

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. File No. 1213162

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William E. Miller, Jr., Employee, Claimant .....Appellant,  
v.

Owen Steel Company, Inc., Employer, and  
Great American Insurance Group  
c/o Strategic Comp Services, Carrier,..... Respondents

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**RECEIVED**

FEB 06 2014

**RESPONDENTS' REPLY TO  
APPELLANT'S RETURN TO  
RESPONDENTS' MOTION TO STRIKE**

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**SC Court of Appeals**

Pursuant to Rules 240, 209 and 210, SCACR, Respondents Owen Steel Company, Inc. and Great American Insurance Group c/o Strategic Comp Services hereby Reply to Appellant William E. Miller, Jr.'s Return to Respondents' Motion to Strike ("Return"). Respondents maintain their objection to Appellant's Initial Reply Brief and Appellant's Designation of Matter to be included in the Record on Appeal ("Designation") to the extent that they cite to, rely on and designate materials that were not admitted into the record before the South Carolina Workers' Compensation Commission.<sup>1</sup> Materials that were not admitted into the record before the Commission were not considered by the Commission in its decision-making process and, therefore, it is improper to rely on the substance of those materials and/or include them in the

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<sup>1</sup> The offending portions of Appellant's Initial Reply Brief are set forth in Respondents' Motion to Strike Portions of Appellant's Initial Reply Brief and Certain Items from Appellant's Designation of Matter ("Motion to Strike").

Record on Appeal before this Court. Appellant has provided no valid justification for his attempts to include and substantively rely on non-record materials.

Appellant's primary rationale for including the documents is that they were submitted with his Motion to Supplement the Record ("Motion to Supplement") before the Commission, were thereby made "part of the administrative file," purportedly reviewed by the Commissioner and "may well have assisted the Commissioner in his determination not to consider this specific issue despite his Commissioner's decision not to allow the supplement." Tellingly, Appellant cites no case law for such a proposition because it runs counter to every rule and case considering what materials are properly included in an appellate record.

Agency decisions must be based on information and evidence admitted as part of the record. Weaver v. South Carolina Coastal Council, 309 S.C. 368, 375, 423 S.E.2d 340, 343-44 (1992); *see also* Cooksey v. Cooksey, 280 S.C. 347, 353, 312 S.E.2d 581, 585 (Ct. App. 1984) (findings of judicial body must be confined to record evidence), *overruled on other gds.*, Dawkins v. Dawkins, 386 S.C. 169, 687 S.E.2d 52 (2010). Furthermore, the Commission's regulations mandate that, "[a]ll available evidence and testimony shall be presented at the scheduled hearing ..." S.C. Code Reg. § 67-612(J). Given that it was Appellant's burden to prove his entitlement to workers' compensation benefits, Clade v. Champion Labs, 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998), he should have presented this evidence to the Single Commissioner prior to or at the hearing. He did not and the Single Commissioner appropriately denied his Motion to Supplement.

As Respondents noted in their Motion, appellate review of a Commission decision is confined to the record before the Commission. S.C. Code Ann. § 1-23-380(4); *see also* Terry v. South Carolina Dept. of Health & Env'l Control, 377 S.C. 569, 574, 660 S.E.2d 291, 294 (Ct.

App. 2008) (appellate review of agency decisions “is confined to the record ...”). “This Court’s review is restricted to the evidence considered by the appellate panel in reaching its decision,” and may not rely on evidence not considered by the Commission. Martin v. Rapid Plumbing, 369 S.C. 278, 288, 631 S.E.2d 547, 553 (Ct. App. 2006).

Appellant admits he did not appeal the Single Commissioner’s denial of his Motion to Supplement to the Full Commission. He then erroneously asserts that he did not need to appeal the denial because the Single Commissioner’s Decision “did not in any way rely on or mention the disputed testimony related to the ‘jackhammer.’” The Single Commissioner clearly noted that, “[f]ollowing the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from ‘**using a jackhammer** ... [while] at work’ (Hr’g Tr. 47: 16-25).” (Single Commissioner Decision, p. 12, Exh D) (emphasis added). Furthermore, the Single Commissioner’s credibility findings were based, in part, on the medical evidence in the record. For example, Finding of Fact No. 7 states, “Based on the substantial evidence, **including the medical records of the Claimant**, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant’s version of events in this case.” (Single Commissioner Decision, pp. 13-14 (emphasis added), Exh D) (Hr’g Tr. 47 is attached hereto as Exh E) (APA p. 127, Dr. Levinson’s medical note referencing the jackhammer is attached hereto as Exh F).

Because Appellant did not appeal the denial of his Motion to Supplement to the Full Commission, he is barred from raising that issue here. Only issues raised to the Full Commission are preserved for appeal. Brunson v. American Koyo Bearings, 367 S.C. 161, 166, 623 S.E.2d 870, 872 (Ct. App. 2005) (rulings of the single commissioner become the law of the case unless raised to the Full Commission); Harbin v. Owens-Corning Fiberglas, 316 S.C. 423,

431, 450 S.E.2d 112, 116 (Ct. App. 1994) (a ruling not challenged on appeal to the Full Commission becomes “the law of the case”).

Appellant also argues that these non-record materials can be reviewed on appeal because the Full Commission did not make a specific finding of fact regarding his use of a jackhammer. However, like the Single Commissioner, the Full Commission noted the medical report concerning the jackhammer. (Full Commission Decision, p. 14, Exh G). Furthermore, the Full Commission appropriately confined its review to the properly admitted record of the case. (Full Commission Decision, pp. 6, 21 (noting on review that the Single Commissioner’s findings are “based on the evidence presented at the hearing ...”), 24 (same), 29 (same), Exh G).

Finally, Appellant argues that Respondents did not raise the issue of the non-record materials or the jackhammer to the Full Commission. This was not Respondents burden. Instead, Appellant was required to raise every issue he wanted preserved to the Full Commission. Brunson, 367 S.C. at 166, 623 S.E.2d at 872 (only issues raised to the Full Commission are preserved for review); Harbin, 316 S.C. at 428, 450 S.E.2d at 115 (party appealing single commissioner decision must raise arguments to the Full Commission in order to preserve them). Here, Appellant neither appealed the denial of his Motion to Supplement nor raised this issue on appeal to the Full Commission. He is barred from raising it to this Court.

This is no more than a back-door attempt to slip into the record materials that Appellant sought to have admitted late at the Commission, which the Commission properly denied. To allow a claimant to include and refer to materials that the Commission refused to admit into the record, on the flimsy basis that they were “reviewed” and at some point “in front of” the Commissioner who decided his Motion to Supplement, would render evidentiary rulings made by the Commission entirely futile and meaningless. Because the Single Commissioner denied

Appellant's Motion to Supplement, which ruling Appellant did not appeal, the materials Respondents seek to have stricken from the Appellant's Initial Reply Brief and Designation were never reviewed or considered by the Full Commission. They may not be included in the Record on Appeal or relied on substantively in Appellant's Initial Reply Brief.

