

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1101678

Appellate Case No.: 2013-001499

Sean Daley, Employee-Claimant, Appellant,

v.

Chapman Mechanical, LLC, Employer, and Stonewood Insurance Company,
Carrier, Defendants, Respondents

RECORD ON APPEAL

Volume 1 of 2

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1101678

SEAN DALEY,
Employee,
Claimant,

vs.

CHAPMAN MECHANICAL, LLC,
Employer,

STONEWOOD INSURANCE COMPANY,
Carrier,

Defendants.

CONSENT ORDER

This matter was scheduled for hearing before the undersigned in Greenville on September 16, 2011 pursuant to Forms 50 and 51.

APPEARANCES:

Claimant: Jeffrey D. Ezell, Ezell Law Firm, LLC, Greenville, South Carolina,
Counsel of Record.

Defendant: Steven M. Rudisill, Rudisill, White & Kaplan, P.L.L.C., Charlotte, North
Carolina, Counsel of Record.

Prior to the scheduled hearing, counsel for the parties informed the undersigned that they had come to an agreement to resolve the issues pending for hearing. Claimant contends that he has been temporarily totally disabled from April 25, 2011 and continuing. Defendants contend that claimant has not been so disabled and deny that he is entitled to compensation for any such disability. The parties have reached an agreement whereby defendants will pay, and claimant will accept, \$6,000.00 in compromise of all accrued temporary total disability compensation from April 25, 2011 through September 18, 2011, and whereby effective September 19, 2011, defendants will pay to claimant compensation for temporary total disability at the compensation rate of \$419.83 (based upon an average weekly wage of \$629.71), said compensation payments to continue pending further agreement of the parties or order of the Commission. The parties further agree that all other issues raised pursuant to the Forms 50 and 51 are held in abeyance. In light of the parties' agreement on these issues, they have requested that the hearing scheduled for September 16, 2011 be cancelled, and that this file be returned to the Commission's general

files pending any further requests for hearing by either party.

IT IS THEREFORE ORDERED, that defendants shall pay to claimant the total sum of SIX THOUSAND AND 00/100 DOLLARS (\$6,000.00) in compromise of claimant's claim for temporary total disability compensation from April 25, 2011 through September 18, 2011.

IT IS FURTHER ORDERED that defendants shall pay to claimant compensation for temporary total disability, at the rate of FOUR HUNDRED NINETEEN AND 83/100 DOLLARS (\$419.83), beginning September 19, 2011 and continuing until further agreement of the parties or order of this Commission.

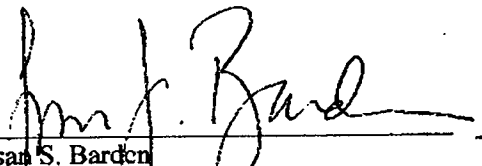
IT IS FURTHER ORDERED that all other issues raised pursuant to Forms 50 and 51 are held in abeyance.

IT IS FURTHER ORDERED that the hearing scheduled for September 16, 2011 is hereby cancelled, and that this file is returned to the Commission's general files pending further requests for hearing by either party.

No hearing costs are assessed.

Fee Subject to Form 61

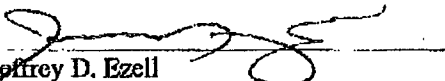
Date: September 20, 2011


Susan S. Barden
CERTIFICATE OF SERVICE

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

WE CONSENT:

By Kristi L. Love on September 20, 2011


Jeffrey D. Ezell
Attorney for Claimant


Steven M. Rudisill
Attorney for Defendants

DECISION AND ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NO. 1101678

SEAN DALEY, CLAIMANT,

vs.

CHAPMAN MECHANICAL, LLC, EMPLOYER,

AND

STONEWOOD INSURANCE COMPANY, CARRIER,

DEFENDANTS.

Hearing: Held in St. Matthews, South Carolina on June 14, 2012.

Appearances: Claimant was represented by Jeffrey D. Ezell, Esquire, Greenville, South Carolina.

Defendants were represented by Steven M. Rudisill, Esquire, of Rudisill, White & Kaplan, P.L.L.C., Charlotte, North Carolina.

Purpose of Hearing: To determine issues as set forth on the Form 21, and Forms 50 and 51.

Decision and Order: By Commissioner Avery B. Wilkerson

Filed: December 5, 2012

I. ADMINISTRATIVE PROCEDURES ACT SUBMISSIONS
(Including supplements)

DEFENDANTS' EVIDENCE

APA#	NAME OF REPORT(S)/PHYSICIANS OR OTHER EVIDENCE	DATES OF REPORT(S)	PAGE NUMBERS
1.	Greenville Hospital System	9/24/03 - 3/2/11	1 - 55
2.	New Horizon Family Health Services, Inc.	10/25/10 - 2/18/11	56 - 65
3.	Henderson County (NC) Emergency Medical Services (Ambulance run report)	2/9/11	66 - 70
4.	Pardee Urgent Care	2/9/11	71 - 74
5.	Pardee Hospital	2/9/11	75 - 91
6.	Melvin E. Porter, M.D. of Westside Medical Center	3/8/11	92 - 93
7.	Dr. Timothy McHenry	3/16/11 - 11/11/11	94 - 105
8.	Robert LeBlond, M.D. of University Medical Group	4/13/11 - 12/21/11	106 - 122
9.	Greenville Proaxis Therapy	6/9/11-7/14/11	123 - 149
10.	Elite Physical Therapy Functional Capacity Evaluation	12/15/11	150 -158
11.	Carol S. Powers, RN/ Carolina Case Management and Rehabilitation Services, Inc.	3/4/11-1/9/12	159 - 202

DEFENDANTS' SUPPLEMENTAL EVIDENCE

APA#	NAME OF REPORT(S)/PHYSICIANS OR OTHER EVIDENCE	DATES OF REPORT(S)	PAGE NUMBERS
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18.	Robert LeBlond, M.D./Upstate Rehabilitation	1/20/12-4/16/12	254-263
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CLAIMANT'S EVIDENCE

APA#	NAME OF REPORT(S)/PHYSICIANS OR OTHER EVIDENCE	DATES OF REPORT(S)	PAGE NUMBERS
12.	Dr. Patrick Mullen	6/30/11	203-206
13.	Dr. Robert LeBlond	7/21/11-12/22/11	207-213
14.	Dr. Robert Brabham	1/16/12	214-224
15.	Dr. Walter Grady	1/19/12	225-231
Exhibit 1	Photographs of Claimant's back - post injury		Pages 1 - 5
Exhibit 2	Photographs of "light duty" work area		Pages 1 - 5
Exhibit 3	Photographs of five-gallon bucket used for seating		Page 1
Exhibit 4	Photograph of "lawn chair" provided		Page 1
Exhibit 5	Email to Carol Powers re light duty work		Page 1
Exhibit 6	Excerpts from Personnel File Accident Report completed by Chad Cox		Pages 1 - 2
Exhibit 7	Obituary of Jack Wilson Wagner		Page 1
Exhibit 8	Webster's Definition of Sedentary		Page 1
Exhibit 9	OSHA Safety Guidelines - Fall Protection		Pages 1 - 54
Exhibit 10	Report of Proaxis Therapy -07/14/11		Page 1
Exhibit 11	Chapman Mechanical Employment Handbook		
Exhibit 12	Recorded Statement of Zaire Meyers		

II. STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the issue set forth in Forms 50 and 51 and Form 21, and any other issues which may timely come before this Commission.
2. Notice of the hearing was timely and properly served on all parties of interest.
3. Venue, set in Calhoun County, was proper.
4. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an injury occurring while in the employment of the Defendant-Employer, and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case.
5. The Claimant's average weekly wage is \$629.71, yielding a compensation rate of \$419.83.

III. STATEMENT OF THE CASE

This case was originally set for hearing on February 7, 2012 in Greenville. The final hearing date was June 14, 2012 in St. Matthews. This case was set to determine issues on both Forms 50/51 and Form 21.

The undersigned had previously issued an Order regarding a Motion of Objection to a Psychiatric Evaluation in North Carolina following Defendants' scheduling of the psychiatric evaluation of Claimant by Dr. Thomas Gualtieri. A telephonic hearing was held on these matters on March 13, 2012. It was ruled that the Defendants were entitled to have an independent medical examination to be performed by Dr. C. Thomas Gualtieri.

There originally was an allegation of a closed head injury, which was ostensibly dropped by the time of the hearing.

At the hearing, the defense took the position that the psychological overlay claim should be denied, and that Claimant sustained a contusion to the back which occurred on top of preexisting medical problems that Claimant had had with his lower back, and for which he had received treatment within just a few months prior to the date of the accident. The defense further averred that the Claimant was still requiring medication from his treating physician for those preexisting problems at the time of his injury.

Claimant took the position that he sustained a significant injury on February 9, 2011, when he fell off a eight foot ladder, and landed on his right side on a piece of four-inch PVC pipe that was cemented into the ground sticking up about two and one-half feet from the ground.

Claimant's counsel further averred that Claimant was never provided with adequate light duty and was mistreated by the employer in terms of the return to work situation and his ultimate termination. Defense counsel took the position that this was irrelevant to this claim.

The defense further took the position that this is a single member injury to the back, whereas Claimant's position was that Claimant has pain in his hips radiating into his lower extremities, in addition to psychological overlay.

II. EVIDENCE OF THE CASE

A. CLAIMANT'S TESTIMONY

Claimant's date of birth is June 16, 1976. He testified that he had no issues regarding his back which prevented him from doing his job as a commercial plumber prior to the accident at issue. (Hearing Transcript, page 37). When he was asked did he ever miss any time from work because of his back, he responded "Maybe for a doctor's appointment, but that was not a full day." (*Id.*).

Claimant testified that he finished high school, where he made B's and C's. (Hearing Transcript, page 38).

Claimant contended that on the date of the accident, the ladder on which he was working came out from underneath him, and he fell on a piece of four-inch PVC pipe. (Hearing Transcript, Page 42).

Following his accident, he was treated at Greenville Memorial Hospital. Subsequently, after having been released by Dr. McHenry, an orthopaedist, he was referred for pain management by Dr. LeBlond, who then became his primary treating physician. (Hearing Transcript, pages 47-48).

After his accident, Claimant was out of work for two or three days, and then returned to work in the office of the employer. After that, he was sent to a commercial job site. (Hearing Transcript, page 48-49). There, he was doing inventory, which basically consisted of counting parts. (Hearing Transcript, page 49).

During this job, he initially was provided with a five-gallon inverted bucket to sit on. He claimed that it made his legs hurt. Then, he was provided with a folding lawn chair. He stated that this also made his legs hurt. (Hearing Transcript, page 52).

Claimant testified that he was then put to work in a "Connex" where he claimed to have had to lift over 15 pounds on his own at times. (Hearing Transcript, page 52).

Ultimately, the Claimant was terminated, and testified that was not told why he was fired. (Hearing Transcript, page 56).

As to his physical ailments, Claimant complained of problems with his hips and buttocks, as well as spasms and pain in his lower back. He further testified to pain in both legs. (Hearing Transcript, page 56). He claimed that he can stand and sit for 45 minutes at a time. (Hearing Transcript, page 57).

Claimant did admit that prior to the accident at issue, he had pain that radiated into his right lower extremity. (Hearing Transcript, page 59).

He testified that he presently still has some Zanaflex left, a muscle relaxer that does not really help him. The only other thing he takes is Tylenol. (Hearing Transcript, page 61).

He testified that he has depression and anxiety because of the accident. (Hearing Transcript, pages 63-66).

Claimant further testified to living a basically sedentary lifestyle.

On cross-examination, Claimant testified that he is no longer under Dr. LeBlond's care. Claimant testified that the last time he saw Dr. LeBlond or his assistant was on April 12, 2012. He testified that he was dismissed because of a urinalysis test, because he was mixing Lortab with Percocet. (Hearing Transcript, page 77). He had been prescribed Lortab by a physician prior to the accident at issue, and was, in fact, continuing to take Lortab up until the time of the accident at issue. (Hearing Transcript, page 78). He also was contemporaneously taking Mobic and Flexeril.

He further admitted that on October 20, 2010, he went to Greenville Memorial Hospital for back pain. When asked about Page 24 of the A.P.A. Submissions, specifically "Patient complains of pain to middle back, lower back, pain described as aching, pain is continuous, on a scale of zero to ten patient rates pain as eight," Claimant stated that he would not disagree with that assessment. When asked about page 56 of A.P.A. Submissions, the Claimant admitted that as of October 25, 2010, he had been having low back pain for four years, and that it had worsened over the past three years following a foot surgery. (Hearing Transcript, page 80).

When asked about the same medical report (A.P.A. page 56), he denied having told the physician that he had occasional tingling in both thighs, even though that is what the report clearly states.

Claimant denied that in November of 2010 he was having bilateral leg pain, even though the MRI report of November 19, 2010 does reflect bilateral leg pain. (A.P.A. page 62; Hearing Transcript, page 83).

When cross-examined about his testimony on direct examination that he had gained 50 pounds since the date of the accident, Claimant adamantly disagreed with the medical report which reflected his weight as being 210 pounds at that time. (A.P.A. page 85). He took exception to this, asserting that "I was very astute about my weight. I have - I have never been over 200 pounds in my life until after I fell off that ladder." (A.P.A. page 71; Hearing Transcript,

page 85). When he saw Dr. McHenry nine months after his injury, he had lost weight (A.P.A. page 103).

Claimant denied recollection of completing a questionnaire for Dr. McHenry, his orthopaedist, which reflected that he did not have nervousness, depression or other problems under the category of mental and emotional health. (A.P.A. page 98; Hearing Transcript, page 87). He did admit that he never talked to Dr. LeBlond about having any psychological or psychiatric problems up to the point that his attorney sent him to a psychiatrist (*Id.*).

Claimant candidly admitted that he has not looked for work after Dr. LeBlond released him with the restrictions that he placed upon him in November of 2011, because his attorney had requested that he not do so. (Hearing Transcript, page 93). Claimant flatly disagreed with the Functional Capacities Evaluation which stated that he was capable of sitting and standing constantly; climbing ladders frequently; occasionally squatting; kneeling; crawling; and engaging in repetitive lumbar bending. He qualified this answer by saying that "occasionally, yes, but as far as frequently, if I have to climb a ladder every day, no." (A.P.A. page 158; Hearing Transcript, page 95).

When asked about computer skills, he admitted to being able to surf the web and to having a computer at home. He then claimed to not have access to the Internet on his home computer. (Hearing Transcript, pages 97-98).

B. MEDICAL EVIDENCE

The A.P.A Submissions reveal a history of long-standing back pain prior to the Claimant's injury of February 9, 2011.

On October 20, 2010, Claimant reported to North Greenville Hospital. At the time, he was complaining of middle and lower back pain, which was aching and continuous. On a scale of zero-ten, Claimant rated the pain as an eight. (A.P.A. page 24). At that time, he was given prescriptions for Prednisone and Lortab.

Just five days later, on October 25, 2010, the Claimant presented to New Horizon Family Health Services with lower back pain that had lasted four years, and had been getting worse over the past three years since having had foot surgery. At the time, he was having occasional tingling in both thighs as well. (A.P.A. page 56).

On October 28, 2010, Claimant had a series of x-rays at Greenville Hospital System. The history noted "34 year old with low back pain for several years, worse with lifting."

On November 10, 2010, the Claimant went to New Horizon once again. This history revealed that "he works as a plumber [times] three months. He needs to find out the reasons for his back pain." The previously mentioned x-ray was interpreted as revealing a "vertebra which is partially sacralized on the right and appears to articulate with the upper sacrum." He was prescribed Lortab at that visit. (A.P.A. page 61).

Subsequently, on November 19, 2010, an MRI was performed. It revealed "a rather focal posterior central disk extrusion at the L4-5 level of the lumbar spine." The L-5 level was "partially sacralized on the right and partially lumbarized on the left." (A.P.A. page 62).

Then, on December 8, 2010, shortly before the accident of February 9, 2011, the Claimant went to New Horizon and was again prescribed Lortab and Medrol Dose Pack. That note also contains a parenthetical mention of what appears to be an "orthopaedist," although no explanation of this is given. (A.P.A. page 63).

After this, Mr. Daley had a no-show at New Horizon on January 25, 2011, which was very close to the injury date at issue, which is February 9, 2011. (A.P.A. page 64).

On the date of his accident, Claimant was attended by Henderson (N.C.) County EMS, with a recorded weight of 200 pounds. The level of care was rated as "non-emergency." (A.P.A. page 66). He conveyed a past medical history of back problems to EMS. (A.P.A. page 67).

The Claimant was taken by EMS to Pardee Urgent Care, where he conveyed his current medications as being Lortab, Mobic, and Flexeril. (A.P.A. page 71).

After that, he was attended at Margaret R. Pardee Hospital on his injury date, where he reported being on the same three medications. (A.P.A. page 83).

On February 10, 2011, the day after his accident, Claimant again presented to North Greenville Hospital, where it was recorded that he had a "History of musculoskeletal disorder, history of back pain (chronic) which is posttraumatic in etiology." (A.P.A. page 27). On that date he rated his symptoms as "moderate." (A.P.A. page 28). Significantly, it was also noted "patient gets #30 Lortab to take one pill a day at bedtime for chronic back pain every month from Dr. Li."

(A.P.A. page 29).

On March 2, 2011, the Claimant again went to North Greenville Hospital. He was ambulating normally despite the fact that at the hearing he was using a cane. At the hospital, he was ambulating slowly, but without assistance. On this date, Claimant stated that Mobic and Flexeril did not help so he stopped taking them "over two weeks ago." (A.P.A. page 52).

Although Claimant complained of pain in his hips, a pelvic MRI dated February 9, 2011 revealed no significant pelvic free fluid, and no visible fracture. (A.P.A. page 86).

On March 8, 2011, Claimant presented to Westside Medical Center. He was diagnosed with a back strain. The history given there was that he previously had a herniated disc in his lumbosacral spine which bothered him some before the accident. (A.P.A. page 92).

When Claimant saw Dr. McHenry on March 16, 2011, it was noted, "He has been treated before for low back pain and was started on narcotic pain medication by Dr. Li in one of the Greenville Clinics last Fall." (A.P.A. page 100).

On March 16, 2011, Dr. McHenry, the treating orthopaedist, opined that Claimant was non-surgical and sent him for pain management.

On November 11, 2011, Dr. McHenry noted no history of weight change. At the time, the patient was getting married and going on a honeymoon to Myrtle Beach for a week. (A.P.A. pages 103-104).

After Dr. McHenry, Claimant began treating with Dr. LeBlond, a pain management specialist. Dr. LeBlond placed Claimant at maximum medical improvement on November 21, 2011. At that time, he assessed a 6% impairment to the whole person for the lumbar spine. (A.P.A. page 119-120).

On December 21, 2011, Claimant again saw Dr. LeBlond. The notes read, in part, "He is coping fairly well. He has not returned to his job with plumbing as they let him go/the company closed." (A.P.A. page 121).

Claimant underwent a Functional Capacity Evaluation by Elite Physical Therapy on December 15, 2011, per the instructions of Dr. LeBlond.

The summary of the Functional Capacity Evaluation reads as follows:

Mr. Daley achieved a PDC level of light with a floor to waist lift of 15 pounds. Mr. Daley demonstrated the ability to perform the following activities at a constant level: sitting, standing. The following activities were demonstrated at frequent level: ladder climbing, transfers. The following activities were demonstrated at an occasional level: squatting, kneeling, crawling, overhead activity, standing truck rotation, walking, repetitive lumbar flexion. (A.P.A. page 158).

Despite Claimant's testimony of leading a sedentary lifestyle, the Functional Capacity Evaluation noted no muscle atrophy. (A.P.A. page 153). He also was moving within normal limits, although he used a cane, which no physician had prescribed, at the hearing. (Id. Hearing Transcript page 93).

It is noted that on December 21, 2011, Dr. LeBlond basically agreed with the FCE limitations. (A.P.A. page 121)

At the behest of his counsel, Claimant saw Dr. Patrick Mullen, a psychiatrist, on June 30, 2011. Dr. Mullen noted that the patient's "intelligence is very good." (A.P.A. pages 203-204). Although he is psychiatrist, as opposed to an orthopaedist, Dr. Mullen opined that "He needs to stay off work and not strain his back." (A.P.A. page 206). Nowhere in his report did Dr. Mullen indicate that depression, in his opinion, was keeping Claimant out of work.

Claimant, at the behest of his attorney, saw Dr. Robert Brabham on January 17, 2012. On this date, Claimant stated "On most days, he gets up at about 6:30 a.m. and is able to handle his basic personal grooming and toilet needs without assistance." (A.P.A. page 215). This appears inconsistent with his report to Dr. Mullen that "He does not bathe every day. He said this is because of both his depression and the fact that it hurts him to get in and out of the bath tub." (A.P.A. page 204).

Dr. Brabham's report indicated a reading level of a 12.2 grade school level. His arithmetic standard score reflected an 8th grade level. His spelling was at a 9.6 grade level. The Beck Depression Inventory and Beck Anxiety Inventory, which, via judicial notice, both are self-reporting tests, revealed only a moderate level of depression and a mild level of anxiety. (A.P.A. page 271).

Dr. Brabham emphasized limitations on sitting and standing, even though the Functional Capacity Evaluation states that he could do each constantly.

On January 19, 2012, the Claimant, at the behest of his counsel, obtained a rating of 26% impairment to the lumbar spine by Dr. Walter Grady, an osteopath. (A.P.A. page 231).

Defense counsel was allowed to submit supplemental A.P.A. Submissions. Dr. Gualtieri has an extensive resume and has written many Journal articles. He opined that Claimant "is a bit depressed" (A.P.A. page 232). Although he told Dr. Gualtieri that "He hopes to go back to school to acquire new job skills," as previously recited. Claimant testified at the hearing that his attorney requested of him not to seek any work at the present time. (A.P.A. page 233). Even though the rest of the record of evidence indicates that Claimant has little or no computer skills, he for some reason told Dr. Gualtieri that he would like to investigate the "I.T. field." (*Id.*). Dr. Gualtieri detected a premorbid Attention Deficit Disorder. Dr. Gualtieri concluded that he did not anticipate any persistent neuropsychiatric difficulties or disabilities related to the events of February, 2011. (A.P.A. page 238).

With the concurrence of Claimant's counsel and with leave of the undersigned, on June 22, 2012 Defense counsel submitted a second Supplemental A.P.A. Submission, consisting of updated records of Dr. LeBlond. They included some records from Greenville Memorial Hospital. The records confirm that the physician discharged Claimant from his care due to medication non-compliance. (A.P.A. page 262).

II. FINDINGS OF FACT

Based upon the above and careful consideration of the record as a whole, the undersigned issues the following Finds of Fact:

1. Claimant's average weekly wage is \$629.71, with a corresponding compensation rate of \$419.83.

2. A Consent Order was filed by Commissioner Susan S. Barden on September 20, 2011. The average weekly wage and compensation rate, as well as the start date of temporary total disability compensation, were established pursuant to said Order.

3. A Form 21 was filed on December 21, 2011, with a hearing date in February. The hearing was postponed for psychiatric evaluation to be performed by the physician of Defendants' choosing. This examination was performed by Dr. Thomas Gualtieri.

4. The directives for this Order were sent to the parties on Sunday, July 22, 2012 at 11:36 a.m.

5. The original hearing date for this case was February 7, 2012 in Greenville, South Carolina. The final hearing date was June 14, 2012 in St. Matthews, South Carolina. This case was heard on both the Forms 50/51 and Form 21.

6. Any employment-law related matters are not properly before this Commission.

7. According to Exhibit Six submitted by Claimant's counsel, "Sean fell off an eight-foot ladder while soldering, he fell back on his back landed on a four inch PVC pipe coming out of the floor. (Right hand side)." Exhibit Six also notes that no safety procedures were violated. It further notes that it was hard to maneuver the ladder where the Claimant was working, or put it at its proper height. This document is a supervisory accident report dated February 9, 2011.

8. The Claimant was discharged by Dr. LeBlond and his assistant on April 13, 2012 due to a drug test demonstrating noncompliance.

9. A.P.A. Exhibit 262 reveals that Claimant was discharged for noncompliance with clinical office policy, and was called by Dr. LeBlonds office on April 16, 2012 to inform him of this.

10. Neither Dr. Mullen nor Dr. Gualtieri found the Claimant to be disabled by any psychological injury. Dr. Gualtieri opined the Claimant was only “a bit” depressed, and Dr. Gualtieri did not anticipate any persistent neuropsychiatric difficulties or disabilities related to the events of February 2011. (A.P.A. page 238).

11. The restrictions noted in the Functional Capacities Evaluation were adopted by Dr. LeBlond, as recited above. This places the Claimant in the light duty category. This contradicts Dr. Brabham’s conclusions about the Claimant’s ability to work.

12. The Claimant had prior back problems for several years before this injury. In fact, he had back problems for which he sought medical care in October, November, and December of 2010, with approximately the same pain level as post-accident, mainly involving the lower back.

13. This is a single member claim pursuant to Singleton v. Young Lumber Co., 236 S.C. 471, 114 S.E. 2d 845 (1961). Any contended radiculopathy emanates from the back, and there is no independent injury to the hips, buttocks, or lower extremities. The evidence submitted as to psychological overlay is too underwhelming to merit an award for same. Claimant never even mentioned depression or anxiety until his counsel sent him to Dr. Patrick Mullen. This was not until June 30, 2011, well after the injury. Furthermore, there is inadequate evidence to support any physical injury to the brain. At the initial hospital visit after the

accident, the head was deemed to be atraumatic. A normal cephalic observation was made. At that time, the Claimant was "Oriented [times] three with a normal affect." (A.P.A. page 23).

14. The hospital report of October 25, 2010 related a history of low back pain of four years with occasional tingling in both thighs. Further, on November 10, 2010, it was reported to Claimant's family physician that "he works as a plumber and he is out of work [times] three months. He needs to find out the reason for his back pain." On February 9, 2011, the date of the accident, he reported to Urgent Care that his current medications were Lortab, Mobic, and Flexeril.

15. On the initial questionnaire completed by Claimant for Dr. McHenry, he denied any problems with mental or emotional health. This also goes to the finding that Claimant had no psychological overlay as a sequela to this injury. The date of this questionnaire is March 16, 2011 (A.P.A., pages 95-99). Additionally, an MRI dated July 12, 2011 indicated disc degeneration at the L5-S1 level. Dr. McHenry determined that the Claimant was non-surgical. (A.P.A. page 101).

16. Dr. LeBlond released the Claimant with a 6% whole person rating to the spine with restrictions pursuant to the Functional Capacity Evaluation, which places Claimant at the light duty level. The restrictions were no lifting to the waist above 15 pounds; occasional level squatting, kneeling, crawling, overhead activity, and standing truck rotations, walking, and repetitive lumbar flexion. He was deemed to be able to sit and stand at a constant level. (A.P.A. pages 158; 213).

17. Claimant has not looked for work after being released by Dr. LeBlond. In fact, Claimant testified that his attorney requested him not to look for employment at the present time.

Although Claimant testified to some problems with driving, he drove to the hearing from Greenville to St. Matthews, a distance of approximately 130 miles one-way.

18. The photographs submitted by Claimant at hearing were properly submitted. Employer did not treat Claimant properly and fairly while he was on light duty.

19. The Claimant worked other jobs for cash while employed with Chapman Mechanical.

20. Based on the preponderance of the evidence presented, the undersigned finds that Claimant reached maximum medical improvement on the date of the filing of the Form 21, which is December 21, 2011. The Defendants provided all proper and adequate medical treatment. Claimant was noncompliant with same.

21. Claimant sustained a 20% permanent partial disability to his back.

III. CONCLUSIONS OF LAW

1. "Jurisdiction" is governed by S.C. Code § 42-1-130 and 42-1-140.
2. "Average weekly wage" is governed by S.C. Code § 42-1-40.
3. "Medical treatment" is governed by S.C. Code § 42-15-60.
4. Permanent partial disability in this case is governed by S.C. Code § 42-9-30; see also Singleton, (cited supra).

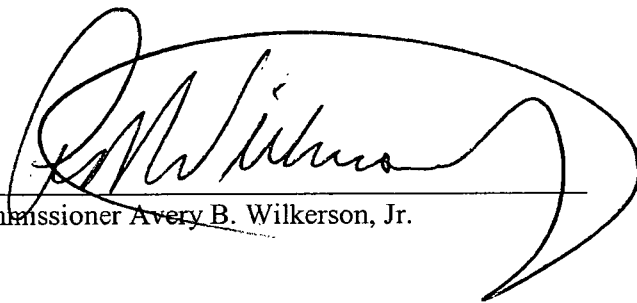
IV. AWARD

IT IS THEREFORE ORDERED, that Claimant be awarded a 20% permanent partial disability to the back, which commutes to 59.307 weeks, yielding an award of \$24,896.63.

Defendants are entitled to credit for all compensation paid to Claimant subsequent to December 21, 2011. The rest of this claim is denied in its' entirety.

No hearing costs are assessed in this instance.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
December 5, 2012

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION

STATE OF SOUTH CAROLINA

WCC FILE NO.: 1101678

SEAN DALEY, EMPLOYEE-CLAIMANT,

vs.

CHAPMAN MECHANICAL, LLC, EMPLOYER,

AND

STONEWOOD INSURANCE COMPANY, CARRIER,

DEFENDANTS.

Appellate Panel Review: Held in Columbia, South Carolina on April 15, 2013.

Appearances: Claimant represented by Jeffrey D. Ezell, Esquire,
Greenville, South Carolina.

Defendants represented by Steven M. Rudisill, Esquire, of
Rudisill, White & Kaplan, P.L.L.C., Charlotte, North
Carolina.

Appellate Panel Decision and Order filed:

6/14/13

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr. in St. Matthews on June 14, 2012. On December 5, 2012, he issued the following Order:

It is therefore ordered that Claimant be awarded a 20% permanent partial disability to the back, which commutes to 59.307 weeks, yielding an award of \$24,896.63. Defendants are entitled to credit for all compensation paid to Claimant subsequent to December 21, 2011. The rest of this claim is denied in its' entirety.

In his December 5, 2012 Decision and Order, Commissioner Wilkerson made the following:

FINDINGS OF FACT:

1. Claimant's average weekly wage is \$629.71, with a corresponding compensation rate of \$419.83.
2. A Consent Order was filed by Commissioner Susan S. Barden on September 20, 2011. The average weekly wage and compensation rate, as well as the start date of temporary total disability compensation, were established pursuant to said Order.
3. A Form 21 was filed on December 21, 2011, with a hearing date in February. The hearing was postponed for psychiatric evaluation to be performed by the physician of Defendants' choosing. This examination was performed by Dr. Thomas Gualtieri.
4. The directives for this Order were sent to the parties on Sunday, July 22, 2012 at 11:36 a.m.
5. The original hearing date for this case was February 7, 2012 in Greenville, South Carolina. The final hearing date was June 14, 2012 in St. Matthews, South Carolina. This case was heard on both the Forms 50/51 and Form 21.

6. Any employment-law related matters are not properly before this Commission.

7. According to Exhibit Six submitted by Claimant's counsel, "Sean fell off an eight-foot ladder while soldering, he fell back on his back landed on a four inch PVC pipe coming out of the floor. (Right hand side)." Exhibit Six also notes that no safety procedures were violated. It further notes that it was hard to maneuver the ladder where the Claimant was working, or put it at its proper height. This document is a supervisory accident report dated February 9, 2011.

8. The Claimant was discharged by Dr. LeBlond and his assistant on April 13, 2012 due to a drug test demonstrating noncompliance.

9. A.P.A. Exhibit 262 reveals that Claimant was discharged for noncompliance with clinical office policy, and was called by Dr. LeBlonds office on April 16, 2012 to inform him of this.

10. Neither Dr. Mullen nor Dr. Gualtieri found the Claimant to be disabled by any psychological injury. Dr. Gualtieri opined the Claimant was only "a bit" depressed, and Dr. Gualtieri did not anticipate any persistent neuropsychiatric difficulties or disabilities related to the events of February 2011. (A.P.A. page 238).

11. The restrictions noted in the Functional Capacities Evaluation were adopted by Dr. LeBlond, as recited above. This places the Claimant in the light duty category. This contradicts Dr. Brabham's conclusions about the Claimant's ability to work.

12. The Claimant had prior back problems for several years before this injury. In fact, he had back problems for which he sought medical care in October, November, and

December of 2010, with approximately the same pain level as post-accident, mainly involving the lower back.

13. This is a single member claim pursuant to Singleton v. Young Lumber Co., 236 S.C. 471, 114 S.E. 2d 845 (1961). Any contended radiculopathy emanates from the back, and there is no independent injury to the hips, buttocks, or lower extremities. The evidence submitted as to psychological overlay is too underwhelming to merit an award for same. Claimant never even mentioned depression or anxiety until his counsel sent him to Dr. Patrick Mullen. This was not until June 30, 2011, well after the injury. Furthermore, there is inadequate evidence to support any physical injury to the brain. At the initial hospital visit after the accident, the head was deemed to be atraumatic. A normal cephalic observation was made. At that time, the Claimant was "Oriented [times] three with a normal affect." (A.P.A. page 23).

14. The hospital report of October 25, 2010 related a history of low back pain of four years with occasional tingling in both thighs. Further, on November 10, 2010, it was reported to Claimant's family physician that "he works as a plumber and he is out of work [times] three months. He needs to find out the reason for his back pain." On February 9, 2011, the date of the accident, he reported to Urgent Care that his current medications were Lortab, Mobic, and Flexeril.

15. On the initial questionnaire completed by Claimant for Dr. McHenry, he denied any problems with mental or emotional health. This also goes to the finding that Claimant had no psychological overlay as a sequela to this injury. The date of this questionnaire is March 16, 2011 (A.P.A., pages 95-99). Additionally, an MRI dated July 12, 2011 indicated disc

degeneration at the L5-S1 level. Dr. McHenry determined that the Claimant was non-surgical. (A.P.A. page 101).

16. Dr. LeBlond released the Claimant with a 6% whole person rating to the spine with restrictions pursuant to the Functional Capacity Evaluation, which places Claimant at the light duty level. The restrictions were no lifting to the waist above 15 pounds; occasional level squatting, kneeling, crawling, overhead activity, and standing truck rotations, walking, and repetitive lumbar flexion. He was deemed to be able to sit and stand at a constant level. (A.P.A. pages 158; 213).

17. Claimant has not looked for work after being released by Dr. LeBlond. In fact, Claimant testified that his attorney requested him not to look for employment at the present time. Although Claimant testified to some problems with driving, he drove to the hearing from Greenville to St. Matthews, a distance of approximately 130 miles one-way.

18. The photographs submitted by Claimant at hearing were properly submitted. Employer did not treat Claimant properly and fairly while he was on light duty.

19. The Claimant worked other jobs for cash while employed with Chapman Mechanical.

20. Based on the preponderance of the evidence presented, the undersigned finds that Claimant reached maximum medical improvement on the date of the filing of the Form 21, which is December 21, 2011. The Defendants provided all proper and adequate medical treatment. Claimant was noncompliant with same.

21. Claimant sustained a 20% permanent partial disability to his back.

Within the statutory period, counsel for the Claimant filed a Form 30, Application for Review, setting forth the Claimant's issues on appeal. The parties have filed their respective Briefs, which have been thoroughly reviewed by the Appellate Panel, and the parties, through counsel, presented oral argument before the Appellate Panel on April 15, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In an Appellate Panel review, the Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1985), review the Decision and Order entered by the Hearing Commissioner, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law, consistent with or inconsistent with those of the Hearing Commissioner. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E. 2d 318 (1967); see also Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E. 2d 87 (Ct. App. 1984). Although an Appellate Panel is empowered to make its own Findings of Fact and to reach its own Conclusions of Law, it is logical for an Appellate Panel, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E. 2d 162 (1992).

The Appellate Panel has considered all evidence in the record and, by unanimous vote, fully affirms the Hearing Commissioner's Decision and Order. Based upon a review of the foregoing, we enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

1. Claimant's average weekly wage is \$629.71, with a corresponding compensation rate of \$419.83.
2. A Consent Order was filed by Commissioner Susan S. Barden on September 20, 2011. The average weekly wage and compensation rate, as well as the start date of temporary total disability compensation, were established pursuant to said Order.
3. A Form 21 was filed on December 21, 2011, with a hearing date in February. The hearing was postponed for psychiatric evaluation to be performed by the physician of Defendants' choosing. This examination was performed by Dr. Thomas Gualtieri.
4. The directives for this Order were sent to the parties on Sunday, July 22, 2012 at 11:36 a.m.
5. The original hearing date for this case was February 7, 2012 in Greenville, South Carolina. The final hearing date was June 14, 2012 in St. Matthews, South Carolina. This case was heard on both the Forms 50/51 and Form 21.
6. Any employment-law related matters are not properly before this Commission.
7. According to Exhibit Six submitted by Claimant's counsel, "Sean fell off an eight-foot ladder while soldering, he fell back on his back landed on a four inch PVC pipe coming out of the floor. (Right hand side)." Exhibit Six also notes that no safety procedures were violated. It further notes that it was hard to maneuver the ladder where the Claimant was working, or put it at its proper height. This document is a supervisory accident report dated February 9, 2011.

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12. The Claimant had prior back problems for several years before this injury. In fact, he had back problems for which he sought medical care in October, November, and December of 2010, with approximately the same pain level as post-accident, mainly involving the lower back.

13. This is a single member claim pursuant to Singleton v. Young Lumber Co., 236 S.C. 471, 114 S.E. 2d 845 (1961). Any contended radiculopathy emanates from the back, and there is no independent injury to the hips, buttocks, or lower extremities. The evidence submitted as to psychological overlay is too underwhelming to merit an award for same. Claimant never even mentioned depression or anxiety until his counsel sent him to Dr. Patrick Mullen. This was not until June 30, 2011, well after the injury. Furthermore, there is inadequate

evidence to support any physical injury to the brain. At the initial hospital visit after the accident, the head was deemed to be atraumatic. A normal cephalic observation was made. At that time, the Claimant was "Oriented [times] three with a normal affect." (A.P.A. page 23).

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15. On the initial questionnaire completed by Claimant for Dr. McHenry, he denied any problems with mental or emotional health. This also goes to the finding that Claimant had no psychological overlay as a sequela to this injury. The date of this questionnaire is March 16, 2011 (A.P.A., pages 95-99). Additionally, an MRI dated July 12, 2011 indicated disc degeneration at the L5-S1 level. Dr. McHenry determined that the Claimant was non-surgical. (A.P.A. page 101).

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18. The photographs submitted by Claimant at hearing were properly submitted. Employer did not treat Claimant properly and fairly while he was on light duty.

19. The Claimant worked other jobs for cash while employed with Chapman Mechanical.

20. Based on the preponderance of the evidence presented, the undersigned finds that Claimant reached maximum medical improvement on the date of the filing of the Form 21, which is December 21, 2011. The Defendants provided all proper and adequate medical treatment. Claimant was noncompliant with same.

21. Claimant sustained a 20% permanent partial disability to his back.

CONCLUSIONS OF LAW

1. S.C. Code Ann. § 42-17-50 (1985) gives the Commission the power to affirm, amend or reverse a decision of a Single Commissioner.

2. "Jurisdiction" is governed by S.C. Code § 42-1-130 and 42-1-140.

3. "Average weekly wage" is governed by S.C. Code § 42-1-40.

4. "Medical treatment" is governed by S.C. Code § 42-15-60.

5. Permanent partial disability in this case is governed by S.C. Code § 42-9-30; see also Singleton v. Young Lumber Company, 236 S.C. 471, 114 S.E. 2d 845 (1961).

ORDER

IT IS, THEREFORE, ORDERED that the Hearing Commissioner's Order dated December 5, 2012 is hereby FULLY AFFIRMED.

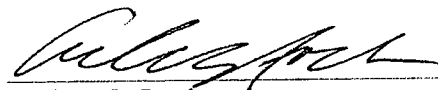
IT IS, THEREFORE ORDERED that Claimant be awarded a 20% permanent partial disability to the back, which commutes to 59.307 weeks, yielding an award of \$24,896.63. Defendants are entitled to credit for all compensation paid to Claimant subsequent to December 21, 2011. The rest of this claim is denied in its' entirety.

No hearing costs are assessed.

IT IS SO ORDERED.

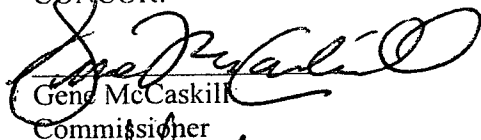
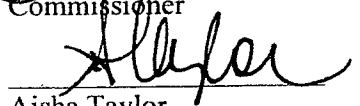
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BY:



Andrea C. Roche
Commissioner

CONCUR:


Gene McCaskill
Commissioner
Aisha Taylor
Commissioner

CERTIFICATE OF SERVICE

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

By Valerie Deller on June 14, 2013



WCC File #: **1101678**
Carrier File #: **STN0103651**
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Sean Daley SSN: 162-58-7911 Employer's Name: Chapman Mechanical
Address: 9 Arrington Avenue Address: 348-A Feaster Road
City: Greenville State: SC Zip: 29617 City: Greenville State: SC Zip: 29615
Home Phone: () - Work Phone: 864-284-0725 Insurance Carrier: Stonewood Insurance
Preparer's Name: Jeffrey D. Ezell Law Firm: Ezell Law Firm, LLC Preparer's Phone #: 864-421-0015

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

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

Date of Injury or Illness: **02/09/11**

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to back, ribs, trunk, hips and pelvis, psyche (Part(s) of Body Injured) on 02/09/11 (Month/Day/Year) in Hendersonville county, state of NC.

1b. Body part(s) affected are: back, ribs, trunk, hips and pelvis, psyche

Briefly describe how the accident occurred. Claimant fell from an 8 foot ladder and landed on a 4" pipe sticking 2' out of the ground, causing injury to his back, ribs, hips and pelvis.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 02/09/11 (Month/Day/Year) in the following manner:

Notice was given to supervisor

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

☒ (a) medical examination and treatment for: back, ribs, trunk, hips and pelvis, psyche

☒ (b) additional medical examination and treatment for: back, ribs, trunk, hips and pelvis, psyche

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

Claimant was provided with insufficient light duty work which did not meet his restrictions. Claimant is entitled to TTD benefits as defendants have wrongfully terminated the Claimant even though he never returned to work for 15 days without restrictions as required by law; therefore, Claimant demands that defendants immediately begin TTD benefits and back-date same to the date of the accident. Claimant reserves the right to amend.

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

☒ (1) General Disability:

☐ Total

☒ (2) Specific Disability:

☐ Total

☒ (3) Wage Loss

☒ Partial

☒ Partial

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

To be determined

10a. At the time of the injury, the Claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provided by law. Claimant hereby demands that a Form 20 be provided within the statutory time table or hereby requests that the Commission impose statutory and regulatory fines and penalties against the defendants for failure to comply with the Act.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

very briefly for the defendant employer; however, the employer did not meet the Claimant's work restrictions, and then wrongfully terminated Claimant without the Claimant having returned to work for 15 days without restrictions. The Claimant is, therefore, entitled to TTD benefits at his full compensation rate.

11a. Further grounds or unusual aspects of claim:

As may be developed pursuant to applicable law. Claimant reserves the right to amend Form 50.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

Pardee Hospital Emergency Room, Hendersonville, NC; North Greenville Hospital ER, Travelers Rest, SC; Dr. Li, New Horizon; Dr. Melvin Porter, Westside Medical Clinic; Dr. Robert LeBlond, Upstate Medical Rehabilitation; Dr. McHenry; Claimant reserves the right to amend.

11c. To the best of your knowledge, did you have any prior permanent disability? yes

If yes, describe: Claimant had a prior disc problem at one (1) level below the injured/affected area; however, he was never assigned any impairment or disability rating.

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

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1.5 hours

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

Preparer's Signature

Attorney at Law
Title

jeff@jeffezelllawfirm.com
Email

May 4, 2011
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley,	)	
	)	
Employee,	)	
Claimant,	)	
vs.	)	
	)	
Chapman Mechanical,	)	CERTIFICATE OF
	)	SERVICE
Employer,	)	
	)	
And	)	
	)	
Stonewood Insurance,	)	
	)	
Carrier,	)	
Defendants	)	

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:	Mr. Bradley Smith	Judicial Director
	Rudisill White Kaplan	SC Workers' Compensation Commission.
	212 S. Tryon St., Ste. 1440	PO Box 1715
	Charlotte, NC 28281	Columbia, SC 29202-1715

DOCUMENT: Form 50 - Hearing

DATE OF MAILING: May 4, 2011

Janet Spruell

Janet Spruell
Paralegal to Jeffrey D. Ezell

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 1101678
Carrier File # STN0103651
Carrier Code #
Employer FEIN

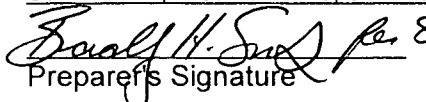
Sean Daley				162-58-7911				Chapman Mechanical, LLC							
Claimant's Name				SSN				Employer's Name							
9 Arrington Avenue, Greenville, SC 29617								348-A Feaster Road, Greenville, SC 29615							
Address		City		State		Zip		Address		City		State		Zip	
864-990-8621								Stonewood Insurance Company							
Home Phone #		Work Phone #						Insurance Carrier							
		Steven M. Rudisill						(704) 378-8888							
		Preparer's Name						Preparer's Phone Number							

Date of Injury: 02/09/11

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

- It is admitted/denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: No medical evidence to support an injury to claimant's psyche.
- It is admitted that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
- It is admitted that the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
- It is admitted that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
- It is admitted that notice of injury was given the employer. The reasons for denial are: _____
- It is admitted that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: _____
- It is denied that the employee is entitled to temporary disability for the period(s) of: 2/10/11 to present
- It is denied that the employee is permanently partially disabled. The reasons for denial are: premature
- It is denied that the employee has a serious disfigurement.
- It is contended that an average weekly wage of **\$629.71** applies.
- Further contentions, grounds of defense, or unusual aspects are: None
- Estimated time needed for hearing: 1 hour

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Jeffrey D. Ezell, Ezell Law Firm, LLC, 15 N. Irvine Street, Greenville, SC 29601, via first class mail and to Virginia Crocker, Judicial Director, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715, via Certified Mail on the 18th day of May, 2011.

	Attorney for Defendants	stevenrudisill@rwklawfirm.com	May 20, 2011
Preparer's Signature	Title	Email	Date

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



WCC File #: 1101678
Carrier File #: STN0103651
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Sean Daley SSN: 162-58-7911 Employer's Name: Chapman Mechanical
Address: 9 Arrington Avenue Address: 348-A Feaster Road
City: Greenville State: SC Zip: 29617 City: Greenville State: SC Zip: 29615
Home Phone: () - Work Phone: 864-284-0725 Insurance Carrier: Stonewood Insurance
Preparer's Name: Jeffrey D. Ezell Law Firm: Ezell Law Firm, LLC Preparer's Phone #: 864-421-0015

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- 1a. The claimant sustained an injury to back, ribs, trunk, hips and pelvis, psyche, head/brain (Part(s) of Body Injured) On 02/09/11 (Month/Day/Year) in Hendersonville county, state of NC.

1b. Body part(s) affected are: back, ribs, trunk, hips and pelvis, psyche, head/brain

Briefly describe how the accident occurred. Claimant fell from an 8 foot ladder and landed on a 4" pipe sticking 2' out of the ground, causing injury to his back, ribs, hips pelvis, head and/or brain.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 02/09/11 (Month/Day/Year) in the following manner:

Notice was given to supervisor

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

☒ (a) medical examination and treatment for: back, ribs, trunk, hips and pelvis, psyche, head/brain - claimant is in need of an MRI of his back

☒ (b) additional medical examination and treatment for: back, ribs, trunk, hips and pelvis, psyche, head/brain - claimant is in need of an MRI of his back

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

Claimant was provided with insufficient light duty work which did not meet his restrictions, defendants completely failed to adequately provide claimant with suitable employment and/or equipment to perform work within his restrictions. Claimant is entitled to TTD benefits as defendants have wrongfully terminated the Claimant even though he never returned to work for 15 days without restrictions as required by law; therefore, Claimant demands that defendants immediately begin TTD benefits and back-date same to the date of the accident. Claimant reserves the right to amend.

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

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

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

To be determined

10a. At the time of the injury, the Claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provided by law. Claimant hereby demands that a Form 20 be provided within the statutory time table or hereby requests that the Commission impose statutory and regulatory fines and penalties against the defendants for failure to comply with the Act.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: very briefly for the defendant employer; however, the employer did not meet the Claimant's work restrictions, and then wrongfully terminated Claimant without the Claimant having returned to work for 15 days without restrictions. The Claimant is, therefore, entitled to TTD benefits at his full compensation rate.

11a. Further grounds or unusual aspects of claim:

As may be developed pursuant to applicable law. Claimant reserves the right to amend Form 50.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

Pardee Hospital Emergency Room, Hendersonville, NC; North Greenville Hospital ER, Travelers Rest, SC; Dr. Li, New Horizon; Dr. Melvin Porter, Westside Medical Clinic; Dr. Robert LeBlond, Upstate Medical Rehabilitation; Dr. McHenry; Claimant reserves the right to amend.

11c. To the best of your knowledge, did you have any prior permanent disability? yes

If yes, describe: Claimant had a prior disc problem at one (1) level below the injured/affected area; however, he was never assigned any impairment or disability rating.

