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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Melody L. James, Commissioner
Gabe Coggiola, Commissioner
R. Michael Campbell, II, Commissioner

W.C.C. FILE NO.: 2202565
Appellate Case No. 2025-001932

RUSTY YOUNG, CLAIMANT.....APPELLANT,

v.

CONFLUENCE OUTDOOR, INC., EMPLOYER, and
GREAT AMERICAN ALLIANCE INSURANCE CO., CARRIER.....RESPONDENTS.

RECORD ON APPEAL
Volume 1 of 4

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State of South Carolina
Workers' Compensation Commission

DECISION AND ORDER

THE HONORABLE T. SCOTT BECK
SCWCC File No.: 2202565

Rusty Young,
Claimant,
v.
Confluence Outdoor, Inc.,
Employer,
and
Great American Alliance Insurance Company,
Carrier
Defendants.

District 7

Hearing held in Columbia, South Carolina,
on June 19, 2024.

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

Appearances:	Richard C. Alexander, Esquire of Shelly Leeke Law Firm, LLC, North Charleston, South Carolina, appeared on behalf of Claimant. Benjamin M. Renfrow, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina, appeared on behalf of Defendants.
Purpose of Hearing:	To determine the issues as set forth in Claimant's Form 50 and Defendants Form 51.
Court Reporter:	ABC Reporting Service 257 Summerland Avenue Batesburg, South Carolina 29006 (803)532-5255 Cwiz1959@aol.com
Filed:	*February 27, 2025*

I. STATEMENT OF THE CASE

Claimant alleged that he sustained neck injury, requiring cervical fusion surgery, and right shoulder problems from a work accident on March 8, 2022, around 11 a.m. Claimant has been represented by prior counsel in this claim. The initial letter of representation and Form 50 filed on March 16, 2022, indicated only injury to the right shoulder, arm, hand, and fingers. (APA 852-853) The amended Form 50, filed on June 23, 2022, reflected the same. (APA 855-856) It was not until March 17, 2023, a full year after the initial alleged injury, that Claimant filed an amended Form 50 to add the neck as an additional body part. (APA 859)

Claimant raised objections to Defendants' APA submissions # 9, 10, 11, 14, and 19. While those documents may lack relevance as a whole, they contain portions of information that are relevant. I overruled Claimant's objections and have afforded this evidence the weight I deemed it deserved. The South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission. See S.C. Code Ann. § 1-23-330 (1) (except in proceedings before the Workers' Compensation Commission, rules of evidence apply in contested matters before an agency). *See also Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 528 S.E.2d 667 (2000); *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1941) ("[G]reat liberality is exercised in permitting the introduction of evidence in proceedings under Workmen's Compensation Acts."). The Commission is given discretion to weigh and consider all evidence when deciding whether causation has been established. The final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011); *see also Tiller v. National Health Care Center*, 334 S.C. 333, 513 S.E.2d 843 (1999).

Defendants denied the claim entirely on a number of grounds: (1) fraud in the application, (2) Claimant's credibility, (3) no accident occurred, (4) Claimant's current condition is not related to his employment, and (5) Claimant cannot satisfy his burden of proof that he sustained a compensable injury by accident. (Tr. p.7)

II. STIPULATIONS

The respective parties stipulated to the following issues:

1. The date of alleged injury by accident was March 8, 2022;
2. Claimant's average weekly wage was $636.08, with a corresponding compensation rate of $424.07;
3. Notice was timely and properly served upon all parties of interest;
4. Venue in Columbia is proper as agreed by all parties;
5. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved.

Without objection, the Commission's file was made a part of the record in this matter, with the exception of any self-serving declaration or unstipulated medical reports.

III. APA SUBMISSIONS AND EXHIBITS

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

Claimant's APA Submissions:

Claimant's #1: Medical records of AFC Urgent Care, dated March 9, 2022, consisting of pages 1-5.
Claimant's #2: Medical records of St. Francis Eastside, dated March 16, 2022, consisting of pages 6-21.
Claimant's #3: Medical records of Piedmont Orthopaedic Associates, dated March 30, 2022 to July 20, 2023, consisting of pages 22-175.
Claimant's #4: Medical records of Piedmont Comprehensive Pain Management Group, LLC, dated August 22, 2022 to May 16, 2023, consisting of pages 176-190, 190A, 190B
Claimant's #5: Medical records of ATI Physical Therapy, dated June 22, 2023 to July 21, 2023, consisting of pages 191-210.

Claimant's #6: Independent Medical Examination (IME) of Medical Group of the Carolinas, dated November 17, 2023, consisting of pages 211-216.
Exhibit A: Deposition of Nurse Practitioner Alan Duncan, dated December 2, 2022, consisting of pages 217-257.
Exhibit B: Deposition of Dr. Christopher Van Pelt, dated September 28, 2023, consisting of pages 258-303.
Exhibit C: Deposition of Dr. Walter Grady, dated January 31, 2024, consisting of pages 304-332.

Defendants' APA Submissions:

Defendants' #7: Removed
Defendants' #8: Prior claim Clincher and Form 19, dated May 7, 2021, consisting of pages 355-359.
Defendants' #9: Prior claim Psychiatric Evaluation, Carolina Center for Behavioral Health, dated May 19, 2016, consisting of pages 360-416.
Defendants' #10: Prior claim #2007031 Deposition of Claimant, dated July 30, 2020, consisting of pages 417-464.
Defendants' #11: Prior claim #1806973 Deposition of Claimant, dated June 20, 2019, consisting of pages 465-507.
Defendants' #12: Employment/Personnel Records, various dates, consisting of pages 508-519.
Defendants' #13: Piedmont Orthopaedic Associates, dated June 1, 2022 to September 1, 2022, consisting of pages 520-606. Pages 523 and 529-606 removed.
Defendants' #14: Medical records of Greenville Memorial Hospital, dated May 10, 2016, July 7, 2017, and April 3, 2021, consisting of pages 607-678. Pages 660-678 removed.
Defendants' #15: Medical records of Live Well Chiropractic, dated October 17, 2019 to July 9, 2021, consisting of pages 679-833.
Defendants' #16: Email communication between parties, dated October 31, 2022 to November 8, 2022, consisting of pages 834-842.
Defendants' #17: Medical records of Piedmont Comprehensive Pain Management, dated August 8, 2022 to September 12, 2022, consisting of pages 843-851.
Defendants' #18: Certain pleadings from case, dated March 16, 2022, June 23, 2022, and March 17, 2023, consisting of pages 852-859.
Defendants' #19: Records from prior claim against Auto Owners Insurance, dated December 22, 2023, consisting of pages 860-1119. Pages 860-61, 892, 905-919, and 996-1119 removed.
Defendants' #20: Records received from Cintas, dated May 23, 2024, consisting of pages 1120-1220.
Defendants' #21: Expert report from Dr. Philip J. Hodge, dated May 24, 2024, consisting of pages 1221-1222.
Defendants' #22: Curriculum Vitae of Dr. Philip J. Hodge, undated, consisting of pages 1223-1224.
Defendants' #23: Records received from Allied Universal, undated, consisting of pages 1225-1295.
Exhibit D: Video from date of injury and day after, dated March 8 and 9, 2022.
Exhibit E: Deposition of Claimant dated August 23, 2022.
Exhibit F: Deposition of Claimant dated January 11, 2024

IV. EVIDENCE OF THE CASE

Testimony of Rusty Young (Claimant)

Claimant testified that he went through 9th grade and then got his high school diploma and welding certificate through Job Corps. (Tr.10) He worked at Lee's Welding for two years, Draexlmaier for 8 years, and then on and off through a temp service. He started working for Confluence two months before the alleged incident. (Tr.11) His job was to put powder-based formulas inside the mold, put the screws in, move it to the oven, which would melt the fiber into a kayak. (Tr.11) Claimant testified that he was trying to "de-mold" a boat out and pulled or popped something in his shoulder. He continued to work. He said he reported it to a supervisor who wrote a report but could not remember who. (Tr.12-13) He said he was sent home and worked a little while the following day when the same thing happened again. (Tr.13) Don, the safety guy, took him to AFC Urgent Care. (Tr.14, 18) Claimant said the video did not show an accident, but allowed him to remember how much effort he had to put in to de-mold the kayaks. (Tr.16) Urgent Care took an Xray and put him on light duty, where Confluence had him sweep the whole facility. (Tr.18-19) He went to the Emergency Room, which referred him to Piedmont Orthopedics. (Tr.20) He went to physical therapy and had injections with pain management, which provided brief relief but did not last. (Tr.21) He still wakes up every morning with his shoulder hurting and has good and bad days. (Tr.22) His neck is better since the surgery but is still stiff and will throb and get warm. (Tr.22)

Claimant worked at Confluence about two days after his alleged injury and then soon after went to work for Cintas. (Tr.23) He then worked at Greenville Memorial Hospital as a security officer and now works at Cook Out. (Tr.24) He was an above average student, and at the time of his first deposition, he was working toward an Associate's degree in Theology in person at USC Upstate.

(Tr.25-26) By his second deposition, he had completed his certificate in Theology and was working toward his Associate's with an ultimate goal of his Master's degree. (Tr.26-27)

He worked at Ingles previously and was terminated for not working fast enough. (Tr.27) He then worked for Vermeer prior to Confluence and was terminated for hostility toward a coworker. (Tr.28) He filed a workers' compensation claim during his 8 years at Draexlmaier. (Tr.29) He injured his left ankle and treated at Piedmont Orthopedics, settling the claim for $60,000 in September 2019, with forced resignation. (Tr.30-31) He worked for Fitesa prior to Vermeer and was terminated for not communicating with a supervisor. (Tr.31) There, he also filed a workers' compensation claim where he said he fell, injuring his back and hip. (Tr.32) He was represented by The Clardy Law Firm and settled that claim in May 2021, for $15,000. (Tr.32) He also had a motor vehicle accident (MVA) in April 2021, just a month before signing the settlement agreement with Fitesa. (Tr.33-34) In the MVA, he injured his ankle that was previously injured at Draexlmaier and his neck and cervical spine, for which he received treatment at Live Well Chiropractic until July or August 2021, just a few months before he applied for his job at Confluence. (Tr.35) He was represented in the MVA by John Newlon of McCravy, Newlon, and Sturkie Law Firm. (Tr.36) That case settled for $20,000. (Tr.37). Those three settlements amounted to $95,000, and he received around $60,000 once attorney's fees were deducted. (Tr.38-39)

Claimant applied to Confluence in December 2021, just four months after his neck treatment ended at Live Well Chiropractic. (Tr.39-40) He interviewed on January 5, 2022, and began working on January 11, 2022. (Tr.40) Claimant said he told Confluence about the screw in his ankle but did not tell them about his other medical problems because he did not find it relevant, despite clear questions that asked about prior problems. (Tr.41-43) He was afraid that if he was honest on his application, he would not get the job and felt like he was already judged on his appearance. (Tr.44) Explaining his failure to disclose his prior injuries, Claimant testified, "So I wasn't planning on going

to Confluence and getting hurt. It was from something that wasn't fixed. It was just bandaged up.... And so, I wasn't thinking about I was going to have to ever come to this situation again." (Tr.47)

Confluence showed him the molding position he would be doing, and he did not tell them about his back problems "because I didn't have any problems anymore with that." However, he told them about depression, which he also was not having problems with. (Tr.49) He admitted to prior drug (cocaine) and alcohol addiction but did not recall being diagnosed with schizophrenia. (Tr.50) He said he never had a problem with anyone at Confluence prior to getting hurt. (Tr.51) He was terminated on March 11, 2022, just after the accident, for an altercation with Don's son over tools. (Tr.52-54)

Counsel for Defendants pointed out that Claimant had prior problems with his headaches and neck documented in medical records that he had denied in sworn testimony. (Tr.55-57) He applied for the job at Cintas within a week of being allegedly injured at Confluence. (Tr.60) He started work on April 4, 2022. (Tr.61) He did not tell Cintas about his job at Confluence on his application because he "didn't work there that long, so I feel like it wasn't relevant." He initially said he thought you needed to work at a place a year to name it, however, he worked at Fitesa for less than a year and put that on his application. (Tr.63) He then attempted to walk that testimony back, saying he worked there longer. (Tr.63) He told Cintas about the hours he worked at Confluence but not the job because he thought it would help him get hired. (Tr.64) "So you lied for the things you thought would help you, and you didn't put down the things you thought would hurt you, correct? That's the way it seems. Yes, sir." (Tr.64) He said that when applying to Cintas that he answered no to anything that would prevent him doing the work because it wasn't that heavy. (Tr.65) He ultimately filed an EEOC claim against Cintas and called the police because he said they tried to hit him with buggies. (Tr.66-67) He had a pattern of discrimination with jobs. (Tr.67-68) He said he verbally told Cintas about

the Confluence accident but did not write it down. Claimant's health insurance through his job with Cintas paid for his neck surgery with Dr. Van Pelt and paid him $3,000 severance. (Tr.69-70)

He then worked for Allied Security at Greenville Memorial Hospital. (Tr.71-72) He said he told them he had metal in his neck and ankle but did not have the form. However, he also said he had no disability. (Tr.73-74) He said he wanted to work full-time and was able to work full-time and did not tell Allied about his surgery just a couple of months previous. (Tr.75) Also on his Cintas application, he said he left Draexlmaier to have a closer commute to work and did not disclose that he had a foot injury or was forced to resign. (Tr.76) He did not tell Allied about his EEOC claim against Cintas. (Tr.78) He had to run up 70 flights of stairs to get that job and was working 40 hours per week. (Tr.79) During one incident, he had a patient kick him in the crotch as the doctor approached her, and he and another officer "had to hold her down, which wasn't hard." (Tr.79-80) He did not file a worker's compensation claim for this incident. (Tr.96)

Claimant treated with Dr. Van Pelt on his own and did not tell him about his prior drug and alcohol addiction issues, nor his prior MVA wherein he injured his neck because "it didn't hurt like it hurt when I pulled it at Confluence." (Tr. 81-82) Claimant was also not forthcoming with Dr. Walter Grady about his prior medical problems. (Tr.83) Claimant's explanation of why he left Allied was incoherent. (Tr.87-89) When asked if the videos from the next day showed him in any pain, Claimant's answer was unresponsive and said only that he was "trying to avoid using his right arm with a lot of things." (Tr.90) Claimant stated that the last evidence of drug use was five years before the accident. (Tr.91-92) On the 2020 claim with Fitesa, he had 3% impairment to the right lower extremity and 0% impairment to the back by Dr. James Behr. (Tr.93) He had stopped treating with a chiropractor in July from the MVA. (Tr.93-94) He further noted that he had no radicular symptoms with tingling down his arm from the MVA. (Tr.94)

He reiterated that he left Lee's Welding and fast-food jobs off his application because he felt they were not relevant. (Tr.95) Two days after the alleged accident, he had a verbal altercation with Don's son and was fired. (Tr.95) Claimant stated he had no issues doing his job at Confluence and did not believe he had any major injuries from the prior MVA. (Tr.97) He stated the time of his accident was not exact. (Tr.98) He was on light duty at Cintas. (Tr.98) He confirmed his answers on his applications with Cintas and Allied. (Tr.99-100)

Deposition Testimony of Claimant Rusty Young (This Claim)

Defendants took Claimant's deposition on August 23, 2022. (Ex. E) He stated he was taking Diclofenac, Phentermine, and Wellbutrin. (Ex. E, p.6) He was a C student in high school, got his diploma through Job Corps, and is getting his Associate's degree in theology. (Ex. E, p.12-15) He started at Confluence in February 2023 and worked for Vermeer for two months before that. (Ex. E, p.17) He was terminated from Vermeer for being hostile. (Ex. E, p.18-19) Before that, he worked at Fitesa for 9 months until he was terminated for attendance after he fell down some stairs and fractured his hip. (Ex. E, p. 20-21) He was represented by Clardy Law Firm and received $10,000 in settlement. (Ex. E, p. 22) Claimant was previously deposed in his worker's compensation claims against Fitesa and Draexlmaier. (Ex. E, p.24-25) At Draexlmaier, he was jumping up and hitting a machine piece and came down on his ankle wrong. He was represented by Jason Sturkie and received a $60,000 settlement, of which he received $45,000. (Ex. E, p.25) He had to resign from Draexlmaier. (Ex. E, p.27) He previously worked for Lee's Welding until that job ended. (Ex. E, p.28) He was terminated from Ingles Cherrydale because they said he was not catching on fast enough. (Ex. E, p.28-29) In 2021 or 2022, Claimant was in an MVA and was represented by Jon Newlon, with McCravey, Newlon and Sturkie Law Firm. (Ex. E, p.29) He received a settlement of $20,000 for injuries to his ankle and neck. (Ex. E, p.30) Claimant told Confluence about his prior ankle injury with Draexlmaier, but failed to mention his other injuries or conditions because

Confluence only specifically asked if he had any previous surgeries. (Ex. E, p.32) Claimant testified that he was fired from Confluence over an altercation with Don's (the safety manager's) son. (Ex. E, p.34-35) At the time of his deposition, Claimant had worked for Cintas for five months, packing scrubs. (Ex. E, p.39) He stated that his work at Cintas was not aggravating his problems. (Ex. E, p.41)

Claimant stated that when he lifted the boat at Confluence out of the mold, he felt something pull in his right shoulder. (Ex. E, p.43) Claimant stated that he was unmolding the boat by himself, even though two people were supposed to do it, sometimes three, and the boat flipped when he did that. (Ex. E, p.53-54) He "guessed" that he also injured his neck and had headaches because he had not had similar pain prior. (Ex. E, p.44) However, he treated with LiveWell Chiropractic for his back and neck after the MVA. (Ex. E, p.44-45) Claimant stated that he was supposed to go talk to the surgeon, but "I'm not trying to get no surgery." (Ex. E, p.50) Claimant stated that the orthopedist thought there might be something wrong with his neck in addition to his shoulder and that he had two injuries rather than one. (Ex. E, p.50-51) Claimant stated that Dr. Amy Hunt from Piedmont Orthopedics and the pain management doctor told him that the problems in his shoulder and neck were related to the work event at Confluence. (Ex. E, p.58) Claimant was working full duty at Cintas and swept the whole building in his last days at Confluence. (Ex. E, p.59) Claimant admitted to treatment for alcohol and drug (cocaine) abuse four years ago. (Ex. E, p.62-63) He was treated inpatient for depression for 3-4 days. (Ex. E, p.64-65) He clarified that he thought it was his right shoulder making his neck hurt, but the doctors said the problem stemmed from his neck. He had intermittent tingling in three fingers on his right arm. (Ex. E, p.68-69)

Medical Records

On March 9, 2022, Claimant presented to AFC Urgent Care for shoulder pain, stating that he felt "pins and needles" in his right arm. (APA 1) They advised RICE, took an Xray that revealed

no abnormalities, and referred him to orthopedics. (APA 2, 4) They returned him to work with no lifting, pushing, or pulling over 2 pounds. On March 16, 2022, he presented to St. Francis Eastside Emergency Department to request an MRI and more pain medication. (APA 12) He reported that he was at work trying to move one of the boats he was working on, was pulling up, and the boat moved, causing a jolting in his right arm. He stated he had the same pain as before with intermittent tingling and numbness radiating down his right arm when he uses his shoulder significantly. He stated his restrictions were hard to stick to, given what his job entails. (APA 13) Exam showed neck and shoulder pain and stiffness. (APA 15) They started anti-inflammatories (Meloxicam) and muscle relaxants (Flexeril) and encouraged avoiding heavy lifting and doing frequent stretching, allowing 4-5 days for improvement. (APA 17-18)

On March 30, 2022, Claimant presented to Piedmont Orthopedics. (APA 22) He now stated that he felt a pop in his shoulder but continued working. He also said the steroid Dosepak from Urgent Care did not help. (APA 23) He had tenderness to palpation in the anterior shoulder around the bicipital groove and forward flexion to 170 degrees with extreme pain. He had positive Hawkins, Kennedy, Neer's, O'Brien's, and O'Driscoll's. (APA 24) Alan Duncan opined that the majority of his pain may be due to labral pathology and ordered an MRI. (APA 24) The MRI showed edema-like marrow signal in the distal acromion and clavicle with trace fluid in the acromioclavicular interval, but no rotator cuff or labral pathology. (APA 33) On April 20, 2022, Claimant followed up, reporting he could not sleep on his side due to pain and had pain localized anteriorly, worse when reaching out in front of him. (APA 37) Alan Duncan stated his pain was improving but may be exacerbated by cervical spine pain and radiculopathy. He advised a Medrol Dosepak and physical therapy. Claimant requested referral to a spine specialist for his neck. He was to come back as needed for the shoulder. (APA 38) Nurse Practitioner Duncan completed a questionnaire opining that the work accident caused his right shoulder symptoms. (APA 40).

On June 29, 2022, Claimant reported intermittent relief from the subacromial injection and oral NSAIDs but said the pain had returned and his shoulder was still catching. Physical therapy was progressing well. (APA 41) Exam showed tenderness to palpation over the AC joint and anterior shoulder around the bicipital groove with active forward flexion to 170 degrees with minimal pain at the extreme. He still had positive Hawkins, Kennedy, Neer's, pain with Speeds, but negative O'Brien's. He had positive Tinel's at the wrist and positive Spurling's. Alan Duncan noted that Claimant reported the majority of pain over his AC joint and reproduction of symptoms with motion was localized to that area. He referred Claimant to the spine team to evaluate cervical radiculopathy, gave an AC joint injection, and continued physical therapy. (APA 42)

On July 12, 2022, the note says he was "working on a boat and lifting a motor....In April, he began developing right-sided neck pain with headaches. He did go to the ED again but followed up with our sports medicine providers after his MRI of the right shoulder, [which] showed acromioclavicular arthritis.... Patient then began having more symptoms of right arm pain with numbness and tingling into the third through fifth fingers. Also having more headaches associated with his neck pain. Physical therapy was addressing cervical spine as well including traction. He has had over 10 visits of physical therapy and symptoms continue to persist." (APA 58) Spurling's was positive to the right for reproduction of radicular symptoms. Amy Hunt, PA-C, opined that his symptoms were consistent with cervical radiculopathy involving the right C7 nerve root and recommended an MRI. (APA 61) MRI showed: "Degenerative disc signal present C2-3 through C6-7 with multilevel disc osteophyte complex formation. There is an annular fissure at C5-6." On July 20, 2022, he followed up to review the MRI results.

> MRI scan findings to reveal spinal stenosis of the cervical spine. It is most prominent on the left, and there is severe left foraminal narrowing, but this is not concordant with the radicular symptoms that he is having, which are more on the right. He has numbness and tingling in his right hand and is less symptomatic on the left. There is no cord signal change at the areas of stenosis. Before definitively recommending

> surgical intervention, I would recommend a trial of epidural steroid injections to see if he gets any relief with his right radicular symptoms with a cervical epidural. I am going to refer him to pain management for cervical epidural steroid injection. I will have him follow-up with Dr. Christopher Van Pelt to get his evaluation and opinion.

She referred him for a nerve conduction study and to the spine surgeon for consultation. (APA 87)

On July 27, 2022, Claimant reported "a decent amount of relief from the AC joint injection," but had continued intermittent pain with minimal improvement. NP Duncan opined that 80% relief was encouraging. He advised continued physical therapy, with return as needed for repeat shoulder injection. Claimant reported that he still got occasional numbness and tingling, for which he was referred to Dr. Van Pelt, by Amy Hunt. NP Duncan stated that he was at maximum benefit from a shoulder standpoint and should continue to pursue treatment on his neck. (APA 96) On September 1, 2022, Dr. Van Pelt noted the MRI showed large left-sided C5-6 and C6-7 disc herniations causing significant left-sided hemicord compression.

> This patient's clinical history and physical exam is a bit of a diagnostic dilemma. He does have neuropathic pain in the right upper extremity. Interestingly, his cervical MRI shows predominantly left-sided disc pathology. There is significant cord compression, so his symptoms may represent a cord level dysfunction as opposed to a specific radiculopathy. He does not have any spasticity for confirmation. Nore does he have any intrinsic weakness. That makes it difficult to confirm whether the cervical findings are incidental or the etiology of his symptoms. I recommended a cervical epidural steroid injection, which he is apparently already scheduled for. I would also recommend EMG and nerve conduction study of the right upper extremity for further delineation. In the end, if it is felt that his symptoms are of a cervical etiology, he may be a candidate for a C5-C7 ACDF.

(APA 104) On October 20, 2022, the steroid injection had helped, and Claimant was revisiting physical therapy. He had a new job that was not physical and was doing better with it. However, his neck and right upper extremity were bothersome on a daily basis. (APA 113) They discussed surgery. (APA 115)

On December 15, 2022, Claimant described a deep ache in the neck and shoulder with intermittent sharp and shooting sensations as well as a tingling sensation over the upper extremities

rather diffusely in a glove-like pattern. He had associated pain in the periscapular area and had noticed instability in his gait where he felt like he was staggering. He had recurrent headaches. Physical therapy exacerbated the pain. He had two epidural steroid injections with "negligible benefit." Symptoms were aggravated by overhead activities. Surgery was planned. (APA 120-121) On January 24, 2023, Dr. Christopher Van Pelt completed a questionnaire sent by Claimant's attorney that the work accident caused Claimant's symptoms after the surgery was denied. (APA 124) By May 4, 2023, Claimant was following the expected course following cervical surgery. Dr. Van Pelt stated that once he was comfortable with neck range of motion, he could begin driving. He also encouraged walking and low impact exercise. Return to work was anticipated on June 5, 2023. (APA 154) On July 20, 2023, Claimant reported significant relief of his upper extremity pain, weakness, and parasthesias. (APA 163) Dr. Van Pelt released him to activities as tolerated with follow-up as needed. (APA 165)

On undated paperwork accompanied by a letter from Claimant's then attorney, Jason Sturkie, on August 8, 2022, Claimant presented to Piedmont Comprehensive Pain Management with steady neck pain and shoulder pain with certain motion, as well as numbness and tingling into his fingers. He indicated he had headaches and could not use his dominant side without pain. (APA 843-850) He put "n/a" for psychiatric help, and "no" regarding similar problems in the past. (APA 847-848) On August 22, 2022, Claimant presented to Caroline Franklin, PA-C. Claimant said, "he was at work lifting a kayak that weighed approximately 85 pounds when he felt a pop in his right shoulder that sent pain and a tingling sensation up to his neck and down his entire right arm." Physical therapy for his right shoulder had provided some improvement, but he still had numbness and tingling down his right arm into his fingers and neck pain. He was only using Tylenol and Ibuprofen for pain with minimal relief. He described his neck pain as aching and sharp and reported the numbness in his 3rd through 5th fingers "comes and goes". He reported intermittent headaches mostly over the right

backside of his head. This was before his surgery with Dr. Van Pelt. Dr. Loudermilk suggested starting a long-acting NSAID (Diclofenac), Gabapentin, and scheduling a CESI. They also adjusted the physical therapy orders to work on the neck instead of the shoulder. (APA 176) On September 6, 2022, the CESI was done. (APA 179) On September 19, 2022, Claimant requested a second CESI with Ativan prior to relax him. He was not doing physical therapy. (APA 181) The second injection was done on October 4, 2022. (APA 182) The Claimant had seen Dr. Behr for a work injury in 2020 for the left hip where he was taking Norco.

On October 17, 2022, Claimant stated he got 60% pain relief from the injection and was happy with that result. He stated he was not having nearly as many headaches, and his right upper extremity paresthesias was not as frequent. He complained of left low back pain. He requested physical therapy for his back and neck pain. They advised him to buy a TENS unit for his low back. (APA 184) On December 6, 2022, he requested another repeat injection, which was done on January 10, 2023. He had started physical therapy and was happy with the results. He also had a nerve conduction study ordered by Dr. Richardson at St. Francis. (APA 185-186) On February 13, 2023, Claimant reported at least 50% improvement from the third injection. It was starting to wear off, but the pain was not back to baseline. Pain management refilled his medications. (APA 188) On March 28, 2023, Claimant was managing with Diclofenac and Neurontin and was hopeful that surgery would help. (APA 189) On May 16, 2023, Caroline Franklin noted that Claimant had a cervical spine fusion on April 11th. Claimant stated that the majority of his neuropathic pain complaints were relieved following surgery, though he had stiffness in his neck. He was taking Gabapentin and Diclofenac less often. (APA 190)

On November 17, 2023, Claimant's prior attorney sent him to Dr. Walter Grady at Medical Group of the Carolinas for an Independent Medical Evaluation. The description of injury states that Claimant was "trying to pull bolt out of the mold, bolt was jammed in mold, and he had to pull on

bolt harder than normal and heard popping noises in right shoulder and around neck." (APA 211) At hearing, Claimant testified that Dr. Grady must have misunderstood "boat" for "bolt". (Tr.85). Dr. Grady also noted the surgery in April 2023. Claimant rated his shoulder and neck pain as 2-3/10 on a good day up to 5-6/10 on a bad day. (APA 211) Claimant said he had received no prior treatment for the problems he was being evaluated for, despite having received extensive treatment. (APA 212) Dr. Grady found pain with Spurling's, and positive cross over and Hawkins tests. (APA 214) Dr. Grady recommended repeat consultation with his orthopedist for shoulder and spine surgeon for neck, as well as consistent exercise and NSAIDs, with no overhead lifting. He assigned a 51% cervical spine impairment, 5% right upper extremity impairment, 8% right shoulder impairment, and 21% whole person impairment. (APA 215)

Dr. Philip Hodge of Southeastern Neurosurgical and Spine Institute opined:

> He claims he was injured on March 8, 2022, lifting a boat from a mold. He complained of right sided neck pain and right arm pain with numbness and tingling to the 3-5 digits. An evaluation of the shoulder was done that showed acromioclavicular arthritis and had some exam findings consistent with this. Injections to this region did not seem to help. MRI shows multilevel spondylitic changes. C4-5 spondylitic disc protrusion with moderate central canal stenosis. C5-6 annular tear with left C5-6 disc protrusion with severe stenosis. C6-7 left-sided spondylitic disc protrusion with moderate stenosis. These findings are degenerative in nature except for an annular fissure. An annular fissure can be acute but can also be a chronic finding. It can be symptomatic or asymptomatic. Also, the neural compression is more pronounced on the left, but the patients' symptoms are only on the right side. He had an EMG/NCS [that] showed right C7 radiculopathy and mild carpal tunnel syndrome. Ultimately, I cannot say beyond a reasonable doubt that the imaging findings are related to the injury. His symptoms may have been related to the imaging findings, but do not exactly fit. You must depend on the patient's subjective report of symptoms and timing to determine causality. Given the information I have reviewed, there are reasons to believe that he may not have reported the injury/condition accurately.

(APA 1221)

Medical Depositions

Alan Duncan, Nurse Practitioner, testified in deposition on December 2, 2022, that he was unaware of prior right shoulder problems or hardware in Claimant's body from prior surgeries. He stated that AC joint arthritis and subacromial impingement, as seen on the MRI, could be acute or chronic, and there was nothing on the MRI to suggest either. (APA 233-234) He opined the problem may be cervical based on Claimant's complaints of intermittent radiculopathy, which he did not report on the first two visits. (APA 234) NP Duncan stated that the basis of his causation opinion as stated in the questionnaire was Claimant's report that he did not have shoulder pain prior to the alleged work accident. (APA 235-236) He testified he knew nothing about Claimant's actual job at Confluence. (APA 237) He signed another questionnaire, relating the neck, again based on Claimant's subjective complaints and information. (APA 238) He had no prior medical records detailing problems. (APA 239) He was also unaware of the prior worker's compensation claims and prior MVA. (APA 240) He had no idea about Claimant's current job. (APA 241) The injection improved his shoulder pain. (APA 242) NP Duncan opined that Claimant had both neck and shoulder pain. (APA 242) He stated that Dr. Van Pelt would be in a better position to determine cervical causation and withdrew his causation opinion in deference to Dr. Van Pelt. (APA 245) He stood behind his questionnaire that the work accident caused the right shoulder pain. (APA 247)

On September 28, 2023, Dr. Van Pelt testified that he was unaware of prior neck problems and the prior worker's compensation claims and MVA where he injured his neck less than a year prior and wherein Claimant received substantial settlements. (APA 264-268) He also knew nothing about Claimant's prior drug and mental health issues. (APA 266) However, Dr. Van Pelt stated that did not affect his opinion. (APA 269) He saw the MRI results secondhand through Amy Hunt's notes. (APA 271) He noted the rotator cuff with certain motions would press up against the undersurface of the clavicle, causing irritation. The MRI also showed acromioclavicular joint

arthritis. There was no way to tell if those problems were acute or chronic. (APA 273) However, arthritis is typically chronic. (APA 274)

Dr. Van Pelt stated that the annular fissure—the torn outer lining of the disc—presented 6-8 months after an injury and then would disappear, suggesting that the MRI findings were relatively recent, suggesting to him that the problems were caused by the alleged work injury, "within the window of reasonable probability." (APA 277-278) C5, C6, and C7 had large herniations, resulting in pressure on the spinal cord. (APA 279) He explained the "diagnostic dilemma" that his symptoms were on the right side, but the bulk of the compression was on the left side of his MRI. (APA 280) He stated that in the spinal cord itself are "fibers that cross left or right, decussating fibers, and so it can cause symptoms on either side." (APA 281) He explained that what side a patient was hit on has really no bearing on what side is going to hurt or what side of the disc is going to herniate. (APA 281) He was not able to say based on spasticity or specific weakness in the fingers or hands that the problems could be specifically traced back to the neck, so he thought an EMG would be helpful. (APA 282) The EMG suggested right-sided C7 radiculopathy and mild carpal tunnel syndrome, which confirmed it was a cervical spine origin problem with the MRI correlating acute to sub-acute pathology. (APA 283) He stated the April 11, 2023, surgery went according to plan. (APA 285) MMI would usually be about six months post-op. (APA 286) Dr. Van Pelt did not believe the prior records from Live Well Chiropractic would impact his opinions. (APA 288-289)

On January 31, 2024, Dr. Walter Grady testified that he does not treat annular fissures. He sends that out to neurosurgeons or orthopedic spine surgeons, especially where there is a herniated disc. (APA 307-308) Dr. Grady was unaware of the prior MVA or prior claims. (APA 308-310) His report stated Claimant was working on a boat out of a mold, although he read a report from Amy Hunt that Claimant was injured lifting a boat motor. (APA 310) He confirmed that the MRI showed degenerative disc disease, which is chronic, and marrow reconversion, which may be associated with

trauma or with people who smoke. (APA 311) He stated annular fissure could be from wear and tear or could be caused by lifting. (APA 311) There is no way to look at the MRI and tell whether the problems were acute or chronic, and he testified he was unaware of any expert that could. (APA 311) He opined it was aggravation of pre-existing degenerative pathology but could not say when or where. (APA 312) Claimant did not tell Dr. Grady about any of his prior problems. (APA 314) Dr. Grady did not know about the job with Cintas or Allied. However, he imposed general lifting restrictions until Claimant saw an orthopedic surgeon. (APA 314) He bases his recommendations on an hour exam and prior records review, but he does not provide treatment. (APA 314) Dr. Grady stated that he concurred with Dr. Van Pelt's assessment regarding causation, and that his report opinions were unchanged.

Prior Claims and Past Medical History

On June 8, 2020, Claimant fell downstairs and injured his low back and right hip at Fitesa. He settled that claim in May 2021 for $15,000 and was represented by David Hartman. (APA 355-358) In connection with the Fitesa claim, Claimant was deposed on July 30, 2020. (APA 417) He stated he had a 2018 incident where he tore two tendons and ligaments in his ankle and had surgery. (APA 420) He spent 8 years on the production line at Draexlmaier, injuring himself in the molding section. (APA 438) He was working at Draexlmaier on a station that was high where he had to jump up repeatedly and came down on his left ankle, also injuring his knee and his low back. (APA 427-428) He saw a chiropractor a few times and then could work without pain. (APA 430) He received a $60,000 settlement and was represented by Jason Sturkie. (APA 431) He said he had no other prior worker's compensation claims or MVAs. (APA 433) Claimant testified that he spent a week at Carolina Behavioral Center four years before. (APA 434-435) He stated his only prior surgery was with Dr. Womack on his left ankle. (APA 444) Claimant was treating with chiropractor up until

about two months after he started with Fitesa, at which point he had no back problems. (APA 461-462)

On June 20, 2019, Claimant was deposed in connection with his claim against Draexlmaier. (APA 465) His employment history was outlined more fully therein. In 2005, he worked two years at KFC cooking and running cash register. He then worked at McDonald's in Greer for a year. Then at Jack in the Box for a year, Hardees for a week or two, and Copper River as a dishwasher. Then he worked at Ingles in Cherrydale stocking for two weeks until he was fired. He worked at Job Corps for two years, then Lee's Welding in Greer for two years welding panels for hospital buildings. He worked at BMW through Lumbee Temp Service checking sun roofs to make sure they were seated flush for six months. Then he worked for American Electronic Recycling in Duncan destroying electronic equipment and separating plastic boards for three months. He started with Draexlmaier in 2012 assembling instrument panels for dashboards. He moved from doing "skins" to IP foam. (APA 475-482) I note that most of those prior jobs were not disclosed on his employment application.

Claimant stated that "they put me out of work because I couldn't work no longer because it was unbearable." He also said the doctor told him to think about changing his career. (APA 486) He was released without restrictions, though they suggested he should get shoe inserts. (APA 490) He was willing to go back to his job but did not know if he could do it. (APA 490-491) He had continuing problems in his low back, both knees, and left ankle. (APA 492) He had missing cartilage in the knee and had an annular bulge in the back. (APA 493) Dr. McDonald put him in a boot for his ankle and said he could not lift over 20 pounds. (APA 500)

Claimant treated with Live Well Chiropractic on October 17, 2019, with moderate pain. He had 8/10 bilateral lumbar pain since September 26, 2019. Claimant stated that employment, lifting, and standing had become difficult due to bending over, exercising, and standing for more than 3 minutes. He also had left ankle pain since January 1, 2018, and disclosed his left ankle fracture

surgery and screw. (APA 679-686) By October 21, 2019, his lumbar pain was down to 6/10 and ankle pain was down to 5/10 and continued to improve. (APA 687-693) Of note to this claim, on October 25, 2019, he complained of moderate lumbar and posterior cervical (neck) muscle spasms, which continued into subsequent visits. (APA 694) This treatment and symptoms were never disclosed to later treating doctors. On November 14, 2019, he presented with a headache. (APA 702) He had spinal subluxations left C1 and C7, right T1, and right L4 and L5, as well as continuing cervical spasms. (APA 703)

Live Well also documented an MVA on April 3, 2021, less than a year prior to this claim. He was restrained, airbag did not deploy, and the vehicle was moving at moderate speed. He felt aching and tightness at the front of his left ankle and left side of his left foot, and significantly, "anxiety and tightness in neck." He stated that his daily function was deteriorating. (APA 710) Chiropractic documented 7/10 thoracic pain and "an acute posterior cervical (neck) complaint due to the accident on 4/3/2021." (APA 711) Active range of motion of his neck, as well as thoracic and lumbar, showed pain in most planes. (APA 714) They diagnosed a "sprain of ligaments of cervical spine." (APA 716) On April 19, 2021, he had been to the ER for his ankle, and was referred to orthopedics. (APA 738) By May 14, 2021, his neck pain was down to 4/10, but was constant and described as "aching and dull." (APA 767) Sitting and sleeping had become difficult, as was lifting objects and looking over his shoulder, all clearly relevant to his job at Confluence. With his ankle, walking and standing (which were constant at his Confluence job) and getting in and out of a chair had become difficult. (APA 771) On June 25, 2021, he had been released from his orthopedist. He had a headache that woke him up and was unaffected by Tylenol. (APA 814) He treated until at least July 9, 2021, and still had subluxations at T5 and C1 that were treated. (APA 833) Even though the ankle and lumbar are not relevant to this claim, the neck very much is. These chiropractic records show that Claimant hid extensive prior medical treatment and problems.

Claimant presented to the ER on April 3, 2021, after an MVA where he was sideswiped or T-boned on the driver's side, and he complained of left-sided neck pain and left ankle pain. (APA 868, 926, 931) Claimant settled his claim in that April 3, 2021, MVA for $20,000 on either July or August 22, 2022, a few months after the alleged Confluence worker's compensation claim. (APA 863-865) Thus, that claim was ongoing at the time Claimant alleges his injury at Confluence and for the first few months of treatment.

From May 10-19, 2016, Claimant was involuntarily hospitalized as a result of suicidal thoughts from alcohol and cocaine use and paranoid delusions about his wife cheating on him. (APA 360-416) He had been snorting and smoking crack and held a gun in front of their son, threatening to shoot himself. (APA 607-659) His wife filed white commitment papers and stated that he began acting bizarrely a week ago with increased paranoia about her cheating on him. He took a knife and cut open the couch because he thought people were living in there. He rented a U-Haul, put two TVs and a laptop from their house into it, and drove around for several hours. He had stopped going to work and been lying about going to work. She stated he had similar behavior a year ago, was admitted to CCBH, and was discharged on Abilify and Trazodone. He did not take the medication because a friend told him it would make him crazy. The wife took her two children to her parents' home. She also noticed he was taking colorful pills out of a plastic baggy that he had been buying off the street. She suspected he was using cocaine due to intermittent nosebleeds. He had a history of cocaine use. They had recent stressors from their mortgage and finances and his automotive job, all contributing to his depression. (APA 634)

Employment Applications/Termination

On his employment application for Confluence, Claimant stated "none" under major illness or injury in the past 5 years. In response to any physical defects or impairments which preclude him from performing certain kinds of work, Claimant said he had a screw in his left ankle, but the doctor

had cleared him three years ago. In response to have you ever been treated for drug addiction or alcoholism, Claimant answered "no". (APA 510) On his post-offer medical questionnaire, he did not check surgical or spontaneous fracture, back pain or injury, or arthritis, even though he had all of those conditions. In response to any injury or disease for which he had treated in the past three years, he put "none". Asked whether he had been hospitalized, he put "no". Regarding treatment for mental or psychological condition, he put "for depression over four years ago." Asked whether there was any health-related reason he may not be able to perform the offered job, he put "none". (APA 518) Claimant was terminated on March 11, 2022 (APA 514)

Claimant interviewed with Cintas on March 15, 2022, four days later. (APA 1132) When asked about his career over the past 5 years, he wrote down Draexlmaier 2012-2020 8 years and "Tesa" (presumably Fitesa) opening operation. He also said he worked 50 hours per week in his present position. However, he did not disclose his employment with Confluence, nor his worker's compensation injury. (APA 1133) He said a typical day in his present or recent position was putting in fabric material and checking for defects. He said he was looking for a new position because he was looking for better hours. In response to whether there was anything that would prevent him from working his assigned work week, he answered "no". He said he wanted to work at Cintas because it was close to home and something new. (APA 1133-1135) In his interview on March 17, 2022, he disclosed that he worked for Draexlmaier for 8 years and Fitesa for 2 years, making dashboards for BMW. He said he was looking for a new position because he was working 8-8 and needed more family time. (APA 1136) He stated that he was involved with safety and improvement at Draexlmaier. He also said that he respects his superiors and is on time and reliable, even though he had just been fired from Confluence for an altercation. (APA 1137)

On his application with Allied Security, it asked for "up to five years of verifiable employment." (APA 1274) Claimant listed his employment with Draexlmaier from 7/20/2012 to

3/9/2021. His reason for leaving was "Moved to another city. Seek job with closer commute to work." He also listed his employment with Cintas beginning 3/13/2021, and stated he was "Looking for an employer with better benefits package." (APA 1274-1275) He notably omitted his employment with Confluence entirely, and made it seem as though he went directly from Draexlmaier to Cintas. He also omitted of any mention that he was forced to resign from Draexlmaier due to a worker's compensation claim.

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Employee/Claimant, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Rusty Young as Claimant, Confluence Outdoor, Inc. as Defendant Employer, and Great American Alliance Insurance Company as Defendant Carrier.

2. Claimant's average weekly wage at the time of the accident was $636.08, and his compensation rate was $424.07. This finding of fact is based on the stipulation of the parties.

3. Claimant initially alleged that he sustained work-related injuries on March 8, 2022, to his right shoulder, right arm, right hand, right fingers, and cervical spine while removing a kayak from its mold.

4. After the Pre-Hearing Conference between the parties, Claimant amended his alleged injuries to exclude his right hand and right fingers. (Tr. p.6)

5. Defendants denied that Claimant sustained compensable injuries or that the alleged work-related accident even occurred on March 8, 2022.

6. Claimant previously filed a workers' compensation claim with the Commission: WCC File No. 1806973. While working for Employer DAA Draexlmaier Automotive of America on January 31, 2018, Claimant allegedly sustained injuries to his left ankle, foot, and leg when he landed wrong after jumping up to reach a part. This matter concluded with a Settlement Agreement that was filed with the Commission on September 25, 2019.

7. Prior to settling that case (WCC File No. 1806973), Claimant testified in deposition that his MRIs showed a large amount of cartilage missing from the side of his knee and that his back had an annular bulge, which caused back pain. (Commission File and Defendants' APA #11)

8. Claimant testified he believed that he had 60% function in his back in the January 31, 2018 claim. (Commission File and Defendants' APA #11)

9. Claimant presented to Live Well Chiropractic between October 21, 2019 through November 22, 2019 to address lumbo-sacral and upper to mid cervical pain and tenderness. He also sought treatment for moderate muscle spasms in his lumbar and posterior cervical neck during the January 31, 2018 claim. (Defendants' APA #15)

10. Claimant filed a second workers' compensation claim with the Commission (WCC File No. 2007031). While working for Employer FITESA USA, LLC, on June 8, 2020, Claimant sustained injuries to his back and right hip when he fell down seven stairs. This matter concluded with a Settlement Agreement that was filed with the Commission on February 24, 2021. (Commission File and Defendants' APAs #8, 10)

11. Prior to settling that case (WCC File No. 2007031), Claimant testified in deposition that the accident resulted in him landing on his back. (Commission File and Defendants' APAs #8, 10)

12. Claimant testified as a result of the June 8, 2020 claim he experienced pain radiating from his mid to low back following the accident. (Commission File and Defendants' APAs #8, 10)

13. Claimant testified as a result of the June 8, 2020 accident he had ongoing hip pain, which bothered his back and ankle. (Commission File and Defendants' APAs #8, 10)

14. Claimant was involved in a motor vehicle accident (MVA) on April 3, 2021, unrelated to his employment. (Defendants' APAs #15, 19)

15. On the date of the MVA, Claimant presented to an Emergency Room in Greenville, South Carolina. Claimant reported left foot, ankle, and neck pain. (Defendants' APAs 868, 926, 931)

16. The Emergency Room diagnosed Claimant with a sprain of the left ankle, unspecified ligament, and an acute cervical strain. (Defendants' APAs #15, 19)

17. Claimant presented to Live Well Chiropractic between April 6, 2021, through July 12, 2021, to address injuries sustained in his MVA on April 8, 2021. (Defendants' APAs #15, 19)

18. Live Well diagnosed Claimant with a sprain of the thoracic spine, segmental somatic dysfunction of the thoracic region, pain in the thoracic spine, pain in the left ankle and joints and left foot, sprain of ligaments of cervical spine, segmental somatic dysfunction of the cervical region, and cervicalgia. (Defendants' APAs #15, 19)

19. Claimant testified he injured his ankle and neck during his MVA on April 3, 2021. (Defendants' Ex. E, p. 30)

20. Claimant testified during his deposition in this matter (WCC File No. 2202565) that on August 23, 2022, he worked for Vermeer for about two months prior to starting work with Confluence Outdoor, Inc. (Defendants' Ex. E, p.17)

21. Claimant testified Vermeer, a previous employer, terminated his employment for the stated reason of him being hostile in the workplace. However, he testified that he was not the hostile party. (Defendants' Ex. E, p.18-19, Tr. 28)

22. Claimant testified Confluence hired him for a molding position. (Tr. 11)

23. Claimant testified he told Confluence about his prior ankle surgery, but not his other injuries or conditions because Confluence only specifically asked if he had any previous surgeries. (Defendants' Ex. E, p.32)

24. Claimant informed Confluence about his previous ankle surgery on a post-job offer medical questionnaire, which was signed and dated by Claimant and witnessed by another party on January 5, 2022. (Defendants' APA #12, p.510)

25. Though not specifically numbered the first question on the questionnaire asked: "Have you ever been treated for any of the following conditions or diseases?" Among the listed "conditions or diseases" was "back pain or injury." Claimant did not select this option or any of the other "conditions or diseases" listed. (Defendants' APAs #12, p.518)

26. Though not specifically numbered the second question on the questionnaire asked: "Please list any condition, injury, or disease for which you have been treated in the past three (3) years. If no treatment has been provided, state 'none.' Please list any medical providers and dates when applicable." Claimant answered: "none". (Defendants' APA #12, p.518)

27. Though not specifically numbered the third question on the questionnaire asked: "Have you ever been hospitalized? If so, for what condition? If you have not been hospitalized, state 'no.' Please list any physicians or hospitals and dates when applicable." Claimant answered: "no". (Defendants' APA #12, p.518).

28. Though not specifically numbered the fourth question on the questionnaire asked: "Have you ever been treated for any mental or psychological condition? If no such treatment has been received, state 'none'. Please list any physicians and dates when applicable." Claimant answered: "For depression over four years ago." (Defendants' APA #12, p.518)

29. Though not specifically numbered the fifth question on the questionnaire asked: "Is there any health-related reason you may not be able to perform the job you have been offered? If yes, please explain." Claimant answered: "none." (Defendants' APA #12, p.518)

30. Though not specifically numbered the sixth question on the questionnaire asked: "Have you had a major illness or injury in the last five (5) years? If none, state 'none.' Please list any physicians and dates when applicable." Claimant answered: "none". (Defendants' APA #12, p.510)

31. Though not specifically numbered the seventh question on the questionnaire asked: "Do you have any physical defects or impairments which preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations. If these limitations have been prescribed by a medical provider, please provide the name of said medical provider." Claimant answered: "I have a metal screw in left ankle, but the doctor cleared me over three years ago." (Defendants' APA #12, p.510).