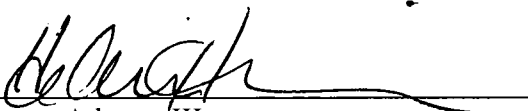
With respect to the second issue concerning Appellant's Designation, Respondents agree to Appellant's proposal to revise his Designation so as to delete the reference to "proposed APA exhibits," and replace that designation with "APA Submissions." With the understanding that Appellant will revise his Designation to read "APA Submissions," Respondents withdraw their objection to Appellant's Designation in this respect.

**CONCLUSION**

For all the reasons set forth herein and in Respondents' Motion to Strike, Respondents move this Court to strike the portions of Appellant's Initial Reply Brief identified in Respondents' Motion to Strike. Respondents also request that this Court order that Designation No. 12, "Motion to Supp. / Order" be revised to delete the Motion to Supplement and accompanying attachments from Appellant's Designation.

McANGUS GOUDELOCK & COURIE, L.L.C.

February 3, 2014

  
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# **Exh. D**

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1213162

WILLIAM E. MILLER, JR.,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

GREAT AMERICAN INSURANCE  
GROUP c/o STRATEGIC COMP  
SERVICES,

Carrier,

Defendants.

**AMENDED  
DECISION AND ORDER**

**DATE OF HEARING:**

Hearing held in Columbia, South Carolina on December 10, 2011.

**APPEARANCES:**

Claimant appeared and represented by J. Charles Ormond, Jr., Esquire of Holler, Dennis, Corbett, Ormond, Plante & Garner of Columbia, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

**PURPOSE OF THE HEARING:**

To determine all issues as set forth in Forms 50 and 51.

**COMMISSIONER:**

Commissioner Derrick L. Williams

**FILED:**

January 27, 2013

**STIPULATIONS**

1. Jurisdiction is proper with the South Carolina Workers' Compensation Commission.
2. Venue is proper in Columbia, South Carolina.
3. Claimant's average weekly wage is \$862.98 with a corresponding compensation rate of \$575.35.

**APA SUBMISSIONS**

**Claimant's APA submissions:**

1. Records of Scott Boyd, M.D. dated September 19, 2012 through October 22, 2012, pages 1-13.
2. Records of Palmetto Health Baptist dated September 26, 2012, pages 14-26.
3. Records of Benjamin Levinson, M.D./South Carolina Internal Medicine dated February 8, 2012 through October 29, 2012, pages 27-66.
4. Records of Scott Boyd, M.D. (Treating Physician Questionnaire) dated November 19, 2012, pages 67-69.
5. Records of Benjamin Levinson, M.D. (Release Letter) dated August 27, 2012, pages 70-71.
6. Records of Scott Boyd, M.D. (Release Letter) dated November 26, 2012, pages 72-73.

**Defendants' APA submission:**

7. Memorandum of Law in Support of Defendants' Position dated November 26, 2012, pages 74-81.
8. Written Statement of William E. Miller, Jr., page 82.
9. Written Statement of Steve O. Raulerson, page 83
10. Written Statement of Brian Ingle, Page 84.
11. Written Statement of Jackie Osborne, page 85.
12. Written Statement of Jason Frye, page 86.

13. Written Statement of Ray Hollins, page 87.
14. Owen Personnel Action Directive dated November 8, 2009, page 88.
15. Owen Personnel Action Directive dated November 24, 2010, page 89.
16. Owen Personnel Action Directive dated August 28, 2012, page 90.
17. Owen Personnel Action Directive dated August 27, 2012, page 91.
18. Owen Personnel Action Directive dated August 28, 2012, page 92.
19. South Carolina Department of Employment & Workforce -- Request for Information dated December 8, 2010, page 93.
20. Owen Steel Company, Inc. -- Application for Employment dated January 5, 2005, pages 94-95.
21. Owen Steel Company, Inc. -- Session Recap dated August 27, 2012, pages 96-97.
22. Records of South Carolina Internal Medicine Associates & Rehabilitation dated September 11, 2009 through October 8, 2012, pages 98-130.
23. Records of Columbia Neurosurgical Associates, P.A. dated September 17, 2012 through October 22, 2012, pages 131-134.
24. Records of Palmetto Imaging dated September 4, 2012, page 135.
25. Records of Paul Aitchison, M.D. dated February 8, 2012, pages 136-137.
26. Records of Tony Owens, M.D. dated February 20, 2012 through April 10, 2012, pages 138-139.
27. Records of W. Daniel Westerkam, M.D. dated October 4, 2011, pages 140-141.

#### STATEMENT OF THE CASE

Claimant has filed a Form 50 alleging injury by accident August 15, 2012. Claimant alleges that he suffered injuries to his head, back, and neck with radicular symptoms to his arms and legs as a result of a physical altercation, which occurred between himself and a co-employee, while in the course and scope of his employment with the Defendants. Claimant is seeking

payment of outstanding causally-related medical treatment, and provision of causally-related medical treatment on the basis that the Claimant has not reached maximum medical improvement (MMI). Claimant is also requesting payment of temporary total disability (TTD) benefits from the date of accident to the present and continuing.

Defendants maintain that the Claimant's injuries are not the result of a work-related accident that occurred within the course and scope of the Claimant's employment. Defendants also contend that Claimant is barred from recovery of any benefits, pursuant to S.C. Code Ann. § 42-9-60, on the grounds that, if Claimant were injured during the physical altercation, which occurred between himself and a co-employee, he willfully intended to injure the co-employee. Therefore, any claim for benefits would be barred pursuant to S.C. Code Ann. § 42-9-60. Further, Defendants contend that Claimant cannot satisfy his burden of proving a compensable injury by accident or a compensable aggravation of a pre-existing injury pursuant to S.C. Code Ann. § 42-1-160 and § 42-9-35.

#### **EVIDENCE OF THE CASE**

Claimant is a forty-six (46) year old male with a high school diploma and approximately one and a half years of college education. (Hr'g Tr. 8:14-20). He has been employed with Owen Steel since 2004. (Hr'g Tr. 8:25 – 9:1). Claimant stated that his entire work history is comprised of working for various companies as a welder. (Hr'g Tr. 8:21-23). Claimant was hired as a welder with Owen Steel before he was promoted to a fabricator and then to the maintenance department. (Hr'g Tr. 9:4-11).

Claimant testified that he was involved in a physical altercation with Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time in question, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25).

Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant "[w]hat seems to be the problem?" (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying "[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 - 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he

saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the altercation was broken up by the Claimant's co-employees. (Hr'g Tr. 16:14-17). Claimant testified that the altercation between her and Mr. Raulerson lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that the reason he threw the welding leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20). Claimant testified that he was briefly terminated following the altercation for throwing welding leads at Mr. Zimms. (Hr'g Tr. 50:23 - 51:7). Stacey Oxendine testified that Claimant was terminated from Owen Steel due to "multiple cases of aggression and insubordination." (Hr'g Tr. 148:9-14, APA p. 92).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation between the Claimant and Mr. Raulerson. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that, prior to the August 15 altercation, he observed Claimant and Mr. Raulerson involved in other arguments. (Hr'g Tr. 103:6-13).

Specifically, Mr. Ingle recalled an argument between the Claimant and Mr. Raulerson, one week prior to the date of accident, where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 – 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that he noticed Claimant "had his fists balled up" and he told Claimant, during this encounter, "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that, after being struck by the Claimant, he shoved Claimant against the wall. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement that occurred between the Claimant and Mr. Raulerson one week prior to the date of accident. He stated that Claimant had accused him of stealing from the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset with Mr. Raulerson. (Hr'g Tr. 122:16-21).

Ronald Frye testified on behalf of the Defendants. Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?"

Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a heated confrontation ensued between the Claimant and Mr. Frye. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 - 138:9).

Jackie Osborne testified on behalf of the Defendants. Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Mr. Osborne stated that the Claimant was saying to Mr. Raulerson to stop pushing the Claimant because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85).

John Gardner also testified on behalf of Defendants. Mr. Gardner indicated that he is a supervisor with Owen Steel and has been there for twenty-two years. (Hr'g Tr. 156:16-21). Mr. Gardner testified that he observed Claimant pulling a part off a machine and when he asked Claimant not to do that, Claimant "...hollered out 'Fuck You'." (Hr'g Tr. 157:10-14).

Finally, Cliff Zimms testified on behalf of Defendants. Mr. Zimms has been an electrician with Owen Steel for six years. (Hr'g Tr. 159:7-15). Mr. Zimms testified about working with Claimant at Owen Steel and about an altercation that occurred between himself and Claimant. Mr. Zimms stated that Claimant got mad and threw a welding lead at him. (Hr'g Tr. 160:6-22). Mr. Zimms also testified that he had personally observed Claimant get into verbal altercations with other employees. (Hr'g Tr. 161:15-20).

#### MEDICAL EVIDENCE

Claimant stated that, after the altercation with Mr. Raulerson, his neck began to get progressively worse. (Hr'g Tr. 22:10-12). He stated that he was having trouble sleeping, experienced numbness in his hands and leg, and had pain shooting down from his shoulders. (Hr'g Tr. 22:14-15). On the morning of August 27, Claimant informed his supervisor, Mr. Sloan that he needed to go see a doctor and left work early for an appointment. (Hr'g Tr. 25:2-10). Claimant states that he also told Mr. Oxendine that he was upset because they were not making an effort to get him to a doctor. (Hr'g Tr. 25:17-18). He went to see Dr. Levinson and reported complaints of neck pain as a result of being pushed against a wall at work. (Hr'g Tr. 26:17-20).

Claimant testified that he has had prior neck and back issues. (Hr'g Tr. 26:24 – 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant had received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same problems with his neck, before his alleged work-related accident that he was having after his alleged work-related accident. (Hr'g Tr. 28:2-5). However, Claimant testified that the severity of his neck symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident,

Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 – 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back problems. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson, prior to the date of his alleged work-related accident, and was still undergoing treatment for his back and neck issues prior to August 15, 2012. (Hr'g Tr. 39:6-15).

Based on the medical records, Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 – 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23, APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant again presented to Dr. Levinson and complained of the same neck pain and problems, similar to those problems documented in the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI on February 9, 2012. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). The MRI results show that Claimant had (1) normal cervical cord signal intensity; (2) an asymmetric disc bulge to the right at C2-C3 without stenosis; (3) a congenital shortening of the pedicles throughout the cervical spine; (4) right-sided uncovertebral joint degenerative changes without stenosis at C3-C4; (5) no significant disc bulge or protrusion

at C4-C5; (6) disc height loss with osteophytic bulge to the left and mild to moderate left neural foraminal stenosis and mild right foraminal stenosis at C5-C6; (7) left central disc extrusion and left neural foraminal stenosis at C6-C7; and (8) no disc bulge or protrusion at C7-T1. (APA p. 115, 136-137). Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit on February 29, 2012, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6, APA p. 115). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118). Claimant saw Dr. Levinson in July 2012 approximately one month prior to the date of his alleged work-related accident. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p. 122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of the alleged work-related accident, Claimant underwent another MRI on September 4, 2012. (APA p. 135). The MRI revealed that (1) the C2-C3 disc is normal; (2) there is no significant disc bulge or protrusion at C3-C4; (3) there is no acquired central canal or foraminal stenosis at C4-C5; (4) there is diffuse disc bulge with uncovertebral joint hypertrophic changes at C5-C6; (5) there is central disc extrusion migrating slightly cephalad which narrows the central canal and deforms the ventral cord at C6-C7; and (6) the disc is normal at C7-T1. (APA p. 135). Claimant then underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr.

66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant vehemently denied this statement, contained in the medical records of Dr. Levinson, and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23). Mr. Ingle testified that Claimant had previously complained of a bad back and neck and that he was seeing a doctor about them. (Hr'g Tr. 101:15-20). Mr. Frye also testified that Claimant had discussed prior back and neck problems. Specifically, Mr. Frye stated that Claimant told him about medications that his doctor had prescribed for neck and back pain. (Hr'g Tr. 139:2-10).

#### **FINDINGS OF FACT**

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim. Venue is proper in Columbia, South Carolina.
2. Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 Dollars (\$862.98) with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 Dollars (\$575.35).
3. Notice of the hearing was timely and properly served on all parties of interests.
4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation. (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 – Dr. Boyd's records).
6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to this alleged accident. (APA p. 102, 106, 111, 118, 122)
7. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case. Claimant has demonstrated that he has temper and anger issues. The record reflects that he was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace. (Hr'g Tr. 50:14-18; 50:19 – 51:1; 50:23 - 51:7; 51:17-24; 52:19 – 53:1; 74:17-20; 134:21 – 135:1; 135:15-18; 137:19 – 138:9).
8. S.C. Code Ann. § 42-9-60 does not apply in this case because I do not find enough evidence to show that Claimant willfully intended to injure himself or another employee. However, as noted above, I do not place his current medical condition as being caused by this alleged accident.
9. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants,

Claimant alleges that he injured his neck before he threw a punch and kicked Mr. Raulerson. This is not believable testimony. (Hr'g Tr. 15:9-12).

10. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the employer witness testimonies as a whole are more believable than Claimant's testimony.
11. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not find enough evidence that Claimant willfully intended to injure himself or Mr. Raulerson.
12. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not place his current medical condition as being caused by this alleged accident.
13. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the Claimant did not satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.
14. All benefits under the South Carolina Workers' Compensation Act are hereby denied.

