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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COMMISSION PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC NO. 0914812

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AUG 02 2013

SC Court of Appeals

Oscar Hickman Appellant

vs.

City of Myrtle Beach and Companion Property & Casualty Group Respondents

RECORD ON APPEAL

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Oscar Hickman Appellant

vs.

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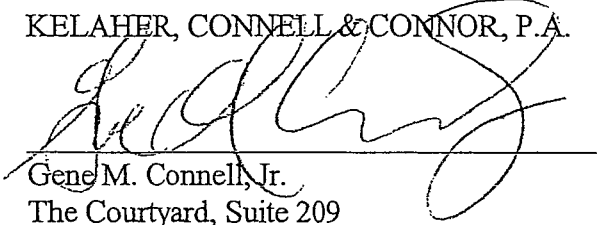
NOTICE OF APPEAL

The Appellant, Oscar Hickman, appeals the Decision and Order of the Commission Panel of the South Carolina Workers' Compensation Commission dated March 7, 2013 and received by Appellant on March 7, 2013. The grounds for appeal are as follows:

1. The Commission erred in failing to find that the Claimant had a change of condition.
2. The Commission erred in failing to find that medical care was governed pursuant to S.C. Code Section 42-15-60.
3. The Commission erred in failing to find that a change of condition had occurred because the Claimant's cancer was no longer a constraint to him having back surgery.
4. The Commission erred in failing to construe the act in favor of coverage for the employee.
5. The Commission erred in failing to find that the employee was entitled to additional medical treatment according to *Dodge*.
6. The Commission erred in finding that the cancer remission was not a physical change of condition which allowed for spine surgery.

7. The Commission erred in not finding that Hickman was entitled to medical treatment as per the previous Order of Commissioner Wilkerson and S.C. Code Ann. Section 42-15-60.
8. The Commission erred in failing to find that the spine surgery was a physical impossibility until the cancer treatment was finished.

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DECISION AND ORDER
OF THE COMMISSION PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 0914812

OSCAR HICKMAN, CLAIMANT/APPELLANT,

vs.

CITY OF MYRTLE BEACH, EMPLOYER,

AND

COMPANION PROPERTY & CASUALTY GROUP, CARRIER/RESPONDENTS

AFFIRMED

STATEMENT OF THE CASE

This is an appeal from the denial of a change of condition. Claimant's appeal presented eight questions¹ which he consolidated into three issues in his brief:

1. Did the single Commissioner fail to construe the Workers' Compensation Act as remedial in nature?
2. Did the single Commissioner err in failing to find that Hickman had a change of condition?
3. Did the Commission err in failing to hold that the request to treat back surgery would lessen the period of disability?

¹The eight questions claimant presented on appeal were:

- I. The Single Commissioner erred in failing to find that the Claimant had a change of condition.
- II. The Single Commissioner erred in failing to find that medical care was governed pursuant to S.C. Code Section 42-15-60.
- III. The Single Commissioner erred in failing to find that a change of condition had occurred because the Claimant's cancer was no longer a constraint to him having back surgery.
- IV. The Single Commissioner erred in failing to construe the act in favor of coverage for the employee.
- V. The Single Commissioner erred in failing to find that the employee was entitled to additional medical treatment according to *Dodge*.
- VI. The Single Commissioner erred in finding that the cancer remission was not a physical change of condition which allowed for spine surgery.
- VII. The Single Commissioner erred in not finding that Hickman was entitled to medical treatment as per the previous Order of Commissioner Wilkerson and S.C. Code Ann. Section 42-15-60.
- VIII. The Single Commissioner erred in failing to find that the spine surgery was a physical impossibility until the cancer treatment was finished.

For the reasons herein stated, the Commission Panel fully affirms the Decision & Order of the hearing commissioner.

SUMMARY OF EVIDENCE

Claimant injured his back on September 9, 2009 and was treated by Dr. Bauerle. An MRI was performed on October 20, 2009, and showed degenerative changes in claimant's lumbar spine which were most severe at L4-5 and L5-S1. Claimant also underwent epidural steroid injections by Dr. Kang.

In mid January, 2010, claimant was diagnosed with colon cancer which was unrelated to his back injury. The day after his diagnosis, he had a scheduled appointment with Dr. Bauerle who told claimant he could either live with the back and leg pain or consider surgery. Claimant disclosed he had to undergo treatment for the cancer, so he was not interested in back surgery.

Because of the cancer, claimant applied for and received disability retirement. His wife, a registered nurse, took a job in California and they moved to the west coast. Claimant received his cancer treatment while in California. He returned to South Carolina in June 2010 to see Dr. Bauerle and underwent a functional capacity evaluation. Dr. Bauerle reviewed it on June 30, 2010, declared claimant at MMI and rated him at 5% whole person. Dr. Bauerle also indicated claimant was able to return to work without restrictions and would not need further medical care for the back.

Employer filed a Form 21 requesting a hearing. Claimant continued his cancer treatment in California and, by the time a hearing was scheduled on May 12, 2011, had completed his cancer treatment. Dr. Shah, claimant's oncologist, wrote a letter on May 9, 2011, advising the cancer was no longer a detriment to back surgery.

At the hearing on employer's Form 21, claimant asserted he wanted the surgery, but Dr. Bauerle had submitted a Form 14B indicating claimant was at MMI and did not need any further medical treatment. Commissioner Wilkerson issued his Order on July 21, 2011, finding claimant reached MMI on June 30, 2010, and awarding 7.5% to the back. No medical treatment pursuant to Dodge v. Bruccoli, Clark, Laymen, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999) was awarded, and the Employer paid the award in a lump sum on October 11, 2011. Claimant did not appeal that order.

Claimant filed a Form 50 on January 12, 2012, asserting a change of condition. Attached thereto was a letter from Dr. Bauerle dated November 28, 2011, in which he opined that there was "objective evidence" that claimant's condition had progressively worsened. Employer responded with a Form 51 denying any physical change of condition.

Dr. Bauerle was deposed on March 16, 2012, and confirmed he had found Claimant to be at maximum medical improvement on June 30, 2010, and returned him to regular duty with no need for future medical treatment. The FCE put claimant at 5% whole person impairment. Dr. Bauerle testified he saw claimant again on October 3, 2011 for complaints of continuing back and leg pain. Claimant had had another MRI performed in California on August 17, 2011, but did not have it with him. Dr. Bauerle did not see that MRI report and photos until November 16, 2011. Dr. Bauerle acknowledged he wrote the letter on November 28, 2011, expressing the opinion there was objective evidence of a worsening condition, but he testified under oath he did not see "any significant change in the two [MRIs]." He said the opinion he expressed in his letter was based on claimant's subjective complaints, not diagnostic studies. Based on the objective evidence before him, Dr. Bauerle could not opine, to a reasonable degree of medical certainty, claimant exhibited a physical change of condition.

FINDINGS OF FACTS

1. This matter is properly before the South Carolina Workers' Compensation Commission, which has jurisdiction of this matter.

2. Venue is properly set in Horry County.

3. Claimant's average weekly wage is \$815.40, which yields a compensation rate of \$543.63.

4. Claimant was injured on September 9, 2009 while employed with the employer. He injured his arm and low back while attempting to lower a heavy trailer gate.

5. Employer has paid all temporary total disability benefits for which it is responsible and there is no overpayment.

6. Claimant received medical treatment for his arm and back from Doctors Care, Dr. Wayne Bauerle at Strand Orthopedic Consultants, and Dr. Gregory Kang at Pain, Spine & Sports Medicine. He also received physical therapy from Atlantic Physical Therapy Rehabilitation, Inc.

7. Claimant underwent a Functional Capacity Evaluation and was rated at 5% to the spine.

8. On June 30, 2010, Dr. Bauerle found Claimant at reached MMI, rated him at 5% to the spine and released him to regular duty with no future medical treatment needed.

9. Carrier filed a Form 21 based on Dr. Bauerle's Form 14B and a hearing was scheduled for May 12, 2011 before Commissioner Wilkerson.

10. Prior to the hearing, Claimant obtained a letter from his oncologist in California that Claimant had completed his cancer treatment and the cancer was not longer a detriment to back surgery.

11. Commissioner Wilkerson issued his Decision and Order on July 21, 2011, finding Claimant reached MMI on June 30, 2010 and awarding 7.5% to the back. Consistent with Dr. Bauerle's Form 14B, no further medical treatment was awarded pursuant to Dodge, *supra*.

12. Claimant did not appeal Commissioner Wilkerson's order and Employer paid the award in a lump sum on October 11, 2011.

13. Dr. Bauerle saw claimant again on October 3, 2011 and was told of another MRI performed in California in August 2011, but Claimant did not have it with him. Dr. Bauerle did not see that MRI until November 16, 2011.

14. Dr. Bauerle wrote a letter dated November 28, 2011, stating there was "objective evidence" that claimant's condition had progressively worsened, and Claimant timely filed a Form 50 on January 12, 2012, asserting a change of condition.

15. Dr. Baurele was deposed on March 16, 2012, and testified under oath he compared the MRI taken in 2009 with another MRI performed in California in August 2011 and did not see "any significant change in the two MRIs."

16. Dr. Baurele testified he could not say to a reasonable degree of medical certainty Claimant had a physical change of conditions for the worse.

17. Dr. Baurele testified that the opinion he expressed in his November 28, 2011, letter was based on Claimant's subjective complaints of pain and not on any evidence of a physical change of condition.

CONCLUSIONS OF LAW

"Change of condition" is governed by S.C. Code Ann. § 42-17-90. That code section provides in part that a party in interest may file a motion on the ground of a change of condition and receive additional benefits if the claimant can prove by a preponderance of the evidence that

there has been a change of condition for the worse caused by the original injury. The motion must be made within 12 months from the date of the last payment of compensation pursuant to an award provided by the Act.

Our Courts have interpreted "change of condition" to mean a physical change of condition as a result of the original injury. Causby v. Rock Hill Printing & Finishing, Co., 249 S.C. 225, 153 S.E.2d 697 (1967); Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E.2d 19 (1942). Proof of a change of condition requires more than mere subjective complaints of pain. Robbins v. Walgreen's and Broadspire Services, Inc., 375 S.C. 259, 652 S.E.2d 90 (S.C. App. 2007). In his letter of November 28, 2011, Dr. Bauerle originally opined there was "objective evidence that [claimant's] condition had progressively worsened." However, in his deposition, he admitted that opinion was based on claimant's subjective complaints of pain, not objective evidence of physical change. When he compared the 2009 MRI with the copies of the 2011 MRI, Dr. Baurele did not see any significant change. He could not opine to a reasonable degree of medical certainty claimant had a physical change of condition for the worse.

Claimant makes the argument that, because he was diagnosed with cancer and Dr. Bauerle would not operate until that problem was resolved, claimant should be provided back surgery now that his cancer is in remission. A review of the record belies this argument. The date of accident was September 9, 2009. Claimant was diagnosed with cancer in January 2010 after which he discussed back surgery with Dr. Bauerle. Dr. Baurele explained to claimant he could have back surgery or live with the pain. Because claimant had therapy and possible surgery to treat his cancer, back surgery was not pursued. Claimant, who by that time lived in California, returned to South Carolina in June, 2010, underwent a Functional Capacity Evaluation (FCE), and was pronounced at maximum medical improvement (MMI) and rated by

Dr. Baurele. Employer filed a Form 21 seeking a determination of permanency and the hearing was set for May 12, 2011. Claimant's APA 2 which is a letter from Dr. Shad dated May 9, 2011, cleared claimant for further back therapy.

Carrier paid the award on October 11, 2011, as reflected in the Form 19. As of that day, claimant's cancer was in remission and the Commission had determined his disability. There has been no showing of a physical change of condition since that date. S.C. Code Ann. Section 42-17-90 specifically requires there be a "change of condition caused by the original injury, after the last payment of compensation." Claimant's argument that the improvement in the cancer should be the basis of change in condition is misplaced. The cancer was not part of the original injury and no change of condition has been shown to the original injury,

Claimant argues that the hearing commissioner erred by not liberally construing the Act. On the contrary, the hearing commissioner applied the Act exactly as the legislature intended.

The basic rule on statutory interpretation is legislative intent. Roper Hospital v. Clemons, 326 S.C. 534, 484 S.E.2d 598 (Ct. App. 1997). As claimant points out, our Supreme Court has recognized the Act is social legislation and remedial in nature. But the Courts also hold that, while the Act has given liberal construction, it cannot be construed so as to do violence to a specific requirement of the Act. Teigue v. Appleton Co., 221 S.C. 52, 68 S.E.2d 878 (1952). Where the Act is clear and unambiguous in its terms, it must be strictly applied. Transportation Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010). The meaning of §42-17-90 is not ambiguous or unclear.² It requires proof of a change of condition "by a preponderance of the evidence" and no less.

² S.C. Code §42-17-90 (A) reads as follows: On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make and award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of

Claimant's burden in this case is to prove by a preponderance of the evidence that he has a change of condition for the worse. His appeal rests upon the testimony of Dr. Bauerle who stated in his deposition that, given his examination of the MRI obtained in 2009 at Strand Orthopaedic Consultants and the MRI performed in California in 2011, he could not say to a reasonable degree of medical certainty that claimant's condition had progressed significantly. In response to questions from claimant's counsel, Dr. Bauerle acknowledged his reference to "objective evidence" of a change of condition referred only to claimant's subjective complaints. Subjective complaints of pain are insufficient to support an award for a change of condition. See Robbins, supra. The hearing commissioner correctly construed the Act as intended by the legislature.

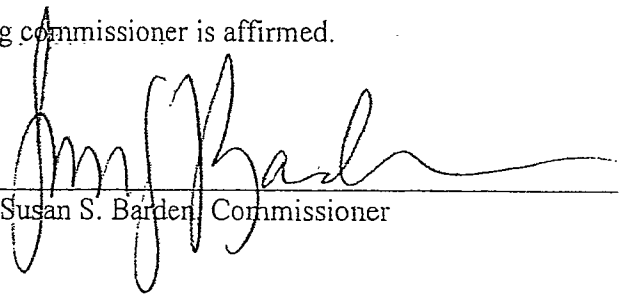
Claimant also argues the Commissioner erred in failing to hold that the "request to treat back surgery would lessen the period of disability." A review of the record does not reveal any medical evidence that back surgery would lessen the period of disability. Dr. Bauerle opined on his Form 14B Claimant was at MMI with no need for further medical treatment. Claimant was cleared to return to regular duty. Nothing in this record changed that opinion. The issue was not before the Commissioner, but had it been an issue, the Claimant did not establish by a preponderance of the evidence further medical treatment would lessen his period of disability, and we so hold.

compensation. An award is subject to maximum or minimum provided in this title, and the commission immediately shall send to the parties a copy of the order changing the award. The review does not affect the award as regards any monies paid and the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title.

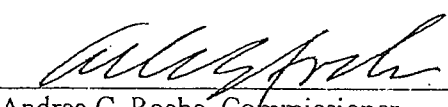
AWARD

The Decision and Order of the hearing commissioner is affirmed.

7 day of March, 2013
Columbia, S.C.



Susan S. Barden, Commissioner



Andrea C. Roche, Commissioner



Gene McCaskill, Commissioner

CERTIFICATE OF SERVICE

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

By Valerie Deller on March 7, 2013

DECISION AND ORDER
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0914812

OSCAR HICKMAN, EMPLOYEE/CLAIMANT,
vs.
CITY OF MYRTLE BEACH, EMPLOYER,
AND
COMPANION PROPERTY & CASUALTY GROUP, CARRIER/DEFENDANTS.

DATE OF HEARING: July 11, 2012 in Conway, South Carolina.

APPEARANCES: Claimant Oscar Hickman was represented by Gene M. Connell, Jr. of Myrtle Beach, South Carolina; Defendants were represented by Stanford E. Lacy, Attorney of Collins & Lacy, P.C., Columbia, South Carolina

PURPOSE OF HEARING: To decide issues set forth in Forms 50 & 51

COMMISSIONER: Melody L. James, Commissioner

FILED: October 23, 2012

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the following records were admitted into evidence.

The Following APAs were submitted by Claimant:

NO.	NAME OF PROVIDER/WITNESS/EXHIBIT	DATE OF REPORT/RECORD	PAGE(S)
1.	Previous APA Submissions	4/20/1	1 - 20
2.	Dr. Mukund Shah	5/09/11	21
3	Previous Order of WC Commission	7/21/11	22 - 28
4.	Dr. Wayne B. Bauerle	11/28/11	29
5.	Deposition of Dr. Wayne B. Bauerle	03/16/12	30 - 53

The Following APAs were submitted by the Defendants:

NO.	NAME OF PROVIDER/WITNESS/EXHIBIT	DATE OF REPORT/RECORD	PAGE(S)
6.	Strand Orthopaedic Consultants	10/20/09 - 11/16/11	54 - 55
7.	Deposition of Dr. Wayne B. Bauerle	3/16/12	56 - 91

STIPULATIONS

Counsel for the parties stipulated at the hearing to the following:

1. The parties stipulate this matter is properly before the South Carolina Workers' Compensation Commission which has jurisdiction to decide all issues raised herein.
2. Venue is properly set in Horry County.
3. Claimant's average weekly wage was \$815.40 which yields a compensation rate of \$543.63.

4. The Commission's file is made part of the record except for self-serving declarations and unstipulated medical reports. Medical records previously submitted as APA submissions are made a part of this record and incorporated herein by reference.

STATEMENT OF THE CASE

Claimant asserts a change of condition for the worse pursuant to SC Code Ann. § 42-17-90 and requests the Commission issue its Order requiring carrier to provide additional medical treatment for Claimant's back. Additionally, Claimant asks for further compensation including temporary total disability and permanent partial disability as appropriate.

Employer denies Claimant has had a change of condition for the worse and denies his entitlement to further benefits.

SUMMARY OF EVIDENCE

This is an admitted back injury case which was originally heard by the Honorable Avery B. Wilkerson on May 12, 2011 in Myrtle Beach, South Carolina. He issued his Order on July 21, 2011 finding Claimant reached maximum medical improvement on June 30, 2010 and was rated by Dr. Bauerle at 5% whole person. Claimant was awarded 7.5% disability to the spine and noted that the Form 14B submitted by Dr. Bauerle dated August 11, 2010, did not indicate Claimant needed further medical care. Employer paid the award in a lump sum on October 11, 2011.

The events leading up to the hearing before Commissioner Wilkerson are well summarized in his Order. Of particular interest here is the fact that Claimant underwent an MRI on October 20, 2009, that showed degenerative changes in his lumbar spine which were most severe at L4-5 and L5-S1. Claimant's primary medical provider was Dr. Bauerle, and Claimant also underwent epidural steroid injections by Dr. Kang.

In mid-January, 2010, Claimant was diagnosed with colon cancer which was unrelated to his back injury. The day after his diagnosis, he had a scheduled appointment with Dr. Bauerle who told Claimant he could either live with the back and leg pain or consider surgery. Claimant disclosed he had to undergo treatment for the cancer, so talk of surgery for the back was discontinued.

Because of the cancer, Claimant applied for and received disability retirement. His wife, a registered nurse, took a job in California and they moved to the west coast. Claimant received his cancer treatment while in California. He returned to South Carolina in June 2010, again saw Dr. Bauerle, and underwent a functional capacity evaluation which Dr. Bauerle reviewed on June 30, 2010 and rated Claimant at 5% whole person. Dr. Bauerle also set the date of maximum medical improvement to be June 30, 2010, and indicated Claimant was able to return to work without restrictions and would not need further medical care. This was greatly disputed by Claimant at the hearing before Comm. Wilkerson. By the time of that hearing, Claimant had completed his cancer treatment and the cancer was in remission.

On June 22, 2011, subsequent to the hearing but before Commissioner Wilkerson issued his Order on July 21, 2011; Claimant filed a Form 50 requesting a hearing for a change of condition for the worse. The defense responded by a Form 51 denying a change of condition on July 15, 2011. On the eve of the hearing, the Form 50 was withdrawn. Claimant re-filed the Form 50 on January 12, 2012. Attached thereto was a letter from Dr. Bauerle dated November 28, 2011, in which he opined that there was "objective evidence" that Claimant's condition had progressively worsened. Employer responded with a Form 51 categorically denying any change of condition.

Claimant was the only witness to testify at the current hearing. He testified that he worked for the City of Myrtle Beach for 20 years and had been in the military for 10 years. His oncologist in California was Dr. Mukund Shah. Dr. Shah wrote a letter on May 9, 2011 stating that Claimant was "cleared" for further treatment and care of his ongoing back therapy. This included surgery. (Claimant's APA No. 2) Claimant testified he was still experiencing back and leg problems and now wanted the back surgery.

Dr. Bauerle's March 16, 2012, deposition was introduced by both parties. Dr. Bauerle testified that he had been Claimant's treating physician and that he had found him to be at maximum medical improvement on June 30, 2010. The FCE put Claimant at 5% whole person impairment. Dr. Bauerle saw Claimant again on October 3, 2011 for complaints of continuing back and leg pain. Claimant had had another MRI performed in California on August 17, 2011, but Claimant did not have it for Dr. Bauerle to review. On November 16, 2011, Dr. Bauerle reviewed both the MRI done in October 2009 and the MRI from California. He wrote a letter at on November 28, 2011, expressing the opinion there was objective evidence of a worsening condition. But in his deposition, Dr. Bauerle testified that he compared the two and did not see "any significant change in the two...." The opinion he expressed in his letter was based on Claimant's subjective complaints, not diagnostic studies. Based on the objective evidence before him, Dr. Bauerle could not opine, to a reasonable degree of medical certainty, Claimant exhibited a physical change of condition.

FINDINGS OF FACT

1. The factual findings of Commissioner Wilkerson in his Order of July 21, 2011, are incorporated herein by reference.

2. Claimant reached maximum medical improvement on June 30, 2010 and was awarded 7.5% disability to the spine by Commissioner Wilkerson on July 21, 2011.

3. According to the Form 19, Claimant received his compensation award on October 11, 2011.

4. Claimant returned to Dr. Bauerle on October 3, 2011, and complained of continued back and leg pain. Thereafter, an MRI of Claimant's lumbar spine taken in California on August 17, 2011, was made available for Dr. Bauerle who compared it to the MRI taken on South Carolina on October 20, 2009.

5. Dr. Bauerle testified that, to a reasonable degree of medical certainty, he saw no significant difference between the MRI of 2009 and the MRI of 2011.

6. Dr. Bauerle's reference to "objective evidence" of a worsening condition in his letter of November 28, 2011, referred to Claimant's subjective complaints of pain.

7. Dr. Bauerle could not opine to a reasonable degree of medical certainty there was objective evidence of physical change of condition.

8. Claimant has failed to establish by a preponderance of the evidence that he has had a physical change of condition for the worse since he received his last compensation payment on October 11, 2011.

CONCLUSIONS OF LAW

"Change of condition" is governed by S.C. Code Ann. § 42-17-90. That code section provides in part that a party in interest may file a motion on the ground of a change of condition and receive additional benefits if the claimant can prove by a preponderance of the evidence that there has been a change of condition for the worse caused by the original injury. The motion must be made within 12 months from the date of the last payment of compensation pursuant to an award provided by the Act.

Our Courts have interpreted "change of condition" to mean a physical change of condition as a result of the original injury. Causby v. Rock Hill Printing & Finishing, Co., 249 S.C. 225, 153 S.E.2d 697 (1967); Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E.2d 19 (1942). Proof of a change of condition requires more than mere subjective complaints of pain. Robbins v. Walgreen's and Broadspire Services, Inc., 375 S.C. 259, 652 S.E.2d 90 (S.C. App. 2007). In his letter of November 28, 2011, Dr. Bauerle's originally opined there was "objective evidence that [claimant's] condition had progressively worsened." However, in his deposition, he admitted that opinion was based on Claimant's subjective complaints of pain, not objective evidence of physical change. When he compared the 2009 MRI with the copies of the 2011 MRI, Dr. Baurele did not see any significant change. He could not opine to a reasonable degree of medical certainty Claimant had a physical change of condition for the worse.

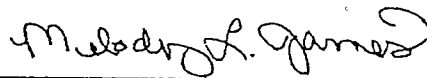
The correct standard applicable here is whether the evidence supports a finding that Claimant suffered a "physical change of condition for the worse." Robbins, 375 S.C. at 263, 652 S.E.2d at 93. Dr. Baurele could not express that opinion and therefore could not provide that evidence.

Claimant also makes the argument that, because he was diagnosed with cancer and Dr. Bauerle would not operate until that problem was resolved, claimant should be awarded back surgery now that his cancer is in remission and he has been cleared for the back surgery. The sequence of events indicates otherwise. The date of accident was September 9, 2009. Claimant was diagnosed with cancer in January 2010 after which he discussed back surgery with Dr. Bauerle. Dr. Baurele explained to claimant he could have back surgery or live with the pain. Because Claimant had therapy and possible surgery to treat his cancer, back surgery was not pursued. Claimant, who by that time lived in California, returned to South Carolina in June, 2010, underwent a Functional Capacity Evaluation (FCE), and was pronounced at maximum medical improvement and rated by Dr. Baurele. Employer filed a Form 21 seeking a determination of permanency and the hearing was set for May 12, 2011. Commissioner Wilkerson's Decision & Order reflects Claimant's cancer was already in remission when he returned to South Carolina for the Form 21 hearing. That fact is substantiated by Claimant's APA 2 which is a letter from Dr. Shad dated May 9, 2011, clearing Claimant for further back therapy.

Carrier paid the award on October 11, 2011, as reflected in the Form 19. As of that day, Claimant's cancer was in remission and the Commission had determined his disability. There has been no showing of a physical change of condition since that date. S.C. Code Ann. Section 42-17-90 specifically requires there be a "change of condition caused by the original injury, after the last payment of compensation." Claimant's argument that the improvement in the cancer should be the basis of change in condition is misplaced. Although it is regretful as the spine surgery was originally recommended at the time of his diagnosis of cancer, the change of condition in his cancer treatment is not related to the original injury. The cancer was not part of the original injury and no change of condition has been shown to the original injury,

AWARD

Claimant's claim for additional benefits resulting from a change of condition pursuant to S.C. Code Section 42-17-90 is denied.



Commissioner Melody L. James

CERTIFICATE OF SERVICE

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

October 23, 2012

By: Tamara Morris, Administrative Assistant to Commissioner James

DECISION AND ORDER
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0914812

OSCAR HICKMAN, EMPLOYEE/CLAIMANT,

vs.

CITY OF MYRTLE BEACH, EMPLOYER,

AND

COMPANION PROPERTY & CASUALTY GROUP, CARRIER/DEFENDANTS.

DATE OF HEARING: The hearing was held in Myrtle Beach, South Carolina on May 12, 2011.

APPEARANCES: Claimant, Oscar Hickman, was represented by Gene M. Connell, Jr. of Kelleher Connell & Connor, P.C. in Myrtle Beach, South Carolina; The City of Myrtle Beach was represented by Stanford E. Lacy, of Collins & Lacy, P.C. in Columbia, South Carolina.

PURPOSE OF HEARING: To determine if the Employer/Carrier is entitled to pay compensation to Claimant and if the Employer/Carrier is entitled to a credit for temporary total benefits paid in excess of the award.

COMMISSIONER: The Honorable Avery B. Wilkerson, Jr.

FILED: July 21, 2011

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were admitted into evidence:

The following APA Submissions were made by Defendants:

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE NOS.
1.	Strand Orthopedic Consultants	10/7/09 thru 8/11/10	1 – 11
2.	Work Well Systems, Inc.	6/24/10 thru 6/25/10	12 – 21
3.	Myrtle Beach Physical Therapy	11/30/09 thru 5/26/10	22 - 24
4.	Doctors Care	9/14/09 thru 9/29/09	25 - 32
5.	Dr. Gregory Kang	11/10/09 thru 11/18/09	33 – 34
6.	Atlantic Physical Therapy	12/21/09 thru 1/8/10	35 – 54
EXHIBITS			PAGE NOS.
Various disability related forms from Claimant's personnel file.			1 – 22

The Following APA Submissions were made by Claimant:

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE NOS.
1.	Strand Orthopedic Consultants	11/30/09 – 6/30/10	1 - 5
2.	Atlantic PT-FCE	6/24/10 & 6/25/10	6 - 15

STIPULATIONS

1. The parties stipulate this matter is properly before the South Carolina Workers' Compensation Commission which has jurisdiction to decide all issues raised herein.
2. Venue is properly set in Horry County.
3. Claimant's average weekly wage is \$815.40 which yields a compensation rate of \$543.63.

4. The Commission's file is made a part of the record except for self-serving declarations and undisputed medical reports.

STATEMENT OF THE CASE

This is an admitted back injury case in which the employer has filed a Form 21 requesting a determination of permanency. Employer states Claimant reached maximum medical improvement (MMI) on June 30, 2010 and was given a 5% impairment rating to the whole person. Claimant asserts he is not at maximum medical improvement and a finding of permanency would be premature.

SUMMARY OF EVIDENCE

Claimant worked for 20 years with Employer in land maintenance. He cut grass, trimmed trees, and otherwise performed landscaping duties. On September 9, 2009, Claimant and a co-worker were lowering the gate of the trailer when the co-worker dropped his side causing the entire weight of the gate to be held briefly by Claimant. As a result, Claimant injured his arm and back. Initially, Claimant missed no time from work and did not seek medical treatment, but the pain persisted. He asked to see a doctor and was sent to Doctors Care on September 14, 2009. He complained of low back pain and right elbow pain. On September 21, 2009, he returned to Doctors Care and reported his right elbow felt better but he was still having back pain. On September 29, 2009, Claimant was referred to Dr. Bauerle at Strand Orthopedic Consultants.

Claimant reported to Dr. Bauerle that he was having burning pain down both lower extremities but no real back pain associated with it. Dr. Bauerle diagnosed lumbar spondylosis with neurogenic claudication and probably spinal stenosis. An MRI was performed that showed degenerative changes in Claimant's lumbar spine which were most severe at L4-5 and L5-1.

Claimant underwent epidural steroid injections with Dr. Kang but did not receive much relief of his ridiculer components. Dr. Bauerle prescribed a course of physical therapy but it did not help.

In mid January, 2010, Claimant was diagnosed with colon cancer after a colonoscopy. When he saw Dr. Bauerle the next day, Dr. Bauerle told Claimant he had two options. He could either live with the back and leg pain or consider surgery. Claimant disclosed he had been diagnosed with cancer and was not interested in spine surgery because he had to undergo treatment for the cancer, which also included surgery.

Because of the cancer, Claimant applied for and received disability retirement. His wife, a registered nurse, took a job in California and they moved. Claimant received his cancer treatment, which included surgery and chemotherapy, while in California. He returned to South Carolina in June 2010 and again saw Dr. Bauerle. He also underwent a functional capacity evaluation. When Dr. Bauerle reviewed the FCE on June 30, 2010, he rated Claimant at 5% whole person.

Dr. Bauerle prepared and submitted a Form 14B indicating a diagnosis of lumbar spondylosis with neurogenic claudication and probable stenosis. He set Claimant's date of MMI to be June 30, 2010 and opined Claimant had a 5% impairment rating to the whole person. Dr. Bauerle also indicated Claimant was able to return to work without restrictions and would not need further medical care. Claimant disputed this.

Claimant testified at the hearing that his back was "doing bad" and on normal days he felt his pain was 6 on a scale of 10. He also has pain in his legs that he described as feeling like "cramps." Claimant finished his chemotherapy for the cancer in September 2010, and, as of the hearing, was in remission.

FINDINGS OF FACTS

1. This matter is properly before the South Carolina Workers' Compensation Commission, which has jurisdiction of this matter.
2. Venue is properly set in Horry County.
3. Claimant's average weekly wage is \$815.40, which yields a compensation rate of \$543.63.
4. Claimant was injured on September 9, 2009 while employed with the employer. He injured his arm and low back while attempting to lower a heavy trailer gate.
5. Employer has paid all temporary total disability benefits for which it is responsible and there is no overpayment.
6. Claimant received medical treatment for his arm and back from Doctors Care, Dr. Wayne Bauerle at Strand Orthopedic Consultants, and Dr. Gregory Kang at Pain, Spine & Sports Medicine. He also received physical therapy from Atlantic Physical Therapy Rehabilitation, Inc.
7. Based on Dr. Bauerle's reports, Claimant reached MMI on June 30, 2010.
8. According to Dr. Bauerle, Claimant was rated at 5% whole person, which, under the AMA guides, equates to the spine.
9. Claimant has a 7.5% disability to the spine.
10. The Form 14B submitted by Dr. Bauerle dated August 11, 2010 does not indicate Claimant needs further medical care.

CONCLUSIONS OF LAW

1. Injury and personal injury are governed by § 42-9-160. It is undisputed in this case Claimant suffered an injury by accident arising out of and in the course of employment and therefore has a personal injury.

2. Medical treatment is governed by S.C. Code Ann. § 42-15-60.

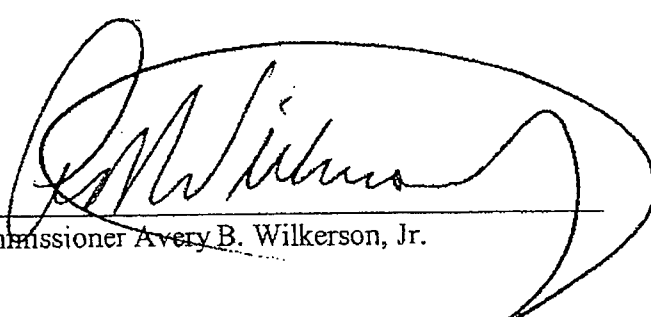
3. Temporary total disability is governed by S.C. Code Ann. § 42-9-10.

4. Schedule for period of disability and compensation for the back is governed by S.C. Code Ann. § 42-9-30(21). Under that section, the back is worth 300 weeks and 7.5% of the back equates to 22.5 weeks.

