

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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WCC File No. 1111085

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JOHN L. LANE, .....Appellant

vs.

DARLINGTON COUNTY, EMPLOYER, AND  
SOUTH CAROLINA COUNTIES WORKERS'  
COMPENSATION TRUST, CARRIER, ..... Respondents.

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**INITIAL BRIEF OF APPELLANT**

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**SC Court of Appeals**

**TABLE OF CONTENTS**

Table of Contents ..... i

Table of Authorities ..... ii

Statement of Issues on Appeal ..... 1

Statement of the Case ..... 2

Argument

I. THE COMMISSION ERRED AS A MATTER OF LAW IN FAILING TO FIND THAT THE CLAIMANT AGGRAVATED THE PRE-EXISTING CONDITION OR PHYSICAL IMPAIRMENT OF HIS BACK WITHIN THE MEANING OF S.C. CODE §42-9-35..... 4

II. THE COMMISSION ERRED IN FAILING TO FIND THAT THE INJURY AFFECTED THE CLAIMANT’S SHOULDER. .... 12

III. THE CLAIMANT SUFFERED TOTAL AND PERMANENT DISABILITY AS A RESULT OF THE ACCIDENT. .... 17

**TABLE OF AUTHORITIES**

CASES

Brown v. Owen Steel Co., 316 S.C. 278, 450 S.E.2d 57 (Ct. App. 1994).....7, 11

Gilliam v. Woodside Mills, 312 S.C. 523 (Ct. App. 1993) .....7

Roper v. Kimbrell’s of Greenville, Inc., 231 S.C. 453, 99 S.E.2d 52 (1957).....16

Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960)..... 6, 7, 11

Therrell v. Jerry’s Inc., 370 S.C. 22 (2006) .....7

Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003).....5, 6, 7, 11

STATUTES

S.C. Code Ann §42-9-10.....2, 5, 6, 7, 11, 17

S.C. Code Ann §42-9-20 .....5, 6

S.C. Code Ann §42-9-30 .....2, 4, 5, 6, 7, 8, 10, 11, 16, 18

S.C. Code Ann §42-9-35.....2, 4, 5, 7, 9, 18

S.C. Code Ann §42-9-150.....11

S.C. Code Ann §42-9-170.....11

**STATEMENT OF ISSUES ON APPEAL**

- I. WHETHER THE COMMISSION ERRED AS A MATTER OF LAW IN FAILING TO FIND THAT THE CLAIMANT AGGRAVATED THE PRE-EXISTING CONDITION OR PHYSICAL IMPAIRMENT OF HIS BACK WITHIN THE MEANING OF S.C. CODE §42-9-35.
  
- II. WHETHER THE COMMISSION ERRED IN FAILING TO FIND THAT THE INJURY AFFECTED THE CLAIMANT'S SHOULDER.
  
- III. WHETHER THE COMMISSION ERRED IN FAILING TO FIND THAT THE CLAIMANT SUFFERED TOTAL AND PERMANENT DISABILITY AS A RESULT OF THE ACCIDENT.

## STATEMENT OF THE CASE

This is an admitted workers' compensation case.

Defendants admit that on May 17, 2011 the Claimant was operating a backhoe which rolled over; causing him injury that resulted in a cervical fusion at C5-6 at the hands of his authorized treating orthopaedist, Dr. W.S. Edwards, Jr. (App. Panel Order, p. 2).

That surgery was superimposed upon a pre-existing fusion the Claimant had undergone of the cervical spine at C6-7 in 1989, also at the hands of Dr. Edwards, as well as a previous L2-3 laminectomy Claimant underwent in 1997 at the hands of Dr. Andrew Rhea, and a previous lumbar decompression at multiple levels in 2010 at the hands of Dr. Edwards. None of these prior spinal surgeries were the result of an on-the-job injury.

