

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NUMBER: 2013-001382

Latonya Footman, ... Claimant/Appellant,

vs.

Johnson Food Services, LLC, Employer, and The Hartford, Carrier, ... Defendants/Respondents.

RECORD ON APPEAL

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0617361

LATONYA FOOTMAN,

Employee,

Claimant,

vs.

JOHNSON FOOD SERVICES, LLC,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on June 8, 2011.

APPEARANCES:

Claimant appeared and represented by Andrew N. Safran, Esquire of Safran Law Offices 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 pursuant to the Form 21.

COMMISSIONER: Commissioner Susan S. Barden

FILED: September 16, 2011

APA SUBMISSIONS

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

The Claimant submitted the following exhibits and medical records:

1. Dr. Joseph P. Jackson, dated 11/28/06-5/25/11, consisting of 17 pages. (Cl. APA # 1)
2. Midlands Orthopaedics, P.A., dated 9/21/06-12/27/10, consisting of 23 pages. (Cl. APA # 2)

The Defendants submitted the following exhibits and medical records:

1. Michael S. Green, M.D., dated 3/1/07-3/23/11, consisting of 19 pages. (Def. APA # 1)
2. Joseph P. Jackson, Jr., M.D., dated 2/1/08, consisting of 2 pages. (Def. APA # 2)
3. EMGs, Midlands Orthopaedics, P.A., dated 9/6/07-3/26/09, consisting of 4 pages. (Def. APA # 3)

Exhibit #1 - Deposition of Dr. Green, dated October 3, 2008. (Def. Exh. # 1)

STIPULATIONS

The parties stipulate to the following:

1. Notice of the hearing was timely and properly served on all parties of interests.
2. The South Carolina Worker's Compensation Commission has jurisdiction of the claim.
3. Venue is proper in Richland County.
4. The Claimant has an average weekly wage with Johnson Food Services of Two Hundred Ninety-Nine and 60/100 Dollars (\$299.60) with a corresponding compensation rate of One Hundred Ninety-Nine and 74/100 Dollars (\$199.74).
5. The Claimant has an average weekly wage with Babcock Center of Two Hundred Fifty-Three and 98/100 Dollars (\$253.98) with a corresponding compensation rate of One Hundred Ninety-Nine and 74/100 Dollars (\$169.33).

The Claimant's total average weekly wage from this scheduled permanent employment amounts to Four Hundred and Thirteen and 58/100 Dollars (\$438.58), with a corresponding compensation rate of Three Hundred Sixty and 65/100 Dollars (\$366.65).

STATEMENT OF THE CASE

This hearing was scheduled pursuant to a Form 21, Request to Pay Compensation, filed by the Defendants on April 5, 2011. The Defendants maintained that the Claimant's authorized treating physician, Dr. Green, determined that the Claimant reached maximum medical improvement on March 30, 2011, and assigned a 2% impairment rating to the left upper extremity and a 2% impairment rating to the right upper extremity. As a result, the Defendants maintained the issue of permanency was ripe for adjudication. More specifically, the Defendants maintained that the Claimant was entitled to an award of permanent partial disability benefits based on the impairment ratings provided by Dr. Green pursuant to Section 42-9-30 of the Act.

In response, the Claimant took the position that she was at maximum medical improvement, and further maintained that she was entitled to an award of permanent partial disability benefits to the left upper extremity and right upper extremity in excess of the impairment ratings provided by Dr. Green. The Claimant maintained that any award of permanent partial disability benefits should be based upon the ~~opinions expressed by~~ Dr. Jackson, who conducted multiple examinations of the Claimant pursuant to the request of the Claimant's attorney. Dr. Jackson, in a ~~report~~ dated April 20, 2011, assigned a 10% impairment rating to the left upper extremity and a 10% impairment rating to the right upper extremity.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on her behalf. The Claimant testified that she is right-hand dominant and currently 40 years of age. The Claimant stated that she graduated from high school, and has taken some courses at Midlands Technical College. The Claimant

indicated that she began working with the Defendants approximately 7 years ago, and is currently employed with the Defendants as a Cook II. The Claimant testified that she began experiencing problems with both hands and wrists on September 6, 2006, while in her capacity as a Cook II with the Defendants. The Claimant testified that she is also currently employed with the Babcock Center, wherein she has worked for approximately seven years. The Claimant testified that her employment with Babcock Center includes a position as a caregiver. Moreover, the Claimant testified that she works, in conjunction with another employee of the Babcock Center, in order to provide care-giving services to four clients of the Babcock Center. The Claimant testified that her work with the Babcock Center requires ~~limited~~ physical activity, and that the most strenuous physical activity includes driving the patients while utilizing a van owned by the Babcock Center. (Hr'g Tr. p. 13, ll. 1)

The Claimant sought and received medical treatment with her family physician, Dr. Gary Bell, who recommended the Claimant undergo nerve studies. (Hr'g Tr. p. 13, ll. 19-23) Based on the medical records, the Claimant sought and received additional treatment ~~with Dr. Jackson~~, who diagnosed her with bilateral carpal tunnel syndrome on November 28, 2006. (Cl. APA # 1, p. 1) Specifically, the Claimant presented with complaints of numbness and tingling that was on going for two years, which she indicated was progressively worse. Id. The Claimant indicated her symptoms were secondary to her position with the Defendants, wherein she has to open 24 cans at a time, stir big pots of scrambled eggs, and peel potatoes as well as cantaloupe. Id. The Claimant underwent nerve conduction studies performed by Dr. Redmond, which revealed "sensory latency of 5.35...and on the left 4.35." Id. at 2. The Claimant was recommended to undergo a carpal tunnel release, particularly on the right secondary to a demanding job that has aggravated her condition. Id. The Claimant underwent a right carpal tunnel release on March 1,

2007 with Dr. Green of Midlands Orthopaedics. (Def. APA # 1, p. 1) A follow-up visit with Dr. Green on March 12, 2007 revealed that the Claimant indicated that she is doing well, and that her nighttime pain and paresthesias are better. Approximately one month later, Dr. Green released her from care, indicating she would see a big difference in her strength and tenderness in the coming months. When she remained symptomatic, Claimant returned to Dr. Jackson on August 12, 2007 and received a recommendation for updated electrodiagnostic testing. The Claimant was redirected by Defendants to Dr. Green on August 24, 2007 with complaints of shooting pain through her wrists with numbness and tingling to her right ring finger and small finger as well as pain up her arm into her shoulder on the left side. Id. at 4. However, an examination by Dr. Green revealed “no Tinel’s at the elbow, really no tinel’s at the wrists, a normal two-point discrimination with no intrinsic weakness and full range of motion in her fingers, wrist and elbow with no intrinsic wasting.” Id. The Claimant was recommended to undergo an EMG/NCS of both upper extremities to evaluate her ulnar nerve function. Id. The Claimant was allowed to continue her regular work activities. Id. The Claimant underwent repeat EMG/NCS in September of 2007, which revealed very mild right carpal tunnel syndrome and mild left carpal tunnel syndrome. (Def. APA # 1, p. 6) Dr. Green indicated the Claimant was not a surgical candidate and further recommended a resting splint with repeat nerve studies in 4 to 6 months if symptoms persisted. Id. Dr. Green determined the Claimant reached maximum medical improvement with regard to her injuries on February 15, 2008, and further assigned a 2% impairment rating to the right upper extremity as well as a 2% impairment rating to the left upper extremity. (Def. APA # 1, p. 8)

Five months later, the Claimant sought additional treatment with Dr. Green on June 27, 2008, and presented with complaints of continued cubital tunnel type symptoms on her right side

as well as left carpal tunnel symptoms. Id. at 9. Dr. Green recommended the use of a 45-60 degree extension split for her right arm as well as an injection into the left wrist and a Sterapred pack for her cubital tunnel syndrome. Id. In addition, the Claimant was recommended light duty for 3-5 days secondary to her on going complaints. Id. at 10. On August 11, 2008, the Claimant presented at a follow-up visit, which revealed an improved right mild cubital tunnel syndrome and a mildly improved left carpal tunnel syndrome. Id. at 11. Dr. Green indicated the Claimant was not symptomatic enough to require surgical intervention and he discharged her from his care. Id. The Claimant was placed at maximum medical improvement by Dr. Green on August 11, 2008 for her left and right upper extremities with no increase to her impairment ratings for either upper extremity. Id. at 13. Dr. Green indicated that the Claimant will not need future medical care. Id.

Based on a review of the medical records, the Claimant sought and received repeat nerve studies, performed by Dr. Redmond on March 26, 2009, which revealed a worsening of her left carpal tunnel syndrome and a finding that the right cubital tunnel syndrome was still mild. Id. at 14. Dr. Green indicated that improvement was present in the right carpal tunnel status post release. Id. On the other hand, the Claimant presented with numbness and tingling, which she indicated was intermittent. Id. Dr. Green recommended the Claimant undergo a left carpal tunnel release. Id. at 15. Subsequently, the Claimant presented to Dr. Green on September 20, 2010, with complaints of worsening symptoms on the left side. Id. at 16. Dr. Green recommended that the Claimant undergo a repeat EMG and NCS to evaluate the possibility of Carpal Tunnel Syndrome and possible Cubital Tunnel Syndrome of both upper extremities. Id. at 17. In a follow-up visit on December 27, 2010, Dr. Green determined the Claimant reached maximum medical improvement and released the Claimant to return to work without restrictions.

Id. at 19. Dr. Green assigned a 2% impairment rating to the left upper extremity and right upper extremity. Id.

Subsequently, the Claimant underwent an independent medical evaluation, at the direction of her attorney, with Dr. Jackson, who indicated, in his diagnostic report dated April 20, 2011, that the Claimant was at maximum medical improvement with regard to her right carpal tunnel, left carpal tunnel and right cubital tunnel. Dr. Jackson assigned a 10% impairment rating to each upper extremity, which equaled a 12% impairment rating to the whole person. (Cl. APA # 1, p. 14, 15) In addition, Dr. Jackson assigned the Claimant permanent restrictions to include "no lifting more than 25 lbs, lifting no more than 12 pieces of chicken on a tray, [and] only opening 10 large cans per day." Id.

The Claimant testified that she is currently employed with the Defendants, and is physically capable of performing her job duties and responsibilities with the Defendants. Moreover, the Claimant testified that her present job duties and responsibilities with the Defendants are within the restrictions, which were placed upon the Claimant by Dr. Jackson. (Hr'g Tr. p. 27 ll. 22-25) In addition, the Claimant stated that the Defendants readily provided the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with the Defendants. (Hr'g Tr. p. 29 ll. 1-5) On the other hand, the Claimant stated that she does experience ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with the Defendants. (Hr'g Tr. p. 19, ll. 11-23) The Claimant testified that she currently experiences numbness and tingling in the fingers of both her left hand and right hand. Id. More specifically, the Claimant indicated that she experiences increased pain and problems while engaging in specific activities such as lifting large pans of chicken. (Hr'g Tr. p. 18, ll. 13-18) In

addition, the Claimant stated that she experiences bilateral elbow pain, as well as decreased grip strength of the left hand and left upper extremity. On the other hand, the Claimant indicated that she does not currently utilize any prescription medication for her ongoing left upper extremity and right upper extremity problems, and only takes over-the-counter medication approximately 1-2 days per week when she experiences pain in the left upper extremity and right upper extremity. (Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8) In addition, the Claimant testified that she does not utilize an assistive device on the left upper extremity or right upper extremity despite her ongoing pain and problems. (Hr'g Tr. p. 29, ll. 9-15)

FINDINGS OF FACT

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

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. Based on the substantial medical records and testimony, I find that the Claimant injured her arms (bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome) on September 6, 2006, both of which conditions are admitted by the Defendants.
3. The Claimant is 40 years of age (testimony of Claimant).
4. The Claimant is right hand dominant (testimony of Claimant).
5. The Claimant is a high school graduate. She attended 1 semester of college (testimony of Claimant).
6. The Claimant is a 17-year employee for Employer or its predecessor contractor at Fort Jackson. Her job involves cooking for soldiers (testimony of Claimant).
7. Based on the substantial medical records and testimony, I find that, on the date of the

Claimant's injury with the Defendants, the Claimant held dual or concurrent employment with another employer (the Babcock Center). This job involves driving a van, dispensing medication, cleaning up after clients, and assisting with meal preparation (testimony of the Claimant).

8. The Claimant underwent bilateral carpal tunnel release surgeries (Defendants' APA #1, page 1; Deposition of Dr. Green, page 5; Claimant's APA #2, pages 23-24 and 47-48).
9. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant has been treated conservatively for ~~bilateral~~ cubital tunnel syndrome (medical evidence in its entirety).
10. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant reached maximum medical improvement on March 28, 2011 (Defendants' APA #1, page 19).
11. Based on the substantial evidence, including the medical records and testimony, I find that Dr. Green's assignment of impairment ratings to be somewhat inconsistent or, at the very least, ambiguous. Initially (by medical report), authorized treating physician Dr. Green assigned a 2% impairment rating for each upper extremity. At his deposition, Dr. Green states that he agrees with an impairment rating in the range of 2% - 5%. (CITE) Dr. Green also considers the same range to be appropriate for cubital tunnel symptoms (leading the undersigned to conclude that the initial rating was for carpal tunnel symptoms only). Later in his deposition, Dr. Green assigned a total ("collective") 2% impairment rating. However, the last page of the deposition appears (at least to the undersigned) to revert to the 4% - 10% impairment rating for each upper extremity. Then finally, in a 2011 report, Dr. Green seems to revert (again) to a 2% total rating for each

upper extremity. Regardless, my awards are based upon other factors as noted herein (Defendants' APA #1, pages 8, 13, and 19; Deposition of Dr. Green, pages 26-28 and 33-34; Claimant's APA #2, page 31).

12. Based on the substantial evidence, including the medical records and testimony, I find that Claimant's IME physician ultimately assigned a total 10% rating for each upper extremity. I considered these ratings, but ultimately do not give them as much weight as I give other factors. (Claimant's APA #1, pages 9-10 and 17).
13. Based on the substantial evidence, including the medical records and testimony, I find that, to his well-deserved credit (as far as being candid is concerned), after Dr. Jackson noted inconsistencies in Claimant's ~~February 1, 2008~~ right grip strength testing, he "pointed out [to Claimant] the consistency of effort in grip strength as a basic element of building a doctor/patient relationship." I give this record great weight for the reason that these are the notes of Claimant's own expert (Defendants' APA #2, pages 20-21; Claimant's APA #1, pages 7-8).
14. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant takes no prescription medication for her causally related condition. She takes over-the-counter medication "every now and then." (Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8).
15. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant has been released with no restrictions, and has returned to work (full duty) with both of her employers (Deposition of Dr. Green, pages 31-32; Defendants' APA #1, page 13).
16. Based on the substantial evidence, including the medical records and testimony, I find

that no future medicals have been recommended by the authorized treating physician, and therefore none are ordered herein. (Cl. APA # 1, p. 15)

17. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the left arm.
18. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the right arm.
19. The issue of Defendants' entitlement to credit is held in abeyance unless otherwise agreed to by the parties.

CONCLUSIONS OF LAW

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

1. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.
2. Pursuant to Section 42-1-160 of the Act, the Claimant sustained admitted compensable injuries to the right and left upper extremities.
3. Section 42-15-60 governs the provision of medical treatment.
4. Pursuant to Section 42-15-60, the Claimant reached maximum medical improvement on March 28, 2011.
5. Pursuant to Section 42-15-60, the Claimant is not entitled to Dodge medicals pursuant to the recommendations of her authorized treating physician Dr. Green, who opined the Claimant will not need future medical treatment.

6. Section 42-9-30 governs the amount of compensation and period of disability for certain injuries.
7. Pursuant to Section 42-9-30 (13), the Claimant is entitled to an award of thirteen and two tenths (13.2) weeks of permanent partial disability benefits, which equals approximately 6% to the right upper extremity.
8. Pursuant to Section 42-9-30 (13), the Claimant is entitled to an award of thirteen and two tenths (13.2) weeks of permanent partial disability benefits, which equals approximately 6% to the left upper extremity.
9. Section 42-9-260 governs the suspension, termination and credit for overpayment of temporary total disability benefits.

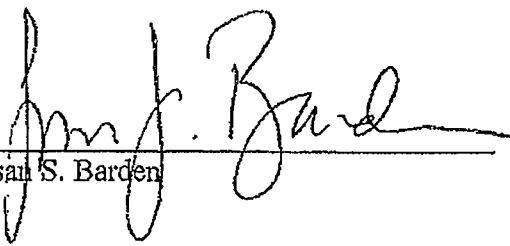
ORDER

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant sustained compensable ~~injuries~~ to the right and left upper extremities.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant is entitled to an award of permanent partial disability benefits in the amount of 6% to the right and left upper extremities, respectively, pursuant to Section 42-9-30 (13) of the Act.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant reached maximum medical improvement on March 28, 2011 and is not entitled to future medical treatment pursuant to Section 42-15-60 of the Act.

AND IT IS SO ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
September 16, 2011

By: Kristi Love, Administrative Assistant to Commissioner Barden

Footman v Johnson Food Services
Wcc#0617361

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 0617361

LATONYA FOOTMAN,

EMPLOYEE,
CLAIMANT/APPELLANT,

vs.

JOHNSON FOOD SERVICES

EMPLOYER,

AND

THE HARTFORD

CARRIER,

DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in
Columbia, South Carolina on March 19, 2012.

Appellate Panel Decision and Order
Filed 5/30, 2012.

APPEARANCES:

Claimant/Appellant, represented by
Andrew N. Safran, Esquire, of Safran Law Offices
of Columbia, South Carolina.

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

STATEMENT OF THE CASE

This matter came to be heard before the Single Commissioner on June 8, 2011 in Columbia, South Carolina. More specifically, in a Decision and Order dated September 16, 2011, Commissioner Barden determined that the Claimant sustained compensable injuries to the right and left upper extremities as a result of the Claimant's September 2006 work-related accident (Decision and Order, WCC No. 0617361). Commissioner Barden concluded that the Claimant was entitled to an award of permanent partial disability benefits, in the amount of six percent (6%) to the right and upper extremities, respectively, pursuant to section 42-9-30 (13) of the Act. Commissioner Barden further concluded that the greater weight of the evidence supported a finding that the Claimant reached maximum medical improvement on March 28, 2011 and is not entitled to future medical treatment pursuant to Section 42-15-60 of the Act.

The hearing was scheduled pursuant to a Form 21, Request to Pay Compensation that was filed on April 5, 2011. The Form 21 was filed on the basis that the Claimant's authorized treating physician, Dr. Green, determined that the Claimant reached maximum medical improvement on March 30, 2011, and assigned a two percent (2%) impairment rating to the left upper extremity and a two percent (2%) impairment rating to the right upper extremity. The Defendants maintained that the Claimant was entitled to an award of permanent partial disability benefits based on the impairment ratings provided by Dr. Green.

In response, the Claimant's attorney maintained that the Claimant was entitled to an award of permanent partial disability benefits to the left upper extremity and right upper extremity in excess of the impairment ratings provided by Dr. Green (Hr'g Tr. 4-5). More specifically, the Claimant's attorney presented the diagnostic report of Dr. Jackson, who conducted an Independent Medical Examination of the Claimant pursuant to the request of the

Claimant's attorney. Dr. Jackson, in a diagnostic report dated April 20, 2011, assigned a ten percent (10%) impairment rating to the left upper extremity and a ten percent (10%) impairment rating to the right upper extremity (Hr'g Tr. p. 6 ll. 7-10). Most notably, the Claimant's attorney took the position that the Claimant was not seeking additional medical treatment in light of the fact that the Claimant had reached maximum medical improvement and based on the absence of medical evidence indicating that the Claimant was in need of additional medical treatment.

Following the hearing, Commissioner Barden issued an Order on September 16, 2011 holding that the Claimant sustained compensable injuries to the right and left upper extremities on September 6, 2006. She held the greater weight of evidence supported a finding that the Claimant was entitled to an award of permanent partial disability benefits in the amount of six percent (6%) to the right and left upper extremities (Decision and Order, WCC No. 0617361). Commissioner Barden concluded that the Claimant reached maximum medical improvement on March 28, 2011 and is not entitled to future medical treatment pursuant to Section 42-15-60 of the Act (*Id.*). In issuing her Order, Commissioner Barden issued the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the Single Commissioner made the following findings of facts:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. Based on the substantial medical records and testimony, I find that the Claimant injured her arms (bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome) on September 6, 2006, both of which conditions are admitted by the Defendants.

3. The Claimant is 40 years of age (Footman Dep. 6:21-22, Nov. 29, 2006.).
4. The Claimant is right hand dominant (Footman Dep. 20:3).
5. The Claimant is a high school graduate. She attended 1 semester of college (Footman Dep. 7:5-8:9).
6. The Claimant is a 17-year employee for Employer or its predecessor contractor at Fort Jackson. Her job involves cooking for soldiers (Footman Dep. 13:17-15:13).
7. Based on the substantial medical records and testimony, I find that, on the date of the Claimant's injury with the Defendants, the Claimant held dual or concurrent employment with another employer (the Babcock Center). This job involves driving a van, dispensing medication, cleaning up after clients, and assisting with meal preparation (Footman Dep. 46:18-50:12).
8. The Claimant underwent bilateral carpal tunnel release surgeries (Defendants' APA #1, page 1; Deposition of Dr. Green, page 5; Claimant's APA #2, pages 23-24 and 47-48).
9. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant has been treated conservatively for cubital tunnel syndrome (medical evidence in its entirety).
10. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant reached maximum medical improvement on March 28, 2011 (Defendants' APA #1, page 19).
11. Based on the substantial evidence, including the medical records and testimony, I find that Dr. Green's assignment of impairment ratings to be somewhat inconsistent or, at the very least, ambiguous. Initially (by medical report), authorized treating physician Dr. Green assigned a 2% impairment rating for each upper extremity. At his deposition,

Dr. Green states that he agrees with an impairment rating in the range of 2% - 5%. (Green Dep. 26:18-23, Oct. 3, 2008.). Dr. Green also considers the same range to be appropriate for cubital tunnel symptoms (leading the undersigned to conclude that the initial rating was for carpal tunnel symptoms only) (Green Dep. 27:16-28:3). Later in his deposition, Dr. Green assigned a total ("collective") 2% impairment rating (Green Dep. 33:18-23). However, the last page of the deposition appears (at least to the undersigned) to revert to the 4% - 10% impairment rating for each upper extremity (Green Dep. 34). Then finally, in a 2011 report, Dr. Green seems to revert (again) to a 2% total rating for each upper extremity (Defendants' APA # 1). Regardless, my awards are based upon other factors as noted herein (Defendants' APA #1, pages 8, 13, and 19; Deposition of Dr. Green, pages 26-28 and 33-34; Claimant's APA #2, page 31).

12. Based on the substantial evidence, including the medical records and testimony, I find that Claimant's IME physician ultimately assigned a total 10% rating for each upper extremity. I considered these ratings, but ultimately do not give them as much weight as I give other factors. (Claimant's APA #1, pages 9-10 and 17).
13. Based on the substantial evidence, including the medical records and testimony, I find that, to his well-deserved credit (as far as being candid is concerned), after Dr. Jackson noted inconsistencies in Claimant's right grip strength testing, he "pointed out [to Claimant] the consistency of effort in grip strength as a basic element of building a doctor/patient relationship." I give this record great weight for the reason that these are the notes of Claimant's own expert (Defendants' APA #2, pages 20-21; Claimant's APA #1, pages 7-8).

14. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant takes no prescription medication for her causally related condition. She takes over-the-counter medication "every now and then." (Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8).
15. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant has been released with no restrictions, and has returned to work (full duty) with both of her employers (Deposition of Dr. Green, pages 31-32; Defendants' APA #1, page 13).
16. Based on the substantial evidence, including the medical records and testimony, I find that no future medicals have been recommended by the authorized treating physician, and therefore none are ordered herein. (Cl. APA # 1, p. 15)
17. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the left arm.
18. Based on the substantial evidence, including the medical records and testimony, I find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the right arm.
19. The issue of Defendants' entitlement to credit is held in abeyance unless otherwise agreed to by the parties.

CONCLUSIONS OF LAW

Based upon the substantial evidence, including the medical evidence and testimony, it was concluded under the South Carolina Worker's Compensation Act in 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.
2. Pursuant to Section 42-1-160 of the Act, the Claimant sustained admitted compensable injuries to the right and left upper extremities.
3. Section 42-15-60 governs the provision of medical treatment.
4. Pursuant to Section 42-15-60, the Claimant reached maximum medical improvement on March 28, 2011.
5. Pursuant to Section 42-15-60, the Claimant is not entitled to Dodge medicals pursuant to the recommendations of her authorized treating physician Dr. Green, who opined the Claimant will not need future medical treatment.
6. Section 42-9-30 governs the amount of compensation and period of disability for certain injuries.
7. Pursuant to Section 42-9-30 (13), the Claimant is entitled to an award of eleven (11) weeks of permanent partial disability benefits, which equals approximately 6% to the right upper extremity.
8. Pursuant to Section 42-9-30 (13), the Claimant is entitled to an award of eleven (11) weeks of permanent partial disability benefits, which equals approximately 6% to the left upper extremity.
9. Section 42-9-260 governs the suspension, termination and credit for overpayment of temporary total disability benefits.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral arguments presented before the Appellate Panel on March 16, 2010. All proffered testimony

has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

By appeal, the Claimant submitted the following:

1. Did the hearing commissioner err in failing to find that after undertaking Ms. LaTonya Footman's treatment for the consequences of her compensable accident, Defendants' designated physician (Dr. Green) repeatedly attempted to declare her at maximum medical improvement, notwithstanding the presence of persistent symptoms that were subsequently determined to warrant further treatment, when the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly verifies this fact?
2. Did the hearing commissioner err in failing to find Ms. Footman was essentially obliged to independently seek evaluation through Dr. Joseph P. Jackson, Jr. in order to prompt Defendants' designated physician to provide further treatment (diagnostic testing, surgery, etc) when the only reasonable inference which may be gleaned from the evidence contained in the hearing record clearly establishes this fact?
3. Did the hearing commissioner err in failing to find the impairment rating assigned by Defendants' authorized physician (Dr. Green) in March, 2011 actually/only related to Ms. Footman's left upper extremity when the only reasonable inference which may be gleaned from the evidence contained in the hearing record obviously confirms this fact?
4. Did the hearing commissioner err in failing to find the impairment rating assigned by Defendant's designated physician (Dr. Green) in March, 2011 was materially inconsistent with his October 3, 2008 deposition testimony when the only reasonable

inference which may be gleaned from the evidence contained in the hearing records absolutely verifies this fact?

5. Did the hearing commissioner err in finding "Dr. Green's assignment of impairment ratings to be somewhat inconsistent, or at the very least ambiguous" when the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes that the impairment ratings assigned by this physician: (a) are materially inconsistent, particularly in view of his sworn acknowledgement that a reasonable impairment assessment would range up to 10% per arm for Ms. Footman's causally related conditions; and (b) the figure referenced by this physician in March, 2011 is 50% lower than the minimum upper extremity rating acknowledged during his deposition?
6. Did the hearing commissioner err in failing to find the inconsistency between the Defendants' designated physician's (Dr. Green's) impairment ratings (within the context of the October 3, 2008 deposition testimony, as well as between this testimony and the March 2011 written acknowledgement) warranted rejection of this evidence when: (a) these material inconsistencies compel a determination that this evidence was wholly unreliable; (b) any contrary characterization ("somewhat inconsistency"; "ambiguous") must be characterized as a product of an unusual finesse of reasoning, as well as an arbitrary and capricious analysis; (c) these inconsistencies establish Dr. Green's impairment ratings are speculative, to the extent they do not constitute competent evidence; and (d) these deficiencies are required rejection of Dr. Green's impairment ratings as a matter of law?

7. Did the hearing commissioner err in failing to find the impairment ratings assigned by Dr. Jackson (who evaluated Ms. Footman on multiple occasions) were patently more reliable than those referenced by Defendants' designated physician (Dr. Green), when: (a) the impairment opinions offered by Dr. Green are fraught with inconsistencies; (b) these inconsistencies are sufficiently material so as to result in this physician's opinions being nothing more than pure speculation; (c) Dr. Jackson's impairment ratings are wholly consistent with not only the nature/degree of Ms. Footman's causally related pathology, but also the pertinent sections of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; and (d) the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely verifies this fact?
8. Did the hearing commissioner err in focusing on a remote (February 1, 2008) comment as to grip strength inconsistencies noted by Dr. Jackson when: (a) inspection of this physician's subsequently generated notes reveal no concerns/qualifications as to the consistency of Ms. Footman's grip strength results; (b) diminished grip strength was not included as an element/component of any impairment rating contained in the hearing record; (c) there was no basis upon which to justify affording "great weight" to this innocuous reference in connection with the assessment of Ms. Footman's degree of residual permanent disability; and (d) the assignment of "great weight" to this remote and inconsequential statement is reflective of an unusual finesse of reasoning, as well as an arbitrary and capricious process, in connection with the analysis of Ms. Footman's degree of residual permanent disability?
9. Did the hearing commissioner err in limiting Ms. Footman's permanent disability compensation award based, to a substantial extent, on a remote/isolated (February 2008)

grip strength inconsistency when: (a) this analysis necessarily hinges upon an unusual finesse of reasoning, as well as an arbitrary and capricious consideration of the evidence; (b) this evidence (upon which the hearing commissioner placed "great weight") is hardly relevant to the assessment of Ms. Footman's permanent disability in 2011; and (c) the hearing commissioner's analysis necessarily constitutes a legally impermissible implicit finding as to credibility (or the lack thereof), which is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record?

10. Did the hearing commissioner err in failing to afford the impairment ratings assigned by Dr. Jackson equally "great weight" (as compared to his remote/isolated statement relative to an inconsistent grip strength finding, to which she specifically attributed "great weight") when : (a) failure to do so is obviously reflective of an arbitrary and capricious analysis process; (b) the inconsistency of the hearing commissioner's actions is similarly indicative of an unusual finesse of reasoning; (c) the only reasonable inference which can be derived from the contents of the hearing records establishes that this physician's impairment ratings warranted equally "great weight"?

11. Did the hearing commissioner err in finding Ms. Footman "had been released with no restrictions" when the only reasonable inference which may be gleaned from the evidence contained in the hearing records clearly confirms: (a) Dr. Jackson (who has evaluated her on several occasions since her accident date) assigned physical restrictions; (b) the assignment of these restrictions was, in fact, acknowledged by the hearing commissioner in "Statement of the Case" portion of her Order; (c) Ms. Footman actually receives "accommodation" by her Employer in connection with the performance of activities

beyond the restrictions assigned by Dr. Jackson; and (d) this finding is not only wholly inconsistent with the contents of the hearing record, but also reflective of an arbitrary and capricious process of analysis, which overlooked undisputed evidence that materially impacted on the primary issue in dispute?

12. Did the hearing commissioner err in finding Ms. Footman had only sustained 6% permanent partial disabilities to her arms, respectively, when this disability assessment:
(a) is wholly inconsistent with the only reasonable inference which may be gleaned from the contents of the hearing record; (b) substantially founded upon medical evidence (opinions expressed by Dr. Green) which can only be characterized as speculative; (c) clearly ignores the impairment ratings assigned by Dr. Jackson (whose opinions were otherwise found to warrant "great weight" by the hearing commissioner); and (d) materially understates Ms. Footman's degree of permanent residual disability?
13. Did the hearing commissioner err in concluding Ms. Footman was entitled to only an aggregate of 26.4 weeks of permanent partial disability compensation when this disability assessment: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the contents of the hearing record; (b) substantially founded upon medical evidence (opinions expressed by Dr. Green) which can only be characterized as speculative; (c) clearly ignores the impairment ratings assigned by Dr. Jackson (whose opinions were otherwise found to warrant "great weight" by the hearing commissioner); and (d) materially understates Ms. Footman's degree of permanent residual disability?
14. Did the hearing commissioner err in failing to find the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes that Ms. Footman has experienced a moderately greater degree of permanent residual

disability than the 6% figures identified by the hearing commissioner when the only reasonable inference which may be gleaned from the evidence contained in the hearing record undoubtedly establishes this fact?

15. Did the hearing commissioner err in failing to make specific/express factual findings relative to all disputed issues when: (a) inspection of the contents of the hearing record, in light of the factual findings contained in her Order, establishes she did not adequately address credibility, the presence of medical restrictions, Ms. Footman's undisputed need for physical accommodation by her Employer or the propriety of Dr. Jackson's impairment ratings (all of which were essential to any determination of permanent residual disability); and (b) the relevant legal authorities unequivocally demand detailed factual findings on each of these issues?
16. Did the hearing commissioner err in failing to adequately delineate the underlying rationale for several factual findings when: (a) inspections of her Order verifies the absence of a sufficient explanation of the thought process underlying findings relative to the weight (or absence thereof) afforded to Dr. Jackson's impairment ratings, placing "great weight" on an isolated/remote statement relative to grip strength inconsistency, the relevance of this February 1, 2008 comment to an assessment of permanent disability three years later, the presence of medical restrictions (that the actual factual findings erroneously overlook, Ms. Footman's undisputed need for work accommodations from her Employer and the "other factors" which purportedly received greater "weight" in the appraisal of Ms. Footman's disability than Dr. Jackson's ratings; and (b) the relevant legal authorities have uniformly demanded a detailed explanation as to the rationale underlying the Commission's findings and ultimate conclusions?

In the appellate review, the Appellate Panel shall, pursuant to § 42-17-50 (1985), review the award, weigh the evidence that was presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, the Appellate Panel hereby affirms the Decision and Order of the Single Commissioner.

STATEMENT OF FACTS

The Claimant was the only witness to testify on her behalf. The Claimant testified that she is right-hand dominant and currently 40 years of age (Hr'g Tr. p. 10, ll. 8-9, Hr'g Tr. p. 16, ll. 11-12). The Claimant stated that she graduated from high school, and has taken some courses at Midlands Technical College (Hr'g Tr. p. 10, ll. 20-25). The Claimant indicated that she began working with the Defendants approximately 7 years ago, and is currently employed with the Defendants as a Cook II (Hr'g Tr. p. 11, ll. 22). The Claimant testified that she began experiencing problems with both hands and wrists on September 6, 2006, while in her capacity as a Cook II with the Defendants (Hr'g Tr. p. 13, ll. 16). The Claimant testified that she is also currently employed with the Babcock Center, wherein she has worked for approximately seven years (Hr'g Tr. p. 12, ll. 6- p. 13, ll. 9). The Claimant testified that her employment with Babcock Center includes a position as a caregiver. *Id.* Moreover, the Claimant testified that she works, in conjunction with another employee of the Babcock Center, in order to provide caregiving services to four clients of the Babcock Center. *Id.* The Claimant testified that her work with the Babcock Center requires physical activity, and that the most strenuous physical activity

includes driving the patients while utilizing a van owned by the Babcock Center. (Hr'g Tr. p. 13, ll. 1)

The Claimant sought and received medical treatment with her family physician, Dr. Gary Bell, who recommended the Claimant undergo nerve studies. (Hr'g Tr. p. 13, ll. 19-23) Based on the medical records, the Claimant sought and received additional treatment with Camden Orthopaedic Associates, who diagnosed her with bilateral carpal tunnel syndrome on November 28, 2006. (Cl. APA # 1, p. 1) Specifically, the Claimant presented with complaints of numbness and tingling that was on going for two years, which she indicated was progressively worse. Id. The Claimant indicated her symptoms were secondary to her position with the Defendants, wherein she has to open 24 cans at a time, stir big pots of scrambled eggs, and peel potatoes as well as cantaloupe. Id. The Claimant underwent nerve conduction studies performed by Dr. Redmond, which revealed "sensory latency of 5.35...and on the left 4.35." Id. at 2. The Claimant was recommended to undergo a carpal tunnel release, particularly on the right secondary to a demanding job that has aggravated her condition. Id. The Claimant underwent a right carpal tunnel release on March 1, 2007 with Dr. Green of Midlands Orthopaedics. (Def. APA # 1, p. 1) A follow-up visit with Dr. Green on March 12, 2007 revealed that the Claimant indicated that she is doing well, and that her nighttime pain and paresthesias are better. Subsequently, the Claimant presented to Dr. Green on August 24, 2007 with complaints of shooting pain through her wrists with numbness and tingling to her right ring finger and small finger as well as pain up her arm into her shoulder on the left side. Id. at 4. However, an examination by Dr. Green revealed "no Tinel's at the elbow, really no Tinel's at the wrists, a normal two-point discrimination with no intrinsic weakness and full range of motion in her fingers, wrist and elbow with no intrinsic wasting." Id. The Claimant was recommended to

undergo an EMG/NCS of both upper extremities to evaluate her ulnar nerve function. Id. The Claimant was allowed to continue her regular work activities. Id. The Claimant underwent repeat EMG/NCS in September of 2007, which revealed very mild right carpal tunnel syndrome and mild left carpal tunnel syndrome. (Def. APA # 1, p. 6) Dr. Green indicated the Claimant was not a surgical candidate and further recommended a resting splint with repeat nerve studies in 4 to 6 months if symptoms persisted. Id. Dr. Green determined the Claimant reached maximum medical improvement with regard to her injuries on February 15, 2008, and further assigned a 2% impairment rating to the right upper extremity as well as a 2% impairment rating to the left upper extremity. (Def. APA # 1, p. 8)

Five months later, the Claimant sought additional treatment with Dr. Green on June 27, 2008, and presented with complaints of continued cubital tunnel type symptoms on her right side as well as left carpal tunnel symptoms. Id. at 9. Dr. Green recommended the use of a 45-60 degree extension split for her right arm as well as an injection into the left wrist and a Sterapred pack for her cubital tunnel syndrome. Id. In addition, the Claimant was recommended light duty for 3-5 days secondary to her on going complaints. Id. at 10. On August 11, 2008, the Claimant presented at a follow-up visit, which revealed an improved right mild cubital tunnel syndrome and a mildly improved left carpal tunnel syndrome. Id. at 11. Dr. Green indicated the Claimant was not symptomatic enough to require surgical intervention and he discharged her from his care. Id. The Claimant was placed at maximum medical improvement by Dr. Green on August 11, 2008 for her left and right upper extremities with no increase to her impairment ratings for either upper extremity. Id. at 13. Dr. Green indicated that the Claimant will not need future medical care. Id.

Based on a review of the medical records, the Claimant sought and received repeat nerve

studies, performed by Dr. Redmond on March 26, 2009, which revealed a worsening of her left carpal tunnel syndrome and a finding that the right cubital tunnel syndrome was still mild. Id. at 14. Dr. Green indicated that improvement was present in the right carpal tunnel status post release. Id. On the other hand, the Claimant presented with numbness and tingling, which she indicated was intermittent. Id. Dr. Green recommended the Claimant undergo a left carpal tunnel release. Id. at 15. Subsequently, the Claimant presented to Dr. Green on September 20, 2010, with complaints of worsening symptoms on the left side. Id. at 16. Dr. Green recommended that the Claimant undergo a repeat EMG and NCS to evaluate the possibility of Carpal Tunnel Syndrome and possible Cubital Tunnel Syndrome of both upper extremities. Id. at 17. In a follow-up visit on December 27, 2010, Dr. Green determined the Claimant reached maximum medical improvement and released the Claimant to return to work without restrictions. Id. at 19. Dr. Green assigned a 2% impairment rating to the left upper extremity and right upper extremity. Id.

Subsequently, the Claimant underwent an independent medical evaluation, at the direction of her attorney, with Dr. Jackson, who indicated, in his diagnostic report dated April 20, 2011, that the Claimant was at maximum medical improvement with regard to her right carpal tunnel, left carpal tunnel and right cubital tunnel. Dr. Jackson assigned a 10% impairment rating to each upper extremity, which equaled a 12% impairment rating to the whole person. (Cl. APA # 1, p. 14, 15) In addition, Dr. Jackson assigned the Claimant permanent restrictions to include "no lifting more than 25 lbs, lifting no more than 12 pieces of chicken on a tray, [and] only opening 10 large cans per day." Id.

The Claimant testified that she is currently employed with the Defendants, and is physically capable of performing her job duties and responsibilities with the Defendants.

Moreover, the Claimant testified that her present job duties and responsibilities with the Defendants are within the restrictions, which were placed upon the Claimant by Dr. Jackson. (Hr'g Tr. p. 27 ll. 22-25) In addition, the Claimant stated that the Defendants readily provided the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with the Defendants. (Hr'g Tr. p. 29 ll. 1-5) On the other hand, the Claimant stated that she does experience ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with the Defendants. (Hr'g Tr. p. 19, ll. 11-23) The Claimant testified that she currently experiences numbness and tingling in the fingers of both her left hand and right hand. *Id.* More specifically, the Claimant indicated that she experiences increased pain and problems while engaging in specific activities such as lifting large pans of chicken. (Hr'g Tr. p. 18, ll. 13-18) In addition, the Claimant stated that she experiences bilateral elbow pain, as well as decreased grip strength of the left hand and left upper extremity. On the other hand, the Claimant indicated that she does not currently utilize any prescription medication for her ongoing left upper extremity and right upper extremity problems, and only takes over-the-counter medication approximately 1-2 days per week when she experiences pain in the left upper extremity and right upper extremity. (Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8) In addition, the Claimant testified that she does not utilize an assistive device on the left upper extremity or right upper extremity despite her ongoing pain and problems. (Hr'g Tr. p. 29, ll. 9-15)

Based on a review of the file, the evidence presented in the parties' briefs and oral argument, the Panel Affirms the Order of November 6, 2009 with Amendments and the following are made as:

FINDINGS OF FACT

Based upon the substantial evidence, including the medical evidence and testimony, the Appellate Panel hereby makes the following findings of facts:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. Based on the substantial medical records and testimony, We find that the Claimant injured her arms (bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome) on September 6, 2006, both of which conditions are admitted by the Defendants.
3. The Claimant is 40 years of age (testimony of Claimant).
4. The Claimant is right hand dominant (testimony of Claimant).
5. The Claimant is a high school graduate. She attended 1 semester of college (testimony of Claimant).
6. The Claimant is a 17-year employee for Employer or its predecessor contractor at Fort Jackson. Her job involves cooking for soldiers (testimony of Claimant).
7. Based on the substantial medical records and testimony, We find that, on the date of the Claimant's injury with the Defendants, the Claimant held dual or concurrent employment with another employer (the Babcock Center). This job involves driving a van, dispensing medication, cleaning up after clients, and assisting with meal preparation (testimony of the Claimant).
8. The Claimant underwent bilateral carpal tunnel release surgeries (Defendants' APA #1, page 1; Deposition of Dr. Green, page 5; Claimant's APA #2, pages 23-24 and 47-48).
- ~~9. Based on the substantial evidence, including the medical records and testimony, We find~~
that the Claimant has been treated conservatively for cubital tunnel syndrome (medical evidence in its entirety).

10. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant reached maximum medical improvement on March 28, 2011 (Defendants' APA #1, page 19).
11. Based on the substantial evidence, including the medical records and testimony, We find that Dr. Green's assignment of impairment ratings to be somewhat inconsistent or, at the very least, ambiguous. Initially (by medical report), authorized treating physician Dr. Green assigned a 2% impairment rating for each upper extremity. At his deposition, Dr. Green states that he agrees with an impairment rating in the range of 2% - 5%. (CITE) Dr. Green also considers the same range to be appropriate for cubital tunnel symptoms (leading the undersigned to conclude that the initial rating was for carpal tunnel symptoms only). Later in his deposition, Dr. Green assigned a total ("collective") 2% impairment rating. However, the last page of the deposition appears (at least to the undersigned) to revert to the 4% - 10% impairment rating for each upper extremity. Then finally, in a 2011 report, Dr. Green seems to revert (again) to a 2% total rating for each upper extremity. Regardless, my awards are based upon other factors as noted herein (Defendants' APA #1, pages 8, 13, and 19; Deposition of Dr. Green, pages 26-28 and 33-34; Claimant's APA #2, page 31).
12. Based on the substantial evidence, including the medical records and testimony, We find that Claimant's IME physician ultimately assigned a total 10% rating for each upper extremity. We considered these ratings, but ultimately do not give them as much weight as We give other factors. (Claimant's APA #1, pages 9-10 and 17).
13. Based on the substantial evidence, including the medical records and testimony, We find that, to his well-deserved credit (as far as being candid is concerned), after Dr. Jackson

noted inconsistencies in Claimant's right grip strength testing, he "pointed out [to Claimant] the consistency of effort in grip strength as a basic element of building a doctor/patient relationship." We give this record great weight for the reason that these are the notes of Claimant's own expert (Defendants' APA #2, pages 20-21; Claimant's APA #1, pages 7-8).

14. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant takes no prescription medication for her causally related condition. She takes over-the-counter medication "every now and then." (Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8).
15. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant has been released with no restrictions, and has returned to work (full duty) with both of her employers (Deposition of Dr. Green, pages 31-32; Defendants' APA #1, page 13).
16. Based on the substantial evidence, including the medical records and testimony, We find that no future medicals have been recommended by the authorized treating physician, and therefore none are ordered herein. (Cl. APA # 1, p. 15)
17. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the left arm.
18. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the right arm.
19. The issue of Defendants' entitlement to credit is held in abeyance unless otherwise

agreed to by the parties.

CONCLUSIONS OF LAW

Based upon the substantial evidence, including the medical evidence and testimony, it was concluded under the South Carolina Worker's Compensation Act in 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.
2. Pursuant to Section 42-1-160 of the Act, the Claimant sustained admitted compensable injuries to the right and left upper extremities.
3. Section 42-15-60 governs the provision of medical treatment.
4. Pursuant to Section 42-15-60, the Claimant reached maximum medical improvement on March 28, 2011.
5. Pursuant to Section 42-15-60, the Claimant is not entitled to Dodge medicals pursuant to the recommendations of her authorized treating physician Dr. Green, who opined the Claimant will not need future medical treatment.
6. Section 42-9-30 governs the amount of compensation and period of disability for certain injuries.
7. Pursuant to Section 42-9-30 (13), the Claimant is entitled to an award of eleven (11) weeks of permanent partial disability benefits, which equals approximately 6% to the right upper extremity.
8. Pursuant to Section 42-9-30 (13), the Claimant is entitled to an award of eleven (11) weeks of permanent partial disability benefits, which equals approximately 6% to the left upper extremity.

9. Section 42-9-260 governs the suspension, termination and credit for overpayment of temporary total disability benefits.

ORDER

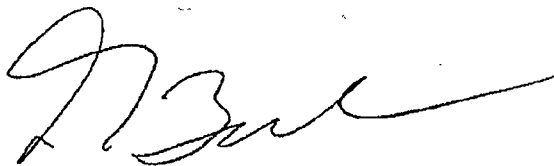
IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant sustained a compensable injury to the right and left upper extremities.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant is entitled to an award of permanent partial disability benefits in the amount of 6% to the right and left upper extremities, respectively, pursuant to Section 42-9-30 (13) of the Act.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant reached maximum medical improvement on March 28, 2011 and is not entitled to future medical treatment pursuant to Section 42-15-60 of the Act.

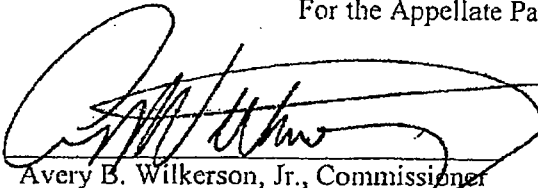
IT IS HEREBY ORDERED that the Appellate Panel hereby affirms the Decision and Order of the Single Commissioner.

AND IT IS SO ORDERED.

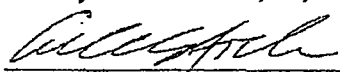


T. Scott Beck , Chair
For the Appellate Panel

CONCUR:



Avery B. Wilkerson, Jr., Commissioner



Andrea C. Roche, Commissioner

Dated: 5-30-12

CERTIFICATE OF SERVICE

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

This 30 day of May, 2012
By Valerie D. Decker

Administrative Assistant to the Commissioner

Jason W. Lockhart
Andrew Safran
Ann McCruey Mickle

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2012CP4004574

Latonya Footman

Johnson Food Services LLC

Hartford

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 3 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Andrew Nathan Safran

Ann McCrowey Mickle

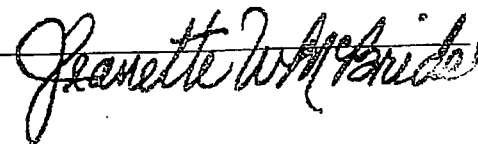
Jason Wendell Lockhart

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

LATONYA FOOTMAN,

Civil Action No. 2012-CP-40-04574

Claimant,

v.

ORDER

JOHNSON FOOD SERVICES, LLC,

Employer,

and

THE HARTFORD,

Carrier,

Defendants.

RICHLAND COUNTY
FILED
2013 APR -1 PM 2:31
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter came before the Court on March 6, 2013 on Claimant's appeal from the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter "Full Commission"). Representing Claimant was Andrew N. Safran, Esquire, and representing Defendants was Jason W. Lockhart, Esquire. Based on the extensive record in the case and the arguments of counsel, I make the following findings and conclusions.

STATEMENT OF THE CASE

This claim arises out of a Form 50 filed by Claimant on October 17, 2006. Claimant alleged that she suffered from work-related bilateral arm injuries as a result of repetitive performance of her job duties. Specifically, Claimant alleged she suffered from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. She indicated that the date of injury or diagnosis was September 6, 2006.

SCANNED

This matter came to be heard before the Single Commissioner on June 8, 2011 in Columbia, South Carolina pursuant to Defendants' Form 21 filed on April 5, 2011. The Form 21 was filed on the basis that Claimant's authorized treating physician, Dr. Green, determined that Claimant reached maximum medical improvement (MMI) on March 30, 2011. After determining Claimant was at MMI, Dr. Green assigned a two percent (2%) impairment rating to the left upper extremity and a two percent (2%) impairment rating to the right upper extremity. Defendants asserted that Claimant was entitled to an award of permanent partial disability benefits based on the impairment ratings provided by Dr. Green.

Claimant maintained that she was entitled to an award of permanent partial disability benefits to the left upper extremity and right upper extremity in excess of the impairment ratings provided by Dr. Green (Single Commissioner Hr'g Tr. 4-5). More specifically, Claimant presented the diagnostic report of Dr. Jackson, who conducted an Independent Medical Examination (IME) of Claimant pursuant to the request of Claimant's attorney. Dr. Jackson, in a report dated April 20, 2011, assigned a ten percent (10%) impairment rating to the left upper extremity and a ten percent (10%) impairment rating to the right upper extremity (Single Commissioner Hr'g Tr. 6:7-10). Claimant took the position that she was not seeking additional medical treatment based on the fact that she had reached maximum medical improvement and based on the absence of medical evidence indicating that she was in need of additional medical treatment. (Single Commissioner Hr'g Tr. 6:16-22).

After the hearing, in a Decision and Order dated September 16, 2011, the Single Commissioner determined that Claimant sustained compensable injuries to the right and left upper extremities as a result of Claimant's September 2006 work-related accident (Decision and Order, WCC No. 0617361). The Single Commissioner concluded that Claimant was entitled to

an award of six percent (6%) of permanent partial disability benefits to the right and left arm, respectively, pursuant to S.C. Code Ann. § 42-9-30(13). The Single Commissioner further concluded that the greater weight of the evidence supported a finding that Claimant reached maximum medical improvement on March 28, 2011 and that she is not entitled to future medical treatment pursuant to S.C. Code Ann. § 42-15-60.

Following the Single Commissioner's Decision and Order, Claimant timely appealed the Decision and Order to the Full Commission. A hearing before the Full Commission was held on March 19, 2012. In a Decision and Order signed on May 30, 2012, the Full Commission affirmed each of the Single Commissioner's Findings of Fact and Conclusions of Law with amendments. This affirmation was based "...upon the substantial evidence, including the medical evidence and testimony..." (Appellate Panel Decision and Order, WCC No. 0617361). In each of the relevant Findings of Fact and Conclusions of Law, the Full Commission provided its rationale and justification in the form of citations to the record and substantive statutory law. A Petition for Judicial Review filed by Claimant followed.

At the hearing before the undersigned, Claimant raised three main issues. First, Claimant asserted that the Single Commissioner and Full Commission erred in finding that Claimant was released to return to work with no restrictions. Second, Claimant asserted the Single Commissioner and Full Commission erred in finding that Claimant suffered a 6% permanent partial disability to both the left and right upper extremities. And finally, Claimant asserted that the Full Commission erred in reducing Claimant's award from 26.4 weeks to 22 weeks.

STANDARD OF REVIEW

The Administrative Procedures Act addresses judicial review upon exhaustion of administrative remedies. S.C. Code Ann. § 1-23-380 states:



"A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this article, and Article 1...For workers' compensation claims with dates of accident before July 1, 2007, appeals from the Appellate Panel are still filed in the court of common pleas of the county in which the alleged accident happened, or in which the employer resides or has his principal office."

The standard of review for the Court of Common Pleas is as follows:

"(5) The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand the case for further proceedings. The Court may reverse or modify the decision if substantial rights if the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

S.C. Code Ann. § 1-23-380(5)(a-f).

When the evidence before the Court gives rise to but one reasonable inference, the question becomes one of law for the Court to decide. See Lorick v. S.C. Electric & Gas Co, 245 S.C. 513, 141 S.E.2d 662 (1965). Likewise, if there is absolutely no evidence in support of a finding of fact by the Commission, the question becomes a question of law. See Scott v. Havner Motor Company, 226 S.C. 580, 86 S.E.2d 475 (1955). Where the evidence is not disputed, then it becomes a matter of law. See Smith v. Union Bleachery/Cone Mills, 276 S.C. 454, 280 S.E.2d 52 (1981).

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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 (emphasis added).

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).

In the appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1985), review the award, weigh the evidence that was presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

Upon review of a decision of the Full Commission, the trial judge or appellate court is not permitted to substitute his or her or its own findings of fact for those of the Commission. See Brown v. R.L. Jordan Oil Company, 291 S.C. 272, 353 S.E.2d 280 (1987). Nor may the court substitute its judgment for that of the agency as to the weight of the evidence. See Tobey v. L & P Construction Co., 296 S.C. 122, 370 S.E.2d 897 (Ct. App. 1988). 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.

