

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

Appellate Case No. 2025-001282

Mary L. Davis, Claimant, ...Appellant,

v.

Ruiz Food Products, Inc., Employer, and
Safety National Casualty Corporation, Carrier, ...Respondents.

RECORD ON APPEAL
VOLUME II OF II

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Claimant's Exhibits – WCC File Nos. 1923627 & 2223041

TAB	DOCUMENT	DATE OF REPORTS	NO.
1	Deposition of Opal Jones	5/12/23	1-39
2	Deposition of Shanda Blackwell	5/12/23	1-28

Defendants' APAs (A.) - WCC File No. 1923627

TAB	DOCUMENT	DATE OF REPORTS	NO.
11	SCWCC Decision and Order	6/7/21	76-80
12	Medical Authorizations	6/14/21-8/8/22	81-85
13	Correspondence to Rodney Alan, MD.	8/25/21	86-87
14	McLeod Orthopaedics – Florence	12/13/21-2/27/23	88-103
15	McLeod Spine Center	7/5/22-12/2/22	104-118
16	Cora Physical Therapy	3/24/22	119-141
17	W.S. (Bill) Edwards, Jr., MD	12/8/20	142-143
18	Correspondence to Robert DaSilva, M.D.	8/10/22	Removed
19	Correspondence from Claimant's Attorney	8/26/22	Removed
20	McLeod Regional Medical Center	11/16/2019	146-152
21	McLeod Seacoast Hospital	10/4/2022	Removed
22	Carolina Pines Regional Medical Center	11/22/14-11/26/14	156-163
23	CareSouth Carolina	1/29/18-10/23/19	164-184
24	Ruiz Foods (Employer)	10/24/19-2/20/23	185-194
25	SCDMV	5/6/20	195-196
26	Videos of Claimant at work	2/8/23-2/9/23	Submitted at Hearing

Defendants' APAs (B.) - WCC File No. 2223041

TAB	DOCUMENT	DATE OF REPORTS	NO.
11	McLeod Spine	11/14/22	76-78
12	McLeod Orthopaedics – Florence	2/27/23	79-82
13	CareSouth Carolina	3/2/23-4/3/23	83-98
14	Hometown Urgent Care	3/24/23	99-101
15	Employer	10/24/19-2/20/23	102-111
16	Videos of Claimant at Work	2/8/23-2/9/23	N/A

IV. EVIDENCE OF THE CASE

During the hearing:

1. Claimant objected to the admission of Defendants' APA (A.) Nos. 18 and 19, into the record. Defendants consented to the removal of these submissions. (Hr. Tr. P. 6.) Accordingly, Defendants' APA (A.) Nos 18 and 19, have not been admitted into the record.
2. Claimant objected to the admission of Defendants' APA (A.) No. 21 into the record. Defendants did not raise any objections to the removal of this submission. (Hr. Tr. P. 5.) Accordingly, Defendants' APA (A.) No. 21 has not been admitted into the record.
3. Claimant objected to the admission of Defendants' APA (A.) No. 24 (Claimant's disciplinary history with Employer). Claimant argued that this submission was unrelated to Employer's stated reason for terminating her employment. Defendants argued that the submission of this "business record" established that Claimant provided Employer cause on numerous occasions to terminate her employment; accordingly, had Employer wanted to fire Claimant for filing a workers' compensation claim, Employer had ample reason to do so before February 20, 2023. (Hr. Tr. PP. 6-7.) I overruled Claimant's objection as to the admission of Defendants' APA (A.) No. 24 as this submission is relevant to determining whether Employer's action to terminate Claimant was retaliatory in nature or for cause.
4. Defendants objected to the admission of Claimant's APA No. 9 (Dept. of Employment and Workforce's Appeal Tribunal Decision). Defendants argued that pursuant to Shelton v. Oscar Mayer Foods Corp., this submission was irrelevant as the doctrine of collateral estoppel had no bearing on this case. Shelton v. Oscar Mayer Foods Corp., 481 S.E.2d 706, 709. (1997). Claimant reiterated the holding of the Shelton court and requested the Commission give this submission the weight deemed appropriate for a finding Claimant was not terminated for cause. (Hr. Tr. PP.8.-9) In accordance with the South Carolina Supreme Court's holding in Shelton, the purposes of the Employment Security Commission (ESC) [presently, The Dept. of Employment and Workforce]

would be frustrated by the application of the doctrine of estoppel. Therefore, findings of fact made during an ESC hearing will not receive preclusive effect. *Id.* at 708-709. I overruled Defendants' objection as to the admission of Claimant's APA No. 9, but have afforded this submission the weight that I deemed appropriate.

5. Defendants objected to the admission of Claimant's APA No. 6, P.53 (Internal email from Shanda Blackwell), and Shanda Blackwell's deposition, P. 18, as hearsay. (Hr. Tr. PP. 10-11.) I overruled Defendants' objection as to the admission of Claimant's APA No. 6, P. 53, and Shanda Blackwell's deposition, P. 18, but have afforded these submissions the weight that I deemed appropriate.
6. Defendants objected to the admission of Claimant's APA No. 7, PP. 55, 65-66 (Correspondence between the parties' legal counsel regarding the authorization of Claimant's benefits). Defendants argued that this submission is self-serving to Claimant and therefore inadmissible. Claimant argued that the submission of this "business record" established Claimant's multiple requests to Employer for medical treatment. (Hr. Tr. PP. 9-10.) I overruled Defendants' objection as to the admission of Claimant's APA No. 7, PP. 55, 65-66. This submission is admissible for the limited purpose of establishing Claimant's request for medical treatment.
7. Hearing testimony included that of the Claimant, Ms. Mary Dais, and the Employer's Representative, Mr. Jonathan Holder.
8. Deposition testimony included that of Ms. Opal Jones and Ms. Shanda Blackwell.

V. FINDINGS OF FACT

1. Per prior Order of this Commission, Claimant sustained compensable injuries to her left knee, left hip and low back. (Single Commissioner's Decision and Order filed on June 7, 2021.)
2. Claimant has been receiving authorized causally related medical treatment at the direction of Defendants.
3. Dr. Alan issued Claimant's light-duty work restrictions, which Employer was able to accommodate.

4. Employer initiated nine (9) disciplinary actions against Claimant from November 2, 2019, through November 7, 2022. These disciplinary actions ranged from verbal warnings to suspension for violating Employer's policy. (Defendants' APA (A.) No. 24, PP. 185-193.)
5. Claimant was ultimately terminated on February 20, 2023, after being observed throwing food away, which was against company policy. (Defendants' APA (A.) No. 24, p. 194.)
6. I find that but for Claimant's work-policy violation, her light-duty work restriction would have continued to be accommodated. Claimant's testimony that she and other employees always threw food away without discipline is unpersuasive.
7. In accordance with the South Carolina Supreme Court's holding in Pollack v. Southern Wine & Spirits of America, the greater weight of the evidence in the instant case supports a finding that Claimant was terminated for cause and, therefore, Claimant's inability to earn wages was not due or because of a work-related injury. Pollack v. Southern Wine & Spirits of America, 747 S.E.2d 430, 434 (2013). I find Claimant is not entitled to TTD benefits.
8. I find Defendants are continuing to provide medical treatment in compliance with the prior Order of the Commission and the Act. (Single Commissioner's Decision and Order filed on June 7, 2021.)
9. Claimant alleges a second injury by accident on November 4, 2022, after she was allegedly assaulted by a co-worker.
10. I find Claimant's testimony regarding her alleged assault is unreliable as to specific details surrounding the incident. Specifically, Claimant was a poor historian during her testimony, especially on cross examination. Claimant testified there was a "crowd" in the hallway where the incident occurred, but asserted she could not recall the name of one person who may have witnessed the alleged incident (Hr. Tr. P. 65.)
11. Claimant had authorized medical treatment for her November 16, 2019 injuries with Dr. Rakesh Chokshi on November 14, 2022. This appointment occurred a mere ten (10) day following the alleged work-related incident on November 4, 2022. Although Claimant testified she told Dr

- Chokshi about the alleged November 4, 2022 incident, her testimony is not supported by the medical evidence.
12. Again, Claimant had authorized medical treatment for her November 16, 2019 injuries with Dr. Alan on February 27, 2023. This appointment occurred over three (3) months following the alleged work-related incident on November 4, 2022. Although Claimant testified she told Dr Alan about the alleged November 4, 2022 incident, her testimony is not supported by the medical evidence.
 13. I find the first mention of any pain in Claimant's wrist which could be attributable to the alleged November 14, 2022 incident is the medical record from March 24, 2023, over four (4) months after the alleged incident. However, even this record indicates Claimant "denies any injury". (Defendants' APA (B.) No. 14, p. 100.)
 14. I find Claimant never filed a police report regarding the alleged assault. (Hr. Tr. P.69.)
 15. I find Claimant's testimony to be unreliable and exaggerating when she testified that all of the pain was "always a ten" out of ten. (10/10), including pain to her low back, neck, left knee and left hip. Further, Claimant admitted she had not once reported to the emergency room due to pain. (Hr. Tr. PP 67-68.)
 16. I give greater weight to the testimony of the Employer's Representative, Mr. Jonathan Holder, who testified he reviewed all of the security camera footage from Claimant's alleged date of injury on November 4, 2022, and did not see anything related to Claimant's assault allegation. (Hr. Tr. PP. 75-76.)
 17. Employer's Representative, Ms. Opal Jones, testified during her deposition that she also reviewed security camera footage from Claimant's alleged date of injury on November 4, 2022, and did not see anything related to Claimant's assault allegation. (Opal Jones Depo. P. 21.)
 18. I also give greater weight, over that of Claimant's, to the testimony of Mr. Holder in regard to multiple policy violations that could have led to Claimant's termination, but did not. (Hr. Tr. PP.

70-74.) I find Claimant's assertion that she was fired because of her workers' compensation claim, and thus owed temporary benefits, is not supported by the greater weight of the evidence.

19. Claimant is entitled to continued authorized causally related medical treatment for the injuries she sustained to her left knee, left hip and low back in an at-work accident on November 16, 2019.
20. All requests for benefits related to her November 4, 2022 alleged assault are denied.

VI. CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-130, Claimant was a covered employee under the Act on November 16, 2019 and November 4, 2022.
2. Pursuant to S.C. Code Ann. § 42-1-140, Employer is a covered employer under the Act.
3. Pursuant to S.C. Code Ann. § 42-1-160, Claimant sustained injuries to her low back, left knee and left hip in an at-work accident on November 16, 2019.
4. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is entitled to continued authorized causally related medical treatment for the injuries she sustained to her left knee, left hip and low back in an at-work accident on November 16, 2019.
5. Pursuant to S.C. Code Ann. § 42-1-160, Claimant did not sustain injuries in an at-work incident on November 4, 2022.
6. Pursuant to S.C. Code Ann. § 42-9-35, Claimant did not aggravate preexisting conditions in an at-work incident on November 4, 2022.
7. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is not entitled to additional causally related medical treatment for her November 4, 2022 alleged injuries.
8. Pursuant to S.C. Code Ann. § 42-9-190, Employer accommodated Claimant's light-duty work restrictions following her at-work accident on November 16, 2019, until her termination on February 20, 2023.
9. Pursuant to Pollack v. Southern Wine & Spirits of America, Claimant was terminated by Employer for cause. Id. at 434.

10. Pursuant to Shelton v. Oscar Mayer Foods Corp., the findings of fact made during Claimant's Department of Employment and Workforce hearing have no preclusive effect on the Commission's adjudication of this case. Id.

11. Pursuant to S.C. Code Ann. § 42-9-10, Claimant is not entitled to TTD benefits from her date of termination on February 20, 2023, to the present and continuing.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law:

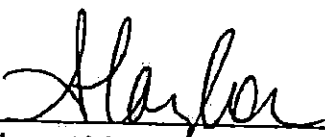
IT IS HEREBY ORDERED that Claimant is entitled to continued authorized causally related medical treatment for the injuries she sustained to her left knee, left hip and low back in an at-work accident on November 16, 2019.

IT IS FURTHER ORDERED that Claimant is not entitled to medical treatment for her alleged November 4, 2022 injuries.

12. **IT IS FURTHER ORDERED** that Claimant is not entitled to TTD benefits from her date of termination on February 20, 2023, to the present and continuing.

No penalties or hearing costs are assessed.

AND SO IT IS ORDERED.



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

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

July 29, 2024

By: Renee Smith, Administrative Assistant to Commissioner Taylor

Order Served via Email 7-29-24:

Walter H. Barefoot walt.barefoot@mgclaw.com

Preston F. McDaniel preston@pfmcdlaw.com

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NOS. 1923627 and 2223041

MARY L. DAVIS,

Claimant,

v.

RUIZ FOOD PRODUCTS, INC.,

Employer, and

SAFETY NATIONAL INS. CO. C/O
SEDGEWICK,

Carrier,
Defendants.

CORRECTED ORDER

On July 31, 2024, Claimant filed a Motion to Reconsider the Decision and Order dated July 29, 2024. The Commission received the Motion on August 6, 2024. Defendants filed a Response to the Motion on August 6, 2024. The Commission received Defendants' Response on August 13, 2024.

After careful consideration of the Claimant's Motion for Reconsideration pursuant to R. 67-215(B), I am unable to discover that any material fact or principle of law has been either overlooked or misapprehended and hence, there is no basis for granting Claimant's Motion. Accordingly, the Motion for Reconsideration is denied.

AND IT IS SO ORDERED.

October 3, 2024



Commissioner Aisha Taylor



CERTIFICATE OF SERVICE

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

October 3, 2024

By: Renee Smith, Administrative Assistant to Commissioner Taylor

Order Served via Email 10-3-24:

Walter H. Barefoot walt.barefoot@mgclaw.com

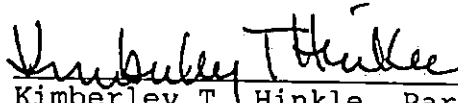
Preston F. McDaniel preston@pfmcdlaw.com

CERTIFICATE OF SERVICE

WCC File Nos.: 1923627 & 2223041

I hereby certify that I have on this day, October 17,
2024, served the following in the matter of MARY L. DAVIS
v. RUIZ FOOD PRODUCTS, INC. with a copy of the FORM 30 -
REQUEST FOR COMMISSION REVIEW by depositing the same in the
United States Mail, with adequate postage thereon,
addressed as follows:

Walter H. Barefoot, Esquire
McAngus Goudelock & Courie
Post Office Box 12519
Columbia, South Carolina 29211



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
17TH day of October, 2024.



Notary Public for South Carolina (L.S.)
My Commission Expires: 10/25/28

CERTIFIED COPY

DAVIS VS. RUIZ FOOD PRODUCTS, INC.
1923627

Deponent: OPAL JONES

Date: May 12, 2023

1 State of South Carolina

2 Workers' Compensation Commission

3 1923627

4
5 Mary L. Davis
6 Employee, Claimant,

7 Vs.

8 Ruiz Food Products, Inc., Employer and Safety National
9 Casualty Corporation c/o/ Sedgwick Claims Management
10 Services Inc.,
11 Defendants

12 Deposition of: Opal Jones
13 Date: Friday, May 12, 2023
14 Location: 108 Cargill Way,
15 Hartsville, South Carolina 29550
16 Time: 1:46 p.m. - 2:48 p.m.

17 Court Reporter: Abigail Kiker

18
19 The deposition is taken pursuant to notice and/or
20 agreement, in the above-entitled cause pending in the
21 above-named court and pursuant to the South Carolina
22 Rules of Civil Procedure.

23 Q & A COURT REPORTING SERVICES
24 Post Office Box 4563 (29502)
25 181 East Evans Street, #203 (29506)
Florence, South Carolina
Telephone: (843) 673-9845
E-mail: info@qacourtreportingonline.com
Visit: Www.qacourtreportingonline.com

A P P E A R A N C E S

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By: Walter H. Barefoot, Esq.
Waltbarefoot@mgclaw.com

Also Present:
Jonathan Holder, Ruiz Foods
Latifah Morris, daughter of Mary Davis

I N D E X

WITNESS
Opal Jones
Examination by Mr. McDaniel 3

E X H I B I T S

Pg/Ln Exhibit Description
(no exhibits proffered)

** Uh-huh = Affirmative
Huh-uh = Negative

S T I P U L A T I O N S

It is stipulated between Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of a question, are reserved until the time of trial.

It is also stipulated between Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

THEREUPON,

Opal Jones,
Being first duly sworn by the court reporter, as hereinafter certified, testified as follows:

E X A M I N A T I O N

By Mr. McDaniel:

Q. Ms. Jones, let me have your full name and your current address?

A. My personal address?

Q. Yes.

A. Okay. It's Opal Jones, and it's 626 Ridge Trail Drive.

Q. Okay.

A. And that's Columbia, South Carolina.

Q. Columbia?

A. Yes, Columbia, South Carolina.

1 Q. Okay.

2 A. 29229.

3 Q. All right. Now my name is Preston
4 McDaniel, and I'm representing Ms. Davis in her
5 workers' compensation claim.

6 A. Okay.

7 Q. And I asked you to be here today, and I'm
8 not here to trick you. I'm here to find out
9 information you know about the situation. And if you
10 don't understand the question I ask you, please ask me
11 to the repeat, 'cause I want to make sure you
12 understand it, 'cause we want to be able to rely on
13 your answers.

14 A. Right.

15 Q. Okay. I tell people all the time I have
16 two -- I speak two languages, Southern and English, and
17 my primary language is Southern. And this lady can't
18 take down if you say uh-huh or huh-uh, then that may
19 translate to something, so try to give more positives
20 like yes, no, that kind of thing. And also, she can't
21 take down nods of the head.

22 A. Okay.

23 Q. And so if you give me an answer -- if I
24 ask you like, you know, is it right that yesterday was
25 Thursday, she can't take that down. So give me a -- a

1 verbal answer.

2 A. All right.

3 Q. And we're not here to make you
4 uncomfortable. This shouldn't take too long. And I
5 just want to -- you know, so if you need to take a
6 break, let me know, okay? We'll just -- we'll do that.
7 I know you've been waiting outside for a long time, and
8 if you need to take a break, let me know.

9 A. Okay.

10 Q. Okay. Ms. Jones, how long have you been
11 with Ruiz Foods?

12 A. Ruiz Foods? Ten months.

13 Q. Ten months. Okay. So that means you
14 started sometime in August or September?

15 A. End of July last year.

16 Q. End of July.

17 A. The 27th, actually.

18 Q. And has your position with Ruiz Foods been
19 the same thing since July?

20 A. It has been the same thing.

21 Q. Okay. And are you -- what -- what
22 department are you in? What's your position?

23 A. It's H.R. supervisor.

24 Q. H.R. supervisor. Okay. And as an H.R.
25 supervisor, what's your work hours? And let me ask you

1 along with that, what are your work hours, and have
2 those changed since you've been with Ruiz Foods?

3 A. Yes. So when I started in July of last
4 year, I was a second-shift, so I worked from 2:00 p.m.
5 to 11:00 p.m., although some nights I'm there later
6 than that.

7 Q. Okay.

8 A. Only last week my hours have changed to
9 8:00 a.m. until 5:00 p.m.

10 Q. So up until last week, you were the
11 second-shift H.R. supervisor?

12 A. Yes, sir.

13 Q. And so that means you were there every --
14 and you -- was that 2:00 p.m. to 11:00 p.m., was that
15 Monday through Friday?

16 A. Monday through Friday, yes.

17 Q. Okay. Sounds like you received a
18 promotion?

19 A. Not really, but promotion to the daytime.

20 Q. Well I was going to say that's --
21 congratulations on being able to work daytimes. All
22 right. Okay. So you were the second-shift supervisor
23 back in November of 2022?

24 A. Correct.

25 Q. All right. When did you first become

1 aware of the incident that happened on November the
2 4th?

3 A. That day, November 4th.

4 Q. Okay. Did you actually talk to Ms. Davis
5 that day?

6 A. Yes, I did.

7 Q. Okay. Did you take any statement from her
8 that day?

9 A. Yes. She wrote a statement, yes.

10 Q. She wrote a statement then. Did you keep
11 a copy of that statement?

12 A. I do have a copy of it.

13 Q. Okay. All right. I asked you to bring
14 all the information. Let me ask you to see if you've
15 brought this -- okay.

16 A. Yes. That's the copy.

17 Q. Did I understand --

18 Mr. Barefoot: Speak up a little bit.

19 The Deponent: That's -- that's it. I'm a
20 little bit congested, so -- yes. That's the copy.

21 Repeat your question?

22 By Mr. McDaniel:

23 Q. Yeah. I don't remember seeing that in the
24 information I looked through.

25 A. Oh. Maybe I still have that. Here.

1 Mr. Barefoot: There's more?

2 The Deponent: Yeah. I do have copies --

3 Mr. Barefoot: Okay.

4 Mr. McDaniel: Off the record. Okay. we

5 can go back on the record.

6 By Mr. McDaniel:

7 Q. Let me ask you a couple of questions just

8 because I forgot to ask them to start with. I may

9 bounce around and sort through this. Who was her

10 supervisor -- who was her supervisor, if you know, on

11 November the 4th?

12 A. I believe it was Wesley Williams.

13 Q. Wesley Williams. Is there a Wendell?

14 A. There is also Wendell. Sometimes they --

15 they, you know, they support each other. They move

16 around.

17 Q. And -- and what's Wendell's last name, if

18 you know?

19 A. Wendell -- Wendell --

20 Q. If you don't know, that's fine.

21 A. I don't remember.

22 Q. Okay.

23 A. His last name.

24 Q. All right. Now superintendent. Who was

25 the superintendent on the night she --

1 A. Yirande Mateo.

2 Q. Who?

3 A. Yirande Mateo.

4 Q. Would you spell that for me?

5 A. Y-I --

6 Q. Y-I --

7 A. -- R-A-N-D-E.

8 Q. -- R-A-N-D-E -- I just saw his name --

9 A. It's in the report, in his e-mail.

10 Yirande Mateo.

11 Q. Yeah. Yirande. Uh-huh. Mateo,

12 M-A-T-E-O.

13 Q. Yirande Mateo?

14 A. Mateo. Yes.

15 Q. Okay. And then --

16 The Court Reporter: I'm sorry. Did you

17 finish spelling that?

18 Mr. McDaniel: Okay. Yirande,

19 Y-I-R-A-N-D-E Mateo, M-A-T-E-O.

20 By Mr. McDaniel:

21 Q. All right. Now who was -- I'm just trying

22 to get who all was in management that night. Who was

23 over safety that evening?

24 A. Why am I drawing a blank? Can I -- can I

25 grab that?

1 Q. Yeah, absolutely.

2 A. So I can give you the correct spelling of

3 his name. His name is Venteral, V-E-N --

4 Q. V-E-N --

5 A. -- T-E-R-A-L.

6 Q. And it's Randy?

7 A. And that's Venteral, V as in Victor.

8 Q. Oh.

9 A. V-E-N-T-E-R-A-L. Last name is McDowell.

10 Yes.

11 Q. McDowell?

12 A. Yes. M-C-D-O-W-E-L-L.

13 Q. Okay. And I see in these records you just

14 gave me that you also took a statement that night from

15 gentleman by the name of Eugene McClendan?

16 A. Yes, sir.

17 Q. Okay. All right. And where -- where were

18 those statements taken?

19 A. In -- in my office. I was in my office at

20 the time.

21 Q. Okay.

22 A. When I spoke to Eugene.

23 Q. Okay. And same with Mary?

24 A. I don't remember if it was my office or if

25 it was across the hall.

1 Q. Okay. Now what kind of follow up did you
2 do to the event that night?

3 A. After hearing from her, I reached out to
4 Eugene. She did not the name the young lady she
5 referenced in the e-mail, so I waited until she got
6 back to me --

7 Q. Okay.

8 A. -- with that information.

9 Q. You know, of course in her statement, she
10 references that he can attacked her aggressively.
11 Okay. Did -- was -- when, either that night or later
12 on, was anything said about reporting this to the
13 police?

14 A. I'm not aware of reporting to police.

15 Q. Okay. If there's any kind of an assault
16 or and attack or anything like that on the job, are
17 y'all required to report that to the police?

18 A. An assault? Not -- not if it's -- she
19 said hugged aggressively.

20 Q. Uh-huh. Did they hug?

21 A. Not to my -- unless -- unless it's -- you
22 know, it involved -- like -- like a knife or something
23 like that, then we would call the police.

24 Q. Well she said, and grabbed me
25 aggressively. And aggressively pushing me real hard,

1 so I hit another team member. Octavia said something
2 about it. So -- so -- so why you don't remember
3 anything being said about that? I mean, about the
4 police or any kind of incident report or anything like
5 that? Beyond the incident report?

6 A. No, sir.

7 Q. Okay. Who is Shanda Blackwell?

8 A. Shanda is our workers' comp specialist.

9 Q. Okay. I've got an e-mail here from Shanda
10 Blackwell on November 16th, Mary requested to speak
11 with safety regarding an incident that occurred last
12 request week, and Vinnie and I -- I guess that's the
13 gentleman you referred to as Yirande? And y'all call
14 him Vinnie?

15 A. No, that's two separate persons.

16 Q. Okay.

17 A. Vinnie is Venteral, not that one.

18 Q. Okay. All right. And he's over safety at
19 night?

20 A. Yes, he's our safety tech.

21 Q. Okay. All right. Now you got a copy of
22 that e-mail. Were you -- so you were -- were you
23 involved at all in reference to any discussions about
24 the company versus her reporting this to the police?

25 A. No, I was not.

1 Q. Okay. Who else would have been involved
2 in such discussions?

3 A. Safety would be involved if -- if it
4 involves the police. Safety, upper management. They
5 would get involved with police.

6 Q. And -- all right. Now that night there's
7 no question that she reported, as a result, my and neck
8 back are hurting real bad. So as a result of the
9 incident, you knew that it was hurting bad, right?

