

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Received
April 30, 2012

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Op. No. 4876 (S.C. Ct. App. filed January 4, 2012)

Henry Dinkins, ... Petitioner,

v.

Lowe's Home Centers, Inc. -Sumter, SC and
Specialty Risk Services, LLC, ... Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Henry Dinkins,

Appellant,

v.

Lowe's Home Centers, Inc. –
Sumter, SC and Specialty Risk
Services, LLC,

Respondent.

Appeal from Sumter County
George C. James, Jr., Circuit Court Judge

Opinion No. 4926
Heard October 5, 2011 – Filed January 4, 2012

AFFIRMED

Stephen Benjamin Samuels, of Columbia, for
Appellant.

Weston Adams, III, Helen F. Hiser, C. Edward Rawl,
Jr., and M. McMullen Taylor, all of Columbia, for
Respondents.

LOCKEMY, J.: In this worker's compensation action, Henry Dinkins appeals the circuit court's decision that there is substantial evidence in the record to support the Appellate Panel of the Worker's Compensation Commission's (Appellate Panel) finding he is not entitled to total disability pursuant to section 42-9-10 of the South Carolina Code (1985). Specifically, Dinkins contends the Appellate Panel erred in (1) finding section 42-9-400 of the South Carolina Code (1985 & Supp. 2005) inapplicable; (2) finding Dinkins is only entitled to compensation under section 42-9-30 of the South Carolina Code (1985); and (3) failing to rule on whether Dinkins' proof of diligent efforts to secure employment establishes a total loss of earnings under section 42-9-10. Dinkins also argues the circuit court erred in failing to remand the case with instructions to make specific findings of fact and conclusions of law affirmatively addressing total disability proven by unsuccessful "diligent efforts to secure employment." We affirm.

FACTS

Dinkins began working for Lowe's Home Centers, Inc. (Lowe's) on April 17, 1999, as a Customer Service Representative and was eventually promoted to Paint and Home Décor Department Manager. On May 1, 2001, Dinkins suffered the first of three injuries at Lowe's when he injured his left ankle. The commissioner found Dinkins sustained a 40% permanent partial disability to the left leg. Dinkins then injured his right knee at Lowe's on June 22, 2002, and the commissioner found Dinkins sustained a 30% permanent partial disability to the right leg. Following the two incidents, Lowe's reassigned Dinkins to a customer service position to accommodate his physical injuries.

Dinkins injured his back on April 20, 2005, and reported his injury to Lowe's. After receiving treatment from Dr. Stacey, an orthopedic surgeon, Dinkins was diagnosed with "L4 radiculopathy." On December 5, 2005, Lowe's released Dinkins from work after Dr. Armsey (Dr. Stacey's partner) reported Dinkins was restricted from lifting items exceeding 20 pounds. Dinkins has not been employed since that time. Dr. Johnson reported Dinkins at maximum medical improvement on March 9, 2007, and stated Dinkins was a good candidate for "long-term anti-inflammatory medications" and was unlikely to need surgery in the future. However, Dr. Johnson also

recommended Dinkins be placed on sedentary to light work with a lifting restriction of 10 pounds on an occasional basis. Dr. Johnson suggested avoiding repetitive bending and twisting if possible, because if Dinkins did not, his condition would be exacerbated. After examining Dinkins on June 2, 2006, Dr. Timothy Zgleszewski, stated "I believe that the lower back injury is a separate injury [from Dinkins' previous ankle and knee injury] "

Dinkins met with two vocational experts, Adger Brown and Glen Adams. Brown stated Dinkins was permanently and totally disabled because of Dinkins' physical limitations combined with his age and lack of transferable skills. Brown also stated that "being sixty-three years old, [Dinkins] is already at an incredible deficit for anyone hiring him into any type of meaningful sustained employment." In contrast, Adams, after meeting with Dinkins, created a report that detailed all the jobs and fields Dinkins is fit to work with his restrictions. Adams stated:

A labor market survey was conducted based on the factors outlined in this report in order to identify actual jobs for which Mr. Dinkins qualifies. A stable labor market was found to exist in his local labor market in the banking, financial and retail industries. Based on the strength of his prior work history in management positions, as well as the other factors outlined in this report, he is currently employable in his labor market.

Prior to working for Lowe's, Dinkins was employed in the banking industry, and he stated he could return to work in that industry. Dinkins conducted a job search in Columbia, Florence, Camden, and Sumter over the course of about three months. After sending out between twenty-five to thirty applications, he was either refused the job or had not heard back from the employer. Dinkins admitted he is not applying to any jobs that he could not do.

On January 23, 2008, the single commissioner found Dinkins' compensable injury was confined to his back; thus, he was limited to the scheduled disability compensation under section 42-9-30. Further, the

commissioner found Ellison v. Frigidaire Home Prods., 360 S.C. 236, 600 S.E.2d 120 (Ct. App. 2004) (Ellison I) was not applicable because Dinkins' pre-existing ankle and knee injuries did not combine to cause a greater disability. The commissioner also found even if Ellison I were applicable, Dinkins did not meet his burden of proving a total loss of earning capacity due to his work related injuries. She awarded Dinkins a 12% permanent partial disability to his back under section 42-9-30. Dinkins appealed the commissioner's decision to the Appellate Panel, and the Appellate Panel affirmed the commissioner's findings, and also found Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (2006) (Ellison II) was not applicable. Dinkins then appealed to the court of common pleas, and the court of common pleas affirmed the Appellate Panel's decision.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") provides the standard for judicial review of workers' compensation decisions. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, this court can reverse or modify the decision of the Appellate Panel if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann. § 1-23-380(5)(d),(e) (Supp. 2010); Transp. Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010).

The Appellate Panel is the ultimate fact-finder in workers' compensation cases. Jordan v. Kelly Co., 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009); Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). As a general rule, this court must affirm the findings of fact made by the Appellate Panel if they are supported by substantial evidence. Pierre, 386 S.C. at 540, 689 S.E.2d at 618. "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." Hill v. Eagle Motor Lines, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the

[Appellate Panel's] finding from being supported by substantial evidence."
Id.

LAW/ANALYSIS

I. Greater disability pursuant to section 42-9-400

Dinkins contends substantial evidence in the record supports his argument that his back injury in combination with his previous knee and ankle injuries resulted in a greater disability than the back injury alone, pursuant to section 42-9-400. Specifically, Dinkins argues the Appellate Panel erred in basing its findings on Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003), and contends Ellison II is controlling. We disagree.

In Wigfall, the claimant's sole physical injury was a broken left femur stemming from a work-related accident. Wigfall, 354 S.C. at 102, 580 S.E.2d at 101. The single commissioner found that while Wigfall's injury, employment history, age, and educational attainment rendered him totally disabled, the supreme court's ruling in Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960) limited him to an award under the scheduled member statute. Id. at 102-03, 580 S.E.2d at 101; see Singleton, 236 S.C. at 471, 114 S.E.2d at 845 ("Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity."). On appeal, the supreme court reaffirmed its ruling in Singleton that an injury to a scheduled member which is the sole cause of the claimant's disability may be compensated only under the scheduled injury statute. Wigfall, 354 S.C. at 106-07, 580 S.E.2d at 103.

In Ellison, the claimant was given a 20% permanent impairment rating to his leg after injuring it on the job. Ellison II, 371 S.C. 159, 161, 638 S.E.2d 664, 665 (2006). Ellison also had pre-existing physical conditions including hypertension, sleep apnea, prostate cancer, diabetes, and congestive cardiac disease, which, in combination with his workplace injury, rendered

him physically unable to return to work after his accident. Id. Applying section 42-9-400, the commissioner concluded Ellison was totally disabled from the combined effect of his pre-existing conditions and his workplace injury to his leg. Id. at 162, 638 S.E.2d at 665. Section 42-9-400 provided in pertinent part:

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability, or either, for disability that is substantially greater, by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment, than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation and medical benefits provided by this Title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund

(d) As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.¹

¹ Section 42-9-400(a) was later amended to refer to a "disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone," and it has omitted the "combined effects" language. Act No. 111, Pt. II, § 3, 2007 S.C. Acts 599 (emphasis added). However, this change is applicable only to injuries that occur on or after July 1, 2007.

S.C. Code Ann. § 42-9-400 (1985 & Supp. 2005). On appeal, this court found section 42-9-400 merely entitled an employer's insurance carrier to be reimbursed by the Second Injury Fund; thus, Singleton should have been applied to the facts. Ellison II, 371 S.C. at 164, 638 S.E.2d at 666. Our supreme court reversed this court's decision, holding Singleton was inapplicable. Id. at 162-64, 638 S.E.2d at 665-66 (stating Singleton "stands simply for the proposition that impairment involving only a scheduled member is compensated under the scheduled injury statute and not the general disability statute"). It held that in contrast to Singleton, Ellison claimed total disability from the combined effect of his workplace injury and his pre-existing physical deficiencies. Id. at 162-63, 638 S.E.2d at 665-66. The supreme court found "[t]he language of § 42-9-400(a) and (d) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing condition hinders employment." Id. at 164, 638 S.E.2d at 666.

While distinguishable from the current appeal, the recent decision in Bartley v. Allendale Cnty. Sch. Dist., 392 S.C. 300, 709 S.E.2d 619 (2011) is also relevant to our analysis. In Bartley, our supreme court determined this court arguably did some improper fact finding to make its ruling that the injury at issue did not cause or aggravate Bartley's other conditions, and therefore, Bartley was not entitled to compensation under section 42-9-400.² Bartley, 392 S.C. at 310-11, 709 S.E.2d at 623-24. The supreme court then stated, "[I]t appears the Court of Appeals focused on whether Bartley's 2002 accident caused her other medical conditions or whether it aggravated her pre-existing conditions." Id. at 309, 709 S.E.2d at 623. However, "[t]here is no requirement that the pre-existing condition aggravated the work injury or that the work injury aggravated the pre-existing condition; rather, the question to be considered was whether the combined effects of the condition and the workplace injury resulted in a greater disability than would otherwise

² The Appellate Panel found it could not "stack" Bartley's previous injuries with her current injuries; thus, it did not make any findings of fact in regards to her previous injuries. Therefore, our supreme court found this court may have made its own findings of fact in regard to those previous injuries in order to come to its decision.

have existed." Id. at 308, 709 S.E.2d at 623 (citing Ellison II, 371 S.C. at 164, 638 S.E.2d at 666). The case was remanded to the Appellate Panel because "had [the Appellate Panel] considered the application of the law in Ellison II, [it] would have made additional findings of fact pertinent to this analysis that are missing from the record." Id. at 310, 709 S.E.2d at 624; see Ellison II, 371 S.C. 159, 638 S.E.2d 664 (2006).

Here, the commissioner erred in citing Ellison I, 360 S.C. 236, 600 S.E.2d 120 (Ct. App. 2004), which was overturned. However, the Appellate Panel cited to the controlling case law in Ellison II, 371 S.C. 159, 638 S.E.2d 664 (2006). The Appellate Panel analyzed the facts in light of Ellison II, and determined that upon the evidence, Ellison II did not apply. Specifically, the Appellate Panel found:

Based on the testimony and evidence presented, Claimant's current inability to work, if any, is secondary solely to his back injury. The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 [sic] in any way; therefore, Claimant's reliance on Ellison and § 42-1-400(a) [sic] is misplaced.

(citations omitted). Unlike the Appellate Panel in Bartley, the Appellate Panel here made findings of fact about Dinkins' previous injuries. In addition, the order cites a doctor's report which states the back injury is a "separate and distinct" injury from Dinkins' ankle and knee injury. The Appellate Panel found Dinkins' knee and ankle injuries did not combine with his current back injury to create a greater disability, and therefore he could not establish total disability based upon section 42-9-400. While the Appellate Panel did not use the preferable language, "combined effects to cause a greater disability,"³ it did cite the proper case law. We believe it viewed the facts appropriately in light of Ellison II, and substantial evidence in the record supports the Appellate Panel's decision that Dinkins did not have a greater disability as a result of the combined effects of his previous

³ The Appellate Panel specifically stated "do not contribute to his disability."

injuries and his current injury. Accordingly, we affirm the Appellate Panel's finding.

In view of our determination that Dinkins has not proven he has a greater disability as a result of the combined effects of his injuries, we need not reach the remaining issues relating to loss of earning capacity. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Based on the foregoing reasons, the trial court is

AFFIRMED.

HUFF and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-43-0087

Henry Dinkins, ... Appellant,

v.

Lowe's Home Centers, Inc. -Sumter, SC and
Specialty Risk Services, LLC, ... Respondents.

PETITION FOR REHEARING

The Appellant, by and through his undersigned attorney, hereby files this Petition for Rehearing. On January 4, 2012, this Court issued an opinion affirming the decision of the Court of Common Pleas which affirmed the Decision and Order of the South Carolina Workers' Compensation Commission. Dinkins v. Lowe's Home Centers, Inc. -Sumter, SC and Specialty Risk Services, LLC, Op. No. 4876 (S.C.Ct.App. filed January 4, 2012)(Shearouse Adv.Sh. No. 1 at 47).

As grounds for granting his Petition, Appellant would respectfully show that the Court may have overlooked or misapprehended the evidence and arguments raised on the issues of the combined effects of Dinkins' previous work-related injuries on his ability to work.

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SL. COURT OF APPEALS

ARGUMENT

This Court held Ellison v. Frigidaire Home Products, 360 S.C. 236, 600 S.E.2d 120 (2004), did not apply to the instant case because the Appellate Panel made findings of fact about Dinkins' previous injuries. Specifically, the Court referenced a finding that "Claimant's current inability to work, **if any**, is secondary solely to his back injury. The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 [sic] in any way; therefore Claimant's reliance on Ellison and § 42-1-400(a) [sic] is misplaced." [Finding of Fact 10, R. page 33].

Respectfully, the Court erred in this conclusion. Dinkins met all requirements to proceed under Ellison. His pre-existing conditions explicitly meet the definition for a "hindrance or obstacle to employment or reemployment" set out in the statute. See S.C. Code Ann. § 42-9-400(d) (2005)(defining a hindrance or obstacle to employment as any preexisting condition which is permanent in nature and would qualify for 78 weeks of compensation). The Appellate Panel's findings are legally incorrect and unsupported by substantial evidence. Moreover, the finding on disability under § 42-9-10 is controlled by legal error, specifically the fact the Appellate Panel failed to consider Dinkins' unsuccessful work search as conclusive proof of disability. Essentially, the Appellate Panel worked backwards. It used the erroneous conclusion on disability to then erroneously conclude Ellison did not apply.

I. The Court erroneously affirmed the Appellate Panel's ruling on Ellison because it overlooked or misapprehended the undisputed fact that Dinkins was both demoted and denied alternative employment specifically because of his preexisting conditions.

The facts necessary to bring this case under Ellison are conclusively established. The

Supreme Court stated, “There is no requirement that the pre-existing condition aggravated the injury, or that the injury aggravated the pre-existing condition, so long as there is a greater disability simply from the ‘combined effects’ of the injury and the preexisting condition.” Ellison II, 371 S.C. at 164, 638 S.E.2d at 666.

Here, Dinkins had two pre-existing conditions, both of which resulted in substantial disability. As to the May 1, 2001 left ankle injury, the Commission had previously found as a fact that, “Claimant continues to experience significant pain, loss of motion and altered gait.” The Commission further found, “Claimant’s symptoms continue to cause problems running, jumping, walking, walking on uneven surfaces, negotiating stairs and standing.” [R. p. 10]. As to the June 22, right knee injury, the Commission previously found Dinkins had “limitations in his ability to stand, squat and walk due to his injury.” [R. p. 3]. The Commission had no ability to alter these findings in the April 2005 back injury case.

In its use of the term “greater disability” in Ellison II, the Supreme Court meant “of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed.” S.C. Code Ann. § 42-9-400(d) (2005). The first two injuries caused a substantial level of disability – serious enough to compel Lowes’ to demote Dinkins from department manager to customer service representative. Thus, not only did Dinkins have substantial physical limitations from his leg injuries, they also caused him to lose his managerial position – and later be denied reemployment in an administrative position.¹ As such, Dinkins went well beyond the normal standard of proof of merely showing that the preexisting

¹Dinkins testified he did not get the administrative job specifically because, “I was told that because of the injury that I had on the knee and all that I wasn’t entitled – that I wouldn’t be qualified for that position.” [R. p. 80, lines 3-10].

condition created physical restrictions – he actually showed that those physical restrictions constituted “a hindrance or obstacle to obtaining employment” with Lowes’. [R. pp. 79-80, 90-91].

As to the findings made by the Commission, the above Ellison analysis shows that the Commission’s finding is legally incorrect and unsupported by the evidence. At most, it is technically correct to state that Dinkins lost his light-duty customer service job at Lowes’ specifically because of his back injury – and, thus, the reference to his “*current* inability to work.” However, his current inability to find gainful employment is a combination of the restrictions from his back injury and his preexisting leg injuries. The Ellison analysis is not limited to finding why an injured worker lost his last job – particularly when the last job was sheltered employment made as an accommodation for a previous work-related injury with the same employer.

The Appellate Panel never conducted an Ellison analysis. Instead, it first made an incorrect finding that “Claimant failed to satisfy his burden of proof he is entitled to compensation for loss of earning capacity pursuant to § 42-9-10 or § 42-9-20 as a result of his April 20, 2005 work-related accident” based entirely on the Employer’s vocational evaluation. As noted at pages 14-18 of Appellant’s Brief and pages 1-6 of Appellant’s Reply Brief, the Appellate Panel erred by failing to consider the proof shown by Dinkins’ diligent and unsuccessful work search. Having made this error, the Appellate Panel then worked backwards to conclude Ellison did not apply.

The guiding principle behind Ellison is that it allows an employee with a single-member injury the ability to recover for his actual loss of earnings capacity rather than limiting him to a scheduled member award. As the Supreme Court explained: “The language of § 42-9-400(a) and (d) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing

condition hinders reemployment.” Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (2006).

It appears that this Court affirmed the Appellate Panel here based on the Supreme Court’s reversal of this Court in Bartley v. Allendale Cnty. Sch. Dist., 392 S.C. 300, 709 S.E.2d 619 (2011). The concern here is not whether reversing the Appellate Panel would usurp the Commission’s role as fact finder. Respectfully, this Court erred by giving undue credence to the Appellate Panel’s findings of fact when those findings are patently erroneous. A conclusory finding of fact unsupported by the evidence is not a finding of fact at all.

In Bartley, the Supreme Court reversed because “the Commission has not considered Bartley’s claims applying the proper legal standard and has not made specific factual findings as to Bartley’s other conditions because it made an initial determination that they could not be considered.” Id. at 310, 709 S.E.2d at 624. The Appellate Panel made a similar error here. It did not apply the proper legal standard. It did not make specific factual findings – or if it did, those factual findings are unsupported by substantial evidence. It simply cannot be said Dinkins’ preexisting injuries did not constitute “a hindrance or obstacle to obtaining employment” when the undisputed facts show Dinkins’ was both demoted and denied alternative employment specifically because of his preexisting conditions. [R. pp. 79-80, 90-91].

Bartley controls here – except that here the evidence supporting application of Ellison is dispositive. Respectfully, this Court should reconsider and reverse its holding that Ellison does not apply. The Court should further address the issues raised by Dinkins on the extent of his disability under S.C. Code Ann. § 42-9-10 (2005).

II. The Court erroneously affirmed the Appellate Panel's ruling on Ellison because it overlooked or misapprehended the statutory presumption that Dinkins' ankle injury is presumed to constitute a "permanent physical impairment" under S.C. Code Ann. § 42-9-400(d)(2005).

The analysis in Ellison based largely on interpreting S.C. Code Ann. § 42-9-400 (2005). As the Supreme Court explained: "The language of § 42-9-400(a) and (d) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing condition hinders reemployment." Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (2006).

§ 42-9-400(d) contains this provision applicable to this case:

When an employer establishes his prior knowledge of the permanent impairment, then there shall be a presumption that the condition is permanent and that a hindrance or obstacle to employment or reemployment exists when the condition is one of the following impairments:

(17) Ankylosis of joints;²

(34) Any other pre-existing disease, condition or impairment which is permanent in nature and which:

(a) Would qualify for payment of weekly disability benefits of seventy-eight weeks or more under § 42-9-30 . . . ³

S.C. Code Ann. § 42-9-400 (2005).

This statutory presumption plainly applies to the facts of this case. As such, Dinkins met the requirements to seek a general disability award under Ellison.

Respondents concede the presumption should have been applied to this case. However, they

²The parties agree the "triple arthrodesis" performed on Dinkins's left ankle meets the ankylosis requirement. [Brief of Respondents, page 13, note 2].

³Dinkins received weekly disability benefits of 78 weeks for his left ankle injury and 58.5 weeks for his right knee injury. [R. p. 5, 11].

contend “because Claimant did not raise this presumption below, it is not preserved for appellate review.” [Brief of Respondents, page 13, note 2]. If the statutory presumption is applied to the facts of this case, the Commission’s ruling is plainly erroneous. This puts the Court in the difficult position of having affirmed a clear error of law in a published opinion when it can make thing right on reconsideration. Not only is this a harsh result for Henry Dinkins; it also creates a misleading precedent that conflicts with a clearly written statute, thus leading to confusion for bench and bar.

In candor to the Court, it is conceded that the statutory presumption was not argued in those specific terms to the Appellate Panel. However, the issue preservation rules require that the *issue* be raised and ruled upon; not necessarily that specific terms be used in an argument. Dinkins is not raising a new issue – the application of Ellison and § 42-9-400 has always been the central issue in this case and that is what is being addressed here. See Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010)(finding argument sufficiently preserved for review because lack of reference to a particular term in argument to trial court was not fatal to appellate argument).

A reviewing court has the ability and authority to reframe the issue and apply the controlling law. See Doe v. South Carolina Dept. of Disabilities and Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008)(Toal , C.J., concurring)(“I concur in the majority's decision to reverse this [workers’ compensation] case, but I write separately because I would resolve the case on different grounds.”). “Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue.” It is enough that “the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.” Herron v. Century BMW, Op. No. 26805 (S.C.Sup.Ct. filed December 19, 2011)(Shearouse Adv.Sh. No. 45 at 15, 22).

Those requirements have been met. This Court should apply the statutory presumption and

hold the Commission erred in Ellison and § 42-9-400 did not apply to this case.

Even if the Court holds the statutory presumption is not preserved, the statute still retains dispositive value in the decision. Workers' compensation is a creature of statute. Ellison is based on interpreting the statute. The specific language referenced in Ellison is found at § 42-9-400(d). The Appellate Panel erred in failing to apply the statutory definition in its Ellison analysis, instead creating its own arbitrary and subjective test. Regardless of the presumption, the statute clearly defines the permanent preexisting conditions suffered by Dinkins as hindrances or obstacles to employment or reemployment. The issue was argued by both sides using those specific words from the statute. [Brief of Appellant at 10-11; R. pp. 101, l. 15-p. 102, l. 7]. The Appellate Panel committed legal error in failing to apply that standard (as did the Circuit Court). Therefore, Appellant respectfully requests this Court reconsider its decision to find that Dinkins proved his preexisting conditions were a hindrance to employment, thus bringing this case under the ambit of Ellison.

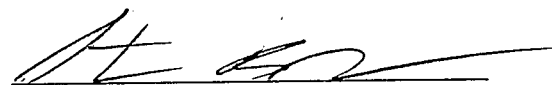
III. The Court should reach the issue of whether the Appellate Panel committed legal error in failing to consider Dinkins' diligent work search and whether Dinkins proved his permanent and total disability as a matter of law.

This Court held in light of its ruling on the combined effects of Dinkins' injuries, it need not reach the remaining issues related to loss of earnings capacity. Dinkins respectfully requests that the Court reconsider this decision and find Dinkins has proven his case on all issues. The Court should address and reverse the rulings below on loss of earnings capacity as argued at pages 13-19 of the Brief of Appellant and in the Reply Brief of Appellant.

CONCLUSION

For the foregoing reasons, the Court should withdraw its initial Opinion and issue a new opinion reversing the trial court and the Appellate Panel on Appellant's right to proceed on his claim for total and permanent disability under S.C. Code Ann. § 42-9-10. The Court should also address and reverse the rulings below on loss of earnings capacity as argued at pages 13-19 of the Brief of Appellant and in the Reply Brief of Appellant.

Respectfully Submitted,



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January 19, 2012

THE STATE OF SOUTH CAROLINA
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APPEAL FROM SUMTER COUNTY
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SC Court of Appeals

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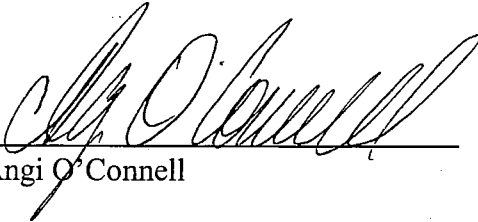
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Lowe's Home Centers, Inc. - Sumter, SC and
Specialty Risk Services, LLC, ... Respondents.

PROOF OF SERVICE

I, the undersigned, paralegal to Stephen B. Samuels of Samuels Law Firm, LLC, attorneys for the Appellant, do hereby certify that I have served one copy of the PETITION FOR REHEARING, dated January 19, 2012, via first class mail and addressed to the attorneys for Respondents as indicated below:

Weston Adams, III, Esquire
Helen F. Hiser, Esquire
C. Edward Rawl, Esquire
M. McMullen Taylor, Esquire
McAngus Goudelock & Courie
Post Office Box 12519
Columbia, South Carolina 29211


Angi O'Connell

January 19, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GEORGE C. JAMES, CIRCUIT COURT JUDGE

CASE No. 2009-CP-43-0087

HENRY DINKINS,
JR.,.....APPELLANT,

v.

LOWE'S HOME CENTERS, INC. – SUMTER, S.C., EMPLOYER,
AND SPECIALTY RISK SERVICES, LLC, CARRIER,.....RESPONDENTS.

RESPONDENTS' RETURN TO PETITION FOR REHEARING

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THE STATE OF SOUTH CAROLINA
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CASE No. 2009-CP-43-0087

HENRY DINKINS,
JR., ... APPELLANT,

v.

LOWE'S HOME CENTERS, INC. – SUMTER, S.C., EMPLOYER,
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RESPONDENTS' RETURN TO PETITION FOR REHEARING

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(803) 779-2300
Attorneys for Respondents

On January 4, 2012, this Court issued its opinion affirming the decisions of the Circuit Court and the South Carolina Workers' Compensation Commission that Appellant Henry Dinkins was not entitled to general disability benefits. *Dinkins v. Lowe's Home Centers, Inc. & Specialty Risk Services, LLC*, Op. No. 4876 (S.C. Ct. App. Filed Jan. 4, 2012). On January 19, Appellant filed a Petition for Rehearing. This Return follows.

Pursuant to Rule 221, SCRAP, a petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." The petitioner bears the burden of demonstrating that the court misapprehended or overlooked fact or law. However, "the purpose of a petition for rehearing is not just to have the case tried in this Court a second time." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 172-173, 167 S.E. 234, 238 (1933); *Checker Yellow Cab Co. v. Checker Cab & Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). Appellant impermissibly seeks to merely reargue his case without meeting his burden of demonstrating that this Court overlooked or misstated fact or law.

Appellant first argues that the Commission should have found that his two prior injuries resulted in substantial disability. As we all know, the Commission is the ultimate fact finder in workers' compensation cases: *Ross v. American Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 729 (1989). A reviewing court should affirm the decision of the Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). This Court reviewed the Appellate Panel Order in this matter, holding that the Appellate Panel "viewed the facts appropriately ... and substantial evidence in the record supports the

Appellate Panel's decision that Dinkins did not have a greater disability as a result of the combined effects of his previous injuries and his current injury." *Dinkins v. Lowe's Home Centers, Inc. & Specialty Risk Services, LLC*, Op. No. 4876 (S.C. Ct. App. Filed Jan. 4, 2012). Appellant raises no fact that this Court overlooked in reaching its decision.

Secondly, Appellant argues that this Court overlooked the statutory presumption that his ankle injury constitutes a permanent physical impairment. The Second Injury Fund Statute provides, in pertinent part, the following:

If an employee, who has a permanent physical impairment from any cause or origin, incurs a subsequent disability from injury by accident ... resulting in compensation and medical payments liability or either, for disability that is substantially greater, by reason of the combined effects of the pre-existing impairment and subsequent injury ... then that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided under this Title.¹ S.C. Code Ann. § 42-9-400(a).

Section 42-9-400(d) defines "permanent physical impairment" as "any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed." A pre-existing physical impairment is defined as "any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed." S.C. Code Ann. § 42-9-400(d). Several identified conditions are presumed to meet this definition. Included among these conditions is "any other pre-existing disease, condition or impairment which is permanent in nature and which ...

¹ The revised Workers' Compensation Act, Act No. 111, Leg. Sess. 117 (S.C. 2007), no longer includes the term "combined effects" within the Second Injury Fund Statute.

would qualify for payment of weekly disability benefits of seventy-eight weeks or more under § 42-9-30 exclusive of benefits payable for disfigurement” S.C. Code Ann. § 42-9-400(d)(34). As noted by Respondents in its Brief, Appellant was awarded 40% permanent partial disability, entitling him to receive seventy-eight weeks of benefits, for his previous ankle injury in 2006. However, Appellant failed to raise or assert this presumption at any hearing below. Appellant now urges this Court to apply this statutory presumption which, in his view, would inexorably result in reversal of the Commission’s Order.

Appellant concedes that he did not raise the presumption before the Commission. App. Pet. Rehearing, p. 7. To avoid the preclusive effect of his failure to raise this presumption, Appellant argues that he nonetheless raised the issue of the Second Injury Fund Statute, and citing to *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E. 2d 135 (2010), characterizes his failure to specifically address the presumption within this statute as a mere technicality. In *Austin*, the respondent argued that insufficient evidence existed to support actual damages because testimony regarding valuation of the vehicle was not squarely framed as a matter of fair market value. *Id.* at 42, 145. The appellant argued that the issue was not preserved for review because the actual term “fair market value” was not used in its post trial motions. *Id.* The court determined that the issue was preserved for review within even though the term “fair market value” was not explicitly stated because respondent’s arguments below nonetheless addressed the issue of proper valuation. *Id.* Essentially, the court found that substance prevailed over form. This case is of no help to Appellant because he cannot point to any argument below that could be reasonably construed as raising the presumption found in the Second Injury

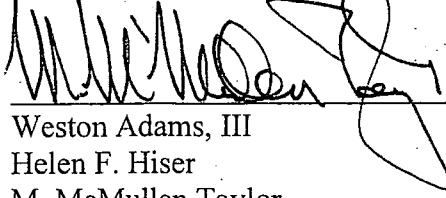
Fund Statute in any form or fashion. The record on appeal shows that Appellant argued vigorously that his prior knee and ankle injuries were a hindrance to obtaining employment. It is difficult to construe these arguments as an assertion of the presumption because the presumption if raised would negate the need to even argue the particulars of these prior injuries.

The ultimate problem with Appellant's argument is that applying the presumption would not change the outcome. The presumption is relevant to the question of whether a particular pre-existing injury meets the definition of the term "permanent physical impairment" used within the Second Injury Fund Statute. It does not reach the ultimate issue of whether that permanent physical impairment combines with a subsequent work injury to cause substantially greater disability. See *Curiel v. Env't'l Management Svs.*, 376 S.C. 23, 31, 655 S.E.2d 482, 486 (2007) (stating that claimant may receive total disability benefits under *Ellison* if the "combined effect" of the pre-existing permanent physical impairment and the subsequent work injury results in a substantially greater disability). Substantial evidence exists to support the Circuit Court's conclusion that the effects of Claimant's ankle, knee and back injuries did not combine to cause substantially greater incapacity to earn wages than Claimant was receiving at the time of his back injury.

For these reasons, Respondents respectfully request that Appellant's Petition for Rehearing be denied.

January 30, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Weston Adams, III', is written over a horizontal line.

Weston Adams, III

Helen F. Hiser

M. McMullen Taylor

C. Edward Rawl, Jr.

McAngus, Goudelock & Courie LLC

Post Office Box 12519

Columbia, South Carolina 29211-2519

(803) 779-2300

Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-43-00087

Henry Dinkins, ... Appellant,

v.

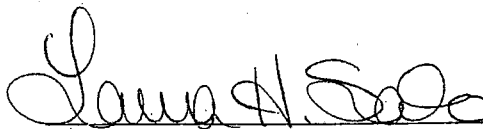
Lowe's Home Centers, Inc. - Sumter, SC and
Specialty Risk Services, ... Respondents.

PROOF OF SERVICE

I certify that on the 30th day of January, 2012, I have served the **Respondents' Return to Petition for Rehearing** on Henry Dinkins by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Stephen B. Samuels, Esquire
Samuels Law Firm
Post Office Box 50349
Columbia, South Carolina 29250

January 30, 2012



Laura H. Sabo
Paralegal for Weston Adams, III

The South Carolina Court of Appeals

Henry Dinkins,

Appellant

v.

Lowe's Home Centers, Inc. - Sumter,
SC and Specialty Risk Services, LLC,

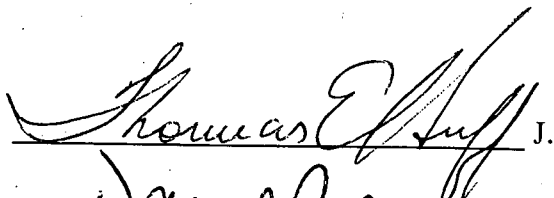
Respondents

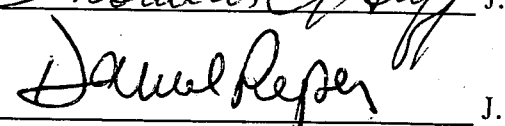
The Honorable George C. James, Jr.
Sumter County
Trial Court Case No. 2009-CP-43-00087

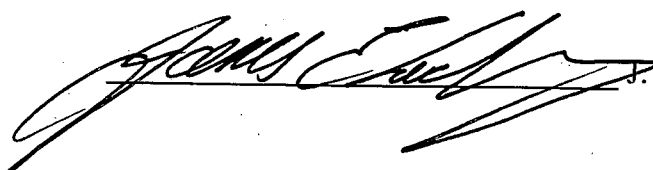
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.



J.


J.


Columbia, South Carolina

cc: Stephen Benjamin Samuels, Esquire
Weston Adams, III, Esquire
Helen F. Hiser, Esquire
C. Edward Rawl, Jr., Esquire
M. McMullen Taylor, Esquire

FILED

March 29, 2012

RECEIVED

JUN 08 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-43-0087

Henry Dinkins, Jr., ... Appellant,

v.

Lowe's Home Centers, Inc. -Sumter, SC, and Lowe's Companies, Inc., ... Respondents.

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENTS

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South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WC File # 0509590
Carrier File # YKH 01832
Carrier Code # 00946
Employer FEIN

Henry Dinkins

Claimant's Name SSN

Dalzell, South Carolina 29040

Address City State Zip

Home Phone #

Work Phone #

George D. Gallagher

Preparer's Name

Lowe's Home Centers, Inc. - Sumter, SC

Employer's Name

Sumter, South Carolina 29150

Address City State Zip

Specialty Risk Services, Inc.

Insurance Carrier

(803) 227-2234

Phone Number

The date of injury reported on the Form 12A is: April 20, 2005

Check applicable section(s). The employer's representative requests a hearing to:

- ☒ I. **Stop payment of compensation.** Compensation payments are current as of May 18, 2007 and shall continue until otherwise ordered or until a Form 17 is signed by the claimant. A Form 17 was offered and refused on May 18, 2007.

The basis of the stop payment hearing is (check one):

- ☒ (a) The authorized health care provider states the claimant has reached maximum medical improvement.
☐ (b) The authorized health care provider states the claimant is able to return to the same or other suitable job and has assigned an impairment rating, if any, and the same or suitable job has been offered to the claimant.
☐ (c) The authorized health care provider states the claimant is unable to return to the same or other suitable job and has assigned an impairment rating, if any.

- ☐ II. **Terminate temporary compensation suspended per R.67-505.** Date suspended: _____

The basis for suspension of benefits is (check one):

- ☐ (a) The claimant refuses medical treatment.
☐ (b) The employer states the claimant is working, has worked for at least fifteen calendar days, and the claimant refuses to sign the Form 17. Requesting: ☐ Informal Conference ☐ Hearing

- ☒ III. **Pay compensation** in the amount of \$to be determined, based on the following grounds: Permanent partial disability to the back based on impairment rating from the authorized treating physician.

- ☒ IV. **Request Credit for overpayment of temporary compensation.**

- ☐ V. **Reduce Payment of compensation** from \$_____ to \$_____, based on the following grounds: _____
Compensation payments are current as of May 18, 2007 and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Stephen B. Samuels, Esquire
McWhirter, Bellinger & Associates, PA
485 North Lafayette Drive
Sumter, South Carolina 29150

on the 18th day of May, 2007 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Preparer's Signature

Attorney for Employer/Carrier
TitleMay 18, 2007
Date

The claimant may respond by writing the preparer at the address above and filing a copy of the response with the Commission's Judicial Department at the address at the top of the form. Refer to R.67-208, R.67-211, R.67-505, R.67-601 - R.67-616. Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675.

Before the South Carolina Workers' Compensation Commission

WCC File No. 0227018

Henry Dinkins,
Employee/Claimant

-v-

Lowes Stores,
Employer

and

Lowes Companies Inc.,
Carrier

Defendants

ORDER

Hearing Commissioner:

David W. Huffstetler

Claimant Represented By:

Stephen B. Samuels, Esq.

Defendants Represented By:

J. Gabriel Coggiola, Esq.

Purpose of the Hearing:

To consider issues outlined in form 21

Date of Hearing:

July 17, 2006

Filed: July 19, 2006

Statement of the Case

The sole issue for determination at this hearing is the extent of permanent partial disability to the Claimant's right leg. The Claimant is 63 years old and holds an Associates Degree in Business Management. His work history includes serving as a Bank Operations Manager prior to joining Lowes, where he started as a Customer Service Representative and grew to Department Manager of the Paint Department. He has suffered three separate injuries during his employment with Lowes. The first was an injury to his left ankle in 2001 and the hearing for that case was conducted by Commissioner J. Alan Bass. The case at bar occurred on June 22, 2002 and, when the Claimant returned to work, he suffered an injury to his back for which he is currently receiving temporary total disability benefits.

This hearing was scheduled pursuant to the form 21 filed by the Defense, which was accompanied by the December 8, 2005 report from Dr. Holmes. In that report Dr. Holmes opines to 25% permanent impairment to the right lower extremity. Two other physicians also assign impairment rating; Dr. Ekman notes 4% impairment on April 5, 2004 and Dr. Zgleszewski gives a rating of 5% on June 2, 2006.

The Claimant is a pleasant gentleman who testified to having limitation in his ability to stand, squat and walk due to his injury. He further testified to experiencing pain in his right knee for which he needs pain medication to maintain his current level of

functioning. The Claimant has greater than a high school education and his work experience includes jobs which do not require heavy physical work.

Findings of Fact

After considering the testimony, evidence and the record as a whole, it is found as a fact that:

1. All parties to this hearing are subject to and bound by the SC Workers' Compensation Act, as amended.
2. The average weekly wage is \$461.65 with a compensation rate of \$307.77 per week.
3. The Claimant reached maximum medical improvement on December 8, 2005.
4. The Claimant testified to experiencing pain in his left knee, but he has not filed a claim for benefits related to his left knee.
5. The Claimant has suffered 30% permanent partial disability to his right leg due to his injury of June 22, 2002.

Rulings of Law

1. Section 42-1-160 defines injury and personal injury.
2. Section 42-9-10 governs compensation for periods of total disability.
3. Section 42-9-30 provides compensation for disability to specific body members.
4. Section 42-15-60 governs medical treatment.

Order

Considering the findings of fact, rulings of law and the record as a whole, it is hereby ordered that:

The Defense shall pay the Claimant 58.5 weeks of compensation, representing a 30% permanent loss of use of the right leg.

The Defense shall provide the Claimant with additional medical treatment so long as it is directly related to this injury and tends to lessen the period of disability.

No hearing costs are assessed in this case,

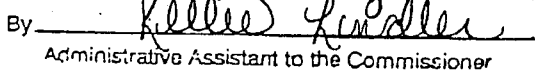
And it is so ordered.


David W. Huffstetler, Commissioner

CERTIFICATE OF SERVICE

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

This 19 day of July, 2006

By 
Administrative Assistant to the Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0127291

HENRY DINKINS,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
SUMTER, SC

Employer,

AND

SPECIALTY RISK SERVICES, INC.
Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Sumter, South Carolina on June 27, 2006.

REPRESENTATION:

Claimant appeared and was represented by Stephen B. Samuels, Esquire, of Sumter, South Carolina.

Defendants were represented by J. Gabriel Coggiola, Esquire, of McAngus, Goudelock & Courie, LLC of Columbia, South Carolina.

PURPOSE OF THE HEARING:

To determine issues as set forth on Form 21 Request to Pay Compensation.

COMMISSIONER:

J. Alan Bass

FILED:

DEC. 21st, 2006

STIPULATIONS

The parties stipulated at the Hearing to the following:

1. Claimant's average weekly wage is Four Hundred Forty-Nine and 15/100 (\$449.15) Dollars, with a corresponding compensation rate of Two Hundred Ninety-Nine and 45/100 (\$299.45) Dollars.
2. Notice of the Hearing was timely and properly served upon all parties of interest.
3. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of this claim.
4. Venue is proper in Sumter County.

APA SUBMISSIONS

Pursuant to the South Carolina administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence.

The Defendants submitted the following exhibits:

1. Wesmark Urgent Care dated 05/04/01-09/04/01 consisting of pages 1-13;
2. Sumter Physical Therapy Clinic dated 06/26/01-06/20/01 consisting of pages 14-18;
3. Industrial Medical and Wellness dated 04/11/02-01/02/03 consisting of pages 19-32;
4. The Moore Orthopaedic Clinic dated 01/29/03-02/27/03 consisting of pages 33-38; and
5. Midlands Orthopaedics dated 04/17/03-05/11/04 consisting of pages 39-59.

The Claimant submitted the following exhibits:

6. Wesmark Urgent Care dated 05/04/01-09/04/02 consisting of pages 60-68;
7. Michael K. Drakeford, M.D. dated 10/23/01-03/26/02 consisting of pages 69-73;
8. Industrial Medicine and Wellness dated 04/11/02-05/14/03 consisting of pages 74-117;
9. Tuomey Medical System MRI dated 09/19/02 consisting of pages 118-119;
10. The Moore Orthopaedic Clinic dated 01/29/03-12/08/05 consisting of pages 120-121;
11. Tuomey Rehab dated 04/15/02-05/31/02 consisting of pages 122-130;
12. Midlands Orthopaedics dated 04/17/03-05/11/04 consisting of page 131;
13. Providence Hospital dated 05/28/03 consisting of pages 132-212;
14. Southern Orthopaedic Sports dated 10/08/02-04/05/04 consisting of pages 213-223;
15. Providence Hospital dated 12/09/03 consisting of pages 224-225;
16. Sumter Physical Therapy dated 10/08/02-02/05/04 consisting of pages 226-244;
17. Palmetto Imaging MRI dated 12/09/02 consisting of pages 245-246;
18. Arlen Compton, M.D. dated 06/24/02 consisting of page 247;
19. Columbia Rehabilitation Clinic dated 06/07/05 consisting of pages 248-259; and
20. Center for Pain Management dated 06/02/06 consisting of pages 260-264.

STATEMENT OF THE CASE

Claimant sustained an admitted injury to his left lower extremity on May 1, 2001. In addition, Claimant has two separate work-related accidents with the same Employer, which Claimant moved to consolidate at the time of Hearing; however, no motion was filed and the request was therefore denied. Following medical treatment, Claimant was found to reach

maximum medical improvement on October 14, 2003 by Dr. Robert H. Belding and assigned a permanent physical impairment of 25% to the foot.

Defendants filed a Form 21 on March 9, 2006 requesting a determination of permanency. A Hearing was noticed to all parties of interest on May 8, 2006.

EVIDENCE OF THE CASE

Claimant was the only witness to testify. Claimant testified on direct examination that he suffered an injury to the left foot on May 1, 2001 while stocking shelves for Lowe's. Claimant further testified that he initially treated with Dr. Gee, but was later referred to The Moore Orthopaedic Clinic for further evaluation. Claimant testified that he was then told he would potentially need surgery, and on May 27, 2003 underwent a triple arthrodesis of the left ankle with Dr. Belding of Midlands Orthopaedics.

Following Claimant's surgery, Claimant testified he continued to follow up with Dr. Belding until October 14, 2003, at which time Dr. Belding opined that Claimant reached maximum medical improvement and assigned an impairment rating of 25% to the left foot and released him to regular duty. Claimant further testified that following his release at maximum medical improvement, he continued to have ongoing problems with pain and range of motion in the ankle. Claimant physically demonstrated to the undersigned Commissioner his difficulty with bending his foot in all directions. Claimant further testified that he was currently only taking ibuprofen for the relief of pain.

On cross-examination, Claimant testified that following maximum medical improvement, he continued to return to Dr. Belding with complaints of pain in the ankle and was eventually rated again at 25% by Dr. Belding. Finally, Claimant testified that his current problems with his ankle affect his ability to sit and stand for prolonged periods and alter his gait.

FINDINGS OF FACT

The undersigned Commissioner closely observed Claimant's testimony, including evaluation of his demeanor, credibility and veracity. The following findings of fact are made pursuant to the South Carolina Workers' Compensation file, the stipulations of the parties, the APA Submissions, and witness testimony:

1. Claimant suffered an admitted accident on May 1, 2001.
2. Claimant suffered a compensable injury by accident to the left lower extremity, as his symptoms included the ankle.
3. Claimant was found to reach maximum medical improvement by Dr. Robert H. Belding on October 14, 2003.
4. Claimant continues to experience significant pain, loss of motion and altered gait.
5. Claimant's symptoms continue to cause problems running, jumping, walking on uneven surfaces, negotiating stairs and standing.
6. Claimant suffered 40% loss of use to the left lower extremity.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act in §42-1-10, S. C. Code of Laws, et. seq. that:

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of and in the course and scope of employment.
2. Pursuant to §42-1-40, Claimant's average weekly wage is Four Hundred Forty-Nine and 15/100 (\$449.15) Dollars, with a correlating compensation rate of Two Hundred Ninety-Nine and 45/100 (\$299.45) Dollars.
3. Claimant sustained a compensable work-related injury to his left lower extremity

by accident arising out of and in the course and scope of his employment on May 1, 2001 pursuant to §42-1-160.

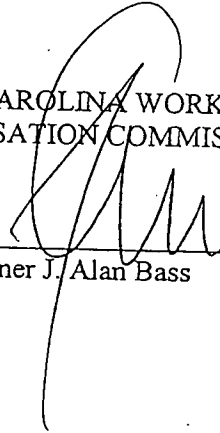
4. Claimant sustained 40% permanent partial disability/loss of use to the left lower extremity pursuant to §42-9-30(15) and is, therefore, entitled to 78 weeks of benefits.

ORDER

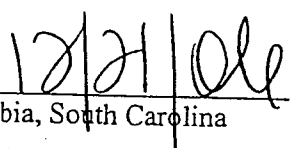
It is therefore ordered that Claimant is entitled to receive 78 weeks of benefits (\$23,357.10) in accordance with his 40% disability to his left lower extremity stemming from his compensable injury pursuant to §42-9-30(15).

AND IT IS SO ORDERED.

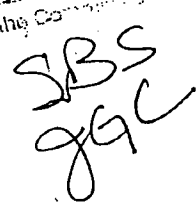
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner J. Alan Bass



Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorney-in-fact herein.
This 21 day of Dec, 2006
By J. Bennett
Administrative Assistant to the Commissioner


SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0509590

HENRY DINKINS,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
SUMTER, SC

Employer,

AND

SPECIALTY RISK SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Sumter, South Carolina on August 24, 2007.

APPEARANCES:

Claimant represented by Stephen B. Samuels, Esquire of McWhirter, Bellinger, & Associates, P.A. of Sumter, South Carolina.

Defendants represented by George Gallagher, Esquire of McAngus, Goudelock, & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING:

The issues for determination are whether the Defendants are entitled to the stop payment of temporary total disability benefits.

COMMISSIONER:

Commissioner Andrea Pope Roche

FILED:

January 23, 2008

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records were submitted into evidence.

The Claimant submitted the following exhibits:

1. Industrial Medicine & Wellness, dated 05/04/05 – 06/20/05, consisting of 7 pages.
(Claimant's APA #9).
2. Access Physical Therapy, dated 09/05/05 – 08/22/06, consisting of 122 pages.
(Claimant's APA #10).
3. University Specialty Clinics, dated 08/09/05 – 03/22/07, consisting of 16 pages.
(Claimant's APA #11).
4. Midlands Orthopaedics (Lumbar MRI), dated 01/03/07, consisting of 1 page.
(Claimant's APA #12).
5. Timothy Zgleszewski, M.D., dated 06/02/06, consisting of 5 pages. (Claimant's APA #13).
6. Midlands Orthopaedics, dated 05/11/04 – 01/05/07, consisting of 4 pages.
(Claimant's APA #14).
7. Columbia Rehabilitation Clinic, dated 02/13/07, consisting of 10 pages.
(Claimant's APA #15).
8. Donald R. Johnson, II, M.D., dated 03/07/07, consisting of 2 pages. (Claimant's APA #16).
9. J. Adger Brown, Jr. MA, CDMS, dated 04/12/07, consisting of 7 pages.
(Claimant's APA #17).

10. Moore Orthopaedic Clinic, dated 12/08/05, consisting of 1 page. (Claimant's APA #18).

11. Orders from 0127291 and 022718, consisting of 10 pages. (Claimant's Exhibit #1).

The Defendants submitted the following exhibits:

1. Industrial Medicine and Wellness, dated 05/04/05, consisting of 3 pages. (Defendants' APA #1).
2. Florence MRI and Imaging, dated 08/15/05, consisting of 1 page. (Defendants' APA #2).
3. Access Physical Therapy, LLC, dated 09/15/05 – 05/03/06, consisting of 20 pages (Defendants' APA #3).
4. Dr. Thomas Armsey and Dr. Jason Stacy, University Specialty Clinics, dated 08/09/05 -10/02/06, consisting of 15 pages. (Defendants' APA #4).
5. Dr. James F. Bethea, Columbia Orthopaedic Specialists, dated 09/25/06, consisting of 2 pages. (Defendants' APA #5).
6. Dr. P. Douglas deHoll, Midlands Orthopaedics, P.A., dated 12/19/06 – 01/05/07, consisting of 3 pages. (Defendants' APA #6).
7. Excerpts from Nurse Case Manager Myra Chere's Notes, dated 04/28/06 - 08/24/06, consisting of 15 pages. (Defendants' APA #7).
8. Glen K. Adams, MRC, CRC, CEES, Adams & Wilkinson, dated 07/09/07, consisting of 25 pages. (Defendants' APA #8).

STIPULATIONS

The parties stipulate to the following:

1. The Claimant's average weekly wage is Four Hundred Eighty Nine and 75/100 Dollars (\$489.75) with a corresponding compensation rate of Three Hundred Twenty Six and 52/100 Dollars (\$326.52).
2. Notice of the hearing was timely and properly served on all parties of interests.
3. The South Carolina Worker's Compensation Commission has jurisdiction over the claim.
4. Venue is proper in Sumter County.

STATEMENT OF THE CASE

Henry Dinkins (the "Claimant") sustained an injury to the lower back in an admitted work-related accident on April 20, 2005. (Hr'g Tr. p. 17, ll. 5-25). The Claimant contends that he has not reached maximum medical improvement, and that he is entitled to additional medical treatment and continued temporary total disability benefits. (Hr. Tr. p. 6, ll. 24-25, p. 7, ll. 1-9). In the alternative, the Claimant maintains that he is permanently and totally disabled based on three alternative theories. (Hr'g Tr. p. 7, ll. 1-25). First, the Claimant claims that he is permanently and totally disabled based on a greater than 50% loss of use of the back. (*Id.*). Second, the Claimant claims total loss of earning capacity secondary to his compensable back injury and disabling effects on the use of his legs. (*Id.*) Third, the Claimant claims total loss of earning capacity due to disability from his back injury, combined with his preexisting right knee and left ankle injuries pursuant to §42-9-400 (a) and Ellison v. Frigidaire Home Products, 360 S.C. 236, 600 S.E.2d 120 (2004). (*Id.*)

The Defendants take the position that the Claimant reached maximum medical

improvement on September 25, 2006 and seek the stop payment of temporary total disability benefits as well as a credit for the overpayment of temporary total disability benefits. (Hr'g Tr. p. 5, ll. 6-11). More specifically, three physicians (Dr. deHoll, Dr. Bethea, and Dr. Johnson) determined that the Claimant has reached maximum medical improvement, including the Claimant's own IME physician. (Defendants' APA #5, p. 41, #6, p. 44; Claimant's APA #16, p. 251). The Defendants deny that the Claimant is permanently and totally disabled, but acknowledge that Claimant is entitled to permanent partial disability benefits to the back pursuant to Section 42-9-30 (19). (Hr. Tr., p. 5, ll. 6-25, p. 6, ll. 1-23).

