

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2013-002487

Commerce and Industry Insurance Company, ...Appellant,

v.

Second Injury Fund of South Carolina, ...Respondent.

RECORD ON APPEAL

Nicholas A. Farr, Esquire
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-5347

AND

Latonya D. Edwards, Esquire
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3790 Fernandina Road, Suite 103
Columbia, South Carolina 29210
(803) 750-2214

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

INDEX

Commerce and Industry Insurance Company

v.

Second Injury Fund of South Carolina

1. Decision and Order of the South Carolina Workers' Compensation Commission (June 20, 2011)	1
2. Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission (December 29, 2011)	11
3. Form 4, Judgment in a Civil Case, Horry County Court of Common Pleas (October 14, 2013)	18
4. Employer/Carrier's Pre-Hearing Brief and APA submissions with Exhibits (April 15, 2011)	20
5. Second Injury Fund's Amended Pre-Hearing Brief and APA submissions with Exhibits (April 25, 2011)	99
6. Employer/Carrier's Request for Commission Review (Form 30) with Exceptions (July 5, 2011)	108
7. Employer/Carrier's Notice of Appeal and Petition for Judicial Review (January 27, 2012)	113
8. Transcript of Hearing before the South Carolina Workers' Compensation Commission (May 2, 2011)	120
9. Transcript of Hearing, Court of Common Pleas, Horry County (October 9, 2013)	137
10. Certificate of Counsel (May 8, 2014)	159

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
SCWCC NO. 0500022; SCSIF NO. 119295
COMMERCE AND INDUSTRY INSURANCE COMPANY
V.
SOUTH CAROLINA SECOND INJURY FUND

(In Re Daniel Haidet, Employee v. Avcraft Support Services, Employer)

HEARING: May 2, 2011 in Columbia, South Carolina.

APPEARANCES: Avcraft Support Services, Employer and Commerce
& Industry Insurance Company, Carrier represented
by TJ Hadley of Gallivan White & Boyd,
Greenville, South Carolina.

The South Carolina Second Injury Fund represented
by Latonya Dilligard Edwards, Esquire, of Boykin
& Davis, LLC, Columbia, South Carolina.

PURPOSE OF HEARING: To determine issues as set forth in the Forms 54 and
55.

OPINION AND AWARD: By Susan S. Barden, Commissioner

DATE FILED: June 20, 2011

PRELIMINARY MATTERS

Carrier had two objections to the Fund's APA submissions. Carrier's first objection was that the Fund's amended prehearing brief was not submitted timely and further, that the amended APA submission included unsworn and unsigned e-mail correspondence from Claimant, which could not be authenticated. Under Commission Regulation 67-612 (E), failure of non moving party to submit reports at least ten (10) days prior to the hearing may result in its exclusion. It was noted that the Fund's original prehearing brief was submitted timely. The e-mail correspondence between the Fund and Claimant was admitted into evidence over the objection of Carrier's attorney.

ADMINISTRATIVE PROCEDURE ACT (APA) SUBMISSIONS

By Carrier:

<u>APA NO.</u>	<u>ITEM</u>	<u>DATE</u>	<u>PAGES</u>
1	Grand Strand Regional Medical Center	01/01/05 - 03/11/05	1-6
2	Strand Orthopaedic Consultants	01/05/05 - 06/24/08	7-21
3	Long Bay Diagnostic Imaging	04/26/05 - 8/03/06	22-28
4	The Center for Pain Relief, LLC	05/12/05 - 04/17/06	29-35
5	Grande Dunes Surgery Center	05/20/05 - 12/14/05	36-41
6	Dr. C. Gregory Kang	08/22/05 - 09/08/05	42-44
7	Adam & Wilkinson	12/06/05	45-56
8	Coastal Interventional Pain Associates	05/17/06 - 08/18/08	57-68