10 A. As a result of that.

11 Q. Yeah. What happened in the days fol---
12 did you -- did you talk to anybody in safety, or did
13 you talk to anybody in workers' comp?

14 A. I did not. The safety tech came to me
15 before that. So if someone reported a injury or -- you
16 know, we always refer them to safety.

17 Q. Okay.

18 A. So she went to safety. If there's a pain,
19 or if they're -- safety would administer medication or
20 pain meds.

21 Q. How many -- how many discussions do you
22 remember having with Ms. Davis after the event on
23 November 4th? Before termination. I mean, in
24 November-December?

25 A. We may have had two or three.

1 Q. Okay. All right. Do you remember a
2 conversation in which she said you told her that he had
3 said he hugged you?

4 A. Yes.

5 Q. Did she continue to deny that?

6 A. I don't know if it was a denial or maybe
7 clarification.

8 Q. Okay.

9 A. So --

10 Q. After the -- that November the 4th, did
11 you have any further discussions with Ms. Davis about
12 signing another statement?

13 A. No. Not about signing another statement.

14 Q. Okay. Did you -- signing another
15 document?

16 A. No, sir.

17 Q. Okay. Now after the incident, did she --
18 and the future meetings -- did she continue to advise
19 you that her back and neck were hurting?

20 A. No.

21 Q. Or did you ask her?

22 A. No, I did not ask. She -- she asked about
23 the results mainly, what's going to happen.

24 Q. Okay.

25 A. It came out of --

1 Q. All right. Tell me about that too, to the
2 best of your recollection, that's probably conversation
3 --

4 A. Well she just asked whether we reached a
5 determination, and we -- we did not because during that
6 time I was still waiting to hear from the person that
7 she said she bumped into.

8 Q. Uh-huh.

9 A. She could not remember her name. I think
10 it was round about the 16th or --

11 Q. Uh-huh.

12 A. -- that the young lady came to my office.

13 Q. Okay. And again, I believe that her words
14 were that so hard that I hit another team member trying
15 to get away from him.

16 A. Okay.

17 Q. So you understood that --

18 A. Yes.

19 Q. -- from her statement?

20 A. I understood that from her statement.

21 Q. Okay. And then now outside of the -- that
22 one team member, have you talked to other team members?

23 A. I spoke to a couple of the team members.
24 I can't remember their name --

25 Q. Uh-huh.

1 A. -- because the young lady that wrote the
2 statement --

3 Q. Right.

4 A. -- I forget her name -- she said she was
5 asked to write a statement in favor of -- in favor of
6 Ms. Davis.

7 Q. Octavia Davis -- Octavia Harrison? Is
8 that it?

9 A. Yes.

10 Q. Okay. So before she finished that
11 statement, tell me what now?

12 A. She said she was -- because they always
13 joke around, Ms. Davis and Mr. Eugene, they always
14 played around, you know, hugging each other --

15 Q. Now is that to your knowledge, or what
16 you've been told?

17 A. That's what I've been told.

18 Q. Okay. So to your knowledge, you don't
19 know that for a fact?

20 A. No.

21 Q. Okay.

22 A. But this is what Ms. Octavia told me.
23 Because they were always joking about -- she did not
24 thing -- she thought they were just playing.

25 Q. Okay.

1 A. She did not think it was serious until she
2 was approached by Ms. Davis to make a statement and per
3 the statement, that I wanted to see her about a
4 statement -- to write a statement as to what happened
5 that day.

6 Q. And I believe that's reflected in her
7 statement is that she -- no question that Ms. Davis hit
8 her, knocked into -- or, you know, I don't want to say
9 --

10 A. Bumped into her.

11 Q. -- hit her hard enough to where -- at that
12 point then -- but at that point, she didn't realize --
13 I think she says that there, that she thought they were
14 -- they were playing. And then after -- Ms. Davis
15 didn't ask her to write a statement in her favor.
16 According to that, she said she talked to Ms. Davis and
17 that she remembered; is that pretty much correct?

18 A. I -- I don't know if Ms. Davis talked to
19 her. She told me that Ms. Davis spoke to her for a
20 while, but what she wrote there was what she was told
21 to write.

22 Q. What -- so she was told to write that they
23 were playing?

24 A. No, she was told to write the statement in
25 favor of Ms. Davis so it would appear as though they

1 were not just playing. But in the last paragraph she
2 wrote that she thought they were playing. She told me
3 they're always joking around, hugging each other, high
4 fiving, so she thought she were just playing.

5 Q. So are you saying Ms. Davis suggested for
6 what -- what her to write? That's not -- that's
7 exactly what she wrote.

8 A. That's what she told me. What I'm
9 suggesting is what she told me in my conversation with
10 her.

11 Q. Okay. She asked why, and she said about
12 the guy that pushed me, and I was like, y'all was
13 playing, right? And she said, no because something
14 about her back or something. Okay. So in other words,
15 I don't read that as -- but you're saying that
16 definitely now that this lady was -- that she was
17 wanting Ms. Octavia to say this; is that --

18 A. That's what she told me.

19 Q. -- told you?

20 A. Right.

21 Q. Now. All right. And you have no other
22 statements? Do you know of anybody else -- or any
23 other statements from anybody else?

24 A. I have not -- no. Not any written
25 statement.

1 Q. Okay.

2 A. But, you know --

3 Q. All right. And did you report to -- this
4 to workers' comp--- the person who coordinates workers'
5 compensation?

6 A. I did not personally report it to the
7 person who handles workers' comp because the safety
8 person took a statement when she -- when Ms. Davis went
9 to him. He wrote a statement -- Venteral. It's one of
10 the e-mails that he wrote.

11 Q. Uh-huh.

12 A. So I didn't think I needed report it to
13 workers' comp.

14 Q. Okay. So in other words, in the normal
15 management process, safety is who would be responsible
16 --

17 A. Responsible.

18 Q. -- for reporting this to whoever handles
19 workers' comp?

20 A. Right.

21 Q. And so Venteral would have been the one
22 that would have reported to -- and who handled workers'
23 comp for second shift?

24 A. Well we have a small team, which is the
25 safety manager, John, and Shanda Blackwell. She's the

1 workers' comp specialist.

2 Q. Okay.

3 A. And we have two safety tech.

4 Q. Do you have any -- I mean, we're going to
5 talk to her in a few minutes -- Shanda has -- do you
6 know how long she's been with the company or in that
7 capacity?

8 A. I don't know how long she's been with the
9 company.

10 Q. Okay. All right. Now -- and is a copy of
11 again, an e-mail from Shanda Blackwell to you -- or you
12 were copied on it -- on November the 16th. And in that
13 again, it discusses medical. It says the team member,
14 referring to Ms. Davis, stated that her doctor told her
15 that she would need to ask us about sending her to get
16 an M.R.I. done from when she was assaulted last week by
17 another team member. Now -- right?

18 A. Uh-huh.

19 Q. Okay. Now -- all right. And I -- you've
20 also -- did you actually see that continuing sedentary
21 work only statement that was within these records?

22 A. From the doctor's statement?

23 Q. Yeah.

24 A. I saw it.

25 Q. That she -- yeah. That she's -- she was

1 only on -- she continued on --

2 A. Sedentary work, yes.

3 Q. Okay. And so you don't know anything else
4 about why workers' comp did not authorize her to see a
5 doctor or anything?

6 A. No, I didn't know why workers' comp --

7 Q. All right. The -- again the day -- all
8 right. How soon after the incident that night did you
9 talk to Ms. Davis again? To the best of your
10 recollection.

11 A. Maybe -- maybe about a week or so because
12 she asked what we were going to do with her workers'
13 comp case. And another time she was coming down the
14 hall, wanted to know about just -- just -- not that she
15 came to me directly, but, you know, but in passing have
16 we reached a conclusion on her case. We were still
17 looking at videos trying to figure out, especially
18 after that e-mail from Ms. Blackwell because the word
19 assault was mentioned.

20 Q. Uh-huh.

21 A. And that is when I went to the safety
22 manager to review the cameras again to see if there
23 were any findings, any assault, any pushing, any
24 shoving. We did not find any.

25 Q. Is there cameras in that specific area, or

1 the hallway?

2 A. There is.

3 Q. Okay. Now again in reference to your
4 conversations in passing with her, she said what are
5 y'all going to do about my workers' comp case. She had
6 told you that night that her neck and back were hurting
7 a lot more. She talks in here about an M.R.I. So when
8 she was referring to the workers' comp, you -- was it
9 your understanding that she was referring about what
10 had occurred on November the 4th?

11 A. No, I was aware of the fact that she was
12 already on a workers' comp.

13 Q. Right.

14 A. So that incident -- I did not I think it
15 was workers' comp case, so I didn't.

16 Q. Why not?

17 A. Well normally a workers' comp situation
18 that happened during the course of her working --
19 actual working. So I didn't think that situation,
20 since it was just a hug, would have contributed to
21 workers' comp, from my understanding.

22 Q. Okay. So because she wasn't at work --
23 suppose that aggressive hug had happened on -- at the
24 machine. Would that have been workers' comp?

25 A. I don't know. I would have to reach out

1 to our safety or manager to get additional detail of
2 what constitutes workers' comp.

3 Q. Okay. Do you remember ever telling her
4 that -- that you were -- she was telling you that her
5 neck and back definitely worse, but that you told her
6 that it was not workers' comp?

7 A. No, just when she mentioned about what we
8 were going to do about her workers' comp. I don't
9 remember that conversation.

10 Q. Okay. Just what we were going to do about
11 worker's comp. These conversations occurred after the
12 incident on November 4th?

13 A. Right.

14 Q. Okay. Because before that, I don't -- had
15 you had any conversations about workers' compensation?

16 A. No, I would not have because I'm not a
17 part of the workmans' comp.

18 Q. So these conversations came about
19 afterwards as a result of your involvement due to the
20 taking the incident report and being over H.R. for this
21 incident?

22 A. Yes, sir.

23 Q. All right. In reference to her
24 termination, can you tell me -- I see here's an e-mail
25 from Jonathan Holder on February the 9th -- or excuse

1 me. February 13th -- where he had watched the February
2 9th shift. Do you know why Mr. Holder was looking at
3 her shift work -- or looking at the -- I mean, not her
4 shift work, but looking at the shift?

5 A. I asked him to. A team member came to my
6 office and reported that each time she would take the
7 tortilla to Ms. Davis, then she threw them in the -- in
8 the garbage. Each time that she would present it to
9 her, bring the tortilla, she'd just throw them in the
10 garbage.

11 Q. And -- and so this team member came to you
12 in when -- when?

13 A. It has to be the day before maybe, or the
14 -- the same night that I e-mailed John, which is
15 probably around February 9th. I don't remember the
16 dates.

17 Q. Okay.

18 A. I use my e-mail as reference.

19 Q. Yeah. We'll take a look at that in just a
20 minute. Take a second and read that.

21 A. Okay. On the 9th, on February 9th.

22 Q. Is that when -- I mean, I see the e-mail.
23 So that was on February 9th is when this --

24 A. When it was -- the team member reported to
25 me.

1 Q. Who was the team member?

2 A. I don't remember her name.

3 Q. Is it somebody that she normally worked

4 with on that machine?

5 A. I really don't know if it's someone the

6 she normally works with because of the rotating

7 schedule, rotating -- I don't know if it's -- if it's a

8 regular person. But that particular night, that

9 individual was giving her bread -- we call it bread.

10 Tortilla. And each time that she would give it to her,

11 she would throw it in the garbage.

12 Q. Okay. Just directly?

13 A. Excuse me?

14 Q. Why -- had this team member ever come to

15 you before complained about anybody?

16 A. No, sir.

17 Q. And so this was -- was this during a

18 normal work shift?

19 A. It was, yes.

20 Q. And so who did she have to ask permission

21 to come and talk to you?

22 A. Who did she ask permission?

23 Q. Yeah.

24 A. I don't know.

25 Q. Well I mean, somebody's working -- y'all

1 are on a production line, right?

2 A. They are on a production line.

3 Q. Okay. Well that's what I'm saying. It's
4 a production line?

5 A. Yes.

6 Q. And I mean outside of breaks, don't you
7 have to ask -- I mean, if you've got to leave the
8 floor, don't you have to tell your supervisor? Or
9 somebody to give you permission?

10 A. Yes. They -- they don't -- they didn't
11 necee--- okay. So if they're leaving the floor, yes,
12 if they went to the bathroom, you know, they would
13 normally ask for permission, so I don't know if she
14 did.

15 Q. Okay. All right. So you don't know --
16 and all of a sudden, she appears at your door and wants
17 to report Ms. Davis?

18 A. She -- she came to my office, yes.

19 Q. Did -- can you tell me why she thought it
20 was so important to report Ms. Davis?

21 A. Well she's throwing away the product. I
22 don't know why she thought it was important, but she
23 came to H.R. to report that each time she brings the
24 product, which is Ruiz property, she would throw it in
25 the -- in the garbage as waste.

1 Q. And so you don't know why she was doing
2 that?

3 A. I don't know she would do it, but --

4 Q. Outside of -- I want to ask you to look at
5 -- let's see -- before I ask you about that, let me ask
6 you this. In reference in her sedentary work only
7 position, I mean, no question she was having problems
8 with her leg, her hip, and her back, right? You
9 understood that?

10 A. I don't -- I don't know what her -- all
11 problems were.

12 Q. Okay. All right. But did you know that
13 she needed to be able to take -- she was on a
14 light-duty job?

15 A. Yes.

16 Q. And y'all created an accommodation job for
17 her so that she could do that one task. The other
18 members do other things on the machine, correct?

19 A. That's correct.

20 Q. And so she was only doing that one task,
21 and y'all gave her a chair so she could do that without
22 having to stand?

23 A. Correct.

24 Q. And to meet the work restrictions of the
25 doctor, right?

1 A. Meet -- repeat -- meet what?

2 Q. Meet the work restrictions of the doctor.

3 A. Correct.

4 Q. I may have said work production, but I

5 meant work restrictions.

6 A. Yes, sir.

7 Q. There goes my Southern English again. All

8 right. Now so -- so no question she was under limited

9 duty. Do you know anything about her needing to take

10 breaks or because of her back pain or whatever the

11 physical problems were that she needed to be able to

12 stand and sit on a basis?

13 A. I -- I -- prior to that, I don't know

14 anything about what was -- what she required.

15 Q. Okay. And -- but you knew she was under a

16 sedentary work only --

17 A. Yes.

18 Q. -- restrictions? Both before and after

19 that? Now I see, going back to this, I see a period of

20 where Mr. Holder viewed the -- why was Mr. Holder

21 involved?

22 A. Because he managed the camera.

23 Q. Okay. All right.

24 A. He's the keeper of the camera, so --

25 Q. That makes sense then.

1 A. Yes.

2 Q. And so there's five occasions that he saw
3 her throwing the bread away?

4 A. On this day, yes.

5 Q. Did you discuss those specific occasions
6 with her?

7 A. No, I did not. Not -- not at that time,
8 no.

9 Q. Okay.

10 A. I requested other times.

11 Q. You requested other times? What you do
12 you mean by that?

13 A. I asked John to look to see if these were
14 the only times that she threw away bread before I had
15 the discussion on her.

16 Q. Okay. And when you had a discussion with
17 her, what was her explanation for why she was throwing
18 away the bread?

19 A. As a matter of fact, she didn't say
20 anything.

21 Q. Okay. You mean nothing?

22 A. Nothing.

23 Q. Okay. This conversation, did it occur the
24 day she was suspended, or -- or when?

25 A. The day she was suspended she was in my

1 office, and I explained to her why. She did not say
2 anything.

3 Q. And what was your explanation to her --
4 and look through your notes if you want to --

5 A. Okay.

6 Q. What was your explanation to her that day
7 the reason she was being suspended?

8 A. So it was on February 15th when I had the
9 conversation with Ms. Davis and explained to her why,
10 because she was throwing away company product on
11 numerous occasions. And because of that, I'd have to
12 conduct additional investigation, and procedure because
13 we normally have a three-day suspension. And I told
14 her I'll get back to her on Monday, February 20th with
15 the findings of my investigation.

16 Q. Okay. And so on the 15th when you had
17 that discussion, when you would -- she was throwing
18 away product -- and I guess since her job was to throw
19 away product, did you explain to her why y'all were
20 concerned with throwing away product? I mean, the
21 difference? I'm just trying to figure out myself.

22 A. Her job was not to throw away product.

23 Q. Well what was it?

24 A. She -- when the products were given to
25 her, she -- she has to strain them out, make sure that

1 they were okay because they have to be given -- they
2 were -- to the tortilla throwers to put -- place on the
3 plate. So that while they throw the product on the
4 plate, it was -- in, you know, good condition. 'Cause
5 sometimes they'll -- they would come to her folded, so
6 she would have to open them up and make sure that --

7 Q. Okay.

8 A. But the instances when they were given to
9 her on the camera, she did not look through them to see
10 if they were folded or if there were in good condition.
11 She took the pile as it was given to her, and she threw
12 them in the garbage.

13 Q. Okay. Was it -- when those -- when she's
14 going through these and unfolding them and all that,
15 are the tortillas, do they have to remain hot? Are
16 they warm or hot?

17 A. Oh, I don't know,

18 Q. You don't -- you don't know anything --
19 now you're over H.R. on the second shift, but you don't
20 know anything about what they -- what happens if the
21 product gets cold?

22 A. If it gets cold?

23 Q. Yes.

24 A. Oh. I don't know a lot of what happens if
25 the product get cold on the line.

1 Q. You don't know in other words, whether or
2 not they can use good product? I mean, use cold
3 product?

4 A. For that particular situation, no.

5 Q. Okay. Wait a minute. I'm sorry. What
6 situ---

7 A. No, you're asking if the products get
8 cold. I don't know.

9 Q. Okay. So in other words -- yeah.

10 A. Yes.

11 Q. 'Cause when you said that particular
12 situation, that's what I meant. So in other words, you
13 don't know what they're supposed to do with product if
14 it gets cold?

15 A. No, I do not.

16 Q. Or if it's given to them cold?

17 A. No.

18 Q. All right. You don't know -- outside of
19 like, if I guess, a tortilla's torn or folded wrong or
20 something, can't be straightened out, then they throw
21 all that -- that product away? But are there times
22 they throw large batches of it away?

23 Q. What makes them -- do they throw stacks of
24 no good away?

25 A. I don't know how they were thrown away.

1 Q. Okay.

2 A. But I know that if someone's given a
3 stack, you would -- you would have to at least go
4 through the stacks, examine them, to see before
5 throwing them away.

6 Q. Well wouldn't that be unless it was cold,
7 if they're not supposed to use cold product?

8 A. I don't know.

9 Q. You don't know? Okay. That's fine.

10 Mr. McDaniel: Walt, I think I'm finished.

11 Mr. Barefoot: Okay.

12 Mr. McDaniel: Let me -- let's take a
13 quick break, 'cause I want to ask -- I want to talk to
14 Ms. Davis just a second. Ready? Okay.

15 By Mr. McDaniel:

16 Q. You approached her, and you suspended her,
17 and then she was terminated three -- several days
18 later. You contacted her and told her she was
19 terminated, correct?

20 A. Correct.

21 Q. Does a person, when they're -- her offense
22 was supposedly throwing away too much product, correct?

23 A. Throwing away company product.

24 Q. Well a product, yeah, a company product.

25 Okay. So normally between a write-up and an incident,

1 do they not get a -- a write up?

2 A. Certain -- certain -- certain situations
3 warrant a write-up, but we also have to write up -- we
4 can go straight to a termination.

5 Q. Okay. Why did -- why did you decide not
6 to simply write her up versus going to a termination?

7 A. So I communicated with my boss, sent the
8 e-mail --

9 Q. Who is that?

10 A. Jamie Moore.

11 Q. Okay.

12 A. And shared with her the findings and my
13 recommendation, and they agreed that we can go to a
14 termination.

15 Q. Why was it your recommendation since you
16 -- has she ever been written up before for wasting
17 company product?

18 A. Not to my to knowledge, no.

19 Q. Okay. So why did you think it warranted
20 termination in this case?

21 A. Because that was a deliberate act of
22 destroying, and it affects our finances.

23 Q. Bottom line?

24 A. Yes. Right. Exactly. So because it was
25 a deliberate act of throwing the product away, not

1 going through to select the damaged product --

2 Q. Uh-huh.

3 A. -- but just deliberately taking the entire
4 stack that was given to her and just throwing it, on
5 numerous occasions -- on several -- not just that one
6 day, but there's another day she was just throwing it
7 in the -- in the trash.

8 Q. Okay. And is it your testimony that you
9 talked to her about this, and she didn't -- gave you no
10 reason to do it?

11 A. She did not give me a reason. When I
12 called her and told her that we've reached a finding,
13 she said, well my supervisor told me to throw it away.

14 Q. Okay.

15 A. She said, no, although my supervisor said
16 to throw it away. And I was -- I checked with the
17 supervisor that the direction was not given to throw
18 away the product. If it was given to her like that,
19 than the person was just dumping it in the trash.

20 Q. Okay. And this all started because a team
21 member that we don't know the name of came to you and
22 told you that she was just throwing all the product she
23 brought -- not other people, but that she brought her
24 and throwing it away?

25 A. Correct.

1 Q. Okay. Do you know whether or not -- did
2 you see that team member on the video?

3 A. Yes, sir.

4 Q. Okay. And was it -- and was it just
5 happening with her?

6 A. With that -- for those --

7 Q. Was there anybody else -- you know what?
8 I didn't mean to interrupt you. Was there anybody else
9 bringing her during that period of time, or was it just
10 her? In other words, I'm trying to figure out -- was
11 there anybody else during that period of time bringing
12 her tortillas, or was it just this one team member?

13 A. Well during that time on the video, it was
14 just the -- those that were given to her by this team
15 member.

16 Q. Okay.

17 A. That was thrown away.

18 Q. You said one occasion -- and I just want
19 to make sure I understand your testimony. One occasion
20 you said -- one time you talked to at her, she didn't
21 say anything?

22 A. The day when she -- when I asked her to
23 come to my office to talk about what was -- what was
24 told, what we saw on the video.

25 Q. And what you say on the video was her

1 throwing away, and you talked to her about that. And
2 she gave no explanation at that day?

3 A. Nothing was said.

4 Q. But then later on, when you called her
5 back and told her she was terminated, she told you that
6 I was just following my supervisor's instructions?

7 A. Correct.

8 Q. Okay. But she didn't say that the first
9 day?

10 A. No, sir.

11 Q. Okay. All right. Was she allowed to
12 clean out her locker?

13 A. I can't remember if -- if I had asked her
14 if she had anything in other locker that day. I can't
15 remember.

16 Q. Okay.

17 A. But normally, people are allowed to clean
18 out their locker, but I can't remember if we had that
19 conversation.

20 Q. Okay. Now -- and in reference to -- well
21 about the first statement on November the 4th that you
22 took from her -- it's your testimony that you did not,
23 after that, talk to her about signing a second
24 statement of any type? Of or some kind of a document?

25 A. No, sir.

1 Q. Relating to the incident whatsoever?

2 A. Just -- no. Just the statement that she
3 wrote.

4 Q. That night?

5 A. That night.

6 Mr. McDaniel: All right. That's all I
7 have.

8 Mr. Barefoot: Let me check my notes real
9 fast. I don't believe I have any questions.

10 Mr. McDaniel: Well in that case, I don't
11 have any more. Nothing further.

12 (Deponent excused.)

13 (Whereupon, at 2:48 p.m.,
14 the taking of the foregoing
15 deposition was concluded.)
16
17
18
19
20
21
22
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24
25

1 CERTIFICATE OF REPORTER

2 State of South Carolina

3 County of Florence

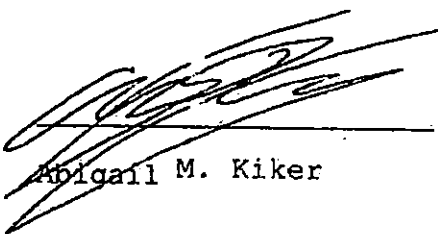
4 I, Abigail M. Kiker, Court Reporter and Notary
5 Public for the State of South Carolina, do hereby that
6 the deponent in the foregoing deposition was, by me,
7 sworn to tell the truth, the whole truth and nothing
8 but the truth; that said deposition transcript is a
9 stenographic report and was transcribed by
10 computer-aided transcription; that the foregoing
11 transcript contains a true record of the deposition of
12 said deponent.

13 I further certify that I am neither attorney nor
14 Counsel for, nor related to or employed by any of the
15 parties connected to the action, nor am I financially
16 interested in the action.

17 Witness my hand at Florence, South Carolina, this
18 12th day of May, 2023.

19
20
21
22 Notary Public for South Carolina

23 My Commission Expires: July 1, 2031
24
25


Abigail M. Kiker

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**DAVIS VS. RUIZ FOOD PRODUCTS, INC.
1923627**

Deponent: SHANDA BLACKWELL

Date: May 12, 2023

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State of South Carolina

Workers' Compensation Commission

1923627

Mary L. Davis
Employee, Claimant,

Vs.

Ruiz Food Products, Inc., Employer and Safety National
Casualty Corporation c/o/ Sedgwick Claims Management
Services Inc.,
Defendants

Deposition of: Shanda Blackwell

Date: Friday, May 12, 2023 ,

Location: 108 Cargill Way,
Hartsville, South Carolina 29550

Time: 2:52 a.m. - 3:37 p.m.

Court Reporter: Abigail Kiker

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in the
above-named court and pursuant to the South Carolina
Rules of Civil Procedure.

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A P P E A R A N C E S

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Also Present:
Jonathan Holder, Ruiz Foods
Latifah Morris, daughter of Mary Davis

I N D E X

WITNESS

Shanda Blackwell	
Examination by Mr. McDaniel	3
Examination by Mr. Barefoot	24
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E X H I B I T S

Pg/Ln	Exhibit	Description
(no exhibits proffered)		

** Uh-huh = Affirmative
Huh-uh = Negative

S T I P U L A T I O N S

It is stipulated between Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of a question, are reserved until the time of trial.