32. Though not specifically numbered the eighth question on the questionnaire asked: "Are you taking any prescribed drugs that can inhibit or impair your ability to perform the job that you have been offered? If yes, state the medication and the reason for taking it, as well as the prescribing medical provider." Claimant answered: "no". (Defendants' APA #12, p.510)

33. Though not specifically numbered the final question on the form asked: "Have you ever been treated for drug addiction or alcoholism? If yes, identify the medical provider and dates of treatment." Claimant answered: "no." (Defendants' APA #12, p.510)

34. I find Defendants placed (or at least the formatting of the document indicates) the second page of the post-job-offer medical questionnaire behind Claimant's employment application, a document which has not been submitted in its entirety. (Defendants' APA #12, p.510, 518-519) *See McDevitt & Street* defense, *infra* in Conclusions of Law.

35. Claimant presented to an Emergency Room in Greenville, South Carolina, on two occasions between May 10, 2016, through July 7, 2017, due to suicidal ideations, hallucinations, and in involuntary psychiatric evaluation. (Defendants' APA #14)

36. The Emergency Room diagnosed Claimant with suicidal ideations and cocaine and alcohol abuse during former visits. He was diagnosed with an unspecified psychosis and nicotine dependence during the latter visit. The medical records from that visit also indicated Claimant had a history of schizophrenia. (Defendants' APA 607-659)

37. On August 23, 2022, Claimant testified Confluence terminated his employment after he and another employee had an altercation. He testified that he could not remember the name of the person with whom he got into an altercation, though he insinuated that the person "used to mess with [him] all the time." (Claimant's deposition p.36)

38. Claimant testified he was "sweeping the whole building" for Confluence prior to the altercation. Although his testimony did not indicate whether he used machinery to complete this task, his testimony at hearing indicated that this task was performed manually. (Claimant's deposition p.35, Tr. p.19, 52)

39. Claimant testified he had neck pain prior to his alleged work-related accident, but his prior pain was not as bad. (Defendants' Ex. E, p.44, Tr. 55-57, 81-82)

40. Claimant testified he received treatment for his prior neck pain from Live Well Chiropractic. (Tr. 93-94, Defendants' APAs 679-686, 694, 702-03, 710-16, 738, 767, 771, 814, 833)

41. Claimant testified his alleged work-related accident occurred when he attempted to remove a kayak stuck in its mold. (Tr. 12-13, Defendants' Ex. E 53-54)

42. Claimant testified 2-3 people were supposed to assist with this process, but the other person (the one with whom he later had an altercation) went home early that day. (Tr. 12-13, Defendants' Ex. E 53-54)

43. Claimant testified he told a supervisor about the work-related accident the same day that it occurred. (Tr. 12-13)

44. Claimant testified he would like to see video footage of his work-related accident, but he did not believe Confluence's surveillance cameras were operational. Defendants provided Claimant with video surveillance of the location where Claimant's work-related accident allegedly occurred. I find that the video footage in evidence does not show Claimant's alleged work-related accident on March 8, 2022. (Defendants' APA #16)

45. Claimant also testified at his deposition in this matter that a provider told him that his current shoulder pain was related to his work-related accident with Confluence, rather than his MVA or another event. I find the greater weight of the evidence indicates Claimant failed to inform his medical providers about his prior accidents while undergoing treatment for injuries allegedly sustained while working for Confluence on March 8, 2022. Dr. Walter Grady's testimony, *infra*, further stretches the credulity of Claimant's testimony. (Claimant's deposition, Defendants' Ex. E p. 58) *See also* Finding of Fact No. 117.

46. Claimant testified the injection he received to alleviate his shoulder pain did not work. (Claimant's deposition p.20)

47. Claimant testified he had never been treated for any type of mental or psychological problem other than depression. The evidence in the record indicates Claimant's testimony is inaccurate. *See* Finding of Fact No. 28.

48. Claimant testified his job with Cintas, the employer immediately prior to Confluence, entailed packing scrubs and uniforms worn by medical professionals. I find Claimant testified to his "packing" responsibilities with Cintas more than seven months before his cervical fusion with Dr. Van Pelt on April 11, 2023. (Claimant's APA #3)

49. Claimant testified during his deposition in this matter on January 11, 2024, that he learned the reason for the pain in his hand and arm was due to carpal tunnel syndrome. (Claimant's deposition, Defendants' Ex. E p.20)

50. Claimant testified his providers determined that his current symptoms originated from his neck. (APA 38, Defendants' Ex. E p.50-51, 58)

51. Claimant testified the cervical fusion performed by Dr. Van Pelt helped him, but he still had good and bad days. (Tr. 22, APA 190, 211)

52. Claimant testified he did not inform Cintas about his alleged work-related injury with Confluence until after he was hired. He did not want to give Cintas "any reason to do what they was doing." (Claimant's deposition, Defendants' Ex. E p.23)

53. Claimant testified he did not want subsequent employers to perceive him as a liability and modify his job duties accordingly. So he did not tell them about his workers' compensation claim with Confluence. (Tr. 44, 64)

54. Claimant began his employment with Cintas on April 4, 2022, a month after his alleged injury with Confluence. He separated from employment with Cintas after filing and settling an EEOC claim. (Defendants' APA #20)

55. Claimant next began working for Allied University as a security guard. He began employment on or around June 6, 2023. Claimant selected the following option on his Voluntary Self-Identification or Disability form: "No, I do not have a disability and have not had one in the past." (Defendants' APA #23)

56. On January 11, 2024, Claimant testified prior to starting work with Allied, he underwent a physical that required him to up "70 flights of stairs" under timed conditions. (Claimant's deposition p.26)

57. Claimant testified his job with Allied required him to apprehend people and could be physically demanding is not handled correctly. (Claimant's deposition p.12, 18)

58. Claimant testified a patient kicked him in the groin while attempting to apprehend her. He and a coworker had to "manhandle" the patient that kicked him. He testified that he did not need to go to the doctor after that incident but instead chose to "walk [the pain] off." (Claimant's deposition p.12, 18, 19)

59. Claimant testified during the hearing on June 19, 2024, that he could not remember the name of the supervisor that he allegedly reported his work-related accident to on March 8, 2022 (Tr. p.13)

60. Claimant testified he was uncertain about the time his work-related accident occurred but guessed "around 11:00" when asked by his supervisor. (Tr. p.15)

61. Claimant testified he did not see his alleged incident on the window of surveillance footage from 10:52-11:07 a.m. provided by Defendants. (Tr. p.14-15)

62. Claimant testified he applied to work for Confluence four months after his treatment for his MVA-related neck injury from Live Well Chiropractic came to an end. (Tr. p.40)

63. Claimant testified he was not forthcoming on his post-job-offer medical questionnaire for Confluence about his health history because he did not believe it was relevant to his job duties. Claimant further testified he did not recall being diagnosed with schizophrenia. (Tr. p.41, 50)

64. Claimant testified he observed his potential job duties with Confluence before he accepted the position. (Tr. p.49)

65. Claimant testified he read the post-job-offer questionnaire in full before signing it on January 5, 2022. (Tr. p.45)

66. Claimant testified he understood that the purpose of the questionnaire was not necessarily to rescind his offer of employment if he were honest in his responses, but do Confluence could attempt to place him in a suitable position. (Tr. p.45-46)

67. Claimant testified he was afraid to be honest on the questionnaire. Claimant further testified that he already felt like he was sometimes judged on his appearance alone. (Tr. p.44)

68. Claimant testified he "wasn't planning on going to [Confluence] and getting hurt. It was from something that wasn't fixed. It was just bandaged up." (Tr. p.47)

69. Claimant attempted to walk back this testimony by reiterating that he believed that disclosing his health history to Confluence was not relevant to his job duties. (Tr. p.48)

70. Claimant testified he never knew anyone to be dishonest or had a problem with anyone at Confluence prior to his alleged work-related accident on March 8, 2022. (Tr. p.51)

71. I find Claimant's hearing testimony does not align with his prior deposition testimony on August 23, 2022, where he indirectly asserted that he was consistently harassed by the unnamed employee.

72. Claimant testified he saw a chiropractor for pain in his cervical and lumbar spine in 2019, two years before the MVA. (Tr. p.56)

73. Claimant testified he saw a doctor to treat his headaches prior to his alleged work-related accident on March 8, 2022. (Tr. p.57)

74. I find that Claimant's hearing testimony does not align with his prior deposition testimony on January 11, 2024, where he testified his headaches were the result of his work-related accident on March 8, 2022. (Claimant's deposition p.36)

75. Claimant testified there were no witnesses to testify to his alleged work-related accident on March 8, 2022, present at the hearing. (Tr. p.58)

76. After being terminated by Confluence, Claimant testified he was dishonest on his Cintas application because he thought it would help him get the job. (Tr. p.64)

77. Claimant testified it appeared he had a pattern of victimization in the workplace. (Tr. p.68)

78. Claimant testified that he did not tell Dr. Christopher Van Pelt, the provider treating him for his present neck injury about his prior neck injury sustained in the MVA because he did not know he "was supposed to." (Tr. p.81)

79. Claimant testified that he did not tell Dr. Grady about his prior neck injury sustained in the MVA because the doctor did not ask. (Tr. p.84)

80. I find Claimant's hearing testimony does not align with Dr. Grady's testimony, *infra*, where the doctor stated his notations from Claimant's visit reflected Claimant answered "no" when asked if he had "received prior treatment for the same problem for which he was being evaluated." (Dr. Walter Grady deposition p.38)

81. Claimant testified Dr. James Behr assigned 0% impairment to Claimant on February 25, 2021, following his second workers' compensation claim with the Commission, *supra* (WCC File No. 2007031). (Tr. p.93)

82. I find following Dr. Behr's impairment rating, Claimant was involved in an MVA on April 3, 2021, where he sustained a neck injury. I further find that Claimant presented to Live Well Chiropractic through July 2021 to treat this neck injury and other conditions. (Defendants' APAs #15, 19)

83. Claimant testified he quit working for Allied because he wanted to spend more time with family and did not want to risk injury. (Tr. p.87-88)

84. Claimant testified that he is now employed by Cook Out Restaurant. (Tr. p.24)

85. The substantial weight of the evidence shows Claimant has provided untruthful, evasive, and inconsistent testimony throughout the course of this claim. Accordingly, I find Claimant's testimony lacks credibility and have afforded it the weight I deemed it deserved.

86. In accordance with *Crane*, my findings on this matter do not conclude here. *Crane v. Raber's Discount Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020). In *Crane*, the claimant was a mechanic who sought workers' compensation benefits for hearing loss and brain injuries he allegedly suffered in a work-related accident. Id. at 350. A single commissioner determined the claimant lacked credibility and, primarily on this basis, denied his claim. *Id.* at 352. On appeal, the court held: "[The] Commission erred in denying claimant's claims based on Commission's finding that claimant's testimony was not credible without explaining any basis on which claimant's credibility could justify ignoring objective medical evidence." *Id.* at 355. The court remanded the case back to the Commission for a new hearing. *Id.*

87. In this case, Claimant presented to AFC Urgent Care on March 9, 2022, the day after his alleged work-related accident. He reported shoulder pain. The provider took an X-ray of Claimant's right shoulder. Impression: "No acute osseous abnormality." (Claimant's APA #2)

88. Claimant presented to Piedmont Orthopaedics between March 30, 2022, through July 20, 2023. During this time span, Claimant reported shoulder and neck pain. Nurse Practitioner Duncan primarily attended to his reported shoulder symptoms. (Claimant's APA #3)

89. Claimant had an MRI of his right shoulder on April 4, 2022. Impression: "Edema-like marrow signal in the distal acromion and distal clavicle with trace fluid in the acromioclavicular interval. No rotator cuff or labral pathology." (Claimant's APA #3)

90. NP Duncan noted Claimant's shoulder pain was improving but may be exacerbated by cervical spine pain and radiculopathy. He diagnosed arthralgia of the right acromioclavicular joint and cervical radiculopathy. (Claimant's APA #3)

91. Claimant had an MRI of his cervical spine on July 19, 2022. Impression: "Multilevel cervical spondylosis as detailed level by level.... Evidence of marrow reconversion. Annular fissure at C5-6." (Claimant's APA #3 and Defendants' APA #12)

92. Dr. Van Pelt primarily attended to Claimant's cervical spine injury from September 1, 2022, through July 20, 2023. He noted, Claimant's "clinical history and physical exam is a bit of a diagnostic dilemma. Claimant does not have neuropathic pain in the right upper extremity. Interestingly, his cervical MRI shows predominantly left-sided disc pathology. I would recommend an EMG and nerve conduction study of this right upper extremity for further delineation." (Claimant's APA #3)

93. Dr. Van Pelt diagnosed cervical spine stenosis, cervical degenerative disc disease, and herniation of cervical invertebral disc radiculopathy. (Claimant's APA #3)

94. Dr. Van Pelt opined to a reasonable degree of medical certainty that Claimant's work-related accident on March 8, 2022, most probably caused his cervical and right arm symptoms. (Claimant's APA #3)

95. Dr. Van Pelt performed Claimant's cervical spine fusion surgery on April 11, 2023. (Claimant's APA #3)

96. Dr. Grady performed Claimant's IME on November 17, 2023, to address Claimant's ongoing neck and shoulder pain allegedly sustained in a work-related accident on March 8, 2022. (Claimant's APA #6)

97. Dr. Grady opined to a reasonable degree of medical certainty that Claimant has "a 51% [cervical] spine impairment, a 5% right upper extremity impairment, an 8% right shoulder impairment, and a 21% total whole person impairment." (Claimant's APA #6)

98. Dr. Phillip Hodge, a board certified neurosurgeon, reviewed Claimant's medical records on May 24, 2024, and opined:

> [Claimant] claims he was injured on March 8, 2022, lifting a boat from a mold. [Claimant] complained of right sided neck pain and right arm pain with numbness and tingling to the 3-5 digits. An evaluation of the shoulder was done that showed acromioclavicular arthritis and had some exam findings consistent with this. Injections to this region did not seem to help.
>
> MRI shows multilevel spondylitic changes. C4-5 spondylitic disc protrusion with moderate central canal stenosis. C5-6 annular tear with left C5-6 disc protrusion with severe stenosis. C6-7 left sided spondylitic disc protrusion with moderate stenosis. These findings are degenerative in nature except for an annular fissure. An annular fissure can be acute but can also be a chronic finding. It can be symptomatic or asymptomatic. Also, the neural compression is more pronounced on the left, but the patient's symptoms are only on the right side.
>
> He had an EMG/NCS [that] showed right C7 radiculopathy and mild carpal tunnel syndrome.
>
> Ultimately, I cannot say beyond a reasonable doubt that the imaging findings are related to the injury. His symptoms may have been related to the imaging findings, but do not exactly fit. You must depend on the patient's subjective report of symptoms and timing to determine causality. Given the information I have reviewed, there are reasons to believe that he may not have reported the injury/condition accurately.

(Defendants' APA #21, p.1221)

99. Dr. Van Pelt testified during his deposition in this matter on September 28, 2023, that he is a board certified orthopedic surgeon. He testified that his records do not indicate that Claimant had prior neck problems and it was generally his practice to ask patients about prior neck problems. (Claimant's Ex. B p.264).

100. He testified that he was not aware of Claimant's prior workers' compensation claims or his MVA on April 3, 2021. He had never seen or reviewed Claimant's prior chiropractic records, including those from his April 2021 MVA. (Claimant's Ex. B, p. 265-66)

101. Dr. Van Pelt testified him knowing about Claimant's previous cervical injury sustained in April 2021 would not have changed his opinion that Claimant's subsequent neck injury was caused by his work-related accident on March 8, 2022. (Claimant's Ex.B p.269)

102. He opined the AC joint injection administered by NP Duncan did not provide Claimant great pain relief. (Claimant's Ex.B p.274)

103. He opined that annular fissures, tears in the outer lining of a spinal disc, will present on MRIs for maybe six to eight months after an injury. (Claimant's Ex.B p.277)

104. He opined the annular fissures present on Claimant's cervical MRI indicated Claimant's neck injury was acute. (Claimant's Ex.B p.277)

105. He opined Claimant's April 2021 MVA was too remote in time for it to have caused the annular fissures on Claimant's cervical MRI. He opined Claimant's annular fissures were relatively recent. He opined the "diagnostic dilemma" that he noted on Claimant's medical records was due to decussating (intersecting to form an X) fibers in the spinal cord that crossed left or right. He further opined the cross action could cause symptoms on either side of the patient. He opined the side of Claimant's body impacted in the MVA would have little bearing on which side of his neck would be in pain. (Claimant's Ex.B p.278)

106. He opined Claimant's EMG was suggestive of very right-sided C7 radiculopathy and mild carpal tunnel syndrome. He opined the EMG confirmed Claimant's symptoms originated in the cervical spine. (Claimant's Ex.B p.283)

107. Dr. Grady testified during his deposition on January 31, 2024, that he is a board certified orthopedic surgeon. He performed Claimant's IME on November 17, 2023. (Claimant's Ex. C, APA 306, p.7, 307, p.10)

108. Dr. Grady opined annular fissures were not always acute problems. He opined annular fissures could be present for many years. (Claimant's Ex.C p.308)

109. Dr. Grady testified he was not aware of Claimant's prior workers' compensation claims or his MVA on April 3, 2021. Nor was he aware that Claimant had sought treatment for an

extensive period from Live Well Chiropractic following the April 2021 MVA. (Claimant's Ex.C p.309)

110. He opined the multilevel cervical spondylosis present on Claimant's cervical MRI could be degenerative in nature and did not have to come from a traumatic event. (Claimant's Ex.C p.311)

111. He opined the marrow reconversion present on Claimant's MRI could be associated with trauma, but could also be associated with a person who smokes. He further opined that this condition could also be degenerative. He opined people who have cervical spondylosis and marrow reconversion oftentimes have annular fissures. (Claimant's Ex.C p.311)

112. He opined there was no "way to look at this MRI report, or anything, and tell or give an opinion to a reasonable degree of medical certainty as to whether any of these problems were the result of trauma [or] just the wear and tear of life." (Claimant's Ex.C p.311)

113. He opined the severe stenosis present on Claimant's cervical MRI was degenerative pathology that resulted from an aggravation to a preexisting condition. (Claimant's Ex.C p.312)

114. He testified for him to opine to a reasonable degree of medical certainty about a patient aggravating a preexisting condition, he would need to have a baseline from a prior MRI to compare against a post-injury MRI. Without a baseline, he could not determine from an MRI or report whether Claimant's aggravation occurred before or after his work-related accident on March 8, 2022. (Claimant's Ex.C p.312)

115. He testified Claimant's chief complaints during the IME were right-side dominant shoulder and neck pain. (Claimant's Ex.C p.312)

116. He opined it was peculiar that Claimant's spinal stenosis and foraminal narrowing presented more on the left side of his spine, while his radicular symptoms presented more on the right side of his spine. (Claimant's Ex.C p.312)

117. He testified Claimant responded "no" when asked during his IME if he had received prior treatment for the same problems for which he was being evaluated. (Claimant's Ex.C p.314)

118. He testified he could not opine to a reasonable degree of medical certainty that any of Claimant's conditions were aggravated by a work-related injury on March 8, 2022. (Claimant's Ex.C p.314)

119. Dr. Grady testified since Dr. Van Pelt was Claimant's treating physician he saw more of and knew more about Claimant. Therefore, he agreed with his opinion that Claimant's cervical and right arm symptoms were probably caused by a work-related accident on March 8, 2022. (Claimant's Ex.C p.315)

120. He testified he did not know if Dr. Van Pelt knew about the injuries Claimant sustained before his work-related accident on March 8, 2022. He testified he took Claimant at his word that "something happened" to him on March 8, 2022. (Claimant's Ex.C p.317)

121. Dr. Van Pelt opined the cause of Claimant's injuries were a work-related accident on March 8, 2022. (Claimant's APA #3)

122. I find the crux of Dr. Van Pelt's opinion was the appearance of annular fissures on Claimant's MRI. (APA 277-78)

123. Dr. Van Pelt further opined the appearance of annular fissures on Claimant's MRI indicated Claimant's injury was acute and thus most likely caused by Claimant's most recent at-work accident and not by something more remote in time. (APA 277-78)

124. Dr. Grady examined Claimant and reviewed the medical records made available to him. Similarly, Dr. Hodge reviewed Claimant's medical records. Both doctors independently formed the same opinion regarding annular fissures: they can be acute or chronic. Dr. Grady also opined that without a baseline, a provider could not accurately determine from an MRI or report whether

Claimant's injuries were caused or aggravated by an event other than Claimant's alleged work-related accident on March 8, 2022. (APA 311-12, 1221)

125. I find the opinion of Dr. Van Pelt, as Claimant's treating physician, would generally be afforded great weight. However, his foremost basis for assigning causation to Claimant's alleged work-related accident on March 8, 2022, was unilaterally contradicted by two other providers. Further, Dr. Van Pelt did not know about Claimant's prior neck injury, but testified that knowing about Claimant's prior cervical spine injury sustained in April 2021 would not have changed his opinion that Claimant's neck injury was caused by his work-related accident on March 8, 2022. Dr. Van Pelt failed to admit knowing about Claimant's prior injuries to a body part, especially those relatively recent in time, which could have some bearing on the present condition of that body part. (Claimant's Ex.2 p.269)

126. Dr. Van Pelt's findings are not supported by the greater weight of the evidence. I find his opinion lacks credibility and have afforded it the weight I deemed it deserved.

127. Though he testified to findings significantly different than those of Dr. Van Pelt, Dr. Grady ultimately deferred to Dr. Van Pelt's opinion as to causation since he was Claimant's treating physician. Accordingly, I too find his opinion as to causation lacks credibility and have afforded it the weight I deemed it deserved.

128. I find Dr. Hodge's opinion aligns with the preponderance of the medical evidence that the cause of Claimant's present symptoms are idiopathic in nature, as he suffered a series of accidents from 2018 to 2021 that affected his back to varying degrees. The last of these accidents occurred only nine months before Claimant began working for Confluence. Further, the preponderance of non-medical evidence does not support a finding that Claimant was involved in a work-related accident on March 8, 2022. Accordingly, I find the opinion of Dr. Hodge to be credible and have afforded it the weight I deemed it deserved.

129. The Linen court held that the Commission, may not rest its determinations on surmise, conjecture or speculation. Linen v. Ruscon Constr. Co., 332 S.E.2d 211, 212 (1985).

130. I can only consider the evidence before me, which includes: the medical records; the providers' testimony; Claimant's untruthful, evasive and inconsistent testimony; no footage of the incident from the available video surveillance or eye witnesses testimony; Claimant's MVA where he sustained a neck injury less than a year before his work-related accident on March 8, 2022, which allegedly caused or aggravated an injury to the same body part; Claimant's prior workers' compensation accidents where he sustained injuries to and received treatment for his back; and Claimant's less than stellar work history where he was terminated from a spate of employment for cause (ex. hostility), or separated from employment under less than ideal circumstances.

131. I find the substantial weight of the evidence shows Claimant has not met his burden of proof that his claim is causally related to an alleged work-related accident on March 8, 2022.

132. Defendants raised a Fraud in the Application (McDevitt & Street) defense.

133. The Cooper court addressed Fraud in the Application after the defendants appealed the Commission's award of benefits to the claimant. Cooper v. McDevitt & St. Co., 196 S.E.2d 833, 834 (1973). The defendants argued the claimant should not be entitled to recover workers' compensation benefits for his injury when he knowingly and intentionally falsified his pre-employment questionnaire as to his back injury. Id. at 835. The court held "[T]here was nothing in [the claimant's] application to alert his employer...that he had a previous back injury. The employer, in the absence of notice to the contrary, had the right to assume the truthfulness of the statements contained in the appellant's application." Id. at 836. **McDevitt & Street Defense:** The Cooper court established three factors that "must be present before a false statement in an employment application will bar benefits: 1.) The employee must have knowingly and willfully

made a false representation as to his physical condition. 2.) The employer must have relied upon the false representation and this reliance must have been substantial factor in hiring. 3.) There must have been a causal connection between the false representation and the injury." Id. at 835.

134. **Employment Application:** In accordance with Finding of Fact No. 34 (*supra*), Defendants submitted two pages of Claimant's four page employment application. There is one question on the submitted documentation (Defendants' APA No. 12. pp. 508-509) that directly addresses the issues at bear in this matter. The question is as follows: "Are you able to perform the essential functions of the job for which you are applying either with or without reasonable accommodations?" Claimant answered: **"Yes"**.

135. The qualifying clause in this question: "**...either with or without reasonable accommodations,**" does not substantiate a finding that Claimant "knowingly and willfully made a false representation as to his physical condition" on his employment application. Id. at 835. Therefore, Defendants have not satisfied the first factor of the McDevitt & Street defense.

136. To satisfy the second factor of the McDevitt & Street defense, Defendants must have relied upon Claimant's false representation and this reliance must have been a substantial factor in Claimant's hiring. Id. at 835. Referring back to the question on Claimant's employment application, Claimant affirmed he could perform the "essential functions" of his job "either with or without reasonable accommodations". The question's lack of specificity as to "essential functions," coupled with the qualifying clause, does not substantiate a finding that Defendant-Employer substantially relied on Claimant's response. This is further evidenced by Defendant-Employer allowing Claimant to observe his potential job functions prior to hire (Hr. Tr. p. 49.), but not taking any additional steps to ensure he could actually perform those job functions before an offer of permanent employment was made (ex. a trial period). Therefore, Defendants have not satisfied the second factor of the McDevitt & Street defense.

137. Defendants must establish a causal connection between Claimant's false representation and his injury to satisfy the third factor of the McDevitt & Street defense. Circling back to the question on Claimant's employment application, Claimant's simple "yes" to a question that has already been established as lacking specificity in one respect (i.e. "essential functions"), but broadening its scope in another (i.e. "reasonable accommodations), does not substantiate a finding that a causal connection exists between Claimant's response and his injury. Therefore, Defendants have not satisfied the third factor of the McDevitt & Street defense.

138. **Post-Job Offer Medical...Questionnaire:** Claimant omitted a significant amount of information about his health history on Defendant-Employer's medical questionnaire. For example, he did not inform Defendant-Employer about the prior injury to his cervical spine. Claimant's glaring omissions on the questionnaire (for a job that is physical in nature) substantiates a finding that Claimant "knowingly and willfully made a false representation as to his physical condition" on his post-job offer medical...questionnaire. Therefore, Defendants' have satisfied the first factor of the McDevitt & Street defense.

139. Though Claimant omitted a significant amount of information on his questionnaire, the evidence in the record does not substantiate a finding that Claimant's false representations were a substantial factor in his hiring. This is evidenced by Defendant-Employer accepting the information that Claimant provided on the questionnaire without any additional follow up (e.g. a physical) to ensure he was actually fit for the position. Furthermore, Defendants did not provide sworn testimony (Hr. Tr. pp. 107-108) or other evidence to support their assertion that they reasonably relied on Claimant's false representations and that said representations were a substantial factor in his hire. Therefore, Defendants have not satisfied the second factor of the McDevitt & Street defense.

140. Claimant omitted information about his prior back injuries, specifically the injury to his cervical spine that he sustained nine months before starting work for Defendant-Employer. Defendant-Employer's medical questionnaire specifically asked: "Please list any condition, injury or disease for which you have been treated in the past three (3) years. If no treatment has been provided, state 'none.' Please list any medical providers and dates when applicable." **Claimant answered: "none".** (Defendants' APA No. 12. p. 518). Claimant's assertion that he sustained an injury to his cervical spine while working for Defendant-Employer, substantiates a finding that a causal connection exists between Claimant's false representations on the questionnaire and his injury. Therefore, Defendants' have satisfied the third factor of the McDevitt & Street defense.

141. I find Defendants have failed to establish all three factors under the McDevitt & Street defense for Fraud in the Application. Therefore, Claimant's claim is not barred by this defense.

142. Though Claimant's claim is not barred by the McDevitt & Street defense in this matter, based on the greater weight of the evidence, Claimant's claim is not compensable under the provisions of the Act.

143. I find Claimant is not entitled to medical benefits.

144. I find Claimant is not entitled to temporary disability compensation.

145. I find Claimant is not entitled to permanent disability compensation.

146. I find Claimant is not entitled to any other ancillary cost associated with this claim.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code Ann. § 42-17-40, it is the determination of this Commission that:

1. Under S.C. Code Ann. § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant Employer was a covered employer under the Act.

2. The *Linen* court held that the Commission may not rest its determinations on surmise, conjecture, or speculation. *Linen v. Ruscon Constr. Co.*, 286 S.C. 67, 68, 332 S.E.2d 211, 212 (1985). *See also Bundrick v. Powell's Garage*, 248 S.C. 496, 151 S.E.2d 437 (1966). Indeed, South Carolina cases are replete that a finding of the Commission will normally be upheld. However, "such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Burnette v. City of Greenville*, 401 S.C. 417, 426, 737 S.E.2d 200, 206 (Ct. App. 2012). *See also Grayson v. Carter Rhoad Furniture*, 317 S.C. 306, 309-10, 454 S.E.2d 320, 322 (1995); *Edwards v. Pettit Constr. Co., Inc.*, 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979).

3. Where claimant's credibility is a substantial issue, the Appellate Panel may properly give less weight to doctor's opinions if it believed a claimant to be untruthful in self-reporting of symptoms or presentation. *Rummage v. BGF Industries*, 434 S.C. 441, 459, 865 S.E.2d 380, 390 (Ct. App. 2021), *cert. granted and then dismissed as improvidently granted*, S.C. Sup. Ct., July 26, 2023. While questioning the commissioner's assessment of claimant's credibility, the appellate court in *Rummage* concurred that Claimant lacked credibility where she had "denied some relatively major prior issues entirely," including prior complaints to affected body parts. *Id.* "Expert medical testimony is designed to aid the Commission in coming to the correct conclusion; therefore, the Commission determines the weight and credit to be given to the expert testimony." *Tiller v. Nat'l Health Care Ctr. Of Sumter*, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999). The appellate courts have implicitly approved the single commissioner giving less weight to the treating doctor's opinion "because of the objective evidence and [her] own observations and impression at the hearing." *Fishburne v. ATI Sys. Internat'l*, 384 S.C. 76, 87, 681 S.E.2d 595, 601 (Ct. App. 2009). Indeed, this

is a large measure of the point of in person hearings before a commissioner—to assess credibility and determine the weight to be given to evidence. "[T]he Commission is the sole fact-finder in workers' compensation cases, and . . . any questions of credibility must be resolved by the Commission." *Smith v. S.C. Dep't of Mental Health*, 329 S.C. 485, 501, 494 S.E.2d 630, 638 (Ct. App. 1997). "It is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion." *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967).

4. The substantial weight of the evidence shows Claimant has not met his burden of proof that his claim was causally related to an alleged work-related accident on March 8, 2022.

5. Defendants have failed to establish all three factors under the McDevitt & Street defense for Fraud in the Application. Therefore, Claimant's claim is not barred by this defense.

6. The *Cooper* court addressed fraud in the application after the defendants appealed the Commission's award of benefits to the claimant. *Cooper v. McDevitt & Street Co.*, 260 S.C. 463, 196 S.E.2d 833 (1973).

7. The *Cooper* court established three factors that must be present before a false statement in an employment application will bar benefits: (1) The employee must have knowingly and willfully made a false representation as to his physical condition. (2) The employer must have relied upon the false representation and this reliance must have been a substantial factor in hiring. (3) There must have been a causal connection between the false representation and the injury. *Id.* at 835.

8. Though Claimant's claim is not barred by the *McDevitt & Street* defense in this matter, Claimant's claim is not compensable under the provisions of the Act based on the greater weight of the evidence. Claimant has failed to carry his burden of proof that a compensable injury occurred at Confluence.

ORDER

IT IS HEREBY ORDERED that Claimant (1) failed to meet burden of proof that he sustained a compensable work injury, and (2) is not entitled to medical benefits, temporary or permanent disability compensation, or any other ancillary costs associated with this claim.

AND SO IT IS ORDERED.

February 27, 2025
Columbia, South Carolina

T. Scott Beck, Commissioner

2/25/25

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).

By Shawnee Radcliff on February 27, 2025

State of South Carolina

Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Melody L. James; The Honorable Gabe Coggiola; and The Honorable Michael Campbell.

SCWCC File No.: 2202565

Rusty Young,

Claimant,

v.

Confluence Outdoor, Inc.,

Employer,

and

Great American Alliance Insurance Co.,

Carrier,

Defendants.

AFFIRMED

Hearing Held in Richland County, South Carolina,
on June 16, 2025
Per notice timely and properly served upon all Parties of Interest.

Appearances:	Richard Charles Alexander, Esq., of Shelly Leeke Law Firm, LLC., represents Claimant/Appellant.
	Benjamin M. Renfrow, Esq., of Wilson Jones Carter & Baxley, P.A., represents Defendants/Respondents.
Court Reporter:	Amber Scarborough, 1230 Richland St, Columbia, SC 29201, 803-252-3445, contact@creelreporting.com.
Filed:	August 26, 2025

I. STATEMENT OF THE CASE

Single Commissioner

A hearing was held before a Single Commissioner on June 19, 2024, pursuant to the parties' Forms 50 and 51. Claimant alleged he sustained neck and right shoulder injuries from a work accident on March 8, 2022. In addition to Claimant's alleged neck and right shoulder injuries, he also previously asserted injuries to his right arm, right hand, and right fingers in the same accident. Following a Pre-Hearing Conference between the parties, Claimant amended his claim to exclude the alleged right arm, right hand and right finger injuries. (Tr. p. 6). Claimant asserted he was not at maximum medical improvement for his injuries. Claimant sought a finding of compensability and additional medical treatment for the same. Claimant further sought Temporary Total Disability from March 11, 2022, to the present and continuing. In the alternative, Claimant sought a permanency determination.

Defendants denied Claimant's claim in its entirety on a number of grounds: (1) fraud in the application, (2) Claimant's credibility, (3) no accident occurred, (4) Claimant's current condition is not related to his employment, and (5) Claimant cannot satisfy his burden of proof that he sustained a compensable injury by accident. (Tr. p.7).

The Single Commissioner determined, *inter alia*: "[C]laimant (1) failed to meet [his] burden of proof that he sustained a compensable injury, and (2) is not entitled to medical benefits, temporary or permanent disability compensation, or any other ancillary costs associated with this claim." (Single Commissioner's Decision and Order filed on February 27, 2025, p. 48.)

Appellate Panel

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on appeal by Claimant. Within the statutory period, Claimant filed a Form 30, Request for Commission Review. Accordingly, the parties presented before the

Appellate Panel on June 16, 2025.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Employee/Claimant, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Rusty Young as Claimant, Confluence Outdoor, Inc. as Defendant Employer, and Great American Alliance Insurance Company as Defendant Carrier.

2. Claimant's average weekly wage at the time of the accident was $636.08, and his compensation rate was $424.07. This finding of fact is based on the stipulation of the parties.

3. Claimant initially alleged that he sustained work-related injuries on March 8, 2022, to his right shoulder, right arm, right hand, right fingers, and cervical spine while removing a kayak from its mold.

4. After the Pre-Hearing Conference between the parties, Claimant amended his alleged injuries to exclude his right hand and right fingers. (Tr. p.6)

5. Defendants denied that Claimant sustained compensable injuries or that the alleged work-related accident even occurred on March 8, 2022.

6. Claimant previously filed a workers' compensation claim with the Commission: WCC File No. 1806973. While working for Employer DAA Draexlmaier Automotive of America on January 31, 2018, Claimant allegedly sustained injuries to his left ankle, foot, and leg when he landed wrong after jumping up to reach a part. This matter concluded with a Settlement Agreement that was filed with the Commission on September 25, 2019.

7. Prior to settling that case (WCC File No. 1806973), Claimant testified in deposition that his MRIs showed a large amount of cartilage missing from the side of his knee and that his back

had an annular bulge, which caused back pain. (Commission File and Defendants' APA #1 1)

8. Claimant testified he believed that he had 60% function in his back in the January 31, 2018 claim. (Commission File and Defendants' APA #11)

9. Claimant presented to Live Well Chiropractic between October 21, 2019 through November 22, 2019 to address lumbo-sacral and upper to mid cervical pain and tenderness. He also sought treatment for moderate muscle spasms in his lumbar and posterior cervical neck during the January 31, 2018 claim. (Defendants' APA #15)

10. Claimant filed a second workers' compensation claim with the Commission (WCC File No. 2007031). While working for Employer FITESA USA, LLC, on June 8, 2020, Claimant sustained injuries to his back and right hip when he fell down seven stairs. This matter concluded with a Settlement Agreement that was filed with the Commission on February 24, 2021. (Commission File and Defendants' APAs #8, 10)

11. Prior to settling that case (WCC File No. 2007031), Claimant testified in deposition that the accident resulted in him landing on his back. (Commission File and Defendants' APAs #8, 10)

12. Claimant testified as a result of the June 8, 2020 claim he experienced pain radiating from his mid to low back following the accident. (Commission File and Defendants' APAs #8, 10)

13. Claimant testified as a result of the June 8, 2020 accident he had ongoing hip pain, which bothered his back and ankle. (Commission File and Defendants' APAs #8, 10)

14. Claimant was involved in a motor vehicle accident (MVA) on April 3, 2021, unrelated to his employment. (Defendants' APAs #15, 19)

15. On the date of the MVA, Claimant presented to an Emergency Room in Greenville, South Carolina. Claimant reported left foot, ankle, and neck pain. (Defendants' APAs 868, 926, 931)

16. The Emergency Room diagnosed Claimant with a sprain of the left ankle, unspecified ligament, and an acute cervical strain. (Defendants' APAs #15, 19)

17. Claimant presented to Live Well Chiropractic between April 6, 2021, through July 12, 2021, to address injuries sustained in his MVA on April 8, 2021. (Defendants' APAs #15, 19)

18. Live Well diagnosed Claimant with a sprain of the thoracic spine, segmental somatic dysfunction of the thoracic region, pain in the thoracic spine, pain in the left ankle and joints and left foot, sprain of ligaments of cervical spine, segmental somatic dysfunction of the cervical region, and cervicalgia. (Defendants' APAs #15, 19)

19. Claimant testified he injured his ankle and neck during his MVA on April 3, 2021. (Defendants' Ex. E, p. 30)

20. Claimant testified during his deposition in this matter (WCC File No. 2202565) that on August 23, 2022, he worked for Vermeer for about two months prior to starting work with Confluence Outdoor, Inc. (Defendants' Ex. E, p. 17)

21. Claimant testified Vermeer, a previous employer, terminated his employment for the stated reason of him being hostile in the workplace. However, he testified that he was not the hostile party. (Defendants' Ex. E, p.18-19, Tr. 28)

22. Claimant testified Confluence hired him for a molding position. (Tr. 11)

23. Claimant testified he told Confluence about his prior ankle surgery, but not his other injuries or conditions because Confluence only specifically asked if he had any previous surgeries. (Defendants' Ex. E, p.32)

24. Claimant informed Confluence about his previous ankle surgery on a post-job offer medical questionnaire, which was signed and dated by Claimant and witnessed by another party on January 5, 2022. (Defendants' APA #12, p.510)

25. Though not specifically numbered the first question on the questionnaire asked: "Have you ever been treated for any of the following conditions or diseases?" Among the listed "conditions or diseases" was "back pain or injury." Claimant did not select this option or any of the other "conditions or diseases" listed. (Defendants' APAs #12, p.518)

26. Though not specifically numbered the second question on the questionnaire asked: "Please list any condition, injury, or disease for which you have been treated in the past three (3) years. If no treatment has been provided, state 'none.' Please list any medical providers and dates when applicable." Claimant answered: "none". (Defendants' APA # 12, p.518)

27. Though not specifically numbered the third question on the questionnaire asked: "Have you ever been hospitalized? If so, for what condition? If you have not been hospitalized, state 'no.' Please list any physicians or hospitals and dates when applicable." Claimant answered: " no". (Defendants' APA #12, p.518).

28. Though not specifically numbered the fourth question on the questionnaire asked: "Have you ever been treated for any mental or psychological condition? If no such treatment has been received, state 'none'. Please list any physicians and dates when applicable." Claimant answered: "For depression over four years ago." (Defendants' APA #12, p.518)

29. Though not specifically numbered the fifth question on the questionnaire asked: "Is there any health-related reason you may not be able to perform the job you have been offered? If yes, please explain." Claimant answered: "none." (Defendants' APA #12, p.518)

30. Though not specifically numbered the sixth question on the questionnaire asked: "Have you had a major illness or injury in the last five (5) years? If none, state 'none.' Please list any physicians and dates when applicable." Claimant answered: " none". (Defendants' APA #12, p.510)

31. Though not specifically numbered the seventh question on the questionnaire asked: "Do you have any physical defects or impairments which preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations. If these limitations have been prescribed by a medical provider, please provide the name of said medical provider." Claimant answered: "I have a metal screw in left ankle, but the doctor cleared me over three years ago." (Defendants' APA #12, p.510).

32. Though not specifically numbered the eighth question on the questionnaire asked: "Are you taking any prescribed drugs that can inhibit or impair your ability to perform the job that you have been offered? If yes, state the medication and the reason for taking it, as well as the prescribing medical provider." Claimant answered: "no". (Defendants' APA #12, p.510)

33. Though not specifically numbered the final question on the form asked: "Have you ever been treated for drug addiction or alcoholism? If yes, identify the medical provider and dates of treatment." Claimant answered: " no". (Defendants' APA #12, p.510)

34. I find Defendants placed (or at least the formatting of the document indicates) the second page of the post-job-offer medical questionnaire behind Claimant's employment application, a document which has not been submitted in its entirety. (Defendants' APA #12, p.510, 518-519) *See McDevitt & Street* defense, *infra* in Conclusions of Law.

35. Claimant presented to an Emergency Room in Greenville, South Carolina, on two occasions between May 10, 2016, through July 7, 2017, due to suicidal ideations, hallucinations, and in involuntary psychiatric evaluation. (Defendants' APA #14)

36. The Emergency Room diagnosed Claimant with suicidal ideations and cocaine and alcohol abuse during former visits. He was diagnosed with an unspecified psychosis and nicotine dependence during the latter visit. The medical records from that visit also indicated Claimant had

a history of schizophrenia. (Defendants' APA 607-659)

37. On August 23, 2022, Claimant testified Confluence terminated his employment after he and another employee had an altercation. He testified that he could not remember the name of the person with whom he got into an altercation, though he insinuated that the person "used to mess with [him] all the time." (Claimant's deposition p.36)

38. Claimant testified he was "sweeping the whole building" for Confluence prior to the altercation. Although his [deposition] testimony did not indicate whether he used machinery to complete this task, his testimony at [the] hearing indicated that this task was performed manually. (Claimant's deposition p.35, Tr. p.19, 52)

39. Claimant testified he had neck pain prior to his alleged work-related accident, but his prior pain was not as bad. (Defendants' Ex. E, p.44, Tr. 55-57, 81-82)

40. Claimant testified he received treatment for his prior neck pain from Live Well Chiropractic. (Tr. 93-94, Defendants' APAs 679-686, 694, 702-03, 710-16, 738, 767, 771, 814, 833)

41. Claimant testified his alleged work-related accident occurred when he attempted to remove a kayak stuck in its mold. (Tr. 12-13, Defendants' Ex. E 53-54)

42. Claimant testified 2-3 people were supposed to assist with this process, but the other person (the one with whom he later had an altercation) went home early that day. (Tr. 12-13, Defendants' Ex. E 53-54)

43. Claimant testified he told a supervisor about the work-related accident the same day that it occurred. (Tr. 12-13)

44. Claimant testified he would like to see video footage of his work-related accident, but he did not believe Confluence's surveillance cameras were operational. Defendants provided Claimant with video surveillance of the location where Claimant's work-related accident allegedly

occurred. I find that the video footage in evidence does not show Claimant's alleged work-related accident on March 8, 2022. (Defendants' APA #16)

45. Claimant also testified at his deposition in this matter that a provider told him that his current shoulder pain was related to his work-related accident with Confluence, rather than his MVA or another event. I find the greater weight of the evidence indicates Claimant failed to inform his medical providers about his prior accidents while undergoing treatment for injuries allegedly sustained while working for Confluence on March 8, 2022. Dr. Walter Grady's testimony, *infra,* further stretches the credulity of Claimant's testimony. (Claimant's deposition, Defendants' Ex. E p.58) *See also* Finding of Fact No. 117.

46. Claimant testified the injection he received to alleviate his shoulder pain did not work. (Claimant's deposition p.20)

47. Claimant testified he had never been treated for any type of mental or psychological problem other than depression. The evidence in the record indicates Claimant's testimony is inaccurate. *See* Finding of Fact No. 28.

48. Claimant testified his job with Cintas, the employer immediately prior to Confluence, entailed packing scrubs and uniforms worn by medical professionals. I find Claimant testified to his "packing" responsibilities with Cintas more than seven months before his cervical fusion with Dr. Van Pelt on April 11, 2023. (Claimant's APA #3)

49. Claimant testified during his deposition in this matter on January 11, 2024, that he learned the reason for the pain in his hand and arm was due to carpal tunnel syndrome. (Claimant's deposition, Defendants' Ex. E p.20)

50. Claimant testified his providers determined that his current symptoms originated from his neck. (APA 38, Defendants' Ex. E p.50-51, 58)

51. Claimant testified the cervical fusion performed by Dr. Van Pelt helped him, but he still had good and bad days. (Tr. 22, APA 190, 211)

52. Claimant testified he did not inform Cintas about his alleged work-related injury with Confluence until after he was hired. He did not want to give Cintas "any reason to do what they was doing." (Claimant's deposition, Defendants' Ex. E p.23)

53. Claimant testified he did not want subsequent employers to perceive him as a liability and modify his job duties accordingly. So he did not tell them about his workers' compensation claim with Confluence. (Tr. 44, 64)

54. Claimant began his employment with Cintas on April 4, 2022, a month after his alleged injury with Confluence. He separated from employment with Cintas after filing and settling an EEOC claim. (Defendants' APA #20)

55. Claimant next began working for Allied University as a security guard. He began employment on or around June 6, 2023. Claimant selected the following option on his Voluntary Self-Identification or Disability form: "No, I do not have a disability and have not had one in the past." (Defendants' APA #23)

56. On January 11, 2024, Claimant testified prior to starting work with Allied, he underwent a physical that required him to up "70 flights of stairs" under timed conditions. (Claimant's deposition p.26)

57. Claimant testified his job with Allied required him to apprehend people and could be physically demanding is not handled correctly. (Claimant's deposition p.12, 18)

58. Claimant testified a patient kicked him in the groin while attempting to apprehend her. He and a coworker had to "manhandle" the patient that kicked him. He testified that he did not

need to go to the doctor after that incident but instead chose to "walk [the pain] off." (Claimant's deposition p. 12, 18, 19)

59. Claimant testified during the hearing on June 19, 2024, that he could not remember the name of the supervisor that he allegedly reported his work-related accident to on March 8, 2022 (Tr. p.13)

60. Claimant testified he was uncertain about the time his work-related accident occurred but guessed "around 11:00" when asked by his supervisor. (Tr. p.15)

61. Claimant testified he did not see his alleged incident on the window of surveillance footage from 10:52-11:07 a.m. provided by Defendants. (Tr. p.14-15)

62. Claimant testified he applied to work for Confluence four months after his treatment for his MVA-related neck injury from Live Well Chiropractic came to an end. (Tr. p.40)

63. Claimant testified he was not forthcoming on his post-job-offer medical questionnaire for Confluence about his health history because he did not believe it was relevant to his job duties. Claimant further testified he did not recall being diagnosed with schizophrenia. (Tr. p.41, 50)

64. Claimant testified he observed his potential job duties with Confluence before he accepted the position. (Tr. p.49)

65. Claimant testified he read the post-job-offer questionnaire in full before signing it on January 5, 2022. (Tr. p.45)

66. Claimant testified he understood that the purpose of the questionnaire was not necessarily to rescind his offer of employment if he were honest in his responses, but do Confluence could attempt to place him in a suitable position. (Tr. p.45-46)

67. Claimant testified he was afraid to be honest on the questionnaire. Claimant further testified that he already felt like he was sometimes judged on his appearance alone. (Tr. p.44)

68. Claimant testified he "wasn't planning on going to [Confluence] and getting hurt. It was from something that wasn't fixed. It was just bandaged up." (Tr. p.47)

69. Claimant attempted to walk back this testimony by reiterating that he believed that disclosing his health history to Confluence *was* not relevant to his job duties. (Tr. p.48)

70. Claimant testified he never knew anyone to be dishonest or had a problem with anyone at Confluence prior to his alleged work-related accident on March 8, 2022. (Tr. p.51)

71. I find Claimant's hearing testimony does not align with his prior deposition testimony on August 23, 2022, where he indirectly asserted that he was consistently harassed by the unnamed employee.

72. Claimant testified he saw a chiropractor for pain in his cervical and lumbar spine in 2019, two years before the MVA. (Tr. p.56)

73. Claimant testified he saw a doctor to treat his headaches prior to his alleged work-related accident on March 8, 2022. (Tr. p.57)

74. I find that Claimant's hearing testimony does not align with his prior deposition testimony on January 11, 2024, where he testified his headaches were the result of his work-related accident on March 8, 2022. (Claimant's deposition p.36)

75. Claimant testified there were no witnesses to testify to his alleged work-related accident on March 8, 2022, present at the hearing. (Tr. p.58)

76. After being terminated by Confluence, Claimant testified he was dishonest on his Cintas application because he thought it would help him get the job. (Tr. p.64)

77. Claimant testified it appeared he had a pattern of victimization in the workplace. (Tr.p.68)

78. Claimant testified that he did not tell Dr. Christopher Van Pelt, the provider treating him for his present neck injury about his *prior* neck injury sustained in the MVA because he did not know he "was supposed to." (Tr. p.81)

79. Claimant testified that he did not tell Dr. Grady about his prior neck injury sustained in the MVA because the doctor did not ask. (Tr. p.84)

80. I find Claimant's hearing testimony does not align with Dr. Grady's testimony, *infra*, where the doctor stated his notations from Claimant's visit reflected Claimant answered "no" when asked if he had "received prior treatment for the same problem for which he was being evaluated." (Dr. Walter Grady deposition p.38)

81. Claimant testified Dr. James Behr assigned 0% impairment to Claimant on February 25, 2021, following his second workers' compensation claim with the Commission, *supra* (WCC File No. 2007031). (Tr. p.93)

82. I find following Dr. Behr's impairment rating, Claimant was involved in an MVA on April 3, 2021, where he sustained a neck injury. I further find that Claimant presented to Live Well Chiropractic through July 2021 to treat this neck injury and other conditions. (Defendants' APAs #15, 19)

83. Claimant testified he quit working for Allied because he wanted to spend more time with family and did not want to risk injury. (Tr. p.87-88)

84. Claimant testified that he is now employed by Cook Out Restaurant. (Tr. p.24)

85. The substantial weight of the evidence shows Claimant has provided untruthful, evasive, and inconsistent testimony throughout the course of this claim. Accordingly, I find

Claimant's testimony lacks credibility and have afforded it the weight I deemed it deserved.

