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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2022-000090

Randall Dalton, Employee,Appellant,

v.

The Muffin Mam, Employer,
and Amerisure Mutual Insurance Company, Inc., Carrier,Respondents.

RECORD ON APPEAL
VOLUME II

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1713760

RANDALL DALTON,)	
)	
CLAIMANT,)	SC WORKERS' COMPENSATION COMMISSION
)	
VS.)	HEARING OF
)	
THE MUFFIN MAM, INC,)	RANDALL DALTON
)	
EMPLOYER,)	
AND)	VS
)	
AMERISURE INS CO,)	THE MUFFIN MAM, INCORPORATED
)	
<u>CARRIER.</u>)	

This is the Transcript of the South Carolina workers' Compensation Hearing of Randall Dalton versus The Muffin Mam, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 12:02 P.M., Tuesday, April 13, 2021, at Greenville County Square, 301 University Ridge, Conference Room E, Greenville, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

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ALSO PRESENT:

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

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STIPULATIONS

Commissioner Wilkerson: Today's date is the 13th day of April, 2021. We're here in reference to workers' comp file number 1713760. The Claimant in today's case is Randall Dalton, represented by Logan Rollins. The Employer is The Muffin Man, Inc.; the Carrier is Amerisure Insurance Company, represented by John Stroud. The date of accident is 6/26/2017. The average weekly wage is a thousand and fifty-seven dollars and eighteen cents (\$1,057.18); the comp rate is seven oh four, eighty-two (\$704.82). It is my understanding that we're here today on a Form 50/51 and a Form 21. I also understand that you all have gone to mediation on this case and have reached an impasse. And are there any objections to APAs, jurisdiction, venue or any other items?

Mr. Rollins: Nothing from the Claimant.

Mr. Stroud: None from the Defense.

Commissioner Wilkerson: Okay. Without objection the Commission's file becomes part of the record, with the exception of self-serving declarations and unstipulated medical reports. At this time I'm going to have Mr. Rollins put his client's position on the record and then,

1 likewise, I'll have Mr. Stroud do the same.
2 Gentlemen?

3 Mr. Rollins: Thank you, Your Honor. It is
4 the Claimant's position that he is permanently and
5 totally disabled under either 42-9-10 or 42-9-30
6 for disability in excess of fifty percent (50%) to
7 the spine. The Claimant concedes that he is back
8 to work and that he has been promoted with the
9 same employer but it is Claimant's position that
10 the appropriate definition of permanent and total
11 disability, particularly under the economic model,
12 should be based on North Carolina precedent and
13 South Carolina precedent but specifically North
14 Carolina precedent, Peoples v. Cone Mills
15 Corporation, which is 342 S.E. 2nd 798, states
16 that an injured employee's earning capacity must
17 be measured not by the largesse of a particular
18 employer but rather by the employee's own ability
19 to compete in the labor market and that is also
20 corroborated by Larson Workers' Compensation,
21 sections 57.21 and 57.34 of the 1983 edition,
22 which states that if an injured man's friend helps
23 him to hold his job by doing much of his work for
24 him or he manages to continue only by delegating
25 his more onerous tasks to a helper, that is, "Made

1 work or sheltered work.” Found on South Carolina
2 law, Wynn v. Peoples Natural Gas Company, 238 S.C.
3 1, states that the proper definition of disability
4 is whether the services that a Claimant can offer
5 are, “So limited in quality, dependability or
6 quantity no reasonably stable market for them does
7 not exist.” It is our contention that there is no
8 reasonably stable market for the services that
9 Claimant can offer. His only work history, as he
10 will outline in his testimony and as is -- as is
11 outlined in our vocational report from Adger
12 Brown, is essentially doing maintenance work and
13 all of those jobs required him to do physical
14 work, including his current job. Because he has
15 been at his current job for nearly twenty (20)
16 years at this point he has a specialized knowledge
17 of this particular facility but it would not
18 transfer to another facility should he lose this
19 job for any reason. And he is allowed to continue
20 in this job only on the basis of having an
21 assistant to help him; that is corroborated in our
22 30 (b) (6) deposition, pages 13 to 14, when Ms.
23 Terry German states if there is anything he can't
24 do somebody else is able to take over for him.
25 The uncontradicted evidence in the record from the

1 Employer also is, according to Ronnie Williams,
2 who Terry German said is the appropriate person to
3 ask, if somebody with Claimant's work restrictions
4 of not being able to lift thirty (30) pounds came
5 from the street and applied for the job, Mr.
6 Williams would not hire him; that's his
7 deposition, pages -- page 14 and 15. So,
8 Claimant's maximum work restrictions are,
9 according to Dr. Behr, he can never lift more than
10 thirty (30) pounds and doctor -- according to Dr.
11 Hoenig he can never lift more than ten (10) pounds
12 above his head but his family physician put him on
13 a ten (10) pound maximum lifting restriction,
14 ever, and that's page 120 of the APA. He also had
15 an FCE that showed that he could not lift more
16 than seven (7) pounds overhead and could not lift
17 more than ten (10) pounds up to shoulder level and
18 that in -- in conjunction with the report from
19 Adger Brown, which also is uncontradicted because
20 it is the only vocational report and in the new
21 Hart v. Phillips opinion from the Court of Appeals
22 vocational opinions must be given weight; if they
23 are uncontradicted then they should become the
24 predominant factor in determining vocation --
25 employability in the case. So, that's Claimant's

1 legal position. We are also asking for lump sum
2 and Utica Mohawk. We dispute that there is a
3 credit because according to everything that we
4 have seen Claimant has returned to work as soon as
5 he was released with restrictions.

6 Commissioner Wilkerson: Let me ask a
7 question. That Supreme Court -- the Court of
8 Appeals decision, was that decision based on
9 someone who was not working or someone who was
10 working?

11 Mr. Rollins: Which opinion?

12 Commissioner Wilkerson: The one from the
13 Court of Appeals, the vocational report; if it's
14 uncontradicted that if another report is not
15 available. I don't --

16 Mr. Rollins: I honestly don't remember.

17 Commissioner Wilkerson: I don't -- I don't
18 remember either; that's why I was -- that's why --
19 okay. I'll look it up. Yes, because I don't
20 remember. I don't remember.

21 Mr. Rollins: And I still don't think it's
22 published; there's not a citation --

23 Commissioner Wilkerson: It's not.

24 Mr. Rollins: -- that I can give you.

25 Commissioner Wilkerson: It's not. I don't

1 think it is; that's why I was trying to remember.

2 Mr. Rollins: Yes. The WestLaw is in my 58
3 somewhere but --

4 Commissioner Wilkerson: Yes. And you -- and
5 you -- that -- I think that is attached.

6 Mr. Rollins: -- but it -- yes, it should be.

7 Commissioner Wilkerson: But what you are
8 reading of was attached to --

9 Mr. Rollins: Yes, it's attached to the 58.

10 Commissioner Wilkerson: -- yes, it was,
11 exactly. Okay.

12 Mr. Rollins: Yes. So, lump sum, Utica
13 Mohawk. Claimant also alleges he is entitled to
14 future medical care consistent with the opinions
15 of both Dr. Behr and Dr. Smith, which would
16 consist of pain management, specifically,
17 injections and medications. We would also ask
18 that he be reimbursed for Dr. Smith's opinion
19 because we tried -- we tried to get him sent back
20 to Behr and that's in our APAs, page 288, and we
21 got no response so he had no choice but to go to a
22 physician of his own choice. I believe that's
23 Claimant's position in a nutshell, unless you've
24 got anymore questions, Commissioner.

25 Commissioner Wilkerson: No. I don't have

1 anymore. Thank you. Mr. Stroud, on behalf of
2 your client?

3 Mr. Stroud: All right. This is an admitted
4 injury to the shoulder, back and neck. We are
5 requesting a finding of MMI and entitlement to
6 benefits under the Act. We are also requesting a
7 credit for overpayment of TTD benefits.

8 Commissioner Wilkerson: Let me ask a
9 question. When is your MMI date? I should have
10 asked that. I should have asked both of you that
11 but --

12 Mr. Stroud: For the -- it's the right
13 shoulder is June 18, 2018, according to Hoenig's
14 finds, November 7th, 2018, and I think we agree on
15 that.

16 Commissioner Wilkerson: -- okay. I thought
17 you all did; I just forgot to ask. Yes. I'm good
18 with that. Okay. And benefits were paid past
19 those two (2) dates? Or do we --

20 Mr. Stroud: We're -- we're a little confused
21 about that --

22 Commissioner Wilkerson: -- okay.

23 Mr. Stroud: -- and we would request that the
24 record be left open to submit evidence of our
25 credit for overpayment at this time --

1 Commissioner wilkerson: Okay.

2 Mr. Stroud: -- and we apologize about that.

3 Commissioner wilkerson: No. That's okay and
4 we talked about this at -- at length in here
5 earlier to try to figure all that out. So, can
6 you get that to us a week, ten (10) days or --

7 Mr. Stroud: Within a week, Commissioner.

8 Commissioner wilkerson: -- okay. Well,
9 okay, that's fine. I'll leave it open either way,
10 a week or ten (10) days for overpayment, a week or
11 ten (10) days for underpayment.

12 Mr. Stroud: Okay. And I'll try --

13 Commissioner wilkerson: That way both sides
14 --

15 Mr. Stroud: -- to send it to you immediately
16 --

17 Commissioner wilkerson: -- no, that's fine.

18 Mr. Stroud: -- as soon as I can.

19 Commissioner wilkerson: Both sides, that's
20 fine.

21 Mr. Stroud: All right.

22 Commissioner wilkerson: So, through the 23rd
23 of -- at max, the 23rd of April. I've got you.
24 And if that's a Sunday it'll be the 24th. I don't
25 have a clue what day the 23rd is on at this point

1 in time.

2 Mr. Stroud: We deny --

3 Commissioner Wilkerson: It should be Friday.
4 Yes.

5 Mr. Stroud: -- that he sustained an injury
6 to the -- to both legs, right hip, either hands as
7 alleged and assert that there is no evidence in
8 the record establishing causation for these body
9 parts. As for future medical treatment, we --
10 it's our position that future medical should be
11 limited to those found on the 14-Bs of Doctor --
12 of both authorized treating physicians, Dr. Behr
13 and -- I'm sorry -- why can I not think of his
14 name -- and the -- and the authorized treating
15 physician for the spine. As for the --

16 Commissioner Wilkerson: Let me ask a
17 question. There is a little bit of discrepancy on
18 he requested Behr but you all didn't send him to
19 Behr. Smith, any reason that you -- that they
20 didn't send him to Behr?

21 Mr. Stroud: -- I believe that recommendation
22 was made on behalf of the -- of the family
23 physician; is that correct?

