

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

FEB 22 2023

SC Court of Appeals

Appellate Case No. 2022-000282

Michael K. Crowley, Employee,Appellant,

v.

Darlington County, Employer, and
SC Association of Counties SIF, Carrier,Respondents.

**RECORD ON APPEAL
VOLUME III OF III**

Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Darlington, South Carolina 29551
(843) 339-3000

Counsel for Appellant

John Gabriel Coggiola, Esquire
WILLSON JONES CARTER & BAXLEY
3600 Forest Drive, Ste. 204
Columbia, South Carolina 29204
(803) 227-2884

Counsel for Respondents

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Order Form

Florence Neurosurgery & Spine Center

1204 E CHEVES ST,
FLORENCE, SC, 29506-2710

843-673-0122 843-673-0227

Req/Ctrl# (CD-): 648769
Catherine Soriano, PA
NPI: 1457729996
Physician Assistant

Crowley, Michael A, Male, M

ID: 1

BENNETTSVILLE, SC, US 29512-7608

Today: 03/13/2019 11:06 AM
Order Date: 03/13/2019 11:06 AM

Primary Insurance Name: WC ARIEL TPA

Insurance Address: PO BOX 212159 , COLUMBIA , SC , 292210000

Subscriber Number: 2018SCAC070654

Insured Name: Crowley, Michael A

Address: , BENNETTSVILLE, SC, US 29512-7608

Test Name

EMG/NCS : EMG, 1 Ext, 95886 (95908-95909)

Fast
No

Assesment(s)
- M54.16, Right lumbar
radiculopathy

Instructions



Electronically Signed By:
Catherine Soriano, PA

Signature of
Patient/Guardian

Order generated by
eClinicalWorks
(www.eclinicalworks.com)

Crowley, Michael A,
--

Florence Neurosurgery & Spine Center
1204 E CHEVES ST
FLORENCE SC 29506-2710
843-673-0122

2/25/2019

To whom it may concern,

This is a note to confirm that *Michael Crowley* was seen in our office on *02/25/2019* for a doctor's appointment. Patient may return to work today *2/25/19*.

Sincerely,

BARBARA SARB, DO

**FLORENCE
NEUROSURGERY
& SPINE CENTER**

COMPREHENSIVE AND COMPASSIONATE PATIENT CARE

Crowley, Michael A

49 Y old Male, DOB:

Account Number:

BENNETTSVILLE, SC-29512-7608

Home:

Guarantor: Crowley, Michael A Insurance: WC ARIEL

TPA Payer ID: PAPER

PCP: GYETRI MITCHELL Referring: Joseph Cheatle

Appointment Facility: Florence Neurosurgery & Spine Center

02/18/2019

Progress Notes: Barbara Sarb, DO

Current Medications

Taking

- Lortab 10-325 MG Tablet Orally Four times a day
- Capacet Orally
- Flexeril 10 MG Tablet Orally
- Zomig 2.5 MG Tablet Orally
- Simvastatin 40 MG Tablet Orally
- Gabapentin 300 MG Capsule Orally Three times a day
- Medication List reviewed and reconciled with the patient

Past Medical History

Medical History Verified..

Surgical History

- appendectomy
- Rt Calf
- knee surgery Rt
- neck surgery

Family History

High Blood Pressure\nCancer.

Social History

Tobacco Use:

Tobacco Use/Smoking Are you a nonsmoker.

SocialMig:

SocialMigHx: negative.

Drugs/Alcohol:

Do you drink alcohol?: No.

Miscellaneous:

Children: 1. Marital status: divorced. Occupation: Deputy Sheriff.

Allergies

- Sudafed
- Actifed
- Cortisone

Hospitalization/Major

Diagnostic Procedure

No Hospitalization History.

Review of Systems

Reason for Appointment

1. SCS TRIAL
2. Spinal Cord Stimulator trial 63650

History of Present Illness

Follow Up:

Patient was referred by Dr. Cheatle for spinal cord stimulator trial. He is having bilateral back pain into the right leg occasional sciatica on the left. Pain is radiating to the knee. He is on Lortab q.i.d. Risk and benefits of spinal stimulator trial were reviewed with patient and informed was obtained. Patient was evaluated by myself, Boston scientific representative, and anesthesia care team.

Vital Signs

BP 142/91 mm Hg, HR 89, Temp 98.2 F, RR 18 /min, Current Pain scale 9 1-10, Worst Pain Scale 10.

Examination

General Examination:

GENERAL APPEARANCE: in no acute distress, well developed, well nourished.

HEAD: normocephalic, atraumatic.

EYES: pupils equal, round, reactive to light and accommodation.

EARS: normal.

ORAL CAVITY: mucosa moist.

THROAT: clear.

NECK/THYROID: neck supple, full range of motion, no cervical lymphadenopathy.

SKIN: no suspicious lesions, warm and dry.

HEART: no murmurs, regular rate and rhythm, S1, S2 normal.

LUNGS: clear to auscultation bilaterally.

ABDOMEN: normal, bowel sounds present, soft, nontender, nondistended.

EXTREMITIES: no clubbing, cyanosis, or edema.

NEUROLOGIC: nonfocal, motor strength normal upper and lower extremities, sensory exam intact.

Assessments

1. Chronic pain syndrome - G89.4 (Primary)
2. Lumbar radiculopathy, chronic - M54.16

Patient: Crowley, Michael A DOB:

Progress Note: Barbara Sarb, DO 02/18/2019

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

General/Constitutional:

Chills denies. Fever denies. Weight loss denies.

Ophthalmologic:

Recent visual loss denies. Vision change denies. Eye Pain denies.

ENT:

Change in hearing denies. Swallowing difficulty denies. Pain denies.

Endocrine:

Weight loss denies. Cold intolerance denies. Weakness denies.

Respiratory:

Breathing problems denies. Cough denies. Shortness of breath denies.

Cardiovascular:

Chest pain denies. Dizziness denies. Irregular heartbeat denies.

Gastrointestinal:

Diarrhea denies. Nausea denies. Vomiting denies.

Hematology:

Previous bleeding problems with surgery denies. Bleeding problems denies. Easy bruising denies.

Genitourinary:

Involuntary loss of urine denies. Difficulty urinating denies. Frequent urination denies.

Musculoskeletal:

Arthritis admits. Joint stiffness denies. Weakness denies.

Skin:

Skin infection denies. open wounds denies. Rash denies.

Neurologic:

Balance difficulty denies. Dizziness denies. Headache admits.

Treatment

1. Chronic pain syndrome

Start Keflex Capsule, 500 MG, 1 capsule, Orally, every 12 hrs, 7 day(s), 14 Capsule, Refills 0

IMAGING: X ray : Thoracic AP/LAT 72070

PROCEDURE: PAIN MGT : Spinal Cord Stimulator Trial (63650)

Notes:

The patient presents to the office today for a spinal cord stimulator trial with two trial lead implant of Boston Scientific equipment. The patient was given prescription for postoperative antibiotics. After the risks and benefits were explained to the patient, informed consent was obtained. A peripheral IV was started. Please see anesthesia records for complete details of all medications administered as well as hemodynamic variables throughout the procedure. The patient was brought back into the operating suite and placed in prone position on the table. Thoracic, lumbar and sacral regions were prepped and draped in sterile fashion using Betadine x 3 and a full laparotomy drape was applied. A timeout was performed. Fluoroscopic C-arm was brought into AP orientation. The patient's L3 pedicle was identified and the skin along the pedicle was anesthetized using 1% Lidocaine with a 25-gauge 1-1/2 inch needle. Approximately 3cc of 1% Lidocaine was used to anesthetize deeper tissue.

A 14-gauge Tuohy needle was placed in the skin medial to the right pedicle and advanced to the epidural space under fluoroscopic guidance. The epidural space was entered using loss of resistance technique with glass syringe. Once the epidural space was found, a Boston Scientific lead was placed into the Tuohy needle and threaded through the epidural space. Electrodes were seen with superior two contacts at the inferior border of T7 and across the T8 and T9 vertebral bodies and corresponding interspaces. A second lead was placed just medial to the first lead. Electrodes were viewed in lateral fluoroscopic view revealing all electrodes in the posterior epidural space. Guide wires were removed and fluoroscopy used to recheck position of (lead/leads). Stimulation was undertaken and found to encompass all the patient's painful areas. The lead was held in place with steri strips and OpSite dressing and was placed on skin to fully cover areas. The patient was brought back to the recovery room and underwent a one hour complex interrogation and programming with adjustment of pulse width and rate to encompass all of patient's pain areas of the stimulation. Patient was somewhat sensitive to tonic stimulation and may do well with burst and high frequency. Patient will be seen back in the office in 5 days to review progress with the device and removal of the trial lead.

fluoro guidance 2 minutes 47 seconds.

Procedure Codes

63650 IMPLANT NEUROELECTRODES two 16 contact leads =32, Units: 2.00

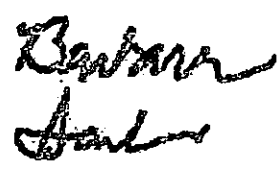
Patient: Crowley, Michael A DOB:

Progress Note: Barbara Sarb, DO 02/18/2019

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

72070 X-RAY EXAM OF THORACIC SPINE
95972 ANALYZE NEUROSTIM, COMPLEX
L8680 IMPLT NEUROSTIM ELCTR EACH, Units: 2.00
77003 FLUOROGUIDE FOR SPINE INJECT
A4550 STERILE TRAY

Follow Up
1 Week (Reason: lead removal)



Electronically signed by BARBARA SARB, DO on
02/18/2019 at 11:58 PM EST

Sign off status: Completed

Florence Neurosurgery & Spine Center
1204 E CHEVES ST
FLORENCE, SC 29506-2710
Tel: 843-673-0122
Fax: 843-673-0227

Patient: Crowley, Michael A DOB:

Progress Note: Barbara Sarb, DO 02/18/2019

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Feb. 11. 2019 1:06PM

F1 nce Neurosurgery and Spine

No. 2823 P. 1/1

Florence Neurosurgery & Spine Center
1204 E CHEVES ST
FLORENCE SC 29506-2710
843-673-0122

2/11/2019

To whom it may concern,

This is a note to confirm that *Michael Crowley* will be having a procedure done on Monday February 18, 2019 and will need to be out of work that week due to the procedure. Please excuse patient from work 2/18/19 to 2/22/19.

Sincerely,

Dr. Barbara L. Sarb

FLORENCE NEUROSURGERY & SPINE CENTER

COMPREHENSIVE AND COMPASSIONATE PATIENT CARE

Crowley, Michael A

49 Y old Male, DOB:
Account Number: :
BENNETTSVILLE, SC-29512-7608
Home: {

Guarantor: Crowley, Michael A Insurance: WCA
TPA Payer ID: PAPER
PCP: GYETRI MITCHELL Referring: Joseph Cheatle
Appointment Facility: Florence Neurosurgery & Spine Center

12/11/2018

Progress Notes: Barbara Sarb, DO

Current Medications

Taking

- Lortab 10-325 MG Tablet Orally Four times a day
- Capacet Orally
- Flexril 10 MG Tablet Orally
- Zomig 2.5 MG Tablet Orally
- Simvastatin 40 MG Tablet Orally
- Gabapentin 300 MG Capsule Orally Three times a day
- Medication List reviewed and reconciled with the patient

Past Medical History

Medical History Verified..

Surgical History

appendectomy
Rt calf
knee surgery Rt
neck surgery

Family History

High Blood Pressure
Cancer.

Social History

Tobacco Use:

Tobacco Use/Smoking Are you a nonsmoker.

SocialMig:

SocialMigHx: negative.

Drugs/Alcohol:

Do you drink alcohol?: No.

Miscellaneous:

Children: 1. Marital status: divorced.
Occupation: Deputy Sheriff.

Allergies

Sudafed
Actifed
Cortisone

Hospitalization/Major

Diagnostic Procedure

No Hospitalization History.

Reason for Appointment

1. NP eval-- stim eval

History of Present Illness

Follow Up:

Patient seen in consultation at the request of Dr. Joseph Cheatle of neurosurgery for spinal cord stimulator trial for back and right leg pain. Patient has Workmen's Comp. case manager Diana Welch is here also. Patient had history of back pain into the right posterior thigh to the knee with first injury May 2017. States he was working as a as a police officer when he had an assault with a juvenile and twisted his knee and back. He did physical therapy 3 times a week for 3 trials. A total of 6 months. Patient describes a second injury January 3, 2018 where he was working assisting a disabled vehicle that slid on some ice patient fell again injuring his back and knee. Patient has been followed by Dr. Cheatle of neurosurgery and is felt not to have surgical pathology. He has been referred to discuss spinal stimulator trial as a means of pain management. Patient has chronic pain C6-10/10, worse with activity and as the day goes on and he feels he gets swelling in the knee and the right foot. I do not appreciate any today he denies any change in temperature or skin quality or hair growth. Patient has had lumbar MRI which was reviewed. Patient has been on chronic pain medications since 1990s. He describes a knee injury and a back injury while working at the fire department. He has been on Lortab 10/300 every 6 hours. Since this time. He is followed by Dr. Laurinburg for medication management. Patient also describes a motor vehicle accident in 2013 with neck and back injury where was told he had a disc protrusion in his lumbar region. Patient notes exacerbation of his back pain after 2 injuries as please officer May of 2017 and January 2018. He has completed physical therapy has been on gabapentin 300 mg 3 times a day, Lortab and Flexeril, but continues with pain. Patient does report having an epidural injection in 1980s. However, he had a post-spinal headache that was quite intense and states he would not consider steroid injection again. He has not had an electrodiagnostic study. Patient currently is on light duty, working at the courthouse with a judge.

Vital Signs

BP 118/83 mm Hg, HR 93, Temp 98.5 F, RR 18 /min, Current Pain scale 6-10, Worst Pain Scale 10.

Patient: Crowley, Michael A DOB:

Progress Note: Barbara Sarb, DO 12/11/2018

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Barbara Sarb
Sarb

Electronically signed by BARBARA SARB , DO on 12/11/2018
at 06:01 PM EST

Sign off status: Completed

Florence Neurosurgery & Spine Center
1204 E CHEVES ST
FLORENCE, SC 29506-2710
Tel: 843-673-0122
Fax: 843-673-0227

Patient: Crowley, Michael A DOB: :

Progress Note: Barbara Sarb, DO 12/11/2018

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)


Florence Neurosurgery & Spine Center
1204 E CHEVES ST
FLORENCE SC 29506-2710
843-673-0122

12/11/2018

To whom it may concern,

This is a note to confirm that *Michael Crowley* was seen in our office on for a doctor's appointment. Patient may continue light duty for courtroom security until next visit for Spinal Cord Stimulator Trial.

Sincerely,



Dr. Barbara L. Sarb

CMCSC



Case Management Consultants of South Carolina, LLC

Physician: Dr. Nigel A. R. Watt, MD

Address: 1005 East Cheves Street

Florence, SC 29506-2277

Fax: 843-777-7925

ATTN: Dr. Watt

PATIENT: Michael Crowley

DOB:

I am the Nurse Case Manager with worker's compensation for the above referenced patient. At his last appointment on 11/6/18 for his right knee your note indicated that you recommend "further management by a physician with specialization and treatment of this type of pain syndrome". Follow up was listed as "PRN".

The client has been established for management of his pain syndrome with Dr. Barbara Sarb. He is undergoing a psychiatric evaluation for placement of a spinal cord stimulator on 1/29/19. Future treatment plans will be addressed by Dr. Sarb upon receipt of the evaluation notes from Dr. Windsorova.

Can you please indicate if a follow up appointment is required with you for additional evaluation and/or treatment of the right knee?

Yes, the client will need to follow up with me, Dr. Nigel A Watt, for further evaluation/treatment.

No, the client does not require a follow up appointment with me, Dr. Nigel A. Watt, for the right knee injury as he is established with a pain management physician for the right lower extremity. He is released from my care from an Orthopedic standpoint.

Nigel A. R. Watt 1/31/19

Dr. Nigel A.R. Watt

follow up progress note

Patient: CROWLEY, MICHAEL H
Account Number:
DOB: Age: 49 Y Sex: Male
Phone:
Address: , BENNETTSVILLE, SC-29512-7608
Pcp: Gyetri Mitchell, MSN FNP

Provider: Nigel A.R. Watt, MD
Date: 11/06/2018

Subjective:

Chief Complaints:

- 1. Right knee pain.

ROS:

General/Constitutional:

Fever no. Chills no. Fatigue no. Weight change no.

Gastrointestinal:

Abdominal pain no. Constipation no. Diarrhea no. Nausea no. Vomiting no.

Musculoskeletal:

Difficulty in Walking yes. Muscle stiffness no. Joint pain yes. Joint stiffness yes. Joint swelling yes. Muscle cramping no.

Skin:

Rash no. Blisters no. Changes in finger or toenails no. Incisional problems no. Non-healing wound no. Hot to touch/feverish feeling no.

Neurologic:

Numbness no. Involuntary movements no. Tingling/numbness no. Weakness no.

Medical History: Hypercholesterolemia, Chronic low back pain, Migraines.

Surgical History: appendix , right knee and calf surgery , neck surgery bone replacement C4&5 2015.

Hospitalization/Major Diagnostic Procedure: see above , No recent hospitalizations or surgeries 8/10/17.

Family History: Father: alive, cholesterol, diagnosed with Cancer. Mother: alive, cholesterol, healthy . Son(s): alive. 1 brother(s) , 1 sister(s) - healthy, 1 son(s) - healthy. .

Social History:

Tobacco Use:

Smoking Are you a: never smoker .

Second Hand Smoke Exposure: No.

Drug/Alcohol:

Drugs: Denies.

Alcohol

Did you have a drink containing alcohol in the past year? No

Points 0

Interpretation Negative

Medications: Taking Simvastatin , Notes: 30mg 1 tab daily, Taking Lortab(Acetaminophen-Hydrocodone) , Notes: 7.5/500mg 1 tab 4 times a day, Taking Flexeril(Cyclobenzaprine HCl) , Notes: 10mg 1 tab daily, Taking Gabapentin , Notes: 300mg 1 tab 3 TID, Taking Zomig(ZOLMitrriptan) , Notes: 5mg as needed, Taking Capacet(Butalbital-APAP-Caffeine) 50-325-40 MG Capsule 1 capsule as needed Orally every 4 hrs, Taking Esglc(Butalbital-APAP-Caffeine) , Notes: as needed, Discontinued Naproxen 500 MG Tablet 1 tablet Orally Twice a day, Discontinued Naproxen 500 mg Tablet 1 tablet with food or milk as needed Orally BID, Discontinued PredniSONE 10 MG Tablet 3 tabs po daily for 2 days , Discontinued Zithromax Z-Pak(Azithromycin) 250 MG Tablet 2 tablets on the first day, then 1 tablet daily for 4 days Orally Once a day, Medication List reviewed and reconciled with the patient

Allergies: Sudafed: slow heart rate, Cortisone, ectifed.

Objective:

Vitals: Wt 168 lb 2 oz, Wt-kg 76.26, Ht 5 ft 7 in, Ht-cm 170.18, BMI 26.33, BSA 1.90 M.

11/06/2018

Assessment:

Assessment:

1. Strain of right knee and leg, subsequent encounter - S86.911D (Primary)
2. Reflex sympathetic dystrophy of right lower extremity - G90.521

Plan:

Follow Up: prn

Provider: Nigel A.R. Watt, MD

Patient: CROWLEY, MICHAEL H **DOB:**

Date: 11/06/2018

McLeod
Physician Associates

McLeod Orthopaedics Florence

1005 East Cheves St
FLORENCE SC 29506-2777
Ph: 843-777-7900 Fax:843-777-7925

Release To School Work Form

NAME: MICHAEL H CROWLEY DATE: 11/06/2018

ADDRESS: BENNETTSVILLE SC 29512-7608

Patient was seen in our office today for a scheduled appointment.

Diagnosis:

Release to: work on 11/7/2018

Restrictions:

- No restrictions
- No jumping
- No lifting
- No overhead work
- Right-hand work only
- No repetitive bending
- No continual standing
- No prolonged sitting
- No climbing
- Sedentary Only
- No lower body
- No pivoting
- Other
- No running
- Right Left
- Left-hand work only
- No repetitive stooping
- No continual walking
- No contact sports
- No continual stair climbing
- No upper body
- No twisting movements

Instructions:

Light Duty until seen by Dr Cheate.

Recheck Visit: pm

Nigel Watt

Physician's Signature

PA's Signature

Date

Powered By eClinicalWorks LLC.

NOV 14 2018 10:13:01

McLeod**Physician Associates****CROWLEY, MICHAEL H**

48 Y old Male, DOB: 02/22/1970

Account Number: 1000000000

, BENNETTSVILLE, SC 29612-7608

Home:

Guarantor: CROWLEY, MICHAEL H Insurance: ARIEL

THIRD PARTY ADMIN INC WC

PCP: Gyele Mitchell, MSN FNP

Appointment Facility: McLeod Pee Dee Orthopedic Associates

02/22/2018

follow up progress note: Nigel A.R. Watt, MD

Current Medications**Taking**

- Naproxen 500 MG Tablet 1 tablet Orally Twice a day

- Simvastatin, Notes: 30mg 1 tab daily

- Lortab (Acetaminophen-Hydrocodone), Notes: 7.5/500mg 1 tab 4 times a day

- Flexeril (Cyclobenzaprine HCl), Notes: 10mg 1 tab daily

- Gabapentin, Notes: 300mg 1 tab 3 TID

- Zomig (Zolmitriptan), Notes: 5mg as needed

- Copaxone (Glatiramer Acetate) 325-40 MG Capsule 1 capsule as needed Orally every 4 hrs

- Esigic (Butalbital-APAP-Caffeine), Notes: as needed

Not-Taking/PRN

- Prednisone 10 MG Tablet 3 tabs po daily for 2 days, then 2 tabs po daily for 2 days, then 1 tab po daily for 2 days

- Zithromax Z-Pak (Azithromycin) 250 MG Tablet 2 tablets on the first day, then 1 tablet daily for 4 days Orally Once a day

- Medication List reviewed and reconciled with the patient

Past Medical History

Hypercholesterolemia.

Chronic low back pain.

Migraines.

Surgical History

appendix

right knee and calf surgery

neck surgery bone replacement C4&5 2015

Family History

Father: alive, cholesterol

Mother: alive, cholesterol

Son(s): alive

1 brother(s), 1 sister(s) - healthy. 1 son(s) - healthy.

Social History**Tobacco Use:**

Smoking Are you a: never smoker.

Second Hand Smoke Exposure: No.

Reason for Appointment

1. Right lower extremity pain, work injury January 3, 2018

Assessments

1. Acute right-sided low back pain with right-sided sciatica - M54.41 (Primary)

Review of initial history of injury including the mechanism and initial and subsequent symptoms as well as previous and present physical findings (and negative MRI of the right posterior thigh hamstring area) now indicates the initial diagnosis of his injury is right lower extremity sciatic pain likely acute lumbar disc injury, and not a primary "knee/thigh" injury.

This is consistent with his report of right lower extremity posterior thigh pain and progressively distal radiating pain and neurogenic symptoms as described below.

He now requires further evaluation and imaging studies of the lumbar spine to confirm the diagnosis of an acute lumbar disc herniation and right lower extremity sciatic pain.

If the diagnosis is confirmed he will need to be referred to a spine specialist for further evaluation and management.

He will continue with limited work duties as previously described. Continue with present NSAID prescription and chronic pain medications.

~~Lumbar MRI is required as a direct result of his work injury of January 3, 2018. This is my opinion to a reasonable degree of medical certainty. He has not reached maximum medical improvement following that injury.~~

Return appointment to see me (or if necessary a spine specialist) after his lumbar MRI.

Treatment

1. Acute right-sided low back pain with right-sided sciatica Start Naproxen Tablet, 500 mg, 1 tablet with food or milk as needed, Orally, BID, 60, Refills 0

IMAGING: MRI: Lumbar without contrast

Notes :Rogers, Chasity 02/26/2018 04:40:47 PM EST > Fax to adjuster.

Notes:

Patient: CROWLEY, MICHAEL H DOB:

Progress Note: Nigel A.R. Watt, MD 02/22/2018

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Miscellaneous:

Marital status: Divorced.
 Occupation: Sherriff Darlington County.
 Children: 1.
 Caffeine: yes.
 Household:
 Household

Marital Status: Divorced
 Number of Adults in Household: 1

Allergies

Sulfated: slow heart rate
 Cortisone
 eczifed

Hospitalization/Major Diagnostic Procedure

see above
 No recent hospitalizations or surgeries
 8/10/17

Review of Systems**General/Constitutional:**

Fever NO. Chills NO. Fatigue NO.
 Weight change NO.

Gastrointestinal:

Abdominal pain NO. Constipation NO.
 Diarrhea NO. Nausea NO. Vomiting NO.

Musculoskeletal:

Difficulty in Walking NO. Muscle
 stiffness NO. Joint pain NO. Joint
 stiffness NO. Joint swelling NO. Muscle
 cramping NO.

Skin:

Rash NO. Blisters NO. Changes in finger
 or toenails NO. Inclusion problems NO.
 Non-healing wound NO. Hot to
 touch/feverish feeling NO.

Neurologic:

Numbness NO. Involuntary
 movements NO. Tingling/numbness NO.
 Weakness NO.

MRI right thigh Florence MRI January 31, 2018 images reviewed personally and radiology report reviewed. No evidence of soft tissue injury to the posterior thigh. No hamstring discontinuity edema or other features of rupture or partial tear.

2. Others

Notes: 2/22/18 Patient brought in a cd from Florence Mri and Imaging, mri right femur 1/31/18. cd loaded and returned to patient.

Follow Up

After lumbar MRI

History of Present Illness**Constitutional:**

Very little improvement in symptoms. Pain is still mainly over the posterior distal thigh posterior right knee but on direct questioning also has burning and tingling pain over lateral right calf to the right foot. Feels his right foot is "going to sleep". Difficulty weightbearing. Has to walk with flexed hip knee gait.

Performing very limited work duties only at the Court House.

On further questioning he confirms no previous significant lumbar injuries in the last several years. No recent evaluation of lumbar spine. No previous surgery. He has previously undergone cervical spine surgery in Pinhurst and has required chronic maintenance pain management concerning that.

He is continuing with Naprosyn prescribed by us and refill today.

Chronic pain management in Laurinburg includes Lortab, Flexeril and Neurontin.

I have reviewed the Review of Systems, Past Medical, Family and Social History as well as Vital Signs. Appropriate changes made as needed.

Vital Signs

Wt 155, Wt-kg 70.34, Ht 67", BMI 24.27, Temp 97.7, BSA 1.82 M.

Examination**General Examination:**

Right slightly flexed hip slightly flexed knee antalgic gait. Mild low lumbar discomfort and limited symmetrical range of motion. No focal tenderness and no deformity seen. No pain range of motion of right hip. Right posterior thigh tenderness is mainly midline upper popliteal corresponding to the sciatic nerve with less tenderness over medial and lateral hamstring tendons. No ischial hamstring tenderness. No visible swelling. Strongly positive posterior tibial nerve stretch and sciatic nerve stretch. Positive flip sign. Pain with attempted full passive knee extension. Right knee no effusion and no joint line tenderness or pain with stress. No calf or ankle edema. No muscle group weakness. Reduced sensation lateral right calf and foot global. Intact foot pulses. Normal skin examination. No pain range of motion of left hip knee or ankle.

Patient: CROWLEY, MICHAEL H DOB:

Progress Note: Nigel A.R. Watt, MD 02/22/2018

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

McLeod
Physician Associates

McLeod Pee Dee Orthopedic Associates

101 JOHNS ST STE 100
FLORENCE SC 29506-2777
Ph: 843-662-5233 Fax: 843-432-1930

Release To School Work Form

NAME: MICHAEL H CROWLEY DATE: 02/22/2018

ADDRESS: BENNETTSVILLE SC 29512-7608

Patient was seen in our office today for a scheduled appointment.

Diagnosis: Acute right-sided low back pain with right-sided spondylosis M54.41

Release to: work on 2/23/18

Restrictions:

- No restrictions
- No jumping
- No lifting
- No overhead work
- Right-hand work only
- No repetitive bending
- No continual standing
- No prolonged sitting
- No climbing
- Sedentary Only
- No lower body
- No pivoting
- Other
- No running
- Right Left
- Left-hand work only
- No repetitive stooping
- No continual walking
- No contact sports
- No continual stair climbing
- No upper body
- No twisting movements

Instructions:

LIGHT DUTY UNTIL SEEN BACK

Recheck Visit: AFTER MRI LUMBAR SPINE

Nigel Watt

Physician's Signature

PA's Signature

Date

Powered By eClinicalWorks LLC.

PROGRESS NOTE

Patient: Crowley, Michael
Account Number:
DOB: Age: 49 Y Sex: Male
Phone:
Address: , BENNETTSVILLE, SC-29512
Emergency Contact: Crowley, Wilma, Relation:Mother, Address:

Provider: JOSEPH T. CHEATLE, MD

Date: 11/14/2018
CHN#:

; State:SC, 29512, Home: -

Subjective:**Chief Complaints:**

1. Imaging-longbay.

HPI:**First Point of Contact Screening:**

Do you have any of the following symptoms?

Symptoms over the past 7 days *none*

In the past three weeks have you traveled outside the U.S? *No*

In the past three weeks have you had close contact with someone who has traveled outside the U.S? *No*

Here for follow-up of MRI. He sells kidneys have leg pain. He denies bowel by 20 this time. He has warmth as well.

ROS:**NEUROSURGERY:**

Musculoskeletal: Negative for:, loss of muscle bulk, loss of control of arms/legs, joint stiffness or swelling.
Neurological: Negative for:, difficulty walking, falls, positive for abnormal arm or leg sensations, negative for arm or leg weakness.

Medical History: High cholesterol.

Surgical History: Right knee 1990s, Right calf 1990s (late), appendectomy 1990s, ACDF- done in Pinehurst 2015.

Hospitalization/Major Diagnostic Procedure: GI issues 1990s x1.

Family History: Mother: alive, diagnosed with HTN. Father: alive, Lung Ca. Sister(s): alive 50 yrs. Brother(s): alive 45 yrs. Son(s): alive 21 yrs.

Social History:**Alcohol Use**

Patient *does not use alcohol*

Tobacco Status

Patient is *a non tobacco user*

Drugs: none.

Medications: Taking Capacet , Taking Lortab 10-300 MG/15ML Elixir 5 ml as needed Orally every 6 hrs, Taking Flexeril , Taking Zomig 2.5 MG Tablet 1 tablet as needed one time Orally Once a day, Taking Simvastatin 40 MG Tablet 1 tablet in the evening Orally Once a day, Taking Gabapentin 300 MG Capsule 1 capsule Orally Once a day, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Ht 67 In, Wt 160 lbs, BMI 25.06, BP 122/78, HR 97, Oxygen sat % 97.

Examination:**NEUROSURGERY:**

Constitutional: pleasant, seemingly appropriate, in no acute distress.

Eyes: normal conjunctiva, PERRLA.

Neuro/Cortical Function: patient seeming alert and appropriate, oriented to person, place and time.

Neuro/Cranial Nerves: cranial nerves 2-12 intact.

Neuro/Motor: 5/5, throughout.

Abdomen: soft, non-tender.

Head: normocephalic and atraumatic.

Lungs & Respiratory: Aerating well .

Psychology appropriate.

Skin dry, Intact.

Document review: MRI visual images Independently reviewed shows no stenosis.

Assessment:**Assessment:**

1. Reflex sympathetic dystrophy of right leg - G90.521 (Primary)

Plan:**1. Reflex sympathetic dystrophy of right leg**

Notes: His MRI is negative for stenosis. I think he would benefit from a spinal cord stimulator trial. Risks benefits alternatives discussed with the patient. Will send him to Dr. sharp for spinal cord stimulator trial as she lives by far as. Will follow up after this.

2. Others

Notes: Seasonal Allergies: Care Instructions material was printed.

Referral To: BARBARA SARB Neurology

Reason: scs trial

Immunizations:

Immunization record has been reviewed and updated.

Preventive:**Quality Measures:****Fall Risk Assessment:**

Date of Screening Completed: 11/14/2018

Increased Fall Risk Factors: *No fall risk factors*

History Falls In Past Year: *No falls in the past year*

High Blood Pressure screening and follow up:

Intervention Order *Yes*

Lifestyle Recommendation *Lifestyle education regarding hypertension (procedure)*

Weight Assessment

Above Normal BMI Follow-Up *Weight monitoring*

Universal PAF (Patient Assessment Form):

Immunizations

Influenza Immunization Exempt *Immunization ordered or recommended (to be given at alternate location or alternate provider); vaccine not available at time of visit*

Follow Up: after scs trial

Provider: JOSEPH T. CHEATLE, MD

Patient: Crowley, Michael **DOB:**

Date: 11/14/2018

PROGRESS NOTE

Patient: Crowley, Michael

Account Number:

Provider: JOSEPH T. CHEATLE, MD

DOB: Age: 49 Y Sex: Male

Date: 08/15/2018

Phone:

CHN#:

Address: --- BENNETTSVILLE, SC-29512

Emergency Contact: Crowley, Wilma, Relation: Mother, Address: 29512, Home:

State: SC,

Subjective:

Chief Complaints:

1. I.M.E.AB .

HPI:

Patient History:

49 y/o male who presents with right leg pain. May the 1st hurt his right knee. He hurt his back at that time. During January 3rd this year had a snow storm. Feels like the back of his knee blew out. He states he cannot or sit for long. Who leg swells he says. His entire leg bothers him. His back hurts as well. He states it is the lower part of the back. He describes a burning stinging pain in his leg. He describes electrical shocks running down his leg. Improved by laying down but this does not completely alleviate it. Any activity makes it worse. Had an injection in the 1990s but nothing recently. He had similar symptoms in the 1990s with a back injury but those had completely resolved. No bowel or bladder problems. He is on light duty at work. It is hard for him to tolerate that. He has done physical therapy x3. No help at all. Exacerbated the symptoms. Seen by orthopaedics. Has not been seen by Neurosurgery.

On the first day he was apprehending a juvenile to columbia. They were both handcuffed. She was able to get a handcuff off. When he was on the ground holding the suspected. He twisted his back and knee and started getting pain. That hurt him for a short time but the pain started to reduce.

On January 3rd he was "called out" during a snow storm. At that time he had his hands on the car trying to push a car and all of the sudden his knee gave out. Since that time he has worsened with his symptoms. He has not seen neurosurgery/spine surgery for this.

His leg doesn't give out on him but it hurts very badly. It has only given out that one night.

ROS:

NEUROSURGERY:

Constitutional: Positive for, good general health lately. Eyes: Negative for, blurred vision, double vision. Ears, Nose, Mouth, Throat: Negative for, drainage, hearing loss. Cardiovascular: Negative for, chest pain, irregular heart beat. Respiratory: Negative for, bronchitis, asthma. Gastrointestinal: Negative for, abdominal pain, difficulty swallowing. Genitourinary: Negative for bowel or bladder complaints.. Musculoskeletal: Positive for back pain. Integumentary (skin/breasts): No rashes or bruises . Neurological: As per HPI . Psychiatric: Normal affect and mood . Endocrine: No heat or cold intolerance . Hematologic/Lymphatic:

No anemia

. Allergic/Immunologic: Negative for hives .

Medical History: High cholesterol.

Surgical History: Right knee 1990s, Right calf 1990s (late), appendectomy 1990s, ACDF- done in Pinehurst 2015.



Hospitalization/Major Diagnostic Procedure: GI issues 1990s x1.

Family History: Mother: alive, diagnosed with HTN. Father: alive, Lung Ca. Sister(s): alive 50 yrs. Brother(s): alive 45 yrs. Son(s): alive 21 yrs.

Social History:

Alcohol Use

Patient *does not use alcohol*

Tobacco Status

Patient is *a non tobacco user*

Medications: Taking Capacet , Taking Lortab 10-300 MG/15ML Elixir 5 ml as needed Orally every 6 hrs, Taking Flexeril , Taking Zomig 2.5 MG Tablet 1 tablet as needed one time Orally Once a day, Taking Simvastatin 40 MG Tablet 1 tablet in the evening Orally Once a day, Taking Gabapentin 300 MG Capsule 1 capsule Orally Once a day, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Ht 67 in, Wt 155 lbs, BMI 24.27, BP 119/79, HR 100.

Examination:

NEUROSURGERY:

Constitutional: Awake alert oriented 3 .

Eyes: Pupils equal round react to light, extra-ocular muscles intact .

Cardiovascular: Regular rate and rhythm .

Musculoskeletal: Normal range of motion except right leg with decreased range of motion.

Painful to palpation. .

Neuro/Cortical Function: Awake alert oriented to person place and time .

Neuro/Cranial Nerves: Cranial nerves II through XII intact .

Neuro/Motor: Strength 5 out of 5 in bilateral upper and lower extremities Except right lower extremity with significant hip flexor and extensor weakness..

Neuro/Sensation: Sensation intact to light touch and pain diffusely except decreased sensation to pinprick only.

Neuro/Reflexes: Normal deep tendon reflexes in bilateral biceps triceps brachioradialis and Achilles tendons except right with decreased reflexes.

Neuro/Coordination: cerebellar function appears intact.

Abdomen: soft, non-tender.

Head: normocephalic and atraumatic.

Lungs & Respiratory: clear to auscultation.

Neck without lymphadenopathy, supple.

Heart heart is regular rate and rhythm without murmur.

Psychology appropriate.

Skin clean, dry, intact.

Document review: Reports reviewed.

Assessment:

Assessment:

1. Injury while engaged in security work - Y93.89 (Primary)
2. Injury of right knee, initial encounter - S89.91XA
3. Back pain due to injury - S39.92XA
4. Reflex sympathetic dystrophy of right leg - G90.521

Plan:



1. Injury while engaged in security work

Notes: This is a 49-year-old male status post to work injuries. Patient has a remote history of back and leg symptoms but nothing recently. It seems clear that his injuries are related to his work injury. I feel it would be prudent to begin with a lumbar spine non contrasted MRI for further evaluation of his injury. His symptoms are consistent with lumbar radiculopathy versus reflex sympathetic dystrophy. If his MRI is negative he may be a good candidate for spinal cord stimulator due to some reflex sympathetic dystrophy. I see no signs of malingering or secondary gain due to his injury. He has decreased sensation in the right lower extremity and significant pain to palpation. I feel this is likely related to reflex sympathetic dystrophy however an MRI to rule out radiculopathy would be required. It has been shown in multiple studies that early spinal cord stimulation for reflex sympathetic dystrophy has a better long-term outcome versus delayed therapy.

Follow Up: IME

Provider: JOSEPH T. CHEATLE, MD

Patient: Crowley, Michael DOB:

Date: 08/15/2018



Electronically signed by JOSEPH CHEATLE, MD on 08/20/2018 at 12:32 PM EDT
Sign off status: Completed





SOUTH CAROLINA DIAGNOSTIC IMAGING

Florence MRI & Imaging
805 South Kirby St Florence, SC 29501
p: (843) 292-0400 f: (843) 292-0470

PATIENT NAME: Crowley, Michael
DOB:
MRN:
PHONE:
PHYSICIAN: Joseph T. Cheatle, MD
EXAM DATE: 10/08/2018

EXAM: MR-Lumbar Spine without contrast

REASON FOR EXAM: S39.92XA - Unspecified injury of lower back, initial encounter

COMPARISON: None available

TECHNIQUE: 1.5T MRI lumbar spine: sag and axial T1 and T2 with sag STIR.

FINDINGS: The conus medullaris terminates normally at the thoracolumbar junction. Vertebral body heights, alignment, marrow signal are normal other than a slight degenerative anterolisthesis of L5 on S1 due to facet arthropathy without evidence of spondylolysis. Mild disc desiccation and loss of disc height at L3-L4 and minimally at L1-L2 with moderate disc desiccation mild loss of disc height at L5-S1.

At L1-L2 and L2-L3 the disc contours are preserved and no stenosis.

At L3-L4 there is a minimal disc bulge greatest laterally. No stenosis.

At L4-L5 mild disc bulge greatest laterally. Mild facet arthropathy. No central canal compromise with mild - moderate left neural foraminal stenosis in part due to a small foraminal disc osteophyte complex. No central canal or right foraminal stenosis.

At L5-S1 minimal disc bulge with a small central disc protrusion. No nerve root encroachment. No central canal compromise with minimal biforaminal stenosis.

IMPRESSION:

1. Minimal DDD at L1-L2 and L3-L4 without stenosis.
2. Mild facet arthropathy and mild disc bulge at L4-L5 with mild - moderate left L4 neural foraminal stenosis.

Radiology

PAGE 1 of 2

PATIENT NAME: Crowley, Michael
DOB:
EXAM: MR-Lumbar Spine without contrast
EXAM DATE: 10/08/2018

3. Mild DDD and facet arthropathy at L5-S1 with small central disc protrusion. No nerve root contact. No stenosis.

James Thesing, DO

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***
10/8/2018 10:32 AM: James Thesing, DO

JT/jt
DD: 10/08/2018 10:24 am
DT: 10/08/2018 10:32 am
Accession #: 08-2937568

Radiology PAGE 2 of 2



Florence MRI & Imaging
www.SCDiag.com

Florence MRI & Imaging
805 S. Irby Street, Florence, SC 29501
p: 843.292.0400 f: 843.292.0470

PATIENT NAME: Crowley, Michael
DOB:
MRN:
PHONE:
PHYSICIAN: William B. Naso, MD
EXAM DATE: 08/08/2019

EXAM: MR-Lumbar Spine without contrast

REASON FOR EXAM: M54.16 - Radiculopathy, lumbar region

TECHNIQUE: Standard sagittal and axial sequences.

COMPARISON: 10/8/2018.

FINDINGS: Bone marrow signal unremarkable. Straightening. Conus terminates at L1.

L1-2 and L2-3 unremarkable. Minimal narrowing L3-4 with mild facet degenerative change. No stenosis.

At L4-5, mild bulging disc slightly asymmetric to the left with facet degenerative change. Left foraminal and lateral recess narrowing.

At L5-S1, focal central and left-sided protrusion with facet degenerative change. No significant stenosis.

IMPRESSION:

1. Straightening compatible with muscle spasm.
2. Mild disc changes lower lumbar spine, very similar to 10/2018.

Radiology

PAGE 1 of 2

PATIENT NAME: Crowley, Michael
DOB:
EXAM: MR-Lumbar Spine without contrast
EXAM DATE: 08/08/2019

- 3. Changes most advanced L4-5 with bulging disc and facet degenerative change. Slight left foraminal and lateral recess narrowing.

Glen A Pu, MD

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***
8/9/2019 11:10 AM: Glen A Pu, MD

GAP/II
DD: 08/09/2019 10:43 am
DT: 08/09/2019 10:58 am
Accession #: 08-3140580

Radiology PAGE 2 of 2

MQ Fax Server

1/31/2018 2:31:03 PM PAGE 2/002

Fax Server



SOUTH CAROLINA DIAGNOSTIC IMAGING

Florence MRI & Imaging
808 South Bay St. Florence, SC 29501
p: (843) 292-0400 f: (843) 292-0470

PATIENT: CROWLEY, MICHAEL
DOB:
MRN:
PHONE:
PHYSICIAN: NIGEL A WATT, MD
EXAM DATE: 01/31/2018

EXAM: MR Right Femur Without Contrast

REASON FOR EXAM: Strain of muscle, fascia and tendon of the posterior muscle group at thigh level, right thigh, initial encounter

TECHNIQUE: 1.5 T MRI right thigh utilizing multiplanar, multisequence imaging.

COMPARISON: None.

FINDINGS: Mildly diminished detail due to motion artifact. Common hamstring tendon is intact at its origin on the ischial tuberosity and symmetric in appearance. There is no focal hamstring muscle tear or edema through to the level of the distal femoral metaphysis. The hamstring tendons are not identified at or distal to the knee. Adductor and quadriceps musculature is unremarkable. There is no bone marrow edema or periostitis involving the right femur. No AVN in either femoral head. No deformity of the visualized portions of the right sciatic nerve.

IMPRESSION: Negative MRI of the right thigh/femur. There is no demonstration of a hamstring muscle or tendon injury. Note that the hamstring muscles and tendons at and distal to the knee are not included in the field of view and could be evaluated with MRI of the knee if clinically indicated.

James Thesing, DO

JAT/arf
DD: 01/31/2018 01:41 P
DT: 01/31/2018 02:10 P
Accession#: 08-2769115 VS#: 121540871 CS#: 2568403
cc:

Electronically Signed and Reviewed by James Thesing, DC 01/31/2018 02:13 P

4-02-19 3:48 pm

FLORENCE REHABILITATION MEDICINE
 900 E. CHEVES STREET
 FLORENCE, SC 29506
 (843) 661-4390 FAX (843) 629-7485

Patient: CROWLEY, MICHAEL **Age/DOB:** **Physician:** LORENZ
Sex: Male **Height:** 5'7 **Ref Phys:** ONECALL/SORIANO

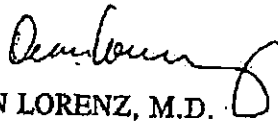
HISTORY

PATIENT REFERRED FOR ELECTRODIAGNOSTIC STUDY OF BILATERAL LOWER EXTREMITIES. PATIENT REPORTS LOW BACK PAIN RADIATING INTO THE RIGHT LEG WITH EDEMA IN THE FOOT. SYMPTOMS PERSISTENT SINCE 2017. PREVIOUS RIGHT KNEE SURGERY IN 1990. DENIES DIABETES AND THYROID DISEASE. RIGHT DORSAL FOOT SKIN TEMPERATURE IS 31.2C. LEFT DORSAL FOOT SKIN TEMPERATURE IS 32.3C.

CONCLUSION

RIGHT L5 RADICULOPATHY.

IF YOU HAVE ANY QUESTION REGARDING THIS ELECTRODIAGNOSTIC STUDY, PLEASE DO NOT HESITATE TO CALL. THANK YOU FOR THIS REFERRAL.


 DEAN LORENZ, M.D.