With regard to the issue of the Claimant's permanent and total disability claim, the Defendants maintain that the medical evidence indicates that the Claimant's compensable injury is confined to his back and there have been no "disabling effects" on any other body parts. (Hr'g Tr. p. 5, ll. 6-25, p. 6, ll. 1-23) (See Ellison v. Frigidaire Home Products, 360 S.C. 236, 600 S.E.2d 120 (2004) (holding that where an injury is confined to a scheduled member, and there is no other part of the body because of the injury, the employee is limited to the scheduled compensation, even though other considerations effected a total or partial industrial incapacity). Accordingly, the Claimant is only eligible to pursue scheduled disability compensation per §42-9-30 and is not legally entitled to pursue permanent and total disability based on wage loss pursuant to § 42-9-10 or § 42-9-20. (Id.) Furthermore, the medical evidence, including impairment ratings of 5% from Dr. deHoll, 5% from Dr. Bethea, and 8% from Dr. Johnson does not support an award of permanent total disability benefits based on greater than 50% loss of use of the back. (Defendants' APA #5, p. 41, #6, p. 44; Claimant's APA #16, p. 251).

The Defendants also maintain that even if the Claimant is procedurally eligible to pursue permanent and total disability based on injury to more than one scheduled body part, he is still

nevertheless not permanently and totally disabled because a reasonably stable labor market exists within his residual functional capacity, based on his education and vocational history. (Hr'g Tr. p. 5, ll. 6-25, p. 6, ll. 1-23).

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 63 years of age, and resides in Dalzell, South Carolina. (Hr'g Tr. p. 12, ll. 11-12). The Claimant testified that he obtained an associates degree in business administration in 1981 and has an advanced certificate from the American Institute of Banking. (Hr'g Tr. p. 12, ll. 19-22). The Claimant testified that he worked in the banking industry for 35 years, predominately on the operations side, but also briefly in finance. (Hr'g Tr. p. 38, ll. 5-25, p. 39, ll. 1-9). The Claimant began working for Lowe's in 1999 and was employed as a price coordinator at the time of his work-related accident. (Hr'g Tr. p. 14, ll. 4-9, p. 17, ll. 10-20). The Claimant sustained a compensable injury to the back in an admitted work-related accident on April 20, 2005. (Hr'g Tr. p. 17, ll. 10-25).

The Claimant sought and received medical treatment from a variety of physicians, as a result of the injuries sustained in his April 2005 work-related accident, including Dr. Bethea, Dr. deHoll, and Dr. Johnson (Claimant's IME physician), as well as Dr. Armsey and Dr. Stacy. (Defendants' APA ##4, 5, and 6; Claimant's APA #16; Hr'g Tr. pp. 18-19). A review of the medical records indicates that the Claimant was diagnosed degenerative disc disease with bulging L3-4 and L4-5 and radiculopathy. (Defendants' APA #2, p. 4). The Claimant was provided conservative treatment in the form of physical therapy and medication. (Defendants' APA #4).

A review of the medical records indicates that on September 25, 2006, Dr. Bethea determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the back; on January 5, 2007, Dr. deHoll determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the lumbar spine; and on March 7, 2007 Dr. Johnson, the Claimant's IME physician, determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 8% to the whole person. (Defendants' APA #5 and #6; Claimant's APA #16). On February 13, 2007, the Claimant underwent a functional capacity evaluation, which placed the Claimant in the light physical demand category. (Claimant's APA #15, page 240).

Additionally, Dr. Johnson opined that the Claimant's ability to perform work was limited to a sedentary to light work status with a lifting restriction of 10 pounds occasionally and restrictions on repetitive bending and twisting. (Claimant's APA #16, pages 250-251). On June 2, 2006, Dr. Zgleszewski opined the Claimant's lower back injury is separate and distinct from the knee and ankle injuries he sustained in previous work-related accidents. (Claimant's APA #13, p. 233).

The Claimant testified that he currently experiences constant aching pain in his lower back with radiation into the thighs of both extremities. (Hr'g Tr. p. 24, ll. 15-25, p. 25, ll. 1-19). The Claimant estimates that he can sit and stand comfortably for approximately 15-30 minutes, respectively. (Hr'g Tr. p. 26, ll. 2-22). In order to alleviate the pain and problems he experiences the Claimant testified that he does not take any medication on a regular basis for his back pain, other than over-the-counter analgesics. The Claimant indicated that he has been prescribed ibuprofen and Tramadol, which he takes sparingly. (*Id.*). The Claimant testified to ongoing pain and popping in his ankle, as well as occasional swelling, weakness, and instability

in his right knee. (Hr'g Tr. p. 23, ll. 8-25, p. 24, ll. 1-9). The Claimant confirmed that he was able to perform essential functions of his job despite these problems prior to his back injury. (Hr'g Tr. p. 25, ll. 20-25). The Claimant also testified that he is able to exercise fairly regularly, including three days a week at the local YMCA.

On cross-examination, the Claimant testified that his complaints of ankle and knee pain are the same problems he was having as a result of a May 2001 and a June 2002 work-related accident, for which the Claimant has already been compensated. (Hr'g Tr. p. 40, ll. 9-23). The Claimant also acknowledged that his current inability to work and work restrictions are secondary to his back injury and not due to his knee and ankle injuries he sustained in these previous work-related accidents. (Hr'g Tr. p. 41, ll. 3-20). The Claimant further testified that he was able to return to work at Lowe's following both his knee and ankle injuries with no lost wages, and in fact received at least one raise following those injuries prior to this April 2005 work-related accident. (Hr'g Tr. p. 41, ll. 21-25, p. 42, ll. 1-18).

Following his April 2005 work-related accident, the Claimant continued to work at Lowe's in a light duty capacity until December 2005. (Hr'g Tr. p. 18, ll. 6-17). The Claimant has not worked with the Defendants since December 5, 2005. (*Id.*). The Claimant testified that he met with several Lowe's representatives in January 2007 about potentially returning to work, but it was determined that the job requirements of a cashier exceeded his permanent work restrictions, specifically, restrictions of no prolonged standing, bending, and stooping. (Hr'g Tr. p. 19, ll. 13-25, p. 20, ll. 1-25, p. 21, ll. 1-5). Nevertheless, the Claimant testified that he definitely thinks he is physically able to return to work in banking. (Hr'g Tr. p. 34, ll. 10-16). He testified that he has sent out several applications, including an administrative job with the State Department of Corrections and a temporary financial position available with Kelly

Services. (Hr'g Tr. pp. 31-34). The Claimant testified that he began receiving Social Security retirement benefits shortly following his back injury. (Hr'g Tr. p. 42, ll. 19-22).

On July 9, 2007, the Claimant underwent a vocational evaluation, with Glen Adams, CRC, which determined that the Claimant was employable in the labor market in the banking, financial and retail industries. (Defendants' APA #8, page 83-84). Specifically, the vocational evaluation noted that prior to working at Lowe's, the Claimant had a career the banking and financial industry, working in highly skilled positions such as operations manager, vice-president, and consultant to the vice-president. (*Id.*). The vocational evaluation highlighted positive factors, such as, the Claimant's customer service experience, computer skills, and management skills. (*Id.*). Additionally, the Claimant's vocational profile included completion of high school, completion of an associate's degree in business management at Pace University, and completion of various banking courses and certifications. (*Id.*). Based on the strength of the Claimant's prior work history in management positions, as well as the other factors, Glen Adams, CRC, determined that the Claimant is employable in his labor market. (Defendants' APA #8, page 83-84).

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is Four Hundred Eighty Nine and 75/100 Dollars (\$489.75) with a corresponding compensation rate of Three Hundred Twenty Six and 52/100 Dollars (\$326.52).

3. Based on the testimony presented, the Claimant is 63 years of age and has an associate's degree in business administration as well as an advanced certificate from the American Institute of Banking. (Hr'g Tr. p. 12, ll. 11-12).
4. Based on the testimony presented, the Claimant worked in the banking industry for 35 years, predominately on the operations side, but also briefly in finance prior to receiving employment with Defendants in 1999. (Hr'g Tr. p. 38, ll. 5-25, p. 39, ll. 1-9).
5. Based on the testimony presented, the Claimant sustained a compensable injury to the back in an admitted work-related accident on April 20, 2005. (Hr'g Tr. p. 17, ll. 5-25).
6. Based on the testimony medical evidence presented, the Claimant sought and received appropriate medical treatment, for the injuries sustained in his April 2005 work-related accident, from a variety of physicians, including Dr. Bethea, Dr. deHoll, and Dr. Johnson. (Defendants' APA #5, p. 41, #6, p. 44; Claimant's APA #16, p. 251). Based on the medical evidence presented, the Claimant was diagnosed with lumbar degenerative disc disease with bulging L3-4 and L4-5 and radiculopathy. (Defendants' APA #2, p. 4).
7. Based on the medical evidence and testimony presented, the Claimant was provided conservative treatment in the form of physical therapy and medication. (Defendants' APA #4).
8. Based on the medical evidence presented, on September 25, 2006, Dr. Bethea determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the back; on January 5, 2007, Dr. deHoll

determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the lumber spine; and on March 7, 2007 Dr. Johnson, the Claimant's IME physician, determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 8% to the whole person. (Defendants' APA #5 and #6; Claimant's APA #16).

9. Based on the medical evidence presented, a functional capacity evaluation placed work restrictions on the Claimant consistent in the light physical demand category. (Claimant's APA #15, page 240). Additionally, Dr. Johnson opined that the Claimant's ability to perform work was limited to a sedentary to light work status with a lifting restriction of 10 pounds occasionally and restrictions on repetitive bending and twisting. (Claimant's APA #16, pages 250-251).
10. Based on the testimony and evidence presented, the Claimant's current inability to work, if any, is secondary solely to his back injury. (Hr'g Tr. p. 25, ll. 20-25). The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 in any way; therefore, the Claimant's reliance on Ellison and § 42-1-400 (a) is misplaced.
11. On June 2, 2006, Dr. Zgleszewski opined the Claimant's lower back injury is separate and distinct from the knee and ankle injuries he sustained in previous work-related accidents. (Claimant's APA #13, p. 233). Based on the medical evidence and testimony presented, I find that the Claimant's compensable injury is confined to his back. Based on the medical evidence and testimony presented, I do not find that the Claimant's legs have been permanently affected by the back injury the Claimant sustained in his April 20, 2005 work-related accident.

(Report of Dr. Zgleszewski dated 6/2/06, Claimant's APA p. 234-235). "Mr. Dinkins' current lumbar spine injury has not affected other body parts including the lower extremities as he has no current radicular symptomatology and no referred pain.

12. Based on the medical evidence submitted, specifically the medical reports of Dr. Bethea, Dr. deHoll, Dr. Stacy and Dr. Johnson, I find that the Claimant has reached maximum medical improvement.
13. Based upon the medical evidence and testimony presented, the Claimant has sustained a 12% partial loss of use of his back. I base this finding on all of the evidence in the record.
14. Based on the medical evidence and testimony presented, the Defendants may stop the payment of temporary total disability benefits effective August 24, 2007.
15. Based on the medical evidence and testimony presented, the Defendants are entitled to a credit for the overpayment of temporary total disability benefits from August 24, 2007 to the date of the Order of the undersigned Commissioner.
16. Based on the medical evidence, testimony and vocational evidence submitted, I find that the Claimant is not permanently and totally disabled as a result of the injury he sustained to his back.
17. Based on the testimony and medical evidence presented, the Claimant failed to satisfy his burden of proof that he sustained "disabling effects" to his legs. See Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003) (holding where an injury was confined to a scheduled member, and there was no impairment of any other part of the body because of such injury, the employee

was limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual effected a total or partial industrial incapacity).

18. Based on the medical evidence, testimony, and vocational evidence presented, the Claimant failed to satisfy his burden of proof that he is entitled to compensation for loss of earning capacity pursuant to § 42-9-10 or § 42-9-20 as a result of his April 20, 2005 work-related accident. The Claimant's vocational evaluation, determined that based on the strength of the Claimant's prior work history in management positions, as well as the other factors, the Claimant is employable in his labor market. (Defendants' APA #8, page 83-84).

19. Based on the testimony and medical evidence presented, the Claimant is entitled to receive causally related medical treatment necessary to lessen the period or extent of the Claimant's disability and/or maintain the Claimant at his current level of functioning, if any. The Defendants will provide all causally related, authorized medical treatment.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.
2. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.

3. The Claimant sustained a compensable injury to the back arising out of and occurring in the course and scope of his employment with the Defendants, on April 20, 2005. (Hr'g Tr. p. 17, ll. 5-25).
4. The Claimant's legs have not been permanently affected by the back injury the Claimant sustained in his April 2005 work-related accident. The Claimant sustained no disabling effects to his legs as a result of his April 20, 2005 work-related accident. See Thus, the Claimant is restricted to scheduled disability benefits pursuant § 42-9-30 (19). See Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003).
5. Based on the testimony and evidence presented, the Claimant's current inability to work, if any, is secondary solely to his back injury. (Hr'g Tr. p. 25, ll. 20-25). The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 in any way; therefore, the Claimant's reliance on Ellison and § 42-1-400 (a) is misplaced. (See Medical Record of Dr. Zgleszewski dated June 2, 2006. (Claimant's APA #13, p. 233). Based on the medical evidence and testimony presented, I find that the Claimant's compensable injury is confined to his back. Based on the medical evidence and testimony presented, I do not find that the Claimant's legs have been permanently affected by the back injury the Claimant sustained in his April 20, 2005 work-related accident
6. Section 42-1-120 defines disability as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."

7. Pursuant to Section 42-9-30, the Claimant is entitled to an award of thirty-six weeks (36) to the back, which equals 12% specific loss of use.
8. The Claimant has failed to satisfy his burden of proof that he is entitled to compensation for loss of earning capacity pursuant to Section 42-9-20.
9. Pursuant to Section 42-9-260, the Defendants are entitled to the stop payment of temporary total disability benefits on the basis that the medical evidence indicates that the Claimant has reached maximum medical improvement.
10. Pursuant to Section 42-9-210, the Defendants are entitled to a credit for temporary total disability benefits, paid to the Claimant, from August 24, 2007 to the date of the Order of the undersigned Commissioner.
11. Section 42-15-60 governs periods within which medical treatment and supplies shall be furnished.
12. Pursuant to Section 42-15-60 and Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (S.C. Ct. App. 1999), while the Claimant has reached maximum medical improvement, the Claimant is entitled to receive causally related medical treatment necessary to lessen the period or extent of the Claimant's disability and/or maintain the Claimant at his current level of functioning. The Defendants will provide all causally related, authorized medical treatment.
13. Section 42-1-40 governs average weekly wage.

ORDER

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that the Claimant suffered a compensable injury to the back.

IT IS FURTHER ORDERED, that the greater weight of the evidence does not support a finding that the Claimant sustained a compensable injury the legs.

IT IS FURTHER ORDERED, that the greater weight of the evidence does not support a finding that the Claimant is permanently and totally disabled under Section 42-9-10, Section 42-9-20, or Section 42-9-30(19).

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant has reached maximum medical improvement.

IT IS FURTHER ORDERED, that the Defendants are entitled to terminate the Claimant temporary total disability benefits effective from the date of this Order.

IT IS FURTHER ORDERED, that the Defendants shall pay the Claimant a lump sum of 36 weeks of compensation, representing 12% specific loss of use of the back, commencing August 24, 2007.

And it is so **ORDERED**.

S.C. WORKERS' COMPENSATION COMMISSION


Andrea Pope Roche, Commissioner

January 7, 2008.

CERTIFICATE OF SERVICE

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

This 23rd day of January, 2008.

By Barbara Chelborne
Administrative Assistant to the Commissioner

SBS
GG

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0509590**

HENRY DINKINS,

EMPLOYEE,
CLAIMANT/APPELLANT,

- V -

LOWE'S HOME CENTERS, INC. – SUMTER, SC,

EMPLOYER,

AND

LOWE'S COMPANIES, INC.,

SELF-INSURED,
DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on October 27, 2008 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

Dec 18, 2008.

APPEARANCES:

Claimant/Appellant represented by Stephen B.
Samuels, Esquire, of Columbia, South
Carolina.

Defendants/Respondents represented by
George D. Gallagher, Esquire, of Columbia,
South Carolina.

STATEMENT OF CASE

The parties were heard by Commissioner Andrea C. Roche on August 24, 2007 in Sumter, South Carolina. On January 23, 2008, she issued the following Order:

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that the Claimant suffered a compensable injury to the back.

IT IS FURTHER ORDERED, that the greater weight of the evidence does not support a finding that the Claimant sustained a compensable injury [sic] legs.

IT IS FURTHER ORDERED, that the greater weight of the evidence does not support a finding that the Claimant is permanently and totally disabled under Section 42-9-10, Section 42-9-20, or Section 42-9-30(19).

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant has reached maximum medical improvement.

IT IS FURTHER ORDERED, that the Defendants are entitled to terminate the Claimant [sic] temporary total disability benefits effective from the date of this Order.

IT IS FURTHER ORDERED, that the Defendants shall pay the Claimant a lump sum of 36 weeks of compensation, representing 12% specific loss of use of the back, commencing August 27, 2007.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on October 27, 2008. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. Whether the single commissioner erred as a matter of fact and law in failing to find Claimant is permanently and totally disabled?
2. Whether the single commissioner erred as a matter of fact and law in finding Claimant had reached maximum medical improvement?
3. Whether the single commissioner's Order must be vacated due to improper and illegal influence from the Office of the Governor and executive orders issued by the Governor?
4. Whether the single commissioner erred as a matter of fact and law in failing to order Defendants to provide additional medical treatment?
5. Whether the single commissioner erred as a matter of fact and law in failing to make an award of general disability under § 42-9-170 (compensation for employee previously disabled in same employment)?
6. Whether the single commissioner erred as a matter of fact and law in failing to find Claimant's legs were affected by his compensable back injury?
7. Whether the single commissioner erred as a matter of fact and law in failing to make an award of general disability for the combined effects of Claimant's pre-existing conditions and injuries pursuant to *Ellison v. Frigidaire Home Products*, 371 S.C. 159, 638 S.E.2d 664 (2006) (total disability for combination of current injury and pre-existing impairments)?
8. Whether the single commissioner erred as a matter of fact and law in finding Claimant failed to meet his burden of proof that he has lost earning capacity when Claimant made a diligent effort to find work, including applying for and being rejected by every potential employer listed by Defendants' vocational expert?
9. Whether the single commissioner erred as a matter of law in finding the additional body parts affected by Claimant's back injury must result in greater disability?
10. Whether the single commissioner erred as a matter of fact and law in failing to prorate the net permanent disability award over Claimant's life expectancy?
11. Whether the single commissioner erred as a matter of fact and law in granting Defendants' credit for overpayment?
12. Whether the single commissioner erred as a matter of fact and law in awarding 12% loss of use of the back when the evidence indicates Claimant has sustained a much greater disability?

13. Whether the single commissioner erred as a matter of fact and law in failing to consider all the evidence in the record, specifically in failing to consider the report of Adger Brown and in relying on Glen Adams opinion when the evidence showed Claimant had applied for and been refused employment at all jobs and employers in the Columbia and Sumter area that Mr. Adams opined he was capable of doing.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Commission, by unanimous vote, has determined all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety.

FINDINGS OF FACT

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.

2. Claimant's average weekly wage is \$489.75 with a corresponding compensation rate of \$326.52.

3. Based on the testimony presented, Claimant is 63 years of age and has an associate's degree in Business Administration as well as an advanced certificate from the American Institute of Banking. (Hr'g Tr. p. 12, ll. 11-12).

4. Based on the testimony presented, Claimant worked in the banking industry for 35 years, predominately on the operations side, but also briefly in finance prior to receiving employment with Defendants in 1999. (Hr'g Tr. p. 38, ll. 5-25, p. 39, ll. 1-9).

5. Based on the testimony presented, Claimant sustained a compensable injury to the back in an admitted work-related accident on April 20, 2005. (Hr'g Tr. p. 17, ll. 5-25).

6. Based on the testimony and medical evidence presented, Claimant sought and received appropriate medical treatment for the injuries sustained in his April 2005 work-related accident from a variety of physicians, including Dr. Bethea, Dr. deHoll, and Dr. Johnson. (Defendants' APA #5, p. 41, #6, p. 44; Claimant's APA #16, p. 251). Based on the medical evidence presented, Claimant was diagnosed with lumbar degenerative disc disease with bulging L3-4 and L4-5 and radiculopathy. (Defendants' APA#2, p. 4).

7. Based on the medical evidence and testimony presented, Claimant was provided conservative treatment in the form of physical therapy and medication. (Defendants' APA#4).

8. Based on the medical evidence presented, on September 25, 2006, Dr. Bethea determined Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the back; on January 5, 2007, Dr. deHoll determined Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the lumbar spine; and on March 7, 2007, Dr. Johnson, Claimant's IME physician, determined Claimant reached maximum medical improvement and assigned an impairment rating of 8% to the whole person. (Defendants' APA #5 and #6; Claimant's APA #16).

9. Based on the medical evidence presented, a functional capacity evaluation placed work restrictions on the Claimant consistent in the light physical demand category. (Claimant's APA #15, page 240). Additionally, Dr. Johnson opined Claimant's ability to perform work was limited to a sedentary to light work status with a lifting restriction of 10 pounds occasionally and restrictions on repetitive bending and twisting. (Claimant's APA #16, pages 250-251).

10. Based on the testimony and evidence presented, Claimant's current inability to work, if any, is secondary solely to his back injury. (Hr'g Tr. p. 25, ll. 20-25). The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 in any way; therefore, Claimant's reliance on *Ellison* and § 42-1-400(a) is misplaced.

11. On June 2, 2006, Dr. Zgleszewski opined Claimant's lower back injury is separate and distinct from the knee and ankle injuries he sustained in previous work-related accidents. (Claimant's APA #13, p. 233). Based on the medical evidence and testimony, Claimant's compensable injury is confined to his back. Based on the medical evidence and testimony presented, Claimant's legs have not been permanently affected by the back injury he sustained in his April 20, 2005 work-related accident. (Report of Dr. Zgleszewski dated 6/2/06, Claimant's APA p. 234-235). "Mr. Dinkins' current lumbar spine injury has not affected other body parts including the lower extremities as he has no current radicular symptomatology and no referred pain.

12. Based on the medical evidence submitted, specifically the medical reports of Dr. Bethea, Dr. deHoll, Dr. Stacy and Dr. Johnson, Claimant has reached maximum medical improvement.

13. Based on the medical evidence and testimony presented, Claimant has sustained a 12% partial loss of use of his back, this finding is based on all of the evidence in the record.

14. Based on the medical evidence and testimony presented, Defendants may stop the payment of temporary total disability benefits effective August 24, 2007.

15. Based on the medical evidence and testimony presented, Defendants are entitled to a credit for the overpayment of temporary total disability benefits from August 24, 2007 to the date of the Single Commissioner's Order.

16. Based on the medical evidence, testimony and vocational evidence submitted, Claimant is not permanently and totally disabled as a result of the injury he sustained to his back.

17. Based on the testimony and medical evidence presented, Claimant failed to satisfy his burden of proof that he sustained "disabling effects" to his legs. See *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 580 S.E.2d 100 (2003) (holding where an injury was confined to a scheduled member, and there was no impairment of any other part of the body because of such injury, the employee was limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual effected a total or partial industrial incapacity).

18. Based on the medical evidence, testimony, and vocational evidence presented, Claimant failed to satisfy his burden of proof he is entitled to compensation for loss of earning capacity pursuant to § 42-9-10 or § 42-9-20 as a result of his April 20, 2005 work-related accident. Claimant's vocational evaluation, determined, based on the strength of the Claimant's prior work history in management positions as well as the other factors, Claimant is employable in his labor market. (Defendants' APA #8, page 83-84).

19. Based on the testimony and medical evidence presented, Claimant is entitled to receive causally related medical treatment necessary to lessen the period or extent of Claimant's disability and/or maintain him at his current level of functioning, if any. Defendants will provide all causally related, authorized medical treatment.

Based upon the findings of fact are the following:

CONCLUSIONS OF LAW

1. S.C. Code Ann. § 42-1-160 (1985) governs injuries by accident arising out of and in the course of employment.

2. S.C. Code Ann. § 42-1-160 (1985) governs injuries by accident arising out of and in the course of employment.

3. Claimant sustained a compensable injury to the back arising out of and occurring in the scope of his employment with Defendants on April 20, 2005. (Hr'g Tr. p. 17, ll. 5-25).

4. Claimant's legs have not been permanently affected by the back injury he sustained in his April 2005 work-related accident. Claimant sustained no disabling effects to his legs as a result of his April 20, 2005 work-related accident. Thus, Claimant is restricted to scheduled disability benefits pursuant to S.C. Code Ann. § 42-9-30 (19) (1985). See *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 580 S.E.2d 100 (2003).

5. Based on the testimony and evidence presented, Claimant's current inability to work, if any, is secondary solely to his back injury. (Hr'g Tr., p. 25, ll. 20-25) The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 in any way; therefore, Claimant's reliance on *Ellison* and § 42-1-400(a) is misplaced. (See *Medical Record of Dr. Zgleszewski dated June 2, 2006*; Claimant's APA #13, p. 233). Based on the medical evidence and testimony presented, Claimant's compensable injury is confined to his back. Based on the medical evidence and testimony presented, Claimant's legs have not been permanently affected by the back injury he sustained in his April 20, 2005 work-related accident.

6. S.C. Code Ann. § 42-1-120 (1985) defines disability as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."

7. Pursuant to S.C. Code Ann. § 42-9-30 (1985), Claimant is entitled to an award of 36 weeks to the back, which equals 12% specific loss of use.

8. Claimant has failed to satisfy his burden of proof that he is entitled to compensation for loss of earning capacity pursuant to S.C. Code Ann. § 42-9-260 (1985).

9. Pursuant to S.C. Code Ann. § 42-9-260 (1985), Defendants are entitled to the stop payment of temporary total disability benefits on the basis the medical evidence indicates Claimant has reached maximum medical improvement.

10. Pursuant to S.C. Code Ann. § 42-9-210 (1985), Defendants are entitled to a credit for temporary total disability benefits paid to the Claimant from August 24, 2007 to the date of the Single Commissioner's Order, January 23, 2008.

11. S.C. Code Ann. § 42-15-60 (1985) governs periods within which medical treatment and supplies shall be furnished.

12. Pursuant to S.C. Code Ann. § 42-15-60 (1985) and *Dodge v. Bruccoli, Clark, Layman, Inc.* 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999), while Claimant has reached maximum medical improvement, he is entitled to receive causally related medical treatment necessary to lessen the period or extent of his disability and/or maintain him at his current level of functioning. Defendants will provide all causally related, authorized medical treatment.

13. S.C. Code Ann. § 42-1-40 (1985) governs average weekly wage.

ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on January 23, 2008 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER ORDERED the greater weight of the evidence supports a finding that Claimant suffered a compensable injury to the back.

IT IS FURTHER ORDERED the greater weight of the evidence does not support a finding that Claimant suffered a compensable injury to the legs.

IT IS FURTHER ORDERED the greater weight of the evidence does not support a finding that Claimant is permanently and totally disabled under Section 42-9-10, Section 42-9-20, or Section 42-9-30(19).

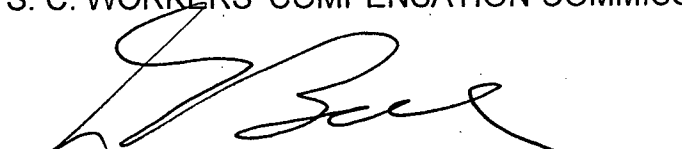
IT IS FURTHER ORDERED the greater weight of the evidence supports a finding that Claimant has reached maximum medical improvement.

IT IS FURTHER ORDERED Defendants are entitled to terminate Claimant's temporary total disability benefits effective the date of the single commissioner's Order.

IT IS FURTHER ORDERED Defendants shall pay Claimant a lump sum of 36 weeks of compensation, representing 12% specific loss of use of the back.

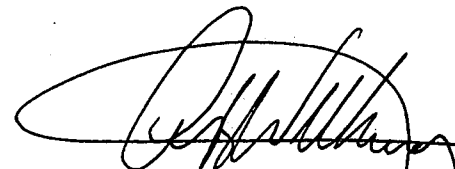
AND IT IS SO ORDERED.

S. C. WORKERS' COMPENSATION COMMISSION


T. Scott Beck, Commissioner

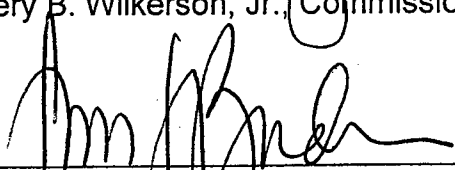
FULL AFFIRMATION

CONCUR:


Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 18th day of Dec, 2008
By Burayynali
Administrative Assistant to the Commissioner


Susan S. Barden, Commissioner

(a:\0509590.app.tsb)

GDG - Box #5
SBS

STATE OF SOUTH CAROLINA

RECORDED

JUDGMENT IN A CIVIL CASE

COUNTY OF SUMTER

2009 MAR 30 PM 3: 52 CASE NO: 2009CP4300087

IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Henry Dinkins Jr vs. Lowe's Home Centers Inc Sumter SC

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

see attached Order

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Chloe L. Hoff
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Dated at Sumter, South Carolina, this 30th day of March 2009.

Court Reporter:

PRESIDING JUDGE - George C. James, Jr.

This judgment was entered on the 30th day of March 2009, and a copy mailed first class this 30th day of March 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Stephen B Samuels Samuels Law Firm P. O.
Box 50349 Columbia, SC 29250

George D. Gallagher McAngus Goudelock &
Courie, LLC P.O. Box 12519 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

James C. Campbell - Clerk of Court

CRCP APP-24/FORM 4

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

RECORDED)

2009 MAR 30 PM 3:46)

HENRY DINKINS,)

JAMES C. CAMPBELL)
Clerk of Court)
Sumter County, S.C.)

v.)

LOWE'S HOME CENTERS, INC. -)
SUMTER, SC,)

Employer,)

and)

SPECIALTY RISK SERVICES, LLC,)

Carrier,)

Defendants/Respondents.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-4300087

ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Cherie L. Hoff
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This workers' compensation case comes before the Court via appeal by the Claimant from a Decision and Order of the South Carolina Workers' Compensation Commission ("Commission") dated December 18, 2008. Specifically, the Commission denied Claimant's claim for permanent and total disability benefits under S.C. Code Ann. §42-9-10 and affirmed the single Commissioner's award of 12% permanent partial disability/specific loss of use of the back under §42-9-30. This Court hereby affirms.

FACTUAL/PROCEDURAL BACKGROUND

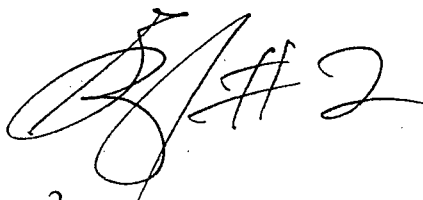
Henry Dinkins ("Claimant") sustained an admittedly compensable injury to his lower back arising out of and in the course of his employment as a customer service representative on April 20, 2005. Specifically, Claimant was assisting a customer removing a lawn mower off the

BJH

shelf. It is significant to note that Claimant previously sustained a compensable left ankle injury arising out of his employment with Lowe's in May 2001. He was subsequently awarded 40% specific loss of use of the left lower extremity. In addition, Claimant sustained a right knee injury in June 2002 at Lowe's and was subsequently awarded 30% specific loss of use to the right leg.

Following the back injury, Claimant was referred for authorized medical evaluation and treatment. He was diagnosed with multi-level degenerative disc disease in the lumbar spine and was treated conservatively with injections, physical therapy, and medications. He was ultimately released at maximum medical improvement by the authorized treating physician in January 2007 with a 5% permanent partial impairment rating to the spine. Claimant's attorney referred him for an independent medical evaluation with Dr. Johnson, who concurred that Claimant had reached maximum medical improvement and assigned an 8% impairment rating. Claimant also underwent a Functional Capacity Evaluation (FCE), which indicated that he was capable of performing work in the light physical demand category. Lowe's was unable to accommodate Claimant's permanent work restrictions and he was terminated. Defendants thereafter filed a Form 21 request for a hearing to terminate temporary total benefits based on maximum medical improvement and enter an award of permanent partial disability benefits.

By Order dated January 23, 2008, the single Commissioner found, *inter alia*, that Claimant's compensable injury was confined to his back; therefore, Claimant was only limited to scheduled disability compensation per §42-9-30. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E. 2d 100 (S.C. 2003). Moreover, the single Commissioner found that the case of Ellison v. Frigidaire Home Products, 360 S.C. 236, 600 S.E. 2d 120 (2004), was not applicable,



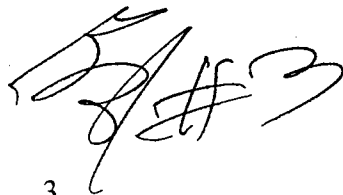
because Claimant's pre-existing ankle and knee injuries did not contribute to his inability to earn wages, if any.

Finally, the single Commissioner found that Claimant did not meet his burden of proving total loss of earning capacity secondary to his work related injuries, even if Ellison was applicable and he was entitled to pursue general disability under §42-9-10 or §42-9-20. She awarded Claimant 12% permanent partial disability/specific loss of use of the back per §42-9-30. Claimant timely appealed to the Full Commission which affirmed the single Commissioner. Claimant then appealed to the Court of Common Pleas.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions of the Workers' Compensation Commission. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E. 2d 297 (Ct. App. 2005). An appellate court may reverse the Commission's findings of fact only if they are "clearly erroneous in view of the reliable, probative, and substantial evidence." *S.C. Code of Laws Section 1-23-387(A)(6)*. Substantial evidence is evidence that, considering the entire record as a whole, allows reasonable minds to reach the same conclusion reached by the Commission. *See Eaddy v. Smurfit Stone Container Corp.*, 355 S.C. 154, 584 S.E. 2d 390 (Ct. App. 2003). Findings of the Commission are binding on the Appellate Court if there is any competent evidence to support it. *Id.*

The Court is not at liberty to reweigh the evidence or substitute its judgment for the Commission's on questions of fact. Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E. 2d 599 (Ct. App. 1999), re-hearing denied, *certiorari* granted in part, affirmed as modified 339 S.C. 68, 528 S.E. 2d 667. The possibility of drawing two inconsistent conclusions from the same evidence does not prevent the Commission's finding from being supported by substantial



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evidence. Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E. 2d 407 (1991). If there is conflict in the evidence, the Commission's findings of fact are conclusive. *Id.*

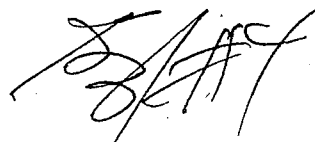
The Court may, however, remand the case with instructions for further proceedings if the Commission's decision is affected by an error of law. See Hamilton, *supra*. Remand is also proper where the Commission has failed to make essential findings of fact, or the findings made are so vague or general as to afford no reasonable basis on which the Appellate Court can determine whether the findings are supported by the evidence. Turner v. Campbell Soup Co., 252 S.C. 446, 166 S.E. 2d 817 (S.C. 1969). A conclusion by the Commission by way of reasonable inference from the evidence is a finding of fact. Windham v. City of Florence, 221 S.C. 350, 70 S.E. 2d 553 (1952).

LAW/ANALYSIS

Claimant argues the Commission erred by not awarding him permanent and total disability compensation, specifically, by failing to consider his pre-existing ankle and knee injuries when assessing his permanent disability per Ellison, *supra*. Further, Claimant requests that this Court remand his case back to the Commission with instructions to consider the affect, if any, of his diligent efforts to secure alternative employment as to the issue of his permanent disability. This Court disagrees on both counts.

I. Applicability of Ellison

The Commission found Claimant was only entitled to scheduled disability compensation under §42-9-30 because Claimant sustained a single member injury to his back. Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E. 2d 837 (1960). The Commission also found Ellison was not applicable to the instant case because Claimant's pre-existing knee and ankle injuries do not substantially contribute to his current inability to earn wages. In Ellison, the Supreme Court



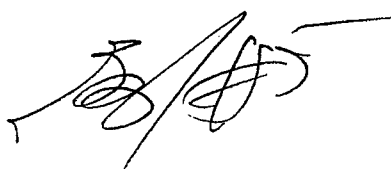
held that S.C. Code Ann. §42-9-400 allows a claimant to “stack” pre-existing impairments or conditions with a subsequent single member work injury to pursue general disability under §42-9-10 or §42-9-20. The statute provides, in pertinent part, the following:

If an employee, who has a permanent physical impairment from any cause or origin, incurs a subsequent disability from injury by accident ... resulting in compensation and medical payments liability or either, for disability that is substantially greater, by reason of the *combined effects* of the pre-existing impairment and subsequent injury ... then that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all the awards of compensation and medical benefits provided under this title. (*emphasis added*).

S.C. Code Ann. §42-9-400(D) further defines “permanent physical impairment” as used in this Section as “any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle of obtaining employment or to obtaining re-employment if the employee should become unemployed.”

As an initial matter, the Court notes that the mere existence of a pre-existing impairment does not automatically render Ellison applicable, because the focus of §42-9-400 is on the “disability” caused by the physical impairment at issue. See Keeter v. Clifton Mfg. Co., 225 S.C. 389, 82 S.E. 2d 520 (1959). (benefits are awarded not for physical injury as such but for “disability” produced by such injury). “Disability” is defined by S.C. Code Ann. §42-1-120 as “incapacity because of injury to earn the wages which employee was receiving at the time of the injury in the same or any other employment.”

Reading these statutes in conjunction, Claimant must establish five elements to prevail under an Ellison theory: (1) pre-existing permanent physical impairment that is a serious hindrance or obstacle to employment or re-employment; (2) a subsequent work related single member injury; (3) resulting in substantially greater inability to earn wages; (4) by reason of the



“combined effects” of the pre-existing impairment and subsequent injury; and (5) than would have resulted from the work injury alone.

In the instant case, Claimant fails to meet all of these statutory elements. The pre-existing impairments that Claimant relies upon are his previous ankle and knee injuries. Despite the moderate scheduled disability awards from the Commission, Claimant has not proven that his pre-existing physical impairments were “of such seriousness as to constitute a hindrance or obstacle to obtaining employment” within the meaning of §42-9-400(D). The fact that Claimant experienced continuing symptoms and functional problems from his pre-existing knee and ankle injuries is not determinative of Ellison’s applicability to this case. Evidence in the record suggests that these pre-existing conditions did not prohibit him from performing the essential functions of his employment with Lowe’s prior to his back injury.

It is also significant to note that Claimant’s light physical demand designation per the Functional Capacity Evaluation is based on Claimant’s lifting capacity, which is a product of his back injury, not the ankle and knee injuries. In turn, it was the lifting restrictions from the back injury per the Functional Capacity Evaluation that the vocational experts relied upon for their opinions. Neither of the vocational experts who analyzed this case opine that Claimant’s pre-existing knee and ankle injuries were a serious “hindrance or obstacle” to employment or re-employment.

In addition, Claimant failed to satisfy other statutory elements of §42-9-400. The Commission found that Claimant’s inability to earn wages, if any, is the result of Claimant’s April 2005 back injury alone. Implicit in this finding is the conclusion that Claimant’s pre-existing knee and ankle injuries did not “combine with” the subsequent back injury to cause “substantially greater” inability to earn wages. The relevant inquiry for assessing whether a pre-

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existing impairment “combines with” a subsequent work injury is whether the prior injuries contribute to the resulting inability to earn wages. See Wigfall, *supra*, ([a]n individual is not limited to scheduled benefits under §42-9-30 when two or more scheduled injuries caused *disabling affect* greater than the arithmetical total of scheduled allowances together).

Again, substantial evidence in the record supports the Commission’s finding that Claimant’s pre-existing knee and ankle injuries did not “combine with” his back injury to cause substantial greater disability. Claimant acknowledged that his current work restrictions are secondary to his back injury and are not due to his knee and ankle injuries. (Hr. Tr. p.41, ll. 3-20). He confirmed that the doctor did not impose any specific work restrictions for his prior ankle and knee injuries. (Hr. Tr. p.41, ll. 14-17). Claimant testified he was able to perform all essential functions of his job at Lowe’s, despite these residual problems from his knee and ankle injuries, prior to the back injury. (Hr. Tr. p.25, ll. 20-25). It has only been since his back injury that he has been unable to work. This Court is not at liberty to reweigh or reconsider this evidence to arrive at a different conclusion than the Commission did.

Because substantial evidence in the record supports the Commission’s finding that Claimant’s inability to earn wages, if any, was the product of his back injury alone, not the “combination” of his impairments, this Court affirms the Commission’s findings.

II. Permanent and Total Disability

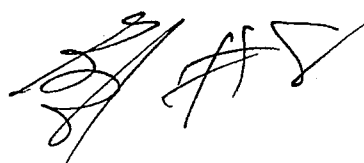
Next, even if Ellison were applicable, the Commission’s finding that Claimant failed to meet his burden of proving a total destruction of earning capacity secondary to his injuries is supported by substantial evidence in the record. The generally accepted test for total disability under §42-9-10 is the inability to perform services other than those are “so limited in quality, dependability, or quantity that a reasonably stable labor market for them does not exist.”



Coleman v. Concrete Products, 245 S.C. 625, 142 S.E. 2d 43 (1965). An employee who is capable of performing other work that is continuously available to him would not be deemed totally disabled simply because he is unable to resume duties of the particular occupation in which he was engaged at the time of his injury. Wynn v. Peoples Natural Gas, 238 S.C. 1, 118 S.E. 2d 812 (1961).

In the instant case, it is undisputed that Claimant cannot return to his employment as a customer service representative with Lowe's secondary to lifting restrictions from his back injury. Nevertheless, substantial evidence in the record would allow a reasonable mind to conclude that a reasonably stable labor market of lighter duty jobs exists for Claimant, based on his qualifications, education, and prior vocational experience. Specifically, Defendant's expert, Glen Adams, opined that, despite Claimant's permanent work restrictions from the back injury, he was employable in banking, finance, and retail. (APA pp. 83-84). The vocational evaluation noted that Claimant was employed for over 35 years in the banking and financial industry, working in highly skilled positions such as operations manager, vice president, and consultant to the president of financial institutions. The evaluation also highlights positive transferable skills to other employment, such as Claimant's customer service experience, computer skills, and management skills. Finally, Claimant's positive vocational profile included completion of high school, completion of an associate's degree in business management, and completion of various banking courses and certifications.

Even Claimant's vocational expert, Adgar Brown, never opines that a reasonably stable labor market does not exist for Claimant within his residual functional capacity. In fact, Mr. Brown states, "[M]^W Mr. Dinkins has an extensive history in bank and finance with skills that are normally associated with sedentary or light jobs." This is clearly substantial evidence that



supports the Commission's conclusion that Claimant has failed to meet his burden of proving entitlement to permanent and total disability compensation under §42-9-10.

III. Necessity of Remand for Further Findings

Further, this Court finds the Commission did not err as a matter of law by not specifically referencing Claimant's expert's opinions in its Order, nor did it err in failing to specifically address Claimant's efforts to secure alternative lighter employment. It simply does not follow that the Commission failed to consider all the evidence in the record, including evidence most favorable to Claimant, just because the Commission issued a ruling unfavorable to him. This Court cannot state as a matter of law that the Commission's failure to reference Claimant's expert report means the Commission did not consider it. As such, this Court cannot order a remand on this ground alone.

Similarly, Claimant's argument that the Commission must affirmatively address his efforts to secure employment is equally misplaced. The significance that the Commission attached to this, which is a factual matter, is implicit in its finding Claimant failed to meet his burden of proving entitlement to permanent and total disability. It is not necessary for the Commission to set forth every single logical inference relied upon to reach its conclusions. The only requirement is that the conclusion be supported by substantial evidence in the record. *See Windham v. City of Florence, supra*. ([w]e have held that a conclusion of the Industrial Commission by way of reasonable inference from the evidence is a finding of fact). Therefore the issue to be determined is whether there was any competent evidence to support the factual finding by the Commission). Thus, the Commission did not fail, as Claimant contends, to make essential findings of fact warranting a remand.

Next, Claimant simply overstates the Court's holding in Coleman, *supra*, regarding the significance of an injured worker's efforts to secure alternative employment. Coleman never held that diligent, but unsuccessful efforts, to secure alternative lighter employment results in a presumption of permanent and total disability. The Court merely stated the following with regard to diligent efforts, "[w]henver the claimant depends, in part, on a showing that he is unable to get work because of his physical condition, it naturally follows that the claimant must prove that he has made reasonable efforts to secure employment." Coleman, *supra* at 245 S.C. 631. The caveat "in part" clearly shows there is no presumption of disability. Diligent efforts to find employment is just one of many factors the Commission may consider. As the Court goes on to state, "[t]he real question is whether the evidence is of sufficient substance to afford a reasonable basis for the Commission concluding as a matter of fact that an employee's inability to obtain was due to his injury that resulted in partial physical incapacity."

Here, it is just as likely that Claimant's inability to secure alternative lighter employment, despite his purported diligent efforts, can be attributed to natural forces totally unrelated to his work injury or availability of lighter duty jobs in the labor market. Claimant never testified that he was not hired for job openings because he was unqualified or physically unable to do the job. This is not to say that Claimant's inability to secure alternative employment is not relevant to rebut or counter a vocational expert's opinion about the availability of jobs in the marketplace. However, this is clearly a factual matter that is within the Commission's ultimate discretion to weigh and decide.

Factual distinctions between Coleman and the instant case are also instructive. Coleman involved an unsophisticated claimant with limited education and a vocational history of manual labor who was seeking temporary total disability benefits. Here, Claimant is college-educated

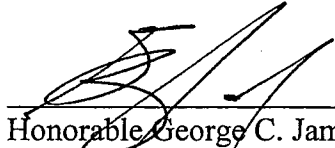
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with a history of sophisticated employment in the banking industry for over 35 years, who is seeking permanent and total disability benefits. Not surprisingly, the Commission in Coleman reached the opposite conclusion than the Commission did in this case, and awarded the claimant the benefits he was seeking. Like the Court in Coleman, this Court finds that the Commission's conclusion was supported by substantial evidence in the record.

To hold otherwise, would put an employer/carrier in the impossible position of virtually guaranteeing that Claimant will find employment. This Court finds that Lowe's satisfied its burden by establishing, through a preponderance of the evidence, that a reasonably stable labor market exists in quantity, quality, and dependability within Claimant's residual functional capacity, and for which he is otherwise qualified based on education, experience, and transferable skills. See Wynn v. Peoples Natural Gas., supra. For the reasons noted earlier, substantial evidence in the record supports the Commission's conclusions in this regard and the Court cannot disturb them on appeal.

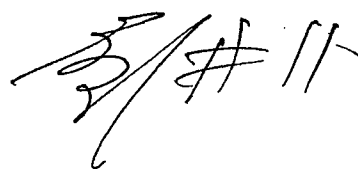
CONCLUSION

For all the aforementioned reasons, this Court hereby **AFFIRMS** the Commission's Decision and Order as being supported by substantial evidence in the record, and not affected by an error of law.



Honorable George C. James, Jr.
Sumter County, 3rd Circuit

3/30/2009
Sumter, S.C.



BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0509590

HENRY DINKINS,

CLAIMANT,

vs.

LOWE'S,

EMPLOYER,

And

SELF-INSURED,

CARRIER,

DEFENDANTS.

 **COPY**

HEARING BEFORE
COMMISSIONER
ANDREA POPE ROCHE

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR
OF 9:40 AM, FRIDAY, AUGUST 24, 2007, COUNTY
COURTHOUSE, 141 N. MAIN STREET, SUMTER, SOUTH
CAROLINA.

APPEARANCES

FOR THE CLAIMANT

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REPORTED BY

CORA ELLIS BRUTON
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT: Today's date is August 24th, 2007.

2 This is WCC File No. 0509590. This is the case of
3 the Claimant, Henry Dinkins, represented by
4 Attorney Stephen B. Samuels, versus the Employer,
5 Lowe's which is self-insured. Both Defendants
6 represented by Attorney George D. Gallagher.
7 Stephen, it looks like Specialty Risk Services is a
8 TPA for Lowe's, and I did do some work for
9 Specialty Risk Services when I was a defense
10 attorney. I just want to make sure that didn't
11 present a problem with me hearing the case today.

12 MR. SAMUELS: I sure hope not, Commissioner.
13 I have no objection.

14 THE COURT: All right, great. Thank you. The
15 issues today, we're here on the Defendants' Request
16 To Stop Pay. I believe to pay comp as well.

17 MR. GALLAGHER: Yes, ma'am.

18 THE COURT: And we've got an average weekly
19 wage of \$489.76 with the resulting compensation
20 rate of \$326.52 and a date of accident of April the
21 20th, 2005. Are there any objections to APAs,
22 jurisdiction or any other items?

23 MR. SAMUELS: No, ma'am.

24 Q Without objection --

25 MR. GALLAGHER: No, ma'am.

1 THE COURT: Without objection the Commission File
2 becomes a part of the record with the exception of
3 self-serving declarations and unstipulated medical
4 reports. How much did he get for those other
5 injuries?

6 MR. SAMUELS: One I think was 30 percent to
7 the leg, and one was -- were they both 30? One was
8 40 and one was 30.

9 MR. GALLAGHER: The awards are attached that
10 -- so you can look it up.

11 MR. SAMUELS: I can't remember which one is
12 which.

13 MR. GALLAGHER: The --

14 MR. SAMUELS: 30 percent to the right leg from
15 Commissioner Huffstetler, and I believe 40 percent
16 to the left leg from Commissioner Bass.

17 MR. GALLAGHER: That would be correct. Your
18 Honor, if I may. I think strictly speaking under
19 Medlin at 42-9-170 there actually is no credit for
20 those previous awards, but of course, we're going
21 to go with any reasonable result.

22 THE COURT: I'll just run numbers, George, but
23 it's too -- if given credit for those plus asking
24 him about what TTD's been paid. There's about 276
25 weeks left.

1 MR. GALLAGHER: Yes, ma'am.

2 THE COURT: I just want to make sure y'all are
3 aware of that. Sometimes that makes a difference.

4 MR. GALLAGHER: I understand.

5 THE COURT: Okay. Before going on the record
6 we had a pre-hearing conference. It's the position
7 of the Defendants that the Claimant has reached
8 maximum medical improvement as far as his admitted
9 back injury. The Defendants are seeking to stop
10 payment of temporary total disability, and request
11 a credit back to the date of filing their Form 21.
12 Furthermore, it's the position of the Defendants
13 that the Claimant -- that this case is now right
14 for determination of permanent partial disability.
15 It's the position of the Defendants that this is a
16 single member injury and therefore Singleton would
17 apply. Furthermore, it's the position of the
18 Defendants that the medical records don't support a
19 finding of 50 percent or more to the back,
20 therefore, the Claimant would be entitled only to
21 permanent partial disability. Furthermore, it's
22 the position of the Defendants that Ellison does
23 not apply here and the line of case that has to do
24 with those issues, it's the position of the
25 Defendants that the prior injuries don't combine --

1 substantially combine with the Claimant's back injury to
2 cause him to be -- to increase his disability.
3 Either the back, doesn't combine with them or they
4 don't combine with the back. Furthermore, it's the
5 position of the Defendants that the evidence
6 doesn't support a finding that the Claimant is
7 permanently and totally disabled under 42-9-10,
8 that he's worked in the banking industry for many,
9 many years and has quite a lot of transferable
10 skills and a recently stated model exists for his
11 employment. Furthermore, it's the position of the
12 Defendants that Adger Brown's report was
13 troublesome in that the Defendants believe that it
14 states that either the Claimant does have
15 transferable skills and is not able to find
16 employment because of his age, and therefore that
17 would not support a finding of permanent and total
18 disability because of his injury. Or it's the
19 position of the Defendants that Adger Brown's
20 report either states that or that the Claimant has
21 no transferable skills and that that would
22 obviously be not true based on the Claimant's
23 extensive history in the banking industry.

24 It's the position of the Claimant that he has
25 not reached maximum medical improvement. That

1 there is further medical treatment that has been ordered
2 that has not been authorized, and it would be the
3 position of the Claimant he would be entitled to
4 that treatment. It's also the position of the
5 Claimant that if I do find that he has reached
6 maximum medical improvement that he would be
7 permanently and totally disabled. Is that solely
8 on the Ellison theory, Stephen, or also 50 percent
9 to the back?

