

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2019-001064

RECEIVED

JAN 02 2020

SC Court of Appeals

Patricia Pate, Employee/Claimant, ... Appellant,

v.

College of Charleston, Employer,
and State Accident Fund, Carrier, ... Respondents.

RECORD ON APPEAL

Max C. Sparwasser
MAX SPARWASSER LAW FIRM, LLC
PO Box 2307
Mt. Pleasant, SC 29465
(843) 864-6444

Margaret M. Urbanic
Clawson & Staubes, LLC
126 Seven Farms Drive, Ste 200
Charleston, SC 29492-7595
(843) 577-2026

Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000

Mikell H Wyman
Gallivan, White & Boyd, P.A
P.O. Box 22768
Charleston, SC 29413
(843) 735-7600

ATTORNEYS FOR APPELLANT

Kirsten L. Barr
Trask & Howell, LLC
PO Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228

ATTORNEYS FOR RESPONDENTS

INDEX

I.	ORDERS	1
	Commissioner Taylor's Decision and Order dated May 16, 2016	1
	Appellate Panel's Decision and Order dated December 22, 2016	16
	Consent Order dated March 15, 2017.....	32
	Commissioner Taylor's Decision and Order dated May 22, 2018	34
	Appellate Panel's Decision and Order dated May 31, 2019.....	43
II.	PLEADINGS	66
	Form 50 dated November 9, 2012	66
	Form 51 dated December 10, 2012.....	67
	Form 50 dated August 28, 2014	68
	Form 50 dated September 10, 2014	69
	Form 51 dated September 29, 2014	70
	Form 21 dated November 6, 2014	71
	Form 50 dated February 3, 2015.....	72
	Form 51 dated March 3, 2015.....	73
	Form 58 dated June 29, 2015	74
	Claimant's APA Submissions.....	75
	No. 1 - Dr. J. Edward Nolan	75
	No. 2 - Dr. Joseph M. Marzluff	202
	No. 3 - Dr. William Kee	237
	No. 4 - Jean R. Hutchinson.....	241

No. 5 - Addendum.....	247
Form 58 dated July 2, 2015.....	249
Defendant's APA Submissions.....	253
No. 6 - Carolina Family Medicine	253
No. 7 - Dr. J. Edward Nolan of Trident Pain Center.....	302
No. 8 - Dr. J. Morgan Stuart.....	337
No. 9 - Select Physical Therapy - Functional Capacity Evaluation	339
No. 10 - Dr. Jeffrey S. Rose	352
No. 11 - Dr. Dyana Lowndes-Rosen.....	362
Defendant's APA Exhibits	369
No. 12 - Employer Records.....	369
Form 30 dated May 27, 2016	389
Brief of Appellant dated July 18, 2016.....	392
Brief of Respondent dated August 1, 2016.....	412
Claimant's Petition for Rehearing dated January 23, 2017.....	427
Form 30 dated June 7, 2018	431
Brief of Appellant dated September 17, 2018.....	433
Brief of Respondent dated October 1, 2018	446
III. TRANSCRIPTS	458
Deposition of Dr. Joseph P. Marzluff dated March 13, 2013	458
Transcript of hearing dated July 14, 2015	482
IV. CERTIFICATE OF COUNSEL	522

ARGUMENT

I. Issues Decided by the Single Commissioner on Remand

As the below issues were decided by the Single Commissioner on Remand, they are appealable to the Appellate Panel.

1. Pate is presumed permanently and totally disabled as she has lost more than 50% use of her back.

On remand, the Single Commissioner found Pate had sustained permanent partial disability (loss of use) of 40% of the back. The specific finding stated:

I find Claimant has sustained 40% permanent partial disability as a result of her work injury. This finding is based on the evidence as a whole including Dr. Nolan's permanent impairment rating of 23% to the lumbar spine issued on March 10, 2014 as well as Claimant's work restrictions at the time of separation from her employer which included working 4 hours per day for 4 days per week, with specific restrictions of no bending, squatting, or crawling; no lifting greater than 15 pounds, and no pushing or pulling heavy objects. (Claimant's APA p. 93).

There are numerous concerns here which should result in an award of 50% or more loss of use of the back.

To begin with, Pate has two impairment ratings from authorized treating physicians. Her surgeon, Dr. Marzluff gave her a 40% spine rating and a 36% *whole person rating*. [APA page 161]. This rating is not even mentioned in the Commissioner's finding of fact.

The second impairment rating is from Dr. Nolan. He is Pate's treating pain management physician. Dr. Nolan's rating is 23% to the whole person (DRE Category IV). Dr. Nolan assigned this rating on February 25, 2014, noting it is inclusive of Dr. Marzluff's rating. [APA page 126a]. Under the AMA Guides and Clemmons, the whole person rating converts to a regional spine rating of 26%.

When Dr. Nolan assigned the ratings, he ordered an FCE to determine permanent restrictions. The FCE showed Pate could perform at a medium duty level.¹ When Dr. Nolan reviewed the FCE, he assigned restrictions of: "No lifting greater than 15 pounds." He wrote "Patient cannot perform medium workload daily. FCE increased their pain." [APA page 256].

Pate returned to work at the bookstore with these restrictions. Unfortunately, her condition worsened, to the point where Dr. Nolan limited her to 4 hours per day, 4 days per week. These restrictions were referenced by the Single Commissioner.

On June 19, 2015, Dr. Nolan increased Pate's restrictions to:

- No lifting greater than 10 lbs.
- No bending, squatting, or crawling.
- No pushing/pulling heavy objects.

He continued to limit her hours to less than 4 hours per day, 4 days per week.

These restrictions are significant. There are no jobs available to someone with these restrictions. The bookstore had made every reasonable attempt to accommodate Pate's restrictions because she was such a valuable employee. However, her increased restrictions could not be accommodated, rendering her totally vocationally disabled. Not only has she lost the ability to even do sedentary work, she has lost 60% of her available time for work (based on going from 40 hours to 16 hours).

If a back injury is severe enough to limit someone to less than sedentary duty for 16 hours per week, then the employee has lost 50% of the use of her back from a vocational standpoint. As

¹The FCE showed Pate could lift up to 25 pounds occasionally. This is actually a light performance level, as medium duty requires lifting 30 pounds.

such, the award should reflect this reality. A 40% impairment rating is not reflective of Pate's true disability and loss of use. As the ultimate trier of fact, the Appellate Panel has the authority to correct the loss of use award and increase it to 50% or higher.

Therefore, the Appellate Panel should increase the award to greater than 50%, thus creating the presumption that Pate is permanently and totally disabled. As the Employer cannot accommodate these restrictions and the vocational evidence proves total disability, Pate should be deemed permanently and totally disabled.

II. ISSUES PREVIOUSLY DECIDED BY APPELLATE PANEL

The issues below were previously raised to and ruled upon by the Appellate Panel. They are raised here to ensure they are preserved in the event this case is appealed to higher court.

4. Claimant's injury was not limited to her back in that she suffered from radiculopathy and psychological overlay.

The Single Commissioner found "the December 14, 2011 accident did not result in injury to, or otherwise affect, any other body member or system." [Order, page 9, Finding of Fact 1]. This was error, as Pate's accident resulted in radiculopathy and SI joint injury along with major depressive disorder.

A. Radiculopathy and SI Joint Injury.

It is well-established law that radicular symptoms from a back injury are considered an "affect" on the legs. This is so even in the absence of a separate impairment rating. See Hutson v. S.C. State Ports Authority, 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010), *reversed on other grounds*, 732 S.E.2d 500, 399 S.C. 381 (2012)(affirming Commission's finding that radicular symptoms in the right leg showed an injury to the back "with affects to the right leg."). This makes sense as the

AMA Guides incorporate radiculopathy into the whole person ratings given for spine injuries.

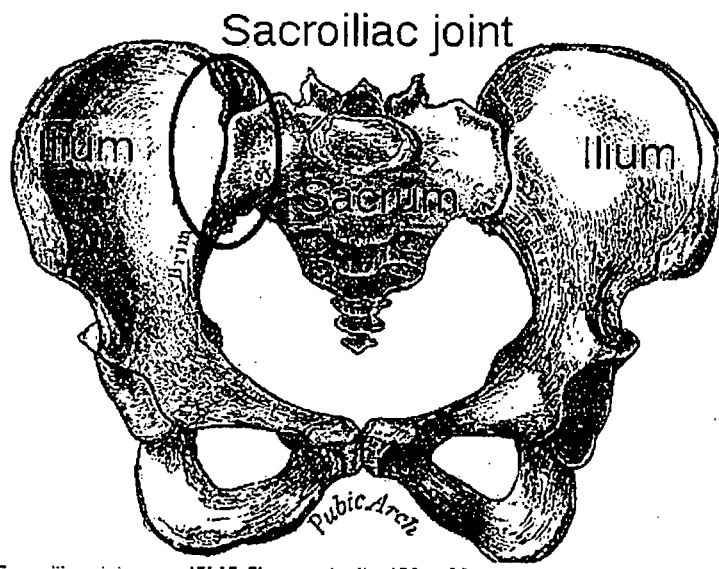
Pate testified that she has pain “in my lower back, and sometimes it leads down to my – into my right thigh through my buttocks. I have more pain on the left side than what it is on the right.”

[Tr. Page 16, lines 11-15]. This is borne out by the medical records.

Dr. Nolan treated Pate for both back pain radiating into her hip and leg, and SI joint pain. On November 26, 2013, he noted a lumbar injection had given relief, albeit temporarily, of “low back pain and leg pain.” From that point, he wanted to “see how treating her low back in conjunction with her SI joint provides relief. [APA pages 245-246]. Dr. Nolan continued treating Pate’s back, legs and SI joint. He consistently characterizes her pain as “Lower back, buttocks, leg.” On August 21, 2014, Dr. Nolan wrote “**Radiating symptoms: moderate to severe lumbar radiculitis pain with ROM in the left L5 nerve distribution and S1 nerve distribution to the knee.**” [APA page 55 (emphasis added)]. He assigned a 23% whole person rating for DRE Category IV. This continued from the outset through the last records presented at the hearing. [APA page 116].

In addition to radiculopathy, Pate injured her SI joint – as evidenced by the need for Dr. Nolan to perform SI joint injections.

The SI joint is an unscheduled member as a matter of law. See Gilliam v. Woodside Mills, 461 S.E.2d 818, 319 S.C. 385 (1995)(“as a matter of law the hip socket is part of the pelvis and not part of the leg for workers' compensation purposes”). The SI joint is the articulation between the sacrum and the ilium of the hip bone. Taber’s Medical Dictionary. The sacrum supports the spine and is supported in turn by an ilium on each side. The illustration below shows the exact location of the SI joint:



The SI joint is by definition an unscheduled body part. Virtually the same issue presented here was definitively addressed in Gilliam v. Woodside Mills, 461 S.E.2d 818, 319 S.C. 385 (1995). In Gilliam, the employee injured her hip and required a hip replacement. She had no other injuries. The Commission refused to make a general disability award, instead holding that Gilliam was limited to a scheduled member award because the hip socket was part of the leg. The Supreme Court reversed holding “the hip socket is part of the pelvis and not part of the leg for workers’ compensation purposes.” Id. The Supreme Court held the issue was one of law – expressly rejecting the employer’s contention that it was a substantial evidence issue. As the injury was to an unscheduled member, the Court remanded to the Appellate Panel for a determination of disability under the general disability statute.

Gilliam commands reversal in the instant case. The evidence is overwhelming that the SI joint was permanently injured in the accident. The Single Commissioner’s finding that Pate’s injury

was limited to her back should be reversed.

B. Psychological Overlay.

The Single Commissioner held “Claimant has not met her burden of proving a psychological injury causally-related to her original injury.” [Order, page 11, finding of fact 7]. This was error. The Single Commissioner overlooked the evaluation by Dr. Kee, as well as the multiple references of psychological overlay from Dr. Nolan. Defendants presented no evidence to contest the opinions of these two doctors.

Pate was referred to Dr. Kee by Dr. Nolan on August 21, 2014. He specifically wrote:

Patient is significantly depressed due s/t pain and increased pressures/stressors. I would like to refer her to Dr. Kee for psychological workup. She states that she feels work is “trying to push her out, that they don’t want her there anymore”. She does not appear to be coping well. Will see if she can work with Dr. Kee to develop/improve these skills. Will also start her on Effexor 50 mg BID and see how she does. Will have her back in 2 weeks to assess her response.

[APA page 55].

Dr. Nolan’s referral specifically relates the depression due to pain and increased pressures/stressors – explaining that this is from not coping with work and her job pushing her out.

Dr. Kee confirmed the diagnosis of major depressive disorder, as well as “problems with anxiety and going to sleep because of worrying about work.” [APA page 164].

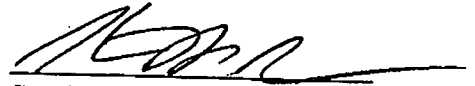
This medical evidence confirms that Pate suffered a psychological overlay with major depressive disorder as a result of the pain and disability resulting from her workplace injury. Therefore, the Single Commissioner should be reversed.

CONCLUSION

For the foregoing reasons, the Decision and Order below should be reversed. An Order should be entered finding: (1) Pate is permanently and totally disabled; (2) the pulmonary embolus

was not an intervening cause sufficient to break the chain of causation; and (3) Pate is entitled to ongoing treatment for her back, radicular symptoms, SI joint, and psychological overlay. Alternatively, should the Full Commission affirm any part of the Order below, Pate is entitled to a permanent partial disability award based on the totality of the evidence – which should include the presumption of total disability.

Respectfully Submitted,



Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000
stephen@samuelslawfirm.net

Max Sparwasser
MAX SPARWASSER LAW FIRM,
LLC
875 Low Country Blvd, Suite
210
Mount Pleasant, SC 29465
(843) 864-6444
max@maxlawsc.com

Attorneys for Appellant

September 17, 2018
Columbia, South Carolina

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL**

Patricia Pate v.

Employee/Claimant,
Appellant

-VS-

College of Charleston,
Employer, and

State Accident Fund
Carrier,
Respondents.

W.C.C. FILE NO. 1121370

RESPONDENTS'S BRIEF TO THE APPELLATE PANEL FOLLOWING REMAND

STATEMENT OF THE CASE

The Claimant experienced low back pain while assisting a co-worker with a box on December 14, 2011 and was subsequently diagnosed with degenerative changes in her lumbar spine. At a hearing before Commissioner Taylor held pursuant to the Defendants' Form 21 and the Forms 50 and 51, the Defendants argued that the Claimant reached maximum medical improvement for her work-related injury by February 14, 2014, when her impairment was rated by Dr. Nolan as 23% to the spine. The Defendants sought a determination of the Claimant's entitlement to benefits under S.C. Code Ann. § 42-9-30, commensurate with that rating and the fact that she was able to return to her regular full time job, earning her regular wages, until September 2014, when the Claimant was hospitalized for multiple pulmonary emboli unrelated to her employment.

