

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1106685

David Glenn Jones, Employee/Claimant, ... Appellant,

v.

Warden and Smith Concrete, Employer,
and Bridgefield Casualty Insurance
Company c/o Summit Holdings, Inc., Carrier, ... Respondents.

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SC Court of Appeals

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**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1106685**

DAVID G. JONES, EMPLOYEE CLAIMANT/APPELLANT/RESPONDENT

VS.

WARDEN & SMITH CONCRETE, EMPLOYER,

AND

BRIDGEFIELD CASUALTY INSURANCE COMPANY
C/O SUMMIT HOLDINGS, INC., CARRIER DEFENDANTS/RESPONDENTS/APPELLANTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on February 20, 2013, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, 44-13

APPEARANCES: CLAIMANT/APPELLANT/RESPONDENT represented by William L. Smith, II, Esquire,
of Columbia, South Carolina; and

DEFENDANTS/RESPONDENTS/APPELLANTS represented by Nicolas L. Haigler,
Esquire, of Columbia, South Carolina.

STATEMENT OF THE CASE

This is a cross-appeal by David G. Jones ("Claimant" or "Appellant/Respondent"), and Warden & Smith Concrete and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc. ("Respondents/Appellants" or "Defendants") from the Decision and Order of Commissioner Melody L. James, filed on October 18, 2012.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the defendants on May 15, 2012. It is the position of the defendants that the claimant reached maximum medical improvement (MMI) with regard to his low back on December 15, 2011 and, therefore, defendants are entitled to terminate temporary total disability (TTD) benefits. In addition, defendants contend the claimant has not sustained any permanent partial disability with regard to his back under Section 42-9-30; however, if so defendants request credit for the extent of pre-existing disability sustained to the claimant's back. Moreover, defendants contend the claimant is not entitled to further medical benefits under Section 42-15-60. The defendants also request credit for the payment to TTD benefits after the date of MMI, and request a determination as to the credibility of the claimant.

Per the Reply to Defendants' Stop Pay Application, it is the position of the claimant that the claimant has not reached MMI as the claimant has been referred for a neurological opinion which has not been provided by defendants. The claimant also requests a second orthopedic opinion. In the alternative, if the claimant is found to have reached MMI, the claimant contends he is permanently and totally disabled under Section 42-9-10 or Section 42-9-30.

The Hearing in this matter was held on June 28, 2012, in Florence, South Carolina, before Commissioner Melody L. James ("Hearing Commissioner"). By way of Decision and Order filed on October 18, 2012, the Hearing Commissioner determined the claimant reached MMI on June 26, 2012, with seven (7%) percent permanent partial disability to the back. The Hearing Commissioner further determined the defendants were entitled to a credit for payment of TTD benefits after the date of MMI, June 26, 2012;

determined the claimant was not entitled to further medical benefits under the Act; and did not find the claimant to be credible.

Within the statutory period, the both parties filed Applications for Review in the case setting forth their reasons, copies of which were furnished to all interested parties; prior to oral argument presented before the Appellate Panel on February 20, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Full Commission Appellate Panel and has since been under study and consideration. Specifically, the claimant respectfully requests the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner based upon the following grounds:

1. Did the Single Commissioner err in her Finding of Fact No. 2 in finding that the claimant was not credible when the greater weight and preponderance of the evidence showed that claimant was credible? Further, the Single Commissioner apparently based her decision on the use of a wheelchair and did not consider the testimony of the doctors in stating that claimant was not malingering and that there were reasons for his pain and for the use of the wheelchair.
2. Did the Single Commissioner err in her Finding of Fact No. 3 in finding that the claimant reached maximum medical improvement when the greater weight and preponderance of evidence showed that claimant was in need of further medical care and the defendants had not provided the medical care required of them in the previous Consent Order?
3. Did the Single Commissioner err in her Finding of Fact No. 4 in finding that Dr. Edwards had just discharged the claimant from his care when the greater weight and preponderance of evidence showed that he opined that claimant was in need of further medical treatment and had referred him to the care of the neurologist and which never provided the care as recommended by Dr. Healy. Further the Single Commissioner apparently misunderstood the deposition testimony of Dr. Healy in which he indicated that claimant's problems were causally related to his on the job injury and that he was in need of further medical and that the claimant was not malingering?
4. Did the Single Commissioner err in her Finding of Fact No. 5 in finding the claimant had reached maximum medical improvement on June 26, 2012, when the greater weight and preponderance of evidence showed that both doctors recommend further medical care for his causally related condition?

5. Did the Single Commissioner err in her finding that defendants were entitled to credit for payment of temporary total disability benefits after June 26, 2012, when the greater weight and preponderance of evidence showed claimant had not reached maximum medical improvement and remained totally disabled?
6. Did the Single Commissioner err in her Finding of Fact No. 7 in finding that claimant had sustained 7% permanent partial disability to the back when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement and/or had a much greater degree of disability?
7. Did the Single Commissioner err in her Finding of Fact No. 8 in finding that the claimant was not entitled to further medical benefits under the Act when the greater weight and preponderance of evidence showed that both of the doctors were recommending additional treatment for claimant?
8. Did the Single Commissioner err in her Conclusion of Law No. 3 in finding that the claimant had sustained a 7% permanent partial disability to the back when the greater weight and preponderance of evidence showed claimant had not reached maximum medical improvement and/or had a much greater degree of disability?
9. Did the Single Commissioner err in her Conclusion of Law No. 4 in finding claimant was not entitled to further medical care when the greater weight and preponderance of evidence showed claimant had not reached maximum medical improvement and was in need of additional medical to lessen his disability?
10. Did the Single Commissioner err in her Conclusion of Law No. 5 in finding the defendants were owed credit for temporary total disability benefits after June 26, 2012, when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement and remained temporarily totally disabled?
11. Did the Single Commissioner err in her Order in finding that claimant had sustained 7% permanent partial disability to the back, that defendants were entitled to credit for temporary total disability payments after June 26, 2012, and in finding that claimant was not entitled to further medical care when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement, was in need of additional medical treatment, remained temporarily totally disabled, and/or had a greater degree of disability?

In addition, the defendants respectfully request the Appellate Panel to reverse, in part, the Decision and Order of the Hearing Commissioner based upon the following grounds:

1. Finding that the claimant reached MMI on June 26, 2012, is not supported by the greater weight of the evidence in the record, as the claimant actually reached MMI on December 15, 2011, or January 12, 2012.

2. The Hearing Commissioner erred in awarding defendants credit for payment of TTD only back to June 26, 2012, as the actual date of MMI was either December 15, 2011, or January 12, 2012.

The defendants request the remainder of the Decision and Order of the Hearing Commissioner be affirmed in its entirety.

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed in its entirety.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant and Rebecca Chavis Jones, the deposition testimony of W.S. Edwards, M.D., and P. Joseph Healy, M.D., and the medical records and exhibits submitted through the APA, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with David G. Jones as employee, Warden & Smith Concrete as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. We do not find the claimant credible. Claimant is using a wheelchair when both treating physicians indicated that there is not a reason for it. Neither treating physician believes there is a reason for the use of a wheelchair. Dr. Edwards even recommends against using a walker. Dr. Edwards indicates that that is symptom magnification. See Deposition of Dr. Edwards, p. 32. Dr. Edwards testified that most patients go to work within 7 days of this type of problem. See Deposition of Dr. Edwards, p. 52. Claimant testified that he cannot shave himself, as well as other upper extremity activities; however, the injury is to his lower back. Claimant testifies that there is extreme pain; however, he has not sought pain medications. Dr. Healy said that the test grips were weak, but when the claimant stood up and held on to him he felt his grip on this arm. See Deposition of Dr. Healy, pp. 60-61. Dr. Healy testified that he had exaggerated or amplified or thought that he was injured worse than what he could find. See Deposition of Dr. Healy, p. 13. Dr. Johnson, on October 18, 2011, stated that I think some of his pain is out of proportion to what his MRI shows me. See Defendants' APA, p. 82.

3. We find the claimant has reached maximum medical improvement (MMI). Both treating physicians, orthopedist and neurologist, indicated that they had nothing further to offer the claimant. The only change appears to be when claimant went to Dr. Healy in April alleging that he had previously fallen. This finding is based upon the greater weight of the evidence in the records, specifically the medical records and deposition testimony of Dr. Edwards and Dr. Healy.
4. On December 15, 2011, Dr. Edwards (orthopedist) discharged the claimant from his care. See Defendants' APA, p. 73. He indicated that work-up failed to show any obvious problem that could be dealt with either medically or surgically. He issued a rating on January 12, 2012, and deferred him to a neurologist. Dr. Healy (neurologist) saw him on November 10, 2011, and stated that he did not have anything neurologic to recommend. See Defendants' APA, p. 94. Dr. Healy then saw him on April 5, 2012, and recommended testing; however, in his deposition he testified that the difference in his opinion from November to April would be that the claimant had indicated he had fallen. See Deposition of Dr. Healy, p. 50. He stated that he thought it was odd that the claimant did not contact him for 3 months after falling. See Deposition of Dr. Healy, p. 50. Dr. Healy testified that before the April visit he did not have anything to offer him; that he didn't find anything wrong with him from a neurological standpoint. See Deposition of Dr. Healy, p. 32. He stated that as of April he was recommending the EMG, but back in November he would have recommended it. See Deposition of Dr. Healy, p. 66. He testified that as of the deposition date (June 26, 2012) that it is still his opinion that day that he did not find any neurological problem. See Deposition of Dr. Healy, p. 23. Dr. Healy testified that he would basically agree that the claimant ought to be able to go back to work without any restrictions, because he did not find any neurological problems. See Deposition of Dr. Healy, pp. 22-23.
5. We find the claimant reached MMI on June 26, 2012. Both treating doctors found that they had nothing to offer the claimant in late 2011 (Dr. Edwards on December 15, 2011 and Dr. Healy on November 10, 2011). Dr. Edwards issued an impairment rating on January 12, 2012. As there are some notes deferring between the doctors to each other, and the doctors' reports needed clarification from the deposition, we find that the date of MMI is the date of Dr. Healy's deposition, June 26, 2012, in which he provides an explanation as to his opinions.
6. We find the defendants are entitled to credit for payment of temporary total disability benefits after June 26, 2012, the date of MMI. See Curiel v. Envtl. Management Servs., 655 S.E.2d 482 (2007)
7. We find the claimant sustained seven (7%) percent permanent partial disability to his back. This finding is based upon the greater weight of the evidence in the record.
8. We find the claimant is not entitled to further medical benefits under the Act. This finding is based upon the greater weight of the evidence in the record, specifically the medical records and deposition testimony of Dr. Healy and Dr. Edwards.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of the Commission that:

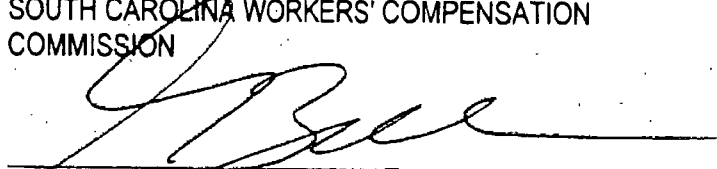
1. Under § 42-1-130, claimant was a covered employee at the time in question.
2. Under § 42-1-140, defendant-employer was a covered employer under the Act.
3. Under § 42-9-30, claimant sustained seven (7%) percent permanent partial disability to his back.
4. Under § 42-15-60, claimant is not entitled to further medical treatment.
5. Under Curiel v. Envtl. Management Servs., 655 S.E.2d 482 (2007), defendants are entitled to credit for temporary total disability benefits paid after June 26, 2012, the date of maximum medical improvement.

ORDER

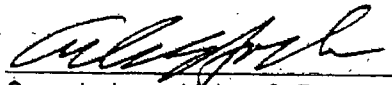
IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on October 18, 2012, is hereby AFFIRMED.

AND IT IS SO ORDERED.

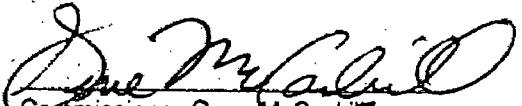
SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



Commissioner T. Scott Beck
For the Appellate Panel



Commissioner Andrea C. Roche



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

By Valerie Deller on April 4, 2013

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1106685

David G. Jones,

Employee,

Claimant,

v.

Warden & Smith Concrete,

Employer,

and

Bridgefield Casualty Insurance Company c/o
Summit Holdings, Inc.,

Carrier,

Defendants.

DECISION AND ORDER

HEARING:

Hearing held in Florence, South Carolina, on June 28, 2012.

APPEARANCES:

Claimant represented by Chappell Smith & Arden, P.A., with William L. Smith, II, Esquire, appearing.

Defendants represented by Sowell Gray Stepp & Laffitte, L.L.C., with Nicolas L. Haigler, Esquire, appearing.

PURPOSE OF HEARING:

To determine issues as set forth in Form 21.

DECISION AND ORDER:

By Honorable Melody L. James, Commissioner

FILED:

October 18, 2012

ORDER

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the claimant submitted records, reports, and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1. W.S. Edwards, M.D.	Pee Dee Orthopaedic Associates	10/19/11	1

Pursuant to the Administrative Procedures Act, the defendants submitted records, reports, and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1.	Marlboro Park Hospital	06/24/02 – 06/06/11	1 – 16
2.	Scotland Memorial Hospital	09/19/05 – 01/24/09	17 – 37
3.	InMed	01/24/07	38
4. W.S. Edwards, M.D.	Pee Dee Orthopaedic Associates	02/27/07 – 01/12/12	39 – 75
5.	McLeod Regional Medical Center	09/12/07 – 10/18/11	76 – 83
6.	Florence Neurological Clinic, PA	01/07/08 – 02/28/08	84 – 89
7.	Marlboro PT and Rehab Center, LLC	08/11/08	90 – 91
8.	ImageCare, LLC	10/11/11	92
9.	Florence MRI & Imaging	10/27/11	93
10. R. Joseph Healy, M.D.		11/10/11 – 04/05/12	94 – 96
11. W.S. Edwards, M.D.		12/06/11	Deposition
12. R. Joseph Healy, M.D.		06/26/12	Deposition

Exhibits	Dates of Service	Page Numbers
A. Claimant's deposition		

STIPULATIONS

At the call of the claim, the parties stipulated to the following issues:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim;
2. Venue in the County of Florence is proper for this claim;
3. The claimant sustained a compensable injury by accident to his lower back on June 1, 2011;
4. The claimant's average weekly wage and compensation rate is \$483.37 and \$322.26, respectively; and
5. With the exception of any self-serving statements or unstipulated medical reports, the Commission file was made part of the record.

STATEMENT OF THE CASE

The undersigned held a Hearing in this matter at the date and location referenced above. All parties of interest were timely and properly notified of the Hearing, and the parties and/or their representatives appeared at the Hearing. The claimant appeared and was represented by William L. Smith, II, Esquire. The defendants were represented by Nicolas L. Haigler, Esquire.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the defendants on May 15, 2012. It is the position of the defendants that the claimant reached maximum medical improvement (MMI) with regard to his low back on December 15, 2011 and, therefore, defendants are entitled to terminate temporary total disability (TTD) benefits. In addition, defendants contend the claimant has not sustained any permanent partial disability with regard to his back under Section 42-9-30; however, if so defendants request credit for the extent of pre-existing disability sustained to the claimant's back. Moreover, defendants contend the claimant is not entitled to further medical benefits under Section 42-15-60. The defendants also request credit for the payment to TTD benefits after the date of MMI, and requested the undersigned make a determination as to the credibility of the claimant.

Per the Reply to Defendants' Stop Pay Application, it is the position of the claimant that the claimant has not reached MMI as the claimant has been referred for a neurological opinion which has not been provided by defendants. The claimant also requests a second orthopaedic opinion. In the alternative, if the claimant is found to have reached MMI, the claimant contends he is permanently and totally disabled under Section 42-9-10 or Section 42-9-30.

Accordingly, the primary issues for determination are: (1) whether the claimant has reached MMI with regard to his low back; (2) if so, the date of MMI; (3) whether defendants are entitled to credit for payment of TTD benefits paid after the date of MMI; (4) whether the claimant sustained permanent partial disability with regard to his back; (5) whether defendants are entitled to credit for the extent of pre-existing disability to the back; (6) whether claimant is entitled to further benefits under the Act; and (7) the credibility of the claimant.

EVIDENCE OF THE CASE

The undersigned has carefully considered all of the evidence presented by the parties in this claim, including the Hearing testimony of the claimant and Rebecca Chavis Jones, the deposition testimony of W.S. Edwards, M.D., and P. Joseph Healy, M.D., and the medical records and exhibits submitted through the APA. From this evidence, the following is specifically noted:

A. HEARING TESTIMONY

1. Claimant

The claimant testified he is 46 years of age and has a high school diploma. See H.T., p. 9. He has been employed as a truck driver by Warden and Smith for over 6 years. See H.T., p. 10. The claimant testified he also served as a volunteer firefighter and sustained an injury to his low back in 2007 for which he treated at Pee Dee Orthopaedics until January of 2009. See H.T., p. 11. The claimant testified he did not have back problems again until his accident on June 1, 2011, when he injured himself trying to get into his truck. See H.T., p. 12. The claimant testified he received treatment with Dr. Edwards and Dr. Healy,

but was not allowed to return to Dr. Healy in April of 2012 to obtain the results of his MRI. See H.T., pp. 13-14. The claimant testified he has been forced to use a wheelchair since October of 2011 due to his troubles walking. See H.T., p. 15. Specifically, he testified he cannot walk more than 20 feet and has fallen four times since his accident. See H.T., p. 15. The claimant testified that his wife is forced to bathe, shave, feed and clothe him due to his back injury. See H.T., p. 17.

Under cross-examination, the claimant admitted he knew Dr. Alexander gave him an impairment rating of 5% following his accident in 2007, but was unaware that Dr. Edwards had provided the same rating as a result of his 2011 injury. See H.T., p. 20. The claimant then testified he was provided a prescription for Norflex when he presented to Marlboro Park Hospital in June of 2011; however, the medications were to only last for one week. See H.T., p. 21. The claimant testified he never attempted to obtain additional pain medications during the subsequent three and one-half month period until he saw Dr. Edwards, despite the fact he had group health insurance through his employer. See H.T., p. 22. When asked why he did not attempt to see another physician during this period, the claimant responded, "I don't know." See H.T., p. 23.

The claimant then testified Dr. Edwards did not provide him with a prescription during this first visit on September 22, 2011. In fact, the claimant testified he had to call back on October 12, 2011, to request pain medication. See H.T., p. 24. The claimant could not explain why he failed to request medication on the visit in September. See H.T., p. 25.

Additionally, the claimant testified he recalled informing Dr. Healy in April of 2012 that he had not taken any medications in the past three months. See H.T., p. 28. The claimant testified he did not go back to see Dr. Edwards for additional medications, despite being in 10/10 pain and having to use a wheelchair, because the claimant was told he was released. See H.T., p. 29. The claimant then admitted the wheelchair he is using was not prescribed by a physician. See H.T., p. 31. He also admitted the walker he previously used was not prescribed by Dr. Edwards. See H.T., p. 32.

The claimant then testified with regard to his multiple falls, all of which he testified he reported to Dr. Edwards. However, the claimant testified he was not aware that none of these falls were noted in Dr. Edwards' reports. See H.T., p. 37. The claimant testified he would dispute the fact that none of Dr. Edwards' reports reference a fall. See H.T., p. 38. The claimant then testified he did not seek medical treatment for these falls after January of 2012 because he did not have enough money to pay the co-pay for his group health insurance. See H.T., p. 39.

Finally, the claimant testified his job requires him to drive a truck, an activity he admittedly has not been restricted from performing by any of his treating physicians. See H.T., p. 40.

2. Rebecca Chavis Jones

The claimant's wife, Rebecca Jones, testified she has been married to the claimant for 6 years. See H.T., p. 47. She testified the claimant can no longer go to church, sit for more than one hour, perform household tasks, drive, get dressed, shave, bathe, or walk. See H.T., pp. 48-49. Ms. Jones then requested the claimant receive additional medical treatment so he could return to work.

Under cross-examination, Ms. Jones denied that Dr. Edwards provided the claimant with at least 30 refills on several medications, none of which were filled by the claimant. See H.T., pp. 55-56.

B. APA SUBMISSIONS:

1. Medical Evidence

a. Prior to Alleged Date of Injury by Accident on June 1, 2011

On June 24, 2002, the claimant presented to Marlboro Park Hospital with complaints of low back pain. See Defendants' APA #1, p. 3. He was diagnosed with lumbar sacrolitis and prescribed Lortab for the pain. See Defendants' APA #1, pp. 4-5.

On August 19, 2005, the claimant presented to Scotland Memorial Hospital, in Laurinburg, North Carolina, with complaints of right-sided back pain. See Defendants' APA #2, p. 17.

On February 27, 2007, the claimant presented to Dr. Anthony Alexander of Pee Dee Orthopaedics with lower back and right leg pain after a ceiling collapsed while he was fighting a fire. See Defendants' APA #4, p. 44. The claimant reported the pain as constant and very severe with throbbing in the lower back region and radiation down the right leg. See Defendants' APA #4, p. 44. Dr. Alexander recommended an EMG and nerve conduction study as well as physical therapy and a series of lumbar epidural steroid injections. See Defendants' APA #4, p. 45. The EMG revealed mild chronic L4, L5 and S1 radiculopathy on the right. See Defendants' APA #4, p. 46. The claimant underwent the injections on April 5, 2007, April 19, 2007, and May 3, 2007. See Defendants' APA #4, pp. 51-53. On May 15, 2007, Dr. Alexander reported the claimant had reached MMI with 5% impairment of the lumbar spine. See Defendants' APA #4, p. 54. On September 18, 2007, the claimant returned to Dr. Alexander with severe lower back pain and occasional leg pain. See Defendants' APA #4, p. 56.

On September 13, 2007, the claimant returned to Scotland Memorial Hospital with complaints of chronic back pain "post-traumatic in etiology." See Defendants' APA #2, p. 19. He was prescribed Lyrica, Hydrocodone and Celebrex. See Defendants' APA #2, p. 22. On September 21, 2007, the claimant returned with paraspinal tenderness in the left and right lower back. See Defendants' APA #2, p. 28. An x-ray of the back revealed degenerative joint disease at L5-S1. See Defendants' APA #2, p. 29.

On September 24, 2007, the claimant returned to Dr. Alexander who reported the claimant had "one episode of severe lower back pain with tremors and questionable seizure activity of his extremities." See Defendants' APA #4, p. 57. On October 10, 2007, the claimant reported suffering from severe headaches after undergoing a CT myelogram. See Defendants' APA #4, p. 58. Dr. Alexander diagnosed him with "occipital headaches and chronic headaches. These headaches are very severe in nature and very debilitating." See Defendants' APA #4, p. 58. He received an occipital nerve block during the visit.

On September 8, 2008, Dr. Alexander diagnosed the claimant with chronic lower back pain and reported the claimant would return to medium to heavy duty work with a progression to full-duty. See Defendants' APA #4, p. 63. On January 27, 2009, Dr. Alexander again reported the claimant had reached MMI with 5% impairment to the lumbar spine. See Defendants' APA #4, p. 65. He also recommended the claimant continue taking Lyrica. See Defendants' APA #4, p. 65.

On September 24, 2009, the claimant presented to Scotland Memorial Hospital with complaints of right lower and middle back pain, which was relieved by Flexeril. See Defendants' APA #2, p. 33. An MRI of the lumbar spine revealed a mild L4-5 posterior disc bulge without spinal canal narrowing. See Defendants' APA #3, p. 38. The claimant was diagnosed with mechanical back pain. See Defendants' APA #2, p. 34.

b. Subsequent to the Alleged Date of Accident on June 1, 2011

On September 22, 2011, the claimant reported to Dr. W.S. Edwards of Pee Dee Orthopaedics with back pain and radiating left leg symptoms from a work-related injury on June 1, 2011. See Defendants' APA #4, p. 67. Dr. Edwards reported the claimant was using a walker to move around the house. See Defendants' APA #4, p. 67. The claimant was diagnosed with a lumbar strain and referred for an MRI. On October 11, 2011, Dr. Edwards reported the MRI revealed mild disc bulging at L4-5 but no significant compressive pathology; he also confirmed the claimant was not a surgical candidate. See Defendants' APA #4, p. 69; #8, p. 92. Instead, Dr. Edwards recommended an epidural steroid injection and a course of physical therapy. See Defendants' APA #4, p. 69.

On October 18, 2011, the claimant underwent the injection at L4-5 with Dr. Bruce Johnson. In Dr. Johnson's corresponding report, he notes the claimant "states he cannot walk" and uses a walker and/or wheelchair. See Defendants' APA #5, p. 81. Dr. Johnson further reported that "I think some of his pain is out of proportion to what his MRI shows me. I am not exactly sure what is going on with this patient." See Defendants' APA #5, p. 82.

On November 10, 2011, the claimant presented to Dr. Joseph Healy for a follow-up consultation after his in-patient visit in the hospital. Dr. Healy reported "I had him last week with transient alteration in mental status which was of uncertain etiology. I could not find any definite problems." See Defendants' APA #10, p. 94. Dr. Healy also noted the claimant could not walk but was able to stand. Dr. Healy then reported "I cannot find any definite neurological problems" and "I really don't have anything neurologic to recommend." See Defendants' APA #10, p. 94.

On December 15, 2011, Dr. Edwards reported the claimant "had in-patient evaluation by Dr. Joe Healy from neurology and he was unable to find any source for the symptoms that he described as weakness in the legs and back pain." See Defendants' APA #4, p. 73. He further reported that "there is no evidence of pathology in the lumbar spine that would be amenable to any surgical intervention." See Defendants' APA #4, p. 74. On January 12, 2012, Dr. Edwards reported the claimant "has a minor disc protrusion at L4-5 and there is a 5% impairment of his spine based on this injury." See Defendants' APA #4, p. 75.

On April 5, 2012, Dr. Healy diagnosed the claimant with mechanical back pain, but nonetheless recommended another MRI of the lumbar spine and electrophysiologic studies, and placed the claimant on a regimen of Gralise. See Defendants' APA #10, p. 96.

2. Deposition W.S. Edwards, M.D. – December 6, 2011

Dr. W.S. Edwards testified the MRI of the lumbar spine from 2007 was "very close in terms of their similarity" to the MRI of the lumbar spine from October of 2011. See Deposition of W.S. Edwards, M.D., p. 12. Dr. Edwards then testified with regard to the claimant's presentation on September 22, 2011. Specifically, he testified he did not record that the claimant was using a walker and would not have prescribed a walker for his use. See Deposition of Dr. Edwards, p. 18. He also indicated he would not have prescribed a wheelchair and, in fact, testified "I would have considered it a bit more than what typically patients with the back symptoms he presented with." See Deposition of Dr. Edwards, p. 18. In addition,

Dr. Edwards testified the use of a walker would only facilitate weakness and deconditioning of the back. See Deposition of Dr. Edwards, p. 21. Dr. Edwards then commented on the report of Dr. Bruce Johnson. Specifically, he testified there is no reason the claimant could not walk, and the claimant never reported the inability to walk during his examination. See Deposition of Dr. Edwards, pp. 23-24.

Dr. Edwards then testified with regard to the extent of the claimant's lumbar spine injury as a result of the accident on June 1, 2011, as follows:

Q: So from an objective standpoint, have you been able to appreciate any additional injury to his spine, based on what I've shown you today from his prior - - is there anything new that's happened to his spine as a result of this alleged June 1 accident?

A: No.

See Deposition of Dr. Edwards, p. 31. Dr. Edwards testified the claimant exhibited symptom magnification. See Deposition of Dr. Edwards, p. 32. Dr. Edwards then testified there was no reason why the claimant would not return to his prior job as a truck driver without any work restrictions. See Deposition of Dr. Edwards, p. 42. Finally, Dr. Edwards testified most patients with the claimant's problems are able to return to work within seven days. See Deposition of Dr. Edwards, p. 52.

3. Deposition of P. Joseph Healy, M.D. – June 26, 2012

Dr. Joseph Healy testified he reviewed the MRI of the claimant's lumbar spine dated October 27, 2011, but confirmed there was no compressive pathology or disc herniation. See Deposition of P. Joseph Healy, M.D., p. 10. Dr. Healy then testified that on November 5, 2011, he could not find anything wrong from a neurological standpoint and deferred to Dr. Edwards for further orthopaedic treatment of his low back. See Deposition of Dr. Healy, pp 15, 19-20. Specifically, Dr. Healy testified he would defer to Dr. Edwards' opinion on December 15, 2011, releasing the claimant from further orthopaedic care. See Deposition of Dr. Healy, p. 20. Dr. Healy then confirmed he did not place the claimant under any restrictions during his treatment of the claimant in 2011. See Deposition of Dr. Healy, p. 22.

Dr. Healy then testified with regard to the claimant's alleged episodes of falling as stated in the report of April 5, 2012; as follows:

A: We talked about his mechanical low back pain and he told me that day that after being in the office four months ago, that he had three episodes of passing out in January and I mentioned that I didn't hear from him, which is unusual.

Q: Why is that?

A: Well, I would think if you were passing out, you would tell somebody.

Q: Does that mean you doubt what he's telling you or you just --

A: Well, you know, some things just don't make sense and it seemed to me that that would be a reason you would contact a doctor.

See Deposition of Dr. Healy, p. 24, ll. 3-16. Dr. Healy then testified regarding the claimant's performance on the grip test on April 5, 2012, as follows:

A: He had some weak grips, but I thought that was more of a functional problem.

Q: Meaning what?

A: That he wasn't really trying.

Q: Okay.

A: And I put here, I notice that when he stands and holds onto my arm, his grip are good.

See Deposition of Dr. Healy, p. 25, ll. 12-19. The testimony continued as follows:

A: An example would be that he told me that his grips were weak and when I testified them, they were weak. But, yet, when he stood up, he had to hold onto me and I felt his grip on my arm.

Q: Is that not inconsistent?

A: It's inconsistent.

Q: So it's inconsistent?

A: Yeah. So it makes me think that there is pain behavior present and that's just a phenomena that physicians have to deal with. And it's not the equivalent of faking necessarily, but it's hard to sometimes decide.

Q: Okay. So if you ask him to do a grip strength and he couldn't given you the same effort as when he grabbed your arm, wouldn't that lead you to the conclusion that he's not being accurate with regard to the nature of his symptoms?

A: It can, yes.

See Deposition of Dr. Healy, p. 60, l. 25-p. 61, l. 12; p. 61, l. 22-p. 62, l. 2.

Additionally, Dr. Healy testified with regard to the possibility of the claimant malingering given his continue use of a walker and wheelchair, stating "[w]ell, you know, I got the feeling all along that this fellow thought he was injured worse than what I could find evidence for." See Deposition of Dr. Healy, pp. 30-31. In fact, Dr. Healy again confirmed he "did not find a neurological basis for his complaints unless it was pain behavior." See Deposition of Dr. Healy, p. 34.

Dr. Healy then reviewed an lumbar spine MRI scan dated May 16, 2012, and concluded the scan "looks probably very similar to the initial one from a year before." See Deposition of Dr. Healy, p. 45. Dr. Healy then explained that the reason he did not request nerve studies, i.e. EMG, in November of 2011 was because "I didn't see evidence at that point," and "it's wouldn't have changed anything at that point." See Deposition of Dr. Healy, pp. 51-52. In fact, Dr. Healy confirmed the claimant's condition has not changed since Dr. Healy saw him in November of 2011. See Deposition of Dr. Healy, p. 52.

Finally, Dr. Healy testified regarding the status of the claimant's treatment, as follows:

Q: Okay. Well, doctor, if he's not responding to injections, to medications and won't let anyone at physical therapy touch him because he feels like it's making him worse, as you said but, yet, his objective findings aren't surgical, what other conclusion is there other than the fact that maybe he's just not being honest with regard to the nature of his pain?

A: Well, I mean, that certainly is a possibility. That can be very hard to tell. But, you know, my approach is to tell these people that you've exhausted all that we can do. We can't do anything more, we can't explain why you're behaving this way, but there has to be an end and I think you've reached maximum medical improvement and that's it.

See Deposition of Dr. Healy, p. 62, l. 22-p. 63, l. 12.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant and Rebecca Chavis Jones, the deposition testimony of W.S. Edwards, M.D., and P. Joseph Healy, M.D., and the medical records and exhibits submitted through the APA, as well as my personal observations of the claimant, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with David G. Jones as employee, Warden & Smith Concrete as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. I do not find the claimant credible. Claimant is using a wheelchair when both treating physicians indicated that there is not a reason for it. Neither treating physician believes there is a reason for the use of a wheelchair. Dr. Edwards even recommends against using a walker. Dr. Edwards indicates that that is symptom magnification. See Deposition of Dr. Edwards, p. 32. Dr. Edwards testified that most patients go to work within 7 days of this type of problem. See Deposition of Dr. Edwards, p. 52. Claimant testified that he cannot shave himself, as well as other upper extremity activities; however, the injury is to his lower back. Claimant testifies that there is extreme pain; however, he has not sought pain medications. Dr. Healy said that the test grips were weak, but when the claimant stood up and held on to him he felt his grip on this arm. See Deposition of Dr. Healy, pp. 60-61. Dr. Healy testified that he had exaggerated or amplified or thought that he was injured worse than what he could find. See Deposition of Dr. Healy, p. 13. Dr. Johnson, on October 18, 2011, stated that I think some of his pain is out of proportion to what his MRI shows me. See Defendants' APA, p. 82.
3. I find the claimant has reached maximum medical improvement (MMI). Both treating physicians, orthopedist and neurologist, indicated that they had nothing further to offer the claimant. The only change appears to be when claimant went to Dr. Healy in April alleging that he had previously fallen. This finding is based upon the greater weight of the evidence in the records, specifically the medical records and deposition testimony of Dr. Edwards and Dr. Healy.
4. On December 15, 2011, Dr. Edwards (orthopedist) discharged the claimant from his care. See Defendants' APA, p. 73. He indicated that work-up failed to show any obvious problem that could be dealt with either medically or surgically. He issued a rating on January 12, 2012, and deferred him to a neurologist. Dr. Healy (neurologist) saw him on November 10, 2011, and stated that he did not have anything neurologic to recommend. See Defendants' APA, p. 94. Dr. Healy then saw him on April 5, 2012, and recommended testing; however, in his deposition he testified that the difference in his opinion from November to April would be that the claimant had indicated he had fallen. See Deposition of Dr. Healy, p. 50. He

stated that he thought it was odd that the claimant did not contact him for 3 months after falling. See Deposition of Dr. Healy, p. 50. Dr. Healy testified that before the April visit he did not have anything to offer him; that he didn't find anything wrong with him from a neurological standpoint. See Deposition of Dr. Healy, p. 32. He stated that as of April he was recommending the EMG, but back in November he would have recommended it. See Deposition of Dr. Healy, p. 66. He testified that as of the deposition date (June 26, 2012) that it is still his opinion that day that he did not find any neurological problem. See Deposition of Dr. Healy, p. 23. Dr. Healy testified that he would basically agree that the claimant ought to be able to go back to work without any restrictions, because he did not find any neurological problems. See Deposition of Dr. Healy, pp. 22-23.

5. I find the claimant reached MMI on June 26, 2012. Both treating doctors found that they had nothing to offer the claimant in late 2011 (Dr. Edwards on December 15, 2011 and Dr. Healy on November 10, 2011). Dr. Edwards issued an impairment rating on January 12, 2012. As there are some notes deferring between the doctors to each other, and the doctors' reports needed clarification from the deposition, I find that the date of MMI is the date of Dr. Healy's deposition, June 26, 2012, in which he provides an explanation as to his opinions.
6. I find the defendants are entitled to credit for payment of temporary total disability benefits after June 26, 2012, the date of MMI. See Curiel v. Envtl. Management Servs., 655 S.E.2d 482 (2007)
7. I find the claimant sustained seven (7%) percent permanent partial disability to his back. This finding is based upon the greater weight of the evidence in the record.
8. I find the claimant is not entitled to further medical benefits under the Act. This finding is based upon the greater weight of the evidence in the record, specifically the medical records and deposition testimony of Dr. Healy and Dr. Edwards.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Commissioner that:

1. Under § 42-1-130, claimant was a covered employee at the time in question.
2. Under § 42-1-140, defendant-employer was a covered employer under the Act.
3. Under § 42-9-30, claimant sustained seven (7%) percent permanent partial disability to his back.
4. Under § 42-15-60, claimant is not entitled to further medical treatment.

5. Under Curiel v. Envtl. Management Servs., 655 S.E.2d 482 (2007), defendants are entitled to credit for temporary total disability benefits paid after June 26, 2012, the date of maximum medical improvement.

ORDER

IT IS THEREFORE ORDERED that claimant is entitled to seven (7%) percent permanent partial disability to his back, which equates to 21 weeks of benefits at his compensation rate of \$322.26, or an award of Six Thousand Seven Hundred Sixty-Seven and 46/100 (\$6,767.46) Dollars.

IT IS FURTHER ORDERED that defendants are entitled to credit for temporary total disability benefits paid after June 26, 2012, the date of maximum medical improvement.

IT IS FURTHER ORDERED that claimant is not entitled to further benefits under the Act.

No hearing costs are assessed in this matter.

IT IS SO ORDERED.



Commissioner Melody L. James

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.

October 18, 2012

By: Tamara Morris, Administrative Assistant to Commissioner James

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

David Glenn Jones,

Claimant,

vs.

Warden & Smith, Inc.,

Employer/Defendants,

Bridgefield Casualty Insurance Company,

Carrier/Defendants.

WCC FILE NOS: 1106685

BRIEF OF CLAIMANT/APPELLANT

STATEMENT OF THE CASE

This matter arises from an admitted injury, in which the Claimant, David Glenn Jones ("Claimant"), alleges he sustained compensable injuries to his back, legs, and whole person. The Claimant has a history of back problems, but according to Dr. Edwards, the authorized treating physician, these problems had resolved with minimum impairment by June 1, 2011. On that day, the Claimant suffered a lower back injury while climbing into his work truck. This injury was initially denied and the Claimant received no medical treatment for several months.

The denied status of this claim had been due to be adjudicated in a hearing before Commissioner Beck on December 8, 2011. However, prior to that hearing, the parties reached an agreement memorialized in a Consent Order. (Exhibit A). The Defendants admitted the Claimant's injury and agreed to provide TTD benefits, authorization of all causally-related medical care incurred since June 1, 2011, and authorization of all future recommended causally related medical care from Dr. Edwards, the Claimant's authorized treating physician. *Id.* This Order was signed December 16, 2011.

The Claimant suffered from lower back problems for several months until he was able to receive medical treatment from Dr. Edwards, at which point he was written out of work entirely. The Claimant has not worked since this date. Furthermore, another authorized treating physician for the Claimant's neurological problems, Dr. Healy, recommended additional treatment when he treated the Claimant; this treatment was never provided despite the terms of the Consent Order signed by Commissioner Beck.

Defendants, Lancaster County ("Employer") and the South Carolina Association of Counties SIF ("Carrier") (collectively, "Defendants"), filed for a form 21 Stop Pay hearing on May 15, 2012, alleging that Dr. Edwards had released the Claimant entirely and that he had reached MMI. They further requested a determination as to whether the Claimant was entitled to a permanent disability award and whether the Defendants were entitled to credit for overpayment of temporary total disability payments. The Claimant filed a response on May 16, 2012, alleging that Dr. Edwards had referred the Claimant to a neurologist despite issuing an impairment rating and that therefore the Claimant had not yet reached MMI. Furthermore, the Claimant requested a second orthopaedic opinion and contended that the Defendants were not entitled to a credit for overpayment. In the alternative, the Claimant contended that if he were deemed to have reached MMI, he was entitled to additional *Dodge* medical care and a permanent disability award in excess of the 5% impairment rating to the spine issued by Dr. Edwards.

A hearing was held on June 28, 2012 before the Single Commissioner, Melody L. James. The Claimant and his wife (Rebecca Chavis Jones) were the only witnesses at the hearing. Medical records and exhibits were submitted through the APA.

Commissioner James issued a Decision & Order on October 18, 2012, finding the Claimant had reached MMI on June 26, 2012, the date when Dr. Healy was deposed. She further found that the Defendants are entitled to credit of overpayment for TTD benefits paid after June 26, 2012, the Claimant sustained a 7% permanent partial disability to his back, and the Claimant is entitled to no further medical benefits. The Commissioner also found that the Claimant was not credible, and was not entitled to additional treatment recommended by Dr. Healy or a second orthopaedic opinion.

Claimant timely filed a Form 30 appeal on October 23, 2012, presenting eleven questions to the Full Commission for review. The Claimant now files his brief in support.

FACTS

The Claimant has suffered from limited back problems over the last ten years. The Claimant was seen at Marlboro Park Hospital in connection with lower left back pain in June of 2002. (Defendants' APA, p. 1-7). He was prescribed Lortab and Indocin, restricted from work for 48 hours, and heat and ice were recommended for the sore area. The Claimant was also seen at Scotland Memorial Hospital in 2005, receiving treatment for right side back pain. (Defendant's APA, p. 17).

An injury received in his duty as a Volunteer Firefighter in early 2007 caused a lower back strain; the Claimant had been putting out a fire in a burning building when the ceiling collapsed and fell onto his back. (Defendants' APA, p. 8). An MRI revealed no "evidence of acute fracture or dislocation of the lumbar spine," showing a total lack of structural damage. (Defendants' APA, p. 8). A January 24, 2007 MRI of the thoracic spine showed no disc

herniation, compression fracture or spinal canal stenosis, and showed only mild L4-5 posterior disc bulge. (Defendants' APA, p. 38).

On February 27, 2007, the Claimant saw Dr. Alexander at Pee Dee Orthopaedics. (Defendant's APA, p. 43-44). At that time he experienced lower back pain and some limited pain radiating into his right leg. (Defendant's APA, p. 44). An electrodiagnostic study revealed evidence of mild chronic L4, L5, and S1 radiculopathy on the right. (Defendant's APA, p. 46). He received three epidural steroid injections and other conservative treatment, and made a near-full recovery, completing his treatment with a 5% impairment to the lumbar spine and mild right-side lower back pain. (Defendant's APA, p. 51-54).

In September 2007, the Claimant had a lumbar puncture performed for a spinal imaging procedure, and developed chronic headaches as a result. (Defendant's APA, p. 18, 21). The Claimant visited Scotland Memorial Hospital several times, with complaints of pain radiating out his head and neck and into his lower back; however, his lower back pain was reported only as a 3 out of 10. (Defendant's APA, p. 26). A CT scan of the lumbar spine from September 21, 2007 showed a normally aligned spine with no fracture or subluxation and only mild degenerative changes of the lumbar spine at the L5-S1 level. (Defendant's APA, p. 31). Ultimately, Dr. Alexander concluded that these headaches were the result of occipital neuralgia, and they were treated with Occipital nerve blocks. (Defendants' APA, p. 58-62).

A Functional Capacity Assessment performed August 15, 2008 found the Claimant capable to perform duties of a medium to heavy physical demand classification position. (Defendant's APA, p. 63). On January 24, 2009, the Claimant visited Scotland Memorial Hospital again with complaints of neck pain and right arm pain, as well as headaches.

(Defendants' APA, p. 32). The Claimant also suffered from lower back pain and muscle spasms, and the doctor's impression was mechanical back pain. (Defendants' APA, p. 34). A 5% impairment to the cervical spine was issued by Dr. Alexander on January 27, 2009. (Defendant's APA, p. 65-66). The Claimant worked continuously without absence related to his back problems from this time until June 1, 2011, the date of injury in this claim.

The Claimant was injured again on June 1, 2011, when climbing into his work truck; he felt something pop in his lower back as he pulled himself into the truck. (Defendants' APA, p. 11). He presented to the Emergency Room suffering from severe lower back pain which radiated into his right leg. (Defendants' APA, p. 9, 12). The Claimant was diagnosed with an "Acute Herniated Disc: cervical and lumbar," and prescribed numerous painkillers. (Defendants' APA, p. 10-11). The pain was rated as a 9 out of 10 and was attributed to the incident at the Claimant's workplace on June 1, 2011. (Defendants' APA, p. 13-14).

On June 6, 2011, the Claimant presented to Marlboro Park Hospital for additional treatment. (Claimant's APA, p. 8-27). He was also suffering from pain radiating down into his legs since the injury. (Claimant's APA, p. 15). He was diagnosed with an acute herniated disc: cervical and lumbar. (Claimant's APA, p. 12). He was discharged and provided with numerous painkillers until he could follow-up with a specialist. (Claimant's APA, p. 14). He was written entirely out of work until he received additional treatment. (Claimant's APA, p. 26).

