

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Supreme Court

Full Commission Appellate Panel Review

Unpublished Opinion No 2012-UP-153 (S C Ct App Filed Mar 7, 2012)

Donna L McCall, Employee,

Respondent,

v

Sandvik, Inc , Employer, and
Sentry Insurance Company, Carrier,

Petitioners

APPENDIX - VOLUME 4 OF 4

Grady L Beard, Esquire
Nicolas L Haigler, Esquire
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorneys for Petitioners

Other Counsel of Record

Larry C Brandt, Esquire
Thad B Ball, Esquire
LARRY C BRANDT, PA
3691 Blue Ridge Boulevard
Walhalla, South Carolina 29691
(864) 638-5406
Attorneys for Respondents

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MCCALL, DONNA LOUISE		MEDICAL RECORD	
10/27/51 44Y	F	1TH-425-01	000093377
04/16/96 1654	126808	0001	04/16/96 2257
DEVAULT, WILLIAM L		ORDERING PHYSICIAN PHONE #	
16 COMMONS BLVD		(803) 882-5232	
SENECA, SC 29678		ATTENDING PHYSICIAN	
DEVAULT, WILLIAM L			

RADIOLOGY REPORT

Chk-in # Order Exam
 126808 0001 7538 VU LOWER EXTREMITY UNILAT 76925*R
 Ord Diag R/O DVT

LOWER EXTREMITY ULTRASOUND

INDICATION Rule out DVT

Real time, color, and pulse wave doppler sonography of the right lower extremity is performed and multiple images are obtained Over the mid calf in the expected region of a peroneal vein there appears to be enlargement with internal echogenicity and no normal flow on color or wave form interrogation suggesting a thrombus within the peroneal vein near the mid-calf The patient is tender over this area to compression Otherwise veins of the lower extremity appear normally compressible from the common femoral to the superficial femoral and popliteal veins and veins of the upper calf No other findings to suggest DVT elsewhere are noted

IMPRESSION FINDINGS SUGGEST DVT WITHIN A PERONEAL VEIN NEAR THE MID-CALF

Case discussed with Dr DeVault

/Read By/ O A HICKLIN M D
 /Released By/ O A HICKLIN M D

CA
 04/16/96 2232

FINAL

IRS NO 57 0357993

ACCOUNT NO 0233000126		ADMISSION DATE / TIME 11/26/02 07:49A		TIME OUT 0		DATE OF BIRTH 10/27/51		AGE 51Y		SEX RACE AIB F I H		SERVICE ERS		ROOM NO		ACC PAT FMS		BY ER TLK		UNIT NUMBER 000093377	
DIAGNOSIS / COMPLAINT R ANKLE PAIN						REGULAR / WORK COMP PHYSICIAN CARPENTER, JIMMIE H						ED / ATTENDING PHYSICIAN WORTHINGTON, JOHN E						ADMITTING PHYSICIAN 2 7			
PATIENT NAME AND ADDRESS MCCALL DONNA LOUISE						PATIENT EMPLOYER VALENITE # 36-SEN 15497 WELLS HWY SENECA SC 29678						TELEPHONE NO (803) 682-7272						EMERGENCY TELEPHONE NO (803) 638-9958			
MANNER OF ARRIVAL WALK		TRIAGE TIME IN 741		TRIAGE TIME OUT 743		DATE FIRST SYMPTOM 11-25-02		PRIOR FIRST AID-SPECIFY YES NO Leave, ICE		POLICE NOTIFIED TIME YES NO N/A		TRIAGE CATEGORY EMERGENT URGENT NON-URGENT									
CHIEF COMPLAINT (S,R) R ANKLE PAIN FROM JUMPING INTO A hole		WT 189		PAIN SCALE 4		INITIAL VITAL SIGNS T 97.2 P 78 R 18 BP 147/93		TRAUMA SIGNATURE Sampson, GMP		SIO 100											
TIME IN ER 0800		ROOM # 17		LNMP JWHS		VALUABLES YES NO		TIME T		P P		R R		SIO SIO		O O		BP BP		Pain Scale Pain Scale	
PRESENT ILLNESS Twisted @ ankle nearly 2 weeks in SW - lost balance in vehicle, & swelling today								TIME T		P P		R R		SIO SIO		O O		BP BP		Pain Scale Pain Scale	
MEDICAL HISTORY								OBSERVATIONS Swelling @ ankle @ ankle pain & numbness No & ulcers													
CURRENT MEDS								REPORT TO TIME		REPORT GIVEN TO		OLD RECORD EKG CBC BMP CMP CP PT/PTT ABGS LIPASE AMYLASE U/A SU HCG									
ALLERGIES / DRUG FOOD LATEX YES NO				COMMUNICATION NEEDS YES NO		TETANUS HISTORY YES NO		NURSE SIGNATURE V. [Signature]													
PHYSICAL @								DISCHARGE REASSESSMENT / PAIN SCALE													
DIAGNOSIS @ Ankle sprain								DOCTOR'S ORDERS ace		DOSE time		ROUTE 4.2		SITE 50		TIME 5:11		INITIALS [Signature]			
TREATMENT																					
DISCHARGED WITH ALONE FAMILY COWORKER EMS FRIEND POLICE																					
CONDITION ON RELEASE GOOD POOR EXPIRED FAIR CRITICAL								DISPOSITION TRANSFERRED HOME ADMITTED DRS OFFICE OTHER													
CONSULTING PHYSICIAN								ATTENDING PHYSICIAN JW 0805													

HOSPITAL COPY

001 (5/02)

OCONEE MEMORIAL HOSPITAL
298 MEMORIAL DRIVE SENECA SC 29672 (864)883 7101
EMERGENCY DEPARTMENT PFCORD

PATIENT NAME MCCALL DONNA LO
MEDICAL RECORD NUM

DATE & TIME OF ED REG 11/26/2002 07 49AM
CHART NUM 0233000126

DATE & TIME OF EP EXAM 11/26/2002 07 49AM
AGE 51y RACE SEX F

PATIENT DOB 10/27/1951

HISTORY

CHIEF COMPLAINT(S) Right ankle pain
HISTORY OF PRESENT ILLNESS

This 51-year old presents with right ankle pain injured 3 days ago. She was raking leaves, stepped in a hole and had some pain at that time but actually was able to continue that activity. She has had with ambulation some continued pain. Noted dramatic increased swelling in the last 1-2 days and presents now for evaluation. She has had no other illness or complaints. No pain anywhere else. She has taken no meds for it prior to now.

REVIEW OF SYSTEMS

SKIN No lacerations or abrasions
MUSCULOSKELETAL No other complaints
NEURO No numbness tingling in the foot
PAST MEDICAL FAMILY AND/OR SOCIAL HISTORY
PAST HISTORY Negative
MEDS None
ALLERGIES None

EXAMINATION OF ORGAN SYSTEMS / BODY AREAS

Temp 97 pulse 73 respirations 18 blood pressure is 147/93. In general this is a well appearing 51-year-old who is at this time is alert and otherwise in no distress. Exam of the right ankle reveals 1+ edema over the lateral malleolus but no obvious bony deformity. The Achilles is intact. The foot is completely nontender. There is only pain over the lateral malleolus, nowhere else. The proximal fibula is nontender.

MEDICAL DECISION MAKING

COURSE IN THE ED WITH INTERPRETATION / REVIEW OF DIAGNOSTIC STUDIES

The patient has had x-rays obtained of the right ankle. Per radiologist, these are negative.

I relayed this information to the patient. Have recommended ice, elevation, weight bearing as tolerated. Advil or Motrin 4 pills 3 x a day with food. I have offered her something for pain and she has accepted it. I have given her Lortab 5 #10 to take as needed for pain interfering with sleep. She is to see her doctor if pain persists.

IMPRESSION(S)/DIAGNOSES Right ankle sprain
DISPOSITION Plan is as noted

ED CHART

page 1 of 2 copy 1

Printed 11/26/2002 15:16:02

13

OCONEE MEMORIAL HOSPITAL
298 MEMORIAL DRIVE SENECA SC 29672 (864)883 7101
EMERGENCY DEPARTMENT RECORD

PATIENT NAME MCCALL, DONNA LO
MEDICAL RECORD NUM

DATE & TIME OF ED REG 11/26/2002 07 49AM
CHART NUM 0233000126

Dictated by: WORTHINGTON, MD, JOHN E
Authenticated by WORTHINGTON MD JOHN E
Transcribed by KELLNERB

11/26/2002 08:57:41
11/26/2002 14 52:12
11/26/2002 14:47 39

ED CHART

page 2 of 2 copy 1

Printed 11/26/2002 15:16:02

16

Anderson Radiology

DEFENDANTS' APA #5 RECORDS OF ANDERSON RADIOLOGY

1011 Ella Street ♦ Anderson South Carolina 29621
Telephone (864) 225 6286 ♦ Fax (864) 231-6738

Exam Date 11/17/99

Physician AMAYA
Patient Name: MCCALL, DONNA L n
DOB 10/27/51 Age 48 Sex F
Acct #: 44972

CERVICAL SPINE Views 5
Clinical Indications Neck pain

Moderate chronic degenerative disc narrowing is present at C5-6 and at C6-7. Mild osteophyte compromise of the neural foramina at C5-6 is demonstrated, right more than left. No neural foramen compromise is visible at C6-7. The remaining cervical vertebra, posterior elements, disc spaces, spinal canal, and paraspinal soft tissues are normally defined.

IMPRESSION Moderate chronic degenerative disc disease C5-6 and C6-7 with bilateral neural foramen compromise at C5-6 by osteophytosis. No spinal canal compromise seen. Otherwise negative cervical spine.

LUMBAR SPINE Views 5
Clinical Indications Back pain

A Schmorl's node is present in the superior aspect of L1, a normal finding. The vertebral bodies are normal in height, density, and alignment and the intervertebral spaces are normal. The facet joints and posterior elements are preserved. The sacroiliac joints appear normal.

IMPRESSION Normal lumbar spine

Thank you for this consultation

Edward Warren, III, M D

EW

Wed Nov 17, 1999 04 10 PM

General Radiology ♦ Fluoro ♦ Ultra Sound ♦ Mammography ♦ CT ♦ MRI

17

18801

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall, Employee

Appellant,

v

Sandvik, Incorporated, Employer
and
Sentry Insurance Company Carrier

Respondents

RECORD ON APPEAL
VOLUME 4 OF 4

Larry C Brandt
Thad B Ball
Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla, SC 29691
864/638-5406
Attorneys for Appellant

Mr Grady L Beard
Sowell Gray Stepp & Laffitte, LLC
P O Box 11449
1310 Gadsden Street
Columbia SC 29211
803/929-1400
Attorney for Respondents

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Lake Ridge



Neurological PA

Orlando A. Rick Ricalde MD
Felipe A. Amaya MD

103 Omni Dr. Suite B Seneca SC 29672
(864) 885 9866 Fax (864) 888 8307

EMG Evoked Potential
FEC Sleep Study

McCallDonna11299
November 12 1999

James H. Carpenter MD

RE Donna McCall

Dear Dr. Carpenter

Thank you very much for asking me to see Ms. McCall. I know that her history is well known to you, but I will review it with you for the purpose of my records.

CHIEF COMPLAINT/HPI Tremors in the extremities

Ms. McCall is a 48yo lady who presented describing diffuse numbness tingling of all extremities. She described that her sx were exacerbated by exertion and had been pretty much stable over the last 2yrs. She also c/o difficulty sleeping because when she positions herself on either side, both induce the same symptomatology. She described a very fine tremor which is also worsened upon exertion, not currently present. She denied neck or low back pain.

A full write is available in the chart for your review upon request.

ASSESSMENT

- 1 CERVICAL AND L/S RADICULOPATHIES +/-
- 2 ENTRAPMENT SYNDROMES IN THE EXTREMITIES +/-
- 3 PERIPHERAL NEUROPATHY

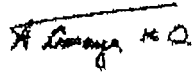
PLAN

- 1 Cervical and L/S imaging studies to evaluate the possibility of nerve root lesions
- 2 Order blood work to check for reversible causes of neuropathies
- 3 EP studies of the RUE and bilateral lower extremities to further define any entrapment syndromes
- 4 Celebrex 200mg capsules 1 po qHS
- 5 Zanaflex 4mg 1/2 po qHS x3 days, then 1 po qHS x3 days then increase to 1/2 qAM, 1 qPM until next MD evaluation
- 6 RTC after all above testing is completed

Thank you very much for allowing me to be involved in the care of your patients.

Page 2
McCall, Donna

Sincerely



F Antonio Amaya MD

FA/sjw 11/26/99

Lake Ridge



Neurological, PA

Orlando A. Rick Ricalde M.D.
Felipe A. Amaya M.D.

103 Omni Dr. Suite B Seneca SC 29672
(864) 885 9866 Fax (864) 836 8307

EMG Evoked Potentials
EEG Sleep Studies

McCallDonna111299
November 12 1999

James H. Carpenter M.D.
Grace Family Practice
867 Whitworth Circle
Seneca SC 29672

RE Donna McCall

Dear Dr. Carpenter

Thank you very much for asking me to see Ms. McCall. I know that her history is well known to you, but I will review it with you for the purpose of my records.

CHIEF COMPLAINT / HPI Tremors

Ms. McCall is a 48yo lady who presented describing tremors of all her extremities progressing for approx 2 yrs. She stated that she also experiences numbness worse on exertion, also going on for about the same time. She also c/o constant HAs mostly felt in the back of the head w/o any known relationship to exertion or trauma. She denied LBP.

A full history and complete neurological exam as they pertain to Mrs. McCall's condition are on file and available for review upon request.

ASSESSMENT CERVICAL AND L/S RADICULOPATHIES AND/OR ENTRAPMENT SYNDROMES OF THE EXTREMITIES AND/OR PERIPHERAL NEUROPATHIES

PLAN

- 1 Cervical and L/S MRIs and X-rays
- 2 Order blood work to check for reversible causes of neuropathies
- 3 RUE and BLE EPS
- 4 Celebrex 200mg 1 po qhs
- 5 Zanaflex 4mg 1/2 po qHS x3 days then increase to 1po qHS x3 days then add 1/2 in the AM until the next MD evaluation
- 6 RTC after all above testing is completed

103 Omni Dr. Suite B Seneca SC 29672
(864) 881 9866 Fax (864) 888 8307

EMG Evoked Potentials
EEG Sleep Studies

Mccallldonna111799mrilspine
November 17 1999

RADIOLOGY REPORT

Patient: Donna McCall **Date of Birth:** October 27, 1951

Indication: Low back pain and radiculopathy

Examination MRI of the lumbar spine

Sagittal T1 T2 axial T1 and T2 weighted images of the lumbosacral spine were obtained. Plain films are available for comparison at this time.

The plain films show degenerative end plate changes at the T11 T12 L1 L2 L3 L4 L5 and S1 levels. Anterior osteophytic spurs are present at multiple levels. There is loss of disc height at the T11/12 and T12/L1 levels. There is also the suggestion of a slight retrolisthesis of L1 in respect to L2. The neuroforamen also appears narrow at the L5/S1 level.

Review of the sagittal T2 weighted images demonstrates disc desiccation or dehydration at the T11/12 T12/L1, and L4/5 L5/S1 levels. Anterior osteophytic spurring is also present at multiple levels. There is also the suggestion of early Schmorl's node formation at the inferior/superior end plates at L1 and the inferior/superior end plates of L2. These are best seen on image 173-175 of series 1-18. There is the suggestion of a disc bulge or herniation at the L3/4 and the L4/5 levels. At the L4/5 level it appears to extend into the region of the neuroforamen bilaterally (see image 145 and 151 of series 1 16).

A view of the axial images obtained at approximately the L1 level demonstrates the spinal canal to be patent. There is a central disc bulge at the L3/4 level. There is a lateral disc herniation present at the L4/5 level with extension into the neuroforamen (see sagittal images 171 and 177 of series 118). At these levels the disc material is adjacent to the nerve root in the neuroforamen. The neuroforamen are widely patent bilaterally at the L5/S1 level.

IMPRESSION 1) Disc desiccation or dehydration is present at multiple levels as described above.

2) Early Schmorl's node formation is present involving the L1 and L2 vertebral bodies as described above.

3) Disc herniation is present at the L4/5 level.

Page 2-Donna McCall

Sincerely

F Antonio Amaya MD
FAA/jeg

PAGE 12/14 * RCVD AT 4/30/2008 10 53 34 AM [Eastern Daylight Time] * SVR RIGHTFAX/1 * DNIS 7884 * CSID 18648888307 * DURATION (mm ss) 04 36

759

22

Name Donna McCall Date 11/17/99 Neurologist Dr Ricalde Arnava

Plan 1 1 (C) (L) MRI & X Rays to evaluate the possibility that mass lesions are producing these sx
Date 11/17/99 Time 3:00 PM Where HUSO 11 Precert

2 Head MRI w w/o contrast to evaluate the probability that mass lesions as producing these sx
Date Time Where Precert

3 3 Blood panels to be able to r/o reversible causes of neuropathies B12 folate CBC w/ diff
ART Sed rate LFTs TFTs COMP ANA, Ca+ Phos &
Date Time Where Precert

3 4 NCS & EMGs of the Upper (R) L Lower R L to evaluate the possibility of a PN being
superimposed on a radiculopathy or vice versa also to isolate these etiologies to further
define treatment

Date 11-23-99 Time 1:40 Where Precert
11-30-99 3:00
12-13-99 3:40

5 Please schedule for Botox EEG or

Date Time Where Precert
Date Time Where Precert

6 Schedule for MRA, carotid doppler & a TEE to define the possible embolic source of TIA

Date Time Where Precert
Date Time Where Precert
Date Time Where Precert

7 Consult

Date Time Where Precert

9 Consult PT OT Rehab
Date Time Where Precert
Date Time Where Precert

10 Other 1) Celebrex 200mg 2x per day bedtime
2) Zanaflex 4mg bid 1/2 hr before meals x 3 days then T
to 2mg bid x 3 days then T
by 1/2 in am until next MD eval

Date Time Where Precert

11 RTC 1 2 3 4 5 6 7 8 9 10 11 12 days wk (s) month (s) yr (s)

6 RTC p above have been completed

A. Amaya, M.D. 12 Nov 99
180

AGE 57 * RCVD AT 4/30/2008 10 51 09 AM (Eastern Daylight Time) * SVR RIGHTFAX/1 * DNIS 7884 * CSID 18648888307 * DURATION (mm:ss) 02:22

760

23

Please take the time to fill out this questionnaire. It will be helpful in allowing us to better understand how to help you with your neurological problem. We do appreciate your patience and assistance. Thank you very much.

Past Medical Problems Have you ever had

1 High Blood Pressure	yes ☒ no ☒	6 Asthma	yes ☒ no ☒	Other Medical Problems?	_____
2 Diabetes	yes ☒ no ☒	7 Kidney Disease	yes ☒ no ☒		_____
3 A Heart Attack	yes ☒ no ☒	8 Liver Disease	yes ☒ no ☒		_____
4 Other Heart Problems	yes ☒ no ☒	9 Seizures	yes ☒ no ☒		_____
5 A Stroke	yes ☒ no ☒	10 Nerve Problems	yes ☒ no ☒		_____

Please List Operations You May Have Had and About When You Had Them

Tonsils _____ Appendix _____ Gall Bladder _____ Hernia _____ Hysterectomy _____
Tubal _____

Neck Surgery _____ Back Surgery _____
Others? _____

ALLERGIES I do have allergies no test done

SYSTEM REVIEW Please Check One in Each Category The Doctor Will Ask You More About These

How is your health in general?	Excellent _____ Good ☒ Fair _____ Poor _____
How is your vision?	Excellent _____ Good ☒ Fair _____ Poor _____
Do you sometimes have double vision?	yes ☒ no ☒
Do you have any trouble with eating or swallowing?	yes ☒ no ☒
Do you have any trouble with speaking?	yes ☒ no ☒
Do you have any trouble with breathing?	yes ☒ no ☒
Do you get chest pains?	yes ☒ no ☒
Do you have any difficulty with bladder function?	yes ☒ no ☒
Do you have any difficulty with bowel function?	yes ☒ no ☒
Do you have arthritis chronic muscle or bone pain?	yes ☒ no ☒
Any Rashes?	yes ☒ no ☒
Any Recent Fever Chills or Weight Loss?	yes ☒ no ☒
Any Numbness or Tingling?	yes ☒ no ☒
Any Weakness?	yes ☒ no ☒

Do You Have Any Family History of

1 Cancer	yes ☒ no ☒	6 Brain Aneurysm	yes ☒ no ☒
2 Heart Disease	yes ☒ no ☒		
3 High Blood Pressure	yes ☒ no ☒		
4 Diabetes	yes ☒ no ☒		
5 Stroke	yes ☒ no ☒		

(Grandmother)

Do You Smoke? No If So How Much? _____

Do You Occasionally Drink Alcohol? No If So How Much? _____

Medications You Are Taking Now _____

Name Donna McCall Age 48 Date 11-12-99 RN UE LEReferring MD Carpenter Primary Doctor CarpenterReason for evaluation tremors in ext(D) handedVS BP sitting 1 HR 76 Reg ✓ Irr ✓ T 98.7 Ht 5'6" Wt 192
Optional supine 1 stand 1 Allergies? (See list on chart)HPI all 4 ext, new x 2 yrs, esp numbness worse on exertion now x 2 yrs,
constant h/o, through back of head, 5 known relationships to Sx
all time 5-10 sec O/R free to take all around

(1-3 Brief 4+ Extended location, quality severity duration, timing context, modifying. Associated signs & sxs)

GEN WN approp developed for age AAAPNED Other Manually slowHEENT (Nml) orCOGNITIVE (grossly Nml) Other MMSEGAIT & COORD (Nml) OtherRomberg Nml mild (prominent)CNs II (Nml) orIII IV & VI (Nml) orV & VII (Nml) orVIII (Nml) orIX & X (Nml) orXI (Nml) orXII (Nml) orMOTOR w/ COORD (Nml) orPronator drift Absent L RSENSORY (Nml) or distal PP in the C/LS region or well on the extremities x 4Manually & vibratory sensation, symmetric & distally. No deficits reported on STDTRs (Nml) or ++ throughoutBabinsky (Nml) orLUNGS (Nml) orHEART (Nml) orVASCULAR (Nml) or DeferedABD (Nml) orEXT (Nml) orBACK/SPINE (Nml) or No reproducible Dx on pressureIMPRESSION C/LS radiculopathy ± entrapment synd ± PH

J. Amaya MD
 12 Nov 99
 18 15

75

Telephone (864) 885 8886

LAKE RIDGE NEUROLOGICAL
ORLANDO A. RICH RICALDE M.D.
FELIPE A. AMAYA M.D.

103 Omni Dr., Suite B

Seneca, SC 29872

NAME <u>Mrs Donna M. Call</u>		DATE <u>12 Nov 99</u>	
ADDRESS _____		AGE _____	
LABEL NAME OF DRUG — STRENGTH AND QUANTITY		☐ YES ☐ NO	PHARMACY #
Rx1 <u>Celebron™ Cn (Clenazepam tablets, USP)</u>			Rx1
SIG <u>0.5mg</u>			
D6PSE <u>1mg mg /cc</u>		REFILL	0 1 2 3 4 5
Rx2 <u>28 tablet C-card</u>		☐ 28 tablet C-card	Rx2
SIG <u>56 tablet C-card</u>		☐ 56 tablet C-card	
D6PSE <u>mg /cc</u>		REFILL	0 1 2 3 4 5
Rx3 <u>1 tablet q Day</u>			Rx3
SIG <u>1 tablet BID</u>			
D6PSE <u>Other</u>		REFILL	0 1 2 3 4 5
<u>F. Amaya</u> M.D.		<u>Substitution Permissible</u> M.D.	
Difference As Written			

PAGE 1/14 * RCVD AT 4/30/2008 10 53 34 AM [Eastern Daylight Time] * SVR RIGHTFAX/1 * DNIS 7884 * CSID 18648888307 * DURATION (mm ss) 04 36

763

76

Mccalldonna111799mricspine
November 17 1999

RADIOLOGY REPORT

Patient Donna McCall

Date of Birth October 27 1951

Indication Cervical radiculopathy

Examination MRI of the cervical spine

Sagittal T1 T2 axial T1 and T2 weighted images of the cervical spine were obtained. Plain films of the cervical spine are available for comparison at this time. These demonstrate narrowing of the neuroforamen in the lower cervical spine region on the oblique films. The sagittal images also demonstrate a loss of disc height with anterior osteophytic spurring at the C5/6 and C6/7 levels.

Review of the sagittal T2 weighted images demonstrates disc desiccation or dehydration at all of the visualized cervical spine levels. Anterior osteophytic spurs are present at the inferior end plates of C4 C5 C6 and C7. There is also the suggestion of disc bulges or herniations at the C5/6 C6/7 and C7/T1 levels. There is no evidence of a Chiari malformation. No definite signal abnormalities are identified within the visualized portions of the spinal cord.

Review of the axial images demonstrates neuroforamen to be patent at the C3/4 and C4/5 levels bilaterally. There is the suggestion of a small paramedian right disc bulge at the C4/5 level. There is a broad based disc bulge present at the C5/6 level which appears to extend into the region of the neuroforamen bilaterally (see image 114-115 of series 1 13). There are associated bony spurs present at this level. There is a broad based disc bulge present at the C6/7 level.

IMPRESSION 1) Loss of normal cervical spine lordosis with disc desiccation or dehydration and osteophytic spurring at multiple levels.

2) Paramedian right disc bulges are seen at the C4/5 level.

3) Broad based disc bulge is seen at the C5/6 level. There is also associated bony spurring present at this level. This most likely affects the exiting nerve root on the left side greater than the right.

4) Broad based disc bulge with bony spur at the C6/7 level.

Thank you very much


F. Antonio Amaya, M.D.
FAA/jcg

27

Date 11.30.99

Name Donna McCall

Referring M D Carpenter

EMG/NCS procedure was explained to patient, along with risks and

complications Patient tolerated procedure well. see Daily R E D 7

Pt presented today with overall improvement of her Sx. she
denies that she might have had an allergic rxn to celebrex &
stopped it on her own

Meds Cps of the C5-C6 & C6-C7 were performed. Full report to follow

imp. (1) C5 & L5 radiculopathy, improved on celebrex &

Zenaflex. No apparent adverse rxn to celebrex

MEDICAL HISTORY (2) myeloid (3) 67s median nerve entrapment & the wrist now
 S Sx

P

1) - VORX - 25mg - no ghs. OIC advised of recurrence of Sx

2) Zanaflex - cont

ALLERGIES

1) PT - C/L5

4) opioid in vix

3) RTC pm

A. Amey MD
9 Dec 99

SOCIAL HISTORY SMOKE

DRINK

CRANIAL NERVES

II

III, IV VI

V

II

XI, X, XII

OTITIS

HEART

LUNGS

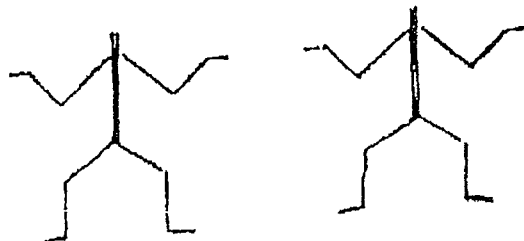
OTOR

COORDINATION

PRONATION

OMBERG'S

BARRE'



78

Telephone (864) 886-9800

LAKE RIDGE NEUROLOGICAL
ORLANDO A RICK RICALDE M D
FELIPE A AMAYA M D

103 Omni Dr., Suite B

Seneca, SC 29672

NAME Donna McCall DATE 11/30/99

ADDRESS		AGE		
LABEL NAME OF DRUG — STRENGTH AND QUANTITY		☐ YES	☐ NO	PHARMACY #
R1	celebrex 200mg, 11 PO QHS			R1
SIG				
DSPSE	#60	mg/cc	REFILL	0 1 2 3 4 5
R2				R2
SIG				
DSPSE		mg/cc	REFILL	0 1 2 3 4 5
R3				R3
SIG				
DSPSE		mg/cc	REFILL	0 1 2 3 4 5

F. Amaya MD Disburse As Written MD Substitution Permissible MD

GE 718 * RCVD AT 4/30/2008 10 48 31 AM [Eastern Daylight Time] * SVR RIGHTFAX/1 DNIS 7884 * CSID 18648888307 DURATION (mm ss) 02 36

766

79

Lake Ridge



Neurological, PA

Orlando A. Rick Ricalde, M.D.
Felipe A. Amaya, M.D.

103 Omni Dr. Suite B Seneca SC 29672
(864) 885 9866 Fax (864) 888 8307

FMC Evoked Potentials
EEG Sleep Studies

McCallDonna113099
November 30, 1999

James H. Carpenter, M.D.
Grace Family Practice
867 Whitworth Circle
Seneca, SC 29672

RE Donna McCall

Dear Dr. Carpenter,

Ms. McCall returned to my office today to have her EP studies performed in both lower extremities and her right upper extremity. She presented describing overall improvement of her sx. She reported that she may have had an allergic reaction to Celebrex and therefore, stopped taking some of it on her own.

LABS / DIAGNOSTICS EPS of the BLE and RUE were performed today. A full report is to follow. The blood work panels ordered to evaluate potentially reversible neuropathies were discussed. All questions with reference to diagnostic studies were answered.

ASSESSMENT

- 1 CERVICAL AND L/S NERVE ROOT LESIONS IMPROVED WITH ZANAFLEX WITH APPARENT ADVERSE REACTION TO CELEBREX
- 2 MILD RIGHT MEDIAN ENTRAPMENT ACROSS THE WRIST, NOW WITHOUT SX

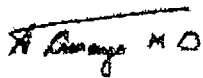
PLAN

- 1 Retry the Celebrex, and then use Vioxx if the apparent adverse reaction reappears
- 2 Continue the Zanaflex as Rx'd per the last visit.
- 3 PT for cervical and L/S flexibility
- 4 Off work note written for the patient
- 5 RTC for work release and prn

Page 2
RE McCall, Donna

Thank you very much for allowing me to be involved in the care of your patients

Sincerely



F Antonio Amaya, M D
FA/sjw

D 12/10/99
T 12/29/99

AGE 1/7 * RCVD AT 4/30/2008 10 51 09 AM [Eastern Daylight Time] SVR RIGHTFAX/1 * DNIS 7884 * CSID 18648888307 * DURATION (mm ss) 02 22

768

3/

773

Lake Ridge



Neurological PA

Orlando A. Rick Ricalde M.D.
Felipe A. Amaya M.D.

103 Omni Dr Suite B • Seneca SC 29672
(864) 885 9866 Fax (864) 898 8307

EMC Evoked Potentials
FTG Sleep Studies

McCallDonna121099
December 10 1999

James H Carpenter M.D.
Grace Family Practice
867 Whitworth Circle
Seneca, SC 29672

RE Donna McCall

Dear Dr Carpenter,

Ms McCall returned to my office today to monitor her response to Celebrex and Zanaflex. She presented describing continuing symptomatology as per our original meeting. She described that all her sx are worsened on exertion.

She has unfortunately not been compliant with tx. Her sx are most likely the result of chronic stress on her cervical and L/S regions. She has a job that demands a lot of heavy lifting and moving. Also, she has not been able to follow instructions to rest.

PHYSICAL EXAM No changes

ASSESSMENT

- 1 SEVERE CERVICAL AND L/S DJD WITH NERVE ROOT LESIONS
- 2 MILD RIGHT CTS

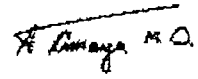
PLAN

- 1 Ms McCall was again advised to assume a light duty job, if not complete rest, anywhere from 6-8 wks with no heavy lifting involved. A statement describing the same was handwritten and given to her to take to her employer.
- 2 Right wrist splints for 6-8 wks.
- 3 Gabitril 4mg 1 po qHS for muscle relaxation and paresthesias.
- 4 RTC in approx 4 wks to reassess.

Thank you very much for allowing me to be involved in the care of your patients.

RE McCall Donna
Page 2

Sincerely

A handwritten signature in dark ink, appearing to read "F. Antonio Amaya, M.D.", with a horizontal line drawn above it.

F. Antonio Amaya, M.D.
FA/sjw

D 12/7/99
T 12/21/99

AGE 3/8 RCVD AT 4/30/2008 10 48 31 AM [Eastern Daylight Time] * SVR RIGHTFAX/1 DNIS 7884 * CSID 18648888307 * DURATION (mm:ss) 02:36

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FOLLOW UP NOTE

LAKE RIDGE NEUROLOGICAL

DR RICALDE/AMAYA

NAME Donna McCall DATE 12/10/99 REF PHY Carpenter

(Are all labs & diagnostic studies ordered previously available to be reviewed with the patient and/or his family here?) I
How has the original reason for evaluation changed w/ the current tx? Out of Zanaflex -
waking up @ 3am while on Zanaflex.

Zanaflex

VS BP sitting 110/66 HR 76 (Reg) Ir T 96.9 Ht --- Wt 191
Optional supine --- stand --- Allergies? --- (See list on chart)

MD eval Cont shuffling of the GLE, worse on exertion, also numbness, tingling
x 4

Results of Med w/orn & dx studies reviewed

Focused PE, changes from last I O's

	CHANGE?	
GEN	Y	WN, approp developed for age, NAAPNED <u>---</u> Other <u>---</u>
HEENT	Y	Nml <u>---</u> or <u>---</u>
COGNITIVE	Y	Nml <u>---</u> Other <u>---</u> MMSE <u>---</u>
GAIT & COORD -	Y	Nml <u>---</u> Other <u>---</u>
Romberg	Y	Nml <u>---</u> mild <u>---</u> prominent <u>---</u>
CN's II	Y	Nml <u>---</u> or <u>---</u>
III, IV & VI	Y	Nml <u>---</u> or <u>---</u>
V & VII	Y	Nml <u>---</u> or <u>---</u>
VIII	Y	Nml <u>---</u> or <u>---</u>
IX & X	Y	Nml <u>---</u> or <u>---</u>
XI	Y	Nml <u>---</u> or <u>---</u>
XII	Y	Nml <u>---</u> or <u>---</u>
MOTOR w/ COORD	Y	Nml <u>---</u> or <u>---</u>
Pronator drift	Y	Absent <u>---</u> L <u>---</u> R <u>---</u>
SENSORY	Y	Nml <u>---</u> or <u>---</u>
DTRs	Y	Nml <u>---</u> or <u>---</u> Babinsky Nml <u>---</u> or <u>---</u>
HEART	Y	Nml <u>---</u> or <u>---</u>
LUNGS	Y	Nml <u>---</u> or <u>---</u>
VASCULAR	Y	Nml <u>---</u> or <u>---</u>
ABD	Y	Nml <u>---</u> or <u>---</u>
EXT	Y	Nml <u>---</u> or <u>---</u>
BACK/SPINE	Y	Nml <u>---</u> or <u>---</u>

IMP (1) Severe c of LS DTD E nerve root lesions
(2) mild DCTS

D. Alarcon
12/10/99

Name Donna McCall Date 12-10-99 Neurologist Dr Ricalde Amaya

Plan 1 C LS MRI & X Rays to evaluate the possibility that mass lesions are producing these sx
Date Time Where Precert

2 Head MRI w w/o contrast to evaluate the probability that mass lesions are producing these sx
Date Time Where Precert

3 Blood panels to be able to r/o reversible causes of neuropathies B12 folate CBC w/ diff
ART Sed rate LFTs TFTs COMP ANA, Ca+ Phos &
Date Time Where Precert

4 NCS & EMGs of the Upper R L Lower R L to evaluate the possibility of a PN being
superimposed on a radiculopathy or vice versa also to isolate these etiologies to further
define treatment
Date Time Where Precert

5 Please schedule for Botox EEG or

Date Time Where Precert
Date Time Where Precert

6 Schedule for MRA, carotid doppler & a TEE to define the possible embolic source of TIA
Date Time Where Precert
Date Time Where Precert
Date Time Where Precert

7 Consult

Date Time Where Precert

9 Consult PT OT Rehab
Date Time Where Precert
Date Time Where Precert

10 Other ① Light duty - 6-8 hrs & no heavy lifting
② ③ must splint for 6-8 hrs
④ Gatchal King test suggests for muscle relaxation,
parenterally

Date Time Where Precert

11 RTC 1 2 3 ④ 5 6 7 8 9 10 11 12 days wk (s) month (s) yr (s) NO

10 Dec 99
Amaya

AGE 5/8 * RCVD AT 4/30/2008 10 48 31 AM [Eastern Daylight Time] * SVR RIGHTFAX/1 * DNIS 7884 * CSID 18648888307 * DURATION (mm ss) 02 36

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UNIVERSITY MEDICAL GROUP

DATE 8-27-17

NEW PATIENT INFORMATION

Patient's Full Name Michelle Dennis L
(Last Name) (First Name) Middle NamePatient's Nickname/AKA _____ Maiden Name Ramsey

Patient SSN# _____ Home # _____

Cell # () _____ Birthday 10 27 51 Sex M
Month Day Complete YearRace W Marital Status M Street Address _____Apt #/Building # _____ City _____ State CA Zip _____County Monterey PO Box _____ City _____ ST _____ PO Box Zip _____Email _____ Preferred Language English/SpanishPatient's Employer ValenteEmployer Address 2424 Sand Pier Boulevard WestminsterStatus C Zip Code 92640 Patients Employer Tel # 614 836 7266 Ext _____EMERGENCY CONTACT
Emergency Contact Name St. McCall Emergency Tel # () _____Cell Phone # _____ Employer Name retiredEmployer Phone # () _____ Relationship husbandGUARANTOR
Parent presenting Minor (under the age of 18) for treatment will be listed as the guarantor

Guarantor Name _____ Guarantor SSN# _____

Patient Relationship to Guarantor _____ Guarantor Address _____

City _____ State _____ Zip _____ Guarantor Telephone # () _____

Cell Phone # () _____ Guarantor Employer _____

Guarantor Employer Phone # () _____ Ext _____

Is visit result of Injury/Accident? () Yes () No (Implies Auto accident, workers compensation, etc)
If you checked 'Yes' to this question return to the receptionist for additional form

Senior Dr. MR 8/6/01

SSN 1 _____
Date of Birth 10 27 51

PATIENT HEALTH HISTORY

In order for us to obtain a complete medical history it is important for you to fill out this form as completely as possible. This is very important information. Please fill out every item. It is important for your doctor to know that you have carefully reviewed every area of this form. This information will be entered into the computer and you are welcomed to a copy of the report if you wish.