AWARD

Based on the findings of fact and conclusions of law, the undersigned Commissioner orders as follows:

IT IS THEREFORE ORDERED, Employers' Form 21 Motion is granted and Claimant is award 7.5% to the spine or 22.5 weeks. At a compensation rate of \$543.63, the award equates to \$12,231.68.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

July 21, 2011

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 0914812
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Oscar Hickman, Appellant SSN: [REDACTED] Employer's Name: City of Myrtle Beach, Respondent
Address: [REDACTED] Address: P.O. Box 2468
City: Lancaster State: CA Zip: 93535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: () - Work Phone: () - Insurance Carrier: Companion Property & Casualty Group
Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelaher, Connell & Connor, P.C. Preparer's Phone #: (843) 238-5648

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 09/09/2009 (m/d/yyyy)

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

1. Did the Single Commissioner err in failing to find that the Claimant had a change of condition?
2. Did the Single Commissioner err in failing to find that medical care was governed pursuant to S.C. Code Section 42-15-60?
3. Did the Single Commissioner err in failing to find that a change of condition had occurred because the Claimant's cancer was no longer a constraint to him having back surgery?
4. Did the Single Commissioner err in failing to construe the Act in favor of coverage for the employee?
5. Did the Single Commissioner err in failing to find that the employee was entitled to additional medical treatment according to Dodge?
6. Did the Single Commissioner err in finding that the cancer remission was not a physical change of condition which allowed for spine surgery?
7. Did the Single Commissioner err in not finding that Hickman was entitled to medical treatment as per the previous Order of Commissioner Wilkerson and S.C. Code Ann. Section 42-15-60?
8. Did the Single Commissioner err in failing to find that the spine surgery was a physical impossibility until the cancer treatment was finished?

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to SCWCC Lacey, Esquire,

Name

Collins and Lacey, P. O. Box 12487, Columbia, SC. 29211

NOV 05 2012

on the 2nd day of November, 2012 by ☒ first class mail

Address

☐ personal service ☐ certified mail.

Preparer's Signature

Attorney for Employee/Claimant
Title

November 2, 2012
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

WCC FILE NO. 0914812

Oscar Hickman,)
)
Appellant/)
Employee/Claimant,)
)
vs.)
)
City of Myrtle Beach,)
)
Employer,)
and)
)
Companion Property & Casualty Group,)
)
Carrier,)
Respondent/Defendants.)
_____)

**BRIEF OF APPELLANT
OSCAR HICKMAN**

STATEMENT OF THE CASE

This matter is before the Commission based on a series of Orders issued by Commissioner Wilkerson and Commissioner James in this case. The Claimant, Oscar Hickman was a 20 year employee with the City of Myrtle Beach who worked for the street department. On September 9, 2009 he was lowering the gate of a trailer when a co-worker dropped his side causing the entire weight of the gate to be held briefly by Hickman. As a result, Hickman injured his arm and back. He was sent to Doctors Care on September 14, 2009 and eventually on September 29, 2009 was referred to Dr. Bauerle at Strand Orthopaedic Consultants.

Dr. Bauerle diagnosed Hickman with lumbar spondylosis and an MRI showed changes in Hickman's lumbar spine at L4-5 and L5-1. Hickman underwent steroidal injections with Dr. Kang along with a course of physical therapy.

SCWCC

DEC 20 2012

JUDICIAL

In January 2010, Dr. Bauerle informed the claimant that he had the option to either live with the pain or have back surgery. The claimant advised Dr. Bauerle at that time that he had just been diagnosed with colon cancer. Thus, Dr. Bauerle indicated that spinal surgery was not an option until the colon cancer was resolved. (APA 45, lines 1-25). As a result, Dr. Bauerle reviewed the Functional Capacities Evaluation on June 30, 2010 and rated the claimant at 5% to the whole person. Dr. Bauerle prepared and submitted a 14-B 5% rating to the whole person. Thereafter, the employer filed a Form 21, which eventually was heard by Commissioner Wilkerson. Commissioner Wilkerson awarded client a 7.5% disability rating to the back but made no mention of the Claimant's colon cancer.

When the case came up for hearing, Hickman was living with his wife in California undergoing lifesaving cancer treatment. Dr. Shah wrote a letter dated December 1, 2010 (attached) which stated:

Oscar Hickman is a patient of ours who we are currently treating and following for colon cancer. He has completed chemotherapy, but continues to suffer from the side effects from the treatment, such as neuropathy and a low immune system. Due to these side effects it is medically unsafe for him to travel outside of California. Please feel free to contact us if you have any further questions or concerns....

Eventually, on May 9, 2011 Dr. Shah wrote another letter regarding Hickman's treatment and stated as follows:

This letter is written in support of my patient Mr. Oscar Lee Hickman regarding continuous treatment in therapy or surgery regarding severe back issues. Upon Mr. Hickman's recent visit and assessment in my office, Mr. Hickman is cleared for further treatment and care for his ongoing back therapy. If I can be of further assistance, please contact me.... (APA 21).

Thereafter, claimant filed a request for change of condition and attached the following letter from Dr. Wayne Bauerle dated November 28, 2011:

It is my opinion that Mr. Hickman's medical condition has changed for the worse as a result of his not being able to undergo the recommended surgery because of being

diagnosed with cancer. It is further my opinion after reviewing the MRI done in Los Angeles, California, on August 17, 2011 that there is objective evidence that his condition has progressively worsened. He has evidence of significant degenerative at L5-S1 and also has a Grade I degenerative spondylolisthesis at L4-L5. (APA 29).

At the change of condition hearing, Dr. Bauerle's deposition was offered along with his medical records. He stated that Hickman's condition was progressively worse (APA 37, lines 19-22); that his functional level was worse (APA 38, lines 7-9); that his pain course was worse, which I classify as an objective complaint (APA 38, lines 7-9); that it was hard to compare different MRI studies with different technicians and different magnets (APA 39, lines 10-14); that there may have been a change in the MRI, it's tough to say without using the same machine (APA 39, lines 17-21); that Hickman had an increase in symptomatology (APA 40, lines 14-23); that his colon cancer must be resolved prior to the back surgery (APA 42, lines 1-4); that he definitely needed the cancer treatment first (APA 42, lines 14-18); that he treats the symptoms and that Hickman's symptoms were worse from the last time he had seen him (APA 44, lines 14-15); that the cancer trumped his ability to have surgery on his back (APA 45, lines 2-4); that there had been a change of condition, that the cancer had been treated and that no one would have performed the back surgery until the cancer was resolved (APA 45, lines 11-19); that he has been rated and released because there should be no surgery until the cancer is resolved (APA 47, lines 15-22).

Despite this testimony that the claimant could not have safely had the back surgery until after his cancer treatment, the single Commissioner found that a change of condition had not occurred, and as a result surgery was denied. Further, the single Commissioner failed to find that medical treatment should continue on pursuant to S.C. Code Ann. § 42-15-60 despite the fact that Commissioner Wilkerson's Order allowing for medical treatment was incorporated into Commissioner James' Order.

QUESTIONS PRESENTED

- I. The Single Commissioner erred in failing to find that the Claimant had a change of condition.
- II. The Single Commissioner erred in failing to find that medical care was governed pursuant to S.C. Code Section 42-15-60.
- III. The Single Commissioner erred in failing to find that a change of condition had occurred because the Claimant's cancer was no longer a constraint to him having back surgery.
- IV. The Single Commissioner erred in failing to construe the act in favor of coverage for the employee.
- V. The Single Commissioner erred in failing to find that the employee was entitled to additional medical treatment according to *Dodge*.
- VI. The Single Commissioner erred in finding that the cancer remission was not a physical change of condition which allowed for spine surgery.
- VII. The Single Commissioner erred in not finding that Hickman was entitled to medical treatment as per the previous Order of Commissioner Wilkerson and S.C. Code Ann. Section 42-15-60.
- VIII. The Single Commissioner erred in failing to find that the spine surgery was a physical impossibility until the cancer treatment was finished.

ARGUMENT

I. Did the single Commissioner fail to construe the Workers' Compensation Act as remedial in nature?

It is well settled under South Carolina law that the Workers' Compensation Act is a remedial act and should always be construed in favor of the employee. In *Davis v. S.C. Dept. of Corrections*, 289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986) the Supreme Court noted:

The Workers' Compensation Act should be liberally construed in furtherance of the purposes for which it was designed. Any reasonable doubts as to construction should be resolved in favor of the claimant by including him within the coverage of the Act rather than excluding him. It would require a strained construction of the Act to allow a former inmate compensation for permanent disability, yet deny him the medical treatment which may prevent his injury from resulting in permanent disability. 345 S.E.2d at 246.

Claimant respectfully suggests that if any case should be liberally construed it should be this one. Hickman was unable to have his back surgery because of life threatening cancer. Once that cancer resolved, Hickman returned to his doctor to have the back surgery which was denied by the singled Commissioner. Hickman asserts that if there was any doubt as to whether the change of condition should apply, it's in this case when Hickman's medical condition changed so he could have the surgery. It is disingenuous to argue that he can't have the surgery after the employer filed a Form 21 hoping for just such a result.

II. Did the single Commissioner err in failing to find that Hickman had a change of condition?

It is well settled in South Carolina that a review for a change of condition is concerned with conditions that have arisen thereafter. See *Causby v. Rock Hill Printing & Finishing Co.*, 249 S.E. 225, 228, 153 S.E.2d 697, 698-99 (1967). Here, Hickman's condition changed, i.e., his medical condition changed. He had treatment for cancer and thereafter was able to have the back surgery.

Claimant asserts that this is just what was contemplated by the change of condition statute in case law.

Further, the change of condition in this case was two-fold. First, the claimant was entitled to treatment now that Claimant's cancer treatment allowed him to have back surgery. Second, Dr. Bauerle, in his deposition, clearly indicated that claimant's symptomatology had gotten worse. (APA 40, lines 14-23); that his pain had gotten worse (APA 38, lines 7-9); that he had gotten progressively worse (APA 37, lines 19-22). With these factors in the record, the single Commissioner erred in failing to find that the claimant was entitled to additional treatment. The substantial evidence presented by Dr. Bauerle includes the fact that claimant's condition had gotten worse and that the cancer treatment now allowed Dr. Bauerle to perform the surgery.

In *Robbins v. Walgreens and Broadspire Services*, 375 S.C. 259, 652 S.E. 2d 90 (2007), the Court of Appeals noted that neither of claimant's treating doctors opined that the claimant's condition had gotten worse. Thus, the full Commission's decision was affirmed. This was not the case in this matter since Dr. Bauerle testified that claimant's condition was progressively worse (APA 37, lines 19-22); that his functional level was worse (APA 38, lines 7-9); that his pain was worse and that I classify this as an objective complaint (APA 38, lines 10-19); that he had an increase in symptomatology (APA 40, lines 14-23); that we treat symptoms and that the symptoms here were worse (APA 44 lines 14-25). Finally, Dr. Bauerle noted no one would have performed the surgery until the cancer issue was resolved (APA 45, lines 11-9):

Thus, the change of condition was two-fold in this matter. First, claimant's condition was worse as per the testimony of Dr. Bauerle; and, second, claimant had a physical change of condition

in that he could not have the back surgery until the cancer treatment had occurred.¹ Accordingly, it is respectfully submitted that there is no evidence in the record to support Commissioner James' decision that there had not been a worsening of the condition. Indeed, the testimony is directly contra.

III. Did the Commission err in failing to hold that the request to treat back surgery would lessen the period of disability?

Claimant respectfully requests to the Commission that this case is controlled by Commissioner Wilkerson's Order which states in pertinent part: "Medical treatment is governed by S.C. Code Ann. § 42-15-60." (See Decision and Order of Commissioner Avery Wilkinson dated July 21, 2011).

In this case, claimant wanted back surgery, but was unable to have it due to claimant's current cancer treatment. Now that the cancer treatment has been resolved, claimant wishes to have additional back surgery to lessen the period of disability under S.C. Code § 42-15-60.

South Carolina's Supreme Court has always recognized additional medical treatment is required under state law if it tends to lessen the period of disability. See *Williams v. Boyle Construction Co.*, 252 S.C. 387, 166 S.E.2d 550 (1969). See also *Lee v. Harborside Café*, 350 S.C. 74, 564 S.E.2d 354 (Ct.App. 2002) which holds that even though a claimant has reached maximum medical improvement if additional medical care treatment would tend to lessen the period of disability, then such treatment may be warranted to at least maintain the claimant's degree of physical impairment. See also *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (Ct.App. 1999). (Commission may order additional medical treatment after MMI).

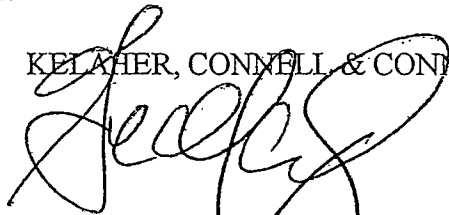
¹ How many times does an employee need surgery from an accident and it is discussed he has an underlying condition like high blood pressure. In these cases, the Commission does not deny the claim. The carrier treats the underlying condition then the Claimant has the surgery.

In sum, at the very least Commissioner James was obligated to follow Commissioner Wilkerson's Order and require medical treatment under S.C. Code Ann. §42-15-60 as such treatment would lessen the claimant's disability by allowing the back surgery after the cancer treatment had resolved.

CONCLUSION

Claimant has been caught between a rock and a hard place. Claimant could not have the back surgery because of his cancer. No doctor in his right mind would do back surgery until the cancer was treated. See Dr. Bauerle APA 45, lines 1-25 (spinal surgery not an option until colon cancer resolved). Claimant should not be penalized for his cancer. Accordingly, Claimant requests the back treatment as ordered by Dr. Bauerle.

KELAHIER, CONNELL, & CONNOR, P.C.



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1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
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Attorney for Employee/Claimant

December 18, 2012
Surfside Beach, South Carolina.



Antelope Valley Cancer Center

A Comprehensive Community Cancer Center

• Hematology • Oncology • Radiation IMRT • Clinical Research •

Medical Oncology & Hematology

H.K. Shamasunder, M.D.

Diplomate of American Board of
Internal Medicine, Hematology
and Oncology

Mukund Shah, M.D.

Diplomate of American Board of
Internal Medicine and Oncology

Ronald Miller, M.D.

Diplomate of American Board of
Internal Medicine
Hematology and Oncology

Miguel Medina, M.D.

Practice in Hematology and Oncology

Infusion Director

Stacy Redding, R.N., O.C.N.

Radiation Oncology

Yuchi Peter Peng, M.D.

Director, Radiation Oncology
Diplomate, American Board of
Radiation Oncology
UCLA Clinical Asst. Professor

Medical Physicist

James Luo

Chief Radiation Therapist

Ken Mackay

December 1, 2010

To Whom It May Concern,

Oscar Hickman is a patient of ours who we are currently treating and following for colon cancer. He has completed chemotherapy, but continues to suffer from the side effects from the treatment, such as neuropathy and a low immune system. Due to these side effects it is medically unsafe for him to travel outside of California. Please feel free to contact us if you have any further questions or concerns in regards to this matter.

Thank you,

Mukund Shah, M.D.

44105 N. 15th Street West, Suite 207 • Lancaster, California 93534
Off. 661/948-5928 • Fax 661/949-8618 • www.avcancercenter.com

1517 N. Downs • Ridgecrest, California 93555
Off. 760/446-7714 • Fax 760/446-5226

RESPONDANT'S BRIEF TO THE FULL COMMISSION

WCC FILE NO.: 0914812

OSCAR HICKMAN, EMPLOYEE/CLAIMANT,

vs.

CITY OF MYRTLE BEACH, EMPLOYER,

AND

COMPANION PROPERTY & CASUALTY GROUP, CARRIER/DEFENDANTS.

STATEMENT OF THE CASE

Claimant asserted a change of condition for the worse pursuant to SC Code Ann. § 42-17-90 and requested the commissioner issue an Order requiring carrier to provide additional compensation and medical treatment for claimant's back. The hearing commissioner denied the request and claimant appeals. For the reasons stated herein, this Panel should affirm the hearing commissioner.

SUMMARY OF EVIDENCE

This is an admitted back injury case which was originally heard by the Honorable Avery B. Wilkerson on employer's Form 21 on May 12, 2011 in Myrtle Beach, South Carolina. He issued his Order on July 21, 2011 finding claimant reached maximum medical improvement on June 30, 2010 and was rated by Dr. Bauerle at 5% whole person. His Form 14B dated August 11, 2010, indicated claimant would not need further medical care. Claimant was awarded 7.5%

disability to the spine but no medical treatment pursuant to Dodge v. Bruccoli, Clark, Laymen, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). The Employer paid the award in a lump sum on October 11, 2011.

The events leading up to the hearing before Commissioner Wilkerson are well summarized in his Order. Claimant injured his back on September 9, 2009 and was treated by Dr. Bauerle. An MRI was performed on October 20, 2009, and showed degenerative changes in claimant's lumbar spine which were most severe at L4-5 and L5-S1. Claimant also underwent epidural steroid injections by Dr. Kang.

In mid January, 2010, claimant was diagnosed with colon cancer which was unrelated to his back injury. The day after his diagnosis, he had a scheduled appointment with Dr. Bauerle who told claimant he could either live with the back and leg pain or consider surgery. Claimant disclosed he had to undergo treatment for the cancer, so he was not interested in back surgery.

Because of the cancer, claimant applied for and received disability retirement. His wife, a registered nurse, took a job in California and they moved to the west coast. Claimant received his cancer treatment while in California. He returned to South Carolina in June 2010 to see Dr. Bauerle and underwent a functional capacity evaluation. Dr. Bauerle reviewed it on June 30, 2010, declared claimant at MMI and rated him at 5% whole person. Dr. Bauerle also indicated claimant was able to return to work without restrictions and would not need further medical care for the back.

Employer filed a Form 21 requesting a hearing. Claimant continued his cancer treatment in California and, by the time a hearing was scheduled on May 12, 2011, had completed his cancer treatment. Dr. Shah, claimant's oncologist, wrote a letter on May 9, 2011, advising the cancer was no longer a detriment to back surgery.

At the hearing on employer's Form 21, claimant asserted he wanted the surgery, but Dr. Bauerle has submitted a Form 14B indicating claimant was at MMI and did not need any further medical treatment. Commissioner Wilkerson issued his Order on July 21, 2011, finding claimant reached MMI on June 30, 2011, and awarding 7.5% to the back. Claimant did not appeal that order.

Claimant filed a Form 50 on January 12, 2012, asserting a change of condition. Attached thereto was a letter from Dr. Bauerle dated November 28, 2011, in which he opined that there was "objective evidence" that claimant's condition had progressively worsened. Employer responded with a Form 51 denying any change of condition.

Dr. Bauerle was deposed on March 16, 2012, and the deposition was introduced by both parties. Dr. Bauerle testified that he had been claimant's treating physician and that he had found him to be at maximum medical improvement on June 30, 2010. The FCE put claimant at 5% whole person impairment. Dr. Bauerle saw claimant again on October 3, 2011 for complaints of continuing back and leg pain. Claimant had had another MRI performed in California on August 17, 2011, but did not have it for Dr. Bauerle to review. That was provided several months later. Although Dr. Bauerle wrote a letter on November 28, 2011, expressing the opinion there was objective evidence of a worsening condition, he testified under oath he did not see "any significant change in the two [MRIs]." (Baurele's deposition, page 7, lines 8-29.) He said the opinion he expressed in his letter was based on claimant's subjective complaints, not diagnostic studies. Based on the objective evidence before him, Dr. Bauerle could not opine, to a reasonable degree of medical certainty, claimant exhibited a physical change of condition. (Dr. Bauerle's deposition page 8, lines 6-8.)

Claimant was the only witness to testify at the change of condition hearing. He testified that he worked for the City of Myrtle Beach for 20 years and had been in the military for 10 years. His oncologist in California was Dr. Mukund Shah. Dr. Shah wrote a letter on May 9, 2011 stating that claimant was "cleared" for further treatment and care of his ongoing back therapy. This included surgery. (Claimant's APA No. 2) Claimant testified he was still experiencing back and leg problems and now wanted the back surgery.

ARGUMENTS

I. CLAIMANT HAS THE BURDEN OF PROVING A PHYSICAL CHANGE OF CONDITION FOR THE WORSE AND DID NOT MEET THAT BURDEN.

"Change of condition" is governed by S.C. Code Ann. § 42-17-90. That code section provides in part that a party in interest may file a motion on the ground of a change of condition and receive additional benefits if the claimant can prove by a preponderance of the evidence that there has been a change of condition for the worse caused by the original injury. The motion must be made within 12 months from the date of the last payment of compensation pursuant to an award provided by the Act.

Our Courts have interpreted "change of condition" to mean a physical change of condition as a result of the original injury. Causby v. Rock Hill Printing & Finishing, Co., 249 S.C. 225, 153 S.E.2d 697 (1967); Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E.2d 19 (1942). Proof of a change of condition requires more than mere subjective complaints of pain. Robbins v. Walgreen's and Broadspire Services, Inc., 375 S.C. 259, 652 S.E.2d 90 (S.C. App. 2007). In his letter of November 28, 2011, Dr. Bauerle originally opined there was "objective evidence that [claimant's] condition had progressively worsened." However, in his deposition, he admitted that opinion was based on claimant's subjective complaints of pain, not objective evidence of physical change. When he compared the 2009 MRI with the copies of the 2011

MRI, Dr. Baurele did not see any significant change. He could not opine to a reasonable degree of medical certainty claimant had a physical change of condition for the worse.

Claimant makes the argument that, because he was diagnosed with cancer and Dr. Bauerle would not operate until that problem was resolved, claimant should be provided back surgery now that his cancer is in remission. A review of the record belies this argument. The date of accident was September 9, 2009. Claimant was diagnosed with cancer in January 2010 after which he discussed back surgery with Dr. Bauerle. Dr. Baurele explained to claimant he could have back surgery or live with the pain. Because claimant had therapy and possible surgery to treat his cancer, back surgery was not pursued. Claimant, who by that time lived in California, returned to South Carolina in June, 2010, underwent a Functional Capacity Evaluation (FCE), and was pronounced at maximum medical improvement (MMI) and rated by Dr. Baurele. Employer filed a Form 21 seeking a determination of permanency and the hearing was set for May 12, 2011. Claimant's APA 2 which is a letter from Dr. Shad dated May 9, 2011, cleared claimant for further back therapy.

Carrier paid the award on October 11, 2011, as reflected in the Form 19. As of that day, claimant's cancer was in remission and the Commission had determined his disability. There has been no showing of a physical change of condition since that date. S.C. Code Ann. Section 42-17-90 specifically requires there be a "change of condition caused by the original injury, after the last payment of compensation." Claimant's argument that the improvement in the cancer should be the basis of change in condition is misplaced. The cancer was not part of the original injury and no change of condition has been shown to the original injury,

II. THE SINGLE COMMISSIONER PROPERLY APPLIED THE WORKERS' COMPENSATION ACT.

Claimant argues that the hearing commissioner erred by not liberally construing the Act. On the contrary, the hearing commissioner applied the Act exactly as the legislature intended.

The basic rule on statutory interpretation is legislative intent. Roper Hospital v. Clemons, 326 S.C. 534, 484 S.E.2d 598 (Ct. App. 1997). As claimant points out, our Supreme Court has recognized the Act is social legislation and remedial in nature. But the Courts also hold that, while the Act has given liberal construction, it cannot be construed so as to do violence to a specific requirement of the Act. Teigue v. Appleton Co., 221 S.C. 52, 68 S.E.2d 878 (1952). Where the Act is clear and unambiguous in its terms, it must be strictly applied. Transportation Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010). The meaning of §42-17-90 is not ambiguous or unclear.¹ It requires proof of a change of condition "by a preponderance of the evidence" and no less.

Perhaps claimant is asking this panel to liberally construe "preponderance of the evidence" to mean something less than the greater weight, clear and convincing, or that conclusion that reasonable minds can reach. Rather than liberally construing the law, claimant asks the panel to liberally construe the facts. This is not what the Courts mean when they say the Act should be liberally construed in favor of claimant.

Claimant's burden in this case is to prove by a preponderance of the evidence that he has a change of condition for the worse. In reviewing the evidence, it is clear he does not. His

¹ S.C. Code §42-17-90 (A) reads as follows: On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make and award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. An award is subject to maximum or minimum provided in this title, and the commission immediately shall send to the parties a copy of the order changing the award. The review does not affect the award as regards any monies paid and the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title.

appeal rests upon the testimony of Dr. Bauerle who stated in his deposition that, given his examination of the MRI obtained in 2010 at Strand Orthopaedic Consultants and the MRI performed in California in 2011, he could not say to a reasonable degree of medical certainty that claimant's condition had progressed significantly. (Bauerle deposition page 8, lines 6-13) In response to questions from claimant's counsel, Dr. Bauerle acknowledged his reference to "objective evidence" of a change of condition referred only to claimant's subjective complaints. Subjective complaints of pain are insufficient to support an award for a change of condition. See Robbins, supra.

In short, Claimant is asking this Panel to lower its standard of proof under the guise of saying the Act must be liberally construed in his favor. This, the panel cannot do.

III. THE COMMISSIONER PROPERLY FOUND CLAIMANT HAD NO CHANGE OF CONDITION.

Claimant's argument for change of condition is an anomaly. In reality, he argues that his unrelated cancerous condition is better, therefore his back is worse. There are two fallacies with this reasoning.

A. The oncologist had already released Claimant to have back surgery before Commissioner Wilkerson issued his Order in July 2011.

Dr. Shah, an oncologist in California, wrote his letter on May 9, 2011 indicating Claimant was cleared to have back surgery. The hearing before Commissioner Wilkerson was on May 12, 2011, and Commissioner Wilkerson's Order was dated July 21, 2011. There was no appeal. The carrier paid the Order on October 11, 2011.

B. Dr. Bauerle, the orthopaedic surgeon who was treating Claimant's back in South Carolina, rated him at 5% to the back and indicated on the Form 14B that Claimant did not need any further medical care.

Claimant argues for further surgery as if it were an inalienable right granted to him because he had colon cancer. At the time Commissioner Wilkerson issued his Decision and Order, Dr. Bauerle's Form 14B was in evidence. In it, Dr. Baurele opined claimant did not need any additional medical treatment. There was no evidence in the record upon which to base a finding claimant's impairment would improve with surgery. Likewise, there is no such evidence now.

IV. THE COMMISSIONER DID NOT ERR IN FAILING TO HOLD THE BACK SURGERY WOULD LESSEN THE PERIOD OF DISABILITY.

The Commissioner properly did not address whether back surgery would lessen Claimant's period of disability for two reasons. First, it was not an issue. Second, if it were an issue it was not proven by the greater weight of the evidence.

A. Whether back surgery would lessen the period of disability was not an issue at the hearing.

The hearing before Commissioner James was a hearing to determine whether there was a change of condition for the worse. Claimant now wishes to morph that into an issue whether the Commissioner should have considered whether surgery would lessen claimant's impairment under § 42-15-60. A review of the record shows why this would be improper.

When the original hearing was held before Commissioner Wilkerson on carrier's Form 21, the Form 14B prepared by Dr. Bauerle indicated there was no future medical treatment necessary. That is to say, there was no future medical treatment that would lessen claimant's period of disability and entitle him to additional medical treatment under Dodge v. Bruccoli Clark Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). Consequently, Commissioner Wilkerson did not award any additional medical treatment pursuant to Dodge. It was simply never an issue.

- B. There is no evidence to support a factual finding that this back surgery would lessen his period of disability.

The record is void of any medical opinion saying that, if claimant had the back surgery, it could lessen his period of disability. On the contrary, Dr. Bauerle stated he was not in a position to opine on that issue. Claimant would have to be re-evaluated before he would opine whether surgery was of benefit. (Bauerle depo., pg. 19, ln. 25 to pg. 20, ln. 18). Not only does the evidence not support a change of condition, there is no proof that surgery would in any way improve claimant's condition.

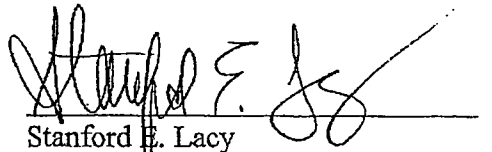
CONCLUSION

For the foregoing reasons, the hearing commissioner's Order should be affirmed in its totality.

Respectfully submitted,

COLLINS & LACY, P.C.

By:


Stanford E. Lacy
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (f)

ATTORNEYS FOR
EMPLOYER/CARRIER

Columbia, South Carolina

January 4, 2013



Claimant's Name: Oscar Hickman Employer's Name: City of Myrtle Beach
Address: [REDACTED] Address: P. O. Box 2468
City: Lancaster State: Ca Zip: 93535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: [REDACTED] Work Phone: () - Carrier: Self Insured/Companion Property & Casualty Co
Preparer's Name: Gene M. Connell, Jr. Preparer's Phone #: (843) 238-5648

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 543.63 2. AWW: \$815.40 Date of Injury: 9/09/09
3. Type of injury and body part(s): Lower back and right elbow
4. Facts in controversy: Admitted injury
5. Legal issues involved: none
6. Unusual aspects: none
7. Witnesses (designate if expert):* Oscar Hickman
8. Exhibits: none
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Strand Orthopaedic Consultants 11/30/09 thru 6/30/10; Atlantic PT-FCE dated 6/24/10 & 6/25/10
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne B. Bauerle, Strand Orthopaedic Consultants,
210 Village Center Blvd., Ste 200, Myrtle Beach, S. C. 29579
11. Impairment rating(s); body part(s); physician and date of opinion: 5% whole person Dr. Wayne Bauerle 6/30/10
12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: _____

Date of hearing: May 12, 2011 @ 2:15 PM

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF Horry	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 0914812
Oscar Hickman,	)	
	)	
Claimant,	)	
	)	
vs.	)	NOTICE OF WITNESSES AND
	)	WRITTEN REPORT(S)/PHYSICIAN
City of Myrtle Beach	)	OR OTHER EVIDENCE TO BE
	)	INTRODUCED ON BEHALF OF
	)	OSCAR HICKMAN
	)	
Employer,	)	
	)	
and	)	
	)	
Self Insured/Companion Property &	)	
Casualty Co.,	)	
Carrier,	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; STANFORD E. LACY, ATTORNEY FOR EMPLOYER/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Employee/Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Employer/Carrier, to wit:

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGES</u>
1. Strand Orthopaedic Consultants	11/30/09 – 6/30/10	1 – 5
2. Atlantic PT-FCE	6/24/10 & 6/25/10	6 -- 15

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

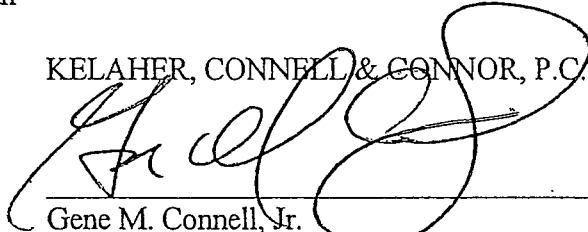
YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or
ROA 48

(3)

photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant/Employee.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant/Employee: a) Oscar Hickman

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.

Post Office Box 14547

Surfside Beach, S.C. 29587

(803) 238-5648

Attorney for Claimant/Employee

April 20, 2011
Surfside Beach, S.C.



Claimant's Name: Oscar Hickman Employer's Name: City of Myrtle Beach
Address: ~~600 Marine Court~~ Address: P. O. Box 2468
City: Lancaster State: Ca Zip: 93535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: ~~803-888-5510~~ Work Phone: () - Carrier: Self Insured/Companion Property & Casualty Co
Preparer's Name: Gene M. Connell, Jr. Preparer's Phone #: (843) 238-5648

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5. Legal issues involved: Change of condition—see letter of Dr. Mukund Shah dated May 9, 2011
6. Unusual aspects: none
7. Witnesses (designate if expert):* Oscar Hickman
8. Exhibits: Previous APA Submissions dated 4/20/11; Previous Order of the Commission dated 7/21/11
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Strand Orthopaedic Consultants 11/30/09 thru 6/30/10; Atlantic PT-FCE dated 6/24/10 & 6/25/10 (Previous APA Submission dated April 20, 2011; Letter of Dr. Mukund Shah dated May 9, 2011.
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne B. Bauerle, Strand Orthopaedic Consultants, 210 Village Center Blvd., Ste 200, Myrtle Beach, S. C. 29579
11. Impairment rating(s); body part(s); physician and date of opinion: 5% whole person Dr. Wayne Bauerle 6/30/10
12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature] Email: _____

Date of hearing: September 28, 2011 2:30 PM Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF HORRY	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 0914812
Oscar Hickman,	)	
	)	
Claimant,	)	
	)	
vs.	)	NOTICE OF WITNESSES AND
	)	WRITTEN REPORT(S)/PHYSICIAN
City of Myrtle Beach	)	OR OTHER EVIDENCE TO BE
	)	INTRODUCED ON BEHALF OF
	)	OSCAR HICKMAN
	)	
Employer,	)	
	)	
and	)	
	)	
Self Insured/Companion Property &	)	
Casualty Co.,	)	
Carrier,	)	
Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; STANFORD E. LACY, ATTORNEY FOR EMPLOYER/CARRIER:

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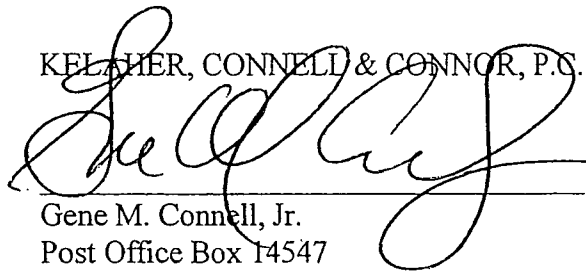
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2. Dr. Mukund Shah	5/9/11	21
3. Previous Order of WC Commission	7/21/11	22 -28

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

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YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant/Employee: a) Oscar Hickman

KELCHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
Post Office Box 14547
Surfside Beach, S.C. 29587
(803) 238-5648
Attorney for Claimant/Employee

September 9, 2011
Surfside Beach, S.C.



