

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM WORKER'S
COMPENSATION COMMISSION
Court of Common Pleas

Howard S. Barnes Circuit Court Judge

Case No. 2021-000303

Raqucal Cunningham

Appellant,

v.

BMW Manufacturing Company LLC,
Employer, and Hartford Accident & Indemnity Company c/o
Sedgwick Claims Management Services, Inc., Carrier,

Respondent,

RECORD ON APPEAL

Raqucal Cunningham
114 Vermillion Drive
Spartanburg, South
Carolina 29306
(864) 497-8680
Appellant, Pro Se

Vernon F. Dunbar
55 Esat Camperdown Way
Suite 300
P.O. Box 2980 Greenville,
South Carolina 29601
(864) 239-4000
Attorney for Respondent

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BEFORE THE WORKER'S COMPENSATION
COMMISSION
WCC FILE NO: 1704918

Raqual Cunningham,
Employee/Claimant

vs.

BMW Manufacturing Corporation,
Employer

And

Hartford Accident & Indemnity
Company c/o Sedgwick Claims
Management Services, Inc.,
Carrier

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Greenville, South Carolina on March 28,
2019.

APPEARANCES:

Claimant appeared and represented by Charles P. Edwards,
Esquire, of Spartanburg, South Carolina.

Defendants represented by Vernon F. Dunbar, Esquire of
McAngus Goudelock & Courie, L.L.C. of Greenville, South
Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Form 21.

COMMISSIONER:

Commissioner Aisha Taylor

FILED:

June 13, 2019

APA SUBMISSIONS

The following documents were admitted into evidence without objection under the

Administrative Procedures Act:

APA#	PROVIDER	DATES	PAGES
1.	BMW- Industrial Health Services	5-6-15 - 6-19-17	1-32
2.	Greenville Health System	5-3-17	33-38
3.	Piedmont Orthopedic Associates	8-29-17 - 1-05-19	39-51
4.	Dr. Hans Blaakman, Upstate Foot Care	8/24/17 -12-13-18	52-58
5.	Multiple- BMW-Industrial Health Services	8/31/18-11/12/18	59-60
6.	Dr.-M: Tollison, Piedmont Orthopedic Associates	11/10/17-11/5/18	61-88
7.	Dr. Stephan G. Pill, GHS-Steadman Hawkins	2/14/19-3/7/19	89-96

STIPULATIONS

It is stipulated that:

- Claimant sustained a compensable injury to her left ankle on May 2, 2017 within the course and scope of her employment.
- Claimants weekly wage is \$803.67.
- Claimants Compensation rate is \$535.81.

STATEMENT OF THE CASE

This matter came to be heard before the undersigned on March 28, 2019 in Greenville, South Carolina pursuant to the Employer's Form 21. In the Form 21 the employer seeks to stop

payment of compensation, to determine if a permanent award is due, if so the amount thereof, and to determine if credit is due for overpayment of temporary compensation. In her Form 22, Claimant presents a general denial and requests a second opinion and continued treatment.

The Claimant sustained an injury to her left ankle on May 2, 2017 during the course and scope of her employment by the employer. The treating physician, Dr. Michael Tollison, operated on her left ankle on November 15, 2017. The Claimant returned to work in August 6, 2018. Her ankle swelled and hobbled her at work. She worked until August 31, 2018 but due to her inability to perform the employer removed her from the job and returned her to temporary total disability. Dr. Tollison issued a 14B Physician's Statement on January 15, 2019 and sometime later the employer placed Claimant in a work hardening program preparatory to return to a work assignment. During this time, she consulted Dr. Stephan Pill of the Steadman-Hawkins Clinic. Dr. Pill recommends arthroscopic surgery to improve the Claimant's ability to work.

EVIDENCE OF THE CASE

Testimony was taken from the Claimant. The Claimant testified that on August 6, 2018 she attempted to return to work, that her job duties involved standing and walking and that the ankle would swell up and become extremely painful during the shift causing her to interrupt her tasks and seek care at the plant infirmary. This continued for several weeks and the employer accommodated the Claimant. After several weeks, however, the employer determined that the Claimant should discontinue work and resume TTD. She testified that she had consulted Dr. Hans Blaakman, of Upstate Footcare, independently. He had suggested bracing, topical medication, steroids, and laser treatment. She states that when Dr. Tollison released her, she desired to consult another orthopedist for a second opinion. She consulted Dr.

Stephan Pill of Steadman-Hawkins Clinic. She testified that she desired to pursue arthroscopic surgery that Dr. Pill had proposed to restore her ability to work.

The November 5, 2018 office visit note of the treating physician, Dr. Michael Tollison releases Claimant from Dr. Tollison's care and states that there are no anticipated future medical or surgical needs. (APA #6 page 87).

In his February 14, 2019 office visit note, Dr. Stephen Pill indicates an intent to order an MRI of the left ankle and notes he will review her operative note from the prior surgery. (APA #7 page 92) His records reflect that the MRI was performed on February 22, 2019. The report is located at APA #7 page 94. Dr. Pill scheduled surgery for April 5, 2019. (APA #7 page 96).

Raqucal Cunningham testified that the surgery had been postponed in order to allow the Commission to consider authorizing the surgery. The Claimant testified that she was presently in a work hardening program provided by the employer and anticipated to be reassigned to a suitable work assignment within the next few weeks.

FINDINGS OF FACT

I find as a fact that:

1. Claimant sustained an admitted compensable injury to her left ankle on May 2, 2017 within the course and scope of her employment.
2. Claimant received medical treatment at the direction of the Defendants and was placed at MMI as of December 28, 2018 by Dr. Tollison through his January 15, 2019 Form 14B Physician's Statement.

3. Claimant attempted to return to work before and after her release from Dr. Tollison. Claimant continues to experience severe swelling during her work shift and has been unable to regularly perform the normal functions of her job. The employer has accommodated Claimant's continued complaints of pain and swelling. At the time of the hearing, Claimant was in a work hardening program provided by the employer.
4. Claimant sought a second opinion from Dr. Stephen Pill of the Steadman-Hawkins Clinic. Dr. Pill obtained an MRI of Claimant's left ankle and has recommended arthroscopic surgery to help restore some functionality so Claimant can return to work.
5. Based on the preponderance of the evidence including the medical opinion of Dr. Pill as well as the credible testimony of the Claimant, I find Claimant is not at maximum medical improvement for her May 2, 2017 work injury.
6. There is additional medical treatment that may tend to lessen her period of disability including but not limited to the arthroscopic surgery recommended by Dr. Pill.
7. Dr. Pill should be authorized to take over medical care as the Defendants' physician, Dr. Tollison, has released the Claimant and opined he could not offer anything further.
8. Claimant is entitled to additional medical treatment to include the arthroscopic surgery to her left ankle as recommended by Dr. Pill.

9. Claimant is entitled to temporary benefits for all compensable lost time from work as a result of this work injury.

10. No hearing costs are assessed.

CONCLUSIONS OF LAW

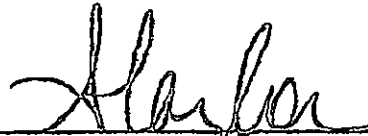
I therefore conclude as a matter of law that:

1. Pursuant to Section 42-15-60, there is additional medical treatment that may tend to lessen the Claimants period of disability including but not limited to the arthroscopic surgery recommended by Dr. Pill.
2. Pursuant to Section 42-17-30, Dr. Phil should be and hereby is authorized to take over medical care as Defendant's physician.
3. Section 42-15-60, the Claimant should be and she hereby is entitled to additional medical treatment to include the arthroscopic surgery to her left ankle as recommended by Dr. Pill.
4. Pursuant to Section 42-7-10, the Claimant should be and she hereby is entitled to temporary benefits for all compensable lost time from work as a result of this work injury.

ORDER

Claimant is not at maximum medical improvement for her May 2, 2017 work injury to her left ankle. Claimant is entitled to additional medical treatment at the direction of Defendants to include arthroscopic surgery to the left ankle as recommended by Dr. Pill. Defendants' From 21 is denied.

IT IS SO ORDERED.



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

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

June 14, 2019

By: Renee Smith, Administrative Assistant to Commissioner Taylor

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1704918

RAQUICAL CUNNINGHAM,

Employee,

Claimant,

vs.

**BMW MANUFACTURING
CORPORATION, LLC**

Employer,

AND

**HARTFORD ACCIDENT & INDEMNITY
COMPANY c/o SEDGWICK CLAIMS
MANAGEMENT,**

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Greenville, SC on March 5, 2020.

APPEARANCES:

Raquical Cunningham, Claimant is represented by Charles P. Edwards, Esquire. BMW Manufacturing Corporation, LLC and Hartford Accident and Indemnity Company, Defendants, are represented by Vernon F. Dunbar, Esquire.

PURPOSE OF THE HEARING: To address all issues raised in the Forms 21 and 58.

COMMISSIONER:

The Honorable R. Michael Campbell, II

FILED:

April 23, 2020

STIPULATIONS

The parties stipulated to the following:

1. The purpose of the hearing is to determine issues as set forth in the Forms 21 and 58. Specifically, whether Claimant has attained maximum medical improvement, and if so, Claimant's entitlement to permanent partial disability benefits to the left leg. Also, to determine Defendants' entitlement to credit for the overpayment of temporary total disability compensation benefits.
2. Notice of the hearing was timely and properly provided to all parties of interest.
3. Raquacal Cunningham, Claimant, earned an average weekly wage of \$803.67. The corresponding compensation rate is \$535.81.
4. Proper venue is in Greenville County, as agreed upon by the parties.
5. On May 2, 2017, Raquacal Cunningham, Claimant, suffered an admitted injury to her left (ankle) leg during the course and scope of her employment as a Production Associate for BMW Manufacturing Corporation, LLC, Defendant/Employer. Therefore, the South Carolina Workers' Compensation Commission has subject matter jurisdiction over this proceeding.
6. Without objection the Commission file is made a part of the record, excluding unstipulated medical reports, self-serving statements and hearsay testimony.

APA SUBMISSIONS

APA#	DOCTOR	PRACTICE	DATES	PAGES
1.	Multiple	BMW-Industrial Health Services	05/06/2015- 06/19/2017	1-32
2.	Kathleen Mitchell, PA	Greenville Health System	05/03/2017	33-38
3.	Michael Tollison, M.D.	Piedmont Orthopedic Associates	08/29/2017- 01/05/2019	39-51
4.	Stephen Pill, MD	Steadman Hawkins	2/14/19-12/26/2019	52-112
5.		ATI Physical Therapy	10/7/2019	113

EXH	DESCRIPTION	DATES
B	SLED Report	03/11/2019
D	Facebook photo	09/28/2019

APA#	NAME OF PHYSICIAN / PRACTICE	DATES	PAGES
6.	* BMW-Industrial Health Services	8/31/18-11/12/18	114-115
7.	Dr. Kathleen Mitchell, Greer Memorial Hospital	5-3-17	116
8.	Dr. Hans Blaakman, Upstate Foot Care	8/24/17 - 12/13/18	117-123
9.	Dr. T. Tollison, Piedmont Orthopedic Associates	11/10/17 - 11/5/18	124 -151
10.	Dr. Stephan G. Pill, GHS-Steadman Hawkins	2/22/19-3/7/19	152-154
11.	ATI Physical Therapy	8/22/19 - 10/24/19	155-187
12.	Functional Capacity Exam	10/29/18	188-199

EXHIBIT

- A. Photo of injury of site at BMW
- B. Photo after first surgery
- C. Photo after first surgery

During the pretrial conference, Charles P. Edwards, attorney for Claimant, objected to the inclusion of Claimant's recorded statement and correspondence pertaining to Claimant from Elizabeth Williams, surgery scheduler for Dr. Stephan Pill, authorized treating physician. Counsel for Defendants voluntarily withdrew these exhibits (A & C).

STATEMENT OF THE CASE

BMW Manufacturing Corporation, LLC, the employer, and its workers' compensation insurance carrier, Hartford Accident and Indemnity Company, and the third party administrator,

Sedgwick Claims Management Services, Inc., [hereafter "Defendant" or "Defendants"], filed a Form 21 requesting an adjudicatory hearing to determine whether Raqucal Cunningham, Claimant, has attained maximum medical improvement. Defendants also requested the Commission determine Claimant's entitlement to receipt of permanent disability compensation benefits to the leg and its entitlement for credit for the overpayment of temporary total disability compensation benefits dating from October 24, 2019.

Raqucal D. Cunningham, Claimant, is a 46-year old single female, who stands approximately 5'8 and weighs 170 pounds. Claimant began work as a Production Associate on September 21, 2015. On May 2, 2017, Claimant was walking up a flight of stairs to return to work after a bathroom break when she twisted her left ankle.

In an entry dated May 3, 2017, the IHS (Industrial Health Services) medical/nursing notes reflect Claimant was returning to a work area from the bathroom and twisted her left ankle while walking up stairs. IHS medical providers observed Claimant's left ankle was slightly swollen and tender to the touch. Claimant was then sent to Greer Memorial ER for further evaluation and x-ray studies. Claimant was advised that the x-rays were negative for a fracture. Claimant was diagnosed by the medical providers at Greer Memorial as having suffered a lateral ankle sprain. Claimant was fitted with an air cast.

Claimant returned to IHS on May 4, 2017. Claimant gave greater details about the incident during this visit. Claimant reported missing a step when simply ascending the stairs in order to return to work. Claimant denied any symptoms of numbness or tingling to IHS medical providers. Claimant was directed to take over-the-counter Advil and apply ice as needed.

Claimant denied any previous left ankle injury or any other underlying abnormalities. Claimant returned to IHS on May 10, 2017, complaining of an ongoing inability to ambulate. Claimant was still wearing an air cast and utilizing crutches. Claimant also reported that she was taking Norco and Ibuprofen. To this end, Claimant was advised to continue to remain out of work, but to begin physical therapy. According to the last IHS note dated May 15, 2017, Claimant stated that the physical therapy and medications were not effective in eliminating left ankle pain and swelling.

Because conservative medical modalities failed to alleviate Claimant's symptoms of pain, swelling and discomfort, she was referred to Dr. Michael Tollison for further care and treatment. Dr. Tollison performed a left ankle reconstruction surgery with regard to the peroneal tendon and lateral left ankle ligaments. Dr. Tollison released Claimant to return to work without restrictions on August 6, 2018. Claimant underwent work hardening and returned to work.

Within a couple of weeks after returning to work, Claimant began complaining of increased soreness and swelling of the ankle because of her work duties, which required her to walk and stand. Subsequently, Dr. Bradley Collins of IHS authorized Claimant to remain out of work because of her inability to perform the essential functions of her jobs and complaints of severe pain. Accordingly, temporary total disability compensation benefits were reinstated on or about August 31, 2018.

In a Form 14B dated January 15, 2019, Dr. Tollison opined Claimant had attained maximum medical improvement as of December 28, 2018. Dr. Tollison assigned Claimant a 5% medical impairment rating to the left lower extremity. Dr. Tollison indicated Claimant physical limitations and restrictions consisted of medium waste and floor lifting/lower end of heavy for front carrying.

Claimant contested the attainment of maximum medical improvement at a Form 21 hearing there had been scheduled by the Honorable Aisha Taylor on March 28, 2019. At the hearing, Claimant testified that she had consulted with Dr. Stephan Pill, an orthopedic surgeon with Steadman Hawkins Clinic. Dr. Pill opined in a report that Claimant would benefit from repeat arthroscopic surgery in order to remove scar tissue, which on turn would lessen her pain and discomfort; and enhance her ability to walk, stand and lift. In addition to Dr. Pill's opinion, Claimant also relied upon a MRI which verified the need for additional surgery.

Accordingly, Commissioner Taylor ordered Claimant proceed with treatment with Dr. Pill. Commissioner Taylor further ordered the continued payment of temporary total disability compensation benefits because of Claimant's inability to return to gainful employment duties.

On August 9, 2019, Dr. Pill performed surgery upon Claimant's left ankle. Thereafter, Claimant was prescribed a splint and a walking boot. On August 15, 2019, Claimant reported improvement in her symptoms and that she was weaning off medications prescribed post-surgery. Dr. Pill ordered physical therapy and prescribed a cam walker with weight bearing activities as tolerated.

Claimant participated in physical therapy sessions from August 22, 2019 until October 24, 2019. At Claimant's last physical therapy visit, it was noted that she had made significant improvement with respect to range of motion, joint mobility, strength, balance, posture, body mechanics and lifting mechanics.

Dr. Pill opined in a Form 14B dated November 5, 2019 that Claimant had attained maximum medical improvement as of October 24, 2019. Dr. Pill assigned Claimant a 10% medical impairment to the left (ankle) leg.

EVIDENCE OF THE CASE

Raquael Denise Cunningham, Claimant, is a 46 year old female. Claimant has a GED and attended school for occupations as a nail technician, barber and cosmetologist. Claimant testified she has worked as a house keeper, but had worked primarily in the cosmetology field as a licensed barber and cosmetologist. Prior to Claimant's employment at BMW, she had worked for Adidas and Siemens Industries.

Claimant testified that she injured her left leg on May 2, 2017, while climbing stairs. Claimant testified that after undergoing the first surgery with Dr. Michael Tollison, she returned to work at BMW. Claimant testified that once she returned to work, her ankle would swell and become more painful. Claimant further explained that the pain was exacerbated by her ankle "popping out" (TR. p. 17, ll. 16-25 and p. 18, ll. 13-14).