#### **CONCLUSIONS OF LAW**

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.

2. Pursuant to South Carolina Code Ann. §41-1-40, the Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 (\$862.98) Dollars with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 (\$575.35) Dollars.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. Pursuant to South Carolina Code Ann. §42-1-160, Claimant has not sustained a compensable injury by accident arising out of and in the course of employment.
5. Pursuant to South Carolina Code Ann. §42-9-10, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total.
6. Pursuant to South Carolina Code Ann. §42-9-10, Claimant has not met his burden of proof that he is permanently and totally disabled.
7. Pursuant to South Carolina Code Ann. §42-9-20, Claimant is not entitled to any temporary partial disability benefits for the period of time during which the Claimant's incapacity for work was partial.
8. Pursuant to South Carolina Code Ann. §42-9-20, Claimant has not met his burden of proof that he is permanently and partially disabled.
9. Pursuant to South Carolina Code Ann. §42-9-35, Claimant has not established that a subsequent injury aggravated a pre-existing condition or permanent physical impairment or that a pre-existing condition or permanent physical impairment aggravated the subsequent injury.

10. Pursuant to South Carolina Code Ann. §42-9-10, §42-9-20, and §42-9-30, Claimant is not entitled to any award under the South Carolina Workers' Compensation Act.

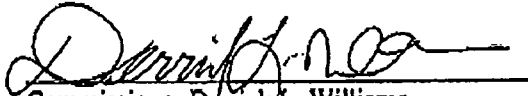
**ORDER**

**IT IS HEREBY ORDERED** that the greater weight of the evidence supports a finding that this claim is denied because Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident arising out of and in the course of her employment with the Defendants.

**IT IS FURTHER ORDERED** that the greater weight of the evidence supports a finding that this claim is denied because Claimant failed to satisfy his burden of proof that he suffered a worsening of a pre-existing condition or permanent physical impairment.

**IT IS FURTHER ORDERED** that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

**AND IT IS SO ORDERED.**

  
Commissioner Derrick L. Williams

**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.  
January 28, 2013

By: Renee Smith, Administrative Assistant to Commissioner Williams

# **Exh. E**

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
COLUMBIA, SOUTH CAROLINA  
WCC FILE NO. 1213162

 COPY

EMPLOYEE/CLAIMANT: WILLIAM MILLER  
EMPLOYER: OWEN STEEL COMPANY, INC.  
INSURER: GREAT AMERICAN ALLIANCE INSURANCE COMPANY

---

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

---

PURSUANT TO NOTICE OF WORKERS' COMPENSATION  
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 10TH DAY OF  
DECEMBER, 2012, COMMENCING AT THE HOUR OF 2:01 P.M., IN  
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE DERRICK L. WILLIAMS,  
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON  
VERBATIM REPORTER

---

JAN L. WHITWORTH  
COURT REPORTING SERVICES  
POST OFFICE BOX 551  
ROEBUCK, S.C. 29376

APPEARANCES

J. CHARLES ORMOND, JR., ESQUIRE, OF THE FIRM  
HOLLER DENNIS CORBETT ORMOND PLATE & GARNER LAW FIRM  
1777 BULL STREET  
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

JASON W. LOCKHART, ESQUIRE, OF THE FIRM  
MCANGUS GOUDELOCK & COURIE, L.L.C.  
1320 MAIN STREET  
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING:

MR. ERIC ADAMS  
MR. DAVID ZALESNE  
MR. MYRON SAMUELS  
MR. BRETT BAYNE

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1 Q. NOW, YOU'VE SEEN DR. LEVINSON SINCE YOU UNDERWENT  
2 THAT SURGERY; IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 BY MR. LOCKHART:

5 YOUR HONOR, I'M LOOKING AT PAGE 127 OF THE  
6 DEFENDANTS' APAs.

7 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

8 Q. MR. MILLER, I HAVE A NOTE FROM DR. LEVINSON THAT'S  
9 DATED OCTOBER THE 8TH OF 2012. DO YOU RECALL SEEING  
10 DR. LEVINSON ON OR ABOUT OCTOBER THE 8TH?

11 A. POSSIBILITY. YES, SIR.

12 Q. OKAY. IF WE HAVE A RECORD FROM HIS OFFICE THAT  
13 INDICATES YOU WERE SEEN ON THAT DAY, DO YOU HAVE ANY  
14 REASON TO DISPUTE THE ACCURACY OF THAT RECORD?

15 A. NO, SIR.

16 Q. DR. LEVINSON NOTES AND -- AND, MR. MILLER, I'M  
17 READING FROM HIS REPORT. HE NOTES THAT DURING HIS  
18 VISIT ON OCTOBER THE 8TH THAT YOU PRESENTED WITH A  
19 HISTORY OF LOW BACK PAIN. IT'S MOST PROMINENT IN  
20 THE LOWER LUMBAR SPINE; IT DOES NOT RADIATE. AND HE  
21 NOTES THE FOLLOWING, "THIS IS AN ACUTE EPISODE WITH  
22 NO PRIOR HISTORY OF BACK PAIN. HE STATES THAT THE  
23 CURRENT EPISODE OF PAIN STARTED THREE DAYS AGO. THE  
24 EVENT WHICH PRECIPITATED THIS PAIN WAS USING A  
25 JACKHAMMER, AND THIS OCCURRED AT WORK." WHERE WERE

# **Exh. F**

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM  
Printed on 10/10/2012 at 3:52 pm.

## SUBJECTIVE:

### CC:

Bill is a 46 year old White male. This is a follow-up visit.

### HPI:

Follow up of cervical disc extrusion. Patient had surgery on 9/26/12 with Dr. Boyd. See docman for full report.

In regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily. TSH was last checked one year ago. Free T4 was last checked 8 months ago.

Dx with other hyperlipidemia; current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Additionally, he presents with history of low back pain. The discomfort is most prominent in the lower lumbar spine. It does not radiate. He characterizes it as intermittent, moderate in intensity, sharp, and aching. This is an acute episode with no prior history of back pain. He states that the current episode of pain started 3 days ago. The event which precipitated this pain was using jackhammer. This occurred at work. The pain worsens with back flexion and back extension.

Concerning constipation, this has been a problem for 2 weeks. The stool is hard in consistency.

### ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Positive for constipation.

MUSCULOSKELETAL: This system is negative except as noted in HPI.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

### Past Medical History / Family History / Social History:

... Last Reviewed on 10/8/2012 4:32:46 PM by Levinson, Benjamin J

### Past Medical History:

Hyperlipidemia  
Sleep Apnea  
Hypothyroidism

Surgical History: Partial Thyroid lobectomy

# **Exh. G**

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1213162

WILLIAM E. MILLER, JR.,

EMPLOYEE,  
CLAIMANT/APPELLANT,

V.