24 Mr. Rollins: It's -- it's in the record.
25 His family physician wrote him out of work and

1 referred him to pain management. He will testify
2 he -- he periodically gets written out of work but
3 it's our position that Behr's -- Behr's note says
4 he needs ongoing pain management --

5 Commissioner Wilkerson: I've got you.

6 Mr. Rollins: -- and it was because he didn't
7 get it that he was in that situation.

8 Commissioner Wilkerson: Okay. I've got you.

9 Mr. Stroud: And we're not -- I -- our
10 position here today is that we are not denying
11 that he is entitled to additional --

12 Commissioner Wilkerson: With Behr?

13 Mr. Stroud: -- medical treatment with Dr.
14 Behr.

15 Commissioner Wilkerson: Okay. That's fine.
16 So, we'll get him back to Behr no matter what.
17 Okay. I'm fine with that.

18 Mr. Stroud: Dr. Hoenig, that probably was
19 who I was trying to think of. Okay. As for the
20 prior visit with Dr. Smith, it's our position that
21 we are not responsible under 42-15-60 because that
22 was -- it was not an emergency as required under
23 the Act. With regard to permanency, it's our
24 position that the Claimant is not permanently and
25 totally disabled and that we are accommodating his

1 restrictions permanently. Claimant's argument
2 relies on a North Carolina case that has not been
3 adopted, I don't think, by South Carolina Courts.
4 There was Watson versus Extra Mile, which did hold
5 that our ability to accommodate does rebut the
6 presumption; that case was discussed in Clemmons
7 versus Lowe's but due to the complicated appellate
8 procedure of that case, I believe it was overruled
9 and, finally, that issue, at the very end, was
10 remanded to determine if we rebutted that
11 presumption undoing the overruling of Watson
12 versus Extra Mile. So, it's our position that
13 Watson is still good case law. And even if the
14 North Carolina case of Peoples was -- was
15 applicable, it did require additional elements.
16 The Court looked at the fact that the job that was
17 created for that person never existed before, it
18 never -- it was designed specifically for that
19 person and that that person just basically sat in
20 a room, didn't have to lift anything, didn't even
21 have to work eight (8) hours a -- a day and it's
22 our position that the case of Peoples is clearly
23 make work case and this case it's clearly the
24 opposite. He has -- we have been accommodating
25 his restrictions for the past three (3) years,

1 during that time he has received two (2)
2 promotions; the most recent was going from hourly
3 to salary making at least seventy-two thousand
4 dollars (\$72,000.00) a year. So, in short, it's
5 our position that a finding of his current
6 employment as a sheltered or make work position is
7 unsupported by the evidence and the theory of the
8 case is based on speculation, conjecture and
9 surmise. We are requesting a -- an award based on
10 the ratings and the future medicals on the 14-Bs.

11 Commissioner Wilkerson: Okay. Anything else
12 before we take some testimony?

13 Mr. Rollins: Did I say lump sum and Utica
14 Mohawk? If not --

15 Commissioner Wilkerson: Yes, you did.

16 Mr. Rollins: -- okay. That's it from the
17 Claimant.

18 Commissioner Wilkerson: Okay. Anything
19 else, Mr. Stroud?

20 Mr. Stroud: I think I addressed everything.

21 Commissioner Wilkerson: Okay.

22 Mr. Stroud: Yes.

23 Commissioner Wilkerson: Mr. Dalton, I'll get
24 you to raise your right hand; I'm going to have
25 the Court Reporter swear you in and we're going to

1 take some testimony.

2 Mr. Dalton: Yes, sir.

3 Commissioner Wilkerson: Thank you.

4 whereupon;

5 Randall Glen Dalton, being duly sworn and cautioned to
6 speak the truth, the whole truth and nothing but the truth,
7 testified as follows:

8 Court Reporter: Please state your full name
9 for the record.

10 witness: Randall Glen Dalton.

11 Court Reporter: Thank you, sir.

12 Commissioner Wilkerson: Is it okay if he
13 leads him through all the preliminary stuff?

14 Mr. Stroud: Yes. It doesn't matter.

15 Commissioner Wilkerson: Okay. All right.
16 Thank you.

17 Mr. Rollins: All right.

18 DIRECT EXAMINATION

19 By Mr. Rollins:

20 Q. when were you born?

21 A. [REDACTED] DOB 1959.

22 Q. That makes you how old now?

23 A. Sixty-one (61).

24 Q. All right. And how far did you go in school?

25 A. Twelve (12) grades -- twelfth (12th) grade.

1 Q. Did you get any college certificates or licenses
2 after high school?

3 A. No. I did do some technical college but I didn't
4 get any certificates.

5 Q. what did you take in technical college?

6 A. Auto mechanics and industrial electronics.

7 Q. Okay. But you did not actually get a certificate?

8 A. No.

9 Q. All right. And you can read and write the English
10 language okay?

11 A. Yes, sir.

12 Q. were you ever in the military?

13 A. No, sir.

14 Q. Do you have a computer at home that you use
15 regularly?

16 A. I have a computer at home, yes.

17 Q. Do you know how to use work -- programs like
18 Excel, PowerPoint, Word or programs like that?

19 A. No.

20 Q. what are you able to do on a computer?

21 A. Let's see, mostly just get on there and scan or
22 look -- look at stuff. I don't do any PowerPoint or
23 anything like that, though.

24 Q. Okay.

25 A. I mean, I could probably write a -- a letter in my

1 computer but I don't; is that word or --

2 Mr. Rollins: Okay. Sorry, you --
3 you're not allowed to ask me questions.

4 witness: -- oh, I'm sorry.

5 Mr. Rollins: That's okay.

6 Q. So, do you know -- do you know how to use any
7 programs, other than just going on the Internet?

8 A. I -- I can use CAMS; that's at work.

9 Q. Okay. And using CAMS at work, what does -- what
10 do you have to input into the computer to use that?

11 A. The PMS.

12 Q. What does that mean?

13 A. I can go in there and click on what the guys have
14 done, like if they've done a PM, put their name. They
15 just -- it's already pre-done, everything is, you just
16 click on their name, if they completed the PM or some
17 of it was done or -- or partially done, click on that
18 and then -- then after I get done, then it will log it
19 in itself, then you can regenerate them.

20 Q. Okay. What does PM stand for?

21 A. Preventive maintenance.

22 Q. Okay. So, you go in there and -- and if the
23 person has done or partially done it you just click a
24 button and hit enter, basically?

25 A. Right.

1 Q. Okay. And that's the full extent of your computer
2 knowledge?

3 A. Yes.

4 Q. Okay.

5 A. As far as work, yes.

6 Q. What is your current height and weight?

7 A. My what?

8 Q. Height and weight.

9 A. Oh, five, eight (5' 8"), one eighty (180).

10 Q. Is that your normal weight?

11 A. Yes, sir.

12 Q. Are you left or right handed?

13 A. I'm right handed.

14 Q. What is your current living situation; do you live
15 with your wife?

16 A. Yes.

17 Q. All right. Anybody else?

18 A. No.

19 Q. All right. Who is your current employer?

20 A. The Muffin Mam.

21 Q. And how long have you worked at the Muffin Mam?

22 A. Eighteen (18) years and almost six (6) months.

23 Q. Okay. So, going on nineteen (19) years almost?

24 A. Yes.

25 Q. What is your current job title?

1 A. Supervisor.

2 Q. Supervisor in what department?

3 A. Maintenance.

4 Q. All right. And what are your job duties as a
5 Supervisor in the Muffin Mam Maintenance Department?

6 A. Delegate some of the stuff that needs to be fixed.
7 I'll actually go on the floor and -- and I'm mostly on
8 my feet most of the day. I may have to fix some stuff
9 --

10 Q. Okay.

11 A. -- and taking care of the PMS, generating the PMS
12 but that's only, like, one (1) day a week, so.

13 Q. Okay. And how long have you been a Maintenance
14 Supervisor?

15 A. Maybe a year.

16 Q. Okay. So, you got promoted to that position after
17 this work injury that occurred in 2017?

18 A. Yes.

19 Q. All right. How -- how much did your job duties
20 change when you became a Supervisor verses when -- oh,
21 well, let's back up. What were you -- what was your
22 job title before you were a Supervisor at the Muffin
23 Mam?

24 A. I was just a Maintenance Tech.

25 Q. And that's what you were the whole time you were

1 there --

2 A. Yes.

3 Q. -- until this promotion?

4 A. Yes.

5 Q. Okay. And how did your job duties change from
6 when you were a Maintenance Tech to when you became a
7 Supervisor?

8 A. Basically, being over the people, I mean, making
9 sure that they're doing what they're supposed to be
10 doing but I still do a lot of the same stuff I was
11 doing before as far as, you know, looking at a -- the
12 equipment or something.

13 Q. Does everybody in the Maintenance Tech Department,
14 supervisor or not, work on the floor --

15 A. Yes.

16 Q. -- fixing stuff?

17 A. Yes.

18 Q. And could you just describe to the Commissioner,
19 because he has never been in the facility, I don't
20 think --

21 Commissioner Wilkerson: Not that
22 facility, no. I've been in maintenance
23 facilities but I -- or manufacturing but I
24 have not been in that one.

25 Q. -- just describe what the Muffin Man does and what

1 sort of equipment you are performing maintenance on
2 there.

3 A. They bake muffins, of course, cakes; cream cakes,
4 loaf cakes and they do some sheet cakes. They have
5 ovens. They have mixers, mixing bowls.

6 Q. Okay. How big are the ovens --

7 A. We have --

8 Q. -- is it like an oven in my house?

9 A. -- we have a tunnel oven and they're getting ready
10 to install the ovens that they took out the -- out of
11 the Simpsonville facility; they're smaller -- they're
12 -- they're smaller rack ovens.

13 Q. Okay. How big are the biggest ovens there?

14 A. It's probably, maybe, sixty (60), eighty (80),
15 feet long.

16 Q. Okay. And that's one of the things you have to
17 perform maintenance on?

18 A. Yes.

19 Q. And how big are the mixing bowls that you have to
20 perform --

21 A. Now, that one --

22 Q. -- maintenance on?

23 A. -- the mixing bowls are -- probably hold about
24 three (300) or four hundred (400) pounds.

25 Q. Okay. And what other items do you have to work on

1 there?