86. In accordance with *Crane*, my findings on this matter do not conclude here. *Crane v. Raber 's Discount Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020). In *Crane*, the claimant was a mechanic who sought workers' compensation benefits for hearing loss and brain injuries he allegedly suffered in a work-related accident. *Id.* at 350. A single commissioner determined the claimant lacked credibility and, primarily on this basis, denied his claim. *Id.* at 352. On appeal, the court held: "[The] Commission erred in denying claimant's claims based on Commission's finding that claimant's testimony was not credible without explaining any basis on which claimant's credibility could justify ignoring objective medical evidence." *Id.* at 355. The court remanded the case back to the Commission for a new hearing. *Id.*

87. In this case, Claimant presented to AFC Urgent Care on March 9, 2022, the day after his alleged work-related accident. He reported shoulder pain. The provider took an X-ray of Claimant's right shoulder. Impression: "No acute osseous abnormality." (Claimant's APA #2)

88. Claimant presented to Piedmont Orthopaedics between March 30, 2022, through July 20, 2023. During this time span, Claimant reported shoulder and neck pain. Nurse Practitioner Duncan primarily attended to his reported shoulder symptoms. (Claimant's APA #3)

89. Claimant had an MRI of his right shoulder on April 4, 2022. Impression: "Edema-like marrow signal in the distal acromion and distal clavicle with trace fluid in the acromioclavicular interval. No rotator cuff or labral pathology." (Claimant's APA #3)

90. NP Duncan noted Claimant's shoulder pain was improving but may be exacerbated by cervical spine pain and radiculopathy. He diagnosed arthralgia of the right acromioclavicular joint and cervical radiculopathy. (Claimant's APA #3)

91. Claimant had an MRI of his cervical spine on July 19, 2022. Impression: "Multilevel

cervical spondylosis as detailed level by level. ... Evidence of marrow reconversion. Annular fissure at C5-6." (Claimant's APA #3 and Defendants' APA #12)

92. Dr. Van Pelt primarily attended to Claimant's cervical spine injury from September 1, 2022, through July 20, 2023. He noted, Claimant's ..clinical history and physical exam is a bit of a diagnostic dilemma. Claimant does not have neuropathic pain in the right upper extremity. Interestingly, his cervical MRI shows predominantly left-sided disc pathology. I would recommend an EMG and nerve conduction study of this right upper extremity for further delineation." (Claimant's APA #3)

93. Dr. Van Pelt diagnosed cervical spine stenosis, cervical degenerative disc disease, and herniation of cervical invertebral disc radiculopathy. (Claimant's APA #3)

94. Dr. Van Pelt opined to a reasonable degree of medical certainty that Claimant's work-related accident on March 8, 2022, most probably caused his cervical and right rum symptoms. (Claimant's APA #3)

95. Dr. Van Pelt performed Claimant's cervical spine fusion surgery on April 11, 2023. (Claimant's APA #3)

96. Dr. Grady performed Claimant's IME on November 17, 2023, to address Claimant's ongoing neck and shoulder pain allegedly sustained in a work-related accident on March 8, 2022. (Claimant's APA #6)

97. Dr. Grady opined to a reasonable degree of medical certainty that Claimant has "a 51% [cervical] spine impairment, a 5% right upper extremity impairment, an 8% right shoulder impairment, and a 21% total whole person impairment." (Claimant's APA #6)

98. Dr. Phillip Hodge, a board certified neurosurgeon, reviewed Claimant's medical records on May 24, 2024, and opined:

> [Claimant] claims he was injured on March 8, 2022, lifting a boat from a mold. [Claimant] complained of right sided neck pain and right arm pain with numbness and tingling to the 3-5 digits. An evaluation of the shoulder was done that showed acromioclavicular arthritis and had some exam findings consistent with this. Injections to this region did not seem to help.
>
> MRI shows multilevel spondylitic changes. C4-5 spondylitic disc protrusion with moderate central canal stenosis. C5-6 annular tear with left C5-6 disc protrusion with severe stenosis. C6-7 left sided spondylitic disc protrusion with moderate stenosis. These findings are degenerative in nature except for an annular fissure. An annular fissure can be acute but can also be a chronic finding. It can be symptomatic or asymptomatic. Also, the neural compression is more pronounced on the left, but the patient's symptoms are only on the right side.
>
> He had an EMG/NCS [that] showed right C7 radiculopathy and mild carpal tunnel syndrome.
>
> Ultimately, I cannot say beyond a reasonable doubt that the imaging findings are related to the injury. His symptoms may have been related to the imaging findings, but do not exactly fit. You must depend on the patient's subjective report of symptoms and timing to determine causality. Given the information I have reviewed, there are reasons to believe that he may not have reported the injury/condition accurately.

(Defendants' APA #21, p.1221)

99. Dr. Van Pelt testified during his deposition in this matter on September 28, 2023, that he is a board certified orthopedic surgeon. He testified that his records do not indicate that Claimant had prior neck problems and it was generally his practice to ask patients about prior neck problems. (Claimant's Ex. B p.264).

100. He testified that he was not aware of Claimant's prior workers' compensation claims or his MVA on April 3, 2021. He had never seen or reviewed Claimant's prior chiropractic records, including those from his April 2021 MVA. (Claimant's Ex. B, p. 265-66)

101. Dr. Van Pelt testified him knowing about Claimant's previous cervical injury sustained in April 2021 would not have changed his opinion that Claimant's subsequent neck injury was caused by his work-related accident on March 8, 2022. (Claimant's Ex.B p.269)

102. He opined the AC joint injection administered by NP Duncan did not provide Claimant great pain relief. (Claimant's Ex.B p.274)

103. He opined that annular fissures, tears in the outer lining of a spinal disc, will present on MRIs for maybe six to eight months after an injury. (Claimant's Ex.B p.277)

104. He opined the annular fissures present on Claimant's cervical MRI indicated Claimant's neck injury was acute. (Claimant's Ex.B p.277)

105. He opined Claimant's April 2021 MVA was too remote intime for it to have caused the annular fissures on Claimant's cervical MRI. He opined Claimant's annular fissures were relatively recent. He opined the "diagnostic dilemma" that he noted on Claimant's medical records was due to decussating (intersecting to form an X) fibers in the spinal cord that crossed left or right. He further opined the cross action could cause symptoms on either side of the patient. He opined the side of Claimant's body impacted in the MVA would have little bearing on which side of his neck would be in pain. (Claimant's Ex.B p.278)

106. He opined Claimant's EMO was suggestive of very right-sided C7 radiculopathy and mild carpal tunnel syndrome. He opined the EMO confirmed Claimant's symptoms originated in the cervical spine. (Claimant's Ex.B p.283)

107. Dr. Grady testified during his deposition on January 31, 2024, that he is a board certified orthopedic surgeon. He performed Claimant's IME on November 17, 2023. (Claimant's Ex. C, APA 306, p.7, 307, p.10)

108. Dr. Grady opined annular fissures were not always acute problems. He opined annular fissures could be present for many years. (Claimant's Ex.C p.308)

109. Dr. Grady testified he was not aware of Claimant's prior workers' compensation claims or his MVA on April 3, 2021. Nor was he aware that Claimant had sought treatment for an extensive period from Live Well Chiropractic following the April 2021 MVA. (Claimant's Ex.C p.309)

110. He opined the multilevel cervical spondylosis present on Claimant's cervical MRI could be degenerative in nature and did not have to come from a traumatic event. (Claimant's Ex.C p.311)

111. He opined the marrow reconversion present on Claimant's MRI could be associated with trauma, but could also be associated with a person who smokes. He further opined that this condition could also be degenerative. He opined people who have cervical spondylosis and marrow reconversion oftentimes have annular fissures. (Claimant's Ex.C p.311)

112. He opined there was no "way to look at this MRI report, or anything, and tell or give an opinion to a reasonable degree of medical certainty as to whether any of these problems were the result of trauma [or] just the wear and tear of life." (Claimant's Ex.C p.311)

113. He opined the severe stenosis present on Claimant's cervical MRI was degenerative pathology that resulted from an aggravation to a preexisting condition. (Claimant's Ex.C p.312)

114. He testified for him to opine to a reasonable degree of medical certainty about a patient aggravating a preexisting condition, he would need to have a baseline from a prior MRI to compare against a post-injury MRI. Without a baseline, he could not determine from an MRI or report whether Claimant's aggravation occurred before or after his work-related accident on March 8, 2022. (Claimant's Ex.C p.312)

115. He testified Claimant's chief complaints during the IME were right-side dominant shoulder and neck pain. (Claimant's Ex.C p.312)

116. He opined it was peculiar that Claimant's spinal stenosis and foraminal narrowing presented more on the left side of his spine, while his radicular symptoms presented more on the right side of his spine. (Claimant's Ex.C p.312)

117. He testified Claimant responded "no" when asked during his IME if he had received prior treatment for the same problems for which he was being evaluated. (Claimant's Ex.C p.314)

118. He testified he could not opine to a reasonable degree of medical certainty that any of Claimant's conditions were aggravated by a work-related injury on March 8, 2022. (Claimant's Ex.C p.314)

119. Dr. Grady testified since Dr. Van Pelt was Claimant's treating physician he saw more of and knew more about Claimant. Therefore, he agreed with his opinion that Claimant's cervical and right arm symptoms were probably caused by a work-related accident on March 8, 2022. (Claimant's Ex.C p.315)

120. He testified he did not know if Dr. Van Pelt knew about the injuries Claimant sustained before his work-related accident on March 8, 2022. He testified he took Claimant at his word that "something happened" to him on March 8, 2022. (Claimant's Ex.C p.317)

121. Dr. Van Pelt opined the cause of Claimant's injuries were a work-related accident on March 8, 2022. (Claimant's APA #3)

122. I find the crux of Dr. Van Pelt' s opinion was the appearance of annular fissures on Claimant's MRI. (APA 277-78)

123. Dr. Van Pelt further opined the appearance of annular fissures on Claimant's MRI indicated Claimant's injury was acute and thus most likely caused by Claimant's most recent at- work

accident and not by something more remote in time. (APA 277-78)

124. Dr. Grady examined Claimant and reviewed the medical records made available to him. Similarly, Dr. Hodge reviewed Claimant's medical records. Both doctors independently formed the same opinion regarding annular fissures: they can be acute or chronic. Dr. Grady also opined that without a baseline, a provider could not accurately determine from an MRI or report whether Claimant's injuries were caused or aggravated by an event other than Claimant's alleged work-related accident on March 8, 2022. (APA 311-12, 1221)

125. I find the opinion of Dr. Van Pelt, as Claimant's treating physician, would generally be afforded great weight. However, his foremost basis for assigning causation to Claimant's alleged work-related accident on March 8, 2022, was unilaterally contradicted by two other providers. Further, Dr. Van Pelt did not know about Claimant's prior neck injury, but testified that knowing about Claimant's prior cervical spine injury sustained in April 2021 would not have changed his opinion that Claimant's neck injury was caused by his work-related accident on March 8, 2022. Dr. Van Pelt failed to admit knowing about Claimant's prior injuries to a body part, especially those relatively recent in time, which could have some bearing on the present condition of that body part. (Claimant's Ex.2 p.269)

126. Dr. Van Pelt's findings are not supported by the greater weight of the evidence. I find his opinion lacks credibility and have afforded it the weight I deemed it deserved.

127. Though he testified to findings significantly different than those of Dr. Van Pelt, Dr. Grady ultimately deferred to Dr. Van Pelt's opinion as to causation since he was Claimant's treating physician. Accordingly, I too find his opinion as to causation lacks credibility and have afforded it the weight I deemed it deserved.

128. I find Dr. Hodge's opinion aligns with the preponderance of the medical evidence

that the cause of Claimant's present symptoms are idiopathic in nature, as he suffered a series of accidents from 2018 to 2021 that affected his back to varying degrees. The last of these accidents occurred only nine months before Claimant began working for Confluence. Further, the preponderance of non-medical evidence does not support a finding that Claimant was involved in a work-related accident on March 8, 2022. Accordingly, I find the opinion of Dr. Hodge to be credible and have afforded it the weight I deemed it deserved.

129. The *Linen* court held that the Commission, may not rest its determinations on surmise, conjecture or speculation. *Linen v. Ruscon Constr. Co.*, 332 S.E.2d 211, 212 (1985).

130. I can only consider the evidence before me, which includes: the medical records; the providers' testimony; Claimant's untruthful, evasive and inconsistent testimony; no footage of the incident from the available video surveillance or eye witnesses testimony; Claimant's MVA where he sustained a neck injury less than a year before his work-related accident on March 8, 2022, which allegedly caused or aggravated an injury to the same body part; Claimant's prior workers' compensation accidents where he sustained injuries to and received treatment for his back; and Claimant's less than stellar work history where he was terminated from a spate of employment for cause (ex. hostility), or separated from employment under less than ideal circumstances.

131. I find the substantial weight of the evidence shows Claimant has not met his burden of proof that his claim is causally related to an alleged work-related accident on March 8, 2022.

132. Defendants raised a Fraud in the Application (McDevitt & Street) defense.

133. The *Cooper* court addressed Fraud in the Application after the defendants appealed the Commission's award of benefits to the claimant. *Cooper v. McDevitt & St. Co.*, 196 S.E.2d 833, 834 (1973). The defendants argued the claimant should not be entitled to recover workers' compensation benefits for his injury when he knowingly and intentionally falsified his pre-employment questionnaire as to his back injury. *Id.* at 835. The court held "[T]here was nothing in

[the claimant's] application to alert his employer ...that he had a previous back injury. The employer, in the absence of notice to the contrary, had the right to assume the truthfulness of the statements contained in the appellant's application," *Id.* at 836. **McDevitt & Street Defense:** The Cooper court established three factors that "must be present before a false statement in an employment application will bar benefits: 1.) The employee must have knowingly and willfully made a false representation as to his physical condition. 2.) The employer must have relied upon the false representation and this reliance must have been substantial factor in hiring. 3.) There must have been a causal connection between the false representation and the injury." *Id.* at 835.

134. Employment Application: In accordance with Finding of Fact No. 34 *(supra),* Defendants submitted two pages of Claimant's four page employment application. There is one question on the submitted documentation (Defendants' APA No. 12. pp. 508-509) that directly addresses the issues at bear in this matter. The question is as follows: "Are you able to perform the essential functions of the job for which you are applying either with or without reasonable accommodations?" Claimant answered: "Yes".

135. The qualifying clause in this question: "...either with or without reasonable accommodations," does not substantiate a finding that Claimant "knowingly and willfully made a false representation as to his physical condition" on his employment application. *Id.* at 835. Therefore, Defendants have not satisfied the first factor of the McDevitt & Strect defense.

136. To satisfy the second factor of the McDevitt & Street defense, Defendants must have relied upon Claimant's false representation and this reliance must have been a substantial factor in Claimant's hiring. *Id.* at 835. Referring back to the question on Claimant's employment application, Claimant affirmed he could perform the "essential functions" of his job "either with or without reasonable accommodations". The question's lack of specificity as to "essential functions," coupled with the qualifying clause, does not substantiate a finding that Defendant Employer substantially

relied on Claimant's response. This is further evidenced by Defendant- Employer allowing Claimant to observe his potential job functions prior to hire (Hr. Tr. p. 49.), but not taking any additional steps to ensure he could actually perform those job functions before an offer of permanent employment was made (ex. a trial period). Therefore, Defendants have not satisfied the second factor of the McDevitt & Street defense.

137. Defendants must establish a causal connection between Claimant's false representation and his injury to satisfy the third factor of the McDevitt & Street defense. Circling back to the question on Claimant's employment application, Claimant's simple "yes" to a question that has already been established as lacking specificity in one respect (i.e. "essential functions"), but broadening its scope in another (i.e. "reasonable accommodations), does not substantiate a finding that a causal connection exists between Claimant's response and his injury. Therefore, Defendants have not satisfied the third factor of the McDevitt & Street defense.

138. **Post-Job Offer Medical ...Questionnaire:** Claimant omitted a significant amount of information about his health history on Defendant-Employer's medical questionnaire. For example, he did not inform Defendant-Employer about the prior injury to his cervical spine. Claimant's glaring omissions on the questionnaire (for a job that is physical in nature) substantiates a finding that Claimant "knowingly and willfully made a false representation as to his physical condition" on his post-job offer medical...questionnaire. Therefore, Defendants' have satisfied the first factor of the McDevitt & Street defense.

139. Though Claimant omitted a significant amount of information on his questionnaire, the evidence in the record does not substantiate a finding that Claimant's false representations were a substantial factor in his hiring. This is evidenced by Defendant-Employer accepting the information that Claimant provided on the questionnaire without any additional follow up (e.g. a

physical) to ensure he was actually fit for the position. Furthermore, Defendants did not provide sworn testimony (Hr. Tr. pp. 107-108) or other evidence to support their assertation that they reasonably relied on Claimant's false representations and that said representations were a substantial factor in his hire. Therefore, Defendants have not satisfied the second factor of the McDevitt & Street defense.

140. Claimant omitted information about his prior back injuries, specifically the injury to his cervical spine that he sustained nine months before starting work for Defendant-Employer. Defendant-Employer's medical questionnaire specifically asked: "Please list any condition, injury or disease for which you have been treated in the past three (3) years. If no treatment has been provided, state 'none.' Please list any medical providers and dates when applicable." Claimant answered: "none". (Defendants' APA No. 12, p. 518). Claimant's assertion that he sustained an injury to his cervical spine while working for Defendant-Employer, substantiates a finding that a causal connection exists between Claimant's false representations on the questionnaire and his injury. Therefore, Defendants' have satisfied the third factor of the McDevitt & Street defense.

141. I find Defendants have failed to establish all three factors under the McDevitt & Street defense for Fraud in the Application. Therefore, Claimant's claim is not barred by this defense.

142. Though Claimant's claim is not barred by the McDevitt & Street defense in this matter, based on the greater weight of the evidence, Claimant's claim is not compensable under the provisions of the Act.

143. I find Claimant is not entitled to medical benefits.

144. I find Claimant is not entitled to temporary disability compensation.

145. I find Claimant is not entitled to permanent disability compensation.

146. I find Claimant is not entitled to any other ancillary cost associated with this claim.

CONCLUSIONS OF LAW

1. Under S.C. Code Ann. § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant Employer was a covered employer under the Act.

2. The *Linen* court held that the Commission may not rest its determinations on surmise, conjecture, or speculation. *Linen* v. *Ruscon Constr. Co.*, 286 S.C. 67, 68, 332 S.E.2d 211, 212 (1985). *See also Bundrick v. Powell's Garage*, 248 S.C. 496, 151 S.E.2d 437 (1966). Indeed, South Carolina cases are replete that a finding of the Commission will normally be upheld. However, "such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Burnette v. City of Greenville*, 401 S.C. 417, 426, 737 S.E.2d 200, 206 (Ct. App. 2012). *See also Grayson* v. *Carter Rhoad Furniture*, 317 S.C. 306, 309-10, 454 S.E.2d 320, 322 (1995); *Edwards* v. *Pettit Constr. Co., Inc.*, 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979).

3. Where claimant's credibility is a substantial issue, the Appellate Panel may properly give less weight to doctor's opinions if it believed a claimant to be untruthful in self-reporting of symptoms or presentation. *Rummage* v. *BGF Industries*, 434 S.C. 441, 459, 865 S.E.2d 380, 390 (Ct. App. 2021), *cert. granted and then dismissed as improvidently granted*, S.C. Sup. Ct., July 26, 2023. While questioning the commissioner's assessment of claimant's credibility, the appellate court in *Rummage* concurred that Claimant lacked credibility where she had "denied some relatively major prior issues entirely," including prior complaints to affected body parts. *Id.* "Expert medical testimony is designed to aid the Commission in coming to the correct conclusion; therefore, the Commission determines the weight and credit to be given to the expert testimony." *Tiller v. Nat'l Health Care Ctr. Of Sumter*, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999). The appellate courts have implicitly approved the single commissioner giving less weight to the treating doctor's opinion "because of the objective evidence and [her] own observations and impression at the hearing."

Fishburne v. ATI Sys. Internat'l, 384 S.C. 76, 87, 681 S.E.2d 595, 601 (Ct. App. 2009). Indeed, this is a large measure of the point of in person hearings before a commissioner-to assess credibility and determine the weight to be given to evidence. "[The Commission is the sole fact-finder in workers' compensation cases, and . . . any questions of credibility must be resolved by the Commission." *Smith v.* S. C. *Dep't of Mental Health*, 329 S.C. 485, 501, 494 S.E.2d 630, 638 (Ct. App. 1 997). "It is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion." *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967).

4. The substantial weight of the evidence shows Claimant has not met his burden of proof that his claim was causally related to an alleged work-related accident on March 8, 2022.

5. Defendants have failed to establish all three factors under the McDevitt & Street defense for Fraud in the Application. Therefore, Claimant's claim is not barred by this defense.

6. The *Cooper* court addressed fraud in the application after the defendants appealed the Commission's award of benefits to the claimant. *Cooper v. McDevitt & Street Co.*, 260 S.C. 463, 196 S.E.2d 833 (1973).

7. The *Cooper* court established three factors that must be present before a false statement in an employment application will bar benefits: (1) The employee must have knowingly and willfully made a false representation as to his physical condition. (2) The employer must have relied upon the false representation and this reliance must have been a substantial factor in hiring. (3) There must have been a causal connection between the false representation and the injury. *Id.* at 835.

8. Though Claimant's claim is not barred by the *McDevitt & Street* defense in this matter, Claimant's claim is not compensable under the provisions of the Act based on the greater

weight of the evidence. Claimant has failed to carry his burden of proof that a compensable injury occurred at Confluence.

III. ISSUES ON APPEAL

1. Did the Hearing Commissioner err as a matter of fact and matter of law by ignoring, misrepresenting, stating without reference to the record, and/or excluding specific medical evidence and testimony that supports Claimant's claim?

2. Did the Hearing Commissioner err as a matter of fact and matter of law by ignoring, misrepresenting, stating without reference to the record, and/or excluding specific hearing testimony and lay evidence that supports Claimant's claim?

3. Did the Hearing Commissioner err as a matter of fact and law by improperly assessing the medical evidence and testimony under *Crane v. Raber's Discount Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020)?

4. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 7 by not specifying this prior claim was for Claimant's low back?

5. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 13 by not specifying this prior claim was for unrelated injuries to the alleged body parts at question in this claim?

6. Did the Hearing Commissioner err as a matter of fact in Finding of Fact 17 by finding Claimant's prior treatment for this motor vehicle accident ended on July 12, 2021?

7. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 45 by finding Claimant did not inform his medical providers about prior accidents and injuries, but ignoring that all his providers *were* apprised of this in their depositions and stood by their opinions concerning causation?

8. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 48 by finding Claimant's employment with Cintas was prior to Confluence and not making reference to any transcript regarding Claimant's testimony?

9. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 62 by mispresenting the actual testimony of Claimant and the records in evidence?

10. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 71 by finding based on conjecture that Claimant "indirectly asserted" he was harassed and that Claimant's testimony was inconsistent but provided no cite to the record to substantiate such a finding?

11. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 81 by misrepresenting that Claimant only testified to having a 0% impairment rating when it was corroborated separately in the record?

12. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 82 by finding

Claimant treated "through July 2021" for a prior motor vehicle accident when the record clearly showed this treatment ended on July 9, 2021?

13. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 85 by finding Claimant's testimony was untruthful, evasive, and inconsistent and lacked credibility when he provided no reference to any transcript to substantiate such a finding?

14. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 100 by misrepresenting that Dr. Van Pelt testified he was unaware of prior claims and had not seen prior records when his testimony clearly showed he was apprised of such information and given an opportunity to review prior medical records?

15. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 119 by mispresenting that Dr. Grady testified that the cervical and right arm symptoms were "probably" caused by the work-related accident?

16. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 122 by finding the crux of Dr. Van Pelt's opinion was the appearance of annular fissures on Claimant's MRI when there was additional objective testing, subjective complaints, and physical examinations that formed his opinion?

17. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 124 by speculating generally as to what medical records Dr. Hodge reviewed without knowing specifically what he reviewed, if anything, outside of the records mentioned in his opinion statement?

18. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 125 by finding Dr. Grady "unilaterally contradicted" Dr. Van Pelt's opinion when Dr. Grady specifically deferred to Dr. Van Pelt regarding the annular fissures and causation and also opined independently that Claimant's injuries were causally related to the March 8, 2022 work accident based on an aggravation of a preexisting condition?

19. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 125 by finding Dr. Van Pelt "failed to admit knowing about prior injuries to a body part . . .." in direct contradiction to Finding of Fact 100?

20. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 126 by finding the greater weight of the evidence did not support Dr. Van Pelt's opinion, when no doctor provided a contradictory opinion to the appropriate standard and the objective medical evidence and physical examinations supported Dr. Van Pelt's opinion?

21. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 127 by finding Dr. Grady's opinion as to causation should be afforded little weight when he relied on portions of his testimony in Finding of Fact 125 to support denying the claim?

22. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 128 by finding Dr. Hodge's opinion aligned with the preponderance of the medical evidence, when such finding is not supported by a preponderance of the substantial evidence in the record and without citing any portion of the record to support such a finding and his opinion was not

provided to the appropriate standard (reasonable degree of medical certainty)?

23. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 128 in finding as fact ". . . that the cause of Claimant's present symptoms are idiopathic in nature. .," when there was no such opinion provided by any medical expert and no such opinion was provided to the appropriate standard (reasonable degree of medical certainty)?

24. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 130 by not complying with *Crane v. Raber's Discount Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020), and directly contradicting Finding of Fact 86 by not explaining any basis on which Claimant's credibility could justify ignoring objective medical evidence?

25. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 131 by finding the substantial weight of the evidence did not support finding Claimant has met his burden of proof?

26. Did the Hearing Commissioner err as a matter of law in Conclusion of Law 4 by concluding the substantial weight of the evidence did not support finding Claimant has met his burden of proof?

27. Did the Hearing Commissioner err as a matter of law in Conclusion of Law 8 by concluding the greater weight of the evidence did not support finding Claimant has met his burden of proof for a compensable injury?

IV. DECISION OF THE APPELLATE PANEL

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the respective Appellant and Respondent briefs of the parties, as well as those issues raised at the Full Commission Review Hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby **AFFIRM** the Decision and Order of the Single Commissioner filed on February 27, 2025.

Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as to this claim.

FINDINGS OF FACT

1. We affirm the above-stated findings of the Single Commissioner as to this claim.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-17-50, we affirm the above-stated conclusions of the Single Commissioner as to this claim.

ORDER

THEREFORE IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on February 27, 2025, is **AFFIRMED**.

ACCORDINGLY:

IT IS FURTHER ORDERED that Claimant (1) failed to meet his burden of proof that he sustained a compensable work injury, and (2) is not entitled to medical benefits, temporary or permanent disability compensation, or any other ancillary costs associated with this claim.

AND SO IT IS ORDERED.

_____**(date)**
Columbia, SC

Melody L. James, Commissioner

Gabe Coggiola, Commissioner

Michael Campbell, Commissioner

Order Served via email:

Benjamin M. Renfrow Wilson Jones Carter & Baxley, PA bmrenfrow@wjcblaw.com	Richard Charles Alexander Shelly Leeke Law Firm, LLC chip@leekelaw.com

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).

By Eugenia Hollmon on August 26, 2025

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to:

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

March 16, 2022

S.C. Workers' Compensation Commission
Attn: Claims Department
P.O. Box 1715
Columbia, SC 29202-1715

Re:	WCC File No:	Not yet established
	Employee:	Rusty Young
	Employee's Address:	10 Yakutata Drive Greenville, SC 29605
	Employee's Telephone No:	(864) 640-1858
	SSN:	249-65-7770
	Date of Injury:	3/8/2022
	Type of Injury/Part of Body Injured:	right shoulder, right arm, right hand/fingers
	Description of Accident:	Claimant was injured while pulling and lifting.
	Geographic Location of Accident:	Greenville County, SC
	Employer:	Confluence Outdoor Inc. 575 Mauldin Rd., Greenville, SC29607
	Insurance Carrier:	Great American Alliance Insurance Company PO Box 4080 Clinton, IA 52733

Dear Sir/Madam:

Pursuant to South Carolina Code Section 42-15-40, this letter is to advise of my representation of the employee named above in a claim for injuries covered by the Workers' Compensation Act and to establish a claim prior to the running of the statute of limitations. We are filing a Form 50 and certificate reflecting proof of service on the insurance carrier referenced above. We are not requesting a hearing at this time. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

By copy of this letter, we are notifying the Employer/Carrier of our representation.

Respectfully submitted,

McCRAVY, NEWLON, STURKIE& CLARDY
LAW FIRM, P.A.

10158

Jason L. Sturkie, Esquire
Attorney

JLS/dm
Enclosures
cc: Rusty Young
Great American Alliance Insurance Company

SCWCC

MAR 18 2022

INSURANCE &
MEDICAL SERVICES

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: Not yet established
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770 Employer's Name: Confluence Outdoor Inc.

Address: 10 Yakutala Drive Address: 575 Mauldin Rd.

City: Greenville State: SC Zip: 29605 City: Greenville State: SC Zip: 29607

Home Phone: (864) 640 - 1858 Work Phone: ( ) - Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq. Law Firm: McCravy, Newton, Sturkie & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 - 9100

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 8 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers
   Briefly describe how the accident occurred. Claimant was injured while pulling and lifting.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety

☑ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: ____

☑ (b) additional medical examination and treatment for: right shoulder, right arm, right hand/fingers

☑ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
3/11/22 - Cont.

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. Claimant at MMI: ☐ Yes ☑ No

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of TBD, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than the above named employer.

11. Further grounds or unusual aspects of claim:
None known at this time.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, Greenville, SC.

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: ____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☑ 13. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: ____

☐ 14. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Great American Alliance Insurance Company **address** PO Box 4080 Clinton, IA 52733 **on the** 16 **day of** Mar 2022, **by** ☐ **first class postage** ☑ **certified mail** ☐ **personal service** ☐ **electronic service**

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

Preparer's Signature	Attorney for Claimant	jason.sturkie@mccravylaw.com	March 16, 2022
	Title	Email	Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

50 **Employee's Notice of Claim and/or Request for Hearing**

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to: ■

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

July 1, 2022

S.C. Workers' Compensation Commission
Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

RE: Rusty Young v. Confluence Outdoor Inc.
WCC File No: 2202565

Dear Sir or Madam:

Enclosed please find a Form 50, **amended to request a hearing,** $50.00 filing fee, and certificate reflecting proof of service on the carrier/attorney. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

Respectfully Submitted,

McCRAVY, NEWLON, STURKIE & CLARDY
LAW FIRM, P.A.

Jason L. Sturkie, Esquire

JLS/dm
Enclosures
cc:Rusty Young
Benjamin Renfrow, Esq.

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SCWCC
JUL 05 2022
JUDICIAL

AMENDED

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770 Employer's Name: Confluence Outdoor Inc.

Address: 10 Yakutata Drive Address: 575 Mauldin Rd.

City: Greenville State: SC Zip: 29605 City: Greenville State: SC Zip: 29607

Home Phone: (864) 640 - 1858 Work Phone: ( ) - Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq. Law Firm: McCravy, Newlon, Sturkie & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 - 9100

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 8 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers
   Briefly describe how the accident occurred. Claimant was injured while pulling and lifting.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety

☑ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: ____

☑ (b) additional medical examination and treatment for: right shoulder, right arm, right hand/fingers

☑ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
3/11/22 - Cont.

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. Claimant at MMI: ☐ Yes ☑ No

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of TBD, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than the above named employer.

11. Further grounds or unusual aspects of claim:
None known at this time.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, St. Francis Eastside, and Piedmont Orthopaedic Associates, Greenville, SC.

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: ____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: 1 hour

☑ 14. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin Renfrow, Esq., Wilson Jones Carter & Baxley, P.A.
address 325 Rocky Slope Rd., Suite 201 Greenville, SC 29607 **on the** 1 **day of** July 2022, **by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service**

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

Preparer's Signature	Attorney for Claimant	jason.aturkie@mccravylaw.com	July 1, 2022
	Title	Email	Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

50

Employee's Notice of Claim and/or Request for Hearing

AMENDED

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to: ■

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

July 1, 2022

S.C. Workers' Compensation Commission
Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

RE: Rusty Young v. Confluence Outdoor Inc.
WCC File No: 2202565

Dear Sir or Madam:

Enclosed please find a Form 50, **amended to request a hearing,** $50.00 filing fee, and certificate reflecting proof of service on the carrier/attorney. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

Respectfully Submitted,

McCRAVY, NEWLON, STURKIE & CLARDY
LAW FIRM, P.A.

Jason L. Sturkie, Esquire

JLS/dm
Enclosures
cc: Rusty Young
Benjamin Renfrow, Esq.

willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

July 22, 2022

Via E-mail
Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJCB File No.: 00285.14509

Dear Judicial Director:

Enclosed please find defendants' **Form 51** in the above-referenced matter. By copy of this correspondence, a copy of our Form 51 is being provided directly to Jason Sturkie, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

BMR/gll

Enclosure

cc (w/enclosure): Jason Sturkie, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675 www.wcc.sc.gov

Carrier File #: A00429427
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: 249-65-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:
Date of Injury: 3/8/2022

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Preparer's Name: Benjamin M. Renfrow Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3296

Date of Injury or Illness: 3/8/2022 **Estimated time for hearing: 45 minutes**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
   Defendants deny the claimant sustained an injury by accident arising out of and in the course of employment, pending investigation.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
   See #1.
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
   See #1.
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
   See #1.
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
   See #1.
6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
   See #1.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
   See #1.
9. It is **Denied** the employee has serious disfigurement.
   [TO BE PROVIDED]
10. It is contended that an average weekly wage of **$TBP** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
    Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jason Sturkie, Esquire/Judicial Analysts Address jason.sturkie@mccravylaw.com; dmayer@mccravylaw.com; /judicialanalysts@wcc.sc.gov on the 22nd day of July 2022, by:
☐ **first class postage** ☐ **certified mail** ☐ **personal service** ☒ **electronic service**

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

Preparer's Signature	**Attorney for the Employer/Insurer**	**bmrenfrow@wjcblaw.com**	**07/22/2022**
	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to: ■

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

August 26, 2022

S.C. Workers' Compensation Commission
Claims Department
P.O. Box 1715
Columbia, SC 29202-1715

RE: Rusty Young v. Confluence Outdoor Inc.
WCC File No: 2202565

Dear Sir or Madam:

Enclosed please find a Form 50, **amended to reflect all injured and affected body parts**, and certificate reflecting proof of service on the carrier/attorney. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

Respectfully Submitted,

McCRAVY, NEWLON, STURKIE & CLARDY
LAW FIRM, P.A.

Jason L. Sturkie, Esquire

JLS/dm
Enclosures
cc:Rusty Young
Benjamin Renfrow, Esq.

RECEIVED
AUG 29 2022
Division of Claims
SC Workers' Comp. Comm.

AMENDED

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: 220256S
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770
Address: 10 Yakutata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640 - 1858 Work Phone: ( ) -

Employer's Name: Confluence Outdoor Inc.
Address: 575 Mauldin Rd.
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq. Law Firm: McCravy, Newlon, Sturkie & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 - 9100

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 9 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers, neck
   Briefly describe how the accident occurred. Claimant was injured while pulling and lifting.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety

☑ 7. Due to injury, the claimant is in need of (check one):
   ☐ (a) medical examination and treatment for: ____
   ☑ (b) additional medical examination and treatment for: right shoulder, right arm, right hand/fingers, neck

☑ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
   3/11/22 - Cont.

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
   ☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
   9a. Claimant at MMI: ☐ Yes ☑ No

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of TBD, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
   None other than the above named employer.

11. Further grounds or unusual aspects of claim:
   None known at this time.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
   AFC Urgent Care, St. Francis Eastside, Piedmont Orthopaedic Associates and Piedmont Comprehensive Pain Management, Greenville, SC.

11b. To the best of your knowledge, did you have any prior permanent disability? No
   If yes, describe: ____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☑ 13. **I am filing a claim. I am not requesting a hearing at this time.** hearing set for 10/13/22 Estimated time needed for hearing: ____

☐ 14. **I am requesting a hearing.** A **$50 fee is required.**

☐ **Mediation**
- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 8.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin Renfrow, Esq., Wilson Jones Carter & Baxley, P.A.
address 325 Rocky Slope Rd., Suite 201 Greenville, SC 29607 **on the** 26 **day of** Aug **2022, by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service**

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

Preparer's Signature	Attorney for Claimant Title	jason.sturkie@mccravylaw.com Email	August 26, 2022 Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

50

Employee's Notice of Claim and/or Request for Hearing

AMENDED

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to: ■

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

March 17, 2023

S.C. Workers' Compensation Commission
Attn: Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

Re:	WCC File No:	2202565
	Employee:	Rusty Young
	Employee's Address:	10 Yakutata Drive, Greenville, SC 29605
	Employee's Telephone No:	864-640-1858
	SSN:	249-65-7770
	Date of Injury:	3/8/2022
	Type of Injury/Part of Body Injured:	right shoulder, right arm, right hand/fingers & neck
	Description of Accident:	Claimant was injured while pulling and lifting
	Geographic Location of Accident:	Greenville County, SC
	Employer:	Confluence Outdoor Inc. 575 Mauldin Rd., Greenville, SC 29607
	Insurance Carrier:	Great American Alliance Insurance Company PO Box 4080, Clinton, IA 52733

Dear Sir/Madam:

Pursuant to South Carolina Code Section 42-15-40, this letter is to advise of my representation of the employee named above in a claim for injuries covered by the Workers' Compensation Act and to establish a claim prior to the running of the statute of limitations. We are filing a Form 50 and certificate reflecting proof of service on the insurance carrier referenced above. We are requesting a hearing at this time. Our filing fee check of $50.00 is enclosed. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

By copy of this letter, we are notifying the Employer/Carrier of our representation.

Respectfully submitted,

McCRAVY, NEWLON, STURKIE & CLARDY
LAW FIRM, P.A.

S214de

Jason L. Sturkie, Esquire
Attorney

JLS/
Enclosures
cc: Rusty Young

SCWCC
MAR 22 2023
JUDICIAL

Amended

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770
Address: 10 Yakutata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864)640 - 1858 Work Phone: ( ) -

Employer's Name: Confluence Outdoor Inc.
Address: 575 Mauldin Rd.
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq. Law Firm: McCravy, Newton, Sturkie & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 - 9100

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 9 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers, neck
   Briefly describe how the accident occurred. Claimant injured while pulling and lifting
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety

☑ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: ____

☑ (b) additional medical examination and treatment for: right shoulder, right arm, right hand/fingers, neck

☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. Claimant at MMI: ☐ Yes ☑ No

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of $ 560.00, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than the aboved named employer.

11. Further grounds or unusual aspects of claim:
None known at this time.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, St. Francis Eastside, Piedmont Orthopaedic, Piedmont Comprehensive Pain Management, and Carolina Orthopaedic

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: ____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: 1 Hour

☑ 14. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**

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☐ b. Mediation is required pursuant to Reg. 67-1802.
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I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin Renfrow, Esq., Wilson Jones Carter & Baxley, P.A.
address 325 Rocky Slope Rd. Suite 204 Gvl., SC **on the** 10 **day of** March **2023, by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service**

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

Preparer's Signature	Attorney for Claimant Title	jason.sturkie@mccravylaw.com Email	March 17, 2023 Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

50

Employee's Notice of Claim and/or Request for Hearing

Amended

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to:

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

March 29, 2023

S.C. Workers' Compensation Commission
Attn: Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

Re:	WCC File No:	2202565
	Employee:	Rusty Young
	Employee's Address:	10 Yakutata Drive, Greenville, SC 29605
	Employee's Telephone No:	864-640-1858
	SSN:	249-65-7770
	Date of Injury:	3/8/2022
	Type of Injury/Part of Body Injured:	right shoulder, right arm, right hand/fingers and neck
	Description of Accident:	Claimant was injured while pulling and lifting
	Geographic Location of Accident:	Greenville County, SC
	Employer:	Confluence Outdoor Inc. 575 Mauldin Rd., Greenville, SC 29607
	Insurance Carrier:	Great American Alliance Insurance Company PO Box 4080, Clinton, IA 52733

Dear Sir/Madam:

Pursuant to South Carolina Code Section 42-15-40, this letter is to advise of my representation of the employee named above in a claim for injuries covered by the Workers' Compensation Act and to establish a claim prior to the running of the statute of limitations. We are filing a Form 50 and certificate reflecting proof of service on the insurance carrier referenced above. We are requesting a hearing at this time. Our filing fee check of $50.00 is enclosed. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

By copy of this letter, we are notifying the Employer/Carrier of our representation.

Respectfully submitted,

McCRAVY, NEWLON, STURKIE & CLARDY
LAW FIRM, P.A.

Jason L. Sturkie, Esquire
Attorney

JLS/
Enclosures
cc: Rusty Young
cc: Benjamin Renfrow, Esq.

Amended

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: 2202555
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770 Employer's Name: Confluence Outdoor Inc.

Address: 10 Yakutata Drive Address: 575 Mauldin Rd.

City: Greenville State: SC Zip: 29605 City: Greenville State: SC Zip: 29607

Home Phone: (864) 640 - 1858 Work Phone: ( ) - Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq. Law Firm: McCravy, Newton, Sturkie & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 -9100

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 0 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers, neck
   Briefly describe how the accident occurred. Claimant injured while pulling and lifting
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety
☑ 7. Due to injury, the claimant is in need of (check one):
   ☐ (a) medical examinadon and treatment for: ____
   ☑ (b) additional medical examination and treatment for: right shoulder, right arm, right hand/fingers and neck
☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
   ☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
   9a. Claimant at MMI: ☐ Yes ☑ No
☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
10a. At the time of the injury, the Claimant was paid weekly wages of $1000.00, and demands accounting of days worked and wages earned as provided by law.
10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
   NOne other than the aboved named employer.
11. Further grounds or unusual aspects of claim:
   None known at this time.
11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
   AFC Urgent Care, St. Francis Eastside, Piedmont Orthopaedic, Piedmont Comprehensive Pain Management, and Carolina Orthopaedic
11b. To the best of your knowledge, did you have any prior permanent disability? No
   If yes, describe: ____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
☐ 13. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: 1 hour
☑ 14. **I am requesting a hearing. A $50 fee is required.**
☐ **Mediation**
   ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 8.
   ☐ b. Mediation is required pursuant to Reg. 67-1802.
   ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
   ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin Renfrow, Esq., Wilson Jones Carter & Baxley, P.A.
address 325 Rocky Slope rd. Suite 211, Greenville SC 29607 **on the** 29 **day of** March **20**23, **by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service**
I verify the contents of this form are accurate and true to the best of my knowledge.

Jason Sturkie | Attorney for Claimant | jason.sturkie@mccravylaw.com | March 29, 2023
Preparer's Signature | Title | Email | Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

50

Employee's Notice of Claim and/or Request for Hearing

Amended

wjcb willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

April 17, 2023

Via E-mail
Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJCB File No.: 00285.14509

Dear Judicial Director:

Enclosed please find defendants' **Form 51** in the above-referenced matter. By copy of this correspondence, a copy of our Form 51 is being provided directly to Jason Sturkie, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

BMR/gll

Enclosure

cc (w/enclosure): Jason Sturkie, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675 www.wcc.sc.gov

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: 249-65-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:
Date of Injury: 3/8/2022

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Preparer's Name: Benjamin M. Renfrow Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3296

Date of Injury or Illness: 3/8/2022 **Estimated time for hearing: 45 minutes**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants deny the claimant sustained an injury by accident arising out of and in the course of employment, pending investigation.

2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See #1.

3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
See #1.

4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See #1.

5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
See #1.

6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
See #1.

7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :

8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
See #1.

9. It is **Denied** the employee has serious disfigurement.

10. It is contended that an average weekly wage of **$TBP** applies, according to attached Form 20 as provided by law.

11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ **Mediation**
- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jason Sturkie, Esquire/Judicial Analysts Address jason.sturkie@mccravylaw.com; dmayer@mccravylaw.com; /judicialanalysts@wcc.sc.gov on the 17th day of April 2023, by:
☐ **first class postage** ☐ **certified mail** ☐ **personal service** ☒ **electronic service**

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

Preparer's Signature	**Attorney for the Employer/Insurer**	**bmrenfrow@wjcblaw.com**	**04/17/2023**
	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to: ■

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

October 17, 2023

S.C. Workers' Compensation Commission
Attn: Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

Re:	WCC File No:	2202565
	Employee:	Rusty Young
	Employee's Address:	10 Yakutata Drive, Greenville, SC 29605
	Employee's Telephone No:	864-640-1858
	SSN:	249-65-7770
	Date of Injury:	3/8/2022
	Type of Injury/Part of Body Injured:	right shoulder, right arm, right hand/fingers
	Description of Accident:	right shoulder and arm , was on light duty but now fired him
	Geographic Location of Accident:	Greenville County, SC
	Employer:	Confluence Outdoor Inc. 575 Mauldin Rd., Greenville, SC 29607
	Insurance Carrier:	Great American Alliance Insurance Company PO Box 4080, Clinton, IA 52733

Dear Sir/Madam:

Pursuant to South Carolina Code Section 42-15-40, this letter is to advise of my representation of the employee named above in a claim for injuries covered by the Workers' Compensation Act and to establish a claim prior to the running of the statute of limitations. We are filing an amended Form 50 and certificate reflecting proof of service on the insurance carrier referenced above. We are requesting a hearing at this time. Our filing fee check of $50.00 is enclosed. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

By copy of this letter, we are notifying the Employer/Carrier of our representation.

Respectfully submitted,

McCRAVY, NEWLON, STURKIE & CLARDY
LAW FIRM, P.A.

Jason L. Sturkie, Esquire
Attorney

539173

JLS/
Enclosures
cc: Rusty Young
Benjamin Renfrow, Esq.

10158

11-16

SCWCC
OCT 23 2023
JUDICIAL

Amended

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770 Employer's Name: Confluence Outdoor Inc.

Address: 10 Yakutata Drive Address: 575 Mauldin Rd.

City: Greenville State: SC Zip: 29605 City: Greenville State: SC Zip: 29607

Home Phone: (864) 640 - 1858 Work Phone: ( ) - Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq. Law Firm: McCravy, Newton, Sturkie & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 - 9100

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 9 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers, neck
   Briefly describe how the accident occurred. Claimant injured while pulling and lifting
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety

☑ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: ____

☑ (b) additional medical examination and treatment for: right shoulder, right arm, right hand/fingers and neck

☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. Claimant at MMI: ☐ Yes ☑ No

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of $ 560.00, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
NOne other then the aboved named employer.

11. Further grounds or unusual aspects of claim:
None known at this time.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, St. Francis Eastside, Piedmont Orthopaedic, Piedmont Comprehensive Pain Management, and Carolina Orthopaedic

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: ____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: 1 hour

☑ 14. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin Renfrow, Esq., Wilson Jones Carter & Baxley, P.A.
address 325 Rocky Slope rd. Suite 201, Greenville SC 29607 **on the** 17 **day of** Oct 2023, **by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service**

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

Preparer's Signature	Title	Email	Date
	Attorney for Claimant	jason.sturkie@mccravylaw.com	October 17, 2023

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

50

Employee's Notice of Claim and/or Request for Hearing

Amended

willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

November 16, 2023

Via E-mail
Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJCB File No.: 00285.14509

Dear Judicial Director:

Enclosed please find defendants' **Form 51** in the above-referenced matter. By copy of this correspondence, a copy of our Form 51 is being provided directly to Jason Sturkie, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

BMR/gll

Enclosure

cc (w/enclosure): Jason Sturkie, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: 249-65-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:
Date of Injury: 3/8/2022

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Preparer's Name: Benjamin M. Renfrow Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3296

Date of Injury or Illness: 3/8/2022 **Estimated time for hearing: 45 minutes**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
   Defendants deny the claimant sustained an injury by accident arising out of and in the course of employment, pending investigation.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
   See #1.
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
   See #1.
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
   See #1.
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
   See #1.
6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
   See #1.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
   See #1.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **$TBP** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
    Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	**Attorney for the Employer/Insurer**	**bmrenfrow@wjcblaw.com**	**11/16/2023**
	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or **judicial@wcc.sc.gov** or **mediation@wcc.sc.gov**. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:2202565

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this Form 51 in the above-captioned action upon Jason Sturkie, Esquire to be served by electronic service at the addresses shown below on 16th day of November, 2023.

Via E-Mail:
jason.sturkie@mccravylaw.com; rdillard@mccravylaw.com

Geri L. Lell
Paralegal to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

16th day of November, 2023
Greenville, South Carolina

Jason L. Sturkie

McCRAVY NEWLON STURKIE CLARDY LAW FIRM P.A.

Respond to: ■

Greenville Office
2 Butternut Dr
Greenville, SC 29605
(864)295-6031
(864)283-6530 - Facsimile

December 14, 2023

S.C. Workers' Compensation Commission
Attn: Claims Department
P.O. Box 1715
Columbia, SC 29202-1715

Re:	WCC File No:	2202565
	Employee:	Rusty Young
	Employee's Address:	10 Yakutata Drive Greenville, SC 29605
	Employee's Telephone No:	864-640-1858
	SSN:	249-65-7770
	Date of Injury:	3/8/2022
	Type of Injury/Part of Body Injured:	right shoulder, right arm, right hand/fingers and neck
	Description of Accident:	Pulling a boat out and felt pain in right shoulder
	Geographic Location of Accident:	Greenville County, SC
	Employer:	Confluence Outdoor Inc. 575 Mauldin Rd., Greenville, SC29607
	Insurance Carrier:	Great American Alliance Insurance Company PO Box 4080, Clinton, IA 52733

Dear Sir/Madam:

Pursuant to South Carolina Code Section 42-15-40, this letter is to advise of my representation of the employee named above in a claim for injuries covered by the Workers' Compensation Act and to establish a claim prior to the running of the statute of limitations. We are filing a Form 50 and certificate reflecting proof of service on the insurance carrier referenced above. We **are not** requesting a hearing at this time. Please return a filed copy of these documents to my office in the provided self-addressed, stamped envelope.