Social Security Number (SSN) _____ Date of Birth 10/27/51 Appointment Date 8-29-07
Patient's Last Name McCall First Donna MI 2 Preferred Name Donna
Male ☐ Female ☒ Race _____ Pharmacy Reference (include location) Exempla, Aurora
Name of Primary Care (family) Physician Dr. Capen Name of referring physician _____
referring

List any and all Doctors you are seeing and why

Dr's Full Name	Why you see this Doctor
<u>Henry Ramirez</u>	<u>Heart problem & heart surgery</u>

Are you taking ANY kind of medication now (This includes prescription over the counter or herbal medications)
☐ No ☒ Yes If yes please list below include dosages

(TAB 1) PLEASE LIST ALL MEDICATIONS CURRENTLY BEING USED (PLEASE PRINT ALL)

Medication Name	Dosage	How often?	Prescribing Doctor
<u>aspirin 81 mg</u>			<u>Henry Ramirez</u>
<u>Ticlid 150 mg</u>			
<u>Ativan 4 mg</u>			
<u>Aspirin 81 mg</u>			
<u>Aspirin 81 mg</u>			
<u>Aspirin 81 mg</u>			

(TAB 2) Are you allergic to ANY medications? ☒ No ☐ Yes If yes please list below

Name of Medication	Type of Reaction

(TAB 3) NON MEDICATION ALLERGIES

Are you allergic to seafood? ☒ No ☐ Yes If yes what reaction do you have?

Aspirin 81 mg ☐ No ☒ Yes ☐ Itch ☐ Rash ☒ Other
If yes what reaction do you have? Allergy to the medicine

SSN [redacted]
Date of Birth 10-27-51

(TAB 6) SERIOUS INJURIES

Have you ever had a serious injury such as head, neck, back, or other injury? ☐ No ☒ Yes

If yes, list and describe the type of injury and when it occurred

Shunt - 7 yrs ago back surgery they said probably more from heavy lifting took care of

(TAB 8) FAMILY HISTORY

Specific Anesthesia Problem ☐ Mother ☐ Father ☐ Brother ☐ Sister

Heart and Blood Vessels

Heart Disease ☐ Mother ☐ Father ☐ Brother ☐ Sister

High Blood Pressure ☐ Mother ☐ Father ☐ Brother ☐ Sister

Lungs and Respiratory

Lung Cancer ☐ Mother ☐ Father ☐ Brother ☐ Sister

Asthma ☐ Mother ☐ Father ☐ Brother ☐ Sister

Bones, Joints & Muscles

Arthritis ☐ Mother ☐ Father ☐ Brother ☐ Sister

Osteoporosis ☐ Mother ☐ Father ☐ Brother ☐ Sister

Brain and Nervous

Dementia ☐ Mother ☐ Father ☐ Brother ☐ Sister

Neurologic disease ☐ Mother ☐ Father ☐ Brother ☐ Sister

Stroke ☐ Mother ☐ Father ☐ Brother ☐ Sister

Blood & Lymph Node problems

Bleeding, clotting problem ☐ Mother ☐ Father ☐ Brother ☐ Sister

Other ☐ Mother ☐ Father ☐ Brother ☐ Sister

(TAB 9) SOCIAL HISTORY

Place of employment Unemployed

Occupation Printer Operator Check here if you are retired ☐ Marital Status M

Have you ever used tobacco in any form? ☒ No ☐ Yes

If yes, please complete the following

Type of Tobacco	From year	To year
Cigarettes per day		
Other (list type)		

Are you exposed to second hand smoke? ☒ No ☐ Yes

Have you ever used alcohol in any form? ☒ No ☐ Yes

If yes, please complete the following

Type of Alcohol	From year	To year
Beers per week		
Wine glasses per week		
Other (list type)		

Hand dominance ☒ Right ☐ Left

Living setting ☐ Alone ☐ Spouse ☐ Children ☐ Mother ☐ Father ☐ Nursing Home ☐ Assisted living ☐ Other

(TAB 10) REVIEW OF SYMPTOMS List any problems you have or have recently had in the following areas

General Health (Fatigue, Fever, Unintentional weight loss, Unintentional weight gain, or other problems) ☒ No ☐ Yes

If yes, please list problems

Eye and Ear (Loss of vision, Hearing loss, Ringing in ears, or other problems)

☐ No ☐ Yes

If yes, please list problems

Blurred vision per se in LRS

SSN _____
Date of Birth 11-27-51

(TAB 4) Have you ever been DIAGNOSED with any major health problems? Including, but not limited to

CHILDHOOD DISTASTHS

Measles ☒ Yes What year? _____
German Measles ☐ Yes What year? _____
Mumps ☒ Yes What year? _____
Scarlet Fever ☐ Yes What year? _____

Diverticulitis ☐ Yes What year? _____
Reflux ☐ Yes What year? _____
Hepatitis ☐ Yes What year? _____
Hemm ☐ Yes What year? _____
Pancreatitis ☐ Yes What year? _____
Stomach ulcer ☐ Yes What year? _____

CANCER

Type _____ ☐ Yes What year? _____

EYES

Cataracts ☐ Yes What year? _____
Glaucoma ☐ Yes What year? _____
Retinal Detachment ☐ Yes What year? _____
DEAFNESS
Hearing loss from aging ☐ Yes What year? _____
Hearing loss from trauma ☐ Yes What year? _____
Hearing loss unknown causes ☐ Yes What year? _____

KIDNEY & BLADDER PROBLEMS

Renal failure ☐ Yes What year? _____
Prostate Enlargement ☐ Yes What year? _____
Are you pregnant? ☐ Yes

SKIN & BRUISING

Psoriasis ☐ Yes What year? _____
Shingles ☐ Yes What year? _____

BRAIN & NERVOUS SYSTEM

Epilepsy ☐ Yes What year? _____
Stroke ☐ Yes What year? _____

HEART & BLOOD VESSELS

Angina ☐ Yes What year? _____
Cerebral Vascular Accident ☐ Yes What year? _____
Heart Attack ☐ Yes What year? _____
Heart Disease ☐ Yes What year? _____
High Blood pressure ☐ Yes What year? _____
Pericarditis ☐ Yes What year? _____
Blood Clots in Arms or Legs ☐ Yes What year? _____

ENDOCRINE HORMONES & SUGAR CONTROL PROBLEMS

Diabetes (Type _____) ☐ Yes What year? _____
Goiter ☐ Yes What year? _____
Thyroid deficiency ☐ Yes What year? _____
Thyroid excess ☐ Yes What year? _____

BLOOD & LYMPH NODE PROBLEMS

Anemia ☐ Yes What year? _____

ALLERGIES IMMUNE & INFECTIOUS

PROBLEMS

HIV ☐ Yes What year? _____
Infections mononucleosis ☐ Yes What year? _____

LUNGS & RESPIRATORY

Tuberculosis ☐ Yes What year? _____
Asthma ☐ Yes What year? _____
Chronic bronchitis ☐ Yes What year? _____

STOMACH & DIGESTIVE

Enlarged liver ☐ Yes What year? _____

OTHER (Please Specify)

I am allergic to latex

(TAB 5) SURGERIES AND HOSPITALIZATIONS

Have you been hospitalized (not for surgery)? ☒ No ☐ Yes

If yes, list the hospitalizations, the reason for admission and the date _____

Have you had surgery? ☐ No ☒ Yes

If yes, list any surgeries and when they were done They removed 2 bad blood clots when I
shot my knee in 1991

Have you had problem with the following, unable to sleep? ☒ No ☐ Yes

If yes, please list what sort of problems _____

SSN ()
Date of Birth 10-27-51

Heart and Blood Vessels (Chest pain, irregular heart beat, Shortness of breath, or other problem) ☒ No ☐ Yes
If yes, please list problems _____

Lungs and Respiratory system (Shortness of breath, frequent cough, Wheezing, or other problems) ☒ No ☐ Yes
If yes, please list problems _____

Stomach and Digestive system (Abdominal pain, Diarrhea, Heartburn, Nausea, Vomiting, or other problem) ☒ No ☐ Yes
If yes, please list problems _____

Kidney or bladder or sexual health
Male (Loss of sexual interest, Change in urinating pattern or other problems) ☒ No ☐ Yes
If yes, please list problems _____

Female (Unusual menstrual bleeding, Stasis, incontinence or other problems) ☒ No ☐ Yes
If yes, please list problems _____

Bones, Joints, and Muscles (Painful joints, Loss of muscle strength, swelling of joint) ☒ No ☐ Yes
If yes, please list problems _____

Skin and Breast (Discharge from nipples, Rash, or other problems) ☒ No ☐ Yes
If yes, please list problems _____

Brain or Nervous system (Difficulty remembering, Loss of consciousness, Seizure, or other problems) ☐ No ☐ Yes
If yes, please list problems _____

Mental and Emotional health (Nervousness, Depression, or other problems) ☐ No ☒ Yes
If yes, please list problems panic attack _____

Blood or Lymph nodes (Excessive bleeding, Easy bruising, or other problems) ☒ No ☐ Yes
If yes, please list problems _____

Allergies, infections, and immune system (Abnormal infections, Hives, or other problem) ☒ No ☐ Yes
If yes, please list problems _____

*This information is very important for us to have
for your treatment. Thank you very much for filling
out these forms completely.*

40

NECK OR SHOULDER PAIN SSN () _____ Date of birth 10-2-51

→ Neck Right Shoulder Left Shoulder

What is the quality (description) of the pain?

On a severity scale of 1-10 (1 being little pain at all and 10 being intolerable) my pain is: 8

c. Mild I am aware of it when present but it doesn't interfere with daily activities

☐ Moderate when present it interferes only with some daily activities

- Severe – when pre- and/or interdicts with most but not all daily activities

Very severe - when present I am unable to carry out any daily activities

U Other description of security

Are you experiencing the pain now? ☒ Yes ☐ No

How long have you had the pain?

Are you experiencing any pain? Yes No muscle aches & burns = inflammation

☐ Left Arm ☐ Right Arm ☐ Both Arms

Where is the arm pin located

☒ Shoulder	☐ Upper Arm	☐ Forearm	☐ Hands	☐ Fingers
--	------------------------------------	----------------------------------	--------------------------------	----------------------------------

What is the quality (description) of the pain?

☐ Aching	☐ Burning	☐ Cold Sensation	☐ Hot Sensation	☐ Stabbing	☐ Weakness
☐ Crawling	☐ Itching	☐ Heavy Sensation	☐ Electric Shock	☐ Tingling	☐ Pins/Needles

Setting in which problem first occurred

Around the hours 1 Recreation 15 School¹ 25 Fall 30 Unknown

~~injury~~ Injury on the job

Date of accident 6-27-00

Description of accident or injury

Was it reported to workman's comp ☒ Yes ☐ No

Are you off work due to the accident or injury? ☒ Yes ☐ No

ri Motor vehicle accident

Circumstances of accident

Date of accident

List any factors that aggravate the pain if any of the following problems the sitting posture is standing the leg is not

Identify any non-medical factors that relieve the pain.

Do you have ☒ Sleep disturbance ☒ Bowel dysfunction ☐ Bladder dysfunction

Last any previous tests you have had for this problem 10/11/2012

List any previous treatments you have had (herbal remedies, physical or occupational therapies, acupuncture or acupuncture therapies, massage therapy, etc) and their effectiveness:

List any medications you have tried for this problem and then effectiveness None for sleeping disorder
 12/14/14 - 12/15/14 - 12/16/14 - 12/17/14 - 12/18/14 - 12/19/14 - 12/20/14 - 12/21/14 - 12/22/14 - 12/23/14 - 12/24/14 - 12/25/14 - 12/26/14 - 12/27/14 - 12/28/14 - 12/29/14 - 12/30/14 - 12/31/14 - 1/1/15 - 1/2/15 - 1/3/15 - 1/4/15 - 1/5/15 - 1/6/15 - 1/7/15 - 1/8/15 - 1/9/15 - 1/10/15 - 1/11/15 - 1/12/15 - 1/13/15 - 1/14/15 - 1/15/15 - 1/16/15 - 1/17/15 - 1/18/15 - 1/19/15 - 1/20/15 - 1/21/15 - 1/22/15 - 1/23/15 - 1/24/15 - 1/25/15 - 1/26/15 - 1/27/15 - 1/28/15 - 1/29/15 - 1/30/15 - 1/31/15 - 2/1/15 - 2/2/15 - 2/3/15 - 2/4/15 - 2/5/15 - 2/6/15 - 2/7/15 - 2/8/15 - 2/9/15 - 2/10/15 - 2/11/15 - 2/12/15 - 2/13/15 - 2/14/15 - 2/15/15 - 2/16/15 - 2/17/15 - 2/18/15 - 2/19/15 - 2/20/15 - 2/21/15 - 2/22/15 - 2/23/15 - 2/24/15 - 2/25/15 - 2/26/15 - 2/27/15 - 2/28/15 - 2/29/15 - 2/30/15 - 3/1/15 - 3/2/15 - 3/3/15 - 3/4/15 - 3/5/15 - 3/6/15 - 3/7/15 - 3/8/15 - 3/9/15 - 3/10/15 - 3/11/15 - 3/12/15 - 3/13/15 - 3/14/15 - 3/15/15 - 3/16/15 - 3/17/15 - 3/18/15 - 3/19/15 - 3/20/15 - 3/21/15 - 3/22/15 - 3/23/15 - 3/24/15 - 3/25/15 - 3/26/15 - 3/27/15 - 3/28/15 - 3/29/15 - 3/30/15 - 3/31/15 - 4/1/15 - 4/2/15 - 4/3/15 - 4/4/15 - 4/5/15 - 4/6/15 - 4/7/15 - 4/8/15 - 4/9/15 - 4/10/15 - 4/11/15 - 4/12/15 - 4/13/15 - 4/14/15 - 4/15/15 - 4/16/15 - 4/17/15 - 4/18/15 - 4/19/15 - 4/20/15 - 4/21/15 - 4/22/15 - 4/23/15 - 4/24/15 - 4/25/15 - 4/26/15 - 4/27/15 - 4/28/15 - 4/29/15 - 4/30/15 - 5/1/15 - 5/2/15 - 5/3/15 - 5/4/15 - 5/5/15 - 5/6/15 - 5/7/15 - 5/8/15 - 5/9/15 - 5/10/15 - 5/11/15 - 5/12/15 - 5/13/15 - 5/14/15 - 5/15/15 - 5/16/15 - 5/17/15 - 5/18/15 - 5/19/15 - 5/20/15 - 5/21/15 - 5/22/15 - 5/23/15 - 5/24/15 - 5/25/15 - 5/26/15 - 5/27/15 - 5/28/15 - 5/29/15 - 5/30/15 - 5/31/15 - 6/1/15 - 6/2/15 - 6/3/15 - 6/4/15 - 6/5/15 - 6/6/15 - 6/7/15 - 6/8/15 - 6/9/15 - 6/10/15 - 6/11/15 - 6/12/15 - 6/13/15 - 6/14/15 - 6/15/15 - 6/16/15 - 6/17/15 - 6/18/15 - 6/19/15 - 6/20/15 - 6/21/15 - 6/22/15 - 6/23/15 - 6/24/15 - 6/25/15 - 6/26/15 - 6/27/15 - 6/28/15 - 6/29/15 - 6/30/15 - 7/1/15 - 7/2/15 - 7/3/15 - 7/4/15 - 7/5/15 - 7/6/15 - 7/7/15 - 7/8/15 - 7/9/15 - 7/10/15 - 7/11/15 - 7/12/15 - 7/13/15 - 7/14/15 - 7/15/15 - 7/16/15 - 7/17/15 - 7/18/15 - 7/19/15 - 7/20/15 - 7/21/15 - 7/22/15 - 7/23/15 - 7/24/15 - 7/25/15 - 7/26/15 - 7/27/15 - 7/28/15 - 7/29/15 - 7/30/15 - 7/31/15 - 8/1/15 - 8/2/15 - 8/3/15 - 8/4/15 - 8/5/15 - 8/6/15 - 8/7/15 - 8/8/15 - 8/9/15 - 8/10/15 - 8/11/15 - 8/12/15 - 8/13/15 - 8/14/15 - 8/15/15 - 8/16/15 - 8/17/15 - 8/18/15 - 8/19/15 - 8/20/15 - 8/21/15 - 8/22/15 - 8/23/15 - 8/24/15 - 8/25/15 - 8/26/15 - 8/27/15 - 8/28/15 - 8/29/15 - 8/30/15 - 8/31/15 - 9/1/15 - 9/2/15 - 9/3/15 - 9/4/15 - 9/5/15 - 9/6/15 - 9/7/15 - 9/8/15 - 9/9/15 - 9/10/15 - 9/11/15 - 9/12/15 - 9/13/15 - 9/14/15 - 9/15/15 - 9/16/15 - 9/17/15 - 9/18/15 - 9/19/15 - 9/20/15 - 9/21/15 - 9/22/15 - 9/23/15 - 9/24/15 - 9/25/15 - 9/26/15 - 9/27/15 - 9/28/15 - 9/29/15 - 9/30/15 - 10/1/15 - 10/2/15 - 10/3/15 - 10/4/15 - 10/5/15 - 10/6/15 - 10/7/15 - 10/8/15 - 10/9/15 - 10/10/15 - 10/11/15 - 10/12/15 - 10/13/15 - 10/14/15 - 10/15/15 - 10/16/15 - 10/17/15 - 10/18/15 - 10/19/15 - 10/20/15 - 10/21/15 - 10/22/15 - 10/23/15 - 10/24/15 - 10/25/15 - 10/26/15 - 10/27/15 - 10/28/15 - 10/29/15 - 10/30/15 - 10/31/15 - 11/1/15 - 11/2/15 - 11/3/15 - 11/4/15 - 11/5/15 - 11/6/15 - 11/7/15 - 11/8/15 - 11/9/15 - 11/10/15 - 11/11/15 - 11/12/15 - 11/13/15 - 11/14/15 - 11/15/15 - 11/16/15 - 11/17/15 - 11/18/15 - 11/19/15 - 11/20/15 - 11/21/15 - 11/22/15 - 11/23/15 - 11/24/15 - 11/25/15 - 11/26/15 - 11/27/15 - 11/28/15 - 11/29/15 - 11/30/15 - 12/1/15 - 12/2/15 - 12/3/15 - 12/4/15 - 12/5/15 - 12/6/15 - 12/7/15 - 12/8/15 - 12/9/15 - 12/10/15 - 12/11/15 - 12/12/15 - 12/13/15 - 12/14/15 - 12/15/15 - 12/16/15 - 12/17/15 - 12/18/15 - 12/19/15 - 12/20/15 - 12/21/15 - 12/22/15 - 12/23/15 - 12/24/15 - 12/25/15 - 12/26/15 - 12/27/15 - 12/28/15 - 12/29/15 - 12/30/15 - 12/31/15 - 1/1/16 - 1/2/16 - 1/3/16 - 1/4/16 - 1/5/16 - 1/6/16 - 1/7/16 - 1/8/16 - 1/9/16 - 1/10/16 - 1/11/16 - 1/12/16 - 1/13/16 - 1/14/16 - 1/15/16 - 1/16/16 - 1/17/16 - 1/18/16 - 1/19/16 - 1/20/16 - 1/21/16 - 1/22/16 - 1/23/16 - 1/24/16 - 1/25/16 - 1/26/16 - 1/27/16 - 1/28/16 - 1/29/16 - 1/30/16 - 1/31/16 - 2/1/16 - 2/2/16 - 2/3/16 - 2/4/16 - 2/5/16 - 2/6/16 - 2/7/16 - 2/8/16 - 2/9/16 - 2/10/16 - 2/11/16 - 2/12/16 - 2/13/16 - 2/14/16 - 2/15/16 - 2/16/16 - 2/17/16 - 2/18/16 - 2/19/16 - 2/20/16 - 2/21/16 - 2/22/16 - 2/23/16 - 2/24/16 - 2/25/16 - 2/26/16 - 2/27/16 - 2/28/16 - 2/29/16 - 2/30/16 - 3/1/16 - 3/2/16 - 3/3/16 - 3/4/16 - 3/5/16 - 3/6/16 - 3/7/16 - 3/8/16 - 3/9/16

Alfred T Nelson JR MD FACS
Charles C Kanos MD FACS

SOUTHERN
Neurosurgical
& Spine
INSTITUTE

Phone (864) 455 8570
Fax (864) 455 1735

890 W Falls Rd Ste 220 Greenville SC 29605

29 Aug 2007

RE DONNA L MCCALL
DOB 27 Oct 1951

DONNA L MCCALL was seen on 29 Aug 2007 for evaluation of WC injury on 06 29 06 Neck pain with headaches
Numbness in the bilateral arms Patient seen in neurosurgical consultation at the request of Dr Henry Ramirez

The diagnoses and plan are as follows

ASSESSMENT

Pain Cervical
Limb Pain

PLAN

Medical Advice Contact the office if there are any problems

Restrictions

Work Status unable to work until evaluated by Dr Rogers

Consults and referrals Referral request Dr Rogers for pain management and to oversee therapy

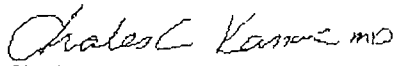
Schedule Follow up as needed

Impression 55 yo WF s/p work related injury 6/06 She is a furnace operator and was cleaning the furnace and fell backwards A few days later she developed headaches initially She now c/o midline neck pain that radiates into her shoulders and numbness into her arms She has no radicular type pain She has had muscle relaxers and PT made her worse

Her MRI shows spondylosis with thickened PLL at C4 5 more severe at c 5 6 6 7 She does have left sided C6 7 foraminal stenosis Lumbar MRI is unremarkable

This is a patient with primarily neck pain into her head without clear radicular pain She does have mild degenerative changes but no clear nerve compression I don't feel surgery is appropriate at present I feel a referral to pain management for extensive physical therapy continued NSAIDs pain modality based treatment to her neck and probably injections

Sincerely


Charles C Kanos MD

DONNA L MCCALL DOB 27 Oct 1951 (56) - Pg 1 of 1

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DONNA L MCCALI Patient ID
DOB 27 Oct 1951 (55) Female
Visit Date 29 Aug 2007

PRESENT ILLNESS INFORMATION

Chief Complaint WC injury on 06/29/06 Neck pain with headaches Numbness in the bilateral arms Patient seen in neurosurgical consultation at the request of Dr Henry Ramirez

HPI

S1 Evaluation of cervical pain

Location posterior neck

Quality aching burning heaviness stabbing and numbing

Severity The usual pain level is 8 (scale of 1-10) Functional impairment is very severe when present the patient is unable to carry out any daily activities The pain interferes with sleep

Timing This has been a problem since 06/29/06

Referred or radiating symptoms numbness in both upper extremities with symmetrical involvement

Setting in which it first occurred following trauma

Mechanism of injury a fall

Timing of injury 06/29/06

Locale where the injury occurred in the workplace The injury was reported to Workers Compensation

Aggravating factors

flexing the neck to look down

standing

straining to lift an object and straining to push an object

Relieving factors none identified

Associated manifestations

headache

weakness Location unspecified

Previous tests/evaluations

Cervical spine MRI Date 08/06/07 Test location Seneca Diagnostic

Previous treatment related to the cervical pain Prescription medication Nabumetone (effectiveness fair) Skelaxin (effectiveness fair) Propoxyphene N APAP (effectiveness fair) Tramadol HCl (effectiveness fair) Carisoprodol

REVIEW OF SYSTEMS

Constitutional Symptoms no details provided

Eyes blurred vision

Ears, Nose Mouth and Throat Ears pressure in ears

Psychiatric anxiety and feeling sad more than usual (depressed)

The following systems are negative Cardiovascular Gastrointestinal Hematological/Lymphatic Immunologic

Integumentary Musculoskeletal Nervous Respiratory

PAST, FAMILY AND SOCIAL HISTORY

Current Meds

Carisoprodol (350 MG) prescribed by Dr Ramirez

Nabumetone (500 MG) prescribed by Dr Ramirez

Propoxyphene N APAP (100-650 MG) prescribed by Dr Ramirez

Skelaxin (800 MG) prescribed by Dr Ramirez

Tramadol HCl (50 MG) prescribed by Dr Ramirez

Med Allergies

No known medication allergies

Non Med Allergies

Contact allergies latex metals and nickel

Insect bite or sting allergies bee stings

Past Health History

Childhood Diseases measles (rubeola) and mumps

Eyes negative

Ears negative

Cardiovascular deep vein thrombosis

Respiratory negative

Gastrointestinal negative

Genitourinary

Obstetric History Patient states not currently pregnant

Gynecologic no information provided

Neurologic negative

Endocrine negative

Hematologic and Lymphatic negative

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Surgeries and Hosp Problems with anesthesia none
 Previous surgery none
 Previous non surgical hospitalizations none
 Serious Injuries Back Injury lumbar injury of the back
 Family History Problems with anesthesia negative
 Cardiovascular negative
 Respiratory negative
 Musculoskeletal negative
 Neurologic negative
 Hematologic/Lymphatic negative Specifically no bleeding clotting or bruising problems
 Social History Most recent occupation Valenite Pulance Operator
 Marital status married
 Current tobacco usage none
 Current use of alcoholic beverages none
 Hand dominance right
 Home living situation and relationships Lives with spouse
 Other comments Dr Henry Ramirez Referring
 Provider has reviewed PFSH/ROS information

OBJECTIVE

CONSTITUTION

General appearance Well developed well nourished and groomed
 Ability to communicate normal

EYES Normal discs vessels and posterior poles of ocular fundus

RESPIRATORY Normal breath sounds

MUSCULOSKELETAL Examination of gait and station is normal (Patient able to undergo exercise testing and/or participate in exercise program)

Cervical spine Normal to palpation without muscle spasms tenderness or stepoffs Full AROM without pain

Right shoulder girdle Full ROM without pain

Left - shoulder girdle Full ROM without pain

NEUROLOGIC The patient is awake and alert Oriented x 4 The judgment and insight of the patient is normal The patient's immediate, recent, and remote memory seem normal The mood and affect of the patient seem normal and appropriate to the situation Language is intact for receptive and expressive functions

Motor examination

Muscle strength Biceps with 5/5 strength bilaterally Triceps with 5/5 strength bilaterally Distal upper extremities and hand bilaterally intact and symmetrical

Muscle tone is normal and symmetrical in all 4 extremities

Sensory examination for pinprick in the upper extremities

Deep tendon reflexes Biceps reflexes normal (2+) bilaterally Brachioradialis reflex normal (2+) bilaterally Triceps reflexes normal (2+) bilaterally

No pathological reflexes

Nerve and spinal cord tension-compression signs

Gait Normal

Station Normal

TESTS AND PROCEDURES

PERFORMED IN THE PAST

72141 MRI spinal canal and contents, cervical, without contrast material

Date 06 Aug 2007 Location Seneca Diagnostic

ASSESSMENT

CURRENT PROBLEMS

7231 Pain, Cervical

7295 Limb Pain

PLAN

DONNA L MCCALL DOB 27 Oct 1951 (55) Visit 29 Aug 2007 Kanos Pg 2 of 3

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Medical Advice Contact the office if there are any problems

Restrictions

Work Status unable to work until evaluated by Dr Rogers

Consults and referrals Referral request Dr Rogers for pain management and to over see therapy

Schedule Follow up as needed

Impression 55 yo WF s/p work related injury 6/06 She is a furnace operator and was cleaning the furnace and fell backwards A few days later she developed headaches initially She now c/o midline neck pain that radiates into her shoulders and numbness into her arms She has no radicular type pain She has had muscle relaxers and PT made her worse

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This is a patient with primarily neck pain into her head without clear radicular pain She does have mild degenerative changes but no clear nerve compression I don't feel surgery is appropriate at present I feel a referral to pain management for extensive physical therapy continued NSAIDs pain modality based treatment to her neck and probably injections

COMMUNICATIONS

Initial consultation

Henry Ramirez MD

Charles C Kanos MD

AllMeds

ICD CODE SUMMARY

723.1 Pain Cervical

729.5 Limb Pain

CPT CODE SUMMARY

99243 Office Consult Level 3

NON BILLABLE CPT CODES

72141 MRI spinal canal and contents cervical without contrast material

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Name Donna M^cCall Account Name _____
 Address _____ Address _____
 S(M) W D Sep Birth 10-27-51 Phone _____ Employer Volente
 Social Security # _____ Insurance BC/BS

Date Description

10/22/99 Wt 193 T 97.4 P 84 BP 132/94, 136/90
 S- nasal cong, watery eyes, ears congested, sore throat
 coughing x 3 days, 106cl dx

McCALL DONNA

4-22-99

S Pt comes in with c/o itchy eyes sore throat and feeling like her rt ear is stopped
 She also is c/o nasal congestion and coughing times 3 days
 A and O white female NAD Rt TM is erythematous Ear canal is wnl Lt ear canal
 is wnl Heart is RRR Lungs are clear to auscultation Neck is supple wo associated
 lymphadenopathy Throat is erythematous wo exudate Strep is slightly pos
 A 1 Allergies 2 Otitis media 3 Strep pharyngitis
 P Will treat with Amoxil 500 mg 1 po tid times 7 days dispense 21 with no refills
 Duratuss G 1 po q12h prn for congestion dispense 20 with 1 refill She is to drink
 lots of fluids After she finishes her Py she is to start with Claritin Redi-tabs 10
 mg 1 po qd, dispense 30 with 1 refill She is to take Tylenol prn for fever or
 discomfort and is to return to the clinic as needed An out of work statement was
 given for 4-22 and 4-23 K R Spielmann, NP/pt4 KR

10/18/99 Wt 191 T 99.7 P 68 BP 112/78 JP
 S=1) sore throat, pressure in ears x 2 days
 headache also, mild fever

O-redness w/ tonsils

little scarring, redness, & bulging of the TM, (R) greater than (L),
 tender

~~secondary~~ cervical adenopathy, good lungs sounds,
 A- pharyngitis, bilateral ~~serousitis~~ Otitis
 secondary & cervical sinusitis

P- Z-pak of Zithromax

Duratuss #

T bid

Vicoprofan

T 94th pin pain

J Carpenter, MD/AR

10-21-99 Throat still sore, burning behind nose - drainage
 Doesn't feel any better The pul Karen gave her on
 leaving office - 4-22-99 Cleared this up - Prednisone 5mg
 if now, 4 in q. m. & bid x 2 (#6) - CVS@ West Union
 done 2 km

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 CHAZIN

Name Donna M^c Call Account Name _____
 Address _____ Address _____
 S(M) W D Sep Birth 10 27-51 Phone _____ Employer Valente 882-7272
 Social Security # _____ Insurance BC/BS #1

Date	Description
10/28/99	Wt no better refer ENT meds. - Dr Baker 10/28/99 3 45 pm JHC/VH
11/1/99	wt 194 T 97.9 P 96 BP 134/78 5- Watery eyes, food cough - green, chest heave Post neck pain, sore throat See ENT 10/18, 10/21 ENT on 10/28 R Prevacid 15mg
12/1/99	Pt called requesting referral to Dr. for picking hands (BS) needs appt after 330pm BS
3/1/99	Appt with Dr Amaya (885-9366) 11/12/99 at 300pm left message for pt to call (BS) pt notified of appt (BS)

MCCALL DONNA

11 01 99

S She comes in with C/O sore throat nasal drainage cough with some green sputum
 O NAD A&O white female Just finished a round of Z Pak and did not seem to improve the Sx Also went
 to an ENT who stated that she probably got sore throat from GERD and he placed her on Prevacid She
 comes in today very fatigued coughing green sputum Left and right TM's are erythematous Nasal
 passages erythematous Throat is erythematous no exudate no adenopathy Heart RRR lungs CTA
 bilaterally
 A Sinusitis
 P Will treat with Augmentin 875 mg 1 po bid X 12 days Entex LA 1 po every 12 hrs prn cong and also
 Elixir of Decadron take as directed dispense 4 oz with 1 refill She is to F/U with us prn OOWS given for
 today and tomorrow K R Spielmann/lrm V/S

2/1/00	Wt 192 T 97.2 P 76 B 10 132/72 S= sinus drainage, sore throat, achey x 4 days JHC started
--------	--

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CMAZ17 F3F

Name Donna McCall Account Name _____
Address _____ Address _____
S M W D Sep Birth 10-27-51 Phone _____ Employer _____
Social Security # _____ Insurance BCBS
Date _____ Description _____

McCall, Donna 11/20/00
DOB 10/23/51
ACCT# _____

S Comes in for sinus infection, sinus pressure green nasal drainage, thick productive cough x 2-3 days Has been using OTC products w/o any help

O Afebrile Hemodynamically stable Neck supple, no thyromegaly HEENT Right and left TMs clear

Oropharynx clear Nasal passages clear Lungs clear to auscultate

ASSESSMENT

1 Sinusitis

2 Hyperthyroidism Follows-up with her OBGYN

RECOMMENDATION Pt is to continue following up with OBGYN for thyroid She is also following up with him for Pap and mammogram results We ll place her on Augmentin 875mg 1 po bid x 10 days and Duratuss 1 po q12h (#20) with 1 refill Given further recommendations on that next visit

K R Spielmann, CFNP/cjh KRS

2/15/00 C/O Sore Throat still. Can Refill on above Rx & be
phoned to CUS in W U. KRM 12 50 p.m.
Duratuss 1 po BID x 10d #20 NR KRS (15)

McCall, Donna 6/20/01
DOB 10/27/51
ACCT# 1327

S Comes in with complaints of sore throat cough congestion fever x 3 days

O Afebrile HEENT Right and left TMs with fluid levels Nasal passages erythematous with purulent drainage Oropharynx is slightly erythematous Neck supple, no thyromegaly CV S1, S2, regular No murmurs or gallops

ASSESSMENT

1 Sinusitis

RECOMMENDATION Pt is given Augmentin 875mg 1 po bid x 10 days, Muco-Phen DM 800mg 1 po bid x 10 days K R Spielmann, CFNP/cjh KRS

OAKTREE MEDICAL CENTRE, P.C.

DEPARTMENT OF NEUROLOGY

PATIENT'S NAME DONNA MCCALL
MRN
DATE OF BIRTH 10/27/50
TEST DATE 06/27/08
REFERRING PHYSICIAN Dr Rogers

NERVE CONDUCTION AND EMG STUDY OF LOWER EXTREMITIES

BRIEF HISTORY

The patient is a 56 year old female who presents complaining of an approximate two year history of lumbar pain with pain radiating through the left lateral posterior hip and thigh. The patient also reports paresthesias in the left lower extremity largely in an L5 distribution. The patient states the symptoms have grown progressively worse and are worse with standing and walking. The patient is status post right knee arthroscopy approximately ten years ago. The patient denies a history of diabetes.

TESTS PERFORMED

Motor conduction studies of the bilateral lateral plantar, peroneal and tibial nerves. Bilateral sensory studies of the peroneal and sural nerves. F Wave studies of the peroneal and tibial nerves bilaterally. H Reflex study of tibial nerves. EMG needle studies of the bilateral fibialis anterior, tibialis posterior, vastus medialis and gastroc muscles.

TEST RESULTS

- Motor conduction studies of the bilateral lateral plantar and tibial nerves demonstrated normal distal latencies, amplitudes and conduction velocities.
- Motor conduction studies of the bilateral peroneal nerves demonstrated diminished amplitudes bilaterally.
- Bilateral sensory study of peroneal and sural nerves demonstrated normal peak latencies and amplitudes.
- F-Wave studies of the peroneal nerves demonstrated absent findings on the left -- no prolongation on the right.
- F-Wave studies of the tibial nerves were symmetric.
- H Reflex study of the tibial nerves demonstrated asymmetry at 1.4-milliseconds.
- EMG needle studies of all muscles tested demonstrated normal insertional activity and waveform morphology.

IMPRESSION

1. Electrophysiologic evidence suggestive of bilateral common peroneal compromise with left being affected more greatly than right, as evidenced by peroneal motor and peroneal F-Wave abnormalities. An MRI of the L5 spine may be considered.

Continued

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DONNA MCCALL

June 27 2008

PAGE 2

IMPRESSION (Continued)

2 Normal EMG of lower extremities


David S. Rogers MD

DSR/ats11
Voice File 0701-011

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CANCER CENTERS OF THE CAROLINAS
HEMATOLOGY/ONCOLOGY - SENECA
131 LILA DOYLE DRIVE
SENECA, SC 29672

FOLLOW-UP VISIT

NAME MCCALL DONNAL

SS#:

DATE: 03/06/2009

ACCT #: 71302

cc.	Frank Rao, MD	DIAGNOSIS	Status post completion thyroidectomy, March
	Henry Jordan, MD		12, 2008 for follicular carcinoma of the
	David Rogers, MD		thyroid, stage I.