2 A. Conveyors, grease machine --

3 Court Reporter: I'm sorry. What kind
4 of machine?

5 Witness: -- a grease machine.

6 Court Reporter: Gris?

7 Witness: Grease.

8 Commissioner Wilkerson: Grease.

9 Witness: G-R-E-A-S --

10 Court Reporter: I'm sorry.

11 Witness: -- E-A-S-E.

12 Court Reporter: I'm sorry. These masks
13 make it hard to hear. Thank you.

14 Q. So, how much -- how much weight do you have to
15 lift to be able to work on these machines?

16 A. Well, they're mostly -- you don't have to lift any
17 weight because they're on wheels or whatever.

18 Q. Okay. How much pushing or pulling do you have to
19 do?

20 A. That's a pretty good bit, I mean, if you have to
21 set the line up you have to push the stuff into -- in
22 the line like they conveyors or the depositors or the
23 grease machine --

24 Q. Okay.

25 A. -- the demister; all that -- all that has to be

1 set up. The big oven is stationary. The -- the line,
2 though, the main line, you don't have to do anything to
3 it but the other lines you have to push all the
4 equipment in and set it up.

5 Q. Okay. And how much pressure do you have to use to
6 push the equipment in?

7 A. It's a pretty good bit of pressure, I mean, I
8 don't know how to explain pressure as far as pushing
9 stuff, I mean, it's -- it's heavy. If your wheels are
10 greased up real good and, you know, a lot of times it's
11 not too bad but you've got a couple of people pushing
12 it or -- it depends on how big it is.

13 Q. All right.

14 A. Most of this stuff can be pushed with a couple of
15 people.

16 Q. Okay. Is it -- is it stuff that you're supposed
17 to use two (2) -- get two (2) people to push it with?

18 A. You -- you need to, yes.

19 Q. Okay. So, is it -- is it more than thirty (30)
20 pounds of force you have to use?

21 A. Oh, yes, probably so.

22 Q. Okay. And what about overhead work; how much
23 overhead work do you have to do there?

24 A. I don't do a lot overhead work. Anything -- the
25 pipes and stuff like that, they put all that up.

1 Q. Do you ever have to get in between machines and do
2 overhead work?

3 A. Maybe sometimes.

4 Q. Okay. And how much pressure do you have to use?
5 Do you have to, like, tighten nuts and things like
6 that?

7 A. If you have to torque nuts or something like that,
8 yes.

9 Q. Okay. And that can be overhead work?

10 A. Yes.

11 Q. And do you have to use more than ten (10) pounds
12 of pressure to do that?

13 A. Yes, you will.

14 Q. So, do you have people who do things -- do the
15 physical things -- do any of these physical things for
16 you?

17 A. They do.

18 Q. Okay. Are you --

19 A. If it's too heavy or something that I'm not
20 comfortable doing or stuff like that, then I'll get
21 somebody to do that.

22 Q. -- okay. And before your injury did you have
23 somebody to do those things for you?

24 A. No.

25 Q. Okay.

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Mr. Rollins: Sorry, just for the Court Reporter so she doesn't get mad, wait until I finish talking before you answer --

Witness: Oh, I'm sorry.

Mr. Rollins: -- so it's clear.

Commissioner Wilkerson: Let me ask a question. Is there any pressure restrictions or are these lifting restrictions? There is a difference in ten (10) pounds of pressure than ten (10) pounds of lifting and it's -- that's why I'm asking the question; I don't know what --

Mr. Rollins: It's -- it's the --

Commissioner Wilkerson: -- and I don't read the stuff while you all are going through it, so.

Mr. Rollins: -- the physician's restrictions are -- technically say lifting but if you look in detail at the FCE it's -- it's pressure that he -- how much pressure he can exert is basically comparable to how much weight he can lift.

Commissioner Wilkerson: Okay. That's -- that's what I was trying to figure out. Thank you.

1 Mr. Rollins: But the FCE report -- I
2 mean, the physician's restrictions say lift.

3 Commissioner Wilkerson: That's fine.
4 That's okay.

5 Mr. Rollins: All right.

6 Q. So, what are some of things that you used to do at
7 this job that you can no longer do since your injury?

8 A. The -- the heavy equipment and stuff like that as
9 far as pushing it, no. As far as for me getting in the
10 floor to some of the equipment, the -- the control
11 panels are on the floor are real low and you have to
12 get down, bend to work on it. So, you have to
13 basically sit on your rear end to -- to try to, you
14 know, look in the panel and stuff and that's pretty
15 strenuous.

16 Q. Okay. So, tell me -- all right, we'll go back to
17 that. Let's go through the rest of your jobs first.
18 So, you made -- so, you had Muffin Mam the first
19 seventeen (17) or seventeen and a half (17 ½) years
20 were Maintenance Tech and then you became Supervisor,
21 correct?

22 A. Yes.

23 Q. So, let's go backwards before the Muffin Mam job;
24 what was your -- your previous job to Muffin Mam?

25 A. Maintenance at the Goglanian Bakery.

1 Q. Okay. And how similar was that to the Muffin Mam
2 Maintenance Tech job?

3 A. Oh, it was -- I mean, it was different equipment,
4 so.

5 Q. Okay.

6 A. It was still maintenance, so.

7 Q. Did you have to relearn how to work on the
8 equipment from that job to the Muffin Mam job?

9 A. Well, it was -- it was different equipment; so,
10 yeah, you had to learn how to -- how to operate and
11 work on it, yes.

12 Q. Okay. But physically all the requirements there
13 were basically --

14 A. Yes.

15 Q. -- the same?

16 A. Yeah.

17 Q. Okay. So, would you have to have accommodations
18 if you went back to the Goglanian Bakery job?

19 A. Yeah. I wouldn't be able to do that.

20 Q. Okay. All right. How long were you at that job?

21 A. About three (3) years.

22 Q. Why did you leave that job?

23 A. I went to Muffin Mam.

24 Q. Okay. Did you just get a better job offer?

25 A. Yes.

1 Q. All right. And prior to that bakery job, what job
2 did you have?

3 A. Sew Simple.

4 Q. Okay. And what did Sew Simple do?

5 A. They done -- they made equipment for textiles,
6 they made sheets; they actually made the sheets there.
7 So, they would get the -- the, I guess, the cloth.
8 well, it wasn't really -- yeah, the cloth and they
9 would have it on the sheet -- the machines and they
10 would sew the machines -- sew the sheets and stuff.

11 Q. Okay. And did the same thing happen to that
12 textile job that happened to all the others?

13 A. Yeah. They -- well, I left before they went out
14 of business but they eventually -- probably like a year
15 after that they went out of business.

16 Q. Okay. And did you -- what specifically were your
17 job duties at that place?

18 A. I was wiring control panels.

19 Q. Okay. would you be able to do that job now?

20 A. No.

21 Q. why is that?

22 A. I couldn't remember how to do that, I mean, I was
23 trained doing that.

24 Q. Okay. Do you have control panel wiring that has
25 to be done at your current job?

1 A. We have control panels but we don't wire them --

2 Q. Okay.

3 A. -- we just trouble shoot them, so.

4 Q. But do you know, in theory, how those panels are
5 wired in 2021?

6 A. A lot of the newer stuff is all PLC and the older
7 stuff was more micro switches and relays and stuff like
8 that.

9 Q. Okay.

10 A. The PLC is like the -- is like a computer, I mean,
11 it's all -- got all the programming already programmed
12 into it and once ever -- like you've got sensors and
13 once the sensors are made in it, it takes it to another
14 position. Does that make any sense?

15 Commissioner Wilkerson: Just -- it's
16 just different kind of equipment --

17 Witness: Yes, sir.

18 Commissioner Wilkerson: -- that you
19 were doing --

20 Witness: It's updated, I mean, it's --

21 Commissioner Wilkerson: -- updated --

22 Witness: -- yeah.

23 Commissioner Wilkerson: -- not that you
24 couldn't relearn it, it's just you wouldn't
25 know how to do it today without --

1 Witness: No.

2 Commissioner Wilkerson: -- being
3 educated on it; is that right?

4 Witness: Well, PLCs is a special
5 training. You've got to -- you've got to be
6 able to go into a computer and do -- write
7 letter logic and stuff like that; that would
8 be a specialized training.

9 Mr. Rollins: Okay.

10 Witness: We actually have a Programmer
11 out at -- at our facility now.

12 Mr. Rollins: Okay.

13 Q. But you don't know how to do that work?

14 A. No. I don't do PLC, no.

15 Q. And you've never been trained to do that work?

16 A. Never.

17 Commissioner Wilkerson: That's right.

18 Mr. Rollins: Okay.

19 Q. All right. And before that, what jobs did you
20 have?

21 A. I worked at GE Service Center.

22 Q. Okay.

23 A. We rebuilt electric motors. We done switch gear
24 work.

25 Q. All right. Would you be able to do that job now?

1 A. The switch gear work was very heavy and strenuous.
2 The motor work was very heavy and strenuous. You had
3 to -- you had to put end bells on and assemble motors,
4 disassemble them. They done, you know, repair -- it
5 was basically repair but that was back when we had
6 textiles too. So --

7 Q. Okay.

8 A. -- a lot of that was we worked for a lot of the
9 textile mills like J. P. Stevens and stuff like that.

10 Q. So, is that job heavier duty than your maintenance
11 job?

12 A. Yes.

13 Q. Okay. All right. Any other jobs that you've had
14 for --

15 A. That was it, pretty much.

16 Q. -- okay. All right. So, have all of your jobs
17 required you to do physically more than your current
18 work restrictions of not lifting thirty (30) pounds,
19 not doing more than ten (10) pounds overhead?

20 A. Yes.

21 Q. All right. And you admit that your employer is
22 now accommodating those restrictions for you?

23 A. Yes, sir.

24 Q. Okay. And how are they accommodating them?

25 A. well, they -- like if I need help and stuff like

1 that. I try not to lift anything heavy or anything
2 like that.

3 Q. Okay. And they let you get people to help you,
4 correct?

5 A. Yes. But I do a lot more walking now since we --
6 since they shut down the other facility. So, I don't
7 really get to -- to sit down like I did before.

8 Q. Okay. So, that's what I wanted to get into next.
9 In addition to the -- to what you've described already,
10 you said -- so, one of your facilities shut down?

11 A. Yes.

12 Q. Okay.

13 A. They moved everything to Laurens.

14 Q. And then, that is a bigger facility?

15 A. Yes.

16 Q. Okay.

17 A. It's much, much -- it's three (3) times as big as
18 what we were -- where we were at.

19 Q. All right. So -- and you said how much of the --
20 how long is your shift, eight (8) hours, ten (10)
21 hours?

22 A. Yeah. I -- I do, like, nine (9) hours.

23 Q. Okay.

24 A. Because they put me on salary.

25 Q. And how much of that shift is on your feet?

1 A. Most of the day.

2 Q. Okay. Do you have any problems being on your feet
3 that long?

4 A. Yes.

5 Q. What happens and how long does it take before you
6 start feeling symptoms?

7 A. Well, probably like mid-day. It depends on how
8 much walking I've got to do because we -- like I said,
9 you're going from one -- we have -- we have an oven, we
10 have a couple set of mixers, then you have a deco room,
11 then you have the packing area and then they're trying
12 to get this other -- the other ovens put in. So, you
13 may be in the -- you may be in make up where they're
14 actually doing the mixing and they do the depositing,
15 then it goes through the ovens and then you may have to
16 go down on the -- the packing end and help down there
17 on the label machines or whatever they need help with.