It is also stipulated between Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

THEREUPON,

Shanda Blackwell,

Being first duly sworn by the court reporter, as hereinafter certified, testified as follows:

E X A M I N A T I O N

By Mr. McDaniel:

Q. Ms. Blackwell, my name is Preston McDaniel. First of, would you mind giving me your full name and address?

A. My full name is Shanda Blackwell.

Q. Okay.

A. And you said address?

Q. Uh-huh.

A. 3007 Wild Turkey Drive, Effingham, South Carolina 29541.

Q. The big city. All right. Now I'm

1 representing Ms. Mary Davis as a result of her workers'
2 compensation claims. It's actually one claim -- a
3 claim and an aggravation -- but I want to know from you
4 is what was your position with Ruiz Foods in the fall
5 of 20--- how long have you been with Ruiz Foods, and
6 what was your position in the fall of 2022?

7 A. Okay. I'm -- I've been with the company
8 for over seven and a half years now.

9 Q. Okay.

10 A. And my position is workmans' comp
11 specialist.

12 Q. Okay. And has it been that the same time?

13 A. No. I've only been a workmans' comp
14 specialist for a year and a half.

15 Q. Year and a half. Before that, what was
16 your job?

17 A. I was the procurement body.

18 Q. Okay. And -- all right. Tell me, as a
19 workers' comp -- and how many people do you have in
20 workers' compensation?

21 A. I'm not able to give you all the exact
22 number..

23 Q. Okay.

24 A. Oh, you said in position?

25 Q. Yeah. How many people -- how many people

1 are -- let's say involved with workers' comp? It's you
2 and --

3 A. Oh. Myself and my manager, John.

4 Q. Manager -- and what's your manager, John,
5 what's his --

6 A. Holder.

7 Q. John Holder.

8 A. Jonathan Holder.

9 Q. As in, the gentleman sitting next to you?

10 A. Yes.

11 Q. Okay. All right. Now -- now what shift
12 do you work?

13 A. I work day shift.

14 Q. Okay. In November, what was your shift?
15 What was your schedule?

16 A. My normal work schedule is 7:30 to 4:30.

17 Q. 7:30 --

18 A. But it varies.

19 Q. A.m. to 4:30 p.m.? And is that Monday
20 through Friday?

21 A. Correct.

22 Q. Okay. All right. And -- and so you would
23 not have been there the night that the incident
24 occurred of November the 11th?

25 A. No, I would not.

1 Q. Now as part of your deposition, I
2 requested that you bring all the files that you had
3 access to and have concerning the workers' comp
4 incident and Ms. Davis. Did you bring those with you?

5 A. Yes.

6 Q. Now is this the originals?

7 A. The originals?

8 Q. Is that the originals?

9 A. With those files, that's what we have on
10 file. For original documents, any original documents
11 that she provides, she keeps the original. We only
12 make a copy.

13 Q. Okay. What I mean is is that -- that's
14 not a copy? That's the originals --

15 A. Correct.

16 Q. That's your original file?

17 A. Correct.

18 Q. Okay. Ms. Blackwell, I looked through
19 that file that you produced, and I did not see anything
20 in reference to -- outside the records from Dr. Rodney
21 Alan in February, in your medical records, there on
22 top. And it looks like you do your medical records
23 like I do mine, and that is latest on top in
24 chronological order; is that that pretty much correct?

25 A. That's correct.

1 Q. All right. And -- but outside of that, I
2 don't see any reference to the event -- any
3 discussions, any documentation concerning the event
4 that happened on November the 11th. Do you have a file
5 on any conversations that you had or -- in reference to
6 that? I saw some termination documentation where she
7 was terminated, and the reason that she was terminated
8 that Mr. Holder viewed in the video. But I don't --
9 correct me if I'm -- I mean, correct me if I'm wrong, I
10 did not see anything. I look -- I looked through it
11 quickly 'cause I was trying to no take up too much more
12 time. Is there anything in there?

13 A. No, it's not.

14 Q. Okay. Do you have it?

15 A. No, I do not.

16 Q. Okay. All right. Now I -- the other lady
17 produced to me a copy of an e-mail from you. Where you
18 do you keep those? E-mails like that?

19 A. So this e-mail was the formal document
20 that we sent to H.R.

21 Q. Okay. All right. But -- all right. So I
22 know you said that it references a meeting that you had
23 with -- I believe y'all call him Vinnie?

24 A. Correct.

25 Q. Okay. And you -- can I see the back of

1 that just a minute? All right. And that Mary had come
2 in and talked to you?

3 A. Correct.

4 Q. With safety regarding an incident that
5 occurred last week?

6 A. Correct.

7 Q. Okay. And before we go any further, let
8 me ask you this. Before this e-mail of November 16th,
9 had you -- were you made aware of the incident that
10 occurred on November the 4th?

11 A. I was not.

12 Q. Okay. So even if Ms. Davis was reporting
13 like, what are y'all doing about my workers' comp
14 claim, and she reported that night, walked off, as a
15 result. My neck and back were hurting real bad. That
16 was not reported to you?

17 A. That was not reported to me.

18 Q. Okay. All right. Try to help me
19 understand, okay? Ms. Davis reports the incident.
20 H.R. knows about it. It's a work-related incident,
21 whether or not it's -- whether or not it's compensable
22 or not, she's asking for medical care. Who's -- in --
23 in management, just tell me how it could happen that
24 that would not be reported to workers' comp?
25 Especially since she was on light-duty work

1 restrictions from a previous work-related injury?

2 A. Can you repeat that question?

3 Q. Yeah, I'll be glad to. I'm -- I'm trying
4 to figure out how a work-related incident occurred on
5 November the 4th, in which she reports that her back
6 and neck are hurting, and after that she was requesting
7 medical care, and that was not reported to you as one
8 of the workers' comp coordinators? Who's
9 responsibility would it be?

10 A. The person that she reported it to.

11 Q. Okay. All right. So that would be -- if
12 that night she says she -- superintendent knew it, her
13 supervisor knew it, and H.R. knew it, then it would be
14 one of their responsibilities to let you know about the
15 event?

16 A. Correct.

17 Q. So am I -- is it my understanding that
18 your first knowledge of the event and the incident was
19 on November the 16th?

20 A. That's correct.

21 Q. Okay. Now the second sentence of that
22 e-mail says that Vinnie and I spoke about Ms. Davis --
23 it says T.M. -- in the south safety office. Do you
24 remember that conversation?

25 A. That's correct.

1 Q. Okay. Tim stated that her doctor told her
2 that she would need to ask us -- assuming H.R. or
3 safety -- about sending her to get an M.R.I. done from
4 when she was assaulted last week by another team
5 member, okay?

6 A. Uh-huh.

7 Q. So she was -- she was definitely wanting
8 medical care at that time as a result of the assault,
9 whatever you want to call, that occurred that night,
10 right?

11 A. Correct.

12 Q. Okay. All right. And you're responsible
13 for workers' comp?

14 A. Correct.

15 Q. Okay. Now then it states that Tim stated
16 she had given the paperwork from her doctor to safety
17 tech on yesterday, and of course, that's referring to
18 Dr. Chokshi's, I guess, continued work restriction
19 notices. Who's -- who would have been the safety tech
20 yesterday?

21 A. I'm not certain which one she actually --

22 Q. Can you just give me an idea? I mean, I
23 don't know how many -- how many are there? Safety
24 tech?

25 A. We have two.

1 Q. Two?

2 A. One on day shift and one on night shift.

3 Q. Okay. And who was the one on night shift?

4 A. Vinnie.

5 Q. Vinnie?

6 A. Correct.

7 Q. So the person we're talking about -- okay.
8 So if she says -- can we assume that she gave it to the
9 safety tech yesterday, can we assume that was Vinnie,
10 or -- well she may not, I guess. It could have been
11 the day shift, she brought it in.

12 A. That's -- that's correct. We don't know
13 that.

14 Q. Okay. And she requested to speak with the
15 safety manager and/or H.R., Human Resources. Why --
16 why -- okay. Tell me your recollection of that
17 conversation. Let's just do it that way.

18 A. My recollection of that conversation, she
19 requested to speak with -- at that time she requested
20 to speak with someone of safety. And so -- and at that
21 time, Vinnie and I spoke with her, and then at that
22 point in time, she just stated that she had been
23 assaulted. That was the first statement that she made,
24 that she had been assaulted.

25 Q. Okay.

1 A. As soon as she made the statement that she
2 was assaulted, according to our process and protocol,
3 we got H.R. involved.

4 Q. Okay.

5 A. At that point.

6 Q. Why is that?

7 A. Because the word she used was assault, and
8 that's not the something that falls under the safety
9 department.

10 Q. Okay. And if it proved out to be as--- or
11 what do y'all do -- or do you know what the company
12 does in reference to reporting assaults?

13 A. I do not.

14 Q. Okay. Was there discussion during that
15 conversation concerning contacting the police?

16 A. I don't know that information.

17 Q. You don't know that information?

18 A. I -- I don't recall that.

19 Q. Oh, you don't recall it. Okay. That's
20 fine. We informed her that safety management was out
21 of the office, not returning until next week, and H.L.
22 was not available today at this time. Okay. So why
23 would she want to talk to the safety manager and the
24 Human Resources? Cause you're taking with her and
25 Vinnie, right?

1 A. Correct.

2 Q. Okay. So what was she going to talk to
3 them about?

4 A. She requested to speak with the H.R.
5 manager and/or H R.

6 Q. Okay. About the assault?

7 A. I assume about the assault. I assume. I
8 can't answer that question.

9 Q. Okay. Okay. You remember the
10 conversation. You reported to H.R. that you had the
11 conversation, and she -- during that conversation, she
12 reported to you the assault, but you don't remember --
13 you recall that she wanted to speak to H.R. and safety,
14 but what about? You don't remember what about?

15 A. I don't recall what she said she wanted to
16 speak to them about.

17 Q. Now there's no question at the time she
18 was requesting medical care as a result of the assault,
19 correct?

20 A. Can you repeat that?

21 Q. At the time of this conversation that you
22 had with Vinnie on November the 6th, she was requesting
23 medical care as a result of the assault?

24 A. I don't recall of her requesting medical.

25 Q. Well that's what it says. I mean, Tim

1 stated that her doctor told her that she would need to
2 ask us, assuming H.R. and safety in parenthesis, about
3 sending her to get an M.R.I. done from when she was
4 assaulted last week by another T.M. -- by another team
5 member. Does that perk your recollection?

6 A. Correct.

7 Q. Okay. So she was asking to be seen -- her
8 doctor told her you would have to talk to the company
9 about getting an H.R. -- I mean, getting an M.R.I.
10 from what had happened last week in the assault,
11 correct?

12 A. Correct.

13 Q. Okay. All right. Now so she's reported a
14 potential workers' compensation claim or, you know,
15 aggravation of the pre-existing condition, which is
16 what we -- what we're treating this as. But in other
17 words, did -- what did you do about medical?

18 A. At that point in time, she requested to
19 speak with the safety manager or H.R., so at that point
20 in time, I said that I would make sure that I followed
21 up with them.

22 Q. Okay. What happens -- okay. You said
23 H.R. and the different people are involved. They're
24 supposed to report workers' compensation claims or
25 incidents to you -- or potential workers' compensation

1 claims or incidents to you, correct?

2 A. Correct.

3 Q. All right. Then what do you do when one's
4 reported?

5 A. At that point I follow our process and
6 protocol in place.

7 Q. Okay. And what is -- okay. Based on this
8 report, what's protocol?

9 A. Based upon the protocol is for to us
10 follow up.

11 Q. Okay. It says that Ms. Davis then
12 proceeded to leave the safety office and made the
13 statement, I guess I'm going to have to wait another
14 day to get an answer. And I -- was she -- in other
15 words, there's no question she was wanting workers--- I
16 mean, she was wanting medical, right? No question?

17 A. Correct.

18 Q. At you then make the statement in here,
19 can we please follow up with the T.M. tonight because
20 this matter is going in a direction we need to try to
21 stay ahead of. What does that mean?

22 A. That means that we want to make sure that
23 we're following up with her and making sure that we're
24 addressing it.

25 Q. Okay. All right. I saw in your records

1 -- you're got all the orders from Dr. Rodney Alan,
2 correct?

3 A. Correct.

4 Q. And you have his limited duty work
5 statement. That's in your records too; do you remember
6 that?

7 A. Correct.

8 Q. Okay. And you remember in his statement
9 back in February of last year, he said that she will
10 need -- because of the continued problems in her hip
11 and knee are not bad enough for a total knee
12 replacement yet, so she's going to need injections on a
13 regular basis in both her knee and her hip. Do you
14 remember that?

15 A. Correct.

16 Q. And I see in there that you have a -- the
17 medical records from Dr. Rodney Alan in February of
18 2023, correct?

19 A. Correct.

20 Q. Did you order those records, or how did
21 you get them -- come by them?

22 A. They were sent to us.

23 Q. I'm sorry?

24 A. They was provided to us.

25 Q. By who?

1 A. By the doctor.

2 Q. Okay. By the doctor. Okay. All right.

3 Now did the doc--- when the doctor -- when the doctor's
4 office requested authorization to treat, in reference
5 to arised claim, who do they contact? I mean, I see
6 constant referrals, and there's referrals in there that
7 you have copies of. Who do they contact for
8 authorization?

9 A. They contact our third-party company.

10 Q. Okay. Sedgwick?

11 A. Correct.

12 Q. Okay. All right. Are you aware of the
13 request by Dr. Alan's office to -- for authorization to
14 perform that injection for the further treatment of
15 her?

16 A. Yes.

17 Q. Do you know if that was the authorized?

18 A. I do not know that.

19 Q. Have you had any conversation with them as
20 to why it would not be authorized?

21 A. I have not.

22 Q. So am I correct that I -- I think I'm
23 correct that the third-party made you aware or provided
24 those medical records where he had done another
25 injection, but they did not tell you if or why they had

1 -- if they had or had not authorized that procedure?

2 A. That's correct.

3 Q. And they -- if they did not authorize it,
4 they gave you no reason why they had not authorized it;
5 is that correct?

6 A. That's correct.

7 Q. All right. Do you know that she saw Dr.
8 -- that Dr. Chokshi was also requesting authorization
9 to see her?

10 A. Correct.

11 Q. Okay. All right. And that they had seen
12 her?

13 A. I'm not aware of that.

14 Q. Okay. All right. And did you request --
15 did they request an authorization for an M.R.I.?

16 A. I'm not aware of that. I do not.

17 Q. Okay. And now here again, clearly in this
18 e-mail on November 16th, stated that her doctor told
19 her that she would need to ask us about sending her to
20 get an M.R.I. done when she was assaulted last week by
21 another T.M. So there's no question that time, her
22 doctor, Dr. Chokshi, that was seeing for her neck was
23 asking for authorization -- or she told her that she
24 would have to get authorization from y'all, basically,
25 correct?

1 A. Correct.

2 Q. Did you contact them? Did -- do you --
3 what records do you have about your contact, other than
4 them sending you medical records? Where do you keep
5 your contacts with Sedgwick?

6 A. I have that information on an e-mail.

7 Q. On an e-mail?

8 A. Correct.

9 Q. Do you have all that with you today?

10 A. I --

11 Q. No?

12 A. No.

13 Q. Okay.

14 Mr. McDaniel: Walt, can we just get that?

15 Mr. Barefoot: Yeah. Now there's might be
16 some that's privileged. I'd guess a lot of it's going
17 to be privileged, but yes. I'll -- I'll gather it and
18 look at it, and we can take -- I'll send you what I
19 think is not privileged, and what you disagree with, we
20 can take it to the commission.

21 Mr. McDaniel: Okay. All right.

22 By Mr. McDaniel:

23 Q. But now let's make clear. What we're
24 talking about here is in -- part of claims
25 administration. We're referring to e-mails between you

1 and Sedgwick, not anything to do with your attorney,
2 correct?

3 A. That's correct.

4 Q. Okay. All right. All right. And -- and
5 the way you communicate with Sedgwick is by e-mails?

6 A. That's correct.

7 Q. Okay. And you do the -- in every claim --
8 under claims administration of any claims to y'all have
9 with the company?

10 A.. Correct.

11 Q. Okay. And they -- they provide you with
12 the medical records as we get -- that's where you get
13 your medical records?

14 A. Correct.

15 Q. Let me see. Look through the file -- you
16 probably know right of the top of your head -- do you
17 work with a regular adjustor in reference to the
18 claims, or are there multiple ones?

19 A. There are multiple ones.

20 Q. Okay. Would you mind seeing if there is
21 like in -- I'm concerned with since November, what
22 adjustor you were working with or communicating with on
23 this claim? Off the record? Back on the record. What
24 -- were we able to determine who the adjustor is
25 assigned to this claim?

1 A. No, we were not.

2 Q. Okay. Is -- is that information that you
3 have back at the plant?

4 A. Yes.

5 Q. Could you provide that to your attorney?

6 Mr. McDaniel: Walt, get me that? Just
7 who the adjustor is?

8 Mr. Barefoot: Sure.

9 By Mr. McDaniel:

10 Q. All right. After -- after November, have
11 you had other discussions with Ms. Davis requesting
12 medical care?

13 A. I have not.

14 Q. Okay. So as far as you know, why would
15 you be being copied on e-mails in February in reference
16 to her termination?

17 A. To keep me informed.

18 Q. The meeting on November the 17th --
19 November 16th -- was in reference to the assault that
20 occurred. That's why she wanted -- or that's why you
21 got with Vinnie, had a meeting regarding the incident
22 last week. Did you take any statements in reference to
23 that?

24 A. I did not.

25 Q. Okay. Did you make any determination

1 whether or not it was work related?

2 A. I did not.

3 Q. Okay. Have you spoken to anybody about
4 that -- this? I mean, this is an incident that
5 occurred at work, in which she was injured. She was
6 requesting medical care. Is there anything that you
7 have been told that would -- that that would not be a
8 work-related incident?

9 A. I have not.

10 Q. Okay. Okay. I think I asked this -- so
11 is it your testimony that since this was reported to
12 H.R. -- well actually Vinnie was on -- he's the
13 second-shift safety guy, isn't he?

14 A. Correct.

15 Q. So Vinnie was aware of this on November
16 the 4th?

17 A. I can't answer that question.

18 Q. To the best of your recollection, was
19 Vinnie aware of it when you had the meeting?

20 A. I don't know the answer to that question.

21 Q. When you say you don't know the answer --

22 A. I don't know whether Vinnie was aware of
23 that or not.

24 Q. You don't remember?

25 A. I don't remember.

1 Q. But you do know that she had a
2 conversation with -- Mary requested -- concerning the
3 incident -- and during that conversation she definitely
4 requested medical care as a result of the incident,
5 correct?

6 A. Yes.

7 Q. Okay. All right. And you have -- and it
8 would be the responsibility of Opal or whoever in H.R.
9 or whoever she reported to, and if Opal and Ms. Mary
10 Davis say that included Vinnie, then it would be their
11 responsibility to process it in reference to workers'
12 comp; is that correct?

13 A. That's correct.

14 Q. In the job which Ms. Davis was in at the
15 time of the incident -- but also all the way through
16 the time she left employment with the company -- she
17 was in a position -- and y'all provided a chair, and
18 you accommodated her restrictions; is that correct?

19 A. That's correct.

20 Q. Okay. And -- but you don't normally have
21 -- are you familiar with the line? I mean, as far as
22 what they -- the various jobs they're doing, the line?

23 A. Uh-huh.

24 Q. Okay. That is a job that there's not
25 usually one person assigned to do just that? That task

1 of throwing out bad bread? You know, they refer to it
2 -- even though it's tortillas' -- y'all refer to it, I
3 think, as bread?

4 A. Uh-huh.

5 Q. Is that right?

6 A. That's right.

7 Q. And so there's not one person that
8 normally just the throws out bad bread? They had other
9 responsibilities. But she was assigned to do just that
10 task because of her light-duty status?

11 A. That's correct.

12 Q. Okay. Now do you know what constitutes
13 bad bread?

14 A. I do not know the answer to that.

15 Q. Okay. So you don't know -- I mean, I --
16 torn -- torn, you know, bubbled up and all that, that
17 would be thrown away. But you don't know whether or
18 not if the bread gets cold that they're instructed to
19 throw to away?

20 A. That's correct. I don't know that answer.

21 Q. Okay. All right.

22 Mr. McDaniel: That's all I have, Walt.

23 Mr. Barefoot: Just one, maybe a couple
24 quick questions.

25 E X A M I N A T I O N

1 By Mr. Barefoot:

2 Q. So it looks like this e-mail is dated
3 November 16th, is that correct?

4 A. That's correct.

5 Q. Okay. And is that when you met with her?

6 A. That is correct.

7 Q. Did she tell you that she had seen Dr.
8 Chokshi only two days prior?

9 A. She did not.

10 Q. Do you have a report from Dr. Chokshi
11 dated November 14th, 2022?

12 A. It's right here.

13 Q. At the end of that report, did he order an
14 M.R.I?

15 Mr. McDaniel: Let's stipulate here.

16 By Mr. Barefoot:

17 Q. Did he, in fact, find her at maximum
18 medical improvement? I think he -- I'm sorry.

19 A. He did not state that he ordered an M.R.I.
20 He did state that she had reached M.M.I.

21 Q. Do you know why she didn't tell you she
22 had seen Dr. Chokshi two days before that meeting with
23 you?

24 A. I don't know why she did not state that to
25 me.

1 Q. Okay.

2 Mr. Barefoot: Nothing else from us at
3 this time.

4 FURTHER EXAMINATION

5 By Mr. McDaniel:

6 Q. Well again, Ms. Shanda, according to your
7 e-mail records, she stated that her doctor told her
8 that she would need to ask us about sending her to get
9 an M.R.I. done from when she was assaulted last week by
10 another T.M., right?

11 A. Correct.

12 Q. That's what you recorded. So obviously
13 she had seen him between November the 4th and November
14 the 16th. Wouldn't that be correct? Since her doctor
15 told her that -- right?

16 A. Correct.

17 Q. Okay. All right. And Dr. Chokshi was
18 seeing her for the -- at that time, he had not been
19 authorized to see her for anything for November 4th,
20 correct? I mean, you said you had not authorized him,
21 right?

22 A. We do not authorize. Sedgwick authorizes.

23 Q. Sedgwick would. But in other words -- and
24 -- but an employee, if a doctor tells them something
25 and they're still at work, do they normally come in and

1 talk to y'all about the doctor told me I needed this?
2 Do y'all contact Sedgwick? Is that a normal course of
3 action?

4 A. Yes, they normally talk to us.

5 Q. Okay.

6 A. And we contact Sedgwick.

7 Q. Okay. And so really, when she came in and
8 talked to y'all, I know she was talking about other
9 things, but when a doctor told her that you would have
10 to talk to your employer about getting an M.R.I. of her
11 neck from last week's assault, that she was doing what
12 she should do, which was tell y'all, and then y'all
13 contact Sedgwick, correct?

14 A. Correct.

15 Mr. McDaniel: Okay. Nothing further.

16 FURTHER EXAMINATION

17 By Mr. Barefoot:

18 Q. Did you have an order for the M.R.I.?

19 A. We did not.

20 Q. Okay.

21 (Deponent excused.)

22 (Whereupon, at 3:37 p.m.,

23 the taking of the foregoing

24 deposition was concluded.)

25

1 CERTIFICATE OF REPORTER

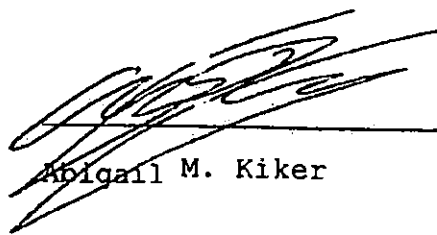
2 State of South Carolina

3 County of Florence

4 I, Abigail M. Kiker, Court Reporter and Notary
5 Public for the State of South Carolina, do hereby that
6 the deponent in the foregoing deposition was, by me,
7 sworn to tell the truth, the whole truth and nothing
8 but the truth; that said deposition transcript is a
9 stenographic report and was transcribed by
10 computer-aided transcription; that the foregoing
11 transcript contains a true record of the deposition of
12 said deponent.

13 I further certify that I am neither attorney nor
14 Counsel for, nor related to or employed by any of the
15 parties connected to the action, nor am I financially
16 interested in the action.

17 Witness my hand at Florence, South Carolina, this
18 12th day of May, 2023.

19
20
21 
22 Notary Public for South Carolina

23 My Commission Expires: July 1, 2031
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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

MARY DAVIS,)
Employee-Claimant,)
vs.) MARY DAVIS
RUIZ FOOD PRODUCTS, INC,) SEPTEMBER 27, 2023
Employer) WCC#1923627 & 2223041
and)
SAFETY NATIONAL CASUALTY)
CORPORATION,)
Carrier,)
Defendants.)
-----)

Hearing Re: MARY DAVIS, reported by Kathryn Bostrom,
Court Reporter and Notary Public in and for the State of
South Carolina; pursuant to Rule 30 of the South Carolina
Rules of Civil Procedure; said hearing was taken before the
Honorable Aisha Taylor at the Hartsville City Hall Council
Chambers, 100 East Carolina Avenue, Hartsville, South
Carolina, Wednesday, the 27th day of September, 2023,
commencing at the hour of 12:11 p.m.

APPEARANCES

Representing the Claimant

Preston McDaniel, Esquire

McDaniel Law Firm

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Columbia, South Carolina 29201

Representing the Employer/Carrier:

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McAngus Goudelock and Courie

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Florence, South Carolina 29501

Also Present:

Jon Holder

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* * * * *

EXHIBIT INDEX

- Exhibit NO. 1 - Depo of Ms. Opal Jones
- Exhibit No. 2 - Depo of Ms. Shanda Blackwell

* * * * *

Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- [ph] Denotes phonetically written
- [sic] Written as said

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Today is Wednesday, September 27, 2023.