PRE-HEARING BRIEF
WCC File No: 0914812
SUPPLEMENTAL

Claimant's Name: Oscar Hickman Employer's Name: City of Myrtle Beach
Address: 000 Myrtle Court Address: P. O. Box 2468
City: Lancaster State: Ca Zip: 93535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: 803-666-9316 Work Phone: () Carrier: Self Insured/Companion Property & Casualty Co
Preparer's Name: Gene M. Connell, Jr. Preparer's Phone #: (843) 238-5648

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 543.63 2. AWW: \$815.40 Date of Injury: 9/09/09
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5. Legal issues involved: Change of condition—see letter of Dr. Mukund Shah dated May 9, 2011
6. Unusual aspects: none
7. Witnesses (designate if expert):* Oscar Hickman; Jackie Hickman
8. Exhibits: Previous APA Submissions dated 4/20/11; Previous Order of the Commission dated 7/21/11
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
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12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: _____

Date of hearing: September 28, 2011 2:30 PM

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF HORRY	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 0914812
Oscar Hickman,	)	
	)	
Claimant,	)	
	)	SUPPLEMENTAL
vs.	)	NOTICE OF WITNESSES AND
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	)	
and	)	
	)	
Self Insured/Companion Property &	)	
Casualty Co.,	)	
Carrier,	)	
Defendants.	)	
	)	

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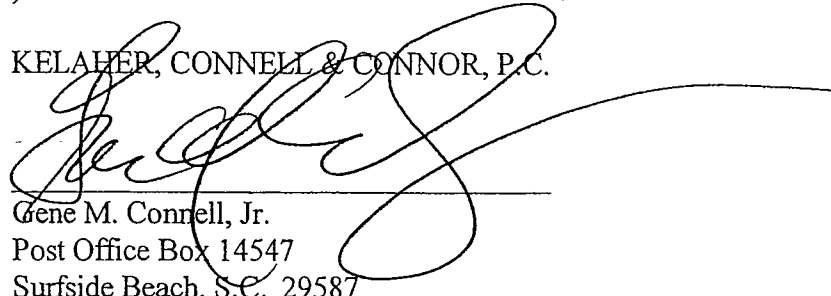
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KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
Post Office Box 14547
Surfside Beach, S.C. 29587
(803) 238-5648
Attorney for Claimant/Employee

September 19, 2011
Surfside Beach, S.C.



Claimant's Name: Oscar Hickman Employer's Name: City of Myrtle Beach
Address: 602 Martha Court Address: P. O. Box 2468
City: Lancaster State: Ca Zip: 93535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: 661-888-0642 Work Phone: () - Carrier: Self Insured/Companion Property & Casualty Co
Preparer's Name: Gene M. Connell, Jr. Preparer's Phone #: (843) 238-5648

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5. Legal issues involved: Change of condition—see letter of Dr. Mukund Shah dated May 9, 2011, letter of Dr. Wayne B. Bauerle 11/28/11 and deposition of Dr. Wayne B. Bauerle (attached)
6. Unusual aspects: Change of condition; previous Order of Commission
7. Witnesses (designate if expert):* Oscar Hickman and Jackie Hickman
8. Exhibits: Previous APA Submissions dated 4/20/11; Previous Order of the Commission dated 7/21/11
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Strand Orthopaedic Consultants 11/30/09 thru 6/30/10; Atlantic PT-FCE dated 6/24/10 & 6/25/10 (Previous APA Submission dated April 20, 2011; Letter of Dr. Mukund Shah dated May 9, 2011, letter of Dr. Wayne Bauerle dated 11/28/11; deposition of Dr. Bauerle dated 3/16/12)
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne B. Bauerle, Strand Orthopaedic Consultants, 210 Village Center Blvd., Ste 200, Myrtle Beach, S. C. 29579
11. Impairment rating(s); body part(s); physician and date of opinion: 5% whole person Dr. Wayne Bauerle 6/30/10
12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: _____

Date of hearing: July 11, 2012 4:00 PM

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

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STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
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	)	W.C.C. FILE NO.: 0914812
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	)	
and	)	
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Self Insured/Companion Property &	)	
Casualty Co.,	)	
Carrier,	)	
Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; STANFORD E. LACY, ATTORNEY FOR EMPLOYER/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Employee/Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Employer/Carrier, to wit:

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGES</u>
1. Previous APA Submissions	4/20/11	1 - 20
2. Dr. Mukund Shah	5/9/11	21
3. Previous Order of WC Commission	7/21/11	22 -28
4. Dr. Wayne B. Bauerle	11/28/11	29
5. Dr. Wayne B. Bauerle (deposition)	03/16/12	30 -53

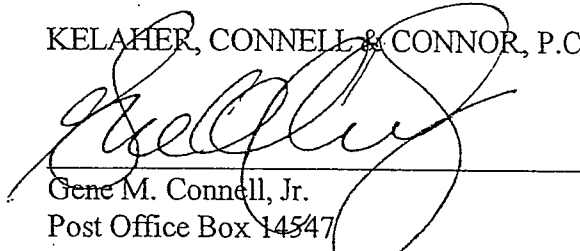
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-

examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant/Employee.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant/Employee: a) Oscar Hickman b) Jackie Hickman

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
Post Office Box 14547
Surfside Beach, S.C. 29587
(803) 238-5648
Attorney for Claimant/Employee

June 21, 2012
Surfside Beach, S.C.

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

April 20, 2011

Commissioner Avery B. Wilkerson, Jr.
South Carolina Workers'
Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

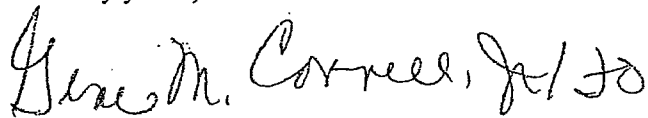
Re:	Claimant:	Oscar Hickman
	Employer:	City of Myrtle Beach
	Carrier:	Self Insured/Companion Property
	W.C.C. File No.:	0914812

Dear Commissioner Wilkerson:

Enclosed please find my Pre-Hearing Brief and Notice of Witnesses and Written Reports which I am at this date submitting in reference to the above captioned workers' compensation matter.

I am, by copy of this letter, serving a copy of my Pre-Hearing Brief and Notice of Witnesses and Written Reports, along with attachments, on Stanford E. Lacy, attorney for the carrier. I enclose proof of service.

Sincerely yours,



Gene M. Connell, Jr.

GMCjr/fo

enclosures

cc w/enc: Stanford E. Lacy, Esquire



Claimant's Name: Oscar Hickman Employer's Name: City of Myrtle Beach
Address: 682 Myrtle Beach Address: P. O. Box 2468
City: Lancaster State: Ca Zip: 93535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: 661-889-8819 Work Phone: () - Carrier: Self Insured/Companion Property & Casualty Co
Preparer's Name: Gene M. Connell, Jr. Preparer's Phone #: (843) 238-5648

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 543.63 2. AWW: \$815.40 Date of Injury: 9/09/09
3. Type of injury and body part(s): Lower back and right elbow
4. Facts in controversy: Admitted injury
5. Legal issues involved: none
6. Unusual aspects: none
7. Witnesses (designate if expert):* Oscar Hickman
8. Exhibits: none
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Strand Orthopaedic Consultants 11/30/09 thru 6/30/10; Atlantic PT-FCE dated 6/24/10 & 6/25/10
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne B. Bauerle, Strand Orthopaedic Consultants,
210 Village Center Blvd., Ste 200, Myrtle Beach, S. C. 29579
11. Impairment rating(s); body part(s); physician and date of opinion: 5% whole person Dr. Wayne Bauerle 6/30/10
12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: _____

Date of hearing: May 12, 2011 @ 2:15 PM

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF HORRY	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 0914812
Oscar Hickman,	)	
	)	
Claimant,	)	
	)	
vs.	)	NOTICE OF WITNESSES AND
	)	WRITTEN REPORT(S)/PHYSICIAN
City of Myrtle Beach	)	OR OTHER EVIDENCE TO BE
	)	INTRODUCED ON BEHALF OF
	)	OSCAR HICKMAN
	)	
Employer,	)	
	)	
and	)	
	)	
Self Insured/Companion Property &	)	
Casualty Co.,	)	
Carrier,	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; STANFORD E. LACY, ATTORNEY FOR EMPLOYER/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Employee/Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Employer/Carrier, to wit:

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGES</u>
1. Strand Orthopaedic Consultants	11/30/09 – 6/30/10	1 – 5
2. Atlantic PT-FCE	6/24/10 & 6/25/10	6 -- 15

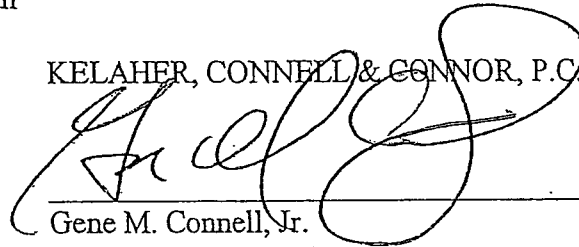
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photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant/Employee.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant/Employee: a) Oscar Hickman

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
Post Office Box 14547
Surfside Beach, S.C. 29587
(803) 238-5648
Attorney for Claimant/Employee

April 20, 2011
Surfside Beach, S.C.

PROOF OF SERVICE

I, the undersigned, do hereby certify that I have served a copy of my Notice of Written Reports, along with the attachments listed, and Pre-Hearing Brief on April 21, 2011 by personally depositing in a United States Postal Service mail box, postage prepaid, addressed to the Attorney for the Employer/Carrier indicated below:

Stanford E. Lacy, Esq.
Collins & Lacy
P. O. Box 12487
Columbia, S. C. 29211

Mary F. O'Donnell
Mary F. O'Donnell

Surfside Beach, SC

April 21, 2011

Received:

72-933

Companion P&C Claims
11/10/09

STRAND ORTHOPAEDIC CONSULTANTS

medical

Patient ID: 580770H

Patient Name: OSCAR L HICKMAN

Date of Birth: 04/28/1953

Date of Service: 11/30/2009
MYRTLE BEACH OFFICE

HPI: The patient comes in today. He had essentially one-sided injections without a lot of relief of his radicular components. It seems now that he has more axial symptoms, referred into the gluteal area bilaterally.

PLAN: I told him that I want to continue with his current work activity level, which is light duty with the previously mentioned restrictions. I am going to start him on lumbar spine stabilization physical therapy. We will have him follow up with me in one month. We will make further treatment recommendations at that point in time. I am going to hold off on any further injections until further notice.

Wayne B. Bauerle, M.D.
WBB/kps

17100000100000127

Received.

Companion P&C Claims

STRAND ORTHOPAEDIC CONSULTANTS

Medical
72-933

Patient ID: 580770H

Patient Name: OSCAR L HICKMAN

Date of Birth: ~~04/12/1952~~

Date of Service: 01/13/2010

MYRTLE BEACH OFFICE

HPI: The patient returns today. He is no better with the physical therapy. Essentially, he has continued to have back and leg pain with activity modification, oral medications, epidural steroid injections, and physical therapy.

PLAN: At this point in time my opinion as a orthopedic spine surgeon, I told the patient that he has two options - live with it and go about activities as tolerated and undergo functional capacity evaluation to see what his long-term work restrictions and his activities would be or consider surgery. I went over the procedure with him. I told him it would involve multilevel lumbar laminectomy with instrumented posterolateral fusion to address the degenerative instability. I told him there are no guarantees that he is going to get significant relief of his symptoms. I feel confident that he will get good relief of his lower extremity neurologic symptoms but there is a significant uncertainty regarding the improvement with any mechanical back pain. I went over the procedure with him along with the risks. At this point in time, he is not interested in any spine surgery. Additionally on top of this, from a personal standpoint, he conveyed to me that he was diagnosed to have colon cancer and needs to undergo treatment to include surgery for that. Obviously that will prevent him from undergoing any other significant treatment regarding his lumbar spine. From my standpoint, he can continue to work on his current work activities. He will follow up with me on an as needed basis once he decides in what direction he would like to proceed regarding his work-related injury.

Wayne B. Bauerle, M.D.

WBB/kps

Received
Companion P&C Claims
STRAND ORTHOPAEDIC CONSULTANTS

[Handwritten signature]
72-933

Patient ID: 580770H

Patient Name: OSCAR L HICKMAN

Date of Birth: 04/10/1952

Date of Service: 06/30/2010

MYRTLE BEACH OFFICE

HPI: The patient comes in today. He had the FCE performed. According to that, he has light duty work level and essentially sedentary work.

PLAN: I went over the FCE with him. Because he has continued back pain from Workers' Compensation standpoint, he has 5% whole person impairment. I told him from my standpoint, he could go about activities as tolerated. He is going to be relocating to California, so there would not be any further follow up with me.

Wayne B. Bauerle, M.D.

WBB/kps

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-6723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Oscar Hickman
Physician's Name: Wayne Bowene
Practice/Clinic: Strand Orthopaedic
Preparer's Name: _____
Phone: 843.231.3222

Employer's Name: _____
Insurance Carrier: _____
SCWCC File No: _____

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 09/19/09

Date of first office visit: 10/7/2009

Date of last visit: 06/30/2010

Diagnosis or nature of Injury or Illness: Lumbar spondylosis w/ neurogenic claudication & probable stenosis

Body part(s) Injured: Low Back

Body part(s) affected: _____

Date of Maximum Medical Improvement: 06/30/2010

Based on the AMA Guidelines, the claimant has sustained a 5 % medical impairment to Whole person injured body part(s) and a _____ % medical impairment to _____ other affected body part(s).

☒ The claimant is able to return to work without restriction.

_____ The claimant is able to return to work with the following restrictions:

_____ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☒ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

_____ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Treating Physician: Bowene

Date: 08/11/2010

South Carolina Workers' Compensation Commission
 1612 Marion Street • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5729
 www.wcc.sc.gov



Physician's Statement

Claimant's Name: Oscar Thompson
 Physician's Name: Wayne Boudette
 Practice/Clinic: Strand Orthopaedic
 Preparer's Name: _____
 Phone: 843, 236-3222

Employer's Name: _____
 Insurance Carrier: _____
 SCWCC File No: _____

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her Injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

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Date of first office visit: 10/7/2009

Date of last visit: 06/30/2010

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Body part(s) affected: _____

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☒ The claimant is able to return to work without restriction.

_____ The claimant is able to return to work with the following restrictions:

_____ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion on the claimant:

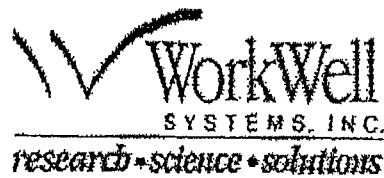
☒ will not need future medical care related to his or her work related Injury or Illness based on a reasonable degree of medical certainty (more likely than not).

_____ will need future medical care and treatment related to his or her work related Injury or Illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Treating Physician: Boudette

08/11/2010
 Date

Functional Capacity Evaluation



Client Name: Oscar Hickman

Dates of FCE: 06/24/2010, 06/25/2010

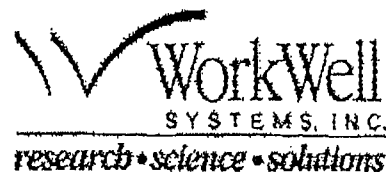
Therapist: Mark Chanaca

Referrer: Dr. Wayne Bauerle

Facility

Atlantic Physical Therapy&Rehab
3650 Coalition Dr
PO Box 1145
Myrtle Beach, SC 29578

Client Name: Oscar Hickman
FCE Dates: 06/24/2010 and 06/25/2010
Therapist Mark Chanaca
Atlantic Physical Therapy&Rehab
3650 Coalition Dr
PO Box 1145
Myrtle Beach, SC 29578



WorkWell Functional Capacity Evaluation

Summary Report

Name: Oscar Hickman
Test Date: 06/24/2010
2nd Date of Testing: 06/25/2010
Date of Birth: 04/10/1962
Gender: M
Address: 8878 Tillman Dr
City: Myrtle Beach
State: SC
Zip Code: 29526
Phone: 843-778-0808
Physician: Dr. Wayne Bauerle
Employer: City of Myrtle Beach
Primary Diagnosis: 719.59,724.2
Secondary Diagnosis: 719.7,728.87

Reason for Testing

Evaluation to determine functional abilities and limitations

Description of Test Done

Two Day WorkWell FCE

Cooperation and Effort

Client patterns of movement and physiological responses consistent with maximal effort. Client demonstrated cooperative behavior and was willing to work to maximum abilities in all test items.

Consistency of Performance

Client gave maximal effort on all test items as evidenced by predictable patterns of movement including increased accessory muscle recruitment, counterbalancing and use of momentum, and physiological responses such as increased heart rate. Performance was consistent among FCE items (similar items had similar performance). Performance was consistent between Day 1 and Day 2. This indicates that work ability should be able to be sustained on a day to day basis. Functional limitations noted with standing, ambulation, and lifts/carries are consistent with physical impairments of trunk ROM (extension), weakness and diagnosis.

Pain Report

Reported discomfort in the low back was part of the reason for limitations with standing, ambulation, and lifts/carries. Objective signs of muscle fatigue, decreased L weight bearing, and elevated heart rate coincided with the client's reports of discomfort.

Safety

Client demonstrated unsafe body mechanics during floor to waist lifting, at which time the test was stopped. Client was provided additional instruction and demonstration and testing proceeded safely.

Quality of Movement

Client demonstrated safe and appropriate changes in body mechanics, including use of accessory muscles, counterbalancing and momentum, as load/force increased. These changes are expected and consistent with maximal effort.

Abilities/Strengths

Good sitting tolerance and with activities involving trunk flexion.

Limitations

Limited ability with standing, ambulation, and lifts/carries. Poor trunk extension tolerance.

Potential Barriers to Return to Work

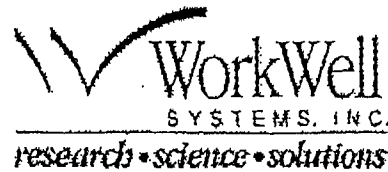
Client has moved out of the state. He is here only for a short visit. Unable to fully assess ability to return to work (if former position was an option) as validated job description was not available; The Dictionary of Occupational Titles and client report were used. Client was employed as crew leader for City of Myrtle Beach Department of Parks. His self reported job duties fall into the Dictionary of Occupational Titles description of Landscape Gardner 408.161-010 at the Heavy physical demand level.

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

Therapist: Mark Chanaca

Atlantic Physical Therapy&Rehab
3650 Coalition Dr
PO Box 1145
Myrtle Beach, SC 29578

**Job Match Grid**

Landscape Gardner 408.161-010

Critical Demand from client report	FCE Abilities	Job Match
Floor to waist lifting 40-80# bags on cement, fertilizer, and grass seed Rarely	30# floor to waist lifting Rarely	No
Frequent standing	Occasional standing work	No
Frequent walking	Occasional walking	No

Physical Return to Work Options Explored

The physical requirements of the client's former job, as described by the client and in the Dictionary of Occupational Titles, have been compared to the client's performance in the FCE. There is not a job match. Please refer to the Job Match Grid for details.

Therapist's Recommendation Regarding Return to Work

Although job description was not obtained, based on client report and the Dictionary of Occupational Titles there is not a job match.

US Department of Labor Physical Demand Level

Client meets all physical demands of sedentary work and is able to work into the light physical demand level with the exception of standing and ambulation. He may be able to perform a job classified in the light physical demand level if accommodations are available to limit standing and ambulation to the occasional level.

Summary/Recommendations

These projections are for 8 hours a day 5 days a week at the levels indicated on the FCE grid. Client has been out of work for over 6 months and is having treatment for colon cancer including surgery and chemotherapy. His physical abilities and employability may further improve with work conditioning.

Signature _____

Date _____

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

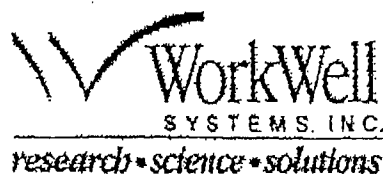
Therapist: Mark Chanaca

Atlantic Physical Therapy&Rehab

3650 Coalition Dr

PO Box 1145

Myrtle Beach, SC 29578



WorkWell FCE Test Results and Interpretation

The interpretation of WorkWell's standardized functional testing is based on assumptions including normal breaks, basic ergonomic conditions and that the tested functions are not required more than 2/3 of a normal working day. If a function is required continuously, job specific testing should be performed.

Client Name: Oscar Hickman

Test Date: 06/24/2010

2nd Date of Testing: 06/25/2010

Interpretation of observed function regarding activity during a normal working day

Frequency	Weighted Activities Observed Effort Level	Position/Ambulation Quantitative + Qualitative Results	% of Workday
NEVER	Contraindicated	Not Possible	0%
RARELY	Maximum	Significant Limitation	1-5%
OCCASIONALLY	Heavy	Some Limitation	6-33%
FREQUENTLY	Low	Slight/No Limitation	34-66%
SELF LIMITED	Client stopped test; submaximum effort level		Submax percent

Lifting, Strength (lbs)	Never	Max	Heavy	Low	Limitations	Recommendations
Waist to Floor (11 in. from floor)		30	20	10		
Waist To Crown (Handles)		20	10	5		
Waist To Crown (Preferred)		20	10	5		
Front Carry		30	20	10		

Posture, Flexibility, Ambulation	Never	Significant Limitation	Some Limitation	Slight/No Limitation Noted	Limitations	Recommendations
Elevated Work				X		
Forward Bending-Standing				X		
Standing Work			X		Limited trunk extension and decreased L weight bearing.	Allow postural relief breaks from the standing position.
Crouch				X		
Walk - 6 Min Walk Test			X			
Sitting				X		

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

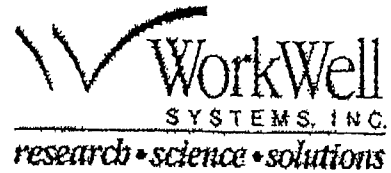
Therapist: Mark Chanaca

Atlantic Physical Therapy&Rehab

3650 Coalition Dr

PO Box 1145

Myrtle Beach, SC 29578



Push-Pull (Static)	Force Generated (pounds)	Limitations	Recommendations
Push Static	120		
Pull Static	120		

(Numerous variables impact Push/Pull force including load, equipment, surface, etc. These forces do not represent the amount of weight that is moved.)

Hand Function

Hand/Finger Strength	Force Generated (pounds)	Mean for Age/ Gender	Values for approx 2/3 of this age/ gender group	Limitation	Recommendations
Hand Grip Right	65	101.1	74 - 128		
Hand Grip Left	57	83.2	60 - 107		

Signature _____

Date _____

Handwritten signature 'Mark Chanaca' and date '6/25/10' written over the signature line.

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

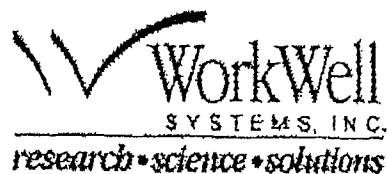
Therapist: Mark Chanaca

Atlantic Physical Therapy&Rehab

3650 Coalition Dr

PO Box 1145

Myrtle Beach, SC 29578



WorkWell FCE Physical Exam

Systems Review

Blood Pressure: 150/90

Height: 72 inches

Heart Rate (resting): 73

Weight: 207

Gait: Decreased trunk rotation and decreased L weight bearing

Posture: Decreased L weight bearing, Decreased lumbar lordosis

Coordination: UE/LE coordination wnl

Movement Characteristics(speed, smoothness, posturing): Decreased speed of movement with sit to stand transfers.

Muscle Tone Spasms: Spasm noted B quadratus

PAR-Q

Yes	No	Question
	X	1. Has your doctor ever said that you have a heart condition and that you should only do physical activity recommended by a doctor?
	X	2. Do you feel pain in your chest when you do physical activity?
	X	3. In the past month, have you had chest pain when you weren't doing physical activity?
	X	4. Do you lose your balance because of dizziness or do you ever lose consciousness?
X		5. Do you have a bone or joint problem (for example, back, knee or hip) that could be made worse by a change in your physical activity?
X		6. Is your doctor currently prescribing drugs (for example, water pills) for blood pressure or heart condition?
	X	7. Do you know any other reason why you should not do physical activity?

Musculoskeletal System

Neck	Normal	Range of Motion	Muscle Strength
Flexion	45	WFL	5
Extension	45	WFL	5
Right Lateral Flexion	45	WFL	5
Left Lateral Flexion	45	WFL	5
Right Rotation	90	WFL	5
Left Rotation	90	WFL	5

Trunk	Normal	Range of Motion	Muscle Strength
Flexion	80	100	3
Extension	30	10	3
Right Lateral Flexion	35	25	4
Left Lateral Flexion	35	25	4
Right Rotation	45	WFL	4
Left Rotation	45	WFL	4

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

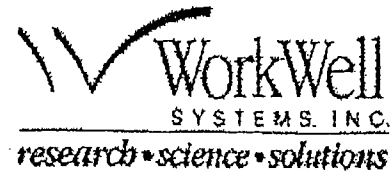
Therapist: Mark Chanaca

Atlantic Physical Therapy&Rehab

3650 Coalition Dr

PO Box 1145

Myrtle Beach, SC 29578

**Comments/Quality of Motion - Spine**

Decreased trunk ROM for extension and core weakness noted. Spasm of quadratus upon palpation of lumbar spine.

		Range of Motion		Muscle Strength	
Shoulder	Normal	Right	Left	Right	Left
Forward Flexion	180	WFL	WFL	4	4
Extension	60	WFL	WFL	4	4
Abduction	180	WFL	WFL	4	4
Internal Rotation	70	WFL	WFL	4	4
External Rotation	90	WFL	WFL	4	4

		Range of Motion		Muscle Strength	
Elbow	Normal	Right	Left	Right	Left
Flexion	150	WFL	WFL	4	4
Extension	0	WFL	WFL	4	4

		Range of Motion		Muscle Strength	
Forearm	Normal	Right	Left	Right	Left
Pronation	80	WFL	WFL	5	5
Supination	80	WFL	WFL	5	5

		Range of Motion		Muscle Strength	
Wrist	Normal	Right	Left	Right	Left
Flexion	80	WFL	WFL	5	5
Extension	70	WFL	WFL	5	5
Ulnar Deviation	30	WFL	WFL	5	5
Radial Deviation	20	WFL	WFL	5	5

		Range of Motion		Muscle Strength	
Gross Hand Motion	Normal	Right	Left	Right	Left
Composite Motion		WFL	WFL	5	5

Comments/Quality of Motion - Upper Quarter

Decreased B UE strength.

		Range of Motion		Muscle Strength	
Hip	Normal	Right	Left	Right	Left
Flexion (knee extd)	90	WFL	WFL	4	4
Flexion (knee flxd)	120	WFL	WFL	4	4
Abduction	45	WFL	WFL	4	4
Adduction	30	WFL	WFL	5	5
Extension	30	WFL	WFL	4	4
Internal Rotation	45	WFL	WFL	4	4
External Rotation	45	WFL	WFL	4	4

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

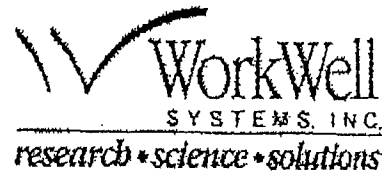
Therapist: Mark Chanaca

Atlantic Physical Therapy&Rehab

3650 Coalition Dr

PO Box 1145

Myrtle Beach, SC 29578



		Range of Motion		Muscle Strength	
Knee	Normal	Right	Left	Right	Left
Flexion	135	WFL	WFL	5	5
Extension	0	WFL	WFL	4	4

		Range of Motion		Muscle Strength	
Ankle	Normal	Right	Left	Right	Left
Plantar Flexion	50	WFL	WFL	5	5
Dorsiflexion	20	WFL	WFL	5	5
Inversion	35	WFL	WFL	5	5
Eversion	15	WFL	WFL	5	5

Other

Toe Rise Reps	Right	10	Left	6
Knee Squat	9			

Comments/Quality of Motion - Lower Quarter

Decreased LE strength.

Neuromuscular System

Sensory Testing	Light touch intact B LE. Pt reports hypersensitivity to cold due chemotherapy.
Reflex Ankle Jerk	equal
Reflex Knee Jerk	equal

Screening for Gross Balance

Attribute	Trial 1(Times)	Trial 2(Times)
Standing on Floor, Eyes Open	30	
Standing on Floor, Eyes Closed	30	
Standing on Foam, Eyes Open	30	
Standing on Foam, Eyes Closed	30	

Questions related to Back Specific Involvement Nerve Root Pain

Unilateral leg pain worse than LB?	no
Pain generally radiates to foot or toes	no
Numbness or paresthesia in same distribution?	no
Motor, sensory or reflex changes limited to one nerve root	np
Nerve irritation signs reduced SLR which reproduces leg pain	no

Back Related Questions (CPR)

Do you think you will be back to normal work in 3 months?	No
Does the pain go from your back into your leg/arm?	No
On a scale of 0-10 (0 = no pain), what number has your average	6

Client Name: Oscar Hickman

FCE Dates: 06/24/2010 and 06/25/2010

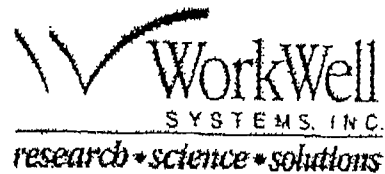
Therapist: Mark Chanaca

Atlantic Physical Therapy & Rehab

3650 Coalition Dr

PO Box 1145

Myrtle Beach, SC 29578



pain been over the past 6 months?	
Lately have you needed to change positions often?	Yes
Do you think lately you have been more irritable than usual?	Yes
Does your back pain affect your ability to sleep?	Yes

Waddells Test

Test	Sign	Present
Tenderness	Superficial, Non-Anatomical	no
Simulation Tests	Axial loading	no
	Simulated Rotation	no
Distraction Tests	Neg SLR Sitting	no
Regional Disturbances	Regional Sensory Disturbances	no
	Regional Weakness	yes
	Regional Sensory Change	no
Overreaction	Overreaction to exam/Overt pain behavior	no

Self Report

Oswestry Questionnaire	Total	Percentage
Results	34	68

First Day Summary of Physical Assessment

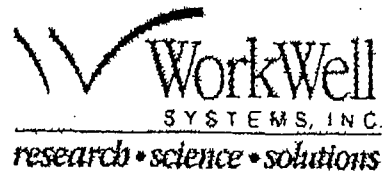
Limited UE/LE and core strength. Decreased trunk ROM with extension. Spasm upon palpation of quadratus and lumbar spine L1 to L5.

Second Day Summary of Physical Assessment

Initial BP 130/80. HR 71. ROM consistent with day 1 measures.

Signature: [Signature]
 Date: 6/25/10

Client Name: Oscar Hickman
FCE Dates: 06/24/2010 and 06/25/2010
Therapist: Mark Chanaca
Atlantic Physical Therapy&Rehab
3650 Coalition Dr
PO Box 1145
Myrtle Beach, SC 29578



WorkWell FCE History

Name: Oscar Hickman
Dates of FCE Testing: 06/24/2010, 06/25/2010
Date of Birth: ~~04/12/1959~~
Date of Injury: 09/09/2009
Gender: M
Address: ~~3873 Hammond Dr~~
City/State/Zip: Myrtle Beach, SC 29526
Primary Diagnosis: 719.59, 724.2
Area of Injury: Low Back
Occupation: City of Myrtle Beach Crew Leader Landscape Gardner 408.161-010
Dept of Labor Category of Work:
Heavy

Mechanism/Type of Injury:
Injury to low back at work while lifting a tail gate.

Previous Treatment:
Medical management including injections.

Pertinent Surgery/Other Clinical Tests/Past Medical History:
Colon cancer dx 1/29/10 had surgery and still having chemotherapy every other week(had it last week). R elbow pain. Tricep tear and surgical repair 3-4 years ago.

Current Medications:
Lisino/HCTZ, Levothroid, Lipitor, Uroxatral, Klor-Con, Colchicine, Oxycodone, Lansoprazole, nausea pills

Functional Status/ Activity Level:
Difficulty standing and walking

Chief Complaints/Symptoms:
5/10 constant pain that increases with standing, walking, and bending. Difficulty lifting light objects from the floor.

Return to Work Information:
not working

Goals:
Decrease pain

Signature

Date



Antelope Valley Cancer Center

A Comprehensive Community Cancer Center

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Medical Oncology & Hematology

I.K. Shamasunder, M.D.

Diplomate of American Board of
Internal Medicine, Hematology
and Oncology

Mukund Shah, M.D.

Diplomate of American Board of
Internal Medicine and Oncology

Ronald Miller, M.D.

Diplomate of American Board of
Internal Medicine
Hematology and Oncology

Miguel Medina, M.D.

Practice in Hematology and Oncology

Infusion Director

Stacy Redding, R.N., O.C.N.

Radiation Oncology

Fuchi Peter Peng, M.D.

Director, Radiation Oncology
Diplomate, American Board of
Radiation Oncology
JCLA Clinical Asst. Professor

Medical Physicist

James Luo

Chief Radiation Therapist

Ken Mackay

May 9th 2011

To whom it may concern

This letter is written in support of my patient Mr. Oscar Lee Hickman Jr. regarding continuous treatment in therapy or surgery regarding severe back issues. Upon Mr. Hickman's recent visit and assessment in my office Mr. Hickman is cleared for further treatment and care for his ongoing back therapy. If I can be further assistance please contact me at 661-948-5928.

Sincerely,

Mukund Shah, M.D.

44105 N. 15th Street West, Suite 207 • Lancaster, California 93534
Off. 661 / 948-5928 • Fax 661 / 949-8618 • www.avcancercenter.com

1517 N. Downs • Ridgecrest, California 93555
Off. 760 / 446-7714 • Fax 760 / 446-5226

DECISION AND ORDER
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 0914812

OSCAR HICKMAN, EMPLOYEE/CLAIMANT,

vs.

CITY OF MYRTLE BEACH, EMPLOYER,

AND

COMPANION PROPERTY & CASUALTY GROUP, CARRIER/DEFENDANTS.

DATE OF HEARING: The hearing was held in Myrtle Beach, South Carolina on May 12, 2011.

APPEARANCES: Claimant, Oscar Hickman, was represented by Gene M. Connell, Jr. of Kelleher Connell & Connor, P.C. in Myrtle Beach, South Carolina; The City of Myrtle Beach was represented by Stanford E. Lacy, of Collins & Lacy, P.C. in Columbia, South Carolina.

PURPOSE OF HEARING: To determine if the Employer/Carrier is entitled to pay compensation to Claimant and if the Employer/Carrier is entitled to a credit for temporary total benefits paid in excess of the award.

COMMISSIONER: The Honorable Avery B. Wilkerson, Jr.

FILED: July 21, 2011

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were admitted into evidence:

The following APA Submissions were made by Defendants:

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE NOS.
1.	Strand Orthopedic Consultants	10/7/09 thru 8/11/10	1 - 11
2.	Work Well Systems, Inc.	6/24/10 thru 6/25/10	12 - 21
3.	Myrtle Beach Physical Therapy	11/30/09 thru 5/26/10	22 - 24
4.	Doctors Care	9/14/09 thru 9/29/09	25 - 32
5.	Dr. Gregory Kang	11/10/09 thru 11/18/09	33 - 34
6.	Atlantic Physical Therapy	12/21/09 thru 1/8/10	35 - 54
EXHIBITS			PAGE NOS.
Various disability related forms from Claimant's personnel file.			1 - 22

The Following APA Submissions were made by Claimant:

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE NOS.
1.	Strand Orthopedic Consultants	11/30/09 - 6/30/10	1 - 5
2.	Atlantic PT-FCE	6/24/10 & 6/25/10	6 - 15

STIPULATIONS

1. The parties stipulate this matter is properly before the South Carolina Workers' Compensation Commission which has jurisdiction to decide all issues raised herein.
2. Venue is properly set in Horry County.
3. Claimant's average weekly wage is \$815.40 which yields a compensation rate of \$543.63.