As a result of this subsequent intervening injury (multiple pulmonary emboli), the Claimant was unable to receive injection therapy for her low back and was placed

out of work by Dr. Nolan. The Defendants argued that, despite her work injury, the Claimant would be working and earning her regular wages but for her subsequent, intervening pulmonary emboli and resulting treatment (anticoagulant therapy), which broke the chain of causation. Therefore, the Defendants argued that the Claimant's current condition, need for medical treatment, and any alleged loss of wage-earning capacity is not the responsibility of the Defendants. Commissioner Taylor agreed with this factual and legal argument and awarded the Claimant benefits for the 23% loss of use of the back causally-related to the December 14, 2011 accident, but denied her claim for additional medical benefits.

The Claimant sought review of Commissioner Taylor's findings and conclusions by the Commission's Appellate Panel, which issued its Decision and Order on December 22, 2016. The Appellate Panel affirmed Commissioner Taylor's findings and conclusions regarding the nature and extent of her injury and the following is the law of the case:

"On December 14, 2011, Claimant sustained an admitted injury to her lower back within the course and scope of her employment. Based upon the greater weight of the evidence in the record, the December 14, 2011 accident did not result in injury to, or otherwise affect any other body member or system...Claimant also alleges a psychological injury ...We find that the Claimant has not met her burden of proving a psychological injury causally-related to her original injury."

However, the Appellate Panel determined that Commissioner Taylor erred in concluding that the Claimant's non-work-related pulmonary emboli which hospitalized her in September 2014 did not constitute a "subsequent intervening accident" and; therefore, remanded the issue of the Claimant's causally-related loss of use of the back to Commissioner Taylor for further determination.¹

On remand, Commissioner Taylor found that the Claimant sustained a 40% loss of use of the back "based on the evidence as a whole including Dr. Nolan's impairment rating of 23% to the lumbar spine...as well as Claimant's work restrictions at the time of her separation from her employer." As such, Commissioner Taylor awarded the Claimant 120 weeks of compensation.² The Claimant has now appealed this award, arguing that "[t]here are numerous concerns here which should result in an award of 50% or more loss of use of the back." However, the Claimant has failed to elucidate these concerns and has failed to raise any legal argument whatsoever is her plea for additional compensation. Therefore, the Defendants respectfully contend that the Hearing Commissioner properly determined that the Claimant is not permanently and totally disabled under S.C. Code Ann. § 42-9-30.

The Claimant argues that she is entitled to additional relief in Section II of her September 17, 2017 Brief. However, because these issues have previously been addressed and rejected by the Appellate Panel in its interlocutory order of December 22,

¹ The Defendants specifically reserve the right to challenge the reversal of Commissioner Taylor's original Decision and Order, as well as the Findings of Fact and Conclusions of Law contained in the Appellate Panel's interlocutory Order of December 22, 2016.

² This award is subject to the Defendants' credit for overpayment of temporary disability, which was previously affirmed by the Appellate Panel.

2016 and were not further addressed by the Hearing Commissioner on remand, these issues are not properly before the Appellate Panel at this time. These arguments have otherwise been addressed in the Defendants' August 1, 2016 Brief and; therefore, the Defendants request that their counter-arguments on these issues be incorporated by reference.

EVIDENCE SUMMARY

Prior to the December 14, 2011 work accident and in the years that followed, the Claimant was employed by the Copy Center at the College of Charleston. She described her duties as answering the phone, greeting customers, collating and binding papers, and some computer work.

While the Claimant attempted to deny having any problems with low back pain prior to the work accident, she was confronted with the 2011 medical records of her family physician, Dr. Hanna, which plainly show that the Claimant was being prescribed Percocet, Flexeril, Lortab, and Flector patches for low back pain prior to the December 14, 2011 accident. (APA pp. 174--179). The Claimant also required a 2 month medical leave in 2011, prior to the work accident, despite the fact that her duties were so physically limited. (APA pp. 290--292);

After the accident on December 14, 2011, the Claimant underwent a surgery on May 15, 2012. She was able to return to full duty at the College's copy shop only three months later and continued working her regular pre-accident job for another two (2) years without incident. The College of Charleston documented her return to work as follows (APA p. 290):

COLLEGE of
CHARLESTON
HUMAN RESOURCES

INJURED WORKER RESTRICTION FORM

August 30, 2012

TO: Cheryl Connor

FROM: Doug Hill
Workers' Compensation Coordinator

RE: Patricia Pate

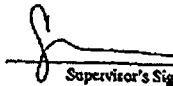
Dear Cheryl Connor,

Patricia Pate has been cleared to return to work on 8/31/12 with the following work restrictions:

No standing or sitting more than 2 hours at a time: ✓
No walking more than 1 hour at a time: ✓
No driving more than 2 hours at a time: n/a
Lifting allowed: 1-10 lbs Frequently; 11-30 lbs - Occasionally no lifting required
No lifting more than 30 lbs n/a
Bending/Stooping/Occasionally not required as part of job

Given these work restrictions, please indicate which one of the following apply:

- ☒ Employee will be able to perform their regular job duties.
☐ Employee's regular job can be performed with modifications.
☐ Employee can perform other job tasks within the department.
☐ Appropriate work for employee cannot be found within the department.


Supervisor's Signature

8/30/12
Date

Please sign/date and return this form to Doug Hill in the Department of Human Resources. Call 843-953-7320 if you have any questions.

294

The Claimant's supervisor, Cheryl Connor, who manages the College of Charleston's Copy Center, testified that this job was available to the Claimant indefinitely.

The Claimant admits that she began having new and different symptoms in her legs in the summer of 2014, including discoloration, swelling, and numbness, and she also began experiencing serious shortness of breath. She was ultimately diagnosed with multiple pulmonary emboli and was hospitalized for several days in September 2014, which rendered her unable to work. The Claimant's supervisor, Ms. Connor, testified

that as a result of the pulmonary emboli, the Claimant was completely out of work from September until December 2014.

In addition, because of the multiple pulmonary emboli and her new need for anticoagulant therapy, the Claimant admitted that the treatment for her low back prescribed by Dr. Nolan changed significantly after September 2014 and she was no longer able to receive injection therapy that had helped her in the past. (T. p.23). The Claimant admitted that none of the treatments she received for her back after the pulmonary emboli worked as well as the treatment she received before the pulmonary embolisms and, as a result, she suddenly required more medication than she had previous to September 2014. The Claimant also admitted that her back pain increased significantly after the pulmonary emboli. The Claimant admits that, because she was no longer able to have injection therapy for her back, she was taken out of work by Dr. Nolan and restricted to working only four (4) hours a day and four (4) days per week. (T. p.24--25).

According to a statement issued by Dr. Nolan on October 3, 2014, the Claimant had

"been hospitalized on 9/17/14 resulting in a diagnosis of pulmonary embolism which will require daily use of an anticoagulant ...The addition of this medication will hinder my ability to continue injection therapy until this issue has resolved. She has received benefit from injection therapy and with treatment she continued to perform her job duties. She presented to my office today and on exam I am concerned about her ability to continue to perform her job as required. In light of this and our inability to resume injection therapy until her pulmonary embolisms are

resolved, I recommend that she be placed out of work for a period of two (2) months and her work status will be evaluated at each visit to our office...Several measures have been taken to try to provide her some form of pain relief to include increasing pain medication strength and frequency and adding physical therapy until we are able to resume treatment with injection therapy.” (APA p. 257).

On September 22, 2014, Dr. Nolan had noted that the Claimant was “*not getting as much relief from the Oxycodone IR 5 mg therefore we will ask her to start doubling what she has to 10 mg.*” (APA p.66).

By October 3, 2014, Dr. Nolan noted that, despite doubling her pain medication,

“she is ultimately unable to perform her job duties as required. Due to her inability to receive needed injection therapy until 02/2015 due to pulmonary embolisms we recommended she be placed out of work at this...” (APA p. 70).

Because of the blood thinner (anticoagulant therapy), the Claimant was also unable to take Percocet, which she felt had helped more than the pain medications she was forced to take after her pulmonary emboli. (APA p. 81). The Claimant was still taking the anticoagulant medication Xarelto at the time of the hearing in July 2015.

In December 2014, the Claimant’s new restrictions from Dr. Nolan regarding her hours (limiting her to four hours per day/four days per week) were accommodated because school was in recess, but the College could no longer afford the Claimant as a

part-time employee as of January 2015. Ms. Connor testified that she was able to accommodate all of the Claimant's physical work restrictions, only the new time restrictions issued after the Claimant's pulmonary emboli were problematic going forward. But for the Claimant's pulmonary emboli, she would have been able to continue working her regular job at the Copy Center indefinitely.

ARGUMENT

- **The Claimant's loss of use of the back does not exceed 50%.**

The Claimant alleges that she is entitled to a presumption of permanent and total disability under S.C. Code Ann. § 42-9-30 because she is not currently working. However, the Claimant has failed to cite any legal authority for her argument that scheduled awards should be based upon a Claimant's work status. More importantly, the Claimant fails to recognize that the Claimant's current work status is not causally-related to her work accident, but is the proximate result of her non-work-related pulmonary emboli in September 2014. Therefore, even if the Claimant's work status were germane to the Commission's determination of physical loss of use, the Claimant's work status in the present case is not relevant.

According to our Supreme Court, there are

"Two competing models of workers' compensation...The first, the economic model, defines disability and incapacity in terms of the claimant's loss of earning capacity as a result of the injury. The second, the medical model, provides awards for disability based upon degrees of medical impairment to specified body parts." Wigfall v. Tideland

Utilities, 354 S.C. 100, 580 S.E.2d 100 (2003) (internal citations omitted).

Here, the Claimant is not entitled to an award based upon the “economic model,” because her work injury affects only a single-scheduled injury to her back. See Appellate Panel Finding of Fact #1. Instead, the Claimant’s only available remedy is under the “medical model” set forth in S.C. Code Ann. § 42-9-30, which compensates for “physical ailments.” Wigfall, *supra* (citing Jewell v. R. B. Pond Co., 198 S.C. 86, 15 S.E.2d 684 (1941)). The Claimant’s physical ailment (degenerative disc disease) resulted in a medical impairment rating of 23% from her current treating physician, Dr. Nolan, which was then increased a full 74% by Commissioner Taylor, who awarded the Claimant benefits for a 40% loss of use of the back. (APA p.254).

Apparently, the Claimant believes her medical impairment rating should at least been doubled to something in excess of 50% of the back, due to economic considerations. However, under S.C. Code Ann. § 42-9-30’s “medical model,” the Legislature has already “statutorily presumed lost earning capacity” for her scheduled injury. Wigfall, *supra* footnote 2 (citing G.E. Moore Co. v. Walker, 232 S.C. 320, 102 S.E.2d 106 (1958) and LARSON’S WORKERS’ COMPENSATION LAW § 86.02 (1999)). Essentially, the Claimant takes issue, not with her treating physician’s impairment rating, but with the degree of compensation that corresponds with that rating. Of course, the Commission is without authority to overrule the Legislature in this regard, but is constrained to weigh the evidence, including the medical impairment ratings and the Claimant’s limited testimony that she has “nagging pain” that affects her activities “at times.” (Hrg. T. p.16).

The Claimant does not take issue with the credibility of her treating physician's 23% impairment rating – she did not even seek to cross-examine Dr. Nolan on this, or any other issue. In addition, there is no evidence that Dr. Nolan, who was in the best position to observe the Claimant and her medical problems, and who was in the best position to apply the AMA's GUIDE TO THE EVALUATION OF IMPAIRMENT, underestimated that impairment. Dr. Nolan's rating is consistent with his report on February 13, 2014 that the Claimant "continues to report good pain relief with her injection therapy and medication management and work restrictions." (APA p.8). By September 4, 2014, the Claimant rated her pain as a "4/10 overall," despite the fact that she was working full time in her regular job. (APA p. 58). These reports are simply not support a finding that the Claimant's physical loss of use of the back exceeds 50%, or that she is permanently and totally disabled.

While the Claimant does not challenge Dr. Nolan's impairment rating, the Claimant does appear to take issue with the impairment rating issued by her previous physician, Dr. Marzluff³, and goes so far as to misstate his impairment rating in her brief to the Appellate Panel. The Claimant would have the Panel believe that Dr. Marzluff rated the Claimant "a 40% spine rating and a 36% whole person rating." (Claimant's Brief p.7). This is incorrect. In his 2013 deposition, Dr. Marzluff testified that he believed the Claimant to have a "40% regional rating to her lumbar spine," which he translated as, and not added to, a "30% whole person rating." (Marzluff T. pp.11–12). Dr. Marzluff further testified that he has already inflated his impairment ratings by

³ Dr. Marzluff released the Claimant at maximum medical improvement on September 19, 2012, at which time he stated that the Claimant had "returned to work on a limited duty bases [sic] and seems to be tolerating that well." (APA p. 160). Dr. Marzluff last evaluated the Claimant 6 years ago.

adding another "ten percent or so" over and above what would be appropriate under the AMA Guides to account for what he termed "chronic pain." (Marzluff T. p. 9, p.19). Therefore, Dr. Marzluff's impairment rating is actually commensurate with the 23% rating issued by the Claimant's current treating physician, Dr. Nolan. Additionally, Commissioner Taylor further inflated Dr. Marzluff's rating by an additional 33% in her award of 40% to the back.

The Claimant further argued that, after her impairment ratings were issued, "her condition worsened" and that this worsening supports a greater inflation of the medical impairment ratings by Appellate Panel. Of course, even the Claimant admits that the worsening of her condition following her multiple pulmonary emboli in September 2014 is not causally-related the December 14, 2011 work accident and; therefore, the worsening of her condition is not the responsibility of the Defendants, nor relevant to the determination of her loss of use of the back caused by the December 14, 2011 accident.

CONCLUSION

Based upon the foregoing arguments, the greater weight of the evidence in the record, and the applicable law, the Defendants respectfully request that the Decision and Order of Hearing Commissioner Taylor be affirmed. This request is specifically subject to the Defendants' right to challenge in the South Carolina Court of Appeals the Appellate Panel's reversal of Hearing Commissioner Taylor's original Decision and Order, as well as the Findings of Fact and Conclusions of Law regarding the Claimant's entitlement to any compensation or medical benefits contained in the Appellate Panel's interlocutory order of December 22, 2016.

Furthermore, the Defendants deny the Claimant is entitled to the additional relief she seeks in Section II of her September 17, 2017 Brief. However, as these issues are not properly before the Appellate Panel at this time and have otherwise been addressed in the Defendants' August 1, 2016 Brief and the Appellate Panel's interlocutory order of December 22, 2016, these arguments are not addressed herein, but are incorporated by reference.