We are here in workers' compensation file numbers 1923627 and 2223041. These are the claims of Ms. Mary Davis, who is present here today and represented by Attorney Preston McDaniel. The employer is Ruiz Foods and the carrier is Safety National Casualty Corporation, care of Sedgewick. Both the employer and carrier are represented today by Attorney Walter Barefoot. We are here today on the claimant's Form 50 request for hearing. We did have a pre-hearing conference in the matter where we discussed some procedural issues. I will allow the parties to put detailed position statements and any objections on the record. However, prior to doing so, first are there any objections to this jurisdiction or venue for this claim? Mr. McDaniel?

MR. MCDANIEL: No, Commissioner.

THE COURT: All right. Mr. Barefoot?

MR. BAREFOOT: Not from defendants.

THE COURT: All right, thank you. With regard to the APA submissions, Mr. McDaniel, do you have any objections to any items in the defendants' APAs?

MR. MCDANIEL: Yes, Commissioner. I think first by

1 agreement, we agreed that tab 21 were records .
2 that were accidentally submitted unrelated to Ms.
3 Davis. And I think those will be stricken by
4 agreement. I would object to the -- I want to
5 limit the objections so I'm not going to object
6 to the medical authorizations or the
7 correspondence to Rodney Allen. As we discussed
8 off the record, we do not disagree that within
9 the 14-day period, they wrote a letter to the
10 doctor but it took until December for him to
11 actually see the claimant. And we have put in
12 records from McLeod Occupational Medicine that
13 clarify how they were requesting referrals to Dr.
14 Allen for the knee and hip and also Dr. Edwards
15 or Dr. Choksi for -- I think Dr. Edwards, you'll
16 find specifically through the records we've
17 submitted was where she was to be referred for
18 the back. And she ultimately see Dr. Choksi
19 after Dr. Allen. She had previously seen Dr.
20 Edwards. All right, now, so I would object --
21 I'm going to object to number 16. Well, I won't
22 object to Cora Physical Therapy because Dr. Allen
23 relied on that in stating his work restrictions,
24 which is part of the issue. I'm going to object
25 to number 18, the correspondence to Dr. Robert

1 DaSilva. You already determined that issued.
2 That's in reference to -- and the correspondence
3 from my -- my office under number 19 because
4 those were in reference to their efforts to have
5 her seen in Columbia and you ruled that the
6 respondent had it. So I'm going to object to
7 those.

8 MR. BAREFOOT: Your Honor, if it's -- I can consent to
9 the removal of 19 and 20, that's APA pages 144
10 and 145 from the WCC# 9123627.

11 THE COURT: Okay. Those are 18 and 19.

12 MR. MCDANIEL: And I'm going to object to under tab
13 number 24, the records from Ruiz Foods. Those
14 are all in reference to 2019, 2020, and are not
15 unrelated to any issue of the case except that
16 she was terminated for cause and they're not
17 related to that because the stated reason for her
18 termination in every document is that she was
19 throwing away company product, or property, which
20 was, in fact, the bread. The bread they made.
21 So I'm going to object to all that. It's nothing
22 but -- it involves personnel records that are
23 totally unrelated to the issue before you today.

24 THE COURT: Okay. All right, thank you. Mr.

25 Barefoot, do you want to respond to the

1 objections of the claimant first?

2 MR. BAREFOOT: I do.

3 THE COURT: Okay.

4 MR. BAREFOOT: Your Honor, in regards to the -- tab
5 number 24. Those are all performance write ups
6 after the date of injury showing that the
7 claimant was disciplined and not terminated. In
8 the Pollock case that we discussed off the
9 record, the Courts indicated that the Commission
10 should be looking to see if an employer was
11 looking for a reason to fire a claimant after a
12 workers' compensation claim. These established
13 that -- they're business records and they
14 establish that had Ruiz wanted a reason quote,
15 unquote to fire the claimant, they would have had
16 one long before they finally had enough and had
17 to fire her.

18 THE COURT: Okay.

19 MR. BAREFOOT: That's the purpose of them.

20 THE COURT: All right, thank you. Any other
21 responses?

22 MR. BAREFOOT: I believe that's it, Your Honor.

23 THE COURT: Okay. All right, thank you. With regard
24 to number 24, I am going to allow it into the
25 record over the claimant's objection but it is

1 preserved for the record. All right, Mr.

2 Barefoot, any objections?

3 MR. BAREFOOT: Yes, Your Honor. We had objection to
4 the claimant's submission pages 72 to 74, record
5 decision for the Department of Employment and
6 Workforce on the basis that we believe it's
7 irrelevant. As we discussed, the case law, to be
8 specific Shelton v. Oscar Meyer Foods case. That
9 indicates that that's a different standard and it
10 does not involve collateral estoppel. We believe
11 it's not relevant.

12 THE COURT: Okay. And, Mr. McDaniel, do you want to
13 respond to that objection?

14 MR. MCDANIEL: Commissioner, as we pointed out in pre-
15 hearing conference, that opinion says that it's
16 not for collateral estoppel, however, it states
17 in that opinion that -- in the actual home,
18 therefore, because the application of the
19 collateral estoppel will frustrate the person
20 Ese, E-s-e, finding or fact made during the E-S-E
21 hearing will not be given preclusive of fact in
22 any subsequent litigation between the employer
23 and employee. I think that the -- you will give
24 it such weight as you deem appropriate in
25 reference to the finding that she was not

1 terminated for cause.

2 THE COURT: Okay. With regard to that objection, I
3 will allow APA number nine into the record to be
4 reviewed along with the relevant case law and as
5 Mr. McDaniel indicated, to be assigned the weight
6 appropriate given the review and analysis. All
7 right, any other objections?

8 MR. BAREFOOT: Yes, Your Honor. Pages 55 and 65 and
9 66. One's an email from the claimant's
10 attorney's office to my legal assistant and the
11 other's a letter from the claimant's attorney to
12 me. I believe these are self-serving. I don't
13 believe they provide any relevance whatsoever in
14 regards to the case.

15 THE COURT: Okay. Mr. McDaniel?

16 MR. MCDANIEL: Fifty-five and 66, right?

17 MR. BAREFOOT: Sixty-seven.

18 MR. MCDANIEL: My hearing aids don't work so well.

19 MR. BAREFOOT: Fifty-five and 65 and 66.

20 MR. MCDANIEL: Okay, I got you.

21 MR. BAREFOOT: I apologize.

22 MR. MCDANIEL: That's all right. Sixty-five and 66.

23 All right, Commissioner, as we discussed off --
24 off the record, the purpose of those emails were
25 simply to establish -- they're part of our

1 business records at my office and they're simply
2 to establish that we made multiple requests --
3 these, of which, are in writing requesting that
4 Ms. Davis be sent back to Dr. Allen so that he
5 can provide the treatment he indicated would be
6 necessary, which was the injections, that he had
7 previously said she would need several times a
8 year in both the knee and the hip. And we have
9 made multiple requests for those. And those were
10 not provided.

11 THE COURT: Okay. All right, I will -- I do hold that
12 they are relevant to the issue of claimant's
13 request to additional medical treatment. So I
14 will allow them in for that limited purpose. All
15 right, any other objections? Mr. Barefoot?

16 MR. BAREFOOT: If I can beg your indulgence.

17 THE COURT: Sure.

18 MR. BAREFOOT: Oh, I believe that the attorney -- Mr.
19 McDaniel is handing up the deposition of Ms.
20 Blackwell. We object to page 18 hearsay.

21 THE COURT: Okay.

22 MR. BAREFOOT: We also have the same objection in
23 regards to page 53 of his evidentiary submission.
24 It's an email which indicates what the claimant
25 told them the doctor said. So these two

1 objections kind of go together. They're the same
2 thing in regards to hearsay from the claimant
3 about what a doctor supposedly said.

4 THE COURT: Okay. With regard to the actual
5 documents, the transcript and the actual email,
6 as a whole, I will allow them into the record and
7 I will review and analyze whether or not those
8 statements are, in fact, hearsay and will
9 indicate as such in my order instructions.

10 MR. BAREFOOT: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. MCDANIEL: Commissioner, would you allow me to --
13 since this objection was just made today, would
14 you allow me to submit a brief memorandum in
15 reference to whether or not those statements by
16 the claimant to company employees are admissible?
17 Are you --

18 THE COURT: I don't think it's necessary unless you
19 just want to do the extra work.

20 MR. MCDANIEL: Okay. All right.

21 THE COURT: But it will be short and succinct when I -
22 - I'll review it. It will be short and succinct.

23 MR. MCDANIEL: An old man appreciates not extra work.

24 THE COURT: Okay. All right, without further
25 objection, the Commission file becomes a part of

1 the record with the exception of self-serving
2 declarations and unstipulated medical reports.
3 Mr. McDaniel, your position statement for the
4 record, please.

5 MR. MCDANIEL: Commissioner, we're here today asking
6 for as we did back when Commissioner Wilson asked
7 that we file a separate Form 50 in reference to
8 the November 4th incident since there was some
9 question or the defendants denying or contesting
10 whether or not that occurred. And so we're here
11 today seeking the same thing that we sought at
12 that time, which is Dr. Allen, as previously
13 stated, has stated in his medical opinion that
14 Ms. Davis, due to the condition of her knee and
15 her hip as a result of a work related accident,
16 she will need ongoing medical treatment, which
17 will have the tendency to reduce the degree of
18 disability, in the form of injections two/three
19 times a year. Three times a year in the hip of
20 cortisone injections. Two -- approximately, two
21 times a year, I think he said, gel injections in
22 the need. And that -- and it's also in that same
23 report or in the reports we submitted that,
24 ultimately, it's his opinion she'll need a total
25 knee replacement. So she needs -- she needs that

1 medical care. We had, as noted previously, we
2 had requested those and, as a matter of fact, on
3 page 55 -- excuse me 52 of the claimant's APA
4 submission under tab 5, is an email from a lady
5 at McLeod Occupational Health -- excuse me,
6 McLeod Health wherein Dr. Allen works, from his
7 office that after speaking with workers'
8 compensation department, authorization was not
9 obtained. Again, confirming we had made multiple
10 requests. And so we simply want an order
11 directing that she be sent back to Dr. Allen to
12 determine what medical care she needs now and
13 also in an order that they are to provide that
14 cause related medical care that Dr. Allen has
15 said she will need on a continuing basis in the
16 form of the injections. And, of course, she
17 will, obviously, need to be able to be seen by
18 him for those -- that. Now, in reference to the
19 neck and back, as we -- we talked off the record,
20 in 2019 and ever since that time, she's been
21 treated for the neck, low back, left hip, and
22 left knee. She's been under ever increasing work
23 restrictions. We will try to make this as
24 limited as possible but we will go into those
25 work restrictions. Then in November, about the

1 time she was about to be released for her low
2 back, which Dr. Choksi was authorized to treat
3 her low back, okay. And he on November 11th, saw
4 her and ordered an FCE but the accident happened
5 before and then -- so we're at -- so he has
6 stated his opinion and that's found at page 10
7 that a functional capacity evaluation is
8 premature and it is their opinion, stated to a
9 reasonable degree of medical certainty that it is
10 premature until after it is determined that she
11 has reached maximum medical improvement from her
12 neck pain stemming from the work related incident
13 wherein, according to our notes, she was
14 assaulted on the job and shook by a co-worker.
15 So we're asking for her to be sent back to Dr.
16 Choksi. And he had indicated in the earlier
17 report, his office did, that she needed an MRI of
18 the neck. So we want her sent back to Dr. Choksi
19 for the MRI and further evaluation and treatment
20 as he deems necessary, if any, on the neck.

21 THE COURT: Okay. Thank you.

22 MR. MCDANIEL: And we're requesting temporary total
23 from the date she was terminated while on light
24 duty. You will find Dr. Choksi on page nine had
25 stated the opinions, which has remained

1 throughout. He refers to those in November that
2 she is to be on sedentary work only. She was
3 placed in an accommodated sedentary work only job
4 at -- at the time -- in November when the
5 accident occurred and she continued in that until
6 termination. So we would request temporary total
7 based on -- we believe that the -- I personally
8 believe we cannot wait for a case, and hope this
9 isn't it, to take that case back up that was a
10 break in the chain of fault and it posed fault
11 into a workers' compensation placed by the
12 Supreme Court. That being the case as referred
13 to in -- in the pre-hearing brief. And I'm sure
14 which -- which the defendants are relying upon in
15 reference to the -- it's Pollock versus S. Wine &
16 Spirits. I believe that is the total
17 contradiction to all the previous Supreme Court
18 decisions and I believe it is limited. I believe
19 the Supreme Court in the case said it was to be
20 very limited and as the Supreme Court noted, the
21 Commission is to be ever on vigilant alert to --
22 for the employer to seek a termination for cause
23 in -- actually, where they're terminating for a
24 work related injury. So we're asking for
25 temporary total from that date forward. And I

1 guess you'll have to make a determination on
2 whether or not she was terminated for just cause.

3 THE COURT: All right, thank you. Mr. Barefoot?

4 MR. BAREFOOT: Thank you, Your Honor. The defendants
5 believe it has provided appropriate medical
6 treatment in regards to this claim. When I say
7 this claim, I specifically refer to the November
8 16, 2019, admitted injury. We complied with a
9 prior order which instructed the defendants to
10 send -- to authorize a visit with Dr. Allen.
11 That was done, I believe, with eight days after
12 the order. As noted in the order, though, the
13 decision as to when to set the appointment for is
14 up to Dr. Allen. So we had no control over that.
15 We fully complied with the order. In regards to
16 the temporary total disability issue, the
17 defendants have been providing suitable work for
18 the claimant for quite a while. She had
19 performance issues going back to, at least, 2020.
20 The defendants did not terminate her. As the
21 claimants are incorrectly noting, Pollock
22 indicates that the Commission needs to make sure
23 that we're not looking for an employer who is
24 looking for a reason to fire a claimant when they
25 really want to fire them for a workers' comp

1 claim. Well, clearly, if Ruiz had wanted to do
2 that, they would have done it a lot sooner than
3 February 2023. Once the information was received
4 that the claimant was destroying company product,
5 an investigation was done. We submitted the
6 video showing her simply shoving stacks of
7 tortilla that weren't even inspected into a trash
8 can. She did it at least five times on -- on the
9 date in question. Significant violation of
10 company policy. Something Ruiz takes very
11 seriously. That was the reason she was
12 terminated. She was terminated for cause.
13 Pursuant to Pollock as well 42-1-120, we believe
14 she's not entitled to temporary disability
15 benefits. Alternatively, if, for some reason,
16 the Commission decides that the Department of
17 Employment and Workforce case does provide
18 collateral estoppel, we believe the claimant's
19 collaterally estoppel from getting temporary
20 disability benefits. In regards to the alleged
21 November 4, 2022, the claimant reported that
22 someone assaulted her at work and that it caused
23 her problems. She saw the doctor eight days
24 later. No mention of it whatsoever. That's Dr.
25 Choksi on the November 14th. I'm sorry, ten days

1 later visit. She also saw Dr. Allen in February
2 of 2022 with no mention of this alleged assault
3 or increased problems. So the defendants have
4 questions and don't believe that she did have an
5 assault. As far as not authorizing treatment, we
6 would note Dr. Choksi ordered FCE on November 14,
7 2022. We were in the process of getting that set
8 up and that's when Mr. McDaniel reached out to
9 the doctor and said hey, if she's got this neck
10 problem, does she need to have the FCE? And
11 that's when he said no, we don't need her to do
12 it. Again, we're trying to authorize a treatment
13 recommended by Dr. Choksi. I believe that is
14 everything, Your Honor.

15 THE COURT: Okay. And then you also handed up video.

16 MR. BAREFOOT: Yes, that is the activity when she
17 destroyed the company products.

18 THE COURT: Okay.

19 MR. BAREFOOT: And, Commissioner, -- oh, I apologize.

20 I also prepared something of cheat sheet. I
21 never take out all the video. This just gives
22 you a video time marker when you can see what
23 she's throwing away.

24 THE COURT: Okay, thank you. All right, thank you.

25 Madame Court Reporter, will you please place Ms.

1 Davis under oath?

2 COURT REPORTER: Would you raise your right hand?

3 MARY DAVIS, having been first duly sworn, was
4 examined and testified as follows:

5 THE COURT: All right, Mr. McDaniel.

6 MR. MCDANIEL: All right. Thank you, Commissioner.

7 DIRECT EXAMINATION

8 MR. MCDANIEL:

9 Q Ms. Davis, I'm going to need to take you back a little
10 bit.

11 MR. MCDANIEL: Commissioner, by the way, I would ask
12 you to note in reference to the records that were
13 placed up by the defendants, in reference to the
14 reason she was terminated was for destruction of
15 company property. That being the -- the product.
16 I would ask you to note that all the other
17 previous records that they're referring to were
18 in reference to attendance after the --

19 MR. BAREFOOT: That's not correct. Not all of them
20 are in reference to attendance.

21 MR. MCDANIEL: Well, I'm -- I'm --

22 THE COURT: But they're unrelated to the product.

23 MR. BAREFOOT: Correct.

24 MR. MCDANIEL: Unrelated to the product, exactly.

25 THE COURT: Okay.

1 MR. MCDANIEL: Attendance and I'm not -- there's one
2 more but anyway.

3 Q Now, Ms. Davis, need to talk -- first off, give me --
4 where do you currently live?

5 A Hartsville.

6 Q Where?

7 A Want my whole address?

8 Q Yeah, your whole address.

9 A 236 Swift Creek Road Apartment E1, Oakview.

10 Q What's your source of income right now?

11 A Zero.

12 Q Who lives with you?

13 A I live by myself.

14 Q How are you paying your bills?

15 A I had some money left over that I saved when I was
16 working but I don't have that much left.

17 Q Okay. Your unemployment's run out?

18 A Yeah, it went out.

19 Q When did you run out of unemployment?

20 A September 5th.

21 Q And you were granted unemployment after that hearing
22 where you went and testified? And the reason they
23 were refusing unemployment is, am I correct, is that
24 you were discharged for cause?

25 MR. BAREFOOT: Your Honor, I object as to leading.

1 THE COURT: Sustained.

2 Q What was your understanding of why they opposed you
3 getting unemployment?

4 A I don't understand.

5 Q Well, the employer denied -- they opposed you getting
6 unemployment. Why was that? From your understanding.

7 A You talking about when I talked to unemployment
8 people?

9 Q Yeah. Why was the employer refusing to allow you to
10 get unemployment?

11 A Because I was fired for throwing away company
12 property.

13 Q Okay. Now, after the 2019 accident, you've been
14 putting under restrictions and we put in Dr. Samuel --
15 some of his records were put in. Records of Dr.
16 Choksi and Dr. Allen. What -- what work -- have you
17 been on light duty -- some type of light duty work
18 ever since the accident? That 2019.

19 A Yes, sir.

20 Q All right. What did they first have you doing after
21 Dr. Samuel gave you those restrictions about bending,
22 lifting, no lifting over five pounds? What did they
23 have you doing?

24 A I was working in bakery one.

25 Q Bakery one. What were you doing in bakery one?

1 A I was separating the bad bread from the good bread.
2 Throwing away the bad bread and throwing away some
3 times the good bread. Throwing away the hot bread and
4 the cold bread.

5 Q Okay. All right. You did that for a few months? Or
6 how long did you do that?

7 A Yeah, I did it for about -- for a while. I don't know
8 exactly how long.

9 Q Now, I guess I need to ask you -- all right, now,
10 after that what did they have you doing after that
11 job? They put you on another job. What was that?

12 A I was sanitizing the doors and the bars and around in
13 the building.

14 Q This is -- this was in 2020. Is this about when Covid
15 hit?

16 A Yeah.

17 Q Okay. Tell me about doing that job. What they wanted
18 you to do and what you were doing.

19 A I was spraying, sanitizing the doors, wiping the
20 doors. And they had bars outside the doors and I was
21 wiping the top of the bars because I couldn't bend
22 down to wipe the other two. So I just did the top.

23 Q Did they -- did they want you to bend?

24 A No.

25 Q And what was your understanding from your employer?

1 They didn't -- what they didn't want you to do.

2 A They didn't want me to hardly do anything so I
3 wouldn't hurt myself because I was on light duty.

4 Q Okay. All right, I believe they made a chair
5 available to you.

6 A Yeah, I had a chair.

7 Q And you could sit down and stand up?

8 A Yeah, sit down when I got ready.

9 Q Now, there came a time Dr. Choksi and Dr. Allen put
10 further restrictions on you. And every time you got a
11 work restriction notice what did you do with it, in
12 reference to your employer?

13 A I gave it to HR and Safety.

14 Q Okay. When they gave you those further restrictions,
15 did they give they put -- give you another job? What
16 did you go to doing then?

17 A They had me sitting out at the waste dock and I was
18 recording the waste.

19 Q Gave you a stool?

20 A A chair. I had a chair.

21 Q Okay. And what were you doing on the waste dock?

22 A I was recording the -- all the bread that they brought
23 from the bakeries that was throwed away. The job I
24 was doing at One and Two.

25 Q Okay. So you would write down on a list. Now, what

1 were you recording?

2 A I was recording how much it woe, what department it
3 came from.

4 Q When you saw woe, I think how much it weighed?

5 A Yeah.

6 Q Okay. All right. What department it came from.

7 A Yeah. Who brought it.

8 Q Who brought it there?

9 A Yeah, who brought it there. It's been so long, I
10 can't hardly remember everything. I apologize for
11 that, but --

12 Q Now, this is the -- it's referred as what department?

13 A Yeah.

14 Q What department -- what's the name of that department?

15 A The one I was in, I was in Bakery One.

16 Q But then were you doing --

17 A And I was in Bakery Two. And then I was back there at
18 the waste dock where they bring all the trash and old
19 bread that you throw away, paper, whatever.

20 Q So the bread like we talked about earlier that you
21 were separating out, the bad bread you were throwing
22 away, is that where it went?

23 A Yeah.

24 Q Okay. Tell the Commissioner how many trucks came in
25 there a day to take off product.

1 A About two or three.

2 Q And what type of trucks are we talking about?

3 A Eighteen wheelers.

4 Q Okay.

5 A Yeah, big 18 wheelers.

6 Q And, of course, it brought bread and also other trash,

7 right?

8 A Yes.

9 Q How would the bread be brought to that waste dump --

10 that waste department?

11 A In containers. I mean, big old containers. I can't -

12 - big old yellow -- they had different color

13 containers they brought us.

14 Q So then two or three 18-wheeler trucks would be filled

15 up with this product -- waste product --

16 A Yeah.

17 Q -- from production every day?

18 A Yeah. Every day I saw anyway.

19 Q While you were there?

20 A Yeah.

21 Q All right. Now, you said previously you had -- when

22 you were on Bakery One, I believe, is that where you

23 were the first time --

24 A Yeah.

25 Q -- throwing away bad bread?

1 A Yeah.

2 Q Did anybody, at any time ever question the way you
3 were doing that job?

4 A No, because that's the way they told me to do it.

5 Q Okay. Tell me about what is bad bread. Tell the
6 Commissioner so we can understand that.

7 A Okay. Some of the, I guess you could say are nice and
8 flat and pretty. The other one is bent up, burnt,
9 stuff like that.

10 Q All right. And what about is anything other than --
11 other -- other types of bread that -- that you were
12 told to throw away?

13 A Yeah. I was told to throw away if the table got too
14 full of hot bread, if it got too full of cold bread.
15 I threw away a lot of bread I was told to throw away.

16 Q Okay. What happens if the bread gets cold?

17 A They can't use it.

18 Q Okay. Now, when you were doing that job, is that a
19 job -- how was that job done normally before you were
20 assigned to do that job with a chair?

21 A The people in there done it. The people that would
22 work in the bakery.

23 Q Okay.

24 A The stock movers, the supervisors, leads.

25 Q The Commissioner and I neither one have ever been in

1 Ruiz foods and so tell me about how this bread comes
2 off and when you say they all did it, who are you
3 talking about.. And how -- tell me about where the
4 bread -- where you were throwing away the bad bread.
5 Tell me about that part of the operation as far as
6 like who's there and what's being done.

7 A I was sitting like in front of a table like this right
8 here. Bread -- the conveyor -- I mean, I guess you
9 call that a conveyor where the bread's coming out the
10 oven, dead in front of me. Sometimes I be like
11 halfway side like this camera right here. I be like
12 sideways like that in front of it. Two people are
13 right there taking the bread out the oven.

14 Q When it comes -- when it comes out -- of course, I
15 assume we're talking about a lot of bread coming out
16 of that oven.

17 A Yeah. It come out in stacks about like that right
18 there.

19 Q All right. When it's coming out, does it come out and
20 like stack up when it comes out of the oven?

21 A Yeah, it be -- it comes out stacked, yeah. And then a
22 girl will take two stacks and put it on the table if
23 it is good. She will -- her partner over there will
24 get it and put it in the cart. And same thing for
25 this side over here.

1 Q Ms. Davis, is all the bread inspected or just some of
2 the bread?

3 A Some of it. There's no way they could inspect it all.

4 Q Okay. So the -- and they're -- on each line, how many
5 -- how many -- how many ovens are there or ovens come
6 -- I mean, how many ovens are there? Or lines are
7 there on each? You said Bakery One. How many lines
8 are there in Bakery One?

9 A Two lines. A person is putting it in the cart. A
10 person is taking it out the oven -- well, it ain't a
11 oven but out --

12 Q Each one of the lines?

13 A Yeah. And then on this side a person right there
14 doing the same thing and a person right there doing
15 the same thing.

16 Q Okay. So there are four people operating at the end
17 of this?

18 A At that part.

19 Q I'm just going to call it an oven for a better term.
20 And then -- and there are four people. And when
21 you're not there, those four people do the job as part
22 of their work that you were doing?