At the hearing Claimant argued that he had suffered an aggravation of the pre-existing condition of his back as a result of the accident within the meaning of S.C. Code §42-9-35. In addition, Claimant argued, inter alia, that the aggravation of the condition of his back affected his shoulders and that, as a result, he was entitled to an award of total disability pursuant to S.C. Code §42-9-10 or §42-9-30(21).

By Order of October 22, 2012 Commissioner Williams found, inter alia:

7. Claimant sustained an admitted injury to his neck. He has many pre-existing injuries (shoulders, neck, low back), however, this injury was to the C5-6 level in his neck. His work-related injury was different from his prior injuries. He does, however, have a long history of pre-existing pain and problems affecting his neck which were not aggravated by this accident.

8. The deposition of Dr. Edwards has been reviewed. Dr. Edwards found that the Claimant has sustained a 15% impairment to the neck from this accident. Dr. Edwards further notes that only the Claimant's neck was a part of this claim; not the Claimant's shoulders. I find this was the ultimate testimony of Dr. Edwards. His initial testimony in the deposition was confusing; however, his final opinion was clear in that only the neck suffered a permanent injury as a result of this accident and the other levels of the cervical spine were not aggravated to include his preexisting fusion. There is not medical evidence to the contrary and Claimant therefore did not meet his burden of proof for an aggravation of preexisting conditions.

\* \* \*

11. ...Claimant sustained an injury affecting his neck only.

12. Based on the evidence as a whole, I find the Claimant has sustained a 33% permanent partial disability to his back for the cervical spine injury in this case...

\* \* \*

14. Based on the deposition testimony of Dr. Edwards and the records as a whole, Claimant's injury from this accident is to disks C-5 and C-6. This injury is at a different level than his prior injuries which were not aggravated by this accident.

(Findings of Fact, pp. 14 – 16)

\* \* \*

6. Claimant did not meet his burden of proof to show an aggravation of his preexisting conditions to the lumbar spine, bilateral shoulders, or any other body part. Claimant suffers multiple preexisting conditions and has undergone multiple surgeries in the recent past that were unrelated to this claim. However, the medical evidence and evidence as a whole, including

Claimant's own testimony regarding his ongoing pain and problems preceding this accident, do not support a finding that these body parts are related to his admitted accident or that they were aggravated by this admitted accident.

(Conclusions of Law, p. 17).

This appeal followed.

### ARGUMENT

**I. THE COMMISSION ERRED AS A MATTER OF LAW IN FAILING TO FIND THAT THE CLAIMANT AGGRAVATED THE PRE-EXISTING CONDITION OR PHYSICAL IMPAIRMENT OF HIS BACK WITHIN THE MEANING OF S.C. CODE §42-9-35.**

S.C. Code §42-9-35 provides, in relevant part:

- (A) **The employee shall establish** by a preponderance of the evidence, including medical evidence, that:
  - (1) **the subsequent injury aggravated the preexisting condition or permanent physical impairment;** or
  - (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.
  
- (B) The commission may award compensation benefits to an employee who has a permanent physical impairment or preexisting condition and who incurs a subsequent disability from an injury arising out of and in the course of his employment for the resulting disability of the permanent physical impairment or preexisting condition and the subsequent injury. However, if the subsequent injury is limited to a single body part or member scheduled in Section 42-9-30, except for total disability to the back as provided in Section 42-9-30(21), the subsequent injury must impair or affect another body part or system in order to obtain benefits in addition to those provided for in Section 42-9-30.

S.C. Code §42-9-35 (emphasis added).

The language of S.C. Code §42-9-35 begs the question: “the employee shall establish... [that] the subsequent injury aggravated the pre-existing condition or permanent physical impairment ...” **of what?** .

The statute may be read to require that the Claimant show that the injury **aggravated the pre-existing condition of his body as a whole**. Under such a reading, however, every accident to any body part would aggravate every pre-existing condition of the body as a whole. Such a reading would make the statute’s application extremely broad, to say the least.