Ms McCall has a number of medical problems and some psychiatric problems apparently. She is followed for these. She is status post a thyroidectomy with radioactive iodine. Her last TSH and thyroglobulins were both within normal limits. The thyroglobulin was 0. There was however on the posttreatment scan, some residual activity. Not sure if this significant or not. Nevertheless a Thyrogen stim I 131 total body scan is indicated and we will make these arrangements.

PHYSICAL EXAMINATION Reveals a pleasant female in no acute distress. Vital signs: Blood pressure 125/65, pulse 72, respirations 20, temperature 97, weight 223 pounds. There is no abnormal mass in the neck. There is no cervical adenopathy. The lungs are clear. Heart reveals a regular rate and rhythm. The patient is extremely nervous and has somewhat of a tremor.

LABORATORY STUDIES Labs to include a CBC and BMP are within normal limits.

IMPRESSION

1. Stage I follicular carcinoma of the thyroid, status post near total thyroidectomy and radioactive iodine.

PLAN

1. Thyrogen stim test with total body I 131 scan.
2. Follow up on today's thyroglobulin.
3. Routine follow up in six months.

Jeffrey K. Giguere, MD

DICTION SIGNED ELECTRONICALLY

DD 03/06/2009 14 47 19 DT 03/10/2009 14 40 50 csp 279763

PATIENT MCCALL, DONNA
Medical Record Number 19475

DOB 10/27/1951
DATE 10/21/2008

CHIEF COMPLAINTS foot pain

DEFENDANTS' APA #11 RECORDS OF
JACKIE AVERY, DPM

HISTORY OF PRESENT ILLNESS

On 10/21/2008 Donna McCall a 56 year old female presented to our office as a new patient complaining of foot pain. She reports the condition began approximately 6 months ago. It was located bilateral feet. She characterized the symptom as burning and stinging sensations. It was radiating proximally. The patient denies any injury. The patient described her condition as severely painful. She states the condition is worsening. The pain occurs at bedtime and at various times. Nothing appears to relieve the symptoms. Previously she was diagnosed with heel spurs by Dr Gilliam. She was not treated for mechanical heel pain because of her inability to wear closed shoes. She also has symptoms of carpal tunnel and appears to have a tremor at rest. She has seen a neurologist but states that he specializes in the brain. She has an appointment with Anderson Neurology on 10/23. Ultracet provided some short term relief. She is concerned about the etiology of her symptoms.

MEDICATIONS HISTORY

Patient is taking - Levothyroxine Sodium 125 mcg (0 125 mg) Lorazepam 1 mg and Lyrica 75 mg

REVIEW OF SYSTEMS

GENERAL history of chills history of fatigue and headache

SKIN - history of bruise easily

MOUTH unexplained dry mouth

RESPIRATORY Denies chest pain cough and expectorations cyanosis dyspnea orthopnea and wheezing

CARDIOVASCULAR - dizziness

MUSCULOSKELETAL low back pain

NEUROLOGICAL history of short term memory loss and history of vertigo

PAST HISTORY Infections Measles and Mumps Illnesses - Cancer and Thyroid dysfunction
Accidents - head hit floor at work June 2006 Surgeries Cholecystectomy Arthroscopy and
Tubal ligation Anesthesia Complications None
Is patient Pregnant now? No
Past pregnancies G 2

SOCIAL HISTORY Alcohol Use Denies drinking Smoking Denies smoking Diet - Balanced Diet
Exercise Minimal Occupation - Retired Illicit Drug Use - Denies use of street drugs
Residence lives with spouse

ALLERGIES NKDA

EXAMINATION

GENERAL

The patient is pleasant cooperative and answers all questions appropriately.
The patient's height is 65. Her weight is reported to be 209 lbs. Her preferred shoe style and size is 10.

DERMATOLOGIC EXAM

Evaluation of the skin reveals normal texture and turgor bilateral. The skin temperature is warm bilateral. The color of the skin is normal color and pigmentation bilateral. Examination of the nails reveals all toenails are in good repair and are clear to the nailbed. Additional examination reveals no skin lesions are seen bilateral.

VASCULAR EXAM

Palpation reveals the dorsalis pedis pulse is easily palpable bilaterally. The posterior tibial pulse is easily palpable bilaterally. There are no visible varicosities. Digital hair is present bilaterally. The skin temperature gradient is within normal limits bilaterally. Capillary refill is less than 3 seconds bilaterally. There is no visible or palpable edema of the lower extremities.

NEUROLOGIC EXAM

Patient MCCALL DONNA MRNO 19475 DOB 10/11/1951 Continued
Light touch sensation mild paraesthesias with palpation bilateral
Tinel s sign present right posterior tibial nerve and left posterior tibial nerve

ORTHOPEDICS EXAM

There are no significant bony prominences of the foot or ankle The first metatarsal and hallux is in normal anatomic alignment bilaterally The lesser metatarsals appear to be in normal anatomic alignment Deformities of the toes include hammertoes 4th toe bilateral and 5th toe bilateral The legs appear equal in length

ASSESSMENT

- 1 Peripheral Neuropathy Idiopathic Other*- New
- 2 Pain in Limb/Foot New

PLAN

The patient was educated regarding the nature of their diagnosis/diagnoses and was given a full range of treatment alternatives Printed information was dispensed and reviewed as appropriate and all of the patients questions were answered to their satisfaction

Recommend following with Anderson Neurology to explore etiology of neuropathy Will consider Anodyne therapy if symptoms do not improve

DRUG RX 1 Metanx 2 8/25/2 mg 1 PO BID #60

SCHEDULING & FOLLOWUP Return in 1 month

Electronically signed by DR AVERY 10/21/2008 12 46 58

PATIENT MCCALL, DONNA
Medical Record Number 19475

DOB 10/27/1951
DATE 04/13/2009

CHIEF COMPLAINTS heel pain

HISTORY OF PRESENT ILLNESS

On 04/13/2009 Donna McCall a 57 year old female presented to our office for follow-up examination regarding foot pain. It was located underneath the heel and arch bilaterally. She characterized the symptom as burning and sharp pain. The patient denies any injury. The patient described her condition as severely painful. She states the condition is worsening slowly. The pain occurs while standing and walking. The patient explained that long periods of ambulation aggravates the condition. It is relieved by elevation.

MEDICATIONS HISTORY

Current medications prescribed to the patient are
1 Metanx 2 8/25/2 mg 1 PO BID

Patient is taking Levothyroxine Sodium 125 mcg (0 125 mg) Lorazepam 1 mg Propranolol Hydrochloride 60 mg Aspirin 81 mg Fish Oil Vitamin E Capsule 1000 intl units and Calcium Vitamin D 600 mg 200 units

REVIEW OF SYSTEMS

GENERAL history of chills history of fatigue and headache

SKIN - bruise easily

RESPIRATORY Denies chest pain cough and expectorations cyanosis dyspnea orthopnea and wheezing

MUSCULOSKELETAL low back pain and bilateral foot pain

PAST HISTORY Infections Measles and Mumps Illnesses Thyroid cancer and Anxiety Accidents head hit floor at work June 2006 Surgeries - Cholecystectomy Arthroscopy Tubal ligation and Thyroidectomy Anesthesia Complications None

SOCIAL HISTORY Alcohol Use - Denies drinking Smoking denies any tobacco use Diet - Balanced Diet Exercise Minimal Occupation - Retired Residence - lives with spouse

ALLERGIES NKDA

EXAMINATION

GENERAL

The patient is pleasant cooperative and answers all questions appropriately. The patient's height is 65. Her weight is reported to be 226 lbs. Her preferred shoe style and size is Women's 10.

DERMATOLOGIC EXAM

Evaluation of the skin reveals normal texture and turgor bilaterally. The skin temperature is decreased bilaterally. The color of the skin is normal color and pigmentation bilaterally. Examination of the nails reveals all toenails are in good repair and are clear to the nailbed. Additional examination reveals no skin lesions are seen bilaterally.

VASCULAR EXAM

Palpation reveals the dorsalis pedis pulse is easily palpable bilaterally. The posterior tibial pulse is easily palpable bilaterally. There are no visible varicosities. Digital hair is present bilaterally. The skin temperature gradient is decreased bilaterally. Capillary refill is less than 3 seconds bilaterally. There is no visible or palpable edema of the lower extremities.

NEUROLOGIC EXAM

Light touch sensation mild paraesthesias with palpation bilaterally. Tinel's sign present right posterior tibial nerve and left posterior tibial nerve.

ORTHOPEDICS EXAM

There are no significant bony prominences of the foot or ankle. The first metatarsal and hallux is in normal anatomic alignment bilaterally. The lesser metatarsals appear to be in normal anatomic alignment. Deformities of the toes include hammertoes 4th toe bilaterally and

Patient MCLALL DONNA MRNO 19475 DOB 10/27/1951 Continued
5th toe bilateral The legs appear equal in length Palpation reveals of the joints or the
ankles or feet is non painful Palpation of the skeletal structures of the ankles or feet
does not cause pain Palpation reveals plantar heel and arch bilateral are painful

ASSESSMENT

- 1 Plantar Fasciitis- New
- 2 Pain in Limb/Foot Unchanged
- 3 Peripheral Neuropathy Idiopathic Other' Unchanged

PLAN

No barefoot walking At this time begin OTC arch supports supportive shoe gear stretching
exercises consider plantar fascia night splint physical therapy corticosteroid injection
and custom orthotics

DRUG RX 1 Medrol Dosepak 4 mg Take as Directed 1 packs
2 Voltaren Gel 1% Apply 4 grams QID to affected areas #5 100 gram tubes

Today I have placed the patient in a low dye strapping Patient is instructed to keep tape
on for 3-5 days

SCHEDULING & FOLLOWUP Return visit in 2 Weeks

Electronically signed by DR AVERY 4/13/2009 14 35 32

PATIENT MCCALL DONNA
Medical Record Number 19475

DOB 10/27/1951
DATE 04/28/2009

CHIEF COMPLAINTS Followup of Plantar Fasciitis

HISTORY OF PRESENT ILLNESS

On 04/28/2009 Donna McCall a 57 year old female presented to our office for follow-up examination regarding foot pain. It was located underneath the heel and arch bilateral. She characterized the symptom as burning sharp pain and while standing. The patient described her condition as moderately painful upon standing while walking. She states the condition is improving since the previous visit. The pain occurs while standing and walking. The patient explained that long periods of ambulation aggravates the condition. It is relieved by otc arch supports supportive shoes and elevation. Previously low dye strapping was definitely beneficial. The patient commented on the Metanx medication.

MEDICATIONS HISTORY

Current medications prescribed to the patient are

- 1 Metanx 2 8/25/2 mg 1 PO BID
- 2 Medrol Dosepak 4 mg Take as Directed
- 3 Voltaren Gel 1% Apply 4 grams QID to affected areas

Patient is taking Levothyroxine Sodium 125 mcg (0 125 mg) Lorazepam 1 mg Propranolol Hydrochloride 60 mg Aspirin 81 mg Fish Oil Vitamin E Capsule 1000 intl units and Calcium-Vitamin D 600 mg-200 units

REVIEW OF SYSTEMS

GENERAL history of chills history of fatigue and headache

SKIN - bruise easily

RESPIRATORY Denies chest pain cough and expectorations cyanosis dyspnea orthopnea and wheezing

MUSCULOSKELETAL low back pain and bilateral foot pain

ALLERGIES NKDA

EXAMINATION

The patient's height is 65 Her weight is reported to be 226 lbs Her preferred shoe style and size is Women's 10

Both heels are painful inferiorly

ASSESSMENT

- 1 Peripheral Neuropathy Idiopathic Other*- Unchanged
- 2 Plantar Fasciitis Improving
- 3 Pain in Limb/Foot Improving

PLAN

No barefoot walking At this time continue OTC arch supports supportive shoe gear stretching exercises begin plantar fascia night splint consider corticosteroid injection physical therapy and custom orthotics

Night splint was applied and instructions given to patient

SCHEDULING & FOLLOWUP Return in 1 month

Electronically signed by DR AVERY 4/28/2009 12 6 31

DEFENDANTS' APA OTHER EXHIBITS A EMPLOYEE'S REPORT OF CLAIM

Employee's Name Donna McCall		Date of Birth 10-27-51	Home Phone No _____ Work Phone No _____ Cell Phone No _____
Address (Street City State & Zip) _____ _____ _____		Social Security No _____ _____ _____	
Former Address (Street City State & Zip) _____ _____ _____		Hire Date _____ Height 5' 7" Weight 180	
Dependents (Name & Relationship)		Date of Birth	Relationship
Name of Employer VA Jenite		Name of Immediate Supervisor Mike Connor	
How Many Hours a Day Do You Work? 8		How Many Days a Week? 5	
What are Your Wages per Hour? \$17.01		Per Day?	Per Week?
Describe Fully Your Injury or Illness hit right elbow & head			
Date Trouble First Started slowly increase of headaches			
Date You First Started Missing Work		Time (hour am/pm)	
When Were You Able to Return to Work		Are You Fully Recovered? NO	
Explain fully and exactly what happened to you or how your physical illness or injury first started. You can help us give your case prompt and proper attention if you will answer this question completely. The following is an illustration of the way to answer this question: A piece of wood about two inches square was thrown a distance of six feet by a power saw striking the outer surface of my right leg about five inches above the knee.			
was vacuuming & cleaning furnace was on a foot stool and I step back to clean front of furnace and step on vacuum hose and fell backward on my back side and hit elbow (right) and hit my head on floor.			
Witnesses (Name & Address) Ma Turner		Phone No	Relationship Partner

Please be Sure to Complete the Reverse Side of this Form

If You Are Not Fully Recovered Explain Your Present Condition in Detail	
going for theraph treatment for head neck & back	
Date on Which You First Saw a Doctor	Are You Still Being Treated?
8-17	yes
List All Treating Physicians (Name & Address)	Phone No Specialty
H Rammer 12014 North Radio Station Rd.	882-7225
Have You Ever Had This or Any Other Injuries in the Past? If Yes Give Details (including dates)	
no	
Give Name and Address of Employer at the Time of Previous Illness/Injury	
Give Name and Address of Physician Who Treated You at the Time of Previous Illness/Injury	
Signature	Date
<i>Donna McCall</i>	8-28-04
Name (printed)	Best Time of Day to Reach You
DONNA MCCALL	7:00 PM
Home Phone Number	Work Phone Number
	886-7329 leaders 886-7300 office
Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals for the purpose of misleading information concerning any fact material thereto commits a fraudulent insurance act which is a crime	



51C593019

DOCCLMS



EERC

SENTRY INSURANCE
CL CSO RICHMOND
PO BOX 26363
RICHMOND VA 23260



FNL

Please fold for return envelope window

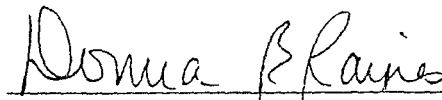
2

795

*SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
Post Office Box 995
Columbia, South Carolina 29202*

) I certify that the attached are true copies of records pertaining to

Donna L McCall, SSN'



Donna B Raines Administrative Assistant
for Allen Larson Deputy Executive Director UI

*Columbia South Carolina
June 27, 2008*

3



Carrier File # **51C593019 &
51C712118**
Carrier Code # _____
Employer FEIN # _____

Claimant's Name Donna L. McCall SSN _____ Employer's Name Sandvik / Valenite, Inc.
Address _____ Address 2424 Sandifer Boulevard
City _____ State SC Zip _____ City Westminster, State SC Zip 29693
Home Phone _____ Work Phone () Insurance Carrier Sentry Insurance
Preparer's Name Larry C. Brandt Law Firm Larry C. Brandt, P.A. Preparer's Phone # (864) 638 5406

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury 11/29/07

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

(See attached Claimant's Grounds For Review)

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

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

Name

Attorney for Employer/Carrier, Post Office Box 11449 Columbia, South Carolina 29211

Address

on the 20th day of November, 2009 by ☐ first class mail ☐ personal service ☒ certified mail

Larry C. Brandt
Preparer's Signature

Attorney for Claimant
Title

November 23, 2009
Date

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

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

SSN

Name	Acct #	Report Type	Year	Qtr 1	Qtr 2	Qtr 3	Qtr 4
DONNA LOUISE MCCALL	138530	Original	2008	\$765 50			
DONNA LOUISE MCCALL		Original	2007	\$11 357 96	\$11 564 33	\$7 919 22	\$765 50
DONNA LOUISE MCCALL		Original	2006	\$9 444 08	\$10 482 16	\$10 218 51	\$8 404 21
DONNA LOUISE MCCALL		Original	2005	\$7 289 10	\$9 627 98	\$10 046 22	\$10 582 58
DONNA LOUISE MCCALL		Original	2004				\$11 312 08

4

<http://wsappserver/SCATSPRODWeb/GatewayServlet?hptAppId=WG005A&hptExec=Y>

6/27/2008

797

(Continuation from Form 30)

CLAIMANT'S GROUNDS FOR REVIEW

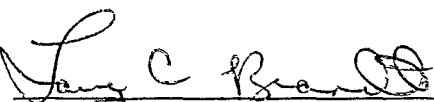
- 1 Did the Hearing Commissioner err in finding that the Claimant has not met her burden of proving she provided timely notice of her carpal tunnel syndrome claim pursuant to **South Carolina Code Ann §42-15-20** when the greater weight of the evidence shows that she did not know that she had such a condition in either wrist until November 29, 2007?
- 2 Did the Hearing Commissioner err in finding that the Claimant discovered or could have discovered that her bilateral carpal tunnel syndrome was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 3 Did the Hearing Commissioner err in finding that Claimant discovered or could have discovered carpal tunnel syndrome on the right and was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 4 Did the Hearing Commissioner err in finding that Claimant discovered or could have discovered carpal tunnel syndrome on the left and was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 5 Did the Hearing Commissioner err in concluding as a matter of law and ordering that under **South Carolina Code of Law Ann §42-15-20** that Claimant did not provide timely notice of repetitive trauma to her bilateral wrists and, therefore, denied her claim for benefits for her carpal tunnel syndrome when the greater weight of the evidence shows that Claimant did not know of her compensable injury to either of her wrists until November 29, 2007 and timely notice of the claim was given within ninety (90) days of that discovery?
- 6 Did the Hearing Commissioner err in admitting into evidence the medical records of Dr Amaya wherein the alleged diagnosis of carpal tunnel syndrome on the right was made in 1999 inasmuch as Dr Amaya's license to practice medicine had been permanently revoked in South Carolina and he was not licensed in any other state, therefore, he was incompetent to testify as to any professional opinions about her condition or medical problems at the time of the hearing, i.e. - the date at which the "testimony" via his records was offered?
- 7 Did the Hearing Commissioner err in concluding as a matter of law and ordering under **South Carolina Code of Law Ann §42-15-20** that Claimant did not provide timely notice of repetitive trauma to her bilateral wrists and, therefore, denied her claim for benefits for her carpal tunnel syndrome when the greater weight of the evidence shows that Claimant did not have any knowledge whatsoever of carpal tunnel syndrome existing on her left prior to November 29, 2007 and, in fact, the condition was not diagnosed by any medical

provider until that date and timely notice of her claim was given within ninety (90) days of November 29, 2007?

- 8 Did the Hearing Commission err in finding that there is no statutory basis upon which to award Temporary Total Disability benefits because the Claimant had retired when the greater weight of evidence shows that retirement was forced upon her by her employer when she was unable to work because of the injuries she sustained as a result of the work related accident on June 29, 2006?
- 9 Did the Hearing Commissioner err in concluding as a matter of law and ordering that Claimant is not entitled to Temporary Total Disability benefits when the greater weight of the evidence shows that Employer forced Claimant to "retire" to protect her economic welfare by maintaining health insurance coverage to pay for medical treatment which the employer should have been paying and for which it has been determined by this Order that the Employer is responsible?
- 10 Did the Hearing Commissioner err in holding that Claimant is not entitled to Temporary Total Disability benefits inasmuch as it appears from the Order that he was mistaken about Claimant's retirement date being August 2007 as the greater weight of the evidence shows that she did not retire until March 1, 2008 and had been written out of work by her medical care providers from August 2007 through that date
- 11 Did the Hearing Commissioner err in holding that Claimant is not entitled to Temporary Total Disability benefits inasmuch as the greater weight of the evidence shows that employer forced her to retire and is, therefore, estopped from benefitting from its unlawful actions?
- 12 Did the Hearing Commissioner err in denying Claimant Temporary Total Disability benefits when the greater weight of the evidence shows that she has been completely written out of work by her medical care providers continuously from August 2007 through present date and she has not yet reached MMI from her work related injuries?

Respectfully submitted,

LARRY C BRANDT, P A

By 

Larry C. Brandt
3691 Blue Ridge Boulevard
Post Office Box 738
Walhalla, South Carolina 29691
(864) 638-5406
Attorney for Claimant

Walhalla, South Carolina
November 23, 2009

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Donna McCall,)
)
Employee,)
)
Claimant / Appellant)
vs)
)
Sandvik, Incorporated,)
)
Employer)
and)
)
Sentry Insurance A Mutual Company,)
)
Carrier,)
)
Defendants / Respondents)
_____)

APPELLANT'S BRIEF

W C C FILE NO 0627287
0722895

SCWCC

FEB 23 2010

JUDICIAL

STATEMENT OF FACTS

CLAIM #0627287 - RE HEAD, SHOULDERS, BACK, NECK

The Claimant, Donna McCall, was on her job with Sandvik, Inc on June 29, 2006 when she fell off of a stool approximately six to seven inches (6-7") tall, upon which she was required to stand to clean a parts coating furnace with a brush and a vacuum hose. According to Mrs. McCall, she had cleaned the back of the furnace and as she stepped back to vacuum the front of the furnace, she accidentally stepped on the vacuum hose, twisted her right ankle, and fell backwards onto the concrete floor. She landed first on her rear, then her back, then her elbow and then her head.

bounced off the concrete floor (T , p 15, l 18-p 16, l 20) After she fell, she felt dazed and weak and lay there for a few minutes to get herself together (T , p 17, ll 9-11) As she lay there, she felt pain in her lower back, shoulders and neck and was dizzy (T , p 18, ll 9-15) After laying there about ten (10) minutes, her co-worker Moe Turner, helped her get up from the floor and into a chair (T , p 18, l 16-p 19, l 11) where she sat for another few minutes trying to get herself together Although she did not feel like working, she remained on her job but only did a menial task of "sitting at the table just setting up some parts ' (T , p 19, l 23-p 20, l 8) She reported the accident soon after it happened to her lead man Paul Thrasher, as she had been instructed to do (T , p 20, ll 12-20, p 59, ll 4-7) At the end of her shift she went home feeling weak and dizzy (T , p 20, ll 9-11) Although she was hurting, she was hoping, and thought that when she had time to collect herself she would be okay (T , p 21, ll 14-18, p 22, ll 11-13) She thereafter continued to work without medical treatment until on August 17 2006, when the pain in her back, shoulders, neck and head seemed to be getting worse instead of better and she kept having bad headaches Again, she went to Paul Thrasher and told him about her ongoing problems and that she thought she needed to see a doctor (T , p 20, l 21-p 21, l 3, p 59, ll 15-19) Mr Thrasher then talked with Diana, the lady at Sandvik in Personnel who handled the worker's compensation claims, and thereafter she was sent by Sandvik to Henry Ramirez, a Physician's Assistant to whom Sandvik initially sends all of its employees who are hurt on the job (T , p 23, ll 9-13) After speaking with Ramirez and receiving the care and treatment he

rendered Mrs McCall, again, thought that she would get better all the while continuing to work, however, her condition did not improve (T , p 24, I 24-p 25, I 7), so approximately eleven (11) months later, on July 24 2007 Sandvik sent her to Ramirez again (T , p 26, II 2-5, p 64, II 12-14) Ramirez then examined her on August 23, 2007, wrote her out of work on that date and referred her to Charles C Kanos, a Neurosurgeon in Greenville, South Carolina (CI APA #1, p 16, T , p 26, II 10-16) Up until this time, Mrs McCall had continued to work and had tried to do her regular job as best she could Sandvik or the carrier made the appointment for her with Dr Kanos on September 10, 2006 and a nurse representative of the worker's comp carrier went to the appointment with her (T , p 26, II 5-11) Dr Kanos then referred her to Dr David S Rogers, a Neurologist, for her neurological problems and wrote her out of work until she could see Dr Rogers (CI APA #5, p 35) The worker's comp carrier, however, made her an appointment with Dr Jay Patel, a pain management doctor, instead of Dr Rogers Mrs McCall was examined by Dr Patel on September 19 2007 with the nurse representative of the carrier present (T , p 27, I 25-p 28 I 16) Upon examining Mrs McCall, Dr Patel placed her on light duty with significant restrictions and stated that if there was no light duty available then off work until recheck (T , p 28, II 23-25, CI APA #6, pp 41-42) Sandvik did not offer her any light duty work that she could do, however, and accused her of refusing to work According to Mrs McCall, the work that they wanted her to do was pretty much her regular job and she just could not do it (CI APA #6, pp 59-60, T , p 29, II 7-12) The carrier then informed her that it would not

pay for any further visits with Dr Patel (T , p 29, l 22-p 30, l 1) Notwithstanding the carrier's refusal to pay Dr Patel and any other doctors, Mrs McCall continued to follow up with Dr Rogers and Dr Patel, paying for those visits through the use of her health insurance and personal monies (T , p 30, ll 2-12, p 35, ll 10-22) She also had to pay for the visit with Dr Kanos as the carrier refused or failed to pay for it even though she was sent there by the worker's comp carrier upon Ramirez's recommendation/referral (T , p 30, ll 13-15) Mrs McCall finally saw Dr Rogers on November 29, 2007 and, at that time, he also wrote her out on medical work leave until her next appointment with him the following month (CI APA #7, p 109,111) Thereafter, he continued to write her out of work through date of the hearing and on October 10 2008, he specifically wrote in her record that she was unable to perform any gainful activity at that time (CI APA #7, p 174) Subsequently on January 29 2008 when his first deposition, de benne esse, was taken by defense counsel, he stated that Mrs McCall was unable to return to work due to significant affective dysfunction (T , p 30, ll 5-8, Rogers 1/29/08 Depo , p 61, ll 13-18, CI APA #7, p 124,129,136,143, 162,165,174) On August 4, 2009 he further stated that in his opinion she had not reached maximum medical improvement of all her conditions and he felt like there were some other things that could be done medically to assist her (Rogers 8/4/09 Depo , p 15, l 7-p 16, l 2) Additionally, on December 28, 2008, Dr George R Bruce, Orthopedic Surgeon, performed an independent medical exam upon her and opined that she was not able to be gainfully employed (CI APA #13, p 212) As a result of her work related injuries,

Mrs McCall has not worked since August 23, 2007, is not able to work (T , p 35, II 10-24, p 36, II 6-24) and has been excused from work continuously throughout that period by the medical care providers who have treated her. Furthermore, as if denying her medical care was not enough, her employer, Sandvik, in or about the spring of 2008, also forced her to involuntarily retire thereby effectively "firing" her for being hurt on the job, being unable to work and for filing a worker's compensation claim. At that time, Sandvik informed Mrs McCall that she had the option of retiring early, in which case she would maintain her health insurance, or, if she didn't voluntarily retire, she would be fired and would lose her health insurance benefits. Facing those options, Mrs McCall, under duress of the situation, put in her paperwork to retire early as she was then experiencing significant medical problems from her work related injuries as well as other conditions, and she needed some means of paying for her medical care. She was already destitute from being out of work so long without a pay check and no temporary total benefits being paid by the carrier so she had no real choice but to do what she did. Because she did so, the Hearing Commissioner Mr Williams found that she was/is not entitled to any temporary total disability benefits (T , p 35, I 25-p 36, I 5, Decision & Order, p 30, Conclusion Fact #9)

CLAIM #0722895 - RE CARPAL TUNNEL

The facts in regard to Mrs McCall's carpal tunnel syndrome claims are that, on November 29, 2007, she was diagnosed by Dr Rogers and informed by him that she had bi-lateral carpal tunnel syndrome (T , p 40, I 24-p 41, I 13, CI APA #7,

pp 104-109) This was the first time that any doctor had ever told her that she had carpal tunnel syndrome (T , p 41, ll 11-13) and it was the first time that she realized that she might have a compensable claim for any problems in her hands and/or wrists Through her attorney, she then notified her employer of her condition and, on February 23, 2007, she filed a Form 50 (Case #0722895) asserting her claim for the carpal tunnel injuries Later she discovered that on November 30, 1999, Dr Amaya, a doctor who has since had his license to practice medicine in the State of South Carolina permanently revoked and at the time of the hearing was not licensed to practice medicine anywhere, had written in her chart that she had carpal tunnel syndrome in her right wrist (T , p 86, ll 5-17, Emp APA #6) He had never advised her of that fact and to her knowledge, had only treated her for a temporary back pain problem which had quickly resolved Dr George R Bruce the Orthopedic Surgeon who performed an independent medical exam of her on December 22 2008, also diagnosed bi-lateral carpal tunnel syndrome, advised her of that fact and stated in her report (CI APA #13) that her carpal tunnel syndrome directly resulted from the repetitive trauma associated with her work over the years (CI APA #13, p 211) Mrs McCall, in her trial testimony, described her job and the repetitive tasks she had been required to do over the approximately twenty-two (22) years of faithful service that she had given to Sandvik and further described the problems she is presently having in her hands and wrists (T , p 40, l 18-p 56, l 23) Commissioner Williams, however, denied the carpal tunnel syndrome claims simply

finding that she had not provided timely notice thereof pursuant to **Section 42-15-20** (Decision & Order, Finding of Fact #8, p 30)

CLAIMANT'S GROUNDS FOR REVIEW
(As Stated in Form 30)

- 1 Did the Hearing Commissioner err in finding that the Claimant has not met her burden of proving she provided timely notice of her carpal tunnel syndrome claim pursuant to **South Carolina Code Ann §42-15-20** when the greater weight of the evidence shows that she did not know that she had such a condition in either wrist until November 29, 2007?
- 2 Did the Hearing Commissioner err in finding that the Claimant discovered or could have discovered that her bilateral carpal tunnel syndrome was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 3 Did the Hearing Commissioner err in finding that Claimant discovered or could have discovered carpal tunnel syndrome on the right and was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 4 Did the Hearing Commissioner err in finding that Claimant discovered or could have discovered carpal tunnel syndrome on the left and was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 5 Did the Hearing Commissioner err in concluding as a matter of law and ordering that under **South Carolina Code Ann §42-15-20** that Claimant did not provide timely notice of repetitive trauma to her bilateral wrists and, therefore, denied her claim for benefits for her carpal tunnel syndrome when the greater weight of evidence shows that Claimant did not know of her compensable injury to either of her wrists until November 29, 2007 and timely notice of the claim was given within ninety (90) days of that discovery?
- 6 Did the Hearing Commissioner err in admitting into evidence the medical records of Dr Amaya wherein the alleged diagnosis of carpal tunnel syndrome on the right was made in 1999 inasmuch as Dr Amaya's license to practice medicine had been permanently revoked in South Carolina and he was not licensed in any other state, therefore, he was incompetent to testify as to any professional opinions about her condition or medical

problems at the time of the hearing, i.e. -the date at which the "testimony" via his records was offered?

- 7 Did the Hearing Commissioner err in concluding as a matter of law and ordering under **South Carolina Code Ann §42-15-20** that Claimant did not provide timely notice of repetitive trauma to her bilateral wrists and, therefore, denied her claim for benefits for her carpal tunnel syndrome when the greater weight of the evidence shows that Claimant did not have any knowledge whatsoever of carpal tunnel syndrome existing on her left prior to November 29 2007 and, in fact, the condition was not diagnosed by any medical provider until that date and timely notice of her claim was given within ninety (90) days of November 29 2007?
- 8 Did the Hearing Commissioner err in finding that there is no statutory basis upon which to award temporary total disability benefits because the Claimant had retired when the greater weight of evidence shows that retirement was forced upon her by her employer when she was unable to work because of the injuries she sustained as a result of the work related accident on June 29, 2006?
- 9 Did the Hearing Commissioner err in concluding as a matter of law and ordering that Claimant was not entitled to temporary total disability benefits when the greater weight of the evidence shows that Employer forced Claimant to "retire" to protect her economic welfare by maintaining health insurance coverage to pay for medical treatment which the employer should have been paying and for which it has been determined by this Order that the Employer is responsible?
- 10 Did the Hearing Commissioner err in holding that Claimant is not entitled to temporary total disability benefits inasmuch as it appears from the Order that he was mistaken about Claimant's retirement date being August 2007 as the greater weight of the evidence shows that she did not retire until March 1 2008 and had been written out of work by her medical care providers from August 2007 through that date?
- 11 Did the Hearing Commissioner err in holding that Claimant is not entitled to temporary total disability benefits inasmuch as the greater weight of the evidence shows that employer forced her to retire and is, therefore, estopped from benefitting from its unlawful actions?
- 12 Did the Hearing Commissioner err in denying Claimant temporary total disability benefits when the greater weight of the evidence shows that she has been completely written out of work by her medical care providers continuously from August 2007 through present date and she has not yet reached MMI from her work related injuries?

DISCUSSION

I DID THE HEARING COMMISSIONER ERR IN DENYING Mrs MCCALL TEMPORARY TOTAL DISABILITY BENEFITS? (GROUNDS 8-12)

The Hearing Commissioner specifically concluded, as a matter of law, pursuant to *S C Code Ann §42-1-160*, that Claimant sustained compensable injury by accident to her cervical spine and low back, post-concussion syndrome and an aggravation of her migraine headaches on June 29, 2006. He also found that she had not reached maximum medical improvement in regards to her compensable injuries. Notwithstanding those findings, however, he held that the Claimant is not entitled to temporary total disability benefits pursuant *S C Code Ann §42-9-10* because she had voluntarily retired and had been released to return to normal duty. These findings, however, are totally without merit and unsupported by the evidence. The records and deposition testimony of Dr. Rogers, Dr. Patel, Dr. Kanos, Henry Ramirez and Dr. George Bruce clearly show that Mrs. McCall was taken out of work on August 23, 2007, per order of Henry Ramirez, and that continuously since that time she has remained out of work per orders of the treating doctors to whom she was sent by her employer. It is true that Dr. Patel initially stated that she could return to light duty work, but he placed significant restrictions upon her and also stated that if her employer had no light duty work to accommodate her, she was to be out totally on medical leave. The evidence further shows that the employer, Sandvik, did not offer her any light duty work, certainly, none that she could do and, therefore, the overwhelming weight of the evidence is

that her work related injuries have continuously disabled her and prevented her from working since August 23, 2007

As for the retirement issue, the evidence is undisputed that in the spring of 2008, Sandvik placed her in the untenable position of having to choose between termination with health insurance coverage and termination without health insurance coverage. Under those circumstances, her retirement surely cannot be deemed to have terminated any obligations of Sandvik under the workers' compensation statutes and absolutely, at a minimum, should not penalize Mrs. McCall from receiving any temporary total disability benefits from August 23, 2007, the date Henry Ramirez completely took her out of work, through March 1, 2008, the approximate date of her retirement.

'Coercion' and 'duress' are age old legal concepts firmly ingrained in the law, particularly in South Carolina, and have been applied in a myriad of circumstances from criminal matters, to family matters, to contracts and the general affairs of people to prevent one party from taking advantage of another party through threats, wrongful conduct, coercive acts or wrongful and oppressive actions. Throughout the land, and in South Carolina, it has been held that this conduct may take virtually any form and must be judged under the circumstances of each situation. As examples of how these concepts have been applied, the Commission's attention is invited to the case of Williams Trucking Co., Inc. vs. J W Construction Co., Inc., 314 S C 170, 442 S E 2d 197, in which our Supreme Court refused to enforce a signed release and waiver of a mechanic's lien because

the actions of the property owner left contractor with no reasonable alternative but to sign the release and waiver. In that opinion, the court defined "duress" as a condition of mind produced by improper external pressure or influence which practically destroys the free agents of a party and causes him or her to do an act or form a contract not of his own volition [Cherry vs. Shelby Mutual Plate Glass and Casualty Co., 191 S C 177, 4 S E 2d 123 (1939)]. Also, in the Family Court case of Gainey v. Gainey, 382 S C 414, 675 S E 2d 792, the court held that if a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim. Also, in Johnson v. City of Columbia, South Carolina, 949 F 2d 127 (USCA, 4th Cir.) the court held that even though a city fire fighter signed an agreement accepting the city's policy of excluding sleep and mealtime from compensable work hours, the fire fighter's agreement was not voluntary or effective in light of city's threats of discharge if he did not sign.

Our legislature has also seen fit to prohibit coercion and duress in the workers comp arena through **S C Code Ann §41-1-180** which specifically provides

"No employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers' Compensation Law (Title 42 of the 1976 Code), or has testified or is about to testify in any such proceeding

Any employer who violates any provision of this section is liable in a civil action for lost wages suffered by an employee as a result of the

violation, and an employee discharged or demoted in violation of this section is entitled to be reinstated to his former position. The burden of proof is upon the employee.

Any employer shall have as an affirmative defense to this section the following: wilful or habitual tardiness or absence from work, being disorderly or intoxicated while at work, destruction of any of the employer's property, failure to meet established employer work standards, malingering, embezzlement or larceny of the employer's property, violating specific written company policy for which the action is a stated remedy of the violation.

