

State of South Carolina  
**Workers' Compensation Commission**

**APPELLATE PANEL DECISION AND ORDER**

**COMMISSION PANEL:** T. Scott Beck, R. Michael Campbell, II, and Avery B. Wilkerson

SCWCC File No.: 2014781

William Doneth,

Claimant,

v.

Keowee Restaurant Group Inc.,

Employer,

and

Accident Fund National Insurance Company,

Carrier,

Defendants.

**RECEIVED**

SEP 05 2023

SC Court of Appeals

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**AFFIRMED**

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Hearing held in Columbia, South Carolina,  
on the 5<sup>th</sup> day of June, 2023.

Per notice timely and properly served upon all Parties of Interest.

Appearances: David R. Price, Jr., of David R. Price, Jr., P.A., appeared on behalf of Claimant/Appellant.

J. South Lewis, II, of Willson Jones Carter & Baxley, P.A., appeared on behalf of Defendants/Respondents.

Court Reporter: Sarah Costilow, Creel Court Reporting, Inc., 1230 Richland Street, Columbia, South Carolina 29201, (803) 252-3445

Filed: \_\_\_\_\_

*August 21, 2023*

## **I. STATEMENT OF THE CASE**

Claimant was employed by Defendant, Keowee Restaurant Group, LLC (“Keowee”) and on October 2, 2020, suffered a low back injury with resulting radicular leg pain. Claimant asserts that he has not reached MMI and is entitled to TTD benefits from February 24, 2022, and continuing. Claimant alleges that during the course of treatment he began experiencing body spasms, and that same are related to the work injury and/or medical treatment he received for the work injury.

Defendants assert that pursuant to the medical evidence, namely Dr. Lim's opinions and reports and other treating physicians, that Claimant reached MMI as of February 24, 2022, and is not entitled to TTD or TPD benefits for any period after February 24, 2022. They assert that there is no medical evidence supporting that the body spasms are related to the work injury.

This matter comes before the South Carolina Workers' Compensation Commission on a Form 50 filed by the Claimant seeking additional medical treatment and TTD benefits. Prior to this hearing pursuant to a pre-trial conference, the parties reached an agreement as to the following:

1. Defendants admit a compensable injury on October 2, 2020, to the low back and associated radiculopathy.
2. Defendant's will authorize pain management treatment with a physician of their choosing for the low back and associated radiculopathy.
3. Claimant's average weekly wage is \$670.38, with a corresponding compensation rate of \$447.14.
4. The parties agree Claimant will be paid \$16,500.00 in full satisfaction and compromise of all alleged temporary total disability (TTD) and temporary partial disability (TPD) benefits for the period of October 2, 2020, to February 24, 2022.

## **II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The parties were heard by Commissioner Cynthia C. Dooley, on January 19, 2023, in

Anderson County, South Carolina. On March 16, 2023, Commissioner Dooley issued the following Decision and Order:

**SINGLE COMMISSIONER FINDINGS OF FACT**

1. *Claimant was moving heavy tables on October 2, 2020, injuring his lower back with resulting pain radiating down both legs. He argues that he has not reached MMI and is seeking additional medical treatment.*
2. *Defendants argue that Claimant is at MMI based on the reports from Dr. Lim and Dr. Kanos. Defendants are seeking a determination of MMI and PPD benefits.*
3. *Prior to the call of the case, the parties were able to reach an agreement on a Consent Order regarding Claimant's AWW and Comp Rate which is \$620.38 and \$447.04, respectively. They also reached an agreement regarding the back TTD benefits owed to Claimant in the amount of \$16,500. The Defendants also agreed to send Claimant for further pain management for the back and radicular symptoms.*
4. *Claimant's VA records were reviewed and showed that the Claimant received a 100% disability rating from the VA for PTSD, increased from 30% disability on June 28, 2019. (APA #23, p. 628.)*
5. *Claimant was evaluated by Dr. Blundy (Chiropractor) on October 8, 2020, and diagnosed with radiculopathy, lumbosacral facet syndrome, and segmental and somatic dysfunction of the lumbar region. (APA #1, p. 4-6.)*
6. *Dr. Lim evaluated Claimant on October 29, 2020. He noted that Claimant had right-sided back pain, no prior issues with back pain, pain was noted at level of 3/10, x-rays showed mild degenerative changes at the L5-S1 levels with possible pars defect and degenerative changes at the L1-2 level, and no spondylolisthesis. Assessment revealed low back pain, a lumbar strain, and lumbar radiculopathy. Dr. Lim recommended an MRI, physical therapy, medications, and light duty work with no bending. (APA #2, p. 7-10.)*
7. *On November 5, 2020, Claimant was evaluated by Dr. Blundy (Chiropractor). He noted that Claimant felt pain after moving tables. He reported pain in the low back, abdomen, and groin at a 9/10 level. X-rays showed Degenerative Disc Disease and Claimant was diagnosed with radiculopathy, lumbosacral region pain, facet syndrome, and segmental and somatic dysfunction of the lumbar region. (APA #1, p. 1-3.)*
8. *Claimant underwent an MRI on November 10, 2020, which showed small right paracentral posterior disc bulging at the L5-S1 level without complication, and small left paracentral posterior disc bulging at the L4-5 level with very mild left-sided neural foraminal narrowing. (APA #4, p. 53-54.)*
9. *Claimant attended physical therapy at Hummel Physical Therapy (hereinafter "Hummel") on November 12, 2020, and Claimant noted pain in the right lower back and occasionally down the back of the right leg. (APA #5, p. 98.)*
10. *Claimant attended physical therapy at Hummel on November 18, 2020, at which time he*