18 Q. Okay. All right. Well, let's go into what
19 happened on June 25th, 2017. This is an admitted
20 accident so you don't need to go into a lot of detail
21 but just briefly describe to the Commissioner what
22 happened and what injuries you sustained that still
23 bother you today.

24 A. We were working on a mixer. I went upstairs;
25 another fellow was with me, we went up there to get

1 some wire and stuff. When we -- when I started down
2 the steps -- the other guy was behind me -- when I
3 started down the steps, we've got a lot of oil and
4 stuff in there -- and I had slip-resistant shoes on
5 because we're required to wear that -- coming down the
6 steps my feet went out from under me and I come down on
7 my right side. And then, went down the steps -- almost
8 fell off of the steps but, I mean, they actually caught
9 me right there, it was like a post, when I went down
10 several of the steps and then stopped there and then --
11 then, I mean, it's pretty much the injury there --

12 Q. Okay.

13 A. -- and mostly on my right side, so.

14 Q. All right. And then -- so, to begin with, tell me
15 all the body parts you injured to start with.

16 A. My neck, my lower back, my shoulder and that was
17 -- they had to find out about my -- you know, it took a
18 long time for me to get an MRI on my shoulder about the
19 -- you know, where I'd tore my tendons or whatever it's
20 called in there.

21 Q. Okay. So, eventually, you got sent to Carolina
22 Orthopedic and Neurosurgical Associates and you saw --
23 to start with it was Dr. Lim for your spine, right?

24 A. Yes, Dr. Lim.

25 Q. And then, Dr. Hoenig for your shoulder?

1 A. Yes.

2 Q. And then, he did surgery -- Hoenig did -- did
3 surgery on --

4 A. On -- on my shoulder --

5 Q. -- your shoulder?

6 A. -- yes, sir.

7 Q. And then, Lim referred you to Dr. Behr for pain
8 management --

9 A. Yes.

10 Q. -- correct?

11 A. Yes.

12 Q. All right. So, tell me about your shoulder, how
13 you did after Dr. Hoenig did the surgery and what
14 symptoms you had since the surgery until now.

15 A. Well, he done the shoulder surgery and then, I had
16 to do the rehab and everything and then, you know, I --
17 I have some pain in it and everything but it's nothing
18 like -- like it was before, so.

19 Q. Okay.

20 A. I -- I'm real careful about my shoulder because I
21 don't want to have to do that ever again.

22 Q. Okay. Are you able to lift your arm above your
23 head?

24 A. I can lift my arm up over my head --

25 Q. Sorry, just -- sorry, for clarification, this is

1 your right shoulder?

2 A. -- yeah, it's my right shoulder.

3 Q. And you said you are able to lift it above your
4 head?

5 A. Yeah, I can lift it above this (demonstrating),
6 you know, I don't go all the way up but whenever I --

7 Commissioner Wilkerson: Is there any
8 hardware in the shoulder that we're aware of?

9 Witness: -- I've got some -- they -- he
10 put a block on there and I think he screwed
11 it into the --

12 Commissioner Wilkerson: Okay. So,
13 there is hardware?

14 Witness: -- to the bone. Yes, sir.

15 Commissioner Wilkerson: Okay.

16 Witness: He actually wrapped it with
17 some kind of -- I don't know whether it was
18 twine or whatever it was.

19 Commissioner Wilkerson: Yes. I know --
20 we -- I've actually seen one live done.

21 Witness: Well, this --

22 Commissioner Wilkerson: I'm not -- your

23 --

24 Witness: -- right.

25 Commissioner Wilkerson: -- not one

1 maybe like that but I've seen a shoulder
2 surgery done live.

3 Witness: Yeah. I have pictures of it;
4 it wasn't very -- very nice to look at.

5 Commissioner Wilkerson: Yes. Oh, I
6 agree with that.

7 Q. So, you can lift it above your head and you said
8 it -- what is -- is it just sore or does it even --

9 A. No. I -- I have pain in it but a lot of it just
10 -- it seems like it shoots from my shoulder into my
11 neck and stuff.

12 Q. -- okay. And how much weight are you able to lift
13 with that right arm?

14 A. I don't do anything over ten (10) pounds over my
15 head at all with this.

16 Q. Okay.

17 A. And I try not to lift anything on this side. I've
18 become a lot stronger on my left side because I favor
19 my left side.

20 Q. Okay. You said you're -- you're right handed or
21 left?

22 A. Yes, I am right handed.

23 Q. Okay. So, what -- are there things that you used
24 to be able to do with your right arm that you can't do
25 --

1 A. well, I can't --

2 Q. -- other than lifting?

3 A. -- throw a baseball now.

4 Q. Okay.

5 A. I throw like a girl for -- oh, I shouldn't say
6 that.

7 Court Reporter: No, you shouldn't.

8 Mr. Rollins: No.

9 Commissioner Wilkerson: That's right.

10 Mr. Rollins: We should strike that from
11 the record or we all could get in trouble.

12 Commissioner Wilkerson: The best ball
13 player on my son's baseball team was a little
14 girl when they were eleven (11) years old. I
15 said, she's wearing you all out. Then went
16 on the play some pretty good softball as she
17 got older; she was a good athlete.

18 Mr. Rollins: Okay.

19 Q. All right. So, pain level, on average, in your
20 shoulder, is -- is it -- is there a pain level, on
21 average, in your shoulder?

22 A. Oh, maybe like two (2) to three (3).

23 Q. Okay. Do you have to take or do anything, ever,
24 for shoulder treatment?

25 A. No. I probably have taken Tylenol or stuff like

1 that.

2 Q. Okay. All right. And then, the other issues that
3 you're having, tell me about your neck issues.

4 A. I just -- my neck gets seized up and that's --
5 well, the last time that Dr. Fuson put me out of work
6 was because I couldn't even move my neck; everything
7 got seized up on my neck and everything.

8 Q. Okay. And Dr. Fuson is your family --

9 A. I mean --

10 Q. -- doctor?

11 A. -- yes, sir; he's my family doctor.

12 Q. Okay.

13 A. I can't be out of work unless I have a doctor's
14 excuse and, you know, try not to miss any work or
15 anything like that but sometimes it's just not
16 avoidable.

17 Q. Okay. And you never had any surgery on your neck,
18 right?

19 A. No, sir.

20 Q. And you've basically just gotten prescriptions for
21 your neck and injections?

22 A. I've never had an injection in my neck. I've had
23 prescriptions for my neck, yes.

24 Q. Okay. Do you have an injection scheduled?

25 A. Yeah. Well, I haven't got it yet but it's

1 supposed to be.

2 Q. Okay. And that's with --

3 A. He's going to do the lower --

4 Q. -- Dr. Smith?

5 A. -- yeah, Dr. Smith is going to do the lower back
6 first and then he's going to do the neck.

7 Q. Okay. And you said the problem -- one problem
8 with your neck is you can't turn your head?

9 A. Yeah. It's hard for me to, like -- sometimes
10 whenever I'm driving and -- and you've got a blind
11 spot, you almost -- I almost have to turn my whole body
12 to make sure that, you know, nothing is on the side
13 there so I don't run into a car or anything.

14 Q. Okay. Do you have problems putting your head up
15 or down in addition to left and right?

16 A. Going back more.

17 Q. Okay.

18 A. As far as going down, not really.

19 Q. Okay. And what is your pain level, on average, in
20 your neck?

21 A. About -- about two (2) to three (3).

22 Q. Okay. What makes it worse or better?

23 A. Probably the cold and then I'll put a heating pad
24 on.

25 Q. So, sorry, cold makes it worse?

1 A. Yeah, that's part of the reason I think one of the
2 things, having to go in the freezer; there's a lot of
3 stuff in there. And then, you know, if I lift
4 something or push something too heavy, you know, it's
5 --

6 Q. Okay. And at it's worst what does the pain level
7 get to in your neck?

8 A. -- probably about a five (5), six (6).

9 Q. Okay. And that's -- you said there's a -- a
10 freezer at work you have to go into?

11 A. I -- I haven't been in there since I -- since I
12 had that last issue, so.

13 Q. Okay. And then, what --

14 A. And it -- go ahead.

15 Q. -- what are -- what are the -- what -- what are
16 the pushing and pulling that you're talking about --

17 A. Like pushing a --

18 Q. -- that you think make your neck worse?

19 A. -- the icing vats or the equipment in.

20 Q. Okay. Is there anything outside of work that you
21 do that makes your neck pain get to that highest five
22 (5) to six (6) level?

23 A. No.

24 Q. Okay. All right. And then, your lower back, what
25 problems do you have in your lower back?

1 A. well, my lower back and then I've got -- I get
2 sharp pains shooting down through my buttocks and into
3 my legs.

4 Q. Is that your right or your left side?

5 A. My right side. I kept calling it my hip and
6 doctor -- Dr. Smith kind of corrected me on that.

7 Q. Okay. What is your pain in your lower back on
8 average?

9 A. Like three (3) to four (4).

10 Q. And what does --

11 A. My lower back hurts me worse than anything.

12 Q. -- okay. And what level does it get to at the
13 worst?

14 A. Probably like six (6) or seven (7).

15 Q. What makes it get to that six (6) or seven (7)
16 level?

17 A. It would be probably getting on the floor, having
18 to get down low and -- and pushing the heavy equipment.

19 Q. Are all these things that you do that make it
20 worse things that you do at work as opposed to
21 somewhere else?

22 A. Yes.

23 Commissioner Wilkerson: The only
24 surgery I've heard so far is to the shoulder
25 area --

1 Witness: Yes, sir.

2 Commissioner Wilkerson: -- is that
3 fair? No -- none -- no surgery on your neck,
4 no surgery on your back --

5 Witness: No, sir.

6 Commissioner Wilkerson: -- is that
7 fair? Okay.

8 Witness: Yes, sir.

9 Commissioner Wilkerson: Okay.

10 Q. All right. So, you said walking around makes your
11 -- your back and neck worse or just your back?

12 A. Well, basically my lower back.

13 Q. Okay. In addition to walking, you said getting
14 down?

15 A. Yes. When I have to get down, if I have to look
16 at a panel or anything and have to get down low or sit
17 on my butt, then you're kind of straining my back or
18 whatever; that hurts my neck more and my back because
19 I'm straining trying to look into the thing. Because
20 you're sitting there and the panel is like this high
21 (demonstrating) and you've got to get down --

22 Q. I'm sorry, just for the record, you're indicating
23 about three (3) feet high?

24 A. -- yes, sir.

25 Q. Okay.

1 A. But that may go to the floor -- from here to the
2 floor and so, you have to get down that low to -- to
3 even look in there.