4. The Commission's file is made a part of the record except for self-serving declarations and undisputed medical reports.

STATEMENT OF THE CASE

This is an admitted back injury case in which the employer has filed a Form 21 requesting a determination of permanency. Employer states Claimant reached maximum medical improvement (MMI) on June 30, 2010 and was given a 5% impairment rating to the whole person. Claimant asserts he is not at maximum medical improvement and a finding of permanency would be premature.

SUMMARY OF EVIDENCE

Claimant worked for 20 years with Employer in land maintenance. He cut grass, trimmed trees, and otherwise performed landscaping duties. On September 9, 2009, Claimant and a co-worker were lowering the gate of the trailer when the co-worker dropped his side causing the entire weight of the gate to be held briefly by Claimant. As a result, Claimant injured his arm and back. Initially, Claimant missed no time from work and did not seek medical treatment, but the pain persisted. He asked to see a doctor and was sent to Doctors Care on September 14, 2009. He complained of low back pain and right elbow pain. On September 21, 2009, he returned to Doctors Care and reported his right elbow felt better but he was still having back pain. On September 29, 2009, Claimant was referred to Dr. Bauerle at Strand Orthopedic Consultants.

Claimant reported to Dr. Bauerle that he was having burning pain down both lower extremities but no real back pain associated with it. Dr. Bauerle diagnosed lumbar spondylosis with neurogenic claudication and probably spinal stenosis. An MRI was performed that showed degenerative changes in Claimant's lumbar spine which were most severe at L4-5 and L5-1.

Claimant underwent epidural steroid injections with Dr. Kang but did not receive much relief of his ridiculer components. Dr. Bauerle prescribed a course of physical therapy but it did not help.

In mid January, 2010, Claimant was diagnosed with colon cancer after a colonoscopy. When he saw Dr. Bauerle the next day, Dr. Bauerle told Claimant he had two options. He could either live with the back and leg pain or consider surgery. Claimant disclosed he had been diagnosed with cancer and was not interested in spine surgery because he had to undergo treatment for the cancer, which also included surgery.

Because of the cancer, Claimant applied for and received disability retirement. His wife, a registered nurse, took a job in California and they moved. Claimant received his cancer treatment, which included surgery and chemotherapy, while in California. He returned to South Carolina in June 2010 and again saw Dr. Bauerle. He also underwent a functional capacity evaluation. When Dr. Bauerle reviewed the FCE on June 30, 2010, he rated Claimant at 5% whole person.

Dr. Bauerle prepared and submitted a Form 14B indicating a diagnosis of lumbar spondylosis with neurogenic claudication and probable stenosis. He set Claimant's date of MMI to be June 30, 2010 and opined Claimant had a 5% impairment rating to the whole person. Dr. Bauerle also indicated Claimant was able to return to work without restrictions and would not need further medical care. Claimant disputed this.

Claimant testified at the hearing that his back was "doing bad" and on normal days he felt his pain was 6 on a scale of 10. He also has pain in his legs that he described as feeling like "cramps." Claimant finished his chemotherapy for the cancer in September 2010, and, as of the hearing, was in remission.

FINDINGS OF FACTS

1. This matter is properly before the South Carolina Workers' Compensation Commission, which has jurisdiction of this matter.

2. Venue is properly set in Horry County.

3. Claimant's average weekly wage is \$815.40, which yields a compensation rate of \$543.63.

4. Claimant was injured on September 9, 2009 while employed with the employer. He injured his arm and low back while attempting to lower a heavy trailer gate.

5. Employer has paid all temporary total disability benefits for which it is responsible and there is no overpayment.

6. Claimant received medical treatment for his arm and back from Doctors Care, Dr. Wayne Bauerle at Strand Orthopedic Consultants, and Dr. Gregory Kang at Pain, Spine & Sports Medicine. He also received physical therapy from Atlantic Physical Therapy Rehabilitation, Inc.

7. Based on Dr. Bauerle's reports, Claimant reached MMI on June 30, 2010.

8. According to Dr. Bauerle, Claimant was rated at 5% whole person, which, under the AMA guides, equates to the spine.

9. Claimant has a 7.5% disability to the spine.

10. The Form 14B submitted by Dr. Bauerle dated August 11, 2010 does not indicate Claimant needs further medical care.

CONCLUSIONS OF LAW

1. Injury and personal injury are governed by § 42-9-160. It is undisputed in this case Claimant suffered an injury by accident arising out of and in the course of employment and therefore has a personal injury.

2. Medical treatment is governed by S.C. Code Ann. § 42-15-60.

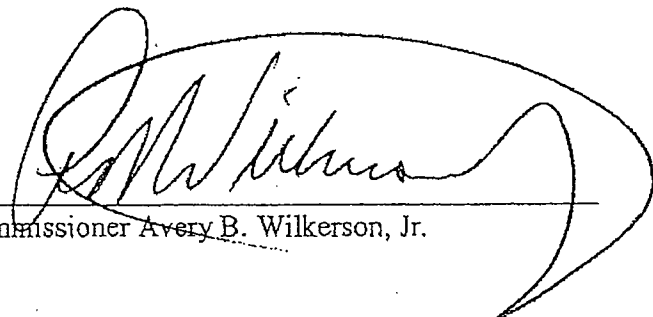
3. Temporary total disability is governed by S.C. Code Ann. § 42-9-10.

4. Schedule for period of disability and compensation for the back is governed by S.C. Code Ann. § 42-9-30(21). Under that section, the back is worth 300 weeks and 7.5% of the back equates to 22.5 weeks.

AWARD

Based on the findings of fact and conclusions of law, the undersigned Commissioner orders as follows:

IT IS THEREFORE ORDERED, Employers' Form 21 Motion is granted and Claimant is award 7.5% to the spine or 22.5 weeks. At a compensation rate of \$543.63, the award equates to \$12,231.68.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

July 21, 2011

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson



STRAND ORTHOPAEDIC CONSULTANTS, L.L.C.

Joe N. Jarrett, Jr., M.D.
Total Joint Replacement
Orthopaedic Surgery
Knee Arthroscopy

Richard W. Ward, M.D.
Sports Medicine
Orthopaedic Surgery
Shoulder Surgery

Steven M. Callihan, M.D.
Orthopaedic Surgery
Total Joint Replacement
Sports Medicine

J. Clark Butler, M.D.
Sports Medicine
Orthopaedic Surgery
Total Joint Replacement

Wayne B. Bauerle, M.D.
Orthopaedic Spine Surgery

Robert S. Leak, M.D.
Hand & Upper Extremity Surgery
Orthopaedic Surgery

James O. Merritt, IV, M.D.
Total Joint Replacement
Orthopaedic Surgery
Knee Arthroscopy

Alexander J. Pappas, M.D.
Foot and Ankle Surgery
Orthopaedic Surgery

Thomas J. Chambers, M.D.
Sports Medicine
Orthopaedic Surgery
Total Joint Replacement

David G. Everman, M.D.
Hand & Upper Extremity Surgery
Orthopaedic Surgery

Kimberly A. Purgavie, D.O.
Physical Medicine
and Rehabilitation

November 28, 2011

Gene M. Connell, Jr.
Attorney At Law
P. O. Drawer 14547
Surfside Beach, SC 29587

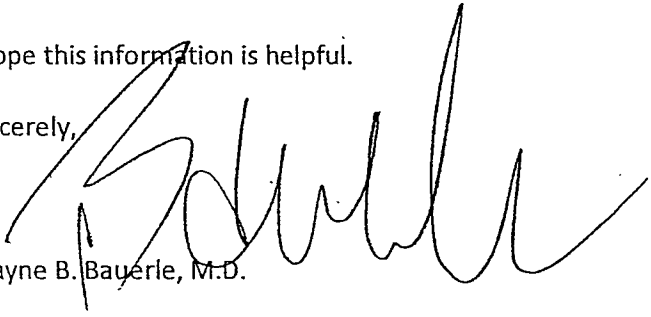
RE: OSCAR HICKMAN

Dear Mr. Connell:

It is my opinion that Mr. Hickman's medical condition has changed for the worse as a result of his not being able to undergo the recommended surgery because of being diagnosed with cancer. It is further my opinion after reviewing the MRI done in Los Angeles, California, on August 17, 2011 that there is objective evidence that his condition has progressively worsened. He has evidence of significant degenerative change at L5-S1 and also has a Grade I degenerative spondylolisthesis at L4-L5.

I hope this information is helpful.

Sincerely,


Wayne B. Bauerle, M.D.

WBB/sl

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

OSCAR HICKMAN,

Employee/Claimant.

vs.

WCC FILE NO. 0914812

CITY OF MYRTLE BEACH,

Employer,

and

CITY OF MYRTLE BEACH SIF,

Carrier/Defendants.

DEPOSITION OF: WAYNE B. BAUERLE, M.D.

DATE: March 16, 2012

TIME: 12:00 p.m.

LOCATION: STRAND ORTHOPAEDIC CONSULTANTS, LLC
210 Village Center Boulevard
Myrtle Beach, SC

TAKEN BY: Counsel for Defendant

REPORTED BY: Karen V. Andersen, RMR, CSR

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

1 APPEARANCES:

2 ATTORNEYS FOR THE EMPLOYEE/CLAIMANT

3 OSCAR HICKMAN:

4 KELAHER CONNELL & CONNER, P.C.

5 BY: GENE M. CONNELL, JR.

6 1500 U.S. Highway 17 North

7 Surfside Beach, SC 29587

8 (843) 238-5648

9 gconnell@classactlaw.net

10

11 ATTORNEYS FOR THE DEFENDANTS

12 CITY OF MYRTLE BEACH:

13 COLLINS & LACY, P.C.

14 BY: STANFORD E. LACY

15 1330 Lady Street, Sixth Floor

16 Columbia, SC 29201

17 (803) 256-2660

18 slacy@collinsandlacy.com

19

20

21 (INDEX AT REAR OF TRANSCRIPT)

22

23

24

25

1 STIPULATION

2 It is stipulated by and between Counsel that
3 this deposition is being taken in accordance with the
4 South Carolina Rules of Civil Procedure, Rule 30;
5 that all objections as to Notice of this deposition
6 are hereby waived; that all objections except as to
7 form are reserved until the time of trial; and that
8 the deponent does waive reading and signing of this
9 deposition.

10 * * * * *

11 (PLF. EXH. 1, Letter dated 11/28/11
12 from Wayne B. Bauerle, M.D., to Gene Connell, Jr.,
13 marked for identification.)

14 WAYNE B. BAUERLE, M.D.,
15 having been duly sworn, testifies as follows:

16 EXAMINATION

17 BY MR. LACY:

18 Q. Please state your full name.

19 A. Wayne Bryan, with a Y, Bauerle.

20 Q. Dr. Bauerle, what is your specialty
21 please?

22 A. Orthopedic spine surgery.

23 Q. As an orthopedic spine surgeon, have you
24 seen a guy by the name of Oscar Hickman?

25 A. Yes.

1 Q. Now, the reason we are taking your
2 deposition is because of a letter that I got from
3 Mr. Connell here signed by you. Let me show you what
4 we pre-marked as Exhibit Number 1. Is that your
5 signature?

6 A. Yes.

7 Q. Okay. Great. Now, Doctor, have you
8 actually seen Mr. Hickman since the last visit that
9 we've got a record of, which was, I think, back in --
10 let's see, October, the 3rd?

11 A. I have one from 11/16/2011.

12 Q. And may I take a look at that record?

13 A. Yep. That's the last record I have.

14 Q. Okay. So can you make us a copy of that
15 and we can attach it as Exhibit Number 2 to your
16 deposition?

17 A. Sure, just remind me.

18 Q. Because I don't have that. It's no
19 problem. So, let me ask, Doctor, when you found him
20 at maximum medical improvement back in 2000 -- is it
21 10?

22 A. 6/30/2010, I have: Patient comes in
23 today. Had the FCE performed. According to that, he
24 has light-duty work level, essentially sedentary
25 work.

1 Q. Okay.

2 A. I put him at a 5 percent whole person
3 impairment.

4 Q. And you had seen or you had had an MRI
5 done before then; is that correct? And that was
6 based on that MRI?

7 A. Yes, I would assume so. Yes, office visit
8 from 10/23/09: Patient comes in after having the MRI
9 of his lumbar spine. I reviewed it, went over things
10 with him.

11 Q. Okay. And I understand from your -- okay.
12 So he was at maximum medical improvement, and got a 5
13 percent rating. Came back on November 16, 2011. And
14 had he had another MRI out in California at that
15 point?

16 A. Actually, just to be complete, he came
17 back -- he came to see me on 10/3/2011. And
18 according to my notes: Patient comes in today,
19 continues to have problem with back and leg pain. He
20 is still living in California.

21 And at that point in time I had mentioned
22 under plan, I discussed with him at some point in
23 time the potential for surgery which would be lower
24 level decompressive laminectomy, instrumental disk
25 fusion. Told him without an updated MRI, I really

1 can't make any further updated surgical
2 determinations. So at that visit, I recommended he
3 got an updated MRI.

4 And then the office visit that you don't
5 have the records of, I believe 11/16/2011, that's
6 where I went over the MRI that I'm assuming says was
7 done out in Los Angeles.

8 Q. So did you have the actual MRI film with
9 you when you met with him?

10 A. After reviewing the images and the report,
11 according to the note, I had the images in the
12 report. I don't recall off the top of my head, so
13 I'm going by the records.

14 Q. When you say images in the report, what
15 does that mean?

16 A. The actual images would be the pictures to
17 look at, and the report would be the radiologist's
18 report.

19 Q. So you had the images to compare with the
20 MRI from before?

21 A. No, no. I'm saying on this 11/16/2011
22 visit when he came in with the MRI that appears to
23 have been done in Los Angeles, I had the actual
24 pictures from that MRI with the report that goes
25 along with the pictures from that MRI.

1 Q. I guess my question is, did you go back
2 and look at the MRI from 2010?

3 A. I usually do, but according to this -- to
4 answer your question, I usually do. I'm assuming I
5 did. I don't frequently mention that I compared it
6 to the two. That's just a habit that I do by going
7 back and reviewing them.

8 Q. Okay. Doctor, was there any physical
9 change in the two MRIs?

10 A. I didn't see any significant change in the
11 two, but the caveat with that too is when you are not
12 using the exact same MRI, you are sort of comparing
13 apples to oranges. But to answer your question, he
14 had rather significant degenerative changes to start
15 with. And from what I can recall reviewing the
16 records prior to coming in here today, it was more
17 his symptoms that were aggravated, as opposed to
18 saying he had increased degenerative changes from one
19 MRI to the next.

20 Q. In what way had his symptoms --

21 A. Basically just --

22 Q. -- degenerated?

23 A. Basically he's just complaining of more
24 pain, had complained of more pain at that office
25 visit from the previous one.

1 Q. So as we are sitting here today, can you
2 say to a reasonable degree of medical certainty most
3 probably that he had a physical change of condition,
4 that is, that his spine physically deteriorated, as
5 opposed to simply getting more symptomatic?

6 A. I can't say with a reasonable degree of
7 medical certainty that the imaging findings
8 progressed significantly. I don't know if that
9 answers your question.

10 Q. And so what we marked as Exhibit Number 1,
11 if I'm understanding you correctly, those opinions
12 that you expressed in Exhibit Number 1 were based
13 primarily on his subjective complaints?

14 A. Yes.

15 MR. LACY: No further questions. Answer
16 any questions Mr. Connell may have.

17 EXAMINATION

18 BY MR. CONNELL:

19 Q. You said there's objective evidence that
20 his condition has progressively worsened in the
21 letter.

22 A. Yes.

23 Q. What objective evidence?

24 A. Basically what he tells me, even though
25 that's a patient's subjective complaint, a lot of

1 times there won't be diagnostic studies that show
2 there's been progression. Their physical findings
3 may not show, which shed more or less hard findings,
4 that their neurologic condition has gotten worse.
5 But if they tell me subjectively that objective
6 things, such as their functional level, what they are
7 able to do, are getting worse, their pain is getting
8 worse, that's what I would've classified, in the
9 letter, as objective complaint or finding or reason.

10 Q. Okay. The letter also says he has
11 evidence of significance degenerative change at
12 L5-S1.

13 A. Yeah, changes.

14 Q. Changes?

15 A. Changes as far as not changing from one
16 MRI to the next, just he has degenerative changes on
17 his MRI. We will frequently -- and that's probably
18 poor descriptive terms we frequently use. Someone
19 will come in, you will look at the MRI, and say, yes,
20 you have degenerative changes at these levels; not
21 changes from Point A to Point B, just changes from
22 normal. Does that make sense?

23 Q. It does to me. So he would have had some
24 change on the Los Angeles MRI from the previous MRI
25 that you had?

1 A. No, that's not what I'm trying to say. He
2 had -- his original MRI that we had here, he had
3 degenerative changes. When he had the MRI out of the
4 area, per se, he had degenerative changes there.
5 There weren't -- I'm not necessarily saying in this
6 letter that there were changes between those two
7 MRIs. He still had degenerative changes. And that's
8 why the question earlier about did you see -- did I
9 see any difference from one MRI to the next, I didn't
10 see anything glaring, but once again, the MRI that we
11 had initially was done here. You are going and
12 having it done elsewhere on a different type of
13 magnet, and if the technician that's doing it changes
14 the way they do their sequences, you are not really
15 comparing apples to apples.

16 So there may have been a change. There
17 may not have been a change when you compare the two,
18 but since they weren't done on the same magnet by the
19 same tech, it's really tough sometimes to say, oh,
20 yeah, hey, is this little change real, or was it just
21 an imaging change based on technique. Does that make
22 sense?

23 Q. Yes, sir. So in order to decide if he had
24 additional degenerative changes, you would want him
25 to come back and have an MRI done with your

1 technician? Is that --

2 A. That's probably a lot cleaner, if that is
3 a proper term.

4 Q. Okay.

5 A. Probably makes more sense to me, at least.
6 And I tell patients frequently, whether it's a
7 workers' compensation or, you know, Joe or Jane off
8 the street in a different situation, they will come
9 in with an MRI done at a different center, and our
10 magnet is a Siemen's magnet, it's 1.5 tesla. Someone
11 may have it on a GE that's a 1.0 tesla. There's a
12 difference there. There's a difference there. And
13 you can see a difference. The images just look
14 different, you know.

15 Q. Do you think that the pain that he was
16 having when you saw him in November, that that pain
17 was increased because he had an increase in
18 symptomatology, is that what --

19 A. He just was telling me he's hurting more
20 and he's having less functional ability. So, yeah,
21 that would be increase in symptomatology.

22 Q. Which would be a worsening of his
23 condition, I take it; is that right?

24 A. A worsening of his physical descriptive
25 condition, not -- may or may not have anything to do

1 with any changes that we do or don't see or may end
2 up finding on MRI. Does that make sense?

3 Q. It does.

4 A. So his MRIs could be stable. We see that
5 frequently. Folks will come in with a problem. They
6 will describe it. We treat them. They may come back
7 some time later and say, hey, listen, it's getting
8 worse. Repeat the MRI on your magnet, and
9 radiologist and myself agree, stable, no interval
10 change, but they feel worse.

11 Q. Is it your opinion that he needs the
12 surgery?

13 A. I mean, he definitely has surgical
14 pathology on his MRI. According to his complaints,
15 his -- I shouldn't use the word complaints, according
16 to his description of his symptom, it would go along
17 with this, the MRI findings, and wouldn't be
18 unreasonable to proceed with surgery. But then
19 again, you know, with surgery, there's always that
20 element it may not do too much to help him from an
21 overall function standpoint. But that goes with
22 anything any more.

23 Q. You had seen him for some time prior to
24 November of 2011, I believe.

25 A. Yeah, I saw him a couple of times at

1 least.

2 Q. And it was my understanding that there was
3 surgery that was talked about, but he apparently had
4 colon cancer which had to be resolved.

5 A. Yes. I can't remember if it was colon
6 cancer. I remember he had some type of malignancy he
7 was dealing with and had to be treated for that. And
8 that sort of delayed some things. Of course, cancer
9 trumps an elective procedure on your spine.

10 Q. Apparently that was the reason -- I was
11 looking at the notes earlier. That was the reason he
12 didn't have it back some years ago?

13 A. Yes.

14 Q. And would that have been -- do you think
15 that would have been a -- was that a reasonable
16 course of action, for him to have the cancer treated
17 first?

18 A. In my opinion, definitely.

19 Q. And then to have the surgery afterwards?

20 A. Then to have whatever further treatment
21 was needed, if it was just injections or therapy.

22 Q. Do you think now, if he came back and had
23 the MRI here, that you would be able to look at the
24 differences between the two MRIs that you had?

25 A. I could definitely -- I think you're much

1 more close to comparing apples to apples than apples
2 to oranges.

3 Q. Every time I've ever had this issue about
4 degenerative changes, the doctor seems to want to
5 look at the subtle changes between the MRI on day one
6 and the MRI on day 300.

7 A. Right.

8 Q. I'm understanding that you have to have
9 the same machine to do that to make sure that you
10 can --

11 A. You don't have to have the same machine,
12 but they sure better be similar. I just know in the
13 Myrtle Beach area, there is a wide variability in
14 imaging when it comes to MRIs. I see it every day.

15 Q. So you could have an MRI that wouldn't
16 show up as well as, based on the resolution?

17 A. Exactly, exactly. The analogy I give the
18 patients is, it's like Super Bowl, March Madness,
19 whatever you like to watch it on, if you are watching
20 on 60-inch plasma high def TV versus grandma's
21 13-inch black and white TV with rabbit ears, there's
22 a difference.

23 Q. Right.

24 A. There's a difference.

25 Q. And Strand has the best, I think

1 resolution; is that right?

2 A. The standard imaging for spine in the, if
3 you will, in our line of work, is a 1.5 tesla, not
4 closed, 1.5 tesla magnet. The strongest that you
5 really see in the medical industry, they will use
6 them for really high resolution tumor imaging, are
7 the 3.0. I don't know, maybe they have one at
8 M.U.S.C. where they are doing a lot of deeper cancer
9 work. But the standard for orthopedics, especially
10 spine, is closed 1.5 tesla magnets.

11 Q. Does the fact that he's having more pain
12 indicate to you that there's some physical change in
13 his structure of his spine?

14 A. No, because I've seen folks that have not
15 had any change in apples to apples comparison MRIs,
16 but their symptoms have gotten worse. And once
17 again, we treat the symptoms. Because somebody could
18 come in and have no symptoms and have an MRI that
19 looks like his. So once again, you know, we don't --
20 I know you guys look for change from Point A to Point
21 B. It's not that it's not important to us, but we
22 have to correlate that with the clinical symptoms.
23 Because once again, somebody could come in with a
24 horrific looking MRI and basically be symptom free.

25 Q. But the fact that he had this cancer issue

1 really trumped his ability to have any surgery back
2 when you saw him?

3 A. In my opinion, yeah. I mean, personally,
4 I would want a patient treated for their malignancy.

5 Q. So there has been a change in his
6 condition. Cancer is now -- treatment is now
7 completed. Now you can proceed with the surgery; is
8 that right?

9 A. Yeah. I think that's definitely a better
10 setting for proceeding with an elective surgery.

11 Q. And I don't think you would have done it,
12 would you, until the cancer thing was resolved?

13 A. I don't know anyone that would have,
14 personally.

15 Q. Cancer had to come first, and then he had
16 to do this afterwards?

17 A. In this situation, I think that's the
18 case, yes.

19 MR. CONNELL: All right. Thank you, sir.

20 EXAMINATION

21 BY MR. LACY:

22 Q. Doctor, a handful of questions. The
23 surgical pathology that we saw on MRI was present
24 before you declared him at maximum medical
25 improvement?

1 A. It was present before he got hurt.

2 Q. Oh, okay.

3 A. Yeah, it's pre-existing.

4 Q. Okay.

5 A. As they are 95 percent of the time.

6 Q. And the surgery, as Gene has pointed out,
7 the surgery was discussed, and he basically said that
8 he wanted to treat the cancer first?

9 A. Yes, yes.

10 Q. And did he come back after that to you and
11 say, okay, now I'm ready to have the surgery?

12 A. Let me check. I believe he did, but I
13 don't want to speak out of turn.

14 Q. Let me ask it this way so I'm nice and
15 careful here.

16 A. Okay.

17 Q. Did he come back to you before October the
18 11th, 2011 --

19 A. Did he come back to me before when,
20 October?

21 Q. October the 11th, 2011, and say, I want
22 the surgery?

23 A. Not that I can tell from the medical
24 records. If you have information otherwise, please
25 let me know.

1 Q. No, no, that was --

2 A. I don't see anything.

3 Q. There's a legal standard that when we talk
4 about last date of payment, and that was apparently
5 when they signed the Form 19. So now we are looking
6 at since that time -- or, I'm sorry, before that
7 time. Before that time, did he come to you and say,
8 you know, I want the surgery?

9 A. No. I have 6/30/2010, which is where we
10 rate and release them at that point in time.

11 Q. Okay. Very good. Thank you very much,
12 Doctor. That's all I've got.

13 EXAMINATION

14 BY MR. COLLINS:

15 Q. Just a couple follow-ups. The only reason
16 he was rated and released was because you told him he
17 couldn't have the surgery until the cancer was
18 resolved; is that right?

19 MR. LACY: Object to the form of the
20 question.

21 THE WITNESS: As far as I recall, yes.

22 BY MR. COLLINS:

23 Q. I think I heard you say earlier you would
24 not have performed this surgery because he had this
25 cancer?

1 A. Correct.

2 Q. And I think, didn't I hear you say, you
3 don't know anybody that would have done that?

4 A. No one I know, but I guess you might be
5 able to find somebody.

6 Q. So really, he got kind of an interim
7 rating until he came back after the treatment with
8 the cancer; is that right?

9 A. Well, and I think part of it too was, and
10 correct me if I am wrong -- yeah, here it is here,
11 under plan 6/30/2010, went over the FC with him
12 because of continued back pain, talks about the
13 impairment. From my standpoint, go back until
14 tolerated. He's going to be relocating to
15 California, so will not be -- I think that was also
16 part of the reason of basically closing things out,
17 because he wasn't going to be in -- at that point in
18 time, from what I was told through him, he wasn't
19 going to be in South Carolina anymore. And I
20 couldn't remember if he said he was going out to
21 California for the cancer treatments. I assumed he
22 was, if he was relocating there. I don't think he's
23 going to come back to South Carolina just to have his
24 cancer treatments.

25 Q. Are you -- would you be willing to do the

1 surgery on him now?

2 A. I would have to reevaluate things and, get
3 back to you on that.

4 Q. Okay. I mean, I know he came down here,
5 but you were under the workers' compensation.

6 A. Right.

7 Q. He came out to see you during that period
8 of time?

9 A. Right.

10 Q. And I think at that point you recommended
11 that he needed additional surgery. Would you
12 reevaluate him again before you had the surgery or --

13 A. Yeah.

14 Q. And that would entail having to do MRI, I
15 take it?

16 A. Yes, obviously talking to him, examine
17 him, repeat the MRI, because it's been since, when,
18 11/16/11. So it's been awhile.

19 Q. So you need a more updated MRI?

20 A. Yeah.

21 Q. Are there any questions his pain has
22 increased apparently based on what he told you?

23 A. As far as that's concerned, all I have to
24 go by is what he tells me, which --

25 Q. You don't have any reason to disbelieve

1 him though do you?

2 A. I don't disbelieve anyone until proven
3 otherwise.

4 Q. It was apparent to you he did need the
5 surgery, right?

6 A. Yeah.

7 MR. CONNELL: All right. Thank you,
8 Doctor.

9 EXAMINATION

10 BY MR. LACY:

11 Q. There's no objective test that you can do
12 that measures somebody's pain is there?

13 A. There are pain questionnaires that try to
14 objectively do that, the validity of which I think is
15 still somewhat questionable.

16 Q. But as far as --

17 A. I can't measure it like I can measure the
18 angle of a displaced fracture or scoliotic curve on
19 an MRI.

20 Q. You can't do something like an MRI that's
21 going to show you degree of pain has increased?

22 A. No, sir.

23 MR. CONNELL: Okay. Thank you very much.
24 Nothing further.

25

1 (DFT. EXH. 2, Strand Orthopaedic
2 Consultants Statement by Dr. Wayne Bauerle, was
3 marked for identification.)
4
5

6 (The deposition was concluded at 12:50 p.m.)
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1 CERTIFICATE OF REPORTER

2

3 I, Karen V. Andersen, Registered Professional
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate, and
7 complete record.

8 I further certify that I am neither related
9 to, nor counsel for, any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 20th day of March, 2012, at
13 Charleston County, South Carolina.

14

15

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22

23

Karen V. Andersen, RMR, CSR

24

My Commission expires:

September 14, 2016

25

1 I N D E X

2

3 EXAMINATION

4	Witness Name	Page
5	WAYNE B. BAUERLE, M.D.	
6	BY MR. LACY	3
7	BY MR. CONNELL	8
8	BY MR. LACY	16
9	BY MR. COLLINS	18
10	BY MR. LACY	21
11	CERTIFICATE OF REPORTER	23

12

13 EXHIBITS

14

	Exhibit	Page	Line
15			
	DFT. EXH. 1	3	11
16	Letter dated 11/28/11 from Wayne B. Bauerle, M.D., to Gene Connell, Jr.		
17			
	DFT. EXH. 2	22	1
18	Strand Orthopaedic Consultants Statement by Dr. Wayne Bauerle		

19

20 REQUESTED INFORMATION INDEX

21 (No Information Requested)

22

23

24

25



PRE-HEARING BRIEF
WCC File No:0914812

Claimant's Name: Oscar Hickman
Address: 603 1/2 Main Street
City: Lancaster State: CA Zip: 83535
Home Phone: (842) 897-6788 Work Phone: () -
Preparer's Name: Stanford E. Lacy

Employer's Name: City of Myrtle Beach
Address: P.O Box 2468
City: Myrtle Beach State: SC Zip: 29578
Carrier: Self Insured/ Companion Property & Casualty TPA
Preparer's Phone #: (803) 256-2660

claim for workers' compensation benefits is made based on the following grounds:

Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ 543.63 2. AWW: \$815.40 Date of Injury: 9/9/09
3. Type of injury and body part(s): Lower back and right elbow.
4. Facts in controversy: Claimant was returned to light duty work and retired and moved to California as unfortunately, he was diagnosed with Stage III Colon Cancer. Issue will be amount of permanency to which he is entitled.
5. Legal issues involved: Amount of permanency to which claimant is entitled.
6. Unusual aspects: N/A
7. Witnesses (designate if expert):* Peggy Cantor, Chad Hudson, Claimant's supervisor.
8. Exhibits: Portions of Claimant's personnel file.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne Bauerle, Strand Orthopaedic Consultants,
210 Village Center Boulevard, Suite 200, Myrtle Beach, South Carolina 29579.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Wayne Bauerle assigned Claimant an impairment rating of
5% to the whole person on June 30, 2010. (Page 11 of APA's.)
12. I am amending my Form 50/51 in the following manner: N/A

verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: slacy@collinsandlacy.com

Date of hearing: May 12, 2011

Time needed for hearing: Sixty minutes

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Rev. 9/07

FORM 58

PRE-HEARING BRIEF

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC File No. 0914812

OSCAR HICKMAN,

Employee,

Claimant,

vs.

CITY OF MYRTLE BEACH,

Employer,

and

CITY OF MYRTLE BEACH SIF,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF
DEFENDANTS**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND GENE
CONNELL, ATTORNEY FOR THE CLAIMANT.

YOU ARE HEREBY NOTIFIED that the defendants pursuant to the South Carolina
Workers' Compensation Act and South Carolina Code, §1-23-330, (1976, as amended), herewith
submits the following medical reports as direct evidence on behalf of the defendants, to wit:

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE NOS
3) Myrtle Beach Physical Therapy	11/30/09 thru 5/26/10	16 - 18
4) Doctors Care	9/14/09 thru 9/29/09	19 - 26
5) Dr. Gregory Kang	11/10/09 thru 11/18/09	27 - 28
6) Atlantic Physical Therapy	12/21/09 thru 1/8/10	29 - 48

EXHIBITS	PAGE NOS
Various disability related forms from claimant's personnel file	1 - 22

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination.

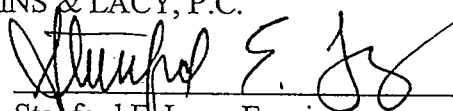
YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, will be delivered to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the defendants, at the hearing in this matter.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants:

Peggy Cantor, Chad Hudson, Claimant's supervisor and/or another representative of the employer.

COLLINS & LACY, P.C.

BY:



Stanford B. Lacy, Esquire

P. O. Box 12487

Columbia, South Carolina 29211

(803) 256-2660

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

April 26, 2011

0937

Received
Companion P&C Claims
DOCTOR'S CARE
10/07/09

Medical

72-933

TICKET NO.

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME
EXAM ROOM	TIME		

NAME & ADDRESS

176967 09/29/09 08:26am DC STRAND MEDICAL,
TUESDAY
HICKMAN, OSCAR DOB: ~~01/11/50~~ (57 years)
GENDER: M
CONWAY, SC 29526 IBG:
WRK: CELL:
INSURED: HICKMAN, OSCAR RELATION: OTHER
INS: WC/COMPANION THIRD PARTY AD
REASON: WC F/II

INSURANCE BALANCE	EM7416
ACCOUNT BALANCE	\$540.04
CURRENT CHARGES	\$540.04
AMOUNT PAID	OKC
NEW BALANCE	
CASH	CHECK
M.O.	C.O.