- noted a little more pain at work. (APA #5, p. 96.)*
11. *Claimant attended physical therapy at Hummel on November 19, 2020; he noted that he had been off of work for two days, so that helped. (APA #5, p. 95.)*
  12. *Claimant attended physical therapy at Hummel on November 25, 2020, and noted that he was doing better with just a little discomfort. (APA #5, p. 93.)*
  13. *Claimant was evaluated at Hummel on December 2, 2020, and noted that his back was fine today, and he was still having some trouble when on his feet at work. (APA #5, p. 92.)*
  14. *Claimant was evaluated at Hummel on December 3, 202, and noted that he was doing well with no pain today. (APA #5, p. 91.)*
  15. *Claimant saw Dr. Lim on December 3, 2020, and Claimant noted 70% relief with physical therapy. Claimant was working light duty with no bending with pain at a 3/10 level. The MRI showed degeneration at the L4-5, L5-S1, small central disc herniation at L4-5 and L5-S1, and no significant compression on neurologic structure. The assessment revealed a lumbar disc herniation and a prolapsed lumbar intervertebral disc. The MRI does not indicate surgery is required. Dr. Lim recommended physical therapy and light duty with limited bending. (APA #2, p. 11-13.)*
  16. *On December 4, 2020, Claimant was evaluated at Oconee Memorial Hospital and stated that he was brushing his teeth in the bathroom, started to feel dizzy, and lost balance, and stumbled hitting his head on the wall, resulting in a head laceration. It was noted the dizziness was likely due to numerous new medications and corresponding side effects of dizziness. Claimant was diagnosed with a laceration of the scalp and his wound was closed with staples. (APA #24, p. 695-727.)*
  17. *Claimant was evaluated at Hummel on December 9, 2020, noting that his pain was not bad today. (APA #5, p. 89.)*
  18. *Claimant was evaluated at Hummel on December 10, 2020, noting that his back was doing well today. (APA #5, p. 88.)*
  19. *Claimant attended physical therapy at Hummel on December 30, 2020, noting that he was no longer having sharp pain but rather just some nagging pain. (APA #5, p. 87.)*
  20. *Claimant attended physical therapy at Hummel on December 31, 2020, noting that he was hurting a little on the right side of his back. (APA #5, p. 86.)*
  21. *Claimant attended physical therapy at Hummel on January 6, 2021, noting that he still had pain down his leg when he was on his feet a lot. (APA #5, p. 84.)*
  22. *Claimant attended physical therapy at Hummel on January 7, 2021, noting overall improvement with physical therapy, and that his low back pain was down to a 0-3/10 level. (APA #5, p. 82.)*
  23. *On January 7, 2021, Claimant saw Dr Lim and reported pain at a 2-3/10 level, weakness, pain in the lower back and down the right posterior thigh with numbness and tingling when on his feet at work. Claimant was diagnosed with right-sided low back pain. Dr. Lim noted*

- physical therapy was helping and he recommended work conditioning, light duty work for two weeks, and then to advance Claimant to full duty. (APA #2, p. 14-16.)*
24. *Claimant was evaluated at Hummel on January 12, 2021, noting that the doctor ordered work conditioning. (APA #5, p. 78.)*
  25. *On January 13, 2021, VA reports show that Claimant was started on low dose Lithium, and increased Sertraline and started Naltrexone. (APA #23, p. 648.)*
  26. *Claimant was evaluated at Hummel on January 20, 2021, noting that he had been hurting all week, just like when it started. (APA #5, p. 77.)*
  27. *Claimant was evaluated at Hummel on January 21, 2021, noting a recent exacerbation of low back pain into the left buttock and thigh. (APA #5, p. 76.)*
  28. *Claimant was evaluated at Hummel on January 27, 2021, noting increased pain the last couple days, and exacerbation of right low back and lower extremity pain. (APA #5, p. 75.)*
  29. *Claimant was evaluated at Hummel on January 28, 2021, noting a little pain today. (APA #5, p. 74.)*
  30. *Claimant attended physical therapy at Hummel on January 29, 2021, noting a recent exacerbation of pain. (APA #5, p. 68.)*
  31. *Claimant attended physical therapy at Hummel on February 3, 2021; he reported that he was doing better, worked yesterday and had a little pain, but overall felt improvement and decreased low back pain. (APA #5, p. 72.)*
  32. *Claimant was evaluated by Dr. Lim on February 4, 2021, and Dr. Lim noted that Claimant was working light duty and woke up three weeks ago with severe pain in his back and had to take eight days off, because he was unable to stand and walk for any prolonged period of time. Claimant was interested in an epidural steroid injection (hereinafter "ESI"). Dr. Lim noted that the pain was in the low back radiating down Claimant's hamstrings to his mid posterior thigh, and no pain below the knees. The pain was rated a 5/10. Dr. Lim recommended physical therapy, an ESI with Dr. Schiff, and light duty work. (APA #2, p. 17-19.)*
  33. *Claimant attended physical therapy at Hummel on February 8, 2021. Claimant noted pain down his leg and that work was the same. (APA #5, p. 69.)*
  34. *Claimant attended physical therapy at Hummel on February 18, 2021, noting that he was doing pretty well. (APA #5, p. 64.)*
  35. *On February 22, 2021, Claimant reported to the VA that he was doing okay. (APA #23, p. 641.)*
  36. *Claimant attended physical therapy at Hummel on February 24, 2021, noting that his back had flared up again. (APA #5, p. 63.)*
  37. *Claimant was evaluated by Hummel on February 25, 2021, noting that he was better today than yesterday, had decreased low back pain, and improved lower extremity strength. (APA*

- #5, p. 61-62.)
38. *Claimant underwent an ESI on March 3, 2021, at the L4-5 level, performed by Dr. Schiff. (APA #2, p. 20.)*
  39. *Claimant was evaluated by Dr. Lim on March 4, 2021 and reported that the ESI helped his pain quite a bit. Dr. Lim recommended that Claimant finish physical therapy and continue light duty. (APA #2, p. 22-24.)*
  40. *Claimant was evaluated by Hummel on March 4, 2021, and noted that he was having a hard time since receiving the ESI. (APA #5, p. 60.)*
  41. *Claimant was evaluated at Hummel on March 23, 2021, noting he was improving but is having flareups while on his feet. (APA #5, p. 58-59.)*
  42. *On March 23, 2021, Claimant saw Dr. Lim. Dr. Lim noted that following physical therapy Claimant reports spasms in his legs and entire body; he described the pain as a jolt and shocking. Claimant reports he was out of work for three weeks and did not leave the house. He was using a TENS unit and ice therapy. He had not returned to work and was unable to get the medications previously prescribed. Dr. Lim took the Claimant out of work until March 31, 2021, cleared him to return to work on April 1, 2021, and recommended an ESI. (APA #2, p. 25-28.)*
  43. *On April 14, 2021, Claimant underwent an ESI at the L4-5 level, performed by Dr. Schiff. (APA #2, p. 29.)*
  44. *On May 12, 2021, Claimant reported to the VA that he was pretty good. Claimant was diagnosed with PTSD and an alcohol disorder. He reported that he had reduced his drinking to rare social drinks. (APA #23, p. 637.)*
  45. *On November 18, 2021, Claimant was evaluated by Dr. Lim. Dr. Lim noted that Claimant still had some occasional shooting pain that happens once or twice at work. Claimant reported pain at a 2-3/10. It was noted Claimant was involved in a motor vehicle accident (hereinafter "MVA"), but his pain was not worse after the MVA and rather was the same as it was prior to the MVA. Dr. Lim released Claimant to full duty work. (APA #2, p. 30-33.)*
  46. *Natalie Stapleton, PAC (Dr. Lim's Physician's Assistant) saw Claimant on January 5, 2022. Claimant stated that despite being at MMI and on full duty status, he was unable to return to work and was experiencing low back spasms and pain, as well as pain in both legs. He reported a 4/10 pain level. He reported having acute exacerbations of debilitating shocking-like pains into his back that take his breath away, tenderness to palpitation widespread in the lumbar spine at the paraspinal musculature (more on the left versus the right), tenderness to palpitation over the sciatic notches and sciatic cords bilaterally, and that he is able to walk and stand without significant discomfort. It was noted that Claimant was at MMI, had increased pain, and that Dr. Lim indicated no surgical intervention was recommended. Repeat ESI was discussed/recommended, along with a full duty work status. (APA #2, p. 34-37.)*
  47. *Claimant saw Nurse Delores Sheftall on February 3, 2022. Nurse Sheftall observed Claimant having violent spasms resulting in body jerking. Claimant reported his back felt*