The Claimant came to Dr. Edwards for a Lumbar examination on September 22, 2011. (Defendant's APA, p. 67). When the Claimant initially presented to Pee Dee Orthopaedics on September 22, 2011, he reported problems with pain in his lower back, especially on the left, and pain which radiated into both legs. (Claimant's APA, p. 6). He was diagnosed with a lumbar

strain/sprain, and Dr. Edwards noted his problems with pain radiating into his legs. (Defendant's APA, p. 67-68). An MRI scan from October 11, 2011 revealed mild disc bulging at L4-5, and he was written out of work entirely for the next four weeks. (Defendant's APA, p. 69-70). An October 11, 2011 MRI revealed minimal degenerative disc changes at the L4-5 level, while a October 27, 2011 MRI confirmed mild L4-5 degenerative disc disease. (Defendant's APA, p. 92-93).

Dr. Bruce Johnson, a pain management specialist, saw the Claimant on October 18, 2011. (Defendant's APA, p. 81-82). He noted the Claimant's extreme difficulty with walking and getting around the house, his need to use a wheelchair, and his trouble with serious pain. (Defendant's APA, p. 81). He noted the Claimant's pain starts in the lower back, rising from the tailbone into the rest of the spine, and also radiating into his hips and both legs, with the pain being worse on the left than the right. (Defendant's APA, p. 81). His assessment included lumbar radiculitis and lumbar degenerative disc disease, and he opined that while the Claimant's pain was out of proportion to what was shown in the MRI, it was possible that he had herniated a disc which later slid back into place and caused nerve irritation. (Defendant's APA, p. 82).

On October 19, 2011, Dr. Edwards issued the following opinion: "Prior to [the Claimant's most recent injury], Mr. Jones had been treated in this practice for a different back injury over four years ago but his pain had resolved. It is my opinion within a reasonable degree of medical certainty that Mr. Jones current back problems were most probably caused or aggravated by his on the job injury of June 1, 2011." (Claimant's APA, p. 7a). By October 27, 2011, Dr. Edwards had diagnosed him with spinal headaches related to an epidural steroid injection performed in response to the June 1, 2011 back injury. (Defendant's APA, p. 71). By December 15, 2011, the Claimant's back pain had become so severe that his activity levels

dropped extremely low and he presented to Dr. Edwards' office in a wheelchair. (Defendant's APA, p. 73). Dr. Edwards discharged him from care at this time. Dr. Edwards issued a 5% impairment of the spine based on this injury, but noted that "it is possible that there may be some limitations placed on him by [a] neurologic condition," and deferred to the specialist on this issue. (Defendant's APA, p. 75).

Dr. Healy, a neurologist, first saw the Claimant on November 10, 2011, noting his problems with lower back pain and a bulging disc. (Defendant's APA, p. 94). He placed the Claimant on painkillers but provided no other treatment. *Id.* Dr. Healy saw the Claimant again on April 5, 2012, and gave his diagnosis of mechanical back pain, placing the Claimant on medication for pain. (Defendant's APA, p. 95-96). He noted the Claimant's difficulties with standing, lifting weight, trembling and weakness in the legs, and walking. (Defendant's APA, p. 95). While his impression was predominately that of mechanical back pain, Dr. Healy recommended follow-up imaging of the lumbo-sacral spine with an MRI and electrophysiologic studies of the lower extremities. (Defendant's APA, p. 96). Dr. Healy ultimately performed the MRI but the Claimant's return visit to Dr. Healy to be informed of the results of the MRI was never authorized. Similarly, all of the testing recommended by Dr. Healy was never authorized by the Defendant Carrier and was never carried out.

At the hearing, the Claimant testified to his back problems prior to the injury in this claim. (H.T., p. 10). The Claimant testified that he received treatment from Pee Dee Orthopaedics following his firefighter injury, but that he had experienced no back problems between January of 2009 and June of 2011. (H.T., p. 10). The Claimant freely admitted that he had suffered from problems with both back pain and headaches following his 2007 injury, but

continued working and did not miss a day at work between his full recovery from the 2007 injury and his June 1, 2011 injury. (H.T., p. 44).

Following his June 1, 2011 injury, his claim was denied and he was unable to get medical care until he visited Dr. Edwards in September of 2011. (H.T., p. 12). The Claimant was ultimately admitted to the hospital for eight days following complications from an injection into his spine as part of his treatment for this injury, and it was only after this extended hospital stay that the Defendants accepted his claim. (H.T., p. 12-13). The Claimant testified that he ultimately treated with Dr. Healy but that he never received the testing and other studies recommended by Dr. Healy because they had been denied by the carrier; he attempted to return to Dr. Healy's office for this treatment twice and was denied both times. (H.T., p. 13-14). The Claimant described his lower back pain as a hard, sharp, and severe pain that is centered at the base of his spine, and his radiating leg pain is a burning from his lower back and waist all the way down into his feet. (H.T., p. 14-16). He had never experienced pain like this prior to the June 1, 2011 injury, despite his prior back problems. (H.T., p. 16). The Claimant stated that he was willing to receive further treatment, including psychological care if need be. (H.T., p. 16-17).

The Claimant was in a wheelchair at the hearing due to trouble he was having walking. (H.T., p. 14-15). He stated that his extreme lower back and leg pain does not allow him to stabilize himself to walk, that he loses his balance, and that he can only walk about 20 feet. (H.T., p. 15). The Claimant has fallen four times as a result of these problems, and has informed Dr. Healy of this problem. (H.T., p. 15-16). The Claimant spends the vast majority of his day sitting and laying down while his family takes care of him. (H.T., p. 17). The Claimant stated

that while he had suffered serious back pain before, immediately after his 2007 accident, it was not as severe and constant as his current pain. (H.T., p. 19-20).

The Claimant testified he was unable to receive a prescription for additional pain medicine between his June 2011 Emergency Room visit and his September 2011 treatment from Dr. Edwards because his Workers' Compensation claim had been denied. (H.T., p. 22-23). He similarly did not receive a prescription, or at least was never told that a prescription was available to him, from Dr. Edwards. (H.T., p. 28-31). After the claim was accepted, the Claimant only received medical treatment from Dr. Healy twice (as recommended by Dr. Edwards), but was not allowed to see him again after that, even when Dr. Healy recommended additional treatment. (H.T., p. 43-44).

The Claimant's wife, Rebecca Chavis Jones, also testified at the hearing. She testified that the Claimant had fully recovered from his 2007 injury, and that before the 2011 injury he was an outgoing person who worked every day, helped around the house, was active in their church, played sports, and helped coach children's sports teams. (H.T., p. 48). Since the 2011 injury, she testified that he is unable to work around the house, drive, go to church, have sex, walk without help, and take care of himself. (H.T., p. 48-49). She testified that when the Claimant's pain becomes particularly severe he becomes weak, move around a lot to become comfortable, and must often go to bed even during the middle of the day. (H.T., p. 49-50). She testified that since the injury occurred, the Claimant has had difficulty receiving medical care, including trouble with physical therapy, trouble seeing and receiving treatment from Dr. Healy, and trouble getting access to Dr. Healy's findings. (H.T., p. 50-51). She further testified that many of the problems the Claimant experienced with getting treatment under his health

insurance plan were due to multiple healthcare providers telling him that treatment was not provided for because the injury occurred on the job. (H.T., p. 53-54).

Dr. Edwards was deposed on December 6, 2011. Dr. Edwards testified that the Claimant initially reported having more leg pain in the right leg immediately after the injury, but by the time he reached Dr. Edwards, more of the pain had shifted to his left leg; Dr. Edwards stated it was not uncommon for patients to describe symptoms with minor variations from visit to visit. (Deposition of Dr. Edwards, p. 6-8). When he first saw the Claimant, he thought he had a chronic back strain, similar to mechanical back pain. (Deposition of Dr. Edwards, p. 19). While the MRI he reviewed after the injury was similar to the MRI performed by Dr. Alexander earlier, he did state that the findings on imaging studies can cause mechanical back pain, and it "doesn't mean he wasn't having any symptoms." (Deposition of Dr. Edwards, p. 20). Dr. Edwards stated he would not have recommended the use of a walker or wheelchair, due to fears over deconditioning. (Deposition of Dr. Edwards, p. 20-21). He further testified that while he would not have recommended the Claimant use a wheelchair, if he was experiencing pain so severe that he could not walk, it was something he had to do. (Deposition of Dr. Edwards, p. 25).

Dr. Edwards also testified regarding the Claimant's need for additional treatment. He stated that the Claimant remains in need of vigorous therapy and more control over his pain levels. (Deposition of Dr. Edwards, p. 29). He also testified that simply because the Claimant has issues from pain, even if they are deemed to be out of proportion from what doctors believed was causing the problem, that the Claimant was not malingering. (Deposition of Dr. Edwards, p. 29). Instead, this could be the result of fear of injury, anxiety disorders, or other things of that sort, and usually in cases like this he recommends patients visit a clinical psychologist. (Deposition of Dr. Edwards, p. 29-30).

Dr. Edwards stated that he does not have concerns as to whether the Claimant is being honest with him as far as relaying his symptoms, and that he used this history from the patient to give his October 19, 2011 opinion that the Claimant's current symptoms are the sole result of his June 1, 2011 injury. (Deposition of Dr. Edwards, p. 31-32). Dr. Edwards further testified that the Claimant told him that he had injured his back while reaching into the cab of his truck for a grip and then pulling himself up into the truck. (Deposition of Dr. Edwards, p. 33). Dr. Edwards testified that this was "reasonable in terms of the type of mechanism of injury" in light of the symptoms the Claimant is having. (Deposition of Dr. Edwards, p. 34). Dr. Edwards stated that if the Claimant "was working and not having any problems and he had this specific event and the symptoms seemed to be worse after that, then I would have given him the benefit of the doubt and said it probably came from that." (Deposition of Dr. Edwards, p. 36-37). Despite repeated attempts from the Defendants' attorney to challenge the October 19, 2011 opinion with additional evidence, Dr. Edwards nevertheless stood by this opinion, stating that "[h]e just said the symptoms were made worse by that. And I don't have any reason to dispute that." (Deposition of Dr. Edwards, p. 35-38). He further opined that the Claimant's back had become deconditioned and that aggressive physical therapy and psychological care would help the Claimant with his improvement. (Deposition of Dr. Edwards, p. 39-40). While he admitted that the Claimant's lack of physical activity certainly caused difficulties in recovery, the ideal scenario for recovery was a series of increasingly vigorous physical activity or therapy regimens. (Deposition of Dr. Edwards, p. 40).

Dr. Edwards testified that the Claimant had no issues following his recovery from his 2007 firefighter accident until the June 1, 2011 incident in this claim. (Deposition of Dr. Edwards, p. 44). In his first visit with the Claimant, he made objective findings regarding

muscular tightness in the lumbar region, mild tenderness in the left sciatic notch, restricted flexibility, and pain during a straight leg raise. (Deposition of Dr. Edwards, p. 45-46). His current recommendation was aggressive physical therapy as the appropriate method of treatment for the Claimant's deconditioning. (Deposition of Dr. Edwards, p. 49). He testified that the Claimant has not reached MMI. (Deposition of Dr. Edwards, p. 49). Assuming that the Claimant was released with a 5% lumbar spine impairment by Dr. Alexander in January of 2009, that the Claimant continued to work for two and a half years without further medical care, and that the Claimant's first additional problems occurred after the June 1, 2011 incident, it was his opinion, within a reasonable degree of medical certainty, that the June 1, 2011 injury had most probably aggravated any preexisting problems that he had going on in his lumbar spine. (Deposition of Dr. Edwards, p. 50). Finally, Dr. Edwards stated that he would have liked to have treated the Claimant immediately after his injury in June 2011, because treatment administered months down the line from an injury is generally less successful than treatment administered immediately following the injury; unfortunately in this case, the Claimant was denied all medical treatment for months following his injury. (Deposition of Dr. Edwards, p. 53).

Dr. Healy was deposed June 26, 2012. Dr. Healy stated that he first saw the Claimant in the hospital for the first time, when he was admitted following complications from his lumbar puncture. (Deposition of Dr. Healy, p. 7). The Claimant was referred to his care following an abnormal neurologic exam involving his eye movements and method of walking. (Deposition of Dr. Healy, p. 7). Dr. Healy stated "I didn't get the feeling he was malingering." (Deposition of Dr. Healy, p. 14). Initially, Dr. Healy referred the Claimant to the care of Dr. Edwards, believing the Claimant to have orthopaedic lower back and neck problems. (Deposition of Dr. Healy, p. 14-16). Dr. Healy further stated that the Claimant told him in April 2012 that he had suffered

from several incidents in which he passed out and fell. (Deposition of Dr. Healy, p. 24). Dr. Healy opined that these might be vasovagal problems, caused by pain which can lower the blood pressure to the point of passing out. (Deposition of Dr. Healy, p. 24-25). Dr. Healy also gave his opinion that the only possible reason for the Claimant's inability to walk and need to use a wheelchair would be from his back pain and injury. (Deposition of Dr. Healy, p. 29).

Dr. Healy stated that he could not agree with Dr. Edwards' opinion regarding MMI, because after seeing the Claimant in April, he wanted to run some additional tests so that he could answer that question, but these tests were not authorized by the Defendant Carrier despite the admitted status of this claim. (Deposition of Dr. Healy, p. 31). While the only Neurological basis for his complaints was pain behavior, he still wanted the Claimant to be tested for other possible reasons for his pain-related problems. (Deposition of Dr. Healy, p. 31-35). Dr. Healy gave the opinion that the Claimant was not malingering or faking an injury, but that instead he may have an exaggerated response to pain. (Deposition of Dr. Healy, p. 37). He also opined that the source of the Claimant's problems might be a conversion disorder, a psychological phenomenon whereby a patient cannot face the reality of a health problem, and instead converts it into a physical problem. (Deposition of Dr. Healy, p. 37-38).

In regard to his April 5, 2012 visit with the Claimant, Dr. Healy testified that he was having the same type of symptoms as when he first saw him in the hospital and when he saw him in November 2011. (Deposition of Dr. Healy, p. 41). Dr. Healy stated that pain has the ability to drop a patient's blood pressure as a psychological response, which can cause trembling, weak legs, fainting, and falling. (Deposition of Dr. Healy, p. 42). Dr. Healy's objective findings pointed towards the lower spine as the source of the Claimant's pain. (Deposition of Dr. Healy, p. 42).

Dr. Healy testified that he recommended both an MRI and an EMG or nerve conduction study in the lower extremities to get to the source of the Claimant's problems. (Deposition of Dr. Healy, p. 43). While the MRI was ultimately performed, the EMG or nerve conduction studies were never completed. (Deposition of Dr. Healy, p. 45). Although the MRI did not lead him to believe that surgery might be necessary, he stated that the electrical study might change that opinion. (Deposition of Dr. Healy, p. 46). He reiterated the need for these electrical studies, recommended by both him and Dr. Johnson. (Deposition of Dr. Healy, p. 46). Furthermore, he concurred with the recommendation of Dr. Edwards, that the Claimant was in need of further physical therapy treatment. (Deposition of Dr. Healy, p. 46). Dr. Healy found the Claimant's inability to receive authorization from the Workers' Compensation carrier for prompt medical treatment had aggravated the Claimant's symptoms, and may have caused psychological problems as well. (Deposition of Dr. Healy, p. 47-48). He found it disturbing that an MRI had been authorized by the Carrier, but that he had not been allowed to followup with the Claimant regarding the result of this MRI. (Deposition of Dr. Healy, p. 48). He stated that this type of behavior from the Carrier was "not in the patient's best interest." (Deposition of Dr. Healy, p. 48).

Dr. Healy stated the Claimant was unable to work driving a truck in the condition that he was in on April 5, 2012. (Deposition of Dr. Healy, p. 48). He stated he had not reached MMI as of April 5, 2012, the last time he saw the Claimant. (Deposition of Dr. Healy, p. 48). He stated that the pain problems were likely exacerbated by psychological problems stemming from the Claimant's inability to receive treatment. (Deposition of Dr. Healy, p. 49). He also reiterated his opinion that the Claimant's pain problems were causally related to the June 1, 2011 incident. (Deposition of Dr. Healy, p. 49). Dr. Healy again reiterated on cross-examination that he could

only defer to Dr. Edwards on back pain issues if he first saw electrical studies which ruled out other causes. (Deposition of Dr. Healy, p. 51). Dr. Healy stated that reliance on a nerve conduction study from 2007 was inadequate to rule out a nerve root injury or other neurological pain, largely because that study was conducted five years ago. (Deposition of Dr. Healy, p. 52-53). Despite being pressed by the Defendants' attorney, Dr. Healy was unwilling to conclude that the Claimant was malingering, stating that "you can't always draw a conclusion that that means there's nothing wrong or you shouldn't be hurting more. But, as I say, it seems to me his pain is the number one phenomena and the way he handles that may be different than how somebody else might." (Deposition of Dr. Healy, p. 62). Dr. Healy stated that the Claimant would not be able to lift at all, stand for any lengthy period of time, or walk for any major distance; in other words, major work restrictions. (Deposition of Dr. Healy, p. 65). He would not be able to drive the type of truck used in a commercial truck driving enterprise. (Deposition of Dr. Healy, p. 67). Dr. Healy reiterated that he did not think the Claimant was malingering, but only that he suffered from an exaggerated pain response. (Deposition of Dr. Healy, p. 67-68).

QUESTIONS PRESENTED

1. Did the Single Commissioner err in finding that the Claimant is not entitled to further medical care when the greater weight and preponderance of the evidence shows that numerous factors entitle the Claimant to additional medical care?
 - a. Did the Single Commissioner err in finding that the Defendants had provided all of the medical care required by the previous Consent Order, that Dr. Healy did not conclude that the Claimant's medical problems were causally related, the Claimant was not malingering, and further medical care was needed?

- b. In the alternative, assuming the Claimant has reached MMI, is the Claimant entitled to additional ongoing *Dodge* medical care?
2. Did the Single Commissioner err in finding that the Claimant lacked credibility when the Single Commissioner did not properly consider the available evidence in making such a finding?
3. Did the Single Commissioner err in finding that the Claimant was entitled to a 7% disability award?
4. Did the Single Commissioner err in ruling that the Defendants were entitled to a credit for payment of TTD benefits when the Claimant has not yet reached MMI?

ARGUMENT

1. **Did the Single Commissioner err in finding that the Claimant is not entitled to further medical care when the greater weight and preponderance of the evidence shows that numerous factors entitle the Claimant to additional medical care?**

In her Order, the Single Commissioner ruled that the Claimant is not entitled to further medical treatment. (D&O, p. 14-15). The Claimant, however, contends that numerous pieces of evidence, and especially the opinions of Drs. Healy and Edwards, point towards the legal conclusion that the Claimant is entitled to additional medical benefits under the Act.

- a. **Did the Single Commissioner err in finding that the Defendants had provided all of the medical care required by the previous Consent Order, that Dr. Healy did not conclude that the Claimant's medical problems were causally**

related, the Claimant was not credible/malingering, and further medical care was not needed?

As noted above, the parties in this claim signed a consent order which essentially changed the status of this claim from denied to admitted. The Defendants admitted the Claimant's injury and agreed to provide TTD benefits, authorization of all causally-related medical care incurred since June 1, 2011, and authorization of all future recommended causally related medical care from Dr. Edwards, the Claimant's authorized treating physician. (Exhibit A).

On December 15, 2011, Dr. Edwards, the authorized treating physician, had released the Claimant from his care, issuing a 5% impairment rating to the spine. (Defendant's APA, p. 73-75). However, he did not entirely release the Claimant, instead referring him to Dr. Healy, a Neurologist, for a followup on his continued pain problems. (Defendant's APA, p. 75). Dr. Healy had experience with the Claimant from the Claimant's extended stay in the hospital, but saw him again April 5, 2012. (Defendant's APA, p. 95-96). Dr. Healy recommended an MRI and a nerve conduction study for the lower extremities to attempt to get to the bottom of the Claimant's pain complaints. *Id.* However, only the MRI was ever performed, and the Claimant was never authorized to meet with Dr. Healy again to discuss the results of his MRI; both the Claimant and Dr. Healy testified to this fact. (H.T., p. 13-14, Deposition of Dr. Healy, p. 31). Furthermore, Dr. Healy stated that he could not agree with Dr. Edward's opinion of MMI until the recommended treatment was performed; that the Claimant was not malingering or faking; and that the Claimant also might have psychological or other types of issues stemming from his inability to receive treatment soon after his injury. (Deposition of Dr. Healy, p. 31-38).

Furthermore, Dr. Healy stated he was dismayed by the conduct of the Carrier in this case, and stated that the decision to deny this treatment to the Claimant was "not in the patient's best interest." (Deposition of Dr. Healy, p. 48). He also recommended additional treatment in the form of physical therapy, disagreed with Dr. Edwards' analysis that the Claimant had reached MMI, and strongly repudiated any claims that the Claimant was faking or malingering. (Deposition of Dr. Healy, p. 48-49). Furthermore, Dr. Edwards himself indicated that the Claimant may be in need of further psychological care in order to receive full treatment for his pain condition. (Deposition of Dr. Edwards, p. 39-40).

This evidence directly contradicts the findings of the Single Commissioner that Dr. Healy concluded that the Claimant's medical problems were not causally related to his injury, that the Claimant was malingering and not credible, and that further medical care is not needed. In her Order, the Single Commissioner found the Claimant's use of the wheelchair particularly damning, finding that "[n]either treating physician believes there is a reason for the use of a wheelchair." (D&O, p. 13). However, while Dr. Edwards certainly did not recommend the use of a wheelchair due to fears over deconditioning, he did give the opinion that if the Claimant was suffering from severe pain that using a wheelchair might be something that he needed to do. (Deposition of Dr. Edwards, p. 25). Dr. Healy directly attributed the Claimant's deconditioning to the Defendants' refusal to authorize treatment in a timely manner, and related the Claimant's current problems to the June 1, 2011 incident. (Deposition of Dr. Healy, p. 49). Furthermore, he stated that the only possible reason that the Claimant would use a wheelchair could be his back problems and pain. (Deposition of Dr. Healy, p. 29).

This evidence, in its entirety, indicates that the Defendants failed to comply with the Consent Order and provide the Claimant with the agreed-upon treatment. Particularly shocking

is the decision of the Defendants to authorize an MRI, but refuse to allow the Claimant to see Dr. Healy again for an interpretation of that MRI. Additionally, the Defendants clearly ignored requests from Dr. Healy's office for a nerve conduction study on multiple occasions, and failed to inform the Claimant; instead, the Claimant only learned of this failure to authorize on two separate occasions when he came to Dr. Healy's office and was refused treatment. Furthermore, Dr. Healy, the last authorized treating physician who saw the Claimant, *refused to place him at MMI*, and reiterated this finding again when asked directly during his deposition. Despite this, the Single Commissioner saw fit to find the Claimant at MMI. Dr. Healy and Dr. Edwards both gave the opinion that the Claimant is in need of additional physical therapy and psychological care in order to reach MMI, yet the Single Commissioner apparently ignored these opinions in their entirety.

The Single Commissioner's supporting reasons for this MMI conclusion are built upon a weak foundation. Not only did Dr. Healy testify that the Claimant was not malingering, but that the Claimant's falls between December of 2011 and April of 2012 were not the cause of his continued pain problems; instead, Dr. Healy attributed the Claimant's ongoing problems to his June 1, 2011 fall, despite great pressure from the Defendants' attorney to do otherwise. While it is true that Dr. Edwards released the Claimant and placed him at MMI *in regard to mechanical issues in his lower back*, Dr. Edwards did not place the Claimant at MMI regarding his pain symptoms and neurological problems; instead, he deferred to Dr. Healy on this issue, and Dr. Healy never placed the Claimant at MMI. For the foregoing reasons, the Single Commissioner's decision to place the Claimant at MMI was made in error, and should be overturned on appeal.

b. In the alternative, assuming the Claimant has reached MMI, is the Claimant entitled to additional ongoing Dodge medical care?

In the alternative, assuming *arguendo* that the Claimant has reached MMI, the Claimant maintains that he is entitled to ongoing medical care, contrary to the ruling of the Single Commissioner. The Single Commissioner specifically found that the Claimant is not entitled to further medical benefits under the Act. (D&O, p. 14). However, Dr. Healy, the Claimant's last authorized treating physician, found the Claimant's ongoing pain complaints to be causally related to the June 1, 2011 work incident. (Deposition of Dr. Healy, p. 49). The parties are essentially in agreement that the Claimant continues to suffer from debilitating problems with lower back and leg pain, and Dr. Healy has related these problems to his work accident. Furthermore, when deposed, Dr. Edwards stood by his opinion that the Claimant's problems were causally related to the June 1, 2011 work accident. (Deposition of Dr. Edwards, p. 50). At various points during their depositions, Drs. Edwards and Healy recommended physical therapy, a review of the Claimant's MRI, pain management, additional neurological testing, and psychological care. Considering that the Single Commissioner based her decision so heavily on the opinions of these doctors, it is incongruous that she would ignore the need for additional treatment caused by ongoing symptoms which both doctors agree are a result of his work related accident. To this end, the Single Commissioner's decision on this matter was in error and if the Claimant is deemed to be at MMI, the Claimant is nevertheless entitled to additional medical treatment on a *Dodge* basis.

2. Did the Single Commissioner err in finding that the Claimant lacked credibility when the Single Commissioner did not properly consider the available evidence in making such a finding?

In her Order, the Single Commissioner made the specific finding that the Claimant was not credible, based largely on his use of the wheelchair when neither Dr. Healy or Dr. Edwards

prescribed a wheelchair or recommended its use. It is true that neither Dr. Healy or Dr. Edwards found the use of the wheelchair to be the ideal situation. However, the Single Commissioner did not consider all of the available evidence as to the Claimant's use of the wheelchair.

Specifically in regard to the wheelchair, Dr. Edwards did state that he would not have recommended the use of the Claimant's wheelchair. (Deposition of Dr. Edwards, p. 20-21). However, he did note that the Claimant might feel as if he needed it, depending on the severity of his pain response. (Deposition of Dr. Edwards, p. 25). Dr. Healy gave the Claimant more credit in his use of the wheelchair, stating that the only possible reason for the Claimant's use of the wheelchair was his back injury and subsequent pain. (Deposition of Dr. Healy, p. 29). The Claimant contends that the Single Commissioner conflated the testimony offered by the doctors, and took their testimony on the ideal situation, which would not involve a wheelchair, to mean that any use of the wheelchair was something akin to malingering and should cast doubts upon the Claimant's credibility. The Claimant contends that his use of the wheelchair, while not ideal, is necessary in light of his severe problems with pain and especially because of his lack of treatment immediately following the injury. Both doctors have testified to the need for additional physical therapy, stemming from the Claimant's obvious deconditioning, so it seems clear that the reason for the Claimant's use of a wheelchair is not only the serious nature of his injury but also the deconditioning that occurred during the months when treatment was not authorized. Neither doctor testified that the Claimant was malingering or lacked credibility as to his reason for using the wheelchair.

Furthermore, and also as previously noted, neither doctor agreed that the Claimant was malingering. At best, it was agreed that the Claimant suffered from an exaggerated pain response. At worst, the Claimant continued to suffer from an undiagnosed neurological or

psychological condition that was never discovered because the Defendant refused to authorize treatment, a failure which Dr. Healy directly indicated was the cause of at least some of the Claimant's problems. For these reasons, the Single Commissioner's finding that the Claimant lacked credibility was made in error, and should be overturned on appeal.

3. Did the Single Commissioner err in finding that the Claimant was entitled to a 7% disability award?

In making the finding that the Claimant is entitled to a 7% disability award, the Single Commissioner relied on her previous finding that the Claimant has reached MMI. As noted above, the Claimant strenuously objects to the suggestion that he has not reached MMI. However, if he is deemed to have reached MMI, the Claimant contends in the alternative that he remains entitled to a greater degree of disability than the 7% award issued.

The Claimant received of a 5% impairment rating to the lumbar spine in this case. However, the Claimant contends that this impairment rating only conveys a part of the story in this case. The Claimant's activities of daily living have very clearly been restricted by his injury. The Claimant has presented uncontested testimony on his inability to care for himself or do basic things around the house, and his wife has testified to his need for near-constant care from others. (H.T., p. 13-20, 48-53). As mentioned before, Dr. Healy has linked these ongoing problems to the Claimant's work injury, so it is reasonable for the Appellate Panel to issue a disability award on the basis of these problems. Furthermore, both doctors have given their opinions that the Claimant is suffering from some kind of pain disorder, which limits his activities in ways that the x-rays and MRIs from his lower back would not suggest. While the impairment rating issued by the doctor only takes into account these physical findings, the additional pain complications

experienced by the Claimant have a clear basis in the record, and his disability is increased by these problems. While they may not be the type of problems that are easily located in an MRI or an X-Ray, the doctors are in agreement that these complaints are real and do not reflect any malingering. For this reason, they should be factored into a finding of disability in addition to the 5% impairment rating. Considering the significant effect of these problems, the Claimant is essentially permanently and totally disabled.

4. Did the Single Commissioner err in ruling that the Defendants were entitled to a credit for payment of TTD benefits when the Claimant has not yet reached MMI?

If the Appellate Panel overturns the decision of the Single Commissioner in regard to whether the Claimant has reached MMI, the Claimant clearly remains entitled to Temporary Total Disability benefits. S.C. Code Ann. § 42-9-10 (2012). Also, the Defendants are not entitled to a credit for overpayment for temporary disability benefits, in light of §42-9-210, which provides for a credit for overpayment only if payments were made “which by the terms of this Title were not due” S.C. Code Ann. § 42-9-210. Clearly, in this case, if the Claimant had not yet reached MMI, he remained entitled to TTD benefits, and therefore any credit for overpayment should be overturned on appeal.

CONCLUSION

South Carolina courts have traditionally construed the Workers’ Compensation statutes “liberally in favor of coverage.” *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 243, 647 S.E.2d 691, 694 (Ct. App. 2007). For many years, the precedent has been that “the basic purpose of the Compensation Act is the inclusion of employers and employees, and not their exclusion.” *Yeomans v. Anheuser-Busch, Inc.*, 198 S.C. 65, 72, 15 S.E.2d 833, 835 (1941). The Claimant

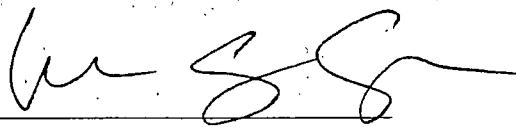
urges the Appellate Panel to be mindful of this general presumption in favor of Workers' Compensation coverage on issues such as this one.

In this case, the Claimant has suffered from an aggravation of his back problem that has caused complications unimaginable by most working people. The Carrier in this case withheld treatment for an extended period of time, then used the problems the Claimant developed during this period as an excuse to attempt to stop compensation in this claim. Furthermore, the Defendants have refused to authorize treatment on multiple occasions, have not received a finding of MMI from the authorized treating physician, and violated the terms of a Consent Order approved by this Commission. In the meantime, the Claimant's health has continued to go downhill as he has been denied access to both pain management and direct treatment for his injury. In fact, the Defendants have repeatedly tried to place blame on the Claimant for allowing his condition to worsen in the months immediately following the injury, despite refusing to authorize any treatment during this time period. To add insult to injury, the Defendants have repeatedly cast doubt upon the reported causes for this injury despite officially granting this case accepted injury status. The Single Commissioner used the Defendants' version of events to find the Claimant not credible, and selectively chose language from the depositions of the authorized treating physicians to, in large part, cast aside the Defendants' responsibility in this claim.

Based upon the arguments set forth herein, the Claimant respectfully requests that the Full Commission strike down the specified decisions of the Commissioner below as they are not in accordance with the facts of this claim and the law under the Act. Finally, the Claimant respectfully requests that the Full Commission enter an Order granting the Claimant further causally related medical care (in the form of reviewing his MRI with Dr. Healy, undergoing the additional testing recommended by Dr. Healy, pain management, physical therapy, and

psychological care recommended by Dr. Healy), a finding that the Claimant has not reached MMI, a finding that the Claimant is credible, and a finding that the Defendants are not entitled to a credit for overpayment. In the alternative, the Claimant contends that he is entitled to a disability award far in excess of the 7% disability award issued by the Single Commissioner and ongoing *Dodge* medical care, considering the poor circumstances surrounding his health following his injury and the Defendants' role in creating this poor outcome.

Respectfully submitted,



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Attorney for the Claimant

January 14, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1106685

David Glenn Jones,

Employee,

Claimant,

v.

Warden & Smith Concrete,

Employer,

and

Bridgefield Casualty Insurance Company c/o
Summit Holdings, Inc.,

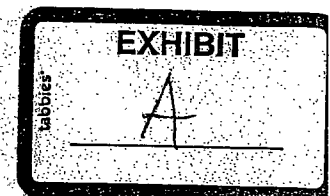
Carrier,

Defendants.

CONSENT ORDER

On August 18, 2011, the claimant filed a Form 50 alleging he sustained an accident on June 1, 2011, arising out of and in the course of his employment with Warden & Smith Concrete, and resulting in compensable injuries to his lower back, left hip and both legs, and resulting in heat exhaustion. By way of Form 51 filed on September 14, 2011, the defendants denied this claim in its entirety pending further investigation. A Hearing in this matter was scheduled to be held before Commissioner T. Scott Beck for December 8, 2011, in Florence, South Carolina, at 10:00 a.m., to address the issues as raised on Forms 50 and 51. Prior to call of the case, the Commissioner was informed by both parties that the Hearing should be postponed based upon the following Consent agreement:

1. Claimant sustained a compensable injury to his low back;
2. Claimant's average weekly wage and compensation rate is \$483.37 and \$322.26;

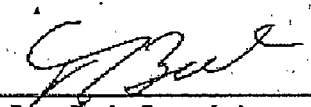


3. The parties agree the claimant is entitled to Seven Thousand Two Hundred and No/100 (\$7,200.00) Dollars as a compromise of temporary total disability benefits owed from June 1, 2011, through December 7, 2011;
4. Claimant is entitled to temporary total disability benefits from December 8, 2011, and continuing until such time as maximum medical improvement is reached for the compensable injury, by Order of the South Carolina Workers' Compensation Commission, or by agreement of the parties;
5. Defendants will authorize payment of all causally-related medical treatment incurred by the claimant since June 1, 2011;
6. Defendants will authorize continued causally-related medical treatment with W.S. Edwards, M.D., of Pee Dee Orthopaedics; and
7. All other issues shall be held in abeyance until such time as a Hearing may be requested by either party.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that this case be returned to general files pursuant to this Consent Agreement and until such time as a Hearing may be requested by either party.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

By: 

T. Scott Beck, Commissioner

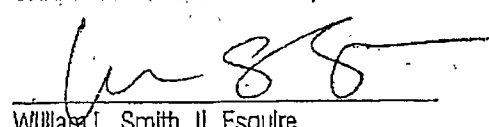
December 16, 2011

WE CONSENT:

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CHAPPELL SMITH & ARDEN, PA


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CERTIFICATE OF SERVICE

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

By Amy A. Bracy on December 16, 2011

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1106685

David G. Jones,)
)
Claimant,)
)
Appellant/Respondent,)
)
v.)
)
Warden & Smith Concrete,)
)
Employer,)
)
and)
)
Bridgefield Casualty Insurance Company)
c/o Summit Holdings, Inc.,)
)
Carrier,)
)
Respondents/Appellants.)

FULL COMMISSION BRIEF
IN RESPONSE TO
CLAIMANT'S APPEAL

STATEMENT OF THE CASE

This is an appeal by David G. Jones ("Claimant" or "Appellant/Respondent") from the Decision and Order of Commissioner Melody L. James, filed on October 18, 2012. This brief is submitted in response to the claimant's appeal.¹

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the defendants on May 15, 2012. It is the position of the defendants that the claimant reached maximum medical improvement (MMI) with regard to his low back on December 15, 2011 and, therefore, defendants are entitled to terminate temporary total disability (TTD) benefits. In

¹ For the purposes of this Brief only Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., is hereinafter known as Defendants.

addition, defendants contended the claimant has not sustained any permanent partial disability with regard to his back under Section 42-9-30; however, if so defendants requested credit for the extent of pre-existing disability sustained to the claimant's back. Moreover, defendants contended the claimant is not entitled to further medical benefits under Section 42-15-60. The defendants also requested credit for the payment of TTD benefits after the date of MMI, and requested the Hearing Commissioner make a determination as to the credibility of the claimant.

Per the Reply to Defendants' Stop Pay Application, it is the position of the claimant that he has not reached MMI as he has been referred for a neurological opinion which has not been provided by the defendants. The claimant also requests a second orthopedic opinion. In the alternative, if the claimant is found to have reached MMI, the claimant contends he is permanently and totally disabled under Section 42-9-10 or Section 42-9-30.

The Hearing in this matter was held on June 28, 2012, in Florence, South Carolina, before Commissioner Melody L. James ("Hearing Commissioner"). By way of Decision and Order filed on October 18, 2012, the Hearing Commissioner determined the claimant reached MMI on June 26, 2012, with seven (7%) percent permanent partial disability to the back. The Hearing Commissioner further determined the defendants were entitled to a credit for payment of TTD benefits after the date of MMI, June 26, 2012; determined the claimant was not entitled to further medical benefits under the Act; and did not find the claimant to be credible based upon a myriad of reasons.

The claimant has now timely appealed the Decision and Order to the Full Commission Appellate Panel ("Appellate Panel"). This Brief will only address the issues discussed by the claimant in the Brief of Claimant/Appellant, wherein the following grounds were raised for review:

1. Did the Single Commissioner err in finding that the claimant is not entitled to further medical care when the greater weight and preponderance of the evidence shows that numerous factors entitle the claimant to additional medical care?
2. Did the Single Commissioner err in finding that the claimant lacked credibility when the Single Commissioner did not properly consider the available evidence in making such a finding?
3. Did the Single Commissioner err in finding that the claimant was entitled to a 7% disability award?
4. Did the Single Commissioner err in ruling that the defendants were entitled to a credit for payment of TTD benefits when the claimant has not yet reached MMI?

The defendants respectfully request the Appellate Panel to affirm the Decision and Order of the Hearing Commissioner in its entirety (with the exception of the grounds for appeal raised on defendants' Form 30), based upon the following grounds:

1. The denial of further medical treatment is supported by the greater weight of the evidence in the record.
2. The claimant's lack of credibility is supported by the greater weight of the evidence in the record.
3. The Hearing Commissioner's determination of permanent partial disability is supported by the greater weight of the evidence in the record.
4. The Hearing Commissioner correctly awarded the defendants credit for payment of TTD benefits after the date of MMI.

ARGUMENT

I. THE DENIAL OF FURTHER MEDICAL TREATMENT IS SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE IN THE RECORD.

The determination of the Hearing Commissioner that the claimant is not entitled to additional medical treatment under Section 42-15-60 is supported by the greater weight of the evidence in the record, specifically the medical reports and deposition testimony of Dr. Edwards and Dr. Healy.

Pursuant to Section 42-15-60, an employer shall provide medical treatment to a claimant for a period not exceeding ten weeks from the date of the injury unless if "in the judgment of the commission [additional treatment] will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty." See S.C. Code Ann. § 42-15-60 (Co-op 1976, Supp. 2007). In the case at bar, there exists absolutely no evidence stated to a reasonable degree of medical certainty indicating the claimant is in need of additional medical treatment. The claimant has provided no evidence or argument to the contrary.

Instead, the claimant relies upon portions of medical reports and deposition testimony of Dr. Edwards and Dr. Healy to support his position that the Hearing Commissioner improperly failed to award the claimant additional medical treatment under Section 42-15-60. However, the defendants submit the claimant has failed to procure the required medical evidence to support an award of additional medical treatment under Section 42-15-60. In addition, the defendants assert that a critical review of the evidence in the record reveals the claimant's reliance upon the deposition testimony of Dr. Edwards and Dr. Healy is misplaced and predicated upon a mischaracterization of the evidence.

A. Claimant Inaccurately Asserts Dr. Edwards Recommended Additional Treatment with Dr. Healy.

The claimant submits that although Dr. Edwards, the authorized treating orthopedist, released the claimant from his care on December 15, 2011, Dr. Edwards nonetheless "referred" the claimant to Dr. Healy "for a follow-up on his continued pain problems." See Brief of Claimant/Appellant, p. 17 (citing Defendants' APA #4, pp. 73-75). Defendants assert this submission constitutes a complete mischaracterization of this report and the report of January 12, 2012. In fact, Dr. Edwards reported on December 15, 2011, that the claimant had an "in-patient evaluation by Dr. Joe Healy from neurology and he was unable to find any source for the symptoms that he describes as weakness in the legs and back pain." See Defendants' APA #4, p. 73. On its face it is inconsistent that Dr. Edwards would refer the claimant to Dr. Healy for additional *treatment* after Dr. Edwards acknowledged Dr. Healy did not find neurologic pathology. In fact, Dr. Edwards' only comment on December 15, 2011, regarding additional evaluation with Dr. Healy was that "[the claimant] plans to follow-up with Dr. Healy but review of his work up while in the hospital failed to show any obvious problems that could be dealt with either medically or surgically." See Defendants' APA #4, p. 74. Importantly, **Dr. Edwards did not refer the claimant to Dr. Healy** or even recommend that he follow-up as argued by the claimant.

The claimant has also mischaracterized Dr. Edwards' comments on January 12, 2012, when he assigned the claimant with an impairment rating of 5% to the spine. See Defendants' APA #4, p. 75. The claimant asserts Dr. Edwards referred the claimant "for a follow-up on his continued pain problems." See Brief of Claimant/Appellant, p. 17 (citing Defendants' APA #4, p. 75). However, a critical review of the report reveals Dr. Edwards **only requested the claimant obtain any applicable**

work restrictions from Dr. Healy, not additional treatment. See Defendants' APA #4, p. 75. In fact, there is no mention of additional medical treatment anywhere in the report from Dr. Edwards.

Defendants assert Dr. Edwards did not recommend additional evaluation or treatment with Dr. Healy (or any other medical provider) on either December 15, 2011, or January 12, 2012. Any assertion to the contrary is wholly inaccurate and unsupported by any evidence in the record.

B. Testimony and Reports of Dr. Healy Do Not Support the Need for Additional Treatment Causally Related to the Accident.

In support of the claimant's contention that the defendants failed to authorize additional medical treatment as recommended by Dr. Edwards and Dr. Healy, the claimant also relies heavily upon the deposition testimony of Dr. Healy, who was only authorized to treat the claimant in November of 2011 after the claimant presented to the emergency room with possible neurological problems. Importantly, the claimant fails to cite to the Appellate Panel any of Dr. Healy's comments from his report(s) from 2011, which are wholly contrary and inconsistent to his subsequent report from April 5, 2012. In addition, the defendants assert the claimant's argument is predicated upon an incomplete summarization of Dr. Healy's testimony as it pertains to the diagnosis of neurologic pathology and the claimant's questionable subjective complaints. Finally, the claimant clearly fails to identify to the Appellate Panel any testimony sufficient to constitute medical evidence as required by Section 42-15-60. In fact, Dr. Healy clearly questioned the causal relationship between his current problems, if any, and his work-related accident in June of 2011.

1. Dr. Healy's report from 2011 does indicate the need for additional neurologic treatment.

On November 10, 2011, the claimant presented to Dr. Healy, a neurologist, after treating with him at McLeod Regional Medical Center "with transient alteration in mental status which was of uncertain etiology." See Defendants' APA #10, p. 94. Dr. Healy reported the claimant's problems

"seemed to be more of a mechanical low back phenomena rather than any cord involvement or radicular involvement." See Defendants' APA #10, p. 94. Dr. Healy concluded the report by stating "I cannot find any definite neurologic problems" and "I really don't see have anything neurologic to recommend." See Defendants' APA #10, p. 94 (emphasis added); see also Deposition of R. Joseph Healy, M.D., pp. 14-15. Dr. Healy subsequently testified on June 26, 2012, that it is still his opinion that the claimant does not have a neurologic condition. See Deposition of Dr. Healy, p. 23. Moreover, Dr. Healy repeatedly testified he would defer any orthopedic treatment recommendations to Dr. Edwards. See Deposition of Dr. Healy, pp. 15-16, 20, 26. Interestingly, the claimant has failed to identify either this report from November of 2011 or Dr. Healy's testimony, as the authorized treating neurologist, unequivocally confirming the claimant does not have a neurologic condition.

Accordingly, it is indisputable that Dr. Healy did not diagnose the claimant with a neurological problem or recommend any treatment for same either in November of 2011 or April 2012. Moreover, Dr. Healy was not authorized to treat the claimant for his diagnosed mechanical back pain, and admittedly deferred any recommendations in this regard to Dr. Edwards. Notwithstanding Dr. Healy's the lack of expertise in the area of orthopedic treatment, it is inconsistent to defer recommendations for continued orthopedic treatment to Dr. Edwards and simultaneously make recommendations for additional treatment. Importantly, Dr. Edwards released the claimant from orthopedic care on January 12, 2012, and deferred any neurologic-related work restrictions, if any, to Dr. Healy. See Defendants' APA #4, p. 75. Defendants then scheduled an appointment with Dr. Healy for April 5, 2012, so Dr. Healy could address only whether work restrictions were appropriate.