The failure of an employer to continue to employ, either in employment or at the employee's previous level of employment, an employee who receives compensation for total permanent disability, is in no manner to be considered a violation of this section.

The statute of limitations for actions under this section is one year.

Although that statute does not specifically cover this situation, it, in essence, declares the public policy of South Carolina to be that an employer cannot directly or indirectly, by any type of action, terminate an employee or do anything in an effort to thwart a worker's compensation claim or prevent a claimant from receiving workers' comp benefits to which he/she may be entitled. The statute does specifically provide that the mere firing or termination of an employee or failure to retain a worker's comp claimant at his previous level of employment standing alone is not to be considered a violation of that particular section, but it clearly demonstrates the intent of our legislature and the public policy of South Carolina to be that even discharged or demoted or reduced employees who file workers' compensation claims are to receive all benefits to which they would otherwise be entitled.

As pointed out in the Statement of Facts, Mrs McCall was given the option of either voluntarily retiring and maintaining health insurance benefits or being fired and not having any insurance whatsoever. The facts are clear that she had been without pay from her job since August 23, 2007, she had not received any temporary total benefits during that time and the workers' comp carrier had not even paid the medical bills for the doctor visits which it had, in fact, arranged and scheduled. How can this be viewed any other way but a coercive action subjecting Mrs McCall to force and duress by placing her under an unconscionable economic burden when she was already in a destitute position and was merely trying to fend for herself while her employer contested her claim which the Hearing Commissioner has now found to be just and compensable?

28 Williston on Contracts §71 13 (4th ed) states

'Wrongful acts can also include threatened or actual action but is morally, though not legally, wrong, such as imposition or oppression but goes beyond mere hard bargaining or the use or threatened use of undue influence and one who takes or threatens to take unfair advantage of the business or financial exigency of another so as to overcome the latter's free will or free agency may also be found to have exercised duress sufficient to render a contract voidable '

As noted above some courts extend the concept of what is wrongful or improper for purposes of duress to acts morally repugnant, though not legally wrong [Citing 4th Circuit Case In re Blanton, 105 B R 321 (Bankr E D Va 1989)] In this regard, one court has stated

"It is true that under the modern view, acts or threats cannot constitute duress unless they are wrongful, but an act may be wrongful though lawful. Acts that are wrongful in a moral sense, though not criminal or tortious or in violation of contractual duty, may also constitute duress under the doctrine sought to be invoked by the defendant " [Citing Fowler v Mumford, 48 Del 282, 102 A 2d 535 (Super Ct 1954)]

It is, therefore, submitted that it is clearly against the public policy of South Carolina to retaliate or to do anything to thwart a claimant from receiving benefits under a Workers' Compensation Act and/or to exercise coercion or duress in such a manner that it allows an employer to take unfair advantage of its employees and gain an economic advantage by avoiding its responsibilities under the Workers' Compensation Act. It is, therefore respectfully submitted by Claimant that the denial of temporary total disability benefits because she had retired, particularly under the circumstances, is totally without merit. It is also submitted that the finding by the Hearing Commissioner that she had been released to go back to normal work duty is absolutely not true and totally unsupported by the evidence. As a result the Hearing Commissioner's decision to deny temporary total disability benefits to Mrs. McCall cannot be sustained and that portion of the Order denying those benefits to Mrs. McCall must be reversed and Claimant awarded temporary total disability benefits from August 23, 2007 until such time as she has reached maximum medical improvement.

II DID THE HEARING COMMISSIONER ERR IN ADMITTING THE MEDICAL RECORDS OF DR. AMAYA WHEREIN HE ALLEGEDLY DIAGNOSED CLAIMANT WITH RIGHT SIDE CARPAL TUNNEL SYNDROME IN 1999? (GROUND 6)

At the outset of the hearing, Claimant objected to records of Dr. Amaya being entered into evidence and considered by the Hearing Commissioner based upon the fact that, on the date of the hearing, Dr. Amaya's license to practice medicine had been permanently revoked in South Carolina and he was not licensed in any

other state, therefore, he was incompetent to testify as to any professional opinions about Mrs McCall's condition or medical problems and his records were inadmissible. The objection was overruled, however, as the Hearing Commissioner stated that it was a question of weight or credibility rather than admissibility. Clearly, the records speak as of the date of the hearing, to-wit June 2, 2009, and are tantamount to Dr Amaya testifying and rendering opinions at a time when he is unqualified and an incompetent witness as a matter of law. **S C Code Ann §42-1-172** pertaining to "repetitive trauma injury" in the workers' compensation setting specifically provides

- a Repetitive trauma injury means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.
- b An injury is not considered a compensable repetitive trauma injury unless a Commissioner makes a specific finding of fact by preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury,
- c As used in this section "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records or other material that is offered by a licensed and qualified medical physician.

The statute requires that repetitive trauma injuries must be proved to exist and be causally related to the employment by "expert opinion" or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a "licensed and qualified medical physician."

In this case Dr Amaya did not personally testify and there is no statement in his records or otherwise that the matters therein are "to a reasonable degree of medical certainty" and the records, at the time of hearing, are not then being offered by a licensed and qualified medical physician. It is, therefore, submitted that Amaya's records are incompetent and inadmissible as a matter of law pursuant to the statute and they cannot be used to provide the requisite evidence upon which the right sided carpal tunnel syndrome can be proved to even exist in 1999 or at any other date. Sound logic and reason then tells us that if the claim for carpal tunnel syndrome cannot be based upon records of an unlicensed physician and/or the absence of a statement or testimony in some form or fashion that the diagnosis and opinions were rendered to a reasonable degree of medical certainty, it only follows that the same testimony and records should not be allowed to be used for the purpose of triggering the statute of limitations and/or notice requirements with which a claimant is required to comply. Based upon these matters, it is respectfully submitted that the records of Dr Amaya should not have been admitted and/or considered in anyway at the hearing on June 2, 2009 because, at the time of the hearing, he was not a licensed and qualified medical physician to speak to those issues.

**III DID THE HEARING COMMISSIONER ERR IN DENYING
CLAIMANT'S CARPAL TUNNEL SYNDROME CLAIM?
(GROUNDS 1-7)**

The Hearing Commissioner specifically found and ordered that the Claimant did not provide timely notice of the alleged repetitive trauma to her bilateral wrists and, therefore her claim, **W C C #0722895**, for benefits was denied. It is submitted, however, that this is error as the evidence clearly shows that Mrs. McCall filed her claim within two (2) years after the assumed date of the onset of the condition and gave notice to her employer, Sandvik, within ninety (90) days of the date that she first became aware that she had a compensable claim.

The case of **Mauldin v Dyna Color Jack Rabbit**, **308 S C 18, 416 S E 2d 639 (Sup Ct 1992)** fully extends the discovery rule in workers' compensation claims and holds that competent diagnosis by a physician of a condition giving rise to a compensable claim must be made before the statute or time periods begin to run. It further held that any reasonable doubts as to construction of the Workers' Compensation Act should be resolved in favor of coverage rather than exclusion of coverage.

Subsequently the case of **Schuriknight v City of North Charleston**, **352 S C 175, 574 S E 2d 194 (Sup Ct 2002)** was decided and is dispositive of the issues here. In that case, the petitioner, Schuriknight, the claimant, sought benefits under Workers' Compensation Act, for noise induced hearing loss. The case squarely presented the question as to when the two (2) year statute of limitations began to run in a repetitive trauma case. The court specifically noted that repetitive

trauma injuries, unlike the injury in Mauldin which occurred on a specific date but simply was misdiagnosed have a gradual onset caused by the cumulative affect of repetitive traumatic events for "mini-accidents " It held that the last day of exposure to the repetitive trauma is the date from which the statute of limitations begins to run in a repetitive trauma case It specifically commented that this approach is consistent with our policy to liberally construe the Workers' Compensation Act in favor of coverage Mauldin (supra) Further it has the added advantage of fixing an outside date for filing that avoids the need to litigate the date of injury and it also notes the separate requirement that a worker give the employer notice of an injury

S C Code Ann §42-15-40, specifically provides that the "right to compensation under this title is barred unless a claim is filed with the commission within two (2) years after an accident For a repetitive trauma injury, as defined in **S C Code Ann §42-1-172**, the right to compensation is barred unless the claim is filed with the commission within two (2) years after the employee knew or should have known that his injury is compensable but no more than seven (7) years after the date of injurious exposure '

As testified to by Mrs Mccall, she was totally unaware that Dr Amaya had entered into her record that she had carpal tunnel syndrome on the right She was certainly asymptomatic and the records of Dr Amaya entered into the evidence at trial sets forth no criteria or symptomology or findings upon which Amaya's notation of carpal tunnel syndrome could be based It is further submitted and as argued in Question #2, that Dr Amaya's records should not have been admitted into evidence

and/or considered in anyway because, at the time of the hearing, Dr Amaya was no longer licensed and qualified to practice medicine Without his records in evidence there was/is no evidence whatsoever that Mrs McCall had right sided carpal tunnel syndrome much less knew or should have known that she had it prior to November 29, 2007, when “bilateral carpal tunnel syndrome” was diagnosed by Dr Rogers There is absolutely no evidence that the left sided carpal tunnel syndrome had been diagnosed until November 29, 2007, the same date that she found that she also had right sided carpal tunnel syndrome per Dr Rogers

As previously set forth, ***S C Code Ann §42-1-172*** requires carpal tunnel or repetitive trauma injury to be proved by expert opinion or testimony, stated to a reasonable degree of medical certainty, documents, records or other material that is offered by a **“licensed and qualified medical physician”** Certainly at the hearing on June 2, 2009, the admission of the records was tantamount to Amaya testifying at that particular point in time and, at that time, Amaya was not a “licensed and qualified medical physician therefore, he was precluded, under ***S C Code Ann §42-1-172(c)***, to testify to his diagnosis of the carpal tunnel syndrome and/or that it was causally connected to her work environment In other words, had Claimant been before the Commission attempting to prove the injury for the purposes of compensation Amaya’s testimony would have been incompetent to establish the claim and would have been excluded pursuant to the statute It is submitted, therefore, that it is a double edged sword and that if Dr Amaya’s testimony upon the carpal tunnel issues is precluded or forbidden under ***S C Code***

Ann §42-1-172(c) to assist Mrs McCall in establishing a claim for right sided carpal tunnel syndrome then his records should not be allowed to defeat her claim by showing that she did not give her employer timely notice of her claim

It may be argued that, although the records may not be admitted to prove the injury or to preclude her claim directly they are relevant upon the timely notice and discovery issues -i e when Mrs McCall knew or should have known of a potential claim which required her to take certain actions to give her employer notice and to file her claim In this regard, however, the only evidence is that Amaya did not tell her that she had carpal tunnel and his records do not indicate that he told her or that it was conveyed to her in any other way The only evidence before the Commission on these issues is the testimony of Mrs McCall that she had no knowledge of her carpal tunnel diagnosis by Amaya until after November 29, 2007 As a result, the only credible evidence supports her claim that she timely complied with the notice and claims filing requirements

Regardless of whichever way this evidence is treated and/or the issues as to the right sided carpal tunnel syndrome are dealt with, there is absolutely no evidence whatsoever through Amaya's records or otherwise that Mrs Mccall knew or should have known that she had carpal tunnel syndrome on the left side until November 29, 2007, and Dr Rogers diagnosed her condition In that regard, the employer was notified timely within ninety (90) days and the claim was filed on February 23, 2008, approximately eighty-six (86) days after the diagnosis by Dr Rogers on November 29, 2007 At a minimum then, the left side carpal tunnel syndrome claim should have been allowed even if the right side claim is denied

In summary, the repetitive trauma injury is presumed under South Carolina Law to have accrued on the last day that a claimant was exposed to the trauma which, in this case, was August 23, 2007. Thereafter, on November 29, 2007, Mrs McCall was advised of her bilateral carpal tunnel syndrome -i e , left side, as well as right, and notice was given to her employer and her claim was filed on February 23, 2008, approximately eighty-six (86) days after learning that she had bilateral carpal tunnel in her wrists. It is, therefore, submitted that the Hearing Commissioner erred in summarily dismissing Claimant's carpal tunnel syndrome claim and that same should be remanded to the Hearing Commissioner for specific findings in accordance with the Workers' Compensation Act pertaining to repetitive trauma injuries.

CONCLUSION

Based upon the foregoing it is respectfully submitted that the Claimant, Donna McCall, has met her burden of proof of providing timely notice of her bilateral carpal tunnel syndrome pursuant to ***South Code Ann §42-15-20***. She did not know and had no reason to know until November 29, 2007 that she had carpal tunnel syndrome, a compensable repetitive injury in her right wrist. The only credible evidence clearly shows that the first time that she had knowledge of the carpal tunnel problem was when Dr. Rogers diagnosed bilateral carpal tunnel syndrome on November 29, 2007 and told her of his diagnosis. Thereafter, she timely notified her employer and filed her claim within ninety (90) days as required.

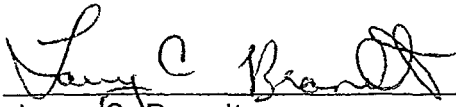
Mrs. McCall further submits that the evidence clearly shows that she is entitled to temporary total disability benefits from August 23, 2007 until she reaches

maximum medical improvement She has been completely out of work pursuant to the orders of her medical care providers since that date Mrs McCall also submits that her retirement is irrelevant to any determination of her entitlement to temporary total disability benefits, especially under the facts and circumstances to which she was subjected at the time she retired She was coerced, placed under great duress and was forced against her will to make a choice to retire in an effort to economically survive and obtain medical treatment and care which the Hearing Commissioner has now determined she was entitled to but which her employer has refused and failed to pay

Based upon all these matters it is respectfully submitted that those portions of the Hearing Commissioner's Decision and Order, dated November 4, 2009, denying her temporary total disability benefits and precluding her from asserting her repetitive trauma claim (bilateral carpal tunnel syndrome) should be reversed her temporary total disability benefits be immediately ordered and her carpal tunnel claims be remanded to the Hearing Commissioner for a determination on the merits in accordance with the Workers' Compensation Act

Respectfully Submitted,

Larry C Brandt
Attorney for Claimant
Larry C Brandt, P A
Post Office Box 738
Walhalla, South Carolina 29691
Tel (864) 638-5406
Fax (864) 638-7873

By 
Larry C Brandt
Attorney for the Claimant

February 19, 2010
Walhalla, South Carolina

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W C C FILE NOS 0627287 & 0722895

Donna McCall,	)	
	)	
Employee,	)	
	)	
Claimant/Appellant,	)	
	)	
v	)	<u>FULL COMMISSION BRIEF</u>
	)	<u>IN RESPONSE TO</u>
	)	<u>CLAIMANT'S APPEAL</u>
Sandvik, Inc ,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Sentry Insurance Company,	)	
	)	
Carner,	)	
	)	
Defendants/Respondents	)	
_____	)	

STATEMENT OF THE CASE

The claimant has appealed the Decision and Order of Commissioner Derrick L. Williams filed on November 4, 2009. This brief is submitted in response to the claimant's appeal.

This matter involves two separate claims. It is the position of the claimant that she sustained compensable injuries to her back, neck, shoulders, head, arms, right ankle, and psychological overlay, on June 29, 2006, arising out of and in the course of her employment with defendant employer. The claimant seeks payment of all past, present and future causally related medical treatment, temporary total disability benefits from August 23, 2007, and continuing until such time as maximum medical

improvement ("MMI") is reached for the alleged injuries, and permanent and total disability benefits under Section 42-9-10 or Section 42-9-30 at such time as MMI is reached

In addition, it is the position of the claimant that she sustained a subsequent compensable injury by repetitive trauma to both wrists resulting in bilateral carpal tunnel syndrome, on or about November 29, 2007, arising out of and in the course of her employment with defendant-employer. Accordingly, the claimant seeks payment of all past, present and future causally related medical treatment temporary total disability benefits from November 29, 2007 and continuing until such time as MMI is reached for the alleged repetitive trauma to her bilateral wrists and permanent and total disability benefits under Section 42-9-10 or Section 42-9-30 at such time as MMI is reached.

With regard to the alleged June 29, 2006 accident, it is the position of the defendants that the claimant sustained only minor contusions and/or strains which resolved after she received medical treatment in 2006 and, therefore, the injuries alleged by the claimant in her Second Amended Form 50 are not causally related to the admitted minor accident. Accordingly, the defendants contend all additional benefits requested under the Act with regard to this alleged accident should be denied as a matter of law. In addition, the defendants contend the claimant sustained an intervening accident which is the true cause of her current problems and contend the claim for benefits should be barred as a matter of law pursuant to Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (1991), and Havird v. YMCA, 308 S.C. 397, 418 S.E.2d 329 (1992). Finally, the defendants request consideration of the claimant's substantial pre-existing disability pursuant to Section 42-9-150 of the Act problems which the claimant specifically denied under oath in her deposition.

With regard to the alleged repetitive trauma of November 29, 2007, the defendants contend the claimant has failed to meet her burden of proving she sustained a compensable injury by repetitive trauma.

under Section 42-1-172 of the Act. In fact, the defendants maintain the claimant was not even employed and/or working for the defendant employer on the alleged date of accident. Accordingly, the defendants contend all benefits requested under the Act with regard to this alleged accident must be denied as a matter of law. In the alternative, the defendants assert the claim should be barred under Section 42-15-20 as the claimant failed to provide timely Notice of her alleged repetitive trauma, the claim should be barred by the doctrine of laches, and/or the claim should be barred under Section 42-15-40, as the claimant failed to satisfy the Statute of Limitations.

The Hearing in this matter was held on June 2, 2009, in Anderson, South Carolina, before Commissioner Derrick L. Williams. By way of Decision and Order filed on November 4, 2009, the Hearing Commissioner determined the claimant sustained compensable injuries to her cervical spine and low back post-concussion syndrome, and an aggravation of her migraine headaches on June 29, 2006, but denied the claimant sustained compensable injuries to her shoulders. In addition, the Hearing Commissioner found an award of permanency was premature as the claimant had not reached MMI for her compensable injuries, determined the claimant was entitled to additional medical evaluation and/or treatment at the recommendation of David S. Rogers, M.D., but denied temporary total disability benefits as the claimant retired subsequent to being released to return to full-duty work. Moreover, the Hearing Commissioner denied the claimant met her burden of proving timely Notice of her claim of repetitive trauma under Section 42-15-60 and, therefore, barred the claim as a matter of law. Finally, the Hearing Commissioner denied the claimant sustained an intervening trauma sufficient to bar the claimant from further benefits.

The claimant has now timely appealed the Decision and Order to the Full Commission Appellate Panel ("Full Commission"). This Brief will only address the issues discussed by the claimant in her

Appellate Brief wherein the following grounds were raised for review (1) Did the Hearing Commissioner err in denying Mrs McCall temporary total disability benefits? (2) Did the Hearing Commissioner err in admitting the medical records of Dr Amaya wherein he allegedly diagnosed claimant with right side carpal tunnel syndrome in 1999? (3) Did the Hearing Commissioner err in denying claimant's carpal tunnel syndrome?

The defendants respectfully request the Appellate Panel to affirm the Decision and Order of the Hearing Commissioner in its entirety, based upon the following grounds

- 1 The Hearing Commissioner correctly denied temporary total disability benefits
- 2 The Hearing Commissioner properly admitted the medical records of Dr Amaya
- 3 Denial of carpal tunnel claim is supported by the greater weight of the evidence in the record

ARGUMENT

I THE HEARING COMMISSIONER CORRECTLY DENIED TEMPORARY TOTAL DISABILITY BENEFITS

Under Section 42-9 10, an employee is entitled to temporary total disability benefits when ' the incapacity for work resulting from an injury is total ' S C CODE ANN § 42-9 10 (Law Co op 1976) In the case at bar, the claimant contends the Hearing Commissioner erred in finding the claimant could not establish a statutory basis for an award of temporary total disability benefits, as the claimant voluntarily retired subsequent to being released to return to work by her treating physician Specifically, the claimant contends the work restrictions placed upon her by the treating physician could not be accommodated by the defendant-employer and therefore temporary total disability benefits were appropriate In addition the claimant contends her decision to retire was not voluntary, but was the result of coercion and duress on the part of the defendant employer and, therefore, is not sufficient to deny temporary total disability

benefits. To the contrary, the defendants maintain the claimant was released to return to light-duty work within certain restrictions (which had previously been accommodated), but refused to return to work. In addition, the claimant voluntarily retired from the defendant-employer in March 2008. As such, the defendants assert the Hearing Commissioner correctly found the claimant was not entitled to temporary total disability benefits.

A Claimant Refused to Return to Work in 2007

The Hearing Commissioner found the claimant could not establish a statutory basis for an award of temporary total disability benefits in part because she was released to return to work by her treating physician. The claimant contends this finding “is absolutely not true and totally unsupported by the evidence” as she contends she was taken out of work by her treating physicians on August 23, 2007. The defendants, however, assert a critical review of the evidence in the record supports the claimant was actually released to return to work on August 23, 2007, but refused to return to work. As such, the defendants maintain the claimant is not entitled to temporary total disability benefits based upon her refusal.

On July 24, 2007, the claimant returned to Henry Ramirez, PA-C, of Upstate Medical Associates, with continued complaints of neck pain with radicular pain into the head causing headaches. See Claimant’s APA #1, p. 5. Ramirez diagnosed her with a cervical and lumbar strain but returned her to work regular duty. Id. On August 15, 2007, Ramirez placed the claimant on light duty and provided work restrictions including no lifting, pushing, or pulling more than five pounds. Id. at p. 9. On August 21, 2007, Ramirez noted the claimant had continued neck and back pain and “wants an excuse to be out of work.” Id. at p. 13. On August 23, 2007, Ramirez diagnosed claimant with a lumbar and cervical herniated disc, but noted she is letting her emotions get the best of her and that her neck only got worse.

when she found out the final diagnosis of the MRI. There is not much I can do with her from a medical standpoint.” Id. Importantly, Ramirez also indicated “[s]he refuses to go back to work,” and, ‘I will send her home against my better judgment and because of her refusal.’ Id. at p. 14.

The claimant was taken out of work and referred to Charles C. Kanos, M.D., of Southeastern Neurosurgical & Spine Institute. Id. On August 29, 2007, Dr. Kanos noted the claimant was unable to work until evaluated by Dr. Rogers. See Defendants’ APA #7, pp. 42-44. On September 19, 2007, the claimant presented to Jay Patel, M.D., of Pain Management Associates, per the referral of Dr. Kanos. Dr. Patel reported the claimant could continue light-duty work with certain restrictions. See Claimant’s APA #5, p. 54. On October 1, 2007, Dr. Patel again placed the claimant on light-duty work status. Id. at p. 70.

The claimant testified before the Hearing Commissioner that she returned to work after Dr. Patel placed her on light-duty; however, the defendant-employer could not accommodate the work restrictions. See H.T., p. 29, ll. 4-12. However, the claimant has failed to provide any evidence whatsoever that the defendant-employer could not accommodate the work restrictions provided by Dr. Patel. To the contrary, the record shows limited-duty work was previously provided to the claimant and would have been available again.

For example, in his report of August 17, 2006, James R. Hanahan, M.D., notes the claimant “fell on June 29, 2006, at work, and reported the claimant could return to light duty with restrictions prohibiting lifting, pushing, and pulling greater than ten pounds.” See Defendants’ APA #1, p. 1. The claimant testified she did in fact, return to work after August 17, 2006, and did not seek additional medical treatment until July 24, 2007, when she returned to Henry Ramirez, PA-C, with continued complaints. The defendants assert this testimony provides the only evidence in the record of the defendant-employer’s

ability to accommodate light duty work restrictions and, in fact supports the defendant employer previously accommodated the light duty work restrictions of the claimant

In sum, the claimant was released to return to work in August and September 2007 with certain work restrictions but refused to return to work. In addition, the claimant has failed to provide any credible evidence that the defendant-employer could not, or would not, accommodate the aforementioned work restrictions. Accordingly, the greater weight of the evidence in the records supports the Hearing Commissioner's finding that no statutory basis for an award of temporary total disability benefits has been established by the claimant.

B Claimant Voluntarily Retired in 2008

The claimant contends the Hearing Commissioner erred in finding the claimant could not establish a statutory basis for an award of temporary total disability benefits based in part upon the claimant's voluntary retirement as she contends her retirement was not voluntary but was the result of coercion and duress on the part of the defendant-employer. Specifically, the claimant contends the defendant-employer "placed the claimant in the untenable position of having to choose between termination with health insurance coverage and termination without health insurance coverage" in an attempt to "thwart a workers' compensation claim or prevent a claimant from receiving workers' comp benefits to which he/she is entitled." Claimant/Appellant's Brief, pp. 9-12 (filed February 20, 2010). To the contrary, the defendants contend these accusations by the claimant are wholly improper and not supported by the greater weight of the evidence in the record.

Specifically, the claimant testified that, upon the denial of temporary total disability benefits, the claimant applied for and received short term disability benefits. See H.T., p. 114, ll. 17-22. However, after twenty-six weeks, the claimant acknowledged the benefits ceased as scheduled. Id. at p. 114, l. 23-

p 115, l 1 The claimant then testified she intended to apply for long term disability benefits but was informed her group health insurance would be terminated if she received long-term disability benefits Id at p 115, ll 2-6 Importantly, her group health insurance would not be terminated if she elected early retirement Id at p 115, ll 8-9 As such, the claimant testified she elected early retirement in order to maintain her group health insurance Id at p 115, ll 10-13 The claimant ultimately retired in March 2008 See H T , p 35 l 25 p 36 l 5

Accordingly the defendants maintain the claimant's decision to retire was not made through duress or coercion, or in an attempt for the defendants to avoid payment of workers' compensation benefits In fact, the claimant voluntarily retired to keep her group health benefits, which would be terminated if the claimant applied for and received long term disability benefits As such the defendants request the Full Commission affirm the finding of the Hearing Commissioner that the claimant is not entitled to temporary total disability benefits after March 1, 2008, as the greater weight of the evidence supports the claimant voluntarily retired from her employment without duress or coercion on behalf of the defendant employer

II THE HEARING COMMISSIONER PROPERLY ADMITTED THE MEDICAL RECORDS OF DR AMAYA

The claimant contends the medical records of Dr Amaya from 1999 are inadmissible as a matter of law, as he was not a licensed physician in South Carolina as of the Hearing on June 2, 2009, and his records allegedly did not constitute "medical evidence" under Section 42-1-172 of the Act Therefore the claimant contends his records cannot be considered as probative evidence of the claimant's failure to comply with the Notice requirement under Section 42-15-20 To the contrary the defendants assert Dr Amaya was licensed to practice medicine in South Carolina in 1999 and therefore, the contentions

of the claimant as to the admissibility of said records are irrelevant and unfounded. Additionally, the defendants assert Section 42-15-20 does not require the defendants to establish by way of "medical evidence" that the claimant discovered her diagnosis of carpal tunnel syndrome is compensable.

A Dr. Amaya was a Licensed Physician in 1999

On December 10, 1999, the claimant presented to Felipe A. Amaya, M.D., of Lake Ridge Neurological with complaints of continued tremors in her extremities. See Defendants' APA #6, p. 32. In his corresponding report, Dr. Amaya noted the claimant "has a job that demands a lot of heavy lifting and moving." See Defendants' APA #6, p. 32. Dr. Amaya then diagnosed the claimant with right carpal tunnel syndrome, advised her to assume a light-duty job with no heavy lifting for six to eight weeks, and provided her with a right wrist splint to wear for six to eight weeks. See Defendants' APA #6, p. 32. Importantly, on December 10, 1999, Dr. Amaya was a licensed physician in South Carolina. The fact that Dr. Amaya subsequently became unlicensed in South Carolina is not relevant for the purposes of determining the admissibility of his medical records. In fact, the claimant has failed to assert any evidentiary rule to support her contention that the medical records of a physician licensed at the time of the record, but subsequently unlicensed, are inadmissible in a subsequent legal proceeding. As such, the defendants request the Full Commission find the claimant's position with regard to the admissibility of the medical records of Dr. Amaya from 1999 is irrelevant and unfounded.

B "Medical Evidence" Pursuant to Section 42-1-172 is Inapplicable to a Determination of Proper Notice Under Section 42-15-20

The claimant argues the medical records of Dr. Amaya do not constitute "medical evidence" as defined in Section 42-1-172 and, therefore, cannot substantiate the defendants' Notice defense under Section 42-15-20.

The Notice defense does not require proof by 'medical evidence Pursuant to Section 42 15-20 'notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable " The Hearing Commissioner found the claimant discovered her repetitive trauma claim was compensable on December 10, 1999, but failed to notify her employer within ninety days thereafter See Defendants' APA #6, p 32 Importantly, Section 42 15 20 only requires the employee discover her condition is compensable There is certainly no requirement that such discovery be supported by expert opinion or testimony stated to a reasonable degree of medical certainty " As such, the defendants assert the claimant's application of Section 42-1-172 in interpreting Section 42-15 20 is improper as a matter of law In addition, the claimant s argument opposing the admissibility of the medical records of Dr Amaya is unsupported by fact or evidentiary rules Therefore, the defendants request the Full Commission uphold the admissibility of the medical records of Dr Amaya

III DENIAL OF CARPAL TUNNEL CLAIM IS SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE IN THE RECORD

Under Section 42 15-20, '[i]n the case of repetitive trauma notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable ' S C Code Ann § 42-15 20 (Supp 2007) In the case at bar, the claimant contends the Hearing Commissioner erred in finding the claimant did not provide timely Notice of her repetitive trauma claim, as the greater weight of the evidence in the record (1) clearly shows that Mrs McCall filed her claim within two (2) years after the assumed date of the onset of the condition" and (2) "gave notice to her employer, Sandvik, within ninety (90) days of the date that she first became aware that she had a compensable claim ' Claimant/Appellant's Brief, p 17 (filed February 20 2010)

In support of this contention the claimant relies upon the decision of the Supreme Court of South Carolina in Mauldin v. Dyna Color Jack Rabbit, 308 S.C. 18 416 S.E.2d 639 (1992). In addition the claimant relies upon the position that the medical records of Dr. Amaya, wherein he diagnosed the claimant with right carpal tunnel syndrome in 1999, are inadmissible as a matter of law due to the subsequent revocation of the Dr. Amaya's license to practice medicine. Finally the claimant alternatively contends that if she had notice of her right carpal tunnel syndrome in 1999, she did not have notice of her left carpal tunnel syndrome until Dr. Rogers diagnosed the condition on November 29, 2007.

To the contrary, the defendants assert the greater weight of the evidence in the record supports the claimant failed to provide timely Notice of her claim of injury by repetitive trauma and, therefore, the claim should be denied as a matter of law pursuant to Section 42-15-20. Specifically the claimant admitted suffering from bilateral hand and/or wrist problems for the duration of her approximately twenty two years under the employ of the defendant-employer, but also unequivocally admitted failing to notify her employer of said problems until November 29, 2007.

In addition the defendants maintain the claimant's reliance upon Mauldin is unfounded and distinguishable from the facts in the matter at bar. Moreover, the defendants maintain the medical records of Dr. Amaya are admissible and more importantly, constitute per se evidence the claimant had knowledge of a compensable injury by repetitive trauma on December 10, 1999. Finally, the defendants assert the claimant's attempt to separate her claim by the specific injuries claimed therein is directly contrary to the purpose of the Notice requirement and is unsupported by the greater weight of the evidence in the record.

A Claimant Discovered Her Condition Is Compensable Prior to 2007

1 Claimant was diagnosed with right carpal tunnel syndrome in 1999.

On December 10 1999 the claimant presented to Felipe A Amaya, M D , of Lake Ridge Neurological with complaints of continued tremors in her extremities See Defendants' APA #6, p 32 In his corresponding report, Dr Amaya noted the claimant 'has a job that demands a lot of heavy lifting and moving " See Defendants' APA #6, p 32 Dr Amaya then diagnosed the claimant with right carpal tunnel syndrome, advised her to assume a light-duty job with no heavy lifting for six to eight weeks, and provided her with a right wrist splint to wear for six to eight weeks See Defendants' APA #6, p 32 The defendants assert this report supports the claimant discovered her condition of right carpal tunnel syndrome was compensable in 1999, but failed to provide timely Notice of same under Section 42-15 20 In fact she did not provide any Notice until November 29, 2007

2 Claimant admitted knowing her bilateral hand problems, which she experienced for the duration of her employment, were related to her employment

In her deposition of April 21, 2009, the claimant testified her bilateral hand pain began during the first four years of her employment with Sandvik, when she held the position of presser See Deposition of Claimant p 14, ll 3-23 (April 27, 2009) The claimant testified she subsequently switched positions and began setting up carbide parts at which point she immediately began experiencing pain and numbing in her hands and fingers Id. at p 15, ll 10 16 Importantly, she confirmed this pain was similar to the pain she subsequently experienced in November 2007 Id. at p 15, l 22 p 16 l 10 The claimant testified that after four years she switched to a position as an etcher, performed this job for two years, and had constant pain in her hand and arms during this period Id. at p 17, ll 1 23 The claimant subsequently became a cutting tool processor, and held this position for approximately four years until

her retirement in 2007 Id. at p 18, l 25-p 19, l 2 The claimant verified her arm and hand pain worsened, however she admitted she never informed her employer of same Id. at p 20, l 17-p 21, l 11

Q During the first ten years, did you ever notify your supervisor that you were having any kind of hand or arm pain?

A No I didn't

Q And at any point during those ten years, did you realize that the work you were doing at Valenite was causing the problem?

A Well, I figured it did, because of how many I had to pick up and I had to hold them so tight, you know I knew it had to be, you know, with what I was doing But I never did say anything

Q Did you realize that that work was causing the pain in your arms and hands?

A Yeah, I knew it was but I just kept on working you know And I love my job and I didn't say anything I just, I just kept working

Q Is that basically the truth for that entire 22 year period up until November 29, 2007, from when you first started having pain in your arms back in the late '80s until 2007, you basically just continued to work with that pain that entire time -

A Yeah

Id. at p 21, ll 8-18 p 28 l 25 – p 29, l 10

The claimant unequivocally testified she experienced bilateral hand problems for the duration of her employment with the defendant-employer Moreover, she testified she knew her problems were caused by the repetitive motions required of her employment, but failed to inform her supervisors of the problems until November 29, 2007 As such, the defendants maintain the medical records of Dr. Amaya and the deposition testimony of the claimant provide probative evidence that the claimant discovered her bilateral hand problems were compensable prior to 2007

B Claimant's Reliance Upon *Mauldin* Misplaced

The claimant relies upon the Supreme Court's decision in Mauldin to support her position that she did not discover the compensability of her injury by repetitive trauma until the diagnosis by Dr. Rogers on November 29, 2007. To the contrary, the defendants contend the facts in Mauldin are distinguishable from those in the case at bar and, therefore, the claimant's reliance upon the holding in Mauldin is misplaced.

In Mauldin, the employee sustained an accident in 1985 which was incorrectly diagnosed by an Emergency Room physician as medial collateral sprain. Mauldin, 308 S.C. at 20, 416 S.E.2d at 641. The employee was treated conservatively, but continued to experience intermittent swelling and pain in her knee. Id. Finally, in 1987, the employee presented to an orthopedist at which time she received a diagnosis of a torn medial meniscus. Id. The employer/carrier argued the employee did not file her claim within the two-year statute of limitations. Id. The Court held the employee only 'discovered or reasonably could have discovered' that her knee problem resulted from the 1985 accident in 1987, when the orthopaedic physician correctly diagnosed her injury. Id.

In the case at bar, the claimant was diagnosed with right carpal tunnel syndrome in 1999 by Dr. Amaya. See Defendants' APA #6, p. 32. Importantly, and unlike the original diagnosis in Mauldin, Dr. Amaya's diagnosis was correct. In fact, Dr. Rogers later made the same diagnosis in 2007, upon which the claimant finally reported her problems to her employer. See Claimant's APA #6, p. 125. Accordingly, any reliance upon Mauldin is misplaced in the case at bar.

C Dr. Amaya's Records Admissible

In further support of her position, the claimant contends the medical records of Dr. Amaya are inadmissible as Dr. Amaya was not licensed to practice medicine as of the date of the Hearing. In fact,

the claimant contends the Hearing Commissioner's decision to admit the records of Dr Amaya into evidence constitutes an independent ground for reversal of the Hearing Commissioner's Decision and Order As discussed herein above, Dr Amaya was licensed to practice medicine in South Carolina in 1999 and, therefore, the contentions of the claimant as to the admissibility of said records are irrelevant and unfounded As such, the Single Commissioner was free to consider the medical records of Dr Amaya and moreover, to rely upon the records as probative evidence that the claimant discovered her condition of right carpal tunnel syndrome was compensable in 1999, but failed to provide timely Notice of same under Section 42 15-20 until November 29, 2007

D Claimant's Left Carpal Tunnel Syndrome Not Separately Compensable

The claimant further contends "there is absolutely no evidence whatsoever through Dr Amaya's records or otherwise that Ms McCall knew or should have known that she had carpal tunnel syndrome on the left side until November 29 2007 ' Claimant/Appellant s Brief p 20 (filed February 20 2010) As such the claimant contends her left carpal tunnel syndrome is compensable regardless of the compensability of her right carpal tunnel syndrome To the contrary the defendants maintain the contention of the claimant is contrary to the well-established purpose of the Notice requirement and, moreover, is not supported by the greater weight of the evidence in the record

- 1 The purpose of the Notice requirement does not support separate compensability of the claimant's left carpal tunnel syndrome

In Mintz v Fiske-Carter Construction the Supreme Court of South Carolina explained the purpose of the Notice requirement under Section 42-15 20 is in part to "afford the employer opportunity to furnish medical care of the employee in order to minimize the disability and consequent liability upon the employer ' Mintz v Fiske-Carter Construction, 218 S C 409, 414, 63 S E 2d 50 52 (1951)(citing 145

A L R 1257)) In the case at bar, the greater weight of the evidence supports the claimant discovered her right carpal tunnel syndrome was compensable in 1999 by way of the diagnosis of Dr Amaya. However, the claimant failed to notify her employer of the condition until 2008. This failure on the part of the claimant violated the fundamental purpose of the Notice requirement, as it precluded employer from minimizing the claimant's disability and in fact may have caused repetitive trauma to her left hand/wrist due to her continued employment without the appropriate medical treatment. As such, the fundamental purpose of the Notice requirement supports the finding of the Hearing Commissioner that the claim is denied in its entirety.