LEGAL ANALYSIS

I. THE FULL COMMISSION DID NOT ERR IN AFFIRMING THE SINGLE COMMISSIONER'S FINDING OF FACT THAT CLAIMANT WAS RELEASED TO RETURN TO WORK WITH NO RESTRICTIONS.

Claimant contends that the Full Commission erred in finding that she was released to return to work without restriction. I disagree.

The Single Commissioner made the following finding of fact:

"15. Based on the substantial evidence, including medical records and testimony, I find that the Claimant has been released with no restrictions, and has returned to work (full duty) with both of her employers (Deposition of Dr. Green, pages 31-32; Defendants' APA #1, page 13"

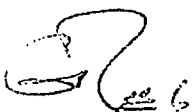
(Decision and Order, WCC No. 0617361).

On appeal, the Full Commission adopted the Single Commissioner's finding of fact as follows:

"15. Based on the substantial evidence, including medical records and testimony, We find that the Claimant has been released with no restrictions, and has returned to work (full duty) with both of her employers (Deposition of Dr. Green, pages 31-32; Defendants' APA #1, page 13"

(Appellate Panel Decision and Order, WCC No. 0617361)

The evidence in the record establishes that Claimant was treated for her injuries, reached maximum medical improvement, and was released to return to work by her authorized treating physician without any restrictions. The Commission reached this conclusion and made this finding of fact based on two specific pieces of evidence: (1) Dr. Green's deposition testimony



and (2) the South Carolina Workers' Compensation Commission Form 14B filled out by Claimant's authorized treating physician (Dr. Green).

Dr. Green indicated, during his deposition, that he released Claimant to return to regular duty work with no restrictions following her final appointment with his office in August 2008. (Dr. Green Deposition Tr. 30:23 – 31:7). After being told about her job description, Dr. Green stated that she could do it under no restrictions. (Dr. Green Deposition Tr. 32:9-20). He did indicate that if Claimant had come back to him and stated that a particular component of her job really bothered her that he would probably advise her to refrain or minimize that particular activity. (Dr. Green Deposition Tr. 32:20-25). Dr. Green also noted that his review of Dr. Jackson's records indicated that she was "...okay for a moderate level of activity." (Dr. Green Deposition Tr. 33:11-12).

Dr. Green also filled out a Form 14B Physician's Statement for filing with the South Carolina Workers' Compensation Commission. On the Form 14B, Dr. Green (as the authorized treating physician) indicates that Claimant suffered an injury to her left and right upper extremities. (Defendants' APA #1, p. 13). He further indicates that Claimant reached maximum medical improvement on August 11, 2008 and "...is able to return to work without restriction." (Defendants' APA #1, p. 13).

Claimant asserts that Dr. Jackson ordered her to return to work with restrictions. Dr. Jackson's reports do contain a mention of work restrictions. However, that is only one piece of the puzzle the Commissioner and Full Commission considered. The Commissioner and Full Commission also weighed the fact that Dr. Jackson is not Claimant's authorized treating physician. As previously mentioned, the authorized treating physician—Dr. Green—released Claimant to return to work without any permanent restrictions.

Claimant also asserted that Dr. Green's impairment rating and release is invalid because it was originally issued in 2008. Her rationale for this position is that Dr. Green operated on Claimant after the 2008 release. However, the fact that Claimant was operated on does not serve to invalidate Dr. Green's reports. As the authorized treating physician for Claimant, Dr. Green had to opportunity to re-release Claimant in 2011 following surgery. He also had the opportunity to re-rate Claimant and assign restrictions in 2011. Following the surgery, Dr. Green chose not to increase the impairment ratings or assign work restrictions.

Additionally, Claimant contends that Dr. Green's statements in his report that Claimant may return to work "as tolerated" constitutes a "work restriction." I disagree. There is a plain difference between tolerating work and being restricted from certain work functions or modalities. Dr. Green has never assigned Claimant any permanent work restrictions.

Upon review of a decision of the Commission, the trial judge or appellate court is not permitted to substitute his or her or its own findings of fact for those of the Commission. See Brown v. R.L. Jordan Oil Company, 291 S.C. 272, 353 S.E.2d 280 (1987). Nor may the court substitute its judgment for that of the agency as to the weight of the evidence. See Tobey v. L & P Construction Co., 296 S.C. 122, 370 S.E.2d 897 (Ct. App. 1988). 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).

The Commission's finding is founded upon the evidence presented in the record. The Commission's finding of fact contains citations to the source of such finding and provides an insight into the rationale for the finding. The Full Commission Appellate Panel agreed with the

Single Commissioner and affirmed her findings of fact on this issue. In the Order, the Full Commission also cited to portions of the record that contain their rationale for the finding of fact.

While it is possible that the Single Commissioner could have decided that Claimant's statements about her work related issues and Dr. Jackson's reports were indicative of her assertion that she is working with restrictions, after weighing the evidence and viewing the record as a whole, the Single Commissioner and Full Commission chose not make that finding. This is an example of the Single Commissioner and Full Commission weighing the evidence presented at the hearing and making a determination based on that evidence. As noted above, this Court may not "...substitute its judgment for that of the agency as to the weight of the evidence. See Tobey v. L & P Construction Co., 296 S.C. 122, 370 S.E.2d 897 (Ct. App. 1988)." Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. And, 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 Single Commissioner and Full Commission determination that Claimant had returned to work with no restrictions is based upon the substantial evidence presented at the hearing. Further, the Single Commissioner and Full Commission provided rationale for this decision in their respective Orders. This Court will not set aside that determination simply because an alternate conclusion *could* have been reached. For the foregoing reasons, the Full Commission's Finding of Fact related to Claimant's return to work without restriction is **AFFIRMED**.

II. THE FULL COMMISSION DID NOT ERR IN AFFIRMING THE SINGLE COMMISSIONER'S FINDING OF FACT AND CONCLUSION OF LAW THAT CLAIMANT SHOULD BE ASSIGNED A SIX PERCENT (6%) PERMANENT PARTIAL IMPAIRMENT RATING TO BOTH THE LEFT AND RIGHT UPPER EXTREMITIES.

Claimant contends that the Full Commission erred in determining that she should be assigned a six percent permanent partial impairment rating to both her left and right upper extremities. I disagree.

The Single Commissioner made the following findings of fact and conclusions of law:

"17. Based on the substantial evidence, including medical records and testimony, I find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the left arm.

"18. Based on the substantial evidence, including medical records and testimony, I find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the right arm.

(Decision and Order, WCC No. 0617361).

and

"7. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of thirteen and two tenths (13.2) weeks of permanent partial disability benefits, which equals approximately 6% to the right upper extremity"

"8. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of thirteen and two tenths (13.2) weeks of permanent partial disability benefits, which equals approximately 6% to the left upper extremity"

(Decision and Order, WCC No. 0617361).

On appeal, the Full Commission adopted the Single Commissioner's findings of fact and conclusions of law as follows:

"17. Based on the substantial evidence, including medical records and testimony, We find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the left arm.

"18. Based on the substantial evidence, including medical records and testimony, We find that the Claimant is entitled to an award of 6% permanent partial disability benefits to the right arm.

(Appellate Panel Decision and Order, WCC No. 0617361)

and

"7. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of eleven (11) weeks of permanent partial disability benefits, which equals approximately 6% to the right upper extremity"

and

"8. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of eleven (11) weeks of permanent partial disability benefits, which equals approximately 6% to the left upper extremity"

(Appellate Panel Decision and Order, WCC No. 0617361).

The Full Commission reviewed the Claimant's medical history and went through a lengthy recitation of the factual background in this case. This recitation of facts, summarized below, provides the basis and rationale for its decision to affirm the Single Commissioner's finding of fact and conclusion of law that Claimant suffered a six percent (6%) permanent partial impairment.

Claimant testified that she began experiencing problems with both hands and wrists on September 6, 2006, while working for Johnson Food Services. (Hr'g Tr. 13:16). Claimant sought and received medical treatment with her family physician, Dr. Gary Bell, who recommended Claimant undergo nerve studies. (Hr'g Tr. 13:19-23). Based on the medical records, Claimant sought and received additional treatment with Dr. Jackson, who diagnosed her with bilateral carpal tunnel syndrome on November 28, 2006. (Cl. APA # 1, p. 1). Claimant underwent a right

carpal tunnel release on March 1, 2007 with Dr. Green of Midlands Orthopaedics. (Def. APA # 1, p. 1).

Approximately one month later, Dr. Green released her from his care, indicating she would see a big difference in her strength and tenderness in the coming months. When Claimant remained symptomatic, she returned to Dr. Jackson on August 12, 2007 and received a recommendation for additional electrodiagnostic testing. Claimant returned to Dr. Green on August 24, 2007 with complaints of shooting pain through her wrists with numbness and tingling to her right ring finger and small finger as well as pain up her arm into her shoulder on the left side. (Def. APA # 1, p. 4).

Thereafter, Claimant underwent an EMG/NCS of both upper extremities to evaluate her ulnar nerve function. Id. Claimant was ultimately allowed to continue her regular work activities. Id. She underwent another EMG/NCS in September of 2007, which revealed very mild right carpal tunnel syndrome and mild left carpal tunnel syndrome. (Def. APA # 1, p. 6). Dr. Green indicated Claimant was not a surgical candidate and recommended a resting splint with repeat nerve studies in 4 to 6 months if symptoms persisted. Id. Dr. Green determined Claimant reached maximum medical improvement with regard to her injuries on February 15, 2008 and assigned a 2% impairment rating to the right upper extremity as well as a 2% impairment rating to the left upper extremity. (Def. APA # 1, p. 8).

Five months later, Claimant sought additional treatment with Dr. Green. At this time, she presented with complaints of continued cubital tunnel type symptoms on her right side as well as left carpal tunnel symptoms. (Def. APA # 1, p. 8). Dr. Green recommended the use of a 45-60 degree extension splint for her right arm as well as an injection into the left wrist and a Sterapred pack for her cubital tunnel syndrome. Id. In addition, Claimant was ordered to light duty for 3-5

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days secondary to her on going complaints. (Def. APA # 1, p. 10). On August 11, 2008, Claimant presented at a follow-up visit which revealed an improved right mild cubital tunnel syndrome and a mildly improved left carpal tunnel syndrome. (Def. APA # 1, p. 11). Dr. Green indicated Claimant was not symptomatic enough to require surgical intervention and he discharged her from his care. Id. Claimant was placed at maximum medical improvement by Dr. Green on August 11, 2008 for her left and right upper extremities with no increase to her impairment ratings for either upper extremity. (Def. APA # 1, p. 13). Dr. Green indicated that the Claimant will not need future medical care. Id.

Claimant sought and received additional repeat nerve studies from Dr. Redmond on March 26, 2009. (Def. APA # 1, p. 14). These revealed a worsening of her left carpal tunnel syndrome and a finding that the right cubital tunnel syndrome was still mild. Id. Dr. Green indicated that improvement was present in the right carpal tunnel status post release. Id. Dr. Green recommended the Claimant undergo a left carpal tunnel release. (Def. APA # 1, p. 15).

Claimant presented to Dr. Green on September 20, 2010, with complaints of worsening symptoms on the left side. (Def. APA # 1, p. 16). Dr. Green recommended that she undergo another EMG and NCS to evaluate the possibility of Carpal Tunnel Syndrome and possible Cubital Tunnel Syndrome of both upper extremities. (Def. APA # 1, p. 17). On December 27, 2010, Dr. Green determined the Claimant again reached maximum medical improvement and released the Claimant to return to work without restrictions. (Def. APA # 1, p. 19). Dr. Green re-assigned a 2% impairment rating to the left upper extremity and right upper extremity. Id.

Following this final rating and release, at the direction of her attorney, Claimant underwent an independent medical evaluation with Dr. Jackson. Dr. Jackson agreed with Dr. Green and indicated in his diagnostic report dated April 20, 2011 that Claimant was at maximum

medical improvement with regard to her right carpal tunnel, left carpal tunnel and right cubital tunnel. Dr. Jackson assigned a 10% impairment rating to each upper extremity, which equaled a 12% impairment rating to the whole person. (Cl. APA # 1, p. 14, 15). In addition, Dr. Jackson suggested he would assign permanent restrictions to include "no lifting more than 25 lbs, lifting no more than 12 pieces of chicken on a tray, [and] only opening 10 large cans per day." Id.

At the hearing, Claimant testified that she was currently employed with the Defendants, and was physically capable of performing her job duties and responsibilities with the Defendants. In addition, she stated that Defendants readily provided her with accommodations when she experienced left upper extremity and right upper extremity pain and problems while at work. (Hr'g Tr. 29:1-5). Claimant stated that she did experience ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with the Defendants. (Hr'g Tr. 19:11-23). Claimant testified that she currently experienced numbness and tingling in the fingers of both her left hand and right hand. Id. More specifically, she indicated that she experienced increased pain and problems while engaging in specific activities such as lifting large pans of chicken. (Hr'g Tr. 18:13-18). On the other hand, Claimant indicated that she does not currently utilize any prescription medication for her ongoing left upper extremity and right upper extremity problems and only takes over-the-counter medication approximately 1-2 days per week when she experiences pain in the left upper extremity and right upper extremity. (Hr'g Tr. 36:25, 37:1-8). In addition, Claimant testified that she does not utilize an assistive device on the left upper extremity or right upper extremity despite her ongoing pain and problems. (Hr'g Tr. 29:9-15).

As noted above, the Full Commission spent a great deal of time reviewing Claimant's medical history, the hearing transcript, and other evidence before affirming the Single

Commissioner's findings of facts and conclusions of law. The Full Commission made the following findings of facts that to explain the rationale behind their decisions:

"11. Based on the substantial evidence, including the medical records and testimony, We find that Dr. Green's assignment of impairment ratings to be somewhat inconsistent or, at the very least, ambiguous. Initially (by medical report), authorized treating physician Dr. Green assigned a 2% impairment rating for each upper extremity. At his deposition, Dr. Green states that he agrees with an impairment rating in the range of 2% - 5%. (CITE) Dr. Green also considers the same range to be appropriate for cubital tunnel symptoms (leading the undersigned to conclude that the initial rating was for carpal tunnel symptoms only). Later in his deposition, Dr. Green assigned a total ("collective") 2% impairment rating. However, the last page of the deposition appears (at least to the undersigned) to revert to the 4% - 10% impairment rating for each upper extremity. Then finally, in a 2011 report, Dr. Green seems to revert (again) to a 2% total rating for each upper extremity. Regardless, my awards are based upon other factors as noted herein (Defendants' APA #1, pages 8, 13, and 19; Deposition of Dr. Green, pages 26-28 and 33-34; Claimant's APA #2, page 31)."

"12. Based on the substantial evidence, including the medical records and testimony, We find that Claimant's IME physician ultimately assigned a total 10% rating for each upper extremity. We considered these ratings, but ultimately do not give them as much weight as We give other factors. (Claimant's APA #1, pages 9-10 and 17)."

"14. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant takes no prescription medication for her causally related condition. She takes over-the-counter medication "every now and then." (Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8)."

"15. Based on the substantial evidence, including the medical records and testimony, We find that the Claimant has been released with no restrictions, and has returned to work (full duty) with both of her employers (Deposition of Dr. Green, pages 31-32; Defendants' APA #1, page 13)."

"16. Based on the substantial evidence, including the medical records and testimony, We find that no future medicals have been recommended by the authorized treating physician, and therefore

none are ordered herein. (Cl. APA # 1, p. 15)."

(Decision and Order, WCC No. 0617361).

This Court can reverse findings of fact 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 such "...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).

Upon review of a decision of the Commission, the trial judge or appellate court is not permitted to substitute his or her or its own findings of fact for those of the Commission. See Brown v. R.L. Jordan Oil Company, 291 S.C. 272, 353 S.E.2d 280 (1987). Nor may the court substitute its judgment for that of the agency as to the weight of the evidence. See Tobey v. L & P Construction Co., 296 S.C. 122, 370 S.E.2d 897 (Ct. App. 1988). 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.

Claimant relied on two cases at the hearing before the undersigned as support for his position. The first case was Burnette v. City of Greenville, 2012 WL 6028904 (S.C. App.). The second case was Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320). I find that neither of these cases are persuasive to show that the Commission in this case erred by awarding a 6% impairment rating to each of Claimant's upper extremities.



In Burnette, the Court of Appeals stated that "...the determination of an injured employees impairment rating is more art than science, involving the consideration of evidence the Commission may gather from the injured employee, medical and vocational experts, and lay witnesses." The Court of Appeals cited to Sanders v. MeadWestvaco Corp., which held:

"While an impairment rating may not rest on surmise, speculation or conjecture ... it is not necessary that the percentage of disability or loss of use be shown with mathematical exactness....

Further, the [Commission] is not bound by the opinion of medical experts and may find a degree of disability different from that suggested by expert testimony. Expert medical testimony is merely intended to aid the [Commission] in coming to the correct conclusion."

371 S.C. 284, 291-92, 638 S.E.2d 66, 70 (Ct. App. 2006) (citations and quotation marks omitted).

Further, in Grayson, the Supreme Court stated, amongst other things, that "[w]here there is conflicting medical evidence, the findings of fact of the commission are conclusive." 317 S.C. 309, 454 S.E.2d 321-22 (*citing Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991)).

The evidence in this case shows that Claimant was assigned two impairment ratings. The first was a 2% rating by Dr. Green (the authorized treating physician) and the second was a 10% rating by Dr. Jackson (Claimant's personal physician). The Single Commissioner undertook a review of the record and awarded permanent disability benefits that she thought reflected Claimant's level of disability based on the substantial evidence. This number was 6% to the left upper extremity and 6% to the right upper extremity. The Full Commission, on review, affirmed this rating based on their review of the record and in-depth analysis of Claimant's medical history.

It is entirely possible that another person would review the evidence and determine Claimant has 4% impairment or 8% impairment to the left and right upper extremities. Drs. Green and Jackson are both medical professionals and disagree on the impairment rating. It is even possible that another person would assign separate and different ratings to each extremity. However, that was not the Full Commission's determination in light of the whole of the evidence.

This is a perfect example of the Single Commissioner and Full Commission weighing the evidence presented at the hearing and making a determination based on that evidence. This Court will not "...substitute its judgment for that of the agency as to the weight of the evidence. *See Tobey v. L & P Construction Co.*, 296 S.C. 122, 370 S.E.2d 897 (Ct. App. 1988)." Further, it appears to the undersigned that this is an issue where there are two conclusions can be drawn from the same evidence. And "[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 finding of fact and conclusion of law related to Claimant's impairment rating is based on the evidence presented at the hearing. Further the Single Commissioner and Full Commission provided rationale for their decisions. Therefore this Court cannot, and will not, set aside a judgment simply because an alternate conclusion *could* have been reached. The Full Commission's Finding of Fact and Conclusion of Law related to Claimant's award of six percent (6%) permanent partial disability benefits to each upper extremity is AFFIRMED.

III. THE FULL COMMISSION'S REDUCTION OF CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FROM 26.4 WEEKS TO 22 WEEKS WAS THE RESULT OF A SCRIVENER'S ERROR.

Claimant asserts that the Full Commission's decision to reduce the award from 26.4 weeks to 22 weeks was arbitrary and capricious. I disagree.

In the Single Commissioner's Decision and Order, the Single Commissioner made the following conclusion of law:

"7. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of thirteen and two tenths **(13.2) weeks** of permanent partial disability benefits, **which equals approximately 6%** to the right upper extremity"

and

"8. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of thirteen and two tenths **(13.2) weeks** of permanent partial disability benefits, **which equals approximately 6%** to the left upper extremity"

(Decision and Order, WCC No. 0617361) (emphasis added).

In the Full Commission Decision and Order, the Full Commission made the following conclusions of law:

"7. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of eleven **(11) weeks** of permanent partial disability benefits, **which equals approximately 6%** to the right upper extremity"

and

"8. Pursuant to Section 42-9-30(13), the Claimant is entitled to an award of eleven **(11) weeks** of permanent partial disability benefits, **which equals approximately 6%** to the left upper extremity"

(Appellate Panel Decision and Order, WCC No. 0617361) (emphasis added).

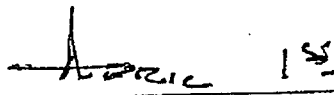
Pursuant to S.C. Code Ann. § 42-9-30, an injury to the arm has a maximum possible award of two hundred and twenty (220) weeks. A six percent (6%) impairment rating to the arm is equal to 13.2 weeks of compensation. While the Full Commission affirmed the assignment of a six percent (6%) permanent partial impairment rating, it appears that the Full Commission committed a mathematical and/or scrivener's error in calculating the number of weeks of permanent partial disability to be awarded relative to the assigned permanent partial impairment rating.

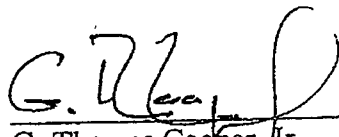
It is clear to any person who reads the Full Commission Decision and Order that there was no malicious, arbitrary, and/or capricious intent on the part of the Commission in "reducing" the award. In fact, **the Commission did not reduce the award at all.** It is readily apparent that the Commissioner awarded a 6% rating to each upper extremity. It is further readily apparent that the Full Commission awarded a 6% rating to each upper extremity. This is simply nothing more than a mathematical and/or scrivener's error as it relates to the number of weeks to be awarded based on the uniform impairment rating between the Commissioner and the Full Commission.

Based on a six percent (6%) rating, Claimant is entitled to 13.2 weeks of permanent partial disability for each arm. The Full Commission's finding of fact and conclusion of law on this issue should be **AFFIRMED BUT MODIFIED** to reflect 13.2 weeks of compensation.

ORDER

Based on the discussion herein, it is ordered that this case be **AFFIRMED AS MODIFIED**.


_____, 2013
Columbia, South Carolina



G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4004574Latonya FootmanJohnson Food Services LLCHartford

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment to the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 3 June 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Andrew Nathan Safran

Ann McCrowey Mickle

Jason Wendell Lockhart

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Latonya Footman,)

Claimant/Appellant,)

v.)

Johnson Food Services, LLC,)

Employer,)

And)

The Hartford,)

Defendants/Respondents.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-40-04574

**DENIAL OF PLAINTIFF'S MOTION
TO ALTER/AMEND JUDGMENT PER
RULE SCRCP 59(E)**

RICHLAND COUNTY
FILED
2013 JUN -3 AM 9:24
JEANETTE W. MORRIS
C.C.P. & C.S.

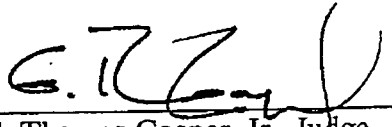
This matter comes before the Court by way of Plaintiff's Motion to Reconsider the Order dated April 1, 2013, denying Plaintiff's request to reverse the Workers Compensation Full Commission's Decision, pursuant to Rule 59 SCRCP.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby DENIES Defendant's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about April 1, 2013. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.

May 28 2013
Columbia, South Carolina


G. Thomas Cooper, Jr., Judge
Judge, Fifth Judicial Circuit

SCANNED



ATTORNEYS AT LAW

Reply To
JASON W. LOCKHART
Direct Dial: (803) 227-2283
jlockhart@mgclaw.com
COLUMBIA

April 6, 2011

VIA HAND DELIVERY

Virginia Crocker, Judicial Director
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: LaTonya Footman v. Johnson Food Services and The Hartford
Date of Accident: September 6, 2006
WCC File No.: 0617361
Our File No.: 2071.06097
Claim No.: YKY26960 C

Dear Ms. Crocker:

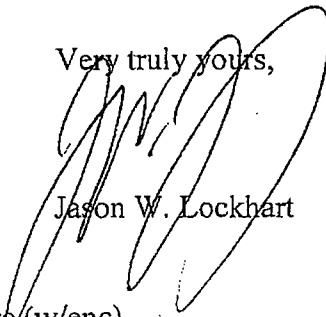
Please find enclosed our Form 21 for filing in this matter. We also enclose copies of supporting medical information and our filing fee in the amount of \$25.00.

By copy of this letter to Andrew N. Safran, Esquire, the Claimant's attorney, we are notifying him of this submission, and serving a copy of same upon him by mail.

If you have any questions, or if you need further assistance from us, please do not hesitate to call.

With kind regards, I am

Very truly yours,


Jason W. Lockhart

JWL/rd

Enclosures

cc: Andrew N. Safran, Esquire (w/enc)
Faith Tolbert, The Hartford (w/enc)(via/email only)
Preston Wider, Johnson Food Services, LLC (w/enc)

MCANGUS GOUDELOCK & COURIE, L.L.C

Check Number: 156954
Check Date: 04/06/2011

DATE	DESCRIPTION	INVOICE NO.	NET AMOUNT
4/5/2011	Rebecca Dunlap/Footman	2071.06097-2	\$ 25.00

Check Totals:

\$ 25.00

THIS DOCUMENT CONTAINS SECURITY FEATURES - SEE BACK FOR DETAILS

MCANGUS GOUDELOCK & COURIE, L.L.C
1320 Main Street, 10th Floor
Columbia SC 29201
PH. (803) 779-2300

No. 156954

67-119/539

The National Bank of South Carolina
Columbia, South Carolina

DATE

04/06/2011

PAY THIS AMOUNT

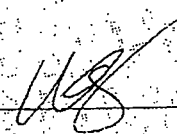
\$*****25.00

PAY *Twenty Five & no/100 Dollars*

OPERATING ACCOUNT

TO
THE
ORDER
OF

SCWCC
Post Office Box 1715
Columbia, South Carolina 29202-1715



⑈00156954⑈ ⑆053901198⑆040813847701⑈

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0617361
Carrier File # YKY26960 C
Carrier Code #
Employer FEIN

LaTonya Footman

Johnson Food Services, LLC

Employer's Name
Post Office Box 10422
Columbia, South Carolina 29207
Address City State Zip
The Hartford
Insurance Carrier
(803) 227-2283
Phone Number

Jason W. Lockhart
Preparer's Name

The date of injury reported on the Form 12A is: September 6, 2006

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

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

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

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

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

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

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

- ☒ III. Pay compensation in the amount of \$tbd based on the following grounds: The Claimant's authorized treating physician, Dr. Green, determined that the Claimant reached maximum medical improvement on August 11, 2008, and assigned a 2% impairment rating to the left upper extremity and a 2% impairment rating to the right upper extremity. The Claimant's authorized treating physician, Dr. Green, determined that the Claimant reached maximum medical improvement on March 30, 2011, and assigned a 2% impairment rating to the left upper extremity and a 2% impairment rating to the right upper extremity.

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

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

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

Andrew N. Safran, Esquire
Safran Law Offices
Post Office Box 12089, Capital Station
Columbia, South Carolina 29211

on the 6th day of April, 2011 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Preparer's Signature

Attorney for Employer/Carrier
Title

April 6, 2011
Date

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



ATTORNEYS AT LAW

2000354

Reply To
JASON W. LOCKHART
Direct Dial (803) 227-2283
jlockhart@mgclaw.com
Columbia

March 28, 2011

Michael S. Green, M.D.
Midlands Orthopaedics, P.A.
1910 Blanding Street
Columbia, South Carolina 29201

RE: Talonya Footman v. Johnson Food Services and The Hartford
Date of Accident: September 6, 2006
WCC File No.: 0617361
Our File No.: 2071.06097
Claim No.: YKY26960 C

Dear Dr. Green:

I represent the Employer/Carrier in the above-referenced case. I am in receipt of your diagnostic report dated December 27, 2010. Based on a review of your diagnostic report, dated December 27, 2010, you stated that you were releasing the Claimant on a PRN basis. In light of the above-referenced diagnostic report, I am writing to request your response to the following questions:

1. In your expert opinion and to a reasonable degree of medical certainty, has the Claimant reached maximum medical improvement? *Yes*
2. In your expert opinion and to a reasonable degree of medical certainty, does the Claimant possess an impairment rating to the left upper extremity and/or right upper extremity pursuant to the 5th Edition of the AMA Guides to Permanent Impairment? *270*

If there is a fee associated with your response to the above-referenced questions, I would respectfully request that you provide me with an invoice, and I will place the invoice in line for payment. By copy of this letter to Andrew N. Safran, Esquire, attorney for the Claimant, I am informing Mr. Safran of my request for additional information. If you have any questions regarding the enclosed information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Jason W. Lockhart

RECEIVED
MAR 30 2011

BY:

JWL/rd
cc:

Andrew N. Safran, Esquire
Faith Tolbert, The Hartford (via/email only)
Preston Wider, Johnson Food Services, LLC (via/email only)

COLUMBIA • CHANDLER • GREENVILLE • CHARLOTTE • RALLIGH • MYRTLE BEACH
111 MAIN STREET, 10TH FLOOR • POST OFFICE BOX 12519 • COLUMBIA, SC 29211 803-779-2300 PHONE 803-748-0526 FAX
WWW.MGCLAW.COM

20000754
 South Carolina Workers' Compensation Commission
 1612 Marion Street • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5723
 www.wcc.sc.gov



Physician's Statement

Claimant's Name: Latonya Footman
 Physician's Name: Midlands Orthopedics
 Practice/Clinic: _____
 Preparer's Name: Kelly D'Arleto
 Phone: (822) 523-9222

Employer's Name: Johnson Food Service
 Insurance Carrier: The Hartford
 SCWCC File No: 0612381

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 9/6/2006

Date of first office visit: 8/24/2007 Date of last visit: 8/4/2008
 Diagnosis or nature of injury or illness: Bilateral Cervical Tunnel Syndrome
 Body part(s) injured: left & right upper extremities Body part(s) affected: same
 Date of Maximum Medical Improvement: 8/4/2008
 Based on the AMA Guidelines, the claimant has sustained a 2 % medical impairment to left upper injured body part(s) and a 2 % medical impairment to right upper extremity other affected body part(s).
☒ The claimant is able to return to work without restriction.

☐ The claimant is able to return to work with the following restrictions:

☐ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

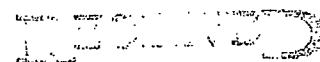
☒ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☐ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

none in the future, but he is still on pain

[Signature]
 Treating Physician

9/18/08
 Date



SEP 18 2008

BY: _____

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0617361

LATONYA FOOTMAN,

Employee,

Claimant,

vs.

JOHNSON FOOD SERVICES, LLC,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants.

**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:

Andrew N. Safran, Esquire
Safran Law Offices
Post Office Box 12089, Capital Station
Columbia, South Carolina 29211

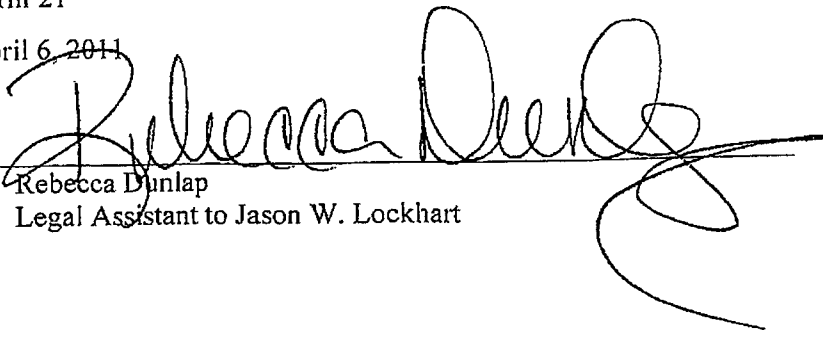
South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 · Post Office Box 1715
Columbia, South Carolina 29202-1715
VIA HAND DELIVERY

DOCUMENT:

Form 21

DATE OF
MAILING:

April 6, 2011


Rebecca Dunlap

Legal Assistant to Jason W. Lockhart



ATTORNEYS AT LAW

Reply To
JASON W. LOCKHART
Direct Dial: (803) 227-2283
jlockhart@mgclaw.com
COLUMBIA

May 24, 2011

VIA HAND DELIVERY

Commissioner Susan S. Barden
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: LaTonya Footman v. Johnson Food Services and The Hartford
Date of Accident: September 6, 2006
WCC File No.: 0617361
Our File No.: 2071.06097
Claim No.: YKY26960 C

Dear Commissioner Barden:

Please find enclosed our Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

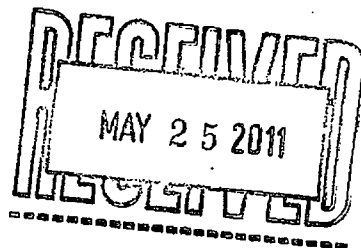
By copy of this letter to Andrew N. Safran, Esquire, the Claimant's attorney, we are notifying him of these submissions and serving copies of the same upon him by mail.

Very truly yours,

Jason W. Lockhart

JWL/ssc
Enclosures

cc: Andrew N. Safran, Esquire, Safran Law Offices
Faith Tolbert, The Hartford
Preston Wider, Johnson Food Services, LLC





LaTonya Footman

Jason W. Lockhart
Preparer's Name

Johnson Food Services, LLC

Employer's Name

Post Office Box 10422

Columbia, South Carolina 29207

Address City State Zip

The Hartford

Insurance Carrier

(803) 227-2283

Phone Number

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

Date of Injury September 6, 2006

1. Comp. Rate: \$169.02 2. AWW: \$253.51
3. Type of injury and body part(s): The Claimant sustained a compensable injury to the bilateral upper extremities on 09/06/06 while in the course and scope of her employment with the Defendants. The Defendants deny any other alleged body parts.
4. Facts in controversy: Whether the Employer/Carrier are responsible for any additional medical treatment, temporary total disability benefits and/or permanent partial disability benefits; Whether the Employer/Carrier are entitled to stop payment of temporary total disability benefits and/or further entitled to a credit for any overpayment of temporary total disability benefits.
5. Legal issues involved: Section 42-1-160; Section 42-15-60; Section 42-9-30; Section 42-9-260.
6. Unusual aspects: The Defendants reserve the right to move to either postpone or adjourn the scheduled Hearing to appropriately exercise due process rights afforded by law to cross-examine, respond to and otherwise oppose evidence presented by the Claimant.
7. Witnesses (designate if expert)* Preston Wider, Tonya Parnell, the Claimant's current direct supervisor and/or other representatives of the Employer.
8. Exhibits: Deposition of the Claimant; Portions of the Claimant's personnel file and/or wage information may be submitted at the Hearing in response to the Claimant's testimony.
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) Michael S. Green, M.D., Midlands Orthopaedics, PA (dated 03/01/07-03/28/11)(consisting of 19 pages); Joseph P. Jackson, Jr., M.D., Camden Orthopaedic Associates (dated 02/01/08)(consisting of 2 pages); EMGs, Midlands Orthopaedics, PA (dated 09/06/07-03/26/09)(consisting of 4 pages). Defendants intend to rely on portions of the medical evidence submitted by the Claimant. The Defendants reserve the right to move to either postpone or adjourn the scheduled Hearing to procure the deposition testimony of physicians listed by the Claimant, if necessary.
10. Name, address, and specialty, if any, of the treating physician: Michael S. Green, M.D., Midlands Orthopaedics, P.A. 1910 Blanding Street Columbia South Carolina 29201
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Green determined the Claimant reached maximum medical improvement on 03/30/11 and assigned a 2% impairment rating to the left upper extremity, as well as a 2% impairment rating to the right upper extremity.
12. I am amending my Form 50/51 in the following manner: Not applicable.

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

SIGNATURE

Email: jlockhart@mgclaw.com

DATE OF HEARING: June 8, 2011

Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0617361

LATONYA FOOTMAN,

Employee,

Claimant,

vs.

JOHNSON FOOD SERVICES, LLC,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, ANDREW N. SAFRAN, ESQUIRE AND ANN M. MICKLE, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

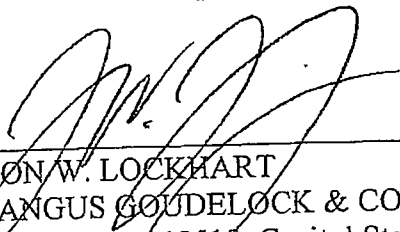
APA#	DOCTOR	DATES	PAGE #
1	Michael S. Green, M.D., Midlands Orthopaedics, P.A.	03/01/07 - 03/28/11	1 -19
2	Joseph P. Jackson, Jr., M.D., Camden Orthopaedic Associates	02/01/08	20-21
3	EMGs, Midlands Orthopaedics, P.A.	09/06/07 - 03/26/09	22-25

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-

examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Preston Wider, Tonya Parnell, and/or other representatives of the Employer.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
700 Gervais St. Suite 300
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
May 24, 2011

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0617361

LATONYA FOOTMAN,

Employee,

Claimant,

vs.

JOHNSON FOOD SERVICES, LLC,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants.

**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Andrew N. Safran, Esquire
Safran Law Offices
Post Office Box 12089, Capital Station
Columbia, South Carolina 29211

VIA HAND DELIVERY
S. C. WORKERS' COMPENSATION
COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written
Medical Reports

DATE OF MAILING: May 24, 2011


Sharon S. O'Quinn
Secretary to Jason W. Lockhart

ANDREW N. SAFRAN, LLC
ATTORNEY AT LAW
1400 PICKENS STREET, SUITE 104
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803 256 6689
FACSIMILE 803 799 1003

MAILING ADDRESS:
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

May 27, 2011

HAND DELIVERED

The Honorable Susan S. Barden
Commissioner
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

RE: Latonya Footman v. Johnson Food Services, LLC and The Hartford
W.C.C. File No.: 0617361
Date of Hearing: June 8, 2011 (1:00 p.m.) - Columbia

Dear Commissioner Barden:

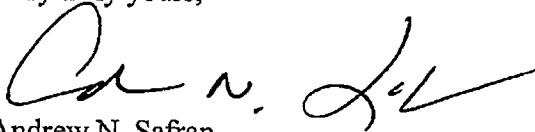
Enclosed please find the Claimant's Pre-Hearing Brief and APA Submission Form relative to the above-captioned matter, which is currently scheduled for a hearing on Wednesday, June 8, 2011 at 1:00 p.m. in Camden, South Carolina. As you will note, the primary issues requiring your determination relate to: (a) the degree of disability which Ms. Latonya Footman has experienced to her arms due to the consequences of repetitive trauma injuries occurring on or about September 6, 2006; and (b) her entitlement to further medical benefits.

By copy of this letter, I am serving copies of the enclosed forms, as well as the documents identified therein, on Jason Lockhart, counsel for Defendants. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your consideration.

With kindest regards, I am

Very truly yours,


Andrew N. Safran

ANS/rmb

Enclosures

cc: Jason W. Lockhart, Esquire



Claimant's Name: Latonya Footman

Employer's Name: Johnson Food Services, LLC

Address: P.O. Box 10422

City: Columbia State: SC Zip: 29207

Phone: () -

Carrier: The Hartford

Preparer's Name: Andrew N. Safran, Esquire

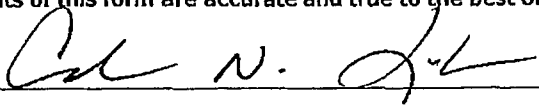
Preparer's Phone #: 803-256-6689

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: To be determined. 2. AWW: To be determined. Date of Injury: 9/6/06
3. Type of injury and body part(s): Bilateral arm injuries, which: (a) have produced both carpal and cubital tunnel syndromes; (b) have heretofore led to performance of two surgical procedure; and (c) will require further treatment per Dr. Jackson (who has actually evaluated Ms. Footman on five occasions since onset of symptoms in 2006).
4. Facts in controversy: Degree of disability which Ms. Footman has experienced to her arms due to the consequences of her compensable injuries [We say residual disability moderately exceeds the impairment ratings assigned by Dr. Green (Defendants' designee), which understate the nature/degree of her pathology and fail to adequately consider all compensable injury components]. Whether Ms. Footman requires additional medical treatment [We say she does for her cubital tunnel injury components per Dr. Jackson]?
5. Legal issues involved: Degree of disability per S.C. Code Ann. Section 42-9-30 (13)(2007). Entitlement to further medical benefits per S.C. Code Ann. Section 42-15-60 (2007).
6. Unusual aspects: None.
7. Witnesses (designate if expert):* Ms. Footman.
8. Exhibits: Medical evidence identified in #9.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): 11/28/06 – 5/25/11 reports/responses of Dr. Joseph P. Jackson, Jr. (APA)(17 pgs.); 9/21/06 – 12/27/10 reports/notes from Midlands Orthopaedics, P.A. (Drs. Green, Ross D. Lynch and M. David Redmond) (APA)(33 pgs.). The undersigned also intends to submit Dr. Green's 10/3/08 deposition transcript.
10. Name, address, specialty, if any, of treating physician: Michael S. Green, M.D., Midlands Orthopaedics, P.A., Columbia, SC (orthopaedic surgeon).
11. Impairment rating(s); body part(s); physician and date of opinion: 2% to each upper extremity by Dr. Green on 9/18/08 (presumably reaffirmed by this physician in March, 2011); 10% to each arm by Dr. Jackson on 4/20/11 (reaffirmed/clarified on 5/25/11).
12. I am amending my Form 50/51 in the following manner: N/A.

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

Signature: 

Email: Msa6631@aol.com

Date of hearing: June 8, 2011

Time needed for hearing: 45 mins.

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Rev. 9/07

58

PRE-HEARING BRIEF

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Latonya Footman,)
Employee,)
vs.)
Johnson Food Services, LLC,)
Employer,)
and)
The Hartford,)
Carrier.)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBER: 0617361

NOTICES OF WITNESSES AND
WRITTEN REPORT(S) OF PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
LATONYA FOOTMAN

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION and JASON W. LOCKHART, ESQUIRE, ATTORNEY FOR DEFENDANTS:

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Claimant, to wit:

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT</u>	<u>PAGE NOS.</u>
APA 1: Reports/responses of Dr. Joseph P. Jackson	11/28/06 – 5/25/11	1 – 17
APA 2: Reports from Midlands Orthopaedics, P.A. (Drs. Green, M. David Redmond and Ross D. Lynch)	9/21/06 – 12/27/10	18 – 50

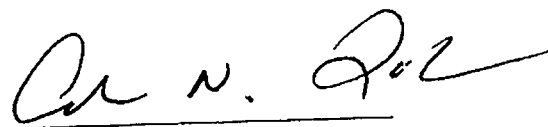
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physician/others, will be submitted to the South Carolina Workers' Compensation Commission at the time of the hearing on this claim for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

Ms. Footman.

By: _____



ANDREW N. SAFRAN
P.O. Box 12089
Columbia, S.C. 29211
Phone: (803) 256-6689
ATTORNEY FOR CLAIMANT

Columbia, South Carolina
May 27, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
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Latonya Footman,)
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Employee,)
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vs.)
)
Johnson Food Services, LLC,)
)
Employer,)
)
and)
)
The Hartford,)
)
Carrier.)
_____)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE
WCC FILE NUMBER: 0617361

Roxanne M. Branham, being first duly sworn, says that she is a legal assistant for the firm of Andrew N. Safran, LLC Attorney at Law, with offices at Columbia, South Carolina, that on the 27th day of May, 2011 she mailed the documents listed below to the persons listed below, by depositing in the United States mail with sufficient postage affixed thereto.

Documents: Pre-Hearing Brief and APA Submission Form

To: **HAND DELIVERED**
The Honorable Susan S. Barden
Commissioner
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Jason W. Lockhart, Esquire
McAngus, Goudelock & Courie, L.L.C.
Post Office Box 12519
Columbia, South Carolina 29211-2519

This 27th day of May, 2011.

Roxanne M. Branham
Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: **0617361**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Latonya Footman

Employer's Name: Johnson Food Services, LLC

A: _____

Address: P.O. Box 10422

City: _____ State: SC Zip: 29207

City: Columbia State: SC Zip: 29207

Phone: _____

Insurance Carrier: The Hartford

Preparer's Name: Andrew N. Safran, Esquire

Law Firm: Andrew N. Safran, LLC

Preparer's Phone #: 803-256-6689

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one)

Date of injury: 9/6/06

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

See attached.

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Jason W. Lockhart, Esquire, McAngus, Goudelock &

Name

Courie, L.L.C., Post Office Box 12519, Columbia, South Carolina 29211-2519

Address

on the 30th day of September, 2011 by

☒ first class mail

☐ personal service

☐ certified mail.

Preparer's Signature

Attorney for Employee/Claimant

Title

September 30, 2011

Date

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

RECEIVED

SEP 30 2011

(FRONT DESK)
SC Workers' Comp Comm

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

- 1) Did the hearing commissioner err in failing to find that after undertaking Ms. LaTonya Footman's treatment for the consequences of her compensable accident, Defendants' designated physician (Dr. Green) repeatedly attempted to declare her at maximum medical improvement, notwithstanding the presence of persistent symptoms that were subsequently determined to warrant further treatment, when the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly verifies this fact?
- 2) Did the hearing commissioner err in failing to find Ms. Footman was essentially obliged to independently seek evaluation through Dr. Joseph P. Jackson, Jr. in order to prompt Defendants' designated physician to provide further treatment (diagnostic testing, surgery, etc.) when the only reasonable inference which may be gleaned from the evidence contained in the hearing record clearly establishes this fact?
- 3) Did the hearing commissioner err in failing to find the impairment rating assigned by Defendants' authorized physician (Dr. Green) in March, 2011 actually/only related to Ms. Footman's left upper extremity when the only reasonable inference which may be gleaned from the evidence contained in the hearing record obviously confirms this fact?
- 4) Did the hearing commissioner err in failing to find the impairment rating assigned by Defendants' designated physician (Dr. Green) in March, 2011 was materially inconsistent with his October 3, 2008 deposition testimony when the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely verifies this fact?
- 5) Did the hearing commissioner err in finding "Dr. Green's assignment of impairment ratings to be somewhat inconsistent, or at the very least, ambiguous" when the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes that the impairment ratings assigned by this physician: (a) are materially inconsistent, particularly in view of his sworn acknowledgement that a reasonable impairment assessment would range up to 10% per arm for Ms. Footman's causally related conditions; and (b) the figure referenced by this physician in March, 2011 is 50% lower than the minimum upper extremity rating acknowledged during his deposition?
- 6) Did the hearing commissioner err in failing to find the inconsistency between Defendants' designated physician's (Dr. Green's) impairment ratings (within the context of the October 3, 2008 deposition testimony, as well as between this testimony and the March, 2011 written acknowledgement) warranted rejection of this evidence when: (a) these material inconsistencies compel a determination that this evidence was wholly unreliable; (b) any contrary characterization ("somewhat inconsistent"; "ambiguous") must be characterized as a product of an unusual finesse of reasoning, as well as an arbitrary and capricious analysis; (c) these inconsistencies establish Dr. Green's impairment ratings are speculative, to the extent they do not constitute competent evidence; and (d) these deficiencies required rejection of Dr. Green's impairment ratings as a matter of law?

7) Did the hearing commissioner err in failing to find the impairment ratings assigned by Dr. Jackson (who evaluated Ms. Footman on multiple occasions) were patently more reliable than those referenced by Defendants' designated physician (Dr. Green), when: (a) the impairment opinions offered by Dr. Green are fraught with inconsistencies; (b) these inconsistencies are sufficiently material so as to result in this physician's opinions being nothing more than pure speculation; (c) Dr. Jackson's impairment ratings are wholly consistent with not only the nature/degree of Ms. Footman's causally related pathology, but also the pertinent sections of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; and (d) the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely verifies this fact?

8) Did the hearing commissioner err in focusing on a remote (February 1, 2008) comment as to grip strength inconsistencies noted by Dr. Jackson when: (a) inspection of this physician's subsequently generated notes reveal no concerns/qualifications as to the consistency of Ms. Footman's grip strength results; (b) diminished grip strength was not included as an element/component of any impairment rating contained in the hearing record; (c) there was no basis upon which to justify affording "great weight" to this innocuous reference in connection with the assessment of Ms. Footman's degree of residual permanent disability; and (d) the assignment of "great weight" to this remote and inconsequential statement is reflective of an unusual finesse of reasoning, as well as an arbitrary and capricious process, in connection with the analysis of Ms. Footman's degree of residual permanent disability?

9) Did the hearing commissioner err in limiting Ms. Footman's permanent disability compensation award based, to a substantial extent, on a remote/isolated (February 2008) grip strength inconsistency when: (a) this analysis necessarily hinges upon an unusual finesse of reasoning, as well as an arbitrary and capricious consideration of the evidence; (b) this evidence (upon which the hearing commissioner placed "great weight") is hardly relevant to the assessment of Ms. Footman's permanent disability in 2011; and (c) the hearing commissioner's analysis necessarily constitutes a legally impermissible implicit finding as to credibility (or the lack thereof), which is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record?

10) Did the hearing commissioner err in failing to afford the impairment ratings assigned by Dr. Jackson equally "great weight" (as compared to his remote/isolated statement relative to an inconsistent grip strength finding, to which she specifically attributed "great weight") when: (a) failure to do so is obviously reflective of an arbitrary and capricious analysis process; (b) the inconsistency of the hearing commissioner's actions is similarly indicative of an unusual finesse of reasoning; (c) the only reasonable inference which can be derived from the contents of the hearing record establishes that this physician's impairment ratings warranted equally "great weight"?

11) Did the hearing commissioner err in finding Ms. Footman "has been released with no restrictions" when the only reasonable inference which may be gleaned from the evidence contained in the hearing record clearly confirms: (a) Dr. Jackson (who has evaluated her on several occasions since her accident date) assigned physical restrictions; (b) the assignment of these restrictions was, in fact, acknowledged by the hearing commissioner in the "Statement of the Case" portion of her Order; (c) Ms. Footman actually receives "accommodation" by her Employer in connection with the performance of activities beyond the restrictions assigned by Dr. Jackson; and (d) this finding is not only wholly inconsistent with the contents of the hearing record, but also reflective of an arbitrary and capricious process of analysis, which overlooked undisputed evidence that materially impacted on the primary issue in dispute?

12) Did the hearing commissioner err in finding Ms. Footman had only sustained 6% permanent partial disabilities to her arms, respectively, when this disability assessment: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the contents of the hearing record; (b) substantially founded upon medical evidence (opinions expressed by Dr. Green) which can only be characterized as speculative; (c) clearly ignores the impairment ratings assigned by Dr. Jackson (whose opinions were otherwise found to warrant "great weight" by the hearing commissioner); and (d) materially understates Ms. Footman's degree of permanent residual disability?

13) Did the hearing commissioner err in concluding Ms. Footman was entitled to only an aggregate of 26.4 weeks of permanent partial disability compensation when this disability assessment: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the contents of the hearing record; (b) substantially founded upon medical evidence (opinions expressed by Dr. Green) which can only be characterized as speculative; (c) clearly ignores the impairment ratings assigned by Dr. Jackson (whose opinions were otherwise found to warrant "great weight" by the hearing commissioner); and (d) materially understates Ms. Footman's degree of permanent residual disability?

14) Did the hearing commissioner err in failing to find the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes that Ms. Footman has experienced a moderately greater degree of permanent residual disability than the 6% figures identified by the hearing commissioner when the only reasonable inference which may be gleaned from the evidence contained in the hearing record undoubtedly establishes this fact?

15) Did the hearing commissioner err in failing to make specific/express factual findings relative to all disputed issues when: (a) inspection of the contents of the hearing record, in light of the factual findings contained in her Order, establishes she did not adequately address credibility, the presence of medical restrictions, Ms. Footman's undisputed need for physical accommodation by her Employer or the propriety of Dr. Jackson's impairment ratings (all of which were essential to any determination of permanent residual disability); and (b) the relevant legal authorities unequivocally demand detailed factual findings on each of these issues?

16) Did the hearing commissioner err in failing to adequately delineate the underlying rationale for several factual findings when: (a) inspection of her Order verifies the absence of a sufficient explanation of the thought process underlying findings relative to the weight (or absence thereof) afforded to Dr. Jackson's impairment ratings, placing "great weight" on an isolated/remote statement relative to grip strength inconsistency, the relevance of this February 1, 2008 comment to an assessment of permanent disability three years later, the presence of medical restrictions (that the actual factual findings erroneously overlook, Ms. Footman's undisputed need for work accommodations from her Employer and the "other factors" which purportedly received greater "weight" in the appraisal of Ms. Footman's disability than Dr. Jackson's ratings; and (b) the relevant legal authorities have uniformly demanded a detailed explanation as to the rationale underlying the Commission's findings and ultimate conclusions?

STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND)
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Latonya Footman,)
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Employee/Claimant,)
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vs.)
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Johnson Food Services, LLC,)
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Employer,)
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and)
)
The Hartford,)
)
Carrier/Defendants.)
_____)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 0617361

CLAIMANT'S MEMORANDUM IN SUPPORT
OF APPLICATION FOR REVIEW

RECEIVED

JAN 05 2012

(FRONT DESK)
SC Workers' Comp Comm

STATEMENT OF THE CASE

This is an appeal from the September 16, 2011 Order of the Honorable Susan S. Barden, which determined Claimant, Latonya Footman, had sustained a mere 6% permanent partial disability to each arm as a result of repetitive trauma injuries that: (a) required the performance of bilateral carpal tunnel releases; (b) also produced bilateral cubital tunnel syndrome; and (c) undeniable necessitate her daily receipt of work accommodations consistent with the restrictions assigned by Dr. Joseph P. Jackson, Jr. (the upper extremity specialist who initially diagnosed her compensable condition and subsequently performed several reevaluations during her treatment course).

In this regard, Ms. Footman respectfully submits the hearing commissioner's disability assessment: (a) mistakenly overlooks the fact she routinely requires these work accommodations (notwithstanding her authorized treater's failure to identify these logical limitations); (b) similarly ignores unanimous medical opinion that the consequences of her injuries produce functional restrictions; (c) materially/erroneously based her disability determination on the obviously inconsistent statements made/opinions expressed by Defendants', Johnson Food Services, LLC's and The Hartford's, designated

physician (Dr. Michael S. Green); (d) arbitrarily/capriciously afforded “great weight” to a remote (February 1, 2008) grip strength finding by Dr. Jackson in an attempt to justify an inordinately low permanent disability compensation award; (e) similarly engaged in an unusual finesse of reasoning by failing to give similar weight to Dr. Jackson’s impairment ratings (which even Defendants’ designee characterized as “reasonable”); and (f) erred as a matter of law in failing to make specific/expressed factual findings or adequately explain the underlying rationale behind her attempted resolution of various disputed issues (including the presence of medical restrictions, the admitted need for physical accommodation by Johnson Food Service, the propriety of Dr. Jackson’s impairment ratings and the basis upon which medical impairment was gauged).