EXHIBITS

A	Notice of Possible Second Injury Form	11/22/10	69
B	First Report of Injury Form	01/03/05	70
C	Employer Knowledge Affidavit	10/05/10	71
D	Medical Questionnaire of Dr. Scott Sauer	11/17/10	72
E	Medical Questionnaire of Dr. Gregory Kang		73

By the Second Injury Fund:

1	E-mail correspondence between SIF and Claimant	4/20/2011	1-3
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STIPULATIONS

The parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission had jurisdiction to hear the case.
2. Venue was proper in Richland County.
3. Notice was timely and proper.
4. The Commission's file became a part of the record with the exception of self-serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

This is a claim for reimbursement from the South Carolina Second Injury Fund (the Fund) by Avcraft Support Services, Inc., Employer, and Commerce & Industry Insurance Company, Carrier (collectively "Carrier") pursuant to S.C. Code Ann. § 42-9-

400. Carrier alleged that they incurred substantially greater liability for compensation and medical benefits when employee Daniel Haidet's (Claimant) prior back problem was either aggravated by or combined with his January 1, 2005 work related back injury. Carrier further alleged that Claimant's prior back problem was a hindrance or obstacle to employment. The Fund argued that Carrier did not have knowledge of Claimant's prior back injury and alternatively, if Carrier had knowledge, Claimant's prior back problem was neither permanent nor a hindrance to employment and that Carrier was not entitled to reimbursement pursuant to S.C. Code Ann. § 42-9-400.

EVIDENCE OF THE CASE

On January 1, 2005, Claimant sustained an injury by accident to his left elbow and back during the course of his employment with Avcraft Support Services, Incorporated. On the date of his injury, Claimant presented to Grand Strand Regional Medical Center and was diagnosed with a left elbow fracture, and back and hip contusions. Carrier APA p.1. Claimant's treatment plan was an arm splint and sling and prescription medication for pain. Carrier APA p.1. On January 10, 2005, Claimant presented to Stand Orthopaedic Consultants complaining of back pain. Carrier APA p.8. Claimant's diagnosis was lumbar and thoracic strain and his treatment plan included physical therapy, prescription medication, thoracic and lumbar MRIs and remaining out of work until he is reevaluated. Carrier APA pp.8-9. On or about January 2005, Claimant underwent open reduction and internal fixation (ORIF) of the left elbow. Carrier APA p.10. Claimant was referred to physical therapy, was instructed to do range

of motion elbow exercises and a three week recheck was recommended. Carrier APA p.10.

On February 11, 2005, Claimant returned to Strand Orthopaedic Consultants to follow up with his back. Carrier APA p.11. Claimant's physical examination revealed tenderness and some discomfort. Claimant received an injection for pain and his treatment plan included a continuation of physical therapy, follow up as needed and the possibility of an MRI if he does not improve. Carrier APA p.11. On February 22, 2005, Claimant followed up regarding his left elbow and noted continued pain. Carrier APA p.13. Claimant's assessment noted failed hardware from the January 2005 ORIF surgery and a surgical revision was recommended. Carrier APA p.13.

On March 11, 2005, Claimant underwent surgical revision of the previous left ORIF surgery. Carrier APA pp.4-5. On March 17, 2005, Claimant presented to Strand Orthopaedic Consultants for a post operative appointment. Carrier APA p.14. Claimant's physical examination revealed well healed wounds and increased range of motion in his elbow. Carrier APA p.14. Claimant's treatment plan included a posterior arm splint, fitting for an elbow brace and therapy to assist with range of motion. Carrier APA p.14.