Respectfully submitted,

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for the Defendants

October 1, 2018
Mt. Pleasant, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1121370

COPY

PATRICIA PATE,	)	DEPOSITION OF
	)	
Claimant,	)	JOSEPH P.
	)	MARZLUFF, MD
-versus-	)	
	)	
COLLEGE OF CHARLESTON,	)	
	)	
Employer,	)	
	)	
-and-	)	
	)	
STATE ACCIDENT FUND,	)	
	)	
Carrier-Defendants.	)	

DATE: Wednesday, March 13, 2013

TIME: 3:12 p.m.

LOCATION: Neurological Surgery
9313 Medical Plaza Drive, Suite 305
North Charleston, South Carolina
29406

REPORTED BY: Janice D. Hayward, RMR
NCRA Registered Merit Reporter
101 Dorchester Court
Charleston, South Carolina 29418
843.478.6756
JanHayward1@gmail.com

Janice D. Hayward, RMR 843.478.6756

1 Any Court, party, or person who has purchased
2 a transcript, may, without paying a further fee
3 to the reporter, reproduce a copy or portion
4 thereof as an exhibit pursuant to Court order
5 or rule or for internal use, but shall NOT
6 otherwise provide or sell a copy or copies to
7 any other party or person.

8 APPEARANCES

9 For the Claimant Max C. Sparwasser
10 Max Sparwasser Law Firm
11 875 Lowcountry Boulevard
12 Suite 210
13 Post Office Box 2307
14 Mount Pleasant, South Carolina
15 29465
16 For the Employer- Margaret M. Urbanic
17 Carrier Clawson & Staubes
18 126 Seven Farms Road
19 Charleston, South Carolina 29492
20
21
22
23
24
25

1 INDEX TO EXAMINATIONS

2	Examination By Ms. Urbanic:	4
3	Examination By Mr. Sparwasser:	14
4	Examination By Ms. Urbanic:	16

5

6 INDEX TO EXHIBITS

7	Deposition Exhibit 1, 15.4 DRE: Lumar Spine	20
8	Deposition Exhibit 2, return to work slip	20

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Joseph M. Marzluff, MD, after being
2 sworn, testified as follows:)

3 EXAMINATION

4 BY MS. URBANIC:

5 Q Doctor Marzluff, my name's Peggy Urbanic
6 again. And I represent the College of Charleston
7 and the State Accident Fund with regards to Patricia
8 Pate's worker's compensation claim.

9 And I understand she was your
10 patient. Her back has been accepted, that's not the
11 issue of the case. And I understand you did a
12 lumbar fusion on her, is that correct?

13 A Correct.

14 Q Just for the record, what level was that
15 at?

16 A Four-five, lumbar 4-5.

17 Q Okay. And I know -- last note I have that
18 you saw her, and you may have seen her more recently
19 than that, was January 30th of 2013. When is the
20 last time you saw Miss --

21 A February 13th is the last time I've seen
22 her.

23 Q Okay. And how was Miss Pate on
24 February 13th of 2013?

25 A Well, I had her come back in and discuss

1 her magnetic resonance scan. When I saw her on the
2 13th, she was complaining of some increasing back
3 and hip pain, and she had some normal problems with
4 bowel incontinence. She had been worked up, looking
5 for a cause. Nobody could find the cause of it.

6 One of the causes of bowel and
7 bladder incontinence is spine problems. We repeated
8 a scan on her. It looked okay. We saw
9 postoperative changes, as we would expect to see,
10 but nothing else.

11 A lot of the problems that she
12 was having were related to the stuff she was doing
13 at work was aggravating her back.

14 Q Okay. And did you ever determine the
15 cause of the bowel incontinence?

16 A No.

17 Q And do you have an opinion as to whether
18 or not it's related to her spinal problems or if
19 it's from something else completely different?

20 A Don't have an opinion.

21 Q Okay. And you did the lumbar fusion
22 surgery, and did she basically have a good recovery
23 from that surgery?

24 A Certainly, initially she did. You know, I
25 guess I initially saw her in February of 2012 with

1 spondylolisthesis that we felt was aggravated by a
2 work accident.

3 We treated her with conservative
4 management with a couple of cortisone injections.
5 Really didn't get any better, so we operated on her.
6 That was in, I guess, late May of 2012.

7 And really postoperatively, she
8 was doing reasonably well. She was having -- sort
9 of all along she had back pain as you would expect.

10 At three months she was getting
11 progressively better. We sent her to rehab. When I
12 saw her back after rehab, again, doing reasonably
13 well.

14 She was doing home exercises. I
15 had given her an impairment rating at that time and
16 said she could return to work.

17 And, you know, we had a
18 discussion about what she could and what she
19 couldn't do, and she seemed to think at that time
20 that her immediate supervisors would be reasonable
21 with her as far as lifting and bending and twisting.
22 And apparently there is at least some controversy,
23 in her mind, as to whether they are or are not.

24 Q What can she and can't do?

25 A Well, it's kind of difficult to quantify

1 that. It's like if it hurts, don't do it. The
2 biggest problem she was having was bending over and
3 picking up boxes.

4 Q Okay. But you didn't give her a specific
5 weight restriction?

6 A I tell people, you know, try not to do
7 more than 15 to 20 pounds on a frequently repetitive
8 basis, but everybody's a little different.

9 Q Okay. Any problems with her standing for
10 long periods of time, to your knowledge?

11 A Not as far as I know, although the
12 majority of people that have spine surgery find that
13 any particular position for a prolonged period of
14 time is uncomfortable. You know, it gets better as
15 time goes on.

16 Q Okay. And you mentioned earlier that you
17 had given her an impairment rating. I think you
18 filled out one of our workers' comp forms, a 14B for
19 us. I don't know if you have a copy of that in your
20 file or not.

21 A I have my note, 40 percent of the spine
22 for status post lumbar fusion, restriction, back in
23 all directions --

24 MS. HAYWARD: Wait, status post
25 lumbar --

1 THE WITNESS: Fusion --

2 MR. SPARWASSER: Do you mind if we
3 give it to him?

4 MS. URBANIC: No.

5 BY MS. URBANIC:

6 Q And what -- the real reason why we're here
7 today, Doctor Marzluff, is we want to know how you
8 came to that impairment rating. And I'll tell you,
9 you know, we have the AMA guides which attorneys
10 have, although technically we're not supposed to
11 read them, and they have our handy charts in it.

12 And this is the chart I made a
13 copy of, which is table 15.3 in the Lumbar Spine
14 Section. And I think you said she had a, was it
15 a --

16 A Lumbar fusion.

17 Q Yeah, lumbar fusion. So a 36 percent
18 medical impairment with a 40 percent regional
19 rating. And we were trying to figure out how you
20 arrived on that, based on that AMA guide.

21 A Basically, as I recall, and
22 unfortunately -- you know, sort of having done this
23 for a long time, a lot of this is by memory. But
24 although there's alteration of motion segment, stuff
25 like that in category five, she also has the chronic

1 pain syndrome as well. And so that tends to boost
2 up the overall.

3 Q Okay. So the category five of the lumbar
4 chart, table 15.3 has a 25 to 28 percent whole
5 person rating.

6 A Right. But she also got -- but this is
7 typically not with a lot of chronic pain either.
8 She has more of a chronic pain problem as well, too.

9 Q Okay. Is there a chart in the AMA guides?

10 A I honestly don't know. They've changed so
11 many times.

12 Q Right. Every now and then they like to
13 revise them.

14 A Yes.

15 Q So you just add an additional --

16 A Yes. I added an additional ten percent or
17 so because of the chronic pain she's having.

18 Q Okay. Because you don't think that the
19 category five takes into consideration any type of
20 chronic --

21 A Not as much, no.

22 Q Okay. Because it does talk about pain
23 and/or sensory changes within a distribution.

24 A You're talking primarily about a
25 radiculopathy.

1 Q That's what that's referring to?

2 A Which is pain in a specific distribution.
3 Part of hers is a general back pain.

4 Q Okay. And -- 'cause it also includes the,
5 I guess the way they write these tables, category
6 four includes the previous categories.

7 A Right. We understand that.

8 Q And to your knowledge, none of those
9 include any other type of what you consider chronic
10 pain syndrome as the overall general back pain?

11 A No. I think that impairment rating is a
12 fair one for her.

13 Q Okay. And that's the 36 --

14 A Whatever 40 percent of the lumbar spine
15 translates to.

16 Q Okay.

17 A Okay?

18 Q All right. And I know the AMA guide's
19 probably not your favorite thing in the world,
20 but --

21 A No. It's not maybe not my favorite thing,
22 it is truly not my favorite thing.

23 Q Okay. All right. We need to clarify this
24 for the workers' comp case, though. I'm not trying
25 to be difficult here.

1 But my understanding of your
2 testimony is saying that she has a 40 percent
3 regional rating to her lumbar spine?

4 A Right.

5 Q Did you use -- there's a conversion chart
6 to get from regional --

7 A I don't know where that came from. I
8 don't know who supplied the 36 versus 40. I'm
9 sorry, I just don't know.

10 Q Okay.

11 A Since this was done a couple months ago.

12 Q Right. Okay. Because the next page that
13 I have copied out of the AMA guides, which is page
14 427, they have this little conversion deal to go
15 from whole person, and regional, and back and forth.

16 And with your --

17 A .75 percent of the lumbosacral spine.

18 Q Right. So if it's a 40 percent --

19 A So that would be 30.

20 Q So it would be 30?

21 A Not 36.

22 Q So it should be a 30 percent whole person
23 rating?

24 A Wait a minute.

25 Q And if you wanted a calculator or

1 something to do the math.

2 A I have a calculator right here. Okay. It
3 should be 75 percent. So it should be 30 percent,
4 not 36 percent.

5 Q Okay. So Miss Pate would have a
6 30 percent whole person rating?

7 A Whole person, 40 percent --

8 Q Regional.

9 A -- regional.

10 Q Okay. And I'll tell you, workers' comp
11 uses the whole person rating. So we just wanted to
12 clarify what you meant by that rating.

13 A That's okay. I don't have a problem with
14 that.

15 Q And I know you said you had seen her, I
16 think, recently, in February, and you had done your
17 14B back in November. What additional treatment
18 would Miss Pate require in the future? Anything
19 changed?

20 A She's required more pain medication
21 because actually she called today wanting a refill
22 of pain medication.

23 Q Okay. Is that just oral meds she's
24 taking?

25 A Yeah.

1 Q And do you know what oral medication she's
2 currently on?

3 A Percocet.

4 Q Okay.

5 A She's taking that -- she probably doesn't
6 need a medicine quite that strong, but she can't
7 take some of the other medications. They upset her
8 stomach, or they make her ill. She's specifically
9 allergic to hydrocodone. So that seems to hold her.
10 She is not a drug abuser by any stretch of the
11 imagination.

12 But, you know, she will probably
13 need intermittent physical therapy and pain
14 medications, perhaps intermittent diagnostic
15 studies.

16 Q Okay. I think that's all the questions I
17 have.

18 MS. URBANIC: I will just make these
19 two pages of the AMA guides an exhibit,
20 Max.

21 MR. SPARWASSER: That's fine. That's
22 fine.

23 MS. URBANIC: Max may have some
24 questions for you.

25 EXAMINATION

1 BY MR. SPARWASSER:

2 Q Yes. Doctor Marzluff, thank you for your
3 time. I represent Patricia Pate.

4 As far as page 427 of the AMA
5 guides that you have before you, you're right. The
6 DRE, Diagnosed Related Estimates, says the
7 multiplier is .75.

8 A Right.

9 Q But then the range of motion is .9. So
10 that's how it comes to 36 percent, the range of
11 motion. And so I just wanted to point that out on
12 page 427.

13 A I'm going to let the Work Comp Commission
14 decide what they prefer.

15 Q Okay.

16 A You know, as far as the conversion from
17 regional to the whole man.

18 Q Thank you.

19 A But I can understand your point.

20 Q Thank you. Doctor Marzluff, you recently
21 saw her after she had an MRI, correct?

22 A Right.

23 Q And did you recommend that MRI for Miss
24 Pate?

25 A Yes.

1 Q All right. And was the need for that
2 recent MRI causally related to her work injury?

3 A Yes.

4 Q And as far as the numbness and pain in her
5 left buttocks, are you aware that she has that
6 issue?

7 A Yes.

8 Q Is that causally related to her work
9 injury?

10 A Yes.

11 Q All right. And then as far as
12 restrictions, are those the same restrictions that
13 she should be on right now?

14 A Yes, I think so.

15 Q Okay. And did you recommend pain
16 management for Miss Pate?

17 A Yes.

18 Q And do you believe that pain management
19 would lessen her disability?

20 A I think it will.

21 Q Okay. All of your opinions today are
22 stated to a reasonable degree of medical certainty?

23 A Yes.

24 Q Thank you, Doctor Marzluff.

25

EXAMINATION

1 BY MS. URBANIC:

2 Q What pain management did you recommend
3 other than the Percocet she's currently getting? Is
4 that to a pain management doctor?

5 A Yeah. We referred her to -- I don't know
6 who we referred her to.

7 MR. SPARWASSER: We might need the
8 medical records.

9 BY MS. URBANIC:

10 Q My last note is January 30th, so.

11 A Yeah. We sent her to pain management to
12 try an epidural steroid injection on the left side.

13 Q And when was that?

14 A My date is 3-6-13. I don't know when that
15 was done or if that has been done because workman's
16 compensation had denied her, denied that visit.

17 The visit of 1-30-13 was denied
18 by work comp, so I don't know if they agreed to the
19 epidural or not.

20 Q Did you see her on March 6th, or is
21 that --

22 A No. That was just a phone.

23 Q Okay.

24 A Yeah.

25 Q A phone thing, you referred her for an

1 injection?

2 A Right.

3 Q Okay. All right.

4 A Yes. Yeah, my note on 2-5-13, work comp
5 denied her x-ray, the MRI, so we did it through her
6 regular insurance. And then she called back on 3-6.
7 She was having more left-sided buttocks pain and
8 thigh, and we decided to try her with an epidural.

9 Q Did you refer that to a particular doctor
10 or just whoever she wants to get that with?

11 A We would have referred it to a particular
12 doctor, and I'm trying to find out who it was
13 because there are several pain management doctors
14 that we use. I honestly do not know who it went to,
15 and I don't have it written down.

16 Q Well, let me go back and ask you a
17 question. When Max was asking you questions, he
18 referenced the -- there's two different, I guess,
19 methods for impairment ratings: One is the DRE
20 method, and one is the range of motion method.