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

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1.5 hours

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

Jeffrey D. Ezell
Preparer's Signature

Attorney at Law
Title

jeff@jeffezelllawfirm.com
Email

July 6, 2011
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

AMENDED 50

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley,	)	
	)	
Employee,	)	
Claimant,	)	
vs.	)	
	)	
Chapman Mechanical,	)	CERTIFICATE OF
	)	SERVICE
Employer,	)	
	)	
And	)	
	)	
Stonewood Insurance,	)	
	)	
Carrier,	)	
Defendants	)	

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:	Mr. Bradley Smith Rudisill White Kaplan 212 S. Tryon St., Ste. 1440 Charlotte, NC 28281	Judicial Director SC Workers' Compensation Commission PO Box 1715 Columbia, SC 29202-1715
-----	--	--

DOCUMENT: Amended Form 50 - Hearing

DATE OF MAILING: July 6, 2011

Janet Spruell

Janet Spruell
Paralegal to Jeffrey D. Ezell



WCC File #: 1101678
Carrier File #: STN0103651
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Sean Daley SSN: 162-58-7911 Employer's Name: Chapman Mechanical
Address: 9 Arrington Avenue Address: 348-A Feaster Road
City: Greenville State: SC Zip: 29617 City: Greenville State: SC Zip: 29615
Home Phone: () - Work Phone: 864-284-0725 Insurance Carrier: Stonewood Insurance
Preparer's Name: Jeffrey D. Ezell Law Firm: Ezell Law Firm, LLC Preparer's Phone #: 864-421-0015

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

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

Date of Injury or Illness: 02/09/11

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back, ribs, trunk, hips and pelvis, psyche, head/brain (Part(s) of Body Injured) on 02/09/11 (Month/Day/Year) in Hendersonville county, state of NC.

1b. Body part(s) affected are: back, ribs, trunk, hips and pelvis, psyche, head/brain

Briefly describe how the accident occurred. Claimant fell from an 8 foot ladder and landed on a 4" pipe sticking 2' out of the ground, causing injury to his back, ribs, hips pelvis, head and/or brain.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 02/09/11 (Month/Day/Year) in the following manner:

Notice was given to supervisor

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

☒ (a) medical examination and treatment for: back, ribs, trunk, hips and pelvis, psyche, head/brain – claimant is in need of an MRI of his back

☒ (b) additional medical examination and treatment for: back, ribs, trunk, hips and pelvis, psyche, head/brain – claimant is in need of an MRI of his back

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

Claimant was provided with insufficient light duty work which did not meet his restrictions, defendants completely failed to adequately provide claimant with suitable employment and/or equipment to perform work within his restrictions. Claimant is entitled to TTD benefits as defendants have wrongfully terminated the Claimant even though he never returned to work for 15 days without restrictions as required by law; therefore, Claimant demands that defendants immediately begin TTD benefits and back-date same to the date of the accident. Claimant reserves the right to amend.

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

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

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

To be determined

10a. At the time of the injury, the Claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provided by law. Claimant hereby demands that a Form 20 be provided within the statutory time table or hereby requests that the Commission impose statutory and regulatory fines and penalties against the defendants for failure to comply with the Act.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: very briefly for the defendant employer; however, the employer did not meet the Claimant's work restrictions, and then wrongfully terminated Claimant without the Claimant having returned to work for 15 days without restrictions. The Claimant is, therefore, entitled to TTD benefits at his full compensation rate.

11a. Further grounds or unusual aspects of claim:

As may be developed pursuant to applicable law. Claimant was only cleared to return to "light duty" work as per the FCE performed on December 15, 2011 – Claimant has never worked in any light duty capacity and has no transferable skill set to obtain light duty work, accordingly, Claimant has suffered either General Total Disability or substantial wage loss. Additionally, Claimant contends that he was improperly terminated by the Defendant and will be pursuing a claim for same in Civil Court.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Pardee Hospital Emergency Room, Hendersonville, NC; North Greenville Hospital ER, Travelers Rest, SC; Dr. Li, New Horizon; Dr. Melvin Porter, Westside Medical Clinic; Dr. Robert LeBlond, Upstate Medical Rehabilitation; Dr. McHenry; Claimant reserves the right to amend.

11c. To the best of your knowledge, did you have any prior permanent disability? yes
If yes, describe: Claimant had a prior disc problem at one (1) level below the injured/affected area; however, he was never assigned any impairment or disability rating.

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

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1 hour

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

Jeffrey D. Ezell
Preparer's Signature

Attorney at Law
Title

jeff@jeffezelllawfirm.com
Email

December 20, 2011
Date

South Carolina Workers' Compensat. Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC # 1101678
Carrier File # STN0103651
Carrier Code #
Employer FEIN

Sean Daley 162-58-7911
Claimant's Name SSN
9 Arrington Avenue, Greenville, SC 29617
Address City State Zip
864-990-8621
Home Phone # Work Phone #
Steven M. Rudisill
Preparer's Name

Chapman Mechanical, LLC
Employer's Name
348-A Feaster Road, Greenville, SC 29615
Address City State Zip
Stonewood Insurance Company
Insurance Carrier
(704) 378-8888
Preparer's Phone Number

Date of Injury: 02/09/11

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is **admitted/denied** that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Defendants admit strain and contusion to thoracic/lumbar back area and to right rib cage area only. Defendants deny all other alleged injuries.
2. It is **admitted** that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
3. It is **admitted** that the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is **admitted** that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
5. It is **admitted** that notice of injury was given the employer. The reasons for denial are: Defendants admit notice of back/rib cage injury. Defendants deny notice of all other alleged injuries.
6. It is **admitted** that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: Defendants admit that Dr. LeBlond has recommended the continuation of certain medications, heat and home exercises only. Defendants deny that claimant needs or is entitled to any further medical treatment otherwise.
7. It is **admitted** that the employee is entitled to temporary disability for the period(s) of: Defendants admit that claimant was temporarily totally disabled pursuant to terms of previously-filed Consent Order only, and that such disability continued through November 21, 2011 (date of MMI) only. Defendants request credit for overpayment of any temporary disability compensation beyond that date.
8. It is **admitted** that the employee is permanently partially disabled. The reasons for denial are: Defendants admit that claimant retains a 6% permanent impairment to his whole person/lumbar spine, pursuant to rating assessed by Dr. LeBlond. Defendants deny any other alleged permanent disability.
9. It is **denied** that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of **\$629.71** applies.
11. Further contentions, grounds of defense, or unusual aspects are: Defendants reserve the right to amend this Answer.
12. Estimated time needed for hearing: 1 hour

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Jeffrey D. Ezell, Ezell Law Firm, LLC, 15 N. Irvine Street, Greenville, SC 29601, via first class mail and to Virginia Crocker, Judicial Director, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715, via Certified Mail on the 18th day of January 2012.

Preparer's Signature  Title Attorney for Defendants Email stevenrudisill@rwklawfirm.com Date January 19, 2012

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission
P.O. Box 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700
www.wcc.sc.gov

PRE-HEARING BRIEF

WCC File No. 1101678

Sean Daley SSN: 161-58-7911
Claimant's Name
9 Arrington Avenue, Greenville, SC 29617
Address City State Zip
(864) 990-8621
Home Phone # Work Phone #

Chapman Mechanical
Employer's Name
348-A Feaster Road, Greenville, SC 29615
Address City State Zip
Stonewood Insurance Company
Carrier

Preparer's Name: Steven M. Rudisill, Rudisill, White & Kaplan, P.L.L.C., 212 S. Tryon Street, Suite 1440, Charlotte, NC 28281

Preparer's Phone # (704) 378-8888

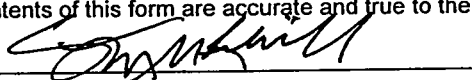
A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$419.83 2.AWW: \$629.71 Date of Injury: 02/09/2011
3. Type of injury and body part(s): Contusion/abrasion/strain to right side of back/trunk/rib cage area post-fall from ladder.
4. Facts in controversy: Nature and extent of compensable injury; whether claimant provided defendant-employer with notice of alleged injuries; extent of temporary disability; extent of permanent partial disability to the back; credit for overpayment of temporary disability compensation; need for and entitlement to future medical treatment.
5. Legal issues involved: See Paragraph 4.
6. Unusual aspects: None.
7. Witnesses (designate if expert)*: None. Defendants reserve the right to call all witnesses called or listed by claimant, and reserve the right to call other witnesses pending claimant's evidence.
8. Exhibits: Defendants may offer personnel, attendance, payroll and accident investigation records maintained by defendant-employer, transcript of deposition of claimant. Defendants reserve the right to offer other exhibits pending claimant's evidence.
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) See attached Notice of Witnesses and Written Medical Reports.
10. Name, address, and specialty, if any, of the treating physician: Primarily, Dr. Timothy McHenry (Southeastern Neurosurgical and Spine Institute) and Dr. Robert LeBlond (Upstate Medical Rehabilitation).
11. Impairment rating(s); body part(s); physician and date of opinion: 6% whole person/lumbar spine, Robert LeBlond, M.D., 11/21/11.
12. I am amending my Form 50/51 in following manner: Not Applicable.

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

SIGNATURE



EMAIL: steverudisill@rwklawfirm.com

DATE OF HEARING: 02/07/2012

TIME NEEDED FOR HEARING: 1.5 hours

On behalf of Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67.611 and R.67-212. Do not send medical reports.

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



Claimant's Name: Sean Daley Employer's Name: Chapman Mechanical
Address: 9 Arrington Avenue Address: 348-A Feaster Road
City: Greenville State: SC Zip: 29617 City: Greenville State: SC Zip: 29615
Home Phone: () - Work Phone: () - Carrier: Stonewood Insurance
Preparer's Name: Jeffrey D Ezell Preparer's Phone #: 864-421-0015

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

- | | | | | | | |
|----|--------------------|----------|-----------|----------|-----------------|----------|
| 1. | Compensation Rate: | \$419.83 | 2. A W W: | \$629.71 | Date of Injury: | 02/09/11 |
|----|--------------------|----------|-----------|----------|-----------------|----------|
-
- | | | | | | | |
|----|----------------------------------|--|--|--|--|--|
| 3. | Type of injury and body part(s): | Claimant sustained a severe injury to his back and trunk when he fell off an 8-ft. ladder and landed on a 2-ft. piece of PVC pipe anchored in the floor, Claimant has severe back pain which radiates to his hips, pelvis, and legs. Claimant is also severely depressed as a result of the pain and financial problems brought about by this claim (Defendants improperly terminated Claimant after his accident while the Claimant was still on medical restrictions). | | | | |
|----|----------------------------------|--|--|--|--|--|
-
- | | | | | | | |
|----|-----------------------|--|--|--|--|--|
| 4. | Facts in controversy: | Claimant was terminated by the Defendants for unrelated and improper reasons subsequent to his injury and while he was still on work restrictions , it is Claimant's contention that the Defendants never provided him with adequate light duty work within his restrictions, Claimant was forced to sit on a five-gallon bucket for several days which caused him great pain while he tried to do the work that had been assigned to him, ultimately the Defendants bought the Claimant a cheap folding lawn chair to sit in; however, it provided him no support to his back and actually was more difficult to get into and out of than a regular chair, the "light duty" work that the Defendants provided did not meet the doctor's restrictions. The doctor restricted the Claimant to <u>sedentary</u> work; however, it is clear from the description and photographs of the job site where the Claimant was placed, that he had to get up and down off of his five-gallon bucket or out of his "lawn chair", once same was provided to him after several days of sitting on a five-gallon bucket with no back support or padding of any kind and this aggravated the Claimant's condition. Claimant is also <u>severely</u> depressed as a result of the pain problems and the financial difficulty caused by the Defendants' failure to properly pay TTD benefits when due. Claimant is in need of psychiatric treatment. It should also be noted that Claimant has had to fight unnecessarily hard to counter spurious allegations lodged against him by various agents of the Defendant which has only aggravated and exacerbated his psychological/psychiatric issues. A psychiatric evaluation by Dr. Patrick Mullen has revealed the Claimant may also have sustained a head/brain injury and he is in need of evaluation and treatment for same. | | | | |
|----|-----------------------|--|--|--|--|--|
-
- Claimant's counsel is **EXTREMELY** concerned and even confused as Defendants' Form 58 notes under "Facts In Controversy" that it is questioned "whether claimant provided defendant-employer with notice of alleged injuries". Counsel for Defendants' has filed a Form 51 ADMITTING claimant's claim. It is uncertain from Defendants' Form 58 whether they are now contesting liability on notice grounds. Claimant would assert that any such denial is barred by the doctrines of laches and estoppel. Claimant steadfastly denies that he is capable of returning to gainful employment in any occupation to which he would be suited. Further, Claimant steadfastly denies that Defendants are entitled to stop payment of TTD benefits and further denies that Defendants are entitled to any credit for alleged overpayment of TTD benefits. Claimant reserves the right to amend.
- | | | | | | | |
|----|------------------------|--|--|--|--|--|
| 5. | Legal issues involved: | See No. 4 above. §41-1-80, §42-9-10, §42-9-20, and §42-9-30. Claimant contends he is permanently and totally disabled and his overall disability greatly exceeds the stated rating from the authorized treating physician. Claimant is no longer able to work as a Commercial Plumber, which is his only skill. Claimant reserves the right to amend. | | | | |
|----|------------------------|--|--|--|--|--|

- | | | |
|----|---------|--|
| 6. | Unusual | Claimant was recently evaluated by a psychiatrist for symptoms of severe depression and it was |
|----|---------|--|

aspects: determined at that point in time that the Claimant may have sustained a closed-head injury and/or a brain injury when he fell from the 8-ft. ladder and ultimately landed on the floor. Claimant may have lost consciousness briefly and has some memory gaps with regard to the time frame subsequent to his fall.

7. Witnesses (designate if expert):* Claimant, Claimant's wife, Chad Cox, Ray Burkhart, Jesse Blanchard, Zaire Myers, Claimant reserves the right to amend.

8. Exhibit s: Photographs of Claimant's back – post-accident, Photographs of the "work area" provided by Defendants, photographs of the five-gallon bucket where the Claimant was forced to sit for several days with no padding or back support, photographs of the "lawn chair" which the Defendant's ultimately purchased for the Claimant's use; however, it was grossly inadequate for the necessary purpose, deposition of Chad Cox, deposition of Ray Burkhart, Claimant's deposition, photographs of the "lawn chair" provided to the Claimant by the Defendants, Excerpts from Claimant's personnel file, specifically the accident report which shows that no safety violations were committed; however, sometime thereafter, the employer chose to write the Claimant up for some sort of purported malfeasance. It is particularly noteworthy that the initial Accident Report specifically stated that the Claimant did **not** violate any safety protocols. It is also noteworthy that, despite the fact that the Claimant was working at a height at which OSHA requires harnesses; no harnesses were provided to the Claimant. Copy of Obituary of Jack Wilson Wagner, the father of Claimant's fiancé. The Claimant tried to provide this obituary to Chad Cox to account for his absence to attend his fiancé's father's funeral; however, despite the fact that the Claimant tried to provide Mr. Cox with the web address where the obituary could be viewed, Mr. Cox testified in his deposition that he made no effort whatsoever at any time to verify the obituary. Webster's Definition of "Sedentary". Separation/Termination forms for Craig Giles and Zaire Meyers, Timesheets/Time cards for Craig Giles, Zaire Meyers, Sean Daley, Termination/Separation document for Jesse Blanchard, "Time line" of case, Deposition of Chad Cox (with exhibits), deposition of Ray Burkhart (with exhibits), Chapman Mechanical Employee Handbook, Recorded Statement of Zaire Meyers, Claimant reserves the right to amend.

9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached.

10. Name, address, and specialty, if any, of the treating physician:
Dr. LeBlond, Upstate Medical Rehabilitation; Dr. Patrick B. Mullen, Poinsett Psychiatric; Pardee Hospital, Emergency Dept. Report; Dr. Melvin Porter, Westside Medical Center; Dr. Timothy McHenry, Southeastern Neurosurgical and Spine Institute, Dr. Robert Brabham, Vocational Expert, Dr. Walter Grady, Grady Orthopaedics.

11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Robert LeBlond, 6%, 12/22/11 with **PERMANENT lifting restrictions of light duty, no lifting greater than 15 pounds and further that claimant WILL need lifetime medication management; Dr. Walter Grady, 26% to the Lumbar Spine, 23% to the whole person, 01/19/12.**

12. I am amending my Form 50/51 in the following manner: Based upon the evaluation performed by Dr. Patrick Mullen, a Greenville Area psychiatrist, it is now believed that the Claimant may have suffered a closed head injury and/or a brain injury and he is in need of neuropsychological testing for same.

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

Signature:

Email:

jeff@jeffzelllawfirm.com

Date of hearing:

February 7, 2012

Time needed for hearing:

2 hours

On behalf of ☒ Claimant ☐ Employer

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

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	NOTICE OF WITNESSES AND
	)	WRITTEN REPORTS/PHYSICIANS
Chapman Mechanical	)	OR OTHER EVIDENCE TO BE
	)	INTRODUCED ON BEHALF OF
Employer	)	CLAIMANT
	)	
	)	
And	)	
	)	
Stonewood Insurance	)	
	)	
Carrier,	)	
Defendants	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
MR. STEVEN RUDISILL, ATTORNEY FOR DEFENDANT(S).

HEARING DATE: July 25, 2011

YOU ARE HEREBY NOTIFIED THAT pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), and Amended Regulation 67-612, the following medical reports are submitted as direct evidence:

APA 12	Dr. Patrick Mullen	06-30-11	Pages 203 - 206
APA 13	Dr. Robert LeBlond	07-21-11 – 12-22-11	Pages 207 - 213
APA 14	Dr. Robert Brabham	01-16-12	Pages 214 - 224
APA 15	Dr. Walter Grady	01-19-12	Pages 225 - 231
Exhibit 1	Photographs of Claimant's back – post-injury		Pages 1 – 5
Exhibit 2	Photographs of "light duty" work area		Pages 1 – 5
Exhibit 3	Photograph of five-gallon bucket used for seating		Page 1
Exhibit 4	Photograph of "lawn chair" provided		Page 1
Exhibit 5	Email to Carol Powers re light duty work		Page 1
Exhibit 6	Excerpts from Personnel File		
	Accident Report completed by Chad Cox		Pages 1 - 2
Exhibit 7	Obituary of Jack Wilson Wagner		Page 1

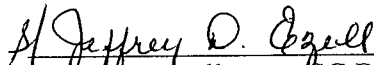
Exhibit 8	Webster's Definition of Sedentary	Page 1
Exhibit 9	OSHA Safety Guidelines – Fall Protection	Pages 1 – 54
Exhibit 10	Report of Proaxis Therapy – 07/14/11	Page 1
Exhibit 11	Chapman Mechanical Employee Handbook	
Exhibit 12	Recorded Statement of Zaire Meyers	

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: Claimant, Claimant's Wife, Chad Cox, Ray Burkhardt, Jesse Blanchard, Zaire Meyers, Claimant reserves the right to amend.

Respectfully Submitted on Behalf of
the Moving Party,



Jeffrey D. Ezell SC Bar #011877
ATTORNEY FOR THE CLAIMANT
15 N. Irvine St., Greenville, SC 29601
864/421-0015 fax 864/421-0256
Email: jeff@jeffezelllawfirm.com

Date: 1-27-12

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Chapman Mechanical	)	CERTIFICATE OF
	)	SERVICE
Employer,	)	
	)	
And	)	
	)	
	)	
Stonewood Insurance	)	
	)	
Carrier,	)	
	)	
Defendants	)	

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:	Commissioner Avery Wilkerson	Mr. Steve Rudisill
	SCWCC	Rudisill White & Kaplan
	PO Box 1715	212 S. Tryon St., Suite 1440
	Columbia, SC 29202-1715	Charlotte, NC 28281

DOCUMENT: 5th Amended Form 58 – Pre-Hearing Brief and Written Reports/Physicians or Other Evidence to be Introduced on Behalf of Claimant

DATE OF MAILING: January 27, 2012

Janet Spruell
Paralegal to Jeffrey D. Ezell
Attorney at Law

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1101678
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Sean Daley SSN: _____ Employer's Name: Chapman Mechanical, LLC
Address: 9 Arrington Avenue Address: 348-A Feaster Road
City: Greenville State: SC Zip: 29609 City: Greenville State: SC Zip: 29615
Home Phone: _____ Work Phone: _____ Insurance Carrier: Stonewood Insurance
Preparer's Name: Jeffrey D. Ezell Law Firm: Ezell Law Firm, LLC Preparer's Phone #: 864 421 0015

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 01/19/2011

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

(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 Virginia Crocker, Judicial Director, SCWCC,

Name

Mr. Steve Rudisill, Rudisill, White, & Kaplan, P.L.L.C.

on the 12th day of December, 2012 by ☐ first class mail ☐ personal service ☒ certified mail.

Preparer's Signature

Attorney at Law

Title

December 12, 2012

Date

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

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

GROUND S OF APPEAL

1. Did the Hearing Commissioner err in finding that neither Dr. Mullen nor Dr. Gaultieri found the Claimant to be disabled by any psychological injury in view of the substantial evidence on the record, the error being that said finding is not supported by the substantial and/or greater weight of the evidence, the testimony on the record, nor by the applicable case and/or statutory law?
2. Did the Hearing Commissioner err in finding that Dr. Gaultieri opined that the Claimant was only “a bit” depressed and that Dr. Gaultieri did not anticipate any persistent neuropsychiatric disabilities or difficulties related to the events of February 2011, the error being that said finding is not supported by the substantial and/or greater weight of the evidence, the testimony on the record, nor by the applicable case and/or statutory law?
3. Did the Hearing Commissioner err in finding that the restrictions noted in the Functional Capacities Evaluation were adopted by Dr. LeBlond, and accordingly, the Claimant was in the “light duty” category, the error being that said finding is not supported by the substantial and/or greater weight of the evidence, and testimony on the record, nor by the applicable case and/or statutory law?
4. Did the Hearing Commissioner err in finding that the Functional Capacities Evaluation contradicted Dr. Brabham’s conclusions about the Claimant’s ability to work, the error being that said finding is not supported by the substantial and/or greater weight of the evidence, and testimony on the record, nor by the applicable and/or statutory law?
5. Did the Hearing Commissioner err in failing finding that the Claimant is unable to work, the error being that said failure to make such a finding is not supported by the substantial and/or greater weight of the evidence, and testimony on record, nor by the applicable case and/or statutory law?
6. Did the Hearing Commissioner err in failing to find that Dr. Brabham specifically found the Claimant is unable to work, the error being that said failure to find is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
7. Did the Hearing Commissioner err in finding that the Claimant had prior back problems for several years before this injury, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
8. Did the Hearing Commissioner err in finding that the Claimant had prior back problems for which he sought care for in October, November, and December 2010, with approximately the same pain level as post-accident, mainly involving his lower back, with the error being that the finding is not supported by the substantial greater weight of the evidence and/or the testimony on record, nor by the applicable case and/or statutory law?

9. Did the Hearing Commissioner err in finding that this is a single-member claim pursuant to Singleton v. Young Lumber Co., 236 SC 471, 114 S.E. 2d 845 (1961), the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony on record, nor by the applicable case and/or statutory law?
10. Did the Hearing Commissioner err in finding that any contended radiculopathy emanates from the back, and there is no independent injury to the hips, buttock, or lower extremities, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and/or the testimony on record, nor by the applicable case and/or statutory law?
11. Did the Hearing Commissioner err in finding the evidence submitted regarding psychological overlay is too underwhelming to merit an award for same; the error being that said finding is not supported by the substantial and/or greater weight of the evidence and/or the testimony on the record, nor by the applicable case and/or statutory law?
12. Did the Hearing Commissioner err in finding that the Claimant never mentioned depression or anxiety until his Counsel sent him to Dr. Patrick Mullen, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and/or the testimony on the record, nor by the applicable case and/or statutory law?
13. Did the Hearing Commissioner err in finding that the hospital report of October 25, 2010, related a history of low back pain of four (4) years with occasional tingling in both thighs, the error being that said finding is not supported by the substantial and/or greater weight of the evidence on the record, nor by the applicable case and/or statutory law?
14. Did the Hearing Commissioner err in finding that on November 10, 2010, it was reported to the Claimant's family physician that he "works as a plumber and he out of work [times 3 months]. He needs to find out the reason for his back pain", the error being that said finding is not supported by the substantial and/or greater weight of the evidence on the record, nor by the applicable case and/or statutory law?
15. Did the Hearing Commissioner err in finding that the Claimant had no psychological overlay as a sequela to his injury, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
16. Did the Hearing Commissioner err in failing to find that the Claimant had psychological overlay as a result of his injury and/or resulting limitations, the error being that said finding is not supported by the substantial and/or greater weight of the evidence on the record, nor by the applicable case and/or statutory law?

17. Did the Hearing Commissioner err in failing to find that the Claimant had psychological overlay as a result of his injury and/or resulting limitations, the error being that failure to make such a finding is not supported by the substantial and/or greater weight of the testimony on the record, nor by the applicable case and/or statutory law?
18. Did the Hearing Commissioner err in finding that on the initial questionnaire completed by Dr. McHenry he denied any problems with any problems with mental and/or emotional health, the error being that said questionnaire was completed early on in the case when the full psychological, mental, and/or emotional repercussions of the Claimant's injury and/or limitations was not determined and/or developed, and accordingly, said finding is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
19. Did the Hearing Commissioner err in finding that Dr. LeBlond released the Claimant with a 6% Whole Person rating to the spine with restrictions pursuant to the Functional Capacities Evaluation, which placed the Claimant at "light duty" level, such error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
20. Did the Hearing Commissioner err in failing to find that the Claimant was permanently and totally disabled as a result of his physical and psychological limitations, the error being that failing to make such finding was not supported by the substantial and/or greater weight of the evidence in testimony on the record, nor by the applicable case and/or statutory law?
21. Did the Hearing Commissioner err in failing to find that the Claimant was permanently and totally disabled, or at least more substantially disabled than determined by the Hearing Commissioner, including, but not limited to, his finding that the restrictions were no lifting to the waist above than fifteen (15) pounds, occasional squatting, kneeling, crawling, overhead activity, and standing trunk rotations, walking, and/or repetitive lumbar flexion, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony and on the record, nor by the applicable case and/or statutory law?
22. Did the Hearing Commissioner err in finding that the Claimant testified that his attorney requested him not to look for employment at the present time, the error being that the finding is not supported by the substantial and/or greater weight of the evidence in testimony and on the record, nor by the applicable case and/or statutory law?

23. Did the Hearing Commissioner err in finding that the Claimant reached Maximum Medical Improvement on the date of the filing of the Form 21 which is December 21, 2011, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
24. Did the Hearing Commissioner err in finding that the Defendants provided all proper and adequate medical treatment, the error being that the finding is not supported by the reliable, substantial, probative, and/or greater weight of the evidence in testimony and on the record, nor by the applicable case and/or statutory law?
25. Did the Hearing Commissioner err in finding that the Claimant was not compliant with medical treatment, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
26. Did the Hearing Commissioner err in finding that the Claimant sustained only a 20% permanent and partial disability to his back, the error being that said finding is not supported by the substantial and/or greater weight of the evidence and testimony and on the record, nor by the applicable case and/or statutory law?
27. Did the Hearing Commissioner err as a matter of law in relying solely on SC Code §42-9-30, the error being that said conclusion and/or ruling is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
28. Did the Hearing Commissioner err in relying upon Singleton v. Young Lumber Co., 236 S.C. 471, 114 S.E. 2d 845 (1961), the error being that said reliance, ruling, and/or conclusion is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
29. Did the Hearing Commissioner err in awarding the Defendants credit for all compensation paid subsequent to December 21, 2011, the error being that said ruling, Order, and/or conclusion is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
30. Did the Hearing Commissioner err in ordering that “the rest of the claim is denied in its entirety”, the error being that said ruling, Order, and/or conclusion is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?

31. Did the Hearing Commissioner err in failing to deny credit to the Defendants for compensation paid after December 21, 2011, particularly in light of the fact that the Defendants delayed considerably in providing the Claimant with a psychological and/or psychiatric evaluation, and further, that Defendant's counsel took more than four (4) months from the date the Order instructions were presented to him to prepare a Final Proposed Decision and Order, said error being that such failure to rule is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
32. Did the Hearing Commissioner err in failing to rely on Hudson v. State Ports Authority, said error being that the Commissioner's failure to consider said case is both a factual error and an error of law?
33. Did the Hearing Commissioner err in failing to allow testimony as to the harsh treatment rendered by the employer subsequent to the injury, and the effect said conduct of the employer had upon the Claimant as it pertains to the Claimant's psychological injuries, damages, and/or claim, the error being that said failure to make such ruling is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
34. Did the Hearing Commissioner err as a matter of law in failing to allow testimony and/or evidence as to the harsh treatment by the employer and its subsequent effect upon the psychological, and/or psychiatric, and/or emotional condition of the Claimant, said error being that failure to allow such testimony is not supported by the substantial and/or greater weight of the evidence and testimony on the record, nor by the applicable case and/or statutory law?
35. Did the Hearing Commissioner err in failing to find that the Claimant sustained a psychological and/or psychiatric and/or emotional injury and/or damages, the error being that said failure to find is not supported by the substantial and/or greater weight of the evidence and testimony on record, nor by the applicable and/or statutory law?

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley,)
)
Employee,)
Claimant,)
vs.)
)
Chapman Mechanical,)
)
Employer,)
)
And)
)
Stonewood Insurance,)
)
Carrier,)
Defendants)

CERTIFICATE OF
SERVICE

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: The Honorable Virginia Crocker
 SCWCC
 PO Box 1715
 Columbia, SC 29202-1715

Mr. Steven Rudisill
Rudisill White & Kaplan
212 South Tryon Street, Ste. 1440
Charlotte, NC 28281

DOCUMENT: Form 30

DATE OF MAILING: December 12, 2012

Janet Spruell

Janet Spruell
Paralegal to Jeffrey D. Ezell

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1101678

SEAN D. DALEY)
)
 CLAIMANT,)
)
 VS.)
)
 CHAPMAN MECHANICAL)
)
 EMPLOYER,)
)
 AND)
)
 STONEWOOD INSURANCE)
)
CARRIER.)

SC WORKERS' COMPENSATION COMMISSION
 HEARING OF
 SEAN D. DALEY
 VS
 CHAPMAN MECHANICAL, INCORPORATED

This is the Transcript of the South Carolina Workers' Compensation Hearing of Sean D. Daley versus Chapman Mechanical, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:13 A.M., Thursday, June 14, 2012, at Calhoun County Courthouse Annex, 102 Court House Drive, St. Matthews, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

PALMETTO COURT REPORTING
 321 Mac Circle Lexington, SC 29073
 (803) 358-0515
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APPEARANCES

FOR THE CLAIMANT:
Jeffrey D. Ezell, Esquire
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Greenville, SC 29601

FOR THE EMPLOYER/CARRIER:
Steven M. Rudisill, Esquire
Rudisill, White & Kaplan
128 South Tryon Street
Charlotte, NC 28202-5005

ALSO PRESENT:

Mrs. Daley

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

WITNESSES

All witnesses:	Page
Mr. Daley for Claimant	
Direct Examination by Mr. Ezell	36:14
Cross-Examination by Mr. Rudisill	73:20
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STIPULATIONS

Commissioner Wilkerson: Today's date is June the 14th, 2012. This hearing was originally scheduled on February the 7th, 2012. We're here in reference to Workers' Comp File Number 1101678. The Claimant is Sean D. Daley and his Attorney is Jeffrey Ezell. The Employer, Chapman Mechanical, Incorporated, their carrier is Stonewood Insurance Company; is that correct, Mr. Rudisill?

Mr. Rudisill: Yes, sir, Your Honor.

Commissioner Wilkerson: Okay. And Mr. Rudisill represents both the Employer as well as the carrier. The date of accident is 2/9/11. The average weekly wage is six twenty-nine, seventy-one (\$629.71); thus the comp rate would be four nineteen, eighty-three (\$419.83). We're here today to determine if Employer/Carrier may stop payment and, if so, determine if the Claimant is entitled to any future benefit. The Carrier also requests credit for temporary total benefits paid in excess of award. And also we're here on the Form 50 and 51 that has respectfully been filed by both parties. Are there any objections to APA's, jurisdiction, venue or any other items, Mr. Rudisill, since you filed first on either one of

1 those issues with the 50, 51 or the 21?

2 Mr. Rudisill: Your Honor, I -- I -- I would
3 object on behalf of my client to the introduction
4 of exhibits that have been submitted by the
5 Claimant with his APA submissions. They -- they
6 seem to go to -- more to the issue of the light
7 duty work that had been provided to him last year.
8 There are photographs of -- of his work area, a
9 bucket that he was provided to sit on, a chair
10 that he was provided to sit in, and some other
11 matters, personnel records. The parties resolved
12 the light duty work issue and the Claimant's
13 entitlement to temporary disability compensation
14 pursuant to a consent order back on September 20,
15 2011, and it -- it doesn't seem to us that -- that
16 those exhibits at this time are -- are relevant or
17 material to any of the issues that are before you
18 here today pursuant to the Form 21 or the Forms 50
19 and 51.

20 Mr. Ezell: Your Honor, if I might respond?

21 Commissioner Wilkerson: Yes. Please. Thank
22 you. And I've got them now. I was --

23 Mr. Ezell: Okay.

24 Commissioner Wilkerson: -- looking for them.

25 Mr. Ezell: Your -- Your Honor, it's -- it's

1 our position that they are relevant for -- for two
2 (2) reasons. Obviously, Mr. Rudisill is here
3 today trying to stop payment of benefits. It's
4 our position that Mr. Daley was never provided
5 adequate light duty and that the -- the exhibits
6 are pertinent to that issue in and of itself. But
7 secondly, there is what now appears to be a very
8 valid psyche claim having been ratified by the
9 Defendant's own Psychiatrist from Charlotte. And
10 it's -- and it's our position that Mr. Daley's
11 psychiatric or psychological issues are not only
12 the result of his pain and his inability to resume
13 the type of work he did, but also the -- the
14 pretty significant maltreatment of him by the
15 Employer, Chapman Mechanical. The -- the evidence
16 is pretty clear that they pretty much jerked him
17 around pretty hard when they -- when -- when the
18 return to work issue came about. They didn't make
19 decent accommodations to him. They gave him
20 ridiculous accommodations and I -- I use that word
21 with extreme reservation because they really
22 weren't accommodations. At one point in time,
23 after falling eight feet (8') off a ladder,
24 striking himself on the side on a four inch (4")
25 pipe that stuck out of the ground two and a half

1 feet (2½') they gave him a five (5) gallon bucket
2 to sit on. Dr. Leblond has viewed these pictures,
3 their -- their APA submissions pertinent to his
4 opinions with regard to what the Employer did or
5 didn't do in terms of trying to give him "light
6 duty" and again, I use that term extremely
7 loosely. And I think that these exhibits are very
8 pertinent because, like I said, not only has his
9 pain and limitations been a factor in his
10 psychological condition but also that the fact
11 that he worked, you know, for this company, gave
12 them his best, got hurt on the job, and this is
13 what they did to him. Ultimately dismissing him
14 as his testimony will reflect and I think these
15 exhibits are -- are very, very relevant to that
16 point.

17 Commissioner Wilkerson: And -- and, Mr.
18 Rudisill, I -- you -- you don't have an employer
19 representative here; is that fair?

20 Mr. Rudisill: No, Your Honor; we do not.

21 Commissioner Wilkerson: And -- and it's my
22 understanding that the Employer has gone out of
23 business; is that correct?

24 Mr. Rudisill: My -- the company is defunct

25 --

1 Commissioner Wilkerson: Defunct. Okay.

2 Mr. Rudisill: -- to the best of my
3 knowledge.

4 Commissioner Wilkerson: Sure.

5 Mr. Rudisill: Yes, sir.

6 Commissioner Wilkerson: Okay.

7 Mr. Rudisill: I have not been able to
8 contact any of the representatives of the company,
9 one of whom we -- whose deposition was taken in
10 this case last year.

11 Commissioner Wilkerson: And -- and this --
12 it is submitted?

13 Mr. Rudisill: Excuse me?

14 Commissioner Wilkerson: Is that deposition
15 submitted --

16 Mr. Rudisill: No, sir --

17 Commissioner Wilkerson: -- here today?

18 Mr. Rudisill: -- it's not submitted.

19 Commissioner Wilkerson: Okay. Okay.

20 Mr. Rudisill: Because at the time, Your
21 Honor, the parties were wrangling, if you will,
22 over this light duty work issue --

23 Commissioner Wilkerson: I understand.

24 Mr. Rudisill: -- and the claimant's --

25 Commissioner Wilkerson: Right.

1 Mr. Rudisill: -- entitlement to TTD, so.

2 Commissioner Wilkerson: Okay. Is there any
3 reason to believe that what I'll see on these
4 photographs is not what took place at the employer
5 or do we have any information or evidence that it
6 is not, I mean?

7 Mr. Rudisill: No, sir.

8 Commissioner Wilkerson: Okay.

9 Mr. Rudisill: No, sir.

10 Commissioner Wilkerson: Okay.

11 Mr. Rudisill: I mean, the photographs are --
12 there's a photograph of the five (5) gallon bucket
13 that was provided to him at -- at one point in
14 time. There's a photograph of the -- of a -- a
15 soft lawn chair that was provided to him to sit
16 in. And, as I said, there's some personnel
17 records and -- you know, quite a few of them
18 actually.

19 Commissioner Wilkerson: Sure.

20 Mr. Rudisill: So, it -- it just didn't seem
21 that -- that any of this is really relevant to any
22 of the issues here today --

23 Commissioner Wilkerson: And it may not be.

24 Mr. Rudisill: -- MMI --

25 Commissioner Wilkerson: Sure, I understand.

1 Mr. Rudisill: -- the extent of his PPD and
2 -- and -- and any -- whether he needs ongoing
3 treatment for any psychological issues.

4 Commissioner wilkerson: Okay. I will allow
5 them in because as both of you all know, its part
6 of the evidence but it's not -- it's probably not
7 the part of the evidence that's going to throw the
8 case tremendously one way or the other. It's not
9 going to -- for no better term, it's not the
10 smoking gun that's going to tilt it one way or the
11 other. Okay. So, I'm going to go ahead and let
12 that information in, okay?

13 Mr. Rudisill: All right.

14 Commissioner wilkerson: And I understand
15 your objection to that, Mr. Rudisill.

16 Mr. Rudisill: Yes, sir. Thank you.

17 Commissioner wilkerson: So noted.

18 Mr. Rudisill: Thank you.

19 Mr. Ezell: And we -- we have no objection to
20 any -- any of the submissions, Your Honor.

21 Commissioner wilkerson: Anything else with
22 --

23 Mr. Ezell: No, sir.

24 Commissioner wilkerson: -- that's from the
25 APA's or the jurisdiction or anything else?

1 Mr. Ezell: Right. No, sir.

2 Commissioner Wilkerson: Okay. Then we'll
3 proceed forward with that -- and that objection
4 has been handled; the Commission's file becomes a
5 part of the record with the exception of
6 self-serving declarations and unstipulated medical
7 reports. And let me make sure before we get
8 started. This is your submissions today?

9 Mr. Ezell: Yes, sir.

10 Commissioner Wilkerson: Okay. I just got
11 some stuff in here. Okay. Mr. Rudisill or Steve,
12 since you were the first one to file the form and
13 it was the 21, do you want to handle just the 21
14 first or do you want to address the 50 and 51? I
15 -- I'll take it either way. I was going to let
16 you go first since you were the moving party,
17 initially?

18 Mr. Rudisill: Well, Your Honor, we would --
19 with respect to the Form 21, my clients will take
20 the position that Mr. Daley was placed at maximum
21 medical improvement by the authorized treating
22 physician who is the Physiatrist, Dr. Leblond, on
23 November 21, 2011. Dr. Leblond on that date, or
24 shortly thereafter, assessed a six percent (6%)
25 whole person impairment as the result of the

1 contusion that Mr. Daley suffered to his thoracic
2 and lumbar area and his rib cage, right rib cage
3 area, when he fell from this ladder on February
4 the 9th of 2011. Dr. Leblond imposed work
5 restrictions pursuant to a functional capacity
6 evaluation that had been performed shortly prior
7 to that date of no lifting greater than fifteen
8 (15) pounds. He indicated that Mr. Daley could
9 sit or stand constantly, that he could engage in
10 frequent ladder climbing and transfers, that he
11 could occasionally squat, kneel, crawl, overhead
12 lift or reach, and he could engage in repetitive
13 lumbar flexion, and that he could walk; all of
14 those on an occasional basis. The Defendants have
15 continued to pay compensation for temporary total
16 disability since that date, and we seek credit for
17 all the compensation that's been paid since that
18 date.

19 Commissioner Wilkerson: Back to 11/21/11; is
20 that --

21 Mr. Rudisill: Yes, sir.

22 Commissioner Wilkerson: -- okay. All right,
23 I wanted to make sure I've got the right notes,
24 okay, from last time. All right.

25 Mr. Rudisill: Yes, sir.

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1 Commissioner Wilkerson: Has any medical
2 since then been provided?

3 Mr. Rudisill: Well, we have the
4 neuro-psychiatric evaluation --

5 Commissioner Wilkerson: Okay. All right.

6 Mr. Rudisill: -- that Mr. Daley underwent at
7 the hands of Dr. Thomas Gualtieri in Charlotte on
8 May the 10th, 2011 --

9 Commissioner Wilkerson: Okay.

10 Mr. Rudisill: -- which goes more to the
11 issues, I suppose, that are raised in the Form 50
12 --

13 Commissioner Wilkerson: Okay.

14 Mr. Rudisill: -- and the 51.

15 Commissioner Wilkerson: Okay.

16 Mr. Rudisill: So -- and -- and the issue
17 there would be whether the Claimant has any
18 psychological problems as a result of -- of his
19 injury. There -- I think pursuant to the
20 pleadings, at least some of the pleadings
21 indicates, there's an indication that Mr. Daley
22 had suffered a head injury or a traumatic brain
23 injury. When we were at the last hearing, I
24 think, Mr. Ezell had indicated that the Claimant
25 was not -- in so many words was not many words was

1 not pursuing that claim and I -- I stand to be
2 corrected on this --

3 Mr. Ezell: No. That -- that's correct, Your
4 Honor.

5 Mr. Rudisill: -- but --

6 Commissioner Wilkerson: Okay.

7 Mr. Rudisill: -- so, I don't -- I don't think
8 that issue is really before the Commission at this
9 point.

10 Commissioner Wilkerson: Okay. That's fine.

11 Mr. Rudisill: Although Dr. Gualtieri did
12 address it and did indicate that he found based
13 upon his extensive neuro-psychiatric testing that
14 there was no evidence of any type of closed head
15 injury or -- or traumatic brain injury.

16 Commissioner Wilkerson: Okay.

17 Mr. Rudisill: He had indicated that pursuant
18 to -- to all of his testing and his clinical
19 evaluation that Mr. Daley was, as he put it, a bit
20 depressed and he did prescribe a couple of
21 medications for that reason but he did not think
22 that there was any long term sequelae to that
23 problem and did not indicate that there was any
24 disability associated with that problem. And my
25 clients would point out that the Claimant was seen

1 on a referral by Mr. Ezell by a Dr. Mullen back in
2 June of last year, I believe it was, June of 2011.
3 Dr. Mullen seemed to engage in a lot of
4 speculation about whether there had been a closed
5 head injury and my clients believe that a lot of
6 his opinions are based upon his belief that there
7 perhaps was a closed head injury.

8 Commissioner Wilkerson: But since he's not
9 pursuing that --

10 Mr. Rudisill: Correct.

11 Commissioner Wilkerson: -- the closed head
12 injury --

13 Mr. Rudisill: And -- and I --

14 Commissioner Wilkerson: -- but the
15 psychological you are pursuing is my
16 understanding?

17 Mr. Ezell: Yes, Your Honor.

18 Commissioner Wilkerson: Okay.

19 Mr. Rudisill: -- yes, sir. And I -- I think
20 that goes more to the -- to the weight that you
21 give any opinions --

22 Commissioner Wilkerson: Okay. Sure.

23 Mr. Rudisill: -- that he has rendered, Your
24 Honor.

25 Commissioner Wilkerson: Okay.

PALMETTO COURT REPORTING
321 Mac Circle Lexington, SC 29073

1 Mr. Rudisill: So -- but neither Dr. Mullen
2 nor Dr. Brabham, who Mr. Ezell also referred the
3 Claimant to for an evaluation -- Dr. Brabham, of
4 course, being a Psychologist, not a medical doctor
5 -- neither of them seemed to have indicated that
6 -- that Mr. Daley has any -- any permanent
7 disabilities or inability to return to work
8 because of any psychiatric or psychological
9 problems. So, in our view we are looking solely
10 at a -- a single member injury here, that is to
11 the back. A contusion to the back, which occurred
12 on top of some pre-existing medical problems that
13 the Claimant had had with his lower back, lumbar
14 spine, and for which he had received treatment
15 within just a few months prior to the date of the
16 accident. And, in fact, for which he was still
17 requiring medication from his treating physician
18 for those problems.

19 Commissioner Wilkerson: Okay.

20 Mr. Rudisill: So, our position would be that
21 -- that he had some back problems at the time of
22 the accident. The accident occurs; he suffers
23 some additional problems and exacerbation. He
24 obviously had a -- a serious contusion to his --
25 to his -- his back and his rib cage area and he

1 has recovered from that. He has been rated and --
2 and there's been some -- some permanent impairment
3 assessed for those problems. And he continues to
4 have some problems, according to the medical
5 records and I'm sure what you'll hear from him in
6 his testimony today but that he, from a
7 psychological standpoint, is not disabled and he
8 has the restrictions that Dr. Leblond has placed
9 on him and no other doctor has placed any
10 restrictions on him as a result of any injury that
11 he suffered at the time of this accident. So, we
12 have six percent (6%) to the back. Again, Mr.
13 Ezell did send Mr. Daley to Dr. Grady, a DO, for
14 an evaluation back in December, I believe it was,
15 of 2011. Dr. Grady, of course I'm sure you'll
16 read his report --

17 Mr. Ezell: I'm sorry.

18 Commissioner Wilkerson: You've got to stop.

19 Mr. Rudisill: -- we --

20 Court Reporter: Please.

21 Mr. Ezell: My bad.

22 Commissioner Wilkerson: My gosh.

23 Mr. Ezell: I'm sorry.

24 Mr. Rudisill: -- we -- we -- we would -- we
25 would argue that -- that the Commission should not

1 put a great deal of weight on his opinions based
2 upon the other evidence in the record from, not
3 only Dr. Leblond, but you also have Dr. McHenry,
4 who is an Orthopedic Surgeon who saw the Claimant
5 early on and then saw him again in the fall; I
6 think it was November of last year for a final
7 evaluation as to whether he was surgical or not
8 and so, we think their opinion should carry more
9 weight here than Doctor -- Doc -- Dr. Grady. Dr.
10 Grady did assess a twenty-six percent (26%)
11 permanent partial impairment to the lumbar spine,
12 I believe it was. So, that's what we see in the
13 case, Your Honor.

14 Commissioner Wilkerson: Okay. All right.
15 Thank you.

16 Mr. Ezell: Your Honor, my eyes are not --

17 Commissioner Wilkerson: On behalf of your
18 client --

19 Mr. Ezell: -- Your Honor, my eyes are not
20 what they used to be --

21 Commissioner Wilkerson: -- tell me what --

22 Mr. Ezell: -- do -- do you mind if I stay
23 seated so I can --

24 Commissioner Wilkerson: -- no, no, that's
25 fine. No, absolutely. I'm not --

1 Mr. Ezell: -- okay.

2 Commissioner Wilkerson: -- I'm taking notes.

3 Mr. Ezell: Okay.

4 Commissioner Wilkerson: I'll look at you
5 sometimes and sometimes I don't.

6 Mr. Ezell: Okay. Your Honor, it's our
7 position that Mr. Daley sustained a pretty severe
8 injury on February 9th of 2011. He fell off of an
9 eight foot (8') ladder, landed on his right side
10 on a piece of four inch (4") PVC pipe that was
11 cemented into the ground; it stuck up from the
12 ground about two and a half feet (2½") feet; so,
13 he was basically impaled on -- on -- on that pipe.
14 Since that point in time he's had an extremely
15 difficult time having to fight for the benefits
16 he's -- he's entitled to. He has by the
17 Defendant's own Nurse Case Manager's notes been
18 extremely compliant throughout his course of
19 treatment; we just call your attention to Exhibit
20 Number 10. Pursuant to Exhibit Number 2, pages 1
21 through 5, as well as APA Number 13, pages 207 to
22 210, it's our --

23 Commissioner Wilkerson: Let me ask you. How
24 am I going to know what these exhibits are?

25 Mr. Ezell: -- I'm sorry. They're -- it --

1 it's --

2 Commissioner Wilkerson: Because they're not
3 marked.

4 Mr. Ezell: -- pardon me?

5 Commissioner Wilkerson: They're not marked,
6 I don't think.

7 Mr. Ezell: I believe they are, Your Honor.
8 I will double check.

9 Commissioner Wilkerson: Are they marked on
10 the top or on the side?

11 Mr. Daley: There should be -- there should
12 be stickers on them.

13 Commissioner Wilkerson: All right. That's
14 what you gave me; so, I don't know.

15 Mr. Ezell: Okay.

16 Commissioner Wilkerson: Let me make sure I
17 got the right stack --

18 Mr. Ezell: All right.

19 Commissioner Wilkerson: -- and I'm not
20 looking at the wrong thing.

21 Mr. Ezell: I think the blue pages is her --

22 Commissioner Wilkerson: Is it at -- it says
23 on the front of the blue page?

24 Mr. Ezell: -- on the front of the blue page;
25 yes, sir. Commissioner Wilkerson: Okay. That's

1 fine.