FACTS

I. INITIAL TREATMENT

In 2006, Ms. Footman developed bilateral arm symptoms (pain and numbness), which prompted her family physician to order electrodiagnostic studies (performed on September 6, 2006). While Dr. M. David Redmond interpreted this testing to reveal moderately severe bilateral carpal tunnel syndrome and opined that “it seems reasonable to believe [her repetitive work activities]. . . would be a significant contributing factor in the etiology”, Defendants denied liability per the Act.

In view of this fact, the undersigned directed Ms. Footman to Dr. Joseph P. Jackson, Jr. (an upper extremity specialist), who confirmed: (a) Dr. Redmond’s diagnosis; (b) this carpal tunnel syndrome “most probably result[ed]. . . from her performance of repetitive activities incidental to her job as a food service worker and/or their aggravation of preexisting pathology”; and (c) proceeding with surgical intervention on the right side would be appropriate.

II. TREATMENT COURSE FOLLOWING ACCEPTANCE OF CLAIM

Shortly after receiving Dr. Jackson's corroborative opinions, Defendants directed Ms. Footman to Dr. Green, who: (a) performed the previously recommended right carpal tunnel release on March 1, 2007; and (b) released her from active care approximately five weeks later, without addressing her remaining symptoms.

When her bilateral arm problems persisted, Ms. Footman was reevaluated by Dr. Jackson (August 13, 2007), who: (a) felt she was also exhibiting evidence of cubital tunnel syndrome; and (b) recommended obtaining updated electrodiagnostic testing. This development prompted Defendants to redirect Ms. Footman to Dr. Green (August 24, 2007), who concurred with Dr. Jackson's recommendation of "EMG/NCS of both upper extremities to evaluate her ulnar nerve function."

Although this testing revealed both left carpal tunnel syndrome and right cubital tunnel syndrome, Dr. Green: (a) offered no additional treatment; (b) **inaccurately stated she had "underwent a procedure for both of these conditions (one on the right upper extremity and one on the left);** (c) determined Ms. Footman had achieved maximum medical improvement; and (d) assigned impairment ratings of 2% to each upper extremity (February 15, 2008). Conversely, Dr. Jackson: (a) believed the results of updated electrodiagnostic testing were consistent with a bilateral cubital tunnel syndrome; (b) felt utilization of "an anti-flexion splint" was warranted; and (c) "pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship" when he sensed her right-sided effort was probably not consistent.

Pursuant to questionnaire responses dated May 23, 2008, Dr. Jackson (who had reevaluated Ms. Footman on May 15, 2008) verified: (a) despite Dr. Green's contrary statement, Ms. Footman had actually not undergone surgical intervention for either her cubital tunnel syndrome or left carpal tunnel syndrome; (b) her treatment needs for the cubital tunnel syndrome included "a period of splinting and potential surgical intervention"; and (c) she was most probably limited to the performance of restricted duty work

activities (no repetitive use of arm; no lifting or exertion of force in excess of 20 pounds). This physician also assigned a 10% impairment of the right upper extremity and 5% of the left upper extremity in conjunction with the May 15, 2008 evaluation.

Predictably, Defendants redirected Ms. Footman to Dr. Green (June 17, 2008), who: (a) reconfirmed these diagnoses (noting she exhibited a positive Tinel's on clinical examination); and (b) again adopted Dr. Jackson's recommendation (this time prescribing a splint for the right cubital tunnel syndrome).

III. DR. GREEN'S OCTOBER 3, 2008 DEPOSITION TESTIMONY

During the course of this deposition, Dr. Green agreed: (a) Ms. Footman's preexisting diabetic condition "predispose[d] . . . her to having more profound symptoms. . . than somebody who doesn't have diabetes" (p. 12); (b) these symptoms would increase with the performance of certain activities (pp. 15 – 16); (c) the impairment ratings he had assigned were "relatively arbitrary" (p. 17); (d) Dr. Jackson's ratings fell within the range that could reasonably be assigned for her particular pathology (p. 18 – 19); and (e) this range would be applicable to each of Ms. Footman's distinct injury components (p. 23).

IV. POST-DEPOSITION TREATMENT

When Ms. Footman's symptoms persistent and repeat electrodiagnostic studies (October 11, 2010) identified not only worsening left carpal tunnel syndrome, but also bilateral cubital tunnel syndrome, Dr. Green recommended a left carpal tunnel release (performed on November 9, 2010). Approximately six weeks following this procedure, he released her from active care.

In response to a March 28, 2011 letter from defense counsel, Dr. Green indicated Ms. Footman had sustained a 2% impairment of her left upper extremity. After reexamining Ms. Footman on April 20, 2011, Dr. Jackson verified: (a) the causal relationship of her bilateral cubital tunnel syndrome to the consequences of her repetitive trauma injuries; (b) her residual impairment amounted to 10% of each

upper extremity; and (c) work restrictions would include “lifting no more than 25 lbs., lifting no more than 12 pieces of chicken on a tray [and]. . . only opening 10 large cans per day.”

V. CURRENT SYMPTOMS/LIMITATIONS

Ms. Footman (who has been employed by Johnson Food Service and its predecessors for approximately 17 years) explained: (a) how several visits to Dr. Jackson had been necessary to prompt action from Dr. Green; (b) she deferred the left carpal tunnel release until she could no longer stand the pain; (c) the numbness emanating from her cubital tunnel syndrome disrupts her sleep “pretty much every night” and is present even when she is not engaged in work activities (Hearing Transcript, pp. 22 -21); (d) increased activity elevates her pain levels (Hearing Transcript, p. 21); (e) the limitations identified by Dr. Jackson have proven to be accurate (Hearing Transcript, p. 23); (f) she receives assistance/accommodation from co-employees with troublesome activities (Hearing Transcript, pp. 28 -29); (g) routine activities such as driving, as well as repetitive work duties, are painful (Hearing Transcript, pp. 23; 25); and (h) she requires “assistance on all [her]. . . jewelry and. . . dress[ing] in the morning time. . . .” (Hearing Transcript, p. 25).

LEGAL ANALYSIS

I. MS. FOOTMAN WAS NOT ONLY ASSIGNED RESTRICTIONS, BUT ALSO RECEIVES ACCOMMODATIONS FOR HER PHYSICAL LIMITATIONS FROM JOHNSON FOOD SERVICES.

As previously noted, on April 20, 2011, Dr. Jackson (who had evaluated Ms. Footman on no less than five occasions) confirmed the consequences of her compensable injuries warranted physical restrictions, “i.e., lifting no more than 25 lbs., lifting no more than 12 pieces of chicken on a tray, only opening 10 large cans per day.” (See, Claimant’s APA, p. 15). Additionally, Dr. Green acknowledged: (a) “repetitive activity with some other torque or a load applied to it, . . . even a mild course – probably would exasperate (sic) her symptoms” (See, Dr. Green Deposition, p. 15); (b) “even a 10 to 15 pound repetitive activity probably could. . . [exacerbate] her symptoms” (See, Dr. Green Deposition, p. 16); and (c) **the nature of her injuries would likely require performance of repetitive activities “just on an intermittent basis to where there’s some either frequent breaks or change of activity.”** (Id.).

Additionally, the evidence unequivocally establishes that Ms. Footman continues to require physical/functional accommodations relative to the performance of certain work activities. (See, Hearing Transcript, pp. 28 – 29). In fact, the hearing commissioner’s Order not only states “that the Defendants readily provide the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with Defendants”, but also references Ms. Footman’s undisputed testimony that “her present job duties and responsibilities with the Defendants are within the restrictions, which were placed upon [her] . . . by Dr. Jackson.” (See, September 16, 2011 Order, pp. 7).

The Commission’s rulings may not be premised upon “a mistaken view of the evidence.” Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 439 S.E. 2d 859, 860 (Ct. App. 1993), *aff’d.* as modified, 317 S.C. 306, 454 S.E. 2d 320 (1995). However, given these undisputed facts, it is clearly “there is, in reality,

no evidence” to support the hearing commissioner’s finding that Ms. Footman “has been released with no restrictions, and has returned to work. . . “full duty” without accommodation. Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E. 2d 320, 322 (1995).

As this finding was obviously a material component of the hearing commissioner’s disability determination, Ms. Footman respectfully submits the bilateral 6% upper extremity award: (a) is legally flawed; and (b) must be vacated.

II. DR. GREEN’S IMPAIRMENT RATINGS ARE MATERIALLY AND IRRECONCILABLY INCONSISTENT.

When initially requested to assign an impairment rating (February 15, 2008), Dr. Green: (a) **erroneously reported** that he had performed surgical procedures for **both** a right carpal tunnel syndrome; (b) overlooked an objectively verified bilateral carpal tunnel syndrome, while **incorrectly assuming** the left-sided pathology had been surgically addressed; and (c) assigned an aggregate 4% upper extremity impairment, despite the temporal presence of three diagnosed injury components. (See, Claimant’s APA Submission, pp. 28 – 31).

Subsequently, on September 18, 2008, this physician changed the previously assigned ratings, to the extent he: (a) only referenced the bilateral carpal tunnel syndrome; and (b) **completely ignored** the electrodiagnostically proven right cubital tunnel syndrome (which had provided a partial basis for his initially impairment assessment). (See, Defendants’ APA Submission, p. 13).

However, when questioned as to these ratings, Dr. Green acknowledged: (a) these impairment figures were “**relatively arbitrary**” (characterizing Dr. Jackson’s in a similar fashion); (b) **Dr. Jackson’s ratings**, which were derived from “Table 16-15” of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, were “**within the realm of what you would ascribe to**” these conditions

(See, Dr. Green Deposition, p. 18); and (c) this range would be **applicable to each** of Ms. Footman's distinct injury components. (See, Dr. Green Deposition, p. 23).

Subsequently, when requested to address permanent impairment following the performance of **another surgical procedure** and updated electrodiagnostic testing **confirming the continued presence of bilateral cubital tunnel syndrome**, Defendants' designee: (a) purportedly limited Ms. Footman's left upper extremity impairment to 2%; and (b) **completely ignored** the causally related left cubital tunnel syndrome.

Conversely, Dr. Jackson: (a) **consistently** recognized the particular nature of Ms. Footman's causally related pathology; (b) designated ratings **per the Guides**, as opposed to the "arbitrary" figure **Dr. Green "routinely" assigned**; and (c) recognized each of her injury components warranted a **separate rating**.

While the hearing commissioner sought to characterize "Dr. Green's assignment of impairment ratings to be somewhat inconsistent or, at the very least, ambiguous", the disparities between Defendants' designees' reports: (a) **are significant**, as they **repeatedly ignore** admitted injury components; (b) clearly confirm **minimal attention was directed toward these impairment assessments**; and (c) validate Ms. Footman's contention **these ratings provided an inadequate basis** upon which to appraise her residual permanent disability.

In view of these facts, as well as Dr. Green's acknowledgement as to the propriety of Dr. Jackson's AMA Guide – derived figures, Ms. Footman respectfully submits: (a) Dr. Jackson's ratings constitute the **only reliable medical evidence** relative to residual impairment; and (b) these figures should provide the starting point for her disability assessment.

III. THE “GREAT WEIGHT” AFFORDED TO AN ISOLATED 2008 GRIP STRENGTH DISPARITY IS REFLECTIVE OF AN ARBITRARY/CAPRICIOUS ANALYSIS OF THE EVIDENCE.

After examining Ms. Footman on February 18, 2008, Dr. Jackson “pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship.” While the record contains no similar references, the hearing commissioner found this remote statement deserved “great weight”.

Interestingly, neither Dr. Jackson nor Dr. Green: (a) utilized grip strength as a facet of their impairment assessments; (b) **questioned the legitimacy** of Ms. Footman’s current symptoms; or (c) **referenced any other discrepancies during the ensuing three year treatment course.**

In view of these circumstances, any analysis which affords “great weight” to an innocuous, remote statement (in the context of a four-plus year period of treatment) can legitimately be characterized as arbitrary. The refusal to attribute equal weight to the impairment ratings identified by Dr. Jackson (who offered the February 1, 2008 advice “to his well-deserved credit”) is similarly irreconcilable/capricious.

IV. INADEQUACY OF FINDINGS/ABSENCE OF SUFFICIENT RATIONALE.

“If a material fact is contested. . . [the Commission] must make a specific, express finding on it.” Aristizabal v. I.J. Woodside – Division of Dan River, Inc., 268 S.C. 366, 234 S.E. 2d 21, 23 (1977); Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 666 S.E. 2d 287, 300 (Ct. App. 2008). It is equally certain that: (a) “implicit findings of fact are not sufficient.” Brayboy v. Clark Heating Company, 306 S.C. 56, 409 S.E. 2d 767, 768 (1991); Heater of Seabrook, Inc. v. Public Service Commission of South Carolina, 332 S.C. 20, 503 S.E. 2d 739, 742 (1998). Additionally, it is incumbent upon the Commission to: (a) “explain its reasoning” for any determination. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998); Lee County School District Board of Trustees v. MLD Chart School Academy, 371 S.C. 561, 641 S.E. 2d 24, 28 (2007).

In this instance, the hearing commissioner did not delineate the underlying rationale for several factual findings, including: (a) the manner in which she gauged Ms. Footman's underlying medical impairment in the face of Dr. Green's highly contradictory statements; (b) the basis for affording "great weight" to Dr. Jackson's isolated/remote comment of February 1, 2008, while not giv[ing his logically calculated impairment ratings] as much weight as. . . other factors"; (c) sufficiently identifying these "other factors" which led to the 6% award, a problem which is compounded by the "arbitrary"/contradictory nature of Dr. Green's opinions, as well as her misconception of Ms. Footman's physical/functional deficits; and (d) explaining why an isolated/remote comment that had absolutely no bearing on Ms. Footman's residual disability status in 2011 warranted "great weight".

While the hearing commissioner certainly listed several "findings", their conclusory and arbitrary nature essentially make it impossible to identify the actual basis for her disability determination, leaving "the reasons underlying the decision. . . to speculation." Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151, 152 (1986); Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 525 S.E. 2d 863, 865 (1999).

Ms. Footman respectfully submits the hearing commissioner's inability to provide an adequate explanation for her 6% permanent partial disability award constitutes legal error and requires reversal.

V. THE HEARING COMMISSIONER'S PERMANENT DISABILITY ASSESSMENT COMPLETELY IGNORES THE CHARACTER OF HER INJURIES.

An assessment of disability in this context "is based on the character and extent of injury. . . ." Lyles v. Quantum Chemical Company (Emery), 315 S.C. 440, 434 S.E. 2d 492, 495 (Ct. App. 1993); Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E. 2d 100, 102 (2003). As a consequence, proof of loss earning capacity is not required. (Id.).

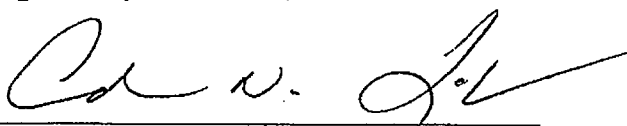
As previously noted, Ms. Footman: (a) developed four distinct injury components secondary to compensable repetitive trauma; (b) has heretofore undergone two surgical procedures; (c) continues to manifest objective evidence of bilateral upper extremity nerve dysfunction; and (d) manifests functional limitations validated by both evaluating physicians.

The consequences of her injuries not only require work accommodations (acknowledged by the single commissioner), but also: (a) disrupt her sleep "pretty much every night"; (b) produce regular pain, which increases with activity; and (c) require her to receive "assistance on all [her] . . . jewelry and . . . dress[ing] in the morning time. . . ."

Given these facts, Ms. Footman respectfully submits: (a) the 6% impairment ratings assigned by the hearing commissioner are wholly inconsistent with the actual character/extent of her injuries; and (b) her true permanent disability falls in the range of 20% to each arm.

ACCORDINGLY, Ms. Footman respectfully prays that the Panel vacate the hearing commissioner's disability determination and either: (a) remand this claim for rehearing; or (b) enter an award in the range of 20% permanent partial disability to each arm.

Respectfully submitted,



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211

and

Ann McCrowey Mickle, Esquire
Mickle & Bass, LLC
1116 Blanding Street, 2nd Floor
Columbia, South Carolina 29201
Attorneys for Employee/Claimant

January 5, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latonya Footman,

Employee,

vs.

Johnson Food Services, LLC,

Employer,

and

The Hartford,

Carrier.

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE
WCC FILE NUMBER: 0617361

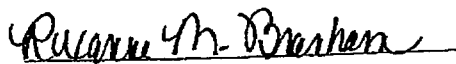
Roxanne M. Branham, being first duly sworn, says that she is a legal assistant for the firm of Andrew N. Safran, LLC Attorney at Law, with offices at Columbia, South Carolina, that on the 5th day of January, 2012 she mailed the documents listed below to the persons listed below, by depositing in the United States mail with sufficient postage affixed thereto.

Documents: Claimant's Memorandum In Support of Application for Review

To: **HAND DELIVERED**
The Honorable Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Jason W. Lockhart, Esquire
McAngus, Goudelock & Courie, L.L.C.
Post Office Box 12519
Columbia, South Carolina 29211-2519

This 5th day of January, 2012.


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689



ATTORNEYS AT LAW

Reply To
JASON W. LOCKHART
Direct Dial: (803) 227-2283
jlockhart@mgclaw.com
COLUMBIA

January 25, 2012

VIA HAND DELIVERY

Virginia Crocker, Judicial Director
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: LaTonya Footman v. Johnson Food Services and The Hartford
Date of Accident: September 6, 2006
WCC File No.: 0617361
Our File No.: 2071.06097
Claim No.: YKY26960 C

Dear Ms. Crocker:

Please find enclosed the original and four (4) copies of our Respondents' Brief to the Full Commission in this case. By copy of this letter to Andrew N. Safran, Esquire, and Ann McCrowey Mickle, Esquire, attorneys for the Claimant, we are notifying them of this submission and serving a copy of the same upon them by mail. Please file the original and return a clocked copy to us via our courier.

With kind regards, I am

Very truly yours,

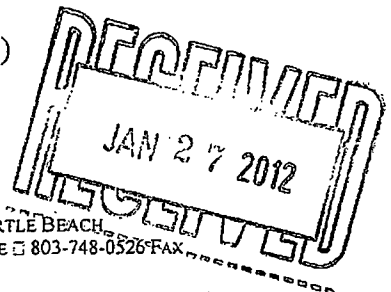
Jason W. Lockhart

JWL/rd

Enclosures

cc: Andrew N. Safran, Esquire (w/enc)
Ann McCrowey Mickle, Esquire (w/enc)
Dana Kotowski, The Hartford (w/enc)(via/fax only)
Preston Wider, Johnson Food Services, LLC (w/enc)(via/email only)

COLUMBIA | CHARLESTON | GREENVILLE | CHARLOTTE | RALEIGH | MYRTLE BEACH
1320 MAIN STREET, 10TH FLOOR □ POST OFFICE BOX 12519 □ COLUMBIA, SC 29211 □ 803-779-2300 PHONE □ 803-748-0526 FAX
WWW.MGCLAW.COM



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0617361

LA TONYA FOOTMAN,

Employee,

Claimant,

vs.

JOHNSON FOOD SERVICES, LLC

Employer,

AND

THE HARTFORD

Carrier,

Defendants.

**RESPONDENTS' BRIEF TO THE
FULL COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
ANDREW SAFRAN, ESQUIRE:

STATEMENT OF THE CASE

This matter came to be heard before the Single Commissioner on June 8, 2011 in Columbia, South Carolina pursuant to a Form 21, Request to Pay Compensation, filed on April 5, 2011. The Form 21 was filed on the basis that the Claimant's authorized treating physician, Dr. Green, determined that the Claimant reached maximum medical improvement on March 30, 2011, and assigned a 2% impairment rating to the left upper extremity and a 2% impairment rating to the right upper extremity. The Defendants took the position that the issue of permanency was ripe for adjudication. More specifically, the Defendants maintained that the Claimant was entitled to an award of permanent

partial disability benefits pursuant to Section 42-9-30 of the Act.

In response, the Claimant's attorney took the position that the Claimant had reached maximum medical improvement, and further maintained that the Claimant was entitled to an award of permanent partial disability benefits to the left upper extremity and right upper extremity in excess of the impairment ratings provided by Dr. Green. The Claimant maintained that any award of permanent partial disability benefits should be based upon the diagnostic report of Dr. Jackson, who conducted multiple examinations of the Claimant pursuant to the request of the Claimant's attorney. Dr. Jackson, in a diagnostic report dated April 20, 2011, assigned a 10% impairment rating to the left upper extremity and a 10% impairment rating to the right upper extremity.

On September 16, 2011, the Single Commissioner issued a Decision and Order finding that the Claimant had reached maximum medical improvement. The Single Commissioner awarded the Claimant permanent partial benefits representing 6% to the right upper extremity and left upper extremity, respectively. (See Decision and Order, dated September 16, 2011, p. 12) The Single Commissioner declined to award the Claimant Dodge medicals based on the medical records of the Claimant's authorized treating, Dr. Green, who opined the Claimant will not need future medical treatment. Id. at p. 11.

The Claimant filed a Form 30, Request for Commission Review on September 30, 2011. The Defendants/Respondents submit this brief in support of their position.

STATEMENT OF FACTS

The Claimant was the only witness to testify on her behalf. The Claimant, who is right-hand dominant, testified that she is currently 40 years of age. The Claimant stated

that she graduated from high school, and has taken some courses at Midlands Technical College. The Claimant indicated that she began working with the Defendants approximately 7 years ago, and is currently employed with the Defendants as a Cook II. The Claimant testified that she is also currently employed with the Babcock Center, where she has worked for approximately seven years. The Claimant testified that her employment with Babcock Center includes a position as a caregiver. Moreover, the Claimant testified that she works, in conjunction with another employee of the Babcock Center, in order to provide care-giving services to four clients of the Babcock Center. The Claimant testified that her work with the Babcock Center requires physical activity, and that the most strenuous physical activity includes driving the patients while utilizing a van owned by the Babcock Center. (Hr'g Tr. p. 13, ll. 1)

The Claimant sought and received initial medical treatment with her family physician, Dr. Bell, who recommended that the Claimant undergo nerve conduction studies. (Hr'g Tr. p. 13, ll. 19-23) Based on the medical records, the Claimant sought and received additional treatment with Camden Orthopaedic Associates, who diagnosed her with bilateral carpal tunnel syndrome on November 28, 2006. (Cl. APA # 1, p. 1) More specifically, the Claimant presented with complaints of numbness and tingling, which was on going for two years, and she indicated that it was progressively worse. Id. The Claimant indicated her symptoms were secondary to her position with the Defendants, wherein she has to open 24 cans at a time, stir big pots of scrambled eggs, and peel potatoes as well as cantaloupe. Id.

The Claimant underwent nerve conduction studies performed by Dr. Redmond, which revealed "sensory latency of 5.35...and on the left 4.35." Id. at 2. The Claimant

was recommended to undergo a carpal tunnel release, particularly on the right secondary to a demanding job that has aggravated her condition. Id. The Claimant underwent a right carpal tunnel release on March 1, 2007 performed by Dr. Green of Midlands Orthopedics. (Def. APA # 1, p. 1) A follow-up visit with Dr. Green on March 12, 2007 revealed that the Claimant indicated that she is doing well, and that her nighttime pain and paresthesias are better. Subsequently, the Claimant presented to Dr. Green on August 24, 2007 with complaints of shooting pain through her wrists with numbness and tingling to her right ring finger and small finger as well as pain up her arm into her shoulder on the left side. Id. at 4. However, an examination by Dr. Green revealed "no Tinel's at the elbow, really no Tinel's at the wrists, a normal two-point discrimination with no intrinsic weakness and full range of motion in her fingers, wrist and elbow with no intrinsic wasting." Id. The Claimant was recommended to undergo an EMG/NCS of both upper extremities to evaluate her ulnar nerve function. Id.

The Claimant underwent repeat EMG/NCS in September 2007, which revealed very mild right carpal tunnel syndrome and mild left carpal tunnel syndrome. (Def. APA # 1, p. 6) Dr. Green indicated the Claimant was not a surgical candidate and further recommended a resting splint with repeat nerve studies in 4 to 6 months if symptoms persisted. Id. Dr. Green determined the Claimant reached maximum medical improvement with regard to her injuries on February 15, 2008, and further assigned a 2% impairment rating to the right upper extremity as well as a 2% impairment rating to the left upper extremity. (Def. APA # 1, p. 8)

Five months later, on June 27, 2008, the Claimant sought additional treatment with Dr. Green, and presented with complaints of continued cubital tunnel type

symptoms on her right side as well as left carpal tunnel symptoms. Id. at 9. Dr. Green recommended the use of a 45-60 degree extension splint for her right arm as well as an injection into the left wrist and a Steraped pack for her cubital tunnel syndrome. Id. In addition, the Claimant was recommended light duty for 3-5 days secondary to her on going complaints. Id. at 10. On August 11, 2008, the Claimant presented at a follow-up visit, which revealed an improved right mild cubital tunnel syndrome and a mildly improved left carpal tunnel syndrome. Id. at 11. Dr. Green indicated the Claimant was not symptomatic enough to require surgical intervention and he discharged her from his care. Id. The Claimant was placed at maximum medical improvement by Dr. Green on August 11, 2008 for her left and right upper extremities with no increase to her impairment ratings for either upper extremity. Id. at 13. Dr. Green indicated that the Claimant will not need future medical care. Id.

Based on a review of the medical records, the Claimant sought and received repeat nerve conduction studies, performed by Dr. Redmond on March 26, 2009, which revealed a worsening of her left carpal tunnel syndrome and a finding that the right cubital tunnel syndrome was still mild. Id. at 14. Dr. Green indicated that improvement was present in the right carpal tunnel status post release. Id. On the other hand, the Claimant presented with numbness and tingling, which she indicated was intermittent. Id. Dr. Green recommended the Claimant undergo a left carpal tunnel release. Id. at 15. Subsequently, the Claimant presented to Dr. Green on September 20, 2010, with complaints of worsening symptoms on the left side. Id. at 16. Dr. Green recommended that the Claimant undergo a repeat EMG and NCS to evaluate the possibility of carpal tunnel syndrome and possible cubital tunnel syndrome of both upper extremities. Id. at

17. In a follow-up visit on December 27, 2010, Dr. Green determined the Claimant reached maximum medical improvement and released the Claimant to return to work without restrictions. Id. at 19. Dr. Green assigned a 2% impairment rating to the left upper extremity and a 2% impairment rating to the right upper extremity. Id.

Subsequently, the Claimant underwent an independent medical evaluation, at the direction of her attorney, with Dr. Jackson, who indicated, in his diagnostic report dated April 20, 2011, that the Claimant was at maximum medical improvement with regard to her right carpal tunnel, left carpal tunnel and right cubital tunnel. Dr. Jackson assigned a 10% impairment rating to each upper extremity, which equaled a 12% impairment rating to the whole person. (Cl. APA # 1, p. 14, 15) In addition, Dr. Jackson assigned the Claimant permanent restrictions to include "no lifting more than 25 lbs, lifting no more than 12 pieces of chicken on a tray, [and] only opening 10 large cans per day." Id.

The Claimant testified that she is currently employed with the Defendants, and is physically capable of performing her job duties and responsibilities with the Defendants. Moreover, the Claimant testified that her present job duties and responsibilities with the Defendants are within the restrictions, which were placed upon the Claimant by Dr. Jackson. (Hr'g Tr. p. 27 ll. 22-25) In addition, the Claimant stated that the Defendants readily provided the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with the Defendants. (Hr'g Tr. p. 29 ll. 1-5) The Claimant indicated that she does not currently utilize any prescription medication for her ongoing left upper extremity and right upper extremity problems, and only takes over-the-counter medication approximately 1-2 days per week when she experiences pain in the left upper extremity and right upper extremity.

(Hr'g Tr. p. 36, ll. 25) (Hr'g Tr. p. 37, ll. 1-8) In addition, the Claimant testified that she does not utilize an assistive device on the left upper extremity or right upper extremity despite her ongoing pain and problems. (Hr'g Tr. p. 29, ll. 9-15)

ISSUE

- I. WHETHER THE SINGLE COMMISSIONER ERRED IN DETERMINING THE CLAIMANT WAS ENTITLED TO PERMANENT PARTIAL DISABILITY BENEFITS EQUALING 6% TO THE RIGHT AND LEFT UPPER EXTREMITIES, RESPECTIVELY?

STANDARD OF REVIEW

The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).

It is well-established that the Full Commission is the ultimate fact finder in workers' compensation cases and is not necessarily bound by the Single Commissioner's findings of fact. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc., 336 S.C. 266, 281, 519 S.E. 2d 583, 591 (S.C. Ct. App. 1999). Although it is logical for the Full Commission, which did not have the benefit of observing the witness, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. Id. The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission. Id.

I. THE CLAIMANT CANNOT SATISFY HER BURDEN OF PROVING THAT SHE IS ENTITLED TO PERMANENT DISABILITY BENEFITS IN EXCESS OF 6% TO THE RIGHT UPPER EXTREMITY AND LEFT UPPER EXTREMITY.

The burden is upon claimants to prove such facts as will render the injury compensable within the provisions of the Workmen's Compensation Act, and such award must not be based upon surmise, conjecture or speculation. Walker v. City Motor Car Co., 232 S.C. 392, 102 S.E.2d. 373 (1958). An award which is without support in the evidence should be reversed on appeal whether or not it is legally sufficient as to form and content. Shealy v. Algernon Blair, Inc., 250 S.C. 106, 156 S.E. 2d 646 (S.C. 1967). In worker's compensation proceedings, where uncontroverted medical opinions are merely deductions drawn from certain symptoms, the final conclusion remains with the triers of fact. Sharpe v. Case Produce, Inc., 336 S.C. 154 (S.C. 1999).

In Fishburne v. ATI Systems, 384 S.C. 76, 681 S.E.2d 595 (S.C. App. 2009), the court determined that there was competent evidence to support the determination by the Appellate Panel that the Claimant's proper rating for permanent partial disability benefits was less than what was provided for by the Claimant's treating physicians. The Claimant was awarded ten percent loss for her back, including her right lower extremity despite the fact that the Claimant's treating physicians gave the Claimant a five percent impairment rating to the whole person and entire spine, one orthopedic physician gave the claimant an impairment rating of fifteen to twenty percent of the lumbar spine, and another orthopedic physician gave her a physical impairment of twenty-four percent for the whole person and twenty seven percent of the lumbar spine. Id. The court found that "competent evidence supported [the] determination of the Appellate Panel for the Worker's Compensation Commission that proper rating for the claimant's permanent

partial disability was ten percent loss for her back.” Id.

The Claimant’s appellate brief, regarding the extent of her physical pain and problems, stands in stark contrast with the competing medical evidence of the Claimant’s authorized treating physician. **First, while the Claimant maintains Dr. Green’s findings are erroneous, the medical records reflect detailed and lengthy objective review of the Claimant’s physical symptology.** On August 24, 2007, Dr. Green’s objective physical evaluation revealed “no Tinel’s at the elbow, really no Tinel’s at the wrists. I get a two-point discrimination is normal. She has no intrinsic weakness. She has full ROM of her fingers, her wrist and her elbow. I see no intrinsic wasting.” (Def. APA # 1, p. 4) **Second, while the Claimant continues to maintain that she has been provided accommodations and restrictions, the medical records, again, reflect otherwise.** The Claimant was subsequently released to regular work activities by Dr. Green on August 24, 2007. Id. On January 14, 2008, Dr. Green opined that “her nerve conduction studies revealed a very mild right carpal tunnel syndrome and a mild left carpal tunnel syndrome.” Id. at p. 6. Moreover, Dr. Green determined that “no intervention is necessary from a surgical standpoint for either the carpal tunnel or cubital tunnel syndrome.” Id. The objective medical evidence as noted by Dr. Green does not “square” with the Claimant’s hearing testimony regarding her subjective bilateral upper extremity complaints. The following month, the Claimant was placed at maximum medical improvement and assigned 2% impairment rating to the bilateral upper extremities according to the AMA Guidelines for the Evaluation of Permanent Impairment, 5th edition. Id. at p. 8. In follow-up on August 11, 2008, Dr. Green, again, opined that, “we will go ahead and release her. She is not ready for any surgical

procedure. She has improved enough to leave well enough alone. She is discharged from this office.” *Id.* at p. 11. **In short, the Claimant’s subjective complaints of pain could not be substantiated objectively, nor could the Claimant’s complaints be explained medically by the Claimant’s authorized treating physician.** Therefore, it is both rational and logical for the Single Commissioner to conclude that the Claimant was entitled to permanent partial disability benefits in the amount of 6% to the bilateral upper extremities. (Decision and Order).

Although the Claimant has returned to work with the Defendants, performing her regular duties, the Claimant testified that she experiences significant weakness and problems while performing her job duties and responsibilities. (Hr’g Tr. p. 24, ll. 1-15) Even though Dr. Green released the Claimant to her regular duties, the Claimant acknowledged that the current job she is performing on behalf of the Defendants is within the permanent work restrictions that were placed upon the Claimant by her independent medical evaluation physician. (Decision & Order, dated September 16, 2011, p. 7) However, the Claimant herself admitted at the hearing that her job with the Defendants is within her restrictions. *Id.* More specifically, when asked if her job duties were within her work restrictions, the Claimant specifically testified in the affirmative. *Id.* Furthermore, the Claimant denied utilizing any type of assistive device or brace. (Hr’g Tr. p. 29, ll. 9-15)

The Claimant’s reliance upon Grayson v. Carter Rhoad Furniture, 312 S.C. 250 (Ct. App. 1993) is mistaken as the present case is clearly distinguishable from the aforementioned case. In Grayson, the Hearing Commissioner actually misread the medical evidence indicating that no doctor addressed the issue of maximum medical

improvement when, in fact, two separate physicians had determined such. In contrast, the Single Commissioner in the present case has simply afforded more weight to Dr. Green's medical evidence versus the Claimant's preference, Dr. Jackson.

In addition, the Claimant's assertion that the Single Commissioner has insufficient evidence to support her Decision & Order, due to the failure to make all express findings, is also a mischaracterization of the facts at hand, as evidenced by the Single Commissioner's three page long Request for a Proposed Decision and Order. (See Request for a Proposed Decision and Order in its entirety.) In the litany of spliced sentences from fragmented case law that the Claimant relied upon in making this assertion, she fails to appropriately discuss the applicable standard in these cases, which is the 'total absence of evidence.' (Cl. App. Br. p. 9, Section IV) The Claimant cited five different cases which reflect a Commissioner's decision and order was based on no evidence. In contrast, the hearing record, in its entirety, reflects that the medical records of Dr. Green are substantial in nature and kind. Therefore, the Claimant's concern, regarding the lack of evidence, is a red herring to mask her apparent preference for Dr. Jackson's diagnostic reports. The present case is not one where the Single Commissioner's opinion is based on the total absence of evidence, but rather she is relying upon the authorized treating physician's opinion over the Claimant's independent medical evaluator.

The hearing record reflects consistent objective medical evidence from Dr. Green, which the Commissioner, in her discretion, weighed more heavily than the Claimant's competing evidence. Case law stipulates that an impairment rating does not mandate a basis for the calculation of permanent partial disability benefits. See Bowen v. Chiquola

Mfg. Co., 238 S.C. 322, 120 S.E. 2d 99 (S.C. 1961). Therefore, the Single Commissioner appropriately determined that the Claimant is entitled to an award of disability benefits of 6% to the left upper extremity and right upper extremity. (Decision and Order, dated September 17, 2001).

II. THE SUBSTANTIAL MEDICAL EVIDENCE SUPPORTS THE SINGLE COMMISSIONER'S AWARD OF PERMANENT PARTIAL DISABILITY BENEFITS.

Unless the question of the extent of partial loss of use under Section 42-9-30 is so technically complicated as to require exclusively expert testimony, lay testimony is admissible. Linen v. Ruscon Constr. Co., 286 S.C. 67; 332 S.E.2d 211. The extent of loss of use need not be shown with mathematical precision. (*Id.*). However, it is well-established that an award for permanent impairment may not rest on surmise, conjecture, or speculation. Rather, it must be founded on evidence of sufficient substance to afford a reasonable basis for it. Bundrick v. Powell's Garage, 248 S.C. 496, 151 S.E.2d 437 (1966).

The Claimant contends that she is entitled to an award of permanent partial disability benefits in excess of 6% to the bilateral upper extremities. Although Sanders v. MeadWestvaco Corp., 317 S.C. 284, 638 S.E.2d 66 (S.C. Ct. App. 2006), requires, that the Commission consider lay testimony, when awarding workers compensation benefits, lay testimony must be viewed along with all other testimony, particularly the medical evidence. In McLeod v. Piggly Wiggly Carolina Co., 280 S.C. 466, 313 S.E. (2d) 38, 40 (Ct. App. 1984) the Court of Appeals determined that medical evidence is particularly critical when the injury is to the back; a complicated part of the body requiring evidence of a higher degree of expertise. As discussed in a dissenting opinion by Judge Shaw of

South Carolina Court of Appeals, although lay testimony may supplement expert testimony, an award may not be based on lay testimony alone which so contradicts credible medical testimony. Cropf v. The Pantry, Inc., 289 S.C. 106, 344 S.E.2d 879 (S.C. Ct. App. 1989). As explained by Judge Shaw, while the Supreme Court, in Linen v. Ruscon Construction Company, 286 S.C. 67, 332 S.E. (2d) 211 (1985), allowed lay testimony to supplement expert testimony as to the claimant's disability rating, Linen did not overrule McLeod. (Id.). According to Judge Shaw, the Linen court expressly found the doctors in that case possessed the expertise required by McLeod. (Id.). In Linen, a neurologist and an orthopedic surgeon testified that the claimant would aggravate his condition doing work similar to the claimant's job. (Id.). Significantly a vocational rehabilitation expert testified, in Linen, that the claimant was not employable. (Id.).

In the present case, Dr Green, an orthopedist with Midlands Orthopaedics, provided medical treatment to the Claimant for nearly two (2) years in the form of surgery, medication and physical therapy. (Defendants' APA #1). Dr. Green determined that the Claimant reached maximum medical improvement on February 15, 2008, and released the Claimant to return to regular duty work. (Defendants' APA #1, pp. 8). Dr. Green indicated that the Claimant sustained 2% permanent impairment to each upper extremity based on his interpretation and application of the AMA Guides to Permanent Impairment. (Id.). Dr. Jackson, the Claimant's IME physician, determined that the Claimant reached maximum medical improvement and assigned a 10% impairment rating to the right upper extremity and a 5% impairment rating to the left upper extremity. (Cl. App. Br. p. 4) Despite the fact that the Claimant's authorized treating physician determined that the Claimant sustained 2% permanent impairment, as a result of her

work-related accident, the Single Commissioner awarded the Claimant permanent partial disability benefits of 6% to the bilateral upper extremities. The Single Commissioner clearly considered both the Claimant's testimony and the medical evidence in awarding the Claimant permanent partial disability benefits.

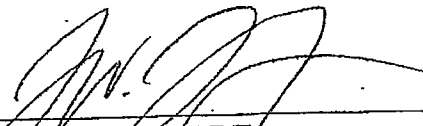
Sanders only requires that a claimant's testimony be considered in awarding workers compensation benefits. **The Claimant's own assertion that "her true permanent disability falls in the range of 20% to each arm," is erroneous, wholly unsupported by the medical evidence, and clearly flawed.** The Sanders court did not hold that credible medical evidence be ignored by the Commission. The fact that the Claimant does not agree with the Single Commissioner's assessment of the evidence does not mean that the Single Commissioner did not take the Claimant's testimony into consideration. The Single Commissioner's Decision and Order clearly complies with Sanders, and should be affirmed by the Full Commission.

CONCLUSION

The Single Commissioner's award of 6% permanent partial disability benefits to each upper extremity is supported by the substantial medical evidence. Therefore, the Defendants respectfully request that the Full Commission affirm the Decision and Order of the Single Commissioner.

[Signature on Next Page]

RESPECTFULLY SUBMITTED,



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January 25, 2012

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0617361

LATONYA FOOTMAN,

Employee,

Claimant,

vs.

JOHNSON FOOD SERVICES, LLC,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:

Andrew N. Safran, Esquire
Safran Law Offices
Post Office Box 12089, Capital Station
Columbia, South Carolina 29211

Ann M. Mickle, Esquire
Mickle & Bass, LLC
Post Office Box 10751
Rock Hill, South Carolina 29731

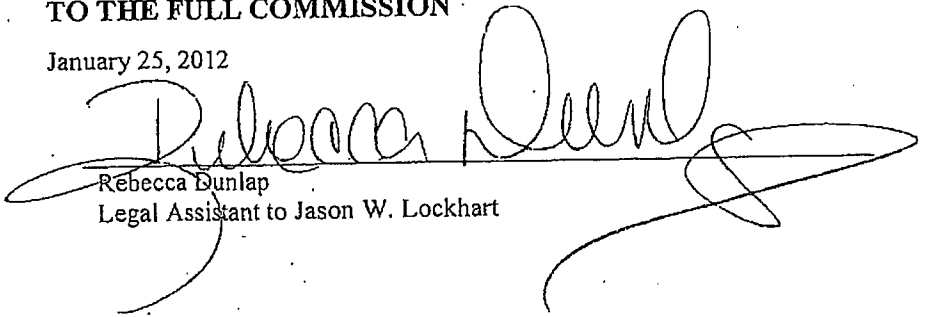
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29202
(VIA HAND DELIVERY)

DOCUMENT:

**RESPONDENTS' BRIEF
TO THE FULL COMMISSION**

DATE OF
MAILING:

January 25, 2012


Rebecca Dunlap
Legal Assistant to Jason W. Lockhart

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latonya Footman,

Plaintiff(s)

vs.

Johnson Food Services, LLC and The Hartford,
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

_____ - CP - _____

2012 CP 400 4574

(Please Print)

Submitted By: Andrew N. Safran, Esquire

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Columbia, South Carolina 29211

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Other (399)	☐ Building Code Violation (460)
			☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☒ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
-
Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	

Submitting Party Signature: _____

Date: June 27, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latonya Footman,

Employee/Petitioner,

vs.

Johnson Food Services, LLC,

Employer,

and

The Hartford,

Carrier/Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO: _____

PETITION FOR JUDICIAL REVIEW

RICHLAND COUNTY
FILED
2012 JUN 29 PM 3:01
JEANELLE W. HENDRIDE
C.C.P. & G.S.

Petitioner, Latonya Footman, would respectfully show unto the Court:

1) In 2006, she developed bilateral arm symptoms (pain and numbness), which prompted her family physician to order electrodiagnostic studies (performed on September 6, 2006). While Dr. M. David Redmond interpreted this testing to reveal moderately severe bilateral carpal tunnel syndrome and opined that "it seems reasonable to believe [her repetitive work activities]. . . would be a significant contributing factor in the etiology", Respondents denied liability per the South Carolina Workers' Compensation Act.

2) Given this denial, she was required to independently seek evaluation from Dr. Joseph P. Jackson, Jr. (an upper extremity specialist), who confirmed: (a) Dr. Redmond's diagnosis; (b) this carpal tunnel syndrome "most probably result[ed]. . . from her performance of repetitive activities incidental to her job as a food service worker and/or their aggravation of preexisting pathology"; and (c) proceeding with surgical intervention on the right side would be appropriate.

3) Shortly after receiving Dr. Jackson's corroborative opinions, Respondents directed her to Dr. Michael S. Green, who: (a) performed the previously recommended right carpal tunnel release on

March 1, 2007; and (b) discharged her from active care approximately five weeks later, without addressing her remaining symptoms.

4) When her bilateral arm problems persisted, she was reevaluated by Dr. Jackson (August 13, 2007), who: (a) felt she was also exhibiting evidence of cubital tunnel syndrome; and (b) recommended obtaining updated electrodiagnostic testing. This development prompted Respondents to redirect her to Dr. Green (August 24, 2007), who concurred with Dr. Jackson's recommendation of "EMG/NCS of both upper extremities to evaluate her ulnar nerve function."

5) Although this testing revealed both left carpal tunnel syndrome and right cubital tunnel syndrome, Dr. Green: (a) offered no additional treatment; (b) **inaccurately stated she had "underwent a procedure for both of these conditions (one on the right upper extremity and one on the left);** (c) determined she had achieved maximum medical improvement; and (d) assigned impairment ratings of 2% to each upper extremity (February 15, 2008). Conversely, Dr. Jackson: (a) believed the results of updated electrodiagnostic testing were consistent with a bilateral cubital tunnel syndrome; (b) felt utilization of "an anti-flexion splint" was warranted; and (c) "pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship" when he sensed her right-sided effort was probably not consistent.

6) Pursuant to questionnaire responses dated May 23, 2008, Dr. Jackson (who had reevaluated her on May 15, 2008) verified: (a) despite Dr. Green's contrary statement, she had actually not undergone surgical intervention for either her cubital tunnel syndrome or left carpal tunnel syndrome; (b) her treatment needs for the cubital tunnel syndrome included "a period of splinting and potential surgical intervention"; and (c) she was most probably limited to the performance of restricted duty work activities (no repetitive use of arm; no lifting or exertion of force in excess of 20 pounds). This physician also

assigned a 10% impairment of the right upper extremity and 5% of the left upper extremity in conjunction with the May 15, 2008 evaluation.

7) Respondents then redirected her to Dr. Green (June 17, 2008), who: (a) reconfirmed these diagnoses (noting she exhibited a positive Tinel's on clinical examination); and (b) again adopted Dr. Jackson's recommendation (this time prescribing a splint for the right cubital tunnel syndrome).

8) On October 3, 2008, Dr. Green was deposed by the respective parties. Significantly, this physician acknowledged/conceded: (a) her preexisting diabetic condition "predispose[d] . . . her to having more profound symptoms. . . than somebody who doesn't have diabetes" (p. 12); (b) these symptoms would increase with the performance of certain activities (pp. 15 – 16); (c) the impairment ratings he had assigned were "relatively arbitrary" (p. 17); (d) Dr. Jackson's ratings fell within the range that could reasonably be assigned for her particular pathology (p. 18 – 19); and (e) this range would be applicable to each of her distinct injury components (p. 23).

9) When her symptoms persistent and repeat electrodiagnostic studies (October 11, 2010) identified not only worsening left carpal tunnel syndrome, but also bilateral cubital tunnel syndrome, Dr. Green recommended a left carpal tunnel release (performed on November 9, 2010). Approximately six weeks following this procedure, he released her from active care.

10) In response to a March 28, 2011 letter from Respondents' counsel, Dr. Green indicated she had sustained a 2% impairment of her left upper extremity. After reexamining her on April 20, 2011, Dr. Jackson verified: (a) the causal relationship of her bilateral cubital tunnel syndrome to the consequences of her repetitive trauma injuries; (b) her residual impairment amounted to 10% of each upper extremity; and (c) work restrictions would include "lifting no more than 25 lbs., lifting no more than 12 pieces of chicken on a tray [and] . . . only opening 10 large cans per day."

11) Pursuant to a Form 21 Stop Payment Application filed by Respondents, a hearing was held before the single commissioner on June 8, 2011. During the course of this hearing, she confirmed: (a) several visits to Dr. Jackson had been necessary to prompt action from Dr. Green; (b) the limitations imposed by Dr. Johnson had, through experience, proven to be accurate (Hearing Transcript, p. 23); (c) her receipt of assistance/accommodation from co-employees with certain activities (Hearing Transcript, pp. 28 – 29); and (d) the various ongoing problems/limitations produced by her compensable injury components (Hearing Transcript, pp. 21 – 23, 25, 28 – 29).

12) By Order dated September 16, 2011, the single commissioner ruled the consequences of her compensable injuries had produced only 6% impairments to her arms. This determination was ultimately affirmed, without substantive comment, by an Appellate Panel of the Full Commission pursuant to an Order dated May 30, 2012.

13) In this connection, the single commissioner's Order the import of her testimony, noting: (a) "her present job duties and responsibilities with Defendants are within the restrictions, which were placed upon the claimant by Dr. Jackson" (See, September 16, 2011 Order, p. 7); (b) "the Defendants readily provided the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with the Defendants" (Id.); and (c) "she does experience ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with the Defendants." (Id.).

14) However, despite this uncontroverted evidence, the single commissioner nonetheless found "the Claimant has been released with no restrictions, and has returned to work (full-duty) with both her Employers. . . ." (See, September 16, 2011 Order, p. 10). Although the factual inaccuracy of this finding was clearly referenced in her Form 30 Request for Commission Review, the Appellate Panel: (a) perpetuated the single commissioner's erroneous misconstruction of the evidence through affirmance of

the underlying ruling; and (b) declined to provide any explanation as to its rationale for ignoring the undisputed evidence relative to her physical limitations and receipt of accommodation from her Employer.

15) Additionally, while the single commissioner noted Dr. Green's fundamentally inconsistent testimony, her related findings failed to offer any insight as to either the impact of this evidence on the ultimate disability determination or the particular "factors" that provided the basis for assignment of the respective 6% ratings. ("Regardless, my awards are based upon other factors. . ."). (See, September 16, 2011 Order, p. 10). In fact, neither this Order nor the Appellate Panel's ruling contain any reasoning/rationale/explanation relative to: (a) the weight afforded this medical evidence, which undoubtedly impacted upon assessment of her residual disability; (b) the "other factors" upon which this determination was founded; or (c) the particular significance of any of these purported "other factors".

16) Notwithstanding specific exceptions to the adequacy and propriety of several other findings entered by the single commissioner, which were reflective of an irreconcilably capricious construction of the evidence, the Appellate Panel again declined to either address these issues or explain the reasoning for any of these determinations. It likewise failed to elaborate on several arbitrary/conclusory findings contained in the single commissioner's Order, instead: (a) adopting them without further comment; and (b) overlooking its well established duty to not only make specific (as opposed to implicit or conclusory) findings as to all material facts in dispute, but also provide an adequate explanation for the reasoning behind any rulings.

17) Finally, despite the absence of any appellate challenge to her award by Respondents, the Appellate Panel unilaterally reduced the single commissioner's disability compensation award from 26.4 weeks to 22 weeks. Although Respondents may assert this legally untenable action was insignificant, she respectfully submits it is symbolic of an arbitrary/capricious decision-making process that taints essentially all elements of the Appellate Panel's rulings.