Claimant testified that when she returned to work after undergoing work conditioning and work hardening in August 2018, she had tremendous difficulty walking from the parking lot into the building. Claimant testified that when she entered into the building, her ankle pain "was horrible." (TR. p. 23, ll. 18-22) Claimant testified that when she began work, her ankle was already swollen from having had walked from the parking lot to the manufacturing facility. (TR. pp. 20-25).

Claimant testified wearing certain shoes causes ankle swelling and pain. Claimant further testified that she has difficulty walking up stairs or an incline. (TR. pp. 33-34) Claimant also admitted that squatting poses a challenge with regard to left ankle stability and pain. According to Claimant, walking from the parking lot into a Walmart store causes immense pain. (TR. p. 35, ll. 2-7)

Claimant testified she has balance problems. However, Claimant did not state that the balance problems have resulted in any falls.

Claimant testified that she still experiences ankle pain and swelling if she is active or stands or walks for a short period of time. As a result, Claimant takes 800mg of ibuprofen to alleviate the pain only when needed. (TR. pp. 37-38)

On cross examination, Claimant admitted that the photographs she submitted into evidence were taken prior to the most recent surgery performed by Dr. Pill on August 9, 2019. Claimant further admitted that the most accurate depiction of her ankle was the condition of her ankle that was exhibited and observed during the hearing.

Claimant denied having any idea or appreciation how long she could stand or walk without experiencing increased pain and swelling. Specifically, Claimant testified that she could stand for five minutes without experiencing pain and swelling, but was uncertain as to whether she could stand for ten minutes or more without experiencing an increase in symptoms. Similarly, Claimant indicated that she was unable to state how long or how far she could walk without her symptoms becoming exacerbated, despite a history of running and walking for long distances.

Claimant admitted BMW Production Associates have to stand and walk to perform their jobs and essential job tasks. Additionally, Claimant admitted that when she returned to work after the first surgery, her ankle constantly popped out or dislocated, which in turn, caused intense and disabling pain. (TR. P. 51, ll. 11-15). Claimant described the pain and swelling associated with the popping of the ankle as "super bad". (TR. p. 52, ll. 10-14) As a result of the constant popping, Claimant sought a second medical opinion with Dr. Pill. Claimant eventually underwent a second surgery, which was performed by Dr. Pill.

Claimant admitted that there was major instability in her ankle that persisted after the first surgery was performed by Dr. Tollison in 2018. (TR. p. 52, ll. 20-23)

Claimant admitted that after undergoing the second surgery in 2019, her symptoms improved. Claimant admitted she had apprised her physical therapist in a report dated October 7, 2019 that she had felt good enough to square dance after the second surgery; however, she felt a pop while square dancing. (TR. pp. 58-59)

Claimant testified she was not seeking employment at the time of the hearing, despite not being employed at BMW. Claimant testified that she was contemplating returning to school and perhaps working. (TR. p. 69)

Donell Smith testified on behalf of the Defendants. Mr. Smith is employed as a Disability Management Analyst for BMW Manufacturing Corporation. Mr. Smith explained that BMW has a light duty policy in which a Production Associate's medical limitations and restrictions are accommodated for 90 days. If after 90 days, the Production Associate is not able to return to work, that individual is placed out of work until the Production Associate is able to return to full duty employment.

Mr. Smith further testified that in a ten hour shift, there would be as much as eight hours of standing and considerable walking involved in order for a Production Associate to perform the required job duties. Mr. Smith further testified that most of the jobs as a Production Associate require the performance of some lifting activities, and squatting and stooping. (TR. pp. 79-80)

Based upon a review of the medical evidence, the APA submissions of both parties, the testimonies of the various witnesses, and the Commission's file, the following findings of fact are made:

FINDINGS OF FACT

1. Claimant sustained an admitted work related injury to her left ankle arising out of and during the course and scope of her employment duties as a production associate with BMW Manufacturing Corporation on May 2, 2017. Specifically, Claimant was walking up a flight of stairs when she lost her balance and fell.
2. Claimant initially received medical treatment from Industrial Health Services (IHS). In particular, Dr. Bradley Collins, a physician with IHS, prescribed conservative medical modalities to treat Claimant's symptoms of left ankle pain and swelling. X-rays were ordered and Claimant was prescribed Advil for ankle pain. Claimant was also directed to apply ice. (APA p. 6)
3. Claimant was initially diagnosed with a left ankle sprain as a result of the X-rays being deemed negative for any fractures or dislocation. (APA p. 17)
4. Claimant expressed continuous complaints of left ankle pain and swelling. Despite elevating the left leg, applying ice, taking prescriptive medications and being authorized to remain out of work and engaging in therapeutic exercises, Claimant's condition remained unchanged. To this end, Drs. Ken Hommel and Bradley Collins, physicians at IHS, referred Claimant to Dr. Michael Tollison, an orthopedic surgeon with Piedmont Orthopedic Associates.
5. Dr. Tollison first treated Claimant on September 19, 2017. Claimant complained of dull aching throbbing ankle pain, which was aggravated with any slight period of standing and walking. Claimant reported that rest greatly alleviated her symptoms. Dr. Tollison recommended a MRI upon suspicion of tendinosis and peritenonitis of the peroneus brevis tendon. (APA pp. 40-41).

6. In a report dated November 5, 2018, Dr. Tollison noted Claimant had seen Dr. James Behr who had recommended injections and use of the medication, Voltaren. Claimant declined the recommended pain management treatment. However, Claimant did complete formal physical therapy. (APA pp. 43-44).
7. Because conservative medical modalities did not improve Claimant's condition, Dr. Tollison performed surgery on November 15, 2018, in which he repaired a left peroneal tendon tear and stabilized Claimant's lateral ankle ligament. (APA p. 45)
8. On a Form 14B dated January 15, 2019, Dr. Tollison opined to a reasonable degree of medical certainty that Claimant had attained maximum medical improvement as of December 28, 2018. Dr. Tollison assigned Claimant a 5% medical impairment to the left lower extremity. Dr. Tollison assigned permanent physical limitations on medium waist to floor lifting/lower end of heavy for front carrying. Dr. Tollison concluded no additional medical treatment was warranted. (APA p. 51)
9. Despite being released to work, Claimant was unable to perform her essential job function. To this end, Claimant was authorized to remain out of work and began receiving temporary total disability benefits on or about December 31, 2018.
10. Commissioner Taylor held a Form 21 hearing and ordered continued payment of temporary total disability benefits and additional medical care. The hearing transcript and order are a part of the Commission's file and were reviewed and considered.
11. Claimant began treating with Dr. Stephan G. Pill, an orthopedic surgeon with Steadman Hawkins Clinic.
12. In a report dated February 14, 2019, Dr. Pill reported Claimant had complained of ankle instability and a popping of the left ankle. Claimant complained of intense pain that had

continued since her work related accident of May 2, 2017. Dr. Pill recommended Claimant continue to use a cane and brace for stability. (APA pp. 57-60)

13. Claimant returned to Dr. Pill on June 25, 2019. (APA pp. 62-67). Dr. Pill concluded that Claimant's ligament was stable in the left ankle. However, there was evidence of thickening of the retinaculum and ongoing tendinosis in the area of the peroneal tendon. Dr. Pill recommended surgery to debride the peroneal tendon and repair the retinaculum. (APA p. 66). On August 9, 2019, Dr. Pill performed the recommended surgical procedure.
14. On November 5, 2019, Dr. Pill completed a Form 14B. Dr. Pill opined in the Form 14B Claimant had attained maximum medical improvement as of October 24, 2019. Dr. Pill assigned Claimant a 10% medical impairment to the left lower extremity. Dr. Pill assigned no permanent physical limitations and did not recommend any future or additional medical treatment. (APA p. 112)
15. During the hearing before the undersigned commissioner observed Claimant's left and right ankles and left surgical scar.
16. Based upon the undersigned Commissioner's observations of Claimant's injury site, her ability to ambulate and stand, medical evidence and forgoing testimonies, Defendants proved by preponderance of the evidence Claimant attained maximum medical improvement as of October 24, 2019. Thus, Defendants are entitled to stop or terminate payment of temporary total disability compensation benefits.
17. Based upon Claimant's age, education, work history and medical evidence, which includes a 5% and 10% medical impairment rating to the left lower extremity, Claimant has a 25% disability left lower extremity. Although Claimant's surgical scar does not

constitute serious permanent disfigurement of the face, head and neck, or are normally exposed in employment pursuant to §42-9-30 (23), the 25% disability award takes into account Claimant's resulting disfigurement from the surgical scar.

18. Claimant's 25% disability award was significantly enhanced beyond the impairment rating because of Claimant's testimony of current ankle pain and instability. While it is clear Claimant is able to perform all of her necessary daily living activities and engage in recreational activities, she is not able to perform the essential functions of a Production Associate based on her 25% loss of use of the left leg.
19. Defendant proved it provided Claimant with suitable employment after she reached MMI resulting from the first surgery with Dr. Tollison. However, by virtue of Claimant's testimony, she was still incapable and unable to work because of incapacitating pain and because her left ankle continuously "popped out".
20. Claimant did not prove that she is entitled to future or additional medical treatment. Thus, Defendants are not responsible for any further medical treatment beyond the date of maximum medical improvement or October 24, 2019.
21. Defendants are entitled to credit for the overpayment of temporary total disability compensation benefits dating from the date upon which it filed a Form 21, which was on January 10, 2020.
22. Defendants shall take credit for the overpayment of temporary total disability compensation benefits beginning on January 10, 2020 until the date upon which Defendants issue a permanent partial disability lump sum award.
23. Because the injury only involves one body part, Claimant is not entitled to an award of wage loss or permanent and total disability. Also, Claimant failed to prove by a

preponderance of the evidence that she has suffered disability in greater 25%, much less 75% disability to the left leg.

CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-9-260 (2020) governs awards of temporary total disability compensation benefits and stop payment applications.
2. S.C. Code Ann. §42-9-210 (2020) governs credit for the overpayment of temporary total disability compensation benefits.
3. S.C. Code Ann. §42-15-60 governs past, present and future medical treatment.
4. S.C. Code Ann. §42-9-30 (16) (2020) governs permanent disability awards for partial loss of use of a leg.

ORDER

IT IS HEREBY ORDERED that Defendants are entitled to terminate temporary total disability compensation benefits to Claimant because Claimant attained maximum medical improvement as of October 24, 2019.

IT IS FURTHER ORDERED Defendants are entitled to credit for the over payment of temporary total disability compensation benefits from January 10, 2020 until the lump sum award check reflecting Claimant's disability to the left leg is issued.

IT IS FURTHER ORDERED that Defendants shall pay to Claimant 25% disability to the left leg or 48.75 weeks on compensation benefits. Defendants shall pay the balance of this

award to Claimant after taking into account its credit for the overpayment of temporary total disability compensation benefits beginning on January 10, 2020.

AND IT IS SO ORDERED.


Commissioner Mike Campbell

CERTIFICATE OF SERVICE

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

April 23, 2020

By: Barbara Cheeseboro, Administrative Assistant
to Commissioner Campbell

Copies of Decision and Order served
via U.S. Mail upon:

Raquael Cunningham
Vernon F. Dunbar, Esq.

(Served by Deborah F. Hutto)

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1704918

Raquael Cunningham

EMPLOYEE,
CLAIMANT/APPELLANT

VS.

BMW Manufacturing Corporation, LLC

EMPLOYER,

AND

Hartford Accident & Indemnity Company c/o
Sedgwick Claims Management Services, Inc.

CARRIER,
DEFENDANTS/RESPONDENTS,

Appellate Panel Review on the Record held in Columbia, South
Carolina, on July 20, 2020 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

November ~~2020~~

March 10, 2021

Claimant/Appellant is unrepresented or Pro Se

Defendants/Respondents represented by Vernon F. Dunbar

STATEMENT OF THE CASE

Raqucal D. Cunningham, Claimant/Appellant, is a 46 year old female who began working as a production associate for BMW Manufacturing Corporation, LLC, the Employer/Respondent, on September 21, 2015. On May 2, 2017, Appellant injured her left ankle while climbing a flight of stairs during a bathroom break. Appellant was immediately treated at Industrial Health Services (IHS). The medical providers at IHS referred Appellant to Greer Memorial Emergency Room for further evaluation and X-ray studies. Physicians at Greer Memorial Emergency Room diagnosed Appellant as having suffered a lateral ankle sprain. Appellant was fitted with an air cast.

Because conservative medical modalities proved to be ineffective, Appellant began treating with Dr. Michael Tollison, an orthopedic surgeon. Dr. Tollison performed a left ankle reconstruction surgery which involved surgical procedures on the peroneal tendon and lateral left ankle ligaments. On August 6, 2018, Dr. Tollison released Appellant to return to work without restrictions and he assigned her a five percent (5%) medical impairment rating to the left lower extremity. Appellant contested Dr. Tollison's conclusion she had attained maximum medical improvement.

Dr. Stephan Pill, an orthopedic surgeon with Steadman Hawkins Clinic, began treating Appellant. Dr. Pill opined Appellant would benefit from repeat arthroscopic surgery in order to remove scar tissue, which in turn would potentially lessen her pain and discomfort and improve her ability to walk, stand and lift.

On August 9, 2019, Dr. Pill performed surgery on Appellant's left ankle, despite Appellant's effort to postpone the surgery to a later date. After undergoing physical therapy, Dr. Pill opined in a Form 14B dated November 5, 2019, Appellant had attained maximum medical

improvement as of October 24, 2019. Dr. Pill assigned Appellant a ten percent (10%) medical impairment rating to the left leg.

The Honorable R. Michael Campbell, II, scheduled a Form 21 or Stop Payment Hearing, which was held on March 5, 2020. Commissioner Campbell promulgated an order on April 23, 2020, finding Appellant had attained maximum medical improvement as of October 24, 2019. Commissioner Campbell awarded Respondents credit for the overpayment of temporary total disability compensation benefits beginning from January 10, 2020 or the date the Form 21 was filed. Finally, Commissioner Campbell awarded Claimant 25% disability to the left leg or 48.75 weeks of compensation benefits.

Appellant filed a Form 30 appealing Commissioner Campbell's Decision and Order on or about April 27, 2020.

GROUND OF APPEAL

Appellant appeals the Hearing Commissioner's 25% disability award to the left leg as insufficient and inadequate. Appellant argues the Hearing Commissioner should have awarded her greater disability and/or wage loss.

HEARING COMMISSIONER FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. Claimant sustained an admitted work related injury to her left ankle arising out of and during the course and scope of her employment duties as a production associate with BMW Manufacturing Corporation on May 2, 2017. Specifically, Claimant was walking up a flight of stairs when she lost her balance and fell.
2. Claimant initially received medical treatment from Industrial Health Services (IHS). In particular, Dr. Bradley Collins, a physician with IHS, prescribed conservative medical

modalities to treat Claimant's symptoms of left ankle pain and swelling. X-rays were ordered and Claimant was prescribed Advil for ankle pain. Claimant was also directed to apply ice. (APA p. 6)

3. Claimant was initially diagnosed with a left ankle sprain as a result of the X-rays being deemed negative for any fractures or dislocation. (APA p. 17)
4. Claimant expressed continuous complaints of left ankle pain and swelling. Despite elevating the left leg, applying ice, taking prescriptive medications and being authorized to remain out of work and engaging in therapeutic exercises, Claimant's condition remained unchanged. To this end, Drs. Ken Hommel and Bradley Collins, physicians at IHS, referred Claimant to Dr. Michael Tollison, an orthopedic surgeon with Piedmont Orthopedic Associates.
5. Dr. Tollison first treated Claimant on September 19, 2017. Claimant complained of dull aching throbbing ankle pain, which was aggravated with any slight period of standing and walking. Claimant reported that rest greatly alleviated her symptoms. Dr. Tollison recommended a MRI upon suspicion of tendinosis and peritenonitis of the peroneus brevis tendon. (APA pp. 40-41).
6. In a report dated November 5, 2018, Dr. Tollison noted Claimant had seen Dr. James Behr who had recommended injections and use of the medication, Voltaren. Claimant declined the recommended pain management treatment. However, Claimant did complete formal physical therapy. (APA pp. 43-44).
7. Because conservative medical modalities did not improve Claimant's condition, Dr. Tollison performed surgery on November 15, 2018, in which he repaired a left peroneal tendon tear and stabilized Claimant's lateral ankle ligament. (APA p. 45)

8. On a Form 14B dated January 15, 2019, Dr. Tollison opined to a reasonable degree of medical certainty that Claimant had attained maximum medical improvement as of December 28, 2018. Dr. Tollison assigned Claimant a five (5%) percent medical impairment to the left lower extremity. Dr. Tollison assigned permanent physical limitations on medium waist to floor lifting/lower end of heavy for front carrying. Dr. Tollison concluded no additional medical treatment was warranted. (APA p. 51)
9. Despite being released to work, Claimant was unable to perform her essential job function. To this end, Claimant was authorized to remain out of work and began receiving temporary total disability benefits on or about December 31, 2018.
10. Commissioner Taylor held a Form 21 hearing and ordered continued payment of temporary total disability benefits and additional medical care. The hearing transcript and order are a part of the Commission's file and were reviewed and considered.
11. Claimant began treating with Dr. Stephan G. Pill, an orthopedic surgeon with Steadman Hawkins Clinic.
12. In a report dated February 14, 2019, Dr. Pill reported Claimant had complained of ankle instability and a popping of the left ankle. Claimant complained of intense pain that had continued since her work related accident of May 2, 2017. Dr. Pill recommended Claimant continue to use a cane and brace for stability. (APA pp. 57-60)
13. Claimant returned to Dr. Pill on June 25, 2019. (APA pp. 62-67). Dr. Pill concluded that Claimant's ligament was stable in the left ankle. However, there was evidence of thickening of the retinaculum and ongoing tendinosis in the area of the peroneal tendon. Dr. Pill recommended surgery to debride the peroneal tendon and repair the retinaculum.