By copy of this letter, we are notifying the Employer/Carrier of our representation.

Respectfully submitted,

McCRAVY, NEWLON, STURKIE& CLARDY
LAW FIRM, P.A.

Jason L. Sturkie, Esquire
Attorney

SCWCC
10158 DEC 20 2023
JUDICIAL

JLS/
Enclosures
cc: Rusty Young
Benjamin Renfrow, Esq.

Amended

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770 Employer's Name: Confluence Outdoor Inc.

Address: 10 Yakutata Drive Address: 575 Mauldin Rd.

City: Greenville State: SC Zip: 29605 City: Greenville State: SC Zip: 29607

Home Phone: (864) 640 - 1858 Work Phone: ( ) - Insurance Carrier: Great American Alliance Insurance Company

Preparer's Name: Jason L. Sturkie, Esq Law Firm: McCravy, Newlon, Sturkie, & Clardy Law Firm, P.A. Preparer's Phone #: (864) 388 - 9100

A claim for workers' compensation benefits is mada based on tha following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to 9 (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville county, state of SC.
2. Body part(s) affected are: right shoulder, right arm, right hand/fingers, and neck
   Briefly describe how the accident occurred. r
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury tha claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/8/2022 (Month/Day/Year) in the following manner:
   Notified Safety

☒ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: rt.shoulder,arm,hand/fingers and neck ☐ (b) additional medical examination and treatment for:

☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

☒ 9. Claimant at MMI: ☒ Yes ☐ No. 9a. If yes, due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial ☑ (2) Specific Disability: ☐ Total ☒ Partial ☐ (3) Wage Loss

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

☐ 11. At the time of the injury, the Claimant was paid weekly wages of $ TBD, and demands accounting of days worked and wages earned as provided by law.

☐ 12. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than tha aboved name employer.

☐ 13. Further grounds or unusual aspects of claim:

☒ 13a. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, Augusta Da; Anmed Health Rehabilitation,Anderson SC ;ATI Physical Therapy, Mauldin SC;Encompass Health Rehabilitation, Piedmont Comprehensive Pain, Piedmont Ortho, St. Francis

☐ 13c. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe:

☐ 14. ☐ I am adding a party. (name/address).
☐ I am removing a party. (name/address).
☐ Other amendment:

☒ 15. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing:

☐ 16. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service. I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	Title	Email	Date (m/d/yyyy)
	Attorney For Claimant	jason.sturkie@mccravylew.com	12/14/2023

Refer to Regulations 67-204 - 67-211, Regulations 67-601 -67-615, and Regulation 67-1801.

WCC Form # 50
Revised 9/2023

50

Employee's Notice of Claim and/or Request for Hearing

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

BEFORE THE WORKERS' COMPENSATION COMMISSION

Rusty Young, Employee,

Claimant,

vs.

Confluence Outdoor Inc., Employer,

Great American Alliance Insurance Company, Insurer,

Defendants.

CERTIFICATE OF SERVICE BY MAIL

WCC File No.: 2202565

The undersigned of MCCRAVY NEWLON STURKIE & CLARDY LAW FIRM, P.A., Attorney for the Claimant, hereby certifies that on December 14, 2023, she served a copy of the pleadings specified below by mailing the same in an envelope with sufficient postage attached via certified mail and return receipt requested, by depositing the same in the U.S. Mail, Greenwood, South Carolina, to the address referenced below.

PLEADINGS:

1. NOTICE OF CLAIM AND/OR REQUEST FOR HEARING (FORM 50)
2. CERTIFICATE OF SERVICE BY MAIL

SERVED:

Benjamin Renfrow, Esq.
Wilson Jones Carter & Baxley, P.A.
325 Rocky Slope Road
Suite 201
Greenville, SC 29607

McCRAVY NEWLON STURKIE
& CLARDY LAW FIRM, P.A.

BY: Ramona Dillard

Ramona Dillard, Paralegal to
Jason L. Sturkie, Esq.
Attorney for Claimant

December 14, 2023

SHELLY LEEKE
LAW FIRM, LLC

Charleston Office
Shelly Leeke Law Firm, LLC
6060 Rivers Avenue
North Charleston, SC 29406

Phone: 843.297.8485
Fax: 843.297.8497

www.LeekeLaw.com

Call For Additional Office Locations

February 1, 2024

VIA First Class Mail
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

RE: Rusty Young vs. Confluence Outdoor Inc.
Carrier: Greater American Alliance Insurance Co.
Date of Loss: 03/08/2022
WCC File No: 2202565

Dear Ms. Bracy:

Enclosed please a Form 50 (Employee's Request for Hearing) for filing in the above referenced claim as well as a $50.00 check pursuant to the Commission's required filing fee. Please note, I am requesting a hearing at this time.

By copy of this letter, I am serving a copy of same directly upon all Parties of record.

Thank you in advance for your assistance with this matter.

Sincerely,

Wesley J. Shull
Attorney at Law 7030

WJS/br

cc: Benjamin M. Renfrow, Esq. (w/encl.)

SCWCC
FEB 05 2024
JUDICIAL

546553 3-2

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770
Address: 10 Yakutata Dr.
City: Greenville State: SC Zip: 29605
Home Phone: 864-640-1858 Work Phone: 864-640-1858

Employer's Name: Confluence Outdoor Inc.
Address: 575 Mauldin Road
City: Greenville State: SC Zip: 29607-4208
Insurance Carrier: Greater American Alliance Insurance Company

Preparer's Name: Wesley Shull Law Firm: Shelly Leeke Law Firm Preparer's Phone #: (843) 297-8485

A claim for workers' compensation benefits is made based on tha following grounds:
☒Injury ☐ Illness ☐ Repetitive Trauma ☐Occupational Disease ☐Physical Brain Injury ☐Concurrent Jurisdiction

1. The claimant sustained an injury to Right Shoulder, Right arm and right hand/fingers (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville County, state of SC.
2. Body part(s) affected are: Right Shoulder, Right arm and right hand/fingers.
   Briefly describe how the accident occurred. The claimant was injured while pulling and lifting.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 03/08/2022 (Month/Day/Year) in the following manner:
   Notified Safety.

☒7. Due to injury, the claimant is in need of (check one):
☐(a) medical examination and treatment for: _____ ☒(b) additional medical examination and treatment for: Right Shoulder, Right arm and right hand/fingers

☒8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
03/11/2022 to MMI.

☒9. Claimant at MMI: ☐ Yes ☒ No. 9a. If yes, due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐(1) General Disability: ☐Total ☐ Partial ☐(2) Specific Disability: ☐Total ☐ Partial ☐ (3) Wage Loss

☒10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____.

☒ 11. At the time of the injury, the Claimant was paid weekly wages of $ TBD, and demands accounting of days worked and wages earned as provided by law.

☒ 12. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than the above-named employer

☒ 13. Further grounds or unusual aspects of claim:
None.

☒ 13a. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☒13b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, St. Francis, Eastside, Piedmont Orthopaedic, Piedmont Comprehensive Pain Management and Carolina Orthopaedic

☒ 13c. To the best of your knowledge, did you have any prior permanent disability? None
If yes, describe: _____

☐ 14. ☐ I am adding a party. _____(name/address).
☐ I am removing a party. _____(name/address).
☐ Other amendment: _____.

☐15. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: 1 Hour

☒16. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**
- ☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 8.
- ☐b. Mediation is required pursuant to Reg. 67-1802.
- ☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211. See ettached certificate of service. I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	Lawyer Title	wesley.shull@leekelaw.com Email	2/1/2024 Date

Refer to Regulations 67-204 - 67-211, Regulations 67-601 -67-615, and Regulation 67-1801.
WCC Form # S0
Revised 9/2023

50

Employee's Notice of Claim and/or Request for Hearing

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 2202565

Rusty Young Claimant Versus Confluence Outdoor Inc., Employer and Greater American Alliance Insurance Company, Carrier/Defendants.	CERTIFICATE OF SERVICE

I, Bernadette Roa, the undersigned, a paralegal at Shelly Leeke Law Firm, attorney for the Claimant, Rusty Young, do hereby certify that I have on this 1st day of February, 2024, served the above-named Employer and Carrier, with a copy of the as described below:

South Carolina Workers' Compensation Commission
Attn: Judicial Department
PO Box 1715
Columbia, S.C. 29202-1715

Benjamin M. Renfrow
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Rd., Suite 201
Greenville, SC 29607

Bernadette Roa
Shelly Leeke Law Firm, LLC
6060 Rivers Avenue
North Charleston, SC 29406

Charleston, SC
February 1, 2024

SHELLY LEEKE
LAW FIRM, LLC

Charleston Office
Shelly Leeke Law Firm, LLC
6060 Rivers Avenue
North Charleston, SC 29406

Phone: 843.297.8485
Fax: 843.297.8497

www.LeekeLaw.com

Call For Additional Office Locations

March 14, 2024

VIA First Class Mail
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

AY
3-2

RE: Rusty Young vs. Confluence Outdoor Inc.
Carrier: Greater American Alliance Insurance Co.
Date of Loss: 03/08/2022
WCC File No: 2202565

Dear Ms. Bracy:

Enclosed please an Amended Form 50 (Employee's Request for Hearing) for filing in the above referenced claim. I amamending my previously filed Hearing Request to add the neck as an injured body part. Please note, I am requesting a hearing at this time.

By copy of this letter, I am serving a copy of same directly upon all Parties of record.

Thank you in advance for your assistance with this matter.

Sincerely,

Wesley J. Shull
Attorney at Law

WJS

cc: Benjamin M. Renfrow, Esq. (w/encl.)

SCWCC
MAR 18 2024
JUDICIAL

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249-65-7770
Address: 10 Yakutata Dr.
City: Greenville State: SC Zip: 29605
Home Phone: 864-640-1858 Work Phone: 864-640-1858

Employer's Name: Confluence Outdoor Inc.
Address: 575 Mauldin Road
City: Greenville State: SC Zip: 29607-4208
Insurance Carrier: Greater American Alliance Insurance Company

Preparer's Name: Wesley Shull Law Firm: Shelly Leeke Law Firm Preparer's Phone #: (843) 297-8485

A claim for workers' compensation benefits is made based on the following grounds:
☒Injury ☐ Illness ☐ Repetitive Trauma ☐Occupational Disease ☐Physical Brain Injury ☐Concurrent Jurisdiction

1. The claimant sustained an injury to Neck, Right Shoulder, Right arm and right hand/fingers (Part(s) of Body Injured) on 3/8/2022 (Month/Day/Year) in Greenville County, state of SC.
2. Body part(s) affected are: Neck Right Shoulder, Right arm and right hand/fingers.
   Briefly describe how the accident occurred. The claimant was injured while pulling and lifting.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 03/08/2022 (Month/Day/Year) In the following manner:
   Notified Safety.

☒7. Due to injury, the claimant is in need of (check one):
☐(a) medical examination and treatment for: _____ ☒(b) additional medical examination and treatment for: Neck, Right Shoulder, Righ arm and right hand/fingers

☒8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
03/11/2022 to MMI.

☒9. Claimant at MMI: ☐ Yes ☒ No. 9a. If yes, due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐(1) General Disability: ☐Total ☐ Partial ☐(2) Specific Disability: ☐Total ☐ Partial ☐ (3) Wage Loss

☒10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____.

☒ 11. At the time of the injury, the Claimant was paid weekly wages of $ TBD, and demands accounting of days worked and wages earned as provided by law.

☒ 12. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than the above-named employer

☒ 13. Further grounds or unusual aspects of claim:
None.

☒ 13a. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☒13b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
AFC Urgent Care, St. Francis, Eastside, Piedmont Orthopaedic, Piedmont Comprehensive Pain Management and Carolina Orthopaedic

☒ 13c. To the best of your knowledge, did you have any prior permanent disability? None
If yes, describe: _____

☐ 14. ☐ I am adding a party. _____(name/address).
☐ I am removing a party. _____(name/address).
☐ Other amendment: _____.

☐15. **I am filing a claim. I am not requesting a hearing at this time.** Estimated time needed for hearing: 1 Hour

☒16. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**
- ☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 8.
- ☐b. Mediation is required pursuant to Reg. 67-1802.
- ☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service. I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	Lawyer Title	wesley.shull@leekelaw.com Email	3/14/2024 Date

Refer to Regulations 67-204 - 67-211, Regulations 67-601 -67-615, and Regulation 67-1801.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 2202565

Rusty Young Claimant Versus Confluence Outdoor Inc., Employer and Greater American Alliance Insurance Company, Carrier/Defendants.	CERTIFICATE OF SERVICE

I, Wesley Shull, the undersigned, an attorney at Shelly Leeke Law Firm, attorneys for the Claimant, Rusty Young, do hereby certify that I have on this 14th day of March, 2024, served the above-named Employer and Carrier, with a copy of the as described below:

South Carolina Workers' Compensation Commission
Attn: Judicial Department
PO Box 1715
Columbia, S.C. 29202-1715

Benjamin M. Renfrow
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Rd., Suite 201
Greenville, SC 29607

Wesley J. Shull
Shelly Leeke Law Firm, LLC
701 East North Street, Suite B
Greenville, SC 29601

Greenville, SC
March 14, 2024

wjcb willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

April 12, 2024

Via E-mail
Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJCB File No.: 00285.14509

Dear Judicial Director:

Enclosed please find defendants' **Form 51** in the above-referenced matter. By copy of this correspondence, a copy of our Form 51 is being provided directly to Richard "Chip" C. Alexander, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

BMR/gll

Enclosure

cc (w/enclosure): Richard "Chip" C. Alexander, Esquire (via e-mail)
Wesley J. Shull, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: 249-65-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:
Date of Injury: 3/8/2022

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Preparer's Name: Benjamin M. Renfrow Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3296

Date of Injury or Illness: 3/8/2022 **Estimated time for hearing: 1 hour**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
   Defendants deny the claimant sustained an injury by accident arising out of and in the course of employment, pending investigation.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
   See #1.
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
   See #1.
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
   See #1.
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
   See #1.
6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
   See #1.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
   See #1.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **$TBP** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
    Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	**Attorney for the Employer/Insurer**	**bmrenfrow@wjcblaw.com**	**04/12/2024**
	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:2202565

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this Form 51 in the above-captioned action upon Richard "Chip" C. Alexander, Esquire to be served by electronic service at the addresses shown below on 12th day of April, 2024.

Via E-Mail:
chip@leekelaw.com
wshull@gwblawfirm.com

Geri L. Lell
Paralegal to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

12th day of April, 2024
Greenville, South Carolina

SHELLY LEEKE
LAW FIRM, LLC

Main Office
3614 Ashley Phosphate Rd.
N. Charleston, SC 29418

Phone: 843.297.8485
Toll Free:
888.690.0211

Call For Additional Office Locations
www.LeekeLaw.com

May 20, 2024

Via Upload Only
Commissioner T. Scott Beck
S.C. Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

RE: Rusty Young vs. Confluence Outdoor, Inc.
Date of Loss: 03/08/2022
WCC File #: 2202565

Dear Commissioner Beck,

Enclosed herewith please find the Claimant's Pre-Hearing Brief and First Supplemental Notice of Witnesses and Written Report(s)/Physician or Other Evidence to Be Introduced on Behalf of Claimant in accordance with South Carolina Administrative Procedures Act.

By copy of this letter to Defense Counsel, Benjamin M. Renfrow, Esq., attorney for the Defendants, I am providing them with a copy of same as required by the Rules and Regulations of the Commission, together with copies of the submissions under the Administrative Procedures Act.

I look forward to appearing before you. With kindest regards, I am

Sincerely,

Chip Alexander

Richard C. Alexander
Attorney at Law

RCA/pkm

Enclosures

cc: Benjamin M. Renfrow, Esq. (w/encls) (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 2202565

Claimant's Name: Rusty Young
Address: 10 Yakutata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-1858 Work Phone: ( ) -
Preparer's Name: Richard C. Alexander, Esq.

Employer's Name: Confluence Outdoor, Inc.
Address: 575 Mauldin Rd.
City: Greenville State: SC Zip: 29607
Carrier: Great American Alliance Insurance Company
Preparer's Phone #: (843) 297-8485

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $ 636.08 2. AWW: $ 424.07 **Date of Injury:** 3/8/2022
3. Type of injury and body part(s): Claimant was pulling on a boat and felt a pop. Injuries to spine, right shoulder, right upper extremity, and right hand/fingers.
4. Facts in controversy: (1) Whether Claimant sustained compensable injuries to the above body parts or the body parts above are affected by the compensable injuries; (2) Is Claimant entitled to weekly TTD benefits? (3) Is Claimant entitled to past, present, and ongoing medical treatment?
5. Legal issues involved: **1) If at maximum medical improvement, the Claimant's entitlement to permanent disability** –Section 42-9-10 et al.; *Winn vs. Peoples Natural Gas*, 118 S.E. 2nd 812 (1961); *Coleman vs. Quality Concrete Products* 142 S.E. 2nd 43 (1965); *Stevenson vs. Rice Services*, 473 S.E. 2nd 699 (1996); **2) The Claimant's entitlement to past, present and ongoing medical treatment** – Section 41-15-60; *Dodge v. Bruccoli*, 514 S.E. 2d 593 (Ct. App. 1999); **3) The Claimant's entitlement to past, present and ongoing temporary compensation** – Section 42-9-10; 42-9-20; **4) Neture and extent of injury** – Section 42-1-160; All consequences of an injury are compensable; *Mullinax v. Winn Dixie Stores*, 458 S.E. 2d 76 (Ct. App. 1995); *Whitfield v. Daniel Construction* 83 S.E. 2d 460 (1954).
6. Unusual aspects:
7. Witnesses (designate if expert):* Claimant; Dr. Christopher Van Pelt *; Dr. Walter Grady *; Alan Duncan, MS, APRN, FNP-BC*; any and all witnesses listed by Defendants
8. Exhibits: See attached Notice of Witnesses for Exhibits to be Introduced as Direct Evidence on behalf of Claimant.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
   See attached Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on behalf of Claimant.
10. Name, address, and specialty, if any, of the treating physician: 1) **AFC Urgent Care**, 1800 August Rd., Ste 8, Greenville, SC 29605; 2) **St. Francis Eastside**, 125 Commonwealth Drive, Greenville, SC 29615; 3) **Piedmont Orthopedic Associates**, 35 International Dr., Greenville SC 29615; 4) **Piedmont Comprehensive Pain Management Associates**, 3 St. Francis Drive, Ste 480, Greenville, SC 29601; **AIT Physical Therapy**, 203 East Butler Rd., Ste C, Mauldin SC 29662; 5) **Walter Grady, DO**, 480 Floyd Road, Spartanburg SC 29307
11. Impairment rating(s); body part(s); physician and date of opinion: 51% to cervical spine, 5% to right upper extremity, and 8% to right shoulder by Walter Grady, DO, on 11/17/2023 **per the AMA 5th Ed.**
12. I am amending my Form 50/51 in the following manner:

☒ **Mediation**
- ☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐b. Mediation is required pursuant to Reg. 67-1802.
- ☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☒d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

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

Signature: Chip Alexander
Email: chip@leekelaw.com
Date of hearing: June 4, 2024
Time needed for hearing: 1 Hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC file number: 2202565

Rusty Young,	)	
Claimant,	)	
	)	
Vs.	)	
	)	
Confluence Outdoor, Inc.,	)	
Employer,	)	**NOTICE OF WITNESSES AND WRITTEN REPORT(S)/PHYSICIAN OR OTHER EVIDENCE TO BE INTRODUCED ON BEHALF OF CLAIMANT**
	)	
And	)	
	)	
Great American Alliance Insurance Co.,	)	
Carrier/Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND BENJAMIN RENFROW, ESQ., ATTORNEY FOR THE DEFENDANTS;

PLEASE TAKE NOTICE THAT the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and S.C. Code Section 1-23-330 (1976, as amended), herewith submits the following written medical reports as direct evidence on behalf of the Claimant, to wit:

APA	SOURCE	TYPE OF REPORT	DATED	NO. OF PAGES	PAGES
1	AFC Urgent Care	Medical Records	3/9/22	5	1-5
2	St. Francis Eastside	Medical Records	3/16/22	16	6-21
3	Piedmont Orthopaedic Associates	Medical Records	3/30/22-7/20/23	154	22-175
4	Piedmont Comprehensive Pain Management Group, LLC	Medical Records	8/22/22-5/16/23	15	176-190
5	ATI Physical Therapy	Medical Records	6/22/23-7/21/23	20	191-210
6	Medical Group of the Carolinas	IME	11/17/23	6	211-216

EXH	SOURCE	TYPE OF REPORT	DATED	NO. OF PAGES	PAGES
A	Alan Duncan, MS,APRN, FNP-BC	Deposition	12/2/22	41	217-257
B	Christopher D. VanPelt, M.D.	Deposition	9/28/23	46	258-303
C	Walter Grady, D.O.	Deposition	1/31/24	29	304-332

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

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers'

Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant.

1. Claimant;
2. Dr. Christopher Van Pelt;
3. Dr. Walter Grady;
4. Alan Duncan, MS, APRN, FNP-BC;
5. Any witnesses named by Defendants

Richard C. Alexander, Esq.
Attorney for the Claimant
Shelly Leeke Law Firm, LLC
3614 Ashley Phosphate Rd.
North Charleston, SC 29418
(843) 297-8485

North Charleston, SC
May 20, 2024

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 2202565

Rusty Young, Claimant Versus Confulence Outdoor, Inc., Employer and Great American Alliance Insurance, Carrier/Defendants.	CERTIFICATE OF SERVICE

I, Paige Mensing, the undersigned, a paralegal at Shelly Leeke Law Firm, attorney for the Claimant, Rusty Young, do hereby certify that I have on this 20th day of May, 2024, served the above-named Employer and Carrier, with a copy of the *SCWCC Form 58 (Pre-Hearing Brief and First Supplemental Notice of Witnesses)* as described below:

Via E-Case Upload
South Carolina Workers' Compensation Commission
Attn: Amy Bracy, Judicial Department
PO Box 1715
Columbia, S.C. 29202-1715

Via Email: bmrenfrow@wjcblaw.com
Willson Jones Carter & Baxley, P.A.
Attn: Benjamin M. Renfrow, Esq.
ATTORNEY FOR DEFENDANTS

Paige Mensing
Paige Mensing, Paralegal
Shelly Leeke Law Firm, LLC
3614 Ashley Phosphate Road
North Charleston, SC 29418

Charleston, SC
May 20, 2024.

willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

May 24, 2024

Via eCase
The Honorable T. Scott Beck
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJC&B File No.: 00285.14509

Dear Commissioner Beck:

Enclosed herein please find the defendants' Pre-Hearing Brief as well as the Notice of Witnesses and Written Medical Reports which lists the documents I intend to submit at the hearing of the above-referenced matter pursuant to the South Carolina Administrative Procedures Act.

By copy of this letter, I am providing a copy of these forms and reports to Richard "Chip" C. Alexander, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

BMR/msc
Enclosures

cc (w/enclosures): Richard "Chip" C. Alexander, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 2202565

Claimant's Name: Rusty Lee Young
Address: 10 Yakeutata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:
Preparer's Name: Benjamin M. Renfrow

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Carrier: Great American Alliance Insurance
Preparer's Phone #: (864) 527-3296

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $TBD 2. AWW: $ TBD **Date of Injury:** 3/8/2022
3. Type of injury and body part(s): Alleged right upper extremity – Denied Claim.
4. Facts in controversy:

(1) Is Claimant's current condition causally related to his work injury?
(2) Intervening accident?
(3) Singleton;
(4) Wigfall;
(5) Curiel;
(6) Nawa;
(7) Are Defendants entitled to credit for overpayment of benefits?
(8) Is this a single member/schedule loss?
(9) Medically complex?
(10) Did Claimant give timely and proper notice of his claim?
(11) Can Claimant meet his burden of proof on any issues?
(12) Fraud in the Application?
(13) Section 42-9-30
(14) Is Claimant entitled to any additional benefits?
(15) Doctrine of Laches
(16) Credibility of Claimant

5. Legal issues involved: See No. 4 above. Defendants will also rely on all previously submitted pre-hearing brief and APA Submissions from Claimant.
6. Unusual aspects: Records from Allied University may be submitted.
7. Witnesses (designate if expert):*

Rusty Young; Representative(s) of Confluence; Heather MacSwain; Alan Duncan – Nurse (Deposition To Be Submitted); Kiera Richardson; Jason Gerisch; Dr. Van Pelt (Deposition to be submitted); Dr. Walter Grady (Deposition to be submitted); Dr. Phillip Hodge (expert)*.

8. Exhibits:

See Form 50; Claimant's Deposition Transcript; Entire Payroll, Employment, and Personnel File; Employment Application; Facebook/ Internet postings; Claimant's Tax Returns; Entire WCC File; ISO Index Report; SLED Check report; All of Claimant's prior depositions in this case; Video of alleged date of accident; Records from Cintas; Records from Allied University; SEE APA & OTHER SUBMISSIONS.

9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: SEE APA & OTHER SUBMISSIONS.
11. Impairment rating(s); body part(s); physician and date of opinion: None Known
12. I am amending my Form 50/51 in the following manner: See No. 4 above.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

☒ **Mediation**

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☒ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

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

Signature: _____ Email: bmrenfrow@wjcblaw.com

Benjamin M. Renfrow, Willson Jones Carter & Baxley, P.A.

Date of hearing: 06/04/2024 – Commissioner T. Scott Beck Time needed for hearing: 2 Hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: xxx-xx-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Benjamin M. Renfrow (Preparer's Name) 325 Rocky Slope Road, Suite 201, Greenville, SC 29607 (Address) (864) 527-3296 (Phone #)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND RICHARD "CHIP" C. ALEXANDER, ESQUIRE, ATTORNEY FOR CLAIMANT

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

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE
7. Prior Claim: Medical Summary of Claimant	3/26/2021	333 – 354
8. Prior Claim: Clincher and Form 19 – WCC# 2007031	5/7/2021	355 – 359
9. Prior Claim: Psychiatric Evaluation – The Carolina Center for Behavioral Health	5/19/2016	360 – 416
10. Prior Claim: Deposition Transcript of Claimant – WCC# 2007031	7/30/2020	417 – 464
11. Prior Claim: Deposition Transcript of Claimant – WCC# 1806973	6/20/2019	465 – 507
12. Employment/Personnel Records	Various	508 – 519
13. Piedmont Orthopaedic Associates	6/1/2022 – 9/1/2022	520 – 606
14. Greenville Memorial Hospital	5/10/2016; 7/7/2017; 4/3/2021	607 – 678
15. Live Well Chiropractic	10/17/2019 – 7/9/2021	679 – 833
16. E-mail Communication Between Parties	10/31/2022 – 11/8/2022	834 – 842
17. Piedmont Comprehensive Pain Management	8/8/2022 – 9/12/2022	843 – 851
18. Certain Pleadings From Case	3/16/2022; 6/23/2022; 3/17/2023	852 – 859
19. Records from Prior Claim Against Auto Owners Insurance	12/22/2023	860 – 1119
20. Records Received From Cintas	5/23/2024	1120 – 1220
21. Expert Report from Dr. Philip J. Hodge	5/24/2024	1221 – 1222

Exhibit – Video of Alleged Accident		

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

Benjamin M. Renfrow
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607

May 24, 2024

June 4, 2024
(hearing date)

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:2202565

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this Form 58 and APA Submissions in the above-captioned action upon Richard "Chip" C. Alexander, Esquire to be served by electronic service at the addresses shown below on 24th day of May, 2024.

Via E-Mail:
chip@leekelaw.com; fay.y@leekelaw.com

Myra S. Clayton
Legal Assistant to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

24th day of May, 2024
Greenville, South Carolina

willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

May 30, 2024

Via eCase
The Honorable T. Scott Beck
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJC&B File No.: 00285.14509

Dear Commissioner Beck:

Enclosed herein please find Defendants' ***Supplemental APA*** in the above-referenced matter.

By copy of this letter, I am providing a copy of ***Supplemental APA*** and submissions to Richard "Chip" C. Alexander, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

BMR/msc
Enclosures

cc (w/enclosures): Richard "Chip" C. Alexander, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

SUPPLEMENTAL

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: xxx-xx-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Benjamin M. Renfrow (Preparer's Name) 325 Rocky Slope Road, Suite 201, Greenville, SC 29607 (Address) (864) 527-3296 (Phone #)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND RICHARD "CHIP" C. ALEXANDER, ESQUIRE, ATTORNEY FOR CLAIMANT

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

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18. Certain Pleadings From Case	3/16/2022; 6/23/2022; 3/17/2023	852 – 859
19. Records from Prior Claim Against Auto Owners Insurance	12/22/2023	860 – 1119
20. Records Received From Cintas	5/23/2024	1120 – 1220
21. Expert Report from Dr. Philip J. Hodge	5/24/2024	1221 – 1222
22. Curriculum Vitae – Philip H. Hodge, MD	**N/A**	**1223 – 1224**

Exhibit – Video of Alleged Accident		

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

Benjamin M. Renfrow
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607

May 30, 2024

June 4, 2024
(hearing date)

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:220256S

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this ***Supplemental APA Submission*** in the above-captioned action upon Richard "Chip" C. Alexander, Esquire to be served by electronic service at the addresses shown below on 30th day of May, 2024.

Via E-Mail:
chip@leekelaw.com; fay.y@leekelaw.com

Myra S. Clayton
Legal Assistant to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

30th day of May, 2024
Greenville, South Carolina

SHELLY LEEKE
LAW FIRM, LLC

Main Office
6060 Rivers Avenue
N. Charleston, SC 29406

Phone: 843.297.8485
Toll Free: 888.690.0211
Fax: 843.297.8497

Call For Additional Office Locations
www.LeekeLaw.com

May 31, 2024

Via Upload Only
Commissioner T. Scott Beck
S.C. Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

RE: Rusty Young vs. Confluence Outdoor
Date of Loss: 3/08/2022
WCC File #: 2202565

Dear Commissioner Beck,

Enclosed herewith please find the Claimant's Pre-Hearing Brief and First Supplemental Notice of Witnesses and Written Report(s)/Physician or Other Evidence to Be Introduced on Behalf of Claimant in accordance with South Carolina Administrative Procedures Act.

By copy of this letter to Defense Counsel, Benjamin M. Renfrow, Esq., attorneys for the Defendants, I am providing them with a copy of same as required by the Rules and Regulations of the Commission, together with copies of the submissions under the Administrative Procedures Act.

I look forward to appearing before you. With kindest regards I am

Sincerely,

Richard C. Alexander
Attorney at Law

RCA/pm

Enclosures

cc: Benjamin M. Renfrow, Esq. (w/encls) (via e-mail)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 2202565

Claimant's Name:	Rusty Young	Employer's Name:	Confluence Outdoor, Inc.
Address:	10 Yakutata Drive	Address:	575 Mauldin Road
City:	Greenville State: SC Zip: 29605	City:	Greenville State: SC Zip: 29607
Home Phone:	(864) 640-1858 Work Phone: ( ) -	Carrier:	
Preparer's Name:	Richard C. Alexander, Esq.	Preparer's Phone #:	(843) 297-8485

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $ 636.08 2. AWW: $ 424.07 **Date of Injury:** 3/8/2022
3. Type of Injury and body part(s): Claimant was pulling on a boat and felt a pop. Injuries to spine, right shoulder, right upper extremity, and right hand/fingers.
4. Facts in controversy: (1) Whether Claimant sustained compensable injuries to the above body parts or the body parts above are affected by the compensable injuries; (2) Is Claimant entitled to weekly TTD benefits? (3) Is Claimant entitled to past, present, and ongoing medical treatment?
5. Legal issues involved: **1) If at maximum medical improvement, the Claimant's entitlement to permanent disability** –Section 42-9-10 et al.; *Winn vs. Peoples Natural Gas*, 118 S.E. 2nd 812 (1961); *Coleman vs. Quality Concrete Products* 142 S.E. 2nd 43 (1965); *Stevenson vs. Rice Services*, 473 S.E. 2nd 699 (1996); **2) The Claimant's entitlement to past, present and ongoing medical treatment** – Section 41-15-60; *Dodge v. Bruccoli*, 514 S.E. 2d 593 (Ct. App. 1999); **3) The Claimant's entitlement to past, present and ongoing temporary compensation** – Section 42-9-10; 42-9-20; **4) Nature and extent of injury** – Section 42-1-160; All consequences of an injury are compensable; *Mullinax v. Winn Dixie Stores*, 458 S.E. 2d 76 (Ct. App. 1995); *Whitfield v. Daniel Construction* 83 S.E. 2d 460 (1954).
6. Unusual aspects:
7. Witnesses (designate if expert):* Claimant; Dr. Christopher Van Pelt *; Dr. Walter Grady *; Alan Duncan, MS, APRN, FNP-BC*; any and all witnesses listed by Defendants
8. Exhibits: See attached Notice of Witnesses for Exhibits to be Introduced as Direct Evidence on behalf of Claimant
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
   See attached Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on behalf of Claimant.
10. Name, address, and specialty, if any, of the treating physician: 1) **AFC Urgent Care**, 1800 August Rd., Ste 8, Greenville, SC 29605; 2) **St. Francis Eastside**, 125 Commonwealth Drive, Greenville, SC 29615; 3) **Piedmont Orthopedic Associates**, 35 International Dr., Greenville SC 29615; 4) **Piedmont Comprehensive Pain Management Associates**, 3 St. Francis Drive, Ste 480, Greenville, SC 29601; **AIT Physical Therapy**, 203 East Butler Rd., Ste C, Mauldin SC 29662; 5) **Walter Grady, DO**, 480 Floyd Road, Spartanburg SC 29307
11. Impairment rating(s); body part(s); physician and date of opinion: 51% to cervical spine, 5% to right upper extremity, and 8% to right shoulder by Walter Grady, DO, on 11/17/2023 per the AMA 5th Ed.
12. I am amending my Form 50/51 in the following manner:

■ **Mediation**

☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐b. Mediation is required pursuant to Reg. 67-1802.
☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

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

Signature: Chip Alexander Email: chip@leekelaw.com
Date of hearing: 6/4/2024 Time needed for hearing: 1 Hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC file number: 2202565

Rusty Young,	)	
Claimant,	)	
	)	
Vs.	)	
	)	
Confluence Outdoor, Inc.,	)	
Employer,	)	**1st SUPPLEMENTAL NOTICE OF**
	)	**WITNESSES AND WRITTEN**
And	)	**REPORT(S)/PHYSICIAN OR OTHER**
	)	**EVIDENCE TO BE INTRODUCED ON**
Great American Alliance Insurance Co.,	)	**BEHALF OF CLAIMANT**
Carrier/Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND BENJAMIN RENFROW, ESQ., ATTORNEY FOR THE DEFENDANTS;

PLEASE TAKE NOTICE THAT the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and S.C. Code Section 1-23-330 (1976, as amended), herewith submits the following written medical reports as direct evidence on behalf of the Claimant, to wit:

APA	SOURCE	TYPE OF REPORT	DATED	NO. OF PAGES	PAGES
1	AFC Urgent Care	Medical Records	3/9/22	5	1-5
2	St. Francis Eastside	Medical Records	3/16/22	16	6-21
3	Piedmont Orthopaedic Associates	Medical Records	3/30/22-7/20/23	154	22-175
4	**Piedmont Comprehensive Pain Management Group, LLC**	**Medical Records**	**8/22/22-9/26/23**	**17**	**176-190A-B**
5	ATI Physical Therapy	Medical Records	6/22/23-7/21/23	20	191-210
6	Medical Group of the Carolinas	IME	11/17/23	6	211-216

EXH	SOURCE	TYPE OF REPORT	DATED	NO. OF PAGES	PAGES
A	Alan Duncan, MS,APRN, FNP-BC	Deposition	12/2/22	41	217-257
B	Christopher D. VanPelt, M.D.	Deposition	9/28/23	46	258-303
C	Walter Grady, D.O.	Deposition	1/31/24	29	304-332

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

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina

Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant.

1. Claimant;
2. Dr. Christopher Van Pelt;
3. Dr. Walter Grady;
4. Alan Duncan, MS, APRN, FNP-BC;
5. Any witnesses named by Defendants

Richard C. Alexander, Esq.
Attorney for the Claimant
Shelly Leeke Law Firm, LLC
3614 Ashley Phosphate Rd.
North Charleston, SC 29418
(843) 297-8485

North Charleston, SC
May 31, 2024

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 2202565

Rusty Young, Claimant Versus Confulence Outdoor, Inc., Employer and Great American Alliance Insurance, Carrier/Defendants.	CERTIFICATE OF SERVICE

I, Paige Mensing, the undersigned, a paralegal at Shelly Leeke Law Firm, attorney for the Claimant, Rusty Young, do hereby certify that I have on this 31st day of May, 2024, served the above-named Employer and Carrier, with a copy of the *SCWCC Form 58 (Pre-Hearing Brief and First Supplemental Notice of Witnesses)* as described below:

Via E-Case Upload
South Carolina Workers' Compensation Commission
Attn: Amy Bracy, Judicial Department
PO Box 1715
Columbia, S.C. 29202-1715

Via Email: bmrenfrow@wjcblaw.com
Willson Jones Carter & Baxley, P.A.
Attn: Benjamin M. Renfrow, Esq.
ATTORNEY FOR DEFENDANTS

Paige Mensing

Paige Mensing, Paralegal
Shelly Leeke Law Firm, LLC
3614 Ashley Phosphate Road
North Charleston, SC 29418

Charleston, SC
May 31, 2024

willson jones carter & baxley

attorneys at law
greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

Benjamin M. Renfrow
Direct (864) 527-3296
Fax (864) 235-6015
bmrenfrow@wjcblaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcblaw.com

June 3, 2024

Via eCase
The Honorable T. Scott Beck
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Rusty L. Young vs. Confluence Outdoor, Inc.
WCC File No.: 2202565 DOI: 3/8/2022
Carrier: Great American Alliance Insurance - Claim No.: A00429427
WJC&B File No.: 00285.14509

Dear Commissioner Beck:

Enclosed herein please find Defendants' ***Supplemental APA*** in the above-referenced matter.

By copy of this letter, I am providing a copy of ***Supplemental APA*** and submissions to Richard "Chip" C. Alexander, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Benjamin M. Renfrow

Benjamin M. Renfrow

BMR/msc
Enclosures

cc (w/enclosures): Richard "Chip" C. Alexander, Esquire (via e-mail)
Mr. Steve Anthony (via e-mail)

SUPPLEMENTAL

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: xxx-xx-7770
Address: 10 Yakautata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3554 Work Phone:

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Benjamin M. Renfrow (Preparer's Name) 325 Rocky Slope Road, Suite 201, Greenville, SC 29607 (Address) (864) 527-3296 (Phone #)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND RICHARD "CHIP" C. ALEXANDER, ESQUIRE, ATTORNEY FOR CLAIMANT

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

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8. Prior Claim: Clincher and Form 19 – WCC# 2007031	5/7/2021	355 – 359
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10. Prior Claim: Deposition Transcript of Claimant – WCC# 2007031	7/30/2020	417 – 464
11. Prior Claim: Deposition Transcript of Claimant – WCC# 1806973	6/20/2019	465 – 507
12. Employment/Personnel Records	Various	508 – 519
13. Piedmont Orthopaedic Associates	6/1/2022 – 9/1/2022	520 – 606
14. Greenville Memorial Hospital	5/10/2016; 7/7/2017; 4/3/2021	607 – 678
15. Live Well Chiropractic	10/17/2019 – 7/9/2021	679 – 833
16. E-mail Communication Between Parties	10/31/2022 – 11/8/2022	834 – 842
17. Piedmont Comprehensive Pain Management	8/8/2022 – 9/12/2022	843 – 851
18. Certain Pleadings From Case	3/16/2022; 6/23/2022; 3/17/2023	852 – 859
19. Records from Prior Claim Against Auto Owners Insurance	12/22/2023	860 – 1119
20. Records Received From Cintas	5/23/2024	1120 – 1220
21. Expert Report from Dr. Philip J. Hodge	5/24/2024	1221 – 1222
22. Curriculum Vitae – Philip H. Hodge, MD	N/A	1223 – 1224
23. Records Received from Allied Universal	**N/A**	**1225-1295**

Exhibit – Video of Alleged Accident		

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

Benjamin M. Renfrow
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607

June 3, 2024

June 4, 2024
(hearing date)

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	5OUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:2202565

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this ***Supplemental APA Submission*** in the above-captioned action upon Richard "Chip" C. Alexander, Esquire to be served by electronic service at the addresses shown below on 3rd day of June, 2024.

Via E-Mail:
chip@leekelaw.com; fay.y@leekelaw.com

Geri L. Lell
Paralegal to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

3rd day of June, 2024
Greenville, South Carolina

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 2202565

Claimant's Name: Rusty Lee Young
Address: 10 Yakeutata Drive
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640-3654 Work Phone:
Preparer's Name: Benjamin M. Renfrow

Employer's Name: Confluence Outdoor, LLC
Address: 675 Mauldin Road, Suite 200
City: Greenville State: SC Zip: 29607
Carrier: Great American Alliance Insurance
Preparer's Phone #: (864) 527-3296

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $424.07 2. AWW: $ 636.08 **Date of Injury:** 3/8/2022
3. Type of injury and body part(s): Alleged right upper extremity/ neck – Denied Claim.
4. Facts in controversy:

(1) Is Claimant's current condition causally related to his work injury?
(2) Has there been an intervening accident?
(3) Is this a single member/schedule loss?
(5) Can Claimant meet his burden of proof on any issues?
(6) Fraud in the Application?
(7) Is Claimant entitled to any additional benefits?
(8) Credibility of Claimant

5. Legal issues involved: See No. 4 above. Defendants will also rely on all previously submitted pre-hearing brief and APA Submissions from Claimant.
6. Unusual aspects: Records from Allied University may be submitted.
7. Witnesses (designate if expert):*

Rusty Young; Representative(s) of Confluence; Heather MacSwain; Alan Duncan – Nurse (Deposition To Be Submitted); Kiera Richardson; Jason Gerisch; Dr. Van Pelt (Deposition to be submitted); Dr. Walter Grady (Deposition to be submitted); Dr. Phillip Hodge (expert)*.

8. Exhibits:

See Form 50; Claimant's Deposition Transcript; Entire Payroll, Employment, and Personnel File; Employment Application; Facebook/ Internet postings; Claimant's Tax Returns; Entire WCC File; ISO Index Report; SLED Check report; All of Claimant's prior depositions in this case; Video of alleged date of accident and day after; Records from Cintas; Records from Allied University; SEE APA & OTHER SUBMISSIONS.

9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: SEE APA & OTHER SUBMISSIONS.
11. Impairment rating(s); body part(s); physician and date of opinion: None Known
12. I am amending my Form 50/51 in the following manner: See No. 4 above.

] Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☒ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.
verify the contents of this form are accurate and true to the best of my knowledge.

Signature: Benjamin M. Renfrow, Willson Jones Carter & Baxley, P.A.
Email: bmrenfrow@wjcblaw.com

Date of hearing: 06/19/2024 – Commissioner T. Scott Beck
Time needed for hearing: 2 Hours

estions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to mit expert witnesses at hearings.

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:2202565

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this Updated Form 58 in the above-captioned action upon Richard "Chip" C. Alexander, Esquire to be served by electronic service at the addresses shown below on 18th day of June, 2024.

Via E-Mail:
chip@leekelaw.com; fay.y@leekelaw.com

Geri L. Leil
Paralegal to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

18th day of June, 2024
Greenville, South Carolina

UPDATED

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

WCC File #: **2202565**
Carrier File #: **A00429427**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Lee Young SSN: xxx-xx-7770 Employer's Name: Confluence Outdoor, LLC

Address: 10 Yakautata Drive Address: 575 Mauldin Road, Suite 200

City: Greenville State: SC Zip: 29605 City: Greenville State: SC Zip: 29607

Home Phone: (864) 640-3554 Work Phone: Insurance Carrier: Great American Alliance Insurance

Benjamin M. Renfrow (Preparer's Name) 325 Rocky Slope Road, Suite 201, Greenville, SC 29607 (Address) (864) 527-3296 (Phone #)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND RICHARD "CHIP" C. ALEXANDER, ESQUIRE, ATTORNEY FOR CLAIMANT

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

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE
7. Prior Claim: Medical Summary of Claimant	3/26/2021	333 – 354 **(removed entire submission pages 333-354**
8. Prior Claim: Clincher and Form 19 – WCC# 2007031	5/7/2021	355 – 359
9. Prior Claim: Psychiatric Evaluation – The Carolina Center for Behavioral Health	5/19/2016	360 – 416
10. Prior Claim: Deposition Transcript of Claimant – WCC# 2007031	7/30/2020	417 – 464
11. Prior Claim: Deposition Transcript of Claimant – WCC# 1806973	6/20/2019	465 – 507
12. Employment/Personnel Records	Various	508 – 519
13. Piedmont Orthopaedic Associates	6/1/2022 – 9/1/2022	520 – 606 **(removed 523, and 529-606)**
14. Greenville Memorial Hospital	5/10/2016; 7/7/2017; 4/3/2021	607 – 678 **(removed 660-678)**
15. Live Well Chiropractic	10/17/2019 – 7/9/2021	679 – 833
16. E-mail Communication Between Parties	10/31/2022 – 11/8/2022	834 – 842
17. Piedmont Comprehensive Pain Management	8/8/2022 – 9/12/2022	843 – 851
18. Certain Pleadings From Case	3/16/2022; 6/23/2022; 3/17/2023	852 – 859
19. Records from Prior Claim Against Auto Owners Insurance	12/22/2023	860 – 1119

		(removed 860-861; 892; and 905-919; 996-1119)
20. Records Received From Cintas	5/23/2024	1120 – 1220
21. Expert Report from Dr. Philip J. Hodge	5/24/2024	1221 – 1222
22. Curriculum Vitae – Philip H. Hodge, MD	N/A	1223 – 1224
23. Records Received from Allied Universal	N/A	1225-1295

Exhibit – Video from DOI and day after		

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

Benjamin M. Renfrow
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607

June 18, 2024

June 19, 2024
(hearing date)

Rusty Lee Young, Claimant, v. Confluence Outdoor, LLC, Employer, And Great American Alliance Insurance, Carrier, Defendants.	)	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO:2202S6S

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this ***Updated APA Submission*** in the above-captioned action upon Richard "Chip" C. Alexander, Esquire to be served by electronic service at the addresses shown below on 18th day of June, 2024.

Via E-Mail:
chip@leekelaw.com; fay.y@leekelaw.com

Geri L. Lell
Paralegal to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Bar # 71245
(864) 527-3296
bmrenfrow@wjcblaw.com

18th day of June, 2024
Greenville, South Carolina

SHELLY LEEKE
LAW FIRM, LLC

Main Office
6060 Rivers Ave.
North Charleston, SC 29406

Phone: 843.297.8485
Toll Free: 877.533.1046
Fax: 843.297.8497
www.LeekeLaw.com

Call For Additional Office Locations

March 12, 2025

S.C. Workers' Compensation Commission
Attn: Ms. Amy Bracy - Judicial Director
Post Office Box 1715
Columbia, SC 29202-1715

RE: Rusty Young v. Confluence Outdoor, Inc.
Carrier: Great American Alliance Insurance Company
Date of Loss: 3/8/2022
WCC File #: 2202565

Dear Ms. Bracy,

Please find enclosed the original and one copy of the Form 30 (Request for Commission Review) together with the Certificate of Service on behalf of Rusty Young, Appellant, in the above referenced matter for filing in your office, along with the filing fee. Please return a clocked copy in the pre-addressed stamped envelope.

By copy of this letter, we are serving the Form 30 (Request for Commission Review) on the Defendants' attorney, Benjamin M. Renfrow, Esquire.

With kind regards, I am

Very truly yours,

Richard C. Alexander
Attorney at Law

Enclosures

cc: Benjamin M. Renfrow, Esq. (w/ enc.)

SCWCC
MAR 14 2025
JUDICIAL

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov

WCC File #: 2202565
Carrier File #: A00429427
Carrier Code #:
Employer FEIN #:

Claimant's Name: Rusty Young SSN: 249 - 65 - 7770
Address: 10 Yakutata Dr.
City: Greenville State: SC Zip: 29605
Home Phone: (864) 640 - 1858 Work Phone: ( ) -

Employer's Name: Confluence Outdoor, LLC
Address: 575 Mauldin Rd., Suite 200
City: Greenville State: SC Zip: 29607
Insurance Carrier: Great American Alliance Insurance

Preparer's Name: Richard C. Alexander, Esq Law Firm: Shelly Leeke Law Firm, LLC Preparer's Phone #: (843) 297 - 8485

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 3/8/2022 (m/d/yyyy)

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

See attachment to Form 30

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.
I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

Preparer's Signature | Attorney (Title) | chip@leekelaw.com (Email) | 3/12/2025 (Date (m/d/yyyy))

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

Attachment to Form 30 - 2202565

1. Did the Hearing Commissioner err as a matter of fact and matter of law by ignoring, misrepresenting, stating without reference to the record, and/or excluding specific medical evidence and testimony that supports Claimant's claim?
2. Did the Hearing Commissioner err as a matter of fact and matter of law by ignoring, misrepresenting, stating without reference to the record, and/or excluding specific hearing testimony and lay evidence that supports Claimant's claim?
3. Did the Hearing Commissioner err as a matter of fact and law by improperly assessing the medical evidence and testimony under Crane v. Raber's Discount Tire Rack, 429 S.C. 636, 842 S.E.2d 349 (2020)?
4. On p. 22 the middle paragraph is all about his involuntary mental hospitalization and things his wife said he was doing, which I think are hearsay, but is it worth the fight on it?
5. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 7 by not specifying this prior claim was for Claimant's low back?
6. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 13 by not specifying this prior claim was for unrelated injuries to the alleged body parts at question in this claim?
7. Did the Hearing Commissioner err as a matter of fact in Finding of Fact 17 by finding Claimant's prior treatment for this motor vehicle accident ended on July 12, 2021?
8. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 45 by finding Claimant did not inform his medical providers about prior accidents and injuries but ignoring that all his providers were apprised of this in their depositions and stood by their opinions concerning causation?
9. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 48 by finding Claimant's employment with Cintas was prior to Confluence and not making reference to any transcript regarding Claimant's testimony?
10. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 62 by mispresenting the actual testimony of Claimant and the records in evidence?
11. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 71 by finding based on conjecture that Claimant "indirectly asserted" he was harassed and that Claimant's testimony was inconsistent but provided no cite to the record to substantiate such a finding?
12. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 81 by misrepresenting that Claimant only that he testified to having a 0% impairment rating when it was corroborated separately in the record?
13. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 82 by finding Claimant treated "through July 2021" for a prior motor vehicle accident when the record clearly showed this treatment ended on July 9, 2021?
14. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 85 by finding Claimant's testimony was untruthful, evasive, and inconsistent and lacked credibility when he provided no reference to any transcript to substantiate such a finding?
15. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 100 by misrepresenting that Dr. Van Pelt testified he was unaware of prior claims and had not seen prior records when his testimony clearly showed he was apprised of such information and given an opportunity to review prior medical records?

16. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 119 by mispresenting that Dr. Grady testified that the cervical and right arm symptoms were "probably" caused by the work-related accident?
17. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 122 by finding the crux of Dr. Van Pelt's opinion was the appearance of annular fissures on Claimant's MRI when there was additional objective testing, subjective complaints, and physical examinations that formed his opinion?
18. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 124 by speculating generally as to what medical records Dr. Hodge reviewed without knowing specifically what he reviewed, if anything, outside of the records mentioned in his opinion statement?
19. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 125 by finding Dr. Grady "unilaterally contradicted" Dr. Van Pelt's opinion when Dr. Grady specifically deferred to Dr. Van Pelt regarding the annular fissures and causation and also opined independently that Claimant's injuries were causally related to the March 8, 2022 work accident based on an aggravation of a preexisting condition?
20. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 125 by finding Dr. Van Pelt "failed to admit knowing about prior injuries to a body part . . . ." in direct contradiction to Finding of Fact 100.
21. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 126 by finding the greater weight of the evidence did not support Dr. Van Pelt's opinion when no doctor provided a contradictory opinion to the appropriate standard and the objective medical evidence and physical examinations supported Dr. Van Pelt's opinion?
22. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 127 by finding Dr. Grady's opinion as to causation should be afforded little weight when he relied on portions of his testimony in Finding of Fact 125 to support denying the claim?
23. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 128 by finding Dr. Hodge's opinion aligned with the preponderance of the medical evidence when such finding is not supported by a preponderance of the substantial evidence in the record and without citing any portion of the record to support such a finding and his opinion was not provided to the appropriate standard (reasonable degree of medical certainty)?
24. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 128 in finding as fact ". . . that the cause of Claimant's present symptoms are idiopathic in nature . . .," when no such opinion was provided by any medical expert and no such opinion was provided to the appropriate standard (reasonable degree of medical certainty)?
25. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 130 by not complying with Crane v. Raber's Discount Tire Rack, 429 S.C. 636, 842 S.E.2d 349 (2020) and directly contradicting Finding of Fact 86 by not explaining any basis on which Claimant's credibility could justify ignoring objective medical evidence?
26. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 131 by finding the substantial weight of the evidence did not support finding Claimant has met his burden of proof?

27. Did the Hearing Commissioner err as a matter of law in Conclusion of Law 4 by concluding the substantial weight of the evidence did not support finding Claimant has met his burden of proof?
28. Did the Hearing Commissioner err as a matter of law in Conclusion of Law 8 by concluding the greater weight of the evidence did not support finding Claimant has met his burden of proof for a compensable injury?

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 2202565

Rusty Young,	)	
	)	
CLAIMANT	)	
	)	CERTIFICATE OF SERVICE
Versus	)	
	)	
Confluence Outdoor, Inc.,	)	
	)	
and	)	
	)	
Great American Alliance Insurance Company	)	
	)	
EMPLOYER/CARRIER/Defendants.	)	

I, the undersigned, an attorney at Shelly Leeke Law Firm, attorney for the Claimant, Rusty Young, do hereby certify that I have, this 12th day of March 2025, served the above-named Defendants, with a copy of the Form 30 (Request for Commission Review), as described below:

VIA USPS
S.C. Workers' Compensation Commission
Attn: Ms. Amy Bracy - Judicial Director
Post Office Box 1715
Columbia, SC 29202-1715

VIA E-Mail – bmrenfrow@wjcblaw.com
Willson, Jones, Carter, & Baxley
Attn: Benjamin M. Renfrow, Esq.
325 Rocky Slope Rd., Suite 201
Greenville, SC 29607

Chip Alexander

Richard C. Alexander, Esq.
Shelly Leeke Law Firm, LLC
6060 Rivers Avenue
North Charleston, SC 29406

(843) 297-8485

North Charleston, SC
March 12, 2025

SHELLY LEEKE
LAW FIRM, LLC

Charleston Office
Shelly Leeke Law Firm, LLC
6060 Rivers Avenue
North Charleston, SC 29406

Phone: 843.297.8485
Fax: 843.297.8497

www.LeekeLaw.com

Call For Additional Office Locations

May 21, 2025

VIA UPLOAD
Ms. Amy Bracy
Judicial Department
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

RE: Rusty Young v. Confluence Outdoor, Inc.
Carrier: Great American Alliance Insurance Company
Date of Loss: 03/08/2022
WCC File #: 2202565

Dear Ms. Bracy,

Please find enclosed our ***Claimant/Appellant's Brief*** together with the Certificate of Service on behalf of Rusty Young, Claimant/Appellant. By copy of this letter to Benjamin M. Renfrow, Esq., we are notifying them of this submission and serving a copy of the same.

Sincerely,

Richard C. Alexander
Attorney at Law

RCA/ll

cc: Benjamin M. Renfrow, Esq. (w/encls)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL

RUSTY YOUNG, Claimant/Appellant, v. CONFLUENCE OUTDOOR, INC., Employer, and GREAT AMERICAN ALLIANCE INSURANCE COMPANY, Carrier, Respondents.	W.C.C. FILE NO. 2202565 **BRIEF OF THE CLAIMANT/APPELLANT**

STATEMENT OF THE CASE

This matter is before the Full Commission's Appellate Panel pursuant to Claimant's Form 30, requesting review of Single Commissioner Beck's (hereinafter "Single Commissioner") February 27, 2025 Decision and Order. This matter was before the Single Commissioner on June 19, 2024 in Columbia, South Carolina pursuant to Claimant's Form 50, specifically to determine (1) whether Claimant sustained a compensable injury, (2) whether Claimant is entitled to temporary total disability benefits ("TTD"), (3) the extent of Claimant's entitlement to permanent partial disability benefits, and (4) whether Claimant is entitled to past, present, and future medical treatment.

This is a denied claim for an injury to the right shoulder, right arm, and back arising out of

the course and scope of employment. Claimant worked for Confluence Outdoor, Inc. (hereinafter "Defendant Employer") where he made kayak molds. While performing his job duties, he sustained injuries when he tried to pry a kayak mold out of the machine where the mold is formed.

In the Decision and Order currently on appeal, the Single Commissioner found Claimant failed to meet his burden of proof that he sustained a compensable work injury and is not entitled to medical benefits, temporary or permanent disability compensation, or any other ancillary costs associated with this claim. This appeal was filed by Claimant to address the Single Commissioner's findings concerning compensability, entitlement to medical benefits, and entitlement to permanent partial disability. As it pertains to Defendants' bases for denial (discussed below), the Single Commissioner found they had not met their burden of proof as it pertains to a "fraud in the application" or "McDevitt & Street defense."

At the Single Commissioner Hearing, Claimant took the position that he met his burden of proof, by a preponderance of the evidence, that he is entitled to a finding of compensability for work related injuries to his neck/back, right shoulder and right upper extremity, past and future medical treatment related to these body parts, and a permanent partial disability award of, at a minimum, 8% to the right shoulder, 5% to the right upper extremity, and 51% to the back. Claimant did not argue that he is entitled to permanent and total disability due to the issue of permanent physical restrictions not being addressed by his treating providers due to the claim being denied by Defendants. (Hrg. Tr. p.7).

Defendants denied the claim entirely on several grounds: (1) fraud in the application, (2) Claimant's credibility, (3) no accident occurred, (4) Claimant's current condition is not related to his employment, and (5) Claimant cannot satisfy his burden of proof that he sustained a compensable injury by accident. (Hrg. Tr. p.7). As mentioned previously, the Single Commissioner found

Defendants had not met their burden for a "McDevitt & Street defense," but Defendants have not appealed this issue, and, therefore, it is not before the Appellate Panel.

STANDARD OF REVIEW

The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all the evidence and reach its own findings of fact and conclusions of law. *Lowe v. Am-Can Transport Services, Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).

It is well-established that the Full Commission is the ultimate fact finder in workers' compensation cases and is not necessarily bound by the Single Commissioner's findings of fact. *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). *See also Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 281, 519 S.E. 2d 583, 591 (Ct. App. 1999). The Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *Id.* The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission. *Id.*

ARGUMENTS

I. The Single Commissioner erred in finding as fact and concluding as law that Claimant did not meet his burden of proof under § 42-1-160 regarding a compensable work accident and such findings and conclusions are against the greater weight and preponderance of the substantial medical evidence in the record.

A. Medical Evidence for Right Shoulder

The medical evidence associated with this claim is extensive, but for the purposes of this appeal, it is necessary to focus on the treatment and opinions of the treating surgeon (Dr. VanPelt), the treating provider for his right shoulder (Alan Duncan, MS, APRN, FNP-BC), independent medical examiner (Dr.

Grady), and the opinion of non-examining physician (Dr. Hodge). On March 9, 2022, Claimant reported his injury to his safety manager, Don, and he was directed to AFC Urgent Care for treatment (APA 1, p. 1). As he testified, he was sent home after reporting the injury on March 8, 2022. He attempted to work the next day, and he testified that the same sort of issue occurred again with removing the mold, and he reported to Don and was taken to AFC Urgent Care. (Hrg. Tr. pp. 13-14). At AFC, Claimant complained of pain in his right shoulder and "pins & needles" in the right upper extremity (APA 1, p. 1). He was given work restrictions and told to follow up with an orthopedic doctor (Id. at p. 5). On March 16, 2022, Claimant presented to the Emergency Room at St. Francis Eastside due to the claim being denied. He presented with right shoulder pain, and after an exam, the doctor prescribed an anti-inflammatory and muscle relaxant. He was advised to avoid heavy lifting and gave him a referral for orthopedics (APA 2, pp. 13-17).

On March 30, 2022, Mr. Young began treating at Piedmont Orthopaedic Associates (APA 3). He was seen by Alan Duncan, MS, APRN, FNP-BC, who is licensed and board-certified (Exhibit A, p. 222). Mr. Duncan noted that he thought the majority of Mr. Young's right shoulder pain may be due to a labral pathology. He performed a myriad of tests that all came back positive for an injury. An MRI was ordered, and Mr. Young was told to follow up after completion for a definitive treatment plan (APA 3, p. 24).

An MRI of the right shoulder was performed on April 4, 2022 (APA 3, pp. 32-33). On April 20, 2022, Mr. Young followed up with Mr. Duncan to review the MRI, which showed edema-like marrow signal in the distal acromion and distal clavicle and trace fluid in the AC interval. No rotator cuff or labral pathology present. Mr. Duncan opined that Claimant's shoulder pain was due to subacromial impingement, and he could not rule out AC joint arthritis. He recommended conservative treatment to include corticosteroid injections, oral NSAIDS, and formal physical

therapy. Claimant elected to proceed with the recommended treatment and was given an injection at that visit. Interestingly, this is also the first documented mention that there could be a cervical spine component to this injury (Id. at pp. 37-38).

Mr. Duncan provided a written causation statement, in addition to testifying in a deposition, that he believes Mr. Young's cervical issues were causally related to the work injury (APA 3, p. 40). In his deposition, he confirmed compensability of the right shoulder (Exhibit A, pp. 235, 247). During the deposition, Defendants had the opportunity to show Mr. Duncan all relevant records concerning any prior injuries as well as documents concerning their allegations about Claimant's credibility in this matter. Defendants also had the opportunity to question Mr. Duncan at length regarding these issues and inform Mr. Duncan of their concerns relating to the issues presented in the present claim. After reviewing records and addressing Defendants' line of questioning, Mr. Duncan confirmed Mr. Young injured his right shoulder in this March 8, 2022 work-related accident (Id. At p. 247). All page references in this section are from the actual deposition transcript:

B. <u>Medical Evidence for Back (cervical spine)</u>

As discussed above, there were complaints of radicular symptoms very early in this case, but initially this injury presented as being in the shoulder. Mr. Duncan even admitted in his deposition that he should have asked questions to rule out radiculopathy early on but did not (Id. at p. 235). Regardless, as early as April 20, 2022, there was discussion of cervical spine pain and radiculopathy, and by June 2022, it was abundantly evident from the medical records that there was a cervical spine injury in this claim that needed to be evaluated by the spine team. This was supported by physical examinations performed by Mr. Duncan and not only Claimant's subjective complaints (APA 3, p. 38, p. 42).

On July 12, 2022, Claimant was finally able to get an evaluation from the spine team at Piedmont Orthopaedic Associates, and an MRI of the cervical spine without contrast was ordered by Amy Hunt, PA-C (Id. at pp. 54, 58-61). On July 19, 2022, Claimant completed the cervical MRI, which demonstrated multilevel cervical spondylosis, marrow reconversion, and an annual fissure at C5-6 (Id. at pp. 68-69). In a follow up visit, Amy Hunt ordered injections prior to a surgical consultation (Id. at pp. 87-88). In a July 21, 2022 questionnaire, Alan Duncan opined that Mr. Young's cervical spine and radicular symptoms down to the hand/fingers were causally related to the March 8, 2022 work accident (Id. at p. 92). This medical opinion does not merely rely on subjective complaints made by Claimant but was rendered after physical examinations and review of objective diagnostic imaging by Mr. Duncan.

On September 1, 2022. Mr. Young saw Dr. Christopher Van Pelt for the first time to evaluate his cervical spine injury (Id. at p. 99). Dr. Van Pelt reviewed the MRI and was unable to determine whether the patient's symptoms were incidental to or the etiology of his symptoms. Dr. Van Pelt recommended cervical epidural steroid injections as well as an EMG and nerve conduction study of the right upper extremity for further delineation (Id. at pp. 102-104). **Perhaps the most persuasive evidence regarding the cervical spine injury and veracity of this claim comes from Dr. Van Pelt's October 20, 2022 visit. Dr. Van Pelt specifically mentions the diagnostic dilemma with predominantly right-sided symptoms but left-sided findings on the MRI (Id. at p. 113). In his Assessment/Plan, Dr. Van Pelt stated "[t]his patient's clinical history and physical exam is consistent with right-sided C7 radiculopathy. The imaging studies are concordant with the patient's symptoms." (Id. at p. 115). Again, this opinion is based on Dr. Van Pelt's physical examinations and review of objective diagnostic imaging and not based solely on Mr. Young's subjective complaints.**

Dr. Van Pelt was later deposed concerning causation of the cervical spine injury (Exhibit B). Defendants had the opportunity to show Dr. Van Pelt any and all records in support of their denial and question Dr. Van Pelt at length regarding their allegations relating to Claimant's credibility. They went to great lengths by not only discussing his prior accidents and claims but also discussing the amounts of settlements as if this information has some basis in determining medical causation. They even attempted to drag Claimant's prior hospitalization for use of drugs and a mental health condition from SEVEN years earlier into the fray (Id. at pp. 264-267). Without regurgitating, in full, the deposition, I will refer the Panel to several key points with brief references:

- P. 269 – reviewing prior records from April 2021 MVA has no significance and does not change his opinion
- P. 277 – cervical MRI shows annular fissure, and this is very important due to timing
- P. 278 – timing puts the fissure within reasonable probability of being related to the March, 8, 2022 work accident
- P. 280 – medical explanation regarding MRI findings and right-side complaints and this being because of the annular fissure pressing on the spinal cord
- P. 282 – confirms why he ordered EMG
- P. 283 – explains why the MRI and EMG correlate with the 3/8/22 injury
- P. 287 – refuses to provide an impairment rating on the fly without reviewing Guides, and also states clearly that prior drug use does not cause cervical spine issues
- PP. 288-289 – reviewed chiro records and does not change his opinion
- P. 289, L. 19 – P. 290, L. 10 – after reviewing all the evidence put in front of him, Dr. Van Pelt provides the clearest answers on causation for the cervical spine

Because of the multiple body parts involved, Claimant presented to Dr. Walter Grady for evaluation of permanent impairment to the alleged body parts (APA 6). Dr. Grady provided a physical exam of the right shoulder, right arm, and cervical spine. He also noted Claimant's ongoing symptoms and limitations with his cervical spine, right shoulder, and right arm (Id. at p. 211). After his examination and reviewing records, Dr. Grady provided permanent impairment

ratings of 51% to the cervical spine, 5% to the right upper extremity, and 8% to the right shoulder (Id. at p. 215). All opinions were provided to a reasonable degree of medical certainty in tbe IME, and there is no other medical evidence in the record to contradict these impairment ratings.

Dr. Grady was subsequently deposed as well in this matter (Exhibit C). This was the third time Defendants deposed a medical provider in this claim, and like the depositions before this, they were able to show any and all records and make assertions in support of their ongoing denial directly to Dr. Grady. As was done above, all references to the deposition below will be the pages of the deposition:

- P. 306 – Dr. Grady has training in family medicine, orthopedics, and hand surgery and is board-certified in orthopedic surgery and family medicine
- P. 306 – he has scaled back his practice in recent years and stopped doing surgeries so that he can be a caregiver for his wife, but he still sees patients regularly outside of IMEs
- P. 306 – he has a hand specialty but treats all body parts
- P. 307 – he doesn't treat annular fissures personally and refers those patients to a neurosurgeon or orthopedic spine surgeon for their treatment
- P. 315 – confirms the "bolt" vs. "boat" in the IME could be typographical error
- **P. 315 – agrees with Dr. Van Pelt's opinion in his questionnaire that the March 8, 2022 accident most probably caused the cervical spine and right upper extremity symptoms, and also says none of the questions Mr. Renfrow asked changed his opinion from his IME regarding causation and permanent impairment**
- **PP. 315-316 – asked if he agrees with Dr. Van Pelt, and states that he does agree with Dr. Van Pelt and that Dr. Van Pelt is the treating surgeon AND SPECIALIST, so he agrees with Dr. Van Pelt's opinion and causation statement**
- **P. 317 – gives his own concurring opinion that what Claimant was doing with the boat on March 8, 2022 aggravated any preexisting condition**

In summation, as was, in my opinion, indicated by the Single Commissioner in our pre-hearing conference, when you have objective findings to support a claimant's subjective complaints, it is hard to refute compensability. Every treatment of a patient by a medical professional starts with

subjective complaints, and from those subjective complaints, physical examinations are performed and, if necessary, imaging and other objective testing are ordered to determine a treatment plan. In the present case, the subjective reports led to the physical examinations discussed above that had pertinent findings, which led to imaging/testing. Mr. Young cannot fake or lie about an annular fissure on an MRI that is pressing on his spinal cord, and he cannot fake or lie about an EMG evidencing right C7 radiculopathy. The objective findings on imaging are what led to the treatment plan from Mr. Duncan and Dr. Van Pelt (and Dr. Van Pelt's staff), and all of this medical and opinion evidence leads to the conclusion that this is a compensable claim for the right arm, right shoulder, and cervical spine.

Based upon the greater weight and preponderance of the substantial record including the medical reports, opinions, and testimony of the treating physician Dr. Van Pelt and treating provider Mr. Duncan, as well as the medical report and opinion of Dr. Grady by way of IME (and his deposition) confirming those opinions, Claimant asserts he has met his burden of proof establishing compensability of his claim. Additionally, Claimant asserts the medical evidence and testimony confirm entitlement to permanent partial disability as reflected in Dr. Grady's IME and deposition (APA 6, p. 215; Exhibit C, pp. 315).

C. Error of Law

In determining whether a work-related injury is compensable, courts liberally construe the Workers' Compensation Law toward providing coverage and resolve any reasonable doubt in favor of the injured employee. *Whigham v. Jackson Dawson Communications* (S.C. 2014) 410 S.C. 131. 763 S.E.2d 420, rehearing denied; *Douglas v. Spartan Mills, Startex Division* (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173. Proof that workers' compensation claimant sustained an injury may be established by circumstantial evidence and direct evidence where circumstances lead an

unprejudiced mind to reasonably infer the injury was caused by the accident. *Tiller v. National Health Care Center of Sumter* (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843.

Proof that a claimant sustained an injury and that it arose out of and in the course of his employment may be established by circumstantial as well as by direct evidence, where the circumstances surrounding the occurrence of the injury are such as to lead an unprejudiced mind reasonably to infer that it was caused by accident; the evidence need not negate all other causes of resultant injury in compensation proceedings. *Holly v. Spartan Grain & Mill Co.*, (1947) 210 S.C. 183, 42 S.E.2d 59.

In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward the end of providing coverage rather than noncoverage in order to further the beneficial purposes for which it was designed. *Shealy v. Aiken Co.,* 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "Any reasonable doubt as to the construction of the Act will be resolved in favor of coverage." *Id.* at 455-56, 535 S.E.2d at 442.

In *Brailey v. Michelin North America, Inc.,* 438 S.C. 77 (2022), the court dealt with almost the exact same scenario as the current case before you. There was a "fraud in the application" defense raised along with compensability issues. While the discussion and analysis of *Brailey* tends to focus on the three prongs of the *Cooper v. McDevitt & Street* defense, we point to this case for the lesser discussed subtext put forth by the court. Specifically, the court discussed Defendants in that case "[having] not proven a causal connection between the false representation and the injury. *See Corbin v. Kohler Co.,* 351 S.C. 613, 624, 571 S.E.2d 92, 98 (Ct. App. 2002) ("Expert medical testimony is intended to aid the Appellate Panel in coming to the correct conclusion.").

The *Brailey* court further noted the doctor in that case was unaware of "the extent" of a

prior injury. However, the record contained no evidence that the prior injury did not resolve nor did it indicate the "extent" of the injury. Further, the court noted that the record contained no medical evidence that the prior injury contributed to the work-related injury at issue. (*Id.*). It is Claimant position that the Single Commissioner's conclusions misapply the standard outlined in *Brailey*, which affirms that fact-finders cannot ignore objective medical evidence or substitute personal judgment for professional opinions rendered to a reasonable degree of certainty.

In the present claim, Claimant is asserting that the preponderance and substantial weight of medical evidence in this case can only point to a finding of compensability for his back, right shoulder, and right upper extremity injuries. Mr. Duncan, Dr. Van Pelt, and Dr. Grady have provided medical opinions to a reasonable degree of medical certainty as well as testified under oath, and they all support compensability. The Single Commissioner's Decision and Order made several errors as it pertains to not only the medical evidence but also the medical testimony, lay evidence, and lay testimony by misstating evidence, ignoring evidence, not specifically citing the record, etc.

First, as it pertains to findings regarding medical evidence and testimony of medical providers, Finding of Fact 17 is a clear mistake in finding the wrong date upon which Claimant stopped treating with a chiropractic facility. This could be dismissed as a minor mistake by stating July 12, 2021 instead of July 9, 2021, but Finding of Fact 82 then attempts to further skew and misrepresent the record by finding Claimant treated for a prior accident "**through** July 2021." Again, perhaps this was a minor mistake (albeit both were pointed out prior to signing this Decision and Order), they are two of many mistakes/misstatements in the record that when compounded upon each other appear to be an attempt to construe the evidence against finding coverage and sew reasonable doubt in favor of a denial. *Whigham v. Jackson Dawson Communications* (S.C. 2014)

410 S.C. 131. 763 S.E.2d 420, rehearing denied; *Douglas v. Spartan Mills, Startex Division* (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

Another clear misstatement of the evidence came in Finding of Fact 45, where the Single Commissioner stated that Claimant did not inform his medical providers about prior accidents and injuries while undergoing treatment. Whether a specific question was asked by a medical provider about a prior injury or accident and not answered truthfully or whether Claimant answered and it was not recorded correctly would be speculation to begin with. Notwithstanding this speculation, to find this as fact, but ignore that Mr. Duncan, Dr. Van Pelt, and Dr. Grady were all apprised of these prior injuries and accidents in their depositions and did not change their opinions on causation is reversible error.

The Single Commissioner made a similar misstatement in Finding of Fact 100 when he found Dr. Van Pelt testified that he was not aware of prior claims and had not seen or reviewed prior chiropractic records. While it is true that Dr. Van Pelt testified to not being aware of the prior accidents, the Single Commissioner chose to leave out and not find as fact that Dr. Van Pelt was presented with these prior records during his deposition, and of course, he was asked about the prior workers' compensation claims, so he had full knowledge during his deposition about all of this when rendering his opinion. (Exhibit B, pp. 264-266, 278, 281, 288-289). What also gets left out in all this is that NONE of these prior workers' compensation claims brought up by Defendants had anything to do with the body parts Dr. Van Pelt was treating.

In Finding of Fact 119, the Single Commissioner also misstated Dr. Grady's deposition testimony regarding the cervical and right arm symptoms by finding as fact that he opined they were "probably caused by a work-related accident on March 8, 2022." The deposition could not have been clearer that Dr. Van Pelt's opinion was that the work-related accident **MOST** probably

caused Claimant's cervical and right arm symptoms, and Dr. Grady agreed with him. This an important omission, as the difference between "probably" and "most probably" is the difference between meeting the requisite standard for compensability and not. This finding of fact is not accurately based on the record, rather it is contradicted and represents reversible error. These are more attempts to pile on issues with or weaken the claim but ignore that, from a medical standpoint, all treating providers were provided with this information and were able to make fully informed opinions to a reasonable degree of medical certainty in their depositions with knowledge of his history as well as their personal physical examinations and imaging reviews.

Dr. Van Pelt's deposition testimony is discussed at length above, so I will not regurgitate all the same points as above. However, in Finding of Fact 122, the Single Commissioner finds that the crux of his opinion is based on the appearance of annular fissures on imaging. It is our position this finding is purely speculation and conjecture, as it dismisses the totality of Dr. Van Pelt's testimony focusing on only one portion of the evidence he found important. Nearly two pages later in his deposition, he discusses not only the MRI but also his physical examinations and the EMG findings, and how all these things correlated and formed his opinion. (Exhibit B, pp. 282-284).

In Finding of Fact 124, the Single Commissioner committed several errors. First, he stated as fact that Dr. Grady and Dr. Hodge "similarly reviewed Claimant's medical records." Dr. Grady's review of medical records is clear in his IME, and he and Defense counsel stated at the beginning of his deposition that he had Claimant's file and if anything existed regarding his treatment, it was in there (APA 6, pp. 212-213; Exhibit C, p. 305). This was clear speculation, surmise, and conjecture to conflate the thorough record review of Dr. Grady with what Dr. Hodge may or may not have done. We have one page from Dr. Hodge, and the only records that are specifically mentioned are an MRI and an EMG (APA 21, p. 1221). This is a far cry from the

detailed review Dr. Grady performed and specified in his IME. Furthermore, this Finding of Fact discusses both doctors opining that annular fissures can be acute or chronic. However, it is conveniently left out that, when deposed, Dr. Grady specifically stated he does not treat annular fissures and refers them to neurosurgeons or orthopedic spine surgeons (Exhibit C, p. 305). Additionally, to find as fact that Dr. Grady opined that annular fissures can be acute or chronic and use that to deny this claim when the Single Commissioner just stated in Finding of Fact 119 that Dr. Grady agreed with Dr. Van Pelt's opinion is clearly contradictory. This also ignores the totality of Dr. Grady's deposition testimony wherein he never wavered from supporting the opinion of Dr. Van Pelt and agreed, at a minimum, there was an aggravation of any preexisting condition. (Exhibit C, pp. 315-317).

In Finding of Fact 125, the Single Commissioner, similarly to Finding of Fact 122, fixated on the annular fissure issue as the sole basis for Dr. Van Pelt's opinion. This is has been discussed above as to why this is patently incorrect that this was the only basis for his opinion. Additionally, the Single Commissioner found as fact that two other providers "unilaterally contradicted" his opinion. There is no disputing Dr. Grady did agree in his deposition with an unknown internet article quoted by Defense Counsel that stated annular fissures could be present for many years. However, as stated previously, this ignores the totality of Dr. Grady's testimony and how he stated time and again that he agreed on causation with Dr. Van Pelt. The Single Commissioner also found as fact that Dr. Van Pelt did not know about a prior neck injury and April 2021 motor vehicle accident, but then inexplicably accuses him of "[failing] to admit knowing about Claimant's prior injuries to a body part, especially those relatively recent intime, which could have some bearing on the present condition of that body part." This portion of the finding is completely contradictory by itself by first finding as fact that Dr. Van Pelt did not know about a prior neck injury and then

accusing him of failing to admit he knew about a prior neck injury with no evidence to substantiate such a claim.

Considering Dr. Grady repeatedly stated that he would agree with and defer to Dr. Van Pelt, the only partially contrary medical opinion in the record is a statement written by Dr. Hodge (APA 21, p. 1221). There are myriad issues with relying on Dr. Hodge's opinion, including the fact that we have no idea exactly what records he reviewed, he reviewed only reports of imaging and did not review the imaging personally, and he never performed his own in-person physical examination of Claimant. Perhaps speculation about what records Dr. Hodge reviewed or ignoring that he did not read the imaging personally and never physically examined Claimant could be ignored in deciding to give his opinion more weight. While I would not agree with speculating and ignoring all these faults in his opinion, the biggest issue that cannot be ignored is that his opinion was he ". . . cannot say beyond a reasonable doubt that the imaging findings are related to the injury." (Id.).

First, this opinion was not rendered to the correct standard that is required for compensability. In *Michau v. Georgetown County,* 396 S.C. 589 (2012), the court discussed the admissibility of evidence in a repetitive trauma injury claim under S.C. Code § 42-1-172. In *Michau*, they discussed the statute's definition of "medical evidence" meaning "expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material . . ." The *Michau* court found that the plain reading of the statute requires "opinion or testimony" be stated to a reasonable degree of medical certainty, and that "opinion or testimony" are treated differently than "documents, records, or other material." The definition of "medical evidence" is the same in S.C. Code § 42-9-35, so it stands to reason the courts would apply the definition of "medical evidence" the same in every case. There is no scenario where Dr. Hodge's opinion

statement could be considered anything but a medical opinion. As such, under Michau, Dr. Hodge's opinion should never have been admissible to begin with for not being stated to a reasonable degree of medical certainty. However, even upon admission, it should not have been given greater weight than those opinions stated to a reasonable degree of medical certainty. Even moving past the wrong standard being applied, the plain language of his opinion is that he "cannot say beyond a reasonable doubt that the imaging findings are related to the injury." (APA 21, p. 1221. That clearly means that it can still be more likely than not that the findings are related, and we have THREE medical providers who also confirmed that it was more likely than not.

In Finding of Fact 126, the Single Commissioner found Dr. Van Pelt's findings are not supported by the greater weight of the evidence, lacks credibility, and afforded it the weight he deemed necessary, which is unclear but presumably little weight. This finding provides no basis for how Dr. Van Pelt's opinion is "not supported by the greater weight of the evidence." In fact, the only evidence that is not in support of Dr. Van Pelt's opinion is the three doctors slightly varying their opinions on whether annular fissures dissipate after a few months or not. Again, Dr. Van Pelt did not rely SOLELY on this finding, and while it was important in forming his opinion, as discussed above, it was not the only evidence he used. Furthermore, the Single Commissioner went out of his way to accuse Dr. Van Pelt of lying under oath with no evidence to substantiate such a claim or any explanation of how Dr. Van Pelt's opinion lacked credibility.

Subsequent to this, in Finding of Fact 127, the Single Commissioner found Dr. Grady "testified to findings significantly different than those of Dr. Van Pelt," but that he ultimately deferred to Dr. Van Pelt. Because of this, the Single Commissioner found as fact that Dr. Grady's opinion lacked credibility and gave it, presumably, little weight. Yes, two findings before this (Finding of Fact 125), the Single Commissioner dismissed the opinion of Dr. Van Pelt, in part,

based on a portion of Dr. Grady's testimony. However, two findings later, the Single Commissioner finds Dr. Grady's opinion lacks credibility and should be given little weight. The tap dance back and forth that was done here to cherry pick portions of a doctor's opinion to degrade the weight afforded the treating physician but then subsequently afford neither of those doctors' opinions great weight is confounding. And again, the Single Commissioner is giving little weight to the TWO BOARD-CERTIFIED orthopedists that actually treated and/or examined the patient personally.

In Finding of Fact 128, the Single Commissioner found as fact that Dr. Hodge's opinion aligns with a preponderance of the medical evidence that the cause of Claimant's present symptoms are idiopathic in nature due to a series of accidents between 2018 to 2021. First and foremost, Dr. Hodge made no such conclusion in his opinion or even an assertion tbat a reasonable mind could surmise to make the leap that was made in stating this was his opinion. Second, the Single Commissioner has no opinion statement or medical evidence anywhere in the entirety of this record that says Claimant's symptoms are idiopathic in nature or related to any accident but the March 8, 2021 work accident at Confluence. In fact, the word "idiopathic" never appears in any of the doctors' records or deposition transcripts. Yet, the Single Commissioner found as fact that his "present symptoms were idiopathic in nature." Third, tbe Single Commissioner found as fact that the April 3, 2021 motor vehicle accident "occurred only nine months before Claimant began working for Confluence." While the math of this is accurate, there is no explanation for how starting a job nine monthbs after an accident (or six months after the treatment for that accident had ended) have any bearing on the compensability of a claim or the medical opinions of the treating providers that were made aware of all these factors and still rendered opinions in favor of compensability. The Single Commissioner also found as fact that the preponderance of the non-

medical evidence did not support finding Claimant was involved in a work-related accident on March 8, 2022. However, there is no mention of what the said "non-medical evidence" was or how it supported this part of the finding. Finally, the Single Commissioner found the opinion of Dr. Hodge was credible and afforded it the weight he "deemed it deserved." This was not specified, but presumably as with the other inconclusive findings of fact above, he afforded the opinion great weight. I have discussed the multitude of fallacies with Dr. Hodge's opinion above, and I will not bother with reciting them all again other than to note that the issues with his opinion are plentiful and not worthy of being afforded great weight to deny compensability. Ultimately, the Single Commissioner's conclusion that Claimant's symptoms were "idiopathic" was unsupported by any expert opinion, and especially not an opinion to a reasonable degree of medical certainty, and constitutes reversible error under *Michau* as well as *Clemmons v. Lowe's Home Centers, Inc.*, 420 S.C. 282 (2017).

The Single Commissioner's Conclusions of Law 4 and 8 stated the substantial weight and greater weight of the evidence showed Claimant had not met his burden of proof that his claim was causally related to the March 8, 2022 work accident. Without restating all the evidence and errors discussed above, Claimant would simply refer to the above arguments as support for overturning these conclusions of law and concluding that the substantial and greater weight of the evidence supports finding Claimant sustained a compensable injury by accident on March 8, 2022 at Confluence.

II. The Single Commissioner erred in finding as fact and concluding as law that Claimant did not meet his burden of proof under § 42-1-160 in direct contravention of Crane v. Raber's Discount Tire Rack, 429 S.C. 636, 842 S.E.2d 349 (2020).

It is Claimant's position that the objective medical evidence and opinion testimony of the medical providers in this case would far outweigh any credibility issues, and as is the case in *Crane*, there is simply no nexus between the credibility issues brought up and how they warrant precluding compensability in light of the objective medical evidence and opinion testimony. However, I would be remiss if I did not address some of the things Defendants brought up trying to muddy the waters in this claim to avoid compensability.

For example, as Claimant's hearing testimony showed (and his previous depositions), he never denied having an altercation with a coworker or why he was fired. In fact, the hearing testimony, which was not refuted with any evidence or testimony from Defendants, clearly shows Defendants are not exactly clean in this termination. The only evidence in the record is that the son of the safety manager is who Claimant got into an altercation with, and this is the same safety manager who Mr. Young initially reported his injury to when his pain got too unbearable the day after the date of the accident. There was no refutation provided about this altercation, which brings the question that if two people were involved in this altercation, then why was only one terminated for their actions in this incident? Additionally, if someone has recently reported a work injury, and you are about to fire them, it would make sense to save video of such an altercation or at least have more documentation besides one form that says terminated "for cause" with no other supporting documentation (APA 515).

There was plenty of cross examination about Claimant having two prior workers compensation claims and a prior motor vehicle accident where he received settlements. Again, he never lied nor attempted to hide any of this information. In fact, all the evidence regarding these prior claims only further supports his claims because there was no prior shoulder injury/condition, and he had no prior impairment rating to his back. Having a prior claim (or claims) that is/are

admitted and compensable is not evidence to support the current claim should be denied. I have personally experienced two workers' compensation claims in the past, so am I to assume I should be wary of bringing a third claim if I am injured on the job due to the Commission potentially viewing my claim as not compensable because I had prior claims?

While the records admitted do show two instances of polysubstance abuse in his past, Mr. Young was able to testify truthfully at the hearing that he has had no issues since. I say he testified truthfully because there was no rebuttal to his testimony, and not only did he have a clear drug test to get his job, but he was also drug tested on March 9, 2022 with testing coming back negative. Similar to having prior claims, just because someone has used illicit substances on two occasions seven or eight years ago does not mean they suddenly cannot have a compensable workers' compensation claim. In the same vein, a prior termination from a job does not suddenly render a claim non-compensable. Yet, the Single Commissioner made it a point to discuss all of these things at length in the review of evidence and in Findings of Fact.

In Finding of Fact 7, the Single Commissioner found as fact that Claimant testified in a deposition about a prior MRI showing missing cartilage in his knee and an annular bulge in his back. Oddly, despite all the credibility issues the Single Commissioner found as fact in his Decision and Order, this finding of fact does not question in the slightest what Claimant testified to or the validity of the MRI findings. Nevertheless, while this testimony is taken as fact, the error and misstatement here by the Single Commissioner was not clarifying or specifying that this annular bulge testimony was only about Claimant's **low back**, which is not an area of the body alleged to have been injured in the present claim (APA 11, pp. 491-493).

In Finding of Fact 13, the Single Commissioner found as fact that Claimant testified that a June 2020 accident resulted in ongoing hip pain, which bothered his back and ankle. The Single

Commissioner referenced a prior clincher, where there is no evidence to support "ongoing hip pain" that bothers his hip or ankle (APA 8). In fact, as the clincher in that case showed, there was no impairment rating his back (Id.). Also, this finding of fact conveniently leaves out that this clincher and accident was about his **low back**, hip, and left ankle, NONE of which are at issue in the present claim.

In Finding of Fact 48, the Single Commissioner found as fact that Claimant testified that his job immediately prior to Confluence (where he was injured) was with Cintas and that Claimant testified about his packing responsibilities at this job. First, this is factually incorrect, as Claimant started his job at Cintas AFTER he was fired by Confluence (Hrg. Tr. p. 23). There is no explanation why the Single Commissioner also found as fact that the "packing" responsibilities of this job were done seven months prior to his cervical fusion or how that has any bearing on the compensability of the claim. While there is speculation, surmise, and conjecture abound, I can only speculate here there is some insinuation that perhaps his work at Cintas is somehow connected to the cervical fusion. Of course, there is no lay testimony, medical evidence, or medical opinion/testimony to support such an assertion.

In Finding of Fact 62, the Single Commissioner found as fact that Claimant testified about applying for work with Confluence four months after his treatment for his motor accident ended. While this is true that Claimant agreed with the math error made by Defense Counsel in his questioning, the Single Commissioner did not clarify the clear mistake here that this was five plus months after the treatment ended. As stated previously, the slight error between four months and five months is possibly harmless error, but when the amalgamation of all these seemingly minor errors are used in combination to constitute substantial evidence to deny a claim, they become very important. Additionally, there is no medical evidence anywhere in the record that provides any

nexus between Claimant's prior motor vehicle accident and his need for a cervical fusion.

In Finding of Fact 71, the Single Commissioner found as fact that Claimant's hearing testimony does not align with prior deposition testimony where he "indirectly asserted" he was consistently harassed by an unnamed employee. The Single Commissioner only cites to the hearing transcript here, so it is hard to understand how the testimony does not align. However, reading the hearing and deposition transcripts in full clearly shows Claimant consistently stated that he never had a problem with his supervisor at Confluence and never knew anybody at Confluence to be dishonest or had a problem with them **prior to getting hurt on March 8th**. (Hrg. Tr. pp. 50-51). The testimony literally shows the exact opposite because Defense Counsel states Claimant's testimony was consistent. Additionally, while this finding of fact references an August 23, 2022 deposition (a date that is factually incorrect), I can only assume the Commissioner was referring to Claimant's September 7, 2022 deposition. And making this assumption and re-reading the entirety of this deposition (due to the fact that no specific part of the deposition was cited), the Single Commissioner has, again, erroneously interpreted Claimant's testimony. Claimant was specifically asked about any problems with his supervisor or anybody in a supervisory or management position (Exb. E, p. 33, ll. 14-24). There is no evidence in the record to support this testimony does not align, and there is no evidence that the person he was in a verbal altercation with that led to his termination was a supervisor or management.

In Finding of Fact 74, the Single Commissioner found Claimant's hearing testimony does not align with his January 11, 2024 deposition testimony regarding his headaches being related to his March 8, 2022 work accident. The Single Commissioner cites to Claimant's deposition transcript wherein Claimant testified that certain motions performed during his independent medical examination with Dr. Grady led him to tbe conclusion his headaches were from certain

movements of his neck (Exhibit F, p. 36, ll. 9-15). There is no reference to the hearing transcript to support finding the testimony does not align, and it would be an error to find this as fact without supporting it from the record.

Findings of Fact 130 and 131 are the crux of the Single Commissioner errors in not applying the law of *Crane* to the case at hand. The Single Commissioner found as fact that he could only consider the evidence before him, lists the evidence before him, and then finds the substantial weight of the evidence shows Claimant has not met his burden. This is discussed in more detail below, but many of the things mentioned by the Single Commissioner are not supported by the very record he mentions (i.e., untruthful/evasive/inconsistent testimony, prior workers' compensation claims for UNRELATED body parts, etc.). To find this as fact but not explain the nexus between this evidence and how it results in ignoring objective medical evidence is the gravest of injustices before us.

Error of Law

In workers' compensation cases, it is crucial that the findings of the commissioner are based on objective medical evidence. The failure to consider such evidence not only undermines the integrity of the decision-making process but also denies injured workers the benefits they rightfully deserve. In the case at hand, the commissioner's decision to ignore objective medical evidence (physical examinations, MRI imaging, EMG findings, etc.) and the multiple medical opinions, rendered to a reasonable degree of medical certainty, should be deemed reversible error, much like the ruling in *Crane v. Raber's Discount Tire Rack*, 419 S.C. 249 (2018). In *Crane*, the South Carolina Supreme Court underscored the necessity of using medical evidence to substantiate findings regarding the severity of an injury. Here, as in *Crane*, the Single Commissioner's decision to disregard objective medical evidence in tbis case mirrors tbe same error, resulting in an unjust

denial of benefits.

In this case, the claimant presented objective medical evidence, including expert testimony and diagnostic testing, showing that the injuries sustained were consistent with the claimant's account of the work-related accident. While there is not specific video evidence on the date of accident due to the fact that there was only a fifteen-minute window saved for review, Claimant provided ample testimony about a similar occurrence at work that is very clearly on video the day after this accident, which is the date he reported this injury to his safety manager (Hrg. Tr., pp. 17-18). Despite this evidence and the video from the day after clearly showing the jerking motion that resulted in this work-related injury, the Single Commissioner dismissed the medical findings, citing subjective factors like the claimant's credibility or perceived inconsistencies in his testimony. The Single Commissioner's reliance on these subjective factors, without giving appropriate weight to the objective medical evidence, led to the wrongful denial of benefits.

Objective medical evidence is the cornerstone of workers' compensation claims, as it provides an unbiased, factual basis upon which to evaluate the extent of a worker's injuries. In South Carolina, workers are entitled to compensation for injuries that arise out of and in the course of employment. The Workers' Compensation Act specifically mandates that benefits should be awarded based on the medical evidence of a claimant's injury, not solely on subjective accounts.

In *Crane*, the South Carolina Supreme Court addressed a situation where the commissioner had relied heavily on subjective credibility determinations to deny benefits, despite the claimant's presenting substantial objective medical evidence. The Court reversed the Single Commissioner's decision, asserting that credibility findings must be supported by substantial evidence in the record, especially when such findings conflict with objective medical evidence. The Court held that the Workers' Compensation Commission must base its findings on objective, verifiable facts, and any

denial of benefits should be clearly justified by such evidence.

Much like in *Crane*, the Single Commissioner in this case erroneously placed undue emphasis on subjective factors, such as alleged inconsistencies in Claimant's testimony, having prior worker's compensation claims, or previously using drugs, instead of properly considering the objective medical evidence that supported compensability in this claim. Moreover, the Single Commissioner failed to show the nexus between credibility and the medical evidence before him. The medical evidence presented in this case, including physical examinations, diagnostic reports, and expert testimony, clearly establishes that Mr. Young sustained the injury as described in the claim. To disregard this objective evidence in favor of subjective assessments is legally unsound and contrary to the principles outlined in *Crane*.

CONCLUSION

For the reasons set forth above, Claimant respectfully requests that the Order of the Single Commissioner be reversed with regards to the Findings of Fact and Conclusions of Law concerning compensability of the alleged body parts, award of reimbursement for out-of-pocket causally-related medical treatment, award of future medical care, award of temporary total disability benefits, and award of temporary permanent partial disability benefits and that the Full Commission find the preponderance of the evidence supports finding Claimant met his burden of proof establishing compensability under the Act.

Respectfully submitted,

Chap Alexander

By: _____

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May 21, 2025
North Charleston, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 2202565

Rusty Young, Claimant/Appellant Versus Confluence Outdoor, Inc., Employer, & Great American Alliance Insurance Company Carrier/Defendants/Respondents.	)	CERTIFICATE OF SERVICE

I, the undersigned, an attorney at Shelly Leeke Law Firm, attorney for the Claimant, Rusty Young, do hereby certify that I have, this 21st day of May 2025, served the above-named Defendants with a copy of Claimant/Appellant's Brief as described below:

Via Upload
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North Charleston, SC
May 21, 2025

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 2202565

Rusty Young, Employee/Appellant, vs. Confluence Outdoor, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Defendants/Respondents.	APPELLATE BRIEF OF DEFENDANTS/RESPONDENTS

STATEMENT OF THE CASE

This case is about the bedrock of worker's compensation law—can the Claimant meet his burden of proof that he sustained a compensable work-related injury? This case was heard by Commissioner Beck in Columbia, South Carolina, on June 19, 2024. The issues for hearing, as set forth on Appellant's Form 50, were (1) whether there was a compensable injury, (2) TTD, (3) PPD, and (4) medical treatment. Commissioner Beck found that there was no compensable work-related injury.

Much of the basis of his decision, on Claimant's testimony and his lack of credibility on some of the most basic issues in the case. Claimant has repeatedly and consistently lied and omitted information from doctors and employers. Commissioner Beck appropriately relied on the overwhelming evidence in determining that Claimant could not meet his burden of proving that a work-related injury occurred.

Claimant said that he felt a pop in his right shoulder from de-molding a kayak. He claims

that his neck surgery with Dr. Van Pelt is related to that alleged injury. The overwhelming evidence shows otherwise.

STATEMENT OF THE FACTS

Defendants will not review here the entire course of Claimant's medical treatment, which is thoroughly laid out in Commissioner Beck's order. Rather, Defendants would like to provide a timeline of relevant facts that Claimant lied about or omitted to medical providers, and which impacts credibility and thus causality in this claim. This case has a long and protracted history as evidence by the following timeline of events.

Timeline

On May 10-19, 2016, Claimant was involuntarily hospitalized at Carolina Behavioral Center for inpatient psychiatric treatment as a re APA 360-416, 434-35. He had been snorting and smoking crack and held a gun in front of their son, threatening to shoot himself. APA 607-659. His wife filed white commitment papers and stated that he began acting bizarrely a week ago with increased paranoia about her cheating on him. He took a knife and cut open the couch because he thought people were living in there. He rented a U-Haul, put two TVs and a laptop from their house into it, and drove around for several hours. He had stopped going to work and been lying about going to work. She stated he had similar behavior a year ago, was admitted to CCBH, and was discharged on Abilify and Trazadone. He did not take the medication because a friend told him it would make him crazy. The wife took her two children to her parents' home. She also noticed he was taking colorful pills out of a plastic baggy that he had heen buying off the street. She suspected he was using cocaine due to intermittent nosebleeds. He had a history of cocaine use. They had recent stressors from their mortgage and finances and his automotive job, all contributing to his depression. APA 634.

In January 2018- Claimant filed a worker's compensation claim with Draexlmaier. Tr. 29 In September 2019- Claimant settled his worker's compensation claim with Draexlmaier for $60,000. Tr. 30. He was foreed to resign as part of settlement. Tr. 31. Claimant then worked for Fitesa for nine months driving forklifts and was terminated for not communicating with a supervisor. Tr. 31-32.

On June 8, 2020- Claimant had a worker's compensation elaim with Fitesa where he fell down a flight of stairs, injuring his back and hip and was represented by The Clardy Law Firm. Tr. 32.

In April 2021- Claimant had a motor vehicle accident, injuring his ankle and his neck. Tr. 32-33, 35. He was working at Vermeer at the time of the motor vehicle accident. Tr. 33. Claimant treated from April until July or August 2021 with Live Well Chiropractic, a few months bcfore he applicd for the job with Confluence. Tr. 35.

On or around May 4, 2021- Claimant's claim with Fitesa settled for $15,000. Tr. 32-33. APA 355. Around this time Claimant was terminated from Vermeer due to issues with his claim of racial discrimination and being hostile to a coworker. Tr. 28.