In sum, the claimant has misinterpreted the final reports of Dr. Edwards and Dr. Healy to provide recommendations for additional orthopedic treatment, yet ignored the indisputable facts that Dr. Healy did not diagnose the claimant with a condition in the purview of his expertise and deferred

further orthopedic treatment to Dr. Edwards. The greater weight of the evidence supports the Hearing Commissioner's determination that additional causally-related medical treatment was not recommended by either Dr. Edwards or Dr. Healy.

2. **Dr. Healy explicitly questioned the credibility of the claimant.**

The claimant submits to the Appellate Panel that Dr. Healy did not question the claimant's credibility, i.e. was malingering or exhibiting symptom exaggeration. In fact, the claimant argues Dr. Healy "strongly repudiated any claims that the claimant was faking or malingering." See Brief of Claimant/Appellant, p. 18 (citing Deposition of Dr. Healy, pp. 48-49). However, the defendants contend this argument is based upon clearly-selected and partially-quoted portions of Dr. Healy's testimony, and ignores Dr. Healy's clear testimony that felt the claimant's symptoms were in excess of what he could confirm by objective evidence. Specifically, Dr. Healy explained his opinion of the claimant's problems following his examination in November of 2011, testifying "I thought he had exaggerated or amplified or thought that he was injured worse than what I could find." See Deposition of Dr. Healy, pp. 13-14. As such, defendants submit Dr. Healy questioned the complaints of the claimant from the outset.

In addition, the claimant submits that Dr. Healy testified that the *only possible reason* for the claimant's use of a wheelchair could be his back pain. See Brief of Claimant/Appellant, p. 18 (citing Deposition of Dr. Healy, p. 29). This seems to suggest Dr. Healy does not believe the claimant may be exaggerating his symptoms. However, a critical review of Dr. Healy's subsequent testimony provides a more thorough understanding of his opinion regarding possible symptom exaggeration and/or malingering. The testimony continued as follows:

Q: Would you disagree with Dr. Edwards if he testified that he didn't think he should be using a walker or a wheelchair?

A: No.

Q: And why is that?

A: I'd be surprised that he needed that at this point.

Q: Would that be evidence of any kind of intentional or unintentional malingering on his part if he was still using those devices?

A: Well, you know, I got the feeling all along that this fellow thought he was injured worse than I could find evidence for.

Sée Deposition of Dr. Healy, pp. 30-31. Dr. Healy then provided a specific example of possible malingering on the part of the claimant, as follows:

A: An example would be that he told me that his grips were weak and when I testified them, they were weak. But, yet, when he stood up, he had to hold onto me and I felt his grip on my arm.

Q: Is that not inconsistent?

A: It's inconsistent.

Q: So it's inconsistent?

A: Yeah. So it makes me think that there is pain behavior present and that's just a phenomena that physicians have to deal with. And it's not the equivalent of faking necessarily, but it's hard to sometimes decide.

Q: Okay. Well, Doctor, I mean, isn't it inconceivable when you asked him to stand up and he grabbed your arm, I mean, he had no idea you were going to be testing his grip strength then, did he?

A: No. And that's part of the reason why you do those things because you try to distract people to see if a reflex movement is the same as their volitional movement.

Q: Okay. So if you ask him to do a grip strength and he couldn't given you the same effort as when he grabbed your arm, wouldn't that lead you to the conclusion that he's not being accurate with regard to the nature of his symptoms?

A: It can, yes.

See Deposition of Dr. Healy, pp. 60-62. Finally, Dr. Healy confirmed his opinion regarding the veracity of the claimant's subjective complaints, as follows:

Q: If he's not responding to injections, to medications and won't let anyone at physical therapy touch him because he feels like it's making him worse, as you said, but yet his objective findings aren't surgical, what other conclusion is there other than the fact that maybe he's just not being honest with regard to the nature of his pain?

A: Well, I mean, that certainly is a possibility.

See Deposition of Dr. Healy, pp. 62-63.

In sum, the argument by the claimant that Dr. Healy "strongly repudiated any claims that the claimant was faking or malingering" is wholly contrary to the actual testimony of Dr. Healy. In fact, Dr. Healy never made or insinuated such an opinion. Accordingly, the indication by the Hearing Commissioner that the claimant's credibility should be questioned in part based upon the reports and testimony of Dr. Healy is supported by the greater weight of the evidence in the record, and provided a sound basis to deny additional medical treatment under Section 42-15-60.

3. **Dr. Healy questioned the claimant's alleged falls and could not establish a causal relationship between the falls and the claimant's admitted back injury.**

Dr. Healy testified regarding the claimant's reports on April 5, 2012, of three episodes of allegedly "passing out," which was clearly the reason for the recommendations for additional medical evaluation. See Deposition of Dr. Healy, p. 24; Defendants' APA #10, p. 95. Regardless of the falls, however, Dr. Healy confirmed the MRI performed following the visit on April 5, 2012, did not reveal

any additional pathology and "was probably very similar to the initial one from the year before." See Deposition of Dr. Healy, p. 45. In addition, Dr. Healy clearly found the claimant's alleged falls questionable. In fact, Dr. Healy testified that the fact the claimant did not report the alleged falls in January to Dr. Healy or Dr. Edwards until April of 2012 was "unusual." See Deposition of Dr. Healy, p. 24. The testimony continued as follows:

Q: Does that mean you doubt what he's telling you or you just - -

A: Well, you know, some things just don't make sense and it seemed to me that that would be a reason you would contact a doctor.

See Deposition of Dr. Healy, p. 24. Dr. Healy then testified that "I'd be more suspicious about the falls if, in fact, they happened. But, you know, it just seemed unusual. If I was at home and I fainted, I'd be calling somebody, so - - and he did it three times, supposedly, but didn't notify anybody." See Deposition of Dr. Healy, p. 27. As such, the only basis for Dr. Healy's recommendations for additional evaluation was the claimant's alleged falls in January of 2012, which Dr. Healy himself questioned. Moreover, Dr. Healy did not provide any opinion or testimony stated to a reasonable degree of medical certainty establishing a causal relationship between the alleged falls and the admitted back injury. In fact, Dr. Healy testified the MRI of April 2012 did not reveal any new pathology, which the defendants assert further eliminates the possibility of a causal connection.

In sum, the contention of the claimant that additional medical treatment was recommended by Dr. Edwards is not supported by any evidence in the record and, in fact, is predicated upon an inaccurate summarization of the reports of Dr. Edwards. In addition, Dr. Healy made it clear that the only explanation (outside of malingering or symptom magnification) for the claimant's subjective complaints is speculative and undiagnosed "pain behavior," although Dr. Healy clearly agreed with the notion the claimant may have been malingering or exaggerating his symptoms. Regardless, it is the

responsibility of the Hearing Commissioner, as the finder of fact, to consider the credibility and weight afforded an expert's opinion during the process of rendering a decision. Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (1967); see also Tiller v. Nat'l Health Care Ctr. Of Sumter, 334 S.C. 333, 334, 513 S.E.2d 843, 846 (1999) ("once admitted, expert testimony is to be considered just like any other testimony"). The Hearing Commissioner properly considered the aforementioned reports and testimony in conjunction with the claimant's incredible testimony to reach the conclusion that the claimant had reached MMI and is not entitled to further treatment under the Act. This determination is supported by the greater weight of the evidence in the record and, therefore, should be affirmed by the Appellate Panel.

II. **THE CLAIMANT'S LACK OF CREDIBILITY IS SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE IN THE RECORD.**

The finding of the Hearing Commissioner that the claimant is not credible is supported by the greater weight of the evidence in the record. The claimant, however, argues the Hearing Commissioner did not consider all evidence available as to the claimant's credibility, but focused only on the evidence regarding the claimant's use of a wheelchair. Specifically, the claimant contends Dr. Edwards and Dr. Healy did not believe the claimant's use of the wheelchair raised questions as to his credibility, but was simply the result of his back injury and subsequent pain. Moreover, the claimant contends the Hearing Commissioner failed to consider the alleged testimony of both Dr. Edwards and Dr. Healy that the claimant was not malingering.

To the contrary, the defendants submit the claimant's contentions regarding his credibility are contrary to the testimony of Dr. Edwards and Dr. Healy when considered in its entirety. In fact, both physicians raised questions as to the credibility of the claimant, which the Hearing Commissioner confirmed after hearing the testimony of the claimant, which was perhaps the most incredible and

compelling evidence in the record. Specifically, the claimant asserts that although Dr. Edwards testified he would not have recommended the use of a wheelchair, the claimant "might feel as if he needed it, depending on the severity of the pain response." See Brief of Claimant/Appellant, p. 21 (citing Deposition of Dr. Edwards, p. 25). However, this is not an accurate summarization of the testimony. In fact, Dr. Edwards actually testified there was no neurologic or orthopedic reason why the claimant could not walk. See Deposition of Dr. Edwards, p. 25. In other words, the severity of the claimant's alleged pain response is not consistent with the objective medical findings of Dr. Edwards.

The claimant then proceeds to describe Dr. Healy's testimony to conclude that the only possible reason the claimant would use a wheelchair would be because of his back injury and resulting level of pain, i.e. only out of necessity. See Brief of Claimant/Appellant, p. 21 (citing Deposition of Dr. Healy, p. 29). Again, this argument is based upon an inaccurate summarization of the testimony. In fact, Dr. Healy testified regarding the claimant's use of the wheelchair as follows:

Q: Would you disagree with Dr. Edwards if he testified that he didn't think he should be using a walker or a wheelchair?

A: No.

Q: And why is that?

A: I'd be surprised that he needed that at this point.

Q: Would that be evidence of any kind of intentional or unintentional malingering on his part if he was still using those devices?

A: Well, you know, I got the feeling all along that this fellow thought he was injured worse than I could find evidence for.

See Deposition of Dr. Healy, pp. 30-31. Defendants assert Dr. Healy clearly questioned the veracity of the claimant's alleged complaints of pain. The claimant also asserts that neither physician generally identified the claimant to be malingering. However, the defendants assert both Dr. Healy and Dr.

Edwards made numerous references to the claimant's possible symptom exaggeration and/or malingering. See Deposition of Dr. Healy, pp. 13-14, 23-24, 30-31, 60-63; Deposition of Dr. Edwards, pp. 16-18.

Additionally, and perhaps most compelling with regard to credibility, is the Hearing testimony of the claimant. Interestingly, the claimant has failed to explain or refute the importance of this testimony in his Brief to the Appellate Panel. The claimant testified he was provided a prescription for Norflex when he presented to Marlboro Park Hospital in June of 2011; however, the medications were to only last for one week. See H.T., p. 21. Despite being in severe pain and having group health insurance, the claimant admitted he never attempted to obtain additional pain medications during the subsequent three and one-half month period until he saw Dr. Edwards. See H.T., p. 22. In fact, the claimant failed to request pain medications during his initial visit with Dr. Edwards on September 22, 2011, and therefore, did not receive medications until October 12, 2011, more than five months after his accident, and despite having pain so severe he was confined to a wheelchair.

Additionally, the claimant testified he recalled informing Dr. Healy in April of 2012 that he had not taken any medications in the past three months. See H.T., p. 28. The claimant testified he did not go back to see Dr. Edwards after January 12, 2012, for additional medications despite being in 10/10 pain, having three falling episodes, and having to use a wheelchair. See H.T., pp. 15, 29. Most outrageous, however, is the claimant's testimony, corroborated by his wife, that his wife is forced to bathe, shave, feed and clothe him due to his back injury. See H.T., p. 17. The defendants submit, and the Hearing Commissioner noted, that it is incredible to believe a person with mechanical back pain cannot perform these activities without assistance.

In sum, the Hearing Commissioner properly and accurately considered the testimony of Dr. Edwards, Dr. Healy and the claimant in reaching the conclusion that the claimant was not credible. Dr.

Edwards and Dr. Healy both raised questions as to the veracity of the claimant's complaints based upon the insignificant objective findings when compared to the extreme subjective complaints – questions which were answered by the claimant's incredible testimony. As such, the defendants request the Appellate Panel to affirm the finding as to the claimant's credibility as supported by the greater weight of the evidence in the record.

III. **THE HEARING COMMISSIONER'S DETERMINATION OF PERMANENT PARTIAL DISABILITY IS SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE IN THE RECORD.**

It is well-established in South Carolina that an award under the Act "must not rest of surmise, conjecture, or speculation; it must be founded on evidence of sufficient substance to afford it a reasonable basis." Linen v. Ruscon Constr. Co., 286 S.C. 67, 68, 332 S.E.2d 211, 212 (1985). The defendants assert the determination by the Hearing Commissioner that the claimant sustained seven (7%) percent permanent partial disability to the back is not speculative, but is supported by the greater weight of the evidence in the record and, therefore, should be affirmed by the Appellate Panel. Nonetheless, the claimant asserts the Hearing Commissioner failed to account for the claimant's "uncontested testimony on his inability to care for himself or do basic things around the house," which is the result of an alleged "pain disorder" from which he suffers.

Defendants submit this assertion by the claimant constitutes nothing more than an unfounded dissatisfaction with the award. The Hearing Commissioner clearly considered the testimony of the claimant describing his alleged disability, but simply found the testimony unbelievable and unsupported by any medical evidence. For example, it is inconceivable to believe a person with mechanical back pain requires assistance to shave or dress. Moreover, and as discussed above, neither treating physician believed the claimant's injury required the use of a wheelchair, and both raised questions as to the veracity of the claimant's subjective complaints. Finally, while both

physicians diagnosed the claimant with mechanical back pain, neither physician provided a formal diagnosis of "some kind of pain disorder." See Deposition of Dr. Edwards, p. 19; Deposition of Dr. Healy, pp. 16-19.

In sum, the claimant's testimony regarding his perceived disability was considered by the Hearing Commissioner but found incredible in comparison to the reports and testimony of his treating physicians. The claimant is mistakenly equating the Hearing Commissioner's finding regarding his lack of credibility with her ignoring the evidence in the record. The greater weight of the evidence in the record supports the finding of permanent partial disability sustained to the claimant's back and, therefore, should be affirmed by the Appellate Panel.

IV. **THE HEARING COMMISSIONER CORRECTLY AWARDED DEFENDANTS CREDIT FOR PAYMENT OF TTD BENEFITS AFTER THE DATE OF MMI.**

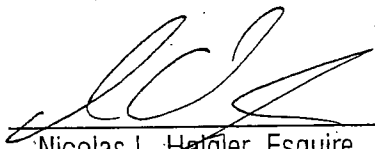
Claimant contends the Hearing Commissioner incorrectly found the claimant reached MMI for his admitted back injury and, as such, contends the defendants are not entitled to credit for TTD benefits paid after the determined date of MMI. Defendants concede that if the Appellate Panel finds the claimant has not reached MMI, then the defendants are not entitled to a credit. However, defendants maintain the claimant has reached MMI and, in fact, argue to the Appellate Panel that the appropriate date of MMI is actually December 15, 2011, or January 12, 2012, not June 26, 2012, as determined by the Hearing Commissioner. Nonetheless, the defendants maintain the Hearing Commissioner properly awarded the defendants credit for the payment of TTD benefits after the claimant reached MMI.

CONCLUSION

Based upon the foregoing, the defendants request the Full Commission to affirm the Decision and Order of the Hearing Commissioner with regard to the claimant's entitlement to additional medical treatment under Section 42-15-60 of the Act, the award of permanent partial disability, the credibility of the claimant, and the defendants' entitlement to credit for TTD benefits paid after the determined date of MMI.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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Attorneys for Respondents/Appellants

Columbia, South Carolina

February 6, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1106685

 **COPY**

EMPLOYEE/CLAIMANT: DAVID G. JONES

EMPLOYER: WARDEN & SMITH, INCORPORATED

CARRIER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 28TH DAY
OF JUNE, 2012, COMMENCING AT THE HOUR OF 2:27 P.M., IN
FLORENCE, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY
L. JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
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APPEARANCES

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ATTORNEY FOR THE EMPLOYER/CARRIER.

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REBECCA CHAVIS JONES:

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN FLORENCE,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 **BY COMMISSIONER JAMES:**

7 TODAY IS JUNE THE 28TH, 2012. WE ARE HERE FOR
8 THE MATTER OF DAVID JONES VERSUS WARDEN & SMITH, ET
9 AL. WCC FILE NUMBER 1106685. PRESENT ON BEHALF OF
10 THE CLAIMANT IS MR. WILLIAM SMITH. PRESENT ON BEHALF
11 OF THE DEFENDANTS IS MR. NICHOLAS HAIGLER.

12 STIPULATED AVERAGE WEEKLY WAGE RATE OF 483.37,
13 COMPENSATION RATE 322.26, DATE OF ACCIDENT 6-1-2011.

14 WE ARE HERE ON THE DEFENDANTS' FORM 21 TO
15 DETERMINE IF THE EMPLOYER/CARRIER MAY STOP PAYMENT
16 AND, IF SO, TO DETERMINE IF CLAIMANT IS ENTITLED TO
17 ANY FURTHER BENEFITS. THE CARRIER ALSO REQUESTS
18 CREDIT FOR TEMPORARY TOTAL BENEFITS PAID IN EXCESS OF
19 THE AWARD AFTER THE DATE OF M.M.I. ARE THERE ANY
20 OBJECTIONS TO THE APAs, JURISDICTION, VENUE, OR ANY
21 OTHER ITEMS?

22 **BY MR. SMITH:**

23 YES, MA'AM, YOUR HONOR. I'VE GOT AN OBJECTION
24 TO AN APA.

25 **BY THE COMMISSIONER:**

1 OKAY. WHAT PART OF THE APA?

2 BY MR. SMITH:

3 THERE IS AN EXHIBIT OFFERED, WHICH IS EXHIBIT

4 ---

5 BY MR. HAIGLER:

6 WE WILL WITHDRAW THAT EXHIBIT.

7 BY MR. SMITH:

8 YOU'LL WITHDRAW IT?

9 BY MR. HAIGLER:

10 YES.

11 BY MR. SMITH:

12 OKAY.

13 BY THE COMMISSIONER:

14 OKAY. HAS IT BEEN TAKEN ---

15 BY MR. HAIGLER:

16 IT HAS NOT BEEN TAKEN OUT, BUT WE WILL WITHDRAW

17 IT.

18 BY THE COMMISSIONER:

19 IS IT "A"?

20 BY MR. HAIGLER:

21 IT IS "A."

22 BY THE COMMISSIONER:

23 ALL RIGHT. THEN I'M GOING TO GO AHEAD AND

24 REMOVE "A," AND RETURN THAT TO YOU.

25 BY MR. HAIGLER:

1 THANK YOU.

2 BY THE COMMISSIONER:

3 ALL RIGHT. ANYTHING ELSE?

4 BY MR. SMITH:

5 NO, MA'AM.

6 BY THE COMMISSIONER:

7 ANYTHING ON BEHALF OF THE DEFENDANTS?

8 BY MR. HAIGLER:

9 NOTHING, YOUR HONOR. THANK YOU.

10 BY THE COMMISSIONER:

11 OKAY. AND I'VE BEEN HANDED UP A COUPLE OF
12 DEPOSITIONS THAT ARE GOING INTO THE RECORD, THE
13 DEPOSITION OF DR. EDWARDS AND A DEPOSITION OF DR.
14 HEALY, WHICH I UNDERSTAND YOU ALL JUST RECENTLY TOOK
15 THIS. THIS IS NOT CERTIFIED, BUT DO EITHER ONE OF
16 YOU HAVE AN OBJECTION TO THIS BEING SUBMITTED AS IT
17 IS?

18 BY MR. SMITH:

19 NO OBJECTION.

20 BY MR. HAIGLER:

21 AND WE WILL DELIVER THE CERTIFIED COPY TO YOUR
22 OFFICE IF YOU FEEL THAT'S NECESSARY.

23 BY THE COMMISSIONER:

24 OKAY. IF YOU BOTH ARE AGREEING TO THE COPY, THE
25 DELIVERY OF THE CERTIFIED IS NOT NECESSARY.

1 BY MR. HAIGLER:

2 THANK YOU, COMMISSIONER.

3 BY THE COMMISSIONER:

4 ALL RIGHT. WITH REGARDS TO THE DEFENDANTS'
5 POSITION, THE DEFENDANTS' POSITION, AS I STATED, THAT
6 THE CLAIMANT IS AT MAXIMUM MEDICAL IMPROVEMENT AS OF
7 12-15-2011, AND THEY ARE REQUESTING FOR DISABILITY TO
8 BE DETERMINED TO THE CLAIMANT'S BACK. THEY WISH TO
9 HAVE CREDIT FROM THE DATE OF M.M.I., AND THEY
10 INDICATE THAT THERE IS NO FUTURE MEDICAL NEEDED.

11 THE CLAIMANT'S POSITION IS THAT THE CLAIMANT IS
12 NOT AT M.M.I., THAT THERE IS FURTHER MEDICAL
13 TREATMENT THAT IS NEEDED THAT IS REFERENCED IN THE
14 RECORD. THE ALTERNATIVE POSITION IS THAT IF THE
15 CLAIMANT IS AT M.M.I., THAT THE CLAIMANT IS
16 PERMANENTLY AND TOTALLY DISABLED, PURSUANT TO 42-9-
17 30.

18 IS THERE ANYTHING FURTHER FROM THE DEFENSE?

19 BY MR. HAIGLER:

20 NOTHING, YOUR HONOR. THANK YOU.

21 BY THE COMMISSIONER:

22 IS THERE ANYTHING FURTHER FROM THE CLAIMANT?

23 BY MR. SMITH:

24 IN TERMS OF OUR POSITION?

25 BY THE COMMISSIONER:

1 YES, SIR.

2 BY MR. SMITH:

3 NO, MA'AM.

4 BY THE COMMISSIONER:

5 ALL RIGHT. I WILL ASSUME THAT THE DEFENDANT
6 RESTS ON THEIR MEDICAL AND RESERVES THE RIGHT TO
7 CROSS EXAMINE THE CLAIMANT?

8 BY MR. HAIGLER:

9 THAT IS CORRECT, YOUR HONOR. THANK YOU.

10 BY THE COMMISSIONER:

11 MR. JONES, IF YOU WOULD RAISE YOUR RIGHT HAND
12 FOR ME, PLEASE, SIR.

13 * * * * *

14 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
15 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
16 MATTER HEREIN:

17 DAVID G. JONES,

18 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
19 FOLLOWS:

20 BY THE COMMISSIONER:

21 YOUR WITNESS.

22 DIRECT EXAMINATION BY MR. SMITH:

23 Q. MR. JONES, STATE YOUR FULL NAME FOR ME, PLEASE, SIR.

24 A. DAVID G. JONES.

25 Q. LET ME GET YOU TO SPEAK UP BECAUSE SHE'S TAKING DOWN

1 EVERYTHING WE SAY, OKAY?

2 A. OKAY.

3 Q. HOW OLD ARE YOU, SIR?

4 A. I'M 46.

5 Q. AND ARE YOU MARRIED?

6 A. YES.

7 Q. DO YOU HAVE CHILDREN?

8 A. YES, I DO.

9 Q. HOW MANY CHILDREN DO YOU HAVE?

10 A. FOUR.

11 Q. HOW FAR DID YOU GO IN SCHOOL?

12 A. TWELFTH GRADE.

13 Q. GRADUATED FROM HIGH SCHOOL?

14 A. YES, SIR.

15 Q. ANY COLLEGE OR TECHNICAL SCHOOL?

16 A. NO, SIR.

17 Q. IN GENERAL TELL ME WHAT KIND OF WORK YOU'VE DONE OVER

18 THE COURSE OF YOUR LIFE.

19 A. I WORKED IN A DISTRIBUTION CENTER FOR PEPSI COLA,

20 DROVE A TRUCK, 18-WHEELER, AND I WORKED FOR WARDEN &

21 SMITH.

22 Q. EXCUSE ME?

23 A. I WORKED FOR WARDEN & SMITH.

24 Q. OKAY. WHAT IS YOUR POSITION AT WARDEN & SMITH?

25 A. TRUCK DRIVER.

1 Q. WHAT KIND OF TRUCK DO YOU DRIVE?

2 A. DUMP TRUCK.

3 Q. HOW LONG HAVE YOU BEEN AT WARDEN & SMITH?

4 A. IT'S BEEN ABOUT SIX YEARS, SIX-AND-A-HALF, ABOUT SIX-
5 AND-A HALF YEARS.

6 Q. WHAT KIND OF PHYSICAL ACTIVITY IS REQUIRED IN THAT
7 JOB?

8 A. MOSTLY JUST DRIVING, DRIVING A MIXER TRUCK. I HAVE
9 TO GET OUT AND LET MY CHUTES DOWN, PUT CHUTES ON THE
10 TRUCK. THAT'S WHEN I'M DRIVING THE MIXER TRUCK.

11 Q. THAT'S A CONCRETE MIXER?

12 A. YES, SIR.

13 Q. OKAY. YOU ALSO HAVE BEEN A VOLUNTEER FIREMAN IN THE
14 PAST?

15 A. YES, SIR.

16 Q. HOW LONG WERE YOU A VOLUNTEER FIREMAN?

17 A. TWENTY-TWO YEARS.

18 Q. PREVIOUSLY HAVE YOU HAD PROBLEMS WITH YOUR BACK
19 BEFORE THIS INJURY?

20 A. YES, SIR.

21 Q. AND WAS THAT AN ON-THE-JOB INJURY?

22 A. FIREFIGHTER.

23 Q. AS A FIREFIGHTER?

24 A. YES, SIR.

25 Q. WHAT YEAR WAS THAT INJURY?

1 A. THAT WAS '07, 2007.

2 Q. AND WAS THAT -- DID THAT INJURY INVOLVE YOUR BACK?

3 A. YES, SIR.

4 Q. AND WERE YOU TREATED AT PEE DEE ORTHOPAEDICS FOR THAT
5 INJURY?

6 A. YES, SIR.

7 Q. ACCORDING TO THE MEDICAL RECORDS THAT HAVE BEEN
8 OFFERED AS EVIDENCE, THE LAST TIME YOU WERE SEEN AT
9 PEE DEE ORTHOPAEDICS FROM THAT INJURY WOULD HAVE BEEN
10 JANUARY OF 2009; DOES THAT SOUND ABOUT RIGHT?

11 A. YES, SIR.

12 Q. FROM JANUARY 2009 UP UNTIL THE TIME OF THIS INJURY,
13 HOW DID YOUR BACK DO?

14 A. GOOD; I HAD NO PROBLEMS.

15 Q. NOW, YOU SUFFERED THIS INJURY ON JUNE 1, 2011?

16 A. YES, SIR.

17 Q. AND NOW THIS IS AN ADMITTED INJURY, SO WE DON'T HAVE
18 TO GO INTO ANY DETAIL AT ALL. BUT JUST VERY BRIEFLY
19 TELL THE COMMISSIONER HOW YOU GOT HURT.

20 A. OKAY. I GOT CALLED AT THE PLANT TO LOAD THE TRUCK.
21 I WENT TO THE JOB SITE, DOWN AT (INAUDIBLE) SCHOOL,
22 PULLED UP IN FRONT, WENT TO THE BACK, PULLED AROUND
23 THERE, GOT SET UP, WAITED UNTIL THE TRUCK POURED THE
24 CONCRETE, AND I GOT -- I GOT HEATED, OVERHEATED, AND
25 THEN ONCE I GOT DONE, WHEN I -- AFTER I GOT

1 OVERHEATED, I WENT BACK AND TRIED TO WASH DOWN AND
2 FINISH UP THE TRUCK SO I COULD GET IN THE TRUCK. AND
3 ONCE I WENT TO GET IN THE TRUCK, I PULLED MYSELF UP
4 AND I HEARD A POP IN MY BACK, AND EVER SINCE THEN
5 I'VE HAD PAIN IN MY BACK SINCE THEN.

6 Q. OKAY. NOW, YOUR INITIAL TREATMENT WAS AT THE
7 EMERGENCY ROOM; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. DID YOU HAVE DIFFICULTY GETTING MEDICAL CARE AFTER
10 THAT POINT?

11 A. YES, SIR; I DID.

12 Q. WAS YOUR CLAIM DENIED?

13 A. YES, SIR.

14 Q. AND DID YOU EVENTUALLY GET TO SEE DR. EDWARDS AROUND
15 OCTOBER OF 2011?

16 A. YES, SIR.

17 Q. DID YOU HAVE AN MRI SCAN BACK THEN?

18 A. YES, SIR.

19 Q. AND DID YOU HAVE AN INJECTION INTO YOUR SPINE?

20 A. YES, SIR.

21 Q. DID YOU HAVE SOME DIFFICULTY FOLLOWING THAT
22 INJECTION?

23 A. YES, SIR. I WENT BACK AFTER THE INJECTION, AND IT
24 WAS LEAKING, SO THEY HAD TO GO BACK AND DO A BLOOD
25 PATCH, THEY CALLED IT. BUT ONCE I GOT THERE THEY

1 COULDN'T DO IT. THE DOCTOR COULDN'T DO IT. HE SEEN
2 THE CONDITION THAT I WAS IN AT THAT TIME, AND HE
3 WOULDN'T DO THE BLOOD PATCH.

4 Q. WERE YOU ADMITTED TO THE HOSPITAL?

5 A. YES, SIR. I WAS ADMITTED TO THE HOSPITAL, AND I
6 STAYED THERE EIGHT DAYS.

7 Q. AFTER THAT WE WERE PENDING A HEARING BEFORE THE
8 WORKERS' COMP COMMISSION. DID THEY ULTIMATELY ACCEPT
9 YOUR CLAIM? DID THE INSURANCE COMPANY ULTIMATELY
10 ACCEPT YOUR CLAIM AND START PAYING BENEFITS TO YOU?

11 A. YES, SIR.

12 Q. SINCE THEY ACCEPTED YOUR CLAIM, HAVE YOU CONTINUED TO
13 HAVE DIFFICULTY IN GETTING MEDICAL CARE?

14 A. YES, SIR.

15 Q. HAVE YOU EVER HAD THE E.M.G. THAT WAS RECOMMENDED BY
16 DR. BRUCE JOHNSON AND DR. JOSEPH HEALY?

17 A. I HAD ONE.

18 Q. AN E.M.G.?

19 A. NO, NO; THAT WAS AN E.K.G. I'M SORRY.

20 Q. OKAY. YOU'VE NOT HAD AN E.M.G.?

21 A. NO, SIR.

22 Q. OKAY, ALL RIGHT. DID YOU -- BACK IN APRIL OR MAY DID
23 YOU HAVE AN MRI SCAN DONE THAT WAS RECOMMENDED BY DR.
24 HEALY?

25 A. YES, SIR.

1 Q. WERE YOU ALLOWED TO GO BACK TO DR. HEALY TO GET THE
2 RESULTS OF THAT?

3 A. NO, SIR.

4 Q. HOW MANY TIMES HAVE YOU TRIED TO SEE DR. HEALY THIS
5 SPRING?

6 A. TWICE.

7 Q. WERE YOU ALLOWED TO SEE HIM?

8 A. NO, SIR.

9 Q. HOW MANY TIMES DID YOU GO TO HIS OFFICE AND SIT THERE
10 TO FIND OUT THAT IT WASN'T AUTHORIZED?

11 A. ONE TIME.

12 Q. AND DID YOU HAVE A SIMILAR EXPERIENCE WITH THE MRI
13 SCAN?

14 A. NO, SIR.

15 Q. YOU WERE ABLE TO GET THAT DONE?

16 A. YES, SIR; I WAS ABLE TO GET THAT. YES, SIR.

17 Q. NOW, TELL ME -- DESCRIBE FOR ME THE PAIN THAT YOU
18 HAVE.

19 A. IT'S A HARD PAIN. I'M HURTING NOW SITTING HERE.
20 IT'S REALLY HURTING. SOMETIMES I FEEL LIKE SOMETHING
21 IS TRYING TO PUSH OUT OF MY BACK, IT'S HURTING SO
22 BAD, AND IT JUST REALLY HURTS IN MY LOWER BACK AND
23 MIDDLE BACK, AND IT GOES DOWN FROM MY BACK TO MY
24 LEGS. SOMETIMES IT AFFECTS MY ARMS.

25 Q. YOU ARE IN A WHEELCHAIR TODAY?

1 A. YES, SIR.

2 Q. HOW LONG HAVE YOU BEEN USING A WHEELCHAIR?

3 A. PROBABLY -- IT'S SEVERAL MONTHS. I DON'T REMEMBER
4 THE EXACT DATE THAT I GOT IT, BUT IT WAS -- I'M GOING
5 TO SAY IT WAS BEFORE -- PROBABLY SOMETIME AFTER
6 OCTOBER. I CAN'T REMEMBER THE EXACT DATE, BUT EVER
7 SINCE THEN.

8 Q. MR. JONES, WHY ARE YOU USING A WHEELCHAIR?

9 A. I'M HAVING TROUBLE WALKING.

10 Q. WHAT KIND OF TROUBLE DO YOU HAVE WALKING?

11 A. I CAN'T GET STABILIZED TO WALK. IT HURTS WHEN I
12 MOVE, AND I LOSE MY BALANCE. IT'S LIKE MY LEGS JUST
13 GO OUT FROM UNDER ME. I JUST CAN'T WALK. I CAN'T GO
14 BUT MAYBE 20 FEET.

15 Q. YOU SAID THAT YOUR LEGS JUST GO OUT FROM UNDER YOU.
16 HAVE YOU FALLEN?

17 A. YES, SIR; I'VE FALLEN.

18 Q. HOW MANY TIMES HAVE YOU FALLEN?

19 A. FOUR TIMES.

20 Q. ROUGHLY WHEN DID THOSE FALLS OCCUR?

21 A. ONE HAPPENED, IF I REMEMBER CORRECTLY, IN JULY OF
22 LAST YEAR, AND THEN THE OTHERS COME AFTER I SEEN DR.
23 EDWARDS IN OCTOBER.

24 Q. AFTER OCTOBER?

25 A. AFTER OCTOBER, THE OTHER THREE.

1 Q. ALL RIGHT, SIR. DID YOU TELL DR. HEALY ABOUT THE
2 FALLS THAT YOU HAD?

3 A. YES, SIR; I DID.

4 Q. WHAT BRINGS ON THOSE FALLS?

5 A. THE PAIN. JUST LIKE I SAY, WALK, TRY TO MOVE, IT
6 JUST HURTS.

7 Q. YOU DESCRIBED FOR ME THE PAIN THAT YOU HAVE IN YOUR
8 LOWER BACK. CAN YOU DESCRIBE THAT PAIN THAT GOES
9 INTO YOUR LEGS.

10 A. YES, SIR. IT'S PAIN THAT GOES FROM THE BACK ALL THE
11 WAY FROM MY WAIST DOWN. IT'S BURNING, AND IT REALLY
12 HURTS. IT REALLY HURTS.

13 Q. BACK WHEN YOU HAD YOUR INJURY BACK IN 2007, DID YOU
14 HAVE ANY PAIN OF THAT KIND OF SEVERITY BACK THEN?

15 A. NO, SIR; I DID NOT.

16 Q. WERE YOU WORKING AT WARDEN & SMITH BACK THEN?

17 A. YES, SIR.

18 Q. AND DID YOU CONTINUE TO WORK FOLLOWING THAT INJURY?

19 A. YES, SIR. THEY HAD ME ON -- HAD ME ON LIGHT DUTY.

20 Q. MR. JONES, DO YOU WANT FURTHER MEDICAL CARE?

21 A. YES, SIR.

22 Q. DO YOU FEEL LIKE YOU NEED FURTHER MEDICAL CARE?

23 A. YES, SIR.

24 Q. ARE YOU WILLING TO UNDERGO THE TESTING THAT DR. HEALY
25 HAS RECOMMENDED FOR YOU?

1 A. YES, SIR.

2 Q. ARE YOU WILLING TO UNDERGO PHYSICAL THERAPY?

3 A. YES, SIR.

4 Q. IF THEY SEND YOU TO A PSYCHOLOGIST TO SEE WHAT'S
5 GOING ON, ARE YOU WILLING TO DO THAT?

6 A. YES, SIR.

7 Q. IF THE DOCTOR SAW SOMETHING AND RECOMMENDED SURGERY,
8 WOULD YOU BE WILLING TO HAVE SURGERY?

9 A. YES, SIR.

10 Q. WHAT KIND OF IMPACT HAS THIS HAD ON YOU AND YOUR
11 FAMILY?

12 A. IT'S BEEN TOUGH, BEEN TOUGH. I JUST WANT TO GET BACK
13 ON MY FEET. IT'S BEEN TOUGH ON US.

14 Q. ARE YOU ABLE TO DO ANYTHING AROUND YOUR HOME?

15 A. NO, SIR, NOT A THING. ALL I DO IS SIT THERE AND
16 WATCH T.V., AND I LAY DOWN. THAT'S ABOUT IT. THAT'S
17 IT. THAT'S ALL I GET TO DO -- I'M ABLE TO DO.

18 Q. DOES YOUR FAMILY HAVE TO TAKE CARE OF YOU?

19 A. YES, SIR, MY WIFE DOES, AND MY STEPSON HELPS OUT WHEN
20 HE'S THERE.

21 Q. WHAT SORT OF THINGS DOES SHE DO FOR YOU?

22 A. EVERYTHING FROM HAVING TO BATHE ME, TO SHAVE ME. SHE
23 HAS TO CLOTHE ME. SHE HAS TO PUT MY CLOTHES ON ME.
24 SOMETIMES SHE'S HAD -- SHE'S HAD TO FEED ME.

25 Q. DO YOU FEEL LIKE YOU ARE ABLE TO WORK?

1 A. NO, SIR.

2 Q. DO YOU WANT TO WORK?

3 A. YES, SIR; I WANT TO WORK. YES, SIR.

4 BY MR. SMITH:

5 THANK YOU, SIR. NO FURTHER QUESTIONS.

6 BY THE COMMISSIONER:

7 CROSS EXAMINATION.

8 CROSS EXAMINATION BY MR. HAIGLER:

9 Q. MR. JONES, LET ME ASK YOU ABOUT YOUR USE OF THE WHEEL
10 -- LET ME GO BACK ACTUALLY. YOU ADMITTED WHEN YOUR
11 ATTORNEY WAS ASKING YOU QUESTIONS THAT YOU HAD SOME
12 PRIOR BACK PROBLEMS?

13 A. YES, SIR.

14 Q. WHILE YOU WERE A FIREFIGHTER, CORRECT?

15 A. YES, SIR.

16 Q. IN FACT, A ROOF FELL ON YOUR BACK, DIDN'T IT?

17 A. YES, SIR.

18 Q. AND YOU TESTIFIED THAT THE PAIN YOU ARE HAVING NOW IS
19 WORSE THAN IT WAS BACK THEN?

20 A. YES, SIR.

21 Q. IN 2007, 2008?

22 A. YES, SIR.

23 Q. IF YOU HAD TO GIVE ME A NUMBER OUT OF TEN, WHAT WOULD
24 YOU SAY YOUR PAIN IS, TEN BEING THE WORST?

25 A. NOW?

1 Q. CORRECT. TEN? IS THAT A CONSTANT TEN?

2 A. YES, SIR.

3 Q. DOES IT EVER GO DOWN BELOW TEN?

4 A. EVERY ONCE IN A WHILE.

5 Q. WHAT IS YOUR AVERAGE PAIN, WOULD YOU SAY, ON AN
6 AVERAGE DAY?

7 A. ABOUT A SEVEN-AND-A-HALF.

8 Q. SEVEN-AND-A-HALF ON AN AVERAGE DAY?

9 A. YES.

10 Q. MR. JONES, WERE YOU AWARE THAT IN 2007 YOU TOLD DR.
11 ALEXANDER THAT YOU WERE HAVING EIGHT-OUT-OF-TEN PAIN?

12 A. YES, SIR.

13 Q. DO YOU REMEMBER THAT BACK IN 2007?

14 A. YES, SIR.

15 Q. AND BACK IN 2008 YOU ALSO TOLD DR. ALEXANDER AGAIN
16 THAT YOU WERE HAVING EIGHT-OUT-OF-EIGHT PAIN?

17 A. YES, SIR.

18 Q. EIGHT-OUT-OF-TEN PAIN; EXCUSE ME. DO YOU REMEMBER
19 THAT?

20 A. YES, SIR.

21 Q. THAT'S ABOUT THE SAME AS IT IS NOW, ISN'T IT?

22 A. WELL, IT WASN'T EVERY DAY.

23 Q. IT WASN'T?

24 A. NO.

25 Q. WHAT WAS IT LIKE?

1 A. IT WAS MAYBE THREE AT THE MOST, AT THE HIGHEST. IT
2 WASN'T EVERY DAY.

3 Q. YOU LAST SAW -- YOU WERE ALSO HAVING NECK PROBLEMS AS
4 WELL, WEREN'T YOU?

5 A. YES, SIR.

6 Q. BACK IN 2007?

7 A. YES.

8 Q. AND ARE YOU AWARE THAT DR. EDWARDS -- OR EXCUSE ME,
9 DR. ALEXANDER, WHEN YOU LAST SAW HIM FROM THE PRIOR
10 ACCIDENT, THE FIREFIGHTING ACCIDENT, ARE YOU AWARE
11 THAT HE GAVE YOU FIVE PERCENT IMPAIRMENT TO YOUR
12 LUMBAR SPINE, TO YOUR LOW BACK?

13 A. YES, SIR.

14 Q. YOU ARE AWARE OF THAT?

15 A. YES, SIR.

16 Q. THAT'S THE SAME IMPAIRMENT THAT DR. EDWARDS HAS GIVEN
17 YOU IN THIS CASE, ISN'T IT?

18 A. I HAVE NO IDEA.

19 Q. YOU DON'T KNOW WHAT YOUR IMPAIRMENT RATING IS FROM
20 DR. EDWARDS?

21 A. NO, SIR.

22 Q. MR. JONES, YOU WENT -- CORRECT ME IF I'M WRONG, BUT I
23 THINK YOU WENT TO MARLBORO COUNTY HOSPITAL?

24 A. MARLBORO PARK.

25 Q. MARLBORO PARK, RIGHT AFTER YOUR ACCIDENT, IS THAT

1 RIGHT?

2 A. YES, SIR.

3 Q. AND THEY GAVE YOU SOME MEDICATIONS OR A PRESCRIPTION
4 FOR SOME MEDICATIONS, DIDN'T THEY?

5 A. YES, SIR.

6 Q. AND DO YOU REMEMBER WHAT THOSE MEDICATIONS WERE?

7 A. ONE WAS -- IF I'M NOT MISTAKEN, IT WAS A STEROID.

8 Q. OKAY. I'M ACTUALLY LOOKING AT THE REPORT.

9 BY MR. HAIGLER:

10 I'M ON PAGE 11, COMMISSIONER, OF MY APAs.

11 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

12 Q. IT LOOKS LIKE YOU GIVEN NORFLEX, WHICH IS A
13 PRESCRIPTION FOR MUSCULAR PAIN AND SPASMS; YOU WERE
14 GIVEN LORCET, WHICH IS A PAIN MEDICATION, AND
15 PREDNISONE AS WELL, WEREN'T YOU? ARE THOSE THE
16 MEDICATIONS YOU REMEMBER?

17 A. YES, SIR.

18 Q. AND IT LOOKS LIKE YOU WERE NOT GIVEN A REFILL; IS
19 THAT WHAT YOUR RECOLLECTION IS?

20 A. YES.

21 Q. AND YOU WERE GIVEN ENOUGH TO LAST YOU, BASED ON MY
22 CALCULATIONS, ABOUT A WEEK, IS THAT RIGHT?

23 A. YES.

24 Q. AND YOU DIDN'T SEE A DOCTOR AFTER THAT VISIT UNTIL
25 SEPTEMBER 22ND WHEN YOU FIRST WENT TO DR. EDWARDS, IS

1 THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. SO THAT'S, WHAT, THREE-AND-A-HALF MONTHS LATER?

4 A. YES, SIR.

5 Q. DID YOU EVER GO GET PAIN MEDICATION DURING THAT
6 THREE-AND-A-HALF MONTH PERIOD?

7 A. NO, SIR.

8 Q. DID YOU EVER GO BACK TO MARLBORO PARK?

9 A. NO, SIR.

10 Q. OKAY. AND YOU HAD HEALTH INSURANCE DURING THAT
11 PERIOD, DIDN'T YOU?

12 A. YES, SIR.

13 Q. DO YOU STILL HAVE HEALTH INSURANCE?

14 A. YES, SIR.

15 Q. OKAY. BUT YOU DIDN'T USE THAT TO GO GET YOU SOME
16 PAIN MEDICATION FOR YOUR BACK PAIN THAT WAS TEN OUT
17 OF TEN, DID YOU?