4 Commissioner Wilkerson: Yes.

5 A. So, you either have to sit on the floor or bend
6 over and I just -- you know, the bending over ain't
7 going to get it for me. So, sitting on the floor, then
8 that puts a strain on my back or my neck, so.

9 Q. Okay. So, you have problems bending over?

10 A. Yes.

11 Q. What happens if you bend over?

12 A. Then I get sharp pains in my back.

13 Q. Okay. And that's your lower back?

14 A. Yeah.

15 Q. What about kneeling or stooping?

16 A. Same thing.

17 Q. Okay.

18 A. It's just hard to get up; once you get down like
19 that it's hard for me to get up, so.

20 Q. Okay.

21 A. But by the end of the day I'm --

22 Q. All right. So, tell me about that; just go
23 through and tell me what you would do on an average
24 day, what time you get up, what you would do physically
25 at work on an average day and then what you would do

1 when you got home.

2 A. -- I get up at 5:10 in the morning, I mean, excuse
3 me, 4:50 in the morning. I have to be at work at six
4 o'clock, that is if I ain't woke up at one (1:00) or
5 two o'clock in the morning because of the pain in my
6 back and stuff.

7 Q. How often do you wake up in the middle of the
8 night?

9 A. It's probably three (3) to four (4) nights a week.

10 Q. Okay.

11 A. And then -- and I'll get up, get ready to go to
12 work and when I get to work I usually go in the shop
13 and look and see what was done that night and then I'll
14 make a pass around and get with all the guys on the --
15 on the different shift, on night shift, and see what
16 kind of problems they had or if they had any problems
17 and then we'll go around make sure everything is kind
18 of set up and get the other guys to kind of walk around
19 and make sure everything is set up and stuff. Then we
20 talk about what needs to be done or taken care of for
21 the day and if -- and if we have any issues -- the
22 morning time, once we get in there, is -- is kind of
23 hectic; it's pretty stressful because everybody -- when
24 they're not running, they're not making money and
25 everybody is not happy.

1 Q. All right. And how do you decide if you,
2 physically, do stuff on the floor or if you delegate it
3 to somebody else?

4 A It depends on what it is. I mean, like the other
5 day when I went in -- most of the time I get the guys
6 to do anything heavy, like if they had to -- they had
7 to anchor racks and stuff the other day so they had to
8 get down on their knees, drill the holes and put the
9 anchors in; I had them do that. I usually do stuff
10 like trouble shooting; if -- if a piece of equipment is
11 not running correctly or whatever then I'll go help out
12 with that because I know a lot of the equipment that's
13 in there, especially the older stuff, because none of
14 the other people in there know how to do that.

15 Q. Okay. Does that include your supervisors?

16 A. Yes.

17 Q. And how long have your supervisors been on the
18 job?

19 A. well, Wayne is the new Maintenance Manager and
20 he's been there about a year.

21 Q. Okay. And your other supervisor, is that Ronnie
22 Williams?

23 A. No. Ronnie Williams is no longer with the
24 company.

25 Q. Oh. He was your supervisor though?

1 A. Yes, he was my supervisor.

2 Q. And how long was he there?

3 A. He was there for about two (2) or three (3) years.

4 Q. All right. So, is it fair to say that you know
5 the equipment better than anybody else there?

6 A. Yes.

7 Q. All right. Is that why who --

8 A. The -- the older equipment, I won't say the newer
9 stuff but -- but all the older stuff that came from
10 Simpsonville: The depositors, mixers, ovens; I'm the
11 only one that knows, really, how to work on that.

12 Q. -- and how did you learn how to work on that?

13 A. It's just eighteen (18), nineteen (19) years.

14 Q. Okay. So, is that the most important factor in
15 your experience doing this job is working on it for --
16 do -- working on that specific equipment for a long
17 period of time?

18 A. Yes.

19 Q. Okay.

20 A. I'm trying to get some of the other guys trained
21 up on it --

22 Q. Okay.

23 A. -- so they'll be knowledgeable about it.

24 Q. All right. Is there any way you could do your job
25 without -- and only delegate and not have to do any of

1 the physical work yourself?

2 A. If it -- out there?

3 Q. Yes.

4 A. No, because they can't do it and they don't --

5 Q. Okay.

6 A. -- I mean, as far as trouble shooting and stuff
7 like that; as far as moving equipment, yeah, I can get
8 them to do that.

9 Q. Okay. But you do -- do you have to do the -- some
10 of the physical work yourself?

11 A. I -- I do have to do some of it, yes.

12 Q. Okay.

13 Commissioner Wilkerson: Within the
14 restrictions, though?

15 Witness: Yes, sir.

16 Commissioner Wilkerson: Okay.

17 Witness: Within restrictions.

18 Mr. Rollins: All right.

19 Q. And has your employer -- they have accommodated
20 these restrictions throughout?

21 A. Yes. They've been good. They've been pretty good
22 about doing that.

23 Q. Okay. If you lost this job, are you aware of any
24 job -- any past job you've had you could go back to?

25 A. No.

1 Q. Are you aware of any other job that you're
2 qualified to do anywhere else?

3 A. No. Nobody -- nobody would hire me because of my
4 shoulder restrictions.

5 Q. Okay. And do you believe that you provide a
6 valuable service to your current employer?

7 A. Yes, I do.

8 Q. And why is that?

9 A. Because of my knowledge of the older equipment.

10 Q. Okay. would you be able to take that knowledge --
11 based on your previous experience doing this same sort
12 of work, would be able to -- able to take that
13 knowledge that you have gotten from this specific
14 equipment and go apply it at BMW or Michelin or
15 somewhere like that?

16 A. No. They're -- that's totally different
17 equipment, so.

18 Q. Okay. And all of your training to learn about
19 this equipment was just doing it for eighteen (18)
20 years, correct?

21 A. At this facility, yes.

22 Q. Okay. All right. What about do you have any
23 hobbies that you used to do before this injury?

24 A. I used to restore cars.

25 Q. Okay. What -- from the ground up you --

1 A. Pretty much --

2 Q. -- rebuilt everything?

3 A. -- yes.

4 Q. Okay. When is the last time you've done any car
5 restoration?

6 A. Before my accident.

7 Q. Okay. What happened to the cars you were working
8 on?

9 A. They're -- it's just sitting there where it was
10 four (4) years ago.

11 Q. Okay. Any other hobbies you used to do that
12 you're not able to do anymore?

13 A. I don't -- I fish a little bit but not like I used
14 to.

15 Q. Okay. And I think maybe I interrupted you. You
16 went through, basically, what you do all day at work;
17 what happens to -- what time do you get off of work --

18 A. I get off around 3:30 --

19 Q. -- and what do you do then?

20 A. -- if I -- if it's possible; if they have
21 something down then I usually try to stay and -- and
22 help them out so we don't -- we try to keep our down
23 time down and if I'm able to help them then I'll --
24 I'll help them try to trouble shoot something --
25 something like that.

1 Q. And what do you do once you get off of work?

2 A. I go home, take a shower and lay down or either
3 sit the recliner and put a heating pad on.

4 Q. Okay. And do you take any medications now?

5 A. I -- I do take some of the Flexeril and Dr. Smith
6 had give me something; I can't remember what it's
7 called. It's -- it's kind of like Aleve but he said it
8 was more stronger than Aleve.

9 Q. Okay. How often do you have to take those?

10 A. well, I took two (2) Tylenol this morning before I
11 came over here, so. I -- I try not to take a whole lot
12 of stuff because I don't like poisoning my liver and
13 stuff but, you know, when it gets pretty intense and
14 that's when I take it.

15 Q. what is your back pain -- or what are your pain
16 levels today; is today a good day, bad day, average?

17 A. No, today is a good day. It's probably about,
18 like, two (2) to three (3) on my shoulder and my neck
19 and my back is probably about four (4).

20 Q. Okay. How many bad days a week do you have?

21 A. Probably about -- out of seven (7), probably about
22 four (4).

23 Q. Okay.

24 A. On the weekends I usually rest; I have to rest my
25 body, so.

1 Q. All right. Do you remember having a functional
2 capacity evaluation December of last year?

3 A. Yes, sir.

4 Q. Did you give your best effort in --

5 A. Yes, I did.

6 Q. -- in that functional capacity evaluation? How
7 did you feel after you finished it?

8 A. Very tired and sore and hurting.

9 Q. Do you think you would have been able to do
10 another functional capacity evaluation the next day?

11 A. I don't think so.

12 Q. Okay. Why not?

13 Mr. Stroud: Object to the form.

14 Witness: Do what?

15 Mr. Rollins: You can answer.

16 Commissioner Wilkerson: Object to the
17 -- he can ask -- he can answer why he doesn't
18 think he could do it, yes.

19 A. Because I was pretty sore and my back was hurting
20 when I left there, so.

21 Q. All right. Is there anybody in your -- in your
22 place of employment in maintenance who does not lift
23 more than ten (10) pounds above their head or lift more
24 than thirty (30) pounds --

25 A. No.

1 Q. -- sorry, other than you?

2 A. No, I'm the only one --

3 Q. Okay.

4 A. -- that's got restrictions.

5 Commissioner Wilkerson: That's why they
6 call them accommodations.

7 Mr. Rollins: All right.

8 Q. Do you do -- do you engage in any physical
9 activities outside of the workplace that make your
10 symptoms worse?

11 A. No.

12 Q. What caused you to go to Dr. Smith at the end of
13 2020?

14 A. I had -- I had went to Dr. Fuson because I -- my
15 neck was hurting real, real bad; he ended up putting me
16 out of work. So, he decided to send me to pain
17 management. So, it's -- I went to Dr. Smith and
18 actually Dr. Smith had give me some injections in my --
19 I take that back, I did say I didn't get any
20 injections; he didn't give me an epidural or anything,
21 it was just a -- he had stuck me like twelve (12) or
22 fifteen (15) times in my neck area because I was so
23 tight and everything, trying to get me loosened up.

24 Q. Okay.

25 A. And that was -- that was the reason for me going

1 to Dr. Smith.

2 Q. Do you know what caused your pain levels to
3 increase at that time?

4 A. I can't remember what I had been doing; it was out
5 -- it was from work, though and --

6 Q. Is that the only time you've been written out
7 since --

8 A. -- no. It was like, I think, three (3) or four
9 (4) times last year.

10 Q. -- okay. All related to the body parts you
11 injured in this accident?

12 A. Right, and now my neck.

13 Q. Okay. And do you have a follow up visit scheduled
14 with Dr. Smith?

15 A. Yes. In not even four (4) weeks.

16 Q. Okay. Do you know what he is going to do at that
17 visit?

18 A. I'm not sure. He give me some exercises to try so
19 I'm going to start working on that and -- and then I'm
20 supposed to be getting a call for to schedule about
21 getting injections; he hasn't scheduled that yet,
22 that's being scheduled.