Nerve Conduction Report:

Motor Nerves

Nerve	Site	Onset Lat (ms)	Amplitude	Ares (mVms)	Seg Name	Delta (ms)	Distance (cm)	Velocity (m/s)
R Peroneal	EDE		O-P (mV)	Neg				
	Ankle	4.59	6.79	28.397	B Fib-Ankle	0		
	B Fib	11.02	6.45	27.157	Poplt-B Fib	6.42	29.10	45.3
	Poplt	12.98	6.57	27.176		1.97	9.80	49.8
R PostTib	AbdHal		O-P (mV)	Neg				
	Ankle	4.50	7.39	16.803	Knee-Ankle	0		
	Knee	13.69	4.88	13.847		9.19	38.60	42.0
L Peroneal	EDE		O-P (mV)	Neg				
	Ankle	4.50	6.19	21.530	B Fib-Ankle	0		
	B Fib	10.78	5.63	21.235	Poplt-B Fib	6.28	29.00	46.2
	Poplt	12.42	5.54	21.228		1.64	8.50	51.8

Sensory Nerves

Nerve	Site	Peak Lat (ms)	Amplitude	Seg Name
R S Peron	Ankle		P-T (uV)	
	14 cm	4.81	14.25	14 cm-Ankle
		4.36	19.00	
R Sural	LatMal		P-T (uV)	
	10 cm	3.42	41.54	10 cm-LatMal
	14 cm	4.25	35.23	14 cm-LatMal
	17 cm	5.03	16.85	17 cm-LatMal

CROWLEY, MICHAEL

4-02-19 3:48 pm 2

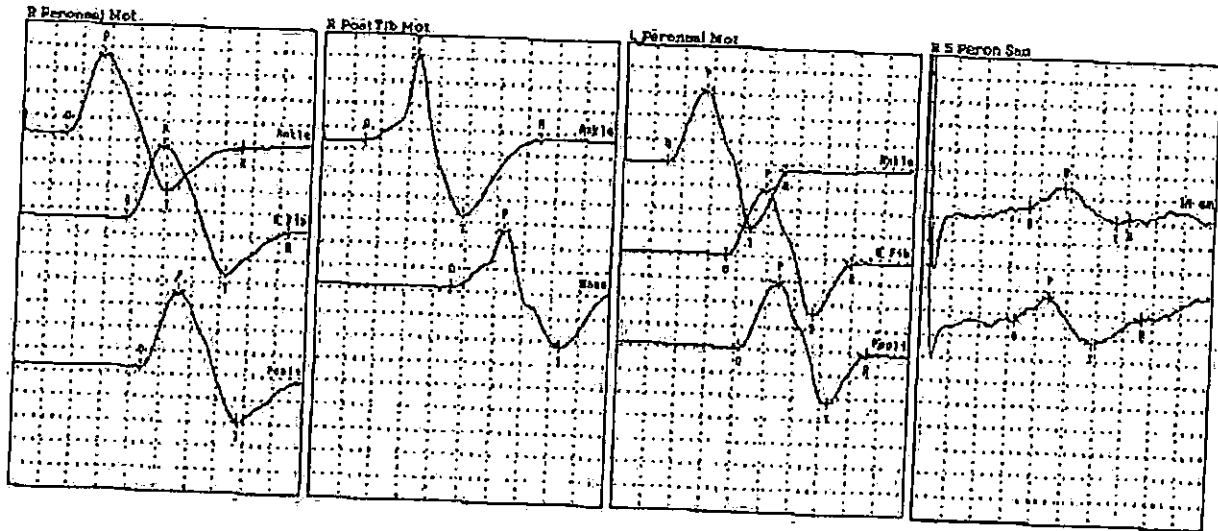
Nerve	Site	Peak Lat (ms)	Amplitude	Seg Name
L Sural	LatMa1 14 cm	3.97	P-T (µV) 11.47	14 cm-LatMa1

F/H Report:

Nerve	Muscle	Lat1 (ms)	Lat2 (ms)	Lat2 - Lat1 (ms)	Amplitude (µV)
L H Reflex H	Gast-Soleus	30.35	6.56	23.79	
R H Reflex H	Gast-Soleus	31.41	6.27	26.13	

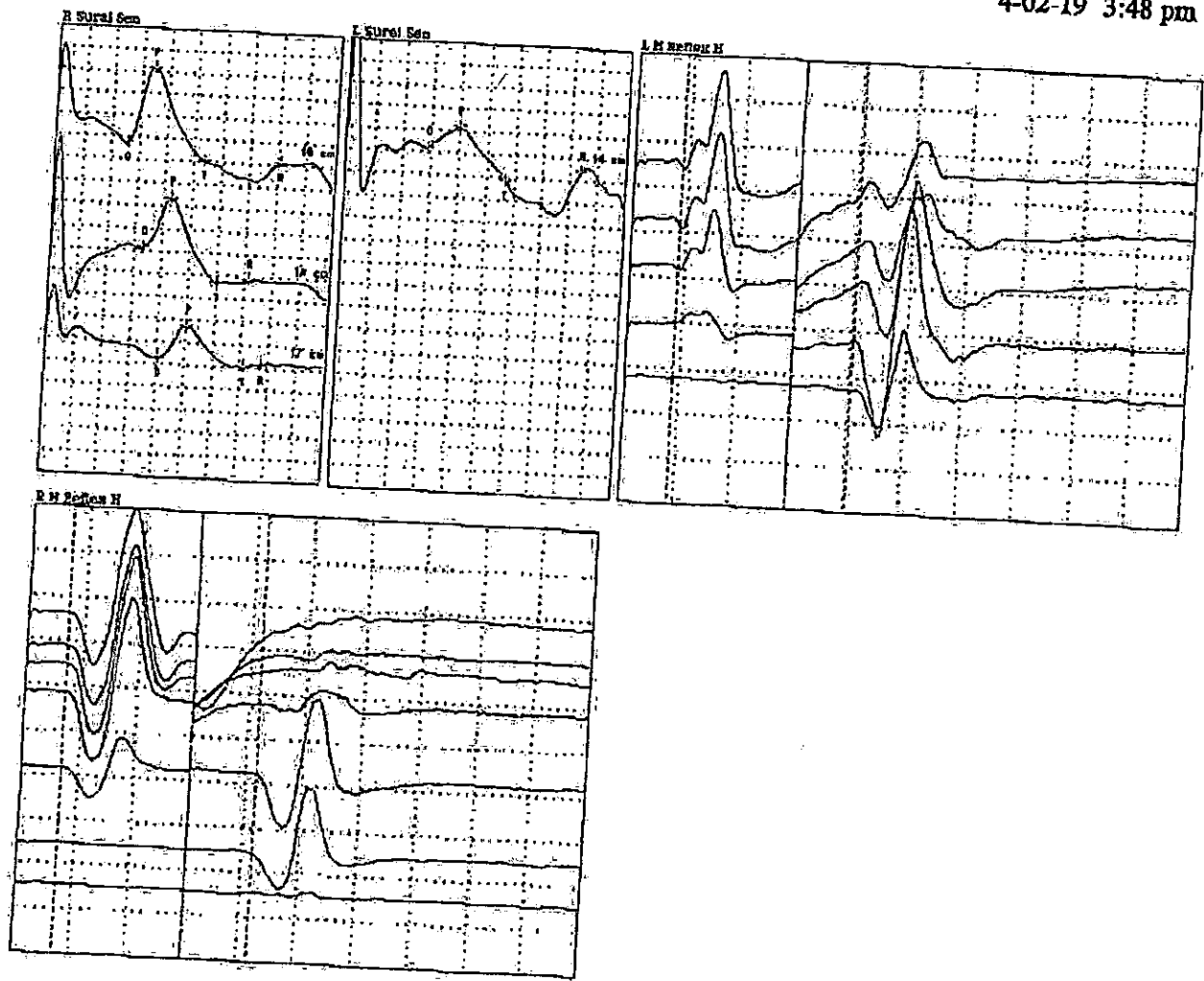
EMG Report:

Side	Muscle	Nerve	Root	INS	FIBS	PSW	AMP	DUR	PHS	REC	IP	Comment
L	Lumb Parasp	Rami	L1-S1	Nm1	Nm1	Nm1						
L	AdductorLong	Obturat	L2-4	Nm1	Nm1	Nm1						
L	AntTibialis	Dp Peron	L4-5	Nm1	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	
L	PostTibialis	Tibial	L5,S1	Nm1	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	
L	Soleus	Tibial	L5-S2	Nm1	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	
L	MedGastroc	Tibial	S1-2	Nm1	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	
R	Lumb Parasp	Rami	L1-S1	Nm1	Nm1	Nm1						
R	VastusMed	Femora1	L2-4	Nm1	Nm1	Nm1						
R	AntTibialis	Dp Peron	L4-5	Nm1	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	UNABLE TO RELAX
R	PostTibialis	Tibial	L5,S1	Inc	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	
R	FlexDigLong	Tibial	L5,S1	Inc	Nm1	Nm1	++	>12	2	Nm1	Nm1	
R	Soleus	Tibial	L5-S2	Nm1	Nm1	Nm1	++	>12	2	Nm1	Nm1	
R	MedGastroc	Tibial	S1-2	Nm1	Nm1	Nm1	Nm1	Nm1	2	Nm1	Nm1	



CROWLEY, MICHAEL

4-02-19 3:48 pm 3



Dora Windsorova, Ph.D., ABPP

Licensed Clinical Psychologist
2137 Hoffmeyer Road # D
Florence, SC 29501

Phone (843) 662-3330
Fax (843) 662-3315

Board Certified in Neuropsychology
American Board of Professional Neuropsychology

Clinical Psychology & Neuropsychology
Psychotherapy & Assessment

Note: This information and report is private and confidential and protected by South Carolina Law 19-11-93. All professional colleagues are required to maintain confidentiality and the release of this report must be in accordance with the terms of this law.

PSYCHOLOGICAL CONSULTATION

NAME: Michael Crowley **DOB:**
EDUCATION: 12 years **EVAL DATE:** 1-29-19
REF. PHYSICIAN: Barbara Sarb, D.O.

IDENTIFICATION AND REASON FOR REFERRAL: Mr. Crowley is a 49-year-old divorced, Caucasian male who has injured his back at work on 5-5-17 and again on 1-3-18 having chronic pain. Mr. Crowley is currently being considered for a spinal cord stimulator for pain management. A psychological consultation is carried out as part of his pre-procedure workup to provide psychological clearance for him to undergo the procedure and to identify any psychological issues that may need to be addressed in his pre and/or post-procedure care.

CURRENT COMPLAINTS AND PERTINENT HISTORY: The following history was obtained through an interview with Mr. Crowley who was believed to be a reliable historian and from review of medical records provided by Dr. Sarb. Mr. Crowley worked as a deputy sheriff when he was injured on his job on 5-5-17. Reportedly, he was trying to detain a juvenile with him being on the ground twisting his back and knee. Mr. Crowley was diagnosed with strained back being on medication and undergoing physical therapy for his knee and back. Mr. Crowley reported he did not require any time off work at that time continuing to work. He then suffered another injury on 1-3-18 when during a snowstorm he was pushing a car that was stranded in the process his knee buckled with him falling on the ground reinjuring his back and knee. At that time, Mr. Crowley was evaluated in the emergency room undergoing x-ray being told he strained his back being referred for physical therapy. After his second injury, Mr. Crowley has been on light duty for a year working in a courthouse. Mr. Crowley reported being treated by Dr. Joseph Chestle, an orthopedic surgeon. Not getting much pain relief, he was eventually referred to Dr. Barbara Sarb in consideration for him to have a spinal cord stimulator for pain management consulting with Dr. Sarb on 12-11-18 being recommended to have the stimulator. Mr. Crowley reported currently only being on medication as part of his pain management. He indicated his pain is in his lower back and his right hamstring and right knee. He rated his pain anywhere between 7-10/10 with his lowest pain being at best at 5/10. Provided records by Dr. Sarb indicate Mr. Crowley being diagnosed with chronic lumbar radiculopathy and chronic pain syndrome.

PSYCHOLOGICAL CONSULTATION

Michael Crowley

Page 2

Mr. Crowley already discussed the stimulator with Dr. Sarb. During today's session, he discussed the procedure having good understanding stimulator being aware initially having a trial prior to permanent implantation. He also was aware of possible injury and infection as a complication. He indicated if the stimulator would decrease his pain down to 3/10, he would consider it to be effective in managing his pain. Mr. Crowley has a good support system having assistance as needed before and after his procedure.

MEDICAL HISTORY: Mr. Crowley injured his right knee and his back in the 1990's. He underwent right knee surgery in the 1990's. He was involved in a motor vehicle accident in 2013 eventually undergoing cervical surgery for C5 and C6 in 2015. Mr. Crowley is post appendectomy and surgery on his right calf. He has high cholesterol and arthritis.

CURRENT MEDICATIONS: Capacet, Lortab 7.5/325 mg, Flexeril 10 mg, Zornig 2.5 mg, Simvastatin 40 mg, Prolong QT Interven, and Gabapentin 300 mg.

PSYCHIATRIC HISTORY: Mr. Crowley denied having any history of psychiatric illness or treatment, or history of alcohol or drug abuse. He is a nonsmoker. His family psychiatric history is significant for his maternal aunt having some mental health issues though Mr. Crowley not being aware of their nature.

PSYCHOSOCIAL HISTORY: Mr. Crowley grew up in Bennettsville, South Carolina in an intact and close family both of his parents living. He is the middle child of three. Reportedly, he had a good childhood without any abuse or trauma. After graduating from high school, Mr. Crowley worked in different plants until 2005 when he completed the police academy for 9 weeks with certification then working as a deputy sheriff. He also has a fire fighter certificate. Mr. Crowley married in 2004 after dating for several years divorcing in 2012. He has a 21-year-old son of whom he had joint custody with his son now living with Mr. Crowley. Mr. Crowley has been in a relationship for the past 5 years. He indicated having good support system.

MENTAL STATUS EXAMINATION: Mr. Crowley was pleasant and cooperative throughout the consultation. He was dressed in his uniform being neatly groomed. He was alert and fully oriented. He openly discussed his personal history and his hope for more effective pain management with the spinal cord stimulator. He frequently changed position being in apparent pain. Mr. Crowley indicated his mood to be "so-so" denying any depression though with pain he feels stressed and at times gets aggravated. He rated his mood at 7/10 (1 = worst ever, 10 = within normal range). His affect was within normal range and engaging. He reported at best sleeping 5 hours combined time feeling rested from his sleep 5 days a week. His appetite is good with him weighing 155 pounds at the height of 5'7" having stable weight for the past year. His energy is good. Mr. Crowley presented with intact thought process without any evidence of a formal thought disturbance. He denied having any history of auditory or visual hallucinations, delusions, or paranoid ideations. His memory and

PSYCHOLOGICAL CONSULTATION

Michael Crowley
Page 3

concentration is intact. Mr. Crowley's intellectual ability is estimated to be within low average given his educational and vocational background, his verbalization, and his reading level. He denied having any history of suicidal ideation and reported no recent change in his libido. His psychological insight was good, his judgment was intact.

Mr. Crowley completed the Wide Range Achievement Test - IV, Reading subtest, obtaining standard score of 79, which places his reading within the 6th grade level.

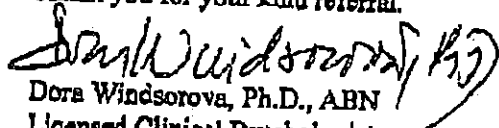
Mr. Crowley completed the Personality Assessment Inventory, an objective measure of psychological functioning, in a consistent and valid fashion. His clinical profile fell entirely within normal range not being indicative of any significant depression and/or clinical psychopathology with him only endorsing some concerns regarding his physical functioning and health matters in general. Mr. Crowley endorsed having a generally stable and positive self-esteem tending to be confident and optimistic. Interpersonally, he portrayed himself as being friendly and extroverted. Mr. Crowley endorsed having a relatively stress-free environment and extensive support system.

IN SUMMARY, Mr. Crowley is psychologically cleared to undergo spinal cord stimulator placement for pain management. He does not have any psychiatric history and currently presents as being psychologically stable without any significant depression and/or clinical psychopathology. Mr. Crowley has basic understanding of the spinal cord stimulator being aware of possible infection as a complication. He has realistic expectations for the procedure outcome. Mr. Crowley is highly motivated to improve his functioning with more effective pain management. I would anticipate him to be an active and compliant participant in his treatment and would not anticipate him to have any difficulties from a psychological standpoint should he have the stimulator. He has a good support system having assistance as needed before and after his procedure.

Dr. Sarb:

Should you have any further questions regarding Mr. Crowley's current psychological status in order for him to undergo spinal cord stimulator placement or if I could be of any further assistance in his care, do not hesitate to call me at 843-662-3330.

Thank you for your kind referral.


Dora Windsorova, Ph.D., ABN
Licensed Clinical Psychologist

Cc: Dianna Welch, RN, CCM

Vendor Code Post Date	Vendor Name Activity	Inv/Check #	Description	Invoice Amt	Check Amt
MIC100	MICHAEL CROWLEY				
01/26/2016	CHECK	W10CH 65339			
01/31/2016	INVOICE	0000018244		40.00	40.00
03/03/2016	CHECK	W10CH 65523			40.00
03/30/2016	CHECK	W10CH 65704			40.00
03/31/2016	INVOICE	0000018341		40.00	
03/31/2016	INVOICE	0000018422		40.00	
04/26/2016	INVOICE	0000018486		260.00	
04/29/2016	CHECK	W10CH 65871			
06/02/2016	CHECK	W10CH 66102			260.00
06/30/2016	INVOICE	0000018574		220.00	220.00
07/07/2016	CHECK	W10CH 66336			
07/28/2016	CHECK	W10CH 66478			190.00
07/31/2016	INVOICE	0000018681		190.00	160.00
07/31/2016	INVOICE	0000018743		160.00	
09/07/2016	CHECK	W10CH 66706			200.00
09/29/2016	CHECK	W10CH 66878			220.00
09/30/2016	INVOICE	0000018855		200.00	
09/30/2016	INVOICE	0000018898		220.00	
11/02/2016	CHECK	W10CH 67080			
11/30/2016	INVOICE	0000018993		300.00	300.00
12/01/2016	CHECK	W10CH 67239			
12/30/2016	INVOICE	0000019112		190.00	200.00
12/30/2016	CHECK	W10CH 67417			190.00
12/31/2016	INVOICE	0000019048		200.00	
02/02/2017	CHECK	W10CH 67617			
02/28/2017	INVOICE	0000019208		270.00	270.00
03/02/2017	CHECK	W10CH 67819			150.00
03/30/2017	INVOICE	0000019345		130.00	
03/30/2017	CHECK	W10CH 67988			130.00
03/31/2017	INVOICE	0000019278		150.00	
04/27/2017	CHECK	W10CH 68159			250.00
04/30/2017	INVOICE	0000019430		250.00	
06/02/2017	CHECK	W10CH 68366			
06/29/2017	CHECK	W10CH 68554			180.00
06/30/2017	INVOICE	0000019513		180.00	190.00
06/30/2017	INVOICE	0000019598		190.00	
08/02/2017	INVOICE	JULY 2017	JULY 2017 VOLUNTEER FIRE CALLS	270.00	
08/03/2017	CHECK	W10CH 68781			270.00
08/29/2017	INVOICE	08312017	VOLUNTEER FIRE PAY	100.00	
08/31/2017	CHECK	W10CH 68926			100.00
09/27/2017	INVOICE	09302017	VOLUNTEER FIRE PAY	130.00	
09/28/2017	CHECK	W10CH 69133			130.00
11/01/2017	INVOICE	VOLUNTEER PAY OCT	VOLUNTEER FIRE PAY	220.00	
11/02/2017	CHECK	W10CH 69373			220.00
11/30/2017	INVOICE	11/30/2017	VOLUNTEER FIRE PAY	260.00	
11/30/2017	CHECK	W10CH 69599			260.00
01/02/2018	INVOICE	V.PAY 1/1/18	VOLUNTEER FIRE PAY	170.00	
01/05/2018	CHECK	W10CH 69804			170.00
02/01/2018	INVOICE	01/31/2018	VOLUNTEER FIRE PAY	260.00	
02/01/2018	CHECK	W10CH 69968			260.00
03/01/2018	INVOICE	03/01/2018	VOLUNTEER FIRE PAY	160.00	
03/01/2018	CHECK	W10CH 70140			160.00
04/30/2018	INVOICE	VOLUNTEER 4/30/18	VOLUNTEER FIRE PAY	60.00	
05/03/2018	CHECK	W10CH 70461			60.00
05/31/2018	INVOICE	VOLUNTEERPAY5/31/	VOLUNTEER FIRE PAY	20.00	
05/31/2018	CHECK	W10CH 70611			20.00
07/09/2018	INVOICE	6/2018 VOLUNTEER	6/2018 VOLUNTEER PAY	20.00	
07/09/2018	CHECK	W10CH 70882			20.00
08/01/2018	INVOICE	7/18 VOLUNTEER	7/2018 VOLUNTEER PAY	20.00	
08/02/2018	CHECK	W10CH 71079			20.00
09/27/2018	INVOICE	VPAY 9/30/18	VOLUNTEER FIRE PAY	20.00	
09/27/2018	CHECK	W10CH 71385			20.00
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11/01/2018	CHECK	W10CH 71594			20.00
11/28/2018	INVOICE	VPAY 11/2018	VOLUNTEER FIRE PAY	20.00	
11/29/2018	CHECK	W10CH 71709			20.00
02/25/2019	INVOICE	VPAY 12/31/18		20.00	
02/25/2019	INVOICE	VPAY 1/31/19		20.00	
02/25/2019	CHECK	W10CH 72182			40.00
02/13/2019	INVOICE	VPAY FEB 2019		40.00	
02/14/2019	CHECK	W10CH 72299			40.00
Total:				5,060.00	5,060.00
Net of 36 Invoices / 35 Checks					

2016

2060

2017

2490.00

12/30/2019 02:42 PM
User: Patricia.Bethea
DB: Bennettsville

VENDOR ACTIVITY REPORT FOR CITY OF BENNETTSVILLE
VENDOR RANGE: MIC100 TO MIC100
Activity From 01/01/2016 To 12/30/2019

Page: 2/2

Vendor Code Post Date	Vendor Name Activity	Inv/Check #	Description	Invoice Amt	Check Amt
Grand Total 36 invoices and 35 checks f				5,060.00	5,060.00

Rose Thielke

From: Rose Thielke
Sent: Monday, October 26, 2020 5:22 PM
To: Anne V. Noonan; Kim Hinkle; Preston F. McDaniel
Cc: Andrea Ham; Erica M. Senn; Gerald Malloy (gmalloy@bellsouth.net); Greta Elliotte
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969: Hearing Notice - WCC# 1716288; Crowley and 1801098
Attachments: SCAN20102617320.pdf

Anne,

I made one correction.

Also, attached is part of a letter (part on Crowley) that I sent to a friend of mine in MUSC General Counsel's office.

Your thoughts after you read.

Preston

-----Original Message-----

From: Anne V. Noonan <avnoonan@wjlaw.net>
Sent: Monday, October 26, 2020 11:09 AM
To: Kim Hinkle <kim@pfmcdlaw.com>; Preston F. McDaniel <preston@pfmcdlaw.com>
Cc: Andrea Ham <aham@pfmcdlaw.com>; Erica M. Senn <EMSenn@wjlaw.net>; Gerald Malloy (gmalloy@bellsouth.net) <gmalloy@bellsouth.net>; Rose Thielke <rose@pfmcdlaw.com>; Greta Elliotte <gelliotte@bellsouth.net>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969: Hearing Notice - WCC# 1716288: Crowley and 1801098
Importance: High

Preston: Attached is the Consent Order as we agreed at the prehearing conference. Please sign this and file it or return it to me for filing.

Erica is requesting the 2nd opinion with MUSC for the low back.

Thank you, Anne

Anne Veatch Noonan, Attorney
avnoonan@wjlaw.net
421 Wando Park Blvd., Suite 100
Mount Pleasant, South Carolina 29464
Phone: (843) 284-1097
Fax: (843) 284-1081
wjcbllaw.com

Part of letter on Crowley

The first is a deputy sheriff that I just had the Commission order by agreement a second opinion at MUSC concerning his low back problem. He sustained an injury to his low back affecting his legs, but no doctor so far has recommended surgery. However, EMG studies have confirmed a radiculopathy (at L5-S1) in the right leg: he is under chronic pain management out of North Carolina for both the low back and neck (not related); he is working in a sedentary job at the courthouse and he is getting ready to retire; and an FCE confirmed that he is not even qualified for sedentary work; however, one of the interesting things about this Deputy's problem is that 3 different orthopaedists and neurosurgeons have either listed a diagnosis of or have entertained a diagnosis of reflex sympathetic dystrophy as being the cause of or a factor in his problems.

We were about to have a hearing and then he advised that his pain in his back and particularly his leg is getting much worse over the last couple of months and the insurance carrier agreed to send him to MUSC for an evaluation and treatment, to see if they can find something that can help him. He has 2 failed stimulator trials in Florence.

I do not mean this to be disrespectful, but so many times I find that neurosurgeons and many orthopaedic surgeons, when they find it is not surgical, they really don't offer any alternatives. If a patient is sent to pain management, the pain management doctors focus on the pain management and not any alternatives. In my opinion, physical rehabilitation medicine specialists tend to try to address all different modalities.

So, I have got no problem if they send him to a neurosurgeon or to an orthopaedist or neurologist or a physical medicine rehabilitation specialist, but I really want it to be somebody that will simply look at all the different treatment modalities that are out there that may give this

man some relief, otherwise he is going to be on multiple opioids and chronic pain management medications for the remainder of his life. He is truly pitiful.

Rose Thielke

From: Rose Thielke
Sent: Tuesday, October 27, 2020 12:14 PM
To: Anne V. Noonan
Cc: Kim Hinkle; Andrea Ham
Subject: RE: Michael Crowley

Dear Anne,

Thanks, but I have already stopped it. This is the attorney that all of the departments call all the time for favors and advice and actually she has delayed fears in other cases, including several involving the Shepard Center. Thus, another example why I hate emails and again it proves my point, meaning my assumption that the carrier thought I was trying to take away their right to choose the doctor, or somehow manipulate this .

Stay safe.

Preston

From: Anne V. Noonan <avnoonan@wjlaw.net>
Sent: Tuesday, October 27, 2020 11:51 AM
To: Rose Thielke <rose@pfmcdlaw.com>
Cc: Kim Hinkle <kim@pfmcdlaw.com>; Andrea Ham <aham@pfmcdlaw.com>
Subject: RE: Michael Crowley

Preston:

Usually if anything is sent to legal in my experience, it raises a red flag for them (they think they are getting deposed no matter what) and then they turn us down and "decline" to do the second opinion or IME (they just send our check back). It happens a lot. If you know someone there well though maybe it won't raise a red flag.

WJC&B

WILLSON JONES CARTER
& BAXLEY, P.A.

Anne Veatch Noonan, Attorney
avnoonan@wjlaw.net
421 Wando Park Blvd., Suite 100
Mount Pleasant, South Carolina 29464
Phone: (843) 284-1097
Fax: (843) 284-1081
wjclaw.com

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Tuesday, October 27, 2020 11:46 AM
To: Anne V. Noonan <avnoonan@wjlaw.net>

Cc: Kim Hinkle <kim@pfmcdlaw.com>; Andrea Ham <aham@pfmcdlaw.com>

Subject: Michael Crowley

Dear Anne,

Please find attached the Consent Order signed as written.

Next, I am writing the person I know at MUSC and telling her to ignore the letter, as I want nothing to affect this man getting a second opinion.

Anne, for the love of humanity, what in the world did I say in that letter that in any way implied that I was trying in any way to take away your clients right to choose the doctor that provides the second opinion. Did I name any doctor, did I ask for any doctor, did I do anything other than simply say that we wanted to get him to somebody that would look at all possibilities out there to try to get this man some help to treat his problem. My client is hurting.

Again, I am telling the person I know in counsels office to ignore that letter. I guess it just proves again that that carpenter was right 2000 years ago that the love of money is the root of all evil. I long for the day when again all of us can talk to each other without thinking what is your ulterior motive. Again, I apologize.

Stay safe.

Sincerely,

Preston

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 35 years.

Preston F. McDaniel

Matthew C. Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

January 6, 2021

CERTIFIED MAIL - 70171450000190106411
RETURN RECEIPT REQUESTED
Dr. James Frank Bethea, MD
MUSC
Primary Care - Epic Center
West Ashley Medical Pavilion
2060 Sam Rittenberg Boulevard
Charleston, SC 29407

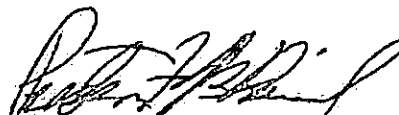
RE: Michael Crowley
DOB:

Dear Dr. Bethea:

Please find attached a Subpoena for the production of records in reference to the evaluation performed by you on Deputy Michael Crowley. By copy of this letter I am notifying and serving Counsel for the Defendants with a copy of this Subpoena to produce records.

I look forward to receiving the records.

Sincerely yours,


Preston F. McDaniel

PFM/rmt/kth
Enclosures

cc: Gerald Malloy, Esquire
Anne V. Noonan, Esquire
Mr. Michael Crowley

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com
OFFICIAL USE

7017 1450 0001 9010 6411

Certified Mail Fee \$ **3.55**

Extra Services & Fees (check box, add fee to appropriate)

Return Receipt (hardcopy) \$ **2.25**

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ **.50**

Total Postage and Fees \$ **6.90**

Postmark
Here

Sent To **Dr Bethur**

Street and Apt. No., or P.O. Box No. **2060 Sam Rittenberg Blvd**

City, State, ZIP+4® **Charleston SC 29407**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dr. James Frank Bethur
MUSC
Primary Care - Epic etc
West-Ashley Medical Pavilion
2060 Sam Rittenberg Blvd
Charleston SC 29407

2. Article Number (Transfer from service label) **7017 1450 0001 9010 6411**

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

x Vicki E. Allen

B. Received by (Printed Name) **Vicki E. Allen**

C. Date of Delivery **4-11-2021**

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below: _____

3. Service Type

Certified Mail® Priority Mail Express™

Registered Return Receipt for Merchandise

Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes No



Claimant's Name: Michael Crowley SSN: _____ Employer's Name: Darlington County
Address: _____ Address: 1 Public Square, Room 210
City: Bennettsville State: SC Zip: 29512 City: Darlington State: SC Zip: 29532
Home Phone: () - - Work Phone: () - - Insurance Carrier: SC Association of Counties SIF
Preparer's Name: Preston F. McDaniel, Esq. Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

SUBPOENA

To: **Dr. James Frank Bethea, MD, MUSC, Primary Care - Epic Center, West Ashley Medical Pavilion, 2060 Sam Rittenberg Blvd, Charleston, SC 29407**

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____ **ROOM:** _____
DATE AND TIME: _____

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: _____ **DATE AND TIME:** _____

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

SEE ATTACHED LIST OF DOCUMENTS.

PLACE: McDaniel Law Firm, 1315 Elmwood Ave.,
Columbia, SC 29201 **DATE AND TIME:** 01/26/2021
12:00 Noon pm

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ **DATE AND TIME:** _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

Preston F. McDaniel, Esquire
Attorney for the Claimant
ISSUING OFFICER'S SIGNATURE AND TITLE

(803) 771-7211
PHONE NUMBER

January 6, 2021
DATE

this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5675.

MICHAEL CROWLEY v. DARLINGTON COUNTY

WCC FILE NO.: 1716288 & 1801098

ATTACHMENT TO FORM 27 - SUBPOENA DUCES TECUM

1. Any and all written communications and documents including letters, facsimiles, emails, etc. by and from the Defense Counsel, Willson Jones Carter & Baxley; the Adjuster; or anyone representing the employer, Darlington County, or the Insurance Carrier, SC Association of Counties SIF, in reference to the evaluation that was performed on December 17, 2020 on Deputy Michael Crowley, DOB: _____ and
2. Any and all medical records or other documentation including x-rays, MRIs, or other scans forwarded or provided to you by either the Employer; the Insurance Carrier; their Attorney; Adjuster; or anyone else representing the employer and/or the insurance carrier in reference to the evaluation performed on December 17, 2020 on Deputy Michael Crowley, DOB: _____

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, SC 29551
(843) 339-3000

Attorneys for the Claimant

January 6, 2021

CERTIFICATE OF SERVICE

WCC File No. 1716288 & 1801098

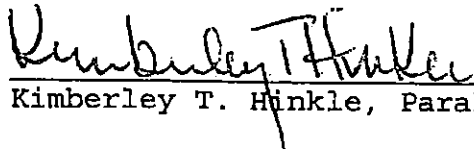
I hereby certify that I have on this day, served a copy of the document described below in the matter of Michael Crowley v. Darlington County addressed as follows:

TO: CERTIFIED MAIL - 70171450000190106411
RETURN RECEIPT REQUESTED
Dr. James Frank Bethea, MD
MUSC
Primary Care - Epic Center
West Ashley Medical Pavilion
2060 Sam Rittenberg Boulevard
Charleston, SC 29407

Anne V. Noonan, Esquire
WILLSON JONES CARTER & BAXLEY
421 Wando Park Blvd.
Mt. Pleasant, SC 29464

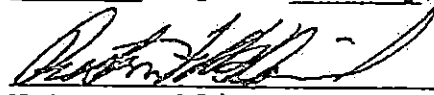
DOCUMENT: Form 27 - Subpoena Duces Tecum

DATE OF MAILING: January 6, 2021



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
6th day of January, 2021.



Notary Public for South Carolina (L.S.)
My Commission Expires: 12/25/25

Rose Thielke

From: Rose Thielke
Sent: Friday, January 15, 2021 4:53 PM
To: Boyd, Amanda
Cc: Kim Hinkle; Andrea Ham
Subject: Michael Crowley
Attachments: SCAN21011516040.pdf

Amanda,

Please find attached the subpoena for records and also the email I sent to Dr. Bethea back on January 6th. I had drafted another one, but I thought better of it. I look forward to hearing from Dr. Bethea.

Addendum after drafting; Amanda please send me an email confirming that we are resetting the deposition for January 27th at 4:00 pm, and I assume Dr. Bethea will attend via Zoom from his office at your location. I just need to put that in the notice to the defense lawyer.

I will notify the defense lawyer and the court reporter to set this up. Again, I look forward to hearing from Dr. Bethea.

Sincerely,

Preston F. McDaniel
Attorney at Law

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1716288 & 1801098
Carrier File #: 2017-SCAC-068969
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Michael Crowley SSN: _____ Employer's Name: Darlington County
Address: _____ Address: 1 Public Square, Room 210
City: Bennettsville State: SC Zip: 29512 City: Darlington State: SC Zip: 29532
Home Phone: () - Work Phone: () - Insurance Carrier: SC Association of Counties SIF
Preparer's Name: Preston F. McDaniel, Esq. Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

SUBPOENA

To: **Dr. James Frank Bethea, MD, MUSC, Primary Care - Epic Center, West Ashley Medical Pavilion, 2060 Sam Rittenberg Blvd, Charleston, SC 29407**

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DATE AND TIME: _____

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PLACE OF DEPOSITION: _____ **DATE AND TIME:** _____

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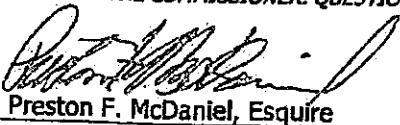
SEE ATTACHED LIST OF DOCUMENTS.

PLACE: McDaniel Law Firm, 1315 Elmwood Ave., **DATE AND TIME:** 01/26/2021
Columbia, SC 29201 12:00 Noon pm

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ **DATE AND TIME:** _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.



Preston F. McDaniel, Esquire
Attorney for the Claimant
ISSUING OFFICER'S SIGNATURE AND TITLE

(803) 771-7211
PHONE NUMBER

January 6, 2021
DATE

Fill out this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5675.

MICHAEL CROWLEY v. DARLINGTON COUNTY

WCC FILE NO.: 1716288 & 1801098

ATTACHMENT TO FORM 27 - SUBPOENA DUCES TECUM

1. Any and all written communications and documents including letters, facsimiles, emails, etc. by and from the Defense Counsel, Willson Jones Carter & Baxley; the Adjuster; or anyone representing the employer, Darlington County, or the Insurance Carrier, SC Association of Counties SIF, in reference to the evaluation that was performed on December 17, 2020 on Deputy Michael Crowley, DOB: : and
2. Any and all medical records or other documentation including x-rays, MRIs, or other scans forwarded or provided to you by either the Employer; the Insurance Carrier; their Attorney; Adjuster; or anyone else representing the employer and/or the insurance carrier in reference to the evaluation performed on December 17, 2020 on Deputy Michael Crowley, DOB:

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, SC 29551
(843) 339-3000

Attorneys for the Claimant

January 6, 2021

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston R. McDaniel

Matthew C. Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

January 6, 2021

VIA EMAIL: boydama@musc.edu
AND US MAIL

James Bethea, MD
2060 Sam Rittenberg Blvd.
Charleston, SC 29407

RE: Michael Crowley;
DOB:

Dear Dr. Bethea:

Due to increased pain over the last several months, especially in his leg, before a scheduled October Hearing at Deputy Crowley's request made to the Commissioner at the time of the Hearing that he be sent to a specialist at the Medical University of South Carolina for an evaluation as to whether there was any treatment, other than that which he is receiving, that could provide him relief or effect a cure of his problems stemming from his back injury, the insurance company consented and agreed to provide that evaluation. They scheduled the evaluation with you for that purpose and that purpose only.

To say that I was shocked and appalled at the issues you addressed in your report would be to say the least. I want to know:

1. What were you told about the purpose of the evaluation?
2. Who asked you to address impairment?
3. Who asked you to address his work restrictions as established by the authorized treating physicians?
4. Who asked you to express an opinion on symptom Magnification?
5. Who asked you for an opinion questioning the current treatment he is receiving?

My God, this man was asking for, hoping for, and praying for treatment that may help him.

I look forward to hearing from you or seeing you at a deposition to answer these questions.

James Bethea, MD
January 6, 2021
Page 2

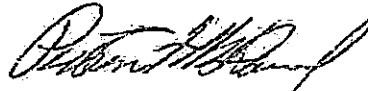
If the purpose of the evaluation was not explained to you and/or if you would like to withdraw your report and issue a revised report simply addressing whether there is any treatment, other than that which he is receiving, that may help him; or if you want to see him again for that purpose and will write me a letter to that effect, that would be acceptable.

In reference to your evaluation and another appointment, it was my understanding that any tests, any treatment, and/or any referrals to any other specialists that the specialist (you) felt might offer him help, all that would be authorized.

Again, Deputy Crowley asked for this evaluation to see if a MUSC specialist could provide him any relief, not a Defense IME.

I look forward to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/bhk

cc: Gerald Malloy, Esquire

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew C. Robertson

Facsimile (803) 252-0709

January 19, 2021

VIA EMAIL: boydama@musc.edu
& US MAIL
James Bethea, MD
2060 Sam Rittenberg Blvd.
Charleston, SC 29407

RE: **Michael Crowley;**
DOB:

Dear Dr. Bethea:

Please find attached a Notice of Deposition and Subpoena for your attendance at the deposition, DE BENE ESSE, which will be conducted via Zoom conference at the time and location per your request on January 27th at 4:00 pm.

While this is by notice and agreement, attached is a Certificate of Service, serving this Notice of Deposition and Subpoena on you. I would appreciate a confirmation of receipt, via email from your assistant, and I look forward to seeing you at the deposition.

Sincerely yours,



Preston F. McDaniel

PFM/rmt

cc: Gerald Malloy, Esquire
Anne Noonan

R1030

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1801098 & 1716288

Michael Crowley,)
)
EMPLOYEE/CLAIMANT,)
)
v.)
)
Darlington County,)
)
EMPLOYER, and)
)
South Carolina Association)
of Counties SIF,)
)
INSURANCE CARRIER,)
DEFENDANT(S).)
)

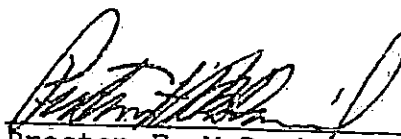
NOTICE OF DEPOSITION
DE BENE ESSE OF
JAMES FRANK BETHEA, MD
VIA ZOOM

TO: ANNE V. NOONAN, ATTORNEY FOR THE DEFENDANTS, WILLSON JONES
CARTER & BAXLEY, 421 WANDO PARK BLVD, SUITE 100, MT PLEASANT, SC
29464; JAMES FRANK BETHEA, MD, MUSC HEALTH, WEST ASHLEY MEDICAL
PAVILION, 2060 SAM RITTENBERG BLVD., CHARLESTON, SC 29407:

YOU WILL PLEASE TAKE NOTICE that at 4:00 o'clock p.m. on
the 27TH day of January 2021, the attorney for the Claimant will
take the deposition de bene esse of James Frank Bethea, MD, for
purposes of cross-examination pursuant to, and including, but
not limited to, SC Code §1-23-320; §1-23-330(3); §42-3-160 Via
Zoom at MUSC Health, West Ashley Medical Pavilion, 2060 Sam
Rittenberg Blvd, Charleston, SC 29407, upon oral examination
before a Notary Public or before some other officer authorized
by law to take depositions, said deposition to continue from day

to day until completed. You are invited to attend and take part
as is fit and proper.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, SC 29551
(843) 339-3000

Attorneys for the Claimant

January 19, 2021



Claimant's Name: Michael Crowley SSN: _____ Employer's Name: Darlington County
Address: _____ Address: 1 Public Square, Room 210
City: Bennettsville State: SC Zip: 29512 City: Darlington State: SC Zip: 29532
Home Phone: () - - Work Phone: () - - Insurance Carrier: SC Association of Counties SIF
Preparer's Name: Preston F. McDaniel, Esq. Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

SUBPOENA

To: **Dr. James Frank Bethea, MD, MUSC Health, West Ashley Medical Pavilion, 2060 Sam Rittenberg Blvd, Charleston, SC 29407 - VIA Zoom**

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____ ROOM: _____
DATE AND TIME: _____

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: **Dr. James F. Bethea, MD, MUSC Health, West Ashley Medical Pavilion, 2060 Sam Rittenberg Blvd, Charleston, SC 29407 -VIA Zoom** DATE AND TIME: 01/27/2021 4:00 PM

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.


All documents listed in the Subpoena served upon you on January 6, 2021.

PLACE: **Dr. James F. Bethea, MD, MUSC Health, West Ashley Medical Pavilion, 2060 Sam Rittenberg Blvd, Charleston, SC 29407 - VIA Zoom** DATE AND TIME: 01/27/2021 4:00 PM

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.


Preston F. McDaniel, Esquire
Attorney for the Claimant
ISSUING OFFICER'S SIGNATURE AND TITLE

(803) 771-7211
PHONE NUMBER

January 19, 2021
DATE

Use this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5675.

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this day served the following in the matter of Michael Crowley v. Darlington County with a copy of the **Claimant's Notice of Deposition De Bene Esse and Subpoena** for Dr. James F. Bethea Deponent via email and by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

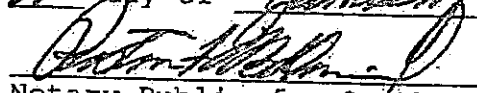
Anne V. Noonan, Attorney
Willson Jones Carter & Baxley
421 Wando Park Blvd., Suite 100
Mt. Pleasant, SC 29464



Rose Thielke

SWORN TO BEFORE ME this

17th day of January, 2021.



(L.S.)
Notary Public for South Carolina

My Commission Expires:

10/25/28

Rose Thielke

From: Rose Thielke
Sent: Tuesday, January 19, 2021 3:12 PM
To: boydama@musc.edu
Cc: Kim Hinkle; Andrea Ham; Anne V. Noonan
Subject: Michael Crowley
Attachments: SCAN21011914580.pdf

The attached letter, Notice of Deposition and Subpoena are being sent at the request of Preston McDaniel.

Rose Thielke
McDaniel Law Firm



RE: M Crowley-Cancellation of Deposition [SEND SECURE]

From: Boyd, Amanda

To: Rose Thielke

Cc: Anne V. Noonan, Kim Hinkle, Andrea Ham, 'Greta Elliott', Gerald Malloy (gmalloy@belisouth.net), Erica M. Senn, Fairbairn, Vivian

Sent: 1/26/2021 4:03:59 PM

Attachments: 2020.11.11-M. Crowley-Records Review Invoice.pdf; 2020.11.11-M. Crowley-IME Invoice.pdf; M. Crowley IME-Dr. Bethea. E-mails.pdf

Hi Mr. McDaniel,

My understanding is that medical records has provided you with a copy of the patients records, however please find respo requested.

If you have any additional questions or concerns please contact Vivian Fairburn in the General Counsel's Office.

Thank you,
Amanda B



Amanda Boyd

Administrative Assistant
Department of Orthopaedics & Physical
Medicine
96 Jonathan Lucas St. Suite 708, MSC 622
Charleston, SC 29425

P: 843-792-8959
F: 843-792-3674
E: boydama@musc.edu

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Tuesday, January 26, 2021 2:57 PM
To: Boyd, Amanda <boydama@musc.edu>
Cc: Anne V. Noonan <avnoonan@wjlaw.net>; Kim Hinkle <kim@pfmcdlaw.com>; Andrea Ham <aham@pfmcdlaw.com>; 'G <gelliotte@bellsouth.net>; Gerald Malloy (gmalloy@bellsouth.net) <gmalloy@bellsouth.net>; Erica M. Senn <EMSenn@w
Subject: Michael Crowley-Cancellation of Deposition

CAUTION: External

Dear Amanda,

I have not heard from you to confirm that Dr. Bethea will not go forward with the deposition unless pre-payment i made fo having heard from the defendants that they will not pay the fee so we may execute our right of cross-examination, and bas January 22, 2021, stating that, "all fees must be received prior to rendering of any service". **I am hereby canceling the dep tomorrow** and will take this up with the Commission, as to the report and as to whether or not a deposition will be ordere required to pay for it.


By copy of this email I am notifying defense counsel of the cancellation of the deposition. It was nice communicating with y

As to the records subpoena, defense counsel has provided me with copies of emails and letters from them, and has provide the medical records that were sent to Dr. Bethea, all of which I was unaware of. However, there are no emails or communic nor are there any bills for the cost of the evaluation, and so I still would request production of all the records requested. TF to be forwarded to us today by 12:00 noon. They have not been received. Please communicate with MUSC General Couns them to call me in reference to this production so that we can ensure that all records requested are provided.

It was a pleasure working with you. Had I known about all this communication beforehand, none of this would have ever c

Sincerely yours,

Preston F. McDaniel
Attorney at Law



MUSC Health
 Medical University of South Carolina
**Department of Orthopaedics
 & Physical Medicine**

96 Jonathan Lucas Street
 CSB • Suite 708 • MSC 622
 Charleston, SC 29425
 Patient Care/Scheduling: 843-876-0111
 Administrative Office: 843-792-1792
 Facsimile: 843-792-3674

Department Chair
 Lee R. Leddy, MD

Arthritis & Joint Reconstruction
 Harry A. Demos, MD
 Richard J. Friedman, MD, FRCSC
 Zeke J. Walton, MD

Foot & Ankle
 Christopher E. Gross, MD

General Orthopaedics
 James F. Bethea, MD
 Howard L. Brilliant, MD

Hand, Wrist and Microvascular
 Dane N. Daley, MD

Orthopaedic Oncology
 Lee R. Leddy, MD
 Zeke J. Walton, MD

Orthopaedic Trauma
 Langdon A. Hartsock, MD, FACS
 Kristoff R. Reid, MD

Pediatric Orthopaedics
Pediatric Spinal Disorders & Scoliosis
 Matthew A. Dow, MD
 Robert F. Murphy, MD
 Sara S. Van Nortwick, MD

Physical Medicine & Rehabilitation
 Daniel G. Areson, DO, MS
 Emily A. Darr, MD
 David R. O'Brien, Jr., MD
 John M. Schmidt, MD
 Vivek Sindhi, MD, MBA

Shoulder & Elbow
 Josef K. Eichinger, MD
 Richard J. Friedman, MD, FRCSC
 Shane K. Woolf, MD

Spinal Disorders & Scoliosis
 Daniel G. Areson, DO, MS
 Emily A. Darr, MD
 John A. Glaser, MD
 David R. O'Brien, Jr., MD
 Charles A. Reitman, MD
 Barton L. Sachs, MD, MBA, FACS
 John M. Schmidt, MD
 Vivek Sindhi, MD, MBA

Sports Medicine
 Libby E. Barton, MD
 Harris S. Slone, MD
 Shane K. Woolf, MD

*Orthopaedic Research
 & Clemson BioEngineering*
 William R. Barfield, PhD
 Martine LaBerge, PhD
 Jessica E. Thaxton, PhD
 Yongren Wu, PhD
 Hai Yao, PhD

November 11, 2020

Erica M. Senn
 Paralegal
 Willson Jones Carter & Baxley, P.A.
 Phone: 843-284-0691
 Fax: 843-284-1081
 Via Email: emsenn@wjlaw.net

RE: Michael Crowley
 MRN:
 DOB:
 DOI: 05/05/2017 & 01/03/2018
 Claim #: 2017-SCAC-068969

Dear Erica:

Thank you for your correspondence regarding the above-mentioned patient. Listed below are the fees for services requested of *James F. Bethea, M.D.* All fees must be received prior to the rendering of any service. If the requested service is canceled at any time by the requesting party, there will be no refund of payment. Rescheduling services will require additional payment. Please send a check payable to **MUSC Health**

MUSC Health
 96 Jonathan Lucas St.
 MSC 622; Suite 708 CSB
 Charleston, SC 29425

DESCRIPTION	
Review of Records	\$1,000.00
- per request	
Total Amount Due	\$1,000.00

Please contact our offices if you have any questions,
 843-876-1119 or 843-792-8959

Administrative Assistant:
 Amanda Boyd, 843-792-8959



**Department of Orthopaedics
& Physical Medicine**

96 Jonathan Lucas Street
CSB • Suite 708 • MSC 622
Charleston, SC 29425
Patient Care/Scheduling: 843-876-0111
Administrative Office: 843-792-1792
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Zeke J. Walton, MD

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Rahn A. Ravenell, DPM
Daniel J. Scott, MD, MBA

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Howard L. Brilliant, MD
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Sara S. Van Norwick, MD

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Sudeep Mehta, MD
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Libby E. Winton, MD

*Orthopaedic Research
& Clemson BioEngineering*
William R. Barfield, PhD
Martine LaBerge, PhD
Jessica E. Thaxton, PhD
Yongren Wu, PhD
Hai Yao, PhD

November 11, 2020

Erica M. Senn
Paralegal
Willson Jones Carter & Baxley, P.A.
Phone: 843-284-0691
Fax: 843-284-1081
Via Email: emsenn@wjlaw.net

RE: Michael Crowley
MRN: --
DOB: .
DOI: 05/05/2017 & 01/03/2018
Claim #: 2017-SCAC-068969

Dear Erica:

Please consider this an invoice for an Independent Medical Examination (IME) rendered by *James F. Bethea*, MD in the Department of Orthopaedics at the Medical University of South Carolina.

Prior to scheduling, a pre-payment of \$4,000.00 must be received in order to reserve a time. The pre-payment is non-refundable if canceled 14 days or less from the appointment date. Additionally, if an appointment is rescheduled within 14 days or less, additional payment will be required. Please contact Amanda Boyd at 843-792-8959 if scheduling issues should arise.

Although records have been submitted prior to this invoice, be sure that the patient provides/brings any MRI or x-rays films with him/her to the appointment. If not provided, the clinician can cancel the appointment and an additional fee will be required to reschedule it. **Please note there may be additional facility charges as the fee below is strictly for the IME report.**

DESCRIPTION	
Independent Medical Exam/2 nd Opinion (For 2+ body parts)	\$4,000.00/request
TOTAL AMOUNT DUE	\$4,000.00

please make check payable to and mail to: MUSC Health
96 Jonathan Lucas St
MSC 622
Charleston, SC 29425

Contact information:
Amanda Boyd, 843-792-8959
Administrative Assistant

From: emsenn@wjcbjlaw.com
To: Boyd, Amanda
Subject: RE: WCC #1716288 Mi Crowley vs. Darlington County 2017-SCAC-068969 [SEND SECURE]
Date: Monday, December 21, 2020 10:19:22 AM
Attachments: ATT00002.png
ATT00003.png
ATT00004.png
ATT00005.png
ATT00006.png
ATT00007.png
ATT00008.png

CAUTION: External

Thank you

From: Boyd, Amanda
Sent: Mon, 21 Dec 2020 15:16:07 +0000
To: Erica M. Senn
Cc:
Subject: RE: WCC #1716288 Mi Crowley vs. Darlington County 2017-SCAC-068969 [SEND SECURE]

Good morning Erica-

I can confirm that Mr. Crowley attended the IME appointment scheduled for 12/17/2020 with Dr. Bethea.

Please find attached the IME report completed by Dr. Bethea on behalf of Mr. Crowley.

Thank you,

Amanda B



Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: boydama@musc.edu

From: Erica M. Senn <emsenn@wjcbllaw.com>
Sent: Monday, December 21, 2020 9:18 AM
To: Boyd, Amanda <boydama@musc.edu>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-0

CAUTION: External

Amanda, I just wanted to confirm Mr. Crowley attended his appointment on 12/17 and request a copy of the report upon completion. Thank you



Erica M. Senn

Paralegal

email: EMSenn@wjcbllaw.com

phone: 843.284.0691

421 Wando Park Blvd., Suite 100

Mount Pleasant, South Carolina 29464

This message may be protected by the attorney-client privilege, attorney work product privilege, or other privileges. If you received this message in error, please send a copy to delete@wjcblaw.com and do not forward the message to any other person.