(APA p. 66). On August 9, 2019, Dr. Pill performed the recommended surgical procedure.

14. On November 5, 2019, Dr. Pill completed a Form 14B. Dr. Pill opined in the Form 14B Claimant had attained maximum medical improvement as of October 24, 2019. Dr. Pill assigned Claimant a 10% medical impairment to the left lower extremity. Dr. Pill assigned no permanent physical limitations and did not recommend any future or additional medical treatment. (APA p. 112)
15. During the hearing before the undersigned Commissioner observed Claimant's left and right ankles and left surgical scar.
16. Based upon the undersigned Commissioner's observations of Claimant's injury site, her ability to ambulate and stand, medical evidence and forgoing testimonies, Defendants proved by preponderance of the evidence Claimant attained maximum medical improvement as of October 24, 2019. Thus, Defendants are entitled to stop or terminate payment of temporary total disability compensation benefits.
17. Based upon Claimant's age, education, work history and medical evidence, which includes a 5% and 10% medical impairment rating to the left lower extremity, Claimant has a 25% disability left lower extremity. Although Claimant's surgical scar does not constitute serious permanent disfigurement of the face, head and neck, or is normally exposed in employment pursuant to §42-9-30 (23), the 25% disability award takes into account Claimant's resulting disfigurement from the surgical scar.
18. Claimant's 25% disability award was significantly enhanced beyond the impairment rating because of Claimant's testimony of current ankle pain and instability. While it is clear Claimant is able to perform all of her necessary daily living activities and engage in

recreational activities, she is not able to perform the essential functions of a Production Associate based on her 25% loss of use of the left leg.

19. Defendant proved it provided Claimant with suitable employment after she reached MMI resulting from the first surgery with Dr. Tollison. However, by virtue of Claimant's testimony, she was still incapable and unable to work because of incapacitating pain and because her left ankle has continuously "popped out".
20. Claimant did not prove that she is entitled to future or additional medical treatment. Thus, Defendants are not responsible for any further medical treatment beyond the date of maximum medical improvement or October 24, 2019.
21. Defendants are entitled to credit for the overpayment of temporary total disability compensation benefits dating from the date upon which it filed a Form 21, which was on January 10, 2020.
22. Defendants shall take credit for the overpayment of temporary total disability compensation benefits beginning on January 10, 2020 until the date upon which Defendants issue a permanent partial disability lump sum award.
23. Because the injury only involves one body part, Claimant is not entitled to an award of wage loss or permanent and total disability. Also, Claimant failed to prove by a preponderance of the evidence that she has suffered disability in greater 25%, much less 75% disability to the left leg.

CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-9-260 (2020) governs awards of temporary total disability compensation benefits and stop payment applications.

2. S.C. Code Ann. §42-9-210 (2020) governs credit for the overpayment of temporary total disability compensation benefits.
3. S.C. Code Ann. §42-15-60 governs past, present and future medical treatment.
4. S.C. Code Ann. §42-9-30 (16) (2020) governs permanent disability awards for partial loss of use of a leg.

LEGAL DISCUSSION

Appellant argues the hearing Commissioner's 25% disability award is not enough to compensate her for her leg injury. On the contrary, Appellant asserts she should have been awarded compensation benefits due to wage loss.

The Hearing Commissioner did not err in awarding Appellant permanent partial disability benefits pursuant to section 42-9-30. *S.C. Code Ann. §42-9-30 (16) (2020)*. The Hearing Commissioner awarded Appellant 25% disability to the left leg. The compensation award was correctly and properly based upon functional loss of the left leg rather than loss of earnings. *Dykes v. Daniel Const. Co.*, 262 S.C. 98, 202 S.E.2d 646 (1974). Also, Claimant did not raise this issue of wage loss during the hearing before the hearing Commissioner. Hence, it is not preserved for review. *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1940).

Because Appellants injury is confined to the left leg, a scheduled member, and no other body part is impaired or affected by the admitted left ankle injury, Appellant's recovery or damages is limited to the scheduled compensation per section 42-9-30. *Colonna v. Marlboro Park Hosp.*, 404 S.C. 537, 745 S.E.2d 128 (Cl. App. 2013)

Thus, Appellant's argument that she should be awarded wage loss is without merit and should be dismissed as a matter of law. *Id.*

APPELLATE PANE FINDINGS OF FACT

The Appellate Panel hereby affirms the findings of the Hearing Commissioner and makes the following Findings of Fact:

1. Appellant sustained an admitted work related injury to her left ankle arising out of and during the course and scope of her employment duties as a production associate with BMW Manufacturing Corporation on May 2, 2017. Specifically, Appellant was walking up a flight of stairs when she lost her balance and fell.
2. Appellant initially received medical treatment from Industrial Health Services (IHS). In particular, Dr. Bradley Collins, a physician with IHS, prescribed 'conservative medical modalities to treat Appellant's symptoms of left ankle pain and swelling. X-rays were ordered and Appellant was prescribed Advil for ankle pain. Appellant was also directed to apply ice. (APA p. 6)
3. Appellant was initially diagnosed with a left ankle sprain as a result of the X-rays being deemed negative for any fractures or dislocation. (APA p. 17)
4. Appellant expressed continuous complaints of left ankle pain and swelling. Despite elevating the left leg, applying ice, taking prescriptive medications and being authorized to remain out of work and engaging in therapeutic exercises, Appellant's condition remained unchanged. To this end, Drs. Ken Hommel and Bradley Collins, physicians at IHS, referred Appellant to Dr. Michael Tollison, an orthopedic surgeon with Piedmont Orthopedic Associates.
5. Dr. Tollison first treated Appellant on September 19, 2017. Appellant complained of dull aching throbbing ankle pain, which was aggravated with any slight period of standing and walking. Appellant reported that rest greatly alleviated her symptoms. Dr. Tollison

recommended a MRI upon suspicion of tendinosis and peritenonitis of the peroneus brevis tendon. (APA pp. 40-41).

6. In a report dated November 5, 2018, Dr. Tollison noted Appellant had seen Dr. James Behr who had recommended injections and use of the medication, Voltaren. Appellant declined the recommended pain management treatment. However, Appellant did complete formal physical therapy. (APA pp. 43-44).
7. Because conservative medical modalities did not improve Appellant's condition, Dr. Tollison performed surgery on November 15, 2018, in which he repaired a left peroneal tendon tear and stabilized Appellant's lateral ankle ligament. (APA p. 45)
8. On a Form 14B dated January 15, 2019, Dr. Tollison opined to a reasonable degree of medical certainty that Appellant had attained maximum medical improvement as of December 28, 2018. Dr. Tollison assigned Appellant a five (5%) percent medical impairment to the left lower extremity. Dr. Tollison assigned permanent physical limitations on medium waist to floor lifting/lower end of heavy for front carrying. Dr. Tollison concluded no additional medical treatment was warranted. (APA p. 51)
9. Despite being released to work, Appellant was unable to perform her essential job function. To this end, Appellant was authorized to remain out of work and began receiving temporary total disability benefits on or about December 31, 2018.
10. Commissioner Taylor held a Form 21 hearing and ordered continued payment of temporary total disability benefits and additional medical care. The hearing transcript and order are a part of the Commission's file and were reviewed and considered.
11. Appellant began treating with Dr. Stephan G. Pill, an orthopedic surgeon with Steadman Hawkins Clinic.

12. In a report dated February 14, 2019, Dr. Pill reported Appellant had complained of ankle instability and a popping of the left ankle. Appellant complained of intense pain that had continued since her work related accident of May 2, 2017. Dr. Pill recommended Appellant continue to use a cane and brace for stability. (APA pp. 57-60)
13. Appellant returned to Dr. Pill on June 25, 2019. (APA pp. 62-67). Dr. Pill concluded that Appellant's ligament was stable in the left ankle. However, there was evidence of thickening of the retinaculum and ongoing tendinosis in the area of the peroneal tendon. Dr. Pill recommended surgery to debride the peroneal tendon and repair the retinaculum. (APA p. 66). On August 9, 2019, Dr. Pill performed the recommended surgical procedure.
14. On November 5, 2019, Dr. Pill completed a Form 14B. Dr. Pill opined in the Form 14B Appellant had attained maximum medical improvement as of October 24, 2019. Dr. Pill assigned Appellant a 10% medical impairment to the left lower extremity. Dr. Pill assigned no permanent physical limitations and did not recommend any future or additional medical treatment. (APA p. 112)
15. The Hearing Commissioners' observed Appellant's left and right ankle and left surgical scar.
16. Based upon the Hearing Commissioner's observations of Appellant's injury site, including his observations of her ability to ambulate and stand; and a review of the medical evidence and forgoing testimonies, Respondents proved by preponderance of the evidence Appellant attained maximum medical improvement as of October 24, 2019. Thus, Respondents are entitled to stop or terminate payment of temporary total disability compensation benefits.

17. Based upon Appellant's age, education, work history and medical evidence, which includes a 5% and 10% medical impairment rating to the left lower extremity, Appellant has a 25% disability left lower extremity. Although Appellant's surgical scar does not constitute serious permanent disfigurement of the face, head and neck, or are normally exposed in employment pursuant to §42-9-30 (23), the 25% disability award takes into account Appellant's resulting disfigurement from the surgical scar.
18. Appellant's 25% disability award was significantly enhanced beyond the impairment rating because of Appellant's testimony of current ankle pain and instability. While it is clear Appellant is able to perform all of her necessary daily living activities and engage in recreational activities, she is not able to perform the essential functions of a Production Associate based on her 25% loss of use of the left leg.
19. Respondent proved it provided Appellant with suitable employment after she reached MMI resulting from the first surgery with Dr. Tollison. However, by virtue of Appellant's testimony, she still is currently incapable and unable to work because of incapacitating pain and because her left ankle has continuously "popped out".
20. Appellant did not prove that she is entitled to future or additional medical treatment. Thus, Respondents are not responsible for any further medical treatment beyond the date of maximum medical improvement or October 24, 2019.
21. Respondents are entitled to credit for the overpayment of temporary total disability compensation benefits dating from the date upon which it filed a Form 21, which was on January 10, 2020.

22. Respondents shall take credit for the overpayment of temporary total disability compensation benefits beginning on January 10, 2020, until the date upon which Respondents issue a permanent partial disability lump sum award.

23. Because the injury only involves one body part, Appellant is not entitled to an award of wage loss or permanent and total disability. Also, Appellant failed to prove by a preponderance of the evidence that she has permanent disability greater than 25%, and clearly not 75% disability to the left leg as she alleges.

APPELLATE PANEL CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-9-260 (2020) governs awards of temporary total disability compensation benefits and stop payment applications.
2. S.C. Code Ann. §42-9-210 (2020) governs credit for the overpayment of temporary total disability compensation benefits.
3. S.C. Code Ann. §42-15-60 governs past, present and future medical treatment.
4. S.C. Code Ann. §42-9-30 (16) (2020) governs permanent disability awards for partial loss of use of a leg.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Hearing Commissioner's award of 25% disability to the left leg is hereby affirmed.

AND IT SO ORDERED.



Traci Beck, Commissioner

WE CONCUR:



Commissioner Aisha Taylor


Commissioner Avery B. Wilkerson, Jr.

Order Served via USPS:

Raqucal Cunningham 114 Vermillion Drive Spartanburg, SC 29306	Vernon F. Dunbar McAngus Goudelock & Courle, LLC P.O. Box 2980 Greenville, SC 29602
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CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on March 10, 2021

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1704918

Raqucal D. Cunningham,)
)
Claimant,)
)
v.)
)
BMW Manufacturing Corporation,)
)
Employer,)
)
and)
)
Hartford Accident & Indemnity)
Company,)
)
Carrier/Defendants.)
-----)

COMMISSION HEARING

Thursday, March 5, 2020
12:04 p.m. - 1:23 p.m.

The Commission Hearing was heard before Commissioner R. Michael Campbell, II, at the Count Square, 301 University Ridge, Conference Room E, East Wing, Greenville, South Carolina, 29601, on the 5th day of March, 2020 before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES**Charles P. Edwards, Esquire**

Charles P. Edwards, Attorney at Law
 207 Magnolia Street
 P.O. Box 2552
 Spartanburg, South Carolina 29304
 Attorney for the Claimant

Vernon F. Dunbar, Esquire

McAngus, Goudelock & Courie, LLC
 55 East Camperdown Way
 P.O. Box 2980 (29602)
 Greenville, SC 29601
 Attorney for the Defendant/Carrier

Also present:

Donnell Smith, BMW

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EXHIBITS

Claimant's Exhibit Number 1 21
(4 Color photographs of Claimant's ankle)

Defendant's Exhibit Number 1 76
(SLED Arrest Record)

(All Exhibits were retained by the Commission.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COMMISSIONER CAMPBELL: Today's hearing date is March 5th, 2020. This is Workers' Compensation Case Number 1704918. The Claimant is Raqucal D. Cunningham, represented by Charles P. Edwards. Employer is BMW Manufacturing Corporation. Carrier is Hartford Accident & Indemnity Company, represented by Vernon F. Dunbar. The date of accident was May 2nd, 2017. There was an average weekly wage of \$803.67 and a corresponding compensation rate of \$535.81. APAs have been submitted. Are there any objections to APAs, jurisdiction, venue or any other items?

MR. EDWARDS: None from the Claimant.

MR. DUNBAR: None from Defendants, Your Honor.

COMMISSIONER CAMPBELL: Without objection the Commission file becomes a part of the record with the exception of self-serving declarations and unstipulated medical reports. Mr. Dunbar, we are here today on the Form 41 that you filed with the Commission, so if you would please put your position on the record and let us know what you're seeking here today, sir?



DEFENDANT'S POSITION:

MR. DUNBAR: Thank you very much, Your Honor. We take the position that Ms. Cunningham has now obtained maximum medical improvement, and as a result we seek credit from the date of the attainment of maximum medical improvement, which I have, I believe it's October 29, 2019. We seek that because according to the law once an individual reaches maximum medical improvement the Commission then is endowed with the authority and power to render a permanent disability rating. And therefore we believe we should be afforded credit because she's no longer temporarily totally disabled according to Section 42-9-210. We take the position that she's had two surgeries. She's been adequately treated from a medical standpoint by two permanent orthopaedic surgeons. The first being Dr. Michael Tollison who performed the initial surgery, and he gave her -- or assigned her a five percent medical impairment rating after she reached maximum medical improvement. But because Ms. Cunningham had continued problems with pain and swelling she sought her own treatment from Dr. Stephan Pill, who is an



1 orthopaedic surgeon with Steadman Hawkins, who
2 indicated that an additional surgery could
3 improve her condition and as a result he went
4 in and did a second surgery. And the surgical
5 notes are in our APA as well as the Form 14Bs
6 for both, Dr. Tollison as well as Dr. Pill.
7 Dr. Tollison -- I'm sorry, Dr. Pill indicated
8 that as the attainment of maximum medical
9 improvement had been achieved he indicated in
10 the Form 14B that Ms. Cunningham has a ten
11 percent medical impairment to the left lower
12 extremity or left leg. So we take the position
13 that Ms. Cunningham's disability range is
14 somewhere between 12 and 17 percent disability
15 to the left lower extremity and we seek credit
16 for the overpayment of temporary total.

17 **COMMISSIONER CAMPBELL:** Okay. All right. Thank
18 you, sir. Mr. Edwards, if you would please put
19 your position on the record and let us know
20 what you're seeking today, sir?

21 **CLAIMANT'S POSITION:**

22 **MR. EDWARDS:** Your Honor, we agree that Ms.
23 Cunningham has reached MMI, but we strongly
24 disagree with the ratings of the physicians.
25 We feel that the disability liable is in excess



1 of 75 percent to the lower extremity. We
2 disagree with the request for overpayment on
3 the grounds that she was terminated rather than
4 it being a voluntary leaving of the job or
5 whatever. And also on the Form 17 that she was
6 asked to sign to stop the compensation, she
7 would have to verify -- or it said on there
8 don't sign until you've been back on the job
9 for 15 days, and she couldn't go back on the
10 job 'cause she had been terminated but even if
11 she hadn't she wasn't physically able to do the
12 job. So for those reasons we don't believe the
13 overpayment should be credited back to the
14 employer.