In December 2021- Claimant applied to Confluence, four months after his treatment for his neck ended with Live Well Chiropractie from the April 2021 car aecident. Claimant admitted that when he applied with Confluence, he was not honest on his application. Tr. 40-44. He informed them about the screw in his ankle, but did not mention anything else beeause "I guess I didn't find it relcvant." Tr. 41. To the question of whether he had a major injury or illness in the past five years, he put, "None." Tr. 42. He did not tell them about the work injury at Draexlmaier where he severely injured his ankle. Tr. 42. He was "not sure" if he told them about the accident at Fitesa where he fell down stairs and injured his hip and lower baek. Tr. 42. He did not tell them about

the car accident and that he had settled that claim for $20,000. Tr. 43. "I didn't know I was supposed to, actually." Tr. 43. To the question whether he had ever treated for drug addiction or alcoholism, he put "No." Tr. 43-44. APA 510. "You were afraid if you were honest, you wouldn't get the job and be able to make money, correct? Correct. Okay. So you lied so you could put money in your pocket? I didn't—didn't want to mention it. I mean, sometimes I would feel like I will already be judged—I'll already be by my appearance, so I didn't want to help the situation." Tr. 44.

The Employer also had him fill out a post-offer medical questionnaire. Tr. 44. APA 518-19. Nothing said they would fire him but only that they would try to find something that fit with his abilities. Tr. 45-46. He said he had not had surgery or a fracture that required surgery, even though he had a previous ankle surgery. Tr. 46, APA 518-19. He did not tell them about the back injury at Fitesa or the car accident just a few months before where he injured his back and neck. Claimant testified that he did not tell Confluence about his back and neck problems, even though it was a physically demanding job, "because I didn't feel like it was relevant to it." Tr. 48. However, he then admitted that he did not disclose those recent, prior injuries because he was afraid that if he told Confluence, they might not offer him a job. Tr. 48. Confluence actually showed him the molding position, and he did not mention any prior back or neck problems. Tr. 49. He disclosed his depression in the past, but not his cocaine or alcohol addiction issues. Tr. 50.

On January 5, 2022- Claimant interviewed with Confluence. Tr. 40. On January 11, 2022- Claimant began work at Confluence. Tr. 40. He claims he was injured on March 8, 2022. The Employer presented video from 8 minutes before 11 a.m. until 7 minutes after 11 a.m., as well as four videos from March 9, 2022, the day after the accident. Tr. 52. These videos show no evidence of an injury, or any noticeable consequences or behavior of someone with injuries.

On March 11, 2022- three days after his alleged work injury Claimant is terminated from Confluence for getting into a fight with Mr. Don, the safety guy's, son regarding stealing his tools. Tr. 23, 52-56, APA 515. On March 15, 2022 the Claimant applies to Cintas (scrubs laundry folding), and does not mention anything about the Confluence injury. Tr. 23, 60, APA 1132. On his application, Claimant disclosed his prior jobs with Draexlmaier and Fitesa, but not Confluence. Tr. 62. "I didn't work there that long, so I feel like it wasn't relevant." Tr. 62. In response to the question of any employment within the past five years, Claimant stated that he did not disclose Confluence because he only worked there two months, and he felt you should work somewhere at least a year to disclose it. Tr. 62. Yet, he told them about Fitesa, where he worked for nine months. Tr. 63. He told Cintas he was working 50 hours per week for Confluence, but did not disclose the employer or anything else about the job because he thought it would help him get the job. One week out from the Confluence alleged injury, Claimant is asked if there is anything that would prevent him from doing work duties. He answered, "No," explaining there was nothing heavy about the job. Tr. 64-65, APA 1134. Claimant then admitted that he did not mention Confluence, his termination, or hack or neck problems because he thought it would prevent him from getting the job at Cintas. Tr. 66.

On or around April 4, 2022- Claimant goes to work for Cintas. Tr. 61. On or around August 22, 2022- Claimant settled his motor vehicle accident case from April 2021 (which involved significant chiropractic treatment for his neck, among other things) for $20,000 and was represented by John Newlon at McCravy, Newlon and Sturkie Law Firm. Tr. 35-37, APA 863-866, the same law firm who first represented the Claimant in this case.

On August 23, 2022 Claimant had his first deposition in this claim. Claimant testified he had been paid $60,000 from all of the settlements, but had only $8,400 left. Tr. 38-39.

In 2023- Claimant worked for Cintas for a portion of the year and then filed an EEOC claim against them. Tr. 66-68. 2nd Depo p.6-10. He was out on leave for his neck surgery with Dr. Van Pelt, and then negotiated settlement on his EEOC claim with Cintas. Tr. 69-70. He was given about $3,000 severance to leave Cintas and sign a release. Tr. 70. "So it seems like there is a pattern though of every job you have had, ultimately, you become the victim of either racial discrimination, or people don't like you? Yeah." Tr. 68.

At some point in 2023- Claimant went to work at Greenville Memorial Hospital as a security guard through Allied Security. Tr. 24. When he applied with Allied, he stated that he told them about the metal in his neck and ankle, but the form regarding prior disability was checked "No." Tr. 73-74, APA 1235. Claimant stated that he wanted to work full-time, 30 hours per week or more, and did not tell them about prior problems because he needed the job. Tr. 75, APA 1250. He stated on his application that he left Draexlmaier because he "moved to another city to seek a job with a closer commute to work." Tr. 76, APA 1250. He said he left Fitesa for better benefits and a package. TR. 76, APA 1250. He did not disclose any of his prior worker's compensation claims to Allied. Tr. 77. He stated he had to run up 70 flights of steps to get the job with Allied. Tr. 79. Claimant gave a long, rambling, unresponsive answer to why he quit his job with Allied. Tr. 88-89. All of this appears to be inconsistent with what really happened.

On or about January 11, 2024, the Claimant underwent his Second deposition in this claim. There a number of inconsistencies in that deposition. At the hearing on June 19, 2024 the Claimant was working at Cook Out. Tr. 24

The medical evidence in this case is also filled with inconsistencies and omissions that call the credibility of this claim into question.

Alan Duncan, Nurse Practitioner

NP Duncan testified in deposition on December 2, 2022, that he was unaware of prior right shoulder problems or hardware in Claimant's body from prior surgeries. He stated that AC joint arthritis and subacromial impingement, as seen on the MRI, could be acute or chronic, and there was nothing on the MRI to suggest either. APA 233-34. He opined the problem may be cervical based on Claimant's complaints of intermittent radiculopathy, which he did not report on the first two visits. APA 234. NP Duncan stated that the basis of his causation opinion as stated in the questionnaire was Claimant's report that he did not have shoulder pain prior to the alleged work accident. APA 235-36. He testified he knew nothing about Claimant's actual job at Confluence. APA 237. He signed another questionnaire, relating the neck, again based on Claimant's subjective complaints and information. APA 238. He had no prior medical records detailing problems. APA 239. He was also unaware of the prior worker's compensation claims and prior motor vehicle accident. APA 240. He had no idea about Claimant's current job. APA 241. NP Duncan opined only that Claimant had both neck and shoulder pain. APA 242. He stated that Dr. Van Pelt would be in a better position to determine cervical causation and withdrew his causation opinion in deference to Dr. Van Pelt. APA 245. However, he stood behind his questionnaire that the work accident caused the right shoulder pain, which was premised on the accident as reported to him by Claimant. APA 247.

Dr. Van Pelt

Claimant went on his own to Dr. Van Pelt to treat his neck and ultimately had surgery in April 2023. Tr. 80-82, APA 285. Claimant did not tell Dr. Van Pelt about his prior drug and alcohol addiction, nor about the motor vehicle accident in April 2021. The medical records state that Claimant told the Dr. Vanb Pelt's PA he was working on a boat and "lifted the motor." Tr. 81-82.

Defendants took Dr. Van Pelt's deposition because he filled out a questionnaire in January 2023 causally relating Claimant's cervical problems to his alleged work injury. APA 258-291. Dr. Van Pelt does not treat shoulders beyond physical therapy and medication; his specialty is the spine. APA 272. Dr. Van Pelt stated that he did not see an MRI following this incident, nor does there seem to be one. APA 269. He stated there was nothing in NP Duncan's April 20, 2022, note or his review of the MRI that would allow him to opine as to when the shoulder problems and arthritis began. APA 273.

He reviewed the cervical MRI report and images dated July 19, 2022, and found Claimant to have severe degenerative disc disease at several levels of the spine, including herniations, and an annular fissure. APA 276-277. He stated that it was hard to confirm that the findings on the neck MRI were the sole source of Claimant's symptoms. APA 282. It was his testimony that the "annular fissure" made it clear to him that Claimant's current cervical problems were from an accident in the March 8, 2022 timeframe, his alleged work injury, as opposed to the motor vehicle accident in April 2021 where he admittedly injured his cervical spine. He indicated that the presence of an annular fissure on the July 2022 MRI showed that some acute trauma would have had to take place in the last 6-8 months and relating it to a motor vehicle accident 14 months prior would have been "too long." APA 277-78. There was no prior MRI. APA 289.

However, Dr. Van Pelt's opinion on the annular fissure timing was rebutted by both Dr. Walter Grady, **Claimant's own IME expert**, and Dr. Phillip Hodge, neurosurgeon and Defendants' IME expert. Moreover, "reasonable probability" of being related is not "most probably" related and does not meet the required standard under South Carolina case law. Dr. Van Pelt testified, "It puts it within the window of reasonable probability that it did have something to do with an injury within that time period." That's not enough to meet the standard required for

medical evidence in South Carolina claims. South Carolina worker's compensation law is clear that medical evidence must meet the most probably standard and be stated to a reasonable degree of medical certainty. *See, e.g., Armstrong v. Union Carbide*, 308 S.C. 235, (Ct. App. 1992). 417 S.E.2d 597 (Ct. App. 1992); *Bass v. Isochem*, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005); *Brooks v. Benore Logistics Sys.*, 437 S.C. 376, 879 S.E.2d 1 (Ct. App. 2022).

Dr. Van Pelt and his PA also reviewed MRI findings, which they opined created a "diagnostic dilemma." Specifically, the MRI imaging revealed cervical spinal stenosis most prominent on the left and severe left foraminal narrowing, but that is not concordant with the radicular symptoms he is having, which are more on the right. APA 87, 104. (Emphasis added.) Dr. Van Pelt saw the MRI results secondhand through Amy Hunt's notes. APA 271. Dr. Van Pelt also testified, consistent with Dr. Hodge's and Dr. Grady's testimony that there is no way to look at an MRI and see if the problems related to an acute injury or a chronic problem, "but again, that's not my expertise." APA 273. Asked about the chiropractic records from the April motor vehicle accident, he did not review them but stated, "a lot of these objective findings and stuff are really kind of spoken in a different language than what we would speak.... And I don't know that I would necessarily correlate them." APA 288.

At his deposition, Dr. Van Pelt was shown Claimant's prior drug use records (crack, cocaine, marijuana), his psychological records (schizophrenia, delusional thoughts, domestic violence), and all ER and chiropractic records for the April 2021 motor vehicle accident prior neck injury. He did not actually look through all of them. He was also shown Claimant's settlements from many prior claims and motor vehicle accidents. He was not aware of any of those and had not seen any of the pre-existing records. APA 264-68. However, Dr. Van Pelt stated, "I don't think that would've affected my [causation] opinion or the treatment recommendations." APA 269.

Defendants do not dispute that his treatment recommendations were correct for the medical condition. But he's focused on the medical treatment of the neck, not Claimant's credibility and whether the injury at Confluence happened and caused any injury. During the whole deposition, Dr. Van Pelt was focused on his surgery and treatment for Claimant's neck and whether the imaging and exam were consistent with his symptoms and thus medically warranted, as we would expect a doctor to be, not whether the neck injury was caused by the alleged injury at Confluence. The neck surgery by Dr. Van Pelt was ultimately paid for by Claimant's group health insurance with Cintas. So this is not a case where Claimant has not received medical treatment.

The question remains whether it's causally related to a work accident. Claimant's brief on page 6 cites the "most persuasive evidence" as the October 20, 2022 finding that the exam and imaging are consistent with radiculopathy and Claimant's symptoms. However, "concordant" and "consistent with" are not causation. Nothing in that addresses even slightly whether the injury was caused by a work-related accident. That is premised solely on what Claimant told Dr. Van Pelt.

Dr. Hodge

> [Claimant] claims he was injured on March 8, 2022, lifting a boat from a mold. [Claimant] complained of right-sided neck pain and right arm pain with numbness and tingling to the 3-5 digits. An evaluation of the shoulder was done that showed acromioclavicular arthritis and had some exam findings consistent with this. Injection to this region did not seem to help.
>
> MRI shows multilevel spondylitic changes. C4-5 spondylitic disc protrusion with moderate central canal stenosis. C5-6 annular tear with left C5-6 disc protrusion with severe stenosis. C6-7 left-sided spondylitic disc protrusion with moderate stenosis. These findings are degenerative in nature except for an annular fissure. An annular fissure can be acute but can also be a chronic finding. It can be symptomatic or asymptomatic. Also, the neural compression is more pronounced on the left, but the patient's symptoms are only on the right side.
>
> He had an EMG/NCS [that] showed right C7 radiculopathy and mild carpal tunnel syndrome.
>
> Ultimately, I cannot say beyond a reasonable doubt that the imaging findings are

> related to the injury. His symptoms may have been related to the imaging findings, but do not exactly fit. You must depend on the patient's subjective report of symptoms and timing to determine causality. Given the information I have reviewed, there are reasons to believe that he may not have reported the injury/condition accurately.

APA 1221. (Emphasis added.) On page 16 of his brief, Claimant argues that because Dr. Hodge cannot say it's related, that "it can still be more likely than not that the findings are related." This is a variation on the argument from ignorance logical fallacy—because we do not have evidence against it, something must be the case. This is also impermissible burden shifting. Defendants do not have to prove an injury is definitely not related. Claimant has to prove that it is. Dr. Hodge recognized that doctors must base their conclusions on Claimant's subjective reports, which were not reported accurately.

Dr. Grady

Claimant spent about thirty minutes with Dr. Grady for an IME on one day, for which he paid $1,000-1,050. Claimant did not tell Dr. Grady about the drug or alcohol problems, his mental health, nor the April motor vehicle accident because he was not asked. Tr. 83-84. The medical notes state that he told Dr. Grady he was pulling a bolt out of a mold that was jammed. Tr. 85. Dr. Grady is an orthopedic and hand surgeon, but he no longer does surgery. He sees general orthopedic patients and does a large number of litigation IMEs for claimants' attorneys. On January 31, 2024, Dr. Grady testified that he does not treat annular fissures. He sends that out to neurosurgeons or orthopedic spine surgeons, especially where there is a herniated disc. APA 307-08. He confirmed that the MRI showed degenerative disc disease, which is chronic, and marrow reconversion, which may be associated with trauma or with people who smoke. APA 311. He stated annular fissure could be from wear and tear or could be caused by lifting. APA 311. There is no way to look at the MRI and tell whether the problems were acute or chronic, and he testified

he was unaware of any expert that could. APA 311. He opined it was aggravation of pre-existing degenerative pathology but could not say when or where. APA 312.

He was not aware that Claimant had any pre-existing problems or a prior motor vehicle accident in 2021, eleven months prior to his alleged work injury. Grady Depo 19-22. He was not aware of some of the other claims Claimant had made against other employers. He was not aware of Claimant's prior drug use, and he was not aware of Claimant's history of domestic violence. He testified that he could not say to a reasonable degree of medical certainty that Claimant's current condition had been aggravated by his work injury on March 8, 2022 because he did not know what his baseline was prior to seeing Claimant in November 2023. He admitted that he did not have an MRI dated prior to March 8, 2022. Grady depo 14. He also very clearly confirmed that Claimant has annular fissures that showed up on his MRI and "'fissures' were not always an acute problem. Those annular fissures could have been present for many years prior to the MRI." Grady depo 15. Dr. Grady testified there was no way to tell if they came from a work accident or a car accident or something else. He was also under the impression that Claimant was injured lifting a motor while working on a boat. Grady depo 24.

The doctors rubber stamping their prior determinations regarding causation do not solve or wipe away the problem that those opinions were based on Claimant's omissions and self-serving description of the unwitnessed accident.

Claimant's Testimony Inconsistencies

During his first deposition on August 23, 2022, Claimant first said he left the job at Vermeer after two months because "I really wasn't interested in that job like I thought I was going to be." Depo. 17. However, he then admitted that he was terminated for being hostile. Depo 18-19. He stated under oath that he was terminated from Fitesa for missing too many days. Depo. 20-

21. He then admitted that he fell down some stairs and fractured his hip. Depo. 21. He stated he was represented by The Clardy Law Firm and received a $15,000 settlement the day before, of which $8,400 was left because "I'm a pretty good saver." Depo. 22-24. He stated he was jumping up and hitting a machine piece at Draexlmaier and came down on his left ankle wrong. He was represented by Jason Sturkie and received a $60,000 settlement. Depo. 25. He had surgery and retained hardware with Dr. Womack. Depo. 50. Claimant initially stated he left Confluence for a job where he would not have to lift anything heavy, but then admitted he was fired for being hostile when someone stole his tools. Depo. 34-35.

Claimant stated he takes a lot of medicine for headaches at Cintas but did not disclose to them that he got hurt at Confluence, nor did he tell them he was in deposition. Depo. 40-41. He stated that he felt something pull in his right shoulder and a little headache. Claimant stated he previously went to Live Well Chiropractic for his back but never had headaches prior to the alleged injury. Depo. 44-45.

At hearing, Claimant denied prior problems with his neck before the April 2021 motor vehicle accident, and denied seeing a chiropractor for his cervical spine. Tr. 56. APA 694. Claimant testified that he never had prior headaches but claimed headaches related to this alleged incident at Confluence. Tr. 57. Yet, Claimant was seeing a doctor for headaches in 2019. APA 702. When defense counsel questioned if he was being honest, Claimant testified, "things that 1 feel like wouldn't have nothing to do with me performing my job, 1 wouldn't share." Tr. 57.

Let us be very clear. His drug and psych problems were not minor episodes. We are not saying that his past drug problems had any causal nexus to the alleged right shoulder injury. Rather, Claimant's failure to disclose substantial prior drug, alcohol, and psychological problems are very relevant to credibility and a pattern of not disclosing prior problems when it does not behoove him.

"So you lied for the things you thought would help you, and you didn't put down the things you thought would hurt you, correct? That's the way it seems. Yes, sir." Tr. 64. Those are the facts. And they are undisputed.

STANDARD OF REVIEW

The Commission often gives claimants the benefit of the doubt. But Claimant has the burden of proof to bring their claim within the Act and to prove that a work-related injury occurred in the course of and arising out of employment. An award must not be based on surmise, conjecture or speculation. *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960); *Glover v. Columbia Hospital of Richland County*, 236 S.C. 410, 114 S.E.2d 565 (1960); *Leonard v. Georgetown County*, 230 S.C. 388, 95 S.E.2d 777 (1956); *Wilson v. Darlington*, 229 S.C. 62, 91 S.E.2d 714 (1956); *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955); *Kennedy v. Williamsburg County*, 242 S.C. 477, 131 S.E.2d 512 (1963).

> We begin our analysis by repeating two principles which form the lens through which we view this case. First is the guiding principle undergirding our workers' compensation system that the Act is to be liberally construed in favor of the claimant. *Carter v. Penney Tire & Recapping Co.*, 261 S.C. 341, 349, 200 S.E.2d 64, 67 (1973); *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 350, 656 S.E.2d 753, 759 (Ct. App. 2007). The second is the equally compelling evidentiary principle that an award may not rest upon surmise, conjecture, or speculation. *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999). Instead, "[an award] must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Wynn v. People's Natural Gas Co. of S.C.*, 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961).

Hutson v. S.C. State Ports Auth., 399 S.C. 381, 387, 732 S.E.2d 500, 502 (2012). *See also Rudd v. Fairforest Finishing Co.*, 189 S.C. 188, 200 S.E. 727 (1939). "The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." *Crisp v. SouthCo.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013). *See also Turner v. SAIIA Constr.*, 419 S.C. 98, 104, 796 S.E.2d 150,

154 (Ct. App. 2016); *Patel v. BVM Motel, LLC*, 433 S.C. 337, 857 S.E.2d 564 (Ct. App. 2021).

ISSUES PRESENTED

I. **The Full Commission is unique in South Carolina law as the finder of fact in that they do not see or hear the witnesses. As such, some deference is due to the single Commissioner.**

II. **The record amply bears out that Claimant had numerous physical and psychological problems that he failed to disclose to his doctors or employers.**

III. **There is no evidence, other than Claimant's problematic testimony, of a work-related accident, including video.**

ARGUMENTS

I. **The Full Commission is unique in South Carolina law as the finder of fact in that they do not see or hear the witnesses. As such, some deference is due to the single Commissioner.**

The Full Commission Panel is unique in South Carolina as the finder of fact in that they do not see or hear the witnesses at hearing. This is unlike the circuit court in criminal and civil cases and the Administrative Law Court in other administrative cases. There, the finder of fact is the one who actually hears the witness and can evaluate body language and how they answer questions. Defendants would argue that while the Commission may certainly take its own view of the evidence, prudence dictates that it accord some deference to Commissioner Beck's determination of credibility where it was derived from how Claimant presented at hearing.

The appellate courts have implicitly approved the single commissioner giving less weight to the treating doctor's opinion "because of the objective evidence and [her] own observations and impression at the hearing." *Fishburne v. ATI Sys. Internat'l*, 384 S.C. 76, 87, 681 S.E.2d 595, 601 (Ct. App. 2009). Indeed, it is a large measure of the point of in person hearings before a commissioner—to assess credibility and determine the weight to be given to evidence. It is well-established and undisputed that "the Commission is the sole fact-finder in workers' compensation cases, and ... any questions of credibility must be resolved by the Commission." *Smith v. S.C.*

Dep't of Mental Health, 329 S.C. 485, 501, 494 S.E.2d 630, 638 (Ct. App. 1997). "It is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion." *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967).

However, much of Commissioner's Beck credibility determination was based on inconsistencies in Claimant's sworn testimony and his failure to disclose information, which will be discussed *infra* under Issue Three.

II. The record amply bears out that Claimant had numerous physical and psychological problems that he failed to disclose to his doctors or employers.

Let's look at the cases cited in Claimant's brief—specifically, their facts and where they diverge from this case and where they're similar. In *Brailey*, the Court of Appeals held that medical testimony was the only competent evidence relating causation, that employer had failed to prove fraud in the application, and that there was no evidence employee intended to injure himself by failing to disclose prior injury. Defendants have not raised the third argument here. And in light of the Supreme Court's recent opinion in *Brailey*, questioning whether *Cooper v. McDevitt and Street* has any continued validity under the ADA, Defendants have not opted to pursue the second argument. But the first argument—causation—is key and different.

Michau: *Michau v. Georgetown County*, 396 S.C. 589, 723 S.E.2d. 805 (2012). *Michau* was about the medical standard required to be proven in repetitive trauma cases. This is not an alleged repetitive trauma case. Michau was in his 60s and had worked twice for employer over 20 years as a truck driver and then motor grader operator, smoothing dirt and gravel on roads, working 10 hours per day. He first sought treatment 10 years in, ultimately requiring shoulder surgery, and the orthopedic surgeon opined that the repetitive work activities over the years resulted in the

severe osteoarthritis in both shoulders. The issue was whether Dr. Tountas's, who was not the treating physician, statement was stated to "a reasonable degree of medical certainty" as required by S.C. Code Ann. § 42-1-172 for repetitive trauma claims. "We stress, however, that our opinion is a narrow one limited to medical evidence given by expert opinion or testimony as provided for in section 42-1-172 and the facts of this case." *Id.* at 596, 723 S.E.2d at 808. *Michau* cannot thus be extended.

Clemmons: Claimant cites *Clemmons* on page 18 of his brief. However, *Clemmons* was not about whether a work-related injury occurred. Clemmons slipped and fell on wet straw, severely injuring his back, and Lowe's admitted Clemmons had suffered an accepted, compensable injury. *Clemmons v. Lowe's*, 420 S.C. 282, 284-85, 803 S.E.2d 268, 269 (2017). The issue in *Clemmons* was the degree of impairment where every medical professional who assigned a rating stated that Clemmons lost more than 70% use of his back. Also significantly, the court did not hold that he was permanently and totally disabled, as is often presented, but only remanded the case for a hearing to determine whether employer could rebut the presumption that he was permanently and totally disabled under the scheduled member back—S.C. Code Ann. § 42-9-30 (21). The issue was not whether there was a work-related injury. In contrast, this is a fully denied claim because there was no evidence of a work-related injury apart from Claimant's admittedly problematic testimony.

The Supreme Court recently clarified its holding in *Clemmons* in *Paulino*. *Paulino v. Diversified Coatings, Inc.*, 443 S.C. 150, 903 S.E.2d 503 (2024). Our Supreme Court noted in *Paulino* that four doctors in Clemmons assigned over 50 percent impairment, including two who assigned over 90 percent impairment, with "no evidence" to the contrary. *Id.* at 158, 903 S.E.2d at 507. Paulino was assigned very low ratings and yet was held by the Commission to be permanently

and totally disabled. "Importantly, we did not hold that a claim for benefits under section 42-9-30 must be proved by medical evidence, nor did we hold that medical evidence is conclusive. Instead, we explained that the records must be considered as a whole." *Id.* at 159-60, 903 S.E.2d at 507 (emphasis added). "[T]he single commissioner found that Paulino "was honest and clear in his testimony." *Id.* at 163, 903 S.E.2d at 510. And even then, the Supreme Court "acknowledge[d] it is a close call whether there is substantial evidence to support the commission's finding that Paulino suffered a more than fifty percent loss of use to his back in light of two impairment ratings below twenty percent." However, it affirmed based on the substantial evidence standard. *Id.*

Brailey: *Brailey v. Michelin N. Am. Inc.*, 438 S.C. 77, 882 S.E.2d 172 (Ct. App. 2022). Brailey was hired by Michelin as a rubber streteher for large mining tires and developed back pain three months later. He had failed to disclose a back injury for Richtex Brick from 20 years earlier and had worked for Westinghouse for 16 years in the interim without back issues. On the initial injury, he did not see a back surgeon and settled for $2,500. He stated on his application that he had never had a back injury or pain and did not list Richtex Brick as a previous employer, clearly trying to hide the prior injury. Brailey also told Employer to talk to his lawyer and hung up when they called to offer transportation for his follow-up doctor visits. The Commission found that Brailey repeatedly attempted to justify his answers, gave confusing answers, and provided vague, rambling responses. The Court of Appeals leaned heavily on the record containing no evidence that the 1997 injury did not resolve, not indicating the extent of the injury, and containing no medical evidence that the old back injury contributed to the new back injury. Clearly, at the forefront of the court's analysis was that he had gone 20 years seemingly without issues. The court held the MRI and neurosurgeon's opinion were uncontradicted and constituted substantial evidence.

But notably, the burden is not on defendants to prove the extent of the prior injuries. The burden is not on defendants to prove that a condition is most probably not related to an alleged work injury. That argument, on page 15 of Claimant's brief, is impermissible burden shifting and places an unprecedented and almost unmeetable burden of proof on defendants.

Crane: *Crane v. Raber's Disc. Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020). In *Crane*, our Supreme Court held that Commissioner Susan Barden's focus on Crane's credibility was misplaced where video showed an air hose suddenly separated from its fitting, causing an explosion-like sound, surveillance video showed him stepping away and covering his ears with his hands, ENT medical exam from the next day showed eardrum perforations, testing showed profound hearing loss, and he had 60% right and 80% left eardrum tears.

> In cases where credibility is not a substantial issue, however, even a valid credibility finding is not a proper basis for deciding a question of fact. This case illustrates that point. Even if Crane was untruthful in his testimony at the hearing, his claims for future medical care, temporary total disability, and permanent impairment caused by hearing loss are based on objective medical evidence. The opinions of his treating physicians that he suffers from severe to profound hearing loss as a result of his work-related accident are similarly based on objective medical evidence. There is little in Crane's medical records—or anywhere in the record before us—that indicates Crane's credibility reasonably and meaningfully relates to whether he actually suffered hearing loss on February 19, 2014.... We can discern no basis—either from context or from the commission's orders—on which the commission could find Crane lied to make his eardrums appear ruptured. Similarly, neither the context of the commission's decision nor any explanation in the commission's orders give us any meaningful basis on which to understand that Crane's lack of credibility justifies ignoring the results of three different hearing tests—conducted by two different ear, nose, and throat specialists—each of which showed severe to profound hearing loss.

Id. at 646-48, 842 S.E.2d at 354-55.

However, as noted in the Court of Appeals' opinion in *Brailey*, "Our supreme court has noted it has affirmed the factual findings of the Commission based on credibility determinations when credibility constituted a 'reasonable and meaningful basis' for the Commission's decision."

Brailey, at 90, 882 S.E.2d at 179.

Contrast *Brailey* and *Crane* with **Rummage**. The Court of Appeals held that credibility was a substantial issue where claimant had long-standing significant psychological issues. *Rummage v. BGF Industries*, 434 S.C. 441, 865 S.E.2d 380 (Ct. App. 2021). The Supreme Court granted certiorari but then dismissed it as improvidently granted. S.C. Sup.Ct., July 26, 2023. Rummage alleged concussion from a slip and fall, but she had long-standing and significant psychological issues that she failed to disclose. The evaluating doctor found her non-credible with dramatic inconsistencies and clear evidence of symptom exaggerations, with a subsequent course atypical of concussions. In contrast, Claimant's attorney obtained three doctors' opinions that her psychological problems were real and increased since her fall. *Id.* at 449-50, 865 S.E.2d at 385-86. The court held that "credibility was a substantial issue because the deterioration in Claimant's psychological condition was not objectively measurable like the employee's hearing loss in *Crane*. *Id.* at 459, 865 S.E.2d at 390. And in her deposition, like here, "Claimant denied some relatively major prior issues entirely." *Id.*

In *Lee v. Bondex, Inc.*, 406 S.C. 97, 749 S.E.2d 155 (Ct. App. 2013), cited by the court in *Crane*, claimant was installing a large metal hood at a plant when the hood fell on him, and he testified that a sharp edge landed on his shoulder, resulting in immediate pain and difficulty working. The compensability of Lee's injuries depended on "whether they were caused by the hood falling on his shoulder." *Id.* at 100, 749 S.E.2d at 156. The commissioner denied the claim, based on no compensable injury, but the appellate panel reversed, relying on all four doctors, who all opined that the accident caused his injuries despite other medical evidence indicating the injury was not work-related. The court in *Crane* stated that *Lee* "illustrates the important role credibility findings play when credibility reasonably and meaningfully relates to factual disputes to be

decided by the commission." *Crane*, at 645, 842 S.E.2d at 354-55. Here, not all the doctors agree. NP Duncan demurred. Dr. Hodge and Dr. Grady both opined that causation cannot be determined. And Dr. Van Pelt based his opinion that his exam and imaging was consistent with Claimant's reported symptoms and the accident as Claimant described it to him. Whether Claimant needed neck surgery, which he ultimately had, is admittedly within the treating doctor's purview. But whether it happened at work or somewhere else, whether it aggravated any pre-existing injuries from Claimant's prior claims or motor vehicle accident that he failed to disclose is based solely on Claimant's self-serving testimony.

"The lesson of *Crane* is that the Panel may not base a factual finding on a credibility determination without explaining both the basis of the credibility determination and how the determination rationally affects the disputed fact. An unexplained credibility determination or an unexplained use of a credibility finding means the factfinder's approach was arbitrary rather than rational." *Clark v. Philips Electronics/Shakespeare*, 433 S.C. 186, 857 S.E.2d 378 (Ct. App. 2021). Commissioner Beck did that here. Meticulously and at great length. He found that Claimant, who was before him in the hearing room testifying, as he is not before this Panel, was not credible. Defense counsel pointed out the numerous contradictions in Claimant's hearing and deposition testimony. Commissioner Beck found that the doctors' opinions regarding causation did not carry weight because they were based on what Claimant told them, which omitted all prior injuries, including recents. Claimant repeatedly lies on employment applications. Claimant has successive worker's compensation claims. Claimant gets terminated in under a year for cause from every job. This is not a long-term employee with a distant prior injury. This is a pattern of dishonesty that warrants credibility barring this claim. As Commissioners, you are well aware how rarely the Commission goes out of its way to rule on credibility. Hearing instructions routinely tell attorneys

not to address credibility unless instructed to do so.

Claimants don't get to determine what information is relevant for hiring purposes. They are required to be forthcoming on their application, and in worker's compensation law, and there need to be consequences for lying. Employers do not need or want to put employees where they could re-injure themselves, and there are very real costs to the system in doing so. Our Supreme Court recently stated, "To be clear, this Court does not in any way condone such fraud." *Brailey v. Michelin*, 443 S.C. 468, 471, 906 S.E.2d 83, 84 (2024). However, this is precisely what is happening as barriers to lying about claims, what happened at work, when, prior employment, prior claims, prior injuries continues and yet claims are held to be compensable. The costs to the system are too high to allow recovery every time someone alleges without proof beyond their testimony a work-related injury, where there are numerous credibility problems. Credibility is a valid basis to determine that no work-related injury occurred.

III. There is no evidence, other than Claimant's problematic testimony, of a work-related accident, including video.

Here, there was no video, no witnesses, nothing to evidence a work-related accident except that Claimant says so. Tr. 12-19. He argued below that the time was not exact and therefore the video is not determinative. He said the injury happened around 11 a.m. Employer retained that video and several minutes on either side of it. No accident is apparent. No pain is apparent in the videos from the next day when Claimant continues working. Claimant had no witnesses at the hearing that could corroborate that the accident happened. Tr. 57-58. Claimant stated that he told Mr. Don's son. Tr. 58. However, he did not depose him or subpoena him for hearing. Tr. 58.

As explained in *Turner v. SAIIA Construction*, the Court of Appeals was unwilling to extend the unexplained death presumption to where employee had no memory of the accident. 419

S.C. 98, 796 S.E.2d 150 (Ct. App. 2016). The Court explained that the presumption is based on who is in a better position to offer evidence. Where Claimant has no memory of the incident, "no 'inequality of information' exists because the employer does not know any more about the circumstances of the claimant's injury than did the claimant himself." *Turner*, at 106, 796 S.E.2d at 155. Analogously here, if the accident in fact happened at work, Claimant was in the best position to document it by reporting it immediately to his employer. In *Crane*, there's video and immediate reaction. There's next day objective medical evidence directly tying the injury to the accident. In *Clemmons*, it was an admitted slip and fall. In *Michau*, it was repetitive injury, putting it in a different category altogether. In *Brailey*, it was an admitted back injury, but disputed based on failure to disclose a back injury twenty years ago. In *Paulino*, claimant was found to be very honest and forthright. As stated above, our courts have held that medical evidence is not conclusive, but the record must be read as a whole.

Here, ALL of the doctors' diagnoses, treatment, and testimony is premised at bottom on Claimant's self-serving report of where and how the injury happened, and even that is not consistent in the medical records. Claimant's brief makes much of the fact that during depositions, the doctors did not change their opinion regarding causation when presented with additional evidence about the other things Claimant had failed to disclose. Defendants submit that with this many undisclosed priors, as noted by both Dr. Grady and Dr. Hodge, no doctor could tell whether there was a specific work injury on March 8, 2022, that caused Claimant's alleged right shoulder and neck injury.

Doctors cannot tell where an accident happened. They weren't there. Doctors can tell the damage done to the body and whether it is consistent with a described mechanism of injury. We're not accusing them of lying, as Claimant's brief alleges. They are doctors, and they are human.

They think like doctors, not like lawyers. In deposition, they are trying to get insurance to pay for care that has already been provided. It is not the same when they are presented with priors in a deposition for a few seconds versus being told about it and determining causation at the initial diagnosis. As humans, we tend to make up our minds initially based on the information we have at that time, and it is harder to shift that once our minds are made up based on new information. There were multiple undisclosed priors with medical treatment.

Doctors are doing a job. It's not their job to figure out if an injury is work-related. That's our job. And we wouldn't be doing that job if we allow this injury to be compensable where all of the doctors' opinions are based on Claimant's telling them what happened and the only consistency in this case is that Claimant has lied and omitted information repeatedly. Credibility is key to this case, and Commissioner Beck saw that and held Claimant had not met his burden of proof in a detailed, well-reasoned opinion.

Appellate courts recognize that bad facts make bad law. This is that case. If this is compensable, claimants can lie with impunity, and all they have to do is find a doctor to causally relate their treatment to the injury they say happened. The Worker's Compensation Act requires more—at bedrock, it requires a work-related injury.

CONCLUSION

Defendants do not bear the burden of proof in this case related to the overall compensability of this claim. Claimant does. And he cannot lie to doctors, lie to employers without consequence when he has relevant, recent injuries, and has been terminated for cause from seemingly every single job he had had. Credibility is central to whether a work-related injury occurred, and Commissioner Beck appropriately found that Claimant was not credible, undermining his doctors' opinions on causation that was based on his self-reporting. Please note that Claimant has had at

least three attorneys on this claim.

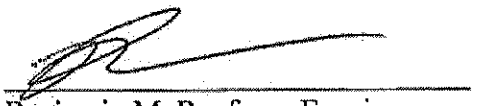
Commissioner Beck's decision and order was amply supported by the record. In fact the evidence is simply overwhelming. Claimant's arguments regarding the errors with the order were brought to defense counsel's attention, were reviewed and answered, and many changes were made. They were also brought to Commissioner Beck's attention prior to signing the order. Commissioner Beck, who is highly experienced, made 168 detailed, specifically enumerated findings of fact and conclusions of law in his directives. The extent of the evidence supporting his decision is extraordinary and overwhelming.

There was no credible evidence of a work-related injury, and Claimant failed to meet his burden of proof. Claimant repeatedly lied or omitted information and was appropriately found not credible. Everything else is superfluons!

For these reasons, and other reasons stated herein above and in the Order, the Defendants respectfully request the Full Commission Appellate Panel fully affirm the decision of the single Commission.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



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June 9, 2025
Greenville, South Carolina

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 2202565

Rusty Young, Employee/Appellant, vs. Confluence Outdoor, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Defendants.	CERTIFICATE OF SERVICE

I Geri L. Lell do hereby certify that I am the paralegal for attorneys for the Defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 9th day of June, 2025, I served the APPELLATE BRIEF OF DEFENDANTS/RESPONDENTS via email to:

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Geri L. Lell, Paralegal to
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Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.

BEFORE THE SOUTH CAROLINA

WORKER'S COMPENSATION COMMISSION

CASE NO.: 2202565

Rusty Young, Employee, Claimant, vs. Confluence Outdoor, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Defendants.	)

H E A R I N G

DATE: Wednesday, June 19, 2024

TIME: 12:33 p.m.

LOCATION: SC Workers' Compensation Commission
1333 Main Street, Suite 500
Hearing Room A
Columbia, South Carolina 29201

BEFORE: Commissioner T. Scott Beck

REPORTED BY: Patricia Andrews
South Carolina Court Reporter

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(INDEX AT REAR OF TRANSCRIPT)

THE COURT: Today's date is June 19, 2024. This is Workers' Compensation File No. 2202565. The Employer is -- I'm sorry. The Claimant is Rusty Young, represented today by Attorney Chip Alexander.

The Employer is Confluence Outdoor, Inc. The Carrier is Great American Alliance Insurance Company. They are both represented today by Attorney Ben Renfrow.

The date of alleged accident in this matter is March 8, 2022. I believe the last get-together we had, you all had stipulated to an average weekly wage of 636.08, and a comp rate of 424.07. Is that correct, gentlemen?

MR. RENFROW: That is correct.

MR. ALEXANDER: Yes, sir.

THE COURT: Okay. We are here today on Claimant's Form 50. During a pre-hearing conference in this matter, we had the discussion regarding objections to submissions.

Claimant has objected to Defendants' Tab 9, Tab 11, Tab 12, Tab 14, and Tab 19. I am going to overrule the objections on each of those tabs. While the entirety of those documents may lack relevance, I think there are portions of those that do contain relevant information, and I think the matter really comes down to an issue of how much weight I place on

those during my deliberations, if any.

So with those objections dealt with, are there any other objections to APAs, jurisdiction, venue, or any other matter?

Mr. Alexander?

MR. ALEXANDER: Commissioner, just to be clear, it was 10 and 11, not 11 and 12. But, otherwise, no, sir.

THE COURT: You told me 11 and 12.

MR. ALEXANDER: If I did, I misspoke, and so I --

THE COURT: Let me go back and look at the 10.

MR. ALEXANDER: 10 and 11 were the prior deposition transcripts, so I may have said 11 and 12.

THE COURT: Nope. You're right. I just -- I just wrote it down wrong. I'm sorry. My ruling remains the same.

MR. ALEXANDER: Yes, sir.

THE COURT: Any other objections?

MR. ALEXANDER: No, sir.

THE COURT: Mr. Renfrow?

MR. RENFROW: None. I will --

THE COURT: All right. Without further objection --

MR. RENFROW: I wanted to clarify just for

your -- for the sake of the -- the record. When we were last together, he was not going to submit some deposition transcripts in his brief because he wanted me to submit sealed copies. We haven't addressed that yet, but there are no objections otherwise.

THE COURT: All right. Let's talk about that before we start. Let's -- what's the issue with that?

MR. ALEXANDER: Oh. That was just -- I've got them in -- they're in my exhibits. I just wasn't sure before if he was going to submit the sealed copies or if it mattered to you, but --

THE COURT: It doesn't matter to me if it doesn't matter to you.

MR. RENFROW: It does not matter at all. I just wanted to make sure you didn't need sealed copies.

THE COURT: No. I don't want two copies.

MR. RENFROW: Okay. Good. I agree.

THE COURT: I'm only going to read one. I can assure you.

MR. RENFROW: I agree. All right.

THE COURT: Now, if there's an objection from a party, I want the original. I'm fine with them being in the -- in the APA submissions.

MR. RENFROW: Great.

THE COURT: Okay. All right. Without further

objections, the Commission File becomes a part of the record, with the exception of self-serving declarations and unstipulated medical reports.

Also during the pre-hearing conference in this matter, the respective positions of the parties was discussed. From the standpoint of Mr. Young, his position is that he suffered compensable injuries to his spine, to his right shoulder, and his right arm, and is seeking a finding of compensability to those body parts. He is asking for causally related medical care, or reimbursement for causally related medical care, asserts that he is entitled to lifetime repair, maintenance, or replacement of implanted hardware resulting from his injuries; that he is at maximum medical improvement as of July 20, 2023, with ratings of 51 percent to the spine, 8 percent to the right shoulder, and 5 percent to the right arm, and is seeking an award of permanent partial disability to each of those body parts.

Mr. Alexander, with respect to Mr. Young's position, anything else you need to get on the record or any other matter you wish to litigate, sir?

MR. ALEXANDER: Yes, sir. Just briefly, I wanted to point out some of the records, since I have seen this memorandum now for just a second. If possible, I would like to at least reference some of the

records on our -- on our side of this for -- so it's on the record.

THE COURT: Are you talking about this document that Mr. Renfrow handed up?

MR. ALEXANDER: Yes, sir.

THE COURT: I will be happy to -- I'm not going to go through all of these records with you, but if you would like to prepare something similar to what Mr. Renfrow did, and you have that to my office by close of business tomorrow, I will consider it. It is not evidence for either one of you, understand that. The memorandum of law is not evidence, this is not evidence, but if you want to attract my attention to certain parts of the APAs you think are relevant to your client's position, if you'll email that to Shawnee by close of business tomorrow, I will review that.

MR. ALEXANDER: Okay.

THE COURT: All right. All right. With regard to the Defendants' position, this is a denied claim in its entirety based on a number of grounds.

Number one, they assert fraud in the application. Number two, credibility of the Claimant. Number three, assert that no accident occurred. Number four, that the Claimant's current condition is not related to his employment with the Defendant, and

finally, that the Claimant can't satisfy his burden of proof in this proceeding.

Mr. Renfrow, with regard to the Defendants' position, anything else in addition to that, sir?

MR. RENFROW: Nothing further, your Honor.

THE COURT: Are you going to submit that to me tomorrow?

MR. ALEXANDER: I will do my best. I'm supposed to be on a flight at 1:00 tomorrow, but I will get it done today when I get -- when I get back.

THE COURT: Okay. I just want to mark the file that we are waiting on it.

MR. ALEXANDER: Yes, sir.

THE COURT: Okay.

MR. ALEXANDER: Commissioner, we also are intending to at least look at one of the videos if you wanted to --

THE COURT: It was my understanding we weren't.

MR. ALEXANDER: I'm going to have him -- I want him to be able to look at least one --

THE COURT: All right.

MR. ALEXANDER: -- with you, so --

THE COURT: That's something we should have -- you should have told me before the hearing

starting because I was under the impression we weren't doing that.

MR. ALEXANDER: Okay. Sorry.

THE COURT: Shawnee, can you hook us up on that one?

(A discussion was held off-the-record.)

THE COURT: All right. Mr. Young, could I have you come on up here, sir?

MR. YOUNG: Yes, you can.

THE COURT: You can have a seat right there.

MR. ALEXANDER: Sit him in the chair there?

THE COURT: Yeah. All right. Before we get started, just to hit a couple points. If you would speak clearly --

MR. YOUNG: Yes, sir.

THE COURT: -- as we go through the proceeding. She has to be able to hear everything you're saying, the recorder has to pick you up, and I'm about half-deaf, and so I certainly need to hear what -- what you're saying.

MR. YOUNG: Yes, sir.

THE COURT: If you are asked questions, you need to respond with a verbal answer.

MR. YOUNG: Yes, sir.

THE COURT: Okay. Any other questions?

MR. YOUNG: No, sir.

RUSTY YOUNG, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

THE COURT: All right. Please state your full name for the record.

THE WITNESS: Rusty Lee Young.

THE COURT: All right. Mr. Alexander?

EXAMINATION

BY MR. ALEXANDER:

Q. Mr. Young, how far did you go in school?

A. Up to the 9th grade.

Q. And did you have any school after 9th grade?

A. And after the 9th grade, I went back to school a few years later. I went to Job Corps to get my high school diploma.

Q. And did you do --

A. And finish things.

Q. -- anything else at Job Corps?

A. And I had gotten a certificate for welding.

Q. Did you work in between dropping out and going back to Job Corps?

A. Yes. I worked at restaurants and it was like a -- I wanted to do better. I wanted to do more, so I decided to go to Job Corps.

Q. Okay. Was that --
A. I still had a chance to go to Job Corps.
Q. Okay. Was that fast-food restaurants or what kind of restaurants was it?
A. Fast-food, McDonald's, KFC.
Q. Okay. All right. What kind of work did you do after you left Job Corps?
A. I worked at Lee's Welding for two years, and then after that I went to DRAXLMAIER, and I worked there for eight --
Q. Eight years?
A. Eight years, yes, sir. And after that, I did temp jobs on and off to the temp service.
Q. When did you start working for Confluence?
A. Confluence, early 2022, so it was about two months before the incident.
Q. Okay. Can -- can you tell us what your job duties were day-to-day?
A. So we put some powder-based formulas inside the mold, and -- and then we'll put the screws in, and then we go to the operator thing to move it to the oven and connect, and it -- it would melt the -- the fiber down that we put in into a canoe.
Q. Okay.
A. A kayak.

Q. A kayak? Okay. And so, apparently your job was molding and making kayaks?

A. Yes.

Q. Because that's the most basic way to explain it?

A. Yes, sir.

Q. Okay. Can you tell me about the day you were injured?

A. So the day I was injured, I was trying to de-mold a boat out, which they had defects to some of the molds, where you had to use the parts to burn the plastic out to -- because it gets piled up in, so it makes it harder to get out, so I was trying to de-mold a kayak, and at the time that we're in, I pulled something. I popped something in my shoulder.

Q. Okay. So you -- it was stuck?

A. Yes, it was stuck.

Q. Okay. Did you fall down?

A. No, sir.

Q. Did -- did anybody really see you get injured?

A. So once I popped it, I -- I also -- I ignored the pain, but -- to an extent. So I still tried to continue. I didn't -- I didn't think it was a tear or anything, so I continued to work until I told Mr. Don's son that I might have to go and see his dad, because his

dad would have at least told him I would have to report to, the incident.

Q. Okay. So did you report it to anybody on -- on the date?

A. Yes, I did. I reported it to a supervisor, but I don't remember his name.

Q. Okay. Did you fill out a report or anything?

A. Yes. He wrote a report. He asked me around what time, and I wasn't sure, and he said just guess. Make a guess. And I said it was around 11:00-something.

Q. So after you did the report, what happened?

A. He told me to go home for the rest of the day and see would it make it better, and come back tomorrow and try, and if it is still a problem the next day, he would take me to -- well, he -- I didn't know he was going to take me to the doctor. He said I could go to the doctor.

Q. Okay. So you went home that day and came back to work on the 9th?

A. Yes, sir.

Q. Okay. And did you work on the 9th?

A. Yes, sir. I did.

Q. Okay. How did that go?

A. So I was working for a little while when the same thing happened again.

Q. Well, what do you mean?
A. The -- the kayak got stuck in the mold.
Q. Uh-huh.
A. And -- and it was hard to take out.
Q. Okay. Did you talk to anybody on the 9th about -- about your injury?
A. Yes. I -- I -- that's when I said that I want -- I'm going to talk to -- I decided I wanted to go tell Don that yeah I need to go be seen.
Q. So -- well then, what -- what happened when you told Don?
A. He ended up taking me to the AOC Urgent Care.
Q. Okay. And we will get back to the treatment, but as far as the day of the accident and the next day, do you remember looking at the videos?
A. From the -- from the March 8th at the -- yes, I do.
Q. All right. And do you remember the March 8th video, how long that video was?
A. Yes. It was around 15 or 20 minutes.
Q. Okay. And do you remember the exact time of -- of that video?
A. I think it was 15 minutes before and 15 minutes back.
Q. All right. If I told you that it was from

10:52 to 11:07 --

A. Yeah.

Q. Does that make -- does that --

A. Yes.

Q. -- sound right? And that time was based on you guessing around 11:00?

A. Yes.

Q. Okay.

A. I really didn't want to give a time, but -- so I just -- I said it was around 11:00.

Q. So after seeing that video from the day of, did you see the incident that happened on the video?

A. From March the 9th?

Q. No. March 8th, the date of the accident.

A. No, I did not see it.

Q. Okay.

A. No, sir.

Q. Do you know if you were shown any video before that 10:52 to 11:07 period?

A. I do not. From my understanding, it's -- it doesn't exist.

Q. Okay. And when we were in Greenville before, you were able to see the video from March 9th?

A. Right.

Q. And that's the first time you had seen that

video?