HISTORY: ~~NYC~~ (is)		ROS (I or O)	PREVENTIVE (W or L)	Allergies:
Personal Hx	Family Hx	Social Hx	Circle recommendations	NKDA
DM	DM	Alcohol	Tetanus	Medications:
ITN	HTN	Tobacco	Cholesterol	Acetophen ; Lipitor
IV	MI<50	Drugs	Colonoscopy	HCTZ ; Lisinapril ; Synthroid
CA	CVA	Reg. Exer.	Flu Shot	
urg	CA	Occur	Pneumovax	
rev chart rev, no sig chg		Above Hx reviewed	Men	
			PSA	
			Rectal	

BP	Pulse	Resp	Temp	Chief Complaint:
36	64	18	98.3	DOE 9/09
HPI (4 items):				

PHYSICAL: (see reverse) Omit if N/A
✓ if normal, O if abnormal & give details

- ☐ General
- ☐ HEENT
- ☐ Neck
- ☐ Nodes
- ☐ Lungs
- ☐ CV
- ☐ Abd
- ☐ Back
- ☐ Ext
- ☐ GU
- ☐ Neuro
- ☐ Skin/Breasts
- Tests/Labs: (in-house)
- ☐ CBC
- ☐ Sirep
- ☐ Mono
- ☐ U/A

"Come a goer."

Mr. Hickman. (on back)

DTR at apartment - intermittent from 10/1/09

Mr. O. H. 10/1/09
State B.P. - but the same

- ☐ Labs - sent out:
- ☐ H-Pylori
- ☐ FBS
- ☐ U Preg
- ☐ Heme

- ☐ Microalbumin
- ☐ HbA1c
- ☐ KOH IV
- ☐ Wet Prep
- ☐ EKG
- ☐ X-Ray
- ☐ Inject / Rx

722.0
724.2
584.3

ASSESSMENT / DIAGNOSIS/ES:

Resistant Low Back Pain

DOO 10/1/09

A1

☐ Patient Care Instructions Discussed: ☐ Lifestyle Modification Date to Return: ☐ If worse: ☐ If not better: ☒ For Follow-Up: 10/1/09 Go to ER if: Off Work / School Restrictions:	Referrals, Tests, Treatments - Keep Chiropractor Appointment 10/1/09 - Life Duty - Return of a patient	Prescriptions / OTC Meds Side Effects Discussed PSR Notes: 99214 = 113.0
--	--	---

Note: If outside test is ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

I, _____ MD, DO, PA, FNP
 1. I warrant, my consent to any and all health care, treatment and diagnostic procedures provided by Doctor's Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee or assurance can be made as to the results of the treatments or examinations at Doctor's Care.
 2. I consent to the use and disclosure of my patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment of my health care operations consistent with the Doctor's Care Notice of Privacy Practices.
 3. I authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.

Patient or Authorized Person's Signature: Oscar Hickman Date: _____

1. Worker's Compensation patients: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation. I have received or will receive.
 Patient or Authorized Person's Signature: Oscar Hickman Date: _____



Received
Return to Work Form
Companion PC Claims
10/07/09
200 Middleburg Drive, Myrtle Beach, SC 29575 (843) 203-6650
1400 Main Street, Conway, SC 29526 (843) 248-6269
1113 Church Street, Conway, SC 29526 (843) 248-6269
1068 North Frick Street, Georgetown, SC 29440 (843) 545-7200
1714 Hwy 17 South, N. Myrtle Beach, SC 29582 (843) 361-0705
1220 21st Avenue, Myrtle Beach, SC 29577 (843) 626-9379

1600 Hwy. 17 North, Surfside Beach, SC 29575 (843) 231-1461

Name: Oscar Hickman Arrival Time: 8:25 Discharge Time: 10:45

Date: 9-29-09 Company Name: CMB

WORK STATUS: (Check Appropriate Boxes)

- ☐ 1. May perform Full Duty as of _____ without accommodations.
- ☐ 2. Off Duty due to work-related condition.
Estimated return to work date modified duty: _____
Estimated return to work date full duty: _____
RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____ Time: _____
- ☐ 3. May work with the following accommodations as of: _____
- ☒ No lifting more than 5 lbs.
 - ☐ No operation of hazardous or fast-moving machinery, no driving.
 - ☐ Ground level work only, no ladders or heights.
 - ☒ No ~~over~~ bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
 - ☐ No continuous standing and/or sitting.
 - ☐ Minimum walking, climbing (including stairs)
 - ☒ Limited use of 5 miles
 - ☒ No overhead lifting.
 - ☐ No high repetitive hand activities for extended periods of time.
 - ☐ No use of _____
- ☐ 4. Has reached Maximum Medical Improvement (MMI)
- ☐ 5. Return for re-evaluation at this office on To See Dr. Yho 10/7/09 Time: _____

Additional Comments:

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Low Back Pain, DDD, Radiculopathy Medications: ☐ as directed ☐ as needed
Wound Care or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks
☐ ice every _____ ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped
☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: If a referral is made to Therapy, or another physician, please complete this section

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer

Employee Signature: Oscar Hickman Date: _____

Provider Signature: [Signature] Date: 10/29/09

FTA09280702760V13
(MFD-F016-07-0911)

822 AM

Received...
Companion P&C Claims
DOCTORS CARE
09/29/09

1000 *Medical*

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO.
EXAM ROOM				

NAME & ADDRESS: 176957 09/21/09 08:11am DC STRAND MEDICAL,
HICKMAN, OSCAR MONDAY
2845 FILLMORE DR
CONWAY, SC 29526
WRK:
INSURED: HICKMAN, OSCAR
INS: WC/COMPANION THIRD PARTY AD
REASON: WKC
NICKNAME:
DOB: 04/14/1952 (57 years)
GENDER: M
IBG:
CELL: 72-933
RELATION: OTHER

INSURANCE BALANCE	601753		
ACCOUNT BALANCE	\$427.04		
CURRENT CHARGES	\$427.04		
AMOUNT PAID			
NEW BALANCE			
CASH	CHECK	M.O.	C.C.

HISTORY: (- or +, or details)		ROS (V or O)	PREVENTIVE (year of last)	Allergies:
Personal Hx	Family Hx	Social Hx	Circle recommendations	N/A
DM	DM	Alcohol	Tetanus	Medications:
ITN	HTN	Tobacco	Cholesterol	Asuprex kipitor
IV	MI < 50	Drugs	Colonoscopy	NCTZ
CA	CVA	Reg. Exer.	Flu Shot	Waxap
Surg	CA	Occup.	Pneumovax	Levothyroxine

Rev. chart rev. no sig chg	Above Hx reviewed
NGT 241	BP 138/78
Pulse 74	Resp 18
Temp 98.2	

PHYSICAL: (see reverse) Omit if N/A
✓ if nml., O if abnml. & give details

☐ General
☐ HEENT
☐ Neck
☐ Nodes
☐ Lungs
☐ CV
☐ Abd
☐ Back
☐ GU
☐ Neuro
☐ Skin/Breasts
Tests/Labs: (In-house)
☐ CBC
☐ Strep
☐ Mono
☐ U/A

☐ Labs - sent out
☐ H-Pylori
☐ FBS
☐ U Preg
☐ Heme

Chief Complaint: (10) Dist Sept 9-09
HPI (4 items): Rt Elbow feels better
Still having Back Pain -
To See Dr. Forst
Stab + 1 bar x 100

Back has much diminished pain in low back level - 17.11m
pain down legs after 2 hrs. 1 Reg. Appt tomorrow
Wing Ky Rca

☐ Microalbumin ☐ EKG
☐ HbA1c ☐ X-Ray
☐ KOHD IV
☐ Wet Prep ☐ Inject / Rx

ASSESSMENT / DIAGNOSIS/ES:

1) Distal RT Elbow pain
2) Distal Left Back pain & radiating, dull

☐ Patient Care Instructions Discussed	Referrals, Tests, Treatments	Prescriptions / OTC Meds	PSR Notes:
☐ Lifestyle Modification		Side Effects Discussed	
Date to Return:			
If worse:			
If not better:			
For Follow-Up: 9/29/09			
Go to ER If:			
Off Work / School			
Restrictions:			

Note: If outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

Signature: Oscar Hickman Date: 9-21-09

Signature: Oscar Hickman Date: 9-21-09

Signature: Oscar Hickman Date: 9-21-09



Received

Return To Work Form

- ☐ 200 Myrtleburg Drive, Myrtle Beach, SC 29577 (843) 983-6650
☐ 1400 Main Street, Conway, SC 29526 (843) 381-8206
☐ 1113 Church Street, Conway, SC 29526 (843) 248-6269
☐ 1068 North Fraser Street, Georgetown, SC 29440 (843) 545-7200
☐ 1714 Hwy 17 South, N. Myrtle Beach, SC 29582 (843) 361-0705
☒ 1220 21st Avenue, Myrtle Beach, SC 29577 (843) 626-9379

Name: Oscar Hickman Arrival Time: 8:13 Discharge Time: 1000Date: 9/21/09 Company Name: COMB

WORK STATUS: (Check Appropriate Boxes)

☐ 1. May perform Full Duty as of _____ without accommodations.☐ 2. Off Duty due to work-related condition.

Estimated return to work date modified duty: _____

Estimated return to work date full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____

Time: _____

☒ 3. May work with the following accommodations as of: None☒ No lifting more than 5 lbs.☐ No operation of hazardous or fast-moving machinery, no driving.☐ Ground level work only, no ladders or heights.☒ No ~~over~~ bending, stooping, squatting, pushing, jerking, twisting, or bouncing.☐ No continuous standing and/or sitting.☐ Minimum walking, climbing (including stairs)☐ Limited use of _____☒ No overhead lifting.☐ No high repetitive hand activities for extended periods of time.☒ No use of ladders - ladder stairs☐ 4. Has reached Maximum Medical Improvement (MMI)☒ 5. Return for re-evaluation at this office on 9/29/09 Time: _____

Additional Comments:

Cyclobenzaprine, Hydrocodone P.O.P. VSC AT HOME

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Low Back Pain DDD Medications: as directed AT HOME (not work)Wound Care or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks☐ Ice every _____ ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped☐ home exercise instructions given ☐ follow instructions sheet given☐ bed rest for _____

REFERRAL: If a referral is made to Therapy, or another physician, please complete this section

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer

Employee Signature: Oscar Hickman Date: 9/21/09Provider Signature: [Signature] Date: 9/21/09

IMFD-F016-17-0011

Received
Companion P&C Claims
DOCTOR'S CARE
09/12/09

1030

ACCOUNT NUMBER 170587	DATE 09/14/09	TIME 09:00am	CHECKOUT TIME	TICKET NO.
7200.00000933 - 0001				
NAME & ADDRESS HICKMAN, OSCAR 1672 TILLMANT DR CONWAY, SC 29526 WRK: INSURED: HICKMAN, OSCAR INS: WC/COMPANION THIRD PARTY AD REASON: WC BACK AND RT ARM INJ NICKNAME:			DOB: 01/18/1932 (57 years) GENDER: M IBG: CELL: RELATION: OTHER COPAY: WKC	
			INSURANCE BALANCE 598031 ACCOUNT BALANCE 1: \$0.00 CURRENT CHARGES AMOUNT PAID WKC NEW BALANCE CASH CHECK M.O. C.C.	

HISTORY: (+ or -, or details) Personal Hx Family Hx Social Hx DM HTN MI<50 CVA CA ROS (V or O) Fever, Chills N, V, D Constip. SOB, CP Headache, Fatigue UTI Sx, & Compl.			PREVENTIVE (year of last) Circle recommendations Tetanus Cholerae Colonoscopy Flu Shot Pneumovax Women LMP PAP Mamm BMD DEXA Men PSA Rectal			Allergies: NKDA Medications: Aspirin 2mg, Urinary 1mg, HCTZ, Levothyroxine, Lipitor 10mg		
--	--	--	---	--	--	---	--	--

WGT 239	BP 144/96	Pulse 119	Resp 19	Temp 97.9
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PHYSICAL: (see reverse) Omit if N/A
☒ if nml, O if abnml. & give details

☐ General ☐ HEENT ☐ Neck ☐ Nodes ☐ Lungs ☐ CV ☐ Abd ☒ Back ☒ Ext ☐ GU ☐ Neuro - DRA ☐ Skin/Breasts

Tests/Labs: (in-house)
☐ CBC ☐ Strep ☐ Mono ☐ U/A

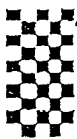
☐ Labs - sent out
☐ H-Pylori ☐ FBS ☐ U Preg ☐ Heme ☐ Microalbumin ☐ EKG ☐ HbA1c ☐ KOH IV ☐ Wet Prep ☐ Inject / Rx

Chief Complaint: X LWK
 WKC ClO LBP on RT elbow pain
 HPI (4 items):
 - LBP on RT elbow pain (9/14)
 - LBP on RT elbow pain (9/14)
 - LBP on RT elbow pain (9/14)
 - LBP on RT elbow pain (9/14)

ASSESSMENT / DIAGNOSIS/ES:

Patient Care Instructions Discussed: Lifestyle Modification Date to Return: If worse: If not better: For Follow-Up: 9/21/09 Go to ER if: Off Work / School Restrictions: Note: If outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.	Referrals, Tests, Treatments - Life Duty - no duty - Rest to day - Fricoid + Low back at home only - Return to work if possible	Prescriptions / OTC Meds Side Effects Discussed - Life Duty - no duty - Rest to day - Fricoid + Low back at home only - Return to work if possible	PSR Notes: 5377-00-382 72100-51.00 73070-Rt-76.00 99203(25)-132.00 J1885(4)-64.00 90782-30.00
---	---	---	--

Signature: [Signature] MD, DO, P.A., F.N.P.
 Date: 9/14/09
 Patient or Authorized Person's Signature: [Signature]
 Date: 9/14/09
 Workers Compensation permits: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation regarding my medical records and the treatment I have received or will receive.
 Patient or Authorized Person's Signature: [Signature]
 Date: 9/14/09



SEP. 14. 2009, 1:11PM

FAX 843 448 0707 DR CARE STRAND MEDICAL

720000000933-00

NO. 2701 P. 1 001/001



Return To Work Form

- ☐ 200 Middleburg Drive, Myrtle Beach, SC 29579 (843) 903-6650
☐ 1400 Main Street, Conway, SC 29526 (843) 381-8206
☐ 1115 Church Street, Conway, SC 29526 (843) 248-6269
☐ 1061 North Fraser Street, Georgetown, SC 29440 (843) 545-7200
☐ 1714 Hwy 17 South, N. Myrtle Beach, SC 29512 (843) 361-4705
☒ 1220 21st Avenue, W, Myrtle Beach, SC 29577 (843) 626-9379

- ☐ 1600 Hwy. 17 North, Surfside Beach, SC 29575 (843) 231-1461

Name: OSCAR HILFMAN Arrival Time: _____ Discharge Time: 1030

Date: 9/14/09 Company Name: CMB

WORK STATUS (Check Appropriate Boxes)

☐ 1. May perform Full Duty as of _____ without accommodations?

☒ 2. Off Duty due to work-related condition. - Remainder of Injury

Estimated return to work date modified duty: TOMorrow

Estimated return to work date full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON 9/21/09 Time: _____

☒ 3. May work with the following accommodations as of: TUesday

☒ No lifting more than 5 lbs.

☐ No operation of hazardous or fast-moving machinery, no driving.

☐ Ground level work only, no ladders or heights.

☒ No ~~over~~ bending, stooping, squatting, pushing, jerking, twisting, or bouncing.

☐ No continuous standing and/or sitting.

☐ Minimum walking, climbing (including stairs)

☐ Limited use of _____

☒ No overhead lifting.

☐ No high repetitive hand activities for extended periods of time.

☒ No use of Ladders

☐ 4. Has reached Maximum Medical Improvement (MMI)

☒ 5. Return for re-evaluation at this office on 9/21/09 Time: _____

Additional Comments: _____

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Referred pain, low back pain, DDD w/ R Radiculopathy Medications: ☐ as directed ☐ as needed

Wound Care or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks

☐ ice every _____ ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped

☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: If a referral is made to Therapy, or another physician, please complete this section

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer

Employee Signature: Oscar Hilfman Date: 9/14/09

Provider Signature: [Signature] Date: 9/14/09

(IMED-F016-(7-09))

12-933
medical

PATIENT: OSCAR HICKMAN

DATE: 11/18/09

Preoperative Diagnosis:

1. Multiple level degenerative disc disease with radiculitis.

Postoperative Diagnosis:

1. Multiple level degenerative disc disease with radiculitis.

Procedure:

1. Right L4-5 transforaminal epidural steroid injection.
2. Right L5-S1 transforaminal epidural steroid injection.

Brief History:

Mr. Hickman is a 57-year-old man with lumbar degenerative disc disease and radicular pain down both lower extremities. He had left-sided L4-5 and L5-S1 transforaminal injections a week ago with resolution of leg pain on the left side. He still has lower back and right leg pain. We will do his right side today.

Procedure in Detail:

After informed consent was obtained, Mr. Hickman was placed in the prone position and Betadine was used to sterilely prep the back in the usual fashion. 1% Xylocaine was used for local anesthesia. C-arm fluoroscopy was used to identify the right L5 pedicle. A 6-inch, 22-gauge spinal needle was used to approach the six o'clock position of the pedicle. Then in the lateral view, the needle was advanced to the anterior 1/3 of the neural foramen. Then in the AP view, Omnipaque was injected which revealed epidural spread without vascular uptake. Then 40 mg of triamcinolone and 1 cc of 1% Xylocaine were injected. The needle was then directed towards the right L4 pedicle in a similar fashion. Again the six o'clock position was approached. In the lateral view, it was advanced to the anterior 1/3 of the neural foramen. In the AP view, Omnipaque was injected which revealed epidural spread without vascular flow. Then 40 mg of triamcinolone and 1 cc of 1% Xylocaine were injected. He was observed in the office for twenty-five minutes prior to discharge. There were no apparent complications.

C. Gregory Kang, M.D.
Physiatrist

CGK:dh

cc: Worker's Compensation carrier
Dr. Bauerle

PATIENT: OSCAR HICKMAN
DATE: 11/10/09

Preoperative Diagnosis:

1. Multiple level degenerative disc disease with radiculitis.

Postoperative Diagnosis:

1. Multiple level degenerative disc disease with radiculitis.

Procedure:

1. Left L4-5 transforaminal epidural steroid injection.
2. Left L5-S1 transforaminal epidural steroid injection.

Brief History:

Mr. Hickman is a 57-year-old gentleman with lumbar degenerative disc disease and a history of a work related back injury. He has back pain with radiation to both lower extremities. He is referred by Dr. Bauerle for bilateral L4-5 and L5-S1 transforaminal injections.

Procedure in Detail:

After informed consent was obtained, Mr. Hickman was placed in the prone position and Betadine was used to sterilely prep the back in the usual fashion. 1% Xylocaine was used for local anesthesia. C-arm fluoroscopy was used to identify the left L4 pedicle. A 6-inch, 22-gauge spinal needle was used to approach the six o'clock position of the pedicle. Then in the lateral view, the needle was advanced to the anterior 1/3 of the neural foramen. Then in the AP view, Omnipaque was injected under real time fluoroscopy, which revealed filling of the L4 nerve root sheath as well as flow into the epidural space. No vascular uptake was seen. Then 40 mg of triamcinolone and 1 cc of 1% Xylocaine were injected. The needle was then directed towards the left L5 pedicle at the six o'clock position. Again it was advanced to the anterior 1/2 of the neural foramen as seen on lateral view. In the AP view, Omnipaque was injected under real time fluoroscopy, which revealed epidural flow without vascular uptake. Then 40 mg of triamcinolone and 1 cc of 1% Xylocaine were injected. He was observed in the office for twenty-five minutes prior to discharge. There were no apparent complications. He will return next week for right side injections.

C. Gregory Kang, M.D.
Physiatrist

CGK:dh

cc: Dr. Bauerle
Worker's Compensation carrier

Received
Companion P&C Claims
01/14/10



ATLANTIC
PHYSICAL THERAPY &
REHABILITATION, INC.

TO: Wayne B Bauerle MD

RE: Oscar Hickman

DOB: [REDACTED]

PT: Therapeutic exercise, instruction regarding HEP, manual lumbar traction, moist heat with Estim, ultrasound x 1 treatment, ice with Estim x 1 treatment.

DATE: 01-08-2010

Mr. Oscar Hickman has been seen in our Myrtle Beach office for treatment as noted above for a total of 7 treatments since his initial evaluation 12/18/09. Patient continues with complaint of constant pain bilateral LB to bilateral buttocks (left greater than right) 7-9/10. He reports pain at right posterior LE to calf and pain left posterior LE to knee intermittently. Patient reports pain radiates to thoracic area intermittently. Patient reports pain is increased with standing/walking - any WBing activity. He reports standing/ambulation tolerance is 5-10 minutes. Patient reports experiencing increased pain immediately following each PT treatment regardless of which treatment performed.

Trunk ROM:	1/8/10	12/18/09
Flexion	85 deg	100 deg
Extension	10 deg	30 deg
Left side bending	22 deg	20 deg
Right side bending	18 deg	20 deg
Left rotation	75%	50%
Right rotation	25%	25%

Strength LE's:	1/8/10	12/18/09
	Left Right	Left Right
Dorsiflexion	WFL WFL	WFL WFL
Knee extension	4+/WFL 4+/WFL	4+ 4
Hip flexion	3+/4 3+	3+ 3/3+
Hip abduction	3+/4 3+/4	3-/3 3+/4
Knee flexion	3+ 3+	3/3+ 3/3+

Subjective complaint of pain persists as noted above and is increased following PT treatments. PT treatment has consisted of gentle mat exercises, gentle standing exercise, manual lumbar traction, ultrasound x 1, moist heat with Estim and 1 treatment of ice with Estim. Subjective complaint of pain is limiting progress in PT and is not decreased with any modality attempted per patient. Trunk ROM (flexion and extension) has decreased while left rotation has improved. Strength bilateral LE's has shown improvement as noted above.

Myrtle Beach	North Myrtle Beach	Conway	Carolina Forest	Murrells Inlet
843-293-7713	843-249-7232	843-234-0015	843-904-4940	843-652-0137
Fax 843-293-1855	Fax 843-280-0206	Fax 843-234-0017	Fax 843-904-4950	Fax 843-652-0138

P.O. Box 11

29578

Received
Companion P&C Claims
01/14/10

Oscar Hickman
-page 2
1/8/10

Patient placed on hold from PT and is to return to you 1/13/10.

Thank you very much for your referral. Please advise regarding continued therapy. Also, please feel free to contact me if you have any questions or if I can be of assistance in any way. I can be reached at 843-293-7713.

Sincerely,

Melissa H Gray PT



Received:
Companion P&C Claims
ATLANTA, GA 30314/10
PHYSICAL THERAPY &
REHABILITATION, INC.

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy DAILY TREATMENT NOTE

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 01-08-2010

Patient DOB: [REDACTED]

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

SUBJECTIVE: Patient continues with complaint of constant pain bilateral LB to bilateral buttocks (left greater than right) 7-9/10. He reports pain at right posterior LE to calf and pain left posterior LE to knee intermittently. Patient reports pain radiates to thoracic area intermittently. Patient reports pain is increased with standing/walking - any WBing activity. He reports standing/ambulation tolerance is 5-10 minutes. Patient reports experiencing increased pain immediately following each PT treatment regardless of which treatment performed.

OBJECTIVE: Treatment per activity/flowsheet;

Trunk ROM:	1/8/10	12/18/09
Flexion	85 deg	100 deg
Extension	10 deg	30 deg
Left side bending	22 deg	20 deg
Right side bending	18 deg	20 deg
Left rotation	75%	50%
Right rotation	25%	25%

Strength LE's:	1/8/10		12/18/09	
	Left	Right	Left	Right
Dorsiflexion	WFL	WFL	WFL	WFL
Knee extension	4+/WFL	4+/WFL	4+	4
Hip flexion	3+/4	3+	3+	3/3+
Hip abduction	3+/4	3+/4	3-/3	3+/4
Knee flexion	3+	3+	3/3+	3/3+

ASSESSMENT: Subjective complaint of pain persists as noted above and is increased following PT treatments. PT treatment has consisted of gentle mat exercises, gentle standing exercise, manual lumbar traction, ultrasound x 1, moist heat with Estim and 1 treatment of ice with Estim. Subjective complaint of pain is limiting progress in PT and is not decreased with any modality attempted per patient. Trunk ROM (flexion and extension) has decreased while left rotation has improved. Strength bilateral LE's has shown improvement as noted above.

PLAN: Patient placed on hold from PT and is to return to MD 1/13/10

Melissa Gray P.T.

Melissa H Gray.PT

Amy Matheny P.T.A.

Amy Matheny.PTA



ATLANTIC PHYSICAL THERAPY & REHABILITATION, INC.

TO: Wayne B Bauerle MD

RE: Oscar Hickman

DOB: ~~01-08-1950~~

PT: Therapeutic exercise, instruction regarding HEP, manual lumbar traction, moist heat with Estim, ultrasound x 1 treatment, ice with Estim x 1 treatment.

DATE: 01-08-2010

Mr. Oscar Hickman has been seen in our Myrtle Beach office for treatment as noted above for a total of 7 treatments since his initial evaluation 12/18/09. Patient continues with complaint of constant pain bilateral L.B to bilateral buttocks (left greater than right) 7-9/10. He reports pain at right posterior LE to calf and pain left posterior LE to knee intermittently. Patient reports pain radiates to thoracic area intermittently. Patient reports pain is increased with standing/walking - any WBing activity. He reports standing/ambulation tolerance is 5-10 minutes. Patient reports experiencing increased pain immediately following each PT treatment regardless of which treatment performed.

Trunk ROM:	1/8/10	12/18/09
Flexion	85 deg	100 deg
Extension	10 deg	30 deg
Left side bending	22 deg	20 deg
Right side bending	18 deg	20 deg
Left rotation	75%	50%
Right rotation	25%	25%

Strength LE's:	1/8/10		12/18/09	
	Left	Right	Left	Right
Dorsiflexion	WFL	WFL	WFL	WFL
Knee extension	4+/WFL	4+/WFL	4+	4
Hip flexion	3+/4	3+	3+	3/3+
Hip abduction	3+/4	3+/4	3-/3	3+/4
Knee flexion	3+	3+	3/3+	3/3+

Subjective complaint of pain persists as noted above and is increased following PT treatments. PT treatment has consisted of gentle mat exercises, gentle standing exercise, manual lumbar traction, ultrasound x 1, moist heat with Estim and 1 treatment of ice with Estim. Subjective complaint of pain is limiting progress in PT and is not decreased with any modality attempted per patient. Trunk ROM (flexion and extension) has decreased while left rotation has improved. Strength bilateral LE's has shown improvement as noted above.

Myrtle Beach	North Myrtle Beach	Conway	Carolina Forest	Murrells Inlet
843-293-7713	843-249-7232	843-234-0015	843-904-4940	843-652-0137
Fax 843-293-1855	Fax 843-280-0206	Fax	3-904-1950	Fax 843-652-0138

Oscar Hickman

-page 2

1/8/10

Patient placed on hold from PT and is to return to you 1/13/10.

Thank you very much for your referral. Please advise regarding continued therapy. Also, please feel free to contact me if you have any questions or if I can be of assistance in any way. I can be reached at 843-293-7713.

Sincerely,

Melissa H Gray PT

THE ATTORNEY GENERAL'S OFFICE

Melissa H Gray PT

Received
Companion P&C Claims
Atlantic Physical Therapy & Rehabilitation, Inc.
01/14/10

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 01-08-2010

Patient DOB: ~~03-22-1954~~

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59 Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7 Difficulty In Walking

MD DX/PRECAUTIONS: Lumbar Spondylosis/ Lumbar Strain

TREATMENT/EXERCISES

Exercise Description	Units/Reps/Weights	Minutes
PT Evaluation		
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure	1/Re-assessment by M.Gray PT	15
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation		
Ultrasound		
Therapeutic Exercise		
Therapeutic Activity		
moist heat		
EXERCISES INCLUDE:		
pelvic tilt		
isometric abdominals - tiny steps in place		
isometric abdominals - bilateral knee fallout		
trunk rolls		
SAQ		
HSS		
adductor squeeze with ball		
quadruped - lifting alt UE		
isometric abs - standing knee flexion		
isometric abs - standing hip abduction		
isometric abs - marching		
tap ups		
bilateral heel raises		
maual traction		
Total Minutes		15

Electronically signed by Melissa H Gray PT
(Therapist)

Electronically signed by Amy Matheny PTA
(Associate)



Received
Companion P&C Claims
ATLANTIC 4/10
PHYSICAL THERAPY &
REHABILITATION, INC.

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy DAILY TREATMENT NOTE

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 01-06-2010

Patient DOB: ~~01-10-1962~~

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

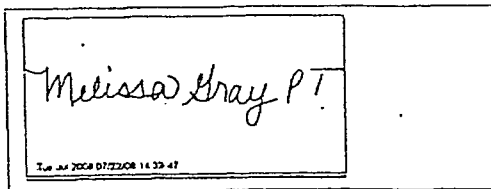
SUBJECTIVE: Patient reports pain bilateral LB to buttocks is still constant 7/10 with intermittent pain left thoracic area and LE's (left greater than right.)

OBJECTIVE: Treatment per grid

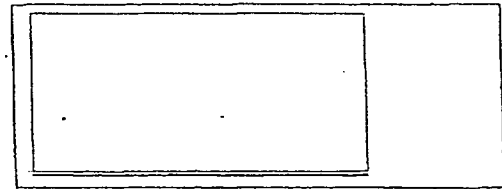
Increased density (mod/max) bilateral lumbar paraspinals - very tender at entire lumbar paraspinal region as well as lumbar spine

ASSESSMENT: Patient with lumbar area spasms - unable to tolerate manual lumbar traction today. Patient with increased sensitivity with pressure of ultrasound sound head as well. Attempted Estim and ice this date to decrease pain/spasm but patient with increased "spasms" at lumbar area with visible body "jerking" while supine. Unable to discern a localized area as cause of symptoms due to patient report of increased pain/tenderness at all regions palpated. Report of pain and spasm limiting progress in PT

PLAN: Re-assess objective information next treatment and refer patient back to MD if symptoms still at same increased level.



Melissa H Gray PT



Received
Companion P&C Claims
 Atlantic Physical Therapy & Rehabilitation, Inc.
 01/14/10
 3650 Coalition Drive Myrtle Beach, SC 29578
 Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman
 Patient DOB: [REDACTED]
 Diagnosis:
 728.87 Muscle Weakness-General
 724.2 Lumbago

Patient ID #: 6468 Date: 01-06-2010
 Referred By: Wayne B Bauerle MD

719.59 Stiffness of joint not elsewhere classified:
 multiple sites
 719.7 Difficulty In Walking

MD DX/PRECAUTIONS: Lumbar Spondylosis/ Lumbar Strain

TREATMENT/EXERCISES

Exercise Description	Units/Reps/Weights	Minutes
PT Evaluation		
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure		
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation	1/FC bilateral L/S to bilateral lumbar area (crossed) with ice - supine	10
Ultrasound	1/ continuous @ 1.5 w/cm2 bilateral lumbar area to bilateral L/S area while sidelying right with pillow between knees	15
Therapeutic Exercise	1/ see below	15
Therapeutic Activity		
moist heat		
EXERCISES INCLUDE:		
pelvic tilt		
isometric abdominals - tiny steps in place		
isometric abdominals - bilateral knee fallout		
trunk rolls		
SAQ		
HSS		
adductor squeeze with ball		
quadruped - lifting alt UE		
isometric abs - standing knee flexion	1 x 10 each LE	
isometric abs - standing hip abduction	1 x 10 each LE	
isometric abs - marching	1 x 10 each LE	
tap ups	8 inch step 1 x 10 alt LE without UE's	
bilateral heel raises	1 x 10	
maual traction	2 min	
Total Minutes		40

Electronically signed by Melissa H Gray PT
 (Therapist)

Electronically signed by
 (Associate)



Received
Companion P&C Claims
ATLANTA, GA
PHYSICAL THERAPY &
REHABILITATION, INC.

3650 Coalition Drive - Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy DAILY TREATMENT NOTE

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 01-04-2010

Patient DOB: [REDACTED]

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

SUBJECTIVE: Pt states that he did have some minimal relief from back spasms/pain and tingles over the weekend, but it was not often in occurrence.

OBJECTIVE: Treatment per grid

Spasms observed in low back following completion of exercise program this date, resumed MH and e-stim to assist with decrease in spasms.

ASSESSMENT: Attempted use of manual traction this date to see if decrease in symptoms of tingles into legs, no direct feedback given as to if there were a noted benefit or increased

PLAN: Cont per plan and progress as able with exercise. Check reaction to manual traction next visit and continue if beneficial.

Melissa Gray PT

Tue Aug 2008 07:23:58 14 38 47

Melissa H Gray PT

Amy Matheny PTA

Fri Aug 2008 06:01:58 18 08 12

Amy Matheny PTA

Received
Companion P&C Claims
Atlantic Physical Therapy & Rehabilitation, Inc.
01/14/10

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Medical Note
72-933

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman
Patient DOB: [REDACTED]
Diagnosis:
728.87 Muscle Weakness-General
724.2 Lumbago

Patient ID #: 6468 Date: 01-04-2010
Referred By: Wayne B Bauerle MD

719.59 Stiffness of joint not elsewhere classified;
multiple sites
719.7 Difficulty In Walking

MD DX/PRECAUTIONS: Lumbar Spondylosis/ Lumbar Strain

TREATMENT/EXERCISES

Exercise/Description	Units/Reps/Weights	Minutes
PT Evaluation		
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure		
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation	1/FC to bilateral sciatic notch and buttocks with MH in supine post rx	15
Ultrasound		
Therapeutic Exercise	2/ see below	25
Therapeutic Activity		
moist heat		
EXERCISES INCLUDE:		
pelvic tilt	1 x 10	
isometric abdominals - tiny steps in place		
isometric abdominals - bilateral knee fallout		
trunk rolls	10x each way	
SAQ		
HSS	1 x 15 sec each by PTA	
adductor squeeze with ball	1 x 10	
quadruped - lifting alt UE		
isometric abs - standing knee flexion	1 x 10 each LE	
isometric abs - standing hip abduction	1 x 10 each LE	
isometric abs - marching	1 x 10 each LE	
tap ups	8 inch step 1 x 10 alt LE without UE's	
bilateral heel raises	1 x 10	
maual traction	5 min with intermitten release	
Total Minutes		40

Electronically signed by Melissa H Gray PT
(Therapist)

Electronically signed by Amy Matheny PTA
(Associate)



Received
Companion P&C Claims
01/07/10

ATLANTIC
PHYSICAL THERAPY &
REHABILITATION, INC.