2 Mr. Ezell: For example, there's Exhibit
3 Number One --

4 Commissioner Wilkerson: Oh, I'm fine.
5 That's fine as long as I've got it. I just wanted
6 it --

7 Mr. Ezell: -- yes, sir.

8 Commissioner Wilkerson: -- where I can
9 reference back to it.

10 Mr. Ezell: Okay.

11 Commissioner Wilkerson: Thank you.

12 Mr. Ezell: Certainly. I'm sorry.

13 Commissioner Wilkerson: No, no. I'm fine.

14 Mr. Ezell: Your Honor, it's our position
15 that -- that Mr. Daley was never provided with
16 adequate light duty. And that ultimately as a
17 result of the substantial change in lifestyle from
18 -- from the injury, the uncertain of his -- the
19 uncertainty of his future in terms of
20 employability or lack of employability and quite
21 frankly, Your Honor, what I consider to be and I
22 think what Mr. Daley will testify to, was pretty
23 significant maltreatment of him by the Employer in
24 terms of the return to work situation and his
25 ultimate termination. He was given sedentary work

1 restrictions by Dr. Leblond; he was fired by the
2 employer when he was still on those restrictions.
3 He's become quite anxious and depressed. Both Dr.
4 Brabham, Dr. Mullen, and Dr. Gualtieri, if I'm
5 pronouncing that right, the Defendant's own
6 Psychiatrist, he is depressed, and Dr. Gualtieri
7 related his depression to the accident and said
8 that he deserves treatment. Dr. Gualtieri, as Mr.
9 Rudisill said, that he is a bit depressed but I
10 would equate that to being a bit pregnant; you're
11 either depressed or you're not. Doctor -- Dr.
12 Mullen, who's a board certified Psychiatrist, Dr.
13 Brabham, who is a PhD Psychologist, both indicated
14 that his pain and his substantial change in
15 lifestyle has caused his depression, Dr. Gualtieri
16 said that he's entitled to treatment for it; that
17 treatment has never been provided. Dr. Gualtieri
18 gave Mr. Daley prescriptions on the date of the
19 evaluation; Mr. Daley tried to have those filled
20 and they were denied. With regard to Dr. Mullen's
21 opinions, he does state at some points in time
22 that Mr. Daley may have a closed head injury as we
23 have stipulated to. In response to Mr. Rudisill's
24 opening statement we are not pursuing closed head
25 injury but Dr. Mullen did say that his depression

1 is caused by his chronic pain, but there may be a
2 contribution of closed head injury. So, the Dr.
3 Mullen -- Dr. Mullen, I think, in no certain term
4 states that at least in -- in some pertinent part
5 the -- the injury and the pain are the source of
6 his depression and anxiety. We would contend that
7 he's not reached MMI. As per Dr. Gualtieri's own
8 notes he has -- is entitled to psychiatric
9 treatment and -- and medication, which at this
10 point has yet to be provided. We would also
11 contend that the Defendants are not entitled to
12 credit for overpayment from the date of maximum
13 medical improvement. We would contend that in
14 addition to his back injury and back pain Mr.
15 Daley also suffers from pain in his hips and into
16 his legs. He has radicular pain. We would rely
17 on the case, I think I've handed up, of Hudson
18 versus South Carolina State Ports Authority. With
19 regard to the evidence of -- of leg pain, Dr.
20 Gualtieri, himself, affirms that Mr. Daley has
21 radiculopathy in -- in the very first paragraph
22 under Summary and Impressions of the -- the
23 supplemental APA Mr. Rudisill submitted. It says
24 he has degenerative disc disease and
25 radiculopathy. So, we would contend that in

1 addition to the -- the rating to his -- his back
2 he has also sustained pain to his -- to his --
3 pain and issues and -- and impairment to his leg
4 or legs. We would contend that Dr. Grady's
5 opinion should be given considerably more rate
6 than -- weight than I think Mr. Rudisill will have
7 you believe. Dr. Grady -- Grady is a board
8 certified Orthopedic Surgeon with the Spartanburg
9 Regional Medical Group and irrespective of whether
10 he's a DO or an MD he passed the same board
11 certifications that any -- any other doctor in
12 town passed and we would contend that, obviously,
13 his -- his assessment should be given significant
14 weight. And -- and we would also contend, Your
15 Honor, that the six percent (6%) assigned by Dr.
16 Leblond is woefully inadequate in light of the
17 very restrictions that Dr. Leblond placed upon
18 him. As Mr. Daley is going to testify the bulk of
19 his work history has been as a Commercial Plumber;
20 that's heavy work. There's no two (2) ways about
21 it, you're lifting toilets, you're lifting pipe,
22 you're lifting, you know, any number of things.
23 You're working overhead, you're working at your --
24 at -- at waist level, you're working below waist
25 level. He's got permanent lifting restrictions of

1 no greater than fifteen (15) pounds. Irrespective
2 of whether he can stand, stoop, sit or walk, the
3 bottom line is he can't pick up a toilet if he
4 can't lift more -- more than fifteen (15) pounds.
5 You can't lay pipe if you can't lift more than
6 fifteen (15) pounds. So, it's -- it's simple that
7 he just can't do what he used to do and that's all
8 he knows. So, we would contend that six percent
9 (6%) is just -- is -- is an abomination under
10 these particular circumstances. Dr. Leblond also
11 indicated that -- that Mr. Daley is going to need
12 medication. There's no indication that that's for
13 a temporary point of -- period of time; it says --
14 it -- it -- it's basically he's going to need
15 medication from this point forward. I know --

16 Commissioner Wilkerson: Is that being
17 provided?

18 Mr. Ezell: -- that's on the 14 -- no, sir.
19 Well, it is and it isn't, and we'll get into that,
20 Your Honor. But that's on the 14-B that the
21 Defendants have submitted. Mr. Daley has never
22 held a desk job, he's never held a supervisory
23 type job where you sit and watch somebody else.
24 Dr. Brabham is a -- is a very well credentialed
25 Vocational Evaluator. There's no evidence to --

1 to contradict Dr. Brabham. Dr. Brabham has not
2 been deposed. There's no vocational opinion
3 that's submitted by the Defendants. So,
4 basically, that -- that information and that
5 evidence is uncontroverted. He's indicated that he
6 can't do what he used to do before. So, given the
7 issues between his back, which we think have not
8 fully been addressed in terms of the amount of
9 impairment he sustained, the issues with his legs
10 with the radiculopathy, which was recognized even
11 by Dr. Gualtieri, and the issues with the
12 psychiatric and psychological problems, he's
13 considerably more than six percent (6%). And we
14 would also contend that this is not, as Mr.
15 Rudisill would have you believe, a single member
16 case; there -- there is considerably more to it
17 than that. So, for that reason we would contend
18 that his -- his impairment greatly exceeds that
19 the Defendants would -- would contend.

20 Commissioner Wilkerson: Okay. Mr. Rudisill,
21 let me ask you a question about the fired while on
22 light duty; I'm a little interested in that, I
23 mean, I'll read the stuff in here. Tell me the
24 position of your clients in reference to fired
25 while on light duty.

1 Mr. Rudisill: Light duty work was provided
2 to Mr. Daley by the Defendant Employer shortly
3 after the accident occurred.

4 Commissioner Wilkerson: Okay.

5 Mr. Rudisill: He was brought into the
6 office, he was doing some work in the office,
7 working with blueprints; according to his
8 testimony, doing some filing. And there came a
9 point in time where -- and I don't know how far
10 you want me to go with this, Your Honor, because
11 there may not be testimony on some of this --

12 Commissioner Wilkerson: Well --

13 Mr. Rudisill: -- so.

14 Commissioner Wilkerson: -- now, what I'm
15 trying to figure out is -- obviously, I think the
16 law is pretty clear that if somebody is on light
17 duty and the employer fires them you've got to
18 continue temporary total benefits, unless there
19 are circumstances that rise to the level, I'll use
20 the word disobedience; that's a little strong but
21 --

22 Mr. Rudisill: Constructive --

23 Commissioner Wilkerson: -- verbal, physical,
24 those type things and I think the Employer has the
25 right, based on the circumstances, to fire someone

1 even if they're on light duty if it rises to that
2 level.

3 Mr. Rudisill: -- yes, sir.

4 Commissioner Wilkerson: I -- I guess their
5 contention currently as I heard it, maybe I
6 misunderstood it, was he was fired while on light
7 duty; I don't know what that means and maybe the
8 testimony will tell me that.

9 Mr. Rudisill: Well, and it may be if Mr.
10 Daley testifies to it.

11 Commissioner Wilkerson: Okay.

12 Mr. Rudisill: But there --

13 Commissioner Wilkerson: That's fine.

14 Mr. Rudisill: -- there were some issues that
15 arose with respect to his attendance at work.

16 Commissioner Wilkerson: That's fine. That's
17 -- that's all -- we -- we'll get into it. Just --

18 Mr. Rudisill: And, I mean, this is all in
19 the Claimant's deposition --

20 Commissioner Wilkerson: -- I understand.

21 Mr. Rudisill: -- testimony. He would --

22 Commissioner Wilkerson: And his deposition
23 has been handed up or it may be handed up?

24 Mr. Rudisill: -- it -- it has not been
25 handed up but we can hand it up. But, Mr. -- Mr.

1 Daley and, as I understand it, and I was -- I -- I
2 -- candidly I was not involved in this case at
3 this juncture of it.

4 Commissioner Wilkerson: Okay. Sure.

5 Mr. Rudisill: But Dr. Daley, pursuant to
6 advice from Mr. Ezell, refused to return to the
7 job that was being provided because of the belief
8 that it was not -- it did not comport with the
9 light duty work --

10 Commissioner Wilkerson: Okay. Okay. That's
11 fine.

12 Mr. Rudisill: -- restrictions that had been
13 imposed at the time. And so, Mr. Daley was off of
14 the job for a number of days; efforts were then
15 made to get him back to work in the office and for
16 various reasons he did not appear for work or he
17 was tardy for work. And then, there were a period
18 -- was a period of a couple of days where he did
19 not show for work and when he came back the next
20 day, as I understand it, he was then terminated.
21 So --

22 Commissioner Wilkerson: Okay. That's fine.

23 Mr. Rudisill: -- the -- the contention that
24 there was no adequate light duty work ever
25 provided to the Claimant is inaccurate; there was

1 adequate light duty work provided for him. As a
2 matter of fact for approximately a month he was
3 working in the office, as I understand it, up
4 until he was moved out of the office and put on a
5 -- a job site where Chapman Mechanical was engaged
6 in commercial plumbing work and he was given an
7 inventory job. And that's when he was provided
8 with the bucket, he was provided with a lawn chair
9 to sit on, and -- and -- and he took the position
10 that that was inappropriate given his sedentary
11 work restriction at the time. And so, the company
12 then was going to bring him back into the office
13 and that's when problems arose with respect to
14 tardiness and absenteeism.

15 Commissioner Wilkerson: Okay. That's fine.
16 Okay.

17 Mr. Rudisill: Okay.

18 Commissioner Wilkerson: I just wanted --
19 that's fine.

20 Mr. Rudisill: So, we had a dispute about
21 whether and how much compensation he was entitled
22 to for disability after that termination occurred
23 and that's what was resolved pursuant to the
24 consent order that the parties entered into on
25 September the 20th --

1 Commissioner Wilkerson: Okay.

2 Mr. Rudisill: -- of 2011.

3 Commissioner Wilkerson: Okay.

4 Mr. Rudisill: So, those issues -- as far as
5 we're concerned those issues have been resolved.
6 So, we have been paying -- the Defendants have
7 been paying compensate -- excuse me --
8 compensation for temporary total disability from
9 that point forward, and actually I think prior to
10 that point forward. So -- and I'm sorry, Your
11 Honor, I don't have that consent order directly in
12 front of me but --

13 Commissioner Wilkerson: No, I -- I'm going
14 to see if it's in here.

15 Mr. Rudisill: -- but --

16 Commissioner Wilkerson: I just want to make
17 sure it's -- sometimes they can get in the file
18 and sometimes -- who -- who signed that; do you
19 all remember? All right. Wait a minute.

20 Mr. Ezell: I don't remember.

21 Mr. Rudisill: -- I, honestly, don't either.

22 Commissioner Wilkerson: I want to see if
23 I've got it. You said it was September?

24 Mr. Rudisill: Yes, sir. It's -- it was
25 filed September the 20th.

1 Mr. Ezell: It takes two (2) tortoises
2 sometimes to go --

3 Commissioner Wilkerson: I don't see it but
4 I'm not -- that doesn't mean it was filed and we
5 scanned it into the system.

6 Mr. Rudisill: Yes, sir. It's -- it's in the
7 system.

8 Commissioner Wilkerson: But I can't --

9 Mr. Rudisill: It's --

10 Commissioner Wilkerson: -- I can't tell you
11 that until I get back. But it -- I mean, you all
12 -- you all can just send me another copy -- or
13 just sometimes it's better if you just send it to
14 me; I'll get it direct as opposed to trying to go
15 back through our filing. Hold on.

16 Mr. Ezell: Your Honor, Commissioner Barden
17 signed it.

18 Commissioner Wilkerson: Okay. Have you got
19 an extra copy or no?

20 Mr. Ezell: I don't. I'm sorry.

21 Commissioner Wilkerson: That's okay.

22 Mr. Ezell: All I have is a -- either an
23 e-mail or faxed copy.

24 Commissioner Wilkerson: You all can send it
25 to me; that's fine.

1 Mr. Ezell: Okay.

2 Commissioner Wilkerson: I mean, I'm -- it
3 will take a -- you all will get it back to me
4 before I probably get back to the office, which is
5 okay. Because this will be something I won't --
6 this is a weekend read.

7 Mr. Ezell: You Honor, just by my quick
8 reading of it, I -- I would -- I would have to
9 disagree with Mr. Rudisill's --

10 Commissioner Wilkerson: That's fine.

11 Mr. Ezell: -- contention that it resolved
12 the light duty issue. It -- we -- we made a
13 compromise agreement with regard to some past
14 temporary total but at no point do I think we
15 acknowledged that light duty was properly provided
16 or that that issue was -- I think -- the order
17 says that all issues pertaining to the 50 and 51
18 are held in abeyance. And just real briefly, Your
19 Honor, in response with regard to the light duty
20 that was provided. We would just call the
21 Commission's attention to APA's pages 207 to 210,
22 which are Dr. Leblond's statements. He viewed the
23 bucket, the lawn chair, the job site that -- that
24 Mr. Daley was purportedly supposed to work on his
25 sedentary restrictions and absolutely said that

1 they're not -- they're not -- that it did not
2 comply. They were not -- they were not proper,
3 they're not adequate; it wasn't -- wasn't right.
4 And, again, that's just more of our contention
5 that he was jerked around and, you know, we'll --
6 we'll deal with that when we come to it.

7 Commissioner wilkerson: And -- and what I'm
8 saying on -- on the consent order, whether one (1)
9 of you or both of you send it to me; I don't care.

10 Mr. Rudisill: I've got a copy of it; it's
11 not signed fully or filed but this is the consent
12 order that I have here, Your Honor.

13 Commissioner wilkerson: That's fine. Just
14 hand it up. I'll -- I tell you what, let Jeff look
15 at it and --

16 Mr. Ezell: I -- I -- I've got -- I'm sure
17 it's the same one I just looked at.

18 Commissioner wilkerson: Yes, I'm sure it is.

19 Mr. Ezell: If you want to hand it up, Steve,
20 I don't have a problem with that.

21 Commissioner wilkerson: Thank you, sir.

22 Mr. Rudisill: Yes, sir.

23 Commissioner wilkerson: I appreciate it.
24 Thanks. And I'll have Elaine pull it, the signed
25 copy, just to put it in my stuff. It's just if

1 this comes up today I just wanted to have a
2 reference point.

3 Mr. Rudisill: Yes, sir.

4 Mr. Ezell: Right, Your Honor.

5 Commissioner Wilkerson: Thank you all.
6 Anything else before we hear testimony from --

7 Mr. Ezell: Nothing further --

8 Commissioner Wilkerson: -- the Claimant?

9 Mr. Ezell: -- nothing further from the
10 Claimant, Your Honor.

11 Commissioner Wilkerson: Mr. Rudisill?

12 Mr. Rudisill: No, Your Honor.

13 Commissioner Wilkerson: Okay. Thank you.
14 Sir, I'm going to get you to raise your right
15 hand. I'm going to have the Court Reporter swear
16 you in and we'll take some testimony from you.

17 Whereupon,

18 SEAN DAVID DALEY, being duly sworn and cautioned
19 to speak the truth, the whole truth, and nothing but
20 the truth, and nothing but the truth, testified as
21 follows:

22 Court Reporter: Please state your full name
23 for the record.

24 Witness: My name is Sean David Daley.

25 Court Reporter: Thank you, sir.

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1 Commissioner Wilkerson: On the 21, do you
2 want to direct or do you want to -- we're
3 combining them.

4 Mr. Rudisill: I'll rely on the medical
5 evidence, Your Honor, and -- and reserve my right
6 to cross-examine.

7 Commissioner Wilkerson: Absolutely. Thank
8 you.

9 Mr. Rudisill: Thank you.

10 Commissioner Wilkerson: Please proceed
11 forward. Thank you.

12 Mr. Ezell: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 By Mr. Ezell:

15 Q. Sean, if you would, give the Commissioner your -- your
16 -- your full address and date of birth.

17 A. My full address is 9 Arrington Avenue, Greenville,
18 South Carolina, 29617, date of birth is June 16th,
19 1976.

20 Q. Okay. And you're married, obviously, and your wife is
21 here. We've agreed to stipulate that her testimony
22 would basically be cumulative and corroborative of
23 yours; so, we'll -- we'll kind of proceed through that.
24 Sean, prior to this accident you'd had some back issues
25 in the past; is that correct?

- 1 A. That is correct.
- 2 Q. Okay. At the time of the accident were you functional
3 in terms of your ability to work as a Commercial
4 Plumber?
- 5 A. I most certainly was.
- 6 Q. Did you have any issues at -- with regard to your back
7 prior to this accident that prevented you from doing
8 your -- your full duty as a Commercial Plumber?
- 9 A. No.
- 10 Q. Did you ever miss any time from work with Chapman
11 Mechanical because of your back?
- 12 A. Maybe for a doctor's appointment but that wasn't a full
13 day.
- 14 Q. Okay. Did you ever have to forego or refuse any
15 particular jobs or tasks because of your back prior to
16 this accident?
- 17 A. No.
- 18 Q. Okay. You also -- I think, you -- you used to like
19 skateboarding; were you able to do that before this
20 accident?
- 21 A. Yes.
- 22 Q. Okay. Obviously, part and partial of what we're here
23 about today, Sean, is -- is some psychological or
24 psychiatric issues including anxiety and depression.
25 Had you ever suffered from anxiety or depression prior

1 to the incident?

2 A. No, not to my knowledge.

3 Q. Had you ever been treated for it --

4 A. No.

5 Q. -- medicated in any way?

6 A. No, I have not.

7 Q. Okay. Other than -- than your prior issues with your
8 back did you have any prior significant health problems
9 of any kind?

10 A. No.

11 Q. Okay. And as of February 9th, 2011, were you able to
12 do your job as a Commercial Plumber without any -- any
13 restrictions or reservation?

14 A. Yes.

15 Q. Okay. Give us your -- your educational background real
16 quickly, if you would.

17 A. I finished high school --

18 Q. Okay.

19 A. -- graduated, middle -- middle class, Bs and Cs, a
20 couple of As, just average student --

21 Q. Okay.

22 A. -- when I graduated.

23 Q. Any technical school or vocational school since then?

24 A. No.

25 Q. In terms of becoming a Commercial Plumbing, was that

1 mostly on the job training or --

2 A. Yeah. It was -- it -- it was every bit of on the job
3 training.

4 Q. -- okay. Had you ever held an office job before?

5 A. No.

6 Q. Ever had any type of computer or sit down job that you
7 -- you didn't have to be on your feet or lifting or
8 moving?

9 A. No.

10 Q. Okay. Prior to working for Chapman what kind of other
11 jobs had you held?

12 A. A few restaurant jobs, maybe a gas station clerk but --
13 when I was in high school.

14 Q. Okay. Where did you start working as a Plumber?

15 A. I started working as a Plumber at -- in Greenville.
16 What is the name of that company? Porter and Gray.

17 Q. Okay. And how long did you do that type of work?

18 A. I worked with them for probably about two (2) years.

19 Q. Okay. In your work history have you ever held any jobs
20 for any significant length of time that did not require
21 you to lift more than fifteen (15) pounds?

22 A. No.

23 Q. Okay. And what would be the maximum you would be
24 expected to lift as a Commercial Plumber on sort of a
25 regular basis; I'm not talking about the way out of the

1 ordinary situation but on a given day what would be the
2 -- would be the maximum you'd have to lift?

3 A. Well, the requirements to be a Plumber, basically, when
4 you fill out an applications a lot of them ask if you
5 can lift fifty (50) pounds or more.

6 Q. Okay. And was that something you had to regularly do
7 even with Chapman?

8 A. Yes.

9 Q. Okay. When did you start working with Chapman?

10 A. October 2010 --

11 Q. Okay.

12 A. -- I think.

13 Q. And you've indicated that -- that you had to lift as
14 much as fifty (50) pounds on a daily basis?

15 A. Yes.

16 Q. Okay.

17 A. My tools alone weigh about fifty (50) pounds just to
18 tote them in and out of the job.

19 Q. Okay. The -- the -- your average weekly wage and
20 compensation rate are already in the record; so, we'll
21 just kind of go past that. When you were working for
22 Chapman who did you -- and -- and we'll call it -- call
23 your attention, specifically, to February 9th of 2011;
24 at that point in time who was your supervisor or who
25 did you answer to directly?

1 A. Jimmy Champion.

2 Q. Okay. Were you ever written up for anything prior to
3 the February 9th, 2011 accident?

4 A. No, not to my knowledge.

5 Q. As far as you know you were in -- were you in good
6 standing with Chapman until the day you got hurt?

7 A. As far as I know I was in great standing.

8 Q. Okay. Had you ever been criticized for slow or
9 inferior work prior to the accident?

10 A. No.

11 Q. Okay. Was there any aspect of the job with Chapman you
12 were unable to perform before February 9th of 2011?

13 A. No.

14 Q. Okay. Tell the Commissioner, if you would, just
15 briefly how you got hurt, roughly what time of day;
16 that kind of thing?

17 A. It was about 10:30, I was working in a unfinished
18 bathroom, unlevel floors. They had put the ceiling
19 grid up about two (2) weeks prior -- two (2) weeks too
20 soon and I had to get up into the ceiling to do the
21 overhead work and the --

22 Q. Let me stop you right there, Sean.

23 A. -- sure.

24 Q. When you -- you say the ceiling grid, looking at the
25 ceiling above us, which is a hung ceiling obviously, is

1 that what you're talking about?

2 A. -- that's exactly what I was talking about, yes.

3 Q. Okay. And I assume the tiles were not in place but the
4 metal --

5 A. The metal --

6 Q. -- supports?

7 A. -- yes. And the General Contractor told us not to
8 touch them, remove them, or you'll be run off the job.

9 Q. Okay. Did working within those metal frames make it
10 more difficult?

11 A. Oh, most certainly.

12 Q. Okay.

13 A. You need to try to fit a twenty foot (20') length of
14 pipe in between something like that it -- it -- it's
15 almost impossible. I was working above the ceiling
16 grid and I don't know exactly how it happened or what
17 happened but the ladder came out from underneath me; I
18 fell backwards and the next thing I knew it was pain
19 and agony.

20 Q. Okay. What exact -- do you -- do you know exactly what
21 you -- what you fell or landed on?

22 A. It was a piece of four inch (4") PVC. I remember
23 falling backwards thinking that this wasn't going to be
24 good because I thought about a couple of things I was
25 going to land on and that was the last thing that was

1 on my mind, I was going to hit that.

2 Q. Okay.

3 A. But, as soon as I hit it I knew what I hit.

4 Q. Okay. Did anybody see you fall?

5 A. One (1) person did.

6 Q. Who was that?

7 A. Paul Lousch.

8 Q. Okay. Did he prepare an incident report?

9 A. He did.

10 Q. Okay. And on that initial incident report were any
11 safety violations alleged against you?

12 A. No.

13 Q. Okay. Now, ultimately, was a second report filled out?

14 A. As I believe -- yes, I believe there was.

15 Q. And that second report did claim safety violations; is
16 that right?

17 A. That's correct.

18 Q. And do you have any idea why it changed from one report
19 to the next?

20 Mr. Rudisill: Your Honor -- Your Honor, I
21 object. This testimony has nothing to do with the
22 issues that are before you today.

23 Commissioner Wilkerson: I -- I -- I was
24 going to let him go. They don't.

25 Mr. Ezell: Okay. Well, again, Your Honor --

1 Commissioner Wilkerson: Because safety
2 violations, that's OSHA, that's not me.

3 Mr. Ezell: -- I understand, Your Honor.
4 What -- what I'm -- what I'm trying to point out
5 is -- is just basically the pattern, the way --
6 the way Chapman had treated Mr. Daley from the
7 time this happened on forward, which we do believe
8 contributed to his psychiatric and psychological
9 issues. I -- I'll be happy to skip past it if
10 you'd prefer? I just wanted to --

11 Commissioner Wilkerson: Yes. I -- I don't
12 know that's going to have any relevance.

13 Mr. Ezell: -- okay. Then --

14 Commissioner Wilkerson: I'm going to be
15 looking at the doctor's report, his testimony, and
16 some other issues. That's -- that happened so far
17 back.

18 Mr. Ezell: -- well --

19 Commissioner Wilkerson: That's a year --
20 four (4) months ago. I --

21 Mr. Ezell: -- again, Your Honor, like I
22 said, and -- and -- and again, I'll obviously
23 defer to your -- your ruling, obviously, but it --
24 it's our position that the way Chapman handled
25 this, literally from the very get go, put in

1 motion a set of circumstances that have -- that
2 have culminated in his -- his situation now. But,
3 if -- if you'd prefer, I'll skip forward --

4 Commissioner Wilkerson: But that's not to be
5 tried in this court of law. That's to be tried in
6 another court of law --

7 Mr. Ezell: -- okay.

8 Commissioner Wilkerson: -- under the
9 employment practices liability and that needs to
10 be pursued there. I can't --

11 Mr. Ezell: I understand.

12 Commissioner Wilkerson: -- handle that here
13 today.

14 Mr. Ezell: And -- and I'm not trying to --
15 to -- to -- to --

16 Commissioner Wilkerson: I understand.

17 Mr. Ezell: -- try a wrongful termination
18 case here, Your Honor.

19 Commissioner Wilkerson: Right.

20 Mr. Ezell: I'm just trying to point out to
21 the Commission what Chapman did and how it
22 impacted him but I'll be happy to skip forward.

23 Commissioner Wilkerson: Yes. We're here
24 today on is he at MMI, does he have any
25 disability, has the medicines been paid; I use

1 medicines liberally. Is psyche going to be
2 accepted and should his temporary total continue
3 or -- I mean, that's what we're here on. We're
4 not --

5 Mr. Ezell: I understand and -- and I guess,
6 Your Honor, I would -- I would just address this
7 to is psyche going too be accepted because it --

8 Commissioner Wilkerson: -- I -- I can't --

9 Mr. Ezell: -- well, and -- and, again, like
10 I said, that's why I wanted it before the
11 Commission to show just what Chapman did in
12 dealing with this. And -- but again, Your Honor,
13 you're -- you're -- you're in charge and I'll skip
14 forward if you say so.

15 Commissioner Wilkerson: Yes. I don't -- I
16 don't think that's going to have any relevance --

17 Mr. Ezell: Okay.

18 Commissioner Wilkerson: -- on the decision.

19 Mr. Ezell: That's -- that's fine, Your
20 Honor.

21 Commissioner Wilkerson: So, we just need to
22 move on by that.

23 Mr. Ezell: That's fine.

24 Commissioner Wilkerson: Sure.

25 Q. Sean, just going ahead and skipping ahead. Where did

1 you get your first medical treatment?

2 A. It was at -- what is the name of that? I can't think
3 of the name of the hospital up in North -- in North
4 Carolina right now.

5 Commissioner Wilkerson: That's fine.

6 Q. Okay. Were you working out -- out of town or out of
7 state when this happened?

8 A. It was in -- yes. It was in North Carolina.

9 Q. Okay. Ultimately -- well, walk -- walk me through the
10 -- the medical treatment you had?

11 A. Pardee --

12 Q. -- okay.

13 A. Pardee Hospital -- emergency room. That's right.

14 Q. Okay. After -- after you returned to South Carolina
15 where was your first medical treatment at that point?

16 A. My first medical treatment when I was at --

17 Q. Once -- once you got back to South Carolina, if you
18 recall?

19 A. -- it was Greenville Memorial.

20 Q. Okay. And, ultimately -- just to -- to -- for the sake
21 of time, it -- it became apparent that Dr. Leblond was
22 your primary care physician; is that correct?

23 A. That is correct.

24 Q. And was that after you had been released by an
25 Orthopedist and told you needed pain management?

1 A. No. I believe the first person I saw was Dr. McHenry
2 and I guess he -- he -- I guess he had done -- he did
3 refer me for pain management.

4 Q. Okay. And Dr. Leblond was handling your pain
5 management?

6 A. Correct.

7 Q. And that was medication, and were any injections or
8 anything like that ever performed?

9 A. I had one (1) ESI.

10 Q. And how did that work?

11 A. Not so well.

12 Q. Okay. How long were you out of work before you were
13 able to -- to go back or before Chapman brought you
14 back on any type of light duty?

15 A. I was out for two (2) days, two (2) or three (3) days.

16 Q. And when you returned to work where -- where were you
17 sent by Chapman Mechanical?

18 A. They put me at the office.

19 Q. Okay. And how long were you at the office?

20 A. Approximate -- approximately a month.

21 Q. Okay. And why did they -- were -- were you taken out
22 of the office?

23 A. Yes.

24 Q. And -- and would you -- do you know why?

25 A. I could speculate why but --

1 Q. No, you can't --

2 A. -- no, I do not know.

3 Q. -- you can't do that. Okay.

4 A. I don't know.

5 Q. When they took you out of the office where were you
6 sent?

7 A. I was sent to a commercial job site.

8 Q. And what job site was that?

9 A. I don't remember the name of the school; it was a
10 school in Anderson.

11 Q. Was it Glenview?

12 A. Glenview, yeah.

13 Q. Okay.

14 A. Thank you.

15 Q. And what were you told to do when you got to Glenview?

16 A. Inventory.

17 Q. Okay. And -- and describe for the Commissioner what
18 they actually had you doing, physically.

19 A. Counting parts. They wanted me -- well, they told me
20 they'd provide help to lift boxes and move things
21 around but I never could find help.

22 Q. Okay. When you say lift boxes, what were these boxes
23 of?

24 A. Metal parts, cast iron parts.

25 Q. And what --

1 A. PVC.

2 Q. -- what would a box of cast iron parts weigh?

3 A. It varies in -- it varies in weight.

4 Q. What would be the most one would weigh?

5 A. The most -- you could have them up to a hundred and
6 fifty (150) pounds.

7 Mr. Rudisill: Objection, unless he
8 knows.

9 Commissioner Wilkerson: Yes. Unless you
10 know exactly.

11 Q. Were -- were the boxes of cast iron or metal parts more
12 than fifteen (15) pounds?

13 A. Yes.

14 Q. Okay. There -- there has been some -- some allegations
15 that you -- you missed work or were noncompliant with
16 your return to work; what is your position on that?

17 A. The only time I missed work was to go to a funeral.

18 Q. Okay. Now, on March 31st of 2012, I guess it was --
19 no, I'm sorry. Yes, of -- no, of 2011, I'm sorry, did
20 you miss some time due to pain; do you recall?

21 A. I think I did.

22 Q. Did you --

23 A. Maybe --

24 Q. -- did you have Jessie Blanchard's permission to miss
25 that time?

1 A. Yes.

2 Q. Okay. Now, there's been an allegation of tardiness.
3 The records, I think indicate -- and these have been
4 submitted to the Commissioner -- that on April 4th you
5 were two (2) hours late?

6 A. Correct.

7 Q. Were you ever late to Glenview any other time?

8 A. No

9 Q. Okay. Now, the -- the time you were late and the hour
10 and half you missed, was that related to pain?

11 A. It was.

12 Q. Okay. In terms of what Chapman had you doing, you were
13 on sedentary work restrictions at the time. It's been
14 submitted, a photograph has been submitted of a five
15 (5) gallon bucket; is that what they initially provided
16 you to sit on?

17 A. That's correct.

18 Q. And how did that make your back or legs feel?

19 A. It didn't make them feel good at all.

20 Q. And this inventory work, could you actually just sit in
21 one spot and do it from the -- the sitting spot or did
22 you have to get up and move around and count things,
23 and sort things, and that kind of thing?

24 A. No, you'd have to constantly move your chair because
25 things were scattered everywhere.

- 1 Q. Okay. Now, after the -- the -- the five (5) gallon
2 bucket didn't work, what -- what did they provide you
3 with to sit on next?
- 4 A. A folding -- I guess a folding lawn chair.
- 5 Q. Okay. How did that make your back and legs feel?
- 6 A. Not much better than the five (5) gallon bucket.
- 7 Q. Okay.
- 8 A. I even tried bringing a pillow of my own, a pillow from
9 home and try to make it better but that didn't --
- 10 Q. Okay. Now, at one point I think you were -- you were
11 told to work in what's called a Conex?
- 12 A. -- yes.
- 13 Q. And is that basically a tractor-trailer or trailer for
14 storage?
- 15 A. Yes.
- 16 Q. Okay. What did that job require you to do?
- 17 A. Pretty much the same thing: lift, bend, dig.
- 18 Q. Okay. Were the parts you had to -- the things you had
19 to sort and inventory in the Conex, did they weigh more
20 than fifteen (15) pounds?
- 21 A. A good bit of them, yes.
- 22 Q. Okay. The Conex job, could you do that completely from
23 a seated position?
- 24 A. No.
- 25 Q. Okay. And I think you indicated you were told to ask

1 for help if you needed help lifting?

2 A. Correct.

3 Q. Was that help ever -- ever available?

4 A. Jessie did his best to provide it but he -- no, he was
5 too short handed.

6 Q. Okay. Who were you -- was Jessie who you were supposed
7 to ask to -- ask for help?

8 A. He was the -- the project -- or the -- yes, he was in
9 charge of the job site.

10 Q. Is that Jessie Blanchard you're referring to?

11 A. Jessie Blanchard, yes.

12 Q. Okay. At some point in time were you asked to transfer
13 some -- transport some materials in your personal
14 vehicle?

15 A. I was.

16 Q. And who -- who asked you to do that?

17 A. Jack Cox.

18 Q. Okay. Were the parts you were asked to transport, did
19 they weigh more than fifteen (15) pounds?

20 A. Yes, they did. Well, I don't know, I didn't transfer
21 them; I -- I refused to do it.

22 Q. Okay. Now, when you worked in the office they had you
23 in the conference room?

24 A. Correct.

25 Q. And was you -- were you in a padded chair like you're

1 in today or what did they have you sitting in?

2 Mr. Rudisill: Your Honor, I'm going to
3 object again. I mean, I don't see where this has
4 anything to do with the issues that are before the
5 Commission --

6 Commissioner Wilkerson: I agree.

7 Mr. Rudisill: -- today.

8 Commissioner Wilkerson: I -- I don't --

9 Mr. Ezell: All right.

10 Commissioner Wilkerson: -- I mean, we're not
11 sitting in a padded chair. We're not -- I mean --

12 Mr. Rudisill: The -- we --

13 Commissioner Wilkerson: -- we've got to get
14 to the point.

15 Mr. Ezell: Your Honor, I --

16 Commissioner Wilkerson: I -- I -- I don't
17 understand what a padded chair today has anything
18 to do with what he's described as a bucket, which
19 everybody -- everybody has sat on a bucket.
20 Everybody has sat in a chair; I understand. I
21 don't --

22 Mr. Ezell: -- all right.

23 Commissioner Wilkerson: -- I mean --

24 Mr. Ezell: All right, Your Honor, that's --

25 Commissioner Wilkerson: -- the next -- the

1 next thing we'll get into is what the level of
2 foam is, I mean --

3 Mr. Ezell: -- Your Honor, I --

4 Commissioner Wilkerson: -- I don't know. We
5 need to get --

6 Mr. Ezell: -- Your Honor, I -- I --

7 Commissioner Wilkerson: -- to the point.

8 Mr. Ezell: -- I don't think I was headed
9 anywhere that -- that ridiculous.

10 Commissioner Wilkerson: Well, I can't answer
11 where you're headed --

12 Mr. Ezell: All right, Your Honor.

13 Commissioner Wilkerson: -- but we've got to
14 the point of what we're here today on. I -- I
15 don't know where you're headed.

16 Q. Sean, what happened to your employment with -- with
17 Chapman?

18 A. Ultimately, I was fired.

19 Q. Okay. Were you told why?

20 A. I was told that if I wanted to know why --

21 Mr. Rudisill: I would object to the hearsay.

22 Commissioner Wilkerson: Well, he can't tell
23 me what he was told.

24 Mr. Ezell: He can -- it -- it's an admission
25 by the party Defendant, Your Honor. It's -- it's

1 Chapman's own statements.

2 Commissioner Wilkerson: He can tell me why
3 he was fired.

4 A. -- they wouldn't tell me why I was fired.

5 Commissioner Wilkerson: Okay. That's what I
6 need to know.

7 Q. Were you on restrictions when you were fired, Sean?

8 A. Yes.

9 Q. Okay. What kind of problems are you having with your
10 back now?

11 A. Radiating pain down either leg.

12 Commissioner Wilkerson: Both -- both legs is

13 --

14 A. Correct.

15 Commissioner Wilkerson: -- right and left?

16 A. Right and left.

17 Commissioner Wilkerson: Okay.

18 A. I have problems with my hips, it feels -- and in my
19 buttocks area feels like I get knots like somebody had
20 punched me real hard. I get muscle spasms in my lower
21 back and just it -- it hurts.

22 Q. Okay. So, you are having pain in both legs?

23 A. Yes.

24 Q. Okay. And that's in addition to your low back?

25 A. Yes.

1 Q. And in both hips?

2 A. Yes.

3 Q. Okay. How often does the pain bother you?

4 A. Every day.

5 Q. Okay. Is this in any way, shape, or form similar to
6 any back pain or problems you had prior to February
7 9th, 2011?

8 A. No.

9 Q. Okay. Just dealing with your low back first, on a
10 scale of one (1) to ten (10), on an average day, ten
11 (10) being extreme pain and one (1) being almost no
12 pain at all, where would you say your low back stays?

13 A. In between a six (6) and a seven (7).

14 Q. Okay. What kind of things aggravates your low back
15 pain?

16 A. Standing too long, sitting too long.

17 Q. When you say too long, how long can you stand before it
18 starts to bother you?

19 A. Maybe about forty-five (45) minutes.

20 Q. Okay. How about sitting?

21 A. Sitting, about the same --

22 Q. Okay.

23 A. -- depending on the surface.

24 Q. Did driving from -- from Greenville to St. Matthews
25 today cause you problems?

- 1 A. Most certainly.
- 2 Q. Okay. Did you have to stop at all or --
- 3 A. Yes.
- 4 Q. -- okay. Moving now to your hip -- well, the low back
- 5 pain, describe it; is it sharp, dull, stabbing, aching?
- 6 A. All of the above, it just depends on the day and if I
- 7 -- how -- if I move wrong, move right, however you want
- 8 to say it; it just depends on how I move.
- 9 Q. You -- you have small children; are you able to lift
- 10 the children?
- 11 A. No.
- 12 Q. Okay. Moving now to your hips, and if -- if -- if
- 13 they're different in terms of severity then we'll deal
- 14 with one (1) -- one (1) at a time but if they're about
- 15 the same what kind of pain do you have or are -- are
- 16 they about the same or is one worse than the other?
- 17 A. My left hip is worse than my right hip.
- 18 Q. Okay. What type -- is it -- the -- the left hip pain
- 19 on -- on a scale of one (1) to ten (10), where would
- 20 you say it stays on average?
- 21 A. About a five (5).
- 22 Q. Okay. How about the right hip?
- 23 A. The right hip, maybe about a three (3) or four (4).
- 24 Q. Okay. What types of things make the hip pain worse?
- 25 A. Too much walking, too -- sitting too long in -- in a

1 car, repetitive motions. well, like in a car I'd say,
2 in a car the bouncing of the road, too much vibrations,
3 things of that nature.

4 Q. Okay. Now, moving to your legs, is one (1) leg worse
5 than the other?

6 A. My left leg.

7 Q. Okay. And -- and on a scale of one (1) to ten (10)
8 where would the left leg pain stay on average?

9 A. About a four (4).

10 Q. Okay. How about the right leg?

11 A. The right legs stays about a two (2) or three (3).

12 Q. Okay. Any -- are any of those pains the same -- the
13 same, similar to or any way -- were they in any way
14 present prior to February 9th, 2011?

15 A. No.

16 Q. Okay. What kind of things makes your leg pain worse?

17 A. I did -- well, I can't say no. There was a small
18 amount of radiating pain that went down my right leg.

19 Q. Prior to this accident?

20 A. Prior to the accident.

21 Q. Did -- did that ever prevent you from working?

22 A. No, it did not.

23 Q. Okay. Did that ever prevent you from enjoying your
24 life in any other way?

25 A. No, it did not.

- 1 Q. Okay. When you -- you -- when you -- you have an
2 aggravation of this pain if from sitting, or standing,
3 or walking too long, what can you do to make the pain
4 better or what do you try and do to make the pain
5 better?
- 6 A. Well, I've tried -- if I'm standing I sit down for a
7 little bit; if I'm sitting I'll stand up; that's about
8 all I've found -- maybe some heat, some cold.
- 9 Q. Okay. With regard to the low back, you said it stays
10 about a six (6) or seven (7) on average; what's the
11 worst it gets?
- 12 A. About a nine (9).
- 13 Q. Okay. And what -- what kind of things will bring that
14 about?
- 15 A. Laying in bed too long. Usually the first thing in the
16 morning is agonizing to get up.
- 17 Q. Okay. How about the hips; what's the worst that gets?
- 18 A. Probably about the same.
- 19 Q. Okay.
- 20 A. In the mornings it's -- everything pretty much hurts.
- 21 Q. When you have an aggravation with the hips, what can
22 you do to make it better?
- 23 A. Nothing that I've found, you just have to wait for it
24 -- I don't know; it's about the same thing. If it
25 starts hurting you move to a different position to see

- 1 if you can alleviate some of the pain.
- 2 Q. And -- and when you have a flare-up how long does it
- 3 usually take that to subside?
- 4 A. It depends on the flare-up.
- 5 Q. Okay. And with regard to your legs, what -- what's the
- 6 worst pain you'll get there?
- 7 A. Worst? Like I said, in the mornings it's usually all
- 8 about -- all -- all around nines (9s).
- 9 Q. Okay. Are you taking any prescription medications at
- 10 this point?
- 11 A. I still have some Zanaflex.
- 12 Q. Okay. And is that a muscle relaxer?
- 13 A. That's a muscle relaxer.
- 14 Q. Okay. Does the muscle relaxer help?
- 15 A. Not really.
- 16 Q. Okay. In terms of any non-prescription medications,
- 17 are you taking anything like that now?
- 18 A. Tylenol.
- 19 Q. And how often do you take Tylenol?
- 20 A. More often than I should, I think.
- 21 Q. Okay. I mean --
- 22 A. But I take -- I take about four (4) Ibuprofens every
- 23 four (4) hours.
- 24 Q. -- okay. And then how often -- how often do you take
- 25 Tylenol and how much?

- 1 A. Well, that's about -- I have Ibuprofen.
- 2 Q. Okay.
- 3 A. I say Tylenol; I kind of associate them all together.
- 4 Q. Okay. Since you last saw -- or since -- since you --
- 5 Dr. Leblond released you in, I believe, mid-November of
- 6 last year, is your condition better, worse, about the
- 7 same?
- 8 A. It's gotten worse.
- 9 Q. Okay. In terms of your weight, how much do you weigh
- 10 now?
- 11 A. I weigh -- well, the last time I checked it was one
- 12 twenty-seven (127) -- or excuse me -- two twenty-seven
- 13 (227).
- 14 Q. Okay. Is that more, or less, about the same as it was
- 15 on February 9th of 2011?
- 16 A. No, it's considerably more.
- 17 Q. All right. And how much more would you say?
- 18 A. Probably about fifty (50) pounds.
- 19 Q. Okay. Has -- has the inability to -- to physically --
- 20 be physically active, has that contributed to your
- 21 weight?
- 22 A. Most certainly.
- 23 Q. And has the weight made your situation worse?
- 24 A. I'm not happy about the weight.
- 25 Q. Okay. Moving now to the -- the psychological or

1 psychiatric issues. You indicated, I think earlier,
2 that you had not been treated for -- you've never been
3 medicated for anxiety or depression in the past; is
4 that correct?

5 A. That's correct.

6 Q. Okay. Tell the Commissioner, if you will, what kind of
7 problems you're having now in terms of just your
8 overall mood, emotions, just your overall
9 psychological, psychiatric situation.

10 A. Well, where to begin? I don't do anything. Well, I
11 try to, excuse me, I don't say I don't do anything. I
12 -- I try to do stuff but when I try to be more active
13 it hurts more and when it hurts more I get depressed
14 because I am not the type of person to sit around. I
15 cannot stand sitting and doing nothing. I've been
16 working since I've been eighteen (18) years old; I've
17 held a job and I have not been able to work in a little
18 over a year and a half now. My marriage is suffering
19 because of this. My children don't understand why
20 Daddy can't go out and play with them and I don't know
21 what to tell them anymore. I --

22 Q. How old -- how old are your children, Sean?

23 A. -- I've got a one and a half (1½) year old. I've got a
24 four (4) year old, and a eight (8) year old.

25 Q. Okay. Were you active with your children prior to this

1 accident?

2 A. I most certainly was.

3 Q. Does the inactivity with your children cause you any
4 depression or distress?

5 A. It certainly does.

6 Q. Okay.

7 A. I don't -- I -- that's another -- it also causes
8 problems between me and my wife because she wants me to
9 come outside and watch them play and watching them play
10 just reminds me that I can't be out there playing with
11 them; so, I -- I try to stay away from it.

12 Q. Okay.

13 A. I don't like seeing things -- people doing things that
14 I used to be able to do.

15 Q. Okay.

16 A. I don't know how to handle it.

17 Q. Okay. Is this something that bothers you once a week?

18 A. Every day.

19 Q. Every day. In terms of anxiety, do you have any issues
20 with -- with that or with stress?

21 A. Stress, yes. Anxiety, I really don't know how to
22 answer that because I don't know what anxiety is; I
23 don't know.

24 Q. Are you -- are you concerned about your -- your future
25 in terms of ability to make a living?

1 A. I most certainly am.

2 Q. Okay. Has this whole situation put you in any type of
3 financial hardship?

4 A. Yes, that's -- that's an understatement.

5 Q. Okay. And has the financial hardship contributed to
6 your overall mood issues?

7 A. It most certainly has.

8 Q. The way Chapman Mechanical handled this in terms of
9 what they gave you for a sensible light duty,
10 ultimately your termination and everything else; did
11 that in any way, shape, or form contribute to your
12 psychological or psychiatric issues?

13 A. It --

14 Mr. Rudisill: Objection.

15 Commissioner Wilkerson: Objection. Tell us
16 what -- what's the objection?

17 Mr. Rudisill: I think it goes to expert
18 opinion, Your Honor.

19 Commissioner Wilkerson: Yes. What --

20 Mr. Ezell: I think he can certainly testify
21 to --

22 Commissioner Wilkerson: -- he -- he can tell
23 me what he thinks caused it but I -- yes.

24 Mr. Rudisill: He can -- he can -- he can
25 testify as to the impact it's had on his life, I

1 think, and his mental state but whether it's -- it
2 caused anything I think is a different issue.

3 Mr. Ezell: -- I think I asked if it -- if it
4 aggravated it in any way.

5 Commissioner Wilkerson: He -- he can answer
6 the question but I --

7 Mr. Rudisill: Thank you.

8 Commissioner Wilkerson: -- I understand.
9 Because, I mean, if he understands what stress is
10 but doesn't understand anxiety we -- you know, it
11 -- it's not going to raise it much above the line
12 anyway, so.

13 Q. Go ahead and answer the question.

14 Commissioner Wilkerson: But I'd like for him
15 to answer the question.

16 A. Well, when you go without being paid for five (5)
17 months or so and you've got three (3) children I guess
18 stress and anxiety levels are out -- out the roof.