A. Yes, sir.

Q. Okay. Did seeing the videos of -- of yourself on the 9th change anything about your recollection of the accident or anything after that?

A. No, sir, it didn't. It actually allowed me to remember more, and with that, it -- it shows on the video actually how it was the first time when I got hurt.

Q. So one of the videos that we showed --

A. It -- it shows when you try to de-mold the boat and it's stuck, and how much effort you have to put in it to get it out.

MR. ALEXANDER: Commissioner, I would like to pull up that video when, you know, when we can.

THE COURT: We're not watching the entirety of this thing, I presume?

MR. ALEXANDER: It's -- I think the whole thing is 30 seconds.

THE COURT: Okay.

THE WITNESS: And -- and while -- okay.

MR. ALEXANDER: It's the 72-83-5.

(A brief video is played.)

BY MR. ALEXANDER:

Q. So as she hits play on this, is this you over

here?

A. Yes, sir.

Q. Okay. And can you tell me what you saw on that video?

A. Me trying to -- so this one is not the one I seen in Greenville the other day. Oh, that -- yeah. Yeah. Yes, it is.

Q. Is that the spot that you were talking about? And I believe that was about 20 seconds in.

A. Yes.

MR. ALEXANDER: If we can go back, please, ma'am.

MS. RADCLIFF: To the beginning or --

MR. ALEXANDER: Just somewhere back in here would probably be fine.

MS. RADCLIFF: Is that good?

BY MR. ALEXANDER:

Q. So right here, where you're looking at though, this is -- is that what you're saying? That it's stuck?

A. Yeah.

Q. And it has to be jerked up?

A. Yes.

Q. And so, is this similar to what happened to you on the 8th?

A. Yes, sir, it is.

MR. ALEXANDER: Okay. All right.

And if you could just play that one more time from there.

BY MR. ALEXANDER:

Q. And that's the -- the jerking that you did on the date of the accident? That's the same?

A. Yes.

Q. Similar at least?

A. Similar.

Q. Okay. And so, going back, you said you were -- you -- you went to Don, and then he took you to an urgent care?

A. Yes, AOC. Yes, sir.

THE COURT: Somebody tell me who Don is.

THE WITNESS: The safety guy.

THE COURT: The safety guy?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

BY MR. ALEXANDER:

Q. So he took you there to get checked out?

A. Yes, sir.

Q. Okay. And don't tell me what they told you, but can you tell me what they -- what the urgent care did for you?

A. So they -- they did x-rays on my shoulder, and

then they made a note that they wanted to send me to an orthopedics a week from now and revisit them. I know I went back to see them and it was a week later.

Q. Did you get to see them when you went back?

A. No. They said that they couldn't see me.

MR. RENFROW: Object to what anybody said.

THE COURT: Sustained.

BY MR. ALEXANDER:

Q. Yeah. Don't tell us what anybody --

A. Oh. I apologize.

Q. That's okay. But you weren't -- you weren't able to be seen at urgent care when you went back a week later?

A. Right.

Q. Okay.

A. I wasn't.

Q. Do you remember having work restrictions?

A. Yes. They gave me work restrictions to -- I don't remember what they was, but they made me sweep the whole facility after that. They had me on light duty.

Q. Okay. So when you went back to work, you were on light duty?

A. Yes, sir.

Q. Okay. Do you remember where you treated after -- after you went back to urgent care the second

time?

A. So I ended up going to the ER.

Q. Okay.

A. And they made an appointment for me to -- to get with orthopedics.

Q. Okay. All right. And then the -- the records will be there for themselves to -- so I don't need you to go through --

A. Yeah.

Q. -- everything. But you -- most of your treatment was then with Piedmont -- Piedmont Orthopaedics?

A. Yes, sir.

Q. Okay. And what -- what -- what body parts were they treating through Piedmont -- Piedmont Orthopaedics?

MR. RENFROW: Object to what was treated.

THE COURT: Overruled.

THE WITNESS: When -- at first, my shoulders because they just sent me to a shoulder orthopedist. They -- they put injections in my arm. Two or three from what I can remember.

BY MR. ALEXANDER:

Q. And did they treat your spine?

A. And then, eventually, he said that it seemed

like it's more than --

MR. RENFROW: Objection to what he said, Commissioner.

BY MR. ALEXANDER:

Q. Don't -- don't tell me what the doctor said. Just did you get treatment from your neck -- or for your neck from Piedmont Orthopaedics?

A. Yes.

Q. Okay.

A. And he sent them to --

Q. That's fine.

A. Okay.

Q. And did you do physical therapy?

A. I did. I did physical therapy and went to pain management for -- for the injections in my spine.

Q. Okay.

A. The epidural --

Q. And --

A. And I had like two epidurals.

Q. Okay. Did those give you any -- did they help at all?

A. At that month for a little while, but it -- it didn't last.

Q. Okay. And once those failed, what treatment did you have after that?

A. Dr. VanPelt gave me -- he did surgery.
Q. Okay.
A. On my spine.
Q. All right. And did you follow up after surgery with more -- more treatment?
A. I did. I was -- they still wanted me to come to pain management to keep an eye on me. To give me medicine and Dr. VanPelt checked the same thing to make sure everything was going like he expected.
Q. How is your shoulder today?
A. I still -- I still wake up every morning with it hurting. I have good days and bad days. Like one of the -- one of the days, it -- well, today wasn't a good day.
Q. And what does that mean?
A. It's like it -- it hurts to a point like when I move it certain ways, I can feel the sharp pain.
Q. And how about your neck? How is your neck today?
A. Well, my neck, it's -- it's better than before the -- it's better since he did the surgery, but I still have a lot of problems with it. I have stiffness. Certain ways -- I can hold my head a certain way a long time, it'll -- it'll throb, like it'll get warm and feel like it has a heartbeat sometimes, but that -- when I

take the medicine, Tylenol will sometimes help cool it down.

Q. Have you worked since your injury at Confluence?

A. Yes, sir.

Q. Okay. Do you remember how long you were at Confluence after the injury?

A. Two days.

Q. Okay. Do you remember where you worked next?

A. Yes, I went to Cintas.

Q. Okay. What did you do at Cintas?

A. We fold garments. We did a lot of stuff with medical places, like we -- scrub tops. Mainly, we did a lot of laundry.

Q. Okay. So -- and your --

A. We wash and --

Q. And your job was folding the --

A. Yes, sir.

Q. Okay. Was that a -- was that heavy duty?

A. It -- it's not.

Q. Okay. I mean, it's a scrub. I guess it's not -- it doesn't weigh much?

A. Yes, but like when you fold, it -- it could get up to an amount, but I never did like fill up the cart.

Q. Okay. And did you work after Cintas anywhere else?

A. Yes, sir. I worked at Greenville Memorial Hospital.

Q. What did you do there?

A. I was a security officer.

Q. Okay. And did you -- have you left that job now?

A. Yes, sir.

Q. Okay. And what are you currently doing?

A. I work at -- at Cook Out, the restaurant.

Q. Okay. Anything else you do?

A. No, sir. And the -- like the restrictions, they keep me from getting other jobs too. I guess for my own safety, I guess.

Q. But you're -- you're able to work within your restrictions at -- at Cook Out right now?

A. Yes, sir.

MR. ALEXANDER: Okay. Commissioner, that's all I have right now.

THE COURT: All right. Thank you, sir.

Mr. Renfrow?

MR. RENFROW: Thank you, Commissioner.

EXAMINATION

BY MR. RENFROW:

Q. All right. Mr. Young, let's -- let's clean this up a little bit. You can read and write with no trouble, correct?

A. Yes, sir.

Q. Okay. And you have no kind of learning disability?

A. No, sir.

Q. Okay. And you will agree, in spite of all of the dropping out and going to Job Corps, you were a pretty good student when you got to focusing and decided to come back --

A. Yes, sir.

Q. -- and get -- let me finish. And when you decided to come back and get your high school diploma, you were an above-average student?

A. Yes, sir.

Q. Okay. And are you currently married? Right?

A. Yes, sir.

THE COURT: I'm sorry. What's the question? Did you just make a statement?

MR. RENFROW: Me?

THE COURT: Yes.

MR. RENFROW: I said, Are you currently married?

THE COURT: Thank you.

MR. RENFROW: I'm sorry.

THE COURT: Please continue.

MR. RENFROW: I have to put my glasses on. I couldn't tell if you were looking at me or looking ...

BY MR. RENFROW:

Q. All right. Now, when I took your depositions the first time back in 2022, six or seven months after this alleged accident, you were taking college courses in Theology, weren't you?

A. Yes, sir.

Q. In fact, you were working towards an Associate's degree in Theology?

A. Yes, sir.

Q. In fact, you weren't just doing it online like a lot of people do. There is an in-person program in the Upstate of South Carolina, and you were going there, correct?

A. Yes, sir.

Q. Okay. And then when I took your deposition the second time, I think it was January -- February of 2024, you had completed the certificate in Theology, correct?

A. Yes, sir.

Q. And you were working towards your Associate's degree?

A. Yes, sir.
Q. All right. And then after that, your goal was to pursue a Master's degree, correct?
A. Yes, sir. If the Lord wills.
Q. Okay. And are you still pursuing all of that?
A. Yes, I am. I go back.
Q. Okay. Now, your attorney asked you about your work history.
A. Yes.
Q. Things you have done in the past, but you actually had a job at Ingles in the past, correct? The grocery store.
A. Before Job Corps.
Q. That's fine.
A. Yes.
Q. And -- and you were terminated from that job, correct?
A. Yes.
Q. And you were terminated because they said you -- you couldn't get the work done fast enough or something? That's what you told me.
A. Yes. For like two weeks I was, yeah.
Q. Okay.
A. Yes.
Q. And then you worked for a company that you

didn't mention earlier by the name of Vermeer, correct?

A. Yes. That was at -- that was recent. That was recent.

Q. Okay. So you worked at Vermeer?

A. Yes, sir.

Q. Prior to going to work for Confluence?

A. Yes. I worked at Vermeer first, then I went to Confluence, yes.

Q. Okay. All right. And you got fired from the job at Vermeer based on some issues regarding racial discrimination, correct?

A. Yes, sir.

Q. Okay. You say you were accused of letting go for being hostile towards a coworker? Is that right?

A. Yes, sir.

Q. Okay. But then you also said you were accused of threatening violence against a coworker because he said something racially motivated or something that attacked your race. Is that correct?

A. No. No, sir.

Q. Okay. Explain it to me.

A. So, no. It was a lady that was coming in my area. She was trying to fight me, and then when I went to go report it the last time, and that was when all of that was said, after what you was mentioning about

they -- that I was being hostile.

Q. Okay. But you told me at your deposition the first time I took it that you were fired because of some racially --

A. Yes.

Q. -- motivated stuff?

A. Yes. That's what was they said, yes.

Q. Okay. That's what they said?

A. Yes, sir. The manager at HR.

Q. Okay. So did you threaten to hurt somebody?

A. No, I didn't.

Q. Did you say to somebody that people get shot for saying things like they said to you?

A. That -- yes. I said something similar to that. Yes, sir.

Q. Okay. All right. Then you worked for a company by the name of DRAXLMAIER, correct?

A. Yes, sir.

Q. And you worked there for eight years?

A. Yes, sir.

Q. All right. And you eventually filed a worker's comp claim at DRAXLMAIER, correct?

A. Yes, sir.

Q. I think the date of injury in that case was January of 2018. Does that sound right?

A. Yes, sir.

MR. RENFROW: Okay. For the record, that's APA Page 465, would be the records regarding that claim.

BY MR. RENFROW:

Q. Now, in that claim with DRAXLMAIER, you injured your left ankle, among other things?

A. Yes, sir.

Q. And you treated at Piedmont Orthopaedics through the same group you chose to go treat with in this case, and ultimately did your surgery, correct?

A. Yes. I -- I didn't choose it. They sent me there.

Q. DRAXLMAIER sent you there?

A. Uh-huh. No. You said the same group from DRAXLMAIER was who I went to is the same people I went to right now?

Q. Right.

A. From -- they sent me. No, I didn't choose it. I can't, you know.

Q. Okay.

A. No, sir.

Q. We will talk a little more about that in a minute. Eventually, you settled your case for the company of DRAXLMAIER for $60,000, correct?

A. Yes, sir.

Q. Okay. And it looks like you settled that sometime in September of 2019, just a few years before going to work for Confluence. Is that correct?

A. Yes, sir.

Q. All right. Now, you were -- as part of the settlement in that case, you were forced to resign that job as well, correct?

A. Yes, sir.

Q. Okay. And you then worked for a company called Fitesa?

A. Yes, sir.

Q. You drove forklifts for that company for nine months?

A. Yes, sir.

Q. All right. And that was the job you had just prior to going to work for Confluence?

A. So I worked at Fitesa, and then I worked at Vermeer.

Q. Okay.

A. And then Confluence.

Q. Okay. So Fitesa, Vermeer, then Confluence?

A. Yes, sir.

Q. Okay. And you first told me the reason you got fired from Fitesa was because you were accused of not communicating with a supervisor about something. Is

that right?

A. Yes, sir.

Q. But the reality is, you also filed a worker's comp claim where you said you fell down a flight of stairs there, correct?

A. Yes, sir.

Q. And you injured your back and your hip?

A. Yes, sir.

Q. All right. And that was a June 8, 2020, claim, and you were represented by The Clardy Law Firm in that case?

A. Yes, sir.

Q. And you were deposed in that case? I have submitted your deposition from that case in here, as well as the DRAXLMAIER case. Correct?

A. Yes, sir.

Q. All right. And that case --

A. I'm sorry. I apologize.

Q. That's all right. That case settled in May of 2021 for $15,000. Does that sound about right?

A. Yes, sir.

Q. All right. And that clincher is in the pre-hearing brief as well. Now, in addition to those two worker's compensation claims, you had a car wreck in April of 2021, correct?

A. Yes, sir.
Q. So right around the time you settled your case with Fitesa, you had this car accident, right?
A. Yes.
Q. Okay. Well --
A. No. No. No. I -- I'm sorry. I apologize. So I was at Vermeer when the car wreck happened.
Q. Okay. All I asked was, your clincher that we have in the pre-hearing brief --
A. Yes, sir.
Q. -- says it was approved by the Commission, and you signed it sometime around May 4th of 2021. Does that sound about right? Do you want me to show it to you?
A. No. Sure. Yeah.
Q. If that's what it says, do you believe that's what -- when it was?
A. I couldn't --
Q. Okay.
A. Refresh my memory. I'm sorry.
Q. Okay. Yeah. I would be glad to.
MR. RENFROW: APA Page 355, Commissioner. If you need to follow the tab.
BY MR. RENFROW:
Q. All right. This is the -- what we call the

clincher, the settlement agreement, in your case against Fitesa. Is that your name at the top?

A. Yes, sir.

Q. And this is the company you were working for?

A. Yes, sir.

Q. Hold that for a second.

A. Oh. Yes, sir.

Q. Does that look like the settlement agreement that you signed in that case?

A. Yes, sir.

Q. All right. And your signature is on the bottom of that settlement agreement. Do you see it?

A. Yes, sir.

Q. Okay. All right. And so this says it was received by the South Carolina Workers' Comp Commission, from the folks in this building right here, on May the 7th of 2021. Does that sound right?

A. Yes, sir.

Q. Does that look right?

A. Yes, sir.

Q. Okay. All right. And you had this car accident in April of 2021, just a month before you signed this settlement agreement, right?

A. Yes, sir.

Q. All right. We're getting there.

All right. In that car accident, you injured your ankle, that had been previously injured at DRAXLMAIER?

A. Yes, sir.

Q. And you injured your neck, correct?

A. Correct.

Q. Your cervical spine?

A. Yes, sir.

Q. Okay. And you received a lot of treatment. We have record after record after record from a chiropractor company by the name of Live Well, where you were getting treatment for your neck, correct?

A. Yes, sir.

Q. All right. And I think you treated up through July or August of 2021, just a few months before you applied for the job at Confluence. Does that sound right?

A. I think. Yes, sir.

Q. Okay. And you settled your car accident, interestingly, seven or eight months after you filed the claim against Confluence. You settled your car accident case in July or August of 2022. Does that sound right?

A. I'm not sure.

Q. Okay. If I have a settlement agreement where you signed it August 22, 2022, do you have any reason to believe that's not accurate?

A. It's possible.
Q. Do you want me to show it to you again?
A. Yes, sir.
Q. Okay. I would be glad to.
MR. RENFROW: All right. And, Commissioner, this is Tab 19, APA Page 860.
BY MR. RENFROW:
Q. Now, in the car accident case, you were represented by John Newlon at McCravy, Newlon and Sturkie Law Firm?
A. Yes. Yes, sir.
Q. And at the time, that was the same law firm that was representing you in this case?
A. Yes, sir.
MR. ALEXANDER: I'm sorry. Did you just reference 860?
MR. RENFROW: 863 is the settlement agreement from --
MR. ALEXANDER: I'm sorry. I thought you said 860. I just -- that -- that page was removed, so I just wanted to ...
BY MR. RENFROW:
Q. So this is a release of all claims. Does that look familiar to you?
MR. ALEXANDER: Commissioner, I'm not sure

about -- I don't mean to object. I'm not sure what pages he is looking at. Again, I just want to make sure this isn't 860.

MR. RENFROW: 863 to 866.

MR. ALEXANDER: Okay. Thank you.

BY MR. RENFROW:

Q. Does this look like the settlement agreement you signed in the case involving the car accident where you injured your neck? And you're welcome to hold it.

A. Oh, you don't need --

Q. Trying to get out of your space there.

A. Yes, sir.

Q. All right. This agreement says you signed it, it looks like August 22nd. It was handwritten August 22, 2022. Do you believe that to be accurate?

A. Yes, sir.

Q. Okay. And, ironically, and we'll get into it later, but that was the day before I took your deposition in the Confluence case. Do you recall that?

A. Yes, sir.

Q. Okay. All right. And you settled your car accident case for $20,000, correct?

A. Yes, sir.

Q. Okay. So up until that point, you had a $60,000 case settled with DRAXLMAIER; a $15,000 case at

Fitesa; and this car accident for $20,000, correct?

A. Yes, sir.

Q. Okay.

A. Yes, sir.

Q. All right. Now, since we're going through legal things, you also were involved in a legal custody battle back in 2016, '17, and '18; is that right?

MR. ALEXANDER: Object to relevance.

THE COURT: Mr. Renfrow?

MR. RENFROW: It's relevant to his experience dealing with legal issues, which is part of the essence of our defense of this case. It's his knowledge of the legal system and how --

THE COURT: How does that fit into any of the defenses you have raised?

MR. RENFROW: Well, I think it's just relevant to credibility and his knowledge of the legal system. I'll move on.

THE COURT: I think that's a good idea.

MR. RENFROW: I'll strike the question.

BY MR. RENFROW:

Q. All right. All right. Now, so we did the math, and those three settlements, they amount to somewhere around $95,000, but your attorneys got paid, so you ended up getting about 60 -- 55, $60,000, when

all was said and done from those three cases, correct?

A. Yes, sir.

Q. All right. But then when I took your deposition the day after you had just settled the car accident, you only had $8,400 left of all the settlements you had. Is that correct?

A. Yes, sir.

Q. Okay. And you had had some -- you had some bank account somewhere?

A. Yes, sir.

THE WITNESS: Can I say something?

THE COURT: Sure.

MR. RENFROW: Yes, sir.

THE WITNESS: So when that happened, that was around the time I -- my wife went back to school, and so I ended up helping her out, taking care of everything, and the neck part, it didn't hurt like it hurt when I hurt it at Confluence.

MR. RENFROW: Okay.

THE WITNESS: So I can speak more on it later on if you --

MR. RENFROW: Okay. All right. So you came to work for Confluence. I think the records will show on Page 508 and 509, that you actually applied to work there in December of 2021, just about four months after

your treatment for your neck ended at Live Well Chiropractic. Does that sound right?

A. Yes, sir.

Q. All right. And then you interviewed them -- with them on January 5th of 2022. That record is in -- in the file, and that they hired you and you started working January 11th, correct?

A. Correct.

Q. All right. And then three months -- or two months later, almost to the day, a little less than two months later, you say you got hurt again on the job. Is that right?

A. Yes. That -- it happened. He -- yes, sir.

Q. Okay. We can talk a lot more about that in a minute. Before --

A. Yes.

Q. -- we do, in your personnel file, which is -- a portion of which is submitted in the pre-hearing brief, there is an application. I want you to look at this with me.

MR. RENFROW: This is APA Page 510, Commissioner. Starting at Tab No. 12, and this is pages 508 to 519.

BY MR. RENFROW:

Q. I want you to look at these records for a

second and let you tell me. Does that look like your personnel file on record?

A. I can't really see the -- what these are.

Q. Okay.

A. Yes, sir.

Q. Okay. So with the exception of those weren't your medical records, in that you had a little trouble reading because of the copies, this looks to be records from your personnel file from Confluence?

A. Yes, sir.

Q. Okay. Now, when you applied to work for Confluence, did you -- were you completely honest with them on your application?

A. I -- well, I guess when they asked me about disability ...

Q. Is it your practice to be honest with your employers when you apply for jobs with them?

A. Yes, sir.

Q. Okay. Were you honest with Confluence when you filled out this application?

A. I had -- I let them know about my screw in my ankle.

Q. Okay. Were there things you weren't honest about?

A. I guess. I guess I didn't find it relevant.

I mean, can you rephrase the question?

Q. Yeah.

A. I don't -- I don't understand.

Q. Let me make it easier for you and show you some of these documents.

MR. RENFROW: So I want you to look at what I have numbered APA Page 510, Commissioner.

BY MR. RENFROW:

Q. Look at this document with me.

A. All right.

Q. The very top question says, Do you have any major -- Have you had a major injury or illness in the last five years? And what did you put?

A. None.

Q. Okay. So did you tell them that you had a work injury at DRAXLMAIER where you injured your ankle severely?

A. I -- no, sir.

Q. Did you tell them that you had an accident just a few years before at Fitesa, where you fell down stairs and injured your hip and your lower back?

A. I'm not sure.

Q. Okay.

A. I think. I don't know.

Q. I mean, if it's -- if it's not in here, do you

think you told them somewhere else?

A. I'm not sure.

Q. Okay.

A. I'm not sure.

Q. But you put "None," when the -- to this question, correct?

A. Yes.

Q. And did you tell them anything about the car accident?

A. Um ...

Q. That you had been injured and ultimately settled for $20,000?

A. I didn't know I was supposed to, actually. To tell you --

Q. Okay.

A. I didn't know.

Q. All right.

A. I had never heard nobody tell -- I -- I didn't even know really.

Q. Okay. All right. The fourth question on this form on Page 510 says, Have you ever been treated for drug addiction or alcoholism? Have you ever been treated for drug addiction or alcoholism?

A. Yes, sir.

Q. Why did you tell them you hadn't? You put no

on this questionnaire.

A. I have no idea to what --

Q. You were afraid if you were honest, you wouldn't get the job and be able to make money, correct?

A. Correct.

Q. Okay. So you lied so you could put money in your pocket?

A. I didn't -- didn't want to mention it. I mean, sometimes I would feel like I will already be judged -- I'll already be by my appearance, so I didn't want to help the situation. I didn't want to be -- I wouldn't --

Q. You're a good-looking guy. What is it about your appearance that would keep you from being honest on your application?

A. Insecurity.

Q. Okay. All right. So are you being honest in the case we are here about today with Commissioner Beck?

A. Yes, sir, I am.

Q. Okay. All right. So let's talk a little more about your application at Confluence.

After you were hired, they had you fill out a post-offer medical questionnaire. Did they not? Let me show you those two documents.

A. All right. Thank you.

THE COURT: What page?

MR. RENFROW: Those are APA Pages 518 and 519, Commissioner.

BY MR. RENFROW:

Q. Okay. Have you seen those before, Mr. Young?

A. Yes, sir.

Q. Okay. And let me read to you where you signed on the back on January 5, 2022, what you signed. You said, The purpose -- or Confluence says this is, The purpose of this inquiry is to determine whether I currently have a physical or mental qualification necessary to perform the job that has been offered. Whether and what accommodations may be necessary, whether I can perform the job without posing a direct threat to the health and safety of myself or others for the purposes and reasons stated on the attached questionnaire.

Do you remember reading that and signing that?

A. Right.

Q. Okay. And you wouldn't sign it without reading it, correct?

A. Right. Right.

Q. All right. So nothing in there says that if -- if you tell us that you got problems, we're going to fire you? In fact, it says, We're going to try to

find something that --

A. Right. To fit me.

Q. Right.

A. Right.

Q. All right. So here is the post-offer questionnaire that went along with that. All right. Do you see where this questionnaire says, Please have you ever been treated for any of the following conditions? Did you check diabetes?

A. Uh-huh.

Q. You did? No, you didn't check it.

A. Oh.

Q. Did you check diabetes?

A. No, sir.

Q. Do you have diabetes?

A. No, sir.

Q. Okay. So you didn't check it because you didn't have it?

A. Right.

Q. Had you ever had surgical -- or a fracture that had to have surgery?

A. No, sir.

Q. You had not had foot surgery at this point?

A. Well, yes. That surgery, the ankle surgery.

Q. All right. And this says, Have you ever had

back pain or a back injury? Did you tell them about the back injury at Fitesa on here?

A. No, sir.

Q. Did you tell them about the car accident just a few months before you filled this out, where you injured your back and neck?

A. No, sir.

Q. Okay.

THE WITNESS: I -- I apologize. Can I say something? If you don't mind.

MR. RENFROW: I guess so.

THE COURT: You're asking the questions.

MR. RENFROW: Sure. Say it.

THE WITNESS: Okay. So I wasn't planning on going to Confluence and getting hurt. It was from something that wasn't fixed. It was just bandaged up.

MR. RENFROW: Right.

THE WITNESS: And so I wasn't thinking about I was going to have to ever come to this situation again.

BY MR. RENFROW:

Q. So you weren't fixed from the car accident when you went to work there?

A. No. I felt good after that.

Q. Okay. So when they asked you about the prior back injuries and back pains, why didn't you tell them

if you felt good?

A. Because I didn't feel like it was relevant to it.

Q. And you were afraid that if you told them, they might not offer you a job?

A. Yes, sir.

Q. Okay. It also asked you a question about any other diseases or injuries or any health-related problems that would keep you from doing your job, and you didn't put anything on here. You did tell them that you had depression four years ago, correct?

A. Yes, sir.

Q. All right.

A. And the reason why I didn't say nothing is because I'm a hard worker. Whatever I do, I -- I put my all into it. Even at Confluence, they was saying I learned fast, and that I caught on fast, and I never had -- they said if I speed up, they would have to do more, so they wanted me to work at the pace that it was working at.

Q. Okay. Now, one of the things that Confluence does with its employees before it puts them in a location because they have several jobs --

A. Yes, sir.

Q. After you fill out that questionnaire, they

walk you back and let you see the position they have in my mind?

A. Yes, sir.

Q. They showed you the molding position that you ultimately were given, correct?

A. Yes, sir.

Q. And that's the molding position we see you doing here, correct?

A. Yes, sir.

Q. Okay. And so you didn't tell them anything about your prior back problems or anything like that prior to agreeing that you could do that job, correct?

A. Right, because I didn't have any problems anymore with -- with that.

Q. Okay. All right. Did you have any problems with any -- were you having any problems with depression when you went to work for Confluence?

A. No, sir.

Q. So you weren't having problems with your depression? So you told them about that, but -- so why didn't you tell them about your back and your neck?

A. Because it's -- it's like -- that's different because depression is quiet, and an injury is just sharing something that -- that happened to you. It -- it's hard to explain. Like I would -- I would

help someone if they said -- if they would have came to me wanting advice, anything like that, so I would put things that I feel like the world -- we need help anyways, and not be scared to share.

Q. Okay. All right. So you have told me at your deposition when I took it the first time, you -- you have had addiction to drugs and alcohol in the past, correct?

A. Yes. Way -- yes, sir.

Q. And you told me about a prior addiction to cocaine. Is that correct?

A. Yes. It wasn't an addiction. It was just something I was trying to use to block out things at the time.

Q. Okay. And you also had a prior diagnosis of schizophrenia and delusional thoughts, correct?

A. That, I don't recall.

Q. Okay. It's in your medical records that are in here, but all that you put on that post-hire questionnaire with Confluence was that you had some depression in the past. Correct?

A. Yes, sir.

Q. Okay. All right. Now, you had a supervisor at Confluence, and you have never had a problem with that supervisor, correct?

A. Correct.

Q. In fact, you told me at your deposition, you have never known anybody at Confluence to be dishonest or had a problem with them prior to you getting hurt on March 8th. Is that correct?

A. Correct.

Q. Okay. And then you claim you were injured on March 8th of 2022, at around 11:00 in the morning. Correct?

A. Around 11:00; yes, sir.

Q. All right. Now, I wasn't going to do this, and I'm still not going to show you the video, but I would ask, can you pull that back up just so I can explain to the Commissioner what we have? Because it's not real clear.

A. And the reason why I said --

Q. Hold that for a second.

A. Okay. Yes, sir.

MR. RENFROW: So --

MS. RADCLIFF: You want the same one?

MR. RENFROW: I don't. You don't need to pull up a thing. I just wanted to go through this.

BY MR. RENFROW:

Q. So, Rusty, you claim you got hurt around 11:00, and so the company was able to pull footage of

your alleged time of accident from eight minutes before and seven minutes after, so we have a 15-minute window based on what you told them. Is that right?

A. Yes, sir.

Q. Okay.

MR. RENFROW: And so what we have here, Commissioner, is we have a video from March 8, 2022, which is the top one, and then we have four videos from March 9, 2022, the day after the accident.

BY MR. RENFROW:

Q. And I'm going to ask you more about that in a minute, Rusty.

A. Yes, sir.

Q. But I want to make sure we are clear on that. So you told them 11:00. We got some video footage from around the time you told them you got hurt, but you mentioned earlier that you worked two or three more days after this alleged injury at Confluence, right?

A. On light duty two days. Yes, sir.

Q. All right. And you were pushing the broom around and they had you doing some other things. Is that right?

A. Yes, sir.

Q. All right. And then the records show, APA Page 515, that you were terminated on March 11, 2022,

three days after your alleged accident. Not because of the accident, but because you got into an argument with somebody who you thought stole your tools. Is that correct?

MR. ALEXANDER: Objection.

THE WITNESS: I didn't -- I didn't get --

MR. ALEXANDER: Hang on. That's not in the -- that's not in this record. That's not in -- I mean, 515 doesn't say anything about that.

THE COURT: Mr. Renfrow?

MR. RENFROW: 515 says that he was terminated for cause, Commissioner. I'm getting ready to lay the foundation from his -- his very own deposition testimony.

THE COURT: All right. I'll allow it.

MR. RENFROW: All right.

THE COURT: Okay. Proceed.

BY MR. RENFROW:

Q. All right. So March 11th, sometime in that timeframe, 2022, you were pushing the broom around the building and you left your tools laying around, and when you came back to get your tools, they were gone. Is that correct?

A. Correct. Yes, sir.

Q. All right. And you almost got in a fight with

a coworker because you thought a coworker had stolen your tools?

A. Not correct. I --

Q. Explain it to me then.

A. So I said that I don't have time to play. We all grown. And he walked off and slammed his hard hat down and started yelling at me.

Q. Okay.

A. And I did not do anything. I didn't wave my hand or look hostile or act hostile, and because it -- I was like, What was all that? And then he walked off.

Q. So you made the comment, I don't have time to play. We're grown folks. And he got upset with you?

A. Yes.

Q. And what were you talking about?

A. My tools was sitting right there, and they use the same tools I use, so I couldn't carry my tools around while I sweep, so I laid it right there where I work at usually, and that's how it happened. And -- and with the timeframe with the 11:00, around 11:00-something, it's not like I was -- when I got hurt, Oh, let me look at the time. So I really couldn't tell you the exact time, but I know in the timeframes that you showed me at Mr. Sturkie's office, sitting there with Mr. Sturkie, I didn't see it there.

Q. All right. We're jumping issues here. You're talking about the video again.

A. Oh, okay.

Q. Right? So, I mean --

A. I'm sorry.

Q. That's all right. No. I'll go back to the video in just a minute. Right now --

A. Yes, sir.

Q. -- I'm trying to figure out why you got fired from Confluence. And you told me you got into a verbal altercation with somebody you thought stole your tools?

A. Yes.

Q. Okay.

A. It was Mr. Don's, the safety guy's, son.

Q. Okay. And you said that someone -- you accused somebody of using the N-word towards you in this altercation. Is that right?

A. Yeah. That was way before all of that. He didn't -- he didn't use it freely. I just didn't pay it no attention because ...

Q. All right. Well, you told me at your deposition you couldn't remember who the guy was you were arguing with, but now you believe --

A. No. No. I -- no. I said it was Don's son.

Q. Okay. All right. But you ended up getting

fired because of the altercation, correct?

A. Yes, sir.

Q. Okay.

A. That he made.

Q. All right. Your attorney asked a bunch of questions about the video, and we are going to talk about that here in a second, but you said you felt something pull in your right shoulder, and possibly you had some pain in your neck. Is that right?

A. Yes, sir.

Q. Now, you told me at your first deposition that I took, that you had had some prior problems in your neck, even before the car accident in April of 2021. Is that correct?

A. No.

Q. Okay. Did you have --

A. I don't recall that.

Q. Did you ever have any -- see a chiropractor for pain in your -- problems in your cervical spine back in 2019, two years before the car accident?

A. My lumbar.

Q. No. Your cervical spine.

A. Yes.

Q. Okay. All right. So you did have prior neck problems, even before the car accident?

MR. RENFROW: And that's APA Page 694, Commissioner.

BY MR. RENFROW:

Q. You also told me when I took your depositions that you had never had prior headaches, but you're claiming that you have had some headaches related to this case at Confluence, correct?

A. Yes.

Q. And you told me at your deposition that you had never had headaches before, but you have had headaches in the past, correct?

A. Yes.

Q. Okay. Because my APA Page 702 shows that you were having problems and seeing a doctor for headaches back in 2019.

MR. ALEXANDER: I'm sorry. What page is that?

MR. RENFROW: 702.

BY MR. RENFROW:

Q. So what is it, Mr. Young? I mean, it seems like you have a hard time being honest about your problems.

A. I don't have a problem with being honest. I just -- things that I feel like wouldn't have nothing to do with me performing my job, I wouldn't share.

Q. Okay. All right. As we sit here today, do

you have any witnesses that you can show or -- or give to this Commissioner, or are here to testify today, that they saw this happen to you on March 8th of 2022, when you were working at Confluence?

A. I told Don's son that I -- he -- I don't know his name off the top of my --

Q. Do you have anybody here, Mr. Young?

A. Not here.

Q. Okay.

A. No, sir.

Q. All right. Now, we have seen this video. We have a 15-minute increment of video. The video that you see from March 8, 2022, the day of the alleged accident, is there anything in that video that you can remember that you could point to, to show this Commissioner, Yeah, this is when I got hurt?

A. Yes, sir. From what I just seen?

Q. Yes.

A. Yes, sir.

Q. Okay. What you just saw was from the next day and I'm talking about --

A. And from the video that you showed me. Well, that was sitting in Mr. Sturkie's office. It wasn't in that video. No, sir.

Q. All right.

MR. RENFROW: And, Commissioner, in the pre-hearing brief, APA Page 16, there is a long set of emails between Mr. Sturkie.

BY MR. RENFROW:

Q. Mr. Sturkie actually got these videos from you back in September. August, September, October of 2022. Is that correct, Mr. Young?

A. Yes, sir.

Q. Okay. So you -- when you saw these last week at the hearing, it wasn't the first time you have seen them? One of your --

A. No.

Q. -- other lawyers have seen it?

A. No, I had never seen that video.

Q. Okay.

A. That was back two weeks ago.

Q. Okay. So -- but you had seen a video with Mr. Sturkie?

A. I've seen a video, yes, sir, of the incident on 3/8. Yes, sir.

Q. All right. And then after you -- at some point in this case, you fired Mr. Sturkie and hired Mr. Wes Shull. Is that correct?

MR. ALEXANDER: Object to the relevance.

THE COURT: Relevance?

MR. RENFROW: It's relevant to the fact that I'm trying to establish how many times he has seen this video and --

THE COURT: Move on.

MR. RENFROW: Okay.

BY MR. RENFROW:

Q. All right. You mentioned to your attorney earlier, Mr. Young, that March 11th was the day you were terminated and you went to work for Cintas after Confluence. Is that correct?

A. Yes, sir.

Q. Okay. And the records show that on Page APA 1132, you were actually applying for a job at Cintas, going through their screening process, on March 15th of 2022. Three, four days after you had been terminated from Confluence. Is that correct?

A. I'm not sure.

Q. Let's flip over to Page 1132. Is it possible that you were already applying for a job at Cintas seven days after your alleged work injury at Confluence?

A. Did -- are you talking about after I -- so after I got fired? You're asking me did I apply for another job?

Q. Yes. Within a week of --

A. Yes, sir. I did.

Q. Oh, okay. So you agree you were applying within a week, and they hired you or were looking to hire you to be a production associate. Is that right?

A. Yes, sir.

Q. And then you went to work for them and actually started your work on April 4th of 2022. Is that right?

A. Yes, sir.

Q. All right. Now, when you filled out the application for Cintas, were you completely honest with them about your prior medical condition, your work history, and your problems?

A. I'm not sure.

Q. You're not sure if you were honest?

A. I'm not sure. I don't -- I don't remember.

Q. Well, I mean, do you believe you were honest?

A. I -- hopefully, I was. Yes.

Q. Okay.

MR. RENFROW: Commissioner, I'm going to start with APA Page 1132. We will work our way through some of this.

BY MR. RENFROW:

Q. All right. Mr. Young, I'm going to stand here and see if I can point things to you, so we can go quicker here.

A. Yes, sir.

Q. This is the application you filled out for Cintas, correct? APA Page 1132.

A. Yes, sir.

Q. Okay. And it looks like you filled it out on March the 15th, 2022, correct? Correct?

A. Yes, sir.

Q. All right. Now, on this Page 1133, it says, Please highlight your career over the last five years. Okay. And you put you have worked for eight years with DRAXLMAIER, and you put that you worked for Tesa, which I will assume is Fitesa, correct?

A. Yes.

Q. All right. Why didn't you tell them that you had worked at Confluence?

A. I had -- well, I wasn't -- I didn't work there that long, so I feel like it wasn't relevant.

Q. You didn't think it was relevant?

A. Yeah. It wasn't -- I mean, two months. You put it on the paper, Yeah, I have been there for two months. I --

Q. How long do you think you should work somewhere before you should put it on the work history from the last five years?

A. At least a year.

Q. Well, you only worked at Fitesa for nine months.
A. Yes, but, you know, it was at least almost a year.
Q. Okay.
A. About a year.
Q. But you told them you worked at Tesa as a --
A. When I worked for --
Q. -- power lift operator
A. -- nine months?
Q. -- for only nine months?
A. Yes.
Q. So why didn't you tell them about Confluence?
A. Because from my understanding, if you worked at a place for six months, it's not bad either.
Q. Okay. Okay. All right.
MR. RENFROW: 1133, Commissioner.
BY MR. RENFROW:
Q. The fifth question on there says, How many hours a week do you work in your present position? 50 hours a week. So you told them you were working 50 hours?
A. Every other week.
Q. Okay.
A. And so that was for Confluence.

Q. So --
A. My hours because every other Saturday we had to work at Confluence.
Q. Okay. So you told them about the hours you were working at Confluence?
A. Yeah.
Q. You just didn't tell them anything about the job?
A. Correct.
Q. Why? Why did you do that?
A. I don't know.
Q. Because you thought it would help you get -- get the job?
A. Yes.
Q. Because it says work ethic, and you thought this would show some good work ethic, even if it wasn't from one of the jobs you listed it was from?
A. Right.
Q. So you lied for the things you thought would help you, and you didn't put down the things you thought would hurt you, correct?
A. That's the way it seems. Yes, sir.
Q. Okay. All right. 1134. A bunch of questions on there. I'm not going to go through all of them. The Commissioner can certainly do that, but the very last

one says, Is there anything that would prevent you from working your assigned work duties?

Now, keep in mind, this is Cintas. A week ago, you got hurt at Confluence. You're filling out this application and it says, Is there anything that would prevent you from working your assigned work? And what did you put? What's the answer to that question?

A. No.

Q. That's a no. Okay.

A. They could have explained to me about how the job was going to be, and it wasn't going to be over -- it wasn't heavy. It's -- there wasn't nothing heavy about the job.

Q. Okay. All right. If we go to Page 1137, it says, Please step me through your work history. Is that the application you filled out with Cintas?

A. Yeah. I guess so.

Q. I mean, you think it's you because it's talking about Fitesa and DRAXLMAIER?

A. Yes.

Q. Right?

A. Yes, sir.

Q. And it's talking about you wanted something different and you wanted a long -- to be a long-term partner with the company, right?

A. Yes, sir.

Q. Okay. There is no mention in here of anything at Confluence? No mention of back problems, neck problems, or any termination from Confluence, correct?

A. Correct.

Q. Okay. Because you thought that would keep you from getting the job at Cintas?

A. Yes, sir.

Q. Okay. All right. Now, you then worked there for about a year. Is that right?

A. Yes, sir.

Q. And then, low and behold, you ended up filing an EEOC claim against Cintas, correct?

A. Yes, sir. I actually called the police at -- when -- at the end like because they tried hitting me with buggies and stuff like that. The police had to come.

Q. And you said that at Cintas they were harassing you?

A. Yes.

Q. They were trying to sabotage your job and that they discriminated because of your religion?

A. Yeah. It was stuff said about that actually. That's why I said it because one of my managers said, You're gonna take Sunday off because I know it's against

your religion to work on -- and I ain't say anything about it. I ain't ask -- I was gonna come in if I have to.

Q. You said they were -- thought you -- part of the reason they -- they were discriminating against you is because you were just too nice?

A. Yes.

Q. Is that right?

A. That, too, also.

Q. Okay. So you saw an opportunity and then you filed an EEOC claim against the company, correct?

A. Because they wasn't helping me on the inside, HR. It -- it just got worse.

Q. And in the end, the first job you had after Confluence, you filed an EEOC claim and you settled with them? Is that right?

A. Yeah. I -- I actually used the restroom on myself a couple times because they put me in an environment where it took a -- longer to take your clothes off, and with what was going on with me at the time for the surgery --

Q. Okay.

A. I told them about it, but I probably didn't write it down, but I let them know.

Q. Okay.

A. So they let me go home. Well, they let me leave early sometimes to see -- go to the doctor visits.

Q. Okay. So it seems like there is a pattern though of every job you have had, ultimately, you become the victim of either racial discrimination, or people don't like you --

A. Yeah. My wife said that.

Q. Okay. And then you sue them and get a little money and you move on?

A. Well, I -- he -- she don't -- she didn't say that, but.

Q. Okay. But that's what happened at Cintas?

A. He -- they paid me to leave. Like they gave me a service pay.

Q. Okay.

A. Like --

Q. Did you -- and you -- you told me at your deposition, you never once mentioned to the folks at Cintas that you worked for, the manager and supervisors, the people that make sure you get a paycheck --

A. Yes, sir.

Q. -- about the -- the accident you had at Confluence, did you?

A. I verbally shared it.

Q. Okay. But --

A. But I didn't write it down.

Q. You hadn't done that at the time I took your deposition, and I'm going to submit your deposition since we have so many problems here, but did -- do you remember who you told about your incident at Confluence?

A. See, after you gave me, I was still -- was I still at Cintas?

Q. I don't know.

A. Oh. Okay.

Q. Okay. But in spite of all of that, you let Cintas pay for your neck surgery that Dr. VanPelt did, right?

A. Yes, sir.

Q. Hadn't told anybody about it, but you let them pay for it?

A. No, I let them know. No, I let -- yeah. I definitely let them know.

Q. And you ended up missing work --

A. Yeah. And so I definitely --

Q. -- while you rested though?

A. Yes. Because they asked me was it work related and did it happen there on their job, and I said no.

Q. Okay. All right. So while you were out on leave, that's when y'all ultimately negotiated the

settlement for the EEOC claim, and then you went to work for Allied, correct?

A. That was actually when I was coming back. So when I was coming back, they didn't want me to come back.

Q. Right.

A. But that was before -- that was like after when I had told you before, I went on the surgery.

Q. That's my point, Mr. Young, though. You were coming back from the surgery that you had Cintas paid for, that you say happened somewhere else, and they didn't want you to come back because you had already had all of the -- these harassment claims and things going on, and during that timeframe before you ever came back to work, they said we're settling with you, and they paid you a $3,000 settlement?

A. I -- I guess. They didn't say settle. It's just a -- it was a service practice. They helped me move on to --

Q. How much did they pay you?

A. $3,000, I think.

Q. Part of the pay -- part of them paying that, though, you had to be done with the EEOC claim against them?

A. Yeah, I had to close.

Q. All of those claims for harassment and things had to go away?

A. Yes.

Q. Okay. And --

A. And I actually got something in the mail the other day about that. They -- it's happening about something with that. They want me to -- to -- I can or I can't. Well, I can. It's something different, but they -- it's probably --

Q. Something involving Cintas?

A. Yes.

Q. Okay. And all of the things you just said to this -- in front of this Commissioner and in front of me today, were how egregious you -- you peed on yourself and they locked you in a room?

A. Yeah, they would laugh. They would laugh. They're giggling.

Q. Things got --

A. They opened --

Q. Okay.

A. I'm -- I'm -- I apologize. So when I was in the restroom, a fella opened the door and just stared at me while I -- yeah, okay. Yeah. It -- it was terrible.

Q. Things got so bad you ultimately called the police on them?

A. Well -- I said, You hit me with a buggy again, I'm gonna call the police.

Q. And you settled with them for $3,000?

A. I ...

Q. Okay. All right. You negotiated the settlement with Cintas, then you go and work for Allied Universal. You called it Greenville Memorial Hospital, but it was actually a company called Allied Security, correct?

A. Yes.

Q. You weren't an employee of the hospital?

A. No, sir.

Q. Okay. And when you went into Allied, were you honest with them on your application for employment?

A. I'm not -- I don't recall.

Q. Well, again, do you think you were honest?

A. Hopefully, I was.

Q. Okay. All right.

MR. RENFROW: I'm going to refer you, Commissioner, to the APA Page 1235. All right. And let's start with the 1235, and then I'm going to go through and ask a couple of questions about some other things.

BY MR. RENFROW:

Q. All right, Mr. Young. This is the application

of voluntary self-identification of disability that appears to have been a part of your application packet on June the 6th of 2023, just a few months after you had surgery with Dr. VanPelt. Okay. Look at that document and tell me if you have ever seen that before.

A. Okay.

Q. Okay. That's part of your application packet. This asked you, much like some of the other applications, to -- to let them know about any condition that substantially limits one or more of your major life activities, including, but not limited to, the things on this form. Is there anywhere on that form where you told them about all of the prior medical conditions, the injuries at Confluence, the car accidents, the injuries to your neck, to your back, the other -- the ankle?

A. Not on here, but I -- I did fill out a form when I was there when they asked do I have any metal in my body.

Q. They asked you if you had any metal in your body?

A. Uh-huh.

Q. And do you know where that form is?

A. I don't. No, sir.

Q. Oh. So when they asked you if you had metal in your body, what did you tell them?

A. Yes, I have --
Q. And where do you have metal?
A. It was in my neck and my ankle.
Q. Okay. All right. But you don't know where that form is?
A. No, sir.
Q. All right. So this form says, Do you or do you not -- excuse me. It gives you three options. Please check one of the boxes below. Yes, I have a disability or have had one in the past; No, I don't have a disability and have not had one in the past; or I do not want to answer. Which one did you check?
A. Probably do not.
Q. Not probably. Which one did you check?
A. This was checked no.
Q. Okay. So you checked the box that says, No, I do not have a disability and have not had one in the past? Is that what that -- is that what that says?
A. Yeah. I know I filled -- I signed one saying no about I didn't want to express it. I don't know was it this job --
Q. I don't know. Do you have that document?
A. No, sir.
Q. Okay. All right. Let's keep moving. APA Page 1250. Again, all of this is part of the packet

that Allied Security sent us.

A. Yes, sir.

Q. You told them when you went to work there, you wanted to work full-time, and work at least 30 hours or more, correct?

A. Yes, sir.

Q. You didn't tell them you had just had a surgery a couple of months before? Didn't tell them anything about all of the prior problems? You want to work full-time?

A. No, I didn't share that at the time right there, but --

Q. You told them you wanted to work full-time?

A. Yes, I did.

Q. Okay.

A. I needed it.

Q. Okay. So were you physically able to work full-time?

A. I forced myself. It was -- it was hard, very hard at first.

Q. Okay. All right.

A. But.

Q. All right. 1274, the next page I want to ask you about. We will start with this one. Please -- please provide up to five years of verifiable

employment. So the stuff I have highlighted there, what did you tell them about?

A. Where?

Q. All right. Let me ask you a better question then, so I'm very clear. This says that you worked for DRAXLMAIER from July 20th of 2012 to March 9th of 2021, and you left DRAXLMAIER because you moved to another city to seek a job with closer commute to work.

A. It says that --

Q. Right there. That's your application, Mr. Young.

A. Okay. Yep. I see it.

Q. You didn't -- you didn't tell them that you had been asked and forced to leave as part of the settlement --

A. Oh, no.

Q. -- under the worker's comp claim where you had --

A. Right.

Q. -- a foot injury. The next one says, Spent three years or worked in March of 13, 2021, at -- it doesn't say where, but it says you left that employer for better benefits and -- and -- and a package. Was that your job at Fitesa?

MR. ALEXANDER: I'm sorry. Which page was

that?

MR. RENFROW: 1275.