Rehab
72-933

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy DAILY TREATMENT NOTE

Patient Name: Oscar Hickman

Patient DOB: [REDACTED]

Patient ID #: 6468

Date: 12-30-2009

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

SUBJECTIVE: Pt reports that his back feels as if it tightens up after performing the exercise when going to get up.

OBJECTIVE: Treatment per grid

ASSESSMENT: Increased muscle guarding with performance of exercise.

PLAN: Cont per plan and progress as able with exercise. Try gentle manual traction next visit.

Melissa Gray PT

Tue Aug 2009 07:22:08 14 38 43

Melissa H Gray PT

Amy Matheny PTA

Fri Aug 2009 09:01:08 10 08 12

Amy Matheny PTA

ROA 135

Received
Companion P&C Claims
Atlantic Physical Therapy & Rehabilitation, Inc.

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 12-30-2009

Patient DOB: ~~04-18-1952~~

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59 Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7 Difficulty In Walking

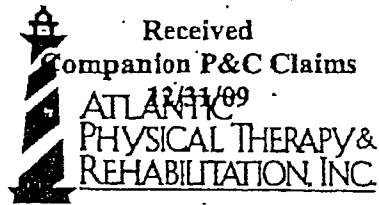
MD DX/PRECAUTIONS: Lumbar Spondylosis/ Lumbar Strain

TREATMENT/EXERCISES

Exercise/Description	Units/Reps/Weights	Minutes
PT Evaluation		
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure		
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation		
Ultrasound		
Therapeutic Exercise	2/ see below	25
Therapeutic Activity		
moist heat		
EXERCISES INCLUDE:		
pelvic tilt	1 x 10	
isometric abdominals - tiny steps in place	5x each LE	
isometric abdominals - bilateral knee fallout	1 x 10 - short range	
trunk rolls	10x each way	
SAQ	1 x 10 each LE	
adductor squeeze with ball	1 x 10	
quadruped - lifting alt UE		
isometric abs - standing knee flexion	1 x 10 each LE	
isometric abs - standing hip abduction	1 x 10 each LE	
isometric abs - marching	1 x 10 each LE	
tap ups	8 inch step 1 x 10 alt LE without UE's	
bilateral heel raises	1 x 10	
Total Minutes		25

Electronically signed by Melissa H Gray PT
(Therapist)

Electronically signed by Amy Matheny PTA
(Associate)



3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy DAILY TREATMENT NOTE

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 12-23-2009

Patient DOB: ~~07-15-1962~~

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

SUBJECTIVE: Patient reports experiencing increased "back spasm" after transferring off treatment table following moist heat with Estim last treatment. Patient reports he is not sure if it was due to position or the moist heat with Estim.

OBJECTIVE: Treatment per activity/flowsheet

ASSESSMENT: Patient with guarded trunk motion/posture with all transfers, ambulation and exercises.

PLAN: Progress with exercise program as tolerated

Melissa Gray PT

Tue Jan 20 2010 07:22:08 14 30 47

Melissa H Gray PT

Received
Companion P&C Claims
Atlantic Physical Therapy & Rehabilitation, Inc.

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 12-23-2009

Patient DOB: 04-18-1962

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59 Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7 Difficulty In Walking

MD DX/PRECAUTIONS: Lumbar Spondylosis/ Lumbar Strain

TREATMENT/EXERCISES

Exercise Description	Units/Reps/Weights	Minutes
PT Evaluation		
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure		
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation		
Ultrasound		
Therapeutic Exercise	2/ see below	25
Therapeutic Activity		
moist heat		
EXERCISES INCLUDE:		
pelvic tilt	1 x 10	
isometric abdominals - tiny steps in place	5x each LE	
isometric abdominals - bilateral knee fallout	1 x 10 - short range	
trunk rolls	10x each way	
SAQ	1 x 10 each LE	
adductor squeeze with ball	1 x 10	
quadruped - lifting alt UE		
isometric abs - standing knee flexion	1 x 10 each LE	
isometric abs - standing hip abduction	1 x 10 each LE	
isometric abs - marching	1 x 10 each LE	
tap ups	8 inch step 1 x 10 alt LE without UE's (*)	
bilateral heel raises	1 x 10 (*)	
Total Minutes		25

Electronically signed by Melissa H Gray PT
(Therapist)

Electronically signed by
(Associate)

Received
Companion P&C Claims
Atlantic Physical Therapy Rehabilitation, Inc.
3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Rehab
72-933

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 12-21-2009

Patient DOB: [REDACTED]

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

TREATMENT/EXERCISES

MD DX/PRECAUTIONS:

Exercise Description	Units/Reps/Weights	Minutes
PT Evaluation		
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure		
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation	1/ Estim bilateral L/S area with moist heat while supine post rx	15
Ultrasound		
Therapeutic Exercise	2/ see below	25
Therapeutic Activity		
moist heat	0/ moist heat with Estim - see Estim charge above	0
EXERCISES INCLUDE:		
pelvic tilt	1 x 10	
isometric abdominals - tiny steps in place	5x each LE	
isometric abdominals - bilateral knee fallout	1 x 10 - short range	
trunk rolls	10x each way	
SAQ	1 x 10 each LE	
adductor squeeze with ball	1 x 10	
quadruped - lifting alt UE	4x each UE - pain at right LB	
isometric abs - standing knee flexion	1 x 10 each LE	
isometric abs - standing hip abduction	1 x 10 each LE	
isometric abs - marching	1 x 10 each LE	
Total Minutes		40

Electronically signed by Melissa H Gray PT
(Therapist)

Electronically signed by
(Associate)



Received
Companion P&C Claims
12/31/09
ATLANTIC
PHYSICAL THERAPY &
REHABILITATION, INC.

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy DAILY TREATMENT NOTE

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 12-21-2009

Patient DOB: [REDACTED]

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

SUBJECTIVE: Patient reports symptoms persist at bilateral L/S area. He reports experiencing sharp pain with trunk rotation.

OBJECTIVE: Treatment per activity/flowsheet

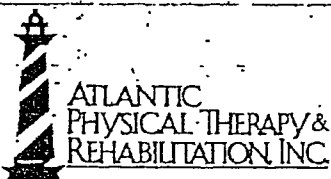
ASSESSMENT:

PLAN: Progress with exercise program as tolerated

Melissa Gray PT

Tue Jul 2008 07:22:08 11 30 47

Melissa H Gray PT



Received
Companion P&C Claims

12/28/09

Fax

Myrtle Beach	843-293-7713	843-293-1855
North Myrtle Beach	843-249-7232	843-280-0206
Conway	843-234-0015	843-234-0017
Carolina Forest	843-903-4940	843-903-4950
Murrells Inlet	843-652-0137	843-652-0138

P.O. Box 1145 Myrtle Beach, SC 29578

12-933
medical

Plan of Care - Initial Evaluation

Date of Evaluation: 12-18-2009

Myrtle Beach Office

Wayne B Bauerle MD
210 Village Centre Blvd Ste 200
Myrtle Beach, SC 29579

PATIENT: Oscar Hickman DOB: 04-12-1932 Patient Account#: 6468

DIAGNOSIS: Muscle Weakness-General 728.87 Stiffness of joint not elsewhere classified: multiple sites 719.59
Lumbago 724.2 Difficulty In Walking 719.7

REFERRAL DIAGNOSIS/PROBLEM:

LONG-TERM GOALS:

- Decrease pain/spasms to self manageable level
- Increase trunk ROM to allow improved function
- Resume normal level of function
- Patient independent with home exercises and management of symptoms

TREATMENT CARE PLAN (Modalities & Exercises PRN):

- PT Evaluation
- Physical Therapy Re-Evaluation
- Physical Performance Test/Measure
- Moist heat/Ice
- Manual Therapy
- Mechanical Traction
- Unattended Electrical Stimulation
- Ultrasound
- Therapeutic Exercise
- Therapeutic Activity

PLAN: We will see Mr. Hickman 3 time(s) per week for 8 week(s). Certify from: to

ESTIMATED DISCHARGE:

Thank you for allowing me to participate in the care of this patient.

Melissa Gray PT

THIS IS A 2009 OFFICIAL 14-30-07

This note has been electronically signed by
Melissa H Gray PT

REHAB POTENTIAL:

Applies to Medicare Beneficiaries only:

I certify that my patient requires outpatient rehabilitation services that are reasonable and necessary. I have written and/or reviewed the plan of care.

Wayne B Bauerle MD

Date: _____

Patient: Oscar Hickman

Account #: 6468

Date: 12-29-2009

Companion P&C Claims

12/29/09

Mechanism of Injury: Patient referred to PT with diagnosis of
Testing includes

Past Medical History (Meds): PMH significant for
Meds include
Number of meds

Work/Functional Status:

Co-morbidities Affecting Therapy:

OBJECTIVE TESTS:

Test	Description	Results	Comments
Posture	Posture Narrative Forward head Cervical Lordosis Rounded Shoulders Thoracic Kyphosis Lumbar Lordosis Crests		
Lumbar Active ROM	Flexion Extension Lateral Flexion (L) Lateral Flexion (R) Rotation (L) Rotation (R)		
Lower Extremity Strength	(L) Hip Flexion (R) Hip Flexion (L) Hip Extension (R) Hip Extension (L) Hip Abduction (R) Hip Abduction (L) Hip Adduction (R) Hip Adduction (L) Knee Extension (R) Knee Extension (L) Knee Flexion (R) Knee Flexion (L) Ankle Dorsiflexion (R) Ankle Dorsiflexion Plantar Flexion (L) Plantar Flexion (R)		
Sensation	Sensation narrative light touch deep pressure pain Parasthesias		
Gait	Assistive Device Gait Pattern Weight Bearing Assistance Required		
Palpation	Tissue Density Muscle Guarding Trigger Point		
ADLs-LE	Impaired sit to stand on affected side Impaired static standing Impaired walking Impaired squat/kneel		

Patient: Oscar Hickman

Account # 6168

Date: 12/29/2009

Companion P&C Claims

	Impair transfers (ex: in/out-car) Impaired running	12/29/09	
Functional Test Scores	Berg Balance Dynamic Gait Index Lower Extremity Functional Scale Neck Disability Index Oswestry QuickDash Optimal		

Assessment: Patient's signs and symptoms are consistent with MD diagnosis. Patient would benefit from skilled PT intervention in order to improve functional mobility and to..... We will utilize modalities in order to decrease pain/spasms and we will progress with exercise to improve lumbar stabilization and mobility. The history form completed by the patient is reviewed and discussed; number and listing of medications are noted; no contraindications for PT treatment are noted. Pt is in agreement with this plan.

Comments:

Mr. Hickman has been advised that compliance with a home program is vital to a successful rehabilitation program. He has been instructed to discontinue any exercise or activity which increases symptoms.

Electronically signed by Melissa H Gray PT

Received
Companion P&C Claims
Atlantic Physical Therapy & Rehabilitation, Inc.

3650 Coalition Drive Myrtle Beach, SC 29578
Phone: 843-293-7713 Fax: 843-293-1855

Physical Therapy Daily Activity Note

Patient Name: Oscar Hickman

Patient ID #: 6468

Date: 12-18-2009

Patient DOB: [REDACTED]

Referred By: Wayne B Bauerle MD

Diagnosis:

728.87 Muscle Weakness-General

719.59

Stiffness of joint not elsewhere classified:
multiple sites

724.2 Lumbago

719.7

Difficulty In Walking

TREATMENT/EXERCISES

MD DX/PRECAUTIONS:

Exercise/Description	Units/Reps/Weights	Minutes
PT Evaluation	1/	30
Physical Therapy Re-Evaluation		
Physical Performance Test/Measure		
Manual Therapy		
Mechanical Traction		
Unattended Electrical Stimulation	1/	15
Ultrasound		
Therapeutic Exercise	1/	15
Therapeutic Activity		
Total Minutes		60

Electronically signed by Melissa H Gray PT-
(Therapist)

Electronically signed by
(Associate)



City of Myrtle Beach
SOUTH CAROLINA

October 20, 2010

Stanford E. Lacy
Collins & Lacy, P.C.
Attorneys at Law
PO Box 12487
Columbia, SC 29211

RE: Oscar Hickman

Dear Mr. Lacy:

As custodian of the employee records for the City of Myrtle Beach, I certify that the enclosed is a true and correct copy of the personnel file and medical file for Oscar Hickman. If you have any questions, please feel free to contact me.

Sincerely,

Coleman H. Randall, SPHR
Human Resources Director
City of Myrtle Beach

Enclosures
CHR/cw

FILE NO. 6-8009

OCT 21 2010

REC'D. SELIVAR
COLLINS & LACY

PERSONNEL TRANSACTION FORM

DEPARTMENT Cultural & Leisure Services
ACTIVITY NUMBER 450

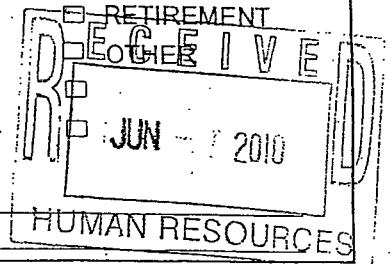
EFFECTIVE DATE 6-3-2010 ^{CR}

CHECK APPLICABLE BOXES	FROM	TO
☐ DEPARTMENT/ACTIVITY		
☒ CHANGE IN STATUS	<u>active</u>	<u>inactive</u>
☐ SALARY ADJUSTMENT		
☐ CHANGE IN ADDRESS		
☐ NAME CHANGE		
☐ JOB TITLE		
☐ REVIEW DATE		
☐		

HIRED-

- | | | | | |
|--|------------------------------------|------------------------------------|---|-------------------------------------|
| ☐ REGULAR | ☐ TEMPORARY | ☐ PART-TIME | ☐ RECLASSIFICATION | ☐ BONUS |
| ☐ COMPLETION OF INITIAL PROBATIONARY PERIOD | | | ☐ TRANSFER | ☐ RETIREMENT |
| ☐ MERIT | | | ☐ RESIGNATION | ☐ OTHER |
| ☐ PROMOTION | ☐ DEMOTION | | ☐ DISCHARGE | |
| ☐ COMPLETION OF PROBATIONARY PERIOD | | | ☐ PAY DIFFERENTIAL | |
| AFTER PROMOTION/DEMOTION/TRANSFER | | | | |

EXPLANATION approved for disability



DEPARTMENTS COMPLETE BOLD ITEMS ONLY

EMPLOYEE NUMBER 2563
NAME Oscar Nickman
ADDRESS (HOME) [REDACTED]
(MAILING) _____
CITY Lancaster
STATE Ca ZIP 93535
HOME PHONE NO. _____
MARITAL STATUS M S SEX M F
DATE OF BIRTH _____
RACE _____
SOCIAL SECURITY NO. _____
DRIVER'S LICENSE NO. _____
DEPARTMENT C&L Services
DATE OF HIRE _____
JOB TITLE crew leader
CLASS _____ GRADE _____ LEVEL _____
CHECK CYCLE—BY-WEEKLY
BARGAINING UNIT _____
WORKERS COMPENSATION _____
SIGNATURE OF DEPARTMENT HEAD [Signature] 6/7/10
SIGNATURE OF HUMAN RESOURCES DIRECTOR [Signature] 6/7/2010

FUNCTION _____
CATEGORY _____
EMPLOYEE GROUP G-GEN P-POLICE F-FIRE
EMPLOYEE TYPE RF RP TF TP
EXEMPT Y OR N
RATE OF PAY _____
ANNUAL SALARY _____
FED. W/H STATUS- S OR M
STATE W/H STATUS S OR M
FED. EXEMPTIONS _____ ADD. FED. _____
STATE EXEMPTIONS _____ ADD. STATE _____
LOCAL TAX DEDUCTION- N
MAIN CLASS/STEP Y OR N
RETIREMENT CODE Y OR N
STATUS ACTIVE OR INACTIVE
TERMINATION DATE 6/3/10
REVIEW DATE _____
FUND _____ DEPT. _____ SUB _____
PERCENTAGE _____ PRIMARY Y OR N
SIGNATURE OF EMPLOYEE Unavailable to sign

South Carolina Retirement Systems

EMPLOYER NOTIFICATION OF DISABILITY APPROVAL

JUN - 4 2010

HUMAN RESOURCES

BARBARA VAUGHT
CITY OF MYRTLE BEACH
921 N OAK STREET
MYRTLE BEACH SC 29577

SSN: [REDACTED]
Appl ID: [REDACTED]-1-4-1
System: SCRS
Type: Disability
Date: June 04, 2010

Your employee, OSCAR L. HICKMAN JR, was approved for disability retirement benefits on 06/03/2010. With this fax transmission we have included an Employer Certification of Last Day Paid (Form 6201). Please complete the Employer Certification of Last Day Paid and fax it to South Carolina Retirement Systems within three business days. Our fax number is (803) 737-7752.

Since you must certify the last day paid before your employee can begin receiving disability retirement benefits, we appreciate your prompt response so that the benefits your employee is due will not be delayed.

Sections 9-1-1540, 9-9-65, and 9-11-80 of the South Carolina Code of Laws require that a disability retiree have an effective retirement date no earlier than 30 days after the application was filed and no later than 9 months after the application filing date. If your employee does not come off your payroll within 9 months of the date the application was received by South Carolina Retirement Systems, no retirement benefits can be paid and our office will stop processing the claim.

If you have already submitted the Form 6201, have any questions, or would like any further assistance, please call SCRS Customer Service at 1-800-868-9002 or (803) 737-6800. On behalf of your employee, we thank you for your prompt response to this request.



**Retiree Health Reimbursement Account (RHRA)
Payment Authorization / Reimbursement Request Form**

Section 1				
Retiree's Name OSCAR L. HICKMAN		Vested Health Member ID	Previous Employer City of Myrtle Beach	
Address, City, State & Zip Code ~~601-111-1111~~ Lancaster PA 17335 ☐ Check here if address is new		Telephone Number 843-446-5058		
Section 2 – Complete this section if you are requesting payments for premiums or claims for yourself.				
I am requesting payment for the following expenses incurred by me: *Please ensure you have submitted all required documentation with this request, such as, Explanation of Benefits (EOB) from Carrier, Provider Statement, Insurance Premium Invoice, etc.				
Date(s) of Service	Send Reimbursement/Payment to (Self, Carrier, or Provider)	Provider of Service	Type	Amount Requested
7-1-2010	City of Myrtle Beach	PAI - Medical	☐ Claim ☒ Premium	638.85
7-1-2010	City of Myrtle Beach	PAI - Dental	☐ Claim ☒ Premium	30.56
Total Requested: \$669.41				
Section 3 – Complete this section if you have a spouse and/or dependent(s) enrolled in the Vested Health Premium Billing & Collection Program.				
Date(s) of Service	Send Reimbursement/Payment to (Self, Carrier, or Provider)	Provider of Service	Type	Amount Requested
			☐ Premium	
			☐ Premium	
Total Requested: \$				
Is this an annual authorization form? ☒ Yes ☐ No				
By checking "Yes" above, I understand that this authorization form will be in effect until revoked or changed by me.				
Section 4 – Please pay the indicated amount(s) above from my Vested Health Account.				
I understand the amount paid may not exceed the available balance in my Vested Health Account. In addition, I acknowledge that if my plan participation ends, and for any reason I have received reimbursement that causes my Vested Health Account to have a negative cash balance, Vested Health may request reimbursement from me or my carrier for the overpayment.				
Signature of Retiree or Retiree's Authorized Representative Oscar L. Hickman Jr			Date 6-24-2010	

For questions regarding your account balance, the status of claim payments, eligible expenses, or how to complete this form, call Vested Health at 1-866-347-3640.

Send Completed Form To: Vested Health LLC
PO Box 953
Charleston WV 25301
Fax: 1-866-347-3643

SOUTH CAROLINA RETIREMENT SYSTEMS
CERTIFICATION OF FINAL RETIREMENT DEDUCTIONS

RETIREE
06-08-2010

Please complete this form within 10 days after issuance of the employee's final paycheck. Please *do not estimate* any amounts. Your receipt of this form indicates *only* that this employee has filed an application. It does not indicate that the application has been approved.

Payroll Department
CITY OF MYRTLE BEACH
921 N OAK STREET
MYRTLE BEACH SC 29577

SSN:
SCRS / -1-4-1
Emp Code: 726.04
OSCAR L HICKMAN JR
Retirement Date: 06-04-2010

SECTION 1: Final Two Quarters of Active Employment (as they will appear on the Quarterly Reports)

NEXT TO LAST QUARTER

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
<u>March 2010</u>	<u>9,829.56</u>	<u>638.92</u>	<u>365 days</u>	<u>3</u>

LAST QUARTER EARNINGS

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
<u>June 2010</u>	<u>1,064.84</u>	<u>69.21</u>	<u>365</u>	<u>1</u>
Payment for ☒ Annual Leave Days	<u>0</u>	<u>0</u>		
TOTAL LAST QUARTER*	<u>= 1,064.84</u>	<u>= 69.21</u>		

*The Total Last Quarter listed above must agree with your final Quarterly Report for this member.

SECTION 2: Accrued Sick Leave at Retirement

☒ Unused Sick Leave Days. Member may receive credit for up to 90 days of unused sick leave towards service credit at retirement, regardless of whether the days were paid or unpaid.

SECTION 3: Payroll Information at Retirement

Last day of employee earned compensation	<u>6/3/2010</u>	Budgeted annual salary	\$ <u>42,528.28</u>
Date of termination (see instructions)	<u>6/3/2010</u>	Daily rate of pay	\$ <u>163.57</u>
Date of final pay check	<u>6/11/2010</u>	Paychecks per year	<u>26</u>

If the last day of earned compensation and date of termination are different, please check reason:

☐ Workers' Compensation ☐ Leave of Absence ☐ Other: _____

* If the employee was working other than a 7.5 or 8 hour work day (i.e. 10, 12, 24 hour shift), please enter the following:

Hourly rate of pay: \$ _____ Number of hours in a shift: _____

SECTION 4: Additional Pay Information – Last Four Contract Or Budget Years

If contractual, did this employee complete the contract period? ☐ Yes ☐ No

If no, how many days was this employee compensated? _____ days

Date Effective	Contract Days	Budgeted Salary	Additional Payments	Reason for Additional Payment(s)
<u>Employee was an hourly worker. Additional pay is</u>				
<u>Overtime & holiday bonus</u>				

6-23-2010
(Date)

Barbara J. Vaughn
(Authorized Signature)

843-918-1112
(Business Phone)

843-918-1157
(Fax Number)

Contact E-Mail Address: bvaughn@cityofmyrtlebeach.com

SOUTH CAROLINA RETIREMENT SYSTEMS
CERTIFICATION OF FINAL RETIREMENT DEDUCTIONS

RETIREE
06-08-2010

Please complete this form within 10 days after issuance of the employee's final paycheck. Please *do not estimate* any amounts. Your receipt of this form indicates *only* that this employee has filed an application. It does not indicate that the application has been approved.

Payroll Department
CITY OF MYRTLE BEACH
921 N OAK STREET
MYRTLE BEACH SC 29577

SSN:
SCRS / -1-4-1
Emp Code: 726.04
OSCAR L HICKMAN JR
Retirement Date: 06-04-2010

SECTION 1: Final Two Quarters of Active Employment (as they will appear on the Quarterly Reports)
NEXT TO LAST QUARTER

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
_____	_____	_____	_____	_____
LAST QUARTER EARNINGS				
Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
_____	_____	_____	_____	_____
Payment for _____ Annual				
Leave Days	+	_____		
TOTAL LAST QUARTER*	=	_____	=	_____

*The Total Last Quarter listed above must agree with your final Quarterly Report for this member.

SECTION 2: Accrued Sick Leave at Retirement

Unused Sick Leave Days. Member may receive credit for up to 90 days of unused sick leave towards service credit at retirement, regardless of whether the days were paid or unpaid.

SECTION 3: Payroll Information at Retirement

Last day of employee earned compensation	____/____/____	Budgeted annual salary	\$ _____
Date of termination (see instructions)	____/____/____	Daily rate of pay	\$ _____
Date of final pay check	____/____/____	Paychecks per year	_____

If the last day of earned compensation and date of termination are different, please check reason:

☐ Workers' Compensation ☐ Leave of Absence ☐ Other: _____

* If the employee was working other than a 7.5 or 8 hour work day (i.e. 10, 12, 24 hour shift), please enter the following:

Hourly rate of pay: \$ _____ Number of hours in a shift: _____

SECTION 4: Additional Pay Information - Last Four Contract Or Budget Years

If contractual, did this employee complete the contract period? ☐ Yes ☐ No

If no, how many days was this employee compensated? _____ days

Date Effective	Contract Days	Budgeted Salary	Additional Payments	Reason for Additional Payment(s)

(Date)

(Authorized Signature)

(Business Phone)

(Fax Number)

Contact E-Mail Address: _____

B&C Board -SC Retirement
Systems

Counseling Services

PO Box 11960, Columbia, SC 29211-1960

FAX

Date:

6-4-10

Number of pages including cover sheet:

3

from
To: 726.04
Barbara Vaughn

Phone: _____
Fax phone: 843-918-1157
CC: _____

10
From: _____
RITA YOUNG
RETIREMENT CLAIMS

Phone: 803-737-6842 (for transmission
problems)
Fax phone: 803-737-7752

REMARKS:

☐ Urgent☐ For your review☒ Reply ASAP☐ Please comment

Member's Name:

Oscar Hickman, Jr

SSN:

0585

This member's disability has been approved. Please complete and return the attached 6201 via fax at 737-7752 ASAP.

If the completed 6201 cannot be faxed within 5 business days, please contact me immediately at (803) 737-6842.

CITY OF MYRTLE BEACH
LEAVE OF ABSENCE REQUEST
(INCLUDING FAMILY & MEDICAL LEAVE)

RECEIVED	APR 26 2010
	HUMAN RESOURCES
RECEIVED	MAY - 3 2010
	HUMAN RESOURCES

TO BE COMPLETED BY EMPLOYEE

NAME Oscar Hideman DEPT. Cultural & Leisure
ADDRESS [REDACTED] DATE OF HIRE 3-28-1970
Conway, S.C. 29526 DATE April 26, 2010

I am requesting a leave of absence for the reason indicated below:
☒ I am requesting an extension of my current leave of absence for the reason indicated below:
(You must provide written verification: certification of health care provider form, doctor's statement)

- ☐ birth of a child due _____
- ☐ adoption of a child, arriving _____
- ☐ placement of child in foster care, beginning _____
- ☒ personal serious health condition
- ☒ a serious health condition affecting my ☐ spouse ☐ child ☐ parent (for which I am needed to provide care)
- ☐ due to a Workers' Compensation injury
- ☐ other _____

I am requesting leave from April 23, 2010 through July 30, 2010
DATE DATE

Under the Family and Medical Leave Act, if you have worked at least one year and at least 1,250 hours in the past 12 months, you are eligible for up to 12 weeks of leave under specific circumstances. You are entitled to receive health benefits as if you were still working. When returning to work, you must be reinstated to the same or an equivalent job with the same pay, benefits and terms and conditions of employment. "Key Employees" may be denied job restoration as described in FMLA Regs. 825.216.

A leave of absence under FMLA ends when the need ends, or after being out of your regular job for an accumulative 52 weeks. An employee's employment will terminate if they do not return to full active employment status at the conclusion of their leave of absence or extended leave of absence, or after being out of your regular job for an accumulative 52 weeks.

PLEASE CHECK ALL APPLICABLE TYPES OF PAY

- | | |
|---|---|
| ☐ WORKERS' COMPENSATION | ☐ LEAVE WITHOUT PAY |
| ☒ SICK LEAVE | ☐ OTHER (EXPLAIN) _____ |
| ☒ ANNUAL LEAVE | |
| ☒ SICK LEAVE BANK | (Eligibility: Must be a participant and must have exhausted all sick & annual leave) |
| ☒ SALARY CONTINUATION | (Eligibility: Must be employed 1 year, exhausted all sick leave & been on disability for 30 continuous calendar days) |

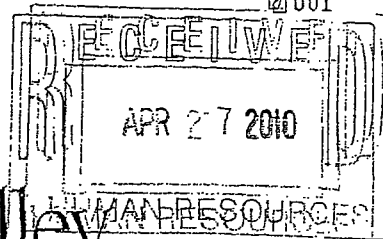
Oscar Hideman
EMPLOYEE

DATE

SUPERVISOR _____ DATE _____
☐ APPROVED ☐ DISAPPROVED

[Signature] 4/26/10
DEPT HEAD _____ DATE _____
☐ APPROVED ☐ DISAPPROVED

[Signature] 5-3-10
CITY MANAGER _____ DATE _____
☐ APPROVED ☐ DISAPPROVED



Antelope Valley Cancer Center

A Comprehensive Community Cancer Center

Hematology • Oncology • Radiation IMRT • Clinical Research

Medical Oncology & Hematology
H.K. Stamsunder, M.D.
Diplomate of American Board of
Internal Medicine, Hematology &
Oncology

Mukund Shah, M.D.
Diplomate of American Board of
Internal Medicine and Oncology

Ronald Miller, M.D.
Diplomate of American Board of
Internal Medicine

Henry Tsai, M.D.
Diplomate of American Board of
Internal Medicine

Infusion Director
Stacy Redding, R.N., O.C.N.

Radiation Oncology
Paul Kantlinski, M.D.

Medical Physicist
James Luo

Chief Radiation Therapist
Ken Mackey

Patient's Name Oscar L. Hickman Date 7/27/10

The above patient:

1. Was seen in the clinic today, accompanied by _____
2. Is excused from work/school until May 23, 2010
3. Has the following physical restrictions _____

Until the following date _____

4. May return to work/school _____
5. May return to full activity _____
6. Is required to take the following medication _____

7. Is scheduled to be admitted to the hospital on _____

8. Has a return appointment in the clinic on _____

9. Other information pt. still undergoing
chemotherapy. Please call with
any questions

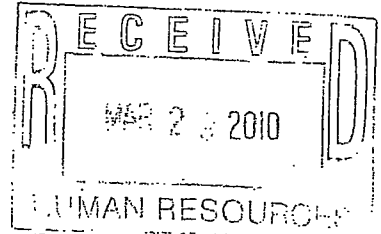
Qulh

M.D.

44105 N. 15th Street West, Suite 207 • Lancaster, California 93534
Off. 661/948-5928 • Fax 661/949-8618 • vtmg@antelecom.net

1517 N. Downs • Ridgecrest, California 93555

CITY OF MYRTLE BEACH
LEAVE OF ABSENCE REQUEST
(INCLUDING FAMILY & MEDICAL LEAVE)



TO BE COMPLETED BY EMPLOYEE

NAME Oscar Hickman

DEPT. Cultural & Leisure

ADDRESS [REDACTED]

DATE OF HIRE 3-28-1990

Conway, S.C. 29526

DATE March 29, 2010

I am requesting a leave of absence for the reason indicated below:

☒ I am requesting an extension of my current leave of absence for the reason indicated below:

(You must provide written verification: certification of health care provider form, doctor's statement)

- ☐ birth of a child due _____
- ☐ adoption of a child, arriving _____
- ☐ placement of child in foster care, beginning _____
- ☒ personal serious health condition
- ☐ a serious health condition affecting my ☐ spouse ☐ child ☐ parent (for which I am needed to provide care)
- ☐ due to a Workers' Compensation injury
- ☐ other _____

I am requesting leave from March 23, 2010 through April 23, 2010
DATE DATE

*Reviewed
w/ Barbara
4/1/10*

Under the Family and Medical Leave Act, if you have worked at least one year and at least 1,250 hours in the past 12 months, you are eligible for up to 12 weeks of leave under specific circumstances. You are entitled to receive health benefits as if you were still working. When returning to work, you must be reinstated to the same or an equivalent job with the same pay, benefits and terms and conditions of employment. "Key Employees" may be denied job restoration as described in FMLA Regs. 825.216.

A leave of absence under FMLA ends when the need ends, or after being out of your regular job for an accumulative 52 weeks. An employee's employment will terminate if they do not return to full active employment status at the conclusion of their leave of absence or extended leave of absence, or after being out of your regular job for an accumulative 52 weeks.

PLEASE CHECK ALL APPLICABLE TYPES OF PAY

- ☐ WORKERS' COMPENSATION
- ☒ SICK LEAVE
- ☒ ANNUAL LEAVE
- ☒ SICK LEAVE BANK (Eligibility: Must be a participant and must have exhausted all sick & annual leave)
- ☒ SALARY CONTINUATION (Eligibility: Must be employed 1 year, exhausted all sick leave & been on disability for 30 continuous calendar days)
- ☐ LEAVE WITHOUT PAY
- ☐ OTHER (EXPLAIN) _____

Oscar Hickman

EMPLOYEE

DATE

SUPERVISOR

DATE

☐ APPROVED

☐ DISAPPROVED

DEPT. HEAD

DATE

☐ APPROVED

☐ DISAPPROVED

CITY MANAGER

DATE

☐ APPROVED

☐ DISAPPROVED

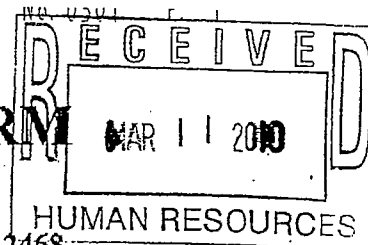
Mar. 11. 2010 2:42PM COHMG AV
H.R.FAX: 845-918-1154

DISABILITY CLAIM FORM

CITY OF MYRTLE BEACH

P.O. BOX 2468

MYRTLE BEACH, SOUTH CAROLINA 29578-2468



HR-9/06

EMPLOYEE'S SECTION

EMPLOYEE'S NAME Oscar Hickman	BIRTHDATE [REDACTED]	SOCIAL SECURITY # [REDACTED]
EMPLOYEE'S HOME ADDRESS [REDACTED]	CITY Conway,	STATE SC
	ZIP 29526	
NATURE OF ILLNESS Stage III colon cancer		DATE OF ILLNESS 01-11-10
NAME AND ADDRESS OF PHYSICIAN WHO TREATED THIS CONDITION: Lily L. Lai, 44105 15th St W #409, Lancaster, CA 93534		
IF CLAIM IS BASED ON ACCIDENT DATE OCCURRED TIME _____ AM _____ PM	WHERE DID ACCIDENT OCCUR? HOME _____ Work _____ OTHER: _____	
HOW DID ACCIDENT HAPPEN? _____		

The above answers are true and complete to the best of my knowledge and belief. I authorize any Physician, medical institution, payment organization, druggist, insurance company, employer, or association to release information to City of Myrtle Beach as is required to properly pay all benefits, if any, due me or my dependents for this claim.