More likely, the legislature intended that the Claimant show that the injury **aggravated the pre-existing condition of the body part injured**. Such a reading necessarily requires a determination of how the Workers’ Compensation Act defines individual body parts, one from another.

Indeed, every ruling regarding disability compensation under the Workers’ Compensation Act revolves around an initial determination of the identity of the body part, or parts, injured. As described by the Supreme Court in Wigfall v. Tideland Utilities, Inc., 354 S.C. 100 (2003):

South Carolina provides three methods to obtain disability compensation: 1) total disability under S.C. Code Ann. §42-9-10; 2) partial disability under S.C. Code Ann. §42-9-20; and 3) scheduled disability under S.C. Code Ann. §42-9-30. The first two methods are premised on the economic model, in most instances, while the third method conclusively relies upon the medical model with its presumption of lost earning capacity...

Wigfall, 354 S.C. 100, 102.

The Court went on to explain that whereas the economic model (S.C. Code §§42-9-10, 20) defines disability and incapacity in terms of the Claimant's loss of earning capacity as a result of the injury, the second, medical, model (S.C. Code §42-9-30), provides awards for disability based upon degrees of medical impairment to specified body parts. See Id.

Thus, to obtain benefits for disability compensation under the Workers' Compensation Act, a Claimant must first identify which body part has been injured pursuant to the schedule of specific body parts listed in S.C. Code §42-9-30. The Claimant may obtain compensation for loss of use of that scheduled body part irrespective of loss of earning capacity under the "medical model" of §42-9-30.

Further, the Supreme Court in Singleton v. Young Lumber Co., 236 S.C. 454 (1960) held:

Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity. To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is affected. Wigfall, 354 S.C. 100, 101-102 (quoting Singleton).

If the Claimant can show that his injury affects more than one scheduled member, he may, pursuant to Singleton v. Young Lumber Co., obtain compensation under §42-9-10 if he can demonstrate loss of earning capacity.

Thus, the entire question of the Claimant's entitlement to disability compensation under the Workers' Compensation Act revolves around, and is determined by, the question

of which body part, or parts, listed in the schedule of S.C. Code §42-9-30 are injured. This question of what body part, as defined by §42-9-30, has been injured, pervades the Workers' Compensation law. See, e.g., Therrell v. Jerry's Inc., 370 S.C. 22 (2006) (considering whether the shoulder is part of the arm pursuant to §42-9-30); Gilliam v. Woodside Mills, 312 S.C. 523 (Ct. App. 1993) (overruled on other grounds) (considering whether the hip is part of the leg within the meaning of §42-9-30); Brown v. Owen Steel Co., 316 S.C. 278 (Ct. App. 1994) (denying Claimant benefits under §42-9-10 where injury was confined to back, a member scheduled at §42-9-30 (21)).

Thus, a reading of the Workers' Compensation Act as a whole leads to the conclusion that the legislature intended that the "employee shall establish...[that] the subsequent injury aggravated the pre-existing condition or permanent impairment" **of the scheduled body part injured.**

Indeed, S.C. Code §42-9-35 specifically incorporates the use of the schedule of members in S.C. Code §42-9-30 as well as the holding of Wigfall and Singleton, providing:

However, if the subsequent injury is limited to a single body part or member scheduled in Section 42-9-30, except for total disability to the back as provided in Section 42-9-30(21), the subsequent injury must impair or affect another body part or system in order to obtain benefits in addition to those provided for in Section 42-9-30.

S.C. Code §42-9-30 does not recognize individual discs or vertebrae of the spine as separate body parts; nor does it recognize separate regions such as the cervical, lumbar, or thoracic region of the spine as separate body parts. Instead, S.C. Code §42-9-30 lists only the "back" as a scheduled member of the body. See S.C. Code §42-9-30(21).

Claimant suffered an admitted injury to his “back,” a scheduled member under §42-9-30 (21). That injury was superimposed upon a pre-existing condition of his “back.”