18) She hereby appeals the Appellate Panel's (Commission's) decision to the Richland County Court of Common Pleas pursuant to the provisions of S.C. Code Ann. Sections 1-23-380 (1) (2008) and 42-17-60 (2006) based upon the following exceptions:

a) The Commission erred in finding Ms. Footman "has been released with no restrictions" because the only reasonable inference which may be gleaned from the evidence contained in the hearing record clearly confirms: (a) Dr. Jackson (who evaluated her on several occasions since the accident date) assigned physical restrictions; (b) the assignment of these restrictions was clearly acknowledged by the Commission in the "Statement of the Case" portion of its Order; (c) she actually receives "accommodation" by her Employer in connection with the performance of activities beyond the restrictions assigned by Dr. Jackson; and (d) this finding is not only wholly inconsistent with the contents of the hearing record, but also reflective of an arbitrary and capricious analysis process which has ignored undisputed evidence relative to a material issue in dispute.

b) The Commission erred in failing to address Ms. Footman's exceptions relative to the clearly erroneous finding that she "has been released with no restrictions" and purportedly working without limitation through entry of sufficient factual findings because this procedure violates the Administrative Procedures Act, as well as the South Carolina Supreme Court's rulings in Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151 (1986); Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 525 S.E. 2d 863, (1999); Aristizabal v. I.J. Woodside Division of Dan River, Inc., 268 S.C. 366, 234 S.E. 2d 21 (1977) and Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767 (1991).

c) The Commission erred in failing to find Ms. Footman continued to receive accommodations from her Employer due to persistent "left upper extremity and right upper extremity pain

and problems” because the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably verifies this fact.

d) The Commission erred in failing to find Ms. Footman experiences “ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with” Johnson Food Services because the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely confirms this fact.

e) The Commission erred in failing to find Johnson Food Service is recognizing the physical limitations identified by Dr. Joseph P. Jackson, Jr. through provision of appropriate accommodations to Ms. Footman because the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably establishes: (a) “her present job duties and responsibilities. . . are within the restrictions” identified by Dr. Jackson; (b) her Employer provides Ms. Footman “with accommodations” due to the presence of persistent symptoms that necessitated assignment of these restrictions; and (c) her Employer is not only recognizing, but also accommodating, these causally related physical restrictions.

f) The Commission erred in failing to identify/explain the impact Dr. Green’s irreconcilably inconsistent testimony relative to Ms. Footman’s degree of residual permanent impairment had in connection with its ultimate determination of her permanent disability because this omission: (a) is violative of numerous Appellate Court rulings that require the Commission to “explain its reasoning” for any determination. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998); Lee County School District Board of Trustees v. MLD Chart School Academy, 371 S.C. 561, 641 S.E. 2d 24, 28 (2007); and (b) leaves the basis for its permanent disability assessment to speculation.

g) The Commission erred in failing to provide any explanation/rationale for its determination Ms. Footman sustained only 6% permanent partial disabilities to her arms (particularly in

view of the irreconcilably inconsistent testimony elicited from Dr. Green relative to her residual medical impairment) because this omission: (a) is violative of numerous Appellate Court rulings that require the Commission to “explain its reasoning” for any determination. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998); Lee County School District Board of Trustees v. MLD Chart School Academy, 371 S.C. 561, 641 S.E. 2d 24, 28 (2007); and (b) leaves the basis for its permanent disability assessment to speculation.

h) The Commission erred in failing to offer any reasoning/rationale/explanation relative to the weight afforded the “other factors” upon which its assessment of Ms. Footman’s degree of permanent disability was purportedly assessed because this omission: (a) is violative of numerous Appellate Court rulings that require the Commission to “explain its reasoning” for any determination. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998); Lee County School District Board of Trustees v. MLD Chart School Academy, 371 S.C. 561, 641 S.E. 2d 24, 28 (2007); and (b) leaves the basis for its permanent disability assessment to speculation.

i) The Commission erred in affording any weight to the impairment ratings ultimately assigned by Dr. Green because: (a) these admittedly “arbitrary” figures do not constitute a legally sufficient basis upon which to rest Ms. Footman’s disability determination; and (b) these speculative/arbitrary statements do not constitute substantial evidence in the contexts of the current record.

j) The Commission erred in reducing Ms. Footman’s permanent partial disability compensation entitlement from 26.4 weeks to 22 weeks because: (a) Defendants did not challenge the 26.4 week figure through the appellate process; (b) the Appellate Panel was consequently obliged to limit its consideration to only those issues raised by Ms. Footman, which focused on the **inadequacy of her permanent partial disability award**; and (c) reduction of the single commissioner’s permanent disability

compensation award exceeded the relevant scope of review, to the extent it constitutes a basic error of law.

k) The Commission erred in declining to enter factual findings explaining the rationale for its inordinately low disability determination (notwithstanding Ms. Footman's various exceptions and the obligations imposed by the above-cited authorities) because its failure to comply with these rulings, in light of the only reasonable inference which may be gleaned from the evidence contained in the hearing record (including Ms. Footman's persistent symptoms, performance of her job duties within the restrictions imposed by Dr. Jackson and receipt of accommodation for tasks she is unable to perform) leaves "the reasons underlying the decision. . . to speculation." Able, 351 S.E. 2d at 152; Kiawah Property Owners Group, 525 S.E. 2d at 865.

l) The Commission erred in failing to address Ms. Footman's numerous exceptions through the entry of sufficient factual findings because this procedure violates the Administrative Procedures Act, as well as the South Carolina Supreme Court's rulings in Able, Kiawah Property Owners Group, Aristizabal, and Brayboy.

m) The Commission erred in affirming the single commissioner's disability assessment, without explanation, because this procedure: (a) fails to address Ms. Footman's numerous exceptions relative to the inconsistency of its disability assessment with undisputed evidence; and (b) leaves the rationale for its determination to speculation in violation of the above-cited authorities.

n) The Commission erred in failing to enter specific findings as to its basis/rationale for dismissing/disregarding the obvious inconsistency between Ms. Footman's permanent disability award and highly relevant undisputed (persistent symptoms requiring medical/physical restrictions and receipt of work accommodations) evidence because this procedure violates the Administrative Procedures Act, as

well as the South Carolina Supreme Court's rulings in Able, Kiawah Property Owners Group, Aristizabal, and Brayboy.

o) The Commission erred in arbitrarily and capriciously affirming the single commissioner's disability determinations without further explanation because this procedure: (a) violates the Administrative Procedures Act, as well as the above-cited authorities; (b) leaves the basis/rationale for its ruling to speculation; and (c) essentially ignores undisputed evidence verifying the magnitude/legitimacy of Ms. Footman's causally related symptoms/limitations/disability.

p) The Commission erred in arbitrarily and capriciously affirming the single commissioner's disability determinations without further explanation because the absence of sufficient factual findings explaining its reasoning/rationale in this instance violates both S.C. Code Ann. Sections 1-23-350 (1976, as amended) and 42-17-40 (1976).

q) The Commission erred in finding Ms. Footman had only sustained 6% permanent partial disabilities to each of her arms due to the consequences of her compensable injuries because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes her residual disability moderately exceeds this figure.

r) The Commission erred in failing to specifically find Ms. Footman's bilateral arm injuries continue to produce both symptoms and functional limitations, while requiring accommodations from her Employer consistent with the physical restrictions identified by Dr. Jackson, because the only reasonable inference which may be gleaned from the evidence contained in the hearing record unequivocally establishes this fact.

s) The Commission erred in failing to find the permanent partial disability which Ms. Footman has sustained to each of her arms moderately exceeds Dr. Jackson's impairment ratings because

the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly verifies this fact.

t) The Commission erred in failing to specifically find the consequences of Ms. Footman's bilateral arm injuries continue to produce objective evidence of bilateral upper extremity nerve dysfunction, moderately limit her use of these arms and generate chronic symptoms because the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably establishes this fact.

u) The Commission erred in affording any weight to the medical impairment ratings assigned by Dr. Green because these admittedly "arbitrary" opinions: (a) were speculative; and (b) could not provide a legally sufficient basis upon which to rest its disability determination.

v) The Commission erred in focusing on a remote (February 1, 2008) comment as to grip strength inconsistencies noted by Dr. Jackson because: (a) inspection of this physician's subsequently generated notes reveal no concerns/qualifications as to the consistency of Ms. Footman's grip strength results; (b) diminished grip strength was not included as an element/component of any impairment rating contained in the hearing record; (c) there was no basis upon which to justify affording "great weight" to this innocuous reference in connection with the assessment of Ms. Footman's degree of residual permanent disability; and (d) the assignment of "great weight" to this remote and inconsequential statement is reflective of an unusual finesse of reasoning, as well as an arbitrary and capricious process, in connection with the analysis of Ms. Footman's degree of residual permanent disability.

w) The Commission erred in failing to find that after undertaking Ms. Footman's treatment for the consequences of her compensable accident, Defendants' designated physician (Dr. Green) repeatedly attempted to declare her at maximum medical improvement, notwithstanding the presence of persistent symptoms that were subsequently determined to warrant further treatment because

the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly verifies this fact.

x) The Commission erred in failing to find the impairment rating assigned by Dr. Green in March, 2011 related solely to Ms. Footman's left upper extremity because the only reasonable inference which may be gleaned from the evidence contained in the hearing record obviously confirms this fact.

y) The Commission erred in failing to find the impairment rating assigned by Dr. Green in March, 2011 was materially inconsistent with his October 3, 2008 deposition testimony because the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely verifies this fact.

z) The Commission erred in finding "Dr. Green's assignment of impairment ratings to be somewhat inconsistent, or at the very least, ambiguous" because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes that the impairment ratings assigned by this physician: (a) are materially inconsistent, particularly in view of his sworn acknowledgement that a reasonable impairment assessment would range up to 10% per arm for Ms. Footman's causally related conditions; and (b) the figure referenced by this physician in March, 2011 is 50% lower than the minimum upper extremity rating acknowledged during his deposition.

aa) The Commission erred in failing to find the inconsistency between Defendants' designated physician's (Dr. Green's) impairment ratings (within the context of the October 3, 2008 deposition testimony, as well as between this testimony and the March, 2011 written acknowledgement) warranted rejection of this evidence because: (a) these material inconsistencies compel a determination that this evidence was wholly unreliable; (b) any contrary characterization ("somewhat inconsistent"; "ambiguous") must be characterized as a product of an unusual finesse of reasoning, as well as an

arbitrary and capricious analysis; (c) these inconsistencies establish Dr. Green's impairment ratings are speculative, to the extent they do not constitute competent evidence; and (d) these deficiencies required rejection of Dr. Green's impairment ratings as a matter of law.

bb) The Commission erred in failing to find the impairment ratings assigned by Dr. Jackson (who evaluated Ms. Footman on multiple occasions) were patently more reliable than those referenced by Defendants' designated physician (Dr. Green), because: (a) the impairment opinions offered by Dr. Green are fraught with inconsistencies; (b) these inconsistencies are sufficiently material so as to result in this physician's opinions being nothing more than pure speculation; (c) Dr. Jackson's impairment ratings are wholly consistent with not only the nature/degree of Ms. Footman's causally related pathology, but also the pertinent sections of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; and (d) the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely verifies this fact.

cc) The Commission erred in limiting Ms. Footman's permanent disability compensation award based, to a substantial extent, on a remote/isolated (February 2008) grip strength inconsistency because: (a) this analysis necessarily hinges upon an unusual finesse of reasoning, as well as an arbitrary and capricious consideration of the evidence; (b) this remote reference does not constitute substantial evidence sufficient to support its disability determination under the present circumstances; and (c) the Commission's analysis necessarily constitutes a legally impermissible implicit finding as to credibility (or the lack thereof), which is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record.

dd) The Commission erred in failing to afford the impairment ratings assigned by Dr. Jackson equally "great weight" (as compared to his remote/isolated statement relative to an inconsistent grip strength finding, to which she specifically attributed "great weight") because: (a) failure to do so is

obviously reflective of an arbitrary and capricious analysis process; (b) the inconsistency of the Commission's actions is similarly indicative of an unusual finesse of reasoning; (c) the only reasonable inference which can be derived from the contents of the hearing record establishes that this physician's impairment ratings warranted equally "great weight".

ee) The Commission erred in finding Ms. Footman had only sustained 6% permanent partial disabilities to her arms, respectively, because this disability assessment: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the contents of the hearing record; (b) substantially founded upon medical evidence (opinions expressed by Dr. Green) which can only be characterized as speculative; (c) clearly ignores the impairment ratings assigned by Dr. Jackson (whose opinions were otherwise found to warrant "great weight" by the Commission); and (d) materially understates Ms. Footman's degree of permanent residual disability.

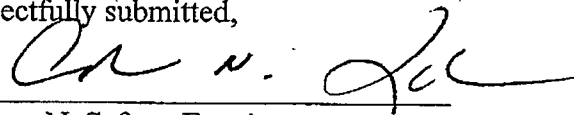
ff) The Commission erred in finding/concluding Ms. Footman was entitled to only 22 weeks of permanent partial disability compensation because this disability assessment: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the contents of the hearing record; (b) substantially founded upon medical evidence (opinions expressed by Dr. Green) which can only be characterized as speculative; (c) clearly ignores the impairment ratings assigned by Dr. Jackson (whose opinions were otherwise found to warrant "great weight" by the hearing commissioner); and (d) materially understates Ms. Footman's degree of permanent residual disability.

gg) The Commission erred in failing to make specific/express factual findings relative to all disputed issues because: (a) inspection of the contents of the hearing record, in light of the factual findings contained in its Order, establishes it did not adequately address credibility, the presence of medical restrictions, Ms. Footman's undisputed need for physical accommodation by her Employer or the propriety of Dr. Jackson's impairment ratings (all of which were essential to any determination of

permanent residual disability); and (b) the relevant legal authorities unequivocally demand detailed factual findings on each of these issues.

hh) The Commission erred in failing to adequately delineate the underlying rationale for several factual findings because: (a) inspection of its Order verifies the absence of a sufficient explanation of the thought process underlying findings relative to the weight (or absence thereof) afforded to Dr. Jackson's impairment ratings, placing "great weight" on an isolated/remote statement relative to grip strength inconsistency, the relevance of this February 1, 2008 comment to an assessment of permanent disability three years later, the presence of medical restrictions that the actual factual findings erroneously overlook, Ms. Footman's undisputed need for work accommodations from her Employer and the "other factors" which purportedly received greater "weight" in the appraisal of Ms. Footman's disability than Dr. Jackson's ratings; and (b) the relevant legal authorities have uniformly demanded a detailed explanation as to the rationale underlying the Commission's findings and ultimate conclusions.

Respectfully submitted,



Andrew N. Safran, Esquire
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and

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Attorneys for Employee/Claimant

June 29, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Latonya Footman,)
)
Employee,)
)
vs.)
)
Johnson Food Services, LLC,)
)
Employer,)
)
and)
)
The Hartford,)
)
Carrier.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: _____

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 JUN 29 PM 3:01
JEANETTE W. MCBRIDE
CLERK OF COURT
C.P. & G.S.

Roxanne R. Moorner, being first duly sworn, says that she is a legal assistant for the firm of Andrew N. Safran, LLC Attorney at Law, with offices at Columbia, South Carolina, that on the 29th day of June, 2012 she hand delivered and mailed the documents listed below to the persons listed below, by depositing in the United States mail with sufficient postage affixed thereto.

Documents: Petition for Judicial Review

To: **HAND DELIVERED**
The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Jason W. Lockhart, Esquire
McAngus, Goudelock & Courie, L.L.C.
Post Office Box 12519
Columbia, South Carolina 29211-2519

The Honorable Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

This 5th day of January, 2012.

Roxanne R. Moorner
Roxanne R. Moorner
Post Office Box 12089
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latonya Footman,

Claimant/Appellant,

vs.

Johnson Food Services, LLC,

Employer,

and

The Hartford,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2012-CP-40-4574

APPELLANT'S MEMORANDUM IN SUPPORT
OF PETITION FOR JUDICIAL REVIEW

RICHLAND COUNTY, SC
FILED
2013 FEB 27 PM 4:12
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATEMENT OF THE CASE

This is an appeal from the May 30, 2012 Order of the South Carolina Workers' Compensation Commission (Commission), which: (a) adopted the single commissioner's finding that Appellant, Latonya Footman, "had been released with no restrictions, and has returned to work (full duty)" with Respondent, Johnson Food Services, LLC following treatment of her admittedly compensable bilateral arm injuries"; (b) obviously focused on several statements of their designated physician which materially conflicted with this doctor's prior sworn testimony relative to Ms. Footman's degree of residual medical impairment; (c) engaged in an arbitrary/capricious process (which is reflective of an unusual finesse of reasoning) in effectively ignoring several opinions expressed by Dr. Joseph P. Jackson, Jr., who she also extolled for his candor; (d) clearly relied on the non-existent absence of medical restrictions, the mischaracterization of Ms. Footman's work status, irreconcilably inconsistent evidence from Respondents' physician and the arbitrary/capricious consideration of Dr. Jackson's opinions in determining Ms. Footman's residual disability for two separate injury components per arm at 6%, respectively; and (e) compounded the problem by failing to adequately identify the rationale for various rulings, notwithstanding our Appellate

Courts' repeated admonitions that an administrative agency's conclusions will otherwise not be accepted at face value.

In this regard, Ms. Footman respectfully submits the Commission's disability assessment: (a) mistakenly overlooks the fact she routinely requires these work accommodations (a fact acknowledged in the Statement of the Case portion of its Order) in finding she was maintaining "full duty"; (b) similarly ignores unanimous medical evidence that the consequences of her injuries have produce functional restrictions in finding she "was released with no restrictions"; (c) materially/erroneously based its disability determination on the obviously inconsistent statements made/opinions expressed by Respondents designated physician; (d) arbitrarily/capriciously afforded "great weight" to a remote (February 1, 2008) grip strength finding by Dr. Jackson in an attempt to justify an inordinately low permanent disability compensation award; (e) similarly engaged in an unusual finesse of reasoning by failing to give similar weight to Dr. Jackson's impairment ratings (which even Respondents' designee characterized as "reasonable"); and (f) erred as a matter of law in failing to make specific/express factual findings or adequately explain the underlying rationale behind its attempted resolution of various disputed issues (including the presence of medical restrictions, the admitted need for physical accommodation by Johnson Food Service, the propriety of Dr. Jackson's impairment ratings and the basis upon which medical impairment was gauged).

FACTS

I. INITIAL TREATMENT

In 2006, Ms. Footman developed bilateral arm symptoms (pain and numbness), which prompted her family physician to order electrodiagnostic studies (performed on September 6, 2006). While Dr. M. David Redmond interpreted this testing to reveal moderately severe bilateral carpal tunnel syndrome and

opined that “it seems reasonable to believe [her repetitive work activities]. . . would be a significant contributing factor in the etiology”, Respondents denied liability per the Act.

In view of this fact, the undersigned directed Ms. Footman to Dr. Jackson (an upper extremity specialist), who confirmed: (a) Dr. Redmond’s diagnosis; (b) this carpal tunnel syndrome “most probably result[ed]. . . from her performance of repetitive activities incidental to her job as a food service worker and/or their aggravation of preexisting pathology”; and (c) proceeding with surgical intervention on the right side would be appropriate.

II. TREATMENT COURSE FOLLOWING ACCEPTANCE OF CLAIM

Shortly after receiving Dr. Jackson’s corroborative opinions, Respondents directed Ms. Footman to Dr. Michael S. Green, who: (a) performed the previously recommended right carpal tunnel release on March 1, 2007; and (b) released her from active care approximately five weeks later, without addressing her remaining symptoms.

When her bilateral arm problems persisted, Ms. Footman was reevaluated by Dr. Jackson (August 13, 2007), who: (a) felt she was also exhibiting evidence of cubital tunnel syndrome; and (b) recommended obtaining updated electrodiagnostic testing. This development prompted Respondents to redirect Ms. Footman to Dr. Green (August 24, 2007), who concurred with Dr. Jackson’s recommendation of “EMG/NCS of both upper extremities to evaluate her ulnar nerve function.”

Although this testing revealed both left carpal tunnel syndrome and right cubital tunnel syndrome, Dr. Green: (a) offered no additional treatment; (b) **inaccurately stated she had “underwent a procedure for both of these conditions (one on the right upper extremity and one on the left);** (c) determined Ms. Footman had achieved maximum medical improvement; and (d) assigned impairment ratings of 2% to each upper extremity (February 15, 2008).

Conversely, Dr. Jackson: (a) believed the results of updated electrodiagnostic testing were consistent with a bilateral cubital tunnel syndrome; (b) felt utilization of “an anti-flexion splint” was warranted; and (c) “pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship” when he sensed her right-sided effort was apparently lacking.

Pursuant to questionnaire responses dated May 23, 2008, Dr. Jackson (who had reevaluated Ms. Footman on May 15, 2008) verified: (a) despite Dr. Green’s contrary statement, Ms. Footman had actually not undergone surgical intervention for either her cubital tunnel syndrome or left carpal tunnel syndrome; (b) her treatment needs for the cubital tunnel syndrome included “a period of splinting and potential surgical intervention”; and (c) she was most probably limited to the performance of restricted duty work activities (no repetitive use of arm; no lifting or exertion of force in excess of 20 pounds). This physician also assigned a 10% impairment of the right upper extremity and 5% of the left upper extremity in conjunction with the May 15, 2008 evaluation.

Respondents redirected Ms. Footman to Dr. Green (June 17, 2008), who: (a) reconfirmed these diagnoses (noting she exhibited a positive Tinel’s on clinical examination); and (b) again adopted Dr. Jackson’s recommendation (this time prescribing a splint for the right cubital tunnel syndrome).

III. DR. GREEN’S OCTOBER 3, 2008 DEPOSITION TESTIMONY

During the course of his deposition, Dr. Green agreed: (a) Ms. Footman’s preexisting diabetic condition “predispose[d]. . . her to having more profound symptoms. . . than somebody who doesn’t have diabetes” (Green Deposition, p. 12); (b) these symptoms would increase with the performance of certain activities (Green Deposition, pp. 15 – 16); (c) the impairment ratings he had assigned were “relatively arbitrary” (Green Deposition, p. 17); (d) **Dr. Jackson’s ratings fell within the range that could**

reasonably be assigned for her particular pathology (Green Deposition, p. 18 – 19); and (e) **this range would be applicable to each of Ms. Footman’s distinct injury components** (Green Deposition, p. 23).

IV. POST-DEPOSITION TREATMENT

When Ms. Footman’s symptoms persistent and repeat electrodiagnostic studies (October 11, 2010) identified not only worsening left carpal tunnel syndrome, but also bilateral cubital tunnel syndrome, Dr. Green recommended a left carpal tunnel release (performed on November 9, 2010). Approximately six weeks following this procedure, he released her from active care.

In response to a March 28, 2011 letter from defense counsel, Dr. Green indicated Ms. Footman had sustained a 2% impairment of her left upper extremity. After reexamining Ms. Footman on April 20, 2011, **Dr. Jackson verified: (a) the causal relationship of her bilateral cubital tunnel syndrome to the consequences of her repetitive trauma injuries; (b) her residual impairment amounted to 10% of each upper extremity; and (c) work restrictions would include “lifting no more than 25 lbs., lifting no more than 12 pieces of chicken on a tray [and] . . . only opening 10 large cans per day.”**

V. CURRENT SYMPTOMS/LIMITATIONS

Ms. Footman (who has been employed by Johnson Food Service and its predecessors for more than 17 years) explained: (a) how several visits to Dr. Jackson had been necessary to prompt action from Dr. Green; (b) she deferred the left carpal tunnel release until she could no longer stand the pain; (c) the numbness emanating from her cubital tunnel syndrome disrupts her sleep “pretty much every night” and is present even when she is not engaged in work activities (Hearing Transcript, pp. 22 -21); (d) increased activity elevates her pain levels (Hearing Transcript, p. 21); (e) **the limitations identified by Dr. Jackson have proven to be accurate** (Hearing Transcript, p. 23); (f) **she receives assistance/accommodation from co-employees with troublesome activities** (Hearing Transcript, pp. 28 -29); (g) routine activities

such as driving, as well as repetitive work duties, are painful (Hearing Transcript, pp. 23; 25); and (h) she requires “assistance on all [her]. . . jewelry and. . . dress[ing] in the morning time. . . .” (Hearing Transcript, p. 25).

LEGAL ANALYSIS

I. STANDARD OF REVIEW

S.C. Code Ann. Section 1-23-380 (5) (2008), which governs judicial review in the current context (i.e., for cases arising prior to recent amendments), provides in pertinent part:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Pursuant to the scope of review established by this statute, the “court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel’s decision if the appellant’s substantial rights have been prejudiced because the decision is affected by an error of law or is ‘clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.’” Rabon v. Arrow Exterminating, Inc., 393 S.C. 510, 713 S.E. 2d 347, 349 (Ct. App. 2011); See also, Therrell v. Jerry’s, Inc., 370 S.C. 22, 633 S.E. 2d 893, 894 -895 (2006).

II. MS. FOOTMAN WAS NOT ONLY ASSIGNED RESTRICTIONS, BUT ALSO RECEIVES ACCOMMODATIONS FOR HER PHYSICAL LIMITATIONS FROM JOHNSON FOOD SERVICES.

As previously noted, on April 20, 2011, Dr. Jackson (who had evaluated Ms. Footman on no less than **five** occasions) confirmed the consequences of her compensable injuries warranted physical restrictions, “i.e., lifting no more than 25 lbs., lifting no more than 12 pieces of chicken on a tray, only opening 10 large cans per day.” (See, Claimant’s APA Submissions, p. 15). Additionally, **Dr. Green acknowledged:** (a) “repetitive activity with some other torque or a load applied to it, . . . even a mild course – probably would exasperate (sic) her symptoms” (See, Green Deposition, p. 15); (b) **“even a 10 to 15 pound repetitive activity probably could. . . [exacerbate] her symptoms”** (See, Green Deposition, p. 16); and (c) **the nature of her injuries would likely require performance of repetitive activities “just on an intermittent basis to where there’s some either frequent breaks or change of activity.”** (Id.).

Additionally, the evidence unequivocally establishes that Ms. Footman continues to require physical/functional accommodations relative to the performance of certain work activities. (See, Hearing Transcript, pp. 28 – 29). In fact, the Commission’s Order not only states “that the Defendants readily provide the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with Defendants”, but also references Ms. Footman’s undisputed testimony that “her present job duties and responsibilities with the Defendants are within the restrictions, which were placed upon [her] . . . by Dr. Jackson.” (See, May 30, 2012 Order, pp. 18).

Our Appellate Courts have repeatedly held: (a) where “there is no evidence to support [a] . . . finding of fact made by the Commission”, the resulting determination should be reversed. Sanders v.

Richardson, 251 S.C. 325, 162 S.E. 2d 257, 259 (1968); Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E. 2d 320 (1995); and (b) the absence of “substantial evidence” warrants reversal of the Commission’s ruling as to the contested issue. See, Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E. 2d 526, 529 (2001); McCuen v. BMW Manufacturing Corporation, 383 S.C. 19, 677 S.E. 2d 28, 32 (Ct. App. 2009). Additionally, the Commission’s rulings may not be premised upon “a mistaken view of the evidence.” Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 439 S.E. 2d 859, 860 (Ct. App. 1993), aff’d. as modified, 317 S.C. 306, 454 S.E. 2d 320 (1995).

After inspecting the undisputed evidence of record, Ms. Footman respectfully submits “there is, in reality, no evidence” to support the Commission’s finding that she “has been released with no restrictions, and has returned to work. . . “full duty” without accommodation. Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E. 2d 320, 322 (1995). Rather the only reasonable inferences which may be gleaned from the Record verify: (a) both physicians identified physical restrictions resulting from her compensable injuries; (b) the restrictions identified by Dr. Jackson have proven accurate; and (c) she is certainly requiring/receiving assistance from Johnson Food Services, LLC due to the consequences of her injuries.

As this erroneous finding was undoubtedly a material component of the Commission’s disability determination process, Ms. Footman respectfully submits the bilateral 6% upper extremity award: (a) is legally flawed; and (b) must be vacated.

III. DR. GREEN’S IMPAIRMENT RATINGS ARE MATERIALLY AND IRRECONCILABLY INCONSISTENT.

When initially requested to assign an impairment rating (February 15, 2008), Dr. Green: (a) **erroneously reported** that he had performed surgical procedures for **both** a right carpal tunnel syndrome; (b) overlooked an objectively verified bilateral carpal tunnel syndrome, while **incorrectly assuming** the left-sided pathology had been surgically addressed; and (c) assigned an aggregate 4% upper

extremity impairment, despite the temporal presence of three diagnosed injury components. (See, Claimant's APA Submission, pp. 28 – 31).

Subsequently, on September 18, 2008, this physician changed the previously assigned ratings, to the extent he: (a) only referenced the bilateral carpal tunnel syndrome; and (b) **completely ignored** the electrodiagnostically proven right cubital tunnel syndrome (which had provided a partial basis for his initially impairment assessment). (See, Defendants' APA Submission, p. 13).

However, when questioned as to these ratings, Dr. Green acknowledged: (a) these impairment figures were “**relatively arbitrary**” (characterizing Dr. Jackson’s in a similar fashion); (b) **Dr. Jackson’s ratings**, which were derived from “Table 16-15” of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, were “**within the realm of what you would ascribe to**” these conditions (See, Green Deposition, p. 18); and (c) this range would be **applicable to each** of Ms. Footman’s distinct injury components. (See, Green Deposition, p. 23).

Subsequently, when requested to address permanent impairment following the performance of **another surgical procedure** and updated electrodiagnostic testing **confirming the continued presence of bilateral cubital tunnel syndrome**, Respondents’ designee: (a) purportedly limited Ms. Footman’s left upper extremity impairment to 2%; and (b) **completely ignored** the causally related left cubital tunnel syndrome.

Conversely, Dr. Jackson: (a) consistently recognized the particular nature of Ms. Footman’s causally related pathology; (b) designated ratings per the Guides, as opposed to the “arbitrary” figure Dr. Green “routinely” assigned; and (c) recognized each of her injury components warranted a separate rating.

While the Commission sought to characterize “Dr. Green’s assignment of impairment ratings to be somewhat inconsistent or, at the very least, ambiguous”, the disparities between Defendants’ designees’

reports are: (a) quite significant, as they repeatedly ignore admitted injury components; (b) highly contradictory (particularly with respect to prior sworn testimony). Further, the Commission's attempts to: (a) soft pedal the materiality of these inconsistencies can only be characterized as arbitrary/capricious; and (b) disclaim their significance is belied by the fact its ultimate disability ratings fall below the only other **medical impairment rating** of Record.

In view of these facts, Ms. Footman respectfully suggests this decision-making process is wholly inconsistent with the standard prescribed by Section 1-23-380 (5) (f).

IV. THE "GREAT WEIGHT" AFFORDED TO AN ISOLATED 2008 GRIP STRENGTH DISPARITY IS REFLECTIVE OF AN ARBITRARY/CAPRICIOUS ANALYSIS OF THE EVIDENCE.

After examining Ms. Footman on February 18, 2008, Dr. Jackson "pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship." While the record contains no similar references, the Commission found this remote statement deserved "great weight".

Interestingly, neither Dr. Jackson nor Dr. Green: (a) utilized grip strength as a facet of their impairment assessments; (b) **questioned the legitimacy** of Ms. Footman's current symptoms; or (c) **referenced any other discrepancies during the ensuing three year treatment course.**

In view of these circumstances, any analysis which affords "great weight" to an innocuous, remote statement (in the context of a four-plus year period of treatment) can legitimately be characterized as not only arbitrary, but also the product an impermissible "unusual finesse of reasoning". Young v. Hyman Motors, 199 S.C 233, 19 S.E. 2d 109, 113 (1942). The refusal to attribute equal weight to the impairment ratings identified by Dr. Jackson (who was afforded "well-deserved credit" by the Commission for his candor) is similarly irreconcilable/capricious, as it has absolutely nothing to do with the issue in dispute..

V. INADEQUACY OF FINDINGS/ABSENCE OF SUFFICIENT RATIONALE.

“If a material fact is contested. . . [the Commission] must make a specific, express finding on it.” Aristizabal v. I.J. Woodside – Division of Dan River, Inc., 268 S.C. 366, 234 S.E. 2d 21, 23 (1977); Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 666 S.E. 2d 287, 300 (Ct. App. 2008). It is equally certain that “implicit findings of fact are not sufficient.” Brayboy v. Clark Heating Company, 306 S.C. 56, 409 S.E. 2d 767, 768 (1991); Heater of Seabrook, Inc. v. Public Service Commission of South Carolina, 332 S.C. 20, 503 S.E. 2d 739, 742 (1998). Additionally, it is **incumbent upon the Commission to “explain its reasoning” for any determination.** Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998); Lee County School District Board of Trustees v. MLD Chart School Academy, 371 S.C. 561, 641 S.E. 2d 24, 28 (2007) (Emphasis added).

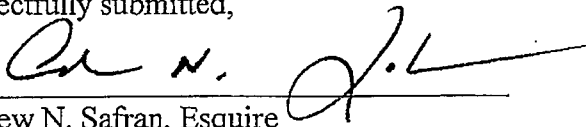
In this instance, the Commission did not delineate the underlying rationale for several factual findings, including: (a) the manner in which it gauged Ms. Footman’s underlying medical impairment in the face of Dr. Green’s highly contradictory statements; (b) the basis for affording “great weight” to Dr. Jackson’s isolated/remote comment of February 1, 2008, while not giving his logically calculated impairment ratings as much weight as “other factors”; (c) sufficiently identifying the “other factors” which led to the 6% award, a problem which is compounded by the “arbitrary”/contradictory nature of Dr. Green’s opinions, as well as its misconception of Ms. Footman’s physical/functional deficits; and (d) explaining why an isolated/remote comment that had no bearing on Ms. Footman’s residual disability status in 2011 warranted “great weight”.

It is axiomatic that the “Court will not accept an administrative agency’s decision at face value without requiring the agency to explain its reasoning.” Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 525 S.E. 2d 863, 865 (1999). While the Commission listed several “findings”, their conclusory and arbitrary nature essentially make it impossible to identify the

actual basis for her disability determination, leaving “the reasons underlying the decision. . . to speculation.” Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151, 152 (1986); Grant v. Grant Textiles, 372 S.C. 196, 641 S.E. 2d 869, 872 (2007)

ACCORDINGLY, Ms. Footman respectfully requests this Court to: (a) vacate the Commission’s May 19, 2009 Order; (b) remand this matter to the Commission for rehearing de novo; and (c) require that further proceedings not only be based upon the evidence of Record, but utilize a determination process which is neither arbitrary/capricious nor inconsistent with the Court’s requirements as to adequate explanation of the ultimate rational for any rulings.

Respectfully submitted,



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April 15, 2013

HAND DELIVERED

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

RE: Latonya Footman v. Johnson Food Services, LLC and The Hartford
Civil Action No.: 2012-CP-40-4574

Dear Ms. McBride:

Enclosed please find an original and three (3) copies of a Notice of Motion and Motion to Alter/Amend Judgment, which I am filing on behalf of Ms. Latonya Footman relative to the above-captioned matter. Additionally, I have enclosed our firm's check in the amount of \$25.00 in satisfaction of your filing fee. At this time, I would greatly appreciate your filing this document and returning three (3) clocked copies to my courier.

By copy of this letter, I am serving a copy of our Motion on Jason Lockhart, counsel for Respondents. Additionally, I am forwarding a copy to the Honorable G. Thomas Cooper, Jr., who ruled on the merits of this appeal, for his consideration.

In this regard, while I have indicated the Motion will require a fifteen minute hearing, I will obviously defer to Judge Cooper relative to his desire for additional oral argument. In the event he believes further argument would be beneficial, I will be happy to make myself available at his convenience.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,


Andrew N. Safran

Enclosures

cc: The Honorable G. Thomas Cooper, Jr.
Jason W. Lockhart, Esquire
The Honorable Virginia L. Crocker
Ann McCrowey Mickle, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latonya Footman

☐ Plaintiff

v.

Johnson Food Services, LLC And The Hartford

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-40-4574

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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Defendant's Attorney:

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phone: 803-227-2283 fax:

e-mail: jlockhart@mgclaw.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: 59 (e)

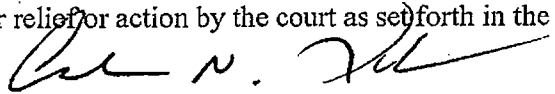
Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

April 15, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Latonya Footman,)
)
Claimant/Appellant,)
)
vs.)
)
Johnson Food Services, LLC,)
)
Employer,)
)
and)
)
The Hartford,)
)
Defendants/Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2012-CP-40-4574

NOTICE OF MOTION AND MOTION
TO ALTER/AMEND JUDGMENT PER
S.C.R.C.P. 59 (e)

2013 APR 15 PM 4:30
JASON W. LOCKHART
ESQUIRE
& G.S.

TO: JASON W. LOCKHART, ESQUIRE, COUNSEL FOR DEFENDANTS/RESPONDENTS.

YOU WILL PLEASE TAKE NOTICE that Claimant/Appellant, Latonya Footman, by and through her undersigned counsel, hereby moves the Honorable G. Thomas Cooper, Jr., pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure, for an Order altering and/or amending his April 1, 2013 Order, which was filed on April 3, 2013 and received by counsel on April 5, 2013. This Motion is based upon the following grounds:

1) The April 1, 2013 Order does not address, determine and/or pass upon the issue raised in Exceptions A, B, C, E and R in that it overlooks and/or misconstrues:

(a) our Appellate Courts' consistent rulings that where "there is no evidence to support a finding of fact made by the Commission", the resulting determination is legally unsustainable. Sanders v. Richardson, 251 S.C. 325, 162 S.E. 2d 257, 259 (1968); Hutson v. South Carolina State Ports Authority, 399 S.C. 381, 732 S.E. 2d 500, 504 (2012);

(b) this lack of evidentiary basis necessarily results in the Commission's award impermissibly "resti[ing] . . . upon surmise, conjecture or speculation . . ." Hines v. Specific Mills, 214 S.C. 125, 51, S.E. 2d 383, 385 (1949); Hutson, 732 S.E. 2d at 503;

(c) the uncontradicted facts Ms. Footman was not released to unrestricted work activities by either her authorized physician (Dr. Michael S. Green) or second opinion evaluator (Dr. Joseph P. Jackson, Jr.) and was receiving physical accommodations from Respondent, Johnson Food Service, due to an inability to perform all job duties;

(d) our Appellate Courts' holdings that statements of the nature made by Dr. Green upon allowing Ms. Footman to resume work activities ("use the hand **as tolerated**") do not constitute a release to return to work "without restriction". Grayson v. Carter Rhoad Furniture, 317 S.C. 206, 454 S.E. 2d 320 (1995); Cranford v. Hutchison Construction, 399 S.C. 65, 731 S.E. 2d 303 (Ct. App. 2012);

(e) the only reasonable inference arising from the evidence contained in the hearing record establishes "there is, in reality, no evidence" to support the Commission's finding that Ms. Footman "has been released with no restrictions, and has returned to work (full duty)" Grayson, 454 S.E. 2d at 322;

(f) this finding unquestionably constituted a material component of the "other evidence" upon which the Commission purportedly relied in assessing Ms. Footman's degree of permanent residual disability; and

(g) the absence of evidentiary support for this materially relevant finding requires reversal of the Commission's permanent disability compensation award.

2) The April 1, 2013 Order does not address, determine and/or pass upon the issues raised in Exceptions B, T, V, CC, DD and HH of her Petition for Judicial Review in that it overlooks and/or misconstrues:

(a) the fact the record is devoid of any medical evidence which attributes significance, materiality or even relevance to Dr. Jackson's February 1, 2008 comment ("pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship") in connection with the assignment of medical impairment, identification of physical restrictions or assessment of permanent disability;

(b) while the Commission found/concluded this statement warranted "great weight", it failed to offer a reason for this determination other than the fact Dr. Jackson was Ms. Footman's "own expert";

(c) as the Commission found Dr. Green's impairment rating "to be somewhat inconsistent or, at the very least, ambiguous" and chose not to afford Dr. Jackson's impairment ratings "as much weight as . . . other factors", the February 1, 2008 statement necessarily constituted a material basis for its ultimate permanent disability assessment;

(d) it is axiomatic that a Court sitting in an appellate capacity "will not accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151, 152 (1986); Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 425 S.E. 2d 863, 865 (1999);

(e) the Commission's Order does not contain any explanation as to why this remote/innocuous finding warranted "great weight";

(f) absent identification of a legally sufficient rationale, this finding must be characterized as the product of an impermissible "medical opinion of the single commissioner" adopted by the Commission. Burnette v. City of Greenville, 401 S.C. 417, 737 S.E. 2d 200, 206 (Ct. App. 2012); and

(g) these holdings compel a remand for the purpose of obtaining identification of the Commission's rationale for this otherwise arbitrary/capricious finding.

3) The April 1, 2013 Order does not address, determine or pass upon the issue raised in Exceptions F, G, H, K, M, N, O, P, Q, T, X, Y, ZZ, AA, CC, DD, EE, FF and HH of her Petition for Judicial Review in that it overlooks and/or misconstrues:

(a) the fact the Commission elected to base its disability determination "upon other factors" in view of its finding Dr. Green's impairment ratings were "somewhat inconsistent or, at the very least, ambiguous";

(b) these "other factors" predominantly included Ms. Footman's purported "release . . . with no restrictions, and . . . return to work (full duty)", as well as Dr. Jackson's February, 2008 statement;

(c) the evidence of record simply does not support the Commission's finding that Ms. Footman "had been released with no restrictions, and has returned to work (full duty)";

(d) the Commission's Order references no rationale for affording the February 1, 2008 statement "great weight";

(e) given these legal deficiencies, "the reasons underlying the . . . Commission's disability determination" are left to speculation." Able, 351 S.E. 2d at 152; Kiawah Property Owners Group, 525 S.E. 2d at 865;

(f) based upon previously-cited holdings, the Commission must explicitly "explain its rationale" for finding Ms. Footman's residual disability amounted to only 6% of each arm. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998); Lee County School District Board of Trustees v. MLD Chart School Academy, 371 S.C. 561, 641 S.E. 2d 24, 28 (2007); and

(g) the absence of this rationale renders the Commission's Order legally unsustainable.

4) The April 1, 2013 Order does not address, determine and/or pass upon the issues raised in Exceptions L, T, X, Y, Z, AA, GG and SS of her Petition for Judicial Review in that it overlooks and/or misconstrues:

(a) the fact finding duty imposed by S.C. Code Ann. Sections 1-23-350 (2005) and 42-17-40 (1976, as amended) "requires not only . . . [that] findings of fact be made upon the essential factual issues, but they . . . [also] be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings." Drake v. Raybestos – Manhattan, Inc., 241 S.C. 116, 127 S.E. 2d 288, 292 (1962); Hill v. Jones, 255 S.C. 219, 178 S.E. 2d 142, 144 (1970);

(b) "[i]f a material fact is contested . . . [the Commission] must make a specific, express finding on it." Aristizabal v. I.J. Woodside - Division of Dan River, Inc., 268 S.C. 366, 234 S.E. 2d 21, 23 (1977);

(c) these findings must likewise contain a legally sufficient explanation as to the Commission's underlying reasoning. Able, 351 S.E. 2d at 152; Porter, 507 S.E. 2d at 332;

(d) despite these longstanding requirements, the Commission failed to enter factual findings detailing the underlying rationale for affording "great weight" to Dr. Jackson's February 1, 2008 statement, or how/which "other factors" referenced in Finding of Fact Nos. 11 and 12 impacted its ultimate disability determination;

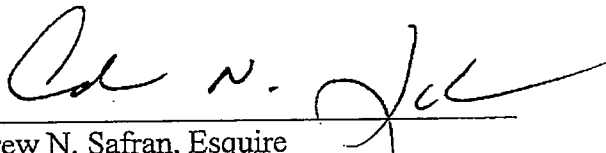
(e) given the absence of evidentiary support for its finding Ms. Footman "has been released with no restrictions, and has returned to work (full duty)", as well as the legal insufficiency of its reliance on Dr. Jackson's isolated/remote February 1, 2008 statement, it was incumbent upon the

Commission to provide sufficiently detailed factual findings, including a rationale consistent with substantial evidence, in connection with its resolution of the contested issue relative to permanent disability; and

(f) the absence of these findings, as well as the requisite rationale, constitutes legal error.

Accordingly, Ms. Footman respectfully requests this Court to amend its prior Order to: (a) vacate the Commission's May 30, 2012 Order; (b) remand this matter to the Commission for further proceedings, including additional discovery by the respective parties; and (c) mandate compliance with the previously-cited authorities in connection with the ultimate redetermination of Ms. Footman's degree of residual permanent disability.

Respectfully submitted,



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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Latonya Footman,)

Claimant/Appellant,)

vs.)

Johnson Food Services, LLC,)

Employer,)

and)

The Hartford,)

Defendants/Respondents.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2012-CP-40-4574

CERTIFICATE OF SERVICE

2013 APR 15 PM 4:30
JANETTE W. MCBRIDE
C.C.P. & G.S.

FILED

Roxanne R. Moorner, being first duly sworn, says that she is a legal assistant for the firm of Andrew N. Safran, LLC Attorney at Law, with offices at Columbia, South Carolina, that on the 15th day of April, 2013 she hand delivered and mailed the documents listed below to the persons listed below, by depositing in the United States mail with sufficient postage affixed thereto.

Documents: Notice of Motion and Motion to Alter/Amend Judgment Per
S.C.R.C.P. 59 (e)

To: **HAND DELIVERED**
The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Jason W. Lockhart, Esquire
McAngus, Goudelock & Courie, L.L.C.
Post Office Box 12519
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This 15th day of April, 2013.

Roxanne R. Moorner
Roxanne R. Moorner
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER 0617361

LATONYA C. FOOTMAN,	)	
	)	
CLAIMANT,	)	SINGLE COMMISSION HEARING
	)	
VS.	)	BEFORE
	)	
JOHNSON FOOD SERVICE,	)	COMMISSIONER SUSAN S. BARDEN
	)	
EMPLOYER,	)	
	)	
HARTFORD,	)	
	)	
DEFENDANTS.	)	

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE SARA L. QUATTLEBAUM, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
11:17 AM ON WEDNESDAY, JUNE 8, 2011, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA.

SARA QUATTLEBAUM, Independent Court Reporter
148 LAKE HARBOR DRIVE
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(803)447-0272

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1 THE COURT: Today's date is June 8, 2011. This
2 is South Carolina Workers' Compensation Commission
3 File No. 0617361.

4 This is the case of the Claimant, Ms. Latonya
5 Footman, who is present today and represented by
6 Attorney Andy Safran versus the Employer, Johnson Food
7 Services and its Carrier, Hartford, both of which are
8 represented by Attorney Jason Lockhart.

9 The purpose of today's hearing is to determine
10 issues raised in the Defendants' Form 21, request to
11 pay compensation.

12 There is a credit issue, and I'm going to
13 elaborate on that further.

14 As to the average weekly wage and compensation
15 rate, those figures are not agreed upon by the parties
16 at this juncture. However, they have both assured me
17 during the prehearing conference that they do believe
18 that they can, in fact, work that out. There was dual
19 employment on the date of the accident. There is a
20 question of the calculation of the average weekly wage
21 of the employment with the Employer in this case,
22 Johnson Food Services. So that issue will be held in
23 abeyance. But the parties do believe that they will
24 be able to work that out prior to the writing of the
25 order. And so the figures that they come to a

1 resolution on, if they agree, will become a part of
2 the order. And if not, then they can hold that issue
3 in abeyance for further adjudication by another
4 Commissioner. But they will work that out, and they
5 assure me that they do believe that they can come to a
6 meeting of the minds on the average weekly wage and
7 compensation rate.

8 The date of this admitted accident was September
9 6, 2006.

10 Are there any objections to APAs, jurisdiction,
11 venue or any other items?

12 MR. LOCKHART: None from the Defendants, Your
13 Honor.

14 THE COURT: Mr. Safran?

15 MR. SAFRAN: No, ma'am.

16 THE COURT: Thank you both. Without objection
17 the Commission File becomes part of the record with
18 the exception of self-serving declarations and
19 unstipulated medical reports.

20 Prior to going on the record we held a prehearing
21 conference.

22 It is the position of the Claimant that because
23 of the fact that she has undergone four surgeries, and
24 that is two to each arm for bilateral carpal tunnel as
25 well as bilateral cubital tunnel, that her residual

1 condition and residual permanent and partial
2 disability is significantly more than the impairment
3 ratings or impairment ratings as assigned by the
4 authorized treating physician, Dr. Green.

5 It is also her position that his deposition
6 testimony should be read and also read in light of the
7 fact that she underwent another surgery after the date
8 of that deposition and any records. And, of course, I
9 haven't read them. They have just been handed to me.
10 But suffice it to say she does not believe that a two
11 percent impairment rating is number one, an
12 appropriate impairment rating considering she has
13 undergone bilateral carpal tunnel and cubital tunnel
14 surgeries on each arm.

15 MR. SAFRAN: Your Honor, I would like to correct
16 that. She has had surgeries on each wrist, and she's
17 had four components. She has not had the surgery on
18 the elbows.

19 THE COURT: Oh, she has not had the surgeries on
20 the elbows. Okay. I did not know that. Thank you,
21 Mr. Safran. Let me back up, then.

22 She has had bilateral carpal tunnel release
23 surgeries. She has cubital tunnel syndrome
24 bilaterally -

25 MR. SAFRAN: Correct.

1 THE COURT: - but has not undergone any surgery.

2 Thank you. I thought there were four surgeries.

3 In any event, she believes that the impairment
4 ratings, considering that she has two component part
5 injuries on each arm, that the impairment rating from
6 Dr. Green are inordinately low.

7 She would point to my attention the impairment
8 ratings of her expert, Dr. Jackson, of ten percent
9 from each arm, which would encompass both the carpal
10 tunnel and cubital tunnel. But in any event, with
11 regard to either physician ratings, she believes the
12 ratings are a mere starting point and that her
13 residual loss of use of disability with regard to her
14 arm is significantly more than the rating from either
15 physician would reflect.

16 She concedes that at this juncture she is not
17 entitled to receive future medicals absent a chance
18 for the change of condition for the worse. And, of
19 course, I am not adjudicating that today, so there
20 will be no Dodge medicals ordered as she does not
21 contend that there are any medicals for which she
22 would be entitled.

23 Conversely, it is the position of the Defendants
24 that the ratings of Dr. Green are established by his
25 deposition testimony as well as the last statement

1 from him, which is, of course, a part of the evidence.
2 And I have not - I have just glanced at it, but I have
3 not reviewed it, as I have not reviewed any of the
4 other evidence yet but will do so at the conclusion of
5 the hearing.

6 But the Defendants contend that because Dr. Green
7 is the authorized treating physician, that it is his
8 impairment rating to which I should accord or grant
9 the greatest weight.

10 The Defendants would point to my attention they
11 are supported by Dr. Green's testimony and the
12 evidence and that there were only surgeries to the
13 wrists and not to the elbows. And so a two percent
14 impairment rating is certainly within the realm of
15 reasonableness and should be accorded great weight.
16 And the fact that the Claimant is working full duty,
17 not only with her job with her Employer, but with her
18 dual employment job, as well, that there is no
19 residual disability or loss of use beyond those
20 impairment ratings.

21 And just going back to the average weekly wage
22 and compensation rate, the Defendants request a
23 credit, but it may be a wash and really can't
24 determine the credit at this juncture because we don't
25 know what the average weekly wage and compensation

1 rate will be. So that may affect the credit issue for
2 that issue, as well, so that is held in abeyance.

3 But the bottom line is that the Claimant believes
4 that she has significant residual disability with
5 regard to her arms and the Defendants would contend
6 that there is no disability beyond the impairment
7 rating from Dr. Green.

8 Is that a fair summary, gentlemen, or is there
9 anything else - and thank you for that correction,
10 Mr. Safran. I understood there was more. So thank
11 you for telling me there were only two surgeries.

12 MR. LOCKHART: Your Honor, just in regard to the
13 credit issue.

14 THE COURT: Yes, sir.

15 MR. LOCKHART: That is based primarily upon a
16 Form 17 that was signed and filed with the Commission
17 back in 2008.

18 THE COURT: Okay.

19 MR. LOCKHART: But Mr. Safran and I talked before
20 the hearing, and we think that once this compensation
21 rate issue is resolved that it may negate the credit.
22 In other words, this may just come out in a wash. So
23 if that does not turn out to be the case, we will let
24 you know once we reconcile the compensation rate
25 issue.

1 THE COURT: Okay.

2 MR. LOCKHART: But there is a potential credit,
3 not based on payments made after MMI following the
4 most recent surgical procedure, but one that goes back
5 to a period of time in 2007 when temporary total was
6 paid.

7 THE COURT: Okay. Well, I'm sure you all will
8 educate me on this. Right now I don't -

9 MR. LOCKHART: Okay. Thank you.

10 THE COURT: Okay. Thank you. Mr. Safran, your
11 first and only witness is Ms. Footman?

12 MR. SAFRAN: That is correct.

13 THE COURT: Ms. Footman, if you will raise your
14 right hand, please.

15 LATONYA C. FOOTMAN,

16 having been first duly sworn, testified as follows:

17 THE COURT: Please state your full name for the
18 record.

19 THE WITNESS: Latonya C. Footman.

20 THE COURT: Thank you so much. Please answer any
21 questions Mr. Safran has for you. And I'm going to
22 ask - well, you already know the drill. You are
23 coming over here. Okay.

24 /

25 /

DIRECT EXAMINATION

1

2 BY MR. SAFRAN:

3 Q Ms. Footman, let's just get a little background about
4 you. Where do you live?

5 A

6 Q Okay. And where is that, Richland County?

7 A Yes, it is.

8 Q How old are you?

9 A 40.

10 Q All right. And are you currently married?

11 A No, I'm single.

12 Q Do you have a child?

13 A One.

14 Q Okay. Does the child live with you?

15 A Yes, sir; he does.

16 Q Okay. Do you support that child?

17 A Yes.

18 Q Do you get any support from the father?

19 A Yes, I do.

20 Q Okay. Now, what is the last grade you completed in
21 school?

22 A Twelfth.

23 Q And do you really have any education to speak of
24 beyond that?

25 A I went to Midlands Tech for one semester.

1 Q Did you get any certificates or anything like that?

2 A No.

3 Q Okay.

4 THE COURT: What were you studying when you took
5 that one semester at Midlands Tech?

6 THE WITNESS: I was just taking English and
7 Reading and things like that.

8 THE COURT: Thank you.

9 BY MR. SAFRAN:

10 Q And was this some time ago, I guess?

11 A I went in 2001.

12 Q Okay. So about ten years ago?

13 A Uh-huh.

14 Q Just for purposes of recent history, when I say that
15 in the last 15 years, what has your primary job been?

16 A Fort Jackson.

17 Q And for a period of years has the food service
18 contract been filled by different companies?

19 A Yes, sir; it has.

20 Q Okay. So you worked for Johnson Food Services, who is
21 the current holder, for about how long?

22 A I just went back in '04 so it's almost seven years.

23 Q And did you work for a previous contract holder
24 before that at Fort Jackson?

25 A Yes, sir.

1 Q In total years out there, roughly, how much are we
2 talking about?

3 A It would be something like 17.

4 Q Okay. So you are familiar with the job?

5 A . Yes, sir; I am.

6 Q Have you also held a second job for some period of
7 years now?

8 A Yes, the Babcock Center.

9 Q And how many years right now have you been out there?

10 A Seven.

11 Q Okay. And for purposes of the Commissioner's
12 understanding, what did you do at Babcock?

13 A At Babcock Center I worked with the mentally
14 challenged people who have disabilities. And
15 basically I give them medications and feed them or
16 whatever.

17 Q I guess what I'm asking you and what the significant
18 thing is, do you have to use your hands and arms in
19 that job in the same way that you use them at Johnson
20 Food?

21 A No, I don't.

22 THE COURT: What would be the most strenuous
23 thing you would do at Babcock Center besides feeding
24 them?

25 THE WITNESS: Mainly I, you know, take them on

1 activities, driving them there in a van.

2 THE COURT: So you drive them in a van?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Tell me what you do at Johnson Food
5 Service.

6 THE WITNESS: Basically at Johnson Food Service
7 we cook for the soldiers.

8 THE COURT: Okay. So you're a cook?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right.

11 BY MR. SAFRAN:

12 Q Now, let me ask you, and I just kind of want to walk
13 you through a little bit of what went on leading us up
14 to today, okay?

15 A Okay.

16 Q Now, I think it's agreed you originally started having
17 some problems with your hands and wrists back in 2006?

18 A Yes, sir.

19 Q And you ended up going to see somebody, and you saw
20 your family doctor for that?

21 A Dr. Gary Bell.

22 Q Okay. And you ended up having nerve studies?

23 A Yes, sir.

24 Q And at least at the time of the nerve studies is that
25 where the problem came up, i.e. when you went to see

1 Dr. Redmond?

2 A Okay.

3 Q Did you get some indication about what was causing all
4 the problems?

5 A He stated that the strongest job that I have in food
6 service contributed to it.

7 Q Okay. Now, despite that, at first did workers' comp
8 pick up the claim and agree to pay it at the
9 beginning?

10 A Yes.

11 Q And I'm talking about before -

12 MR. LOCKHART: Your Honor, I will have to object.
13 This is an admitted claim since 2006. I don't know
14 what the purpose of this testimony to be other than to
15 be -

16 THE COURT: You've already told me in the
17 prehearing conference the claim was initially denied.

18 MR. SAFRAN: It was.

19 THE COURT: Okay. We can move on.

20 BY MR. SAFRAN:

21 Q And I guess my question is is before workers' comp
22 sent you to a doctor did you go to someone else?

23 A Dr. Jackson.

24 Q Okay. So you saw him first?

25 A Yes.

1 Q All right. And after you had seen Dr. Jackson were
2 you sent to Dr. Green?

3 A Yes.

4 Q And basically over a period of time you saw Dr. Green?

5 A Yes.

6 Q Were you also having to go see Dr. Jackson at least
7 different times during that year?

8 A I did.

9 Q And why were you going back to Dr. Jackson?

10 A Basically when I go to Dr. Green he will say you need
11 to do this and you need to do that. But he wouldn't
12 like break it down to me what he was doing. So when I
13 go to Dr. Jackson he basically breaks it down and
14 explains to me what was going on.

15 Q Okay. And I guess, were there times during the period
16 where Dr. Green would release you even though you were
17 still having problems?

18 A Yes.

19 Q And you would go back to Dr. Jackson after that?

20 A Yes, I did.

21 Q Were there times when Dr. Jackson would then make
22 recommendations, and you would go back to Dr. Green
23 and he would agree?