03-08-10

Date

Signature

Oscar Hickman

Cultural & Leisure Services
Dept.

PHYSICIAN'S SECTION

*
Colon Cancer - St. III - He will be treated with
PROVIDE DIAGNOSIS AND CONCURRENT CONDITIONS
Chemotherapy
IS DIAGNOSIS DUE TO INJURY OR SICKNESS ARISING OUT OF EMPLOYMENT? _____ YES ☒ NO
IF YES, PLEASE GIVE DETAILS. _____
PROVIDE BEGINNING AND ENDING (ESTIMATE) DATES OF DISABILITY: 1/29/2010 - 7/30/2010
Dr. Lily Lai, 441-902-5600 44105 15th St W #409 Lancaster
PHYSICIAN'S NAME, TELEPHONE # AND ADDRESS (PLEASE PRINT) PHYSICIAN'S SIGNATURE /DATE

EMPLOYER'S SECTION

Coverage Classification: _____ Full Time Active _____ Leave of Absence

Last Date Wages Were Paid (Include sick leave, vacation, holiday, etc.) _____

Employee Eligible? _____ YES _____ NO (Termination Date) _____

Was sickness or injury in any way connected with employment? Yes _____ NO _____

I certify that the above employee was covered under the employee benefit plan at the time of claim.

Signature

ROA 155

Date

Attn: Wanda

California Cancer Specialists | MEDICAL GROUP

- ☐ Yih-Dar Nien, M.D.
 DEA No. FN0852017 Lic. No. A101665
 44105 15th Street West, #409
 Lancaster, CA 93534
 (661) 902-8600 Tel
 (661) 951-0686 Fax
- ☒ Lily Lai, M.D.
 DEA No. BL4966036 Lic. No. G80261
 23861 McBean Pkwy., #B-14
 Santa Clarita, CA 91355
 (661) 799-1999 Tel.
 (661) 799-0829 Fax
- ☐ Clayton Lau, M.D.
 DEA No. BL9373351 Lic. No. A92221
- ☐ Benjamin Paz, M.D.
 DEA No. BP2435849 Lic. No. A48296
- ☐ Roger Satterthwaite, M.D.
 DEA No. BS7982451 Lic. No. G75976
- ☐ Vijay Trisal, M.D.
 DEA No. BT7815410 Lic. No. A78977

DATE 2/25/2010

NAME Oscar Hernandez

ADDRESS _____ CALIFORNIA



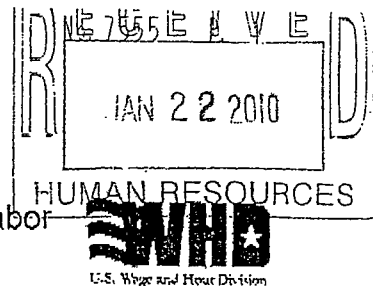
Please excuse the patient
from full time work
duties from 1/29/2010.

The patient is still recovering
from his operation.

☐ CAUTION: MAY CAUSE DROWSINESS

REFILL _____ TIMES M.D.

H.R FAX: (843) 918-1157



**Certification of Health Care Provider for
Employee's Serious Health Condition
(Family and Medical Leave Act)**

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

Employer name and contact: City of Myrtle Beach (Human Resources Department 918-1114)

Employee's job title: Crew Leader Regular work schedule: _____

Employee's essential job functions: _____

Check if job description is attached: _____

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 20 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: Oscar Hickman
First Middle Last

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Please be sure to sign the form on the last page.

Provider's name and business address: Lilylai M.D. 4405 15th St W, Suite 404 Lakewood, CO 80224

Type of practice / Medical specialty: General Oncologic Surgery

Telephone: (303) 902-5600 Fax: (303) 951-0670

PART A: MEDICAL FACTS1. Approximate date condition commenced: 1/8/2010Probable duration of condition: 6 months**Mark below as applicable:**

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

No ☒ Yes. If so, dates of admission:1/29/2010

Date(s) you treated the patient for condition:

Will the patient need to have treatment visits at least twice per year due to the condition? No ☒ Yes.Was medication, other than over-the-counter medication, prescribed? No ☒ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

No Yes. If so, state the nature of such treatments and expected duration of treatment:2. Is the medical condition pregnancy? ☒ No Yes. If so, expected delivery date: _____

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition? No ☒ Yes.

If so, identify the job functions the employee is unable to perform:

Lifting; heavy exertion.

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

Abdominal painBlood loss

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☒ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: 6 weeks

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☒ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?
☐ No ☒ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☒ No ☐ Yes.

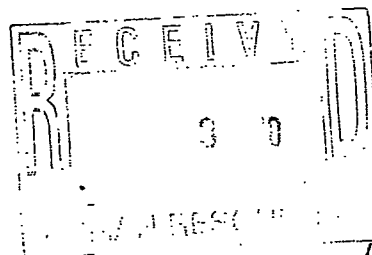
Is it medically necessary for the employee to be absent from work during the flare-ups?
☒ No ☐ Yes. If so, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER:



Oscar came in today
& advised he will be
out due to a personal
serious health condition.
Gave certification form. L.

Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

FOR DATES OF RETIREMENT OF JULY 1, 2005, OR AFTER				OFFICE USE ONLY	
Form 6151S Revised 05/03/2007 Page 1				☐ SCRS	
SCRS DISABILITY RETIREMENT APPLICATION State Budget and Control Board South Carolina Retirement Systems P.O. Box 11960, Columbia, SC 29211-1960				☐ Correlated	
Applications for disability retirement must be filed while you are on your employer's payroll in a paid or approved unpaid capacity. If you are unable to complete this application, a designee (employer, legal counsel, power of attorney) may complete the application on your behalf, but may not complete method of payment or beneficiary information. Please see the reverse side for information about retirement effective dates.				☐ Date first eligible for disability retirement	
				☐ Service application on file	
PERSONAL INFORMATION TYPE OR PRINT IN BLUE INK					
Section I (Attach Your Birth Certificate)		FIRST/MIDDLE NAME		SOCIAL SECURITY NUMBER	
LAST NAME & SUFFIX (Jr., Sr., etc.)		Date of Birth (proof required)		Sex	
HICKMAN Jr.		03/01/1958		☒ M ☐ F	
Address		City		State	
[REDACTED]		LANCASTER		CA	
ZIP+4		Home Phone		Work Phone	
93535		843-446-5058			
Section II SCRS RETIREMENT PLAN ELECTION AND BENEFICIARY DESIGNATION					
YOUR PAYMENT PLAN MAY NOT BE CHANGED ONCE BENEFITS HAVE BEGUN AFTER RETIREMENT, except as noted on the reverse side. If designating more than three beneficiaries, complete and attach an additional Form 6151S. For all plans, attach a copy of your birth certificate and your current driver's license or special identification card issued by your State Department of Transportation or Public Safety. For any joint retiree-survivor plan, attach your beneficiary's birth certificate.					
☐ OPTION A (Maximum-Retiree Only)					
☒ OPTION B (100% - 100% Joint Retiree-Survivor)					
☐ OPTION C (100% - 50% Joint Retiree-Survivor)					
☐ Check here if payments are to be paid through a trust and attach a completed Form 1113, Certification of Trust.					
1. Name of Beneficiary		Social Security #/Federal ID#		Sex	
FENNIE A.J. Hickman		[REDACTED]		☒ M ☐ F	
2. Name of Beneficiary		Social Security #		Sex	
				☐ M ☐ F	
3. Name of Beneficiary		Social Security #		Sex	
				☐ M ☐ F	
Section III RETIREE GROUP LIFE INSURANCE					
☒ CHECK IF SAME BENEFICIARY(IES) AS IN SECTION II					
1. Name of Beneficiary		Social Security #/Federal ID#		Sex	
				☐ M ☐ F	
2. Name of Beneficiary		Social Security #		Sex	
				☐ M ☐ F	
3. Name of Beneficiary		Social Security #		Sex	
				☐ M ☐ F	
Section IV EMPLOYMENT INFORMATION					
Current/Former Employer(s)				Your Position Title	
City of Myrtle Beach				Crew Leader	
☒ Currently on employer's payroll in a paid capacity.				☐ If disability is the result of a job-related injury, check this box and attach employer's first report of injury form.	
☐ Currently on employer's payroll in an unpaid capacity. My unpaid leave of absence began: _____				☐ If receiving Workers' Compensation benefits check here.	
☐ Last day on payroll was: _____					
Section V SIGNATURE STATEMENT					
Please read the Authorization section of the instructions on the reverse (page 2) before signing this form IN BLUE INK.					
I hereby certify I have read and understand the information on the reverse side (page 2), including the authorization, and I agree to the terms stated.					
My signature indicates that I understand it is my responsibility to contact my employer or health insurance provider regarding my eligibility for retiree health insurance, if applicable.					
MEMBER'S SIGNATURE				DATE	
[Signature]				03-04-10	
(Certified copy of legal authorization required with signature other than applicant's)					
WITNESS				DATE	
(Required only when signed by mark)					
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.					
Please call SC Retirement Systems Customer Service with any questions: (800) 868-9002 (in state) or (803) 737-6800					

3. Physician's name: DR. Joseph Edelson
Address: 829 300 Singleton Ridge Rd. Conway SC 29528
Telephone: 843-
How often did you see this physician? ONCE for Colonoscopy & Initial Colon Ca. Diagnosis
Date first seen: _____ Date last seen: _____
Treatment Received: Colonoscopy & Diagnosis of Colon Cancer

B) Have you been treated at a hospital or clinic for your disability? ☒ Yes ☐ No If yes, complete the following:

① Name and Address: Antelope Valley Hospital

☒ Inpatient: If yes, give dates of admission and dates of discharge.

☐ Outpatient: If yes, give date of admission

02-29-10 to 02-04-10

to

Reason for admission: Stage III C/Colon Cancer

Type of treatment received: Colon Resection

Epidural C Contin. Pain infusion
Daily LABS with a Central Line Place

② Name and Address: _____

☐ Inpatient: If yes, give dates of admission and dates of discharge.

☐ Outpatient: If yes, give date of admission

to

to

Reason for admission: _____

Type of treatment received: _____

③ Name and Address: _____

☐ Inpatient: If yes, give dates of admission and dates of discharge.

☐ Outpatient: If yes, give date of admission

to

to

Reason for admission: _____

Type of treatment received: _____

④ Name and Address: _____

☐ Inpatient: If yes, give dates of admission and dates of discharge.

☐ Outpatient: If yes, give date of admission

to

to

Reason for admission: _____

Type of treatment received: _____

C) Have you been evaluated by other agencies for your disability? ☒ Yes ☐ No (for example, Veterans Administration, Workers Compensation, Vocational Rehabilitation, Social Security Administration)

* If yes, name of agency: Workers Compensation / Strand Orthopedics / Dr. Baurele

Address: _____

Your claim number with this Agency: _____

Dates of visits: 09-09 - 02-13-10 (NOT related to Cancer Diagnosis or disability)

Type of treatment or examinations received: Epidural Injections in BACK & SEVERAL weeks of Physical Therapy prior to Diagnosis of Cancer.

D) If you have additional medical information to support your disability, please attach a separate sheet listing information required above.

Section IV

Has your doctor restricted your work activities in any way? ☒ Yes ☐ NoIf yes, which doctor? DR. LAI, DR. SHAHState what the physician told you not to do: NO lifting, bending, pulling, pushing, straining,
NO EXPOSURE in public places with-out MASK, NO SWIM in Large Pools

Section V

Has your disability restricted your activities of daily living such as: home duties, social activities, or your ability to care for your personal needs? ☒ Yes ☐ NoIf yes, please describe your limitations: unable to complete activities of daily care
without assistance, unable to prepare meals require assistance in
in & out of shower 2/3 generalized weakness & instability NO
driving, riding motorcycle, outings with family related to
white count & exposure to others high risk for infections, unable
to attend social gatherings, Church 2/3 days every other week
consistent nausea, vomiting & unpredictable diarrhea

Section VI

a) What was your most recent job(s) before you stopped working? If you have more than one job, please list separately.

Job Title: CREW LEADEREmployer: CITY OF MYRTLE BEACHFrom: MARCH 28, 1990to: CURRENT

b) In this job did you:

1. Use machines, tools, or equipment of any kind? ☒ Yes ☐ NoIf yes describe type of tools/equipment used: LAWN MOWERS, WEED EATERS, IRRIGATION SYSTEMS
BARRACADES, TRAILERS, PIPES, PLUMBING2. Use technical knowledge or skills? ☒ Yes ☐ No

If yes, describe technical knowledge or skills:

3. Do any writing, complete reports, or perform similar duties? ☒ Yes ☐ NoIf yes, please describe: DAILY REPORTS, WEEKLY REPORTS, TASK ASSIGNED
TO CREW.4. Have supervisory responsibility? ☒ Yes ☐ No

If yes, please indicate the number of employees supervised and the extent of your supervision:

PLEASE SEE ATTACHED JOB DESCRIPTION

c) Please describe your essential job duties:

WALKING, STANDING, SITTINGPLEASE SEE ATTACHED
JOB DUTIES

d) Describe the amount of physical activity your job involves during a typical work day.

WALKING (check number of hours a day)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

STANDING (check number of hours a day)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

SITTING (check number of hours a day)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

BENDING / STOOPING (check number of hours per day)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

CLIMBING (check number of hours per day)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

RUNNING (check number of hours per day)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐

LIFTING AND CARRYING:

OCCASIONALLY (UP TO 1/3 OF AN 8-HOUR DAY) LIFTS AND/OR CARRIES:

- ☐ LESS THAN 10 LBS.
☐ 10 LBS.
☐ 20 LBS.
☐ 50 LBS.
☐ 100 LBS. OR MORE

Kinds of objects lifted:

Kinds of objects lifted:

Kinds of objects lifted:

Kinds of objects lifted:

Kinds of objects lifted:

FREQUENTLY (1/3 TO 2/3 OF AN 8-HOUR DAY) LIFTS AND/OR CARRIES:

- ☐ LESS THAN 10 LBS.
☐ 10 LBS.
☐ 25 LBS.
☐ 50 LBS. OR MORE

Kinds of objects lifted:

Kinds of objects lifted:

Kinds of objects lifted:

Kinds of objects lifted:

Section VII

Remarks: This section may be used for additional information that will be helpful to make a decision about your disability claim:

SINCE MY DIAGNOSIS OF COLON CANCER (STAGE III) NOW ONLY HAS IT AFFECTED MY SOCIAL LIFE, BUT MY PERSONAL LIFE. I AM UNABLE TO ATTEND CHURCH OR SOCIAL FUNCTIONS R/T CONSTANT FATIGUE, DIARRHEA, VOMITING, NAUSEA & EPISODES OF INCONTINENCE. I HAVE A 45 LB WEIGHT LOSS IN THE PAST 3 MONTHS. I AM UNABLE TO ATTEND ANY SPORTING EVENTS DUE TO CHemo - CAUSING A DECREASE IN WHITE BLOOD COUNT ALLOWING ME TO BE SUSCEPTIBLE TO INFECTION.

The information I have provided is correct to the best of my knowledge.

Signature of Applicant:

Debra Hickman

Date: 03-10-10

(If signed by other than the applicant, a copy of the Power of Attorney for the person signing must be attached)

Return to:
 State Budget and Control Board
 South Carolina Retirement Systems
 Customer Annuity Claims
 PO Box 11960, Columbia SC 29211-1960

Form 7202 Revised 07/15/2009		Withholding Certificate for Monthly Annuity Payments SC Budget and Control Board South Carolina Retirement Systems PO Box 11960, Columbia SC 29211-1960			☐ Check if new address
Payee Last Name	Suffix	First Name/Middle Initial	Phone Number with area code	Social Security Number	
HICKMAN	JR	Oscar Lee	~~XXXXXXXXXX~~	~~XXXXXXXXXX~~	
Mailing Address		City	State	ZIP code	
~~XXXXXXXXXX~~		LANCASTER	CA	93535	
Check appropriate system: ☒ South Carolina Retirement System ☐ Retirement System for Judges/Solicitors ☐ Police Officers Retirement System ☐ National Guard Retirement System ☐ General Assembly Retirement System			Check appropriate box: ☐ Retired Member Member SSN: _____ ☐ Alternate Payee under QDRO (enter MEMBER SSN above) ☐ Beneficiary of deceased member (enter MEMBER SSN above)		

Federal Income Tax Withholding

Complete the following applicable lines:

- 1 Check box if you do not want any federal income tax withheld from your monthly annuity payment. ☒
 (Do not complete lines 2 or 3.)
- 2 Total number of exemptions and marital status you are claiming for withholding from each monthly annuity payment. (You may also designate an additional dollar amount on line 3.)
 (Enter number of exemptions) _____
- Marital Status: ☐ Single ☐ Married ☐ Married, but withhold at higher Single rate
- 3 Additional amount, if any, you want withheld from each monthly annuity payment.
 Note: For monthly annuity payments, you cannot enter an amount here without entering the number (including zero) of allowances on line 2. This amount will be withheld in addition to the amount calculated using the marital status and allowances from line 2 above. \$ _____

South Carolina State Income Tax Withholding

Complete the following applicable lines:

- 4 Check box if you do not want any South Carolina state income tax withheld from your monthly annuity payment. (Do not complete lines 5 or 6.) ☒
- 5 Total number of exemptions you are claiming for withholding from each monthly annuity payment. (You may also designate an additional dollar amount on line 6.)
 (Enter number of allowances) _____
- 6 Additional amount, if any, you want withheld from each monthly annuity payment.
 Note: For monthly annuity payments, you cannot enter an amount here without entering the number (including zero) of allowances on line 5. This amount will be withheld in addition to the amount calculated using the number of allowances from line 6 above. \$ _____

Oscar L Hickman Jr
 Payee's Signature
 (OR mark with "X" with two witnesses OR Power of Attorney, if on file with the Retirement Systems)

03-10-10
 Date

This form must be signed and dated. See notes on Page 2.

Form 8255
Revised 11/15/2007
Page 1

AUTHORIZATION FOR RELEASE OF INFORMATION

State Budget and Control Board
South Carolina Retirement Systems
Box 11960, Columbia, SC 29211-1960

Applicant Name:

Applicant SSN:

Print or type in black ink

SECTION I *To be completed by Retirement Systems/Disability Determination Service*

Name and address of provider (Include zip code):

Relationship to applicant:

Name and address of applicant at time services were provided (if known--include zip code):

Date of Birth:

Applicant/Patient number:

SECTION II *To be completed by applicant or person authorized to act on his/her behalf*

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT All my medical records; also education records and other information related to my ability to perform tasks.
This includes specific permission to release:

1. All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) including, and not limited to:
 - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
 - Drug abuse, alcoholism, or other substance abuse
 - Sickle cell anemia
 - Human Immunodeficiency Virus (HIV) infection (including acquired immunodeficiency syndrome (AIDS) or tests for HIV) or sexually transmitted diseases
 - Gene-related impairments (including genetic test results)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
3. Copies of educational tests or evaluations, including individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
4. Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SCRS/DDSS
- Employers
- Others who may know about my condition (family, neighbors, friends, public officials)

TO WHOM The South Carolina Retirement Systems and to the agency authorized to process my case (usually called 'disability determination service'), including contract copy services, and doctors or other professionals consulted during the process.**PURPOSE** Determining my eligibility for benefits, including looking at the combined effect of my impairments that by themselves would not meet SCRS's definition of disability.**EXPIRES WHEN** This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances where this information may be redisclosed to other parties (see page 2 for details).
- I may write to SCRS and my sources to revoke this authorization at any time (see page 2 for details).
- SCRS will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

Date: 03-10-10 Signature of Applicant or Guardian/Power of Attorney:

Street Address: [REDACTED]

City:

Lancaster

State:

CA

Zip + 4:

93535

The signature and the address of a person who either knows the person signing this form or is satisfied as to that person's identity are requested below. Although not required by South Carolina Retirement Systems, a provider might not honor this authorization without the signature and address of a witness.

Signature of Witness:

Street Address:

City:

State:

Zip + 4:

This general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 290dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law.

Return completed form to the SC Retirement Systems (see address above)

Please call SC Retirement Systems Customer Service with any questions: (800) 868-9002 (in state) or (803) 737-6800, or cs@retirement.sc.govRGA 166
(12)



PRE-HEARING BRIEF
WCC File No:0914812

Claimant's Name: Oscar Hickman Employer's Name: City of Myrtle Beach
Address: [REDACTED] Address: P.O Box 2468
City: Lancaster State: CA Zip: 83535 City: Myrtle Beach State: SC Zip: 29578
Home Phone: [REDACTED] Work Phone: () - Carrier: Self Insured/ Companion Property & Casualty TPA
Preparer's Name: Stanford E. Lacy Preparer's Phone #: (803) 256-2660

claim for workers' compensation benefits is made based on the following grounds:

Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ 543.63 2. AWW: \$815.40 Date of Injury: 9/9/09
3. Type of injury and body part(s): Lower back and right elbow.
4. Facts in controversy: Admitted case. Claimant was given the option of back surgery on January 13, 2010 but declined in part because he had been diagnosed with cancer unrelated to his injury. He underwent therapy for the cancer and returned to Dr. Baurele on June 30, 2010. On August 11, 2010, Claimant was declared at MMI as of June 30, 2010 and rated at 5% whole person. Commissioner Wilkerson awarded 7.5% disability to the back on July 21, 2011. Claimant has filed a Form 50 alleging a change of condition for the worse. There is no medical evidence to support a change of condition for the worse to claimant's back, only a letter from claimant's oncologist saying he is cleared for back therapy. Claimant's current problems are not causally related but are the unfortunate result of unrelated maladies that are supervening events for which the Employer/Carrier is not responsible.
5. Legal issues involved: Whether claimant has suffered a change of condition for the worse; whether claimant is entitled to further medical care and benefits under the Act.
6. Unusual aspects: Claimant lives in California.
7. Witnesses (designate if expert):* Peggy Cantor, Chad Hudson, Claimant's supervisor.
8. Exhibits: _____
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions. Claimant's will reply upon apas submitted previously on February 1, 2011.
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne Bauerle, Strand Orthopaedic Consultants,
210 Village Center Boulevard, Suite 200, Myrtle Beach, South Carolina 29579.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Wayne Bauerle assigned Claimant an impairment rating of 5% to the whole person on August 11, 2010. Claimant was awarded 7.5% to the back by Commissioner Wilkerson on 7/21/11.
12. I am amending my Form 50/51 in the following manner: N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: slacy@collinsandlacy.com

Date of hearing: September 28, 2011

Time needed for hearing: Sixty minutes

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC File No. 0914812

OSCAR HICKMAN,)
Employee,)
Claimant,)
vs.)
CITY OF MYRTLE BEACH,)
Employer,)
and)
CITY OF MYRTLE BEACH SIF,)
Carrier,)
Defendants.)

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF
DEFENDANTS**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND GENE
CONNELL, ATTORNEY FOR THE CLAIMANT.

YOU ARE HEREBY NOTIFIED that the defendants pursuant to the South Carolina
Workers' Compensation Act and South Carolina Code, §1-23-330, (1976, as amended), will rely
upon APA Submissions of the claimant as well as Defendant's previously submitted APAs.

~~YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination;~~
and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of
the physicians, whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or

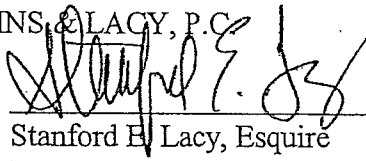
photocopies received from said physicians/others, will be delivered to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the defendants, at the hearing in this matter.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants:

Peggy Cantor, Chad Hudson, Claimant's supervisor and/or another representative of the employer.

COLLINS & LACY, P.C.

BY:



Stanford E. Lacy, Esquire

P. O. Box 12487

Columbia, South Carolina 29211

(803) 256-2660

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

Sept 16, 2011



PRE-HEARING BRIEF
WCC File No:0914812

Claimant's Name: Oscar Hickman

Employer's Name: City of Myrtle Beach

Address: [REDACTED]

Address: P.O Box 2468

City: Lancaster State: CA Zip: 83535

City: Myrtle Beach State: SC Zip: 29578

Home Phone: (843) 997-6736 Work Phone: () -

Carrier: Self Insured/ Companion Property & Casualty TPA

Preparer's Name: Stanford E. Lacy

Preparer's Phone #: (803) 256-2660

A claim for workers' compensation benefits is made based on the following grounds:

Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ 543.63 2. AWW: \$815.40 Date of Injury: 9/9/09
3. Type of injury and body part(s): Lower back and right elbow.
4. Facts in controversy: Claimant was returned to light duty work and retired and moved to California as unfortunately, he was diagnosed with Stage III Colon Cancer. Claimant was paid pursuant to Commissioner Wilkerson's Order. Claimant is now alleging a change of condition. Dr. Bauerle wrote a letter supporting a change of condition, but in his deposition, he testified that opinion was based on Claimant's subjective complaints, and Dr. Baurele could find no evidence of physical change of condition.
5. Legal issues involved: S.C. Code Ann. 42-17-90. Claimant must suffer a physical change of condition to be entitled to additional benefits. *Robins v. Walgreens and Broadspire Services, Inc.*, 375 S.C. 259, 652 S.E.2d 90 (SC App. 2007).
6. Unusual aspects: N/A.
7. Witnesses (designate if expert):* Peggy Cantor, Chad Hudson, Claimant's supervisor.
8. Exhibits: Portions of Claimant's personnel file.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions. ** Deposition of Dr. Wayne Bauerle.
10. Name, address, and specialty, if any, of the treating physician: Dr. Wayne Bauerle, Strand Orthopaedic Consultants, 210 Village Center Boulevard, Suite 200, Myrtle Beach, South Carolina 29579.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Wayne Bauerle assigned Claimant an impairment rating of 5% to the whole person on June 30, 2010. Claimant was awarded 7.5% to the spine by Commissioner Wilkerson.
12. I am amending my Form 50/51 in the following manner: N/A

verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: slacy@collinsandlacy.com

Date of hearing: July 11, 2012

Time needed for hearing: Sixty minutes

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC File No. 0914812

OSCAR HICKMAN,

Employee,

Claimant,

vs.

CITY OF MYRTLE BEACH,

Employer,

and

CITY OF MYRTLE BEACH SIF,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF
DEFENDANTS**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND GENE
CONNELL, ATTORNEY FOR CLAIMANT.

YOU ARE HEREBY NOTIFIED that the defendants pursuant to the South Carolina
Workers' Compensation Act and South Carolina Code, §1-23-330, (1976, as amended), herewith
submits the following medical reports as direct evidence on behalf of the defendants, to wit: -----

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE NOS
6) Strand Orthopaedic Consultants	10/20/09 thru 11/16/11	54 - 55
7) Deposition of Dr. Wayne Bauerle	3/16/12	56 - 91

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination;

and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination.

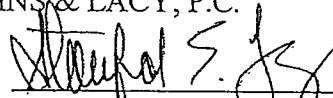
YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, will be delivered to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the defendants, at the hearing in this matter.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants:

Peggy Cantor, Chad Hudson, Claimant's supervisor and/or another representative of the employer.

COLLINS & LACY, P.C.

BY:


Stanford E. Lacy, Esquire
P. O. Box 12487

Columbia, South Carolina 29211
(803) 256-2660

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

June 29, 2012

Oct. 23. 2009 11:37AM

RAND ORTHOPAEDIC-MRI

Received

No. 1133 P. 1

Companion P&C Claims

11/10/09

10/20/2009 1:13 PM FROM: HICKMAN, OSCAR TO: 41 (143) 903-7171 PAGE: 001 OF 002

Medical
72-933

Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, South Carolina 29579
(843) 236-3222 Office
(843) 903-7171 Fax

Professionally Interpreted by:
Carolina Radiology Associates, LLC

NAME: HICKMAN, OSCAR

DATE OF EXAM: 10/20/2009

DOB: ~~01/15/1950~~

PATIENT ID: SOC58077

PHYSICIAN: BAUERLE, WAYNE

EXAM: MRI of the lumbar spine without contrast dated 10/20/09.

HISTORY: 57 year old male with lower back pain radiating to both legs after a lifting injury one month ago. No history of back surgery.

COMPARISON: None.

TECHNIQUE: Localizer, coronal T1 overview images, sagittal T1 and T2 weighted images as well as axial T1 and T2 weighted images are available through the lumbar spine on this high field 1.5 Tesla Siemens MR scanner.

FINDINGS: Coronal T1 overview radiographs are grossly unremarkable. Both kidneys are normal in position.

Sagittal images demonstrate mild overall straightening of the lumbar lordosis. No acute fractures or subluxation. The conus is normal and terminates at the L1 vertebral body level. Sagittal images demonstrate moderate to severe spondylosis at L5-S1. Mild disc spaces at L4-5. Otherwise, the remaining disc spaces are preserved. The bone marrow signal is normal with the exception of minimal anterior endplate degenerative changes along the inferior L4 endplate and moderate endplate degenerative changes at L5-S1. Associated anterior osteophytosis at L5-S1 as well.

For the purposes of this dictation, L5-S1 will be referred to as the most inferior disk space level. A level by level analysis is as follows:

L2-3 is grossly unremarkable without significant central canal stenosis or neural foraminal stenosis. Mild facet and ligamentous hypertrophy.

At L3-4, broad based disc bulge with a very small central annular tear contributes to mild symmetrical neural foraminal stenosis and no significant central canal stenosis. Mild facet and ligamentous hypertrophy.

At L4-5, large broad based disc bulge asymmetric to the left contributes to moderate right sided neural foraminal stenosis and moderate to severe left sided neural foraminal stenosis and moderate central canal stenosis. Severe facet and ligamentous hypertrophy. Moderate bilateral lateral recess stenosis as well.

At L5-S1, moderate to severe spondylosis with associated endplate degenerative changes. Anterior osteophytosis. Large broad based disc protrusion/disc osteophyte complex contributing to moderate central canal stenosis and moderate to severe bilateral neural foraminal stenosis (left greater than right). This also extends up to both exiting S1 nerve roots, left greater than right. Correlate with mass effect at this level. Severe facet and ligamentous hypertrophy.

IMPRESSION:

#1. Degenerative changes of lumbar spine most severe at L4-5 and L5-S1 as described above. No acute fracture or malalignment. Overall straightening of the lumbar lordosis. Please see above for details.

Elizabeth A. Kelley, M.D.
Electronic Signature

57100000741000112

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 580770H

Patient Name: OSCAR L HICKMAN

Date of Birth: ~~REDACTED~~

Date of Service: 11/16/2011

MYRTLE BEACH OFFICE

HPI: I was asked to review MRI of the lumbar spine without contrast. MRI was done on 08/17/11. It was done at Los Angeles in California. After reviewing the images and the report, I would agree with the radiologist's reports and findings that he has grade I degenerative spondylolisthesis at L4-L5 with facet hypertrophy and spinal stenosis and also evidence of significant degenerative change at L5-S1 with associated stenosis.

Wayne B. Bauerle, M.D.

WBB/kps



Claimant's Name: Oscar Hickman SSN: [REDACTED] Employer's Name: City of Myrtle Beach
Address: [REDACTED] Address: Post Office Box 2468
City: Conway State: SC Zip: 29576 City: Myrtle Beach State: SC Zip: 29578
Home Phone: (843) 446-5058 Work Phone: () Insurance Carrier: City of Myrtle Beach SIF/Companion
Preparer's Name: Stanford E. Lacy, Esquire Law Firm: Collins & Lacy, P.C. Preparer's Phone #: 803-256-2660

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	3 1/7	10/7/09	10/25/09	\$
2. Number of Weeks T.P.		11/18/09	11/20/09	\$ 1708.55
3. Number of Weeks P.P.	22.5			\$ 12,231.68
4. Disfigurement				\$
5. Agreement and Final Release				\$
Total Compensation Paid				\$ 13,940.23
6. Total Medical Benefits* Paid				\$ 4535.80
7. Funeral Benefits				\$

☐ Case Denied

Date of Injury: 9/9/09
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Oscar E. Hickman
Claimant

By: _____
Employer's Representative

Date
(m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	_____	\$ _____
B. Attorney's Fee Paid by Employer	_____	\$ _____
C. Attorney's Fee Paid by Claimant (Non-contingent fees only)	_____	\$ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0914812

OSCAR HICKMAN,)
) FULL COMMISSION HEARING
CLAIMANT,) PANEL B
vs.)
) COMMISSIONER ROCHE - CHAIR
CITY OF MYRTLE BEACH,) COMMISSIONER BARDEN
) COMMISSIONER McCASKILL
EMPLOYER,)
)
and)
)
SELF-INSURED,)
)
CARRIER,)
DEFENDANTS.)
_____)

 COPY

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
2:44 P.M., TUESDAY, JANUARY 22, 2013, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

GENE M. CONNELL, JR., ESQUIRE
 KELAHER, CONNELL & CONNOR, PC
 POST OFFICE DRAWER 14547
 SURFSIDE BEACH, SOUTH CAROLINA 29587
 843-238-5648

FOR THE DEFENDANTS

STANFORD E. LACY, ESQUIRE
 COLLINS & LACY, PA
 POST OFFICE BOX 12487
 COLUMBIA, SOUTH CAROLINA 29211
 803-256-2660

REPORTED BY

CORA ELLIS BRUTON
 COURT REPORTER
 131 BROWNING COURT
 LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

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BY MR. CONNELL.	3
BY MR. LACY	10
BY MR. CONNELL.	12
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EXHIBITS

(No Exhibits Proffered)

CORA ELLIS BRUTON - COURT REPORTER
 131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

1 THE COURT REPORTER: Today is January 22, 2013.
2 This is South Carolina Workers' Compensation Case
3 Number 0914812. This is the case of Oscar Hickman,
4 Claimant, versus City of Myrtle Beach, Employer and
5 they are self-insured. The Appellant is the Claimant
6 represented by Attorney Gene M. Connell, Jr. The
7 Respondent is represented by Attorney Stanford E.
8 Lacy.

9 Each side is allowed ten minutes for oral
10 argument and Appellant three minutes in reply. You
11 are requested to argue the grounds of exception and
12 stay within the record.

13 THE COURT: All right. Mr. Connell.

14 BY MR. CONNELL: Thank you. I apologize, I
15 didn't realize y'all were waiting on me. It's a long
16 way from Surfside to here by 3:00.