The pre-existing condition of the Claimant’s back resulted in a fusion, with resulting impairment. This instant admitted accident resulted in an additional fusion resulting in an additional impairment to the back.

Dr. Edwards, who performed the fusion resulting from the instant accident, completed a Form 14B, in which he indicated, “Based on the AMA Guidelines, the claimant has sustained a 15% medical impairment to spine (There is likely some pre-existing condition though this was not apportioned in the impairment rating).” (Defendants’ APA #1, p. 58)

Claimant took Dr. Edwards’ deposition, wherein he testified:

- Q. Do you have an opinion to a reasonable degree of medical certainty as to whether the accident of May the 17<sup>th</sup>, 2011, aggravated the condition of Mr. Lane’s spine resulting in additional impairment beyond that which existed before the accident?
- A. Yes, it did; yes, sir.  
(Edwards dep. p. 31, lines 15-20)

Dr. Edwards further testified:

- Q. ...It looks like you completed a Form 14B at the request of the Carrier.
- A. Yes, sir.
- Q. Okay, And in your note of November the 8<sup>th</sup>, 2011, you make some indication, quote: “There is likely some pre-existing condition, though, this was not apportioned in the impairment rating.”
- A. Yes.
- Q. Tell me what you mean by that.
- A. Well, his total impairment of his cervical spine is higher than 15 percent, the 15 percent rating I gave him was just related to the C5-6 discs and the

stenosis that I dealt with that emanated from his injury.

MR. WUKELA: Okay.

A. But he had had a previous fusion at the level below that does have impairment associated with it.

Q. Fair enough. So he had pre-existing impairment; he had a subsequent accident and as a result suffered additional impairment?

A. Yes.

Q. And the rating you gave was for the additional impairment?

A. Yes, sir.

Q. Okay. I think you have already testified to this, but is it your opinion – do you have an opinion to a reasonable degree of medical certainty as to whether that subsequent accident aggravated that pre-existing condition?

A. I believe that it did, yes.

Q. So it resulted in additional impairment to his spine?

A. It appears that it did; yes.

Q. Okay. Now, can you rate the total condition of his spine without apportioning pre- or post-accident impairment, but instead rate the impairment as a whole as it exists today?

A. It would be 25 percent impairment to his spine.

Q. Okay. And that includes pre- and the post-?

A. Yes.

(Edwards dep, p. 14, line 9 – p. 15, line 23)

Dr. Edwards' testimony is uncontroverted in the record.

Thus, the evidence of the record is that Claimant had a pre-existing condition of the spine or "back" as a result of a cervical fusion. As a result of this accident, he suffered an additional impairment to his spine or "back" as a result of a fusion at an adjacent level; thus aggravating the pre-existing condition of Claimant's back.

Such aggravation, pursuant to S.C. Code §42-9-35, qualifies Claimant to receive compensation for the combined impairment, "of the permanent physical impairment for the pre-existing condition and subsequent injury." S. C. Code §42-9-35.

The Single Commissioner found, “claimant sustained admitted injury to his neck” (Order 10/22/12, pp. 14-15), and that “He does, however, have a long history of pre-existing pain and problems affecting his neck which were not aggravated by this accident.” (Order 10/22/12, p. 15).

The Single Commissioner went on to explain, “Based on the deposition testimony of Dr. Edwards and the records as a whole, Claimant’s injury from this accident is to disks C-5 and C-6. This injury is at a different level than his prior injuries which were not aggravated by this accident.” (Order 10/22/12, p. 16).

In so doing, the Single Commissioner effectively subdivided the back, or spine, which is a scheduled member under §42-9-30 (21), into sub-body parts, each corresponding to one disc space level.

That is to say, the Single Commissioner effectively found that the back or spine is not one scheduled member which was aggravated by this accident. Rather, the Single Commissioner found that the cervical disc at disc space C6-7 is a separate and distinct body part with a pre-existing condition, and that another separate body part the cervical disc at disc space, C5-6, was injured in this accident.