From: Erica M. Senn
Sent: Friday, December 11, 2020 2:02 PM
To: 'Boyd, Amanda' <boydama@musc.edu>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-0

Great, thanks. I have let his attorney know.

WJC&B

**WILLSON JONES CARTER
& BAXLEY, P.A.**

Erica M. Senn, Paralegal to Anne Veatch Noonan

emsenn@wjlaw.net

421 Wando Park Blvd., Suite 100

Mount Pleasant, South Carolina 29464

Phone: (843) 284-0691

Fax: (843) 284-1081

wjcblaw.com

R1042

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From: Boyd, Amanda <boydama@musc.edu>
Sent: Friday, December 11, 2020 1:54 PM
To: Erica M. Senn <EMSenn@wilaw.net>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-0

Hi Erica-

Dr. Bethea stated that any previous MRI scans or X-rays would be helpful.

Thank you,

Amanda B

Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: boydama@musc.edu

Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs.
Darlington County 2017-SCAC-0

Hi Erica-

I have Mr. Crowley scheduled for 12/17/2020 at 2:30pm with Dr. Bethea.

Please make sure the claimant is aware that arriving 15 mins early is strongly encouraged.

Thank you,

Amanda B

Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: boydama@musc.edu

From: Erica M. Senn <EMSenn@wjlaw.net>

Sent: Friday, December 4, 2020 2:22 PM

To: Boyd, Amanda <boydama@musc.edu>

Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969:
WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M
Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs.
Darlington County 2017-SCAC-0

CAUTION: External

P1045

Amanda, let's go with 12/17 at 2:30. Thank you



**WILLSON JONES CARTER
& BAXLEY, P.A.**

Erica M. Senn, Paralegal to Anne Veatch Noonan

emsenn@wjlaw.net

421 Wando Park Blvd., Suite 100

Mount Pleasant, South Carolina 29464

Phone: (843) 284-0691

Fax: (843) 284-1081

wjcbllaw.com

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From: Boyd, Amanda <boydama@musc.edu>
Sent: Friday, December 4, 2020 2:12 PM
To: Erica M. Senn <EMSenn@wjlaw.net>
Subject: RE: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: M. Crowley IME-Dr. Bethea

Hi Erica-

Thank you for your patience, we have received both payments. Thank you so much.

I have the following dates available for the requested IME:

Location: 2060 Sam Rittenburg Blvd., North Charleston, 29407

- Monday, December 14, 2020, 1:30pm
- Tuesday, December 15, 2020, 1:00pm
- Thursday, December 17, 2020, 2:30pm

Please let me know which time/date works best for the claimant.

Thank you,

Amanda B

Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: boydama@musc.edu

From: Erica M. Senn <EMSenn@wjlaw.net>

Sent: Friday, December 4, 2020 1:16 PM

To: Boyd, Amanda <boydama@musc.edu>

Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969; WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969; WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969; M. Crowley IME-Dr. Bethea

CAUTION: External

P1047

Yes, the record review check and the IME check were both mailed by the adjuster on 11/18



**WILLSON JONES CARTER
& BAXLEY, P.A.**

Erica M. Senn, Paralegal to Anne Veatch Noonan

emsenn@wjlaw.net

421 Wando Park Blvd., Suite 100

Mount Pleasant, South Carolina 29464

Phone: (843) 284-0691

Fax: (843) 284-1081

wjclaw.com

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

From: Boyd, Amanda <boydama@musc.edu>
Sent: Friday, December 4, 2020 1:13 PM
To: Erica M. Senn <EMSenn@wjlaw.net>
Subject: RE: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: M. Crowley IME-Dr. Bethea

Hi Erica-

Thank you for the follow up e-mail. I do apologize about the confusion. Dr. Bethea has **agreed** to see the claimant mentioned below.

Do you know any information about the payment, has the check been mailed?

Thank you,

Amanda B

Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: boydama@musc.edu

From: Erica M. Senn <EMSenn@wjlaw.net>
Sent: Wednesday, December 2, 2020 11:34 AM
To: Boyd, Amanda <boydama@musc.edu>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969;
WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: M. Crowley IME-
Dr. Bethea

CAUTION: External

Amanda, just checking to see if you were able to speak with Dr. Bethea regarding this case. The adjuster did already send the check for the record review and IME. I didn't realize he hadn't agree to doing it yet.

Thank you



**WILLSON JONES CARTER
& BAXLEY, P.A.**

Erica M. Senn, Paralegal to Anne Veatch Noonan

emsenn@wjlaw.net

421 Wando Park Blvd., Suite 100

Mount Pleasant, South Carolina 29464

Phone: (843) 284-0691

Fax: (843) 284-1081

wjcblaw.com

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

From: Boyd, Amanda <boydama@musc.edu>
Sent: Monday, November 30, 2020 10:28 AM
To: Erica M. Senn <EMSenn@wjlaw.net>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969;
WCC #1716288 M Crowley vs. Darlington County 2017-SCAC-068969: M. Crowley IME-
Dr. Bethea

Hi Erica-

Thank you for following up.

Dr. Bethea has not agreed to the IME yet, but I will follow up with him today.

Thank you,

Amanda B

Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: boydama@musc.edu

From: Erica M. Senn <EMSenn@wjlaw.net>
Sent: Monday, November 30, 2020 10:22 AM
To: Boyd, Amanda <boydama@musc.edu>
Subject: RE: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969:
M. Crowley IME-Dr. Bethea

CAUTION: External

Amanda, checking on the status of the requested evaluation for Mr. Crowley. The checks were being sent out on 11/18 for the invoices provided.

Thank you

WJC&B

**WILLSON JONES CARTER
& BAXLEY, P.A.**

Erica M. Senn, Paralegal to Anne Veatch Noonan

emsenn@wjlaw.net

421 Wando Park Blvd., Suite 100
Mount Pleasant, South Carolina 29464
Phone: (843) 284-0691
Fax: (843) 284-1081
wjcbllaw.com

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

From: Boyd, Amanda <boydama@musc.edu>
Sent: Wednesday, November 11, 2020 8:53 AM
To: Erica M. Senn <EMSenn@wjlaw.net>
Subject: WCC #1716288 Michael Crowley vs. Darlington County 2017-SCAC-068969; M. Crowley IME-Dr. Bethea

Good morning Erica,

I wanted to confirm that I recently received a large file for Mr. Michael Crowley (DOB: [REDACTED]) requesting and IME with Dr. Bethea.

Please allow Dr. Bethea to review the packet and follow up with a decision at a later date.

Thank you,

Amanda B

Amanda Boyd

Administrative Assistant

Department of Orthopaedics & Physical Medicine

96 Jonathan Lucas St. Suite 708, MSC 622

Charleston, SC 29425

P: 843-792-8959

F: 843-792-3674

E: [boydama@musc.edu](mailto:boydama@mussc.edu)

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA MYRTLE BEACH

Erica M. Senn
Direct (843) 284-0691
Fax (843) 284-1081
EMSenn@wjlaw.net

421 Wando Park Boulevard
Suite 100
Mount Pleasant, SC 29464
www.wjclaw.com

October 27, 2020

Dr. James Bethea
MUSC Department of Orthopedic Surgery
96 Jonathan Lucas Street, MSC 622, 708 CSB
Charleston, SC 29425

Re: Michael Crowley vs. Darlington County
WCC File No.: 1716288 & 1801098 DOI: 5/5/2017 & 1/3/18
Carrier: South Carolina Association of Counties SIF - Claim No.: 2017-SCAC-068969
WJC&B File No.: 0560.00951 & 0560.00961

Dear Dr. Bethea:

Our firm represents the carrier and employer in the workers' compensation claim filed by Michael K. Crowley. We would like for you to perform a second opinion evaluation of the above-referenced claimant, specifically his low back. I have enclosed a copy of all medical records received regarding Michael K. Crowley's injury. Once you have had an opportunity to review the enclosed records, please have someone from your office contact me so that we may schedule an appointment for this evaluation. Please note we are only requesting an evaluation for the low back.

Mr. Crowley first injured his right knee and low back on 5/5/17 during an altercation with a juvenile. We provided medical treatment with Dr. Watt who placed claimant at MMI on October 5, 2017 and assigned a 5% impairment rating to the right lower extremity, no permanent restrictions. Mr. Crowley reinjured his knee on 1/3/18 while pushing a stranded car in the ice when he slipped and fell onto his right knee. He was seen at Carolina Pines on 1/3/18 with an x-ray showing no obvious fractures. He was then seen by Dr. Watt on 1/25/18 and diagnosed with a strain of the muscle, fascia and tendon of posterior muscle group at thigh level on the right. He was referred for physical therapy. He returned to Dr. Watt on 2/22/18 with very little improvement in his right lower extremity pain and noting his right thigh MRI showed no evidence of soft tissue injury. It was noted he also had acute right sided low back pain with right sided sciatica. An additional evaluation with imaging studies to the lumbar spine was recommended. He was then seen by Dr. Cheattle on 8/15/18 with continued complaints to his right knee and low back. A lumbar MRI was recommended and it was noted if the MRI was negative he may be a good candidate for spinal cord stimulator. He underwent the lumbar MRI on 10/8/18 and on 11/6/18 Dr. Watt noted the MRI did not reveal a convincing focal path to suggest a discrete radicular cause for his symptoms. He was referred for pain management for his neck, back and knee.

He continued to treat with Florence Neurosurgery and Spine with failed spinal cord stimulator trials and medications. He was then seen by Dr. Denton on 5/6/19 and diagnosed with CRPS in the right lower extremity noting he felt there was a neurological component to his symptoms and provided a stellate ganglion block. He then underwent an epidural steroid injection on 5/28/19 with 40% improvement in his symptoms lasting only briefly. He then underwent bilateral selective nerve root injections with only minimal relief. It was recommended he undergo a repeat lumbar MRI, and depending on the results, he may be a surgical candidate. The MRI did not show any significant spinal stenosis or foraminal stenosis

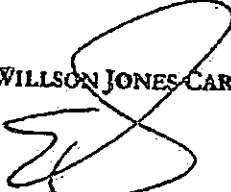
and on 8/20/19 was advised against decompression surgery noting the best option would be a second spinal cord stimulator trial and if not approved felt he was at MMI. He underwent the second trial without significant relief. He underwent an FCE on 10/25/19 showing consistent effort with the ability to perform sedentary duty. He was released at MMI by Dr. Naso on 12/1/19 and provided an impairment for the lumbar spine, with limitations per the FC and future medical treatment.

Mr. Crowley's cervical spine and prior issues with his upper back and neck are not related to this claim and he treats on his own with Integrated Pain for those issues.

We therefore ask that you address the following questions: Please state, to a reasonable degree of medical certainty, if you believe Mr. Crowley is at MMI for his low back injury. If so, please state what impairment he has suffered, if any, and any future medical treatment or restrictions he may require as a result of his 5/5/17 and 1/3/18 injuries. If he is not at MMI, please state, to a reasonable degree of medical certainty what medical treatment is recommended for Mr. Crowley to assist in reaching MMI for his low back.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Erica M. Senn
Paralegal to Anne Veatch Noonan

EMS
Enclosures

cc (w/o enclosures): Ms. Colleen Motley (via e-mail)

**State of South Carolina
County of Charleston**

South Carolina Workers Compensation Commission

**Michael Crowley
Claimant**

Affidavit of Service

VS

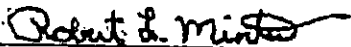
**Darlington County, WCC File: 1801098 & 1716288
Employer and
South Carolina Association of Counties SIF,
Insurance Carrier, Defendant(s)**

The undersigned, Robert L. Minter, who being duly sworn says that he served the subpoena from Gibson Law Firm and Notice of Deposition of James Frank Bethea, MD, on the subject, James Frank Bethea, MD by delivering same to:

(X) JoAnn Waller, Administrative Coordinator for Office of General Counsel, MUSC via email

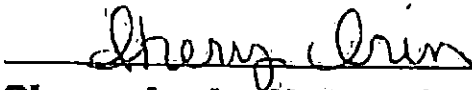
At his place of business at 22 WestEdge St., Charleston, S.C. 29403 on the 15th day of January 2021 at 12:10pm.

And the deponent knows the person so served to be the subject mentioned and described in the Pleadings, and the deponent is not a party to, nor interested in the action.



Robert L. Minter, Process Server

Sworn to Before Me this 15th day of January 2021



**Sherry Irwin, Notary Public for South Carolina
My Commission expires on September 6, 2029**

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1716288 & 1801098
Carrier File #: 2017-SCAC-068969
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Michael Crowley SSN: _____ Employer's Name: Darlington County
Address: _____ Address: 1 Public Square, Room 210
City: Bennettsville State: SC Zip: 29512 City: Darlington State: SC Zip: 29532
Home Phone: () - - Work Phone: () - - Insurance Carrier: SC Association of Counties SIF
Preparer's Name: Preston F. McDaniel, Esq. Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

SUBPOENA

To: **Dr. James Frank Bethea, MD, MUSC Health, West Ashley Medical Pavilion, 2060 Sam Rittenberg Blvd, Charleston, SC 29407.**

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____ ROOM: _____
DATE AND TIME: _____

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: Gibson Law Firm, 5422 Rivers Avenue, North Charleston 29406 DATE AND TIME: 01/27/2021 12:00 Noon PM

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

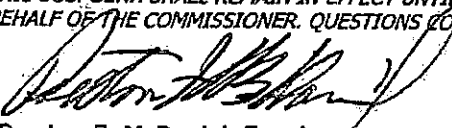
All documents listed in the Subpoena served upon you on January 6, 2021.

PLACE: Gibson Law Firm, 5422 Rivers Avenue, North Charleston 29406 DATE AND TIME: 01/27/2021 12:00 Noon PM

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.


Preston F. McDaniel, Esquire
Attorney for the Claimant
ISSUING OFFICER'S SIGNATURE AND TITLE

(803) 771-7211
PHONE NUMBER

January 13, 2021
DATE

File this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5675.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1801098 & 1716288

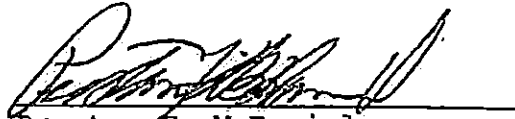
Michael Crowley,)
)
EMPLOYEE/CLAIMANT,)
)
v.)
)
Darlington County,)
)
EMPLOYER, and)
)
South Carolina Association)
of Counties SIF,)
)
INSURANCE CARRIER,)
DEFENDANT(S).)
_____)

NOTICE OF DEPOSITION
DE BENE ESSE OF
JAMES FRANK BETHEA, MD

TO: JAMES FRANK BETHEA, MD, MUSC HEALTH, WEST ASHLEY MEDICAL
PAVILION, 2060 SAM RITTENBERG BLVD., CHARLESTON, SC 29407:

YOU WILL PLEASE TAKE NOTICE that at 12:00 o'clock p.m. on
the 27TH day of January 2021, the attorney for the Claimant will
take the deposition de bene esse of James Frank Bethea, MD, for
purposes of cross-examination pursuant to, and including, but
not limited to, SC Code §1-23-320; §1-23-330(3); §42-3-160 at
Gibson Law Firm, 5422 Rivers Avenue, North Charleston, SC 29406,
upon oral examination before a Notary Public or before some
other officer authorized by law to take depositions, said
deposition to continue from day to day until completed. You are
invited to attend and take part as is fit and proper.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, SC 29551
(843) 339-3000

Attorneys for the Claimant

January 13, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1801098 & 1716288

Michael Crowley,)
)
EMPLOYEE/CLAIMANT,)
)
v.)
)
Darlington County,)
)
EMPLOYER, and)
)
South Carolina Association)
of Counties SIF,)
)
INSURANCE CARRIER,)
DEFENDANT(S).)
)

NOTICE OF DEPOSITION
DE BENE ESSE OF
JAMES FRANK BETHEA, MD

TO: JAMES FRANK BETHEA, MD, MUSC HEALTH, WEST ASHLEY MEDICAL
PAVILION, 2060 SAM RITTENBERG BLVD., CHARLESTON, SC 29407;

YOU WILL PLEASE TAKE NOTICE that at 12:00 o'clock p.m. on
the 27TH day of January 2021, the attorney for the Claimant will
take the deposition de bene esse of James Frank Bethea, MD, for
purposes of cross-examination pursuant to, and including, but
not limited to, SC Code §1-23-320; §1-23-330(3); §42-3-160 at
Gibson Law Firm, 5422 Rivers Avenue, North Charleston, SC 29406,
upon oral examination before a Notary Public or before some
other officer authorized by law to take depositions, said
deposition to continue from day to day until completed. You are
invited to attend and take part as is fit and proper.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, SC 29551
(843) 339-3000

Attorneys for the Claimant

January 13, 2021

Andrea Ham

From: Andrea Ham
Sent: Wednesday, January 6, 2021 4:06 PM
To: boydama@musc.edu
Cc: Kim Hinkle; Rose Thielke; 'Greta Elliottte'; Gerald Malloy (gmalloy@bellsouth.net)
Subject: Urgent Request to Set Deposition by Agreement Instead of Subpoena

Tracking:	Recipient	Read
	boydama@musc.edu	
	Kim Hinkle	Read: 1/7/2021 9:55 AM
	Rose Thielke	Read: 1/6/2021 5:10 PM
	'Greta Elliottte'	
	Gerald Malloy (gmalloy@bellsouth.net)	

Dear Ms. Boyd:

The insurance company attorney has filed for a hearing and listed Dr. Bethea's report as part of the basis for that request. **Please note:** That hearing will be held in 30 days and no more than 60 days; therefore, because they filed the report, I must schedule Dr. Bethea's deposition within the next 30 days to exercise my right of cross-examination. I do not want to inconvenience Dr. Bethea, but we will either have to set it by agreement or I will have him served and will set it at a time and place that is convenient to my schedule. I assume there's a conference room where I can conduct the deposition there.

Either by agreement or y subpoena, we need to set the deposition in Charleston, either on Monday, January 25; Tuesday, January 26; Wednesday, January 27; or Friday, January 29.

Again, I have no intent of inconveniencing Dr. Bethea, but I must get this deposition scheduled for one of those days.

Please pass along to Dr. Bethea that either the insurance company did not explain the purpose of the evaluation, or Dr. Bethea went way beyond the purpose of the evaluation which had been requested by Deputy Crowley to see if a specialist at MUSC could help him get some relief. If Dr. Bethea wants to call me on this, he's more than welcome.

I look forward to getting this set and if I have not heard from you by Friday, January 8, 2021, I'll make preparations to serve Dr. Bethea on Friday with a deposition notice and subpoena him to appear at a deposition at Don Gibson's office in North Charleston.

I look forward to hearing from you and working this out.

Sincerely,

Preston F. McDaniel, Esq.
Office: (803) 771-7211

Rose Thielke

From: Rose Thielke
Sent: Thursday, January 14, 2021 10:07 AM
To: Anne V. Noonan
Cc: Kim Hinkle; Andrea Ham
Subject: Michael Crowley
Attachments: SCAN21011410000.pdf

Dear Anne,

Attached is the faculty and staff at MUSC Department of Orthopaedics and Physical Medicine. I don't see Dr. Bethea listed, why?

Sincerely,

Preston

Orthopaedics & Physical Med (/departments/ortho)

Faculty Leadership



(<https://education.musc.edu/MUSCApps/FacultyDirectory/Leddy-Lee>)

Lee R. Leddy, M.D. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Leddy-Lee>)

Fellow, Program Mentor, American Academy of Orthopaedic Surgeons Leadership

Member, Editorial Board, Journal of Surgical Orthopaedic Advances

Member, Editorial Board, American Journal of Orthopaedics

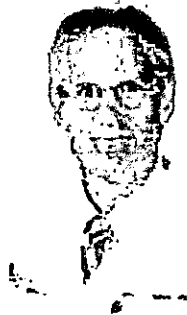
Board Member, Southern Orthopaedic Association

Vice President, Charleston Orthopaedic Society

Member, Advisory Committee, Hollings Cancer Center K12

Program chair, AOA-CORD

Past President, Musculoskeletal Oncology Research Initiative (MORI)



(<https://education.musc.edu/MUSCApps/FacultyDirectory/Reitman-Charles>)

Charles A. Reitman, M.D. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Reitman-Charles>)

Board of Directors, North American Spine Society

Council Director, Administration and Development, North American Spine Society



(<https://education.musc.edu/MUSCApps/FacultyDirectory/Friedman-Richard>)

Langdon A. Hartsock, M.D. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Hartsock-Langdon>)
Director of Orthopaedic Trauma, Medical University of South Carolina



(<https://education.musc.edu/MUSCApps/FacultyDirectory/Glaser-John>)

John A. Glaser M.D. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Glaser-John>)
Chief, Orthopaedics, Ralph H. Johnson VA Medical Center
Member, American Academy of Orthopaedic Surgeons
Member, American Orthopaedic Association
Member, North American Spine Society
Member, International Society for the Study of the Lumbar Spine
Reviewer, Omega Foundation

Faculty by Specialty

Arthritis & Joint Reconstruction

- Harry A. Demos, M.D. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Demos-Harry>)
- Erik J. Hansen, M.D. (<https://muschealth.org/MUSCApps/ProviderDirectory/Hansen-Erik>)

Foot & Ankle

- Christopher E. Gross, M.D. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Gross-Christopher>)
- Rahn A. Ravenell, D.P.M. (<https://education.musc.edu/MUSCApps/FacultyDirectory/Ravenell-Rahn>)
- Daniel J. Scott, M.D., MBA (<https://muschealth.org/MUSCApps/ProviderDirectory/Scott-Daniel>)

Hand & Microvascular

- [Dane N. Daley, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Daley-Dane\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Daley-Dane)

Orthopaedic Oncology

- [Lee R. Leddy, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Leddy-Lee\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Leddy-Lee)
- [Zeke J. Walton, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Walton-Zeke\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Walton-Zeke)

Orthopaedic Trauma

- [Langdon A. Hartsock, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Hartsock-Langdon\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Hartsock-Langdon)
- [Kristoff R. Reid, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Reid-Kristoff\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Reid-Kristoff)
- [Zeke J. Walton, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Walton-Zeke\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Walton-Zeke)

Pediatric Orthopaedics

- [Matthew A. Dow, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Dow-Matthew\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Dow-Matthew)
- [Robert F. Murphy, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Murphy-Robert\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Murphy-Robert)
- [Sara S. Van Nortwick, M.D. \(https://muschealth.org/MUSCApps/providerdirectory/Van-Nortwick-Sara\)](https://muschealth.org/MUSCApps/providerdirectory/Van-Nortwick-Sara)

Pediatric Spinal Disorders & Scoliosis

- [Matthew A. Dow, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Dow-Matthew\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Dow-Matthew)
- [Robert F. Murphy, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Murphy-Robert\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Murphy-Robert)
- [Charles A. Reitman, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Reitman-Charles\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Reitman-Charles)
- [Sara S. Van Nortwick, M.D. \(https://muschealth.org/MUSCApps/providerdirectory/Van-Nortwick-Sara\)](https://muschealth.org/MUSCApps/providerdirectory/Van-Nortwick-Sara)

Physical Medicine & Rehabilitation

- [Emily A. Darr, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Darr-Emily\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Darr-Emily)
- [David R. O'Brien, M.D. \(https://muschealth.org/MUSCApps/providerdirectory/OBrien-David\)](https://muschealth.org/MUSCApps/providerdirectory/OBrien-David)

Shoulder & Elbow

- [Josef K. Eichinger, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Eichinger-Josef\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Eichinger-Josef)
- [Richard J. Friedman, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Friedman-Richard\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Friedman-Richard)
- [Shane K. Woolf, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Woolf-Shane\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Woolf-Shane)

Spinal Disorders & Scoliosis

- [Emily A. Darr, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Darr-Emily\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Darr-Emily)
- [John A. Glaser, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Glaser-John\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Glaser-John)
- [Charles A. Reitman, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Reitman-Charles\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Reitman-Charles)
- [David R. O'Brien, M.D. \(https://muschealth.org/MUSCApps/providerdirectory/OBrien-David\)](https://muschealth.org/MUSCApps/providerdirectory/OBrien-David)

Sports Medicine

- [Louis A. Gerena, M.D. \(https://muschealth.org/MUSCApps/ProviderDirectory/Gerena-Louis\)](https://muschealth.org/MUSCApps/ProviderDirectory/Gerena-Louis)
- [Eugene Hong, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Hong-Eugene\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Hong-Eugene)

- [Harris S. Slone, M.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Slone-Harris\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Slone-Harris)
- [Elizabeth B. Winton, M.D. \(Libby Winton M.D.\)](#)
- [Shane K. Woolf, M.D. \(http://academicdepartments.Fmusc.edu/facultydirectory/Woolf-Shane\)](http://academicdepartments.Fmusc.edu/facultydirectory/Woolf-Shane)

Orthopaedic Research & Clemson BioEngineering

- [William R. Barfield, Ph.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Barfield-William\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Barfield-William)
- [Jessica E. Thaxton, Ph.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Thaxton,%20PhD%20MsCR-Jessica\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Thaxton,%20PhD%20MsCR-Jessica)
- [Yongren Wu, Ph.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Wu-Yongren\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Wu-Yongren)
- [Hai Yao, Ph.D. \(https://education.musc.edu/MUSCApps/FacultyDirectory/Yao-Hai\)](https://education.musc.edu/MUSCApps/FacultyDirectory/Yao-Hai)

Contact Us

Department of Orthopaedics

Clinical Sciences Building, CSB
96 Jonathan Lucas Street
MSC Code: 708
Charleston, SC 29425

Get Directions

<https://www.google.com/maps/dir//96%20Jonathan%20Lucas%20Street+Charleston+SC+29425>



Main: 843-792-1792

[View Details \(/departments/ortho/ortho-location\)](/departments/ortho/ortho-location)



MUSC Health
 Medical University of South Carolina
**Department of Orthopaedics
 & Physical Medicine**

96 Jonathan Lucas Street
 CSB • Suite 708 • MSC 622
 Charleston, SC 29425
 Patient Care/Scheduling: 843-876-0111
 Administrative Office: 843-792-1792
 Facsimile: 843-792-3674

Department Chair
 Lee R. Leddy, MD

Arthritis & Joint Reconstruction
 Harry A. Demos, MD
 Richard J. Friedman, MD, FRCSC
 Zeke J. Walton, MD

Foot & Ankle
 Christopher E. Gross, MD

General Orthopaedics
 James F. Bethea, MD
 Howard L. Brilliant, MD

Hand, Wrist and Microvascular
 Dane N. Daley, MD

Orthopaedic Oncology
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Orthopaedic Trauma
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Pediatric Orthopaedics
Pediatric Spinal Disorders & Scoliosis
 Matthew A. Dow, MD
 Robert F. Murphy, MD
 Sara S. Van Nortwick, MD

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 Shane K. Woolf, MD

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 & Clemson BioEngineering*
 William R. Barfield, PhD
 Martine LaBerge, PhD
 Jessica E. Thaxton, PhD
 Congren Wu, PhD
 Hai Yao, PhD

January 22, 2021

Preston F. McDaniel, Esq.
 McDaniel Law Firm
 Phone: 803.771.7211
 Fax: 803.252.0709
 Via Email: rose@pfmcdlaw.com

RE: Michael Crowley
 DOB:
 MRN:

Dear Ms. Rose:

Thank you for your correspondence regarding the above-mentioned patient. Listed below are the fees for services requested of *James F. Bethea, M.D.* All fees must be received prior to the rendering of any service. If the requested service is canceled at any time by the requesting party, there will be no refund of payment. Rescheduling services will require additional payment. Please send a check payable to **MUSC Health** to the address below using Tax ID# 57-0935917:

MUSC Health
 96 Jonathan Lucas St.
 MSC 622; Suite 708 CSB
 Charleston, SC 29425

DESCRIPTION	
<u>MUSC Health, Tax ID# is 57-0935917</u>	
<i>Workers' Comp Deposition</i>	\$400.00
- \$400.00-1st hour; \$100 each add'l 15 minutes	
Total Amount Due	\$400.00

Please contact our offices if you have any questions,
 843-876-1119 or 843-792-8959

Administrative Assistant:
 Amanda Boyd, 843-792-8959



**Department of Orthopaedics
& Physical Medicine**

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Jiangren Wu, PhD
Hai Yao, PhD

January 22, 2021

Preston F. McDaniel, Esq.
McDaniel Law Firm
Phone: 803.771.7211
Fax: 803.252.0709
Via Email: rose@pfmcdlaw.com

RE: Michael Crowley
DOB:
MRN:

Dear Ms. Rose:

Thank you for your correspondence regarding the above-mentioned patient. Listed below are the fees for services requested of *James F. Bethea, M.D.* All fees must be received prior to the rendering of any service. If the requested service is canceled at any time by the requesting party, there will be no refund of payment. Rescheduling services will require additional payment. Please send a check payable to **MUSC Health** to the address below using Tax ID# 57-0935917:

MUSC Health
96 Jonathan Lucas St.
MSC 622; Suite 708 CSB
Charleston, SC 29425

DESCRIPTION	
MUSC Health, Tax ID# is 57-0935917	
14B	\$70.00
-	\$70.00 per patient form
Total Amount Due	\$70.00

Please contact our offices if you have any questions,
843-876-1119 or 843-792-1792

Administrative Assistant:
Amanda Boyd, 843-792-8959

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ATTORNEYS AND COUNSELORS AT LAW
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Preston F. McDaniel

Matthew C. Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

January 28, 2021

VIA EMAIL - bcheeseboro@wcc.sc.gov
AND US MAIL

Commissioner Mike Campbell
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Michael Crowley v. Darlington County
WCC File Nos. 1716288 & 1801098

Dear Commissioner Campbell:

This matter is set before you for hearing on March 4th at 11:00 am on the defendants Form 21 to pay compensation; and is not subject to the sixty (60) day Rule under Section 42-9-260. This is to request a preliminary hearing anywhere in the State before you on the Record in reference to the report filed by the Defendants as part of the 21 from Dr. James F. Bethea. At the preliminary hearing, we will request that:

1. The report be excluded from evidence for failure of the defendants to comply with the provisions of the Act; specifically including SC Code §42-15-95.

2. Barring exclusion, we request either that the Commission issue a Commission Subpoena, pursuant to §42-3-140 & 150 for Dr. James F. Bethea to appear, or ordering the Defendants to schedule and pay for a de bene esse deposition (depo used in lieu of live testimony) of Dr. James F. Bethea so that we may exercise our right of cross-examination of him in reference to the report that the Defendants have placed in the Record as their evidence in this matter, thus making him their expert.

As I know you are aware, we are guaranteed the right to cross-examination both under the Act and the Administrative Procedures Act, §1-23-330(3) and under subsection 1, specifically in reference to documentary evidence submitted into evidence. Of course, the right of cross-examine is one of the most precious rights under due process and is guaranteed by both the United States and South Carolina Constitutions, as well as by both US and SC Supreme Court decisions, and particularly in administrative proceedings. I have attached a copy of one SC Supreme Court case, City of Spartanburg v. Parris directly on point, and I have underlined the Court's holding for your edification.

Commissioner Mike Campbell
January 28, 2021
Page 2

Of course, the United States Supreme Court has ruled the same way, and specifically ruled in an administrative hearing that where a written report is admitted into evidence, the administrative agency is duty bound to Subpoena the witness for testimony before the agency, at no expense to the litigant where the Claimant specifically asks to exercise that right. Richardson v. Perales, 91 S. Ct. 1420 (1971). That was a Social Security Hearing, and the claimant could request that the administration issue a Subpoena, which is the same as under the Workers' Compensation Act, and which we are requesting.

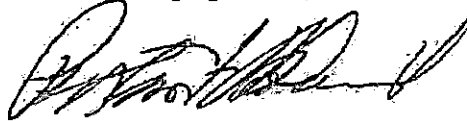
By copy of this letter, I am notifying and serving defense counsel with this communication and request for a preliminary hearing and for a Ruling on this issue by you, so the scheduled hearing may go forward as scheduled.

While this matter is not subject to the 60-day Rule and you could require a formal motion and response and set it later if you want to, we really would like to go forward with the hearing as it is now set and hope that you can accommodate us with a hearing on the Record in the near future.

At the hearing I will submit everything I have done in reference to try to exercise our right of cross-examination by serving the doctor personally with a Subpoena for a de bene esse deposition for cross-examination, his demand for payment to cross-examine him, and refusal to appear otherwise and Defense Counsel's refusal to pay that fee; and of course, the other documentation to support our request that the report not be admitted into evidence because of the Defendants failure to comply with the Act.

I look forward to hearing from you and as always it is a pleasure appearing before you.

Sincerely yours,



Preston F. McDaniel

PFM/rmt/kth
Enclosure

cc: Gerald Malloy, Esquire
Anne V. Noonan, Esquire

Burts, Turner & Hammett, Spartanburg, for respondent.

Opinion

*189 BRAILSFORD, Justice.

The police and fire departments of the City of Spartanburg have been under civil service since 1965. See Act No. 345 of that year, which implemented a special constitutional amendment ratified in 1965. This act was amended in 1966 by Act No. 991.

Larry Dean Parris was a police officer of the City of Spartanburg when the Civil Service Act was adopted and until his discharge by the Director of Law Enforcement, with the concurrence of the City Manager, on March 14, 1967. As required by the Act he was advised of the reasons for his discharge by letter as follows:
'Effective the date of this letter, you are hereby removed and discharged from your position with the Spartanburg Police **229 Department for the following reasons:

'(1) In accepting a gift in January of 1967 from a suspect then being investigated by you.

'(2) In accepting property in January 1967 from a suspect then being investigated by you, which property you should have known was not owned by the suspect or may have been the property of other persons.

'(3) In carrying out your duties as a member of the Spartanburg Police Department in a manner which is injurious to the good of the Police Department and which tends to injure the public service.

'(4) In failing to correct deficiencies heretofore pointed out to you following your suspension on March 3, 1965.'

Parris requested a hearing before the Civil Service Commission, which was charged with the duty of conducting a public hearing and determining whether his discharge 'was or was not made for political or religious reasons and was or *190 was not made in good faith (for) cause.' After a hearing at which Parris was represented by counsel, the Commission entered an order by which it found that 'the discharge was not made for political or religious reasons and, on the contrary, * * * it * * * was made in good faith and * * * for good cause.' Parris appealed to the Court of Common Pleas for Spartanburg County, principally upon the ground that the Commission erred in admitting into evidence an affidavit of one Calvin

Honeycutt, which seriously reflected upon Parris' integrity as a police officer, thereby depriving him of the right to confront and cross-examine his accuser.

The circuit court held that the admission of this affidavit, and the consequent denial of Parris' right to be confronted by his accuser and to cross-examine him, was error requiring the reversal of the order of the Commission. The court remanded the case to the Commission with instructions that it hold another hearing within thirty days from the filing of the order, at which the witness Calvin Honeycutt should be examined in person; otherwise the court ordered that Parris be reinstated with pay.

The City of Spartanburg has appealed on fifteen exceptions. However, there are not nearly so many questions for decision.

¹¹ The Commission is an administrative body and is charged with a number of administrative duties. However, in conducting a hearing for the purpose of determining whether an employee has been discharged in good faith and for cause the Commission acts in a quasi-judicial or adjudicatory capacity. While the strict rules of evidence are not applicable to such a hearing, Richards v. City of Columbia, 227 S.C. 538, 552, 88 S.E.2d 683, 689, the substantial rights of the parties must be preserved. Southern Stevedoring Co. v. Voris, (5th Cir.) 190 F.2d 275, 277. It is generally held that these rights include a reasonable opportunity to cross-examine the important witnesses against a party when their credibility is challenged. *191 The following rule is aptly phrased and finds strong support in the decisions cited in the footnotes to the text:

The right to cross-examine witnesses in quasi-judicial or adjudicatory proceedings is a right of fundamental importance which, in regard to serious matters, exists even in the absence of express statutory provision as a requirement of due process of law or the right to a hearing and no one may be deprived of such right even in an area in which the Constitution would permit it if there is no explicit authorization to the contrary. * * * 2 Am. Jur. 234, Administrative Law, Sec. 474.

**230 ¹² Here the most damaging accusations against Parris concerned his conduct with Honeycutt, and, except for comparatively minor admissions by Parris, they were supported only by the Honeycutt affidavit. The record discloses that Honeycutt is an unsavory character with a long criminal record. His affidavit is, in material part, contradicted by Parris' testimony and is the only evidence by which such testimony is opposed.

¹³ We agree with the circuit court that, under the particular facts of this case, fundamental fairness required

City of Spartanburg v. Parris, 251 S.C. 187 (1968)
161 S.E.2d 228

the exclusion of the Honeycutt affidavit, and that a rehearing must be granted. However, we think that the court went too far in ordering the reinstatement of Parris unless Honeycutt should be produced as a witness at a hearing within thirty days of the filing of the order. The City might elect not to use either the witness or his affidavit at the next hearing. Our conclusion that Parris must be given a rehearing by the Commission rests upon a procedural error, and does not touch the merits of his discharge, which was regularly initiated by the Director of Law Enforcement, with the concurrence of the City Manager. Upon the rehearing, the City will have the option of relying upon any assigned cause for Parris' discharge and establishing it by any available evidence.

Since the decision of the circuit court did not turn on the sufficiency of the evidence, the statements in the order

End of Document

appealed *192 from concerning the degree of proof required and the burden of proof before the Commission are obiter dictum, and the exceptions thereto raise no issues for decision by us.

Modified and remanded for further proceedings.

MOSS, C.J., and LEWIS, BUSSEY, and LITTLEJOHN, JJ., concur.

All Citations

251 S.C. 187, 161 S.E.2d 228

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251 S.C. 187
Supreme Court of South Carolina.

The CITY OF SPARTANBURG,
Appellant,
v.
Larry Dean PARRIS, Respondent.

No. 18788.
|
May 7, 1968.

Synopsis

The Common Pleas Court of Spartanburg County, Wade S. Weatherford, Jr., J., reversed order of civil service commission dismissing police officer from force, and city appealed. The Supreme Court, Brailsford, J., held that where most damaging accusations against police officer concerned his conduct in allegedly accepting gift from suspect he was investigating, and where, except for comparatively minor admissions by the officer, the accusations were supported only by the suspect's affidavit, admission of the affidavit, and consequent denial of officer's right to be confronted by accuser, and to cross-examine him, constituted prejudicial error requiring reversal of civil service commission order discharging officer from police force.

Modified and remanded for further proceedings.

West Headnotes (3)

[1] **Public Employment**—Examination, credibility, and impeachment

In conducting hearing for purpose of determining whether employee has been discharged in good faith and for cause, civil service commission acts in quasi-judicial or adjudicatory capacity, and while strict rules of evidence are not applicable to such a hearing, substantial rights of parties must be preserved, including reasonable opportunity to cross-examine important witnesses when their credibility is challenged.

1 Cases that cite this headnote

[2] **Municipal Corporations**—Evidence in general
Municipal Corporations—Review in general
Public Employment—Harmless, prejudicial, and reversible error
Public Employment—Reversal

Where most damaging accusations against police officer concerned his allegedly accepting gift from suspect and where, except for comparatively minor admissions the accusations were supported only by the suspect's affidavit, admission of the affidavit, and consequent denial of officer's right to be confronted by accuser and to cross examine him, constituted prejudicial error requiring reversal of Civil Service Commission order discharging officer from police force. Acts 1965, No. 345 as amended by Acts 1966, No. 991.

[3] **Municipal Corporations**—Reinstatement
Public Employment—Restoration of status quo ante

Civil service commission's fundamental error in receiving accuser's affidavit in hearing on discharge did not warrant circuit court's ordering reinstatement of the officer unless accuser should be produced as a witness at new hearing within 30 days of filing of order, as city could elect not to use either that witness or his affidavit at next hearing.

2 Cases that cite this headnote

Attorneys and Law Firms

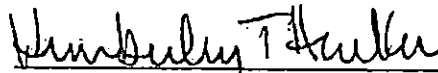
*188 **228 T. E. Walsh, Max B. Cauthen, Jr., Spartanburg, for appellant.

CERTIFICATE OF SERVICE

WCC File No. 1716288 & 1801098

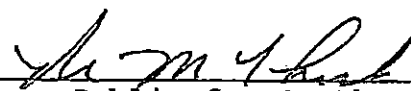
I hereby certify that I have on this day served the following in the matter of Michael Crowley v. Darlington County with a copy of the LETTER TO COMMISSIONER MIKE CAMPBELL REQUESTING A PRELIMINARY HEARING addressed as follows:

Anne V. Noonan, Esquire
WILLSON JONES CARTER & BAXLEY
421 Wando Park Blvd.
Mt. Pleasant, SC 29464



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
28 day of January, 2021.



Notary Public for South Carolina (L.S.)
My Commission Expires: 2/4/24

Kim Hinkle

From: Kim Hinkle
Sent: Thursday, January 28, 2021 5:27 PM
To: bcheeseboro@wcc.sc.gov
Cc: avnoonan@wjlaw.net; Gerald Malloy (gmalloy@bellsouth.net); Greta Elliott; Andrea Ham ; Rose Thiekle
Subject: Michael Crowley v. Darlington County; WCC File Nos. 1716288 & 1801098
Attachments: SCAN21012817210.pdf

The attached is being sent to you at the request of Preston F. McDaniel, Esquire.

Kimberley T. Hinkle
McDANIEL LAW FIRM
Senior Paralegal

(803) 771-7211 - Telephone
(803) 252-0709 - Fax
kim@pfmcdlaw.com

1315 Elmwood Avenue
Columbia, SC 29201

Please "reply to all" when responding.

Kim Hinkle

From: Anne V. Noonan <avnoonan@wjcblaw.com>
Sent: Thursday, January 28, 2021 5:27 PM
To: Kim Hinkle
Subject: Automatic reply: Michael Crowley v. Darlington County; WCC File Nos. 1716288 & 1801098

I am currently out of the office attending hearings in Florence. I will respond to your email as soon as possible. If you need immediate assistance, please contact Erica Senn at emsenn@wjlw.net.

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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for over 35 years.

Preston F. McDaniel
Matthew C. Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

July 7, 2021

VIA EMAIL - bcheeseboro@wcc.sc.gov
AND US MAIL
Commissioner Mike Campbell
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

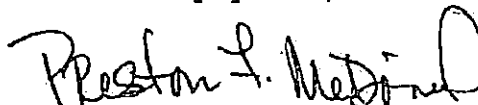
RE: Michael Crowley v. Darlington County
WCC File No. 1716288 & 1801098

Dear Commissioner Campbell:

Pursuant to Regulation 67-215(B), please find enclosed our Motion for Reconsideration of your Order filed July 6, 2021, in the above referenced matter. By copy of this letter, I am notifying and filing this Motion with the Judicial Department along with the required filing fee and serving a copy of the Motion on counsel for the Defendants.

I look forward to your decision on the Motion for Reconsideration; and, as always, I appreciate all the courtesies and kindnesses shown to me and my clients by you, your office, and the Commission.

Sincerely yours,



Preston F. McDaniel

PFM (kth)
Enclosure

cc: Gerald Malloy, Esquire
Anne V. Noonan, Esquire
Amy Bracy, Judicial Director

P1078

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No.: 1716288 & 1801098

MICHAEL CROWLEY,)
)
Employee/Claimant,)
)
vs.)
)
DARLINGTON COUNTY,)
)
Employer,)
)
and)
)
SOUTH CAROLINA ASSOC. OF)
COUNTIES SIF,)
)
Carrier,)
)
Defendants.)
_____)

MOTION FOR RECONSIDERATION
PURSUANT TO REG. 67-215(B)

YOU WILL PLEASE TAKE NOTICE that the Claimant, pursuant to WCC Regulation 67-215(B), hereby requests reconsideration of the Award and decision filed by Commissioner Michael Campbell on July 6, 2021. The bases for the Motion are as set forth hereinafter:

1. That the Claimant requests reconsideration of the future medical care, in reference to the inclusion and designation of the medical providers that are to provide the future medical care awarded and the future medical care that is Awarded. Specifically, the physicians to follow him and future medications must be addressed.

The fact that he was receiving medications through

Integrated Pain Solutions throughout authorized treatment and continuing at the time of discharge is clearly referred by all of the authorized treating physicians, including:

a. Dr. Nigel Watt who was the authorized medical provider for treatment after both the accident in 2017 and the January 3, 2018 accidents, note the medications throughout his treatment. Most importantly Commissioner, in his February 22, 2018 report Dr. Nigel Watt referred to and deferred to that chronic pain management and medications stating, "chronic pain management in Laurinburg includes Lortab, Flexeril and Neurontin". (Claimant's APA P109)

Also, specifically Commissioner, on January 31, 2019 he specifically stated that no further treatment was needed because, "he is established with a pain management physician ...". (Claimant's APA p. 105).

b. Dr. Cheatle noted the medications that Deputy Crowley was already on in his first visit and in his second and last visit. (Claimant's APA pp. 112, 115).

c. In the first visit on December 11, 2018 Dr. Sarb and then Dr. Naso and throughout their records noted the medications that he was taking. In the December 2018 note Dr. Sarb also noted that he had been on, "Lortab" and that he was being followed by a doctor in Laurinburg for medication management. She also noted that he had been on Gabapentin,

Lortab and Flexeril. (Claimant's APA p. 102). Commissioner please note the medications that were added throughout the course of their treatment and that on November 21, 2019 in the last visit when he was released with the recommendations of a TENS Unit and physical therapy Dr. Naso specifically stated that Deputy Crowley was to still be taking those medications, including the ones that he was taking at the time he first saw them, but more importantly to this request the ones that they had added, which are Hydrocodone-Acetaminophen, Tizanidine, Diclofenac Sodium, Butalbital, and Keflex. The November 21, 2019 note specifically states that: "medication list reviewed and reconciled with the patient."

d. Dr. Leonard Forrest in his independent medical evaluation recommended that he continue with his pain management under the direction of Integrated Pain Solutions, and also with Dr. Barbara Naso as needed in order to maintain his current level of function and to treat related increased symptoms as they arise. (Claimant's APA p. 29).

e. The records from Integrated Pain Management and the pain management specialist there that Deputy Crowley was seeing and continues to see in Laurinburg, North Carolina were placed into the Record. That specialist stated the opinion to a reasonable degree of medical certainty that:

"Mr. Crowley will need the chronic pain treatment which we are providing him due to the condition of his lower back without regard to his cervical spine problems; and he will need this treatment for the foreseeable future as reflected in our records and treatment notes."
(Emp. add.)

Commissioner, most respectfully you relied on Dr. Naso and Dr. Sarb for the Award of future medical care and the medical evidence is uncontested that those doctors deferred and referred Deputy Crowley to Integrated Pain Management for continuing treatment for chronic pain management. The medical opinion evidence is uncontested that he will need that medical care by a chronic pain management specialist as being provided by the physicians and medical providers at Integrated Pain Management to maintain his current level of functioning. Again, this is uncontested in the Record. We would request that you amend the Order to include the pain management as recommended by all of the physicians involved including Dr. Naso and Dr. Sarb and Dr. Cheadle and Dr. Forrest to maintain his current condition.

2. That while the evidence concerning functional loss of use of the Claimant's back to do work requiring the use of his back is referred to in the Order, there are no Findings of Fact directly on the Claimant's loss of use of his back; or any evidence to refute that he has lost 50% or more of the functional use of his back to do work requiring the use of his back; or any Finding of Fact or Conclusion of Law concerning any

evidence submitted by the Defendants as required by law to rebut the presumption that he has lost 50% or more of the functional use of his back to do work requiring the use of his back.

The Defendants in this case, as they did in the Clemmons decision and in other decisions since then found by the Court of Appeals and Supreme Court and this Commission, take the position that because they submit evidence that Deputy Crowley can work in some capacity that he is not entitled to an Award under §42-9-30(21) for the same Award as for total and permanent disability under the Act; i.e., the balance of 500 weeks.

As set forth in the Pre-Hearing Brief, the Supreme Court has ruled and this Commission, and I know you want to follow that and will follow the law as dictated by the Supreme Court, has held specifically that whether or not there is a loss of earning capacity under an Award under §42-9-30(21) or under §42-9-10(B) has absolutely nothing, and I want to reiterate nothing, to do with the loss of earning capacity. Under those two sections the Award made is based on the character of the injury sustained. I am a left-handed lawyer and if I lose my right leg and my right arm in a work-related accident, I am entitled to an Award of 500 weeks due to the character of the injury even though I may never miss a day's pay or have any loss of earning capacity as a left-handed lawyer. The same is true, as the Supreme Court has held, in reference in loss of use of the back;

and the same law applies: loss of use not earning capacity.

Many people that have lost both of their legs or both of their arms are employed but they have had a substantial loss of access to jobs within the entire job spectrum. The same is just as true and in fact is truer where a person such as Deputy Crowley has lost more than 50% of the use of their back. There is absolutely no evidence that Deputy Crowley can return to any of the jobs in which he has a background and experience. There is no evidence that he has not lost more than 50% of the functional use of his back to do work requiring the use of this back.

The Supreme Court has held that where there is no evidence rebutting the presumption that the Claimant has lost 50% or more of the functional use of the back, it is a matter of law and it is an error of law not to Award the Claimant the maximum of 500 weeks of benefits.

Commissioner, since the beginning of the Act both the Supreme Court, our Appellate Courts and this Commission has always held that were a man or woman's background is in performing jobs that require the use of their back, it is total disability where a person loses the use of their back to do work with their back.