OWEN STEEL COMPANY, INC.,

EMPLOYER,

AND

GREAT AMERICAN INSURANCE GROUP C/O  
STRATEGIC COMP SERVICES,

CARRIER,  
DEFENDANTS/RESPONDENTS.

---

Appellate Panel Review held in  
Columbia, South Carolina on April 16, 2013.

Appellate Panel Decision and Order  
filed 7-2, 2013.

---

**APPEARANCES:**

Claimant/Appellant represented by  
J. Charles Ormond, Jr., Esquire, of Dennis, Corbett, Ormond, Plante & Garner  
of Columbia, South Carolina

Defendants/Respondent represented by  
Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C.  
of Columbia, South Carolina.

### STATEMENT OF THE CASE

Claimant filed a Form 50 alleging injury by accident on August 15, 2012. Claimant alleged that he suffered injuries to his head, back, and neck with radicular symptoms to his arms and legs as a result of a physical altercation, which occurred between himself and a co-employee, while in the course and scope of his employment with the Defendants. Claimant sought payment of outstanding causally-related medical treatment and provision of causally-related medical treatment on the basis that the Claimant had not reached maximum medical improvement (MMI). Claimant also requested payment of temporary total disability (TTD) benefits from the date of accident to the present and continuing.

Defendants maintained that Claimant's injuries are not the result of a work-related accident that occurred within the course and scope of the Claimant's employment. Defendants also contended that Claimant is barred from recovery of any benefits, pursuant to S.C. Code Ann. § 42-9-60, on the grounds that, if Claimant were injured during the physical altercation, which occurred between himself and a co-employee, he willfully intended to injure the co-employee. Therefore, any claim for benefits would be barred pursuant to S.C. Code Ann. § 42-9-60. Further, Defendants contended that Claimant could not satisfy his burden of proving a compensable injury by accident or a compensable aggravation of a pre-existing injury pursuant to S.C. Code Ann. § 42-1-160 and § 42-9-35.

A hearing in this matter was held before Commissioner Williams on December 10, 2011. At the conclusion of the hearing, Commissioner Williams issued a Decision and Order making the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim. Venue is proper in Columbia, South Carolina.
  2. Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 Dollars (\$862.98) with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 Dollars (\$575.35).
- 
3. Notice of the hearing was timely and properly served on all parties of interests.
  4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation. (APA p. 135-137).
  5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 - Dr. Boyd's records).
  6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to this alleged accident. (APA p. 102, 106, 111, 118, 122)
  7. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case. Claimant has demonstrated that he has temper and anger issues. The record reflects that he was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace. (Hr'g Tr. 50:14-18; 50:19 - 51:1; 50:23 - 51:7; 51:17-24; 52:19 - 53:1; 74:17-20; 134:21 - 135:1; 135:15-18; 137:19 - 138:9).

8. S.C. Code Ann. § 42-9-60 does not apply in this case because I do not find enough evidence to show that Claimant willfully intended to injure himself or another employee. However, as noted above, I do not place his current medical condition as being caused by this alleged accident.
9. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, Claimant alleges that he injured his neck before he threw a punch and kicked Mr. Raulerson. This is not believable testimony. (Hr'g Tr. 15:9-12).
10. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the employer witness testimonies as a whole are more believable than Claimant's testimony.
11. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not find enough evidence that Claimant willfully intended to injure himself or Mr. Raulerson.
12. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not place his current medical condition as being caused by this alleged accident.
13. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the Claimant did not satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.
14. All benefits under the South Carolina Workers' Compensation Act are hereby denied.

## CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Code Ann. §41-1-40, the Claimant's average weekly wage is Eight Hundred Sixty Two and ~~98/100 (\$862.98)~~ Dollars with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 (\$575.35) Dollars.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. Pursuant to South Carolina Code Ann. §42-1-160, Claimant has not sustained a compensable injury by accident arising out of and in the course of employment.
5. Pursuant to South Carolina Code Ann. §42-9-10, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total.
6. Pursuant to South Carolina Code Ann. §42-9-10, Claimant has not met his burden of proof that he is permanently and totally disabled.
7. Pursuant to South Carolina Code Ann. §42-9-20, Claimant is not entitled to any temporary partial disability benefits for the period of time during which the Claimant's incapacity for work was partial.
8. Pursuant to South Carolina Code Ann. §42-9-20, Claimant has not met his burden of proof that he is permanently and partially disabled.
9. Pursuant to South Carolina Code Ann. §42-9-35, Claimant has not established that a subsequent injury aggravated a pre-existing condition or permanent physical impairment or that a pre-existing condition or permanent physical impairment aggravated the subsequent injury.

10. Pursuant to South Carolina Code Ann. §42-9-10, §42-9-20, and §42-9-30, Claimant is not entitled to any award under the South Carolina Workers' Compensation Act.

Following the Decision and Order, Claimant filed a Form 30 and asserted several exceptions to the Decision and Order. These exceptions are as follows:

- I. Did the Hearing Commissioner err in determining that Claimant's injuries and the neurosurgery undertaken subsequent to the physical altercation at work were not causative when Claimant's neurosurgeon (Dr. Boyd) has specifically given his medical opinion that the altercation most likely did cause the spinal injury to a reasonable degree of medical certainty and he specifically described the "fresh bone fragment" he found in Claimant's neck during surgery; the fact that Claimant's internist (Dr. Levinson) noted the spine injury was unique and indicated causation in his records, and; when there is no contrary medical evidence in the Record supporting or indicating another cause for the injury or that this altercation did cause the injury and subsequent medical treatment?
- II. Did the Hearing Commissioner err in making a specific expert medical determination in his findings, that the February 2012 and September 2012 MRI reports were virtually identical, and therefore finding causation did not exist when the neurosurgeon (Dr. Boyd) specifically reviewed not only the reports but the actual images themselves and his records specifically indicate the difference in the images and Dr. Boyd specifically finds causation to a reasonable degree of medical certainty?
- III. Did the Hearing Commissioner err in apparently considering minor factual disputes between the parties in the altercation in making his finding, stated to be based solely on the medical records, of a lack of causation for the injury sustained after the altercation requiring surgery?

After a review of the record and oral arguments of the parties, as set forth below, we  
**AFFIRM WITH AMENDMENT** the Single Commissioner's Decision and Order.

### EVIDENCE OF THE CASE

Claimant is a forty-six (46) year old male with a high school diploma and approximately one and a half years of college education. (Hr'g Tr. 8:14-20). He has been employed with Owen Steel since 2004. (Hr'g Tr. 8:25 – 9:1). Claimant stated that his entire work history is comprised of working for various companies as a welder. (Hr'g Tr. 8:21-23). Claimant was hired as a welder with Owen Steel before he was promoted to a fabricator and then to the maintenance department. (Hr'g Tr. 9:4-11).