Of course, even und this logic, both cervical fusions shared cervical vertebrae C6; which is now, as a result of this accident, fused to both the vertebrae above and below. Even under the Commission’s subdivisions of the back, cervical vertebrae C6 had a pre-existing condition (fusion to vertebrae C7) which impaired its usefulness. This condition was aggravated by the accident when C6 was fused to another adjacent vertebrae (C5).

Nevertheless, this subdivision of the back into separate vertebrae and discs is not supported anywhere in our law, and is contrary to the legislature's treatment of the "back" as one body part under S.C. Code §42-9-30.

If it is, indeed, this Court's holding that the back is not one body part, but that each disc space constitutes a separate body part, then the undersigned respectfully requests a clear statement of that legal principle, given that it would radically change future claimants' entitlement to benefits under S.C. Code §42-9-10. That is, if each disc constitutes a separate body part, claimants that suffer an injury confined to the back, yet injure multiple discs of the back, though without impairing any other part of the body, would be entitled to benefits under §42-9-10 in spite of Singleton, Wigfall, and Brown.

Similarly, if each disc space constitutes a separate body part, future employers who seek credit pursuant to S.C. Code §42-9-150 or S.C. Code §42-9-170 in cases in which a Claimant was awarded benefits under §42-9-30 for permanent partial disability to the back, would not be entitled to credit any longer unless the subsequent injury to the back was to the same disc.

However, that is not the law. The back is one body part within the meaning of our Workers' Compensation Act. Claimant did not injure a separate body part when he herniated a disc at a separate cervical level. Instead he simply aggravated a pre-existing condition of the same body part, the back. The Single Commissioner erred as a matter of law in finding to the contrary.

**II. THE COMMISSION ERRED IN FAILING TO FIND THAT THE INJURY AFFECTED THE CLAIMANT'S SHOULDER.**

The Claimant testified at the hearing that he suffered from a pre-existing condition of both shoulders before the accident. (Tr. p. 23, lines 15 – 22; p. 24, line 5 – p. 25, line 25; p. 26, line 5 – p. 27, line 24). He further testified that, while his shoulder pain persisted before the accident, he was released by his doctors to return to full duty work before the accident, without restriction, (Tr. p. 24, line 5 – p. 25, line 25), which he did for over a year before the instant accident. (Tr. p. 26, line 5 – p. 27, line 24).

After the accident, he complained to the Emergency Room, and later to Dr. Edwards, of increased shoulder pain. (Tr. p. 26, line 25 – p. 27, line 9; p. 27, lines 20 – 24; p. 28, lines 3 – 24; p. 29, lines 16 – 25).

Dr. Edwards, Claimant's treating orthopaedist, testified with regard to the condition of Claimant's shoulders:

- Q. ...in looking at your May the 31<sup>st</sup>, 2011, note, you make reference to shoulder pain.
- A. Yes, sir.
- Q. All right. Tell me what was the relevance of that to you, because you weren't treating a direct injury to the shoulder.
- A. Well, the chief complaint as it is listed here is typically what patients tell us is wrong with them and what they are here to be evaluated for and that is what he complained of.
- Q. Okay. In that you - you make mention of in the third line there, "Progressive pain in his neck radiating into the left shoulder."
- A. Yes, sir.
- Q. Did you reach an opinion at that time as to whether that pain was coming from some injury to the shoulder or rather his injury to his neck?