In reference to the evidence in this case, Dr. Forrest stated the medical opinion that Deputy Crowley had lost 50% or more of the functional use of the back to do work requiring the

use of his back. (Claimant's APA p. 29). Deputy Crowley testified that had lost approximately 80% of the functional use of his back to do work requiring the use his back. (R. p. 72, l. 21).

The Defendants own functional capacity evaluation performed by CORA found that the Claimant under the Dictionary of Occupational Titles under the US Department of Labor's Guidelines establish that Deputy Crowley could only perform at a "sedentary physical demand category". (Claimant's APA p. 3). Commissioner, overlooked in the vocational expert, Ms. Harriet Fowler's report found at p. 47 of the Claimant's APA Submissions is the list of the number of job titles that fall within each category and then the reports states in reference to those job categories that Mr. Crowley is excluded from every job in the very heavy duty category, the heavy duty category, the medium duty category, and the light duty category due to the physical limitations stemming from his injury; that is to say the functional loss of use of his back. Ms. Fowler then goes on to state:

"only 11% of the 12,761 job titles that exist in the US economy fall into the sedentary category; and the client is thus excluded from 89% of the job titles in the US Economy based on his physical capacities and can only work from 2.67 to 5.28 hours total in an 8 hour day even in the sedentary physical demand category"

Even the Defendants' records review vocational report states that he cannot perform physically outside of the physical demand classification and if you will note the jobs that even their expert records are not jobs that require the use of the back to do work requiring the use of the back; in other words bending, stooping, lifting, pushing and pulling. Commissioner, most respectfully, there is simply no evidence other than that this man has lost 50% or more of the functional use of his back to do work requiring the use of the back. There is simply no evidence to rebut the presumption that this man has lost 50% or more of the functional use of his back to do work requiring the use of his back.

3. That in support of reconsideration under both 1. and, more importantly, under 2. as set forth hereinabove, Commissioner we would point out in your consideration that except for the comment made by Dr. Bethea, all the evidence is that Deputy Michael Crowley gave a full and complete effort and showed no signs or either malingering or symptom magnification.

APA p. 3 of the Functional Capacity evaluation showed that Mr. Crowley demonstrated consistent and maximal effort; p. 8, results of objective testing, Mr. Crowley demonstrated consistent and maximal effort; p. 10 Mr. Crowley demonstrated negative symptom magnification. At p. 8 under the Oswestry Disability Index (ODI) which has become one of the principle

condition-specific outcome measures used in the management of spinal disorders in the results, Mr. Crowley scored a 66% on the ODI which equates to "crippled" ... "back pain impinges on all aspects of this patient's life, both at home and at work, and positive intervention is required".

Dr. Cheatle, p. 116, "I see no signs of malingering or secondary gain due to his injury".

On psychological testing based on the objective psychological test results performed by Dr. Windsorova at the request of the Defendants, at p. 127 Dr. Windsorova found that,

"he does not have any psychiatric history and currently presents as being psychologically stable without any significant depression and/or clinical psychopathology. ... Mr. Crowley is highly motivated to improve his functioning with more effective pain management"

Throughout the records, every doctor found him cooperative, wanting help, and a total commitment to improving his condition and I would submit there is absolutely no contrary medical evidence from any of the medical providers other than that Deputy Crowley gave a full and maximum effort in any and all rehabilitation and treatment regimens.

4. That in support of our request for reconsideration and addendum to the future medical and of reconsideration as to an Award for the maximum Award for having lost more than 50% of the functional use of his back to do work requiring the use of his

back, I would submit the following items for your consideration Commissioner.

First, Dr. Barbara Sarb, 2/23/2019 after the spinal cord stimulator trial:

"... he is positive and interested in proceeding to discuss a permanent placement with Dr. Cheatle ... I recommended to his case worker, Dianna Welch, that he follow-up with Dr. Cheatle for continuity of care. The patient appears content with Dr. Cheatle and I would not recommend changing neurosurgical providers on him at this point." (Defendants' APA Submission p. 260).

Commissioner, I would also point out the last question I asked Mr. Crowley on direct:

"Q: Alright. What would you like the Commissioner to do for you?

A: Give me some help, find out what is going on." (R. p. 72, ll. 21-23.)

5. That Commissioner should grant reconsideration or order a new hearing due to the consideration of information outside of that provided by the parties and outside of the Record.

Both in the Findings of Fact under Finding of Fact 22, 23, and 24 the Commission recited specifically to the cases of Barr v. Darlington County School District and to Gadson v. Mikasa Corp. and to WCC Reg. 67-612(f). In neither the Claimant's nor the Defendants' Prehearing Brief, nor in any Memorandum or request made prior to the hearing; nor at or during the hearing; nor subsequent to the hearing neither party submitted that case

law to you Commissioner in support of their positions as to either the objections or anything else. Since the information is not contained within the Record and since neither party submitted it to you for your consideration, it is improper as going outside of the Record to base your decision on this additional caselaw or legal information. In fact, in the Findings of Fact you state a legal opinion and your interpretation of those decisions. In fact, while this is not set out, the Barr v. Darlington County School District decision was not decided until after the Hearing.

Of course, the Commission is subject to the Code of Judicial Conduct and under Canon 3(B)(7), the Canon specifically provides that:

"A judge shall not initiate, permit, or consider ex parte communications, or consideration other communications made to the Judge outside of the presence of the parties concerning a pending or impending proceeding except that:

b. A Judge may obtain the advice of a disinterested expert on the law applicable to the proceeding before the Judge if the Judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond."

Most respectfully since neither party submitted these two cases in support of their positions and since the parties were not advised of any ex parte communication or consideration of these cases which is outside of the Record their consideration is improper requiring recusal and a new hearing.

Commissioner, in fact, any lawyer will tell you that the Barr v. Darlington County School District case is pending a Motion for Reconsideration and therefore the final decision of the Court of Appeals is not in place and it should not be considered. It would be going outside of the Record for me to give you the posture of that case any further since again, it would be going outside of the Record.

6. That at the hearing we objected to all the past medical records prior to the date of the first accident on the basis that they were irrelevant, immaterial and called for speculation on your behalf in reference to the meaning of those records and included within the objection that they would only be relevant if, "counsel shows me any medical opinion that blames any of his current problems with his low back and leg on those past existing problems" (R. p. 17, ll. 1-9).

In response, Ms. Noonan asserted that the records were being put in because, "... all of those medical records go to both the issue of credibility and to show the history of his pain complaints."

Both putting in the records and basing the credibility and more important, putting in the records on the basis they established a relationship between his current pain problems in reference to his low back and any prior medical treatment or history was the specific reason that the Claimant submitted the

Clark v. Phillips Electronic/Shakespeare Inc. case to you for your consideration. In that claim, the Court of Appeals specifically held that it is wrong as a matter of law to consider credibility over objective medical evidence. The Court specifically held that, "Phillips could have offered contrary evidence; without any, the Panel had no basis to discount the objective medical evidence" That is a specific objection that is being made here. The submission of the evidence of past medical treatment without medical opinion is just simply flat wrong. There is no medical opinion relating the prior medical treatment to the current problems of Deputy Crowley.

In reference to credibility, outside of the fact that the Defendants sought to admit these massive amounts of medical records because they might affect the Claimant's credibility, the Supreme Court in Crane as cited in Clark specifically advised that such a witch hunt and such a reference to credibility, that immaterial and irrelevant to the issues for decision is improper. The Supreme Court specifically stated that in reference to

"a factual determination by the Commission based on credibility, the Appellate Court must not only understand that the Commission relied upon the credibility findings; the Court must also be able to understand the reasons the evidence supports the credibility finding and must be able to understand the reasons credibility supports the Commission's decision..."

The Court went on to explain that:

"Here, neither Commissioner Barden nor the Appellate Panel gave any explanation how Crane's lack of credibility can justify ignoring the medical evidence, or how his credibility even relates to whether he suffered hearing loss."

In other words, on a medical issue if the Commission finds the Claimant not to be credible in some way in reference to past medical records, they could only do that if they find that there is medical opinion to support that finding of a lack of credibility. In other words, even if it existed as the Court stated, the Commission must establish "how his credibility even relates to whether he suffered hearing loss."

Of course, the Commission decision must be based on evidence sufficient to support the decision and cannot be based on surmise, speculation, or conjecture. Hudson v. SC State Port's Authority wherein the Supreme Court held that the decision to deny benefits in other words, there has to be medical opinion evidence linking the prior medical care to the current problems and also, it is clear such evidence is not admissible for credibility.

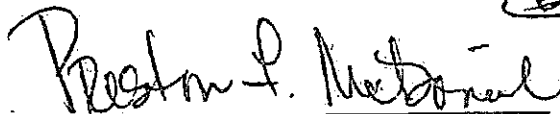
WHEREFORE, based upon the above, the Claimant respectfully requests reconsideration as to the future medical care, and for the Award to include specifically the doctors that shall treat him, including Dr. Barbara Sarb Naso and the doctors at Integrated Pain Management, and order that the continuing medication treatment he needs through Integrated Pain management

as stated by all physicians in the Record be provided.

The Claimant would further request reconsideration as to the Award since the undisputed evidence in the Record on loss of use is that former Deputy Crowley has lost 50% or more of the functional use of his back to do work requiring the use of the back. There is simply no other evidence nor any contradictory evidence concerning loss of use of the back in the Record.

Finally, since legal advice and legal opinion and legal precedents outside of those cited and the positions taken by the parties, was obtained by the Commissioner through ex parte communication, as is clearly set forth in his Order without the knowledge of the parties being contacted, the Claimant would respectfully request that the decision be withdrawn and this matter remanded for a de novo hearing.

Respectfully submitted,

 LHR

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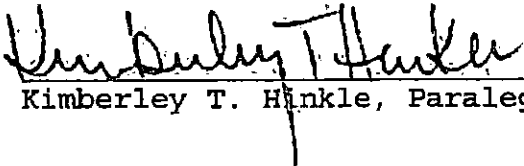
July 7, 2021

CERTIFICATE OF SERVICE

WCC File No. 1716288 & 1801098

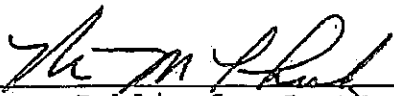
I hereby certify that I have on this day served the following in the matter of Michael Crowley v. Darlington County with a copy of our MOTION FOR RECONSIDERATION PURSUANT TO REG. 67-215(B) by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

VIA EMAIL - avnoonan@wjcblaw.com
AND USMAIL
Anne V. Noonan, Esquire
WILLSON JONES CARTER & BAXLEY
421 Wando Park Blvd., Ste. 100
Mt. Pleasant, SC 29464



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
7 day of July, 2021.



Notary Public for South Carolina (L.S.)
My Commission Expires: 2/4/24

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: **1716288 & 1801098**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Michael Crowley SSN: _____ Employer's Name: Darlington County
Address: _____ Address: 1 Public Square
City: Bennettsville State: SC Zip: 29512 City: Darlington State: SC Zip: 29532
Home Phone: () - Work Phone: () - Insurance Carrier: SC Association of Counties SIF
Preparer's Name: Preston F. McDaniel, Esquire Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 05/05/17 & 01/03/18

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

SEE ATTACHMENT.

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form. I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVIC on the ___ day of ___ 20__.

by first class postage certified mail personal service electronic service

Preston F. McDaniel
Preparer's Signature

Attorney for the Claimant
Title

preston@pfmcdlaw.com
Email

Check this box if you are not represented by an attorney

SCWCC

AUG 09 2021

JUDICIAL
August 6, 2021
Date

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

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

ATTACHMENT TO FORM 30

Michael Crowley v. Darlington County
WCC File Nos. 1716288 & 1801098

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. The Commission should review the Award and find that while Deputy (former now Police Officer disabled retired) Crowley's burden of proof is to establish by a preponderance of the evidence that he is entitled to the benefits sought, there is absolutely no evidence on the essential issue for decision by the Commissioner as to loss of use of the back to do work requiring the use of the back, other than that (former) Deputy Crowley has lost 50% or more of the functional use of his back to do work requiring the use of his back and is entitled to an Award of 500 weeks of compensation for that scheduled member loss of use under SC Code §42-9-30(21). Under that Code Section, the scheduled member Award to be made is for "loss of use" and is based on the character of the injury, not wage loss. The Commissioner erred in failing to make an Award based on the reliable, prohibitive and substantial evidence in all of the Findings of Fact and Conclusions of Law and that part of the Order involved with and addressing that issue. The Commissioner specifically erred in making Findings of Fact, 29,30 & 31, and Conclusions of Law 3 and specifically Conclusion of Law 5 and in the Order and Award made based on those and all Findings and Conclusions in reference to the back and leg.

3. The Hearing Commissioner erred as a Matter of Law by failing to make Findings of Fact and Conclusions of Law on the essential issue of, "loss of use" of the back to do work requiring the use of the back under SC Code §42-9-30(21) in contradiction to our Appellate Court and specifically the Supreme Courts decision in Clemmons v Lowes Home Improvement of Irmo.

4. The Hearing Commissioner erred as a Matter of Law by making Findings of Fact 22, 23, 24, 25 & 26, which are not Findings of Fact but are in fact legal opinions and legal positions. They contain arguments, legal positions, legal opinions and citations to case references not presented to the Commissioner, either before or after the Hearing, by either party which constitutes the Commissioner going outside of the Record and arguments made to him by the parties and based on a legal analysis not presented.

5. The Hearing Commissioner erred as a Matter of Law in specifically making Finding of Fact number 22, which is actually not a Finding of Fact, but is a legal opinion or legal interpretation or legal position based on review of Law and which also is contrary to the actual argument and objection made by the Claimant. The Finding of Fact specifically states in pertinent part:

"... Claimant asserts that prior physicians' opinions are not credible because they allegedly fail to address causation ...

The issue in this case is what weight to assign to medical records that may or may not state 'to a reasonable degree of medical certainty' that Claimant's pre-existing conditions are or are not related to his work injuries ...

Additionally, the records may be admitted for impeachment purposes, and it is necessarily so that a party will not know whether or not the Records will be used for that purpose until a witness testifies at the Hearing."

However, the actual objection that was made, as set out in the Record at the Hearing, and as capsulized in a letter from the Claimant's Counsel submitting additional authority in support of the Claimant's objection, was as follows:

"You will recall that we objected to medical records for past treatment being submitted into evidence without any supporting medical opinion establishing a causal relationship between any of that medical care to any of Deputy Crowley's current medical problems stemming from the accident and for which benefits are sought. Without such expert opinion evidence, the submission calls for speculation by the Commission on a causal relationship. As part of Defendants response to our objection, the Defendants position was, in part that the Records were being submitted concerning the Claimants credibility."

In the Findings of Fact, in Finding #18 in reference to the prior medical history the Commissioner actually found the Claimant credible; he: "either admitted or could not recall the extent or nature of his previous complaints regarding his cervical spine, lumbar spine, right groin, right shoulder, and lower extremity complaints".

There is no finding that the Claimant's testimony was not credible in any regard. From the additional authority cited to the Commissioner, Clark vs. Phillips Electronics:

"Phillips contends the panel rightfully treated all the medical evidence as suspect because Clark did not disclose his 2006 injury. But Dr. Storick deflated this theory when he testified that learning of the 2006 injury did not change his opinion that the 2011 injury caused Clark's injuries. Phillips could have offered contrary evidence; without any, the panel had no basis to discount the objective medical evidence and Crane tells us a vague nod to credibility cannot close the gap.

The Panel's Absolutist treatment of Clark's credibility in effect adopts the Latin maximum, well known to lawyers... 'false in one, false in all'. ... Wigmore denounced the maximum as 'primitive psychology' that 'is in itself worthless'....

..."Dubious and Archaic as the saying may be, we are not aware of any instance where it has been used to disregard not just a party's testimony but their entire array of proof."
(Emp. add.)

The Commissioner erred by admitting these medical records without any medical opinion evidence stating that they were in any way relevant concerning the Claimant's current injuries to his low back (note neck) and leg.

6. The Hearing Commissioner erred as a Matter of Law and Fact in his Award of future medical care. The undisputed medical evidence establishes that former Deputy Crowley will need all types of medical care, not included the Commissioner's Award and specifically including chronic pain management for the severe problems that he is having with his low back:

Dr. Nigel Watt January 31, 2019 stated that Deputy Crowley will not need follow-up appointment because he, "is established with a pain management physician ..."

Dr. Leonard Forrest "I recommend that Deputy Crowley continue his pain management under the direction of Integrated Pain Management and also Dr. Barbara Sarb that is needed in order to maintain his current level of function."

At the time of release, 11/21/2019 Dr. Naso and Dr. Sarb noted his current and continuing medications as:

"CURRENT MEDICATIONS - Taking: Lortab 10-325 MG Tablet Orally Four times a day, Capacet Orally, Zomig 2.5 MG Tablet Orally, Simvastatin 40 MD Tablet Orally, Gabapentin 300 MG Capsule Orally Three times a day, Hydrocodone-Acetaminophen 10-325 MG Tablet Oral, Tizanidine HCl 4 MG Tablet Oral, Diclofenac Sodium 75 MG Tablet Delayed

Release Oral, Butalbital-APAP-Caffeine 50-325-40
MG Capsule Oral, Keflex 500 MG Capsule 1 capsule
Orally every 12 hrs.

Medication List reviewed and reconciled with the
patient."

Integrated Pain Management Ms. Sharon Coggin, PA-C:

"Mr. Crowley will need the chronic pain
treatment which we are providing him due to the
condition of his lower back without regard to
his cervical spine problems, and he will need
this treatment for the foreseeable future as
reflected in our records and treatment notes.
This is my opinion stated to a reasonable degree
of medical certainty."

There is simply no contrary medical opinion evidence that
former Deputy Crowley will not need this medical care.

7. The Hearing Commissioner erred by admitting and not
excluding the medical opinion and evaluation report of Dr. James
Bethea where the Defendants violated and failed to comply with
the provisions of SC Code §42-15-95. That Code Section provides
that an employer, carrier or its representative may communicate
or discuss the worker's claim without consent with any Provider
that either provides examination or treatment, provided that the
employee must be given notice and this notification:

"must occur prior to the actual discussion or
communication" ... (2) advised by the employer,
carrier or its representative ... of the nature
of discussion or communication prior to
discussion or communication ... (3) provided with
a copy of the written questions at the same time
the questions are submitted to the health care
provider...

(C) Any discussions, communications, medical
reports, or opinions obtained in violation of
this section must be excluded from any
proceedings under the provisions of this title."

The evidence established that there were multiple
communications and specifically including a detailed letter
attaching hundreds of pages of medical records sent to Dr.
Bethea on October 27, 2020; all of which conversations and
communications which occurred between October 2020 and January
2021 were not copied to nor was the Claimant made aware of; and
the Claimant only became aware of such communications with Dr.
Bethea following his Subpoena issued on January 6, 2021 to Dr.
James Bethea, MUSC Primary Care as set out in the Record.

The Commissioner erred in violation of the Statute as a
matter of Law requiring a reversal or a new Hearing since that

evidence was obtained in violation of §42-15-95. It was the fruit of the poisonous tree.

8. That the Commissioner erred by accepting the medical records and report of Dr. James Bethea, in violation of the agreement of the Defendants to provide an evaluation for treatment by a specialist at the Medical University of South Carolina, wherein it is clearly established in the Record that Dr. James F. Bethea is not part of nor a specialist with the Medical University of South Carolina, Department of Orthopaedics and Physical Medicine, nor any other specialty department at the Medical University of South Carolina and is only a treating physician within MUSC's, "Primary Care" at the Epic Center in Mount Pleasant, South Carolina.

9. That the Hearing Commissioner erred as a Matter of Law in making Findings of Fact 23, 24, 25 and 26 which are not actually Findings of Fact, but are legal opinions, positions, and statements and which contain rulings that are not Findings of Fact in reference to the Claimant's objections to the admission of Dr. Bethea's medical report and opinions which were put into evidence over those objections; and further by making decisions in Findings of Fact on legal issues including:

A) After a request for a Commission Subpoena by failing to issue a Subpoena for Dr. James F. Bethea to appear at the Hearing to testify so that the Claimant may exercise his right of cross-examination, wherein the Defendants had placed Dr. Bethea's report into evidence over objection. The right of cross-examination is specifically preserved and particularly as to any written documentation put into evidence under SC Code §1-23-330(1) and (3).

B) By interpreting the Workers' Compensation Act so as to not require the Commission upon request to issue a Subpoena requiring the attendance of a witness upon whose written documentary evidence the Commissioner relied in making his decision and wherein a specific request was made for Dr. Bethea to be subpoenaed by the Commissioner to the Hearing, so that the Claimant may exercise his right of cross-examination. The Commissioner interpreted the Statute which allows for it to subpoena witnesses, to hold that the Commissioner didn't have to subpoena the witness, but at the same time admitting the documentary evidence into evidence and relying on that evidence in limiting benefits.

C) Requiring the Claimant to pay to exercise his right of cross-examination wherein the Defendants paid Dr. Bethea a fee of \$5000.00 to conduct, instead of a treatment evaluation, an Independent Medical Evaluation, and to answer questions far beyond a treatment evaluation which was introduced by the Defendants as their evidence to support a limitation on the Award. Thus violating the very fundamental principles of the Act, including that it designed to be a no cost/no fault system interpreted in favor of the injured worker to provide for swift and sure benefits.

D) By concluding as a Finding of Fact, which is not a Finding of Fact, that, "Dr. Bethea, who is a private citizen, is not a State actor as contemplated by our Laws. He may charge appropriate fees for his time in testifying at a deposition". There is no Law, Regulation or Court holding referencing a physician as a private citizen versus a State actor as contemplated by any Law, Regulation or Court decision, and what that has to do with anything in reference to whether or not a Claimant has to pay to cross-examine a Defense Expert is arbitrary and capricious.

E) As a Matter, by confusing or failing to recognize the difference between a discovery deposition, which a party takes to know what a witness is going to say at trial versus a De Bene Esse deposition, that a party takes in order to be allowed to submit evidence into the Record in support of their claim or defense in lieu of live testimony. The Commissioner failed to recognize the difference between a deposition and evidence which constitutes an error of Law.

10. That the Hearing Commissioner erred as a Matter of Law and Fact based on a reliable, probative and substantial evidence in the Record on loss of use, which is undisputed, as follows:

Dr. Leonard Forrest expressed the medical opinion stated to a reasonable degree of medical certainty that Mr. Crowley had lost 50% or more of the functional use of his back to do work requiring the use of his back.

Deputy Crowley testified that in his opinion he had lost 80% of the use of his back as a result of injuries to do work requiring the use of his back.

The Functional Capacity evaluation and Dr. Naso and all treating physicians released Deputy Crowley to only sedentary work. In fact, the Functional Capacity Evaluation limited him to only "limited" sedentary work, thus excluding him under the Dictionary of Occupational Titles from 4 out of the 5 physical demand classification categories due to the injury to his back and thus excluding him from over 80% of the job classifications available throughout the entire economy. Per vocational expert actually 89%.

Both the vocational expert, who personally evaluated Deputy Crowley and the records review expert for the Defendants opined that Deputy Crowley was only capable of doing sedentary work. There is no other evidence in the Record concerning loss of use.

11. That the Hearing Commissioner erred in making Findings of Fact #3 and #9 and by not recognizing and finding that both prior to and subsequent to the first injury, Deputy Crowley was a full-regular duty Deputy Sheriff working in the Fox Trot Unit of the Sheriff's Department who was performing the full range of physical demands and activities of a Deputy Sheriff. Subsequent to the second accident, he was placed on sedentary work only restrictions on which he remained from that date until the day

that he left employment. During this time, he was reassigned to the Court House and to only be a, "security officer for the Judge".

12. The Hearing Commissioner erred as a Matter of Law in making Findings of Fact 2,3,5 and 6 inferring and finding that (former) Deputy Crowley was provided, "all appropriate medical care", whereas subsequent to the 2018 injury after the authorized treating physician, Dr. Nigel Watt recommended an MRI in February, no treatment was provided for the back and the back was totally denied until after the Claimant was sent for an evaluation by Dr. Cheatle, not in Florence, but in Myrtle Beach, SC, after which the MRI was provided over 9 months later. The Record establishes that there was no treatment between February and September for the Claimants severe back injury, thus the finding that the Claimant's injury to the back was "accepted" and that he was provided "all appropriate medical care" is not supported by and is contrary to the Record.

13. That the Hearing Commissioner erred in his review of the vocational expert testimony by not addressing in his Findings of Fact concerning the vocational expert testimony that Ms. Harriett Fowler did a detailed analysis under the Dictionary of Occupational Titles Physical Demand Classification System concerning the number of job classifications that are available in each of the physical demand categories which concluded that since it was agreed by all physicians that the Claimant was excluded from all but, "sedentary" work, that assuming he could do the full range of sedentary work, he was still excluded from, "89% of job titles in the US economy based on his physical capacities, and can only work from 2.67 to 5.28 hours total in an 8 hour day even in the sedentary physical demand category". This issue is not addressed in the report of the vocational analysis conducted by the vocational evaluator for the Defendants. This misunderstanding of this uncontradicted evidence requires reversal of the Hearing Commissioner's decision.

14. That the Hearing Commissioner erred as a Matter of Fact of Law by failing to address the essential issue for decision in any of his Findings of Fact or even to mention Deputy Crowley's opinion concerning the amount of loss of use of the back that he has. The Commission is required to make Findings of Fact and Conclusions of Law on every essential issue presented to the Commissioner for decision.

15. That Commissioner erred as a Matter of Law and Fact in reference to all Findings of Fact and all Conclusions of Law referencing the leg particularly including Findings of Fact 5,6,7,15,18,20,29,30 and Conclusions of Law 2,5 and in the Order part of the Award referencing the leg wherein there is no reference to the fact that Deputy Crowley has a documented radiculopathy based on EMG/NCS studies and which is documented in his treatment notes with Integrated Pain Solutions. There is no evidence in the Order that the Commissioner took this radiculopathy into consideration in reference to the Claimant's

loss of use of the back or loss of use of the leg stemming from the injuries.

16. That while the Hearing Commissioner in part addressed the Claimant's need for further medical care to maintain his current condition and functioning level and Awarded the Claimant a Tens Unit and physical therapy, there is no reference to follow-up medical care or the authorized physician to prescribe a Tens Unit and/or order physical therapy. As is set out in the records of Drs Naso/Sarb and even the vocational expert used by the Defendants report, the Claimant is on continuing medications and chronic pain management which is not addressed in the Commissioner's Order.

17. That the Hearing Commissioner erred as a Matter of Law in his application under Conclusion of Law #4 as to the provision of medical care under SC Code §42-15-60 or that the future medical care needs of the Claimant under the undisputed evidence as a Matter of Law under Law was even considered by the Commissioner. Under the Claimant's burden of proof and the reliable, probative and substantial evidence in the Record and uncontradicted medical opinion evidence as to the future medical care needs of the Claimant. If the Commission is not going to award any medical care thought to be necessary by the treating physicians or under the evidence, the Commission must find substantial evidence in the Record for such denial and cite that evidence in support of any Findings of Fact or Conclusions of Law denying or limiting care.

18. That the Hearing Commissioner erred as a Matter of Law in making Finding of Fact #5, which is not a part of the Law as established by the SC Supreme Court in reference to loss of use of the back or for loss of use of the right leg. The Supreme Court has specifically held, and the Statutes require that the Commission address the essential issue of fact and Law under SC Code §42-9-30, the Scheduled Member Award Statute, which is loss of use, not impairment or disability. Disability is defined under SC Law under SC Code §42-1-120 and under Supreme Court decisions and the Statutes of our State, loss of earning capacity is not a requirement or a consideration in reference to loss of use under §42-9-30. Loss of use under our Supreme Court decisions and particularly as to the back is to be compensated based on the evidence in the Record based on the character of the injury and specifically loss of use to do work requiring the use of the back; and wage loss is not a consideration.

19. That the Commissioner erred as a Matter of Law in making Conclusion of Law #6, wherein that was not an issue presented to the Commissioner for decision, nor was it cited, nor was it a part of the Record in any way, shape or form nor was it in fact an issue before the Commissioner for decision. The Conclusion of Law is arbitrary, (based on random choice of personal whim rather than any reason or system) and capricious (a judicial decision which is the subject of whim not based on and which does not follow the law, logic or proper procedures).

20. That the Hearing Commissioner erred as a Matter of Law in making Conclusion of Law #7 and in citing the case of Barr versus Darlington County School District which decision was not rendered at the time that this matter was heard; it is not part of the Record; it was not submitted by any party; and is not a proper consideration for the Commissioner unless and except as raised by a party in argument or in support of their position.

It violates the neutrality of a Hearing Officer and the responsibility of a Commissioner under the Act for the Commissioner to look up and consider legal authority outside of that presented by the parties with the intent and purpose of denying the Claimant benefits.

Further, that part of Conclusion of Law #7 that refers to the Claimant's due process rights not being violated and the Commission not required to issue a Subpoena, does not reference the requirements of the United States Supreme Court that where a Claimant or any litigant asserts their right to cross-examination of a document placed into evidence and specifically asks that the administrative body subpoena the witness so that they may exercise their right of cross-examination the submission violates due process and is contrary to the Law and the Commissioner's Oath of office.

That part addressing that the Commissioner is not required to issue a Subpoena and referencing the Commissioner's responsibility and authority under the Act is contrary to Law. The Commissioner's responsibility under Statute and specifically 42-3-140 and 42-3-150 in reference to a request for a Subpoena which is made by a party and particularly the injured worker, is to determine and make a decision and set forth Findings of Fact and Conclusions of Law supporting that review and decision as to whether or not the presence and attendance of a witness is necessary as it relates to "the questions in dispute"; and whether or not the testimony is deemed "necessary in connection with any proceeding" under this Title. SC Code §1-23-330 specifically provides that the right to cross-examination shall be preserved in all administrative hearings, and that has been determined to require the attendance of witnesses for that purpose concerning any documentation that is placed into evidence or sought to be placed into evidence.

21. That the Hearing Commissioner erred as a Matter of Law under Conclusion of Law #8 by not referencing the Statutes under which it is ordered, but more importantly as it relates to the Award set forth under Conclusion of Law #8 as to the Award that was made to Deputy Crowley for his back and leg wherein Deputy Crowley is entitled to an Award for loss of use of the back, for the full 500 weeks of compensation due under the Act, due to the character of his injury.

22. That the Hearing Commissioner erred in his Order part in his Award to the back and his Award to the leg as being contrary to Fact and Law and as to his provision of medical care

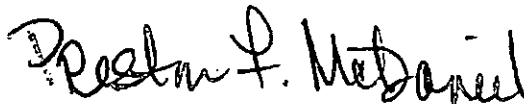
which is contrary to Fact and Law under the undisputed medical and testimonial evidence in the Record.

23. That the Hearing Commissioner erred as a Matter of Fact and Law by not making any Findings of Fact and Conclusion of Law in reference to whether or not the Claimant has sustained serious disfigurement. This factors into the Commissioner's consideration of the back. It is well documented and undisputed throughout the entire Record that Deputy Crowley has a documented, unchallenged radiculopathy in his right leg and that he suffers gait derangement. Gait derangement is an awardable disfigurement, but more importantly it is a factor that should have been considered and is not reflected in the Commissioner's Findings of Fact or Conclusions of Law. Without making Findings of Fact and Conclusions of Law on the issue of serious disfigurement, the Commissioner erred within his Order by concluding that the Claimant did not sustain any serious or permanent disfigurement as a result of the accident.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted,





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, August 6, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No.: 1716288 & 1801098

MICHAEL CROWLEY,)
)
Employee/Claimant,)
)
vs.)
)
DARLINGTON COUNTY,)
)
Employer,)
)
and)
)
SOUTH CAROLINA ASSOC. OF)
COUNTRIES SIF,)
)
Carrier,)
)
Defendants.)
_____)

APPELLANT'S BRIEF TO THE
FULL COMMISSION

PREFACE

It is undisputed that due to and after the January 3, 2018
accident due to the condition of his back and leg, is physically
limited to sedentary work only.

Former Deputy Crowley's Request for Review centers around four (4) errors of law and errors of fact by the Commissioner in reference to his failure to award former Deputy Crowley an Award for total and permanent disability based on either or both having lost 50% or more of the functional use of his back and/or that he has sustained a total loss of earning capacity based on his age, education, background and experience, and the physical facts of the injury under the total disability standard applicable in a workers' compensation case:

First, the Hearing Commissioner erred by allowing into evidence and considering as part of his decision the evaluation and report of Dr. James Bethea which was obtained in violation of SC Code §42-15-95 and under law, "shall" be stricken from the Record requiring a remand for a de novo hearing.

Second, based on the preponderance of the evidence and even the higher standard of the reliable, probative, and substantial evidence in the Record and based on the only evidence in the Record concerning the essential issue before the Commissioner for decision, "loss of use" of the back to do work requiring the use of the back, the Commissioner erred by not awarding former Deputy Crowley an Award for total and permanent disability for having lost 50% or more of the functional "use" of his back.

Third, in accordance with the SC Court of Appeals and Supreme Court decisions, the Commissioner erred by failing to award former Deputy Crowley an Award for total loss of earning capacity under SC Code §42-9-10(A) under the standard applicable in a workers' compensation case which has been the law since the inception of the Act, and case law specifically since 1954.

Fourth, the Commissioner erred by admitting into evidence over objection medical records prior to the date of the first accident and specifically on the basis that there was no medical opinion evidence offered that any of that medical care or treatment in the Records was relevant or material to the current

issues before the Commission. Such medical records are only relevant and material and not prejudicial where there is expert medical opinion evidence giving a causal relationship. Otherwise, a review of medical records by a Commissioner constitutes and calls for surmise, speculation, and innuendo as to any casual connection or relevancy between those prior medical records and treatment as to the current issues before the Commission.

The Claimant will rely on the remainder of his Exceptions as raised in the Request for Review to address other specific errors made by the Hearing Commissioner.

STATEMENT OF THE CASE

Former Deputy Crowley entered law enforcement in 2005 and became a road Deputy for the Sheriff's Department in 2013. He was promoted and transferred to the Fox Trot Unit in 2015, and in 2016 he was promoted to a Corporal. Before that and after graduating High School he did plant work on assembly lines. (Hrg. Tr. p. 32, l. 18). It is uncontested and Deputy Crowley put into evidence the fact that he had had neck surgery in 2015 and that prior to and at the time of the first accident he was under care for pain management mainly in reference to headaches and some neck pain following that neck surgery. (Hrg. Tr. p. 41, l. 19- p. 42, l. 9).

Deputy Crowley sustained two injuries: one on May 5, 2017 and the second on January 3, 2018 both while a Corporal in the

Fox Trot Unit of the Sheriff's Department. On both occasions his injuries were severe enough that he was taken by ambulance to the hospital. In the first accident on May 5, 2017 Deputy Crowley was transporting several juveniles to Columbia, one got out of the restraints and while attempting to subdue that prisoner Deputy Crowley sustained injuries to his right knee and leg and back. While he received treatment for both his low back and right leg, the major focus was on his right leg and he was released by Dr. Nigel Watt completely from care with no work restrictions on December 4, 2017. (Def. APA pp. 1, 7, 13, 14).

Again as former Deputy Crowley testified on direct and as is reflected/recorded in the medical records both the hospital and Dr. Nigel Watt at the time of the first injury Deputy Crowley told them he was receiving pain management for headaches stemming from his neck surgery. (Def. APA pp. 2, 3, 9, 16; Hrg. Tr. p. 46, l. 16 - p. 47, l. 2; and p. 48 ll. 3-25).

After the 5/5/2017 accident and having returned back to regular duty work as a Corporal and Deputy Sheriff in the Fox Trot Unit of the Sheriff's Department on January 3, 2018 he was trying to help a stranded motorist stranded in an ice storm and while trying to push that car, his feet went out from under him and he fell and again was treated for his right knee and leg and his low back. As noted, he was taken by ambulance to the hospital where he was treated specifically for the knee and then

by Dr. Nigel Watt. Dr. Watt on February 22, 2018 due to continuing problems with his lumbar spine ordered an MRI be performed and opined it was a direct result of his injury on January 3, 2018. (Cl. APA p. 109). The Defendants refused and failed to provide any medical care for the Claimant's back and failed to provide the MRI until after they referred him, not to a local orthopaedist, but to Dr. Joseph Cheatle in Myrtle Beach. He was seen by Dr. Cheatle for the first time on August 15, 2018 at which time he ordered an MRI of the lumbar spine and opined the back problems were related to the 1/3/2018 accident. (Cl. APA pp. 114-116). On November 14, 2018 Dr. Cheatle referred Deputy Crowley back to Dr. Barbara Sarb for a spinal cord stimulator trial. Of note: following the January 3, 2018 accident Dr. Nigel Watt placed Deputy Crowley at, "sedentary work only" and he remained under those restrictions throughout the entire time he remained with the Sheriff Department as a Deputy and was transferred and was working as a security guard at the Darlington County Courthouse. (Hrg. Tr. p. 51, l. 1 - p. 57, l. 19).

After being sent to Dr. Sarb and Dr. Naso, Deputy Crowley continued on medications and went through treatment including physical therapy, injections, and two spinal cord stimulator trials. (Hrg. Tr. p. 55, l. 12 - p. 56, l. 21; Cl. APA pp. 63-104).

In February 2020 after being told by the training officer of the Sheriff's Department that he could no longer work as a Deputy Sheriff, drive his patrol car, and could not wear his uniform or gun, and that he would have to stay in plain clothes at the Sheriff's Office. After discussion with the Chief Deputy and the Sheriff and at the request of the Sheriff (Hrg. Tr. p. 59, ll. 5-10; ll. 20-23) Deputy Crowley obtained a Statement from Dr. Naso's office allowing him to continue to wear his taser, weapon and handcuffs and based on that statement the Sheriff directed that he be allowed to continue to work at the Courthouse as Courthouse security. (Hrg. Tr. p. 58, l. 10 - p. 60, l. 1; Cl. APA p. 63). Dr. Nigel Watt continued his restrictions based on the functional capacity evaluation of sedentary work only. (Hrg. Tr. p. 60, ll. 2-5). In reference to his ability to do even Courthouse security:

Q: -- tell us how you -- how it's been trying to do the job at the -- the Courthouse the last year?

A: It has been tough. I mean, I can't sit or stand for long periods of time. I can't do the things I used to do. I mean, I have to be real careful what I do so I won't - so I wouldn't reinjure myself again.

Q: What -- what was your intent, let's say beginning in the Fall of 2020, as far as -- in reference to your position with the Sheriff's Department?

A: Retiring.

Q: Ok. Why was that?

A: Because of the pain in the job. I couldn't do the job that I was hired to do and with

the pain all in my lower back and my right leg."

(Hrg. Tr. p. 60, l. 14 - p. 61, l. 6).

Mr. Crowley then testified that he applied for Police Officer Disability Retirement in November and actually left the force on January 4, 2021. According to his testimony he waited until January 4 because he was trying to booster his retirement and because he received his vacation pay effective January. (Hrg. Tr. p. 61, l. 7 - p. 65, l. 10).

He then testified in reference to his low back and right leg that during the Fall of 2020 that his right leg and low back had gotten worse and when the Hearing was set before Commissioner Beck due to the worsening of the condition of his low back and leg he requested to see a back specialist. He testified that before his injury to his low back affecting his right leg and the severe pain and problems in his right leg that he used to enjoy playing basketball; he had worked for the Volunteer Fire Department for over 28 years and had obtained his scuba diving license and was on the scuba diving team for the Fire Department; and that now he did none of these things and he then testified:

"I can't do anything of it now 'cause I'm hurtin' so bad in my lower back and my right leg. So I can't hardly do anything anymore ...

It hurts every day, I mean the sitting and the -- the standing 'cause the nerve in the hamstring area, if I sit too long it irritates it. I have to get up and calm it down a little bit and if I sit too long then my lower back starts hurtin'.

It's like, just back and forth."

(Hrg. Tr. p. 65, ll. 21-24; p. 66, ll. 19-24).

He further testified that prior to his injuries to his low back in reference to his neck that his neck did not prevent him from doing any of his functions as a Deputy Sheriff at the Sheriff's Department in the Fox Trot Unit.

"Q: Now, you were working in that Fox Trot Unit the whole time with your neck pain injury and that kind of thing. Were you inhibited any way in doing your job up until these two accidents, particularly the last one?

A: No sir."

(Hrg. Tr. p. 66, l. 25 - p. 67, l. 5).

The only offer of employment by the Defendants in January 2021 was to put him underneath the jail as an LE3, reduce his pay by \$6.00/hr., take his patrol car, and require him to drive his own personal vehicle back and forth to work. (Hrg. Tr. p. 7, ll. 7-12).

He then testified to loss of use of his back:

"Q: ... Mr. Crowley, Deputy Crowley, Mr. Crowley, ... you testified that all the jobs in which you got experience, you can't go back to due to the condition of your lower back and leg. Now assuming that at the time of these accidents and particularly after the second accident in the snow, assuming you had 100% use of your back to do work requiring the use of your back, and subsequent to that, zero, meaning you have zero loss of use and 100% meaning you lost 100% loss of use in your back to do work requiring use of your back. In your opinion, in reference to your ability to do work requiring the use of your back, what percentage is the loss of use of your back? Do you, in your opinion have you sustained as a result of these accidents?

A: I would say probably about 80."

(Hrg. Tr. p. 72, ll. 2-21).

From the decision of the Hearing Commissioner admitting into evidence over objection and in violation of SC Code §42-15-95 the report of Dr. James F. Bethea and in part relying on that report and by the denying the Claimant an Award for total and permanent disability based on having lost 50% or more of the functional use of his back to do work with his back and/or under SC Code §42-9-10, for having sustained a total loss of earning capacity based on the Claimant's age, education, background and experience, and the physical facts of the injury, this Request for Review to the Full Commission follows.

ARGUMENTS

- I. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW AND FACT BY FAILING TO MAKE AN AWARD UNDER SC CODE §42-9-30(21) FOR TOTAL AND PERMANENT DISABILITY FOR THE CLAIMANT HAVING LOST 50% OR MORE OF THE FUNCTIONAL USE OF HIS BACK TO DO WORK REQUIRING THE USE OF HIS BACK BASED NOT ONLY ON THE PREPONDERANCE OF THE EVIDENCE STANDARD, BUT ALSO BASED ON THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE IN THE RECORD STANDARD. THE ESSENTIAL ISSUE FOR DECISION BY THE COMMISSIONER UNDER THE SCHEDULED MEMBER STATUTE: THE LOSS OF USE OF THE BACK TO DO WORK REQUIRING THE USE OF THE BACK.

Under S.C. Code §42-9-30(21), a claimant is entitled to an Award of 500 weeks of compensation due to "the character of the injury" where the worker has lost 50% or more of the functional use of his back to do work requiring the use of his back based on the evidence in the Record. The Award under The Scheduled Member statute is based solely "on the character of the injury"

and not upon the earnings or the earning capacity of the injured worker. G.E. Moore Company v. Walker, 232 S.C. 320, 102 S.E.2d 106 (1958). McCullum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (S.C. App. 1989).

There is no need or necessity to prove nor is it pertinent to the essential issue before the Commission as to whether or not the Claimant has actually lost earnings.

"loss of earnings is not required for recovery under 42-9-30; compensation is based on the character of the injury." Bateman v. Town and Country Furniture, 287 S.C. 158, 336 S.E.2d 890 (S.C. App. 1985), Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (S.C. App. 1993 Reh. Denied, Cert. Denied.)

Where the substantial evidence in the Record establishes that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back, the Claimant is entitled to an Award for the maximum Award under a Scheduled Member Award which is the equivalent of a permanent and total disability Award for loss of use of the back. Clemmons v. Lowe's Home Centers, Inc.-Harbison, 420 S.C. 282, 803 S.E.2d 268 (2018).

Due to the position being taken by some defendants and some indications from some Commissioners that the Commission or some members of the Commission believe that after the 2007 amendments that wage loss has been infused into a determination and as evidence to be considered concerning an Award under S.C. Code §42-

9-30(21) for loss of use of the back, the following memorandum is submitted:

AWARD IS PAID FOR CHARACTER OF THE INJURY.

While the presumption under SC Code §42-9-30 (19) was always rebuttable, the 2007 amendment was to simply set that out in Statutory Language. The effect of any presumption under our Law was and is as is stated in the SC Rules of Evidence §301:

"In all civil actions..., a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption but does not shift to such party the burden of proof in the sense of the risk of non-persuasion which remains throughout the trial upon the party on whom it was originally cast."

In other words the Claimant had, has and will always have the burden of proof to put forth evidence, either lay, medical and/or otherwise, that the injured worker has lost 50% or more of the functional use of the worker's back to do work requiring the use of the worker's back which must be sufficient to prove that fact by a preponderance of the evidence.

The misperception that the Claimant has to prove wage loss or loss of earning capacity has been around long before the 2007 amendments and has been put to rest repeatedly by our Appellate Courts in the cases of Bateman, McCollum, and Lyles, supra.

"The Workers' Compensation Commission properly ruled that a Claimant is entitled to benefits even though the injury did not affect his performance in his subsequent job because compensation is based on the character and extent of the injury and not whether the Claimant lost earnings or is otherwise employable in another occupation". Lyles, supra.

A worker is entitled to an award for total and permanent disability for loss of earning capacity under SC §42-9-10 (A).

The pertinent part of S.C. Code §42-9-30 (21) (as Amended 2007) (the scheduled member back section) reads:

"where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under §42-9-10 (B). (Emp. Add.)."

S.C. Code §42-9-10 (B) provides that the loss of both hands, arms, feet, legs, or vision in both eyes or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of that section, i.e., 500 weeks.

An Award under Section (B) of §42-9-10 like an Award under §42-9-30 (21) is paid due to the character of the injury, not wage loss.

"Compensation depends on the functional loss rather than the loss of earnings." Dykes v. Daniel Construction Co., 262 S.C. 98, 202 S.E.2d 646.

Therefore, Awards under §42-9-30 (21) are not paid nor have they ever been paid for wage loss as under §42-9-10 (A). They are paid for the functional loss of use without any consideration of wage loss. A left-handed lawyer is entitled to total and permanent disability if he loses his right foot and right hand and the same is true if he loses 50% of the use of his back.

In this case, not only by a preponderance of the evidence but the only reliable, probative and substantial evidence in the Record on "loss of use" establishes that Deputy Crowley has lost 50% or more of the functional use of his back to do work requiring the use of his back. The uncontradicted evidence is as follows:

A. The CORA Functional Capacity Evaluation. In the summary of findings, the physical therapist stated:

"the Claimant demonstrated a 'CONSISTENT' effort during this evaluation. DIAGNOSIS: CHRONIC PAIN SYNDROME." "Based on results obtained, the Claimant demonstrates the ability to perform within the SEDENTARY physical demand category. The Claimant lifted zero pounds below waist height, 10 pounds to chest height and 10 pounds overhead. ...". (Cl. APA p. 2).

B. Dr. Leonard Forrest, MD in his evaluation conducted on January 30, 2020 stated the opinion that:

"to a reasonable degree of medical certainty, Deputy Crowley has lost more than 50% function of his back as a result of the two work-related incidents (5/5/17 and 1/3/18)." (Cl. APA p. 29).

C. Ms. Harriet Fowler, M.Ed., CRC, Vocational Rehabilitation Manager, in addition to expressing the opinion that the Claimant was totally disabled from gainful employment in reference to a loss of earning capacity, she also expressed the opinion based on his physical limitations and specifically his physical limitation on the use of his back that he was excluded from at least 89% of the jobs in the economy and that when looking at the entire criteria for even the sedentary work category that

he was disqualified from that category as well. Her opinion was as follows:

"Based on the client's valid FCE, the Client is actually excluded from all physical demand categories including very heavy, heavy, medium, light, and sedentary. In the US economy 92 job titles fall into the very heavy category, 1,165 in the heavy category, 3,373 in the medium category, 6,326 in the light duty, and 1,405 job titles in the sedentary category. Only 11% of the 12,761 job titles that exist in the US economy fall into the sedentary category; and the client is excluded from 89% of the job titles in the US economy based on his physical capacities and can only work from 2.67 to 5.28 hours total in an eight-hour day even in the sedentary physical demand category and would have to have an accommodation of sitting and standing every 30 minutes even in the sedentary category and would have reaching limitations even in this category ...".

(Cl. APA p. 47, pp. 31-48).

D. The Claimant testified that he had lost "80%" of the use of his back to do work requiring the use of his back.

E. Even the vocational evaluator for the Defendants found that based on all the objective evidence from the doctors and the functional capacity evaluation that Deputy Crowley was functioning at a sedentary demand level.

Therefore, not only did the Claimant establish by a preponderance of the evidence which is the standard that he must meet before this Commission, but the reliable, probative and substantial evidence in the Record on loss of use established that the Claimant has lost more than 50% of the use of his back to do work requiring the use of his back. There is simply no evidence to the contrary.

The Supreme Court and Court of Appeals have both repeatedly affirmed awards for total and permanent disability for having lost 50% or more of the use of the back when the Commission awarded that under facts identical to the ones here in the cases of, for example, Bateman v. Town & Country Furniture, supra; Lyles v. Quantum Chemical Co., supra.

AND

where recently the Commission has denied a Claimant benefits under facts identical to the ones here as in the case of Clemmons v. Lowe's Home Centers, Inc. - Harbison; and in the case of Dent v. East Richland County Public Service District, 423 SC 193, 813 SE2d 886 (SC App. 2018) the Court didn't reach the less stringent back standard but under the evidence in that case which is on all fours with the evidence here on loss of use found that the Commission erred by denying an injured worker benefits for total and permanent disability under the higher wage loss standard due to the loss of use of his back.