23 Q. All right. If you got this money in a lump sum,
24 what would you spend it on?

25 A. I'd probably pay my house off.

1 Q. Okay. Have you ever made any financial -- bad
2 financial decisions or bad investments that put you in
3 financial difficulties?

4 A. No.

5 Q. Okay.

6 Commissioner wilkerson: Help -- help me
7 -- explain why you'd take lump sum and pay
8 our house off; what are you going to live on?

9 witness: What am I going to live on?

10 Commissioner wilkerson: Yes.

11 witness: Well, I've got some savings
12 and stuff.

13 Commissioner wilkerson: Okay.

14 witness: I've got a 401k. If I get --

15 Commissioner wilkerson: How much is
16 your house payment?

17 witness: -- my house payment is a
18 thousand, sixty-nine dollars (\$1,069.00) --

19 Commissioner wilkerson: Okay.

20 witness: -- now, that's close, I'm not
21 --

22 Commissioner wilkerson: No, no. No,
23 no. I'm not going to hold you to the penny.

24 witness: -- okay.

25 Commissioner wilkerson: I couldn't tell

1 you what mine was, so.

2 Witness: I -- I do get a pension from
3 GE; I started that when I turned sixty (60).

4 Commissioner wilkerson: Okay. So, what
5 -- let me ask a question. A thousand and
6 sixty-nine dollars (\$1,069.00), how many
7 years have you got left to pay on it?

8 Witness: Oh, let's see, maybe four (4)
9 or five (5).

10 Commissioner wilkerson: Okay. So,
11 you're -- it's -- so, you're at the end of
12 it, I guess --

13 Witness: Yes, sir.

14 Commissioner wilkerson: -- as far as
15 paying -- okay. Do you know what the pay off
16 is?

17 Witness: I think it's fifty-one
18 thousand (\$51,000.00).

19 Commissioner wilkerson: Okay. Do you
20 know what the interest rate is? I sound like
21 a Banker, don't I?

22 Witness: Three point seven five (3.75).

23 Commissioner wilkerson: Okay.

24 Witness: Three point seven five (3.75)
25 or three point eight five (3.85).

1 Commissioner Wilkerson: No, no. That's
2 okay. I'm just trying to get an idea if it's
3 a --

4 Witness: Yes, sir.

5 Commissioner Wilkerson: -- I'm good.
6 Okay.

7 Mr. Rollins: All right.

8 Commissioner Wilkerson: I'm sorry. Go
9 ahead.

10 Mr. Rollins: No, that's okay.

11 Q. Are you going to keep working for The Muffin Man
12 as long as you can?

13 A. As -- as long as they'll have me; as long as I'm
14 able to.

15 Q. Okay. How long do you think you'll be able to stick
16 it out?

17 Mr. Stroud: Object to the form.

18 Commissioner Wilkerson: Well, he can
19 ask -- he can say how long he thinks he can
20 stick it out.

21 Mr. Rollins: Got you.

22 Mr. Stroud: That's speculation if I've
23 ever heard of it.

24 Commissioner Wilkerson: Well, it is but
25 it's his speculation; it doesn't mean it's

1 right.

2 Mr. Stroud: Okay.

3 Commissioner Wilkerson: How long -- how
4 much longer are you going to work?

5 Mr. Stroud: I have no idea.

6 Commissioner Wilkerson: Have you got a
7 lottery ticket? That's what somebody told me
8 one day; if this lottery ticket wins, today
9 is my last day.

10 Mr. Stroud: Yes. How much --

11 Commissioner Wilkerson: He can tell me
12 how long he thinks he can work; it --

13 Mr. Stroud: -- he'll be working as long
14 as he's breathing.

15 Commissioner Wilkerson: -- it's got to
16 be medically driven. I -- I understand, yes.

17 A. well, I'd like --

18 Commissioner Wilkerson: -- or how long
19 do you want to work? whatever.

20 A. -- well, I'd like to make it to I'm sixty-five
21 (65) at least --

22 Commissioner Wilkerson: Okay. Okay.

23 A. -- but, you know, like I said, I don't know if
24 I'll be able to make that or not but, you know, they --
25 as long as -- as I'm -- as long as I'm being

1 accommodated or -- or they stay in business, you know.

2 Q. Right.

3 A. I mean, you never know what's going to happen, you
4 know.

5 Commissioner Wilkerson: No.

6 Q. All right. Are you happy with the current
7 employer?

8 A. Yes, sir.

9 Q. All right.

10 Mr. Rollins: I don't believe I have
11 anything else right now, Commissioner.

12 Witness: And I try to do the -- my job
13 to the best of my ability and -- and, you
14 know, provide a --

15 Commissioner Wilkerson: Anything else?

16 Mr. Rollins: I don't think so.

17 Commissioner Wilkerson: If you'd answer
18 any and all questions that Mr. Stroud may
19 have.

20 Witness: -- yes, sir.

21 Commissioner Wilkerson: I'm not sure
22 you left him any but that -- he'll have some.

23 Mr. Stroud: Okay.

24 CROSS-EXAMINATION

25 By Mr. Stroud:

1 Q. Mr. Dalton, do you remember one of my co-workers
2 taking your deposition back in -- I think it was --
3 well, do you remember that?

4 A. Yeah, that's been awhile.

5 Q. At the -- at the time you mentioned that you were
6 about to get promoted from Maintenance Supervisor to
7 Maintenance Manager; do you recall that?

8 A. That was -- that was kind of a little sloop thing
9 there; that probably was like a month or two (2) and
10 then they shut the plant down --

11 Q. I --

12 A. -- because I asked about it.

13 Q. -- okay.

14 Mr. Stroud: Well, Commissioner, I -- in
15 my opening I said he got a seventy-two
16 thousand dollar (\$72,000.00); he did for a
17 month.

18 Commissioner Wilkerson: Okay.

19 Mr. Stroud: I didn't say about a month.

20 Commissioner Wilkerson: Okay.

21 Mr. Stroud: All right.

22 Witness: And then I went back to the
23 supervisor or whatever you want to call it.

24 Mr. Stroud: Okay. No, I didn't know
25 that; I apologize. I just wanted to make it

1 clear.

2 Witness: No. No, that's fine.

3 Q. But do you think that you, you know, deserve that
4 seventy-two thousand dollar (\$72,000.00) raise?

5 A. I think I probably deserve more than that.

6 Q. Okay.

7 A. I bring a lot of value, in my own opinion; I don't
8 know, maybe they don't think that.

9 Q. Now, is the position of Maintenance Supervisor, is
10 that a made up position or is that -- or have there
11 ever been other Maintenance Supervisors in the past?

12 A. The whole time that I've worked at Maintenance, I
13 mean, at Muffin Mam, well, we actually had a
14 Maintenance Manager; we never had a Maintenance
15 Supervisor.

16 Q. Okay. But you're able to contribute to the work?

17 A. Yes, sir.

18 Q. All right. Now, you mentioned earlier about your
19 prior education, did you get -- did you ever get any
20 kind of certificates or anything like that?

21 A. I don't know that I ever got a certificate. I
22 went to Limestone and took some accounting but that was
23 back when I was in my early twenties (20s) or
24 something.

25 Q. Okay.

1 A. But as far as a certificate, I may have got one
2 when I worked at GE but that was through my work when
3 they sent me to switch gear school --

4 Q. Okay.

5 A. -- and I went and taken balancing for them.

6 Q. So, you got --

7 A. That's the only --

8 Q. -- I'm sorry; go ahead.

9 A. -- that's the only two (2) certificates I remember
10 but that was through work, that wasn't through a --
11 through education or anything.

12 Q. Okay. But you got -- so, did you get a
13 certificate in switch gear; is that --

14 Commissioner Wilkerson: Yes.

15 A. That would have been through GE.

16 Commissioner Wilkerson: That's what he
17 said, GE.

18 Q. -- okay. But did you know how to do switch gear
19 stuff before you got training at GE?

20 A. No.

21 Q. But you were able to learn it?

22 A. Yes. They sent me to New York.

23 Q. And was the balancing certification a separate
24 certificate or did you get --

25 A. Yeah. That was separate.

1 Q. -- okay. And so, you --

2 A. But that was through GE, too.

3 Q. -- all right. Did you know how to do it
4 beforehand?

5 A. No.

6 Q. But you were able to learn it?

7 A. Yeah.

8 Q. Now, somewhere in your deposition I think you
9 testified at one point you were a Coil winder
10 somewhere?

11 A. That was at -- that was at Greenville Industrial
12 Supply; that was before I went to GE.

13 Q. Okay.

14 A. My apologies.

15 Q. No, it's fine. I'm just making sure we're -- I
16 mean, I don't have the answer to my next question; so,
17 I -- I may be shooting myself in the foot here. What
18 were your physical duties at -- as a Coil winder?

19 A. I wound coils for motors, for electric motors.

20 Q. Did you make little ones?

21 A. No. They had a coil machine, you just take the
22 wire -- have you ever seen the inside of a motor,
23 you've seen the wires in there? That's the coils in
24 there. It all depends on if it's three (3) face or
25 single face or whatever and I'd wind the coils.

1 Q. Okay.

2 A. And then, they had people that actually put the
3 coils in the -- in the -- I can't even think of the --
4 think of what it's call now. Anyway, the core of the
5 motor, they would actually put the windings in and then
6 hook them up and that would -- and then, that was what
7 they made the motors. Because they were doing all this
8 for, like -- this was still J.P. Stevens and stuff like
9 that, they were getting motors and rebuilding them for
10 these textile companies.

11 Q. Okay.

12 A. So, that was, basically, my first real job.

13 Q. Okay. Now, physically, was there anything about
14 that job that you couldn't do these days?

15 A. Yeah. They don't really do that anymore but,
16 yeah, you've got to stand up and you've got to hold
17 that wire like this (demonstrating) to keep it steady
18 because if you don't it will -- and then you've got to
19 be careful too because it's coming out of a big bucket.
20 I don't know how they do it anymore now.

21 Q. Okay.

22 A. Because that was, like, forty (40) years ago,
23 forty-one (41) years ago.

24 Commissioner Wilkerson: They've
25 probably got a robot that does it, is my

1 guess. I don't' know.

2 witness: And it's actually cheaper to
3 buy a new motor than it is to --

4 Commissioner wilkerson: Yes, now.

5 witness: -- to rebuild it anymore.

6 Commissioner wilkerson: Yes.

7 witness: That's kind of why they went
8 out of business.