On April 8, 2005, Claimant returned to Strand Orthopaedic Consultants for follow up of his back pain. Carrier APA p.15. Claimant's assessment was thoracic and lumbar pain and his treatment plan included a lumbar spine MRI to determine the pathology. Carrier APA p.15. Claimant's April 26, 2005 follow up regarding his elbow revealed decreased elbow pain, improvement of symptoms, and good elbow alignment. Carrier APA p.16. Claimant's treatment plan included range of motion strengthening, light duty,

continuation of physical therapy and returning for a recheck in six weeks. On April 29, 2005, Claimant's thoracic spine MRI was unremarkable and Claimant's lumbar MRI revealed anterior wedging and some degenerative joint disease at L5-S1. Carrier APA p.17. Claimant was not a surgical candidate and received a referral for other treatment options. Carrier APA p.17. On May 12, 2005, Claimant presented to the Center for Pain Relief and was diagnosed with acute mid thoracic pain. Carrier APA pp.29-30. Claimant's wedging deformity at T12-L1 was noted to have been aggravated by the work injury. Carrier APA p.30.

On May 20, 2005, Claimant presented to Grande Dunes Surgery Center for consultation of his back pain. Carrier APA p.36. Claimant's diagnosis was thoracic radiculitis and his treatment plans included a series of epidural steroid injections, which began in June 2005 and concluded in December 2005. Carrier APA pp.36-40.

Claimant's elbow continued to improve and on July 7, 2005, he was deemed at maximum medical improvement with respect to his elbow and released with an eighteen (18%) percent left upper extremity impairment rating. Carrier APA pp.18-19. On August 22, 2005, Claimant was deemed at maximum medical improvement with respect to his back and received six (6%) percent impairment to the thoracic spine. Carrier APA p.43. Claimant was referred for a functional capacity evaluation, which ultimately revealed that he could return to medium level work with a twenty (20) pound lifting restriction. Carrier APA pp.43-44. On December 6, 2005, Claimant's vocational consultant opined that Claimant would not be able to consistently attend work or meet quality standards and expectations at work due to his chronic back pain. Carrier APA pp.55-56.

On May 17, 2006, Claimant presented to Coastal Interventional Pain Associates for consultation of his back pain. Carrier APA p.57. Claimant's vital signs were stable, there was no evidence of impairment and he had a normal gait. Carrier APA p.57. Claimant's treatment plan included medication for pain management. Carrier APA p.57. Claimant continued to utilize medication management for his pain and continued to follow up with Coastal Interventional Pain Associates. Carrier APA pp.58-63 and 65-68.

On October 5, 2010, Avcraft's Human Resources Manager signed a statement indicating that Claimant told her he had been taking medication for back pain prior to his January 1, 2005 work injury. Carrier APA p.71. On November 17, 2010, Dr. Scott Sauer completed a questionnaire supporting Second Injury Fund reimbursement. Carrier APA p.72. Dr. Gregory Kang also completed a questionnaire supporting Second Injury Fund reimbursement. Carrier APA p.73.

FINDINGS OF FACT

Based upon the foregoing, to include review of the Commission's file and all evidence submitted, I make the following findings of fact based upon the preponderance of the reliable, probative, and substantial evidence:

1. On January 1, 2005, Claimant sustained an injury by accident to his back and elbow when he fell eight (8) feet from a ladder onto the concrete during the course of his employment with Avcraft Support Services, Incorporated. This finding is based upon the records in evidence.

2. Claimant is alleged to have had prior back problems. However, the only reference to the prior back problem is contained in the knowledge affidavit of Carrier,

which is signed more than five (5) years post injury and is not notarized or sworn, which puts the knowledge statement on the same footing as the Fund's e-mail, to which I assigned no weight in this matter. This finding is based upon Carrier APA p.71.

3. Nothing contained in the medical reports indicates that Claimant had prior back problems. In fact, the only reference to prior back problems is the previously cited knowledge affidavit, which was not notarized. This finding is based upon Carrier APA p.71.

4. Claimant's preexisting condition was not a hindrance to his employment. Claimant's job history involved heavy labor as an aircraft mechanic; therefore, I find that if he had prior back problems in his heavy labor job it was not serious enough to constitute a hindrance to his employment. This finding is based upon all evidence in the record.