18 A. NO, SIR.

19 Q. IT WAS SO SEVERE THAT YOU DIDN'T THINK IT WAS
20 NECESSARY TO GO GET THAT?

21 A. WELL, I DIDN'T HAVE A PRESCRIPTION.

22 Q. YOU DID NOT?

23 A. NO.

24 Q. WHY DIDN'T YOU GO BACK TO MARLBORO PARK TO GET A
25 PRESCRIPTION?

1 A. BECAUSE I DIDN'T KNOW IF I COULD OR COULDN'T BECAUSE,
2 YOU KNOW, I DIDN'T KNOW. MY HANDS WERE TIED. I
3 DIDN'T KNOW IF I COULD OR COULDN'T.

4 Q. WHY WERE YOUR HANDS TIED?

5 A. WELL, I DIDN'T KNOW IF WORKMAN'S COMP WAS GOING TO
6 PROVIDE FOR ME OR NOT. I DIDN'T KNOW WHAT TO DO.

7 Q. YOU HAD ACTUALLY BEEN ADVISED AT THAT POINT IN TIME
8 THAT YOUR WORKERS' COMP CLAIM WAS DENIED, HADN'T YOU?

9 A. YES, SIR.

10 Q. SO IF WORKERS' COMP WASN'T GOING TO PAY FOR IT, WHY
11 DIDN'T YOU GO GET YOUR OWN MEDICATIONS?

12 A. WELL, I DIDN'T HAVE A PRESCRIPTION.

13 Q. WHY DIDN'T YOU GO SEE A DOCTOR TO GET A PRESCRIPTION?

14 A. I DON'T KNOW.

15 Q. YOU DON'T KNOW. OKAY. AND AFTER YOU SAW DR.
16 EDWARDS, I THINK THAT WAS SEPTEMBER 22ND, 2011, IS
17 THAT RIGHT, OR DO YOU RECALL WHEN THE FIRST TIME YOU
18 SAW HIM WAS?

19 A. I DON'T REMEMBER.

20 Q. OKAY. AND DURING THAT VISIT DR. EDWARDS DIDN'T WRITE
21 YOU A PRESCRIPTION, DID HE, OR AFTER THAT VISIT?

22 A. HE GIVE ME A PRESCRIPTION FOR VICODIN.

23 Q. EXCUSE ME?

24 A. VICODIN.

25 Q. VICODIN?

1 A. I THINK THAT'S WHAT IT WAS.

2 Q. WAS THAT THAT FIRST VISIT, OR WAS THAT LATER?

3 A. I THINK IT WAS LATER. IT WASN'T THE FIRST VISIT.

4 Q. IN FACT, I BELIEVE -- AND CORRECT ME IF I'M WRONG,
5 BUT YOU ACTUALLY CALLED BACK TO HIS OFFICE ABOUT
6 THREE-AND-A HALF WEEKS LATER -- ACTUALLY, IT WAS THE
7 DAY BEFORE YOUR DEPOSITION ON THE 13TH OF OCTOBER --
8 CALLED BACK TO HIS OFFICE ASKING FOR PAIN MEDICATION,
9 DIDN'T YOU?

10 A. YES, I CALLED. YEAH, TO SEE IF THEY WOULD GIVE ME
11 ANOTHER PRESCRIPTION 'CAUSE I WASN'T SEEING ANYBODY
12 ELSE AT THAT TIME.

13 Q. IN FACT, YOU TOLD ME DURING YOUR DEPOSITION --
14 CORRECT ME IF I'M WRONG -- THAT YOU WERE SO EXCITED
15 YOU DIDN'T HAVE TO HAVE SURGERY THAT YOU FORGOT TO
16 ASK HIM FOR PAIN MEDICATION, IS THAT RIGHT?

17 A. YES, SIR.

18 Q. BUT YOU WERE -- YOU WERE STILL IN TEN-OUT-OF-TEN PAIN
19 AT THAT POINT, RIGHT?

20 A. YES, I WAS.

21 Q. IN FACT, YOU CAME TO THE DEPOSITION IN THAT
22 WHEELCHAIR, DIDN'T YOU?

23 A. YES, I DID.

24 Q. WHY, IF YOU WERE STILL IN TEN-OUT-OF-TEN PAIN, DID
25 YOU NOT ASK HIM FOR MEDICAL PRESCRIPTIONS AT THAT

1 VISIT?

2 A. I -- I DON'T KNOW. I CAN'T ANSWER. I MEAN, I WAS
3 HURTING. I DON'T KNOW.

4 Q. AND THEN YOU LATER HAD -- YOU'VE HAD -- I GUESS
5 YOU'VE HAD THREE MRIs ON YOUR BACK, HAVE YOU NOT?
6 YOU HAD TWO BACK IN 2011 AND ONE IN APRIL OF THIS
7 YEAR OR MAY OF THIS YEAR, DIDN'T YOU?

8 A. YES, SIR.

9 Q. SO YOU'VE HAD THREE?

10 A. THREE; YES, SIR.

11 Q. YOU ALSO HAD AN INJECTION, RIGHT?

12 A. YES, SIR.

13 Q. I BELIEVE, AS YOU'VE TESTIFIED, THAT THAT INJECTION
14 LANDED YOU IN THE HOSPITAL FOR A WEEK, DIDN'T IT? OR
15 THE RESULTS FROM IT?

16 A. YEAH. IT WAS LEAKING, AND THEY WERE GOING TO DO THE
17 BLOOD PATCH. BUT WHEN I GOT THERE TO THE DOCTOR TO
18 DO THE BLOOD PATCH, HE SEEN THE CONDITION THAT I WAS
19 IN, AND HE COULDN'T DO IT.

20 Q. WHO IS THE DOCTOR; WHO ARE YOU REFERRING TO?

21 A. DR. SMITH, I THINK IS HIS NAME.

22 Q. OKAY. YOU ALSO SAW A DR. HEALY WHILE YOU WERE IN THE
23 HOSPITAL?

24 A. WELL, HE'S THE ONE THAT CALLED DR. HEALY, AND HE'S
25 THE ONE THAT ADMITTED ME TO THE HOSPITAL THAT DAY.

1 Q. OKAY. AND DR. HEALY SAW YOU WHILE YOU WERE IN THE
2 HOSPITAL, IS THAT RIGHT?

3 A. HE COME IN A FEW MINUTES AND LEAVE; THAT'S ABOUT ALL
4 HE DONE.

5 Q. OKAY. DID DR. HEALY TELL YOU HE DIDN'T HAVE ANYTHING
6 TO OFFER YOU AT THAT POINT IN TIME?

7 BY MR. SMITH:

8 OBJECTION; HEARSAY. THE RECORDS SPEAK FOR
9 THEMSELVES.

10 BY MR. HAIGLER:

11 THAT'S FAIR ENOUGH.

12 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

13 Q. DID DR. HEALY OFFER YOU ANY MEDICAL TREATMENT WHILE
14 YOU WERE IN THE HOSPITAL?

15 A. HE DID -- HE DID SOME TESTS.

16 Q. WHAT KIND OF TESTS?

17 A. HE -- SOME KIND OF E.K.G., E.K.G., SOMETHING WHERE
18 THEY PUT THEM THINGS IN YOUR HAIR TO CHECK THE BRAIN.
19 I KNOW HE DID THAT, AND AS FAR AS I KNOW, THAT WAS
20 IT.

21 Q. DID HE MOVE YOUR LEG AROUND AND MOVE YOUR BACK AROUND
22 AND TEST YOUR BACK OR ANYTHING LIKE THAT?

23 A. NO, HE DIDN'T.

24 Q. NO?

25 A. NO, SIR; HE NEVER DID.

1 Q. DID HE ASK TO SEE YOU AGAIN OR MAKE A RECOMMENDATION
2 TO SEE ---
3 A. YES, SIR.
4 Q. YOU FOLLOWED UP WITH DR. HEALY, DIDN'T YOU?
5 A. YES, SIR.
6 Q. AND THAT WAS A FEW DAYS LATER AFTER YOU DISCHARGED
7 FROM THE HOSPITAL, RIGHT?
8 A. I DON'T REMEMBER EXACTLY WHEN AFTER THE HOSPITAL,
9 BUT, YES, SIR, RIGHT AFTER I GOT OUT OF THE HOSPITAL.
10 Q. AND THEN IT LOOKS LIKE -- CORRECT ME IF I'M WRONG --
11 THE LAST TIME YOU SAW DR. EDWARDS WAS ON DECEMBER THE
12 15TH OF 2011, IS THAT RIGHT?
13 A. I THINK SO; YES, SIR.
14 Q. YOU HAVEN'T SEEN HIM SINCE THEN, HAVE YOU?
15 A. NO, SIR; I HAVE NOT.
16 Q. AND ---
17 A. HE RECOMMENDED ME TO -- DR. EDWARDS DID -- TO GO TO
18 DR. HEALY. HE RECOMMENDED ME TO DO THAT, AND THEN
19 ONCE I GOT DONE WITH DR. HEALY, THEN GO BACK OVER TO
20 HIM AND SEE HIM.
21 Q. OKAY. AND WHERE ARE YOU GETTING THAT INFORMATION
22 FROM? DID DR. EDWARDS SAY THAT TO YOU?
23 A. YES, SIR; HE DID.
24 Q. AND I'M READING DR. EDWARDS' REPORT, BUT DID HE NOT
25 TELL YOU THAT THERE WAS -- THAT DR. HEALY SAID THERE

1 WAS NOTHING WRONG WITH YOU NEUROLOGICALLY?

2 BY MR. SMITH:

3 OBJECTION; HEARSAY, YOUR HONOR.

4 BY MR. HAIGLER:

5 I THINK HIS TESTIMONY IS CONTRARY TO WHAT DR.

6 EDWARDS' REPORT SAYS, SO I CAN ASK HIM ABOUT THAT.

7 BY THE COMMISSIONER:

8 YOU CAN POINT TO THE REPORT. I'LL READ IT.

9 BY MR. HAIGLER:

10 THAT'S FINE. IT'S PAGE 73, COMMISSIONER.

11 BY THE COMMISSIONER:

12 THANK YOU.

13 BY MR. HAIGLER:

14 YOU'RE WELCOME.

15 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

16 Q. AND THEN YOU LAST -- I THINK THE LAST PHYSICIAN YOU
17 ACTUALLY SAW WAS DR. HEALY IN APRIL; AM I RIGHT ON
18 THAT? YOU SAW DR. HEALY AGAIN IN APRIL OF THIS YEAR?

19 A. YES, SIR.

20 Q. DO YOU REMEMBER GOING TO SEE HIM?

21 A. YES, SIR.

22 Q. DO YOU REMEMBER TELLING HIM THAT YOU HAD HAD NO
23 MEDICATIONS FOR THE PAST THREE MONTHS AFTER RUNNING
24 OUT OF VICODIN AND FLEXERIL? DO YOU REMEMBER TELLING
25 HIM THAT?

1 A. YES, SIR.

2 Q. ANY REASON YOU DIDN'T GO BACK TO SEE DR. EDWARDS TO
3 GET MORE VICODIN AND FLEXERIL?

4 A. WHAT I WAS TOLD, HE RELEASED ME.

5 Q. REALLY?

6 A. YEAH. HE RELEASED ME TO GO TO DR. HEALY.

7 Q. BUT YOU WERE STILL HAVING TEN-OUT-OF-TEN PAIN DURING
8 THAT PERIOD, WEREN'T YOU?

9 A. YES, I WAS.

10 Q. YOU WERE STILL USING THAT WHEELCHAIR TO GET AROUND?

11 A. YES, SIR.

12 Q. BUT YOU DIDN'T GO BACK AND GET ANY VICODIN FROM DR.
13 EDWARDS BECAUSE HE RELEASED YOU, IN YOUR WORDS, IS
14 THAT RIGHT?

15 A. YES, SIR, 'CAUSE THEY WOULDN'T GIVE ME A
16 PRESCRIPTION.

17 Q. WERE YOU AWARE THAT WHEN YOU LAST SAW DR. EDWARDS ON
18 DECEMBER 15TH THAT HE ACTUALLY GAVE YOU A
19 PRESCRIPTION FOR 90 REFILLS -- EXCUSE ME, 40 REFILLS
20 OF VICODIN, 90 REFILLS OF LYRICA, 30 REFILLS OF
21 CYMBALTA, AND 30 REFILLS OF ULTRAM? YOU DIDN'T KNOW
22 THAT?

23 A. I DIDN'T KNOW THAT.

24 Q. HE NEVER TOLD YOU THAT?

25 A. NO, SIR.

1 Q. YOU COULDN'T READ YOUR BOTTLE? CAN YOU READ YOUR
2 BOTTLE?

3 A. YEAH; IT WASN'T ON THERE.

4 Q. OKAY. DID YOU EVER TRY TO GO BACK AND GET THOSE
5 PRESCRIPTION MEDICATIONS?

6 A. I DID, YEAH. WELL, I DID, BUT I COULDN'T GET
7 ANYTHING.

8 Q. WHY?

9 A. THERE WASN'T A PRESCRIPTION.

10 Q. WHAT DO YOU MEAN, IT WASN'T A PRESCRIPTION?

11 A. THERE WASN'T A PRESCRIPTION FOR IT. I COULDN'T GET
12 IT.

13 Q. OKAY.. DID YOU EVER CALL DR. EDWARDS' OFFICE AND TELL
14 THEM THAT?

15 A. YES, SIR.

16 Q. YOU DID?

17 A. YES, SIR.

18 Q. DO YOU HAVE ANY EVIDENCE OF THAT?

19 A. PHONE RECORDS.

20 Q. BECAUSE WHEN I ASKED YOU JUST A MINUTE AGO ABOUT YOUR
21 PRESCRIPTION, YOU SAID YOU DIDN'T GET ANYTHING.

22 A. THE ONLY THING I GOT FROM DR. EDWARDS WAS VICODIN.

23 Q. MR. JONES, TRY TO ANSWER MY QUESTION. DID YOU --
24 WHEN YOU -- DURING THAT THREE-MONTH PERIOD THAT DR.
25 HEALY REFERENCED THE FACT THAT YOU DIDN'T GO BACK AND

1 GET ANY FLEXERIL OR YOU WEREN'T TAKING ANY FLEXERIL
2 OR VICODIN, DID YOU OR DID YOU NOT GO BACK TO DR.
3 EDWARDS AND ASK HIM FOR THOSE PRESCRIPTIONS?

4 A. I CALLED HIS OFFICE AND TALKED TO HIS NURSE, AND SHE
5 TOLD ME THAT SHE WASN'T ABLE TO GIVE ME ANY
6 PRESCRIPTIONS BECAUSE HE HAD RELEASED ME.

7 Q. OKAY. IN FACT, THAT'S NOT TRUE, THOUGH, BECAUSE HE
8 ACTUALLY DID GIVE YOU THOSE PRESCRIPTIONS, ISN'T IT?

9 A. UH-UH.

10 Q. IT'S NOT TRUE?

11 A. UH-UH. HE DIDN'T GIVE ME A PRESCRIPTION. SHE
12 WOULDN'T DO IT; THE NURSE WOULDN'T DO IT. SHE GIVE
13 ME THAT ONE, THAT ONE TIME WHEN I WAS SEEING HIM, BUT
14 THAT WAS IT, JUST THAT ONE PRESCRIPTION.

15 **BY MR. HAIGLER:**

16 I'LL JUST POINT TO PAGE 73 AGAIN, COMMISSIONER.

17 **CROSS EXAMINATION RESUMED BY MR. HAIGLER:**

18 Q. AND THAT WHEELCHAIR YOU ARE USING, THAT HASN'T BEEN
19 PRESCRIBED BY A DOCTOR, HAS IT?

20 A. NO, SIR; IT HAS NOT.

21 Q. OKAY. WHEN YOU WENT TO SEE DR. EDWARDS IN THE LAST
22 VISIT, YOU WERE USING THAT WHEELCHAIR, WEREN'T YOU?

23 A. YES, SIR.

24 Q. DID HE TELL YOU NOT TO USE IT? DID HE PRESCRIBE THAT
25 FOR YOU AT THAT TIME?

1 A. NO, HE DIDN'T PRESCRIBE IT FOR ME. NO, SIR.

2 Q. HAVE YOU READ DR. EDWARDS' DEPOSITION?

3 A. NO, SIR.

4 Q. YOU HAVE NOT READ IT? DID YOU ATTEND THAT
5 DEPOSITION?

6 A. NO.

7 Q. NO? ARE YOU AWARE THAT DR. EDWARDS TESTIFIED THAT
8 YOU DIDN'T NEED TO USE THAT WHEELCHAIR, THAT HE
9 DIDN'T RECOMMEND THAT YOU USE THE WHEELCHAIR?

10 A. I DON'T THINK SO.

11 Q. YOU ARE NOT AWARE OF THAT?

12 A. UH-UH.

13 Q. YOU PREVIOUSLY USED A WALKER AS WELL, DIDN'T YOU?

14 A. YEAH, I USED A WALKER.

15 Q. DID DR. EDWARDS PRESCRIBE THAT FOR YOU?

16 A. NO, SIR.

17 Q. HAS ANYBODY PRESCRIBED THAT FOR YOU?

18 A. NO, SIR.

19 Q. HAS ANYBODY PRESCRIBED THAT WHEELCHAIR FOR YOU?

20 A. NO, SIR.

21 Q. ARE YOU AWARE THAT DR. EDWARDS TESTIFIED IN HIS
22 DEPOSITION THAT YOU DIDN'T -- THAT HE DIDN'T
23 RECOMMEND THAT YOU USE THE WALKER EITHER?

24 A. I DON'T REMEMBER.

25 Q. MR. JONES, DID YOU -- YOUR TESTIMONY EARLIER WAS THAT

1 YOU ARE ABLE TO WALK ABOUT 20 STEPS?

2 A. YES, SIR.

3 Q. DO YOU DO THAT EVERY DAY, OR DO YOU TRY NOT TO WALK?

4 A. I TRY TO DO IT EVERY DAY.

5 Q. DO YOU THINK -- CAN YOU WALK?

6 A. WITH HELP.

7 Q. WHAT DO YOU MEAN WITH HELP; WITH A WALKER OR WITH
8 YOUR WIFE?

9 A. MY WIFE HELPS ME.

10 Q. CAN YOU WALK BY YOURSELF?

11 A. NO, SIR.

12 Q. ARE YOU AWARE THAT DR. EDWARDS TESTIFIED IN HIS
13 DEPOSITION THERE IS NO REASON YOU SHOULD NOT BE ABLE
14 TO WALK GIVEN THE CONDITION OF YOUR BACK?

15 A. NO.

16 Q. YOU ARE NOT AWARE OF THAT?

17 A. WELL, I DON'T SEE HOW -- NO, I'M NOT AWARE OF THAT
18 THERE, BUT HE HASN'T REALLY DID ANYTHING TO SAY -- I
19 MEAN, HE DIDN'T TELL ME THAT.

20 Q. HE DIDN'T TELL YOU THERE WAS NOTHING ELSE HE COULD
21 OFFER YOU?

22 A. HE TOLD ME THAT, BUT THERE WERE SOME OTHER THINGS
23 THAT HE TOLD ME THAT HE WAS WANTING TO DO THAT HE
24 DIDN'T DO.

25 Q. LIKE WHAT?

1 A. THAT HE WAS GOING TO SEND ME -- RECOMMEND ME GOING TO
2 CHARLESTON TO GET SOME HELP THERE. HE ALSO SAID
3 SOMETHING ABOUT A HOME -- I GUESS, FOR PAIN
4 MANAGEMENT OR SOMETHING, WAS GOING TO DO THAT.
5 THAT'S WHEN HE RECOMMENDED THOSE TWO THINGS. THERE
6 WAS ONE MORE, BUT I DON'T REMEMBER EXACTLY WHAT IT
7 WAS, BUT THAT'S WHAT HE TOLD ME AND MY WIFE.

8 Q. IS THERE ANY REASON THAT'S NOT IN A SINGLE REPORT OR
9 DEPOSITION TESTIMONY?

10 BY MR. SMITH:

11 OBJECTION; SPECULATIVE AND ARGUMENTATIVE.

12 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

13 Q. YOU CAN'T EXPLAIN THAT? NO?

14 A. NO, SIR.

15 BY MR. SMITH:

16 MOVE TO STRIKE, YOUR HONOR. I STATED AN
17 OBJECTION, AND COUNSEL KEPT GOING. I'M MOVING TO
18 STRIKE THE RESPONSE.

19 BY THE COMMISSIONER:

20 AND YOUR OBJECTION IS BASED ON THE FACT THAT
21 IT'S SPECULATION?

22 BY MR. HAIGLER:

23 WELL, I WOULD HAVE OBJECTED TO THE FACT THAT
24 THAT WAS HEARSAY, WHAT HE JUST ANSWERED.

25 BY THE COMMISSIONER:

1 WAIT JUST A SECOND.

2 BY MR. SMITH:

3 HE WAS ASKING HIM IF HE COULD EXPLAIN WHY DR.
4 EDWARDS PUT OR DIDN'T PUT SOMETHING IN A REPORT. HE
5 HAS NO KNOWLEDGE OF THAT; THAT'S SPECULATION.

6 BY MR. HAIGLER:

7 YOU CAN STRIKE IT; THAT'S FINE.

8 BY THE COMMISSIONER:

9 STRIKE; SO STRICKEN.

10 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

11 Q. MR. JONES, HAVE YOU DRIVEN A CAR SINCE YOUR ACCIDENT?

12 A. NO, SIR.

13 Q. NEVER?

14 A. NO.

15 Q. HAS ANY DOCTOR TOLD YOU, YOU CAN'T DRIVE?

16 A. NO, SIR.

17 Q. YOU JUST CHOOSE NOT TO?

18 A. YES, SIR.

19 Q. AND YOU'VE ALSO HAD, I THINK YOU SAID, ONE INJECTION.
20 THAT DIDN'T HELP YOU AT ALL, DID IT?

21 A. NO, SIR; IT DID NOT.

22 Q. AND THE PAIN MEDICATIONS -- WELL, ARE YOU EVEN TAKING
23 PAIN MEDICATION?

24 A. YES, SIR.

25 Q. YOU ARE NOW?

1 A. (INAUDIBLE)

2 Q. WHERE DID YOU GET THAT FROM?

3 A. DR. HEALY.

4 Q. YOU WEREN'T TAKING ANY BEFORE THAT, WERE YOU?

5 A. NO.

6 Q. SO LET ME JUST BE CLEAR. EVEN THOUGH YOU ARE
7 CLAIMING YOUR PAIN IS TEN OUT OF TEN, YOU DID NOT
8 TAKE ANY PAIN MEDICATIONS AFTER YOUR PRESCRIPTION RAN
9 OUT IN JUNE UNTIL SEPTEMBER, AND THEN YOU DIDN'T
10 REFILL THAT PRESCRIPTION UNTIL OCTOBER, AND THEN
11 AFTER DECEMBER YOU DIDN'T GO REFILL ANY OF THOSE
12 PRESCRIPTIONS EITHER, DID YOU?

13 A. WHAT PRESCRIPTIONS?

14 Q. ANY OF THE PRESCRIPTIONS THAT DR. EDWARDS HAS
15 PRESCRIBED TO YOU?

16 A. JUST THAT VICODIN IS THE ONLY ONE THAT I KNOW OF.

17 Q. OKAY. DID THAT PROVIDE ANY RELIEF FOR YOU?

18 A. A LITTLE BIT, NOT MUCH.

19 Q. MR. JONES, YOUR SYMPTOMS RIGHT NOW ARE BASICALLY THE
20 SAME AS THEY WERE WHEN YOU HAD YOUR INJURY, AREN'T
21 THEY?

22 A. YES, SIR.

23 Q. THEY HAVEN'T REALLY CHANGED, GOOD OR BAD? NOTHING
24 HAS HAPPENED THAT MADE THEM WORSE; NOTHING HAS
25 HAPPENED THAT HAS MADE THEM BETTER, HAS IT?

1 A. NO, SIR.

2 Q. LET ME ASK YOU THIS QUESTION. YOU TESTIFIED EARLIER
3 THAT YOU'VE HAD FOUR FALLS?

4 A. YES, SIR.

5 Q. DID YOU EVER MENTION ANY OF THOSE -- YOU MENTIONED
6 THOSE FALLS TO DR. HEALY IN APRIL, DIDN'T YOU?

7 A. YES, SIR.

8 Q. YOU MENTIONED TO HIM THAT YOU ACTUALLY HAD THREE
9 FALLS IN JANUARY, IS THAT RIGHT?

10 A. I DON'T REMEMBER EXACTLY -- IT WORDED -- I DON'T KNOW
11 HOW I WORDED IT AT THE TIME, BUT, YES, I DID TELL
12 HIM, AND I TOLD DR. EDWARDS.

13 Q. YOU TOLD DR. EDWARDS THAT YOU'VE HAD FALLS?

14 A. YES, SIR.

15 Q. WHEN DID YOU TELL DR. EDWARDS?

16 A. WAS IT THE THIRD VISIT, SECOND VISIT, THIRD VISIT? I
17 DON'T REMEMBER EXACTLY.

18 Q. HAVE YOU READ DR. EDWARDS' -- ANY OF HIS REPORTS?
19 ARE YOU AWARE THAT THE FACT THAT YOU'VE FALLEN IS NOT
20 IN ANY OF THOSE REPORTS?

21 A. NO.

22 Q. YOU ARE NOT AWARE OF THAT?

23 A. NO, SIR; I DIDN'T KNOW THAT.

24 Q. OKAY. AND YOU ACTUALLY -- AND ACCORDING TO DR.
25 HEALY'S LAST REPORT, YOU FELL THREE TIMES IN JANUARY,

1 RIGHT? IS THAT RIGHT, OR IS THAT WRONG?

2 A. THAT'S -- IT'S SOMEWHERE IN THAT AREA. I'M NOT SURE
3 EXACTLY. I CAN'T GIVE YOU THE EXACT DATES I DID, BUT
4 IT'S IN THAT AREA.

5 Q. OKAY. ANY REASON YOU DIDN'T GO SEE DR. EDWARDS AFTER
6 YOU FELL AND TELL HIM, "HEY, DOCTOR, I'VE FALLEN
7 THREE TIMES. I NEED TO SEE YOU"? ANY REASON YOU
8 DIDN'T DO THAT?

9 A. I DON'T KNOW. I CAN'T REMEMBER IF I DID OR DIDN'T.
10 I DON'T REMEMBER.

11 Q. OKAY. IF THERE IS NOT A REPORT THAT EVIDENCES THAT
12 YOU DID, WOULD YOU DISPUTE THAT?

13 A. YES, SIR.

14 Q. YOU WOULD DISPUTE IT?

15 A. YES, SIR.

16 Q. SO YOU THINK YOU DID TELL DR. EDWARDS?

17 A. I KNOW I DID.

18 Q. YOU TOLD HIM YOU FELL THREE TIMES IN JANUARY?

19 A. YES, SIR.

20 Q. WHEN DID YOU DO THAT SINCE YOU HAVEN'T SEEN HIM SINCE
21 THEN?

22 A. I TOLD HIM -- I TOLD DR. -- I TOLD DR. EDWARDS THE
23 FIRST TIME. DR. HEALY, I TOLD HIM THE OTHER ONES. I
24 HAVEN'T SEEN DR. EDWARDS NO MORE AFTER DECEMBER, I
25 THINK.

1 Q. OKAY. AND IS THERE ANY REASON YOU DIDN'T GO SEE A
2 DOCTOR DURING THAT THREE- OR FOUR-MONTH PERIOD AFTER
3 YOUR FALLS TO TELL A DOCTOR, "HEY, LISTEN, I'M
4 FALLING"? ANY REASON YOU DIDN'T DO THAT?

5 A. I DIDN'T HAVE THE MONEY TO DO IT WITH.

6 Q. YOU STILL HAVE HEALTH INSURANCE, THOUGH, DON'T YOU?

7 A. YES, SIR; BUT YOU'VE GOT TO HAVE A COPAY. I DIDN'T
8 HAVE THAT.

9 Q. YOU DIDN'T EVEN TRY TO GO SEE A DOCTOR, THOUGH, DID
10 YOU?

11 A. I DIDN'T HAVE NO MONEY TO DO ANYTHING WITH.

12 Q. YOU GET A WEEKLY CHECK; DO YOU NOT?

13 A. I DO NOW, BUT I DIDN'T THEN.

14 Q. YOU DIDN'T IN DECEMBER?

15 A. I DIDN'T HAVE NOTHING IN DECEMBER.

16 Q. WHAT ABOUT IN JANUARY AFTER YOUR FALLS?

17 A. IT WAS AFTER JANUARY.

18 Q. SO YOU WERE GETTING A WEEKLY CHECK AFTER THE THREE
19 FALLS THAT OCCURRED IN JANUARY, WEREN'T YOU?

20 A. YES, SIR.

21 Q. SO, THAT SHOULD HAVE EQUATED TO THE SAME AMOUNT YOU
22 WERE RECEIVING WHILE YOU WERE WORKING PER WEEK, IS
23 THAT RIGHT?

24 A. YES, SIR.

25 Q. OKAY. WHY COULDN'T YOU USE THAT MONEY TO GO SEE A

1 DOCTOR AND USE YOUR COPAY?

2 A. WAITING ON WORKMAN'S COMP.

3 Q. DID YOU TELL ANYONE AT WORKMAN'S COMP THAT YOU HAD
4 FALLEN THREE TIMES?

5 A. NO, 'CAUSE I NEVER TALKED TO THEM.

6 Q. YOU NEVER DID?

7 A. NOT TO WORKMAN'S COMP.

8 Q. DID YOU EVER ASK ANYONE TO TELL WORKMAN'S COMP THAT
9 YOU HAD FALLEN THREE TIMES IN JANUARY?

10 A. NO, SIR.

11 Q. SO THE FIRST TIME YOU TOLD ANYONE WAS WHEN YOU SAW
12 DR. HEALY IN APRIL, RIGHT?

13 A. DR. EDWARDS.

14 Q. OKAY. MR. JONES, YOUR JOB BASICALLY REQUIRES YOU TO
15 DRIVE A TRUCK, IS THAT RIGHT?

16 A. YES, SIR.

17 Q. BUT YOU HAVEN'T DRIVEN SINCE YOUR ACCIDENT, RIGHT?

18 A. NO, SIR.

19 Q. BUT NO DOCTOR HAS TOLD YOU, YOU CAN'T DRIVE?

20 A. NO, SIR.

21 Q. SO TECHNICALLY NO DOCTOR HAS TOLD YOU, YOU CAN'T
22 DRIVE A TRUCK, THEN, IS THAT RIGHT?

23 A. CORRECT. BUT I'VE NEVER -- I HAVE IT WHERE I CAN'T
24 DRIVE. I HAVE THOSE SPELLS WHERE I GET DIZZY-HEADED,
25 LIGHTHEADED, AND I'M JUST OUT OF IT. I DON'T -- I

1 DON'T WANT TO TAKE A CHANCE ON NOTHING HAPPENING TO
2 ME, ME DRIVING AND THAT HAPPENING TO ME, GET IN A BAD
3 WRECK, AND I DON'T WANT THAT TO HAPPEN TO ME.

4 Q. DID YOU EVER HAVE ANY OF THOSE PROBLEMS BEFORE THIS
5 ACCIDENT?

6 A. NO, SIR.

7 Q. NEVER?

8 A. NEVER.

9 Q. OKAY. SO, BACK IN 2007 ---

10 BY MR. HAIGLER:

11 I'M ON PAGE 58 OF THE CLAIMANT'S APA, 57,
12 COMMISSIONER.

13 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

14 Q. --- YOU NEVER HAD ANY TREMORS OR ANYTHING OF THAT
15 NATURE?

16 A. NO, SIR.

17 Q. YOU DID NOT?

18 A. UH-UH.

19 Q. DID YOU EVER HAVE ANY ANXIETY ATTACKS ---

20 A. NO, SIR.

21 Q. --- BEFORE THIS ACCIDENT?

22 A. NO, SIR.

23 BY MR. HAIGLER:

24 THAT'S PAGE 57, COMMISSIONER.

25 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

1 Q. WERE YOU EVER DIAGNOSED WITH OPTICAL NEURALGIA, WHICH
2 IS A DEBILITATING HEADACHE PROBLEM? WERE YOU EVER
3 DIAGNOSED WITH THAT BACK IN 2008?

4 A. YES, SIR.

5 Q. OKAY. AND YOU ACTUALLY RECEIVED TREATMENT FOR THAT,
6 DIDN'T YOU?

7 A. YES, SIR.

8 Q. AND THAT PROBLEM THAT YOU HAD BACK IN 2008, THAT
9 OPTICAL NEURALGIA, IT CAUSED NOT ONLY HEADACHES, BUT
10 DIZZINESS AND THINGS OF THAT NATURE, DIDN'T IT? IT
11 CAUSED YOU TO FEEL WOBBLY AND ---

12 A. IT DID; YES, SIR.

13 Q. IT DID?

14 A. YES, SIR.

15 Q. SO YOU HAVE HAD THOSE PROBLEMS BEFORE THIS ACCIDENT?

16 A. AT THAT TIME, YES, BUT IT WASN'T AS BAD AS IT IS NOW.

17 Q. OKAY; FAIR ENOUGH.

18 **BY MR. HAIGLER:**

19 THOSE ARE ALL THE QUESTIONS I HAVE FOR YOU.

20 THANK YOU, MR. JONES.

21 **BY THE COMMISSIONER:**

22 ANY REDIRECT?

23 **BY MR. SMITH:**

24 YES, MA'AM.

25 **REDIRECT EXAMINATION BY MR. SMITH:**

1 Q. MR. JONES, LET ME TAKE YOU BACK. WHEN THIS ACCIDENT
2 FIRST HAPPENED, YOUR CLAIM WAS DENIED; IS THAT
3 CORRECT?

4 A. YES, SIR.

5 Q. NOW, WAS THERE A PROBLEM WHERE YOU DIDN'T HAVE HEALTH
6 INSURANCE FOR A PERIOD OF TIME BACK IN THE SUMMER,
7 LAST SUMMER?

8 A. NO; I HAD IT.

9 Q. OKAY, ALL RIGHT. FAST-FORWARDING TO THIS YEAR, AFTER
10 THEY ACCEPTED YOUR CLAIM AND WERE TO PROVIDE MEDICAL
11 CARE FOR YOU, DID IT TAKE A WHILE TO GET TO SEE DR.
12 HEALY?

13 A. YES, SIR.

14 Q. AND HAVE THEY REFUSED TO LET YOU RETURN TO DR. HEALY
15 AFTER YOU SAW HIM?

16 A. YES, SIR.

17 Q. SINCE THEY ACCEPTED YOUR CLAIM AND AGREED TO PROVIDE
18 MEDICAL CARE FOR YOU BY ORDER OF DECEMBER 16, 2011,
19 IS DR. HEALY THE ONLY DOCTOR YOU'VE SEEN, ON THAT ONE
20 VISIT?

21 A. YES, SIR.

22 Q. DESPITE THE FACT THAT THEY AGREED TO PROVIDE MEDICAL
23 CARE FOR YOU IN DECEMBER OF 2011?

24 A. YES, SIR.

25 Q. SO THE ONLY APPOINTMENTS YOU'VE HAD HAVE BEEN AN MRI

1 SCAN AND DR. HEALY?

2 A. YES, SIR.

3 Q. ONE TIME?

4 A. YES, SIR.

5 Q. AND YOU HAVEN'T BEEN ALLOWED TO RETURN SINCE?

6 A. NO, SIR.

7 **BY MR. HAIGLER:**

8 I'M GOING TO OBJECT. THAT'S ASKED AND ANSWERED.

9 **BY THE COMMISSIONER:**

10 SUSTAINED.

11 **REDIRECT EXAMINATION RESUMED BY MR. SMITH:**

12 Q. GOING BACK TO YOUR 2007 INJURY, YOU HAD BACK PROBLEMS
13 WITH THAT?

14 A. YES, SIR.

15 Q. YOU HAD HEADACHES WITH THAT?

16 A. YES, SIR.

17 Q. DID YOU RECOVER FROM THAT?

18 A. YES, SIR.

19 Q. AND DID YOU GO TO WORK EVERY DAY AT WARDEN & SMITH
20 AND DO YOUR JOB UP UNTIL THE TIME OF THIS INJURY?

21 A. YES, SIR; I DID.

22 Q. WAS IT HARD WORK?

23 A. NO, SIR.

24 Q. BUT YOU DROVE A TRUCK?

25 A. DROVE A TRUCK.

1 BY MR. SMITH:

2 THANK YOU, SIR. NO FURTHER QUESTIONS.

3 BY MR. HAIGLER:

4 TWO FOLLOW-UPS, COMMISSIONER, OR JUST ONE
5 FOLLOW-UP REALLY.

6 RE CROSS EXAMINATION BY MR. HAIGLER:

7 Q. WHEN YOU SAW DR. HEALY, YOU SAID THE LAST TIME -- THE
8 ONLY TIME YOU'VE BEEN ABLE TO SEE HIM SINCE DECEMBER
9 WAS IN APRIL, CORRECT? CORRECT?

10 A. YES.

11 Q. HE DID A GRIP TEST ON YOU AT THAT POINT IN TIME,
12 DIDN'T HE?

13 BY MR. SMITH:

14 OBJECTION, YOUR HONOR, AS BEING BEYOND THE SCOPE
15 OF REDIRECT.

16 BY MR. HAIGLER:

17 I THINK HE TESTIFIED THAT THE ONLY TREATMENT HE
18 GOT GOING IN -- EXACTLY WHAT THE TREATMENT WAS.

19 BY THE COMMISSIONER:

20 I'M NOT SURE OF THE REST OF YOUR QUESTION.
21 THERE WAS A QUESTION AS TO WHAT MEDICAL CARE WAS
22 PROVIDED, AN MRI SCAN AND DR. HEALY. ARE YOU ASKING
23 QUESTIONS WITH REGARDS TO AN ADDITIONAL AMOUNT OF
24 MEDICAL TREATMENT?

25 BY MR. HAIGLER:

1 I'M ASKING QUESTIONS WITH REGARDS TO THAT EXACT
2 REPORT THAT HE SAW IN APRIL.

3 BY THE COMMISSIONER:

4 ALL RIGHT. LET'S JUST BE QUICK BECAUSE IT'S
5 REALLY ---

6 BY MR. HAIGLER:

7 THAT'S FINE.

8 BY THE COMMISSIONER:

9 IT'S NOT QUITE WITHIN THE SCOPE.

10 BY MR. HAIGLER:

11 THAT'S FINE. I'LL JUST ASK THE COURT TO LOOK AT
12 PAGE 95 AND 96 OF THE DEFENDANTS' APAs. NO FURTHER
13 QUESTIONS.

14 BY THE COMMISSIONER:

15 NINETY-FIVE AND WHAT?

16 BY MR. HAIGLER:

17 NINETY-FIVE AND NINETY-SIX. NO FURTHER
18 QUESTIONS, YOUR HONOR. THANK YOU.

19 BY THE COMMISSIONER:

20 THANK YOU.

21 BY MR. SMITH:

22 YOUR HONOR, I HAVE NO FURTHER QUESTIONS OF THIS
23 WITNESS. I WOULD VERY BRIEFLY CALL MS. JONES.

24 BY THE COMMISSIONER:

25 ALL RIGHT. YOU CAN ASK HER TO STEP -- IF YOU

WOULD ASK HER TO JUST GO AHEAD AND STEP AROUND HERE.

WHAT IS YOUR FULL NAME, MA'AM?

BY THE WITNESS:

REBECCA CHAVIS JONES.

BY THE COMMISSIONER:

OKAY. HAVE A SEAT FOR ME. IF YOU WOULD RAISE
YOUR RIGHT HAND.

* * * * *

THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
MATTER HEREIN:

REBECCA CHAVIS JONES,

BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
FOLLOWS:

BY THE COMMISSIONER:

YOUR WITNESS, SIR.

DIRECT EXAMINATION BY MR. SMITH:

Q. MS. JONES, HOW ARE YOU RELATED TO DAVID JONES?

A. I'M HIS WIFE.

Q. HOW LONG HAVE YOU ALL BEEN MARRIED?

A. SIX YEARS.

Q. YOU HAVE HAD AN OPPORTUNITY TO OBSERVE HIM ON A DAILY
BASIS OVER THAT PERIOD OF TIME?

A. YES.

Q. AND WERE YOU MARRIED TO MR. JONES BACK WHEN HE HAD

1 HIS ON-THE-JOB INJURY AT THE FIRE DEPARTMENT IN 2007?

2 A. YES.

3 Q. DID HE RECEIVE TREATMENT FOR THAT INJURY?

4 A. YES.

5 Q. AND DID HE EVENTUALLY GET OVER THAT INJURY?

6 A. YES.

7 Q. TELL ME HOW HE WAS RIGHT BEFORE THIS INJURY. WHEN I
8 SAY, "THIS INJURY," I'M TALKING ABOUT THIS INJURY
9 THAT OCCURRED IN JUNE OF 2011.

10 A. HE WAS OUTGOING. HE WORKED EVERY DAY. HE HELPED
11 AROUND THE HOUSE. HE HELPED COACH MY SON'S FOOTBALL
12 TEAM. HE WAS ACTIVE IN OUR CHURCH. HE ALSO PLAYED
13 BASKETBALL AND SOFTBALL WITH THE CHURCH LEAGUE.

14 Q. HAS THAT CHANGED?

15 A. YES.

16 Q. TELL ME HOW HE IS NOW.

17 A. NOW WE CAN'T EVEN REALLY GO TO CHURCH. HE TRIED ONE
18 TIME. HE WAS ONLY ABLE TO SIT AN HOUR, AND THEY HAD
19 TO HELP ME TOTE HIM OUT TO THE CAR, AND HE HASN'T
20 BEEN ABLE TO DO ANYTHING AROUND THE HOUSE. HE
21 DOESN'T DRIVE ANYMORE. OUR SEXUAL LIFE HAS BEEN GONE
22 SINCE JUNE OF LAST YEAR. HE CAN'T WALK WITHOUT HELP,
23 GET DRESSED WITHOUT HELP, BATHE. I HAD TO LEARN HOW
24 TO SHAVE HIM. I HAVE TO WASH HIM. I HAVE TO GET HIM
25 OUT -- IN OUR LIVINGROOM HE HAS TO SIT IN A RECLINER

1 WITH HIS FEET ELEVATED, AND WHEN I COOK DINNER AND
2 STUFF, I HAVE TO BRING IT TO HIM ON A TRAY AND STUFF.

3 Q. HE'S IN THE ROOM HERE TODAY IN A WHEELCHAIR?

4 A. YES.

5 Q. IS THAT NORMAL? I MEAN, IS THAT NORMAL FOR WHAT YOU
6 SEE DAILY?

7 A. YES.

8 Q. HOW MUCH TIME DOES HE SPEND IN THE WHEELCHAIR?

9 A. WELL, HE USES THE WHEELCHAIR -- IN THE HOUSE I'VE
10 ONLY USED IT BAD DAYS WHEN HE CAN'T MOVE AT ALL, HE
11 IS HURTING REALLY BAD. BUT MOSTLY ONLY IF WE ARE
12 GOING ON A TRIP SOMEWHERE, LIKE TO THE DOCTOR OR
13 SOMEWHERE WHERE HE HAS TO WALK A DISTANCE. HE CAN'T
14 WALK A LONG DISTANCE.

15 Q. HOW FAR CAN HE -- YOU SAID HE WALKS WITH ASSISTANCE.
16 HOW FAR CAN HE TYPICALLY WALK?

17 A. WITH A WALKER AND STUFF, HE USUALLY WALKS ABOUT 25 --
18 25 FEET.

19 Q. DOES HE COMPLAIN OF PAIN?

20 A. CONSTANTLY.

21 Q. CAN YOU TELL WHEN HE'S IN PAIN?

22 A. YES, SIR.

23 Q. HOW CAN YOU TELL?

24 A. HE STARTS SHAKING. HE GETS REAL WEAK. HE TRIES TO
25 MOVE SIDE TO SIDE TO TRY TO GET COMFORTABLE, AND

1 FINALLY HE JUST -- HIS VOICE GETS REAL WEAK AND
2 STUFF. HIS EYES GET A LITTLE GLASSY AND BIG, AND HE
3 FINALLY JUST TELLS ME HE CAN'T TAKE IT ANY MORE. I
4 HAVE TO PUT HIM TO BED.

5 Q. DO YOU REMEMBER WHEN THIS INJURY HAPPENED BACK LAST
6 SUMMER?

7 A. YES.

8 Q. DID YOU HAVE DIFFICULTY GETTING MEDICAL CARE?

9 A. YES.

10 Q. WAS THERE -- DID YOU HAVE AN ISSUE WITH YOUR HEALTH
11 INSURANCE BACK THEN?

12 A. NO.

13 Q. WERE YOU AWARE YOU HAD HEALTH INSURANCE FROM THE
14 BEGINNING?

15 A. YES.

16 Q. SINCE THE CLAIM HAS BEEN ACCEPTED BY THE INSURANCE
17 COMPANY BACK IN DECEMBER OF 2011, HAVE YOU CONTINUED
18 TO HAVE TROUBLE GETTING MEDICAL CARE?