- A. Well, I didn't have an opinion at that time, but it certainly seemed more likely related to his cervical spine.
- Q. Okay. **And did you later reach a conclusion as to where that affecting his shoulder was coming from?**
- A. **It was my opinion it was coming from his neck after imaging studies and further evaluation; yes, sir.**
- Q. **Okay. And is that your opinion today to a reasonable degree of medical certainty?**
- A. **Yes.**
- Q. Okay. In fact, I am moving forward to your November 8<sup>th</sup>, 2011, note and you make reference to "persistent mechanical symptoms in the neck and shoulders," but you haven't, and you aren't today recommending any direct intervention on his shoulder, is that right?
- A. That's correct.
- Q. **Okay. And does it continue to be your opinion, then, that his shoulder complaints were a product of his neck injury?**
- A. **Yes, sir.**
- Q. **Okay. In fact, I am looking at your 14B here, the Carrier asks "body parts injured" and you indicated "cervical." And that is your opinion that the direct injury was to his cervical spine?**
- A. **Yes.**
- Q. **Okay. But it goes on to ask "body parts affected" and your response to that, you indicted "shoulder?"**
- A. **Yes.**
- Q. All right. Okay. And that continues to be your opinion to a reasonable degree of medical certainty?
- A. It does.
- (Edwards dep. p. 34, line 2 – p. 36, line 2) (Emphasis added).

Indeed, as Dr. Edwards testified, the Form 14B completed by Dr. Edwards indicates, "Body part(s) injured: Cervical; Body part(s) affected: Shoulders" (Defendants APA #1, p. 58)

The Single Commission found in the Finding of Fact #15:

15. The medical evidence does not support Claimant's allegations that his lumbar spine or low back was aggravated by this accident. The medical evidence also does not support a claim that the right or left shoulders were aggravated by this accident. There is no medical evidence to support the claim that Claimant's legs or knees were aggravated by this accident. In contrast, the medical evidence shows Claimant's multiple alleged physical conditions unrelated to his work accident but for the cervical spine at C5-6. (Order 10/22/12, p. 16).

The Appellate Panel affirmed. In support, the Commission cited Dr. Edwards' deposition testimony at pages 20 – 21. He testified:

Q. Is his right shoulder part of this Workers' claim in your opinion?

A. I don't really know how to answer that. I guess the answer to that would be no. The part of the body I was caring for was his cervical and lumbar spine, and I don't have any information that there is any shoulder issues or knee issues.

(Tr. p. 20, line 24 – p. 21, line 5)

\* \* \*

Q. And, again, just for the record, within a reasonable degree of medical certainty, neither one of his shoulders or his knees were injured, to your knowledge, in the May of 2011 Workers' Compensation accident, is that right, Doctor?

A. That is - - that's correct.

(Tr. p. 21, lines 15 – 21)

On redirect, Dr. Edwards' testified:

Q. Let's talk about the shoulder again for a second. I didn't hear you testify in here today or anything in the records that Mr. Lane had a direct injury to the shoulder that you treated.

A. That's correct.

Q. Okay. In fact, I don't – I don't know that you even treat shoulders.

- A. I don't.
- Q. You have got another partner in here who does that. But in looking at your May the 31<sup>st</sup>, 2011, note, you make reference to shoulder pain.
- A. Yes sir.
- Q. All right. Tell me what was the relevance of that to you, because you weren't treating a direct injury to the shoulder.
- A. Well, the chief complaint as it is listed here is typically what patients tell us is wrong with them and what they are here to be evaluated for and that is what he complained of.
- Q. Okay. In that you – you make mention of in the third line there, "Progressive pain in his neck radiating into the left shoulder."
- A. Yes, sir.
- Q. Did you reach an opinion at that time as to whether that pain was coming from some injury to the shoulder or rather his injury to his neck?
- A. Well, I didn't have an opinion at that time, but it certainly seemed more likely related to his cervical spine.
- Q. Okay. And did you later reach a conclusion as to where that affecting his shoulder was coming from?
- A. It was my opinion it was coming from his neck after imaging studies and further evaluation; yes, sir.
- Q. Okay. And is that your opinion today to a reasonable degree of medical certainty?
- A. Okay.
- (Tr. p. 33, line 17 – p. 35, line 3).

The Claimant did not suffer any direct injury to his shoulder nor did he ever allege one. Instead, Dr. Edwards consistently opined that the Claimant suffered from radicular pain into his left shoulder as a result of his cervical injury. This opinion was uncontradicted anywhere in the record.