The Commission should reverse the Award of the Hearing Commissioner based on the evidence in the Record and award former Deputy Crowley the residual value of 500 weeks of compensation for total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back. The Claimant would submit that he is just as disabled if not more so than an injured worker that

has lost both of his legs or both of his feet to a work-related injury. Just like in those cases, the injured worker can go right back to work working sedentary work just the same as Deputy Crowley. Again, benefits are paid due to the character of the injury and a man that has lost his back is just as disabled, if not more so, than a man that has lost both of his feet, or one foot and one hand.

II. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW AND FACT BY FAILING TO AWARD THE CLAIMANT TOTAL AND PERMANENT DISABILITY UNDER SC CODE §42-9-10 FOR LOSS OF EARNING CAPACITY.

While Deputy Crowley believes that he is entitled to an Award for having sustained 50% or more loss of the functional use of his back to do work requiring the use of his back, under S.C. Code §42-9-10, he is entitled to an Award for a total loss of earning capacity as defined in the Act based on his age, education, background and experience, and the physical facts of the injury wherein the jobs he can perform on a residual basis are so limited in quality, quantity or dependability that a reasonable stable job market for them does not exist. Colvin v. E.I. DuPont de Nemours & Co., 227 S.C. 465, 88 S.E.2d 581

(1955):

[holding specifically that just because an injured worker can perform work on a part-time or seasonal basis; or can perform work that is very limited as to the "quantity" of jobs that are available in the area where he lives; or which are limited in the "quality" of the jobs that he can perform such as menial unskilled, minimum wage jobs; or where he is limited by "dependability" such as he can work in a peach

shed or at certain seasonal work, any of which still mandates an Award for total and permanent disability under the Act. Also, in Colvin the Supreme Court specifically held that a worker who is only qualified for manual labor who can no longer perform manual labor is entitled to an Award for total loss of earning capacity.]

In Dent v. East Richland County Public Service Dist., 423 S.C. 193, 813 S.E.2d 886 (SC App. 2018), the Court of Appeals held that where a man had worked in a heavy physical capacity job his entire life and where he had a similar educational background to that of Deputy Crowley that the substantial evidence in the Record established that he was entitled to an Award for total loss of earning capacity or total wage loss due to his injury to his back. The Court held there was absolutely no substantial evidence in the Record that he could perform jobs that were of sufficient in quantity, quality, or dependability that a reasonably stable job market for them existed. In Stephenson v. Rice Services, the Supreme Court specifically held that where a disabled veteran was able to return to work doing one specific, very limited unskilled job, that under wage loss he was totally disabled prior to an injury sustained in that job as defined in the Act and not entitled to benefits.

Factually, in this case the undisputed evidence from all experts including the Defendants' own expert who did a records review and labor market analysis agree that Deputy Crowley cannot return to work in his job as a Deputy Sheriff and cannot return to work in any of the jobs in which he has a past work

experience. He is limited to doing sedentary work or at best some light duty work jobs; if the Commission wants to look at the subjective conclusions of the Defense vocational expert who did a records review and a labor market analysis. If the Commission looks just at the Defendants' vocational expert's analysis, their expert was only able to find 12 jobs for which former Deputy Crowley was qualified within a 50-mile radius of his home. To qualify for a total loss of earning capacity one does not need to be totally helpless nor unable to perform any and all jobs. While the Act and the Supreme Court decisions and Court of Appeals decisions speak in the alternative of either quality, quantity, or dependability in this case based simply on the "quantity" of jobs former Deputy Crowley would qualify for only 12 jobs if, and again if, you take the opinion of the Defense vocational expert who did a records review.

This Commission, in accordance with its guiding principles as set out in its Objectives including providing sure, prompt and reasonable income to the victims of work-related accidents and their dependents; and to relieve the public and private charities of the financial burdens incident to uncompensated occupational accidents, has always culled through the records, not to find evidence to deny a claim, but to find evidence to support an award of benefits and to find sufficient evidence whereby the Claimant has met his burden of proof which is by

simply a preponderance of the evidence or 50.00001% that it is more probable than not that the injured worker is entitled to the benefits sought. In this case the overwhelming and uncontradicted evidence establishes that former Deputy Crowley is entitled to an Award for total and permanent disability for a total loss of earning capacity. This is especially true where the only evidence that he can do any work of any capacity outside of the job at the Courthouse wherein they made "very special accommodations" to allow him to continue to work in that capacity is that he possibly may qualify for 12 other jobs within a 50-mile radius. There is absolutely no evidence of any accommodations in any of those jobs to allow him to continue working. Of course that is a much higher standard than having lost 50% or more of the functional use of the back, which the Claimant also meets under the evidence submitted.

III. THE HEARING COMMISSIONER ERRED BY ADMITTING AND NOT EXCLUDING THE MEDICAL OPINION AND EVALUATION REPORT OF DR. JAMES BETHEA WHERE THE DEFENDANTS VIOLATED AND FAILED TO COMPLY WITH THE PROVISIONS OF SC CODE §42-15-95.

SC Code §42-15-95 provides that an employer, carrier, or its representative may communicate or discuss the worker's claim without consent with any Provider that either provides examination or treatment, provided that the employee must be given notice and this notification must comply with Section (B):

"(1) must occur prior to the actual discussion or communication" ... (2) advised by the employer, carrier or its representative ... of the nature of discussion or communication prior to

discussion or communication ... (3) provided with a copy of the written questions at the same time the questions are submitted to the health care provider..."

If Section (B) is not complied with, subsection (C) provides:

(C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title."

The evidence establishes that there were multiple communications by the Defendants with Dr. Bethea and specifically including a detailed letter attaching hundreds of pages of medical records sent to Dr. Bethea on October 27, 2020 (Claimant APA pp. 169-170); all of which conversations and communications occurred between October 2020 and January 2021 and were not copied to nor was the Claimant made aware of any of these; and the Claimant only became aware of such communications with Dr. Bethea in the response to his Subpoena issued on January 6, 2021 to Dr. James Bethea, MUSC Primary Care as set out in the Record (Claimant's APA, Response to Subpoena, pp. 152-170).

The Commissioner erred in violation of the Statute as a matter of Law requiring a reversal or a new Hearing since that evidence was obtained in violation of SC Code §42-15-95. It was the fruit of the poisonous tree.

The Commissioner further erred by accepting the medical records and report of Dr. James Bethea, in violation of the agreement of the Defendants to provide an evaluation for

treatment by a specialist at the Medical University of South Carolina, wherein it is clearly established in the Record that Dr. James F. Bethea is not part of nor a specialist with the Medical University of South Carolina, Department of Orthopaedics and Physical Medicine, nor any other specialty department at the Medical University of South Carolina and is only a treating physician within MUSC's, "Primary Care" at the Epic Center in Mount Pleasant, South Carolina (Claimant APA, Tab 13 p. 135, p. 162, pp. 178-182).

Thus, the Commissioner should have excluded the report because of the violation of SC Code §42-15-95 which is mandatory and further because the Defendants did not send the Claimant to a neurological or orthopaedic back specialist as agreed to at the Hearing before Commissioner Beck.

IV. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDINGS OF FACT 22, 23, 24, 25 & 26, WHICH ARE NOT FINDINGS OF FACT BUT ARE IN FACT LEGAL OPINIONS AND LEGAL POSITIONS. THEY CONTAIN ARGUMENTS, LEGAL POSITIONS, LEGAL OPINIONS AND CITATIONS TO CASE REFERENCES NOT PRESENTED TO THE COMMISSIONER, EITHER BEFORE OR AFTER THE HEARING, BY EITHER PARTY WHICH CONSTITUTES THE COMMISSIONER GOING OUTSIDE OF THE RECORD AND ARGUMENTS MADE TO HIM BY THE PARTIES AND BASED ON A LEGAL ANALYSIS NOT PRESENTED.

First, the Hearing Commissioner erred specifically in making Finding of Fact #22, which is actually not a Finding of Fact, but is a legal opinion or legal interpretation or legal position based on a review of Law and which also is contrary to the actual argument and objection made by the Claimant. The Finding of Fact specifically states in pertinent part:

"... Claimant asserts that prior physicians' opinions are not credible because they allegedly fail to address causation ...

The issue in this case is what weight to assign to medical records that may or may not state 'to a reasonable degree of medical certainty' that Claimant's pre-existing conditions are or are not related to his work injuries ...

Additionally, the records may be admitted for impeachment purposes, and it is necessarily so that a party will not know whether or not the Records will be used for that purpose until a witness testifies at the Hearing."

To the contrary, the actual objection that was made, as set out in the Record at the Hearing, and as capsulized in a letter from the Claimant's Counsel submitting additional authority in support of the Claimant's objection, was as follows:

"You will recall that we objected to medical records for past treatment being submitted into evidence without any supporting medical opinion establishing a causal relationship between any of that medical care to any of Deputy Crowley's current medical problems stemming from the accident and for which benefits are sought. Without such expert opinion evidence, the submission calls for speculation by the Commission on a causal relationship. As part of Defendants response to our objection, the Defendants position was, in part that the Records were being submitted concerning the Claimants credibility."

From the Hearing Transcript:

"Mr. McDaniel: Now... another group of objections, Your Honor ... if Counsel can show any report by any medical position (provider) relating any of these medical records, prior to the time ... the first accident happened, the second happened. If -- if she can show any report referencing those records in reference to it being a part of their opinion as to the current cause of his medical problems in reference to his low back and leg, I will be glad to withdraw the objection to these documents. Otherwise, I object to APA 6, which is from 2004 thru 2015. I -- the date of first accident was

May 5, 2017. I object to the records from Scotland Memorial Hospital, 9/15/06. I object to the records from Marlboro Park Hospital from 11/13/06 through April 30, 2013, again, 13. I object to the Hartsville Orthopaedics and Sports Medicine of January 2, 2008 thru 2018. I object to the Integrated Pain Management from Jan -- actually I wrote this down and I am trying to see where my we object to the records from Integrated Pain Management thru April 5, 2000, I mean May 5, 2017. I have no objection to the records after that because they are -- are -- are particularly relevant as to showing what treatment he was receiving after the injuries occurred. We, in fact, put several of those records in there. So I don't object to any of the records after that date coming in. I do object to those records before that time ... here it is pages 311 - 3 -- 512. Those are the records that predate May 5, 2017. I then also object to the records from OrthoCarolina of May 15, 2013, through December of 2013. --- and again, those are all medical records. They are all in referencing TH --- the records reference -- every doctor has known; and we will submit to you knows about it. You are going to find in the Histories that he's recorded it. But there is no doctor, no medical opinion that relates any of his current existing problems. There is no medical opinion that they are in any way related to any of those past medical treatments and so it would be calling -- it would be asking you to speculate as to the relationship of those records to his current condition without such medical testimony. And ... that's the reason as I said earlier, my objection, that if Counsel shows me any medical opinion that blames any of his current problems with his low back and his leg on those past existing problems then I will ... you can let them in. But otherwise, they are irrelevant, immaterial and --- and call for speculation on your behalf as to what the meaning are of those records in relation to his current file."

(Hrg. Tr. p. 14, l. 17 - p. 17, l. 9).

In his Findings of Fact, Finding #18, in reference to the prior medical history the Commissioner actually found the Claimant credible; he found that he: "either admitted or could not recall the extent or nature of his previous complaints

regarding his cervical spine, lumbar spine, right groin, right shoulder, and lower extremity complaints".

There is no finding that the Claimant's testimony was not credible in any regard. After his notes for decision, and from the additional authority cited to the Commissioner, Clark vs.

Phillips Electronics:

"Phillips contends the panel rightfully treated all the medical evidence as suspect because Clark did not disclose his 2006 injury. But Dr. Storick deflated this theory when he testified that learning of the 2006 injury did not change his opinion that the 2011 injury caused Clark's injuries. Phillips could have offered contrary evidence; without any, the panel had no basis to discount the objective medical evidence and Crane tells us a vague nod to credibility cannot close the gap.

The Panel's Absolutist treatment of Clark's credibility in effect adopts the Latin maximum, well known to lawyers... 'false in one, false in all'. ... Wigmore denounced the maximum as 'primitive psychology' that 'is in itself worthless'....

... Dubious and Archaic as the saying may be, we are not aware of any instance where it has been used to disregard not just a party's testimony but their entire array of proof." (Emp. add.)

The Commissioner erred by admitting these medical records without any medical opinion evidence stating that they were in any way relevant concerning the Claimant's current injuries to his low back (not neck) and leg.

V. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW AND FACT IN HIS AWARD OF FUTURE MEDICAL CARE.

The undisputed medical evidence establishes that former Deputy Crowley will need all types of medical care, not included

in the Commissioner's Award and specifically including chronic pain management for the severe problems that he is having with his low back.

Dr. Nigel Watt January 31, 2019 stated that Deputy Crowley would not need a follow-up appointment with him because he, "is established with a pain management physician ...".

Dr. Leonard Forrest:

"I recommend that Deputy Crowley continue his pain management under the direction of Integrated Pain Management and also Dr. Barbara Sarb that is needed in order to maintain his current level of function."

At the time of release, 11/21/2019 Dr. Naso and Dr. Sarb noted his current and continuing medications as:

"CURRENT MEDICATIONS - Taking: Lortab 10-325 MG Tablet Orally Four times a day, Capacet Orally, Zomig 2.5 MG Tablet Orally, Simvastatin 40 MD Tablet Orally, Gabapentin 300 MG Capsule Orally Three times a day, Hydrocodone-Acetaminophen 10-325 MG Tablet Oral, Tizanidine HCl 4 MG Tablet Oral, Diclofenac Sodium 75 MG Tablet Delayed Release Oral, Butalbital-APAP-Caffeine 50-325-40 MG Capsule Oral, Keflex 500 MG Capsule 1 capsule Orally every 12 hrs.

Medication List reviewed and reconciled with the patient."

Integrated Pain Management Ms. Sharon Coggin, PA-C:

"Mr. Crowley will need the chronic pain treatment which we are providing him due to the condition of his lower back without regard to his cervical spine problems, and he will need this treatment for the foreseeable future as reflected in our records and treatment notes. This is my opinion stated to a reasonable degree of medical certainty."

There is simply no contrary medical opinion evidence that former Deputy Crowley will not need this medical care.

VI. THE CLAIMANT WILL RELY ON THE EXCEPTIONS AS SET OUT IN THE REQUEST FOR REVIEW AS TO THE OTHER ISSUES AND ERRORS OF LAW AND FACT THAT THE COMMISSISONER MADE INCLUDING THOSE ALLEGED UNDER EXCEPTIONS #9, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22 AND #23.

CONCLUSION

For the foregoing reasons, the Commission should review the evidence and Award the Claimant total and permanent disability based on having lost 50% or more of the use of his back to do work requiring the use of his back under the undisputed evidence under SC Code §42-9-30(21), and/or for having sustained a total loss of earning capacity under SC Code §42-9-10(A), and the Commission should as part of this Award delete the evidence from Dr. Bethea as having been obtained and submitted in violation of SC Code §42-15-95 and the Claimant's right to cross-examination of his accuser and in violation of the Administrative Procedures Act. The Commission should also strike the evidence of all prior medical treatment where there is absolutely no medical opinion evidence establishing any causal relationship between that past medical care and the Claimant's current problems which thus calls upon the Commissioner and the Commission to make a decision based on surmise, speculation, and innuendo and to speculate specifically as to any causal relationship.

Respectfully submitted,



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Attorneys for Claimant


November 15, 2021

CERTIFICATE OF SERVICE

WCC File Nos. 1716288 & 1801098

I hereby certify that I have on this day, November 15, 2021, served the following in the matter of Michael Crowley v. Darlington County with a copy of our APPELLANT'S BRIEF TO THE FULL COMMISSION by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Anne V. Noonan, Attorney at Law
WILLSON JONES CARTER & BAXLEY
4922 O'Hear Avenue, Suite 301
North Charleston, SC 29405



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

15 day of November, 2021.



Notary Public for South Carolina (L.S.)

My Commission Expires: 2/4/24

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1716288 & 1801098

Michael K. Crowley,)	
Employee,)	
Claimant/Appellant,)	
vs.)	
Darlington County,)	
Employer,)	BRIEF OF
and)	DEFENDANTS/RESPONDENTS
South Carolina Association of Counties SIF,)	
Carrier,)	
Defendants/Respondents.)	

STATEMENT OF THE CASE

This matter involves two (2) admitted accidents sustained by Appellant/Claimant (hereinafter "Claimant") arising out of and in the course and scope of his employment with Defendants/Respondents (hereinafter "Defendants") Darlington County. Claimant was involved in his first accident on May 5, 2017, when he was attempting to restrain a combative juvenile and injured his right knee. Defendants provided appropriate and causally related medical treatment with Dr. Nigel Watt, who released Claimant at maximum medical improvement (hereinafter "MMI") on October 5, 2017. Dr. Watt assigned a 5% impairment rating to the right lower extremity, no permanent work restrictions, and recommended no future medical treatment. (Def. APA #4, p.23). Throughout Claimant's treatment and the administration of his first claim, Claimant missed no time from work, and no temporary indemnity benefits were paid.

Shortly after his release at MMI for the May 5, 2017 injury, Claimant was involved in a second admitted accident on January 3, 2018, when he was assisting in the removal of a car from an icy road, and he reinjured right knee and sustained a new injury to his lumbar spine. Defendants

again provided appropriate and causally related medical treatment to Claimant's right knee with Dr. Watt, who, on January 31, 2019, opined that Claimant would not require further orthopedic care for his right knee as he was already established with a pain management physician for his right lower extremity. (Claimant APA#6, p.105). Dr. Watt did not assign any additional impairment as a result of Claimant's second work accident. Defendants provided a second opinion on Claimant's right knee with Dr. Richard Friedman, who, on October 1, 2020, stated Claimant was at MMI and opined Claimant suffered no permanent impairment, had no permanent limitations, and would not require any future medical treatment. (Def. APA #19, p.739).

Claimant initially saw Dr. Joseph Cheatle for an evaluation of his lumbar spine on August 15, 2018. (Def. APA#10, pp.246–248). Dr. Cheatle causally related Claimant's symptoms to his January 3, 2018 work accident and referred Claimant for an MRI of his lumbar spine. (Def. APA #10, p.248). Following his MRI, Claimant returned to Dr. Cheatle on November 14, 2018, and Dr. Cheatle stated Claimant's MRI was negative for stenosis and referred Claimant for an evaluation as to the medical necessity and feasibility of a spinal cord stimulator (hereinafter "SCS"). (Def. APA #10, p.250). Claimant underwent two (2) trials for a SCS at the direction of Dr. Barbara Sarb, but on September 20, 2019, Dr. Sarb cited Claimant's failure to see appreciable relief with the SCS, and Dr. Sarb indicated Claimant could follow up with neurosurgery as already scheduled. (Claimant APA#5, pp.71–72). Claimant received neurosurgical treatment with Dr. William Naso, who released Claimant at MMI on November 21, 2019, and stated, "he can continue to work at his same capacity which he says he is tolerating." (Claimant APA #5, pp.64–65). On December 1, 2019, Dr. Naso completed a Form 14B, wherein he assigned an 8% whole person impairment rating—10.7% lumbar spine rating—and recommended future medical treatment to consist of a TENS unit and physical therapy. (Def. APA #11, p.309). On February 13, 2020, Dr. Naso provided a letter to Claimant's employer, stating,

From a neurosurgical standpoint, [Claimant] can continue to work in his current capacity, which includes being able to carry a weapon and taser. He can also accompany a judge, providing the judge security inside and outside a court room, including at lunch. Otherwise his restrictions as outlined in his functional capacity evaluation remain.

(Def. APA #11, p.310).

Following his release at MMI for the lumbar spine, Claimant requested a second opinion for his lumbar spine, which Defendants agreed to authorize and provide. On December 17, 2020, Claimant presented to Dr. Bethea, who diagnosed Claimant with chronic lumbar syndrome and stated that Claimant's subjective complaints were out of line with his objective findings. (Def. APA #20, pp.741-743). Dr. Bethea released Claimant at MMI and assigned a 3% whole person impairment, assigned no permanent work restrictions, and opined Claimant would not require future medical treatment. (Def. APA#20, p.742-743).

In addition to the medical treatment described above, Defendants sent Claimant for a vocational evaluation and labor market survey with James Myers, MA, QRP, CCM, CRP at Corvel on April 4, 2020. On April 10, 2020, Mr. Myers prepared a report wherein he stated there was a list of jobs Claimant could perform based on his transferrable skills and physical limitations, including: desk officer; fraud investigator; management aid; dispatcher; surveillance system monitor; customer service representative; collection manager; code inspector; service advisor; information clerk; telephone solicitor; and file/office clerk. (Def. APA#18, p.725). Mr. Myers conducted a labor market survey of twelve (12) employers within a 50-mile radius of Bennettsville, South Carolina, and of the twelve (12) employers contacted, 100% reported they were either hiring or would be hiring in the near future. (Def. APA#18, p.726).

It is worth noting that throughout the course of both of his claims, Claimant continued working for Defendants, who accommodated his work restrictions, until his resignation on January 5, 2021. At the hearing, Claimant testified that his resignation was voluntary and was in part due issues he was having with the Sheriff's Department. (Hr. Tr., p.86; lines 10-19).

On January 4, 2021, Defendants filed a Form 21, Request for Hearing, seeking an adjudication of Claimant's entitlement to permanent partial disability (hereinafter "PPD") and a determination of what, if any, future medical treatment Claimant was entitled to in order to maintain his level of disability at MMI. On January 13, 2021, counsel for Claimant noticed the *de bene esse* deposition of Dr. Bethea, set for January 27, 2021 (Claimant's APA #14, pp.171-176), but Claimant's counsel cancelled the deposition after learning the fees associated with taking Dr. Bethea's deposition and asserted Defendants were responsible for the cost of the deposition. (Hr. Tr., p.10, lines 21-25). In the alternative, Counsel for Claimant requested that either Defendants pay for the deposition or the South Carolina Workers' Compensation Commission issue a subpoena to Dr. Bethea for live testimony at the hearing. (Hr. Tr., p.11, lines 1-14). Defendants argued that Claimant had ample time to conduct Dr. Bethea's deposition and asserted there was no existing statutory, regulatory, or case law supporting Claimant's position that Defendants should bear the cost of the deposition sought by Claimant's counsel. (Hr. Tr., p.13, lines 1-13).

The case was heard by Commissioner Michael Campbell (hereinafter "Hearing Commissioner") on March 4, 2021. At the hearing, in addition to his objections concerning the introduction of Dr. Bethea's medical report pursuant to S.C. Code Ann. § 42-15-95 and the violation of his rights to due process resulting from him having to pay for the deposition of Dr. Bethea and the Commission's failure to subpoena Dr. Bethea as witness, Claimant objected to the introduction of any medical records pre-dating Claimant's initial date of accident on the grounds that there was no medical expert opinion causally relating the prior medical records to his current complaints, and Claimant's prior medical records were irrelevant, immaterial; and call for speculation as to the pertinence of the records. (Hr. Tr., pp.14-17). Defendants argued there was no statutory, regulatory, or case law support for this position. Defendants argued the records were germane to Claimant's credibility and the history of his pain complaints. (Hr. Tr., p.17, lines 13-

21).

On July 6, 2021, the Hearing Commissioner issued a Decision and Order, wherein he found that Claimant reached MMI effective November 21, 2019. (Decision and Order, p.31). The Hearing Commissioner awarded Claimant 10% PPD to his right lower extremity as a result of both the May 5, 2017, and January 3, 2018, accidents. (Decision and Order, pp. 31–32). The Hearing Commissioner awarded Claimant 25% PPD to his back as a result of his January 3, 2018, work accident. (Decision and order, p.32). The Hearing Commission further found that Claimant was entitled to future medical treatment to the back to include physical therapy and a TENS Unit in order to maintain his level of disability as MMI as set forth by his authorized treating physician, Dr. Naso. (Decision and Order, p.32). The Hearing Commissioner denied Claimant’s objection to the admissibility of Claimant’s pre-accident medical records and found that Claimant’s rights to due process were not denied. (Decision and Order, pp.29–31).

On August 6, 2021, Claimant filed a Form 30 request for Full Commission review. This appeal follows.

ISSUES PRESENTED

- I. Did the Hearing Commissioner err as a matter of law by allowing the medical report of Dr. James Bethea into evidence over Appellant’s objection related to S.C. Code Ann. § 42-15-95?**
- II. Did the Hearing Commissioner err as a matter of law by allowing Claimant’s prior medical records into evidence?**
- III. Did the Hearing Commissioner err as a matter of law in determining Claimant is not permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-30(21)?**
- IV. Did the Hearing Commissioner err as a matter of law in determining Claimant is not permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-10(A)?**

ARGUMENTS/DISCUSSION

I. The Hearing Commissioner did not err in allowing into evidence the medical report of Dr. Bethea and considering it as part of the complete evidence in the record.

At the outset of the hearing on March 4, 2021, Claimant objected to the admission of the medical report of Dr. Bethea pursuant to S.C. Code Ann. §42-15-95 and made an objection related to Claimant's right to exercise due process in cross-examining Dr. Bethea. (Hr. Tr., p.11, lines 9–14). Specifically, Claimant objected to (1) the Hearing Commissioner's decision to allow the report of Dr. Bethea to come into evidence despite Claimant not being copied on Defendants' correspondence to Dr. Bethea requesting a second opinion, *prior to* Dr. Bethea ever providing any examination, (2) the Hearing Commissioner's refusal to subpoena Dr. Bethea as a witness to the hearing, and (3) Claimant having to pay for the deposition of Dr. Bethea instead of requiring Defendants to pay for the deposition Claimant noticed. (Hr. Tr., pp.5–11). For the reasons set forth below, Defendants maintain that these arguments lack merit and are not supported by either statute or case law, and therefore, the Hearing Commissioner properly allowed Dr. Bethea's medical report to be entered into evidence and considered as part of the evidence as a whole.

a. Defendants' October 27, 2020, letter to Dr. Bethea requesting a second opinion evaluation was not in violation of S.C. Code Ann. § 42-15-95.

Claimant asserts that the Hearing Commissioner erred in allowing the medical report of Dr. James Bethea into evidence on the grounds that it was obtained in violation of S.C. Code Ann. § 42-15-95(B), which states,

A Health care provider who *provides* examination of treatment for any injury, disease, or condition for compensation is sought under the provisions of this title may discuss or communicate an employees medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys, or certified rehabilitation professionals, or the commission without the employee's consent. The employee must be:

- 1) notified by the employer, carrier, or its representative requesting the discussion or communication with the healthcare provider in a timely fashion, in writing or orally, of the discussion or communication and may

- attend and participate. This notification must occur prior to the actual discussion or communication if the healthcare provider knows the discussion or communication will occur in the near future;
- 2) advised by the employer, carrier, or his representative requesting the discussion or communication with the healthcare provider of the nature of discussion or communication prior to the discussion or communication; and
 - 3) provided with a copy of the written questions at the same time the questions are submitted to the healthcare provider. The employee must also be provided with a copy of the response by the healthcare provider.

S.C. Code Ann. § 42-15-95(B) (*emphasis added*).

In his brief, Claimant references “multiple communications by the Defendants with Dr. Bethea and specifically including a detailed letter attaching hundreds of pages of medical records sent to Dr. Bethea on October 27, 2020; all of which conversations and communications occurred between October 2020 and January 2021 and were not copied to nor was the Claimant made aware of any of these...” (Appellant’s Brief, p.20). Other than the October 27, 2020, letter from Defendants to Dr. Bethea, Claimant fails to cite or identify any other allegedly improper communications by Defendants. As such, Defendants will address the October 27, 2020, letter referenced by Claimant in this brief.

Defendants October 27, 2020, letter to Dr. Bethea was sent *prior to* Dr. Bethea ever having any contact with or performing any examination of Claimant in this case. Defendants agreed to provide Claimant with a second opinion pursuant to a consent order.¹ Defendants’ October 27, 2020, letter to Dr. Bethea requested that he perform a second opinion evaluation of Claimant. (Claimant’s APA #13, p.169–170). A review of the letter shows that the correspondence included an enclosed copy of Claimant’s complete medical records for review, a brief synopsis of Claimant’s treatment to date, and the identification of specific medical opinions to be addressed if Dr. Bethea agreed to perform the evaluation. The issues referenced in the letter included whether Dr. Bethea felt Claimant had reached MMI, if Dr. Bethea did feel Claimant had reached MMI,

¹ See Consent Order dated October 29, 2020, in Commission File.

what impairment he felt Claimant sustained, what permanent work restrictions he would assign as a result of Claimant's injuries, and what future medical treatment Claimant would require as a result of his injuries. (Id.) The letter goes on to ask what treatment Dr. Bethea would recommend at this time if he did not feel Claimant had reached MMI. (Id.)

Nothing in Defendants October 27, 2020, letter to Dr. Bethea could be construed as a "discussion or communication that would conflict with or interfere with the employee's examination or treatment," as set forth in S.C. Code Ann. § 42-15-95(B), which is the purpose of statute's limitation on unilateral communication with health care providers.

Defendants acknowledge that once Dr. Bethea provided examination or treatment of Claimant, Defendants would then have a statutory duty to notify Claimant and his attorney of the communication in advance and give them the opportunity to participate in any ongoing discussions or communications; however, that requirement does take effect until the doctor "provides" examination or treatment of Claimant, as stated in the clear and unambiguous language of § 42-15-95(B). Unless and until Dr. Bethea "provides" examination or treatment, the statute is not applicable. As such, Defendants' October 27, 2020, letter to Dr. Bethea requesting a second opinion was not a violation of § 42-15-95(B), and the Commissioner properly allowed into evidence for consideration the subsequent December 17, 2020, medical report of Dr. Bethea.

b. Claimant's right due process were not violated with respect to his opportunity to cross examine Dr. Bethea.

Dr. Bethea's medical report was timely and properly admitted into evidence as an APA submission in accordance with South Carolina Regulation 67-612. Despite Defendants' proper submission of Dr. Bethea's medical report as evidence pursuant to the regulation, Claimant still argues he was denied his right to due process based on the Commissioner's refusal to subpoena Dr. Bethea as a witness to the hearing and Defendants' refusal to pay for Claimant's deposition of Dr. Bethea.

In this case, Claimant had ample time to depose Dr. Bethea, and Claimant even scheduled the deposition of Dr. Bethea, only to cancel it on his own after learning that he would have to pay for the deposition. The South Carolina Rules of Civil Procedure governing the use of depositions of treating physicians and other specified treating health care providers clearly states, “the cost of the deposition, including materials and fees, shall be borne by the party noticing the deposition.” Rule 30(i), SCRPC.

Under S.C. Reg. 67-1302, the South Carolina Workers’ Compensation Commission establishes a maximum allowable payment for the provision of medical services based upon a relative value scale and a conversion factor set by the Commission. “The maximum allowable payments and any policies governing the billing and payment of services provided by medical practitioners shall be published in a medical services provider manual.” S.C. Reg. 67-1302 (A)(1)—commonly referred to as the “Fee Schedule.” Under the Medical Services Provider Manual, reimbursement for medical testimony by deposition or testimony by appearance for physicians is governed by Code SC004, which outlines that depositions are capped at \$400 for the first hour and \$100 to report each additional quarter hour.

To that end, Dr. Bethea’s request for payment for his deposition was in line with the Fee Schedule. There is no statutory authority supporting Claimant’s argument that Defendants should be required to pay for the deposition of the doctor simply because Claimant wants to cross examine him. It is regular and customary practice in workers’ compensation that either party take the deposition of both authorized treating providers and medical providers retained by either side if they want to investigate or challenge their medical opinions.

Further, Claimant fails to cite any authority in support of his argument that the Commission is required to issue a subpoena to a medical provider to testify live at a hearing. Defendants argue it would be improper for a Hearing Commissioner to step into either party’s role in discovery or

litigation and subpoena a witness on behalf of a party to testify a hearing, as opposed to remaining a neutral party tasked with adjudicating the claim.

c. Dr. Bethea's medical report was not in violation of any agreement between the parties for Defendants to provide Claimant with a second opinion.

Next, Claimant contends that the Hearing Commissioner erred by accepting the medical report of Dr. Bethea in violation of Defendants' agreement to provide an evaluation for treatment with a "specialist" at the Medical University of South Carolina. Claimant argues that Dr. Bethea is not part of, nor a specialist with, the Medical University of South Carolina. (Appellant's Brief, p.21).

The agreement Claimant is referencing is a consent order that was issued on October 29, 2020, which states, "[d]uring the pre-hearing conference, Claimant requested a second opinion for his low back to be provided by Defendants. Defendants have agreed to provide a second opinion with the Medical University of South Carolina *with a doctor of their choosing*."² The consent order, which was signed by both parties and approved by this Commission, did not specify any additional requirements on the specialty or specific department of the doctor Defendants were allowed to choose. Dr. Bethea is board certified orthopedic surgeon within the Medical University of South Carolina's system.³ Accordingly, Defendants' selection of Dr. Bethea as the board certified orthopedist chosen to perform Claimant's second opinion was in accordance with the October 29, 2020 consent order, and the Hearing Commissioner properly allowed Dr. Bethea's report into evidence for consideration as part of the total evidence in the claim.

II. The Hearing Commissioner properly admitted into evidence medical evidence prior to Claimant's first date of accident.

Claimant argues the Hearing Commissioner erred by admitting into evidence, over the

² See Consent Order dated October 29, 2020, in Commission File (*emphasis added*).

³ See MUSC Provider Directory: <https://muschealth.org/MUSCApps/ProviderDirectory/Bethea-James>

objection of Claimant, medical records prior to the date of Claimant's first accident. (Appellant's Brief, pp.2-3). Claimant states that this was an error,

“[O]n the basis that there was no medical opinion offered that any of that medical care or treatment in the records was relevant or material to the current issues before the Commission. Such records are only relevant and material and not prejudicial where there is expert medical opinion evidence giving a causal relationship. Otherwise, a review of medical records by a Commissioner constitutes and calls for surmise, speculation, and innuendo as to any casual connection or relevancy between those prior medical records and treatment as to the current issues before the Commission.

(Appellant's Brief, pp.2-3).

Defendants assert that this argument completely lacks merit and has no support in any statute, regulation, or case law. Simply put, there is no legal basis for Claimant's argument that a Commissioner should not be allowed to review prior medical evidence and assign whatever weight he or she deems appropriate as it relates to a claimant's current condition and request for benefits. Evidence of a claimant's pre-accident medical history goes to the issue credibility of a claimant's complaints and to a determination of what existing problems Claimant has, and whether they are related to his accident produced injuries.

Further, there is no statute or case law supporting Claimant's argument that pre-accident medical records must contain an expert medical opinion causally relating the records to the current issues before the Commission. A Commissioner is free to accept the pre-accident medical records as evidence and assign them whatever weight he or she deems appropriate in conjunction with their well-established statutory authority.

III. The Hearing Commissioner properly found that Claimant was not permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-30(21).

In his brief, Claimant erroneously states that “the only reliable, probative, and substantial evidence in the record” regarding Claimant's loss of use to the back supports an award of permanent and total disability pursuant to S.C. Code Ann. § 42-30(21). (Appellant's Brief, p.13). Claimant

goes on to cite what he erroneously labels as uncontradicted evidence, including: Claimant's FCE; the opinion of Claimant's independent medical evaluation (hereinafter "IME") doctor, Dr. Leonard Forest; the vocational report of Claimant's expert, Harriet Fowler; and the lay testimony of Claimant.

Claimant blatantly ignores any and all evidence which contradicts the self-serving evidence he relies upon, including: the opinion the authorized treating physician, Dr. Naso; the vocational evaluation and labor market survey of James Myers; and the opinion of Dr. Bethea. In total, Claimant received three (3) different impairment ratings to his back as a result of his injuries, including 10% impairment by his authorized treating physician, Dr. Naso, 3% impairment by Dr. Bethea, and 13% impairment by Dr. Forest.

In workers' compensation cases, the Commissioner's job is to weigh competing evidence, assign whatever weight he or she deems appropriate to the evidence, and adjudicate the issues before them accordingly. As the Supreme Court stated in *Sharpe v. Case Produce, Inc.*, "expert medical testimony is designed to aid the Workers' Compensation Commission in coming to the correct conclusion, and therefore, the Commission determines the weight and credit to be given to the expert testimony." *Sharpe v. case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999).

Typically, cases involve conflicting evidence with regards to medical opinions. "In a workers compensation action, the existence of any conflicting opinions between doctors is a matter left to the Workers' Compensation Commission." *Harbin v. Owens-Corning Fiberglass*, 316 S.C. 423, 450 S.E.2d 112 (Ct. App. 1994).

In this case, other than essentially arguing a dissatisfaction with the Commissioner's findings regarding the extent of loss of use suffered by Claimant, Claimant has failed to articulate any actual error on behalf of the Hearing Commissioner. Defendants assert that the Hearing Commissioner's findings with regard to the extent of disability Claimant sustained to the back

pursuant to S.C. Code Ann. § 42-9-30 are completely in line with the ratings assigned by the various doctors and other evidence in the record. Although an award of greater than 50% loss of use to the back presents a rebuttable presumption of permanent and total disability, the evidence in this case included Dr. Naso's opinion that Claimant could continue working in his current position, the vocational evaluation performed by James Myers, which included a variety of jobs Claimant could perform within his restrictions, and the labor market survey performed by Mr. Myers identifying a number of currently available positions in Claimant's area.

In support of his argument, Claimant relies on his own testimony that he lost 80% use of his back. (Hr. Tr., p.72, line 21). Although the Hearing Commissioner is entitled to accept lay testimony in addition to medical evidence, our Supreme Court has stated "[i]t [is] for the Commission to give the testimony of the injured workman and his wife such probative value as it deems proper under the circumstances." *Dykes v. Daniel Const. Co.*, 262 S.C. 98, 2020 S.E.2d 646 (1974).

To accept Claimant's argument as set forth in his brief, all that is required to prove permanent and total disability would be the submission of an IME opinion of a doctor paid for by Claimant in combination with Claimant's own self-serving testimony. Acceptance of this argument would eviscerate the Commission's statutory duty to weigh all evidence in record and adjudicate each case accordingly and essentially render a hearing before a Single Commissioner moot.

IV. The Hearing Commissioner properly found that Claimant was not permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-10(A).

Claimant erroneously argues that the Single Commissioner failed to award Claimant permanent and total disability under S.C. Code Ann. § 42-9-10. "The general test of total disability is inability to perform services other than those that are "so limited in quality, dependability, or

quantity that a reasonable market for them does not exist” *Wynn v. People’s Natural Gas Co.*, 238 S.C. 1, 118 S.E.2d 812 (1961).

As set forth in the argument above, the evidence in this case demonstrated that Claimant was not permanently and totally disabled. Claimant’s authorized treating physician, Dr. Naso, stated that Claimant could continue to work in his current capacity (Def. APA #11, p.310). Defendants’ vocational expert, James Myers, identified a number of jobs Claimant could perform within his work restrictions and identified twelve (12) positions currently available in Claimant’s area.

Based on the evidence in the record, the Hearing Commissioner properly found that Claimant was not permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-10, and his ruling should be affirmed in full.

V. The Hearing Commissioner’s award of future medical care was proper based on the evidence in the record.

Although Claimant fails to identify this issue as one of the Hearing Commissioner’s four (4) errors of law and fact at the outset of his brief, Claimant includes a final argument that the Hearing Commissioner erred in his award of future medical care. (Appellant’s Brief, pp.24–25).

In response, Defendants maintain that the Hearing Commissioner’s finding that Claimant was entitled to future medical treatment, to consist of physical therapy and TENS Unit was appropriate based on the evidence in the record. The future treatment recommendations were specifically stated by Claimant’s authorized treating neurosurgeon, Dr. William Naso, in his Form 14B dated December 1, 2019. (Def. APA #11, p.309). In his brief, Claimant cites an opinion of Ms. Sharon Coggin, PA-C, at Integrated Pain Management, where Claimant was receiving pain management treatment prior to either of his work accidents. Ms. Coggins states that Claimant will need chronic pain management treatment that they are providing him due to the condition of his

lower back without regards to his cervical spine problems. (Claimant's APA #4, p.62a). Neither Ms. Coggins, nor any other providers at Integrated Pain Management, were authorized medical providers in this case. To the contrary, Dr. Bethea opined that Claimant's subjective complaints were out of line with his objective findings, and he did not believe Claimant would require any future medical treatment as a result of his injuries. (Def. APA #20, p.740).

In this case, like almost every other case before the Workers' Compensation Commission, the Hearing Commissioner was tasked with making a decision in light of conflicting medical opinions. It is well established law that "[i]n a workers compensation action, the existence of any conflicting opinions between doctors is a matter left to the Workers' Compensation Commission." *Harbin v. Owens-Corning Fiberglass*, 316 S.C. 423, 450 S.E.2d 112 (Ct. App. 1994). The Hearing Commissioner in this case considered the complete evidence in the record and appropriately awarded future medical treatment consistent with what was recommended by Claimant's authorized treating neurosurgeon, Dr. Naso. As such, the Hearing Commissioner made no error in his award of future medical treatment, and his decision regarding the same should be affirmed.


CONCLUSION

Based on the arguments set forth above, the Hearing Commissioner's findings of fact and conclusions of law set forth in his July 6, 2021, Decision and Order should be affirmed in full. The Commissioner appropriately admitted into evidence the medical report of Dr. Bethea and considered it along with the other evidence in the record in determining Claimant's PPD and entitlement to future medical treatment. Claimant had ample opportunity to depose Dr. Bethea in accordance with the Administrative Procedures Act and the South Carolina Rules of Civil Procedure, and the Hearing Commissioner was under no requirement to subpoena Dr. Bethea to testify as a live witness at the hearing. To that end, Claimant was in no way denied any right to due process in this matter. Finally, the Hearing Commissioner considered the evidence as a whole,

including the complete medical records, vocational evaluations, and witness testimony, and determined Claimant was not permanently and totally disabled, awarding Claimant appropriate PPD in accordance with S.C. Code Ann. § 42-9-30. As a result, the Hearing Commissioner's rulings should be affirmed in full.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



John Gabriel Coggola, Esquire
3600 Forest Drive, Suite 204
Columbia, SC 29204
Attorney for Defendants

Date: December 6, 2021

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1716288 & 1801098

Michael K. Crowley,)
Employee,)
Claimant,)
vs.)
Darlington County,)
Employer,)
and)
South Carolina Association of Counties SIF,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, Nicole R. Johnson, do hereby certify that I am the Legal Assistant for John Gabriel Coggiola, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Columbia, South Carolina, and that on the 6th day of December, 2021, I mailed the foregoing **BRIEF OF DEFENDANTS/RESPONDENTS** to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201



Nicole R. Johnson
Legal Assistant to John Gabriel Coggiola, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
3600 Forest Dr., Suite 204
Columbia, SC, 29204

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1801098/1716288

Michael Crowley,)
Claimant,)
v.)
Darlington County,)
Employer,)
and)
South Carolina Association)
of Counties SIF,)
Carrier/Defendants.)

COMMISSIONER'S HEARING

Thursday, March 4, 2021
11:52 a.m. - 1:34 p.m.

The Commissioner's Hearing was heard before Commissioner R. Michael Campbell, II, at the Florence County Complex, 180 N. Irby Street, 9th Floor, Florence, South Carolina, on the 4th day of March, 2021 before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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 Columbia, South Carolina 29201
 Attorney for the Claimant

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 Attorney for the Carrier

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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 4th, 2021. This is Workers' Compensation Case File Number 1716288 and 1801098. The Claimant is Michael Crowley, represented by Preston F. McDaniel and Gerald Malloy. The Employer is City of Darlington. The Carrier is South Carolina Association of Counties SIF, represented by Anne B. Noonan. The date of the 2017 accident was May 5th, 2017. The date of the 2018 accident was January 3rd, 2018. There was an average weekly wage of \$864.35 with a corresponding compensation rate of \$576.26 with the -- which the parties have stipulated to. APAs have been submitted. Are there any objections to APAs, jurisdiction, venue or any other items?

MS. NOONAN: None from the Defendant's, Your Honor. Only that we're Darlington County, it's not the City of Darlington and I don't know why the case started out with City of Darlington.

COMMISSIONER CAMPBELL: Okay, yeah. Okay and I thank you for that correction. I saw that I had it on one notice one way and the other the



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1 MS. NOONAN: Right -

2 COMMISSIONER CAMPBELL: --- other way -

3 MS. NOONAN: --- yes, sir.

4 COMMISSIONER CAMPBELL: --- so thank you for that
5 correction. Thank you. Mr. McDaniel?

6 MR. MCDANIEL: Your Honor, objection to APAs.

7 COMMISSIONER CAMPBELL: Yes.

8 OBJECTIONS:

9 MR. MCDANIEL: Commissioner, first off, we object to
10 the report of Dr. Bethea that was submitted by
11 the Defendants, we object to that. You'll find
12 numerous documents in the file. That
13 evaluation by Dr. Bethea came about due to our
14 request for -- to be seen by a doctor to see if
15 there was anything further that could be done
16 in reference to his treatment to hopefully get
17 him out of some of the pain he's in. As a
18 result of that, the Defendants agreed, and they
19 sent him to Dr. Bethea. We did not receive any
20 correspondence or communication in reference to
21 that point other than a notice when it was
22 actually set up. We - we then issued a
23 subpoena duces tecum -- duces tecum, which is
24 also in the record un- -- under tab 13, in
25 which it was disclosed, we found out that Dr.



1 Bethea had in fact received a -- a
2 communication, various communications, but one
3 importantly is a - a letter from Commi- --Ms.
4 Noonan in October, requesting evaluation and
5 providing him numerous records. And also
6 setting out various requests for him to address
7 various issues that were far beyond that which
8 was requested in reference to an evaluation.
9 We object to that report coming into the record
10 based on numerous reasons. One of which is
11 basically blackletter law under Section
12 42-15-95. Anytime any physician sees an
13 injured worker, either for examination or for
14 treatment, the -- the Defendants can notify,
15 they can talk to the physician without our
16 consent, but only under circum- -- only on
17 speci- -- certain specified specific reasons,
18 which -- among which is that they must notify
19 us -- they must notify us of the actual
20 discussion or communication before or at the
21 same time that they make that communication or
22 notification with the - the doctor. They did
23 not do that in this case. We only found out
24 about this communication and the records were
25 sent when -- in response to the subpoena duces



1 tecum that we filed with Dr. Bethea after we
2 received the copy of his report. So under
3 subsection C of 15 -- 42-15-95, any
4 discussions, communications, medical reports or
5 opinions obtained in violation of this section
6 must be excluded from any proceeding. We'd ask
7 that it be precluded [sic] -- be excluded on
8 that basis also. Now, in addition, after
9 receiving a copy of the evaluation and
10 realizing that it -- we first requested that I
11 - I wrote various letters to the Commission.
12 One to Commissioner Beck inquiring about having
13 a conference to see whether or not the report
14 went far afield from that which would have been
15 requested and agreed to. In addition to that,
16 at one point, I wrote, Commissioner, you a
17 letter in which I requested that Dr. Bethea ---
18 **MS. NOONAN:** Objection. None of that is evidence in
19 this case.

20 **MR. MCDANIEL:** It's part of the record.

21 **MS. NOONAN:** I don't think it's part of the record
22 that he's making a determination on today.

23 **COMMISSIONER CAMPBELL:** I - I'll -- let -- let him
24 continue with what he's saying and then -- go
25 ahead Mr. McDaniel.



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1 MR. MCDANIEL: Part of the record today is the
2 subpoenas and we then, while we are not
3 required to pay for to cross-examine their
4 expert or a doctor they chose, we issued a
5 subpoena duces tecum. First you'll find that
6 we issued under tab 14. We issued a subpoena
7 duces tecum to take the deposition of the
8 doctor who served him with a -- by affidavit,
9 personal service for him to appear in the
10 deposition at the law offices of the Gibson Law
11 Firm in Charleston, South Carolina. Then, as
12 a courtesy, I also wrote an email, which is in
13 the record, which in wherein we agreed to --
14 we'd conduct the deposition at a place more ti--
15 -- at another time and another place more
16 convenient to the doctor. I did not want to
17 inconvenience the doctor, but you'll notice in
18 the subpoena duces tecum, which was taken to de
19 bene esse, which is purposes of testimony in
20 lieu -- testimony in lieu of appearance. All
21 right. Now, that I served him with a notice of
22 the deposition de bene esse, and it was for the
23 purposes of cross-examination pursuant to and
24 including but not limited to the Administrative
25 Procedures Act and -- and the statutes of this



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1 Commission and the rules of this Commission,
2 exercising my right to cross-examine him on the
3 report that they had notified us and had placed
4 in the record as part of the filing of the 21.
5 And which they had placed in the record, sought
6 to be placed in the record today. So we
7 scheduled it for the limited purpose of cross-
8 examination as advisable, Commissioner, prior
9 to this, in our off the record conference of
10 the United States Supreme Court decisions and
11 South Carolina Supreme Court decisions and in
12 accordance with Section 1-23-330, 320 and 330,
13 you are guaranteed the right to cross-
14 examination of any individual or record that is
15 placed in the right, if it's at all anyway
16 prejudicial to the Claimant. Of course,
17 obviously, this is prejudicial to the Claimant.
18 But it's -- you have that guaranteed right and
19 we sought to exercise that right based on -- we
20 didn't have -- we did not have to do that. The
21 Supreme Court decision said that where the
22 Claimant requests, and Social Security
23 Administration hearing, the right of cross-
24 examination, the Administration brings that
25 witness to the hearing so that he may exercise



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1 that right. Now, the same thing applies here.
2 It applies in every other court, every other
3 situation. Matter of fact, I have this very
4 same case before the South Carolina Court of
5 Appeals right now and I don't know whether or
6 not they're gonna reach it. But in other
7 words, due process -- think about this. In
8 other words, they have the right to go out and
9 pay and you'll see in the records, they pay Dr.
10 Bethea \$5,000 for this evaluation. They have
11 the right, the Defendants, both sides have the
12 right, but in other words, you can go out and
13 hire an expert, pay 'em whatever and then I --
14 at which can completely destroy a person's
15 case, destroy this man's life and he's got to
16 pay whatever that -- that doctor to examine
17 that doctor. Ha- -- you know, it is -- that is
18 so abhorrent to everything I believe and -- and
19 the constitution stands for. But anyway, we
20 chose to go ahead and try to exercise that
21 right. Then Dr. Bethea notified us, and this
22 is in the record, that he would not go forward
23 with a deposition unless we paid him in advance
24 \$400 for the first hour and \$400 for every hour
25 after that. I'm not gonna pay to cross-examine



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1 their -- their foreign expert. I then also
2 requested that either they be made to take the
3 deposition of Dr. Bethea so that we can
4 exercise our right of cross- examination or
5 that this Commission issues a Commission
6 subpoena, which used to be done all the time,
7 for a witness to appear that was necessary or
8 proper disposition of the issue before it. So,
9 I would object to it being submitted into
10 evidence on the basis of 42-15-95. I would
11 also object to it on the basis of it violates
12 our right of cross-examination for them not to
13 be required to pay for either the deposition or
14 to bring 'em here. If -- if the Court wants to
15 leave -- the Commission wants to leave the
16 record open for them to pay for the deposition
17 so that I may exercise my right to cross-
18 examine him, th- -- cross-examine him in
19 reference to that report, I'd perfectly be fine
20 with that. Now, so I object to that on that
21 basis. In addition -

22 **COMMISSIONER CAMPBELL:** And I will typic- -- well, I
23 was gonna let her respond to that objection,
24 and then I know you have other ---

25 **MR. MCDANIEL:** Okay.