10 MR. SAMUELS: It's 50 percent to the back,
11 your honor. It is also that we do contend that he
12 does have radicular symptoms into the left leg and
13 hip that do affect his disability -- increase his
14 disability.

15 THE COURT: Also, furthermore, it's the
16 position of the Claimant that the Claimant be
17 permanently and totally disabled pursuant to Medlin
18 and Ellison. That there's been a combination of
19 his prior injuries and his back, either one
20 affecting the other or the back affecting the legs
21 that has substantially increased his disability to
22 the point he is permanently and totally disabled.
23 Furthermore, that the Claimant requests an award in
24 lump sum with Utica-Mohawk language. Mr.
25 Gallagher, do you have a position on lump sum and

1 Utica?

2 MR. GALLAGHER: I do not, Commissioner. I
3 guess I would technically object to Utica-Mohawk,
4 but I don't object to a lump sum, per se.

5 THE COURT: Okay. Furthermore, it's the
6 position of the Claimant that -- and I'm speaking
7 for you at this point, Mr. Samuels, that it's the
8 position of the Claimant that if I find that he is
9 not permanently and totally disabled but is
10 entitled to some permanent and partial disability
11 that the Claimant be entitled to Dodge medical as
12 long as it was causally related and tended to
13 lessen his period of disability, in particular, but
14 not limited to the treatment recommended by Dr.
15 Zgleszewski at this point. And the Defendants are
16 in agreement that the Claimant would certainly be
17 entitled to any causally related medical treatment
18 that would tend to lessen his period of disability.
19 Anything either of you would like to add?

20 MR. SAMUELS: Not from me, Your Honor.

21 MR. GALLAGHER: Commissioner, I would just
22 like to add, and I don't know if this was on the
23 record, but Stephen had mentioned that under
24 42-9-170 it was his position that if you were to
25 find Mr. Dinkins permanently and totally disabled

1 that we would not be entitled to credit for prior awards
2 paid, and I would just submit that that, I think,
3 is contrary to plain reading of 42-9-170 that
4 clearly establishes that the 500 week cap is a per
5 employment cap, not a per accident cap. So I would
6 submit that if you were to find him permanently and
7 totally disabled that we should be entitled to
8 credit for all benefits paid, compensation
9 benefits, indemnity benefits paid on those prior
10 claims.

11 MR. SAMUELS: If I could respond, Your Honor,
12 particularly referring to the second paragraph
13 under the older version of 42-9-170 that still
14 controls. And that is, "if an employee has
15 previously incurred permanent and partial
16 disability through the loss of a hand, arm, foot,
17 leg or eye", which in this case Mr. Dinkins
18 unquestionably has, "and by subsequent accident
19 incurs total permanent disability through the loss
20 of another member the employers liability is for
21 the subsequent injury only". Up to that point Mr.
22 Gallagher is correct, but then it goes on to say.
23 "Except that such employee may receive further
24 benefits as provided by Sections 42-7-310, 42-9-400
25 and 42-9-410 if his subsequent injury qualifies for

1 additional benefits provided therein. In other words,
2 this case would qualify for the Second Injury Fund,
3 and because it qualifies for the Fund then there's
4 no credit. That's the legal basis for our
5 argument.

6 THE COURT: Okay.

7 MR. GALLAGHER: There's -- Commissioner,
8 there's no evidence this case has been accepted by
9 the Fund or even will be accepted by the Fund.
10 Plus, I believe, this -- this second paragraph
11 42-9-170 clearly deals with total loss of a hand,
12 arm, foot or leg or eye. Not partial loss, you
13 know. But I think this -- this paragraph exists if
14 a situation where someone who has a hand cut off in
15 the prior employment, and is working at the job as,
16 you know, as a one arm worker and then has a
17 subsequent member cut off. Well, I think what
18 they're saying is, if that renders that person
19 totally disabled then yeah, they can get the whole
20 -- the whole thing. But whereas otherwise you'd
21 only have to pay for the degree of disability that
22 you -- that you caused. So I disagree with Mr.
23 Samuels' interpretation of that statute.

24 THE COURT: All right.

25 MR. SAMUELS: Commissioner, if I may respond.

1 The statute clearly refers to permanent partial
2 disability through the loss of the member, so it
3 certainly does not require that the complete
4 hundred percent loss of the other member. As to
5 the Second Injury Fund the statute refers to
6 qualifying the Second Injury Fund. Qualifying
7 meaning it meets -- meets the statutory
8 requirement. The Defendants cannot fail to perfect
9 their claim with the Second Injury Fund and then --
10 then claim that they then don't -- that they then
11 -- the Claimant does not get the benefit of the
12 statute. I think it just is somebody's impression
13 whether there's any evidence that would qualify it,
14 and in my estimation it does.

15 THE COURT: All right. Anything in addition?

16 MR. GALLAGHER: No ma'am.

17 THE COURT: Mr. Gallagher, I assume you're
18 going to rest on the medicals and rely on cross
19 examination of the Claimant; is that correct?

20 MR. GALLAGHER: Yes, ma'am.

21 THE COURT: Mr. Samuels, I understand the
22 Claimant is your first witness. Sir, would you
23 raise your right hand? Do you swear to tell the
24 truth, the whole truth, and nothing but the truth?

25 THE WITNESS: I do.

1 THE COURT: Please state your full name for the
2 record.

3 THE WITNESS: Henry Dinkins, Jr.

4 THE COURT: All right. Mr. Samuels, your
5 witness.

6 MR. SAMUELS: Thank you, Your Honor.

7 Henry Dinkins, Jr.,

8 Having first been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SAMUELS:

11 Q Henry, how old are you?

12 A Sixty-three, a month away from 64.

13 Q Are you married to Rose Maria Dinkins?

14 A Yes, I am.

15 Q How long have you been married?

16 A About 20, 21, 22 years.

17 Q Is she your only dependent?

18 A Yes.

19 Q Do you have an Associates Degree in
20 Business Administration from Pace University in New
21 York?

22 A Yes.

23 Q Before you moved to South Carolina what
24 did you do for a living?

25 A I was in banking, bank operations

Henry Dinkins (Direct)

13

1 manager.

2 Q When did you move to South Carolina?

3 A 1996, '97.

4 Q What kind of work did you do when you
5 first moved to South Carolina?

6 A The first job I obtained was with World
7 Finance, which is one of the Home Finance
8 institutions.

9 Q What did you do for World Finance?

10 A I was assistant store manager.

11 Q What were the duties of that job?

12 A Duties -- I was to train the employees,
13 give them guidance, but also to make contact for
14 small loans persons and to customers. It involved
15 going out visiting on collection -- for
16 collections. Returning merchandise that they had
17 purchased that was securing the loans, bringing it
18 back into the office.

19 Q Why did you leave that job?

20 A Moral -- the moral responsibilities about
21 it. By that I mean putting pressure on people who
22 were not responsible for the loan, but was merely a
23 contact, you know, the problems just being able to
24 bring all of their stuff out, their stereo systems,
25 usually by yourself.

Henry Dintins (Direct)

14

1 Q What was the typical interest rate of World
2 Finance?

3 A Somewhere between 250 to 300 percent.

4 Q After you left World Finance where did
5 you go to work?

6 A I then worked -- began with Lowe's.

7 Q When did you start with Lowe's?

8 A April 17th, 1999. Actually I didn't -- I
9 signed on with them then, but I started at the end
10 of May -- at the end of the following month.

11 Q Have you worked anywhere other than
12 Lowe's since that time?

13 A No.

14 Q What was your job at Lowe's?

15 A I had multiple jobs. The -- the first
16 one I was working as Customer Service, and was
17 Assistant Department Manager of Customer Service
18 section. Then I was promoted up to manager of the
19 Paint and Home Décor Department. And --

20 Q Let me stop you right there. Is that the
21 job you had when you had your first injury on May
22 1st of 2001?

23 A Yes.

24 Q When you did have that first injury what
25 part of your body did you injure?

Henry Dimkins - Direct

15

1 A My left ankle.

2 Q Did you keep working until you went out
3 for surgery on May 28th, 2003?

4 A Yes.

5 Q Was the surgery a triple arthrodesis to
6 your left ankle?

7 A Yes.

8 Q And were you out of work until -- or did
9 you return to work about August 2003?

10 A Yes.

11 Q Now, you also had a second accident to
12 your right leg; is that correct?

13 A Yes.

14 Q When was that?

15 A It was a couple of months after
16 returning. I'm not sure of the exact date.

17 Q The record I have is that that injury was
18 in July 2002. Was that before you had the surgery
19 to your ankle?

20 A That was after the surgery to the ankle.

21 Q Okay.

22 A Oh, wait a minute. No, it couldn't be.
23 No, no, I think I had it before. I think the knee
24 went out before.

25 Q Did you have surgery on your knee?

Henry Dinkins - Direct

16

1 A Yes, I did.

2 Q Did you receive disability awards at
3 hearings for both of your legs?

4 A Yes.

5 Q Are you getting any treatment for either
6 leg?

7 A No.

8 Q Do you believe you are having any
9 problems with those legs that require treatment?

10 A Yes, the ankle still hurts. Sometimes a
11 burning --

12 MR. GALLAGHER: Commissioner, I'm going to
13 object -- I'm sorry, I'm going to object at this
14 point; relevance, just for the record.

15 THE COURT: Okay. I'm going to -- I assume
16 you're doing it for Ellison theory?

17 MR. SAMUELS: I am, Your Honor.

18 THE COURT: I'll overrule the objection.

19 Q Henry, go ahead and continue with that
20 answer.

21 A I get a burning feeling in the left ankle
22 sometimes and every morning when I get up the first
23 thing I have to do is, what I call a routine
24 loosening up, there's a lot of popping sounds in
25 there. I thought maybe the fusion had broken.

Henry Dinkins - Direct

17

1 This was some time last year I attempted to contact Dr.
2 Belden to talk to him about that to see if he
3 needed to check it out and found out that he was no
4 longer in Sumter practicing.

5 Q Okay. Did you injure your back at work
6 at Lowe's?

7 A Yes.

8 Q Was that on April 20th, 2005?

9 A Yes.

10 Q What were you doing when you hurt
11 yourself?

12 A In two -- in 2005 I was working on the
13 floor as a price coordinator, pricing tag
14 coordinator, and a customer came into the store in
15 the seasonal area and needed help and there was no
16 one there. So I walked over and he asked me to
17 help him get a lawnmower off of the shelf, and I
18 reached across to help him pull the lawnmower down
19 and put it on the cart, and felt a sharp pain in my
20 back.

21 Q Did you feel the pain anywhere else?

22 A At that time just my back.

23 Q After you had this accident did you
24 report it to the people at Lowe's?

25 A Yes, I did.

Henry Dinkins - Direct

18

1 Q Were you sent to a doctor?

2 A Yes, I was.

3 Q A Dr. Armsey?

4 A No, I was sent to Industrial Wellness, I
5 believe, Dr. Gee.

6 Q Were you put on light duty?

7 A Not at the time. I'm a little confused
8 because with so many doctors in and out -- I take
9 that back. I don't think it was Dr. Gee. I'm
10 trying to see who the first one. It was someone
11 before they sent me to USC, I just can't recall who
12 it was. Because they sent me down to Sumter
13 Physical Therapy, I think it was.

14 Q Let me ask you this question. How long
15 did you keep working for Lowe's?

16 A I continued to work until December 5th,
17 2005.

18 Q What happened on December 5th, 2005?

19 A I went to see Dr. Armsey at the scheduled
20 appointment, and he reviewed me, looked at my back
21 again, and they determined where the problem was.
22 And I went back and reported to -- brought the
23 report back to Lowe's and was told to go home until
24 they could decide what to do. Because one of the
25 things was the position I was doing required a lot

Henry Dinkins - Direct

19

1 of lifting, and he felt that I was beyond that, had
2 restrictions so, and the -- the type of lifting I
3 was required to do exceeded the restrictions.

4 Q Do you recall what the restrictions were?

5 A At that time I think it was 20 pounds, I
6 believe.

7 Q Have you worked for Lowe's since that
8 date?

9 A No, I haven't.

10 Q Have you worked for anybody since that
11 date?

12 A No.

13 Q Have you heard anything from Lowe's since
14 then about going back to work?

15 A I received a letter from them, I believe,
16 in February of this year that indicated that I
17 needed to -- that there was a position and I needed
18 to report back to work. It kind of indicated if I
19 was -- if I didn't it would be deemed that I no
20 longer wanted to work with Lowe's.

21 Q What did you do when you got that letter?

22 A I went in to meet with Brett, and Rebecca
23 attended the meeting.

24 Q Okay. Who is Brett?

25 A Brett is the store manager; Brett Olsten

1 is the store manager.

2 Q And who is Rebecca?

3 A She's the Human Resource Manager.

4 Q That's the lady sitting next to Mr.
5 Gallagher?

6 A Yes, it is.

7 Q And what's Rebecca's last name?

8 A I apologize, I don't remember.

9 Q That's okay. What kind of reaction did
10 you get from Rebecca and Brett when you asked them
11 about coming back to work because of the letter you
12 got?

13 A Well, first I was speaking with Brett,
14 and he was -- according to him he wasn't aware of
15 any letter. And then he told me the only position
16 he had was a cashier's position, and he and I
17 chatted for a bit, and then Rebecca came in and
18 Rebecca reminded him that -- about my restrictions.
19 And they said there were going to -- they were
20 going to get back in touch with the legal
21 department head office, and they would call me
22 back.

23 Q Did they ever call you back?

24 A No, I called them the following day to
25 see what -- had they heard anything and was told

Henry Dinkins - Direct

21

1 they hadn't heard yet, when they did they would call me
2 back. This was Brett that I was speaking with.

3 Q Let me ask you about -- have you ever
4 heard anything from Lowe's since then?

5 A No, I haven't.

6 Q Let me ask you some questions about your
7 medical treatment. When is the last time you
8 received authorized medical treatment?

9 A I last saw Dr. Stacey, I believe, in
10 March, March of this year.

11 Q Did Dr. Stacey merely evaluate you or did
12 he actually do any kind of treatment?

13 A No, he evaluated me and he said that --
14 MR. GALLAGHER: Objection, Commissioner, to
15 what Dr. Stacey have said.

16 THE COURT: Sustained.

17 Q You can't say what Dr. Stacey told you.
18 You can say what he did, but not what he told you.

19 A Okay. He examined me and gave me a
20 prescription for additional pain medication.

21 Q Were you able to get that prescription
22 filled?

23 A Yes.

24 Q Have you been able to see any other
25 authorized doctor since then?

1 A No.

2 Q Do you believe you need treatment for
3 your back?

4 A Yes.

5 Q What treatment do you believe you need?

6 A I don't know, I'd have to go with what
7 the doctors were saying. Prior to that I was
8 receiving physical therapy which was -- which was
9 -- involved quite a bit of strengthening of the
10 lower back area to try to alleviate some of the
11 pain. The only problem with that there were a lot
12 of interruptions in it. I would get approval for
13 -- the doctor would order eight weeks and I would
14 get an approval for two weeks, and then there would
15 be a gap maybe of a month, and then the -- then I
16 would get another approval that would go on for
17 another week or two. So it was a constant
18 breakdown in the continuation of my treatments.

19 Q What happens to your condition when
20 you've not having physical therapy?

21 A My back tightens up a lot more.

22 Q Are you doing anything on your own to
23 help your back?

24 A Yes. I joined the "Y" and I practice
25 the same techniques that I'm doing at the -- with

1 the physical therapist, the ones I can do alone.

2 Q Are you taking any medicine?

3 A Yes.

4 Q What are you taking?

5 A Pain medicine; Ibuprofen, 800 mgs, and I
6 also have some Tramadol. I'm out of it now, and
7 the pain gets severe.

8 Q Let me ask you some questions about your
9 physical condition. I think you already talked
10 about your left ankle. How's your right knee
11 doing?

12 A The right knee is still bad. It's --

13 MR. GALLAGHER: Again, Commissioner, I'm going
14 to object. Relevance?

15 THE COURT: All right. Overruled.

16 Q It sometimes -- getting into a position I
17 refer to, my term, as locking, which means I can't
18 bend it. So I have to walk stiff legged and that
19 will last for anywhere from three to five days,
20 sometimes a bit longer. What I do, I just massage
21 it and put a solution called Bio-Freeze on it to
22 try -- and heat. And sometimes it just kind of
23 buckles on me.

24 Q Does walking that way have any effect on
25 any other part of your body?

Henry Dinkins - Direct

24

1 A Well, I can only tell you my belief is it
2 puts pressure on my lower back when I walk.

3 Q Does the left ankle being fused cause you
4 any problem with the way you walk or your gait?

5 A Yes. I can't walk straight up and down a
6 hill. I have to walk sideways one step at a time
7 if I'm coming up stairs. I walk up one step at a
8 time holding onto something, I can't lean on my own
9 leg.

10 THE WITNESS: May I please stand for a moment?

11 Q Yes. You just asked me if you could
12 stand. What's going on?

13 A My back gets stiff and tight if I sit
14 long.

15 Q Let's talk about your back. Are you in
16 any pain?

17 A Yes.

18 Q Where does it hurt?

19 A Right in the lower back going down to
20 below my buttocks.

21 Q On which side of your buttocks?

22 A The left.

23 Q Is that constant or does it come and go?

24 A It's been constant. Sometimes it's --
25 it will go in the right, but it hasn't, it's

1 been progressing more or less in the left leg.

2 Q And the pain, how bad is the pain on a
3 scale of one to ten?

4 A Like now it's up to about a six and a
5 half, so if I can get up and relieve it, it seems
6 it will drop down. But I'm taking the Ibuprofen so
7 I can't really tell you what it would be if I
8 wasn't.

9 Q Do you have anything -- any sensations
10 other than pain, for example, numbness or tingling?

11 A Yes, I might get like a tingling in the
12 left thigh area. It feels like, almost like
13 there's a knot or something in there.

14 Q Does the pain or numbness you're talking
15 about that goes into your left thigh have any
16 affect on your ability to do things?

17 A Yes. I want -- I usually wind up sitting
18 and trying to stretch it out, and wait until -- for
19 it to relieve itself.

20 Q Do the problems that you're having with
21 your back have any affect on your attendance at
22 work?

23 A I'm not working.

24 Q If you were working?

25 A If I was working, yes.

1 Q In what way?

2 A I can't -- I would have to have the
3 flexibility to be able to move around, stand, sit
4 and maybe just walk a little bit; just motions.

5 Q Are you able to do any kneeling?

6 A Yes, for short periods, maybe three to
7 five minutes.

8 Q How long can you stand for?

9 A I can stand, I would guess off the top of
10 my head, without feeling -- without the pain
11 increasing probably ten to 15, but I can force
12 myself to stand about an hour if I have to, as long
13 as I'm moving.

14 Q Then how about sitting? How long can you
15 sit?

16 A Sitting, I can sit -- I'll squirm around
17 a lot, but I can sit for probably 15 minutes, if
18 you're saying before I start feeling the -- the
19 tightness of it, probably about ten minutes. But I
20 do a lot of squirming, and it's unfortunate, but
21 that's what I have to do. As long as I'm moving it
22 around and I can find just the right position.

23 Q When you stand up from a sitting position
24 do you have any difficulty getting up?

25 A I need support, and since I don't have,

1 I guess, whatever you want to call it a cane or
2 anything, I use my legs. I put pressure here and
3 then I'll onto something to stand up.

4 Q And the difficulty standing up is that
5 because of your back or your legs or --

6 A That's my back.

7 Q Okay. And why is it your back that makes
8 it difficult to stand up?

9 A It's the pain stops me changing.

10 Q Are you able to walk, for example, all
11 the way through Lowe's?

12 A Yes.

13 Q Do you have to --

14 A Just walking straight through, just a
15 slow pace, yeah. I'll have pain though, I mean I
16 have pain all the time anyway, so.

17 Q Are you able to run?

18 A No.

19 Q Are there any surfaces that give you any
20 problems?

21 A More than the others, not that I'm aware
22 of.

23 Q Do you have any difficulty with hills?

24 A Going up hills I basically go sideways
25 because of the ankle.

Henry Dinkins -Direct

1 Q Do you have any difficulty with the stair.

2 A The same thing.

3 Q Also because of the ankle?

4 A Because of the ankle, yes.

5 Q Are you able to do any bending?

6 A No, very little. I can bend some, but

7 not a lot.

8 Q Are you able to do any lifting?

9 A Small things, small packages.

10 Q And as an example when you talk about
11 small packages, what sort of things can you lift?

12 A Well, let's say if I had some groceries,
13 two cartons of milk would probably be my limit. If
14 I had three gallons of milk I would be maybe from
15 here to the -- down the hallway a little bit and
16 start stiffening and my back starts shooting with
17 pain.

18 Q Would you be able to do any kind of work
19 that involved repetitive lifting, even very light
20 lifting?

21 A Very light lifting.

22 Q And let me ask you about the questions at
23 home. Are you able to climb ladders at home?

24 A No, I haven't attempted to climb ladders.

25 Q Did your job at Lowe's require you to

Henry Dinkins - Direct

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1 climb ladders?

2 A The last one, yes, it did.

3 Q Are you able to do any vacuuming?

4 A I don't vacuum, but I guess if I had to I
5 could since it's on wheels.

6 Q Are you able to do any work in the yard?

7 A Light work.

8 Q For example, what --

9 A Watering -- water the flowers and sowing
10 and stuff.

11 Q Are you able to mow the lawn?

12 A On -- on the riding -- on the rider
13 tractor I can for a little bit of time.

14 Q How little bit of time?

15 A Going at slow speed probably ten, 15
16 minutes, stop, get off, stretch, go another ten, 15
17 minutes, stop, stretch. And I use -- and that's
18 with a back brace on trying to keep the jarring
19 down.

20 Q Have your sleep patterns changed at all
21 since you hurt your back?

22 A Yes.

23 Q How so?

24 A The length of time I sleep. I average
25 about three to four hours of sleep. The other

1 thing is I can't sleep on my back or my stomach. I
2 sleep on my side. When I get up to get out of the
3 bed I position myself on the side and push up with
4 my elbows and hands to sit myself upright, and then
5 I slide off the bed.

6 Q How much sleep do you get a night?

7 A On an average of three to four hours, and
8 then I'll be up, and then I'll drift back off I
9 guess for another hour or two, and that's it,
10 usually about an hour or so.

11 Q How much sleep did you get before you
12 hurt your back?

13 A I slept solid for seven to eight hours.

14 Q Does the lack of sleep affect your
15 performance during the day?

16 A I haven't really paid attention whether
17 it did or not. I just do things in piecemeal now.

18 Q What is your work status with Lowe's?

19 A I don't know, I assume I'm still employed
20 there.

21 Q Are you willing to work if they offer you
22 any kind of work?

23 A It there was a position that didn't
24 require me doing some of the things that I can't do
25 I'd be more than happy to.

1 Q Have you applied for any light duty or
2 administrative type position for Lowe's?

3 A I applied doing -- I think there was a
4 position open for administrative manager and I
5 applied for that.

6 Q Did you get the job?

7 A That was before the final back injury.
8 No, I was told that because of the injury that I
9 had on the knee and all that I wasn't entitled --
10 that I wouldn't be qualified for that position. I
11 forgot the term that -- that he used when he
12 explained that to me.

13 Q Do you want to work?

14 A Yes.

15 Q Are you willing to work?

16 A Yes.

17 Q Have you looked for work?

18 A I hadn't -- I started looking after I
19 think I met with George or just before that, I had
20 done a couple of feelers out to see if there was
21 something else going on. And I went to -- drove
22 down to Charleston for one position to interview.
23 And after that I started seeking out more. I
24 posted my resume on the -- on a couple of websites,
25 and I sent resumes out to and networking letters

1 out to banks, all the banks that I could think of.

2 Q How long have you been actively looking
3 for work?

4 A Probably three months, at least two or
5 three months.

6 Q Had you been waiting to hear back from
7 Lowe's to see if that is your employer?

8 A Yes.

9 Q What areas have you been looking for, for
10 work?

11 A For a different type of position would be
12 in something in a bank. Something in an office
13 environment.

14 Q What geographical areas have you looked
15 for work in?

16 A Columbia, Florence, Camden and Sumter.

17 Q And how many interviews have you gotten?

18 A Three.

19 Q What companies was this with?

20 A An insurance company and two banks.

21 Q Were you hired?

22 A No.

23 Q With the two banks, what kind of job were
24 you interviewing for?

25 A Well, I thought it was a -- something

1 in management, but it turned out it was a teller's
2 position, and they said I was overqualified.

3 MR. GALLAGHER: Objection, Commissioner. I
4 object to what the banks would have told him as
5 about why he would not have hired him, hearsay.

6 THE COURT: Sustained.

7 Q Regardless of the reason are you getting
8 an offer?

9 A No.

10 Q Have you been doing anything as far as
11 networking to find a job?

12 A Yes.

13 Q What have you been doing to network to
14 find a job?

15 A With some banks, contacted their offices
16 and talked with them about my background and what's
17 going on in the industry that I might fit in.

18 Q Have you done anything as far as posting
19 your resume online anywhere?

20 A Yes.

21 Q And where have you done that?

22 A Posted with, I think it's Career.com and
23 there's one other. And I also posted with Kelly
24 Staffing Services, also with MBI Staffing and
25 Robert Hauck and Associates.

Henry Brumins - Direct

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1 Q Do you have any idea how many jobs you've
2 applied for?

3 A You mean actual jobs; actual jobs or just
4 applications I've sent out?

5 Q Applications you've sent out?

6 A I've sent about 25 to 30.

7 Q Have you applied for every job that you
8 think you're qualified for that you could find?

9 A The website that I saw on the records.

10 Q Do you believe that there is a job you
11 can do if somebody will hire you?

12 A Yes.

13 Q And what -- what would that job have to
14 be?

15 A I still believe I can still be a manager
16 in a bank, in a bank environment.

17 Q What physical accommodations will they
18 have to make for you?

19 A Just office space, desk, and freedom to
20 be able to move around. In the banking world
21 you're more like have to be able to move around
22 freely.

23 Q And did you have a job like that when you
24 were in bank operations?

25 A Yes.

Henry Brinkins -Direct

35

1 Q Now, let's go back to when you first came
2 to Sumter. When you first came to Sumter did you
3 try to find a job in banking?

4 A Yes, I went to just about every bank I
5 could think of in Sumter, Columbia. There was
6 one that I had interviewed for and sent my resume,
7 interviewed with the owner. He asked me would I
8 come down for a formal meeting, and they thought
9 that that would be a perfect fit for them. I came,
10 flew down, took a week, came down, went and met
11 with the guy that I was supposed to meet with to
12 discuss the position, and it was coldness. And
13 when I left there he said to me -- I said, they
14 didn't tell me so I asked him, "Well, when should I
15 --

16 Q Let me sort of just stop you before Mr.
17 Gallagher objects. Were you offered that job?

18 A After meeting him, no.

19 Q Okay. Now, how long did you stay
20 unemployed at Sumter looking for work?

21 A I think about a year -- it was about a
22 year and a half, almost two years.

23 Q And was that when you took the job with
24 World Finance?

25 A Yes.

1 Q Now, you talked a little bit about World
2 Finance, but even if you could get past the moral
3 issues of working for a predatory loan company are
4 you physically be able to do that job?

5 A No.

6 Q And why not?

7 A Because I wouldn't be able to retrieve
8 merchandise on defaults at people's homes. Frankly
9 I think it would be quite dangerous for me because
10 I can't run and can't move. You know, I have to go
11 into neighborhoods with animals that are on the
12 loose, and that type situation with people, so
13 there's no way I could do that. I don't see myself
14 doing that.

15 Q Do you remember meeting with Glen Adams,
16 the Defendants' Vocational Expert?

17 A Yes.

18 Q Did you ask Mr. Adams for help in finding
19 a job?

20 A Yes.

21 Q Did he have any suggestions for you?

22 A Well, he said that he couldn't help me,
23 but he did suggest a couple of job sites that I
24 could go on and do some research there.

25 Q And did you follow his advice?

Henry Dimkins Direct

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1 A Yes, I did. That's when I started posting
2 my resume also on the sites he suggested.

3 Q Have you had the opportunity to review
4 Mr. Adams' report?

5 A Yes.

6 Q Had you applied for the jobs that he
7 listed in his report?

8 A Yes, most of them. There's some I
9 couldn't do, so those I didn't bother applying for.

10 Q Do you remember specifically which jobs
11 you applied for that were in his report?

12 A There was one in there about stock --
13 stocking, so I can't do that. There was the one
14 about the personal finance business which I deem
15 dangerous. I can't do that. And there was a
16 couple of others that required skills of lifting
17 that would be -- was inventory or something about
18 inventory position.

19 Q And of the jobs that he had listed that
20 you felt met your physical abilities, did you apply
21 for those?

22 A Yes, I did.

23 Q Were you hired?

24 A No, I haven't heard anything.

25 Q That's all I have for you now. Please

Henry Dinkins - Cross

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1 answer any questions Mr. Gallagher has for you.

2 THE COURT: Mr. Gallagher.

3 CROSS EXAMINATION

4 BY MR. GALLAGHER:

5 Q Mr. Dinkins, I want to ask you to explain
6 in some greater detail exactly what your job was in
7 the banking industry for 35 years.

8 A Okay, which one?

9 Q Well, just generally. I know you worked
10 for several different banks, but --

11 A Okay. As in --

12 Q Let me finish my question just to
13 clarify. My understanding was you worked in bank
14 operations and some in finance, so just explain
15 generally what you did.

16 A Okay. Bank operations, I basically gave
17 guidance and staff training; wrote procedures for
18 that which guided the bank to be able to meet
19 regulatory requirements; interviewed and hired
20 staff; managed multiple departments; the loan
21 department (inaudible); did letter of credit work,
22 sent out letter of credit for auto transactions;
23 met with customers to discuss their contract and
24 develop it into a letter of credit that would
25 protect them; and worked on improving the way we

Henry Binkins - Cross

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1 handled the businesses of the customers, and one was by
2 developing software. I just basically wrote what
3 we would -- what we required and had a software
4 company come in and translate that into a program.

5 Q Now, if I understood your testimony
6 correctly under direct examination by Mr. Samuels,
7 you believe you can go back and do work in the
8 banking industry; is that correct?

9 A I would think so, yes, sir.

10 Q And in fact, you've been looking for work
11 to do in the banking industry; is that correct?

12 A Right.

13 Q And part of the jobs that Glen
14 Adams identified were jobs in the banking industry;
15 is that right?

16 A There were a couple.

17 Q And you've applied for those jobs?

18 A I have applied.

19 Q And you haven't been hired?

20 A No.

21 Q And you just saw Glen Adams -- when did
22 you see him? Was that some time in July, I
23 believe; is that correct?

24 A Yes, I believe it was the beginning of
25 July, but I'm not sure.

Henry Dimkins - Cross

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1 Q And you haven't been hired, but you don't
2 know why you haven't been hired? Is that fair to
3 say?

4 A No, I haven't had any contact back.

5 Q Now your prior injuries with Lowe's, the
6 left ankle and the right knee, I believe that's
7 right. Have I got that right?

8 A Yes.

9 Q Okay. Those problems you testified to
10 under direct examination by Mr. Samuels that you're
11 currently having today, those injuries, are those
12 the same kind of problems you were having back when
13 you were -- when your case was awarded by the
14 Commission?

15 A No. Could you repeat that?

16 Q Well, all of the problems you testified
17 to today that you're having with your left ankle
18 and your right knee --

19 A All right.

20 Q -- are those the same kind of problems
21 you were having at the time you went to hearing on
22 those cases?

23 A Yes.

24 Q And you've received total -- excuse
25 me, partial disability awards from both of

Henry Dinkins - Cross

1 those injuries?

2 A Yes.

3 Q The current work restrictions that you're
4 under, and I've read through them. You've got
5 various work restrictions. Do you know -- do you
6 know what your exact work restrictions are?

7 A Lift no more than ten pounds; no constant
8 bending; sitting; kneeling --

9 Q And all those work restrictions are
10 secondary to your back injury; isn't that true?

11 A Secondary meaning as a result of?

12 Q As a result of, yes, sir.

13 A Yes.

14 Q And there weren't any specific work
15 restrictions for your ankle or knee injuries? Fair
16 to say?

17 A Fair to say.

18 Q At the time you had those ankle and knee
19 injuries you continued work at Lowe's?

20 A Yes.

21 Q And I understand you had to take a
22 different job after both of those accidents, but
23 did your -- did your wages go down?

24 A Yes.

25 Q You took a wage cut?

Henry Dinkins - Cross

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1 A I had no choice.

2 Q I believe you testified in your
3 deposition that you didn't have to take a wage cut,
4 Mr. Dinkins.

5 A I don't think so. If I did then that's a
6 mistake. Oh, back up -- it's a wage cut I'm
7 thinking now, I'm thinking promotion. I was
8 dropped down from manager to just a regular
9 customer service. I didn't have to take a wage
10 cut. I continued making --

11 Q So -- I understand. You took a different
12 job but your job as a -- your salary as a manager
13 stayed the same after your left ankle and right
14 knee injury?

15 A Right. Right.

16 Q Did you get any kind of raise at all
17 between your knee injury and your back injury?

18 A Yes, I did, but not the first year.

19 Q I believe you started getting social
20 security retirement some time in January of 2006;
21 is that right?

22 A Yes.

23 Q And you took retirement from social
24 security before you even knew what your final work
25 status from Lowe's was going to be? Is that fair

Henry Dinkins - Cross

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1 to say?

2 A Well, I -- no -- nobody was telling me
3 anything, and I had bills to pay, so.

4 Q I understand.

5 A My assumption has always been that I was
6 still an employee of Lowe's.

7 Q And between your retirement benefits now
8 and your Workers' Compensation benefits you're
9 making more money than you were at the time you
10 worked for Lowe's?

11 MR. SAMUELS: Object to relevance, Your Honor.

12 THE COURT: Overruled. I'll allow the
13 question.

14 A No, I don't think so. I think I make a
15 lot less because at Lowe's my salary was about 29
16 plus the bonus, plus monies put in for a 401-K, so
17 my total income package was somewhere in the mid
18 30's.

19 Q You're currently receiving about \$326 a
20 week from Workers' Comp?

21 A Yeah, that's --

22 Q And so your -- that means your average
23 weekly wage with Lowe's was about \$489.75; is that
24 right?

25 A I'm not positive.

Henry Dinkins - Cross

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1 Q I guess my question is, are you making more
2 than \$489.75 per week now as a result of your
3 Workers' Compensation benefits and whatever you get
4 from social security?

5 A Let's see, it's -- yes, about \$600. Let
6 me ask, where did you get the \$489 from?

7 Q Well, I'm not trying to be smart, but I
8 get to ask the questions, Mr. Dinkins. That's the
9 average weekly wage that's received. You testified
10 earlier that you take some pain medication, but you
11 don't take pain medication everyday; is that right?

12 A No, most of the time -- most of the time
13 I do, a lot of times I don't. It depends on the
14 level.

15 Q Is it fair to say you have good days and
16 bad days relatively speaking?

17 A Yes.

18 Q You're currently able to exercise about
19 three days a week at the "Y"?

20 A I schedule myself three days, a lot of
21 times I can only go for two, it depends on my pain.
22 If it's too great then I'll go and do something,
23 maybe work on my legs and that's it.

24 Q And what kind of exercise do you do at
25 the "Y"? Are you doing things that you were told

Henry Binkins - Cross

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1 to do by the doctors or the physical therapist?

2 A The physical therapist.

3 Q Is that what you do?

4 A Yes.

5 Q Is your back pain now worse, better or
6 the same since the last time you saw Dr. Stacey or
7 any doctor authorized by the Carrier?

8 A It's worse.

9 Q It's worse now?

10 A (No verbal response).

11 Q Like worse right now this minute, or
12 worse just generally?

13 A Just generally.

14 Q But you haven't been back to the doctor
15 since March; is that right?

16 A March.

17 Q The doctor that Mr. Samuels sent you to,
18 Dr. Johnson down in Charleston, do you remember
19 seeing him?

20 A Yes.

21 Q And do you remember if he released you at
22 maximum medical improvement?

23 A Yes, he said that he didn't think that he
24 -- the best I recall he said what they call a
25 degenerative back problem now, that he didn't

Henry Dinkins - Cross

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1 think surgery would help me at this time.

2 Q And his -- I want to ask you a couple of
3 things about his record as well as some of the
4 other records. Dr. Johnson said that your
5 radicular, meaning the pain in your legs had
6 resolved. Do you agree or disagree with his
7 opinion on that?

8 A My pain in my leg had resolved?

9 Q Yes, sir.

10 A No, my pain is still there.

11 MR. GALLAGHER: Commissioner, just for your
12 reference, Dr. Johnson's record is APA page 251.

13 Q It appears Mr. Samuels -- let me back up.
14 Do you remember seeing Dr. Z, Dr. Zgleszewski?

15 A Yes.

16 Q Okay. It appears that Mr. Samuels wrote
17 him a letter asking him a series of questions. Did
18 you know that? Did you know that he had done that?

19 A Lately?

20 Q Not lately, I'm talking about when you
21 saw him.

22 A I don't know about the letters.

23 Q Well, in response to one of Mr. Samuels'
24 questions, he asked whether or not your back injury
25 affected other parts of your body, and Dr.

Henry Dinkins - Cross/Redirect

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1 Zgleszewski said --

2 MR. GALLAGHER: Again, for your reference,
3 Commissioner, page 234, 235.

4 Q -- that your back injury did not affect
5 the use of your legs. Do you agree or disagree
6 with that?

7 A The use of my legs, I don't think so. I
8 mean, I can use my legs. I don't -- I just don't
9 see the connection. In other words, my answer
10 would be no, I can still use my legs but not my
11 back.

12 Q And I assume, Mr. Dinkins, you wouldn't
13 be applying for jobs you didn't think you could do?
14 Is that fair to say?

15 A Yes.

16 Q All right. That's all the questions I
17 have. Thank you, sir.

18 THE COURT: Mr. Samuels.

19 REDIRECT EXAMINATION

20 BY MR. SAMUELS:

21 Q Henry, the social security you're
22 receiving, is that the social security disability
23 or social security retirement?

24 A It's social security retirement.

25 Q Are you able to take that because of

Henry Dickinson - Redirect

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1 your age?

2 A Yes.

3 Q When Mr. Gallagher asked you about
4 testimony that you gave prior to hearings on June
5 27th, 2006 and July 17th, 2006 was that after your
6 back injury?

7 A I'm sorry, repeat the first date.

8 Q June 27th, 2006, and July 17th, 2006.

9 A Yes.

10 Q How long has it been since you've
11 actually worked in banking?

12 A About, I would say, let's see, I last
13 worked in banking in '96; over ten years.

14 Q Have there been any technological changes
15 in the banking industry since then?

16 A Yes, a lot.

17 Q Do you believe you would require
18 additional training before you could go back to a
19 high level job such as an operations manager?

20 A I would.

21 Q Mr. Gallagher had asked you about jobs
22 you applied for that Glen Adams had listed. Had
23 you applied for any of the jobs he listed even
24 before you read his report?

25 A Yes.

Henry Dinkins - Redirect

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1 Q Do you recall which jobs those were?

2 A I sent -- there were some banks on there,
3 Citizens Bank, First Citizens. There were a couple
4 of others in there, I can't recall the other ones,
5 but there were at least six to ten of them that I
6 had already sent out resumes to and had attempted
7 to talk to people, including Safe Federal right
8 here in town, and Wachovia.

9 MR. SAMUELS: I have no further questions.

10 THE COURT: Mr. Gallagher, any re-cross?

11 MR. GALLAGHER: I don't have any questions.

12 THE COURT: All right. Any other witnesses
13 for the Claimant?

14 MR. SAMUELS: No, Your Honor.

15 THE COURT: All right, that concludes the
16 hearing.

17 (The hearing concluded at 10:36 pm)

18

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS'
 COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND
 FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT OF 50 TYPEWRITTEN PAGES
 REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE
 TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST
 OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
 ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
 NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 16th DAY OF DECEMBER,
 2007.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES JANUARY 18, 2015

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF COMMON PLEAS

Henry Dinkins,

PLAINTIFF,

v.

Lowe's Centers,

DEFENDANT.

TRANSCRIPT OF RECORD
C/A #: 09-CP-43-0087

March 3, 2009
Sumter, South Carolina

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING

APPEARANCES:

Stephen Samuels, Esquire
SAMUELS LAW FIRM, LLC
Post Office Box 50349
Columbia, South Carolina 29250

Attorney Gallagher, Esquire
McAngus, Goudelock, Courie Law

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

1 THE COURT: In other words, combined effects according to Mr. Samuels is
2 the key, correct? That's what he says.

3 MR. GALLAGHER: Right. I ... I think ... I think it's all ... I think all of
4 these elements are mutually exclusive, I mean, they have to be because the Statute clearly
5 says and.

6 THE COURT: There's no doubt about that.

7 MR. GALLAGHER: No doubt about ... so I think these are all mutually
8 exclusive elements that happen have to be proved and again the ... the ... the ... the definition
9 of a physical preexisting physical impairment as defined by the Statute requires that it be of
10 such seriousness as to constitute a hindrance or obstacle to employment. Again, I think it
11 focuses on ...

12 THE COURT: And I know we may be arguing semantics here but
13 substantial hindrance to obtaining employment how was he working to get hurt the third
14 time?

15 MR. GALLAGHER: Well, Your Honor, I think what ... what ... what it
16 envisions if I could just maybe apply the real world situation, what it envisions is somebody
17 who has a prior work injury and is somehow restricted from what they would normally do in
18 the work place but it doesn't ... that restriction doesn't totally take them out of the work force.
19 Then they have a third injury or a second injury or a subsequent injury, however that it is,
20 that that's kind of the straw that broke the camel's back. In other words, there was the ... the
21 restriction ... in other words, let's say a guy who is ... let's say a guy has a ... a knee injury
22 from a prior impairment and he has a restriction of no let's say like squatting. But he's able
23 to sit down without any limitations. Then let's say he has a subsequent ... that ... that
24 definitely impacts his ability to work. I think that situation would meet the definition of a ...
25 of a hindrance or obstacle to employment.

1 THE COURT: It says obtaining employment. Go ahead.

2 MR. GALLAGHER: Obtaining employment or re-employment or obtaining
3 employment I believe can be read into that Statute. Well, and then subsequently has a back
4 injury and because of a back injury he can't sit any more so in a ... so now you have a true
5 combination. You have a guy who has a pre-existing impairment for which he cannot squat
6 but he was able to sit. Now he has a subsequent injury that ... that takes sitting out of the
7 equation so that is a combination.

8 THE COURT: All right.

9 MR. GALLAGHER: And ... and the reason why I don't think in this
10 particular case ... there were no specific work restrictions.

11 THE COURT: You're not arguing that because he had employment back at
12 Lowe's that he had no preexisting permanent impairment are you?

13 MR. GALLAGHER: No, sir, Your Honor, I'm not ... I'm not ...

14 THE COURT: I thought that was what you were saying.

15 MR. GALLAGHER: No, sir. No, Your Honor, what I'm saying is is that he
16 had a physical impairment but it did not prevent him from doing his job. And just like
17 anybody else who, you know, if I ... if I cut my finger off, you know, I would have a physical
18 impairment but it wouldn't impact my ability to practice law. And I would say that's the ...
19 that's the distinction here that is envisioned by Ellison about the Statute. In this particular
20 case it's important to note, Your Honor, that Mr. Dinkins did not have any specific work
21 restrictions as a result of the prior injuries. All of his work restrictions, he even testified to
22 this in the hearing transcript on page 41. Question, "And there were not any specific work
23 restrictions for your ankle or knee injury, is that fair to say?" The answer is "Yes, fair to
24 say." And I asked again, "All your ... all your work restrictions are secondary to your back
25 injury alone, isn't that true?" Answer, "Secondary meaning as a result of?" Question, "As a

INDUSTRIAL MEDICINE AND WELLNESS
250 W. Wesmark
Sumter, South Carolina 29150
Ph. 803-778-8842 Fax 803-778-5283

IM0002507 M 05/14/05 61072
DINKINS, HENRY JR 803-499-4990
240-66-0201 05/04/05

Initial visit ☒
Follow up ☐
Consultation ☐
Other ☐

INDUSTRIAL MEDICINE AND WELLNESS WORK STATUS REPORT

PATIENT INFORMATION

Time in 1335 Time out 0200 Date of Injury 04-30-05 Today's date 05-04-05
Employee Name Henry Dinkins Employee's phone 905-2676
Employer Loves of B.C. Employer's phone 905-2676 Employer's fax 905-2676

DIAGNOSIS

Description _____
X-Ray & Lab _____
Diagnoses: 1. L-strain cpt _____
2. _____ cpt _____
3. _____ cpt _____

TREATMENT

___ Minor first aid ___ Anti-inflammatory meds ___ Physical Therapy ___ Antibiotics
___ Over counter meds ___ Muscle relaxants ___ Sutures/Wound care ___ Bloodborne pathogen protocol
___ Tetanus ___ Scheduled pain meds ___ Splint/Cast/Boot/Sling/Crutches ___ Other NA

IV. WORK STATUS

___ No restrictions ☒ Restrictions ___ No work Restrictions effective: Today ___ next shift

Back and Lower Extremity	None	Rarely	Often	Constant	Work level: Lifting / Pushing / Pulling
Sitting	☐	☐	☐	☐	Sedentary ☐ Negligible - 10 lbs. max.
Walking or standing	☐	☐	☐	☐	Light ☒ 10 lbs. freq. - 20 lbs. max.
Bend / squat / twist / crawl	☐	☒	☐	☐	Medium ☐ 25 lbs. freq. - 50 lbs. max.
Climb / work on heights	☐	☒	☐	☐	Heavy ☐ 50 lbs. freq. - 100 lbs. max.
Upper Extremity					Very Heavy ☐ over 100 lbs
Grasp/pinch	☐	☐	☐	☐	Activity and hour restrictions (if applicable)
Reach above shoulder	☐	☐	☐	☐	___ Not to operate hazardous machinery
Reach beyond forearm limits	☐	☒	☐	☐	___ Not to drive car / truck / forklift
Restrictions apply to	☐ L Arm	☐ R Arm	☐ Both		To work no more than ___ hrs. per day

Other restrictions or clarifications _____

FOLLOW UP

Return Appointment No ☒ Yes one week Date May 11, 05 Time 2:00pm
Patient Referred to _____ Phone _____ Date _____ Time _____
Instructions: ___ Keep wounds clean and dry ___ Elevate ___ Gentle range of motion exercise daily
___ Re-check BP ___ Watch for infection ___ Ice/Heat /Massage ___ Report to Company Nurse as directed
___ Stop smoking ___ Wash, dress daily ___ Stretch / Exercise ___ Sutures to come out in ___ days
___ Take meds as directed ___ Tylenol/ Motrin/ Aleve ___ Maintain activity ___ Continue Physical Therapy
Other: _____

Physician signature _____

Forrest Fontmerenke, MD James Gee, MD

INFORMATION RELEASE and ACKNOWLEDGEMENT

1) By signing, I authorize attending physician and/or the Industrial Medicine and Wellness program to release above information and other information acquired in the course of examination or treatment to my employer or its representative, or to a consulting physician or health care provider.
2) I acknowledge the above information and instructions, and acknowledge that any restrictions are effective at the date or time shown above and apply to both work and off work activities.

Patient signature Henry Dinkins

Copies: White: for medical records (fax to employer) Yellow: for patient

Industrial Medicine & Wellness

250 West Westmark Blvd.

Sumter, SC 29150

Phone: (803) 778-8842

Fax: (803) 770-1714

Date:

Patient Name:

Patient ID#:

Street Address:

City, State Zip:

Forrest A. Pommarenko, MD
Kyle Thomas Osborn, MD
Tisha Smith Boston, MD
Wilmot Salter MacCollough, MD
Catherine Ezell Rabon, MD
Janice Marie Neunier, DO

DOCTOR:

Cindy Skelton Reese, MD
John Russell Fleming Jr., MD
James Eugene Geo, MD
Andrew James Reynolds, MD

Medications for in-office dispensing only

Rx	Generic	Size	
ANTIBIOTIC			
☐ Band-Aid Scrub Refills 1 2 3	Povidone-Iodine	#480ml	Apply () times daily
☐ Augmentin 875mg Refills 1 2 3	Amoxicillin Clavulanate	#14	Take () tablets/capsules () time daily
☐ Keflex 500mg Refills 1 2 3	Cephalexin	#25	Take () tablets/capsules () time daily
ADRENALS			
☐ Deltasone 10mg Refills 1 2 3	Prednisone Tablets	#48	Take () tablets/capsules () time daily
MUSCLE RELAXANTS			
☒ Norflex 50mg Aspirin 770mg Caffeine 60mg Refills 1 2 3	Orphenadrine Citrate	#30	Take (1-2) tablets/capsules (2) time daily for pain & muscle relax
☐ Flexeril 10mg Refills 1 2 3	Cyclobenzaprine Tablets	#21	Take () tablets/capsules () time daily
NSAIDS			
☐ Aleve 220mg Refills 1 2 3	Naproxen Tablets	#60	Take () tablets/capsules () time daily
☐ Naprosyn 500mg Refills 1 2 3	Naproxen Tablets	#30	Take () tablets/capsules () time daily
☐ Motrin 200mg Refills 1 2 3	Ibuprofen Tablets	#100	Take () tablets/capsules () time daily
☐ Motrin 800mg Refills 1 2 3	Ibuprofen Tablets	#60	Take () tablets/capsules () time daily
☐ Celebrex 50mg Refills 1 2 3	Celecoxib Potassium	#30	Take () tablets/capsules () time daily
PAIN MEDS			
☒ Ultram 50mg Refills 1 2 3	Tramadol HCl	#30	Take () tablets/capsules (4) time daily for severe pain
DROPS/ointments			
☐ Visine 0.05% Refills 1 2 3	Tetrahydrozoline HCl	15 cu	() drops into affected eye () times daily.
☐ Tobrex .3% Refills 1 2 3	Tobramycin Ophth Soln	5 ml	() drops into infected eye () times daily.
CREAMS			
☐ Neosporin Plus Cream Refills 1 2 3	Triple Antibiotic	15 gm	Apply () times daily
☐ Silver Sulfadiazine 1% Refills 1 2 3	Thiostazene Cream	25 gm	Apply () times daily

Please Sign on Reverse

Circle: ENGLISH

SPANISH

M.D.