19 Q. Okay.

20 A. And trying to recover from that -- I'm still -- here it
21 is a year and a half later, I'm still struggling every
22 month to make my bills and just to catch up with things
23 that I've gotten behind from all that. So, yes --

24 Commissioner Wilkerson: All right. Explain --

25 A. -- I could say --

1 Commissioner wilkerson: -- explain a little
2 bit to me in reference to that because what -- I'm
3 a little confused because if you're making about
4 six hundred and thirty dollars (\$630.00) a week --
5 okay, I know each week is a little different, and
6 now you're getting about four hundred and twenty
7 dollars (\$420.00), you weren't getting much more
8 than four hundred and twenty dollars (\$420.00) a
9 week after taxes anyway. So, I'm confused --

10 A. Okay.

11 Commissioner wilkerson: -- of where the -- I
12 mean, I'm not saying you --

13 A. That's fair.

14 Commissioner wilkerson: -- you might not
15 have gotten four fifty (\$450.00) or something --

16 A. I understand that.

17 Commissioner wilkerson: -- and thirty
18 dollars (\$30.00) over a period of time could cause
19 some problems.

20 A. I --

21 Commissioner wilkerson: But explain -- help
22 me understand that.

23 A. Okay. Okay. I -- making the six fifty (\$650.00) I was
24 also able to go out on weekends and do side jobs. I
25 had a very big clientele list that would call me on --

1 on random occasions that needed work done at their
2 house, plumbing, family members and what not; so, I
3 would subsidize my income by doing work on the
4 weekends.

5 Commissioner Wilkerson: Okay.

6 A. I can no longer do that.

7 Commissioner Wilkerson: And, typically,
8 those type jobs you were paid cash?

9 A. Correct.

10 Commissioner Wilkerson: Okay. I'm fine with
11 that. Okay.

12 A. Yes.

13 Commissioner Wilkerson: Okay.

14 A. So, it's -- it's taken more of a toll being -- not
15 being able to work than initially -- you know, it just
16 -- it's -- it's not been easy.

17 Q. Sean, you also indicated there was a period of time
18 where you did not receive any temporary total
19 disability benefits?

20 Mr. Ezell: I'm sorry, was there --

21 Commissioner Wilkerson: No, that was the
22 five (5) months, right?

23 Mr. Ezell: -- right.

24 A. Correct.

25 Commissioner Wilkerson: Okay. Yes. Because

1 I was -- that was my -- okay --

2 Mr. Ezell: Okay. Go ahead, Commissioner. I

3 --

4 Commissioner Wilkerson: -- no. Please --
5 no, no. Please.

6 Mr. Ezell: -- I -- I didn't mean to step on
7 your toes.

8 Commissioner Wilkerson: Because I was going
9 to ask where the five (5) months came in but.

10 A. Yeah. That's when -- after they fired me they denied
11 me my total temporary disability and that's the whole
12 court -- that's what everything was the day he was
13 trying to talk about earlier but.

14 Commissioner Wilkerson: But that's been
15 brought up to date?

16 Mr. Ezell: The -- the --

17 A. Yeah.

18 Mr. Ezell: -- well, the ultimate in
19 compromise would be since September.

20 Commissioner Wilkerson: Was that the consent
21 order?

22 Mr. Ezell: Yes, sir. But -- but --

23 Commissioner Wilkerson: Okay.

24 Mr. Ezell: -- but he went with nothing for
25 five (5) months.

1 Commissioner Wilkerson: I'm fine with that.
2 Okay. I -- because I haven't read the consent
3 order. Okay. I'm fine with that. Please,
4 proceed. I'm sorry.

5 Mr. Ezell: Okay. Thank you, Your Honor.

6 Q. Sean, with regard to your psychiatric and psychological
7 condition, the Defendants asked you to be seen by a Dr.
8 Gualtieri in Charlotte, North Carolina; did you attend
9 that?

10 A. I did.

11 Q. Okay. And Dr. Gualtieri's report has been introduced
12 into evidence; so, I won't -- I'm not going to go
13 through that but did he prescribed medications for you?

14 A. He did.

15 Q. And that was the doctor chosen by the Defendants?

16 A. Correct.

17 Q. And were you -- did you try and fill those
18 prescriptions?

19 A. I did.

20 Q. And what happened?

21 A. I was denied.

22 Q. Okay.

23 Commissioner Wilkerson: Still denied on
24 those prescriptions?

25 A. Still denied. Oh, I don't -- I haven't heard word to

1 tell me to go try to fill them since we've asked for
2 them, so.

3 Commissioner Wilkerson: I understand.

4 Q. Sean, tell the Commissioner what you do in an average
5 day.

6 A. Well, this is going to be a short list. I wake up, I
7 eat breakfast, try to do what I can around the house to
8 help; which isn't much at all. I sit and watch TV. I
9 try to listen to the kids when they tell me their
10 stories of what they've just done outside, and I go to
11 sleep.

12 Q. What type of things that you do or try to do in an
13 average day make your situation worse? Are you -- I
14 know you -- not -- be more specific. I know you've
15 talked about sitting and standing more than forty-five
16 (45) minutes and that kind of thing, but tell the
17 Commissioner what -- what you -- you either cannot do
18 anymore in terms of just around your house with helping
19 with your wife and children, or things that you can try
20 to do that may or may not aggravate your condition?

21 A. Well, I can't bathe the kids anymore. Vacuuming is hit
22 or miss, occasion -- when my back is feeling half way
23 decent I might be able to vacuum but that's -- dishes,
24 I can do the dishes, help with that for maybe about
25 fifteen (15), twenty (20) minutes and then I've got to

1 rest. Getting dressed in the morning is -- is usually
2 a bit of a chore. I've got my shoes tied so I can just
3 slide them on so I don't have to bend over to tie them.
4 You know, it's just -- it's impacted -- my life has
5 done a complete one-eighty (180).

6 Q. Okay. Can -- can you sweep or vacuum?

7 A. It just depends on the day.

8 Q. Okay.

9 A. But every time I do it aggravates my back.

10 Q. Okay. Can you make beds, clean bathrooms, do laundry?

11 A. I can put the laundry in the washing machine if it's
12 sitting on top of the dryer.

13 Q. Okay.

14 A. But as far as bending down to pick it up, not really.

15 Q. Okay. How about yard work?

16 A. That's out of the question.

17 Q. Okay.

18 A. We pay somebody to do yard work now.

19 Q. Okay. I -- I -- I meant -- I skipped over one (1)
20 thing; Sean, I apologize. You've seen -- you've been
21 seen by Dr. Brabham and Dr. Mullen; were you completely
22 candid and honest with them in -- in responding to
23 their questions?

24 A. I most certainly was.

25 Q. Dr. Mullen, Dr. Brabham, and -- and Dr. Gualtieri agree

1 that your -- you have some depression as a result of
2 this -- this accident and -- and everything else that
3 went on with it. Is it your desire to -- to -- to get
4 the medication and the treatment that Dr. Gualtieri has
5 recommended?

6 A. It most certainly is.

7 Q. Okay.

8 Mr. Ezell: Bear with me just one (1) second,
9 Commissioner.

10 Commissioner Wilkerson: Sure.

11 Q. Sean, I may have more questions for you in -- in
12 response to anything Mr. Rudisill asks but I think
13 that's everything I've got at this point.

14 A. Okay.

15 Commissioner Wilkerson: Thank you. Mr.
16 Rudisill?

17 Mr. Rudisill: Thank you, Your Honor.

18 Commissioner Wilkerson: Sure.

19 CROSS-EXAMINATION

20 By Mr. Rudisill:

21 Q. Mr. Daley, you're still under Dr. Leblond's care,
22 correct?

23 A. No.

24 Q. When did you last see Dr. Leblond?

25 A. When did I last see Dr. Leblond? Now, that's -- I only

1 saw Dr. Leblond every three (3) months. When I was let
2 go in -- I was let go I believe the beginning of May; I
3 was scheduled to see him May 10th but I had seen -- so
4 two (2) months prior to that was when I saw Doctor --
5 last saw Dr. Leblond.

6 Commissioner Wilkerson: And that's this year
7 we're talking about, so --

8 A. Yes. Correct.

9 Commissioner Wilkerson: -- about March; is
10 that fair?

11 A. Yes, about fair.

12 Commissioner Wilkerson: Okay.

13 A. Yes.

14 Q. Well -- all right. We know you last saw Dr. Leblond on
15 November the 21st of 2011, sir, because he placed you
16 at maximum medical improvement on that date and
17 assessed his impairment rating; do you recall that?

18 A. I do.

19 Q. And you -- have you not seen him at least three (3), if
20 not four (4) times, since that date?

21 A. Yes.

22 Q. Okay. January the 20th, 2012 --

23 A. Well --

24 Q. -- February the 20th, 2012 --

25 A. -- let me --

1 Q. -- March 14, 2012, and then April the 12th of 2012,
2 when you --

3 A. Mr. Rudisill, let me --

4 Commissioner Wilkerson: wait, let --

5 A. -- let me clear this up.

6 Commissioner Wilkerson: -- let him finish.

7 Let him finish.

8 A. I'm sorry.

9 Commissioner Wilkerson: Okay. Now, let him
10 finish. Okay.

11 A. I'm sorry.

12 Q. Did -- did you see Dr. Leblond on those days?

13 Commissioner Wilkerson: Go ahead. I'm
14 sorry.

15 A. No, I did not see Dr. Leblond on all --

16 Q. Did you --

17 A. -- of those days.

18 Q. -- did you see his -- his assistant on those --

19 A. I did.

20 Q. -- days?

21 A. I -- like I said, I see Dr. Leblond every three (3) --
22 every third (3rd) month and it was Dr. Goldsmith that I
23 would see at the -- in between.

24 Q. All right. So, let me rephrase my question.

25 A. Okay.

- 1 Commissioner Wilkerson: That's fine. Yes.
- 2 Q. Have you seen either Dr. Leblond or his assistant,
- 3 David Goldsmith, since November of 2011, and if so, how
- 4 many times?
- 5 A. I saw them on a monthly occasion, so.
- 6 Q. All right. And when did you last see either one of
- 7 them?
- 8 A. April -- it was in April; I don't remember the exact
- 9 date.
- 10 Q. And do you have a return appointment?
- 11 A. No, not at this time.
- 12 Q. So, did Dr. Leblond not give you a return appointment
- 13 for today, actually?
- 14 A. No.
- 15 Q. All right. Has Dr. Leblond or his assistant continued
- 16 to provide you with medication --
- 17 A. No.
- 18 Q. -- during this period of time?
- 19 A. No.
- 20 Q. So, if his notes indicate that he refilled your
- 21 Percocet, your Zanaflex and your Neurontin on April the
- 22 12th, 2012, that would be inaccurate?
- 23 A. No, that would be correct. That was the last time that
- 24 I saw them.
- 25 Q. Okay. And its -- your testimony is that you don't have

1 a return appointment with him?

2 A. No, I do not.

3 Q. And do you know why you don't have a return appointment
4 with him?

5 A. I do.

6 Q. Well, why is that?

7 A. There was a urinalysis test done and I had Lortab in my
8 system instead of Percocet, which they had prescribed
9 me the Lortab and I had talked to them about it, and it
10 was three (3) months after they gave me the urinalysis
11 test that they decided that they would no longer see
12 me. But I had been candid with them; I had told them
13 the truth and they told me that that should not affect
14 it. I had been talking to them, telling them that the
15 Percocet was not helping as much as it was and they
16 were in the process of trying to make arrangements and
17 changes. And when they gave me the urinalysis test I
18 had told them that I had ran out of the Percocet and I
19 had relied on some of the Lortab. But I don't know
20 exactly why they dismissed me because I had talked to
21 them about it, and they assured me nothing was going to
22 happen.

23 Q. So -- so, it -- it's your understanding at this point
24 that Dr. Leblond has dismissed you from his care?

25 A. That is correct.

1 Q. Because you failed the drug test or assay that was
2 administered to you?

3 A. That is correct.

4 Q. And prior to that he had continued to provide -- Dr.
5 Leblond or Mr. Goldsmith had continued to provide to
6 you medications on each of these visits that you had
7 paid to them in January, and February, and March, and
8 April of this year, correct?

9 A. Correct.

10 Q. So, to be clear, which medications are you currently
11 taking, if any, for your --

12 A. I still have --

13 Q. -- your back problem?

14 A. -- I still have some Zanaflex left over.

15 Q. Do you have any Lortab left over?

16 A. No, I do not.

17 Q. You had been prescribed Lortab several months prior to
18 the accident that gave rise to your claim, correct?

19 A. Correct.

20 Q. And you had been prescribed that for back problems that
21 you were having -- low back problems that you were
22 having, correct?

23 A. Correct.

24 Q. And, in fact, you were continuing to take Lortab at the
25 time of the accident on February the 9th, 2011,

1 correct?

2 A. Correct.

3 Q. And you were also taking, at that time, two (2) other
4 medications, Mobic and Flexeril, correct?

5 A. Well, when the need arised for it, yes.

6 Q. Okay.

7 A. And the same with the Lortab; it's not like I was
8 taking them every day.

9 Q. You -- you had sought out medical treatment at
10 Greenville Hospital back on October the 20th of 2010,
11 for chronic back pain, correct?

12 A. Not for chronic back pain; they may have listed it that
13 way.

14 Q. So, if the -- if the note from Greenville Hospital of
15 that date, APA page 24, indicates "Patient complains of
16 pain to middle back, lower back, pain described as
17 aching, pain is continuous, on a scale of zero (0) to
18 ten (10) patient rates pain as eight (8)." would you
19 disagree with any of that?

20 A. No, I would not. And that -- that is what led me to go
21 to the clinic over at -- I can't remember the name of
22 the clinic but the doctor that prescribed me the Lortab
23 --

24 Q. The New Horizon Family Health Clinic?

25 A. -- thank you, very much. Yes.

1 Q. Yes, sir. That would be Dr. Li?

2 A. Correct.

3 Q. L-I, correct?

4 A. Yes.

5 Q. And you expressed to him --

6 Mr. Rudisill: -- APA page 56, Your Honor --

7 Q. -- that you had been having low back pain for four (4)
8 years?

9 A. Correct.

10 Q. And that it had been getting worse over the past three
11 (3) years since you had undergone some foot surgery,
12 correct?

13 A. No.

14 Q. Okay. Did you express to him that it was -- the pain
15 was worse when you lifted things --

16 A. No.

17 Q. -- or you were in awkward positions?

18 A. Yes, I did.

19 Q. And that you had gotten relief with Lortab?

20 A. I did not. He add -- he may have added that in there
21 because he prescribed it.

22 Q. It was prescribed by the hospital doctor, correct?

23 A. Well, I may have said that, yes. I -- that was a long
24 time ago.

25 Q. Okay. And his note of that date also indicates that

1 you complained of occasional tingling in both of your
2 thighs; do you recall that?

3 A. I recall saying my right thigh.

4 Q. Okay. There's a subsequent note from Dr. Li -- APA
5 page 61, dated November 10, 2010 -- in which you
6 indicated that you had been out of work for three (3)
7 months; do you recall that?

8 A. No, I do not.

9 Q. Had you been out of work for three (3) months as of
10 November of 2010?

11 A. I may have but it may not have been -- it wasn't from
12 back pain.

13 Q. Okay.

14 A. It could have just been between jobs, trying to find a
15 job.

16 Q. Okay. There has been testimony from you today that you
17 have been "continuously" employed since you were
18 eighteen (18) years old?

19 A. Correct.

20 Q. All right. You have a number of periods of
21 unemployment during those years; have you not?

22 A. The longest stint would be about two (2) months in
23 between finding jobs. As you know, the economy has not
24 been at the best and when you're in construction work
25 things happen and you lose jobs.

1 Q. Okay. And that goes back for the eighteen (18) years
2 that you've been working in the plumbing industry --

3 A. Correct.

4 Q. -- correct? All right.

5 A. Yes, there's been small periods where you have to find
6 a job and that's when you rely on side work --

7 Q. Okay.

8 A. -- to make things -- make ends meet.

9 Q. In fact, you had only been employed with Chapman
10 Mechanical for approximately four (4) months prior to
11 your accident, correct?

12 A. Correct.

13 Q. You underwent an MRI of your lumbar spine in July of
14 2011, correct?

15 A. Correct.

16 Mr. Rudisill: APA page 113, Your Honor.

17 Q. Excuse me, I misspoke. It was in -- the MRI was in
18 November of 2010, correct?

19 A. I believe so, yes.

20 Q. This was after you came under the care of Dr. Li at --

21 A. Correct.

22 Q. -- New Horizon, correct?

23 A. (Nodded head in an up and down motion).

24 Q. And at that time you were having difficulty with low
25 back pain and bilateral leg pain; is that accurate?

1 A. Well, one (1) -- I don't know if bilateral -- if that
2 means both legs?

3 Q. It means both legs?

4 A. No.

5 Q. You disagree with that?

6 A. I do because I only told him the right.

7 Q. Okay.

8 A. I -- I remember. I -- I -- I was -- and the reason I
9 asked for the X -- he didn't order the MRI; he said we
10 could do an MRI, if you so choose to, to see what's
11 going on.

12 Q. Okay. But you had been having chronic back pain for a
13 long time at that point and you wanted to find out what
14 the problem was, correct?

15 A. And now, let's -- let's go back and redefine the four
16 (4) years. Like I said, I am not trying to escape the
17 fact that I used to skateboard.

18 Q. I'm not asking you --

19 A. Now, hold on, hold on --

20 Q. -- about skateboarding.

21 A. -- okay. Well, let me just finish --

22 Q. I'm just asking you --

23 A. -- my statement. You asked me a question; I'm going to
24 give you an answer.

25 Commissioner Wilkerson: Well, answer the

1 question first.

2 A. Okay.

3 Commissioner Wilkerson: I don't need an
4 explanation. I need --

5 A. No, I did not complain of chronic back pain.

6 Commissioner Wilkerson: -- okay. That's fine.

7 Q. Did you complain of bilateral leg pain?

8 A. I complained about my right leg.

9 Q. Okay. And --

10 A. And it felt like a cell phone was in my pocket on
11 vibrate every now and then.

12 Q. -- and are you familiar with the results of the MRI
13 that you -- you underwent in November --

14 A. I am.

15 Q. -- let me finish my question, please.

16 A. Sorry.

17 Mr. Ezell: Your Honor, I would object. The
18 medical records speak for themselves; we don't
19 need to --

20 Commissioner Wilkerson: I gave you -- wait a
21 minute now; I gave you some liberalization of
22 that. I'll give him a wee bit. If not, then we
23 should have stopped forty-five (45) minutes ago.
24 A little bit. If he continues I'll stop. Okay.

25 Q. The -- the results of the MRI from November of 2010,

1 indicated that you had degenerative disc disease at
2 L-5, S-1; do you -- do you agree or disagree with that?

3 A. Well, I -- I don't know. I'm not a doctor. I don't
4 know how to read those but if that's what they say then
5 that's what they say.

6 Q. Okay. All right. You testified that you weigh two
7 hundred twenty-seven (227) pounds now?

8 A. Correct.

9 Q. And that you've gained fifty (50) pounds since the date
10 of the accident?

11 A. Correct.

12 Q. All right. Your weight on the date of the accident as
13 shown in the medical records, APA page 71, was two
14 hundred and ten (210) pounds; do you disagree with that
15 number?

16 A. That doesn't sound accurate.

17 Q. It doesn't sound accurate?

18 A. I was very astute about my weight. I have -- I have
19 never been over two hundred (200) pounds in my life
20 until after I fell off that ladder.

21 Q. You -- so, you're --

22 A. Until I have not been able to move. Now, if -- with
23 all my clothes on I don't doubt it.

24 Q. -- so, is your testimony that you did not weigh two-ten
25 (210) on February 9 --

1 A. Well, no I -- Okay.

2 Q. -- of 2011?

3 A. I may have with all my equipment and my clothes.

4 Q. Okay. Did you have on your equipment when you went to
5 the -- the initial medical treatment center in
6 Henderson, North Carolina and then --

7 A. I did.

8 Q. -- at Pardee Hospital?

9 A. I did.

10 Q. Did you have it on when they weighed you?

11 A. I did.

12 Q. What type of equipment were you wearing?

13 A. Boots, Jeans, coveralls.

14 Q. Okay. And so, the clothing, not equipment?

15 A. Well, cloth -- I call clothing equipment.

16 Q. All right, sir.

17 A. In the construction world that's part of your
18 equipment, protective equipment.

19 Commissioner Wilkerson: But you didn't have
20 -- you didn't have your belt strapped on?

21 A. Didn't have the belt or nothing.

22 Commissioner Wilkerson: Okay.

23 A. No.

24 Commissioner Wilkerson: Belt being the tool
25 belt; not --

1 A. Correct.

2 Commissioner Wilkerson: -- necessarily the
3 belt for your pants? Okay.

4 Q. You saw Dr. McHenry, who was the initial Orthopedist,
5 who you saw following the accident on March 16, 2011?

6 A. Correct.

7 Mr. Rudisill: It's APA page 95, Your Honor.

8 Q. And you completed a questionnaire on that date; do you
9 recall that?

10 A. No, I do not.

11 Q. Okay. Do you recall that on that day you denied having
12 any type of psychological or psychiatric problems?

13 A. No, I do not. I'm not saying I didn't but I don't
14 recall taking that questionnaire.

15 Q. You did not talk with Dr. Leblond about having any
16 psychological or psychiatric problems or depression or
17 anxiety up through the point that your Attorney
18 referred you to Dr. Mullen, did you?

19 A. About -- well, no, I did not but I was still gainfully
20 employed at that time.

21 Q. When you saw Dr. Mullen --

22 A. When I saw Dr. Mullen.

23 Q. -- in June of 2011?

24 A. Oh, the first time I saw -- no, sir.

25 Q. Have you seen Dr. Mullen on more than one (1) occasion?

- 1 A. Yes, I have.
- 2 Q. How many times did you see him?
- 3 A. The first doctor they sent me to two (2) months -- two
- 4 (2) months after the accident was Dr. Mullen.
- 5 Q. They, who?
- 6 A. The Stonewood Insurance.
- 7 Q. Stonewood Insurance Company sent you to Dr. Mullen;
- 8 you're sure?
- 9 A. Dr. Mullen -- no, that's McHenry. Dr. Mullen? Okay.
- 10 I don't --
- 11 Q. I'm speaking of Dr. Patrick Mullen, the Psychiatrist
- 12 who Mr. Ezell --
- 13 A. -- oh.
- 14 Q. -- referred you to and who rendered a report --
- 15 A. I -- I'm sorry. I didn't --
- 16 Q. -- dated June 30 --
- 17 A. -- know his name.
- 18 Q. -- 2011?
- 19 A. Okay. I'm sorry. I did not know his name.
- 20 Q. All right.
- 21 A. Dr. Mullen.
- 22 Q. All right. You don't know his name?
- 23 A. I -- well, I -- there's so many doctors it's hard to
- 24 keep track of which one is which.
- 25 Q. Okay.

1 A. I've only seen him once.

2 Q. All right. So, you saw him on June 30, 2011?

3 A. Correct.

4 Q. All right. And up until that point -- on that date you
5 were not still employed with Chapman Mechanical --

6 A. No, I was --

7 Q. -- correct?

8 A. -- not at that point.

9 Q. All right, sir. And you had not spoken with Dr.
10 Leblond or Mr. Goldsmith about any psychological or
11 psychiatric issues up to that point when you saw Dr.
12 Mullen, correct?

13 A. Sir, you're speaking to me as somebody that knows how
14 to talk to doctors; I have -- this is the first bout of
15 doctors. I don't know how -- what doctor to talk to
16 about what. I have seen Dr. Leblond for pain; how am I
17 supposed to know to tell him about psychiatric
18 problems? He never asked me if I was depressed, to my
19 knowledge. I have never been through anything like
20 this before in my life. How am I supposed to know what
21 to do on every turn?

22 Q. There's -- there's been some reference to your
23 skateboarding history?

24 A. Yes.

25 Q. Mr. Daley, you -- you actually gave up skateboarding

1 six (6) months or so before this accident occurred in
2 February of 2011, correct?

3 A. Competitively, yes.

4 Q. Competitively?

5 A. Yes.

6 Q. Okay. Do you recall testifying in your deposition that
7 you had given it up because of responsibilities that
8 you had?

9 A. Competitively.

10 Q. Okay.

11 A. I still recreationally skateboarded.

12 Q. Okay. So, when you said you gave it up in your
13 deposition you didn't mean you gave it up completely?

14 A. Correct.

15 Q. Okay.

16 A. You do something for eighteen (18) years -- just say
17 you go fishing for eighteen (18) years of your life and
18 you say you gave it up, you're not going to give it up
19 completely; you're still going to do it recreationally
20 if you were doing it competitively anyhow. And my wife
21 could testify to the same.

22 Commissioner Wilkerson: Do you still
23 skateboard today or --

24 A. I wish I could.

25 Commissioner Wilkerson: -- okay.

- 1 A. That was my biggest stress reliever.
- 2 Q. You've never been licensed as a Plumber, correct?
- 3 A. Correct.
- 4 Q. Do you wish you had?
- 5 A. Yes, I do.
- 6 Q. Because you could make more money if you were licensed?
- 7 A. Yes.
- 8 Q. Okay. It would open --
- 9 A. Because --
- 10 Q. -- more doors for you, correct?
- 11 A. -- correct.
- 12 Q. There's been some reference to your prior work history.
- 13 You -- you've worked as a Cook, correct?
- 14 A. When I was younger, yes.
- 15 Q. Okay. You've worked in various kitchens and
- 16 restaurants?
- 17 A. I've worked in two (2) or three (3) --
- 18 Q. Okay.
- 19 A. -- fast food.
- 20 Q. You've worked at McDonald's?
- 21 A. Correct.
- 22 Q. And what did you do there?
- 23 A. I did food prep.
- 24 Q. Okay. Have you ever run a register?
- 25 A. Yes.

- 1 Q. Okay. You wait tables in a restaurant?
- 2 A. I did wait tables in between plumbing jobs, yes.
- 3 Q. Okay. You've worked in some gas stations?
- 4 A. When I was in high school, yes.
- 5 Q. Okay. Have you worked in one since?
- 6 A. No.
- 7 Q. You testified in your deposition that in 2005, you had
- 8 moved to Oregon and that you had worked in a gas
- 9 station there because you couldn't find a plumbing job;
- 10 do you recall that?
- 11 A. Well, it was a gas station, lube shop. There was a
- 12 lubrication shop, oil changing station; I started out
- 13 pumping gas and I worked and moved to the -- the oil
- 14 station.
- 15 Q. Okay. How long did you perform that type of work in
- 16 2005?
- 17 A. About four (4) months.
- 18 Q. Do you have any other work experience other than
- 19 working in restaurants, or fast food, or gas stations
- 20 --
- 21 A. No, I do not.
- 22 Q. -- or lube shops? No?
- 23 A. No.
- 24 Q. None?
- 25 A. (Shook head in a side to side motion).

1 Q. Have you --

2 A. Not that I can recall.

3 Q. -- have you -- have you looked for work since this
4 accident occurred in February of 2011?

5 A. No, I have not.

6 Q. In any way?

7 A. No.

8 Q. Not even after Dr. Leblond released you with the
9 restrictions that he placed on you in November of 2011?

10 A. No, I have not, and I will tell -- I have not at my
11 Attorney's request.

12 Q. So, your Attorney has requested that you not seek
13 employment?

14 A. At this point, yes.

15 Q. No doctor has prescribed the cane that you have with
16 you today, correct?

17 A. Correct.

18 Q. Do you engage in any type of exercise, Mr. Daley?

19 A. I do the stretches that -- I try to do the stretches
20 that physical therapy taught me.

21 Q. Okay. And by trying to do them what do you mean?

22 A. Well, I do them until they hurt to the point where I
23 can't do them anymore.

24 Q. And do you do these or try to do them on a daily basis?

25 A. Yes.

1 Q. And what are these exercises that you've been taught?

2 A. They're supposed to be trunk-strengthening exercises.

3 Q. And -- and what is required of you to do these
4 exercises?

5 A. Twisting of the hips, bending of the knees, laying on
6 the bed trying to just stretch legs out and work
7 muscles in the -- the mid region.

8 Q. And how frequently do you try to do those activities?

9 A. At least three (3) times a week.

10 Q. Do you have a fear of physical activity?

11 A. At this point, yes.

12 Q. Okay.

13 A. I'm not going to lie about that; before the accident,
14 no, absolutely not.

15 Q. You've testified about your daily activities or
16 routine. So, you can vacuum but some days it causes
17 you pain and some days it doesn't?

18 A. No. Every time I vacuum it causes me pain.

19 Q. Okay.

20 A. But, you know, when you have a wife who's trying to
21 take care of the household, the kids, and everything
22 else you have to try to step up and do a little
23 something if you can; even though it hurts you can't
24 just let her do everything for you. Especially the
25 type of person I am, that's used to being active and

1 doing everything for myself, who wouldn't want to try
2 to do more things that -- and I'm trying to do these
3 things just to see what I can and can't do anymore.

4 Q. Dr. Leblond indicated in -- when he released you to
5 return -- excuse me -- with -- with restrictions that
6 you had the capability pursuant to the functional
7 capacity evaluation that was performed of constantly
8 sitting or standing; do you agree with that?

9 A. No.

10 Q. He indicated that you could climb ladders frequently;
11 do you agree with that?

12 A. No.

13 Q. He indicated you could occasionally squat or kneel, or
14 crawl, or -- or repetitive -- engage in repetitive
15 lumbar bending; do you agree with that?

16 A. I don't.

17 Q. Not even on an occasional basis?

18 A. Occasionally, yes, but as far as frequently, if I'd
19 have to climb a ladder every day, no.

20 Q. Okay.

21 A. Those tests are designed to tell you what they want to
22 see.

23 Mr. Rudisill: Just one (1) second, Your
24 Honor.

25 Q. Do you drive, Mr. Daley?

- 1 A. I do.
- 2 Q. Did you drive here today?
- 3 A. No, I did not.
- 4 Q. Did your wife drive you?
- 5 A. She did.
- 6 Q. You rode the entire way?
- 7 A. Aside from taking a couple of stops, yes.
- 8 Q. Okay. You did not --
- 9 A. But, yeah -- no, I did not drive. No.
- 10 Q. -- but -- but how frequently do you drive an
- 11 automobile?
- 12 A. I drive an automobile maybe once or twice a week.
- 13 Q. And what do you do when you drive; where do you go?
- 14 A. I go down to the local gas station to get cigarettes.
- 15 Q. You -- you smoke?
- 16 A. I do.
- 17 Q. How much do you smoke?
- 18 A. About a half a pack a day now; I'm trying to quit.
- 19 Q. How much were you smoking at the time of the accident?
- 20 A. About a pack a day.
- 21 Q. Do you shop?
- 22 A. On occasion.
- 23 Q. Grocery shop, for example?
- 24 A. On occasion.
- 25 Q. How often?

1 A. Once every two (2) weeks and that's not me -- I -- I go
2 with my wife to help handle the kids.

3 Q. Do you engage in any type of yard work?

4 A. No, I do not.

5 Q. Have you mowed the yard since the accident occurred?

6 A. No, I have not.

7 Q. Have you trimmed --

8 A. No.

9 Q. -- weeds?

10 A. I have not done any yard work.

11 Q. Have you raked?

12 A. No.

13 Q. Nothing?

14 A. No.

15 Q. Do you have computer skills?

16 A. Limited.

17 Q. Do you -- do you have a computer at home?

18 A. I do.

19 Q. Okay. Do you know how to surf the web?

20 A. I can surf a web, yes.

21 Q. Okay. Do you know how to play computer games?

22 A. I don't really play computer games.

23 Q. Okay. But you do have access to a computer?

24 A. Yes.

25 Q. And the Internet?

1 A. Well, not really. I know how to surf a web but I -- we
2 don't have Internet access at home.

3 Q. Okay.

4 Mr. Rudisill: I think those are my
5 questions, Your Honor.

6 Commissioner Wilkerson: Mr. Rudisill? Oh,
7 Mr. Rudisill. Mr. Ezell?

8 REDIRECT EXAMINATION

9 By Mr. Ezell:

10 Q. Sean, just a couple of things. Mr. Rudisill asked you
11 if any doctor had prescribed the cane you're using
12 today; how often do you use that?

13 A. Only when I'm really hurting.

14 Q. Did the car ride down here cause you to be really
15 hurting?

16 A. I anticipated it; that's why I brought it, yes. I did
17 not bring it to show off for the courts.

18 Q. Okay. Did you ever have the need to use a cane prior
19 to February 9th, 2011?

20 A. Only when I had foot surgery.

21 Q. Okay.

22 A. And that's why --

23 Q. Is that where you had the cane from?

24 A. -- that's what I have the cane from.

25 Q. Okay. The -- the prior back pain that Mr. -- Mr.

1 Rudisill, I think, has characterized as chronic. Did
2 that ever cause you to turn down any aspect of the job
3 you had at Chapman Mechanical?

4 A. No, it did not.

5 Q. Did it ever cause -- cause you to not lift anything you
6 had to lift at Chapman Mechanical?

7 A. No, it did not.

8 Q. Okay. Did it ever cause you to refuse any assignment
9 from Chapman Mechanical?

10 A. No, it did not.

11 Q. Okay. Were you ever written up in any way, shape, or
12 form for refusing any assignment at Chapman?

13 A. No, I did not.

14 Q. Were -- despite some intermittent pain and -- and some
15 treatment, I believe at the New Horizons, which I
16 believe is a few clinic?

17 A. Yes.

18 Q. Okay. Despite the -- the -- some intermittent
19 treatment there, had you ever been unable to work --
20 work as a Commercial Plumber prior to February 9th,
21 2011?

22 A. No.

23 Q. Okay. The prior jobs that Mr. Rudisill asked you
24 about, I think you've worked at McDonald's, you worked
25 as a gas station attendant, I think worked your way up

1 to the lube -- Quick Lube or whatever it might be; were
2 you ever able to earn six hundred and fifty dollars
3 (\$650.00) a week in any of those jobs?

4 A. No.

5 Q. Okay. Are -- are you aware of any job right now that
6 you could do physically that you could make six hundred
7 and fifty dollars (\$650.00) a week in?

8 A. No.

9 Q. Okay. Were you honest with Dr. Brabham with regard to
10 his assessment of your vocational ability?

11 A. I was.

12 Q. Okay.

13 Mr. Ezell: That's all the questions I have,
14 Your Honor.

15 Commissioner Wilkerson: Anything?

16 Mr. Rudisill: I have nothing further, Your
17 Honor.

18 Commissioner Wilkerson: Okay.

19 Mr. Ezell: That's -- that's the Claimant's
20 case, Your Honor.

21 Commissioner Wilkerson: Okay. This
22 concludes the case. If I could just let me meet
23 with the Attorneys for a few minutes. Thank you
24 all for being here; I appreciate it.

25 (THERE BEING NO FURTHER QUESTIONS, THE HEARING CONCLUDED AT

11:47 A. M.).

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PALMETTO COURT REPORTING
321 Mac Circle Lexington, SC 29073

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Sean D. Daley, vs. Chapman Mechanical, Incorporated;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

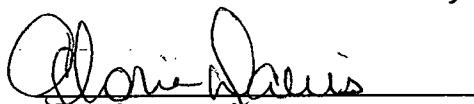
That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 101 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 17th Day of August, 2012.



Gloria Davis
Notary Public for South Carolina
My Commission Expires 12/21/21

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PALMETTO COURT REPORTING
321 Mac Circle Lexington. SC 29073

1	SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION	1
2	W.C.C. FILE #1101678	
3		
4	SEAN D. DALEY	
5	CLAIMANT,	
6	VS.	SC WORKERS' COMPENSATION COMMISSION
7	CHAPMAN MECHANICAL	HEARING OF
8	EMPLOYER	SEAN D. DALEY
9	AND	VS
10	STONEWOOD INSURANCE	CHAPMAN MECHANICAL, INCORPORATED
11	CARRIER	
12	This is the Transcript of the South Carolina Workers'	
13	Compensation Hearing of Sean D. Daley versus Chapman	
14	Mechanical, Incorporated, taken before Gloria Davis, a Court	
15	Reporter and Notary Public in and for the State of South	
16	Carolina, commencing at the hour of 10:13 A.M., Thursday,	
17	June 14, 2012, at Calhoun County Courthouse Annex, 102 Court	
18	House Drive, St. Matthews, South Carolina.	
19		
20	COPY	
21		
22	REPORTED	
23	BY	
24	GLORIA DAVIS	
25		

1	<u>APPEARANCES</u>	2
2	FOR THE CLAIMANT:	
3	Jeffrey D. Ezell, Esquire	
4	11 North Irvine Street, Suite 15	
5	Greenville, SC 29601	
6	FOR THE EMPLOYER/CARRIER:	
7	Steven M. Rudisill, Esquire	
8	Rudisill, White & Kaplan	
9	128 South Tryon Street	
10	Charlotte, NC 28202-5005	
11		
12	ALSO PRESENT:	
13	Mrs. Daley	
14		
15	*Reporter's Note: -- Indicates incomplete thought or	
16	sentence, trailing off or interruption by speakers.	
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1	<u>STIPULATIONS</u>	4
2	Commissioner Wilkerson: Today's date is June	
3	the 14th, 2012. This hearing was originally	
4	scheduled on February the 7th, 2012. We're here	
5	in reference to Workers' Comp File Number 1101678.	
6	The Claimant is Sean D. Daley and his Attorney is	
7	Jeffrey Ezell. The Employer, Chapman Mechanical,	
8	Incorporated, their carrier is Stonewood Insurance	
9	Company; is that correct, Mr. Rudisill?	
10	Mr. Rudisill: Yes, sir, Your Honor.	
11	Commissioner Wilkerson: Okay. And Mr.	
12	Rudisill represents both the Employer as well as	
13	the carrier. The date of accident is 2/9/11. The	
14	average weekly wage is six twenty-nine,	
15	seventy-one (\$629.71); thus the comp rate would be	
16	four nineteen, eighty-three (\$419.83). We're here	
17	today to determine if Employer/Carrier may stop	
18	payment and, if so, determine if the Claimant is	
19	entitled to any future benefit. The Carrier also	
20	requests credit for temporary total benefits paid	
21	in excess of award. And also we're here on the	
22	Form 50 and 51 that has respectfully been filed by	
23	both parties. Are there any objections to APA's,	
24	jurisdiction, venue or any other items, Mr.	
25	Rudisill, since you filed first on either one of	

1 those issues with the 50, 51 or the 21? 5

2 Mr. Rudisill: Your Honor, I -- I -- I would

3 object on behalf of my client to the introduction

4 of exhibits that have been submitted by the

5 Claimant with his APA submissions. They -- they

6 seem to go to -- more to the issue of the light

7 duty work that had been provided to him last year.

8 There are photographs of -- of his work area, a

9 bucket that he was provided to sit on, a chair

10 that he was provided to sit in, and some other

11 matters, personnel records. The parties resolved

12 the light duty work issue and the Claimant's

13 entitlement to temporary disability compensation

14 pursuant to a consent order back on September 20,

15 2011, and it -- it doesn't seem to us that -- that

16 those exhibits at this time are -- are relevant or

17 material to any of the issues that are before you

18 here today pursuant to the Form 21 or the Forms 50

19 and 51.

20 Mr. Ezell: Your Honor, if I might respond?

21 Commissioner Wilkerson: Yes. Please. Thank

22 you. And I've got them now. I was --

23 Mr. Ezell: Okay.

24 Commissioner Wilkerson: -- looking for them.

25 Mr. Ezell: Your -- Your Honor, it's -- it's

1 our position that they are relevant for -- for two 6

2 (2) reasons. Obviously, Mr. Rudisill is here

3 today trying to stop payment of benefits. It's

4 our position that Mr. Daley was never provided

5 adequate light duty and that the -- the exhibits

6 are pertinent to that issue in and of itself. But

7 secondly, there is what now appears to be a very

8 valid psyche claim having been ratified by the

9 Defendant's own Psychiatrist from Charlotte. And

10 it's -- and it's our position that Mr. Daley's

11 psychiatric or psychological issues are not only

12 the result of his pain and his inability to resume

13 the type of work he did, but also the -- the

14 pretty significant maltreatment of him by the

15 Employer, Chapman Mechanical. The -- the evidence

16 is pretty clear that they pretty much jerked him

17 around pretty hard when they -- when -- when the

18 return to work issue came about. They didn't make

19 decent accommodations to him. They gave him

20 ridiculous accommodations and I -- I use that word

21 with extreme reservation because they really

22 weren't accommodations. At one point in time,

23 after falling eight feet (8') off a ladder,

24 striking himself on the side on a four inch (4")

25 pipe that stuck out of the ground two and a half

1 feet (2½) they gave him a five (5) gallon bucket 7

2 to sit on. Dr. Leblond has viewed these pictures,

3 their -- their APA submissions pertinent to his

4 opinions with regard to what the Employer did or

5 didn't do in terms of trying to give him "light

6 duty" and again, I use that term extremely

7 loosely. And I think that these exhibits are very

8 pertinent because, like I said, not only has his

9 pain and limitations been a factor in his

10 psychological condition but also that the fact

11 that he worked, you know, for this company, gave

12 them his best, got hurt on the job, and this is

13 what they did to him. Ultimately dismissing him

14 as his testimony will reflect and I think these

15 exhibits are -- are very, very relevant to that

16 point.

17 Commissioner Wilkerson: And -- and, Mr.

18 Rudisill, I -- you -- you don't have an employer

19 representative here; is that fair?

20 Mr. Rudisill: No, Your Honor; we do not.

21 Commissioner Wilkerson: And -- and it's my

22 understanding that the Employer has gone out of

23 business; is that correct?

24 Mr. Rudisill: My -- the company is defunct

25 --

1 Commissioner Wilkerson: Defunct. Okay. 8

2 Mr. Rudisill: -- to the best of my

3 knowledge.

4 Commissioner Wilkerson: Sure.

5 Mr. Rudisill: Yes, sir.

6 Commissioner Wilkerson: Okay.

7 Mr. Rudisill: I have not been able to

8 contact any of the representatives of the company,

9 one of whom we -- whose deposition was taken in

10 this case last year.

11 Commissioner Wilkerson: And -- and this --

12 it is submitted?

13 Mr. Rudisill: Excuse me?

14 Commissioner Wilkerson: Is that deposition

15 submitted --

16 Mr. Rudisill: No, sir --

17 Commissioner Wilkerson: -- here today?

18 Mr. Rudisill: -- it's not submitted.

19 Commissioner Wilkerson: Okay. Okay.

20 Mr. Rudisill: Because at the time, Your

21 Honor, the parties were wrangling, if you will,

22 over this light duty work issue --

23 Commissioner Wilkerson: I understand.

24 Mr. Rudisill: -- and the Claimant's --

25 Commissioner Wilkerson: Right.

1 Mr. Rudisill: -- entitlement to TTD, so. 9

2 Commissioner Wilkerson: Okay. Is there any

3 reason to believe that what I'll see on these

4 photographs is not what took place at the employer

5 or do we have any information or evidence that it

6 is not, I mean?

7 Mr. Rudisill: No, sir.

8 Commissioner Wilkerson: Okay.

9 Mr. Rudisill: No, sir.

10 Commissioner Wilkerson: Okay.

11 Mr. Rudisill: I mean, the photographs are --

12 there's a photograph of the five (5) gallon bucket

13 that was provided to him at -- at one point in

14 time. There's a photograph of the -- of a -- a

15 soft lawn chair that was provided to him to sit

16 in. And, as I said, there's some personnel

17 records and -- you know, quite a few of them

18 actually.

19 Commissioner Wilkerson: Sure.

20 Mr. Rudisill: So, it -- it just didn't seem.

21 that -- that any of this is really relevant to any

22 of the issues here today --

23 Commissioner Wilkerson: And it may not be.

24 Mr. Rudisill: -- MMI --

25 Commissioner Wilkerson: Sure, I understand.

1 Mr. Rudisill: -- the extent of his PPD and 10

2 -- and -- and any -- whether he needs ongoing

3 treatment for any psychological issues.

4 Commissioner Wilkerson: Okay. I will allow

5 them in because as both of you all know, its part

6 of the evidence but it's not -- it's probably not

7 the part of the evidence that's going to throw the

8 case tremendously one way or the other. It's not

9 going to -- for no better term, it's not the

10 smoking gun that's going to tilt it one way or the

11 other. Okay. So, I'm going to go ahead and let

12 that information in, okay?

13 Mr. Rudisill: All right.

14 Commissioner Wilkerson: And I understand

15 your objection to that, Mr. Rudisill.

16 Mr. Rudisill: Yes, sir. Thank you.

17 Commissioner Wilkerson: So noted.

18 Mr. Rudisill: Thank you.

19 Mr. Ezell: And we -- we have no objection to

20 any -- any of the submissions, Your Honor.

21 Commissioner Wilkerson: Anything else with

22 --

23 Mr. Ezell: No, sir.

24 Commissioner Wilkerson: -- that's from the

25 APA's or the jurisdiction or anything else?

1 Mr. Ezell: Right. No, sir. 11

2 Commissioner Wilkerson: Okay. Then we'll

3 proceed forward with that -- and that objection

4 has been handled; the Commission's file becomes a

5 part of the record with the exception of

6 self-serving declarations and unstipulated medical

7 reports. And let me make sure before we get

8 started. This is your submissions today?

9 Mr. Ezell: Yes, sir.

10 Commissioner Wilkerson: Okay. I just got

11 some stuff in here. Okay. Mr. Rudisill or Steve,

12 since you were the first one to file the form and

13 it was the 21, do you want to handle just the 21

14 first or do you want to address the 50 and 51? I

15 -- I'll take it either way. I was going to let

16 you go first since you were the moving party,

17 initially?

18 Mr. Rudisill: Well, Your Honor, we would --

19 with respect to the Form 21, my clients will take

20 the position that Mr. Daley was placed at maximum

21 medical improvement by the authorized treating

22 physician who is the Psychiatrist, Dr. Leblond, on

23 November 21, 2011. Dr. Leblond on that date, or

24 shortly thereafter, assessed a six percent (6%)

25 whole person impairment as the result of the

1 contusion that Mr. Daley suffered to his thoracic 12

2 and lumbar area and his rib cage, right rib cage

3 area, when he fell from this ladder on February

4 the 9th of 2011. Dr. Leblond imposed work

5 restrictions pursuant to a functional capacity

6 evaluation that had been performed shortly prior

7 to that date of no lifting greater than fifteen

8 (15) pounds. He indicated that Mr. Daley could

9 sit or stand constantly, that he could engage in

10 frequent ladder climbing and transfers, that he

11 could occasionally squat, kneel, crawl, overhead

12 lift or reach, and he could engage in repetitive

13 lumbar flexion, and that he could walk; all of

14 those on an occasional basis. The Defendants have

15 continued to pay compensation for temporary total

16 disability since that date, and we seek credit for

17 all the compensation that's been paid since that

18 date.

19 Commissioner Wilkerson: Back to 11/21/11; is

20 that --

21 Mr. Rudisill: Yes, sir.

22 Commissioner Wilkerson: -- okay. All right,

23 I wanted to make sure I've got the right notes,

24 okay, from last time. All right.

25 Mr. Rudisill: Yes, sir.

1 Commissioner Wilkerson: Has any medical 13
2 since then been provided?
3 Mr. Rudisill: Well, we have the
4 neuro-psychiatric evaluation --
5 Commissioner Wilkerson: Okay. All right.
6 Mr. Rudisill: -- that Mr. Daley underwent at
7 the hands of Dr. Thomas Gualtieri in Charlotte on
8 May the 10th, 2011 --
9 Commissioner Wilkerson: Okay.
10 Mr. Rudisill: -- which goes more to the
11 issues, I suppose, that are raised in the Form 50
12 --
13 Commissioner Wilkerson: Okay.
14 Mr. Rudisill: -- and the 51.
15 Commissioner Wilkerson: Okay.
16 Mr. Rudisill: So -- and -- and the issue
17 there would be whether the Claimant has any
18 psychological problems as a result of -- of his
19 injury. There -- I think pursuant to the
20 pleadings, at least some of the pleadings
21 indicates, there's an indication that Mr. Daley
22 had suffered a head injury or a traumatic brain
23 injury. When we were at the last hearing, I
24 think, Mr. Ezell had indicated that the Claimant
25 was not -- in so many words was not many words was

1 not pursuing that claim and I -- I stand to be 14
2 corrected on this --
3 Mr. Ezell: No. That -- that's correct, Your
4 Honor.
5 Mr. Rudisill: -- but --
6 Commissioner Wilkerson: Okay.
7 Mr. Rudisill: -- so, I don't -- I don't think
8 that issue is really before the Commission at this
9 point.
10 Commissioner Wilkerson: Okay. That's fine.
11 Mr. Rudisill: Although Dr. Gualtieri did
12 address it and did indicate that he found based
13 upon his extensive neuro-psychiatric testing that
14 there was no evidence of any type of closed head
15 injury or -- or traumatic brain injury.
16 Commissioner Wilkerson: Okay.
17 Mr. Rudisill: He had indicated that pursuant
18 to -- to all of his testing and his clinical
19 evaluation that Mr. Daley was, as he put it, a bit
20 depressed and he did prescribe a couple of
21 medications for that reason but he did not think
22 that there was any long term sequelae to that
23 problem and did not indicate that there was any
24 disability associated with that problem. And my
25 clients would point out that the Claimant was seen

1 on a referral by Mr. Ezell by a Dr. Mullen back in 15
2 June of last year, I believe it was, June of 2011.
3 Dr. Mullen seemed to engage in a lot of
4 speculation about whether there had been a closed
5 head injury and my clients believe that a lot of
6 his opinions are based upon his belief that there
7 perhaps was a closed head injury.
8 Commissioner Wilkerson: But since he's not
9 pursuing that --
10 Mr. Rudisill: Correct.
11 Commissioner Wilkerson: -- the closed head
12 injury --
13 Mr. Rudisill: And -- and I --
14 Commissioner Wilkerson: -- but the
15 psychological you are pursuing is my
16 understanding?
17 Mr. Ezell: Yes, Your Honor.
18 Commissioner Wilkerson: Okay.
19 Mr. Rudisill: -- yes, sir. And I -- I think
20 that goes more to the -- to the weight that you
21 give any opinions --
22 Commissioner Wilkerson: Okay. Sure.
23 Mr. Rudisill: -- that he has rendered, Your
24 Honor.
25 Commissioner Wilkerson: Okay.