*like it was shocking his whole body. Nurse Sheftall noted it was not safe to proceed with the ESI. (APA #2, p. 38.)*

48. *Claimant was seen by Dr. Lim on February 24, 2022. He noted Claimant's pain was reported as a 9/10. Dr. Schiff did not feel safe to proceed with the ESI due to the back spasms. Tenderness to palpitation widespread into the lumbar spine at the paraspinal musculature, (being worse on the left versus the right) was noted. It was also noted that there is tenderness to palpitation over the sciatic notches and sciatic cords bilaterally. Dr. Lim recommended an MRI and a referral to neurology. (APA #2, p. 39-43.)*
49. *Claimant underwent an MRI on March 14, 2022. It showed an L5-S1 level disc protrusion/osteophyte complex, contributing to a mild 12 mm AP canal narrowing with minimal progression from previous study; mild neural foraminal narrowing bilaterally; an L4-5 level disc protrusion/osteophyte complex contributing to a mild to moderate 9.3 mm AP canal narrowing with minimal progression from previous study; a mild to moderate neural foraminal narrowing bilaterally; and an L1-2 level mild disc bulge/osteophyte complex contributing to a mild 13 mm AP canal narrowing, with minimal progression from previous study. The remaining lumbar disc levels show degenerative changes to a lesser degree, otherwise grossly stable. There were chronic degenerative changes noted. (APA #4, p. 55-56.)*
50. *Claimant was evaluated by Dr. Rogers (Claimant's IME) on July 15, 2021. Dr. Rogers noted that as a result of the Claimant's accident at work he had 2-disc herniations and subsequent lumbar radiculopathy. He felt that Claimant was not at MMI, and that he needed a neurosurgical evaluation for potential surgical intervention. He felt that Claimant had a 10-13% whole person impairment rating, and if surgery was performed then Claimant would have a 10-23% whole person impairment rating. Dr. Rogers further stated that the thoracolumbar spastic activity was not related to use of lithium. He felt that Claimant had Depression with a 15-29% whole person disability rating and that he needed pain management and psychiatric treatment. (APA #7, p. 107-115.)*
51. *Claimant underwent an MRI on July 22, 2022, which showed an L4-5 posterior, protruded type disc herniation with moderate left and mild right lateral recess narrowing and ligamentum hypertrophy; and an L5-S1 right subarticular, shallow protruding herniation with a small annular tear and mild right lateral recess narrowing. (APA #6, p. 105-106.)*
52. *Dr. Rogers completed an NCS/EMG on July 27, 2022 with findings of electrophysiologic changes noted in the motor and sensory conduction studies, demonstrating bilateral common peroneal motor distal slowing and axonal loss, evidence of bilateral superficial peroneal axonal loss and left distal sensory slowing; absent common peroneal F waves; electrophysiologic changes noted in the EMG examination suggestive of chronic neuropathic injury in the bilateral Tibialis anterior, Peroneus Longus, EHL, biceps Femoris (short head) and right Tibialis posterior - potential noted in the right biceps Femoris (short head), EHL, Gluteus Medius – and the L5 paraspinals are consistent with muscle membrane instability and denervation; and findings consistent with bilateral L4-5 level and bilateral L5-S1 level distribution compromise, with the right side being more grossly affected than the left side. (APA #7, p. 116-123.)*
53. *Dr. Lim's deposition was taken on August 8, 2022, and is a part of the record as APA #22, beginning on page 484. Dr. Lim notes after review of Claimant's MRIs he did not feel that Claimant was a surgical candidate, and that Claimant was 70% better after physical*

therapy. (p. 497.) He noted that after Claimant was prescribed the new medications from the VA Claimant fell. (p. 498-499.) He noted that Claimant first reported leg pain to him on January 7, 2021. (p. 500-501.) He noted that the radicular pain started after the fall at home and the radicular pain could have been caused by the fall. (p. 501-503.) He feels that Claimant's spasms are not related the work accident. (p. 506.) He stated that the March 14, 2022, MRI shows no explanation for the shocking type spasms. (p. 511.) He stated that the VA started Lithium on August 16, 2021, and that the spasms Claimant experienced were not coming from his back. (p. 513.) He stated that Claimant reported no radicular pain until after his fall at home. (p. 514.) He stated that Claimant's July 22, 2022, MRI is the same and Claimant is still not a surgical candidate. (p. 514.) He stated that he did not feel that Claimant needed any additional treatment for his back. (p. 515.) He stated that he felt that Claimant was at MMI on February 24, 2022. (p. 516.) He felt that Claimant had an impairment rating of 2-6%. (p. 516.) He felt that Claimant could return to work at full duty capacity. (p. 517.) He stated that the recommendation for a neurologist evaluation was unrelated to the workers' compensation accident. (p. 517.) He stated that Claimant might not be at MMI since he could not get the final ESI. (p. 522.) He stated that disc herniations do not cause shocking/spasm episodes. (p. 528.) He stated that the herniations are not worse per the MRIs. (p. 534.) He stated that Claimant had no neurologic compression. (p. 536.) He stated that any worsening of the herniations was not related to Claimant's accident at work. (p. 549.)

54. Claimant was evaluated by Dr. Poletti on September 21, 2022. Dr. Poletti noted that Claimant had disrupted both his L4-5 and L5-S1 discs and that Claimant's physical size makes surgery unpredictable. He assigned Claimant a 20% impairment rating; he recommended medial branch blocks and facet blocks, a lumbar facet rhizotomy, lumbar bracing, 30-pound permanent lifting restrictions, and noted that Claimant was at MMI but needed pain management. Dr. Poletti did not recommend surgery. (APA #8, p. 124-125.)
55. Claimant was evaluated by Dr. Kanos on November 28, 2022, who opined that surgery was not warranted. Further, Dr. Kanos opined that Claimant's spasms were not related to the work accident. Dr. Kanos recommended a functional capacity evaluation and pain management. (APA #9, p. 126-134.)
56. Upon review of the totality of the record, I find Claimant's spasms are not related to the work injury based upon the following:
  - a. Dr. Lim's testimony that Claimant's spasms are unrelated to his work accident. (APA #22, p.506);
  - b. Dr. Kanos' second opinion report noting he did not feel that Claimant's spasms were related to the accident at work. (APA #9, p. 126-134);
  - c. Claimant's IME physician, Dr. Rogers, did not set forth an opinion relating to the spasms to the work injury. (APA #7, p. 107-123); and
  - d. Claimant's IME Physician, Dr. Poletti, did not opinion in his report that the spasms relate to the work injury. (APA #8, p. 124-125.)
57. Upon review of the record as a whole, specifically the medical evidence and deposition testimony from the authorized treating physician Dr. Lim, I find that the Claimant has reached MMI as of February 24, 2022, with a 2-6% rating to his spine. Dr. Lim testified