5. Claimant's x-ray nine (9) days post injury notes some "mild" degenerative disc disease at L5-S1 but no fractures or lesions. Claimant's post injury assessment, which was completed more than a year post injury, reveals "no evidence of impairment." This finding is based on Carrier APA pp.8 and 57.

6. The medical questionnaires must be supported by the medical evidence in the record. Here, the medical evidence does not support the positive checklist responses from the treating physicians in the case. I give greater weight to the evidence in the record on the issue of hindrance and find that the medical evidence indicates that Claimant's preexisting condition was not a hindrance to his employment.

7. I find that the cause of Claimant's back problems was the eight (8) feet fall from the ladder onto the concrete. Claimant was released with a six (6%) percent

impairment rating to the back with no surgery. This finding is based on the medical evidence in the records, especially Carrier APA pp.1-9, 11-12, 15, 17, and 29-43.

8. Carrier failed to meet its burden in establishing all necessary elements for partial reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund.

CONCLUSIONS OF LAW

Based upon the foregoing and applicable statutory and case law, I conclude as a matter of law:

1. Reimbursement from the South Carolina Second Injury Fund is governed by S.C. Code Ann. § 42-9-400.

2. The right of Carrier to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

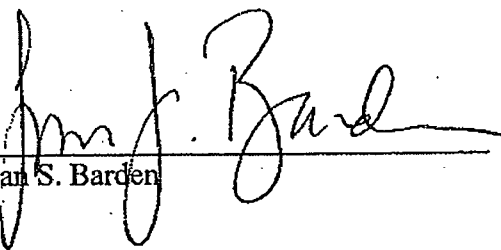
3. To qualify for reimbursement, Carrier had the burden to prove that Claimant's prior back problem was serious enough to be a hindrance or obstacle to Claimant's employment. Carrier failed to meet its burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400.

4. Because Carrier did not meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400, it is not entitled to reimbursement from the South Carolina Second Injury Fund, and its claim is denied.

AWARD

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS SO ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to its statutory right to appeal.

And it is so ORDERED:



Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
June 20, 2011

By: Kristi Love, Administrative Assistant to Commissioner Barden

Commerce and Industry Insurance Company vs SC 2nd Injury Fund
In Re Daniel Haidet vs Aircraft Support Services

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0500022**

COMMERCE & INDUSTRY
INSURANCE COMPANY, ... CARRIER/APPELLANT

- V -

SC SECOND INJURY FUND, ... DEFENDANT/RESPONDENT.

[In Re: Daniel Haidet v. Aircraft Support Services
and Commerce & Industry Insurance Company]

Appellate Panel Review held in Columbia,
South Carolina on October 25, 2011, per notices
timely and properly served on all parties.

Appellate Panel Decision and Order filed

12/29/11

APPEARANCES: Carrier/Appellant represented by Nicholas Farr, Esquire, Gallivan
White & Boyd, P.A., of Greenville, South Carolina.

Defendant/Respondent represented by Latonya Dilligard
Edwards, Esquire, Boykin & Davis, LLC, of Columbia, South
Carolina

STATEMENT OF CASE

On May 2, 2011, Commissioner Susan S. Barden held a hearing on this matter in Columbia, South Carolina and issued the following Order:

“Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS SO ORDERED that Carrier’s claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to Carrier’s statutory right to appeal.”

Within the statutory period, counsel for the Employer and Carrier filed a Request for Commission Review setting forth the grounds for appeal, with copies furnished to all interested parties prior to being presented to the Appellate Panel on October 25, 2011. All proffered testimony has been taken and all documentary evidence has been delivered to the individual members of the Full Commission, who have taken the matter under advisement and consideration.