15 If I could, I would like to state a little bit
16 of the background, Commissioner, because it is
17 somewhat lengthy.

18 Ms. Cunningham is a 46 year old female. She
19 was working for BMW on the line. Accident was
20 May 2nd of '17. She was walking up metal
21 stairs that are somewhat inclined because they
22 are an industrial type of stairs. Twisted her
23 ankle, heard a pop and felt immediate pain.
24 She was treated at the Greer Hospital Emergency
25 Room where they gave her crutches and air cast



1 and they x-rayed her. Thereafter she was seen
2 by BMW, which has an in-house medical facility,
3 and was out of work for about a month or so.
4 Was given PT there on the site. Of course she
5 would report to BMW; she just wouldn't work.
6 She'd be given physical therapy. The claim was
7 denied for workers' comp by BMW on May the
8 17th. And so she sought medical care on her
9 own from a podiatrist, a Dr. Blackman. But
10 shortly thereafter the claim was admitted, and
11 the Carrier chose to have her treated by Dr.
12 Tollison, an orthopaedist here in Greenville,
13 who did do surgery which was not arthroscopic.
14 It was open surgery on November 15th of 2017.
15 Now, Dr. Tollison allowed her to returned to
16 work on February 4th of 2018 if it was sit down
17 work, but BMW had none of that available. He
18 allowed her to go to limited standing and
19 walking on March 22nd of '18, but BMW said none
20 of that was allowed -- or available. He
21 allowed her to return to work full duty on May
22 29th of '18, but BMW didn't have -- or wouldn't
23 allow her to come back on because they saw her
24 in their medical facility and didn't feel that
25 she was ready and capable of going back on. So



1 she was not allowed to return to work until
2 August 6th of 2018, and she -- but let me back
3 up just a moment. In the Spring of '18,
4 between April and June she did -- I may be
5 mistaken there. August 6th of '18 she went
6 back on the floor and worked until August 31st,
7 but every day the ankle would swell up and
8 become painful at the end of her shift and
9 sometimes starting at the first of her shift.
10 She was winding up in the infirmary having it
11 iced and things like that and was not of much
12 use to BMW. After 28 days they said let's go
13 back on TTD, this isn't working.

14 So after that Dr. Tollison ordered an FCE and
15 found her at MMI on November 5th of '18, gave
16 a five percent rating and he applied a lifting
17 restriction to her on his 14 that he -- Dr.
18 Pill's later 14B said ten percent without the
19 lifting restriction. But we do feel she has
20 some lifting difficulties. She was not allowed
21 to return to work at that point in time. So
22 she returned to Dr. Blackman, the podiatrist,
23 again. Wasn't happy there. And then she
24 sought out Dr. Pill using health insurance.
25 He's another orthopaedic surgeon with Steadman



1 Hawkins. And she saw him and he said maybe I
2 can do some good if we go back and operate
3 again. So when BMW filed the Form 21 we filed
4 a response and said we'd like to have a second
5 opinion. We've got a Dr. Pill who would like
6 to treat her, and Commissioner Taylor had a
7 hearing in late March of '19 in which she said,
8 okay, I'll allow Dr. Pill to see what he wants
9 to do. He does decide to do the surgery.

10 Meantime, April of '19, she has gone back to
11 BMW and is working and that lasts 'til about
12 June. But the ankle continues to swell just
13 like it's done the other times before and BMW
14 says, this isn't working, go back on TTD about
15 June.

16 Dr. Pill schedules the surgery for two months
17 later in August of '19 and he does again open
18 surgery, not arthroscopy. And that occurred on
19 August the 9th and on August -- end of August
20 I received a letter that Ms. Cunningham was
21 being terminated. BMW, if I'm not misstating
22 the policy, if you're out for 18 months without
23 being returned to full-time duty and operating
24 in full-time duty, company policy is that you
25 must be terminated. So since that point in



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1 time she has been trying to recuperate and get
2 back to work. She enjoyed -- or was pleased
3 with her job at BMW, making good money and
4 wishes that there was some other way she could
5 be accommodated there. But we realize that she
6 can't go back doing what she was doing because
7 it just wasn't working at all. So that is our
8 position. We just feel that the doctors are
9 way off and that I think she's going to
10 describe to you how she gets around now and
11 all, and we believe that a impairment rating
12 more in the neighborhood of 75 percent is
13 appropriate.

14 **COMMISSIONER CAMPBELL:** Okay. All right. Thank
15 you. Mr. Dunbar, anything else to add at this
16 time?

17 **DEFENDANT'S RESPONSE:**

18 **MR. DUNBAR:** The only thing in response to the 75
19 percent demand or request for a disability
20 award on impairment rating is that there is no
21 expert medical evidence to support such a
22 rating. The only ratings in the file are five
23 percent and a ten percent in accordance with
24 the AMA guides that have been rendered by
25 qualified expert physicians that are Board



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1 certified. So the 75 percent disability does
2 not equate or comport to a ten percent medical
3 impairment rating and would be based on
4 speculation, surmise and conjecture. That's
5 all I have.

6 **COMMISSIONER CAMPBELL:** And if you have anything to
7 add at this time?

8 **CLAIMANT'S RESPONSE:**

9 **MR. EDWARDS:** Yes, sir. I didn't so much mean 75
10 percent impairment rating. I more meant
11 disability rating based on her education and
12 her abilities and things like that.

13 **COMMISSIONER CAMPBELL:** I understand. Okay. All
14 right. Thank you. And, Ms. Cunningham, I have
15 a couple of things to go over with you before
16 we get started. First and foremost, please
17 speak up, speak clearly for us so that we can
18 all hear your responses to the questions, but
19 most importantly that this nice lady seated
20 here to my left can get them for the record.

21 **MS. CUNNINGHAM:** Okay.

22 **COMMISSIONER CAMPBELL:** If you are asked a yes or no
23 question please give us a verbal yes or no
24 answer. You can shake your head yes or no like
25 I do all the time, just make sure you please



1 accompany that with a verbal yes or no answer.

2 MS. CUNNINGHAM: Okay.

3 COMMISSIONER CAMPBELL: And try and stay away from
4 things like uh-huh and huh-uh just because
5 that's easily misinterpreted on the record.

6 MS. CUNNINGHAM: Okay.

7 COMMISSIONER CAMPBELL: So if you could help me out
8 with that I'd appreciate, okay?

9 MS. CUNNINGHAM: Yes, sir.

10 COMMISSIONER CAMPBELL: Thank you, ma'am. If you
11 could please raise your right hand?

12 MS. CUNNINGHAM: (Witness complies.)

13 COMMISSIONER CAMPBELL: Do you swear or affirm the
14 testimony you're about to give is the truth,
15 the whole truth and nothing but the truth?

16 MS. CUNNINGHAM: Yes, sir.

17 COMMISSIONER CAMPBELL: Okay. You can put your hand
18 down, and I know that we all who you are but if
19 you would please state and spell your name for
20 the record, ma'am?

21 MS. CUNNINGHAM: Raqucal -- my middle name, too?

22 COMMISSIONER CAMPBELL: That's fine. Just -

23 MS. CUNNINGHAM: Okay. My name is Raqucal Denise
24 Cunningham. R-A-Q-U-C-A-L, D-E-N-I-S-E,
25 Cunningham, C-U-N-N-I-N-G-H-A-M.



1 COMMISSIONER CAMPBELL: Okay. Thank you, Ms.
2 Cunningham. Mr. Edwards, your witness.

3 RAQUICAL DENISE CUNNINGHAM, having been duly sworn,
4 testifies as follows:

5 MS. CUNNINGHAM - DIRECT EXAMINATION BY MR. EDWARDS:

6 Q: Thank you. How old are you, Ms. Cunningham?

7 A: 46.

8 Q: And what's your educational level?

9 A: I have a GED and also went to school for nail
10 tech, aesthetics, barber and cosmetology.

11 Q: Okay. And tell us generally what sort of jobs
12 that you've had in your adult life?

13 A: Mostly cosmetology. I've done housekeeping
14 sometime, but mostly cosmetology.

15 Q: Okay. Now cosmetology do you sit down much?

16 A: No, you're standing. I'm sorry. Standin'.

17 Q: Now that would be with the hair. Of course
18 with nails you get to sit down when you're
19 doing nails I suppose?

20 A: Sit with nails.

21 Q: Okay.

22 A: But I'm licensed for barber and cosmetology.
23 I only graduated from nails and esthetics.

24 Q: Okay. Now have you had other jobs outside of
25 the cosmetic -- or that field?



- 1 A: No.
- 2 Q: All right. Other factory work anywhere?
- 3 A: Factory work, but ...
- 4 Q: Yeah, tell me about that.
- 5 A: I worked for Adidas. I worked for BMW. I
- 6 worked for Seimens.
- 7 Q: Okay. All right. And any automotive work?
- 8 A: I mean, I play -- I used to work on my car.
- 9 Q: Okay.
- 10 A: I painted my car, but I haven't went in a shop
- 11 and actually.
- 12 Q: No earnings or anything like that?
- 13 A: Right. Right.
- 14 Q: Okay.
- 15 A: Yeah, just ---
- 16 Q: All right. Now the job at BMW, just briefly
- 17 tell us what it amounted to. What were you
- 18 doing?
- 19 A: The first job I had at BMW was in the body shop
- 20 ---
- 21 Q: Uh-huh.
- 22 A: --- where it's similar to Hall 32 where we're
- 23 feedin' the robot. But once -- that's when I
- 24 was with MAU, but once I got hired on to BMW I
- 25 went to body adjust. And body adjust we all,



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1 you know, like check the cars like on the floor
2 and see if they would shift to it. And we
3 also, like, fit the robot, like the screws to
4 the fender. We'll put the fender on and then
5 push the robot on there and make sure it's on.

6 Q: How long of a shift? How long were hours?

7 A: That was ten hours at that one. The first one
8 was ten hours a day and it switched to 12. And
9 then when they -- when they moved me it was
10 like I was back at the body shop. Hall 32 is
11 the same as the body shop.

12 Q: Okay. Out of a ten hour day about how many
13 hours would you be standing up on the job?

14 A: We have two breaks -- three breaks. We have
15 two breaks -- ten minute or 15 minute breaks
16 and then 30 ---

17 Q: So you're standing up the whole time?

18 A: The whole time.

19 Q: Okay.

20 A: It's just that we're switchin'. Like we're
21 here for two hours or a hour and a half and
22 then we'll go to another one.

23 Q: All right.

24 A: Like that.

25 Q: And then how much walking's involved? Much or



1 not?

2 A: It's a lot of -- it was less walkin' where I
3 came from. It's more where they sent me to.

4 Q: Okay. Now where you came from, that's the job
5 you were on when you got hurt, right?

6 A: Yes.

7 Q: And then you went back at a point and you were
8 put on another job; is that right?

9 A: Well, when I went back they put me there but
10 then when BMW requested me to do the work
11 study, that work solution thing, when they put
12 their restriction on me then they violated the
13 restriction that they put me on. They sent me
14 from a less walking area to a more walking
15 area, and I was doin' way more work than I was
16 -- and I have pictures of my ankle where I had
17 to stop and go ice it because it was so big --
18 but -- and the parts that I was puttin' on when
19 they reassigned me, they were huge and I was
20 havin' to lift 'em and turn and put them in the
21 machine the proper way, which was on that
22 paper; the twistin', the liftin'. And I can't
23 lead with this ankle no more -- with my left
24 ankle -- but at that job I was -- it was
25 poppin' -- my ankle was poppin' out a lot



1 because of it.

2 Q: Okay. All right. Now, let's see here. The
3 first time you went back to work, that was
4 August 6th of '18 after Tollison did the work.
5 That's when you were talking about this job
6 here that you feel was harder than it was
7 before?

8 A: August the 6th? That was -- I think August the
9 6th -- is that the same -- if that's the time
10 in 2018, that was in the same -- I was in the
11 same area.

12 Q: All right.

13 A: It's just that it was so bad off. It kept
14 comin' out and that doctor seen it that night
15 and he -- he wouldn't put me back on the floor.

16 Q: Okay. All right. Ms. Cunningham, I have put
17 a couple of photographs in that I've had
18 provided to Vernon Dunbar of your ankle. I
19 believe you may have another photograph that
20 you had? Okay.

21 A: Yeah, this is when I had went back and ---

22 Q: Well, let's don't talk about them yet.

23 A: I'm sorry.

24 MR. EDWARDS: Yeah. Mr. Dunbar, I did not have
25 those in the APA. I don't know if you would



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1 allow them or not.

2 MR. DUNBAR: I'm going to object to that because of
3 the handwriting.

4 MS. CUNNINGHAM: And because he did -- oh, I'm
5 sorry.

6 MR. DUNBAR: And the commentary that I would ---

7 MR. EDWARDS: How about just with the date without
8 the commentary? Can we tear off the commentary
9 and put it in?

10 MR. DUNBAR: That's fine with me.

11 MR. EDWARDS: Okay. Well, if there is no objection
12 I may ask the question -- some questions about
13 this.

14 MR. DUNBAR: No objections.

15 COMMISSIONER CAMPBELL: Go ahead.

16 Q: All right. Ms. Cunningham, do you know that --
17 are these photographs all the same?

18 A: These two are the same (indicating).

19 Q: All right. And those were May 29th of '19?

20 A: That's the 28th. Those are the May 28th of
21 2019.

22 Q: Okay. All of these were within a month of one
23 another, are they not?

24 A: Yes.

25 Q: All right. And they're an accurate reflection



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1 of your ankle as it appeared -- or after the
2 surgery as you recuperated?

3 A: Yes.

4 Q: And this would have been after Dr. Pill's
5 surgery, right?

6 Q: No, this was done after Tollison's.

7 A: I'm sorry. Okay. This is before -- this is
8 before my surgery. This is the nights that I
9 was just talking about when they sent me over
10 to Hall 32. This is after the surgery. This
11 is the night -- this is the morning that I got
12 off -- the -- what I looked like when I got
13 off.

14 Q: After working a shift?

15 A: When I had called. Yes.

16 Q: Okay. Now Hall 32 what is that? Is that the
17 infirmary?

18 A: No. Hall 32 is the area -- is the body part of
19 the body shop where they sent me to. That
20 morning I -- that picture -- when I took that
21 picture I had just got off the phone with the
22 HR rep, Drew, who laughed at that picture.
23 That was at the bottom of that.

24 Q: All right.

25 MR. DUNBAR: Your Honor, I'm going to object to that



1 testimony and move to strike. Drew is not here
2 to testify as to what happened on that day.

3 **COMMISSIONER CAMPBELL:** Okay. All right. Thank
4 you. Sustained. I will -- what I'm going to
5 do is I'll mark these all as one Exhibit for
6 you and staple them together or had you rather
7 had them marked separately?

8 **MR. EDWARDS:** One Exhibit would be fine.

9 **COMMISSIONER CAMPBELL:** Okay. All right. Thank
10 you, sir.

11 **MR. EDWARDS:** Thank you.

12 (Claimant's Exhibit Number 1 was marked for
13 identification purposes.)

14 Q: Ms. Cunningham, I believe you were given a
15 functional capacity exam in October of '18, and
16 I have offered it to the Commission for
17 examination. Did you give your best effort on
18 that functional capacity exam?

19 A: Yes. I think it was November. It was after
20 Thanksgiving ---

21 Q: All right.

22 A: --- that they told me to go down there.

23 Q: Okay. In 2018?

24 A: Yes.

25 Q: But you gave your best effort?



1 A: I gave my best effort.

2 Q: Were you medicated when you took it or were you
3 free of medication?

4 A: I wasn't medicated.

5 Q: Okay. All right. Now Dr. Tollison released
6 you about November 5th or 15th of 2018 and
7 indicated he wasn't able to help you. What did
8 -- you went back to Dr. Blackman, the foot
9 doctor you had seen?

10 A: Yes.

11 Q: What did he offer, if any?

12 A: He said that he couldn't really see anything --
13 well, I can't say what he said because he's not
14 here.

15 Q: No ---

16 A: Okay.

17 Q: That's probably ---

18 A: But I just -- I went to ATI or ATF and seen Dr.
19 Pill and Dr. Pill -- well, I made an
20 appointment and Dr. Pill sent me to have an MRI
21 and that's when he said that it was messed up,
22 my ankle was.

23 Q: Okay. All right. Now eventually, I think
24 before Dr. Pill did the work in August of 2019,
25 you did try to go back on the floor about April



1 of '19?

2 A: I can't remember what day I went back, but it
3 was about April.

4 Q: Okay.

5 A: It was, yeah.

6 Q: And this was after we had had the hearing in
7 front of the Commissioner Taylor, was it not?

8 A: Yes.

9 Q: All right. Now just tell how -- what was your
10 experience when you went back to work?

11 A: Well, it was -- it was horrible, and with him
12 sittin' here bein' a part of HR knowin' that
13 the -- how my ankle was and that I needed
14 surgery, I don't understand why I was made to
15 go through work conditionin' or work hardenin'
16 and put on that floor. It was terrible. The
17 night -- the first night they had me work where
18 they had -- where they sent me to from the
19 parkin' lot to just to get in the buildin' was
20 so far for me and this ankle, and then when I
21 got inside I had to walk all the way back down.
22 It was horrible. I had to walk all the way
23 back. By the time I even got to my station my
24 ankle was already swoll -- it would be already
25 swollen. I used to have to carry the portable



1 ice packs where the nurse taught me how to pop
2 them and I'd stick down in my shoe and wrapped
3 it with a sock for comfort. That's how bad it
4 was.

5 Q: Okay. Can you give an idea the number of times
6 when you were unable to complete the eight hour
7 shift and were sent home or had to go home?

8 A: Well, they -- I couldn't -- I couldn't go home.
9 If I -- that lady said that I have -- well, I
10 was told I couldn't go home.