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1 COMMISSIONER CAMPBELL: --- that you will ask ---

2 MR. MCDANIEL: --- that's fine.

3 COMMISSIONER CAMPBELL: So you can respond to that -
4 - to that objection, ma'am.

5 REPLY TO OBJECTION:

6 MS. NOONAN: Thank you, Your Honor. First of all,
7 42-15-95 of the South Carolina Code applies, as
8 it says in the actual statute, once the
9 physician examines or treats the injured
10 worker. So before that occurs, the Defendants,
11 who are setting up examinations with their own
12 witnesses, are allowed to communicate with the
13 doctors and send them correspondence. If that
14 - I've never seen that misapplied to say that
15 before any worker is even seen by a physician,
16 that the Defendants or the other party cannot
17 communicate with that doctor to set up an
18 opinion. So that -- that clearly does not
19 apply in this case. He had not been evaluated
20 or examined by Dr. Bethea at that time. And
21 then as soon as we received the report we sent
22 everything to Mr. McDaniel. Now, the argument
23 that the -- the report of Dr. Bethea should be
24 excluded because they were denied their right
25 to due process, I think it's just absurd. He



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1 had the right for the past couple of months to
2 depose Dr. Bethea, it was set by zoom, everyone
3 was going to attend. They cancelled it arguing
4 that even though they have the right to examine
5 him on cross that we should bear the burden of
6 that and pay for it. Well, we're already
7 bearing the burden of the second opinion that
8 they asked for that we agreed to. So we
9 already paid for that. Nowhere under the
10 Administrative Procedures Act or the Civil
11 Rules of Civil Procedure, does it say that the
12 other party has to pay for your expert
13 depositions, even if it's that parties expert.
14 That -- that is nowhere, that's -- that's why
15 I don't even have a legal memorandum to hand up
16 to you to -- to refute that, because it doesn't
17 exist. Thank you, Your Honor.

18 **COMMISSIONER CAMPBELL:** Yeah. And as we discussed,
19 as part of the pre-hearing conference, I -- I
20 will allow the report to come in and also Mr.
21 McDaniel, as we discussed, with regard to the
22 issue of the deposition, I said I would address
23 that in my order.

24 **MR. MCDANIEL:** Okay, thank you, Commissioner.

25 **COMMISSIONER CAMPBELL:** Yes, sir. And if you have



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1 anything additional objections, please voice
2 them at this time.

3 **MR. MCDANIEL:** Yeah, I would note that during her
4 response, that counsel stated that, in
5 reference to them choosing their witnesses. I
6 would ask you only to, in reference to that, in
7 your consideration of that, remember that this
8 was an examination that we had requested. So
9 I'm not exactly sure how that became their
10 witness, and thus voiding the right under the
11 42-15-95, for that report to come in or them --
12 allowing them to contact for a mutually agreed
13 upon examiner to contact them without any
14 communication with us about that communication.

15 **COMMISSIONER CAMPBELL:** All right.

16 **ADDITIONAL OBJECTIONS:**

17 **MR. MCDANIEL:** Now. And I do have oth- -- another
18 group of objections, Your Honor. The -- I'm
19 not going to - I - I've used this term before.
20 I don't want -- I want to keep our eye on the
21 prize and so I'll get to our position as soon
22 as possible. But if -- if counsel can show any
23 report by any medical position of relating any
24 of these medical records, prior to the time
25 that this -- the second action -- the first



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1 accident happened, the second accident
2 happened. If -- if she can show any report
3 referencing those records in reference to it
4 being part of their opinion as to the current
5 cause of his medical problems in reference to
6 his low back and leg, I will be glad to
7 withdraw the objection to these documents.
8 Otherwise, I object to APA 6, which is from
9 2004 through 2015. I -- the date of first
10 accident was May 5th, 2017. I object to the
11 records from Scotland Memorial Hospital,
12 9/15/06. I object to the records from
13 Marlborough Park Hospital from 11/13/06 through
14 April 30th of 2013, again, '13. I object to
15 the Hartsville Orthopedics and Sports Medicine
16 of January 2nd, 2008 through 2018. I object to
17 Integrated Pain Management from Jan -- actually
18 I wrote this down and I'm trying to see where
19 my -- we object to the records from Integrated
20 Pain Management through April the 5th of 2000,
21 I mean May the 5th of 2017. I have no
22 objection to the records after that because
23 they were - are -- ~~are particularly relevant as~~
24 ~~to showing what treatment he was receiving~~
25 after the injuries occurred. We, in fact, put



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1 several of those records in there. So, I don't
2 object to any of the records after that date
3 coming in. I do object to those records before
4 that time. And, for the life of me, if I can
5 find the -- I think it's through page 531.
6 Here it is -- here it is, pages 311 through 3-
7 -- 512. Those are the records that pre date
8 May 5th of 2017. I then also object to the
9 records from Ortho Carolina of May 15th, 2013,
10 through December of 2013. And then I - I don't
11 object to -- I object to those records. And
12 again, those are all medical records. They're
13 all in referencing th- -- the records reference
14 -- every doctor has known, and we will submit
15 to you, knows about it. You're gonna find in
16 the histories that he's recorded it. But there
17 is no doctor, no medical opinion that relates
18 any of his current-existing problems. There's
19 no medical opinion that they're in any way
20 related to any of those past medical
21 treatments. And so it would be calling -- it
22 would be asking you to speculate as to the
23 relationship of those records to his current
24 condition without such medical testimony. And
25 that's the reason for -- that's the reason I



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1 said earlier, my objection, that if counsel
2 shows me any medical opinion that blames any of
3 his current problems with his low back and his
4 leg on those past existing problems then I'll
5 - I'll be glad to -- you can let 'em in. But
6 otherwise, they're irrelevant, immaterial and
7 all -- and call for speculation on your behalf
8 as to what the meaning are of those records in
9 relation to ~~his current file.~~

10 **COMMISSIONER CAMPBELL:** And I'll let you respond to
11 the objection.

12 **REPLY TO OBJECTIONS:**

13 **MS. NOONAN:** Yes, Commissioner. I -- I feel like
14 that's a faceless objection just to make the
15 record smaller. We're allowed to put in his
16 prior medical history. There hasn't been any
17 reference to an objection to that before. And
18 all of those medical records go to both the
19 issue of credibility and to show the history of
20 his pain complaints. There's no reason that
21 they should not come in.

22 **COMMISSIONER CAMPBELL:** And I -- as I've said, I'll
23 1- -- let 'em in and give 'em the weight that
24 I feel that they deserve. And, any -- any
25 further objections, Mr. McDaniel?



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1 MR. MCDANIEL: No, like I said, they're numerous
2 factual statements made by counsel and her
3 facts are in controversy, her opinions on - on
4 facts. But I'm not going to make any for -
5 I'll - I'll - one or -- one or two of those I
6 will bring up during examination.

7 COMMISSIONER CAMPBELL: Okay. All right. Anymore?

8 MS. NOONAN: I don't want to prolong this anymore.
9 No, Your Honor.

10 COMMISSIONER CAMPBELL: Okay. All right. Without
11 further objection, the Commission File becomes
12 a part of the record with the exception of
13 self-serving declarations and unstipulated
14 medical reports. We are here today, Ms.
15 Noonan, on the Form 21s that you've filed with
16 the Commission. So if you would, please put
17 your position on the record and let us know
18 what you're seeking here today, ma'am?

19 CARRIER'S POSITION:

20 MS. NOONAN: Yes, Your Honor. We are seeking a
21 determination of the extent of permanent
22 partial disability for Mr. Crowley based on two
23 different workers' compensation accidents that
24 have been consolidated for today. The first on
25 was May 5th, 2017. The second is January 3rd



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1 of 2018. We have impairment ratings of 5% to
2 the right leg, 0% to the right leg, 8% to the
3 back by the treating physician and 3% to the
4 back by Dr. Bethea. And also, Your Honor, we
5 have counsel for the Claimant submitted an IME
6 from Southeastern Spine, Dr. Forest, who says
7 that he can continue to work. The treating
8 physician Dr. Naso, has indicated that Mr.
9 Crowley can continue to work in the same
10 capacity, which at the time was a security
11 guard in the courtroom and that he's also able
12 to carry a gun and a taser. We would also
13 argue that if you do not find that he's
14 entitled to permanent partial disability
15 pursuant to South Carolina Code 42-9-30, that
16 you would look at loss of earning capacity
17 under 42-9-20. And based on that the
18 Claimant's own vocational evaluation from
19 Harriet Fowler indicates that he can earn
20 wages. And in the Corbell evaluation that the
21 Defense did shows that he can earn wages in the
22 amount of \$618.05 per week.

23 **COMMISSIONER CAMPBELL:** Okay.

24 **MS. NOONAN:** Thank you, Your Honor.

25 **COMMISSIONER CAMPBELL:** All right. Mr. McDaniel, if



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1 you'd put your position on the record.

2 CLAIMANT'S POSITION:

3 **MR. MCDANIEL:** Yes, Commissioner. It's our position
4 that Deputy, now Mr. Crowley, is entitled to an
5 award for total and permanent disability based
6 on having lost more than 50% of the functioning
7 use of his back to do work requiring use of his
8 back and on the basis of his age, education,
9 background, experience and the physical facts
10 of the injury, that the -- the jobs which he
11 can do on a residual basis are so limited in
12 quality, quantity, or dependability that a
13 reasonably stable job market for them does not
14 exist. As a matter of fact, counsel may can
15 elucidate on what jobs specifically they felt
16 that Mr. Crowley could do. Ms. Harriet Fowler,
17 her summation was that because he could not --
18 sedentary level -- he does not even meet the
19 qualification based on his ability to sit and
20 stand for even sedentary work. And that -- but
21 it -- that at best, if he could possibly find
22 some kind of a job that he could make -- it
23 would only be at minimum wage, again, at -- to
24 the .67 hours to 5.28 hours total in the eight
25 hour day. So we know that she's saying that he



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1 can only work at maximum three to five, five --
2 five and a half hours a day. He can't even
3 work a full eight hour day. So -- and then her
4 summation is that -- so but in ret- -- going
5 back to the loss use of the back, you will hear
6 medical opinion evidence that is in the record
7 from Dr. Leonard Forest, a board certified
8 orthopedist and board certified pain management
9 specialist, that he has lost more than fi- --
10 in his opinion, he has lost more than 50% of
11 the functioning use of his back to do work
12 requiring the use of his back. That is the
13 only medical opinion evidence you will find in
14 the record concerning loss of use. In addition
15 to that, you will find in the record Dr. Naso
16 trying to determine what he could and could not
17 do, had a functional capacity evaluation
18 performed and you'll find that at -- under tab
19 1 of APA submissions and that was done by
20 Corbell, I believe. And in that the results of
21 the eva- -- evaluation showed that Mr. Crowley
22 demonstrated consistent maximum effort. The
23 test results and the referral diagnosis
24 correlate. Therefore, this FCE is a reliable
25 indication of his true functional abilities at



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this time. Lifting Ability Summary, that's on page 3, Claimant's APA submissions.

COMMISSIONER CAMPBELL: Thank you.

MR. MCDANIEL: Mr. Crowley's occasional lifting capabilities are at sedentary physical demand ca- -- category. It then goes on and references his essential job as a deputy. And it states that he could not, and he did not, meet the requirements of performing his job as a deputy in pushing and pulling. He did not meet in lifting up to 50 pounds, he did not meet it in carrying. So he is limited to sedentary work or less and cannot even meet the full demands of even sedentary work according to this FCE. And additionally, had the func - and then, in addition to that, Deputy Crowley, now Mr. Crowley will testify as to his loss of use of back. He will also testify in reference to this issue of retirement. As the Defendant's well know, Deputy Crowley applied for disability and is in the current process of obtaining and has applied for police officer disability retirement and that's why he retired -- resigned, effective January 4th. This was brought up to the Defendants back in October,



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1 that was his intention. He'll explain why he
2 was he was gonna wait 'til that day. He was
3 not a security guard. He was a functioning
4 deputy that the Department thought enough of
5 him to place him in a special condition
6 allowing him to simply guard the -- the judge
7 and he -- we will testify as to that. Last,
8 you'll find every one of Dr. Naso's reports
9 refer to the light duty, referring back to the
10 original sedentary with no lifting
11 requirements. But what you'll find is -- is
12 that we'll also explain why three months after
13 he last saw Deputy Crowley, Dr. Naso issued
14 that request at the request of the Department,
15 the Sheriff's Department, and Deputy Crowley's
16 request that, that statement that's been
17 referred to by client -- counsel, that he could
18 carry a gun and tasers and why that was
19 necessary. And we hope -- hope you'll agree to
20 awarding him back benefits and also place him
21 under chronic pain management with his chronic
22 pain management specialists, been treating him
23 for years. Her opinion that he needs chronic
24 pain management for his low back, regardless of
25 his cervical spine. We also request that you



1 designate -- right now Dr. Naso's perfectly
2 fine with us to follow him from an orthopedic
3 standpoint. All doctors state -- he'll --
4 he'll show you today, he's wearing his tens
5 unit. He's on his -- on his medications that
6 -- and in addition to that he will show you his
7 -- I mean, at times, hopefully the physical
8 therapy will help him. And hopefully, the
9 other things will help him as well.

10 **COMMISSIONER CAMPBELL:** Okay. All right. Thank
11 you. Ms. Noonan?

12 **CARRIER'S REPLY:**

13 **MS. NOONAN:** Yes, Your Honor. I would just refer
14 you to page 309 of our APAs, which is the 14(b)
15 on this file. This is from the authorized
16 treating physician. This is Dr. Naso and says
17 that the only future treatment he needs is a
18 tens unit and physical therapy. Counsel just
19 asks that you refer him for pain management or
20 that he be entitled to pain management in the
21 future. That has not been recommended by any
22 of the authorized treating physicians. So we
23 would argue that he is only entitled to future
24 medical treatment as outlined in the Form 14B.
25 Other than that, you -- counsel for Mr. Crowley



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1 also just indicated that I was referring to a
2 voc eval but I couldn't show that there were
3 other jobs that he could do. That vocational
4 evaluation that we submitted from Corbell, I
5 would just ask you to read it. It's -- there's
6 Collections Manager for TitleMax, which is
7 secondary. There's a Residence Inn Information
8 Clerk, which is sedentary. South Carolina DMV
9 here in Florence, Customer Service Rep, which
10 is sedentary and all within his restrictions.

11 **COMMISSIONER CAMPBELL:** Okay.

12 **MS. NOONAN:** Thank you, Your Honor.

13 **COMMISSIONER CAMPBELL:** All right, Mr. McDaniel any
14 more at this time?

15 **CLAIMANT'S REPLY:**

16 **MR. MCDANIEL:** Only one thing in reply. If -- if
17 you refer to Dr. Cheattle's report, you'll find
18 that he recommended chronic pain management and
19 you'll find -- if you'll look at page 105 of
20 our APA submissions, Dr. Nigel Watt, the rehab
21 nurse when she obtained this document from Dr.
22 Watt, as you'll see, that he checked no, the
23 Claimant does not require a follow up
24 appointment with me, Dr. Nigel Watt, for the
25 right knee injury as he is established with



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1 pain management position for the right lower
2 extremity. You'll find that Dr. Cheadle in
3 recommending the chronic, I mean, recommending
4 spinal cord stimulator found that he believed
5 that his problems were in the low back and in
6 the right leg and were a result of reflex
7 sympathetic dystrophy. And he -- he
8 recommended the spinal cord stimulator as a
9 first attempt at chronic pain management. And
10 then, but as you -- as noted, Dr. Nigel Watt
11 noted that he was already under chronic pain
12 management. The other thing in reference to
13 the chronic pain management at -- in North
14 Carolina, I'd ask you to look at is in Dr.
15 Naso's reports. And -- and those can be found
16 under tab 5 and -- and I'll, very briefly point
17 this out to you, Your Honor. If you'll look at
18 page 102, which is the first visit Deputy
19 Crowley had with Florence Neurosurgery and
20 Spine. All right. If you'll look at his
21 current medications. All right. And then in
22 the history of present -- present illness,
23 you'll note that he is followed by Laurinburg
24 for medication management. Above that he said,
25 he has been on Lortab for every six hours since



1 this time. He is followed by a doctor in
2 Laurinburg for medication management. You'll
3 find continual reference that he's already on
4 medications throughout their entire records.
5 As a matter of fact, if you - if you look at
6 the record of 11/21/19, pain - found at page
7 64. Okay. And ---

8 **COMMISSIONER CAMPBELL:** Page 64?

9 **MR. MCDANIEL:** Page 64.

10 **COMMISSIONER CAMPBELL:** Thank you.

11 **MR. MCDANIEL:** If you'll look at current
12 medications. All right. A- -- if you'll look
13 at pain me- -- as you see, he -- those are the
14 same medications are listed all the w- -- which
15 are the ones he's taking for chronic pain
16 management. All right. All right, als- --
17 look at page 65. Okay. In their final
18 diagnostics, the number one condition for which
19 they were treating for and which they diagnosed
20 him with was chronic pain syndrome, lumbar
21 radiculopathy, chronic, mechanical low back
22 pain, thoracic radiculopathy. Okay. So what
23 I - I'm saying to you is that the doctors at -
24 at - Dr. Naso, as he will explain, Dr. Naso and
25 Dr. Sarb, who was -- she's the neurologist that



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1 does the implantation of the spinal cord
2 stimulator. Dr. Naso, of course is the
3 neurosurgeon. But you -- that -- we'll submit
4 that to you for your consideration as to --
5 they knew at the time he came to them and
6 throughout this. It's referred to in Dr. Nigel
7 Watt's record throughout -- everybody.
8 Everybody knows he's on these medications so
9 they didn't need to prescribe anything else.
10 What are you gonna do, prescribe Lortab for his
11 low back when he's taking Lortab already for
12 his upper back and then, you know, it's the
13 same thing. Okay.

14 **COMMISSIONER CAMPBELL:** Okay. All right. Anything?

15 **CARRIER'S REPLY:**

16 **MS. NOONAN:** Yes, Commissioner. He's - counsel for
17 Mr. Crowley's asking you to speculate as to
18 what the doctors were thinking in these medical
19 records. I would ask that you actually look at
20 the medical records and what the treating
21 physicians state on the Form 14B. They did --
22 and Dr Cheadle made references to pain
23 management and wanted him to go to pain
24 management, which we provided, that was in
25 2018. That is under APA 10. And that was for



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1 his spinal cord stimulator, which he was not a
2 candidate for after two trials. There is no
3 medical evidence now showing that he has a
4 recommendation for pain management from an
5 authorized treating physician.

6 **COMMISSIONER CAMPBELL:** And -- I'm sorry, just for
7 clarification, did you say under - is it APA
8 page 10 or tab 10?

9 **MS. NOONAN:** Yeah, APA 10, I'm sorry. It is my - I
10 - I filed first so that's why my numbers start
11 with one.

12 **COMMISSIONER CAMPBELL:** Yeah.

13 **MS. NOONAN:** It's 240- -- page 246 to 250.

14 **COMMISSIONER CAMPBELL:** Gotcha. Okay. And I just
15 wanted to clarify that I - that I was following
16 that correctly.

17 **MS. NOONAN:** Yes, sir.

18 **COMMISSIONER CAMPBELL:** Okay.

19 **MR. MCDANIEL:** And again, in reference to an
20 authorized treating physician, Dr. Nigel Watt,
21 at page 105, he -- he is established for their
22 pain management physician for the right lower
23 extremity. I - I - in - enough said.

24 **COMMISSIONER CAMPBELL:** All right. Obviously I will
25 review the records in their entirety, so.



1 Thank y'all.

2 MS. NOONAN: Your Honor, can I just add one thing to
3 that?

4 COMMISSIONER CAMPBELL: Sure, yeah. Go right ahead.

5 MS. NOONAN: Okay. So those are before he's at
6 maximum medical improvement also.

7 COMMISSIONER CAMPBELL: Okay. All right. Like I
8 say, I'll -- I'll take a look at all -- all of
9 it.

10 MS. NOONAN: Thank you.

11 COMMISSIONER CAMPBELL: Mr. Crowley, have a couple
12 of quick things to run through with you before
13 we get started. First and foremost, please
14 speak up and speak clearly for us. It's
15 important that we all hear your responses to
16 the questions but most importantly that this
17 nice lady seated over here to my left, get 'em
18 for the record. If you are asked a yes or no
19 question, please give us a verbal yes or no
20 answer. You can shake your head yes or no like
21 I do all the time, just make sure you please
22 accompany that with a verbal yes or no answer.
23 And try and stay away from things like uh-huh
24 and huh-huh, just because that can be eas- --
25 easily misinterpreted on the record. So, if



1 you could help me out with that I'd appreciate
2 it. Okay?

3 **MR. CROWLEY:** Okay.

4 **COMMISSIONER CAMPBELL:** All right. Please raise
5 your right hand.

6 **MR. CROWLEY:** (Witness complies.)

7 **COMMISSIONER CAMPBELL:** Do you swear or affirm the
8 testimony you're about to give is the truth,
9 the whole truth and nothing but the truth?

10 **MR. CROWLEY:** Yes, sir.

11 **COMMISSIONER CAMPBELL:** Okay. You can put your hand
12 down. And I know we all know who you are but
13 please state and spell your name for the
14 record, sir.

15 **MR. CROWLEY:** Okay. Leave this on?

16 **COMMISSIONER CAMPBELL:** You - if -- you're welcome
17 to take it off or you can leave it on. It's
18 whatever you're most comfortable with. I don't
19 want you to feel unsafe or anybody else in
20 here, but I think we're okay -- we're all okay
21 with it.

22 **MR. CROWLEY:** Okay.

23 **COMMISSIONER CAMPBELL:** Okay, and -- and you ---

24 **MR. CROWLEY:** Thank you, sir.

25 **COMMISSIONER CAMPBELL:** --- just, yeah, if you can



1 just state and spell your name for the record,
2 sir?

3 MR. CROWLEY: Michael Crowley, M-I-C-H-A-E-L,
4 C-R-O-W-L-E-Y.

5 COMMISSIONER CAMPBELL: Okay. Thank you, Mr.
6 Crowley. Mr. McDaniel, your witness.

7 MR. CROWLEY - DIRECT EXAMINATION BY MR. MCDANIEL:

8 Q: All right. Deputy Crowley, Mr. Crowley. Let's
9 first go into - tell me, what's your marital
10 status?

11 A: Divorced.

12 Q: Divorced. Okay. Ho- -- do you have anybody
13 living at home with you that's dependent upon
14 you for support?

15 A: Me and my mom lives together.

16 Q: You -- you, and your mother lives with you?

17 A: Yes, sir.

18 Q: Okay. All right. Tell me about your
19 educational background.

20 A: I completed the ~~12th grade of high school~~. I
21 went to ~~the Police Academy~~ and I also went to
22 Fire Service.

23 Q: All right. After graduating high school in 19-
24 -- I believe it was 1987, what was your first
25 job?



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1 A: Marley Electrical Heating.

2 Q: Marley Electrical Heating?

3 A: Yes, sir.

4 Q: Madam Court Reporter, can you hear him okay?

5 COURT REPORTER: I have a speaker up there, so.

6 Q: Marley Heating and Air. What -- what did you
7 do for -- what -- what kind of business is that
8 and what did you do for 'em?

9 A: ~~They made baseboard heaters~~ and my job was to
10 work on the line. We'd take raw material and
11 hang 'em up on the line, you know a lotta
12 bendin' and stoopin' and doing it all -- all
13 day long, hangin' stuff and takin' stuff off
14 the line.

15 Q: All right. And, I believe you referred to it
16 so, why did -- how long were you there?

17 A: About two years, I think.

18 Q: All right. Why did you leave that job?

19 A: Because I had been laying me off.

20 Q: Okay.

21 A: They had a lay off.

22 Q: They had a ~~general layoff?~~

23 A: Yes, sir.

24 Q: All right. Tell me, knowing the condition of
25 your back and leg, your low back and leg now,



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1 could you go back and work doing that job?

2 A: No, sir.

3 Q: Why not?

4 A: Because I couldn't do the bendin' and the
5 liftin' and the stoopin' and all because of my
6 leg, my lower back.

7 Q: All right. From there you went where?

8 A: To Galey and Lord, Society Hill.

9 Q: Gay - Gay L- -- Gaylords?

10 A: Gay # Galey and Lord.

11 Q: Okay. What did you do for them?

12 A: I started off on a print machine.

13 Q: I guess what -- what kind of plant is it?

14 A: ~~it's a printing plant, cloth material.~~

15 Q: Okay.

16 A: They dye cloth, they print cloth. I started
17 off on a printer machine inspecting cloth and
18 then I went to a dye machine where you had to
19 push heavy bug- -- red buggies with red cloth
20 in it, you gotta push them. And then I ended
21 up in an inspection department where you had to
22 pick up rolls and put 'em on a rod and inspect
23 the cloth.

24 Q: What kind of weights were you dealing with
25 ~~that?~~



- 1 A: You could lift from 50 to 100 pound rolls.
- 2 Q: And -- and I forgot to ask you this about
3 Marley, but also both to Marley and Gaylord
4 [sic], what k- -- what -- what was your shift
5 work. How many hours and what days would you
6 work?
- 7 A: Well, at Marley, I worked on day shift, it was
8 eight hours. And at Galey and Lord, I worked
9 second shift and first shift.
- 10 Q: Okay. And knowing what it took to do that job,
11 you described bending, stooping, lifting.
12 Based on the condition of your back to this --
13 at this time, could you go back to doing that
14 job?
- 15 A: No, sir.
- 16 Q: Why not?
- 17 A: Because of the bendin' and picking up the rolls
18 and I couldn't do it.
- 19 Q: All right. From there you went -- why did you
20 ~~leave that job?~~
- 21 A: ~~They shut-down?~~
- 22 Q: They shut down? All right.
- 23 A: Yes, sir.
- 24 Q: And then from that job, you went where?
- 25 A: ~~Delta Mills.~~



1 Q: All right. And what -- what kind of a plant is
2 Delta Mills?

3 A: ~~It's like a print~~ a dying company with
4 cloth, ~~they dye cloth.~~

5 Q: Okay. And what'd you do for them?

6 A: I started out on ~~a dye machine~~ where they dye
7 the cloth. We unload the -- the buckets where
8 you had to push 'em and stuff with the wet
9 cloth. Then I went to inspection department,
10 'pickin' up rolls, insp- -- reinspecting the
11 rolls, bendin' and -- and all.

12 Q: Okay. All right. Knowing the condition of
13 your back today, as it is now, such with these
14 actions, could you go back in reference to your
15 low back and your leg, would you go back to
16 doing that job?

17 A: No, sir.

18 Q: Why not?

19 A: Because of the bendin' and pickin' up the heavy
20 rolls and stuff.

21 Q: All right. Now, from there you -- how long
22 were you with Del- -- Delta Mills?

23 A: ~~About seven years.~~

24 Q: That's -- all right. And then, so why did you
25 leave there and what'd you go to do?



1 A: I went to Society Hill Police Department in
2 2005.

3 Q: Okay. And is that when you went to the
4 academy?

5 A: Yes, sir.

6 Q: And how long were you with Society Hill?

7 A: About eight years. Or eight or nine years.

8 Q: And tell me -- tell us -- tell us a little bit
9 about your job duties as a police officer at
10 Society Hill.

11 A: We ran a radar, we answered calls. You had to
12 do a lot of riding, checkin' property,
13 domestics, drunks. What a normal cop does.

14 Q: Okay.

15 A: Sitting in the vehicle for long period of
16 times.

17 Q: Now, knowing the condition of your back today,
18 your low back and your right leg, ever since
19 these accidents, could you go back to doing
20 that job?

21 A: No, sir.

22 Q: All right. When did you leave that job?

23 A: ~~In Society. I left in 2013.~~

24 Q: And so, any -- whether or not you had any type
25 of medical problems prior to that, in reference



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1 to your back, your neck, anything like that,
2 you did those jobs on a regular and consistent
3 basis?

4 A: Yes, sir.

5 Q: Able to do those jobs?

6 A: Yes, sir.

7 Q: All right. Now, when you left, cou- -- I think
8 I've already asked you this, gonna ask you
9 -- again. Could you go back and doing that job?

10 A: No, sir.

11 Q: After Society Hill, based on the condition of
12 your low back and -- and your neck?

13 A: No, sir.

14 Q: Why?

15 A: 'Cause with wrestlin' and fightin' with people
16 and handcuffin' and sitting in the -- and
17 everything that's involved, it would be too
18 much on me.

19 Q: How long can you sit at a time?

20 A: Ten, 15 minutes at a times.

21 Q: What -- what happens to you after about 10 or
22 15?

23 A: My lower back starts hurting real bad and then
24 the nerves in the back of my leg, it hurts real
25 bad and irritates it to where it hurts so bad



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- 1 I have to get up just to move it.
- 2 Q: All right. Now, so you went with the -- when
3 y- -- when you left Society Hill, where --
4 where'd you go to work?
- 5 A: ~~L. Darlington County Sheriff's Department.~~
- 6 Q: In what capacity?
- 7 A: ~~I was a road deputy.~~
- 8 Q: Road deputy. And that was in 2000 and ...
- 9 A: 13.
- 10 Q: All right. And tell me about how you
11 progressed as road deputy. How long were you
12 a road deputy and what did you do after that?
- 13 A: I was a road deputy about two years then, I
14 think about ~~2015, I went to the Foxtrot Unit.~~
- 15 Q: All right.
- 16 A: And I started working with the ~~Foxtrot unit.~~
- 17 Q: What's a ---
- 18 A: ~~Which was a day shift job.~~
- 19 Q: Okay. So it's a day shift job. How did -- did
20 you apply for that? How did -- did you apply
21 for that? How did that come about?
- 22 A: No, sir. ~~One of the lieutenants came up to me~~
23 ~~and talked to me and then one of the captains~~
24 ~~came and talked to me. I told 'em, let me~~
25 think about it and I'd come back to 'em and



1 give 'em an answer and I accepted the job with
2 the captain.

3 Q: Okay. Now, in -- as a road deputy, what was
4 your shifts?

5 A: We worked 12-hour shifts, two weeks on day
6 shift and two weeks on night shift.

7 Q: So, is the --, is the Foxtrot Unit considered a
8 better job?

9 A: Yes, sir.

10 Q: Much easier?

11 A: Yes, sir

12 Q: All right. Day work?

13 A: Day work. Yes, sir.

14 Q: How many hours a day do y'all work?

15 A: Usually eight hours. It all depends if you
16 have a transport, funerals. You have to take
17 those things into consideration.

18 Q: Right. Tell, tell me -- tell us what all you
19 -- what do you do? What does the Foxtrot Unit
20 do?

21 A: Deal with juveniles, you take 'em to Columbia.
22 You have mental transports, we have funerals,
23 serve criminal papers, warrants, courts -- we
24 do the court system.

25 Q: Where do you transport people? Where -- like



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1 when you're transporting, where do you, where
2 all do you transport for me?

3 A: You can go to Columbia, you can go to
4 Charleston, you can go to Lancaster, you can go
5 to Spartanburg, anywhere in the state of South
6 Carolina that they have locations for the
7 people.

8 Q: And where are you transporting from?

9 A: Sometimes from the sheriff's office or if a
10 mental patient, you're transferring from the
11 hospital. And sometimes from the Court to
12 Columbia, with juveniles.

13 Q: And you also, you said you also serve papers?

14 A: Yes, sir.

15 Q: Okay. All right. Now, you start out as a line
16 deputy, what was your rank whenever and what --
17 what year did you obtain that rank?

18 ~~A: In 2016, I became a corporal.~~

19 Q: There's been some reference and we put in
20 records in reference the -- I believe you were
21 involved in an automobile wreck 2013. Is that
22 right?

23 A: Yes, sir. I was.

24 Q: And you had cervical spine surgery in 2015?

25 A: Yes, sir.



- 1 Q: Why'd you have that surgery, what was it for?
- 2 A: Because I was having real bad headaches.
- 3 Q: Did that help with those?
- 4 A: Yes, sir. It did.
- 5 Q: All right. After the spinal cord surgery --
- 6 after cervical spine surgery, did you have any
- 7 residual problems from -- from your injury?
- 8 A: I had -- I still had some headaches but it
- 9 wasn't quite as bad.
- 10 Q: Okay. What -- what were they treating for -
- 11 di- -- what kind of treatment have you got for
- 12 your neck after that?
- 13 A: I was going to the pain management over in
- 14 Laurinburg for the -- my neck.
- 15 Q: Okay, neck. Now, okay. And let's focus a
- 16 minute because the statement has been made that
- 17 unbeknownst to the Defendants 'bout your
- 18 treatment. I want to know -- let's just talk
- 19 about this a minute. As a deputy sheriff, do
- 20 you have to do anything in reference to testing
- 21 in reference to narcotics or any kinda drugs in
- 22 your system?
- 23 A: Yes, sir. You do.
- 24 Q: Okay. Tell me about that.
- 25 A: They have a system and the system, every so- --



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- 1 every month it pulls out a names. If you on
2 that list you have to go do a urine test.
- 3 Q: Okay. And so ---
- 4 A: And yeah, if you take a urine test they'll send
5 it to the captain at the sher- -- well, it was
6 the work but the captain at the sheriffs office
7 would get it and then if anything was wrong
8 they would notify you to bring you in and talk
9 to you and to find out what was going on.
- 10 Q: Now, ever since you went on that pain
11 management, did you - tell me 'bout what you do
12 for the urine test.
- 13 A: They would call me in - after I used -- do my
14 urine test about a week or two whenever we got
15 our results back, they would call me in the
16 office and say, if you know if you got this in
17 your system, if you gotta prescription for it
18 take it to Hartsville to the doctor and that's
19 what I would do.
- 20 Q: Okay, with you when you went to take it?
- 21 A: Yes, I would do my -- take my medication with
22 me. Yes, sir.
- 23 Q: And so you been doing that for a lot of years?.
- 24 A: Yes, sir.
- 25 Q: Okay. All right. Now, so any questions --



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1 Sheriff's Department knew you were on
2 medications?

3 A: No, sir.

4 Q: So, it was notes to them, right?

5 A: Yes, sir.

6 MS. NOONAN: Object to the form.

7 COMMISSIONER CAMPBELL: I'm sorry, you said?

8 MS. NOONAN: I said, object to the form.

9 COMMISSIONER CAMPBELL: The form? Okay

10 Q: So it was notice to them? Just, that's just
11 the affirmative of unknowns. Anyways. All
12 right, lets go forward. Deputy Crowley, tell
13 us about what happened to you on May 5th, 2017,
14 the first accident?

15 A: Me and my partner was doing two juvenile
16 transports to Columbia. And we was goin' down
17 the road and one of the juveniles got irate and
18 came out of one of her handcuffs. So we pulled
19 over on the side of the road, at the Saveway
20 and called for backup. And we got the other
21 juvenile out 'cause the juvenile that was
22 irate, she was hitting the cage and all. So we
23 took the other one out for her safety. So we
24 went into -- we got more help. And when the
25 other help got there, we took the juvenile out,



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- 1 I laid her on the ground and I had her legs
2 criss crossed, holding 'em. And so, all of a
3 sudden, she took her legs and tried to kick
4 back and kinda like turned me at an angle which
5 twisted my knee and my back and all. So then
6 I got her back restrained, well, she end up get
7 out but I put in place back and then we got her
8 detained and then I told 'em that I needed
9 medical help for me and her.
- 10 Q: Okay. So how did you get from the scene to --
11 where'd you go and how'd you get there?
- 12 A: EMS was called to a scene and they took me to
13 Carolina Pines.
- 14 Q: All right. And you're treated at the emergency
15 room, Carolina Pines?
- 16 A: Yes, sir.
- 17 Q: And then, who's Hartsville Primary Care?
- 18 A: That's the doctor through the sheriff's office
19 they send us to.
- 20 Q: Okay. So you followed up with care with
21 Hartsville ---
- 22 A: Yes, sir.
- 23 Q: --- Primary Care?
- 24 A: Yes, sir.
- 25 Q: Commissioner, Claimant's, I mean Defendant's



1 APA 13, page 13. Appears that that doctor
2 treated you for a knee sprain and also back
3 sprain, low back sprain. Is that right?

4 A: Yes, sir.

5 Q: All right. And after you treated with him for
6 a while, who do they send you to?

7 A: Dr. Watt.

8 Q: Dr. Watt. All right. Commissioner, page 16 of
9 the Defendant's APA submissions.

10 **COMMISSIONER CAMPBELL:** Thank you.

11 Q: All right. Wh- -- they sent you to Dr. Nigel
12 Watt for -- treating what for you?

13 A: The knee.

14 Q: The knee?

15 A: Yes, sir.

16 Q: All right. When you went to Dr. Watt, did he
17 take a -- want to know what medications you,
18 were on?

19 A: Yes, sir.

20 Q: Okay. So, and did he -- did you tell him where
21 you -- what medication you were on and -- and
22 who was prescribing it?

23 A: Yes, sir.

24 Q: Okay. ~~All right.~~ Who at that time, back in
25 2017, ~~who was providing treatment and your,~~



1 ~~medications that you're taking for your neck?.~~

2 A: ~~, Integrated Pain Solutions~~ in Laurinburg.

3 Q: All right. Do you remember what doctor it was?

4 A: I think at that time -- they were switching me
5 back and forth. I don't know exactly 'cause,
6 like I said, a period that was -- I was seeing
7 different doctors.

8 Q: You remember any of their names?

9 A: I mean, I Dr. -- I was seeing Dr. Bean to start
10 with, but then I can't remember the other ones
11 names.

12 Q: Okay. So you don't remember specifically on
13 August the 10th of 2017 who you -- who you was
14 treating with up in Laurinburg. But you were
15 treating at Laurinburg?

16 A: Yes, sir.

17 Q: Commissioner, as noted, page 16. So if you
18 were told that you received chronic pain
19 treatment for neck symptoms in Laurinburg from
20 Dr. Bean, you would agree with that, if that's
21 what Dr. Nigel Watt recorded?

22 A: Yes, sir.

23 Q: So Dr. Nigel Watt knew that you were ---

24 MS. NOONAN: Objection. Cause for speculation.

25 Q: Did ---



1 COMMISSIONER CAMPBELL: And you can -- you can
2 rephrase it, that's fine.

3 Q: So, is there any question in your mind that Dr.
4 Nigel Watt knew that you taking prescription
5 medication at the time that you started
6 treatment?

7 MS. NOONAN: Objection. Same objection.

8 COMMISSIONER CAMPBELL: Okay. I'll - I'll allow him
9 to say what his opinion was.

10 A: ~~No, sir.~~

11 Q: Well, did he know?

12 A: Yes, sir. He knew.

13 MS. NOONAN: Objection. He can't possibly testify
14 as to what his treating physician knew or did
15 not know.

16 COMMISSIONER CAMPBELL: And I'll let you reply to
17 the objection.

18 MR. MCDANIEL: Okay, Commissioner, all right. I'll
19 -- I'll rephrase. Let me ask this way.

20 COMMISSIONER CAMPBELL: Okay.

21 Q: If -- in what I just read to you that Dr. Watt
22 recorded, does that correlate with your
23 recollection of what you would have told Dr.
24 Watt at that time?

25 A: ~~Yes, sir.~~



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1 Q: All right. Thank you. Now, so you got
2 released from your knee and all that. Then you
3 had another accident on January the 3rd of
4 2018?

5 A: Yes, sir.

6 Q: All right. Tell us about what happened in that
7 accident.

8 A: Well, it was snowing that day and they called
9 me out and you're out in Society Hill because
10 of the weather conditions and so on. I got to
11 52 on Main Street, it had several cars on the
12 hill that were stuck. And we're trying to get
13 one vehicle that was turnt kinda sideways. And
14 some of the guys were at the back trying to
15 push it. I was on the side trying to get it --
16 to help 'em to get it turned straight so that
17 people could get out and I just remember I fell
18 and that was it.

19 Q: Okay. So -- so first recollection of exactly
20 what happened is when?

21 A: Well, now, I remember my hands on the car and
22 then I just slip and fell. I don't remember.

23 Q: What was hurting?

24 A: My back and my right leg. My lower -- lower
25 back and right leg.



1 Q: And then so, how did you -- how did you get
2 from there to medical care?

3 A: ~~EMS came to the scene.~~

4 Q: Okay. And they took -- and they took you
5 where?

6 A: ~~Carolina Pines.~~

7 Q: ~~And then after Carolina Pines,~~ who - who
8 did you follow up with?

9 A: I think it was Dr. Nigel Watt's again.

10 Q: Dr. Watt's, okay. All right. And he was
11 treating for your leg and back?

12 A: Yes, sir.

13 Q: ~~All right.~~ Now, I -- Commissioner, I want to
14 refer to Dr. Watt, under our claim, APA
15 submissions, tab 6, page 109 and 110.

16 **COMMISSIONER CAMPBELL:** Okay. Thank you.

17 Q: On February tw- -- 22nd of 2018, Dr. Watt
18 treated you for your leg and back and he
19 ordered an MRI. Do you remember that?

20 A: Yes, sir.

21 Q: All right. And Commissioner, it's - it's on
22 page 109, his opinion is there's a direct
23 result from the accident. That's his medical
24 opinion.

25 **COMMISSIONER CAMPBELL:** Okay. Thank you.



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1 Q: All right. Now, he also gave you a restricted
2 use statement. That's -- Commissioner, that's
3 page 111.

4 **COMMISSIONER CAMPBELL:** Okay.

5 Q: And I believe he restricted you from no
6 jumping, no lifting, and sedentary work. Did
7 you take that to the Sheriff's Department?

8 A: Yes, sir.

9 Q: Now, first off, did you get that MRI right
10 then?

11 A: No, sir.

12 Q: All right. When -- when did you -- what kind
13 of treatment did you get for your back?

14 A: I didn't get any at that time. Dr. Watt's was
15 trying to get it and then I think I -- October
16 they sent me to Dr. Cheatle down at Myrtle
17 Beach.

18 Q: Myrtle Beach. Okay. So I believe we had to
19 file for a hearing to try to get you treatment.
20 Is that right?

21 A: Yes, sir.

22 Q: Okay. And they finally agreed to send you to
23 somebody?

24 A: Yes, sir.

25 Q: Didn't send you to anybody in Florence, did



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1 they?

2 A: No, sir.

3 **MS. NOONAN:** Objection, Your Honor. I think that's
4 all on the record. We were disputing that the
5 back was related at the time.

6 Q: Well, I don't know what kind of objection that
7 is, but anyway. All right. So you -
8 Commissioner, Tab 8, Page 117. So, after you
9 went to Dr. Cheadle, did Dr. Cheadle also
10 recommend MRI?

11 A: Yes, sir.

12 Q: All right. What was your understanding of the
13 treatment, Dr. Cheadle recommended for you?

14 A: A stimulator.

15 Q: A stimulator. And where did he send you for
16 that purpose?

17 A: Sent me to Florence, to Dr. Sarb.

18 Q: Sarb. All right. And now, Commissioner, Dr.
19 Cheadle's records can be found at our APA
20 submissions, under tab 7, pages 112 through
21 116.

22 **COMMISSIONER CAMPBELL:** Thank you.

23 Q: Now, did - now, did Dr. - I didn't note this,
24 but Dr. Naso, I mean Dr. Watt, in February, and
25 when he saw you in -- in -- after this second



1 accident, he also noted that you were still
2 under treatment wa- -- in Laurinburg by pain
3 management. Is that right at that ---
4 A: Yes, sir.
5 MS. NOONAN: Objection, leading.
6 MR. MCDANIEL: Exactly ---
7 MS. NOONAN: We'll agree what's in the medical
8 records.
9 MR. MCDANIEL: Well, okay.
10 COMMISSIONER CAMPBELL: Okay. Can you rephrase the
11 question, please?
12 Q: Based on your recollection did you tell Dr.
13 Nigel Watt that you would continue to be
14 treated in Laurinburg?
15 A: Yes, sir.
16 Q: All right. When you met with Dr. Cheadle did
17 he also know you were on medication?
18 A: Yes, sir.
19 Q: Okay. So it was known to both of those doctors
20 that you were taking pain medication?
21 MS. NOONAN: Objection. Cause for speculation as to
22 what the doctors knew.
23 COMMISSIONER CAMPBELL: Okay. And I - and I'll let
24 him reply to what - to what his recollection is
25 but not to what the doctor knew.



1 A: Yes, sir.

2 Q: So, now. Okay. Let's - lets go back. Yeah,
3 I just want to clarify couple things here.
4 Just - I want to talk about known and unknowns
5 and some of the statements that have been
6 entered as factual allegations, okay. And
7 expecting this or this.

8 MS. NOONAN: Objection.

9 Q: Who sent you -- who ---

10 COMMISSIONER CAMPBELL: Well, let - let him - let me
11 ans- -- I'm sorry. What's the objection?

12 MS. NOONAN: That that wasn't a question.

13 COMMISSIONER CAMPBELL: Okay. Well, he - all right.

14 MS. NOONAN: This is grand standing.

15 COMMISSIONER CAMPBELL: Let -- let him ask the que-
16 -- let him ask the question, okay?

17 Q: So let me ask you this question. Who sent you
18 to Dr. Nigel Watt?

19 A: Hartsville Primary Care.

20 Q: Okay. But, in other words, the Defense
21 Insurance Carrier?

22 MS. NOONAN: Objection, leading.

23 Q: Okay Commissioner, I tell you what. I'm gonna
24 - I'm gonna cut through this. If you'll look
25 through the Defendant's APA submissions under



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1 Dr. Nigel Watt, if you look at 'em under Dr.
2 Cheattle, if you'll look at 'em under Dr. Naso,
3 they -- you'll find bills and various documents
4 wherein they were all forwarded to the
5 insurance Carrier and -- and representing the
6 Employee in this matter. Okay. And I want --
7 I just want to note that to you. As you know,
8 I -- I made an objection, I said I would not go
9 through and challenge these various factual
10 allegations that were made in the pre-hearing
11 brief that were not in the evidence. I just
12 want to note that to the Commission.

13 Now, okay, tell us -- just tell us about what
14 kinda care -- what doctor -- what happened when
15 you went to Dr. Sarb and Dr. Naso? Tell us --
16 just summarize what you went through.

17 A: They did the stimulator. I had the stimulator
18 done twice. I had an injection also and
19 nothing helped me.

20 Q: How many trials of the sp- -- spinal cord
21 stimulator they did?

22 A: Two.

23 Q: And ha- -- injection?

24 A: One injection.

25 Q: All right. Physical therapy?



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- 1 A: Physical therapy.
- 2 Q: And who sent you for the therapy?
- 3 A: Dr. Naso.
- 4 Q: All right. I - I'm not going to go through
5 every one of these, Commissioner. But in
6 reference to, at page 94 of the Claimant's APA
7 submissions as part of the records from Dr.
8 Naso and Dr. Sarb I see, beginning on December
9 of 2018, light duty statements. Did you take
10 those to your Employer?
- 11 A: Yes, sir.
- 12 Q: That's on page, Commissioner on Page 95, 94,
13 90, 83, and 79. Did they issues light duty
14 statements through out the course of your
15 treatment with them?
- 16 A: Yes, sir.
- 17 Q: What was, in reference to the light duty, what
18 was that? What type of light duty was that?
- 19 A: No stooping, no bending, no long time standing,
20 no jumpin', nothing that's gonna make me hurt
21 worse.
- 22 Q: All right. Now, what changed in reference to
23 your position as a deputy after this second
24 accident in -- in January, and after you
25 developed these problems with your lower back.



1 Tell me how -- what were you doing? You were
2 in the Foxtrot unit, when did that come to an
3 end?

4 A: I was still in the Foxtrot unit, but in
5 February I -- they put me at the courthouse.
6 So I was only doing any criminal transports or
7 juvenile pr- -- transports and stuff like that.
8 I could do funerals -- well, they cut me out of
9 doing everything for a period of time, and then
10 they finally let me start back doing funerals.