It is well established in our law that a Claimant can suffer a compensable injury to a body part without having suffering any direct injury. See, Beard, Poteat, Lamar, Sumwalt, The Law of Workers' Compensation Insurance in South Carolina, Fourth

Edition, 2005, §11 – 20, “Loss of Use of a Member Where There is No Direct Injury to that Member”. In Roper v. Kimbrell’s of Greenville, Incorporated, 231 S.C. 453 (1957), the Claimant sustained fractures of four ribs and a separation of the joint between the left collarbone and shoulder blade. The Commissioner awarded compensation for loss of use of the left arm and the right arm and the employer appealed because there was no evidence of any direct injury to the arms.

The Supreme Court rejected this argument stating:

Section 72-153 [now 42-9-30] contains no such requirement [of direct injury] either expressly or by reasonable implication. “Loss of use” and “partial loss of use” are simple, everyday, unambiguous words, and are to be given their ordinary, generally accepted meaning. Nothing in Section 72-153 or elsewhere in the statute relating to workmen’s compensation suggests restriction of their meaning to such total or partial loss of use as has resulted from a direct injury to the member itself.

Roper, 231 S.C. 453, 456.

Dr. Edwards’ opinion was that the Claimant sustained an injury to his cervical spine which caused radicular symptoms in his left shoulder. Admittedly, the Claimant had a pre-existing condition of both of his shoulders; however, this radiculopathy worsened that pre-existing condition.

The defense clouded the issue by citing Dr. Edwards’ testimony that the Claimant did not sustain any “injury” to his left shoulder. This is certainly true. Claimant sustained no direct injury to his left shoulder. However, a fair reading of Dr. Edwards’ testimony reveals that while he did not believe the Claimant had sustained any direct injury to his left shoulder, he unequivocally opined that the Claimant suffered radiculopathy into his left shoulder as a result of his cervical condition.

The Workers' Compensation Act does not require that the Claimant suffer a direct injury to a body part. The Claimant's radicular effects on his shoulder as a result of his cervical injury should have been found compensable as a matter of law.

Claimant respectfully submits that the Commission's finding to the contrary was in error.

**III. THE CLAIMANT SUFFERED TOTAL AND PERMANENT DISABILITY AS A RESULT OF THE ACCIDENT.**

**A. S.C. Code §42-9-10:**

The evidence of Claimant's total and permanent loss of earning capacity is uncontradicted.

Claimant was injured while working as a heavy equipment operator and truck driver with Darlington County, which followed a work history of mostly electrical maintenance involving fairly physically demanding work performed at least at the minimum level of physical exertion. He has a high school education, though he took several courses at Florence-Darlington Technical College in industrial electricity. (APA No. 20, p. 506 – 512).

Claimant has undergone a Functional Capacity Evaluation which revealed "He can lift from 9 to 20 pounds at various heights on an occasional basis." and "He can carry 16 pounds with 2 hands." which, among other restrictions, qualified him for "limited sedentary to limited light work avoiding sitting, standing/walking for over 60 minutes at a given time." (APA No. 19, FCE 05/01/12, pp. 483-505).

Vocational Expert, J. Adger Brown, Jr., evaluated Claimant's work history and restrictions and opined that Mr. Lane was permanently and totally disabled. (APA No. 20, pp. 506-512). His opinion was uncontradicted.

**B. S.C. Code §42-9-30(21):**

As argued above, pursuant to S.C. Code §42-9-35, due to the aggravation of the condition of the Claimant's back, he is entitled to compensation for the resulting disability of "the pre-existing and the subsequent injury."

Claimant contends he suffered in excess of 50% loss of use of the back when one considers his significant physical restrictions combined with Dr. Edwards' opinion that Claimant currently has a 25% impairment of the cervical spine and a 20% impairment of the lumbar spine.

(See Edwards dep, p. 14, line 9 – p. 16, line 11).

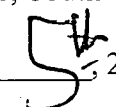
Respectfully submitted,

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