*repeatedly that the Claimant was not a surgical candidate based on the MRIs. Dr. Lim also testified that the Claimant's spasms were not related to his accident at work. Dr. Poletti also agreed that Claimant was not a surgical candidate. Dr. Kanos agreed that Claimant's spasms were not related to his work accident.*

58. *Continued Pain management does not preclude a finding of MMI and I find the greater weight of the evidence supports that Claimant has reached MMI.*
59. *I also find it compelling that Claimant rides a motorcycle as his main mode of transportation and that on March 4, 2021, Claimant told Dr. Lim that he had quite a bit of improvement following the ESI and on the same day told Hummel that he was having problems since the ESI.*
60. *I find that Claimant has a 10% permanent impairment to his spine. This decision is based upon the greater weight and preponderance of the evidence.*

### **SINGLE COMMISSIONER CONCLUSIONS OF LAW**

*Accordingly, as provided by the South Carolina Code Section 42-1-10 it is the determination and finding of this Commissioner:*

1. *That the parties to this proceeding are subject to and bound by the South Carolina Workers' Compensation Act, pursuant to S.C. Code Ann. § 42-1-10.*
2. *That Claimant sustained an admitted injury by accident to his lower back, with resulting radicular leg pain, on October 2, 2020, arising out of and in the course and scope of his employment with Keowee Restaurant Group, Inc. pursuant to § 42-1-160.*
3. *That Claimant has sustained a 10% permanent impairment to his back pursuant to § 42-9-30(21).*
4. *That Claimant is entitled to continued medical treatment in the form of pain management, with a physician of Defendants' choosing, as agreed to by the parties and pursuant to § 42-15-60.*

### **SINGLE COMMISSIONER ORDER**

***IT IS HEREBY ORDERED** that the Findings of Fact and Conclusions of Law are incorporated herein as set above, that Claimant reached MMI as of February 24, 2022, and the Claimant is entitled to 10% permanent partial disability to his back.*

**AND SO IT IS ORDERED.**

**III. ISSUES ON APPEAL**

1. Whether the Single Commissioner erred in determining that Claimant was at MMI on February 24, 2022
2. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, when Dr. Lim did not make any reference to MMI on the date of that visit, but rather wrote him out of work, ordered a repeat MRI, and referred the Claimant to a neurologist (CONA Records, APA #2, pp. 39-41).
3. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, based on the deposition testimony from the authorized treating physician on August 8, 2022, when Dr. Lim had not examined the Claimant since the February 24 visit where Dr. Lim did not state that the Claimant was at MMI (CONA Records, APA #2, pp. 39-41).
4. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, when Dr. Lim stated that "Claimant might not be at MMI since he could not get the final ESI" (Order, p. 13, paragraph 53; Dr. Lim Depo., APA #22, p. 522, ll. 1-6).
5. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, based on the testimony of Dr. Lim on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant since February 24, 2022 (Dr. Lim Depo., CONA Records, APA #22, p. 522, ll. 9-12).
6. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, based on the testimony of Dr. Lim on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant since February 24, 2022, and Dr. Rogers stated after Claimant's IME on July 15, 2021, that Claimant was not at maximum medical improvement and would benefit from an evaluation for surgical evaluation and "continued medical management" (Dr. Rogers Report, APA #7, p. 114).
7. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, based on the testimony of Dr. Lim on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant since February 24, 2022, and Dr. Poletti stated after Claimant's IME on September 21, 2022, that surgery could theoretically have the effect of lessening his disability" but "his physical size makes that option unpredictable," and so Dr. Poletti recommended that Claimant first "consider medical branch blocks and facet blocks and, if effective, consider lumbar facet rhizotomy as interventional treatment that would likely have the effect of lessening his disability" (Dr. Poletti Report, APA #8, p. 125).
8. Whether the Single Commissioner erred in finding the Claimant was at MMI on February 24, 2022, based on the testimony of Dr. Lim on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant

since February 24, 2022, and Dr. Kanos performed the Employer's IME on November 28, 2022, and did not make a finding of MMI (Dr. Kanos Report, APA #9, p. 128).

9. Whether the Single Commissioner erred in failing to determine whether the Claimant sustained a permanent disability to his right leg when the authorized treatment physician testified that the July MRI report suggests that there is recess narrowing on the right side at L5/S1 that is touching the S1 nerve root, and if true it means he would have pain down the S1 nerve distribution which would cause pain down his right leg (Dr. Lim Depo., APA #22, p. 542, l.22 -p. 543, l. 9).
10. Whether the Single Commissioner erred in failing to determine whether the Claimant sustained a permanent disability to his right leg when Dr. Kanos performed the Employer's IME on November 28, 2022, and stated that "the pain into the right leg was resulted from the work injury" (Dr. Kanos Report, APA #9, p. 128).
11. Whether the Single Commissioner erred in failing to determine whether the Claimant sustained a permanent disability to his right leg and left leg when Dr. Rogers completed an NCS/EMG on July 27, 2022 with findings of electrophysiologic changes noted in the motor and sensory conduction studies, demonstrating bilateral common peroneal motor distal slowing and axonal loss, evidence of bilateral superficial peroneal axonal loss and left distal sensory slowing; absent common peroneal F waves; electrophysiologic changes noted in the EMG examination suggestive of chronic neuropathic injury in the bilateral Tibialis anterior, Peroneus Longus, EHL, biceps Femoris (short head) and right Tibialis posterior - potential noted in the right biceps Femoris (short head), EHL, Gluteus Medius- and the LS paraspinals are consistent with muscle membrane instability and denervation; and findings consistent with bilateral L4-5 level and bilateral L5-S1 level distribution compromise, with the right side being more grossly affected than the left side. (Order p. 13, paragraph 52; Dr. Rogers Report, APA #7, p. 116-123).
12. Whether the Single Commissioner erred in finding that Claimant has 2-6% impairment rating to his spine (Order p. 14, paragraph 56).
13. Whether the Single Commissioner erred in finding that Claimant has 2-6% impairment rating to his spine, based on the deposition testimony from the authorized treating physician on August 8, 2022, when Dr. Lim had not examined the Claimant since the February 24, 2022, visit where Dr. Lim did not find the Claimant at MMI and did not evaluate him for impairment (CONA Records, APA #2, pp. 39-41).
14. Whether the Single Commissioner erred in finding that Claimant has 2-6% impairment rating to his spine, based on the deposition testimony from the authorized treating physician on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to physician that has actually examined the Claimant since February 24, 2022 (Dr. Lim Depo. APA #22, p. 522, ll. 9-12).
15. Whether the Single Commissioner erred in finding that Claimant has 2-6% impairment rating to his spine, based on the deposition testimony from the authorized treating physician on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant since February 24, 2022, and Dr. Rogers stated after Claimant's IME on July 15, 2021, that Claimant "had a 10-13% whole person impairment rating" (Order p. 12, paragraph 50).