Claimant testified that he was involved in a physical altercation with Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time in question, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25). Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant “[w]hat seems to be the problem?” (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with “[h]uh” then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was “pounding his finger” into his chest and saying

"[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

~~Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each~~  
other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 - 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the altercation was broken up by the Claimant's co-employees. (Hr'g Tr. 16:14-17). Claimant testified that the altercation between her and Mr. Raulerson lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that the reason he threw the welding leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20). Claimant testified that he was briefly

terminated following the altercation for throwing welding leads at Mr. Zimms. (Hr'g Tr. 50:23 - 51:7). Stacey Oxendine testified that Claimant was terminated from Owen Steel due to "multiple cases of aggression and insubordination." (Hr'g Tr. 148:9-14, APA p. 92).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation between the Claimant and Mr. Raulerson. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw

Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that, prior to the August 15 altercation, he observed Claimant and Mr. Raulerson involved in other arguments. (Hr'g Tr. 103:6-13). Specifically, Mr. Ingle recalled an argument between the Claimant and Mr. Raulerson, one week prior to the date of accident, where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 - 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that he noticed Claimant "had his fists balled up" and he told Claimant, during this encounter, "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that, after being struck by the Claimant, he shoved Claimant against the wall. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement that occurred between the Claimant and

Mr. Raulerson one week prior to the date of accident. He stated that Claimant had accused him of stealing from the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset with Mr. Raulerson. (Hr'g Tr. 122:16-21).

Ronald Frye testified on behalf of the Defendants. Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a heated confrontation ensued between the Claimant and Mr. Frye. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 - 138:9).

Jackie Osborne testified on behalf of the Defendants. Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Mr. Osborne stated that the Claimant was saying to Mr. Raulerson to stop pushing the Claimant because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85).

John Gardner also testified on behalf of Defendants. Mr. Gardner indicated that he is a supervisor with Owen Steel and has been there for twenty-two years. (Hr'g Tr. 156:16-21). Mr. Gardner testified that he observed Claimant pulling a part off a machine and when he asked Claimant not to do that, Claimant "...hollered out 'Fuck You'." (Hr'g Tr. 157:10-14).

Finally, Cliff Zimms testified on behalf of Defendants. Mr. Zimms has been an electrician with Owen Steel for six years. (Hr'g Tr. 159:7-15). Mr. Zimms testified about working with Claimant at Owen Steel and about an altercation that occurred between himself and Claimant. Mr. Zimms stated that Claimant got mad and threw a welding lead at him. (Hr'g Tr. 160:6-22). Mr. Zimms also testified that he had personally observed Claimant get into verbal altercations with other employees. (Hr'g Tr. 161:15-20).

#### **MEDICAL EVIDENCE**

Claimant stated that, after the altercation with Mr. Raulerson, his neck began to get progressively worse. (Hr'g Tr. 22:10-12). He stated that he was having trouble sleeping, experienced numbness in his hands and leg, and had pain shooting down from his shoulders. (Hr'g Tr. 22:14-15). On the morning of August 27, Claimant informed his supervisor, Mr. Sloan that he needed to go see a doctor and left work early for an appointment. (Hr'g Tr. 25:2-10).

Claimant states that he also told Mr. Oxendine that he was upset because they were not making an effort to get him to a doctor. (Hr'g Tr. 25:17-18). He went to see Dr. Levinson and reported complaints of neck pain as a result of being pushed against a wall at work. (Hr'g Tr. 26:17-20).

Claimant testified that he has had prior neck and back issues. (Hr'g Tr. 26:24 -- 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant had received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same problems with his neck, before his alleged work-related accident that he was having after his alleged work-related accident. (Hr'g Tr. 28:2-5). However, Claimant testified that the severity of his neck symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident, Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 -- 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back problems. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson, prior to the date of his alleged work-related accident, and was still undergoing treatment for his back and neck issues prior to August 15, 2012. (Hr'g Tr. 39:6-15).

Based on the medical records, Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 -- 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly

worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23, APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant again presented to Dr. Levinson and complained of the same neck pain and problems, similar to those problems documented in the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

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After the February 2012 visit, Claimant underwent an MRI on February 9, 2012. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). The MRI results show that Claimant had (1) normal cervical cord signal intensity; (2) an asymmetric disc bulge to the right at C2-C3 without stenosis; (3) a congenital shortening of the pedicles throughout the cervical spine; (4) right-sided uncovertebral joint degenerative changes without stenosis at C3-C4; (5) no significant disc bulge or protrusion at C4-C5; (6) disc height loss with osteophytic bulge to the left and mild to moderate left neural foraminal stenosis and mild right foraminal stenosis at C5-C6; (7) left central disc extrusion and left neural foraminal stenosis at C6-C7; and (8) no disc bulge or protrusion at C7-T1. (APA p. 115, 136-137). Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit on February 29, 2012, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6, APA p. 115). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118). Claimant saw Dr. Levinson in July 2012 approximately one month prior to the date of his alleged work-related accident. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p.

122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of the alleged work-related accident, Claimant underwent another MRI on September 4, 2012. (APA p. 135). The MRI revealed that (1) the C2-C3 disc is normal; (2) there is no significant disc bulge or protrusion at C3-C4; (3) there is no acquired central canal or

foraminal stenosis at C4-C5; (4) there is diffuse disc bulge with uncovertebral joint hypertrophic changes at C5-C6; (5) there is central disc extrusion migrating slightly cephalad which narrows the central canal and deforms the ventral cord at C6-C7; and (6) the disc is normal at C7-T1. (APA p. 135). Claimant then underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr. 66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant vehemently denied this statement, contained in the medical records of Dr. Levinson, and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23). Mr. Ingle testified that Claimant had previously complained of a bad back and neck and that he was seeing a doctor about them. (Hr'g Tr. 101:15-20). Mr. Frye also testified that Claimant had discussed prior back and neck problems. Specifically, Mr. Frye stated that Claimant told him about medications that his doctor had prescribed for neck and back pain. (Hr'g Tr. 139:2-10).

## LEGAL ANALYSIS

### I. THE HEARING COMMISSIONER DID NOT ERR IN DETERMINING THAT CLAIMANT'S ALLEGED INJURIES WERE NOT CAUSALLY RELATED TO A WORKPLACE ALTERCATION.

Claimant contends that the Single Commissioner erred by finding that his alleged injuries were not causally related to the workplace altercation. We disagree.

Findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. A judgment upon which reasonable men might differ will not be set aside."

Id at 696 referencing Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304, 307.

Substantial evidence has also been defined as "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers' Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. See Armstrong v. Union Carbide, Inc., 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. Id. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l

Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App,1997) *rev'd on other grounds*.

Claimant testified that he has a history of prior neck and back issues. (Hr'g Tr. 26:24 - 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same symptoms before his alleged accident as he was having after. (Hr'g Tr. 28:2-5). However, Claimant testified that the severity of the symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident, Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 - 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back issues. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson prior to August 15, 2012 and was still undergoing treatment for his back and neck issues. (Hr'g Tr. 39:6-15).

Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 - 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23, APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant

again presented to Dr. Levinson and complained of the same symptoms from the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). Dr. Levinson noted on February 16, 2012 that Claimant's MRI results revealed:

“1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.

2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with unvertebral joint hypertrophy, left greater than right.

3. Congenital shortening of the pedicles.”

Defendants' APA p. 117.

Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118). Claimant saw Dr. Levinson for the final time prior to the accident in July 2012. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p. 122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of alleged accident, Dr. Atchison issued a report on September 4, 2012 detailing the results of Claimant's MRI following the altercation. These results reveal that Claimant has:

"1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.

3. Congenital shortening of the pedicles."

Defendants' APA p. 135.

There is no question that the MRI report from prior to the August 15, 2012 altercation and the MRI report from after the August 15, 2012 altercation are nearly identical. Both Dr. Levinson and Dr. Atchison determined that Claimant had a disc extrusion at C6-7 causing severe canal stenosis with cord compression. Likewise, both Dr. Levinson and Dr. Atchison determined that Claimant had mild central canal stenosis at C5-6 and mild to moderate bilateral foraminal stenosis at C5-6. Dr. Atchison even notes that this is unchanged from the prior study.

Claimant underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr. 66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant denied this statement and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

The Single Commissioner made the following findings of fact:

"4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation." (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 – Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to the alleged incident. (APA p. 102, 106, 111, 118, 122)."

January 28, 2013 Decision and Order p. 11.

In addition, Claimant testified at the hearing that he injured his neck before he threw a punch and kicked Mr. Raulerson. (Hr'g Tr. 15:9-12). The Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants...[t]his is not believable testimony." (January 28, 2013 Decision and Order p. 12). Further, the Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case." *Id.* Finally, the Single Commissioner found that "...the employer witness testimonies as a whole are more believable than Claimant's testimony." *Id.*

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84).

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Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Claimant was saying to stop pushing him because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85).

Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back." (APA p. 85).

Findings of Fact 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are an example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] judgment upon which reasonable men might differ will not be set aside." Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

The Commissioner was presented with a Claimant who has a history of severe ongoing back and neck problems as recently as one month before the altercation, was actively treating for the back and neck problems at the time of the altercation, complained to coworkers of the back

and neck problems prior to the altercation, and expressed during the altercation that he had back and neck problems. Further, the Commissioner had the results of two MRI reports that are nearly identical. Because he determined that to find the injuries occurred as a result of the workplace altercation would be "pure speculation" and that parts of Claimant's testimony simply were "not believable," the Commissioner made the determination that the altercation was not the proximate cause of Claimant's alleged injuries. (January 28, 2013 Decision and Order p. 11 and 12).

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Rather, the Commissioner determined that the injuries were present before the altercation.

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Single Commissioner's Findings of Fact and Conclusions of Law related to the causal relationship of Claimant's alleged injuries and the workplace are AFFIRMED.

**II. THE HEARING COMMISSIONER DID NOT ERR IN MAKING A SPECIFIC DETERMINATION THAT THE FEBRUARY 2012 AND SEPTEMBER 2012 MRI RESULTS WERE VIRTUALLY IDENTICAL.**

Claimant contends the Single Commissioner erred by making a finding that the two MRI reports in the record were virtually identical. We disagree.

As noted above, findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *See Palmetto Alliance, Inc., v. S.C. Public Service Commission*, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by

substantial evidence. A judgment upon which reasonable men might differ will not be set aside.”

*Id* at 696 referencing Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304, 307.

Substantial evidence has also been defined as “...relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers’ Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. See Armstrong v. Union Carbide, Inc., 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. *Id.*

The factual background of Claimant’s prior history with neck and back issues has been laid out in great detail above. For purposes of this section, we will only address the evidence related to the MRI reports and their similarities.

The Single Commissioner made the following findings of fact:

“4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant’s alleged injuries would be pure speculation.” (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant’s symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant’s APA #1 – Dr. Boyd’s records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to the alleged incident. (APA p. 102, 106, 111, 118, 122).”

January 28, 2013 Decision and Order p. 11.

The Single Commissioner specifically relied on the previous and current MRI results in determining that the results were similar and, therefore, the alleged injuries were not the result of a work-related accident. Dr. Levinson noted on February 16, 2012 that Claimant's MRI results revealed:

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1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.
  2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with unvertebral joint hypertrophy, left greater than right.
  3. Congenital shortening of the pedicles."

Defendants' APA p. 117.

Dr. Atchison issued a report on September 4, 2012 detailing the results of Claimant's MRI following the altercation. These results reveal that Claimant has:

1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.
2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.
3. Congenital shortening of the pedicles."

Defendants' APA p. 135.

There is no question that the MRI report from prior to the August 15, 2012 altercation and the MRI report from after the August 15, 2012 altercation are nearly identical. Both Dr. Levinson and Dr. Atchison determined that Claimant had a disc extrusion at C6-7 causing severe canal stenosis with cord compression. Likewise, both Dr. Levinson and Dr. Atchison determined

that Claimant had mild central canal stenosis at C5-6 and mild to moderate bilateral foraminal stenosis at C5-6. Dr. Atchison even notes that this is unchanged from the prior study.

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Single Commissioner's Findings of Fact and Conclusions of Law related to Claimant's MRI reports and their nearly identical nature are **AFFIRMED**.

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**III. THE HEARING COMMISSIONER DID NOT ERR IN CONSIDERING FACTUAL DISPUTES BETWEEN THE PARTIES INVOLVED IN THE ALTERCATION IN MAKING HIS FINDINGS OF FACT RELATED TO CAUSATION AND CLAIMANT'S ALLEGED INJURY.**

Claimant contends the Single Commissioner erred by considering and weighing factual disputes in various parties testimony. We disagree.

Claimant testified that he got into an altercation with Mr. Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25). Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant "[w]hat seems to be the problem?" (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying "[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 - 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the fight was broken up. (Hr'g Tr. 16:14-17). Claimant testified that the entire fight lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that he was briefly terminated following the Zimms altercation for throwing welding leads at Mr.

Zimms. (Hr'g Tr. 50:23 - 51:7). Claimant testified that the reason he threw the leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation. (Hr'g Tr.

89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that prior to the August 15 altercation, Claimant and Mr. Raulerson had been in other arguments. (Hr'g Tr. 103:6-13). Specifically, Mr. Ingle recalled an argument one week prior where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 - 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that he noticed Claimant "had his fists balled up" and told Claimant "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that he shoved Claimant against the wall after being struck by him. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement one week prior. He stated that Claimant had accused him of stealing from

the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset. (Hr'g Tr. 122:16-21).

Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a confrontation ensued. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 - 138:9).

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Claimant was saying to stop pushing him because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance

shop. (APA p. 85). Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back." (APA p. 85).