21 Do you know what the difference
22 is between those two --

23 A No.

24 Q -- methods?

25 The table 15.3 that I showed

1 you, the headings are DRE.

2 A Okay, yeah.

3 Q Category, so I would assume that's the DRE
4 method.

5 A Right.

6 Q And I believe you testified earlier that
7 she would fall into that --

8 A -- category.

9 Q Yeah, the 25 to 28 percent whole person.
10 And then you added on roughly an additional ten
11 percent for pain management?

12 A Right.

13 Q Okay.

14 MR. SPARWASSER: For pain management?

15 MS. URBANIC: I mean for chronic
16 pain, sorry.

17 MR. SPARWASSER: No problem.

18 MS. URBANIC: Excuse me. Sorry.

19 BY MS. URBANIC:

20 Q So if she was in that 25 to 28 percent DRE
21 whole person, say 28 percent to actually have a
22 number on it, do you know what that conversion would
23 be? If it would be 75 percent of that, or -- that's
24 the whole person, excuse me. So she would be --

25 A It would be that times whatever -- there's

1 another conversion rating going the other way, too.

2 Q But the 28 percent would be her whole
3 person plus your -- what you put on, that you added
4 on some for the chronic pain?

5 A Right. So we're at 30 versus 28.

6 Q Okay. And then the range of motion method
7 which Max, I think, said it was a .9 multiplier, do
8 you know if that would use this table 15.3, or would
9 you start with a different whole person number? Do
10 you know what I'm saying? Like if this is the
11 DRE --

12 A Yeah, you know, it's just -- again, this
13 is a game that attorneys and this Board play, the
14 Board plays with, and that's fine. And I'm willing
15 to give a number that is probably within ten percent
16 of any method you use.

17 Q Okay. And your number was 30 percent
18 whole person?

19 A Correct.

20 Q Okay. That's your opinion to --

21 A Forty percent spine.

22 Q Forty percent regional to the lumbar
23 spine?

24 A Correct.

25 Q Thirty percent whole person?

1 A Correct.

2 Q And that's your opinion to a reasonable
3 degree of medical certainty?

4 A Yes.

5 Q Okay.

6 MR. SPARWASSER: Thank you, Doctor.

7 (Marked for identification was Defendant's
8 Exhibit 1.)

9 (Marked for identification was Defendant's
10 Exhibit 2.)

11 (The deposition was concluded at 3:31
12 p.m.)

13 ---oOo---

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER)

CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition, and that the transcript is
7 a true record of the testimony given by the witness.

8 I further certify that the witness was
9 duly sworn and cautioned by me to tell the truth,
10 the whole truth and nothing but the truth. I
11 certify that the same was reduced to typewritten
12 form from my original stenograph notes by
13 computer-aided transcription.

14 I further certify that I am not of
15 counsel or kin to any of the parties to this cause
16 of action, nor am I interested in any manner in
17 its outcome.

18 IN WITNESS WHEREOF I have hereunto set
19 my hand and seal this the 27th day of March, 2013.

20

21

22

A circular notary seal for Janice D. Hayward, RMR, Notary Public, South Carolina. The seal contains the text "JCH" and "RMR" and is partially obscured by the word "COPY".

23

24

25

Janice D. Hayward, RMR
Notary Public, South Carolina
My Comm. Expires Oct. 10, 2022

In cases where the abnormalities discussed above are present on imaging studies and are known or assumed to have preexisted an injury being rated, physicians should acknowledge these antecedent conditions. If requested, physicians may need to assess whether the condition was previously symptomatic and whether any aggravation occurred as a result of the injury. Physicians should be aware of the statutory definition in the involved jurisdiction pertaining to *aggravation* to ensure their use of the term is consistent with their state's legal interpretation.

DRE categories are discussed in the following three sections.

15.4 DRE: Lumbar Spine

The lumbar spine DRE categories are summarized in Table 15-3. Apart from category I, each category includes a range to account for the resolution or continuation of symptoms and their impact on the ability to perform ADL.

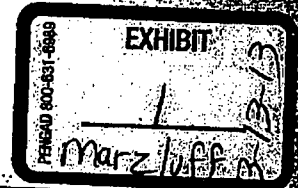


Table 15-3: Criteria for Rating Impairment Due to Lumbar Spine Injury

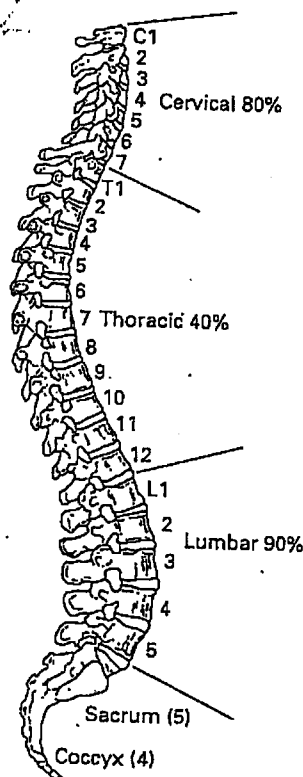
DRE Lumbar Category I 0% Impairment of the Whole Person	DRE Lumbar Category II 5%-8% Impairment of the Whole Person	DRE Lumbar Category III 10%-13% Impairment of the Whole Person	DRE Lumbar Category IV 20%-23% Impairment of the Whole Person	DRE Lumbar Category V 25%-28% Impairment of the Whole Person
No significant clinical findings, no observed muscle guarding or spasm, no documentable neurologic impairment, no documented alteration in structural integrity, and no other indication of impairment related to injury or illness; no fractures	Clinical history and examination findings are compatible with a specific injury; findings may include significant muscle guarding or spasm observed at the time of the examination, asymmetric loss of range of motion, or nonverifiable radicular complaints, defined as complaints of radicular pain without objective findings; no alteration of the structural integrity and no significant radiculopathy or individual had a clinically significant radiculopathy and has an imaging study that demonstrates a herniated disk at the level and on the side that would be expected based on the previous radiculopathy, but no longer has the radiculopathy following conservative treatment or fractures: (1) less than 25% compression of one vertebral body; (2) posterior element fracture without dislocation (not developmental spondylolysis) that has healed without alteration of motion segment integrity; (3) a spinous or transverse process fracture with displacement without a vertebral body fracture, which does not disrupt the spinal canal	Significant signs of radiculopathy, such as dermatomal pain and/or in a dermatomal distribution, sensory loss, loss of relevant reflex(es), loss of muscle strength or measured unilateral atrophy above or below the knee compared to measurements on the contralateral side at the same location; impairment may be verified by electrodiagnostic findings or history of a herniated disk at the level and on the side that would be expected from objective clinical findings, associated with radiculopathy, or individuals who had surgery for radiculopathy but are now asymptomatic or fractures: (1) 25% to 50% compression of one vertebral body; (2) posterior element fracture with displacement disrupting the spinal canal; in both cases, the fracture has healed without alteration of structural integrity	Loss of motion segment integrity defined from flexion and extension radiographs as at least 4.5 mm of translation of one vertebra on another or angular motion greater than 15° at L1-2, L2-3, and L3-4, greater than 20° at L4-5, and greater than 25° at L5-S1 (Figure 15-3); may have complete or near complete loss of motion of a motion segment due to developmental fusion, or successful or unsuccessful attempt at surgical arthrodesis or fractures: (1) greater than 50% compression of one vertebral body without residual neurologic compromise	Meets the criteria of DRE lumbosacral categories III and IV; that is, both radiculopathy and alteration of motion segment integrity are present; significant lower extremity impairment is present as indicated by atrophy or loss of reflex(es), pain, and/or sensory changes within an anatomic distribution (dermatomal), or electromyographic findings as stated in lumbosacral category III and alteration of spine motion segment integrity as defined in lumbosacral category IV or fractures: (1) greater than 50% compression of one vertebral body with unilateral neurologic compromise

15.13 Criteria for Converting Whole Person Impairment to Regional Spine Impairment

In some instances, the evaluator may be asked to express an impairment rating in terms of the involved spine region rather than the whole person. This is done by dividing the whole person impairment estimate by the percent of spine function that has been assigned to that region. Under the DRE method, a whole person estimate being converted to a regional estimate would be divided by 0.35 for the cervical spine, 0.20 for the

thoracic spine, and 0.75 for the lumbar and sacral spines. Under the ROM method, a whole person estimate being converted to a regional estimate should be divided by 0.80 for the cervical spine, 0.40 for the thoracic spine, or 0.90 for the lumbosacral spine (Figure 15-19). For example, a 24-year-old female office worker sustained a cervical injury that, after it was healed and stable, resulted in a whole body impairment, estimated by the DRE method, of 20%. Dividing the 20% by 0.35 results in 57% impairment of the cervical spine. An individual with multiple lumbar compression fractures was rated 25% whole body impairment by the ROM method. To obtain an estimate of lumbar spine impairment, the physician should divide the 25% by 0.9, resulting in a 27.7% rounded up to 28% lumbar spine impairment. Any values that exceed 100% are rounded down to 100% regional impairment.

Figure 15-19 Side View of Spinal Column



The whole spine divided into regions indicating the maximum whole person impairment represented by a total impairment of one region of the spine. Lumbar 90%, thoracic 40%, cervical 80%.

15.14 The Pelvis

Criteria for Rating Impairment Due to Pelvic Injury

The pelvis is composed bilaterally of three bones: the ilium, the ischium, and the pubis, forming a ringlike structure. Each ilium is attached to the sacrum via the sacroiliac synchondrosis. The pelvis, including the symphysis pubis, assists in transfer of body weight to the lower extremities. In females, the pelvic structure and function are also of paramount importance in pregnancy and delivery.

JOSEPH M. MARZLUFF, M.D.
MIKE O. TYLER, JR., M.D.
JASON M. HIGHSMITH, M.D.
DR. SABINO D'AGOSTINO
9313 MEDICAL PLAZA DR, SUITE 305
N. CHARLESTON, SC 29406
843-553-7615/(fax)843-553-1008



NAME: P. PA DATE: 2/11/13

This patient was at the doctor's office on the date above.

☒ He/She may return to work/school:
☐ without restriction—using good judgement with the use of his/her back.
☐ light duty with no excessive bending, no lifting more than 15 pounds.

☐ He/She may not return to work/school:
☐ until his/her medical tests are completed.
☐ until his/her physical therapy is completed.
☐ until he/she has had _____ days of bed rest at home.
☐ until his/her next appointment _____

No frequent bending or stepping

[Signature] M.D.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1121370

EMPLOYEE/CLAIMANT: PATRICIA A. PATE

EMPLOYER: UNIVERSITY OF CHARLESTON

CARRIER: STATE ACCIDENT FUND

COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 14TH DAY
OF JULY, 2015, COMMENCING AT THE HOUR OF 1:06 P.M., IN
GOOSE CREEK, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA
TAYLOR, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

MAX C. SPARWASSER, ESQUIRE, OF THE
MAX SPARWASSER LAW FIRM, LLC
POST OFFICE BOX 2307
MOUNT PLEASANT, SOUTH CAROLINA 29465

ATTORNEY FOR THE CLAIMANT,

KIRSTEN L. BARR, ESQUIRE, OF THE FIRM
TRASK & HOWELL, LLC
POST OFFICE BOX 2167
MOUNT PLEASANT, SOUTH CAROLINA 29465-2167

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MR. DONALD PATE
MS. CHERYL CONNER

I N D E X

PAGE

PATRICIA A. PATE:

DIRECT EXAMINATION BY MR. SPARWASSER.....	12
CROSS EXAMINATION BY MS. BARR.....	19

CHERYL CONNOR:

DIRECT EXAMINATION BY MS. BARR.....	29
CROSS EXAMINATION BY MR. SPARWASSER.....	38
CERTIFICATE OF NOTARY PUBLIC.....	40

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN GOOSE CREEK,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 BY COMMISSIONER TAYLOR:

7 TODAY IS TUESDAY, JULY 14TH, 2015. WE ARE HERE
8 ON WORKERS' COMP FILE NUMBER 1121370. THIS IS THE
9 CLAIM OF MS. PATRICIA PATE, WHO IS PRESENT HERE
10 TODAY AND REPRESENTED BY MR. MAX SPARWASSER. THE
11 EMPLOYER IS THE COLLEGE OF CHARLESTON, AND THE
12 CARRIER IS THE STATE ACCIDENT FUND. BOTH THE
13 COLLEGE OF CHARLESTON AND THE ACCIDENT FUND ARE
14 REPRESENTED TODAY BY MS. KIRSTEN BARR.

15 WE ARE HERE SET ON BOTH THE CLAIMANT'S FORM 50,
16 REQUEST FOR HEARING, AS WELL AS THE EMPLOYER AND
17 CARRIER'S REQUEST FOR HEARING. IT APPEARS, BASED
18 UPON THE FILINGS, THAT THE FORM 21 WAS FILED FIRST.
19 THIS MATTER WAS SUBJECT TO MANDATORY MEDIATION,
20 WHICH WAS UNSUCCESSFUL, AND THUS WE ARE HERE SET FOR
21 A HEARING.

22 I WILL ALLOW THE PARTIES TO PUT DETAILED
23 POSITION STATEMENTS ON THE RECORD. HOWEVER, PRIOR
24 TO DOING SO, ARE THERE ANY OBJECTIONS TO APAs,
25 JURISDICTION, VENUE, OR ANY OTHER ITEMS? MS. BARR?

1 BY MS. BARR:

2 NONE FROM THE DEFENDANTS, YOUR HONOR.

3 BY THE COMMISSIONER:

4 MR. SPARWASSER?

5 BY MR. SPARWASSER:

6 NONE FROM THE CLAIMANT, YOUR HONOR.

7 BY THE COMMISSIONER:

8 THANK YOU. WITHOUT OBJECTION THE COMMISSION
9 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
10 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED
11 MEDICAL REPORTS.