2 The claimant suffered left hand/wrist problems for the duration of her employment but admittedly failed to notify her employer.

The claimant unequivocally testified she experienced bilateral hand problems for the duration of her employment with the defendant-employer. Moreover, she testified she knew her problems were caused by the repetitive motions required of her employment but failed to inform her supervisors of the problems until November 29, 2007. As such, the defendants maintain the deposition testimony of the claimant provides probative evidence that the claimant discovered her left hand/wrist problems were compensable prior to 2007. Accordingly, the claimant must be barred from alleging her left carpal tunnel syndrome is now subject to a separate Notice requirement.

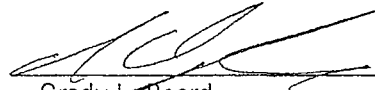
CONCLUSION

Based upon the foregoing, the defendants respectfully request the Full Commission to affirm the Decision and Order of the Hearing Commissioner as it relates to the denial of temporary total disability benefits, admissibility of the medical records of Dr Amaya, and denial of the carpal tunnel claim.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L L C

By



Grady L. Beard

Nicolas L. Haigler

1310 Gadsden Street

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Defendants/Respondents

Columbia South Carolina

March 12, 2010

APPEARANCES**FOR THE CLAIMANT**

M TODD SIMMONS, ESQUIRE
 POST OFFICE BOX 130
 LONG CREEK, SOUTH CAROLINA 29658
 (864) 723-5135

LARRY C BRANDT, PA
 POST OFFICE BOX 738
 WALHALLA, SOUTH CAROLINA 29691
 864-638-5406

FOR THE CARRIER

GRADY L BEARD, ESQUIRE
 SOWELL GRAY STEPP & LAFFITTE, LLC
 POST OFFICE BOX 11449
 COLUMBIA, SOUTH CAROLINA 29211
 (803) 231-7824

NADINE QUATTLEBAUM
 COURT REPORTER
 POST OFFICE BOX 1205
 IRMO, SOUTH CAROLINA 29063
 (803) 834-3410

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INITIAL HEARING TRANSCRIPT 6/2/2009

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TESTIMONY DONNA L MCCALL - DIRECT EXAMINATION BY SIMMONS

1 THE COURT Today's date is June 2, 2009 These
2 are the Workers' Compensation cases of Ms Donna
3 McCall versus Sandvik, Inc The Carrier is Sentry
4 Insurance Company Two WCC File Nos , 0627287 and
5 0722895 The date of accident for the first accident
6 was June 29, 2006 The second accident date is
7 alleged as November 29, 2007

8 Present for the Claimant are Attorneys Todd
9 Simmons and Attorney Larry Brandt Present for the
10 Employer/Carrier is Attorney Grady Beard

11 These hearings are set on the Forms 50 and 51

12 We have two different comp rates For the '06
13 claim, based on the 20, an average weekly wage of
14 \$807 30 with a corresponding come rate of \$538 22
15 From the '07 claim, an average weekly wage of \$828 25
16 with a corresponding come rate of \$552 19

17 The ratings would be as listed on the prehearing
18 briefs and in the APA submissions

19 I do have APA submissions handed up from both
20 parties as well as the deposition transcripts of
21 Dr Patel, Dr Rogers, Dr Kanos, Dr Woodruff,
22 Dr Bruce Any objections to jurisdiction, venue, or
23 the APA submissions? Mr Simmons?

24 MR SIMMONS Only as to the previous discussion
25 that we had regarding the records from Lake Ridge

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TESTIMONY DONNA L MCCALL - DIRECT EXAMINATION BY SIMMONS

1 Neurological and former Dr Felipe Amaya

2 THE COURT I did take up the motion of the
3 Claimant to exclude the records of Dr Amaya,
4 A-M-A-Y-A I have overruled that motion in this case
5 I will add those records in At the time of his
6 treatment, based on the records handed up, he was a
7 licensed doctor within our state Obviously, that is
8 noted, though I'll make no judgment call on the
9 weight I'm going to assign to it at this point

10 Any other objections to any records?

11 MR SIMMONS None from the Claimant

12 THE COURT I had also - I'll just state this for
13 the record I have agreed to leave the record open
14 for three weeks for the deposition of Dr Rogers
15 Mr Beard had filed - had actually subpoenaed him to
16 this hearing Dr Rogers' office had called my office
17 and he was scheduled to be out of town Therefore, in
18 lieu of that, I will allow his deposition to be taken
19 I'll leave the record open until June 23, 2009
20 Hopefully the parties can get it done in advance to
21 that But obviously if you all have some difficulty
22 getting it scheduled for various reasons, please
23 contact my office so that I will be advised of that
24 But that is noted that the record will be left open
25 Mr Beard, any objection to jurisdiction, venue,

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- 1 A Yes
- 2 Q What was your understanding of the problem you had
- 3 back in 1999?
- 4 A He said I had to -
- 5 MR BEARD Object to what he said, Commissioner
- 6 It's hearsay We've got medical records that say what
- 7 the problem was
- 8 THE COURT Sustained
- 9 BY MR SIMMONS
- 10 Q Please don't tell me what the doctor said My
- 11 question is, is what was your understanding of the
- 12 problem that you had in 1999?
- 13 A My understanding, okay
- 14 Q Basically, why were you presenting and what was your
- 15 understanding of the treatment you were presenting
- 16 for?
- 17 A It was because of my tremor in my arm, for one thing,
- 18 and back hurting
- 19 Q Who did you see back in 1999? Do you recall?
- 20 A It was - I can't remember his name
- 21 Q Were you referred to this doctor by anybody?
- 22 A Just a friend
- 23 Q Did you - do you recall seeing a Dr Amaya back in
- 24 1999?
- 25 A Amaya, yes Yes That's it

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TESTIMONY DONNA L MCCALL - DIRECT EXAMINATION BY SIMMONS

1 Q Did the problems that you treated with Dr Amaya for
2 back in 1999, did those problems and symptoms resolve?

3 A Yes

4 Q Did you have any further back pain following those
5 visits?

6 A Say that again?

7 Q Following your visits with Dr Amaya in 1999, did you
8 have any continued or continuous back pain?

9 A I never did see him no more

10 Q My question is, following seeing him, though, did you
11 back pain resolve?

12 A Oh, yes Yeah

13 Q Prior to the fall of June 29, 2006, were you
14 experiencing any back pain other than just normal
15 occasional soreness that you experience from your
16 daily exertion at work?

17 A No

18 MR SIMMONS Can we go off the record just a
19 second?

20 THE COURT Sure

21 (WHEREUPON an off-the-record conversation took place)

22 THE COURT We're back on

23 BY MR SIMMONS

24 Q Ms McCall, have any of your doctors diagnosed you as
25 having carpal tunnel syndrome?

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- 1 A Yes
- 2 Q Which doctors have you treated with and learned that
- 3 you have carpal tunnel syndrome?
- 4 A Dr Rogers and Dr Bruce
- 5 Q When was the first time that you were told by any
- 6 medical doctor that you had carpal tunnel syndrome?
- 7 A With Dr Rogers when I went in for a test
- 8 Q Do you remember the date that you were first told that
- 9 you had carpal tunnel syndrome?
- 10 A That was 11/29/07
- 11 Q Prior to November 29, 2007, had any doctor ever told
- 12 you that you had carpal tunnel syndrome?
- 13 A No
- 14 Q Upon learning that you were diagnosed with carpal
- 15 tunnel, did you instruct your attorney to notify your
- 16 Employer of this injury?
- 17 A Yes
- 18 Q Do you experience any numbness, tingling, or burning
- 19 in your hands?
- 20 A Yes
- 21 Q Can you describe for me those sensations?
- 22 A Describe about -
- 23 Q Yeah Tell me how it feels to you, if you can As
- 24 best you can
- 25 A It's numbness and burning, tingling And it's hard to

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- 1 open up jars or holding things
- 2 Q Where exactly in your hands do you feel this numbness
- 3 and tingling?
- 4 A In my arms and around my wrists
- 5 Q Do you ever feel any of these sensations in your
- 6 fingers?
- 7 A Yeah That's the tingling
- 8 Q Have you experienced any loss of strength like in your
- 9 hands?
- 10 A Yes Definitely
- 11 Q Do you experience any pain in your hand or fingers?
- 12 A Yes
- 13 Q Do these symptoms affect both your right and your left
- 14 hand?
- 15 A Yes
- 16 Q How do these symptoms affect your day-to-day life
- 17 around the house?
- 18 A A whole lot I have to get my husband to help me out
- 19 He helps me opening up jars and opening up just little
- 20 regular potato chip bags, you know
- 21 Q When did you first start working for Valenite,
- 22 Ms McCall?
- 23 A In '85
- 24 Q Is that 1985?
- 25 A Yes

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- 1 Q What was your first job position there?
- 2 A I was a braiser
- 3 Q What exactly does a braiser do? Just short and sweet,
- 4 general terms
- 5 A I have to braise diamonds on the (unintelligible) It
- 6 has to heat up, melt the flux and the braise and -
- 7 Q What shift was it that you were working when you first
- 8 started as a braiser?
- 9 A First
- 10 Q How many hours a day did you work on that shift?
- 11 A It was scheduled for eight But most of the time they
- 12 was booming so much Most of the time we was working
- 13 nine, ten hours a day and eight on Saturday and five
- 14 on Sunday sometimes
- 15 Q How many days a week - which leads me to my next
- 16 question How many days a week were you performing
- 17 these duties as a braiser?
- 18 A Well, about seven
- 19 Q Was there weeks that you worked six and some you
- 20 worked seven?
- 21 A Yeah Because they'd give us a break sometimes
- 22 Q As a braiser, what did you do on a day-to-day basis in
- 23 that position?
- 24 A Well, I had to put the inserts on this tape and I had
- 25 to put each one of them on that tape and sandblast

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- 1 them to get them clean And then I had to take them
2 and put the flux and the braise and the diamond on it
3 And it had to heat up I had a little holder where I
4 had to hold the diamond real still because the flux
5 would float it and it would tend to go off to the
6 side So, I had to hold it down hard And then when
7 it cooled down, then I had to take it to this little
8 wheel that had water dripping out of it, on top of it
9 And I had to take each one of those inserts and shine
10 them and get them cleaned up on the front part of
11 them
- 12 Q How big were these pieces that you were working with?
- 13 A Some of them were real small Some of them was two
14 millimeter, four millimeter, five millimeter They
15 were different sizes
- 16 Q Are we talking about parts that you can fit between
17 your fingers or hold in your hand?
- 18 A Yeah Little bitty, tiny parts
- 19 Q And they're something that you can fit between, say,
20 your thumb and your index finger?
- 21 A Yeah
- 22 Q How many times a day would you do this process of the
23 braising and the blasting and the polishing?
- 24 A All day long
- 25 Q Could you even attempt at any estimate of how many

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- 1 parts per day you would actually take these small
2 parts and do this process?
- 3 A It was in the hundreds
- 4 Q And you testified earlier, I believe, that this was
5 six, seven times a week?
- 6 A Yeah
- 7 Q All day long?
- 8 A Yeah
- 9 Q How long were you in this position with Valenite?
- 10 A Around four years
- 11 Q During the process of the braising and the blasting
12 and the polishing and holding these small parts, did
13 your hands or fingers ever become tired or tingly?
- 14 A Yeah
- 15 Q And what would you do to alleviate these problems?
- 16 A I'd just hold them down to the side and that would
17 relieve them a little bit, try to get out of that
18 position, you know
- 19 Q After you quit, say, doing this all day long, would
20 the symptoms in your hands eventually alleviate? Did
21 they go away?
- 22 A Yeah
- 23 Q In this job of braising, did you use both hands?
- 24 A I would - I had to hold the diamond down with the
25 right hand because I'm right handed But when I was

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TESTIMONY DONNA L MCCALL - DIRECT EXAMINATION BY SIMMONS

- 1 polishing or taping the inserts on the tape, I would
2 switch and use my left hand sometimes
- 3 Q What was the next job that you performed at Valenite?
- 4 A The next one was the etching
- 5 Q What exactly - and once again, we'll get into the
6 details later But what exactly, and just in general
7 terms, does an etcher do?
- 8 A We had to type these little numbers on - I don't know
9 what it's called On this little piece of paper
10 thing It's not paper It's made out of something
11 And it identifies the part And then we have to etch
12 it onto each insert one at a time
- 13 Q How big are these inserts that you have to etch these
14 identifying numbers on?
- 15 A Mostly like four or six millimeter
- 16 Q Are we talking about small parts on -
- 17 A Yes
- 18 Q - that you can fit between your fingers?
- 19 A Yeah
- 20 Q What shift did you work as an etcher?
- 21 A First shift
- 22 Q And how many hours a day did you work as an etcher on
23 average?
- 24 A About eight
- 25 Q How many days a week did you work as an etcher?

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- 1 A Most of the time it was six at least because they did
2 a lot of overtime then
- 3 Q What did you do on a day-to-day basis in detail to
4 make sure you fulfilled your job as an etcher that was
5 doing your job properly? Walk me through the process
- 6 A Well, I had to type the little numbers on that paper
7 and then put them on - it was a little holder that we
8 had to put it on And it just - I can't explain it
9 I don't know how to explain it But it makes - it's a
10 little machine and it makes the numbers etch on to
11 each part And you had to get it just a certain way
12 because a lot of the numbers were so long, they
13 wouldn't hardly fit, you know
- 14 Q How would you have to use your hands and your fingers
15 to make sure that it was etched properly?
- 16 A Well, I had to hold that little holder real tight and
17 hold the insert tight with my hands, my fingers, so
18 that I could get those numbers exactly right on the
19 insert
- 20 Q How many times, roughly, would you do this a day?
- 21 A It was like we did hundreds a day
- 22 Q Was it a situation where you would do one and then
23 instantly go to another and keep over and over and
24 over?
- 25 A Yes We had to line them up and then we'd do them one

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TESTIMONY DONNA L. MCCALL - DIRECT EXAMINATION BY SIMMONS

1 at a time

2 Q How long were you in this position with Valenite?

3 A I'm thinking that was about two years

4 Q During this period of time, did you ever experience

5 fatigue or tingling in your fingers or your hands?

6 A Yes

7 Q What would you do during a shift to alleviate those

8 sensations?

9 A Well, about the same thing, just hold them down until

10 I got feeling back in my fingers

11 Q Once you got your feeling back in your fingers and you

12 went home for the day, was it something that would go

13 away?

14 A Yeah

15 Q What was the next job you performed for Valenite after

16 the etching?

17 A Sometimes they would put me in - when we get slow at

18 work, they would put me in the blasting area And

19 that I had to put all these little inserts in a holder

20 and hold them real tight You couldn't let them fall

21 or nothing because, if you did, they'd chip And so I

22 had to hold them real tight and put them in these

23 little holders and then put them in a blaster and

24 blast the side And then you had to hold them tight

25 again and roll them over and blast the other side

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- 1 And you had to put them all - when you finished, you
2 had to put them - each one of them in the little trays
3 that were divided up in little squares
- 4 Q Is that referred to as setting up parts or is that
5 something totally different?
- 6 A It was called blasting
- 7 Q Did you ever go into any type of position there
8 setting up any type of parts?
- 9 A Yes That was next
- 10 Q In your blasting position, was that a job that you
11 changed to or is it something that just when they
12 needed extra help, you would go over and do it?
- 13 A When they needed extra help
- 14 Q Was that during the period of time when you were an
15 etcher?
- 16 A Yes
- 17 Q After the etcher and the blasting, what did you do
18 next for Valenite?
- 19 A It was the setting up
- 20 Q Do you recall what shift you worked setting up parts?
- 21 A It was first shift
- 22 Q How many hours a day did you, on average, work?
- 23 A It was eight, nine hours sometimes
- 24 Q How many days a week?
- 25 A We were scheduled five But it always boiled down to

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TESTIMONY DONNA L MCCALL - DIRECT EXAMINATION BY SIMMONS

- 1 working a lot of Saturdays
- 2 Q Would you work six days a week several times a month?
- 3 A Yes
- 4 Q What did you do on a day-to-day basis as a person that
- 5 set up parts?
- 6 A We had these little pins, they called them And we
- 7 had to take the insert It has holes in them And
- 8 you had to put a spacer and an insert until you got
- 9 the whole pin full And then you put it over to the
- 10 side on a tray And I had to - I did that all day
- 11 Q And during setting up these parts, how was it that you
- 12 would use your fingers and your hands?
- 13 A I had to hold the pin and then push in the spacer and
- 14 the insert one at a time
- 15 Q How big were these parts, these pins and these
- 16 spacers?
- 17 A They were different sizes Two millimeters, four,
- 18 six Some of them got to be eight Some of them were
- 19 bigger
- 20 Q Are we, once again, talking about parts that you can
- 21 put between your fingers?
- 22 A Yes
- 23 Q And how many times a day would you set up these parts?
- 24 A I was doing that all day long
- 25 Q Was this a repetitive process where you set up parts

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- 1 all day long?
- 2 A Yes
- 3 Q I assume you got breaks, though, right?
- 4 A Oh, yeah
- 5 Q But when you weren't taking a break, when you were
- 6 working, you were setting up parts?
- 7 A Yeah
- 8 Q How long were you in this position with Valenite,
- 9 roughly?
- 10 A It was about five years
- 11 Q Through setting up parts, did you ever experience any
- 12 tiredness or tingling in your hands and fingers?
- 13 A Yes
- 14 Q How would you help alleviate those symptoms?
- 15 A The same way I just stopped for a few minutes and
- 16 hold my hands down to the side
- 17 Q Would that help alleviate the symptoms?
- 18 A The numbness
- 19 Q After you completed your position at Valenite as
- 20 somebody that set up parts, did you then move to
- 21 another position?
- 22 A Yes
- 23 Q What was that position?
- 24 A Furnace operator
- 25 Q Roughly how many years were you a furnace operator?

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- 1 A It was about eight or nine I can't remember
2 exactly
- 3 Q Was your last position at Valenite as a furnace
4 operator?
- 5 A Yes
- 6 Q What shift did you work as a furnace operator?
- 7 A When I first started, it had to be third shift because
8 seniority that people had And it was only about
9 three months, I guess, and then the new TTM (phonetic)
10 furnaces came in and they let me - they picked me to
11 go over there to work with Moe Turner on them
- 12 Q Was being a furnace operator a better paying position
13 than your past positions with Valenite?
- 14 A Yes Definitely
- 15 Q How many hours a day did you work as a furnace
16 operator?
- 17 A Most of the time it was six
- 18 Q How many days a week would you work average?
- 19 A How many days? Six days
- 20 Q As a furnace operator - I'm sorry Did you have
21 something else to say?
- 22 A I'm sorry I was getting the days mixed up
- 23 Q What would you do on a day-to-day basis as a furnace
24 operator? Is this going to be similar to what you
25 testified earlier regarding when -

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TESTIMONY DONNA L MCCALL - DIRECT EXAMINATION BY SIMMONS

- 1 A That was the cleaning part, yeah And then we had to
2 set up and take parts too when the furnaces was
3 running and we didn't have nothing to do
- 4 Q Describe for me, if you could, how you used your hands
5 and your fingers as a furnace operator and as setting
6 up parts
- 7 A Well, we had to - there were 80 runs, we had to take
8 the shields out of the furnace And that was when we
9 had to use - do the pressing real hard and pulling and
10 yanking and all on the liners of the furnaces to get
11 them out and have to sand blast them And sometimes
12 they would run over 80 runs and the nuts that was
13 holding the liners in, they get coated a whole lot
14 And so we'd have to take pliers and try to get them
15 off and pull real hard on the pliers And we were
16 still using our fingers, but we had to do a lot of
17 maintenance and setting up and breaking down
- 18 Q Breaks excluded, was this something that you did all
19 day long as a furnace operator?
- 20 A Yeah Well, the 80 runs, you know, when we - we
21 didn't have to do that every day As far as taking
22 out the liners and stuff, that wasn't every day That
23 was just 80 runs
- 24 Q Did you ever experience any numbness or fatigue or
25 pain in your fingers or your hands through being a

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TESTIMONY DONNA L. MCCALL - DIRECT EXAMINATION BY SIMMONS

1 furnace operator?

2 A Yes

3 Q What would you do to help alleviate that?

4 A The same way I would just hold them down and stop
5 for a few minutes I took some Advil and Tylenol and
6 stuff like that, trying to ease it up

7 Q When you first started working for Valenite in 1985,
8 were you experiencing any numbness or tingling in your
9 fingers or your hands?

10 A No

11 Q Other than the pain and fatigue in your fingers and
12 hands that you've told me about earlier as we're going
13 through your physicians, was there ever a time that
14 you started notices that the pain and the fatigue
15 would last a little bit longer?

16 A Yes

17 Q Did you gradually develop any persistent pain or
18 tingling or numbness in your fingers or your hands
19 over the 21 years that you were at Valenite?

20 A Was it gradually, is that what you're -

21 Q Yes Was it a gradual process?

22 A Yes

23 Q Prior to November 29, 2007, did you ever know that it
24 was possible that these symptoms you were experiencing
25 could be caused by carpal tunnel syndrome?

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- 1 A No I didn't know
- 2 Q Did you work any other jobs over these 21 years that
- 3 you had with Valenite with any other company or any
- 4 other person?
- 5 A (No response)
- 6 Q Let me rephrase that Were you employed by anybody
- 7 else while you were doing these jobs with Valenite?
- 8 A No
- 9 Q If you didn't have your back and head injury and we
- 10 were only talking about your hands, could you today go
- 11 back to fully performing your duties with Valenite?
- 12 A Yeah
- 13 Q I said fully performing your duties with Valenite
- 14 A Say that again I'm sorry
- 15 Q If you didn't have your back injury and your neck
- 16 injury and your head injury, if we were just talking
- 17 about hands, do you think you could go back to fully
- 18 performing your duties with Valenite?
- 19 A No
- 20 Q Why not? What keeps you from doing that?
- 21 A Because of my pain in my arms and hands
- 22 Q Did you play sports or doing anything with a
- 23 repetitive basis with your hands while you were away
- 24 from work?
- 25 A Did I do what now?

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- 1 Q Did you play any sports while you were away from work
2 during this 21 years with Valenite?
- 3 A No
- 4 Q Did you do any type of repetitive activities, like
5 sewing or anything like that while you were employed
6 with Valenite at home?
- 7 A No
- 8 Q Did you have an appointment with Dr Bruce to evaluate
9 you for the purposes of your Workers' Comp case?
- 10 A Yes
- 11 Q And were you completely forthcoming and truthful with
12 Dr Bruce?
- 13 A Was I what now?
- 14 Q Were you completely forthcoming and truthful with him
15 in his evaluation?
- 16 A Yes
- 17 Q Have you been completely honest with all of your
18 physicians that you've seen since your fall on June
19 29, 2006?
- 20 A Yes
- 21 Q Would you like medical treatment for your carpal
22 tunnel syndrome?
- 23 A Yes Definitely
- 24 MR SIMMONS That's all the questions I have,
25 Ms McCall Please answer any that Mr Beard has on

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- 1 Q Yes, ma'am
- 2 A No, sir
- 3 Q You didn't tell them you had a pinched nerve, did you?
- 4 A No, sir
- 5 Q You also were tested, according to Dr Amaya's report
- 6 on November 30, 1999, it says you have right carpal
- 7 tunnel syndrome, median nerve entrapment in the wrist
- 8 area That was in 1999 You actually were told in
- 9 1999 you had carpal tunnel syndrome in your right
- 10 wrist, didn't you, by Dr Amaya?
- 11 A He never told me that
- 12 Q He didn't tell you that?
- 13 A No, he didn't
- 14 Q And even though he sent these documents to
- 15 Dr Carpenter, Dr Carpenter didn't advise you of
- 16 that, your family doctor?
- 17 A No, sir
- 18 Q Did you ever ask him what was going on with your
- 19 wrist?
- 20 A No
- 21 Q You were also written out of work or given a note to
- 22 be out of work at that time, in November of 1999, by
- 23 Dr Amaya, weren't you?
- 24 A Written out of work?
- 25 Q Yes, ma'am For a period of time

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- 1 Q Have you gone through voc rehab -
- 2 A Wait, wait I'm sorry I have filed I'm sorry
- 3 Q When did you file for Social Security Disability?
- 4 A I don't know exact date
- 5 Q Is a lawyer representing you for that?
- 6 A Yes
- 7 Q Who?
- 8 A My lawyer, Todd
- 9 Q And you don't know when you filed for Social Security?
- 10 A I can't remember it
- 11 Q You don't have any restrictions on your driver's
- 12 license, do you?
- 13 A No, sir
- 14 Q None at all?
- 15 A No, sir
- 16 Q Now, you've gone through a lot of testimony earlier,
- 17 Mr Simmons asked you a lot of questions -
- 18 MR BEARD Commissioner, I'm kind of moving over
- 19 into the carpal tunnel now
- 20 BY MR BEARD
- 21 Q You were asked a lot of questions about the kind of
- 22 jobs you performed over the years at Valenite And
- 23 first of all, are you predominantly left handed or
- 24 right handed?
- 25 A Right handed

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- 1 Q And you've been having pain, as I heard your
2 testimony, in your arms and hands ever since you
3 started working at Valenite, is that correct?
- 4 A Yes It wasn't a constant thing And it was
5 progressing
- 6 Q And that included every single - basically every job
7 that Mr Simmons went through, braiser, the etcher,
8 the set-up person, furnace operator, every job you
9 said caused you to have problems
- 10 A Yeah
- 11 Q From the time you started in the 1981s until you left
12 that plant, you never once mentioned to a supervisor
13 having any kind of problems with tingling or numbness
14 or pain or anything in your hands or arms, did you?
- 15 A No, I didn't
- 16 Q Not one time?
- 17 A No, sir
- 18 Q And that includes every one of the jobs, braiser, you
19 never told your supervisors there, right?
- 20 A No
- 21 Q Etcher, you never told the supervisor?
- 22 A No, sir
- 23 Q The set-up person, you never told your supervisor?
- 24 A No, sir
- 25 Q And finally the furnace operator, you never told any

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- 1 of your supervisors?
- 2 A No, I didn't
- 3 Q And in fact, in your second deposition, given here
- 4 recently, on April 27, 2009, do you recall
- 5 acknowledging that you thought - or you knew your work
- 6 was causing those problem, but you just didn't tell
- 7 anybody and you continued to do that job for 22 years?
- 8 A Yes I felt like that
- 9 Q And I'm quoting, you never did say anything?
- 10 A No, sir
- 11 Q And I'm quoting at page 21, you knew it had to be your
- 12 job causing the problems, correct?
- 13 A I felt like it was
- 14 Q You knew it had to be That's what you said in your
- 15 deposition
- 16 A Yes
- 17 Q Page 21 of your second - of the April '09 deposition
- 18 You officially retired from the company in 2007 or in
- 19 2008 Let me strike that When you first left, you
- 20 eventually got on short-term disability benefits,
- 21 correct?
- 22 A Yes, I did
- 23 Q You exhausted those?
- 24 A Yes
- 25 Q How long did you receive those, 26 weeks?

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TESTIMONY DONNA L MCCALL - CROSS EXAMINATION BY BEARD

- 1 A I guess somewhere along in there
- 2 Q After that, did you apply for long-term or did you
- 3 just go ahead and take retirement?
- 4 A Well, that's it, they called me up and they said that
- 5 if I filed for long-term disability, that they would
- 6 fire me
- 7 Q Well, you lose your group insurance, right?
- 8 A And I lose my insurance But if I retired, then I get
- 9 to keep my insurance
- 10 Q So, you took retirement?
- 11 A Yes
- 12 Q And you now still have group insurance, correct?
- 13 A Yes
- 14 Q And with your retirement, do you receive some sort of
- 15 a weekly or monthly check?
- 16 A Yeah I receive - I got seven years instead of
- 17 twenty-two years of retirement
- 18 Q That's not my question My question was, do you
- 19 receive some sort of a check because of being retired?
- 20 A Yeah
- 21 Q And being retired, you have taken yourself outside of
- 22 the job market In other words, can you go get
- 23 another job and still collect retirement from Sandvik
- 24 and Valenite or do you know?
- 25 A I don't know

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- 1 Q At page 29, you testified you worked with pain the
2 entire time you worked on that job even though you
3 knew your job was causing the pain, correct?
- 4 A Yeah
- 5 Q And you never once said a word to anybody in
6 management
- 7 A No, I didn't
- 8 Q Your testimony under oath is that you deny being
9 advised by Dr Carpenter or Dr Amaya back in 1999
10 that you were diagnosed as having right carpal tunnel
11 syndrome?
- 12 A What now?
- 13 Q Are you testifying under oath today that you deny
14 being told by Dr Carpenter or Dr Amaya in 1999 that
15 you were diagnosed as having right carpal tunnel
16 syndrome?
- 17 A I'm not denying I -
- 18 Q You just don't remember?
- 19 A I just don't remember
- 20 Q Have you seen the medical records that say that?
- 21 A No, sir
- 22 Q No one's shown you those records?
- 23 A I hadn't
- 24 Q Has Dr Rogers or Dr Patel or any other doctor
25 referred you for a neuropsychological evaluation?

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- 1 A You talking about a psychiatrist?
- 2 Q No, ma'am
- 3 A What is it then?
- 4 Q Brain doctor A doctor to look at your brain
- 5 A No, they hadn't
- 6 Q Has anyone referred you for a vocational evaluation or
- 7 to a vocational expert or to the South Carolina
- 8 Vocational Rehabilitation Department?
- 9 A What is that?
- 10 Q Are you aware that you can go to the South Carolina
- 11 Vocational Rehabilitation Department for free and sign
- 12 up and try to learn how to do other kinds of jobs?
- 13 A No
- 14 Q Have you tried to do that in the two years you haven't
- 15 been working?
- 16 A I didn't know nothing about it
- 17 Q How long were you a seamstress or worked for the
- 18 sewing company?
- 19 A I think it was five years
- 20 Q And that was the job right before you came to work for
- 21 Valenite?
- 22 A I was a seamstress two different places
- 23 Q Were those the - did you - were you a seamstress right
- 24 before you came to work with Valenite?
- 25 A Yeah Rhonda's Fashions

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TESTIMONY DONNA L MCCALL - CROSS EXAMINATION BY BEARD

1 Q How long were you a seamstress there?

2 A Maybe a year or two I can't remember

3 Q Earlier, Ms McCall, you said you couldn't sit for
4 very long period of time We've been in this hearing
5 now for almost three hours

6 A Yes

7 Q And you've only gotten up for one little small break
8 when the Commissioner took a break Are you able to
9 sit for the periods of time like we're doing now?

10 A I'm trying to I mean, I ain't supposed to interrupt
11 anything, am I? I'm in a courtroom

12 THE COURT You could, if you wanted to Do you
13 need to stand up or something?

14 THE WITNESS I would like to

15 THE COURT Go ahead

16 MR BEARD One second, Commissioner

17 BY MR BEARD

18 Q Are you aware that Dr Patel in his deposition
19 testified that you gave no history of any pervious
20 neck pain to him or any previous neck problems before
21 2006?

22 A I don't remember

23 Q You would agree that the medical records that we
24 presented into evidence show that's not correct,
25 right?

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1 A I had that 1999 But in 1999 it was just back It
2 didn't consist of neck, that I remember

3 Q Did you hear me read from the MRI scans that were done
4 in 1999 on your neck?

5 A Yeah

6 Q And I told you the x-rays that were done, your neck
7 was the only one that had a problem, not your back?

8 A Yes

9 MR BEARD Commissioner, that's all I have
10 I'll rest on the depositions and I'll just let you
11 read those

12 THE COURT Any redirect?

13 MR SIMMONS I have just a few questions on
14 redirect

15 REDIRECT EXAMINATION

16 BY MR SIMMONS

17 Q Ms McCall, prior to your initial visit with Henry
18 Ramirez following your fall on 6/29/06, have you ever
19 seen Henry Ramirez before, have you ever been to him?

20 A I have not Not that I can remember

21 Q So, would it be a fair statement, to your knowledge,
22 to the best of your memory, prior to that initial
23 visit after your fall, you had never seen Henry
24 Ramirez?

25 A No

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1 Q When Mr Beard was asking you questions about APA
2 exhibit 1, page 1 about chronic problems that have
3 been reevaluated and are stable, how can Henry Ramirez
4 reevaluate you if you've never been to him? Do you
5 have any memory whatsoever of going to him prior to
6 that?

7 A No

8 Q To your knowledge, had Henry Ramirez ever evaluated
9 any of your, quote, unquote, prior problems"?

10 A No

11 Q After your treatment with Dr Amaya in 1999 for which
12 you testified earlier to be a pinched nerve, did you
13 have any impairment or disability as a result of those
14 problems that you presented to Dr Amaya for?

15 A No

16 Q Did you have any problems with pain following that
17 1999 treatment?

18 A After the treatment?

19 Q Right

20 A No

21 Q Had your pain resolved?

22 A Yes

23 Q From 1999 to 2006 did you receive any treatment for
24 your back from any physician?

25 A No

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1 Q Mr Beard had asked you some questions about whether
2 or not you knew from Dr Amaya, that he thought that
3 you could potentially have carpal tunnel I want to
4 hand you page 30 from his APA exhibits, which is a
5 doctor's note from Dr Amaya dated November 30, 1999
6 And down here under assessment where it says, "Number
7 two," it says, "Mild median entrapment across the
8 wrist Now without excess " Are you aware that now
9 without excess means without symptoms?

10 A Yes

11 Q Were you having any symptoms of carpal tunnel or right
12 median entrapment across the wrist back in 1999 when
13 you visited Dr Amaya?

14 A No, sir

15 Q And that would be consistent with him stating that you
16 don't have symptoms, correct?

17 A Right

18 Q On any of your Workers' Comp injuries that you've had
19 with Valenite such as the blistering or the allergic
20 reaction, have you received any money from Valenite or
21 their Carrier?

22 A No

23 MR BEARD Asked and answered And she already
24 testified she got a settlement for her knee injury

25 MR SIMMONS I'm entitled to ask

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1 MR BEAPD She's already answered that

2 question

3 BY MR SIMMONS

4 Q Did you file a Form 50 or a request for a hearing when
5 you settled your knee claim with Valenite?

6 A Yes

7 Q Did you have a lawyer?

8 A No

9 Q Who did that for you?

10 A They did

11 Q In the past when you've been hurt at Valenite, has
12 there been one particular person that they've sent you
13 to?

14 A Yes

15 Q Who is that?

16 A Dr Rogers

17 Q Dr Rogers?

18 A On certain person?

19 Q When somebody's hurt at Valenite, say they -

20 A I'm sorry I'm sorry I got that mixed up That was
21 Henry Ramirez

22 Q To your knowledge, was it customary when somebody gets
23 hurt at Valenite, they initially get sent to Henry
24 Ramirez?

25 A Yes

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1 Q Is Henry Ramirez a doctor or is he a physician's
2 assistant?

3 A Physician's assistant

4 Q When Mr Beard was asking you questions earlier about
5 your visit to Finely Chiropractic - and let me hand
6 you a form I'm going to hand you what's been marked
7 as page number 21 of the Claimant's APAs Had you
8 only been to Henry Ramirez?

9 A Yeah

10 Q And Henry Ramirez is not a doctor, is he?

11 A No

12 Q So, when you checked that box, you were being
13 truthful?

14 A Uh-huh

15 Q You need to give me a yes or no

16 A Yes, sir

17 Q Mr Beard had also asked you about whether or not you
18 had conveyed to the chiropractor whether or not you
19 were hurt at work I'm going to hand you what's been
20 labeled as page number 23 to your APA exhibits Can
21 you take a look at that? That appears to me to be a
22 disability certificate of Finely Chiropractic Clinic
23 And would you agree with me it says, "Ms McCall was
24 seen in our office on 6/19/2007 due to work-related
25 injury ""

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- 1 A Yes
- 2 Q Is that true?
- 3 A Yes
- 4 Q So, there is some evidence then that they knew that
- 5 you had been potentially hurt at work and that's why
- 6 you were seeing him?
- 7 A Yes
- 8 Q Prior to today, had you ever heard anyone claim or
- 9 state that Dr Bruce thought that you may have
- 10 Parkinson's disease?
- 11 A (No response)
- 12 Q Had anybody ever told you that you have Parkinson's
- 13 disease?
- 14 A No
- 15 Q I'm going to hand you APA number 13 to your APA
- 16 exhibits, which is a report of Dr Bruce And I want
- 17 you to take a look at that and see if you can find the
- 18 word Parkinson's in that report Are you able to see
- 19 that?
- 20 A I'll have to go through it
- 21 Q Well, let me just ask you this Have you ever heard
- 22 anything prior to today about Parkinson's from
- 23 Dr Bruce?
- 24 A No
- 25 Q Do you recall being advised or learning through your

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1 treatment with Dr Rogers that you have
2 post-concussive syndrome?