16. Whether the Single Commissioner erred in finding that Claimant has 2-6% impairment rating to his spine, based on the deposition testimony from the authorized treating physician on August 8, 2022, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant since February 24, 2022, and Dr. Poletti stated after Claimant's IME on September 21, 2022, that Claimant needed "Lumbar bracing, 30-pound lifting restrictions" and "assigned Claimant a 20% impairment rating" (Order p. 13, paragraph 54).
17. Whether the Single Commissioner erred in finding that Claimant has 2-6% impairment rating to his spine, based on the deposition testimony from the authorized treating physician on August 8, 2022, and without the benefit of a Functional Capacity Evaluation, when Dr. Lim stated that he would defer a decision on MMI to a physician that has actually examined the Claimant since February 24, 2022, and Dr. Kanos stated after the Employer's IME on November 28, 2022, that "the most appropriate treatment for his lumbar spine is a FCE and another evaluation with pain management." (Dr. Kanos Report, APA #9, p. 128; Order, p. 13, paragraph 55).
18. Whether the Single Commissioner erred in finding that Claimant has a 10% impairment rating to his spine (Order, p. 14, paragraphs 58 and Conclusion of Law no. 3).
19. Whether the Single Commissioner erred in finding that Claimant has a 10% impairment rating to his spine without the benefit of the FCE requested by Dr. Kanos (Dr. Kanos Report, APA #9, p. 128; Order, p. 13, paragraph 55).
20. Whether the Single Commissioner erred in failing to assign a disability rating to the Claimant's right leg when the authorized treatment physician testified that the July MRI report suggests that there is recess narrowing on the right side at L5/S1 that is touching the S1 nerve root, and if true it means he would have pain down the S1 nerve distribution which would cause pain down his right leg (Dr. Lim Depo., APA #22, p. 542, l.22 -p. 543, l. 9).
21. Whether the Single Commissioner erred in failing to assign a disability rating to the Claimant's right leg when Dr. Kanos performed the Employer's IME on November 28, 2022, and stated that "the pain into the right leg was resulted from the work injury" (Dr. Kanos Report, APA #9, p. 128).
22. Whether the Single Commissioner erred in failing to assign a disability rating to the Claimant's right leg and left leg when Dr. Rogers completed an NCS/EMG on July 27, 2022 with findings of electrophysiologic changes noted in the motor and sensory conduction studies, demonstrating bilateral common peroneal motor distal slowing and axonal loss, evidence of bilateral superficial peroneal axonal loss and left distal sensory slowing; absent common peroneal F waves; electrophysiologic changes noted in the EMG examination suggestive of chronic neuropathic injury in the bilateral Tibialis anterior, Peroneus Longus, EHL, biceps Femoris (short head) and right Tibialis posterior - potential noted in the right biceps Femoris (short head), EHL, Gluteus Medius - and the L5 paraspinals are consistent with muscle membrane instability and denervation; and findings consistent with bilateral L4-5 level and bilateral L5-S1 level distribution compromise, with the right side being more grossly affected than the left side. (Order p. 13, paragraph 52; Dr. Rogers Report, APA #7, p. l. 16-123).

23. Whether the Single Commissioner erred in finding that pain management does not preclude a finding of MMI (Order, p. 14, paragraph 58), when the Claimant has not received any pain management to determine whether modalities are available that would resolve or lessen the Claimant's impairment instead of simply maintaining his degree of physical impairment.
24. Whether the Single Commissioner erred in finding that pain management does not preclude a finding of MMI when Dr. Poletti stated after Claimant's IME on September 21, 2022, that Claimant should "consider medical branch blocks and facet blocks and, if effective, consider lumbar facet rhizotomy as interventional treatment that would likely have the effect of lessening his disability" (Dr. Poletti Report, APA #8, p. 125).
25. Whether the Single Commissioner erred in finding it "compelling" that on March 4, 2021, the Claimant told Dr. Lim he had improvement since the ESI on March 3, 2021, and then on the same day told Hummel PT he was having problems since the ESI (Order, p. 14, p. 57), when the records reflect as follows:
  - a. Claimant was actually observed by his physical therapist on March 4 to be experiencing "spasms throughout LEs and lumbar" (P.T. Records, APA #5, p. 60); and
  - b. The Claimant told Dr. Lim on March 25 the spasms observed by the physical therapist on March 4 began "later that day ... and after a long drive" from Dr. Lim's office in Duncan (near Spartanburg) to the physical therapist's office in Seneca (CONA Records, APA #2, p. 25).
26. Whether the Single Commissioner erred in finding that Dr. Lim stated "the herniations are not worse per the MRIs" (Order, p. 13, paragraph 53); when Dr. Lim also stated as follows:
  - a. Dr. Lim testified over and over again that he had not seen the MRI from July 22, 2022 (Dr. Lim Depo., APA #22, p. 534, ll. 11-20; p. 537, ll. 11-13; p. 539, ll. 2-6; p. 542, ll. 17-21; p. 543, ll. 13-18; p. 549, ll. 16-22);
  - b. Dr. Lim conceded that he does not know whether the annular tear at L5/S1 that was not noted until the July MRI is getting worse until he sees the image (Dr. Lim Depo., APA #22, p. 540, ll. 6-11);
  - c. Dr. Lim conceded that he does not know whether the herniation or compression is getting worse until he sees the July MRI (Dr. Lim Depo., APA #22, p. 541, ll. 5-10);
  - d. Dr. Lim testified that he would have to see the July MRI to determine whether the compression on the S1 nerve root is from a disk herniation getting worse (Dr. Lim Depo., APA #22, p. 543, l. 23-p. 544, l. 4);
  - e. Dr. Lim agreed that the initial herniations are getting worse (Dr. Lim Depo., APA #22, p. 549, ll. 5-15); and
  - f. Dr. Lim testified that the initial herniation related to the work injury "looks bigger" on the July MRI and is a "re-herniation of L45 and L5-S 1" (Dr. Lim Depo., APA #22, p. 549, ll. 16-22).