12 MS. BARR, SINCE YOUR 21 WAS FILED FIRST, YOU
13 MAY PUT YOUR POSITION STATEMENT ON THE RECORD FIRST.

14 BY MS. BARR:

15 THANK YOU, YOUR HONOR. IT IS OUR POSITION THAT
16 THE CLAIMANT WAS RELEASED AT MAXIMUM MEDICAL
17 IMPROVEMENT FOR A DECEMBER 14TH, 2011, LOW BACK
18 INJURY, WHICH WAS ESSENTIALLY DEGENERATIVE DISC
19 DISEASE. SHE HAS A REGIONAL RATING FROM DR. NOLAN
20 OF 23 PERCENT TO THE SPINE. WE SEEK A DETERMINATION
21 OF PERMANENCY IN ACCORDANCE WITH THAT RATING. IT'S
22 OUR POSITION THAT THE CLAIMANT SUFFERED A SUBSEQUENT
23 INTERVENING INJURY IN SEPTEMBER OF 2014 WHEN SHE WAS
24 HOSPITALIZED FOR MULTIPLE PULMONARY EMBOLISMS, WHICH
25 ARE UNRELATED TO HER EMPLOYMENT AND UNRELATED TO

1 THIS INJURY. AS A RESULT OF THESE PULMONARY
2 EMBOLISMS, SHE SUFFERED SHORTNESS OF BREATH,
3 NUMBNESS, TINGLING AND SWELLING IN HER LEGS AND HAD
4 TO CEASE HER ONGOING PAIN MANAGEMENT WITH DR. NOLAN,
5 INJECTION THERAPY. DR. NOLAN SAYS VERY SUCCINCTLY
6 IN HIS RECORDS, AT PAGE 70 AND PAGE 257, 'THE RESULT
7 OF COMPLICATIONS FROM THE PULMONARY EMBOLISMS, THAT
8 SHE WOULD HAVE TO REMAIN OUT OF WORK FOR SEVERAL
9 MONTHS. HE THEN SIGNIFICANTLY CHANGED HER WORK
10 RESTRICTIONS TO INCLUDE A LIMIT OF FOUR HOURS A DAY
11 AND FOUR DAYS A WEEK. THESE RESTRICTIONS THAT ARE
12 NECESSITATED BY THE PULMONARY EMBOLISMS COULD NOT BE
13 ACCOMMODATED LONG TERM BY THE COPY CENTER WHERE MS.
14 PATE WORKED AS AN ASSISTANT MANAGER. WE HAD
15 ACCOMMODATED WORK RESTRICTIONS NECESSITATED BY THE
16 BACK INJURY FOR OVER THREE YEARS. THAT'S
17 DOCUMENTED, AND WE WILL PRESENT TESTIMONY FROM MS.
18 CONNOR ABOUT THOSE ACCOMMODATIONS FOR THREE YEARS.
19 THEREFORE, WE BELIEVE THAT ANY SUBJECTIVE COMPLAINTS
20 THAT MS. PATE HAS AT THIS POINT IN TIME ARE NOT
21 CAUSALLY RELATED AND CANNOT WITHOUT SPECULATION BE
22 ATTRIBUTED TO THE DECEMBER 14, 2011, ACCIDENT,
23 BECAUSE MS. PATE HERSELF HAS TESTIFIED THAT HER
24 SYMPTOMS WORSENERED AS A RESULT OF THE PULMONARY
25 EMBOLISM AND COMPLICATION. CERTAINLY HER WORK

1 RESTRICTIONS CHANGED SIGNIFICANTLY, AS INDICATED BY
2 DR. NOLAN. SO ANY DISABILITY OR LOSS OF WAGE
3 EARNING CAPACITY IS PROXIMALLY CAUSED BY THESE
4 PERSONAL HEALTH PROBLEMS, NOT BY THE ACCIDENT.

5 WE SEEK A CREDIT FOR OVERPAYMENT OF ALL
6 TEMPORARY TOTAL PAID AFTER FEBRUARY 13, 2014, WHICH
7 WAS THE DATE OF MAXIMUM MEDICAL IMPROVEMENT, AND WE
8 WOULD SUBMIT THAT THERE IS NO EVIDENCE THAT SHE
9 REQUIRES ANY ADDITIONAL MEDICAL TREATMENT TO LESSEN
10 HER PERIOD OF DISABILITY STATED BY THE REQUIRED
11 REASONABLE DEGREE OF MEDICAL CERTAINTY.

12 THERE IS ALSO A PSYCH CLAIM THAT'S BEEN DENIED.
13 AS WE STATED IN OUR PRETRIAL CONFERENCE, MS. PATE
14 HAS A NUMBER OF SIGNIFICANT PERSONAL STRESSORS
15 UNRELATED TO THIS DEGENERATIVE DISC DISEASE CLAIM,
16 INCLUDING A BROTHER WHO SUFFERED UNFORTUNATELY FROM
17 PANCREATIC CANCER AND DIED RECENTLY. SHE HAS
18 CHRONIC BOWEL PROBLEMS THAT ARE MENTIONED THROUGHOUT
19 FOR YEARS IN HER PERSONAL FAMILY PHYSICIAN'S
20 RECORDS, AND THEN, AGAIN, THIS VERY SIGNIFICANT
21 HEALTH PROBLEM WITH THE MULTIPLE PULMONARY EMBOLISMS
22 AND SYMPTOMS RELATED TO THAT. WE BELIEVE THOSE ARE
23 THE SIGNIFICANT FACTORS, ANY STRESS THAT SHE HAS.
24 BUT, MOREOVER, THERE'S NO DISABILITY OR WORK
25 RESTRICTIONS AS A RESULT OF ANY PSYCHIATRIC

1 PROBLEMS, AND NO DOCTOR HAS STATED TO A REASONABLE
2 DEGREE OF MEDICAL CERTAINTY THAT SHE REQUIRES
3 PSYCHIATRIC TREATMENT AT THIS TIME TO LESSEN ANY
4 PERIOD OF DISABILITY.

5 BY THE COMMISSIONER:

6 OKAY, THANK YOU. MR. SPARWASSER.

7 BY MR. SPARWASSER:

8 YES, YOUR HONOR. FIRST OF ALL, IF THERE IS NO
9 OBJECTION, I'VE GOT DR. MARZLUFF'S DEPOSITION.

10 BY MS. BARR:

11 THERE IS AN OBJECTION. HE WAS NOT NOTICED AS A
12 WITNESS. IT WAS NOT PUT IN HIS APAs. IT WOULD BE
13 IMPROPER AT THIS TIME.

14 BY MR. SPARWASSER:

15 YOUR HONOR, IF THE DEFENDANTS ARE OBJECTING TO
16 FUTURE MEDICAL TREATMENT, DR. MARZLUFF DIRECTLY
17 ADDRESSED THIS TO A REASONABLE DEGREE OF MEDICAL
18 CERTAINTY.

19 BY MS. BARR:

20 WELL, THEN YOU SHOULD HAVE NOTICED IT.

21 BY MR. SPARWASSER:

22 IT'S IN HIS DEPOSITION.

23 BY THE COMMISSIONER:

24 WHO IS DR. MARZLUFF; WAS IT AN I.M.E.?

25 BY MR. SPARWASSER:

1 HE'S THE ONE THAT PERFORMED THE SURGERY.

2 BY MS. BARR:

3 DR. MARZLUFF HASN'T SEEN HER SINCE 2012.

4 BY MR. SPARWASSER:

5 HE'S THE ONE THAT PERFORMED THE SURGERY, YOUR
6 HONOR.

7 BY MS. BARR:

8 ACCORDING TO THE RECORDS YOU DID SUBMIT, HE
9 LAST SAW HER IN SEPTEMBER OF 2012. DR. MARZLUFF WAS
10 NOT NAMED AS A WITNESS, WAS NOT SUBMITTED AS AN APA.
11 IT'S NOT LISTED ON THE BRIEF.

12 BY THE COMMISSIONER:

13 WHAT'S THE DATE OF THE DEPOSITION, MR.
14 SPARWASSER?

15 BY MR. SPARWASSER:

16 IT IS MARCH 13TH, 2013.

17 BY THE COMMISSIONER:

18 OKAY. JUST TO NOTE FOR THE RECORD, THE
19 CLAIMANT IS MAKING A MOTION TO SUBMIT DR. MARZLUFF'S
20 DEPOSITION TRANSCRIPT INTO THE RECORD. IT APPEARS
21 THE CLAIMANT TREATED WITH DR. MARZLUFF FROM MAY
22 15TH, 2012, THROUGH SEPTEMBER 19TH, 2012. THE
23 DEPOSITION WAS TAKEN IN CLOSER PROXIMITY TO THAT
24 TIME. THE DEFENDANTS HAVE OBJECTED TO THAT
25 TRANSCRIPT COMING INTO THE RECORD. I WILL ADMIT IT

1 INTO THE RECORD OVER THE DEFENDANTS' OBJECTION. MR.
2 SPARWASSER.

3 BY MR. SPARWASSER:

4 YES, YOUR HONOR. THE RECORD IS CLEAR THAT THE
5 COLLEGE OF CHARLESTON NO LONGER HAS WORK FOR
6 PATRICIA PATE. THE RESTRICTIONS HAVE CHANGED FROM
7 THIRTY POUND LIFTING RESTRICTIONS TO TEN POUNDS AND
8 FROM EIGHT HOURS A DAY TO FOUR HOURS PER DAY.
9 THAT'S THE ONLY THING THAT'S CHANGED. APA RECORD
10 PAGE 173 DOCUMENTS THAT THEY NO LONGER HAVE WORK FOR
11 HER. AS FAR AS IMPAIRMENT RATINGS, DR. MARZLUFF IN
12 HIS DEPOSITION GAVE A 36 PERCENT WHOLE PERSON IN
13 ADDITION TO DR. NOLAN'S 23 PERCENT WHOLE PERSON
14 RATING. AS FAR AS FUTURE MEDICAL TREATMENT, SHE IS
15 CURRENTLY STILL TAKING PERCOCET, OXYCONTIN, AND
16 TAZIDINE.

17 BY MS. BARR:

18 TIZANIDINE.

19 BY MR. SPARWASSER:

20 TIZANIDINE. AND THEN WE ALSO AGREE AS FAR AS
21 THE M.M.I. DATE OF FEBRUARY 13TH, 2014. SO WE'RE
22 SEEKING A FINDING OF PERMANENT AND TOTAL DISABILITY
23 BASED UPON THAT THE COLLEGE OF CHARLESTON NO LONGER
24 HAS WORK FOR HER.

25 BY THE COMMISSIONER:

1 AND JUST FOR THE RECORD SO WE'RE CLEAR, WAS MS.
2 PATE TAKING THOSE THREE MEDICATIONS PRIOR TO
3 SEPTEMBER OF 2014? WERE THEY ALWAYS RECOMMENDED BY
4 AN AUTHORIZED TREATING PHYSICIAN?

5 BY MS. BARR:

6 YOU WILL SEE DR. NOLAN ADDRESS THAT HE HAD TO
7 CHANGE HER MEDICATION MANAGEMENT AS A RESULT OF THE
8 PULMONARY EMBOLISMS AND THE CHANGE IN THE INJECTION
9 THERAPY.

10 BY THE COMMISSIONER:

11 OKAY.

12 BY MS. BARR:

13 BUT FOR THE RECORD, AS WE NOTED IN THE PRETRIAL
14 CONFERENCE, AT PAGE 174, 177, AND 179, THE CLAIMANT
15 WAS TAKING FLEXERIL, WHICH IS A MUSCLE RELAXER MUCH
16 LIKE TIZANIDINE, LORTAB, PERCOCET, AND USING FLECTOR
17 PATCHES IN THE MONTHS PRIOR TO THE ACCIDENT.

18 BY THE COMMISSIONER:

19 ALL RIGHT. THANK YOU. MADAM COURT REPORTER,
20 WILL YOU PLEASE SWEAR MS. PATE.

21 BY THE COURT REPORTER:

22 MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,
23 PLEASE.

24 * * * * *

25 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE

1 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
2 MATTER HEREIN:

3 PATRICIA A. PATE,

4 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
5 FOLLOWS:

6 BY THE COMMISSIONER:

7 MS. BARR, TECHNICALLY YOUR 21 WAS FILED FIRST.
8 YOU HAVE THE RIGHT TO EXAMINE THE CLAIMANT FIRST, OR
9 YOU CAN RESERVE THE RIGHT TO CROSS EXAMINE.

10 BY MS. BARR:

11 YOUR HONOR, WE WOULD LIKE TO RESERVE THE RIGHT
12 TO CROSS EXAMINE.

13 BY THE COMMISSIONER:

14 OKAY. THANK YOU. MR. SPARWASSER.

15 DIRECT EXAMINATION BY MR. SPARWASSER:

16 Q. YOUR FULL NAME FOR THE RECORD, PLEASE.

17 A. PATRICIA ANN PATE.

18 Q. YOUR DATE OF BIRTH?

19 A. DECEMBER 22ND, 1960.

20 Q. WHERE DO YOU LIVE?

21 A. 1108 BERKELEY STREET IN HANAHAN.

22 BY THE COMMISSIONER:

23 OFF THE RECORD FOR A SECOND.

24 (OFF THE RECORD)

25 DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:

- 1 Q. YOUR FULL NAME FOR THE RECORD, PLEASE.
- 2 A. PATRICIA ANN PATE.
- 3 Q. YOUR DATE OF BIRTH?
- 4 A. DECEMBER 22ND, 1960.
- 5 Q. WHAT'S YOUR ADDRESS?
- 6 A. 1108 BERKELEY STREET, HANAHAN, SC.
- 7 Q. ARE YOU MARRIED?
- 8 A. YES, I AM.
- 9 Q. WHAT'S YOUR HUSBAND'S NAME?
- 10 A. DONALD J. PATE.
- 11 Q. IS HE HERE TODAY?
- 12 A. YES, HE IS.
- 13 Q. WHAT'S YOUR EDUCATION LEVEL?
- 14 A. GRADUATED HIGH SCHOOL.
- 15 Q. ALL RIGHT. AND AS FAR AS YOUR WORK HISTORY, WHERE
- 16 HAVE YOU WORKED?
- 17 A. HARDEE'S, IDEAL PRINTING, CITADEL, COLLEGE OF
- 18 CHARLESTON.
- 19 Q. AND HOW LONG DID YOU WORK AT THE COLLEGE OF
- 20 CHARLESTON?
- 21 A. SIX YEARS, I THINK.
- 22 Q. WHAT ABOUT -- HOW LONG DID YOU WORK AT THE CITADEL
- 23 COPY SHOP?
- 24 A. TEN YEARS.
- 25 Q. HOW LONG DID YOU WORK AT IDEAL PRINTING?