1 Mr. Rudisill: So -- but neither Dr. Mullen 16
2 nor Dr. Brabham, who Mr. Ezell also referred the
3 Claimant to for an evaluation -- Dr. Brabham, of
4 course, being a Psychologist, not a medical doctor
5 -- neither of them seemed to have indicated that
6 -- that Mr. Daley has any -- any permanent
7 disabilities or inability to return to work
8 because of any psychiatric or psychological
9 problems. So, in our view we are looking solely
10 at a -- a single member injury here, that is to
11 the back. A contusion to the back, which occurred
12 on top of some pre-existing medical problems that
13 the Claimant had had with his lower back, lumbar
14 spine, and for which he had received treatment
15 within just a few months prior to the date of the
16 accident. And, in fact, for which he was still
17 requiring medication from his treating physician
18 for those problems.
19 Commissioner Wilkerson: Okay.
20 Mr. Rudisill: So, our position would be that
21 -- that he had some back problems at the time of
22 the accident. The accident occurs; he suffers
23 some additional problems and exacerbation. He
24 obviously had a -- a serious contusion to his --
25 to his -- his back and his rib cage area and he

1 has recovered from that. He has been rated and -- 17
 2 and there's been some -- some permanent impairment
 3 assessed for those problems. And he continues to
 4 have some problems, according to the medical
 5 records and I'm sure what you'll hear from him in
 6 his testimony today but that he, from a
 7 psychological standpoint, is not disabled and he
 8 has the restrictions that Dr. Leblond has placed
 9 on him and no other doctor has placed any
 10 restrictions on him as a result of any injury that
 11 he suffered at the time of this accident. So, we
 12 have six percent (6%) to the back. Again, Mr.
 13 Ezell did send Mr. Daley to Dr. Grady, a DO, for
 14 an evaluation back in December, I believe it was,
 15 of 2011. Dr. Grady, of course I'm sure you'll
 16 read his report --
 17 Mr. Ezell: I'm sorry.
 18 Commissioner Wilkerson: You've got to stop.
 19 Mr. Rudisill: -- we --
 20 Court Reporter: Please.
 21 Mr. Ezell: My bad.
 22 Commissioner Wilkerson: My gosh.
 23 Mr. Ezell: I'm sorry.
 24 Mr. Rudisill: -- we -- we -- we would -- we
 25 would argue that -- that the Commission should not

1 put a great deal of weight on his opinions based 18
 2 upon the other evidence in the record from, not
 3 only Dr. Leblond, but you also have Dr. McHenry,
 4 who is an Orthopedic Surgeon who saw the Claimant
 5 early on and then saw him again in the fall; I
 6 think it was November of last year for a final
 7 evaluation as to whether he was surgical or not
 8 and so, we think their opinion should carry more
 9 weight here than Doctor -- Doc -- Dr. Grady. Dr.
 10 Grady did assess a twenty-six percent (26%)
 11 permanent partial impairment to the lumbar spine,
 12 I believe it was. So, that's what we see in the
 13 case, Your Honor.
 14 Commissioner Wilkerson: Okay. All right.
 15 Thank you.
 16 Mr. Ezell: Your Honor, my eyes are not --
 17 Commissioner Wilkerson: On behalf of your
 18 client --
 19 Mr. Ezell: -- Your Honor, my eyes are not
 20 what they used to be --
 21 Commissioner Wilkerson: -- tell me what --
 22 Mr. Ezell: -- do -- do you mind if I stay
 23 seated so I can --
 24 Commissioner Wilkerson: -- no, no, that's
 25 fine. No, absolutely. I'm not --

1 Mr. Ezell: -- okay. 19
 2 Commissioner Wilkerson: -- I'm taking notes.
 3 Mr. Ezell: Okay.
 4 Commissioner Wilkerson: I'll look at you
 5 sometimes and sometimes I don't.
 6 Mr. Ezell: Okay. Your Honor, it's our
 7 position that Mr. Daley sustained a pretty severe
 8 injury on February 9th of 2011. He fell off of an
 9 eight foot (8') ladder, landed on his right side
 10 on a piece of four inch (4") PVC pipe that was
 11 cemented into the ground; it stuck up from the
 12 ground about two and a half feet (2½") feet; so,
 13 he was basically impaled on -- on -- on that pipe.
 14 Since that point in time he's had an extremely
 15 difficult time having to fight for the benefits
 16 he's -- he's entitled to. He has by the
 17 Defendant's own Nurse Case Manager's notes been
 18 extremely compliant throughout his course of
 19 treatment; we just call your attention to Exhibit
 20 Number 10. Pursuant to Exhibit Number 2, pages 1
 21 through 5, as well as APA Number 13, pages 207 to
 22 210, it's our --
 23 Commissioner Wilkerson: Let me ask you. How
 24 am I going to know what these exhibits are?
 25 Mr. Ezell: -- I'm sorry. They're -- it --

1 it's -- 20
 2 Commissioner Wilkerson: Because they're not
 3 marked.
 4 Mr. Ezell: -- pardon me?
 5 Commissioner Wilkerson: They're not marked,
 6 I don't think.
 7 Mr. Ezell: I believe they are, Your Honor.
 8 I will double check.
 9 Commissioner Wilkerson: Are they marked on
 10 the top or on the side?
 11 Mr. Daley: There should be -- there should
 12 be stickers on them.
 13 Commissioner Wilkerson: All right. That's
 14 what you gave me; so, I don't know.
 15 Mr. Ezell: Okay.
 16 Commissioner Wilkerson: Let me make sure I
 17 got the right stack --
 18 Mr. Ezell: All right.
 19 Commissioner Wilkerson: -- and I'm not
 20 looking at the wrong thing.
 21 Mr. Ezell: I think the blue pages is her --
 22 Commissioner Wilkerson: Is it at -- it says
 23 on the front of the blue page?
 24 Mr. Ezell: -- on the front of the blue page;
 25 yes, sir. Commissioner Wilkerson: Okay. That's

1 fine. 21

2 Mr. Ezell: For example, there's Exhibit

3 Number One --

4 Commissioner Wilkerson: Oh, I'm fine.

5 That's fine as long as I've got it. I just wanted

6 it --

7 Mr. Ezell: -- yes, sir.

8 Commissioner Wilkerson: -- where I can

9 reference back to it.

10 Mr. Ezell: Okay.

11 Commissioner Wilkerson: Thank you.

12 Mr. Ezell: Certainly. I'm sorry.

13 Commissioner Wilkerson: No, no. I'm fine.

14 Mr. Ezell: Your Honor, it's our position

15 that -- that Mr. Daley was never provided with

16 adequate light duty. And that ultimately as a

17 result of the substantial change in lifestyle from

18 -- from the injury, the uncertain of his -- the

19 uncertainty of his future in terms of

20 employability or lack of employability and quite

21 frankly, Your Honor, what I consider to be and I

22 think what Mr. Daley will testify to, was pretty

23 significant maltreatment of him by the Employer in

24 terms of the return to work situation and his

25 ultimate termination. He was given sedentary work

1 restrictions by Dr. Leblond; he was fired by the 22

2 employer when he was still on those restrictions.

3 He's become quite anxious and depressed. Both Dr.

4 Brabham, Dr. Mullen, and Dr. Gualtieri, if I'm

5 pronouncing that right, the Defendant's own

6 Psychiatrist, he is depressed, and Dr. Gualtieri

7 related his depression to the accident and said

8 that he deserves treatment. Dr. Gualtieri, as Mr.

9 Rudisill said, that he is a bit depressed but I

10 would equate that to being a bit pregnant; you're

11 either depressed or you're not. Doctor -- Dr.

12 Mullen, who's a board certified Psychiatrist, Dr.

13 Brabham, who is a PhD Psychologist, both indicated

14 that his pain and his substantial change in

15 lifestyle has caused his depression, Dr. Gualtieri

16 said that he's entitled to treatment for it; that

17 treatment has never been provided. Dr. Gualtieri

18 gave Mr. Daley prescriptions on the date of the

19 evaluation; Mr. Daley tried to have those filled

20 and they were denied. With regard to Dr. Mullen's

21 opinions, he does state at some points in time

22 that Mr. Daley may have a closed head injury as we

23 have stipulated to. In response to Mr. Rudisill's

24 opening statement we are not pursuing closed head

25 injury but Dr. Mullen did say that his depression

1 is caused by his chronic pain, but there may be a 23

2 contribution of closed head injury. So, the Dr.

3 Mullen -- Dr. Mullen, I think, in no certain term

4 states that at least in -- in some pertinent part

5 the -- the injury and the pain are the source of

6 his depression and anxiety. We would contend that

7 he's not reached MMI. As per Dr. Gualtieri's own

8 notes he has -- is entitled to psychiatric

9 treatment and -- and medication, which at this

10 point has yet to be provided. We would also

11 contend that the Defendants are not entitled to

12 credit for overpayment from the date of maximum

13 medical improvement. We would contend that in

14 addition to his back injury and back pain Mr.

15 Daley also suffers from pain in his hips and into

16 his legs. He has radicular pain. We would rely

17 on the case, I think I've handed up, of Hudson

18 versus South Carolina State Ports Authority. With

19 regard to the evidence of -- of leg pain, Dr.

20 Gualtieri, himself, affirms that Mr. Daley has

21 radiculopathy in -- in the very first paragraph

22 under Summary and Impressions of the -- the

23 supplemental APA Mr. Rudisill submitted. It says

24 he has degenerative disc disease and

25 radiculopathy. So, we would contend that in

1 addition to the -- the rating to his -- his back 24

2 he has also sustained pain to his -- to his --

3 pain and issues and -- and impairment to his leg

4 or legs. We would contend that Dr. Grady's

5 opinion should be given considerably more rate

6 than -- weight than I think Mr. Rudisill will have

7 you believe. Dr. Grady -- Grady is a board

8 certified Orthopedic Surgeon with the Spartanburg

9 Regional Medical Group and irrespective of whether

10 he's a DO or an MD he passed the same board

11 certifications that any -- any other doctor in

12 town passed and we would contend that, obviously,

13 his -- his assessment should be given significant

14 weight. And -- and we would also contend, Your

15 Honor, that the six percent (6%) assigned by Dr.

16 Leblond is woefully inadequate in light of the

17 very restrictions that Dr. Leblond placed upon

18 him. As Mr. Daley is going to testify the bulk of

19 his work history has been as a Commercial Plumber;

20 that's heavy work. There's no two (2) ways about

21 it, you're lifting toilets, you're lifting pipe,

22 you're lifting, you know, any number of things.

23 You're working overhead, you're working at your --

24 at -- at waist level, you're working below waist

25 level. He's got permanent lifting restrictions of

1 no greater than fifteen (15) pounds. Irrespective 25
2 of whether he can stand, stoop, sit or walk, the
3 bottom line is he can't pick up a toilet if he
4 can't lift more -- more than fifteen (15) pounds.
5 You can't lay pipe if you can't lift more than
6 fifteen (15) pounds. So, it's -- it's simple that
7 he just can't do what he used to do and that's all
8 he knows. So, we would contend that six percent
9 (6%) is just -- is -- is an abomination under
10 these particular circumstances. Dr. Leblond also
11 indicated that -- that Mr. Daley is going to need
12 medication. There's no indication that that's for
13 a temporary point of -- period of time; it says --
14 it -- it -- it's basically he's going to need
15 medication from this point forward. I know --
16 Commissioner Wilkerson: Is that being
17 provided?
18 Mr. Ezell: -- that's on the 14 -- no, sir.
19 Well, it is and it isn't, and we'll get into that,
20 Your Honor. But that's on the 14-B that the
21 Defendants have submitted. Mr. Daley has never
22 held a desk job, he's never held a supervisory
23 type job where you sit and watch somebody else.
24 Dr. Brabham is a -- is a very well credentialed
25 Vocational Evaluator. There's no evidence to --

1 to contradict Dr. Brabham. Dr. Brabham has not 26
2 been deposed. There's no vocational opinion
3 that's submitted by the Defendants. So,
4 basically, that -- that information and that
5 evidence is uncontroverted. He's indicated that he
6 can't do what he used to do before. So, given the
7 issues between his back, which we think have not
8 fully been addressed in terms of the amount of
9 impairment he sustained, the issues with his legs
10 with the radiculopathy, which was recognized even
11 by Dr. Gualtieri, and the issues with the
12 psychiatric and psychological problems, he's
13 considerably more than six percent (6%). And we
14 would also contend that this is not, as Mr.
15 Rudisill would have you believe, a single member
16 case; there -- there is considerably more to it
17 than that. So, for that reason we would contend
18 that his -- his impairment greatly exceeds that
19 the Defendants would -- would contend.
20 Commissioner Wilkerson: Okay. Mr. Rudisill,
21 let me ask you a question about the fired while on
22 light duty; I'm a little interested in that, I
23 mean, I'll read the stuff in here. Tell me the
24 position of your clients in reference to fired
25 while on light duty.

1 Mr. Rudisill: Light duty work was provided 27
2 to Mr. Daley by the Defendant Employer shortly
3 after the accident occurred.
4 Commissioner Wilkerson: Okay.
5 Mr. Rudisill: He was brought into the
6 office, he was doing some work in the office,
7 working with blueprints; according to his
8 testimony, doing some filing. And there came a
9 point in time where -- and I don't know how far
10 you want me to go with this, Your Honor, because
11 there may not be testimony on some of this --
12 Commissioner Wilkerson: Well --
13 Mr. Rudisill: -- so.
14 Commissioner Wilkerson: -- now, what I'm
15 trying to figure out is -- obviously, I think the
16 law is pretty clear that if somebody is on light
17 duty and the employer fires them you've got to
18 continue temporary total benefits, unless there
19 are circumstances that rise to the level, I'll use
20 the word disobedience; that's a little strong but
21 --
22 Mr. Rudisill: Constructive --
23 Commissioner Wilkerson: -- verbal, physical,
24 those type things and I think the Employer has the
25 right, based on the circumstances, to fire someone

1 even if they're on light duty if it rises to that 28
2 level.
3 Mr. Rudisill: -- yes, sir.
4 Commissioner Wilkerson: I -- I guess their
5 contention currently as I heard it, maybe I
6 misunderstood it, was he was fired while on light
7 duty; I don't know what that means and maybe the
8 testimony will tell me that.
9 Mr. Rudisill: Well, and it may be if Mr.
10 Daley testifies to it.
11 Commissioner Wilkerson: Okay.
12 Mr. Rudisill: But there --
13 Commissioner Wilkerson: That's fine.
14 Mr. Rudisill: -- there were some issues that
15 arose with respect to his attendance at work.
16 Commissioner Wilkerson: That's fine. That's
17 -- that's all -- we -- we'll get into it. Just --
18 Mr. Rudisill: And, I mean, this is all in
19 the Claimant's deposition --
20 Commissioner Wilkerson: -- I understand.
21 Mr. Rudisill: -- testimony. He would --
22 Commissioner Wilkerson: And his deposition
23 has been handed up or it may be handed up?
24 Mr. Rudisill: -- it -- it has not been
25 handed up but we can hand it up. But, Mr. -- Mr.

1 Daley and, as I understand it, and I was -- I -- I 29
2 -- candidly I was not involved in this case at
3 this juncture of it.
4 Commissioner Wilkerson: Okay. Sure.
5 Mr. Rudisill: But Dr. Daley, pursuant to
6 advice from Mr. Ezell, refused to return to the
7 job that was being provided because of the belief
8 that it was not -- it did not comport with the
9 light duty work --
10 Commissioner Wilkerson: Okay. Okay. That's
11 fine.
12 Mr. Rudisill: -- restrictions that had been
13 imposed at the time. And so, Mr. Daley was off of
14 the job for a number of days; efforts were then
15 made to get him back to work in the office and for
16 various reasons he did not appear for work or he
17 was tardy for work. And then, there were a period
18 -- was a period of a couple of days where he did
19 not show for work and when he came back the next
20 day, as I understand it, he was then terminated.
21 So --
22 Commissioner Wilkerson: Okay. That's fine.
23 Mr. Rudisill: -- the -- the contention that
24 there was no adequate light duty work ever
25 provided to the Claimant is inaccurate; there was

1 adequate light duty work provided for him. As a 30
2 matter of fact for approximately a month he was
3 working in the office, as I understand it, up
4 until he was moved out of the office and put on a
5 -- a job site where Chapman Mechanical was engaged
6 in commercial plumbing work and he was given an
7 inventory job. And that's when he was provided
8 with the bucket, he was provided with a lawn chair
9 to sit on, and -- and -- and he took the position
10 that that was inappropriate given his sedentary
11 work restriction at the time. And so, the company
12 then was going to bring him back into the office
13 and that's when problems arose with respect to
14 tardiness and absenteeism.
15 Commissioner Wilkerson: Okay. That's fine.
16 Okay.
17 Mr. Rudisill: Okay.
18 Commissioner Wilkerson: I just wanted --
19 that's fine.
20 Mr. Rudisill: So, we had a dispute about
21 whether and how much compensation he was entitled
22 to for disability after that termination occurred
23 and that's what was resolved pursuant to the
24 consent order that the parties entered into on
25 September the 20th --

1 Commissioner Wilkerson: Okay. 31
2 Mr. Rudisill: -- of 2011.
3 Commissioner Wilkerson: Okay.
4 Mr. Rudisill: So, those issues -- as far as
5 we're concerned those issues have been resolved.
6 So, we have been paying -- the Defendants have
7 been paying compensate -- excuse me --
8 compensation for temporary total disability from
9 that point forward, and actually I think prior to
10 that point forward. So -- and I'm sorry, Your
11 Honor, I don't have that consent order directly in
12 front of me but --
13 Commissioner Wilkerson: No, I -- I'm going
14 to see if it's in here.
15 Mr. Rudisill: -- but --
16 Commissioner Wilkerson: I just want to make
17 sure it's -- sometimes they can get in the file
18 and sometimes -- who -- who signed that; do you
19 all remember? All right. Wait a minute.
20 Mr. Ezell: I don't remember.
21 Mr. Rudisill: -- I, honestly, don't either.
22 Commissioner Wilkerson: I want to see if
23 I've got it. You said it was September?
24 Mr. Rudisill: Yes, sir. It's -- it was
25 filed September the 20th.

1 Mr. Ezell: It takes two (2) tortoises 32
2 sometimes to go --
3 Commissioner Wilkerson: I don't see it but
4 I'm not -- that doesn't mean it was filed and we
5 scanned it into the system.
6 Mr. Rudisill: Yes, sir. It's -- it's in the
7 system.
8 Commissioner Wilkerson: But I can't --
9 Mr. Rudisill: It's --
10 Commissioner Wilkerson: -- I can't tell you
11 that until I get back. But it -- I mean, you all
12 -- you all can just send me another copy -- or
13 just sometimes it's better if you just send it to
14 me; I'll get it direct as opposed to trying to go
15 back through our filing. Hold on.
16 Mr. Ezell: Your Honor, Commissioner Barden
17 signed it.
18 Commissioner Wilkerson: Okay. Have you got
19 an extra copy or no?
20 Mr. Ezell: I don't. I'm sorry.
21 Commissioner Wilkerson: That's okay.
22 Mr. Ezell: All I have is a -- either an
23 e-mail or faxed copy.
24 Commissioner Wilkerson: You all can send it
25 to me; that's fine.

1 Mr. Ezell: Okay. 33

2 Commissioner Wilkerson: I mean, I'm -- it

3 will take a -- you all will get it back to me

4 before I probably get back to the office, which is

5 okay. Because this will be something I won't --

6 this is a weekend read.

7 Mr. Ezell: You Honor, just by my quick

8 reading of it, I -- I would -- I would have to

9 disagree with Mr. Rudisill's --

10 Commissioner Wilkerson: That's fine.

11 Mr. Ezell: -- contention that it resolved

12 the light duty issue. It -- we -- we made a

13 compromise agreement with regard to some past

14 temporary total but at no point do I think we

15 acknowledged that light duty was properly provided

16 or that that issue was -- I think -- the order

17 says that all issues pertaining to the 50 and 51

18 are held in abeyance. And just real briefly, Your

19 Honor, in response with regard to the light duty

20 that was provided. We would just call the

21 Commission's attention to APA's pages 207 to 210,

22 which are Dr. Leblond's statements. He viewed the

23 bucket, the lawn chair, the job site that -- that

24 Mr. Daley was purportedly supposed to work on his

25 sedentary restrictions and absolutely said that

1 they're not -- they're not -- that it did not 34

2 comply. They were not -- they were not proper,

3 they're not adequate; it wasn't -- wasn't right.

4 And, again, that's just more of our contention

5 that he was jerked around and, you know, we'll --

6 we'll deal with that when we come to it.

7 Commissioner Wilkerson: And -- and what I'm

8 saying on -- on the consent order, whether one (1)

9 of you or both of you send it to me; I don't care.

10 Mr. Rudisill: I've got a copy of it; it's

11 not signed fully or filed but this is the consent

12 order that I have here, Your Honor.

13 Commissioner Wilkerson: That's fine. Just

14 hand it up. I'll -- I tell you what, let Jeff look

15 at it and --

16 Mr. Ezell: I -- I -- I've got -- I'm sure

17 it's the same one I just looked at.

18 Commissioner Wilkerson: Yes, I'm sure it is.

19 Mr. Ezell: If you want to hand it up, Steve,

20 I don't have a problem with that.

21 Commissioner Wilkerson: Thank you, sir.

22 Mr. Rudisill: Yes, sir.

23 Commissioner Wilkerson: I appreciate it.

24 Thanks. And I'll have Elaine pull it, the signed

25 copy, just to put it in my stuff. It's just if

1 this comes up today I just wanted to have a 35

2 reference point.

3 Mr. Rudisill: Yes, sir.

4 Mr. Ezell: Right, Your Honor.

5 Commissioner Wilkerson: Thank you all.

6 Anything else before we hear testimony from --

7 Mr. Ezell: Nothing further --

8 Commissioner Wilkerson: -- the Claimant?

9 Mr. Ezell: -- nothing further from the

10 Claimant, Your Honor.

11 Commissioner Wilkerson: Mr. Rudisill?

12 Mr. Rudisill: No, Your Honor.

13 Commissioner Wilkerson: Okay. Thank you.

14 Sir, I'm going to get you to raise your right

15 hand. I'm going to have the Court Reporter swear

16 you in and we'll take some testimony from you.

17 Whereupon,

18 SEAN DAVID DALEY, being duly sworn and cautioned

19 to speak the truth, the whole truth, and nothing but

20 the truth, and nothing but the truth, testified as

21 follows:

22 Court Reporter: Please state your full name

23 for the record.

24 Witness: My name is Sean David Daley.

25 Court Reporter: Thank you, sir.

1 Commissioner Wilkerson: On the 21, do you 36

2 want to direct or do you want to -- we're

3 combining them.

4 Mr. Rudisill: I'll rely on the medical

5 evidence, Your Honor, and -- and reserve my right

6 to cross-examine.

7 Commissioner Wilkerson: Absolutely. Thank

8 you.

9 Mr. Rudisill: Thank you.

10 Commissioner Wilkerson: Please proceed

11 forward. Thank you.

12 Mr. Ezell: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 By Mr. Ezell:

15 Q. Sean, if you would, give the Commissioner your -- your

16 -- your full address and date of birth.

17 A. My full address is 9 Arrington Avenue, Greenville,

18 South Carolina, 29617, date of birth is June 16th,

19 1976.

20 Q. Okay. And you're married, obviously, and your wife is

21 here. We've agreed to stipulate that her testimony

22 would basically be cumulative and corroborative of

23 yours; so, we'll -- we'll kind of proceed through that.

24 Sean, prior to this accident you'd had some back issues

25 in the past; is that correct?

37

1 A. That is correct.

2 Q. Okay. At the time of the accident were you functional

3 in terms of your ability to work as a Commercial

4 Plumber?

5 A. I most certainly was.

6 Q. Did you have any issues at -- with regard to your back

7 prior to this accident that prevented you from doing

8 your -- your full duty as a Commercial Plumber?

9 A. No.

10 Q. Did you ever miss any time from work with Chapman

11 Mechanical because of your back?

12 A. Maybe for a doctor's appointment but that wasn't a full

13 day.

14 Q. Okay. Did you ever have to forego or refuse any

15 particular jobs or tasks because of your back prior to

16 this accident?

17 A. No.

18 Q. Okay. You also -- I think, you -- you used to like

19 skateboarding; were you able to do that before this

20 accident?

21 A. Yes.

22 Q. Okay. Obviously, part and partial of what we're here

23 about today, Sean, is -- is some psychological or

24 psychiatric issues including anxiety and depression.

25 Had you ever suffered from anxiety or depression prior

38

1 to the incident?

2 A. No, not to my knowledge.

3 Q. Had you ever been treated for it --

4 A. No.

5 Q. -- medicated in any way?

6 A. No, I have not.

7 Q. Okay. Other than -- than your prior issues with your

8 back did you have any prior significant health problems

9 of any kind?

10 A. No.

11 Q. Okay. And as of February 9th, 2011, were you able to

12 do your job as a Commercial Plumber without any -- any

13 restrictions or reservation?

14 A. Yes.

15 Q. Okay. Give us your -- your educational background real

16 quickly, if you would.

17 A. I finished high school --

18 Q. Okay.

19 A. -- graduated, middle -- middle class, Bs and Cs, a

20 couple of As, just average student --

21 Q. Okay.

22 A. -- when I graduated.

23 Q. Any technical school or vocational school since then?

24 A. No.

25 Q. In terms of becoming a Commercial Plumbing, was that

39

1 mostly on the job training or --

2 A. Yeah. It was -- it -- it was every bit of on the job

3 training.

4 Q. -- okay. Had you ever held an office job before?

5 A. No.

6 Q. Ever had any type of computer or sit down job that you

7 -- you didn't have to be on your feet or lifting or

8 moving?

9 A. No.

10 Q. Okay. Prior to working for Chapman what kind of other

11 jobs had you held?

12 A. A few restaurant jobs, maybe a gas station clerk but --

13 when I was in high school.

14 Q. Okay. Where did you start working as a Plumber?

15 A. I started working as a Plumber at -- in Greenville.

16 What is the name of that company? Porter and Gray.

17 Q. Okay. And how long did you do that type of work?

18 A. I worked with them for probably about two (2) years.

19 Q. Okay. In your work history have you ever held any jobs

20 for any significant length of time that did not require

21 you to lift more than fifteen (15) pounds?

22 A. No.

23 Q. Okay. And what would be the maximum you would be

24 expected to lift as a Commercial Plumber on sort of a

25 regular basis; I'm not talking about the way out of the

40

1 ordinary situation but on a given day what would be the

2 -- would be the maximum you'd have to lift?

3 A. Well, the requirements to be a Plumber, basically, when

4 you fill out an applications a lot of them ask if you

5 can lift fifty (50) pounds or more.

6 Q. Okay. And was that something you had to regularly do

7 even with Chapman?

8 A. Yes.

9 Q. Okay. When did you start working with Chapman?

10 A. October 2010 --

11 Q. Okay.

12 A. -- I think.

13 Q. And you've indicated that -- that you had to lift as

14 much as fifty (50) pounds on a daily basis?

15 A. Yes.

16 Q. Okay.

17 A. My tools alone weigh about fifty (50) pounds just to

18 tote them in and out of the job.

19 Q. Okay. The -- the -- your average weekly wage and

20 compensation rate are already in the record; so, we'll

21 just kind of go past that. When you were working for

22 Chapman who did you -- and -- and we'll call it -- call

23 your attention, specifically, to February 9th of 2011;

24 at that point in time who was your supervisor or who

25 did you answer to directly?

41

1 A. Jimmy Champion.

2 Q. Okay. Were you ever written up for anything prior to

3 the February 9th, 2011 accident?

4 A. No, not to my knowledge.

5 Q. As far as you know you were in -- were you in good

6 standing with Chapman until the day you got hurt?

7 A. As far as I know I was in great standing.

8 Q. Okay. Had you ever been criticized for slow or

9 inferior work prior to the accident?

10 A. No.

11 Q. Okay. Was there any aspect of the job with Chapman you

12 were unable to perform before February 9th of 2011?

13 A. No.

14 Q. Okay. Tell the Commissioner, if you would, just

15 briefly how you got hurt, roughly what time of day,

16 that kind of thing?

17 A. It was about 10:30, I was working in a unfinished

18 bathroom, unlevel floors. They had put the ceiling

19 grid up about two (2) weeks prior -- two (2) weeks too

20 soon and I had to get up into the ceiling to do the

21 overhead work and the --

22 Q. Let me stop you right there, Sean.

23 A. -- sure.

24 Q. When you -- you say the ceiling grid, looking at the

25 ceiling above us, which is a hung ceiling obviously, is

42

1 that what you're talking about?

2 A. -- that's exactly what I was talking about, yes.

3 Q. Okay. And I assume the tiles were not in place but the

4 metal --

5 A. The metal --

6 Q. -- supports?

7 A. -- yes. And the General Contractor told us not to

8 touch them, remove them, or you'll be run off the job.

9 Q. Okay. Did working within those metal frames make it

10 more difficult?

11 A. Oh, most certainly.

12 Q. Okay.

13 A. You need to try to fit a twenty foot (20') length of

14 pipe in between something like that it -- it -- it's

15 almost impossible. I was working above the ceiling

16 grid and I don't know exactly how it happened or what

17 happened but the ladder came out from underneath me; I

18 fell backwards and the next thing I knew it was pain

19 and agony.

20 Q. Okay. What exact -- do you -- do you know exactly what

21 you -- what you fell or landed on?

22 A. It was a piece of four inch (4") PVC. I remember

23 falling backwards thinking that this wasn't going to be

24 good because I thought about a couple of things I was

25 going to land on and that was the last thing that was

43

1 on my mind, I was going to hit that.

2 Q. Okay.

3 A. But, as soon as I hit it I knew what I hit.

4 Q. Okay. Did anybody see you fall?

5 A. One (1) person did.

6 Q. Who was that?

7 A. Paul Lousch.

8 Q. Okay. Did he prepare an incident report?

9 A. He did.

10 Q. Okay. And on that initial incident report were any

11 safety violations alleged against you?

12 A. No.

13 Q. Okay. Now, ultimately, was a second report filled out?

14 A. As I believe -- yes, I believe there was.

15 Q. And that second report did claim safety violations; is

16 that right?

17 A. That's correct.

18 Q. And do you have any idea why it changed from one report

19 to the next?

20 Mr. Rudisill: Your Honor -- Your Honor, I

21 object. This testimony has nothing to do with the

22 issues that are before you today.

23 Commissioner Wilkerson: I -- I -- I was

24 going to let him go. They don't.

25 Mr. Ezell: Okay. Well, again, Your Honor --

44

1 Commissioner Wilkerson: Because safety

2 violations, that's OSHA, that's not me.

3 Mr. Ezell: -- I understand, Your Honor.

4 What -- what I'm -- what I'm trying to point out

5 is -- is just basically the pattern, the way --

6 the way Chapman had treated Mr. Daley from the

7 time this happened on forward, which we do believe

8 contributed to his psychiatric and psychological

9 issues. I -- I'll be happy to skip past it if

10 you'd prefer? I just wanted to --

11 Commissioner Wilkerson: Yes. I -- I don't

12 know that's going to have any relevance.

13 Mr. Ezell: -- okay. Then --

14 Commissioner Wilkerson: I'm going to be

15 looking at the doctor's report, his testimony, and

16 some other issues. That's -- that happened so far

17 back.

18 Mr. Ezell: -- well --

19 Commissioner Wilkerson: That's a year --

20 four (4) months ago. I --

21 Mr. Ezell: -- again, Your Honor, like I

22 said, and -- and -- and again, I'll obviously

23 defer to your -- your ruling, obviously, but it --

24 it's our position that the way Chapman handled

25 this, literally from the very get go, put in

1 motion a set of circumstances that have -- that 45
2 have culminated in his -- his situation now. But,
3 if -- if you'd prefer, I'll skip forward --
4 Commissioner Wilkerson: But that's not to be
5 tried in this court of law. That's to be tried in
6 another court of law --
7 Mr. Ezell: -- okay.
8 Commissioner Wilkerson: -- under the
9 employment practices liability and that needs to
10 be pursued there. I can't --
11 Mr. Ezell: I understand.
12 Commissioner Wilkerson: -- handle that here
13 today.
14 Mr. Ezell: And -- and I'm not trying to --
15 to -- to -- to --
16 Commissioner Wilkerson: I understand.
17 Mr. Ezell: -- try a wrongful termination
18 case here, Your Honor.
19 Commissioner Wilkerson: Right.
20 Mr. Ezell: I'm just trying to point out to
21 the Commission what Chapman did and how it
22 impacted him but I'll be happy to skip forward.
23 Commissioner Wilkerson: Yes. We're here
24 today on is he at MMI, does he have any
25 disability, has the medicines been paid; I use

1 medicines liberally. Is psyche going to be 48
2 accepted and should his temporary total continue
3 or -- I mean, that's what we're here on. We're
4 not --
5 Mr. Ezell: I understand and -- and I guess,
6 Your Honor, I would -- I would just address this
7 to is psyche going too be accepted because it --
8 Commissioner Wilkerson: -- I -- I can't --
9 Mr. Ezell: -- well, and -- and, again, like
10 I said, that's why I wanted it before the
11 Commission to show just what Chapman did in
12 dealing with this. And -- but again, Your Honor,
13 you're -- you're -- you're in charge and I'll skip
14 forward if you say so.
15 Commissioner Wilkerson: Yes. I don't -- I
16 don't think that's going to have any relevance --
17 Mr. Ezell: Okay.
18 Commissioner Wilkerson: -- on the decision.
19 Mr. Ezell: That's -- that's fine, Your
20 Honor.
21 Commissioner Wilkerson: So, we just need to
22 move on by that.
23 Mr. Ezell: That's fine.
24 Commissioner Wilkerson: Sure.
25 Q. Sean, just going ahead and skipping ahead. Where did

1 you get your first medical treatment? 47
2 A. It was at -- what is the name of that? I can't think
3 of the name of the hospital up in North -- in North
4 Carolina right now.
5 Commissioner Wilkerson: That's fine.
6 Q. Okay. Were you working out -- out of town or out of
7 state when this happened?
8 A. It was in -- yes. It was in North Carolina.
9 Q. Okay. Ultimately -- well, walk -- walk me through the
10 -- the medical treatment you had?
11 A. Pardee --
12 Q. -- okay.
13 A. Pardee Hospital -- emergency room. That's right.
14 Q. Okay. After -- after you returned to South Carolina
15 where was your first medical treatment at that point?
16 A. My first medical treatment when I was at --
17 Q. Once -- once you got back to South Carolina, if you
18 recall?
19 A. -- it was Greenville Memorial.
20 Q. Okay. And, ultimately -- just to -- to -- for the sake
21 of time, it -- it became apparent that Dr. Leblond was
22 your primary care physician; is that correct?
23 A. That is correct.
24 Q. And was that after you had been released by an
25 Orthopedist and told you needed pain management?

1 A. No. I believe the first person I saw was Dr. McHenry 48
2 and I guess he -- he -- I guess he had done -- he did
3 refer me for pain management.
4 Q. Okay. And Dr. Leblond was handling your pain
5 management?
6 A. Correct.
7 Q. And that was medication, and were any injections or
8 anything like that ever performed?
9 A. I had one (1) ESI.
10 Q. And how did that work?
11 A. Not so well.
12 Q. Okay. How long were you out of work before you were
13 able to -- to go back or before Chapman brought you
14 back on any type of light duty?
15 A. I was out for two (2) days, two (2) or three (3) days.
16 Q. And when you returned to work where -- where were you
17 sent by Chapman Mechanical?
18 A. They put me at the office.
19 Q. Okay. And how long were you at the office?
20 A. Approximate -- approximately a month.
21 Q. Okay. And why did they -- were -- were you taken out
22 of the office?
23 A. Yes.
24 Q. And -- and would you -- do you know why?
25 A. I could speculate why but --

49

1 Q. No, you can't --

2 A. -- no, I do not know.

3 Q. -- you can't do that. Okay.

4 A. I don't know.

5 Q. When they took you out of the office where were you

6 sent?

7 A. I was sent to a commercial job site.

8 Q. And what job site was that?

9 A. I don't remember the name of the school; it was a

10 school in Anderson.

11 Q. Was it Glenview?

12 A. Glenview, yeah.

13 Q. Okay.

14 A. Thank you.

15 Q. And what were you told to do when you got to Glenview?

16 A. Inventory.

17 Q. Okay. And -- and describe for the Commissioner what

18 they actually had you doing, physically.

19 A. Counting parts. They wanted me -- well, they told me

20 they'd provide help to lift boxes and move things

21 around but I never could find help.

22 Q. Okay. When you say lift boxes, what were these boxes

23 of?

24 A. Metal parts, cast iron parts.

25 Q. And what --

50

1 A. PVC.

2 Q. -- what would a box of cast iron parts weigh?

3 A. It varies in -- it varies in weight.

4 Q. What would be the most one would weigh?

5 A. The most -- you could have them up to a hundred and

6 fifty (150) pounds.

7 Mr. Rudisill: Objection, unless he

8 knows.

9 Commissioner Wilkerson: Yes. Unless you

10 know exactly.

11 Q. Were -- were the boxes of cast iron or metal parts more

12 than fifteen (15) pounds?

13 A. Yes.

14 Q. Okay. There -- there has been some -- some allegations

15 that you -- you missed work or were noncompliant with

16 your return to work; what is your position on that?

17 A. The only time I missed work was to go to a funeral.

18 Q. Okay. Now, on March 31st of 2012, I guess it was --

19 no, I'm sorry. Yes, of -- no, of 2011, I'm sorry, did

20 you miss some time due to pain; do you recall?

21 A. I think I did.

22 Q. Did you --

23 A. Maybe --

24 Q. -- did you have Jessie Blanchard's permission to miss

25 that time?

51

1 A. Yes.

2 Q. Okay. Now, there's been an allegation of tardiness.

3 The records, I think indicate -- and these have been

4 submitted to the Commissioner -- that on April 4th you

5 were two (2) hours late?

6 A. Correct.

7 Q. Were you ever late to Glenview any other time?

8 A. No.

9 Q. Okay. Now, the -- the time you were late and the hour

10 and half you missed, was that related to pain?

11 A. It was.

12 Q. Okay. In terms of what Chapman had you doing, you were

13 on sedentary work restrictions at the time. It's been

14 submitted, a photograph has been submitted of a five

15 (5) gallon bucket; is that what they initially provided

16 you to sit on?

17 A. That's correct.

18 Q. And how did that make your back or legs feel?

19 A. It didn't make them feel good at all.

20 Q. And this inventory work, could you actually just sit in

21 one spot and do it from the -- the sitting spot or did

22 you have to get up and move around and count things,

23 and sort things, and that kind of thing?

24 A. No, you'd have to constantly move your chair because

25 things were scattered everywhere.

52

1 Q. Okay. Now, after the -- the -- the five (5) gallon

2 bucket didn't work, what -- what did they provide you

3 with to sit on next?

4 A. A folding -- I guess a folding lawn chair.

5 Q. Okay. How did that make your back and legs feel?

6 A. Not much better than the five (5) gallon bucket.

7 Q. Okay.

8 A. I even tried bringing a pillow of my own, a pillow from

9 home and try to make it better but that didn't --

10 Q. Okay. Now, at one point I think you were -- you were

11 told to work in what's called a Conex?

12 A. -- yes.

13 Q. And is that basically a tractor-trailer or trailer for

14 storage?

15 A. Yes.

16 Q. Okay. What did that job require you to do?

17 A. Pretty much the same thing: lift, bend, dig.

18 Q. Okay. Were the parts you had to -- the things you had

19 to sort and inventory in the Conex, did they weigh more

20 than fifteen (15) pounds?

21 A. A good bit of them, yes.

22 Q. Okay. The Conex job, could you do that completely from

23 a seated position?

24 A. No.

25 Q. Okay. And I think you indicated you were told to ask

1 for help if you needed help lifting? 53

2 A. Correct.

3 Q. Was that help ever -- ever available?

4 A. Jessie did his best to provide it but he -- no, he was

5 too short handed.

6 Q. Okay. Who were you -- was Jessie who you were supposed

7 to ask to -- ask for help?

8 A. He was the -- the project -- or the -- yes, he was in

9 charge of the job site.

10 Q. Is that Jessie Blanchard you're referring to?

11 A. Jessie Blanchard, yes.

12 Q. Okay. At some point in time were you asked to transfer

13 some -- transport some materials in your personal

14 vehicle?

15 A. I was.

16 Q. And who -- who asked you to do that?

17 A. Jack Cox.

18 Q. Okay. Were the parts you were asked to transport, did

19 they weigh more than fifteen (15) pounds?

20 A. Yes, they did. Well, I don't know, I didn't transfer

21 them; I -- I refused to do it.

22 Q. Okay. Now, when you worked in the office they had you

23 in the conference room?

24 A. Correct.

25 Q. And was you -- were you in a padded chair like you're

1 in today or what did they have you sitting in? 54

2 Mr. Rudisill: Your Honor, I'm going to

3 object again. I mean, I don't see where this has

4 anything to do with the issues that are before the

5 Commission --

6 Commissioner Wilkerson: I agree.

7 Mr. Rudisill: -- today.

8 Commissioner Wilkerson: I -- I don't --

9 Mr. Ezell: All right.

10 Commissioner Wilkerson: -- I mean, we're not

11 sitting in a padded chair. We're not -- I mean --

12 Mr. Rudisill: The -- we --

13 Commissioner Wilkerson: -- we've got to get

14 to the point.

15 Mr. Ezell: Your Honor, I --

16 Commissioner Wilkerson: I -- I -- I don't

17 understand what a padded chair today has anything

18 to do with what he's described as a bucket, which

19 everybody -- everybody has sat on a bucket.

20 Everybody has sat in a chair, I understand. I

21 don't --

22 Mr. Ezell: -- all right.

23 Commissioner Wilkerson: -- I mean --

24 Mr. Ezell: All right, Your Honor, that's --

25 Commissioner Wilkerson: -- the next -- the

1 next thing we'll get into is what the level of 55

2 foam is, I mean --

3 Mr. Ezell: -- Your Honor, I --

4 Commissioner Wilkerson: -- I don't know. We

5 need to get --

6 Mr. Ezell: -- Your Honor, I -- I --

7 Commissioner Wilkerson: -- to the point.

8 Mr. Ezell: -- I don't think I was headed

9 anywhere that -- that ridiculous.

10 Commissioner Wilkerson: Well, I can't answer

11 where you're headed --

12 Mr. Ezell: All right, Your Honor.

13 Commissioner Wilkerson: -- but we've got to

14 the point of what we're here today on. I -- I

15 don't know where you're headed.

16 Q. Sean, what happened to your employment with -- with

17 Chapman?

18 A. Ultimately, I was fired.

19 Q. Okay. Were you told why?

20 A. I was told that if I wanted to know why --

21 Mr. Rudisill: I would object to the hearsay.

22 Commissioner Wilkerson: Well, he can't tell

23 me what he was told.

24 Mr. Ezell: He can -- it -- it's an admission

25 by the party Defendant, Your Honor. It's -- it's

1 Chapman's own statements. 56

2 Commissioner Wilkerson: He can tell me why

3 he was fired.

4 A. -- they wouldn't tell me why I was fired.

5 Commissioner Wilkerson: Okay. That's what I

6 need to know.

7 Q. Were you on restrictions when you were fired, Sean?

8 A. Yes.

9 Q. Okay. What kind of problems are you having with your

10 back now?

11 A. Radiating pain down either leg.

12 Commissioner Wilkerson: Both -- both legs is

13 --

14 A. Correct.

15 Commissioner Wilkerson: -- right and left?

16 A. Right and left.

17 Commissioner Wilkerson: Okay.

18 A. I have problems with my hips, it feels -- and in my

19 buttocks area feels like I get knots like somebody had

20 punched me real hard. I get muscle spasms in my lower

21 back and just it -- it hurts.

22 Q. Okay. So, you are having pain in both legs?

23 A. Yes.

24 Q. Okay. And that's in addition to your low back?

25 A. Yes.

57

1 Q. And in both hips?

2 A. Yes.

3 Q. Okay. How often does the pain bother you?

4 A. Every day.

5 Q. Okay. Is this in any way, shape, or form similar to

6 any back pain or problems you had prior to February

7 9th, 2011?

8 A. No.

9 Q. Okay. Just dealing with your low back first, on a

10 scale of one (1) to ten (10), on an average day, ten

11 (10) being extreme pain and one (1) being almost no

12 pain at all, where would you say your low back stays?

13 A. In between a six (6) and a seven (7).

14 Q. Okay. What kind of things aggravates your low back

15 pain?

16 A. Standing too long, sitting too long.

17 Q. When you say too long, how long can you stand before it

18 starts to bother you?

19 A. Maybe about forty-five (45) minutes.

20 Q. Okay. How about sitting?

21 A. Sitting, about the same --

22 Q. Okay.

23 A. -- depending on the surface.

24 Q. Did driving from -- from Greenville to St. Matthews

25 today cause you problems?

58

1 A. Most certainly.

2 Q. Okay. Did you have to stop at all or --

3 A. Yes.

4 Q. -- okay. Moving now to your hip -- well, the low back

5 pain, describe it; is it sharp, dull, stabbing, aching?

6 A. All of the above, it just depends on the day and if I

7 -- how -- if I move wrong, move right, however you want

8 to say it; it just depends on how I move.

9 Q. You -- you have small children; are you able to lift

10 the children?

11 A. No.

12 Q. Okay. Moving now to your hips, and if -- if -- if

13 they're different in terms of severity then we'll deal

14 with one (1) -- one (1) at a time but if they're about

15 the same what kind of pain do you have or are -- are

16 they about the same or is one worse than the other?

17 A. My left hip is worse than my right hip.

18 Q. Okay. What type -- is it -- the -- the left hip pain

19 on -- on a scale of one (1) to ten (10), where would

20 you say it stays on average?

21 A. About a five (5).

22 Q. Okay. How about the right hip?

23 A. The right hip, maybe about a three (3) or four (4).

24 Q. Okay. What types of things make the hip pain worse?

25 A. Too much walking, too -- sitting too long in -- in a

59

1 car, repetitive motions. Well, like in a car I'd say,

2 in a car the bouncing of the road, too much vibrations,

3 things of that nature.

4 Q. Okay. Now, moving to your legs, is one (1) leg worse

5 than the other?

6 A. My left leg.

7 Q. Okay. And -- and on a scale of one (1) to ten (10)

8 where would the left leg pain stay on average?

9 A. About a four (4).

10 Q. Okay. How about the right leg?

11 A. The right legs stays about a two (2) or three (3).

12 Q. Okay. Any -- are any of those pains the same -- the

13 same, similar to or any way -- were they in any way

14 present prior to February 9th, 2011?

15 A. No.

16 Q. Okay. What kind of things makes your leg pain worse?

17 A. I did -- well, I can't say no. There was a small

18 amount of radiating pain that went down my right leg.

19 Q. Prior to this accident?

20 A. Prior to the accident.

21 Q. Did -- did that ever prevent you from working?

22 A. No, it did not.

23 Q. Okay. Did that ever prevent you from enjoying your

24 life in any other way?

25 A. No, it did not.

60

1 Q. Okay. When you -- you -- when you -- you have an

2 aggravation of this pain if from sitting, or standing,

3 or walking too long, what can you do to make the pain

4 better or what do you try and do to make the pain

5 better?

6 A. Well, I've tried -- if I'm standing I sit down for a

7 little bit; if I'm sitting I'll stand up; that's about

8 all I've found -- maybe some heat, some cold.

9 Q. Okay. With regard to the low back, you said it stays

10 about a six (6) or seven (7) on average; what's the

11 worst it gets?

12 A. About a nine (9).

13 Q. Okay. And what -- what kind of things will bring that

14 about?

15 A. Laying in bed too long. Usually the first thing in the

16 morning is agonizing to get up.

17 Q. Okay. How about the hips; what's the worst that gets?

18 A. Probably about the same.

19 Q. Okay.

20 A. In the mornings it's -- everything pretty much hurts.

21 Q. When you have an aggravation with the hips, what can

22 you do to make it better?

23 A. Nothing that I've found, you just have to wait for it

24 -- I don't know; it's about the same thing. If it

25 starts hurting you move to a different position to see

1 If you can alleviate some of the pain. 61

2 Q. And -- and when you have a flare-up how long does it

3 usually take that to subside?

4 A. It depends on the flare-up.

5 Q. Okay. And with regard to your legs, what -- what's the

6 worst pain you'll get there?