27. Whether the Single Commissioner erred in finding that Dr. Lim stated "the Claimant had no neurologic compression" (Order, p. 13, paragraph 53); when Dr. Lim also stated as follows:
- a. Dr. Lim testified that herniations are at the exact same levels as what he sustained in his work injury and now it's pressing on the nerve (Dr. Lim Depo., APA #22, p. 551, l. 22-25);
  - b. Dr. Lim testified that the July MRI rep011 suggests that there is recess narrowing on the right side at L5/S1 that is touching the S1 nerve root, and if true it means he would have pain down the S1 nerve distribution which would cause pain down his right leg (Dr. Lim Depo., APA #22, p. 542, l.22 -p. 543, l. 9);
  - c. Dr. Lim testified that the thecal effacement shown on the MRI from July 22, 2022, is compression on the nerve sac (Dr. Lim Depo., APA #22, p. 538, ll 14-18; p. 541, ll. 11-16); and
  - d. Dr. Lim testified that the bilateral recess narrowing shown on the July MRI was "possibly" compressing nerves (Dr. Lim Depo., APA #22, p. 538, l. 19-p. 539, l. 23).
28. Whether the Single Commissioner erred in finding that the spasms are not related to the work injury (Order. p. 13, paragraph 56).
29. Whether the Single Commissioner erred in failing to find that the Claimant was entitled to treatment for the spasms where the authorized treating physician testified that the spasms prevented him from receiving treatment ordered by the authorized treating physician because the spasms made it unsafe to do so (Dr. Lim Depo., APA #22, p. 552, ll. 3-10).
30. Whether the Single Commissioner erred in failing to find that the Claimant was entitled to treatment for the spasms where the authorized treating physician testified that his spasms would have to be controlled before he can receive the ESI ordered by the authorized treating physician (Dr. Lim Depo., APA #22, p. 552, ll. 3-14).
31. Whether the Order of the Single Commissioner is consistent with O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 459 S.E.2d 324 (1995), Scruggs v. Tuscarora Yarns, Inc., 294 S.C. 47, 362S.E.2d319 (1987), and Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (1999) as well as other applicable case law in South Carolina.
32. Whether the Order of the Single Commissioner is consistent with and in compliance with the statutory law of the State of South Carolina.

#### IV. DECISION OF THE APPELLATE PANEL

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, **AFFIRM** THE DECISION OF THE HEARING COMMISSIONER,

AS SET FORTH BELOW:

**FINDINGS OF FACT**

WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Claimant was moving heavy tables on October 2, 2020, injuring his lower back with resulting pain radiating down both legs. He argues that he has not reached MMI and is seeking additional medical treatment.
2. Defendants argue that Claimant is at MMI based on the reports from Dr. Lim and Dr. Kanos. Defendants are seeking a determination of MMI and PPD benefits.
3. Prior to the call of the case, the parties were able to reach an agreement on a Consent Order regarding Claimant's AWW and Comp Rate which is \$620.38 and \$447.04, respectively. They also reached an agreement regarding the back TTD benefits owed to Claimant in the amount of \$16,500. The Defendants also agreed to send Claimant for further pain management for the back and radicular symptoms.
4. Claimant's VA records were reviewed and showed that the Claimant received a 100% disability rating from the VA for PTSD, increased from 30% disability on June 28, 2019. (APA #23, p. 628.)
5. Claimant was evaluated by Dr. Blundy (Chiropractor) on October 8, 2020 and diagnosed with radiculopathy, lumbosacral facet syndrome, and segmental and somatic dysfunction of the lumbar region. (APA #1, p. 4-6.)
6. Dr. Lim evaluated Claimant on October 29, 2020. He noted that Claimant had right-sided back pain, no prior issues with back pain, pain was noted at level of 3/10, x-rays showed mild degenerative changes at the L5-S1 levels with possible pars defect and degenerative changes at the L1-2 level, and no spondylolisthesis. Assessment revealed low back pain, a lumbar strain, and lumbar radiculopathy. Dr. Lim recommended an MRI, physical therapy, medications, and light duty work with no bending. (APA #2, p. 7-10.)
7. On November 5, 2020, Claimant was evaluated by Dr. Blundy (Chiropractor). He noted that Claimant felt pain after moving tables. He reported pain in the low back, abdomen, and groin at a 9/10 level. X-rays showed Degenerative Disc Disease and Claimant was diagnosed with radiculopathy, lumbosacral region pain, facet syndrome, and segmental and somatic dysfunction of the lumbar region. (APA #1, p. 1-3.)
8. Claimant underwent an MRI on November 10, 2020, which showed small right paracentral posterior disc bulging at the L5-S1 level without complication, and small left paracentral posterior disc bulging at the L4-5 level with very mild left-sided neural foraminal narrowing. (APA #4, p. 53-54.)
9. Claimant attended physical therapy at Hummel Physical Therapy (hereinafter "Hummel") on November 12, 2020, and Claimant noted pain in the right lower back and occasionally down the back of the right leg. (APA #5, p. 98.)
10. Claimant attended physical therapy at Hummel on November 18, 2020, at which time he

noted a little more pain at work. (APA #5, p. 96.)

11. Claimant attended physical therapy at Hummel on November 19, 2020; he noted that he had been off of work for two days, so that helped. (APA #5, p. 95.)
12. Claimant attended physical therapy at Hummel on November 25, 2020 and noted that he was doing better with just a little discomfort. (APA #5, p. 93.)
13. Claimant was evaluated at Hummel on December 2, 2020, and noted that his back was fine today, and he was still having some trouble when on his feet at work. (APA #5, p. 92.)
14. Claimant was evaluated at Hummel on December 3, 202, and noted that he was doing well with no pain today. (APA #5, p. 91.)
15. Claimant saw Dr. Lim on December 3, 2020, and Claimant noted 70% relief with physical therapy. Claimant was working light duty with no bending with pain at a 3/10 level. The MRI showed degeneration at the L4-5, L5-S1, small central disc herniation at L4-5 and L5-S1, and no significant compression on neurologic structure. The assessment revealed a lumbar disc herniation and a prolapsed lumbar intervertebral disc. The MRI does not indicate surgery is required. Dr. Lim recommended physical therapy and light duty with limited bending. (APA #2, p. 11-13.)
16. On December 4, 2020, Claimant was evaluated at Oconee Memorial Hospital and stated that he was brushing his teeth in the bathroom, started to feel dizzy, and lost balance, and stumbled hitting his head on the wall, resulting in a head laceration. It was noted the dizziness was likely due to numerous new medications and corresponding side effects of dizziness. Claimant was diagnosed with a laceration of the scalp and his wound was closed with staples. (APA #24, p. 695-727.)
17. Claimant was evaluated at Hummel on December 9, 2020 noting that his pain was not bad today. (APA #5, p. 89.)
18. Claimant was evaluated at Hummel on December 10, 2020 noting that his back was doing well today. (APA #5, p. 88.)
19. Claimant attended physical therapy at Hummel on December 30, 2020 noting that he was no longer having sharp pain but rather just some nagging pain. (APA #5, p. 87.)
20. Claimant attended physical therapy at Hummel on December 31, 2020 noting that he was hurting a little on the right side of his back. (APA #5, p. 86.)
21. Claimant attended physical therapy at Hummel on January 6, 2021 noting that he still had pain down his leg when he was on his feet a lot. (APA #5, p. 84.)
22. Claimant attended physical therapy at Hummel on January 7, 2021 noting overall improvement with physical therapy, and that his low back pain was down to a 0-3/10 level. (APA #5, p. 82.)
23. On January 7, 2021, Claimant saw Dr Lim and reported pain at a 2-3/10 level, weakness, pain in the lower back and down the right posterior thigh with numbness and tingling

when on his feet at work. Claimant was diagnosed with right-sided low back pain. Dr. Lim noted physical therapy was helping and he recommended work conditioning, light duty work for two weeks, and then to advance Claimant to full duty. (APA #2, p. 14-16.)