Special instructions:

IM0002607 M 09/14/43 61072
DINKINS, HENRY JR 603-499-4990
05/04/05

Industrial Medicine, Inc.
For Professionals
Clark, Stonor, SC 803-778-6842

「水々々」

REMARK: C = minor = Present, N = Normal, Ab = Abnormal, X = Not present, No notation = Not addressed

ALLERGIES: ~~2nd 3rd~~ MILD

Current Notes: Exp'd'n Extra Str. Lev. & Tax
Case Management Notes - Call backs

Case Management Notes - Call backs

LOS DOJ 4-20-85
 186
 P 68 RR 20
 RR 120 20 C UC
 yvement same worse better ____%
 Injury
 Illness
 Follow-up
 Disability
 Impairment
 Fit for duty
 Pre-plapa

History			
Heart	N	HTN	Heart problems
Pul	N	Asthma	TB
Endo	N	Thyroid	DM
GI	N	Ulcers/GERD	Hepatitis
MS	N	Broken bones	Back injury
Other			

403 Pt. returns for a rev. of back
pain. Pt. states that he was helping
a customer get something off the
shelf, when he noticed a bulge. Pt.
states that pain starts from lower back to
knee. Pt. rates pain 5/10. Initial
When pain starts it does 9/10. — Actual Pain

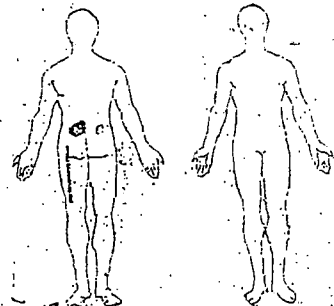
MEDICAL EVALUATION

Observations	Good	Fair	Vague	Very Detailed
History	Good	Fair	Mod	Severe
Stress	N	Min	Mild	
Morale	Good	Fair	Poor	?
Mood	N	Alert	Anxious	Depressed
Posture	N	Guarding	Stooped	Stiffening
Heart & Neck				
Pericardium	N	Valvular trauma		
Respiratory	N	Ab	PERLA	Infected conj. Abnormal
ENT	N	Ab		Cran N. N. N. AB ?
Neck	N	ROM	4	WNL Spasms / Pain Nodes Mening. signs
Chest	N	Barrel	CP in palpation	CP in indirect pressure
Lungs	N	Wheezes	Rhonchi	Rales BS
Heart	N	Irreg	Murmurs	Peripheral edema
Abd	N	Tender	Rebound	Sounds ↑↑ Masses Hernia
Musculoskeletal				
Observe	N	Guarding	Swelling	Effusion Deformity
Motion	N	Ankylos	Slow	Guarded Smooth
Pain	N	Resisting	TA	Activity A. Point: Broad Multiple
		Touch	JA	Palpat A. Pain deep to palpation
		Physiologic	N. AB ?	
Reflex	N	None	2	None 2 Numb 4 Ringing Glove Stocking
ROM	N	2	4	2 4 6
Strength	N	2	4	2 4 6
No visible causes				Non-physiologic symptoms/signs
A. Neuro	N			
Gait	N	Ab ?	Sensation	N/Ab ? DTRs
Fine motor	N	Ab ?	Gross motor	N/Ab ?
Head-Tongue	N	Ab ?	Head-Shin	N/Ab ?
Bleeding	N		Thrombocytopenia	YO
Circ.	N	Contract	Polices	
Derm	N	Eczema	Erythema	Hematomata Echinomosis
	N	Rash Mac	Papules	Vesicoides Pustules Crusts
U. Exch	N	Alert	Lethargic	

MEDICAL NOTES, DIAGNOSIS, AND TREATMENT

5) 252 bar - second day of LBP after 1st rain -

⑦ ptp ② 100%
~ post illicent
Flux 30° 04 - 30° 00
SUT ① sub f peri



1 G2243 N 55049-2777-8
Origen adriatici Ciferri, A.R.A.
Castellana Grotte 433
Lot 81132 Gull Two (73) 167
100 20163-271501

Tramadol HCl
50mg Tablets #30

P) Manganese Fülle
Reste
Reichlich

ORDERS

X-Ray		Results		(see report)
UA	Sp Gray	Sic	Blood	Leuk
Hb/Ht			Physical Therapy	
HCG			Contact key contact	
FSBS			Case management	
Mat Tox			Clean Dress Stitch / Remove	
Toradol			Splint Grutch Dressing	
Lab				
Other				

FOLLOW-UP PLAN

Instructions	Take meds as directed	Keep wounds clean and dry	Elevate / Strict rest
Re-check BP	Increase fluids	Watch for infection	Ice/Heat/Massage
Stop smoking	Blind diet	Wash, change dressing daily	Stretch / Exercise
Head trauma hist.	Antacids / Pepsid Bismol	Tylenol Motrin/ Aleve /OTC	Maintain activity
Call for results		Other	
Work Status	No restrictions	☒ Restrictions	Off work (see Work Status Report)
Follow Up	Dismiss	☒ Re-evaluate	Follow up with PMD / Company Nurse
	Refer to Physical / Occ Therapy		emergent, urgent, non-urgent
			(Physician)

68876


FLORENCE MRI & IMAGING
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FLORENCE MRI & IMAGING
 305 South Irby Street
 Florence, SC 29501
 (843) 292-0400 - fax (843) 292-0470

PATIENT: Dinkins, Henry
 DOB: 9/14/1943
 MRN: 390048
 PHYSICIAN: Thomas Armsey, MD
 DATE: 8/15/2005

EXAM: MRI OF THE LUMBAR SPINE

HISTORY: Low back and right leg pain.

TECHNIQUE: The following sequences were performed on a 1.5 Tesla GE Echosped magnet: Sagittal T1, sagittal T2, axial T1 and T2, and screening coronal T1 of the pelvis.

FINDINGS: The screening coronal T1 of the pelvis is unremarkable. The lumbar vertebral bodies are of normal height. The marrow signal of the visualized vertebral bodies appears normal. The conus is seen ending in its normal position at L1-2. No soft tissue paraspinal masses are seen.

The T12-L1, L1-2 and L2-3 discs are well maintained.

At L3-4, there is loss of disc height with anterior and posterior bulging of the disc. The disc bulge is eccentric towards the right. There is proximal neural foraminal stenosis bilaterally, right greater than left. There is also facet arthropathy with hypertrophy of ligamentum flavum. There is no spinal canal stenosis.

At L4-5, there is loss of disc height and signal on the T2-weighted sequence consistent with disc desiccation. There is posterior degenerative bulging of the disc. The disc bulge is eccentric towards the left. There is lateral recess and proximal neural foraminal stenosis bilaterally.

At L5-S1, the disc is well maintained. The facet joints are well maintained.

CONCLUSION:

1. Degenerative disc disease and facet arthropathy with stenosis at L3-4.
2. Disc bulge at L4-5.

Robin Drum-Kowalski, MD
 RD / kp

DD: 8/15/2005
 DT: 8/16/2005
 Job: 2245711

This document has been electronically reviewed and signed.

327 Broad St
Sumter, SC 29150

☒ Initial Evaluation ☐ Re-Evaluation
Plan of Treatment

Chart #: 649-7

Prior ID #:

History: 62 yb^o referred to out-pat. PT 2° to pain in low back that started in 2002 when he injured it along c ankle fx(L) from lifting a can of paint & again on 03/2004; injured it on 05/2003 when he felt a spasm when he twisted while lifting a lawn mower; received PT in the past a min. / very alert, Qx 3; aggressive, 100% PT, guarding low back

ROM: WNL's all 4/5; trunk v 5/2 in. from 7th finger tip to floor; SB(R) 18 1/2 in. at
 SPL 19 in. at (R) 50% to pain; act (L) WNL
 Strength: (L) LE grossly 4/5; (R) hip grossly 4/5 (? due to pain), others $\geq 4/5$

Pain: No pain at rest; No & Painful
and walking pain in D. paravertebral & feet.
Inspection: denies numbness / tingling
prop. gait.

Inspection: ☒ well developed ☐ in not distressed due to gain of humerus, scapula
 Mobility Transfers: ☒ difficult ☐ severe TTP / - snail - 1 and TTP

Gait: (I) S/P device, ↓ cadence, stiff gait, no lateral list noted

Education: discusses POC to good understanding
(+) SLR, RPD, (+) Skump, (+) PKB (R)

Clinical Assessment: 62 yr old presenting a pain, LROM (+) nerve provocation sign, work injury on 05/20/03. Will benefit from PT to address above pain. Pt's job involves walking and some bending; currently on 10# lifting restrictions.

Treatment: PT 3x/week x 4-6 weeks for pain management (moist heat, TENS, US, mob/massage, traction/flexion), cryo, as appropriate), therapeutic ex. (stretching, strengthening, stabilization), HEP instruction/back mecha

Goals: (1) $\text{Thrust } L_{TM} \geq 1$ in (2) $\downarrow$ pair to $\leq 3/10$ aggravators (3) $\downarrow$ TTP to min/non (4) normalize gait (5) $\text{I} \rightarrow \text{O}$ HEP $\text{O} \rightarrow \text{I}$ good-fellow-through

Patient/Family Goals: to have no pain/prevent to normal function

Rehab Potential: fair $\oplus$; fair ROM; chronic LBP

Physical Therapist's Signature: Stralman, M

Date: 09/05

Physician's Signature:

Date: _____

Client Name Linkins, Henry
 Date 10-25-05

Clinical Notes

Access Physical Therapy

Assessment	Ultrasound @ L5/S1 cont'd to R paravertebral x5	Whirlpool
Re-Evaluation	Phonophoresis w/	Traction <u>Lumbar X5 @ 35#</u>
Therapeutic Exercise	Electrophoresis w/	Prosthetic Training
Transfer Training	Moist Heat	Pre-prosthetic Training
Balance Training	Cryotherapy	Balance Training
Home Program	E. Stim.	Endurance Training
Wheelchair Training	Massage to low back & hip area	Biofeedback
Manual Therapy	TENS @ L4-L5 to L5/S1 in supine	Other

Therapeutic Exercise

Passive	
Active-Assisted	
Active	
Resistive	
Catching	VERTIC, DITC, LTR, TAME 3X20
VF	
Other	Theraball

Transfer Training

	Dependent	Assist	Independent
Bed Mobility			
Get to Stand			
Wheelchair			
Door/Chair			
Other			

Gait Training

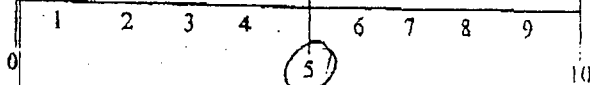
It _____
 Distance _____
 Pace _____
 Characteristics / Deviations _____

Pain:

None

Moderate

Severe

Location LBDescription Same as before

Aggravating Factors _____

Vital Signs:

BP: _____

PR: _____

RR: _____

Client Education:

Review ☐ Upgrade ☐ Home ProgramCall: ☐ Poor ☐ Fair ☐ Good

Comments: S: Lt verbalizes @ cont'd BP that varies & activities
 O: Lt seen today. Lx @ above.
 A: Lt progressing slowly & min TD BP
 & they ex. TD verbalizes TD for a cyber
 & pretherapy.
 P: Cont'd PT Lx w/ toward LTG's.
 Therapist Signature: Wendy Vaughn, PT Date: 10-25-05

6

RECEIVED 11/18/2005 2:44:40 PM

Access Physical Therapy

Patient Name L. Linkins, Henry Clinical Notes
 Date 10-25-05

Evaluation	Ultrasound @ 1.0w/cm ² to paraspinal x5	Whirlpool
Re-Evaluation	Phonophoresis w/	Traction Lumb x15 @ 75#
Therapeutic Exercise X20	Iontophoresis w/	Prosthetic Training
Transfer Training	Moist Heat	Pre-prosthetic Training
Gait Training	Cryotherapy	Balance Training
Home Program	E. Stim.	Endurance Training
Wheelchair Training	Massage to LB in prone + biofreeze	Biofeedback
Manual Therapy	TENS EMG to LB x15 in supine	Other

Therapeutic Exercise

Passive	
Active-Assisted	
Active	
Resistive	
Stretching	✓ VTC, DTC, LTR, ham x3x20, piriformis, figure 4 x3x20
PNF	
Other	✓ lateral ball ex x20

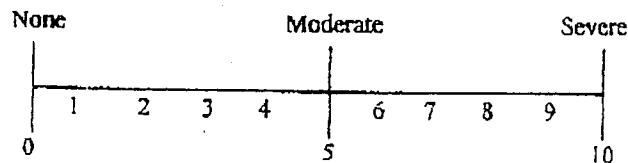
Transfer Training

	Dependent	Assist	Independent
Bed Mobility			
Sit to Stand			
Wheelchair			
Floor/Chair			
Other			

Gait Training

Gait _____
 Assistance _____
 Device _____
 Characteristics / Deviations _____

Pain:



Location _____

Description _____

Aggravating Factors _____

Patient Education:

☐ Review ☐ Upgrade ☐ Home Program

 Recall: ☐ Poor ☐ Fair ☐ Good

Vital Signs:

BP: _____ PR: _____ RR: _____

Comments:

S: Pt reports "it's OK today"
 O: Pt sleep today 1x 6 above.
 A: Pt cont to have 1 cadance & gait upon
 exit of clinic this visit. Pt verbalizing &
 red. S/S today.
 P: Cont to progression @ tol.
 Therapist Signature: Wendy Vaughn, PT Date: 10-25-05

Clinical Notes

Access Physical Therapy

Patient

11

Evaluation

Re-Evaluation

Therapeutic Exer.

Transfer Training

Gait Training

Home Program

Wheelchair Training

Manual Therapy

and 2) 5W/cm² to R paravertebral X15 ✓
 iontophoresis w/
 iontophoresis w/
 Moist Heat
 Cryotherapy
 E. Stim.
 Massage to LB & prof. vert.
 TENS & MHP to low back X15 in supine

Whirlpool
 Traction Lumb X15 @ 75# ✓
 Prosthetic Training *signature*
 Pre-prosthetic Training
 Balance Training
 Endurance Training
 Biofeedback
 Other

Therapeutic Exercise

Assessive

Active-Assisted

Active

Resistive

Stretching

NF

Other

✓ SKTC, DKTC, LTR, Ham, 3X20

✓ Theraball exs, apex trunk v/s

Transfer Training

	Dependent	Assist	Independent
Bed Mobility			
Get to Stand			
Wheelchair			
Door/Chair			
Other			

Gait Training

It _____
 Distance _____
 Pace _____
 Characteristics / Deviations _____

Pain:

None

Moderate

Severe

1 2 3 4 5 6 7 8 9 10
 0 5 10

Location

Description

Aggravating Factors

Vital Signs:

BP:

PR:

RR:

Patient Education:

Review ☐ Upgrade ☐ Home ProgramCall: ☐ Poor ☐ Fair ☐ Good

Comments:

S: Pt reports "back is feeling better"
 O: Pt seen today. Tx as above.
 A: Pt verbalizes w/d LBP, though Tx with
 sitting/walking activities. Pt has
 antalgic gait upon exit of clinic.
 P: Cont. w/d Tx for trunk strengthening.

Therapist Signature:

Date:

ACCESS

Physical Therapy, LLC

327 Broad Street, Sumter, SC 29150
Tel: (803)774-2781 • Fax: (803)774-2782

May 1, 2006

To: Dr. Armsey
From: S. Salzer, PT
Regarding: Henry Dinkins

Dr. Armsey,

Thank you for referring Henry Dinkins to Access Physical Therapy. Mr. Dinkins has had 17 sessions since last MD appt. on 032006.

Mr. Dinkins' treatment consists of therapeutic exercises, work conditioning and home exercise instruction. He continues to work on trunk stabilization, leg strengthening, endurance training; also performs work-simulated tasks to include crate lifting of up to 15 lbs., reaching, bending, etc. Progression with work conditioning is limited by lifting restriction and unrelated problems i.e., old (L) ankle injury and chronic (R) knee pain.

Mr. Dinkins reports a pain level of 5 - 5 1/2 / 10 consistently since last MD appt. He continues to c/o centralized pain mostly in (L) LB; denies radiating pain, numbness or paresthesias at this time. He continues to c/o decreased tolerance to prolonged standing/ walking. He reports having to shift/ change positions or move legs periodically to be able to tolerate prolonged sitting positions. He reports good tolerance to mild to moderate activity at home with frequent rest periods.

Mr. Dinkins demonstrates fair mobility; very cautious with transfers and gait. He demonstrates proper technique during lifting; reports difficulty and beginning LB spasm with lifting 14 lb. crate at chest level. He reports good follow-through with HEP, back mechanics, posture and positioning.

Mr. Dinkins has been able to manage pain through learned exercises and techniques. We recommend d/c to home exercise program at this time. A functional capacity evaluation may be helpful if return to work is being considered.

Please advise if you feel that changes should be made to Mr. Dinkins' plan of care. Feel free to contact me at 803-774-2781 if you would like to discuss his care.

Thank you again for the referral of this pleasant man.

Respectfully,

S. Salzer
S. Salzer, PT
SC Lic. # 2217

Julie Speelman
Julie Speelman, PTA
SC Lic. # 1962

Clinical Notes

Patient Name Dinkins, HenryDate 5-3-06

Evaluation	Ultrasound	Whirlpool
Re-Evaluation	Phonophoresis w/	Traction
Therapeutic Exercise <u>x 4</u>	Iontophoresis w/	Prosthetic Training
Transfer Training	Moist Heat	Pre-prosthetic Training
Gait Training	Cryotherapy	Balance Training
Home Program	E. Stim.	Endurance Training
Wheelchair Training	Massage	Biofeedback
Manual Therapy	TENS	Other

Therapeutic Exercise

Passive		
Active-Assisted		
Active		
Resistive		
Stretching		
PNP		
Other		

same as before

Transfer Training

	Dependent	Assist	Independent
Bed Mobility			
Sit to Stand			
Wheelchair			
Floor/Chair			
Other			

Gait Training

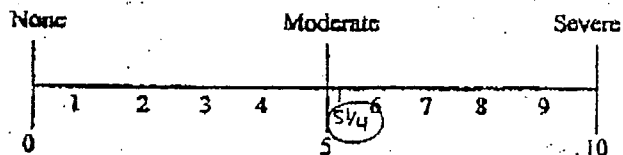
Gait _____

Assistance _____

Device _____

Characteristics / Deviations _____

Pain:

Location low back

Description _____

Aggravating Factors _____

Vital Signs:

BP: _____ PR: _____ RR: _____

Patient Education:

☐ Review ☐ Upgrade ☐ Home Program

 Recall: ☐ Poor ☐ Fair ☐ Good

Comments: S: pt reports no new changes.
O: tx as above. pt seen today
A: pt tol tx well!
P: pt received new script from MD, need Ltr to approved

Therapist Signature: Julie Spielman PTA Date: 5-3-06



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS

AUGUST 9, 2005

ORTHOPAEDIC EVALUATION

RE: HENRY DINKINS #68876

HISTORY: Henry is a very pleasant black male who is sent to see us from Dr. Pomerence from Sumter Industrial Wellness. Henry states that he has had low back pain since an acute injury back in 2003. At that time he was lifting multiple five gallon pails of paint and twisting to place them into a machine. He noticed that after several of these that he had a significant discomfort when he twisted with one of these pails. The patient had some radicular pain down his right leg. He was sent to Industrial Wellness for evaluation. The pain was worse with bending. He was placed on some pain medicines and returned to work. He modified most of his activities of daily living to allow him to move with the pain. He states that the pain has moderately improved over the next three to four months but this may be because he stopped doing activities that exacerbated his pain. The patient does note that there was an acute reexacerbation in May of 2005 at which time he went back to Dr. Pomerence. He was seen, he was given tramadol and orphenadrine which he feels has not significantly improved his pain. He does not take his medication. He is just avoiding, again, any activities that might exacerbate his pain. He states his pain was the worst pain he has ever had, 10/10, but it is significantly improving and now is approximately 4/10. He states that it is throbbing and aching and stiff as if he had a rod in his back. It does go down the right leg but never below the knee. The patient does have some mild weakness associated with this. His pain does worsen when he coughs. He does have some mild night pain but this does not wake him up. The patient wakes up with pain at approximately 4 and goes to bed with this pain approximately at 6. Standing makes his pain better, sitting is worse.

PAST MEDICAL HISTORY: He does have a history of some left ankle pain.

ALLERGIES: He has no allergies to any medicines and no allergies to latex.

FAMILY HISTORY: Unknown family history.

SOCIAL HISTORY: His current occupation is a price coordinator for Lowe's. He does drive. He does not drink alcohol. He does not smoke or chew tobacco. He does not do any recreational drugs.

REVIEW OF SYSTEMS: General: He has no weight changes. He has no fevers, chills or night sweats. He has had no urinary or fecal incontinence. He does have some mild thyroid problems which began approximately a year ago. ENT: He does have some mild visual changes. He has been looking at a reevaluation with his ophthalmologist. No hearing changes and no voice changes. He is having no GI complaints. No nausea, vomiting, constipation or diarrhea. Cardiovascular: No palpitations. No chest pain and no hypertension.

AUGUST 9, 2005
ORTHOPAEDIC EVALUATION
RE: HENRY DINKINS #68876
PAGE TWO

Respiratory: No cough or shortness of breath. Genitourinary: No STDs. No urinary tract infections. Neurologic: No seizures, paralysis, numbness or weakness. Musculoskeletal: He does have backaches and some joint pain of his left ankle. Skin: No bruising or sores.

PHYSICAL EXAMINATION: The physical exam reveals a well-developed, thin black male, in moderate distress. He is sitting deliberately on the edge of the examining table with legs fairly straight at the hip. The patient has a mild amount of distress by the appearance on his face. His vital signs are: Weight is 162. Blood pressure 131/85. Pulse is 70 and regular. His cervical spine reveals no tenderness to palpation, full range of motion and a negative Spurling test bilaterally. The patient has full range of motion of bilateral upper extremities and full strength of bilateral upper extremities. The patient is neurovascularly intact to bilateral upper extremities. He has no atrophy of bilateral upper extremities and no erythema or ecchymosis. The bilateral lower extremities were examined. There is a negative straight-leg raise bilaterally. The patient had full range of motion of bilateral hips. There is no tenderness to palpation at the lateral hips or on the groin. There is no tenderness of the pubic symphysis. The patient has a negative SI eval with direct compression. The patient has a negative FABER bilaterally. The patient has no significant scoliosis. There is an increased lordotic curve at the lumbosacral spine. The patient has no tenderness to palpation at the lumbosacral spine in the area of I, II and III. There is some mild tenderness at L4-5 and L5-S1. The patient has some limitation to forward flexion. He can get to 40 degrees of forward flexion without discomfort. The patient has no tenderness with extension. The patient can laterally flex without discomfort. There are no problems with rotation of the lumbosacral spine. The patient has no atrophy of bilateral lower extremities. The patient does have a positive Trendelenburg consistent with his right-sided gluteus medius weakness. The patient's extensor hallucis longus is 5/5 strength bilaterally. The patient has full strength to inversion, eversion, supination and pronation, abduction and adduction of the lower extremities. The patient has no erythema or ecchymosis at the bilateral lower extremities. The patient has a normal gait.

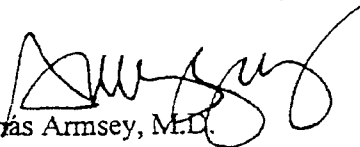
RADIOGRAPHS: X-rays were evaluated of the lumbosacral spine which shows an obvious exostosis off of L4. There is some L4-5 narrowing. There is sacralization of L5 vertebrae. The patient otherwise has some mild spurring at L3-4. There appears no pars defects on obliques and there are no radiographic signs of instability.

ASSESSMENT: Some likely L4 herniated nucleus pulposus with right-sided sciatica and a positive Trendelenburg on the right consistent with L4 weakness.

PLAN: The patient will obtain an MRI to look for L4 herniated nucleus pulposus. The patient will follow up after this. We will place him in formal physical therapy for strengthening and improvement of his gluteus medius weakness. The patient was given Vicodin #20 to be used on a p.r.n. basis for his night pain and discomfort. The patient will follow up in four to six weeks or sooner if anything worsens. We will reevaluate his strength at his gluteus medius. If he is not significantly improved we will consider an EMG to rule out an L4 radiculopathy.

AUGUST 9, 2005
ORTHOPAEDIC EVALUATION
RE: HENRY DINKINS #68876
PAGE THREE

The patient understands the prognosis and his course. He will follow up on a p.r.n. basis.


Thomas Armsey, M.D.

TrUSA0211

cc: Dr. Pomerence

Note: Dr. Armsey said to send letter to Dr. Pomerence, but did not dictate letter.

SEPTEMBER 12, 2005

RE: HENRY DINKINS # 68876

CHIEF COMPLAINT: Low back pain.

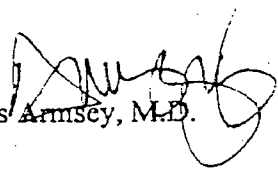
HISTORY OF PRESENT ILLNESS: Mr. Dinkins is a very pleasant African-American male here for follow-up of evaluation of low back pain. He is a very pleasant gentleman who works at Lowe's. He states today that the back pain has become progressively worse. He does not endorse any history of saddle paresthesias, numbness or tingling or drop foot or any neurologic sequelae today. He does not have any trouble with his bowel or bladder continence. However, he states the back pain is getting worse. It is radiating to his right buttock and down his right leg. It is severely interfering with his quality of life, however, he still continues to try to work some at Lowe's. He has not undergone any type of physical therapy secondary to not having the right forms or something. He is going to try to get that filled out today. He states the pain is approximately 7/10 on the pain scale which is slightly worse than it was last time he was seen by Dr. Armsey. In the interim he got an MRI done of his LS spine that demonstrates a disk bulge at L3-L4 to the right and L4-L5 to the left. These are eccentric bulges primarily in the anterior region.

PHYSICAL EXAM: Mr. Dinkins is a very pleasant African-American male in no acute distress. He has a positive straight-leg test on the right, negative heel raise test on both sides. There is no gross tenderness across the lumbar spine. There is no erythema or focal deformity noted. There is no edema noted. He has good dorsalis pedis and posterior tibial and femoral pulses. He has good patellar and Achilles reflexes noted bilaterally.

RADIOGRAPHS: MRI of the LS spine was reviewed and shows the L3-L4 bulge and L4-L5 bulge, the former being to the right and the latter being to the left.

ASSESSMENT: Lumbar disk bulge at L3-L4 and L4-L5 with worsening back pain.

PLAN: A lengthy discussion was taken with Mr. Dinkins referencing the disk bulge and routes of therapy. We offered a referral to a neurosurgeon today since his pain was increasing. He states that due to the fact that he has no permanent neurologic sequelae currently and previous surgeries, he was going to try a course of physical therapy and anti-inflammatories to see how far he can make it without having to go to surgery. He understands the risks and benefits of this plan and wishes to proceed. He will be back to see us in approximately 4-6 weeks.


Thomas Armsey, M.D.

TrUSA0222

100 12

FAX: 863 668 9553
THOMAS D. ARMSEY II, M.D.
TWO MEDICAL PARK, SUITE 1109
COLUMBIA, SC 29203-6808
DEA # SBA 3032022
E.O. # TL 26501

NAME: THOMAS D. ARMSEY II PAGE: 1
ADDRESS: 1300 06
DATE: 1300 06
RE: LEGAL (NOT SAFETY BLUE BACKGROUND)

P. Mr. [unclear] continues to
C/O LBP & [unclear] radiation.
He showed moderate
improvement & his last course
of PT & to pain to 5/10
He discussed [unclear]
and decided on a LESE @
L3-4 disk bulge + 8 weeks of
PT (2-3 x /wk). If no improve-
ment he will be referred
to a NEUROSURGEON.

Remil [unclear]
Label [unclear]

DISPENSE AS WRITTEN SUBSTITUTION PERMITTED
5JFP0267410

MARCH 21, 2006

RE: HENRY DINKINS #68876

HISTORY: Henry is being seen in follow-up for his chronic low back pain with an MRI documented L3-4 herniated disc with an eccentric bulge towards the right and a L4-5 herniated disc with an eccentric bulge towards the left. He has undergone a fluoroscopic-guided LESI under the supervision and execution of Dr. Tim Close at the Palmetto Richland Hospital. He has stated that that injection immediately recreated his right-sided radiculopathy. He stated that the pain relief, once the corticosteroid kicked in, was significant and has lasted approximately three weeks. Patient has been going to formal physical therapy and states that he continues to make significant improvement in his functionality. The patient is able to perform most of his activities of daily living with modified bending and lifting. The patient continues restrictive lifting, but has been trained to lift a little bit more than 10 pounds on his own. He states that he can lift 15 pounds consistently without significant discomfort. The patient states that his right-sided radiculopathy has significantly improved and has not had any significant exacerbation since he has been having therapy and has undergone the LESI. He is having some mild left-sided radiculopathy which correlates well with his L4-5 disc.

PAST MEDICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY, REVIEW OF SYSTEMS, MEDICATIONS AND ALLERGIES: Have all been updated on the chart.

PHYSICAL EXAMINATION: On formal physical exam he has had mildly elevated blood pressures. When he went for his LESI his blood pressure was found to be mildly elevated. He has seen his primary care physician who has placed him on a blood pressure medicine, which he is going to go back and see her today for reevaluation. The patient currently has no significant weakness at his hamstring. He has symmetric reflexes of his Achilles, left and right. He has a decreased patellar tendon reflex on the right. It is normal on the left. He has no clonus bilaterally. The patient has full strength of extensor hallucis longus bilaterally. His sensation is intact in the L4, L5 and S1 dermatomes. The patient has full range of motion of bilateral hips. There is no effusion at the right knee or the left knee. The patient has mildly decreased range of motion at the left ankle, secondary to a triple arthrodesis. He has some mild medial joint line tenderness in the right knee, likely secondary to a medial meniscal debridement and some mild osteoarthritis of the right knee. The patient's forward flexion at the low back, he can reach 60 degrees of forward flexion without significant discomfort and 15 degrees of extension. Lateral bending is symmetric at 20 degrees and rotation is normal. The patient is showing no atrophy of bilateral lower extremities, neurovascularly intact.

ASSESSMENT:

1. L3-4 herniated nucleus pulposus with right-sided radiculopathy that is improving.
2. L4-5 herniated nucleus pulposus with left-sided radiculopathy which is stable.
3. Status post a right knee arthroscopy with mild degenerative arthritic changes.
4. Left ankle arthrodesis that is stable.

PLAN: The patient will continue to be restricted with his lifting to no more than 15 pounds. He will continue to do formal physical therapy and likely improve to his maximum medical improvement in the next six to eight weeks. He understands that he is going to continue to increase his activities as pain allows. He will continue to modify his activities to pain and that with

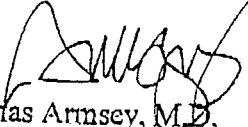
30

MARCH 21, 2006

RE: HENRY DINKINS #68876

PAGE TWO

strengthening and truncanl stability exercises he is hoping to return to his maximum medical improvement in the next six to eight weeks. We will reevaluate him in six to eight weeks, or sooner if anything worsens. He will continue to utilize his anti-inflammatory medicine. He is on ibuprofen 800 one p.o. t.i.d. p.r.n. and patient is taking no narcotic analgesics and has no desire to undergo a fluoroscopic-guided L4-5 LESI at this point.


Thomas Arnsey, M.D.

TrUSA0280



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS

PHYSICAL THERAPY PRESCRIPTION

Date: 5/2/06

Patient's Name: Henry Jenkins DOB: _____

Diagnosis/Surgery: (2) L5/S1 Disc Herniation DOS: _____

Treatment Frequency: (1) Left Radiculopathy
(1) Sacroiliitis

(2) times per week, or _____ one instructional visit only

Treatment Duration:

8 weeks, or _____ months

Precautions/Limitations: _____

☒ Evaluate and Treat _____

☒ Ultrasound/Phono/Tonto _____

☒ ROM and Strength _____

☒ Home Exercise Program _____

☐ Progress per Protocol _____

☒ Electrical Stimulation _____

☒ Trunk Stabilization _____

☒ Work Conditioning _____

☐ Gait Training _____

☒ Functional Capacity Eval. _____

☒ Spine Rehabilitation _____

☒ Massage/Mobilization _____

☒ Other EPIDURAL FOR TENS UNIT FOR LOCAL L5 SPINE

PAIN

Physician Signature: [Signature] Date: 5.02.06

Please send or fax periodic and discharge reports to the above physician at the address and/or fax number listed below.

MAY 22, 2006

RE: HENRY DINKINS #68876

HISTORY: Henry is being seen in follow-up for his low back pain. He states that he was scheduled for an evaluation in approximately two weeks. He has not been able to undergo any formal physical therapy due to Workers Comp issues. He is continuing to do his home exercises on his own. He did note that he had some right lateral hip pain going down to the knee. The patient denies any radicular pain across the knee or down to the foot. He denies any weakness at the hip flexors, hip extensors, the abductors, adductors. The patient has had no trauma except for the previous injuries while working. The patient does have an MRI documented disc bulge with right paracentral extension in the L3-4 nerve root and this is similar to the dermatome that is being affected today.

PHYSICAL EXAMINATION: The patient on formal physical exam has no numbness in the area of the lateral femoral cutaneous nerve. Quads full strength, adductors full strength, abductors full strength bilaterally. The patient does have a normal gait.

ASSESSMENT: L4 radiculopathy on the right side consistent with the MRI findings of the L3-4 disc herniation going down the right side.

PLAN: The patient will continue to utilize anti-inflammatory modalities. He will work hard on strengthening. He will continue to do truncal stability exercises. He continues to understand that if any of his pain worsens or if his weakness significantly increases, then he needs to return to the office immediately or the emergency room for reevaluation. The patient understands all of the risk and benefit profiles. The patient will continue to do his strengthening exercises. He will continue to follow up on a p.r.n. basis. He is going to be at a Workers Comp hearing shortly and I have told him that this correlates very well with his MRI findings and he understands. The patient will follow up in four to six weeks or sooner if anything worsens.

DRAFT

Thomas D. Armsey, M.D.

TrUSA0280

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JULY 10, 2006

RE: HENRY DINKINS #68876

HISTORY: The patient has been seeing Dr. Armsey previously for L4 radiculopathy with MRI findings of an L4-5 disc herniation. This is a Worker's Comp problem and he has been through physical therapy which he is continuing to do working on truncanl stability and strengthening. He states he is no better but no worse. He continues to have pain which radiates down both legs at times and he feels he has some weakness bilaterally, and he has not been back to work.

PHYSICAL EXAMINATION: GENERAL: He is alert and oriented, in no acute distress. He has limited flexion and extension of his low back. There is no specific tenderness to palpation of his low back. His straight-leg raise is negative. He is unable to do a single-leg squat with either side but he does fire his quadriccps well. There does not appear to be a significant weakness. He continues to have a normal gait.

ASSESSMENT: L4 radiculopathy with L3-4 disc herniation on MRI.

PLAN: We will continue with his physical therapy and anti-inflammatories. We will go ahead and wait for his Worker's Comp hearing as it appears it will come up relatively soon. He will follow up in about six weeks. At that time we will evaluate his improvement and we will consider an impairment rating.



Jason J. Stacy, M.D.

TrUSA0211

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AUGUST 21, 2006

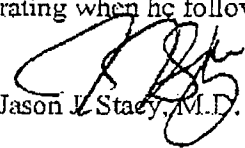
RE: HENRY DINKINS #68876

HISTORY: Mr. Dinkins presents for follow-up of low back pain. He had a previous L4 radiculopathy with disc herniation at L4-5, has been seeing Dr. Armsey. He is here for a Workman's Comp follow-up. He states he is not improved. He continues to have pain in his low back. He has had difficulty getting to physical therapy and has not done so as of yet. He was supposed to have a Workman's Comp hearing but apparently has not had it yet.

PHYSICAL EXAMINATION: In general: He is alert and oriented, in no acute distress. He continues to have limited extension and flexion of his low back. There is no point tenderness. Straight leg raise is negative. He continues to have some difficulty with single leg squats. He has no significant weakness of his lower extremities with dorsi and plantar flexion of his feet bilaterally. He has normal gait and sensation is grossly intact.

ASSESSMENT: L4 radiculopathy with both L3-4 and L4-5 disc bulging. There is a disc bulge towards the right at L3-4 and the disc bulge is towards the left at L4-5. These findings could correlate and do correlate with his continued problems.

PLAN: We have given him ibuprofen 800 mg one tablet p.o. three times a day with meals, as well as resumed his physical therapy three times weekly for six weeks for him lumbar radiculopathy. I am unsure of the status of the Worker's Comp hearing. We will consider doing an impairment rating when he follows up if he has not made significant improvement.



Jason L. Stacy, M.D.

TrUSA0291

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08/22/2006 15:00

8037788488

MCWHIRTER

PAGE 02/03



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS

EXCUSE SLIPDATE: Aug 21, 2006DOCTOR: Stacy

TO WHOM IT MAY CONCERN:

Henry Dinkins is under my care. He/She☒ Was seen in my office today.☐ Is released to return to work on _____☐ Is able to return to school on _____☐ Is/ is not able to participate in the physical education program at school.☐ Is in good physical health.☐ Is scheduled for surgery _____ Return to work date will be determined at post-operative evaluation.Restrictions: No Lifting > 10 lbsallow pt for 3 times for 6 weeks

Other: _____

[Signature]
Signature



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

DEPARTMENT OF ORTHOPAEDIC SURGERY

Henry Dinkins

Name: _____ Date: Mon. Oct. 2 Time: 8:45 am

Two Medical Park, Lower Level, Suite L10
Columbia, SC 29203
803-434-6612 Fax 803-434-7829

UNIVERSITY OF ORTHOPAEDIC SURGERY
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-09
COLUMBIA, SC 29203
803-434-6612, FAX 803-434-7829

USC SPORTS MEDICINE CENTER
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-10
COLUMBIA, SC 29203
803-434-7689, FAX 803-434-7829
08/22/2006 04:06PM

36

Henry Dinkins v. Lowe's and Specialty Risk Services, Inc.

Date of Accident: April 20, 2005

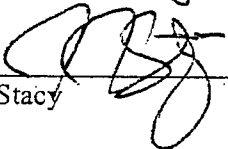
Claim No.: YKH 01832

WCC File No.: 0509590

Our File No.: 2073.06033

MEDICAL QUESTIONNAIRE

1. Do you recommend further physical therapy for Mr. Dinkins' back as a result of his April 20, 2005 work related accident? Yes ☒ No ☐
2. If you do recommend further physical therapy, is Mr. Dinkins able to move past his 15-pound weight restriction, previously assigned by Dr. Armsey, in order to progress to the work hardening stage of physical therapy? Yes ☐ No ☒ *I would like to see him again before advancing his restrictions*



Dr. Jason Stacy

9/11/06

Date



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS®

Name Henry Dinkins Chart # 68876
DOB 4/19/43 SS# Phone # 803-499-4990

TEST/EXAMINATION:

- ☐ MRI ☐ Bone Density
☐ Bone Scan ☐ EMG/NCS
☐ Cat Scan ☐ Sleep Study
☐ DEXA Scan

☐ Vascular Studies Arterial Venous

☒ Other Referral Spine Surgery - Midlands Ortho Dr. DePaulis

- ☐ PRMH ☐ Palmetto Imaging ☐ InMed ☐ Lex. Open MRI
☐ Carolina Medical Imaging ☐ Other

Date Scheduled Time Scheduled

Contact Person Phone # Fax #

Diagnosis (Rule/Out) Chronic LBP

L3-4, L4-5 disc protrusion

Prep. Instructions

Insurance WC Bunch & Assoc

Precert Information 803 669 0861 myra chair

Doctor [Signature] Date 9/10/2/06 fax 803-668-9553

Please fax report immediately to (803) 434-7829 or 434-7604.

- Send Study/Film: ☐ with patient ☐ Office Check List: ☐ patient notified
☐ please deliver ☐ noted in computer
☐ Federal Express to: ☐ faxed

DEPARTMENT OF ORTHOPAEDIC SURGERY
Two Medical Park, Lower Level, Suite L09
Columbia, SC 29203
803-434-6812, FAX 803-434-7829

USC SPORTS MEDICINE CENTER
Two Medical Park, Lower Level, Suite L10
Columbia, SC 29203
803-434-7689, FAX 803-434-7604

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OCTOBER 2, 2006

RE: HENRY DINKINS #68876

HISTORY: Patient comes in today for followup for radiculopathy. He states that two weeks ago he did have quite a flare. He had been taking Motrin and at times Vicodin to take care of the pain. It was typical of his usual flares with pain in his right low back and shooting down his leg. He also felt that he was getting tightness up higher in his back and into his back during that flare. He states that he did go see a Workman's Comp doctor for an evaluation but he has not had his hearing yet. He is continuing to work out at the Y on his own since he is having trouble with his insurance company paying for his physical therapy. Currently now he has been out of work since December and he has been having problems with his pain for approximately a year.

PHYSICAL EXAM: In general, he is alert and oriented. He is no acute distress. He does have some weakness with single leg squats on the right. He does not have tenderness to palpation over his low back but he is limited in extension and flexion. He currently has a negative straight leg raise test. He has normal 5/5 strength in his gastroc, anterior tib and EHL bilaterally. He has an absent patellar tendon reflex on the right. He has normal Achilles bilaterally and a normal left patellar tendon reflex. He is intact to light touch bilaterally.

ASSESSMENT: L4 radiculopathy with some weakness and loss of patellar reflex although he did have a prior surgery to his knee.

PLAN: To refer him to orthopaedic spine specialist at Midlands for evaluation for a possible surgical procedure and currently he will continue with his ibuprofen and Vicodin for flares as well as continuing his physical therapy at the Y.

DRAFT

Jason J. Stacy, M.D.

Lisa Pomranky, M.D.

TrUSA0278

09/25/06
Henry Dinkins
Page 2

by Dr. Ekman at Providence Northeast, as well as a triple arthrodesis done by Dr. Belding at the other Providence location.

PHYSICAL EXAMINATION: General appearance is that of a pleasant 5'7" 174 lb. male, certainly in no severe distress, with a normal station and gait.

At the cervical spine he had full flexion, extension and lateral bending. Lateral rotation was possible to 60° in either direction. Distal neurovascular status was intact in both upper extremities.

At the lumbar spine he had 90° of flexion, with extension more uncomfortable and limited to about 30°. Lateral bending was limited to 30° in either direction, whereas lateral rotation was limited to 40° either to the right or left. He could stand on his toes and heels. He could squat only about 1/3 of the way due to his pain. Distal neurovascular status was intact. Straight leg raising was negative. Both hips had full internal rotation. There was no atrophy in the lower extremities. His pelvis was level.

RADIOGRAPHS: AP and lateral x-rays of his lumbosacral spine revealed all disc spaces to be well maintained, with spurring of the vertebral bodies and L2, L3 and L4, consistent with osteoarthritis.

MRI SCAN: Multiple images of his lumbar spine done August 15th, 2005 revealed degenerative disc disease at L3-L4, with neuroforaminal stenosis, right greater than left. At L4-L5 the radiologist described loss of disc height and signal, with disc desiccation with posterior degenerative bulging.

IMPRESSION: LUMBAR DEGENERATIVE DISC DISEASE.

DISPOSITION: I do believe that the patient is at maximum medical improvement, and no return visit was made for him here. There are no absolute work restrictions. Using the 5th edition of the AMA Guides, there is a 5% impairment of the lumbar spine.



James F. Bethea, M.D.
JFB/prf

(Next Appointment p.r.n.)

Cc: Myra Chere, RN, CCM
Bunch and Associates, Inc.
P.O. Box 32037
Lakeland, FL 33802

41

MIDLANDS ORTHOPAEDICS Fax: 803-253-6655

Jan 8 2007 16:29 P 06

1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: DINKINS, HENRY ACCOUNT: [REDACTED]
DATE: 01/05/2007 DOB: [REDACTED]

CLINICAL STATUS Mr. Dinkins is back in follow up after obtaining the MRI of his lumbar spine. MRI of the lumbar spine reveals some mild bulging at the L3-4 and L4-5 disc. There is some mild facet arthropathy and some mild ligamentum thickening but nothing that is out of the possible norm for a 63-year-old male. There is no severe stenosis at any level.

DISPOSITION AND RECOMMENDATIONS. I have told Mr. Dinkins that in reviewing this MRI I really do not think that surgical intervention would be likely to give him any significant benefit. My recommendation is for him to return to the industrial care or physicians at the university, they were providing him his nonsurgical care. I think it is reasonable to continue with a conservative course in light of the fact that he essentially is not a surgical candidate. Also I see nothing structural that would limit his activities at work at this time other than his subjective complaints. I would state that at least from my standpoint he is at maximum medical improvement. According to the AMA Guide to the Evaluation of Permanent Impairment, ORE method he would qualify for a 5% permanent impairment to the lumbar spine. He is discharged.

(P. Douglas deHoll MD
PDD / lkh
cc:

REV 0
Report id. 318529

attachment for claim 31765V921

44

Printed by: CHEREM on 02/27/2007 10:49:18 AM

Case Info: DINKINS, HENRY: 04/20/2005: YKH01832 C: XXX-XX-0201

Entry Date: 06/15/2006 Entered By: CHEREM

Case - DINKINS, HENRY :04/20/2005:YKH01832 C:XXX-XX-0201

Date Originated: 06/15/2006

Originated By: CHEREM

Generic Note

Henry Dinkins

Dalzell, SC 29040

DIAGNOSIS: 9-27-05 DEGENERATIVE LUMBAR DISC DISEASE WITH BULGING L3-4 AND L4-5, RADICULOPATHY

WORK STATUS: REL-YES

RESTRICTIONS: NO LIFTING OVER 15LBS

LOV: 5-2-06 DR ARMSEY UNIVERSITY ORTHOPEDIC , DR ARMSEY PH 803-434-6812 FAX 803-434-7340

NOV: PENDING WORK HARDENING AND FCE / DR ARMSEY PH 803-434-6812 FAX 803-434-7340

CURRENT BRIEF SUMMARY OF CONTACTS:

EE REPRESENTED NO PERMISSION TO SPEAK WITH EE OR MD , OTHER THAN TO OBTAIN RECORDS AND PROVIDE AUTHORIZATION

SEE ROUNDTABLE WITH ADJUSTER

SPOKE WITH SCOTT AT ACCESS PT , TOLD WILL AUTHORIZE ADDITIONAL WORK HARDENING, HE MAY NEED TO DO RE-EVAL ,AND CONTINUE WORK HARDENING TO FCE

TC/ TO HRM , WAS TOLD SHE IS NOT IN AT THIS TIME

SHORT TERM GOAL CHANGES:

EE WILL COMPLETE WORK HARDENING IN 4 TO 6 WEEKS

CASE ACTION PLAN:

TIMEFRAMES FOR FOLLOW-UP: NCM TO FOLLOW UP WITH PHYSICAL THERAPY AND HRM BY 6-28-06

RESOURCES: WORK HARDENING TO PROGRESS TO FCE AND MMI

COLLABORATIVE APPROACHES

(COORDINATION OF MEDICAL CARE/RTW):

NCM TO FOLLOW UP WITH PHYSICAL THERAPY REGARDING EE PROGRESS AND ANTICIPATED COMPLETION OF WORK HARDENING , NCM TO FOLLOW UP WITH HRM TO CONFIRM SHE STILL CANNOT MEET RESTRICTIONS

Myra Chere , RN CCM

56

Printed by: CHEREM on 02/27/2007 10:49:58 AM

Case Info: DINKINS, HENRY: 04/20/2005: YKH01832 C: XXX-XX-0201

Entry Date: 07/06/2006 Entered By: CHEREM

Case - DINKINS, HENRY :04/20/2005:YKH01832 C:XXX-XX-0201

Date Originated: 07/06/2006

Originated By: CHEREM

Generic Note

Henry Dinkins

Dalzell, SC 29040

DIAGNOSIS: 9-27-05 DEGENERATIVE LUMBAR DISC DISEASE WITH BULGING L3-4 AND L4-5, RADICULOPATHY

WORK STATUS: REL-YES

RESTRICTIONS: NO LIFTING OVER 15LBS

NOV: 5-22-06 DR ARMSEY UNIVERSITY ORTHOPEDIC , DR ARMSEY PH 803-434-6812 FAX 803-434-7340

NOV: 7-10-06 DR STACY / UNIVERSITY ORTHOPEDIC , DR ARMSEY PH 803-434-6812 FAX 803-434-7340

CURRENT BRIEF SUMMARY OF CONTACTS:

ID FAX OF VISIT 5-22-06 DR ARMSEY

HE WAS SCHEDULED FOR FOLLOW UP IN TWO WEEKS , HE CONTINUES TO DO HIS HEP AT HOME, HE DID NOTE SOME RIGHT LATERAL HIP PAIN ,GOING DOWN TO HIS KNEE.HE DENIES WEAKNESS OF HIP, HE HAS HAD NO TRAUMA EXCEPT FOR INJURIES WHILE WORKING . A MRI HAS DOCUMENTED DISC BULGE IN THE L3-4

EXAM / QUADS FULL STRENGTH , ADDUCTORS FULL STRENGTH , ABDUCTORS FULL STRENGTH . NORMAL GAIT

ASSESSMENT L4 RADICULOPATHY ON THE RIGHT SIDE CONSISTENT WITH MRI FINDINGS

PLAN / ANTI-INFLAMMATORY, WORK ON STRENGTHENING FOLLOW UP PRN, HE HAS A WORKERS COMP HEARING SHORTLY AND I HAVE TOLD HIM THIS CORRELATES VERY WELL WITH HIS MRI FINDINGS . FOLLOW UP IN FOUR TO SIX WEEKS
ER DR ARMSEY

RM UNABLE TO MEET HIS CURRENT RESTRICTIONS

SPOKE WITH SCOTT ACCESS PT , ASKED IF HE SPOKE WITH EE REGARDING HAVING HIM ASK DR ARMSEY IF HE WILL ALLOW HIS WEIGHT LIMIT TO BE ADVANCED TO PROGRESS WITH WORK HARDENING
HE SAID HE DID AND EE SAID HE WOULD ASK DR ARMSEY , HE HAS NOT INFORMED THEM OF ANY CHANGES

SPOKE WITH UNIVERSITY ORTHOPEDICS , EE HAS APPT 7-10-06 WITH DR STACY , WHO IS TAKING OVER DR ARMSEYS PATIENTS

SHORT TERM GOAL CHANGES:

HE WILL BE GIVEN AN ORDER AT NOV TO ADDRESS WORK CONDITIONING AND WILL BE ALLOWED TO BE PROGRESSED AS TOLERATED WITH IN TWO WEEKS

BASE ACTION PLAN:

TIMEFRAMES FOR FOLLOW-UP: NCM TO FOLLOW UP WITH , MD , AND PHYSICAL THERAPY POST NOV BY 7-17-06 POST NCM RETURN TO WORK FROM TIME OFF

RESOURCES: WORK HARDENING TO PROGRESS TO FCE AND RESOLUTION

COLLABORATIVE APPROACHES

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Printed by: CHEREM on 02/27/2007 10:49:58 AM

(COORDINATION OF MEDICAL CARE/RTW):

NCM TO OBTAIN NOTES FROM NOV FOR TREATMENT PLAN AND WITH PHYSICAL THERAPY FOR ANY NEW ORDERS FROM WORK
HARDENING

AND UPDATE ADJUSTER WITH TREATMENT PLAN . NCM TO FOLLOW

UP WITH HRM REGARDING ABILITY TO MEET RESTRICTIONS AT NOV

Myra Chere , RN CCM

Printed by: CHEREM on 02/27/2007 10:52:19 AM

Case Info: DINKINS, HENRY: 04/20/2005: YKH01832 C: XXX-XX-0201

Entry Date: 08/24/2006 Entered By: CHEREM

Case - DINKINS, HENRY :04/20/2005:YKH01832 C:XXX-XX-0201

Date Originated: 08/24/2006

Originated By: CHEREM

Generic Note

08/24/2006 EXTERNAL ROUNDTABLE

DISCUSSION / HAVE RECEIVED ANOTHER REQUEST FOR ADDITIONAL PT .
 HE HAS HAD A TOTAL OF 31 SESSIONS OF PT OF THAT 18 WERE WORK HARDENING , PHYSICAL THERAPY HAD ATTEMPTED TO
 BTAIN A ORDER THAT EE WEIGHT LIMITS COULD BE ADVANCED IN WORK HARDENING ONLY , SO THEY COULD ADVANCE HIM
 WITH WORK HARDENING , AND MD OFFICE REPLY WAS T O THEM THAT DR STACY WAS NOT THE ORDERING MD FOR THIS WORK
 HARDENING, THIS ORDER APPEARS TO BE FOR REGULAR PHYSICALTHERAPY , EE IS REPRESENTED I CANNOT CONTACT MD OTHER
 HAN TO OBTAIN RECORDS , I HAVE REQUESTED PT SEND ME A LETTER REGARDING LONG TERM GOALS THEY FEEL THEY WOULD
 CHIEVE WITH ADDITIONAL PT , I DO NOT HAVE LOV NOTES FROM DR STACY TO SUPPORT NEED FOR ADDITIONAL PT

LAN NCM TO OBTAIN IME WITH DR BETHEA AND NOTIFY DEE AND SHE WILL NOTIFY EE ATTORNEY , NCM TO PA FOR
 ADDITIONAL PT WHEN ADDITIONAL INFORMATION RECEIVED

Myra Chere , RN CCM

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**RECEIVED**

JUL - 9 2007

Vocational Assessment

Date July 9, 2007

Name of referral source George D. Gallagher
Address McAngus Goudelock & Courie, LLC
700 Gervais Street, Suite 300
Columbia, SC 29211

Injured Worker: Henry Dinkins
Date of Birth: 09-14-43
Age: 63
SSN:

Employer: Lowe's
WCC #: 0509590
Claim #: YKH 01832
Date of Accident: April 20, 2005
Date of Assessment: June 27, 2007

Background information

This vocational assessment was requested by the defense attorney to determine the vocational impact of Mr. Dinkin's work-related injuries sustained while working at Lowe's. The assessment was conducted at his attorney's office in Sumter. Mr. Dinkins was on time for the assessment. He was pleasant, polite, alert and oriented. He was well-dressed and appropriately groomed for the assessment. He was articulate and detailed in his responses. He ambulated without the use of any assistive devices. He was able to sit for the assessment, standing as needed due to reported discomfort. His affect was appropriate and eye contact was good. The assessment was completed in two and one-half hours.

Medical Information

History of injury. Mr. Dinkins describes experiencing three injuries while working for Lowe's. The first was around 2001 and involved his left ankle. He was working late one night, putting away 5-gallon pales of paint while standing on a pallet. One of the slats was cracked, resulting in his foot going through the slat with a twisting motion. He was evaluated at Tuomey Healthcare by Dr.