19 A. YES.

20 Q. CAN YOU TELL ME ABOUT THAT.

21 A. WE HAVE TRIED GETTING HIM SEEN. IT WAS RECOMMENDED
22 THAT HE SEE DR. HEALY, A NEUROLOGIST. WE TRIED TO
23 GET -- WELL, FIRST BEFORE THEN IT WAS RECOMMENDED
24 THAT HE SEE PHYSICAL THERAPY, AND WE WENT TO
25 LAURINBURG SCOTLAND PHYSICAL THERAPY, AND THEY SEEN

1 HIM TWICE, AND THEN WE WERE TOLD THAT HE COULD NO
2 LONGER HAVE TREATMENT THERE; IT WAS OUT OF NETWORK.
3 SO, HE WAS REFERRED TO MARLBORO PHYSICAL THERAPY. I
4 GOT HIM IN THE CAR, DROVE HIM OVER THERE TO
5 LAURINBURG PHYSICAL -- BENNETTSVILLE PHYSICAL
6 THERAPY; I'M SORRY -- FOR HIS TREATMENT, AND WE SAT
7 IN AND TALKED WITH THE RECEPTIONIST FOR ABOUT 20
8 MINUTES OR SO, AND THEN WORKMAN'S COMP CALLED US --
9 THE LADY CALLED US, SAID THAT THEY WEREN'T GOING TO
10 LET HIM HAVE ANY TREATMENT UNTIL AFTER HE SEEN THE
11 DOCTOR. SO, WE WENT -- AND HE GOT REFERRED TO SEE
12 DR. HEALY, THE NEUROLOGIST, IN FLORENCE. WE WENT AND
13 SEEN HIM THE FIRST TIME. HE TALKED TO HIM A FEW
14 MINUTES, SAID THERE WAS SOME TESTS HE WANTED TO DO ON
15 HIM. WE CAME BACK A COUPLE MONTHS LATER FOR THE
16 TESTS AND WENT AND HAD THE MRI DONE, AND THEN WE LEFT
17 FROM THE MRI TO GO TO DR. HEALY'S OFFICE FOR HIM TO
18 REVIEW IT AND HAVE THE OTHER TESTS DONE. I SAT IN
19 THERE FOR 40 MINUTES WITH DAVID, AND WE WERE CALLED
20 UP TO THE FRONT AND TOLD THAT IT WASN'T APPROVED FOR
21 HIM TO GET SEEN.

22 Q. SO YOU HAVE NEVER SEEN DR. HEALY TO REVIEW THE MRI
23 SCAN?

24 A. NO.

25 Q. HAVE YOU SEEN -- HAVE YOU HAD THE E.M.G. DONE YET?

1 A. NO.

2 Q. HAVE YOU TRIED TO GO BACK TO DR. HEALY?

3 BY MR. HAIGLER:

4 I'M GOING TO OBJECT. THIS IS ALL CUMULATIVE AND
5 CORROBORATIVE. THIS HAS ALREADY -- WE'LL STIPULATE
6 TO ALL OF THIS. IT'S ALREADY BEEN DONE. WE'VE
7 ALREADY HAD THIS CONVERSATION.

8 BY THE COMMISSIONER:

9 MR. SMITH?

10 BY MR. SMITH:

11 I'LL WITHDRAW THE LAST QUESTION.

12 BY THE COMMISSIONER:

13 OKAY.

14 DIRECT EXAMINATION RESUMED BY MR. SMITH:

15 Q. WHAT DO YOU WANT TO SEE DONE FOR YOUR HUSBAND?

16 A. I'D LIKE TO SEE HIM GET TREATMENT. I PERSONALLY FEEL
17 IF HE WOULD HAVE GOTTEN TREATMENT WHEN IT FIRST
18 HAPPENED, HE COULD HAVE BEEN BACK TO WORK ALREADY,
19 YOU KNOW, HELPING TAKE CARE OF OUR FAMILY AND BACK TO
20 THE PERSON THAT HE USED TO BE, IS WHAT WE REALLY LOOK
21 FORWARD TO. I KNOW IT'S, YOU KNOW, HUMBLING TO HIM
22 TO HAVE TO EXPECT ME TO HAVE TO TAKE CARE OF HIM AND
23 DO EVERYTHING I'VE HAD TO DO. IT PUTS A LOT OF
24 STRAIN ON ME AND SOME OF OUR FAMILY SOMETIMES FROM
25 HAVING TO TAKE CARE OF HIM. SO WE WOULD LIKE TO SEE

1 HIM BACK IN THE SHAPE BEFORE HE GOT INJURED WHERE
2 HE'S ABLE TO GET AROUND AND BE HISSELF AGAIN.

3 BY MR. SMITH:

4 THANK YOU, MA'AM. NO FURTHER QUESTIONS.

5 BY THE COMMISSIONER:

6 ANY CROSS EXAMINATION?

7 BY MR. HAIGLER:

8 JUST BRIEFLY, YOUR HONOR.

9 CROSS EXAMINATION BY MR. HAIGLER:

10 Q. MS. JONES, RIGHT AFTER THE ACCIDENT YOU AND YOUR
11 HUSBAND, I BELIEVE, WENT TO MARLBORO PARK HOSPITAL,
12 IS THAT RIGHT?

13 A. YES, SIR.

14 Q. OKAY. AND DID YOU EVER FOLLOW UP WITH THEM?

15 A. NO, SIR. THEY REFERRED US TO GO TO FLORENCE.

16 Q. OKAY. AND AT THAT POINT IN TIME, IS IT YOUR
17 UNDERSTANDING THAT YOU WORKERS' COMP CLAIM WAS
18 DENIED?

19 A. DENIED; YES, SIR.

20 Q. BASICALLY, IMMEDIATELY, IS THAT RIGHT, OR DID IT TAKE
21 A LITTLE WHILE BEFORE YOU ---

22 A. IT TOOK A LITTLE WHILE.

23 Q. HOW LONG, DO YOU THINK?

24 A. I'M NOT QUITE SURE OF THE EXACT DATE.

25 Q. BUT AT SOME POINT YOU WERE ADVISED YOUR CLAIM WAS

1 DENIED?

2 A. YES.

3 Q. THAT WAS WHAT I WAS ASKING. AND YOU HAD HEALTH
4 INSURANCE DURING THAT PERIOD OF TIME, DIDN'T YOU?

5 A. YES.

6 Q. BUT YOU DIDN'T GO SEEK ANYONE TO SEE YOUR HUSBAND,
7 DID YOU?

8 A. THEY WOULD NOT SEE HIM UNDER -- UNDER THE CONDITIONS
9 WITH OUR MEDICAL INSURANCE BECAUSE IT WAS DONE ON THE
10 JOB. THEY SAID ONLY WORKMAN'S COMP COULD VERIFY THEM
11 HAVING TO TREAT HIM.

12 Q. DID YOU SHOW THEM THE LETTER THAT WORKMAN'S COMP GAVE
13 YOU INDICATING IT WAS DENIED?

14 A. YES.

15 Q. YOU DID? AND THEY STILL WOULDN'T TREAT YOUR HUSBAND?

16 A. RIGHT. THEY COULDN'T FILE IT UNDER OUR INSURANCE
17 CLAIM -- OUR INSURANCE CARRIER BECAUSE IT WAS DONE ON
18 THE JOB, AND THAT'S A WORKMAN'S COMP SITUATION.

19 Q. OKAY. AND SO YOU DIDN'T SEE -- HE DIDN'T SEE A
20 DOCTOR FOR, WHAT, THREE-AND-A-HALF MONTHS?

21 A. HE DIDN'T SEE A DOCTOR 'TIL OCTOBER.

22 Q. WHY DIDN'T YOU ALL GO BACK TO MARLBORO PARK?

23 A. THEY'RE NOT EQUIPPED TO TAKE CARE OF ANYTHING.

24 Q. THEY'RE A HOSPITAL. THEY'RE NOT EQUIPPED AS A
25 HOSPITAL TO TAKE CARE OF ANYTHING?

1 A. WELL, A LOT OF THE TESTING THEY HAD TO DO, THEY
2 WANTED HIM TO GO TO THE SPINE SURGEON AND STUFF AND
3 GET TESTED AND -- BY DOCTORS THERE. THEY DON'T HAVE
4 THOSE KIND OF DOCTORS AT MARLBORO PARK HOSPITAL.

5 Q. OKAY. AND CORRECT ME IF I'M WRONG, AND YOU MAY NOT
6 KNOW THIS, BUT JUST TELL ME IF YOU DON'T, BUT THE
7 LAST TIME MR. JONES SAW DR. EDWARDS WAS IN DECEMBER
8 OF THIS PAST YEAR, IS THAT RIGHT?

9 A. CORRECT.

10 Q. DO YOU RECALL THAT DR. EDWARDS -- OR DO YOU AGREE
11 THAT DR. EDWARDS GAVE HIM A PRESCRIPTION FOR A LOT OF
12 REFILLS, AT LEAST 30 ON EVERY MEDICATION THAT HE WAS
13 GETTING?

14 A. NO, SIR.

15 Q. YOU DON'T REMEMBER THAT?

16 A. NO, SIR. HE HASN'T GOTTEN ANY REFILLS.

17 Q. THAT'S NOT WHAT I'M ASKING. I'M ASKING DID DR.
18 EDWARDS ---

19 A. THE ONLY THING HE HAD HIM ON WAS VICODIN.

20 Q. MY QUESTION TO YOU WAS -- I'M NOT ASKING IF HE GOT
21 THE REFILLS. I'M ASKING, DID DR. EDWARDS -- DR.
22 EDWARDS GAVE HIM THOSE REFILLS, THOUGH, DIDN'T HE?

23 A. NO.

24 Q. HE DID NOT?

25 A. NO.

1 BY MR. HAIGLER:

2 AGAIN, COMMISSIONER, THAT'S PAGE 73, DEFENDANTS'
3 APAs.

4 WITNESS RESUMES:

5 A. THE ONLY THING WE RECEIVED WAS A VICODIN REFILL, THE
6 ONLY THING HE'S BEEN ON, AND WHEN THAT RAN OUT DR.
7 EDWARDS WOULDN'T REFILL IT BECAUSE HE WASN'T SEEING
8 HIM ANYMORE. DR. HEALY PUT HIM ON MEDICATION.

9 CROSS EXAMINATION RESUMED BY MR. HAIGLER:

10 Q. OKAY, FAIR ENOUGH. SO, IF DR. EDWARDS' REPORT FROM
11 DECEMBER 15TH SAYS 40 REFILLS OF VICODIN, YOU DISPUTE
12 THAT? THAT HE WAS ENTITLED TO 40 REFILLS OF VICODIN,
13 YOU'D DISPUTE THAT?

14 A. YES, SIR.

15 Q. OKAY, JUST CHECKING.

16 BY MR. HAIGLER:

17 THANK YOU. THOSE ARE ALL THE QUESTIONS I HAVE.

18 WITNESS RESUMES:

19 A. YOU CAN PULL UP THE LOG FROM OUR PHARMACIST.

20 BY MR. HAIGLER:

21 THANK YOU, MS. JONES.

22 BY THE COMMISSIONER:

23 ALL RIGHT.

24 BY MR. SMITH:

25 NO REDIRECT, YOUR HONOR.

1 BY THE COMMISSIONER:

2 ALL RIGHT. THANK YOU ALL.

3 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
4 CONCLUDED AT THE HOUR OF 3:15 P.M.)

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1106685

David G. Jones,
Employee,
v.
Warden & Smith, Inc.,
Employer,
and
Bridgefield Casualty
Insurance, Inc.,
Carrier/Defendants.

CCCV

HEARING

Wednesday, February 20, 2013
10:39 a.m. - 11:02 a.m.

The hearing before the Workers' Compensation Commission was taken at 1333 Main Street, Suite 500, Columbia, South Carolina, on the 20th day of February 2013, before Alexandra A. Patrick, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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EXHIBITS

(No Exhibits were marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.

1 CHAIRMAN BECK: Mr. Smith.

2 OPENING STATEMENT - BY MR. SMITH:

3 MR. SMITH: May it please the Commission. And if I
4 may approach, I'm going to refer to some parts
5 of depositions during my argument. I represent
6 David Jones in this claim. Mr. Jones is 46
7 years old. He's married. He has four
8 children. He worked as a concrete truck driver
9 for Warden & Smith for six and a half years
10 prior to this accident. He had also done 22
11 years as a volunteer firefighter. He suffered
12 a prior injury in 2007 as a volunteer
13 firefighter to his lower back and to his neck
14 actually, and had gotten a fair amount of
15 treatment for that. He was released from that
16 treatment and all this time worked at Warden &
17 Smith and worked two and a half years with no
18 problems doing hard, heavy work everyday. On
19 June 1, 2011, he was pumping concrete and it
20 was really hot and he developed some heat-
21 related symptoms. Was climbing into his truck
22 and in the process injured his low back and had
23 pain down into his legs. Originally, this
24 happened in June of 2011. Originally, this
25 claim was denied. It was set for hearing

1 actually before you, Commissioner Beck, and in
2 December 2011 we entered into a consent order
3 in which they admitted the claim and agreed to
4 provide medical care. During that time, Mr.
5 Jones had had very little medical care. And
6 basically once that consent order was signed,
7 he saw the doctor -- he saw Dr. Edwards the day
8 before, he saw Dr. Healey one time and he had
9 an MRI one time. Despite the fact that a whole
10 lot more medical treatment was recommended for
11 him, it was never authorized by the carrier.
12 They filed a stop pay and this case it came up
13 before Commissioner James. And quite candidly,
14 Mr. Jones -- there's nothing showing on the MRI
15 that says he has a herniated disk. But he has
16 had terrible pain to the point that he spent
17 months on a walker and eventually is in a
18 wheelchair. Now, he can get up and walk, but
19 he can only walk a very short period of time in
20 a really staggering gait. The single
21 commissioner in this case, I believe, got hung
22 up on the fact that, I believe, is in a
23 wheelchair and found that this was all
24 exaggerated, malingering, et cetera and -

25 **COMMISSIONER MCCASKILL:** Didn't he put himself on

1 the walker and the wheelchair?

2 **MR. SMITH:** He did. He did. He sure did. But the
3 order that was issued in this case, I will tell
4 you is, based on the testimony, is fantasy.
5 And that's why I have these depositions and I
6 want to go through with you. Both of the
7 physicians were questioned in this case by
8 deposition. Dr. Edwards -- and I'm starting
9 here on page 24. It says, he noted in that
10 report the patient was unable to walk when he
11 presented. Yes -- it basically states cannot
12 walk at home. Is using a walker at home. He
13 can hardly stand. He's having to use a
14 wheelchair to get around, especially here in
15 the hospital. The is Mr. Haigler questioning
16 him. I'm going to represent to you that I
17 deposed your patient on October 14, four days
18 before the injection. He presented to the
19 deposition in a wheelchair. Would that
20 surprise you? Well, sometimes patients
21 perceive -- again, like we talked about, when
22 you're asking about my physician examination
23 findings, sometimes patients level of pain they
24 perceive they're having is at a level that we
25 don't find substantiation for in the physical

1 exam findings or imaging studies. But if he
2 perceives his pain was so severe that he
3 couldn't walk, maybe that's what he felt like
4 he had to do. But from a physical imaging
5 standpoint, I don't see any reason for him not
6 to be able to walk. So you're saying he could
7 walk, he just thought he couldn't walk? Is
8 that what you're saying? I guess I'm saying
9 that, yes. Maybe he was hurting too bad to
10 walk and he felt that he was hurting too bad to
11 walk. But there was no neurological reason for
12 it. I don't dispute any of that. But let's go
13 to page 29. He's asking him at that point,
14 starting on line 13. What does he need? What
15 would you recommend for this patient? I think
16 he needs -- this is December 6, 2011, by the
17 way. I think he needs vigorous therapy. He's
18 got to get control of the fact he's able and
19 needs to work through some of the discomfort to
20 get his level of conditioning up to a level
21 that will allow him more function. He's got
22 issues with a lot of pain. Out-of-proportion-
23 kind of issues and that doesn't mean he's
24 malingering. But symptom magnification can be
25 a result of many things. Fear of injury, you

1 know, just anxiety disorders. Things of that
2 sort can play into this. So it doesn't mean
3 he's a bad person or malingerer, but very
4 commonly we get a clinical psychologist
5 involved to try to help them. Sometimes it's
6 just a pain coping or stress management or
7 behavior-modification-kind of issue. Going on
8 to page 32. He says I didn't see any sign of
9 that with him. I think he does have symptom
10 magnification but again, that's different from
11 somebody, quote, faking their symptoms. I
12 don't think that was the case at all. Now
13 that's Dr. Edwards. Now, he goes on. Page 39.
14 He talks about his back being pretty
15 deconditioned. And he may not be able to
16 function in the workplace. Whether these
17 symptoms are psychologically magnified or what,
18 that's just really what he feels, he may not be
19 able to function in the workplace and may need
20 aggressive therapy to get him back to that
21 point. And again, it may require psychological
22 support, so I don't think he's capable of
23 functioning in a workplace. He says he not
24 malingering, he needs aggressive physical
25 therapy and psychological support and he's not

1 capable of functioning in the workplace. On
2 page 43 it goes on to say, at this point in
3 time until he either has an FCE or you can see
4 what he can do or until he gets physical
5 therapy, you're not going to allow him to
6 return to work, is that fair? That's an
7 appropriate summary of my opinion, yes. Then
8 on page 49. Your recommendation at this point
9 in time is that he needs physical therapy,
10 aggressive physical therapy to get rid of
11 deconditioning. I think that would be the
12 appropriate method of treatment, yes, sir. And
13 it's your opinion he's not reached maximum
14 medical improvement? Not from this situation,
15 no, sir. He's not. Not a single thing that
16 was recommended by Dr. Edwards in this
17 deposition was authorized for this claim.
18 Instead, they sent Dr. Edwards a letter three
19 weeks later asking for an impairment rating and
20 he rated it. Now, they also sent him to Dr.
21 Healey, the neurologist in this case. Let me
22 let you look at Dr. Healey's deposition.
23 Starting on page 13. And they're asking him
24 about exaggerated pain, and, again, this is
25 Nick questioning him and he says I thought he

1 had exaggerated -- and going on to page 14,
2 exaggerated or amplified or thought he was even
3 worse than I could find. Was that intentional
4 on his part? Did you feel that? No. It may
5 be a conversion disorder which is a
6 psychological phenomena. I didn't get the
7 feeling he was malingering. Then on page 33 it
8 came up, you know, they tried to say Dr. Healey
9 was not authorized to treat him. Well, it says
10 right here on this page and they sent him there
11 for treatment. On page 36 Dr. Bruce Johnson
12 had seen him at McLeod. He recommended EMGs
13 for him and that's also in the attached reports
14 I have for you that are in the APA. Page 83 of
15 the APA. He recommended an EMG that was never
16 authorized. Dr. Healey on pages 36 and 37
17 concurs with the need for that. Then he says
18 in the middle of the page. And you testified
19 this earlier --

20 **CHAIRMAN BECK:** Finish your thought.

21 **MR. SMITH:** Your impression of Mr. Jones was not
22 that he was faking this problem, but that he
23 just had an exaggerated response to pain? He
24 says yes. He goes on to talk about conversion
25 disorder. On page 38, again, he says he's not

1 malingering or faking. To just quickly finish
2 my thought. They approved an MRI scan for this
3 man, but never even let him go back to see the
4 results from the MRI scan. They didn't
5 authorize it. The only reason we even ever got
6 the MRI looked at was because I took it to the
7 deposition to get the doctor to look at it.
8 And after seeing this, all this, he says he's
9 not malingering, he's not able to work and he
10 needs further medical care and that's our
11 position in this case. He's not at MMI.

12 **CHAIRMAN BECK:** Thank you, sir. Mr. Haigler?

13 **OPENING STATEMENT - BY MR. HAIGLER:**

14 **MR. HAIGLER:** May it please the Commission, Nick
15 Haigler, here for Warden and Smith. Just
16 quickly to follow up on some of Bill's
17 comments. He's absolutely correct. We did
18 enter into a consent order in December of 2011
19 indicating we would authorize treatment with
20 Dr. Edwards. He has summarized, in part, some
21 of the medical testimony in this case, but
22 conveniently has left out all of the medical
23 records in this case which I think are more
24 important and I'll tell you why. But I think
25 the testimony is important too, but I think the

1 testimony considered with the medical records
2 will give you the full picture of what took
3 place. He's absolutely correct on December 6th
4 we deposed Dr. Edwards. He made all of those
5 statements. Okay. We said -- and we had not
6 to that date provided any treatment with Dr.
7 Edwards. He had gone there on his own.
8 Importantly, Bill has not provided any evidence
9 stated to a degree of medical certainty, which
10 is required under 42-15-60, indicating this
11 individual needs more medical treatment. Every
12 testimony -- all the testimony he just read to
13 you and he kept using the word, and I kept
14 writing it down was may, may, may. May need,
15 may need, may need. That's not medical
16 evidence. That's may need. So I think that's
17 the first issue that I have with the
18 proposition that Bill's trying to lay out here
19 today. The second thing I think is interesting
20 is he went to, he went to Dr. Edwards on the
21 15th of December. We did not send -- Bill
22 indicated that we sent a letter to Dr. Edwards
23 after the deposition to say hey, can we get an
24 impairment rating and that's not what took
25 place. We sent it to Dr. Edwards for an

1 authorized evaluation on December 15th. He
2 evaluated him on December 15th. That's on page
3 74 of my APAs. Dr. Edwards said I have nothing
4 further to offer this individual. Quote, And
5 released him. We then sent a letter saying
6 that since he had been released and that was --
7 we were trying to get a record of what his
8 recommendations were going to be for treatment
9 if there were going to be any, and he said I
10 have nothing further to offer the individual.
11 I'm releasing him from my care. That's a
12 quote. I didn't make that up. That's page 74
13 of the APAs. We then sent a letter to Dr.
14 Edwards, assuming he was at MMI at that point
15 in time, wanting to know what the impairment
16 was. We got that impairment rating back and
17 then, and then as indicated in the brief that
18 was submitted by Mr. Jones or on behalf of Mr.
19 Jones, it's indicated that Dr. Edwards somehow
20 recommended that he, and I couldn't believe
21 this was in there, but he said Dr. Edwards at
22 that point recommended that he go back for
23 additional treatment for his pain. That's not
24 in any medical record. That's not in the
25 medical records that were referenced on

1 December 15th and January 12, 2012. What Dr.
2 Edwards said is you may have restrictions from
3 a neurological standpoint. I'm going to let
4 Dr. Healey deal with those restrictions. He
5 didn't refer him for more care. He's never
6 referred him for more care after that
7 deposition. So, I don't know where that came
8 out of, I don't know where that came out but
9 that's simply not what Dr. Edwards said. The
10 interesting thing, and I think the problem with
11 this whole case was, again, there was a period
12 where the case was denied while we were
13 justifiably investigating it and part of the
14 reason we were investigating the case was
15 because he -- his subjective complaints were
16 out of line with what was being found. When he
17 went to the ER, they diagnosed him with what
18 was not a very serious back condition. At
19 least it did not appear as though that was the
20 case. He was provided -- he didn't see another
21 doctor for three and a half months until he was
22 seen by Dr. Edwards in September. Never went
23 -- and apparently he was in 10 out of 10 pain
24 and in a wheelchair and couldn't walk and never
25 went back for any pain medications. He had

1 health insurance, admitted that in the hearing,
2 which I think is part of what Commissioner
3 James relied on is that the guy had medical
4 insurance on his own, we were denying the case.
5 It would be reasonable if you're in 10 out of
6 10 pain to go get some medical treatment. I
7 mean that would be a reasonable conclusion that
8 you would draw. He admitted he didn't do that.
9 In fact, even when he saw Dr. Edwards in
10 September, he didn't ask for pain medication.
11 And in fact he remembered conveniently four
12 weeks later that he didn't get any pain
13 medication, even though he was in a wheelchair
14 and asked for some then. Conveniently, after
15 he last saw Dr. Edwards, again, he's still in
16 a wheelchair in January of 2012, three months
17 passed before he went and saw Dr. Healey and
18 the only reason he was sent to Dr. Healey was
19 to address the restrictions that we thought Dr.
20 Edwards needed him to address. That was the
21 only reason. Now there was an MRI that we
22 authorized, and I'll just tell you I don't know
23 why that was authorized, but we did authorize
24 it. Dr. Healey reviewed the MRI and said
25 there's still nothing. This MRI is exactly the

1 same as the prior MRI. There's nothing new to
2 show. So I don't what to make of that, but I
3 don't know that that's necessarily -- I don't
4 think that's necessarily relevant. But, he
5 didn't -- during that three and a half month
6 period, from when Dr. Edwards released him in
7 January and when he saw Dr. Healy in April, he
8 didn't -- he was in a wheelchair, he didn't go
9 get medical treatment anywhere else, didn't
10 file for a hearing asking for medical
11 treatment. Didn't go to the emergency room and
12 try to get pain medication. Admitted he didn't
13 take any pain medication for about a five month
14 period. I don't know how you explain that if
15 you're in a wheelchair and if you have health
16 insurance on your own. I just don't understand
17 that.

18 **COMMISSIONER MCCASKILL:** Refresh my memory, because,
19 you know, we read a lot. Do I remember
20 correctly that he couldn't even shave himself?
21 That his wife had to shave him? Is that?

22 **MR. HAIGLER:** That's an important point because I
23 think a lot of this case hinges on the
24 credibility -

25 **COMMISSIONER MCCASKILL:** Where's the correlation, the

1 connection there?

2 **MR. HAIGLER:** Well, I think a lot of the problem
3 that Commissioner James had was the credibility
4 of this individual and a lot of the credibility
5 issue was what I just laid out to you. The
6 fact that he was in so much pain yet wasn't
7 doing anything to get medical treatment while
8 the case was denied and never went back to Dr.
9 Edwards to get more treatment. In fact, Dr.
10 Healey said that in his deposition. He said if
11 this guy was in so much pain and if he was
12 falling like he was saying because he couldn't
13 walk, why didn't he go see a doctor. He's --
14 I mean Dr. Healey clearly said that, that makes
15 me question everything. Why he didn't go get
16 treatment if he was in such bad shape. And I
17 think Commissioner James relied on that, and I
18 didn't know he was going to say this at the
19 hearing, but he gets up there and says, quote,
20 let me read it to you because I think it's
21 important. Cannot bathe, shave, feed or clothe
22 himself and his wife has to help him. She got
23 up there and corroborated that evidence right
24 afterwards. Now, I know there -- I'm not going
25 -- I'm not calling him a liar, but it's

1 literally inconceivable that a low back injury
2 where no doctor has been able to find any kind
3 of diagnosis for it other than mechanical back
4 pain that would prevent you from shaving your
5 face. I mean, I don't know how -- it was
6 literally unbelievable that he gave that
7 testimony. Clothed himself, bathed -- I mean
8 it's almost like he's paralyzed, yet there's
9 nothing to support it. I don't know what other
10 conclusion you draw but for the fact he was not
11 being honest. Now, there were some other
12 issues. Dr. Healey, when he saw him in April,
13 Dr. Healey did a grip test. The claimant said
14 I'm having trouble gripping things so Dr.
15 Healey, unbeknownst to the claimant, asked him
16 to stand up and grab his arm to help him get up
17 thinking he couldn't get up on his own. Well,
18 the claimant latches on, according to Dr.
19 Healey, and pulls himself up. Dr. Healey
20 testified that, you know, I did that for a
21 reason and that's evidence to me that he's not
22 being honest with regard to his symptoms. Now,
23 that may be psychologically induced or it may
24 be malingering. I think you'll read through
25 the testimony and find out that we're not sure

1 which it is. But he's never been evaluated for
2 any kind of psychological problem. It's never
3 been recommended other than may need
4 psychological evaluation. That's just not part
5 of the evidence in the record. There is no
6 psychological, medical evidence in the record
7 whatsoever to support that finding or to
8 support a finding of that. Anyway, I think
9 we're, you know, the other important thing to
10 note is when he saw Dr. Healey initially, that
11 was only because he thought he had an injection
12 by Dr. Johnson, and Bill's provided you that
13 report today and the injection, he thought he
14 was having a -

15 **CHAIRMAN BECK:** Finish your thought.

16 **MR. HAIGLER:** --- thought he was having a crazy
17 reaction to the injection, so went to the ER.
18 Dr. Healey came and saw him in the ER and then
19 asked him to come back to his office a couple
20 weeks later to see how he was doing and Dr.
21 Healey's report, which is page 94, page 95 of
22 the APAs, Dr. Healey said there's no
23 neurological problems. I cannot find any
24 neurological issue for this guy. I just don't
25 -- Dr. Edwards has released him, Dr. Healey

1 said there's nothing neurologically wrong with
2 him. He's a neurologist. He's not an
3 orthopaedic. He deferred to Dr. Edwards on
4 that in his deposition. I think this is much
5 to do about nothing. This individual was given
6 a rating. He had literally nothing wrong with
7 him and I think there's no doubt based on his
8 testimony that he was malingering. Thank you.

9 **THE COURT:** Mr. Smith?

10 **REPLY - BY MR. SMITH:**

11 **MR. SMITH:** Thank you.

12 **COMMISSIONER MCCASKILL:** Mr. Smith, if you could,
13 give me your take on why he can't bathe and why
14 he can't shave.

15 **MR. SMITH:** Well, there's -- I can't explain his
16 symptoms. And neither can the doctors, quite
17 honestly, okay? But Dr. Healey says we have to
18 go through and rule out all these things.
19 That's why they want the EMGs done. Both Dr.
20 Johnson and Dr. Healey wants those EMGs done.
21 He said now, if that comes back positive, then
22 we've got something going on we'll send him
23 back to Edwards for surgery. If that comes
24 back negative, we've got to investigate the
25 conversion disorder. There is no question

1 these doctors believe this man. Are the
2 symptoms bizarre? Yes, they are. And I can't
3 -- you know, but the doctors believe it. Again
4 and again and again in this testimony they said
5 this man is not faking this. He's not
6 malingerer. There is no evidence, you can
7 spin it, yeah, these symptoms are weird and all
8 that, you can spin that all you want to, but
9 the doctors, both doctors, both authorized
10 treating physicians said this man is not
11 malingerer. He's not able to work. So, you
12 know, okay, he didn't get medical care and he
13 had health insurance, well he testified he
14 couldn't get medical care. They denied it. So
15 that's not damning to him. He was requesting
16 these things be authorized. They weren't
17 authorizing them. When they filed their stop
18 payment, we filed, pointing all that stuff out
19 on the reply to stop pay application. It is
20 bizarre. I don't, you know, I don't like a
21 claimant coming into a hearing in a wheelchair.
22 And I wouldn't if it wasn't that the guy had to
23 have it. And both doctors testified he needs
24 more treatment that has not been provided to
25 him, and certainly Dr. Healey says he is not at

1 maximum medical improvement. We've got to
2 check out these other things to see what's
3 going on with him and if he stays like he is,
4 he can't work. So, if you do find for some
5 reason he's at MMI, he's permanently and
6 totally disabled and neither he nor I want this
7 to happen to this man at this point in time.
8 We want him to get the car that's recommended
9 for him. So I would ask you, please read these
10 depositions and I would ask you to reverse.

11 **THE COURT:** Thank you, sir. Mr. Haigler?

12 **REPLY - BY MR. HAIGLER:**

13 **MR. HAIGLER:** Commissioner, just briefly, this is my
14 cross appeal. The issue of MMI I think is at
15 stake here and the only reason it's obviously
16 relevant is because we've requested credit from
17 the date of MMI. Commissioner James ironically
18 found that MMI was the date of Dr. Healey's
19 deposition, but I think when you review the
20 records, you'll see that there was no treatment
21 authorized, excuse me, recommended after
22 December 15th and after January 12th by Dr.
23 Edwards who was the authorized treating
24 orthopaedic physician. It was clear that that
25 was the date on which he had reached maximum

1 medical improvement. Now, referencing my prior
2 argument, but there was some confusion between
3 Edwards and Healey as to who was treating who
4 for what. In other words, Healey -- Dr.
5 Edwards didn't have Dr. Healey's records so he
6 didn't know that he had said at that point
7 there's nothing neurologically wrong with him
8 and likewise when Dr. Healey saw him, he hadn't
9 seen any of Dr. Edwards' records, so they
10 didn't know what the treatment was being
11 provided on the either end. So, I think that
12 was the reason that Commissioner James
13 indicated that the deposition of Dr. Healey
14 kind of cleared everything up because that was
15 when it was cleared up as to who did what when
16 and who is deferring to who and who was the
17 specialist for what. There's no doubt that Dr.
18 Healey said that with regard to orthopaedic
19 care Dr. Edwards is the specialist, I'm
20 deferring to him. Dr. Edwards, there's no
21 disputing the fact that Dr. Edwards did not
22 recommend any further treatment the last time
23 he saw the claimant. He released him saying I
24 have nothing further to offer for you on page
25 74 of my APAs. Then Dr. Healey said back in

1 November, I've got nothing to offer you from a
2 neurological standpoint. Page 23 of his
3 deposition in June said I still don't have
4 anything to offer him from a neurologic
5 standpoint, there is nothing neurologically
6 wrong with this guy. In that report, from
7 April where Dr. Healey saw him and made all
8 these recommendations for treatment, he said
9 the MRI would be tell-tale. That would be the
10 determining factor as to whether this guy's got
11 something wrong with his back. It was the
12 third MRI he had had. In fact, when Dr. Healey
13 reviewed that MRI at the deposition, literally
14 at the deposition he reviewed it, held it up in
15 the air and looked at it. He said this is the
16 same MRI that he had back in November and the
17 same MRI that he had back in October.

18 **CHAIRMAN BECK:** Is Dr. Edwards the only orthopaedic
19 ever involved in this matter?

20 **MR. HAIGLER:** Correct. And there was never, I think
21 it's also important to note that I filed for
22 the hearing. The claimant has not yet entered
23 a request for additional medical treatment by
24 way of a second opinion in a Form 50, that was
25 never, that was never done. Still no Form 50

1 filed in this case other than to get the
2 hearing to find the plaintiff compensable which
3 we ultimately admitted anyway. I guess the
4 point with regard to MMI is that there was no
5 further treatment authorized or provided by
6 either of these two doctors after January 12,
7 2012. Dr. Healey had already said there was
8 nothing wrong with you from a neurological
9 standpoint which is what he was treating him
10 for and Dr. Edwards to say I have nothing
11 further to offer you. And so that's kind of
12 where we got the whole MMI issue. I think
13 Commissioner James used the deposition in my
14 own opinion, to try to not to reduce the
15 claimant's award any more than necessary.
16 Thank you, Commissioners. I appreciate it.

17 **CHAIRMAN BECK:** That will conclude the proceeding.

18 Thank you very much.

19 **MR. SMITH:** Do I get to respond to his appeal?

20 **CHAIRMAN BECK:** No, sir.

21 (There being nothing further, the hearing was
22 concluded at 11:02 a.m.)
23
24
25

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
FILE NO.: 1106685

DAVID GLENN JONES,)
CLAIMANT) DEPOSITION OF
vs.)
WARDEN & SMITH CONCRETE,) DR. W. S. EDWARDS, JR.
EMPLOYER,)
BRIDGEFIELD CASUALTY,)
CARRIER/DEFENDANTS.)

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 4:42 PM
ON DECEMBER 6, 2011, AT PEE DEE ORTHOPEDICS, 901 EAST
CHEVES STREET, FLORENCE, SOUTH CAROLINA.



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I N D E X

WITNESS DR. W. S. EDWARDS, JR.

DIRECT EXAMINATION BY MR. HAIGLER

3

CROSS EXAMINATION BY MR. SMITH

43

REDIRECT EXAMINATION BY MR. HAIGLER

50

RECROSS EXAMINATION BY MR. SMITH

53

CERTIFICATE

54



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STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR THE
RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED UNTIL
THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE QUESTION.

THIS DEPOSITION IS BEING TAKEN PURSUANT TO THE SOUTH
CAROLINA RULES OF CIVIL PROCEDURE.

- - - - -

THE READING AND SIGNING OF THIS DEPOSITION IS WAIVED
BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE PARTIES.

WHEREUPON, DR. W. S. EDWARDS, JR., BEING DULY SWORN
AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS FOLLOWS:

EXAMINATION

BY MR. HAIGLER:

Q Dr. Edwards, will you please state your full name for
the record?

A Willie Stanley Edwards, Jr.

Q Dr. Edwards, my name is Nick Haigler. I represent
Warden & Smith concrete and Bridgefield Casualty
Insurance Company in David Jones' workers' comp
claim. I have deposed you before. And I'll just
briefly ask you, just give me a brief outline of what
you do for a living; if you will?

MR. SMITH: I'll stipulate the qualifications.

MR. HAIGLER: Okay. That's perfect.



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1 BY MR. HAIGLER:

2 Q Then we will get right to it. You first saw, and I'm
3 just basing this on your evaluation. You first saw
4 Mr. Jones on September 22, 2011; is that correct?

5 A Yes, sir.

6 Q Okay. And how did he get to you; do you know? I
7 mean, was he referred by someone or how did that come
8 to be?

9 A It appears that he was referred here for an
10 independent medical evaluation for his back and leg
11 pain.

12 Q Okay. And are you aware whether he had been seen in
13 your practice before?

14 A I am aware that he had been seen in our practice
15 before by Dr. Anthony Alexander, one of our
16 non-operative spine specialists.

17 Q Okay. And you do back surgery; is that right?

18 A Yes, sir.

19 Q Okay. Did you review those records before you saw
20 Mr. Jones, Dr. Alexander's records, that is?

21 A I can't recall if I reviewed them exactly at the time
22 I saw him or a little bit before or after. But I
23 have reviewed them before this report was given, yes.

24 Q Okay. And is it important for you to see kind of,
25 especially if it was in your own practice, kind of



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1 the prior medical history on a patient --

2 A Yes, sir.

3 Q -- if it is the same type of body part?

4 A Yes, it is; yes.

5 Q Okay. And do you know why he was sent to you
6 specifically? What was the purpose of the
7 evaluation; do you know?

8 A Well, I think to determine what kind of problem he
9 had with his back and what, if any, relationship to a
10 work-related injury that he had described having
11 occurred back in June of this year, whether it was
12 related to that or not.

13 Q Okay. And did any other documents come with the
14 referral; any other medical records outside of your
15 own practice? And I'm not including anything you may
16 have ordered yourself.

17 A I have some records here that were sent at the time
18 he was referred for an independent medical evaluation
19 that were generated at Marlboro Park Hospital in
20 Bennettsville. And it appears to be an emergency
21 room consultation or visit.

22 Q Okay. Do you know if you reviewed those records
23 before or after the IME?

24 A I would have reviewed them at some point either
25 before or right after this report was generated.



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1 Q Fair enough. Any other records other than the
2 Marlboro Park records.

3 A I don't think so.

4 Q Okay. And when he came to see you on September 22
5 what kind of problems was he having as far as his
6 history of present illness, just briefly; if you
7 will?

8 A Well, he complained of pain in his back and some
9 radiating pain down into his left leg.

10 Q Okay. And when you reviewed -- in your review of the
11 Marlboro Park records were you able to appreciate
12 different complaints from those, or did he have
13 similar complaints in those records?

14 A It was back pain in that examination as well. And on
15 June 6, 2011, I believe was the date of his visit.
16 So it was similar.

17 Q Okay. And doctor, I will ask you to look -- and I
18 don't know if you have this, but it's Page 16 of
19 Claimant's APAs. It's this particular document right
20 here. It's part of the Marlboro Park records.

21 A Yes, sir.

22 Q I don't know if you have that or not.

23 A I think I do.

24 Q Okay. That's not it. Keep going. There it is right
25 there. At the bottom of that under musculoskeletal



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1 there. And I'm not going to ask you to comment on
2 the accuracy of the actual doctor, but can you tell
3 me what the complaints were as far as patient
4 complaints of lower back pain, starting in that all
5 caps part?

6 A It says, "Patient claims of lower back pain radiating
7 down his right leg. Began Wednesday while at work.
8 Had back injury in past."

9 Q Okay. So as of June 6, 2011 the complaints of back
10 pain was radiating pain into right leg; is that
11 correct?

12 A That's what this says, yes.

13 Q But when you saw him on September 22 the problems had
14 moved to the left leg; is that right?

15 A He actually said he had symptoms on both sides but
16 recorded that it was more significant on the left
17 side.

18 Q Okay. And is that a significant change from a
19 subjective standpoint or is that of any relevance to
20 you?

21 A It's not really uncommon for us to hear patients
22 describe symptoms a little bit differently each --
23 from one visit to the next, but it can be
24 significant, especially if this relates to nerve
25 compression and pain radiating into the leg coming



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1 from something in the sciatic. It's in one side and
2 then changes to the other. Then we have to be
3 concerned that something new has happened.

4 Q Okay. What do you mean, something new?

5 A Well, like a disc herniation has occurred, which is a
6 very common cause of pain radiating into the leg. As
7 a fragment of that disc material moves to the other
8 side, it would have some relevance in terms of the
9 surgical treatment.

10 Q Sure. What would cause symptoms to go from the right
11 leg to the left leg in that period in between June 6
12 and September 22?

13 A (No Response)

14 Q I mean, can you give me any reason why that may have
15 happened?

16 A No. I mean, I think a lot of times patients will
17 complain of pain radiating into their leg. And it is
18 really referred pain from the back. It radiated
19 down, not in any particular nerve distribution. And
20 sometimes it's just muscular tension. So from one
21 visit to the other going from the right to the left
22 really may or may not mean that much, basically.

23 Q Okay. What was your understanding of his prior back
24 problem that Dr. Alexander treated him for?

25 A He had told me that he had some previous back



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1 problems, and that it had resolved and he was fine.
2 But when I looked back at Dr. Alexander's notes, and
3 I didn't have an opportunity to speak with Dr.
4 Alexander personally, but the records related to his
5 cervical spine, which surprised me a little bit. But
6 in one of the notes it did reference some back
7 problems.

8 Q Okay. Were you aware, and I assume you are from your
9 review of Dr. Alexander's records, were you aware
10 that Dr. Alexander actually provided him an
11 impairment rating to his lumbar spine?

12 A I didn't have that information. I'm not aware of
13 that.

14 Q I'm going to show it to you, just so the record
15 reflects that you have seen it. Doctor, I will just
16 represent to you that this is my APA No. 1, which
17 doesn't mean anything to you, but it does for the
18 record. These are all the records from your practice
19 from when Dr. Alexander saw the patient. Are those
20 some of the records you may have seen before this --
21 after this evaluation or during the course of this
22 evaluation?

23 A Yes. It's informative, but I didn't see this note
24 from January 27, 2009 when I was looking through the
25 electronic medical record earlier. But it does



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1 reference an impairment of his lumbar spine, five
2 percent in this history of present illness note that
3 Dr. Alexander wrote.

4 Q Okay. And it looks like he was still complaining, at
5 least as of that day, of lumbar spine pain in
6 addition to neck pain; is that correct?

7 A Yes.

8 Q And the impairment rating that Dr. Alexander
9 provided; what was that?

10 A Five percent of the lumbar spine and five percent of
11 the cervical spine?

12 Q And just to be clear, you were not aware of that
13 prior to right now; is that correct?

14 A I was not.

15 Q Okay. If a patient has an impairment, does that
16 indicate to you that their condition is, in fact,
17 permanent?

18 A Yes, it does indicate that.

19 Q Okay. Would that, with regard to symptoms continuing
20 thereafter, I guess after the date of that report
21 that you just looked at, would you expect his
22 symptoms to continue during that period of time on
23 and off?

24 MR. SMITH: Objection; speculative.

25 THE WITNESS: Well, that certainly is



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1 speculative, but when impairment ratings are given,
2 that does imply some permanence to the condition.
3 Now, whether that permanency is associated with
4 symptoms, either persistent or recurrent, is very
5 speculative. But it would have not been surprising
6 to me for him to have had some ongoing symptoms.

7 Q Okay. Did you have a chance to look at the films,
8 the MRIs from Dr. Alexander's treatment?

9 A Yes.

10 Q Do you remember what those showed? Do you have a
11 recollection or did you note those anywhere in your
12 report?

13 A Well, as it related to his lumbar spine, the only
14 scans that I saw were the ones that were done while I
15 was caring for him. Now, I'm not sure about any
16 scans Dr. Alexander had of the lumbar spine. I
17 didn't see anything in the record there.