- 1 A. APPROXIMATELY TEN YEARS.
- 2 Q. TELL US -- OR PLEASE TELL THE COMMISSIONER WHAT KIND
- 3 OF JOB DUTIES YOU HAD AT THE COPY SHOP.
- 4 A. IT WAS A VARIETY OF THINGS; ANSWERING THE PHONE,
- 5 DEALING WITH CUSTOMERS WALKING IN AND ON THE PHONE,
- 6 THE BINDERY WORK -- MY MIND'S GOING BLANK --
- 7 COLLATING, PUTTING PAPER IN THE COPIERS, CLEARING
- 8 JAMS. I DID SOME COMPUTER WORK, BUT I'M NOT VERY
- 9 GOOD ON THE COMPUTER, SO THAT WAS LIMITED. MORE OR
- 10 LESS, I JUST DID THE PRODUCTION WORK, PER SE.
- 11 Q. WHAT WAS YOUR JOB TITLE?
- 12 A. ASSISTANT MANAGER.
- 13 Q. TELL THE COMMISSIONER WHAT KIND OF LIFTING YOU DID
- 14 AS THE ASSISTANT MANAGER AT THE COPY SHOP.
- 15 A. WE REALLY DIDN'T HAVE THAT -- LIFTING, I DIDN'T DO
- 16 THAT MUCH LIFTING. SOMETIMES I LIFTED HEAVIER
- 17 OBJECTS THAN I WASN'T SUPPOSED TO, BUT SOMETIMES IT
- 18 GOT UP TO MAYBE 40 POUNDS OR SO.
- 19 Q. IS THAT ---
- 20 A. BOX OF PAPER.
- 21 Q. THAT'S WHAT I WAS THINKING OF, BOX OF PAPER. ALL
- 22 RIGHT. ALL RIGHT. AND THEN WE DISCUSSED YOUR DATE
- 23 OF ACCIDENT, DECEMBER 14TH, 2011?
- 24 A. MM-HMM.
- 25 Q. ALL RIGHT. YOU ENDED UP HAVING A LUMBAR FUSION WITH

1 DR. MARZLUFF, CORRECT?

2 A. CORRECT.

3 Q. ALL RIGHT. AND THEN YOU WORKED LIGHT DUTY IN THE
4 COPY SHOP FOR AN EXTENDED PERIOD OF TIME; DID YOU
5 NOT?

6 A. CORRECT.

7 Q. AND THEY ACCOMMODATED YOUR REQUEST, RIGHT?

8 A. YES.

9 Q. AS FAR AS YOUR LIGHT-DUTY RESTRICTIONS, ---

10 A. YES.

11 Q. --- THEY ACCOMMODATED THEM?

12 A. MM-HMM.

13 Q. YOU KEPT WORKING, BUT AT SOME POINT YOU STOPPED
14 WORKING. WHY DID YOU STOP WORKING?

15 A. BECAUSE THEY SAID THEY COULDN'T ACCOMMODATE MY
16 RESTRICTIONS ANYMORE. THEY NEEDED A FULL-TIME
17 EMPLOYER (SIC), AND I COULD NO LONGER DO EIGHT-HOUR
18 DAYS.

19 Q. THEY NEEDED A FULL-TIME EMPLOYEE?

20 A. YES.

21 Q. DID CHERYL HIRE YOU?

22 A. YES.

23 Q. YOU WORKED TOGETHER FOR THAT FIVE- OR SIX-YEAR
24 PERIOD OF TIME?

25 A. YES.

1 Q. DID YOU LIKE WORKING AT THE COPY SHOP?

2 A. YES.

3 Q. WOULD YOU BE WORKING THERE NOW IF THEY COULD
4 ACCOMMODATE YOUR RESTRICTIONS?

5 A. I WOULD LIKE TO THINK SO, YEAH.

6 Q. PLEASE TELL THE COMMISSIONER HOW YOUR BACK IS NOW.

7 A. I'M STILL DEALING WITH PAIN DAILY. AT SOME POINTS
8 IT GETS A LOT WORSE THAN OTHERS. IT'S JUST A VERY
9 ONGOING, NAGGING PAIN. THAT'S REALLY ABOUT ALL I
10 CAN SAY.

11 Q. MS. PATE, WHERE IS THE PAIN?

12 A. IN MY LOWER BACK, AND SOMETIMES IT LEADS DOWN TO MY
13 -- INTO MY RIGHT THIGH THROUGH MY BUTTOCKS. I HAVE
14 MORE PAIN ON THE LEFT SIDE THAN WHAT IT IS ON THE
15 RIGHT.

16 Q. DOES IT AFFECT YOUR DAILY ACTIVITIES?

17 A. AT TIMES, YES.

18 Q. ALL RIGHT. AND HOW DOES IT AFFECT YOUR ACTIVITIES?

19 A. I HAVE TO SIT DOWN OR LAY DOWN OR TAKE MORE
20 MEDICATION, AND THAT'S ABOUT IT.

21 Q. HOW DO YOU SPEND YOUR DAYS?

22 A. I GET UP AND DO THE LITTLE ODDS AND ENDS AROUND THE
23 HOUSE THAT I CAN. SOMETIMES I GET MORE INVOLVED
24 THAN I SHOULD, AND I PAY THE CONSEQUENCES FOR THAT,
25 AND THAT'S ABOUT IT.

1 Q. ARE YOU WORKING NOW?

2 A. NO, I'M NOT.

3 Q. WHY NOT?

4 A. I'M STILL EMPLOYED AT THE COLLEGE, I THINK.

5 Q. NOW, YOU HAD BLOOD CLOTS LAST YEAR, RIGHT?

6 A. YES, SIR.

7 Q. YOU'RE STILL TREATED FOR THAT?

8 A. YES.

9 Q. ALL RIGHT. HOW HAVE YOUR RESTRICTIONS CHANGED
10 BEFORE AND AFTER THE BLOOD CLOTS?

11 A. THE JOB RESTRICTIONS I DON'T THINK CHANGED. IT WAS
12 JUST THE HOURLY -- MY HOURS CHANGED.

13 Q. AND AS FAR AS YOUR MEDICAL TREATMENT, DR. NOLAN HAS
14 GIVEN YOU THREE DIFFERENT TYPES OF MEDICATION,
15 CORRECT?

16 A. CORRECT.

17 Q. DO YOU KNOW THE NAMES OF THEM?

18 A. PERCOCET, OXYCONTIN, AND TIZANIDINE.

19 Q. ALL RIGHT. AND YOU JUST RECEIVED A TRIGGER POINT
20 INJECTION RECENTLY?

21 A. YES.

22 Q. THAT WAS MAY THE 28TH, 2015?

23 BY MS. BARR:

24 OBJECTION; THE MEDICAL RECORDS WILL SPEAK FOR
25 THEMSELVES.

1 BY THE COMMISSIONER:

2 SUSTAINED.

3 DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:

4 Q. WHAT OTHER KIND OF MEDICAL TREATMENT ARE YOU
5 RECEIVING FROM DR. NOLAN?

6 A. AT THIS POINT I JUST DO THE MEDICATION AND THE
7 MACHINE, TENS MACHINE.

8 Q. TENS UNIT?

9 A. YES.

10 Q. ALL RIGHT. DID HE ALSO PRESCRIBE A BACK BRACE FOR
11 YOU?

12 A. YES. I DO DO THAT OCCASIONALLY. IT'S A LITTLE BIG
13 AND HOT RIGHT NOW.

14 Q. YOU SAY IT'S TOO HOT TO USE THE BACK BRACE RIGHT
15 NOW?

16 A. YEAH.

17 Q. BECAUSE ---

18 A. IT'S UNCOMFORTABLE.

19 Q. ALL RIGHT. DO YOU WANT THE COMMISSIONER TO ORDER
20 YOU FUTURE MEDICAL TREATMENT?

21 A. YES.

22 Q. HOW WOULD YOU GET THAT MEDICAL TREATMENT IF THE
23 COMMISSIONER DID NOT ORDER FUTURE MEDICAL TREATMENT?

24 A. I DON'T KNOW HOW. I HAVE INSURANCE THROUGH MY
25 HUSBAND RIGHT NOW THROUGH HIS JOB, BUT I DON'T KNOW

1 IF I CAN GET THEM TO GO ALONG WITH WHAT I'M DOING
2 NOW SINCE IT WAS A JOB-RELATED INJURY.

3 BY MR. SPARWASSER:

4 THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME.
5 PLEASE ANSWER ANY QUESTIONS MS. BARR MAY HAVE FOR
6 YOU.

7 BY THE COMMISSIONER:

8 MS. BARR.

9 CROSS EXAMINATION BY MS. BARR:

10 Q. MS. PATE, MY NAME IS KIRSTEN BARR, AND I REPRESENT
11 THE COLLEGE AND THE STATE ACCIDENT FUND. PRIOR TO
12 THIS INCIDENT THAT WE'RE HERE ABOUT TODAY ON
13 DECEMBER 14TH, 2011, YOU WERE TREATING AT CAROLINA
14 FAMILY MEDICINE. I BELIEVE DR. HANNA IS YOUR FAMILY
15 DOCTOR; IS THAT CORRECT?

16 A. YES, YES.

17 Q. DR. HANNA'S RECORDS REFLECT THAT IN APRIL OF 2011
18 YOUR CURRENT MEDICATIONS AT THAT TIME INCLUDED
19 PERCOCET, FLEXERIL, LORTAB, FLECTOR PATCHES, AND
20 OTHER MEDICATIONS, I BELIEVE, FOR HIGH BLOOD
21 PRESSURE; IS THAT CORRECT?

22 A. I DIDN'T HAVE HIGH BLOOD PRESSURE.

23 Q. OKAY. BUT YOU WERE TAKING THE PERCOCET, FLECTOR
24 PATCHES, FLEXERIL, AND LORTAB?

25 A. I GUESS. IT'S BEEN A LONG TIME AGO.

1 Q. OKAY. AND YOU RECALL HAVING COMPLAINED TO HIM OF
2 BACK PAIN AND SHOULDER PAIN, ANKLE AND FOOT PAIN, IF
3 THAT'S WHAT HIS RECORDS INDICATE?

4 A. THE INJURY ON MY ANKLE, I DID. YEAH.

5 Q. IT LOOKS LIKE, ALSO, PRIOR TO THE LEFT ANKLE INJURY
6 YOU WERE SEEING HIM FOR COMPLAINTS ---

7 BY MS. BARR:

8 YOUR HONOR, THIS IS PAGE 174.

9 CROSS EXAMINATION RESUMED BY MS. BARR:

10 Q. --- OF LOW BACK PAIN?

11 A. I DON'T RECALL THAT. I'M NOT SURE.

12 Q. THERE WAS A MENTION THAT YOU COULDN'T TAKE ANY
13 INFLAMMATORY MEDICATIONS BECAUSE YOU HAD A HISTORY
14 OF ULCERS, IS THAT RIGHT?

15 A. YES.

16 Q. SO YOU'VE HAD TROUBLE WITH THE TYPES OF MEDICATIONS
17 YOU TAKE FOR PAIN; IS THAT WHY YOU WERE TAKING THE
18 PERCOCET?

19 A. YES.

20 Q. OKAY. NOW, AFTER THIS ACCIDENT YOU CAME BACK TO
21 WORK AS ASSISTANT MANAGER AT THE COPY SHOP, IS THAT
22 RIGHT?

23 A. CORRECT.

24 Q. AND YOU WERE WORKING ALONGSIDE WITH CHERYL?

25 A. RIGHT.

1 Q. YOU ALL HAVE BEEN FRIENDS FOR A LONG TIME, I
2 BELIEVE?

3 A. CORRECT.

4 Q. OKAY. AND YOU WERE ABLE TO DO CERTAIN THINGS, DO
5 WHAT CHERYL ASKED OF YOU WHILE YOU WERE ON LIGHT
6 DUTY, IS THAT RIGHT?

7 A. YES.

8 Q. OKAY. AND SOMETIMES -- I THINK YOU MENTIONED IT IN
9 YOUR TESTIMONY -- YOU PUSH YOURSELF TOO HARD AND YOU
10 DO THINGS THAT YOU'RE NOT SUPPOSED TO; IS THAT FAIR
11 TO SAY?

12 A. MM-HMM.

13 Q. BUT CHERYL WASN'T MAKING YOU DO THINGS THAT YOU
14 WEREN'T SUPPOSED TO DO?

15 A. NO.

16 Q. OKAY. DID SHE SOMETIMES FUSS AT YOU IF YOU DID TOO
17 MUCH?

18 A. YEAH.

19 Q. OKAY, ALL RIGHT. NOW, THE PULMONARY EMBOLISMS, IT
20 LOOKS LIKE YOU STARTED HAVING SOME NEW AND DIFFERENT
21 SYMPTOMS WITH YOUR LEGS LAST SUMMER, JULY, AUGUST OF
22 LAST YEAR. YOUR FAMILY DOCTOR RECORDS INDICATED
23 THAT YOU HAD SOME DISCOLORATION IN YOUR LEGS AND YOU
24 WERE EXPERIENCING SOME SWELLING, IS THAT RIGHT?

25 A. YES. AND I ---

- 1 Q. OH, GO AHEAD.
- 2 A. I JUST ASSUMED IT WAS FROM THE ANKLE INJURY. I
- 3 STILL HAVE DISCOLORATION IN THEM.
- 4 Q. AND THERE WAS MENTION THAT YOU WOULD FEEL NUMBNESS
- 5 OR ---
- 6 A. I FELT NUMBNESS AFTER THE BACK INJURY.
- 7 Q. OKAY. BUT THAT CHANGED; YOU STARTED HAVING
- 8 DIFFERENT SYMPTOMS, THOUGH, WITH THE -- WHAT WAS
- 9 ULTIMATELY DIAGNOSED AS THE PULMONARY EMBOLISM, IS
- 10 THAT RIGHT?
- 11 A. I GUESS. IF YOU SAY SO.
- 12 Q. YOU HAD SHORTNESS OF BREATH; WE KNOW THAT?
- 13 A. YES, YES.
- 14 Q. OKAY. AND THAT HAD TO BE -- THEY HOSPITALIZED YOU
- 15 TO TRY TO FIGURE OUT WHAT WAS GOING ON; IS THAT WHAT
- 16 HAPPENED? IS THAT HOW YOU GOT THE DIAGNOSIS?
- 17 A. YES, MA'AM. WELL, IT SHOWED UP.
- 18 Q. IT SHOWED UP. ALL RIGHT. AND YOU WERE IN THE
- 19 HOSPITAL FOR A COUPLE OF DAYS?
- 20 A. RIGHT.
- 21 Q. SO IT WAS AFTER YOU GOT OUT OF THE HOSPITAL YOU WENT
- 22 BACK AND SAW DR. NOLAN?
- 23 A. YES.
- 24 Q. OKAY. IT LOOKS LIKE FROM DR. NOLAN'S RECORDS HE WAS
- 25 ALWAYS ASKING YOU BEFORE HE DID ANY INJECTIONS IF

1 YOU WERE TAKING ANTICOAGULANTS, THE MEDICATIONS THAT
2 YOU -- YOU TAKE MEDICATION FOR YOUR PULMONARY
3 EMBOLISM, RIGHT?

4 A. YES.

5 Q. WHAT'S THAT MEDICATION CALLED?

6 A. XARELTO.

7 Q. XARELTO. I GUESS WE'VE ALL SEEN THOSE TELEVISION
8 COMMERCIALS, BUT XARELTO WAS SOMETHING YOU NEVER
9 TOOK BEFORE YOUR HOSPITALIZATION FOR THE PULMONARY
10 EMBOLISMS, IS THAT RIGHT?