24 A Yes, he did.

25 Q Okay. So I guess from a standpoint of having to get

1 certain treatments at least on occasions, was it
2 necessary to see Dr. Jackson to prompt Dr. Green to do
3 things?

4 A Yes.

5 Q All right. Now, let me ask you: You ended up having
6 surgery on the right side first?

7 A Correct.

8 Q And that would have been in your wrist, carpal tunnel?

9 A Yes, carpal tunnel.

10 Q All right.

11 THE COURT: Are you right handed or left handed?

12 THE WITNESS: Yes, I'm right handed.

13 BY MR. SAFRAN:

14 Q And I guess from a standpoint of the surgery, it did
15 some good for you?

16 A Yes, it did.

17 Q All right. Did you, I guess, over time continue to
18 have other problems at first with this other wrist?

19 A I did.

20 Q Okay. For awhile, I guess, reluctant to do surgery on
21 the left side?

22 A Yes.

23 Q And why was that?

24 A Because I couldn't take the pain any longer so I had
25 to get the surgery done.

1 Q Okay. Did you put it off as long as you could?

2 A Yes.

3 Q Over a period of time did you start developing
4 problems with your elbows?

5 A Yes.

6 Q Dr. Green did your surgery on the left side?

7 A Yes.

8 Q And did he at some point, and the records will show
9 that Dr. Jackson recommended it, splint you on the
10 right elbow for awhile?

11 A He did.

12 Q Did the splint really make a difference for you?

13 A No.

14 Q So basically you've had surgery twice, each one on the
15 wrist?

16 A Correct.

17 Q And not any surgeries on the elbows, at least up to
18 now?

19 A No.

20 Q All right. Tell me this now. At one point you were
21 out, I guess, for surgery, but each time you did go
22 back to work?

23 A Yes, sir; I did.

24 Q All right. And you've handled, I guess, working in
25 that kitchen for a lot of years?

1 A Yes.

2 Q When you saw Dr. Jackson on one occasion, I guess
3 deeper into your treatment did he identify limitations
4 for you?

5 A Yes, he did.

6 Q and since that time how have things been going, and
7 I'm asking you in terms of do those limitations, based
8 on what you can and can't do and how you do your job,
9 have they been accurate?

10 A Yes.

11 Q And would you explain to the Commissioner what you
12 mean?

13 A Basically like I'm still doing the same job. It's
14 just like - well, for instance like when I'm doing
15 chicken or whatever, you have to put it in the oven
16 and take it out. And it will be like 25 birds on a
17 sheet pan or whatever. I can feel a discomfort in my
18 elbows and my hands, as well.

19 Q Now, did Dr. Jackson recommend as far as kind of a
20 lower number that would be workable for you as far as
21 how much chicken on a pan?

22 A Yes, he stated like only ten servings on a pan.

23 THE COURT: And you do that with your job or do
24 you need to put the 25 or 30? Do you do the - can
25 they accommodate and make adjustments or is that just

1 not practical to do that?

2 THE WITNESS: To be honest it's not practical to
3 do that.

4 BY MR. SAFRAN:

5 Q Okay. Do you notice, I guess, that if it's more than
6 ten -

7 A I can feel the difference, yes.

8 Q Okay. And when you feel the difference you're talking
9 about in your wrist and in your -

10 A In my hands and in my elbows; that's right.

11 Q Okay. Now, if you're just sitting here like you are
12 right now, are your wrists - if you're doing nothing,
13 are you having any problems in your wrists and hands
14 just sitting here?

15 A I feel discomfort in my elbows.

16 Q Okay. But how about down here, are they okay?

17 A They are okay just sitting here.

18 Q As a result of this process are you still having
19 numbness in any parts of your hands?

20 A Yes, I do. My pinky finger and the one right beside
21 it.

22 THE COURT: Your ring finger and your pinky?

23 THE WITNESS: Yes, ma'am; in both hands.

24 BY MR. SAFRAN:

25 Q And at least from your understanding, to what is that

1 numbness attributed to?

2 A It's -

3 Q Where do you understand the numbness comes from?

4 A It's coming from the cubital.

5 Q Okay. And so basically does the numbness ever stop?

6 A From time to time it stops. But basically when I try
7 to rest at night it wakes me up. And when I do get up
8 for work it's like I had no rest, really. I'm
9 irritable and frustrated because I didn't get enough
10 sleep.

11 Q Okay. So I guess - at one point earlier the carpal
12 tunnel problems were giving you that same type of
13 sleep disruption?

14 A Yes, it did.

15 Q And now those two fingers are attributed to your
16 elbows?

17 A Yes, sir; it is.

18 Q Do you really have that pretty much every night?

19 A Pretty much, yes.

20 Q Let me ask you also, tell me, do you still have any
21 kind of discomfort in your elbows even if you're doing
22 nothing?

23 A Yes, I do.

24 Q And how would you describe the sensations in your
25 elbows if you're just sitting there now?

1 A It's like pain just shooting through my elbows.

2 Q When you do more, how does the pain in the elbows act
3 then?

4 A I feel the pains shooting through my hands and
5 everything. It hurts.

6 Q So if you're doing certain activities does that make
7 your elbow problems worse?

8 A Oh, yes.

9 Q Are you really interested, sitting here today, in
10 anymore surgery?

11 A Not right now.

12 Q Has surgery not necessarily been recommended, but has
13 it at least been discussed with the doctors about the
14 elbows at one time or another?

15 MR. LOCKHART: Your Honor, I have to object to
16 any discussions with the doctors regarding -

17 MR. SAFRAN: I'm not asking about anything
18 specific, I'm just asking if she discussed it with
19 them.

20 MR. LOCKHART: It defines statements made by
21 physicians, which would be hearsay.

22 THE COURT: Well -

23 MR. LOCKHART: Again, I believe - my
24 understanding is there is not a request for future
25 medical treatment.

1 MR. SAFRAN: I'm not saying that there is.

2 MR. LOCKHART: Then what is the relevancy of the
3 testimony?

4 THE COURT: That's true. We're not dealing with
5 that at this time.

6 MR. SAFRAN: I understand. I understand. I
7 based it upon - I withdraw the question.

8 THE COURT: She said she's not interested at this
9 point.

10 MR. SAFRAN: Okay.

11 THE COURT: Right now is what she said.

12 MR. SAFRAN: I will withdraw the question.

13 THE COURT: Okay.

14 BY MR. SAFRAN:

15 Q Tell me this, when you are lifting at work what, I
16 guess, limitations did Dr. Jackson talk to you about?

17 A Basically he talked to me about with the chicken
18 issue, only ten on a sheet pan.

19 Q Okay. What about lifting in general? Is there a
20 pound range that I guess he - I looked in the records
21 and saw 25 pounds.

22 A 25 pounds is all.

23 Q All right. And basically do you still try to abide by
24 that?

25 A I try to, yes.

1 Q Do you notice that if anything gets above 25 that you
2 feel it?

3 A I feel it, yes.

4 Q So I guess if that limitation he's identified, based
5 on your experience, does it seem accurate?

6 A Yes.

7 Q Okay. When you try to lift more than something that
8 may weigh 25 pounds what happens as far as your
9 symptom?

10 A I feel the pain.

11 Q Okay. When you do certain types of repetitive things
12 now what particularly makes you notice more symptoms?

13 A Basically when I'm doing eggs. You have to pour like
14 three cups of eggs in a gallon pitcher. Then you
15 throw the grease on the grill and you try to pour the
16 eggs, which are left-handed and then you've got to try
17 to cook with your right hand. I notice a lot of pain
18 when I do that.

19 Q Okay. How about cooking spaghetti?

20 A Well, that's with the spaghetti, you have to beat the
21 meat. And I have a hard time with trying to beat the
22 meat, as well.

23 Q Okay. I noticed in the records that at least at one
24 point the grip on the right side kind of went down,
25 but then it came back. Do you feel like over time

1 some of your right sided grip strength has come back?

2 A Yes.

3 Q On the left side have you really recovered the grip to
4 that same level?

5 A No.

6 Q And beforehand, did you really feel like the left was
7 that much weaker before this all started than the
8 right side?

9 A Yes.

10 Q I'm asking before you got hurt, was the left side -

11 A It was the right when I got hurt.

12 Q Okay. And I guess my question is this, and let me
13 clear this up. Do you feel like you're weaker on the
14 left side now than before your injury happened?

15 A Yes.

16 Q Okay. I just want to go through a couple of other
17 things with you real quickly and then I think we can
18 be done. In terms of day-to-day things, what do you
19 do that makes you notice that there is still a problem
20 with your arms, what kind of activities?

21 A Do you mean what I do at home?

22 Q Yes.

23 A Well, basically trying to run the vacuum cleaner.

24 When I'm doing that I can feel a discomfort in my arms
25 and hands.

1 Q Okay. What about driving?

2 A Oh, yes, all my way to the office this morning I was
3 in a lot of pain. My arms were just killing me in my
4 elbows.

5 Q When you dress yourself do you notice anything with
6 any -

7 A Yes. When I'm getting ready for work in the morning;
8 oh, yes.

9 Q Okay. And what activities particularly do you notice?

10 A Like when I'm putting on my T-shirt or whatever
11 because I have to lift over my head. And I feel a
12 discomfort in my arms.

13 Q Does lifting your arms up, is that something that
14 really triggers it?

15 A Yes.

16 Q Do you do your hair yourself?

17 A I used to, but due to the fact I have problems with my
18 hands and arms I just go to the beauty shop.

19 Q Okay. Do you ever ask for help dressing, such as
20 putting earrings on?

21 A Yes, I have to get assistance on all my jewelry and my
22 dress in the morning time or whatever.

23 Q And again, why do you ask for that assistance?

24 A Because I be hurting in my hands and arms.

25 Q And again, having been out there and adjusted to the

1 system, are you able to do your job?

2 A I do my job, yes.

3 Q Okay.

4 MR. SAFRAN: That's all I got.

5 THE COURT: All right. Thank you. Mr. Lockhart?

6 CROSS EXAMINATION

7 BY MR. LOCKHART:

8 Q Ms. Footman, good morning.

9 A Good morning.

10 Q My name is Jason Lockhart. I represent Johnson Food
11 Services. I just have some questions to ask you and
12 follow-up on some things that Mr. Safran asked you
13 about. You are employed at Johnson Food Services as a
14 Cook 2; is that correct?

15 A That's correct.

16 Q Thank you. And just generally speaking, what are the
17 job duties and responsibilities of a Cook 2?

18 A Basically on the production sheet they will put your
19 name, like whatever you're on, like eggs for instance
20 or meat or sausage or whatever you may have for that
21 day.

22 Q You would have to do things like cook meat as you told
23 us earlier?

24 A Yes, sir.

25 Q Chop vegetables?

1 A Yes. Cut fruit or whatever.

2 Q Okay, make grits?

3 A Yes.

4 Q Oatmeal?

5 A Oatmeal.

6 Q You are making food for the soldiers who are actually
7 serving out at the Fort, correct?

8 A Yes, sir.

9 Q Okay. Now, it's my understanding your day starts at
10 about 4:00 AM?

11 A Yes, sir.

12 Q And you work seven hours per day?

13 A Yes, sir.

14 Q At Fort Jackson, five days a week; is that correct?

15 A Yes, sir.

16 Q Okay. All right. And during that seven-hour-a-day
17 job are you using your hands 100 percent of the time?

18 A Yes.

19 Q Okay. All right. I believe there are a couple of
20 breaks throughout the course of your work day?

21 A Yes, we get a 30-minute break.

22 Q Okay. All right. Now, you are able to perform your
23 job duties and responsibilities at Johnson Food
24 Services?

25 A Yes, sir.

1 Q Okay. All right. when you have pain and difficulty
2 at work do you notify or ask for assistance from your
3 supervisor?

4 A Yes, sir. She gives me help.

5 Q Okay. And that's Ms. Parnell?

6 A Yes. She's the cook.

7 Q Okay. The head cook. But your supervisor for some
8 time is Ms. Parnell who is out in the lobby?

9 A Yes.

10 Q Okay. And have you gone to Ms. Parnell at times and
11 informed her of problems you were having performing
12 certain activities at work?

13 A I don't think I have.

14 Q Okay. You've never complained to her about not being
15 able to -

16 A I know at first when I was hurting or whatever I did
17 used to complain.

18 Q Okay.

19 A I did.

20 THE COURT: Who are you saying gives you help?

21 THE WITNESS: Okay, we've got a good crew. She
22 always has somebody with us or whatever, you know.

23 THE COURT: Okay. So they help?

24 THE WITNESS: Yes, ma'am. Or she gets another
25 cook to help.

1 BY MR. LOCKHART:

2 Q So on those occasions when you have problems and you
3 tell somebody at work about it, they try to assist you
4 or accommodate you?

5 A Yes, they do.

6 Q Okay. They will put you in another job or give you
7 another task so you don't have to -

8 A They will give me some help.

9 Q Okay. All right. Now, as far as today is concerned,
10 are you wearing any type of brace on either your left
11 hand or your right hand?

12 A No.

13 Q Are you wearing any kind of assistive device at all on
14 your hands or wrists because of your ongoing problems?

15 A No, sir.

16 Q Okay. When this accident - when your problems
17 occurred back in '06 were you employed as a Cook 2 at
18 that time?

19 A Yes.

20 Q Okay. So essentially the job you're doing today is
21 the same job you were doing back in 2006?

22 A Correct.

23 Q And is that the same job that you've had at Johnson
24 Food Services, has the job of Cook 2 been the same
25 from 2006 up until now?

1 A Yes, sir.

2 Q Okay. All right. Now, let me talk to you a little
3 bit about this job over at the Babcock Center. If you
4 arrive to work at Johnson at 4:00 AM and you work for
5 seven hours, do you leave around 11:00 AM from
6 Johnson?

7 A No, the latest I leave is 12:00.

8 Q The latest you leave is 12:00, okay.

9 A Yes.

10 Q Okay. Do you immediately begin your job at Babcock?

11 A No. Most of the time I go to Babcock at 2:00 or maybe
12 4:00.

13 Q Okay. In the afternoon?

14 A Yes.

15 Q Okay. And you typically work at Babcock until when?

16 A From two to ten or four to ten.

17 Q Okay. All right. Now, when you work at Babcock, do
18 you go to a facility that they have or do you go to
19 the home?

20 A I go to the home.

21 Q Okay, of the patient or a client?

22 A For consumers.

23 Q Okay. And while you're there - let's talk about the
24 residential - the people you're staying with at the
25 present time.

1 A Okay.

2 Q Do you have a group of people or a person you go to
3 see on a regular basis now?

4 A I'm in a home with four ladies.

5 Q With four ladies, okay.

6 A Yes.

7 Q Okay. And how long have you been going to that
8 particular home?

9 A I've been with Babcock for seven years.

10 Q Okay. As far as the ladies that you're seeing right
11 now and that you are sitting with right now, how long
12 have you been sitting with this particular group?

13 A About three years or more.

14 Q Do you perform cooking on their behalf in the
15 evenings?

16 A Just for four people.

17 Q Okay. So you make their meals?

18 A If I don't make them, what we do is we have a night
19 person that basically preps. All we're doing is
20 putting it in the oven doing the vegetable.

21 Q And do you do any cleaning up for them after dinner,
22 for example, washing the dishes or anything?

23 A Basically, they are to do it, and if they need help, I
24 will assist. But they mainly have to do it
25 themselves.

1 Q Okay. And when you say assist them, what do you
2 mean?

3 A Just say they needed help, what would you do?

4 Say they needed help with maybe - just say they
5 ask me to do something. I have to do it.

6 Q But when you say do something, are you assisting them
7 with taking a bath or getting in and out of a shower
8 or -

9 A No, they do that on their own. Just say they wanted
10 something from the store, and what I would do is take
11 them to the store.

12 Q Okay. Do you do driving like chauffeuring, and I hate
13 to use that term, but you drive them around?

14 A I pick them up from the workshop. Like when I go in
15 at two I pick them up at the workshop.

16 Q Okay. Do any of them have medical needs that you have
17 to attend to as far as, you know, limitations of
18 walking or moving around? Do you have to physically
19 help them move from place to place?

20 A We have one, but there is another staff there. There
21 are two of us present. But most of the time that one
22 that needs a lot of assistance, she is basically
23 always sitting down.

24 Q So when you work during that time there is someone
25 else there with you?

1 A Yes.

2 Q Okay. All right. And you have held that job, you
3 said, for about -

4 A Seven years; yes, sir.

5 Q Okay. Do you have any other jobs at the present time
6 other than your job with Johnson Food and your job
7 with Babcock Center?

8 A No, sir; I don't.

9 Q You mentioned Dr. Jackson, and we have a record with
10 him on April 20. Now, did you go back to see him on
11 April 20 of this year?

12 A I think so.

13 Q If we have a record that says you did would you have
14 any reason to dispute it?

15 A No, I wouldn't.

16 Q Now, you were sent to Dr. Jackson by Mr. Safran?

17 A Yes, I was.

18 Q Okay. And how long did you spend with Dr. Jackson
19 when you saw him on the 20th of April?

20 A I'm not really sure.

21 Q Can you provide me with maybe an estimate of how long
22 you think you may have been there?

23 A Maybe an hour, but I'm not sure.

24 Q Okay. Of that hour how much time did you spend face
25 to face with Dr. Jackson?

1 A I really don't know because he was in other rooms
2 seeing other patients, so I can't say.

3 Q Okay. If you were there for an hour, that entire hour
4 would not have been spent with him, that would have
5 been an hour total in the office waiting on him and
6 seeing him?

7 A Yes.

8 Q You mentioned that you still continue to have some
9 problems at night with pain and discomfort in your
10 arms; is that correct?

11 A That is correct.

12 MR. LOCKHART: Okay. And I'm looking at Page 50
13 of Claimant's APAs.

14 BY MR. LOCKHART:

15 Q The last record we have from Dr. Green is dated
16 December 27, 2010. And he says: "Latonya is
17 progressing nicely. Patient is using it much more
18 comfortably. No night pain or paresthesia." Were you
19 not having any night pain in December?

20 A Yes, I was.

21 Q Okay. So even though Dr. Green's report says that you
22 were not, would you maintain that that is incorrect?

23 A That is incorrect.

24 Q Are you a diabetic?

25 A Yes, I am.

1 Q All right. And how long have you been diabetic?

2 A Since in the late nineties.

3 Q And is that treated with medication or injections?

4 A Yes, medication.

5 Q Okay. To your knowledge, have you ever had any
6 numbness or tingling in your hands attributable to
7 your diabetes?

8 A I'm not sure.

9 Q Do you have one child?

10 A Yes, I do.

11 Q And how old is your child?

12 A He's eight.

13 Q Dr. Jackson - Mr. Safran asked you about this a few
14 moments ago, but Dr. Jackson says in his April 20 note
15 that you have - or that he has placed restrictions
16 upon you of no lifting more than 25 pounds. Is that a
17 restriction that your Employer has accommodated in
18 your opinion?

19 A Yes.

20 Q Okay. And I believe he says no lifting more than 12
21 pieces of chicken on a tray. I think you said ten.

22 A I said ten, yes.

23 Q But again, when you are asked to do something like
24 that you said your Employer gives you help?

25 A Yes, sir.

1 Q Has Johnson Food Services been accommodating to you
2 when you've had the need to be under restrictions in
3 the past?

4 A Yes.

5 Q There was a period of time in the fall, in the later
6 part of 2010 you had your left-wrist surgery and you
7 were out of work; is that right?

8 A Yes; that's correct.

9 Q And when you were out of work you received workers'
10 compensation; is that correct?

11 A I did.

12 Q And then you returned to work. Do you recall when you
13 went back to work?

14 A I want to say sometime in January. The actual date I
15 don't really know.

16 Q Okay. And then once you went back to work those
17 weekly - your workers' comp checks stopped; is that
18 correct?

19 A That's correct.

20 Q Okay.

21 MR. LOCKHART: Your Honor, I beg the Court's
22 indulgence for a brief moment.

23 THE COURT: Yes, sir.

24 BY MR. LOCKHART:

25 Q As far as your hand and arm pain is concerned, do you

1 take any medication for that at the present time?

2 A No, sir; I don't.

3 Q Okay. Do you take any over-the-counter medicine for
4 it?

5 A Every now and then I may take Aleve.

6 Q Okay. In the course of an average week, how often do
7 you take Aleve for your hand or arm pain?

8 A Maybe twice a week, if that.

9 Q You mentioned to Mr. Safran and the Court that you
10 have problems driving. But you do drive on a daily
11 basis, correct?

12 A Yes.

13 Q To and from work?

14 A Yes.

15 Q And then you said you did some driving as part of your
16 job with Babcock?

17 A Yes.

18 Q And you transport these patients of Babcock's or
19 clients in a vehicle that Babcock uses or do you have
20 to use your own vehicle?

21 A Babcock's vehicle.

22 Q Is that a van?

23 A Yes, sir; it's a van.

24 Q Okay.

25 MR. LOCKHART: Your Honor, those are all the

1 questions I have. Thank you, Ms. Footman.

2 THE WITNESS: You're welcome.

3 THE COURT: Thank you, Mr. Lockhart. Mr. Safran,
4 anything on redirect?

5 MR. SAFRAN: Very quickly. I want to refer you
6 to Page 46 about the problems with her arms secondary
7 to the diabetes with the most recent nerve study that
8 was done in September of 2010. It indicated there was
9 no evidence of diabetic neuropathy.

10 REDIRECT EXAMINATION

11 BY MR. SAFRAN:

12 Q I think you described it thoroughly, but when you're
13 doing these activities, even though you are doing your
14 job, are you still having the pain, particularly with
15 your elbows into your hands?

16 A Correct.

17 Q The other question I wanted to ask you is this: You
18 mentioned when you saw Dr. Green that last time in
19 December, you mentioned something that you said was
20 inaccurate about continuing to have the numbness and
21 having problems sleeping?

22 A Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes.

25 BY MR. SAFRAN:

1 Q Has that been a consistent problem?

2 A Yes, it has been.

3 Q And when you actually saw Dr. Jackson again back in
4 April you told him about having problems sleeping?

5 A Yes, sir; I did.

6 Q You mentioned this earlier, but I want to ask you: Is
7 that in terms of the time spent and the amount of
8 lifting that the doctors did, was there a difference
9 between Dr. Green and Dr. Jackson?

10 A Oh, yes; it's a big difference.

11 Q And I guess in terms of listening to what you were
12 saying, what was your perception as far as your time
13 spent with Dr. Green?

14 MR. LOCKHART: Your Honor, I have to object. I
15 mean, Mr. Safran is not asking for the perspective of
16 a physician with regard to their -

17 MR. SAFRAN: I'm not -

18 MR. LOCKHART: No. No. the question was about
19 their listening to her. Now, he's asking for their
20 impression.

21 THE COURT: Well, she has already testified that
22 one of them explained things better to her than the
23 other.

24 MR. SAFRAN: True. And I guess what I'm asking
25 is what was her perception in terms of what was being

1

2 THE COURT: Do you feel like one of them listened
3 to you better than the other one?

4 THE WITNESS: Yes, ma'am; Dr. Jackson did.

5 THE COURT: That's your impression, that's good.
6 Okay.

7 BY MR. SAFRAN:

8 Q And I guess the last time that you saw Dr. Green, if
9 you can think back, were those times together very
10 long as far as face time?

11 A No. He - well, technically speaking he would come in
12 and say, what do you got to say? And he's out of
13 there versus Dr. Jackson.

14 Q So if you had things to say about what was going on
15 with you, who was more likely to hear you?

16 A Dr. Jackson.

17 MR. SAFRAN: That's all I have.

18 THE COURT: Mr. Lockhart?

19 MR. LOCKHART: Yes, real quick.

20 RE-CROSS EXAMINATION

21 BY MR. LOCKHART:

22 Q Do you know if the bills from Dr. Jackson have been
23 paid?

24 A I really don't know, sir.

25 Q Do you get any bills from him?

1 A When I get them I send them to Andy.

2 Q Okay. So maybe Mr. Safran is paying them? Did he -
3 are you aware of that?

4 A No. No.

5 Q You're not paying them?

6 A No.

7 Q Your health insurance isn't paying them?

8 A No.

9 Q I can certify that workers' comp hasn't paid them, and
10 you're not getting any kind of collection notices from
11 Dr. Jackson for unpaid medical bills?

12 A No.

13 Q Okay. You said that you have pain performing your job
14 duties still. Are you in any way unable to do your
15 job at Johnson Food Service because of your pain in
16 your left or right arm?

17 A I'm still doing my job.

18 Q Okay. Are you able to do that?

19 A Yes.

20 MR. LOCKHART: No further questions.

21 THE COURT: Mr. Safran?

22 MR. SAFRAN: No.

23 THE COURT: All right. That's the Claimant's
24 case. Mr. Lockhart, do you have any witnesses?

25 MR. LOCKHART: Your Honor, we were going to call

1 Latonya Parnell, but in light of Ms. Footman's
2 testimony, we think that Ms. Parnell will corroborate
3 that. So we will not be calling her.

4 THE COURT: Thank you.

5 That concludes this proceeding.

6 (The hearing concluded at 11:56 AM.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) CERTIFICATE

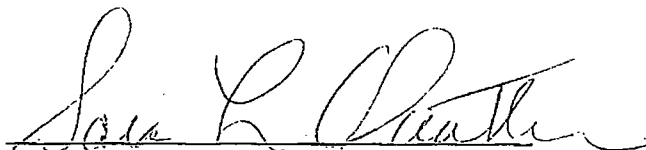
BE IT KNOWN THAT I TOOK THE FOREGOING
WORKERS' COMPENSATION HEARING;

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

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

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

WITNESS MY HAND AND SEAL THIS 23RD DAY OF JUNE,
2011.



SARA L. QUATTLEBAUM
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES JULY 12, 2012

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2012-CP-40-4754

LaTonya Footman,)
Plaintiff,)
vs.) Transcript of Record
Johnson Food Services, LLC,)
and The Hartford,)
Defendants.)
_____)

March 6, 2013
Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge

A P P E A R A N C E S:

Andrew N. Safran, Esquire
Attorney for Plaintiff

Jason W. Lockhart, Esquire
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Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:37 a.m.)

THE COURT: LaTonya Footman/Johnson Food Service?

MR. LOCKHART: Good morning, Your Honor.

THE COURT: Morning.

MR. SAFRAN: Your Honor, this is a record we prepared for you. And I've got a couple cases ---

THE COURT: You Mr. ---

MR. SAFRAN: Yes, sir. I'm Mr. Safran.

THE COURT: --- Safran. That's what I thought. Is this the commission's file?

MR. SAFRAN: Yes, sir. They don't send it anymore.

So ---

THE COURT: Well, I ---

MR. SAFRAN: --- basically, what we ---

THE COURT: --- I knew they were ---

MR. SAFRAN: --- we have to do is -- is effectively

THE COURT: You know why they don't send them anymore?

MR. SAFRAN: They say they don't get them back.

THE COURT: They didn't get them back.

MR. SAFRAN: Your Honor, I'm going to hand up a couple of cases that I had basically -- I think some are cited in my brief, but I wanted to make sure that they were available. Because I think the point that I wanted to

1 focus on that I didn't go into as much detail in the brief,
2 and so I wanted to you those.

3 THE COURT: All right. Hold on just a minute.

4 All right. Let me just first say: Those of you who
5 are here for magistrate appeals -- how long are we going to
6 be with this, Mr. Safran?

7 MR. SAFRAN: Your Honor, I think these generally go
8 about a half an hour ---

9 THE COURT: I'm ---

10 MR. SAFRAN: --- I guess.

11 THE COURT: --- I just want to -- I think there are a
12 number of people here from -- that are here pro se. Let me
13 just call the roll before we do that.

14 (Off the record from 9:39 a.m. until 9:45 a.m.)

15 THE COURT: All right. Well, that -- thank you for
16 that indulgence. It clears the courtroom and moves things
17 along.

18 Mr. Safran, let me, just for your information,
19 disclose on the record: I see my former law clerk, who is
20 employed with McAngus Goudelock, sitting in the courtroom
21 -- are you Mr. Lockhart?

22 MR. LOCKHART: Yes, Your Honor ---

23 THE COURT: All right.

24 MR. LOCKHART: --- I am.

25 THE COURT: --- as second chair.

1 MR. SAFRAN: Yes, sir.

2 THE COURT: I -- I'd -- I'd -- I have to disclose
3 that.

4 And I need also to disclose that my son-in-law is an
5 employee of that firm also, an attorney with that firm.
6 Now, you know, it's -- I -- I'm not supposed to make
7 disclosures such as that immediately prior to a trial
8 because it puts too much, generally, pressure on you. But
9 it -- if you have any concerns about that, I'll be glad to
10 recuse.

11 MR. SAFRAN: Well, Your Honor, basically, the -- the
12 interesting thing is we're here because Judge Lee had to
13 recuse -- or -- or not -- didn't have, but chose to recuse
14 herself because my cocounsel apparently has some
15 relationship ---

16 THE COURT: A small community.

17 MR. SAFRAN: It is. And -- and -- and, Your Honor, I
18 came over to -- to argue the case. I -- I mean, I think
19 the better question is this: If Your Honor feels like
20 there is any concern about it, you know ---

21 THE COURT: I think Mr. Bayne would tell you I --
22 that's not what I look at ---

23 MR. SAFRAN: And -- and ---

24 THE COURT: --- you know.

25 MR. SAFRAN: --- that's -- that's my, you know,

1 belief. So I -- I'm more than prepared to go forward. I
2 -- I don't have ---

3 THE COURT: All right.

4 MR. SAFRAN: --- you know, any concerns with -- with
5 your partiality or anything like that.

6 THE COURT: All right. Let -- let me ask you this:
7 Why am I hearing a workmen's comp appeal? Is this prior to
8 ---

9 MR. SAFRAN: It is. It's ---

10 THE COURT: It's an old ---

11 MR. SAFRAN: --- a pre-2007 ---

12 THE COURT: --- case?

13 MR. SAFRAN: --- case, Your Honor. So this is one
14 that would come up to -- to the circuit court.

15 THE COURT: All right.

16 MR. SAFRAN: And frankly, I'm sorry that the -- all
17 the rest of them don't, although you may disagree with me.
18 But ---

19 THE COURT: I handled plenty of them. I love reading
20 those records. All right. You ---

21 MR. SAFRAN: And ---

22 THE COURT: --- may proceed.

23 MR. SAFRAN: And I believe, Your Honor, I've given Mr.
24 Lockhart a copy of what I believe is -- is the ---

25 THE COURT: --- the record?

1 MR. SAFRAN: --- the record. And -- and I assume
2 everything that's in there is what he wants. I mean, if
3 there's certainly anything that -- that he might believe
4 otherwise, I don't have any problem adding it.

5 But I think it contains effectively everything that
6 started the process getting us here today: the -- the
7 hearing request that he filed, as well as everything that's
8 transpired since then that led to this appeal.

9 THE COURT: Any problem, Mr. Lockhart? Of course, you
10 can supplement if you need to.

11 MR. LOCKHART: Your Honor, based on a review of what
12 Mr. Safran has provided, I have no objection to what he's
13 offered up to you. And it appears to be a complete, you
14 know, record, based on the briefs that have been filed by
15 the parties as well. So ---

16 THE COURT: Okay.

17 MR. SAFRAN: Your Honor, basically ---

18 THE COURT: Give me a little background ---

19 MR. SAFRAN: Yes, sir.

20 THE COURT: --- Mr. Safran.

21 MR. SAFRAN: Basically, this is a case that actually
22 originated in 2006. And it has had a -- a rather long
23 history, in terms of medical treatment as well as
24 litigation. It started out as a denied claim, meaning that
25 they had contested whether there was liability under the

1 Workers' Compensation Act.

2 Because of that we initially sent her to Dr. Jackson
3 in Camden for an evaluation, really to address the issue of
4 causation because under these repetitive-injury cases, even
5 before the statute was amendful (phonetic) -- was
6 implemented, you needed to have medical evidence.

7 So Dr. Jackson being a hand/arm specialist, I felt he
8 would be an appropriate person. He went ahead and actually
9 tied in this causal relationship. And then, on the heels
10 of that, the case was accepted.

11 At that point the carrier chose to direct Ms. Footman
12 to Dr. Mike Green here in Columbia at Midlands
13 Orthopaedics.

14 Now, Your Honor, I think many times what you're going
15 to see in these situations, at the end of the day, is the
16 contention or the -- the -- the argument that: Hey, we've
17 got a treating doctor who's so intimately familiar with the
18 patient because of the number of times. And the way the
19 commission has gotten, I think it's almost like they're
20 somehow deified, in terms of because they are the, quote,
21 designated doctor by the carrier, that they are afforded
22 some substantial level of credibility.

23 What I want to point out here -- and -- and I think it
24 -- it -- it lends itself later to, I think, some things
25 that -- that I want to highlight for you -- is that during

1 the course of this treatment, Ms. Footman, who ended up
2 having bilateral problems that affected both of her wrists
3 as well as her elbows, would be sent to Dr. Green. There
4 were statements made that many times were inaccurate.

5 THE COURT: What -- what did she do for ---

6 MR. SAFRAN: She worked over ---

7 THE COURT: --- Johnson ---

8 MR. SAFRAN: --- at Fort Jackson -- and still does --
9 in their service where they prepare the food for the
10 troops. There are ---

11 THE COURT: Food preparation?

12 MR. SAFRAN: Yes, sir. There are contracting
13 companies that have been out there for years. They farm
14 that out. She's been with Johnson Food Service, as well as
15 a predecessor, for roughly, I think per the record, about
16 17 years.

17 THE COURT: So ---

18 MR. SAFRAN: And she ---

19 THE COURT: --- she's ---

20 MR. SAFRAN: --- worked ---

21 THE COURT: --- she's still there?

22 MR. SAFRAN: Yes, sir, she still is.

23 And she actually works two jobs. I mean, she works
24 over at Babcock Center as a house sitter. So I guess the
25 easy thing to tell you is lazy, she is not. She maintains

1 full-time employment in two positions.

2 Now, granted, the second job is one where she
3 essentially just watches people, because she's dealing with
4 mentally handicapped folks. Her real job, and the one that
5 caused these injuries, is obviously working in a kitchen
6 and doing various elements of frood (phonetic) -- food
7 preparation.

8 THE COURT: Repetitive work?

9 MR. SAFRAN: Yes, sir. Yes, sir.

10 And there's no dispute about that. We -- they -- they
11 ultimately conceded that issue. But, Your Honor, I think
12 that the ---

13 THE COURT: What issue?

14 MR. SAFRAN: Oh. As -- as to whether or not ---

15 THE COURT: Causation?

16 MR. SAFRAN: --- the -- causation. Yes, sir.

17 THE COURT: They did? Okay.

18 MR. SAFRAN: They did.

19 Your Honor, ultimately, what I think is important --
20 and I -- I will tell you briefly and then move on -- is
21 that it's in my brief -- and -- and I won't go into it blow
22 by blow. But it would seem like every time she would go
23 see Dr. Green, there would either be a statement that was
24 made that was in inaccurate reflection. I.e., at -- one
25 report said she had already had surgery on one part of her

1 body that she'd never had surgery on, which, frankly, to
2 the naked eye, would be pretty obvious because you're going
3 to show residual signs.

4 Other times, she would be released by Dr. Green,
5 saying there's nothing else to do. And in each occasions,
6 Your Honor, I would send her back to Dr. Jackson, who would
7 make a diagnosis; who would clarify the situation. They
8 would in turn return -- run her back to Dr. Green, and then
9 he would change his mind and say: Oh, I need to do this.
10 I need to do that.

11 So effectively, even though they had a doctor who, I
12 believe, was their designee, if you look at the record, you
13 will see that Dr. Jackson ultimately was the one that truly
14 directed the treatment. Because it seemed like every time
15 he would give an opinion, Dr. Green, when they would send
16 the lady back, would reinstate care and start doing
17 whatever Dr. Jackson had suggested. Ultimately, she had
18 surgery on each side.

19 Basically, where we ended up was a hearing to
20 determine, at their request, what was her degree of
21 disability, which, Your Honor, I will be the first to say:
22 That's a factual question. That goes to what the
23 commission determined. And certainly, I wouldn't come in
24 here and ask you to basically make findings on that.

25 What ended up happening, though, Your Honor, is that

1 the way this order came out, I would ---

2 THE COURT: You talking ---

3 MR. SAFRAN: --- respectfully ---

4 THE COURT: --- about the single commission?

5 MR. SAFRAN: Yeah. And the full commission. Because
6 really, all they did was take the single commissioner's
7 order and substitute "we" for "I." It was essentially the
8 same order.

9 THE COURT: What's new?

10 MR. SAFRAN: That -- well, and -- and that's part of
11 the problem. You know, we -- we're supposed to have
12 effective appeals. We're still in a situation in -- in the
13 workers' comp arena where I began years ago where you would
14 make exceptions back when you'd do appeals. When we do
15 these to this Court, we make exceptions.

16 Frankly, I made a number of exceptions. And
17 effectively, all they did was list the exception in the
18 order and then regurgitate the exact same order, changing
19 the word "I" from "we" -- or to "we." That was basically
20 it. And I'll -- I'll get to that in a minute.

21 But, Your Honor, basically, what we've got -- I know
22 that, you know, frankly, there are a number of exceptions.
23 And I'm going to try to condense them into just a few
24 issues, because I think this, really, is -- is the better
25 way to approach, kind of, what I'm here about.

1 Essentially, it's admitted that she had effectively
2 four components: each elbow, each wrist. Testimony was
3 given; medical records were submitted. I think the first
4 and the most crucial issue is they made a disability
5 determination.

6 They say that we considered certain factors. But I
7 think, when you look at what those factors purportedly
8 were, one very substantial one had absolutely no
9 evidentiary basis. Another was literally the most, I
10 guess, odd thing I think I've run into in quite some time.

11 But yet when you read the order, this is, more or
12 less, a step-by-step as to how you get there. But
13 unfortunately, we're dealing with steps that don't have any
14 basis. They're in name only. And I -- I'll explain.

15 Basically, what happened is this: This lady, at the
16 time that -- of one of her releases -- and she had multiple
17 by Dr. Green -- Mr. Lockhart and I went and deposed Dr.
18 Green. And to say that -- that his opinions in the
19 deposition, as well as in comparison to other things that
20 were in the record, were literally all over the place and
21 contradictory would be an understatement.

22 In fact, it seemed like the opinions spanned the
23 entire panorama, in terms of what's the number; what kind
24 of limitations would this lady have; what kind of problems
25 would she have. They were everywhere.

1 Ultimately, Dr. Green reinstated treatment. And the
2 last thing that he said, the last comment -- the last
3 statement that was made, in terms of
4 limitation/restriction/problems/etc. -- I've put a -- a
5 paperclip on the bottom. It's in this thing that's
6 basically part of the record that would be with these tabs
7 on the side.

8 THE COURT: Uh-huh.

9 MR. SAFRAN: It would be the last page of -- of the
10 second tab. It has a No. 50 on the bottom.

11 And what he said in the very last time that he had an
12 opportunity to make a comment -- and there's nothing after
13 this -- was: Patient can progressively use the hand as
14 tolerated.

15 Now, the significance of that is "as tolerated." That
16 means, I think: To the extent you can; and if you can't,
17 you stop; it's up to you. If you can't do what you need to
18 do with it, you only do what you can tolerate.

19 Your Honor, and -- and I think the significance of
20 that -- and I've handed the case up -- is this. And I do
21 this by way of comparison. I've handed you a case that's
22 from the Supreme Court in 1995. It's the Grayson case.
23 And I've highlighted it.

24 And it's really being -- I guess, from my standpoint,
25 it's educational in this respect: In that case there was a

1 big argument about what was without restriction. There was
2 a contention that where the doctor said be somewhat careful
3 with lifting, which, again, is a subjective thing, saying
4 you do whatever you can, but be careful with lifting. The
5 Court said that was not without restriction.

6 In fact, the commission found the guy had been
7 released to work without restriction. He had gone back and
8 worked for several weeks. So the big issue was: Was he
9 released without restriction or was he not.

10 The Court of Appeals heard the case and said: I think
11 they've had a mistaken view of the evidence because he was
12 never released without restriction. The Supreme Court went
13 further and said: It's not a mistaken view. There's no
14 evidence.

15 This was a very subtle statement that said, again, be
16 somewhat careful with lifting. Dr. Green said: Go back to
17 do your job as tolerated. I think they're analogous in the
18 sense that there is no firm release. There is no firm
19 statement. Everything and everything is wide open.

20 THE COURT: What ---

21 MR. SAFRAN: The ---

22 THE COURT: --- what did -- what is the -- what's the
23 essence of your appeal? I mean ---

24 MR. SAFRAN: Well, the essence ---

25 THE COURT: --- I see -- let me just ---

1 MR. SAFRAN: Oh.

2 THE COURT: --- I'll just briefly peruse the -- a
3 brief that was delivered to me, I guess, saying Dr. Green
4 assigned 2 percent impairment; Dr. Jackson, 10; and single
5 commissioner, 6.

6 MR. SAFRAN: Uh-huh.

7 THE COURT: Is that where the issue is ---

8 MR. SAFRAN: Well ---

9 THE COURT: --- or ---

10 MR. SAFRAN: --- the issue is this: If you look at
11 the factual finding on page 21 of the order -- and I've --
12 -- I've also clipped the bottom of that for you ---

13 THE COURT: All right. Let me find the order. The
14 Michael Green -- no. Wait a minute.

15 MR. SAFRAN: Your Honor, I think it's a little deeper.
16 It's actually the order. It's -- and it has at the bottom
17 -- it has page 21.

18 THE COURT: I got it.

19 MR. SAFRAN: Your Honor, in making this determination,
20 they ---

21 THE COURT: Which ---

22 MR. SAFRAN: --- made ---

23 THE COURT: --- which paragraph you talking?

24 MR. SAFRAN: Your Honor, it's No. 15.

25 THE COURT: Okay.

1 MR. SAFRAN: It says that we find that the claimant
2 has been released with no restrictions and returned to work
3 full-duty.

4 Well, obviously, I think I've laid out in the brief,
5 Dr. Jackson gave very emphatic and specific restrictions.
6 He put a pound lifting; he put a certain number of things
7 on a tray. He said there are going to be restrictions,
8 limitations. Dr. Green ---

9 THE COURT: Postsurgery?

10 MR. SAFRAN: Postsurgery. Dr. Green never said full-
11 duty without restriction the last time he saw her
12 postsurgery. He said: Go back as tolerated.

13 And I guess the reason I hand that up is this: One of
14 the elements that they ended up focusing on, presumably, as
15 a basis for this determination of disability, was the
16 absence of restrictions. However, the record doesn't
17 support that finding.

18 THE COURT: Uh-huh.

19 MR. SAFRAN: The finding is clear that no
20 restrictions, full-duty. On the other hand, their doctor
21 said as tolerated -- or per tolerance. Dr. Jackson said no
22 lifting over this -- 25 pounds; no lifting this number of
23 pieces of chicken on a tray; no doing -- opening these big
24 cans but so many a day. So there's clearly restrictions.

25 And I guess what I'm simply saying -- and I may be

1 getting ahead of myself -- is -- is this: When we got into
2 the meat of this, there is a finding on the prior page in
3 terms of Dr. Green's impairment rating, where they said:
4 You know, he said this, and then he said this, and then he
5 said this. And at least, at the minimum, it is ambiguous,
6 if not conflicting or contradictory. But we rely on other
7 factors in making this decision.

8 Well, if you go look and see -- okay. What are the
9 other factors that they've specified in the order? There
10 can only be two and possibly three.

11 One is the absence of restrictions. Well,
12 unfortunately, the evidence doesn't support that finding.
13 There is no evidence in the record of a absence of
14 restrictions.

15 In fact, if you look at the prior pages under what
16 they refer to as the "statement of the case" -- and, Your
17 Honor, if you just go back about, I'd say, two pages from
18 the one I clipped -- well, I take that back. It would be
19 on the bottom -- or actually, on page 18.

20 This lady actually testified that -- that --
21 restrictions that Dr. Jackson identified for me have proven
22 true. And I get accommodation readily from other people
23 around me for the things I can't do.

24 So how can you say that there's a full-duty release
25 when she's getting help from other people to do things that

1 are part of her job that she can't do? That's what the
2 evidence is.

3 However, they say unequivocally no restrictions, full-
4 duty; when, in fact, the evidence is completely contrary to
5 that -- not my evidence, not my perception of the evidence,
6 the evidence. And that's why I believe that case, as well
7 as the ones I've cited in my brief, say that if there is no
8 evidentiary support for the finding, then it is one that is
9 legally erroneous.

10 And, Your Honor, because they rejected, effectively,
11 Dr. Green's impairment ratings because they were so
12 literally across the board, they then said -- and -- and,
13 Your Honor, I'm quoting from the order. And again, this
14 started out as the single commission and was just, more or
15 less, changed to -- to "we" from "I."

16 This is on page 20. Regardless -- and this is after
17 -- Your Honor, on -- under 11, where it goes in and says
18 that the doctor said this, and then he said that, and then
19 he said this.

20 And what they end up saying is -- is that: These
21 things look conflicting. However -- or excuse me --
22 regardless, my awards are based on other factors.

23 So if we're basically throwing Dr. Green's ratings to
24 the side because they are so conflicting, we then have to
25 look at the other factors. The other factors that they're

1 citing are the lack of restriction; the lack of -- or -- or
2 going back to full duty, which, again, if you read the
3 relevant evidence, it's not there.

4 Now, I know what has -- was submitted in the brief
5 from the other side is: Well, he didn't impose
6 restrictions in 2008. Well, he's operated on her since
7 then.

8 The last thing that he speaks to in 2010, after doing
9 a surgery, his last time to see her is per tolerance,
10 which, again, I think based on what I've shown you in
11 *Grayson*, that doesn't pass muster as no restrictions.
12 That's number one.

13 The other thing that they cite as a presumed reason is
14 an innocuous comment that Dr. Jackson made in 2008, three
15 years before this case came to a hearing. On one date he
16 says: I think the lady's grip strength was not a full
17 effort. I've told her that she needs to do that and make
18 sure, because our relationship as patient and physician
19 necessarily hinges on, you know, her giving her all.

20 That was said in February of 2008. There was never
21 anything that he said derogatory, negative, etc. -- or Dr.
22 Green, for that matter -- for the next three-plus years.

23 However, if you read the order, what -- this is what
24 it says: That to his well-deserved credit, after Dr.
25 Jackson noted inconsistencies in claimant's right-grip-

1 strength testing, he pointed out that consistency of effort
2 in grip strength is a basic element of building a doctor --
3 patient relationship.

4 That's all well and good. But now, they're pointing
5 to that as the factor for determinating her disability
6 three years later. And when you look at, supposedly, the
7 rationale as to why this was given great weight -- and
8 again, I call you to page 21, the same one we're open to --
9 it effectively says because he said it -- because he said
10 it.

11 What was the significance? I don't know. It says:
12 We give it great weight for the reason that these are the
13 notes of the claimant's own expert three years ago.

14 Now, Your Honor, I think -- I'm sure we're going to
15 hear plenty about substantial evidence. We're going to
16 hear: Don't go reweigh the evidence.

17 But, Your Honor, I think that -- that -- that the
18 point is this: There is, throughout the cases, a
19 requirement of a reasonable basis, a requirement to avoid
20 arbitrary and capricious findings. I would submit to you
21 that it's nonsensical in 2011 to say I am giving great
22 weight to a comment that was made in 2008 that has no
23 relevance in 2011 whatsoever, other than to say he
24 admonished her back then to make sure she was going to keep
25 trying when she came in.

1 Now, had it been a consistent problem, certainly, you
2 could talk about it. There's nothing after that. All they
3 say is he made this comment three-plus years ago and,
4 because he said it, he's entitled to great weight.

5 What's totally inconsistent is, is that once they
6 kicked Dr. Green's ratings, effectively, to the side, they
7 didn't deem it appropriate to give Dr. Jackson's ratings
8 the same great weight. Why? I have no clue.

9 Your Honor, the other thing that I would point out is
10 this: When they say we're relying on other factors, we
11 have to look at the findings. The findings that relate to
12 this would be that statement about he made the comment
13 three years ago; the fact that they say, I think
14 erroneously, that he has assigned no restrictions; there is
15 full-duty. What else is there? Well, if these things are
16 -- are effectively either baseless or -- or have no real
17 relevance in 2011, then where is the basis for the ruling?

18 Now, Your Honor, one thing that -- that I would ---

19 THE COURT: Was Jackson deposed?

20 MR. SAFRAN: Jackson was not deposed. But Jackson
21 gave report after report after report, basically saying
22 that he felt like this lady had ongoing impairments; she
23 had ongoing restrictions.

24 And again, Jackson -- even though he was not, quote,
25 the designee, if you read the records, he's ultimately the

1 ones that was making the treatment recommendations.
2 Because once they'd go back to their doctor, he'd say, "Oh,
3 okay. Yeah. Let's do that."

4 So, you know, I -- if it was simply a matter of saying
5 let's weigh Jackson versus Green, I don't think I'd be
6 here. But what I think the problem is this: Your Honor
7 had heard plenty of workers' comp appeals. And I think
8 you're very familiar with the fact that when you determine
9 disability, there has to be a basis for it.

10 They cite, as their basis, elements that I think are
11 either -- are unsupported by the evidence or very
12 arbitrary. I mean, I'm sure that I'll hear an answer.

13 But I'm asking you, Your Honor, from an objective
14 standpoint: What relevance, what relationship does a
15 comment that say -- says Dr. Jackson made a comment three
16 years ago and we're gooding (phonetic) -- putting great
17 weight on that in determining her disability in 2011.

18 Now, I think the thing about it is -- is that had he
19 rated her based upon some grip strength that was deficient,
20 sure. He didn't do that. That was never even considered a
21 factor in how they ultimately assigned an impairment
22 rating.

23 Because Dr. Jackson has, in the past -- not -- did not
24 in this case -- very explicitly said: "I'm basing it on
25 grip." He doesn't do that.

1 So again, what we're talking about is effectively
2 hollow findings. They don't have either an evidentiary
3 basis or they're legally untenable.

4 Because again, I'm asking you, sitting here today: If
5 we're sitting here, trying to look at these things
6 reasonably -- because I think substantial evidence means
7 that we have to give a reasonable interpretation to
8 whatever they say is important -- what is a reasonable
9 interpretation for saying I'm going to take a comment from
10 three years ago and say that it's a -- is entitled to great
11 weight, in terms of deciding today what her degree of
12 disability is. That happened in the beginning of her
13 treatment. Makes no sense.

14 The reason I've handed up those other cases is because
15 when I read the -- my friend's brief -- and I'm sure I'll
16 hear it also -- there seems to be a prevailing notion when
17 we come over here that if they put a number next to a
18 paragraph and called it a finding, that automatically you
19 have to give deference to it. And as a practical matter,
20 that's just not true.

21 Those cases that I've handed up are recent decisions,
22 once that just came out in 2012; another one from 2009,
23 where the Court did what -- what they were supposed to do,
24 which is go in and read the record and said: Yeah. The
25 commission made this finding. But it's just not -- it's --

1 it's not there. The evidence doesn't support it.

2 On another situation, you know, at one time they
3 reversed it for the claimant; one time they reversed it for
4 the defendant. Commission had actually found that
5 something was causally related. And the Court of Appeals
6 said: There's not a -- it's not there. We don't think
7 there is evidence to support it.

8 So I think the main reason I've handed those up is to
9 let you know that even though we've got a deferential
10 standard, I think ---

11 THE COURT: Right.

12 MR. SAFRAN: --- the Courts are still very, very
13 vigilant in saying: That doesn't mean we just say that if
14 it's called a finding of fact, that we necessarily have to
15 adopt it.

16 THE COURT: Well, but ---

17 MR. SAFRAN: Your Honor ---

18 THE COURT: --- this -- this isn't a *de novo* hearing
19 either.

20 MR. SAFRAN: No, sir. I understand that.

21 But I think it's in the sense of having to go through
22 and review the findings and make sure that they are
23 compatible with either the evidence, which I believe, in
24 terms of the restrictions, there's no evidence that
25 supports that. If they're going to get up ---

1 THE COURT: Well ---

2 MR. SAFRAN: --- and say ---

3 THE COURT: --- no evidence is one thing.

4 MR. SAFRAN: Yes, sir.

5 THE COURT: But if they considered evidence, then ---

6 MR. SAFRAN: But I think ---

7 THE COURT: --- there is ---

8 MR. SAFRAN: --- the other ---

9 THE COURT: --- a deferential standard.

10 MR. SAFRAN: There is. But I think the other thing is
11 -- is the reason I handed those up is that even though I've
12 been dealing with substantial evidence, as you have for a
13 number of years and -- and certainly, have heard many an
14 argument that says that means, effectively, if we can point
15 to anything that we think might support it, that's enough,
16 it's not enough. Those cases say -- they go back and
17 determine whether or not the evidence is truly, quote,
18 substantial; if it truly meets the standards.

19 And so my point is that innocuous comment by Dr.
20 Jackson is hardly substantial evidence. Clearly, as I've
21 already went into -- I think, probably in more detail than
22 you wanted to hear -- the restrictions -- there's no
23 evidence. I don't think they can come in and bootstrap,
24 saying: Well -- oh, well, he gave restrictions or said no
25 restrictions in 2008, when afterward this treatment

1 continued through 2010.

2 If they were going to say: Okay. In 2010 something's
3 different, they would've had to go back and elicit evidence
4 other than what I've shown you, which is the last statement
5 saying it's per tolerance, which, I believe, reflects that
6 there are limitations based on what her physical capacity
7 is in her own mind.

8 Your Honor, the last thing that I would point to is
9 this -- well, actually, second-to-last -- and I'm sorry.
10 First, I've cited a number of cases that say: Those
11 findings still have to give a rationale, an explanation, as
12 to why they did what they did.

13 I asked the panel in my appeal: Show me your
14 rationale for saying Dr. Jackson's statement of three years
15 ago needed -- or was afforded great weight, beyond the fact
16 that it was merely said. Because I don't think that passes
17 muster. Show me the rationale per what our Courts have
18 repeatedly said for how you came up with a disability
19 determination in the face of findings that are legally
20 devoid of a basis. Show me the reasoning.