18 Q Okay. Well, doctor, I'm going to show you just a few
19 of the diagnostic measures that were taken during
20 that period of time when he was treating; if you
21 don't mind?

22 A I would be glad to do it.

23 Q This is an MRI dated January 24, 2007. That was just
24 after the accident that he had back in 2007 that
25 involved his neck and lumbar spine, not related to



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1 this claim.

2 A Yes, sir.

3 Q Okay. What were the results of that particular MRI
4 of his lumbar spine?

5 A It showed some mild bulging at the L4/5 disc.

6 Q Was that similar to what you found on the MRI?

7 A It was.

8 Q How similar?

9 A It was the same location. Without seeing the scan
10 itself, I can't say how closely these corollate. But
11 certainly the reports are very very close in terms of
12 their similarity.

13 Q Okay. And were you aware that there had also been a
14 CT scan of the lumbar spine back in 2007?

15 A I was not.

16 Q I'm going to show you that report. And that's Page
17 56 of the Defendants' APAs. Have you seen that
18 before today?

19 A No.

20 Q Okay. What were the results of that CT scan of the
21 lumbar spine?

22 A It showed mild bulging of the L4/5 disc and also the
23 L5/S1 disc.

24 Q Okay. Is that similar to the MRI that you just
25 reviewed, as well?



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1 A Yes.

2 Q Okay. Did it just confirm that?

3 A Yes.

4 Q This is a myelogram that was taken of the lumbar
5 spine. Have you seen that before today?

6 A No.

7 Q Okay. What were the results of that?

8 A Mild defused bulging of the disc at L4/5.

9 Q Again, was that similar to the CT scan and the MRI?

10 A Yes.

11 Q From 2007; all this from 2007?

12 A It was.

13 Q Okay. And doctor, were you also aware that he had
14 had an EMG done during that period of time, 2007?

15 A No.

16 Q Okay. Doctor, I'm going to show you the EMG. It's
17 Pages 16 through 19 of the Defendants' APAs. This
18 was done at your practice?

19 A Yes.

20 Q Okay. Is that similar complaints to what he
21 presented to you -- not to you with -- let me ask you
22 this: What were the results of the EMG, at least
23 from the report?

24 A It showed some evidence of chronic nerve irritation
25 down the right buttock and leg.



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1 Q Okay. Was that similar to what he presented to
2 Marlboro County with?

3 A Yes.

4 Q Okay. But different from what he presented to you
5 with; is that right?

6 A Well, certainly that part of the back. And again, he
7 complained of some right-leg symptoms. But it does
8 appear from his records in Marlboro Park that the
9 symptoms were down into the right leg.

10 Q Okay. So you hadn't seen any of those particular
11 diagnostic measures that were done by Dr. Alexander;
12 had you?

13 A No.

14 Q Were you aware that he had also had a neurological
15 evaluation done?

16 A No.

17 Q Okay. And I'm talking about -- actually, this was
18 February and January of 2008. You didn't have any
19 knowledge of that?

20 A No.

21 Q Okay. Doctor, I'm going to show this to you. This
22 is an evaluation from Florence Neurological Clinic,
23 Dr. Kent. Do you know Dr. Kent?

24 A Yes.

25 Q Do you ever refer patients to Dr. Kent?



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1 A Before he moved away, yes.

2 Q Have you seen that report before?

3 A No.

4 Q What is the date on that report, doctor?

5 A January 7, 2008.

6 Q Okay. Doctor, what was his ultimate assessment of --
7 and I'm just curious about the low-back problems, not
8 necessarily the neck problems.

9 A He says, "The working diagnosis currently is chronic
10 back strain."

11 Q Does he continue?

12 A It says, "The difference in diagnosis include several

13 possibilities. There may be secondary gain issues or
14 some addovation. Then there is a reference to some
15 medication. And he talks again about his neck.

16 Q Okay. What is a differential diagnosis generally?

17 A Well, it's just different possibilities of what's
18 causing a person's symptoms. It's just kind of the
19 possibilities of causation.

20 Q Okay. Going back to your report of September 22,
21 did you perform a physical examination of this
22 patient?

23 A Yes.

24 Q Okay. Let's go through that if we can. I'm reading
25 the second line. You indicate that he appears to



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1 exhibit chronic pain behavior. What do you mean by
2 that?

3 A Grimacing and sometimes inappropriate amount of
4 tenderness to light palpation; things indicative of a
5 person experiencing pain. It's a difficult thing to
6 quantify, but there are some ways that we attempt
7 that in with the Waddell signs that I reference in
8 here. It's kind of an indicator of a patient's
9 perception of pain. It may be perhaps a little bit
10 out of proportion to what the underlying physical
11 findings might be.

12 Q And that was my next question, but the Waddell signs,
13 it looks like your examination revealed two out of
14 five -- I guess two out of five signs were positive.

15 A Yes.

16 Q What does that indicate to you, if anything?

17 A Well, it suggests that the person has some symptom
18 magnification that perhaps, again, as I said, the
19 amount of pain they are experiencing is not
20 substantiated by typical ways. We objectively are
21 able to quantify that with physical examination
22 and/or imaging studies.

23 Q Does it make it difficult to treat a patient when you
24 have those type issues at play?

25 A Yeah, I think the more Waddell signs that we see, the



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1 more chronic pain that one has, the success rate of
2 any therapeutic intervention with spine conditions,
3 the success is decreased significantly.

4 Q Okay. When he came to see you on the 22, with regard
5 to his presentation, did he come with any kind of
6 assistive device or a cane or a walker or anything of
7 that nature?

8 A (No Response)

9 Q Do you recall or did you note that anywhere?

10 A He had told me about using a walker around the house.
11 And I'm a little bit embarrassed that I didn't record
12 whether or not he used one.

13 Q I think you did.

14 A If I did I don't see it in here.

15 Q In the history of present illness it says, "Has
16 difficulty ambulating and states that he has had to
17 use a walker to get around the house." Do you know
18 if he actually came to the appointment with the
19 walker?

20 A Yeah, that's what I was referencing. I didn't
21 specifically say that he had a walker. I think I
22 would have probably -- I would like to think that I
23 would have recorded that he did. So by its not being
24 here, I'm assuming that he didn't have one.

25 Q Okay. Would you have prescribed him a walker at this



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1 point in time?

2 A No.

3 Q Okay. Do you think that this individual needed a
4 walker at this point in time?

5 A I generally wouldn't recommend a walker for any kind
6 of spinal pathology.

7 Q Why is that?

8 A It's just not typically something that is required.

9 Q Okay. Would you have recommended a wheelchair for
10 this individual?

11 A No.

12 Q Okay. If he did present to you with -- at this
13 appointment in a walker, would that surprise you? I
14 mean, would that have drawn your attention?

15 A Well, I would have considered it a bit more than what
16 typically patients with the back symptoms he
17 presented with. It's not something I typically see.

18 Q Okay.

19 A I would have probably recorded it had I seen it.

20 Q Doctor, I'm going to represent to you that I took his
21 deposition on October 14 here in Florence. And he
22 told me in his deposition under oath that he had been
23 using a walker that someone in his family had given
24 him just weeks after the accident in June up until
25 about a month prior to the deposition, which I assume



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1 they have included, September 22. Were you aware of
2 that --

3 A No.

4 Q -- that he had been using a walker during that
5 entire summer?

6 A No. I mean, I mentioned in my history of present
7 illness, I did reference his statement that he had
8 used it to get around the house some. I didn't
9 record how long or how frequent that had been going
10 on.

11 Q Did you counsel him on using a walker; do you know.

12 A I didn't really make any statement to him about any

13 recommendations for treatment other than giving him
14 my opinion that perhaps an MRI scan would be helpful
15 to clarify some of these uncertainties.

16 Q Okay. And based on what you saw, and this was before
17 you saw the MRI, what did you think may be wrong with
18 this individual from a physical standpoint?

19 A I thought he had a chronic back strain.

20 Q Would that be similar to mechanical back pain?

21 A Yes.

22 Q Would that be similar to the type of problems he was
23 having before the accident --

24 A Yes.

25 Q -- as far as from his treatment with Dr. Alexander?



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1 A It appears from a review of those records, absolutely
2 the same.

3 Q Doctor, did you ultimately get that MRI that you had
4 recommended?

5 A Yes, sir.

6 Q Okay. What were the results of that MRI? And I have
7 that date as October 11; and correct me if I'm wrong.

8 A It showed the degenerative changes with some slight
9 bulging at the L4/5 disc.

10 Q Okay. Are these results close or the same as what
11 Dr. Alexander found when he did MRIs and all -- I
12 guess all that diagnostic treatment?

13 A Yes.

14 Q Anything in this MRI that would cause you to think
15 this individual needs surgery?

16 A No.

17 Q Anything in this MRI to substantiate the complaints
18 he was making to you?

19 A I think those findings on the imaging studies can
20 certainly cause mechanical-type back pain, so it
21 doesn't mean he wasn't having any symptoms. It's
22 just not a surgical problem.

23 Q Okay. Would you recommend that a person with
24 findings such as these, and I'm talking about the MRI
25 findings, use a walker to get around?



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1 A I would recommend against the use of a walker.

2 Q Why is that?

3 A Well, it actually just facilitates weakness of the
4 spine. I mean, leaning on the walker and supporting
5 yourself that way is really the same as using a back
6 brace. The muscles get weaker and stiffer. The
7 spine loses flexibility. The discs dry out even
8 more. So it's kind of a vicious cycle. While
9 initially it may give him some relief of symptoms,
10 since he is unloading his spine, it just facilitates
11 kind of a downward spiral where the spine becomes
12 more stiff and more weak and the discs get worse

13 rather than better. So exercise is the best thing
14 for a condition like this in my opinion.

15 Q Okay. Is that called deconditioning?

16 A Yes. That's a fancy way of saying your back is out
17 of shape, and the stronger the muscles and ligaments
18 support around the spine is, the less stress the disc
19 has on it. And the discs work kind of like sponges
20 in our back. They don't really have a good blood
21 supply. So the only way they receive nourishment is
22 by soaking it up from the surrounding area, kind of
23 like a sponge. So the more flexibility you can
24 maintain the more nourishment that disc can receive.
25 And it's therapeutic. And the opposite, obviously



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1 makes the disc worse.

2 Q Okay. If he came in with a walker, would you have
3 told him not to use that, based on what you just
4 said?

5 MR. SMITH: Objection; speculative.

6 THE WITNESS: Well, if I was his treating
7 physician, I would have recommended against using a
8 walker, yes.

9 BY MR. HAIGLER:

10 Q Doctor, at this point in time it looks like your
11 recommendations were aggressive physical therapy. Is
12 that true?

13 A Yes.

14 Q At least as of September 22?

15 A It was.

16 Q Doctor, I'm going to look at -- in conjunction with
17 that MRI, it looks like you saw him on the 11th of
18 October to kind of go over the MRI; is that right?

19 A Yes.

20 Q It looks like you also recommended that he receive an
21 epidural steroid injection at that level that had the
22 degenerative disc disease?

23 A I did.

24 Q Do you know if he's received that?

25 A He did.



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1 Q And do you know when he received that?

2 A I don't have the exact date, but it was somewhere
3 between the date of October 11 and October 27,
4 because he had some spinal headache after the
5 injection. Dr. Alexander referenced that in his
6 notes with a follow-up on the 27th.

7 Q Doctor, I'm going to show you the report. Do you
8 know Dr. Bruce Johnson?

9 A I do.

10 Q Is that who you refer patients to for injections?

11 A Frequently, yes, sir.

12 Q Do you do those here at your office?

13 A Some we do.

14 Q Okay. Any reason why you would refer it out for
15 that?

16 A Well, sometimes it's availability of the physician.
17 Sometimes it's patient's choice. Sometimes it's
18 where insurance companies ask patients they have
19 relationships with or, you know, comp carriers, for
20 example. I don't have a strong preference about any
21 particular one, but Dr. Johnson is certainly very
22 competent in that regard.

23 Q Okay. Doctor, based on what you had seen the two
24 times you had seen Mr. Jones and his MRI, any reason
25 why you think he would not be able to walk based on



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1 that?

2 A No, there is no reason why he wouldn't be able to
3 walk.

4 Q Did you note anywhere in your report that he was not
5 able to walk or that he was having problems walking?

6 A No.

7 Q Okay. Have you seen the report of Dr. Johnson? Do
8 you have that in your file?

9 A I don't think so.

10 Q Doctor, I'm going to show you the report of Dr.
11 Johnson. This is dated October 18. It looks like
12 you were the requesting physician?

13 A I very well could have been.

14 Q Okay. Does he note in that report that the patient
15 was unable to walk when he presented?

16 A Yes, it states -- basically he states he cannot walk
17 at home. He is using a walker at home. He can
18 hardly stand. He is having to use a wheelchair to
19 get around, especially here in the hospital.

20 Q Okay. Doctor, I'm going to represent to you that I
21 deposed, again, the patient on October 14, four days
22 before that injection. He presented to the
23 deposition in a wheelchair. Would that surprise you?

24 A Well, sometimes patients perceive, again, like we
25 talked about when you were asking about my physician



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1 examination findings. Sometimes patients' level of
2 pain that they perceive they are having is at a level
3 that we don't find substantiation for it in physical
4 exam findings or imaging studies. But if he
5 perceived that his pain was so severe that he
6 couldn't walk, maybe that's what he felt like he had
7 to do. But from a physical and imaging standpoint, I
8 don't see any reason for him not to be able to walk.

9 Q So you're saying he could walk, he just thought he
10 couldn't walk? Is that what you're saying?

11 A I guess I am saying that, yes.

12 Q Okay.

13 A Maybe he was hurting too bad to walk, or he felt that
14 he was hurting too bad to walk. But there was no
15 neurologic reason why he couldn't walk that I'm aware
16 of.

17 Q Okay. I guess my question is: Is the reason he
18 couldn't walk, is there a physical reason for that?
19 Or is that more of a psychological reason?

20 A Well, I don't think there is any spinal pathology
21 that would prevent him from walking.

22 Q Okay. Would you recommend, in fact, that he walk?

23 A I would generally recommend as much activity from a
24 walking standpoint as possible; yes, sir.

25 Q Okay. Have you had a chance to review -- I know



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1 we've been talking. Have you had a chance to review
2 the report of Dr. Johnson?

3 A Yes.

4 Q Okay. Did he also perform a physical examination of
5 the patient?

6 A Yes, sir; he did.

7 Q Okay. Is that common when you perform an injection
8 to do that?

9 A I think the circumstance in which this gentleman
10 presented with these complaints of not being able to
11 ambulate probably prompted him to do a little bit
12 more thorough of an examination than typically he
13 would do. I mean, many times they just do the
14 injection that we recommend or have prescribed for
15 them without doing a whole lot of physical
16 examination. In this case he was probably being a
17 little bit more thorough because of those complaints.

18 Q Was he able to appreciate, at least from your review
19 of his physical examination, anything to substantiate
20 the pain he was having?

21 MR. SMITH: Objection; the report speaks for
22 itself.

23 THE WITNESS: Well, he does say he's got a
24 little bit of decreased muscle strength on his hip
25 flexion and extension. But you don't know if that's



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1 pain inhibiting him from giving a good effort or
2 whatever. But I really don't see anything else that
3 would jump out at me as being tremendously abnormal.
4 He just references again his difficulty or his
5 opinion that the patient had difficulty in getting up
6 and not being steady with his, you know, walking.

7 Q Okay. Thank you, Doctor. It looks like you saw him
8 again after that injection; is that right, I think
9 October 27?

10 A I did; yes, sir.

11 Q How was he doing at that point in time?

12 A Well again, he was complaining of symptoms in his

13 back and also with the spinal headaches from his
14 steroid injection.

15 Q Were you able to -- well, let me ask you this: It's
16 my understanding, and his attorney and I both tried
17 to get the records and we haven't been able to get
18 them from McLeod yet, but it's our understanding that
19 he actually went to the hospital; checked himself
20 into the hospital following that injection. Are you
21 aware of that?

22 A I didn't have it listed. I mean, if he told me that
23 I didn't record it.

24 MR. SMITH: I don't know if it was right after
25 that injection or not. I just know he had been in



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1 the hospital.

2 MR. HAIGLER: At some point in time.

3 MR. SMITH: At some point in time within the
4 last month.

5 MR. HAIGLER: Okay.

6 BY MR. HAIGLER:

7 Q Doctor, do you know if you actually -- did you ever
8 go to the hospital to see him?

9 A I don't recall having done that, and I don't have it
10 in my note of the 27th.

11 Q Okay. Do you have any McLeod records that indicate
12 whether he did or didn't go or when he went to the
13 hospital?

14 A My notes of the 27th just referenced his increasing
15 pain and his headache that we presume is related to
16 his epidural steroid injection, which is something we
17 see from time to time. It's usually not a big deal
18 in terms of any danger to the patient but certainly
19 is very uncomfortable. We sent him for an MRI scan
20 and we did see findings that were compatible with the
21 spinal fluid leak. And we recommended at that point
22 in time that he have a blood patch. And that's where
23 they take some blood out of your arm and put it in
24 your back just to try to kind of provide a little bit
25 of buttress against that area leaking spinal fluid.



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1 And that usually is pretty curative. You typically
2 are not admitted to the hospital for that. It's an
3 outpatient thing. You go on home after that.

4 Q Would he have done that at McLeod?

5 A Yes.

6 Q You all don't do that here; is that what you're
7 saying?

8 A No. That's typical of that, especially since Dr.
9 Johnson probably did the injection originally, so he
10 would probably be the -- sometimes the radiologists
11 do them for us and sometimes Dr. Johnson or an
12 anesthesiologist, and I don't have that information.

13 Q Okay. Doctor, with regard to his kind of treatment
14 prognosis at this point in time, what does he need?
15 I mean, what would you recommend for this patient?

16 A Well, I think he needs some vigorous therapy, but
17 he's got to kind of get control of the fact that he's
18 able and needs to work through some of the discomfort
19 to try to get his level of conditioning up to a level
20 that will allow more function. And if he, in fact,
21 has got a lot of issues from pain -- out of
22 proportion kind of issues, and that doesn't mean he's
23 malingering, but symptom magnification can be a
24 result of many things; fear of injury, you know, just
25 anxiety disorders, things that sort of can play into



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1 this. So it doesn't mean he's a bad person or a
2 malingerer, but very commonly we get the clinical
3 psychologist involved to try to help them. Sometimes
4 it's just a pain coping or a stress management or
5 behavior modification kind of an issue.

6 Q In other words, it's not going to help him to go do
7 physical therapy if he doesn't think he can -- if he
8 won't let anybody help him; is that what you're
9 saying?

10 A Well, that's partly the case, but also trying to
11 reassure him that he's not going to damage his spine
12 by working in that therapeutic environment and also
13 trying to reassure him that, you know, this is not a
14 dangerous -- while it might be painful, but not a
15 dangerous problem and that's it's not typical
16 surgery, either.

17 Q Okay. Doctor, let me ask you about -- you completed
18 a questionnaire. Do you have this in your file?

19 A Yes, sir.

20 Q And that's just a brief statement where you indicate
21 to a reasonable degree of medical certainty that his
22 current back problems were aggravated or caused by
23 his on-the-job injury on June 1?

24 A Yes.

25 Q What basis do you have to give that opinion, doctor?



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1 A Just the patient's history that he was doing fine and
2 working up until that period of time between when he
3 had recovered from his original problem that we
4 talked about back in 2008. You know, it's just based
5 on the history the patient gave me.

6 Q Okay. And so as far as the accident, it's basically
7 -- you just relied on what the patient told you and
8 that's what you went with?

9 A There is no way to -- certainly as you pointed out,
10 the MRI scan didn't show any demonstrable difference
11 of the way it was before and after this injury in
12 June, but the patient's feeling was that he had been

13 doing well and was working and didn't have any
14 significant problems until this occurred.

15 Q Okay. So from an objective standpoint, have you been
16 able to appreciate any additional injury to his
17 spine, based on what I've shown you today from his
18 prior -- is there anything new that's happened to his
19 spine as a result of this alleged June 1 accident?

20 A No.

21 Q Okay. No new physical problems; is that correct?

22 A Well, the imaging studies are fairly clear in their
23 similarity of before and after this injury.

24 Q Okay. So are we dealing with basically just a pain
25 issue, a subjective pain issue?



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1 A I think that's the major problem here; yes, sir.

2 Q Okay. Do you have any concerns as to whether he is
3 being honest with you with regard to the level of the
4 pain that he's in?

5 A Not really. I mean, there are some things that we
6 can pick up on our exam to give us some idea that
7 patients are not being honest. And I didn't see any
8 of that with him. I think he does have symptom
9 magnification, but again, that's different than
10 somebody quote "faking their symptoms". I don't
11 think that was the case at all.

12 Q Okay. And I'm going back to your questionnaire. You
13 note that he felt a sharp pain in his back with pain
14 radiating into his leg. Do you mean the left leg?

15 A Well, that's what he told me.

16 Q Okay. I just wanted to make sure we were talking
17 about which leg we were referring to. Is that a yes?

18 A Yes.

19 Q Okay. Doctor, I'm going to show you, if you would,
20 and I think you have these records. I'm on Page 11
21 of the Claimant's APAs, but it's one of the first
22 records from Marlboro County. I'll tell you when you
23 get there. Go back one more. Yeah, that's is.

24 Doctor, I'm looking at kind of under chief complaint.

25 It says, in the second paragraph, it says, "Old



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1 history of injury as a volunteer firefighter".

2 A Yes, sir.

3 Q Okay. And then the next sentence, will you read that
4 sentence, please?

5 A "Also, about a month ago shoveling gravel, had
6 left-sided weakness and pain. Resolved that day.
7 Past two to three days problems with pain and
8 weakness but mostly diffused."

9 Q Okay. The first question I want to ask you is --
10 well, let me ask you this: What is your
11 understanding of the injury of the accident that
12 occurred on June 1?

13 A The history I was given was he was trying to pull
14 himself up into his truck and felt a sharp pain in
15 his back and radiating to his left buttock and leg.

16 Q Okay. If you're -- did he describe for you how that
17 actually happened, I mean, what he was actually
18 doing? Did he give you a description of that?

19 A If he did I don't recall the specifics of it. I just
20 reported that. And I may have summarized it from
21 what he said. I don't recall.

22 Q Does climbing into your truck, and I'm guessing he
23 was reaching for something. Is that the type of
24 mechanism that could cause the problems that he's
25 having?



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1 A That's what I -- it sounded reasonable in terms of
2 the type of mechanism of injury.

3 Q What about shoveling gravel? Would that be something
4 that could cause the type of problems he was having?

5 A Yes.

6 Q Okay. What about -- he actually had left-sided
7 weakness and pain from shoveling gravel, which is
8 consistent with what he's presented to you with; is
9 that not right?

10 A Yes.

11 Q And different from what he presented to Marlboro
12 County with in the middle of those two previous
13 visits; is that right?

14 A (No Response)

15 Q In other words, he presented to Marlboro County with
16 right-sided leg pain. When he came to you he had
17 left-sided -- predominately left-sided leg pain?

18 A That's correct.

19 Q Which is consistent with what he had after he was
20 shoveling gravel?

21 A That's what this report says, yes.

22 Q Okay. Would that cause you to question whether his
23 problems actually began back a month prior to June 1
24 or is there any way for you to know that?

25 A There is really no way. I mean, I have recorded as



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1 accurately as I could what the patient told me in my
2 history of present illness and whether it is
3 consistent with or contradictory to some other report
4 or other visit with some other provider. I really
5 don't have an opinion about the accuracy of that
6 person. But it certainly -- what I have said is what
7 the patient told me.

8 Q Sure. And I'm not disputing it. I'm not saying that
9 you, you know, manipulated a report or anything.
10 What I'm asking is: Are the complaints that he
11 complained to you about, and I'm specifically meaning
12 the left-leg pain, is that not more consistent with

13 what he told Marlboro Park, the pain that he had a
14 month prior to June 1?

15 A Yes, it is; in terms of the sided involvement with
16 his leg?

17 Q Correct.

18 A Yes, it is.

19 Q Okay. Does that make it difficult for you to give an
20 opinion as to causation relating something to June 1
21 or does it --

22 A Well again, my response to the inquiry that you
23 referenced earlier was just again based on the
24 patient's history. So again, if you give me more
25 information my opinion may change. And if you are



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1 giving me that information and you want me to answer
2 the same question, that it is difficult to answer
3 affirmatively that it is.

4 Q Let me ask it this way: Having seen this new
5 information, can you still state to a reasonable
6 degree of medical certainty that the problems were
7 aggravated or started or caused by what happened on
8 June 1? And the reason I ask it that way is because
9 of the nature of the symptoms that he complained
10 about. Can you still state to a reasonable degree of
11 medical certainty, or has this new evidence lessened
12 the degree of certainty?

13 A Well, I think it does lessen it. But again, in large
14 part my response to that inquiry was based on
15 information the patient gave me. And so --

16 Q Did he give you the information about shoveling
17 gravel?

18 A No.

19 Q If you were -- when you were giving a causation
20 statement would that have been nice to know?

21 A Well, it would have helped to perhaps have known
22 that, but again, you know, whether the symptoms are
23 exactly the same as he had had in the distant past or
24 a month before that, if he was working and not having
25 any problems and he had this specific event and the



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1 symptoms seemed to be worse after that, then I would
2 have given him the benefit of the doubt and said it
3 probably came from that. It's kind of common sense.
4 But there is no way objectively to prove it or
5 disprove it.

6 Q Does it make it difficult to give an opinion to a
7 reasonable degree of medical certainty.

8 A It does.

9 Q Okay. Does it make it so you cannot give an opinion
10 to a reasonable degree of medical certainty is my
11 question?

12 A Well, we give opinions all the time. That doesn't
13 mean they are right. They are just our opinions.
14 But again, the patient perceives that his injury that
15 was referenced in June is what caused him symptoms to
16 be radiating in his back and his left leg. That's
17 what he told me and that's why I responded yes to the
18 inquiry that was given. But, I mean, there is no way
19 to know that with complete certainty in any way.

20 Q Okay. What about 51 percent certainty? No way to
21 know that?

22 A I really don't know.

23 Q Okay. Doctor, I guess what my question is, and I
24 hate to keep going, you know, going round and round
25 with this, but given this new information that I've



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1 shown you is it still your opinion or do you, having
2 seen this, especially considering the fact that his
3 symptoms were different, at least subjectively, does
4 that allow you to maintain this opinion?

5 A You know, my opinion is that based on what this
6 patient's information to me was that this accident in
7 June aggravated a preexisting condition with his
8 back. That was my opinion, and it continues to be.
9 Was there some preexisting problems, could there have
10 been other episodes that could have led to some
11 discomfort, as well? Certainly. He had an abnormal
12 back before he got hurt, and he had an abnormal back

13 after he got hurt. He just said the symptoms were
14 made worse by that. And I don't have any reason to
15 dispute that.

16 Q Okay. Well, doctor, he told you in his report that
17 he had no recent history of back problems.

18 A That's right. He told me about the problem that ha
19 had several years before, but not anything he had the
20 month before. But if he would have told me about
21 that, then I would have said how do you know it came
22 from that and not that? And he wouldn't -- you know,
23 he could have told me the same thing, and I would
24 have responded the same way. But if he said, I don't
25 know; then I would have said, I don't know. So, I



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1 mean, my answer to the inquiry about the causation
2 was based on exactly what the patient said.

3 Q Okay. So in other words --

4 A I don't have any way to know that with any certainty
5 or any reasonable medical certainty. But I don't
6 have any reason to disbelieve it.

7 Q So your reasonable certainty, in other words, medical
8 certainty is the Claimant's statement to you?

9 A That's right.

10 Q Okay. Doctor, is there any reason why this -- if he
11 can walk is there any reason why he can't work at
12 this point in time? It's been six months -- seven
13 months since his injury.

14 A I think his back is pretty deconditioned, again, for
15 whatever reason, whatever causation. But from the
16 structural anatomy of the spine, generally that disc
17 would not preclude work activities. It certainly
18 didn't. It was known about for some time in the
19 distant past and he was able to work after that, so
20 he should be able to at this point. Again, if the
21 muscles and ligaments have been strained and it's
22 taken on some increased level of symptoms, whether
23 they are partly psychologically magnified or just
24 that's really what he feels, he may not be able to
25 function in a workplace and he may need some



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1 aggressive therapy to get him back to that point.
2 And again, it may require some, you know,
3 psychological support as I mentioned earlier. So I
4 don't think he is capable of functioning in the
5 workplace, at least based on the information I've
6 been given; again, not from strictly a disc
7 standpoint or any type of spinal pathology, but from
8 a conditioning standpoint.

9 Q Okay. Would activity such as work not -- I mean,
10 isn't that the whole problem here is that he's not
11 working, he's not doing anything? Wouldn't activity
12 help him out a little bit?

13 A Oh, it would. I mean, I think that you -- you know
14 the ideal scenario is to try to graduate that work or
15 physical activity regimen in a manner that allows you
16 to go from a low-level conditioning to a normal level
17 of conditioning. But it can't happen all at one
18 time, probably. I probably has to be done gradually.
19 And if there were some progressive work, you know,
20 like a limited duty and increasing up to regular
21 activities, that would be good, or a therapy program
22 to try to help get him to that point would be
23 advisable, I think.

24 Q Would you allow him to do light duty at this point in
25 time?



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1 A Well, I think if he could do it; I would, yeah.

2 Q Okay. I mean, would you restrict him from -- I guess
3 my question is you put him out of work, it looks
4 like, unable to return to work based on your notes.

5 A Yes.

6 Q I mean, if he's just sitting at his house, is there
7 not some -- is there not some job you would allow him
8 to do that would be light duty that you would allow
9 him to perform?

10 A Oh, absolutely. You know, we are kind of caught in
11 the middle when we are seeing patients and they are
12 telling us that they don't have light duty
13 availability or there is not anything that's
14 available that they feel like they can do. And so
15 then we are put in a situation where we keep them out
16 of work and try to get them into a therapy program
17 and get them beefed up until they can get back to
18 normal work activities. That is historically what we
19 hear. I don't recall the specifics of this
20 gentleman, but --

21 Q Would you allow -- his job is a truck driver. Would
22 you allow him to drive a truck?

23 A If he thought he could do it, I would. I think, you
24 know, when you present this data of all this needing
25 a wheelchair and stuff like that, you know, to



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quantify what his capabilities are and assuming you can get a good effort from him, it may be required to do something like a functional capacity evaluation to document kind of what his level of conditioning is. I don't know how back it is. I mean, literally, if you took somebody with a normal spine and they laid around for months and didn't do anything and rode around in a wheelchair or used a walker, anybody is going to get to where they can't go because they are used to those structures to help them do stuff. And they may be basically incapacitated because they are so out of shape. So I don't know what his level of

being in shape is. And it may require some objective measure evaluation such as, I mentioned a functional capacity evaluation, to determine that.

Q Assuming he gets the treatment you're recommending, which I hope he does, but assuming he gets that treatment, is there any reason why you may think he won't be able to return to work without any restrictions?

A No.

Q Okay.

A He was clearly able to do it before he strained his back.

Q Can you give an opinion to a -- and I know he hasn't



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1 reached maximum medical improvement, but do you know
2 whether his impairment will increase from the five
3 percent that he has from Dr. Alexander or would it be
4 about the same?

5 A Well, between five and ten percent is a general
6 amount of impairment that we would generally see with
7 some type of a problem like this.

8 Q Okay.

9 A So it could go up a little bit, but maybe not.

10 Q Okay. So at this point in time until either he has
11 an FCE where you can see what he can do or until he
12 gets some physical therapy you're not going to allow
13 him to return to work; is that fair?

14 A That's an appropriate summary of my opinion, yes.

15 Q Okay. What if we were to provide light duty at his
16 place of employment where he wasn't standing up or
17 wasn't lifting anything; would you allow him to do
18 that?

19 A Yes. I mean, I think if employers were to do that
20 early on, I think we would probably have a lot less
21 of this type of meeting.

22 Q Okay. Thank you, doctor?

23 A You're welcome.

24 EXAMINATION

25 BY MR. SMITH:



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1 Q Dr. Edwards, I'm Bill Smith. I have just a few
2 questions here for you.

3 A Yes, sir.

4 Q You were asked to review the records from Marlboro
5 Park where he was seen at the emergency room on June
6 6, 2011. And I'm going to get you to reference Page
7 11, which is where you were asked about -- he said he
8 gave him a history of this injury but also of having
9 an old history of injuries; a volunteer firefighter,
10 history of rehab and about a month ago shoveling
11 gravel, had left side weakness and pain and it
12 resolved that day. Based on the history that he gave

13 them did he have any further problems following that
14 issue with shoveling?

15 A No.

16 Q Okay. And then he came to you, and you saw him for
17 the first time on September 22, 2011. When I look at
18 your report, the first page of that report, it has
19 checked on there low back pain. And then it has
20 left-leg pain and right-leg pain; is that correct?

21 A Yes, it is.

22 Q So he complained of both legs to you; is that
23 correct?

24 A He did.

25 Q And I also have a pain drawing. Is that something --



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1 do you have that?

2 A I don't have it with me.

3 Q I'm going to let you look at it. Is that something
4 you have the patients do?

5 A Yes, sir.

6 Q And did he, in fact, draw on there that he had issues
7 with both legs?

8 A Yes.

9 Q Okay. So he didn't just complain to you of left leg,
10 he complained to you of left and right leg?

11 A That's correct.

12 Q Okay. And then you examined him on that day. And in
13 your examination you noted that he gave an
14 appropriate effort but did appear to have some
15 chronic pain behavior?

16 A Yes.

17 Q Muscular tightness is prominent throughout the lumbar
18 region. Is that something that you are able to
19 actually palpate?

20 A Yes, sir.

21 Q Okay. So that is an objective finding?

22 A It is.

23 Q And you also noted mild tenderness here and to the
24 left sciatic notch. That's in the lumbar region as
25 well as in the left sciatic notch?



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1 A Yes, sir.

2 Q Is that an objective finding?

3 A I think so.

4 Q Okay. You noted flexibility is markedly restricted
5 in all places secondary to his report of discomfort.
6 I'm assuming you're checking his range of motion
7 there; is that correct?

8 A Yes, sir.

9 Q And that was restricted?

10 A It was.

11 Q Is that an objective finding?

12 A Certainly all of these measures have some component

13 of subjectivity. But it's an effort to try to be
14 somewhat reproducible in our examination. And there
15 is an objective component to these.

16 Q Okay. You also performed a straight-leg test?

17 A Yes.

18 Q Straight-leg raising test, excuse me.

19 A Yes.

20 Q And was that positive?

21 A It was for pain in the left posterior thigh. It was
22 in the back of the leg up in the hamstring.

23 Q Okay. And once again, is that an objective finding?

24 A It is.

25 Q Okay. You diagnosed him with your lumbar



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1 strain/sprain, rule out lumbar disc herniation?

2 A Yes.

3 Q Okay. Obtained the MRI scan, and in the MRI scan
4 noted L4/5 degenerative disc disease, which is
5 similar to what had been noted in prior examinations
6 or prior MRI scans when he was treated by Dr.
7 Alexander; is that correct?

8 A Yes.

9 Q But you did not have the occasion or ability to
10 actually review full on scan on top of one another
11 and look at them at the same time?

12 A No, I did not.

13 Q Okay. In your notes -- excuse me, in Dr. Alexander's
14 notes it appears as though he was last seen by Dr.
15 Alexander on January 27, 2009; is that correct?

16 A That's the note I received; yes sir.

17 Q Okay. So it's been two and a half years between the
18 time Dr. Alexander saw him and when this injury
19 occurred in June, 2011?

20 A Yes, sir.

21 Q Okay. And he had not been back in his practice at
22 any time during that two and a half years?

23 A No, sir.

24 Q Okay. After you got the MRI scan you recommended an
25 epidural steroid injection. And he had that



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1 injection, as already noted.

2 A Yes, sir.

3 Q He developed a spinal fluid leak and had some pain as
4 a result of that?

5 A He did.

6 Q And then you've got another MRI scan. And on that
7 MRI scan, it was similar in terms of degenerative
8 disc disease, but you were actually able to see the
9 fluid?

10 A Yes, sir.

11 Q So you were able to document that he did have a
12 spinal fluid leak?

13 A Yes, sir.

14 Q Okay. Then after that he was treated -- he was
15 scheduled to come back in to see you, I believe, and
16 I don't know if your notes will show this or not, but
17 did you have an emergency and his appointment had to
18 be rescheduled?

19 A Yes, sir.

20 Q Okay. So he is still scheduled to see you at some
21 point soon?

22 A Yes, sir.

23 Q And you were asked about hospitalization, but you
24 were unaware of any hospitalization?

25 A I don't recall knowing about that.



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1 Q Okay. Your recommendation at this point in time is
2 that he needs physical therapy, aggressive physical
3 therapy to get rid of the deconditioning?

4 A I think that would be the appropriate method of
5 treatment; yes, sir.

6 Q Okay. Dr. Johnson, when he did the epidural steroid
7 injection, you mentioned that he might recommend an
8 EMG. I'm looking for it. I know I saw that. I
9 apologize. Well, let me just ask you, do you -- is
10 an EMG indicated with him?

11 A Perhaps Dr. Johnson was concerned because of his
12 level of difficulty ambulating. And that might
13 provide some level of objective information about
14 nerve function. I mean, it sometimes can be helpful.
15 I don't really find it tremendously beneficial.

16 Q Okay. But it's your opinion he has not reached
17 maximum medical improvement at this point?

18 A Not from this situation; no, sir, he is not.

19 Q Okay. Doctor, you were asked about causation, and
20 let me just state that a different way. If you
21 assume he was treated in this practice by Dr.
22 Alexander, had the MRI scans back in '07 and '08 that
23 you reviewed, that he was released by Dr. Alexander
24 in January of 2009 with a five percent lumbar spine
25 impairment; that following that he returned to work



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1 and worked as a concrete truck driver for a period of
2 two and a half years without any further medical care
3 until the incident in which he was pulling himself
4 into the truck on June 1, 2011 and felt pain in his
5 low back; that he has been out of work since that
6 time and under your care since September of 2011.

7 Assuming those facts to be true, do you have an
8 opinion within a reasonable degree of medical
9 certainty as to whether that event on June 1, 2011 of
10 injuring himself while climbing into the truck would
11 have most probably aggravated any preexisting
12 problems that he had going on in his lumbar spine?

13 A Yes, it is my opinion that it did aggravate the
14 preexisting condition in his lumbar spine.

15 Q Thank you, sir.

16 MR. SMITH: No further questions.

17 EXAMINATION

18 BY MR. HAIGLER:

19 Q I have a couple of follow-ups, doctor. Let's just
20 assume you had seen him right after this alleged
21 accident in June. Would you have recommended that he
22 stay off work for a period of time, based on the fact
23 that he had been working basically with the same
24 physical problems for two and a half years? Would
25 you have allowed him to go back to work?



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1 A (No Response)

2 Q I guess my question is before the deconditioning
3 started?

4 A Well, many times if we see people right after and
5 there is a muscular ligament strain or sprain like he
6 probably had, we may keep him out of work for a few
7 days, up to a week. But it wouldn't be a long thing.
8 And we may put him in some therapy pretty quickly to
9 try to help alleviate their symptoms and just not let
10 them fall into that trap, or at least try not to let
11 them fall into that trap of, you know, laying up and
12 getting deconditioned.

13 Q Okay. Should he have been able to return to work
14 after about a week?

15 A Well, that's hard to say, but a lot of times after a
16 strain/sprain, it can take a little bit longer than
17 that. But patients, especially if they are given
18 some, you know, light duty or let them kind of ease
19 back into it, they would be fine. But that does keep
20 the deconditioning circumstance from coming as often
21 or as severely. So it's not uncommon for us, when we
22 work with employees that have been injured at work,
23 to try and get them quickly back into the workplace,
24 even if they are in a light-duty status so that they
25 don't get into that problem.



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1 Q Okay. And doctor, I'll tell you, and I think you
2 have the records, that Marlboro County actually took
3 him out of work for a week, seven days. Is that
4 consistent with what your recommendations would have
5 been with this type of problem?

6 A Yes.

7 Q Okay. Do you always recommend physical therapy after
8 this type of problem?

9 A No.

10 Q Is it possible -- I mean, is it sometimes that these
11 kind of things just go away, resolve on their own?

12 A I think the natural history is one of spontaneous
13 resolution, whether you do therapy, chiropractic,
14 take pills, lay up, exercise, whatever. I mean, most
15 of these things get better on their own with just a
16 little bit of time. So we just try to keep people
17 moving while they're going through that so they don't
18 get weaker.

19 Q Should he have been able to return to work after
20 seven days with this problem?

21 A Most patients are able to.

22 Q Okay. Do you have any reason to believe that this
23 guy wouldn't have been able to return to work after a
24 week off?

25 A Every patient is different.



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1 Q All right. Thank you, doctor.

2 EXAMINATION

3 BY MR. SMITH:

4 Q Doctor, would the benefit of a rearview crystal ball,
5 had this gentleman been able to get the treatment
6 back in June, would it have been more likely that he
7 would have been able to return to work?

8 A We certainly see patients if they are aggressively
9 managed by knowledgeable specialists early on, we see
10 less of this. And I think historically it's been a
11 frustrating problem for many of us that do this for a
12 living that, you know, we kind of come in late into
13 the ballgame and it's kind of hard to undo that.

14 Q Thank you, sir.

15 MR. SMITH: No more questions.

16 MR. HAIGLER: Thank you, doctor.

17 (The deposition concluded at 5:55 PM)

18

19

20

21

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1106685

DAVID JONES,	)	
	)	
EMPLOYEE-CLAIMANT,	)	
	)	
VS	)	DEPOSITION OF
	)	ROBERT J. HEALY, JR., M.D.
	)	JUNE 26, 2012
WARDEN & SMITH	)	
CONCRETE,	)	
	)	
EMPLOYER,	)	
	)	
AND	)	
	)	
BRIDGEFIELD CASUALTY	)	
INSURANCE COMPANY	)	
C/O SUMMIT HOLDINGS,	)	
INC.,	)	
	)	
CARRIER/DEFENDANTS.)	)	

Deposition on oral examination of Robert J. Healy, Jr., M.D., reported by Laura S. DeCillis, Certified Court Reporter and Notary Public in and for the State of South Carolina; said deposition taken at 805 Pamplico Highway, Suite A130, Florence, South Carolina, on Tuesday, the 26th day of June 2012, commencing at 5:37 p.m.



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1 It is agreed and stipulated by the
2 deponent and respective counsel that the
3 reading and signing of the deposition by
4 the deponent is expressly waived.

5 WHEREUPON:

6 Robert J. Healy, Jr., M.D., being
7 duly sworn and cautioned to tell the
8 truth, the whole truth and nothing but
9 the truth, testified as follows:

10 (DFT. EXH. #1, Examination, was marked
11 for identification.)

12 (DFT. EXH. #2, MRI - 11/5/11 - Page 1,
13 was marked for identification.)

14 (DFT. EXH. #3, MRI - Page 2, was marked
15 for identification.)

16 (DFT. EXH. #4, MRI - Page 3, was marked
17 for identification.)

18 (DFT. EXH. #5, Discharge Summary, was
19 marked for identification.)

20 EXAMINATION BY MR. HAIGLER:

21 Q. Dr. Healy, please state your full name
22 for the record.

23 A. Robert Joseph Healy, Jr.

24 Q. Dr. Healy, my name is Nick Haigler. I
25 represent Warden & Smith Concrete and Bridgefield



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1 Casualty Insurance Company in Mr. David Jones'
2 workers' compensation matter.

3 I've deposed you before, but just for
4 the record, if you will, just give us a brief
5 synopsis of your educational background, if you
6 will.

7 MR. SMITH: I'll be happy to
8 stipulate to qualifications.

9 MR. HAIGLER: Excellent.

10 BY MR. HAIGLER:

11 Q. We'll stipulate that you are a -- well,
12 just tell us what you're certified in just so --

13 A. Undergraduate degree from
14 St. Bonaventure University, majored in chemistry,
15 graduate school in neuroanatomy and then at MUSC.
16 After that, I went to medical school at MUSC and
17 then I did internal medicine and then I did
18 neurology. I'm still on the faculty in neurology
19 at MUSC, although I teach here at McLeod at the
20 Family Practice Center. And I've been practicing
21 here in Florence since '86.

22 Q. Okay. And, Doctor, I don't want to go
23 into it right yet, but I want to make sure I have
24 all of your notes. The last note I have, office
25 note I have, is from April the 5th of 2012. Is



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1 that what your notes indicate?

2 A. Yes. That's the last time I saw the
3 patient.

4 Q. Okay. When was the very first time you
5 saw the patient?

6 A. Let's see. (Views documents). I guess
7 I saw this fellow at McLeod 10/28/2011.

8 Q. Okay. Doctor, I'm going to show you
9 this. It's Defense Exhibit 1. Is that the report
10 you're referencing or is that a different report?