3 A Say that again

4 Q Have you ever learned through your treatment with
5 Dr Rogers that you have been diagnosed by him as
6 having post-concussive syndrome?

7 MR BEARD Commissioner, I'm going to object
8 because he's now going outside the scope of direct or
9 cross examination I haven't talked about Dr Rogers
10 and his diagnoses or anything of the sort In fact, I
11 intentionally did not do that

12 MR SIMMONS Commissioner, on cross examination
13 he brought up the point that Dr Rogers had stated in
14 a record that she did not have memory problems And
15 I'll just like to ask her a couple of questions
16 because, in fact, I do believe that on the same visit,
17 she was diagnosed as having a concussion

18 THE COURT I do believe that's outside of the
19 scope of what he actually asked So, sustained

20 MR SIMMONS Commissioner Williams, I would like
21 to point out that Mr Beard did put into issue on his
22 cross examination a specific record of Dr Rogers
23 And that's what I'm asking her - like to ask her
24 questions about, is a particular record where he
25 questioned her about whether or not she had any memory

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1 loss, according to Dr Rogers And once he puts a
2 record into issue, certainly I believe I'm entitled to
3 ask him questions about that record on redirect

4 THE COURT What is the record?

5 MR SIMMONS The record I believe is -

6 MR BEARD 11/29/07

7 MR SIMMONS It's 11/29/07 visit, which is
8 labeled in our brief as page 106 And my question
9 relates to the results of that examination

10 THE COURT Go ahead

11 BY MR SIMMONS

12 Q Ms McCall, do you recall visiting or having an
13 appointment with Dr Rogers on 11/29/07?

14 A Yes

15 Q And I'll hand you page 109 and ask you to take a look
16 where it says "Impression of plan" (phonetic) And
17 would you agree with me that he diagnosed you with
18 post-concussive syndrome?

19 A Yes

20 Q Ms McCall, do you recall filling out an employee
21 report of claims for your Employer? I'm going to hand
22 you what's been marked, I believe as exhibit A to the
23 Defendants' brief Is that your signature there?

24 A Yes, sir

25 Q Mr Beard asked you whether or not you had made any

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- 1 claim to your employer about if you were having
2 problems with your neck and back Do you recall that?
3 A Yes, sir
4 Q Would you agree with me that on the second page where
5 it says, "Explain your present condition in detail," -
6 what did you write?
7 A "Therapy treatments of head and neck and back "
8 Q So, you did, in fact, inform them and your first
9 report of injury that you were having problems with
10 your neck and back, true?
11 A Yes
12 Q When you were describing your pain that you - your
13 numbness and tingling that you felt through your
14 employment, when we went through all of the positions
15 that you had at Valenite, were you talking about pain
16 or numbness and tingling that was associated with
17 doing that job over and over and as a result of
18 fatigue or was it like you felt that you actually had
19 an injury that was causing the pain?
20 A It was the - say it again
21 Q You started working at Valenite in 1985, correct?
22 A Yes
23 Q And do you recall testifying about your jobs that you
24 went through?
25 A Yes

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1 Q The braiser, parts set up, furnace operator, and all
2 that And you told me, when we went through each of
3 those, what you did in those positions You talked
4 about how you felt as you did them, is that correct?

5 A Yes

6 Q When you made references to that pain and numbness and
7 tingling, was it as a result of the actual work or was
8 it because you thought you had an injury?

9 A Of the work

10 Q When was the first time that you were able to notify
11 that that pain and numbness and tingling in your hands
12 might just be the result of an injury that occurred
13 over the course of your employment?

14 A First notified as carpal tunnel?

15 Q Right

16 A It was when I had the test done with Dr Rogers

17 MR SIMMONS That's all the questions I have

18 Thank you, Ms McCall

19 THE COURT Any other questions?

20 MR BEARD A couple of follow-ups

21 RE-CROSS EXAMINATION

22 BY MR BEARD

23 Q You just testified I believe inconsistently,
24 Ms McCall You said you never treated with
25 Dr Ramirez to your knowledge before August of 2006

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- 1 And then you testified that every time you have a
2 Workers' Compensation claim, you go see Henry Ramirez
3 Well, you had three or four Workers' Compensation
4 claims before August of 2006, correct?
- 5 A Yes
- 6 Q And every one of them you went to see Henry Ramirez,
7 didn't you?
- 8 A I don't remember Henry Ramirez It might have been a
9 different doctor But I don't remember Henry Ramirez
- 10 Q Are you denying that you ever saw Henry Ramirez before
11 August of 2006 or you just don't remember?
- 12 A I don't remember
- 13 Q Kind of like you don't remember that you had an MRI
14 scan on your neck that showed very severe problems
15 back in 1999, correct? You didn't remember that
16 either?
- 17 A About the head injuries?
- 18 Q No, ma'am About your neck injury In 1999, when you
19 had an MRI scan, it said you had a severe problem with
20 your neck in 1999 You don't remember that either?
- 21 A The only thing Dr Amaya told me was I had a pinched
22 nerve
- 23 Q I didn't ask you what he told you I said, you don't
24 remember that either, do you?
- 25 A About my neck?

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- 1 Q Yes, ma'am
- 2 A No
- 3 Q I always like it when lawyers think they catch you on
- 4 something Mr Simmons came up here and showed you a
- 5 report from Dr Amaya dated November 17th, I think,
- 6 that said your symptoms with right carpal tunnel had
- 7 resolved, the median symptoms Do you remember that?
- 8 He came up and showed you where it says, page 30,
- 9 "Mild right median entrapment across the wrist now
- 10 without symptoms " What's the date of that, 11/30/99?
- 11 A Yes
- 12 Q Well, let's flip over to the last time you saw
- 13 Dr Amaya, December 10, 1999 What did he diagnose
- 14 you with then? Can you read those words for me at
- 15 page 32, number 2
- 16 A "Mild right CTS "
- 17 Q Do you know what CTS stands for?
- 18 A No
- 19 Q Carpal tunnel syndrome You don't deny being
- 20 diagnosed with that ten days later?
- 21 A No, sir
- 22 Q And that's the last time you saw Dr Amaya, correct?
- 23 A (Indication of yes)
- 24 Q Mr Simmons showed you page 21 of your medical records
- 25 from the chiropractor, Finley And it says - he said

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1 you were being truthful, you were telling the truth
2 when you told the doctor that - or that you told the
3 chiropractor you had not seen another doctor for this
4 problem and you circled no, that was the truth Do
5 you remember that?

6 A Uh-huh

7 Q Is everything on here true?

8 A (No verbal response)

9 Q So, you were telling the truth when you did this whole
10 form right?

11 A Yes

12 Q Including that your symptoms first appeared three days
13 before you went there on June 19, '07, right?

14 A I explained why I put that three days there

15 Q Finally, he said - you weren't even seeing Finley
16 Chiropractic in October of '07, were you? You had
17 stopped seeing him the one time you went in June,
18 correct?

19 A (No verbal response)

20 Q You didn't go to the chiropractor for this form, did
21 you?

22 A I don't remember

23 Q Isn't that almost the exact same day you retained
24 Mr Simmons to be your attorney, October of 2007?

25 MR SIMMONS I object What happens between me

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1 and my client is attorney/client privileged And
2 he's not entitled to ask those questions

3 MR BEARD I'm entitled to know when she
4 obtained you as her lawyer in connection with this
5 document

6 THE COURT I don't think she needs to answer
7 that one

8 BY MR BEARD

9 Q Finally, Mr Simmons showed you Dr Bruce's report
10 He didn't show you his deposition, did he?

11 A Whose?

12 Q Dr Bruce's Do you remember going - Dr George
13 Bruce You were at the deposition

14 A Yes

15 Q Do you remember being there on -

16 A Yes

17 Q - on February 11, 2009? The very last thing he talks
18 about on page 38 of his deposition, he says - he was
19 asked at page 38, "As part of your evaluation with
20 Ms McCall, you did make note of a closed head
21 syndrome that she is suffering from Do you believe
22 that she needs continued treatment in that regard?"
23 Answer, "My opinion was she needed to have further
24 examination if it fell in the category of the Workers'
25 Comp in this point in time or even if it doesn't So,

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- 1 find out what the clicking is and also to see - make
2 sure we don't have something developing like
3 Parkinsonism " I mean, you heard him say that, right?
4 I didn't make that up
- 5 A I didn't hear him say it I was there, but I didn't
6 hear him say it
- 7 Q Do you understand that's his sworn testimony, correct?
- 8 A Yeah
- 9 Q So, I didn't make that up when I said Parkinson's, did
10 I? I mean, it's right there in black and white,
11 correct?
- 12 A "Make sure we don't have" -
- 13 Q - "something developing like Parkinsonism "
- 14 A He didn't say it was Parkinson's
- 15 Q I didn't ask you that, ma'am I said, "Were you aware
16 that he wanted to check for that?"
- 17 A Yes
- 18 Q And then your lawyer made a big deal about it and
19 showed you a report that I had made up I didn't make
20 that up, did I?
- 21 A No
- 22 Q Whether you thought you had an injury for your hands
23 and arms the 22 years that you worked at the plant or
24 not, you testified under oath at your deposition you
25 knew your problems that were ongoing for 22 years were

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1 because of your job, correct?

2 A Yes

3 Q And despite, you never said a word to anybody at the
4 plant for 22 years that you were having the problems
5 and that you thought that were work related, correct?

6 A Right

7 MR BEARD That's all I have

8 MR SIMMONS I have nothing further

9 THE COURT Ma'am, you've been at this a long
10 time today I'm sorry it's taken them so long to ask
11 you all those questions I have one question, though

12 EXAMINATION

13 BY THE COURT

14 Q After you first started getting treatment, you've
15 already answered this, but I want to hear the answer
16 from you, why did you wait so long to go back and ask
17 for further medical treatment?

18 A Because Henry Ramirez, he told me that there wasn't
19 nothing wrong

20 Q I don't need to know what anybody else told you Why
21 didn't you go back, if your condition was getting
22 worse and worse? Why didn't you just go to an ER or
23 go somewhere and seek medical treatment? That's what
24 I'm asking, not what anyone else told you

25 A I thought I was going to get better I didn't - I

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1 thought I was going to get better And he said
2 there was nothing wrong, so I just kept thinking I was
3 going to get better and kept getting worse

4 THE COURT You can step down Any other
5 witnesses for the Claimant?

6 MR. SIMMONS Nothing further

7 THE COURT Any witnesses -

8 MR. BEARD None

9 THE COURT That'll conclude this hearing

10 (This hearing concluded at 3 40 PM)

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(803)834-3410

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APPEARANCES**1ST APPELLANT****DEFENDANT**

GRADY L BEARD, ESQUIRE
 SOWELL GRAY STEPP & LAFFITTE, LLC
 POST OFFICE BOX 11449
 COLUMBIA, SOUTH CAROLINA 29211
 (803)231-7824

2ND APPELLANT**CLAIMANT**

LARRY C BRANDT, ESQUIRE
 LARRY C BRANDT, F A
 POST OFFICE BOX 738
 WALHALLA, SC 29691
 864-638-5406

NADINE A GARRETT
 COURT REPORTER
 POST OFFICE BOX 1205
 IRMO, SOUTH CAROLINA 29063
 803-834-3410

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TRANSCRIPT OF FULL COMMISSION REVIEW HEARING
 3/16/2010

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1 THE COURT Today's date is March 16, 2010 This
2 is the South Carolina Workers' Compensation Case
3 Numbers 0627287 and 0722895 This is the case of
4 Donna McCall, who is the Claimant, versus Sandvik,
5 Incorporated, who is the Employer And Sentry
6 Insurance Company is the Carrier

7 The Appellate is the Defendant, represented by
8 Attorney Grady Beard The Respondent is represented
9 by Attorney Larry Brandt

10 Each side is allowed ten minutes for oral
11 argument and the Appellate three minutes in reply
12 You are requested to argue the grounds of exception
13 and stay within the record

14 COMMISSIONER ROCHE And this is a cross appeal
15 as well, isn't it?

16 MR BEARD It's actually a cross appeal from the
17 first claim And they have appealed the second claim
18 So, they have appealed both I have appealed part of
19 the first claim And I'm not real sure how you want
20 to divvy that up

21 MR BRANDT I guess I appealed part of the first
22 claim too with the temporary total

23 MR BEARD That's what I said No, I said we
24 both appealed the first claim and then you appealed
25 the second claim, as well

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1 COMMISSIONER ROCHE I will give both of you time
2 on rebuttal, obviously So, why don't we do like 9,
3 9, 3, 3 You want to start, Grady, or is yours -

4 MR BEARD I'm not sure how you want to do it
5 The other thing you do also need to know, and we were
6 asked to point this out, Commissioner Williams
7 actually talked about it in the transcript, but for
8 whatever reason didn't do it in the order These
9 cases will take a different appellate track One of
10 them will have to go to the Circuit Court if it goes
11 beyond The other one will go to the Court of
12 Appeals, which could create some strangeness But I
13 just point that out

14 MR BRANDT I respectfully disagree And I'll
15 set forth sort of why I think they are both - it's
16 the carpal tunnel syndrome, we've got bilateral, and
17 there was one, there's a medical from Dr Amaya

18 COMMISSIONER ROCHE That doesn't really matter
19 right now to us So, I mean we are going to make a
20 ruling and you all appeal it wherever you want to

21 MR BRANDT Thank you

22 COMMISSIONER ROCHE Mr Beard

23 MR BEARD Thank you, Commissioner It requires
24 a little bit of factual background to lay out this
25 case This was - an incident actually occurred on

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1 June 29, 2006 Ms McCall was standing at the
2 beginning of a small stepladder, fell backwards about
3 six or seven inches she testified, landed on her rear,
4 fell over kind of to the right side and bumped her
5 head Now, that happened on June 29, 2006 She never
6 asked to go see a doctor She did not even go see a
7 doctor until August 17, 2006, nearly two months later
8 when she asked to go see a doctor and the client
9 agreed and the Employer sent her to the company doctor
10 in their group

11 She saw them for a couple of occasions, was
12 released back to work, actually went through some
13 physical therapy, and in august '06 returned to
14 regular duty work at the company From that point
15 forward she never again went to a doctor until July -
16 or at least never asked my client to go see a doctor
17 until July of 2007, roughly 11 months later At that
18 time she was, again, allowed to go back to the company
19 doctor He made a referral to a neurosurgeon about
20 the low back and neck issues She saw Dr Kanos

21 In the interim, my clients found out some other
22 facts She had, unbeknownst to my clients, gone to a
23 chiropractor in June of 2007 and had seen a
24 Chiropractor Finley She went to Chiropractor Finley,
25 filled out some records with his office, filled out a

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1 questionnaire and things of that nature And those
2 documents under the Defendants' APAs, tab number 2
3 And specifically she told the chiropractor that on
4 June 19, 2007, which is when she saw him, that two
5 months ago, which if you back that up, would be about
6 April of '07, she had again fallen at work is what she
7 said, landing in basically the same sort of scenario
8 But then on a document that she personally signed
9 dated June 19, 2007, on the patient history
10 questionnaire it says, 'Date when symptoms first
11 appeared," she put, 'Three days ago " "What makes
12 symptoms increase", 'Heavy lifting " "Where are the
13 symptoms," "In her back " That document is dated June
14 19, 2007 Now, again, she has not seen a doctor for
15 one year, for anything that happened from that
16 incident in 2006 She signed that particular
17 questionnaire and was questioned about it extensively
18 at the hearing From there, the clients immediately
19 denied all further treatment because of the new
20 history that they had received from the chiropractor

21 The Commissioner, as it pertains to the 2006
22 claim, ultimately found that the Claimant sustained
23 injuries to her cervical and low back, post concussion
24 syndrome, and/or an aggravation of her migraine
25 headaches He denied that either the Capers or the

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1 Havird case had any application to the facts of the
2 case He found that the Claimant had not reached
3 maximum medical improvement from the 2006 incident and
4 that the Claimant was in need of additional evaluation
5 or treatment with Dr Rogers, who was a neurologist or
6 a pain management specialist who the Claimant had
7 started seeing after she was referred over to Oaktree
8 Medical Group where she first saw Dr Patel, who then
9 later referred her to Dr Rogers

10 Our position is, with regards to those issues,
11 that the evidence does not support that the Claimant -
12 the problems that the Claimant had in 2007, which
13 became the ultimate Form 50 and what we were at the
14 hearing for, had anything to do with this incident
15 Again, she fell, she was treated, she was released to
16 regular duty, she never complained, never said a word
17 to my clients during that entire one year period of
18 time saying, 'I have more problems, I have more
19 issues, I need more treatment ' Unbeknownst to my
20 client, she went to a chiropractor, told them a
21 history that is not the same as the history of what
22 happened in 2006 with regards to her low back,
23 lifting, etc

24 And the basis of our opinion is that she has a
25 significant preexisting problem She was treated in

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1 1999 by her family doctor, a Dr Carpenter, who
2 referred her to a neurologist, a Dr Amaya up in Lake
3 Ridge Neurological Group At the time, she was having
4 all sorts of tremors in her extremities Her
5 extremities were, both hands and feet and legs were
6 shaking at that particular time She was diagnosed by
7 Dr Amaya in 1999 with both cervical and lumbar spine
8 radiculopathy, entrapment syndrome in the extremities,
9 and she had a peripheral neuropathy She was
10 diagnosed as having chronic degenerative disc disease
11 at both C5-6, C6-7 She was found to have bilateral
12 neural foramina compromise at C5-6, and she had all
13 sorts of degenerative problems found on her MRI
14 Literally at every level of her lumbar spine she had
15 degenerative changes

16 The Claimant had a subsequent MRI scan on her
17 cervical spine in August of 2007, which revealed
18 basically identical findings, according to Dr Patel
19 In fact, Dr Patel, who saw her, indicated that he
20 used the word severe in his medical report When we
21 presented him with the medical report of Dr Amaya,
22 whom he had never seen those reports when he had seen
23 her, they said the exact said words, severe, and then
24 the terminology that followed were basically the same
25 levels of problems

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1 Part of the major problem with this case also is
2 this Ms McCall, who by all appearance, is a very
3 nice lady, seems to be a very nice person, testified
4 under oath, "I have never in my lifetime had a problem
5 with my neck I have never had medical treatment in
6 my lifetime for my neck " It is absolutely impossible
7 to say that based upon the record that's been
8 developed including her family doctor, Dr Carpenter,
9 who noted these problems, referred her to Dr Amaya in
10 1999, who came up with some severe diagnoses of
11 problems She admitted that she had a pinched nerve
12 in her low back, but she, to this day, continues to
13 deny that she's ever been treated for any neck
14 problems Now, we've presented the medical records,
15 the MRI scans, and all those things to Dr Patel
16 Dr Patel testified in his deposition that - let me
17 get the exact quote This is at page 88 of his
18 deposition And he said he agreed that he and
19 Dr Amaya both used the word severe in their reports
20 referencing neck and back issues He agrees that the
21 Claimant did have problems with her neck at page 104
22 of his deposition before this incident And if she
23 testified any differently, that is absolutely untrue
24 Now, this is Dr Patel This is not a doctor that we
25 chose in this chain of doctors This is the doctor

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1 that she has seen and paying for his medical
2 opinions Dr Kanos, once he became aware - none of
3 these doctors knew about this preexisting issue Once
4 he became aware, Dr Kanos said at page 14 of his
5 deposition, he cannot say to within a reasonable
6 degree of medical certainty whether the current
7 problem she related to this Workers' Comp accident in
8 2006 were legitimate given the new history that he had
9 seen to the chiropractor in 2007 as well as these
10 preexisting medical records He said causation is
11 brought into question He also said at page 15
12 there's no cure for degenerative disc disease, only
13 treatment, it's a progressive problem, and that he
14 can't rule out that this is nothing more than the
15 natural progression of her degenerative disc disease
16 because it was so severe, it's going to get worse In
17 '99 to 2007 he said it was not unusual - what little
18 changes had occurred, they were not unusual given that
19 period of time for that condition And he said - he
20 was asked the question by opposing counsel at the
21 time, Mr Simmons - Mr Simmons asked him, "Could that
22 be all caused by this traumatic incident?" He said at
23 page 23 the vast majority of the bulges in her back
24 are degenerative While they could be traumatic, he
25 would not say that they probably were And in fact he

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1 would say at page 26 that the problems are the
2 natural progression of arthritis most probably in his
3 opinion

4 In our opinion, and I heard the buzzer, so I will
5 sit down on these issues, but Commissioner improperly
6 found that the problems that were being treated were
7 in any way causally related to this incident Her IME
8 doctors all indicate also that there is a new history
9 that's not consistent with the history they were
10 given And in fact Dr Bruce said at page 17 that
11 suggested to him an entire new injury or aggravation
12 once he was presented with the chiropractor records
13 from 2007 after the one year period of treatment
14 Yes, sir

15 COMMISSIONER LYNDON Madame Chairman, one
16 question On page 28 of the order in the - I guess
17 it's the evidence of the case it says - and it was
18 referring to Dr Rogers' deposition where she reports
19 to having headache, vertigo, tinnitus, concentration
20 problems, memory loss, sleep disruption, depression,
21 anxiety and insomnia, it says, "However Dr Rogers
22 also admitted these symptoms were present prior to the
23 accident ""

24 MR BEARD Yes, sir In fact, it's quite
25 interesting Dr Rogers testified, and he was deposed

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1 twice, in his first deposition he said -

2 COMMISSIONER LYNDON Is that based on Amaya's
3 treatment?

4 MR BEARD Well, it's based on that as well
5 But what's interesting, he didn't even know about
6 Dr Amaya No, he said he assumed all of that from
7 the beginning because she has a long history of
8 migraines She's had migraine headaches basically her
9 entire life And part of migraine headaches are a lot
10 of these symptoms Plus she has these tremors
11 Dr Bruce believes, or at least has speculated, and I
12 will submit it's speculation, that there is some sort
13 of a Parkinson's type of problem going on
14 Dr Rogers, however, does not believe it's Parkinson's
15 but he does not know what it is

16 COMMISSIONER LYNDON The order doesn't say it
17 aggravated a preexisting condition?

18 MR BEARD No, sir It does not

19 COMMISSIONER ROCHE Mr Brandt

20 MR BRANDT Thank you As far as the chronology
21 of things, the way they happened, roughly I agree with
22 the overall view that the accident happened on the 29th
23 of June She didn't seek medical attention until
24 August 17th when she asked the employer if she could
25 go They provided it They sent her to Henry

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1 Ramirez, who is a physician's assistant and not a
2 medical doctor Then, of course, after a few - I
3 think she had some physical therapy And then she
4 left care and continued to work all during this time
5 She never missed time from work And she continued to
6 work then until July '07

7 Now, those doctors, once it came back to July '07
8 and the Employer gave the - provided the medical care
9 again, sent back to Ramirez, the statement that
10 Dr Patel was not in the chain of doctors, it was
11 provided by the Employer, it is true that the Employer
12 quit paying for him But the whole thing is that
13 Ramirez referred her to Kanos Kanos referred her to
14 Dr Rogers However, the Employer made the
15 appointment with Dr Patel and sent her to Patel
16 Then Patel and Rogers - and they are all writing her
17 out of work saying she is unable to work to a
18 reasonable degree of medical certainty that it was
19 caused by either the initial trauma of this injury or
20 an aggravation of preexisting conditions Then she
21 goes on She gets an IME from Dr Bruce that we had
22 done That was there But certainly all the doctors
23 there that was in her line of care was provided by the
24 Employer with the exception of Dr Bruce and that's
25 Kanos and all Kanos, he does not rule out - he says

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1 that there's an annual tear that's consistent with
2 trauma, but he would not rule out - I mean, he doesn't
3 think that's what it was He thinks it's a
4 degenerative condition But he does say in one spot,
5 and I've cited that in my brief, that what we are
6 talking about here is an aggravation of a preexisting
7 condition and of course -

8 COMMISSIONER LYNDON The order doesn't fine that
9 as a finding of fact, though, does it, that she
10 aggravated a preexisting condition? It looks like all
11 of this is new stuff

12 MR BRANDT He doesn't specifically - the
13 Commissioner doesn't specifically say He says it
14 aggravated her - she didn't have post concussive
15 syndrome That's new

16 COMMISSION LYNDON But she had migraines?

17 MR BRANDT But she had migraines, which he says
18 in there that it aggravated that condition He does
19 say that The low back and he talks about in his
20 deposition and everything that it's an aggravation of
21 a back injury, he does say that, because she has this
22 degenerative condition Now, that's what the doctors
23 say That's the medical testimony to a reasonable
24 degree of medical certainty

25 There is - they made this argument that there was

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1 an intervening accident However, there is no
2 evidence of an intervening accident with the exception
3 of two things Dr Patel gets the accident date wrong
4 to begin with in his records for about the first four
5 or five visits and then he straightens it out I have
6 addressed that in my brief The other thing was this
7 visit to the chiropractor Now, what the chiropractor
8 wrote in the record, it happened two months earlier, a
9 fall Ms McCall explained that in her testimony that
10 she basically told him about the '06 accident, 29 June
11 '06 Now, when the time was, she had no control over
12 that record and had never seen that record They
13 wrote that in there But it does say - reference two
14 months ago a fall at work However, the description
15 of the accident given by the chiropractor is the same
16 description as that of the '06 accident, that she
17 basically fell landing on her rear and then striking
18 her head on the floor And I have addressed all of
19 that I think that's consistent

20 The symptoms, the medical testimony says that
21 she's got this condition going on in her back She's
22 got this trauma and now she's having this back pain
23 Dr Bruce explains all of that, her trying to work
24 through it and that certainly heavy lifting would
25 aggravate those symptoms that was there And the

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1 symptoms - and she testifies as to the gap in the
2 treatment from August '06 to July '07

3 I submit to you that the Commissioner had to find
4 that she was very believable and credible He watched
5 her testify, saw her testify, and he accepted her
6 explanation as to why she did not go to the doctor
7 during that period of time She was a loyal employee
8 She was not a malingerer or a whiner She tried to
9 work through it She finally got to the point that
10 she couldn't because it continued to get worse and
11 worse Finally she went to the doctor again in July
12 '07 Since then, she worked, I think, until August
13 23rd And then after August 23rd she was taken out of
14 work And she hasn't been back to work since that
15 time and has been written out of work I think they
16 gave her some restrictive conditions The Employer
17 had no work that would fit those restrictions that she
18 could do, so she didn't have a job So, she's been
19 out of work continuously since August 23, '07 because
20 of she was unable to do the job that her employer had
21 for her

22 Now, we have in my appeal - and I'm not certain
23 if you want me just to respond to his

24 MS ROCHE You need to go ahead and cover yours
25 as well

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1 MR BRANDT We have this issue of temporary
2 total disability Obviously, she was written out of
3 work by the doctors that they provided for her Once
4 they gave notice that they weren't going to pay for
5 any more medical claims, she did have - she paid for
6 it either herself, continued with their doctors that
7 they had sent her to, following their orders,
8 following their instructions, and she paid for it
9 either out of her pocket or used her health insurance
10 if she could They get over to March of '08 and they
11 call her in and they basically tell her, "We give you
12 a choice You can either voluntarily retire and
13 maintain your health insurance or we are going to
14 terminate you and you are going to lose your right to
15 health insurance " She not only had the problems that
16 she has in this Workers' Comp claim, but she has the
17 situation with these tremors and other problems going
18 on that she needs health insurance She made a
19 choice I submit to you it was not a free choice
20 under the circumstances which they gave her It was
21 basically a voluntary retirement They quote
22 voluntary retirement I submit to you it's an
23 involuntary retirement She did it because she was
24 looking for a way to survive economically She had no
25 income during this time because they were not paying

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1 temporary total disability Certainly, I think from
2 August to at least to that date she would have been
3 entitled to temporary total And I would submit to
4 you that the Commissioner erred in that regard But I
5 don't even think that they should - and I submit to
6 you that I don't even think that that retirement
7 should affect her right to temporary total because all
8 the doctors, again, they started it with Ramirez,
9 Ramirez refers to Kanos, Kanos refers to Rogers, the
10 Employer makes the appointment for her with both Patel
11 and Rogers, all the way they make the appointments,
12 but then have not paid for them Now, the symptoms
13 again was back pain Those symptoms did get worse
14 three days prior to her going to see the chiropractor
15 She says I kept thinking I was going to get better I
16 kept thinking because I was assured there wasn't
17 anything serious wrong But it didn't get better It
18 got worse It continued to get worse She continued
19 to be a loyal employee She continued to try to work
20 for her employer and do her job She has explained
21 all of that in the testimony And certainly this is
22 one of these cases where it would be easy if you had a
23 legal issue here or something that was there But we
24 are before you and obviously you have the right to
25 make determination of facts and set the facts of this

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1 thing according to what you wish I submit though
2 great deference should be given to the hearing
3 Commissioner who heard the people testify and
4 considered all the evidence

5 Now, Amaya's records, I have a problem with the
6 Amaya's records simply because Amaya at the time first
7 of all she says, "He never told me and I never went to
8 him with anything, but a pinched nerve, low back "
9 Whatever else he put in those medical records, she had
10 never seen them before and he had never told her about
11 this carpal tunnel The first time she knew about
12 carpal tunnel was in November of '07 when Dr Rogers
13 told her that she had bilateral carpal tunnel That I
14 submitted to you

15 And I've briefed that fully as to why we think we
16 have hit all the time lines and was within the time
17 frames to perfect that claim

18 COMMISSIONER HUFFSTETLER Madame Chair While
19 you are on that point, the order says that your client
20 testified that she did not remember a diagnosis of
21 carpal tunnel syndrome in 1999, but she did not deny
22 it, is that correct?

23 MR BRANDT well, she did not - she had no
24 knowledge of that there I don't recall her
25 testifying in the - I don't recall her testifying that

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1 way that's stated in the order She testified that
2 she had no knowledge - that he hadn't told her of that
3 carpal tunnel back in '99 I don't recall the exact
4 quote that you are referring to or the hearing
5 Commissioner referred to in his order Again, I think
6 that was right side But we have got - I submit to
7 you, you not only got a right side, but you have got a
8 left side

9 COMMISSIONER HUFFSTETLER Page 12

10 MR BRANDT Page 12 of his order?

11 COMMISSIONER HUFFSTETLER When you get there
12 I'm just telling you where it is I don't want to
13 stop your argument

14 MR BRANDT Anyway, the evidence certainly
15 doesn't - I submit to you that her testimony was, as I
16 recall, that she had never had knowledge of that He
17 had never told her that she had that Dr Amaya has
18 been - his license has been suspended permanently in
19 South Carolina and I have a problem with the way the
20 statute is drafted I want to raise the issue simply
21 for preservation or whatever you all choose to do with
22 it When we talk about in the Workers' Comp statutes,
23 medically complex cases, and you talk about medical
24 evidence, and the medical evidence there is defined as
25 certainly is testimony, other material offered by

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1 licensed healthcare providers When you get into the
2 repetitive trauma section, the 42-1-172, it says that
3 you have to prove a repetitive trauma case by medical
4 testimony, medical certainty And it has to be there
5 - they use the term that it has to be by a medical -
6 offered by a licensed and qualified medical physician
7 It doesn't say health care provider It says
8 physician, specifically It's states it in two parts
9 of the statute

10 COMMISSIONER LYNDON Madame Chairman, I have one
11 question I know time ran just then I noticed in
12 the findings of fact, it seems like the Claimant saw a
13 lot of doctors But Dr Rogers is the person upon
14 whom they rely the most And it says she has an
15 aggravation of migraine headaches How long has she
16 had migraines prior to this?

17 MR BRANDT Well, migraines, he's testified -
18 Rogers testifies that migraine headaches are something
19 you are born with It's hereditary, that you usually
20 have them or you don't

21 COMMISSIONER LYNDON So if this finding, does
22 the insurance company now have to pay for the migraine
23 treatments from this point forward?

24 MR BRANDT For any treatment, no Yeah, I
25 would say that she's got an aggravation He said

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1 that If you base it strictly on what the -

2 COMMISSIONER LYNDON Now, the Commissioner said
3 it There's no doctor said it, to my understanding

4 MR BRANDT Excuse me?

5 COMMISSIONER LYNDON I thought no doctor said
6 it I thought Dr Rogers in his deposition said all
7 of this preexisted

8 MR BRANDT He said it aggravated it

9 COMMISSIONER LYNDON The order does say
10 aggravation of migraine headaches My simple question
11 was, if she's had them since birth -

12 MR BRANDT She has

13 COMMISSIONER LYNDON - does the Carrier have to
14 pay for them for the rest of her life?

15 MR BRANDT Yes, sir If you find that
16 Dr Rogers, and I submit to you and I can't go through
17 it right now, but he said it aggravated those migraine
18 headaches

19 COMMISSIONER ROCHE All right, sir Thank you
20 Mr Beard

21 MR BEARD Thank you, Commissioner With
22 regards to deference to a Hearing Commissioner on
23 those things that the Commissioner saw and heard
24 testify, I totally agree with that position The only
25 problem is, the only person that the Commissioner saw

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1 was Ms McCall He didn't see any of these doctors
2 testify Just like you are going to be reading
3 deposition transcripts just like a Commissioner read
4 the deposition transcripts

5 But what he did not do, as he was requested and
6 asked to do both in a prehearing brief and at the
7 beginning of the hearing, is make a finding of fact
8 regarding credibility because you cannot say, "I have
9 never" - I mean, you can see these medical records
10 You can't say, 'I've never been treated or have
11 treatment for my neck in my lifetime " She had MRI
12 scans on her neck You don't get MRI scans for
13 nothing

14 The Commissioner gave a lot of deference He
15 said to the last deposition of Dr Rogers, which was
16 taken actually after the hearing in this case, because
17 he ordered us to do a mediation, which failed, and we
18 attempted, but the problem of that is this, maybe this
19 is not a problem to some of you and maybe it is a
20 problem to some of you, Dr Rogers is not a board
21 certified doctor He has no special certifications
22 If you go read his entire deposition, even the most
23 recent one, I submit to you he says that he has
24 questions about why she waited so long to go to a
25 doctor That raised questions in his mind He was

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1 not aware about the preexisting treatment She
2 admits that in her deposition He admits that in his
3 deposition Dr Patel admits that They said we
4 referred - or Dr Kanos referred to Dr Rogers Well,
5 that's not correct If you look at Dr Rogers'
6 records, it says point blank at the top the referral
7 to him came from his partner, Dr Patel Now, Dr
8 Patel said in his deposition in January of 2008,
9 that's two years ago, he said at that time she is
10 rapidly approaching MMI at this point in time In
11 fact, he was curious as to why she had delayed in her
12 care He goes through all these things This is
13 Dr Rogers actually in January '08 Dr Patel said
14 even though she knew work was causing her pain, she
15 just kept on working because apparently she loved her
16 job and didn't say anything to anybody throughout that
17 period of time even though we now know, if you go back
18 and read all these 1990 records, she was told, "You
19 can't do this job anymore " She didn't tell us that
20 She did not tell my clients that

21 You cannot ignore the history You cannot
22 ignore what she signed as a document that she filled
23 out in the chiropractor's office She put her
24 signature on the following history that she prepared
25 This is in June '07 unbeknownst to my client She

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1 didn't tell my client she went to this chiropractor
2 She goes to the chiropractor and it says, "Date when
3 symptoms first appeared, three days ago " Now, that's
4 June of '07 That's not June of '06 She wrote that
5 She said the symptoms were caused by increased - by
6 heavy lifting, which she had already been told by her
7 doctors she shouldn't have been doing in the first
8 place And she never told us that until we found all
9 these medical records and that the problem is in her
10 back She signed that document herself on June 19,
11 2007, filed it under her own group insurance Here's
12 the other part You can't ignore this "Have you
13 ever been to another doctor for this problem?" She
14 circled "no" That's a lie She'd been to our
15 doctors for that problem just eleven months earlier,
16 but she is going to tell the chiropractor, "No, I have
17 never been to a doctor for that problem " I'm sorry
18 There needs to be a finding about credibility because
19 there is no credibility in this case And she has
20 reached MMI

21 COMMISSIONER ROCHE Mr Brandt

22 MR BRANDT Thank you The credibility of my
23 client was she testified fully and explained the gaps
24 in medical coverage, why she didn't do this, why she
25 didn't do that At the very end of the hearing,

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1 Commissioner Williams questioned her himself about
2 that very thing Then he issues his order Whether
3 he made a specific finding of credibility or not, it's
4 obvious that he found credibility in her explanations
5 and what she told him and he believed her

6 Now, the presentation of these other witnesses,
7 she's not to be penalized because they weren't
8 presented The Employer/Carrier had a right to call
9 them all if they wanted to and present them and
10 present other testimony They did not do that

11 Now, Patel, he says referred to Rogers Patel,
12 the appointment for Patel was made by the Carrier of
13 the Employer She was sent to Dr Patel by her
14 Employer Then Patel refers to Rogers But before
15 that, Kanos had intended her to see Rogers He says
16 that in his records But the Carrier chose to send
17 her to Patel the pain management guy rather than
18 Rogers That's how that chain goes So, I submit to
19 you that all of these doctors were the doctors that
20 were selected by the Employer/Carrier

21 And as far as testimony as to what Amaya said to
22 her there's absolutely nothing there I have
23 explained my reasons for believing and Amaya's records
24 shouldn't even have been admitted because they speak
25 as of the day of the hearing And on that issue and

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1 it doesn't seem like - I would submit to you that, if
2 we had to rely on Amaya's records the day of the
3 hearing to prove carpal tunnel syndrome, we could not
4 use it under that statute because it specifically says
5 has to be licensed. We couldn't call him in Court as
6 an expert witness on anything at that particular point
7 in time. Now, it does pertain if he told her anything
8 as to whether or not she had notice as far as
9 triggering a new should have known and the claims.
10 But because somebody says you've got that, that might
11 put her on at least inquiry notice as to do something.
12 COMMISSIONER ROCHE Well, she actually testified
13 that her arms were bothering her and she knew it was
14 due to work. I mean, she said that.
15 MR. BRANDT She knew that she was being bothered
16 just like her back and everybody has aches and pains
17 through employment. Her testimony is there.
18 Certainly, you are going to have to review the record
19 and make your findings yourself. I respect that. But
20 those are the things that she says the way it came
21 about. That that was the one side she says she didn't
22 know, and that's right side. But the left side, the
23 first time she has ever said any problems in her wrist
24 or anything permanent for which there could be claim
25 or anything was November 29th, I believe it was, 2007.