Claimant testified at the hearing that he injured his neck before he threw a punch and kicked Mr. Raulerson. (Hr'g Tr. 15:9-12). The Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants...[t]his is not believable testimony." (January 28, 2013 Decision and Order p. 12). In addition, the Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case." *Id.* Further, the Single Commissioner found that "...the employer witness testimonies as a whole are more believable than Claimant's testimony." *Id.* Finally, the Single Commissioner goes on to find that "[t]he record reflects that [Claimant] was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace." (January 28, 2013 Decision and Order p. 12).

These Findings of Fact are another example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] judgment upon which reasonable men might differ will not be set aside." Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

Because the finding of facts and conclusions of law in issue are based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, including a determination of credibility based on live witness testimony, the Hearing Commissioner's Findings of Fact and Conclusions of Law related to the factual disputes between the parties involved in the altercation is AFFIRMED.

#### **FULL COMMISSION FINDINGS OF FACT**

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim. Venue is proper in Columbia, South Carolina.
2. Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 Dollars (\$862.98) with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 Dollars (\$575.35).
3. Notice of the hearing was timely and properly served on all parties of interests.
4. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that this case turns mainly on the medical reports. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that when we review the two MRIs from before and after the alleged accident, they strike this Panel as nearly identical. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that to say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation. (APA p. 135-137).
5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an

alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 -- Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that the Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to this alleged accident. (APA p. 102, 106, 111, 118, 122).

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7. Based on the substantial evidence, including the medical records of Claimant and testimony of Claimant, we find that the Claimant failed to inform Dr. Boyd that he had back and neck issues prior to the August 15, 2012 altercation. Further, Claimant failed to tell Dr. Boyd that he had received prior treatment for his neck and back including injections. (Hr'g Tr. 36:22 -- 37:21, 38:1-16; APA p. 131, 133).

8. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we do not fully believe Claimant's version of events in this case. Claimant has demonstrated that he has temper and anger issues. The record reflects that he was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace. (Hr'g Tr. 50:14-18; 50:19 - 51:1; 50:23 - 51:7; 51:17-24; 52:19 - 53:1; 74:17-20; 134:21 - 135:1; 135:15-18; 137:19 - 138:9).

9. S.C. Code Ann. § 42-9-60 does not apply in this case because we do not find enough evidence to show that Claimant willfully intended to injure himself or another employee. However, as noted above, based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we do not place his current medical condition as being caused by this alleged accident.

10. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, Claimant alleges that he injured his neck before he threw a punch and kicked Mr. Raulerson. We find that this is not believable testimony. (Hr'g Tr. 15:9-12).

11. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we find that the employer witness testimonies as a whole are more believable than Claimant's testimony.

12. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we do not find enough evidence that Claimant willfully intended to injure himself or Mr. Raulerson.

13. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we do not place his current medical condition as being caused by this alleged accident.

14. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we find that the Claimant did not satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.

15. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we

find that all benefits under the South Carolina Workers' Compensation Act are hereby denied.

### CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Code Ann. §41-1-40, the Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 (\$862.98) Dollars with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 (\$575.35) Dollars.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. Pursuant to South Carolina Code Ann. §42-17-50, the Commission may review an award and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.
5. The scope of review of the Commission is not limited. Lowe v. Am-Can Transport Services, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).
6. The Commission does not have to uphold the findings of the Hearing Commissioner if, in its opinion, the preponderance of the evidence leads to a different finding, whether or not the Hearing Commissioner's findings were based on a preponderance of the evidence. Lowe v. Am-Can Transport Services, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).
7. The Commission's discretion in reviewing a case is equal to that of the Hearing

Commissioner. Rollins v. Wunda Weve Carpet Company, 255 S.C. 1, 172 S.F.2d 5 (1970).

8. Pursuant to South Carolina Code Ann. §42-1-160 and based on the substantial evidence, we find that the Claimant has not satisfied his burden of proving that he sustained a compensable injury by accident arising out of and in the course of employment.

9. Pursuant to South Carolina Code Ann. §42-9-10 and based on the substantial evidence,

we find that the Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total.

10. Pursuant to South Carolina Code Ann. §42-9-10 and based on the substantial evidence, we find that the Claimant has not met his burden of proof that he is permanently and totally disabled.

11. Pursuant to South Carolina Code Ann. §42-9-20 and based on the substantial evidence, we find that the Claimant is not entitled to any temporary partial disability benefits for the period of time during which the Claimant's incapacity for work was partial.

12. Pursuant to South Carolina Code Ann. §42-9-20 and based on the substantial evidence, we find that the Claimant has not met his burden of proof that he is permanently and partially disabled.

13. Pursuant to South Carolina Code Ann. §42-9-35 and based on the substantial evidence, we find that the Claimant has not satisfied his burden of proving that a subsequent injury aggravated a pre-existing condition or permanent physical impairment or that a pre-existing condition or permanent physical impairment aggravated the subsequent injury.

14. Pursuant to South Carolina Code Ann. §42-9-10, §42-9-20, and §42-9-30 and based on the substantial evidence, we find that the Claimant is not entitled to any award under the South Carolina Workers' Compensation Act.

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**ORDER**

**IT IS HEREBY ORDERED**, that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED WITH AMENDMENT**.

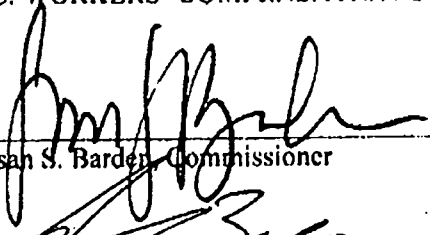
**IT IS FURTHER ORDERED**, that the substantial evidence supports a finding that this that the greater weight of the evidence supports a finding that this claim is denied because the Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident to the arising out of and in the course of his employment with the Defendants on August 15, 2012.

**IT IS FURTHER ORDERED**, that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing the Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

**IT IS HEREBY ORDERED.**

**AFFIRMED WITH AMENDMENT.**

S.C. WORKERS' COMPENSATION COMMISSION

  
Susan S. Barden, Commissioner

  
T. Scott Beck, Commissioner

  
Melody L. James, 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 July 2, 2013***

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. File No. 1213162

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William E. Miller, Jr., Employee, Claimant .....Appellant,  
v.

Owen Steel Company, Inc., Employer, and  
Great American Insurance Group  
c/o Strategic Comp Services, Carrier, ..... Respondents.


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**PROOF OF SERVICE**

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I certify that I have served the **Respondents' Reply to Appellant's Return to Respondents' Motion to Strike** on William E. Miller, Jr., by depositing a copy of it in the United States Mail, postage prepaid, on February 3, 2014, addressed to his attorney of record:

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Holler Garner Corbett Ormond Plante & Dunn  
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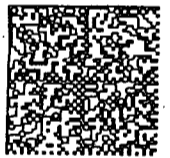


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