21 I'm sure, as I've read in the brief, they're going to
22 say: Well, they said the reason was they gave it great
23 weight because he said it. Your Honor, that -- that's --
24 again, that -- that's irrational.

25 I'm sure I'm going to hear that somewhere in this

1 record, Dr. Green said no restrictions. In 2008 he did,
2 not in 2010, after he'd done another operation.

3 So I think it was incumbent upon me then, as it is
4 now, to say: Comply with the cases; we will not take your
5 ruling at face value. And that's right out of the Able
6 case from the Supreme Court.

7 It is not to be taken at face value. You have to give
8 an explanation and a rationale.

9 THE COURT: And ---

10 MR. SAFRAN: I don't think ---

11 THE COURT: --- that ---

12 MR. SAFRAN: --- it's there.

13 THE COURT: The -- the issue, then, that you are
14 concerned about is the MMI?

15 MR. SAFRAN: Well, I think it's ultimately the
16 determination of disability. We don't contest MMI. We
17 don't contest, at this point ---

18 THE COURT: What do ---

19 MR. SAFRAN: --- that ---

20 THE COURT: --- you contest about -- I mean, the order
21 says permanent and partial, 6 percent to the ---

22 MR. SAFRAN: Correct. We ---

23 THE COURT: --- right ---

24 MR. SAFRAN: --- think ---

25 THE COURT: --- and upper.

1 MR. SAFRAN: We think that they ---

2 THE COURT: Where's the ---

3 MR. SAFRAN: --- gave us no basis that was -- that
4 legally passes muster for where they got that 6 percent.

5 THE COURT: That's ---

6 MR. SAFRAN: We ---

7 THE COURT: --- your issue?

8 MR. SAFRAN: That is the basic issue; and that the
9 findings don't meet the criteria that the Court has laid
10 out; that there is a lack of evidence on one of the
11 findings I'm sure I'm going to hear from them as being
12 substantial and crucial to that determination: you know,
13 the -- the fact that she had no restriction, was working
14 full-duty, which, again, is contrary to the record.

15 Your Honor, the last thing I will say is this. And I
16 think this is reflective of exactly what was going on.
17 There was no appeal by the defendants of the number. There
18 was a number of weeks that were awarded.

19 MR. LOCKHART: Your Honor, I -- I hate to interrupt
20 Mr. Safran. But I -- we have conceded in our brief that
21 the commission committed a scrivener's error in its ---

22 MR. SAFRAN: Well ---

23 MR. LOCKHART: --- mathematical calculation of the PPD
24 award. So I don't -- I'm sorry to interrupt him. But I
25 don't want to waste the Court's time by pleading to believe

1 that that's a -- an issue that's in dispute ---

2 MR. SAFRAN: Well ---

3 MR. LOCKHART: --- Your Honor.

4 MR. SAFRAN: --- and, Your Honor, I -- I think that,
5 certainly, my friend can make his own argument, but I'd
6 like to make mine.

7 Basically, I believe they went and changed the number,
8 even though there was no appeal. Now, I agree: They need
9 to concede it, because it's legally error as a matter of --
10 of just -- it's -- it's no question.

11 But I think it's reflective of something beyond. What
12 I think it's reflective of is, again, we going do what we
13 feel like doing. We do -- really don't care what the rules
14 of law are.

15 Obviously, the law says that if nothing is appealed to
16 that level by the other side, they can't reduce it. But
17 yet they go and reduce it. And I think, rightfully, he
18 concedes that's an error. But I think the error is
19 something that's ---

20 THE COURT: What's ---

21 MR. SAFRAN: --- reflective ---

22 THE COURT: --- the error?

23 MR. SAFRAN: The error is -- is that they said it was
24 11 weeks of compensation, when it should have been 13.
25 They reduced it, even though there was no challenge to it

1 from the ---

2 THE COURT: All right.

3 MR. SAFRAN: --- other side.

4 THE COURT: All right. What would you have me do, Mr.
5 Safran?

6 MR. SAFRAN: Your Honor, what I would ask you to do is
7 very simple.

8 THE COURT: A simple remand?

9 MR. SAFRAN: I think, vacate the order; remand it with
10 instructions as to determining what the rationale is; make
11 it clear that there has to be an understanding that there
12 is no evidence on the issue of the lack -- or the
13 restrictions. And frankly, you know, I don't have a
14 problem going back, you know, either way. We can go back
15 and relitigate this before the panel, or we can go do a *de*
16 *novo* hearing. It doesn't matter to me.

17 I think the underlying problem is -- is that if
18 they're going to continue to rely on Dr. Green in the face
19 of all these comments from the commission that literally
20 were kind of throwing his thing to the side, we may have to
21 go back and depose him again and get the answer. So I -- I
22 don't have a -- a problem with a *de novo* hearing.

23 But I think, clearly, the order is deficient in that
24 the findings that they focus on as being the rationale,
25 supposedly, for the ruling are either arbitrary and

1 capricious or unsupported by the evidence and -- and
2 honestly cannot provide the support that supposedly they --
3 they are being proposed to do.

4 THE COURT: All right.

5 MR. SAFRAN: Thank you.

6 THE COURT: Mr. Lockhart?

7 MR. LOCKHART: Your Honor, May it please the Court:

8 My argument is going to be much brief and fairly
9 straightforward. This matter is before you on an appeal
10 from the full commission. And as you note, the appellate
11 courts repeatedly, annually for many years, have given this
12 Court, sitting in an appellate capacity, instructions on
13 its role in hearing a workers' compensation matter.

14 And the -- and the appellate courts have also told the
15 circuit court, over the years, the standard by which it is
16 to consider a decision of -- of the Workers' Compensation
17 Commission.

18 And in this case, Your Honor, if you apply the
19 substantial-evidence standard, which we argue would apply
20 to this case, you will find that there is evidence to
21 support the commission's decision. And we feel very
22 strongly that it should be affirmed.

23 Mr. Safran has handed up to you a -- and I'm looking
24 at this -- this case as well -- the case of *Grayson v.*
25 *Carter Rhoad Furniture*. And he spent some time talking

1 about that case with you this morning.

2 What I'd point out, Your Honor, in one of the
3 headnotes to this case, which is on page 1, the Court in
4 *Grayson* held that: Where there is conflicting medical
5 evidence in a workers' compensation case, the findings of
6 fact of the commission are conclusive.

7 And we would agree that that's a very important
8 principle, particularly in the context of the matter that's
9 before you. I don't think there's any dispute that there
10 is conflicting evidence. I think Mr. -- Mr. Safran went
11 out and procured opinions from his expert, Dr. Jackson,
12 that are in conflict with the opinions of Dr. Green, who is
13 the authorized treating physician.

14 I think the commission adequately weighed the
15 evidence, considered the opinion of both physicians, in
16 reaching the decision that it reached in this case.

17 THE COURT: Sort of split the baby, didn't they?

18 MR. LOCKHART: I would agree, Your Honor, that they --
19 they very well -- and we point out that -- out -- out this
20 matter in -- in our -- in our brief at page 17 -- they
21 could've very well awarded 6 percent, 8 percent, 7 percent,
22 5 percent. Just because there are two lawyers who disagree
23 about the extent of permanent-partial-disability benefits

24 ---

25 THE COURT: Which is ---

1 MR. LOCKHART: --- doesn't mean that the commission's
2 decision is not supported by substantial evidence.

3 THE COURT: Right.

4 MR. LOCKHART: And, Your Honor ---

5 THE COURT: Just so ---

6 MR. LOCKHART: --- we ---

7 THE COURT: --- happens 2 and 10 is 12; divided by 2
8 is 6.

9 MR. LOCKHART: Correct, Your Honor. Correct.

10 And in my experience over the years, it's not -- it's
11 -- it's -- it's, you know, very common for our commissioner
12 to take an impairment rating and -- and award double the
13 impairment rating or 2 1/2 times the rating. I mean,
14 Section 42-9-30, which is a portion of the act that governs
15 the award of permanent-partial-disability benefits, along
16 with other statutory provisions in the act, give a
17 commissioner a lot of discretion in awarding permanent-
18 partial-disability benefits in excess of the impairment
19 rating assigned by an authorized treating physician or
20 another physician.

21 And -- and again, one of the cases that we cited to in
22 our brief, the case of *Palmetto Alliance, Inc. v. the South*
23 *Carolina Public Service Commission*, stands for the
24 principle that a judgment upon which a reasonable man might
25 differ will not be set aside. And -- and again, while Mr.

1 Safran and I disagree about the facts of this case and --
2 and, certainly, the evidence may be in -- in conflict, the
3 evidence that does exist that is in the record supports the
4 commission's decision.

5 Your Honor, there were four commissioners who heard --
6 heard this case, essentially: one sitting in the single-
7 commissioner capacity, Commissioner Barden; and three
8 sitting in an appellate capacity. And they all four
9 reached the same conclusion in this case.

10 As you know, Your Honor -- and not to belabor the
11 point -- but the -- our appellate courts have held that the
12 circuit court, sitting in an appellate capacity, is not
13 permitted to substitute its own findings of fact for those
14 of the commission. And the circuit court may not
15 substitute its judgment for the weight of the evidence.

16 The *Armstrong* case, which is at 417 S.E.2d 597, stands
17 for the proposition that this Court may only set aside the
18 findings of the commission if they are unsupported by
19 substantial evidence. And that's what Mr. Safran's asking
20 you to do: He's asking you to reconsider the evidence;
21 he's asking you to look at the -- the medical record and
22 the deposition testimony and reach a different conclusion
23 than that reached by the panel.

24 The panel didn't err in affirming the single-
25 commissioner determination that the claimant was released

1 to return to work without restriction. That finding is
2 based on both the deposition testimony of Dr. Green at
3 pages 30 through 32. It's based on Form 14(b), which is
4 something called a "physician's statement" that Dr. Green
5 completed, which was in our APA submissions.

6 And, Your Honor, it's -- it's supported also, in large
7 part, by the -- by the testimony, rather, of the claimant
8 at the hearing before Commissioner Barden. She testified
9 at the hearing that she was performing with Johnson Food
10 Services the same job that she was performing before --
11 before she was injured.

12 And -- and again, this is a lady who is also employed
13 with another employer. She had concurrent employment. And
14 certainly, she should be applauded for that. But again,
15 the fact that she's working two jobs, one of which is with
16 my client, performing the same job duties and
17 responsibilities that she was performing before she was
18 injured, is evidence to support the conclusions the
19 commission reached, not only regarding her work capacity,
20 but also the permanent-disability award that was provided.

21 THE COURT: Who did her surgery?

22 MR. LOCKHART: Dr. Green was the physician who
23 operated on her, Your Honor.

24 Mr. Safran has spent a lot of time talking to you
25 about Dr. Jackson. Again, he was not an authorized

1 provider. He was a physician who was selected and paid by
2 Mr. Safran to provide opinions in this case. And I think
3 the commission took that into consideration when weighing
4 the evidence and considering how much weight should be
5 afforded to Dr. Jackson's opinion.

6 Your Honor, the full commission and the single
7 commissioner could have reached a different conclusion
8 regarding the plaintiff's work status, her ability to
9 return to work, the extent of her disability. They could
10 have reached a different conclusion.

11 But the fact that they could have reached a different
12 conclusion is not a sufficient basis for a reversal of
13 their decision. And again, we rely upon on the *Palmetto*
14 *Alliance* case for that principle.

15 Mr. Safran's also handed up to you this morning a case
16 -- I believe it's a recent case -- *Burnett v. City of*
17 *Greenville*. I'm looking at page 3 of this case in one of
18 the headnotes, in which the Court held that: A workers' --
19 that the Workers' Compensation Commission is not bound by
20 the opinion of medical experts and may find a degree of
21 disability different from that suggested by expert
22 testimony. Expert testimony, according to the Court, is
23 merely intended to aid the commission in coming to the
24 correct conclusion.

25 In this particular case, the commission did just --

1 just that: They -- they took all the medical opinions into
2 consideration in reaching the decision that they rendered
3 in this case. And I think that ironically enough, this --
4 this -- this *Burnett* case that Mr. Safran hands up to you
5 supports the contention that we're taking here this
6 morning.

7 The commission is not bound or was not bound by the
8 opinion of Dr. Jackson. And they were within their
9 statutory right to find a degree of disability different
10 than that suggested by him in assigning impairment ratings.

11 Your Honor, their permanent-partial-disability award
12 is based upon, I think, findings of fact other than those
13 pointed out by Mr. Safran. I find it a little -- okay.

14 THE COURT: Excuse me a minute.

15 MR. LOCKHART: Yes, sir.

16 THE COURT: Frank, you tell them to be quiet out
17 there, please. (To Mr. Lockhart) Go ahead.

18 MR. LOCKHART: Your Honor, if you look at Findings of
19 Fact at 11 through 15 in the full-commission order, you
20 will see the factors that the commission took into
21 consideration in reaching its award of permanent-partial-
22 disability benefits. Those include the fact that Ms. --
23 Ms. Footman had returned to work; that she was no longer
24 using -- utilizing prescription medications for any ongoing
25 problems related to her -- her arms; she wasn't wearing

1 assistive devices; and that she was essentially back
2 performing the same job she was performing before she was
3 injured. That, along with the medical evidence,
4 represented substantial evidence to support the
5 commission's decision.

6 We touched on this earlier in the outset of your
7 questioning about the award itself being halfway between 10
8 and 2. That award is reasonable when you consider the
9 ratings assigned by both Dr. Green and Dr. Jackson. The
10 award is reasonable when you consider that the claimant has
11 returned to work with both my client and her other
12 employer.

13 And based on her testimony, again, at page 27, 29, 36,
14 37, and 41 of the hearing transcript, her testimony, when
15 considered along with the evidence -- medical evidence and
16 testimony, represents a substantial-evidence basis upon
17 which this Court should affirm the full-commission
18 decision.

19 Again, Your Honor, I -- I would concede on the final
20 point that -- that the -- the commission did commit a
21 scrivener's error, a mathematical error, in its
22 calculation. If you do -- if you engage in the exercise of
23 looking at what 6 percent to the upper extremity is, it --
24 it is not 11 weeks; it's 13.2 weeks; that -- that was a
25 mathematical error.

1 We're not -- we're not contesting that that -- that
2 should be affirmed. That -- if you were to affirm the
3 commission's order, it would need to be affirmed with a
4 modification, reflecting an accurate calculation of what 6
5 percent to the upper extremity is.

6 THE COURT: All right.

7 MR. LOCKHART: So in all told, Your Honor, again,
8 we're asking you to affirm the commission's decision this
9 morning. Thank you for your time.

10 THE COURT: Mr. Safran?

11 MR. SAFRAN: If Your Honor please, just a couple
12 things: One of the first things that -- that was said is
13 -- is, I guess, the pat argument that we hear all the time.

14 THE COURT: Sure.

15 MR. SAFRAN: Oh, there was conflicting evidence.

16 THE COURT: Well ---

17 MR. SAFRAN: What I found interesting is I cited to
18 you particularly Dr. Green's last statement after the last
19 surgery -- not something from 2008 before he completed
20 treatment, but actually when he finally completed treatment
21 -- that says: Patient can progressively use the hand as
22 tolerated.

23 They haven't pointed to one thing that came after that
24 to change it. Additionally -- and I think maybe I didn't
25 focus on this to a level, maybe, to get my point across up

1 front, that finding that they had about no restrictions, it
2 doesn't say claimant was released to no restrictions by Dr.
3 Green. It says claimant was released with no restrictions.

4 Your Honor, the evidence is Dr. Jackson certainly gave
5 her restrictions. Now, had they said Dr. Green gave her no
6 restrictions, I still think that document is inconsistent
7 wholly with that.

8 THE COURT: Uh-huh.

9 MR. SAFRAN: But because of the actual language that
10 was used -- "Claimant has been released with no
11 restriction" -- Dr. Jackson's restrictions are noted in the
12 body of the order. Her accommodations that she receives
13 from work readily are noted in the body of the order. So
14 even though the evidence was presumably considered, they
15 make a finding that simply is inconsistent with any of it.

16 The other thing is: Again, I would -- I -- I came up
17 first, and I'd do it again. I invite them to point to
18 something that was inconsistent ultimately with what Dr. --
19 or excuse me -- Dr. Green's statement was at the time he
20 released her. There's nothing there.

21 The things he's talking about, these conflicting from
22 2008 before he ever did his final surgery, that they find
23 MMI in 2010. So how can we say her final restrictions
24 relate back to 2008? It -- it really doesn't jive.

25 THE COURT: All right. I'll review the record.

1 Anything further?

2 MR. SAFRAN: Your Honor, the only other thing I would
3 point to, just very briefly, is, you know, again, this was
4 not a matter of these findings that they've given you. You
5 know, they pointed to the same ones I did, where they go
6 into that statement about Dr. Jackson. They go into this
7 one about there's, you know, no restrictions.

8 When he says 11 to 15, most of those findings are what
9 I've already said, where they effectively dismiss Dr.
10 Green's ratings as being all over the page; acknowledge
11 what Dr. Jackson said; and then ultimately say we're
12 looking at other factors.

13 Well, I've told you what the findings are for those
14 other factors. And frankly, they don't hold any water from
15 a legal standpoint. So I believe it should be vacated and
16 remanded.

17 THE COURT: All right. How much time do you need to
18 prepare me proposed orders?

19 MR. SAFRAN: Two weeks?

20 THE COURT: Two weeks?

21 MR. SAFRAN: Is that ---

22 THE COURT: Yeah. Well, let's say -- let's make it
23 more definite than that -- by the 22nd?

24 MR. SAFRAN: Yes, sir. That's fine.

25 THE COURT: Friday, the 22nd. Okay?

1 MR. LOCKHART: Thank you, Your Honor.

2 THE COURT: Thank you.

3 (Whereupon, the proceeding was concluded at 10:30 a.m.)

4 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA,
ON THE 6TH DAY OF MARCH, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 31, 2013



**Camden Orthopaedic Associates
507 Walnut Street
Camden, SC 29020**

Joseph P. Jackson, Jr., M.D., F.A.C.S.

Telephone (803) 432-9300

11/28/06 Latonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam

Problem: Bilateral carpal tunnel

Ms. Footman is an employee of Johnson's Food Service and had a nine year tour and then a two year tour working with this organization. Has also worked for the Babcock Center caring for clients there and also doing some cooking in a residential home for these clients. For approximately two years she has had symptoms of numbness and tingling, awakening her from sleep at night and while driving. These have gotten worse over the last year or so, particularly she has to open up 24-#10 cans at a time, stir big pots of scrambled eggs, grits and also peeling potatoes and cutting up cantaloupe in the dining facility at Ft. Jackson. All of these bring out the symptoms, right greater than left. She has tried her mother's splints to no avail.

Allergies: NKDA

Medications: Glucophage and an anti-hypertensive, she does not know the names of those.

Surgery: Tubal ligation 2-3 years ago.

ROS: HTN, diabetes since 1993.

Social History: She likes to walk and attend movies for hobbies. She has a three year old child and is assisted in her childcare duties with a sister and her mother. She is a single parent. She does not smoke or drink alcohol.

Objective: BP 120/80. P-60 and regular. R-20. Ht 5'5" Wt 180 lbs. Patient is a neatly dressed, pleasant, well spoken lady in no acute distress. Her grip is 55 on the right; 38 on the left. She does not have any visible muscular atrophy or fasciculations. Pulses are intact. Sensibility to two point discrimination within normal limits. On the right she has positive arm elevation, Tinel's, Phalen's and median nerve compression test. Reflexes are brisk and symmetrical. Thyroid is not enlarged. Negative Spurling sign. Coordination is excellent. Mental status is clear. Does not appear to be depressed.

11/28/06 LaTonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam Cont'd
Page Two

Electrical Studies: Studies are reviewed and they show a sensory latency of 5.35, normal is less than 3.6 on the right median nerve and on the left 4.35, again normal less than 3.6. These were done by Dr. Dave Redmond, who is a very reliable examiner. His impression was that she would need a carpal tunnel release, particularly on the right.

Assessment: #1. I think that the patient has bilateral carpal tunnel, electrically proven. #2. Diabetes. #3. Obesity. #4. Female gender. The last three factors are certainly associated with carpal tunnel but she certainly seems to have a demanding job that has aggravated this condition and really the last two years the tasks seem to elicit symptoms on the job and get better when she is not on the job.

Plan: Counseled the patient for surgery, offered her surgery, tentatively on the 20th of December.

Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

NOV 30 2006



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January 12, 2007

VIA FACSIMILE 803-432-9307

Joseph P. Jackson, Jr., M.D.
Camden Orthopaedic Associates
507 Walnut Street
Camden, South Carolina 29020

RE: LaTonya Footman
Chart No.: 13403

Dear Dr. Jackson:

As you will recall, on November 28, 2006, you evaluated Ms. Latonya Footman for bilateral arm symptoms, which Dr. M. David Redmond has substantially attributed to her performance of repetitive activities necessitated by her employment as a food service worker at Fort Jackson. At that time, you: (a) obtained a relatively detailed history relative to her job duties; (b) observed she exhibited "positive arm elevation, Tinel's Phalen's and median nerve compression test" on the right; (c) noted electrodiagnostic studies performed by Dr. Redmond verified bilateral median neuropathy (carpel tunnel syndrome); (d) determined this bilateral median neuropathy was causally related to her performance of the repetitive work activities she described; and (e) recommended surgical intervention.

At this time, I would greatly appreciate your answering the following questions so that the parties to Ms. Footman's pending claim, as well as the South Carolina Workers' Compensation Commission, will fully understand your opinions as to these material issues:

1) Do you believe, to a reasonable degree of medical certainty, that Ms. Footman's bilateral median neuropathy (carpel tunnel syndrome) most probably results from her performance of the repetitive activities incidental to her job as a food service worker and/or their aggravation of preexisting pathology?

Yes  No _____

Joseph P. Jackson, Jr., M.D.
January 12, 2007
Page 2

2) Do you believe, to a reasonable degree of medical certainty, that the nature/degree of her right median neuropathy (carpel tunnel syndrome) warrants surgical intervention at this time?

Yes *JPJ* No

3) Do you believe, to a reasonable degree of medical certainty, that her undergoing this surgical intervention is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by her compensable right upper extremity symptoms?

Yes *JPJ* No

4) Are you currently ready/willing/able to expeditiously perform this surgical procedure (within 10 days or less, provided you receive appropriate authorization from the workers' compensation insurance carrier)?

Yes *JPJ* No

I, Joseph P. Jackson, Jr., M.D., hereby certify that my responses to the above-listed questions represent my opinions, to a reasonable degree of medical certainty, as to each issue.

 Joseph P. Jackson, Jr.
Joseph P. Jackson, Jr., M.D.

 15 JAN 07
Date

At this time, I would greatly appreciate your answering each of the above-listed questions and executing the certification as soon as possible.

Thank you for your assistance.

With kindest regards, I am

Very truly yours,

 Andrew N. Safran
Andrew N. Safran

ANS/jmn

08/13/07 LaTonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam

Problem: Bilateral hand pain. Attorney referral.

S: I saw Ms. Footman in November of 2006 for what appeared to be bilateral carpal tunnel syndrome. She continues to work at Johnson's Food Services and had right carpal tunnel surgery by Dr. Michael Green at Midlands Orthopaedics in March of 2007. She said substantially that her hand is not improved since the surgery and she was told by Dr. Green that it would continue to hurt. Apparently it does but now is accompanied by numbness and tingling in her little and ring finger on both sides, left greater than right. The carpal tunnel symptoms, which she presented with in the past on the left, apparently are not bothering her.

Allergies: None.

Medications: Glucophage and anti-hypertensive.

Previous Surgery: Tubal ligation three years ago.

ROS: Hypertension, diabetes since 1993.

Family History: Mother and father both have diabetes.

Social History: Does not smoke or drink.

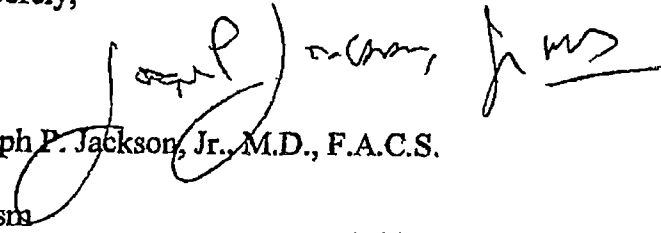
O: BP 120/70. P-64. R-18. Ht 5'4". Wt 185 lbs. Her grip is 40 lbs on the right, operative side. In 2006 it was 55. On the left it is 35 today and it was 38 lbs back in November of 2006. There is no visible atrophy. No fasciculations. Two point discrimination within normal limits. She has a positive elbow flexion test. Negative Tinel's test on the left. Tinel's and elbow flexion test for the ulnar nerve are negative on the right. Two point discrimination is 5 mm. Reflexes in the upper extremities are brisk and symmetrical. Adson's maneuver is negative. Neck is supple. Full ROM. Nontender. Thyroid is not enlarged.

A: 729.5, pain upper extremities, unknown etiology. Patient has some features of cubital tunnel bilaterally. It is not unusual in the course of recovering from a carpal tunnel with the elbow flexed to manifest ulnar nerve symptoms.

08/13/07 LaTonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam Cont'd
Page Two

P: Since the patient is in the Workman's Compensation arena it would be prudent to test her ulnar nerve bilaterally. Until then, the patient should get an anti-flexion splints on both sides and elbow pads. She should see her family doctor to make sure that she has optimal control of her blood sugar. If necessary, I will be glad to see her back here.

Sincerely,


Joseph P. Jackson, Jr., M.D., F.A.C.S.
JPJ/sma



02/01/08 Latonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam

Problem:

S: Mrs. Footman I saw in August of 2007, she had had carpal tunnel surgery by Dr. Green and still had persistent numbness and tingling in her hand. At that visit I felt that she probably had bilateral cubital tunnel as a working diagnosis. Since then she has seen Dr. Green one more time, apparently sent back there by workman's compensation and a repeat nerve conduction study in September of 2007 showed that she had a mild cubital tunnel on the right and actually the nerve conduction velocity across the elbow was abnormal on the left and was about equivalent to what it was on the right. Dr. Redmond's table is a little bit confusing to me but if I am interpreting it correctly, that would be my conclusion. The patient tells me that she wakes up every night with both hands numb and tingling. Patient reminds me that she is a diabetic but we do not have any numbers about her hemoglobin A1C.

Medications: Include Glucophage and an anti-hypertensive.

She has no thyroid problems.

O: The patient appears rather quiet today. Her grip on the right is 22 lbs and by way of comparison in August the grip was 40 lbs and in 2006 it was 55 and that was preoperatively. On the left the baseline grip in 2006 was 38, in August when I initially saw her it was 35 and today it is 38. So I would point out that her effort probably was not consistent on the right and on the left it probably was consistent. BP 120/82. P-88. R-24. Two point discrimination 5 mm throughout. Motor strength is 5/5. Arm elevation test is negative. Bilateral elbow flexion test. Positive on the left. It is a little atypical in that the little finger, ring finger and long finger are tingling. Only the little finger on the right is tingling. No muscle atrophy is present. No fasciculations. Adson's maneuver was within normal limits. Pulses are bounding distally. Skin shows no lesions.

A: Electrical evidence of slowing of both ulnar nerves at the elbow with cubital tunnel diagnose confirmed by Dr Redmond on the right and on the left it looks like the nerve conduction is not normal but maybe does not meet Dr. Redmond's threshold for cubital tunnel.



Discussion: I will not operate on any patient unless they have conservative treatment and my usual practice in my practice is to put the patient in an anti-flexion splint so that the elbow cannot flex more than 45° and put them in an elbow pad. I call this a no-brainer splint because it will help the patient break the habit of flexing the elbow. I noticed that this patient as I sit in the interview has both elbows acutely flexed and that is enough to trigger these symptoms.

P: I told the patient about good ulnar nerve hygiene, the simple trick of putting a pillow between her arms and sleeping with them straight at night if that is the chief complaint. She is having some problems with her thumb when she uses tongs at food service but I do not think that has much to do with the current condition. I pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship.

I will be glad to see the patient after she has had three weeks of full-time splinting of both elbows. She is going to see her family doctor, Dr. Bell, on the 12th and he needs to get a Hb-A1C and a fasting blood sugar and then let me know what the results are. I will be happy to see her in follow-up. At this point, I agree with Dr. Green that she does not need surgery. No patient does unless they have had a trial of conservative therapy in an elective situation. I also pointed out to the patient that diabetes has a lot to do with these conditions.

Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

Addendum: Nerve conduction across the elbow on the right was 45 seconds and on the left 51 seconds, and usually 55 mm per second is considered normal.

cc: Andrew Safran, Attorney at Law

FEB 05 2008

05/15/08 Latonya Footman DOB:

#13403 Orthopaedic Exam

Problem: bilateral ulnar nerve symptoms and median nerve symptoms.

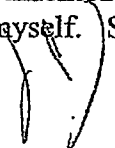
S: Mrs. Footman is now 37 years of age, is a diabetic on Glucophage and continues to work with the Johnson Food Services, who does food services at Ft. Jackson. She has to do a lot of preparative work, opening cans, cutting, cooking, etc. She complains of some tingling in the ulnar three digits of the left hand when she drives and it wakes her up from sleep at night.

I asked her her goals in seeing me and she said that she is tired of coming to see doctors and she wants to be done with all of this. I reviewed Dr. Green's note and I must take issue with one thing that he said. He stated that the patient had had surgery on both hands. She has not. She had a right carpal tunnel release. Subsequent to that she began to develop ulnar nerve symptoms, which are not unusual after carpal tunnel surgery and it happens about 20% of the time so I think that there is direct causation to a workman's compensation situation. I saw her for the first time in 2006, at which time she had abnormal sensory latencies, i.e. 5.35 on the right and 4.35 on the left. Normal being 3.6. Carpal tunnel surgery was recommended by Dr. Redmond, who works with Midlands Orthopaedics. I made the observation in 2006 that the patient had a demanding job that aggravated her condition and certainly substantially contributed to it and that when she had a heavy workload the symptoms were worse and then when she was not at work the symptoms improved. That is a pretty good cause and effect relationship.

Today the patient complains mainly of symptoms in the upper extremity on the right. On the left she says that occasionally her shoulder hurts her. I told her that that would really muddy the waters on trying to settle her claim. Dr. Green had recommended in one of his last notes to use an anti-flexion splint on the right and I thought that would be prudent but the Workman's Compensation has not seen fit to provide that splinting.

O: Patient's grip is 35 on the right; 34 on the left. Two point discrimination is 5 mm, 4-5 mm in all ten digits. There is no visible atrophy. Good strength of testing the ulnar and median innervated intrinsic. Negative elbow flexion test. Negative arm elevation test. Negative Tinel's, Phalen's and Tinel's sign at the wrist. Negative elbow flexion test at the elbow.

A: #1. The patient has had a carpal tunnel surgery on the right with some residual symptoms. I think that a 5% impairment per the provisions of Table 16-15 would be appropriate. #2. She has documented left carpal tunnel symptoms attributed to work by Dr. Green, Dr. Redmond and myself. She does not desire surgery on that and I think that



05/15/08 Latonya Footman DOB: #
Page Two

Orthopaedic Exam Cont'd

she would be entitled to a 5% impairment for the dysesthesias waking her from sleep at night, etc. Again, this is per the provisions of Table 16-15. #3. The patient has a cubital tunnel syndrome on the right. This has been documented by Dr. Green, Dr. Redmond and myself. Workman's Compensation has not seen fit to fund the usual conservative treatment, which would be an anti-flexion splint. I think that it would be prudent to award her a 5% upper extremity impairment for impairment of the ulnar nerve documented objectively by three examiners.

P: No follow-up appointment was made. No medicines were dispensed. Per the patient's request no surgery is entertained. This would be a 15% impairment of the upper extremities, which is a 9% impairment of the entire person.

Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

MAY 19 2008

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May 22, 2008

VIA FACSIMILE 803-432-9307

Joseph P. Jackson, Jr., M.D.
Camden Orthopaedic Associates
507 Walnut Street
Camden, South Carolina 29020

RE: Latonya Footman
Chart No.: 13403

Dear Dr. Jackson:

I have received/reviewed the report stemming from your May 15, 2008 reevaluation of Ms. Latonya Footman. Based upon this report, it is my understanding that while you believe her right cubital tunnel symptoms warrant, at minimum, conservative treatment (splinting) and potential consideration of surgical intervention (if they do not satisfactorily respond to conservative care), Ms. Footman indicated she "want[ed] to be done" with the workers' compensation process.

In this regard, it is my impression you recognized certain factors that have fueled her frustration, including: (a) mistaken references to multiple surgeries for both carpal and cubital tunnel components; and (b) no authorized treatment for her cubital tunnel component (despite medical findings/recommendations which justify conservative care).

After reviewing the contents of your report with Ms. Footman, she confirmed: (a) her desire to receive conservative care, while deferring any consideration of surgery until she has exhausted other treatment options; as well as (b) her frustration with the rather limited/intermittent treatment she has been authorized to receive for her injuries. Frankly, her continued symptoms and the lack of any treatment for her cubital tunnel syndrome (a concern you share) resulted in her acting out of frustration. However, Ms. Footman now understands she needs to approach the situation rationally and desires treatment.

Given her willingness to proceed with conservative treatment, I would greatly appreciate your answering the following questions so that the parties to her pending claim, as well as the South Carolina Workers' Compensation Commission, will fully understand your opinions as to these material issues:

Joseph P. Jackson, Jr., M.D.
May 22, 2008
Page 2

1) Do you believe, to a reasonable degree of medical certainty, that both the performance of repetitive activities and the consequences of carpal tunnel syndrome (including positioning of the arm necessitated by this condition) are known causes of cubital tunnel syndrome?

Yes JK No _____

2) Based on your extensive experience relative to the diagnosis and treatment of cubital tunnel syndrome, do you believe, to a reasonable degree of medical certainty, that the results of Ms. Footman's electrodiagnostic testing reveal abnormalities across the right elbow and, in conjunction with her clinical findings, are reflective of cubital tunnel syndrome?

Yes JK No _____

3) Do you believe, to a reasonable degree of medical certainty, that in view of Ms. Footman's particular history (performance of repetitive job duties, as well as modified use/positioning of her arms due to symptoms stemming from work related bilateral carpal tunnel syndrome), her right cubital tunnel syndrome most probably results from these repetitive job activities and/or the consequences of her previously acknowledged work related carpal tunnel syndrome?

Yes JK No _____

4) Based upon your physical examination of Ms. Footman, has she undergone surgical intervention for either her cubital tunnel syndrome or left carpal tunnel syndrome?

Yes _____ No JK

5) Based upon Ms. Footman's willingness to proceed with care, do you believe, to a reasonable degree of medical certainty, that she requires treatment for her causally related cubital tunnel syndrome, including a period of splinting and potential surgical intervention (in the event her symptoms do not satisfactorily respond to conservative care)?

Yes JK No _____

Joseph P. Jackson, Jr., M.D.
May 22, 2008
Page 3

6) Do you believe, to a reasonable degree of medical certainty, that her receipt of these medical modalities is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of her work related bilateral arm injuries?

Yes JP No

7) Given the nature/duration of her bilateral arm symptoms, do you believe, to a reasonable degree of medical certainty, that Ms. Footman is most probably limited to the performance of restricted duty work activities (no repetitive use of arms; no lifting or exertion of force in excess of 20 pounds)?

Yes J No

I, Joseph P. Jackson, Jr., M.D., hereby certify that my responses to the above-listed questions represent my opinions, to a reasonable degree of medical certainty, as to each issue.

Joseph P. Jackson, Jr., M.D. 23 May 08
Joseph P. Jackson, Jr., M.D. Date

At this time, I would greatly appreciate your answering each of the above-listed questions and executing the certification as soon as possible.

Thank you for your assistance.

With kindest regards, I am

Very truly yours,

Andrew N. Safran
Andrew N. Safran

ANS/as

**Camden Orthopaedic Associates
507 Walnut Street
Camden, SC 29020**

Joseph P. Jackson, Jr., M.D., F.A.C.S.

Telephone (803) 432-9300

04/20/11 Latonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam

Independent Medical Evaluation

Problem: Upcoming workman's compensation hearing

Mrs. Footman is an established patient who is now 40. I completed a rating on her in May of 2008 giving her a rating of 5% for a right carpal tunnel that had surgery, a left carpal tunnel that had not had surgery for 5%, and right cubital tunnel. The patient had a left carpal tunnel release by Dr. Green on 11/9/10 but is now having tingling in the little and one half of the ring finger on both hands, waking her up from sleep at night, interfering with her rest and also at work where she does repetitive activities. My review of my records and previous electrical studies have documented slowing of the left ulnar nerve conduction around the elbow as far back as 2007.

Allergies: NKDA

Medications: Metformin, Lisinopril, Omega 3, Calcium, Multi Vitamins, Amaryl, Pravastatin.

Previous Surgery: Bilateral carpal tunnel surgeries.

ROS: Has been a diabetic for several years, hypercholesterolemia.

Family History: Diabetes in her mother; also mom has glaucoma. She is alive.

Social History: Does not smoke.

Objective: BP 100/60. P-78. R-22. Ht 5'5". Wt 180 lbs. Grip is 60 on the right; 30 on the left. Two point discrimination is 5 mm for all ten digits. No atrophy. Well-healed bilateral carpal tunnel incisions. No thenar atrophy. Excellent strength to FDP, first dorsal interosseous and abductor digiti quinti bilaterally. Elbow flexion test is negative.

**04/20/11 Latonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam Continued
Page Two**

Electrical studies show evidence of a right cubital tunnel, slowing of the left ulnar nerve around the elbow.

Assessment: Carpal tunnel surgery bilaterally with mild residuals and an un-operated right cubital tunnel.

Plan: Impairment rating would be the same as my rating in 2009 with a 15% impairment of the upper extremity; 9% impairment of the entire person. I think that since the patient is now having symptoms on the left it would be fair to award her a 5% rating for the left ulnar nerve of the elbow, making that a 20% impairment of the upper extremities add arithmetically which equates to a 12% person impairment. This encounter was purely administrative, does not establish an intention to treat or establish doctor/patient relationship other than administratively. The report was dictated in the presence of the patient for completeness and accuracy. Note that I have no additional restrictions on the patient's activity that I have placed in the past, i.e. lifting no more than 25 lbs, lifting no more than 12 pieces of chicken on a tray, only opening 10 large cans per day.

Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

APR 27 2011

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May 25, 2011

VIA FACSIMILE

Joseph P. Jackson, Jr., M.D., F.A.C.S
Camden Orthopaedic Associates
507 Walnut Street
Camden, South Carolina 29020

RE: LaTonya Footman
Chart No.: 13403

Dear Dr. Jackson:

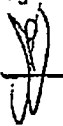
Upon reevaluating Ms. LaTonya Footman on April 20, 2011, you noted: (a) her most recent (October 11, 2010) electrodiagnostic studies confirmed persistent evidence of bilateral cubital tunnel syndrome; (b) Ms. Footman had now undergone bilateral carpal tunnel releases to address electrodiagnostically-proven median neuropathy; and (c) she had sustained "a 20% impairment of the upper extremities" secondary to these conditions.

In this regard, per questionnaire responses dated May 23, 2008, you verified: (a) "both the performance of repetitive activities and the consequences of carpal tunnel syndrome (including position of the arm necessitated by this condition) are known causes of cubital tunnel syndrome"; (b) Ms. Footman's right cubital tunnel syndrome most probably resulted from her prior performance of repetitive job activities and/or the consequences of her previously acknowledged work related carpal tunnel syndrome; and (c) her need for treatment of this condition.

At this time, I would greatly appreciate your answering the following questions so that the parties to Ms. Footman's pending workers' compensation claim, as well as the South Carolina Workers' Compensation Commission, will fully understand your opinions as to these material issues:

1) Do you believe, to a reasonable degree of medical certainty, that the bilateral cubital tunnel syndrome identified by Ms. Footman's most recent nerve conduction studies most probably results from her prior performance of repetitive activities and the consequences of her acknowledged work related carpal tunnel syndrome?

Yes



No

Joseph P. Jackson, Jr., M.D., F.A.C.S.
May 25, 2011
Page 2

2) Do you believe, to a reasonable degree of medical certainty, that she has most probably experienced 10% permanent physical impairments to each arm as a result of her causally related bilateral carpal tunnel and cubital tunnel syndromes?

Yes *JP* No

3) Do you believe, to a reasonable degree of medical certainty, that Ms. Footman will most probably require, at minimum, conservative treatment of her bilateral cubital tunnel syndrome (splinting, medications, office visits, injections, etc.) in the foreseeable future?

Yes *JP* No

4) Do you believe, to a reasonable degree of medical certainty, that her receipt of these conservative treatment modalities is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of her compensable injuries?

Yes *JP* No

I, Joseph P. Jackson, Jr., M.D., F.A.C.S., hereby certify that my responses to the above-listed questions represent my opinions, to a reasonable degree of medical certainty, as to each issue.

 Joseph P. Jackson, Jr.
Joseph P. Jackson, Jr., M.D., F.A.C.S.

 5 May 11
Date

At this time, I would greatly appreciate your answering each of the above-listed questions and executing the certification as soon as possible.

Thank you for your assistance.

With kindest regards, I am

Very truly yours,

 Andrew N. Safran
Andrew N. Safran

ANS/rmb

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

NEW PATIENT ENCOUNTER

NAME: FREEMAN, LATONYA
DATE: 09/21/2006

ACCOUNT #: 2000354
DOB: 12/23/1970

HISTORY OF PRESENT ILLNESS: Latonya is referred by Dr. Bell, her family physician by way of Dr. Redmond who did EMGs at Dr. Bell's request. Gary thought that she probably had carpal tunnel syndrome. It was confirmed by Dr. Redmond, and he has referred her back for consideration of treatment.

Latonya is a 35-year-old African-American woman who works at Fort Jackson in food services. She feels like she loses her grip. It gets numb when holding objects, and it certainly bothers her in the mornings with difficulty zipping and buttoning. She doesn't have any neck pain or shoulder pain. Dr. Redmond's EMGs showed bilateral carpal tunnel syndrome with moderate severity, right worse than left. She has no signs of diabetic neuropathy.

PAST MEDICAL HISTORY:

Allergies: None
Medications: Diabetes and blood pressure meds
Surgeries/Hospitalizations: None
Illnesses: Diabetes, hypertension

SOCIAL HISTORY: She is single with children, no tobacco use, no alcohol. Employed as a cook at the Fort.

FAMILY HISTORY: Positive for diabetes.

REVIEW OF SYSTEMS: Weight: 180 pounds, Height: 5 feet 5 inches
Positive for a frequent cough.

PHYSICAL EXAM: The patient has a negative Tinels, but positive Phalens in less than 20 seconds on the right, and about 40 seconds on the left.

DIAGNOSIS: BILATERAL CARPAL TUNNEL SYNDROME, RIGHT WORSE THAN LEFT.

PLAN: The patient is scheduled for carpal tunnel release at MOPA Surgery Center on 10/10/06.

NAME: FREEMAN, LATONYA
DATE: 09/21/2006

ACCOUNT #: 2000354
DOB: 12/23/1970

Ross D. Lynch, M.D.
RDL / hf
Cc: Gary B. Bell, MD
REV 0

This document was signed electronically by:
Ross D. Lynch, M.D.
On: 09/29/2006 14:56:43

LaTonya C Footman

2000354

9/6/2006 2:47:21 PM

MIDLANDS ORTHOPAEDICS, P.A.
1910 BLANDING STREET
COLUMBIA, SC 29201
TELEPHONE 803-256-4107 EXT 6213 FAX 803-988-8115
PHYSICAL MEDICINE SERVICE
ELECTROMYOGRAPHY REPORT

Patient: LaTonya C Footman
 MOFILE#: 2000354
 Sex: Female
 Date of Birth: 12/23/1970
 Age: 35 Years 8 Months
 Referring Phy.: Gary Bell, M.D.
 Technologist: Kathleen Ernette, R NCS T
 Reason For EMG: NUMBNESS AND TINGLING BOTH HANDS

Sensory NCS

Nerve	Sites	Rec. Site	Amp. 2-3 μ V	Latency ms	Dist. cm	Vel. m/s
R MEDIAN	1. wrist	index	9.5	5.35	14	31.1
L MEDIAN	1. wrist	index	15.9	4.35	14	38.9
R ULNAR	1. wrist	small	11.8	3.55	14	60.9
L ULNAR	1. wrist	small	13.7	3.35	14	49.1

NR < 3.6
NR < 3.6

Motor NCS

Nerve	Sites	Rec. Site	Amp mV	Lat. ms	Dist. cm	Vel. m/s
R MEDIAN - APB	1. Wrist	APB	13.6	5.05	8	
	2. Elbow		13.3	9.45	20	45.5
L MEDIAN - APB	1. Wrist	APB	15.6	4.55	8	
R ULNAR - ADM	1. Wrist	ADM	11.2	2.45	7	
	2. B. Elbow		9.7	7.05	23	50.0
L ULNAR - ADM	1. Wrist	ADM	11.1	2.40	7	

NR < 4.3
NR < 4.3

EMG Summary Table									
	Spontaneous					MUAP			Recruitment
	LA	Fib	PSW	Fasc	CRD	Amp	Dur.	PPP	Pattern
R. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NI Full
R. OPP POLL	N	None	None	None	None	N	N	N	NI Full
R. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NI Full
R. BICEPS	N	None	None	None	None	N	N	N	NI Full
R. TRICEPS	N	None	None	None	None	N	N	N	NI Full
L. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NI Full
L. OPP POLL	N	None	None	None	None	N	N	N	NI Full
L. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NI Full
L. BICEPS	N	None	None	None	None	N	N	N	NI Full
L. TRICEPS	N	None	None	None	None	N	N	N	NI Full

LaTonya C Footman

2000354

9/6/2006 2:47:21 PM

IMPRESSION: Bilateral Carpal Tunnel Syndrome, moderate in severity, with the right side worse than the left. She has a strenuous job in food service at Ft. Jackson, and it seems reasonable to believe that this would be a significant contributing factor in the etiology.

There is no sign of diabetic polyneuropathy.

RECOMMENDATION: I think she will need CT release, particularly on the right. If we can be of further assistance, please feel free to ask.

Thank you for requesting this study.

M. DAVID REDMOND, MD

**MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201**

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA
DATE: 01/22/2007

ACCOUNT: 2000354
DOB: 12/23/1970

CHIEF COMPLAINT: Bilateral hand numbness and tingling.

HISTORY OF PRESENT ILLNESS: Ms. Footman is a 35 year old right hand dominant female I am seeing today for evaluation of bilateral hand numbness and tingling. She says these symptoms started back in September. She actually saw Dr. Lynch on 09/21/06 with carpal tunnel syndrome, right worse than left. She had nerve studies which revealed moderate severity. Apparently, it was Workers' Compensation, a case that was finally approved. Dr. Lynch does not participate in Workers' Compensation. Therefore, I am seeing the patient today for evaluation and management of the same.

She says she wakes up at nighttime, 3 out of 7 nights per week, for the last 3-4 months. Most of the numbness and tingling is to the middle and index fingers. Sometimes to the ring. It bothers her when she drives. It bothers her when she is on the phone or when she does her hair.

IMPRESSION: BILATERAL MODERATE CARPAL TUNNEL SYNDROMES, RIGHT WORSE THAN LEFT.

PLAN: The patient is symptomatic enough that she may want to give some consideration to a carpal tunnel release. She understands and has been through this. It has been approved by Workers' Compensation. Will go ahead and try to get something set up some time in the near future.

Michael S. Green, M.D.

MSG / sjb

cc:

REV 0

This document was signed electronically by:

Michael S. Green, M.D.

On: 01/24/2007 09:30:29

MIDLANDS ORTHOPAEDICS, PA
1930 Blanding Street
Columbia, SC 29201

OPERATIVE REPORT

NAME: FOOTMAN, LATONYA.
DATE: 03/01/2007

ACCOUNT #: 2000354
DOB: 12/23/1970

DATE OF SURGERY: MARCH 1, 2007

SURGEON: MICHAEL S. GREEN, MD

FIRST ASSISTANT: PAM CLAYTOR, RN FA

PREOPERATIVE DIAGNOSIS (ES): RIGHT CARPAL TUNNEL SYNDROME.

POSTOPERATIVE DIAGNOSIS (ES): RIGHT CARPAL TUNNEL SYNDROME.

PROCEDURE: RIGHT CARPAL TUNNEL RELEASE.

COMPLICATIONS: NONE

ANESTHESIA: REGIONAL

ESTIMATED BLOOD LOSS: MINIMAL

DRESSING: SEMI-BULKY COMPRESSIVE DRESSING W/SHORT ARM CAST

CONDITION: STABLE

DESCRIPTION OF PROCEDURE: The patient was taken to the operative suite and placed on the operating table in supine position after regional block was placed in the holding room. The right upper extremity was prepped with Hibiclens, painted with Hibistat and draped in the usual sterile fashion. The right upper extremity was elevated. An Ace wrap was used for exsanguination. The tourniquet was inflated to 250 mmHg.

A 1.5 cm incision was made in the mid proximal palmar area in line with the radial border of the ring finger. This was taken down through the subcutaneous tissue. Hemostasis was accomplished by electrocautery. Blunt dissection and sharp dissection

NAME: FOOTMAN, LATONYA
DATE: 03/01/2007

ACCOUNT #: 2000354
DOB: 12/23/1970

was carried down to the palmar fascia. The palmar fascia was divided sharply. The deep transverse carpal ligament was identified. The distal border was identified and divided. A Freer elevator was placed beneath the ligament to free up the adhesions at the synovium and median nerve from the undersurface of the ligament. Then under direct visualization, the deep transverse carpal ligament was divided in its entirety all the way from distal to proximal. Once it was divided, the median nerve was inspected. The branches to the hypothenar eminence were identified as well. They had been completely decompressed.

The skin and subcutaneous tissue were then reapproximated in one layer utilizing #4-0 Prolene in a horizontal mattress stitch fashion.

Meticulous hemostasis was accomplished by electrocautery. The wound was then closed with #4-0 Prolene in a horizontal mattress stitch fashion. 4x4s, semi-bulky compressive dressing and a short arm cast were applied. The tourniquet was released. Total tourniquet time was less than 30 minutes. The patient's fingers were pink and warm after the tourniquet was released. The patient was taken from the operating room to the recovery room in satisfactory condition.

Michael S. Green, M.D.

On: 03/06/2007 09:02:54

MSG / lkh

cc:

REV 0

This document was signed electronically by:

Michael S. Green, M.D.

On: 03/06/2007 09:02:54

MIDLANDS ORTHOPAEDICS, PA

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Voice Job ID# 341983

Page 2 of 2

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA
DATE: 03/12/2007

ACCOUNT: 2000354
DOB: 12/23/1970

CLINICAL STATUS: I am seeing Latonya in follow-up. She is doing well. The pain at nighttime is better. Paresthesias are better.

DIAGNOSIS: STATUS POST RIGHT CARPAL TUNNEL RELEASE.

PLAN: Will go ahead and have her work on scar massage, work on strengthening. Splint at nighttime for 2 weeks.

RETURN APPOINTMENT: One month.

Michael S. Green, M.D.
MSG / sjb
cc:
REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 03/20/2007 10:29:19

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA
DATE: 04/09/2007

ACCOUNT: 2000354
DOB: 12/23/1970

CLINICAL STATUS: I am seeing Ms. Footman in follow-up. Her wounds look good. Little tender at the scar as is to be expected. Strength is returning. Night pain is better.

DIAGNOSIS: STATUS POST RIGHT CARPAL TUNNEL RELEASE.

PLAN: Will go ahead and have her continue working on scar massage and strengthening. She does not need to wear a splint.

RETURN APPOINTMENT: PRN basis in case she has any further problems. She should see a big difference in her strength and tenderness over the next 6 weeks.

Michael S. Green, M.D.
MSG / sjb
cc:
REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 04/26/2007 15:13:52

799-1000

Oct. 3. 2007 1:40PM

MWS.AR KJL 12:19:34 03 OCT 2007

4m08242007 DICTAPHONE Dr 8 Recorded: 08312007 by 0 DICTAPHONE 0
MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

Om

NEW PATIENT ENCOUNTER

NAME: FOOTMAN, LATONYA C ACCOUNT #: 2000354
DATE: 08/24/2007 DOB: 12/23/1970

HISTORY OF PRESENT ILLNESS: I am seeing the patient for evaluation of both hands. She says that she has shooting pains through her wrists but it seems that she has numbness and tingling to her right ring finger and small finger as well as her left ring finger and small finger. She complains of pain that goes up her arm, even almost up to her shoulder on the left side. She does not relate any new injury, any new changes except for these particular hands. She says that she has been doing a lot of heavy carrying and lifting activity at work.

PHYSICAL EXAMINATION: Reveals no Tinel's at the elbow. Really no Tinel's at the wrists. I get two-point discrimination is normal. She has no intrinsic weakness. She has full ROM of her fingers, her wrist and her elbow. I see no intrinsic wasting.

IMPRESSION: BILATERAL HAND PAIN.

PLAN: At this point I would recommend EMG/NCS of both upper extremities to evaluate her ulnar nerve function. She is a diabetic therefore I have some concern that this might really just be a diabetic neuropathy of some type. I will see her back after the nerve studies. She can go ahead and work regular work activities.