THE WITNESS: And the reason why -- or you said -- Well, yeah, I need that. I was advised to settle with $3,000. I just wanted it to be done.

BY MR. RENFROW:

Q. No, no, no. We're not going back to that right now.

A. Okay. I'm sorry.

Q. Right now, I'm asking you about the application --

A. I forgot about the first one.

Q. -- you filled out.

A. Yeah.

Q. Did you tell them anything about your job at Confluence or that you had been terminated from Confluence?

A. No, sir.

Q. Okay. And you didn't do that because you knew if you were honest, it might cost you from being able to put money in your pocket, correct, and get a job?

A. Correct. Because I would rather be working for my money and instead of just giving it to me. That's why $3,000, I just wanted peace. That's why I just took it.

Q. Okay.
A. I would rather have peace.
Q. And 1275 says you're still working at Cintas at the time you filled this out, so was that true or had you already gotten a severance -- a settlement package from them for $3,000?
A. I was still -- I was doing a transition through when that was going on.
Q. Okay. All right. You didn't tell them about the EEOC claim with Cintas though, did you?
A. No, I didn't say -- no.
Q. All right. You told me at your deposition --
A. So do -- do I have to let them know?
Q. I don't know. I think you have to be honest.
THE COURT: Mr. Renfrow, how much -- how much further do you have?
MR. RENFROW: Not much.
THE COURT: Okay.
MR. RENFROW: Do you need a break? Do you want to take a break or do you just want me to hurry?
THE COURT: You're getting ready to wrap it up.
MR. RENFROW: All right.
BY MR. RENFROW:
Q. All right. Mr. Young, before you went to work

for Allied, you had to take a test where you had to run up 70 flights of stairs to get that job, correct?

A. Yes.

Q. Because you were a security guard and you might have to chase after patients?

A. It was something with the baby takes -- someone steals a baby.

Q. And when you went to work there, that was a -- you were working 40 hours a week at the time I took your second deposition, correct?

A. Yes.

Q. And you had been there I think seven or eight months by that point, and several months. Interestingly, all -- with all of that training you had, you -- you actually had to tackle a patient who tried to run out of the hospital, correct?

A. No. I -- it wasn't a tackle. No, sir.

Q. Okay.

A. I -- I called for backup and when backup got there, we and another officer and the doctor was approaching her, and we grabbed her, and she kicked me in the crotch.

Q. Okay. But you had -- well, you told me at your deposition that y'all had to tackle her and you were injured.

A. We -- we couldn't tackle a patient if we wanted to there, actually.

Q. All right. You had to physically manhandle her?

A. We had to hold her down with -- which it wasn't hard.

Q. All right.

A. But ...

Q. Now, at some point you went and asked Dr. VanPelt to do a surgery on your neck, correct?

A. Before I worked there?

Q. Yeah. That's -- that's -- my question -- listen to my question.

A. Okay.

Q. At some point during the course of this claim, you went to see Dr. VanPelt --

A. Uh-huh.

Q. -- on your own?

A. Yes, sir.

Q. And asked him to treat you for your neck, correct?

A. Yeah. A doctor sent me there.

Q. Okay.

A. Because she said there wasn't nothing she could do for me. That the problem was, I heard, too far

out of hand.

Q. But, Mr. Young, what I'm -- what I'm getting at is, the worker's comp people weren't sending you there. That's something you were going on to while you were --

A. Right. They didn't communicate with me at all.

Q. Okay.

A. They have --

Q. All right. And you -- we have taken Dr. VanPelt's deposition. We have his records. You never told him once about your drug and alcohol addiction?

A. I -- I didn't -- wasn't asked about it. If I was asked, maybe.

Q. Okay. You said --

A. I probably would have said --

Q. I asked him in his deposition, and he says you didn't tell him about your car accident in April of 2021.

A. All right.

Q. You didn't tell him, did you?

A. I didn't know I was supposed to, actually.

Q. Okay. Even though he was working on the same neck that had been injured in that car accident?

A. But it didn't hurt like it hurt when I pulled

it at Confluence.

Q. When he treated you, he ultimately did the surgery in April of 2023, correct?

A. Yes, sir.

Q. And you were working at Cintas at that time, correct?

A. Yes, sir.

Q. Okay. Now, you -- prior to seeing Dr. VanPelt, you saw his assistant, Amy Hunt, correct?

A. Yes, sir.

Q. And her APA Page 58 says that the way you were injured is you were working on a boat and lifted the motor. Did you tell her you were lifting a motor?

A. She maybe misunderstood what I said.

Q. Okay. All right. Now, she did -- she was the first person to interpret your MRI. Do you remember her having a conversation with you that -- that your symptoms were on the right side and what she saw on the MRI showed something that should be present on the left side?

A. Yeah.

Q. Okay. She said -- in fact, her statement was -- I'm going to read her report. You have a left foraminal narrowing, but that is not comported with the radicular symptoms he is having, which are more on the

right.

A. Uh-huh.

Q. Do you remember that? Okay.

A. And when you get to the one for the copper column in my hand, I didn't know nothing about that until then too.

Q. Okay. And Dr. VanPelt said, essentially, the -- the same thing?

A. Uh-huh.

Q. And then Dr. Grady -- your attorney eventually sent you to see Dr. Walter Grady, did he not?

A. Yes, sir.

Q. Okay. And you spent about 30 minutes with Dr. Grady the day you met with him, correct?

A. I don't recall. I'm sorry.

Q. Okay. Well, I asked you that at your deposition just a few months ago and you said, I spent about 30 minutes, about half an hour. Does that sound about right?

A. Yes, sir.

Q. Okay. All right. And in that deposition, we found out you had to pay him $1,000 -- $1,050, just to see you that day, correct?

A. Yes, sir.

Q. All right.

A. That was his cost.
Q. All right. Were you completely honest with Dr. Grady about your problems?
A. Like share everything?
Q. Did you tell him anything about drugs, alcohol, cocaine, or mental health problems?
A. No, he didn't ask me.
Q. Did you tell him anything about the car accident involving the same neck he was seeing you about?
A. No, sir. It wasn't asked.
Q. Okay. All right. And did you tell him when you saw him that you were working at Cintas, at another job?
A. I told him I was working at -- with Allied at the time.
Q. And his APA Page 211 --
THE COURT: We're going to --
MR. RENFROW: His APA --
THE COURT: All right.
MR. RENFROW: His -- his report --
THE COURT: We're going to go off the record for a second.
(A brief recess was taken.)
THE COURT: All right. We're back on the record.

Please proceed, Mr. Renfrow.

BY MR. RENFROW:

Q. All right. Mr. Young, you understand you're still under oath?

A. Yes, sir.

Q. Okay. I was asking you about your visit with Dr. Grady, and I'm looking at his report and, again, we saw what Ms. Hunt said in her report. We saw the other reports, but Dr. Grady says that you were pulling a bolt out of a mold and the bolt was jammed, and that's how you were injured. Did you tell Dr. Grady that's what happened?

A. I actually called a kayak a boat. Actually, I -- I -- I actually do call it a boat.

Q. He doesn't have boat. He has bolt. B-O-L-T.

A. Oh. I don't -- I'm not the best English speaker, so they -- maybe I was misunderstood.

Q. Maybe he misunderstood you?

A. Yes.

Q. Okay. Well, did you tell Amy Hunt earlier about a motor on the boat?

A. Misunderstood. I didn't say no motor. I wouldn't say no motor.

Q. All right. Now, you -- when I took your deposition in January this year, you -- this was

January 24th, that was two months since you had seen Dr. Grady. And at that deposition, you had never seen his report, correct?

A. Like are you talking about after --

Q. So when I took your deposition in January --

A. Yes, sir.

Q. Two months after you had seen Dr. Grady, had you even seen his report --

A. No, sir.

Q. -- that you paid $1,050 for?

A. No, sir. I haven't.

Q. All right. Do you know what he recommended?

A. I knew something had restrictions.

Q. Okay. Did he -- did he tell you there was more treatment that could be had that would make you better?

A. I think to follow up with the -- with Dr. VanPelt.

Q. But you hadn't seen his report two months after you had seen him?

A. Yeah.

Q. So was that the -- was that -- did you go see him because you wanted somebody to -- you wanted to get better, or did you go see him just to get ready for court?

A. Oh, because he's a -- because he was an orthopedic that was for the whole body, so he -- I guess that was like he was like a master orthopedist, so.

Q. Okay. That's what he told you?

A. That --

MR. ALEXANDER: Object. Object to hearsay.

MR. RENFROW: Okay. I'll strike that.

THE COURT: Thank you.

BY MR. RENFROW:

Q. And he is the only doctor that you -- you have any evidence from that has given you an impairment rating or --

A. Yes, sir.

Q. At this point, correct?

A. Yes, sir.

Q. Okay. Does he know you were working when you saw him?

A. Yes, sir.

Q. At that time, you were working for Allied. But you told this Commissioner that you no longer worked for Allied. Why did you leave that job?

A. I didn't have time to spend with my family, and plus, I was taking your advice. I'm better at taking advice. That's why with stuff you asked me about the application. My wife said if I would have put the

truth, she would have said, You don't want to work. That's why.

That's the -- why I put stuff like that. I didn't -- I thought I said, No, I need to put it, but my wife said, If you put it, it's because you don't want to work because you know they're not gonna hire you. So that's why that happened, but with, you know, the question with the answer, can you re-ask that again?

Q. Yeah, I will.

A. I apologize.

Q. Why aren't you working at Allied Universal right now?

A. So when you said that it was probably getting hard for me at times, so I -- I kind of took your advice too, of leaving.

Q. Okay.

A. Because I ain't want to make stuff worse than I already -- because, man -- man, I had so much wrong with me, it's crazy. Like maybe I -- I need to lose weight. Maybe that's something to do with it. I'm -- I'm not sure, but.

Q. But you're suggesting I gave you advice to leave the job?

A. You said there was a high -- high job, like it could get dangerous, and from what I was seeing,

it -- it could.

Q. So did you quit the job or did they fire you?

A. I quit.

Q. Did you sue them for anything?

A. No, sir.

Q. Have you thought about suing them for anything?

A. No, sir.

Q. Did you accuse anybody of making racial threats against you or anything else?

A. No, sir.

Q. Okay. Did they pay you a settlement to leave?

A. No, sir.

Q. Uh-huh. The final thing I want to ask you, this video stuff that we have been talking about.

A. Uh-huh.

Q. There's a video from the day you say you got hurt, and -- and it's your testimony, I believe, that the video they have of that day is not reflective --

A. From 3/8 that -- from -- was shown?

Q. On 3/8.

A. It -- the -- at Mr. Sturkie's office, no.

Q. All right. So the -- the videos you have seen from the next day, so the day after you say you got hurt, is there anything in those videos that you -- you

saw that suggest that you were walking around and in pain -- wincing in pain or giving any indication to anybody --

A. I couldn't use my --

Q. Let me finish. Let me finish.

A. Oh. Yes, sir. I'm -- I apologize.

Q. Do you have any indication that you can point to for this Commissioner when he goes back and watches these videos, that you had any pain or problems in your shoulders or neck that day?

A. I was trying to avoid using my right arm with a lot of things.

MR. RENFROW: Okay. All right. All right. No further questions, Commissioner.

THE COURT: And please, sir, Mr. Alexander, as we discussed out in the hall, we have a little bit of a time issue, and I don't want to interrupt your rebuttal, but you understand my time limitations on having to at least take a break if you don't finish? Would you -- do you want to try to get through this or do you want me to take the break and resume after that other commitment?

MR. ALEXANDER: How long did you say we have right now?

THE COURT: At the most, 15 minutes.

MR. ALEXANDER: Okay. I -- I can be done,

but -- but I believe I can go ahead and finish.

THE COURT: All right. Please proceed then.

RE-EXAMINATION

BY MR. ALEXANDER:

Q. There has been some mentions about the history you have with drugs, and the last time you had any issue was seven years ago. Is that right?

A. It's been many.

Q. Okay. Did you -- did you take a drug test to get your job at Confluence?

A. Yes, sir.

Q. Okay. Any issues with that drug test?

A. No, sir.

Q. Okay. Did you take a drug test when you got injured?

A. Yes, sir.

Q. Okay. Do you remember -- do you remember going to urgent care and they gave you a drug test?

A. Yes, sir.

Q. Yeah.

A. Uh-huh.

Q. We haven't talked about that either, have we?

A. No, sir.

Q. And because it's negative and there is nothing in your system. Did you know that?

A. Yes, sir.

Q. Okay. So as far as we know, the only evidence that you have used drugs was roughly five years before this accident, and as we sit here today, it's almost seven years ago?

A. Yes, sir.

Q. Okay. Also, we have been talking about these accidents that you had. The work accidents, the motor vehicle accident. Has anybody ever denied those happened?

A. No, sir.

Q. Those were admitted claims? You got injured on the job, and then because of your injuries you received a settlement?

A. Yes, sir.

Q. Did anybody deny that you were in the motor vehicle accident?

A. No, sir.

Q. Any special investigation units saying it was fraud or you made it up?

A. No, sir.

Q. Okay. All right. And we -- we talked about this clincher.

MR. ALEXANDER: Can I approach, Commissioner?

THE COURT: Yes, sir.

BY MR. ALEXANDER:

Q. This clincher from the 2020 claim with Fitesa, and that's Page 355. Can you read there what I have got underlined?

A. Claimant was rated as having 3 percent impairment to the right lower extremity, and 0 percent -- and percent 0 impairment to the back by Dr. James Behr on February 24th.

Q. Okay.

A. 2021.

Q. All right. So at least as -- as of the time of this 2020 accident, there is -- you have no impairment rating to your back?

A. Correct.

Q. And did anybody give you an impairment rating when you had the motor vehicle accident? You have never been shown a record --

A. No, sir. No, sir.

Q. Okay. All right. Do you remember the treatment for the motor vehicle accident?

A. Yes. I was sent to a chiropractor.

Q. Okay. And you have treated -- that accident was in April, and you stopped treating, I believe, maybe July? Does that sound right?

A. Yes, sir.

Q. Okay. And you were fine after the accident or -- I'm sorry, after your treatment ended, I should say?

A. Yes, sir.

Q. Okay. And did you ever come -- do you know what radicular symptoms are now that you have treated for them?

A. (Shakes head.)

Q. Okay. Are you familiar with that tingling down your arm?

A. Yes. Yes, sir.

Q. Okay. Did you ever -- did you know that there is no mention anywhere in any of those chiropractor records of any radicular symptom ever?

A. No, sir. I didn't know.

Q. Okay. Because you didn't have radicular symptoms when you were in your motor vehicle accident based on the medical evidence?

A. Correct.

Q. But the complaints you made to your doctors after this accident, they said that you may have radiculopathy?

A. Yes, sir.

Q. Okay. We -- briefly, just to talk about these applications and the jobs on here, you know, there's --

you know, you mentioned, I think on one of them, that you -- you mentioned Fitesa and DRAXLMAIER, but you didn't mention Lee's Welding, did you?

A. No, sir.

Q. Okay. You didn't mention the fast-food places you -- you -- you worked at?

A. No, sir.

Q. Was there any particular reason to leave those off or did they just get left off? What was --

A. I feel like they wasn't relevant to put on there because --

Q. Okay.

A. -- it was so long ago.

Q. Okay. When you got let go from the job you had a -- you had a verbal, at least, altercation with Don's son?

A. Yes, sir.

Q. Or Don's -- Don is the safety manager that took you to the doctor?

A. Yes, sir.

Q. Okay. And then you had two days later, you apparently have a verbal altercation with --

A. Yes, sir.

Q. -- with his son, and you get fired for it?

A. Yes, sir.

Q. Okay. But there is no video of -- of that interaction, is there?

A. No, sir. I wish -- I wish there was.

Q. Yeah. Me too. And there is no mention of -- he -- he showed you the termination paperwork earlier. All it says is for cause. There is no explanation of -- of anything about that incident, is there?

A. No, sir.

Q. Okay. The job you had with Allied, when you were at Greenville Memorial, and we talked about the patient you had to help restrain --

A. Yes, sir.

Q. And she -- she kicked you?

A. Yes, sir.

Q. Okay. Did that hurt?

A. Yes, it did.

Q. Okay. All right.

A. In the crotch.

Q. Did you file a claim --

A. No, sir.

Q. -- for worker's comp benefits?

A. No, sir.

Q. Okay. All right. The post-offer medical questionnaire that you were asked about earlier at 518

and 519, it -- it says on here, The purpose of this inquiry is to determine whether I currently have the physical or mental qualifications necessary to perform the job that I have been offered, whether and what accommodations may be necessary, whether I can perform the job without posing a direct threat to the health or safety of myself or others, and for the purpose of reasons stated on the attached questionnaire. So when you signed that, did you have any issues doing the job at Confluence?

A. No, sir.

Q. Okay. And this was, I believe misstated earlier, but this is on 510, where you said any major illnesses or injuries in the last five years, you say no, and they ask you if you told them about the screw, and you said no, but on the next line down you said, I have a metal screw in my left ankle. Is that -- that's your writing on there?

A. Yes, sir.

Q. Okay. Did you think you had a major injury from the motor vehicle accident when you were applying at Confluence?

A. No, sir.

Q. Okay.

A. It --

Q. And I know we have talked about the time on this and the around 11:00, but there isn't, again, there is nothing in the video that they have -- that -- that was submitted, the 10:52 to 11:07?

A. Right.

Q. So this -- it could have happened at 10:50. It could have happened at 11:09?

A. Yes, sir.

Q. Okay.

A. I -- because I wasn't, you know, I wasn't looking at my watch. Oh, this is the time I got hurt, really, so -- and it was -- that was made like -- he said just take a guess, and -- and so I just said around 11:00-something, because it was near 11:00-something when I went to him, so near around that time.

Q. And on 1134 they asked if there was anything that would prevent you from working your assigned work week, and you said no? And that's -- that's with your Cintas job, I believe?

A. Yes, sir.

Q. Okay. Is that because you were -- because of the light duty you were doing at that job?

A. Yes.

Q. Okay.

A. Correct.

Q. This part of your application there, on --

MR. ALEXANDER: Can I approach, Commissioner?

THE COURT: Proceed.

BY MR. ALEXANDER:

Q. On 1137, this is -- this document is typed, right?

A. Yes.

Q. Okay. And then can you read the last question and answer?

A. Why should we hire you here at Cintas? He respects his super -- superior, on time, and reliable.

Q. Okay. If you were writing this, you would have said, I respect superiors, I would assume. Okay. So did -- did somebody else type this? Because it's not handwritten like the rest of your --

A. (Nods head.)

Q. Okay.

A. Yes, sir.

Q. So some of this isn't -- isn't from you? This is someone else?

A. Right.

Q. Okay. In your Allied application, that form that we were talking about on 1235 about the voluntary self-identification of disability?

A. Uh-huh.

Q. All right. And you -- you -- you have here, it's checked no. Okay. Did you have any of the disabilities that are listed?

A. (Nods head.)

Q. Okay. And I know they're --

A. No, sir. No, sir. I apologize.

Q. 1235. And that -- I know it says alcohol or substance abuse disorder, substance use disorder, and it says, Not currently using drugs illegally. Okay. So that would be right?

A. Yes.

Q. Okay. And also in this application, there is other parts where you can see certain parts of the application. Do you remember doing this on the computer?

A. You're talking about Cintas?

Q. Yeah. Oh, no. This is Allied.

A. Uh-huh.

Q. And do you remember doing this on the computer?

A. Yeah.

Q. Okay.

A. We filled out a lot of stuff.

Q. And just like Page 1232, there was a box you check that says I'm signing this. That me checking this

box would be signing it? Do you remember that?

A. Yes, sir.

Q. Okay. And there's, for some reason, nothing after 1235 for you to check the box, so are you sure you even did that page?

A. I'm not -- I'm not sure, but it's marked.

Q. Okay. But either way, based on what was on there, you didn't have any of those disabilities?

A. Right. I did not.

Q. You didn't think there was anything that would preclude you from being able to do what they wanted you to do at that job?

A. Right.

Q. Okay. And even now, today, you're not alleging that you can't work at all? You're not alleging you're disabled?

A. Right.

Q. Okay. And, you know, you were asked about that document if -- if you told them about motor vehicle accident and prior work comp claims, none of that stuff is on there, right?

A. Right.

Q. Okay. And you were asked if you told Dr. VanPelt about your prior drug -- drug and alcohol use, and you said you didn't?

A. Uh-huh.

Q. But you are aware that when he was deposed, he said none of that would have mattered in his opinion?

A. Yes, sir.

Q. Okay. And did you know that he also reviewed various pages of your chiropractic records that also said none of that changed or -- or effected his opinion in any way?

A. Correct.

Q. Okay. All right. And there's a -- we have just talked about some of the medical records. We seem to have left out the follow-ups when Ms. Hunt said, you know, you're -- you're imaging shows something on the left, but your symptoms are on the right.

A. Right.

Q. And are you aware that Dr. VanPelt in his medical records reconciled all of the issues with that?

A. Yes, sir.

MR. ALEXANDER: And, Commissioner, this is 114 and 115.

THE COURT: Okay.

BY MR. ALEXANDER:

Q. So your October 2022 visit with -- with Dr. VanPelt reviewing your imaging, do you see the -- this about the EMG?

A. Yes, sir.
Q. And it suggests radiculopathy?
A. Yes, sir.
Q. All right. And, you know, I -- and, you know, Mr. Renfrow mentioned that Ms. Hunt was -- was not sure about the symptoms versus the, you know, the findings on the imaging, but did you see --
A. Yes, sir.
Q. Did -- have you seen this record from Dr. VanPelt talking about that on -- on page 115?
A. Yes, sir.
Q. Okay.
MR. ALEXANDER: And, Commissioner, I will just refer you to the assessment there in that section. We just discussed that. Also, his deposition covers that as well.
THE COURT: Anything further?
BY MR. ALEXANDER:
Q. This was, I think -- when you were questioned in your deposition about seeing Dr. Grady --
THE COURT: I don't mean to rush you, because I -- I think I have expressed upon you the importance of where I have to be.
MR. ALEXANDER: Yep. I have three questions.
THE COURT: I -- I understand, but those three

questions could take 5 or 10 minutes, and I don't have that right now.

MR. ALEXANDER: Yes, sir.

THE COURT: So at this point, we are going to take a recess.

(Recess from 2:24 p.m. - 4:12 p.m.)

THE COURT: We're back on the record.

Mr. Alexander?

BY MR. ALEXANDER:

Q. Mr. Young, just a couple more questions about a couple things that Mr. Renfrow brought up to you. There was a discussion of whether you told someone about a boat, or a motor, or a bolt. Do you -- do you remember telling anybody that you lifted a motor?

A. No, sir.

Q. Okay.

A. They misunderstood. Actually, I had corrected Dr. VanPelt on it and he said, Okay, whether it was a boat, you know.

Q. All right.

A. Because I really -- I caught it, actually, when I was reading it myself when I got a copy of it.

Q. And did you -- are you aware that Dr. Grady was questioned about this? Whether it was a boat, or a bolt, or what it was? Did -- have you -- I mean, have

you read his deposition?

A. Yes, sir.

Q. Okay. But do you remember his response to -- to that question?

A. He said a boat, kayak --

MR. RENFROW: Object to the form.

THE WITNESS: He said it was the same thing.

MR. RENFROW: I think --

THE COURT: Sustained.

MR. RENFROW: -- the deposition speaks for itself.

MR. ALEXANDER: I'm just asking you -- and, Commissioner, I will just direct to you on Page 48, Line 9 is the question regarding this miscommunication.

THE COURT: Grady --

MR. ALEXANDER: Or maybe it's typographical, but.

THE COURT: Grady 48, Line 9?

MR. ALEXANDER: Page 48, Line 9, is the start of the question and -- and answer for that.

THE COURT: All right.

BY MR. ALEXANDER:

Q. I think you testified earlier that you didn't have any issue with Allied. You -- you left that job?

A. Right.

Q. Okay. And did -- did you -- did you have anything where you were getting moved to different locations? Does that have anything --

A. Yes. That -- so that was keeping me away from -- from my family. Like they were wanting me to go to Oconee, like further places like that. North Greenville I went a few times, but.

Q. So when you were hired, you were --

A. I was supposed to just be at Greenville Memorial.

Q. Okay. So that's part of the reason you left, but not --

A. Yes, sir.

Q. You didn't have, again, didn't have a claim? You didn't have anything, you know --

A. No, sir.

MR. ALEXANDER: Okay. I believe that is everything, Commissioner.

THE COURT: Mr. Renfrow, anything further?

MR. RENFROW: I have no further questions for the witness, Commissioner. I'm just going to make sure we submit the deposition transcripts that we have talked about during his testimony.

THE COURT: Any objection, Mr. Alexander?

MR. ALEXANDER: I'm sorry. No, sir.

THE COURT: All right. So we have what?

MR. RENFROW: So we will do the first one. It was August 23rd of 2022, it says Claimant's depo, and I have them in a bound version if you would rather have that than these sealed copies. I just bring the sealed.

THE COURT: We are going to take them out of the seal anyhow.

MR. RENFROW: Are you okay with him just having the --

MR. ALEXANDER: If it's already -- yeah. If that's easier. I'm --

MR. RENFROW: That will be easier on you, to have it already sealed? I mean, already in a binder, both depositions?

THE COURT: Yeah. I mean, we won't have to mark them as exhibits.

MR. RENFROW: 1 and 2.

THE COURT: -- if they are a part of your APAs.

MR. RENFROW: That's perfect. And it's right here.

THE COURT: Perfect. Thank you.

MR. RENFROW: I think it will make it easier for you.

THE COURT: Okay. No witnesses on behalf of

Defendants?

MR. RENFROW: None from the Defendants.

THE COURT: All right. I apologize for having to break as long as I did. I was unsure whether you were going to have questions back on --

MR. RENFROW: Sure.

THE COURT: -- cross again, so I just didn't want to take a chance of -- of not giving each of you the sufficient time you need to complete this thing, so that will conclude this proceeding. We are -- we are free for the day.

MR. RENFROW: Thank you, sir.

MR. ALEXANDER: Thank you, sir.

(WHEREUPON, the taking of this sworn hearing was concluded at approximately 4:16 p.m.)

CERTIFICATE OF REPORTER

I, Patricia Andrews, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That I reported the hearing on the 19th day of June, 2024; and that the foregoing 108 pages constitute a true and correct transcription of said hearing.

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

Witness my hand, I have hereunto affixed my official seal this 1st day of September, 2024, at Lexington County, South Carolina.

Patricia Andrews, Court Reporter
Notary Public.
State of South Carolina at Large
My Commission expires:
June 15, 2031

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REPORTER'S NOTE: No exhibits were marked for identification.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 2202565

Rusty Young,	)
	)
Employee,	)
	)
v.	)
	)
Confluence Outdoor, Inc.,	)
	)
Employer,	)
	)
and	)
	)
Great American Alliance Co.,	)
	)
Carrier/Defendants.	)
	)

FULL COMMISSION HEARING

****

Monday, June 16, 2025
3:22 p.m. - 3:50 p.m.

The Full Commission Hearing was heard before Commissioners Melody James, R. Michael Campbell, II and John Gabriel "Gabe" Coggiola, via CourtCall at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 14th day of April, 2025, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.

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EXHIBITS

(There were no exhibits marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.

CALL TO ORDER:

COMMISSIONER JAMES: I think I'm ready to get started if that works. And so -- so I'm going to have Court Reporter call the case. So we are no cross-appeals. We've had a few of those so we're 10, 10 and 3.

COMMISSIONER CAMPBELL: And if you all would, if you're not speaking, would you mute your microphone because were getting some feedback and we have some on the previous hearing that we had. So if you're not speaking, if you could, just so we don't have that spilling over. Thank you all.

COMMISSIONER JAMES: All right.

COMMISSIONER CAMPBELL: I'm sorry. I didn't mean to interrupt.

COMMISSIONER JAMES: No, no, that's great. If you can call the case Madam Court Reporter.

COURT REPORTER: Okay. Today is June 16th, 2025. This is South Carolina Workers Compensation Case number 2202565. This the case of Rusty Young versus Confluence Outdoor, Incorporated and Great American Alliance Corporation.

The Appellant is the Claimant, represented by Richard Charles Alexander. The Respondent

is represented by Benjamin M. Renfrow.

Each side is allowed ten minutes for oral argument and the Appellant three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER JAMES: Mr. Alexander, when you're ready.

APPELLANT/CLAIMANT'S POSITION STATEMENT BY MR. ALEXANDER:

MR. ALEXANDER: Good afternoon, Commissioners. May it please the Court. This appeal was filed on our -- on our end for what we believe arises from a denial of a claim based on unsupported irrelevant credibility findings, mischaracterizations of the record and speculation in the face of consistent objective medical evidence and causation testimony.

Now, I'll start by saying I agree in part with the Respondent's brief that the Commission may certainly takes its own view of the evidence. However, Respondents would have you believe that the Single Commissioner observed Mr. Young in the hearing and because of that he deserves deference when it comes to credibility and the overall decision rendered in this case.

This argument generally would make sense but in this case he used some language from the Respondents, it creates a logical fallacy. For this case I don't believe there's one mention of anything the Commissioner specifically observed in the hearing that lead to his determination in this case. The overwhelming majority, if not the totality, of the findings of facts in this case rely on issues outside of the hearing testimony like prior Worker's Compensation claims, job applications or employment history. And not anything about his demeanor or appearance or anything else observable in the hearing. In fact, because of there were no discernible credibility issues observed in the hearing, the only mention of hearing testimony are capricious, ambiguous and did not make any specific reference to the wreck. Because of that it's our position that no deference is owed to the Single Commissioner and the panel should consider all evidence on its own to reach its own findings of facts and conclusion of law. Moreover, when the Commissioner disregards uncontroverted medical testimony without evidentiary support appellant

courts and panels are not bound by his discretion. My hope is that what you've read in my brief and what I'll tell you today will support our case in brief and show that it lays out a much clearer factually accurate and a well supported argument for overturning the Single Commissioner's decision due to it being based on both factually and legally flawed findings in error to the law. There are consistent causation opinions through Mr. Duncan, Dr. VanPelt and Dr. Grady in the record. Additionally, the opinions of these providers are based not only on subjective complaints of Mr. Young, but they are supported by the objective medical evidence including MRIs, VMDs and physical examinations.

Now, quick background here on this accident. March 8th, 2022, Rusty Young was working at Confluence which is a company that manufacturers kayaks and canoes. Mr. Young's job involved creating the molds of kayaks and removing them from the machine that makes that mold. These kayaks routinely get stuck in the machine while they form requiring them to be jerked loose. On the date of the accident Mr.

Young was attempting to pull a kayak loose from the machine when he had to jerk it, pull it off which is what caused his injuries. He immediately felt a pop and pain. He immediately reported it to his supervisor that day and was sent home for the remainder of the day. He returned to work the next day, attempted to work for a period of time, and when his symptoms got too bad he went to the safety manager. They filled out a report regarding the accident and the safety manager took him to AFC Urgent Care for treatment and a drug test. He was placed on light duty which he worked for the next couple of days until a verbal altercation with a coworker resulted in Mr. Young's termination. Of course the coworker was not terminated, but Mr. Young was. Of course there's no explanation other than he was fired for cause. In the file all it says is for cause, but there's no video or evidence to support this altercation, but Mr. Young has not disputed or disagreed with that in any way at any point.

Now, there was no evidence in the Decision and Order from the Single Commissioner or any

evidence in the hearing that rebutted Mr. Young's testimony regarding these sequence of events that it heard around the time of this accident and the days after. And the Single Commissioner did not find any issue with this testimony or find any -- any issues when he included in the testimony -- or excuse me -- he put it in a Decision and Order anything about what the -- what happened around these days after the accident. As such, there's no evidence to rebut it. It's presumed to be the, you know, the facts of this case because that's what happened at the time of this accident.

Now, at this point I will share the screen to show the approximately 30 seconds of video that was provided by the Defendants in this, and I believe it's Exhibit D, and the file name that we're referencing ends in 72835. This was discussed in the hearing starting on page 17 of the transcript, and I wanted the panel to see this to understand what sort of accident we're talking about here. Because this is not one of those clear accidents where, you know, someone slipped and fell or someone fell down stairs and you see it. It's a little bit discreet in

what happens, but we want you to see what kind of work he was doing so that you can understand how the mechanism -- how he described the mechanism of injury and how it was described to medical providers. If you could let me know when you can see it.

MS. BRACY: If you'll choose to share screen again and then I can approve it. Okay, hang on. All right it should pop up in just a sec.

COMMISSIONER JAMES: All right, Mr. Alexander, you should be ready to hit play.

(Shares screen)

MR. ALEXANDER: Okay. So really quick I'm putting my cursor over Mr. Young so you can see him in this -- in this video here over on the right side. But I want to first bring your attention to, at the five second mark, the two gentlemen on this orange kayak that's right beside him. And you'll see right at the five second mark the gentleman in ---

COMMISSIONER JAMES: Mr. Alexander, your screen is not shared even though it says you're sharing.

COMMISSIONER CAMPBELL: Yeah, we can't see it on our end.

MS. BRACY: Can you click on the screen to make

sure?

MR. ALEXANDER: Yeah, sorry. I was in the full screen mode so I didn't see that. Sorry. Okay. Is that better?

COMMISSIONER CAMPBELL: Yep.

COMMISSIONER JAMES: Yes. Thank you.

MR. ALEXANDER: All right. So, sorry. This here is Mr. Young down here on the right side as I said. But what I want to first draw your attention to is this gentleman here and at the five second mark you're going to see him pulling off a kayak that's stuck. I'm hitting play. And you'll see him again at the five second mark jerk this kayak to get it out. Now a few seconds later you're going to see Mr. Young do a similar action when he tries to get his kayak loose and that's I believe at 10 to 15 second mark. Is that freezing on your end? It's freezing on my end.

COMMISSIONER JAMES: Yes.

COMMISSIONER CAMPBELL: Yeah.

COMMISSIONER JAMES: It's buffering or something.

MR. ALEXANDER: We'll request just because of the time and my time running I wanted the Commission to be able to see this. But if you

could review at the 15 second mark you'll see Mr. Young come around the side of the kayak to get it loose.

COMMISSIONER JAMES: If you hit it again it might play now.

MR. ALEXANDER: Okay. And here it is again. As I said it's stuck here and I don't know how it's freezing again right on the same moment.

COMMISSIONER JAMES: Well, we have -- we have -- we have that.

MR. ALEXANDER: Okay.

COMMISSIONER JAMES: So, all right.

MR. ALEXANDER: Well, yeah and then I request again that you just see that that's what was referenced in the hearing. At the 15 second mark in that video is where you'll see his -- his kayak is stuck and he has to jerk it to get it loose. Now again you may be asking yourself why we're looking at a video from the day after the accident and not the day of. That's partially because Mr. Young was asked when he thought the accident. He said he thought it was around 11:00 a.m. and because of that the Defendants only chose to preserve 15 minutes of video around 11:00 a.m., from 10:52 a.m. until

11:07 a.m. And as you can see from the accident that the other gentleman and Mr. Young -- when you view it, it's a discreet action that occurred in about two seconds. So, you know, what we would submit is that just because there is no video in that -- or there's nothing showing in that 15 minutes on the date of the accident, does not mean that that accident did not occur. Now of course, you know, not having video is not the end of the argument when you're discussing convicibility, there's nothing under the Act that requires video. And, again, that can be proved by circumstantial evidence, which as we've shown and what we -- he testified to in his hearing is the similar action occurring on the day after the accident. Now again it's that day after the accident when he finally went to his supervisor and was taken to the doctor. So he reported it the day of and then the day after reports it again and goes to a doctor immediately. It's our position that based on, you know, this proof that an injury occurred, it can be established again by circumstantial evidence and direct evidence when circumstances

lead to an unprejudiced mind could reasonably infer the injury was caused by the accident. The Defendants stated in their brief that there's no evidence of an injury or any noticeable consequence or behavior of someone with injuries. And I would submit to you that that's incorrect. We have not once claimed Mr. Young was totally incompacitated from this injury. And again the initial injury to the right shoulder was not of a torn rotator cuff or something that completely disabled him from doing any sort of work. But there are several instances on the video which you'll see in those other files that are in the -- in the CD that you have that will show that there are instances where he's guarding or attempting to limit his use of his right arm. I would point the Commission to the video that ends in 73555. There are instances at the ten second mark, 20 second mark, 50 seconds, a minute and 24 seconds and a minute and 57 seconds, and they're all instances of where you can see him trying to work his arm out or trying to not use his right arm and only use his left arm or his left -- his arm and his legs to try to move

things around. So, again, I would submit that there is evidence to show that there are behaviors of someone who has an injury that's trying to avoid the use of his arm. Additionally, in the file that ends in 95112, there's a point at the 45 second mark, a minute 15, and two minutes and 25 seconds, all where they show similar situations.

As it pertains to the medical evidence, our brief is laid out in detail and without -- in detail what's, what's gone on in this treatment of this Claimant. Without reciting the entirety of our brief, we'd like to lay out a 30,000 foot view of the evidence that supports compensability. When this claim initially started Mr. Young only thought he had a right shoulder injury so that's what he was treated for. It wasn't until a couple months later when the nurse practitioner at Piedmont Orthopedics referred him to the spine team because he thought there was a cervical component to what was going on with his injury. That ultimately resulted in a referral to Dr. VanPelt's spine team, which ultimately lead to surgery with Dr. VanPelt for the cervical spine

injury. Regarding the right shoulder and arm injuries, there's no contradictory medical evidence regarding compensability. In addition to the medical records the day after the accident, showing an accident, the medical records from St. Francis ER and Piedmont Orthopedics, as well as causation statements from Piedmont Orthopedics all support compensability on the shoulder. And finally, there's the deposition testimony of Mr. Duncan, the Nurse Practitioner that treated him, where he stood by his causation statement regarding the right shoulder. Regarding the neck, that's the most contentious point here in this case, and the simplest was to look at this is we've got Dr. VanPelt who is the treating surgeon, Dr. Grady who performed an IME, and then Dr. Hodge who performed some sort of record review and provided a one page statement on the case. The treating surgeon, Dr. VanPelt, has stated to a reasonable degree of medical certainty that the neck injury and treatment are related to the March 8th, 2022 accident.

(Timer beeps.)

COMMISSIONER JAMES: Finish your thought.

MR. ALEXANDER: Just quickly, he's done this in medical records, causation statements and in -- in deposition testimony where he stood by his opinion despite all of the evidence being presented to him regarding everything you can think of from prior Worker's Comp claims to prior drug use and a motor vehicle accident.

COMMISSIONER JAMES: All right. Mr. Renfrow?

RESPONDENT'S POSITION STATEMENT BY MR. RENFROW:

MR. RENFROW: Thank you, Commissioner James, and good to see all of you today. I think if it were as simple as my friend, Chip, was spelling out we wouldn't be here today. We wouldn't have an Order from Commissioner Beck that the request for (unintelligible) are at 164 findings and the Order itself was narrowed down to I think 158 findings. But I think I understand and appreciate this case and all of the stuff that's going on. We've got to look at this from a wide lenses first and then we can focus in on the minutia after that. Eight days after this alleged accident, Mr. Young had his attorney file a Form 50 and allege injury to a number of body parts. Eight days. So he had an attorney within a week. A year later

they amended, almost to the day, amended the Form 50 and added the neck. So Mr. Alexander is correct. It was not initially a neck. At some point, we started dealing with a neck in addition to other body parts. The first hearing of any time in this case that went forward on any issue was June 19th, 2024. Twenty-seven months after the Claimant's alleged accident. And it's important to understand the case was denied from the beginning. The original denial was based on initial red flags, some of which you already heard about. He'd only been working for this Employer for two months at the time of this alleged accident. He claimed this accident took place around eleven o'clock and we have an eight minute before eleven in the seven minute video after that snippet to see if there was any accident. What you did see in that video is, which we very thoroughly reviewed at the initial hearing, was there were a bunch of people around Mr. Young when he claims this happened. You don't see any evidence in that video of an accident and he didn't bring a single witness to the hearing to testify on his

behalf, yep, I remember my man was aching and hurting or had a problem that day, and not a single witness showed up to testify on behalf of Mr. Young who had the burden of proof in this case. As we got into it, three days after the accident Mr. Young was terminated for, as Mr. Alexander said, for cause. So he was terminated for -- he claimed that a coworker stole his tools and then later he claimed that he was using racial epithets and making racially insensitive comments towards him. And that's going to be a theme in this case. If Mr. Young is not anything else, he's as a good professional victim as I've ever seen. And I'll explain that was dive into the minutia. So by the time we got to that hearing in June of 2024, Mr. Young had had three attorneys and had three jobs since he left Confluence. Complaining of all these pain and problems, he had three jobs after he left. Now, I will admit Chip is the third lawyer with this case and he -- he does an amazing job. We were over with Commissioner Beck for about six hours I think on the date of the hearing. We had about an hour and a half break in between, and we had

a meeting, and we spent four hours questioning the Claimant, reviewing all of this video. And I want to make something clear about the video. We've got video from the day of the alleged accident based on the Claimant's explanation for when it happened, but we also have four videos, snippets from the next day when he was back at work. And there's very little evidence, if any at all. In fact, I would argue there is no clear evidence. If you didn't know he was claiming a Worker's Comp claim that you could watch that video and claim he is showing any kind indifference towards his shoulder, neck, upper back or what have you. And all of that was reviewed. Commissioner Beck ultimately spent a lot of time. I think he had this case after the hearing for about three months before he issued his request for -- his Order. He addressed every one of these issues in the greatest of detail. And we ultimately got word from him with over 154 findings of fact and conclusions of law. The facts are abundantly clear in this case. This Claimant is not credible. And without trying to come across as overly

dramatic, which maybe I can do from time to time in a case like this, I don't think I've ever had a case where the Claimant was less credible in my 20 years. And you don't have to take my word for it. You don't have to take my brief's word for it. The evidence in the pre-hearing briefs, which was over twelve hundred pages, shows undeniable admitted evidence of a Claimant who lies on every application of employment he's ever had. Who admits at the hearing the reason he lied was he knew if I was honest about my pre-existing problems and some of the problems I was having in my jobs I applied to after I was at Confluence I wouldn't get the job, or I wouldn't be able to make money and put money in my pocket. And so you take his testimony and the documented evidence that we have in the briefs and it's absolutely overwhelming.

So I'm here today asking the Court to confirm that the overwhelming and exhaustive evidence supports the denial of the claim, that the Single Commissioner did not make any error in finding that the Claimant failed to meet his burden of proof and that the credible medical

evidence in this matter does not support the finding of compensability.

So it's important to understand some of these things. Prior to this claim the Claimant had two prior Worker's Comp claims. He settled one in September of 2019 for $60,000. He settled another one in May of 2021, just a year or less than a year prior to this one, against a company called Fitesa for $15,000. Prior to the Worker's Comp claim that we're here about today he had a motor vehicle accident in April of 2021. He treated through July or August 2021 and then in December of 2021, four months after that, he started applying for the job at Confluence. He lies about his prior problems, doesn't bring up the fact that he was -- was involved in litigation at the time he was applying for the job at Confluence in the car accident case, and interestingly he settled his car accident case on August 22nd, 2022, which was the day before I took his deposition for the first time in the Worker's Comp case. And so we found about that at his lawyer's office who represented him in both that car accident case and in the Worker's Comp claim. Now, that

car accident is a big part of this case. In that car accident or following that car accident, it was determined that he had some type of annular fissure in his spine that ultimately lead Dr. VanPelt to do surgery. Dr. VanPelt testified at the time, at a time when obviously the claim was denied, he was looking to get this -- his -- his -- his surgery authorized and treated, that the annular fissure gave him proof that this had to have been something that happened after the car accident because the way he understood annular fissures were they have to be more recent in time. And having an MRI that shows, one would think there'd be a three, a six, a eight month window of when that annual fissure was -- happened and therefore couldn't be related to the car accident. So then one of the attorneys in this case hired Dr. Walker Grady. We all know Dr. Grady. We know how he does and what he does. I don't think he does any surgeries anymore. But he was in fact, annular fissures can exist for years and could have been there in this case for multiple years prior to both the car accident and the Worker's Comp claim.

And so there was no way to know if that annular fissure was the result of a car accident, a Worker's Comp claim, some of his prior involvement and injuries from other cases and so it's -- and that's a big part of this, is that the Claimant's own expert countered testimony from one of his other experts that would get the surgery in the case. We also learned in this case that Mr. Young is a professional victim. He's -- he had Court ordered inpatient treatment for violent behavior against his wife, diagnosed schizophrenic behavior, delusion thoughts, cocaine, marijuana, alcohol abuse, threats of harms of violence against himself and others. He lied about all of that on all of the applications that he applied for, both to Confluence and jobs after Confluence. He also had been terminated from a number of jobs. He was terminated from Vermuda [sic] Corporation claiming he was discriminated because of his race. He claimed a lady came into the area where he was working and tried to fight him. He claimed that somehow that was related to race and that he made statement that people get

shot for making racial threats like that towards people, and they ultimately fired him. That was at a job he had just before he came to Confluence. He was also at fire at Ingles grocery store. And then after Confluence he went to work for Cintas four days after being terminated from Confluence. He never once told them on that application at Cintas about any problems that had at Confluence. In fact, he lied he even worked at Confluence. They asked what is -- give us your job history for the last five years. He fails to disclose he even worked at Confluence. Ultimately, he ends up getting on their group health, pays for his next surgery with their group health, files an EEOC claim against them claiming that they tried to sabotage his job. They discriminated against him because of his religion and maybe discriminated against him because he was just too nice of a guy. And at some point during that claim decides he's going to settle with them and go work for a second company, Allied Security. Within just a few months he went to work for that company, and let's not forget we have that application for employment too, where

he lied about Confluence, lied about his pre-existing problems, didn't give them any clear explanation about his pre-existing problems. He claims that he aggravated or at least had some pain following an incident where he went to tackle an employee -- or a mental health patient who was trying to run from the hospital. All of this is going on while he's, out of the other side of his mouth, trying to claim that he's -- his problems and his need for surgery was related to something that happened at Confluence. There are so many other things that I could point out. And one thing I wanted to share in addition, and we've talked about the video. We've talked about the lies on all of his applications. We raised the fraud of the application defense. And Commissioner Beck explains all of that very thoroughly, that we met many of the prongs for fraud in the application, met many of the prongs, but ultimately found -- if I may finish that thought, Commissioner?

COMMISSIONER JAMES: Certainly.

MR. RENFROW: We ultimately found that while those affirmative defenses weren't necessarily met,

they didn't need to be. Ultimately, this Claimant's credibility was so in question, because of all of this inconsistency, that whether it was an affirmative defense or not that the claim should be denied and he couldn't meet his burden of proof. Medical records are clear. There's a ton of inconsistency. They initially couldn't find -- they felt the problems he was complaining of, if you look at Dr. VanPelt and his -- and the nurse that Chip referenced, his symptoms were on one side and the problems they found were the result of symptoms on the other side and that created an inconsistency from the very beginning.

COMMISSIONER JAMES: Thank you. Thank you.

MR. RENFROW: We would ask that this Order be affirmed.

COMMISSIONER JAMES: Mr. Alexander?

APPELLANT/CLAIMANT'S REPLY BY MR. ALEXANDER:

MR. ALEXANDER: The biggest issue in this case is a misapplication of the of facts, that the object medical evidence and opinion testimony far outweigh any credibility issues. We believe this to be this to be the case because the very credibility issues the Single Commissioner

references and Mr. Renfrow's referencing today were all addressed with medical providers. They were all shown, oh, were you aware about these settlements. Did -- what doctors need to know about Worker's Comp settlements? Nothing. They need to know about injuries. None of those prior accidents had anything to do with his neck or his shoulder. The motor vehicle accident is the only thing that is remotely related because there was some treatment for his cervical spine that lasted approximately three months. All of this was shown to the doctors. All of this stuff about lying about applications and omitting information for, you know, filing an EEOC claim, none of those have anything to do with the causation that these doctors have provided medically in this case. And they've done it over and over. We're missing the fact that Dr. Grady only somewhat disagreed about whether an annular fissure could be there or not. Dr. Grady also said he's not an expert and when he sees an annular fissure he sends it to a neurosurgeon, that's Dr. VanPelt. Additionally, he ultimately deferred to Dr. VanPelt in giving -- in giving

causation and said Dr. Van Pelt's the treating physician, he's also a neurosurgeon, that's the opinion we follow. The reason there's no witness that Mr. Young brought to the hearing is because the very person that he -- he initially told when he hurt himself is the guy who got him fired three days later. So that guy's not going to come to the hearing and give very good testimony for him, so, no, there's nobody that he was bringing to the hearing. Also, whether he brings that guy or not, there's still a report that he was injured and they took him to the doctor the same day that he reported it officially to his -- to his supervisor. And, again, none of that's rebutted in the hearing testimony or anywhere in the Decision and Order. Respondent's brief hinges mainly on the Claimant's unrelated credibility and false information on applications. It ignores most of the medical causation, especially for the shoulder. It's not contradicted anywhere in the record. And far as the neck, they have nothing to go against what Dr. VanPelt said. The only opinion they have is given to the wrong

standard. It is laid out in the brief. It should have been -- should have been considered, but even if it was we could supply it's not saying -- all it said was beyond a reasonable doubt. I can't say imaging findings are related. That doesn't mean they -- they weren't. He even says they may be related. Again, that doesn't -- that doesn't take out Dr. VanPelt's opinion and that it's more likely than not related to this work accident. Respondents argue vehemently in their brief that maybe the guy needs to be punished because he's lied in the past. And we're back to the logical fallacy discussion that because he lied nothing he says should be believed. But if that's the case why did the Commissioner find as fact that he was able to complete a physical at a subsequent job.

(Timer beeps.)

I realize that my time's up. I have way too much more to follow-up to finish up. So I'll have to ask you read the brief and request the Commission please review that and all references in the citations to the briefs and the inconsistencies there.

COMMISSIONER JAMES: Okay. Thank you. That concludes this hearing.

(There being nothing further, the hearing concluded at 3:50 p.m.)

CERTIFICATE

This is to certify that the within hearing consisting of thirty (30) 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 Stenomask 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 October 15, 2025.

Amber Scarborough
Court Reporter

Notary Public for South Carolina
My Commission Expires: June 13, 2033