23 A Yes. Not just them, though.

24 Q Okay. Who else would be involved?

25 A The stock mover would do it. The supervisor would do

1 it. And the lead would do it. And if they somebody
2 like in the other departments, they had too many in
3 the other departments, they will bring some of them in
4 there to help do it.

5 Q All right.

6 A Everybody had to throw away the bread at some point.

7 Q Okay. But when you got there, they assigned just that
8 task to you, right?

9 A Yeah. That's all I was doing.

10 Q All right. Now, after the waste dock, where did they
11 send you? Dr. Choksi put you on sedentary work only
12 in about March of 2022. Where did they put you then?

13 A After the waste dock, that's when they put me in
14 number two. Bakery Two.

15 Q All right. Tell -- tell the Commissioner what's the
16 different between Bakery One and Bakery Two?

17 A The difference is Bakery One have big bread and Bakery
18 Two have small bread.

19 Q So you were put on Bakery Two, which was the small
20 bread line?

21 A Yes.

22 Q And it's the same thing, though. Stacks of bread --
23 bread is constantly coming out of the oven. They
24 stack it up, put it aside, and then every so often
25 when they know something's bad or they put it over

1 here to be inspected? They either inspect it there or
2 they put it on the table to be inspected. Is that
3 pretty much correct?

4 A Yeah. And no to mention, if too many -- if it's
5 coming out too fast, they'll grab an armful and put it
6 on the table because they'll have too much right
7 there. So they'll grab an arm -- armfuls and -- and
8 put them on the table.

9 Q All right. What will you -- all right, so you're on
10 Bakery Two and -- let's talk about prior to November
11 4th. In reference to the people you were working with
12 around -- on Bakery Two. I mean, you were assigned to
13 throw away the bad bread, right?

14 A Yes.

15 Q And we're going to get in, again, to make sure we
16 understand exactly what constituted bad bread, all
17 right. But tell me about you doing that job. Did you
18 get any help from anybody else?

19 A Sometimes.

20 Q Before the --

21 A Sometimes they would help me. Sometimes they
22 wouldn't. Sometimes I had to do it all myself.

23 Q Okay. But sometimes they would help you?

24 A Sometimes they would help me.

25 Q Okay. All right, now, tell us what happened --

1 A At first, they was helping me 'real good. And then one
2 day when I came in there, they told me they say --

3 MR. BAREFOOT: Objection, Your Honor, as to hearsay.

4 THE COURT: Sustained.

5 Q Wait a minute. Is this is a fellow employee --
6 employee of Ruiz Foods?

7 A Yeah.

8 MR. MCDANIEL: Commissioner.

9 THE COURT: It's a fellow employee. It's not a --

10 MR. MCDANIEL: Of the company.

11 MR. BAREFOOT: Right. But where they in a supervisory
12 role.. I believe she testified --

13 THE COURT: But not a -- not a -- was it a supervisor?

14 WITNESS: Excuse me?

15 THE COURT: Was it a supervisor?

16 WITNESS: Not at that -- not at that particular
17 moment, no.

18 THE COURT: Okay. Then he can't be a representative
19 of the company. It's just a co-worker.

20 MR. MCDANIEL: Well, he cannot --

21 WITNESS: They said the supervisor told them.

22 MR. MCDANIEL: It still constitutes an admission
23 against interest. Just like a truck driver

24 driving a truck if he says I caused a wreck.

25 THE COURT: Mr. McDaniel, we are going over very basic

1 evidentiary things that can't come in as a -- as
2 a statement of a party opponent unless it's a
3 supervisor or above.

4 MR. MCDANIEL: All right, well, I understand your
5 ruling. I'll abide by it.

6 Q Now, tell us -- tell the Commissioner -- by the way,
7 we didn't go over -- what shift were you working?

8 A Second shift.

9 Q All right. And so -- and what is second shift? What
10 time is it?

11 A Second shift was supposed to be from 4:00 to 12:30.
12 And when I started working in the bakery that's what
13 it was. But when I was working my regular job, I got
14 off later than 12:30.

15 Q You're talking about before the first accident when
16 you'd do your --

17 A Right.

18 Q -- regular job?

19 A Right.

20 Q Now, what happened on November 4th?

21 A November 4th is when I got assaulted by the other guy
22 that work out there.

23 Q Okay. Tell us about who that was, how it happened,
24 and tell us exactly what -- tell the Commissioner
25 exactly what happened.

1 A Okay. I was coming out of Bakery Two, fixing to cross
2 the boot cleaner thing which is right there at the
3 door.

4 Q The boot scrape. Y'all have to scrape your boots when
5 you come off the floor.

6 A Yeah. In and out you have to scrape your boots. When
7 I got to the door, I was taking off my smock. We have
8 to wear a smock. Company policy.

9 Q And -- and you take off the smock when you go on
10 break. You can either put them in a --

11 MR. BAREFOOT: Objection, Your Honor, as to leading.

12 MR. MCDANIEL: Okay.

13 THE COURT: Sustained.

14 Q Okay, tell -- okay, let's take a little more time.
15 Tell me what you do -- tell me about the smocks. When
16 do you take them off? Do you put them back on?

17 A Okay. You can either take them off and hang them up
18 and reuse them. Or you can put them in the dirty
19 clothes bin and get a clean one. I did either/or. I
20 never did it the same way all the time. So I did
21 either/or. Okay, this particular day, I was coming
22 through the double doors, which is the double doors to
23 go out into the hallway from -- I was going on my
24 break. When I got out the double doors, I saw my in
25 peripheral, the guy coming up. When he got like kind

1 of almost level with me, he said where are you going?

2 MR. BAREFOOT: Objection, Your Honor, as to hearsay.

3 MR. MCDANIEL: She can describe the incident.

4 THE COURT: I will sustain the objection as to what he
5 said. Can you just focus on like what he did and
6 how it hurt you.

7 WITNESS: Okay. All right. Okay. Let me see. All
8 right, well, he grabbed me. Can I say that?

9 THE COURT: Yes, ma'am.

10 A Okay. He grabbed me. After I took my smock off, he
11 grabbed me. And my hands was like this, he had -- I
12 can't describe but he had my hand -- his hand here and
13 his hand holding my wrist and I couldn't get loose.
14 So I started trying to -- he was shaking me. I was
15 trying to get loose from him but I couldn't get loose
16 because he had such a tight hold on me. At that time,
17 other people was coming from break so I tried to move
18 around in the crowd. I bumped into another girl. I
19 tried to move around in the crowd to get him loose but
20 he didn't want to let me go. He was shaking me and
21 pulling me with my neck steady going back and forth,
22 okay. So he finally let me go. Somebody in the crowd
23 told him to let that girl go so he finally let me go,
24 and he walked off.

25 Q What was his name?

1 A His first name -- I don't know if it's real name but
2 they called him Eugene. I don't have no idea if
3 that's his real name and I don't know what his last
4 name is.

5 Q All right. Now, I want to go into what -- tell me how
6 long you had known this fellow.

7 A I used to see him when I was working back there at the
8 waste dock because he had to bring waste, bread, trash
9 back there. So I used to see him back there a lot.

10 Q Prior to this event, had he made comments to you in
11 the past?

12 A Yes. He have threatened me in the past. But at first
13 when we was laughing and talking, I thought he was
14 playing. Until he wouldn't stop. And then I asked
15 him I said you going to have to stop talking to me
16 like that because I've taken you seriously and I think
17 you threatening me for real. And made a point of
18 saying yeah.

19 MR. BAREFOOT: Objection, Your Honor, as to hearsay.

20 THE COURT: Sustained.

21 A Well, he said a lot of threatening stuff to me before
22 this incident.

23 Q Okay. Did -- did any of his -- any of his comments
24 center around your workers' compensation action?

25 A Well, he knew I was hurt.

1 MR. BAREFOOT: Objection, Your Honor, as to
2 speculation. He knew I was hurt.

3 A That's why I was sitting back there at the waste dock,
4 I mean.

5 Q He had seen you when you were at -- on light duty?

6 MR. BAREFOOT: Objection as to leading.

7 A Yeah.

8 THE COURT: No, he --

9 MR. MCDANIEL: I'm reading from the testimony.

10 THE COURT: Yeah, he -- he -- yeah.

11 MR. BAREFOOT: Okay.

12 THE COURT: Overruled. Go ahead.

13 Q So he had seen you at the waste dock when you were
14 sitting on the chair?

15 A Yeah.

16 Q Okay. And he had also seen you out on the bakery line
17 sitting on a chair?

18 A Yes.

19 Q And nobody else sits on a chair?

20 A No.

21 Q Did -- did anybody -- did everybody in that department
22 pretty much know, or realize, you were on light duty?

23 MR. BAREFOOT: Objection, Your Honor, as to
24 speculation.

25 THE COURT: Sustained.

1 Q All right. All right, let me ask you this then. You
2 were there on light duty sitting in a chair, correct?

3 A Yes.

4 MR. BAREFOOT: Objection as to leading.

5 MR. MCDANIEL: That's not leading, Walt.

6 Q Anyway, reaffirming your testimony. Now, Ms. Davis,
7 you said that your conversations began and you thought
8 he was kidding you. But then after that, you began to
9 realize that he was actually was threatening you. Is
10 that correct?

11 A Yes.

12 Q All right. Now, in any of his conversations, were any
13 of those in reference to or concern or in any way, did
14 you feel like they were related to your work related
15 accident?

16 A He didn't like the fact I was sitting down.

17 Q Okay. Now, after the accident happened, tell me what
18 you did.

19 A I told the supervisor, and the supervisor told me to
20 go tell the superintendent, and the superintendent
21 gave me the paper to write out the incident report.
22 And I went -- they took me down to the room down there
23 just so I could be in privacy to write out the
24 incident report. And I was telling them how I needed
25 to see a doctor because I was hurting bad.

1 Q Okay. So you were asking that night -- who -- who all
2 do you remember talking to that night in management?

3 A Let me see. I know one was a supervisor. Well, I
4 don't know if he was a lead or a supervisor at the
5 time. It's been so long. He might have been a lead
6 at the time but I know he a supervisor now. But he
7 might have been a lead at the time. And I talked to
8 the superintendent. And --

9 Q Was Opal Jones there that night?

10 A No, Opal Jones wasn't there that night. She's HR.
11 She wasn't there. HR's already gone home, I think.

12 Q Was Vinny there that night?

13 A Vinny wasn't there either. They was already gone
14 home.

15 MR. MCDANIEL: So, Commissioner, page 54.

16 Q Identify that for me.

17 A That's the report I wrote out.

18 Q Okay. And do you remember who was present when you --
19 when you took that -- gave that report?

20 A I got the paper from the superintendent. She told --
21 like I say, I don't know if he was a supervisor at the
22 time or the lead. I think he was the lead. She told
23 him to carry me down in the room so I could write out
24 the report by myself and that's what I did. And I
25 came back out and I gave it to her, or him, one of

1 them. I don't remember which one I gave it to but I
2 gave it to either her or him after I wrote it out and
3 they gave me a copy.

4 Q Now, after that, tell me about what did you do in
5 reference to medical care as far as requesting it?

6 A You mean did I go see a doctor about that right there?

7 Q No. I mean, what -- in reference to the company.

8 What were you doing in reference to -- when you
9 requested to be seen by a doctor. Tell me about that.

10 A Well, yeah, I told the superintendent that I needed to
11 see a doctor because I was hurting bad. I told the
12 guy, like I say I don't know if he was a lead or a
13 supervisor. I told him that I needed to see a doctor
14 because I was hurting bad.

15 Q All right. Did you request a meeting with somebody
16 from Safety and from workers' comp?

17 A Yeah, because I told them I wanted to talk to them and
18 tell them that I needed to see a doctor.

19 Q Okay. All right. Now, and according -- we have an
20 email we put in that was dated Wednesday, November
21 16th, that they had seen you. That Vinny and Shanda
22 Blackwell had seen you that day in a meeting that you
23 had requested. Is that -- does that --

24 A Yeah. And they told me they said -- okay, well they
25 told me they couldn't do anything until they talked to

1 Jonathan, because he was they boss. So I was waiting
2 to hear back from them after they talked to him.

3 Q About -- what were you waiting to hear back from him
4 about what?

5 A Medical.

6 Q Medical care?

7 A Yeah.

8 Q Okay. Now, you had seen Dr. Choksi on the 11th, about
9 five days before this -- this meeting, all right.
10 What did you see Dr. Choksi for on the 11th? What
11 part of your back was he treating?

12 A It was -- he was looking at my lower back and my neck,
13 I think. I think my neck and my lower -- no, that
14 lady looked at my neck. He was looking at my lower
15 back because my back is hurt real bad at the bottom.
16 And when I got hurt from that guy shaking me,
17 something snapped in my back because I feel something
18 moving around in it. And I was trying to get that
19 across that something's moving around in my back.

20 Q Did you try to get -- on the 11th; did you do anything
21 in reference requesting medical care for your neck?

22 A Yeah.

23 Q What was your understanding in reference to whether or
24 not they could provide medical care on the 11th?

25 A They said I needed --

1 MR. BAREFOOT: Objection, Your Honor, as to hearsay.

2 Q Not what he said. What was your understanding from
3 the doctor's office --

4 A I understood -- I understood --

5 Q -- as to whether or not they could treat your neck.

6 A They couldn't treat my neck because workers' comp
7 hadn't paid anybody. So they was waiting to get paid
8 by workers' comp and the person I saw told me that --
9 I forgot what she called it --

10 MR. BAREFOOT: Objection, Your Honor, as to hearsay.

11 THE COURT: Sustained..

12 Q What was your understanding that you needed to do to
13 be able to be seen for your neck?

14 A I don't know how to answer that because he keep
15 objecting.

16 Q What was your understanding -- what was your
17 understanding, from the people, that you had to do to
18 be able to be seen for your neck?

19 A I had to get -- they had to get in contact with
20 workers' comp, and workers' comp had to get in contact
21 with the doctors in order for them to see me. I
22 needed an MRI and I couldn't get the MRI until they
23 got in contact with them to pay for it.

24 Q Okay. Did you discuss this with Shanda Blackwell?

25 A Yeah, and Vinny.

1 Q And Vinny. Did you discuss it -- did you have
2 conversations with Opal Jones also after this
3 accident?

4 A Yeah.

5 Q All right. Now, in November/December/January, did
6 they provide any medical care for your neck?

7 A No.

8 Q All right. You were also having problems with your
9 hip and --

10 MR. BAREFOOT: Objection, Your Honor. Still leading.

11 THE COURT: Sustained.

12 Q What problems, if any, were you having with your hip
13 and your leg?

14 A My hip and my knee?

15 Q Uh-huh.

16 A Well, I supposed to been got injections in both of
17 them. I got one in the knee. I forgot what date it
18 was. But they didn't give me the one in my hip
19 because --

20 Q But in -- in the fall, how was your -- was your knee
21 and hip the same or were they getting worse? Or how
22 were they? Were they getting better? How was -- how
23 were -- did you request additional medical care?

24 A I did.

25 Q Okay. And Dr. Allen had told you --

1 MR. BAREFOOT: Objection, Your Honor, as to hearsay.

2 MR. MCDANIEL: Objection. This is a statement off of
3 the medical records, Commissioner.

4 Q Dr. Allen references in --

5 THE COURT: Well, can you --

6 Q -- his February --

7 THE COURT: Go ahead.

8 Q -- note that you were to get -- you would need
9 injections in your hip and your knee, approximately,
10 two to three times a year in each one. Do you
11 remember him discussing that with you?

12 A Yeah.

13 Q When he released you?

14 A Yeah.

15 Q Okay. Now, and what was your understanding that you
16 needed to do in reference to -- his records say you
17 were supposed to come back to see to him to get those
18 when you needed them. Is that pretty much your
19 understanding?

20 A Yeah.

21 Q All right, now, so how did you -- how were your knee
22 and your hip doing in the late fall, in
23 November/December of 2022?

24 A They were still hurting bad.

25 Q 2023. They were hurting.

1 A Because he had to change the shots because the ones he
2 gave me in the knee wasn't working.

3 Q Did you try to go see Dr. Allen?

4 A I tried.

5 Q Did we try to get you to see Dr. Allen?

6 A Yes.

7 Q Did Dr. Allen contact workers' comp?

8 A Yeah.

9 Q Did they authorize it?

10 A No.

11 Q Okay. Now, let's bring up -- so in January and
12 February, you were still on the job doing the same
13 work, is that correct? The sit down job separating
14 bad bread.

15 A Uh-huh.

16 Q All right. Now, tell me about how you were doing
17 that, let's say, in January and February. Doing it
18 the same way you had been doing it?

19 A Same way. Nothing changed. Nobody brought nothing
20 different to my attention.

21 Q Okay. And let's -- let's again -- now, let's go over
22 again what constitutes bad bread, all right. First
23 off, how would the bread -- how would it be brought to
24 you? Where would you work? Describe that to
25 Commissioner.

1 A Like I said, it would be coming out whatever you call
2 that. A girl standing there, a girl standing there.
3 She would look at it. If it's good, she will put it
4 over there and the girl put it in the cart. If not,
5 she would put it right in front of me. And then I'll
6 go through to see how many good and how many bad.
7 Okay, some would be burnt, folded, cut, swell, bad. I
8 would throw them away and then I would -- had a pile
9 for that I would throw in the trash can. A pile for
10 the good, they would -- somebody would come and get it
11 and give it to the girl. And if I wasn't too busy, I
12 would just slid it over there to her, and she would
13 get it.

14 Q All right. What were your instructions if the bread
15 got cold?

16 A Throw it away.

17 Q All right. Where there times -- how much bread -- are
18 we talking about -- now, listen. Make sure you
19 understand me here. It's my understanding there's
20 Bakery One and Bakery Two.

21 A Yes.

22 Q And then in Bakery One, there are two lines.

23 A Yes.

24 Q And on Bakery Two, there are two lines.

25 A Yes.

1 Q And when you waste in waste removal, two -- about two
2 or three truck -- tractor trailers were backing up to
3 the waste department and carrying off bad bread.

4 A Yes.

5 Q So two to three tractor trailers of bad bread was sent
6 out a day. Is that --

7 A Yeah.

8 Q Okay. Now, so, all right, you're instructed -- what
9 were your instructions if there was a lot of bread
10 coming out and it needed to be inspected and the table
11 stacked up?

12 A Throw it away.

13 Q Okay.

14 A I did - I did what I could and that I couldn't do,
15 either I throw away or somebody else going to come and
16 throw it away. Either way, it's going to get thrown
17 away.

18 Q Okay. All right, and -- all right now, at any time --
19 are there video cameras in there where you work?

20 A Yes.

21 Q Okay. Anytime -- now, let's see you worked in -- the
22 first accident happened in 2019. You worked in
23 multiple months in reference to the bakery -- I
24 believe that was Bakery One.

25 A The first one I went in.

1 Q Okay. And then at least since March of 2022 --, do you
2 know when you actually started doing the bad bread
3 again?

4 A I did the bad bread in one and two.

5 Q Okay. But when you back to the bad bread the second
6 time, you know, when you were working --

7 A Talking about number two?

8 Q -- where you were working when you got fired.

9 A Yeah, that was two.

10 Q Okay, that was two. Do you remember -- Dr. Choksi put
11 you on sedentary work only back in March of 2022. Do
12 you know how long you actually worked in that area
13 throwing away bad bread?

14 A A long time.

15 Q A long time.

16 A Long, long time.

17 Q Okay. Six months --

18 A Every day. Every day I threw away bread. Every day
19 for hours. I was there eight hours so yeah, for eight
20 hours, I threw away bread.

21 Q Okay. How many times did a supervisor or anybody in
22 supervisor capacity, prior to February 20th when you
23 were terminated for throwing away too much product,
24 came to you and said you were throwing away too much
25 product?

1 A Nobody ever.

2 Q Okay. After November 4th, did -- in your opinion, did
3 things change where you were working as far as your
4 relationship and what you -- not what you were doing
5 but people helping you and that kind of thing?

6 A Yeah, they stopped helping and they would put more
7 bread, more than usual bread, on the tables.

8 Q Okay. I'm sure pretty much about some testimony is
9 goings to come from the defense so I'll save some of
10 this for rebuttal but I want to ask you this. The
11 instruction to throw away bad bread -- throw away cold
12 bread, all cold bread, and also the instruction to
13 keep that table clean, did that come from supervisors?

14 A Yeah, supervisors and leads.

15 Q Okay. All right, now, why was it important to keep
16 the table clean from your understanding?

17 A My understanding is they didn't want certain people to
18 see the bread on the table.

19 Q Okay. All right. Okay, tell me about the events
20 leading up to you being fired -- terminated on
21 February 20th.

22 A I was going to break -- lunch. I was fixing to go to
23 lunch and the supervisor at the time, he was coming
24 from his break and he said did they tell you? I say
25 who? He said HR want to see you. I said when? He

1 said now. I said well, can I go to the bathroom
2 first? He said well, it shouldn't take long. Just go
3 now. I said well, okay well, I'll go now then. So
4 that's when I went to the door and they never ever
5 offered me in there. And she told me she said come
6 in. So when I came in, she took me back there where
7 her office at and then she got this other lady that
8 work in HR, -- I forget her name at this time --
9 brought her in there. And she say -- I thought she
10 was fixing to talk to me about the incident because
11 she never got back to me about that like she was
12 supposed to. But she said we going to have to let you
13 go. I say let me go where? I mean, you know, it
14 wasn't registering to me she was saying fired. I said
15 let me go where? She said we got to terminate you. I
16 say -- no, first she said we're going put -- do the --
17 what it's called? Before they fire you. I forgot
18 what it's called. Where they do the investigation and
19 stuff at.

20 Q Suspension?

21 A She called it something else. Anyway, she called me
22 in there and told me they had to do the investigation
23 and she was going to let me go until they complete the
24 investigation, and this was -- she would call me that
25 morning. I forget it was either a Thursday or Friday,

1 I think, and she would call me that Monday and let me
2 know what the investigation say so I could come on
3 back to work. And she needed my badge. I say okay,
4 but what about the incident where I got assaulted it?
5 She said oh, the camera don't show none of that so we
6 -- we ain't see you where you got assaulted at because
7 the camera right there wasn't working, so we couldn't
8 see where you got assaulted at.

9 Q All right. And then what was your understanding you
10 were being terminated for?

11 A She said throwing away company property. And I asked
12 her, I said what company property? I ain't had no
13 company property because in my mind, I wasn't thinking
14 it was the bread because that's what I did every day.
15 So I said what company property? I ain't had no
16 company property. She said yeah, the bread. I said
17 you mean the job I do everyday? That's what you're
18 terminating me for? She say well, that's company
19 property and you threw it away. I said but I been
20 throwing it away for a long time. Why now, all of a
21 sudden, I'm throwing away company property when I
22 throw away company property every day.

23 Q All right. And before that day, nobody -- nobody in
24 supervision had ever come up to you and complained
25 about the amount of bread you were throwing away or

1 anything like that?

2 A Nothing. I ain't got no write up about it. I ain't
3 got no talking to about it. Nothing. That's why I
4 was surprised.

5 Q Now, you applied for unemployment benefits?

6 A I did.

7 Q Did you take them the sedentary work only statement
8 and tell them that? That you were available for work
9 within that capacity?

10 A I did.

11 Q All right. And you eventually got unemployment and
12 that ran out, approximately, when?

13 A September 5th.

14 Q All right, now, tell the Commissioner, if you would --
15 just tell her about your neck, your low back, your
16 hip, and your leg, if you will.

17 A My neck don't never stop hurting. It hurts so bad it
18 feel like I just got whiplash all down in my
19 shoulders. I felt something pop in my back when --
20 like I say, when I was getting shook. And I ain't got
21 nobody to look at that yet to see what it is. I don't
22 know what kind of damage it's doing in there. And my
23 lower back, I hurt it from the beginning when I hit
24 the floor. It don't never stop hurting. It hurt all
25 the time. It don't ever stop hurting. I'm always in

1 pain. My hip hurts all the time. It be twisting and
2 stuff. Feel like the bone moving in it. My knee it
3 hurts all the time because the shots he gave me done
4 wore off because they wasn't strong enough from the
5 beginning and I told him that. So he gave me that
6 other one and that other one wasn't strong enough
7 because it wore off quicker than the one he gave me
8 before that one. When I'm by myself, I cry a lot
9 because I'm constantly in pain and nobody don't take
10 me serious because they don't think I'm hurt. That's
11 how I feel every day, all day. I don't go to the
12 doctor and run up bills because why? They ain't
13 paying the bills that I owe now and I can't pay them.
14 I can't pay the bills. I don't -- I can't pay them
15 and they ain't paying them. So why run up more bills
16 on top of that?

17 MR. MCDANIEL: Commissioner, I don't have any further
18 questions.

19 THE COURT: Okay.

20 MR. MCDANIEL: Answer any questions Mr. Barefoot has.

21 WITNESS: Okay.

22 THE COURT: Mr. Barefoot?

23 MR. BAREFOOT: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 MR. BAREFOOT:

1 Q Ms. Davis, I do have some questions for you.

2 A Okay.

3 Q A little bit about your background. I believe at one
4 point in your life, you went to Job Corps and took
5 classes for baking didn't you, ma'am?

6 A I did.

7 Q Is that a yes?

8 A Yes.

9 Q Okay. You have no difficulty with reading and
10 writing?

11 A Say that again.

12 Q You no have difficulty with reading and writing, do
13 you?

14 A At some point. I mean, I'm not the best.

15 Q Well, remember when I took your deposition here back
16 in May, you told me you didn't have any trouble with
17 reading and writing?

18 A Well, I can read and I can write but I'm not the best.

19 Q Okay. You can read the newspaper and understand it,
20 can't you?

21 A Yes.

22 Q Okay. And no difficulty with basic math? Addition,
23 subtraction, multiplication, division?

24 A Right.

25 Q Okay. And you don't remember where you lived as a

1 child.