24. Claimant was evaluated at Hummel on January 12, 2021 noting that the doctor ordered work conditioning. (APA #5, p. 78.)
25. On January 13, 2021, VA reports show that Claimant was started on low dose Lithium, and increased Sertraline and started Naltrexone. (APA #23, p. 648.)
26. Claimant was evaluated at Hummel on January 20, 2021, noting that he had been hurting all week, just like when it started. (APA #5, p. 77.)
27. Claimant was evaluated at Hummel on January 21, 2021, noting a recent exacerbation of low back pain into the left buttock and thigh. (APA #5, p. 76.)
28. Claimant was evaluated at Hummel on January 27, 2021, noting increased pain the last couple days, and exacerbation of right low back and lower extremity pain. (APA #5, p. 75.)
29. Claimant was evaluated at Hummel on January 28, 2021, noting a little pain today. (APA #5, p. 74.)
30. Claimant attended physical therapy at Hummel on January 29, 2021, noting a recent exacerbation of pain. (APA #5, p. 68.)
31. Claimant attended physical therapy at Hummel on February 3, 2021; he reported that he was doing better, worked yesterday and had a little pain, but overall felt improvement and decreased low back pain. (APA #5, p. 72.)
32. Claimant was evaluated by Dr. Lim on February 4, 2021, and Dr. Lim noted that Claimant was working light duty and woke up three weeks ago with severe pain in his back and had to take eight days off, because he was unable to stand and walk for any prolonged period of time. Claimant was interested in an epidural steroid injection (hereinafter "ESI"). Dr. Lim noted that the pain was in the low back radiating down Claimant's hamstrings to his mid posterior thigh, and no pain below the knees. The pain was rated a 5/10. Dr. Lim recommended physical therapy, an ESI with Dr. Schiff, and light duty work. (APA #2, p. 17-19.)
33. Claimant attended physical therapy at Hummel on February 8, 2021. Claimant noted pain down his leg and that work was the same. (APA #5, p. 69.)
34. Claimant attended physical therapy at Hummel on February 18, 2021, noting that he was doing pretty well. (APA #5, p. 64.)
35. On February 22, 2021, Claimant reported to the VA that he was doing okay. (APA #23, p. 641.)
36. Claimant attended physical therapy at Hummel on February 24, 2021, noting that his back had flared up again. (APA #5, p. 63.)

37. Claimant was evaluated by Hummel on February 25, 2021, noting that he was better today than yesterday, had decreased low back pain, and improved lower extremity strength. (APA #5, p. 61-62.)
38. Claimant underwent an ESI on March 3, 2021 at the L4-5 level, performed by Dr. Schiff. (APA #2, p. 20.)
39. Claimant was evaluated by Dr. Lim on March 4, 2021 and reported that the ESI helped his pain quite a bit. Dr. Lim recommended that Claimant finish physical therapy and continue light duty. (APA #2, p. 22-24.)
40. Claimant was evaluated by Hummel on March 4, 2021, and noted that he was having a hard time since receiving the ESI. (APA #5, p. 60.)
41. Claimant was evaluated at Hummel on March 23, 2021, noting he was improving but is having flareups while on his feet. (APA #5, p. 58-59.)
42. On March 23, 2021, Claimant saw Dr. Lim. Dr. Lim noted that following physical therapy Claimant reports spasms in his legs and entire body; he described the pain as a jolt and shocking. Claimant reports he was out of work for three weeks and did not leave the house. He was using a TENS unit and ice therapy. He had not returned to work and was unable to get the medications previously prescribed. Dr. Lim took the Claimant out of work until March 31, 2021, cleared him to return to work on April 1, 2021, and recommended an ESI. (APA #2, p. 25-28.)
43. On April 14, 2021, Claimant underwent an ESI at the L4-5 level, performed by Dr. Schiff. (APA #2, p. 29.)
44. On May 12, 2021, Claimant reported to the VA that he was pretty good. Claimant was diagnosed with PTSD and an alcohol disorder. He reported that he had reduced his drinking to rare social drinks. (APA #23, p. 637.)
45. On November 18, 2021, Claimant was evaluated by Dr. Lim. Dr. Lim noted that Claimant still had some occasional shooting pain that happens once or twice at work. Claimant reported pain at a 2-3/10. It was noted Claimant was involved in a motor vehicle accident (hereinafter "MVA"), but his pain was not worse after the MVA and rather was the same as it was prior to the MVA. Dr. Lim released Claimant to full duty work. (APA #2, p. 30-33.)
46. Natalie Stapleton, PAC (Dr. Lim's Physician's Assistant) saw Claimant on January 5, 2022. Claimant stated that despite being at MMI and on full duty status, he was unable to return to work and was experiencing low back spasms and pain, as well as pain in both legs. He reported a 4/10 pain level. He reported having acute exacerbations of debilitating shocking-like pains into his back that take his breath away, tenderness to palpitation widespread in the lumbar spine at the paraspinal musculature (more on the left versus the right), tenderness to palpitation over the sciatic notches and sciatic cords bilaterally, and that he is able to walk and stand without significant discomfort. It was noted that Claimant was at MMI, had increased pain, and that Dr. Lim indicated no surgical intervention was recommended. Repeat ESI was discussed/recommended, along with a full duty work status. (APA #2, p. 34-37.)

47. Claimant saw Nurse Delores Sheftall on February 3, 2022. Nurse Sheftall observed Claimant having violent spasms resulting in body jerking. Claimant reported his back felt like it was shocking his whole body. Nurse Sheftall noted it was not safe to proceed with the ESI. (APA #2, p. 38.)
48. Claimant was seen by Dr. Lim on February 24, 2022. He noted Claimant's pain was reported as a 9/10. Dr. Schiff did not feel safe to proceed with the ESI due to the back spasms. Tenderness to palpitation widespread into the lumbar spine at the paraspinal musculature, (being worse on the left versus the right) was noted. It was also noted that there is tenderness to palpitation over the sciatic notches and sciatic cords bilaterally. Dr. Lim recommended an MRI and a referral to neurology. (APA #2, p. 39-43.)
49. Claimant underwent an MRI on March 14, 2022. It showed an L5-S1 level disc protrusion/osteophyte complex, contributing to a mild 12 mm AP canal narrowing with minimal progression from previous study; mild neural foraminal narrowing bilaterally; an L4-5 level disc protrusion/osteophyte complex contributing to a mild to moderate 9.3 mm AP canal narrowing with minimal progression from previous study; a mild to moderate neural foraminal narrowing bilaterally; and an L1-2 level mild disc bulge/osteophyte complex contributing to a mild 13 mm AP canal narrowing, with minimal progression from previous study. The remaining lumbar disc levels show degenerative changes to a lesser degree, otherwise grossly stable. There were chronic degenerative changes noted. (APA #4, p. 55-56.)
50. Claimant was evaluated by Dr. Rogers (Claimant's IME) on July 15, 2021. Dr. Rogers noted that as a result of the Claimant's accident at work he had 2-disc herniations and subsequent lumbar radiculopathy. He felt that Claimant was not at MMI, and that he needed a neurosurgical evaluation for potential surgical intervention. He felt that Claimant had a 10-13% whole person impairment rating, and if surgery was performed then Claimant would have a 10-23% whole person impairment rating. Dr. Rogers further stated that the thoracolumbar spastic activity was not related to use of lithium. He felt that Claimant had Depression with a 15-29% whole person disability rating and that he needed pain management and psychiatric treatment. (APA #7, p. 107-115.)
51. Claimant underwent an MRI on July 22, 2022, which showed an L4-5 posterior, protruded type disc herniation with moderate left and mild right lateral recess narrowing and ligamentum hypertrophy; and an L5-S1 right subarticular, shallow protruding herniation with a small annular tear and mild right lateral recess narrowing. (APA #6, p. 105-106.)
52. Dr. Rogers completed an NCS/EMG on July 27, 2022 with findings of electrophysiologic changes noted in the motor and sensory conduction studies, demonstrating bilateral common peroneal motor distal slowing and axonal loss, evidence of bilateral superficial peroneal axonal loss and left distal sensory slowing; absent common peroneal F waves; electrophysiologic changes noted in the EMG examination suggestive of chronic neuropathic injury in the bilateral Tibialis anterior, Peroneus Longus, EHL, biceps Femoris (short head) and right Tibialis posterior - potential noted in the right biceps Femoris (short head), EHL, Gluteus Medius – and the L5 paraspinals are consistent with muscle membrane instability and denervation; and findings consistent with bilateral L4-5 level and bilateral L5-S1 level distribution compromise, with the right side being more grossly affected than the left side. (APA #7, p. 116-123.)