11 Q: Well, what would you do if you couldn't --
12 you'd go to the infirmary?

13 A: On my -- I'd go to the infirmary whenever they
14 were in. Over there on Hall 32, the doctor
15 don't stay there or the nurse don't be in there
16 all the time. So I've kept extra ice packs in
17 there, or I asked that off-line person to
18 relieve me while I go to the bathroom.

19 Q: All right. Well, how did the job end when they
20 said -- were you told you're not performing,
21 you're going to need to go back on TTD, or did
22 you ---

23 A: No. I can't say what happened, but just told
24 me that she would throw that out because I
25 spoke to his witness that didn't show up. So



1 I don't know how to tell that without it being
2 ---

3 COMMISSIONER CAMPBELL: You can testify as to what a
4 supervisor told you. You just can't use ---

5 MS. CUNNINGHAM: He's -- he is -- that man is a
6 supervisor.

7 COMMISSIONER CAMPBELL: Okay. You can testify as to
8 what a supervisor tells you -- told you. You
9 just can't tell -- like a doctor or somebody
10 like that, but you're allowed to testify as to
11 what a supervisor ---

12 MS. CUNNINGHAM: Well, he just had her to strike
13 that off of there. He's a supervisor.

14 COMMISSIONER CAMPBELL: You can ---

15 MS. CUNNINGHAM: I am.

16 MR. EDWARDS: Hear what the Judge is saying.

17 COMMISSIONER CAMPBELL: Sorry, that was with regard
18 to an observation.

19 MS. CUNNINGHAM: Okay.

20 COMMISSIONER CAMPBELL: You said he laughed. That's
21 not -- but anything that a supervisor told you
22 you're allowed to do that, but you were saying
23 that the supervisors laughed about something.
24 That -- that can be stricken, yes.

25 MS. CUNNINGHAM: Oh, okay.



1 COMMISSIONER CAMPBELL: Okay, but I'm sorry. Mr.
2 Edwards, you can continue.

3 Q: You can -- the Commissioner says you can say
4 what the supervisor said to you. Now, were you
5 asked to leave the job or did you leave on your
6 own?

7 COMMISSIONER CAMPBELL: But you've got to identify
8 who the supervisor is.

9 A: Well, no, I didn't leave on my own. I didn't
10 leave on my own. They had called and said that
11 I couldn't ---

12 Q: All right. Now, who is they?

13 A: I don't know. They called you, and you called
14 me. I don't know. I don't know who they was.
15 But I did know that my supervisor, Dunn, he was
16 trying to accommodate far as my ankle because
17 they got this area in there called cold caste
18 and you have to -- in cold caste you have to
19 walk around this huge area and fill these big
20 old things up and he would take me off of that
21 and he would, like if they have an inspection
22 in another area of the plant he would -- he
23 would ask me to stay up there and then they
24 would drive me over to like the body shop and
25 I'd sit there and like check the cars and write



1 the number down and, you know, see if it was a
2 defect on it. And he did that, but the minute
3 Mr. Drew found out he was doin' that, he
4 couldn't send me back over there no more.

5 Q: All right.

6 A: And I hope that's not strikeable because that's
7 what happened.

8 Q: So you felt one super was trying to give you
9 lighter work?

10 A: Mr. Dunn was, my supervisor.

11 Q: And the other super was trying to draw you back
12 on it?

13 A: Right. He was trying to draw me back on it.

14 Q: All right.

15 A: And so I had to do what was in the line up for
16 that night to do.

17 Q: Okay. Ms. Cunningham, I wish that you would,
18 with the Commission's approval, remove your
19 shoes and your socks or your shoe and your sock
20 for your left ankle and stand up and ---

21 **COMMISSIONER CAMPBELL:** If y'all need an angle to be
22 able to view, you're welcome to stand up ---

23 **MR. VERNON:** Okay.

24 **COMMISSIONER CAMPBELL:** --- come around and do
25 whatever.



1 MR. EDWARDS: You might want to stand over here Ms.
2 Cunningham where everyone can see.

3 MS. CUNNINGHAM: I didn't get a pedi, so.

4 COMMISSIONER CAMPBELL: That's all right.

5 Q: Okay. Now this is the scar where the surgeons
6 operated?

7 A: Yes.

8 Q: All right. And both surgeons went into the
9 same area didn't they?

10 A: Yeah, he told me he was gonna do it like that.
11 I was happy. He didn't like -- he didn't have
12 to cut up under. He just done the same one.

13 Q: Okay. Now, when it swells tell me the level it
14 swells in your ankle.

15 A: It'll -- this whole area right here
16 (indicating).

17 COMMISSIONER CAMPBELL: And for the record you're
18 referring to the outside part of your ankle not
19 the inside.

20 A: Right. Right around the surgery area all
21 that'll be swollen and it sticks out. It
22 inflames like crazy.

23 Q: Okay. What causes it to come out? Activity or
24 does it come spontaneously?

25 A: Well, walkin' a long distance, if I stand



1 awhile and sadly I drive a five speed so I'm
2 forever switchin' cars with my kids because my
3 ankle bothers me.

4 Q: Clutch foot? You can't use the clutch?

5 A: Right.

6 Q: Okay. You can sit a moment if you want to.
7 You may have to stand up again in a minute
8 though. Can you -- well do stand here. Take
9 -- just leave your sock off a minute and let me
10 have you stand and as far as moving your ankle
11 tell what ways cause you pain when you move
12 your ankle?

13 A: Well, I can move -- I've never said I couldn't
14 do anything with this ankle itself. Can't go
15 all the way left -- I mean, all the way right
16 and all the way left

17 Q: You mean like this (indicating).

18 A: Right. I can't. And he said that maybe in
19 time I will, but I have a lot of scar tissue
20 from the first surgery and now from the second
21 surgery there's permittin' the movement around
22 that ankle to go left and right.

23 Q: Yeah. And when I said ---

24 A: And I have that from the first surgery. It got
25 worse during the second surgery.



1 Q: When I said like this ---

2 A: Right.

3 Q: --- I meant to say for the record move it left
4 and right ---

5 A: Left and right.

6 Q: --- which I believe is called invert and evert
7 I think. How about moving your ankle up --
8 your foot up and down?

9 A: He was satisfied. He was awesome. This going
10 up and down, I'm good (indicating). He
11 couldn't believe how quick that I could do that
12 after my surgery when he took the stitches out.
13 But that's no problem. It's just goin' this
14 way and that way.

15 Q: All right.

16 A: Left and right.

17 Q: How about standing on your tip toes to try to
18 reach up?

19 A: I can stand on -- I can stand on my tip toes.
20 I don't have a problem with standing on the
21 tip. It's when I stretch all the way up is
22 when that side, that left side when the
23 surgery, the incision, it will hurt. I can't
24 lead with this foot like goin' up steps.

25 Q: With this foot you mean ---



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Handwritten signature

1 A: Well, my left foot.

2 Q: --- your left foot.

3 A: I can't lead with my left foot. If I do you'll
4 see me go to the side. It's -- and he said
5 that it's gonna be weak like this for a minute
6 because I've been operated on twice in the same
7 area. And then on top of that, the process
8 that he told me that he had to unravel and
9 cuttin' off 20 percent on both of them so he
10 said it might take a while.

11 Q: Okay.

12 A: But I will always have trouble.

13 COMMISSIONER CAMPBELL: And well let -- while you're
14 standing can you pull up your other pant leg,
15 just let me see your other ankle?

16 MS. CUNNINGHAM: I can take my sock off for you.

17 COMMISSIONER CAMPBELL: Well, you don't -- I think I
18 can see your ankle without you havin' to do
19 that.

20 MS. CUNNINGHAM: Oh, okay.

21 COMMISSIONER CAMPBELL: I'm trying to keep you from
22 having to get back up, but.

23 MS. CUNNINGHAM: I was -- 'cause see that? You
24 can't see with this shoe on. I want to take it
25 off.



1 COMMISSIONER CAMPBELL: Okay, well that's fine.

2 That's fine.

3 MS. CUNNINGHAM: I gotta take it off.

4 Q: Do you have any swelling?

5 A: At the present time this -- you see the

6 difference between my ankle? You can see that.

7 See that bump?

8 COMMISSIONER CAMPBELL: Uh-huh. Okay. All right.

9 Thank you, ma'am. Appreciate it.

10 MS. CUNNINGHAM: Uh-huh.

11 COMMISSIONER CAMPBELL: Thank you.

12 MS. CUNNINGHAM: Yeah, I mean, yes, sir.

13 COMMISSIONER CAMPBELL: You can continue.

14 Q: How long can you usually stand up?

15 A: I haven't really timed it, but standin' a long

16 time does bother it. It ---

17 Q: Okay.

18 A: --- aches and swells.

19 Q: Okay. Now, any difference in walking on even

20 ground as opposed to uneven ground?

21 A: It is. It's a big difference. I tried to --

22 I tried to do like a trail and at the beginning

23 of the trail you park right here and then at

24 the beginning of the trail there's gravel and

25 I've had to like catch a car because I can't



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1 walk on gravel -- I mean, the rocks that was
2 right there, but soon as I got on that flat
3 plane -- it's call the Rail Trail in
4 Spartanburg, and soon as I got on that it was
5 smooth sailing and so I didn't have no trouble.
6 'Cause I used to walk four miles every morning
7 after work before ---

8 Q: Before the injury?

9 A: Before my injury.

10 Q: All right. Okay. All right. Any difference
11 wearing shoes as opposed to not wearing shoes?

12 A: I can't wear -- I got real nice boots that I
13 can't wear. If I -- well, I can wear them.
14 I'm not gonna say I can't. That I can wear
15 them but after I take them off or halfway
16 through the night it's very uncomfortable and
17 I'm swellin' and really want to take them off.

18 Q: All right. How about walking on -- up an
19 incline or down an incline?

20 A: I have trouble walking up stairs.

21 Q: All right.

22 A: Like goin' up the stairs I have trouble.

23 Q: Okay. Now, that's one thing but you know
24 sometimes for a wheelchair ramp you've got an
25 incline and sometimes you've got to walk down



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A handwritten signature, possibly 'JES', in dark ink.

1 that incline. Any trouble walking up an
2 incline and down an incline?

3 A: Walking up it, yes, sir.

4 Q: And not so much coming down?

5 A: Not -- well, comin' down I don't think I have
6 a problem with it's just like tryin' to get up.

7 Q: Would the same thing be true of stairs? Do you
8 have trouble coming down stairs as well as
9 going up?

10 A: I don't have trouble.

11 Q: Just going up?

12 A: Just going up.

13 Q: Okay. Okay. What about squatting, stooping
14 down?

15 A: Squattin', it was a challenge for me when they
16 -- when I -- they started my physical therapy
17 I had issues with it, but I do have -- I mean,
18 it's gettin' better but at first I couldn't it
19 at all. I was cryin', but he said that it
20 would come.

21 Q: All right. Now you've had lots of physical
22 therapy?

23 A: Yes.

24 Q: Two out privately and several there at the
25 facility?



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- 1 A: Yes.
- 2 Q: All right. Do you know how far you can walk
3 without having to sit?
- 4 A: I don't know.
- 5 Q: How about ---
- 6 A: Walkin' from the parking lot at Walmart to the
7 middle of the store is terrible for me.
- 8 Q: Okay. Now, how about your responsibilities
9 around the house? Cleaning? Any problems?
- 10 A: I wash dishes. I don't -- I mean, the floors
11 are hard.
- 12 Q: All right. You're able to cook for you -- cook
13 okay?
- 14 A: I don't cook much.
- 15 Q: All right. Okay. Any trouble bathing,
16 dressing, things like that?
- 17 A: No, sir.
- 18 Q: All right. How about balance?
- 19 A: It's horrible.
- 20 Q: Have you had any falls or almost falls?
- 21 A: I have like the -- I don't know what it's
22 called. I call it a twitch. Like when I'm
23 walking and then it's like the ankle will go
24 this way and come back in. I still have those.
- 25 Q: Okay. What about lifting and carrying things?



1 Do you feel it's affected your ability to lift
2 and carry things?

3 A: Yeah. I don't lift nothin'. Like I don't lift
4 heavy stuff.

5 Q: All right. Any affect on sleeping?

6 A: No.

7 Q: All right. Now, you're not at BMW, haven't
8 been for a while. What frequency do you have
9 swelling now if you could say per week? Do you
10 have many episodes of swelling per week?

11 A: I have -- my ankle swell every day.

12 Q: All right. Is it a certain time of the day?

13 A: No. If I get in motion like even for me to
14 walk down the street to the park and back up
15 I'm swollen and that's it.

16 Q: All right. Now, a moment ago you showed us --
17 the Commissioner and us the knot on your ankle,
18 the natural anatomical knot and we pointed to
19 some swelling right around there, but does your
20 ankle ever swell up other than that or is it
21 always right ---

22 A: It gets -- no it -- well, it's the -- I tried
23 to show you, it's the ankle and the area around
24 my ankle. It's like that whole side right
25 there. All of that swells.



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1 Q: All right.

2 A: Like you can't even tell there's an ankle it be
3 so big.

4 Q: All right. This swelling that you have today
5 is very minimal compared to some swelling you
6 have ---

7 A: Right.

8 Q: --- isn't it?

9 A: Right.

10 Q: All right. And that bigger type of swelling
11 occurs how frequently?

12 A: I mean, if I'm on it a lot. It -- that's what
13 it do.

14 Q: Is there a certain time of day when you have
15 more pain?

16 A: If I walk -- if I walked a good bit on it,
17 yeah, I have ---

18 Q: At the end of the day or just any time of the
19 day?

20 A: Any time of the day.

21 Q: Okay. Now, the pain you experience, is it
22 sharp or dull type of pain or can you describe
23 the pain?

24 A: I don't like pills and it's so painful that I
25 will take a pill and lay down for the rest of



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1 the evening.

2 Q: Okay. What medication do you take?

3 A: I be takin' the ibuprofen 800 because the
4 trainer told me ---

5 MR. DUNBAR: Objection.

6 Q: Yeah, don't say what the trainer told.

7 COMMISSIONER CAMPBELL: You can't tell me that.

8 A: Well, no Lortabs, just the 800.

9 Q: Ibuprofen 800?

10 A: Right.

11 Q: By the week how many of those 800s would you
12 take in a week would you say?

13 A: Three, maybe four.

14 Q: Okay. What's the affect of the physical
15 therapy? Does it help?

16 A: I'm gonna say it did help this time because I
17 really think he, you know, we went in and fixed
18 what was wrong. But the reason why I didn't
19 have any more physical therapy is because --
20 well, I don't know if I'd be objected or not.
21 But the doctor told me ---

22 Q: Don't say what he told you.

23 COMMISSIONER CAMPBELL: You can't tell ---

24 MS. CUNNINGHAM: Okay.

25 COMMISSIONER CAMPBELL: And let me just clarify



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1 some. You can't tell me what he told you. You
2 can -- if it's reflected in the medical
3 records, a medical recommendation he made for
4 you or a treatment he did you can testify to
5 that. You just can't tell me what he told you.

6 **MS. CUNNINGHAM:** Okay.

7 **COMMISSIONER CAMPBELL:** And it's got to be reflected
8 in the medical records.

9 **A:** Okay.

10 **Q:** He has the records and the Commissioner will
11 review ---

12 **A:** Well, it's not on -- it's not on his record.
13 He told me that they didn't ask him that part.

14 **Q:** All right. Now, do you feel like your weight
15 has altered some?

16 **A:** Yes, some. Yes.

17 **Q:** All right. Tell how?

18 **A:** I'm like a 184 pounds now. They said I didn't
19 gain weight but I went to their nutritionist to
20 try to get help after I gained all this weight
21 from me not bein' able to move the way I
22 normally move. But when I went to her I had
23 actually lost two pounds. I was a 182 pounds.
24 So now I'm gettin' -- I'm goin' back down but
25 I'm still not, you know ...



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1 Q: At the time you got hurt what was your weight?

2 A: I think I was in the 160s. 160. I mean, I
3 don't want to say the number and then, you
4 know, somebody'll say oh, you said such and
5 such the last time, so.

6 Q: Well, the medical records ---

7 A: I was in the 160s.

8 Q: --- the medical records do reflect your weight,
9 Ms. Cunningham, and some of them are not
10 agreeing with -- did you have another record?

11 A: Well, I didn't get weighed with Tollison.

12 Q: Uh-huh.

13 A: Tollison never weighed me. They only ask your
14 weight when you go in there. I have doctors
15 visits where I did -- and like I said that one
16 ---

17 Q: All right.

18 A: The nutritionist was March of 2000 -- this is
19 of '19 -- and I was a 182 pounds. So I did, I
20 gained weight. I wasn't able to do my
21 activities like I was.

22 Q: All right. Let's move along. Do you object to
23 the scar on your leg?

24 A: What do you mean?

25 Q: Do you have any problem with the appearance.



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- 1 A: Yeah, it's horrible. It's ugly.
- 2 Q: All right.
- 3 A: I don't -- my feet and my back were the -- and
- 4 well my mid section used to be like clear free.
- 5 I had acne when I was comin' up and I was a
- 6 tomboy so, you know, that didn't matter. Now
- 7 my ankle messed up and ---
- 8 Q: Okay.
- 9 A: --- yes, it ---
- 10 Q: Now, before the accident happened were you --
- 11 did you like your job? Were you happy with it?
- 12 A: Yeah, I was happy with it.
- 13 Q: All right. And I know you can't return to that
- 14 job, but would you like to return to some other
- 15 job at BMW that you could do?
- 16 A: Well, at that time, yeah, I would have
- 17 returned.
- 18 Q: All right. Well, what do you intend to do as
- 19 far as trying to earn an income now?
- 20 A: I want to go to school for a trade or
- 21 something.
- 22 Q: No particular trade in mind?
- 23 A: Well, I want to -- I don't know. I don't know.
- 24 Q: All right. Have you thought about any jobs you
- 25 can do or can't do?