2 A I didn't know I had to remember that, sir. I still
3 don't to this day when you asked me that.

4 Q So you don't remember any city that you lived in while
5 you were a child?

6 A No, I don't. I didn't know it was that important.
7 I'm going to make a point from this day forward and
8 find out.

9 Q Okay. Let's talk about your work history. I think
10 you said the first 20 years, you did farm work.

11 A Yes.

12 Q Okay. And you started working at -- well, you're not
13 sure of your next job but the next job you do remember
14 is working at Hardee's; isn't that right?

15 A Right.

16 Q Okay. And you don't -- you're not sure if you were
17 quite or were terminated from that job, are you,
18 ma'am?

19 A I'm not sure about that. I sure ain't.

20 Q And you worked at Red Fox Apparel next.

21 A I did.

22 Q And you're not sure whether you quit or were
23 terminated from that job.

24 A I'm not sure.

25 Q You next worked at Craig Industries; is that right?

1 A I worked at Craig's, yes.

2 Q And you're not sure if you quit or were terminated
3 from that job, correct?

4 A Correct.

5 Q Then you worked at Florence Civic Center in the
6 security office?

7 A I was a security guard, yeah.

8 Q You monitored the --

9 A The ice.

10 Q Yeah, that type thing. You're talking about ice.
11 They had an ice floor that they ice skated on, right?

12 A Right.

13 Q Okay. And you also worked at the governor's school in
14 Hartsville.

15 A Yes.

16 Q Again, in security.

17 A Yes.

18 Q And you're not sure whether you quit or were
19 terminated from that job.

20 A I'm not sure..

21 Q And, ma'am, you were physically unable to work from
22 2013 through the end of 2014, at least, isn't that
23 right?

24 A I'm not sure.

25 MR. BAREFOOT: Just refer the Commissioner to APA page

1 156, Carolina Pines.

2 Q You remember going to Carolina Pines and telling them
3 you were physically unable to work and had been so for
4 about a year?

5 A I don't remember that. I do not.

6 Q Okay. All right, let's talk about your ongoing
7 medical problems or history, if you will, ma'am.

8 A Okay.

9 Q I believe you have asthma.

10 A I do.

11 Q And you have bad problems with your feet, isn't that
12 right?

13 A I do.

14 Q Hard to walk sometimes?

15 A That's right.

16 Q Now, the medical treatment after this injury, you went
17 to the McLeod Emergency Room, isn't that right?

18 A Yes.

19 Q And then you saw McLeod Occupational Health.

20 A Yes, sir. I think that's were Dr. Sanders at, yes.

21 Q You saw Dr. Edwards, the back doctor.

22 A Yeah, I saw him too.

23 Q And you've been to Hometown Urgent Care.

24 A Been there too.

25 Q Care South.

1 A Yes.

2 Q Seen Dr. Allen.

3 A Yes.

4 Q Seen Dr. Choksi.

5 A Yes.

6 Q Now, your attorney asked you some questions about
7 restrictions and a physical -- 'what's called a
8 functional capacity evaluation. You remember going to
9 a place called CORA for a functional capacity
10 evaluation?

11 A I sure do.

12 Q You didn't give him full effort, did you, ma'am?

13 A Yes, I did. They lied.

14 MR. BAREFOOT: Yes, Commissioner, refer to APA page
15 119, 123 to 126.

16 Q So you're saying they lied on your report?

17 A Yes, they did. I did everything they asked me to do.
18 They wanted -- the one thing I -- they asked me to do,
19 I couldn't do, they wanted me to get down on the floor
20 and I wasn't going to get down there because I know I
21 couldn't get up. They lied in they report and I told
22 them so.

23 Q Okay. Well, let's talk about work since you had the
24 injury back in 2019. You told your attorney that you
25 first were working in Bakery One, isn't that right?

- 1 A Yes.
- 2 Q That work was within your restrictions, wasn't it?
- 3 A That's where they put me at.
- 4 Q That was within your restrictions, wasn't it, ma'am?
- 5 A I don't know.
- 6 Q Well, when I took your deposition, you told me it was
- 7 within your restrictions.
- 8 A I sat down in there and did the bread.
- 9 Q Was it within your restrictions, ma'am?
- 10 A When you say within, tell me what you mean.
- 11 Q What the doctor said you can and can't do. It was
- 12 within what they said what you can do, wasn't it?
- 13 A Yeah, okay.
- 14 Q Is that right?
- 15 A Right.
- 16 Q Okay. And then you said you had to do some wiping
- 17 down. That was during Covid wasn't it, ma'am?
- 18 A Covid, yeah.
- 19 Q Then you said they put you at the waste dock. That
- 20 didn't exceed the restrictions either, did it?
- 21 A No.
- 22 Q Okay. Then you said Bakery Two. That was within your
- 23 restrictions also, wasn't it?
- 24 A Yeah, until it wasn't.
- 25 Q And when you say until it wasn't, what do you mean?

1 A When they started putting too much bread on the table
2 and forcing me to do more than I could do.
3 Q Okay. And when did they do that, ma'am?
4 A While I was in there working.
5 Q When?
6 A I don't remember the time or the date.
7 Q Did you report that to anybody?
8 A They saw it theyself, I mean.
9 Q Ma'am, my question is did you report to anybody?
10 A I did not.
11 Q Okay. All right, now, we're going to talk about the
12 termination in just a minute but since you were
13 terminated from Ruiz, you applied for a job at Wal-
14 Mart as a cashier and stocker, isn't that right?
15 A A cashier.
16 Q You applied at Hardee's to be a cashier.
17 A Yeah. I applied a lot of places. I'm trying to get a
18 job.
19 Q You said you applied at lot of other places.
20 A Oh, yeah.
21 Q Okay.
22 A I'm trying to get a job.. They just ain't hired me
23 yet.
24 Q All right, now let's talk about the termination. You
25 said your job was to look at the tortillas and

1 determine what should be thrown away and what should
2 be kept, isn't that right?

3 A Yes.

4 Q And they came to you in a stack, didn't they?

5 A Yes, and armfuls.

6 Q And to figure out what needs to be kept, you need to
7 go through the stack, don't you, ma'am?

8 A Yes.

9 Q Well, at least -- February 8th, at least five
10 different stacks, you simply shoved in the trash can,
11 didn't you, ma'am?

12 A I don't know. I don't know what happened February --
13 I don't know.

14 Q Well, you're not supposed to shove an entire stack in
15 the trash can, are you?

16 A Depends on the circumstances. If they hot, cold, or
17 ain't no good.

18 Q Well, how can you tell they're no good if you haven't
19 gone through the stack to see what's in it?

20 A Sometimes you can look at it if you been doing it long
21 enough.

22 Q Well, ma'am, when it comes to the cold bread, the
23 supervisor's supposed to decide what cold bread gets
24 thrown away, isn't that right?

25 A That ain't what I was told.

1 Q And your supervisor at the time was Mr. Wendell Hayes?

2 A If you say so.

3 Q Well, I'm asking you, ma'am.

4 A I don't remember who was the supervisor at that time.
5 I thought it was that guy named James. I forgot his
6 last name. I thought it was the guy named James.'

7 Q Well, remember in your deposition, you told me his
8 first name was Wendell.

9 A Wendell was a supervisor also. They two.

10 Q Okay. So Wendell was one supervisor?

11 A But Wendell -- Wendell wasn't in there. James would
12 be in there.

13 Q All right. Wendell was one of your supervisors?

14 A Yes.

15 Q Okay, got you. So you don't dispute that on February
16 8th, you threw five -- at least five entire stacks
17 straight in the trash can?

18 A I'm not going to say that because I don't know what
19 you talking about. I don't know what happened
20 February 8th. Do you know how long ago that been?

21 Q Yes, ma'am. All right, so before February of 2023,
22 whatever date it was you were terminated, you had been
23 written up several times since you had your accident,
24 hadn't you?

25 A Written up for what?

1 Q For being late.

2 A Yeah, I've been late because I was hurting trying to
3 get there.

4 Q You were written up for being late, weren't you?

5 A I don't think it was --

6 Q Ma'am, in March of 2020, do you remember being put on
7 suspension for three days?

8 A For what?

9 Q Unexcused attendance days.

10 A No, I don't remember that.

11 MR. BAREFOOT: Refer the Commissioner to APA page 189.

12 Q Remember on July 14, 2020, you didn't clock out?

13 A They're quite a few days, I mean, you could say I
14 ain't clocked out.

15 Q I'm talking about that you were written up for, ma'am.

16 A I didn't know I was written up for them, though.

17 Q Okay.

18 A I didn't know I was written up for that.

19 Q You didn't know you were written up for clocking out
20 late?

21 A I clocked out late?

22 Q I apologize. For not clocking out.

23 A Clocking out to go home? Break? What you mean?

24 Q All right, you just said you didn't know, ma'am. I'm
25 going to hand you APA page 191, employee counseling

1 record. First of all, let me ask you. Is that your
2 signature down here in the bottom left-hand corner?

3 A Yeah.

4 Q Okay. And does it say TM missed out punch on 7/14, no
5 badge 7/25, and was late on 7/28?

6 A That's what it say.

7 Q And it's out punch. That's clocking out, isn't it,
8 ma'am?

9 A So I clocked out you're saying?

10 Q No, you missed clocking out.

11 A Okay. So they gotten certain ones that I missed is
12 what you're saying.

13 Q Ma'am, I'm asking if you got written up for failing to
14 punch out on July 14th.

15 A I understand what you're asking me but what I'm asking
16 you is do they have certain ones? Because now every
17 one of them I did, I didn't get wrote up for. So is
18 this certain ones that they -- that they -- they
19 picked out to give me?

20 Q Ma'am, I'm asking if you got written up for it and
21 signed the write up on August 11, 2020?

22 A Okay, I see where I signed that at.

23 Q So then you did get written up for things other than
24 being late?

25 A I know they -- I know they ain't -- they ain't wrote

1 me up for all of them because that -- there's more
2 than one. So I'm trying to figure out did they just
3 pick certain ones or how do they do that?

4 Q I don't know, ma'am. We submitted them in the record.
5 So even after your suspension, they could have
6 terminated you before February 20, '23, for failing to
7 follow company policy, couldn't they, ma'am?

8 A What company policy I failed to follow?

9 Q Well, clocking out on time, being late, not coming to
10 work.

11 A I did not not come to work. I came to work. What you
12 -- I came to work. What you -- I don't know what you
13 talking about right there.

14 Q You didn't have a three day suspension on March of
15 2020 for too many unexcused absences?

16 A Yeah, but that wasn't for not for coming to work.
17 That was for coming to work late. But I came to work.

18 Q Okay.

19 A I came to work. That was coming to work late and I
20 told them, I said, sometimes I be hurting so bad, it
21 be hard for me to get here but I come anyway. But
22 they ain't got that in there.

23 Q Yes, ma'am. All right, let's talk about the assault
24 that you say happened on November 4, 2022.

25 A Uh-huh.

1 Q You say you were in a crowd, I think, was the term. I
2 crowd of people came through, is that right?

3 A At some point, yes.

4 Q But you can't tell us a single name to ask about what
5 they saw, can you?

6 A She had the names wrote down. She remembered them
7 better than I did. She didn't give you that paper?

8 Q Ma'am, I'm asking if you can remember any witnesses to
9 what happened.

10 A No.

11 Q And you saw Dr. Choksi November 14th, ten days later,
12 isn't that right?

13 A If you say so. I can't quite remember what date it
14 was.

15 Q Okay. In that date, you made no mention of the
16 assault, did you, ma'am?

17 A Oh, yes, I did. Every time I went to every doctor I
18 went to.

19 Q You made no mention of your neck on November 14, 2022,
20 did you, ma'am?

21 A Yes, I did.

22 Q You made no mention of feeling a pop in your back on
23 November 14, 2022, did you, ma'am?

24 A Yes, I did. Oh, yes, I did.

25 Q It's at that visit, I believe Dr. Choksi ordered

1 what's called a functional capacity evaluation. The
2 one that you say CORA lied about.

3 A Oh, yeah, they lied.

4 Q But that's when he ordered that FCE, isn't it?

5 A I don't know when he ordered it now.

6 Q Well, you also saw Dr. Allen in February of 2023,
7 . didn't you?

8 A If you say so.

9 Q You made no mention to Dr. Allen about being
10 assaulted, did you, ma'am?

11 A Yes, I did.

12 Q You made no mention to Dr. Allen about your neck
13 bothering you, did you, ma'am?

14 A Yes, I did.

15 Q You made no mention to Dr. Allen about anything
16 popping in your back, did you, ma'am?

17 A Yes, I did.

18 MR. BAREFOOT: Just refer the Commissioner APA pages
19 one through five.

20 Q And when you saw -- I think the first time the medical
21 records I have indicate you reported this alleged
22 assault to a medical provider, it was March 22, 2022,
23 -- excuse me, 2023, and you said that you had neck
24 pain that started when you were assaulted by a co-
25 worker, is that correct.

1 A I had neck pain before then.

2 Q Okay.

3 A When I got hurt the first time, my neck popped. So,
4 yeah, I had -- I had neck pain before then.

5 MR. BAREFOOT: Just refer the Commissioner to APA page
6 12.

7 Q Let's talk about your pain. Make sure I've got this
8 right. You say that your low back hurts all the time.

9 A All the time. It don't never stop hurting.

10 Q On a scale of one to ten, with ten being pain so bad
11 you need to go the emergency room, you say it's always
12 a ten?

13 A Always a ten. Every pain I got.

14 Q Your neck.

15 A Yes.

16 Q Always a ten?

17 A Yes.

18 Q Your left knee.

19 A Yes.

20 Q Always a ten?

21 A Yes.

22 Q Your left hip always a ten?

23 A Always a ten.

24 Q But you haven't been to the emergency room have you,
25 ma'am?

1 A No. I can't run up no more bills that workers' comp
2 don't want to pay for.

3 Q Now, when you were working at Ruiz before you got
4 terminated for throwing away the bread, you were
5 driving back and forth from Hartsville to Ruiz,
6 weren't you?

7 A Sometimes.

8 Q Well, how else would you get back and forth?

9 A My daughter.

10 Q You were riding back and forth?

11 A Sometimes.

12 Q Okay.

13 A And one of the workers that worked there, he would
14 give me a ride because he don't live far from me. He
15 would give me a ride.

16 Q Forty-five to 50 minute trip each way?

17 A I guess. I don't know. I ain't never timed it.

18 Q That's what you told me when I took your deposition.

19 A Okay. If that's what's up there. It's a long time.

20 MR. BAREFOOT: All right, Commissioner, --

21 Q Now, let me ask you this. You say you were assaulted
22 at work. That this gentleman grabbed you. You never
23 filed a police report, did you, ma'am?

24 A The lady named Opal in HR told me that she was going
25 to file the police report. I was waiting to hear back

1 from her about the police report. And if I knew she
2 was going to lie, I would have filed it myself.

3 Q As we sit here today, have you filed one?

4 A No, I haven't filed none yet. I didn't know I still
5 could.

6 Q Have you called the police and asked?

7 A No, I hadn't called the police and asked.

8 MR. BAREFOOT: Nothing further from the defendants at
9 this point.

10 THE COURT: Thank you. Any redirect?

11 MR. MCDANIEL: Nothing further.

12 THE COURT: Okay, thank you. Ms. Davis, you may have
13 a seat next to your attorney?

14 WITNESS: Ma'am, can I go and walk around? My legs
15 are tight --

16 THE COURT: Yes, ma'am, you sure can.

17 WITNESS: -- tightening up.

18 MR. MCDANIEL: Can we take a quick break

19 THE COURT: We'll take a five minute recess.

20 (Off the record)

21 THE COURT: Back on the record in file number 1923627
22 and 2223041. Are there any other witnesses for
23 the claimant?

24 MR. MCDANIEL: None, Commissioner.

25 THE COURT: All right, thank you.

1 MR. MCDANIEL: That's the claimant's case.

2 THE COURT: Mr. Barefoot, you may call your first
3 witness.

4 MR. BAREFOOT: Call Mr. Jonathan Holder.

5 THE COURT: All right, Mr. Holder, if you'll have a
6 seat up here, please.

7 JONATHAN HOLDER, having been first duly sworn,
8 was examined and testified as follows:

9 THE COURT: All right, Mr. Barefoot.

10 DIRECT EXAMINATION

11 MR. BAREFOOT:

12 Q Mr. Holder, are you the Environmental Health & Safety
13 Manager with the Ruiz Plant in Florence?

14 A Yes, sir.

15 Q Been in that job for a little over seven years?

16 A Yes, sir.

17 Q Did you assist with issues involving the claimant's
18 work related injury of November 16, 2019?

19 A Yes, sir.

20 Q While she was on restrictions from the doctor, did
21 Ruiz provide work within those restrictions?

22 A Yes, sir.

23 MR. MCDANIEL: Objection, leading.

24 MR. BAREFOOT: I don't think that was leading. The
25 question was did Ruiz provide work within the

1 restrictions of the doctors.

2 THE COURT: Overruled.

3 Q All right, since the injury November 16, 2019, has the
4 claimant had numerous disciplinary and performance
5 write ups?

6 MR. MCDANIEL: Objection. Characterization of the --
7 of the --

8 A She has.

9 THE COURT: Sustained of numerous.

10 MR. BAREFOOT: Okay. Well, I was hoping we weren't
11 going to have to go through them but we can go
12 through them.

13 Q In January of 2020, was she written up for clocking in
14 late for a few days?

15 MR. MCDANIEL: Objection leading.

16 THE COURT: Sustained.

17 Q Was she written up in January of 2020?

18 A She was.

19 Q What for?

20 A Could have been attendance, clocking in late.

21 Q I'm going to hand you the evidentiary submissions that
22 have been made. Page 188. Is that a capital E
23 Employee, capital C Counseling, capital R Record?

24 A It is.

25 Q Was she written up?

1 A She was.

2 MR. MCDANIEL: What page are you on?

3 MR. BAREFOOT: 188.

4 Q What was she written up for?

5 A Team member punched late less than one hour on 1/10,
6 1/21, 1/23.

7 Q Okay. And what was the future action?

8 A Corrective action leading up to termination.

9 Q Okay. Can you flip to the next page, 189? Was she
10 written up in March 2020?

11 A She was.

12 Q What for?

13 A Points. Eleven points.

14 Q And why do you get points?

15 A Could be clocking in late, not coming to work,
16 clocking out early, not clocking out.

17 Q Was she given a three day suspension?

18 MR. MCDANIEL: Your Honor, -- Commissioner, I'd point
19 out on 189 that that's not signed by the
20 claimant.

21 MR. BAREFOOT: Okay. We'll get to that in just a
22 minute.

23 THE COURT: Okay.

24 Q Was she given a three day suspension?

25 A She was.

1 Q Okay. Look at -- did she refuse to sign the write up?

2 A She did.

3 Q Okay. Is that included on the form?

4 A It is.

5 Q Let's look at page 191. Was she written up for
6 failing to clock out on July 14, 2020?

7 A She was.

8 Q Was she written up for not having her work/Ruiz ID
9 badge on July 25, 2020?

10 A She was.

11 Q Was she written up for being late to work on July 25,
12 2020?

13 A She was.

14 Q If I can ask you to flip to page 192. Was she written
15 up for leaving early on July 8, --

16 MR. MCDANIEL: Objection. Commissioner, I have no
17 objection to him testifying as to why she was
18 written up but object to counsel's leading.

19 MR. BAREFOOT: I'm just asking what she was written up
20 for.

21 Q What was she written up for, Mr. Holder?

22 A Team member left greater than 15 minutes early on 7/8.

23 Q Okay. Was she terminated for any of those violations?

24 A Not to my knowledge.

25 Q Could she have been terminated for any of those

1 violations?

2 A She could have.

3 Q Now, was she terminated February 20, 2023?

4 A Yes.

5 Q Why?

6 A I believe it was destruction of company property.

7 Q Were you asked to review video from the plant cameras
8 from February 8, 2023?

9 A I was.

10 Q Okay. Was the claimant doing light duty work?

11 A She was.

12 Q Was she given at least five stacks of tortillas that
13 she simply slid in the trash --

14 MR. MCDANIEL: Objection to what counsel's
15 characterizing. I have no objection to this
16 witness testifying to.

17 THE COURT: Yep, sustained.

18 MR. BAREFOOT: Okay. Your Honor, this is all
19 collaborated by the videos in evidence, okay?

20 THE COURT: Okay.

21 Q What did you see her --

22 MR. MCDANIEL: Are we -- are we going to show the
23 video?

24 MR. BAREFOOT: We can. It's up to me. It's sitting
25 over there.

1 THE COURT: I don't -- let me hear his testimony first
2 and then I'll decide.

3 Q What was she observed doing on the video?

4 A Taking bread and throwing it directly into the trash.

5 Q Did she go through the stack?

6 A No, sir.

7 Q Is there any reason for the claimant to simply throw
8 an entire stack of bread tortillas into the trash
9 without going through them?

10 A No, sir.

11 Q Had she not thrown away the stacks, without even going
12 through them, would Ruiz have continued to provide
13 suitable work?

14 A We would have.

15 Q I want to ask you about the alleged assault. Were you
16 asked to review video from November 4, 2022?

17 A I was.

18 Q Did you do it?

19 A I did.

20 Q Did you see any assault?

21 A I did not.

22 Q Did you see anybody touch her?

23 A I didn't.

24 MR. MCDANIEL: Are those -- are those tapes in
25 evidence?

1 MR. BAREFOOT: No.

2 MR. MCDANIEL: Okay.

3 Q Did you see anybody touch her?

4 A I did not.

5 Q Do you still have those videos?

6 A I do not.

7 Q Why not?

8 A I didn't, at the time, think it was important to
9 record something that didn't happen.

10 Q In retrospect, do you wish you would have kept them?

11 A Very much so.

12 MR. BAREFOOT: That's all the questions I have.

13 THE COURT: Okay, thank you. Mr. McDaniel.

14 CROSS-EXAMINATION

15 MR. MCDANIEL:

16 Q So you're testifying about what you saw on those tapes
17 and, yet, you don't have the tapes?

18 A That's correct.

19 Q But you do have the tapes from February?

20 A Yes, sir.

21 Q Now, let me ask you. I see a bunch of write ups that
22 were put into evidence. Did you review her personnel
23 file as part of your testimony today?

24 A I did not.

25 Q Okay. Would you agree with me that everyone of these

1 were since the accident occurred? The original
2 accident back in 2019.

3 A Do I agree that they happened after --

4 Q Yeah.

5 A Yes, they happened afterwards.

6 Q Okay. How many times was she written up prior to the
7 accident?

8 A I'm not sure.

9 Q Do you know if she was written up any?

10 A I do not know.

11 Q Okay. But now she has this accident -- okay, and I
12 believe you have testified before that you are
13 responsible for coordinating all medical care under
14 workers' compensation claims, is that right?

15 A Not all. I would say I'm in the loop on all but I
16 don't coordinate it, yes..

17 Q You get the -- you get the medical records from where
18 they're -- Like when she was sent to occupational
19 health and all of that.

20 A Correct.

21 Q And I believe I took your deposition in the Cook case.
22 Do you remember that?

23 A Uh-huh.

24 Q Okay. Now, and some of the MRIs were denied in
25 reference to her treatment.

1 A We're back on --

2 Q Back on her.

3 A Okay.

4 Q Back on Ms. Davis, yes.

5 A Okay. Repeat the question.

6 Q Do you remember -- can you tell me why certain MRIs
7 and certain medical care and certain referrals were
8 denied?

9 A As far as MRIs, I cannot. I know there were several
10 MRIs that were missed for one reason or another. I
11 don't necessarily remember one being denied.

12 Q Yeah, let's go back and talk about that. Early on, I
13 believe, -- can -- this accident happened in November
14 and then we got involved in February. I actually
15 wrote you a letter in March. Do you remember that?

16 A I do not.

17 Q Okay. Do you remember the problems we had with
18 getting an MRI conducted some time around some of
19 these events happening when she was reporting to work
20 late or didn't report in or didn't come in? Do you
21 remember whether or not she was actually -- had been
22 scheduled for MRIs? Do you remember?

23 A I remember her being scheduled. I remember there
24 being a couple of reasons why they weren't attended or
25 had to be canceled.

1 Q Do you remember one of the main reasons for that was
2 that she has claustrophobia?

3 A I remember that being a reason.

4 Q Okay. And do you remember we worked with y'all during
5 that period -- so some of this time may have been due
6 to her problems with medical care.

7 A Possibly.

8 Q Okay. All right. Now, tell me in -- now, of course,
9 you go throughout the plant. I believe you're over
10 workers' comp and safety, is that --

11 A Workers' comp, safety, security, environmental, yeah.

12 Q Whose job was it to find her that first job where she
13 was throwing away bread the first time right after the
14 first accident 2019?

15 A That would have been mine and the workers' comp
16 specialist at the time. And then we would communicate
17 that with the supervisor to confirm.

18 Q And -- all right. And whose job would it have been to
19 find the job that she was -- she testified to in
20 reference to the waste area?

21 A The same.

22 Q Okay. And tell me about all this bread. You know,
23 Mr. Holder, you can give me an idea of this and give
24 the Commissioner an idea of this, in fairness to
25 everybody. How much bread are we talking about coming

1 off these lines? We've got -- would you agree there's
2 like two lines in Bakery One and two lines in Bakery
3 Two? Is that a fair statement? Is that a fair
4 description?

5 A I would describe it a little bit different. So
6 there's five bakeries within Ruiz. Each bakery has
7 eight chutes, or --

8 Q Each bakery has eight chutes.

9 A That deliver tortillas.

10 Q And there's five bakeries.

11 A Correct.

12 Q Okay. And so the people -- how many people -- you
13 said each bakery has five chutes?

14 A Eight.

15 Q There's five bakeries that have eight chutes.

16 A Correct.

17 Q And how many people are working those eight chutes on
18 each one of those bakeries?

19 A So you have two -- two that work the chutes. Those
20 two then pull the stack of tortillas that comes to
21 them and then they hand it to another team member, who
22 then takes it and stacks it into a tray, which then
23 gets put into production. So there's four at the
24 stacker table.