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1 when Dr Rogers diagnosed bilateral

2 MR BEARD I just need to object to that on the
3 record because that is an improper and a misstatement
4 of - what you just said Commissioner is what she
5 testified as to bilateral wrist and arms, her entire
6 period of work, not just what was stated on the
7 record

8 COMMISSIONER ROCHE That concludes this
9 proceeding

10 (THE HEARING CONCLUDED AT 9 40 AM)

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS' COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall Employee,

Appellant,

v

Sandvik, Incorporated, Employer,
and
Sentry Insurance Company, Carrier,

Respondents

CERTIFICATE OF COUNSEL

The undersigned, attorney for Appellant, hereby certifies that the **RECORD ON APPEAL** contains all material proposed to be included by any of the parties and not any other material

Larry C Brandt, P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla, SC 29691
864/638-5406

February 9, 2011

By Larry C Brandt
Larry C Brandt
Attorney for Appellant

STATE OF SOUTH CAROLINA
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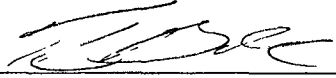
PROOF OF SERVICE

I certify that I have served the ***a copy of the RECORD ON***
APPEAL upon ***the Respondents*** by depositing a copy of it in the United States
Mail, postage prepaid, on ***FEBRUARY 14***, 2011, addressed as follows

Mr Grady L Beard
Sowell Gray Stepp & Laffitte, LLC
P O Box 11449
1310 Gadsden Street
Columbia, SC 29211
Attorney for Respondents

Larry C Brandt, P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla, SC 29691
864/638-5406

February 14, 2011

By 
Thad B Ball, Attorney

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall Employee

Appellant

v

Sandvik Incorporated Employer,
and
Sentry Insurance Company Carrier

Respondents

APPELLANT'S BRIEF

Larry C Brandt
Thad B Ball
Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla, SC 29691
864/638-5406
Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

- 1 Did the Workers' Compensation Full Commission Panel err in affirming the Hearing Commissioner's finding that the Claimant has not met her burden of proving she provided timely notice of her carpal tunnel syndrome claim pursuant to **South Carolina Code Ann §42-15-20** when the greater weight of the evidence shows that she did not know that she had such a condition in either wrist until November 29, 2007?
- 2 Did the Workers' Compensation Full Commission Panel err in affirming the Hearing Commissioner's finding that the Claimant discovered or could have discovered that her bilateral carpal tunnel syndrome was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 3 Did the Workers' Compensation Full Commission Panel err in affirming the Hearing Commissioner's finding that Claimant discovered or could have discovered carpal tunnel syndrome on the right and was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 4 Did the Workers' Compensation Full Commission Panel err in affirming the Hearing Commissioner's finding that Claimant discovered or could have discovered carpal tunnel syndrome on the left and was compensable as early as 1999 inasmuch as there was no credible evidence upon which said finding could be based?
- 5 Did the Workers' Compensation Full Commission Panel err in affirming the Hearing Commissioner's finding as a matter of law and ordering that under **South Carolina Code Ann §42-15-20** that Claimant did not provide timely notice of repetitive trauma to her bilateral wrists and therefore denied her claim for benefits for her carpal tunnel syndrome when the greater weight of evidence shows that Claimant did not know of her compensable injury to either of her wrists until November 29, 2007 and timely notice of the claim was given within ninety (90) days of that discovery?
- 6 Did the Workers' Compensation Full Commission Panel err in affirming the Hearing Commissioner in admitting into evidence the medical records of Dr. Amaya wherein the alleged diagnosis of carpal tunnel syndrome on the right was made in 1999 inasmuch as Dr. Amaya's license to practice medicine had been permanently revoked in South Carolina and he was not licensed in any other state, therefore he was incompetent to testify as to any professional opinions about her condition or medical problems at the time of the hearing, i.e., the date at which the 'testimony' via his records was offered?

- 7 Did the Workers Compensation Full Commission Panel err in affirming the Hearing Commissioner's finding as a matter of law and ordering under ***South Carolina Code Ann §42-15-20*** that Claimant did not provide timely notice of repetitive trauma to her bilateral wrists and, therefore denied her claim for benefits for her carpal tunnel syndrome when the greater weight of the evidence shows that Claimant did not have any knowledge whatsoever of carpal tunnel syndrome existing on her left prior to November 29 2007 and in fact the condition was not diagnosed by any medical provider until that date and timely notice of her claim was given within ninety (90) days of November 29 2007?

STATEMENT OF THE CASE

The Claimant in this case filed a Form 50 (W C C #0722895) on February 20, 2009 alleging that the Claimant sustained an injury to both wrists on November 29, 2007 seeking benefits under the South Carolina Workers Compensation Act. The Employer filed a Form 51 denying the claim. This case came before Commissioner Derrick Williams on June 2, 2009 along with another claim in which the Claimant had previously filed a Form 50 (W C C #0627287). The injury claimed in the previous Form 50 (W C C #0627287), was alleged to have occurred on June 29, 2006 prior to July 1, 2007 and any appealable issues resulting from that claim will not be before this Court. In the Decision and Order dated November 4, 2009 Commissioner Williams ruled that the Claimant did not provide timely notice of the alleged repetitive trauma to her bilateral wrists and therefore, her claim W C C #0722895, for benefits was denied. Specifically Commissioner Williams held that the Claimant discovered or could have discovered her condition was compensable as early as 1999 when she was diagnosed with carpal tunnel syndrome. This ruling was appealed by the Claimant, which was heard by the Full Commission panel on March 16, 2010. The Full Commission panel in the Decision and Order dated May 18, 2010 affirmed Commissioner Williams' ruling. The Notice of Appeal in this case was filed on June 18, 2010, which referenced W C C #0722895 and W C C #0627287, however, the only issues before this Court are ones resulting from the Commission's rulings regarding W C C #0722895.

STATEMENT OF FACTS

The facts in regard to Mrs. McCall's carpal tunnel syndrome claims are that on November 29, 2007, she was diagnosed by Dr. Rogers and informed by him that she had bi-lateral carpal tunnel syndrome (**R p 844, line 24-p 845, line 13, R pp 163-167**). This was the first time that any doctor had ever told her that she had carpal tunnel syndrome (**R p 845, lines 11-13**) and it was the first time that she realized that she might have a compensable claim for any problems in her hands and/or wrists. Through her attorney, she then notified her employer of her condition by way of certified letter sent to employer January 31, 2008, which was acknowledged on a subsequently filed Form 50 (Case #0722895) dated, February 20, 2009. Later, she discovered that on November 30, 1999, Dr. Amaya, a doctor who has since had his license to practice medicine in the State of South Carolina permanently revoked and at the time of the hearing was not licensed to practice medicine anywhere, had written in her chart that she had carpal tunnel syndrome in her right wrist (**R p 861, lines 5-17, R p 769**). He had never advised her of that fact and, to her knowledge, had only treated her for a temporary back pain problem which had quickly resolved (**R p 843, line 23-p 845, line 13**). Dr. George R. Bruce, the Orthopedic Surgeon who performed an independent medical exam of her on December 22, 2008, also diagnosed bi-lateral carpal tunnel syndrome, advised her of that fact and stated in his report (**R pp 268-273**) that her carpal tunnel syndrome directly resulted from the repetitive trauma associated with her work over the years (**R p 272**). Mrs. McCall, in her trial testimony, described her job and the repetitive tasks she had

been required to do over the approximately twenty-two (22) years of faithful service that she had given to Sandvik and further described the problems she is presently having in her hands and wrists (R p 844, line 18-p 860, line 23) Commissioner Williams however, denied the carpal tunnel syndrome claims simply finding that she had not provided timely notice thereof pursuant to *Section 42-15-20* (R p 40)

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission *Lark v Bi-Lo, Inc.*, 276 S C 130, 276 S E 2d 304 (1981) *Hargrove v Titan Textile Co.*, 360 S C 276, 599 S E 2d 604 (Ct App 2004) A reviewing court may reverse or modify a decision of an agency if the findings inferences conclusions or decisions of that agency are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record *Bursey v South Carolina Dep't of Health & Env'tl Control*, 360 S C 135, 141, 600 S E 2d 80, 84 (Ct App 2004), S C Code Ann §1-23-380(A)(6)(e)(2005)

DISCUSSION

I DID THE WORKERS' COMPENSATION FULL COMMISSION PANEL ERR IN AFFIRMING THE HEARING COMMISSIONER IN ADMITTING THE MEDICAL RECORDS OF DR AMAYA WHEREIN HE ALLEGEDLY DIAGNOSED CLAIMANT WITH RIGHT SIDE CARPAL TUNNEL SYNDROME IN 1999?

At the outset of the hearing Claimant objected to records of Dr Amaya being entered into evidence and considered by the Hearing Commissioner based upon the fact that on the date of the hearing Dr Amaya's license to practice medicine had been permanently revoked in South Carolina and he was not licensed in any other state, therefore, he was incompetent to testify as to any professional opinions about Mrs McCall's condition or medical problems and his records were inadmissible. The objection was overruled however as the Hearing Commissioner stated that it was a question of weight or credibility rather than admissibility (**R p 841, line 22-p 842, line 9**). Clearly the records speak as of the date of the initial hearing to-wit June 2 2009 and are tantamount to Dr Amaya testifying and rendering opinions at a time when is he is unqualified and an incompetent witness as a matter of law **S C Code Ann §42-1-172** pertaining to repetitive trauma injury in the workers compensation setting specifically provides

- a Repetitive trauma injury means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute
- b An injury is not considered a compensable repetitive trauma injury unless a Commissioner makes a specific finding of fact by preponderance of the evidence of a causal connection

that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury

- c As used in this section medical evidence means expert opinion or testimony stated to a reasonable degree of medical certainty, documents records or other material that is offered by a licensed and qualified medical physician

The statute requires that repetitive trauma injuries must be proved to exist and be causally related to the employment by expert opinion or testimony stated to a reasonable degree of medical certainty documents, records or other material that is offered by a 'licensed and qualified medical physician

In this case Dr Amaya did not personally testify and there is no statement in his records or otherwise that the matters therein are to a reasonable degree of medical certainty and the records at the time of hearing, are not then being offered by a licensed and qualified medical physician It is therefore, submitted that Dr Amaya s records are incompetent and inadmissible, as a matter of law, pursuant to the statute and they cannot be used to provide the requisite evidence upon which the right side carpal tunnel syndrome can be proved to even exist in 1999 or at any other date Sound logic and reason then tells us that if the claim for carpal tunnel syndrome cannot be based upon records of an unlicensed physician and/or the absence of a statement or testimony in some form or fashion that the diagnosis and opinions were rendered to a reasonable degree of medical certainty, it only follows that the same testimony and records should not be allowed to be used for the purpose of triggering the statute of limitations and/or notice requirements with which a claimant is required to comply Based

upon these matters it is respectfully submitted that the records of Dr Amaya should not have been admitted and/or considered in any way at the hearing on June 2, 2009 because at the time of the hearing he was not a licensed and qualified medical physician to speak to those issues

**II DID THE WORKERS' COMPENSATION FULL
COMMISSION PANEL ERR IN AFFIRMING THE HEARING
COMMISSIONER DENYING THE CLAIMANT'S CARPAL
TUNNEL SYNDROME CLAIM?**

The Hearing Commissioner specifically found and ordered that the Claimant did not provide timely notice of the alleged repetitive trauma to her bilateral wrists and therefore her claim W C C #0722895, for benefits was denied It is submitted, however that this is error as the evidence clearly shows that Mrs McCall filed her claim within two (2) years after the assumed date of the onset of the condition and gave notice to her employer, Sandvik, within ninety (90) days of the date that she first became aware that she had a compensable claim pursuant to ***S C Code Ann §42-15-20***

The case of **Mauldin v Dyna Color Jack Rabbit**, **308 S C 18, 416 S E 2d 639 (Sup Ct 1992)** fully extends the discovery rule in workers compensation claims and holds that competent diagnosis by a physician of a condition giving rise to a compensable claim must be made before the statute or time periods begin to run It further held that any reasonable doubts as to construction of the Workers' Compensation Act should be resolved in favor of coverage rather than exclusion of coverage This Court has ruled that in applying ***S C Code Ann §42-15-20*** to a repetitive trauma injury, i e , carpal tunnel syndrome, the Workers' Compensation Commission shall determine the statutory

notice requirement from the time of disablement of the claimant and that notice begins to run when the employee becomes disabled and could discover with reasonable diligence her condition is compensable **Bass v Isochem, 365 S C 454, 481, 617 S E 2d 369, 383 (Ct App 2006)**

As testified to by Mrs McCall she was totally unaware that Dr Amaya had entered into her record that she had carpal tunnel syndrome on the right. She was certainly asymptomatic and the records of Dr Amaya entered into the evidence at trial sets forth no criteria or symptomology or findings upon which Dr Amaya's notation of carpal tunnel syndrome could be based. It is further submitted and as argued in Question #1, that Dr Amaya's records should not have been admitted into evidence and/or considered in anyway because at the time of the hearing Dr Amaya was no longer licensed and qualified to practice medicine. Without his records in evidence there was/is no evidence whatsoever that Mrs McCall had right sided carpal tunnel syndrome much less knew or should have known that she had it prior to November 29, 2007 when bilateral carpal tunnel syndrome was diagnosed by Dr Rogers. There is absolutely no evidence that the left side carpal tunnel syndrome had been diagnosed until November 29, 2007, the same date that she found that she also had right side carpal tunnel syndrome per Dr Rogers.

As previously set forth, ***S C Code Ann §42-1-172*** requires carpal tunnel or repetitive trauma injury to be proved by expert opinion or testimony, stated to a reasonable degree of medical certainty, documents, records or other material that is offered by a **"licensed and qualified medical physician"**. Certainly at

the hearing on June 2, 2009, the admission of the records was tantamount to Dr. Amaya testifying at that particular point in time and, at that time, Dr. Amaya was not a licensed and qualified medical physician, therefore, he was precluded under ***S.C. Code Ann. §42-1-172(c)***, to testify to his diagnosis of the carpal tunnel syndrome and/or that it was causally connected to her work environment. In other words, had Claimant been before the Commission attempting to prove the injury for the purposes of compensation, Dr. Amaya's testimony would have been incompetent to establish the claim and would have been excluded pursuant to the statute. It is submitted, therefore, that it is a double-edged sword and that if Dr. Amaya's testimony upon the carpal tunnel issues is precluded or forbidden under ***S.C. Code Ann. §42-1-172(c)*** to assist Mrs. McCall in establishing a claim for right-sided carpal tunnel syndrome, then his records should not be allowed to defeat her claim by showing that she did not give her employer timely notice of her claim.

It may be argued that, although the records may not be admitted to prove the injury or to preclude her claim directly, they are relevant upon the timely notice and discovery issues - i.e., when Mrs. McCall knew or should have known of a potential claim which required her to take certain actions to give her employer notice and to file her claim. In this regard, however, the only evidence is that Dr. Amaya did not tell her that she had carpal tunnel and his records do not indicate that he told her or that it was conveyed to her in any other way. The evidence in the record suggests that the Claimant suffered and sustained a repetitive trauma injury, carpal tunnel syndrome, over a period of time resulting in

disability on November 29 2007 and that she had no knowledge of her carpal tunnel diagnosis by Dr Amaya until after November 29 2007 The evidence further suggests that, though she may have experienced pain, as one does with a repetitive trauma injury she had no reason to believe that her pain would result in a compensable injury As a result the only credible evidence supports her claim that she timely complied with the notice requirements under **S C Code Ann §42-15-20** which should be construed liberally in favor of claimants **Mintz v Fiske-Carter Constr Co**, 218 S C 409, 414, 63 S E 2d 50, 52 (1951)

This Court may overturn a decision of the Workers Compensation Commission when substantial rights 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 **See S C Code Ann §1-23-380(A)(6)(d)(e)(Supp 2007)** Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence when the whole record is considered as would allow reasonable minds to reach the conclusion the Full Commission reached **Waters v South Carolina Land Resources Conservation Comm'n**, 321 S C 219, 467 S E 2d 913 (1996) In this case, there was no substantial evidence for Commissioner Williams or the Full Commission to have ruled that the Claimant had knowledge of her carpal tunnel diagnosis until November 29, 2007 and their decisions should be overturned

Regardless of whichever way this evidence is treated and/or the issues as to the right side carpal tunnel syndrome are dealt with, there is absolutely no

evidence whatsoever through Dr. Amaya's records or otherwise that Mrs. McCall knew or should have known that she had carpal tunnel syndrome on the left side until November 29, 2007, and Dr. Rogers diagnosed her condition. In that regard, the employer was notified timely within ninety (90) days by way of certified letter sent to employer dated January 31, 2008, approximately sixty-three (63) days after the diagnosis by Dr. Rogers on November 29, 2007. At a minimum, then, the left side carpal tunnel syndrome claim should have been allowed even if the right side claim is denied.

In summary, on November 29, 2007, Mrs. McCall was advised of her bilateral carpal tunnel syndrome - i.e., left side as well as right - and notice was given to her employer and on January 31, 2008, approximately sixty-three (63) days after learning that she had bilateral carpal tunnel in her wrists. It is therefore, submitted that the Hearing Commissioner erred in summarily dismissing Claimant's carpal tunnel syndrome claim and that same should be remanded to the Hearing Commissioner for specific findings in accordance with the Workers' Compensation Act pertaining to repetitive trauma injuries.

CONCLUSION

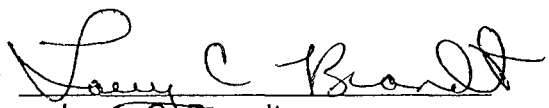
Based upon the foregoing it is respectfully submitted that the Claimant has met her burden of proof of providing timely notice of her bilateral carpal tunnel syndrome pursuant to **S.C. Code Ann. §42-15-20**. She did not know and had no reason to know until November 29, 2007 that she had carpal tunnel syndrome, a compensable repetitive injury, in her right wrist. The only credible evidence clearly shows that the first time that she had knowledge of the carpal tunnel

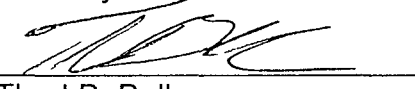
problem was when Dr Rogers diagnosed bilateral carpal tunnel syndrome on November 29 2007 and told her of his diagnosis Thereafter she timely notified her employer and filed her claim within ninety (90) days as required

Based upon all these matters it is respectfully submitted that those portions of the Hearing Commissioner's Decision and Order dated November 4, 2009 precluding her from asserting her repetitive trauma claim (bilateral carpal tunnel syndrome) should be reversed and her carpal tunnel claims be remanded to the Hearing Commissioner for a determination on the merits in accordance with the Workers Compensation Act

Respectfully Submitted,

Larry C Brandt
Attorney for Claimant
Larry C Brandt P A
Post Office Box 738
Walhalla, South Carolina 29691
Tel (864) 638-5406
Fax (864) 638-7873

By 
Larry C Brandt
Attorney for the Claimant

By 
Thad B Ball
Attorney for the Claimant

February 11 2011
Walhalla, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall, Employee

Appellant

v

Sandvik Incorporated Employer
and
Sentry Insurance Company Carrier,

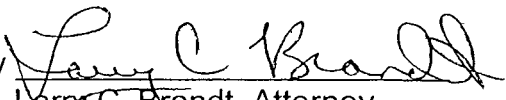
Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that ***Appellant's Brief*** complies with ***Rule 211(b), SCACR***

Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla SC 29691
864/638-5406

February 11, 2011

By 
Larry C Brandt, Attorney

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

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W C C File No 0722895

Donna McCall Employee

Appellant,

v

Sandvik Incorporated Employer
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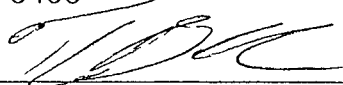
PROOF OF SERVICE
(APPELLANT'S BRIEF)

I certify that I have served the ***Appellant's Brief*** upon ***the Respondents***
by depositing a copy of it in the United States Mail postage prepaid on
FEBRUARY 18, 2011, addressed as follows

Mr Grady L Beard
Sowell Gray Stepp & Laffitte, LLC
P O Box 11449
1310 Gadsden Street
Columbia, SC 29211
Attorney for Respondents

Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla SC 29691
864/638-5406

February 18 2011

By 
Thad B Ball, Attorney

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Full Commission Appellate Panel Review

W C C File No 0722895

Donna L. McCall Employee

Appellant

v

Sandvik Inc Employer and
Sentry Insurance Company Carrier

Respondents

FINAL BRIEF OF RESPONDENTS

Grady L. Beard
Sowell Gray Stepp & Laffitte LLC
1310 Gadsden Street
Post Office Box 11449
Columbia South Carolina 29211
(803) 929-1400
Attorney for Respondents

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STATEMENT OF ISSUE ON APPEAL

- 1 Does substantial evidence support the Commission's determination that claimant failed to provide proper Notice of her alleged accident pursuant to Section 42-15-20?
- 2 Does substantial evidence support the Commission's finding that claimant discovered or could have discovered her condition was compensable as early as 1999 when she was diagnosed with carpal tunnel syndrome?
- 3 Did the Commission properly admit into evidence and consider the medical records of Dr. Amaya who is no longer licensed to practice medicine in South Carolina but was duly licensed at the time he evaluated the claimant?

STATEMENT OF THE CASE

This is a workers compensation appeal. The claimant appealed the Decision and Order of the Full Commission which unanimously affirmed the Decision and Order of the Hearing Commissioner. This brief is submitted in response to the claimant's appeal.

The claimant alleges she sustained a work related injury by repetitive trauma to both hands/arms which she allegedly did not discover as compensable until she was diagnosed with carpal tunnel syndrome on November 29, 2007. Accordingly, the claimant seeks payment of all past, present, and future causally-related medical treatment, temporary total disability benefits from November 29, 2007, and continuing until such time as maximum medical improvement (MMI) is reached for the alleged repetitive trauma to her bilateral wrists, and permanent and total disability benefits at such time as MMI is reached.

The defendants contend the claimant cannot meet her burden of proving a compensable injury by repetitive trauma under Section 42-1-172 of the Act. Furthermore, the defendants assert the claim must be barred under Section 42-15-20 as the claimant failed to provide timely Notice of her alleged repetitive trauma, particularly given her diagnosis of carpal tunnel syndrome in 1999 and her ongoing knowledge that her problems were work related. Accordingly, the defendants contend all benefits requested under the Act with regard to this alleged accident must be denied.

The Hearing in this matter was held on June 2, 2009, in Anderson, South Carolina, before Commissioner Derrick L. Williams. By way of Decision and Order filed on November 4, 2009, the Hearing Commissioner determined the claimant discovered or could have discovered her condition was compensable as early as 1999 when she was diagnosed

by Dr. Amaya with right carpal tunnel syndrome. Accordingly, the claimant did not meet her burden of providing timely Notice of her claim under Section 42-15-20 and was therefore barred from any recovery under the Act.

The claimant timely appealed the Decision and Order to the Full Commission Appellate Panel (Full Commission). By Decision and Order filed March 18, 2010, the Full Commission unanimously affirmed the Hearing Commissioner. The claimant has now timely appealed to the Court of Appeals.

STATEMENT OF FACTS

The claimant was hired by the defendant-employer Sandvik in 1985 (R p 18) She worked for Sandvik until August 2007 when she took early retirement (R p 19)

On December 10 1999 the claimant presented to Felipe A Amaya M D of Lake Ridge Neurological with complaints of continued tremors in her upper extremities (R p 769) In his narrative report Dr Amaya noted the claimant has a job that demands a lot of heavy lifting and moving (*Id*) Dr Amaya diagnosed the claimant with right carpal tunnel syndrome advised her to assume a light duty job with no heavy lifting for six to eight weeks and provided her with a right wrist splint to wear for six to eight weeks (*Id*)

On December 10 1999 Dr Amaya was a licensed physician in the State of South Carolina His medical license has since been revoked

By report dated November 29 2007 David Rogers M D of Oaktree Medical Centre diagnosed the claimant with carpal tunnel syndrome (R p 163) A letter from the claimant's attorney to Sandvik (Attn - Human Resources Manager) dated January 31 2008 provides as follows Pursuant to South Carolina Code §42-15-20(c) this is to give you formal notice that Dr David S Rogers has diagnosed Ms McCall with carpal tunnel syndrome on November 29 2007 (R p 42)

The claimant testified she experienced bilateral hand and arm problems for the duration of her twenty-two year employment with the defendant employer Moreover she testified she knew her problems were caused by work but she failed to inform her supervisors of the problems until after the diagnosis by Dr Rogers on November 29 2007 (R p 864 lines 3 16 p 883 line 22-p 884 line 6)

STANDARD OF REVIEW

The Administrative Procedures Act (APA) governs the review of decisions of the Workers Compensation Commission S C CODE ANN § 1 23 380 (Law Co-op 1976 and Supp) *Ellis v Spartan Mills* 276 S C 216 277 S E 2d 590 (1981) *Lark v Bi Lo Inc* 276 S C 130 276 S E 2d 304 (1981) Under the APA decisions of the Commission may only be reversed modified or remanded if substantial rights of the appellant have been prejudiced because the administrative findings inferences conclusions or decisions are affected by error of law Moreover decisions of the Commission can only be reversed modified or set aside when they are not supported by reliable probative or substantial evidence on the whole record *Id*

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 conclusion the administrative agency reached in order to justify its action *Etheredge v Monsanto Co* 349 S C 451 562 S E 2d 679 (Ct App 2002)(quoting *Miller v State Roofing Co* 312 S C 452 454 441 S E 2d 323 324-25 (1994)) *Broughton v South of the Border* 336 S C 488 495 520 S E 2d 634 637 (Ct App 1999) The South Carolina Supreme Court held in *Howell v Pacific Columbia Mills* 291 S C 469 354 S E 2d 384 (1987) as follows

A decision of the Workers Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record *Massey v WR Grace & Co* 286 S C 434 334 S E 2d 122 (1985) Substantial evidence is evidence which considering the record as a whole would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action *Lark v Bi Lo Inc* 276 S C 130 276 S E 2d 304 (1981) Quantitatively substantial evidence is something less than the weight of the evidence *Palmetto Alliance Inc v South Carolina Public Service Commission* 282

S C 430 319 S E 2d 695 (1984)

Howell 291 S C at 471 354 S E 2d at 385 [F]indings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence

Broughton 336 S C at 496 520 S E 2d at 637 *Hicks v Piedmont Cold Storage* 335 S C 46 515 S E 2d 532 (1999) *Medlin v Upstate Plaster Serv* 329 S C 92 495 S E 2d 447 (1998)

Finally a decision may be reversed or modified if arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion S C CODE ANN § 1-23-380 (A)(6)(f) (Law Co op 1976 & Supp)

ARGUMENT

I THE HEARING COMMISSIONER PROPERLY ADMITTED THE MEDICAL RECORDS OF DR. AMAYA

The claimant contends the medical records of Dr. Amaya from 1999 are inadmissible as a matter of law as he was not a licensed physician in South Carolina as of the date of the Hearing on June 2, 2009. Furthermore, the claimant contends the medical records do not constitute medical evidence as purportedly required under Section 42-1-172 of the Act. Therefore, the claimant contends Dr. Amaya's records cannot be considered as probative evidence of the claimant's failure to comply with the Notice requirement under Section 42-15-20.

To the contrary, the defendants maintain Dr. Amaya was licensed to practice medicine in South Carolina at the time he evaluated the claimant in 1999 and therefore the claimant's position as to the admissibility of said records is irrelevant and unfounded. Additionally, the defendants assert Section 42-15-20 does not require the defendants to establish by way of medical evidence that the claimant knew or should have known her condition was compensable for purposes of satisfying the Notice requirement.

A Dr. Amaya was a Licensed Physician in 1999

On December 10, 1999, the claimant presented to Felipe A. Amaya, M.D., of Lake Ridge Neurological with complaints of continued tremors in her upper extremities. (R p 769) In his narrative report, Dr. Amaya noted the claimant has a job that demands a lot of heavy lifting and moving. (*Id.*) Dr. Amaya diagnosed the claimant with right carpal tunnel syndrome, advised her to assume a light duty job with no heavy lifting for six to eight

weeks and provided her with a right wrist splint to wear for six to eight weeks (*Id*)

There is no dispute that on December 10 1999 the date of this office visit Dr Amaya was a licensed physician in the State of South Carolina The fact that Dr Amaya subsequently became unlicensed in South Carolina is simply irrelevant to the admissibility of his medical records in the underlying workers compensation claim In fact the claimant has failed to assert any evidentiary rule whatsoever to support her contention the medical records of a physician licensed at the time of the record but subsequently unlicensed are inadmissible in a legal proceeding As such the defendants request the Court affirm the Commission's determination that the medical records of Dr Amaya were properly admitted into evidence

B Definition of Medical Evidence Under Section 42-1-172 is Inapplicable to Determining Proper Notice Under Section 42-15-20

The claimant further argues the medical records of Dr Amaya do not constitute medical evidence as defined in Section 42-1-172 and therefore cannot substantiate the defendants Notice defense under Section 42 15 20

The new workers compensation reform legislation changed the requirements for proving a compensable repetitive trauma injury Under Section 42 1-172 repetitive trauma injury is defined as an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events Compensability of a repetitive trauma injury must be determined only under the provisions of this statute S C CODE ANN § 42-1-172 (A) (Law Co op 1976 and Supp) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a

preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury S C CODE ANN § 42-1-172 (B) (Law Co op 1976 and Supp)(emphasis added) Furthermore [a] repetitive trauma injury is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury S C CODE ANN § 42-1-172 (D) (Law Co op 1976 and Supp)(emphasis added)

Medical evidence under Section 42-1-172 is defined as follows As used in this section medical evidence means expert opinion or testimony stated to a reasonable degree of medical certainty documents records or other material that is offered by a licensed and qualified medical physician S C CODE ANN § 42-1-172 (C) (Law Co-op 1976 and Supp)

The claimant was required to establish the compensability of her alleged repetitive trauma injury pursuant to Section 42-1-172 by medical evidence as defined therein The Commission did not reach the issue of compensability of the alleged repetitive trauma injury as the claimant could not satisfy proper Notice of the accident pursuant to Section 42-15-20

Critically Section 42-15-20 does not require that Notice be established by medical evidence as defined under Section 42-1-172 Section 42-15-20 simply provides that [i]n the case of repetitive trauma notice must be given by the employee within ninety days of the date the employee discovered or could have discovered by exercising reasonable

diligence that his condition is compensable unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice and the commission is satisfied the employer has not been unduly prejudiced S C CODE ANN § 42-15-20 (C) (Law Co-op 1976 and Supp) The Hearing Commissioner found and the Full Commission agreed the claimant discovered her repetitive trauma claim was compensable as early as 1999 based upon her diagnosis of carpal tunnel syndrome by Dr Amaya on December 10 1999 however she failed to notify her employer within ninety days thereafter (R p 40) Importantly Section 42-15-20 only requires the employee discover her condition is compensable There is certainly no requirement that such discovery be supported by expert opinion or testimony stated to a reasonable degree of medical certainty As such the defendants assert the claimant's application of Section 42-1-172 to satisfy the requirements of Section 42-15-20 is improper

II DENIAL OF CARPAL TUNNEL CLAIM IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Again under Section 42-15-20 [i]n the case of repetitive trauma notice must be given by the employee within ninety days of the date the employee discovered or could have discovered by exercising reasonable diligence that his condition is compensable

S C CODE ANN § 42-15-20 (C) (Law Co-op 1976 & Supp 2007) In the case at bar the claimant contends the evidence shows she gave notice to her employer within ninety days of the date she first became aware she had a compensable claim which she contends is the date she was diagnosed with carpal tunnel syndrome by Dr Rogers in 2007 (and not the date she was previously diagnosed with carpal tunnel syndrome by Dr Amaya in 1999)

The claimant relies upon the decision of the Supreme Court of South Carolina in *Mauldin v Dyna Color Jack Rabbit* 308 S C 18 416 S E 2d 639 (1992) In addition the claimant maintains her position that the medical records of Dr Amaya (wherein he diagnosed the claimant with right carpal tunnel syndrome in 1999) are inadmissible Finally the claimant alternatively contends that even if she had discovered the compensability of her right carpal tunnel syndrome in 1999 she certainly did not have a diagnosis of left carpal tunnel syndrome until Dr Rogers diagnosed carpal tunnel syndrome on November 29 2007

The defendants maintain substantial evidence in the record supports the claimant failed to provide timely Notice of her claim of injury by repetitive trauma and therefore the claim was properly denied pursuant to Section 42 15-20 Specifically the evidence shows the claimant admitted she knew her bilateral hand/arm problems were caused by her work during approximately twenty two years of employment with the defendant employer but she never notified her employer of a work-related condition until after she was diagnosed by Dr Rogers on November 29 2007 In addition the defendants maintain the claimant's reliance upon *Mauldin* is unfounded and distinguishable from the facts in the matter at bar Moreover the defendants assert the medical records of Dr Amaya constitute per se evidence the claimant had knowledge of a diagnosis of carpal tunnel syndrome by December 10 1999 Finally the defendants assert the claimant's attempt to separate her claim by the specific injuries claimed therein is directly contrary to the purpose of the Notice requirement and is unsupported by the greater weight of the evidence in the record

A Claimant Discovered Her Condition was Compensable Prior to 2007

1 Claimant was diagnosed with right carpal tunnel syndrome in 1999

As noted previously Dr Amaya diagnosed the claimant with right carpal tunnel syndrome on December 10 1999 (R p 769) However he not only made the diagnosis he also described her job as requiring a lot of heavy lifting and moving (*Id*) He then provided her with a right wrist splint and instructed her to work a light-duty job with no heavy lifting for six to eight weeks (*Id*) The defendants assert this medical record alone supports the Commission's determination that the claimant discovered or could have discovered her diagnosis of a compensable condition of carpal tunnel syndrome as early as 1999 yet she failed to provide timely Notice under Section 42-15-20

2 Claimant admitted knowing her problems were work related prior to 2007

The Single Commissioner's Decision and Order references testimony from the claimant's deposition of April 21 2009 The claimant confirmed her bilateral hand pain began during the first four years of her employment with Sandvik when she held the position of "presser" (R p 30) The claimant testified she subsequently switched positions and began setting up carbide parts at which point she immediately began experiencing pain and numbing in her hands and fingers (R p 31) Importantly she confirmed this pain was similar to the pain she subsequently experienced in November 2007 (*Id*) The claimant testified that after four years she switched to the position of "etcher" and performed this job for two years with constant pain in her hands and arms during this period (*Id*) The claimant subsequently became a cutting tool processor and held this position for

approximately four years until her retirement in 2007 (*Id*) The claimant verified her arm and hand pain worsened however she admitted she never informed her employer of same (*Id*) The Hearing Commissioner noted the following passage from the claimant's deposition testimony

Q During the first ten years did you ever notify your supervisor that you were having any kind of hand or arm pain?

A No I didn't

Q And at any point during those ten years did you realize that the work you were doing at Valenite was causing the problem?

A Well I figured it did because of how many I had to pick up and I had to hold them so tight you know I knew it had to be you know with what I was doing But I never did say anything

Q Did you realize that work was causing the pain in your arms and hands?

A Yeah I knew it was but I just kept on working you know And I love my job and I didn't say anything I just I just kept working

Q Is that basically the truth for that entire 22 year period up until November 29 2007 from when you first started having pain in your arms back in the late 80s until 2007 you basically just continued to work with that pain that entire time -

A Yeah

(*Id*)

During the Hearing the claimant was cross examined about her prior deposition testimony as follows

Q And in fact in your second deposition given here recently on April 27 2009 do you recall acknowledging that you thought or you knew your work was causing those problem[s] but you just didn't tell anybody and you continued to do that job for 22 years?

A Yes I felt like that

Q And I m quoting you never did say anything?

A No sir

Q And I m quoting at page 21 you knew it had to be your job causing the problems correct?

A I felt like it was

Q You knew it had to be That s what you said in your deposition

A Yes

Q Whether you thought you had an injury for your hands and arms the 22 years that you worked at the plan or not you testified under oath at your deposition you knew your problems that were ongoing for 22 years were because of your job correct?