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1 A: I'm used to bein' in motion so I don't know
2 like if I could do an office job. I mean, and
3 I'm not sayin' like I wouldn't do a job
4 because, you know, I'll try anything, but if
5 it's gonna bother my ankle, you know, I'm not
6 gonna -- I'm not gonna let that go on and then
7 have to take more of my ankle joints or
8 whatever on my ankle and it's unnecessary time
9 down.

10 Q: All right. That's all I have Commissioner.

11 COMMISSIONER CAMPBELL: Okay. All right. Mr.
12 Dunbar?

13 MR. DUNBAR: Your Honor, may I see those photographs
14 that we marked into evidence?

15 COMMISSIONER CAMPBELL: Absolutely. Certainly.

16 MR. DUNBAR: Thank you very much.

17 MS. CUNNINGHAM - CROSS-EXAMINATION BY MR. DUNBAR:

18 Q: Ms. Cunningham, if I could get you to identify
19 the first three photographs? One's dated May
20 28th, 2019 and the other one is April 29th,
21 2019. Those are pictures depicting your left
22 ankle, left foot and weren't those photographs
23 taken before your surgery with Dr. Pill?

24 A: Yeah, 'cause the surgery was -- yes.

25 Q: All right.



- 1 A: That surgery was August the 9th.
- 2 Q: All right. So only one of those photographs
- 3 shows the ---
- 4 A: This one is after the ---
- 5 Q: After ---
- 6 A: --- excuse me.
- 7 Q: Certainly right after the surgery but the ones
- 8 were before the surgery?
- 9 A: Yeah, that was the 15th.
- 10 Q: All right.
- 11 A: Yes.
- 12 Q: And would it be fair to say that the best
- 13 depiction of your ankle right now is you with
- 14 you sitting here and us having looked at it?
- 15 It's more accurate than those photographs how
- 16 your ankle condition is at this present time?
- 17 Wouldn't you agree with that?
- 18 A: What was the question again?
- 19 Q: As we sit here today looking at your ankle,
- 20 that is the best description of how your
- 21 condition is today rather than those
- 22 photographs?
- 23 A: That is the best condition of how it is now,
- 24 not how it was then.
- 25 Q: Correct. Now, you indicated in your direct



1 testimony that you can't stand for a long
2 period of time. How long can you stand?
3 A: As I stated for Mr. Edwards I don't know
4 exactly how long can I stand.
5 Q: Have you tried standing for 30 minutes?
6 A: And timing it -- I haven't standed and timed
7 it, no, sir.
8 Q: Okay. Do you have any idea whether you can
9 stand for 30 minutes or more without it causing
10 any pain?
11 A: I have no clue.
12 Q: How about five minutes or more? Can you stand
13 for five minutes?
14 A: I know I can stand -- I know I can stand more
15 than five minutes.
16 Q: All right. How about ten minutes?
17 A: I have no clue.
18 Q: So you know you can stand for more -- for five
19 minutes but you're not certain whether you can
20 stand for ten minutes or more?
21 A: No, sir.
22 Q: All right. You also indicated that you can't
23 walk for a long period of time. I think you
24 testified that if you walk from the parking lot
25 to Walmart getting into the store you have



1 problems with your left ankle; is that correct?

2 A: I didn't -- what I said was I can walk, but I
3 can't walk far.

4 Q: Certainly.

5 A: That's what I stated.

6 Q: Right. And you used the description -- and I
7 know Walmart parking can be very big and you
8 get into the store.

9 A: Very big.

10 Q: So if I had you to estimate in terms of how
11 long it would take you to walk into Walmart or
12 how many yards what are we talking about before
13 you start experiencing pain?

14 A: I don't know.

15 Q: All right. Would you park in the handicapped
16 spot of Walmart? Would it be that close or
17 would you park way down towards the road?

18 A: Considering I am not handicapped legally I
19 don't park in those spaces. So I have to park
20 where you and me park in the back.

21 Q: All right. So what 'you're saying you would
22 park from middle of the parking lot of Walmart?

23 A: I park where it is available. I do not illegal
24 park because I have trouble with my ankle.

25 Q: I understand that. I'm not accusing you of



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1 that. I'm just ---

2 A: You just asked me that. I was replying.

3 Q: I'm trying to figure out the distance that you
4 would walk from your automobile into a Walmart
5 store, and you indicated that causes pain. So
6 I'm just trying to figure out what distance is
7 that?

8 A: I have no -- I have no clue. I'm not bein'
9 funny. But what I can do is next time I will
10 time myself -- I have a timer on here -- and I
11 can write it down, but I can't tell you like
12 right now 'cause I would be tellin' a lie.

13 Q: Well, you also gave an example that when you
14 walk down the street to the park ---

15 A: Okay.

16 Q: --- and you walk back that you have pain in
17 your ankle?

18 A: Yeah.

19 Q: You've walked -- 'cause you said you used to
20 walk four miles ---

21 A: Yes.

22 Q: --- before your accident.

23 A: Uh-huh.

24 Q: So I'm assuming since you know four miles --
25 you can measure that -- you can measure from



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1 your house to the park and back. How far is
2 that before you start experiencing pain?

3 A: This watch has it set up on it. Even my fitbit
4 has it set up on it. And then that is set up
5 on my phone. Considering I can't exercise no
6 more like I used to I don't keep up with it.
7 I only know when I'm in pain and I turn around
8 and go back to the house.

9 Q: Okay. So do you think you've walked a quarter
10 of a mile before you experience pain? A third
11 of a mile? Half a mile or a mile?

12 A: I don't know if you want me to write it down
13 for you but I don't know.

14 Q: You don't know?

15 A: No, sir. I don't know.

16 Q: How often would you walk from your house to the
17 park before your ankle injury?

18 A: Sir, I tried it once. It bothered me and I
19 haven't went back.

20 Q: Okay. Did you walk from your house to the park
21 before you had this accident with respect to
22 your left ankle? Did you do that walk?

23 A: I haven't walked since I had the ---

24 Q: I understand. My question is before you had
25 your accident, before May 2017, did you leave



1 your house, walk to the park to get exercise?

2 A: Yeah. Yes, sir.

3 Q: All right. So having done that before how long
4 would you walk now or that one time you said
5 you walked before you started experiencing
6 ankle pain?

7 A: I don't know.

8 Q: Would it have been within five minutes, ten
9 minutes, 15, 30 minutes?

10 A: When the -- the time that I was talking about,
11 after the surgery when I walked down the street
12 and had to come back, that was -- it was -- it
13 was five minutes or less.

14 Q: Five minutes or less. Okay. So since you've
15 had the surgery with Dr. Pill has your ankle
16 improved? Has the pain and the swelling
17 improved?

18 A: What I just spoke on ---

19 Q: Yes.

20 A: --- was after the surgery. When I was released
21 from that boot and then the scrap.

22 Q: Okay. So that was your surgery with Dr. Pill?

23 A: Yes. After the -- August the 9th of 2019.

24 Q: Now, your attorney asked you about returning to
25 work at BMW. As I understand it that your job



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1 required standing for ten hours and some
2 walking with some breaks.

3 A: We didn't stand the whole ten hours and when --
4 right. Not at the one where I was at the first
5 time. We didn't stand the whole ten hours.

6 Q: I understand, but it's a lot of standing when
7 you work on the line.

8 A: It's a lot of -- there was a lot of down time
9 over where I was from. Now, where y'all
10 switched me to was totally different so you
11 can't compare it. You'd have to ask me about
12 this area and then ask me about that area.

13 Q: All right. Let's talk about the last area you
14 were in.

15 A: Okay.

16 Q: Lots of walking, lots of standing, correct?

17 A: Right.

18 Q: And most of the jobs at BMW on the assembly
19 line require people to stand and walk; do they
20 not?

21 A: Assembly. I'm in body adjust.

22 Q: I understand. But in assembly?

23 A: Right.

24 Q: Is that correct?

25 A: I'm not in assembly. I can't answer no



1 assembly questions.

2 Q: All right. Well, in body correct ---

3 A: Body adjust.

4 Q: --- body adjust. People do stand, do they not,
5 to perform their job?

6 A: Right.

7 Q: People do walk to perform their job; do they
8 not?

9 A: And go to the bathroom, yes.

10 Q: I understand that.

11 A: Uh-huh.

12 Q: But you spend more time working than you do in
13 the bathroom; is that a fair assessment? You
14 said to go to the bathroom. I want to make
15 certain you weren't ---

16 A: Well, you said to walkin'. You do a lot of
17 walkin'.

18 Q: Certainly.

19 A: You go to the bathroom, you go to your station,
20 so that's walkin'.

21 Q: So my question to you is if you could only
22 stand for a short period of time, walk for
23 five, ten minutes before you experience pain,
24 please identify the job that you could have
25 done at BMW being able to stand for a limited



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1 time, walk for an extremely limited period?

2 A: Body adjust. Where you sent me -- where they
3 sent me from.

4 Q: All right.

5 A: I could have done -- yes, I could have done
6 that. When I went back from my first surgery
7 actually that was fine, but the ankle kept
8 poppin' out so I had no control over that.
9 That doctor sent me home. I begged him to let
10 me stay on the floor.

11 Q: But your ankle was popping out.

12 A: It was poppin' out.

13 Q: And you complained of pain to the doctor, did
14 you not?

15 A: I couldn't help that though.

16 Q: Just answer my question. You did complain of
17 pain to the doctor, did you not?

18 A: I -- no. It was my -- it was check up. It was
19 -- I had to do my two weeks. When people come
20 back they said -- the doctor had -- I don't
21 know his name, but what they do is they set you
22 an appointment and then they'll tell you --
23 have your green shirt to tell you to go to this
24 appointment and when I went to the appointment
25 -- so it happened that night when I was



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1 checkin' that door and I walked -- went to walk
2 around the car, my ankle went out so it was
3 already swollen but it made that area real red.
4 And so when that doctor saw that he told me
5 that he was gonna write me out.

6 Q: So after the first surgery you go back to work,
7 your ankle pops, it's swelling and it's red,
8 correct?

9 A: Uh-huh.

10 Q: Having the swollen ankle, it's popping. That's
11 not a good sign, is it?

12 A: Well, my knees pop all the time so they say
13 poppin' is okay. It's just the pain and the
14 swellin' that was super bad.

15 Q: And the pain and swelling as you described it
16 was super bad and that's why you were sent
17 home, and you ultimately had a second surgery
18 by Dr. Pill, correct?

19 A: I had a second surgery.

20 Q: Okay. So there was something unstable about
21 your ankle that Dr. Pill felt that he could
22 correct, which he did in terms of surgery?

23 A: Correct.

24 Q: And according to the medical reports the
25 surgery did improve your symptoms, did it not?



1 A: Some of them.

2 Q: Well, I'm looking.

3 A: He said time will heal the rest. Well, I mean,
4 like I said y'all don't put it -- the questions
5 on the paper don't pertain to the actual pain
6 and with the physical pain -- I mean, the
7 situations that the people are -- that the
8 clients like me are goin' through. Y'all only
9 -- the question there is mainly to help this
10 side of the table not my side of the table.

11 Q: Well, not ---

12 A: Because see he told -- well, I can't say what
13 he said so reject (sic) to all of that.

14 Q: No, no, no.

15 A: The only thing I'm sayin' is your paperwork's
16 sayin' that, oh, yeah, but as you can see you
17 just saw with your eyes even though he cleared
18 me and said oh, she -- you know, she's fine.
19 But he sat and told me that I'm gonna have this
20 trouble the rest of my life but it's not on
21 that paper. But you see this paper, swellin'
22 and then the surgery and then you see it
23 swellin' -- it's swollen here now. Not that
24 big but it's swollen. But you're gonna sit and
25 say that, hey, you know, you're fine because



1 the doctor say your fine. The doctor is not
2 me. You're not me. I can -- I'm -- you asked
3 about me, I'm telling you about me.

4 Q: I understand.

5 A: And it bothers me because I'm not used to this
6 weight. I could show you -- excuse me, I
7 meant, sir, I can show you pictures of me.

8 Q: I understand. I don't -- I'm not going to be
9 argumentative ---

10 A: I'm not arguing.

11 Q: --- let me just show you why ---

12 A: I'm explainin'.

13 Q: --- you are incorrect. On APA page 110 Dr.
14 Pill, the doctor that you found and put on your
15 health insurance, stated I feel that she will
16 always have some soreness and swelling
17 overlying this ankle with repetitive
18 activities. This is nothing BMW asked him
19 address. This is nothing you asked him to
20 address.

21 A: Well ---

22 Q: This is his expert opinion. He also says,
23 however, I feel it will also continue to
24 slightly improve with time. He told you that.

25 A: Nothing you're readin' is against what I agreed



1 on. I just said the same thing.

2 Q: Please, ma'am, you interrupted me. Let me
3 finish. The question now is he offered you
4 more physical therapy but you declined it. Is
5 that ---

6 A: That's not true. He told -- well, I can't --
7 how can you ask me something if you're gonna
8 reject (sic) to it.

9 Q: I'm not objecting to it. I will show you a
10 report at APA page 110.

11 A: Well, he told me that there was no point of me
12 havin' more physical therapy because this is
13 it. He said if I was younger, yeah, but this
14 is it. So, I mean, I didn't decline. He told
15 me that there was no use of me havin' any more
16 physical therapy.

17 Q: Well ---

18 A: I never turned down physical therapy. Remember
19 look how many physical therapies I had with my
20 first doctor even though he didn't complete his
21 surgery. Thank you.

22 Q: Well, I understand, ma'am, but let me correct
23 you on something else. You have declined
24 physical therapy in the past. I am looking at
25 Dr. ---



- 1 A: Never declined. I accepted every last one of
2 them.
- 3 Q: Well, let me ask my questions. Your lawyer put
4 in some evidence here from Dr. Tollison. APA
5 page 136. He indicated that you could go see
6 Dr. Behr who would do injections. Do you
7 recall that conversation?
- 8 A: Sir, this was ---
- 9 Q: Do you recall it, ma'am?
- 10 A: No, sir.
- 11 Q: I get to ask the questions.
- 12 A: No, sir.
- 13 Q: You have to answer.
- 14 A: No, sir. 'Cause it was worded wrong. That's
15 not ---
- 16 Q: All right. Let me show you another page. APA
17 page 137. More physical therapy with BMW was
18 discussed. You declined. Do you see that?
- 19 A: So I can go back to work. Okay.
- 20 Q: That's fine. So you declined it so you could
21 back to work?
- 22 A: I did not, no. They told me either I do -- BMW
23 and Dr. Tollison told me, he said either -- and
24 BMW's the one that sent the order to him --
25 they said either she do work conditioning or



1 she do physical therapy. So in order for me to
2 do the work conditionin' to go back to work,
3 because y'all sent me a certified letter that
4 if I did come back to work y'all was gonna
5 terminate me, and so he said no more physical
6 therapy. Go ahead and do the work
7 conditioning.

8 Q: All right. Well, let me show you this. APA
9 page 138. Again, your lawyer put this into
10 evidence. She reports she has not had any
11 injections because you said your ankle was very
12 painful, swelling, lots of pain. This is after
13 Dr. Tollison, but you weren't interested in any
14 injections, correct?

15 A: Tollison not ---

16 Q: Just answer my question then you can explain.

17 A: No. It was not correct.

18 Q: Okay.

19 A: Tollison gave me a choice. Either do physical
20 therapy, continue to do my physical therapy or
21 take injections. Sir, I hate needles. I had
22 both of my kids natural 'cause I wouldn't let
23 them give me a epidural in my back. So I took
24 the physical therapy. If you're gonna send
25 something get the whole story and send it to



1 me, okay?

2 Q: All right. So again when Dr. Pill, after he
3 did his surgery -- I'll pass that back. I
4 don't need that and I don't want to take it.

5 COMMISSIONER CAMPBELL: All right.

6 Q: He indicated that your symptoms had improved.

7 A: And I agree.

8 Q: You agree with that.

9 A: They have -- some of my symptoms have improved
10 and I love it and I told him that. 'Cause at
11 first I couldn't move. I couldn't walk on my
12 ankle for a very long time. After he finished
13 his surgery I was -- when he took his stitches
14 out I was able to do everything they was
15 tellin' me to do. It took BMW almost two
16 months to get me to lay my feet straight down
17 the platter. I could even do that.

18 Q: As a matter of fact I'm looking at a physical
19 therapy note and it's dated October 7th, 2019,
20 couple months after your surgery. You were
21 feeling good enough to go square dance.

22 A: Yes. You know why? Because the doctor said
23 that I need to put pressure on my foot and did
24 he tell you that right after they took the
25 stitches out that I was movin' so good that he



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1 told -- that they had me to do restraint bands
2 right there on the spot. So there was nothing
3 wrong with me goin' square dancin'.