25 Q Okay. Four at the stacker table. And does this bread

1 come off in such a way that it sort of stacks itself
2 and you pick up a stack of it?

3 A That's correct.

4 Q I'm sort of describing it sideways. Is that sort of
5 how it is? Like a side or does it come out in stacks?

6 A No, it comes out in stacks. I mean, we call it bread
7 but it's tortillas. So they come out in a stack of
8 about 50.

9 Q About 50?

10 A Right. And then it gets automatically --

11 Q Do you cut it off at 50 or does it just keep going?

12 A No, it counts -- it counts -- so there's a canister
13 that sits there and then there's a light that counts
14 tortillas that go into the canister. Once 50 gets
15 there, it automatically advances that to you -- to the
16 stacker. They pick it up and put it on the side
17 table.

18 Q Stacker picks it up and puts it in -- into -- to the
19 next person who then puts it in something --

20 A Correct.

21 Q -- going down the line.

22 A Correct.

23 Q Okay.

24 A Correct.

25 Q And so whenever Ms. Davis is not there, who's

1 responsibility is it to go through the stacks for bad
2 bread?

3 A It could be leads. It could be supervisors. It could
4 be material movers. It could be a handful of people.

5 Q So it's sort of a team effort. Is that a fair
6 statement?

7 A I would say that's fair.

8 Q Okay. And also the people that you -- I think you'
9 referred to them as stackers. The four people there
10 are stackers?

11 A Uh-huh.

12 Q They also go through --

13 A It's a little bit more difficult for them because they
14 -- they're constantly at the stacker table.

15 Q Well, since it's stacking up and you got folded bread,
16 burned bread, and all that, you don't go through every
17 stack, do you?

18 A No, you wouldn't go through every stack. You know,
19 obviously, when it comes out you can visually see hey,
20 this has folds or this has alligator skins, or
21 something like that.

22 Q So the stacker see that and say hey, this needs to be
23 checked?

24 A Sure.

25 Q Okay. All right. And then they either check it

1 themselves, or a lead person, or one of the
2 supervisory people, or somebody else assists them in -
3 - in looking at -- looking at the bread.

4 A Fair statement.

5 Q Okay. Is that done -- is it also -- can that be done
6 right there at the stacker and if it needs to be
7 checked, is it put on a table? Do they do it right
8 there or does it all put on a table to be done?

9 A For the most part, it depends. Yeah, that's a tough -
10 - it depends. I would say most of it gets put onto a
11 secondary table to get reworked.

12 Q Okay. And then you said since the -- since -- we're
13 talking about massive amounts of bread, aren't we?
14 You probably know -- how much bread do y'all produce a
15 day?

16 A I'm not sure.

17 Q Okay.

18 A I'm not sure.

19 Q How many -- well, let me ask you this. How many
20 trucks of good bread leave the factory?

21 A I don't know that one either. I'm not sure.

22 Q Okay. But it -- I'm not trying -- I'm just trying to
23 make it -- an idea of the quantity. So now did you
24 agree with her description of the number of trucks
25 that came into the waste area?

1 A I would say three may be a little bit high. But one
2 to two isn't -- isn't uncommon at the time.

3 Q Okay. One to two per day?

4 A Correct.

5 Q Okay.

6 A Correct.

7 Q And there is some other trash involved.

8 A Uh-huh.

9 Q But there's -- but it's mainly the bread -- bad bread?

10 A Well, when you say bread, it's tortillas or dough.

11 Q Yeah. Yeah, I --

12 A So you have five bakeries, then you have five
13 production lines, and then you have five packaging
14 lines. So all of that it gets encompassed into the
15 waste trash.

16 Q Right. It can go out of any -- any -- any part of
17 that?

18 A Correct.

19 Q And so -- so let me see now. We've got five ovens,
20 for a better term, with eight chutes on each one of
21 them on one line. And five ovens on another line.
22 She referred to it as small bread and large bread,
23 right?

24 A Uh-huh.

25 Q All right. Now, and is that fair? That -- and have

1 you got like four people at each one of those eight
2 chutes?

3 A You have two people at the chutes. Two people on the
4 outside just taking it and putting it into trays for
5 production.

6 Q Right. Right. Okay. So it's a total four, though,
7 at the end where that chute comes out and the bread
8 goes out. You got four people at one. How many
9 stackers are we talking about?

10 A You have two stackers.

11 Q Two stackers.

12 A If I'm understanding the question.

13 Q All right. But at that one machine, we've got four
14 people. Two stackers and two --

15 A Packers, yeah.

16 Q What do y'all refer to those two as?

17 A Packers. Well, I mean, they rotate. So they're
18 stackers but that's --

19 Q The stackers and packers?

20 A No, they're all stackers.

21 Q Okay.

22 A But they rotate.

23 Q Okay, I got you. All right, now, but then there's
24 four people at each one of those machines that has
25 eight. Am I right on that?

1 A Correct. But only two are pulling at a time.

2 Q I know. So two at each machine and we've got five
3 machines on one line and five machines on the other
4 line.

5 A You have five total ovens.

6 Q Oh, okay. So there's five total ovens on the two
7 lines.

8 A No. There are five ovens throughout the facility for
9 all five lines of productions. Each line has it's own
10 oven.

11 Q Okay. All right. And so there's a total of five
12 lines throughout the facility.

13 A Correct.

14 Q All right. Is there like maybe one more in the small
15 bread or one more in the large bread? I'm just --

16 A As far as chutes?

17 Q Yeah. I mean, because I was thinking -- well, let me
18 ask you this. I don't know. Is Bakery One do only
19 large bread? And Bakery Two only do small bread?

20 A Typically but not always.

21 Q Okay. So they can do the --

22 A You can switch.

23 Q -- each one. Okay. Now, so then it's put on the
24 table and -- all right, the instructions from
25 supervision about cold bread. All right, who -- all

1 right, is it correct that cold bread cannot be used in
2 production?

3 A Cold bread has a tendency to crack, which creates
4 waste so yes.

5 Q Okay. So, in other words, it's thrown away if it's
6 cold?

7 A Correct.

8 Q Okay. And in addition to that, -- I don't know if you
9 know this or not. Do you know what the -- what's --
10 in reference to that table, do you know why they do
11 not want the table stacked up?

12 A That I do not know.

13 Q Why Ruiz Foods does not? Okay, so you don't anything
14 as to why anybody would be instructed or they do not --
15 -- the supervisory people around there don't want that
16 table stacked up?

17 A I would say, just in general, if that table -- if the
18 rework table is stacked up then that means equipment
19 may not be running. That's waste.

20 Q Okay.

21 A But I don't -- I don't know. I don't know.

22 Q Okay. That's fine. That's fine. All right, now,
23 let's see. All right, and you assigned her to the
24 light duty job with the restrictions with Dr. Sanders,
25 which included no bending, stooping, or twisting, no

1 lifting over five pounds. Do you remember that?

2 A I don't remember that specific one but.

3 Q And then after that, Dr. Allen had all those
4 restrictions -- very similar restrictions. No
5 bending, twisting, stooping, lifting. And then Dr.
6 Choksi said sedentary work only. And you made the
7 accommodations for those jobs?

8 A Yes, sir.

9 Q And you assigned her to each one of those jobs? You
10 found them?

11 A Yes, sir.

12 Q Or is created a fair statement?

13 A Well, I mean, given the job so the waste dock one, I
14 would say, is probably created. The other ones -- I
15 mean, we're constantly sanitizing. We're constantly
16 doing rework to keep waste down. But I would say the
17 waste dock one was created.

18 Q But in reference to her last job of which she was
19 terminated, she was the only employee -- that was a
20 job where she would do only that function and that
21 function alone in reference to what was coming out the
22 end. The stackers were doing the other job.

23 A Correct.

24 Q And before she got there, they were doing that work as
25 well.

1 A Someone within the department.

2 Q Someone within the department --

3 A Yeah.

4 Q -- was doing all that work. Okay. Now, prior to --
5 what caused you to go -- what was the reason that you
6 went and looked at video tape of her on a given night
7 in reference to her work?

8 A Are we talking about a night specifically?

9 Q I'm talking about the night that you went -- you chose
10 to pull those videos that we don't have -- we've got
11 those.

12 A The alleged harassment?

13 Q Yeah.

14 A That was --

15 Q No, no, no. Not the harassment. Not November 4th.
16 I'm talking about the bread when --

17 A Okay.

18 Q -- she was seen to be throwing it away. What caused
19 you to go look at those videos?

20 A HR came and requested it.

21 Q Okay. And was that based on an employee coming to HR?

22 A I believe so.

23 Q Okay. And I believe that was Opal Jones was the --

24 A She's the one that came to me.

25 Q Okay.

1 A Correct.

2 Q All right, and -- and so -- and was the -- was it
3 specific as to the night or time or what? The request
4 for reviewed tapes.

5 A I believe it was for the night. I don't remember
6 specifically but I believe it was for the night.

7 Q Okay. Did you review -- review the entire night?

8 A I did not. Not that I can recall.

9 Q And why did Ms. Opal Jones want you to review those
10 tapes concerning throwing away bread?

11 A Because a team member came and alluded of the
12 situation, she came and asked me.

13 Q Okay. And if the allegations proved to be true, what
14 was going to happen to Ms. Davis?

15 A That I wasn't sure.

16 Q Disciplinary action was going to be taken?

17 A Yes.

18 Q Okay. All right. But in reference to Ms. Davis,
19 whose job it is to throw away bread, --

20 A No, that wasn't her job.

21 Q Her job is to sort through and separate good bread
22 from bad bread?

23 A Her job is to -- the request was if bread comes out
24 bad and it is salvageable then you salvage that bread
25 so that we can use it.

1 Q If not?

2 A The objective is to remove waste.

3 Q If not, it --

4 A If it's not, then yes -- if it's torn or something
5 like that, if it's not usable, then yes, you would
6 throw it away.

7 Q Or it's cold?

8 A Or it's cold.

9 Q Okay.

10 A I will say the likelihood of it being cold in that
11 position is minimal. Not saying it couldn't happen
12 but I'm saying it's minimal.

13 Q Okay. But yet, your plant throws away two tractor
14 truck loads of bad bread a day?

15 A Yes.

16 Q Okay. So you'd agree with me that's a pretty good bit
17 of bread, right?

18 A Two truck loads?

19 Q Yeah.

20 A Yes, sir, I would.

21 Q Okay. Two tractor trailers. Okay, now, so how many
22 other people have you reviewed the video tape on
23 concerning throwing away bad bread?

24 A I don't know. I'm not sure. Other than Opal and --
25 and Walt, I'm not -- I'm not sure.

1 Q How many --

2 A They wouldn't --

3 Q How many other employees have you reviewed video tapes
4 to determine whether or not they were throwing away
5 bad bread in excess of the -- what they were supposed
6 to be throwing away?

7 A Outside of Ms. Mary?

8 Q Outside of Ms. Davis.

9 A That I -- none that I recall right off.

10 Q Okay. So none that you recall. And in the entire
11 time that she was on light duty, do you know of any
12 other complaints about the quantity of bread that she
13 was throwing away?

14 A I do not.

15 Q Okay. And --

16 A But at the same time, the only reason I know about
17 this is because I was asked.

18 Q You were asked.

19 A Right.

20 Q Exactly. And -- and that was because of an employee
21 complaint or some -- you believe?

22 A I believe, yeah.

23 Q I believe that's in accordance with Opal Jones's
24 testimony.

25 A Correct.

1 Q Some employee had out of the blue come into her office
2 and told her about that she thought she was throwing
3 away --

4 A Possibly.

5 Q -- bread. Well, you were there at the deposition.

6 A I was.

7 Q Okay. All right, now, there's been testimony and I
8 think there was a discussion before about -- now, I'm
9 talking about November 4th, okay.

10 A Okay.

11 Q All right. Before we get to that, again, knowing that
12 maybe some disciplinary action, did you take a look at
13 other tapes just to see what her normal work -- what
14 she was doing normally in a given day? Or did you
15 concentrate on that one day?

16 A I believe it was two days just to make sure that it
17 wasn't a snapshot in time. That it was over a period
18 of time.

19 Q I believe -- I can't find the list that Walt was so
20 kind to give me --

21 MR. MCDANIEL: Walt, can I borrow your list with the
22 times on there?

23 MR. BAREFOOT: Sure.

24 Q Now, this in reference to -- it says at the top that
25 this is in reference to one day, February 8th, is that

1 right?

2 A Uh-huh.

3 Q And so tell me about these times on here, if you don't
4 mind. What do these -- what does this mean? Is that
5 right like right after midnight? Forty-three seconds
6 after midnight? Is that what that is?

7 A I would have to defer to Walt. This isn't my -- this
8 isn't my printout.

9 Q Okay. So you can't tell -- these numbers 0043 and
10 00.46 what those are?

11 A It would be an assumption.

12 Q Okay. All right. But you basically observed her on
13 four different occasions throwing away an entire stack
14 of bread?

15 A Correct.

16 Q And it's not in a bag or anything. It's just stacked
17 up bread.

18 A Correct. Yes, sir.

19 Q All right. Does the video show who's bringing the
20 bread?

21 A It does.

22 Q Was it the same person?

23 A Not that I recall. I believe it's two individuals but
24 I can't be certain.

25 Q Okay. All right. Now, but knowing that disciplinary

1 action may have been taken against her, you did not
2 see if that was something like an aberration of what
3 she normally did in her job on a day-to-day basis?

4 A Me personally, no. That would fall under HR for them
5 to make that decision.

6 Q To make the request of you to look at the video tapes
7 --

8 A Sure.

9 Q -- and say hey, we want to be fair to Ms. Davis --

10 A Sure.

11 Q -- since we've never fired anybody for throwing away a
12 lot of bread, as far as you know.

13 A As far as I know.

14 Q You know, and we want to be fair to her. We know
15 she's on light duty with extreme restrictions but we
16 want to know, you know, why she was doing that. Or if
17 that was normal course of practice that she was doing
18 a lot or that just happened to be an aberration. So
19 nobody asked you to do that?

20 A I was asked to look for a second day to see if there
21 was a second day of the same type of situation so
22 that's what I did. And on the second day, whether it
23 was before the day or after the day, the same practice
24 took place.

25 Q Are those on the video?

1 A I'm not sure. I'd have to look.

2 MR. MCDANIEL: How many -- how many of those videos do
3 we have, Walt?

4 MR. BAREFOOT: The one that we sent to you. Did you
5 look at it?

6 MR. MCDANIEL: I tried to but I couldn't bring it up.
7 It wouldn't come up. Mine wouldn't -- would not
8 come up.

9 MR. BAREFOOT: Why didn't you contact us? But yeah.

10 MR. MCDANIEL: Well, I'm sorry, Walt, I didn't -- I
11 didn't get a chance to look at it until last
12 night. But anyway.

13 MR. BAREFOOT: But I thought there was one day on here
14 but there could be two days.

15 Q To the best of your recollection, was it one or two
16 days?

17 A I believe -- I believe that it was two because we
18 didn't want it to be a snapshot in time. We wanted to
19 be a consecutive or some type of repeat before they
20 made that decision.

21 Q How many hours of video tape did you turn over to HR?

22 A I'm not sure.

23 Q Okay. Now, for future reference for this case and
24 just -- just for general, you have retained -- how
25 much of the video tapes surrounding her work there

1 have you retained?

2 A How many video tapes?

3 Q Yeah. In other words, like we know that you looked at
4 a video tape of her at her work station involving one
5 night at least. How many other days -- have you
6 retained all of those for a month or so around that?

7 A Typically, once it's saved, it's -- it's saved.

8 Q It's saved?

9 A Right.

10 Q But that doesn't apply to what happened on November
11 4th?

12 A That's correct.

13 Q Why is that?

14 A For me, there was no incident so, at the time, I said
15 there's no incident there's nothing to record.

16 Q Okay. So let me make -- make sure I understand
17 recording here. All right, so it's recorded and then
18 -- if it's recorded, why is it kept?

19 A I don't -- I'm not understanding that question.

20 Q Well, I'm -- all right, her work activity at this work
21 table was recorded. You went back and looked at the
22 tapes for that day. There were other -- I assume that
23 those -- her work station was recorded every day, is
24 that correct?

25 A It's recorded. You know, we have X amount of days

- 1 that the server can save.
- 2 Q Correct.
- 3 A Once it reaches that max day then it's gone.
- 4 Q Okay.
- 5 A So if you don't save it within that timeframe, it's
- 6 not there.
- 7 Q So if somebody wanted to defend in court that this was
- 8 an aberration of her normal work practice, we couldn't
- 9 prove that now because that -- all of that's been --
- 10 is gone. Is that right? Except for what you saved.
- 11 A If you're looking for her specifically, yes.
- 12 Q Okay. So everything except for what you saved, what
- 13 the Commission's going to be asked to look at, that's
- 14 -- that's all that's been saved?
- 15 A That's correct. There's also a saved video of the --
- 16 the day of injury -- of the initial fall in the
- 17 cafeteria.
- 18 Q Oh, yeah. And you -- you kindly sent me that --
- 19 A Right.
- 20 Q -- a long time ago.
- 21 A Right.
- 22 Q But of the November 4th, that one you chose -- it's
- 23 day is gone -- come and gone?
- 24 A That's correct.
- 25 Q And you don't have it?

1 A That's correct.

2 Q So all we have is your testimony. Now, there's been
3 some discussion about that. Did you see large numbers
4 of people in -- in the video?

5 A Not knowing what large number means, I would say no.
6 From what I recall, the hallway was relatively -- I'm
7 not going to say empty but, you know, 6/7/8 people.
8 Large number to me would be 20/30.

9 Q How many people go on break at a time? Maybe that --
10 maybe it would help us with understanding that.

11 A It depends. If it's the production line, you might be
12 looking at 40 people. If you're looking --

13 Q They all go to the same break area?

14 A No, you have two different -- you have a north side
15 and a south side.

16 Q Okay. And so would it be uncommon -- so you say 40 at
17 a time. So let's say 20 in each break room -- going
18 to each break area.

19 A No, each -- so each production line has its own break
20 room but there's two different break rooms. So one,
21 two, and three may go to this one. Four and five go
22 to this one.

23 Q And -- okay, and they go down the hall to get to each
24 one of those? And that's what we're talking about?
25 The hall.

1 A Correct.

2 Q Did you see the -- on the tapes you reviewed, did it
3 review the doors?

4 A Correct.

5 Q Did it review the scrape area -- the boot scrape area?

6 A Not the boot scrape. It's a boot scrubber but
7 that is on the inside of the doors. Where we watched
8 was on the outside of the doors in the main hallway.

9 Q Okay. All right. Is there a video tape -- or is
10 there a camera on that boot scraper area?

11 A There it is not.

12 Q So if this occurred in the boot scrape area, it would
13 not be on tape?

14 A That's correct. What we were told, or what I was
15 asked, was to look in the main hallway once you come
16 through the doors. It was my impression that that's
17 where the incident took place.

18 Q By the way, the gentleman involved in the incident, he
19 -- he did a statement too.

20 A I believe.

21 Q Okay. And I believe he said a minor incident occurred
22 but not -- he disagreed with the degree.

23 A Okay.

24 Q Do you know whether or not he has any relatives in the
25 plant?

- 1 A That I do not.
- 2 Q Cousins?
- 3 A I do not know.
- 4 Q Anybody that works in supervision?
- 5 A Not to my knowledge.
- 6 Q Okay. All right. Do you know anything about any of
- 7 the cameras being broken or malfunctioning?
- 8 A I need a little more -- I mean, sure, we have several
- 9 cameras that are currently now down or may malfunction
- 10 from time to time.
- 11 Q Well, during this time.
- 12 A No, I distinctly remember sitting with Ms. Opal
- 13 watching the video of Ms. Mary come through the double
- 14 doors, out the hairnets, out the smocks, and then
- 15 leaving there and going through the double doors into
- 16 the cafeteria -- or into the hallway that leads to the
- 17 cafeteria.
- 18 Q And passing people?
- 19 A Correct.
- 20 Q Did you see the other gentleman involved?
- 21 A The harasser?
- 22 Q Yeah. Yeah.
- 23 A I did.
- 24 Q Okay. Where was he?
- 25 A It was in passing by the hairnet stand going into the

1 double doors that then leads to the boot scrubber.

2 Q But we do not have that video tape and there's no
3 video tape in reference to inside the doors at the
4 boot scraper?

5 A That's correct.

6 Q And if somebody had said that -- that one or more of
7 those cameras was not working during that time, you
8 would -- do you know whether or not that's true?

9 A Well, I know that it isn't true because I watched the
10 video.

11 Q On the one -- on how many cameras did you watch --
12 work on? How many cameras are in that area?

13 A That picks up that location, there's one camera.

14 Q Okay. And so -- okay, all right.

15 MR. MCDANIEL: I don't have any further questions.

16 THE COURT: All right, thank you. Mr. Barefoot?

17 MR. BAREFOOT: One follow-up.

18 REDIRECT EXAMINATION

19 MR. BAREFOOT:

20 Q You were asked about two trucks leaving the plant with
21 waste. Is all the waste tortillas?

22 A It is not.

23 Q What else would be in the trucks?

24 A As I said, you have 5 bakeries so that's raw side,
25 cook side. You have 5 production lines. Each

1 production line has 16 lanes of production. And you
2 go on to packaging, they have their own waste. And
3 then warehouse as well would have their waste, if
4 something has NFO or met life expectancy, all of that
5 would then go to the waste dock.

6 MR. BAREFOOT: Nothing further, Your Honor.

7 THE COURT: Okay, all right.

8 MR. MCDANIEL: Nothing further.

9 THE COURT: Thank you. Mr. Holder, thank you. You
10 may have a seat over there. Any other witnesses
11 for the defendants?

12 MR. BAREFOOT: If I could beg your indulgence, just
13 one moment. The defense rests.

14 THE COURT: Okay, thank you. All right, with no
15 further testimony, I will recite the APA
16 submissions into the record. For the claimant, I
17 have APA numbers 1 through 10 with your pages 1
18 through 75. In addition, the claimant has
19 submitted the deposition transcript of Ms. Opal
20 Jones and that's marked as hearing exhibit 1.

21 MR. MCDANIEL: I handed up the wrong one,
22 Commissioner.

23 THE COURT: Okay.

24 MR. MCDANIEL: Shanda Blackwell would be --

25 THE COURT: Okay. Do you want me to keep Opal Jones

1 or no?

2 MR. MCDANIEL: Yeah, I'll go ahead and submit Opal
3 Jones. I'm sure it will be fine.

4 THE COURT: Okay. All right, and then also the
5 deposition transcript of Ms. Shanda Blackwell,
6 and that will be marked as hearing exhibit 2.
7 For the defendants, I have received APA
8 submissions for the claim number 1923627, I have
9 APA numbers 11 through 26, which are pages 76
10 through 196 as well as a flash drive of video
11 surveillance. Or not surveillance. Videos from
12 the company. And then for the 2223041 claim, I
13 have APA numbers 11 through 16, which are pages
14 76 through 111, and that also listed the video.
15 I know there are some duplicates but because
16 there are two different claim numbers that have
17 been consolidated, I will just upload all of the
18 submissions as is. That concludes this matter.
19 Thank y'all very much.

20 (There being nothing further, the hearing
21 concluded at 2:20 pm)

CERTIFICATE OF REPORTER

I, KATHRYN BOSTROM, COURT REPORTER AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
CERTIFY THAT I REPORTED THE ABOVE HEARING ON WEDNESDAY, THE
27th DAY OF SEPTEMBER, 2023, THAT THE WITNESS WAS FIRST
DULY SWORN BY ME AND THAT THE FOREGOING 104 PAGES
CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK
REPORT OF SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
20TH DAY OF FEBRUARY, 2024.

KATHRYN B. BOSTROM, COURT REPORTER

MY COMMISSION EXPIRES AUGUST 23, 2032

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1923627 and 2223041

Mary L. Davis,)
)
Claimant,)
)
v.)
)
Ruiz Food Products, Inc.,)
)
Employer,)
)
and)
)
Safety National Casualty)
Corp,)
)
Carrier/Defendants.)
-----)

VIRTUAL FULL COMMISSION HEARING

Monday, February 10, 2025
1:58 p.m. - 2:27 p.m.

The Virtual Commission Hearing was heard before Commissioners Cynthia Dooley, Melody James, Mike Campbell on the 10th day of February, 2025, before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.



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Also Present:
 Eugenia Hollman

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EXHIBITS

(No Exhibits were marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 CALL OF THE CASE:

2 COURT REPORTER: Today is February 10th, 2025. This
3 is South Carolina Workers' Compensation Case
4 Number 2223041. This is the case of Mary L.
5 Davis versus Ruiz Food Products, Inc. and
6 Safety National Casualty Corporation.

7 The Appellant is Attorney Preston
8 McDaniel. And the Respondent is represented by
9 -- I'm sorry. The Appellant is the Claimant,
10 Representd by Attorney Preston McDaniel. And
11 the Respondent is represented by Attorney Walt
12 Barefoot.

13 Each side is allowed ten minutes for oral
14 argument and the Appellant three minutes in
15 reply. You are requested to argue the grounds
16 of exception and stay within the record.

17 COMMISSIONER DOOLEY: All right. And it is my
18 understanding that Mr. McDaniel has a motion
19 that he would like to address at this time
20 before we start the clock.

21 MOTION BY MR. MCDANIEL:

22 MR. MCDANIEL: Commissioner, I'd asked that -- in an
23 e-mail sent earlier today that you recuse
24 yourself, because we have a Pollock issue in
25 this case, and you were the defense counsel in



1 Pollock. And, you know, I'm -- while I'm sure
2 that you will try to be as neutral as possible,
3 I feel that I would ask you to recuse yourself,
4 because of the possibility of the perception
5 that you may have preconceived notions about
6 Pollock in this application and whether or not
7 it should be even extended beyond what this
8 Plaintiff already said and what to extend it
9 to. And so for those reasons I would moved as
10 a potential bearing, I would like for you to
11 recuse yourself.