17 I wanted to talk to you just about Mr. Hickman's
18 case and why I think it should be reversed. Mr.
19 Hickman was a 24 year employee of the City of Myrtle
20 Beach and he had a back injury. And after he had the
21 back injury he went to the doctor and the doctor
22 indicated to him that he probably would need surgery
23 and he told the doctor -- this is in January 2010, he
24 said, "You know, I'd like to have the surgery right
25 now but I have colon cancer and I can't have the

1 surgery." And as a result the doctor gave him a seven
2 and a half percent impairment rating. The City of
3 Myrtle Beach then filed a Form 21, a hearing was held
4 before Commissioner Wilkerson and Commissioner
5 Wilkerson found that he had a seven and a half percent
6 impairment rating but left open the medical under
7 Dodge.

8 COMMISSIONER McCASKILL: Seven and half percent
9 impairment rating or disability?

10 MR. CONNELL: Disability, I'm sorry, disability
11 rating, yes, sir.

12 But left the -- left the medical open under
13 42-15-60 and what happened thereafter was that he had
14 the cancer treatment and after he had the cancer
15 treatment he went back to Dr. Bauerle who was his --
16 who was his treating physician and said, "Okay, I'm
17 ready to have the surgery." The Employer then denied
18 the surgery and we had a hearing on change of
19 condition and on the 42-15-60 which is the ongoing
20 medical. In the record you will see certain notes
21 from the doctor, you'll see a note from the cancer
22 specialist that said that he couldn't have the
23 surgery. You will also see some records from Dr.
24 Bauerle -- from Dr. Bauerle who, himself, even in his
25 deposition he says, you know, I wouldn't -- this man

1 couldn't have any back surgery when he was having this
2 -- this cancer treatment and no -- no physician would
3 allow this. So it's our position, really twofold is
4 that he was entitled to Dodge medical and if he wasn't
5 he had a change of condition. And if you'll see in
6 the deposition records of Dr. Bauerle you'll note that
7 Dr. Bauerle said that his pain was worse, his
8 condition had worsened, his functional levels had
9 worsened and he had an increase in symptomatology.
10 It's interesting because when the Form 21 was filed
11 and Commissioner Wilkerson heard the original case the
12 Defendants gave him an Order which asked that the
13 medical be cut off and Commissioner Wilkerson, in his
14 original Order, recognized that this gentleman might
15 need some cancer surgery and -- before he could have
16 the back surgery and as a result refused to put that
17 language in the Order. If you note Commissioner
18 Wilkerson's Order says that medical will continue
19 under 42-15-60.

20 COMMISSIONER ROCHE: Did Commissioner James
21 address that issue in her Order?

22 MR. CONNELL: She did not.

23 COMMISSIONER ROCHE: Did y'all argue that at the
24 hearing?

25 MR. CONNELL: We did. She did not address that

1 in her Order. It -- it -- this case, to me, is the --
2 is really a -- a situation where the fairness of the
3 argument is such that, I mean this gentleman had
4 worked there 24 years, he wanted the surgery, he did
5 everything right. He found out he had this colon
6 cancer first and after having the colon cancer he told
7 the orthopedist, the orthopedist indicated you
8 certainly couldn't have it at that point, you could
9 only have it later on. He went through all the
10 treatment, he came back, the Defendants filed a Form
11 21 and got a seven and a half disability rating, but
12 did nothing in regard to his future medical. And so
13 we would argue that -- that not only his change of
14 condition --

15 COMMISSIONER ROCHE: I don't see anything in
16 Commissioner Wilkerson's Order awarding Dodge medical.

17 MR. CONNELL: Well, it says 42-15-60, I think,
18 and that -- that's ongoing medical I believe, right?
19 That was my position, I think --

20 COMMISSIONER ROCHE: He says it's govern --
21 medical treatment is governed by 42-15-60, it's true,
22 but he said in Finding of Fact Number 10 that the 14-B
23 does not indicate Claimant needs further medical care.

24 MR. CONNELL: Well, Claimant couldn't have
25 ongoing medical care because Claimant had cancer; he

1 couldn't get treatment at that time.

2 COMMISSIONER ROCHE: I mean I would probably tend
3 to agree with you that the Dodge medical issue needed
4 to be addressed by Commissioner James and it doesn't
5 appear that that got addressed, if Commissioner
6 Wilkerson had ordered it. I don't see where
7 Commissioner Wilkerson ordered it.

8 MR. CONNELL: Well, doesn't Section 42-15-60
9 follow through with Dodge? That would be my position.

10 COMMISSIONER ROCHE: Well, all medical treatment
11 is governed by 42-15-60. Just because he -- so you're
12 saying just because he said under Conclusions of Law
13 that medical treatment is governed by 42-15-60 that
14 that's an award of Dodge medical?

15 MR. CONNELL: I am. I'm saying that under this
16 circumstance because we -- we agree that he couldn't
17 have any treatment for the back at that time.

18 COMMISSIONER ROCHE: I mean it also says TTD is
19 governed by 42-9-10, but that wasn't an award of TTD.
20 I don't see how that's an award of Dodge medical.

21 MR. CONNELL: It's -- well, it's med -- it's
22 future medical benefits. I mean otherwise the -- the
23 Defendants submitted an Order that wanted to cut off
24 his medical and Commissioner Wilkerson refused to do
25 that in his Order.

1 COMMISSIONER ROCHE: I don't see where
2 Commissioner Wilkerson refused to do that in his
3 Order.

4 MR. CONNELL: No, not in this Order but in their
5 -- in their draft Order I believe is what I
6 understand.

7 COMMISSIONER ROCHE: I mean I don't see where
8 Commissioner Wilkerson awarded Dodge medical in this
9 Order. Go ahead though.

10 MR. CONNELL: But -- but our -- I mean this case
11 is more about him not getting what he should have
12 gotten because of a medical impossibility. I mean he
13 couldn't have the back surgery simply because he had
14 this cancer treatment and if -- if you're going to cut
15 off that, I mean it was impossible -- no doctor would
16 have ever allowed him to have a back surgery when he
17 was undergoing colon cancer treatment.

18 COMMISSIONER ROCHE: I tend to agree with you,
19 Gene, but I think Commissioner Wilkerson's Order is
20 the one that should have been appealed. I think it
21 may be the law of the case now he doesn't get future
22 medical treatment.

23 MR. CONNELL: Well, --

24 COMMISSIONER ROCHE: If you can't prove a change
25 of condition.

1 MR. CONNELL: Well, let me speak to the change of
2 condition. Dr. Bauerle's deposition was taken and
3 we've -- I've listed in the -- in his deposition what
4 he says, but he indicates that the pain is worse, his
5 condition is worse, his functional level is worse, his
6 symptomatology is worse and "No one would perform any
7 type of back surgery in light of his ongoing cancer
8 treatment." And he's also written a letter and he has
9 provided the evidence that would show that he had a
10 change of condition, but I -- I don't think he really
11 needed to have that. I mean this -- this issue was
12 argued before Commissioner Wilkerson and he left it
13 open. He could have closed out the medicals if he
14 wanted to, but he realized this was a problem at the
15 time that we had the first hearing. Everybody knew
16 that this man could not have this surgery because of
17 the cancer.

18 So we would ask that either under the change of
19 condition or under 42-15-60 that the Commission either
20 remand this for this -- for a hearing on that issue or
21 in the alternative reverse -- reverse and set it down
22 for him to have his medical treatment. Thank you.

23 THE COURT: All right, thank you. Mr. Lacy.

24 BY MR. LACY: May it please the Commission. The
25 only issue that's really before us today is whether or

1 not Mr. Hickman proved by a preponderance of the
2 evidence that he had a change of condition for the
3 worse. He did have cancer and if you read through the
4 medicals I don't think there was a discussion with Dr.
5 Bauerle in which he said I really want to have this
6 surgery but I can't because of this colon cancer. The
7 way it was written in there Dr. Bauerle says, here are
8 the options, you can have -- you can live with the
9 pain or you can have surgery. And he says, "Well, I'm
10 going to have to have treatment for my cancer" so, the
11 -- the -- the subject of surgery at that point,
12 frankly, was just dropped. He came back, had an FCE,
13 Dr. Bauerle came back, saw him again. Before the
14 hearing -- before the Order was issued he had the
15 letter from the doctor saying that he -- if he -- that
16 his cancer was in remission and he could have the
17 surgery; and yet, -- and I honestly don't recall ever
18 submitting an Order to Dr. -- to Commissioner
19 Wilkerson in which he said change this Order or do
20 something else. I -- I -- for -- for -- for a moment
21 there I'm -- I thought that I was looking at the wrong
22 -- I brought the wrong file with me because clearly
23 all it says is that it awarded permanency and Dr.
24 Bauerle, in his medical report said on his Form 14-B,
25 "Does not indicate Claimant needs further medical

1 treatment." And that's what we had, that's what the
2 Order showed.

3 COMMISSIONER ROCHE: Mr. Lacy, I don't even see
4 where Dodge medical was argued at the hearing before
5 Commissioner James either. Seems like the only thing
6 -- what I'm looking at the transcript it says the only
7 issue is change of condition, not Dodge medical. Was
8 that even raised to Commissioner James?

9 MR. LACY: I don't recall it being raised, but
10 I'm not going to -- if Gene says it was.

11 COMMISSIONER ROCHE: I don't really see it in
12 here.

13 MR. LACY: The -- but, the point being that
14 Commissioner Wilkerson's Order became the law of the
15 case. Those issues were gone so when we came to this
16 hearing all we had was, was there a change of
17 condition? And the question is, was there a physical
18 change of condition and what Dr. Bauerle -- Dr.
19 Bauerle wrote his letter, but when we deposed him we
20 asked him, "Can you say to a reasonable degree of
21 medical certainty, most probably, whether there is a
22 physical change of condition?" He said, "No." "Then
23 what is your opinion based on?" "Well, it's based
24 upon his subjective complaints of pain." And clearly
25 that -- the law in South Carolina is that that is not

1 the basis for a change of condition and that's
2 basically what we have. As -- as hard as it is and as
3 difficult as it is to sometimes make an argument that
4 you know is right in the law and you know that your
5 client is entitled to this argument and it's right and
6 it's legal, my heart goes out to him. But the two
7 things we've got is, number one, we really don't have
8 any proof that he has -- if he has this surgery it's
9 going to -- going to lessen his period of disability;
10 there's nothing in the record to that effect. And
11 just because he has cancer does not give him a
12 lifetime option to have surgery when it happens. And
13 I think, Commissioner, you're right, it was the last
14 Order that should have been appealed, not this one.

15 THE COURT: All right. Mr. Connell.

16 BY MR. CONNELL: You know, we're not asking for
17 lifetime medical. Immediately after the cancer
18 treatment was finished he presented and said, "I'm
19 able to do what I need to do now." And I would point
20 out in Dr. Bauerle's deposition, he's testified that
21 the Claimant's condition got progressively worse;
22 that's APA page 37, lines 19 through 22. That his
23 functional level was worse; APA page 38, lines 7
24 through 9. That "his pain was worse and that I
25 classify this as an objective complaint"; APA page 38,

1 lines 10 through 19. That he had an increase in
2 symptomatology; APA page 40, lines 14 through 23. And
3 that "we treat the symptoms and the symptoms here are
4 worse"; APA page 44 lines 14 through 25. And finally
5 Dr. Bauerle says, "And no one would have performed
6 surgery until the cancer was resolved"; APA page 45,
7 lines 11 through 19. So you know, poor Mr. Hickman
8 was clearly in a Catch-22 situation; he wanted to have
9 the treatment but he couldn't have the treatment
10 because no doctor in his right mind was going to treat
11 him and do a back surgery until such time as he had
12 the cancer treatment. And so we would ask the
13 Commission to reverse based on those grounds. Thank
14 you.

15 THE COURT: That concludes the hearing.

16 (The hearing concluded at 2:56 p.m.)
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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0914812

EMPLOYEE/CLAIMANT: OSCAR HICKMAN

 **COPY**

EMPLOYER: CITY OF MYRTLE BEACH

CARRIER: SELF-INSURED

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 11TH DAY
OF JULY, 2012, COMMENCING AT THE HOUR OF 4:48 P.M., IN
CONWAY, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY L.
JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

GENE M. CONNELL, JR., ESQUIRE, OF THE FIRM
KELAHHER, CONNELL & CONNOR, PC
POST OFFICE DRAWER 14547
SURFSIDE BEACH, SOUTH CAROLINA 29587

ATTORNEY FOR THE CLAIMANT,

STANFORD E. LACY, ESQUIRE, OF THE FIRM
COLLINS & LACY, PC
POST OFFICE BOX 12487
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MS. PHYLLIS STURKEY
MS. PEGGY CANTOR

I N D E X

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN CONWAY, SOUTH
4 CAROLINA.

5 * * * * *

6 BY COMMISSIONER JAMES:

7 TODAY IS JULY 11TH, 2012. WE ARE HERE FOR THE
8 MATTER OF OSCAR HICKMAN VERSUS THE CITY OF MYRTLE
9 BEACH, ET AL. WCC FILE NUMBER 0914812. REPRESENTING
10 THE CLAIMANT IS MR. GENE CONNELL. REPRESENTING THE
11 DEFENDANTS IS MR. STANFORD LACY. DATE OF ACCIDENT IS
12 9-9-2009. WE ARE HERE TO DETERMINE THE ISSUES AS SET
13 FORTH ON THE FORMS 50 AND 51, WHICH I WILL FURTHER
14 DELINEATE. AT THIS POINT ARE THERE ANY OBJECTIONS TO
15 THE APAs, JURISDICTION, VENUE, OR ANY OTHER ITEMS?

16 BY MR. CONNELL:

17 NO, MA'AM.

18 BY MR. LACY:

19 NONE FROM THE DEFENSE.

20 BY THE COMMISSIONER:

21 ALL RIGHT. WITHOUT OBJECTION THE COMMISSION
22 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
23 OF ANY SELF-SERVING DECLARATIONS AND UNSTIPULATED
24 MEDICAL REPORTS.

25 THE ISSUE FOR TODAY IS A CHANGE OF CONDITION FOR

1 THE WORSE. THERE IS A PRIOR ORDER BY THE COMMISSION
2 DETERMINING DISABILITY IN THIS MATTER, AND THE
3 CLAIMANT SEEKS TO PRESENT A CHANGE OF CONDITION AND
4 WISHES TO HAVE A FINDING OF CHANGE OF CONDITION FOR
5 THE WORSE SO THAT HE CAN OBTAIN HIS SURGERY.

6 THE DEFENSE POSITION IS THAT THERE IS NOT A
7 PHYSICAL CHANGE OF CONDITION, THAT THIS DOES NOT COME
8 UNDER THE STATUTE 42-17-90 AND CITES VARIOUS CASE
9 LAW, BRIDGES VERSUS THE CITY OF NORTH MYRTLE BEACH
10 AND ROBINS VERSUS WALGREENS.

11 IS THERE ANYTHING FURTHER ON BEHALF OF THE
12 CLAIMANT?

13 BY MR. CONNELL:

14 YES, YOUR HONOR. OUR OTHER POSITION WOULD BE
15 THAT THE STATUTE SAYS CHANGE OF CONDITION, NOT
16 PHYSICAL CHANGE OF CONDITION, AND THE CASES THAT HAVE
17 BEEN CITED DO NOT TAKE THE LANGUAGE OF THE STATUTE AT
18 ITS LITERAL. WE WOULD ALSO ARGUE THAT IF WE'RE
19 TALKING ABOUT PHYSICAL CHANGE OF CONDITION, HOW WOULD
20 YOU HAVE A CHANGE OF CONDITION IN A PSYCHIATRIC CASE,
21 WHICH OBVIOUSLY THAT STATUTE CONTEMPLATES, BUT THE
22 CASE DOESN'T. WE WOULD FURTHER ARGUE THAT MR.
23 HICKMAN COULD NOT, BASED ON HIS PHYSICIAN'S
24 TESTIMONY, HAVE HAD THE SURGERY, AND IT WAS A
25 PHYSICAL IMPOSSIBILITY BECAUSE THE CANCER TREATMENT

1 WAS NECESSARY FIRST, AND THAT THE DEPOSITION OF DR.
2 BAUERLE AND THE RECORDS WOULD SHOW THAT. AND WE
3 WOULD FINALLY POINT OUT TO THE COURT THAT THE
4 PREVIOUS ORDER WAS ON MR. LACY'S FORM 21, IN WHICH
5 THE DOCTOR FOUND A FIVE PERCENT IMPAIRMENT RATING.
6 WE WOULD POINT OUT THAT THE COMMISSION ON ITS OWN
7 MOTION CAN DECIDE IF THERE HAS BEEN A CHANGE OF
8 CONDITION, AND WE WOULD ALSO STATE THAT THERE WILL BE
9 TESTIMONY OF THE DOCTOR THAT THERE IS PAIN AND THAT
10 THAT'S ONE OF THE FACTORS YOU COULD CONSIDER IN A
11 CHANGE OF CONDITION IN THIS CASE.

12 BY THE COMMISSIONER:

13 THANK YOU, SIR. IS THERE ANYTHING FURTHER FOR
14 THE DEFENSE?

15 BY MR. LACY:

16 COMMISSIONER, FOR THE DEFENSE THE LAW IS PRETTY
17 CLEAR THAT THE CLAIMANT CAN COME IN AND ASK FOR A
18 CHANGE OF CONDITION FOR THE WORSE ONE YEAR AFTER THE
19 LAST DATE OF PAYMENT. OUR COURTS HAVE INTERPRETED
20 THAT AS BEING PHYSICAL CHANGE OF CONDITION. WHAT WE
21 HAVE HERE IS A SITUATION WHERE MR. HICKMAN
22 UNFORTUNATELY DEVELOPED CANCER, COLON CANCER, WHILE
23 HE WAS BEING TREATED FOR THE BACK INJURY. HE OPTED
24 NOT TO HAVE THE BACK SURGERY, ACCORDING TO THE
25 DOCTOR'S NOTE, AND THAT WE WENT FORWARD WITH A STOP

1 PAYMENT HEARING. THE HEARING COMMISSIONER FOUND HE
2 WAS AT MAXIMUM MEDICAL IMPROVEMENT, AND IT WAS AFTER
3 THAT -- AND GAVE HIM A RATING OF SEVEN-AND-A-HALF
4 PERCENT. SO WE HAVE THAT ORDER, AND THAT ORDER WAS
5 NOT APPEALED. IT IS THE LAW OF THIS CASE. IF HE'S
6 GOING TO HAVE A CHANGE OF CONDITION, HE HAS TO COME
7 IN NOW AND SAY -- AND PRESENT MEDICAL EVIDENCE OF A
8 CHANGE OF CONDITION. AND UNDER THE BRIDGES CASE THAT
9 I CITED TO YOU, WHAT THE COURTS HAVE SAID IS THAT
10 WHERE THE DEFENSE -- WHERE THE CLAIMANT; EXCUSE ME --
11 RELIES UPON A DOCTOR'S OPINION, THAT THE ENTIRE CASE
12 RELIES UPON A DOCTOR'S OPINION, WHICH THIS ONE DOES,
13 THEN THAT MUST BE STATED TO A REASONABLE DEGREE OF
14 MEDICAL CERTAINTY. AND DR. BAUERLE WAS DEPOSED AND
15 SAID HE COULD NOT SAY THAT TO A REASONABLE DEGREE OF
16 MEDICAL CERTAINTY. IN FACT, FURTHER IN HIS
17 DEPOSITION HE BASICALLY SAYS THE MRI TAKEN BEFORE THE
18 FINAL HEARING AND THE MRI TAKEN AFTER THE FINAL
19 HEARING WERE NOT -- THERE WAS NO CHANGE.

20 BY THE COMMISSIONER:

21 THANK YOU, SIR. PLEASE CALL YOUR FIRST WITNESS.

22 BY MR. CONNELL:

23 COME UP HERE, IF YOU WILL, MR. HICKMAN, JUST FOR
24 A MINUTE.

25 BY THE COMMISSIONER:

1 IF YOU WILL RAISE YOUR RIGHT HAND FOR ME.

2 * * * * * * * * * *

3 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
5 MATTER HEREIN:

6 OSCAR HICKMAN,

7 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
8 FOLLOWS:

9 BY THE COMMISSIONER:

10 HAVE A SEAT FOR ME, PLEASE, SIR.

11 DIRECT EXAMINATION BY MR. CONNELL:

12 Q. MR. HICKMAN, HOW LONG DID YOU WORK FOR THE CITY OF
13 COLUMBIA -- I MEAN CITY OF MYRTLE BEACH? I
14 APOLOGIZE. I HAVE CITY OF COLUMBIA ON MY BRAIN
15 TODAY.

16 A. IT TOTALED 20 YEARS AND ONE MONTH AFTER THE -- IN
17 TOTAL.

18 Q. AND HOW MANY -- PRIOR TO THAT YOU WERE IN THE
19 MILITARY?

20 A. YEAH.

21 Q. HOW MANY YEARS WERE YOU IN THE MILITARY?

22 A. TEN.

23 Q. YOU INJURED YOUR -- WHAT BRANCH OF THE MILITARY WERE
24 YOU IN?

25 A. I WAS IN THE MARINE CORPS AND THE U.S. NAVY.

1 Q. ALL RIGHT. AND YOU INJURED YOUR BACK WHILE IN THE
2 EMPLOY OF THE CITY OF MYRTLE BEACH?

3 A. YES, SIR.

4 Q. AND DURING THE TREATMENT, WHEN DID YOU LEARN THAT YOU
5 HAD CANCER, COLON CANCER?

6 A. WELL, I INJURED MY BACK IN SEPTEMBER 2009, AND IN
7 JANUARY 2010 I WAS DIAGNOSED WITH COLON CANCER, BUT
8 ALL THAT TIME I WAS SEEING A DOCTOR FOR MY BACK.

9 Q. ALL RIGHT. AND DID YOU ACTUALLY HAVE SOME SORT OF
10 COLON SURGERY?

11 A. YES, SIR.

12 Q. AND DID YOU ACTUALLY HAVE CHEMOTHERAPY TREATMENTS?

13 A. YES, SIR.

14 Q. AND THAT WAS -- APPARENTLY YOU AND YOUR WIFE, AFTER
15 YOU RETIRED, MOVED OUT TO CALIFORNIA?

16 A. CORRECT.

17 Q. IS THAT RIGHT?

18 A. YES, SIR.

19 Q. YOU CAME FROM CALIFORNIA TODAY FOR THIS HEARING?

20 A. YES, SIR.

21 Q. THE SURGERY ON THE BACK, DO YOU WANT THAT SURGERY AT
22 THIS POINT?

23 A. WELL, I FEEL LIKE I NEED THE SURGERY 'CAUSE MY BACK
24 HURTS EVERY DAY; I HAVE PAIN AT NIGHT; I CAN'T REALLY
25 WALK. AND A LOT OF TIMES, LIKE NOW, TO ME -- I DON'T

1 KNOW WHAT THE DOCTORS SAY, BUT TO ME IT'S GETTING
2 WORSE BECAUSE I KNOW LIKE THE LITTLE BIT OF STEPS I
3 DO TAKE, A LOT OF TIMES I BE STUMBLING BECAUSE MY
4 RIGHT FEET AIN'T COMING UP ENOUGH AND I BE 'BOUT TO
5 TRIP, AND I HAVE TO GO TO THE BATHROOM A LOT BECAUSE
6 WHATEVER HE SAID WAS PRESSING ON MY BLADDER, AND THE
7 PAIN -- THE PAIN IS TOO MUCH. I CAN'T -- I CAN'T
8 STAND UP REALLY FOR THAT LONG, AND I CAN'T WALK.
9 THAT'S MY PROBLEM, 'CAUSE I GOT KIDS, AND MY LITTLE
10 BABY, SHE LIKE TO GO OUT TO THE PARK. I CAN'T GO
11 DANCING WITH MY WIFE 'CAUSE I CAN'T STAND UP THAT
12 LONG, STUMBLING DOWN. AND IT'S JUST GETTING TO THE
13 POINT WHERE I NEED TO BE FIXED.

14 Q. ALL RIGHT. AND YOU COULDN'T HAVE THE SURGERY BECAUSE
15 OF THE CANCER SURGERY; WAS THAT WHAT ---

16 BY MR. LACY:

17 LET ME OBJECT TO THE FORM OF THE QUESTION AS
18 BEING LEADING.

19 BY MR. CONNELL:

20 LET ME ASK THIS QUESTION. I'LL WITHDRAW IT.

21 DIRECT EXAMINATION RESUMED BY MR. CONNELL:

22 Q. GIVE US A LITTLE BIT OF THE HISTORY OF HOW LONG THE
23 CANCER SURGERY -- THE CANCER TREATMENT WENT ON AND
24 WHAT YOU HAD TO GO THROUGH.

25 A. WELL, IT ALL STARTED JANUARY -- JANUARY THE 11TH. I

1 WENT TO THE DOCTOR, AND I TOOK A COLONOSCOPY, AND
2 THAT EVENING I GOT HOME MY SON SAID, "THE DOCTOR
3 WANTS YOU TO COME BACK TOMORROW," BECAUSE I WAS WOOLY
4 WHEN I LEFT. AND I WENT BACK TO HIM, AND HE TOLD ME
5 NO, I WAS SUPPOSED TO GO TO THE SURGEON, AND HE --
6 AND I WENT OVER THERE, AND HE TOLD ME THAT I HAD TO
7 HAVE AN OPERATION AND I NEEDED IT NOW, AND HE HAD A
8 SPOT AVAILABLE ---

9 BY MR. LACY:

10 OBJECTION TO WHAT SOMEBODY TOLD YOU AS BEING
11 HEARSAY.

12 DIRECT EXAMINATION RESUMED BY MR. CONNELL:

13 Q. DON'T SAY WHAT THE DOCTOR SAID. LET ME ASK THIS
14 QUESTION. WAS CHEMOTHERAPY ADMINISTERED TO YOU?

15 A. YES.

16 Q. HOW LONG WAS THAT, JUST APPROXIMATELY?

17 A. SIX MONTHS.

18 Q. ARE YOU FINISHED WITH THE CANCER TREATMENT NOW?

19 A. YES, SIR.

20 BY MR. CONNELL:

21 THAT'S ALL THE QUESTIONS I HAVE. ANSWER ANY HE
22 MIGHT HAVE.

23 CROSS EXAMINATION BY MR. LACY:

24 Q. MR. HICKMAN, YOU WERE IN THE MILITARY FOR TEN YEARS,
25 AND YOU WORKED FOR THE CITY OF MYRTLE BEACH FOR 20

1 YEARS, CORRECT?

2 A. CORRECT.

3 Q. NOW, YOU HAVE RETIRED FROM THE CITY OF MYRTLE BEACH,
4 HAVEN'T YOU?

5 A. CORRECT.

6 Q. AND I THINK YOU ARE RECEIVING DISABILITY RETIREMENT;
7 IS THAT CORRECT?

8 A. CORRECT.

9 Q. SO THAT -- ARE YOU WORKING ANYWHERE NOW?

10 A. NO, SIR.

11 Q. IF YOU HAD THIS SURGERY, DO YOU KNOW IF IT WOULD
12 INCREASE YOUR ABILITY TO FIND A JOB?

13 A. WOULD IT INCREASE MY ABILITY TO FIND A JOB?

14 Q. IF YOU ARE ALREADY RECEIVING YOUR DISABILITY
15 RETIREMENT, DO YOU THINK IT WOULD HELP YOU GET BACK
16 INTO THE WORKFORCE?

17 A. NO, SIR.

18 Q. OKAY. AND, LET'S SEE, YOU HAVE BENEFITS AT THE V.A.,
19 IS THAT RIGHT?

20 A. YES, SIR.

21 Q. HAVE YOU TALKED TO THEM ABOUT HAVING YOUR SURGERY
22 DONE THERE?

23 BY MR. CONNELL:

24 OBJECTION, YOUR HONOR. I DON'T KNOW WHAT --
25 WHETHER HE HAS BENEFITS ANYWHERE ELSE HAS NO

1 RELEVANCE IN THIS CASE.

2 BY THE COMMISSIONER:

3 SUSTAINED.

4 BY MR. LACY:

5 I'LL WITHDRAW THE QUESTION.

6 CROSS EXAMINATION RESUMED BY MR. LACY:

7 Q. NOW, WHERE DO YOU LIVE IN CALIFORNIA?

8 A. LANCASTER.

9 Q. AND WHERE IS THAT?

10 A. IT'S PART OF L.A. COUNTY.

11 Q. OKAY. DO YOU GO DEEP SEA FISHING?

12 A. I WENT OUT THERE ONE TIME.

13 Q. AND DID YOUR BACK BOTHER YOU WHILE YOU WERE DEEP SEA
14 FISHING?

15 A. I GOT SICK; I DIDN'T REALLY FISH.

16 Q. NOW, BACK WHEN YOU WERE SEEING DR. BAUERLE, YOU WERE
17 DIAGNOSED WITH COLON CANCER, AND YOU AND DR. BAUERLE
18 TALKED ABOUT HAVING BACK SURGERY AND PUTTING IT OFF
19 UNTIL AFTER CANCER SURGERY; IS THAT YOUR TESTIMONY?

20 A. YOU COULD WORD IT LIKE THAT, BUT I WOULD WORD IT LIKE
21 THIS: HE TOLD ME ---

22 Q. I'M NOT ASKING WHAT HE TOLD YOU.

23 BY MR. CONNELL:

24 OBJECTION, YOUR HONOR, HE ASKED THE QUESTION.

25 IF HE WANTS TO GET THE ANSWER ---

CROSS EXAMINATION RESUMED BY MR. LACY:

Q. GO AHEAD.

A. THE DOCTOR TOLD ME THAT THE CANCER WAS MORE IMPORTANT THAN THE BACK SURGERY, AND THAT'S WHY WE PUT IT OFF. BUT WE STILL DIDN'T HAVE A DATE FOR IT.

Q. DID ANYBODY FROM THE CITY OF MYRTLE BEACH TELL YOU, "LET'S DELAY, OR WE WILL OKAY THE DELAY UNTIL WE FIGURE OUT WHAT HAPPENS WITH THE COLON CANCER"?

A. NO, SIR.

Q. SO THAT REPRESENTATION WAS NEVER MADE TO YOU?

A. NOT FROM THE CITY.

Q. AND DID ANYBODY FROM COMPANION MAKE THAT REPRESENTATION TO YOU?

A. NO, SIR. I DIDN'T DEAL WITH COMPANION.

Q. OKAY. MOVED OUT TO CALIFORNIA. AND WHILE YOU WERE BEING TREATED FOR COLON CANCER WERE YOU STILL RECEIVING TEMPORARY TOTAL DISABILITY? WERE YOU RECEIVING BENEFITS?

A. FROM?

Q. THE CITY.

A. I RECEIVED BENEFITS FROM THE CITY FROM JANUARY TO JUNE.

Q. WHEN WAS THE HEARING? JUNE OF 2011?

A. JUNE OF 2010.

Q. JUNE OF 2010; IS THAT WHEN YOU STARTED TO RECEIVE

1 DISABILITY RETIREMENT?

2 A. YES, SIR.

3 Q. I SEE.

4 A. THE NEXT MONTH.

5 BY MR. LACY:

6 THE COMMISSION'S INDULGEMENT ONE SECOND.

7 BY THE COMMISSIONER:

8 CERTAINLY.

9 CROSS EXAMINATION RESUMED BY MR. LACY:

10 Q. SO THE DECISION TO NOT HAVE THE BACK SURGERY WAS MADE
11 BEFORE THE HEARING THAT WAS HELD IN MAY OF 2011; IS
12 THAT A FAIR STATEMENT?

13 A. CAN YOU REPEAT THAT.

14 Q. YOU HAD YOUR CONVERSATION WITH DR. BAUERLE, AND THE
15 DECISION NOT TO HAVE THE BACK SURGERY WAS MADE PRIOR
16 TO MAY OF 2011, WASN'T IT? IT WAS MADE BEFORE YOU
17 LEFT TO GO TO CALIFORNIA?

18 A. CORRECT.

19 Q. AND WHEN WAS THAT?

20 A. JANUARY 13TH, 2010.

21 Q. 2010 OR '11?

22 A. I WENT IN 2010.

23 BY MR. LACY:

24 NO FURTHER QUESTIONS.

25 BY THE COMMISSIONER:

1 ANY REDIRECT?

2 BY MR. CONNELL:

3 NO, YOUR HONOR.

4 BY THE COMMISSIONER:

5 ANY FURTHER WITNESSES ON BEHALF OF EITHER PARTY?

6 BY MR. CONNELL:

7 NOT FROM THE CLAIMANT.

8 BY MR. LACY:

9 NOT FROM THE DEFENSE, COMMISSIONER.

10 BY THE COMMISSIONER:

11 IF I CAN SPEAK WITH THE ATTORNEYS FOR A MOMENT.

12 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS

13 CONCLUDED AT THE HOUR OF 5:04 P.M.)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COMMISSION PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC NO. 0914812

Oscar Hickman Appellant

vs.

City of Myrtle Beach and Companion Property & Casualty Group Respondents

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Record on Appeal** on Respondents, through their attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Stanford E. Lacy, Esquire
Collins & Lacy, PC
P. O. Box 12487
Columbia, SC 29211

DATE OF MAILING: July 12, 2013

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 12th day of July, 2013

Mary J. O'Donnell
Notary Public for South Carolina
My Commission Expires: 6/1/16

RECEIVED

JUL 15 2013

SC Court of Appeals

RECEIVED

AUG 02 2013

SC Court of Appeals

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APPEAL FROM COMMISSION PANEL OF THE SOUTH CAROLINA
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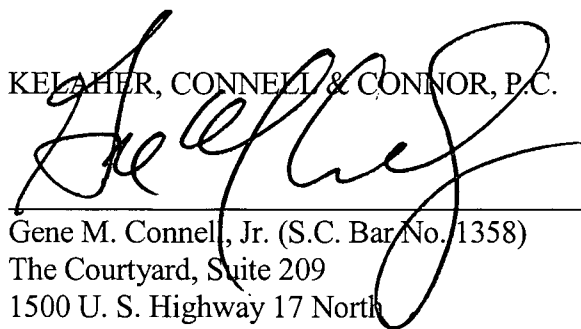
vs.

City of Myrtle Beach and Companion Property & Casualty Group Respondents

CERTIFICATE OF COUNSEL

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

KELAHER, CONNELL & CONNOR, P.C.



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Attorney for Appellant

July 12, 2013