4 Q: Okay. But then after you went square dancing
5 on October 7th or October 6th, 2019 ---

6 A: Uh-huh.

7 Q: --- or some time thereabout you reported
8 feeling worse because the visit prior to that
9 you felt better. Now, you're feeling worse
10 because a muscle popped out. Do you see that
11 report?

12 A: That's not true, sir. What popped was my knee
13 and if you'll listen when I stand I always pop.
14 This knee always pop. And that's because I
15 used to play football with my brothers. I was
16 a tomboy. So that's what that means. I didn't
17 have no trouble with my ankle after I square
18 danced. I continued to go to square dancing
19 classes and I wore my brace every night that I
20 went.

21 Q: Okay.

22 A: And I let my doctor know and he said that that
23 was great.

24 Q: So I see nothing in that physical therapy
25 report about a knee. I see nothing in Dr.



1 Pill's report about a knee. Only see you
2 complaining about an ankle. So are you saying
3 when you went after square dancing it was a
4 knee and not your ankle that got worse?

5 A: I never said anything to workers' comp
6 pertaining to this case about me having issues
7 with my knee. As I just stated I've always had
8 a poppin' knee 'cause I was a tomboy with my
9 brothers. I never told anybody or my doctor or
10 my lawyer that I have trouble with my ankle now
11 that I hurt the same -- I mean, my knee now
12 that I hurt this ankle. And that didn't just
13 come out my mouth. You reworded it to try to
14 make it come out my mouth.

15 Q: Well, I apologize if I reworded it ---

16 A: Yeah.

17 Q: --- and put words in your mouth. But let me
18 ask you this. Since you can only stand for a
19 short period of time, five minutes, you can
20 only walk for a short period of time, is it
21 fair to say you're not capable of doing a job
22 at BMW because you're unable to walk and stand
23 for no more than ten minutes?

24 A: I can't say that.

25 Q: Okay. Now, you also have been out on Friday



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1 nights and you say you can't stand and I have
2 three pictures here which I believe this is
3 Exhibit D.

4 A: I can give you a better look on that picture.
5 I got the color of it.

6 Q: So you have a color photograph?

7 A: Yes, sir. I colored it for you. This was the
8 night -- this is the -- well, you can say your
9 date so she can it recorded and I'll answer you
10 -- answer after that.

11 Q: I appreciate your direction, Ms. Cunningham.

12 A: Just tryin' to help you out.

13 Q: On September 28th at -- at least that you
14 posted at 1:14 a.m. I don't know when the
15 photograph was taken but the night lights are
16 on.

17 A: If you would have sent my photo it's comin'
18 from my phone. It's on here dated.

19 **COMMISSIONER CAMPBELL:** Let him finish ---

20 **MS. CUNNINGHAM:** Oh, okay.

21 **COMMISSIONER CAMPBELL:** Let him finish his question.

22 **MS. CUNNINGHAM:** I'm sorry.

23 Q: Thank you, Your Honor. As I have you look at
24 this photograph, you're standing; is that not
25 correct?



1 A: I am standin'.

2 Q: And you're putting a little pressure on that
3 left leg, aren't you?

4 A: Oh that's -- tear that off for me. This is --
5 this picture is September the 28th. I seen my
6 doctor September the 26th where they took my
7 boot off. This is a celebration of that boot
8 off of my foot, me not having to put that ankle
9 or anything on it. My son and his girlfriend
10 took me downtown Spartanburg. I am standing
11 happily. Yes, we had a wonder night.

12 Q: And this ---

13 A: I am standin' -- I am leanin' on him. I got
14 the -- my right foot propped up and that foot
15 down. But you forgot what I stated earlier.
16 When they took the stitches out I was already
17 given permission to walk around the house
18 without the brace. I can do that. So there
19 was nothin' wrong with me steppin' out and
20 leanin' on my son and havin' a good time that
21 night because mommy's first time puttin' her
22 shoe on.

23 Q: And, Ms. Cunningham, with all do respect I
24 didn't think anything was wrong with that.

25 A: Oh, I don't care.



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1 Q: I was glad you were able to get out.

2 A: None taken.

3 Q: And the only reason why I bring this up is that
4 approximately one month after the surgery, no
5 brace, no walking boot, you're in a sneaker or
6 tennis shoe and you're out having a good time,
7 correct?

8 A: 'Cause I was allowed -- yes, sir, 'cause I was
9 allowed to.

10 Q: And isn't it fair to say as time has gone on
11 your ankle condition has improved. Movement,
12 mobility, strength and everything has gradually
13 come back as Dr. Pill indicated in the report
14 that I just showed you; is that correct?

15 A: Some of it is correct.

16 Q: Okay. Now, with regard to any prior
17 convictions you were convicted for a fraudulent
18 check, right?

19 A: My criminal record has nothing to do with
20 what's goin' on right now with my ankle.

21 Q: I understand that.

22 A: What I ---

23 Q: But unfortunately I ---

24 A: Look --

25 COMMISSIONER CAMPBELL: Let him answer -- ask the



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1 question.

2 Q: Unfortunately, I get to ask the questions and
3 you have to answer them.

4 A: Well ---

5 Q: So my question simply is ---

6 A: Whatever you have on that paper take that as my
7 yes or no. Whatever you have on the paper
8 'cause we're not here for my background; we're
9 here for a workers' comp.

10 Q: All right. So ---

11 A: I answered your question.

12 Q: So my question is you were once convicted for
13 writing fraudulent checks, correct?

14 A: Whatever's on the paper.

15 Q: So that paper would be the SLED report that I
16 submitted.

17 A: Whichever is on that paper, which was thrown
18 out on the first hearing should be thrown on
19 this hearing, but whatever's on that paper.

20 Q: Okay. You don't deny that you were convicted.

21 A: Whatever is on that paper. I'm answerin' his
22 question, am I right? Whatever's on that
23 question -- on that paper.

24 Q: So I will take your response as whatever's
25 reflected in the SLED report ---



1 A: Whatever's on that paper.

2 Q: --- and if the SLED report says you were
3 convicted for writing a fraudulent check ---

4 A: Whatever's on that paper.

5 Q: That's what on the document.

6 A: Has nothing to do with the condition of my
7 ankle and that I got hurt at your people's
8 establishment.

9 Q: All right. You have not looked for work at all
10 since you were terminated from BMW, have you?

11 A: No.

12 Q: Do you have any other pending lawsuits or any
13 type of EEOC charges or claims against BMW?

14 A: I am in here for workers' comp and workers'
15 comp only. Anything pertainin' to EEOC or any
16 other people I ---

17 MR. EDWARDS: I would object to the relevance of the
18 question.

19 A: That has nothin' to do with this.

20 COMMISSIONER CAMPBELL: Okay. And, Mr. Dunbar, I'll
21 let you respond to the objection.

22 MR. DUNBAR: Your Honor, I think it is relevant
23 since she's claiming that her ankle is 25
24 percent disabled despite the evidence from the
25 physicians as well as the photographs, that



1 this is greatly embellished and that it shows
2 that there's some other ulterior motives other
3 than just a injured ankle that's been repaired.

4 **COMMISSIONER CAMPBELL:** Okay, I'll allow it.

5 Q: Again, do you have any other ---

6 A: I'm not answerin'.

7 Q: --- pending lawsuits?

8 A: I'm not answerin'.

9 **MR. EDWARDS:** The Commissioner says you must answer
10 the question.

11 A: He -- whatever he has on that paper. What's up
12 on that paper is on that paper. Whatever's on
13 that paper.

14 Q: So are you ---

15 A: But I just don't understand how you can ---

16 **MR. EDWARDS:** Answer the question, Ms. Cunningham.

17 **MS. CUNNINGHAM:** I did. Whatever's on his paper. I
18 answered it.

19 **COMMISSIONER CAMPBELL:** So you agree that whatever
20 is in -- reflected on those records is
21 accurate?

22 **MS. CUNNINGHAM:** No. What I'm sayin' is the -- they
23 have nothing' to do. These -- the two cases
24 has nothin' to do. One has nothin' to do with
25 the other.



1 COMMISSIONER CAMPBELL: That's not what I asked.

2 MS. CUNNINGHAM: Okay. Well what was the question?

3 COMMISSIONER CAMPBELL: Do you agree with -- what
4 Mr. Dunbar was asking was -- do you agree
5 whether that was accurate -- what's on those --
6 piece of paper?

7 MS. CUNNINGHAM: I didn't agree. I don't know
8 what's on his papers 'cause like I said I
9 thought I came here for workers' comp so I
10 don't know what he's talkin' about.

11 COMMISSIONER CAMPBELL: Mr. Dunbar, you can continue.

12 Q: Certainly. You have accused BMW of acting
13 improperly, you have accused BMW of acting
14 unethically, you have accused BMW of conspiring
15 with the doctors against you, and as a result
16 of those accusations I have a right to ask you
17 questions about your behavior as a result.

18 MR. EDWARDS: I object to that question in that she
19 should be allowed to respond whether she's
20 accused of these several things that Mr. Dunbar
21 stated. There was a laundry list of things
22 that she's said to have been accused for and
23 she may not admit to all of those things. It
24 was a compound question and I wish it might
25 could be broken down and let her admit or deny



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1 first.

2 Q: My question to you, Ms. Cunningham, simply is
3 this: Have you filed an EEOC claim against BMW
4 for retaliation of treating you unfairly?

5 A: What does that have to do with this?

6 Q: Do you mind answering?

7 COMMISSIONER CAMPBELL: Answer the question just yes
8 or no.

9 MS. CUNNINGHAM: I have.

10 Q: Okay. Thank you.

11 MS. CUNNINGHAM: But can I ask now?

12 COMMISSIONER CAMPBELL: I'll allow you to -- yeah,
13 absolutely, ma'am.

14 MS, CUNNINGHAM: What does that have to do with
15 workers' comp?

16 COMMISSIONER CAMPBELL: But you can't -- you don't
17 get to ask him questions.

18 MS. CUNNINGHAM: Who do I ask questions to?

19 COMMISSIONER CAMPBELL: Nobody.

20 MS. CUNNINGHAM: Oh, nobody.

21 COMMISSIONER CAMPBELL: No.

22 MS. CUNNINGHAM: Oh, I thought you told me to ask.

23 COMMISSIONER CAMPBELL: No, you can't.

24 MS. CUNNINGHAM: No?

25 COMMISSIONER CAMPBELL: I will let you ---



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1 MS. CUNNINGHAM: Oh, okay.

2 COMMISSIONER CAMPBELL: --- you can answer a
3 question.

4 MS. CUNNINGHAM: But not now. Okay. Okay.

5 COMMISSIONER CAMPBELL: You can answer a question.
6 Any questioning is to come through your
7 attorney.

8 MS. CUNNINGHAM: Oh.

9 COMMISSIONER CAMPBELL: Okay?

10 Q: And do you have any plans on seeking employment
11 or are you just going to go to school?

12 A: Well, most of the time when people go to school
13 they seek employment so I was thinkin' maybe
14 I'd follow and do the same.

15 Q: Okay. So you're going to work and go to
16 school?

17 A: I guess.

18 Q: Okay. Have you thought about your vocation,
19 your employment opportunities going forward?

20 A: I don't understand. Are you helpin' me to get
21 a job? I don't understand the question.

22 Q: No, I'm not helping you. I'm just trying to
23 decide what your disabilities ---

24 COMMISSIONER CAMPBELL: Ma'am, you've got to stop
25 asking questions.





1 MS. CUNNINGHAM: I don't understand.
2 COMMISSIONER CAMPBELL: I've been very patient, but
3 you have got to stop asking questions.
4 MS. CUNNINGHAM: But, see ---
5 COMMISSIONER CAMPBELL: Ma'am. If you're asked a
6 question just answer the question. You're well
7 -- You're certainly within your right to
8 explain your answer.
9 MS. CUNNINGHAM: Well, I don't ---
10 COMMISSIONER CAMPBELL: But you can't ask questions
11 back to the attorney.
12 MS. CUNNINGHAM: Okay, so can I ask him to explain?
13 MR. EDWARDS: No, you cannot.
14 MS. CUNNINGHAM: Okay.
15 MR. DUNBAR: I'll rephrase the question.
16 MS. CUNNINGHAM: Thank you.
17 COMMISSIONER CAMPBELL: Okay. All right.
18 MS. CUNNINGHAM: Okay, see I didn't understand.
19 That's what I was trying to ---
20 COMMISSIONER CAMPBELL: That's fine. For
21 clarification purposes you can do that.
22 Q: What type of work do you plan on going into
23 since you can no longer work at BMW? I know
24 you said you worked cosmetology and you can sit
25 while you cut hair. I noticed that you worked

1 at Great Clips, Sports Clips all those type of
2 salons. You can sit if you want.

3 A: You don't sit and cut hair. You have to stand
4 and cut hair. You sit and do nails is what he
5 said.

6 Q: Okay. I understand that but I've seen some
7 barbers that I've had that they sat down, they
8 cut my hair.

9 A: Well, see it's different with a -- I worked
10 with a franchise, not privately owned.
11 Privately owned and franchise is different.

12 Q: All right. So have you thought about going
13 into cosmetology?

14 A: I will have to go back to school.

15 Q: Okay.

16 A: My license are gone. I've been at BMW for so
17 long. My license are gone. I let them expire.

18 Q: So ---

19 A: So I would have to back and get the -- did I
20 mess up again?

21 Q: No.

22 A: Okay. 'Cause I didn't want you to think I was
23 bein' smart. I'm just tryin' explain. I'd
24 have to go back and get 1,500 hours -- well,
25 that's what it was then; I don't know what it



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1 is now. But I would to go back and get those.
2 I was again -- and then go to State Board.

3 Q: I understand. Okay. I have no further
4 questions, Ms. Cunningham. Thank you.

5 COMMISSIONER CAMPBELL: Thank you. Mr. Edwards?

6 MS. CUNNINGHAM - REDIRECT EXAMINATION BY MR. EDWARDS:

7 Q: Please. Ms. Cunningham, as far as doing nails
8 and doing hair what did you do most of?

9 A: Hair.

10 Q: Would you say 90 percent hair, ten percent
11 nails? 50 percent, 50 percent?

12 A: I done mostly hair is what I done. I worked
13 for Sports Clips. I worked for Great Clips.
14 I worked for Smart Styles. Them the three that
15 I've worked for. I did try to work in a
16 privately owned salon but I couldn't do it.

17 Q: All right. Now at one point when you were
18 answering questions you said that doctor sent
19 me home.

20 A: Uh-huh.

21 Q: Now these were BMW physicians, were they not?

22 A: Right.

23 Q: And fair to say BMW was more strict on staying
24 off the job than your own doctors were; is that
25 fair to say?



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1 A: BMW didn't want me -- is that -- okay, can you
2 rephrase it?

3 Q: Yes, ma'am. Were there instances when Dr. Pill
4 or Dr. Tollison allowed you to return to work
5 when the BMW doctor ---

6 A: Yes.

7 Q: --- did not allow you to?

8 A: Right.

9 Q: And did that happen fairly often?

10 A: BMW the whole time when -- when Tollison
11 allowed me -- and I have every last one of my
12 statements if you want a copy of them -- where
13 when I would leave he would have on there
14 return to work light duty, and I tried to give
15 it to the BMW doctor. No, we don't accommodate
16 people. But then when I went into therapy and
17 met these three other guys they moved them from
18 one area to another to accommodate them. So
19 that's where the EEOC come in at. But they
20 were accommodated but I wasn't and then they
21 turned around and say, well, you know, you
22 can't do this and you can't do that but then
23 they make me do it the same time.

24 Q: This photograph that was taken from Facebook
25 with you and your son there, how far had you



1 been walking when that picture was taken?

2 A: Right here is -- this is -- it used to be a
3 street but they made it into a little walkway
4 and they got little restaurants right here. So
5 this is -- these are buildings right here. On
6 the other side of that building is parking
7 (indicating). So on the other side of that
8 building was me -- was my car and his car and
9 then we were standing right here before takin'
10 the picture. But he had took me to eat up the
11 street on the other side of this buildin'. So
12 all up through that main street -- main street
13 right here and these are the buildin's on the
14 -- that, you know, stick out from it. So the
15 restaurant was there. We took pictures there,
16 got in the car and left.

17 Q: Okay.

18 **COMMISSIONER CAMPBELL:** Okay. And just for the
19 record the photograph that you're referring to
20 is Defendant's Exhibit D and it is the larger
21 photograph that shows you standing with your
22 son, the walkway and the building?

23 **MS. CUNNINGHAM:** Yeah, it's just that mine is color
24 and his is not.

25 **COMMISSIONER CAMPBELL:** But I'm just clarifying that



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1 for the record.

2 **MS. CUNNINGHAM:** Yes. Yes. Wednesday, September
3 the 28th.

4 **COMMISSIONER CAMPBELL:** Okay. Thank you, ma'am.

5 **Q:** And so when you left the car and went away from
6 the car there was a period when you were
7 sitting as well because you were in a
8 restaurant?

9 **A:** Well, we -- well, the restaurant is like on the
10 other side -- well I could, you know, but it's
11 on the other side right there. Yeah, we sat
12 and we was leavin' and took the picture.

13 **Q:** Okay. Nothing further.

14 **COMMISSIONER CAMPBELL:** Okay. Mr. Dunbar?