12 And if so, since the Commission would have
13 to have time to review the file, then I would
14 -- I mean, I don't want to postpone the
15 hearing, but I would prefer to do that versus
16 having a Commissioner that I do not get a
17 chance to appear before in my request for a
18 hearing by a Full Commission.

19 **COMMISSIONER DOOLEY:** Mr. Barefoot, do you have any
20 response to that?

21 **MR. BAREFOOT:** No, Your Honor. I received the e-
22 mail after I got out of a deposition about an
23 hour and a half ago, so I haven't had time to
24 research it.

25 My gut reaction, for whatever it's worth,



1 is that a case in which a Commissioner was
2 involved in over 12 years ago would in no way
3 be a cause for a recusal. We, as attorneys,
4 advocated positions all the time.

5 But, again, at the end of the day, I
6 certainly defer to the Commission.

7 **COMMISSIONER DOOLEY:** Mr. McDaniel, I do not feel,
8 in this case, that I should recuse myself. I
9 think all of us do have a past where we have
10 either defended employers or represented
11 Claimants and had various cases that we dealt
12 with at that time. And, like Mr. Barefoot
13 said, that has been almost 20 years ago. I
14 didn't make the decision in the case. The
15 Court of -- the Supreme Court actually did, so
16 therefore I do not feel the need to recuse
17 myself in this matter.

18 **MR. MCDANIEL:** Well, I understand the Commission. I
19 accept the ruling. But as of yesterday I had
20 Commissioner McCaskill, because he knew the
21 head of the agency, he offered to recuse
22 himself. So it's across the board. But I
23 understand your ruling, and we'll go forward.

24 **COMMISSIONER DOOLEY:** Very good. You have ten
25 minutes, sir.



1 ORAL ARGUMENT BY MR. MCDANIEL:

2 MR. MCDANIEL: Commissioner, I'm going to basically
3 submit three arguments to you today, and ask
4 you to review the record, which I know you've
5 already done in this case.

6 First one is that Commissioner Taylor
7 simply did not perform her statutory duty by
8 making detailed findings of fact and
9 conclusions of law, as required by either the
10 legislature -- because they want to make sure
11 that to make a detailed findings of fact, they
12 added Section 42-9-5. And in this case we
13 received notice of decision, some four -- over
14 four months after the decision. And those are
15 in the record. And it consisted of eight
16 general statements. And in those general
17 statements it said that the instruction said --

18 COMMISSIONER JAMES: Mr. McDaniel, you're talking
19 about the instructions?

20 MR. MCDANIEL: I'm sorry?

21 COMMISSIONER JAMES: You're talking about the
22 instructions. That's not the order, so you're
23 talking about her instructions.

24 MR. MCDANIEL: Correct, it is her instructions. But
25 that is supposed to be the thing that I get



1 from you and I get from Commissioner Dooley and
2 I get from Commissioner Campbell instructions
3 containing findings of fact that contain
4 references to the record where you have made
5 that -- you have based your decisions.

6 To simply say in a group of instructions,
7 which I have never gotten from any one of you.
8 Never gotten from any one of you. Instructions
9 simply saying that ask the drafting attorney to
10 put -- the proposed finding of fact and
11 conclusion of law consisted, which was the
12 further instructed, and then to cite the APA
13 submissions, deposition transcript, and/or
14 hearing transcript where appropriate.

15 Now, those eight instructions that were
16 sent to us in January, Mr. Barefoot and I both
17 agree that she did not include any directions
18 on certain issues before her decision. They're
19 not there. And then only after, some six
20 months later, when I file in the Circuit Court,
21 didn't issue in the order because she hadn't
22 done her job in reference to making findings of
23 fact and conclusions of law.

24 Two months after that, I sent -- I made a
25 mistake of sending a courtesy copy to the



1 Commission. And two weeks after that,
2 Mr. Barefoot had contacted her no less than
3 three times asking the Commissioner, what are
4 your directions on these two issues that were
5 before you? I think there were other issues
6 that she did not address, but he asked her. We
7 agree that there are at least two issues that
8 she did not address in her findings of fact and
9 conclusions of law. And then almost a year
10 later she pretty much issues her -- she doesn't
11 -- she doesn't send Mr. Barefoot any additional
12 findings of fact, because I wanted to file a
13 complaint at that time in the Circuit Court.
14 What does she do? She goes in and she makes --
15 she writes her own order. And this now
16 contains some findings of fact, but it does not
17 contain findings of fact that that's clearly
18 done a year, a year. Cases to be remanded to
19 the Commission because it didn't have findings
20 of fact on certain issues. And for example, in
21 this case, she did -- within her order she did
22 not make findings of fact.

23 On the first five and first eight when she
24 listed her original instructions, the first one
25 does not contain any findings of fact. It's



1 recited in her order. Finding of fact number
2 two does not have any findings of fact before
3 you.

4 COMMISSIONER DOOLEY: Mr. McDaniel, in the order
5 which issues are you contending -- I hear what
6 you're saying about the findings, but are you
7 saying there's particular issues that weren't
8 addressed also? And what are they?

9 MR. MCDANIEL: Okay. Commissioner, the whole
10 purpose of us filing the initial Form 50 and
11 the alleged Form 50 was to obtain medical care.
12 There is absolutely, in her instructions and in
13 her order, no decision in reference to -- the
14 Defendants either did it several times, Dr.
15 Alan had said this lady is going to need two to
16 three injections in her hip and two to three
17 injections -- I want to say three -- I want to
18 say three in reference to her knee. We had
19 asked those to be authorized. They weren't
20 authorized. We repeatedly asked for them.
21 And then over a period of three months. So
22 that is not even addressed.

23 The second thing is, Commissioner
24 Wilkerson, who originally this matter was set
25 before, issued a specific order finding that



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1 the case -- he considered it to be a separate
2 action and should have been reset before a
3 Commissioner. We had to file a second Form 50
4 for that accident and he wanted us -- so then
5 he wanted a Commissioner to decide whether or
6 not the action was -- if the things that the
7 lady was having, all these issues came before
8 the Commission as to whether or not the
9 Claimant's current problems and requested
10 medical care and benefits stem from the first
11 accident, the second accident, or a combination
12 of the two. And that's the law of the case.
13 She doesn't even reference any of the past
14 medical history after 2019 where this lady took
15 a diagnosis of cervicalgia, her left hip ---

16 **COMMISSIONER JAMES:** All right. So Mr. McDaniel,
17 then the first thing you're saying that's not
18 in there is a certain treatment modality to
19 some body parts?

20 **MR. MCDANIEL:** correct.

21 **COMMISSIONER JAMES:** What is it that you're
22 requesting? Which treatment to which body
23 parts?

24 And then the second thing I hear you
25 saying is you're saying that the cervical -- or



1 the neck was not addressed. Is that what
2 you're saying?

3 MR. MCDANIEL: That is correct. The cervical was
4 not addressed as to whether or not it stemmed -
5 - before the Commissioner Wilkerson, whether or
6 not it stemmed from the first accident, the
7 second accident, or a combination of the two.
8 They denied MRIs, they denied treatment for
9 certain things. However, they authorized
10 treatment for the neck, the low back, and both
11 hip and leg from the very beginning. So we're
12 asking for the treatment for the leg and back,
13 and we're asking for all the body parts that
14 were injured in the accident. We're asking
15 specifically for the treatment -- Dr. Chokshi
16 has said, before he can determine whether or
17 not she's going for treatment, she needs an MRI
18 of the neck. Okay.

19 Now, we believe that she further
20 aggravated the back of her neck and she's
21 having problems with it ever since the first
22 accident and then the second, I understand. So
23 we're asking for the treatment by Dr. Chokshi
24 for the neck. We're asking for treatment by
25 Dr. Alan for the hip and the knee. And we're



1 asking for all that medical care.

2 In addition, we're asking that the
3 Commission grant us temporary total disability
4 benefits from the time she was terminated.
5 Now, I need to get to that real fast, since
6 it's a Pollock issue. Pollock being an
7 exception within the provision of benefits was
8 the act of benefits -- payment of benefits to
9 the injured worker, it being a restricted case.
10 It was supposed to be restricted and construed.
11 However, it's been pointed every day as a
12 basis for denying benefits for an injured
13 worker or who stopped, do not pay temporary
14 total.

15 Now, in Pollock there were three things
16 that happened in Pollock. Number one,
17 Mr. Pollock, while being in a full-duty job, he
18 was not ever paid temporary total. That's
19 number -- the second issue in Pollock that
20 everybody forgets to look at, he was not on
21 temporary total disability. He was at his
22 regular duty job doing light duty capacity.
23 But more importantly, in Pollock he violated a
24 totally unrelated, in any way shape or form to
25 a work-related accident, policy that required -



1 - and the policy is in Pollock. It required --
2 it says it is automatic, mandatory termination
3 for failure to report an accident. He reported
4 an -- he failed to report an accident. Totally
5 unrelated in any way to his light duty job or
6 what he was doing before, he violated a totally
7 unrelated Pollock.

8 The third thing is that he admitted that
9 he violated -- knew that that policy was there,
10 knew that it required informing them of the
11 accident, and knew that he violated the policy
12 and was required immediate termination. So in
13 this case, you're not going to find that same
14 written policy for that. The light duty job
15 the Claimant performed was, she testified
16 uncontested -- matter of fact, Mr. Holden
17 testified to this -- said he didn't know what
18 the policy was in this regard. And that is
19 that they managed to throw away cold bread.
20 She was instructed that, if that table got
21 stacked up, she was even to throw away hot
22 bread. But she simply said that she was
23 supposed to throw away cold bread. And wait --
24 all they did was they took it and didn't --
25 didn't find out what she was doing. And ---



1 (Time keeper alert while speaking.)

2 COMMISSIONER DOOLEY: All right. That's your time
3 at this point. You'll have three minutes in
4 reply.

5 Any questions?

6 COMMISSIONER CAMPBELL: No.

7 COMMISSIONER JAMES: No.

8 COMMISSIONER DOOLEY: Mr. Barefoot.

9 ORAL ARGUMENT BY MR. BAREFOOT:

10 MR. BAREFOOT: Thank you. May it please the
11 Commission. I'm Walt Barefoot, here on behalf
12 of Defendants with the Respondent. I would
13 note, I believe the court reporter read only
14 one of the WCC numbers involved. This claim
15 involved -- this hearing involved two matters.
16 The other WCC number is 1923627. I just want
17 to make sure I had that on the record.

18 COMMISSIONER DOOLEY: Thank you, sir.

19 MR. BAREFOOT: The Claimant file two Form 50. Thank
20 you. They consolidated for a single hearing
21 with a Commissioner in September of 2023.

22 Now, if you look back through the
23 introductions or the statements on the record,
24 there are primarily two issues for the hearing.
25 One was the Claimant had filed temporary



1 disability benefits after being terminated
2 following light duty for what the Defendants
3 believe was good cause. And second, that she
4 sustained a compensable injury to her neck on
5 November 4, 2022 when she claims she was
6 assaulted. I'll just refer you to page 14 to
7 the transcript of hearing.

8 The report indicated that the doctor had
9 -- Dr. Chokshi would hold off on the FCE
10 because it was premature until after it
11 determined that she has reached maximum medical
12 improvement for her neck pain stemming from the
13 work-related incident wherein, according to our
14 notes, she was assaulted on the job and shook
15 by a co-worker.

16 The Single Commissioner listened to live
17 testimony, reviewed the depositions that were
18 submitted, reviewed all the evidentiary
19 submissions, and issued an order in July of
20 2024.

21 As far as the temporary total disability
22 issue -- oh, by the way, the Defendants have
23 also submitted in a video of the Claimant
24 throwing away entire stacks of product, bread,
25 tortillas. So she reviewed all of that in her



1 order finding that the Claimant was terminated
2 for cause. And under the Pollock case, she's
3 not entitled to temporary disability benefits.

4 She also looked at all the evidence and
5 listened to testimony about the alleged assault
6 and found there really was no alleged assault,
7 and therefore denied medical care as a result
8 of that assault.

9 The Claimant finally filed a Form 30. And
10 that's what brings us here today.

11 I want to touch on the evidence of the
12 case. There's a good bit of evidence, as you
13 can imagine. I'll refer to a bunch of it in
14 our brief on pages three to eight of our brief.
15 I'll try to be concise today, because of the
16 time limitations. All witnesses, including the
17 Claimant testified that, since the injury in
18 2019 Ruiz has been able to provide work within
19 her restrictions. Okay. that's transcript
20 hearing pages 57, 70, and the Blackwell
21 deposition at page 23.

22 In January and February of 2023, Ruiz had
23 her doing a job where she sat at a table
24 sedentary working to put stacks of tortillas
25 that had to be sorted, what's good, what's bad.



1 She was supposed to stack the good bread on one
2 side and throw away the bad bread. That's the
3 Claimant's own testimony, transcript of hearing
4 page 44, 59, 60, 81. There's a good bit of
5 them.

6 In February of 2023 a coworker went to HR
7 and said, She's throwing away entire stacks of
8 bread. She's not sorting what's supposed to be
9 sorted. So to check up on it, the employer
10 said, well, we'll pull a video and see what she
11 did. That's where John Holder comes in, and
12 that's the ultimate video that you have in
13 evidence. He reviewed it. Reviewed a couple
14 of days. She was, in fact, taking entire
15 stacks of bread and throwing it away, despite
16 her own testimony that she's supposed to go
17 through it. Yeah, she's supposed to throw some
18 bad -- you're supposed to through the bad bread
19 away. But she has to sort out the good from
20 the bad in order to throw away.

21 As a result of violating that policy and
22 destroying healthy product, she was terminated.
23 Now, I would also note that, after the original
24 injury of 2019, the original claim, she's been
25 written up at least seven times for



1 infractions. For all of those infractions, she
2 could have been terminated, but she was not.
3 That's from the alleged assault. On the
4 Plaintiff testified that a specific coworker
5 grabbed her and shook her in a specific
6 location around a crowd of people. If you look
7 at the transcript, it'll be on pages 33 and 34.

8 So Mr. Holder -- she didn't report this
9 the day it supposedly happened. When she did
10 report it, Mr. Holder went back and looked at
11 the video of that area of the plant. He saw
12 her come through the door she said she went
13 through, walked past the people she said was
14 there, including the alleged assailant, and
15 nothing happened. That's his deposition --
16 excuse me, his transcript -- his hearing
17 testimony pages 101 and 102. The human
18 resources lady did the same thing. She did not
19 see any assault, pushing, or shoving. Jones
20 deposition page 21.

21 So the Claimant saw Dr. Chokshi ten days
22 after the alleged assault. That's her
23 testimony. If you look at his report, APA
24 pages 76 through 78, no mention of assault.
25 She saw Dr. Rodney Alan for the left leg in



1 February of 2023. She said she told him about
2 the assault. No mention of it. APA pages 79
3 to 82. In March of 2023 she saw the nurse
4 practitioner for an unrelated condition. No
5 mention of the alleged assault. APA pages 83
6 to 90. In fact, he found a full range of
7 motion for her neck.

8 So I'm not going to go over the standard
9 of review. That's a Pollock as well. It's in
10 our brief if you need it. But first in regards
11 of the finding of fact issue, the Single
12 Commissioner oriented 20 specific findings of
13 fact in the order, and that's all that
14 mattered. Instructions to prepare an order
15 aren't what matter. What matters is the order.
16 She also made specific -- 11 specific
17 conclusions of law, all of which meet the legal
18 requirement, all of which tell us what she
19 decided, why she decided, and what it's based
20 on. She was correct in those.

21 Secondly, the Commissioner was correct in
22 denying temporary total disability benefits.
23 Pollock is in no way limited to its facts of
24 that specific case. The Claimant wants to
25 argue what's bad law and needs to be



1 reconstrued. According to our research, it's
2 been cited at least 35 times since it was
3 handed down. In no way has it been questioned
4 or criticized or overruled by the Court.

5 Now, it does warn, make sure that the
6 employer is not firing somebody just because
7 they want to get rid of them, because they're
8 on comp. Well, as I indicated earlier, she had
9 been written up for seven infractions before
10 the significant problem, and she could have
11 been fired and wasn't. Therefore, this is not
12 pretextual. In addition, the company rep,
13 Mr. Holder, testified that had she not been
14 fired for destroying company product, like she
15 did, they would have continued to make some
16 work. Therefore, the Single Commissioner is
17 correct and were request you'll affirm that.

18 In regards to the alleged assault. As you
19 all know, the Claimant has the burden of proof.
20 The only evidence of this assault from anywhere
21 is the Claimant saying, I got assaulted that
22 day. The video doesn't show it. The medical
23 record, ten day after the alleged assault
24 doesn't show it. She never called the police.
25 She never reported the assault to any sort of



1 legal authority. The bottom line is -- oh, she
2 said there was a crowd there, but she didn't
3 produce no witness whatsoever to the alleged
4 assault. Like I said, the video says it didn't
5 happen. So the Single Commissioner was
6 correct, she did not have an assault -- an
7 injury to her neck on November 4, 2022. That
8 should be affirmed.

9 Now, I don't quite understand some of the
10 arguments that is made in the brief -- the
11 Appellant's brief about finding of fact number
12 one, about the prior order. The prior order is
13 correct. It's in evidence. It's been
14 submitted. It's part of the APA evidentiary
15 submission. Her prior order, the Commission
16 has found there sustained an injury to her left
17 knee, left hip, and low back as a result of the
18 2019 claim. It's right there. I don't have to
19 argue this. It's in the record. It's
20 obviously correct.

21 In regards to the medical treatment, the
22 Commissioner found that finding of fact number
23 two, the Claimant's been receiving authorized
24 causally related medical treatment from
25 Defendants. That's true. That's why she saw



1 Dr. Chokshi. That's why she saw Dr. Alan. The
2 Defendants have been provided appropriate
3 medical treatment.

4 In regards to finding of fact number
5 three, that finding of fact says Dr. Alan
6 issued light duty restrictions, which Employer
7 was able to accommodate. I don't quite
8 understand the argument there. It seems to be
9 that the Commissioner didn't pay attention to
10 the other restrictions. Well, that's not true.
11 They're all in the APAs pages 9, 23, and 28.
12 And even the Claimant testified that Ruiz had
13 accommodated her work restrictions. That
14 really wasn't an issue before the Commission.
15 Now -- so, again, no error there.

16 So, when we look at all of it, I believe
17 that there is absolutely correct and
18 appropriate findings of fact and conclusions of
19 law that tell us what the Commissioner was
20 doing and why she did it. It's all supported
21 by the evidence. She made the right decision
22 on the temporary total disability benefits.
23 Pollock is good law and absolutely applies to
24 this situation. And that all of the evidence,
25 except for the Claimant's testimony, points



1 away from the alleged assault and injury to the
2 neck. And that's why that's denied.

3 I request that the Full Commission affirm
4 the Single Commissioner in full. I'll be glad
5 to answer any questions y'all have.

6 **COMMISSIONER JAMES:** I do have a question. The issue
7 of the neck, I just heard Mr. McDaniel say that
8 his position was at the hearing, that that was
9 from the first, second, or a combination of the
10 two. Has the issue of whether the neck's been
11 related to the first injury or was that before
12 the Commissioner and not addressed?

13 **MR. BAREFOOT:** When I reviewed it, I don't recall
14 that being -- I just looked back at the
15 transcript material. Again, looking at page
16 14, it says, Neck pain stemming from the
17 work-related incident wherein, according to our
18 notes, she was assaulted on the job and shook
19 by a coworker. That is page 14, lines seven to
20 14.

21 **COMMISSIONER JAMES:** And I think there's some other
22 discussion on 12 and 13. I'm getting back to
23 be transcripts right now. So I'm trying to
24 figure out what the parameters of the hearing
25 were with regards to the neck. Because my



1 understanding was that Dr. Sanders, and I don't
2 have the date of that opinion written down
3 right now, related the neck directly or
4 aggravated by the -- it says original accident.

5 I don't know what that date is. But I'm
6 looking ---

7 **MR. BAREFOOT:** The incident from November 19th, the
8 date. But that's a guess. I don't have that
9 in front of me, Commissioner.

10 **COMMISSIONER JAMES:** Okay. I'm going to look at
11 that. So I'm just trying to get the parameters
12 of what went on the record.

13 So -- and I think on page 13 it says, Now,
14 in reference to neck and back -- we talked off
15 the record -- in 2019, ever since then she's
16 been treated. So is the neck and request
17 related back to the 2019 accident, is that
18 before the Commissioner?

19 **MR. BAREFOOT:** I'm looking back at the pre-hearing
20 brief, Your Honor. My recollection is that he
21 was saying it came from the November 2022
22 alleged assault. But that -- again, there's a
23 lot of evidence here, and I don't want to
24 misstate something.

25 **COMMISSIONER JAMES:** Okay. Well, I'll ask



1 Mr. McDaniel also when it's his turn.

2 COMMISSIONER DOOLEY: Any other questions?

3 COMMISSIONER CAMPBELL: No.

4 COMMISSIONER DOOLEY: All right. Mr. McDaniel.

5 RESPONSE ORAL ARGUMENT BY MR. MCDANIEL:

6 MR. MCDANIEL: First, Commissioner, Dr. Stuart said
7 on page 31 of the Claimant's APA submissions,
8 says that the problems with the knee, hip, low
9 back, and neck, were causally related to
10 (unintelligible) preexisting asymptomatic
11 problems that were aggravated by the work
12 related injury, which occurred on November 16,
13 2019.

14 In reference to the Claimant not
15 mentioning this, the Commissioner does not even
16 reference any of this. Immediately after the
17 accident she testified in the deposition
18 transcript she found that she reported the
19 incident, she reported the problems with her
20 neck.

21 As to medical care, when she went to
22 Dr. Chokshi, you can read it on page 53 of the
23 Claimant's APA submission wherein Dr. Chokshi,
24 as we all know, at that point in time, he was
25 not regularly treating the low back and he was



1 not authorized to treat the cervical spine. So
2 he -- his office instructed her to go back, and
3 they could not address the neck until they got
4 authorization. So you can find -- Shandon
5 Blackwell on page 53, TM, which stands for team
6 member, stating that her doctor told her that
7 she would need to ask us, assuming HR or
8 safety, about sending her to get an MRI done
9 from when she was assaulted last week by
10 another TM. Now, it's also admitted in the
11 record and in the depositions that another
12 coworker gave a statement that, yeah, there was
13 an incident that she thought they were just --
14 and it involved some pushing and shoving. And
15 she did -- my client testified that she was
16 knocked into her. But she testified that she
17 did -- that my client did bump into her. So
18 there's no question that incident occurred.

19 Now, unfortunately, while they have
20 the video tape from the -- they
21 (unintelligible) from the event so we can look
22 at it, so you and the Commission can look at
23 it. I think they -- those aren't there. They
24 don't have those. Those are not in the
25 evidence. And so we have only Holden.



1 Mr. Holden confirmed in his best evidence and
2 again his testimony, that he did not know what
3 the supervisor had instructed and he did not
4 know the policy of the company in reference to
5 throwing away bread.

6 And one other thing in reference to
7 throwing away bread, I think it's really -- I
8 couldn't believe when I heard, that they throw
9 away, depending on the estimates, at least two
10 tractor truck loads of bread a day that's
11 unusable in some way, shape, or form. So,
12 Commissioner ---

13 (Time keeper alert while speaking.)

14 MR. MCDANIEL: --- a misstatement in the file order
15 from the Commission, there's no reference of
16 the Commissioner Wilkerson's order, there's no
17 reference to the decision on a combination of
18 the two of preexisting or direct problems
19 coming from the incident. I hope you'll give
20 me a ruling.

21 COMMISSIONER DOOLEY: Any questions?

22 COMMISSIONER CAMPBELL: No. Thank you.

23 COMMISSIONER DOOLEY: Thank you y'all.

24 (There being nothing further, the hearing concluded
25 at 2:27 p.m.)



CERTIFICATE

This is to certify that the within hearing consisting of twenty-seven (27) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 22, 2025.

N. Garrett

Nadine A. Garrett
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 16, 2026



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South Carolina Workers' Compensation Commission

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WCC File #: 1923627

Carrier File #: 5866516952000101665

December 18, 2024

FORM 31 BRIEFING SCHEDULE AND NOTICE OF APPELLATE HEARING

Mary L Davis v Ruiz Food Products, Inc

Filing Date for Appellant's Brief: January 17, 2025

Subject: Set on Review.
Date: 02/10/25 at 02:00 PM
Location: This hearing will be conducted electronically via the Zoom application. Instructions to participate via Zoom will be emailed to the parties. If a party chooses to have an in-person hearing, please contact us at the number below and we will accommodate your request at our earliest convenience.

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the Upload functionality in eCase located on the Commission's website at www.wcc.sc.gov or via US Mail. Unrepresented claimant need only mail a copy of their brief to the Commission by the date listed above.

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5737.

This matter is set before: Panel A

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

By: Eugenia Hollmon, SC Workers' Compensation, December 18, 2024

Party

Employee: Mary L Davis

Employer: Ruiz Food Products, Inc
Carrier: Safety National Casualty Corporation

Attorney

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WCC File #: 2223041

Carrier File #: NRHR20230705

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This matter is set before: Panel A.

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

By: Eugenia Hollmon, SC Workers' Compensation, December 18, 2024

Party

Employee: Mary L Davis

Employer: Ruiz Food Products, Inc
Carrier: Safety National Casualty Corporation

Attorney

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2025-001282

Mary L. Davis, Claimant, ... Appellant,

v.

Ruiz Food Products, Inc., Employer, and
Safety National Casualty Corporation, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal
contains all material proposed to be included by any of the
parties and not any other materials.



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1/30, 2026