A Yes

Q And despite you never said a word to anybody at the plant for 22 years that you were having the problems and that you thought that were work related correct?

A Right

(R p 864 lines 3 16 p 883 line 22-p 884 line 6)

The claimant unequivocally testified she experienced bilateral hand and arm problems for the duration of her employment with the defendant employer Moreover she testified she knew her problems were caused by work but she failed to inform her supervisors of the problems until after November 29 2007 As such the defendants maintain the medical records of Dr Amaya and the claimant s testimony provide probative

and substantial evidence that the claimant discovered her bilateral hand and arm problems were compensable prior to 2007 but failed to provide proper Notice to her employer

B Claimant's reliance upon the discovery rule in *Mauldin* is misplaced

The claimant relies upon the Supreme Court's decision in *Mauldin v Dyna Color Jack Rabbit* 308 S C 18 416 S E 2d 639 (1992) to support her position that she did not discover the compensability of her injury by repetitive trauma until the diagnosis by Dr Rogers on November 29 2007 To the contrary the defendants contend the facts in *Mauldin* are distinguishable from those in the case at bar and therefore the claimant's reliance upon the holding in *Mauldin* is misplaced

In *Mauldin* the employee sustained a work-related knee injury in 1985 but was incorrectly diagnosed by an Emergency Room physician with a medial collateral sprain *Mauldin* 308 S C at 20 416 S E 2d at 641 The employee was treated conservatively but continued to experience intermittent swelling and pain in her knee *Id* Finally in 1987 the employee presented to a orthopedist at which time she received a diagnosis of torn medial meniscus *Id* The employer/carrier argued the employee did not file her claim within the two year statute of limitations *Id* The Court held the employee only discovered or reasonably could have discovered that her knee problem resulted from the 1985 accident in 1987 when the orthopaedic physician correctly diagnosed her injury *Id*

In the case at bar the claimant was diagnosed with right carpal tunnel syndrome in 1999 by Dr Amaya (R p 769) Importantly and unlike the original diagnosis in *Mauldin* Dr Amaya's diagnosis was correct In fact Dr Rogers later made the same diagnosis of carpal tunnel syndrome in 2007 at which point the claimant finally reported her problems

as work related to her employer (R p 166)

Furthermore the claimant does not deny Dr Amaya previously diagnosed her with carpal tunnel syndrome To the contrary she testified at the Hearing as follows

Q Are you testifying under oath today that you deny being told by Dr Carpenter or Dr Amaya in 1999 that you were diagnosed as having right carpal tunnel syndrome?

A I m not denying I -

Q You just don t remember?

A I just don t remember

(R p 866 lines 13-19) Accordingly any reliance upon *Mauldin* is misplaced in the case at bar

The claimant further contends there is no evidence through Dr Amaya s records or otherwise that claimant knew or should have known that she had carpal tunnel syndrome on the left side until November 29 2007 As such the claimant contends her left carpal tunnel syndrome is compensable regardless of the compensability of her right carpal tunnel syndrome The defendants maintain this position is not supported by any credible evidence in the record and moreover is contrary to the well-established purpose of the Notice requirement

1 The claimant suffered left hand/arm problems for the duration of her employment but admittedly failed to notify her employer

The claimant unequivocally testified she experienced bilateral hand problems for the duration of her employment with the defendant-employer Moreover she testified she knew

her problems were caused by her work activities but she failed to inform her supervisors of the problems until after November 29, 2007. As such, the defendant's maintain the testimony of the claimant provides probative and substantial evidence that the claimant knew her left (and right) hand and arm problems were most likely work related conditions prior to 2007. Accordingly, the claimant must be barred from alleging her left carpal tunnel syndrome is now subject to a separate Notice requirement.

2. The purpose of the Notice requirement does not support separate compensability of the claimant's left carpal tunnel syndrome.

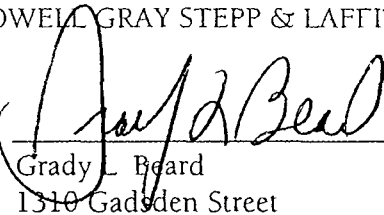
In *Mintz v Fiske Carter Construction*, the Supreme Court of South Carolina explained the purpose of the Notice requirement under Section 42-15-20 is in part to afford the employer opportunity to furnish medical care of the employee in order to minimize the disability and consequent liability upon the employer. *Mintz v Fiske Carter Construction*, 218 S.C. 409, 414, 63 S.E.2d 50, 52 (1951) (citing 145 A.L.R. 1267)). In the case at bar, the greater weight of the evidence supports the claimant discovered her right carpal tunnel syndrome was compensable in 1999 by way of the diagnosis of Dr. Amaya. However, the claimant failed to notify her employer of the condition until 2008. Furthermore, the claimant's own testimony supports she also knew she was having symptoms in her left hand/arm during this same period of time. The claimant's failure to report her condition upon being diagnosed in 1999 violated the fundamental purpose of the Notice requirement, as it precluded employer from minimizing the claimant's ultimate disability. As such, the fundamental purpose of the Notice requirement further supports the finding of the Hearing Commissioner that the claim is denied in its entirety.

CONCLUSION

Based upon the foregoing the defendants respectfully request the Court of Appeals
affirm the Decision and Order of the Workers Compensation Commission

Respectfully submitted

SOWELL GRAY STEPP & LAFFITTE LLC

By 
Grady L. Beard
1310 Gadsden Street
Post Office Box 11449
Columbia South Carolina 29211
(803) 929-1400

Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Full Commission Appellate Panel Review

W C C File No 0722895

Donna L McCall Employee

Appellant

v

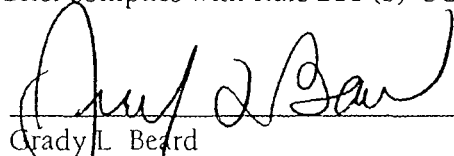
Sandvik Inc Employer and
Sentry Insurance Company Carrier

Respondents

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211 (b) SCACR

By



Grady L. Beard
Sowell Gray Stepp & Laffitte LLC
1310 Gadsden Street
Post Office Box 11449
Columbia South Carolina 29211
(803) 929-1400

Attorney for Respondents

March 4 2011

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall Employee

Appellant

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Sandvik Incorporated Employer
and
Sentry Insurance Company Carrier

Respondents

APPELLANT'S REPLY BRIEF

Larry C Brandt
Thad B Ball
Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla SC 29691
864/638-5406
Attorneys for Appellant

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ARGUMENT

Respondents' argument supporting the Hearing Commissioner's denial of the Appellant's carpal tunnel claim is not supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence when the whole record is considered as would allow reasonable minds to reach the conclusion the Commissioner reached. **Waters v. South Carolina Land Resources Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996)**. The Respondents cite two pieces of evidence to support their argument that the Appellant failed to provide timely notice of her carpal tunnel claim. When examining these insubstantial pieces of evidence and the Respondents' reliance upon them, it is clear that Respondents' argument fails.

First, the Respondents cite Defendants' APA #6 p. 32 which includes a notation in Dr. Amaya's records indicating a diagnosis of 'Mild Right CTS'. **(R p 769)**. A review of the medical records obtained from Dr. Amaya shows no other mention of CTS. **(R pp 755-772)**. Dr. Amaya was unavailable at the time of the hearing and for depositions so there was no opportunity for the Appellant to inquire as to whether this diagnosis was noted in the records in error. Also, there is no notation that he notified the Appellant of this diagnosis. Again, Dr. Amaya was unavailable for deposition so there is no testimony from him that he did, in fact, notify the Appellant of such diagnosis. The only testimony regarding any notification of this diagnosis would be from the Appellant herself. The Respondents claim that the Appellant did not deny that Dr. Amaya diagnosed her

with CTS To the contrary she testified at the Hearing as follows

Q according to Dr Amaya s report on November 30 1999, it says you have right carpal tunnel syndrome, median nerve entrapment in the wrist area That was in 1999 You actually were told in 1999 you had carpal tunnel syndrome in your right wrist didn t you by Dr Amaya?

A He never told me that

Q He didn t tell you that?

A No he didn t

(R p 861, lines 5-13) The Appellant unequivocally denied that she was informed of this possible diagnosis by Dr Amaya As there is no recorded testimony that Dr Amaya actually made a diagnosis of Mild Right CTS or that this possible diagnosis was conveyed to the Appellant this notation in Defendants APA #6, p 32 relied upon by the Respondents, cannot be considered anything more than a mere scintilla of evidence, notwithstanding Appellant s arguments fully set forth in her initial brief on pages 6 through 8, that Dr Amaya s records are totally inadmissible

The next piece of evidence relied upon by the Respondents to support their argument is testimony from the Appellant in which she acknowledged that she has experienced work-related pain and other symptoms throughout the course of her working life The Respondents rely on the fact that in the testimony the Appellant apparently agrees that the pain in her hands and arms she had experienced was linked to her job in which she often uses her hands and arms This, of course would be a most reasonable response by any worker that works with his or her hands Testimony by the Appellant reveals that she never believed that this pain could have been carpal tunnel syndrome

Q Prior to November 29, 2007 did you ever know that it was possible

that these symptoms you were experiencing could be caused by carpal tunnel syndrome?

A No I didn't know

(R p 858, line 23-p 859, line 1) This Court is well aware that carpal tunnel syndrome is a repetitive trauma injury with pain and trauma being stretched out over time. The Appellant in this case suffered and sustained a repetitive trauma injury carpal tunnel syndrome over a period of time resulting in disability on November 29, 2007. This Court has ruled that in applying **S C Code Ann §42-15-20** to a repetitive trauma injury, i.e. carpal tunnel syndrome the Workers Compensation Commission shall determine the statutory notice requirement from the time of disablement of the claimant and that notice begins to run when the employee becomes disabled and could discover with reasonable diligence her condition is compensable. **Bass v Isochem, 365 S C 454, 481, 617 S E 2d 369, 383 (Ct App 2006)**. The Appellant in this case discovered with reasonable diligence that her condition was compensable on November 29, 2007, when she was diagnosed with bilateral carpal tunnel syndrome. Through her attorney, she then notified her employer of her condition by way of certified letter sent to employer January 31, 2008. This satisfied the notice requirement of **S C Code Ann §42-15-20**. The evidence that the Appellant experienced pain while working is not substantial evidence showing that this Appellant failed to meet the requirements of **S C Code Ann §42-15-20**.

Again regardless of whichever way this evidence is treated and/or the issues as to the right side carpal tunnel syndrome are dealt with there is absolutely no evidence whatsoever through Dr. Amaya's records or otherwise

that Mrs McCall knew or should have known that she had carpal tunnel syndrome on the left side until November 29 2007 and Dr Rogers diagnosed her condition The case of Mauldin v Dyna Color Jack Rabbit, 308 S C 18, 416 S E 2d 639 (Sup Ct 1992) which fully extends the discovery rule in workers compensation claims and holds that competent diagnosis by a physician of a condition giving rise to a compensable claim must be made before the statute or time periods begin to run, is especially applicable in this case In that regard, the employer was notified timely within ninety (90) days by way of certified letter sent to employer dated January 31 2008, approximately sixty-three (63) days after the diagnosis by Dr Rogers on November 29 2007 At a minimum then the left side carpal tunnel syndrome claim should have been allowed even if the right side claim is denied

In summary on November 29 2007 Mrs McCall was advised of her bilateral carpal tunnel syndrome -i e left side as well as right, and notice was given to her employer and on January 31 2008 approximately sixty-three (63) days after learning that she had bilateral carpal tunnel in her wrists It is again submitted that the Hearing Commissioner erred in summarily dismissing Claimant's carpal tunnel syndrome claim and that same should be remanded to the Hearing Commissioner for specific findings in accordance with the Workers' Compensation Act pertaining to repetitive trauma injuries

CONCLUSION

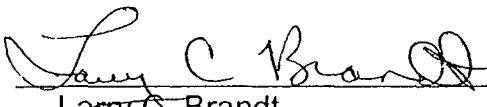
Based upon the foregoing it is respectfully submitted that the Claimant has met her burden of proof of providing timely notice of her bilateral carpal tunnel

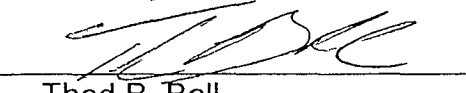
syndrome pursuant to **S C Code Ann §42-15-20** She did not know and had no reason to know until November 29 2007 that she had carpal tunnel syndrome a compensable repetitive injury Thereafter she timely notified her employer and filed her claim within ninety (90) days as required The evidence cited by the Respondents has been shown to be insubstantial and should not have been relied upon by the Hearing Commissioner to deny the Appellant's claim

Based upon all these matters it is again respectfully submitted that those portions of the Hearing Commissioner's Decision and Order dated November 4 2009, precluding her from asserting her repetitive trauma claim (bilateral carpal tunnel syndrome) should be reversed and her carpal tunnel claims be remanded to the Hearing Commissioner for a determination on the merits in accordance with the Workers Compensation Act

Respectfully Submitted

Larry C Brandt
Attorney for Claimant
Larry C Brandt, P A
Post Office Box 738
Walhalla South Carolina 29691
Tel (864) 638-5406
Fax (864) 638-7873

By 
Larry C Brandt
Attorney for the Claimant

By 
Thad B Ball
Attorney for the Claimant

February 11 2011
Walhalla, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
S C WORKERS COMPENSATION COMMISSION

Appellate Panel Review

W C C File No 0722895

Donna McCall Employee,

Appellant,

v

Sandvik Incorporated Employer
and
Sentry Insurance Company Carrier,

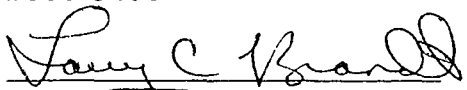
Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that ***Appellant's Reply Brief*** complies with
Rule 211(b), SCACR

Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla SC 29691
864/638-5406

February 11 2011

By 
Larry C Brandt Attorney

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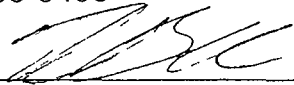
PROOF OF SERVICE
(APPELLANT'S
REPLY BRIEF)

I certify that I have served the ***Appellant's Reply Brief*** upon ***the Respondents*** by depositing a copy of it in the United States Mail postage prepaid, on ***FEBRUARY 18, 2011***, addressed as follows

Mr Grady L Beard
Sowell Gray Stepp & Laffitte, LLC
P O Box 11449
1310 Gadsden Street
Columbia SC 29211
Attorney for Respondents

Larry C Brandt P A
P O Box 738
3691 Blue Ridge Blvd
Walhalla SC 29691
864/638-5406

February 18 2011

By 
Thad B Ball Attorney

**THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD NOT BE CITED OR
RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE
268(d)(2), SCACR**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Donna L. McCall, Appellant

v

Sandvik Inc. and Sentry Insurance Company,
Respondents

Appeal from the Appellate Panel
South Carolina Workers' Compensation Commission

Unpublished Opinion No. 2012-UP-153
Heard December 6, 2011 – Filed March 7, 2012

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Larry C. Brandt, of Walhalla, for Appellant

Grady L. Beard, of Columbia for Respondents

PER CURIAM In this workers' compensation case Donna McCall appeals from the order of the Appellate Panel of the South Carolina Workers' Compensation Commission (Commission) affirming the single commissioner's finding that her claim for repetitive trauma injury (RTI) to her bilateral wrists was barred because she had failed to give timely notice pursuant to section 42-15-20 of the South Carolina Code. We affirm in part, reverse in part, and remand.

Initially, McCall contends the Commission erred in admitting into evidence the medical records of Dr. Felipe Amaya, a neurologist she consulted in 1999. McCall argues Dr. Amaya, at the time of the hearing, was "incompetent to testify as to any professional opinions" because his license to practice medicine had been permanently revoked and he was no longer licensed to practice in any state. Furthermore, McCall argues Dr. Amaya's records were inadmissible because section 42-1-172 of the South Carolina Code, which governs compensability of RTI, requires medical evidence "offered by a licensed and qualified physician."

The Commission used Dr. Amaya's records for the limited purpose of determining whether McCall's notice was timely under section 42-15-20. See S.C. Code Ann. § 1-23-330 (2005) (stating that while the rules of evidence do not apply in contested cases before the

Commission "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded") Section 42-1-172 was not invoked because the Commission did not reach the question of whether McCall's RTI was compensable. See Michau v Georgetown Cnty, Op No 27604 (S C Sup Ct refiled February 1, 2012) (Shearouse Adv Sh No 4 at 26). Consequently we find no error in the admission of Dr Amaya's records under the more relaxed admissibility provisions of section 1-23-330.

As to the timeliness of McCall's notice, there was no substantial evidence to support the Commission's finding that McCall "discovered or could have discovered her condition was compensable as early as 1999, when she was diagnosed with carpal tunnel syndrome." We disagree with the Commission's finding that Dr Amaya's letter of December 10, 1999 was sufficient to establish that McCall was "diagnosed" with her current condition—or, for that matter, that she was diagnosed with any condition. The December 10, 1999 letter from Dr Amaya to McCall's family physician was a general "assessment" at a time when McCall was seeking treatment for tremors and was not experiencing symptoms of carpal tunnel syndrome. Dr Amaya noted the absence of carpal tunnel syndrome symptoms as follows: "mild right [carpal tunnel syndrome] now without [symptoms]." Further, Dr Amaya did not notify McCall of his assessment of carpal tunnel syndrome. McCall continued to work until 2007, one year following her fall at work. She sought no medical treatment for the gradual development of pain in her arms and hands, and Dr David Rogers, who diagnosed McCall's carpal tunnel syndrome on November 29, 2007, was the first doctor who notified her that she had carpal tunnel syndrome.

Even had McCall been diagnosed with RTI in 1999, it was unclear at that time what notice, if any, she would have been obligated to provide. In 1999, the South Carolina Code contained no reference to RTI. Further, the common law had not yet determined whether RTI was an injury by accident, which required notice pursuant to section 42-15-20, or an occupational disease, which required notice within ninety days of disability. See Pee v AVM, Inc, 352 S C 167, 173, 573 S E 2d 785, 788 (2002) ("Whether a repetitive trauma injury is compensable either as an injury by accident or an occupational disease has not been squarely addressed by this Court."). Notably, in 2005, this court applied section 42-15-20 to a claimant's RTI and held "[n]otice begins to run when the employee becomes disabled and could discover with reasonable diligence his condition is compensable." Bass v Isochem, 365 S C 454, 481, 617 S E 2d 369, 383 (Ct App 2005) (emphases added).

Moreover, McCall's admission—"she knew the job caused the problems"—was insufficient to support the Commission's finding that she had reason to believe she had a "compensable" condition prior to either her carpal tunnel syndrome diagnosis on November 29, 2007, or her inability to work resulting from carpal tunnel syndrome. In 2007, the legislature added subsection (C) to section 42-15-20, effective July 1, 2007, which states, in pertinent part: "In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered or could have discovered by exercising reasonable diligence, that his condition is compensable." S C Code Ann § 42-15-20(C) (Supp 2011). This court interpreted subsection (C) in King v International Knife and Saw-Florence: "[A] work-related repetitive trauma injury does not become compensable, and the ninety-day reporting clock does not start, until the injured employee discovers or should discover he qualifies to receive benefits for medical care, treatment, or disability due to his condition." 395 S C 437, 444, 718 S E 2d 227, 231 (Ct App 2011). The court found a distinction existed between work-related aches and pains and a compensable condition.

[A] mere work-related ache does not constitute a compensable condition, regardless of whether the employee later develops an injury. The Act requires an injured employee to be diligent, not prescient. King's condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first.

Id. at 445, 718 S.E.2d at 231.

Therefore, McCall's obligation to provide notice under section 42-15-20(C) was triggered only after her RTI required medical care or interfered with her ability to perform her job—neither of which occurred prior to her diagnosis on November 29, 2007. Because McCall gave notice of her RTI on January 30, 2008—well within the ninety-day period required under section 42-15-20(C)—we reverse the Commission's conclusion that McCall failed to provide timely notice of her RTI and remand for a determination of compensability pursuant to section 42-1-172.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED

SHORT, WILLIAMS, and GEATHERS, JJ, concur

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Full Commission Appellate Panel Review

W C C File No 0722895

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PETITION FOR REHEARING

Grady L Beard Esquire
SOWELL GRAY STEPP & LAFFITTE LLC
1310 Gadsden Street
Post Office Box 11449
Columbia South Carolina 29211
(803) 929-1400
Attorney for Respondents

Other Counsel of Record

Larry C Brandt Esquire
Thad B Ball Esquire
LARRY C BRANDT PA
3691 Blue Ridge Boulevard
Walhalla South Carolina 29691
(864) 638 5406
Attorneys for Appellant

RECEIVED
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SC Court of Appeals

Respondents Sandvik Inc. and Sentry Insurance Company respectfully request the rehearing of Unpublished Opinion No. 2012 UP 153 wherein the Court of Appeals affirmed in part, reversed in part, and remanded the Decision and Order of the Workers Compensation Commission (Commission). The Court of Appeals has reversed the Order of the Commission on the basis that there was no substantial evidence to support the finding that the Appellant failed to provide timely notice of her repetitive trauma injury (RTI) and remanded the claim for a determination of compensability pursuant to Section 42.1-172. The Court cites as controlling authority precedent set forth in King v. International Knife and Saw-Florence, 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011) wherein the Court held [a] work-related repetitive trauma injury does not become compensable and the ninety-day reporting clock does not start until the injured employee discovers or should have discovered he qualifies to receive benefits for medical care, treatment, or disability due to his condition. King, 395 S.C. at 444, 718 S.E.2d at 231.

Respondents agree with this Court that per King, the Appellant's obligation to provide notice of her RTI is triggered only after her condition either require[s] medical treatment or interfere[s] with [her] ability to perform [her] job. Id. at 445, 718 S.E.2d at 231. However, Respondents now request this Court reconsider whether either of these requirements occurred prior to November 29, 2007, when the Appellant was diagnosed with carpal tunnel syndrome (CTS) by Dr. David Rogers. This Court mistakenly held this was the first date of diagnosis.

I SUBSTANTIAL EVIDENCE SUPPORTS CLAIMANT WAS DIAGNOSED WITH CTS PRIOR TO NOVEMBER 27, 2007

This Court held the December 10, 1999 letter from Dr. Felipe Amaya is insufficient to establish the Appellant was diagnosed with CTS. As rationale, this Court noted the letter constituted only an assessment of the Appellant's condition, not a diagnosis of CTS. In addition, this Court noted Dr. Amaya reported the Appellant was now without [symptoms]. Finally, this Court noted Dr. Amaya never notified the Appellant of the assessment of CTS.

To the contrary, the Respondents submit this Court has mistakenly relied upon the wrong letter from Dr. Ayama. The letter relied upon by this Court in its analysis is actually Dr. Amaya's letter dated November 30, 1999. (See R. at 767). In fact, on December 10, 1999, Dr. Amaya authored an actual handwritten report wherein he clearly diagnosed the Appellant with mild right CTS. (R. at 771). In a corresponding letter, Dr. Amaya diagnosed Appellant with right CTS, advised her to assume a light-duty job with no heavy lifting for six to eight weeks, and provided her with a right wrist splint to wear for six to eight weeks. (R. at 769). In fact, Dr. Jay Patel confirmed that Dr. Ayama had given this diagnosis and work restrictions during his deposition taken by Appellant's counsel. (R. at 522, ll. 12-24). Importantly, and contrary to holding of this Court, the Appellant does not deny receiving this diagnosis. (R. at 866, ll. 13-19 and 880, ll. 12-23). Accordingly, the Respondents submit a review of the actual letter and corresponding report from December 10, 1999, will reveal indisputable and substantial evidence that the Appellant was diagnosed with and notified of her CTS by Dr. Amaya in 1999.

Additionally and more importantly the Respondents contend this Court has also failed to consider several reports of Dr Charles Kanos and Dr Jay Patel from 2007 On August 29 2007 Dr Kanos reported the Appellant complained of numbness in both upper extremities with symmetrical involvement (R at 90) On September 19 2007 Dr Patel examined the Appellant after a referral by Dr Kanos and ultimately recommended the Appellant undergo an electrodiagnostic study of bilateral upper extremities (R at 97) On October 17 2007 104 days prior to the date of notice Dr Patel diagnosed the Appellant with bilateral moderate to severe CTS (R at 126)(emphasis added) Dr Patel restated his diagnosis on October 22 2007 99 days prior to the date of notice (R at 135)(emphasis added) As a side note Dr Patel is the partner of Dr Rogers whose report of November 29 2007 this Court placed great reliance

Finally the Respondents assert contrary to the apparent reasoning of this Court that a medical report from a licensed physician is sufficient to impute notice of the diagnosis contained therein To require otherwise is overly burdensome Regardless the Respondents note the Appellant was clearly notified of her assessment impression or diagnosis of CTS during the aforementioned office visits In Dr Amaya's letter dated December 10 1999 he notes Ms McCall was again advised to assume a light duty job if not complete rest anywhere from 6 8 weeks with no heavy lifting involved (R at 769) In addition Dr Patel indicated in the report from October 22 2007 that the Appellant presents to follow-up for EMG results and subsequently reports the findings of the EMG (R at 135) Respondents assert it is only appropriate to conclude the Appellant was notified of the reason for the light-duty restrictions as well as the results of the EMG - bilateral moderate to severe CTS

and as indicated above did not deny receiving such notification from Dr. Amaya (R. at 866-880)

In sum, substantial evidence supports the Appellant was diagnosed with and notified of her CTS on December 10, 1999, October 17, 2007, and/or October 22, 2007, each of which would independently suffice to trigger the Appellant's obligation to provide notice of her RTI within 90 days thereafter. It is well-established by our appellate courts that findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Cl. App. 1999); Hicks v. Piedmont Cold Storage, 335 S.C. 46, 515 S.E.2d 532 (1999); Medlin v. Upstate Plastic Serv., 329 S.C. 92, 495 S.E.2d 447 (1998). Based upon the aforementioned medical records of Dr. Amaya, Dr. Kanos, and Dr. Patel, the finding of the Commission with regard to the Appellant's failure to provide timely notice under Section 42-15-20 should be reinstated, as they provide substantial evidence to support the finding.

II. SUBSTANTIAL EVIDENCE SUPPORTS CLAIMANT'S CTS INTERFERED WITH HER JOB PERFORMANCE ON AND BEFORE AUGUST 29, 2007.

Substantial evidence also supports the Appellant's condition of CTS interfered with her ability to perform her job in 1999, but at the latest as of August 29, 2007, thereby triggering the statutory requirement stated by this Court to provide notice of her condition within 90 days. King, 395 S.C. at 444, 718 S.E.2d at 231. Importantly, this Court did not address in their Opinion the date on which the Appellant's disability from this condition began, but simply held the disability began within the 90-day statutory period for notice.

The Respondents now respectfully request this Court reconsider the date on which the Appellant's CTS caused interference with her job performance.

As referenced in Section I above, Dr. Amaya clearly diagnosed the Appellant with mild right CTS on December 10, 1999 (R. at 771). In a corresponding letter, Dr. Amaya reiterated the diagnosis of CTS, advised her to assume a light duty job with no heavy lifting for six to eight weeks, and provided her with a right wrist splint to wear for six to eight weeks (R. at 769) (emphasis added). Respondents assert Dr. Amaya's decision to place the Appellant under light-duty work restrictions constitutes substantial evidence that her CTS was interfering with the performance of her job as early as 1999.

Additionally, on August 29, 2007, Dr. Kanos reported the Appellant complained of numbness in both upper extremities with symmetrical involvement—the symptoms which were ultimately diagnosed as CTS by Dr. Patel (R. at 90). Dr. Kanos nonetheless removed the Appellant from work at that time (R. at 92). On October 17, 2007, Dr. Patel, Dr. Rogers' partner, diagnosed the Appellant with bilateral moderate to severe CTS and placed her under light duty work restrictions (R. at 126, 132, 135, 470). Moreover, on October 22, 2007, Dr. Patel noted he [doesn't] anticipate that she'll be able to return to operating the furnace again (R. at 144). Importantly, the Appellant testified that her repetitive use of her hands and fingers while operating the furnace caused her to experience numbness and fatigue in her fingers and hands (R. at 857).

Accordingly, Respondents submit these reports of Dr. Kanos and Dr. Patel provide indisputable and substantial evidence that the Appellant's CTS caused interference with the performance of her job no later than August 29, 2007, when the Appellant admitted she

could not return to work after her visit with Dr. Kanos on August 29, 2007, three months before the date cited by the Court in their opinion (R. at 19-30). As such, and pursuant to the analysis provided by this Court in King, the finding of the Commission that the Appellant failed to provide timely notice of her CTS is supported by substantial evidence in the record and therefore should be reinstated. Respondents would also respectfully note Appellant's last actual date of employment was August 23, 2007 (R. at 5, 19-30).

III KING IS INAPPLICABLE IN DETERMINING WHETHER CLAIMANT COULD HAVE DISCOVERED COMPENSABILITY BY EXERCISING REASONABLE DILIGENCE

Substantial evidence, particularly the unequivocal testimony of the Appellant, supports the finding of the Commission that the Appellant could have discovered, by exercising reasonable diligence, that her condition was compensable as early as December 10, 1999, when she was diagnosed with CTS by Dr. Amaya (R. at 771). Importantly, while this Court in King clearly delineated a test for assessing when a condition is compensable for the purposes of providing notice, this Court did not address when a claimant has failed to exercise reasonable diligence to discover compensability. Accordingly, the Respondents request this Court to reconsider, based upon a critical review of the testimony of the Appellant, whether the Appellant exercised reasonable diligence to discover the compensability of her condition.

Specifically, the Respondents direct this Court to the deposition testimony of the Appellant from April 21, 2009, wherein she confirmed her bilateral hand symptoms began during the first four years of her employment with Sandvik, which commenced in 1985, when she held the position of presser (R. p. 18-30). The Appellant testified she

subsequently switched positions however she nonetheless immediately began experiencing pain and numbing in her hands and fingers (R p 31) Importantly the Appellant confirmed these symptoms were similar to the symptoms she subsequently experienced in November of 2007 (Id.)

Furthermore the Appellant testified that after four years she switched to the position of etcher and performed this job for two years with constant pain in her hands and arms (Id.) The Appellant again verified that although her arm and hand symptoms worsened she never informed her employer of the problem (Id.) The Appellant's deposition testimony continued as follows

Q During the first ten years did you ever notify your supervisor that you were having any kind of hand or arm pain?

A No I didn't

Q And at any point during those ten years did you realize that the work you were doing at Valenite was causing the problem?

A Well I figured it did because of how many I had to pick up and I had to hold them so tight you know I knew it had to be you know with what I was doing But I never did say anything

Q Did you realize that work was causing the pain in your arms and hands?

A Yeah I knew it was but I just kept on working you know And I love my job and I didn't say anything I just I just kept working

Q Is that basically the truth for that entire 22 year period up until November 29 2007 from when you first started having pain in your arms back in the late 80s until 2007 you basically just continued to work with that pain that entire time - -

A Yeah

(Id.)

Additionally, the Appellant testified before the Hearing Commissioner as follows:

Q And in fact, in your second deposition given here recently on April 27, 2009, do you recall acknowledging that you thought - or you knew your work was causing those problem[s], but you just didn't tell anybody and you continued to do that job for 22 years?

A Yes. I felt like that.

Q And I'm quoting you never did say anything?

A No, sir.

Q And I'm quoting at page 21, you knew it had to be your job causing the problems, correct?

A I felt like it was.

Q You knew it had to be. That's what you said in your deposition.

A Yes.

Q Whether you thought you had an injury for your hands and arms the 22 years that you worked at the plant or not, you testified under oath at your deposition you knew your problems that were ongoing for 22 years were because of your job, correct?

A Yes.

Q And despite you never said a word to anybody at the plant for 22 years that you were having the problems and that you thought that were work related, correct?

A Right.

(R p. 864, lines 3-16; p. 883, line 22; p. 884, line 6)

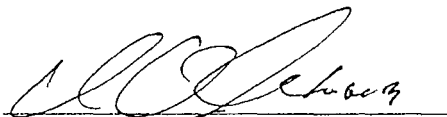
In sum, the Appellant unequivocally testified she experienced bilateral hand and arm problems for the duration of her employment. Moreover, she admitted she knew for over 20 years that her problems were caused by her employment, but she nonetheless failed to

inform her supervisors of the problems until January 30, 2008. This would certainly not equate with an injured employee being diligent. As such, the Respondents submit the Appellant's Hearing and deposition testimony constitutes substantial evidence to support the finding of the Commission that the Appellant failed to exercise reasonable diligence to discover the compensability of her condition. As there exists no evidence to the contrary, the presumed correct finding of the Commission should be reinstated by this Court. See Broughton, 336 S.C. at 496, 520 S.E.2d at 637.

CONCLUSION

Based upon the foregoing, the Respondents respectfully request the Court of Appeals to reconsider its Opinion affirming in part, reversing in part, and remanding the Decision and Order of the Workers' Compensation Commission on the basis that there was no substantial evidence to support the finding that the Appellant failed to provide timely notice of her repetitive trauma injury under Section 42-15-20.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Grady L. Beard', is written over a horizontal line.

Grady L. Beard
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorney for Respondents

Columbia, South Carolina

March 22, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Full Commission Appellate Panel Review

W C C File No 0722895

RECEIVED

MAR 22 2012

SC Court of Appeals

Donna L McCall Employee

Appellant

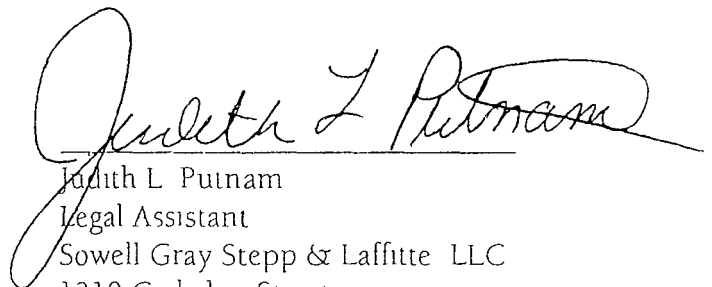
v

Sandvik Inc Employer and
Sentry Insurance Company Carrier

Respondents

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Donna L McCall by depositing a copy in the United States Mail postage prepaid on March 22 2012 addressed to her attorneys of record Larry C Brandt Esquire and Thad B Ball Esquire Larry C Brandt PA 3691 Blue Ridge Boulevard Walhalla SC 29691



Judith L Putnam

Legal Assistant

Sowell Gray Stepp & Laffitte LLC

1310 Gadsden Street

Post Office Box 11449

Columbia South Carolina 29211

(803) 929 1400

Attorneys for Respondents

March 22 2012

THE STATE OF SOUTH CAROLINA

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APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

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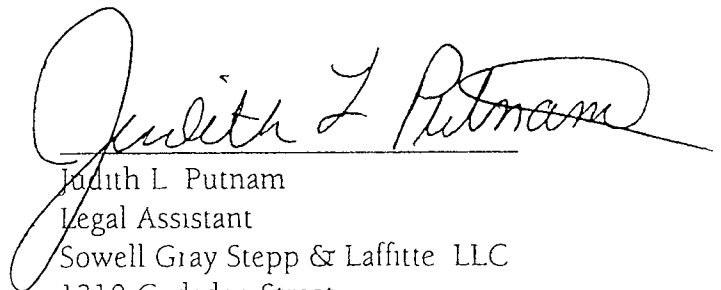
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Judith L Putnam
Legal Assistant
Sowell Gray Stepp & Laffitte LLC
1310 Gadsden Street
Post Office Box 11449
Columbia South Carolina 29211
(803) 929-1400
Attorneys for Respondents

March 22 2012

The South Carolina Court of Appeals

Donna L. McCall, Employee,

Appellant,

v

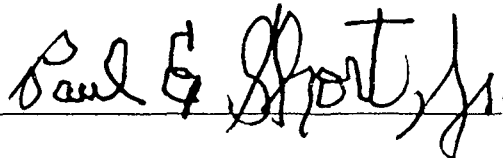
Sandvik, Inc., Employer, and Sentry
Insurance Company, Carrier,

Respondents

The Appellate Panel
South Carolina Workers' Compensation Commission
Trial Court Case No. 2006-WC 40-27287
2007-WC-40-22895

ORDER DENYING PETITION FOR REHEARING

PER CURIAM After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that 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. Short

 J. Williams

 J. Geathers

FILED

3 May 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Review

Unpublished Opinion No 2012-UP-153 (S C Ct App Filed Mar 7, 2012)

Donna L McCall, Employee,

Respondent,

v

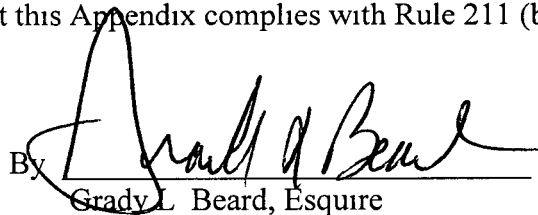
Sandvik, Inc , Employer, and
Sentry Insurance Company, Carrier,

Petitioners

CERTIFICATE OF COUNSEL

The undersigned certified that this Appendix complies with Rule 211 (b), SCACR

By



Grady L. Beard, Esquire

Nicolas L Haigler, Esquire

SOWELL GRAY STEPP & LAFFITTE, LLC

1310 Gadsden Street

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Petitioners

June 4, 2012