7 A. Worst? Like I said, in the mornings it's usually all

8 about -- all -- all around nines (9s).

9 Q. Okay. Are you taking any prescription medications at

10 this point?

11 A. I still have some Zanaflex.

12 Q. Okay. And is that a muscle relaxer?

13 A. That's a muscle relaxer.

14 Q. Okay. Does the muscle relaxer help?

15 A. Not really.

16 Q. Okay. In terms of any non-prescription medications,

17 are you taking anything like that now?

18 A. Tylenol.

19 Q. And how often do you take Tylenol?

20 A. More often than I should, I think.

21 Q. Okay. I mean --

22 A. But I take -- I take about four (4) Ibuprofens every

23 four (4) hours.

24 Q. -- okay. And then how often -- how often do you take

25 Tylenol and how much?

1 A. Well, that's about -- I have Ibuprofen. 62

2 Q. Okay.

3 A. I say Tylenol; I kind of associate them all together.

4 Q. Okay. Since you last saw -- or since -- since you --

5 Dr. Leblond released you in, I believe, mid-November of

6 last year, is your condition better, worse, about the

7 same?

8 A. It's gotten worse.

9 Q. Okay. In terms of your weight, how much do you weigh

10 now?

11 A. I weigh -- well, the last time I checked it was one

12 twenty-seven (127) -- or excuse me -- two twenty-seven

13 (227).

14 Q. Okay. Is that more, or less, about the same as it was

15 on February 9th of 2011?

16 A. No, it's considerably more.

17 Q. All right. And how much more would you say?

18 A. Probably about fifty (50) pounds.

19 Q. Okay. Has -- has the inability to -- to physically --

20 be physically active, has that contributed to your

21 weight?

22 A. Most certainly.

23 Q. And has the weight made your situation worse?

24 A. I'm not happy about the weight.

25 Q. Okay. Moving now to the -- the psychological or

1 psychiatric issues. You indicated, I think earlier, 63

2 that you had not been treated for -- you've never been

3 medicated for anxiety or depression in the past; is

4 that correct?

5 A. That's correct.

6 Q. Okay. Tell the Commissioner, if you will, what kind of

7 problems you're having now in terms of just your

8 overall mood, emotions, just your overall

9 psychological, psychiatric situation.

10 A. Well, where to begin? I don't do anything. Well, I

11 try to, excuse me, I don't say I don't do anything. I

12 -- I try to do stuff but when I try to be more active

13 it hurts more and when it hurts more I get depressed

14 because I am not the type of person to sit around. I

15 cannot stand sitting and doing nothing. I've been

16 working since I've been eighteen (18) years old; I've

17 held a job and I have not been able to work in a little

18 over a year and a half now. My marriage is suffering

19 because of this. My children don't understand why

20 Daddy can't go out and play with them and I don't know

21 what to tell them anymore. I --

22 Q. How old -- how old are your children, Sean?

23 A. -- I've got a one and a half (1½) year old. I've got a

24 four (4) year old, and a eight (8) year old.

25 Q. Okay. Were you active with your children prior to this

1 accident? 64

2 A. I most certainly was.

3 Q. Does the inactivity with your children cause you any

4 depression or distress?

5 A. It certainly does.

6 Q. Okay.

7 A. I don't -- I -- that's another -- it also causes

8 problems between me and my wife because she wants me to

9 come outside and watch them play and watching them play

10 just reminds me that I can't be out there playing with

11 them; so, I -- I try to stay away from it.

12 Q. Okay.

13 A. I don't like seeing things -- people doing things that

14 I used to be able to do.

15 Q. Okay.

16 A. I don't know how to handle it.

17 Q. Okay. Is this something that bothers you once a week?

18 A. Every day.

19 Q. Every day. In terms of anxiety, do you have any issues

20 with -- with that or with stress?

21 A. Stress, yes. Anxiety, I really don't know how to

22 answer that because I don't know what anxiety is; I

23 don't know.

24 Q. Are you -- are you concerned about your -- your future

25 in terms of ability to make a living?

1 A. I most certainly am. 65

2 Q. Okay. Has this whole situation put you in any type of

3 financial hardship?

4 A. Yes, that's -- that's an understatement.

5 Q. Okay. And has the financial hardship contributed to

6 your overall mood issues?

7 A. It most certainly has.

8 Q. The way Chapman Mechanical handled this in terms of

9 what they gave you for a sensible light duty,

10 ultimately your termination and everything else; did

11 that in any way, shape, or form contribute to your

12 psychological or psychiatric issues?

13 A. It --

14 Mr. Rudisill: Objection.

15 Commissioner Wilkerson: Objection. Tell us

16 what -- what's the objection?

17 Mr. Rudisill: I think it goes to expert

18 opinion, Your Honor.

19 Commissioner Wilkerson: Yes. What --

20 Mr. Ezell: I think he can certainly testify

21 to --

22 Commissioner Wilkerson: -- he -- he can tell

23 me what he thinks caused it but I -- yes.

24 Mr. Rudisill: He can -- he can -- he can

25 testify as to the impact it's had on his life, I

1 think, and his mental state but whether it's -- it 66

2 caused anything I think is a different issue.

3 Mr. Ezell: -- I think I asked if it -- if it

4 aggravated it in any way.

5 Commissioner Wilkerson: He -- he can answer

6 the question but I --

7 Mr. Rudisill: Thank you.

8 Commissioner Wilkerson: -- I understand.

9 Because, I mean, if he understands what stress is

10 but doesn't understand anxiety we -- you know, it

11 -- it's not going to raise it much above the line

12 anyway, so.

13 Q. Go ahead and answer the question.

14 Commissioner Wilkerson: But I'd like for him

15 to answer the question.

16 A. Well, when you go without being paid for five (5)

17 months or so and you've got three (3) children I guess

18 stress and anxiety levels are out -- out the roof.

19 Q. Okay.

20 A. And trying to recover from that -- I'm still -- here it

21 is a year and a half later, I'm still struggling every

22 month to make my bills and just to catch up with things

23 that I've gotten behind from all that. So, yes --

24 Commissioner Wilkerson: All right. Explain --

25 A. -- I could say --

1 Commissioner Wilkerson: -- explain a little 67

2 bit to me in reference to that because what -- I'm.

3 a little confused because if you're making about

4 six hundred and thirty dollars (\$630.00) a week --

5 okay, I know each week is a little different, and

6 now you're getting about four hundred and twenty

7 dollars (\$420.00), you weren't getting much more

8 than four hundred and twenty dollars (\$420.00) a

9 week after taxes anyway. So, I'm confused --

10 A. Okay.

11 Commissioner Wilkerson: -- of where the -- I

12 mean, I'm not saying you --

13 A. That's fair.

14 Commissioner Wilkerson: -- you might not

15 have gotten four fifty (\$450.00) or something --

16 A. I understand that.

17 Commissioner Wilkerson: -- and thirty

18 dollars (\$30.00) over a period of time could cause

19 some problems.

20 A. I --

21 Commissioner Wilkerson: But explain -- help

22 me understand that.

23 A. Okay. Okay. I -- making the six fifty (\$650.00) I was

24 also able to go out on weekends and do side jobs. I

25 had a very big clientele list that would call me on --

1 on random occasions that needed work done at their 68

2 house, plumbing, family members and what not; so, I

3 would subsidize my income by doing work on the

4 weekends.

5 Commissioner Wilkerson: Okay.

6 A. I can no longer do that.

7 Commissioner Wilkerson: And, typically,

8 those type jobs you were paid cash?

9 A. Correct.

10 Commissioner Wilkerson: Okay. I'm fine with

11 that. Okay.

12 A. Yes.

13 Commissioner Wilkerson: Okay.

14 A. So, it's -- it's taken more of a toll being -- not

15 being able to work than initially -- you know, it just

16 -- it's -- it's not been easy.

17 Q. Sean, you also indicated there was a period of time

18 where you did not receive any temporary total

19 disability benefits?

20 Mr. Ezell: I'm sorry, was there --

21 Commissioner Wilkerson: No, that was the

22 five (5) months, right?

23 Mr. Ezell: -- right.

24 A. Correct.

25 Commissioner Wilkerson: Okay. Yes. Because

1 I was -- that was my -- okay -- 69

2 Mr. Ezell: Okay. Go ahead, Commissioner. I

3

4 Commissioner Wilkerson: -- no. Please --

5 no, no. Please.

6 Mr. Ezell: -- I -- I didn't mean to step on

7 your toes.

8 Commissioner Wilkerson: Because I was going

9 to ask where the five (5) months came in but.

10 A. Yeah. That's when -- after they fired me they denied

11 me my total temporary disability and that's the whole

12 court -- that's what everything was the day he was

13 trying to talk about earlier but.

14 Commissioner Wilkerson: But that's been

15 brought up to date?

16 Mr. Ezell: The -- the --

17 A. Yeah.

18 Mr. Ezell: -- well, the ultimate in

19 compromise would be since September.

20 Commissioner Wilkerson: Was that the consent

21 order?

22 Mr. Ezell: Yes, sir. But -- but --

23 Commissioner Wilkerson: Okay.

24 Mr. Ezell: -- but he went with nothing for

25 five (5) months.

1 Commissioner Wilkerson: I'm fine with that. 70

2 Okay. I -- because I haven't read the consent

3 order. Okay. I'm fine with that. Please,

4 proceed. I'm sorry.

5 Mr. Ezell: Okay. Thank you, Your Honor.

6 Q. Sean, with regard to your psychiatric and psychological

7 condition, the Defendants asked you to be seen by a Dr.

8 Gualtieri in Charlotte, North Carolina; did you attend

9 that?

10 A. I did.

11 Q. Okay. And Dr. Gualtieri's report has been introduced

12 into evidence; so, I won't -- I'm not going to go

13 through that but did he prescribed medications for you?

14 A. He did.

15 Q. And that was the doctor chosen by the Defendants?

16 A. Correct.

17 Q. And were you -- did you try and fill those

18 prescriptions?

19 A. I did.

20 Q. And what happened?

21 A. I was denied.

22 Q. Okay.

23 Commissioner Wilkerson: Still denied on

24 those prescriptions?

25 A. Still denied. Oh, I don't -- I haven't heard word to

1 tell me to go try to fill them since we've asked for 71

2 them, so.

3 Commissioner Wilkerson: I understand.

4 Q. Sean, tell the Commissioner what you do in an average

5 day.

6 A. Well, this is going to be a short list. I wake up, I

7 eat breakfast, try to do what I can around the house to

8 help; which isn't much at all. I sit and watch TV. I

9 try to listen to the kids when they tell me their

10 stories of what they've just done outside, and I go to

11 sleep.

12 Q. What type of things that you do or try to do in an

13 average day make your situation worse? Are you -- I

14 know you -- not -- be more specific. I know you've

15 talked about sitting and standing more than forty-five

16 (45) minutes and that kind of thing, but tell the

17 Commissioner what -- what you -- you either cannot do

18 anymore in terms of just around your house with helping

19 with your wife and children, or things that you can try

20 to do that may or may not aggravate your condition?

21 A. Well, I can't bathe the kids anymore. Vacuuming is hit

22 or miss, occasion -- when my back is feeling half way

23 decent I might be able to vacuum but that's -- dishes,

24 I can do the dishes, help with that for maybe about

25 fifteen (15), twenty (20) minutes and then I've got to

1 rest. Getting dressed in the morning is -- is usually 72

2 a bit of a chore. I've got my shoes tied so I can just

3 slide them on so I don't have to bend over to tie them.

4 You know, it's just -- it's impacted -- my life has

5 done a complete one-eighty (180).

6 Q. Okay. Can -- can you sweep or vacuum?

7 A. It just depends on the day.

8 Q. Okay.

9 A. But every time I do it aggravates my back.

10 Q. Okay. Can you make beds, clean bathrooms, do laundry?

11 A. I can put the laundry in the washing machine if it's

12 sitting on top of the dryer.

13 Q. Okay.

14 A. But as far as bending down to pick it up, not really.

15 Q. Okay. How about yard work?

16 A. That's out of the question.

17 Q. Okay.

18 A. We pay somebody to do yard work now.

19 Q. Okay. I -- I -- I meant -- I skipped over one (1)

20 thing; Sean, I apologize. You've seen -- you've been

21 seen by Dr. Brabham and Dr. Mullen; were you completely

22 candid and honest with them in -- in responding to

23 their questions?

24 A. I most certainly was.

25 Q. Dr. Mullen, Dr. Brabham, and -- and Dr. Gualtieri agree

1 that your -- you have some depression as a result of 73
2 this -- this accident and -- and everything else that
3 went on with it. Is it your desire to -- to -- to get
4 the medication and the treatment that Dr. Gualtieri has
5 recommended?
6 A. It most certainly is.
7 Q. Okay.
8 Mr. Ezell: Bear with me just one (1) second,
9 Commissioner.
10 Commissioner Wilkerson: Sure.
11 Q. Sean, I may have more questions for you in -- in
12 response to anything Mr. Rudisill asks but I think
13 that's everything I've got at this point.
14 A. Okay.
15 Commissioner Wilkerson: Thank you. Mr.
16 Rudisill?
17 Mr. Rudisill: Thank you, Your Honor.
18 Commissioner Wilkerson: Sure.
19 CROSS-EXAMINATION
20 By Mr. Rudisill:
21 Q. Mr. Daley, you're still under Dr. Leblond's care,
22 correct?
23 A. No.
24 Q. When did you last see Dr. Leblond?
25 A. When did I last see Dr. Leblond? Now, that's -- I only

1 saw Dr. Leblond every three (3) months. When I was let 74
2 go in -- I was let go I believe the beginning of May; I
3 was scheduled to see him May 10th but I had seen -- so
4 two (2) months prior to that was when I saw Doctor --
5 last saw Dr. Leblond.
6 Commissioner Wilkerson: And that's this year
7 we're talking about, so --
8 A. Yes. Correct.
9 Commissioner Wilkerson: -- about March; is
10 that fair?
11 A. Yes, about fair.
12 Commissioner Wilkerson: Okay.
13 A. Yes.
14 Q. Well -- all right. We know you last saw Dr. Leblond on
15 November the 21st of 2011, sir, because he placed you
16 at maximum medical improvement on that date and
17 assessed his impairment rating; do you recall that?
18 A. I do.
19 Q. And you -- have you not seen him at least three (3), if
20 not four (4) times, since that date?
21 A. Yes.
22 Q. Okay. January the 20th, 2012 --
23 A. Well --
24 Q. -- February the 20th, 2012 --
25 A. -- let me --

1 Q. -- March 14, 2012, and then April the 12th of 2012, 75
2 when you --
3 A. Mr. Rudisill, let me --
4 Commissioner Wilkerson: Wait, let --
5 A. -- let me clear this up.
6 Commissioner Wilkerson: -- let him finish.
7 Let him finish.
8 A. I'm sorry.
9 Commissioner Wilkerson: Okay. Now, let him
10 finish. Okay.
11 A. I'm sorry.
12 Q. Did -- did you see Dr. Leblond on those days?
13 Commissioner Wilkerson: Go ahead. I'm
14 sorry.
15 A. No, I did not see Dr. Leblond on all --
16 Q. Did you --
17 A. -- of those days.
18 Q. -- did you see his -- his assistant on those --
19 A. I did.
20 Q. -- days?
21 A. I -- like I said, I see Dr. Leblond every three (3) --
22 every third (3rd) month and it was Dr. Goldsmith that I
23 would see at the -- in between.
24 Q. All right. So, let me rephrase my question.
25 A. Okay.

1 Commissioner Wilkerson: That's fine. Yes. 76
2 Q. Have you seen either Dr. Leblond or his assistant,
3 David Goldsmith, since November of 2011, and if so, how
4 many times?
5 A. I saw them on a monthly occasion, so.
6 Q. All right. And when did you last see either one of
7 them?
8 A. April -- it was in April; I don't remember the exact
9 date.
10 Q. And do you have a return appointment?
11 A. No, not at this time.
12 Q. So, did Dr. Leblond not give you a return appointment
13 for today, actually?
14 A. No.
15 Q. All right. Has Dr. Leblond or his assistant continued
16 to provide you with medication --
17 A. No.
18 Q. -- during this period of time?
19 A. No.
20 Q. So, if his notes indicate that he refilled your
21 Percocet, your Zanaflex and your Neurontin on April the
22 12th, 2012, that would be inaccurate?
23 A. No, that would be correct. That was the last time that
24 I saw them.
25 Q. Okay. And its -- your testimony is that you don't have

1 a return appointment with him? 77

2 A. No, I do not.

3 Q. And do you know why you don't have a return appointment

4 with him?

5 A. I do.

6 Q. Well, why is that?

7 A. There was a urinalysis test done and I had Lortab in my

8 system instead of Percocet, which they had prescribed

9 me the Lortab and I had talked to them about it, and it

10 was three (3) months after they gave me the urinalysis

11 test that they decided that they would no longer see

12 me. But I had been candid with them; I had told them

13 the truth and they told me that that should not affect

14 it. I had been talking to them, telling them that the

15 Percocet was not helping as much as it was and they

16 were in the process of trying to make arrangements and

17 changes. And when they gave me the urinalysis test I

18 had told them that I had ran out of the Percocet and I

19 had relied on some of the Lortab. But I don't know

20 exactly why they dismissed me because I had talked to

21 them about it, and they assured me nothing was going to

22 happen.

23 Q. So -- so, it -- it's your understanding at this point

24 that Dr. Leblond has dismissed you from his care?

25 A. That is correct.

1 correct? 79

2 A. Correct.

3 Q. And you were also taking, at that time, two (2) other

4 medications, Mobic and Flexeril, correct?

5 A. Well, when the need arised for it, yes.

6 Q. Okay.

7 A. And the same with the Lortab; it's not like I was

8 taking them every day.

9 Q. You -- you had sought out medical treatment at

10 Greenville Hospital back on October the 20th of 2010,

11 for chronic back pain, correct?

12 A. Not for chronic back pain; they may have listed it that

13 way.

14 Q. So, if the -- if the note from Greenville Hospital of

15 that date, APA page 24, indicates "Patient complains of

16 pain to middle back, lower back, pain described as

17 aching, pain is continuous, on a scale of zero (0) to

18 ten (10) patient rates pain as eight (8)." Would you

19 disagree with any of that?

20 A. No, I would not. And that -- that is what led me to go

21 to the clinic over at -- I can't remember the name of

22 the clinic but the doctor that prescribed me the Lortab

23 --

24 Q. The New Horizon Family Health Clinic?

25 A. -- thank you, very much. Yes.

1 Q. Because you failed the drug test or assay that was 78

2 administered to you?

3 A. That is correct.

4 Q. And prior to that he had continued to provide -- Dr.

5 Leblond or Mr. Goldsmith had continued to provide to

6 you medications on each of these visits that you had

7 paid to them in January, and February, and March, and

8 April of this year, correct?

9 A. Correct.

10 Q. So, to be clear, which medications are you currently

11 taking, if any, for your --

12 A. I still have --

13 Q. -- your back problem?

14 A. -- I still have some Zanaflex left over.

15 Q. Do you have any Lortab left over?

16 A. No, I do not.

17 Q. You had been prescribed Lortab several months prior to

18 the accident that gave rise to your claim, correct?

19 A. Correct.

20 Q. And you had been prescribed that for back problems that

21 you were having -- low back problems that you were

22 having, correct?

23 A. Correct.

24 Q. And, in fact, you were continuing to take Lortab at the

25 time of the accident on February the 9th, 2011,

1 Q. Yes, sir. That would be Dr. Li? 80

2 A. Correct.

3 Q. L-I, correct?

4 A. Yes.

5 Q. And you expressed to him --

6 Mr. RudisIII: -- APA page 56, Your Honor --

7 Q. -- that you had been having low back pain for four (4)

8 years?

9 A. Correct.

10 Q. And that it had been getting worse over the past three

11 (3) years since you had undergone some foot surgery,

12 correct?

13 A. No.

14 Q. Okay. Did you express to him that it was -- the pain

15 was worse when you lifted things --

16 A. No.

17 Q. -- or you were in awkward positions?

18 A. Yes, I did.

19 Q. And that you had gotten relief with Lortab?

20 A. I did not. He add -- he may have added that in there

21 because he prescribed it.

22 Q. It was prescribed by the hospital doctor, correct?

23 A. Well, I may have said that, yes. I -- that was a long

24 time ago.

25 Q. Okay. And his note of that date also indicates that

81

1 you complained of occasional tingling in both of your
 2 thighs; do you recall that?

3 A. I recall saying my right thigh.

4 Q. Okay. There's a subsequent note from Dr. Li -- APA
 5 page 61, dated November 10, 2010 -- in which you
 6 indicated that you had been out of work for three (3)
 7 months; do you recall that?

8 A. No, I do not.

9 Q. Had you been out of work for three (3) months as of
 10 November of 2010?

11 A. I may have but it may not have been -- it wasn't from
 12 back pain.

13 Q. Okay.

14 A. It could have just been between jobs, trying to find a
 15 job.

16 Q. Okay. There has been testimony from you today that you
 17 have been "continuously" employed since you were
 18 eighteen (18) years old?

19 A. Correct.

20 Q. All right. You have a number of periods of
 21 unemployment during those years; have you not?

22 A. The longest stint would be about two (2) months in
 23 between finding jobs. As you know, the economy has not
 24 been at the best and when you're in construction work
 25 things happen and you lose jobs.

82

1 Q. Okay. And that goes back for the eighteen (18) years
 2 that you've been working in the plumbing industry --

3 A. Correct.

4 Q. -- correct? All right.

5 A. Yes, there's been small periods where you have to find
 6 a job and that's when you rely on side work --

7 Q. Okay.

8 A. -- to make things -- make ends meet.

9 Q. In fact, you had only been employed with Chapman
 10 Mechanical for approximately four (4) months prior to
 11 your accident, correct?

12 A. Correct.

13 Q. You underwent an MRI of your lumbar spine in July of
 14 2011, correct?

15 A. Correct.

16 Mr. Rudisill: APA page 113, Your Honor.

17 Q. Excuse me, I misspoke. It was in -- the MRI was in
 18 November of 2010, correct?

19 A. I believe so, yes.

20 Q. This was after you came under the care of Dr. Li at --

21 A. Correct.

22 Q. -- New Horizon, correct?

23 A. (Nodded head in an up and down motion).

24 Q. And at that time you were having difficulty with low
 25 back pain and bilateral leg pain; is that accurate?

83

1 A. Well, one (1) -- I don't know if bilateral -- if that
 2 means both legs?

3 Q. It means both legs?

4 A. No.

5 Q. You disagree with that?

6 A. I do because I only told him the right.

7 Q. Okay.

8 A. I -- I remember. I -- I -- I was -- and the reason I
 9 asked for the X -- he didn't order the MRI; he said we
 10 could do an MRI, if you so choose to, to see what's
 11 going on.

12 Q. Okay. But you had been having chronic back pain for a
 13 long time at that point and you wanted to find out what
 14 the problem was, correct?

15 A. And now, let's -- let's go back and redefine the four
 16 (4) years. Like I said, I am not trying to escape the
 17 fact that I used to skateboard.

18 Q. I'm not asking you --

19 A. Now, hold on, hold on --

20 Q. -- about skateboarding.

21 A. -- okay. Well, let me just finish --

22 Q. I'm just asking you --

23 A. -- my statement. You asked me a question; I'm going to
 24 give you an answer.

25 Commissioner Wilkerson: Well, answer the

84

1 question first.

2 A. Okay.

3 Commissioner Wilkerson: I don't need an
 4 explanation. I need --

5 A. No, I did not complain of chronic back pain.

6 Commissioner Wilkerson: -- okay. That's fine.

7 Q. Did you complain of bilateral leg pain?

8 A. I complained about my right leg.

9 Q. Okay. And --

10 A. And it felt like a cell phone was in my pocket on
 11 vibrate every now and then.

12 Q. -- and are you familiar with the results of the MRI
 13 that you -- you underwent in November --

14 A. I am.

15 Q. -- let me finish my question, please.

16 A. Sorry.

17 Mr. Ezell: Your Honor, I would object. The
 18 medical records speak for themselves; we don't
 19 need to --

20 Commissioner Wilkerson: I gave you -- wait a
 21 minute now; I gave you some liberalization of
 22 that. I'll give him a wee bit. If not, then we
 23 should have stopped forty-five (45) minutes ago.
 24 A little bit. If he continues I'll stop. Okay.

25 Q. The -- the results of the MRI from November of 2010,

1 indicated that you had degenerative disc disease at 85
2 L-5, S-1; do you -- do you agree or disagree with that?
3 A. Well, I -- I don't know. I'm not a doctor. I don't
4 know how to read those but if that's what they say then
5 that's what they say.
6 Q. Okay. All right. You testified that you weigh two
7 hundred twenty-seven (227) pounds now?
8 A. Correct.
9 Q. And that you've gained fifty (50) pounds since the date
10 of the accident?
11 A. Correct.
12 Q. All right. Your weight on the date of the accident as
13 shown in the medical records, APA page 71, was two
14 hundred and ten (210) pounds; do you disagree with that
15 number?
16 A. That doesn't sound accurate.
17 Q. It doesn't sound accurate?
18 A. I was very astute about my weight. I have -- I have
19 never been over two hundred (200) pounds in my life
20 until after I fell off that ladder.
21 Q. You -- so, you're --
22 A. Until I have not been able to move. Now, if -- with
23 all my clothes on I don't doubt it.
24 Q. -- so, is your testimony that you did not weigh two-ten
25 (210) on February 9 --

1 A. Well, no I -- Okay. 88
2 Q. -- of 2011?
3 A. I may have with all my equipment and my clothes.
4 Q. Okay. Did you have on your equipment when you went to
5 the -- the initial medical treatment center in
6 Henderson, North Carolina and then --
7 A. I did.
8 Q. -- at Pardee Hospital?
9 A. I did.
10 Q. Did you have it on when they weighed you?
11 A. I did.
12 Q. What type of equipment were you wearing?
13 A. Boots, Jeans, coveralls.
14 Q. Okay. And so, the clothing, not equipment?
15 A. Well, cloth -- I call clothing equipment.
16 Q. All right, sir.
17 A. In the construction world that's part of your
18 equipment, protective equipment.
19 Commissioner Wilkerson: But you didn't have
20 -- you didn't have your belt strapped on?
21 A. Didn't have the belt or nothing.
22 Commissioner Wilkerson: Okay.
23 A. No.
24 Commissioner Wilkerson: Belt being the tool
25 belt; not --

1 A. Correct. 87
2 Commissioner Wilkerson: -- necessarily the
3 belt for your pants? Okay.
4 Q. You saw Dr. McHenry, who was the initial Orthopedist,
5 who you saw following the accident on March 16, 2011?
6 A. Correct.
7 Mr. Rudisill: It's APA page 95, Your Honor.
8 Q. And you completed a questionnaire on that date; do you
9 recall that?
10 A. No, I do not.
11 Q. Okay. Do you recall that on that day you denied having
12 any type of psychological or psychiatric problems?
13 A. No, I do not. I'm not saying I didn't but I don't
14 recall taking that questionnaire.
15 Q. You did not talk with Dr. Leblond about having any
16 psychological or psychiatric problems or depression or
17 anxiety up through the point that your Attorney
18 referred you to Dr. Mullen, did you?
19 A. About -- well, no, I did not but I was still gainfully
20 employed at that time.
21 Q. When you saw Dr. Mullen --
22 A. When I saw Dr. Mullen.
23 Q. -- in June of 2011?
24 A. Oh, the first time I saw -- no, sir.
25 Q. Have you seen Dr. Mullen on more than one (1) occasion?

1 A. Yes, I have. 88
2 Q. How many times did you see him?
3 A. The first doctor they sent me to two (2) months -- two
4 (2) months after the accident was Dr. Mullen.
5 Q. They, who?
6 A. The Stonewood Insurance.
7 Q. Stonewood Insurance Company sent you to Dr. Mullen;
8 you're sure?
9 A. Dr. Mullen -- no, that's McHenry. Dr. Mullen? Okay.
10 I don't --
11 Q. I'm speaking of Dr. Patrick Mullen, the Psychiatrist
12 who Mr. Ezell --
13 A. -- oh.
14 Q. -- referred you to and who rendered a report --
15 A. I -- I'm sorry. I didn't --
16 Q. -- dated June 30 --
17 A. -- know his name.
18 Q. -- 2011?
19 A. Okay. I'm sorry. I did not know his name.
20 Q. All right.
21 A. Dr. Mullen.
22 Q. All right. You don't know his name?
23 A. I -- well, I -- there's so many doctors it's hard to
24 keep track of which one is which.
25 Q. Okay.

89

1 A. I've only seen him once.

2 Q. All right. So, you saw him on June 30, 2011?

3 A. Correct.

4 Q. All right. And up until that point -- on that date you

5 were not still employed with Chapman Mechanical --

6 A. No, I was --

7 Q. -- correct?

8 A. -- not at that point.

9 Q. All right, sir. And you had not spoken with Dr.

10 Leblond or Mr. Goldsmith about any psychological or

11 psychiatric issues up to that point when you saw Dr.

12 Mullen, correct?

13 A. Sir, you're speaking to me as somebody that knows how

14 to talk to doctors; I have -- this is the first bout of

15 doctors. I don't know how -- what doctor to talk to

16 about what. I have seen Dr. Leblond for pain; how am I

17 supposed to know to tell him about psychiatric

18 problems? He never asked me if I was depressed, to my

19 knowledge. I have never been through anything like

20 this before in my life. How am I supposed to know what

21 to do on every turn?

22 Q. There's -- there's been some reference to your

23 skateboarding history?

24 A. Yes.

25 Q. Mr. Daley, you -- you actually gave up skateboarding

90

1 six (6) months or so before this accident occurred in

2 February of 2011, correct?

3 A. Competitively, yes.

4 Q. Competitively?

5 A. Yes.

6 Q. Okay. Do you recall testifying in your deposition that

7 you had given it up because of responsibilities that

8 you had?

9 A. Competitively.

10 Q. Okay.

11 A. I still recreationally skateboarded.

12 Q. Okay. So, when you said you gave it up in your

13 deposition you didn't mean you gave it up completely?

14 A. Correct.

15 Q. Okay.

16 A. You do something for eighteen (18) years -- just say

17 you go fishing for eighteen (18) years of your life and

18 you say you gave it up, you're not going to give it up

19 completely; you're still going to do it recreationally

20 if you were doing it competitively anyhow. And my wife

21 could testify to the same.

22 Commissioner Wilkerson: Do you still

23 skateboard today or --

24 A. I wish I could.

25 Commissioner Wilkerson: -- okay.

91

1 A. That was my biggest stress reliever.

2 Q. You've never been licensed as a Plumber, correct?

3 A. Correct.

4 Q. Do you wish you had?

5 A. Yes, I do.

6 Q. Because you could make more money if you were licensed?

7 A. Yes.

8 Q. Okay. It would open --

9 A. Because --

10 Q. -- more doors for you, correct?

11 A. -- correct.

12 Q. There's been some reference to your prior work history.

13 You -- you've worked as a Cook, correct?

14 A. When I was younger, yes.

15 Q. Okay. You've worked in various kitchens and

16 restaurants?

17 A. I've worked in two (2) or three (3) --

18 Q. Okay.

19 A. -- fast food.

20 Q. You've worked at McDonald's?

21 A. Correct.

22 Q. And what did you do there?

23 A. I did food prep.

24 Q. Okay. Have you ever run a register?

25 A. Yes.

92

1 Q. Okay. You wait tables in a restaurant?

2 A. I did wait tables in between plumbing jobs, yes.

3 Q. Okay. You've worked in some gas stations?

4 A. When I was in high school, yes.

5 Q. Okay. Have you worked in one since?

6 A. No.

7 Q. You testified in your deposition that in 2005, you had

8 moved to Oregon and that you had worked in a gas

9 station there because you couldn't find a plumbing job;

10 do you recall that?

11 A. Well, it was a gas station, lube shop. There was a

12 lubrication shop, oil changing station; I started out

13 pumping gas and I worked and moved to the -- the oil

14 station.

15 Q. Okay. How long did you perform that type of work in

16 2005?

17 A. About four (4) months.

18 Q. Do you have any other work experience other than

19 working in restaurants, or fast food, or gas stations

20 --

21 A. No, I do not.

22 Q. -- or lube shops? No?

23 A. No.

24 Q. None?

25 A. (Shook head in a side to side motion).

93

1 Q. Have you --

2 A. Not that I can recall.

3 Q. -- have you -- have you looked for work since this

4 accident occurred in February of 2011?

5 A. No, I have not.

6 Q. In any way?

7 A. No.

8 Q. Not even after Dr. Leblond released you with the

9 restrictions that he placed on you in November of 2011?

10 A. No, I have not, and I will tell -- I have not at my

11 Attorney's request.

12 Q. So, your Attorney has requested that you not seek

13 employment?

14 A. At this point, yes.

15 Q. No doctor has prescribed the cane that you have with

16 you today, correct?

17 A. Correct.

18 Q. Do you engage in any type of exercise, Mr. Daley?

19 A. I do the stretches that -- I try to do the stretches

20 that physical therapy taught me.

21 Q. Okay. And by trying to do them what do you mean?

22 A. Well, I do them until they hurt to the point where I

23 can't do them anymore.

24 Q. And do you do these or try to do them on a daily basis?

25 A. Yes.

94

1 Q. And what are these exercises that you've been taught?

2 A. They're supposed to be trunk-strengthening exercises.

3 Q. And -- and what is required of you to do these

4 exercises?

5 A. Twisting of the hips, bending of the knees, laying on

6 the bed trying to just stretch legs out and work

7 muscles in the -- the mid region.

8 Q. And how frequently do you try to do those activities?

9 A. At least three (3) times a week.

10 Q. Do you have a fear of physical activity?

11 A. At this point, yes.

12 Q. Okay.

13 A. I'm not going to lie about that; before the accident,

14 no, absolutely not.

15 Q. You've testified about your daily activities or

16 routine. So, you can vacuum but some days it causes

17 you pain and some days it doesn't?

18 A. No. Every time I vacuum it causes me pain.

19 Q. Okay.

20 A. But, you know, when you have a wife who's trying to

21 take care of the household, the kids, and everything

22 else you have to try to step up and do a little

23 something if you can; even though it hurts you can't

24 just let her do everything for you. Especially the

25 type of person I am, that's used to being active and

95

1 doing everything for myself, who wouldn't want to try

2 to do more things that -- and I'm trying to do these

3 things just to see what I can and can't do anymore.

4 Q. Dr. Leblond indicated in -- when he released you to

5 return -- excuse me -- with -- with restrictions that

6 you had the capability pursuant to the functional

7 capacity evaluation that was performed of constantly

8 sitting or standing; do you agree with that?

9 A. No.

10 Q. He indicated that you could climb ladders frequently;

11 do you agree with that?

12 A. No.

13 Q. He indicated you could occasionally squat or kneel, or

14 crawl, or -- or repetitive -- engage in repetitive

15 lumbar bending; do you agree with that?

16 A. I don't.

17 Q. Not even on an occasional basis?

18 A. Occasionally, yes, but as far as frequently, if I'd

19 have to climb a ladder every day, no.

20 Q. Okay.

21 A. Those tests are designed to tell you what they want to

22 see.

23 Mr. Rudisill: Just one (1) second, Your

24 Honor.

25 Q. Do you drive, Mr. Daley?

96

1 A. I do.

2 Q. Did you drive here today?

3 A. No, I did not.

4 Q. Did your wife drive you?

5 A. She did.

6 Q. You rode the entire way?

7 A. Aside from taking a couple of stops, yes.

8 Q. Okay. You did not --

9 A. But, yeah -- no, I did not drive. No.

10 Q. -- but -- but how frequently do you drive an

11 automobile?

12 A. I drive an automobile maybe once or twice a week.

13 Q. And what do you do when you drive; where do you go?

14 A. I go down to the local gas station to get cigarettes.

15 Q. You -- you smoke?

16 A. I do.

17 Q. How much do you smoke?

18 A. About a half a pack a day now; I'm trying to quit.

19 Q. How much were you smoking at the time of the accident?

20 A. About a pack a day.

21 Q. Do you shop?

22 A. On occasion.

23 Q. Grocery shop, for example?

24 A. On occasion.

25 Q. How often?

1 A. Once every two (2) weeks and that's not me -- I -- I go
 2 with my wife to help handle the kids.
 3 Q. Do you engage in any type of yard work?
 4 A. No, I do not.
 5 Q. Have you mowed the yard since the accident occurred?
 6 A. No, I have not.
 7 Q. Have you trimmed --
 8 A. No.
 9 Q. -- weeds?
 10 A. I have not done any yard work.
 11 Q. Have you raked?
 12 A. No.
 13 Q. Nothing?
 14 A. No.
 15 Q. Do you have computer skills?
 16 A. Limited.
 17 Q. Do you -- do you have a computer at home?
 18 A. I do.
 19 Q. Okay. Do you know how to surf the web?
 20 A. I can surf a web, yes.
 21 Q. Okay. Do you know how to play computer games?
 22 A. I don't really play computer games.
 23 Q. Okay. But you do have access to a computer?
 24 A. Yes.
 25 Q. And the Internet?

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1 A. Well, not really. I know how to surf a web but I -- we
 2 don't have Internet access at home.
 3 Q. Okay.
 4 Mr. Rudisill: I think those are my
 5 questions, Your Honor.
 6 Commissioner Wilkerson: Mr. Rudisill? Oh,
 7 Mr. Rudisill. Mr. Ezell?

REDIRECT EXAMINATION

9 By Mr. Ezell:
 10 Q Sean, just a couple of things. Mr. Rudisill asked you
 11 if any doctor had prescribed the cane you're using
 12 today; how often do you use that?
 13 A. Only when I'm really hurting.
 14 Q. Did the car ride down here cause you to be really
 15 hurting?
 16 A. I anticipated it; that's why I brought it, yes. I did
 17 not bring it to show off for the courts.
 18 Q. Okay. Did you ever have the need to use a cane prior
 19 to February 9th, 2011?
 20 A. Only when I had foot surgery.
 21 Q. Okay.
 22 A. And that's why --
 23 Q. Is that where you had the cane from?
 24 A. -- that's what I have the cane from.
 25 Q. Okay. The -- the prior back pain that Mr. -- Mr.

98

1 Rudisill, I think, has characterized as chronic. Did
 2 that ever cause you to turn down any aspect of the job
 3 you had at Chapman Mechanical?
 4 A. No, it did not.
 5 Q. Did it ever cause -- cause you to not lift anything you
 6 had to lift at Chapman Mechanical?
 7 A. No, it did not.
 8 Q. Okay. Did it ever cause you to refuse any assignment
 9 from Chapman Mechanical?
 10 A. No, it did not.
 11 Q. Okay. Were you ever written up in any way, shape, or
 12 form for refusing any assignment at Chapman?
 13 A. No, I did not.
 14 Q. Were -- despite some intermittent pain and -- and some
 15 treatment, I believe at the New Horizons, which I
 16 believe is a few clinic?
 17 A. Yes.
 18 Q. Okay. Despite the -- the -- some intermittent
 19 treatment there, had you ever been unable to work --
 20 work as a Commercial Plumber prior to February 9th,
 21 2011?
 22 A. No.
 23 Q. Okay. The prior jobs that Mr. Rudisill asked you
 24 about, I think you've worked at McDonald's, you worked
 25 as a gas station attendant, I think worked your way up

99

1 to the lube -- Quick Lube or whatever it might be; were
 2 you ever able to earn six hundred and fifty dollars
 3 (\$650.00) a week in any of those jobs?
 4 A. No.
 5 Q. Okay. Are -- are you aware of any job right now that
 6 you could do physically that you could make six hundred
 7 and fifty dollars (\$650.00) a week in?
 8 A. No.
 9 Q. Okay. Were you honest with Dr. Brabham with regard to
 10 his assessment of your vocational ability?
 11 A. I was.
 12 Q. Okay.

100

13 Mr. Ezell: That's all the questions I have,
 14 Your Honor.
 15 Commissioner Wilkerson: Anything?
 16 Mr. Rudisill: I have nothing further, Your
 17 Honor.
 18 Commissioner Wilkerson: Okay.
 19 Mr. Ezell: That's -- that's the Claimant's
 20 case, Your Honor.
 21 Commissioner Wilkerson: Okay. This
 22 concludes the case. If I could just let me meet
 23 with the Attorneys for a few minutes. Thank you
 24 all for being here; I appreciate it.

25 (THERE BEING NO FURTHER QUESTIONS, THE HEARING CONCLUDED AT

1 11:47 A. M.). 101
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1 STATE OF SOUTH CAROLINA) 102
2 COUNTY OF CALHOUN } CERTIFICATE
3
4 Be it known that I took the foregoing South Carolina
5 Workers' Compensation Commission Hearing of Sean D. Daley,
6 vs. Chapman Mechanical, Incorporated;
7 That I was then and there a Notary Public in and for
8 the State of South Carolina-At-Large;
9 That by virtue thereof I was duly authorized to
10 administer an oath;
11 That the witness was first duly sworn to testify the
12 truth, the whole truth, and nothing but the truth,
13 concerning the matter in controversy aforesaid;
14 The foregoing transcript of 101 typewritten pages
15 represents a true, accurate and complete transcription of
16 the testimony so given at the time and place aforesaid to
17 the best of my skill and ability;
18 That I am not related to nor an employee of any of the
19 parties hereto, nor a relative or employee of any attorney
20 or counsel employed by the parties hereto, nor interested in
21 the outcome of this action;
22 Witness my hand and seal this 17th Day of August, 2012.
23
24 Gloria Davis
25 Notary Public for South Carolina
My Commission Expires 12/21/21
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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Chapman Mechanical,	)	FULL COMMISSION BRIEF
	)	OF THE APPELLANT
Employer,	)	
	)	
And	)	
	)	
Stonewood Insurance.	)	
	)	
Carrier,	)	
	)	
Defendants	)	

STATEMENT OF THE CASE

The Claimant, Sean Daley, began working for the Defendant, Chapman Mechanical, as a commercial plumber, in October 2010 (Tr. p. 40, LL 9-12). Roughly all of Mr. Daley's prior employment had been in the field of commercial plumbing. He did hold some other brief jobs as a gas station clerk in high school, and some brief restaurant jobs; however, he had never held any type of office jobs (Tr. p. 39, LL 4-9).

Further, Mr. Daley testified that he has never held any job for any significant length of time that did not require him to lift more than 15 lbs. (Tr. p 39, LL 19-22). Rather, virtually all of his work has been as a commercial plumber required him to lift 50 lbs. or more on a frequent basis. He also indicated that was something he regularly had to do while employed with the Defendant, Chapman Mechanical (Tr. p. 40, LL 3-8).

Further, Mr. Daley testified, without contradiction¹ that he was in great standing with Chapman Mechanical until the date of his injury. He also testified that he had never been criticized for slow or inferior work prior to the date of the accident. Likewise, he testified that there was not any aspect of the job with Chapman Mechanical he was not able to perform without difficulty prior to the February 9, 2011 accident date (Tr. p. 41, LL 5-13).

Mr. Daley testified as to the nature and circumstances of his accident. It is noteworthy that Chapman Mechanical provided no safety harnesses as required by OSHA. Accordingly, Mr. Daley fell off an eight-foot (8 ft.) ladder, and basically impaled himself on a four inch (4") piece of PVC pipe that was cemented in the floor and protruded several feet from the floor. (See Claimant's Exhibit 1, pp. 1-5, Exhibit 3, Exhibit 4, Exhibit 5, and Exhibit 9).

Since the date of his accident, Mr. Daley had to fight vigorously and unnecessarily to obtain the benefits to which he was lawfully entitled. It is noteworthy that his fall was witnessed by another employee, Paul Lousch, who prepared an Incident Report. It is also particularly noteworthy, and emblematic of the manner in which Chapman chose to mistreat Mr. Daley, that the Incident Report made no allegation of any safety violation allegedly committed by Mr. Daley. Ultimately; however, a second Incident Report was completed, albeit clearly punitively, claiming an alleged safety violation on Mr. Daley's part (Tr. p. 43, LL 4-17).

¹ It should be noted that despite the fact that deposition testimony was taken from some of Chapman Mechanical's primary officers, Chapman Mechanical was purportedly out of business as of the date of the Hearing and no Defendant, either Chapman Mechanical or Stonewood Insurance presented any testimonial evidence of any kind.

Mr. Daley attempted to submit further evidence as to the maltreatment of him by Chapman and how said treatment at the hands of his employer aggravated and exacerbated his psychological and/or psychiatric condition. He would earnestly contend that the Single Commissioner's failure to fully allow said evidence and testimony is erroneous and grounds for reversal and/or remand.

As will be discussed further hereinbelow, part and parcel of Mr. Daley's claim in this case is that he was injured, not only physically, but ultimately psychologically, both from the maltreatment by Chapman Mechanical, which forced him to go without pay for a significant period of time, and fight unnecessarily hard to obtain the benefits to which he was clearly lawfully entitled and also by the significant change in lifestyle that his injury and resulting limitations have placed upon him. As will also be discussed hereinbelow, Chapman Mechanical fired Mr. Daley while he was on substantial work restrictions, and Chapman Mechanical never provided him with adequate light duty work as was required by the authorized treating physicians (See Claimant's Exhibit 2, pp. 1-5, See also APA 13, pp. 207-210, Dr. LeBlond).²

Mr. Daley testified that he was only allowed to be out of work for two (2) or three (3) days before Chapman returned him to work in the office. He worked in the office for approximately one (1) month, and then the serious maltreatment by Chapman began in earnest. Ultimately Mr. Daley was taken out of the office and sent to a commercial jobsite, a school in Anderson, SC by the name of Glenview Middle School (hereinafter "Glenview"). At this job, Mr. Daley was ostensibly sent for light duty work inventorying

² Claimant would stress that the Hearing Commissioner erroneously refused to accept evidence as to the maltreatment of Chapman Mechanical of the Claimant when, in fact, maltreatment was one of the strong bases for Mr. Daley's uncontroverted psychological condition. (See Tr. p. 46, LL 15-16).

parts. Glenview was supposed to involve sedentary work, and allegedly, Chapman was going to provide Mr. Daley with help lifting boxes. Unfortunately; however, Mr. Daley was never provided any help when needed for heavy lifting (Tr. p. 49, LL 5-24)..

This job required Mr. Daley to lift boxes full of cast iron plumbing parts. He indicated that these boxes could weigh up to 150 lbs. Further, and uncontroverted, was Mr. Daley's testimony that the boxes of cast iron or metal parts he was required to lift and/ or move clearly weighed considerably more than 15 lbs., which at that time, was his stated lifting restriction (Tr. p. 50, LL 5-6, 11-13).³

As further evidence of Mr. Daley's maltreatment by Chapman, Chapman was aware that Mr. Daley had sustained an injury to his back, and was provided with restrictions which required him to work in a sedentary capacity. When Mr. Daley was initially sent to Glenview to inventory heavy metal and cast iron parts, Chapman provided Mr. Daley with only a hard plastic five (5) gallon paint bucket to sit on while performing this work. This inadequate "seat" caused Mr. Daley's back and legs to be painful and bothersome. Further, Mr. Daley testified that the job required him to move his seat all over the work area because the parts were "scattered everywhere" (Tr. p. 51, LL 12-25).

Mr. Daley complained vigorously about the pain caused by sitting on this five-gallon bucket, and Chapman then grudgingly provided him with a very cheap folding lawn chair with little or no support for his back, hips and legs. This also aggravated his back, hips and legs (Tr. p. 52, LL 1-6).

³ See Claimant's APA 13, pg. 213, (Form 14B), wherein Dr. LeBlond gave Mr. Daley permanent lifting restrictions of no greater than 15 lbs.

Subsequently, Mr. Daley was moved from the Glenview site to a storage area called a “Conex”. This is basically a trailer used for storage of heavy plumbing parts and supplies. Once again, this job involved lifting heavy objects and repeatedly moving from his seated position to various areas within the Conex, all of which was contrary to his stated restrictions (Tr. p. 52, LL 10-24). It should also be noted that Dr. LeBlond viewed the five-gallon bucket and the lawn chair provided by Chapman Mechanical for Mr. Daley to sit upon while under these restrictions and Dr. LeBlond unequivocally stated that said “seats” were inadequate, and would likely harm Mr. Daley’s condition (See APA 13, pg. 207).

Ultimately, for reasons which were never completely clear, Chapman chose to fire Mr. Daley. When he was fired, he was still on substantial restrictions (Tr. p. 56, LL 7-8). Despite this fact, and contrary to South Carolina law, Chapman Mechanical and their insurance carrier refused to pay Mr. Daley Temporary Total Disability benefits (hereinafter “TTD”) for some five (5) months.

Ultimately, and out of desperation, Mr. Daley agreed to a significant reduction in the past due TTD in order to simply get his current and on-going TTD started (See SCWCC Consent Order, dated September 20, 2011, signed by Commissioner Barden). Basically, Chapman Mechanical extorted Mr. Daley by leaving him in an absolutely untenable financial position with no income of any kind for five (5) months. This greatly contributed to and/or exacerbated Mr. Daley’s psychological and/or psychiatric issues causing him to be very anxious and depressed (Tr. p. 65, LL 2-7; p. 66, LL 14-18).