11 Q: Okay. All right. And then after that, you
12 were -- remained at the courthouse?

13 A: Yes, sir. Doing -- with general sessions or in
14 the lobby.

15 Q: What -- what did you actually do, let's say the
16 last six months or a year you were there?

17 A: I was with the judge, general session judge,
18 when in court or I was in the lobby, and front
19 door, checking people in and out.

20 Q: Okay. Now, all right. There's a report from
21 Dr. Naso. Commissioner, page 63.

22 **COMMISSIONER CAMPBELL:** Thank you.

23 Q: Concerning -- to address what Ms. Rhonda
24 Henderson -- dated February the 13th, 2020.
25 You were working as a deputy at the courthouse



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1 in two thou- -- February 2020?

2 A: Yes, sir.

3 Q: All right. In reference to this report from
4 Dr. Naso, it said, Mr. Michael Crowley can
5 continue to work in his current capacity, which
6 includes being able to carry a weapon and a
7 taser. All right. Tell - tell us about what
8 was going on with your job and how that -- that
9 statement came about.

10 A: Well, the training officer -- I was out at the
11 time, 'cause my dad had just passed away. And
12 I came back. Well, my Sergeant called me and
13 told me that the training officer said that I
14 couldn't drive my patrol vehicle, I couldn't
15 wear my gun, my uniform. I had to come in
16 plain clothes to stay at the office. I don't
17 know, like I said, I was out when all this came
18 about. So when I came back, and then like the
19 second day, I was talkin' to the chief deputy,
20 me and him was talkin' about it. And then, the
21 sheriff came in. And he was saying, well
22 didn't you qualify, didn't you pass. I said,
23 yes, sir. I said, I did everything I was
24 supposed to. I just couldn't lay on the
25 ground, I couldn't kneel, but I still qualified



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1 like everybody else besides those two things.
2 And so he said, what's the problem? I said, I
3 don't know. I said, I was told not to come
4 with my patrol vehicle and not to wear my
5 uniform or my gun. And then he says, well, you
6 start back driving your vehicle and you'll put
7 your uniform back on and go back, he says that
8 I just need a note saying that you can tote
9 a taser, your duty weapon and your handcuffs
10 and your badge at the courthouse. So, I called
11 Dr. Naso's office, talked with them and
12 explained to them what I needed. So, a week
13 went by - well, I think it was that Friday,
14 Rhonda called and told 'em that -- asked 'em
15 about the note and all and Dr. Naso was having
16 some issues. So I think he and the nurse and
17 her talked and they kinda got it situated and
18 then the next week, I got the excuse. That
19 excuse, it was sent to the sheriff's office.

20 Q: ~~So, you requested that?~~

21 A: ~~Yes, sir.~~

22 Q: ~~At the request of the sheriff?~~

23 A: ~~Yes, sir.~~

24 Q: Which would allow you to continue working as a
25 deputy?



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1 A: Yes, sir.

2 Q: All right. So, did Dr. - Dr. Naso in any way
3 change your sedentary work requirements that he
4 -- had been placed on you before?

5 A: No, sir.

6 Q: And according to my records, the last time you
7 actually saw him was in November when he
8 released you to sedentary work only. Did you
9 actually see him in February, do you remember?

10 A: No, sir. I think I just called him.

11 Q: Okay. Did you actually even talk to him?

12 A: No, sir.

13 Q: All right. Deputy Crowley, Mr. Crowley, let's
14 -- let's come up on -- tell us how you -- how
15 it's been trying to do the job at the -- the
16 courthouse the last year.

17 A: It's been tough. I mean, I can't sit or stand
18 for long periods of time. I can't do the
19 things I used to do. I mean, I have to be real
20 careful what I do so I won't - so I wouldn't
21 reinjure myself again.

22 Q: What -- what was your intent, let's say
23 beginning in Fall of 2020, as far as -- in
24 reference to your position with the sheriff's
25 department?



1 A: Retiring.

2 Q: Okay. Why was that?

3 A: Because of the pain and the job. Couldn't do
4 the job that I was hired to do and with the
5 pain and all in my lower back to my right leg.
6 Okay.

7 MR. MCDANIEL: All right. Now -- let me mark this
8 Claimant's Exhibit A.

9 MS. NOONAN: Before it's marked I -- I need to know
10 what it is, see if I have an objection.

11 MR. MCDANIEL: Commissioner, I normally in -- in all
12 -- I normally have the document marked and then
13 show it to Counsel.

14 COMMISSIONER CAMPBELL: Okay but just ---

15 MS. NOONAN: What if I ---

16 COMMISSIONER CAMPBELL: --- just make --

17 MS. NOONAN: --- have an ---

18 COMMISSIONER CAMPBELL: --- make ---

19 MS. NOONAN: --- objection to ---

20 COMMISSIONER CAMPBELL: -- well ---

21 MS. NOONAN: --- it being marked? I don't know what
22 ---

23 COMMISSIONER CAMPBELL: --- well it ---

24 MS. NOONAN: --- it is ---

25 COMMISSIONER CAMPBELL: --- and then - and then I



1 won't let it in ---
2 **MR. MCDANIEL:** You don't ---
3 **COMMISSIONER CAMPBELL:** --- just ---
4 **MR. MCDANIEL:** --- have any objections to marking
5 it, you have an objection to it coming in.
6 **COMMISSIONER CAMPBELL:** All right. Let's - let's
7 just make sure you show it to her and then let
8 me know. Okay?
9 **MS. NOONAN:** I do object to this. This is not
10 within the APA submissions, and you've had this
11 report since November 17th of 2020.
12 **MR. MCDANIEL:** I - you - you - I haven't had since
13 November the 17th ---
14 **MS. NOONAN:** It's dated ---
15 **MR. MCDANIEL:** --- in our -- I don't. I
16 **MS. NOONAN:** Mr- -- Mr. Crowley's had it since
17 November 17th of 2020. And I completely object
18 to that coming in. It's not an APA
19 submissions. And it's also not relevant for
20 this case.
21 **MR. MCDANIEL:** Oh, it's not?
22 **MS. NOONAN:** No, it's not.
23 **MR. MCDANIEL:** Okay. Well, Commissioner, I - I'm
24 gonna ask my Client to identify it and then ask
25 you to submit the document over her objection.



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1 COMMISSIONER CAMPBELL: Okay. I'll - I'll let you -
2 you can ask him to identify ---

3 MR. MCDANIEL: Okay.

4 COMMISSIONER CAMPBELL: --- the -- the document.

5 Q: Deputy Crowley, could you identify that
6 document and tell me what it is?

7 MS. NOONAN: Again, just same objection for the
8 record that was not submitted with APA
9 submissions.

10 COMMISSIONER CAMPBELL: Okay.

11 MR. MCDANIEL: You're not required to submit all
12 documentation as far the APAs submissions.

13 MS. NOONAN: So why are you submitting it today at
14 the hearing for the first time?

15 MR. MCDANIEL: I don't have to answer that but it --
16 it -- I just got it today.

17 COMMISSIONER CAMPBELL: Okay.

18 MS. NOONAN: Your Honor, I have -- object to it as a
19 late submission. It's something I haven't
20 seen.

21 COMMISSIONER CAMPBELL: Okay. Let him identify what
22 it is and then I'll make a decision as to
23 whether it comes in or not.

24 A: Okay. This is where I applied for my
25 disability through the State Retirement System



1 for my job.

2 Q: Okay.

3 COMMISSIONER CAMPBELL: All right. Given -- given
4 the timing of it, I'm not gonna let it in, but
5 he's identified it. But I'm not gonna let it
6 in.

7 MR. MCDANIEL: All right. Fine, Commissioner, I
8 proffered it.

9 MS. NOONAN: Same objection.

10 COMMISSIONER CAMPBELL: Okay.

11 (Claimant's Exhibit A was proffered at this time.)

12 Q: Now, so when did you apply for police officer
13 disability retirement?

14 A: In November, last year.

15 Q: And is that pending now?

16 A: Yes, sir.

17 Q: Okay. Why did you wait till January -- wh- --
18 you've left the police department, correct?

19 A: Yes, sir.

20 Q: Why -- When did you leave?

21 A: January 4th of this year.

22 Q: All right. Tell me why you waited until
23 January 4th, tell the Commission, not me.

24 A: Well, I was doing it 'cause I was doing a
25 little bit of overtime and I was trying to get



1 my yearly income kinda high so -- so whenever
2 I went out on my retirement, it would boost my
3 retirement up some to help me out in the long
4 run.

5 Q: And then also you get your benefits, they kick
6 into January, correct? You- -- your leave
7 time, all that?

8 A: Yes sir. My vacation time I got it in January.

9 Q: All right. So are you working now?

10 A: No, sir.

11 Q: Mr- -- Deputy Crowley, tell me, Mr. Crowley
12 tell me about the things that up until this --
13 these two accidents that you were doing that
14 you -- has -- how's this changed your life?
15 Tell me what's going on in your life now.

16 A: Well, I used to be on the fire department. I
17 was on the fire department for like 28 years
18 and then I was on the scuba diving team, yeah,
19 I played basketball, and just with this
20 accident I can't -- I'm not allowed to do
21 anything. I can't do anything of it now 'cause
22 I'm hurtin' so bad in my lower back and my
23 right leg. So I can't hardly do anything
24 anymore.

25 Q: So, the scuba diving was interesting to me.



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1 You were on a scuba diving team?

2 A: Yes, sir.

3 Q: Tell -- tell us about that.

4 A: The fire department, we had a dive team to go
5 try to find vehicles in the water, if somebody
6 drown, we'd go do search and rescue for the
7 bodies. We'd go -- I'd train in -- went down
8 to Florida a couple of times training missions
9 and stuff.

10 Q: Okay. And -- and you're talking about as a
11 volunteer fireman as, this was a team that you
12 were on as a volunteer fireman?

13 A: Yes, sir.

14 Q: Okay. All right. You -- I think the
15 Commission can see, but and you know, just tell
16 us about your -- your problems in your low back
17 and your leg today. Just how is it on a
18 day-to-day basis?

19 A: ~~It hurts~~ every day, I mean, the sitting and the
20 -- the standing 'cause the nerve in the
21 hamstring area, if I sit too long it irritates
22 it. I have to get up and calm it down a little
23 bit and if I sit too long then my lower back
24 start hurtin'. It's like, just back and forth.

25 Q: Now, you were working in that Foxtrot unit the



1 whole time with your neck pain injury and that
2 kinda thing. Were you inhibited any way in
3 doing your job up until these two accidents,
4 particularly the last one?

5 A: No, sir.

6 Q: All right. Could you go back to doing your
7 job, your full duties, in the - in the Trot- --
8 Foxtrot unit?

9 A: No, sir.

10 Q: Okay. All right. What job out there that you
11 know that you could do eight hours a day, five
12 days a week?

13 A: I'm not sure.

14 Q: Okay. Now, what, just for the record I want to
15 go back just a minute and I'll - I'll be
16 through with you. We were scheduled to go
17 before a hearing before Commissioner Beck in
18 the fall. And we prepared for that hearing and
19 tell -- tell the Commissioner what happened and
20 what you said to me and what you -- what you
21 wanted at that time.

22 MS. NOONAN: I'm just gonna object to that because
23 he's gonna tell us what he said to Preston, but
24 I can't ask any questions because that's all
25 attorney-client privilege.



1 Q: Okay. Tell us what you were asking everybody,
2 what you wanted ba- -- at that time.

3 A: I said I wanted to go to a specialist like at
4 the Eastern Spine Center to a specialist doctor
5 for the back.

6 Q: What kind of problems are you having that led
7 you to make that request?

8 A: My back and my right leg.

9 Q: Okay.

10 A: My lower back and my right leg.

11 Q: All right. And -- and what, I mean you've
12 talked about your leg and your back, what was
13 happening at that time that led you to make
14 that request.

15 A: ~~It was getting worse. I was starting to have,~~
16 ~~on both sides of my legs, the nerves running~~
17 ~~down from my right side. The two little toes,~~
18 I have like numbness and tingling in those toes
19 on the right side. Just -- just like going
20 back, starting to run down more of my right leg
21 to my buttocks to my right leg. And just my
22 hamstring on the right hand side, that nerve,
23 it's just constantly all the time.

24 Q: Okay. When's the last time you've had an ~~MRI~~
MRI

25 A: That would have been 2019.



1 Q: How much -- tell me, you saw Dr. Bethea. How
2 much time did he spend with you?

3 A: I would say between 10 to 15 minutes if that.

4 Q: Tell me what kind of examination he gave.

5 A: I mean, he came in the room and he had me to
6 bend side to side and kinda bend over and then
7 he told me to sit on the table. And then he
8 got my right leg and I yelled 'cause he hurt
9 it, made me hurt and I yelled and so he let me
10 down and he walked outside and then some young
11 lady came in. I guess she was in training and
12 she talked to me longer than he did. And I was
13 telling her the same symptoms that I told him
14 and then he came back in and talked to me for
15 a few more minutes and then he said I could
16 leave. And then as I was leaving, he says,
17 well, let me see you walk and that was it.

18 Q: All right. Then, in your presence, did he look
19 at any MRI scans?

20 A: Not that I'm aware of, he didn't.

21 Q: Okay. Did -- what was your -- what d- -- what
22 understanding did he give you when you went
23 into the examination room about why you were
24 there?

25 MS. NOONAN: Object to - just objection, that calls



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1 for speculation.

2 Q: Tell me what he said to you.

3 MS. NOONAN: Objection, it's in the medical records.

4 COMMISSIONER CAMPBELL: Well, I'll ---

5 MR. MCDANIEL: What he said to him isn't necessarily

6 in the medical records. It's -

7 MS. NOONAN: He can't testify to what the doctor

8 said.

9 MR. MCDANIEL: Why can't he?

10 COMMISSIONER CAMPBELL: Well -

11 MR. MCDANIEL: It's admission against interest.

12 COMMISSIONER CAMPBELL: I will -- here's the thing.

13 I -- I know it's hearsay but I will let him do

14 it just because he's already gonna object --

15 he's already been testifying to what the doctor

16 has stated.

17 Q: Okay. Go ahead.

18 A: What the doctor said to me?

19 Q: Yeah.

20 A: Nothing.

21 Q: What -- what was the purpose of you being

22 there?

23 A: For him to help me with my pain.

24 Q: What was your understanding, what from him,

25 what was your understanding?



1 MS. NOONAN: Same objections. And asked and
2 answered.

3 Q: Okay. Already asked him. All right. Now,
4 pursuit to 42-9-190, what jobs within your
5 residual capacity have the Defendant's offered
6 you? Have they offered you any job?

7 A: Just the job that I had that was gonna strip me
8 of my pay, \$6 an hour. They was gonna take my
9 patrol vehicle. They was gonna just put -- put
10 me up under the jail as a LE3 and I would have
11 to drive my own personal vehicle back and forth
12 to work.

13 Q: All right. Now, the Defendant's put in as
14 their APA submission 744, your resignation
15 letter. Who typed that let- -- letter for you?

16 A: The lady at the sheriff's office.

17 Q: And it's addressed - and it's to Sheriff Taylor
18 Chase, that was the sheriff at that time?

19 A: Yes, sir.

20 Q: Did - ha- -- have you authorized anybody to
21 give out your records from your personnel file?

22 A: No, sir.

23 Q: Okay. All right. Is there -- they submitted
24 one page, how many pages were there to that
25 document?



- 1 A: Two.
- 2 Q: Mr. Chavis, excuse me, I'm sorry. Mr. Crowley,
3 Deputy Crowley, Mr. Crowley, let me know --
4 tell the Commissioner, all right, one last --
5 one last thing. You testified that all the
6 jobs in which you got experience, you can't go
7 back to due to the condition of your lower back
8 and leg. Now assuming that at the time of
9 these accidents and particularly after the
10 second accident in the snow, assume that you
11 had 100% use of your back to do work requiring
12 the use of your back. And subsequent to that,
13 zero, meaning you have zero loss of use and
14 100% meaning you lost 100% loss of use in your
15 back to do work requiring use of your back. In
16 your opinion, in reference to your ability to
17 do work requiring the use of your back, what
18 percentage is the loss of use of your back? Do
19 you, in your opinion, have you sustained as a
20 result to these accidents?
- 21 A: I would say probably about 80.
- 22 Q: All right. What would you like for the
23 Commissioner to do for you?
- 24 A: Give me some help, find out what's going on.
- 25 Q: Commissioner, I have nothing further.



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1 COMMISSIONER CAMPBELL: Okay. Thank you. Ms.
2 Noonan.

3 MS. NOONAN: Okay. Yes, Your Honor. Is it -- it
4 okay if I sit?

5 COMMISSIONER CAMPBELL: Absolutely, what -- whatever
6 you're most comfortable doing.

7 MS. NOONAN: Six feet apart.

8 COMMISSIONER CAMPBELL: Yeah.

9 MS. NOONAN: Okay.

10 COMMISSIONER CAMPBELL: Whatever you're most
11 comfortable.

12 MR. CROWLEY - CROSS-EXAMINATION BY MS. NOONAN:

13 Q: Mr. Crowley, I want to go back through some of
14 your medical history before these accidents
15 first. We have in the file, the records from
16 CareSouth. You have been treating with
17 CareSouth since around 2007. Does that sound
18 right?

19 A: It coulda been, I'm not sure.

20 Q: Okay. Well, in -- in 2007, specifically, April
21 26th of 2007 were you referred for pain
22 management due to your right shoulder and back
23 pain after a 2002 accident?

24 A: I was referred to a pain management in
25 Florence. Yes, ma'am.



1 Q: Okay. And then did you have a -- a car
2 accident on April 30th, 2007?

3 A: I'm not sure.

4 Q: Okay. And then did you continue to treat
5 throughout 2007 and 2008 at CareSouth for
6 chronic pain syndrome, migraines, back pain,
7 and right groin pain?

8 MR. MCDANIEL: Commissioner, I'm gonna enter the
9 same objection that I -- I entered ea- --
10 earlier and I would ask it to be made running
11 so that I don't have to interrupt in reference
12 to relevancy and materiality. Again, I will
13 have no objection to any of this if she has
14 medical opinion evidence saying that any --
15 that any of his current problems are causally
16 related to any of this.

17 COMMISSIONER CAMPBELL: Okay. And I'll let you
18 reply to the objection. Go ahead.

19 MS. NOONAN: Is that supposed to be a running
20 objection ---

21 MR. MCDANIEL: Yeah.

22 MS. NOONAN: --- that really long objection.

23 MR. MCDANIEL: Yeah.

24 MS. NOONAN: Okay. It -- it goes straight to the
25 issue of credibility.



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1 COMMISSIONER CAMPBELL: Okay.

2 Q: Now, in -- and I'm sorry, you didn't answer the
3 question. In 2007 were you still treating at
4 CareSouth throughout 2007 for chronic pain
5 syndrome, migraines, back pain and right groin
6 pain? Do you remember that?

7 A: If it was documented -- if you got it. I -- I
8 mean, I don't recall or remember.

9 Q: Okay. And then in January of 2008, on the 23rd
10 you went to Dr. Hassler, Hartsville Orthopedics
11 and that's when, as far as records I have, you
12 had your first MRI. Do you remember that MRI?

13 A: No, ma'am.

14 Q: Okay. Well, that one showed an L-5 S-1
15 herniated disc, and you already had low back
16 pain and left lower extremity radiculopathy?
17 Remember that?

18 A: In what year?

19 Q: January 23rd, 2008.

20 A: I don't.

21 Q: Okay. Well, you continued to treat throughout
22 2008 and into 2009 for the chronic low back
23 pain and numbness in your lower extremities.
24 Does that sound familiar?

25 A: If you think you got the paperwork, I mean.



1 Q: All right. And then just to jump ahead a
2 little bit on June 22nd, 2010 at CareSouth you
3 were diagnosed with chronic right groin pain,
4 secondary to nerve damage. Do you remember
5 that?

6 A: No, ma'am.

7 Q: Okay. And at that point, you told the doctor
8 at CareSouth that you used to be with the fire
9 department but you couldn't do it anymore.
10 Remember that?

11 A: No, ma'am.

12 MS. NOONAN: Your Honor, that's APA, our APA 6,
13 page 95.

14 COMMISSIONER CAMPBELL: Thank you.

15 Q: All right. And then at your next visit, which
16 was November 10th of 2010 with CareSouth, you
17 were diagnosed with low back pain and groin
18 pain and you told them that you had lost your
19 job. What job had you lost?

20 A: What year was that?

21 Q: 2010.

22 A: Yes, ma'am.

23 Q: You lost your job?

24 A: Decided to go to the police department.

25 Q: That was what?



1 A: Society Hill Police Department. But you said
2 -- what was the injury?

3 Q: That was chronic pain syndro- -- syndrome, low
4 back pain and groin pain.

5 A: No, ma'am.

6 MS. NOONAN: Okay. Your Honor, that's APA six,
7 page 97.

8 COMMISSIONER CAMPBELL: Thank you.

9 A: 'Cause when I lost my job at Society Hills
10 'cause of my right -- my right hand.

11 Q: Okay. But not your right groin or low back?

12 A: No, ma'am. My right hand.

13 Q: All right, And then in 2011, you went back to
14 CareSouth and were seen for low back pain and
15 burning pain in the middle to lower back. Do
16 you recall that?

17 A: No, ma'am.

18 Q: Okay, and then I have that you were seen by
19 CareSouth again, March 28th, 2013, after
20 another motor vehicle accident.

21 A: Yes, ma'am.

22 Q: Do you recall that accident? Okay. And that
23 one your reported injury to your low back, your
24 left knee and your right shoulder and were
25 referred for pain management. That sound



1 right? After the 2013 car accident?
2 A: Yes, ma'am. I -- later on I was --
3 Q: Okay.
4 A: -- referred to pain management.
5 Q: All right. And then you were -- they sent you
6 to Dr. Allen at Ortho Carolina where you were
7 seen on May 15th of 2013. They documented ---
8 A: Yes, ma'am.
9 Q: --- your car accident. It said from that car
10 accident you had neck and lumbar pain. Does
11 that sound familiar?
12 A: Yes, ma'am.
13 Q: Okay. And you -- did you receive injections
14 after that and were given more pain medication?
15 A: I mean, I don't think so. I'm not sure now.
16 Q: But do you remember Dr. Allen then referred you
17 to pain management as he had nothing else to
18 offer you? And that was on December 17th of
19 2013.
20 A: Yes, ma'am.
21 Q: Okay. You started treatment with Integrated
22 Pain on January 15th of 2014. Does that sound
23 right?
24 A: Yes, ma'am.
25 Q: All right. And there I believe you had disc



1 surgery December 2015 on your neck?
2 A: Yes, ma'am.
3 Q: Okay. You continued to treat with them. And
4 is what -- they first started diagnosing you
5 with opioid dependence in 2016. Does that
6 sound familiar?
7 A: Yes, ma'am.
8 Q: Okay. And at any point, did they work to get
9 you off of the opioids or the hydrocodone?
10 A: No, ma'am.
11 Q: Okay. And then you ---
12 A: When I was ---
13 Q: --- settled that car accident claim in 2017.
14 Is that right?
15 A: Yes, ma'am.
16 Q: And how much did you settle that case for?
17 **MR. MCDANIEL:** Objection. Relevancy.
18 **COMMISSIONER CAMPBELL:** And I'll -- I'll let you
19 reply to the objection.
20 **MS. NOONAN:** I shall withdraw it.
21 **COMMISSIONER CAMPBELL:** Okay.
22 Q: Okay, but do you remember settling that case?
23 A: Yes, ma'am.
24 Q: And was that in mid to late 2017?
25 A: It could be, I don't remember exactly.



1 Q: Okay. And then you had -- well, I guess you
2 went back to Integrated Pain, continued to
3 treat with them after your settlement.
4 Correct?
5 A: Yes, ma'am.
6 Q: All right. And that was for chronic pain
7 syndrome. And then you had this accident,
8 which was in May of 2017.
9 A: Yes, ma'am.
10 Q: Okay. And after that I have that you were
11 injured on May 5th of 2017, but you went to
12 Integrated Pain on May 16th of 2017, 11 days
13 later. That sound right?
14 A: Yeah, I go every month.
15 Q: Okay, so just 11 days after your first accident
16 you went to integrated pain and reported that
17 you hurt your knee at work. Does that sound
18 right?
19 A: No, ma'am. 'Cause they give me -- they give me
20 most of the appointments.
21 Q: Right. But this is following your May 5th of
22 2017 accident. And you did report to
23 Integrated Pain that you hurt your knee at
24 Darlington County?
25 A: Yes, ma'am.



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- 1 Q: Okay. But at that point you didn't report to
2 them that you'd injured your lumbar spine, did
3 you?
- 4 A: I'm not sure.
- 5 Q: All right. And then you had an MRI of your
6 right knee following that? Isn't it, June
7 16th, 2017?
- 8 A: Yes, ma'am. Yes, ma'am.
- 9 Q: Okay. Now, I noted you treated with Dr. Watt.
10 He released you on Oc- -- October 5th, 2017
11 with a 5% inherent rating to the right leg and
12 regular duty without restriction. Does that
13 sound right?
- 14 A: Yes, ma'am.
- 15 **MS. NOONAN:** Okay. And Your Honor, that's
16 Defendant's APA four, Page 25.
- 17 **COMMISSIONER CAMPBELL:** Thank you.
- 18 Q: Okay. That -- then you had the second accident
19 was - was January 3rd, 2018. And that's when
20 you were assisting with the car on ice.
- 21 A: Yes, ma'am.
- 22 Q: Okay. Now, following that accident, just 12
23 days later, you went to Integrated Pain. Do
24 you remember that visit?
- 25 A: Yes, ma'am. I go once a month.



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- 1 Q: Okay. And at that visit you indicated that you
2 re-injured your right knee at work and your
3 diagnosis was chronic pain syndrome,
4 cervicalgia, chronic opiate use and knee pain
5 related to work. Does that sound right?
- 6 A: I think I told her my back was hurtin'.
- 7 Q: Okay, was that documented in those medical
8 records?
- 9 A: Okay.
- 10 Q: Okay. And then you went back to Dr. Watt,
11 January of 2018, and he ordered another MRI
12 which was negative. Does that sound right?
- 13 A: Yes, ma'am.
- 14 Q: Okay. There were no changes on the MRI for
15 your leg at that point? Is that right?
- 16 A: Yes, ma'am.
- 17 Q: Okay. And I know, you were finally sent to Dr.
18 Cheattle in Myrtle Beach after we worked out the
19 back issue and he did another MRI of your back.
20 Do you recall that?
- 21 A: Yes, ma'am.
- 22 Q: November 14th of 2018, and he did a comparison
23 which showed that there was not much difference
24 between the two MRIs. Do you remember that?
- 25 A: He didn't discuss that with me on that. He



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1 said that he was going to come in with a
2 stimulator.

3 Q: Your MRI from October of 2018 done for
4 comparison, showed degenerative disc disease at
5 L-1, 2, and then L-3, 4 without stenosis and
6 then a mild disc bulge at L-4, 5. Do you
7 recall him talk -- or did he talk to you about
8 that MRI?

9 A: I don't recall.

10 Q: Okay.

11 A: He may have.

12 MS. NOONAN: And, Your Honor, that is Defendant's
13 APA 5, page 58.

14 COMMISSIONER CAMPBELL: Thank you.

15 Q: Okay. Now, I know we talked a little bit with
16 Mr. McDaniel about your spinal cord stimulator
17 trials. Neither one of those were positive
18 results. Is that right? You didn't end up
19 getting the -- the permanent ---

20 A: No, I didn't.

21 Q: --- implant?

22 A: No.

23 Q: Okay, but you did go to Dr. Sarb for all those
24 treatments?

25 A: Yes, ma'am.



1 Q: All right. Now, your FCE that you did, that
2 was October 25th, 2019. , Do you remember that?

3 A: Yes, ma'am.

4 Q: Okay, and did you stop a lot of your tests due
5 to pain in different parts of your body?

6 A: I did.

7 Q: All right. And were some of your testing
8 stopped due to pain in your neck?

9 A: No, ma'am

10 Q: Did you have issues also with your grip in your
11 hands?

12 A: I think the lifting part of it, but I mean, I
13 don't ...

14 Q: You don't what?

15 A: Not with my hands. I don't remember.

16 MS. NOONAN: Okay. And Your Honor, that's
17 Defendant's APA 17, page 699.

18 COMMISSIONER CAMPBELL: Thank you.

19 Q: All right. Dr. Naso has released you at
20 maximum medical improvement with an 8%
21 impairment rating. He also recommended that
22 you would need physical therapy and possible --
23 possibly a TENS unit. Is that something you
24 have pursued with him?

25 A: Yes, ma'am. I got a TENS unit. I tried



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1 physical therapy, but it made me hurt worse.

2 Q: Okay. Now, I know you went and saw -- you said

3 you need to see a specialist but you actually

4 went to your own specialist at Southeastern

5 Spine, which you mentioned, and that was on

6 January 29th of 2020. Does that sound right?

7 Dr. Forrest, you went to Charleston?

8 A: Yes, ma'am.

9 Q: Do you remember that visit?

10 A: Yes, ma'am.

11 Q: And he released you at MMI with a 13%

12 impairment for your back. Do you recall that

13 visit with him?

14 A: Yes, ma'am.

15 Q: And did Dr. Forest tell you that you could

16 continue doing the work at the courthouse?

17 A: On light duty?

18 Q: Yes.

19 A: Yes, ma'am.

20 MS. NOONAN: Okay. Your Honor, that's Claimant's

21 APA two.

22 COMMISSIONER CAMPBELL: Thank you.

23 Q: All right. And I know you testified earlier

24 that the letter that you obtained from Dr. Nas-

25 -- Naso said that you could continue working at



1 the courthouse also and that you could carry a
2 weapon and a taser?

3 A: Yes, ma'am.

4 Q: All right. And were you able to do that job
5 after receiving that letter from Dr. Nasa?

6 A: Yes, ma'am.

7 Q: Okay. And was the County still accommodating
8 your restrictions with that job?

9 A: Yes, ma'am.

10 Q: Okay. So your decision to resign that you said
11 came out December 2020, that was voluntary and
12 was on your own merit? Some- -- not something
13 that you discussed with the County?

14 A: Yes, ma'am. 'Cause I was having some issues
15 within the -- inside the department also.

16 Q: Within the what department?

17 A: Inside of the sheriff's department. I was
18 having some issues inside the sheriff's
19 department also.

20 Q: But if -- if you wanted to, you could have
21 still been working the security for the judge
22 in the courthouse. Is that right?

23 A: Well, with a pay cut, without my vehicle and I
24 wouldn't be up under the sheriff's office. I
25 was going up under the detention center.



- 1 Q: But the job that you resigned from I thought
2 was the courthouse security with the judge.
- 3 A: As a LE1. They were trying to put me under an
4 L3 and come off pay \$6 an hour, take my patrol
5 vehicle, and put me up under the jail. I
6 wouldn't be up under the sheriff's office. I
7 would be up under the jail. That's two
8 different departments.
- 9 Q: So that was a different position that they'd
10 offered you?
- 11 A: It kinda it is. It's the same, but they're
12 just gonna cut my pay and everything else.
- 13 Q: If you went to the jail, were they going to cut
14 your pay?
- 15 A: Yes, ma'am.
- 16 Q: Okay. But if you stayed at the courthouse what
17 would you'd been making?
- 18 A: That was gonna cut my pay to 11.70, I think she
19 said 11.75 an hour.
- 20 Q: Okay. And when you were working the security
21 at the courthouse, were you able to sit and
22 stand and move around however you needed?
- 23 A: Yes, ma'am.
- 24 Q: And I think we talked about in your deposition,
25 you would go to lunch with the judge?



1 A: Well, if -- yes, ma'am.

2 Q: Okay. was there any part of that job that you
3 physically could not do?

4 A: If a fight something broke out or somebody
5 tried to come get the judge. Yeah, that was,
6 I mean, I would put myself at risk and the
7 judge at risk doing that job.

8 Q: Did that ever happen while you were working in
9 that capacity?

10 A: We had one -- we had a couple incidents inside
11 the courtroom.

12 Q: But did that ever happen where you had to fight
13 with ---

14 A: No, ma'am.

15 Q: --- people coming in the courthouse?

16 A: We just -- I had that one incident. I did.
17 Well, not really fight but detained somebody.

18 Q: Just what, I'm sorry?

19 A: Detained somebody.

20 Q: Detained someone.

21 A: That's right.

22 Q: Okay. And the letter that -- that your counsel
23 asked you about earlier, your resignation
24 letter. He -- he asked if somebody else typed
25 that up for you. Were those your words,



1 though, in the resignation letter?
2 A: Pretty much.
3 Q: I mean, this isn't something that somebody
4 typed up and told you ---
5 A: Yes, ma'am.
6 Q: --- to sign it, is it? Those were your words
7 and you ---
8 A: Yes, ma'am.
9 Q: --- they just did you a favor and typed it for
10 ---
11 A: Yes, ma'am.
12 Q: --- you? Okay. So that was your resignation
13 letter?
14 A: Yes, ma'am.
15 Q: Okay. I don't have anything further, Your
16 Honor. Thank you -
17 **COMMISSIONER CAMPBELL:** Okay
18 Q: --- Mr. Crowley.
19 **COMMISSIONER CAMPBELL:** All right. Mr. McDaniel?
20 **MR. CROWLEY - RE-DIRECT EXAMINATION BY MR. MCDANIEL?**
21 Q: Couple questions. Commissioner, I'd ask you to
22 refer to any of the records between 2013 and
23 2017, in May, Integrated Pain Management.
24 Deputy Crowley or Mr. Crowley, were you
25 treating for neck pain? Your chief complaint



1 was neck pain and shoulder pain.

2 A: Yes, causing the headaches.

3 Q: All right. And that was up until after the
4 second accident in -- in tw- -- in January of
5 2018?

6 A: Yes, sir.

7 Q: So up until that time, if I asked the
8 Commissioner to review all those records, is he
9 going to find any reference during that entire
10 time to treat with the low back between '13 and
11 '17, or '18?

12 A: It shouldn't been the neck, the headaches.

13 Q: No question you were being treated at that time
14 for your neck?

15 A: Yes, sir.

16 Q: Now, Commissioner, we've also submitted some
17 records with chronic Integrated Pain
18 Management. Tell me how it -- what -- how it
19 changed after the accident in 2000 -- January
20 2018, in reference to your reports of the
21 problems you were having at Integrated Pain
22 Management?

23 A: Well, 'cause of my lower back and my right leg,
24 I was having more issues with those.

25 MR. MCDANIEL: Commissioner, I've asked you, just



1 for times sake, I ask you to refer to Page --
2 under tab 4, page 49 through page 62. And that
3 would be in reference to all of the records
4 that -- that we've submitted in reference to
5 the -- his treatment of chronic pain management
6 at Integrated Pain Management, in reference to
7 how that's changed during that period from 2018
8 through the present time.

9 **COMMISSIONER CAMPBELL:** Okay. Thank you.

10 **Q:** Now, Mr. Crowley, I'm gonna try not to keep you
11 much longer. Sorry I had to keep you this
12 long. You remember counsel asking you about --
13 something about a doctor and an MRI reported
14 that you had a herniated disc at L-5 S-1. Do
15 you remember that?

16 **A:** Yes, sir.

17 **Q:** Her asking about that. All right. And I
18 believe that was quite a long time ago, wasn't
19 it. She was asking question about 2005 and all
20 that?

21 **A:** Yes, sir.

22 **Q:** All right. Dr. Cheadle did an updated MRI?

23 **A:** Yes, sir.

24 **MR. MCDANIEL:** Commissioner, I'll ask your reading
25 because I can, you know it actually would be



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1 his interpretation if I ask it but I'd ask you
2 to take note of the MRIs that have been done.
3 There's no reference to a herniated disc at L-5
4 S-1, in any of these. Now ---

5 **COMMISSIONER CAMPBELL:** Thank you.

6 Q: --- I also in reference to radiculopathy, you
7 went to a Dr. Dean Lorenz in 2019. And Dr.
8 Lorenz did new conduction studies on your right
9 lower extremity?

10 A: Yes, sir.

11 Q: And -- and your back?

12 A: Yes, sir.

13 **MR. MCDANIEL:** Commissioner, page 690 under the
14 Defendant's APA submissions and page 122
15 through 124, under tab 9. He was found to have
16 a L-5 S-1 radiculopathy on -- on objective
17 testing in 2019.

18 And you applied for police officer disability
19 retirement back in the fall. Is that right?

20 A: Yes, sir.

21 Q: As far as you're aware between, let's just say
22 '15 -- 2015, 2016 and 2017 up through the time
23 of that accident on May 5th, were you under any
24 active treatment for your lumbar spine during
25 that period of time?



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1 A: But just for my neck. No, sir.
2 Q: Okay. Nothing further, Commissioner.
3 MS. NOONAN: Yes, Your Honor, I just need to
4 respond. Defendant's APA 9, page 241 is what
5 I was referencing and it is there. It says,
6 MRI on the lumbar spine there is a small L-5 S-
7 1 herniated disc. Has had since the, and I
8 can't tell whether it says '80s or '90s and was
9 seen by Dr. Edwards. At that time the left
10 lower extremity radiculopathy and had epidermal
11 steroid injections. So again, page 241.
12 MR. MCDANIEL: And what date was that?
13 MS. NOONAN: January 23rd, 2008.
14 MR. MCDANIEL: Commissioner, I ha- -- I don't know
15 ... None, nothing further.
16 COMMISSIONER CAMPBELL: All right. Anything
17 further?
18 MS. NOONAN: I don't have anything else, Your Honor.
19 COMMISSIONER CAMPBELL: Okay.
20 MR. MCDANIEL: Claimant's case.
21 COMMISSIONER CAMPBELL: Yeah. All right. Well,
22 thank yall. I appreciate y'all being here.
23 And sir, thank you for your testimony and your
24 patience and you can step down.
25 MR. CROWLEY: Thank you.



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COMMISSIONER CAMPBELL: And there being nothing further then that concludes today's proceeding.

MS. NOONAN: All right, thank you.

COMMISSIONER CAMPBELL: Good to see everybody. Y'all be careful going home.

(There be nothing further, the commissioner's hearing concluded at 1:34 p.m.)



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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1716288; 1801098

Michael K. Crowley,)
)
 Claimant,)
)
 v.)
)
 Darlington County,)
)
 Employer,)
)
 and)
)
 South Carolina Association)
 of Counties,)
)
 Carrier/Defendants.)
)

FULL COMMISSION HEARING

Monday, December 20, 2021
4:23 p.m. - 4:46 p.m.

The Full Commission Hearing was heard before Commissioners Gene McCaskill, Aisha Taylor, Avery B. Wilkerson, Jr., at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 20th day of December, 2021, before Jamie Leigh Barrs, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(There were no exhibits marked during the hearing.)

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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1 **COMMISSIONER TAYLOR:** Madam Court Reporter, will you
2 please call the case?

3 **CALL TO ORDER:**

4 **COURT REPORTER:** Today is Monday, December the 20th
5 of 2021. This is South Carolina Workers
6 Compensation Case Number 1716288. This is the
7 case of Michael K. Crowley, Claimant, versus
8 Darlington County, Employer, and South Carolina
9 Association of Counties, Carrier. The
10 Appellant is the Claimant, represented by
11 Preston McDaniel. The Respondent is
12 represented by Gabe Coggiola. Each side is
13 allowed 10 minutes for oral argument and the
14 Appellant three minutes in reply. You are
15 requested to argue the grounds of exception and
16 stay within the record.

17 **COMMISSIONER TAYLOR:** All right. Thank you. Mr.
18 McDaniel?

19 **CLAIMANTS POSITION:**

20 **MR. MCDANIEL:** May it please the Commission. There
21 are, basically, primarily two issues we would
22 ask you to decide today, although there are
23 multiple punitive issues in this case, in
24 reference to the Deposition of Dr. Bethea and
25 all that.



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1 The first two issues are, we believe, and
2 we'll submit to you, that on the undisputed,
3 uncontested -- not only based on the
4 preponderance of the evidence but even based on
5 reliable evidence, substantial evidence in the
6 record, there is no evidence in this record
7 other than the fact that Deputy Crowley lost 50
8 percent or more of the functional use of his
9 back and his work requires the use of his back.
10 Alternat- -- and, and not only alternative but
11 we also believe that the evidence substantiates
12 under the standard of Total and Permanent
13 Disability to wage loss, and that is based on
14 the age, education, background, experience, and
15 physical facts of the injury. The jobs which
16 this Claimant could perform are of limited
17 quality, quantity or dependability that will
18 reinstatement in the job market for him does
19 not exist, and he's entitled to a -- either of
20 the that higher standard.

21 Now, the other issue is the admission of
22 Dr. Bethea's recording the evidence in
23 violation of 42-15-95. Now, going to the
24 issue. And very briefly, on the facts. Deputy
25 Crowley had been promoted to a member of the



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1 Foxtrat [sic] Unit -- Foxtrot Unit and he had
2 been made a Corporal when his career came to an
3 end on January the 3rd of 2018, when he was
4 trying to help a stranded motorist and slipped
5 and fell on the ice, and fell so hard and so
6 bad that he had to be taken by ambulance to the
7 hospital. After that he has never been
8 released to any work other than sedentary work
9 only. In February, Dr. Watt ordered the MRI of
10 his lum- -- of his lumbar spine. And it's all
11 on the record about cervical spine and all
12 that, and he's had treatment by that and had no
13 problem that prevented him from doing his
14 Deputy Sheriff work, and Dr. Watt put him on
15 sedentary work. He was transferred to the
16 courthouse, courthouse security, retained his
17 title as Deputy. It took us until August 15th
18 of 2018, almost six months later to -- and they
19 sent him to Dr. Chu in Myrtle Beach, not any of
20 the doctors in Florence, and the MRI was
21 performed. Dr. Chu then saw him again on
22 November 14th of 2018 and said, in my opinion,
23 based on this man's condition, he needs a
24 spinal cord stimulator trial. I don't think
25 he's a surgical candidate but we want -- we --



1 he needs a spinal cord stimulator trial and
2 said there's no reason for him to come to
3 Myrtle Beach. I -- I'm sending him back to
4 Florence to -- and he sent him to Dr. Saw (ph)
5 and Dr. Nassau, well that's who they -- was
6 chosen. Dr. Saw (ph) and Dr. Nassau did
7 physical therapy, multiple injections, tried a
8 spinal cord stimulator trial, twice, trying to
9 give this man some relief. And throughout
10 their entire treatment released -- he was
11 already on medication so they -- the entire
12 time they released him never to anything more
13 than sedentary work. Basically, what it is, he
14 escorts the Judge to -- we've all been to the
15 courthouse. He was courthouse security, sat in
16 the chair, was able to get up and down, check
17 people in and out of the courthouse at times
18 and accompany the Judge to provide a personal
19 security for the Judge. It's all on the
20 record.

21 Then Dr. Nassau, they'd done everything
22 they felt they could for him, he ordered a
23 functional capacity evaluation. They chose
24 CORA physical therapy and CORA physical therapy
25 finally gave him maximum consistent effort and



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1 found him to be at no more than sedentary level
2 work. I failed to mention this, because as
3 part of the spinal cord stimulator trauma I
4 think this is important, in that, you have to
5 go through a func- -- a psychological
6 evaluation to -- whether or not you qualify.
7 And of course that psychological -- (technical
8 audio interference) -- came back and said, this
9 man is not having any psychological problems,
10 what he's having is, he's having is prob- --
11 physical problems in his back. And they found
12 that he was qualified -- would be a good
13 candidate, he might get some good results from
14 it. It didn't work. Dr. Nassau released him.
15 Thereafter, and it's in the record, he
16 continued as courthouse security. And then he,
17 because of the condition and how much suffering
18 and pain he was going through even doing that
19 job, he applied for police officer disability
20 retirement and that was -- he had received that
21 at the time, if I'm correct, I may stand
22 corrected, but at the time of the hearing, when
23 we finally went to the hearing. And we had
24 gone in November -- and getting ready to go to
25 a hearing and -- before Commissioner Beck and



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1 he was having so much problems with his back,
2 and it had gotten a lot worse over the last
3 month or so that we requested another
4 evaluation. And by a specialist at the
5 University of South Carolina School of Medicine
6 in Charleston or, you know, another qualified
7 expert. Well, you won't find Dr. Bethea listed
8 on the website as part of -- and I put that in
9 the record, as part of the Department of
10 Orthopedic Surgery at the Medical University of
11 South Carolina. He works in a family practice
12 clinic over in Mount Pleasant. As we all know,
13 MUSC is spreading out like so many of the
14 hospitals, like Prisma and all that, that're
15 coming under their umbrella. But anyway, they
16 sent him to him and, unknown to us, they wrote
17 him a letter. And they communicated by e-mail,
18 multiple times over the charge for the
19 evaluation, which I find shocking, \$5,000 for
20 an IME. What is this world coming to? But
21 anyway, they also sent him about 300 pages of
22 medical records. Now, this is supposed to be
23 a treatment pathways to see if this man could
24 do -- I mean, we all see these treatment
25 evaluations all the time, what the -- is that



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1 -- it's -- they simply want the scan so they
2 can look and see if they can see the scans and
3 do anything else for the person. Now, they did
4 that, didn't give us any that. We found out
5 that when we issued a subpoena for Dr. Bethea's
6 records and we found out how much he charged
7 and we also found out, at that time, that they
8 had sent him this letter and all these e-mails
9 and we'd sign- -- we found the medical records.
10 We didn't get those until after that, not any
11 of it.

12 Now, let's go to the issues in the case,
13 the primary issue. Lost the use of -- the
14 functional loss of use of the back to do work
15 requiring the use of the back, the Supreme
16 Court has recited over and over again, which is
17 the criteria under 42-930-21, which is the
18 functional loss of use of the back to do work
19 requiring the use of the back, that's the
20 criteria. All right. What's the rec- --
21 evidence in the record? Not only this reliable
22 -- (technical audio interference) -- but the
23 only evidence. CORA physical therapy pa- --
24 found at page 3. Sedentary work only, valid
25 and consistent at maximum effort. Under the



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1 dictionary of occupational titles, Department
2 of Labor's physical demand classification, he
3 was qualified for only sedentary work. Dr.
4 Leonard Forest expressed the medical opinion
5 that, in his opinion, stated to a reasonable
6 degree of medical certainty, this man had lost
7 50 percent or greater the loss of the use of
8 his back to do work required the use of his
9 back. Ms. Harriet Fowler (ph) did a vocational
10 evaluation and I asked her if she addressed in
11 her report. She went through the DOT, the
12 classifications. She let us all know exactly
13 what percentage of the jobs were heavy duty
14 work, very heavy duty work, medium duty work,
15 light duty work, and sedentary work. And based
16 on his physical limitations on the use of his
17 back, she also found him to be totally disabled
18 based on wage loss but based on the physical
19 loss of the use his back alone and only, he was
20 excluded from 89 percent of the jobs available
21 in the United States.

22 Now, Deputy Crowley testified that he had
23 lost 50 percent or more of the functional use
24 of his back to do work that required the use of
25 his back. So, that's the -- (technical audio



1 interference) ---

2 COMMISSIONER TAYLOR: All right.

3 MR. MCDANIEL: Yes, ma'am.

4 COMMISSIONER TAYLOR: I was gonna say that's your --
5 your 10 minutes, sir.

6 MR. MCDANIEL: Oh, I'm sorry.

7 COMMISSIONER TAYLOR: That's okay.

8 MR. MCDANIEL: I -- I think I also covered the other
9 issue which is Dr. Bethea then put in his
10 record without us -- letting us know he had
11 sent him a letter.

12 COMMISSIONER TAYLOR: Yes, sir. The 95 argument.
13 Yes, sir. Thank you. All right. Mr.
14 Coggiola?

15 CARRIER'S POSITION:

16 MR. COGGIOLA: Good afternoon, may it please the
17 Court. I'm gonna just start with the Dr.
18 Bethea's report issue first, and just address
19 that quickly. So basically, the -- the letter
20 that he's referencing was the letter to Dr.
21 Bethea requesting the second opinion. You
22 know, Counsel talked about the Consent Order
23 and agreement to a specialist and, this and
24 that, and whether -- whether Dr. Bethea fell
25 under the MUSC umbrella that he thought he



1 needed to be in. The Consent Order said that
2 the Defendant's agreed to provide a second
3 opinion at MUSC with a doctor of their
4 choosing. Dr. Bethea, if you look under their
5 medical directory -- I also included a link to
6 his website, he is a board certified
7 orthopedist within MUSC. So they sent a letter
8 to him, a large stack of medical records, you
9 know, it's always been my practice you don't
10 pick and choose and cherry pick which records
11 you're going to send to the doctor for a second
12 opinion, you send them all. You send them
13 everything that you got. And that's why that
14 was the large stack of records. And they all
15 -- basically it was a benign letter that we see
16 with every request for a second opinion. You
17 know, this is a synopsis, it's the treatment
18 he's had to date. These are the opinions we'd
19 like you to address: MMI, rating, restrictions,
20 future treatment. If not MMI, what rating,
21 what treatment do you recommend at this time?

22 **COMMISSIONER TAYLOR:** Mr. Coggiola, didn't we just
23 get a case down from the Court of Appeals about
24 this issue, that basically said, it doesn't
25 matter what the letter says, they're supposed



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1 to get a copy and, Ms. McCree (ph) if you can
2 refresh our memory. I think it was last month
3 or the month before.

4 MS. MCCREE (ph): It was -- let me see if I can find
5 it in here.

6 COMMISSIONER TAYLOR: Anyway, Ms. -- so I know --
7 because that's been the argument to this point
8 that, oh, well, we didn't put any narrative in
9 the cover letter or there was nothing regarding
10 treatment. But I believe a case came down that
11 basically said, all correspondence has to be
12 copied.