Franklin. He was out of work for two or three days. He received physical therapy at Sumter PT and Tuomey PT. He received cortisone injections from Dr. Gee and was referred to Dr. Colpini, who ordered x-rays and an MRI. He was diagnosed with three broken bones in his ankle. He was referred to Dr. Belding, who performed ankle surgery in 2004. He continued to experience pain and was told by the doctor that he had arthritis. He continued to experience burning and tingling. He is currently receiving no treatment for his ankle.

The second injury involved the right knee. In approximately May of 2003 he was working in the paint department. He was mixing paint for a customer order. As he lifted a bucket of paint and turned, his right knee gave way and popped. He reported the injury and was sent to Industrial Wellness. He received physical therapy, x-rays and an MRI. He saw Dr. Lee and Dr. Eckman at Southern Orthopaedics. He underwent arthroscopy in November or December of 2003. He received additional therapy for his knee.

He first injured his low back sometime in 2004. He was working in the garden center. A customer was picking up patio blocks and he assisted the customer to load the blocks. He felt a twinge in his low back. He was sent to Industrial Wellness for evaluation. He received physical therapy for his low back. He re-injured his low back in 2005 while lifting a lawn mower from a rack. He started treatment at Industrial Wellness and was referred to USC Sports Medicine. He was evaluated by Dr. Armsey, received x-rays and an MRI, and participated in physical therapy. He states that he had compressed discs and the physician recommended traction. He also received massage and strengthening therapy. He received a TENS unit and received one epidural injection. He continued to work. He states that his physical therapy was stopped due to approval problems. He returned to Lowe's with a work note after seeing the doctor on 12/05 and was informed that his employer could not accommodate him. He applied for an administrative position, was called in to work, then was told that he did not qualify for the position due to his workers compensation claims. He joined the "Y" and used his training from physical therapy to continue his exercises. He continues to go to the "Y" three times per week.

Mr. Dinkins states that he was instructed to return to work at Lowe's this year. He was offered a cashier position, then he was turned down due to the 60 pound lifting requirement for the job. He was sent back home and has not heard back from Lowe's since that time. He has no doctor's appointments scheduled at this time.

Secondary medical issues. He states he has possible kidney problems.

Current medical status. He experiences throbbing pain in the left ankle. At times he will hear the ankle pop. If he stands for a prolonged period of time, he will do range of motion exercises. He experiences pain in his low back ever hour. He tries to do his stretches. His wife provides massages for him. He will sleep on a hard floor at times. When he gets up out of bed, he will roll to his side and use something to pull him up. He states the knee is the least bothersome to him. He currently takes Ibuprofen 800 milligrams every day. He might skip the medication depending on his pain. He takes Tramadol if his pain is 8 or above. He has only taken this medication a couple of times.

Daily activities. He states he can drive himself; he drove himself to the appointment today. He can dress himself and take care of his own activities of daily living. He has problems bending. He does not do laundry. He can wash the dishes. His bending is limited.

Education and Training

He graduated from high school in 1961. He received his associate's degree in business management from Pace University. He attended banking seminars conducted by American Institute of Banking. He attended the beginner and advanced seminars. He attended a two-week seminar in production management through MIT and received a certification.

Work History

1. Lowe's, April 17, 1999, customer service department. He was an assistant to the manager for cashiers and loaders. He was responsible for scheduling of staff, performing employee evaluations, and ensuring that the front-end inventories and displays were up to date. He printed reports for inventory and scheduling. He did follow-ups on special customer orders by calling companies to check on the status of the orders. He performed this work for about two years. He was responsible for 17 - 18 employees.

299.367-010 CUSTOMER-SERVICE CLERK

SVP: 4

GED: 3 3 3

STRENGTH: L

2. Lowe's, department manager, paint and home décor, 1 - 1 ½ years. His duties were similar to the previous position. He managed the staff, stocked shelves and

printed inventory reports. He contacted vendors and buyers. He trained staff and was responsible for 8 employees.

299.137-010 MANAGER, DEPARTMENT

SVP: 7

GED: 4 3 3

STRENGTH: M

3. Lowe's, sales associate, then price coordinator, where he printed labels and performed price changes on the items.

279.357-050 SALESPERSON, GENERAL HARDWARE

SVP: 4

GED: 3 2 2

STRENGTH: L

209.587-034 MARKER

SVP: 2

GED: 2 1 1

STRENGTH: L

4. World Finance, 1998 – 99, assistant store manager. The company provided unsecured loans and cashed checks. He solicited loan business, processed loan applications, checked credit reports, worked with the staff, and made visits to customers for collection purposes.

205.367-022 CREDIT CLERK

SVP: 4

GED: 4 3 4

STRENGTH: S

5. Bank Bumiputra (Malaysia), New York, four years. He was the operations manager over the loan, letter of credit, teller services and investigations departments. He earned \$60,000 – 65,000 annually. He did all staffing, interviewing, disciplinary actions and procedure writing.

186.137-014 OPERATIONS OFFICER

SVP: 7

GED: 5 4 4

STRENGTH: S

6. Continental Bank International, vice president, trade service division, 3 ½ to 4 years. He started this work around 1989. He managed back office functions in the investigations, letter of credit, and loan departments. He formulated contracts and did procedural writing. He documented a trail for software development by meeting with other managers. He assisted the software development process by looking at the flow of data. He oversaw the functions of two department managers and a total of 16 employees.

186.117-078 VICE PRESIDENT, FINANCIAL INSTITUTION

SVP: 8

GED: 5 5 5

STRENGTH: S

7. NMB Belgium, consultant to the vice president, letter of credit department. They handled petroleum products. He discussed the terms with customers and drafted the terms of payment. He also trained staff and assisted the department manager.

219.367-050 LETTER-OF-CREDIT CLERK

SVP: 5

GED: 4 3 3

STRENGTH: S

8. Mr. Dinkins started his career in the mailroom. He worked in the loan department and letter of credit. At one time he was supervisor in the current accounts department. He was treasurer in the loans department. He was assistant vice president at J. Henry Schroeder Banking.

Analysis of Worker Traits

Mr. Dinkins' work history indicates a **superior degree of aptitude ability** in the areas of:

- General Learning Ability
- Verbal Ability

Mr. Dinkins' work history indicates a **high degree of aptitude ability** in the areas of:

- Numerical Ability
- Clerical Perception

Mr. Dinkins' work history indicates a **medium degree of aptitude ability** in the areas of:

- **Form Perception**
- **Motor Coordination**
- **Finger Dexterity**
- **Color Discrimination**

Mr. Dinkins' work history indicates a **specific vocational preparation** level of 8 (skilled): Over 4 years up to and including 10 years. Specific vocational preparation is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation (The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

According to the Dictionary of Occupational Titles, the occupations reported by Mr. Dinkins indicate the following **GED levels**:

- **Reasoning Development = 5**
- **Mathematical Development = 5**
- **Language Development = 5**

GED embraces those aspects of education (formal and informal) which contribute to the worker's (a) reasoning development and ability to follow instructions, and (b) acquisition of "tool" knowledge such as language and mathematical skills. Ordinarily, such education is obtained in elementary school, high school, or college. However, it may be obtained from experience and self-study (source: The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

Mr. Dinkins' work history is reflective of the following **Job Temperaments**, defined as common situations to which the worker must adapt:

- Directing, controlling, planning the activities of others
- Influencing people in their opinions, attitudes and judgments
- Making JUDGEMENTS and decisions
- Dealing with PEOPLE
- Performing a variety of duties

Personal Data

Mr. Dinkins currently resides at 2920 Cresshaven Drive in Dalzell with his wife of 20 years. He is purchasing his home and has lived there for seven years. He states he is ambidextrous; he writes with his right hand. He lived in New York from 1961 until 1998. He has one child who is 20 years of age and is in the Air

Force. He was previously married from 1969 until 1984, stating that his wife died. He had four children from his first marriage. He currently has 11 grand children. His wife works for Verizon Wireless. Mr. Dinkins denies alcohol or tobacco use.

Basic Skills

He describes his computer skills as "average", stating that he can type a letter or report. He used Lotus 1-2-3 spreadsheet in the 90's and was able to use formulas. He states he had to verify reports for financial status. He reads business magazines, stock reports, AARP publications, Time and religious publications.

Avocational

He enjoyed playing basketball, baseball, exercising and tennis, but states he cannot do these activities now. He cannot run and has trouble walking down a hill. When negotiating steps, he does so one step at a time. He has not attempted to golf since his back injury.

Financial Data

He currently receives \$326.52 per week in workers compensation benefits. He also receives \$200 per month in a pension from a previous employer.

Work Restrictions

Physician's description.

02-13-07 - Columbia Rehabilitation Clinic Functional Capacity Evaluation: Refer to results below.

03-07-07 - Donald R. Johnson II, MD: "...I agree with Dr. Zgleszewski's recommendations that he should be placed on sedentary to light work with a lifting restriction of 10-pounds on occasional basis. He should try to avoid repetitive bending and twisting if possible ..."

Vocational plans

He states he has looked for employment. He has put his resume out based on his past employment. His efforts have been concentrated in financial and banking industries. He has received one response last week and went in for a meeting. His target employment was a management position. He also drove to Charleston for an interview. He believes he has sent out 18 - 22 resumes. He uses the computer to look for jobs, including sites such as Monster.com and Hotjobs.com.

He has also targeted customer service positions in the bank. He states he plans to keep looking for work, but states that his "optimism is waning".

Vocational Test Results

The Wide Range Achievement Test, Revision 4 (WRAT4, green form) was administered to the claimant. The tests were administered according to standardized test conditions. He was able to complete all sections of the test within the required time frames. He exhibited no outward signs of difficulty in taking the required tests. The spelling section was deferred. The results of the test are shown below.

	Raw score	Standard Score	%ile Rank	Grade Equivalent
Word Reading	64	106	66	>12.9
Sentence Comprehension	47	99	47	12.9
Spelling	NA	NA	NA	NA
Math Computation	43	98	45	>12.9

Review of Records

Access Physical Therapy notes reviewed

Industrial Medicine and Wellness reports reviewed

Genesis notes reviewed

05-11-04 Robert Belding, MD follow-up, about a year status post-triple arthrodesis. He recommended MMI and 25 percent lower extremity impairment.

06-27-05 Deposition of the claimant:
His address is 2920 Cresthaven Drive, Dalzell.
He attended a banking institution for four years part time. He received a bank management certificate. The name is American Institute of Banking. He has been out of banking for 8 years. He has an associate's degree in business administration from Pace University.
He was in banking for 40 years.
He received approximately \$400 per month from a pension.
He managed the letter of credit, loans, customer service and foreign

exchange departments and the Bank of Bumiputra.

He worked for World Finance as assistant manager. He made loans and tracking and did collections. He was there approximately 9 months. He earned approximately 24,200.

He started working for Lowe's in 98 or 99. He started out doing customer service work. He became department manager in the paint and home décor. He continues to work there. His current job is pricing coordinator. He made sure the pricing was correct on the product.

- 08-09-05 Thomas Armsey, MD, University Specialty Clinics consult. "Henry states that he has had low back pain since an acute injury back in 2003. At that time he was lifting multiple five-gallon pails of paint and twisting to place them into a machine. He noticed that after several of these that he had a significant discomfort when he twisted with one of these pails ..." His occupation is price coordinator.
- 08-15-05 Florence MRI lumbar
- 09-12-05 Thomas Armsey, MD follow-up
- 10-24-05 Thomas Armsey, MD follow-up: " ... The patient has returned to full activities at work, although he is limited to 10 pounds of lifting ..."
- 12-05-05 Thomas Armsey, MD follow-up
- 12-08-05 S. Wendell Holmes, MD consult for right knee : He assigned 25 percent lower extremity impairment. Impression: Lateral compartment degenerative arthritis, right knee
- 01-30-06 Thomas Armsey, MD follow-up
- 03-21-06 Thomas Armsey, MD follow-up
- 05-01-06 Access PT letter to Dr. Armsey: " ... Progression with work conditioning is limited by lifting restriction and unrelated problems i.e., old (L) ankle injury and chronic (R) knee pain ..."
- 05-02-06 Thomas Armsey, MD follow-up
- 05-22-06 Thomas Armsey, MD follow-up
- 06-02-06 Timothy Zgleszewski, MD IME

Henry Dinkins
Vocational Assessment

- 07-10-06 Jason Stacey, MD follow-up
- 08-21-06 Jason Stacey, MD follow-up
- 09-25-06 James F. Bethea, MD assessment: "This 63-year-old Lowe's employee reports that he had a second injury to his lower back at work April 2005, while lifting a lawn mower off of a shelf ..." He recommended MMI. "There are no absolute work restrictions ..." He recommended 5 % permanent impairment of the lumbar spine.
- 10-02-06 Jason Stacey, MD follow-up, referred to specialist for consideration of surgery
- 12-19-06 Midlands Work Status Information: sedentary duties only
- 12-19-06 P. Douglas deHoll, MD consult: "Mr. Dinkins is a 63-year-old male who apparently had an injury at Lowe's while he was lifting a lawnmower from a shelf. He felt a pop in his back ..." He recommended updated MRI.
- 01-05-07 P. Douglas deHoll, MD follow-up: He recommended no surgery. He recommended continuing conservative care. " ... Also I see nothing structural that would limit his activities at work at this time other than his subjective complaints..." He recommended MMI and 5 % permanent impairment to the lumbar spine.
- 02-13-07 Columbia Rehabilitation Clinic Functional Capacity Evaluation:
" ... The results of today's evaluation place Mr. Dinkins in the light physical demand category. He has the following occasional lifting restrictions: floor to waist-unable, 12 inches off the floor to waist-25 lbs, waist to shoulder-25 lbs, shoulder to overhead-20 lbs. He can carry 35 lbs with both hands and 25 lbs with the right and left hands. He can push and pull 15 lbs occasionally. He also tolerates occasional kneeling, bending, twisting, stair climbing, and overhead reaching. He does not tolerate occasional squatting. He also does not tolerate frequent or constant bending, twisting and stair climbing. The results of the treadmill test place him in the good Classification of Aerobic Capacity, which qualifies him for light work. His self-reported sitting and static standing tolerance is 60 minutes and he was not observed exceeding this limit. His self-reported dynamic standing tolerance is 2 hours and he was not observed exceeding this limit ..."
- 03-07-07 Donald R. Johnson II, MD IME: He recommended MMI. " ... I agree

with Dr. Zgleszewski's recommendations that he should be placed on sedentary to light work with a lifting restriction of 10-pounds on occasional basis. He should try to avoid repetitive bending and twisting if possible ..." He assigned 8 percent whole person impairment.

03-22-07 Jason Stacey, MD follow-up: He recommended referral over to Dr. Z for continuing treatment.

06-01-07 Deposition of the claimant:
He states he takes medications three times a day, twice per month.
He receives about \$1200 per month in Social Security retirement.
He was earning about \$26,000 salary at Lowe's at the time of his back injury.

Adjusted vocational profile

Transferable Skills Analysis. Based on the Vocational Profile outlined above, a classical transferable skills analysis (TSA) was conducted utilizing Skilltran. Parameters for the TSA were restricted based on the results of the FCE. The variables used in the analysis were:

Strength = light

Physical demands:

Climbing = occasional

Stooping = occasional

Kneeling = occasional

Crouching = not able to do

All jobs identified through this transferable skills analysis were screened based on a reasonable likelihood that they exist in the claimant's local labor market. Each occupation carries a designation of "sedentary" (S) or "light" (L) as defined by the U.S. Department of Labor.

The following occupations are considered to be **directly transferable** occupations, defined as occupations which involve similar work experience to the past and which require little or no learning of essential job duties.

160.167-046 CHIEF BANK EXAMINER S

161.117-018 TREASURER S

162.117-014 CONTRACT ADMINISTRATOR S

165.117-010 DIRECTOR, FUNDRAISING S
169.167-086 MANAGER, CREDIT AND COLLECTION S
185.117-010 MANAGER, DEPARTMENT STORE S
186.117-034 MANAGER, BROKERAGE OFFICE S
186.117-078 VICE PRESIDENT, FINANCIAL INSTITUTION S
186.167-086 MANAGER, FINANCIAL INSTITUTION S
169.267-042 LETTER-OF-CREDIT DOCUMENT EXAMINER S
186.137-014 OPERATIONS OFFICER S
189.167-014 DIRECTOR, SERVICE S
185.157-014 SUPERVISOR OF SALES L
185.167-046 MANAGER, RETAIL STORE L
250.257-022 SALES REPRESENTATIVE, FINANCIAL SERVICES L
273.353-010 SALESPERSON, AUTOMOBILES L
274.357-018 SALES REPRESENTATIVE, BUILDING EQUIPMENT L
275.357-026 SALES REPRESENTATIVE, HOTEL & RESTAURANT L
169.267-018 FINANCIAL-AID COUNSELOR S
219.362-038 MORTGAGE-CLOSING CLERK S
219.367-050 LETTER-OF-CREDIT CLERK S
279.357-014 SALES REPRESENTATIVE, GENERAL MERCHANDISE L
205.367-022 CREDIT CLERK S
249.362-026 ORDER CLERK S
261.357-050 SALESPERSON, MEN'S AND BOYS' CLOTHING L
279.357-050 SALESPERSON, GENERAL HARDWARE L
299.367-010 CUSTOMER-SERVICE CLERK L

The following occupations are considered to be **generally transferable** occupations, defined as occupations which involve generally related work to the past and which likely require some learning of essential job duties.

163.117-014 MANAGER, EXPORT S
163.117-022 DIRECTOR, MEDIA MARKETING S
163.167-010 MANAGER, ADVERTISING S
163.167-018 MANAGER, SALES S
166.117-018 MANAGER, PERSONNEL S
183.117-010 MANAGER, BRANCH S
186.117-030 GENERAL CLAIMS AGENT S
186.167-034 MANAGER, INSURANCE OFFICE S
183.117-014 PRODUCTION SUPERINTENDENT L
184.167-114 MANAGER, WAREHOUSE L
012.167-082 MATERIAL SCHEDULER S

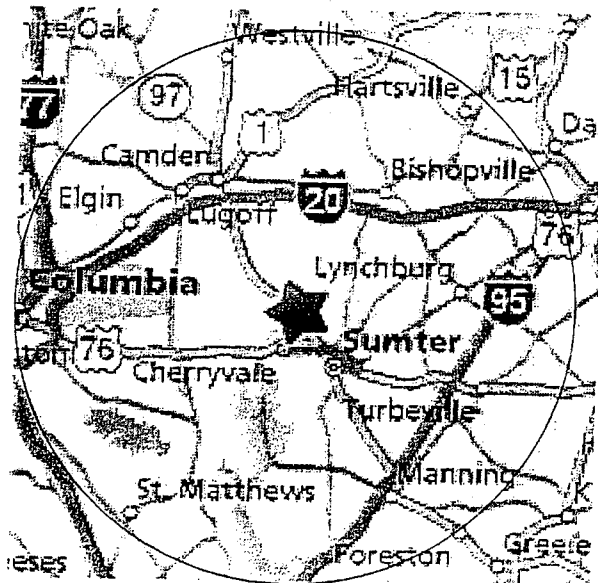
166.167-018 MANAGER, BENEFITS S
169.167-034 MANAGER, OFFICE S
187.117-038 MANAGER, HOTEL OR MOTEL S
216.132-010 SUPERVISOR, ACCOUNTING CLERKS S
241.137-010 SUPERVISOR, CREDIT AND LOAN COLLECTIONS S
185.117-014 AREA SUPERVISOR, RETAIL CHAIN STORE L
189.167-026 MEMBERSHIP DIRECTOR L
211.137-010 SUPERVISOR, CASHIERS L
210.367-010 ACCOUNT-INFORMATION CLERK S
210.382-014 BOOKKEEPER S
221.167-018 PRODUCTION COORDINATOR S
205.362-026 CUSTOMER SERVICE REPRESENTATIVE L
221.167-014 MATERIAL COORDINATOR L
222.137-030 SHIPPING-AND-RECEIVING SUPERVISOR L
250.257-010 SALES AGENT, INSURANCE L
293.157-010 FUND RAISER I L
201.362-018 MEMBERSHIP SECRETARY S
210.382-054 NIGHT AUDITOR S
211.362-010 CASHIER I S
214.362-022 INSURANCE CLERK S
216.382-022 BUDGET CLERK S
216.482-010 ACCOUNTING CLERK S
219.362-026 CONTRACT CLERK, AUTOMOBILE S
239.362-014 CUSTOMER SERVICE REPRESENTATIVE (telephone, utilities) S
247.367-010 CLASSIFIED-AD CLERK I S
249.362-014 MORTGAGE CLERK S
249.362-022 MORTGAGE LOAN PROCESSOR S
209.367-046 TITLE SEARCHER L
222.137-050 VAULT CASHIER L
205.362-018 HOSPITAL-ADMITTING CLERK S
215.362-014 DISPATCHER CLERK S
215.382-014 PAYROLL CLERK S
216.382-058 RETURNED-ITEM CLERK S
219.367-014 INSURANCE CLERK S
293.357-022 MEMBERSHIP SOLICITOR L
295.467-026 AUTOMOBILE RENTAL CLERK L
210.382-050 MORTGAGE-LOAN-COMPUTATION CLERK S
211.462-026 CHECK CASHIER S
214.462-010 ACCOUNTS-ADJUSTABLE CLERK S
215.367-010 ASSIGNMENT CLERK S

237.367-010 APPOINTMENT CLERK S
239.367-014 DISPATCHER, MAINTENANCE SERVICE S
299.357-014 TELEPHONE SOLICITOR S
209.562-010 CLERK, GENERAL L
211.462-034 TELLER L

[Note: Occupations that are in **bold** are classified as "highly skilled" occupations with a corresponding SVP of "8" or "9".]

Labor Market Survey

A labor market survey was conducted in order to identify actual job openings for which this claimant qualifies. Jobs were searched based on the vocational profile that is provided in this report. The map on the right indicates the approximate geographical labor market area available to the claimant.



Job Search – S.C. Employment Security Commission

COLLECTION/CUSTOMER SERVICE
CLERK - SUMTER, SC, US

Job Information

Job Order ID : SC3356267

of Positions : 1

Experience Required : 1 year

Salary : \$8 - \$12 hourly

Duration : Full Time Regular

Shift : Split

Hours per week: 40

Job Description

WILL WORK AS A COLLECTIONS/CUSTOMER SERVICE CLERK.
FINANCIAL BACKGROUND IS A PLUS. MUST HAVE GOOD CUSTOMER SERVICE SKILLS, BE FAMILIAR WITH MOST TYPES OF OFFICE EQUIPMENT AND HAVE GOOD COMPUTER SKILLS. VALID SC DR LIC REQUIRED. WILL BE DOING SOME OUTSIDE COLLECTIONS. CRIMINAL BACKGROUND CHECK AND CREDIT CHECK ALSO REQUIRED. CANNOT BE HIRED IF CREDIT RECORD IS NOT CLEAN. DAYS AND HOURS MAY VARY. SALARY

WILL DEPEND ON SKILLS AND EXPERIENCE. SEND DIRECT TO FILL OUT APPLICATION.

Company Information

Please Note : The SC Employer posting this job order has opted to suppress their employer information. If your qualifications meet the employer's requirements, your information will be forwarded accordingly.

Application Information

SC Job Order ID : Please Reference SC3356267 in all communications

By Mail : Mail your resume and cover letter to:

Sumter Workforce Center

PO Drawer 1978

Sumter, SC 29151 In Person : Bring your resume and cover letter to:

Sumter Workforce Center

By Fax : Fax your resume and cover letter to:

803-778-0390

ASSISTANT MANAGER - CAMDEN, SC, US

Job Information

Job Order ID : SC3353074# of Positions : 1

Experience Required : 1 year

Salary : Not Specified

Duration : Full Time Regular

Shift : Unspecified

Hours per week: 40

Job Description

ASST. STORE MANAGER WITH AT LEAST 1 YEAR OF MANAGEMENT EXPERIENCE NEEDED TO WORK IN A DEPT. STORE. WILL BE RESPONSIBLE FOR SCHEDULING STAFF, MAINTAINING PAYMENT/RETURN TRANSACTIONS, OPENING AND/OR CLOSING STORE, INVENTORY CONTROL, ETC. DRUG SCREEN AND BACKGROUND CHECK WILL BE CONDUCTED. A MINIMUM OF A HIGH SCHOOL DIPLOMA IS REQUIRED. SEE SUPPRESSED FOR ADDRESS. NO PHONE CALLS!!!

Company Information

Please Note : The SC Employer posting this job order has opted to suppress their employer information. If your qualifications meet the employer's requirements, your information will be forwarded accordingly.

Application Information

SC Job Order ID : Please Reference SC3353074 in all communications

By Mail : Mail your resume and cover letter to:

Camden Workforce Center

PO Box 98

Camden, SC 29020 In Person : Bring your resume and cover letter to:

Camden Workforce Center

By Fax : Fax your resume and cover letter to:

803-432-6540

CASHIERS, STOCKERS, SALES - CAMDEN, SC, US

Job Information

Job Order ID : SC3345656

of Positions : 8

Experience Required : none

Salary : Not Specified

Duration : Full Time Regular

Shift : Unspecified

Hours per week: 40

Job Description

VARIOUS POSITIONS AVAILABLE IN KERSHAW COUNTY HOURS AND DAYS WILL VARY. VACANCIES INCLUDE: CASHIERS, STOCKERS, SALES, LAWN AND GARDEN, AND OTHER POSITIONS. BACKGROUND CHECK CONDUCTED/DRUG SCREENING

Company Information

Please Note : The SC Employer posting this job order has opted to suppress their employer information. If your qualifications meet the employer's requirements, your information will be forwarded accordingly.

Application Information

SC Job Order ID : Please Reference SC3345656 in all communications

By Mail : Mail your resume and cover letter to:

Camden Workforce Center

PO Box 98

Camden, SC 29020 In Person : Bring your resume and cover letter to:

Camden Workforce Center

By Fax : Fax your resume and cover letter to:

803-432-6540

PARTS ROOM SUPERVISOR - SUMTER, SC, US

Job Information

Job Order ID : SC3351474

of Positions : 1

Experience Required : none

Salary : Not Specified

Duration : Full Time Regular

Shift : First Shift (Day)Hours per week: 40

Job Description

PILGRIM'S PRIDE IS CURRENTLY SEEKING A PARTS ROOM SUPERVISOR FOR THEIR SUMTER, SOUTH CAROLINA LOCATION. THIS INDIVIDUAL WILL LEARN SAP INVENTORY AND PURCHASING MODULES,SUPPORT PROCUREMENT,STOREROOM,ACCOUNTING AND WAREHOUSE PERSONNEL,SUPPORT MAINTENANCE PLANNER/SCHEDULERS AND SUPPORT MAINTENANCE MANAGERS. WILL MAINTAIN SAP ITEM MASTER FORMAT,EVALUATE PARTS ROOM INVENTORY CONSTANTLY FOR RIGHT SAVINGS,MAINTAIN CYCLE COUNTS;SUPERVISE PARTS ROOM CLERKS.HS DIP/GED REQ. COLLEGE PREFERRED. MUST HAVE 2 YRS PARTS ROOM EXPERIENCE, STRONG LEADERSHIP AND INTERPERSONAL SKILLS; GOOD VERBAL AND WRITTEN COMMUNICATION SKILLS;CREATIVE PROBLEM SOLVING SKILLS AND COMPUTER SKILLS TO INCLUDE MICROSOFT OFFICE. APPLY ON LINE @ [HTTP://PILGRIMSPRIDE.COM](http://PILGRIMSPRIDE.COM). SEE LE59 SCREEN.

Company Information

Please Note: The SC Employer posting this job order has opted to suppress their employer information. If your qualifications meet the employer's requirements, your information will be forwarded accordingly.

Application Information

SC Job Order ID : Please Reference SC3351474 in all communications

By Mail : Mail your resume and cover letter to:

Sumter Workforce Center

PO Drawer 1978

Sumter, SC 29151In Person : Bring your resume and cover letter to:

Sumter Workforce Center

By Fax : Fax your resume and cover letter to:

803-778-0390

STORE MANAGER AND MANAGER IN TRAINING - CAMDEN, SC, US

Job Information

Job Order ID : SC3353076

of Positions : 1

Experience Required : 2 years

Salary : Not Specified

Duration : Full Time Regular

Shift : Unspecified

Hours per week: 40

Job Description

STORE MANAGER WITH A MINIMUM OF TWO YEARS EXPERIENCE NEEDED FOR NEW DEPT. STORE IN CAMDEN. WILL BE RESPONSIBLE FOR OVERSEEING THE DAY TO DAY OPERATIONS OF A DEPT. STORE AND STAFF. DRUG SCREEN AND BACKGROUND CHECK WILL BE CONDUCTED. A MINIMUM OF A HIGH SCHOOL DIPLOMA IS REQUIRED. MANAGER IN TRAINING ALSO AVAILABLE. MUST ALSO HAVE AT LEAST 2 YEARS EXPERIENCE. SEE SUPPRESSED.

Company Information

Please Note : The SC Employer posting this job order has opted to suppress their employer information. If your qualifications meet the employer's requirements, your information will be forwarded accordingly.

Application Information

SC Job Order ID : Please Reference SC3353076 in all communications

By Mail : Mail your resume and cover letter to:

Camden Workforce Center

PO Box 98

Camden, SC 29020 In Person : Bring your resume and cover letter to:

Camden Workforce Center

By Fax : Fax your resume and cover letter to:

803-432-6540

SALESPERSON - AUTOMOBILE - CAMDEN, SC, US

Job Information

Job Order ID : SC3351190

of Positions : 1

Experience Required : 6 months

Salary : Not Specified

Duration : Full Time Regular Shift : First Shift (Day) Hours per week: 40

Job Description

MUST HAVE A VALID DRIVER'S LICENSE AND GOOD COMMUNICATION SKILLS. WILL SELL CARS & TRUCKS AT A CAR DEALERSHIP IN LUGOFF ON A FULLTIME BASIS, 45 -50 HOURS PER WEEK, FROM 9AM UNTIL. HIGH SCHOOL DIPLOMA OR GED REQUIRED. SALARY WILL BE DISCUSSED.

Company Information

Please Note : The SC Employer posting this job order has opted to suppress their employer information. If your qualifications meet the employer's requirements, your information will be forwarded accordingly.

Application Information

SC Job Order ID : Please Reference SC3351190 in all communications

By Mail : Mail your resume and cover letter to:

Camden Workforce Center

PO Box 98

Camden, SC 29020 In Person : Bring your resume and cover letter to:

Camden Workforce Center

By Fax : Fax your resume and cover letter to:

803-432-6540

Job Search – The State

TELLER

Description

Teller Credit Union in Columbia area has an immediate opening for a teller.

Excellent customer service skills are required, previous cash handling experience is preferred. This position offers a professional environment and great benefits.

Fax resume to 704-987-5165 or Mail to Human Resources P.O. Box 1230

Cornelius, NC 28031-1230

Source - The State

Banking First Citizens

Description

Banking First Citizens is currently recruiting for the following positions in the Columbia area: Audit Manager; Senior Auditor; Staff Auditor; Lending Compliance Manager; Rapid Application Developer; Loan Operations Group Lead; Loan Operations Manager; Fraud Prevention Analyst; Corporate Communications Specialist; Strategic Consulting Services Manager Please visit our website at www.firstcitizensonline.com to view the job description and to apply online. EOE F/M/V/H

Source - The State

Collections Specialist I & Executive Admin Asst II

Company: FIRST CITIZENS BANK

Description

Collections Specialist I; Executive Administrative Assistant; Columbia You must indicate position title for resume/ application to be considered. If interested in any of these listed positions or other opportunities, please apply on the internet at www.firstcitizensonline.com. EOE F/M/V/H

Source - The State

TELLER

Description

Teller Credit Union in Columbia area has an immediate opening for a teller. Excellent customer service skills are required, previous cash handling experience is preferred. This position offers a professional environment and great benefits. Fax resume to 704-987-5165 or Mail to Human Resources P.O. Box 1230 Cornelius, NC 28031-1230
Source - The State

Image Center Operator

Company: Carolina First

Description

An excellent opportunity for an individual to work in a high productivity bank operations environment. Will be responsible for the preparation of legal bank documents for scanning, scan documents, index documents and perform quality control tasks.

ESSENTIAL DUTIES AND RESPONSIBILITIES: Prepare documents as required; accurately scan documents in accordance with established standards; accurately key indexes in accordance with established standards; perform quality control tasks and verification of all documents; and perform other duties determined by management as necessary for departmental goals.

Requirements

SKILLS REQUIRED: Must possess accurate and proficient keying skills; ability to work with minimum supervision; should possess a positive attitude and have the ability to work as a team player in a fast paced environment; excellent oral and written communication skills

QUALIFICATIONS: High school graduate or equivalent; knowledge of bank operations; good problem solving skills; knowledge of information processing operations.

May be required to work overtime for special projects.

The hours for this position are Monday-Friday, 3:30pm-midnight.

Must be able to pass a drug screening, and a credit and criminal background, and a reference check.

Administrative Manager

Company: CLEANSOURCE, INC.

Description

Clerical/ Customer Service Entry level F/T, to help handle busy phones, cust & gen ofc duties. Self starter w/outstanding phone skills. Great attitude, comp skills, exemplary work ethics and ability to work quickly. Exc working

environment w/great benefits. SLED-drug check req'd. Fax resume to 803-781-7876

Source - The State

Office Manager

Description

Office Manager for local pest control co. Good phone skills people person, billing payroll, etc. Pay commensurate with experience / skills. Health Ins benefits 40-45 hr/ wk. Ricky 446-9351

Source - The State

DISPATCHER FT

Description

DISPATCHER FT, Schedule work, plan mat'ls, keep inventory. Salary & benefits. Call 803-796-4343

Source - The State

Office/Sales Assist Full-time

Description

Office/ Sales Assist Full-time. Must be resp & like people. Sales exp helpful but not req'd. Solid ofc skills nec. Fax resumes to 803-758-2523

Source - The State

Job Search - AllSouth Federal Credit Union

Member Answer Center Representative - Columbia, SC

Located at our Parklane Road Branch, this position provides assistance and information to members regarding all credit union products and services via telephone. Duties can include but are not limited to: opening/closing accounts, ordering checks/ATM cards, completing forms for payroll deduction, stopping payment on checks, completing wire transfers, cross-selling credit union products, etc.

Qualified applicants should possess at least six months experience in a financial institution as a teller, member service representative or other relevant position. Previous call center experience desired. Excellent verbal and writing

communication is a must. Candidates should be familiar with checking account reconciliations. Computer skills required.

Branch Manager - Sumter, SC

AllSouth is seeking applicants for Branch Manager in a retail environment. The ideal candidate is energetic, sales-oriented, and dedicated to the highest level of customer satisfaction.

The responsibilities of this highly visible position include:

Overseeing the daily operation of the branch

Focusing on branch loan and deposit growth

Leading, delegating, instructing, and motivating a multifaceted workforce

Consumer lending, account servicing, teller duties, ATM servicing, and risk prevention

Qualified applicants should possess previous supervisory experience, preferably in the financial services industry, and demonstrated leadership, communication, organizational, and decision-making skills.

Assistant Branch Manager - Batesburg-Leesville, Camden, Sumter and Columbia, SC

AllSouth is searching for individuals that are energetic, sales-oriented, and dedicated to the highest level of customer satisfaction to fill our newly created Assistant Branch Manager position. Primary responsibilities include, but are not limited to: assisting the Branch Manager with the overall daily operation of the branch; focusing on branch loan and deposit growth; leading, delegating, instructing, and motivating a multifaceted workforce; consumer lending, member service, teller duties, ATM servicing, and risk prevention.

Qualified applicants should possess previous supervisory experience, preferably in the financial services industry, and demonstrated leadership, communication, organizational, and decision-making skills.

Job Search - Safe Federal Credit Union

Mortgage Loan Interviewer

We are seeking an individual to assist with the day-to-day operations of our Mortgage Department. Applicants must be organized and possess excellent follow up skills. Exceptional oral and written communication abilities are also job requirements.

The ideal candidate will have at least two years related experience and/or training in real estate lending, or equivalent combination of education and experience in a related field.

We offer competitive salaries and an excellent benefits package, which includes medical insurance, 401K, and profit sharing. Send resume with cover letter and an employment application* to:

Human Resources
SAFE Federal Credit Union
PO Box 2008
Sumter SC 29151-2008

You could also send this information to your nearest SAFE office, fax to (803) 469-4050, or, [click here to send an e-mail](#).

Vocational Conclusions

Mr. Dinkins is a 63-year-old worker who sustained several injuries while working for Lowe's. Sometime around 2001 he sustained an injury to his left ankle, resulting in surgery in 2004. The second injury involved the right knee in 2003, resulting from a twisting motion while handling pales of paint. This injury resulted in arthroscopic surgery. The third injury occurred sometime around 2004 when he injured his low back while assisting a customer in lifting some patio blocks. He re-injured the low back in 2005 while lifting a lawn mower. The low back injuries resulted in evaluation and treatment from several physicians, including Dr. Armsey, Dr. Zgleszewski, Dr. Stacey, Dr. deHoll and Dr. Don Johnson. Based on the review of medical records, Mr. Dinkins has reached MMI with regard to the low back injuries he sustained while working for Lowe's. On 01/05/07 Dr. deHoll recommended MMI and 5 % impairment to the lumbar spine. On 03/07/07 Dr. Johnson recommended MMI and 8 % whole person impairment. Mr. Dinkins participated in a Functional Capacity Evaluation at Columbia Rehabilitation Clinic on 02/13/07 requested by his attorney. The FCE classifies him in the "light" physical demand category as defined by the U.S. Department of Labor, with additional restrictions as outlined in this report. Dr. Johnson classifies him in a "sedentary to light" work status with a lifting restriction of 10 pounds occasionally and restrictions on repetitive bending and twisting.

Mr. Dinkin's recent work history is classified as semi-skilled to skilled, having worked in the customer service department, performing employee evaluations, scheduling staff, printing reports and following up with vendors on special orders. He also worked as a manager in the paint and home décor department and as a sales associate. Work as a cashier-checker is classified as "light" in

physical demands, although much of his work is classified as "medium" or greater performed in the way he described.

Mr. Dinkin's work history prior to working at Lowe's consists of a career in the banking and financial industry. In later years, he worked in highly skilled positions such as operations manager, vice president, and consultant to the vice president. He began his career in the banking industry working in the mailroom and working his way through various positions at the bank. All of his relevant previous work history in banking is classified as "sedentary" by the Dictionary of Occupational Titles.

Positive factors in Mr. Dinkin's vocational profile include completion of high school, completion of his associate's degree in business management at Pace University and completion of various banking courses and certifications, including beginning and advanced seminars, as well as a production management seminar. Other positive factors include customer service experience, computer skills, and management skills. In the banking industry he worked in high-level positions performing duties such as staffing of personnel, administering disciplinary actions, writing procedures, managing back-office functions, formulating contracts, and assisting in software development by documenting data flow.

Negative factors in his vocational profile include residual physical capacities limiting his employment to jobs ranging from "light" to "sedentary". Based on his residual functioning, he does not qualify to return to any of his previous employment at Lowe's requiring exertion greater than a light level. He does qualify to return to positions in the banking and finance industries, including his previous positions, as well as numerous other occupations identified in the Transferable Skills Analysis (TSA) section of this report. The TSA section all occupations for which he qualifies by virtue of his work history and residual physical functioning. His age will provide to be a limiting factor in obtaining those jobs that are highly skilled, identified as such in the TSA section. Other occupations identified as transferable occupations exist in the retail industry, including sales positions, clerical office positions, customer service and service provision.

A labor market survey was conducted based on the factors outlined in this report in order to identify actual jobs for which Mr. Dinkins qualifies. A stable labor market was found to exist in his local labor market in the banking, financial and retail industries. Based on the strength of his prior work history in management

positions, as well as the other factors outlined in this report, he is currently employable in his labor market.

Thank you for this referral to Adams & Wilkinson.



Glen K. Adams, MRC, CRC, CEES
Vocational Consultant

05/11/05

Follow up ☒
Consultation ☐
Other ☐

INDUSTRIAL MEDICINE AND WELLNESS

WORK STATUS REPORT

PATIENT INFORMATION

Time in 12:00 Time out 1255 Date of Injury 4-20-05 Today's date 5-11-05
Employee Name Henry Dinkens Employer's phone 905-2650 Employee's phone 905-2674
Employer Lowe's Employer's fax 905-2674

DIAGNOSIS

Description _____

X-Ray & Lab _____

Diagnoses: 1. L-Stric cpt _____
2. _____ cpt _____
3. _____ cpt _____

TREATMENT

____ Minor first aid ____ Anti-inflammatory meds ____ Physical Therapy ____ Antibiotics
____ Over counter meds ____ Muscle relaxants ____ Sutures/Wound care ____ Bloodborne pathogen protocol
____ Tetanus ____ Scheduled pain meds ____ Splint/Cast/Boot/Sling/Crutches ____ Other _____

IV. WORK STATUS

____ No restrictions ☒ Restrictions ____ No work Restrictions effective: Today ____ next shift _____

	None	Rarely	Often	Constant
Back and Lower Extremity				
Sitting	☐	☐	☐	☐
Walking or standing	☐	☐	☐	☐
Bend / squat / twist / crawl	☐	☒	☐	☐
Climb / work on heights	☐	☐	☐	☐
Upper Extremity				
Grasp/pinch	☐	☐	☐	☐
Reach above shoulder	☐	☐	☐	☐
Reach beyond forearm limits	☐	☐	☐	☐
Restrictions apply to	☐ L Arm	☐ R Arm	☐ Both	

Work level: Lifting / Pushing / Pulling
Sedentary ☐ Negligible - 10 lbs. max.
Light ☒ 10 lbs. freq. - 20 lbs. max.
Medium ☒ 25 lbs. freq. - 50 lbs. max.
Heavy ☐ 50 lbs. freq. - 100 lbs. max.
Very Heavy ☐ over 100 lbs
Activity and hour restrictions (if applicable)
____ Not to operate hazardous machinery
____ Not to drive car / truck / forklift
To work no more than ____ hrs. per day

FOLLOW UP

Return Appointment ☐ No ☒ Yes 10 days Date 05-20-05 Time 12:00 Noon
Patient Referred to _____ Phone _____ Date _____ Time _____
Instructions
____ Re-check BP ____ Keep wounds clean and dry ____ Elevate
____ Stop smoking ____ Watch for infection ____ Ice/Heat /Massage
____ Take meds as directed ____ Wash, dress daily ____ Stretch / Exercise
____ Other _____ Tylenol/ Motrin/ Aleve ____ Maintain activity ____ Continue Physical Therapy

Physician signature

Forrest Pommerenke, MD James Gee, MD

INFORMATION RELEASE and ACKNOWLEDGEMENT

1) By signing, I authorize attending physician and/or the Industrial Medicine and Wellness program to release above information and other information acquired in the course of examination or treatment to my employer or its representative, or to a consulting physician or health care provider.
2) I acknowledge the above information and instructions, and acknowledge that any restrictions are effective at the date or time shown above and apply to both work and off work activities.

Patient signature

Henry Dinkens

Copies: White: for medical records (fax to employer) Yellow: for patient

ASSESSMENT

(Circle = Present, N = Normal)

Date 5/1/05 DOI 4205
BP 80/72
T _____ P 61 RR _____
Vision R _____/20 L _____/20 C UC
Improvement: same worse better _____%

☐ Fitness
☒ Follow-up
☐ Disability
☐ Impairment
☐ Fit for duty
☐ Pre-plate

Heart	N	Any	heart problems
Pul	N	Asthma	TB
Endo	N	Thy. Gout	DM
GI	N	Ulcers/GERD	Hepatitis
MS	N	Broken bones	Back injury
Other			

ALLERGIES: Pen Cod *AKA*

Current Meds: Levothyroxine
Ultram - largest 2pk
Case Management Notes - Call backs

Concerns Re. ✓ L-shorn Pt plots
lower brack is still too low to move
slow —————

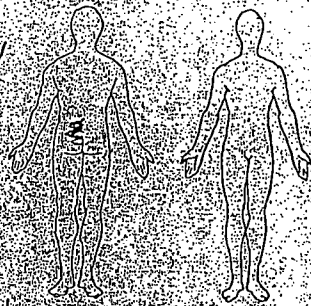
 HTN Protocol

MEDICAL EVALUATION

1. Observations
History Good Fair Vague Very detailed
Distress N Mild Mod Severe
Effort N Good Fair Poor ?
Mood N Alert Anxious Depressed
Posture Guarding Stopped Shifting
2. Head & Neck
Gen N Visible trauma
Eyes N Ab PERLA Injected conj. Abnormal
ENT N Ab Cran N. N N Ab ?
Neck N ROM +/- WNL Spasm/Pain Nodes Meningeal signs
3. Chest N Barrel CP to palpation CP to indirect pressure
4. Lungs N Wheezes Rhonchi Rales BS+
5. Heart N Irreg Murmurs Peripheral edema
6. Abd N Tender Rebound Sounds ↑ Mass Hemis
7. Musculoskeletal
Observ N Guarding Swelling Emission Deformity
Motion N Antalgic Slow Guarded Smooth
Pain N Resting 2/4 Activity 2/4 Point Broad Multiple
Touch 2/4 Palpat 2/4 Pain deep to palpation
Physiologic Ab ?
Rad. Sx N None Pain Numb Tingling Glove Sockg
ROM N b L slow
Strength N
X No visible trauma Non-physiologic symptoms/exam
8. Neuro N
Gait N Ab ? Sensation N Ab ? DTRs
Fine motor N Ab ? Gross motor N Ab ?
Heel-Toe N Ab ? Heel-Shin N Ab ?
Rhomburg - + Paresthesia N Y ?
9 Circ. N Intact Pulses ↓
10. Derm N Edema Erythema Hematoma Ecchymosis
Rash Mac Papules Vesicles Pustules Crusts
11. Psych N Alert Lethargic

MEDICAL NOTES, DIAGNOSIS, AND TREATMENT

3) better production
@ 15 kg on 15 sec
out of 14 days - 32%
milk yield



① Full Room - slow
 steps with
 weight shift & water
 no manipulation

1) Improving LSS

pp) Restriction
S2 the mids
Per 10d

ORDERS

X-Ray	Results			(see report)
UA	Sp Grav	Glc	Blood	Leuk
Hb/Hct	Physical Therapy			
HCG	Contact key contact			
FSBS	Case management			
Tet Tox	Clean Dress Stitch / Remove			
Toradol	Splint Grutch Dressing			
Lab				
Other				

FOLLOW-UP PLAN

Instructions	Take meds as directed	Keep wounds clean and dry	Elevate	Strict rest
Re-check BP	Increase fluids	Watch for infection	Ice/Heat/Massage	
Stop smoking	Blind diet	Wash, change dressing daily	Stretch/Exercise	
Head trauma hist	Antibiotics/ Pepto Bismol	Tylenol/Motrin/ Aleve/OTC	Maintain activity	
Call for results		Other		
Work Status	No restrictions / Restrictions	Off work	(see Work Status Report)	
Follow Up	Dismiss / Re-evaluate		Follow up with PMD / Company Nurse	
Refer to			Emergency / urgent / non-urgent	
Physical / Oc / Marfan				

(Physician)

INDUSTRIAL MEDICINE AND WELLNESS WORK STATUS REPORT

PATIENT INFORMATION

Time in 11:53 Time out 1240 Date of Injury 4.20.05 Today's date 5.20.05
Employee Name Henry Jenkins Employee's phone 905-2650
Employer Lowes Employer's fax 905-2674

DIAGNOSIS

Description _____
X-Ray & Lab _____
Diagnoses: 1. L-strain cpt _____
2. _____ cpt _____
3. _____ cpt _____

TREATMENT

____ Minor first aid ____ Anti-inflammatory meds ☒ Physical Therapy ____ Antibiotics
____ Over counter meds ____ Muscle relaxants ____ Sutures/Wound care ____ Bloodborne pathogen protocol
____ Tetanus ____ Scheduled pain meds ____ Splint/Cast/Boot/Sling/Crutches ____ Other _____

IV. WORK STATUS

____ No restrictions ☒ Restrictions ____ No work Restrictions effective: ____ today ____ next shift _____

Back and Lower Extremity	None	Rarely	Often	Constant
Sitting	☐	☐	☐	☐
Walking or standing	☐	☐	☐	☐
Bend / squat / twist / crawl	☐	☒	☐	☐
Climb / work on heights	☐	☒	☐	☐

Upper Extremity

Grasp/pinch	☐	☐	☐	☐
Reach above shoulder	☒	☐	☐	☐
Reach beyond forearm limits	☐	☐	☐	☐

Restrictions apply to ____ L Arm ____ R Arm ____ Both

Other restrictions or clarifications _____

Work level: Lifting / Pushing / Pulling

Sedentary	☐	Negligible	- 10 lbs. max.
Light	☒	10 lbs. freq.	- 20 lbs. max.
Medium	☐	25 lbs. freq.	- 50 lbs. max.
Heavy	☐	50 lbs. freq.	- 100 lbs. max.
Very Heavy	☐	over 100 lbs	

Activity and hour restrictions (if applicable)

____ Not to operate hazardous machinery

____ Not to drive car / truck / forklift

To work no more than ____ hrs. per day

FOLLOW UP

Return Appointment ____ No ☒ Yes 3 wks Friday Date June 10 Time 8:30am
Patient Referred to Physical Therapy Phone _____ Date _____ Time _____
Instructions
____ Re-check BP ____ Keep wounds clean and dry ____ Elevate ____ Gentle range of motion exercise daily
____ Stop smoking ____ Watch for infection ____ Ice/Heat /Massage ____ Report to Company Nurse as directed
____ Take meds as directed ____ Wash, dress daily ____ Stretch / Exercise ____ Sutures to come out in ____ days
____ Tylenol/ Motrin/ Aleve ____ Maintain activity ____ Continue Physical Therapy
Other _____

FAKED
5-20-05

Physician signature

Forrest Pommerenke, MD James Gee, MD

INFORMATION RELEASE and ACKNOWLEDGEMENT

1) By signing, I authorize attending physician and/or the Industrial Medicine and Wellness program to release above information and other information acquired in the course of examination or treatment to my employer or its representative, or to a consulting physician or health care provider.

2) I acknowledge the above information and instructions, and acknowledge that any restrictions are effective at the date or time shown above and apply to both work and off work activities.

Patient signature

Henry Jenkins

Copies: White: for medical records (fax to employer) Yellow: for patient

ASSESSMENT

(Circle = Present, N = Normal Ab = Abnormal)

ALLERGIES: Pen Cod NKDA

Date 5-20-05 DOI 4-20-05
 BP 140/90
 T 98.6 P 76 RR _____
 Vision R _____ /20 L _____ /20 C UC
 Improvement: same worse better _____ %

Injury _____
 Illness _____
 Follow-up _____
 Disability _____
 Impairment _____
 Fit for duty _____
 Pre-place _____

History
 Heart: N HTN Heart problems
 Pul: N Asthma TB
 Endo: N Gout DM
 GI: N Ulcers/GERD Hepatitis
 MS: N Broken bones Back injury
 Other _____

Current Meds: Ultram; Percocet
 Case Management Notes - Call backs

Concerns Presents for back rev. States soreness
continues. Rate pain 5/10.