11 A. CORRECT.

12 Q. AND YOU STILL TAKE THAT MEDICATION TODAY?

13 A. YES, MA'AM.

14 Q. DR. ROSE IS TREATING YOU PRIMARILY FOR THOSE
15 PROBLEMS?

16 A. YES.

17 Q. OKAY. AS A RESULT OF TAKING THAT XARELTO, YOUR
18 TREATMENT CHANGED WITH DR. NOLAN, DIDN'T IT?

19 A. YES, MA'AM.

20 Q. ALL RIGHT. IT WAS A PRETTY SIGNIFICANT CHANGE. YOU
21 HAD BEEN GETTING INJECTIONS THAT WERE HELPING YOU,
22 WEREN'T YOU, BEFORE THE XARELTO?

23 A. CORRECT.

24 Q. ALL RIGHT. HAS ANYTHING HELPED AS MUCH SINCE YOU
25 STARTED TAKING THE XARELTO AS THE INJECTIONS THAT

1 HAVE HELPED YOU IN THE PAST?

2 A. NO. THEY'VE TRIED THE TRIGGER SHOTS OCCASIONALLY,
3 BUT IT DOESN'T SEEM TO LAST AS LONG AS THE
4 INJECTIONS DID.

5 Q. AND AFTER YOU HAD TO STOP TAKING THOSE INJECTIONS
6 BECAUSE OF THE XARELTO, DID YOU HAVE TO TAKE MORE
7 PAIN PILLS OR CHANGE YOUR PAIN PILLS?

8 A. NO, I DIDN'T HAVE TO CHANGE THEM. NO.

9 Q. DO YOU TAKE MORE NOW THAN YOU DID BEFORE?

10 A. WELL, AT TIMES I DO.

11 Q. YOU HAD YOUR -- DO YOU REMEMBER HAVING YOUR
12 DEPOSITION TAKEN LAST NOVEMBER?

13 A. YEAH.

14 Q. THAT WAS PROBABLY NOT LONG AFTER YOU HAD BEEN IN THE
15 HOSPITAL?

16 A. MY MEMORY IS NOT WHAT IT USED TO BE. I'M SORRY.

17 Q. THAT'S ALL RIGHT. JUST AS LONG AS YOU'RE TRUTHFUL
18 IN ANSWERING TO THE BEST OF YOUR ABILITY, THAT'S ALL
19 WE CAN ASK.

20 A. OKAY.

21 Q. YOU WERE ASKED THEN WHY YOU HAD BEEN TAKEN OUT OF
22 WORK, AND YOU STATED THEN THAT YOU WERE TAKEN OUT OF
23 WORK BECAUSE YOU COULD NO LONGER HAVE THE
24 INJECTIONS; IS THAT CORRECT?

25 A. RIGHT.

1 Q. OKAY. AND YOU STATED THEN THAT THE PAIN YOU WERE
2 FEELING WAS INCREASED BECAUSE YOU WERE NO LONGER
3 TAKING THE INJECTIONS; IS THAT CORRECT?

4 A. YES.

5 Q. AND AS A RESULT OF THOSE INCREASE IN PAIN AND THE
6 FACT THAT YOU WEREN'T TAKING THE INJECTIONS, THAT'S
7 WHY DR. NOLAN WAS LIMITING YOU TO FOUR HOURS A DAY,
8 FOUR DAYS A WEEK; IS THAT CORRECT?

9 A. I ASSUME, YES.

10 Q. YOU HAD NEVER -- YOU HAD BEEN WORKING FOR A COUPLE
11 OF YEARS ON A FIVE-DAY-A-WEEK SCHEDULE FULL TIME, IS
12 THAT RIGHT?

13 A. YES.

14 Q. OKAY. AND SO YOU CAME BACK AND WORKED THAT REDUCED
15 SCHEDULE IN DECEMBER OF 2014?

16 A. UH-HUH.

17 Q. YES?

18 A. YES.

19 Q. WHERE YOU HAVING TROUBLE KEEPING UP WITH EVEN THAT
20 REDUCED SCHEDULE IN DECEMBER?

21 A. YES.

22 Q. YOU WERE HAVING TO CALL OUT A GOOD BIT?

23 A. YES. I HAD TROUBLE WITH EIGHT HOURS.

24 Q. YOU HAD BEEN -- I GUESS YOU HAD A LOT OF NEW
25 SYMPTOMS WITH THE PULMONARY EMBOLISM, IS THAT RIGHT?

1 A. RIGHT.

2 Q. OKAY. YOUR BROTHER PASSED AROUND THAT PERIOD OF
3 TIME, TOO; IS THAT CORRECT?

4 A. YES, MA'AM; HE DID.

5 Q. I'M SO SORRY. IT'S IN THE MEDICAL RECORDS, SO
6 THERE'S A LOT OF THINGS THAT THE COMMISSIONER WILL
7 SEE, AND IT'S MENTIONED IN DR. HANNA'S RECORDS, AND
8 THAT'S WHY I ASKED, THAT THAT WAS SOMETHING -- IT
9 WAS OBVIOUSLY VERY STRESSFUL FOR YOU?

10 A. YES, MA'AM; IT WAS.

11 Q. SOMETHING YOU JUST -- IT'S HARD TO GET PAST?

12 A. YES.

13 Q. WELL, WE'RE VERY SORRY FOR YOUR LOSS. BUT YOU
14 TALKED TO DR. HANNA ABOUT THAT, AND DR. HANNA GAVE
15 YOU SOME MEDICATIONS?

16 A. YEAH. YEAH, WE TALKED ABOUT THAT.

17 Q. DO YOU FEEL LIKE YOU'RE GETTING BETTER, MAYBE
18 GETTING OVER THE HUMP OR FEELING A LITTLE BIT BETTER
19 AS FAR AS STRESS-WISE AT THIS POINT IN TIME?

20 A. YES, MA'AM.

21 Q. OKAY, GOOD. JUST SO WE'RE CLEAR FOR THE RECORD, WE
22 -- I KNOW THAT DR. MARZLUFF RETIRED, BUT IT'S BEEN
23 SEVERAL YEARS SINCE YOU'VE SEEN DR. MARZLUFF; IS
24 THAT TRUE?

25 A. CORRECT.

1 Q. DR. NOLAN IS THE MAIN DOCTOR TREATING YOU AT THIS
2 POINT IN TIME?

3 A. CORRECT.

4 Q. IN FACT, HE'S THE ONLY DOCTOR WHO TREATS YOU FOR
5 YOUR LOW BACK PROBLEMS, IS THAT RIGHT?

6 A. YES.

7 BY MS. BARR:

8 MS. PATE, THAT'S ALL THE QUESTIONS I HAVE FOR
9 YOU. I APPRECIATE YOUR TIME.

10 BY THE WITNESS:

11 OKAY.

12 BY THE COMMISSIONER:

13 MR. SPARWASSER?

14 BY MR. SPARWASSER:

15 NOTHING FURTHER, YOUR HONOR.

16 BY THE COMMISSIONER:

17 ALL RIGHT. THANK YOU, MA'AM. YOU MAY HAVE A
18 SEAT NEXT TO YOUR ATTORNEY. ANY OTHER WITNESSES ON
19 BEHALF OF MS. PATE?

20 BY MR. SPARWASSER:

21 NO, YOUR HONOR.

22 BY THE COMMISSIONER:

23 OKAY. MS. BARR, YOU MAY CALL YOUR FIRST
24 WITNESS.

25 BY MS. BARR:

1 THANK YOU. CHERYL, DO YOU MIND TAKING THE
2 STAND.

3 BY THE COMMISSIONER:

4 MADAM COURT REPORTER, WILL YOU SWEAR THE
5 WITNESS, PLEASE.

6 BY THE COURT REPORTER:

7 MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,
8 PLEASE.

9 * * * * * * * * * * * * * * *

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
11 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
12 MATTER HEREIN:

13 CHERYL CONNOR,

14 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
15 FOLLOWS:

16 BY THE COURT REPORTER:

17 AND WOULD YOU SPELL YOUR NAME FOR ME, PLEASE,
18 MA'AM.

19 BY THE WITNESS:

20 C-H-E-R-Y-L, C-O-N-N-O-R.

21 BY THE COURT REPORTER:

22 THANK YOU.

23 BY THE COMMISSIONER:

24 ALL RIGHT, MS. BARR.

25 BY MS. BARR:

1 THANK YOU.

2 DIRECT EXAMINATION BY MS. BARR:

3 Q. MS. CONNOR, WHERE ARE YOU EMPLOYED?

4 A. THE COLLEGE OF CHARLESTON.

5 Q. WHAT IS YOUR POSITION AT THE COLLEGE?

6 A. I'M THE MANAGER OF THE COPY CENTER.

7 Q. HOW LONG HAVE YOU BEEN IN THAT POSITION?

8 A. THIRTY-ONE YEARS.

9 Q. THIRTY-ONE YEARS. AND IT'S IN THAT POSITION THAT
10 YOU CAME TO KNOW MS. PATE?

11 A. YES. WELL, YES, I GUESS. SHE WAS WORKING AT THE
12 CITADEL PRINT SHOP, AND WE -- OUR DEPARTMENTS WORK
13 TOGETHER, AND SHE USED TO COME OVER TO BRING THINGS
14 AND PICK UP THINGS, AND THAT'S HOW I MET HER.

15 Q. AND THEN YOU ULTIMATELY HIRED HER TO BE YOUR
16 ASSISTANT MANAGER?

17 A. YES. SHE -- THE CITADEL PRINT SHOP WAS CLOSING
18 DOWN, AND WE WERE DELIGHTED TO HAVE PATTY COME AND
19 JOIN OUR TEAM.

20 Q. YOU ALL WORK CLOSELY TOGETHER; IS THAT FAIR TO SAY?

21 A. YES. IT WAS THE TWO OF US RUNNING THAT CRAZY PLACE.

22 Q. WHAT TYPE -- BEFORE THIS ACCIDENT WHAT TYPE OF
23 EMPLOYEE -- HOW WOULD YOU DESCRIBE PATTY AS AN
24 EMPLOYEE?

25 A. DEPENDABLE, CONSCIENTIOUS. CUSTOMER SERVICE WAS

1 UNBELIEVABLE, PLEASANT ALL THE TIME.

2 Q. WOULD YOU CONSIDER HER A FRIEND?

3 A. YES.

4 Q. AFTER THIS ACCIDENT SHE HAD SOME WORK RESTRICTIONS,
5 I THINK INITIALLY FROM DR. MARZLUFF BACK IN 2012,
6 LIMITS ON LIFTING MORE THAN 30 POUNDS, RESTRICTIONS
7 ON HOW LONG SHE COULD DRIVE OR STAND. WERE YOU ABLE
8 TO ACCOMMODATE THOSE RESTRICTIONS?

9 A. YES. WE CHANGED HER POSITION DESCRIPTION TO
10 ACCOMMODATE IT. AND WHAT WE DID WAS NO STANDING OR
11 SITTING MORE THAN TWO HOURS, NO WALKING MORE THAN
12 ONE HOUR, WHICH BASICALLY SHE DIDN'T HAVE TO RUN
13 ERRANDS ON CAMPUS. HER DESK IS, YOU KNOW, IN A
14 LITTLE OFFICE RIGHT OUTSIDE THE COPY CENTER. SO IF
15 SHE DID HAVE TO GET UP AND GO TO THE COPY CENTER,
16 SHE WAS LIMITED ON THAT WALKING. I TOOK ALL THE
17 LIFTING AWAY FROM HER. I HIRED TWO STUDENTS WHO
18 BASICALLY -- THEY WERE TO BE AVAILABLE TO HER TO
19 OPEN THE TRAYS AND PUT PAPER IN, TO LIFTING THE
20 PAPER SHE NEEDS MOVED, OR TO GO -- LIKE IF SHE SENT
21 AN ORDER OUT TO PRINT, SHE WOULD TELL THEM TO GO
22 RETRIEVE IT FROM THE PRINTER JUST TO SAVE HER FROM
23 GETTING UP. HER RESTRICTIONS WERE LIFTING ONE TO
24 TEN POUNDS FREQUENTLY, ELEVEN TO THIRTY POUNDS
25 OCCASIONALLY, BUT WE ELIMINATED LIFTING BY ASKING

1 STUDENT EMPLOYEES TO DO THAT FOR HER. AND ALL SHE
2 HAD TO DO WAS TELL THE EMPLOYEE, "I NEED YOU TO DO
3 THIS." BENDING AND STOOPING OCCASIONALLY. WE HAD A
4 TEMP EMPLOYEE FOR THIS. AND STUDENTS, THEY COULD
5 ADD PAPER TO THE DRAWERS, WHICH WOULD ELIMINATE
6 BENDING.

7 Q. WERE YOU PREPARED TO ACCOMMODATE THOSE RESTRICTIONS
8 INDEFINITELY?

9 A. YEAH, BECAUSE AS LONG AS WE COULD HAVE STUDENT
10 EMPLOYEES IN THERE, WE COULD DO THAT.

11 Q. OKAY. NOW, I'M LOOKING AT A NOTE FROM DR. NOLAN
12 WHEN HE FIRST STARTED SEEING HER IN APRIL OF 2014
13 ---

14 BY MS. BARR:

15 AND, YOUR HONOR, IT'S PAGE 29.

16 DIRECT EXAMINATION RESUMED BY MS. BARR:

17 Q. BUT, CHERYL, AT THIS POINT IT SAID THAT "IN ORDER TO
18 KEEP WORKING SHE CANNOT STAND MORE THAN ONE HOUR AT
19 A TIME AND THEN MUST SIT FOR AT LEAST TWO HOURS; SHE
20 MAY REQUIRED BREAKS DURING THESE TIMES TO CHANGE
21 POSITION, CANNOT LIFT MORE THAN 15 POUNDS." ANY
22 PROBLEM ACCOMMODATING THOSE RESTRICTIONS?

23 A. NO PROBLEM WITH THAT. WE DID PUT A PODIUM IN HER
24 OFFICE SO THAT SHE COULD SEE AT THE STANDUP DESK,
25 WAS SOMETHING SHE WAS GONNA NEED THAT WE WOULD NEED

1 TO INVEST IN. SHE COULD SIT WHEN SHE NEEDED. AND I
2 DID TALK WITH PATTY ABOUT THAT BECAUSE WE'RE BUSY
3 AND I CAN'T MONITOR WHEN SHE'S SITTING AND WHEN
4 SHE'S STANDING. SO IT WAS UP TO HER MANAGE THAT AND
5 TO NOTIFY ME OR A STUDENT OR THE TEMP EMPLOYEE THAT
6 "I'VE GOT TO GO SIT DOWN" OR "I CAN'T GET UP."