15 **MR. DUNBAR:** Your Honor, I have nothing further.
16 The only thing I just wanted to make certain,
17 I've marked and placed into evidence the
18 Exhibit D, the photograph, and with regard to
19 the arrest record from SLED based upon
20 Claimant's testimony I'll move to have that
21 submitted into evidence, but if it's objected
22 to then I'd simply like to proffer it.

23 **MR. EDWARDS:** I would object to those -- anything on
24 there that is not related to credibility.
25 There may be a few things on there not related





1 to credibility and I would ask the Commission
2 to try ignore those things.
3 COMMISSIONER CAMPBELL: And on that basis I will let
4 it in and give it the weight that I feel like
5 it deserves.
6 MR. EDWARDS: Yes, sir.
7 COMMISSIONER CAMPBELL: Okay. Thank you. And
8 you're entering this an Exhibit, or?
9 MR. DUNBAR: Exhibit. That's all.
10 COMMISSIONER CAMPBELL: Yeah, okay.
11 (Defendant's Exhibit Number 1 was marked for
12 identification purposes.)
13 MR. DUNBAR: Yeah, I thought I had a paperclip.
14 COMMISSIONER CAMPBELL: That's okay. Is that -- Mr.
15 Dunbar, is that it?
16 MR. DUNBAR: That is it, Your Honor.
17 COMMISSIONER CAMPBELL: Okay. All right. And, Mr.
18 Edwards, nothing further.
19 MR. EDWARDS: No, sir.
20 COMMISSIONER CAMPBELL: Okay. Ma'am, you can step
21 down. If you want to come over and have a seat
22 right here next to your attorney you're welcome
23 to. Do you have any ---
24 MR. DUNBAR: I just have one witness, one question.
25 COMMISSIONER CAMPBELL: Okay. All right. Fine if

1 you want to call your witness that's fine.

2 **MR. DUNBAR:** I'm going to call Mr. Donell Smith.

3 **COMMISSIONER CAMPBELL:** Okay.

4 **MR. DUNBAR:** Here.

5 **COMMISSIONER CAMPBELL:** Yeah, if you don't mind
6 sitting there. And, Mr. Smith, I know you
7 heard the instructions before that I gave to
8 Ms. Cunningham. That same thing includes speak
9 up, speak clearly for us. If you're asked a
10 yes or no question please give us a verbal yes
11 or no answer, and try and stay away from things
12 like uh-huh and huh-uh just because that's
13 easily misinterpreted on the record. So if you
14 could help me out with that I'd appreciate it.

15 **MR. SMITH:** Yes, sir.

16 **COMMISSIONER CAMPBELL:** Okay. Please raise your
17 right hand.

18 **MR. SMITH:** Do you swear and affirm the testimony
19 you're about to give is the truth, the whole
20 truth and nothing but the truth?

21 **MR. SMITH:** I do.

22 **COMMISSIONER CAMPBELL:** Okay. You can put your hand
23 down and if you would -- I know Mr. Dunbar
24 stated it, but if you could please state and
25 spell your name for the record, sir?



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1 MR. SMITH: Yes, my full name is Curtis Donell
2 Smith, D-O-N-E-L-L, Smith.

3 COMMISSIONER CAMPBELL: Okay. Thank you, sir. Mr.
4 Dunbar, your witness.

5 CURTIS DONELL SMITH, having been duly sworn,
6 testifies as follows:

7 MR. SMITH - DIRECT EXAMINATION BY MR. DUNBAR:

8 Q: Mr. Smith, what's your employment title or your
9 work title at BMW?

10 A: My work title is Disability Management Analyst.

11 Q: And you've been in courtroom or hearing room
12 and you heard the entirety of Ms. Cunningham's
13 testimony?

14 A: Yes, sir.

15 Q: Could you please explain to Commissioner
16 Campbell the light duty policy of BMW?

17 A: Yes. We do have a light duty policy. For
18 example, if someone's injured you have what's
19 called a 90 day light duty where you can be
20 accommodated for 90 days.

21 Q: And that only lasts for 90 days?

22 A: That's correct.

23 Q: What happens after 90 days?

24 A: After 90 days they have to come back to work or
25 they go out.



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1 Q: All right. Thank you, sir. I have no further
2 questions.

3 COMMISSIONER CAMPBELL: Okay. Mr. Edwards?

4 MR. SMITH - CROSS-EXAMINATION BY MR. EDWARDS:

5 Q: Mr. Smith, balancing, would that be something
6 that would be required, have good balance to do
7 most all the jobs in the plant?

8 A: I would think so, yes.

9 Q: All right. You're familiar with the tasks that
10 she had, are you not?

11 A: I'm not exactly familiar with it. I'm familiar
12 with the area, but I'm not exactly familiar
13 with the jobs that she was performing.

14 Q: Out of a ten hour day would you say as much as
15 eight hours of it would be standing?

16 A: Yes.

17 Q: And considerable walking involved?

18 A: It depends on the job that she's actually
19 running for that particular quarter.

20 Q: All right. How about carrying and lifting and
21 things?

22 A: There would be some lifting and possibly some
23 carrying of some light weighted items that she
24 would have to, yes.

25 Q: Do most of the jobs in the plant require



1 squatting, stooping?

2 A: I would -- yes.

3 Q: All right. Okay. Now, BMW does have a fairly
4 sizeable medical facility on site, do they not?

5 A: Yes.

6 Q: How many nurses are employed there?

7 A: I can't give an exact figure but I can give you
8 a good -- a rough estimate. If I had to guess
9 off the top of my head I would probably say 15
10 to 20.

11 Q: And they administer a good bit of the treatment
12 in workers' comp cases arising at BMW, do they
13 not?

14 A: No.

15 Q: They don't?

16 A: No.

17 Q: All right. It is common though for work
18 hardening programs and things of that nature
19 after the client is -- or the patient's been
20 released by the doctor, isn't it?

21 A: Yes.

22 Q: All right. Do you know of other jobs within
23 the BMW facility that would accommodate her
24 with her ankle?

25 A: The -- it depends on what her restrictions



1 were. If she's sayin' that she couldn't walk
2 but five minutes it takes longer to walk from
3 the parking lot than five minutes to her
4 particular area.

5 Q: Uh-huh. Okay. All right. No further
6 questions.

7 MR. DUNBAR: I have no further questions, and the
8 Defendants rest.

9 COMMISSIONER CAMPBELL: Okay. Thank you, sir. I
10 appreciate your testimony, and there being
11 nothing further then that concludes today's
12 proceedings. Thank you everybody for being
13 here and your time.

14 (There being nothing further, the commission hearing
15 concluded at 1:23 p.m.)
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Citizens Access to Criminal Histories

Results

Name **RAQUICAL CUNNINGHAM**

DOB **1974 01 09**

Gender **Female**

Maiden Name **CUNNINGHAM**

SSN *******9016**

Transaction **102818536P**

Date of Check **October 28, 2019 at
18:53**



The record is based on a search using Last Name, First Initial, Gender, Date of Birth, Maiden Name, and SSN Only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

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NAME-CUNNINGHAM, RAQUICAL DENNISE SEX-F RACE-B
HEIGHT-504 WEIGHT-134 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC-160204PM0207TTAATT01 HENRY-16 M 9 U 2
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ADDITIONAL IDENTIFIERS	BIRTH			
NAME	DATES	MARKS	SOC SEC	MISC NUM
CUNNINGHAM, RAQUICAL DENISE	01091974			
CUNNINGHAM, RAQUEL DENISE	01191974			

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
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CUNNINGHAM, RAQUICAL DENNISE	07/13/1997
SC0420000 SPARTANBURG CNTY SO	
CASE-056325	
WARR-F587146	

WARR-F587145

DOC-R84

WARR-F587146

DOC-R84

WARR-F587145

ARREST CHARGE -ASSAULT AND
BATTERY
PHOTOGRAPH AVAILABLE

ARREST CHARGE -TRESPASSING
COURT CHARGE 01-SIMPLE ASSAUL
T AND BATTERY
COURT DISP-NON-CONVICTION;
NOT GUILTY
COURT DATE-08/25/1997
COURT CHARGE 02-TRESPASSING
COURT DISP-CONVICTED;30 DAYS

OR \$425
COURT DATE-07/13/1997

CUNNINGHAM, RAQUEL DENISE 05/11/2000
SC0420000 SPARTANBURG CNTY SO
CASE-56325
ATN-

ARREST CHARGE -CHECK FRAUD
11 COUNTS
OFFENSE DATE-05/11/2000
PHOTOGRAPH AVAILABLE

CUNNINGHAM, RAQUEL DENISE 10/22/2003
SC0420000 SPARTANBURG CNTY SO
CASE-56325
ATN-422000071861
WARR-H516365
CIT-34-11-60-MISDEMEANOR

ARREST CHARGE -FRAUDULENT
CHECK UNDER \$500 - 1ST
OFFENSE DATE-10/22/2003
PHOTOGRAPH AVAILABLE

CIT--MISDEMEANOR
DOC-42
WARR-H516365

COURT CHARGE 01-FRAUDULENT
CHECK UNDER \$500 - 1ST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-10/23/2003
ATN-422000071861

CIT-34-11-60-MISDEMEANOR
DOC-R84
WARR-H429749

COURT CHARGE 02-FRAUDULENT
CHECK UNDER \$500 - 1ST
COURT DISP-CONVICTED;PAID \$66

CUNNINGHAM, RAQUEL DENISE 06/13/2014
SC0420100 SPARTANBURG PD
CASE-20140613
ATN-422100218058
WARR-2014A4210102001
CIT-16-3-600(D) (2)-MISDEMEANOR

ARREST CHARGE -ASSAULT AND
BATTERY 2ND DEGREE
OFFENSE DATE-06/13/2014
PAIM PRINTS AVAILABLE

WARR-2014A4210102002
CIT-16-3-600(E) (2)-MISDEMEANOR

ARREST CHARGE -ASSAULT AND
BATTERY 3RD DEGREE
OFFENSE DATE-06/13/2014

WARR-2014A4210102003
CIT-16-11-0510(A)-MISDEMEANOR

ARREST CHARGE -MALICIOUS
INJURY TO PERSONAL PROPERT
Y <\$2000
OFFENSE DATE-06/13/2014

CIT-16-3-600(C) (2)-FELONY
DOC-15GS4201278
WARR-2014A4210102001

COURT CHARGE 01-ASSAULT AND
BATTERY 1ST DEGREE
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-09/20/2017
ATN-422100218058

CIT-16-3-600(E) (2)-MISDEMEANOR
DOC-15GS4201276
WARR-2014A4210102002

COURT CHARGE 02-ASSAULT AND
BATTERY 3RD DEGREE
COURT DISP-CONVICTED;30 dys
or \$200 plus court costs.
Cons, \$100 per mo
COURT DATE-09/20/2017

CIT-16-11-0510(A)-MISDEMEANOR
DOC-15GS4201277
WARR-2014A4210102003

COURT CHARGE 03-MALICIOUS
INJURY TO PERSONAL PROPERT
Y <\$2000
COURT DISP-CONVICTED;30 dys
or POR \$40 and \$200 plus
Court Costs. Cons
COURT DATE-09/20/2017

BASED ON SEARCH OF SLED CJIS CCH FILE USING SID/SC01130991
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

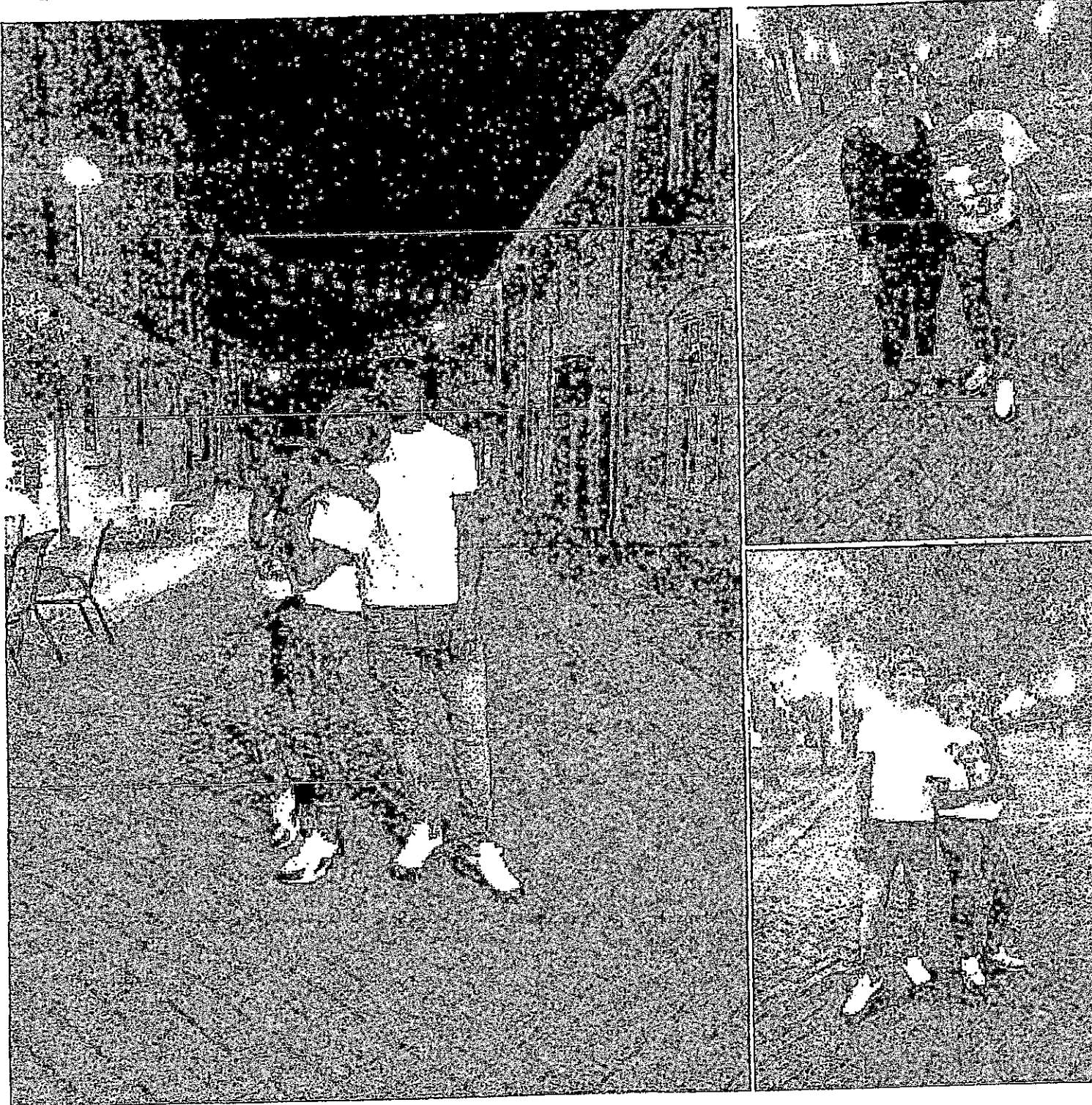
SLED Headquarters | 4400 Broad River Road | Columbia, SC 29210



Rocky Cunningham is with Isaac Sims.

September 28 at 1:14 AM · 🌐

My Friday night...Really enjoyed myself ty Isaac Sims Marina



👍❤️ 56

9 Comments 1 Share

👤 1 Story

👤 Share

122

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2021-000303
WCC File No. 1704918

Raqual Cunningham, Employee.....Appellant,

v.

BMW Manufacturing Corp., Employer and
Hartford Accident & Indemnity Company, Carrier..... Respondents,

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondents, BMW Manufacturing Corporation and its workers' compensation insurance carrier, Hartford Accident & Indemnity Company, propose the following matters be included in the record on appeal:

1. Appellate Panel Decision and Order dated March 10, 2021.
2. Hearing Commissioner's Order dated April 23, 2020.
3. Hearing Commission Transcript dated March 5, 2020.
4. Defendants' APA submissions:
 1. BMW Industrial Health Services, 5/06/15-6/19/17, pp. 1-32;
 2. Kathleen Mitchell, PA, Greenville Health System, 5/03/17, pp. 33-38;
 3. Michael Tollison, MD, Piedmont Orthopedic Associates, 8/29/17-1/05/19, pp. 39-51;
 4. Stephen Pill, MD, Steadman Hawkins Clinic, dated 2/14/19-12/26/19, pp. 52-112;
 5. ATI Physical Therapy, 10/07/19, p. 113;

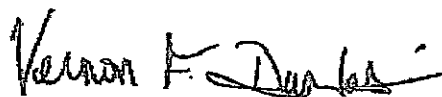
Exhibits:

B, SLED report, 3/11/19;
D. Facebook photo, 9/28/19.

5. Form 30 Appeal to Full Commission Panel, dated April 27, 2020.
6. Appellants' Brief to Workers' Compensation Commission Appellate Panel dated May 29, 2020 and attachments.
7. Motion to Certify Form 19.
8. Form 19.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,



Vernon F. Dunbar
McAngus Goudelock & Courie, LLC
55 East Camperdown Way
Suite 300
Greenville, South Carolina 29601
864-239-6735
vernon.dunbar@mgclaw.com
Attorney for Respondents

October 20, 2021

RECEIVED

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SC Court of Appeals

Certificate of Appellant

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

October 31, 2022

Raqucal Cunningham
114 Vermillian Drive
Spartanburg, S.C. 29000
(864) 498-8680
Appellant is Pro Se

Raqucal Cunningham
10-31-22