Michael S. Green, M.D.
MSG / lkh47
Cc:

REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 08/31/2007 15:41:39
Report id: 371643

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 COLUMBIA, SC 29201
 TELEPHONE 803-256-4107 EXT 6213 FAX 803-988-8115
 PHYSICAL MEDICINE SERVICE
 ELECTROMYOGRAPHY REPORT

Patient: Latonya C Footman
 MOFILE #: 2000354
 Sex: Female
 Date of Birth: 12/23/1970
 Age: 36 Years 8 Months
 Referring Phy: Michael S. Green, M.D.
 Technologist: Kathleen Ernette, R NCS T
 Notes:

Numbness and tingling bilateral small fingers. Right CTR 3/1/2007

Sensory NCS

Nerve / Sites	Rec. Site	Amp. 1-2 μ V	Lat. 2 ms	Dist cm
R MEDIAN				
1. wrist	index	18.5	4.05	14
L MEDIAN				
1. wrist	index	17.7	4.05	14
R ULNAR				
1. wrist	small	22.7	2.95	14
L ULNAR				
1. wrist	small	13.7	2.90	14

Motor NCS

Nerve / Sites	Rec. Site	Amp. mV	Lat. ms	Dist. cm	Vel. m/s
R MEDIAN - APB					
1. Wrist	APB	11.0	4.05	8	
L MEDIAN - APB					
1. Wrist	APB	11.7	4.20	8	
R ULNAR - ADM					
1. Wrist	ADM	10.2	2.60	7	
2. B. Elbow		9.6	6.45	22.5	58.4
3. A. Elbow		8.5	8.90	11	44.9
L ULNAR - ADM					
1. Wrist	ADM	10.3	2.60	7	
2. B. Elbow		10.3	6.50	22.5	57.7
3. A. Elbow		9.6	8.85	12	51.1
R ULNAR - FDI					
1. Wrist	FDI	8.2	2.85		
2. B. Elbow		6.9	7.20	22.5	51.7
3. A. Elbow		6.3	9.80	11	42.3
L ULNAR - FDI					

Nerve / Sites	Rec. Site	Amp. mV	Lat. ms	Dist. cm	Vel. m/s
1. Wrist	FDI	14.3	3.10		
2. B.Elbow		14.0	7.40	22.5	52.3
3. A.Elbow		13.6	9.65	12.5	55.6

EMG Summary Table									
	Spontaneous					MUAP			Recruitment
	IA	Fib	PSW	Fasc	CRD	Amp	Dur.	PPP	Pattern
R. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
R. OPP POLL	N	None	None	None	None	N	N	N	NL Full
R. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
R. BICEPS	N	None	None	None	None	N	N	N	NL Full
R. TRICEPS	N	None	None	None	None	N	N	N	NL Full
R. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
R. ABD DIG MIN (UL)	N	None	None	None	None	N	N	N	NL Full
R. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full
L. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
L. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
L. OPP POLL	N	None	None	None	None	N	N	N	NL Full
L. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
L. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full

IMPRESSION: 1) Mild right Cubital Tunnel Syndrome.

2) Mild left Carpal Tunnel Syndrome.

3) Improved right median nerve conduction, s/p CT release.

4) No suggestion of a generalized polyneuropathy, and no sign of a left Cubital Tunnel Syndrome. There is no sign of a left or right cervical radiculopathy.

Thank you for requesting this study.

M. DAVID REDMOND, M.D

Jan. 16. 2008 12:07PM

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

No. 9303 P. 2/2

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA C ACCOUNT: 2000354
DATE: 01/14/2008 DOB: 12/23/1970

CLINICAL STATUS: I am seeing this patient in follow-up. Her nerve conduction studies revealed a very mild right carpal tunnel syndrome and mild left carpal tunnel syndrome. Her right carpal tunnel syndrome that has been released in the past has no improved numbers. It did not show any evidence of significant diabetic neuropathy.

IMPRESSION:

1. MILD RIGHT CUBITAL TUNNEL SYNDROME.
2. MILD LEFT CARPAL TUNNEL SYNDROME.

PLAN: At this point we went over the diagnosis in detail with her. She understands. At this point no intervention is necessary from a surgical standpoint for either the carpal tunnel or cubital tunnel syndrome. If the cubital tunnel syndrome continues to be symptomatic we may want to put her into a night resting splint at 45 degrees. I would repeat her nerve studies in 4 to 6 months if in fact her symptoms persist or get worse.

Michael S. Green, M.D.
MSG / kd77
cc:

REV 0
Report Id: 405802

MIDLANDS ORTHOPAEDICS, PA
1910 BLANDING STREET
COLUMBIA, SC 29201

ADDENDUM/NOTE TO CHART

NAME: FOOTMAN, LATONYA C

ACCOUNT: 2000354

DATE: 02/15/2008

DOB: 12/23/1970

Ms. LaTonya Footman is a patient of mine who has been followed by me for work-related carpal tunnel syndrome and cubital tunnel syndrome. The patient underwent a procedure for both of these conditions, one on the right upper extremity and one on the left. She has reached maximum medical improvement and is released for these problems at this time.

According to the AMA Guidelines for the Evaluation of Permanent Impairment, 5th edition, the patient has 2% impairment to the right upper extremity and 2% impairment to the left upper extremity.

I do not foresee any further need for treatment for these particular conditions in the future.

Michael S. Green, M.D.
MSG/lbp

REV0

RECEIVED

FEB 18 2008

BY: _____

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA C
DATE: 06/27/2008

ACCOUNT: 2000354
DOB: 12/23/1970

CLINICAL STATUS: I am seeing the patient back in follow-up. She continues to have some cubital tunnel type symptoms on her right side as well as a left carpal tunnel type symptoms. Has really not gotten better from when I saw her in January.

PHYSICAL EXAMINATION: She still has relatively normal two-point discrimination of the intrinsic muscles. Positive Tinel's. Otherwise, no significant changes.

IMPRESSION:

1. MILD LEFT CARPAL TUNNEL SYNDROME.
2. MILD RIGHT CUBITAL TUNNEL SYNDROME.

PLAN: At this point, we will go ahead and get her into a night 45-60 degree extension splint for sleeping for her right cubital tunnel. For her left wrist, we will go ahead and inject her carpal canal with ½ cc Celestone and Xylocaine. Have put her on a Sterapred pak for her cubital tunnel syndrome.

Will see her back in 4-6 weeks and see how she is doing.

Michael S. Green, M.D.
MSG / sjb33
cc:
REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 07/01/2008 19:30:57

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA C
DATE: 08/11/2008

ACCOUNT: 2000354
DOB: 12/23/1970

CLINICAL STATUS: I am seeing the patient in follow-up. Her carpal tunnel injection helped for a while, certainly made some improvement. The splint helped her cubital tunnel syndrome a lot. She is not symptomatic enough to consider a carpal tunnel release yet. Therefore, will leave well enough alone.

DIAGNOSIS(ES):

1. IMPROVED RIGHT MILD CUBITAL TUNNEL SYNDROME.
2. MILDLY IMPROVEMENT, LEFT CARPAL TUNNEL SYNDROME.

PLAN: At this point, we will go ahead and release her. She is not ready for any surgical procedure. She has improved enough to leave well enough alone. She is discharged from the office.

Michael S. Green, M.D.
MSG / sjb33
cc:
REV 0

Report Date: May 13, 2009 Patient: Footman, Latonya C DOS: 04/24/09

Detailed Follow up Exam

NAME: Footman, Latonya
 DATE: 03/06/09
 EMPLOYER: Johnson Food

ACCOUNT: 2000354
 DOB: 12/23/1970 AGE: 38 years old
 OCCUPATION: No data for occupation

CC: BILATERAL HANDS, left is worse than right

DATE OF INJURY/ONSET/SURGERY: 2008

HPI: Patient states that she is not doing well, pain has increased since last visit. Numbness in much more in the left hand. Patient has been trying to do her daily tasks at work, but it has been difficult with what she is required to do with her hands. Patient works in the kitchen area and the constant motion, with stirring and pulling, lifting, carrying, has increased her pain and has made it difficult to complete the tasks. Patient did have an instance where she was carrying a heavy sheet pan with meat on it and her hand gave out, so she had to stop what she was doing at that moment. Patient is concerned that she has not gotten much better and the pain is still there. Patient mentions that she is still having night waking with her left side and it will feel like it is "vibrating" around her fingers.

Date of last visit: 08/11/08

Since the last visit the pain is: () Better (X) Worse () Same () N/A

On a scale of 0-10 (10 is the worst), the patient reports that the pain is: 5

The patient describes the quality of pain as: () N/A
 (X) Sharp (X) Throbbing
 () Dull () Aching
 () Stabbing () Burning

The pain is: () Constant (X) Intermittent () N/A

The patient reports that they are taking NONE (medication) for the condition.

The patient reports treatment since last visit:

Treatment	Did it help?	
Anti-inflammatory?	() Yes	() No
Narcotics?	() Yes	() No
Brace/Cast	() Yes	() No
Physical/Occupational Therapist	() Yes	() No
Home Exercise Program	() Yes	() No
Injection at last visit: short-term	(X) Yes	() No
Injection at last visit: long-term	() Yes	() No
Surgery since last visit	() Yes	() No

each injection helped her may be for about a month or possibly two months.

ALLERGIES: No Known Drug Allergies

CURRENT MEDICATIONS: Calcium

Lisinopril
 Metformin Hydrochloride
 Vitamins

PHYSICAL EXAM:

Vital Signs: No data for Vitals

Examination reveals full range of motion of bilateral hand and wrist and elbow. She has two point discrimination of five to 6 mm to the ring finger and middle finger of her left hand. A negative Tinel's is present. No thenar or intrinsic weakness is noted. Phalen's test is positive.

Report Date: May 13, 2009 Patient: Footman, Latonya C DOS: 04/24/09

RADIOGRAPHS:

PROCEDURE:

ASSESSMENT: -Left carpal tunnel syndrome
-Right cubital tunnel syndrome
-Status post right carpal tunnel release

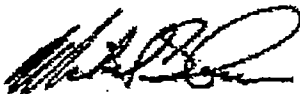
PLAN: The patient is been symptomatic for extended period of time. She's gotten worse since the last time he saw her. Her corticosteroid injection was not helpful in the long run. I would repeat her nerve settings of both the right arm and left to evaluate her right cubital tunnel syndrome and Left carpal tunnel syndrome. Return appointment after nerve studies

PRESCRIPTIONS: No data for Prescription

PRE-EXAMINATION:

WORK STATUS:

(X) Full Time () Part Time () Restrictions () Out of Work () Non-Applicable
she can work full work activities with no restrictions.



Micheal S. Green, M.D.

Report Date: May 13, 2009 Patient: Footman, Latonya C DOS: 04/24/09

TELEPHONE 803-256-4107 EXT 6213 FAX 803-988-8115
 PHYSICAL MEDICINE SERVICE
 ELECTROMYOGRAPHY REPORT

Patient: Latonya C Footman
 MOFILE #: 2000354
 Sex: Female
 Date of Birth: 12/23/1970
 Age: 38 Years 3 Months
 Referring Phy: Michael S. Green, MD
 Date of Service: 3-26-09
 Technologist: Lynn Williams, R.NCS.T
 Notes: Recheck right cubital tunnel and left carpal tunnel syndrome

Sensory NCS

Nerve / Sites	Rec. Site	Amp. 2-3 μ V	Lat. 2 ms	Dist cm
L MEDIAN				
1. wrist	index	23.3	4.65	14
R MEDIAN				
1. wrist	index	32.3	3.90	14
L ULNAR				
1. wrist	small	30.8	3.05	14
R ULNAR				
1. wrist	small	19.0	3.05	14

Motor NCS

Nerve / Sites	Rec. Site	Amp. mV	Lat. ms	Dist. cm	Vel. m/s
L MEDIAN - APB					
1. Wrist	APB	9.6	4.75	8	
R MEDIAN - APB					
1. Wrist	APB	8.6	4.10	8	
L ULNAR - ADM					
1. Wrist	ADM	9.3	2.30	7	
R ULNAR - ADM					
1. Wrist	ADM	8.4	2.45	7	
2. B.Elbow		7.4	6.05	20.9	58.1
3. A.Elbow		7.3	8.75	12	44.4
R ULNAR - FDI					
1. Wrist	FDI	5.7	4.00	7	
2. B.Elbow		5.1	7.75	20.9	55.7
3. A.Elbow		5.0	9.85	12	57.1

Report Date: May 13, 2009 Patient: Footman, Latonya C DOS: 04/24/09

EMG Summary Table									
	Spontaneous					MUAP			Recruitment
	IA	Fib	PSW	Fasc	CRD	Amp	Dur.	PPP	Pattern
L. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
L. OPP POLL	N	None	None	None	None	N	N	N	NL Full
L. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
L. BICEPS	N	None	None	None	None	N	N	N	NL Full
L. TRICEPS	N	None	None	None	None	N	N	N	NL Full
R. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full
R. FLEX DIG PROF IV	N	None	None	None	None	N	N	N	NL Full
R. ABD DIG MIN (UL)	N	None	None	None	None	N	N	N	NL Full
R. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
R. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
R. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full

IMPRESSION: 1) Slightly improved right median nerve conduction compared to previous study in 2007.

- 2) Mild Cubital Tunnel Syndrome, with an identical result on one of our two ulnar motor studies, compared to 2007. A second study today demonstrated improvement. No denervation was seen in ulnar innervated muscles.
- 3) Moderate left Carpal Tunnel Syndrome, with worsening compared to the previous study in 2007.
- 4) No suggestion of diabetic polyneuropathy.

Thank you for requesting this study.



M. David Redmond, M.D.

MIDLANDS



Robert M. Peele, Jr, MD*J. Talley Parrott, MD*Robert M. DaSilva, MD
James A. O Leary, MD*Michael R. Ugino, MD*Michael S. Green, MD
M. David Redmond, MD*William C. James, MD*Robert D. Santrock, MD

Frederick C. Piehl, MD *Thomas P. Gross, MD*Coleman D. Fowble, MD*Thomas D. Annsey, MD

1910 Blanding Street * Columbia, SC 29201 * 1013 Lake Murray Boulevard * Imo, SC 29063
(803)256.4107 * www.midlandsortho.com

Detailed Follow up Exam

NAME: Footman, Latonya
DATE: 04/24/09
EMPLOYER: Johnson Food
REFERRING PHYSICIAN: Not Referred By

ACCOUNT: 2000354
DOB: 12/23/1970 AGE: 38 years old
OCCUPATION: No data for occupation

CC: BILATERAL HAND PAIN, L<R

DATE OF INJURY/ONSET/SURGERY: 2008

HPI: Patient returns today after her nerve studies performed by Dr. Redmond on March 26, 2009. The nerve studies reveal a worsening of her left carpal tunnel syndrome. Right cubital tunnel syndrome is still mild. Improvement in right carpal tunnel status post release is present.

Date of last visit: 3/6/2009

Since the last visit the pain is: () Better () Worse (X) Same () N/A

On a scale of 0-10 (10 is the worst), the patient reports that the pain is:

The patient describes the quality of pain as: (X) NUMBNESS AND TINGLING
() Sharp () Throbbing
() Dull () Aching
() Stabbing () Burning

The pain is: () Constant (X) Intermittent () N/A

The patient reports that they are taking NO (medication) for the condition.

The patient reports treatment since last visit:

Treatment	Did it help?
Anti Inflammatories?	() Yes (X) No () NA
Narcotics?	() Yes () No () NA
Brace/Cast	() Yes () No () NA
Physical/Occupational Therapist	() Yes () No () NA
Home Exercise Program	() Yes () No () NA
Injection at last visit: short-term	() Yes () No () NA
Injection at last visit: long-term	(X) Yes () No () NA
Surgery since last visit	() Yes () No () NA

ALLERGIES: No Known Drug Allergies

CURRENT MEDICATIONS: Calcium

Lisinopril
Metformin Hydrochloride
Vitamins

PHYSICAL EXAM:

Vital Signs: No data for Vitals

Examination is unchanged

Report Date: May 13, 2009 Patient: Footman, Latonya C DOS: 04/24/09

RADIOGRAPHS:

PROCEDURE:

ASSESSMENT: -Worsening left carpal tunnel syndrome
-Mild right cubital tunnel syndrome
-Improved Right carpal tunnel syndrome status post release

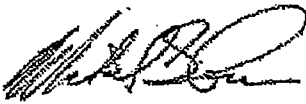
PLAN: At this point the patient would probably benefit from a left carpal tunnel release. Right cubital tunnel syndrome is still not severe enough to consider any type of surgical intervention. I have discussed the condition with the patient. I feel they would benefit from carpal tunnel release. I explained the risk and benefit of the surgery. The benefit would be resolution of the symptoms. The risk includes, but is not limited to: bleeding, infection, damage to nerves and blood vessels, damage to the median nerve, persistent numbness/weakness of the hand, painful incision and anesthesia. They understand the risk and wish to proceed. The plan is understood and agreed upon. There are no unanswered questions. The patient will call with any questions or concerns.

PRESCRIPTIONS: No data for Prescription

PRE-EXAMINATION:

WORK STATUS:

☐ Full Time ☐ Part Time ☐ Restrictions ☐ Out of Work ☐ Non-Applicable



Michael S. Green, M.D.

MIDLANDS



Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O Leary, MD
Michael R. Ugho, MD*Michael S. Green, MD * M. David Redmond, MD*
William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
Coleman D. Fowble, MD*Thomas D. Armsey, MD*I van LaMotta, MD*Bernard G. Kirol, MD

1910 Blanding Street * Columbia, SC 29201* 1013 Lake Murray Boulevard * Irmo, SC 29063
2989 Sunset Boulevard, West Columbia, SC 29169
(803) 256.4107 * www.midlandsortho.com

Detailed Follow up Exam

NAME: Footman, Latonya

DATE: 09/20/10

EMPLOYER: Johnson Food

REFERRING PHYSICIAN: Bell, MD, Gary, B.

ACCOUNT: 2000354

DOB: 12/23/1970 **AGE:** 39 years old

OCCUPATION: cook

CC: bilateral hand numbness

DATE OF INJURY/ONSET/SURGERY: DOI: September 2006

HPI:

39-year-old female who has been seen in the past for carpal tunnel syndrome. She has had a release on the right side but had some cubital tunnel symptoms. Her left carpal tunnel symptoms seem to be getting worse according to the patient. She states that is giving her more problems at nighttime. Her left hand stays numb. Her hurts all the time. Splinting has not helped.

Date of last visit: 4-29-2009

Since the last visit the pain is: () Better (X) Worse () Same () N/A

On a scale of 0-10, how much better are you? 0
(0 being no change; 10 being normal)

The patient reports that they are taking none (medication) for the condition.

The patient reports treatment since last visit:

Treatment	Did it help?	
Anti inflammatories?	() Yes	() No (X) NA
Narcotics?	() Yes	() No (X) NA
Brace/Cast	() Yes	() No (X) NA
Physical/Occupational Therapist	() Yes	() No (X) NA
Home Exercise Program	() Yes	() No (X) NA
Injection at last visit: short-term	() Yes	() No (X) NA
Injection at last visit: long-term	() Yes	() No (X) NA
Surgery since last visit	() Yes	() No (X) NA

Since the last visit, has there been a change in:

Patient's Medical History	() Yes	(X) No
Family History	() Yes	(X) No
Social History	() Yes	(X) No
Medications	() Yes	(X) No

ALLERGIES:

No Known Drug Allergies

CURRENT MEDICATIONS:

Calcium

Report Date: September 24, 2010 Patient: Footman, Latonya C DOS: 09/20/10

Lisinopril
Metformin Hydrochloride
Multi-vitamins
Omega
Pravastatin
Vitamins

****Medications verified in room with patient 12:10:27 PM 9/20/2010 JG,LPN****

PHYSICAL EXAM:

Vital Signs: HEIGHT: 5'4"
WEIGHT: 180 lbs 0 oz
BMI: 30.9

Examination of the hand has full range of motion of the IP joints. There is no thenar eminence atrophy. Tinel's testing is negative over the carpal canal, and Phalen's testing is positive after 30 seconds of volar flexion of the wrist. Intrinsic motor strength testing shows no weakness of the APB/Opponens pollicis. Vascular Allen's testing is normal.

Sensibility testing shows the following 2-point discrimination of the hand: .

Thumb		Index		Middle		Ring		Small	
Radial	Ulnar	Radial	Ulnar	Radial	Ulnar	Radial	Ulnar	Radial	Ulnar
5	5	5	5	5	5	5	5	5	5

RADIOGRAPHS:

PROCEDURE:

ASSESSMENT: -Mild right cubital tunnel syndrome
-Moderate left carpal tunnel syndrome

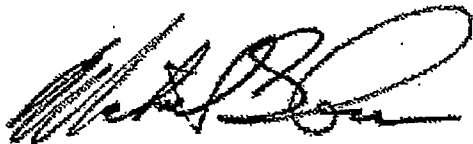
PLAN: I have discussed the patients symptoms and exam findings with Latonya in detail. I would suggest sending the patient to see Dr. Redmond for EMGs and NCS to rule out Carpal Tunnel Syndrome and possibly Cubital Tunnel Syndrome of both upper extremities. I will see Latonya back as soon as the studies are done.

PRESCRIPTIONS: No data for Prescription

PRE-EXAMINATION:

WORK STATUS:

() Full Time () Part Time () Restrictions () Out of Work () Non-Applicable



Michael S. Green, MD

Report Date: September 24, 2010 Patient: Footman, Latonya C DOS: 09/20/10

Referral Reply Letter(s) - Dated 09/20/10

Bell, MD, Gary - SPECIALTY: Internal Medicine

Report Date: April 19, 2011 Patient: Footman, Latonya C DOS: 09/20/10

Detailed Follow up Exam

NAME: Footman, Latonya

DATE: 10/15/10

EMPLOYER: Johnson Food

REFERRING PHYSICIAN: Bell, MD, Gary, B.

ACCOUNT: 2000354

DOB: 12/23/1970 AGE: 39 years old

OCCUPATION: No data for occupation

CC: bilateral hand numbnessDATE OF INJURY/ONSET/SURGERY: DOI 09/2008

HPI: Pt is here to follow up on her bilateral hand numbness. She had an EMG/NCS performed on 10/11/2010 with Dr Redmond. EMG and nerve conduction studies I feel a moderate left carpal tunnel syndrome. She also shows a very mild slowing of the ulnar nerve around both elbows.

Date of last visit: 09/20/2010

Since the last visit the pain is: () Better (X) Worse () Same () N/A

On a scale of 0-10, how much better are you? 0
(0 being no change; 10 being normal)

The patient reports that they are taking Mobic (medication) for the condition.

The patient reports treatment since last visit:

Treatment	Did it help?	
Anti inflammatories?	() Yes	(X) No () NA
Narcotics?	() Yes	() No () NA
Brace/Cast	() Yes	() No () NA
Physical/Occupational Therapist	() Yes	() No () NA
Home Exercise Program	() Yes	() No () NA
Injection at last visit: short-term	() Yes	() No () NA
Injection at last visit: long-term	() Yes	() No () NA
Surgery since last visit	() Yes	() No () NA

Since the last visit, has there been a change in:

Patient's Medical History	() Yes	(X) No
Family History	() Yes	(X) No
Social History	() Yes	(X) No
Medications	() Yes	() No

ALLERGIES:

No Known Drug Allergies

CURRENT MEDICATIONS:

Calcium
Lisinopril
Metformin Hydrochloride
Mobic
Multi-vitamins
Omega
Pravastatin
Vitamins

Report Date: April 19, 2011 Patient: Footman, Latonya C DOS: 09/20/10

PHYSICAL EXAM:

Vital Signs: HEIGHT: 5'4"
WEIGHT: 180 lbs 0 oz
BMI: 30.9

His examination is unchanged.

RADIOGRAPHS:

PROCEDURE:

ASSESSMENT: -Moderate left carpal tunnel syndrome

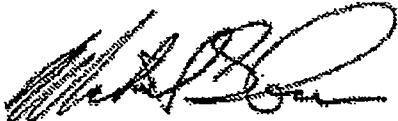
PLAN: I have discussed the condition with the patient. I feel they would benefit from carpal tunnel release. I explained the risk and benefit of the surgery. The benefit would be resolution of the symptoms. The risk includes, but is not limited to: bleeding, infection, damage to nerves and blood vessels, damage to the median nerve, persistent numbness/weakness of the hand, painful incision and anesthesia. They understand the risk and wish to proceed. The plan is understood and agreed upon. There are no unanswered questions. The patient will call with any questions or concerns. ROV 11-13 days postop.

PRESCRIPTIONS: No data for Prescription

PRE-EXAMINATION:

WORK STATUS:

☐ Full Time ☐ Part Time ☐ Restrictions ☐ Out of Work ☐ Non-Applicable



Michael S. Green, MD

Referral Reply Letter(s) - Dated 10/17/10

Bell, MD, Gary - SPECIALTY: Internal Medicine

Report Date: April 19, 2011 Patient: Footman, Latonya C DOS: 09/20/10

PHYSICAL MEDICINE SERVICE ELECTROMYOGRAPHY REPORT

Patient: Footman Latonya C
MOFILE #: 2000354
Sex: Female
Date of Birth: 12/23/1970
Age: 39 Years 9 Months
Referring Phy: Michael S. Green, MD
Date of Service: 10-11-10
Technologist: Lynn Williams, R.NCS.T
Notes: R/O Bilateral carpal and cubital tunnel syndrome

Sensory NCS

Nerve / Sites	Rec. Site	Amp.2-3 μ V	Lat. 2 ms	Dist cm
R MEDIAN				
wrist	index	30.2	4.10	14
L MEDIAN				
wrist	index	19.2	5.10	14
R ULNAR				
wrist	small	24.1	3.30	14
L ULNAR				
wrist	small	36.0	3.15	14
L RADIAL				
Forearm	1st web	22.3	2.75	14

Motor NCS

Nerve / Sites	Rec. Site	Amp. mV	Lat. ms	Dist. cm	Vel. m/s
R MEDIAN - APB					
Wrist	APB	9.7	4.20	8	
L MEDIAN - APB					
Wrist	APB	12.5	4.95	8	
R ULNAR - ADM					
Wrist	ADM	9.2	2.85	7	
B.Elbow		8.2	6.60	22.8	60.8
A.Elbow		7.4	9.45	11	38.6
L ULNAR - ADM					
Wrist	ADM	7.4	2.55	7	
B.Elbow		6.5	6.60	21.5	53.1
A.Elbow		6.2	8.85	10	44.4

Report Date: April 19, 2011 Patient: Footman, Latonya C DOS: 09/20/10

R ULNAR - FDI					
Wrist	FDI	7.4	4.25	7	
B.Elbow		6.6	8.65	22.8	51.8
A.Elbow		5.9	11.35	11	40.7

EMG Summary Table									
	Spontaneous					MUAP			Recruitment
	IA	Fib	PSW	Fasc	CRD	Amp	Dur.	PPP	Pattern
R. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full
R. FLEX DIG PROF IV	N	None	None	None	None	N	N	N	NL Full
R. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
R. EXT INDICIS	N	None	None	None	None	N	N	N	NL Full
R. EXT DIG COMM	N	None	None	None	None	N	N	N	NL Full
R. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
L. OPP POLL	N	None	None	None	None	N	N	N	NL Full
L. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full

IMPRESSION: 1) Moderate left Carpal Tunnel Syndrome, with some worsening compared to the previous study in 2009.

2) Mild right Cubital Tunnel Syndrome, with slight worsening compared to the previous study. No denervation is seen in ulnar innervated muscles of the forearm or hand.

3) Mild slowing of left ulnar motor conduction across the elbow segment, not studied last visit. Patients who are diabetic seem to be more likely to develop Cubital Tunnel Syndrome, and this may be underway. No denervation seen on screening EMG of the left 1st D.I.

4) No evidence of diabetic polyneuropathy affecting the upper extremities.

Thank you for requesting this study.



M. David Redmond, MD

Electronically Signed
October 11, 2010 12:11 PM

MIDLANDS



Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O'Leary, MD
Michael R. Ugino, MD*Michael S. Green, MD * M. David Redmond, MD*
William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
Coleman D. Fowble, MD*Thomas D. Amsey, MD* Ivan LaMotta, MD* Bernard G. Kiriak, MD

1910 Blanding Street * Columbia, SC 29201 * 1013 Lake Murray Boulevard * Irmo, SC 29063
2989 Sunset Boulevard, West Columbia, SC 29169
(803) 258.4107 * www.midlandsortho.com

MIDLANDS ORTHOPAEDICS SURGERY CENTER, LLC
1930 Blanding Street * Columbia, SC * 29201
Phone: 803.461.4740 * Fax: 803.461.4742

OPERATIVE REPORT

NAME: Latonya Footman

DATE: 11/09/10

LOCATION: Midlands Orthopaedics Surgery Center

PROVIDER: Michael S. Green, M.D.

DOB: 12/23/1970

MOPA ID #: 2000354

PREOPERATIVE DIAGNOSIS (ES):

Left Carpal tunnel syndrome

POSTOPERATIVE DIAGNOSIS (ES):

Left Carpal tunnel syndrome

PROCEDURE:

Left Carpal tunnel release

COMPLICATIONS: NONE

ANESTHESIA: REGIONAL

ESTIMATED BLOOD LOSS: MINIMAL

DRESSING: SEMI-BULKY COMPRESSIVE DRESSING W/SHORT ARM CAST

CONDITION: STABLE

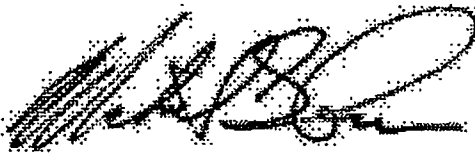
DESCRIPTION OF PROCEDURE: The patient was taken to the operative suite and placed on the operating table in supine position after regional block was placed in the holding room. The involved upper extremity was prepped with BactoShield, painted with alcohol and draped in the usual sterile fashion. The involved upper extremity was elevated. An Ace wrap was used for exsanguination. The tourniquet was inflated to 250 mmHg.

A 1.5 cm incision was made in the mid proximal palmar area in line with the radial border of the

Report Date: December 09, 2010 **Patient:** Footman, Latonya C **DOS:** 11/09/10

ring finger. This was taken down through the subcutaneous tissue. Hemostasis was accomplished by electrocautery. Blunt dissection and sharp dissection was carried down to the palmar fascia. The palmar fascia was divided sharply. The deep transverse carpal ligament was identified. The distal border was identified and divided. Then under direct visualization, the deep transverse carpal ligament was divided in its entirety all the way from distal to proximal. Once it was divided, the median nerve was inspected. The branches to the hypothenar eminence were identified as well. They had been completely decompressed.

Meticulous hemostasis was accomplished by electrocautery. The wound was then closed with #3-0 Prolene in a horizontal mattress stitch fashion. 4x4s, semi-bulky compressive dressing and a volar plaster splint was applied. The tourniquet was released. Total tourniquet time was less than 30 minutes. The patient's fingers were pink and warm after the tourniquet was released. The patient was taken from the operating room to the recovery room in satisfactory condition.

A handwritten signature in black ink, appearing to read 'Michael S. Green', with a stylized flourish at the end.

Michael S. Green, MD

Electronically Signed
November 09, 2010 12:32 PM

MIDLANDS



Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O Leary, MD
Michael R. Ugino, MD*Michael S. Green, MD * M. David Redmond, MD*
William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
Coleman D. Fowble, MD*Thomas D. Amsey, MD*I van LaMotta, MD*Bernard G. Kirol, MD

1910 Blanding Street * Columbia, SC 29201* 1013 Lake Murray Boulevard * Irmo, SC 29063
2989 Sunset Boulevard, West Columbia, SC 29169
(803) 256.4107 * www.midlandsortho.com

NAME: Footman, Latonya
DATE: 11/22/10
EMPLOYER: Johnson Food

ACCOUNT: 2000354
DOB: 12/23/1970
OCCUPATION: No data for occupation

CC/HPI: The patient is here for follow-up 2 weeks status post left carpal tunnel release. They are doing well overall and the pain is well-controlled and improving daily.

DATE OF INJURY/ONSET/SURGERY: 11/09/10

EXAM: The wound is clean and dry with no signs of infection. Finger motion is good. mild swelling is noted at the carpal canal region as expected.

Procedure: Sutures were removed without difficulty

Assessment: 2 week post op left carpal tunnel release

Plan: A supporting splint is to be used at night for two weeks. The patient was told to expect palmar tenderness and some occasional paresthesias in her hand or fingers. Strengthening exercises were commenced, as well as, wrist range of motion exercises. Light lifting and gripping are encouraged within the patient tolerance and comfort. The patient is to start massaging their scar in one week. Return appointment 4 weeks.

Prescriptions: No data for Prescription

Michael S. Green, MD

Electronically Signed
November 22, 2010 5:36 PM

MIDLANDS



Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O Leary, MD
Michael R. Ugino, MD*Michael S. Green, MD * M. David Redmond, MD*
William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
Coleman D. Fowble, MD*Thomas D. Armsey, MD*J van LaMotta, MD*Bernard G. Krol, MD

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2989 Sunset Boulevard, West Columbia, SC 29169
(803) 256.4107 * www.midlandsortho.com

Follow-Up Office Visit

NAME: Footman, Latonya
DATE: 12/27/10
EMPLOYER: Johnson Food

ACCOUNT: 2000354
DOB: 12/23/1970
OCCUPATION: No data for occupation

CC/HPI: Latonya is progressing nicely. Patient is using it much more comfortably. No night pain or paresthesias.

DATE OF INJURY/ONSET/SURGERY: 11/09/10

EXAM: Scar is much less tender but still somewhat thick. Finger motion is full. Strength is significantly better. No signs of infection.

Assessment: Six weeks s/p left carpal tunnel release.

Plan: At this point, the patient's strength should continue to improve as the scar tissue matures. Scar tenderness will calm down over the next 6 to 8 weeks. Patient can progressively use the hand as tolerated. At this point we will release patient back on a prn basis in case they are having any further problems. □

Prescriptions: No data for Prescription

WORK STATUS:

☐ Full Time ☐ Part Time ☐ Restrictions ☐ Out of Work ☐ Non-Applicable

Michael S. Green, MD

Electronically Signed
December 27, 2010 1:54 PM

MIDLANDS ORTHOPAEDICS, PA
1930 Blanding Street
Columbia, SC 29201

OPERATIVE REPORT

NAME: FOOTMAN, LATONYA . ACCOUNT # 2000354
DATE: 03/01/2007 DOB: 12/23/1970

DATE OF SURGERY: MARCH 1, 2007

SURGEON: MICHAEL S. GREEN, MD

FIRST ASSISTANT: PAM CLAYTOR, RN FA

PREOPERATIVE DIAGNOSIS (ES): RIGHT CARPAL TUNNEL SYNDROME.

POSTOPERATIVE DIAGNOSIS (ES): RIGHT CARPAL TUNNEL SYNDROME.

PROCEDURE: RIGHT CARPAL TUNNEL RELEASE.

COMPLICATIONS: NONE

ANESTHESIA: REGIONAL

ESTIMATED BLOOD LOSS: MINIMAL

DRESSING: SEMI-BULKY COMPRESSIVE DRESSING W/SHORT ARM CAST

CONDITION: STABLE

DESCRIPTION OF PROCEDURE: The patient was taken to the operative suite and placed on the operating table in supine position after regional block was placed in the holding room. The right upper extremity was prepped with Hibiclens, painted with Hibistat and draped in the usual sterile fashion. The right upper extremity was elevated. An Ace wrap was used for exsanguination. The tourniquet was inflated to 250 mmHg.

A 1.5 cm incision was made in the mid proximal palmar area in line with the radial border of the ring finger. This was taken down through the subcutaneous tissue. Hemostasis was accomplished by electrocautery. Blunt dissection and sharp dissection was carried down to the palmar fascia. The palmar fascia was divided sharply. The deep transverse carpal ligament was identified. The distal border was identified and divided. A Freer elevator was placed beneath the ligament to free up the adhesions at the synovium and median nerve from the undersurface of the ligament. Then under direct visualization, the deep transverse carpal ligament was divided in its entirety all the way from distal to proximal. Once it was divided, the median nerve was inspected. The branches to the hypothenar eminence were identified as well. They had been completely decompressed.

The skin and subcutaneous tissue were then reapproximated in one layer utilizing #4-0 Prolene in a horizontal mattress stitch fashion.

Meticulous hemostasis was accomplished by electrocautery. The wound was then closed with #4-0 Prolene in a horizontal mattress stitch fashion. 4x4s, semi-bulky compressive dressing and a short arm cast were applied. The tourniquet was released. Total tourniquet time was less than 30 minutes. The patient's fingers were pink and warm after the tourniquet was released. The patient was taken from the operating room to the recovery room in satisfactory condition.

Michael S. Green, M.D.

On: 03/06/2007 09:02:54
MSG / lkh
cc:
REV 0

This document was signed electronically by
Michael S. Green, M.D
On: 03/06/2007 09:02:54
Report id: 327470

RECEIVED
MARCH 6 2007
10:00 AM

By: _____

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME FOOTMAN, LATONYA ACCOUNT 2000354
DATE 03/12/2007 DOB 12/23/1970

CLINICAL STATUS: I am seeing Latonya in follow-up. She is doing well. The pain at nighttime is better. Paresthesias are better.

DIAGNOSIS: STATUS POST RIGHT CARPAL TUNNEL RELEASE.

PLAN Will go ahead and have her work on scar massage, work on strengthening. Splint at nighttime for 2 weeks.

RETURN APPOINTMENT: One month.

Michael S. Green, M.D.
MSG / sjb
cc

REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On 03/20/2007 10:29:19
Report id: 330554

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA ACCOUNT 2000354
DATE: 04/09/2007 DOB: 12/23/1970

CLINICAL STATUS: I am seeing Ms. Footman in follow-up. Her wounds look good. Little tender at the scar as is to be expected. Strength is returning. Night pain is better.

DIAGNOSIS: STATUS POST RIGHT CARPAL TUNNEL RELEASE.

PLAN: Will go ahead and have her continue working on scar massage and strengthening. She does not need to wear a splint.

RETURN APPOINTMENT: PRN basis in case she has any further problems. She should see a big difference in her strength and tenderness over the next 6 weeks.

Michael S. Green, M.D.
MSG / sjb
cc:

REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 04/26/2007 15:13:52
Report id: 337184

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APR 23 2007

BY: _____

3

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

NEW PATIENT ENCOUNTER

NAME: FOOTMAN, LATONYA C ACCOUNT #: 2000354
DATE: 08/24/2007 DOB: 12/23/1970

HISTORY OF PRESENT ILLNESS. I am seeing the patient for evaluation of both hands. She says that she has shooting pains through her wrists but it seems that she has numbness and tingling to her right ring finger and small finger as well as her left ring finger and small finger. She complains of pain that goes up her arm, even almost up to her shoulder on the left side. She does not relate any new injury, any new changes except for these particular hands. She says that she has been doing a lot of heavy carrying and lifting activity at work.

PHYSICAL EXAMINATION: Reveals no Tinel's at the elbow. Really no Tinel's at the wrists. I get two-point discrimination is normal. She has no intrinsic weakness. She has full ROM of her fingers, her wrist and her elbow. I see no intrinsic wasting.

IMPRESSION: BILATERAL HAND PAIN.

PLAN: At this point I would recommend EMG/NCS of both upper extremities to evaluate her ulnar nerve function. She is a diabetic therefore I have some concern that this might really just be a diabetic neuropathy of some type. I will see her back after the nerve studies. She can go ahead and work regular work activities.

Michael S. Green, M.D.
MSG / lkh47
Cc:

REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 08/31/2007 15:41:39
Report id: 371643

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JAN 17 2008

BY: _____

4

WORK STATUS INFORMATION

Midlands Orthopaedics

1910 Blanding St.
Columbia, SC 29201
803-256-4107 x 6214
www.midlandsortho.com

PATIENT WORK INJURY INFORMATION:

LATONYA FOOTMAN - 2000354

Employer: JOHNSON FOOD

Physician: Green

Date of Accident: 9/6/07

Worker's Comp Case #: 0000000000

Carrier: Hartford

SS #: 251656128

Date of Service: 8/24/07

Diagnoses code(s): 719.44

Diag Description: Hand pain

WORK STATUS:

- ☒ Regular duty, no restrictions (date to return to regular duty: 8/25/07)
- ☐ Light duty, with restrictions (date to begin light duty:)
The availability of light duty is determined by the employer, not the physician.)
- ☐ Remain out of work (estimated duration:)
- ☐ Part time (whether regular duty or light duty)
- ☐ Full time (whether regular duty or light duty)

PHYSICAL LIMITATIONS:

- ☐ None
- ☐ No walking
- ☐ No climbing
- ☐ No Standing
- ☐ No prolonged standing
- ☐ No sitting
- ☐ No bending or stooping
- ☐ No twisting or stretching
- ☐ No kneeling, squatting, crawling
- ☐ Pushing or pulling limit (lbs)
- ☐ Lifting and carrying limit (lbs)
- ☐ Sedentary duties only
- ☐ No work involving L / R (extremity)
- ☐ No overhead work
- ☐ No work at heights
- ☐ Other

FOLLOW-UP:

- ☐ Days
- ☐ Weeks
- ☐ Months
- ☐ Discharged with permanent limitations above
- ☐ Has reached MMI
- ☐ Permanent Impairment rating of to the (body part / system)
- ☒ Post diagnostic (MRI, EMG, etc...) exam (usually one week after test)
- ☐ PRN
- ☐ Next appointment date (if scheduled):

Nerve Studies scheduled for 9/6/07

- ☐ Ross D. Lynch, M.D.
- ☐ Robert M. Peele, Jr M.D.
- ☐ Michael R. Ugino, M.D.
- ☐ J. Talley Parrott, M.D.
- ☒ Michael S. Green, M.D.
- ☐ Tom D. Amisey, M.D.

- ☐ M. David Redmond, M.D.
- ☐ Robert Santrock, M.D.
- ☐ Robert M. DaSilva, M.D.
- ☐ Frederick C. Piehl, M.D.
- ☐ Thomas P. Gross, M.D.
- ☐ Kyle H. Johnson, P.A.

- ☐ James A. O'Leary, M.D.
- ☐ Coleman D. Fowble, M.D.
- ☐ William C. James, III, M.D.
- ☐ P. Douglas deHoll, M.D.
- ☐ John O. Watson, M.D.
- ☐ Brian Valus, P.A.

Jan. 16. 2008 12:07PM
MIDLANDS ORTHOPEDICS, PA
1910 Blanding Street
Columbia, SC 29201

No. 9303 P. 2/2

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA C ACCOUNT: 2000354
DATE: 01/14/2008 DOB: 12/23/1970

CLINICAL STATUS: I am seeing this patient in follow-up. Her nerve conduction studies revealed a very mild right carpal tunnel syndrome and mild left carpal tunnel syndrome. Her right carpal tunnel syndrome that has been released in the past has no improved numbers. It did not show any evidence of significant diabetic neuropathy.

IMPRESSION:

1. MILD RIGHT CUBITAL TUNNEL SYNDROME.
2. MILD LEFT CARPAL TUNNEL SYNDROME.

PLAN: At this point we went over the diagnosis in detail with her. She understands. At this point no intervention is necessary from a surgical standpoint for either the carpal tunnel or cubital tunnel syndrome. If the cubital tunnel syndrome continues to be symptomatic we may want to put her into a night resting splint at 45 degrees. I would repeat her nerve studies in 4 to 6 months if in fact her symptoms persist or get worse.

Michael S. Green, M.D.
MSG / kd77
cc:

REV 0
Report Id: 405802

6

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION:

LATONYA FOOTMAN - 2000354

Employer: JOHNSON FOOD

Physician: Dr. Green

Date of Accident: 9/16/06

Worker's Comp Case #: VLY 26100C

Carrier: Hartford Insurance

WORK STATUS:

- ☒ Regular duty, no restrictions (date to return to regular duty: 1/14/08)
- ☐ Light duty, with restrictions (date to begin light duty:)
- The availability of light duty is determined by the employer, not the physician.
- ☐ Remain out of work (estimated duration:)
- ☐ Part time (whether regular duty or light duty)
- ☐ Full time (whether regular duty or light duty)

PHYSICAL LIMITATIONS:

- ☐ None
- ☐ No walking
- ☐ No climbing
- ☐ No Standing
- ☐ No prolonged standing
- ☐ No sitting
- ☐ No bending or stooping
- ☐ No twisting or stretching
- ☐ No kneeling, squatting, crawling

- ☐ Pushing or pulling limit () lbs)
- ☐ Lifting and carrying limit () lbs)
- ☐ Sedentary duties only
- ☐ No work involving L / R (extremity)
- ☐ No overhead work
- ☐ No work at heights
- ☐ Other

FOLLOW-UP:

- ☐ Days
- ☐ Weeks
- ☐ Months
- ☐ Post-diagnostic (MRI, EMG, etc...) exam (usually one week after test)
- ☒ PRN
- ☐ Next appointment date (if scheduled):
- ☒ Discharged with permanent limitations above
- ☐ Has reached MMI
- ☐ Permanent Impairment rating of

to the (body part / system)

- ☐ Ross D. Lynch, M.D.
- ☐ Robert M. Peele, Jr. M.D.
- ☐ Michael R. Ugino, M.D.
- ☐ J. Talley Parrott, M.D.
- ☐ Michael S. Green, M.D.
- ☐ Tom D. Armsey, M.D.

- ☐ M. David Redmond, M.D.
- ☐ Robert Santrock, M.D.
- ☐ Robert M. DeSilva, M.D.
- ☐ Frederick C. Plehl, M.D.
- ☐ Thomas P. Gross, M.D.
- ☐ Kyle H. Johnson, P.A.

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Columbia, SC 29201
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www.midlandsortho.com

SS #: 251658128

Date of Service: 1/14/08

Diagnoses code(s): 354.2, 354.0

Diag Description: Carpal tunnel syndrome
Carpal " "

- ☐ James A. O'Leary, M.D.
- ☐ Coleman D. Fowble, M.D.
- ☐ William C. James, III, M.D.
- ☐ P. Douglas deHoll, M.D.
- ☐ John O. Watson, M.D.
- ☐ Brian Velus, P.A.

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7

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COLUMBIA, SC 29201

ADDENDUM/NOTE TO CHART

NAME: FOOTMAN, LATONYA C ACCOUNT: 2000354
DATE: 02/15/2008 DOB: 12/23/1970

Ms. LaTonya Footman is a patient of mine who has been followed by me for work-related carpal tunnel syndrome and cubital tunnel syndrome. The patient underwent a procedure for both of these conditions, one on the right upper extremity and one on the left. She has reached maximum medical improvement and is released for these problems at this time.

According to the AMA Guidelines for the Evaluation of Permanent Impairment, 5th edition, the patient has 2% impairment to the right upper extremity and 2% impairment to the left upper extremity.

I do not foresee any further need for treatment for these particular conditions in the future.

Michael S. Green, M.D.
MSG/lbp

REV0

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FEB 18 2008

BY _____

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA C ACCOUNT: 2000354
DATE: 06/27/2008 DOB: 12/23/1970

CLINICAL STATUS: I am seeing the patient back in follow-up. She continues to have some cubital tunnel type symptoms on her right side as well as a left carpal tunnel type symptoms. Has really not gotten better from when I saw her in January.

PHYSICAL EXAMINATION: She still has relatively normal two-point discrimination of the intrinsic muscles. Positive Tinel's. Otherwise, no significant changes.

IMPRESSION:

1. MILD LEFT CARPAL TUNNEL SYNDROME.
2. MILD RIGHT CUBITAL TUNNEL SYNDROME.

PLAN: At this point, we will go ahead and get her into a right 45-60 degree extension splint for sleeping for her right cubital tunnel. For her left wrist, we will go ahead and inject her carpal canal with 1/2 cc Celestone and Xylocaine. Have put her on a Sterapred pak for her cubital tunnel syndrome.

Will see her back in 4-6 weeks and see how she is doing.

Michael S. Green, M.D.
MSG / sjb33
cc:

REV 0

This document was signed electronically by:
Michael S. Green, M.D.
On: 07/01/2008 18:30:57
Report id: 447873

WORK STATUS INFORMATION**Midlands Orthopaedics**

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Columbia, SC 29201
803-256-4107 x 6214
www.midlandsortho.com

PATIENT WORK INJURY INFORMATION:**LATONYA FOOTMAN - 2000354**

SS #: 251656128

Employer: JOHNSON FOOD

Physician: Dr. GreenDate of Service: 10/27/08Date of Accident: 9/16/08Diagnoses code(s): 354.0Worker's Comp Case # YK 26940CDiag Description: C7SCarrier: Hartford Insurance**WORK STATUS:**

- ☒ Regular duty, no restrictions (date to return to regular duty: 6/27/08)
☐ Light duty, with restrictions (date to begin light duty: _____)
(The availability of light duty is determined by the employer, not the physician.)
☐ Remain out of work (estimated duration: _____)
☐ Part time (whether regular duty or light duty)
☐ Full time (whether regular duty or light duty)

*Will remain light duty
for 3-5 days for
pt to wear @
wrist splint.*

PHYSICAL LIMITATIONS:

☐ None	☐ Pushing or pulling limit (_____ lbs)
☐ No walking	☐ Lifting and carrying limit (_____ lbs)
☐ No climbing	☐ Sedentary duties only
☐ No standing	☐ No work involving L / R _____ (extremity)
☐ No prolonged standing	☐ No overhead work
☐ No sitting	☐ No work at heights
☐ No bending or stooping	☐ Other _____
☐ No twisting or stretching	
☐ No kneeling, squatting, crawling	

FOLLOW-UP:

- ☐ Days _____ ☐ Discharged with permanent limitations above
☒ Weeks 6 ☐ Has reached MMI
☐ Months _____ ☐ Permanent impairment rating of: _____ to the _____ (body part / system)
☐ Post diagnostic (MRI, EMG, etc...) exam (usually one week after test)
☐ PRN
☒ Next appointment date (if scheduled): 8-11-08 @ 1000

☐ Ross D. Lynch, M.D.	☐ M. David Redmond, M.D.	☐ James A. O'Leary, M.D.
☐ Robert M. Peele, Jr M.D.	☐ Robert Santrock, M.D.	☐ Coleman D. Fowble, M.D.
☐ Michael R. Ugino, M.D.	☐ Robert M. DaSilva, M.D.	☐ William C. James, III, M.D.
☐ J. Talley Parrott, M.D.	☐ Frederick C. Piehl, M.D.	
☐ Michael S. Green, M.D.	☐ Thomas P. Gross, M.D.	
☐ Tom D. Armsey, M.D.	☐ Kyle H. Johnson, P.A.	

MIDLANDS ORTHOPAEDICS, PA
1910 Blanding Street
Columbia, SC 29201

FOLLOW-UP OFFICE VISIT

NAME: FOOTMAN, LATONYA C ACCOUNT: 2000354
DATE: 08/11/2008 DOB: 12/23/1970

CLINICAL STATUS: I am seeing the patient in follow-up. Her carpal tunnel injection helped for a while, certainly made some improvement. The splint helped her cubital tunnel syndrome a lot. She is not symptomatic enough to consider a carpal tunnel release yet. Therefore, will leave well enough alone.

DIAGNOSIS(ES):

1. IMPROVED RIGHT MILD CUBITAL TUNNEL SYNDROME.
2. MILDLY IMPROVEMENT, LEFT CARPAL TUNNEL SYNDROME.

PLAN: At this point, we will go ahead and release her. She is not ready for any surgical procedure. She has improved enough to leave well enough alone. She is discharged from the office.

Michael S. Green, M.D.
MSG / sjb33
cc:

REV 0
Report id: 458796

RI

EY: _____

11

WORK STATUS INFORMATION**Midlands Orthopaedics**

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Columbia, SC 29201
803-256-4107 x 8214
www.midlandsortho.com

PATIENT WORK INJURY INFORMATION:**LATONYA FOOTMAN - 2000354**

SS #: 251656128

Employer: JOHNSON FOOD

Physician: Dr. GreenDate of Service: 8-11-08Date of Accident: 9-10-06Diagnoses code(s): 354.0, 354.2Worker's Comp Case #: 4K426940CDiag Description: CTSCarrier: Hartford Insurancelesion of ulnar nerve**WORK STATUS:**

- ☒ Regular duty, no restrictions (date to return to regular duty: 08-11-08)
- ☐ Light duty, with restrictions (date to begin light duty:)
(The availability of light duty is determined by the employer, not the physician.)
- ☐ Remain out of work (estimated duration:)
- ☐ Part time (whether regular duty or light duty)
- ☐ Full time (whether regular duty or light duty)

PHYSICAL LIMITATIONS:

☐ None	☐ Pushing or pulling limit (<u> </u> lbs)
☐ No walking	☐ Lifting and carrying limit (<u> </u> lbs)
☐ No climbing	☐ Sedentary duties only
☐ No standing	☐ No work involving L / R: <u> </u> (extremity)
☐ No prolonged standing	☐ No overhead work
☐ No sitting	☐ No work at heights
☐ No bending or stooping	☐ Other <u> </u>
☐ No twisting or stretching	
☐ No kneeling, squatting, crawling	

FOLLOW-UP:

- ☐ Days: ☐ Discharged with permanent limitations above
- ☐ Weeks: ☐ Has reached MMI
- ☐ Months: ☐ Permanent impairment rating of to the (body part / system)
- ☐ Post diagnostic (MRI, EMG, etc...) exam (usually one week after test)
- ☐ PRN
- ☐ Next appointment date (if scheduled):

- ☐ Ross D. Lynch, M.D.
- ☐ Robert M. Peele, Jr. M.D.
- ☐ Michael R. Ugino, M.D.
- ☐ J. Talley Parrott, M.D.
- ☐ Michael S. Green, M.D.
- ☐ Tom D. Armsey, M.D.

- ☐ M. David Redmond, M.D.
- ☐ Robert Santrock, M.D.
- ☐ Robert M. DaSilva, M.D.
- ☐ Frederick C. Piehl, M.D.
- ☐ Thomas P. Gross, M.D.
- ☐ Kyle H. Johnson, P.A.

- ☐ James A. O'Leary, M.D.
- ☐ Coleman D. Fowble, M.D.
- ☐ William C. James, III, M.D.

20000754
 South Carolina Workers' Compensation Commission
 1612 Marion Street • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5723
 www.wcc.sc.gov



Physician's Statement

Claimant's Name: Lakonya Poolman
 Physician's Name: Midlands Orthopedics
 Practice/Clinic: _____
 Preparer's Name: Kelly Diersto
 Phone: (877) 573-9222

Employer's Name: Johnson Food Service
 Insurance Carrier: The Hartford
 SCWCC File No: 0512361

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 9/6/2006

Date of first office visit: 8/24/2007 Date of last visit: 8/11/2008
 Diagnosis or nature of injury or illness: Bilateral Carpal Tunnel Syndrome
 Body part(s) injured: left & right upper extremities Body part(s) affected: same
 Date of Maximum Medical Improvement: 8/11/2008

Based on the AMA Guidelines, the claimant has sustained a 2 % medical impairment to left upper injured body part(s) and a 2 % medical impairment to right upper extremity other affected body part(s).

☒ The claimant is able to return to work without restriction.