HTN Protocol

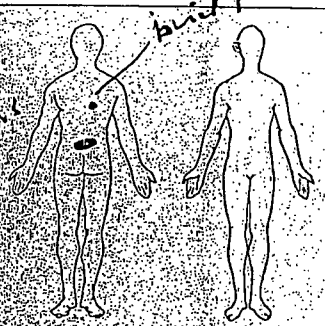
Initial [Signature]

MEDICAL EVALUATION

MEDICAL NOTES, DIAGNOSIS, AND TREATMENT

1. Observations
 History Good Fair Vague Very detailed
 Distress Min Mild Mod Severe
 Effort Good Fair Poor ?
 Mood Alert Anxious Depressed
 Posture Guarding Slooped Shifting
 2. Head & Neck
 Gen N Visible trauma
 Eyes N Ab PERLA Injected conj. Abrasion
 ENT N Ab Cran N N N AB ?
 Neck N ROM WNL Spasm/Pain Nodes Menting. signs
 3. Chest N Barrel CP to palpation CP to indirect pressure
 4. Lungs N Wheezes Rhonchi Rales BS+
 5. Heart N Irreg Murmurs Peripheral edema
 6. Abd N Tender Rebound Sounds ↑ Mass Hernia
 7. Musculoskeletal
 Observe N Guarding Swelling Effusion Deformity
 Motion N Antalgic Slow Guarded Smooth
 Pain N Resting 4 Activity 4 Point Broad Multiple
 Touch 4 Palpat 4 Pain deep to palpate
 Physiologic N AB ?
 Rad.Sx None Pain Numb Tingling Glove Stocking
 ROM N
 Strength N
 No visible trauma Non-physiologic symptoms/exam
 8. Neuro N
 Gait N Ab ? Sensation N Ab ? DTRs 0/2
 Fine motor N Ab ? Gross motor N Ab ?
 Heel-Toe N Ab ? Heel-Shin N Ab ?
 Romberg - + Paresthesia N Y ?
 9 Circ. Intact Pulses ↓
 10. Derm Edema Erythema Hematoma Ecchymosis
Bash Mac Papules Vesicles Pustules Crusts
 11. Psych N Alert Lethargic

5 meds helps him move
high 1500 - Nu helps
Radial pain @ high 2100
one
SLTGO suits
1
1) L-strain
2) SLTPT
3) 5000 mls



ORDERS

FOLLOW-UP PLAN

X-Ray _____ Results _____ (see report)
 UA Sp Grav _____ Glc _____ Blood _____ Leuk _____
 Hb/Hct _____ Physical Therapy _____
 HCG _____ Contact key contact _____
 FSBS _____ Case management _____
 Tet Tox _____ Clean Dress Stitch / Remove _____
 Toredol _____ Splint Crutch Dressing _____
 Lab _____
 Other _____

Instructions: Take meds as directed Keep wounds clean and dry Elevate _____ Strict rest
 Re-check BP _____ Increase fluids _____ Watch for infection _____ Ice/Heat/Massage
 Stop smoking _____ Bland diet _____ Wash change dressing daily _____ Stretch/Exercise
 Head trauma inst _____ Antacids/Pepto Bismo _____ Tylenol/Motrin/Aleve/OTC _____ Maintain activity
 Call for results _____ Other _____
 Work Status: No restrictions _____ Restrictions _____ Off work (see Work Status Report)
 Follow Up: Dismiss _____ Re-evaluate _____ Follow up with PMD/Company Nurse
 Refer to _____ emergent, urgent, non-urgent
 Physical / Occ Therapy _____
[Signature] (Physician)

REHABILITATION PRESCRIPTION

☒ TUOMEY INDUSTRIAL MEDICINE

☐ WESMARK URGENT CARE

PH 803-778-8842

250 W. WESMARK

PH 803-778-5200

FAX 803-778-5283

SUMTER SOUTH CAROLINA 29150

FAX 803-778-5280

Name Henry Dinkia

Date 5/20/02

Diagnosis L-strain x 4 wks

PROCEDURES:

☒ Evaluate and Treat	☐ Pre-Placement Eval	☐ Complete FCE	☐ Limited FCE
☐ Wound Care	☐ Whirlpool	☐ Debridement	☐ Dressing Changes
☐ Home Program	☐ Patient Education	☐ Joint Mobilization	☐ Gait Training
☐ Splint fabrication	☐ Strengthening	☐ CV - Conditioning	☐ Work Hardening

MODALITIES

☒ May substitute other appropriate modalities

☐ Moist Heat	☐ Traction	☐ Ultrasound	☐ Fluidotherapy
☐ Cryotherapy	☐ TENS Unit	☐ Phonophoreses	☐ Cerv. Traction Unit
☐ Electric Stim	☐ Whirlpool	☐ Iontophoresis with	
☐ Aquatic Therapy			

GOALS

☒ Decrease Pain	☐ Independent Exercise Program	☒ Return to Normal Function
☐ Increase ROM	☒ Increase Strength and Endurance	

COMMENTS

Frequency 3x/w Duration 3-4w

Physician Signature [Signature]

SCHEDULING (To be completed by Physical Therapy Department)

Appointment date _____ Time _____

Patient Signature (acknowledging appointment) _____

Once scheduled and acknowledged, please Fax to Tuomey Industrial Medicine 778-5283 or Wesmark Urgent Care 778-5280

Original For Physical Therapy Dept.

Yellow Patient's copy

Pink Physician's Records

INDUSTRIAL MEDICINE AND WELLNESS

WORK STATUS REPORT

PATIENT INFORMATION

Time in 1156 Time out 1250 Date of Injury 04-30-05 Today's date 06-20-05
Employee Name Henry Jenkins Employee's phone _____
Employer Lones Employer's phone 905-2650 Employer's fax 905-2674

DIAGNOSIS

Description _____

X-Ray & Lab _____

Diagnoses: 1. L-5-S-5th cpt _____
2. _____ cpt _____
3. _____ cpt _____

G2243 N 55045-2777-8
Orphenadrine Citrate, ASA,
Caffeine Tablets #30
Lot # 99133 Ref # 034136 407
Exp. 08/13/2014-01

TREATMENT

____ Minor first aid ____ Anti-inflammatory meds ____ Physical Therapy ____ Antibiotics
____ Over counter meds ____ Muscle relaxants ____ Sutures/Wound care ____ Bloodborne pathogen protocol
____ Tetanus ____ Scheduled pain meds ____ Splint/Cast/Boot/Sling/Crutches ____ Other _____

IV. WORK STATUS

____ No restrictions ☒ Restrictions ____ No work Restrictions effective: ☒ today ____ next shift _____

	None	Rarely	Often	Constant
Back and Lower Extremity				
Sitting	☐	☐	☐	☐
Walking or standing	☐	☐	☐	☐
Bend / squat / twist / crawl	☐	☒	☐	☐
Climb / work on heights	☐	☒	☐	☐
Upper Extremity				
Grasp/pinch	☐	☐	☐	☐
Reach above shoulder	☒	☐	☐	☐
Reach beyond forearm limits	☐	☐	☐	☐
Restrictions apply to	☐ L Arm	☐ R Arm	☐ Both	

Work level: Lifting / Pushing / Pulling
Sedentary ☐ Negligible - 10 lbs. max.
Light ☒ 10 lbs. freq. - 20 lbs. max.
Medium ☐ 25 lbs. freq. - 50 lbs. max.
Heavy ☐ 50 lbs. freq. - 100 lbs. max.
Very Heavy ☐ over 100 lbs

Activity and hour restrictions (if applicable)

____ Not to operate hazardous machinery
____ Not to drive car / truck / forklift
To work no more than ____ hrs. per day

Other restrictions or clarifications _____

FOLLOW UP

Return Appointment ____ No ☒ Yes 4-5 wks

Patient Referred to _____

Phone _____

Date 07-18-05 Time _____

Date _____ Time _____

Instructions

____ Re-check BP ____ Keep wounds clean and dry ____ Elevate ☒ Gentle range of motion exercise daily
____ Stop smoking ____ Watch for infection ____ Ice/Heat /Massage ____ Report to Company Nurse as directed
____ Take meds as directed ____ Wash, dress daily ____ Stretch / Exercise ____ Sutures to come out in ____ days
____ Other _____ ☒ Maintain activity ____ Continue Physical Therapy

FAXED
6-20-05

Physician signature _____

Forrest Pommerenke, MD James Gee, MD

INFORMATION RELEASE and ACKNOWLEDGEMENT

1) By signing, I authorize attending physician and/or the Industrial Medicine and Wellness program to release above information and other information acquired in the course of examination or treatment to my employer or its representative, or to a consulting physician or health care provider.
2) I acknowledge the above information and instructions, and acknowledge that any restrictions are effective at the date or time shown above and apply to both work and off work activities.

Patient signature _____

Copies: White: for medical records (fax to employer) Yellow: for patient

ASSESSMENT (Circle = Present, N = Normal, AL)

ALLERGIES: Pen Cod NKA

Date 6/10/05 DOI 541082
 BP 128/63
 T 97.6 P 166 RR 16
 Vision R 120 L 120 C UC
 Improvement: same worse better %

Injury
 Illness
 Follow-up
 Disability
 Impairment
 Fit for duty
 Pre-place
 History
 Heart N HTN
 Pul N Asthma
 Endo N Thy Gout
 GI N Ulcers/GERD
 MS N Broken bones
 Other
 Heart problems
 TB
 DM
 Hepatitis
 Back injury

Current Meds: Altran Norgestrel
 Cephalexin
 Case Management Notes - Call backs

13:10
 Concerns: Filler up on lower back strain
 C/O back still sore. Didn't go to therapy. Only get relief
 from electrodes + heat. Rates pain 5/10. M. Redissing m

HTN Protocol

Initial

MEDICAL EVALUATION

MEDICAL NOTES, DIAGNOSIS, AND TREATMENT

1. Observations
 History: Good Fair Vague Very detailed
 Distress: N Min Mild Mod Severe
 Effort: N Good Fair Poor ?
 Mood: N Alert Anxious Depressed
 Posture: N Guarding Stopped Shifting

2. Head & Neck
 Gen: N Visible trauma
 Eyes: N AB PERLA Injected conj. Abnormal
 Ears: N AB
 Nose: N AB
 Mouth: N AB
 Neck: N ROM WNL Spasm/Pain Nodes Mening. signs

3. Chest: N Barrels CP to palpation CP to indirect pressure
 4. Lungs: N Wheezes Rhonchi Rates BS
 5. Heart: N Murs Murmurs Peripheral edema
 6. Abds: N Tender Rebound Sounds J Mass Hernia

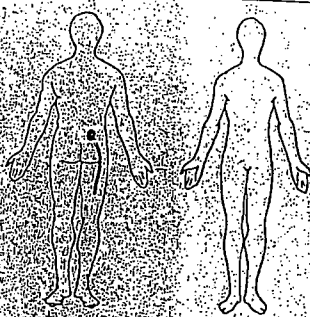
7. Musculoskeletal
 Observe: N Guarding Swelling Effusion Deformity
 Motion: N Antalgic Slow Guarded Smooth
 Pain: N Resting /4 Activity /4 Point Broad Multiple
 Touch /4 Palpat /4 Pain deep to palpate
 Physiologic N AB ?
 Rad. Sx: None Pain Numb Tingling Glove Stocking
 ROM: N

Strength N

8. Neuro
 No visible trauma Non-physiologic symptoms/exam
 8. Neuro: N
 Gait: N Ab ? Sensation: N Ab ? DTRs
 Fine motor: N Ab ? Gross motor: N Ab ?
 Heel-Toe: N Ab ? Heel-Shin: N Ab ?
 Rhomburg: Paresthesia N Y ?

9. Circ: N Intact Pulses
 10. Derna: N Edema Erythema Hematoma Ecchymosis
 Rash Mac Papules Vesicles Pustules Crusts
 11. Psych: N Alert Lethargic

slow but sure
 get PT at progress PT
 ptp - @ 525
 L-ssm
 we'll manage it
 we 4-5 wk
 find out PT
 Reilly Nam



2243 N 55045-2777-8
 Ophthalmic Chloride, ASA,
 Caffeine Tablets #30
 Lot 39833 Rgt 843435 107
 Exp 10/18/07

ORDERS

FOLLOW-UP PLAN

X-Ray
 UA Sp Grav Gic Blood Leuk
 Hb/Hct
 HCG
 FSBS
 Tel Tox
 Tordol
 Lab
 Other

Results (see report)
 Physical Therapy
 Contact key contact
 Case management
 Clean Dress Stitch/Remove
 Splint, Crutch Dressing

Instructions
 Re-check BP
 Stop smoking
 Head trauma Inst
 Call for results
 Work Status
 Follow Up
 Refer to
 Physical / Doc Therapy

Take meds as directed
 Increase fluids
 Bland diet
 Antacids / Pepto Bismo
 No restrictions
 Dismiss
 Re-evaluate

Keep wounds clean and dry
 Watch for infection
 Wash change dressing daily
 Tylenol Motrin Aleve / OTC
 Elevate
 Ice/Heat / Massage
 Stretch / Exercise
 Maintain activity
 Off work (see Work Status Report)
 Follow up with PMD / Company Nurse
 emergent urgent non-urgent

(Physician)

ACCESS

Physical Therapy, LLC

327 Broad Street, Sumter, SC 29150
(803) 774-2781 • Fax: (803) 774-2782

APR 23 REC'D

DISCHARGE SUMMARY

Patient Name: Henry Dinkins
Diagnosis: LBP; ant. herniation
@ L3-L4, L4-L5

Eval date: 09/15/05
D/C date: 09/23/06

Reason for discharge:

- ☐ Goals met; anticipated outcome met
- ☐ Therapy is no longer necessary
- ☐ Patient demonstrates independence with HEP and shows great progress towards resolution
- ☐ Patient reached a plateau; significant progress is not expected with continued therapy
- ☐ Patient failed to respond to therapy; continued therapy is contraindicated
- ☐ Patient referred to physician due to deterioration of condition
- ☐ Referring physician requested discontinuation of therapy
- ☐ Patient requested to be discharged from therapy
- ☐ Patient was non-compliant with visits

☒ Other

Comments: of visits approved by WC.

	Evaluation	D/C
Pain	6-8/10 @ LBP & ant. thigh	6/10 LBP & ant. thigh
ROM	SB @ 18 1/2 in. SB @ 19 in. FT @ 12 in.	SB @ 15 in. SB @ 11 1/2 in. FT @ 5 in.
Strength	@ hip @ 4/5	@ L&T's grossly 5/5
Function	antalgic gait, standing, sitting, & lifting skills	pantallone, P.D., 15' tread with P.D., tree ext. & 20' P.D., crate lifting & 10' P.D. & good technique

Physical Therapist: A. J. J. S. PT Date: 09/23/06
Physician Signature: _____ Date: _____

TUULOO
Physical Therapy, LLC

327 Broad Street, Sumter, SC 29150
Tel: (803)774-2781 • Fax: (803)774-2782

August 22, 2006

To: Myra Chere
From: S. Salzer, PT
Regarding: Henry Dinkins

Ms. Chere,

Thank you for referring Mr. Henry Dinkins to Access Physical Therapy. Mr. Dinkins was seen for 9 visits from 061906 to 071406.

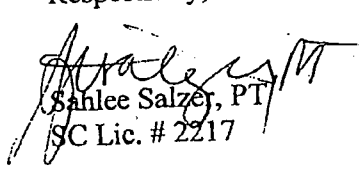
At that time, Mr. Dinkins had been c/o 6/10 pain in his low back and ant. Hip. He reported having difficulty sleeping due to new pains in his hip. He continued to c/o beginning tightness in the low back during crate lifting activities. He also reported limited tolerance to sustained sitting, standing, walking as before.

Mr. Dinkins was seen for pain modalities, therapeutic exercises for stretching, strengthening and stabilization, work conditioning to include treadmill x 15 mins., exercise bike x 10 mins., crate lifting with wts. at different levels.

Mr. Dinkins was able to progress with most of the above activities by increasing ex. time or adding more resistance/ difficulty to the tasks. His home program was updated and he reported good follow-through with it.

Please feel free to give me a call if you have any questions or if you would like to discuss his care. Thank you again for this referral.

Respectfully,


Sahlee Salzer, PT
SC Lic. # 2217



EXCUSE SLIP

DATE: 8/9/05

DOCTOR: Dr. Armsey

TO WHOM IT MAY CONCERN:

Henry Dinkins is under my care. He/ She

☒ Was seen in my office today.

☒ Is released to return to work on 08/10/05

☐ Is able to return to school on _____

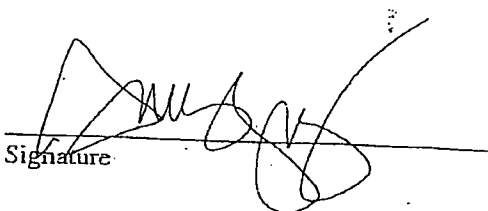
☐ Is/Is not able to participate in the physical education program at school.

☐ Is in good physical health.

☐ Is scheduled for surgery _____. Return to work date will be determined at post-operative evaluation.

☒ Restrictions: No LIFTING MORE THAN 10 POUNDS.

☐ Other: _____

Signature: 

UNIVERSITY OF ORTHOPAEDIC SURGERY
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-09
COLUMBIA, SC 29203
803-434-6812, FAX 803-434-7829

USC SPORTS MEDICINE CENTER
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-10
COLUMBIA, SC 29203
803-434-7689, FAX 803-434-7829

MAY 2, 2006

RE: HENRY DINKINS #68876

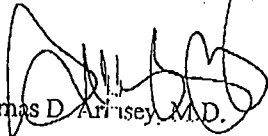
HISTORY: Henry is being seen in follow-up for his degenerative disc disease of the lumbosacral spine, sacroiliitis. The patient states that he is doing mildly better. He was having significant left radicular pain. He does note that he does continue to have lumbosacral spine pain. He has been working on functional evaluations with formal physical therapy lifting 14 pounds up to chest level and states that this is causing some discomfort but no significant worsening of his pain. Patient does note that he continues to have some acute exacerbations of his discomfort when he does too much bending and lifting. The patient has undergone multiple injections and an LESI and a sacroiliac injection which temporarily improved his discomfort.

PHYSICAL EXAMINATION: On formal physical exam the patient is improving his range of motion and improving his lower extremity strength. His range of motion to bilateral lower extremities has improved. His reflexes are symmetric at the Achilles and patellar tendon. He has no atrophy on inspection, no ecchymosis, no effusion of the right knee, no effusion to the left ankle. The patient has no tenderness at the right knee and the ankle is giving him no significant problems at this time.

ASSESSMENT:

1. Chronic degenerative disc disease at L3-4, 4-5.
2. Status post right knee arthroscopy and left ankle arthrodesis.

PLAN: Patient will continue his formal physical therapy, continue to utilize anti-inflammatory medicines p.r.n. He will follow up in four to six weeks. He will continue on his functional assessment examination and we will slowly, hopefully, get him back to light duty and advance him back to full activities and work. The patient is very eager to return and he states he is working very hard on his home exercises while he is on the formal physical therapy. I have spoken to his access therapists and they state that he seems to be working very well with his home exercises as well as when he is in formal physical therapy. We will evaluate him for a TENS unit to decrease his inflammatory response with acute exacerbations. If needed, we will try to obtain a TENS unit from them through his insurance plan.


Thomas D. Arriese, M.D.

TrUSA0280



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS

EXCUSE SLIP

DATE: 7/10/06

DOCTOR: Stacy

TO WHOM IT MAY CONCERN:

Henry Dinkins is under my care. He/ She

☒ Was seen in my office today.

☐ Is released to return to work on _____

☐ Is able to return to school on _____

☐ Is/ is not able to participate in the physical education program at school.

☐ Is in good physical health.

☐ Is scheduled for surgery _____. Return to work date will be determined at post-operative evaluation.

☒ Restrictions: NO lifting more than 15 lbs

☒ Other: Next appointment Aug 21, 2006.

Signature

K. By

UNIVERSITY OF ORTHOPAEDIC SURGERY
MEDICAL PARK - LOWER LEVEL, SUITE L-09
COLUMBIA, SC 29203

USC SPORTS MEDICINE CENTER
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-10
COLUMBIA, SC 29203



EXCUSE SLIP

DATE: 10/2/04

DOCTOR: Stacy

TO WHOM IT MAY CONCERN:

Henry Dinkins is under my care. He/ She

☒ Was seen in my office today.

☐ Is released to return to work on _____

☐ Is able to return to school on _____

☐ Is/ is not able to participate in the physical education program at school.

☐ Is in good physical health.

☐ Is scheduled for surgery _____ Return to work date will be determined at post-operative evaluation.

☒ Restrictions: Lift no more than 15 lbs.

☐ Other: _____

[Signature]
Signature

UNIVERSITY OF ORTHOPAEDIC SURGERY
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-09
COLUMBIA, SC 29203
803-434-6812, FAX 803-434-7829

USC SPORTS MEDICINE CENTER
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-10
COLUMBIA, SC 29203
803-434-7689, FAX 803-434-7829

08/22/2006 15:00

8037780488

MCWHIRTER



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS

EXCUSE SLIP

DATE: Aug 21, 2006

DOCTOR: Stacy

TO WHOM IT MAY CONCERN:

Henry Dinkins is under my care. He/She

☒ Was seen in my office today.

☐ Is released to return to work on _____

☐ Is able to return to school on _____

☐ Is/ is not able to participate in the physical education program at school.

☐ Is in good physical health.

☐ Is scheduled for surgery _____ Return to work date will be
determined at post-operative evaluation.

Restrictions: No lifting > 10 lbs
allow pt for 3 times for 6 weeks

Other: _____

Signature: _____



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

DEPARTMENT OF ORTHOPAEDIC SURGERY

Henry Dinkins
Name _____
Date Mon. Oct. 2 9:00am
Time _____

Two Medical Park, Lower Level, Suite L-10
Columbia, SC 29203
803-434-6812 Fax 803-434-7029

UNIVERSITY OF ORTHOPAEDIC SURGERY
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-10
COLUMBIA, SC 29203
803-434-6812, FAX 803-434-7029

USC SPORTS MEDICINE CENTER
TWO MEDICAL PARK - LOWER LEVEL, SUITE L-10
COLUMBIA, SC 29203
803-434-7029, FAX 803-434-7029
08/22/2006 04:06PM

MARCH 22, 2007

RE: HENRY DINKINS #68876

HISTORY OF PRESENT ILLNESS: Mr. Dinkins is here in follow-up of chronic lower back pain. He is seen at the request of his lawyers at the law firm of McAngus, Goudelock & Courie. They have asked that we evaluate him further to see if there are any additional treatments necessary. After extensive review of his medical records, he had been seen by Dr. Deltold at my referral back in January. Dr. Deltold basically said that the patient's back is not a surgical issue. He felt that the patient had an impairment rating of 5% at that time. The patient also had been seen by Dr. Bethea in the past and was also given a 5% impairment rating. However, one visit with Dr. Zgleszewski with Palmetto Pain Management did feel that he was not at maximum medical improvement as far as his lumbar spine. Mr. Dinkins states that he has not improved since the last time that he saw me in this office. He still has to modify daily activities due to the difficulty with forward flexion of his back and inability to lift anything over 10 pounds. He has done extensive physical therapy in the past as well as he has had an epidural injection, although it causes him significantly increased pain over what had been his baseline. He does have a history of previous knee injury and subsequent surgery as well as left ankle arthrodesis both of which are stable and not causing him significant discomfort. Mr. Dinkins denies fever, chills or any new injuries. His symptoms have remained relatively unchanged. He does have symptoms radiating to his legs at times but not currently.

OBJECTIVE: In general, he is alert and oriented in no acute distress. He is a very pleasant black male. He does have relatively maintained forward flexion. He does lack extension in his low back only of about 5 to 10 degrees. There is some tenderness to palpation over his lower lumbar spine and laterally over the musculature. There is does not seem to be significant muscle spasm. Skin is grossly intact. He has normal sensation. He has maintained strength with dorsiflexion and plantar flexion of his feet as well as his great toes. He ambulates slowly but without a limp.

No radiographs were reviewed today, although we did review old records.

ASSESSMENT: Continued lower lumbar back pain with L3/4, and L4/5 disc bulging which is chronic in nature and causing him significant discomfort.

PLAN: Due to the fact that multiple providers including myself are having a difficult time figuring out further treatment options other than Dr. Zgleszewski at Palmetto Pain Management, we will go ahead and refer the patient over to Palmetto Pain Management for hopefully some advice on how to improve his symptoms and reach maximal medical improvement. I did, however, tell Mr. Dinkins that we are likely close to maximal medical improvement or at maximal medical improvement and he should work on

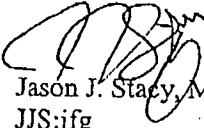
CONTINUED

MARCH 22, 2007

RE: HENRY DINKINS #68876

PAGE 2

continuing to stay active and modifying his lifestyle to fit in with the likely restrictions that his back will cause him. I did refill his ibuprofen 800 mg at this time and informed him I will send a letter to his lawyers to inform them that we are planning on referring him to Palmetto Pain Management.



Jason J. Stacy, M.D.

JJS:jfg

310 Blanding Street
Columbia, SC 29201

NAME: DINKINS, HENRY ACCOUNT #: 1006921
DATE: 01/03/2007 DOB: 09/14/1943

REFERRED BY: P. Douglas deHoll, M.D.

PRI OF THE LUMBAR SPINE

COMPARISON: No previous

CLINICAL REQUEST: R/O stenosis

TECHNIQUE: All images were acquired on a 1.0 Tesla Siemens Harmony.
Multiplanar, multisequence imaging of the lumbar spine was performed, without
contrast.

FINDINGS: There are five non-rib-bearing lumbar vertebral bodies.
Hemangiomas are demonstrated at T12 and L1. The conus medullaris is at the
L1 level.

The T12-L1, L1-L2 and L2-L3 levels are normal.

The L3-L4 level demonstrates biforaminal disc bulge, facet osteoarthritic
change and thickening of the ligamentum flavum. The findings result in mild
narrowing of the transverse dimensions of the central canal. Bilateral
mild neural foraminal stenosis is present.

The L4-5 level demonstrates diffuse annular disc bulge without focal
extrusion. Facet osteoarthritic change and thickening of the ligamentum
flavum is present. There is no significant central canal stenosis at this
level. Mild bilateral neural foraminal stenosis is present.

The L5-S1 level demonstrates diffuse annular disc bulge without focal
extrusion. No significant central canal stenosis is seen. Mild neural
foraminal stenosis is demonstrated.

There is disc desiccation at L3-4 and L4-L5.

IMPRESSION:

Mild multilevel spondylotic change. The dominant finding is minimal
narrowing of the transverse dimension of the thecal sac at L3-4 with
bilateral neural foraminal stenosis at L3-4, L4-5 and L5-S1.

Jason Lynn, MD
MD / Isb

Date Received: 01/04/2007
Date Transcribed: 01/04/2007 08:27:40
V 0

This document was signed electronically by:
Jason Lynn, MD
01/09/2007 11:26:54
Report id: 315723

THE CENTER FOR PAIN MANAGEMENT

PATIENT: Henry Dinkins

DATE: June 2, 2006

PHYSIATRIC INDEPENDENT MEDICAL EXAMINATION

HISTORY: Henry Dinkins is a 63-year-old left hand dominant gentleman who has been involved in a multiple work-related injuries. The injury dates include an injury on or about May 1, 2001 when he "injured his left ankle" as he was loading paint when he caught his foot in the pallet. He also reports a lifting injury on or about May 10, 2003. He states he injured his back. There is also a questionable injury date in July of 2002 when Mr. Dinkins twisted his right knee and felt a snap causing pain on the right knee.

Currently, Mr. Dinkins reports pain that ranges anywhere from 4-7/10 in the pain scale. In the knee, there is pain only most with walking at this point. He states the pain in the ankle is constant and he gets occasional clicking. The pain in the lower back is worse with extension, more so with forward flexion by his report. He states the pain in the low back is a deep, throbbing, achy type pain, in occasion sharp, stabbing component. He denies any radiation into the legs at this point. Apparently states that for prolonged period of time with sitting, standing, walking these aggravates his pain. Also, worse with pretty much all activities and movements aggravates his pain in the ankle and lower back and occasionally in the right knee. He has gone through physical therapy in Sumter. He has also had "epidural steroid injection" with no long-term benefit by his report. He has had x-rays to the ankle and MRI to the lumbar spine as well as "a bone scan to the ankle." These are all reported by the patient.

Mr. Dinkins reports that he feels though the left ankle caused the right knee injury.

CURRENT MEDICATIONS: Synthroid and ibuprofen.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

PAST MEDICAL HISTORY: Hypothyroidism.

PAST SURGICAL HISTORY: Left ankle surgery on May 28, 2003, right knee surgery on December 9, 2003.

SOCIAL HISTORY: Mr. Dinkins is a nonsmoker, occasional drinker and drinks 1 cup of caffeinated beverage per day. He is married, has 5 children.

FAMILY HISTORY: As per the new patient questionnaire filled out today as well as the history.

PATIENT:

Henry Dinkins

DATE:

June 2, 2006

Page 2

REVIEW OF SYSTEMS: As per the new patient questionnaire filled out today as well as the history.

PHYSICAL EXAMINATION: Height 5'7". Blood pressure 137/88, heart rate 78, respirations 18, weight is 164 pounds, VAS 4-7/10.

GENERAL APPEARANCE: Physical examination reveals a well-developed, well-nourished gentleman in a moderate amount of reported pain. He appears to be in minimal to moderate amount of discomfort. Grooming, nutrition, and body habitus is normal for his age.

Gait and station is nonantalgic. However, he limps mostly on the left secondary to left ankle pain.

Inspection of the right and left ankle demonstrate well-healed surgical incisions.

Inspection of the upper and lower extremities demonstrates no significant edema with intact radial and pedal pulses.

Inspection of the low back reveals no prior lumbar incisions. There is normal lumbar lordosis with no lumbar shift, step-off in the lumbar spine, or muscle atrophy. Internal and external rotation of both hips is pain free. Ankle plantar flexion is 20 degrees, ankle dorsiflexion is 5 degrees, inversion of the left ankle is 0 degrees, and eversion of the left ankle is 4 degrees. There is full range of motion of the right knee with flexion and extension. There is no muscle atrophy noted in the right or left lower extremities. There is minimal spasm noted in the lumbar segments today. Forward flexion is relatively pain free today, but extension of the lumbar spine reproduces lower back pain.

Neurologic examination including motor strength and sensation is intact in both lower extremities and torso. Deep tendon reflexes are symmetric at the patella and Achilles tendons. There is no clonus on either ankle. Negative neural tension signs in both legs in the seated slump position. Equivocal straight leg raise testing with reproduction of only lower back pain. Positive Patrick's test bilaterally. There is tenderness over lower lumbar Z-joints.

Examination of the thoracic spine reveals no spinous process tenderness and no thoracic paraspinal muscle spasms.

Waddell's testing today demonstrated no superficial tenderness or regional tenderness. Axial loading and simulated axial rotation is negative. Distraction testing as well as overreaction is negative today. Overall, Waddell's testing is negative today.

MEDICAL RECORD AND DIAGNOSTIC REVIEW:

PATIENT: Henry Dinkins
DATE: June 2, 2006
Page 3

An MRI of the left ankle dated September 19, 2002 is reviewed today.

A Functional Capacity Evaluation (FCE) report dated June 7, 2005 was reviewed today. Medical records from Dr. Arnsperger are reviewed today.

Medical records from Westmark Urgent Care are reviewed today.

Medical records from Industrial Medicine and Wellness are reviewed today.

Medical records from Palmetto Orthopedic and Sports Medicine Center are reviewed today.

Medical records from Moore Orthopedic Clinic are reviewed today.

Medical records from Providence Hospital are reviewed today. This includes an operative report from a left triple arthrodesis with tendon of Achilles lengthening through a separate incision dated May 28, 2003.

Medical records from Dr. Ekman are reviewed today.

DIAGNOSES:

1. Left chronic subtalar arthritis, status post triple arthrodesis with TAL.
2. Right lateral meniscus injury with patellofemoral chondromalacia, status post partial lateral meniscectomy.
3. Lower back pain.

DISCUSSION: I will do my best to answer questions posed to me in a May 31, 2006 letter.

1. What is your assessment and diagnosis of his "condition"?

It is my medical opinion with a reasonable degree of medical certainty that Mr. Henry Dinkins has the above three diagnosis. It is my medical opinion with a reasonable degree of medical certainty that the ankle injury is secondary to a work injury dated on or about May 1, 2001. He subsequently injured his right knee in July of 2002. It is my medical opinion that this is a separate work injury. Medical records from the time of the injury did not report any favoring of the left ankle nor is there a period of any reports around the time of injury from Mr. Dinkins stating that he felt that his left ankle contributed to the right knee injury. I believe that the lower back injury is a separate injury as well and that is dated from on or about May 10, 2003.

2. "Has he reached maximum medical improvement for each body part?"

It is my medical opinion with a reasonable degree of medical certainty that Mr. Dinkins is at MMI from the standpoint of the left ankle injury as well as the right knee injury. It is my medical opinion with a reasonable degree of medical certainty that Mr. Dinkins is not at MMI from the standpoint of his lumbar spine injury.

3. "If he is not at MMI for any body part, what additional treatment will be require to reach MMI?"

Mr. Dinkins will require based upon today's examination diagnostic medial branch blocks to rule out the lumbar Z-joints as pain generators. In reviewing the medical records and pain drawings from around the initial injury of the lower back, the pain that is drawn on the pain drawings does not extend passed the knee. This would also then bring in the possibility given the twisting and lifting injury, the possibility of sacroiliitis. We would need to also rule those out as pain generators. The above would be ruled out easily with fluoroscopic-guided contrast enhancement diagnostic SI joint as well as medial branch blocks to the lumbar Z joints with pain diaries.

If the above were negative, then it is my opinion with a reasonable degree of medical certainty that Mr. Dinkins will require provocative lumbar discography to rule out the possibility of lumbar discogenic pain. At this point in time, Mr. Dinkins does not have any signs of a radiculopathy or radicular process occurring. Again, going through the medical records, it is possible that he has one of the above three diagnoses and the above diagnostic plan would resolve that issue.

4. "What additional treatment would you require to maintain his present level of function?"

Since Mr. Dinkins will require no further physical therapy for the knee nor for the ankle. He just needs to continue with his independent exercise program at home. As far as lower back, he is not at MMI and therefore we will not address that issue for the lumbar spine.

5. "What specific lifting and other restrictions does he have on his work activities?"

From the standpoint of lower back, Mr. Dinkins is limited to lifting no greater than 10 pounds at this time on an occasional basis from knuckle to shoulder height. He is not to do any repetitive bending, lifting, or twisting. He is not to do any prolonged sitting, standing, or walking. He can sit or stand, and walk up to approximately 20-30 minutes at a time and at that point in time would require change in position. I would recommend against repetitive movements with the lower extremities at this time. He certainly is to do no squatting, climbing, or crawling.

6. "Has his back injury affected any other part of his body due to radiculopathy or referred pain? If so, please identify the additional body parts."

Mr. Dinkins' current lumbar spine injury has not affected any other body parts including the lower

PATIENT:
DATE:
Page 3

Henry Dinkins
June 2, 2006

extremities as he has no current radicular symptomology and no referred pain and just has actual lower back pain reported to me today as well as drawn on the pain drawing on the new patient questionnaire.

7. Please assign impairment rating as appropriate to the affected body parts.

Based upon the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, Mr. Dinkins has an impairment rating of 20 % to the left lower extremity.

Based upon the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, Mr. Dinkins has a 5 % impairment rating to the right lower extremity based upon the partial lateral meniscectomy.

8. At this point in time, no impairment rating will be given to the lumbar spine as Mr. Dinkins has not reached the MMI for that injury.

Should you have any further questions, please do not hesitate to contact me.

Sincerely,

Timothy M. Zgleszewski, M.D.
Board Certified Physical Medicine Rehabilitation
Sub Specialty Board Certified, Pain Medicine
Fellowship Trained Interventional Spine/Pain Medicine

TMZ/nra/rot

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

NEW PATIENT ENCOUNTER

NAME: DINKINS, HENRY
DATE: 05/11/2004

ACCOUNT #: _____
DOB: _____

CLINICAL STATUS: Mr. Dinkins is now about a year post triple arthrodesis. He is doing fairly well. He has occasional complaints of pain. He has a solid subtalar fusion in neutral. He has good ankle movement and distal tendon neurovascular is intact.

IMPRESSION:

1. POST TRIPLE ARTHRODESIS

DISPOSITION AND RECOMMENDATIONS: The patient has reached maximum medical recovery. He has a permanent physical impairment to the foot of 25% associated with the triple arthrodesis.

RETURN APPOINTMENT: Prn

Robert H. Belding, M.D.
RHB / hcf
Cc:
REV 0

This document was signed electronically by:
Robert H. Belding, M.D.
On: 05/21/2004 15:10:07

Voice Job ID# 133141
Page 1 of 1

Workers Compensation Dept.
1910 Blanding Street
Columbia, SC 29201
803-256-4107 x 6214
www.midlandsortho.com

CHART # 1006921

PATIENT WORK INJURY INFORMATION

Patient name and account #: Henry Dinkins
Employer: Lowei
Physician: DeHoll
Date of Accident: 11-1-06
Workers' Comp Case # YKH 01832

SS #: _____
Carrier: Bunch & Assoc.
Date of Service: 12-19-06
Diagnoses code(s): _____
Diag Description: _____

WORK STATUS

- ☐ Regular duty, no restrictions (date to return to regular duty: 12/19/06)
☒ Light duty, with restrictions (date to begin light duty: 12/19/06) (The availability of light duty is determined by the employer, not the physician.)
☐ Remain out of work (estimated duration: _____)
☐ Part time (whether regular duty or light duty)
☐ Full time (whether regular duty or light duty)

PHYSICAL LIMITATIONS

☐ None	☐ Pushing or pulling limit (____ lbs)
☐ No walking	☐ Lifting and carrying limit (____ lbs)
☐ No climbing	☒ Sedentary duties only
☐ No standing	☐ No work involving L / R _____ (extremity)
☐ No prolonged standing	☐ No overhead work
☐ No sitting	☐ No work at heights
☐ No bending or stooping	☐ Other _____
☐ No twisting or stretching	
☐ No kneeling, squatting, crawling	

FOLLOW UP

☐ Days _____	☐ Discharged with permanent limitations above
☐ Weeks _____	☐ Has reached MMI
☐ Months _____	☐ Permanent disability rating of ____ % to the _____ (body part / system)
☒ Post diagnostic (MRI, EMG, etc...) exam (usually one week after test)	
☐ PRN	
☐ Next appointment date (if scheduled): ____ / ____ / ____	

☐ Ross D. Lynch, M.D.	☐ M. David Redmond, M.D.	☐ James A. O'Leary, M.D.
☐ Robert M. Peele, Jr. M.D.	☐ Robert H. Belding, M.D.	☐ Coleman D. Fowble, M.D.
☐ Michael R. Ugino, M.D.	☐ Robert M. DaSilva, M.D.	☐ William C. James, III, M.D.
☐ J. Talley Parrott, M.D.	☐ Frederick C. Piehl, M.D.	☒ P. Douglas deHoll, M.D.
☐ Michael S. Green, M.D.	☐ Thomas P. Gross, M.D.	



Date: February 13, 2007

Bruce D. Filler, M.Ed., P.T.
Director

Attn: Mr. Stephen Samuels
McWhirter, Bellinger & Associates
485 N. Lafayette Dr.
Sumter, SC 29150

RE: Henry Dinkins

Mr. Dinkins was seen on February 13, 2007 for a Functional Capacity Evaluation. He is a 63 year old male who sustained a work-related injury to his low back on May 2, 2005 while lifting a lawnmower. He was employed by Lowe's at the time of the injury but is currently not working. He now complains of pain across the low back with radiation into the left hip. His past medical history is significant for right knee arthroscopic surgery and a left ankle fusion.

The results of today's evaluation place Mr. Dinkins in the light physical demand category. He has the following occasional lifting restrictions: floor to waist-unable, 12 inches off the floor to waist-25 lbs, waist to shoulder-25 lbs, shoulder to overhead-20 lbs. He can carry 35 lbs with both hands and 25 lbs with the right and left hands. He can push and pull 15 lbs occasionally. He also tolerates occasional kneeling, bending, twisting, stairclimbing, and overhead reaching. He does not tolerate occasional squatting. He also does not tolerate frequent or constant bending, twisting, and stairclimbing. The results of the treadmill test place him in the good Classification of Aerobic Capacity which qualifies him for light work. His self-reported sitting and static standing tolerance is 60 minutes and he was not observed exceeding this limit. His self-reported dynamic standing tolerance is 2 hours and he was not observed exceeding this limit.

Mr. Dinkin's lumbar range of motion is limited. Please see the enclosed report for all measurements.

He put forth a consistent effort during today's evaluation.

Thank you for this referral. If you have any questions, please call me at (803) 799-7007.

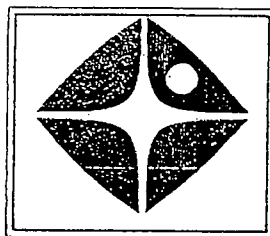
Sincerely,



Laurie Whitcomb, M.S., P.T., A.T., C.

2362 Two Notch Road, Columbia, SC 29204, 799-7007
4350 St. Andrews Road, Columbia, SC 29210, 772-2735
1177 Sunset Boulevard, West Columbia, SC 29169, 794-3440
3000 Northeast Medical Park, Columbia, SC 29223, 736-4845

PREPARED FOR:
Attn: Mr. Stephen Samuels
McWhirter, Bellinger Associates
485 N. Lafayette Dr.
Sumter, SC 29150



Client Information

Client Name: Mr. Henry Dinkins
Address: Dalzell, S.C.
29040
Injury Date: May 02, 2005
Dominant Hand: Left Hand
SSN:

Employment Information

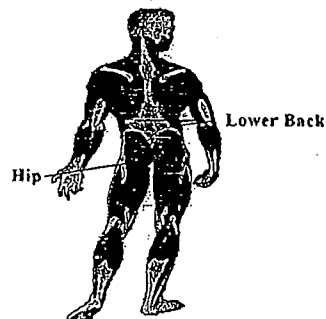
Occupation:
Employer: Lowe's
Address: 1251 Broad Street
Sumter, SC
29150

Date of Birth: September 14, 1943
Gender: Male
Height: 67 inches
Weight: 175 lbs

Work Status: Not currently working

Start & Finish Date: Feb 13, 2007
Evaluator: Laurie Whitcomb.
M.S., P.T., A.T., C.
Evaluation Time: 1 Hour 53 Min

Areas of Complaint



General Location	Specific Location	Plane	Side	Pain Type
Hip			Left	
Lower Back (Lumbosacral)			Bilateral	

Laurie Whitcomb
Laurie Whitcomb, M.S., P.T., A.T., C.
Physical Therapist

COLUMBIA REHABILITATION CLINIC
2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007

All testing was completed using the FOCUS System, Data Management was compiled through ODES products of Hanoun Medical Inc.



Manual Muscle Testing of the lower extremities was performed and the results are as follows:

Hip Flexion: 5/5 bilateral
Extensor hallucis Long: 5/5 bilateral

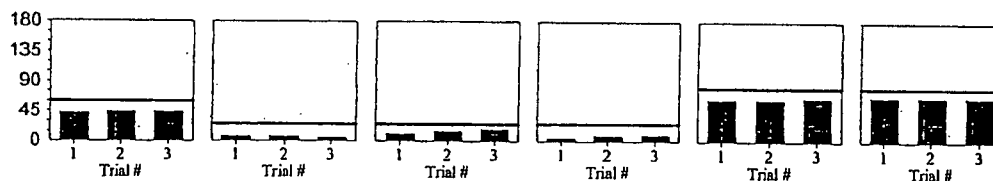
Knee Extension: 5/5 bilateral
Eversion: 5/5 bilateral

Dorsiflexion: 5/5 bilateral

Range of Motion ➤ Lumbar Range of Motion

Feb 13, 2007 2:13:35 PM

	True Lumbar Flexion	True Lumbar Extension	Left Lateral Flexion	Right Lateral Flexion	Left Straight Leg Raise	Right Straight Leg Raise
Normals:	60	25	25	25	80	80
Trial 1:	43	7	12	5	64	68
Trial 2:	45	7	16	9	64	68
Trial 3:	45	6	19	10	66	68
Average	44.3	6.7	15.7	8.0	64.7	68.0
Maximum	45.0	7.0	19.0	10.0	66.0	68.0
AMA Valid	YES	YES	YES	YES	YES	YES
% of Normal	74%	27%	63%	32%	81%	85%



Evaluator Comments

Mr. Dinkins complained of increased back pain at end range of flexion and lateral flexion.

Reference Information

American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition

Work Simulation ➤ Kneeling

Feb 13, 2007 2:38:31 PM

The patient was asked to assume a kneeling position for 2 minutes. The results are as follows.

Kneeling: 2 minutes

94 bpm pre
bpm post

Evaluator Comments

Mr. Dinkins completed the test. He complained of increased back tightness during the test.

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Mr. Henry Dinkins



The patient was asked to assume the squatting position for 2 minutes. The results are as follows:

Squatting: unable

Evaluator Comments

Mr. Dinkins is unable to assume a squatting position secondary to limited range of motion and complaints of pain in the low back, right knee, and left ankle.

Work Simulation ► Dynamic Bending

Feb 13, 2007 2:45:10 PM

The patient was asked to bend forward at the waist 25 repetitions. The results are as follows:

Dynamic Bending: 25 repetitions

99 bpm pre 100
bpm post

Evaluator Comments

Mr. Dinkins completed the test. He complained of a mild increase in low back pain during the test.

Work Simulation ► Dynamic Rotation

Feb 13, 2007 2:47:21 PM

The patient was asked to rotate at the waist 25 repetitions. The results are as follows:

Dynamic Rotation: 25 repetitions

91 bpm pre 98 bpm
post

Evaluator Comments

Mr. Dinkins completed the test. He complained of a mild increase in back pain during the test.

Work Simulation ► Dynamic Reaching

Feb 13, 2007 2:49:27 PM

The patient was asked to transfer 1 lb weights from shoulder level to above head level for 5 minutes. The results are as follows:

Dynamic Reaching: 5 minutes

92 bpm pre 94 bpm
post

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Mr. Henry Dinkins



The patient was asked to ascend/descend a series of 4 stairs for a total of 10 cycles. The results are as follows:

Time (min,secs)	Initial Heart Rate (bpm)	Final Heart Rate (bpm)	Stairs Ascended	Stairs Descended
02:33	90	114	40	40

Evaluator Comments

Mr. Dinkins completed the test. He utilized a step-to-step pattern leading with his right lower extremity while ascending and descending secondary to complaints of increased right knee pain.

Work Simulation ► Floor to waist lift

Feb 13, 2007 3:06:20 PM

Floor to waist lifting results are as follows:

Floor to waist: unable

Evaluator Comments

Mr. Dinkins is unable to lift from the floor secondary to complaints of increased back pain.

Work Simulation ► 12 inch to waist

Feb 13, 2007 3:13:12 PM

The patient was asked to lift from 12 inches off the floor to waist height. The results are as follows:

12 inch to waist: 25 lbs

Physical demand level: light

Evaluator Comments

Mr. Dinkins can lift 25 lbs from 12 inches off the floor occasionally. This test was limited by complaints of increased back pain.

Work Simulation ► Waist to shoulder lift

Feb 13, 2007 3:13:16 PM

The patient was asked to lift from waist height to shoulder height. The results are as follows:

Waist to shoulder: 25 lbs

Physical demand level: light

Evaluator Comments

Mr. Dinkins can lift 25 lbs from waist to shoulder occasionally. This test was limited by arm strength.

Work Simulation ► Shoulder to overhead lift

Feb 13, 2007 3:13:20 PM

The patient was asked to lift from shoulder height to overhead height. The results are as follows:

Shoulder to overhead: 20 lbs

Physical demand level: light

Evaluator Comments

Mr. Dinkins can lift 20 lbs from shoulder to overhead occasionally. This test was limited by complaints of increased low back pain and arm strength.

COLUMBIA REHABILITATION CLINIC

2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007

Mr. Henry Dinkins



... patient was asked to carry a box, using both hands, a distance of 30 feet. The results are as follows:

Dynamic 2-handed 35 lbs
carry:

Physical demand level: light-medium

Evaluator Comments

Mr. Dinkins can carry 35 lbs with both hands occasionally. This test was limited by complaints of increased low back pain.

Work Simulation ► Dynamic 1-handed carry

Feb 13, 2007 3:16:15 PM

The patient was asked to carry a bucket, using 1 hand, a distance of 30 feet.
The results are as follows:

Left-handed carry: 25 lbs

Right-handed carry: 25 lbs

Evaluator Comments

Mr. Dinkins can carry 25 lbs with the right and left hands occasionally. This test was limited by complaints of increased back pain.

Work Simulation ► Dynamic Push/Pull

Feb 13, 2007 3:22:58 PM

The patient was asked to push and pull a sled a distance of 30 feet. The results are as follows:

Push: 15 lbs

Pull: 15 lbs

Evaluator Comments

Mr. Dinkins can push and pull 15 lbs occasionally. This test was limited by complaints of increased back and right knee pain.

Mr. Henry Dinkins

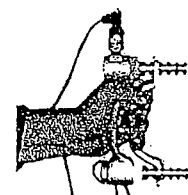
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2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007



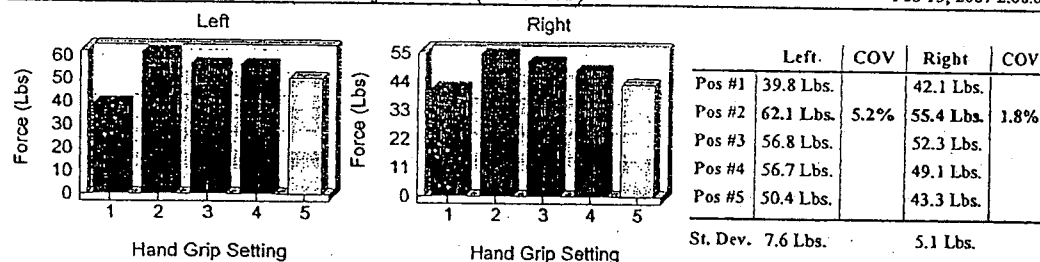
Dinkins exerted consistent effort during grip strength testing. Mr. Henry Dinkins was tested using the modified maximum voluntary effort hand grip protocol. Mr. Henry Dinkins is left hand dominant. Normative data is based on the assumption that right and left hand dominant subjects, analyzed separately show little functional difference between their mean scores.¹⁻²

Modified Maximum Voluntary Effort (MMVE)

Feb 13, 2007 2:08:02 PM



The hand dynamometer is set to each of the five available positions which vary the client's grip size. The results for each of the average maximum forces during each position are displayed by the corresponding bar graphs.



Using the Modified Maximum Voluntary Effort (MMVE) protocol over a range of five positions on the hand dynamometer, it is expected that the strength graphs obtained results in a bell-shaped curve^{3, 11, 12, 13}, even in a disabled population or if the client's hand is injured^{3, 13}, with the coefficients of variation at position 2 within the acceptable 15% or less limit.

The graph obtained for Mr. Henry Dinkins did demonstrate a bell shaped curve which may be an indicator of maximal effort and the coefficients of variation of the underlying data may be an indicator of consistent effort

³ Stokes H. 1983. The seriously uninjured hand - weakness of grip. J Occup Med 25(9):683-684.

¹¹ Niebuhr B, Marion R. 1990. Voluntary control of submaximal grip strength. Am J Phys Med Rehabil 69(2): 96-101.

¹² Matheson L, Carlton R, Micmeyer L. 1988. Grip strength in a disabled sample: reliability and normative standards. Ind Rehabil Q 1(3):9,17-23.

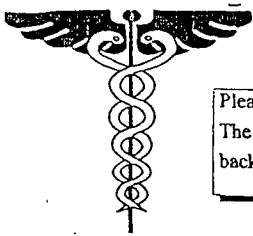
¹³ Hildreth D, Breidenbach W, Lisiter G, Hodges A. 1989. Detection of submaximal effort by use of the rapid exchange grip. J Hand Surgery 14A(4): 742-745.

COLUMBIA REHABILITATION CLINIC

2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007

Mr. Henry Dinkins





Please read:

The following tests are recommended to test for sincerity of effort in the case of lower back injuries. Please check whether the test is positive or negative.

1. Tenderness - Should be localized to a skeletal or neuromuscular structure.

Superficial Tenderness-provide light pinch to the skin over the lower back region. If there is widespread tenderness, this is considered non-physiological and is an indication of symptom magnification.

- ☒ Negative
☐ Positive

Non-Anatomic Tenderness-Perform deep palpation to the lumbar paraspinals. If there is tenderness which is widespread and not localized to any specific structures, then this is considered magnification of symptoms.

- ☒ Negative
☐ Positive

2. Simulation Tests - Give the patient the impression that a particular movement is being performed when it actually is not

Axial Loading -To perform this test apply a light downward pressure on the top of the patient's head while they are in the standing position. If increased lower back pain is reported then this is an indication of exaggeration of

- ☒ Negative *symptoms*
☐ Positive

Simulated Rotation -With the patient in the stand position and feet together, rotate the pelvis and shoulders simultaneously by applying pressure at the level of the lower forearm. If the patient reports increased pain then this is considered symptom magnification.

- ☒ Negative
☐ Positive

3. Distraction Tests - Retesting of a positive finding in a way that the patient does not recognize or expect

Distraction Test -Perform a straight leg raise with the patient in the supine position. When the SLR shows marked improvement while performed on distraction (i.e. Patient seated) this is considered positive.

- ☒ Negative
☐ Positive

4. Regional Disturbances - Divergence from accepted neuroanatomy

Regional Disturbance -These are present as motor weakness or sensory loss involving widespread regions such as the entire leg or a quarter or half of the body.

- ☒ Negative
☐ Positive

5. Overreaction - Disproportionate verbalization, facial expression, muscular tension and/or tremor or sweating

Overreaction-A disproportionate response such as verbalizations, facial expressions, collapsing etc. can be indicative of symptom magnification.