Mr. Daley testified that in addition to low back pain, he was also having pain in both legs (Tr. p. 56, LL 22-25). Counsel for the Defendants tried to make much of the

fact that Mr. Daley had suffered from back pain and other related problems in the past. The Claimant would contend that his prior problems paled in comparison to the problems he experienced as a result of his work related accident, and accordingly, any such allegation and/or inference propounded by the Defendants is unwarranted and unfounded.

Mr. Daley testified unequivocally that any and all problems he had prior to the February 9, 2011, accident were much less severe, and in no way debilitating. The pain that he suffered subsequent to his February 9, 2011 accident was different and much more severe than any prior back problems (Tr. p. 57, LL 5-8). Mr. Daley testified that since the accident he has not only back pain, which generally stayed between a “6 and a 7” on a scale of 1 – 10, but now also had hip and leg pain. Mr. Daley testified that his left hip averages a “5” on a scale of 1 – 10 and his right hip is a “3 or 4” on average. Likewise, Mr. Daley testified that his left leg has more pain than his right leg. His left leg generally stays at a “4” on a scale of 1 – 10, and his right leg is a “2 or 3” on the same scale (Tr. pp. 57-59).

Once again, he testified unequivocally that none of those pain ratings were similar to, or even present, prior to his February 9, 2011 accident. He admitted that prior to the accident, he had a small amount of radiating pain down his right leg; however, he testified that it never prevented him from working or enjoying life in any other way, and he was completely capable of living a normal and active life prior to his work related accident (Tr. pp. 57-59). Mr. Daley also testified that his pain and/or conditions have gotten worse even since he was released by Dr. LeBlond in November 2011 (Tr. p. 64, LL 4-8).

A key factor in this case is Mr. Daley's psychological/psychiatric condition subsequent to his February 9, 2011, accident. Mr. Daley would steadfastly contend that he suffers from significant anxiety and depression; caused both by the maltreatment he suffered at the hands of Chapman Mechanical, the pain he now must try to endure, the substantial lifestyle alteration, the financial situation he has had to endure since the accident, and fear about future economic hardships caused by the debilitating and impairing nature of his accident and subsequent condition.

Mr. Daley indicated that he had never been treated or medicated for anxiety or depression in the past (Tr. pg. 63, LL 1-5). Since the accident; however, Mr. Daley indicated that he has significant anxiety and/or stress on a daily basis. He is gravely concerned about his future and his ability to make a living, and stated emphatically that this accident, and the manner in which Chapman Mechanical handled his injury and resulting claim, has caused him a substantial financial hardship (Tr. pp. 64-65).

He noted particularly the fact that Chapman Mechanical and their insurance carrier withheld the Temporary Total Disability Benefits to which he was entitled for five (5) months. With a wife and three (3) children to provide for Mr. Daley testified that fact alone sent his stress and anxiety levels "out the roof" (Tr. p. 66, LL 14-18).

At this point it is extremely noteworthy to look at the procedural history of this claim. This matter was essentially filed by the Defendants on a Form 21 Stop Payment Application, and the matter was set for a Hearing on February 7, 2012 before Commissioner Wilkerson. At that time, Counsel for the Defendants requested that the record be held open to allow the Defendants to have the Mr. Daley evaluated by a

psychologist or psychiatrist of their choosing to attempt to refute Mr. Daley's claim of psychological injury and impairment.

Over the objections of Claimant's Counsel, the Commissioner agreed to allow the Defendants to do this; however, it is important to point that once the Defendants had this victory in their hands, it took a full two (2) months before Mr. Daley could be seen by an out-of-state psychiatrist, located in Charlotte, NC, and hand-picked by the defendants.

The Defendants ultimately chose Dr. Thomas Gaultieri in Charlotte, NC. Mr. Daley appeared for the evaluation, and Dr. Gaultieri, whose report was submitted by the Defendants, agreed that Mr. Daley was suffering from depression as a result of the fallout from this accident. Further, and of particular note, is the fact that Dr. Gaultieri prescribed medications for Mr. Daley to help treat the depression.

As has become the custom with regard to the Defendant's conduct in this matter, when Mr. Daley attempted to fill the prescriptions written by the Defendant's own doctor, authorization for those prescriptions was unilaterally denied by the Defendants without justification or explanation. (Tr. pg. 70, LL 6-25).

As was testified by the Claimant, there was absolutely no evidence to controvert or refute Mr. Daley's claim for psychological/psychiatric injury. In addition to the out-of-state psychiatrist, hand-picked by the Defendants to evaluate Mr. Daley, a Board Certified Psychiatrist located in Greenville, SC, and a PhD Psychologist from Columbia, SC, also agreed that Mr. Daley suffers from significant depression and anxiety (See APA 13, Dr. Patrick Mullen, Page 205; APA 14, Dr. Robert Brabham, Page 222). Mr. Daley testified that he was candid, forthright, and honest in replying to the questions presented to him by Dr. Brabham and Dr. Mullen (Tr. p. 72, LL 20-24).

Further, Mr. Daley testified unequivocally that it was his desire to obtain and use the medication and treatment recommended by Dr. Gaultieri (Tr. p. 73, LL 3-6). Mr. Daley would assert that the treatment recommended by the Defendant's own psychiatrist is the absolute minimal treatment necessary to assist him with his depression and anxiety. Mr. Daley would contend that he is entitled to, and in need of, considerably more treatment to help him deal with his psychiatric and psychological issues in order to render him in some way, shape, or form better from a psychiatric and/or psychological perspective.

It is Mr. Daley's contention that the Single Commissioner erred in many respects, but most notably, in failing to find him permanently and totally disabled. Mr. Daley would contend that the substantial evidence in this case clearly supports the finding that he sustained more than a single-member injury by virtue of the fact that he also sustained debilitating problems with his hips and legs and a substantial and well-documented psychiatric and/or psychological injury.

ARGUMENT

It is the position of the Claimant, Sean Daley, that the Full Commission should review the evidence and testimony presented, and make new Findings and Conclusions consistent with the evidence on the record. Mr. Daley would contend that solid grounds are present that would warrant the Full Commission making its own Findings of Fact and Conclusions of Law consistent with substantial evidence and, of necessity, inconsistent with the erroneous findings of the Single Commissioner. Pack vs. State Department of Transportation, 381 S.C. 526, 673 S.E. 2d 461, (S.C.App. 2009).

As is well settled law in South Carolina, the Workers Compensation Act is to be construed liberally in favor of the claimant. Carter v. Penny Tire and Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973); Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C.App.2007). As such, Mr. Daley would steadfastly contend that the Full Commission should reverse and remand the Findings and Conclusions of the Single Commissioner in the following particulars:

I. THE SINGLE COMMISSIONER ERRED IN FAILING TO FIND AND/OR CONCLUDE THAT THE CLAIMANT HAD A PSYCHOLOGICAL AND/OR INJURY WHICH CONSTITUTED A DISABLING CONDITION.

The fact that Mr. Daley suffered a psychological/psychiatric injury is absolutely uncontroverted. The Single Commissioner's failure to make such a finding constitutes a clear error and Mr. Daley contends that the Full Commissioner should make new Findings in accordance with the evidence and testimony.

Mr. Daley was evaluated by Robert E. Brabham, PhD, a licensed psychologist practicing in Columbia, SC. Dr. Brabham reviewed Mr. Daley's medical records at length, and also performed the following tests:

Wechsler Adult Intelligence Scale – Fourth Edition
Wide Range Achievement Test – Revision 4
Beck Depression Inventory – II
Beck Anxiety Inventory
Brain Injury Screening

Additionally, Dr. Brabham made behavioral observations and a mental status examination during the course of a very lengthy interview (See APA 14, page 215).

Dr. Brabham's evaluation is extremely thorough and his report reflects same in great detail. Dr. Brabham noted that Mr. Daley suffers from Pain Disorder as well as Depressive Disorder NOS – (Not Otherwise Specified), and a Generalized Anxiety

Disorder. Dr. Brabham indicated that Mr. Daley appeared extremely credible and that the information provided to Dr. Brabham was highly consistent with information contained in the other reports which Dr. Brabham reviewed.

Of particular note in this regard is the following statement from Dr. Brabham:

It is noted that the information provided in this interview is highly consistent with information reported in other reports. This provided additional confirmation that the responses and description of events and circumstances were candid, not feigned or exaggerated, and do not appear to represent any symptom magnification.

It does not seem reasonable to suggest that someone who has worked essentially continuously since graduating high school would now feign or fake an inability to work. It is particularly unlikely that he would do so within months of his recent marriage and with a young child at home to support. I do not believe that he would subject himself and his family to the financial difficulties described in numerous reports in any fictitious manner. (See APA 14, pg. 223, emphasis added).

Dr. Brabham ultimately concluded the following:

Based on all the evidence as described above, consistent with the observations during this evaluation and the various reports in this file, he is unable to yet effectively perform the essential duties in any gainful work activity. It is also clear that the unfortunate combination of factors and characteristics he now faces are directly related to the injury he sustained while working.

With his combination of physical, emotional, and/or cognitive difficulties, he is still unable to perform any type substantial gainful work activity which exists in the SC or the national economy. Directly as a result of his on-the-job injuries the only services he could perform are so limited in quality, dependability, or quantity that no reasonably stable market for them exists (See APA 14, pg. 224 emphasis added).

As such, it is abundantly clear from the uncontroverted findings of Dr. Brabham that Mr. Daley sustained a substantial psychological and/or psychiatric injury as a result of his fall on February 9, 2011. Therefore, Mr. Daley would respectfully submit that the Full Commission should reverse the findings of the Single Commissioner in this regard.

In addition to the findings of Dr. Brabham, Mr. Daley also saw a Board Certified Clinical Psychiatrist, Dr. Patrick B. Mullen. Dr. Mullen practices with Poinsett Psychiatric Group in Greenville, SC, and evaluated Mr. Daley on June 30, 2011. As did Dr. Brabham, Dr. Mullen reviewed at length the medical records in Mr. Daley's case. When Mr. Daley first presented to Dr. Mullen, his chief complaints were "depression and pain" (See APA 12, page 203). It is particularly noteworthy, and will be discussed more fully hereinbelow, that Mr. Daley's condition is considerably worse as a result of his accident of February 9, 2011. Dr. Mullen, in reviewing Mr. Daley's medical records, made the following observation:

One thing is sure and that is that his back pain is much, much worse than when he had his only MRI [prior to the accident giving rise to this claim]. At that time he was working, playing sports, skateboarding, etc. The pain was chiefly in his low back and did not interfere with his day-to-day life, his sleep, nor his mood.

Now none of that is true – his pain does interfere with his life and has changed his mood completely. (See APA 13, pg. 205, emphasis added).

Upon review of his medical records and after completing a medical evaluation of Mr. Daley, Dr. Mullen indicated that Mr. Daley was suffering from major depression and, further, that he was subject to stressors including loss of ability to make a living. Dr. Mullen assessed his Gross Assessment of Functions (GAF) at roughly 50 – 65.

It is particularly noteworthy that Dr. Mullen's report was prepared at a point in time when many of the things which Chapman Mechanical did to almost overtly and intentionally exacerbate Mr. Daley's psychological/psychiatric symptoms had not even yet occurred. While Mr. Daley was without an income at the time of Dr. Mullen's

evaluation and examination, the full impact of the Defendant's unwarranted refusal to pay Temporary Total Disability Benefits had yet to be realized by Mr. Daley.

As stated hereinabove, it was not until September 2011 that the Defendants even began to pay Temporary Total Disability Benefits to which Mr. Daley had long been entitled. Likewise, and as stated hereinabove, Mr. Daley ultimately had to compromise his claim for past due Temporary Total Disability Benefits in an effort to simply get some sort of income with which he might be able to try and support his family.

As stated hereinabove, the Single Commissioner, over the objections of Claimant's Counsel, allowed the original Hearing to be continued so that the Defendants could obtain a psychological and/or psychiatric evaluation of the Claimant.⁴ The Defendants chose to send Mr. Daley to Dr. Thomas Gaultieri, a North Carolina Psychiatrist, practicing in various locations throughout the state of North Carolina, and who evaluated Mr. Daley at his office in Charlotte, NC, notwithstanding the fact that there are countless qualified mental health practitioners in the upstate of South Carolina.

Dr. Gaultieri's report references the fact that he, too, reviewed the medical records of Mr. Daley. It should also be noted that Dr. Gaultieri picked up on the fact that Dr. LeBlond was aware of some of the maltreatment that Mr. Daley suffered at the hands of Chapman Mechanical, and even referenced that:

Sedentary work was recommended, but Dr. LeBlond did not like the conditions for sedentary work which the employer provided. Seating on a plastic bucket, then a canvas lawn chair with no support, and finally on the floor to sort inventory. Dr. LeBlond wrote several letters to the employer about the inappropriateness of the offered seating (See Defendant's APA 16 pg. 233, emphasis added).

⁴ It should be noted that once the Defendants were granted this continuance it took more than two (2) months for Mr. Daley to be seen by the Defendants' chosen physician.

Dr. Gaultieri also noted that Mr. Daley's marriage was suffering due to the disability and the loss of income. He noted that Mr. Daley was worried about the future, about his chronic pain, and about whether or not the pain would ever subside to an appreciable degree (See Defendant's APA 16, pg. 233).

Dr. Gaultieri, though providing some self-serving language in his report denying any serious "psychiatric" condition, did ultimately conclude that Mr. Daley is depressed which is "probably related to his disability and the fact that he cannot return to his work as a plumber because of his back injury. The patient's depression is therefore accident related and deserves treatment. We have prescribed Wellbutrin XL 150 mgs OAM for three days, to be followed by 300 mgs daily thereafter" (See Defendant's APA 16, pp. 237-238, emphasis added).

As such, and as stated above, it is uncontroverted that he found Mr. Daley to be depressed as a result of his on-the-job accident. Further, and most notably, he prescribed anti-depressant medications, authorization for which was denied by the Defendants. It seems untenable that the Defendants should be allowed to avoid responsibility for a condition they clearly created, and for which medication was clearly recommended by the out-of-state physician they hand-picked to evaluate the Claimant.

As such, Mr. Daley would steadfastly contend that he has clearly suffered an uncontroverted and significant psychiatric and/or psychological injury for which he is entitled to treatment. That finding in and of itself, refutes any finding that the Single Commissioner may have made with regard to Maximum Medical Improvement, particularly when the very treatment recommended by the Defendants' own doctor has been denied by the Defendants. As such, Mr. Daley would earnestly and steadfastly

contend that the Order of the Single Commissioner should be reversed and remanded for further findings consistent with the substantial evidence on the record.

II. THE SINGLE COMMISSIONER ERRED IN FINDING AND CONCLUDING THAT THE CLAIMANT HAD PRIOR BACK PROBLEMS THAT ROSE TO OR EVEN APPROACHED THE LEVEL OF HIS CURRENT PROBLEMS.

First and foremost, the Claimant would assert that the Single Commissioner erred in concluding and/or finding that the Claimant had prior back problems that rose to the level even approaching his current problems following his work-related injury. Mr. Daley would assert that the Functional Capacities Evaluation did not contradict the findings of Dr. Brabham with regard to the Claimant's capabilities. Furthermore, Mr. Daley would steadfastly assert that the Functional Capacities Evaluation and the Vocational Evaluation performed by Dr. Brabham are separate and distinct evaluations, taking into account very different factors and items, and therefore, the findings of Dr. Brabham are vocationally and legally valid and support Mr. Daley's contentions in this regard.

Mr. Daley testified, both emphatically and unequivocally, that he did not have back pain or problems that even approached the level and magnitude of his problems subsequent to his February 9, 2011 on-the-job injury (Tr. pg. 57, LL 5-8). Further, while Mr. Daley conceded that he had a small amount of radiating pain in his right leg prior to the accident, he testified without equivocation or contradiction, that this pain never prevented him from working. Further, said pain never prevented him from enjoying his life in any other form or fashion (Tr. pg. 59, LL 17-25; Tr. pg. 99, LL 14-22). Further,

there was no evidence whatsoever that Mr. Daley was on any medications for pain or problems in his back, legs, or hips prior to his February 9, 2011 accident.

The record is clear that Mr. Daley worked for Chapman Mechanical for several months before the accident occurred. Mr. Daley testified that, as a commercial plumber for Chapman Mechanical, he regularly had to lift 50 lbs. or more prior to his on-the-job injury (Tr. pg. 40, LL 3-8).

He testified that he was in great standing with Chapman until the day of his on-the-job injury. Likewise, he had never been criticized for slow or inferior work, nor had he ever had to turn down any aspect of his job as a commercial plumber for Chapman Mechanical prior to his injury of February 9, 2011, on-the-job injury (Tr. pg. 41, LL 5-13; Tr. pg. 98, L25 – pg. 99 L13).

As stated hereinabove, Mr. Daley was never provided with adequate light-duty treatment within his restrictions. Furthermore, it appears quite clear that Chapman Mechanical went out of its way, at every available opportunity, to make Mr. Daley's life and recovery much more difficult. They provided him with inadequate light-duty work, inadequate tools and/or seating with which to perform this purported light-duty work, and no help or assistance when he needed same for lifting any items outside of his restrictions (Tr. pg. 50, LL 11-13; pp. 51, L12 – pg. 52, L 24; pg. 65, L2 – pg. 66, L18).

Further, and as set forth hereinabove, Dr. Mullen clearly picked up on the fact that, irrespective of whatever minor ailment or pain Mr. Daley may have experienced in the past, his life was full and active prior to his on the job accident and injury. In reviewing his medical records and the impact the accident had upon Mr. Daley's live, Dr.

Mullen noted the following which has already been cited hereinabove but bears repeating given the assertions of the Defendants in this regard:

One thing is sure and that is that his back pain is much, much worse than when he had his only MRI [prior to the accident giving rise to this claim]. At that time he was working, playing sports, skateboarding, etc. The pain was chiefly in his low back and did not interfere with his day-to-day life, his sleep, nor his mood.

Now none of that is true – his pain does interfere with his life and has changed his mood completely. (See APA 13, pg. 205, emphasis added).

Dr. Mullen astutely picked up on a very salient fact in this case, namely that Mr. Daley was not only gainfully, successfully, functionally employed before this on the job accident, but also that any purported preexisting problems did not prevent Mr. Daley from enjoying his life. Dr. Mullen even noted that Mr. Daley enjoyed vigorous recreational activities before he was injured in his fall at Chapman Mechanical.

Additionally, Mr. Daley was evaluated by Dr. Walter Grady, an orthopedist with the Spartanburg Regional Physician Group. Of particular note is the fact that Mr. Daley was found to ambulate with an antalgic gait which prevented him from undergoing some testing (See APA p. 228). Said antalgic gait was not present prior to his on the job accident with Chapman Mechanical.

Dr. Grady also noted that Mr. Daley's prior MRI showed no neurological impingement and therefore it would seem abundantly clear that Mr. Daley did not have any significant component of spinal pathology prior to his significant fall on the job. Dr. Grady also diagnosed Mr. Daley, post-accident, with bilateral sacroiliitis, sciatica, thigh and calf atrophy, and antalgic gait (See APA p. 230). Dr. Grady found Mr. Daley to have suffered a 23% permanent impairment to the whole person as he was on the date of the evaluation. More compelling, however, is Dr. Grady's opinion that Mr. Daley needed

a repeat MRI, a re-consultation with an ortho-spine surgeon or neurosurgeon, a TENS unit, oral anti-inflamator[ies], and other treatment modalities in order to better treat and/or handle his pain and limitations (See APA p.p. 230 – 231). Suffice it to say that none of these diagnostic or treatment modalities have ever been offered or provided by the Defendants.

Accordingly, Mr. Daley would assert that any allegation or inference that he suffered from severe, debilitating back pain and/or problems before his on the job injury with Chapman Mechanical is spurious and without merit. Mr. Daley was very clearly capable of performing heavy work/labor with Chapman Mechanical before this accident, and clearly unable to do so after this accident. As such, the Findings and Conclusions as to Maximum Medical Improvement (MMI), degree of disability and “single member injury” must, of necessity, be reversed.

III. THE SINGLE COMMISSIONER ERRED IN FINDING AND CONCLUDING THAT THE CLAIMANT SUFFERED ONLY A SINGLE MEMBER INJURY AND/OR THAT THE CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED.

In this matter, it is abundantly clear from the substantial evidence that Mr. Daley is permanently and totally disabled from the multiple combinations of injuries to his back, hips, legs and psyche. As set forth hereinabove, Mr. Daley very clearly suffered an injury to his psyche of a psychological and/or psychiatric nature, for which even the Defendants’ own chosen psychiatrist felt he needed treatment and prescriptions. Given that the Defendants not only refused to allow Mr. Daley to obtain the prescriptions which their own psychiatrist recommended, but also refused to allow him any other treatment so

recommended and/or needed, it is clear from this fact alone that Mr. Daley has not reached MMI from a psychological and/or psychiatric perspective.

Further, Mr. Daley would earnestly point out that his serious fall not only impacted and impaired his back, but also as is well documented in the records, his hips and legs. The Claimant brought to the Single Commissioner's attention the case of Hutson v. S.C. State Ports Authority, 390 S.C.108, 700 S.E.2d 462 (S.C.App.2010), for the proposition that the Single Commissioner should have allowed and/or entertained Mr. Daley's uncontroverted testimony that this significant fall he suffered at Chapman Mechanical impacted not only his back, but also his hips and legs.

In Hutson, the Claimant testified, just as did Mr. Daley in the instant case, that he not only an injury to his back, but also injury/impairment to his legs for symptoms he experienced after a work related injury. In finding that the Single Commissioner erred in not accounting for the injury to his legs as per the Claimant's testimony, the Court stated:

In his order, the single commissioner made a finding of fact that Hutson suffered radicular symptoms in his right leg that affected the functioning of the limb. He reiterated this finding when, in commenting on Hutson's assurances that he was capable of running a restaurant, he indicated that but for this testimony he would have found Hutson to be permanently and totally disabled "with affects to his right leg." Given this finding, which neither the SPA nor the Fund has appealed, we hold Hutson has established at least a prima facie case for compensation for the injury to his leg pursuant to section 42-9-30 and remand the matter for further findings of fact on this matter based on the present record.

As such, Mr. Daley would likewise contend that, he has made a prima facie showing for further finding(s) that he has an injury to his legs and hips based upon his own uncontroverted testimony.

The law in South Carolina is clear that "In workers' compensation cases, the Full Commission is the ultimate fact finder", DeBruhl v. Kershaw County Sheriff's

Department, 303 S.C. 20, 397 S.E.2d 782 (S.C.App.1990). In this matter, in light of the foregoing, it is incumbent upon the Full Commission to reverse the Findings and Conclusions of the Single Commissioner which either contend that Mr. Daley is not permanently and totally disabled and/or has only a single member injury.

CONCLUSION

Mr. Daley would assert that, for the foregoing reasons, the Findings and Conclusions of the Single Commissioner must be overturned. The substantial evidence clearly shows that he suffered a psychological and/or psychiatric injury for which he has never been provided even the minimal treatment offered by the Defendants' own chosen physician. Further, he has suffered injury and/or impairment to his hips and legs for which he is entitled to be found permanently and totally disabled.

Respectfully submitted,


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2/27, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1101678

SEAN DALEY,)
Employee,)
Claimant,)
)
vs.)
)
CHAPMAN MECHANICAL, LLC,)
Employer,)
)
and)
)
STONEWOOD INSURANCE)
COMPANY,)
Insurer,)
)
)
Defendants.)
_____)

DEFENDANTS-APPELLEES' BRIEF
TO APPELLATE PANEL

STATEMENT OF THE CASE

This matter was heard before Commissioner Avery B. Wilkerson, Jr. in St. Matthews on June 14, 2012 pursuant to Forms 50/51 and Form 21. Claimant was the only witness at that hearing, and the parties submitted extensive Administrative Procedures Act Submissions. Commissioner Wilkerson subsequently filed a Decision and Order on December 5, 2012, pursuant to which he found and concluded that Claimant sustained a 20% permanent partial disability to his back, and he denied Claimant's claim for psychological injury and permanent and total disability benefits. Claimant subsequently filed a Request for Commission Review (Form 30) on December 12, 2012. Defendants hereby submit their contentions.

EVIDENCE OF THE CASE

A. CLAIMANT'S TESTIMONY

Claimant's date of birth is June 16, 1976. He testified that he had no issues regarding his

back which prevented him from doing his job as a commercial plumber prior to the accident at issue. (Hr. T., p. 37). When he was asked did he ever miss any time from work because of his back, he responded "Maybe for a doctor's appointment, but that was not a full day." (Id.).

Claimant testified that he finished high school, where he made B's and C's. (Hr. T., p. 38).

Claimant contended that on the date of the accident, the ladder on which he was working came out from underneath him, and he fell on a piece of four-inch PVC pipe. (Hr. T., P. 42).

Following his accident, he was treated at Greenville Memorial Hospital. Subsequently, after having been released by Dr. McHenry, an orthopaedist, he was referred for pain management by Dr. LeBlond, who then became his primary treating physician. (Hr. T., p.s 47-48).

After his accident, Claimant was out of work for two or three days, and then returned to work in the office of the employer. After that, he was sent to a commercial job site. (Hr. T., p. 48-49). There, he was doing inventory, which basically consisted of counting parts. (Hr. T., p. 49).

During this job, he initially was provided with a five-gallon inverted bucket to sit on. He claimed that it made his legs hurt. Then, he was provided with a folding lawn chair. He stated that this also made his legs hurt. (Hr. T., p. 52).

Claimant testified that he was then put to work in a "Connex" where he claimed to have had to lift over 15 pounds on his own at times. (Hr. T., p. 52).

Ultimately, the Claimant was terminated, and testified that was not told why he was fired. (Hr. T., p. 56).

As to his physical ailments, Claimant complained of problems with his hips and buttocks, as well as spasms and pain in his lower back. He further testified to pain in both legs. (Hr. T., p. 56). He claimed that he can stand and sit for 45 minutes at a time. (Hr. T., p. 57).

Claimant did admit that prior to the accident at issue, he had pain that radiated into his right lower extremity. (Hr. T., p. 59). He denied suffering from any bilateral leg pain prior to the accident. (Hr. T., pp. 82-83).

He testified that he presently still has some Zanaflex left, a muscle relaxer that does not really help him. The only other thing he takes is Tylenol. (Hr. T., p. 61).

He testified that he has depression and anxiety because of the accident. (Hr. T., p.s 63-66).

Claimant further testified to living a basically sedentary lifestyle.

On cross-examination, Claimant testified that he is no longer under Dr. LeBlond's care. Claimant testified that the last time he saw Dr. LeBlond or his assistant was on April 12, 2012. He testified that he was dismissed because of a urinalysis test, because he was mixing Lortab with Percocet. (Hr. T., p. 77). He had been prescribed Lortab by a physician prior to the accident at issue and was, in fact, continuing to take Lortab up until the time of the accident at issue. (Hr. T., p. 78). He also was contemporaneously taking Mobic and Flexeril. (Hr. T., p. 79).

He further admitted that on October 20, 2010, he went to Greenville Memorial Hospital for back pain. When asked about page 24 of the A.P.A. Submissions, specifically "Patient complains of pain to middle back, lower back, pain described as aching, pain is continuous, on a scale of zero to ten patient rates pain as eight," Claimant stated that he would not disagree with that assessment. When asked about p. 56 of A.P.A. Submissions, the Claimant admitted that as

of October 25, 2010, he had been having low back pain for four years, and that it had worsened over the past three years following a foot surgery. (Hr. T., p. 80).

When asked about the same medical report (A.P.A. p. 56), he denied having told the physician that he had occasional tingling in both thighs, even though that is what the report clearly states.

Claimant denied that in November of 2010 he was having bilateral leg pain, even though the MRI report of November 19, 2010 does reflect bilateral leg pain. (A.P.A. p. 62; Hr. T., p. 83).

When cross-examined about his testimony on direct examination that he had gained 50 pounds since the date of the accident, Claimant adamantly disagreed with the medical report which reflected his weight as being 210 pounds on the date of accident. (A.P.A. p. 85). He took exception to this, asserting that "I was very astute about my weight. I have - I have never been over 200 pounds in my life until after I fell off that ladder." (A.P.A. p. 71; Hr. T., p. 85). When he saw Dr. McHenry nine months after his injury, he had lost weight (A.P.A. p. 103).

Claimant denied recollection of completing a questionnaire for Dr. McHenry, his orthopaedist, which reflected that he did not have nervousness, depression or other problems under the category of mental and emotional health. (A.P.A. p. 98; Hr. T., p. 87). He did admit that he never talked to Dr. LeBlond about having any psychological or psychiatric problems up to the point that his attorney sent him to a psychiatrist (Id.).

Claimant candidly admitted that he has not looked for work after Dr. LeBlond released him with the restrictions that he placed upon him in November of 2011, because his attorney had requested that he not do so. (Hr. T., p. 93). Claimant flatly disagreed with the Functional Capacities Evaluation which stated that he was capable of sitting and standing constantly;

climbing ladders frequently; occasionally squatting; kneeling; crawling; and engaging in repetitive lumbar bending. He qualified this answer by saying that “occasionally, yes, but as far as frequently, if I have to climb a ladder every day, no.” (A.P.A. p. 158; Hr. T., p. 95).

When asked about computer skills, he admitted to being able to surf the web and to having a computer at home. He then claimed to not have access to the Internet on his home computer. (Hr. T., p.s 97-98).

B. MEDICAL EVIDENCE

The A.P.A Submissions reveal a history of long-standing back and bilateral leg pain prior to the Claimant’s injury of February 9, 2011.

On October 20, 2010, Claimant reported to North Greenville Hospital. At the time, he was complaining of middle and lower back pain, which was aching and continuous. On a scale of zero-ten, Claimant rated the pain as an eight. (A.P.A. p. 24). At that time, he was given prescriptions for Prednisone and Lortab.

Just five days later, on October 25, 2010, the Claimant presented to New Horizon Family Health Services with lower back pain that had lasted four years, and had been getting worse over the past three years since having had foot surgery. At the time, he was having occasional tingling in both thighs as well. (A.P.A. p. 56).

On October 28, 2010, Claimant had a series of x-rays at Greenville Hospital System. The history noted “34 year old with low back pain for several years, worse with lifting.”

On November 10, 2010, the Claimant went to New Horizon once again. This history revealed that “he works as a plumber [times] three months. He needs to find out the reasons for his back pain.” The previously mentioned x-ray was interpreted as revealing a “vertebra which is

partially sacralized on the right and appears to articulate with the upper sacrum.” He was prescribed Lortab at that visit. (A.P.A. p. 61).

Subsequently, on November 19, 2010, an MRI was performed. Claimant’s “bilateral leg pain” was noted. The MRI revealed “a rather focal posterior central disk extrusion at the L4-5 level of the lumbar spine.” The L-5 level was “partially sacralized on the right and partially lumbarized on the left.” (A.P.A. p. 62).

Then, on December 8, 2010, shortly before the accident of February 9, 2011, the Claimant went to New Horizon and was again prescribed Lortab and Medrol Dose Pack. That note also contains a parenthetical mention of what appears to be an “orthopaedist,” although no explanation of this is given. (A.P.A. p. 63).

After this, Mr. Daley had a no-show at New Horizon on January 25, 2011, which was very close to the injury date at issue, which is February 9, 2011. (A.P.A. p. 64).

On the date of the accident, Claimant was attended by Henderson (N.C.) County EMS, with a recorded weight of 200 pounds. The level of care was rated as “non-emergency.” (A.P.A. p. 66). He conveyed a past medical history of back problems to EMS. (A.P.A. p. 67).

The Claimant was taken by EMS to Pardee Urgent Care, where he conveyed his current medications as being Lortab, Mobic, and Flexeril. (A.P.A. p. 71).

After that, he was attended at Margaret R. Pardee Hospital on his injury date, where he reported being on the same three medications. (A.P.A. p. 83).

On February 10, 2011, the day after his accident, Claimant again presented to North Greenville Hospital, where it was recorded that he had a “History of musculoskeletal disorder, history of back pain (chronic) which is posttraumatic in etiology.” (A.P.A. p. 27). On that date

he rated his symptoms as “moderate.” (A.P.A. p. 28). Significantly, it was also noted “patient gets #30 Lortab to take one pill a day at bedtime for chronic back pain every month from Dr. Li.” (A.P.A. p. 29).

On March 2, 2011, the Claimant again went to North Greenville Hospital. He was ambulating normally despite the fact that at the hearing he was using a cane. At the hospital, he was ambulating slowly, but without assistance. On this date, Claimant stated that Mobic and Flexeril did not help so he stopped taking them “over two weeks ago.” (A.P.A. p. 52).

Although Claimant complained of pain in his hips, a pelvic MRI dated February 9, 2011 revealed no significant pelvic free fluid, and no visible fracture. (A.P.A. p. 86).

On March 8, 2011, Claimant presented to Westside Medical Center. He was diagnosed with a back strain. The history given there was that he previously had a herniated disc in his lumbosacral spine which bothered him some before the accident. (A.P.A. p. 92).

When Claimant saw Dr. McHenry on March 16, 2011, it was noted, “He has been treated before for low back pain and was started on narcotic pain medication by Dr. Li in one of the Greenville Clinics last Fall.” (A.P.A. p. 100).

On March 16, 2011, Dr. McHenry, the treating orthopaedist, opined that Claimant was non-surgical and sent him for pain management.

On November 11, 2011, Dr. McHenry noted no history of weight change. At the time, the patient was getting married and going on a honeymoon to Myrtle Beach for a week. (A.P.A. p.s 103-104).

After Dr. McHenry, Claimant began treating with Dr. LeBlond, a pain management specialist. Dr. LeBlond placed Claimant at maximum medical improvement on November 21,

2011. At that time, he assessed a 6% impairment to the whole person for the lumbar spine. (A.P.A. p. 119-120).

On December 21, 2011, Claimant again saw Dr. LeBlond. The notes read, in part, "He is coping fairly well. He has not returned to his job with plumbing as they let him go/the company closed." (A.P.A. p. 121).

Claimant underwent a Functional Capacity Evaluation by Elite Physical Therapy on December 15, 2011, per the instructions of Dr. LeBlond.

The summary of the Functional Capacity Evaluation reads as follows:

Mr. Daley achieved a PDC level of light with a floor to waist lift of 15 pounds. Mr. Daley demonstrated the ability to perform the following activities at a constant level: sitting, standing. The following activities were demonstrated at frequent level: ladder climbing, transfers. The following activities were demonstrated at an occasional level: squatting, kneeling, crawling, overhead activity, standing truck rotation, walking, repetitive lumbar flexion. (A.P.A. p. 158).

Despite Claimant's testimony of leading a sedentary lifestyle, the Functional Capacity Evaluation noted no muscle atrophy. (A.P.A. p. 153). He also was moving within normal limits, although he used a cane, which no physician had prescribed, at the hearing. (*Id.*; Hr. T. p. 93). On December 21, 2011, Dr. LeBlond basically agreed with the FCE limitations. (A.P.A. p. 121)

At the behest of his counsel, Claimant saw Dr. Patrick Mullen, a psychiatrist, on June 30, 2011. Dr. Mullen noted that the patient's "intelligence is very good." (A.P.A. p.s 203-204). Although he is psychiatrist, as opposed to an orthopaedist, Dr. Mullen opined that "He needs to stay off work and not strain his back." (A.P.A. p. 206). Nowhere in his report did Dr. Mullen indicate that depression, in his opinion, was keeping Claimant out of work.

Claimant, at the behest of his attorney, saw Dr. Robert Brabham on January 17, 2012. On this date, Claimant stated "On most days, he gets up at about 6:30 a.m. and is able to handle his basic personal grooming and toilet needs without assistance." (A.P.A. p. 215). This appears inconsistent with his report to Dr. Mullen that "He does not bathe every day. He said this is because of both his depression and the fact that it hurts him to get in and out of the bath tub." (A.P.A. p. 204).

Dr. Brabham's report indicated a reading level of a 12.2 grade school level. His arithmetic standard score reflected an 8th grade level. His spelling was at a 9.6 grade level. The Beck Depression Inventory and Beck Anxiety Inventory, which, via judicial notice, both are self-reporting tests, revealed only a moderate level of depression and a mild level of anxiety. (A.P.A. p. 271).

Dr. Brabham emphasized limitations on sitting and standing, even though the Functional Capacity Evaluation states that he could do each constantly.

On January 19, 2012, the Claimant, at the behest of his counsel, obtained a rating of 26% impairment to the lumbar spine by Dr. Walter Grady, an osteopath. (A.P.A. p. 231).

Defendants were allowed to submit supplemental A.P.A. Submissions. Dr. C. Thomas Gualtieri, Neuropsychiatrist, has an extensive resume and has written many Journal articles. He opined that Claimant "is a bit depressed" (A.P.A. p. 232). Although Claimant told Dr. Gualtieri that "He hopes to go back to school to acquire new job skills," as previously recited, Claimant testified at the hearing that his attorney requested of him not to seek any work at the present time. (A.P.A. p. 233). Even though the rest of the record of evidence indicates that Claimant has little or no computer skills, he for some reason told Dr. Gualtieri that he would like to investigate the

“I.T. field.” (Id.). Dr. Gualtieri detected a premorbid Attention Deficit Disorder, concluded that he did not anticipate any persistent neuropsychiatric difficulties or disabilities related to the events of February, 2011, and recommended Wellbutrin for Claimant’s “bit” of depression and his premorbid Attention Deficit Disorder. (A.P.A. p. 238).

With the concurrence of Claimant’s counsel and with leave of the undersigned, on June 22, 2012 Defense counsel submitted a second Supplemental A.P.A. Submission, consisting of updated records of Dr. LeBlond. They included some records from Greenville Memorial Hospital. The records confirm that the physician discharged Claimant from his care due to his failure of two drug screens and medication non-compliance. (A.P.A. p. 262).

ARGUMENT

I. THE HEARING COMMISSIONER PROPERLY FOUND THAT CLAIMANT’S RECOVERY IS LIMITED TO SOUTH CAROLINA CODE § 42-9-30(21).

Claimant contends that he is entitled to a determination of permanent and total disability because of the “multiple combinations of injuries to his back, hips, legs and psyche”, thereby potentially taking an award of disability outside of the limited recovery for a single scheduled member under South Carolina Code § 42-9-30. Claimant’s interpretation of the facts and the law is erroneous, as to broadly interpret Singleton v. Young Lumber Company, 236 SC 454, 114 SE 2d 837 (1960) and its progeny to justify a claim for general disability based upon the facts of this case is to misconstrue those cases and to produce a result not originally contemplated by their holdings or intended by the Legislature. Further, Claimant’s broad interpretation of the law undermines, and is inconsistent with, the South Carolina Supreme Court’s opinion in Therrell v. Jerry’s, Inc., 370 SC 22, 633 SE 2d 893 (2006), which was decided after Singleton.

The Supreme Court in Singleton set forth the following rule of law: “Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation.” 236 SC 454, 471, 114 SE 2d 837, 845 (1960). The Supreme Court in Singleton further stated, “to obtain compensation in addition to that schedule for the injured member, Claimant must show some other part of his body is affected.” 236 SC at 471, 114 SE 2d at 845. This theory is often described as the “exclusive” approach. Wigfall v. Tideland Utilities, Inc., 354 SC 100, 109-110, 580 SE 2d 100, 103-105 (2003).

Claimant maintains that radicular pain emanating from his back into his hips and legs satisfies the requirement under Singleton that other body parts, in addition to his back, were “impacted and impaired” by his back injury, thereby entitling him to a determination of disability based on loss of wage-earning capacity. In subsequent decisions, however, the Supreme Court has expounded upon what affect must be had on another body part to permit a Claimant to seek benefits beyond a scheduled-member disability. For example, in Wigfall, the Supreme Court cited Singleton and opined that, in order to recover for general disability, a Claimant who has a Section 42-9-30 scheduled injury must show an *additional injury*.” (Emphasis added.) The Court reiterated this point by explaining that Singleton “stands for the rule that an individual is not limited to scheduled benefits under Section 42-9-30 if he can show *additional injuries* beyond a lone scheduled injury.” Id, 580 SE 2d at 103. (Emphasis added.)

The term “injury” means more than just testimony from a Claimant that another body part is affected. The case Fishburne v. ATI Systems International, 384 SC 76, 681 SE 2d 595 (Ct. App. 2009) is illustrative. In Fishburne, the Claimant alleged to have symptoms in the right leg

and foot emanating from an admitted injury to the low back. Id at 83, 681 SE 2d at 599. The Commission awarded 10% permanent partial disability to the back, including any right lower extremity radiculopathy. The Court of Appeals affirmed the Commission's award and noted that, despite the Claimant's testimony of problems with her right lower extremity, there was "no evidence that she had sustained a specific injury to her right lower extremity. . . ." Id at 89, 681 SE 2d at 601. Thus, it is clear that the definition of "injury" requires evidence of an actual injury to the body part.

The Supreme Court in Singleton intended an additional "affected" body part to mean something more significant than a body part that is simply symptomatic. Instead, the Supreme Court's intent was that the additional body part must be affected to the point that it is deemed injured. In this case, while there is evidence that Claimant's hips and legs were symptomatic because of a low back injury, the radicular pain of which Claimant complained does not amount to an injury to the hips or legs. Claimant received no medical treatment for the hips or legs, he was provided no work restrictions as it relates to the hips or legs, and he was not assigned any permanent impairment ratings to the hips or legs by either the authorized treating physicians or Claimant's chosen physicians. Put simply, the cause of Claimant's disability is an injury to his back, and with the back being a scheduled member, it follows that under the exclusive approach of Singleton, Claimant is limited to the scheduled compensation determined by S.C. Code § 42-9-30(21).

In addition to Singleton, Defendants point to the Supreme Court's decision in Therrell (adopting the "situs of the injury" theory for evaluating scheduled disability awards and rejecting the "functional impairment" model", as controlling in this case. In Therrell, the Supreme Court

explained the competing approaches of scheduled recovery.¹ Under a functional impairment analysis, a Claimant would be entitled to compensation for any scheduled body part that is functionally impaired by the direct injury to the another body part. *Id.* at 26-27, 633 SE 2d at 895. In contrast, the situs of the injury approach “focuses on the injured body part in determining how the injury is properly compensated.” *Id.* at 27, 633 SE 2d at 896. The Therrell Court concluded that “South Carolina’s statutory scheme best complies with the situs of the injury approach.” *Id.*

Under Therrell, Claimant’s recovery should be limited to scheduled disability to his back only. *Id.* at 29, 633 SE 2d at 897. Claimant’s argument, however, is akin to applying the functional impairment analysis which was expressly rejected by the Supreme Court in Therrell. Instead, applying the situs of the injury rule to the subject case limits Claimant’s recovery to scheduled disability to this back as it clearly is the situs of the injury.

It should be noted that the Legislature had the cases of Wigfall and Therrell before it as it contemplated reform of the South Carolina Workers’ Compensation system in 2007. The Legislature declined to overrule or modify the legal theories set forth in Wigfall and Therrell and, therefor, it can be presumed that it did not intend to change the effect of these cases. State v. 192 Coin-Operated Video Game Machines, 338 SC 176, 188, 525 SE 2d, 872, 879 (2000) (the Legislature is presumed to be aware of the Court’s interpretation of its statutes). These cases are still, and should continue to be, controlling law concerning an injury to a single scheduled member.

¹It should be recognized that the Court adopted the situs of the injury approach after discussing the Claimant’s contention that she was entitled to an award under Section 42-9-30(22) for an injury to an unlisted member. Thus, this approach would also be applicable in cases where the Claimant seeks an award of disability compensation outside of what is allowed for a scheduled member under Section 42-9-30.

When analyzed in light of controlling case law, it is clear that Claimant sustained an “injury” to his back only, and the Hearing Commissioner correctly found such to be the case. Defendants request that the Full Commission affirm the Decision of the Hearing Commissioner and find that Claimant’s injury was limited to his back, and that under Singleton and Therrell Claimant’s recovery for disability compensation is confined to the permanent partial disability compensation for the back under South Carolina Code § 42-9-30(21) which the Hearing Commissioner awarded.

II. THE HEARING COMMISSIONER PROPERLY DENIED CLAIMANT’S CLAIM FOR PSYCHOLOGICAL INJURY AND TREATMENT.

The Hearing Commissioner must determine the weight and credibility to be given to expert evidence. He is not bound by the opinion of medical experts, and may find facts different from those suggested by expert evidence. Fishburne v. ATI Systems International, 384 SC 76, 681 SE 2d 595 (2009). A Hearing Commissioner has the discretion to weigh and consider all of the evidence, including both lay and expert testimony. Tiller v. National Care Ctr. of Sumter, 334 SC 333, 513 SE 2d 843 (1999). In this case, the Hearing Commissioner properly weighed and considered all of the evidence presented by the parties and denied Claimant’s claim for any psychological injury or treatment.

Although Claimant in his Brief vociferously rests his argument on opinions rendered by Dr. Mullen, Dr. Brabham and Dr. Gualtieri, the Hearing Commissioner declined to accord any weight to the opinions of those experts with respect to the issue of whether Claimant had suffered any psychological consequences which were directly related to his compensable injury. Defendants submit that the Hearing Commissioner was entirely correct in doing so. The Hearing

Commissioner clearly did not accept Claimant's evidence and contentions, and after hearing Claimant's testimony and thoroughly reviewing all evidence of his alleged psychological issues, choose not to give any weight to either Claimant's testimony or the opinions of the experts. In essence, the hearing Commissioner did not believe Claimant's testimony on the issue, or the subjective reports of his purported psychological problems to the physicians by whom he was examined.

It is noteworthy that the medical evidence is devoid of any mention of any psychological problems prior to Claimant's evaluation by Dr. William Mullen on June 30, 2011 - over four months after Claimant's accident. Throughout the course of Claimant's medical treatment up to that point Claimant had either explicitly or implicitly denied that he was experiencing any psychological or emotional issues. When Claimant was initially seen by Dr. McHenry on March 16, 2011, he explicitly denied that he was experiencing any mental or emotional problems. (A.P.A. Submissions, p. 98). When Claimant thereafter came under the care of Dr. LeBlond on April 13, 2011, he did not report to Dr. LeBlond at any time then, or thereafter throughout the extensive course of Dr. LeBlond's treatment of him, that he was experiencing any such difficulties. In fact, Dr. LeBlond's thorough notes pertaining to his treatment of Claimant from April 13, 2011 through April 12, 2012 not only fail to report any mention of such issues by Claimant, but affirmatively indicate that a "review of systems" was negative on each occasion on which Claimant was seen by Dr. LeBlond or his assistant. (A.P.A. Submissions Numbers 8 and 18). Even after Claimant was seen by Dr. Mullen on June 30, 2011, he did not report to Dr. LeBlond that he was experiencing, or had been diagnosed with, any psychological problems. (Id.)

When Claimant was referred by his attorney to Dr. Mullen, he reported to Dr. Mullen that

his chief complaints were “depression and pain”, even before Dr. Mullen had performed an evaluation of him. Claimant reported to Dr. Mullen that he “may also have hit his head and lost consciousness briefly” at the time of the accident, although such history is clearly refuted by the initial history given by Claimant to the first responders and treating healthcare providers. (A.P. A. Submissions, pp. 203, 69, 78). Indeed, Claimant has not even pursued this claim on the grounds that he suffered a head injury of any type. Nevertheless, in his report Dr. Mullen focused on that issue and noted that Claimant “has symptoms of traumatic brain injury” which he set forth in specific detail in his report. (A.P.A. Submissions pp. 203-206). Dr. Mullen noted that Claimant reported his pain to be “usually a six (6) out of ten (10)”, which is noteworthy because Claimant had reported chronic back pain of eight (8) out of ten (10) to the health care providers who were treating him for low back pain and radicular pain into his bilateral legs immediately prior to the accident of February 9, 2011. (A.P.A. Submissions pp. 205; 21, 24, 56, 62). Claimant, in fact, had obtained Lortab for chronic back pain from his then-treating physician, Dr. Li, every month leading up to the date of the accident -- yet he failed to inform Dr. Mullen of that fact. (A.P.A. Submissions p. 29). While Dr. Mullen rendered his statement that Claimant had depression which was caused by his “chronic pain,” he does not differentiate between the chronic pain that Claimant was experiencing prior to the accident and any pain that he may have been experiencing as the result of any injuries which he suffered in the accident. Dr. Mullen further stated that there “may be a contribution by a closed head injury” with respect to his impression that Claimant was experiencing depression, but it is clear that Claimant did not suffer any such injury. Finally, Dr. Mullen did not opine that any depression which Claimant may have been experiencing was disabling in any way. (A.P.A. Submissions pp. 203-206).

The report of Robert Brabham, Ph.D. pertaining to his “psychological and vocational evaluation” of Claimant is, likewise, replete with misinformation. Dr. Brabham incorrectly notes at the outset of his report that Claimant “actually sustained a brief loss of consciousness” at the time of the accident and that “he sustained a mild (physical) traumatic brain injury . . .” (A.P.A. Submissions pp. 214, 222). He asserts that Claimant’s “depression, anxiety and/or post-concussion symptoms interfere with his ability to maintain sufficient attention and concentration,” and opines that Claimant’s “brain injury and with his continued profound deficits” render him “unable to engage in full-time gainful, competitive employment as a result of his medical conditions . . .” (A.P.A. Submissions p. 223). Dr. Brabham appears to have totally ignored the salient medical records and history which, again, clearly establish that Claimant did not suffer a closed head or brain injury. Furthermore, he accepted Claimant’s reported inability to engage in almost any type of physical activity on any sustained basis, without regard to the results of the Functional Capacity Evaluation performed on December 5, 2011 and the opinions of Dr. LeBlond about Claimant’s capacities for work on December 21, 2011. (A.P.A. Submissions pp. 150-158; 121). It is also noteworthy that with respect to Dr. Brabham’s statements about Claimant’s purported inability to work and the impact that such has had on his psyche, Dr. Brabham was never informed by Claimant that he had not sought employment at his attorney’s request, which Claimant acknowledged on cross-examination at the hearing. (Hr. T., p. 93). Likewise, Dr. Brabham was not informed by Claimant that the cane which he appeared with at the evaluation, and at the hearing, was not prescribed for him by any of the treating physicians post-accident. (A.P.A. Submission, p. 215; Hr. T., p. 93). Claimant admitted on cross-examination that he never brought up any psychological issues with any of his

post-accident healthcare providers until his attorney sent him to Dr. Mullen (Hr. T., p. 87).