11 A. Yes -- no. That's page one, I guess --
12 well, no. That's the last page. There's a page
13 one.

14 Q. Oh, there is? I don't have that.

15 A. That's page two, this is page one.

16 Q. Okay. Is there a way we could get a
17 copy of page one?

18 A. If the girls are still here, you might.

19 Q. Do you mind checking? Neither Bill nor
20 I have seen that page. I was wondering where the
21 rest of it was.

22 (Momentarily off the record)

23 MR. HAIGLER: Back on the record.

24 BY MR. HAIGLER:

25 Q. Dr. Healy, I appreciate you making a



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1 copy of the rest of your report from October 28th.
2 And I'll look at the exhibit since you have a copy
3 of it in your file.

4 On October the 28th, 2011, why did
5 Mr. Jones come to see you on that day? What was
6 the purpose of that visit?

7 A. Well, I actually saw him in the hospital
8 for the first time. Dr. David Smith was in
9 anesthesia at McLeod and called me. He was seeing
10 this fellow in his pain clinic, I believe, and was
11 concerned about his behavior and so he called me
12 and asked me to admit him and evaluate him, which

13 I did.

14 Q. When you say behavior, what do you
15 mean?

16 A. His neurologic exam, he thought, was not
17 normal.

18 Q. What was not normal about it?

19 A. I think he thought his eye movements and
20 the way that he was walking.

21 Q. Okay. And I assume you went to see him
22 in the hospital?

23 A. Yes.

24 Q. Did you go over to McLeod from here?

25 A. Yes.



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1 Q. Okay. And is this the report that you
2 did? Is this your report or --

3 A. Yeah. That's the first night.

4 Q. Okay. And when you got there, did you
5 examine Mr. Jones or --

6 A. Yes.

7 Q. And what did you find when you examined
8 him?

9 A. Well, do you want me to read this, go
10 through this report or --

11 Q. You can summarize it if you can. If
12 not, then tell us what you found.

13 A. Well, my impression was that he had a
14 spinal headache and that, I think, was following a
15 myelogram. He was told that he had a fluid
16 collection in the low back, which I didn't see any
17 evidence of that. So I placed him supine in bed
18 and gave him IV fluids and caffeine to see if this
19 helped his headache. And I was going to evaluate
20 him for his abnormal eye movements with an MRI of
21 the head, and that was essentially my impression
22 the first night.

23 Q. Okay. Were you aware that he had had an
24 MRI the day before?

25 A. Yes.



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1 Q. Did you have a chance to review that?

2 A. Yes.

3 Q. And do you have that in your file or do
4 you have a notation of where you reviewed or what
5 you saw?

6 A. Well, it was done over at McLeod.

7 Q. And I have a copy if you don't.

8 A. You do have it?

9 Q. I've got it right here, yes.

10 MR. HAIGLER: It's Defendants' APA
11 93, for the record.

12 BY MR. HAIGLER:

13 Q. I believe that's the MRI of the lumbar
14 spine.

15 A. Right. That showed a mild L4-5
16 degenerative disk. And it was a bulging disk and
17 the cord was normally located -- and there were no
18 other abnormalities on there. My impression was
19 that, you know, after the spinal tap, that the
20 patient was told that you can have a fluid
21 collection. And often when people hear this, then
22 they think they do have that. But that MRI didn't
23 show anything.

24 Q. And just to be clear, was the MRI also
25 negative for any kind of compressive pathology?



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1 A. All there was was a degenerative disk
2 and a bulging disk. But, yeah, nothing
3 compressive, no disk herniation.

4 Q. Okay. Fair enough. With regard to the
5 eye movements, were you able to determine why that
6 may have been happening or if it even was
7 happening?

8 A. I did not see evidence of that.

9 Q. Okay. And, Doctor, I'm looking at what
10 I believe to be some scans or some tests,
11 diagnostic tests that you performed and I'm not
12 sure what they necessarily are. They're not very
13 well labeled from the hospital. But I have three,
14 but all of them look like they took place on the
15 first of November. Do you have those?

16 A. Yes.

17 Q. Okay. The first one, the procedure says
18 Visual Evoked Potential/Full. I don't know that
19 is.

20 A. A visually evoked response.

21 Q. Okay. What is that?

22 A. That is a test where you stimulate the
23 eye electrically and then you can measure how long
24 it takes for the impulse to go to the brain and
25 you can compare the two eyes.



1 Q. Why would you do that test?

2 A. To make sure that the optic nerve wasn't
3 injured.

4 Q. Okay. And I'm reading Indication and it
5 looks like the indication was what, Doctor?

6 A. He had normal eye movements in his
7 complaints about his vision.

8 Q. Okay. Did you give a -- and I'm reading
9 the actual report. It says Indication, possible
10 demyelinating disease. What is demyelinating
11 disease?

12 A. Like multiple sclerosis.

13 Q. Okay. And, in fact, the diagnosis is MS
14 changes. Is that --

15 A. Mental status.

16 Q. Is that what MS stands for?

17 A. Yes.

18 Q. Okay. Did you feel this individual may
19 have multiple sclerosis?

20 A. That was needed to be ruled out.

21 Q. Have you been able to rule that out?

22 A. I did not find evidence of that.

23 Q. Okay. What kind of evidence would you
24 be looking for?

25 A. A normal MRI of the head and his evoked



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1 potentials were normal.

2 Q. I guess my question though is, what
3 types of things are evidence of symptoms of MS?

4 A. The eye movement abnormality.

5 Q. He didn't have any of that, even though
6 he thought he did?

7 A. Well, I didn't find any evidence of
8 that.

9 Q. Okay. What other symptoms would he have
10 if he had MS?

11 A. He could have anything. It affects the
12 entire nervous system. So anything the brain does
13 it could do abnormally from MS.

14 Q. Fair enough. The other report I have --
15 and correct me if I'm wrong -- but maybe it's the
16 discharge summary, is the only other report I have
17 from you from the hospital visit. At least, the
18 only other report I want to go over today. I
19 don't think I have any other reports. Are there
20 any others that we're missing, Doctor?

21 A. Not that I'm aware of.

22 Q. Okay. Good deal. And I'm looking at
23 your discharge summary. Do you kind of go through
24 what took place over the course of his hospital
25 stay of seven days?



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1 A. Yes.

2 Q. Okay. And did you have any opinions at
3 that point in time as to what was going on with
4 him neurologically?

5 A. Well, all I found was that he had some
6 degenerative disk problems in the low back and he
7 had a mild central disk protrusion in the
8 mid-neck, and he had a Dandy Walker variant which
9 is something he was born with.

10 Q. A congenital problem?

11 A. Right.

12 Q. Okay.

13 A. And that is the only thing that I found.
14 His headache did better with treating him for his
15 spinal headache, and we didn't see anything else.

16 Q. Okay. And I'm reading your report. Was
17 it your feeling that -- and I'm reading your
18 report, the second paragraph -- that he had
19 complaints and symptoms to an excess relative to
20 the amount of pathology that was identified in the
21 cervical and lumbosacral areas. Was that your
22 opinion?

23 A. Yes.

24 Q. What did you mean by that?

25 A. That I thought he had exaggerated or



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1 amplified or thought that he was injured worse
2 than what I could find.

3 Q. Was that intentional on his part, did
4 you feel, or was that --

5 A. No. It may be a conversion disorder,
6 which is a psychological phenomena. I didn't get
7 the feeling he was malingering.

8 Q. Okay. And you said, as a consequence
9 he's being sent home for bed rest. What was the
10 purpose of that?

11 A. Just to make sure that the headache went
12 away.

13 Q. Okay. And, Doctor, are you aware of --
14 well, let me go through the rest of this just
15 before we go there.

16 And then it looks like the next
17 sentence, you said that he was given a
18 prescription that he had from Dr. Edwards of
19 Vicodin. Did you prescribe him anything else?

20 A. I don't believe so.

21 Q. Okay. And the next sentence, you said,
22 I've explained to him and his wife that I cannot
23 find any specific neurological problems. Was that
24 your opinion as of 11/5/2011?

25 A. Yes.



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1 Q. Okay. And when you say neurological
2 problems, what kind of things did you rule out?

3 A. The demyelinating disease was the main
4 thing.

5 Q. Okay. And were you basically at this
6 point just deferring to Dr. Edwards' treatment of
7 his low back orthopaedically?

8 A. Yes.

9 Q. You didn't feel like there was anything
10 else that needed to be done from a neurological
11 standpoint; is that fair?

12 A. That's fair.

13 Q. Okay. And, Doctor, I'm reading what I
14 think is your next report, which is November the
15 10th, 2011, just a few days after you discharged
16 him from the hospital or he was discharged from
17 the hospital. Do you have that report?

18 A. Yes.

19 Q. Was that a scheduled follow-up
20 appointment or did he just --

21 A. It was.

22 Q. Okay. And what was the purpose of the
23 follow-up?

24 A. To see how he was doing after his
25 hospitalization.



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1 Q. And how was he doing?

2 A. He was about the same. I remember he
3 was in his wheelchair. He was able to stand, but
4 with a lot of discomfort. And my opinion was that
5 he had predominantly mechanical low back pain and
6 I explained that there was no impingement or, to
7 me, it didn't look like anything that would
8 involve surgery.

9 Q. Okay. Did you advise him that he needed
10 to follow up with Dr. Edwards at this point to see
11 what else could be done from an orthopaedic
12 standpoint?

13 A. Yes. I think at that point, he hadn't
14 seen him yet.

15 Q. Ever or just since his release?

16 A. Well, since his release from the
17 hospital.

18 Q. Okay. And I'm reading the second
19 sentence of your note here and it says, he had
20 transient alteration of his mental status which is
21 an uncertain etiology, could not find any definite
22 problems.

23 A. Right.

24 Q. What did you mean by that? I mean, what
25 was the mental status that he had that was



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1 altered?

2 A. When he came in, he had the abnormal eye
3 movements, Dr. Smith felt, and he had trouble
4 standing.

5 Q. And you were unable to determine what
6 was causing that; is that --

7 A. I did not find a problem.

8 Q. Okay. Given the nature of his objective
9 findings, did you find it interesting that he was
10 unable to walk or unable to stand and had to use a
11 wheelchair?

12 A. He seemed to have a lot of pain when he
13 would stand, which I thought was reminiscent of
14 his mechanical low back problems.

15 Q. Okay. Were you aware that the accident
16 in this case that brought about all this was in
17 June of 2011, over 13 months ago?

18 A. Yes.

19 Q. Are you aware of kind of what happened,
20 the mechanism of injury?

21 A. Yes.

22 Q. And what's your understanding of that?

23 A. Well, I thought that he probably had had
24 somewhat of a heat stroke. Now, he was getting
25 back into his truck and he said he felt or heard a



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1 pop in his low back, which might have been a
2 mechanical injury to the back, but all we found
3 was some degenerative disks and actually nothing
4 that appeared acute. And so it seemed like he
5 probably strained his lumbosacral spine.

6 Q. Okay. And is that something that has
7 reached a plateau at this point in time, I mean,
8 as far as maximum medical improvement goes? And
9 I'm talking about his lumbar spine.

10 A. Well, I don't know what, you know, the
11 follow-up situation has been with Dr. Edwards.

12 Q. Okay. Do you have any of Dr. Edwards'
13 notes?

14 A. I don't.

15 Q. None, whatsoever?

16 A. No.

17 Q. Okay. Were you aware that he had
18 preexisting lumbar spine problems?

19 A. Yes.

20 Q. Were you aware that he had been given an
21 impairment rating by Dr. Alexander at Dr. Edwards'
22 practice before this accident?

23 A. I wasn't aware of that.

24 Q. Okay. Did you believe that the problems
25 he was having as far as standing and pain, do you



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1 believe that that was due to the mechanical back
2 pain or was that due to some other issue?

3 A. Mechanical back pain.

4 Q. Okay. And I'm talking about the
5 November note. Even six months later?

6 A. Yes.

7 Q. And did you have any recommendations --
8 or, at least, according to this -- did you have
9 any recommendations at that point in time in
10 November?

11 A. No. I was going to defer to Dr. Edwards
12 about his back.

13 Q. Okay. And just to be clear, you haven't
14 seen any of Dr. Edwards' reports, have you?

15 A. No.

16 Q. Let me show you just a couple of those
17 so we're all on the same page. (Views documents).
18 Doctor, this is a December 15th report. That's
19 the very next time he saw Dr. Edwards after you
20 saw him in November. I'll give you a second to
21 look at that before I ask you any questions.

22 A. (Views document).

23 Q. And I apologize, it's been highlighted.
24 It's very difficult to read.

25 A. (Continues to view document). Okay.



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1 Q. Have you had a chance to look at
2 Dr. Edwards' report from December 15th?

3 A. Yes.

4 Q. Did Dr. Edwards basically release him
5 from care at that point in time?

6 A. I believe that's true. He said he had
7 nothing really to offer.

8 Q. Okay. And if you look through the
9 history and present illness, did Dr. Edwards
10 actually go through kind of what happened in the
11 hospital and what your opinion was from a
12 neurological standpoint?

13 A. Yes.

14 Q. And, again, you would defer to
15 Dr. Edwards' opinion from December 15th, 2011; is
16 that fair?

17 A. Talking about his neck and his low back,
18 yes.

19 Q. Okay. And Dr. Edwards noted in his plan
20 part that he appears to have some fairly
21 significant issues as it relates to his leg and he
22 plans to follow up with Dr. Healy. But review of
23 his workup while in the hospital failed to show
24 any obvious problems that could be dealt with
25 either medically or surgically. Was that your



1 opinion?

2 A. Yes.

3 Q. Okay. So Dr. Edwards was basically just
4 restating what you had already said; is that
5 fair?

6 A. Yes.

7 Q. Okay. And let me show you another
8 report of Dr. Edwards, if I can. This is the
9 final one that I'm aware of and this is January
10 12th of 2012, this year. Have you seen that
11 report before today, Dr. Healy?

12 A. No.

13 Q. I believe there's a note written at the
14 bottom of that page, the bottom right. Just for
15 the record, what's the number on that page,
16 Doctor?

17 A. 075.

18 Q. Okay. Page 75 of Defendants' APA.
19 Dr. Healy, did Dr. Edwards provide a 5 percent
20 impairment from the injury he sustained back in
21 June?

22 A. Yes.

23 Q. And that was to the lumbar spine?

24 A. Yes.

25 Q. Okay. And what else did he recommend or



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1 note in this short note?

2 A. Well, just that the patient used good
3 body mechanics and careful lifting and to follow
4 up with me, basically.

5 Q. Okay. In fact, he says it's noted that
6 he's been evaluated for some type of neurological
7 symptoms and it's possible there may be some
8 limitations placed on him by his neurologic
9 condition.

10 A. Yes.

11 Q. Okay. Had you placed any restrictions
12 on him at that point in time?

13 A. No.

14 Q. Did you find any reason to place any
15 restrictions on him at that point in time --

16 A. No.

17 Q. -- from a neurological standpoint?

18 A. He was out of work and I thought that if
19 there were any restrictions, they would be as a
20 result of his spine problems.

21 Q. Okay. If Dr. Edwards testified in his
22 deposition last year that based on the objective
23 findings on that MRI and his physical exam, that
24 he believes he ought to be able to go back to work
25 without any restrictions, would you disagree with



1 that?

2 MR. SMITH: Object to the question.

3 It's misstating the facts in evidence and the
4 testimony of Dr. Edwards.

5 BY MR. HAIGLER:

6 Q. Would you disagree with that,
7 Dr. Healy?

8 A. I would agree basically with that.

9 Q. And why is that?

10 A. I didn't find any neurological problem.

11 Q. Is that still your opinion today?

12 A. Yes.

13 Q. Okay. And, Doctor, I think the last
14 note I have from your office is dated April 5th,
15 2012, and I think you've already confirmed that
16 that is in fact your last note. Do you know how
17 he got to you on the 5th of April, what the
18 purpose of the referral was?

19 A. I don't. I thought I was seeing him
20 just in follow-up at my own request.

21 Q. Okay. And tell me how he was doing at
22 that point in time or if there was any change,
23 whatsoever.

24 A. Well, we sort of went over again what
25 Dr. Edwards had told him. I reiterated I had no



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1 explanation for the altered mental status and that
2 I found no evidence of orthostasis, cardiac
3 arrhythmia or demyelinating disease. We talked
4 about his mechanical low back pain and he told me
5 that day that after being in the office four
6 months ago, that he had three episodes of passing
7 out in January and I mentioned that I didn't hear
8 from him, which seemed unusual.

9 Q. Why is that?

10 A. Well, I would think if you were passing
11 out, you would tell somebody.

12 Q. Does that mean you doubt what he's
13 telling you or you just --

14 A. Well, you know, some things just don't
15 make sense and it seemed to me that that would be
16 a reason you would contact a doctor.

17 Q. Okay.

18 A. Particularly, maybe not one, but if you
19 had three.

20 Q. Do you have any explanation for those,
21 as you put them, syncopal episodes?

22 A. Well, I thought that --

23 Q. If, in fact, they occurred.

24 A. I thought that he might have been having
25 some vasovagal problems. In other words, if you



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1 have enough pain, you can lower your blood
2 pressure and sometimes that can make you pass out.
3 It's kind of like, if you slam your finger in the
4 car door and you faint, the pain causes your blood
5 pressure to drop and you faint. Some people are
6 just prone to that. But his vital signs were
7 stable the day he was here. He was not
8 orthostatic and I did not find any cardiovascular
9 problems.

10 Again, the main things I found pointed
11 to his spine as the problem. And, predominantly,
12 I thought he had mechanical low back issues. He

13 had some weak grips, but I thought that was more
14 of a functional problem.

15 Q. Meaning what?

16 A. That he wasn't really trying.

17 Q. Okay.

18 A. And I put here, I notice that when he
19 stands and holds onto my arm, his grips are good.
20 I believe at this point, we need to follow up his
21 imaging of the lumbosacral spine with MRI and
22 electrophysiologic studies of lower extremities.
23 It states he had a closed head injury with one of
24 the falls and episode of altered mental status. I
25 have not previously found any problems but I was



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1 going to repeat his EEG.

2 Q. Okay.

3 A. He had three epidurals in the past which
4 were not very beneficial, so I didn't think he was
5 a good surgical candidate unless there had been
6 some change in his imaging, and I thought that
7 probably a follow-up MRI might be telltale.

8 Q. Okay. And, Doctor, this report and
9 these recommendations that kind of came from the
10 report, those were all without any knowledge as to
11 what Dr. Edwards had been doing; is that fair?

12 A. That is.

13 Q. Okay. And at least from an orthopaedic
14 standpoint, you would defer to him for treatment
15 of the low back; is that fair?

16 A. Yes.

17 Q. Okay. I guess my question then is,
18 knowing what you now know about what Dr. Edwards
19 has said from an orthopaedic standpoint, do you
20 still recommend this medical treatment?

21 A. Well, now, this was all after Edwards
22 had seen him for the last time.

23 Q. Okay.

24 A. Edwards saw him for the last time in the
25 second week of January and I was seeing him here



1 in April.

2 Q. Okay. Well, Doctor, if any of these
3 tests revealed anything new, they wouldn't be
4 causally related to that accident, would they?

5 MR. SMITH: Object to the leading.

6 BY MR. HAIGLER:

7 A. That's hard to say.

8 Q. Why is that hard to say?

9 A. Well, because I don't know what the
10 tests would have shown.

11 Q. Okay. If they showed anything, if they
12 showed anything additional that weren't shown on

13 the two previous MRIs that he's had since his
14 accident, how would you be able to causally relate
15 that to the accident?

16 A. I don't know about the accident. I'd be
17 more suspicious about the falls if, in fact, they
18 happened. But, you know, it just seemed unusual.
19 If I was at home and I fainted, I'd be calling
20 somebody, so -- and he did it three times,
21 supposedly, but didn't notify anybody.

22 Q. Okay. So we don't even know if those
23 actually occurred, do we?

24 A. I don't, no.

25 Q. Okay. Have you been presented any



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1 medical evidence that he followed up with a doctor
2 or told Dr. Edwards that he was having these
3 problems?

4 A. No.

5 Q. Okay.

6 A. And these notes. Now, when I see them,
7 they don't say anything about that.

8 Q. Would you have expected Dr. Edwards to
9 mention that, if he were falling at home, and told
10 Dr. Edwards?

11 MR. SMITH: Objection,
12 speculative.

13 BY MR. HAIGLER:

14 A. I would think so, yes.

15 Q. Okay. So, Doctor, is it fair to say
16 without knowing, one, whether these episodes
17 actually occurred in January and, two, I mean, do
18 you have any idea whether anything that you would
19 find on examination or any of these tests would be
20 causally related to his June 2011 accident?

21 A. Well, if there was any change on the MRI
22 of the lumbosacral spine, it would probably have
23 been because of the falls which would probably be
24 a change in condition from the original problem.

25 Q. Okay. But, again, you don't know that



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1 they occurred?

2 A. I don't.

3 Q. Okay. Doctor, do you have an
4 explanation as to why now, or at least as of when
5 you saw him in April, ten months later, his pain
6 was still such that he couldn't walk and had to
7 use a wheelchair and was having allegedly syncopal
8 episodes in January, I mean, do you have any
9 objective findings as to why that's the case?

10 A. Only if his low back pain is causing it
11 to happen.

12 Q. Okay. And according, or at least from

13 what you've reviewed of Dr. Edwards' report was,
14 did he feel like that was the case, that the
15 mechanical back pain was causing the problems or
16 did he feel like it was some other issue with his
17 legs which is why he sent him back to you?

18 A. I think he sent him back to me just to
19 make sure there wasn't any other issue. I think
20 what he believes is that the fellow has mechanical
21 low back pain but he doesn't have a surgical
22 condition.

23 Q. Okay. Would you recommend that this
24 individual use a walker or a wheelchair?

25 A. Well, I would be in hopes that he



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1 wouldn't need that by now.

2 Q. And why is that?

3 A. Well, we're now a year out from when his
4 problem occurred and, you know, he has, I think,
5 mechanical low back issues which typically do
6 better with time and I would be in hopes that at
7 this point, you know, his problems would be better
8 and that he'd be headed toward going back to work.

9 Q. Would you disagree with Dr. Edwards if
10 he testified that he didn't think he should be
11 using a walker or a wheelchair?

12 A. No.

13 MR. SMITH: Again, I object to the
14 question as it misstates facts in evidence.

15 BY MR. HAIGLER:

16 Q. You can answer, Doctor.

17 A. I wouldn't disagree.

18 Q. And why is that?

19 A. I'd be surprised that he needed that at
20 this point.

21 Q. Would that be evidence of any kind of
22 intentional or unintentional malingering on his
23 part if he was still using those devices?

24 A. Well, you know, I got the feeling all
25 along that this fellow thought that he was injured



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1 worse than what I could find evidence for.

2 Q. Okay.

3 A. Which is more of an emotional -- you
4 know, lots of times, people don't understand
5 what's wrong with them. You know, he told me he
6 had a fluid collection in his back, which he
7 didn't. So I sort of got the feeling that if you
8 suggest something to this person, they sort of run
9 with it. Which isn't unusual, but that's just
10 human nature and how people, you know, treat their
11 illnesses or what their understanding of their
12 illnesses is.

13 Q. Okay. With regard to his lumbar spine,
14 do you agree with Dr. Edwards' opinion that he's
15 reached maximum medical improvement?

16 A. Well, I wasn't sure. Because when I saw
17 him in April, I wanted to do some additional
18 things so I could answer that question. But I
19 guess they weren't approved or I don't know what
20 happened.

21 Q. Okay. As of January, when Dr. Edwards
22 last saw him, do you agree with that opinion?

23 MR. SMITH: Objection, asked and

24 answered.

25 BY MR. HAIGLER:



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1 A. Well, I don't know. Because my
2 information or what I'm working on is a little
3 different than -- I'm under the impression that
4 these things happened after he saw Dr. Edwards,
5 but I don't actually know.

6 Q. Okay. Before this April accident
7 though -- let me ask it this way. Excuse me.
8 Before this April visit, you didn't have anything
9 to offer Mr. Jones; is that fair?

10 A. Yes.

11 Q. And you didn't find anything wrong with
12 him from a neurological standpoint; is that fair?

13 A. That's fair.

14 Q. Okay. Do you have an opinion as to
15 whether he should be under any kind of work
16 restrictions at this point or would you defer that
17 to Dr. Edwards?

18 A. Well, since I don't know what the
19 situation is with his back, I would have to defer.

20 Q. Okay. Doctor, in your April 5th note,
21 you note that he is on no medications for the past
22 three months after running out of Vicodin and
23 Flexeril. Doctor, if his pain were such that it
24 was causing him to have syncopal episodes, would
25 you have expected him to go back to Dr. Edwards or



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1 someone and get some pain medication?

2 MR. SMITH: Objection,
3 speculative.

4 BY MR. HAIGLER:

5 A. I would think that if you were having
6 pain, as you've said, you know, that you would
7 probably try and get something or want something
8 if you thought it was helpful.

9 Q. Okay. Were you aware that in fact the
10 only reason he came to see you in April was
11 because the insurance company set that up and not
12 because Mr. Jones requested it?

13 MR. SMITH: Objection. That
14 absolutely misstates the facts in evidence in
15 this case.

16 BY MR. HAIGLER:

17 A. I was of the opinion that he was coming
18 back on his own.

19 Q. So if the insurance company set that up,
20 you didn't know that?

21 A. I didn't know.

22 Q. Okay. Doctor, prior to this April note,
23 was it still your opinion when you last saw him in
24 November that his subjective complaints didn't
25 really match up with what you found objectively or



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1 what Dr. Edwards found objectively?

2 A. Yeah. I did not find a neurological
3 basis for his complaints unless it was pain
4 behavior.

5 Q. Okay. Those are all of the questions I
6 have for you, Doctor. Thank you.

7 A. Thank you.

8 EXAMINATION

9 BY MR. SMITH:

10 Q. Dr. Healy, my name is Bill Smith. I'm
11 here today representing Mr. Jones in his claim and
12 I've got a few questions for you.

13 A. Yes.

14 Q. Mr. Jones gave you a history of the
15 injury he sustained at work in June of 2011?

16 A. Yes.

17 Q. And he explained to you that he had an
18 episode with the heat and then injured his back
19 while trying to pull himself up into the truck?

20 A. Yes.

21 Q. And he explained to you that he had been
22 having significant low back pain and leg pain
23 since that time?

24 A. Yes.

25 Q. Originally, he was treated by



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1 Dr. Edwards, had an epidural steroid injection,
2 ended up in the hospital following that
3 injection?

4 A. Yes.

5 Q. Okay. And I'm not quibbling with you at
6 all about your interpretation of that MRI scan,
7 but I did want to ask you about that. Your review
8 of that MRI did not show a spinal fluid leak; is
9 that correct?

10 A. Correct.

11 Q. Okay. I'm going to show you page 72 of
12 the APA submissions by the defendants. But did

13 Dr. Edwards interpret that as if there was a CSF
14 leak?

15 A. It does show fluid collection
16 posteriorly compatible with spinal fluid. He
17 thought that he did see fluid or that, clinically,
18 the patient had a spinal fluid leak.

19 Q. Okay. Regardless of whether he did or
20 whether he didn't, he ended up in the hospital and
21 he received treatment; is that correct?

22 A. He had a spinal headache so, I mean, he
23 had a leak. Whether or not fluid was accumulating
24 is conjecture, but he definitely had a spinal
25 fluid leak and a spinal headache.



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1 Q. Okay. So it was not your opinion that
2 he was malingering or anything regarding that
3 spinal headache?

4 A. Not related to the spinal headache.

5 Q. All right, sir. So, anyway, you're
6 called in, you see him in the hospital and he's
7 having that significant low back pain and having
8 difficulty standing?

9 A. Yes.

10 Q. Okay. You reviewed the MRI scan and
11 that MRI scan showed degenerative disk disease at
12 L4-5, but no frank herniation or anything of that
13 nature?

14 A. Correct.

15 Q. Doctor, do you know Dr. Bruce Johnson?

16 A. Yes.

17 Q. Is Dr. Johnson somebody that practices
18 at McLeod?

19 A. Yes.

20 Q. He's an anesthesiologist, I believe,
21 that provides epidural steroid injections?

22 A. He's their pain anesthesiologist.

23 Q. Okay. Let me show you page 83 of the
24 APA submissions. It appears that as early as
25 October 18, 2011, he recommended EMG studies of



1 the legs?

2 A. Yes.

3 Q. Okay. You never saw any EMG studies,
4 did you?

5 A. No.

6 Q. Okay. So, anyway, you treat him, he is
7 ultimately -- and let me back up for a second.

8 When you saw him in the hospital, you
9 indicated that while you could not find any
10 specific neurological problems, you did believe
11 that he had back pain; is that correct?

12 A. Yes. Mechanical back pain.

13 Q. Okay. And you testified to this
14 earlier, but your impression of Mr. Jones was not
15 that he was faking this problem, but that he just
16 had an exaggerated response to pain?

17 A. Yes.

18 Q. Are people just different? Some people
19 deal with pain or are able to handle pain
20 differently?

21 A. Oh, yeah. Absolutely.

22 Q. Okay. You also mentioned that there was
23 a possible conversion disorder. Explain that to
24 me.

25 A. Well, that is a psychological phenomena



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1 where, for whatever reason, a patient can't face
2 or won't face what the actuality is of the problem
3 and the mind, to protect them, converts it into a
4 physical problem.

5 Q. Okay.

6 A. So it may not be legitimate to go to
7 your doctor and say, I got injured on the job and
8 nobody's taking me seriously, so the body converts
9 it into something that somebody will take
10 seriously, which isn't malingering or faking.
11 That is a subconscious disorder.

12 Q. Okay. After he was released from the
13 hospital, you saw him again on November 10, 2011,
14 and you've been through that. Was he pretty much
15 the same then as he was in the hospital?

16 A. Yes.

17 Q. And, again, you stated at that time that
18 his main complaint seemed to be pain, the possible
19 etiology was a significant response to pain from a
20 degenerative disk?

21 A. Yes.

22 Q. And just seemed to be more of a
23 mechanical low back phenomena rather than cord
24 involvement or radicular involvement?

25 A. Correct.



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1 Q. Okay. Doctor, do you -- I don't know if
2 often is the right word -- but do you see workers'
3 compensation patients in your practice?

4 A. Yes.

5 Q. You are aware that the workers'
6 compensation insurance company pretty much
7 controls their treatment?

8 A. Absolutely.

9 Q. Whether they can come in and when they
10 can come in and that sort of thing?

11 A. Right. And whether they're going to
12 allow what you think needs to be done to be done.

13 Q. Okay. You were asked a whole bunch of
14 questions about what Dr. Edwards may have said.
15 Were you aware that we took Dr. Edwards'
16 deposition back in December of 2011 and he
17 deferred opinions to you?

18 A. It's not surprising. If there is no
19 surgical target, you are out of there quick.

20 Q. Okay. And in this case, on the MRI
21 scans done in October there was no surgical target
22 identified?

23 A. Correct. I did not see, in my opinion,
24 anything that I would have referred somebody to a
25 surgeon for.



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1 Q. Okay. We took Dr. Edwards' deposition
2 and he felt like he needed treatment with you.

3 MR. HAIGLER: I'm going to object
4 to the form of that question.

5 BY MR. SMITH:

6 Q. An appointment was scheduled with you
7 for March 15, 2012, and I don't know if you can
8 tell that from your chart. Can you tell when an
9 appointment was set up?

10 A. Well, there was a 2/14/12 visit, I
11 think, that said the patient didn't show, but I
12 don't know that we can interpret that as he just
13 didn't come. It may have been that he called and
14 then they couldn't get approval or it may have
15 been that he came and we didn't have a letter from
16 workers' comp saying it was approved. I don't
17 know.

18 Q. Okay. I've got an email from defense
19 counsel that has scheduled appointment but that
20 you had an emergency and that appointment was
21 moved to April 15th. Do you know?

22 A. I don't know. If the emergency was on
23 Valentine's Day, I don't remember it.

24 Q. Actually, the note I had said the
25 appointment was on March 15 and you had an



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1 emergency.

2 A. Well, it's not listed in here which, I
3 mean, that could be just an oversight. But I
4 don't know what it would have been.

5 Q. Okay. Well, in any event, you did see
6 him again on April 15, 2012? Excuse me. April 5,
7 2012.

8 A. I did.

9 Q. Okay. And when you examined him on
10 April 5, 2012, was he still having the same type
11 symptoms that he was having when you would see him
12 in the hospital and when you saw him in follow-up
13 in November?

14 A. Pretty much, yes.

15 Q. Okay. You indicated, and I'm going to
16 ask you to explain this again. I know you talked
17 a little bit about it, but you said, it's always
18 seemed to me as if he had mechanical low back pain
19 and that movement such as standing or turning over
20 in bed which exacerbates his pain causes likely a
21 vasovagal-type response where he drops his
22 pressure and his legs begins to tremble and he has
23 trouble supporting his weight.

24 Can you explain that a little bit for
25 me?



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1 A. Well, pain can drop your blood pressure
2 and that's a physiologic response. And that often
3 is why, if people have bad pain, they'll faint.
4 But what happens is, as you're standing, if the
5 pain is bad enough it can make you tremble, it can
6 make you feel like your legs are going to buckle.
7 And if it's a matter of the blood pressure
8 falling, people do get to where they can't support
9 themselves and feel like they're going to fall,
10 faint, they have to sit down.

11 Q. Okay. And he was still complaining of
12 low back and leg pain to you at that time?

13 A. Yes.

14 Q. Okay. On examination, you performed a
15 straight leg raising which produced back pain?

16 A. Yes.

17 Q. What is that indicative of, if anything?

18 A. And I think also, did I say I did a bent
19 leg pull?

20 Q. Yes, you did.

21 A. Those are two maneuvers that point to
22 the spine as the source of pain and the straight
23 leg raising usually points to the lower spine, the
24 lower part of the lumbar spine. And the bent leg
25 pull usually suggests that the upper part of the



1 lumbar spine is the issue, but both seem to be
2 positive in him.

3 Q. Okay. You've noted that he's able to
4 stand but demonstrates a lot of pain behavior
5 while doing that?

6 A. Yes.

7 Q. Okay. And, again, you felt that
8 predominantly he had mechanical low back pain?

9 A. Yes.

10 Q. Okay. You also stated, or you
11 recommended additional testing at that point in
12 time; is that correct?

13 A. I did.

14 Q. Okay. It looks like you recommended
15 both an MRI as well as an EMG or nerve conduction
16 studies in the lower extremities?

17 A. Yes.

18 Q. You also were going to repeat his EEG?

19 A. Yes.

20 Q. What was the purpose of the EEG?

21 A. Well, because he had pain and he said he
22 had a head injury with one of the episodes. It
23 was more precautionary.

24 Q. Okay. Do your notes reflect whether or
25 not any of this testing that you recommended was



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1 approved?

2 A. I don't think it was.

3 Q. Okay. My understanding -- and I'm
4 giving you information here -- my understanding is
5 that he had the MRI done but has not been able to
6 get the EMG or nerve conduction studies done.

7 A. And I don't know.

8 Q. Okay. My understanding is he attempted
9 to come back to see you for your interpretation of
10 the MRI. Do your notes show that one way or the
11 other?

12 A. They don't.

13 Q. Okay. I have no idea what this shows,
14 but I've got his MRI scan. Can you look at it for
15 us?

16 A. Sure.

17 (Discussion off the record)

18 BY MR. SMITH:

19 Q. Doctor, I've handed you a MRI. What's
20 the date of that MRI?

21 A. 5/16/12.

22 Q. And where was that performed?

23 A. In May.

24 Q. Okay. And have you seen this MRI prior
25 to today?



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1 A. I don't believe so, no.

2 Q. And there's no radiology report with
3 that MRI that I see.

4 A. No. I interpret these.

5 Q. Okay. Is that the way you do them? You
6 just get the MRI, you don't get a radiologist's
7 impression?

8 A. I read them.

9 Q. I got you. And you've now had a moment
10 to look at that. What's your impression of that
11 MRI scan?

12 A. Well, there are degenerative changes at
13 L4-5 and the neuroforamin on both sides are
14 minimally comprised. There's some bulging of the
15 disk at that level. And my recollection is that
16 this looks probably very similar to the initial
17 one from a year before.

18 Q. And you're saying that you don't have
19 them side by side to compare; is that right?

20 A. I don't.

21 Q. Okay. I understand you don't do low
22 back surgery, do you?

23 A. I don't do surgery.

24 Q. Okay. Is there anything that you see on
25 that MRI scan that would lead you to believe that



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1 it is a surgical condition?

2 A. I don't believe so. But, now, the
3 electrical study is the adjunct to this that might
4 change that, but --

5 Q. And that was what I was going to ask
6 you. But both you and Dr. Johnson have
7 recommended electrical studies. Do you still feel
8 that those electrical studies need to be done?

9 A. Yes.

10 Q. Mr. Jones has not been allowed to come
11 back to see you since April of 2012. If his
12 symptoms are now the same as they were when you

13 saw him in October, November and April, do you
14 feel like he needs to be further investigated?

15 A. Yes.

16 Q. Is the next step to obtain the
17 electrical studies?

18 A. Yes. I believe that would be.

19 Q. Dr. Edwards also recommended physical
20 therapy for him that has not been provided. Would
21 you concur with that recommendation?

22 A. Yes.

23 Q. If the electrical studies come back --
24 well, if the electrical studies are positive for a
25 radiculopathy, what's the next step?



1 A. Well, probably send him back to
2 Dr. Edwards to see what his thoughts are.
3 Although, again, I can't imagine thinking that
4 this would be a surgical problem. He's had
5 epidurals. I think he's had three epidurals and
6 he didn't seem to think that they were beneficial.
7 A single nerve root block might be the next pain
8 procedure that might be done if the electrical
9 study pointed to one particular root level.

10 Q. If the electrical studies are normal,
11 what would be the next step?

12 A. Physical therapy.

13 Q. You mentioned earlier and we discussed
14 the possibility of a conversion disorder. How do
15 you investigate that?

16 A. Well, that's more of a psychological
17 phenomena, you know. I don't know if you want to
18 get me started on this, but I, personally, think
19 that when people get injured and it's a
20 work-related situation, that the way their
21 evaluation and treatment is handled in the very
22 beginning sets up this whole abnormal process, you
23 know, where they're sent to doctors that they
24 don't know, they can't go to their own doctor and
25 so they start to distrust from the beginning. And



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1 then you ask for things to be done, they don't get
2 approved.

3 This is a prime example of the workers'
4 comp people apparently agreed to do the MRI but
5 wouldn't let me follow it up. So we have a scan
6 here from six weeks ago that nobody's seen and I
7 haven't seen the patient and that's not the way
8 things are done in the real word. It's not in the
9 patient's best interest.

10 Q. Okay. If he is today as he was on April
11 5, 2012, could this gentleman work driving a
12 truck?

13 A. No.

14 Q. Based on the fact that you are
15 recommending this additional testing, is it your
16 opinion that he's not reached maximum medical
17 improvement?

18 A. He wasn't as of when I saw him in April.

19 Q. Okay. With regard to the -- and I
20 started asking you about the conversion disorder
21 possibility -- is that something you would
22 investigate after you ruled the things out with
23 EMGs and that sort of thing or is that something
24 you would do in conjunction with that?

25 A. No. I think you would wait until you



1 ruled out a physiologic or pathologic injury that
2 would be treated in a different way. If you don't
3 see it and, again, you think that his behavior is
4 not proportionate to the amount of problem that
5 you can find, then you might look into the
6 psychological side of things.

7 Q. Okay. Based on the history that you
8 obtained from him with these problems starting
9 with his injury of June 2011, is it your opinion
10 that these continued symptoms relate to that?

11 A. Yes.

12 Q. Thank you, sir. No further questions.

13 A. Okay.

14 REEXAMINATION

15 BY MR. HAIGLER:

16 Q. Doctor, just a couple of follow-up. You
17 had a chance to actually personally review the
18 actual MRI scan today, didn't you?

19 A. Yes.

20 Q. And it was your opinion that based on
21 your review of the scan, it was -- I think you
22 used, pretty much basically the same --

23 A. My recollection is that this looks about
24 the same as the one I think that was done in
25 November.



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1 Q. Okay. And so my question is, when you
2 saw him in April, what subjectively was different
3 that made you recommend all these tests?

4 A. Oh. That he had fallen three times.

5 Q. But you don't even know that that's
6 true, do you?

7 A. No. But that's not my job. My job
8 isn't to decide whether the patient's lying.

9 Q. Okay.

10 A. Sometimes I suspect it, but the behavior
11 just always doesn't add up.

12 Q. Well, in this case, you've already
13 testified you thought it was odd that he didn't
14 show up for three months to any doctor after
15 falling?

16 A. Right. And he didn't tell Dr. Edwards
17 that that had happened. In April, he told me the
18 last time he saw Edwards was in December, but, in
19 fact, I think he saw him January 12th.

20 Q. Okay. And so you recommended an MRI
21 which was performed and you've had a chance to
22 look at it and there doesn't appear to be any
23 additional damage done to his back; is that fair?

24 A. I think I would like to be able to see
25 them side by side, but that's my recollection.



1 Q. Okay. Would you defer to Dr. Edwards on
2 that from an orthopaedic standpoint?

3 A. Well, I'd like to see the electrical
4 studies to see if, in fact, the nerve roots are
5 fine and if they are, then I would defer to
6 Edwards.

7 Q. Okay. And why are you requesting the
8 nerve studies? What's the point? I mean, why are
9 you doing that now?

10 A. Oh. Well, I did it before.

11 Q. What do you mean, before?

12 A. Well, I did it in April.

13 Q. Why did you do it in April? Excuse me.

14 A. Because of the fact that possibly there
15 may be a nerve root injury.

16 Q. A radicular issue?

17 A. Right.

18 Q. Why didn't you request that back in
19 November when you saw him three times?

20 A. Well, I didn't see evidence at that
21 point.

22 Q. He was complaining of left leg pain from
23 his back, was he not?

24 A. Right. But I didn't see at that point
25 where he'd already had three epidurals, he



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1 couldn't have any more, he wasn't a surgical
2 candidate. It wouldn't have changed anything at
3 that point.

4 Q. Okay. What's changed since then that
5 would make you think that? I mean, nothing
6 subjectively has changed. What's changed?

7 A. Just his complaints persists. He had
8 the three falls and alleged possibility that he
9 may have injured his back additionally.

10 Q. Which we've discovered wasn't the case;
11 is that fair?

12 A. Well, the MRI isn't the bottom line.

13 This doesn't mean that he didn't get injured.

14 Q. Okay.

15 A. But, you know, his condition when I saw
16 him in April was pretty much the same as it always
17 had been.

18 Q. Okay. Which is exactly my question. If
19 it's the same as it always had been, why when you
20 saw him three times did you not recommend any of
21 this treatment?

22 A. It wouldn't have changed anything at
23 that point.

24 Q. And how would it change anything now?

25 A. Well, if he has a nerve root injury, you



1 might approach his pain management differently.

2 Q. Okay. Fair enough. Are you aware that
3 he's had an EMG before this accident, before this
4 accident ever occurred?

5 A. No.

6 Q. Were you aware that he had an EMG
7 performed back in 2007 when he previously injured
8 his back and that EMG found that he did have some
9 radicular problem in his legs? Were you aware of
10 that?

11 A. No.

12 Q. Okay. So would that change your opinion
13 as to whether those are even necessary at this
14 point in time? In other words, we've already
15 determined that he may have those problems in his
16 legs from a preexisting problem.

17 A. Well, I don't know what that test said.

18 Q. Okay.

19 A. And that was five years ago.

20 Q. And, Doctor, is that a nerve conduction
21 study from Pee Dee Orthopaedics from back in 2007?

22 A. Yeah. This is a nerve conduction EMG.

23 Q. Okay. And what were the results of
24 that?

25 A. This suggests a mild chronic L4-5/S1



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1 radiculopathy on the right.

2 Q. Okay. You haven't seen that before
3 today, have you?

4 A. No.

5 Q. Are you aware that Dr. Alexander back in
6 2007 did not find that to be a surgical issue?

7 A. Yeah. Well, I wouldn't think he would.
8 And then, apparently, Edwards didn't think he was
9 and he didn't have any surgery.

10 Q. At this point in time --

11 A. Right.

12 Q. -- for this accident.

13 A. Well, that was way before this
14 accident.

15 Q. Okay. Since this accident, Dr. Edwards
16 has also opined that he doesn't think this is a
17 surgical issue?

18 A. Correct.

19 Q. Okay. And it's been represented to you
20 that physical therapy was recommended for
21 Mr. Jones, has it not?

22 A. Yes.

23 Q. Okay. And that was from a deposition on
24 December 6th, 2011; is that right?

25 A. As I understand it, yes.



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1 Q. If Dr. Edwards thought he needed
2 physical therapy, don't you think he would have
3 mentioned it in his subsequent report nine days
4 later?