53. Dr. Lim's deposition was taken on August 8, 2022, and is a part of the record as APA #22, beginning on page 484. Dr. Lim notes after review of Claimant's MRIs he did not feel that Claimant was a surgical candidate, and that Claimant was 70% better after physical therapy. (p. 497.) He noted that after Claimant was prescribed the new medications from the VA Claimant fell. (p. 498-499.) He noted that Claimant first reported leg pain to him on January 7, 2021. (p. 500-501.) He noted that the radicular pain started after the fall at home and the radicular pain could have been caused by the fall. (p. 501-503.) He feels that Claimant's spasms are not related the work accident. (p. 506.) He stated that the March 14, 2022, MRI shows no explanation for the shocking type spasms. (p. 511.) He stated that the VA started Lithium on August 16, 2021, and that the spasms Claimant experienced were not coming from his back. (p. 513.) He stated that Claimant reported no radicular pain until after his fall at home. (p. 514.) He stated that Claimant's July 22, 2022, MRI is the same and Claimant is still not a surgical candidate. (p. 514.) He stated that he did not feel that Claimant needed any additional treatment for his back. (p. 515.) He stated that he felt that Claimant was at MMI on February 24, 2022. (p. 516.) He felt that Claimant had an impairment rating of 2-6%. (p. 516.) He felt that Claimant could return to work at full duty capacity. (p. 517.) He stated that the recommendation for a neurologist evaluation was unrelated to the workers' compensation accident. (p. 517.) He stated that Claimant might not be at MMI since he could not get the final ESI. (p. 522.) He stated that disc herniations do not cause shocking/spasm episodes. (p. 528.) He stated that the herniations are not worse per the MRIs. (p. 534.) He stated that Claimant had no neurologic compression. (p. 536.) He stated that any worsening of the herniations was not related to Claimant's accident at work. (p. 549.)
54. Claimant was evaluated by Dr. Poletti on September 21, 2022. Dr. Poletti noted that Claimant had disrupted both his L4-5 and L5-S1 discs and that Claimant's physical size makes surgery unpredictable. He assigned Claimant a 20% impairment rating; he recommended medial branch blocks and facet blocks, a lumbar facet rhizotomy, lumbar bracing, 30-pound permanent lifting restrictions, and noted that Claimant was at MMI but needed pain management. Dr. Poletti did not recommend surgery. (APA #8, p. 124-125.)
55. Claimant was evaluated by Dr. Kanos on November 28, 2022, who opined that surgery was not warranted. Further, Dr. Kanos opined that Claimant's spasms were not related to the work accident. Dr. Kanos recommended a functional capacity evaluation and pain management. (APA #9, p. 126-134.)
56. Upon review of the record as a whole, specifically the medical evidence and deposition testimony from the authorized treating physician Dr. Lim, we find that the Claimant has reached MMI as of February 24, 2022, with a 2-6% rating to his spine. Dr. Lim testified repeatedly that the Claimant was not a surgical candidate based on the MRIs. Dr. Lim also testified that the Claimant's spasms were not related to his accident at work. Dr. Poletti also agreed that Claimant was not a surgical candidate. Dr. Kanos agreed that Claimant's spasms were not related to his work accident.
57. We also find it compelling that Claimant rides a motorcycle as his main mode of transportation and that on March 4, 2021, Claimant told Dr. Lim that he had quite a bit of improvement following the ESI and on the same day told Hummel that he was having problems since the ESI.
58. We find that Claimant has a 10% permanent impairment to his spine. This decision is based upon the greater weight and preponderance of the evidence.

**CONCLUSIONS OF LAW**

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. That the parties to this proceeding are subject to and bound by the South Carolina Workers' Compensation Act, pursuant to S.C. Code Ann. § 42-1-10.
2. That Claimant sustained an admitted injury by accident to his lower back, with resulting radicular leg pain, on October 2, 2020, arising out of and in the course and scope of his employment with Keowee Restaurant Group, Inc. pursuant to § 42-1-160.
3. That Claimant has sustained a 10% permanent impairment to his back pursuant to § 42-9-30(21).
4. That Claimant is entitled to continued medical treatment in the form of pain management, with a physician of Defendants' choosing, as agreed to by the parties and pursuant to § 42-15-60.

**ORDER**

**IT IS HEREBY ORDERED** that the Findings of Fact and Conclusions of Law are incorporated herein as set above, that Claimant reached MMI as of February 24, 2022, and the Claimant is entitled to 10% permanent partial disability to his back.

**AND SO IT IS ORDERED.**

\_\_\_\_\_  
Columbia, SC (date)

  
\_\_\_\_\_  
T. Scott Beck, Commissioner, Chair

*Mike Campbell*

R. Michael Campbell, II, Commissioner

*[Signature]*

Avery B. Wilkerson, Commissioner

**2014781 William Doneth v Keowee Restaurant Group Inc.**

**CERTIFICATE OF SERVICE**

**APPELLATE PANEL DECISION AND ORDER**

**Served via E-Mail:**

<p>J. South Lewis, II, Esquire <a href="mailto:jlewis@wjcbllaw.com">jlewis@wjcbllaw.com</a></p> <p>David R. Price, Jr., Esquire <a href="mailto:david@greenvillelegal.com">david@greenvillelegal.com</a></p>	
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**Order Served via USPS:**

**CERTIFICATE OF SERVICE**

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

**August 21, 2023**

**By: Valerie D. Deller, Judicial Department**