Because Claimant attempted to establish that he had suffered some psychological injury as a result of the accident, the Hearing Commissioner allowed defendants to obtain an independent medical evaluation of Claimant by Dr. C. Thomas Gualtieri, neuropsychiatrist. That evaluation was performed on May 10, 2012. Dr. Gualtieri conducted a thorough neuropsychiatric evaluation of Claimant on that date. Claimant reported to Dr. Gualtieri that he has a family history of depression, with two sisters being treated for depression and one brother who has been hospitalized for depression in the past -- facts that neither Dr. Mullen nor Dr. Brabham were made aware of (A.P.A. Submissions, pp. 2, 232). Claimant reported a weight gain of "about 60 pounds due to inactivity" since his accident, although Dr. Gualtieri noted his weight to be 221 pounds, which is substantially the same weight that he has carried since immediately prior to the accident and subsequently. (A.P.A. Submissions, pp. 233, 236, 56, 61, 63, 66, 81). Dr. Gualtieri found no indication that Claimant had a traumatic brain injury at the time of the accident. He further stated: "He does not have any serious psychiatric or cognitive problems that can be related to that accident." The doctor further noted that his evaluation indicated that Claimant had "premorbid Attention Deficit Disorder," and that since Claimant reported to him that he would like to return to school if he can not return to the plumbing trade, Wellbutrin, an antidepressant medication, can be helpful for that Disorder. (A.P.A. Submission, p. 232). Dr. Gualtieri concluded that Claimant "is a bit depressed, which is probably related to his disability, and the fact that he can't return to his work as a plumber because of his back injury." He noted that, in his opinion, Claimant's "depression is therefore accident related and deserves treatment." In that regard, he did prescribe Wellbutrin for Claimant's "bit" of

depression, as well as his Attention Deficit Disorder. (Id.). Importantly, Dr. Gualtieri stated that no “persistent neuropsychiatric difficulties or disabilities related to the events of February, 2011” were anticipated. (Id.).

While Dr. Gualtieri appears to have given Claimant the benefit of the doubt with respect to whether he suffered from any psychological issues, he clearly opined that Claimant “does not have any serious psychiatric or cognitive problems that can be related” to the accident of February 9, 2011, or that Claimant is disabled by any such difficulties. While he indicated that a prescription for Wellbutrin may benefit Claimant while he is “a bit depressed,” it is apparent that he also recommended that medication as helpful for Claimant’s premorbid Attention Deficit Disorder.

However, subsequent to Dr. Gualtieri’s evaluation of Claimant, defendants received and submitted into evidence subsequent medical records from Dr. LeBlond pertaining to his treatment of Claimant from January 20, 2012 through April 12, 2012, and Dr. LeBlond’s discharge of Claimant from his care, without recourse, on April 13, 2012 due to his failure of two urinary drug screens. (A.P.A. Submissions, pp, 254-263). Claimant testified on cross-examination at the hearing on June 14, 2012 that he did not “know exactly why [Dr. LeBlond] dismissed me”, but explained that he had “Lortab in my system instead of Percocet” (Hr. T., p. 77). The medical records indicated that Dr. LeBlond had not prescribed Lortab for Claimant since August 10, 2011. (A.P.A. Submissions, p. 115). It is worth repeating that Claimant had obtained Lortab from Dr. Li for back and leg pain prior to the accident of February 9, 2011, and Dr. LeBlond’s urinary drug screen results certainly call into question his compliance with Dr. LeBlond’s treatment regimen and whether he had continued to obtain Lortab through other

means.

The bottom line is that the Hearing Commissioner, considering all of Claimant's testimony and the medical evidence, concluded that Claimant had not met his burden of proving that he had suffered any psychological injury as a result of the accident. As the Hearing Commissioner stated in Finding or Fact 13, "The evidence submitted as to psychological overlay is too underwhelming to merit an award for same." The Hearing Commissioner had the opportunity to observe Claimant's testimony and his demeanor on these issues, and he reached the proper conclusion in denying this aspect of this claim, as well as finding and concluding that Claimant retains only permanent partial disability to his back and is not permanently and totally disabled as the result of any combination of his back injury and any psychological issues.

CONCLUSION

Defendants respectfully submit that the Hearing Commissioner properly found and concluded, based upon the reliable and probative evidence of record, that Claimant has suffered a 20% permanent partial disability to his back, that he is not permanently and totally disabled, and that his claim for psychological injury and treatment should be denied. The Appellate Panel should, therefore, affirm the Hearing Commissioner's Decision and Order in all respects.

Respectfully submitted this the 2nd day of April, 2013.

RUDISILL, WHITE & KAPLAN, P.L.L.C.

By:



Steven M. Rudisill
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CERTIFICATE OF SERVICE

We do hereby certify that on this date the foregoing or attached Defendants-Appellees' Brief to Full Commission was duly served upon the parties to this action and/or their attorney(s) of record by U.S. Mail, pursuant to the Regulations of the South Carolina Workers' Compensation Commission and/or Rule 5 of the Rules of Civil Procedure.

Respectfully submitted this the 2nd day of April, 2013.

RUDISILL, WHITE & KAPLAN, P.L.L.C.

By:



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[Via Certified U.S. Mail]

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[Via First Class U.S. Mail]

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION FULL COMMISSION
WCC No. 1101678

Sean Daley,)
)
Claimant/Appellant,)
)
v.)
)
Chapman Mechanical,)
)
Employer/Respondent,)
)
and)
)
Stonewood Insurance,)
)
Carrier/Respondent.)
-----)

(COPY)

FULL COMMISSION HEARING

Monday, April 15, 2013
3:22 p.m. - 3:42 p.m.

The Full Commission Hearing before Commissioner Aisha Taylor; Commissioner Andrea C. Roche; and Commissioner Gene McCaskill, Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 15th day of April, 2013 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

Jeffrey D. Ezell, Esquire
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 Greenville, South Carolina 29601
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Steven M. Rudisill, Esquire
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 Attorney for the Defendant/Respondents

Also Present:
 Sean Daley
 Aiden Daley

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1 **THE COURT REPORTER:** Today is Monday, April 15,
2 2013. This is South Carolina Worker's
3 Compensation Case Number 1101678. This is a
4 case of Sean Daley, Claimant, versus Chapman
5 Mechanical, Employer, and Stonewood Insurance,
6 Carrier.

7 The Appellant is the Claimant represented by
8 Jeffrey Ezell. The Respondent is represented
9 by Steven Rudisill.

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

14 **ARGUMENT BY MR. EZELL:**

15 **MR. EZELL:** Thank you. May it please the
16 Commission.

17 I have the pleasure of representing Sean Daley.
18 He's here with us today. He began working for
19 Chapman Mechanical as a commercial plumber in
20 October of 2010 and that's a -- just by DOT
21 description, that's a heavy labor, particular
22 with regard to lifting toilets, other plumbing
23 and it's -- it's a heavy job.

24 He'd done that job with no restrictions and no
25 problems whatsoever until his accident on

1 February 9th of 2011, roughly five months
2 later.

3 What happened was, Sean was on about an
4 eight-foot ladder working within a ceiling
5 grid, much like this one here (indicating);
6 although, the tiles were not in place.

7 He fell from the ladder, landed on a piece of
8 PVC pipe which stuck out of the ground roughly
9 two, two and a half feet, four inches in
10 diameter; basically impaled himself on his side
11 and back before falling to the ground.

12 He sustained a pretty significant back injury
13 and that's obviously part and parcel of what's
14 admitted, but we also contend that he's
15 sustained injuries to his hips and legs, as
16 well as a very clear injury to his psyche.

17 The psych injury came about by virtue of the
18 significant pain he endures every day, the
19 substantial change in lifestyle. He can no
20 longer do the job he once did. His
21 restrictions, permanent, are now no lifting
22 more than 15 pounds. He's never held any job
23 for any significant period of time, which would
24 be within those restrictions.

25 He's had loss of the ability to work and

1 provide for his family and, also -- this is one
2 of the issues we contend was erroneous with
3 regard to the Single Commissioner's ruling --
4 there was no other -- we were not allowed to
5 present evidence of the maltreatment by the
6 Employer, which contributed to his psych
7 injury, which is clear both from Dr. Brabham
8 and Dr. Mullin's report, which I'll address in
9 a moment.

10 They basically brought Sean back to work
11 entirely too soon. They steadfastly refused to
12 provide him with proper return to work
13 situations.

14 If you look in their APA submissions,
15 particular with Dr. Leblond's statements,
16 you'll note that various points in time when he
17 was brought back with restrictions and a
18 severely injured back with pain in his legs and
19 hips, he was given a five-gallon bucket to sit
20 on.

21 When we complained about the five-gallon
22 bucket, they gave him a cheap, flimsy nine-
23 dollar Wal-Mart folding chair. Dr. Leblond
24 stated unequivocally that none of those were
25 within the realm of what was reasonable for a

1 return to work accommodations.

2 Our first point of contention would be that the
3 Single Commissioner erred in failing to find
4 that Mr. Daley suffered a disabling
5 psychological injury. The only evidence in the
6 record that has a psychological injury,
7 Dr. Brabham indicated that he had both
8 depressive disorder and generalized anxiety
9 disorder --

10 **COMMISSIONER ROCHE:** Dr. Brabham is a vocational
11 expert.

12 **MR. EZELL:** He's also a Ph.D. psychologist.

13 **COMMISSIONER ROCHE:** Okay.

14 **MR. EZELL:** Dr. Brabham indicated that Sean was
15 credible in his presentation and the testing,
16 that he had no evidence of symptom
17 magnification and, particularly -- and this
18 is -- it's just plain common sense --

19 Dr. Brabham indicated that there would be no
20 reason for Sean to fabricate his situation.

21 He was basically doing well, making good money
22 as a commercial plumber, able to provide for
23 his family. As per Dr. Mullin's reports and
24 the Claimant's own testimony, prior to the
25 accident while he had some back issues, he was

1 skate boarding, he was participating in sports,
2 he was able to lift his children, he was able
3 to work. There's no evidence whatsoever that
4 he was ever restricted in any way from this
5 heavy job he was doing for Chapman Mechanical
6 until his accident happened.

7 Dr. Brabham noted the presence of emotional
8 disturbances which were contributing to his
9 inability to work. Dr. Mullin, a psychiatrist
10 in Greenville, also evaluated Sean, noted that
11 prior to the accident he had a very active
12 life; subsequent to the accident, he did not.

13 Dr. Mullin indicated that he has -- that his
14 mood has changed his mood -- or, I'm sorry,
15 that the pain had changed his mood completely.
16 I'd refer to APA 13, page 205. Dr. Mullin
17 opined that Sean was suffering from major
18 depression.

19 And one of the really important and salient
20 points with regard to Dr. Mullin's report, he
21 found Sean to be suffering from major
22 depression. Many of the issues which even
23 compound and make his psychological injury and
24 psychiatric injury worse had not yet even
25 occurred when Dr. Mullin evaluated Sean. And,

1 again, I'm talking about the maltreatment by
2 Chapman.

3 They returned him to work too soon. They gave
4 him terrible work conditions. Ultimately they
5 fired him while he was still restricted. And
6 then he had to fight for five months to get
7 T.T.D. So there was obviously a pretty
8 compelling issue there with a man who had a
9 wife and children to support.

10 Now, I would also point out -- and this, I
11 think, is really, really important with regard
12 to psych injury -- over our objection, the
13 Hearing Commissioner allowed the hearing to be
14 continued so the Defendants could have
15 Mr. Daley seen by a psychiatrist of their
16 choosing.

17 It took two months to get an appointment with
18 a psychiatrist in Charlotte, North Carolina,
19 out of state. After we got this two-month-
20 later appointment, it took another five to
21 seven weeks for him to submit his report.

22 Then he submits his report and he finds out --
23 and he notes that -- and this is -- Sean's
24 marriage was suffering. Sean was worried about
25 the future. Sean was suffering from and

1 worried about chronic pain and that Sean was
2 depressed.

3 If you look at APA number 16, pages 237 and
4 238, Dr. Gaultieri -- this is a North Carolina
5 psychiatrist that the Defendant specifically
6 chose, that we had to wait months and months to
7 get him seen by -- he said, "Sean's depression
8 is probably related to his disability and the
9 fact that he cannot return to his work as a
10 plumber. The patient's depression is therefore
11 accident related and deserves some treatment."
12 Dr. Gaultieri, this psychiatrist in North
13 Carolina that the Defendants picked, prescribed
14 Sean antidepressants. He went to get them
15 filled, they were denied.

16 The doctor that they chose said he's depressed,
17 said it's related to his work, said he needs
18 psychotropic medications, prescribes the
19 psychotropic medications; they wouldn't let him
20 fill them. So --

21 **COMMISSIONER MCCASKILL:** Is he on any psychotropics
22 now?

23 **MR. EZELL:** He's not been able to, Your Honor.

24 Again, there are additional points, but I will
25 go ahead, just in the interest of time, the

1 second point out of our appeal is that we feel
2 the Single Commissioner erred in finding that
3 Sean's prior back problems were anything nearly
4 approaching what he suffers from now.

5 He had an MRI performed before this accident
6 when he did have some prior back problems.
7 There was no neurological deficits shown on the
8 MRI. He was never provided with an MRI
9 subsequent to this accident. It was the brief
10 of the independent orthopedist that evaluated
11 him that he should have one, but that was never
12 given.

13 We would again point out both Dr. Mullin's
14 findings and Sean's own testimony. Sean was
15 very active prior to the fall. He skate
16 boarded, participated in sports. He lifted his
17 small children, one of whom is here today.

18 He also was able to do the job at Chapman
19 Mechanical. He was lifting toilets. He was
20 working on a ladder inside a ceiling grid. He
21 was doing everything he had. There was no
22 evidence presented by Chapman whatsoever that
23 he was ever restricted, that he was ever
24 chastised for working too slow, that he was
25 ever chastised for not doing what he was

1 supposed to do. Up until this fall, he was an
2 employee in good standing, earning a very good
3 living, a living that he can't earn anymore.
4 We would point to APA number 13, page 205,
5 where Dr. Mullin stated, "One thing is sure,
6 that his back pain is much, much worse than
7 when he had his only MRI;" again, that was
8 prior to the accident.

9 "At that time" -- meaning the time of the
10 MRI -- "he was working, playing sports, skate
11 boarding, et cetera. The pain was chiefly in
12 his low back and did not interfere with his
13 day-to-day life, his sleep, nor his mood. Now,
14 none of that is true. His pain does interfere
15 with his life and has changed his mood
16 completely."

17 But we would also point out, we had him
18 evaluated by Dr. Walter Grady in Spartanburg,
19 an orthopaedic surgeon, as well. He noted that
20 Sean was walking with an antalgic gait -- limp
21 or gait and that that was not present prior to
22 the on-the-job injury. That's APA 228.

23 He, again, noted that the only MRI performed
24 prior to the accident did not show any
25 neurological deficit; that's APA page 230. He

1 felt that Sean needed a repeat MRI and a
2 consultation with an ortho, spine or
3 neurosurgeon, a TENS unit and anti-inflammatory
4 medications. Again, completely controverting
5 the testimony or the evidence -- purported
6 evidence that Sean was not having difficult --
7 or Sean was having difficulty of this magnitude
8 prior to the accident.

9 And, lastly, it would be our position that the
10 Single Commissioner erred in finding this to be
11 a single member injury only.

12 He has the injury to his back, which is
13 admitted. He testified unequivocally, with no
14 contradiction by any other physician, any other
15 party, that he has pain in his hips and his
16 legs.

17 We brought to the Commissioner's attention the
18 *Hudson versus South Carolina State Port*
19 *Authority* case and we feel that it's square on.
20 In that case, it was -- it was found by our
21 Supreme Court that -- I'm sorry, our Court of
22 Appeals that the Claimant presented a prime
23 facie case of injury to his legs and that
24 should have -- that testimony and that evidence
25 should have been allowed and reviewed and

1 understood.

2 Again, in this case, there's no evidence that
3 contradicts Sean's testimony regarding his leg
4 and hips -- or legs and hips. Dr. Mullin says
5 that he's had no issues prior to that.
6 Dr. Grady says he needs a repeat MRI. He also
7 has a psych injury, which their own doctor says
8 he needs medication and treatment for and that
9 it's job related.

10 The fact he hasn't been given the medication
11 that Dr. Gaultieri, their doctor prescribed,
12 completely precludes a finding of MMI. He
13 hasn't had that treatment yet, so how can he
14 possibly be at MMI if he hasn't had the
15 treatment that their own doctor said he needs?
16 So for that reason, it's our contention that
17 the Single Commissioner erred in finding this
18 to be a single member injury only case and
19 erred in failing to find that there was a psych
20 injury or -- and/or injury to his hips and
21 legs, erred in failing to allow us to present
22 testimony and evidence regarding the
23 maltreatment by Chapman as it contributed to
24 his psych injury, which I think both Dr. Mullin
25 and Dr. Brabham found and, quite frankly,

1 Dr. Gaultieri's -- his report falls right in
2 line with that. It's work related. He can't
3 go back to the type of work he did before.
4 He's been terminated.

5 All of those play into the fact that this is
6 not a single member injury case and it needs to
7 be reviewed, it needs to be returned to the
8 Single Commissioner for further findings.

9 Thank you.

10 **COMMISSIONER MCCASKILL:** Thank you, sir.

11 Mr. Rudisill.

12 **ARGUMENT BY MR. RUDISILL:**

13 **MR. RUDISILL:** May it please the Commission. I'm
14 Steve Rudisill of Mecklenburg County, North
15 Carolina bar. My clients firmly believe that
16 Commissioner Wilkerson properly decided this
17 case when he determined that Mr. Daley had
18 suffered only an injury to his back, which is
19 what the overwhelming evidence indicates and
20 which the law indicates under *Singleton* and
21 *Therrill* that he is entitled to compensation
22 for.

23 He talks a lot about referred pain into his
24 hips and legs in his testimony. It's mentioned
25 in some of the medical records, but the only

1 rating that Mr. Daley ever received and the
2 only treatment that he ever got was for an
3 injury to his back.

4 He never received any specific treatment for
5 injuries to his legs, hips or any other body
6 parts. So the Commissioner properly determined
7 that issue and limited Mr. Daley's recovery to
8 his benefits under 42-9-30(21).

9 With respect to the purported psychological
10 injury, one has to believe that Mr. Daley is,
11 in fact, disabled -- that is, incapable of
12 returning to some type of work -- in order to
13 get to the point that he is depressed because
14 he is unable to work.

15 And of all of the psychologists or
16 neuropsychiatrists who have seen him and
17 rendered opinions about him, Dr. Gaultieri's
18 comes the closest to that, admittedly. But
19 Dr. Gaultieri said he thought he was, quote, a
20 bit depressed, end quote, because he can't
21 return to work as a plumber.

22 Mr. Daley testified at the hearing that his
23 lawyer had told him not to seek out work;
24 transcript page 93. He also testified that he
25 disagreed with the results of a functional

1 capacity evaluation, which had been ordered by
2 Dr. Leblond, the authorized treating
3 physiatrist.

4 That physical -- functional capacity evaluation
5 clearly indicates that he has the capacity to
6 engage in numerous physical activities on a
7 constant or occasional basis.

8 Mr. Daley's testimony also reveals that he has
9 not been a plumber for his entire life. He has
10 other vocational skills. He has worked in a
11 restaurant, in several different occupations:
12 cashier, waiter, cook. He has also worked in
13 lube shops. He has worked at a gas station as
14 recently as a few years prior to his work at
15 Chapman Mechanical, so he has skills.

16 He has an educational background, which was
17 noted by Dr. Brabham to indicate a 12.2 reading
18 level, grade level, and an eighth grade level
19 in math, a 9.6 grade level in spelling.
20 Mr. Daley testified that he made A's and B's
21 and C's in high school, that he was an average
22 student.

23 He is not a licensed plumber, so he is, in
24 essence, a plumber's helper.

25 So combining all of that, he has opportunities

1 to go out and search for work, but he chooses
2 not to either because his attorney has told him
3 not to or apparently of his own decision.

4 So when you have experts in the psychological
5 field rendering opinions that he's depressed or
6 anxious because he doesn't have a job, it
7 doesn't stand to reason that that's a basis for
8 any depression or anxiety that he may be
9 experiencing.

10 I would also point out to the Commission --

11 **COMMISSIONER MCCASKILL:** Back up. Say that for me
12 again.

13 **MR. RUDISILL:** You have to believe that he is, in
14 fact, incapable of returning to work to believe
15 that he is depressed because he cannot work.
16 And the competent evidence of record does not
17 establish that he is incapable of returning to
18 work.

19 He may not be capable of returning to work as
20 a plumber or a plumber's helper, but he clearly
21 has physical capabilities and it would appear
22 the mental capabilities to return to some other
23 type of vocation, given the totality of the
24 evidence in the record, Your Honor.

25 **COMMISSIONER MCCASKILL:** But your psych expert

1 prescribed psychotropic medication for him.
2 True?

3 **MR. RUDISILL:** He did, because he made -- he
4 rendered the statement that he was a bit
5 disabled because he can't return to work as a
6 plumber.

7 Well, when you have a Claimant testifying that
8 he hasn't even attempted to return to work, he
9 hasn't even sought out work in the face of a
10 functional capacity evaluation that shows he
11 has physical capabilities to engage in certain
12 physical activities, then how do you know?

13 And I think this is what Commissioner Wilkerson
14 seized on when he listened to the totality of
15 the evidence that was before him.

16 You've got a Claimant who came to the hearing
17 with a cane, which no doctor has prescribed for
18 him. You -- he disagrees with the functional
19 capacity evaluation results.

20 He was discharged by the authorized treating
21 physician for noncompliance with the medication
22 regimen, because he failed drug screening times
23 two. And this was post -- this was immediately
24 prior to the hearing.

25 We didn't even have the medical records from

1 Dr. Leblond about this in evidence at the time
2 of the hearing and Mr. Daley testified about
3 this on cross-examination. And the
4 Commissioner allowed us to obtain those records
5 from Dr. Leblond to support the testimony.

6 He contended that he had gained 50, 60 pounds
7 of weight since this accident occurred.
8 Evidence doesn't bear that out.

9 He weighed 212.4 pounds on October the 25th,
10 2010, about the time he started working for the
11 Employer. He weighed 210 pounds on the date of
12 the accident. And the evidence indicates going
13 forward that he weighs now still only 212
14 pounds, give or take. So he hasn't gained the
15 weight that he testified that he did.

16 The Commissioner made no credibility findings
17 in this case, but one can see that when he
18 looked at the entire body of evidence, he just
19 didn't believe a lot of what he was hearing.

20 So when he made the statement in his Finding of
21 Fact that the evidence of any psychological
22 overlay is too underwhelming, he was correct.

23 So we believe that the Commissioner made the
24 proper findings with respect to both of these
25 issues and that the Full Commission should

1 affirm in all respects. Thank you.

2 COMMISSIONER MCCASKILL: Questions?

3 Thank you, sir.

4 REPLY BY MR. EZELL:

5 MR. EZELL: Gosh, story of my life. Sorry about
6 that.

7 COMMISSIONER MCCASKILL: All right.

8 MR. EZELL: May it please the Commission. Just one
9 or two quick points.

10 With all due respect to Mr. Rudisill, who's
11 been very good to work with in this entire
12 matter, Dr. Gaultieri didn't make the findings
13 that have just been described. Dr. Gaultieri
14 made -- their doctor made the specific finding
15 that he's depressed because he cannot return to
16 work as a plumber.

17 He didn't say depressed because he cannot
18 return to work as anything. He said
19 specifically in that report he is depressed
20 because he cannot return to work as a plumber.
21 Sean testified at the trial and in his
22 deposition that, yes, over the course of his
23 life he's had a couple of jobs here and there
24 as a cook or as a waiter. He didn't make
25 anything approaching what he made as a

1 commercial plumber. It was a good job and he
2 was doing a good job at it. No evidence of
3 anything to contradict that.

4 The other thing and irrespective of anything
5 you want to say about Sean's agreement or
6 disagreement with the functional capacity
7 evaluation, the treating physician's final
8 restrictions were permanent restrictions of no
9 lifting greater than 15 pounds.

10 A standard toilet weighs well over 48 pounds.
11 He can't install a toilet anymore. As a
12 plumber that pretty much takes you out of the
13 loop.

14 The last thing I would point out is that this
15 Dr. Gaultieri that they had to have Sean see --
16 we had to wait two months for it to happen; we
17 had to wait more -- five or six weeks to get
18 his report because he's so busy -- in their
19 own -- in their own brief they ask you not to
20 believe him. And I'd beg reference to page 14
21 of the Defendant's brief. They said that the
22 Commissioner properly found Dr. Gaultieri's
23 report wasn't completely credible.

24 The only evidence in the record regarding
25 psych, Brabham, Mullin, their Dr. Gaultieri all

1 say he's depressed, all say it's work related,
2 all say it's related to his inability to return
3 to work as a plumber, the fact that he can't
4 earn the kind of money he once earned as a
5 plumber. It's just that simple.

6 I don't know how much more evidence of psych
7 there could be. There's not any evidence that
8 it's not there.

9 Their own doctor that they had to see
10 prescribed him Wellbutrin, medications that
11 they wouldn't even let him fill the day that he
12 left the doctor's office.

13 So it's our position the Single Commissioner
14 erred in this case. He just got it wrong.
15 It's just one of those kind of things. It
16 doesn't happen often; I realize that. And I
17 don't come down here lightly. But in this
18 case, I'm pretty stern about this. I honestly
19 believe that Sean should have been found to
20 have more than a single member injury, that
21 there's absolutely nothing but credible
22 evidence of a psych injury related to his
23 employment and for that reason that the Single
24 Commissioner's order needs to be overturned.
25 Thank you so much.

1 COMMISSIONER MCCASKILL: Thank you.

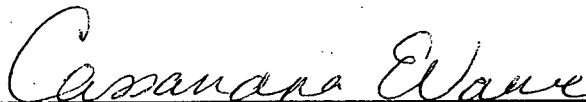
2 (There being no further questions, the deposition
3 concluded at 3:42 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of twenty-three (23) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 19, 2013.



Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018

Transcript of the Testimony of
SEAN DALEY V. CHAPMAN MECHANICAL

Date: April 15, 2013



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1 STATE OF SOUTH CAROLINA 2 BEFORE THE SOUTH CAROLINA 3 WORKERS' COMPENSATION FULL COMMISSION 4 WCC No. 1101678 5 Sean Daley,) 6 Claimant/Appellant,) 7 v.) 8 Chapman Mechanical,) 9 Employer/Respondent,) 10 and) 11 Stonewood Insurance,) 12 Carrier/Respondent.) 13 FULL COMMISSION HEARING 14 ***** 15 Monday, April 15, 2013 16 3:22 p.m. - 3:42 p.m. 17 The Full Commission Hearing before Commissioner 18 Aisha Taylor; Commissioner Andrea C. Roche; and 19 Commissioner Gene McCaskill, Chair, was taken at 20 1333 Main Street, Suite 500, Columbia, South 21 Carolina on the 15th day of April, 2013 before 22 Cassandra E. Vance, Court Reporter and Notary Public 23 in and for the State of South Carolina.	1 THE COURT REPORTER: Today is Monday, April 15, 2 2013. This is South Carolina Worker's 3 Compensation Case Number 1101678. This is a 4 case of Sean Daley, Claimant, versus Chapman 5 Mechanical, Employer, and Stonewood Insurance, 6 Carrier. 7 The Appellant is the Claimant represented by 8 Jeffrey Ezell. The Respondent is represented 9 by Steven Rudisill. 10 Each side is allowed ten minutes for oral 11 argument and the Appellant three minutes in 12 reply. You are requested to argue the grounds 13 of exception and stay within the record. 14 ARGUMENT BY MR. EZELL: 15 MR. EZELL: Thank you. May it please the 16 Commission. 17 I have the pleasure of representing Sean Daley. 18 He's here with us today. He began working for 19 Chapman Mechanical as a commercial plumber in 20 October of 2010 and that's a -- just by DOT 21 description, that's a heavy labor, particular 22 with regard to lifting toilets, other plumbing 23 and it's -- it's a heavy job. 24 He'd done that job with no restrictions and no 25 problems whatsoever until his accident on
Page 2	Page 4
1 APPEARANCES: 2 Jeffrey D. Ezell, Esquire 3 Ezell Law Firm, LLC 4 15 North Irvine Street 5 Greenville, South Carolina 29601 6 Attorney for the Claimant/Appellant 7 Steven M. Rudisill, Esquire 8 Rudisill, White & Kaplan, PLLC 9 212 South Tryon Street, Suite 1440 10 Charlotte, North Carolina 28281 11 Attorney for the Defendant/Respondents 12 Also Present: 13 Sean Daley 14 Aiden Daley 15 INDEX 16 PAGE 17 ARGUMENT BY: 18 Mr. Ezell 3 19 ARGUMENT BY: 20 Mr. Rudisill 14 21 REPLY BY: 22 Mr. Ezell 20 23 Certificate 24	1 February 9th of 2011, roughly five months 2 later. 3 What happened was, Sean was on about an 4 eight-foot ladder working within a ceiling 5 grid, much like this one here (indicating); 6 although, the tiles were not in place. 7 He fell from the ladder, landed on a piece of 8 PVC pipe which stuck out of the ground roughly 9 two, two and a half feet, four inches in 10 diameter; basically impaled himself on his side 11 and back before falling to the ground. 12 He sustained a pretty significant back injury 13 and that's obviously part and parcel of what's 14 admitted, but we also contend that he's 15 sustained injuries to his hips and legs, as 16 well as a very clear injury to his psyche. 17 The psych injury came about by virtue of the 18 significant pain he endures every day, the 19 substantial change in lifestyle. He can no 20 longer do the job he once did. His 21 restrictions, permanent, are now no lifting 22 more than 15 pounds. He's never held any job 23 for any significant period of time, which would 24 be within those restrictions. 25 He's had loss of the ability to work and

1 (Pages 1 to 4)

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1 provide for his family and, also -- this is one 2 of the issues we contend was erroneous with 3 regard to the Single Commissioner's ruling -- 4 there was no other -- we were not allowed to 5 present evidence of the maltreatment by the 6 Employer, which contributed to his psych 7 injury, which is clear both from Dr. Brabham 8 and Dr. Mullin's report, which I'll address in 9 a moment. 10 They basically brought Sean back to work 11 entirely too soon. They steadfastly refused to 12 provide him with proper return to work 13 situations. 14 If you look in their APA submissions, 15 particular with Dr. Leblond's statements, 16 you'll note that various points in time when he 17 was brought back with restrictions and a 18 severely injured back with pain in his legs and 19 hips, he was given a five-gallon bucket to sit 20 on. 21 When we complained about the five-gallon 22 bucket, they gave him a cheap, flimsy nine- 23 dollar Wal-Mart folding chair. Dr. Leblond 24 stated unequivocally that none of those were 25 within the realm of what was reasonable for a	1 skate boarding, he was participating in sports, 2 he was able to lift his children, he was able 3 to work. There's no evidence whatsoever that 4 he was ever restricted in any way from this 5 heavy job he was doing for Chapman Mechanical 6 until his accident happened. 7 Dr. Brabham noted the presence of emotional 8 disturbances which were contributing to his 9 inability to work. Dr. Mullin, a psychiatrist 10 in Greenville, also evaluated Sean, noted that 11 prior to the accident he had a very active 12 life; subsequent to the accident, he did not. 13 Dr. Mullin indicated that he has -- that his 14 mood has changed his mood -- or, I'm sorry, 15 that the pain had changed his mood completely. 16 I'd refer to APA 13, page 205. Dr. Mullin 17 opined that Sean was suffering from major 18 depression. 19 And one of the really important and salient 20 points with regard to Dr. Mullin's report, he 21 found Sean to be suffering from major 22 depression. Many of the issues which even 23 compound and make his psychological injury and 24 psychiatric injury worse had not yet even 25 occurred when Dr. Mullin evaluated Sean. And,
Page 6	Page 8
1 return to work accommodations. 2 Our first point of contention would be that the 3 Single Commissioner erred in failing to find 4 that Mr. Daley suffered a disabling 5 psychological injury. The only evidence in the 6 record that has a psychological injury, 7 Dr. Brabham indicated that he had both 8 depressive disorder and generalized anxiety 9 disorder -- 10 COMMISSIONER ROCHE: Dr. Brabham is a vocational 11 expert. 12 MR. EZELL: He's also a Ph.D. psychologist. 13 COMMISSIONER ROCHE: Okay. 14 MR. EZELL: Dr. Brabham indicated that Sean was 15 credible in his presentation and the testing, 16 that he had no evidence of symptom 17 magnification and, particularly -- and this 18 is -- it's just plain common sense -- 19 Dr. Brabham indicated that there would be no 20 reason for Sean to fabricate his situation. 21 He was basically doing well, making good money 22 as a commercial plumber, able to provide for 23 his family. As per Dr. Mullin's reports and 24 the Claimant's own testimony, prior to the 25 accident while he had some back issues, he was	1 again, I'm talking about the maltreatment by 2 Chapman. 3 They returned him to work too soon. They gave 4 him terrible work conditions. Ultimately they 5 fired him while he was still restricted. And 6 then he had to fight for five months to get 7 T.T.D. So there was obviously a pretty 8 compelling issue there with a man who had a 9 wife and children to support. 10 Now, I would also point out -- and this, I 11 think, is really, really important with regard 12 to psych injury -- over our objection, the 13 Hearing Commissioner allowed the hearing to be 14 continued so the Defendants could have 15 Mr. Daley seen by a psychiatrist of their 16 choosing. 17 It took two months to get an appointment with 18 a psychiatrist in Charlotte, North Carolina, 19 out of state. After we got this two-month- 20 later appointment, it took another five to 21 seven weeks for him to submit his report. 22 Then he submits his report and he finds out -- 23 and he notes that -- and this is -- Sean's 24 marriage was suffering. Sean was worried about 25 the future. Sean was suffering from and

2 (Pages 5 to 8)

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1 worried about chronic pain and that Sean was
 2 depressed.
 3 If you look at APA number 16, pages 237 and
 4 238, Dr. Gaultieri -- this is a North Carolina
 5 psychiatrist that the Defendant specifically
 6 chose, that we had to wait months and months to
 7 get him seen by -- he said, "Sean's depression
 8 is probably related to his disability and the
 9 fact that he cannot return to his work as a
 10 plumber. The patient's depression is therefore
 11 accident related and deserves some treatment."
 12 Dr. Gaultieri, this psychiatrist in North
 13 Carolina that the Defendants picked, prescribed
 14 Sean antidepressants. He went to get them
 15 filled, they were denied.
 16 The doctor that they chose said he's depressed,
 17 said it's related to his work, said he needs
 18 psychotropic medications, prescribes the
 19 psychotropic medications; they wouldn't let him
 20 fill them. So --
 21 COMMISSIONER MCCASKILL: Is he on any psychotropics
 22 now?
 23 MR. EZELL: He's not been able to, Your Honor.
 24 Again, there are additional points, but I will
 25 go ahead, just in the interest of time, the

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1 second point out of our appeal is that we feel
 2 the Single Commissioner erred in finding that
 3 Sean's prior back problems were anything nearly
 4 approaching what he suffers from now.
 5 He had an MRI performed before this accident
 6 when he did have some prior back problems.
 7 There was no neurological deficits shown on the
 8 MRI. He was never provided with an MRI
 9 subsequent to this accident. It was the brief
 10 of the independent orthopedist that evaluated
 11 him that he should have one, but that was never
 12 given.
 13 We would again point out both Dr. Mullin's
 14 findings and Sean's own testimony. Sean was
 15 very active prior to the fall. He skate
 16 boarded, participated in sports. He lifted his
 17 small children, one of whom is here today.
 18 He also was able to do the job at Chapman
 19 Mechanical. He was lifting toilets. He was
 20 working on a ladder inside a ceiling grid. He
 21 was doing everything he had. There was no
 22 evidence presented by Chapman whatsoever that
 23 he was ever restricted, that he was ever
 24 chastised for working too slow, that he was
 25 ever chastised for not doing what he was

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1 supposed to do. Up until this fall, he was an
 2 employee in good standing, earning a very good
 3 living, a living that he can't earn anymore.
 4 We would point to APA number 13, page 205,
 5 where Dr. Mullin stated, "One thing is sure,
 6 that his back pain is much, much worse than
 7 when he had his only MRI;" again, that was
 8 prior to the accident.
 9 "At that time" -- meaning the time of the
 10 MRI -- "he was working, playing sports, skate
 11 boarding, et cetera. The pain was chiefly in
 12 his low back and did not interfere with his
 13 day-to-day life, his sleep, nor his mood. Now,
 14 none of that is true. His pain does interfere
 15 with his life and has changed his mood
 16 completely."
 17 But we would also point out, we had him
 18 evaluated by Dr. Walter Grady in Spartanburg,
 19 an orthopaedic surgeon, as well. He noted that
 20 Sean was walking with an antalgic gait -- limp
 21 or gait and that that was not present prior to
 22 the on-the-job injury. That's APA 228.
 23 He, again, noted that the only MRI performed
 24 prior to the accident did not show any
 25 neurological deficit; that's APA page 230. He

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1 felt that Sean needed a repeat MRI and a
 2 consultation with an ortho, spine or
 3 neurosurgeon, a TENS unit and anti-inflammatory
 4 medications. Again, completely controverting
 5 the testimony or the evidence -- purported
 6 evidence that Sean was not having difficult --
 7 or Sean was having difficulty of this magnitude
 8 prior to the accident.
 9 And, lastly, it would be our position that the
 10 Single Commissioner erred in finding this to be
 11 a single member injury only.
 12 He has the injury to his back, which is
 13 admitted. He testified unequivocally, with no
 14 contradiction by any other physician, any other
 15 party, that he has pain in his hips and his
 16 legs.
 17 We brought to the Commissioner's attention the
 18 Hudson versus South Carolina State Port
 19 Authority case and we feel that it's square on.
 20 In that case, it was -- it was found by our
 21 Supreme Court that -- I'm sorry, our Court of
 22 Appeals that the Claimant presented a prime
 23 facie case of injury to his legs and that
 24 should have -- that testimony and that evidence
 25 should have been allowed and reviewed and

3. (Pages 9 to 12)

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1 understood. 2 Again, in this case, there's no evidence that 3 contradicts Sean's testimony regarding his leg 4 and hips -- or legs and hips. Dr. Mullin says 5 that he's had no issues prior to that. 6 Dr. Grady says he needs a repeat MRI. He also 7 has a psych injury, which their own doctor says 8 he needs medication and treatment for and that 9 it's job related. 10 The fact he hasn't been given the medication 11 that Dr. Gaultieri, their doctor prescribed, 12 completely precludes a finding of MMI. He 13 hasn't had that treatment yet, so how can he 14 possibly be at MMI if he hasn't had the 15 treatment that their own doctor said he needs? 16 So for that reason, it's our contention that 17 the Single Commissioner erred in finding this 18 to be a single member injury only case and 19 erred in failing to find that there was a psych 20 injury or -- and/or injury to his hips and 21 legs, erred in failing to allow us to present 22 testimony and evidence regarding the 23 maltreatment by Chapman as it contributed to 24 his psych injury, which I think both Dr. Mullin 25 and Dr. Brabham found and, quite frankly,	1 rating that Mr. Daley ever received and the 2 only treatment that he ever got was for an 3 injury to his back. 4 He never received any specific treatment for 5 injuries to his legs, hips or any other body 6 parts. So the Commissioner properly determined 7 that issue and limited Mr. Daley's recovery to 8 his benefits under 42-9-30(21). 9 With respect to the purported psychological 10 injury, one has to believe that Mr. Daley is, 11 in fact, disabled -- that is, incapable of 12 returning to some type of work -- in order to 13 get to the point that he is depressed because 14 he is unable to work. 15 And of all of the psychologists or 16 neuropsychiatrists who have seen him and 17 rendered opinions about him, Dr. Gaultieri's 18 comes the closest to that, admittedly. But 19 Dr. Gaultieri said he thought he was, quote, a 20 bit depressed, end quote, because he can't 21 return to work as a plumber. 22 Mr. Daley testified at the hearing that his 23 lawyer had told him not to seek out work; 24 transcript page 93. He also testified that he 25 disagreed with the results of a functional
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1 Dr. Gaultieri's -- his report falls right in 2 line with that. It's work related. He can't 3 go back to the type of work he did before. 4 He's been terminated. 5 All of those play into the fact that this is 6 not a single member injury case and it needs to 7 be reviewed, it needs to be returned to the 8 Single Commissioner for further findings. 9 Thank you. 10 COMMISSIONER MCCASKILL: Thank you, sir. 11 Mr. Rudisill. 12 ARGUMENT BY MR. RUDISILL: 13 MR. RUDISILL: May it please the Commission. I'm 14 Steve Rudisill of Mecklenburg County, North 15 Carolina bar. My clients firmly believe that 16 Commissioner Wilkerson properly decided this 17 case when he determined that Mr. Daley had 18 suffered only an injury to his back, which is 19 what the overwhelming evidence indicates and 20 which the law indicates under Singleton and 21 Therrill that he is entitled to compensation 22 for. 23 He talks a lot about referred pain into his 24 hips and legs in his testimony. It's mentioned 25 in some of the medical records, but the only	1 capacity evaluation, which had been ordered by 2 Dr. Leblond, the authorized treating 3 physiatrist. 4 That physical -- functional capacity evaluation 5 clearly indicates that he has the capacity to 6 engage in numerous physical activities on a 7 constant or occasional basis. 8 Mr. Daley's testimony also reveals that he has 9 not been a plumber for his entire life. He has 10 other vocational skills. He has worked in a 11 restaurant, in several different occupations: 12 cashier, waiter, cook. He has also worked in 13 lube shops. He has worked at a gas station as 14 recently as a few years prior to his work at 15 Chapman Mechanical, so he has skills. 16 He has an educational background, which was 17 noted by Dr. Brabham to indicate a 12.2 reading 18 level, grade level, and an eighth grade level 19 in math, a 9.6 grade level in spelling. 20 Mr. Daley testified that he made A's and B's 21 and C's in high school, that he was an average 22 student. 23 He is not a licensed plumber, so he is, in 24 essence, a plumber's helper. 25 So combining all of that, he has opportunities

4 (Pages 13 to 16)

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1 to go out and search for work, but he chooses
 2 not to either because his attorney has told him
 3 not to or apparently of his own decision.
 4 So when you have experts in the psychological
 5 field rendering opinions that he's depressed or
 6 anxious because he doesn't have a job, it
 7 doesn't stand to reason that that's a basis for
 8 any depression or anxiety that he may be
 9 experiencing.
 10 I would also point out to the Commission --
 11 COMMISSIONER MCCASKILL: Back up. Say that for me
 12 again.
 13 MR. RUDISILL: You have to believe that he is, in
 14 fact, incapable of returning to work to believe
 15 that he is depressed because he cannot work.
 16 And the competent evidence of record does not
 17 establish that he is incapable of returning to
 18 work.
 19 He may not be capable of returning to work as
 20 a plumber or a plumber's helper, but he clearly
 21 has physical capabilities and it would appear
 22 the mental capabilities to return to some other
 23 type of vocation, given the totality of the
 24 evidence in the record, Your Honor.
 25 COMMISSIONER MCCASKILL: But your psych expert

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1 prescribed psychotropic medication for him.
 2 True?
 3 MR. RUDISILL: He did, because he made -- he
 4 rendered the statement that he was a bit
 5 disabled because he can't return to work as a
 6 plumber.
 7 Well, when you have a Claimant testifying that
 8 he hasn't even attempted to return to work, he
 9 hasn't even sought out work in the face of a
 10 functional capacity evaluation that shows he
 11 has physical capabilities to engage in certain
 12 physical activities, then how do you know?
 13 And I think this is what Commissioner Wilkerson
 14 seized on when he listened to the totality of
 15 the evidence that was before him.
 16 You've got a Claimant who came to the hearing
 17 with a cane, which no doctor has prescribed for
 18 him. You -- he disagrees with the functional
 19 capacity evaluation results.
 20 He was discharged by the authorized treating
 21 physician for noncompliance with the medication
 22 regimen, because he failed drug screening times
 23 two. And this was post -- this was immediately
 24 prior to the hearing.
 25 We didn't even have the medical records from

1 Dr. Leblond about this in evidence at the time
 2 of the hearing and Mr. Daley testified about
 3 this on cross-examination. And the
 4 Commissioner allowed us to obtain those records
 5 from Dr. Leblond to support the testimony.
 6 He contended that he had gained 50, 60 pounds
 7 of weight since this accident occurred.
 8 Evidence doesn't bear that out.
 9 He weighed 212.4 pounds on October the 25th,
 10 2010, about the time he started working for the
 11 Employer. He weighed 210 pounds on the date of
 12 the accident. And the evidence indicates going
 13 forward that he weighs now still only 212
 14 pounds, give or take. So he hasn't gained the
 15 weight that he testified that he did.
 16 The Commissioner made no credibility findings
 17 in this case, but one can see that when he
 18 looked at the entire body of evidence, he just
 19 didn't believe a lot of what he was hearing.
 20 So when he made the statement in his Finding of
 21 Fact that the evidence of any psychological
 22 overlay is too overwhelming, he was correct.
 23 So we believe that the Commissioner made the
 24 proper findings with respect to both of these
 25 issues and that the Full Commission should

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1 affirm in all respects. Thank you.
 2 COMMISSIONER MCCASKILL: Questions?
 3 Thank you, sir.
 4 REPLY BY MR. EZELL:
 5 MR. EZELL: Gosh, story of my life. Sorry about
 6 that.
 7 COMMISSIONER MCCASKILL: All right.
 8 MR. EZELL: May it please the Commission. Just one
 9 or two quick points.
 10 With all due respect to Mr. Rudisill, who's
 11 been very good to work with in this entire
 12 matter, Dr. Gaultieri didn't make the findings
 13 that have just been described. Dr. Gaultieri
 14 made -- their doctor made the specific finding
 15 that he's depressed because he cannot return to
 16 work as a plumber.
 17 He didn't say depressed because he cannot
 18 return to work as anything. He said
 19 specifically in that report he is depressed
 20 because he cannot return to work as a plumber.
 21 Sean testified at the trial and in his
 22 deposition that, yes, over the course of his
 23 life he's had a couple of jobs here and there
 24 as a cook or as a waiter. He didn't make
 25 anything approaching what he made as a

5 (Pages 17 to 20)

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1 commercial plumber. It was a good job and he
2 was doing a good job at it. No evidence of
3 anything to contradict that.
4 The other thing and irrespective of anything
5 you want to say about Sean's agreement or
6 disagreement with the functional capacity
7 evaluation, the treating physician's final
8 restrictions were permanent restrictions of no
9 lifting greater than 15 pounds.
10 A standard toilet weighs well over 48 pounds.
11 He can't install a toilet anymore. As a
12 plumber that pretty much takes you out of the
13 loop.
14 The last thing I would point out is that this
15 Dr. Gaultieri that they had to have Sean see --
16 we had to wait two months for it to happen; we
17 had to wait more -- five or six weeks to get
18 his report because he's so busy -- in their
19 own -- in their own brief they ask you not to
20 believe him. And I'd beg reference to page 14
21 of the Defendant's brief. They said that the
22 Commissioner properly found Dr. Gaultieri's
23 report wasn't completely credible.
24 The only evidence in the record regarding
25 psych, Brabham, Mullin, their Dr. Gaultieri all

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1 say he's depressed, all say it's work related,
2 all say it's related to his inability to return
3 to work as a plumber, the fact that he can't
4 earn the kind of money he once earned as a
5 plumber. It's just that simple.
6 I don't know how much more evidence of psych
7 there could be. There's not any evidence that
8 it's not there.
9 Their own doctor that they had to see
10 prescribed him Wellbutrin, medications that
11 they wouldn't even let him fill the day that he
12 left the doctor's office.
13 So it's our position the Single Commissioner
14 erred in this case. He just got it wrong.
15 It's just one of those kind of things. It
16 doesn't happen often; I realize that. And I
17 don't come down here lightly. But in this
18 case, I'm pretty stern about this. I honestly
19 believe that Sean should have been found to
20 have more than a single member injury, that
21 there's absolutely nothing but credible
22 evidence of a psych injury related to his
23 employment and for that reason that the Single
24 Commissioner's order needs to be overturned.
25 Thank you so much.

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1 COMMISSIONER MCCASKILL: Thank you.
2 (There being no further questions, the deposition
3 concluded at 3:42 p.m.)

6 (Pages 21 to 23)

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