7 Q. AND YOU WERE TYPICALLY NEARBY IF SHE NEEDED
8 ANYTHING?

9 A. OH, YEAH, YEAH.

10 Q. AND YOU MADE HER AWARE OF THAT, THAT YOU WERE HAPPY
11 TO HELP?

12 A. YEAH. IT WAS JUST A COMMUNICATION THING.
13 UNFORTUNATELY, IT KIND OF FELL ON HER TO BE THE
14 COMMUNICATOR, BUT SHE WAS THE ONE WITH THE NEEDS,
15 AND I FELT LIKE SHE COULD COMMUNICATE BETTER THAN I
16 COULD.

17 Q. OKAY. THERE'S A MENTION ---

18 BY MS. BARR:

19 AND, YOUR HONOR, THIS IS PAGE 43.

20 DIRECT EXAMINATION RESUMED BY MS. BARR:

21 Q. --- BY DR. NOLAN IN JULY OF 2014 THAT SHE WAS UNABLE
22 TO MEET HER QUOTAS REQUIRED OF HER WITH RESTRICTION.
23 DID YOU HAVE ANY QUOTAS OR PROBLEMS WITH HER
24 PERFORMANCE DURING THAT PERIOD OF TIME?

25 A. NO. YOU MEAN DURING THE RESTRICTED TIME?

1 Q. YES, MA'AM.

2 A. THE ONLY PROBLEM I HAD THAT I COULD SEE IS THAT WHEN
3 WE CHANGED HER JOB DESCRIPTION, 'CAUSE I DIDN'T WANT
4 HER TO FEEL LIKE SHE DIDN'T HAVE ANYTHING TO DO,
5 'CAUSE WE TAKING AWAY A LOT TO OTHER PEOPLE TO DO.
6 SO, I DID ASK HER TO REVIEW OUR WEB PAGE BECAUSE
7 THAT'S SOMETHING SHE COULD DO AT A DESK. SHE COULD
8 READ THE WEB PAGE. SHE COULD MAKE NOTES OF ANYTHING
9 THAT NEEDED TO BE CHANGED OR NEW SERVICES THAT WE
10 OFFER, BECAUSE PATTY NOR I DO WEB DESIGN. WE AREN'T
11 PAID TO DO THAT. WE DON'T KNOW HOW TO DO THAT. BUT
12 OUR DIVISION HAS A WEB MASTER. SO, WHAT I ASKED HER
13 TO DO IS REVIEW THE WEB PAGE AND SEND THE EMAIL TO
14 OUR WEB MASTER. OUR WEB MASTER MAKES THE CHANGES.
15 PATTY WOULD ASSURE THAT THE CHANGES HAD BEEN MADE.
16 SO THAT WAS KIND OF LIKE ADDING SOMETHING DIFFERENT,
17 AND PATTY'S REACTION WAS COMPUTER, AND IT MADE HER
18 VERY UNCOMFORTABLE. SHE DID NOT WANT TO DO IT.

19 Q. THERE IS MENTION IN THE MEDICAL RECORDS THAT SHE
20 FELT LIKE YOU WERE TRYING TO PUSH HER OUT. WERE YOU
21 TRYING TO PUSH HER OUT?

22 A. NO. I NEEDED PATTY. YEAH. I'VE BEEN VERY
23 FORTUNATE TO HAVE FIVE GREAT ASSISTANT MANAGERS IN
24 MY CAREER, PATTY BEING ONE OF THEM. AND THEY ARE
25 HARD TO COME BY, AND WHEN YOU FIND SOMEBODY THAT'S

1 DEDICATED AND HONEST AND WANTS TO WORK HARD, YOU
2 WANT TO KEEP THEM.

3 Q. NOW, WHEN PATTY -- YOU SAID SHE KIND OF PANICKED
4 WHEN YOU SAID WEB PAGE OR COMPUTER. WERE YOU TRYING
5 TO ENCOURAGE HER, OR WERE YOU TRYING TO PUSH HER
6 OUT?

7 A. TRYING TO ENCOURAGE HER TO GIVE HER MORE VALUE IN
8 HER DAY, BUT I SCARED HER, AND I DID NOT MEAN TO
9 SCARE HER. BUT PATTY CAN DO IT, AND I WOULD NEVER
10 WANT HER TO SELL HERSELF SHORT BECAUSE SHE CAN DO
11 IT.

12 Q. DID THINGS CHANGE AROUND ABOUT SEPTEMBER OF 2014
13 WITH THE PULMONARY EMBOLISM? WERE YOU AWARE OF THAT
14 DIAGNOSIS?

15 A. I REMEMBER HER TALKING ABOUT SHORTNESS OF BREATH
16 WHEN SHE LEFT FOR A DOCTOR'S APPOINTMENT, AND THE
17 NEXT THING, SHE CALLS AND SHE'S IN THE HOSPITAL.
18 SO, YEAH, WE WERE ALL VERY CONCERNED. AND WHEN SHE
19 CAME BACK -- 'CAUSE SHE WAS OUT THEN FROM SEPTEMBER
20 16TH -- I THINK THAT WAS HER SURGERY OR YOUR
21 HOSPITAL ADMISSION, AND SHE CAME BACK ON DECEMBER
22 THE 4TH. AND WHEN SHE DID SHE CAME BACK WITH NEW
23 WORK RESTRICTIONS, BECAUSE IN APRIL -- APRIL OF 2013
24 -- I'M SORRY; I'M CHECKING MY NOTES SO I GET
25 EVERYTHING RIGHT. WHEN HER...

1 Q. THOSE WERE THE LATEST RESTRICTIONS?

2 A. YES. OKAY, APRIL 2014 HER RESTRICTIONS WERE
3 IMPROVED. SO WE WERE ALL EXCITED, AND THEN WHEN SHE
4 GOT SICK IN SEPTEMBER AND DIDN'T COME BACK UNTIL
5 DECEMBER, HER NEW RESTRICTIONS -- NOW THOSE
6 RESTRICTIONS THAT HAD BEEN LIFTED WERE PUT BACK IN,
7 BUT SHE COULD ONLY COME FOUR DAYS A WEEK, FOUR DAYS
8 -- FOUR HOURS A DAY, FOUR DAYS A WEEK. AND I COULD
9 DO THAT IN DECEMBER BECAUSE SCHOOL'S OUT. IN
10 JANUARY WE'RE VERY BUSY, A LOT OF ACTIVITY GOING
11 AROUND, AND BECAUSE WE ARE A TWO-PERSON OPERATION I
12 NEEDED MY SECOND FULL-TIME POSITION. SO, I DIDN'T
13 SEE HOW WE COULD WORK AROUND HER BEING THERE FOUR
14 HOURS A DAY, FOUR DAYS A WEEK.

15 Q. SO, WHEN SHE CAME BACK IN DECEMBER OF 2014, THE ONLY
16 THING THAT YOU HAD NOT ACCOMMODATED BEFORE WAS THIS
17 FOUR DAYS A WEEK, FOUR HOURS A DAY?

18 A. FOUR DAYS A WEEK, FOUR HOURS A DAY. YEAH, 'CAUSE
19 YOU'RE REALLY NOT THERE ENOUGH TO GET ANYTHING -- IT
20 IS A FULL-TIME POSITION. I HAVE FULL-TIME NEEDS
21 FROM THAT PERSON IN THAT POSITION.

22 Q. THE LIFTING RESTRICTIONS, EVERYTHING ELSE THAT SHE
23 HAD IN THE PAST, YOU WERE ABLE TO WORK AROUND?

24 A. OH, YEAH, 'CAUSE THE OTHER RESTRICTIONS WERE NO
25 LIFTING OVER 15 POUNDS, NO BENDING, SQUATTING, OR

1 CRAWLING, NO PUSHING OR PULLING HEAVY OBJECTS. AND
2 WE WERE GOOD ON ALL THAT.

3 Q. THERE IS A REPORT FROM A VOCATIONAL SPECIALIST THAT
4 PATTY SUBMITTED THAT REFERRED TO HER WORK AS BEING A
5 PRODUCTION WORKER. WOULD YOU CALL HER A PRODUCTION
6 WORKER, OR WAS SHE SOMETHING MORE?

7 A. SHE -- OUR STUDENTS -- WELL, I HAVE A TEMPORARY THAT
8 WE CALL PRODUCTION COORDINATOR. THAT'S THE PERSON
9 THAT ACTUALLY -- PATTY WOULD SET THE JOBS UP BECAUSE
10 SHE HAD THE KNOWLEDGE AND THE TRAINING TO DO THAT.
11 AND THEN THE TEMPORARY WORKERS WOULD GO IN AND
12 PRODUCE IT, PUT IT ON THE SHELF. PATTY OR I WOULD
13 PUT IT IN THE DATABASE.

14 Q. SHE ACQUIRED SOME SKILL SET IN HER YEARS AT THE COPY
15 SHOP?

16 A. YES. AND THAT'S WHY I SAY DON'T SELL YOURSELF
17 SHORT. WE HAD A WONDERFUL DATABASE, AND IT WAS
18 BUILT SPECIFICALLY FOR US, AND IT WAS KEYING IN WHAT
19 WE DID, AND IT COMPUTED THE COST, AND WE JUST WOULD
20 TRANSFER THAT ON TO THE INTERDEPARTMENTAL TO
21 TRANSFER, AND SHE WOULD EMAIL IT TO THE CUSTOMER.

22 Q. ONE OTHER THING I'D LIKE FOR YOU TO ADDRESS: ALSO
23 IN THIS VOCATIONAL REPORT THAT MS. PATE'S ATTORNEY
24 SUBMITTED IT SAYS THAT "LIGHT WORK REQUIRES STANDING
25 AND/OR WALKING FOR AT LEAST SIX HOURS OF AN EIGHT-

1 HOUR DAY AND LIFTING UP TO TWENTY POUNDS, FREQUENTLY
2 LIFTING UP TO TEN POUNDS." YOU WEREN'T REQUIRING
3 HER TO DO THOSE THINGS AT THE COLLEGE?

4 A. WE SPECIFICALLY ORDERED SMALLER CARTON BOXES OF OUR
5 20-POUND PAPER, WHICH IS OUR MOST-USED PAPER,
6 BECAUSE WE COULD LIFT THAT, THOUGH IT REALLY WASN'T
7 NECESSARY, 'CAUSE YOU COULD OPEN THE BOX, TAKE OUT
8 HOW MUCH PAPER YOU FEEL COMFORTABLE CARRYING. I HAD
9 A RULE, NO BOXES ON THE FLOOR, BECAUSE I'M NOT GOING
10 TO LIFT IT FROM THE FLOOR AND I WOULDN'T EXPECT
11 ANYONE ELSE TO DO THAT. WE HAD SHELVES AT COUNTER
12 LENGTH SO WE COULD SLIDE THEM ON AND SLIDE THEM OFF.

13 Q. AND THEN YOU HAD THE ASSISTANTS TO HELP WITH ANY
14 LIFTING?

15 A. STUDENTS.

16 Q. I THINK THERE WAS ALSO MENTION THAT YOU GOT AN
17 ERGONOMIC CHAIR FOR MS. PATE?

18 A. YEAH. WE ALL GOT ERGONOMIC CHAIRS ABOUT THREE YEARS
19 AGO WHEN WE REDESIGNED THE OFFICE.

20 Q. OKAY. WERE THERE ANY -- PRIOR TO THE REQUEST FOR
21 THE FOUR-HOUR DAYS, FOUR DAYS A WEEK, WERE THERE ANY
22 ACCOMMODATIONS OR REQUESTS OR RESTRICTIONS THAT YOU
23 DIDN'T ACCOMMODATE FOR PATTY?

24 A. NO. I FELT LIKE WE REALLY WORKED HARD TO MAKE IT
25 WORK BECAUSE WE WANTED TO RETAIN PATTY AS LONG AS

1 SHE WANTED TO BE WITH US, AND WE WERE ALL HOPEFUL
2 THAT HER PAIN WOULD IMPROVE.

3 BY MS. BARR:

4 WELL, THANK YOU VERY MUCH. PLEASE ANSWER ANY
5 QUESTIONS THAT COMMISSIONER TAYLOR OR MS. PATE'S
6 ATTORNEY HAS FOR YOU.

7 BY THE COMMISSIONER:

8 MR. SPARWASSER.

9 CROSS EXAMINATION BY MR. SPARWASSER:

10 Q. MS. CONNOR, AS FAR AS YOU'RE AWARE PATTY PATE HAS
11 PHYSICAL RESTRICTIONS AND TIME RESTRICTIONS,
12 CORRECT?

13 A. YES.

14 Q. AS FAR AS HER PHYSICAL RESTRICTIONS, THE COLLEGE OF
15 CHARLESTON CAN STILL ACCOMMODATE HER PHYSICAL
16 RESTRICTIONS; IS THAT FAIR TO SAY?

17 A. YES, 'CAUSE I PERSONALLY WON'T LIFT MORE THAN 15
18 POUNDS MYSELF.

19 Q. THE ONLY THING THAT IS THE ROADBLOCK TO HER
20 RETURNING TO WORK AT THE COLLEGE OF CHARLESTON IS
21 THE RESTRICTION FROM HER WORKING EIGHT HOURS A DAY;
22 IS THAT FAIR?

23 A. THAT'S FAIR.

24 BY MR. SPARWASSER:

25 NOTHING FURTHER. THANK YOU.

1 BY THE WITNESS:

2 THANK YOU.

3 BY THE COMMISSIONER:

4 ANYTHING FURTHER?

5 BY MS. BARR:

6 NO, YOUR HONOR.

7 BY THE COMMISSIONER:

8 ALL RIGHT. MS. CONNOR, THANK YOU. YOU MAY
9 STEP DOWN. ANY OTHER WITNESSES ON BEHALF OF THE
10 DEFENDANTS?

11 BY MS. BARR:

12 NO, YOUR HONOR.

13 BY THE COMMISSIONER:

14 ALL RIGHT. I BELIEVE THAT CONCLUDES THIS
15 MATTER.

16 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
17 CONCLUDED AT THE HOUR OF 1:44 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1121370

EMPLOYEE/CLAIMANT: PATRICIA A. PATE

EMPLOYER: UNIVERSITY OF CHARLESTON

CARRIER: STATE ACCIDENT FUND

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 39 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF PATRICIA A. PATE, TAKEN ON THE 14TH DAY OF JULY, 2015.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 2ND DAY OF SEPTEMBER, 2015.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2019-001064

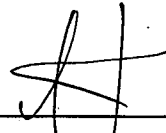
Patricia Pate, Employee/Claimant, ... Appellant,

v.

College of Charleston, Employer,
and State Accident Fund, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.



Stephen B. Samuels
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29250
(803) 779-4000

Attorney for Appellant

January 2, 2020
Columbia, South Carolina