9 Commissioner wilkerson: Yes.

10 Q. Now, how many plants are open now?

11 A. Just one (1), Laurens.

12 Q. Just the one (1)?

13 A. Laurens plant is the only plant now.

14 Q. But that one is three (3) times bigger than the --

15 A. Yes.

16 Q. -- last one?

17 A. Yes, sir.

18 Q. Okay.

19 A. I think that -- the one that we were in was forty
20 thousand (40,000); I think this is a hundred and twenty
21 thousand (120,000) square feet.

22 Commissioner wilkerson: They probably
23 moved everything there because of what they
24 call an economic impact by Laurens County.
25 They gave them some dollars to show up, is my

1 guess. That's what we used to do in
2 Lexington County when I did stuff.

3 Q. Can you drive a forklift?

4 A. Yes.

5 Q. Are you certified in that?

6 A. Yes.

7 Q. Now, did you tell Mr. Brown, the -- the Vocational
8 Evaluator --

9 Mr. Stroud: -- that was Mr. Brown,
10 right?

11 Commissioner Wilkerson: Yes. Adger
12 Brown.

13 Q. About your -- your certifications in switch gear,
14 balancing, operating a forklift?

15 A. I'm not sure.

16 Q. Do you have any reason to believe that after this
17 case is over that your job at Muffin Man would be in
18 jeopardy?

19 A. Well, I -- I would hope not but if -- if it does
20 happen then, you know, I've got to worry about trying
21 to find another job and then, nobody is going to hire
22 somebody with a, you know, a bum shoulder; if you can't
23 lift stuff they're not going to hire you. You know,
24 most applications -- if you look on an application, I
25 don't know if you've looked at one lately or -- they

1 will have on there, have you had any workman's Comp in
2 the last five (5) years. You know, before prior to
3 this happening, I -- I had went out and -- and started
4 looking around a little bit and on the application it
5 will have that on there unless they've done changed it
6 now; that's been awhile, so.

7 Q. All right. Well, I'm sorry to hear about the --
8 the Maintenance Manager position but they hired you
9 back on as a Maintenance Supervisor making the -- the
10 thirty-five (\$35,000.00) that -- at that time?

11 A. Excuse me.

12 Q. How -- how much do you make now?

13 A. About seventy-two (\$72,000.00).

14 Q. Seventy-two thousand dollars (\$72,000.00)?

15 A. Yes.

16 Q. Oh, so, you're paid salary now?

17 A. Yes.

18 Q. Okay. So, that's where I'm confused. So, they
19 promoted you to a Maintenance Manager --

20 A. Yes, for about a month.

21 Q. -- for a month and what was your pay then during
22 that month?

23 A. I -- you know, honestly, I can't really tell you;
24 I can't -- because it wasn't -- it was a little bit
25 less than what I'm making now, I think.

1 Q. Okay. But then, they -- they shut down an entire
2 plant --

3 A. Right.

4 Q. -- and they kept you on?

5 A. Yes.

6 Q. And gave you a raise?

7 A. Yes. They moved me to this facility.

8 Q. Okay.

9 A. Actually, that was Ronnie that done that.

10 Q. Now, you testified earlier that there's nothing
11 outside of work that you do that bothers -- that
12 increases your pain levels?

13 A. I really don't do anything outside of work, so.

14 Q. Okay. Do you take care of your lawn?

15 A. My wife cuts the grass.

16 Q. Are you able -- do you do any weed eating?

17 A. Very seldom; I have done it a couple of times.

18 Usually our friend, she goes over and cuts his grass
19 and he usually comes over and weed eats.

20 Q. Okay.

21 A. And our yard is very small too; so, you go around
22 the -- plus we do -- I do do some Roundup because we've
23 got, like, a little boarder or whatever so we just
24 spray around the boarder and that way you don't even
25 have to weed eat.

1 Q. All right. Now, on -- was that the case on -- you
2 know, back in March when you had your deposition taken
3 or has things changed since then?

4 A. No. No, I told the lady the same thing. My -- I
5 mean, I could cut the grass but my wife won't even let
6 me get on the lawnmower because she likes to cut the
7 grass.

8 Q. Yes. And that --
9 Commissioner Wilkerson: Was that depo
10 --

11 Q. -- that's not because of your --
12 Commissioner Wilkerson: -- was that
13 depo March of this year?

14 Mr. Stroud: -- no. 2020.

15 Commissioner Wilkerson: 2020?

16 Mr. Stroud: It was last year.

17 Commissioner Wilkerson: Okay.

18 Q. So, the reason that you don't cut the grass isn't
19 because you physically aren't able, it's because your
20 wife likes to do it --

21 A. Right.

22 Q. -- is that right?

23 A. Right.

24 Q. Okay. Could you cut the grass if you needed to?

25 A. Yeah. Yes, I could cut the grass if I needed to.

1 Q. All right.

2 Mr. Stroud: Almost done. Hold on one
3 second.

4 Q. Oh, were you ever furloughed during the pandemic?

5 A. No, sir.

6 Q. Okay. Are you able to do cleaning and vacuuming
7 around the house?

8 A. Yeah, I vacuum a little bit. My wife usually does
9 -- does most of the -- the housework.

10 Q. All right.

11 Mr. Stroud: Those are all of my
12 questions.

13 Mr. Rollins: Nothing else.

14 Commissioner Wilkerson: Okay. This
15 concludes our hearing. I thank everybody for
16 being here, sir.

17 Mr. Dalton: Yes, sir. Thank you.

18 Commissioner Wilkerson: Thank you. And
19 that -- I've been riding by that place
20 forever. I thought it was Muffin Man because
21 I'm driving, okay? I'm glancing up and it's
22 Mam.

23 Mr. Dalton: Yeah.

24 Commissioner Wilkerson: I'll have to
25 remember that as I drive --

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Mr. Dalton: Everybody says that.

Commissioner Wilkerson: -- yes, I just
-- I'm not paying attention. So, let me meet
with the attorneys for a few minutes.

Mr. Dalton: Yes, sir.

Commissioner Wilkerson: Thank you.

(THERE BEING NO FURTHER QUESTIONS, THE HEARING CONCLUDED AT
1:08 P. M.)

State OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Randall Dalton, vs. The Muffin Mam, Incorporated;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 72 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

witness my hand and seal this 1st Day of June, 2021.

 Gloria G. Davis
 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1713760

Randall Dalton,)
)
 Claimant,)
)
 v.)
)
 The Muffin Man,)
)
 Employer,)
)
 and)
)
 Amerisure Insurance,)
)
 Carrier/Defendants.)
 -----)

FULL COMMISSION HEARING

Tuesday, November 23, 2021
2:39 p.m. - 2:54 p.m.

The Full Commission Hearing was heard before Commissioners Aisha Taylor, Michael Campbell and Melody James virtually via ZOOM on the 23rd day of November, 2021, before Amber Scarborough, 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 **CALL TO ORDER:**

2 **COURT REPORTER:** Today is November 23rd, 2021. This
3 is South Carolina Workers' Compensation Case
4 Number 1713760. This is the case of Randall
5 Dalton versus the Muffin Man and Amerisure
6 Insurance. The Appellant is the Claimant,
7 represented by Logan Rollins. The Respondent
8 is represented by John Stroud. Each side is
9 allowed ten minutes for oral argument and the
10 Appellate three minutes in reply. You are
11 requested to argue the grounds of exception and
12 stay within the record.

13 **COMMISSIONER JAMES:** All right. Mr. Rollins, when
14 you're ready.

15 **APPELLANT/CLAIMANT'S POSITION:**

16 **MR. ROLLINS:** Thank you. So, the issue in this case
17 really is just whether a claimant receiving
18 wages by itself is not to defeat a claim for
19 permanent and total disability. And as
20 workers' compensation is entirely a creature of
21 statute, of course we have to start with a
22 statutory definition of disability which is
23 found at 42-1-120 and defined as, incapacity
24 because of injury to earn the wages which the
25 employee was receiving at the time of the



1 injury in the same or any other employment.
2 And the key word in that statute throughout the
3 jurisprudence surrounding this issue is
4 capacity, and that's distinguishable from other
5 disability systems. For example, in social
6 security disability, the first step in the
7 disability analysis is, doe- -- is the claimant
8 engaged in substantial gainful activity or is
9 the claimant receiving wages? If the -- if the
10 answer to that question is yes, it does not
11 matter what that claimant's physical
12 restrictions are, but under our Act, under the
13 South Carolina Workers' Compensation System,
14 that question is not asked whether the claimant
15 is actually earning wages. The question that
16 is asked is whether the claimant has the
17 capacity to earn wages and our Courts have
18 elucidated what that means. One of the leading
19 cases on this issue is *Wynn v. Peoples Natural*
20 *Gas*, which is 238 South Carolina 1. And in
21 that case, the Court held that the generally
22 accepted test of total disability is inability
23 to perform services other than those that are
24 so limited in quality, dependability or
25 quantity, that a reasonably stable market for



1 them does not exist. So step one is, does the
2 claimant have the capacity to earn wages? And
3 what the Court has defined capacity to mean is
4 not, is the claimant earning wages, but can
5 that claimant compete in the marketplace for
6 wages, that is compete with other workers. And
7 so the Commission is -- is to look at first, is
8 the -- is the claimant actually earning wages
9 in his current employment? Second, if he lost
10 that employment would he be able to earn or
11 compete for wages in other employment? Other
12 jurisdictions recognize this doctrine of
13 sheltered employment by calling it sheltered
14 employment. Whether or not we call it
15 sheltered employment, our claim is essentially,
16 we don't have to call it sheltered employment,
17 we can just call it Section 42-1-120 disability
18 because we -- the question to be asked, again,
19 is not -- is not whether you're earning wages,
20 but whether you have the capacity. And using
21 the term sheltered employment is just a
22 shorthand way for us to look at it because we
23 have a natural instinct for our first question
24 to be, well, how can you be disabled if you're
25 still earning wages? But strictly under this



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1 creature of statute, Title 42, that is not the
2 question that we're supposed to ask. So, in
3 this case in particular, what we have to look
4 at is, first of all, what are the claimant's
5 work restrictions? That's always the first --
6 the first thing we have to look at in
7 determining disability. So in this case, the
8 uncontradicted maximum work abilities that this
9 claimant retains are the ability to lift 10
10 pounds overhead in accordance with Dr. Hoenig,
11 the authorized treating physician, that was
12 adopted by the Single Commissioner in his
13 Order, and not lifting more than 30 pounds at
14 all from his other treating physician, Dr.
15 Behr, who is a spinal physician. And -- and
16 though -- that finding was also specifically
17 adopted by the Hearing Commissioner. So, we
18 have to look at whether first of all again,
19 going back to 42-1-120, does the claimant have
20 the capacity to have a job at the Muffin Man
21 with those restrictions? So I took a dep- --
22 took first of all a 30(b)(6) deposition. The
23 employer denominated Terry Jermon - Jermon.
24 It's J-E-R-M-O-N, I'm not sure how she
25 pronounces it, but -- and when I was asked