- ☒ Negative
☐ Positive

If three or more of the categories are positive then the findings are clinically significant for non-organic low back pain.

Scoring: Clinically insignificant.

COLUMBIA REHABILITATION CLINIC
2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007

Mr. Henry Dinkins



the patient reports a sitting tolerance as follows:

Evaluator Comments

Mr. Dinkins states he can sit for approximately 60 minutes. His tolerance is limited by complaints of increased back pain.

► **Standing tolerance**

Feb 13, 2007

The patient's self-reported standing tolerance is as follows:

Evaluator Comments

Mr. Dinkins states he can stand dynamically for approximately 2 hours and statically for approximately 1 hour. His tolerance is limited by complaints of increased back pain.

Cardiovascular Intake ►

Feb 13, 2007

Resting Rate (Min)	Systolic (mm Hg)	Diastolic (mm Hg)
89	152	82

Result	Normal Heart Rate	Borderline Hypertension	Normal Blood Pressure

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2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007

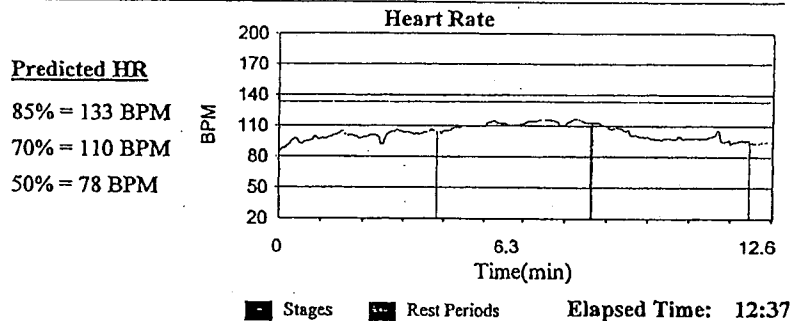
Dr. Henry Dinkins



Treadmill

1. Have you ever had a heart attack?..... ☐ Yes ☒ No
2. Have you ever had heart surgery?..... ☐ Yes ☒ No
3. Have you ever had an abnormal electrocardiogram?..... ☐ Yes ☒ No
4. Do you have heart disease?..... ☐ Yes ☒ No
5. Have you been told by a physician you have had angina?.. ☐ Yes ☒ No
6. Have you been told by a physician you have had palpitations?..... ☐ Yes ☒ No
7. Have you had a stroke (CVA)?..... ☐ Yes ☒ No
8. Is your blood pressure (BP) 159/100?..... ☐ Yes ☒ No
9. Are you pregnant?..... ☐ Yes ☒ No

Initial Heart Rate Initial Blood Pressure
89 BPM 152 / 82



Stage	Speed	Heart Rate	Blood Pressure	Grade
1. Warm-Up	2.1mph	106 BPM	140/90	0%
2. Exercise	2.1mph	117 BPM	152/90	5%
3. Recovery	1mph	113 BPM	132/84	0%

Predicted Maximum VO2	31 ml/kg/min
	12 ml/kg/min
Predicted Max Met Level	4 METS
Functional Aerobic Capacity	Moderate work
Classification of Aerobic Capacity	Good

Evaluator Comments

Mr. Dinkins completed the test. He complained of a mild increase in right knee pain during the test.

COLUMBIA REHABILITATION CLINIC
2362 TWO NOTCH RD. COLUMBIA SC 29204 (803) 799-7007

Mr. Henry Dinkins



CONFIDENTIAL
DINKINS, HENRY

Patient # 123429

March 7, 2007

This patient is a 63-year old from Dalzell. He is here for an independent medical evaluation. He has complaints of low back pain with pain radiation into both legs. He has more back than leg pain and currently his pain ratio is actually 100% back pain. He states he has had two injuries, one 5/03, the second 5/05. He apparently is under workers' compensation case with the later injury. He has seen a number of physicians including Dr. Armsey, Dr. Stacy, Dr. Zgleszewski and Dr. deHoll. Dr. deHoll was the last physician that he saw. He states he has been told that he does not need surgical intervention.

He has been through physical therapy. The TENS unit also gave him some relief. He has had one injection which sounds like an epidural. This gave him no help and in fact increased his pain.

Currently he has pain with bending and particularly with lifting. His back continues to "be sore". He has pain with lying on his stomach, coughing or sneezing.

He has not been able to return to the workplace. He works as a customer service rep at Lowe's. His job involved lifting and stacking. He has not worked since 12/5/05.

SOCIAL HISTORY: He does not smoke nor drink.

He has thyroid disease. He is otherwise healthy.

ALLERGIES: NKDA.

He has had left knee surgery and left ankle surgery. He is accompanied by a lumbar MRI. I have personally reviewed it and the radiologist's report from 8/15/05. I agree with the report, he has degenerative changes with facet arthritis at 3-4 and 4-5. He has a bulge at the 4-5 level slightly toward the left. He has no gross herniation, instability nor gross stenosis.

He is accompanied by past medical records, these include the records of Dr. Douglas deHoll. Dr. Douglas deHoll's note of 1/5/07 is reviewed. He placed the patient at maximum medical improvement at that time. There is unfortunately no mention in regards to work restrictions.

Dr. Timothy Zgleszewski's notes are reviewed. These include the functional capacity evaluation done 6/5. He felt that in regards to work restrictions the patient should lift no greater than "10 pounds on an occasional basis", he also requested no repetitive bending, lifting, or twisting and he felt that there should be no prolonged sitting, standing or walking.

Dr. Zgleszewski's note of 6/2/06 is the note that I have reviewed.

Medical records from Dr. Thomas Armsey are reviewed.

900 Bowman Road, #300
1941 Savage Rd., Ste. 100-E

Mt. Pleasant, SC 29464
Charleston, SC 29414

(843) 849-1551
(843) 763-2720

Fax 884-0629
Fax 769-6022

-195-

J. Adger Brown, Jr., MA, CDMS
Rehabilitation Consulting

Tel: (803) 738-0347
Fax: (803) 787-8662

4705 Crystal Drive
Columbia, SC 29206

April 12, 2007

TRANSMITTED VIA E-MAIL

Mr. Stephen B. Samuels, Attorney at Law
McWhirter, Bellinger & Associates
485 North Lafayette Street
Sumter, SC 29251

RE: Claimant	:Henry Dinkins
Employer	:Lowe's
DOA	:4/20/05
SSN	
Date of Interview	:4/11/07
Our File No.	:07-0410

Dear Mr. Samuels:

Attached please find my initial evaluation report and statement on your client, Henry Dinkins. As I have indicated in my report, I think this man is permanently and totally disabled. His physical condition, a fused ankle, a bad knee, and now bad back with radiation and physical restrictions, precludes his going back to what he used to do at Lowe's. As far as doing anything lighter and capitalizing on his prior skills, I think his age seriously mitigates against him. Any company that would want his finance skills is not going to want to hire someone that they have to retrain and bring up to speed just to have him retire, and companies having jobs requiring fewer skills would pass him over in favor of younger, more physically able individuals.

Thank you for allowing me to assist you in the evaluation of Mr. Dinkins' case.

Sincerely yours,

J. Adger Brown, Jr.

J. Adger Brown, Jr., MA, CDMS
Rehabilitation Consultant

JAB:gl

J. Adger Brown, Jr., MA, CDMS
Rehabilitation Consulting

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April 12, 2007

TRANSMITTED VIA E-MAIL

RE: Claimant :Henry Dinkins
Employer :Lowe's
DOA :4/20/05
SSN :
Date of Interview :4/11/07
Our File No. :07-0410

VOCATIONAL EVALUATION REPORT

INTRODUCTION:

Henry Dinkins is a sixty-three year old man seen on a referral from his attorney in connection with a work-related accident occurring in April 2005. Mr. Dinkins, who was employed as a customer service representative and pricing clerk for Lowe's stores, sustained an injury to his lower back while lifting a lawnmower for a customer. He states that he felt the sudden onset of a grabbing pain in his lower back which, within a week, was radiating into his left lower extremity. This evaluation is sought to discuss the impact of Mr. Dinkins' injury on his ability to work in some form of suitable employment consistent with factors such as his age, education, work experience, and physical limitations.

The report that follows is based on my clinical interview with Mr. Dinkins and on a review of medical records, including those of Dr. Forrest Pommerenke, M.D., Dr. Thomas Armsey, M.D., Dr. Jason J. Stacy, M.D., Dr. Timothy M. Zgleszewski, M.D., Dr. James F. Bethea, M.D., Dr. P. Douglas deHoll, M.D., a functional capacity evaluation performed February 13, 2007, and an independent medical examination from Dr. Donald R. Johnson, II, M.D.

MEDICAL HISTORY:

By way of background, Mr. Dinkins advises me that he has had a number of prior work-related injuries, all sustained at Lowe's. Sometime in 2001, he injured his left ankle, was out of work for about four to six months, and had a triple arthrodesis performed by Dr. Belding sometime in 2003.

His surgery was followed by a course of physical therapy and a return to work with a demotion from his prior position as a department manager, to working on the floor and doing customer service.

In April 2004, Mr. Dinkins had a low back injury while loading some patio blocks for a customer. He states he was put into a course of physical therapy, but did not lose any significant amount of time from work. Around May 2004, also while working at Lowe's, he had a right knee injury that resulted in surgery to the lateral meniscus performed by a Dr. Eckman. He was again put into a course of physical therapy and was out two to three months before returning to work. Mr. Dinkins is not sure if he had even completed his physical therapy before the accident of April 20, 2005.

The medical records available for my review show that Mr. Dinkins was first seen by Dr. Pommerenke, on May 4, 2005. Dr. Pommerenke diagnosed a lumbar strain and placed him on light work limitations. He continued to see Mr. Dinkins until June 20, by which time no real improvement was being recorded on the doctor's work status reports.

Almost two months later, Mr. Dinkins was referred to Dr. Thomas Armsey at the USC Specialty Clinics. Dr. Armsey diagnosed a likely L4 herniated disc with right-sided sciatica and placed Mr. Dinkins on rather sedentary duties. MRI studies found lumbar disc bulges at L3-4 and L4-5 with worsening back pain. Recommendations were made for a course of physical therapy and lumbar epidural steroid injections. By late January 2006, Dr. Armsey was still recommending sedentary activities only. By the end of May 2006, the required medical care that had been recommended by the doctor for the last nine months or so had not yet been provided due to problems with the workers' compensation carrier. In the meantime, he had been doing some home exercise, but Dr. Armsey was continuing to document continuing problems.

On June 2, 2006, an independent medical examination was obtained from Dr. Timothy Zgleszewski, who diagnosed left chronic subtalar arthritis, status-post triple arthrodesis, a right lateral meniscus injury with patella femoral chondromalacia and a status-post partial lateral meniscectomy. He also diagnosed low back pain. Dr. Zgleszewski did not believe Mr. Dinkins to be at maximum medical improvement for his lumbar injury and again recommended he handle no more than sedentary types of activities, with no prolonged sitting, standing, or walking, indicating the need to change positions every thirty minutes.

By the end of August 2006, Dr. Jason Stacy had taken over Mr. Dinkins' care from Dr. Armsey, who had left University Specialists. Dr. Stacy noted that this man still hadn't had his required therapy, had him on medication, and was still diagnosing multiple disc bulges, continuing him on sedentary activities. By early October the workers' comp carrier still hadn't approved therapy care, so Mr. Dinkins took it on himself to join the Y for exercise. Dr. Stacy recommended an orthopaedic consultation at Midlands Orthopaedics for evaluation of possible surgical needs.

On September 25, 2006, Mr. Dinkins was seen by Dr. James Bethea at Columbia Orthopaedics, who recorded X-rays showing spurring at L2, L3 and L4, with osteoarthritis and MRI studies showing degenerative disc disease at L3-4 with neuroforaminal stenosis. He also commented on the loss of disc height and signal, and disc desiccation with posterior degenerative bulging at L4-5. With all these clinical findings, it was Dr. Bethea's opinion that there are "absolutely no work restrictions."

Dr. Douglas deHoll of Midlands Orthopaedics was seen on December 19, 2006. He placed Mr. Dinkins on light duty and ordered an MRI, which showed multilevel spondylitic changes, some minimal narrowing of the thecal sac at L4-5 with bilateral neural stenosis at L4-5, and L5-S1. Dr. deHoll did not believe Mr. Dinkins to be a surgical candidate and recommended continuing conservative care, noting him to be able to go back to regular duty with no restrictions as of January 5, 2006.

On February 13, 2007, a functional capacity evaluation was performed, placing Mr. Dinkins at the light physical demand category, with the inability to do anything more than occasional squatting, bending, twisting, and stair climbing. He was noted to be able to sit for about an hour at a time and stand for about two hours, again confirming the ability to work in a light duty situation.

Finally an independent medical examination was obtained from Dr. Donald Johnson on March 7, 2007, with Dr. Johnson making the same diagnoses as had been made in the past, but stating his disagreement with doctors who have said that there should be no work restrictions. Dr. Johnson stated that if he returned to a workplace doing the type of activity he did previously, he would worsen his condition and might even be forced into a surgical intervention. He recommended a ten pound lifting restriction and the need to avoid repetitive activities. He also stated he would need long term anti-inflammatory medications as well.

According to Mr. Dinkins, he is experiencing some occasional tingling in his right thigh, occasionally has difficulty reaching overhead because of pain, denies any particular problem sitting, states that he can stand and walk in combination for about thirty minutes at a time, maybe up to a few hours a day, bends, kneels, and stoops with difficulty, can lift five to ten pounds on a regular basis without too much of a problem, perhaps somewhat more if he pushes himself, stair climbs slowly, and denies any problems with gripping, grasping, speaking, hearing, or breathing.

Mr. Dinkins states he has some occasional problems with his balance, making him guarded in his movements, particularly when he has been on his feet for extended periods of time or on uneven terrain.

Mr. Dinkins is an ambidextrous man who writes with his right hand and performs many other activities with his left. He is five feet seven and a half inches tall and now weighs 172 pounds, having gained approximately 15 pounds since the time of his accident. Presently, he is under the care of Dr. Jason Stacy, who was last seen two weeks ago. He takes Ibuprofen, 800 mg three times a day, Tramadol for pain once a day as needed, and Synthroid for his thyroid condition. He is not taking any over-the-counter medications. As noted, he has joined the Y and uses that facility as a forum for performing the exercises taught to him by Access Therapy where he finally was permitted to go for care.

EDUCATIONAL BACKGROUND:

Mr. Dinkins completed the twelfth grade at Ebenezer High School in New York in 1961, then attended Brooklyn College for a brief period of time, then obtained an advanced certificate from American Institute of Banking with a degree in business administration and banking in 1979. He then attended Pace University in New York City, studying business, obtaining an Associate's degree in business administration in 1981. Beyond this, he has also taken additional courses relative to his prior work. Based on this man's education and work experience, the assumption is made that he is a quite literate individual who would not have any problems in a job requiring regular reading and writing. There is no history of any military service.

WORK HISTORY:

All of Mr. Dinkins' prior work-related injuries, and particularly his injury of April 20, 2005, occurred while employed at Lowe's. Mr. Dinkins began with them in April 1999 and left work in December 2005. Mr. Dinkins began work as a customer service representative and then advanced to be a department manager responsible for auditing duties, and following his ankle injury was put on the floor doing more customer work, and was working as a customer service representative and pricer when he had the current injury.

In his most recent job, he was responsible for getting price changes from the computer, printing out labels for the stock, repricing items on the shelves, updating their records, and helping customers on the floor. This work, as he described it and as it is normally performed, is semiskilled to skilled work normally performed at the medium level of physical exertion. This work requires regular standing, walking, climbing ladders, reaching, handling, moving, and lifting stock, and other such duties that would fall into the strength category of medium.

Before working at Lowe's, Mr. Dinkins' work career was more finance and banking oriented.

Between November 1998 and April 1999, Mr. Dinkins worked as a loan processor and outside collector for World Finance, earning approximately \$22,000 a year. He would assist customers in opening loans, process them, checking references, and handling the paperwork necessary for processing loans. He was also responsible for calling customers on the phone, visiting them, and following up on collections. This work was skilled work performed at the light level of physical exertion.

From 1992 to 1996, Mr. Dinkins was the vice president of operations for Bank Bumiputra in New York, earning approximately \$62,000 per year. In this job he would oversee the cashiers, supervise the investments, purchase money for the bank, make overnight investments, handle foreign exchanges and the money market, as well as preparing letters of credit and handling systems operations. This work was skilled work performed at the light level of exertion. Before that, Mr. Dinkins worked at Continental Bank International as vice president of operations over trade services, performing work analogous in its physical demands to those at Bank Bumiputra.

From a vocational standpoint, Mr. Dinkins' educational background prepared him to enter banking, which he did in the late '80s and early '90s. He worked consistently in this type of work until 1996 when he moved from New York to South Carolina. He spent approximately two years trying to find a job, constantly being told he was over qualified or otherwise not suited, eventually finding a job at World Finance, which he found personally unpalatable, thus bringing him to Lowe's. His work history shows consistent employment at the semiskilled and usually skilled level in a financial environment, or certainly one working with figures and numbers. These skills are transferrable, in the abstract, to jobs that exist at the sedentary and light levels.

OBSERVATIONS:

Mr. Dinkins arrived on time for his scheduled appointment with me. His presentation was that of a casually, but neatly dressed and well-groomed man, who appears somewhat younger than his given age. Throughout the course of our interview, which lasted approximately an hour and forty-five minutes, Mr. Dinkins sat in some degree of apparent discomfort in a straight-back, well-upholstered chair, shifting about frequently, and occasionally standing up to find a more comfortable position. He comes across as an intelligent, articulate, friendly man, who at the same time is aware of his physical limitations and his rapidly diminishing chances of employment with the lengthening amount of time he has been out of work. The information Mr. Dinkins provided was consistent with the medical record, given in a straightforward manner. He is an upbeat and optimistic gentleman who seems to have a realistic understanding of his present condition and limitations.

CONCLUSIONS:

Henry Dinkins is a sixty-three year old man injured in April 2006 who has been out of work for a little more than a year and a half. His age classifies him as someone approaching retirement, with his past work at Lowe's being semiskilled and medium in its physical demands. The medical record, when taken in total, portrays an individual who is likely capable of many phases of light work, who probably would have difficulty returning to the full range of his former employment, particularly if it requires constant standing and walking, or any significant amount of regular lifting of more than a minimal amount. If there is any question regarding Mr. Dinkins' motivation, one has only to look at his history of having been injured on three prior occasions with the same employer and going back to work each time.

Looking at Mr. Dinkins' vocational future, it looks fairly clear that he is not going to be able to return to his former work, or anything like it. I suspect that given his history with Lowe's, if they had any type of suitable employment to offer Mr. Dinkins; they certainly would have done so. In fact, I understand that they tried to get him to come back to work as a cashier; however, this job requires constant standing and a certain degree of lifting.

Mr. Dinkins has an extensive history in banking and finance, with skills that are normally associated with sedentary or light jobs. However, it's been many years since Mr. Dinkins has performed this type of work, and undoubtedly many of these skills have become obsolete and would require some degree of retraining and readjustment before he would be up to speed in any type of new job. Unfortunately, being sixty-three years old, Mr. Dinkins is already at an incredible deficit for anyone hiring him into any type of meaningful sustained employment. By the time this man was brought into a company, provided training, and adjusted to a new job, he would be ready to retire.

From a vocational standpoint, it is my opinion, within a reasonable degree of vocational certainty, that Mr. Dinkins is physically incapable of performing any sort of strenuous work as he did in the recent past, and, in terms of significantly lighter jobs, would face such an incredibly restricted labor market and extreme prejudice due to his age, that he would be unhireable for those few jobs he might be physically capable of performing. Because of this catch 22, it is my opinion that Mr. Dinkins is unlikely to reenter the world of work and should be considered permanently and totally disabled.

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April 12, 2007

TRANSMITTED VIA E-MAIL

Mr. Stephen B. Samuels, Attorney at Law
McWhirter, Bellinger & Associates
485 North Lafayette Street
Sumter, SC 29251

RE: Claimant	:Henry Dinkins
Employer	:Lowe's
DOA	:4/20/05
SSN	:
Date of Interview	:4/11/07
Our File No.	:07-0410

Dear Mr. Samuels:

Attached please find my initial evaluation report and statement on your client, Henry Dinkins. As I have indicated in my report, I think this man is permanently and totally disabled. His physical condition, a fused ankle, a bad knee, and now bad back with radiation and physical restrictions, precludes his going back to what he used to do at Lowe's. As far as doing anything lighter and capitalizing on his prior skills, I think his age seriously mitigates against him. Any company that would want his finance skills is not going to want to hire someone that they have to retrain and bring up to speed just to have him retire, and companies having jobs requiring fewer skills would pass him over in favor of younger, more physically able individuals.

Thank you for allowing me to assist you in the evaluation of Mr. Dinkins' case.

Sincerely yours,

J. Adger Brown, Jr.

J. Adger Brown, Jr., MA, CDMS
Rehabilitation Consultant

JAB:gl



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& General Orthopaedics

S. Wendell Holmes, Jr., M.D.
Sports Medicine, Arthroscopy
& General Orthopaedics
William H. Kirkley, M.D.
General Orthopaedics
Mark D. Locke, M.D., FAAP
Pediatric Orthopaedics
Earl B. McFadden, Jr., M.D.
Hand & Upper Extremity Surgery

Frank K. Noojin, III, M.D.
Sports Medicine, Arthroscopy
& General Orthopaedics
Bradley P. Presnal, M.D.
Total Joint Replacement, Arthroscopy
& General Orthopaedics
W. Alaric Van Dam, M.D.
Musculoskeletal Medicine
& Electrodiagnostics

Henry Dinkins 663039

EMPL: Lowe's

DOI: 6/22/02

Richland Office

HISTORY OF

PRESENT ILLNESS:

Mr. Dinkins suffered an on-the-job injury on approximately June 22, 2002 when he worked at Lowe's. After that, he was seen by Dr. David Lee and then subsequently by Dr. Evan Ekman for evaluation of this condition. He was noted to have lateral compartment arthritis and a degenerative lateral meniscus tear. He ultimately underwent knee arthroscopy on December 9, 2003 with partial lateral meniscectomy and debridement of his lateral compartment. He continues to have problems with this knee. He primarily has lateral compartment pain. It's made worse with activity, made better with activities such as squatting and walking fast. He states that his pain is normally about 4.5/10 and sometimes ranges up to 10/10.

PAST MEDICAL HISTORY:

Past Medical History: Unremarkable. Surgical History: Tonsillectomy. Arthroscopy. Family History: Unremarkable. Medications: Synthroid. Allergies: None Listed. Social History: Does not smoke. Does not drink alcohol. Review of Systems: Joint Pain. Joint Swelling.

PHYSICAL EXAMINATION:

The right knee is examined. The patient has 1+ effusion, negative Lachman. The patient has a normal posterior drawer, medial and lateral collateral ligament stress test. Range of motion is 3-135 degrees. Positive lateral joint line tenderness.

RADIOGRAPHS:

Standing radiographs show significant narrowing of the lateral compartment of the knee especially with the 45-degree PA view, very little lateral joint space remaining.

IMPRESSION:

LATERAL COMPARTMENT DEGENERATIVE
ARTHRITIS, RIGHT KNEE

PLAN:

My recommendations would be an OA adjuster brace and possibly Synvisc injections to control his pain at present. At some point, he will require a total knee replacement but that would be based on his levels of pain with everyday activity. I advised him of this. His permanent impairment based on the findings today would be based on Table 1731 in the Guides, 25% lower extremity and 10% whole person.

SWH:di

S. Wendell Holmes, Jr., M.D.

cc: (Specialty Risk Services/Dee Phifer, Adjuster/CL#: CCE11098C)

McAngus, Goudelock, & Courie/Attn: Valerie Cash

DD: 12/29/05, DT: 12/30/05

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

ORIGINAL

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-43-0087

Henry Dinkins, ... Appellant,

v.

Lowe's Home Centers, Inc. -Sumter, SC and
Specialty Risk Services, LLC, ... Respondents.

BRIEF OF APPELLANT

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Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Did the Workers' Compensation Commission err in holding an injured worker was not entitled to proceed under the general disability statute when he had a pre-existing disability from prior injuries with the same employer, and those pre-existing disabilities combined with a subsequent work related injury to create greater disability?
2. Did the Workers' Compensation Commission err in making a disability award under the scheduled member statute (S. C. Ann. § 42-9-30 (1985)) when an award under the general disability statute (S. C. Ann. § 42-9-10 (1985)) would have resulted in a more munificent remedy for the injured worker?
3. Did the Workers' Compensation Commission err in failing to make a ruling based on the proof of the injured worker's unsuccessful work search when it is well established that total disability can be shown by three alternative methods of proof including proof of "diligent efforts to secure employment" and the injured worker was entitled to a ruling on the issue as a matter of law?
4. Did the Circuit Court err in failing to remand the case to the Workers' Compensation Commission with instructions to make specific findings of fact and conclusions of law to affirmatively address disability proven by unsuccessful "diligent efforts to secure employment?"

STATEMENT OF THE CASE

This is an appeal by the Claimant, Henry Dinkins, from the Court of Common Pleas affirming a Decision and Order of the Workers' Compensation Commission. The claim arose out of an admitted work-related injury suffered by Dinkins on April 20, 2005. Dinkins' employer, Lowe's Home Centers, accepted the claim and provided benefits pursuant to Title 42.

After a course of treatment, Dinkins was declared at Maximum Medical Improvement (MMI) by the authorized treating physician. Employer filed a Form 21 requesting a hearing to terminate temporary compensation and to have the Commission determine Dinkins' disability.

A hearing was held on August 27, 2007 before the Honorable Andrea Pope Roche. At the hearing, Dinkins contended he was permanently and totally disabled due to the combined effects of his April 20, 2005 back injury and two previous work-related injuries to his legs. Employer contended Dinkins was limited to a disability award to his back.

By Decision and Order dated January 23, 2008, the single Commissioner found, *inter alia*, that Dinkins' compensable injury was confined to his back. She further found the combined effects doctrine of Ellison v. Frigidaire Home Products, 360 S.C. 236, 600 S.E.2d 120 (2004) was inapplicable. She found Dinkins had sustained 12% permanent partial disability to his back. [R. p. 12-27].

Dinkins timely appealed to the Appellate Panel of the Full Commission on February 6, 2008.. By Decision and Order dated December 18, 2008, the Appellate Panel affirmed. [R. p. 28-37].

Dinkins timely appealed to the Court of Common Pleas. The case was heard by the Honorable George C. James, Jr. Judge James issued an Order affirming the Commission's Order on March 30, 2009. [R. p. 38-49]. This appeal followed.

STATEMENT OF THE FACTS

The Claimant, Henry Dinkins, is 63 years old (as of the date of the hearing). He is a high school graduate and has an Associates degree in business. [R. p. 61].

Before moving to South Carolina in 1996, he worked as an operations manager in a bank. When he moved to South Carolina, he searched for work in banking for a year, but was unable to find any work in that field. He finally found a job with a high interest lender, World Finance Company, where he worked for about one year. He ultimately left World Finance because he could not in good conscience continue to offer 250-300% interest rate loans and because it was not safe for him to visit people in their homes to collect payments. [R. p. 62].

Dinkins then went to work for Lowe's in April 1999. He started as a Customer Service Representative. He was promoted to Assistant Department Manager and then to Paint and Home Decor Department Manager. [R. p. 63, ll. 7-19].

On May 1, 2001, Dinkins suffered the first of three major injuries at Lowe's when he injured his left ankle. The claim was accepted. On May 27, 2003, Dinkins underwent a triple arthrodesis (fusion of the ankle). He was released for the left leg injury on October 14, 2003 with a 25% impairment rating from Dr. Belding. The Commission found Dinkins sustained 40% disability to the left leg for this first injury. [R. pp. 2-5, 63-64].

While still under care for the left leg injury, Dinkins suffered a second injury at Lowe's, this time a right knee injury on June 22, 2002. Dinkins underwent surgery for the knee injury. He was released with a 25% rating from Dr. Holmes, the treating physician, along with 4% from Dr. Ekman and 5% from Dr. Zgleszewski. The Commission found Dinkins sustained 30% disability to the right leg for the second injury. [R. pp. 6-11, 64-65].

Dinkins suffered a third injury on April 20, 2005 when he injured his back. [R. p. 66]. This third injury is the subject of this appeal.

Dinkins received treatment from Dr. Stacey, an orthopaedic surgeon. Dr. Stacey diagnosed him with "L4 radiculopathy." [R. p. 127]. Dr. Stacey referred Dinkins to Dr. deHoll for a surgical evaluation. Dr. deHoll declined to recommend surgery and released Dinkins with a 5% impairment rating. [R. p. 44]. Dinkins returned to Dr. Armsey, Dr. Stacey's partner (Dr. Stacey became ill during this time). Neither Dr. Stacey nor Dr. Armsey ever declared Dinkins to be at MMI. Dr. Stacey ultimately referred Dinkins to Dr. Zgleszewski for pain management. Dr. Zgleszewski opined Dinkins was not at MMI and recommended further treatment. [R. p. 177-181].

During this time, Dinkins was seen by Dr. James Bethea and Dr. Don Johnson. Dr. Bethea assigned a 5% impairment rating. [R. p. 128]. Dr. Johnson opined Dinkins was at MMI with an 8% rating to the whole person. Dr. Johnson went on to recommend "long-term anti-inflammatory medications." He also agreed Dinkins "should be placed on sedentary to light work with a lifting restriction of 10-pounds on an occasional basis. He should try to avoid repetitive bending and twisting if possible. If he does not his condition will certainly become exacerbated." [R. pp. 194-195].

After the two leg injuries, Lowe's demoted Dinkins from a manager to a customer service representative to accommodate his physical restrictions. The demotion happened before the 2005 back injury. Dinkins applied for administrative positions within Lowe's but was turned down. [R. pp. 79-80, 90-91].

Dinkins last worked for Lowe's on December 5, 2005. His doctor restricted him from lifting over 20 pounds. Lowe's had no job for him within those restrictions. Lowe's called Dinkins back

into work in February 2007, but after confirming his restrictions, the offer of work was withdrawn. [R. pp. 67-70]. Dinkins was told by Lowe's managers that they would call him back, but they never did.

Acting on the assumption that his employment at Lowe's had been terminated, Dinkins began looking for work. Since his restrictions precluded any kind of physical activity, he applied for work in banks and other office environments throughout Columbia, Florence, Camden and Sumter. He was able to get two interviews with banks and one with an insurance company. However, no one offered him a job. [R. pp. 80-83].

Dinkins continues to have significant physical limitations due to his injuries. The Commission found that as a result of the back injury, "the Claimant's ability to perform work was limited to a sedentary to light duty work status with a lifting restriction of 10 pounds occasionally and restrictions on repetitive bending and twisting." [R. pp. 22, 184-195].

Dinkins had pre-existing physical limitations from his two leg injuries. The first injury on May 1, 2001 resulted in a triple left ankle arthrodesis (fusion of the joint). The Commission found as a fact that, "Claimant continues to experience significant pain, loss of motion and altered gait. . . Claimant's symptoms continue to cause problems running, jumping, walking, walking on uneven surfaces, negotiating stairs and standing." [R. p. 10].

The second injury on June 22, 2002 resulted in knee surgery and ultimately will result in a knee replacement. [R. p. 204]. The Commission awarded 30% disability to the right leg from the knee injury. The Commission found Dinkins had "limitations in his ability to stand, squat and walk due to his injury." [R. p. 3].

Shortly before the hearing on his back injury, Dinkins was evaluated by two vocational

experts: Adger Brown and Glen Adams.

Brown opined Dinkins was permanently and totally disabled based on his physical limitations combined with his age and lack of transferable skills. Brown noted Dinkins had an extensive history in banking and finance, but since it had been many years since he worked in that field, he would need to be retrained. He opined that Dinkins' age made retraining unrealistic for an employer. He concluded:

From a vocational standpoint, it is my opinion, within a reasonable degree of vocational certainty, that Mr. Dinkins is physically incapable of performing any sort of strenuous work as he did in the recent past, and, in terms of significantly lighter jobs, would face such an incredibly restricted labor market and extreme prejudice due to his age, that he would be unhireable for those few jobs he might be physically capable of performing. Because of this catch 22, it is my opinion that Mr. Dinkins is unlikely to reenter the world of work and should be considered permanently and totally disabled. [R. p. 202].

Adams agreed Dinkins could not return to work at Lowe's or any job requiring exertion greater than a light level. [R. p. 158]. He also concurred that "[h]is age will be a limiting factor in obtaining those jobs that are highly skilled." [R. p. 158]. Adams did opine Dinkins qualified for occupations "in the retail industry, including sales positions, clerical office positions, customer service and service provision." [R. p. 158]. He also opined Dinkins qualified to return to positions in the banking and finance industries. [R. p. 158].

Adams went on to opine that:

A labor market survey was conducted on the factors outlined in this report in order to identify actual jobs for which Mr. Dinkins qualifies. A stable labor market was found to exist in his local labor market in the banking, financial and retail industries. Based on the strength of his prior work history in management positions, as well as the other factors outlined in this report, he is currently employable in his labor market. [R. p. 158-159].

Upon learning Lowe's had no work within his restrictions, Dinkins applied for numerous

other jobs in the Sumter, Florence, Camden and Columbia areas. [R. p. 80-85]. He applied to every bank in the area. He also asked Glenn Adams for advice, although none was forthcoming. Dinkins read Adams' report and used the report to apply for even more jobs, *including every job listed by Glenn Adams that he was physically capable of doing*. [R. p. 85, l. 15-p. 86, l. 24; p. 88, ll. 5-20]. Dinkins has received no offers. He remains unemployed.

STANDARD OF REVIEW

A court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are affected by other error of law. Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634, 637 (Ct. App. 1999). Upon a proper appeal under the Worker's Compensation Act when only a question of law is involved, the facts having been concluded by the finding of the Commission, the appellate court as to review and correction of errors has plenary powers. Jolly v. Atlantic Greyhound Corp. 207 S.C. 1, 35 S.E.2d 42 (S.C. 1945).

The evidence will ordinarily be regarded as sufficient where the circumstances shown tend to establish the ultimate facts in issue and provide a basis from which they reasonably may be inferred. An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures. Broughton v. South Carolina Game and Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951). The substantial evidence rule, prescribed in the statute, means the appellate court will not overturn a finding of fact by an administrative agency unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276, S.E.2d 304 (1981). However, when only one reasonable inference can be deduced from the evidence, it becomes a question of law for the courts. Kinsey v. Champion

American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977). The Commission must consider all the evidence in the record when developing its findings of fact. Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App.1999).

Not only must findings of fact be made upon the essential factual issues by the Commission, but they must be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings. Generalized, conclusory, or incomplete findings will not suffice as findings of fact. Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct App. 1991). Where the decision of the commission fails to comply with the foregoing requirements, it will ordinarily be reversed and the cause be remanded to the commission, where the evidence is in conflict, in order that such detailed and specific findings may be made as will enable the appellate court to properly review the factual and legal basis of the award. Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970).

ARGUMENT

1. A workers' compensation claimant with preexisting work-related disabilities which combine with a new work-related injury to cause greater disability is entitled to an award for general disability.

The Commission refused to consider an award of general disability because it held the case was controlled by Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003). Wigfall reaffirmed the court's holding in Singleton that an injury to a scheduled member which is the sole cause of a claimant's disability may be compensated only under the scheduled injury statute. A key exception applies here. Dinkins' back injury combines with his previous ankle and knee injuries to result in greater disability. See Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664

(2006)(applying S.C. Code Ann. § 42-9-400 (1985)).

A. Dinkins' back injury in combination with his previous knee and ankle injuries results in greater disability than the back injury alone.

Under the Workers' Compensation Act, an injured worker is entitled to compensation and medical benefits for disability arising from a permanent impairment if the combined effect results in a substantially greater disability. Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (2006). The Commission found Ellison did not apply to the instant case because:

the Claimant's current inability to work, if any, is secondary solely to his back injury. The knee and ankle injuries he sustained in his previous work-related accidents do not contribute to his disability as defined by § 42-1-10 in any way; therefore, the Claimant's reliance on Ellison and § 42-1-400 (a) is misplaced. [Order, p. 14 (emphasis in original; internal citations omitted)].

This finding is completely contrary to the evidence, *including the previous findings by the Commission* in the two earlier cases. See Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 439 S.E.2d 859 (Ct. App. 1993), *affirmed as modified*, 317 S.C. 306, 454 S.E.2d 320 (1995) ("Viewing the record as a whole, we reach the inescapable conclusion that the commission's decision rested on a clearly erroneous view of the evidence before it."). As the knee and ankle injuries were the reason Lowe's demoted Dinkins from manager to customer service representative, it simply cannot be said that these injuries "do not contribute to his disability . . . in any way."

The test for Ellison to apply is whether the combined effects of the injury and the pre-existing condition hinder reemployment. As the Supreme Court explained:

The language of § 42-9-400(a) and (d) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing condition hinders reemployment. There is no requirement that the pre-existing condition aggravated the injury, or that the injury aggravated the pre-existing condition, so long as there is a greater disability simply from the "combined effects" of the injury and the

pre-existing condition. Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (2006).

Dinkins clearly satisfies this test.

Instead of applying the test set out by the Supreme Court, the Circuit Court created a 5-element test, to wit: “(1) pre-existing permanent physical impairment that is a serious hindrance or obstacle to employment or re-employment; (2) a subsequent work related single member injury; (3) resulting in substantially greater inability to earn wages; (4) by reason of the “combined effects” of the pre-existing impairment and subsequent injury; and (5) than would have resulted from the work injury alone.” [R. p. 43-44 (emphasis in original)].

The Circuit Court’s test is problematic. The court changed the statute’s reference to “disability that is substantially greater” to “substantially greater inability to earn wages.” The reference to *disability* in the statute refers to disability greater than the scheduled member awards found in S.C. Ann. § 42-9-30 (1996). Ellison is based on the logical premise that the combined effect of multiple injuries results in greater disability than the disability presumed by the values assigned in the scheduled member statute. To satisfy Ellison, Dinkins merely needs to show that the combination of his leg and back injuries is a hindrance to employment.

At oral argument before the Circuit Court, Lowe’s essentially conceded that Dinkins met the requirements of Ellison – even the more stringent test adopted by the Circuit Court. As described by Lowe’s attorney:

[. . .] if I could just maybe apply the real world situation, what it envisions is somebody who has a prior work injury and is somehow restricted from what they would normally do in the work place but it doesn’t . . . that restriction doesn’t totally take them out of the work force. Then they have a third injury or a second injury or a subsequent injury, however that is, that that’s kind of the straw that broke the camel’s back. In other words, there was [. . .] let’s say a guy has a . . . a knee injury

from a prior impairment and he has a restriction of no let's say squatting. But he's able to sit down without any limitations. Then let's say he has a subsequent . . . that . . . that definitely impacts his ability to work. I think that situation would meet the definition of a . . . of a hindrance or obstacle to employment.

Obtaining employment or re-employment or obtaining employment I believe can be read into that Statute. Well, and then subsequently has a back injury and because of a back injury he can't sit any more so in a . . . so now you have a true combination. You have a guy who has a pre-existing impairment for which he cannot squat but he was able to sit. Now he has a subsequent injury that . . . that takes sitting out of the equation so that is a combination. [R. pp. 101, l. 15-p. 102, l. 7].

After setting out – correctly – the Ellison test, Lowe's attorney argued that the reason the above test did not apply was because "Mr. Dinkins did not have any specific work restrictions as a result of the prior injuries." [R. p. 102, ll. 9-21]. Lowe's contends this argument is supported by Dinkins' testimony that there weren't any specific work restrictions for his ankle and knee injuries. However, Dinkins' testimony on this point was in response to an earlier question about his "*current work restrictions*" – which in itself was asked as a follow up question to questions about his *prior injuries*. As he had already testified at length about his previous injuries, Dinkins was plainly stating that his "current work restrictions" were "secondary to [his] back injury" and did not include any restrictions for his ankle or knee injuries. The evidence is overwhelming that Dinkins had specific work restrictions from his two previous injuries substantial enough for Lowe's to demote him.

Dinkins had two very serious injuries at Lowe's before he suffered his back injury. The first injury on May 1, 2001 resulted in a triple left ankle arthrodesis (fusion of the joint). More importantly, the Commission found as a fact that, "Claimant continues to experience significant pain, loss of motion and altered gait." As to disabling restrictions from the ankle injury, the Commission found, "Claimant's symptoms continue to cause problems running, jumping, walking, walking on uneven surfaces, negotiating stairs and standing." [R. p. 10].

The second injury on June 22, 2002 resulted in knee surgery and ultimately will result in a knee replacement. [R. p. 204]. The Commission awarded 30% disability to the right leg from the knee injury. The Commission found Dinkins had "limitations in his ability to stand, squat and walk due to his injury." [R. p. 3].

The first two injuries caused a substantial level of disability. In fact, Lowes' demoted Dinkins from a department manager position to customer service representative because of these previous injuries. Thus, not only did Dinkins have substantial physical limitations from his leg injuries, they also caused him to lose a managerial position. It is an error of law for the Commission to make findings inconsistent with its previous Orders involving the same parties.

Dinkins' current disability is largely a function of his combined physical limitations. Although he has substantial limitations from his back injury alone, he has additional limitations from the previous leg injuries. The combined effect is shown by the Functional Capacity Evaluation (FCE) of February 17, 2007. The FCE placed him in the light physical demand category. A number of the limitations shown by the FCE are directly related to a combination of the back and leg injuries, to wit:

Mr. Dinkins is unable to assume a squatting position secondary to limited range of motion and complaints of pain in the low back, right knee, and left ankle. [R. p. 187].

Mr. Dinkins can push and pull 15 lbs. occasionally. This test was limited by complaints of increased back and right knee pain. [R. p. 189].

There is no question that these limitations are a hindrance to employment. Even Glenn Adams noted "Negative factors in his vocational profile include residual physical capacities limiting his employment to jobs ranging from 'light' to 'sedentary'. Based on his residual functioning, he does not qualify to return to *any* of his previous employment at Lowe's requiring exertion greater than a

light level.” [R. p. 112 (emphasis added)].

As Dinkins met this requirement, he is entitled to proceed under Ellison. This is particularly so in a case such as this where the pre-existing condition was the result of workplace injuries with the same employer. The fundamental purpose behind the Second Injury Fund was to encourage employers to hire or retain employees with physical disabilities. City of Greenville v. South Carolina Second Injury Fund, 339 S.C. 141, 528 S.E.2d 91 (Ct. App. 2000). This is accomplished in a case such as this by the statutory provision that ensures Lowe’s will be reimbursed by the Fund for the greater disability suffered by Dinkins as a result of the combined effects of his three accidents.

There are two steps in an Ellison case. The first is the showing of the combined effects as described above. The second stage in the analysis is determining whether the injured worker suffered a partial or total loss of earnings capacity.

B. The Commission must award compensation for loss of earnings capacity under § 42-9-10 because this would result in a disability greater than the presumptive disability provided for under the scheduled member section (§ 42-9-30).

The evidence in this case shows that Dinkins has lost any prospect of employment with Lowe’s and, despite diligent efforts, has been unable to find any employment within his restrictions. As an award under § 42-9-10 would be larger than the single member award made by the Commission, the Commission on remand should be directed to apply the codes section which would result in the greatest possible disability award. S.C. Code Ann. § 42-9-10 (1996)(setting out requirements for general disability).

The Commission is required to apply whichever statute provides the greatest benefits for the Claimant. The policy behind the general disability portion of the act provides the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the

scheduled member section. See Brown v. Owen Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct.App.1994). This concept is practically identical to North Carolina's *Doctrine of Munificent Remedy*. It would defeat the purposes of the Act to deny a Claimant the opportunity to establish a greater disability than he would receive under the scheduled member statute.

Under the Doctrine, "where two remedies are created side by side in a statute, the Claimant should have the benefit of the more favorable." Gupton v. Builders Transport, 357 S.E.2d 674 (N.C. 1987), quoting 2 A. Larson, *The Law of Workmen's Compensation* Sec. 58.25 (1987). In other words, where a claimant has established entitlement to a greater award under § 42-9-10 or 42-9-20 than he would receive under a scheduled member award, the Commission is required to make the most favorable award. See McLean v. Eaton Corp., 481 S.E.2d 289 (N.C. App. 1997)(error for Commission to award partial permanent disability under scheduled injury statute without assessing whether or not the lost income statute would provide a more munificent remedy).

If interpreted under the Brown framework, Dinkins would be entitled to an award for loss total disability under § 42-9-10. The Commission erred by failing to consider an award under § 42-9-10. On remand, the Commission should be instructed to apply the code section which would result in the more favorable remedy for Dinkins.

2. As Dinkins presented proof that he could not obtain gainful employment despite a diligent work search, he is entitled to a ruling on whether he has proven a total loss of earnings capacity.

The Commission is required to rule on all issues before it. It is not legally sufficient for the Commission to consider only one of the two methods of proving his case submitted by Dinkins. Our courts have universally vacated orders which failed to specifically address facts essential to a proper determination of the issue. See, e.g. Gray v. Laurens Mill, 231 S.C. 488, 99 S.E.2d 36 (S.C.

1957)(remanded because commission made no specific findings on whether Claimant had reasonable excuse for failing to provide timely notice of injury); DiMaria v. Multimedia, Inc., 308 S.C. 387, 418 S.E.2d 324 (Ct. App. 1992)(remanded because commission made no specific findings on whether trip on which employee was injured was work related or personal). As a matter of law, the Commission must make a finding as to whether or not the diligent work search conducted by Dinkins proved “his inability to perform services other than those that are ‘so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.’” Coleman v. Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965). This omission requires a remand with instructions to consider the evidence concerning Dinkins’ unsuccessful search for employment and make appropriate findings of fact and conclusions of law.

It is well established that an injured worker can prove loss of earnings capacity by a diligent, but unsuccessful work search. See Coleman v. Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965). Coleman sets out three alternative methods of proof (1) expert vocational testimony; (2) testimony of employers who refused to hire the claimant; and (3) “diligent efforts to secure employment.” Id. Any one of these methods will suffice.

Coleman is remarkably similar to the instant case. As in this case, in Coleman “[t]he uncontradicted medical evidence is to the effect that following and as a result of his injury he is no longer able to perform the duties incident to his regular vocation. He was refused further employment in such capacity by his employer and told that the employer had no light work which he was able to perform.” Id. Coleman admitted he was “able to drive light equipment and perform various jobs which would require only light work . . . if such employment be available.” Id.

The problem for both Coleman and Dinkins is that no employer would hire them to do light

work. In Coleman,

The findings of fact by the Commission that the employee had been unable to obtain employment in the open labor market suitable to his capacity, or otherwise, due to his injury and had suffered a total loss of wage earning capacity, rests solely upon the testimony of the employee as to his efforts to obtain employment. He testified that between the date of his discharge by the doctor in October and the date of the hearing the following January, a period of approximately three months, he not only repeatedly sought employment with respondent, which was refused, but sought employment through the South Carolina State Employment Service and some eighteen other possible or potential employers. According to his testimony, the positions which he applied for ranged from night watchman to manager of an apartment building. He further testified that he was seeking any job he could find within his capabilities, and that up to the date of the hearing he had been unsuccessful. Id.

Dinkins presented similar testimony. In one respect, his testimony is even more significant than Coleman's for Dinkins testified he applied for the very jobs that Adams opined showed he was employable.

The fact Dinkins sought help from Glenn Adams and applied for every potential job listed by Adams – to no avail – shows that Adams' opinion does not hold up to a real world test. In the real world where employers actually decide who they want to hire from competing candidates, Dinkins did not fare near as well as predicted. Glenn Adams' conclusions were based on unsupported speculation that work was available in the open market for someone of Dinkins' profile. The diligent efforts made by Dinkins show, unfortunately, that his outdated skills, age and physical limitations preclude him from successfully obtaining work in the competitive market. The Commission's failure to consider this essential element of the Coleman test is reversible error.

The Commission is required to consider *all* the evidence in the record. While it has discretion to weigh conflicting evidence, it cannot ignore evidence. See Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App.1999)(Commission must consider all the evidence

in the record when developing its findings of fact). Moreover, the Commission must make specific, express findings of fact. Aristizabal v. Woodside-Division of Dan River, 268 S.C. 366, 234 S.E.2d 21 (1977). The findings of fact must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. See, Able Communications v. South Carolina Public Svc. Comm'n., 290 S.C. 409, 352 S.E.2d 151 (1986); Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970). If the findings of fact are not sufficient for review, the appellate court must remand the case back to the agency with instructions to make detailed findings of fact in support of its ruling. Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct. App.1991). It may be appropriate to rehear the case or take additional testimony. Gray v. Laurens Mill, 231 S.C. 488, 99 S.E.2d 36 (S.C. 1957).

In this case, the Commission got halfway there. It found as a fact that:

Based on the medical evidence, testimony, and vocational evidence presented, the Claimant failed to satisfy his burden that he is entitled to compensation for loss of earning capacity pursuant to § 42-9-10 or § 42-9-20 as a result of his April 20, 2005 work-related accident. The Claimant's vocational evaluation, determined that based on the strength of the Claimant's prior work history in management positions, as well as the other factors, the Claimant is employable in his labor market. (Defendants' APA #8, page 83-84). [R. p. 34].

This finding shows the vocational report from Glenn Adams was the sole determining factor in the Commission's decision.¹ The Commission made no finding, one way or the other, on the fact that

¹The Commission appears to have completely overlooked the vocational report from Adger Brown, as it is mentioned nowhere in the Order. Although the Commission has discretion to weigh contrary evidence, the Order must include an explanation of the reasons greater weight was (apparently) given to the Adams' report over the Brown report. When the Commission simply ignores evidence in the record without explanation, the case must be remanded to the Commission for more detailed findings. The failure to mention Brown's report is itself not grounds for outright reversal; but it does require a remand for further findings as to why Adams' report was given greater weight than Brown's.

This is different than ignoring the testimony about Dinkins applying for the jobs Adams

Dinkins could not get hired in the jobs for which Adams opined he was employable. This was legal error. It is one thing to rely on expert testimony as the basis for a decision; it is something else when the trier of fact ignores evidence that completely undermines the basis of the expert opinion. See Stallcup v. Carolina Wood Turning, Co., 7 S.E.2d 550 (N.C. 1940)(Seawell, J. dissenting)(“How far the Industrial Commission may be indulged in refusing to believe credible testimony is still to be worked out, but its arbitrary disregard of positive testimony and the substitution therefor of mere speculation is within the power of review and correction by this Court.”). Cf. Young v. Tide Craft, 270 S.C. 453, 468, 242 S.E.2d 671, 678 (1978) (“It is, of course, elementary that the factual or underlying basis for the expert's opinion be set out, otherwise the opinion lacks probative value.”).

Therefore, this Court should remand this case to the Commission with instructions to consider the testimony of Dinkins regarding his unsuccessful work search – particularly on the jobs for which Adams had opined he was employable – and to make new findings of fact consistent with the evidence. The Commission should also be directed to consider the vocational report of Adger Brown which was overlooked in its previous Order.

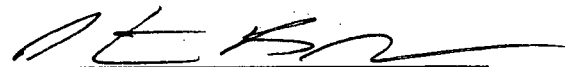
opined he was qualified for. The failed job search is a different means of proving total disability which was not ruled on by the Commission. As such, the case should be remanded not just for more detailed findings, but for an examination of the record and new rulings based on the failed job search.

CONCLUSION

For the foregoing reasons, the Decision and Order below should be vacated and remanded to the Commission with the following instructions:

1. The Commission shall consider the testimony of Henry Dinkins regarding his failed search for work and make new findings as to whether or not the diligent work search conducted by Dinkins proved "his inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist";
2. The Commission shall make detailed and explicit findings of fact as to the weight given to the vocational report of Adger Brown; and
3. The Commission shall apply Ellison and make an award under whichever code section would result in the greatest disability benefit for Dinkins.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

SC Court of Appeals

George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-43-0087

Henry Dinkins, ... Appellant,

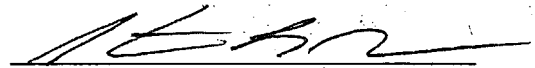
v.

Lowe's Home Centers, Inc. -Sumter, SC and
Specialty Risk Services, LLC, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b),
SCACR.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 30 2010

SC Court of Appeals

ORIGINAL

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GEORGE C. JAMES, CIRCUIT COURT JUDGE

CASE No. 2009-CP-43-0087

HENRY DINKINS, JR., ... APPELLANT,

v.