13 MR. COGGIOLA: I mean I -- well, I mean I think
14 that's still goes back to what the Statute of
15 42-19 or 15-95 says, and that's to a health
16 care provider who provides examination or
17 treatment, that -- that requirement doesn't
18 kick in until -- until the doctor actually
19 provides examination or treatment. So once --
20 once they've seen him, yes, I agree, you've got
21 to copy on all correspondence. But until that
22 point, it doesn't kick in. I also don't think
23 that Court of Appeals case was retroactive, so
24 even if it does, I don't think it applies to
25 this case. But I would still -- we would stand



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1 for the premise that 42-15-95 doesn't apply
2 until the healthcare provider provides an
3 examination or treatment. And -- and that
4 hadn't happened in this case with that letter.
5 This is a ---

6 **COMMISSIONER MCCASKILL:** Okay. Mr. Coggiola, let me
7 ask you, if we're the final fact finders, why
8 would that case, not apply?

9 **MR. COGGIOLA:** I don't think that that case had
10 retroactive applicability to cases before this.
11 If it does, it -- it'll apply to cases going
12 forward.

13 **COMMISSIONER MCCASKILL:** Okay.

14 **MR. COGGIOLA:** I -- I'd have to go back through that
15 case.

16 **COMMISSIONER MCCASKILL:** I -- I don't re- -- I don't
17 re- -- I -- yeah.

18 **MR. COGGIOLA:** But -- so that's our position on Dr.
19 Bethea's report. And then, in the brief,
20 Appellate goes into how his due proc- -- he was
21 deprived of due process, because he was going
22 to have to pay for the deposition of Dr. Bethea
23 in order to cross examine him and the
24 Commission should've -- is required to subpoena
25 that doctor. There's absolutely no regulation,



1 no statute, no case law supporting that
2 argument. The Rules of Civil Procedure that
3 govern depositions of treating physicians and
4 other health care providers specifically state
5 that, the party -- party seeking the
6 deposition, they bear the costs, including
7 materials and fees of that deposition. And
8 that's Rule 30-I of the South Carolina Rules of
9 Civil Procedure, the fees that he was charging
10 were in line with the fee schedule for \$400 for
11 the first hour, \$100 for every quarter hour
12 following after that. So there was nothing
13 unusual about the fees that he was charging for
14 his deposition. And there's -- there's just no
15 authority for a claim that, we as the
16 Defendants will be responsible for bearing the
17 cost of that deposition, nor that the
18 Commission is required to subpoena that doctor
19 as a witness. Not only is that not a
20 requirement, we would argue that's improper.
21 I mean, that -- that's the Commission stepping
22 out of their neutral, sort of, third party role
23 of adjudicating a case and -- and bringing
24 someone in for cross-examination on behalf of
25 one of the parties, which we would argue is --



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1 is not proper in this case.
2 COMMISSIONER TAYLOR: Okay.
3 MR. COGGIOLA: Moving on ---
4 COMMISSIONER TAYLOR: Can you spend some --
5 (technical audio interference) -- time on the
6 PPD?
7 MR. COGGIOLA: Yes.
8 COMMISSIONER TAYLOR: Okay.
9 MR. COGGIOLA: Moving onto the PPD ---
10 COMMISSIONER TAYLOR: Okay.
11 MR. COGGIOLA: --- you know, the Appellant basically
12 just comes out and says that there is
13 absolutely no evidence to the contrary and we
14 respectfully just disagree with that statement.
15 I mean, basically, what you've got is, you got
16 ratings from the authorized treating physician,
17 Dr. Nassau, who gave a 10 percent recommended
18 future treatment of physical therapy and TENS
19 unit and said, work restrictions, sedentary,
20 but can continue doing his job. I want to
21 point out that throughout the course of both of
22 these accidents, the Claimant never missed a
23 single day of work. I mean, he -- he continued
24 his job the whole time. Now, they accommodated
25 with restrictions and would've continued to



1 accommodate him. And he testified at the
2 hearing that he voluntarily resigned, in part,
3 due to other issues he had with the Sheriff's
4 Department, it wasn't even just for this. So
5 you've got the 10 percent rating from Dr.
6 Nassau. Dr. Bethea, who said that it's depth
7 complaints outweigh the objective findings, he
8 assigned 3 percent with no restrictions and no
9 further treatment. And then Claimant's expert,
10 Dr. Forest, he only assigned the 13 percent.
11 So he goes on to make a statement after 13
12 percent in accordance with the AMA's, and says,
13 oh, I also think he's lost more than 50 percent
14 loss of use. That -- that's not a doctor's
15 role in this. The doctor can assign impairment
16 in accordance with the AMA's, and in this case,
17 the most he could assign in accordance with the
18 AMA's was 13 percent. But the percent of
19 disability, the loss of use, that's a
20 Commission determination. That's not something
21 a doctor's supposed to say, 13 percent, oh, and
22 by the way, also 50 percent greater loss of
23 use. And then he re- -- he mentioned the one
24 voc eval that he hired of Ms. Fowler, there's
25 also a separate voc evaluation from Mr. Myers



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1 at CorVel, who identified I think over 13
2 different positions that he could do. Not only
3 did he do a vocational evaluation, but he also
4 did a Labor Market Survey of the 12 jobs in the
5 area that he identi- -- that he contacted. A
6 hundred percent said that they were either
7 hiring at the time or would be hiring in the
8 near future. So, you know, this is -- this is
9 what -- what y'all deal with every day. This
10 is a case of conflicting evidence. There's two
11 conflicting wage, you know, voc reports. An
12 injured worker who never missed any time from
13 work, who could've continued to be accommodated
14 by his employer, but for his voluntary
15 resignation. And then even the conflicting
16 medical evidence isn't really that far off.
17 It's 10 percent, 3 percent, 13 percent.
18 Nothing that really gets to that 50 percent
19 range. And we -- we would argue that even if
20 you did find that it went over 50 percent, the
21 fact that they were -- he could've continued in
22 his employment, and the fact that there's
23 vocational reports indicating there's work he
24 could do, and, in fact, those jobs in that area
25 would be a sufficient rebuttable presumption



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1 against that in any finding of Permanent and
2 Total Disability.

3 This is a case where, like I said, you've
4 got conflicting evidence and it's up to the
5 Commissioner, the Hearing Commissioner, who
6 heard the actual testimony of the Claimant,
7 weighed that evidence we find -- properly found
8 that he was not permanently totally disabled,
9 either under 42-9-30 or 42-9-10.

10 **COMMISSIONER TAYLOR:** Okay. Thank you. All right,
11 Mr. McDaniel, you've got three minutes in
12 rebuttal.

13 **CLAIMANT'S REBUTTAL:**

14 **MR. MCDANIEL:** Commissioner, I was trying to rapidly
15 find that decision that recently came out.
16 I've been submit- -- to have a little bit
17 behind on my advance sheets. However, it -- it
18 would go on specifically with what's been said
19 in every other case, including all the way back
20 to *Brown vs. BI-LO* in 2003 that, in other
21 words, you've got to disclose the paperwork in
22 this -- it -- it's mandatory in 42-15-95,
23 you've got to tell us about it, and they didn't
24 do it and it should have been excluded. Now,
25 the Supreme Court -- I -- I appreciate Mr.



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1 Coggiola's a wonderful argument, but however
2 the Supreme Court disagrees with him. The
3 doctor can testify to the ultimate question in
4 any case, matter of fact, the Rules have been
5 documented to prove that. Dr. Forest has the
6 right, and did, express an opinion on loss of
7 use. It's a totally separate issue from
8 medical impairment. You know, people
9 constantly forget the AMA guides what they say.
10 Page 4 and page 5, these rating guides rate and
11 -- and apply to the activities of daily living;
12 brushing your teeth, combing your hair, scratch
13 -- washing you back, daily going to the
14 bathroom. They have absolutely nothing -- and
15 they say that specifically, absolutely nothing
16 to do with work and the ability to work.

17 Now, loss of use is what this Commission
18 determines, I agree with Mr. Coggiola on that.
19 That's exactly what -- (technical audio
20 interference) -- and there's absolutely no
21 evid- -- just like there was in Clemmons,
22 whether anybody wants to hear it or not, you
23 know, they got a job to go out and -- and if
24 they want to argue against it, they gotta go
25 out and do it. And in this case, there's



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1 absolutely no evidence in this record on loss
2 of use, the issue that this Commission is
3 supposed to decide. And I know this Commission
4 is gonna require a literal interpretation of
5 the law in favor of benefits to need to work.
6 And then under that standard, there's
7 absolutely no evidence this man can go back to
8 doing work requiring the use of this back.
9 Now, also, you know, I -- I guess Mr.
10 Coggiola's heard about that little old case
11 called, *Stevenson vs. Brice Services*, wherein
12 that man was working and beca- -- he could --
13 he could do one job because they accommodated
14 him, he -- he was still working. He hadn't
15 medically retired on police officer disability
16 because he could do one job they accommodated
17 him. They even provided extra securities in
18 the room, they provided extra people just so
19 that he could continue to work as a deputy
20 sheriff. And when the new sheriff came in, he
21 was gonna lose his job as a deputy sheriff. He
22 was gonna be de- -- downgraded. He was gonna
23 lose his police car, he was gonna lose his
24 right to -- God knows, there's two professions
25 out there that I find that they would rather do



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1 their profession than eat, and that's nursing
2 and police officers. This man's life has been
3 devastated. There's nothing out there he can
4 do. They say they -- there's a little known
5 statute in a- -- in the Act that people
6 constantly forget about, 42-9-19, if they say
7 that there's a job out there that he can do,
8 they have an obligation under law -- read it,
9 *Coleman vs. Quality Concrete Property*, I've
10 read it. I've read it many times and it says
11 this, they can be relieved of responsibility to
12 pay disability by offering or procuring that
13 job forward. God knows when the last time I
14 seen any carrier go out there and provide
15 comprehensive rehabilitation assistance. They
16 used to do that all the time. Commissioner
17 Wilkerson, you know this, we used to ha- --
18 have all the time because they were trying to
19 avoid total and permanent disability. Try to
20 find that man something to do. They did it all
21 the time. They don't do anymore. But,
22 however, this man's entitled to work, his life
23 has been devastated, he's lost a career he
24 loved. He can't go out there and work. They
25 didn't offer him a job. They haven't procured



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1 him a job. And this -- he -- he actually --
2 their record of -- it agrees that he can't do
3 anything other than sedentary work. I submit
4 to you, clearly, there's no evidence in the
5 record on loss of use, which is the issue and
6 the Supreme Court said that's issue in
7 Clemmons, whether anybody wants to hear it or
8 not. There's nothing in this record --
9 (technical audio interference) ---

10 **COMMISSIONER TAYLOR:** All right. Thank you, Mr.
11 McDaniel. That's your -- your rebuttal time.
12 Thank you both. Y'all have a good day.

13 **MR. MCDANIEL:** Thank you Madam Chairman.
14 (There being nothing further the hearing concluded at
15 4:46 p.m.)

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January 13, 2021

VIA EMAIL AND US MAIL
Commissioner T. Scott Beck
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Michael Crowley v. Darlington County
WCC File No. 1716288 & 1801098

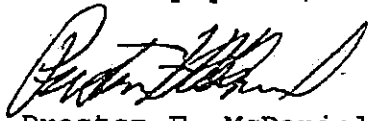
Dear Commissioner Beck:

I hate to trouble you with this, but I need to make a request to document what occurred at the last hearing set in the above-referenced matter before you. You will recall that at the time the case was called for hearing an Off-the-Record conversation/conference was held in reference to our request for additional evaluation and due to that conference, the hearing was cancelled.

The particulars of that conversation and our request have now become an issue and I would request the right to either submit an Affidavit to you to confirm what happened for submission into evidence at an upcoming hearing or a conference with you with Defense Counsel to reach a mutually agreed upon statement as to what occurred during that conference in reference to our request. To establish the facts is now necessary because the Defendants have now submitted the evaluation we requested as additional evidence for stop payment and to support the Defendants' position in reference to our request for benefits under the Act.

I would like to get this accomplished as soon as possible and I want to inconvenience you as little as possible as you've got enough to do. However, this is very important to our client based on the use of the Defendants of the evaluation which we requested. By copy of this email, I am notifying Counsel for Defense, Ms. Anne Noonan, of this communication and request.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire
Anne V. Noonan, Esquire

P1268

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January 28, 2021

VIA EMAIL - bcheeseboro@wcc.sc.gov
AND US MAIL
Commissioner Mike Campbell
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Michael Crowley v. Darlington County
WCC File Nos. 1716288 & 1801098

Dear Commissioner Campbell:

This matter is set before you for hearing on March 4th at 11:00 am on the defendants Form 21 to pay compensation; and is not subject to the sixty (60) day Rule under Section 42-9-260. This is to request a preliminary hearing anywhere in the State before you on the Record in reference to the report filed by the Defendants as part of the 21 from Dr. James F. Bethea. At the preliminary hearing, we will request that:

1. The report be excluded from evidence for failure of the defendants to comply with the provisions of the Act; specifically including SC Code §42-15-95.
2. Barring exclusion, we request either that the Commission issue a Commission Subpoena, pursuant to §42-3-140 & 150 for Dr. James F. Bethea to appear, or ordering the Defendants to schedule and pay for a de bene esse deposition (depo used in lieu of live testimony) of Dr. James F. Bethea so that we may exercise our right of cross-examination of him in reference to the report that the Defendants have placed in the Record as their evidence in this matter, thus making him their expert.

As I know you are aware, we are guaranteed the right to cross-examination both under the Act and the Administrative Procedures Act, §1-23-330(3) and under subsection 1, specifically in reference to documentary evidence submitted into evidence. Of course, the right of cross-examine is one of the most precious rights under due process and is guaranteed by both the United States and South Carolina Constitutions, as well as by both US and SC Supreme Court decisions, and particularly in administrative proceedings. I have attached a copy of one SC Supreme Court case, City of Spartanburg v. Parris directly on point, and I have underlined the Court's holding for your edification.

Commissioner Mike Campbell
January 28, 2021
Page 2

Of course, the United States Supreme Court has ruled the same way, and specifically ruled in an administrative hearing that where a written report is admitted into evidence, the administrative agency is duty bound to Subpoena the witness for testimony before the agency, at no expense to the litigant where the Claimant specifically asks to exercise that right. Richardson v. Perales, 91 S. Ct. 1420 (1971). That was a Social Security Hearing, and the claimant could request that the administration issue a Subpoena, which is the same as under the Workers' Compensation Act, and which we are requesting.

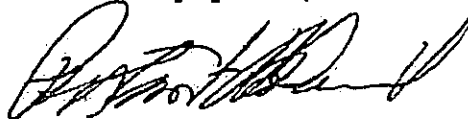
By copy of this letter, I am notifying and serving defense counsel with this communication and request for a preliminary hearing and for a Ruling on this issue by you, so the scheduled hearing may go forward as scheduled.

While this matter is not subject to the 60-day Rule and you could require a formal motion and response and set it later if you want to, we really would like to go forward with the hearing as it is now set and hope that you can accommodate us with a hearing on the Record in the near future.

At the hearing I will submit everything I have done in reference to try to exercise our right of cross-examination by serving the doctor personally with a Subpoena for a de bene esse deposition for cross-examination, his demand for payment to cross-examine him, and refusal to appear otherwise and Defense Counsel's refusal to pay that fee; and of course, the other documentation to support our request that the report not be admitted into evidence because of the Defendants failure to comply with the Act.

I look forward to hearing from you and as always it is a pleasure appearing before you.

Sincerely yours,



Preston F. McDaniel

PFM/rmt/kth
Enclosure

cc: Gerald Malloy, Esquire
Anne V. Noonan, Esquire

Burts, Turner & Hammett, Spartanburg, for respondent.

Opinion

*189 BRAILSFORD, Justice.

The police and fire departments of the City of Spartanburg have been under civil service since 1965. See Act No. 345 of that year, which implemented a special constitutional amendment ratified in 1965. This act was amended in 1966 by Act No. 991.

Larry Dean Parris was a police officer of the City of Spartanburg when the Civil Service Act was adopted and until his discharge by the Director of Law Enforcement, with the concurrence of the City Manager, on March 14, 1967. As required by the Act he was advised of the reasons for his discharge by letter as follows:
'Effective the date of this letter, you are hereby removed and discharged from your position with the Spartanburg Police **229 Department for the following reasons:

'(1) In accepting a gift in January of 1967 from a suspect then being investigated by you.

'(2) In accepting property in January 1967 from a suspect then being investigated by you, which property you should have known was not owned by the suspect or may have been the property of other persons.

'(3) In carrying out your duties as a member of the Spartanburg Police Department in a manner which is injurious to the good of the Police Department and which tends to injure the public service.

'(4) In failing to correct deficiencies heretofore pointed out to you following your suspension on March 3, 1965.'

Parris requested a hearing before the Civil Service Commission, which was charged with the duty of conducting a public hearing and determining whether his discharge 'was or was not made for political or religious reasons and was or *190 was not made in good faith (for cause.' After a hearing at which Parris was represented by counsel, the Commission entered an order by which it found that 'the discharge was not made for political or religious reasons and, on the contrary, * * * it * * * was made in good faith and * * * for good cause.' Parris appealed to the Court of Common Pleas for Spartanburg County, principally upon the ground that the Commission erred in admitting into evidence an affidavit of one Calvin

Honeycutt, which seriously reflected upon Parris' integrity as a police officer, thereby depriving him of the right to confront and cross-examine his accuser.

The circuit court held that the admission of this affidavit, and the consequent denial of Parris' right to be confronted by his accuser and to cross-examine him, was error requiring the reversal of the order of the Commission. The court remanded the case to the Commission with instructions that it hold another hearing within thirty days from the filing of the order, at which the witness Calvin Honeycutt should be examined in person; otherwise the court ordered that Parris be reinstated with pay.

The City of Spartanburg has appealed on fifteen exceptions. However, there are not nearly so many questions for decision.

^[1] The Commission is an administrative body and is charged with a number of administrative duties. However, in conducting a hearing for the purpose of determining whether an employee has been discharged in good faith and for cause the Commission acts in a quasi-judicial or adjudicatory capacity. While the strict rules of evidence are not applicable to such a hearing, *Richards v. City of Columbia*, 227 S.C. 538, 552, 88 S.E.2d 683, 689, the substantial rights of the parties must be preserved. *Southern Stevedoring Co. v. Voris*, (5th Cir.) 190 F.2d 275, 277. It is generally held that these rights include a reasonable opportunity to cross-examine the important witnesses against a party when their credibility is challenged. *191 The following rule is aptly phrased and finds strong support in the decisions cited in the footnotes to the text:

'The right to cross-examine witnesses in quasi-judicial or adjudicatory proceedings is a right of fundamental importance which, in regard to serious matters, exists even in the absence of express statutory provision, as a requirement of due process of law or the right to a hearing, and no one may be deprived of such right even in an area in which the Constitution would permit it if there is no explicit authorization therefor. * * * 2 Am.Jur. 234, Administrative Law, Sec. 424.'

**230 ^[2] Here the most damaging accusations against Parris concerned his conduct with Honeycutt, and, except for comparatively minor admissions by Parris, they were supported only by the Honeycutt affidavit. The record discloses that Honeycutt is an unsavory character with a long criminal record. His affidavit is, in material part, contradicted by Parris' testimony and is the only evidence by which such testimony is opposed.

^[3] We agree with the circuit court that, under the particular facts of this case, fundamental fairness required

City of Spartanburg v. Parris, 251 S.C. 187 (1968)
161 S.E.2d 228

the exclusion of the Honeycutt affidavit, and that a rehearing must be granted. However, we think that the court went too far in ordering the reinstatement of Parris unless Honeycutt should be produced as a witness at a hearing within thirty days of the filing of the order. The City might elect not to use either the witness or his affidavit at the next hearing. Our conclusion that Parris must be given a rehearing by the Commission rests upon a procedural error, and does not touch the merits of his discharge, which was regularly initiated by the Director of Law Enforcement, with the concurrence of the City Manager. Upon the rehearing, the City will have the option of relying upon any assigned cause for Parris' discharge and establishing it by any available evidence.

Since the decision of the circuit court did not turn on the sufficiency of the evidence, the statements in the order

End of Document

appealed *192 from concerning the degree of proof required and the burden of proof before the Commission are obiter dictum, and the exceptions thereto raise no issues for decision by us.

Modified and remanded for further proceedings.

MOSS, C.J., and LEWIS, BUSSEY, and LITTLEJOHN, JJ., concur.

All Citations

251 S.C. 187, 161 S.E.2d 228

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251 S.C. 187
Supreme Court of South Carolina.

The CITY OF SPARTANBURG,
Appellant,
v.
Larry Dean PARRIS, Respondent.

No. 18788.

May 7, 1968.

Synopsis

The Common Pleas Court of Spartanburg County, Wade S. Weatherford, Jr., J., reversed order of civil service commission dismissing police officer from force, and city appealed. The Supreme Court, Brailsford, J., held that where most damaging accusations against police officer concerned his conduct in allegedly accepting gift from suspect he was investigating, and where, except for comparatively minor admissions by the officer, the accusations were supported only by the suspect's affidavit, admission of the affidavit, and consequent denial of officer's right to be confronted by accuser and to cross-examine him, constituted prejudicial error requiring reversal of civil service commission order discharging officer from police force.

Modified and remanded for further proceedings.

West Headnotes (3)

- [1] **Public Employment**—Examination, credibility, and impeachment

In conducting hearing for purpose of determining whether employee has been discharged in good faith and for cause, civil service commission acts in quasi-judicial or adjudicatory capacity, and while strict rules of evidence are not applicable to such a hearing, substantial rights of parties must be preserved, including reasonable opportunity to cross-examine important witnesses when their credibility is challenged.

1 Cases that cite this headnote

- [2] **Municipal Corporations**—Evidence in general
Municipal Corporations—Review in general
Public Employment—Harmless, prejudicial, and reversible error
Public Employment—Reversal

Where most damaging accusations against police officer concerned his allegedly accepting gift from suspect and where, except for comparatively minor admissions the accusations were supported only by the suspect's affidavit, admission of the affidavit, and consequent denial of officer's right to be confronted by accuser and to cross examine him, constituted prejudicial error requiring reversal of Civil Service Commission order discharging officer from police force. Acts 1965, No. 345 as amended by Acts 1966, No. 991.

- [3] **Municipal Corporations**—Reinstatement
Public Employment—Restoration of status quo ante

Civil service commission's fundamental error in receiving accuser's affidavit in hearing on discharge did not warrant circuit court's ordering reinstatement of the officer unless accuser should be produced as a witness at new hearing within 30 days of filing of order, as city could elect not to use either that witness or his affidavit at next hearing.

2 Cases that cite this headnote

Attorneys and Law Firms

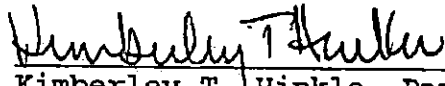
*188 **228 T. E. Walsh, Max B. Cauthen, Jr.,
Spartanburg, for appellant.

CERTIFICATE OF SERVICE

WCC File No. 1716288 & 1801098

I hereby certify that I have on this day served the following in the matter of Michael Crowley v. Darlington County with a copy of the LETTER TO COMMISSIONER MIKE CAMPBELL REQUESTING A PRELIMINARY HEARING addressed as follows:

Anne V. Noonan, Esquire
WILLSON JONES CARTER & BAXLEY
421 Wando Park Blvd.
Mt. Pleasant, SC 29464



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
28 day of January, 2021.



Notary Public for South Carolina (L.S.)

My Commission Expires: 2/4/24

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March 19, 2021

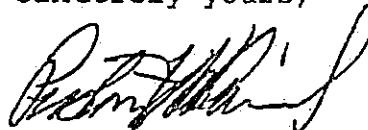
VIA EMAIL - bcheeseboro@wcc.sc.gov
Commissioner Mike Campbell
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: **Michael Crowley v. Darlington County**
WCC File Nos. 1716288 & 1801098

Dear Commissioner Campbell:

After consultation with my co-counsel Gerald Malloy, we are submitting the recent Opinion of the Court of Appeals in Lamar Clark v Philips Electronics/Shakespeare, Employer, and Gallagher Bassett Services, Carrier, Opinion number 5809, filed March 10, 2021, in support of our position at the Hearing, wherein we objected to certain evidence and specifically medical records for past medical treatment being submitted by the defendants. You will recall that we objected to medical records for past treatment being submitted into evidence without any supporting medical opinion establishing a causal relationship between any of that medical care to any of Deputy Crowley's current medical problems stemming from the accident and for which benefits are sought. Without such expert opinion, evidence the submission calls for speculation by the Commission on a causal relationship. As part of the defendant's response to our objection, the defendant's position was, in part that the records were being submitted concerning the claimant's credibility. By copy of this email I am notifying defense counsel of the submission of this additional authority.

Sincerely yours,



Preston F. McDaniel
Attorney at Law

PFM/rmt

cc: Gerald Malloy, Esquire
Anne V. Noonan, Esquire

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Lamar Clark, Appellant,

v.

Philips Electronics/Shakespeare, Employer, and
Gallagher Bassett Services, Carrier, Respondents.

Appellate Case No. 2018-001197

Appeal From The Worker's Compensation Commission

Opinion No. 5809
Submitted February 1, 2021 – Filed March 10, 2021

REVERSED AND REMANDED

William B. Salley, Jr., of Salley Law Firm, P.A., of
Lexington, for Appellant.

Brooke Ann Payne, of Payne Law Group, LLC, of Mt.
Pleasant, for Respondents.

HILL, J.: Lamar Clark was hurt in July 2011 while working for Philips Electronics (Philips). Philips admitted the injury, and Clark continued working for them another six months. An October 2011 MRI of Clark's back revealed a herniated disc at L5-S1. He began having "new onset radicular pain down to the buttocks." Dr. Daniel Sheehan diagnosed Clark with lumbar radiculopathy, also called sciatica, a condition often caused when a herniated disc pinches a lumbar spinal nerve and radiates pain to the legs and other lower extremities. A conservative course of treatment, including pain medication and physical therapy, was prescribed. Dr. Thomas Holbrook began treating Clark in February 2012 and confirmed Clark "has

lumbar radiculopathy on the left, secondary to a herniated disc on the left at L5-S1." Dr. Holbrook performed a microdiscectomy (a general anesthesia surgery to remove parts of a herniated disc to relieve pressure on the affected nerve). This relieved Clark's pain but only temporarily. Dr. Holbrook referred Clark to Dr. Steven Storick for pain management. Dr. Holbrook ordered another MRI, which showed a herniated disc at the left L4-5 with nerve root compression. Clark underwent a second microdiscectomy in September 2013. Again, the surgery appeared to help with Clark's pain but did not stop it. Clark continued with physical therapy and pain medications. In July 2015, at Dr. Storick's urging, Clark underwent a radiofrequency rhizotomy (a procedure designed to relieve chronic pain by destroying affected nerves). This procedure, along with prescribed painkillers, provided Clark some relief.

Over the years since his injury, Clark's medical providers have also addressed his mental health, attempting to combat the depression and anxiety caused by his persistent pain. Dr. Storick contemplates Clark may benefit from a spinal cord stimulator but does not recommend the treatment until Clark's depression and other aspects of his mental health have improved.

Dr. Robert Brabham, a psychologist and vocational rehabilitation expert with over fifty years' experience, concluded Clark was totally and permanently disabled. Jan Westmoreland, M.Ed., whom Philips engaged to evaluate Clark's ability to work, found Clark's medical records disclosed he could work at sedentary or light duty jobs. She listed several suitable positions available in the market, including cashier, attendance monitor, and movie ticket taker. When Westmoreland later learned Clark had completed a second year of college, she amended her report to state Clark could find work in IT support, computer programming, or as a security guard.

At the hearing before the Single Commissioner, Clark sought an award of permanent and total disability, alleging injuries to his back, left leg, left hip, and left foot, as well as psychological overlay. *See* S.C. Code Ann. § 42-9-10 (2015). He alternatively claimed he was totally and permanently disabled because he had lost more than fifty percent of the use of his back. *See* S.C. Code Ann. § 42-9-30(21) (2015).

A month before the hearing, it became known that Clark had claimed a back injury in 2006 while working for Tile Depot in Florida, and he had filed for worker's compensation and unsuccessfully sought social security disability income (SSDI) in 2008 and 2009 related to this injury. Clark had not disclosed this to Philips, who highlighted at the hearing that Clark claimed extensive physical limitations and pain symptoms in his SSDI paperwork and that he had sought mental health treatment. It

was also discovered Clark had presented to a local hospital several months before the 2011 injury complaining of back pain.

The Single Commissioner ruled Clark was permanently and totally disabled pursuant to § 42-9-10, having proven injury to more than one body part (his back and legs) that destroyed his earning capacity. The Single Commissioner alternatively found Clark totally and permanently disabled due to loss of use of fifty percent of his back pursuant to § 42-9-30(21). The Single Commissioner ruled Clark reached maximum medical improvement (MMI) on May 25, 2016, and Philips would be responsible for Clark's future medical and psychological care related to the injuries from the 2011 accident. *See* S.C. Code Ann. § 42-15-60 (2015).

Philips appealed to the Appellate Panel. It reversed, finding Clark was not permanently and totally disabled, suffered no psychological injury, had reached MMI on July 23, 2014, and sustained a twenty percent permanent partial disability to his back, entitling him to benefits of \$14,477.40. The Panel, however, ordered Clark to reimburse Philips \$33,539.31, the net credit owed to Philips for the temporary total benefits it had paid Clark after the July 23, 2014 MMI date.

Clark now appeals. He claims the Panel's order is not supported by substantial evidence, and several of its factual findings are clearly erroneous. For the reasons that follow, we agree with Clark and reverse and remand.

I. STANDARD OF REVIEW

A. The Substantial Evidence Standard

We must affirm the factual findings of the Panel if they are supported by substantial evidence. S.C. Code Ann. § 1-23-380(5) (2005 & Supp. 2020); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132-33, 276 S.E.2d 304, 305 (1981). Like any other finder of fact, the Panel may not rest its findings on speculation or guesswork. *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ("Workers' compensation awards must not be based on surmise, conjecture or speculation."). We may reverse the Panel's decision if its findings are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record," resulting in prejudice to Clark's substantial rights. § 1-23-380(5)(e). The Panel must anchor its ruling on evidence substantial enough to provide a reasonable basis for its findings. *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012).

B. Credibility Determination

The Panel concluded Clark's lack of credibility "undermined the medical opinions and treatment received . . . as the opinion and conclusions of [Clark's] providers were based upon self-serving assertions of the claimant." The order noted Clark's "lack of truthfulness" was "an impediment to supporting the Single Commissioner's decision."

The Panel was entitled to conclude Clark's credibility crumbled when it was learned he had not disclosed his 2006 back injury. We are also mindful that factual findings based on credibility calls can, and often do, amount to substantial evidence that requires us to affirm. But a credibility finding has no force independent of context—deciding a party is not credible does not make all of the party's other evidence incredible. Instead, the trier of fact must weigh and measure each piece of evidence. The Panel, bound as it is to make findings based on substantial evidence, "must explain how the credibility determination is important to making the particular factual finding." *Crane v. Raber's Disc. Tire Rack*, 429 S.C. 636, 647, 842 S.E.2d 349, 354 (2020). The lesson of *Crane* is that the Panel may not base a factual finding on a credibility determination without explaining both the basis of the credibility determination and how the determination rationally affects the disputed fact. An unexplained credibility determination or an unexplained use of a credibility finding means the factfinder's approach was arbitrary rather than rational.

II. ANALYSIS

A. Section 42-9-10 Disability

Clark seeks permanent and total disability under § 42-9-10 on the theory that he had injured a body part scheduled by § 42-9-30 as well as another body part and experienced a loss of earning capacity. *See Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 105–06, 580 S.E.2d 100, 102–03 (2003).

1. Injury to More Than One Body Part

The Panel found Clark had a twenty percent "impairment to his back, taking into account any affects to his legs." Despite acknowledging Clark had injured his back and legs, the Panel proceeded to deny Clark permanent and total disability under section 42-9-10, reasoning he only injured one body part (his back) and had no lost earning capacity. This was clear error. There is no substantial basis in the record permitting the Panel to find Clark only injured one body part. The Panel gave the opinions of Clark's authorized treating physicians, Dr. Holbrook and Dr. Storick, the

greatest weight; they both ultimately concluded Clark had injured his back and at least one of his legs.

Although the Panel declared Clark's woeful credibility befouled his entire medical record, it still agreed with Dr. Holbrook and Dr. Storick that Clark had suffered a twenty percent whole person impairment. Philips contends the Panel rightly treated all of the medical evidence as suspect because Clark did not disclose his 2006 injury. But Dr. Storick deflated this theory when he testified that learning of the 2006 injury did not change his opinion that the 2011 injury caused Clark's injuries. Philips could have offered contrary evidence; without any, ~~the Panel had no basis to discount the objective medical evidence,~~ and *Crane* tells us a vague nod to credibility cannot close the gap. Clark's lack of candor did not corrupt the credibility of his MRI results or the physical examinations of his treating physicians. Commissioner Taylor, the Single Commissioner, understood this. She deemed Clark "not credible at all," yet still fairly and impartially weighed the medical evidence. The Panel concluded the doctors' opinions were based upon "self-serving assertions of the claimant," but no doctor has said this. What people say when seeking medical help is usually self-serving and sometimes unreliable. Doctors are trained to detect such things, and we are confident that if the doctors believed they were duped into their opinions they would have said so.

The Panel's absolutist treatment of Clark's credibility in effect adopts the Latin maxim, well known to lawyers and a stalwart of closing arguments, which translates as "false in one, false in all." The maxim was discredited by *State v. Littlejohn*, 33 S.C. 599, 11 S.E. 638 (1890), and as far as we can tell, last appeared in a reported South Carolina case almost a hundred years ago as an aside in the infamous Upstate moonshine murder saga of *State v. Pittman*, 137 S.C. 75, 134 S.E. 514 (1926). Wigmore denounced the maxim as "primitive psychology" that "is in itself worthless . . . because in one form, it merely contains in loose fashion a kernel of truth which no one needs to be told, and in the others it is absolutely false as a maxim of life." 3A *Wigmore Evidence* §1008 at 982 (Chadbourn rev. 1970); see also *Virginia Ry. Co. v. Armentrout*, 166 F.2d 400, 405 (4th Cir. 1948) (noting the "harsh" maxim "has little or no place in modern jurisprudence"). Dubious and archaic as the saying may be, we are not aware of any instance where it has been used to disregard not just a party's testimony but their entire array of proof.

We therefore reverse the impairment rating and the finding that Clark injured only one body part and remand to the Panel for further findings. On remand, the Panel shall also revisit its impairment rating of Clark's back and explain how the twenty percent whole person rating does not translate to a higher rating for Clark's back alone.

2. Lost Earning Capacity

We agree with Clark that the Panel's finding that he has not lost earning capacity lacks substantial evidence. The finding—which appears in the "Conclusions of Law" section—floats on air, unsupported by any visible explanation or evidence. The "Findings of Fact" do not discuss either Dr. Brabham's or Ms. Westmoreland's reports, so we have no way of knowing what the Panel used to find Clark's earning capacity was intact. If it was Ms. Westmoreland's report, it would seem the Panel would have to explain why, unlike Dr. Brabham, Ms. Westmoreland chose not to take into account Clark's mental health diagnoses in concluding Clark could return to work. Dr. Brabham concluded Clark's depression and anxiety so affected his concentration and attention that he could not find work in the stable job market. Ms. Westmoreland's report "assumes" Clark can work twenty to forty hours per week. We reverse the Panel's conclusion that Clark has not lost earning capacity and remand for a de novo hearing resulting in conclusions of law supported by findings of fact.

B. Psychological Overlay

The Panel ruled Clark had "pre-existing psychological issues," and had not proven his 2011 injury at Philips aggravated them. *See* S.C. Code Ann. § 42-9-35 (2015). The Panel concluded his "current psychological condition, if any, is unrelated to his work injury."

The Panel pointed to Clark's response of "Yes" on one of his SSDI applications to a question asking whether he had been "seen by a doctor/hospital/clinic or anyone else for emotional or mental problems that limit your ability to work?" Yet, Clark replied, "No," to the same question on his other SSDI application, and in neither did he state he was seeking benefits for a psychological injury. There is no evidence of any pre-existing mental health diagnosis before his 2011 injury. The way the SSDI question is worded does not prove a pre-existing treatment or diagnosis. Nor does it provide any basis to identify the type, nature, or degree of the supposed pre-existing condition.

On the other hand, the objective medical evidence of the existence, causation, and degree of Clark's depression and anxiety is uncontradicted. The record details the chronic pain, sleeplessness, and sense of helplessness and hopelessness Clark has experienced because of his 2011 injury. He has been examined or treated by at least ten medical doctors, several of whom are mental-health experts. Not one of them suggests Clark is malingering or faking. The Panel's conclusion that his concealment of a supposed pre-existing condition undermines this objective medical evidence is

another misuse of the credibility metric. We therefore reverse the Panel's finding that Clark suffered no psychological overlay and remand to the Panel for a de novo hearing.

C. Date of MMI

The Panel calculated Clark reached MMI on July 23, 2014. No party pushed this date; Philips argued the correct MMI date was August 27, 2015. The Panel drew the date from a form Dr. Holbrook had filled out, but he had handed Clark off to Dr. Storick, who testified Clark reached MMI on August 27, 2015. Because the Panel did not explain how it resolved the clashing MMI evidence, we vacate and remand this finding to solve the mystery. *See Canteen v. McLeod Reg'l Med. Ctr.*, 400 S.C. 551, 558-59, 735 S.E.2d 246, 250 (Ct. App. 2012) (remanding case where an Appellate Panel failed to make sufficient findings on issue where evidence conflicted: "The findings of fact made by the Appellate Panel must be sufficiently detailed to enable the reviewing court to determine whether the evidence supports the findings."); *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("Where material facts are in dispute, the administrative body must make specific, express findings of fact.").

III. CONCLUSION

We reverse the Panel's decision and remand for a new hearing and findings as to Clark's § 42-9-10 claim for total and permanent disability based on injury to multiple body parts and loss of earning capacity, psychological overlay, date of MMI, and, if appropriate, future medical care and costs. We decide this case without oral argument pursuant to Rule 215, SCACR.

REVERSED AND REMANDED.

WILLIAMS and THOMAS, JJ., concur.

REQUEST FOR PROPOSED ORDER

Please note these are general Order Instructions/Directives only. This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC File Number: 1716288 & 1801098

Date of Hearing: 03/04/2021

Location of Hearing: Florence County

CLAIMANT: Michael Crowley

EMPLOYER: Darlington County

CARRIER: South Carolina Association of Counties SIF

Claimant's Attorney: Preston F. McDaniel & Gerald Malloy

Defendants' Attorney: Anne V. Noonan

DOI: 05/05/2017 & 01/03/2018

AWW: \$864.35 CR: \$576.26

Court Reporter: Mrs. Amber Scarborough
Creel Court Reporting, Inc.

1230 Richland Street

Columbia, SC 29201

contact@creelreporting.com

(803) 252-3445

FINDINGS & DIRECTIVES

Ms. Noonan, please draft the Order consistent with the below findings and directives and return to this office within 30 days.

1. Claimant sustained admitted injuries to his right lower extremity and back arising out of and in the course and scope of his employment on 05/05/2017 & 01/03/2018. (Drafting party to detail.)
2. Claimant underwent various evaluations and treatments for his admitted work-related injuries. (Drafting party to detail.)
3. On 12/15/2017, on a Form 14B, ATP Dr. Nigel A.R. Watt of McLeod Pee Dee Orthopaedics opined to a reasonable degree of medical certainty that claimant was at MMI as of 10/05/2017, assigned a 5% medical impairment to the right lower extremity, assigned no permanent physical limitations and recommended no additional treatment. (Defendants' p. 26) (Drafting party to detail.)
4. On 10/25/2019, in an FCE, PT Christine Sbroglia of OneCall Physical Therapy opined claimant demonstrated the ability to perform within the sedentary physical demand category. (Claimant's p. 2) (Drafting party to detail FCE.)
5. On 12/01/2019, on a Form 14B, ATP Dr. William B. Naso of Florence Neurosurgery and Spine opined to a reasonable degree of medical certainty that claimant was at MMI as of 11/21/2019, assigned an 8% medical impairment to the whole person, assigned a 10.7% medical impairment to the lumbar spine, assigned permanent physical limitations per the FCE, and recommended additional medical treatment in the form of a tens unit and physical therapy. (Defendants' p. 309) (Drafting party to detail.)
6. On 01/29/2020, in an IME for the claimant, Dr. Leonard Forrest of Southeastern Spine Institute opined to a reasonable degree of medical certainty claimant was at MMI, assigned a 13% whole person permanent impairment rating, a 17% regional impairment rating, opined claimant has lost more than 50% function of his back, and recommended claimant continue pain management. (Claimant's p. 29) (Drafting party to detail IME.)
7. On 02/13/2020, in a letter to the defendants, Dr. Naso opined: "From a neurosurgical perspective, Mr. Michael Crowley can continue to work in his current capacity which includes being able to carry a weapon and a taser. He can also accompany a judge, providing the judge security within and outside a court room, including at lunch. Otherwise his restrictions as outlined in his functional capacity evaluation remain." (Defendant's p. 310) (Drafting party to detail.)
8. On 03/02/2020, in a vocational evaluation for the claimant, vocational evaluator Harriet Fowler of Harriet Fowler Vocational Services opined that based on a transferable skills capacity analysis, there were no job titles identified that would be within claimant's current transferable abilities, that claimant can only perform work in a sedentary category on a limited basis, and it is more likely than not that claimant will be unable to obtain and maintain substantial gainful employment. (Claimant's pgs. 47-48) (Drafting party to detail vocational assessment.)
9. On 04/10/2020, in a labor market survey and vocational assessment for the defendants, Rehabilitation Counselor James R. Myers of Corvel opined there were several positions claimant would qualify for in the sedentary to light physical demand category. In addition, Counselor Myers further opined the average weekly wage for these employers reflect wages below claimant's pre-injury wages. (Defendants' p. 730) (Drafting party to detail labor market survey and vocational assessment.)
10. On 10/06/2020, in a records review for the defendants, Dr. Richard J. Friedman of MUSC Department of Orthopaedics opined to a reasonable degree of

medical certainty claimant was at MMI for his right knee injuries for both his 05/05/2017 and 01/03/2018 injuries, assigned a 0% impairment to the right lower extremity, returned claimant to full unrestricted activities without limitations, and recommended no additional medical treatment. In addition, Dr. Friedman completed a Form 14B. (Defendants' pgs. 739-740) (Drafting party to detail.)

11. On 12/17/2020, in a 2nd opinion, Dr. James F. Bethea of MUSC Health Orthopaedics–West opined claimant was at MMI, assigned no restrictions, recommended no additional medical treatment, and assigned a 3% medical impairment to the whole person. (Defendants' p. 742-743) (Drafting party to detail second opinion.)
12. On 03/04/2021, at the hearing before the undersigned Commissioner, claimant testified regarding his work-related injuries, the medical treatment he has received, his light duty, his retirement, his ability to work and the issues he continues to have. (Drafting party to detail relevant testimony.)

Based on a preponderance of the evidence and sworn testimony, I hereby find:

1. With regard to claimant's objection to the admissibility of claimant's prior medical records, based on the application of Clark v. Phillips Electronics, claimant asserts that prior physician's opinions are not credible because they allegedly fail to address causation. This argument misses the mark and is not the holding from Clark. The Clark Court addressed the issue of whether substantial evidence supported the Appellate Panel's decision to base its factual findings regarding the claimant's injury, lost earning capacity, psychological overlay, and MMI date largely on claimant's credibility without "explaining the basis of the credibility determination and how the determination rationally affects the disputed fact." Clark v. Phillips Electronics, Opinion No. 5809 (March 10, 2021). In other words, if the Commission thinks that a witness is credible there needs to be an explanation as to why and how that conclusion is supported by the facts in the record. This case is not Clark. The issue in this case is what weight to assign to medical records that may or may not state "to a reasonable degree of medical certainty" that claimant's pre-existing conditions are or are not related to his current injuries. This is a proper inquiry. In addition, the records may be admitted for impeachment purposes. Therefore, claimant's objection to the admissibility of claimant's prior medical records is hereby denied and the records are hereby allowed in. (Drafting party to detail.)
2. With regard to claimant's argument that his due process rights to cross examine witnesses was violated because there was a fee involved in securing Dr. Bethea's deposition testimony, this issue was similarly addressed in the recent Court of Appeals decision in Barr v. Darlington County School District. In Barr v. Darlington County School District, claimant argued that he was denied due process because the Commission did not issue subpoenas for four of claimant's treating physicians and because he received defendants' Pre-hearing Brief and APA submissions late. Relying on Gadson v. Mikasa Corp., (holding that a physician's report was admissible where it was timely filed with the opposing party's APA submissions

despite claimant's decision not to depose the physician) the Court of Appeals held that the Commission did not err in including the records from claimant's four treating physicians because although defendants' APAs were untimely, the hearing had been rescheduled allowing a seven month timeframe to depose or subpoena the physicians. Barr v. Darlington County School District, Opinion No. 5815 (April 7, 2021)(citing Gadson v. Mikasa Corp, 368 S.C. 214, 227 (Ct. App. 2006)). The Barr Court declined to hold that there is any requirement that the Commission subpoena any witnesses. The Administrative Procedures Act only states that an administrative body *may* issue subpoenas. They are not required to do so. In this case, claimant isn't arguing that the *Commission* incorrectly admitted APA's that were untimely submitted thereby depriving his client of notice and the opportunity to cross-examine witnesses, he argues that the physician fee charged by *Dr. Bethea* for his appearance at the deposition frustrated his right to cross-examine witnesses as it relates to the due process protections afforded by our state laws and constitution. Under our current Act and regulations, there is no relevant authority regulating the fees doctors may charge for deposition appearances. Furthermore, Dr. Bethea, who is a private citizen, is not a "state actor" as contemplated by our laws. He may charge any reasonable fee he sees fit for his time testifying. And, the party wishing to dispute this evidence must pay to do so. In this case, claimant had a couple of months to depose Dr. Bethea. (Hr. Tr. p. 12) It was scheduled via Zoom and claimant cancelled the deposition. (Hr. Tr. p. 12) Regarding claimant's assertion that either the defendants pay for Dr. Bethea's deposition or the Commission subpoena the witnesses, the Commission isn't required to send any subpoenas. Because there is no requirement that the Commission subpoena a witness, the Commission has not deprived Claimant of any right to cross-examination. It should also be noted that these proceedings are civil (not criminal) in nature. Therefore, given that claimant was afforded the opportunity to cross-examine Dr. Bethea and chose not to, I hereby find the principles of claimant's due process were satisfied and not denied. (Drafting party to detail.)

3. In addition, I give little to no weight to the opinions of Dr. Friedman, as his opinions are based solely on a records review and not a physical evaluation of the claimant.
4. Therefore, I hereby find claimant is at MMI as of 11/21/2019.
5. Claimant is entitled to an award of PPD.
6. Claimant has a 10% disability to the right leg.
7. Claimant has a 25% disability to the back.
8. Claimant is entitled to a lump-sum award.
9. Claimant is entitled to additional medical treatment as recommended by ATP Dr. Naso, including physical therapy and a tens unit.
10. Order to include Utica-Mohawk language.

INSTRUCTIONS: If you need a transcript, please order it *immediately* from the court reporter listed above. Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within the 30 day timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however you may also add additional Findings of Fact consistent with the above ruling and any relevant testimony. The Order should include biographical information regarding the Claimant's work history and previous medical history, if relevant to the case. Provide a copy of the proposed Order to opposing counsel or *pro se* Claimant before or at the same time one is submitted to the Commission. When submitting the proposed Order to the Commission, please email only to bcheeseboro@wcc.sc.gov The Commission no longer requires hard copies of the proposed order unless the Claimant is *pro se*. The parties have 14 days from the date of receipt of the final Decision and Order to appeal the Order. Appeals are to be filed with the Workers' Compensation Commission within the 14 day period.

Matters to include In the Order:

1. APA Submissions (if submitted)
2. Stipulations
3. Statement of the Case (contentions of the parties – stated concisely)
4. Evidence of the Case (synopsis of the evidence – including any relevant testimony of witnesses and medical reports)
5. Findings of Fact [numbered] (Do not delete any of the above findings.)
6. The prevailing party may add to the order to support the decision.
7. Conclusions of Law (cite applicable statutory sections and case law)
8. Award
9. Do not address credibility in the Order, unless it has been addressed in the preceding Order Instructions.

The Honorable R. Michael Campbell, II
Commissioner
South Carolina Workers' Compensation Commission
1333 Main Street
Suite 500
Columbia, South Carolina 29201
(803) 737-5678

Order Instructions emailed to parties on April 13, 2021.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1801098
Carrier File #: 2018SCAC070654
October 19, 2021

**FORM 31 BRIEFING SCHEDULE
AND
NOTICE OF APPELLATE HEARING**

DARLINGTON COUNTY v Michael Crowley

Filing Date for Appellant's Brief: November 18, 2021

Subject: Set on Review.

Date: 12/20/2021 at 04:30 PM

Location: This hearing will be conducted electronically via the Zoom application. Instructions to participate via Zoom will be emailed to the parties.

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the Upload functionality in eCase located on the Commission's website at www.wcc.sc.gov or via US Mail. **Unrepresented claimant need only mail a copy of their brief to the Commission by the date listed above.**

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739.

This matter is set before: Panel A

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

By: Eugenia Hollmon, SC Workers' Compensation, October 19, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 22 2023

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

Appellate Case No. 2022-000282

Michael K. Crowley, Employee,Appellant,

v.

Darlington County, Employer, and
SC Association of Counties SIF, Carrier,Respondents.

CERTIFICATE OF COUNSEL

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 materials.



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February 22, 2023