1 whether she was able to testify about what
2 restrictions the claimant could perform, this
3 is page 14 of her deposition or page 303 of the
4 APA, she said I can't answer that question, I'm
5 not in that department. So she -- she could
6 not testify what physical abilities were
7 required for someone with this claimant's
8 education, work experience and background. So
9 she deferred to Ronnie Williams, who I
10 thereafter deposed, and Ron- -- Ronnie Williams
11 testified, page 14 of the -- his deposition,
12 page 329 of the APA. I asked him if you
13 couldn't lift 30 pounds would that person be
14 able to do the physical grind required for a
15 maintenance tech? And he said if he couldn't
16 do it with both arms, yeah. So, both Terry
17 Jermon said I don't -- I don't know what the
18 physical requirements are. Ronnie Williams
19 thereafter testified he couldn't work here if
20 he couldn't lift 30 pounds, if he didn't
21 already work here, essentially. So the first
22 step of the analysis, can he do a job at the
23 Muffin Man, the answer to that question out of
24 the Muffin Man's employee's, supervisor's own
25 mouth is no, there's no job here that we would



1 hire him to do if he came in off the street.
2 So, he could not compete for work here. That's
3 -- that's out of their own mouths. So then the
4 second step in the analysis is whether the
5 claimant could engage in other employment and
6 the only way we can know this is through expert
7 testimony. The only expert testimony or report
8 in the record is our vocational report from
9 Adger Brown. Adger Brown's report is
10 unequivocal. It states that if he lost this
11 job for any reason, and it's not really
12 relevant, but the plant did shut down, he would
13 not be able to get any work anywhere else. And
14 that is uncontradicted. There's no -- there's
15 no other vocational report in the record. And
16 under the *Clark v. Philips* opinion, if you base
17 a determination of what jobs a claimant could
18 get on anything other than a vocational report,
19 that finding must be invalid. And in this
20 case, it's clear from the report, the only
21 report in the record, the only vocational
22 expert opinion in the record, that he could not
23 compete in the marketplace for any job. It's
24 -- according to the Single Commissioner's
25 Order, he has, quote, major lifetime



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1 restrictions. So even if he is not permanently
2 and totally disabled, it would be our position
3 if he's not permanently and totally disabled
4 under 42-9-10, it's our position based on his
5 major restrictions, he should be permanently
6 totally disabled under 42-9-30 for greater than
7 50 percent to the spine, or at the very least
8 have substantially higher impairment ratings to
9 both of his scheduled members. So, if y'all
10 have questions, I will shut up.

11 **COMMISSIONER JAMES:** Questions?

12 **COMMISSIONER CAMPBELL:** No, I'm fine.

13 **COMMISSIONER JAMES:** Okay. Mr. Stroud, when you're
14 ready.

15 **RESPONDENT/DEFENDANT'S POSITION:**

16 **MR. STROUD:** First, I -- I just want to object for
17 the record to the -- the reference of the plant
18 shutting down. I'm not sure if he's referring
19 to the initial plant he worked in, but if he's
20 not, then that it's not in evidence. So --

21 **COMMISSIONER JAMES:** And we'll look at the record.

22 **MR. STROUD:** Correct. When you -- it's our position
23 that when you take a step back and look at the
24 big picture here, it is clear that claimants
25 injury resulted in minimal disability as



1 defined by the Act and even if the state of
2 South Carolina were to adopt this sheltered
3 employment doctrine, this is not the case with
4 which to do so. It's our position that we have
5 not adopted this sheltered employment doctrine
6 and should not do so now. Although North
7 Carolina Workers' Compensation case law retains
8 a special significance in the state, our
9 legislatures pronouncements of the law must
10 necessarily prevail. Generally speaking, North
11 Carolina case law can be given weight when
12 interpreting statutes South Carolina adopted
13 from North Carolina. And while we both spent
14 a great deal of time and energy in our pre-
15 hearing -- in our briefs about the definition
16 of disability, we did not talk about the
17 application of that deposition. And we would
18 respectfully point out that there is a
19 significant difference in the statutes dealing
20 with what constitutes tot- -- total disability,
21 which would obviously be South Carolina Code
22 42-9-10 and North Carolina General Statute 97-
23 29. South Carolina did not adopt all the
24 provisions North Carolina's Statute. And so,
25 it's our position that these statutes differ



1 enough to break that precedential chain, if you
2 will, between North Carolina case law and South
3 Carolina's statutory analysis regarding
4 payments, entitlement to permanent and total
5 disability. Additionally, North Carolina has a
6 statute defining suitable work, which is 97-2,
7 subsection 22, which South Carolina did not
8 adopt. And suitable work is obviously
9 discussed at length in the sheltered employment
10 North Carolina case law cases. Even if South
11 Carolina acknowledges or adopts a sheltered
12 employment doctrine, the facts of this claim
13 are clearly distinguishable. Employer not only
14 provided permanent accommodations over the past
15 three years, they also promoted the Claimant to
16 the salaried position, gave him a significant
17 raise, transferred claimant to a new plant
18 after the original plant he was working in
19 shutdown, and he wasn't even furloughed during
20 the pandemic, although his supervisor
21 apparently was at some point. Now, according
22 to *Larson*, when the Claimant returns to work
23 for the employer making the same wages, there's
24 a presumption that there is no wage loss. And
25 I would also point out in response to Logan's



1 argument that 42-9-10, when determining what
2 constitutes total disability, starts when the
3 incapacity for work resulting from an injury is
4 total. Well, the only evidence is that it's
5 not total disability. He's been working there
6 for three years, granted with permanent
7 accommodations, but that's what accommodations
8 are. There is -- beg your pardon, hang on,
9 lost my place. So, there's a presumption that
10 there's no wage loss, there's often request by
11 a Claimant if he can prove that the employment
12 is made work, sheltered work, so that's truly
13 the issue. Can they rebut the presumption that
14 his current wages are not evidence but an
15 earning capacity. It's our position that the
16 Appellant's contention that he is unable to
17 gain suitable employment in the open market is
18 misplaced. He's been promoted to a salaried
19 position and transferred, repositioned, given
20 raises and in open market over the past three
21 years. There's no reliable evidence that the
22 equipment that he specializes in doesn't exist
23 somewhere else. There's no reliable evidence
24 that claimant is the only person in South
25 Carolina who knows how to maintain it, or could



1 learn how to maintain it. So, Respondents --
2 further, Respondents were unable to find any
3 case law, applying the sheltered work doctrine,
4 someone that specializes in something like the
5 claimant does here, and that's maintaining this
6 very old equipment at the factory. And so in
7 his brief, his argument relies heavily on the
8 possibility that he, you know, may be
9 unemployable if Muffin Man went out of business
10 in the future, when there is no evidence of,
11 you know any indication that that might happen.
12 Additionally, this assumes that the equipment
13 does not exist anywhere in South Carolina, and
14 that the equipment would be destroyed rather
15 than repurchased by another potential employer.
16 According to *Larson*, if the claimants earnings
17 and post injury employment are sufficiently
18 regular and continuous to establish true
19 earning capacity, which we contend is certainly
20 the case here, the claimant cannot assert
21 disability based on the uncertainty of future
22 content -- continuance of employment
23 opportunities in that field. The claimant must
24 take his or her chances on economic
25 unemployment like anyone else. So, if the



1 Commission were to find that claimant is
2 permanently and totally disabled, this would
3 raise many questions. If -- if -- if that is
4 the case, we would argue that we would be
5 entitled to credit for payment of TTD and we'll
6 accept credit for payment of all of those wages
7 in lieu of TTD since the date of injury and
8 which, I mean, I don't know how that would end
9 up, but it would be very interesting to
10 determine. I mean, I -- I don't think it would
11 be dated maximum medical improvement because he
12 had impairment the whole time since the date of
13 injury. But for these reasons, we -- we think
14 that the Commission, this -- the Hearing
15 Commissioner's decision and Order should be
16 affirmed. Does anyone have any questions for
17 me?

18 **COMMISSIONER CAMPBELL:** No, huh-uh.

19 **COMMISSIONER JAMES:** All right. Mr. Rollins, you
20 have three minutes in reply.

21 **APPELLANT/CLAIMANT'S POSITION:**

22 **MR. ROLLINS:** All right. I will be brief. The
23 central thing I think I need to convey is that
24 we don't have to adopt a new doctrine to find
25 this claimant disabled. Sheltered employment



1 is a -- it's a term used when someone is
2 receiving a paycheck, but is still permanently
3 totally disabled. What -- the only thing we
4 have to do to determine what he's entitled to
5 is look at the Act and focus on the statutory
6 definition of capacity to work and the case law
7 that -- that follows it. And there is a
8 specific in *Stephenson v. Rice Services*, which
9 is 323 South Carolina 113, where the Court
10 held, quote, the mere fact that employment is
11 not always indicative of earning capacity. So,
12 you can be employed and still not have earning
13 capacity. And that was a court that did not
14 expressly recognize sheltered employment, but
15 it did expressly recognize that the fact that
16 you're employed does not mean that you are not
17 totally and permanently disabled. He -- this
18 -- this is a sp- -- the employers contention in
19 this case has been that he is a valuable
20 employee because their setup here is unique,
21 because he is the only person who knows how to
22 operate this equipment and they can't find
23 anybody else to operate the equipment so they
24 have to keep him. So for them to now say well,
25 they -- he can do this somewhere else, it's --



1 it's not likely. If they can't find somebody
2 else who can do it there, I don't think there's
3 any evidence that he could go out somewhere
4 else and do the same thing with the same
5 equipment somewhere else. The only specific
6 factual findings in the record that relates to
7 what his -- to -- to why he is not totally
8 disabled, is finding of fact number three,
9 which simply states that he is earning more
10 money and therefore he is not permanently and
11 totally disabled. The Court expressly held in
12 *Stephenson v. Rice Services*, that that is not
13 the proper analysis for total disability. So,
14 it's our contention that although he nominally
15 had employment at this facility that by itself,
16 under these unique set of circumstances, does
17 not prove that he's not disabled. And the
18 North Carolina Courts go through the rationale
19 outside other jurisdictions. Essentially, if
20 the employer goes out of business and the --
21 and the claimant can't work anywhere else, he
22 -- he's hung out to dry or there could be a
23 dozen reasons -- reasons that -- that that
24 business simply ceases to exist and then the
25 employee cannot go anywhere else. So, that's



1 the reason why courts have recognized sheltered
2 employment. It's the reason why disability is
3 defined as it is under South Carolina law.
4 Thank y'all.

5 **COMMISSIONER JAMES:** Thank y'all. That concludes
6 this hearing.

7 **(There being no further discussion, the proceedings**
8 **concluded at 9:54 a.m.)**

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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 material.

April 21, 2021

s/ Logan Rollins

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