5 MR. SMITH: Objection,
6 speculative.

7 BY MR. HAIGLER:

8 A. Well, I don't know. It may have been an
9 oversight, I don't know.

10 Q. Okay. You can't answer that, can you?

11 A. No.

12 Q. Would you have to defer to Dr. Edwards?

13 A. Well, I can't answer it, but --

14 Q. Okay. Would you defer to Dr. Edwards as
15 to whether he needs physical therapy or not?

16 A. Well, I agree that the patient needs
17 physical therapy. I've already mentioned that.

18 Q. Okay. If he won't do the physical
19 therapy, will it help him?

20 A. No.

21 Q. If the pain is so bad that he won't let
22 anyone touch his legs, will that help him?

23 A. Well, that's what my concern is because
24 that's what happened the first time.

25 Q. The first time, what?



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1 A. He says that manipulation made him
2 worse. And so I was concerned that if we went
3 directly back to physical therapy at this point
4 without addressing his pain, that they probably
5 weren't going to get anywhere.

6 Q. Okay. And the pain has tried to be
7 addressed by different medications and injections
8 to no avail; is that fair?

9 A. Yes.

10 Q. Okay. Doctor, if you're not confident
11 that he actually sustained the syncopal events
12 that he said that he had sustained back in

13 January, if you're not confident of those, then
14 how can you give an opinion that any of your
15 recommendations for future medical treatment or
16 continued medical treatment are causally related
17 to the original accident?

18 A. Well, I think the patient's history is
19 the bottom line. Otherwise, we wouldn't be in
20 business.

21 Q. Which is what?

22 A. Taking care of people.

23 Q. What do you mean, the patient's
24 history?

25 A. What they tell you happened.



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1 Q. What do you mean by that?

2 A. Well, he told me that he passed out
3 three times. Now, I can't assume that, well, gee,
4 that's odd. I wouldn't have done it that way.
5 There must be nothing wrong. You can't do that.

6 Q. Okay.

7 A. But it seems unusual.

8 Q. Okay. Just to be clear, though, when
9 you saw him in November and October at the
10 hospital when he was complaining of left leg
11 problems and severe back pain and all these other
12 subjective issues, you didn't recommend any of
13 this treatment, did you?

14 A. No.

15 Q. In fact, you said you had nothing
16 neurological to offer him, didn't you?

17 A. At that point, that was true.

18 Q. Okay. And so as of the date that
19 Dr. Edwards released him in early January of this
20 year, that was still your opinion, was it, because
21 you hadn't seen him since then?

22 A. Right. I hadn't seen him so I would
23 have -- my opinion would have been what I said in
24 November.

25 Q. Even though he was still having the same



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1 subjective problems that he was having when you
2 saw him in November, even then?

3 A. Yes.

4 Q. Even though he was having the same
5 extreme pain and couldn't walk and needed a walker
6 and a wheelchair, things of that nature, that was
7 still your opinion in January of this year?

8 A. Well, I didn't see him in January.

9 Q. As of the last time you saw him?

10 A. Well, the last time I saw him, I made
11 some other recommendations.

12 Q. The last time you saw him before April.

13 A. And that was in the hospital in
14 November.

15 Q. Okay.

16 A. No. I think I saw him in the office in
17 December after the hospitalization.

18 Q. Okay.

19 A. And it was my feeling, again, that he
20 had mechanical low back pain and that he had pain
21 behavior.

22 Q. Okay. Doctor, have you been able to
23 appreciate anything objectively that would explain
24 the nature of the pain that he's having?

25 A. Well, his degenerative disk problems and



1 the low back.

2 Q. Okay.

3 A. That would explain his mechanical low
4 back pain.

5 Q. Are those degenerative problems
6 typically completely unresponsive to conservative
7 care, such as injections and medication?

8 A. No. Usually, there's something you can
9 do. But it's not always easy, particularly in
10 somebody who has degenerative disk problems whose
11 life is sort of labor-related, you know. This
12 fellow probably won't do well down the road with
13 heavy labor-type activities.

14 Q. Okay. Can he drive a truck down the
15 road?

16 A. I would think that he might be able to
17 drive a truck. I don't know that he'd be able to
18 load, unload or do things like that. But, you
19 know, in my mind, he's probably going to drive his
20 car. If he can drive his car, he probably can
21 drive a truck. But on the other hand, you know,
22 if you have low back problems, sitting,
23 chronically, is not a good position to be in.

24 Q. You mentioned that there might be some
25 psychological issues in play as well?



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1 A. I think that some of his behavior is not
2 consistent with what his complaints are.

3 Q. And the reason I ask you that question,
4 Doctor, is because you've just explained to me
5 that the nature of his pain, the severity of his
6 pain could be explained by degenerative disk
7 disease. But at the same time, you're saying that
8 it may be a psychological condition that makes him
9 think his pain is worse than it is. Those seem
10 inconsistent. Do you understand what I'm --

11 A. It's not. I mean, there's pain
12 behaviors and people approach those things

13 differently and for a multitude of reasons.

14 Q. Okay. And what are those reasons?

15 A. Some of them are cultural. Again, I
16 already mentioned that I think in the beginning of
17 a workers' comp injury, there's a lot of distrust
18 and that the stage is set for the patient
19 wondering if what's happening is what's supposed
20 to be happening. A lot of different reasons.

21 Q. Okay. Do you have an opinion as to
22 whether his pain is as bad as he thinks it is or
23 is it something else?

24 A. Well, I don't know. I see a lot of pain
25 behavior, you know. An example would be that he



1 told me that his grips were weak and when I tested
2 them, they were weak. But, yet, when he stood up,
3 he had to hold onto me and I felt his grip on my
4 arm.

5 Q. Is that not inconsistent?

6 A. It's consistent.

7 Q. So it's inconsistent?

8 A. Yeah. So it makes me think that there
9 is pain behavior present and that's just a
10 phenomena that physicians have to deal with. And
11 it's not the equivalent of faking necessarily, but
12 it's hard to sometimes decide.

13 Q. Okay. Well, Doctor, I mean, isn't it
14 inconceivable when you asked him to stand up and
15 he grabbed your arm, I mean, he had no idea you
16 were going to be testing his grip strength then,
17 did he?

18 A. No. And that's part of the reason why
19 you do those things because you try to distract
20 people to see if a reflex movement is the same as
21 their volitional movement.

22 Q. Okay. So if you ask him to do a grip
23 strength and he couldn't give you the same effort
24 as when he grabbed your arm, wouldn't that lead
25 you to the conclusion that he's not being accurate



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1 with regard to the nature of the symptoms?

2 A. It can, yes.

3 Q. Can we rule out that this guy just
4 simply is malingering? I mean, can we rule that
5 out?

6 A. Well, he has, you know, some definite
7 injuries that do cause pain and there's no way to
8 look at an MRI and tell somebody how much pain
9 they're going to have because of that. So, again,
10 that's sort of the gestalt of doing medicine.

11 You can look at the MRI and objectively
12 say, well, this doesn't look surgical or

13 everything seems to be in the right place or, yes,
14 you have a degenerative disk but it doesn't look
15 any different than it did six months ago. But you
16 can't always draw a conclusion that that means
17 there's nothing wrong or you shouldn't be hurting
18 more. But, as I say, it seems to me his pain is
19 the number one phenomena and the way he handles
20 that may be different than how somebody else
21 might.

22 Q. Okay. Well, Doctor, if he's not
23 responding to injections, to medications and won't
24 let anyone at physical therapy touch him because
25 he feels like it's making him worse, as you said,



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1 but, yet, his objective findings aren't surgical,
2 what other conclusion is there other than the fact
3 that maybe he's just not being honest with regard
4 to the nature of his pain?

5 A. Well, I mean, that certainly is a
6 possibility. That can be very hard to tell. But,
7 you know, my approach is to tell these people that
8 you've exhaustion all that we can do. We can't do
9 anything more, we can't explain why you're
10 behaving this way, but there has to be an end and
11 I think you've reached maximum medical improvement
12 and that's it.

13 Now, I always preface that with, you
14 know, you're not going to be able to go back to
15 work according to you. You're going to lose your
16 job and when you go to your next job, you know,
17 they're going to ask why you left your last one.
18 The minute you say a workers' comp injury, you're
19 not going to have another job. So, you know, you
20 need to go home and think long and hard about, you
21 know, if things are the way you're presenting them
22 and how this is going to impact the rest of your
23 life.

24 Q. Isn't that exactly what happened,
25 Doctor, in November and December when you said



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1 there was nothing else I could do for you and when
2 Dr. Edwards said, there's nothing else I can do
3 for you, isn't that exactly what took place, that
4 exact comment from your reading of the notes and
5 your opinion --

6 A. I told him there wasn't anything more
7 that I could do neurologically at that point and
8 that he needed to see Dr. Edwards. Now, I think
9 the unfortunate thing was, I had no idea what
10 Dr. Edwards was telling him. But I think he was
11 essentially telling him the same thing. I don't
12 have a surgical treatment for you so you're going

13 to have to go back and see Dr. Healy or the pain
14 management person because your treatment is with
15 them, not with me.

16 Q. Okay. And for the record, Doctor,
17 Dr. Edwards never said he needed to go back and
18 treat with you. Dr. Edwards' opinion was that he
19 needed to get his work restrictions from you. Are
20 you able to provide those?

21 MR. SMITH: I object to the form of
22 the question. It's misstating facts in
23 evidence.

24 BY MR. HAIGLER:

25 A. I can give work restrictions if need



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1 be.

2 Q. And what would those be in your
3 opinion?

4 A. Well, he's not going to be able to lift.
5 I mean, right now or, at least, the last time I
6 saw him, he couldn't stand and walk for any, you
7 know, distance. So right now, they're major work
8 restrictions.

9 Q. Are those work restrictions supported by
10 anything objectively or are those just from his
11 subjective complaints?

12 A. Well, I mean, his disk problems are
13 objective. What's subjective is trying to
14 determine how much pain somebody should have from
15 that. And, as I've said, I think the pain
16 response is a little bit exaggerated, but that's
17 just in my experience.

18 Q. Okay. Thank you, Doctor.

19 REEXAMINATION

20 BY MR. SMITH:

21 Q. Doctor, I'm not going to keep you here
22 all night, I promise you. Just a few questions.

23 A. Yes.

24 Q. You were asked about the EMG tests that
25 were done in 2007. If this man returned to work



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1 following that and worked for four years, does
2 that give you any help in determining what's going
3 on with him now?

4 A. No. It was also of the right leg and
5 his complaints are of the left leg.

6 Q. While you didn't recommend the EEG nerve
7 conduction studies back in October and November,
8 according to this, Dr. Johnson did recommend that
9 on October 18, 2011; is that correct?

10 A. Yes.

11 Q. Okay. And you are still recommending
12 that now?

13 A. Well, as of April, I was recommending
14 it. Back in November, that study wouldn't have
15 changed anything.

16 Q. But you are recommending that for him
17 now?

18 A. Yes.

19 Q. Okay. And you've not been allowed to
20 see him since April or to get the EMG studies
21 done?

22 A. That's the only thing I can assume since
23 I haven't seen him.

24 Q. Okay. You were asked about him being
25 able to drive a truck and I just want to make sure



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1 we're clear about it. You were saying that you
2 would hope that he would be able to do that down
3 the road?

4 A. Yes.

5 Q. You did not think that he was able to do
6 that right now?

7 A. Correct.

8 Q. And just to summarize and make sure I
9 understand, it is your belief that he may well
10 have an exaggerated pain response, but it is not
11 your opinion that he is malingering; is that
12 correct?

13 A. Correct.

14 Q. Okay. Thank you, sir. No further
15 questions.

16 REEXAMINATION

17 BY MR. HAIGLER:

18 Q. In fact, Doctor, didn't you just testify
19 that you weren't sure, that it's hard to tell
20 whether he's malingering or not?

21 A. That's a difficult call.

22 Q. Okay. So it's not your testimony that
23 it's not your opinion that he's malingering, it's
24 that you can't tell; is that fair?

25 A. Oh. I don't think he's malingering. I



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1 just think he has an exaggerated pain response.

2 Q. Fair enough. Thank you, Doctor.

3 (The taking of the deposition concluded
4 at 6:52 p.m.)
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Patient: JONES, GLENN DOB: 6/5/1966 Patient #: V005394580 MRN: M0007930 Date In: 6/6/2011

PHYSICAL EXAMINATION: YS 06/06/2011 07:34

General: Patient in no acute distress. Vital signs noted. Nursing documentation reviewed.

HEENT: **Head/Face:** Normocephalic / atraumatic. **Eyes:** Pupils equal, round and reactive to light. Extraocular motion intact. **Ears:** Left otic canal normal. Left TM is normal. Right otic canal normal. Right TM is normal. **Nose:** Normal external appearance. Septum midline and intact. **Pharynx:** Posterior pharynx is unremarkable.

Neck: Supple with no palpable adenopathy.

Respiratory: No respiratory distress. Lungs clear with equal breath sounds bilaterally.

Cardiovascular: PMI normal. RRR. S1, S2 normal with no murmurs, clicks, gallops or rubs. All distal pulses 2+ and symmetric.

Abdomen: Bowel sounds are normoactive. Abdomen is soft, flat, non-tender, without organomegaly or palpable mass.

Back: Right straight leg lift positive. Paralumbar tenderness is present on the right. Paralumbar spasm is present on the right.

Musculoskeletal/Extremity: Normal joint range of motion; no swelling or deformities. Negative cyanosis, clubbing or edema.

Skin: Skin is warm and dry with normal turgor, without lesions or rashes.

Neurologic: Abnormal motor exam is noted on the right. Deep tendon reflexes hyperreflexic on on left.

Mental Status: awake and alert. Oriented X 3.

Lymphatic: No palpable lymphadenopathy.

Genitourinary: Deferred.

DIAGNOSTIC TEST RESULTS: YS 06/06/2011 10:24

CBC, CMP and UA are not clinically significant

ED COURSE AND TREATMENT: YS 06/06/2011 07:35

Patient was medicated with dilaudid, Flexeril.

CLINICAL IMPRESSION: YS 06/06/2011 10:27

1. Acute Herniated Disc: cervical and lumbar

DISPOSITION: YS 06/06/2011 10:27

Disposition: Patient discharged to home.

Condition: satisfactory, Stable, Improved.

Certified Med Emerg: Patient's condition was emergent. Disposition date/time: 06/06/2011 10:27.

Discussed care with patient and family. Explained findings, diagnosis, and need for follow-up care.

Patient: JONES, GLENN DOB: 6/5/1966 Patient #: V005394580 MRN: M0007930 Date In: 6/6/2011

- SCH

IV Toradol 30 mg initiated at 06/06/2011 10:43 by SCH. [Written][YS]:

Reassessed at 06/06/2011 10:45 [SCH] - IV infusion stopped at 06/06/2011 10:45. - SCH

Decadron 8mg IV initiated at 06/06/2011 10:46 by SCH. [Written][YS]:

Reassessed at 06/06/2011 10:48 [SCH] - IV infusion stopped at 06/06/2011 10:48. - SCH

Disposition 06/06/2011 11:20 SCH

Discharge: Patient left the department at 06/06/2011 11:20. Patient's disposition is: DISCHARGE-HOME. Discharge instructions were given to the patient and given to the patient's significant other. The patient, WIFE verbalizes understanding of the discharge instructions. The condition at discharge is improved. Vital signs taken at 11:20 were: T: 97.2 TAT, P: 70, R: 20, BP: 132/95, O2 Sat: 97, pain level is 9 on a 1-10 scale in the multiple Areas. Pain is unchanged. Medication reconciliation documentation was completed and given to patient and provided along with discharge instructions. RX: LORCET, NORFLEX, AND PREDNSIONE.

WORK NOTE FOR 7DAYS. PATIENT INFORMED TO FOLLOW UP WITH NEUROLOGIST.
VERBALIZED UNDERSTANDING.

PATIENT D/C'ED VIA W/C IN CARE OF WIFE.

SARA HAMER RN All text in this document clearly marked by SCH has been authored and legally signed by use of electronic device. 06/06/2011 11:23



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Lumbar IME Examination

PATIENT ID: 252631

Patient: David Jones
Address: 203 School Street
Bennettsville, SC 29512
DOB: 06/05/1966
Employer: Town of McColl

Date of Service: 09/22/11
Gender: male
Age: 45 years old
Occupation: Fireman

Referring Physician: Workman's comp., ;
Other Physicians: Shealy, Robin, ;

Date of injury/onset:

Date: 01/04/2007
Type: DOA

Chief Complaint: Back and left leg pain for Independent Medical Evaluation.

☒ Low back pain ☒ Leg pain ☒ L ☒ R ☐ Thoracic back pain
☐ Neck pain ☐ Arm pain ☐ L ☐ R

History of Present Illness: This 45 year old white male presents with a chief complaint of back pain and some radiating left leg symptoms emanating from a work related accident that occurred on June 1st. Apparently was trying to pull himself up into his truck and felt a sharp pain in his back and subsequently it radiated into the left buttock and leg. He describes a perception of weakness in the leg and sought care subsequently in the emergency department mainly for what he felt was back pain but also some over heating. He was not admitted to the hospital and has been at home awaiting further care and out of work since this time. He describes difficulty ambulating because of pain in his back and his left leg and states that he has had to use a walker to get around the house. He denies any neurogenic sounding bowel or bladder dysfunction. Denies any weakness in the upper extremities. No specific treatment has been carried out thus far. No recent history of previous back problems but apparently he saw Dr. Alexander here about four years ago for back injury while being a firefighter and states that his symptoms resolved and he has had no problems for the last several years.

Medications: Lisinopril, LYRICA (Dosage: 150MG SIG: 1 TAB PO TID Dispense: 90 Refills: 0), CYMBALTA (Dosage: 60MG SIG: 1 TAB PO QHS WITH FOOD Dispense: 30 Refills: 0), Ultram ER (Dosage: 200 mg SIG: 1 po QHS Dispense: 30 Refills: 0), Celebrex, Flexeril
Allergies: No Known Drug Allergies
Surgical History: Herniorrhaphy

067

Report Date: September 28, 2011 Patient: Jones, David Glenn DOS: 09/22/11

Medical History: Hypertension
Family History: Heart Disease: father; Hypertension: mother; Parents: Father-Living; Parents: Mother-Living
Social History: Alcohol use: None; Drug Use: Never; Employment: Full Time; Marital Status: Married; Tobacco: Never Smoked

REVIEW OF SYSTEMS:

Review of General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT;
Systems: musculoskeletal, skin and endocrine systems are normal except what is noted below:
Cardiac: High blood pressure; EENT: Sinus Problems

PHYSICAL EXAM:

Vitals: HEIGHT: 6'0" WEIGHT: 225 lbs 0 oz BMI: 30.5
Appearance: No acute distress
Psychiatric: Mood and affect were appropriate.
Head: Normocephalic, atraumatic.
Skin: Clean, dry, no lesions, no rashes.
Neuro: Alert and oriented x 3.

LUMBAR FOCUSED EXAM: Pleasant white male in no acute distress. He gave an appropriate effort on examination but did appear to exhibit some chronic pain behavior. Waddell signs were 2/5. Normal lumbar lordosis is noted. Muscular tightness is prominent throughout the lumbar region with some mild tenderness here and into the left sciatic notch. Flexibility is markedly restricted in all planes secondary to his report of discomfort. Motor strength is 5/5. Reflexes are 2+ symmetric. No dermatomal paresthesias. Straight leg raising is positive on the left side for posterior thigh pain and absent on the right side. Gait is limited due to his report of discomfort.

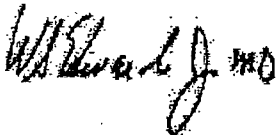
Xrays: X-rays of the lumbar spine showed no obvious abnormality.
MRI:

ASSESSMENT:

Diagnosis: -Lumbar strain/sprain. Rule out lumbar disc herniation.

PLAN:

He appears to have sustained a soft tissue injury but because of some radiating symptoms into the leg and his significant concern as well as the significant delay in formal evaluation, MRI scan should be obtained to clarify any underlying pathology and help facilitate aggressive rehab efforts. Though the patient is being seen as an Independent Medical Evaluation today I will be happy to enter into a patient/physician relationship with him, obtain the MRI scan and follow him up if the involved parties desire.



W. S. Edwards, M.D.
Spine Surgeon
Pee Dee Spine Center

This document was electronically signed on 09/22/11



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MRI Review

PATIENT ID: 252631

PATIENT: David Jones
DOB: 06/05/1966
Employer: Town of McColl

Date of Service: 10/11/11
Age: 45 years old
Occupation: Fireman

Referring Physician: Workman's comp.,
Other Physicians: Shealy, Robin, ;

Allergies: No Known Drug Allergies
Current Meds: Lisinopril, LYRICA (Dosage: 150MG SIG: 1 TAB PO TID Dispense: 90 Refills: 0),
CYMBALTA (Dosage: 60MG SIG: 1 TAB PO QHS WITH FOOD Dispense: 30 Refills: 0),
Ultram ER (Dosage: 200 mg SIG: 1 po QHS Dispense: 30 Refills: 0), Celebrex, Flexeril

MRI Review:

MRI scan was personally reviewed and discussed with the patient in detail. This study demonstrates mild disc bulging at L4-5 but no significant compressive pathology and no surgery.

Plan:

Epidural steroid injection at L4-5 and a course of physical therapy should be the definitive management of this mild disc bulging at L4-5. He has already slipped into some de-conditioning and aggressive therapy after his epidural will be required before him reaching maximum improvement. Recheck in four weeks.

Diagnosis: -Lumbar strain/sprain. Rule out lumbar disc herniation.

W. S. Edwards, M.D.
Spine Surgeon
Pee Dee Spine Center

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Fax Created: Dated 10/13/2011 9:57:00 AM

Dr. Robin Shealy



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Patient Name: David Glenn Jones

DATE: 10/11/11

(X) UNABLE TO RETURN TO WORK-UNTIL FURTHER NOTICE

() RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS ON:

() No Lifting/Carrying over	lbs.	() No repetitive bending
() No sitting over	hrs./day	() No repetitive stooping
() No standing over		() Cannot reach above shoulder
() No prolonged walking		() No work involving use of hand
() No Climbing		() No repetitive squatting
() No Kneeling		() No repetitive crawling
() No repetitive twisting		() No pushing or pulling

Other:

Return Appointment: 4 WEEKS

May return to work with no restrictions on

Willie S. Edwards, M.D.

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Follow Up Examination

PATIENT ID: 252631

PATIENT: David Jones
DOB: 06/05/1966
Employer: Town of McColl

Date of Service: 10/27/11
Age: 45 years old
Occupation: Fireman

Referring Physician: Workman's comp., , ,
Other Physicians: Shealy, Robin, ,

Date of injury/onset:

Date: 01/04/2007
Type: DOA

Chief Complaint: Increased discomfort with spinal headache after ESI performed earlier in the week.

History of Present Illness: He has been severely uncomfortable with postural headache and some swelling in his back.

Allergies: No Known Drug Allergies
Current Meds: VICODIN (Dosage: 5MG SIG: 1 PO Q 6 HOURS PRN PAIN Dispense: 40 Refills: 0),
Lisinopril, LYRICA (Dosage: 150MG SIG: 1 TAB PO TID Dispense: 90 Refills: 0),
CYMBALTA (Dosage: 60MG SIG: 1 TAB PO QHS WITH FOOD Dispense: 30 Refills: 0),
Ultram ER (Dosage: 200 mg SIG: 1 po QHS Dispense: 30 Refills: 0), Celebrex, Flexeril

PHYSICAL EXAM:

Vitals: No data for Vitals
Appearance: No acute distress.
Psychiatric: Mood and affect were appropriate.
Head: Normocephalic, atraumatic.
Skin: Clean, dry, no lesions, no rashes.
Neuro: Alert and oriented x 3.

FOCUSED EXAM:

No focal neurologic deficit. No external sign of swelling or fluctuance.

X-ray: None taken today.

ASSESSMENT:

Diagnosis: -Status post epidural steroid injection with spinal headache. Disc protrusion L4-5.

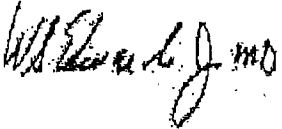
PLAN:

Likely has spinal headache from the epidural steroid injection and will send him for an MRI scan to evaluate this matter.
Follow up after that study.

Report Date: November 17, 2011 Patient: Jones, David DOS: 10/27/11

Prescription: VICODIN (Dosage: 5MG SIG: 1 PO Q 6 HOURS PRN PAIN Dispense: 40 Refills: 1 Method: Print)

ADDENDUM: Patient was sent for MRI scan earlier and I have reviewed this with he and his wife this afternoon. It does show fluid collection posteriorly compatible with spinal headache/CSF leak. Blood patch should take care of his symptoms and he was reassured in this regard. He is to be scheduled as soon as possible and follow up with us in 2-3 weeks.



W. S. Edwards, M.D.
Spine Surgeon
Pee Dee Spine Center

This document was electronically signed on 10/27/11

PDF GENERATED BY DATE: 11/23/2011 2:57:40 PM

Dr. Robin Shealy

1/10/2012 10:05 AM FROM: Fax TO: 17707189490,,, PAGE: 002 L J03



**Pee Dee
Orthopaedic
Associates, PA**

W.S. (Bill) Edwards, Jr., M.D. * Rakesh P. Chokshi, M.D.
Patrick K. Denton, M.D. * Anthony W. Alexander, M.D. * Barry L. Clark, D.O.
Nigel A.R. Watt, M.D. * Robert E. Elvington, Jr., M.D. *
Matthew D. Welsch, M.D. * Jason B. O'Dell, M.D. * Dewey N. Ervin, M.D. *

901 E. CHEVES ST., SUITE 100 - FLORENCE, SC 29506-2769
1580 FREEDOM BLVD., SUITE 100 - FLORENCE, SC 29505
(843) 662-5233 - FAX (843) 678-9003 - WWW.PDOA.COM

Follow Up Examination

PATIENT ID: 252631

PATIENT: David Jones
DOB: 06/05/1966
Employer: Town of McColl

Date of Service: 12/15/11
Age: 45 years old
Occupation: Fireman

Referring Physician: Workman's comp., ;
Other Physicians: Shealy, Robin, ;

Date of injury/onset:

Date: 01/04/2007
Type: DOA

Chief Complaint: Back pain and weakness in both legs.

History of Present Illness: This 45 year old gentleman has had worsening symptoms of both pain in the back and weakness in the legs that has been poorly characterized. Previous imaging studies from October 27th showed very minimal degenerative changes at L4-5 with no compressive pathology and he had inpatient evaluation by Dr. Joseph Healy from neurology and he was unable to find any source for the symptoms that he describes as weakness in the legs and back pain. Wife states that his activity level is very low and he presents in a wheelchair today. He describes the onset of his symptoms to a work related injury back in June. Epidural steroid injection was associated with some evidence of CSF leak and it was not felt that this led to any neurological issue.

Allergies: No Known Drug Allergies

Current Meds: Vicodin (hydrocodone-acetaminophen) (Dosage: 5-500 mg Tablet SIG: Take 1 tablet Oral every six hours as needed for pain 1 Dispense: 40 Refills: 1 Note: Take one hour prior to appointment), Lisinopril () (Dosage:), LYRICA () (Dosage: 150MG SIG: 1 TAB PO TID Dispense: 90 Refills: 0), CYMBALTA () (Dosage: 60MG SIG: 1 TAB PO QHS WITH FOOD Dispense: 30 Refills: 0), Ultram ER () (Dosage: 200 mg SIG: 1 po QHS Dispense: 30 Refills: 0), Celebrex () (Dosage:), Flexeril () (Dosage:)

PHYSICAL EXAM:

Vitals: HEIGHT: 6'0" WEIGHT: 225 lbs 0 oz BMI: 30.5
Appearance: No acute distress.
Psychiatric: Mood and affect were appropriate.
Head: Normocephalic, atraumatic.
Skin: Clean, dry, no lesions, no rashes.
Neuro: Alert and oriented x 3.

FOCUSED EXAM:

Unchanged from before. Reflexes brisk throughout the upper and lower extremities. No motor weakness is noted. No

073

1/10/2012 10:05 AM FROM: Fax TO: 17707189490,,, PAGE: 003 G. 003

Report Date: January 10, 2012 Patient: Jones, David DOS: 12/15/11

obvious clonus. He is able to stand without assistance though states that his legs are weak with ambulating.

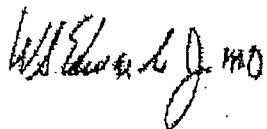
X-ray: None taken today.

ASSESSMENT:

Diagnosis: -Minimal disc protrusion L4-5

PLAN:

Patient was reassured that there is no evidence of pathology in the lumbar spine that would be amenable to any surgical intervention. He appears to have some mild significant issues as it relates to his legs and he plans to follow up with Dr. Healy but review of his workup while in the hospital failed to show any obvious problem that could be dealt with either medically or surgically. Little else to offer to this gentleman and they understand he is being discharged from my care at this time.



W. S. Edwards, M.D.
Spine Surgeon
Pee Dee Spine Center

This document was electronically signed on 12/15/11

Fax Created: Dated: 12/17/2011 9:00:04 AM

Dr. Robin Shealy



Pee Dee
Orthopaedic
Associates, PA

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DOCTORS NOTE

PATIENT ID: 252631

PATIENT: David Jones
DOB: 06/05/1966

Date of Service: 01/12/12
Age: 45 years old

Received inquiry regarding impairment. This gentleman has minor disc protrusion at L4-5 and there is a 5% impairment of his spine based on this injury. Use of good body mechanics and careful lifting techniques are emphasized. It is noted that he has been evaluated for some type of neurological symptoms and it is possible that there may be some limitations placed on him by this neurologic condition and I will defer to that specialist regarding any impairment or restrictions.

Willie S. Edwards, M.D.

This document was electronically signed on 01/12/12

(800) 231-7893 (F)

DATE: October 18, 2011

PATIENT: # 9761 David G. Jones

SURGEON: Bruce Johnson, M.D.

FACILITY: McLeod Regional Medical Center

OPERATIVE NOTE

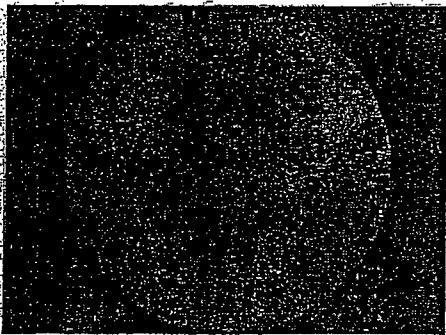


Photo 1.

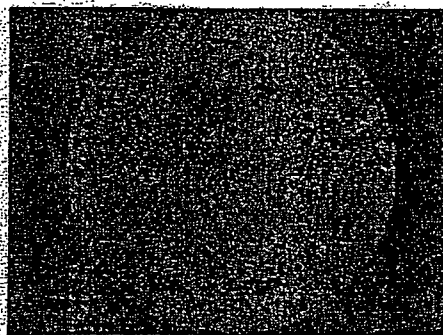


Photo 2.

PROCEDURE PERFORMED: L4-5 interlaminar epidural steroid injection with left paramedian approach.

INDICATIONS FOR PROCEDURE: Lumbar radiculitis and lumbar degenerative disc disease.

SUMMARY OF PROCEDURE: After the risks, benefits, and alternatives were discussed with the patient and a consent form obtained, the patient was taken back to the fluoroscopy suite where he was placed prone on the table. The procedural timeout and patient identification x2 was done. The low back was sterilely prepped and draped in the usual fashion. The fluoroscopy was used to identify the L4-5 interlaminar space from a left paramedian approach. Then, 1% lidocaine local anesthetic to the skin and subcutaneous tissue was applied.

An 18-gauge Weiss needle was advanced under intermittent fluoroscopic guidance to rest at the L4-5 interlaminar space from the left-paramedian approach. After negative aspiration for blood or CSF, 1 cc of Omnipaque contrast showed very good spread going from L4-5 down to L5-S1, some tracing up towards L3-4 as well. This was verified in both AP and lateral views. Negative aspiration once again. Then, 80 mg of triamcinolone with 3 cc of preservative free saline was injected. The needle was removed. Hemostasis was appreciated. Band-Aids were placed.

RT/DOCUMENTATION
MED IMAGESSM
(33PEJX)

DATE: October 18, 2011

Dr. Johnson

PATIENT: #1159761 David G. Jones

The patient was aided to over to a stretcher and then back over to day surgery with no further complications. Thank you once again for this excellent patient.

Bruce Johnson, M.D.

DD: 10/18/2011 09:36

DT: 10/19/2011 05:34

Transmission Date: 10/18/2011

cc: Willie S. Edwards, Jr., M.D.

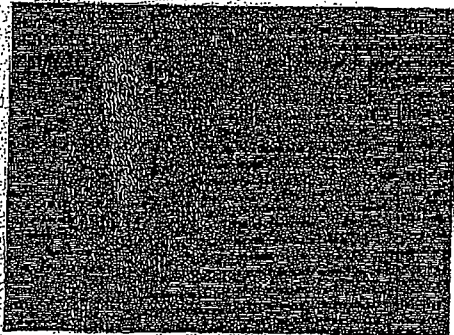


Photo 3.

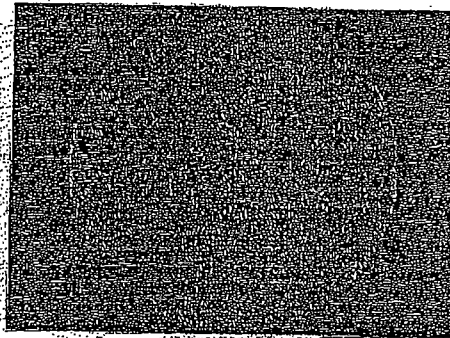


Photo 4.

BJJ

Page 2 of 2

McLeod Regional Medical Center

Pain Management Center

Post Office Box 100551

Florence, South Carolina 29501-0551

PATIENT NAME: DAVID JONES
MED REC NO: 9761
CHART NO: 14845
DATE SEEN: October 18, 2011
PHYSICIAN DICTATING: BRUCE JOHNSON, M.D.

REQUESTING PHYSICIANS: Dr. Willie S. Edwards, Jr., and Dr. Robert J. Healy

HISTORY OF PRESENT ILLNESS: The patient is a very pleasant 45-year-old gentleman who comes to the Anesthesia Pain Clinic with ongoing low back pain started on June 1st. He was getting into his truck after he had been working. He states that he got some heat exhaustion, was trying to pull himself back into the concrete truck. Pain started hard a couple of days after that. Apparently he went to the emergency department and was treated. The patient denies any further treatment up until October 13, 2011, when he saw Dr. Willie Edwards. He reports not seeing a family practice physician or anyone associated with this. Basically, he states he cannot walk. He is having to use a walker at home. He can hardly stand. He is having to use a wheelchair to get around at times especially here in the hospital. Most of the pain starts in his low back, into the tailbone and above. He states that it goes into both of his hips, goes down both of lower extremities. It is a hard type pain. It is difficult for him to walk. The left is worse than the right. He denies any bowel or bladder problems. He is complaining of weakness in his left leg. It is worse with standing or walking. It is better with lying flat. He denies any bleeding disorders or fever, chills or sweats. The patient has an MRI of the lumbar spine that shows some minimal degenerative disc changes at the L4-5 location without disc space narrowing, disc herniation or annular tear. The remaining four lumbar and distal three thoracic segments are normal. He is being seen for possible lumbar epidural steroid injection.

PAST MEDICAL HISTORY: Hypertension.**PAST SURGICAL HISTORY:** Hernia.**PAST GENERAL ANESTHETIC:** No anesthetic related complications.**FAMILY HISTORY:** Hypertension.**SOCIAL HISTORY:** He denies any alcohol, drugs or tobacco.**MEDICATIONS:** Motrin and over-the-counter.**ALLERGIES:** None.

DAVID JONES
October 18, 2011
PAGE TWO

REVIEW OF SYSTEMS: A 14-system review of systems is otherwise negative except for history of present illness. The patient denies any fevers, chills, sweats, nausea, vomiting, shortness of breath, weakness or bowel or bladder symptoms.

PHYSICAL EXAMINATION: The patient is alert and oriented x3. He is pleasant, cooperative, and in no acute distress. Temperature is 98.2, blood pressure 132/74, pulse is 88, and respiratory rate is 16. He is well developed. Neck is supple, no masses. Trachea is midline. No thyroid tenderness is appreciated. Chest is clear to auscultation. Normal chest excursion. No retractions. Cardiovascular: Regular rate and rhythm. Pulses are equal and present bilaterally. Musculoskeletal: The patient cannot hardly stand. He gets from a seated position to a standing position very slowly. He is wobbly on his legs. He cannot walk. He is in a wheelchair coming up to the clinic today. With hip flexion with him in a seated position 5/5 muscle strength and with knee extension he has 5/5 muscle strength on the right hand side. On the left hand side he has 4/5 muscle strength with hip flexion and the knee extension. Deep tendon reflexes are 1+ bilaterally. Sensation appears to be intact. Skin shows no induration, no edema, no signs of infection or inflammation. He does have tenderness to palpation diffusely over his lumbosacral paraspinal muscles some go into the sacral region. Negative SI joint tenderness. Negative straight leg raise. Negative Patrick's maneuver.

ASSESSMENT:

1. Lumbar radiculitis.
2. Lumbar degenerative disc disease.

PLAN: Basically, I think some of his pain is out of proportion to what his MRI shows me. I am not exactly sure what is going on with this patient. I do not know if he herniated a disc and now some of it is kind of gone back into place and he had some nerve irritation from that. However, Dr. Edwards has requested an L4-5 epidural steroid injection. We will proceed with this today.

IMAGECARE, LLC

710 RABON ROAD
COLUMBIA, SC 29203
803-462-3680

Name: Jones, David
Patient ID: 157969
DOB: 06/05/1966

Acc#: 605055
Patient Phone #

Exam Date 10/11/2011
Exam MRI L-spine w/o contrast
Reason: LUMBAGO (724.2) | PAIN IN
LOWER BACK (724.2)
Referrer: Alexander, Anthony

PROCEDURE: MRI lumbar spine without contrast, initial exam

CLINICAL HISTORY: Low back pain

TECHNIQUE: Sagittal and axial T1 and T2 images and coronal T1-weighted images were obtained.

FINDINGS: There are 5 lumbar vertebral segments. Minimal degenerative changes of the L4-5 disc are noted with a mild symmetric circumferential diffuse bulge of the annulus without disc space narrowing, disc herniation or annular tear. No degenerative facet or ligamentous changes at the L4-5 level are noted. The remaining 4 lumbar and distal 3 thoracic discs and vertebral segments are normal in appearance. No intradural, retroperitoneal, or surrounding paraspinal soft tissue abnormalities are noted. The proximal femurs and hips and visualized soft tissues and osseous structures of the pelvis and sacrum appear normal and coronal T1-weighted images.

IMPRESSION: (1) minimal degenerative disc changes at the L4-5 level are noted without disc space narrowing, disc herniation or annular tear.
(2) the remaining 4 lumbar and distal 3 thoracic discs and vertebral segments as well as the hips, pelvis and sacrum are normal in appearance.

Martin P. Dommers, M.D.
Electronic Signature
Date Finalized: 10/11/2011

DD DT:10/11/2011

57726

R. JOSEPH HEALY MD, P.A.

R. JOSEPH HEALY, MD
805 PAMPLICO HIGHWAY, SUITE A130
FLORENCE, SC 29505
P-(843) 664-9200
F-(843) 664-9202

OFFICE NOTE
November 10, 2011

RE: David G. Jones
57726

David returns today for a follow up. I had him at MRMC last week with transient alteration in mental status which was of uncertain etiology. I could not find any definite problems. Specifically we found no evidence of demyelinating disease or no cardiac arrhythmia. It did not sound as though he had a TIA. He does have disc problems in the low lumbo-sacral spine without definite radicular findings and he also has a disc at C5-6 lateralizing to the right with no definite radicular problems.

His main complaint seems to be pain. He has no bladder or bowel dysfunction. During hospitalization he maintained that he could not walk but he is able to stand. The only possible etiology I felt might be present is a significant response to pain from a degenerative disc. This seemed to be more of a mechanical low back phenomena rather than any cord involvement or radicular involvement.

At this point I have explained to him and his wife that I cannot find any definite neurological problems. He does have a Dandy-walker malformation in the posterior fossa but I have explained to him that this is a congenital and not an issue.

I will be happy to see him back but at this point I really don't have anything neurologic to recommend.

I did place him on Voltaren 75mg p.o. qd to take P.C.

Thank you for your kind referral.

R. Joseph Healy MD
RJH/nb

cc: David Smith, MD / Fax # 777-5976 ✓
W. S. Edwards Jr., MD / Fax # 678-9003 ✓

094

57726

R. JOSEPH HEALY MD, P.A.

R. JOSEPH HEALY, MD
805 PAMPLICO HIGHWAY, SUITE A130
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OFFICE NOTE

April 15, 2012

RE: David Jones
57726

David returns today for a follow up. This is a 45 Y/O white male who I admitted to MRMC in October of 2011 with altered mental status and a few other things. He had a disease without radiculopathy and a small cervical disc at C5-6 lateralizing to the right without radiculopathy. He had been injured after an episode of heat exhaustion in June of 2011 and then subsequently while making a delivery of concrete he fell and popped in my low back and had low back pain and leg pain since.

In the hospital we found no explanation for the altered mental status and there was no evidence of demyelinating disease or cardiac arrhythmia or orthostasis.

It has always seemed to me as if he had mechanical low back pain and that movement such as standing or turning over in bed which exacerbates his pain causes a likely a vasovagal type response which causes his presyncope and his legs begin to tremble and he has trouble supporting his weight. He tells me today after not being in the office for 4 months that he had 3 syncope episodes in January although I did not hear from him. He denies palpitations and chest pain. A majority of his day is spent sitting or lying. His bladder works fine but he suffers from constipation. He is on no medications for the past 3 months after running out of Vicodin and Flexeril.

He still complains of his low back and bilateral leg pain which he states "goes to the foot".

On exam his vital signs are stable. There are no orthostatic changes. Chest clear and cardiovascular exam reveals regular rhythm with no murmur. Straight leg raising and bent leg pull both cause low back pain. His reflexes are symmetric in upper and lower extremities and there are no pathologic reflexes. Sensory exam is intact throughout. He is able to stand but demonstrates a lot of pain behavior while doing this.

IMPRESSION: I believe predominately this patient has mechanical low back pain. His cervical disc is not an issue. In muscle strength above the grips are very weak which

095

May. 15. 2012 10:23AM

DR

eph Hea'y MD

No. 2581 P. 3/3

57726

Page 2
April 5, 2012

RE: David Jones
57726

think is more functional. I noticed that when he stands and holds on to my arm his grip is good. I believe at this point we need to follow up with imaging of the lumbosacral spine with a MRI and electrophysiologic studies of the lower extremities. While he states he had a closed head injury with one of his falls and episode of altered mental status I have not previously found any problems but I am going to repeat his EEG.

I am going to start him on ~~Oralise~~ for pain and am giving him a starter kit with 300mg ~~once a day~~ and side effects have been explained. He has had 3 epidurals in the past which he doesn't think were very beneficial. My impression is that he is not a good surgical candidate unless there has been change in his imaging. MRI will be tell tale.

Thank you for your kind referral.

R. Joseph Healy, MD

R. JOSEPH HEALY, MD
RJH/nb

cc: W. S. Edwards Jr., MD
901 East Cheves Street # 100
Florence, SC 29506
Fax #.678-9003

096

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1106685

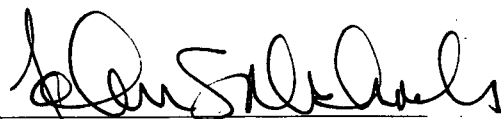
David Glenn Jones, Employee/Claimant, ... Appellant,

v.

Warden and Smith Concrete, Employer,
and Bridgefield Casualty Insurance
Company c/o Summit Holdings, Inc., Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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John S. Nichols, SC Bar # 4210
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THOMPSON & DELGADO
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jsnichols@bntdlaw.com

February 18, 2014

Attorneys for Appellant

RECEIVED

FEB 18 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No. 1106685

David Glenn Jones, Employee/Claimant, ... Appellant,

v.

Warden and Smith Concrete, Employer,
and Bridgefield Casualty Insurance
Company c/o Summit Holdings, Inc., Carrier, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served
counsel for the Respondents with a copy of the *Record on Appeal* by mailing a copy of
the same by United States Mail with first class postage prepaid to the following address:

Nicolas L. Haigler, Esquire
Sowell Gray
P.O. Box 11449
Columbia, SC 29211



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

February 18, 2014
Columbia, South Carolina

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SC Court of Appeals