LOWE'S HOME CENTERS, INC. — SUMTER, S.C., EMPLOYER,
AND SPECIALTY RISK SERVICES, LLC, CARRIER, ... RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Circuit Court properly applied the elements of the Second Injury Fund Statute in determining whether Claimant was entitled to an award of total and permanent disability pursuant to *Ellison v. Frigidaire Home Products*?
- II. Whether the Circuit Court properly upheld the Commission's decision that Claimant failed to meet the requirements for obtaining total and permanent disability under the Second Injury Fund Statute?
- III. Whether the Circuit Court properly determined that remand to the Commission was unnecessary?

STATEMENT OF THE CASE

Henry Dinkins ("Claimant") sustained an injury to the lower back in an admitted work-related accident on April 20, 2005. Before the Single Commissioner, Claimant sought permanent and total disability based on three alternative theories. (R. p. 56). First, the Claimant argued that he is permanently and totally disabled based on a greater than 50% loss of use of the back. (*Id.*) Second, the Claimant argued total loss of earning capacity due to his compensable back injury and disabling effects on the use of his legs. (*Id.*) Third, the Claimant argued total loss of earning capacity due to disability from his back injury, combined with his preexisting right knee and left ankle injuries pursuant to S.C. Code Ann. § 42-9-400 (a) and *Ellison v. Frigidaire Home Products*, 360 S.C. 236, 600 S.E.2d 120 (2004). (*Id.*) By Order dated January 23, 2008, the Single Commissioner found that Claimant's compensable injury was confined to his back; therefore, Claimant was limited to scheduled disability compensation under S.C. Code Ann. § 42-9-30. (R. p. 22). Moreover, the Single Commissioner found *Ellison v. Frigidaire Home Products*, 360 S.C. 236, 600 S.E. 2d 120 (2004), was not applicable because Claimant's previous ankle and knee injuries did not contribute to his inability to earn wages. (R. p. 23-24). The Single Commissioner also found that Claimant did not meet his burden of proving a total loss of earning capacity secondary to his work-related injuries, even if he was otherwise eligible to pursue general disability under S.C. Code Ann. § 42-9-10 or § 42-9-20. (R. p. 24). Claimant was awarded 12% permanent partial disability to the back under S.C. Code Ann. § 42-9-30. (R. p. 27).

Claimant timely appealed to the Full Commission. By Order dated December 18, 2008, an Appellate Panel affirmed the single Commissioner. (R. p. 36). Claimant then appealed to the Court of Common Pleas. By Order dated March 30, 2009, the Court affirmed the Appellate Panel's Decision and Order. (R. p. 39). On April 29, 2009, Claimant filed a Notice of Appeal with this Court.

FACTS

Claimant began working for Lowe's in 1999, starting as a Customer Service Representative. (R. p. 63). He was subsequently promoted to management positions. (*Id.*). In 2001, Claimant sustained a compensable injury to his left ankle. (R. p. 64). As a result of this injury, the Commission awarded Claimant 40% partial disability. (R. p. 11). In 2002, Claimant sustained a compensable injury to his right knee, for which the Commission awarded 30% disability. (R. p. 40). Claimant sustained a compensable injury to the back in an admitted work-related accident on April 20, 2005. (R. p. 66). Claimant was diagnosed degenerative disc disease with bulging L3-4 and L4-5 and radiculopathy. (R. p. 106). The Claimant was provided conservative treatment in the form of physical therapy and medication. (R. p. 116).

On September 25, 2006, Dr. Bethea determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the back. (R. p. 128). On January 5, 2007, Dr. deHoll determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 5% to the lumbar spine. (R. p. 129). And on March 7, 2007, Dr. Johnson, the Claimant's IME physician, determined that the Claimant reached maximum medical improvement and assigned an impairment rating of 8% to the whole person. (R. p. 195). On February 13, 2007, the

Claimant underwent a functional capacity evaluation, which placed the Claimant in the light physical demand category. (R. p. 184).

Additionally, Dr. Johnson opined that the Claimant's ability to perform work was limited to a sedentary to light work status with a lifting restriction of 10 pounds occasionally and restrictions on repetitive bending and twisting. (R. pp. 194-95). On June 2, 2006, Dr. Zgleszewski concluded that the Claimant's lower back injury was separate and distinct from the knee and ankle injuries he sustained in previous work-related accidents. (R. p. 179).

The Claimant testified that he currently experiences constant aching pain in his lower back with radiation into the thighs of both extremities. (R. p. 73, lines 15-25; p. 74, lines 1-19). The Claimant estimates that he can sit and stand comfortably for approximately 15-30 minutes, respectively. (R. p. 75, lines 2-22). In order to alleviate the pain and problems he experiences the Claimant testified that he does not take any medication on a regular basis for his back pain, other than over-the-counter analgesics. (*Id.*) The Claimant indicated that he has been prescribed ibuprofen and Tramadol, which he takes sparingly. (*Id.*) The Claimant testified to ongoing pain and popping in his ankle, as well as occasional swelling, weakness, and instability in his right knee. (R. p. 72, lines 8-25; p. 73, lines 1-9). The Claimant confirmed that he was able to perform essential functions of his job despite these problems prior to his back injury. (R. p. 74, lines 20-25). The Claimant also testified that he is able to exercise fairly regularly, including three days a week at the local YMCA.

On cross-examination, the Claimant testified that his complaints of ankle and knee pain are the same problems he was having as a result of a May 2001 and a June

2002 work-related accident, for which Claimant has already been compensated. (R. p. 89, lines 9-23). Claimant also acknowledged that his current inability to work and work restrictions are secondary to his back injury and not due to his knee and ankle injuries he sustained in these previous work-related accidents. (R. p. 90, lines 3-20). Claimant further testified that he was able to return to work at Lowe's following both his knee and ankle injuries with no lost wages, and in fact received at least one raise following those injuries prior to this April 2005 work-related accident. (R. p. 90, lines 21-25; p. 91, lines 1-18).

Following his April 2005 work-related accident, the Claimant continued to work at Lowe's in a light duty capacity until December 2005. (R. p. 67, lines 6-17). The Claimant has not worked with the Defendants since December 5, 2005. (*Id.*) The Claimant testified that he met with several Lowe's representatives in January 2007 about potentially returning to work, but it was determined that the job requirements of a cashier exceeded his permanent work restrictions, specifically, restrictions of no prolonged standing, bending, and stooping. (R. p. 68, lines 13-25; p. 69, lines 1-25; p. 70, lines 1-5). Nevertheless, the Claimant testified that he definitely thinks he is physically able to return to work in banking. (R. p. 83, lines 10-16). He testified that he has sent out several applications, including an administrative job with the State Department of Corrections and a temporary financial position available with Kelly Services. (R. pp. 80-83). The Claimant testified that he began receiving Social Security retirement benefits shortly following his back injury. (R. p. 91, lines 19-22).

On July 9, 2007, the Claimant underwent a vocational evaluation, with Glen Adams, CRC, which determined that the Claimant was employable in the labor market in

the banking, financial and retail industries. (R. pp. 158-59). Specifically, the vocational evaluation noted that prior to working at Lowe's, the Claimant had a career the banking and financial industry, working in highly skilled positions such as operations manager, vice-president, and consultant to the vice-president. (*Id.*) The vocational evaluation highlighted positive factors, such as, the Claimant's customer service experience, computer skills, and management skills. (*Id.*) Additionally, the Claimant's vocational profile included completion of high school, completion of an associate's degree in business management at Pace University, and completion of various banking courses and certifications. (*Id.*) Based on the strength of the Claimant's prior work history in management positions, as well as the other factors, Glen Adams, CRC, determined that the Claimant is employable in his labor market. (*Id.*)

The Claimant's vocational expert, Adger Brown, stated that Claimant's inability to obtain work is the product of his age. (R. p. 196). At no time does Mr. Brown conclude that a reasonably stable labor market does not exist for Claimant within his residual functional capacity. In fact, Mr. Brown acknowledged that Claimant "has an extensive history in banking and finance; with skills that are normally associated with sedentary or light jobs." (R. p. 202).

STANDARD OF REVIEW

Judicial review of a Workers' Compensation Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5). *Gray v. Club Group, Ltd.*, 339 S.C. 173, 180, 528 S.E.2d 435, 439 (Ct. App. 2000); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). The Commission is the ultimate fact finder in workers' compensation cases. *Ross v.*

American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 729 (1989). A reviewing court should affirm the decision of the Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. *Lark*, 276 S.C. at 136, 276 S.E.2d at 307. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action." *Etheredge v. Monsanto Co.*, 349 S.C. 451, 456, 562 S.E.2d 679, 681-82 (Ct. App. 2002). Substantial evidence is not evidence viewed solely from one side; it is evidence, when the whole record is considered, that would allow reasonable minds to reach the conclusion the Commission reached. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Ellis v. Spartan Mills*, 276 S.C. 216, 218, 277 S.E.2d 216, 217 (1981). The findings of the Commission are presumed to be correct and can be set aside only if unsupported by substantial evidence. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 185, 414 S.E.2d 162, 163 (1992).

The reviewing court may not substitute its own judgment for that of the Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by errors of law. S.C. Code Ann. § 1-23-380(A)(5). *Etheridge v. Monsanto Co.*, 349 S.C. 451, 455, 562 S.E.2d 679, 681 (Ct. App. 2002). "Where there are conflicts in the evidence over a factual issue, the findings of the Commission are conclusive." *Id.*

ARGUMENT

I. The Circuit Court correctly stated the appropriate test under the Second Injury Fund Statute to pursue total disability.

Pursuant to the South Carolina Workers Compensation Act, a Claimant may obtain permanent and total disability benefits in the following ways: 1) by establishing a presumptive disability under S.C. Code Ann. § 42-9-10; 2) by establishing that a non-scheduled injury “caused sufficient loss of earning capacity to render him totally disabled,” and 3) by establishing multiple partial disabilities that amount to a total disability. *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 105, 580 S.E.2d 100, 102 (2003). In addition, the South Carolina Supreme Court held that a Claimant may obtain permanent and total disability under the Act’s Second Injury Fund provisions (“Second Injury Fund Statute”). *Ellison v. Frigidaire Home Products*, 371 S.C. 159, 638 S.E.2d 664 (2006). The Second Injury Fund Statute provides, in pertinent part, the following:

If an employee, who has a permanent physical impairment from any cause or origin, incurs a subsequent disability from injury by accident ... resulting in compensation and medical payments liability or either, for disability that is substantially greater, by reason of the combined effects of the pre-existing impairment and subsequent injury ... then that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided under this Title.¹ S.C. Code Ann. § 42-9-400(a).

Section 42-9-400(d) defines “permanent physical impairment” as “any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed.” “Disability” is defined by

¹ The revised Workers’ Compensation Act, Act No. 111, Leg. Sess. 117 (S.C. 2007); no longer includes the term “combined effects” within the Second Injury Fund Statute.

S.C. Code Ann. § 42-1-120 as “incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment.”

Reading these statutes in conjunction, the Circuit Court held that, in order for Claimant to prevail on his *Ellison* theory he must satisfy five elements: (1) a pre-existing permanent physical impairment that is a serious hindrance or obstacle to employment; (2) a subsequent work-related single member injury; (3) resulting in substantially greater inability to earn wages; (4) by reason of the “combined effects” of the pre-existing impairment and subsequent injury; and (5) than would have resulted from the work injury alone.

Claimant argues that this five-part test deviates from the test allegedly set forth in *Ellison*, and is therefore, in error. In *Ellison*, the Supreme Court explained:

The language of 42-9-400(A) and (D) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing condition hinders reemployment. There is no requirement that the pre-existing condition aggravated the injury, or that the injury aggravated the pre-existing condition, so long as there is a greater disability simply from the “combined effects” of the injury and the pre-existing condition. *Ellison v. Frigidaire Home Products*, 371 S.C. 159, 638 S.E.2d 664 (2006).

Claimant reasons that “to satisfy *Ellison*, he merely needs to show that the combination of his leg and back injuries is a hindrance to employment.” (App. Initial Brief, p. 10). To reach this conclusion, Claimant erroneously transforms *Ellison*’s holding that S.C. Code Ann. § 42-9-400(a) provides another path to general disability into a test for how to prevail under S.C. Code Ann. § 42-9-400(a).

In *Ellison*, the claimant sustained a work-related injury to his leg, and was given a 20% permanent impairment rating for this injury. The single commissioner found that the claimant was permanently and totally disabled pursuant to the Second Injury Fund Statute, 42-9-400(a), due to the combined effects of the leg injury and several pre-existing conditions. The full commission and circuit court affirmed this award. The South Carolina Court of Appeals reversed, holding that the circuit court committed an error of law in applying S.C. Code Ann. § 42-9-400(a) to reach its total disability award. The Court of Appeals reasoned that “§ 42-9-400 was not applicable because it merely entitles an employer’s insurance carrier to be reimbursed by the Second Injury Fund.” The Supreme Court reversed, announcing that the claimant may indeed seek total and permanent disability under S.C. Code Ann. § 42-9-400(a). *Ellison* did not delve into the merits of the claimant’s award under § 42-9-400(a), nor did it undertake any analysis of the requirements of S.C. Code Ann. § 42-9-400(a). It simply recognized another means by which a claimant may obtain total and permanent disability. Under *Ellison*, Claimant must still meet the requirements of S.C. Code Ann. § 42-9-400(a).

As stated above, the Circuit Court devised a test for obtaining general disability under the Second Injury Fund Statute by incorporating the definitions of “permanent physical impairment” and “disability” within the Statute’s substantive provisions. In so doing, the Court set forth the following test: to prevail on an *Ellison* theory, Claimant must satisfy five elements: (1) a pre-existing permanent physical impairment that is a serious hindrance or obstacle to employment; (2) a subsequent work-related single member injury; (3) resulting in substantially greater inability to earn wages; (4) by reason of the “combined effects” of the pre-existing impairment and subsequent injury; and (5)

than would have resulted from the work injury alone. Element one simply includes the definition of “permanent physical impairment.” Element two is a restatement of the Statute’s language requiring that the Claimant who has a permanent physical impairment must “incur a subsequent disability from injury by accident.” The third element overlaps somewhat with the second element because it serves to define “disability;” however, this third element incorporates the Statute’s requirement that the subsequent disability must be “substantially greater” than that caused by the permanent physical impairment alone. The forth and fifth element mirrors the Statute’s requirement that the “substantially greater” disability must be caused by “the combined effects of the pre-existing impairment and subsequent injury” instead of “the subsequent injury alone.”

Claimant asserts error in the Circuit Court’s test by focusing on inconsequential details. Claimant points to the Court’s use of the phrase “substantially greater inability to earn wages” instead of the statute’s reference to “disability that is substantially greater” as “problematic” because the term “disability” found in the Second Injury Fund Statute “refers to disability greater than the disability presumed by the values assigned in the scheduled member statute.” Apparently, Claimant is arguing that the Court’s phrase “substantially greater inability to earn wages” shifts the Statute’s meaning because “substantially greater” no longer qualifies the word “disability” but rather, an “inability to earn wages.” The Court’s phrase merely paraphrases the definition of disability found within the Workers’ Compensation Act. Pursuant to S.C. Code Ann. § 42-1-120, “disability” is defined as “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.” There is no error in this regard.

Claimant then goes on to take Respondents' words out of context in his assertion that the Respondents allegedly conceded that he met the *Ellison* requirements. (App. Initial Brief, p. 10). Claimant posits that the following explanation by the Respondents during the Circuit Court hearing concedes that Dinkins had met the *Ellison* requirements:

[...] if I could apply just maybe the real world situation, what it envisions is somebody who has a prior work injury and is somehow restricted from what they would normally do in the work place but it doesn't [...] that restriction doesn't totally take them out of the work force. Then they have a third injury or second injury or a subsequent injury, however that is, that that's kind of the straw that broke the camel's back. In other words, there was [...] let's say a guy has a knee injury from a prior impairment and he has a restriction of no let's say squatting. But he's able to sit down without any limitations. Then let's say he has a subsequent [...] that [...] that definitely impacts his ability to work. I think that situation would meet the definition of a hindrance or obstacle to employment.

Obtaining employment or re-employment or obtaining employment I believe can be read into that Statute. Well, and then subsequently has a back injury and because of a back injury he can't sit any more so in a [...] so now you have a true combination. You have a guy who has a pre-existing impairment for which he cannot squat but he was able to sit. Now he has a subsequent injury that [...] that takes sitting out of the equation so that is a combination.

(R. p. 101, lines 16-25; p. 102, lines 1-7).

What the Respondents were talking about here was a general explanation of the first *Ellison* requirement, that Claimant have a pre-existing permanent physical impairment, and how that pre-existing permanent physical condition could combine with a subsequent work injury, which is the forth *Ellison* requirement. Respondents did not conclude that Claimant indeed met these requirements. Instead, Respondents argued that

Claimant had failed to meet his burden of showing that his pre-existing permanent physical impairment combined with his subsequent back injury, resulting in substantially greater inability to earn wages. Claimant impermissibly takes Respondents' words out of context. *See e.g. Doe v. S.C. Dep't of Disabilities & Special Needs*, 377 S.C. 346, 350, 600 S.E.2d 260, 262 (2008) (stating that Court of Appeals erred by taking testimony out of context).

II. Substantial evidence supports the Circuit Court's finding that Claimant failed to meet the requirements of the Second Injury Fund Statute.

To obtain permanent and total disability under S.C. Code Ann. § 42-9-400(a), Claimant bears the burden of establishing that his pre-existing ankle and knee injuries, in combination with his back injury, caused substantially greater disability than that caused by his back injury alone. Claimant's argument on this point fails for several reasons.

a. Permanent Physical Impairment

Under S.C. Code Ann. § 42-9-400(a), an employee suffering from a previous "permanent physical impairment" who then incurs a "subsequent disability from injury by accident ... resulting in ... disability that is substantially greater, by reason of the combined effects of the pre-existing impairment and subsequent injury ... than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided under this Title." A pre-existing physical impairment is defined as "any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed." S.C. Code Ann. § 42-9-

400(d). Several identified conditions are presumed to meet this definition. Included among these conditions is “any other pre-existing disease, condition or impairment which is permanent in nature and which ... would qualify for payment of weekly disability benefits of seventy-eight weeks or more under § 42-9-30 exclusive of benefits payable for disfigurement” S.C. Code Ann. § 42-9-400(d)(34).

The pre-existing impairments Claimant relies upon are his previous ankle and knee injuries that occurred while under the employ of Lowe’s. Claimant sustained a compensable left ankle injury on May 1, 2001. By Order dated December 21, 2006, he was subsequently awarded 40% permanent partial disability, entitling him to receive seventy-eight weeks of benefits.² (R. p. 11). On June 22, 2002, Claimant also sustained a compensable right knee injury arising out of the course of his employment. He was subsequently awarded 30% permanent partial disability, entitling him to 58.5 weeks of benefits. (R. p. 5). At issue here is whether Claimant’s previous injuries were “of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed.” S.C. Code Ann. § 42-9-400(d).

Claimant argues that his previous ankle and knee injuries constitute were serious enough to constitute a hindrance to employment. In support of his argument, Claimant relies upon the Commission’s award of scheduled member benefits for these injuries, and the Commission’s findings related to these previous awards. Clearly, under the Second

² Claimant’s ankle injury is presumed to constitute a “permanent physical impairment” under S.C. Code Ann. § 42-9-400(d). Neither party raised this presumption before the Commission or the Circuit Court, and the Circuit Court Order ruled that Claimant’s ankle injury did not meet the definition of “permanent physical impairment.” (R. p. 44). Respondent believes it is obligated to bring this statutory presumption to this Court’s attention. However, because Claimant did not raise this presumption below, it is not preserved for appellate review.

Injury Fund Statute, a Claimant must do more than show a pre-existing injury. A pre-existing permanent physical impairment must be of such seriousness as to hinder employment. S.C. Code Ann. § 42-9-400(a). As the Circuit Court held, “the fact that Claimant experienced continuing symptoms and functional problems from his pre-existing knee and ankle injuries is not determinative of Ellison’s applicability to this case.” (R. p. 44). “Evidence in the record suggests that these pre-existing conditions did not prohibit [Claimant] from performing the essential functions of his employment with Lowe’s prior to his back injury.” (*Id.*)

As stated earlier, Claimant injured his left ankle in 2001, and injured his right knee in 2002. During an orthopedic evaluation of his back injury, Dr. Armsey noted that Claimant has a normal gait, with no atrophy of his lower extremities, and “full strength to inversion, eversion, supination and pronation, abduction and adduction of the lower extremities.” (R. p. 114). A further orthopedic evaluation noted that Claimant “has some mild medial joint line tenderness in the right knee, likely secondary to a medial meniscal debridement and some mild osteoarthritis of the right knee.” (R. p. 118). Further, it was noted that Claimant “has mildly decreased range of motion at the left ankle.” (*Id.*) In another evaluation, Dr. Stacy noted that Claimant “has no significant weakness of the lower extremities” and has a normal gait. (R. pp. 123, 127). On May 2, 2006, Dr. Armsey noted that Claimant “has no tenderness at the right knee and the ankle is giving him no significant problems at this time.” (R. p. 170). In short, medical evidence does not indicate that Claimant’s previous injuries are serious enough to hinder obtaining employment.

Moreover, Claimant's own testimony does not indicate that his previous injuries are so serious as to constitute a hindrance to employment. When asked whether his previous injuries are causing problems, Claimant testified that he sometimes feels a burning sensation in his left ankle and must loosen up his left ankle every morning. (R. p. 65, lines 8-25). When asked if his left ankle injury causes any problem with his gait, Claimant testified that he cannot walk straight up and down a hill, has to walk sideways one step at a time when using stairs, and cannot "lean on [his] own leg." (R. p. 73, lines 3-9). When asked about his previous knee injury, Claimant stated that his knee "locks up" on occasion causing stiffness. (R. p. 72, lines 10-23). Claimant's complaints, essentially of stiffness, do not rise to the level of seriousness contemplated in the Second Injury Fund Statute.

Given the evidence before the Commission, it is reasonable for the Circuit Court to conclude that these injuries do not meet the definition of "permanent physical impairment."

b. Claimant's pre-existing impairments, in combination with his back injury, did not cause substantially greater disability.

Even if Claimant's pre-existing injuries constitute a permanent physical impairment within the meaning of S.C. Code Ann. § 42-9-400(d), the Circuit Court correctly held that Claimant failed to establish that the pre-existing impairments, combined with the work related injury, resulted in substantially greater disability than would have resulted from the work injury alone. "Disability" is defined by § 42-1-120 as "incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment." A claimant may receive total

disability benefits under *Ellison* if the “combined effect” of the pre-existing permanent physical impairment and the subsequent work injury “results in a substantially greater disability.” *Curiel v. Env’tl Management Svs.*, 376 S.C. 23, 31, 655 S.E.2d 482, 486 (2007). Substantial evidence exists to support the Circuit Court’s conclusion that the effects of Claimant’s ankle, knee and back injuries did not combine to cause substantially greater incapacity to earn wages than Claimant was receiving at the time of his back injury.

In determining whether Claimant met the requirements of S.C. Code Ann. § 42-9-400(a), the Full Commission found that Claimant’s inability to earn wages was a result of Claimant’s April 2005 back injury alone. (R. p. 33). In other words, the effects of Claimant’s pre-existing knee and ankle injuries did not “combine with” the subsequent back injury to cause “substantially greater disability.” As part of the medical evidence supporting this conclusion, the Commission referred to the medical opinion of Dr. Zgleszewski, who stated that the Claimant’s lower back injury was separate and distinct from the knee and ankle injuries he sustained in previous work-related accidents. (R. p. 179). Furthermore, the Circuit Court found it significant that Claimant’s Functional Capacity Evaluation put Claimant in a light physical demand designation, which was based upon his back injury, not his prior ankle and knee injuries. (R. p. 44). And, the Circuit noted that none of the vocational expert opinions in this case claim that Claimant’s pre-existing conditions constitute a serious hindrance to employment. (*Id.*) Thus, the medical evidence in this case supports the Circuit Court’s determination that Claimant’s injuries were not serious enough to constitute a hindrance to employment.

Moreover, the Claimant's testimony provides additional bases for the Circuit Court's determination. Claimant testified that he was able to return to work for Lowe's following his previous injuries, with no lost wages. In fact, Claimant received at least one raise following those injuries prior to his April 2005 back injury. (R. p. 90, lines 21-25; p. 91, lines 1-18). Moreover, Claimant acknowledged that his current work restrictions are secondary to his back injury and are not due to his knee and ankle injuries. (R. p. 90, lines 3-20). He confirmed that the doctor did not impose any specific restrictions for his prior ankle and knee injuries. (*Id.* at lines 14-17). Claimant testified he was able to perform all essential functions of his job, despite residual problems from his knee and ankle injuries prior to his back injury. (R. p. 74, lines 20-25). It has only been since his back injury in December 2005, that he has been unable to work. Claimant even stated that he probably should still be working for Lowe's but for his back injury. As such, Claimant's pre-existing ankle and knee injuries do not contribute to his inability to earn wages, if such disability exists. The Full Commission, and the Circuit Court, correctly found that Claimant's back injury is the reason he is no longer able to work at Lowe's.

Claimant argues that the Circuit Court erred in concluding that no combination of Claimant's previous injuries and his back injury occurred. (App. Initial Brief, p. 12). Specifically, Claimant contends that the Commission's findings of physical limitations in its Orders awarding Claimant permanent partial disability due to his ankle and knee injuries constitute "overwhelming" evidence that Claimant had specific work restrictions from his two previous injuries substantial enough for Lowe's to demote him. (App. Initial Brief, pp. 11-12). Further, Claimant points to Claimant's Functional Capacity

Evaluation as evidence of combined effects. For several reasons, Claimant's arguments fail.

First, the Commission's findings of fact in its previous orders awarding permanent partial disability only addressed Claimant's prior injuries individually, standing alone, without consideration of the issue before this Court of combined effects of all the Claimant's injuries. The issue here is not consideration of Claimant's prior injuries in isolation. Rather, the question is whether the combined effects of these two prior injuries and Claimant's subsequent back injury caused substantially greater disability. The Commission's prior orders may establish the individual effects for each of Claimant's ankle and knee injuries. But that is all.

Furthermore, Claimant's argument that combined effects are evidenced by Claimant's "demotion" by Lowe's after his knee injury cannot prevail. Claimant was not "demoted" in terms of salary. (R. p. 91, lines 2-10). He continued making the same wages in his new position as he had as Department Manager. (*Id.*) Therefore, the alleged combined effects of Claimant's prior injuries and subsequent back injury do not cause greater disability, as defined by the "incapacity because of injury to earn the wages which employee was receiving at the time of the injury" See e.g. *Outlaw v. Johnson Service Co.*, 254 S.C. 486, 489, 176 S.E.2d 152, 154 (1970) (no disability found when employee made same wages after injury as before). After Claimant's pre-existing injuries, Claimant continued to earn the same wages as before these injuries occurred. Therefore, Claimant's pre-existing injuries cannot combine with his back injury to cause greater inability to earn wages.

Lastly, Claimant calls attention to his Functional Capacity Evaluation by Mr. Adger Brown, in which two of out of thirteen work simulation tests elicited comments from the evaluator that Claimant was unable to assume a squatting position due to his limited range of motion and complaints of pain in the low back, right knee, and left ankle, and that pushing and pulling fifteen pounds was limited by Claimant's complaints of back and knee pain. (R. p. 184-193). Evidence must be viewed as a whole. *See Adams v. Texfi Indus.*, 341 S.C. 401, 404, 535 S.E.2d 124, 124 (S.C. 2000) ("Substantial evidence ... is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action."). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Ellis v. Spartan Mills*, 276 S.C. 216, 218, 277 S.E.2d 216, 217 (1981). The Commission reviewed this Functional Capacity Evaluation and found that that the greater weight of evidence yielded a different conclusion. *See Etheridge v. Monsanto Co.*, 349 S.C. 451, 455, 562 S.E.2d 679, 681 (Ct. App. 2002) ("Where there are conflicts in the evidence over a factual issue, the findings of the Commission are conclusive.").

For these reasons, substantial evidence in the record supports the Circuit Court's conclusion that Claimant's pre-existing knee and ankle injuries did not combine with his subsequent back injury to contribute to his inability to earn wages. While Claimant may view the evidence differently, when the evidence is viewed as a whole, the Full Commission's award for permanent partial disability to the back must be affirmed. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (substantial

evidence is not evidence viewed solely from one side; it is evidence, when the whole record is considered, that would allow reasonable minds to reach the conclusion the Commission reached).

III. Even if Claimant could meet the requirements of S.C. Code Ann. § 42-9-400(a), the Circuit Court did not err in upholding the Commission's conclusion that Claimant failed to meet the test for total disability.

“Disability in compensation cases is to be measured by loss of earning capacity.” *Wynn v. People's Natural Gas Co.*, 238 S.C. 1, 11, 118 S.E. 2d 812, 818 (1961). “The generally accepted test of total disability is inability to perform services other than those that are “so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.” *Id.* “An employee who is capable of performing other work that is continuously available to him would not be deemed totally disabled simply because he is unable to resume duties of the particular occupation which he was engaged at the time of his injury.” *Id.* “An award of compensation must be based upon the claimant's *incapacity* because of injury to earn the wages which (he) was receiving at the time of injury in the same or any other employment.” *Shealy v. Algernon Blair Inc.*, 250 S.C. 106, 112, 156 S.E.2d 646, 649 (1967) (emphasis in original). “Loss of earning capacity is the criterion.” *Id.* “There is no recognition of the elements of pain and suffering, or of increased discomfort and difficulty in performing the work, as long as there is no diminution in earning capacity.” *Id.* An award of total disability “may not rest on surmise, conjecture or speculation and must be founded on evidence of sufficient substance to afford a reasonable basis for it.” *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 631, 142 S.E.2d 43, 45 (1965).

At the outset, Claimant argues that the Commission failed to consider an award of total disability. (App. Initial Brief, p. 13-14): Contrary to this assertion, the Appellate Panel found that:

Based on the medical evidence, testimony, and vocational evidence, Claimant failed to satisfy his burden of proof he is entitled to compensation for loss of earning capacity pursuant to 42-9-10 or 42-9-20 as a result of his April 20, 2005 work-related accident. Claimant's vocational evaluation, determined, based on the strength of the Claimant's prior work history in management positions as well as the other factors, Claimant is employable in his labor market. (R. p. 34).

Clearly, the Commission considered Claimant's total and permanent disability and found that Claimant had failed to meet his burden.

Claimant goes on to contend that the Commission committed reversible error by failing to specifically consider his testimony describing diligent efforts to obtain employment. Claimant contends that, pursuant to *Coleman v. Concrete Products, Inc.*, 245 S.C. 625, 142 S.E.2d 43 (1965), his testimony describing his diligent search for employment necessarily requires the Commission to find that he is permanently and totally disabled. Thus, as Claimant sees it, the Commission erred in ignoring evidence that should have yielded a decision in his favor. Claimant misreads *Coleman*.

In *Coleman*, the court considered an appeal by the employer of the Workers' Compensation Commission's award of total temporary disability to the employee. 245 S.C. 625, 628, 142 S.E.2d 43, 44 (1965). The employee was 58 years old, had a sixth grade education, and worked as a heavy equipment operator for 37 years. *Id.* Although the employee's injury prevented him from continuing employment as a heavy equipment operator, the employee was able to perform light work. *Id.* at 629, 45. Based solely upon

the employee's testimony, the Commission found that the employee "had been unable to obtain employment in the open labor market suitable to his capacity, or otherwise, due to his injury and had suffered a total loss of earning capacity." *Id.* The employee had testified that he repeatedly sought employment suitable to his capacity for three months, with no success. *Id.* at 45, 630. The court stated the issue as whether "the evidence is of sufficient substance to afford a reasonable basis for the Commission concluding as a matter of fact that the employee's inability to obtain employment was due to his injury and resultant partial physical incapacity." *Id.* at 45, 631. Noting that the employee could have made a stronger case by testimony from employers who refused to hire him or by expert testimony regarding the absence of a reasonably stable market for the services of a person of [employee's] limited capacity, the court nonetheless held that it could not "say that the evidence was not susceptible of the reasonable inference, or did not afford a reasonable basis for the Commission concluding, that his unemployment and inability to obtain work of any kind was the direct result of his injury and resultant limited capacity." *Id.* at 631, 46.

It is important to point out that in *Coleman*, the only evidence supporting lack of earning capacity was the employee's testimony, which even the court conceded could have been bolstered by additional evidence. Even so, the employee's testimony of diligent efforts to obtain employment was found to reasonably support the Commission's finding that the employee was totally disabled. In contrast, the evidence before the Commission as to loss of earning capacity of Claimant was more than Claimant's testimony regarding his efforts to obtain employment. In this case, the record contained not only Claimant's testimony, but also vocational assessments as to whether Claimant

was employable in an existing and stable labor market. Hence, the Commission had more evidence before it than that found in *Coleman*. In *Coleman*, the sole evidence relating to the issue of total disability was the claimant's testimony, and the court deemed this evidence sufficient to uphold the Commission's award. In the case at bar, the Commission had more evidence than Claimant's testimony as to his job search. In weighing this evidence, the Commission found that Claimant was unable to sustain his burden of proof in establishing lack of earning capacity.

Claimant attempts to fashion *Coleman* as establishing an absolute rule that the Commission must find earning incapacity when the claimant testifies that he engaged in a diligent job search with no success, and the failure of the Commission to do so warrants remand. Nothing in *Coleman* demands such a rule.

Illustrating this point is *Shealy v. Algernon Blair, Inc.*, in which the court considered whether the Commission's award of total disability was supported by specific findings of loss of earning capacity. 250 S.C. 106, 109, 156 S.E.2d 646, 647 (1967). The Commission considered medical testimony and reports, the claimant's testimony, and the testimony of claimant's co-workers and employers in arriving at its decision. *Id.* at 110-111, 648-649. In reviewing this evidence before the Commission, the court stated that, because none of the medical testimony and reports, nor the testimony of co-workers and employers, supported a finding that claimant lost all earning capacity, the only way that a reasonable inference could be made otherwise is testimony from claimant showing a diligent job search. *Id.* at 113, 649. Comparing the claimant's testimony regarding his job search to the testimony found in *Coleman*, the court concluded that claimant's

testimony failed to show diligent efforts to obtain employment., and reversed the Commission's award. *Id.*

Shealy shows the limited reach of *Coleman*. *Coleman* merely holds that the Commission's award of total disability based solely on a claimant's testimony concerning a diligent job search may be sufficient to show that loss of earning capacity is caused by a claimant's injury. When other evidence in addition to a claimant's testimony regarding his diligent job search is entered, as in *Shealy*, Claimant's attempt to create a bright line rule from *Coleman* fails. In light of *Shealy*, *Coleman* merely holds that testimony describing a diligent job search may suffice to support loss of earning capacity if no other evidence is conflicting. Thus, no reversible error is found here, where, unlike *Coleman*, the Commission considered multiple and conflicting evidentiary sources, and in weighing the evidence, found no loss in earning capacity.

Moreover, substantial evidence supports the Commission's denial of total disability. The Respondents' vocational expert, Glen Adams opined that, despite Claimant's permanent work restrictions from the back injury, he was employable in banking, finance and retail. (R. pp. 158-59). Specifically, the vocational evaluation noted that Claimant was employed for over 35 years in the banking and financial industry, working in highly skilled positions such as operations manager, vice president and consultant to the vice president of financial institutions. (R. pp. 137-140). Mr. Adams' vocational evaluation also highlighted positive transferable skills, such as Claimant's customer service experience, computer skills, and management skills. (R. p. 158). Finally, Claimant's positive vocational profile included completion of high school, completion of an Associate's degree in Business Management, and completion of various

banking courses and certifications. (*Id.*) This report represents evidence supporting the Workers' Compensation Commission's conclusion that Claimant failed to satisfy his burden of proof for permanent and total disability.

Next, Claimant's vocational expert, Adger Brown, opined that Claimant's inability to obtain work is the product of his advanced age. (R. p. 196). Specifically, Mr. Brown stated, "[i]n terms of significantly lighter jobs, he would face such an incredibly restricted labor market and extreme prejudice *due to his age*." (R. p. 202). Mr. Brown also stated, "[u]nfortunately, being 63 years old, Mr. Dinkins is already at an incredible deficit for anyone hiring him into any type of meaningful sustained employment. By the time this man was brought into a company, provided training, and adjusted to a new job, he would be ready to retire." (*Id.*) At no time does Mr. Brown opine that a reasonably stable labor market does not exist for Claimant within his residual functional capacity. In fact, Mr. Brown says quite the opposite when he acknowledges "Mr. Dinkins has an extensive history in banking and finance, with skills that are normally associated with sedentary or light jobs." (*Id.*) In sum, substantial evidence exists to support the Commission's denial of total disability. When, as is the case here, conflict evidence is present in the record, the Commission's weighing of that evidence and its decision made thereupon must be upheld.

IV. The Circuit Court properly held that the Commission's findings of fact were sufficient, and therefore, remand was unnecessary.

Claimant contends that the Commission made no finding whatsoever on his testimony detailing his unsuccessful efforts to obtain employment, and this lack of a finding regarding this detail constitutes reversible error warranting remand. (App. Initial

Brief, pp. 16-17). Furthermore, Claimant asserts that the Commission failed to mention the report of his vocational report from Mr. Adger Brown, which also necessitates remand to the Commission for specific findings concerning Mr. Brown's report. (*Id.* at 17-18).

Findings of fact "must be sufficiently definite and detailed to enable the appellate court properly to determine whether the findings of fact are supported by the evidence and whether the law has been correctly applied to those findings." *Airco, Inc. v. Hollington*, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977). "A conclusion by the [Workers' Compensation Commission] by way of reasonable inference from the evidence is a finding of fact." *Windham v. Florence*, 221 S.C. 350, 354 (S.C. 1952); *Rhodes v. Guignard Brick Works*, 245 S.C. 304, 306, 140 S.E.2d 487, 488 (1965). Implied findings of fact are acceptable so long as the Commission does not leave too many gaps in its reasoning. *Mohasco Corp., Dixiana Mill Div. v. Rising*, 292 S.C. 489, 357 S.E.2d 456 (1987) (accepting the Commission's implicit recognition of chronic obstructive lung disease as peculiar to the claimant's occupation); *Dixon v. Nucor Steel Corp.*, 295 S.C. 387, 368 S.E.2d 680 (Ct. App. 1988) (Commission's order, which specifically addressed only four out of the six elements required to prove an occupational disease, upheld as sufficiently detailed on appellate review). In *Dixon*, this Court admonished the Commission to structure future opinions so that they specifically address all of the elements required to prove an occupational disease claim. 295 S.C. at 390 n.1, 368 S.E.2d at 682 n.1. This Court did not, however, require that every piece of evidence in the record be specifically addressed.

A review of the Commission's findings show that remand is not warranted.

Concerning Claimant's request for total disability, the Appellate Panel found that:

Based on the medical evidence, testimony, and vocational evidence, Claimant failed to satisfy his burden of proof he is entitled to compensation for loss of earning capacity pursuant to 42-9-10 or 42-9-20 as a result of his April 20, 2005 work-related accident. Claimant's vocational evaluation, determined, based on the strength of the Claimant's prior work history in management positions as well as the other factors, Claimant is employable in his labor market. (R. p. 34).

In the Single Commissioner's recitation of evidence, Claimant's testimony concerning his search for employment was included. (R. pp. 57-58). Additionally, the Single Commissioner included references to Claimant's vocational expert. (R. p. 58). Thus, looking at the Single Commissioner's Order as a whole, the Single Commissioner certainly considered Claimant's vocational assessment. However, in weighing the evidence of Claimant's testimony, Claimant's vocational assessment, and Respondent's vocational assessment, the Single Commissioner obviously found by the greater weight of the evidence that Claimant had not met his burden of showing loss of earning capacity. This conclusion is readily evidenced in the Single Commissioner's explanation that the Respondent's vocational expert stated that Claimant's prior work history, among other factors, led to the conclusion that Claimant was employable in his labor market. (R. p. 24). The Commissioner's findings are sufficiently definite to enable judicial review. Claimant seems to argue that the Commission must set forth every detail of the case in order to avoid remand. But, "the Commission is not required to make a finding as to each detail of the evidence or as to every inference or shade of meaning to be drawn

therefrom.” *Gregory v. W.A. Brown & Sons*, 363 N.C. 750, 761, 2010 N.C. LEXIS 35, *
24 (2010).

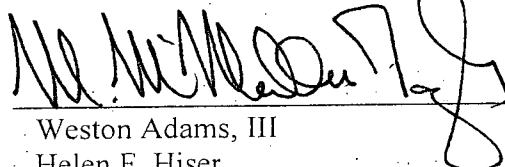
CONCLUSION

For the reasons stated above, the Circuit Court’s opinion should be upheld as properly stating the test for obtaining total disability under *Ellison*, as properly holding that substantial evidence exists to support the Commission’s denial of total disability under the Second Injury Fund Statute, and as properly holding that substantial evidence supports the Commission’s denial of total disability pursuant to S.C. Code Ann. § 42-9-10. Further, the Circuit committed no error in its decision that remand to the Commission was unnecessary.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GEORGE C. JAMES, CIRCUIT COURT JUDGE

CASE NO. 2009-CP-43-0087

HENRY DINKINS, JR., ... APPELLANT,

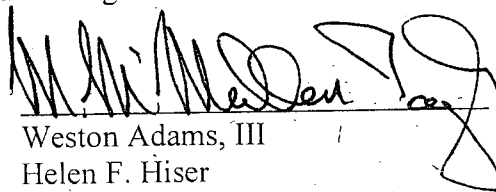
v.

LOWE'S HOME CENTERS, INC. - SUMTER, S.C., EMPLOYER,
AND SPECIALTY RISK SERVICES, LLC, CARRIER, ... RESPONDENTS.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Lowe's Home Centers, Inc. - Sumter, S.C., Employer, and Specialty Risk Services, LLC, Carrier, complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief complies with the South Carolina Supreme Court's August 13, 2007 Order re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

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SC Court of Appeals

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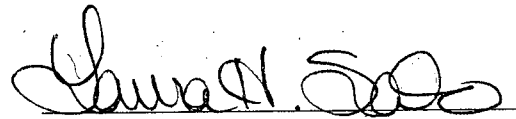
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AND SPECIALTY RISK SERVICES, LLC, CARRIER, ...RESPONDENTS.

PROOF OF SERVICE

I certify that on the 30th day of June 2010, I served the **Respondents' Final Brief** on Henry Dinkins, Jr. by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

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SC Court of Appeals

ORIGINAL

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v.

Lowe's Home Centers, Inc. -Sumter, SC and
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ARGUMENT

The Commission erred in failing to consider Dinkins' diligent work search as definitive proof of his disability (in response to Respondents' Argument III at pages 21-27).

Respondents attempt to obfuscate the issue before the Court by characterizing this case as simply one of substantial evidence. It is critical that this Court appreciate exactly what is at issue here. This is not a case where the Commission simply weighed competing evidence and picked the evidence it preferred. This is a case where the Commission completely overlooked dispositive proof of disability that our Courts have stated the Commission *must* consider. See Coleman v. Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965)(setting out three alternative methods of proof, including the employee's "diligent efforts to secure employment."). Cf. Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App.1999)(Commission must consider all the evidence in the record when developing its findings of fact).

Respondents state "Claimant attempts to fashion Coleman as establishing an *absolute* rule that the Commission must find earning incapacity when the claimant testifies that he engaged in a diligent job search with no success, and the failure of the Commission to do so warrants remand." [Brief of Respondents at 25 (emphasis added)]. The rule sought to be applied here is simply the rule the Supreme Court itself set out in Coleman and Shealy, to wit: the Commission must find earning incapacity when the claimant's "periods of unemployment were attributable to an injury produced limitation on, or impairment of, his capacity to work [as shown] by evidence that claimant had made reasonable efforts to obtain employment and had failed because of an injury produced handicap." Shealy v. Algernon Blair, Inc., 250 S.C. 106, 113, 156 S.E.2d 646, 649 (1967).

In the instant case, Dinkins unquestionably cannot return to work at Lowe's nor to any similar

occupation. His injuries and physical restrictions prevent him from doing that. Had Dinkins been capably only of physical work such as he did at Lowe's, then without question he would be permanently and totally disabled. In this respect, his situation is identical to the injured worker in Coleman. There, the Court observed, "The uncontradicted medical evidence is to the effect that following and as a result of his injury he is no longer able to perform the duties incident to his regular vocation. He was refused further employment in such capacity by his employer and told that the employer had no light work which he was able to perform." Coleman v. Concrete Products, Inc., 245 S.C. 625, 629, 142 S.E.2d 43, 45 (1965).

The complication here is that Dinkins did perform banking work in the remote past (15 years ago).¹ As such he *may* have transferable skills that *might* allow him to obtain similar employment today. The issue the Commission had to decide is whether Dinkins could *actually* obtain such

¹Dinkins previous employment in banking was as an operations manager. He has not worked in banking in over 15 years. The banking industry, particularly at the operational level, has undergone enormous change during that time. Dinkins may very well be capable of being retrained to handle 21st century technology, but few if any employers in today's economy would be willing to make such an investment for a man of Dinkins' profile. As Adger Brown opined:

... I think this man is permanently and totally disabled. ... As far as doing anything lighter and capitalizing on his prior skills, I think his age seriously mitigates against him. Any company that wants his finance skills is not going to want to hire someone that they have to retrain and bring up to speed just to have him retire, and companies having jobs requiring fewer skills would pass him over in favor of younger, more physically able individuals. [R. p. 196].

Glenn Adams concurred, stating, "His age will provide to be a limiting factor in obtaining those jobs that are highly skilled . . ." [R. p. 158]. See Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E.2d 390 (S.C.App. 2003)(claimant's age is proper factor to consider in determining if a reasonably stable employment market exists).

The claimant in Shealy had also done other work (auto repair) fifteen years before his injury. However, Shealy never even looked to work as an auto mechanic; whereas Dinkins tried to find jobs in banking as well as apply for every other job Glenn Adams opined he was qualified to do. [R. p. 85, l. 15-p. 86, l. 24; p. 90, ll. 5-20].

employment in the open market. Merely because Löwe's vocational expert theorized that such a market exists is not enough for the Commission to conclude, without more, that Dinkins would actually be able to find such a job in the open market. The proof is in the pudding. If Dinkins presents evidence that he conducted a diligent job search – as he did – the Commission is bound as a matter of law to consider it. Shealy at 110, 156 S.E.2d at 648 (“It is the duty of the Commission to make specific findings upon which a claimant's entitlement to compensation may rest and upon which the amount of compensation due him may be calculated by one of the statutory formulae.”). Furthermore, if his unsuccessful job search is made with “reasonable effort,” Dinkins would then have proven total loss of earnings capacity as a matter of law. See Coleman v. Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965); Stephenson v. Rice Servs., Inc., 323 S.C. 113, 116, 473 S.E.2d 699, 700 (1996)(The ability to perform limited tasks for which no stable job market exists does not prevent an employee from proving total disability).

Coleman and Shealy demonstrate that, where the other evidence of total disability is equivocal, the dispositive test is whether the claimant made a diligent job search. In Coleman, “between the date of his discharge by the doctor in October and the date of the hearing the following January, a period of approximately three months, he not only repeatedly sought employment with respondent, which was refused, but sought employment through the South Carolina State Employment Service and some eighteen other possible or potential employers.” Coleman at 630, 142 S.E.2d at 45. Coleman's testimony was sufficient for the Supreme Court to conclude: “we think the employee has proved that he has made not only reasonable, but diligent efforts to secure employment.” Id.

Conversely, the employee in Shealy did not make a reasonable effort to find employment.

Shealy "admitted that he had applied for only two of the six or seven jobs on which he had been employed since his discharge. He made only two other references to any effort to obtain employment." Shealy v. Algernon Blair, Inc., 250 S.C. 106, 112, 156 S.E.2d 649 (1967). Unlike Dinkins, Shealy made no effort to find work in the field in which he was previously employed 15 years before his injury (auto mechanics). The court concluded: "Quite clearly this meager testimony has no tendency to establish that claimant's failure to secure work in either instance resulted from any injury produced physical impairment." Id.

In the instant case, the Commission was presented with testimony comparable to, if not stronger, than the testimony in Coleman. It was legal error for the Commission to fail to consider this testimony. "The absence of any findings to support the Commission's denial leaves this Court no way of evaluating the reasoning behind the Commission's decision." See Pack v. State Dept. of Transp., 381 S.C. 526, 673 S.E.2d 461 (Ct.App. 2009); Fox v. Newberry County Mem'l Hosp., 319 S.C. 278, 280, 461 S.E.2d 392, 394 (1995)(holding when an administrative agency acts without first making the proper factual findings required by law, the proper procedure is to remand the case and allow the agency the opportunity to make those findings).

This Court should reject the Respondents' contention that the Commission's findings are supported by substantial evidence simply based on a weighing of the vocational reports. Dinkins is entitled to have the Commission consider all the evidence he presented. The Commission's finding of fact on this issue shows the vocational report from Glenn Adams was the sole determining factor in the Commission's decision:

The Claimant's vocational evaluation, determined that based on the strength of the Claimant's prior work history in management positions, as well as the other factors, the Claimant is employable in his labor market. (Defendants' APA #8, page 83-84).

[R. p. 34].

The Commission did not weigh Dinkins' testimony about the diligent job search; they *completely overlooked* it. This is the important distinction this Court must appreciate. This is not a simple substantial evidence case, but a case where the Commission failed to make any findings on a specific element of the proof presented. See Fox at 280, 461 S.E.2d at 394 (commissioner failed to make findings on 4 of 6 elements thus "it is impossible to know what facts he relied upon.").

Respondents argue that regardless of Dinkins' inability to find employment in a different field than the one in which he had been injured, the vocational assessment by Glen Adams alone is substantial evidence to support the Commission's finding. Essentially, Respondents contend Adams' report trumps Dinkins' unsuccessful job search. The reality is just the opposite. Because Adams' report is essentially a hypothetical opinion, his hypotheses is trumped by the real world job search. Hypothetically, Dinkins might be employable in the banking and finance field. In reality – and as predicted by Adger Brown – Dinkins' physical limitations, age, outdated skills, and absence from the finance field for over a decade render him unemployable in the open market. See Stephenson v. Rice Servs., Inc., 323 S.C. 113, 116, 473 S.E.2d 699, 700 (1996)(The ability to perform limited tasks for which no stable job market exists does not prevent an employee from proving total disability); Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E.2d 390 (S.C.App. 2003)(claimant's age and transferable skills are proper factors to consider in determining if a reasonably stable employment market exists). He proved this by conducting a reasonable job search.

The Commission made no finding, one way or the other, on the fact that Dinkins could not get hired in the jobs for which Adams opined he was employable. This was legal error. It is one

thing to rely on expert vocational testimony as the basis for a decision; it is something else when the trier of fact ignores evidence that completely undermines the basis of the expert opinion, particularly when the Supreme Court has explicitly endorsed an unsuccessful job search as proof of total disability. See Stallcup v. Carolina Wood Turning, Co., 7 S.E.2d 550 (N.C. 1940)(Seawell, J. dissenting)(“How far the Industrial Commission may be indulged in refusing to believe credible testimony is still to be worked out, but its arbitrary disregard of positive testimony and the substitution therefor of mere speculation is within the power of review and correction by this Court.”).

Therefore, this Court should remand this case to the Commission with instructions to consider the testimony of Dinkins regarding his unsuccessful work search – particularly on the jobs for which Adams had opined he was employable – and to make new findings of fact consistent with the evidence proving Dinkins has suffered a total loss of earnings capacity. The Commission should also be directed to consider the vocational report of Adger Brown which was overlooked in its previous Order.

CONCLUSION

For the foregoing reasons and the reasons previously raised in Appellant’s Brief, the Decision and Order below should be vacated and remanded to the Commission with the following instructions:

1. The Commission shall consider the testimony of Henry Dinkins regarding his failed search for work and make new findings as to whether or not the diligent work search conducted by Dinkins proved “his inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market

for them does not exist”;

2. The Commission shall make detailed and explicit findings of fact as to the weight given to the vocational report of Adger Brown; and
3. The Commission shall apply Ellison and make an award under whichever code section would result in the greatest disability benefit for Dinkins.

Respectfully Submitted,



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July 5, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-43-0087

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SC Court of Appeals

Henry Dinkins, ... Appellant,

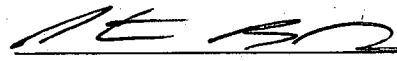
v.

Lowe's Home Centers, Inc. -Sumter, SC and
Specialty Risk Services, LLC, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b),
SCACR.

Respectfully submitted,



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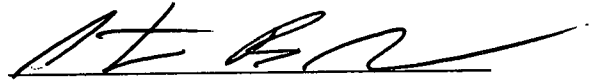
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July 5, 2010

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The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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