☐ The claimant is able to return to work with the following restrictions:

☐ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☒ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☐ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

none in the future. Will be his doctor

[Signature]
 Treating Physician

9/18/08
 Date

[Signature]

SEP 18 2008

BY: _____

MIDLANDS**Orthopedics, P.A.**

Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O'Leary, MD
 Michael R. Ugino, MD*Michael S. Green, MD* M. David Redmond, MD*
 William C. James, MD* Robert D. Santrock, MD* Frederick C. Piehl, MD* Thomas P. Gross, MD
 Coleman D. Fowble, MD*Thomas D. Amsey, MD* van LaMotta, MD*Bernard G. Kird, MD

1910 Blanding Street * Columbia, SC 29201* 1013 Lake Murray Boulevard * Irmo, SC 29063
 2989 Sunset Boulevard, West Columbia, SC 29169
 (803) 256.4107 * www.midlandsortho.com

Detailed Follow up Exam**NAME:** Footman, Latonya**DATE:** 04/24/09**EMPLOYER:** Johnson Food**REFERRING PHYSICIAN:** Not Referred By**ACCOUNT:** 2000354**DOB:** 12/23/1970 **AGE:** 38 years old**OCCUPATION:** No data for occupation**CC:** BILATERAL HAND PAIN, L<R**DATE OF INJURY/ONSET/SURGERY:** 2008

HPI: Patient returns today after her nerve studies performed by Dr. Redmond on March 26, 2009. The nerve stays reveal a worsening of her left carpal tunnel syndrome. Right cubital tunnel syndrome is still mild. Improvement in right carpal tunnel status post release is present.

Date of last visit: 3/6/2009

Since the last visit the pain is: ☐ Better ☐ Worse ☒ Same ☐ N/A

On a scale of 0-10 (10 is the worst), the patient reports that the pain is:

The patient describes the quality of pain as: ☒ NUMBNESS AND TINGLING
☐ Sharp ☐ Throbbing
☐ Dull ☐ Aching
☐ Stabbing ☐ Burning

The pain is: ☐ Constant ☒ Intermittent ☐ N/A

The patient reports that they are taking NO (medication) for the condition.

The patient reports treatment since last visit:

Treatment	Did it help?		
Anti inflammatories?	☐ Yes	☒ No	☐ NA
Narcotics?	☐ Yes	☐ No	☐ NA
Brace/Cast	☐ Yes	☐ No	☐ NA
Physical/Occupational Therapist	☐ Yes	☐ No	☐ NA
Home Exercise Program	☐ Yes	☐ No	☐ NA
Injection at last visit: short-term	☐ Yes	☐ No	☐ NA
Injection at last visit: long-term	☒ Yes	☐ No	☐ NA
Surgery since last visit	☐ Yes	☐ No	☐ NA

ALLERGIES: No Known Drug Allergies**CURRENT MEDICATIONS:** Calcium

Lisinopril

Metformin Hydrochloride

Vitamins

PHYSICAL EXAM:**Vital Signs:** No data for Vitals

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MAY 26 2010

BY: _____

Examination is unchanged

RADIOGRAPHS:

PROCEDURE:

ASSESSMENT: -Worsening left carpal tunnel syndrome
-Mild right cubital tunnel syndrome
-improved Right carpal tunnel syndrome status post release

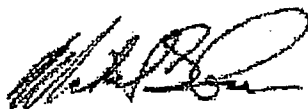
PLAN: At this point the patient would probably benefit from a left carpal tunnel release. Right cubital tunnel syndrome is still not severe enough to consider any type of surgical intervention. I have discussed the condition with the patient. I feel they would benefit from carpal tunnel release. I explained the risk and benefit of the surgery. The benefit would be resolution of the symptoms. The risk includes, but is not limited to: bleeding, infection, damage to nerves and blood vessels, damage to the median nerve, persistent numbness/weakness of the hand, painful incision and anesthesia. They understand the risk and wish to proceed. The plan is understood and agreed upon. There are no unanswered questions. The patient will call with any questions or concerns.

PRESCRIPTIONS: No data for Prescription

PRE-EXAMINATION:

WORK STATUS:

☐ Full Time ☐ Part Time ☐ Restrictions ☐ Out of Work ☐ Non-Applicable



Michael S. Green, M.D.



MIDLANDS

Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O Leary, MD
Michael R. Ugino, MD*Michael S. Green, MD * M. David Redmond, MD*
William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
Coleman D. Cowble, MD*Thomas D. Arnsey, MD*I van LaMotta, MD*Bernard G. Kirol, MD

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2989 Sunset Boulevard, West Columbia, SC 29169
(803) 256.4107 * www.midlandsortho.com

Detailed Follow up Exam

NAME: Footman, Latonya ACCOUNT: 2000354
DATE: 09/20/10 DOB: 12/23/1970 AGE: 39 years old
EMPLOYER: Johnson Food OCCUPATION: cook
REFERRING PHYSICIAN: Bell, MD, Gary, B.

CC: bilateral hand numbness

DATE OF INJURY/ONSET/SURGERY: DOI: September 2000

HPI:

39-year-old female who has been seen in the past for carpal tunnel syndrome. She has had a release on the right side but had some cubital tunnel symptoms. Her left carpal tunnel symptoms seem to be getting worse according to the patient. She states that is giving her more problems at nighttime. Her left hand stays numb. Her hurts all the time. Splinting has not helped.

Date of last visit: 4-29-2009

Since the last visit the pain is: () Better (X) Worse () Same () N/A

On a scale of 0-10, how much better are you? ____ 0 ____
(0 being no change; 10 being normal)

The patient reports that they are taking none (medication) for the condition.

The patient reports treatment since last visit:

Treatment	() Yes	() No (X) NA
Anti Inflammatories?	() Yes	() No (X) NA
Narcotics?	() Yes	() No (X) NA
Brace/Cast	() Yes	() No (X) NA
Physical/Occupational Therapist	() Yes	() No (X) NA
Home Exercise Program	() Yes	() No (X) NA
Injection at last visit: short-term	() Yes	() No (X) NA
Injection at last visit: long-term	() Yes	() No (X) NA
Surgery since last visit	() Yes	() No (X) NA

Since the last visit, has there been a change in:

Patient's Medical History	() Yes	(X) No
Family History	() Yes	(X) No
Social History	() Yes	(X) No
Medications	() Yes	(X) No

ALLERGIES:

No Known Drug Allergies

CURRENT MEDICATIONS:

Calcium

Report Date: September 24, 2010 Patient: Footman, Latonya C DOS: 09/20/10

Lisinopril
Metformin Hydrochloride
Multi-vitamins
Omega
Pravastatin
Vitamins

****Medications verified in room with patient 12:10:27 PM 9/20/2010 JG,LPN****

PHYSICAL EXAM:

Vital Signs: HEIGHT: 5'4"
WEIGHT: 180 lbs 0 oz
BMI: 30.9

Examination of the hand has full range of motion of the IP joints. There is no thenar eminence atrophy. Tinel's testing is negative over the carpal canal, and Phalen's testing is positive after 30 seconds of volar flexion of the wrist. Intrinsic motor strength testing shows no weakness of the APB/Opponens pollicis. Vascular Allen's testing is normal.

Sensibility testing shows the following 2-point discrimination of the hand: .

Thumb		Index		Middle		Ring		Small	
Radial	Ulnar	Radial	Ulnar	Radial	Ulnar	Radial	Ulnar	Radial	Ulnar
5	5	5	5	5	5	5	5	5	5

RADIOGRAPHS:

PROCEDURE:

ASSESSMENT: -Mild right cubital tunnel syndrome
-Moderate left carpal tunnel syndrome

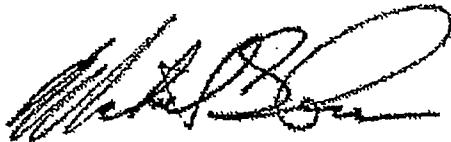
PLAN: I have discussed the patients symptoms and exam findings with Latonya in detail. I would suggest sending the patient to see Dr. Redmond for EMGs and NCS to rule out Carpal Tunnel Syndrome and possibly Cubital Tunnel Syndrome of both upper extremities. I will see Latonya back as soon as the studies are done.

PRESCRIPTIONS: No data for Prescription

PRE-EXAMINATION:

WORK STATUS:

() Full Time () Part Time () Restrictions () Out of Work () Non-Applicable



Michael S. Green, MD

Report Date: September 24, 2010 Patient: Foolman, Latonya C DOS: 09/20/10

Referral Reply Letter(s) - Dated 09/20/10

Bell, MD, Gary - SPECIALTY: Internal Medicine



ATTORNEYS AT LAW

Reply To
Jason W. Lockhart
Direct Dial (803) 227-2283
jlockhart@mgscnv.com
C/O UMBIA

March 28, 2011

Michael S. Green, M.D.
Midlands Orthopaedics, P.A.
1910 Blanding Street
Columbia, South Carolina 29201

RE: Talanya Footman v. Johnson Food Services and The Hartford
Date of Accident: September 6, 2006
WCC File No.: 0617361
Our File No.: 2071.06097
Claim No.: YKY26960 C

Dear Dr. Green:

I represent the Employer/Carrier in the above-referenced case. I am in receipt of your diagnostic report dated December 27, 2010. Based on a review of your diagnostic report, dated December 27, 2010, you stated that you were releasing the Claimant on a PRN basis. In light of the above-referenced diagnostic report, I am writing to request your response to the following questions:

1. In your expert opinion and to a reasonable degree of medical certainty, has the Claimant reached maximum medical improvement? *Yes*
2. In your expert opinion and to a reasonable degree of medical certainty, does the Claimant possess an impairment rating to the left upper extremity and/or right upper extremity pursuant to the 5th Edition of the AMA Guides to Permanent Impairment? *270 left*

If there is a fee associated with your response to the above-referenced questions, I would respectfully request that you provide me with an invoice, and I will place the invoice in line for payment. By copy of this letter to Andrew N. Safran, Esquire, attorney for the Claimant, I am informing Mr. Safran of my request for additional information. If you have any questions regarding the enclosed information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Jason W. Lockhart

JWL/rd

cc: Andrew N. Safran, Esquire
Faith Tolbert, The Hartford (via/email only)
Preston Wider, Johnson Food Services, LLC (via/email only)

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MAR 30 2011

BY:

COLUMBIA CHARLSTON GREENVILLE CHARLOTTE RALLIGH MARTIN BEACH
137 MAIN STREET, 10TH FLOOR PHILADELPHIA BOX 12519 COLUMBIA, SC 29211 803-779-2300 PHONE 803-748-0526 FAX
WWW.MGSCNV.COM

02/01/08 Latonya Footman DOB: 12/23/70 #13403 Orthopaedic Exam

Problem:

S: Mrs. Footman I saw in August of 2007, she had had carpal tunnel surgery by Dr. Green and still had persistent numbness and tingling in her hand. At that visit I felt that she probably had bilateral cubital tunnel as a working diagnosis. Since then she has seen Dr. Green one more time, apparently sent back there by workman's compensation and a repeat nerve conduction study in September of 2007 showed that she had a mild cubital tunnel on the right and actually the nerve conduction velocity across the elbow was abnormal on the left and was about equivalent to what it was on the right. Dr. Redmond's table is a little bit confusing to me but if I am interpreting it correctly, that would be my conclusion. The patient tells me that she wakes up every night with both hands numb and tingling. Patient reminds me that she is a diabetic but we do not have any numbers about her hemoglobin A1C.

Medications: Include Glucophage and an anti-hypertensive.

She has no thyroid problems.

O: The patient appears rather quiet today. Her grip on the right is 22 lbs and by way of comparison in August the grip was 40 lbs and in 2006 it was 55 and that was preoperatively. On the left the baseline grip in 2006 was 38, in August when I initially saw her it was 35 and today it is 38. So I would point out that her effort probably was not consistent on the right and on the left it probably was consistent. BP 120/82. P-88. R-24. Two point discrimination 5 mm throughout. Motor strength is 5/5. Arm elevation test is negative. Bilateral elbow flexion test. Positive on the left. It is a little atypical in that the little finger, ring finger and long finger are tingling. Only the little finger on the right is tingling. No muscle atrophy is present. No fasciculations. Adson's maneuver was within normal limits. Pulses are bounding distally. Skin shows no lesions.

A: Electrical evidence of slowing of both ulnar nerves at the elbow with cubital tunnel diagnose confirmed by Dr Redmond on the right and on the left it looks like the nerve conduction is not normal but maybe does not meet Dr. Redmond's threshold for cubital tunnel.



Discussion: I will not operate on any patient unless they have conservative treatment and my usual practice in my practice is to put the patient in an anti-flexion splint so that the elbow cannot flex more than 45o and put them in an elbow pad. I call this a no-brainer splint because it will help the patient break the habit of flexing the elbow. I noticed that this patient as I sit in the interview has both elbows acutely flexed and that is enough to trigger these symptoms.

P: I told the patient about good ulnar nerve hygiene, the simple trick of putting a pillow between her arms and sleeping with them straight at night if that is the chief complaint. She is having some problems with her thumb when she uses tongs at food service but I do not think that has much to do with the current condition. I pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship.

I will be glad to see the patient after she has had three weeks of full-time splinting of both elbows. She is going to see her family doctor, Dr. Bell, on the 12th and he needs to get a Hb-A1C and a fasting blood sugar and then let me know what the results are. I will be happy to see her in follow-up. At this point, I agree with Dr. Green that she does not need surgery. No patient does unless they have had a trial of conservative therapy in an elective situation. I also pointed out to the patient that diabetes has a lot to do with these conditions.

Joseph P. Jackson, Jr., M.D., F.A.C.S.

JFJ/sm

Addendum: Nerve conduction across the elbow on the right was 45 seconds and on the left 51 seconds, and usually 55 mm per second is considered normal.

cc: Andrew Safran, Attorney at Law

FEB 05 2008

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FEB 5 2008

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MIDLANDS ORTHOPAEDICS, P.A.
 1910 BLANDING STREET
 COLUMBIA, SC 29201
 TELEPHONE 803-256-4107 EXT 6213 FAX 803-988-8115
 PHYSICAL MEDICINE SERVICE
 ELECTROMYOGRAPHY REPORT

Patient: Latonya C Footman

MOFILE #: 2000354

Sex: Female

Date of Birth: 12/23/1970

Age: 36 Years 8 Months

Referring Phy: Michael S. Green, M.D.

Technologist: Kathleen Ernette, R NCS T

Notes: Numbness and tingling bilateral small fingers. Right CTR 3/1/2007

Sensory NCS

Nerve / Sites	Rec. Site	Amp. 1-2 µV	Lat. 2 ms	Dist cm
R MEDIAN				
1. wrist	index	18.5	4.05	14
L MEDIAN				
1. wrist	index	17.7	4.05	14
R ULNAR				
1. wrist	small	22.7	2.95	14
L ULNAR				
1. wrist	small	13.7	2.90	14

Motor NCS

Nerve / Sites	Rec. Site	Amp. mV	Lat. ms	Dist. cm	Vel. m/s
R MEDIAN - APB					
1. Wrist	APB	11.0	4.05	8	
L MEDIAN - APB					
1. Wrist	APB	11.7	4.20	8	
R ULNAR - ADM					
1. Wrist	ADM	10.2	2.60	7	
2. B. Elbow		9.6	6.45	22.5	58.4
3. A. Elbow		8.5	8.90	11	44.9
L ULNAR - ADM					
1. Wrist	ADM	10.3	2.60	7	
2. B. Elbow		10.3	6.50	22.5	57.7
3. A. Elbow		9.6	8.85	12	51.1
R ULNAR - FDI					
1. Wrist	FDI	8.2	2.85		
2. B. Elbow		6.9	7.20	22.5	51.7
3. A. Elbow		6.3	9.80	11	42.3
L ULNAR - FDI					
1. Wrist	FDI	14.3	3.10		
2. B. Elbow		14.0	7.40	22.5	52.3
3. A. Elbow		13.6	9.65	12.5	55.6

EMG Summary Table									
	Spontaneous					MUAP			Recruitment
	LA	Fib	PSW	Fasc	CRD	Amp	Dur.	PPP	Pattern
R. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
R. OPP POLL	N	None	None	None	None	N	N	N	NL Full
R. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
R. BICEPS	N	None	None	None	None	N	N	N	NL Full
R. TRICEPS	N	None	None	None	None	N	N	N	NL Full
R. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
R. ABD DIG MIN (UL)	N	None	None	None	None	N	N	N	NL Full
R. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full
L. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
L. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
L. OPP POLL	N	None	None	None	None	N	N	N	NL Full
L. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
L. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full

IMPRESSION: 1) Mild right Cubital Tunnel Syndrome.

2) Mild left Carpal Tunnel Syndrome.

3) Improved right median nerve conduction, s/p CT release.

4) No suggestion of a generalized polyneuropathy, and no sign of a left Cubital Tunnel Syndrome. There is no sign of a left or right cervical radiculopathy.

Thank you for requesting this study.

M. DAVID REDMOND, M.D

MIDLANDS**ORTHOPEDIC CLINIC, P.A.**

Robert M. Peele, Jr, MD * Robert M. DaSilva, MD * James A. O'Leary, MD
 Michael R. Ugiro, MD * Michael S. Green, MD * M. David Radmond, MD *
 William C. James, MD * Robert D. Santrock, MD * Frederick C. Piehl, MD * Thomas P. Gross, MD
 Coleman D. Fowble, MD * Thomas D. Annsey, MD * Ivan LaMotta, MD * Bernard G. Kirol, MD

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**PHYSICAL MEDICINE SERVICE
 ELECTROMYOGRAPHY REPORT**

Patient: Latonya C Footman
MOFILE #: 2000354
Sex: Female
Date of Birth: 12/23/1970
Age: 38 Years 3 Months
Referring Phy: Michael S. Green, MD
Date of Service: 3-26-09
Technologist: Lynn Williams, R.NCS.T
Notes: Recheck right cubital tunnel and left carpal tunnel syndrome

Sensory NCS

Nerve / Sites	Rec. Site	Amp. 2-3 µV	Lat. 2 ms	Dist cm
L MEDIAN				
1. wrist	index	23.3	4.55	14
R MEDIAN				
1. wrist	index	32.3	3.90	14
L ULNAR				
1. wrist	small	30.8	3.35	14
R ULNAR				
1. wrist	small	19.0	3.05	14

Motor NCS

Nerve / Sites	Rec. Site	Amp. mV	Lat. ms	Dist. cm	Vel. m/s
L MEDIAN - APB					
1. Wrist	APB	9.6	4.75	8	
R MEDIAN - APB					
1. Wrist	APB	8.6	4.10	8	
L ULNAR - ADM					
1. Wrist	ADM	9.3	2.30	7	
R ULNAR - ADM					
1. Wrist	ADM	8.4	2.45	7	
2. B. Elbow		7.4	6.05	20.9	58.1

3. A.Elbow		7.3	8.75	12	44.4
R ULNAR - FDI					
1. Wrist	FDI	5.7	4.00	7	
2. B.Elbow		5.1	7.75	20.9	55.7
3. A.Elbow		5.0	9.85	12	57.1

EMG Summary Table									
	Spontaneous					MUAP			Recruitment
	IA	Fib	PS W	Fasc	CRD	Amp	Dur.	PP P	Pattern
L. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
L. OPP POLL.	N	None	None	None	None	N	N	N	NL Full
L. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full
L. BICEPS	N	None	None	None	None	N	N	N	NL Full
L. TRICEPS	N	None	None	None	None	N	N	N	NL Full
R. FLEX CARPI ULN	N	None	None	None	None	N	N	N	NL Full
R. FLEX DIG PROF IV	N	None	None	None	None	N	N	N	NL Full
R. ABD DIG MIN (UL)	N	None	None	None	None	N	N	N	NL Full
R. FIRST D INTEROSS	N	None	None	None	None	N	N	N	NL Full
R. FLEX CARPI RAD	N	None	None	None	None	N	N	N	NL Full
R. BRACHIORADIALIS	N	None	None	None	None	N	N	N	NL Full

IMPRESSION: 1) Slightly improved right median nerve conduction compared to previous study in 2007.

- 2) Mild Cubital Tunnel Syndrome, with an identical result on one of our two ulnar motor studies, compared to 2007. A second study today demonstrated improvement. No denervation was seen in ulnar innervated muscles.
- 3) Moderate left Carpal Tunnel Syndrome, with worsening compared to the previous study in 2007.
- 4) No suggestion of diabetic polyneuropathy.

Thank you for requesting this study.



M. David Redmond, M.D.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 0617361

LATONYA FOOTMAN,	)	
	)	
CLAIMANT,	)	DEPOSITION
	)	
VS.	)	OF
	)	
JOHNSON FOOD SERVICES,	)	MICHAEL S. GREEN, MD.
	)	
EMPLOYER,	)	
	)	
THE HARTFORD,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Michael S. Green, MD., taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 1:09 p.m., October, 3rd, 2008, at Midlands Orthopaedics, 1910 Blanding Street, Columbia, South Carolina.

COPY

Reported by
Heidi A. Vaughn, ACR

SCOTT REPORTING SERVICE
P.O. Box 290482, Columbia, SC 29229 ♦ (803) 736-2408
www.scottreporting.com ♦ bscott@scottreporting.com

Appearances

For the Claimant: Andrew N. Safran, Esquire
Andrew N. Safran, LLC
1400 Pickens Street, Suite 104
Columbia, SC 29201

For the Employer/
Carrier: Jason W. Lockhart, Esquire
McAngus, Goudelock &
Courie, LLC
700 Gervais Street, Suite 300
Columbia, SC 29201

Reported By: Heidi A. Vaughn, ACR

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Stipulations

The reading and signing of this deposition transcript is waived by the deponent and counsel for the respective parties.

Whereupon,

Michael S. Green, MD., being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Michael Scott Green.

Mr. Safran: Do you want to go first, or me?

Mr. Lockhart: No, you go ahead.

Mr. Safran: Okay.

Direct Examination

By Mr. Safran:

Q Doctor, Mr. Lockhart and I have jointly decided to take your deposition just to clarify a few issues. I believe you should have access in your file to several documents, your own notes as well as some I think I sent you from Joe Jackson.

A Mm-hmm.

Q Just for history sake, this case was initially a

1 denied case, and, at that time, Dr. Jackson had
2 seen her and causally related some things. After
3 that, Mr. Lockhart's clients had accepted the case
4 and then allowed her to come and treat here.

5 A Yes.

6 Q So, Dr. Jackson actually saw her first and then has
7 seen her, as you noted, a couple of times since
8 then. What I'm here today to ask you about is
9 really just some very narrow issues. Hopefully,
10 we'll be really pretty quickly. As I understand
11 it, -- And I don't want to have you read all your
12 notes. We'll put those in evidence. Basically,
13 when Ms. Footman first came in, I think Dr. Redmond
14 saw her back in September 6, '06, and ran some
15 electrodiagnostic studies.

16 A Mm-hmm.

17 Q And from my review of those, they revealed
18 bilateral carpal tunnel syndrome. I could hand you
19 these because I think I had them pulled earlier.

20 A The 6/06 ones I don't know.

21 Q Hold on. I got them. Not a problem. I've got
22 them right here. Here you go.

23 A Okay. All right.

24 Q And just let me ask you a couple of quick
25 questions. These handwritten entries that are on

1 the side of the document, I believe those are the
2 normals.

3 A Mm-hmm.

4 Q Okay. Am I fair and correct in that?

5 A Yes.

6 Q Okay.

7 A They are.

8 Q And from what I understood, she was at least
9 showing some abnormalities on the carpal tunnel end
10 under the latency portions, from a sensory and a
11 motor standpoint at least, at that point?

12 A That's correct.

13 Q Okay. Now, you did a carpal tunnel release that
14 was on March the 1st of 2007, I believe.

15 A Yes, sir.

16 Q Okay. And just for the sake of the record, the
17 only surgery that she's had up to now was the right
18 carpal tunnel release?

19 A By me, yes.

20 Q Correct. All right. And I think for the purpose
21 of the record, nobody else has operated on her
22 otherwise.

23 A Right.

24 Q So, if we were to agree that you were the only
25 operating surgeon, we're at one surgery at this

1 point.

2 A Okay.

3 Q Okay. Now, I think there was some repeat studies
4 that were done in -- basically to the day one year
5 later, and I could hand you copies of those.

6 A All right. 9/6/07?

7 Q Right.

8 A Mm-hmm.

9 Q And do you have those?

10 A I do.

11 Q Okay. I wanted to ask you just a couple of things
12 about that. I believe, at least if we use the
13 values that were kind of the guideline from the
14 first document that we had, as far as what the
15 norms were, -- I just wanted to ask you, just to
16 compare. Would not -- At least on the sensory end
17 of it, if the norm was 3.6, she was still somewhat
18 above that, as I understand it.

19 A Yes. She was above that on both.

20 Q Okay. And I think --

21 A Which is not unexpected, especially on the right
22 one, even status post to release.

23 Q Okay. So, you --

24 A She had moderately severe initially, and it's rare
25 that once you get to a certain level, they return a

1 hundred percent back to normal --

2 Q Mm-hmm.

3 A -- and, so, -- but she has significant improvement,

4 from a 5.35 to a 4.05. So, the right one shows the

5 improvement --

6 Q Okay.

7 A Interestingly enough, her left one showed some

8 improvement, as well. But, you know, I don't know

9 how much outside of the normal variation that you

10 get from measurements --

11 Q Okay.

12 A -- that that really is -- you know, if it really is

13 or not.

14 Q Okay.

15 A Because, I mean, there's always a little bit of

16 variability between testing, you know, of, you

17 know, your measuring your distances and its timing

18 and all that stuff with the machine.

19 Q Okay. And let -- let me ask, just along those

20 lines, would that be more likely to be found if

21 you're using different examiners and different

22 machines?

23 A Yes.

24 Q That's -- Basically, in this case, we've got the -

25 -

- 1 A Same one.
- 2 Q -- same examiner and the same machine, as I
- 3 understand it.
- 4 A Exactly.
- 5 Q Okay. So, I mean, is it fair to say that those
- 6 numbers are, for the most part, at least -- we
- 7 don't have any reason that they wouldn't be
- 8 reliable?
- 9 A Right. I agree.
- 10 Q Okay. Now, I do believe that the second go-round
- 11 the motor numbers came back and fell within the
- 12 norm, for the most part.
- 13 A Say it again.
- 14 Q The -- Her motor -- Excuse me. Her motor
- 15 latencies had come back within the norm?
- 16 A On the second go-round?
- 17 Q Right.
- 18 A Yes.
- 19 Q If we use the 4.3 as being the standard?
- 20 A Yes, sir.
- 21 Q Okay.
- 22 A Yes, sir.
- 23 Q Now, Doctor, as I understood it, when you saw her
- 24 again, she had developed some symptoms of cubital
- 25 tunnel, which were documented by the second

- 1 electrodiagnostic study.
- 2 A Exactly.
- 3 Q And that was clearly on the right side, at least
- 4 from what Dr. Redmond had mentioned?
- 5 A Right.
- 6 Q I have one question just along those lines, and I
- 7 just again wanted to ask -- I saw somewhere in one
- 8 of Dr. Jackson's notes that I had sent over to you
- 9 -- and, specifically, I think it was on the one --
- 10 Yeah, it was 5/15. I believe that's right. Let me
- 11 double-check. And I'm dealing with a cubital
- 12 tunnel here.
- 13 A Right.
- 14 Q Let me just make sure it matches with this one that
- 15 was sooner than that. I just want to double-check
- 16 --
- 17 A Yeah. It says 2/1/08 note.
- 18 Q Right. Where he was talking about --
- 19 A Speed for velocity, --
- 20 Q Right.
- 21 A -- 55 seconds. I think that would have to be -- I
- 22 think I'd have to check with Dr. Redmond on that
- 23 because different examiners, depending upon their
- 24 examining technique, --
- 25 Q Mm-hmm.

1 A -- may have a different velocity.
2 Q Okay.
3 A And if you look at his 9/6/07 note, he said, mild -
4 - I mean mild right cubital tunnel syndrome.
5 Q Mm-hmm.
6 A Okay. And I think part of that was based upon --
7 Give me one second here. Part of that was based
8 upon a velocity of meters per second --
9 Q Mm-hmm.
10 A -- at 42.3.
11 Q Mm-hmm.
12 A That is lower than normal for the ulnar nerve above
13 the elbow.
14 Q Mm-hmm.
15 A And then it -- then it sped up to 55 below. Okay.
16 Q Mm-hmm.
17 A On the left one, she -- the -- she had 51 --
18 Q Mm-hmm.
19 A -- above the elbow on the left ulnar --
20 Q Mm-hmm.
21 A -- to the -- and then 51. He didn't call that --
22 He didn't call that cubital -- even mild cubital
23 tunnel syndrome on the right.
24 Q Right.
25 A So, for him, his velocity, -- I thought his -- his

1 measurements for velocity was 50.

2 Q Okay.

3 A And it may be slightly different. And you can
4 check the technical details with him on that.

5 Q Okay.

6 A But I think -- I've always interpreted him to say
7 that you want about, you know, -- you don't want a
8 ten-millimeter drop across the elbow -- I mean a
9 ten-meter -- you don't want a ten-, you know, meter
10 per second drop in speed across the elbow segment
11 because that will -- because you have a significant
12 difference there or you want a 50 -- you know,
13 meters per second speed, depending if you use one
14 of two criteria to determine if there's slowing or
15 if there's a big slowing above and below or if
16 there's a certain speed that it doesn't hit a
17 threshold. And I thought his threshold was 50.
18 Q So, basically, if I could maybe sum that up. I
19 guess, would maybe a fair statement be, as far as
20 the left side, that depending on what the
21 examiner's cutoff is, either way, it's probably in
22 that -- that gray area where he did not necessarily
23 feel like it was something that would be
24 significant enough to consider any kind of
25 treatment at that point?

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- 1 A Right. Right.
- 2 Q Okay. Let me just ask you a couple of other
- 3 questions. I think -- When she came back to see
- 4 you, you did attempt to treat the cubital tunnel
- 5 through the splinting of the right side?
- 6 A Yes, sir.
- 7 Q And I gave -- I think you gave her an injection
- 8 into the carpal tunnel area on the left side?
- 9 A Right.
- 10 Q And from what I'm reading, even though she got some
- 11 benefit, she was still at least complaining of some
- 12 symptoms afterwards. I think the report I was
- 13 looking at would have been in -- Right here.
- 14 A So, I injected her in June of '08, --
- 15 Q Mm-hmm.
- 16 A -- and then I saw her back in 8 of '08.
- 17 Q Correct.
- 18 A Then it said the carpal tunnel injection did help
- 19 for awhile. It certainly made an improvement. So,
- 20 it leads to believe that it helped some, but it's
- 21 either recurred or maybe it's still there but not
- 22 as bad.
- 23 Q Mm-hmm.
- 24 A I mean, it's kind of how I interpreted that.
- 25 Q Okay.

- 1 A And her splint helped her cubital tunnel syndrome a
2 lot. So, at that time she really didn't feel like
3 she was symptomatic enough to warrant a surgical
4 approach for either of those two procedures --
- 5 Q And I guess --
- 6 A -- either those two conditions.
- 7 Q And, so, I guess my question is, along those lines,
8 -- and please correct me if I'm wrong -- that you
9 felt, even though she was manifesting symptoms,
10 they were not ones that you would necessarily
11 operate on at those levels?
- 12 A At that time.
- 13 Q At that time. And I think the characterization as
14 I saw it was -- is that, you know, just kind of
15 leave well enough alone at this point and, just, if
16 it gets worse, then certainly we'll consider
17 surgery?
- 18 A And deal with it then, yeah.
- 19 Q Okay. And, I guess, is one of the reasons why more
20 or less that you were deciding to leave well enough
21 alone, because she actually had the right side
22 procedure done, she still was complaining to some
23 extent of some residual symptoms, and, you know,
24 even though there was an improvement, it was no
25 guarantee if you did the left that she wouldn't

1 have the same type of residual problems there?

2 A Partially.

3 Q Okay.

4 A Okay. I mean, I think it's a partially accurate
5 statement. I think the real impetus behind it,
6 though, is that she was mild enough now that I
7 could not, with a high degree of predictability,
8 tell her that she was going to be better.

9 Q Okay.

10 A Okay. At that level, when they're very mild.

11 Okay. And, so, that's what I usually try to inject
12 those and treat them symptomatically for a while.
13 And sometimes they'll kind of just get better over
14 time. Unfortunately, she's a diabetic. You know,
15 hers is not likely to be the case. Okay. But, at
16 the time, she felt that she really -- I mean, if
17 you ask her, at the time, she didn't think she was
18 bothered enough by it to proceed with it -- with
19 ending up with a surgical procedure. Okay.

20 Q Let me ask you --

21 A But it's -- But it's the predictability of
22 resolution of symptoms, in a mild case, that is not
23 disabling.

24 Q Okay.

25 A Okay. I mean, disabling in a since of just being

1 irritating and bothersome every day and interfering
2 with activities and sleeping.

3 Q Okay. So, let me ask you this. I want to just
4 clear -- synopsise all that stuff for whoever will
5 be reading this transcript. As I understand it, --
6 and, please, again, correct me on anything I'm
7 mistaken about -- that with the level of the
8 symptoms, even though they were present, and even
9 though they were documented by the
10 electrodiagnostic testing, surgery was not
11 something that you felt like could reliably improve
12 them, you know, with any guarantee. As I
13 understood it, it was better to live with what you
14 got unless it got, you know, moderately worse
15 because surgery was not necessarily -- as you said,
16 there was not a predictability that they were going
17 to get appreciably better with surgery.

18 A Yes.

19 Q Okay.

20 A I would agree with that. I think, you know, the
21 main emphasis that I -- the main impetus I think I
22 use for surgical procedures is, somebody -- if
23 they're really having a hard time sleeping, it
24 bothers them or it's interfering with job
25 activities, or it just -- they're just to the point

1 they're sick and tired of it, once you get to that
2 level, then the degree of carpal -- then the degree
3 of satisfaction from carpal tunnel release is
4 usually pretty high.

5 Q Okay.

6 A If it's an intermittent thing that kind of bothers
7 you and it's just kind of a nuisance that you can
8 live with, then the surgical release is less
9 predictable, and it -- the difference between where
10 they're at and where they may get is not such a
11 large gap that they may not notice it that much,
12 and it's probably -- you know, it may not be
13 something that's going to be -- that they're ready
14 to have something done.

15 Q Right. And, so, I assume in this thing that -- I
16 guess initially more or less triggered the notion
17 of doing the surgery on the right side is that the
18 electrodiagnostic studies were coming back
19 moderately severe and she was ready to have an
20 operation done.

21 A Right. Exactly.

22 Q Okay.

23 A Exactly, because I've never seen one at that level
24 get better on its own, whereas a mild will wax and
25 wain. If it bothers them a little bit more for a

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1 little bit and then it will calm down and not
2 hardly bother them at all and it will kind of wax
3 and wain. But -- And those can -- Basically,
4 they can live with as long as it's not causing
5 nerve damage forever. But if it gets to the point
6 to where your numbers really jump, as far as the
7 latencies, and your symptoms worsen, well, then,
8 those don't usually just get better on their own.
9 They usually just need some type of intervention.

10 Q Okay. Let's see. Along those lines, you mentioned
11 just now, though, because of the fact she is a
12 diabetic, you would think it's more likely than --
13 or it's not likely that her symptoms are going to
14 necessarily improve at this stage, seeing where
15 they are?

16 A I think she'll wax and wain and be -- go through
17 periods where it doesn't bother her much.

18 Q Mm-hmm.

19 A But as far as total nerve recovery and that type of
20 thing, I think it causes -- in diabetics it causes
21 less -- it takes less pressure to cause an
22 effective symptoms and a change in nerve conduction
23 velocities in a diabetic than it does in a normal
24 person. So, that lesser trauma, lesser activity,
25 lesser things, activities that she does, will cause

1 her to more symptoms than somebody who doesn't have
2 diabetes.

3 Q Okay. So, the fact that she is diabetic, as I
4 understand it, predisposes her to having to more
5 profound symptoms than if she didn't have it?

6 A Exactly.

7 Q Okay. Let me ask you just a few things about just
8 the treatment that you would anticipate. Is the
9 splinting that she's done on the right elbow for
10 the cubital tunnel -- is that something that you
11 envision she's likely going to need to do just --
12 at least intermittently, for an extended period of
13 time?

14 A I would suspect so.

15 Q Okay. And would you expect that further injections
16 or something that would be, kind of, within the
17 realm of what you would anticipate, more likely
18 than not, that she'd have in foreseeable future
19 just given where her symptoms are and what you
20 anticipate their progression to be?

21 A For her carpal tunnel?

22 Q Mm-hmm.

23 A Yes, it could. And, you know, you could always try
24 a corticoid steroid preparation that has a longer
25 half life.

1 Q Okay.

2 A The one we use -- The one we use for her is a
3 usually quick onset. It's water soluble. It
4 causes less irritation. But it's not a real long
5 -- it doesn't last a long time. It's half life
6 isn't as long. Where as, there are other
7 preparations that are maybe less water soluble like
8 a Kenalog, or so, that may actually give her a lot
9 longer lasting relief.

10 Q Would the -- Let me ask you this, would her
11 diabetic condition in any way, limit the use of
12 steroid injections?

13 A Mm-hmm. Sure, a lot. If she's a real diabetic and
14 I can't recall exactly where -- what her hemoglobin
15 A1C was or if it was done or where her sugars ran.
16 But if she -- if she had a hard time keeping
17 control of her sugars, then a little cortisone will
18 just throw them out of whack for awhile.

19 Q Okay. But, I guess, assuming that her diabetes is
20 reasonably well controlled, would it be most likely
21 and, I guess, more likely than not, fifty-one
22 percent, that you would anticipate injections will
23 be something that would be utilized in the
24 foreseeable future for the carpal tunnel problem?

25 A I think it's a reasonable -- as long as it doesn't

1 affect her sugars much and I think it's a
2 reasonable option to do for, you know, a few times.
3 I certainly wouldn't do it for, you know, long
4 periods of time --

5 Q Okay.

6 A -- multiple injections over long period of time.

7 Q And from what I'm hearing is that unless her
8 symptoms, as far as, the carpal or the cubital
9 tunnel, keep her up all the time at night and
10 really just become completely intolerable, surgery
11 is something, at least, right now, would be
12 deferred?

13 A I would. I usually do. I can't say that I can
14 recall, you know, patients with these numbers on
15 her nerve studies, that I've ever had to tell them
16 when to have it done. I just leave it in their
17 ballpark. I say, you know, when you get sick and
18 tired of it, you know, of the symptoms, then, you
19 know, that's the time to do the surgery. You know,
20 if you live with them and it's tolerable, then
21 there's certainly no urgency to proceed.

22 Q Okay. So, it'd really be, kind of, left up to her
23 --

24 A Mm-hmm.

25 Q -- and really how she would come in and say, I'm

1 ready?

2 A Yeah. Unless she profoundly changes for some
3 reason.

4 Q Okay. Let me ask you this. Would somebody like
5 this have, and I want to differentiate between what
6 you would impose as restrictions and basically
7 what, as a practical matter, the things they would
8 more be limited from doing or have limitations, as
9 far as, trying to do. Because I don't know that
10 I'm necessarily asking you to impose any
11 restrictions on her, rather I want you to identify
12 the activities that, with her condition, she is
13 likely to find difficult and I'm going to suggest a
14 few and just see if that -- Is repetitive use of
15 the arms something that will exasperate her
16 symptoms, in all likelihood?

17 A I think repetitive use with a load is probably more
18 likely than just light clerical repetitive use.

19 Q Okay.

20 A Light clerical repetitive use may or may not. I
21 think most studies are showing probably doesn't --

22 Q Okay.

23 A -- doesn't have a lot of affect in causing carpal
24 tunnel or such. But I think that if, you know,
25 repetitive activity with some other torque or a

1 load applied to it, some type of, even a mild
2 course --

3 Q Mm-hmm.

4 A -- probably would exasperate her symptoms.

5 Q And I think I had maybe posed that question in a
6 questionnaire to Dr. Jackson, and I think what his
7 response had been -- and I think I had sent this to
8 you -- but this is one from May of this past year
9 where I think I asked the question number seven --
10 and you can look at that one. I think that's --
11 that's correct. -- where I asked about exertion of
12 force and I asked in excessive of, and I think he
13 put 20 pounds of force as opposed to, I guess as
14 you say, just light clerical, but where you're
15 actually having to push or squeeze, things of that
16 nature, where you have something greater than 20
17 pounds. Is that basically in the realm of what
18 you're talking about?

19 A My suspicion would be even less force than 20.

20 Q Okay. So, where would you more or less --

21 A It's, you know, it's --

22 Q I'm just saying --

23 A -- truly arbitrary --

24 Q Sure.

25 A -- for either one of us to be able to say this --

1 You know, I'm sure there are maybe some ergonomic
2 studies that may give some better numbers. But,
3 you know, I mean, even when I think of a gallon --
4 A milk jug is eight pounds. Okay.

5 Q Mm-hmm.

6 A So, you know, even a repetitive use of 10 to 15
7 pounds, I think, could certainly trigger, you know,
8 especially, if it's on a frequent basis.

9 Q Mm-hmm.

10 A Intermittent basis maybe not. But on a frequent
11 basis, you know, even a 10 to 15 pound repetitive
12 activity probably could -- probably can exasperate
13 her symptoms.

14 Q Okay. So, I guess -- And -- Would you normally
15 expect that exacerbations like that would
16 necessarily require somebody to at least stop that
17 activity for a period of time, whether it be a
18 matter of minutes, hours or just stop for the day
19 and have to pick it up another time? I mean, is
20 that the expected outcome?

21 A Best term I can say without being able to be -- not
22 being able to be more specific would be, yeah, just
23 on an intermittent basis to where there's some
24 either frequent breaks or change of activity.

25 Q Okay. Just want to ask you lastly a couple of

1 things. What I had tried to do, -- and I know this
2 can be to some extent exasperating -- I was trying
3 to look in the guides and kind of compare what was
4 found about electrodiagnostic studies as well as
5 the fact that she has remained symptomatic to some
6 extent. And I wanted to just ask a couple quick
7 things so we could maybe wrap this up. As I see
8 it, under dealing with median neuropathy, under
9 this table 15 -- 16-15 page 492, the maximum value
10 that's available for a median neuropathy, without
11 getting into all the sub parts, is 39 percent, and
12 that would be the absolute most, as I understand
13 it.

14 A That's correct.

15 Q Okay. What I saw, -- and I'm asking your thoughts
16 about this -- I think Dr. Jackson ultimately landed
17 in the median neuropathy around five percent, and
18 what I'm trying to figure out is kind of where this
19 number would probably be.

20 A All right. Yeah. I think -- I don't know. Have I
21 given her an impairment rating?

22 Q I think you gave her two percent.

23 A Yeah. And that's pretty normal for a -- From an
24 improvement from symptoms from carpal tunnel
25 syndrome, especially with an improvement in nerve

1 conduction studies, two percent is what I use. And
2 it's relatively arbitrary, too. We both probably
3 use more along the lines of table 16-10 in the
4 impairment.

5 Q Mm-hmm.

6 A You know, the impairment of sensory deficits.

7 Okay.

8 Q Mm-hmm.

9 A Or pain -- sensory deficits or pain. So,
10 basically, if you got essentially -- you have no --
11 if you have absolutely no abnormality whatsoever.
12 So, if her nerve studies had returned to normal,
13 okay, even with a carpal tunnel -- I mean with a
14 carpal tunnel release, basically it's essentially,
15 you know, a zero percent impairment rating because
16 there's no nerve deficit. Okay.

17 Q Mm-hmm

18 A I assign two percent for the simple reason that
19 she's almost normal. I mean, yeah, she's only
20 6/10, you know, 6/10s away -- of her median -- I
21 mean of her latencies to be almost normal. So, --
22 And I just -- I usually just routinely give them
23 two percent, especially if it's only detectable by
24 nerve studies and not by -- her two-point
25 discrimination, muscle mass and all that, was

1 essentially normal. Okay.

2 Q Mm-hmm.

3 A But because the nerve studies are so sensitive, if
4 there's a slight abnormality -- And, so, I give a
5 two percent. Is there a difference between his
6 five percent and my two percent? Probably not.
7 It's -- Both of them are relatively arbitrary.
8 She doesn't -- She doesn't, you know, -- On the --
9 -- For the grade four or from zero -- from a one to
10 a 25 percent, basically it's distorted superficial
11 tactical sensibility. Well, she doesn't really
12 have that. But she's got -- You know, but it's
13 not normal. Therefore, we did -- I gave her
14 something, and he gave her something as a result.
15 Okay. So, I mean, there is not a -- any more
16 precise way to truly determine that than -- than --
17 than to do this.

18 Q Let me ask you. So, as I'm understanding, I think
19 what you've indicated is, is that anywhere in that
20 two to five percent range is certainly kind of
21 within the realm of what you would ascribe to this?

22 A I certainly wouldn't go further than that. But,
23 yeah, I agree with that.

24 Q Okay.

25 A But I probably wouldn't go higher than that.

1 Q Sure. Let me ask you this. Would you have the
2 same opinion on the left carpal tunnel, non-
3 operated side?

4 A Yeah. Yes. Yeah, I would, because it's no
5 different on nerve study conduction studies than
6 the other side.

7 Q So, again, you know, anywhere in that two to five
8 percent range, depending on, I guess, --

9 A Only because she's symptomatic. And that's where
10 it goes into the pain category and not the
11 distorted sensibility.

12 Q Okay. All right. Because I guess this is -- the
13 sensory element of it would include pain, as I
14 understand it?

15 A Yeah.

16 Q All right. And then, lastly, I think one thing
17 that we didn't see necessarily, or I couldn't find
18 in the rating part, was -- I don't think it
19 necessarily took into play the cubital tunnel
20 aspect. What would ascribe, I guess, for the
21 cubital tunnel symptoms as well as, you know, the
22 fact that she does have symptoms and the fact she
23 also has positive studies?

24 A I think it's reasonable -- I mean, I think it's
25 reasonable to say in the same realm. I mean, is it

1 two? Is it three? Is it four? Is it five?

2 Probably makes no difference. It's probably in
3 that area.

4 Q Okay. All right. I think the last thing I want to
5 ask you is that in terms of the medical modalities
6 that we've identified, as far as what she's likely
7 going to require just into the future, whether it
8 be the splinting, the intermittent shots, and the
9 surgery, again, depending on when she comes in and
10 says I'm ready, are all those things, from a
11 medical standpoint, reasonable and geared toward
12 lessening her ultimate period of disability under
13 these circumstances? And what I mean by that is -
14 - is that are they geared toward making her
15 condition better than --

16 A Yeah. They would be, but I think for her the
17 triggering point is development of diabetic
18 neuropathy. That's the thing that's going -- I
19 think that's going to be the -- the -- the -- When
20 she develops some peripheral neuropathy from her
21 diabetes, that's -- I think that's when she's going
22 to notice the symptoms more. And that's probably
23 going to be the turning point to where something
24 needs to be done from a medical standpoint.

25 Q Okay.

1 A Now, will it worsen because -- with her work
2 activities as they are now? I don't know. You
3 know, she can -- I mean they're so mild that, I
4 mean, her cubital tunnel syndrom does not meet the
5 criteria for surgical -- for surgical intervention.
6 You need to see some significant changes before you
7 can tell that moving that nerve is going to help or
8 -- you know, is going to help. If you move a nerve
9 that has -- where her nerve studies are now, she'd
10 have to be a lot more symptomatic because just
11 moving the nerve can give you numbness and tingling
12 that she has now, --

13 Q Mm-hmm.

14 A -- just because you're stripping a certain portion
15 of the nerve from its blood supply and you're
16 moving it to a different bed. So, you know, --
17 So, if you took a normal person and you did that to
18 their nerve, it wouldn't surprise me that they
19 would have some, you know, residual numbness and
20 tingling. So, it has to be relatively pronounced
21 before we can say, hey, it's going to make a
22 difference.

23 Q Well, let me --let me, I guess, maybe narrow the
24 question. Let's just talk about the carpal tunnel
25 end of it.

1 A Okay.

2 Q Would -- I think we've gone through previously
3 that what you had identified as probably her
4 ongoing or long-term problems for the carpal tunnel
5 would be doing the injection periodically. Would
6 that be something that --

7 A She might need?

8 Q Yeah. That basically would be tending to lessen
9 her period of disability, i.e. trying to maintain
10 greater control of her symptoms and not let them
11 interfere with work activities?

12 A Yes, sir.

13 Q And then the splinting, really what I was talking
14 about was more for the cubital. Would the
15 intermittent splinting similarly be medically
16 reasonable and aimed towards keeping her symptoms
17 as tolerable as possible?

18 A Yes, sir.

19 Mr. Safran: Okay. I think that's all I
20 got. Jason.

21 Cross-examination

22 By Mr. Lockhart:

23 Q Doctor, I just have a couple of brief questions.
24 Going back to your last visit with her on August
25 11, 2008, it appeared from looking at the patient

1 work information sheet from your office, you did
2 release her to return to regular duty with no
3 restrictions as of the day of that last
4 examination.

5 A Mm-hmm.

6 Q Is that correct?

7 A I did.

8 Q Okay. So, Mr. Safran asked you earlier some
9 questions about activities that may cause her
10 condition to worsen. And I believe you talked
11 about the -- the utilization of force greater than
12 10 to 15 pounds. But I guess my question is, you
13 haven't placed any specific physical restrictions
14 upon her per se, at least as of the day of your
15 last examination on August 11th; is that correct?

16 A No. I did not. But, to be probably a little bit
17 more precise than that, you have to help me --

18 Q Certainly.

19 A -- in a sense and tell me what does she do for a --
20 What's her job activity?

21 Q Well, she works --

22 A What does her job entail --

23 Q Sure.

24 A -- activity entail?

25 Q And Mr. Safran can probably fill in any gaps. I

1 mean, the client I represent is a company called
2 Johnson Food Services, and they're actually a --
3 they provide food services at Fort Jackson.

4 A Okay.

5 Q So, she works in a cafeteria-type setting, food
6 preparation. She also has another job with a home
7 healthcare service, --

8 Mr. Safran: Babcock.

9 Q -- Babcock Center. So, she's providing --

10 Mr. Safran: Basically, she sits.

11 Q -- almost custodial-type services to --

12 A A sitter, a care sitter?

13 Q Yes, exactly. Yes, sir. So, I mean, that's in
14 essence what she does for a living. She performs
15 both of those jobs concurrently. So, as far as
16 work restrictions are concerned, you have not
17 placed any upon her per se?

18 A No, because I told her, I said, -- No, I didn't,
19 in a sense that, you know, if she could do her job,
20 she could do it under certainly no restrictions. I
21 guess if she had come to me and said there is a
22 certain component of her job that, you know, just
23 really bothers her, then I'd probably say try to
24 refrain or minimize that particular activity as
25 much as possible.

1 Q And, typically, a functional capacity evaluation is
2 often our best way of assessing what work
3 restrictions or permanent restrictions would be.
4 Is that correct?

5 A Mm-hmm. It is.

6 Q And I don't think she ever had one in this case
7 while she was under your care.

8 A No, she did not.

9 Q Is that correct? All right.

10 A Except somewhere along the way, I thought I read in
11 Dr. Jackson's notes that she had something that
12 said she was okay for a moderate level activity.

13 Q Okay.

14 A Do you remember seeing something like that?
15 Somewhere, I thought that I read --

16 Q I don't recall seeing that.

17 A Okay. I could be wrong.

18 Q It might be the last one. Just so I'm clear, too,
19 Doctor, on the impairment ratings again, is it your
20 testimony today that she has a collective two
21 percent rating to both the left and right upper
22 extremities --

23 A That's each.

24 Q That's each. Okay.

25 Mr. Lockhart: All right. Doctor, I

1 don't have any questions.

2 Re-direct Examination

3 By Mr. Safran:

4 Q Let me just ask you just one other thing.

5 A I take that back. Maybe it's not in here, but I
6 thought -- I'm sorry. I can't find it.

7 Q Okay. I wanted to make sure because I don't want
8 us to be confused. As I understood the testimony
9 previously when we were talking about these two to
10 five percent realms, -- Is that applicable to each
11 of the carpal tunnels?

12 A Yes, sir.

13 Q And, also, that's -- would be another one would be
14 applicable to the cubital tunnel?

15 A Yes, sir.

16 Q So, I mean, there's really three -- I guess three
17 components, carpal left, carpal right and cubital
18 right?

19 A That's correct.

20 Q Okay. I looked in there, too, I didn't --

21 A I didn't see it either. It must have been somebody
22 else that I was reading.

23 Mr. Safran: Okay. That's all I got.

24 Mr. Lockhart: Thank you, sir.

25 The Deponent: Okay.

1 Mr. Lockhart: Appreciate your time.
2 (Whereupon the deposition was concluded at
3 1:42 p.m.)
4 (Deponent has waived reading and signing.)

State of South Carolina)
) Certificate
County of Richland)

Be it known that the foregoing deposition of Michael S. Green, MD., was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

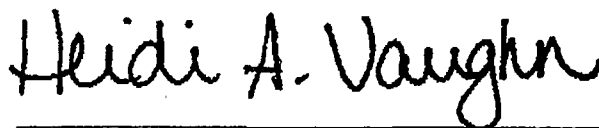
That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 35 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 20th day of October, 2008.



Heidi A. Vaughn

Notary Public for South Carolina
My commission expires March 18, 2018.

Note: Recordings are retained for twelve (12) months from date of certification.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NUMBER: 2013-001382

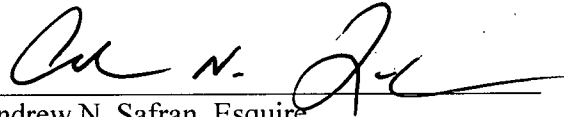
Latonya Footman, ... Claimant/Appellant,

vs.

Johnson Food Services, LLC, Employer, and The Hartford, Carrier, ... Defendants/Respondents.

CERTIFICATION OF COUNSEL

The undersigned hereby certifies that, to the best of his knowledge, the contents of this Record on Appeal are limited to all material proposed to be included by the respective parties and complies with the August 13, 2007 Order of the South Carolina Supreme Court.



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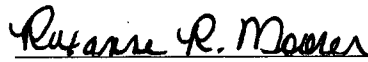
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CERTIFICATE OF SERVICE

I, Roxanne R. Moorner, paralegal for Andrew N. Safran, Esquire, Attorney for Appellant, does hereby certify that on the 12th day of February, 2014, I caused to be filed, via hand delivery, the original and fourteen (14) copies of the Record on Appeal with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Record on Appeal was furnished to counsel for Respondents via first class mail at the following addresses:

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February 12, 2014

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