By appeal, Employer and Carrier respectfully submitted the following:

1. The Hearing Commissioner erred in admitting the Fund’s Amended Form 58 and email correspondence.
2. The Hearing Commissioner erred in finding that the only reference to Claimant’s prior back problems was contained in the knowledge affidavit of Carrier.
3. The Hearing Commissioner erred in finding that Employer’s knowledge statement was assigned equal weight as the Fund’s e-mail correspondence.
4. The Hearing Commissioner erred in finding that the medical reports did not indicate that Claimant had prior back problems.
5. The Hearing Commissioner erred in finding that Claimant’s preexisting conditions were not a hindrance to employment.

6. The Hearing Commissioner erred in finding that the medical evidence did not support the medical questionnaires of Dr. Sauer and Dr. King.

7. The Hearing Commissioner erred in finding that Carrier failed to meet its burden in establishing all necessary elements of reimbursement pursuant to S.C. Code Ann. § 42-9-400.

8. The Hearing Commissioner erred in finding that Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund.

9. The Hearing Commissioner erred in concluding that Carrier failed to meet its burden of proving that Claimant's preexisting back problems were serious enough to be a hindrance or obstacle to employment.

10. The Hearing Commissioner erred in concluding that Carrier did not meet the requirements of reimbursement.

11. The Hearing Commissioner erred in denying Carrier's reimbursement claim.

12. The Hearing Commissioner erred in not finding that Claimant's preexisting back injury combined with and was aggravated by the January 1, 2005 work injury.

13. The Hearing Commissioner erred in not finding that the Second Injury Fund failed to present any evidence that Claimant's preexisting back injury was not a permanent condition of such seriousness to constitute a hindrance or obstacle to employment or reemployment.

14. The Hearing Commissioner erred in not finding that the Fund failed to present any evidence that Claimant's preexisting back injury did not combine with or was aggravated by his January 1, 2005 injury to substantially increase the overall liability of the Carrier.

15. The Hearing Commissioner erred in not finding that the evidence in the medical records support the Carrier's claim for Second Injury Fund recovery.

16. The Hearing Commissioner erred in not concluding that Carrier established employer knowledge of the preexisting back injury prior to the January 1, 2005 work injury.

In accordance with S.C. Code Ann. § 42-17-50, the Appellate Panel shall review the award, and if good and proper grounds are shown, may reconsider evidence, receive further evidence, rehear the parties and amend the award. Furthermore, the Appellate Panel may make its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C.App. 1984). After careful review in the instant case, the Commission has determined that all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become the law of the case, and are sustained in their entirety.

FINDINGS OF FACT

After hearing argument of the parties and reviewing the evidence, the following findings of fact are made:

1. On January 1, 2005, Claimant sustained an injury by accident to his back and elbow when he fell eight (8) feet from a ladder onto the concrete during the course of his employment with Aircraft Support Services, Incorporated.

2. Claimant is alleged to have had prior back problems. However, the only reference to the prior back problem was contained in the knowledge affidavit of Carrier, which was signed more than five (5) years post injury and was not notarized or sworn, which puts the knowledge statement on the same footing as the Fund's e-mail, to which we assigned no weight in this matter.

3. Nothing contained in the medical reports indicates that Claimant had prior back problems. In fact, the only reference to prior back problems is the previously cited knowledge affidavit, which was not notarized.

4. Claimant's preexisting condition was not a hindrance to his employment. Claimant's job history involved heavy labor as an aircraft mechanic; therefore, we find that if he had prior back problems in his heavy labor job it was not serious enough to constitute a hindrance to his employment. This finding is based upon all evidence in the record.

5. Claimant's x-ray nine (9) days post injury noted some "mild" degenerative disc disease at L5-S1, but no fractures or lesions. Claimant's post injury assessment, which was completed more than a year post injury, revealed "no evidence of impairment."

6. The medical questionnaires must be supported by the medical evidence in the record. Here, the medical evidence does not support the positive checklist responses from the treating physicians in the case. We give greater weight to the evidence in the record on the issue of hindrance and find that the medical evidence indicates that Claimant's preexisting condition was not a hindrance to his employment.

7. We find that the cause of Claimant's back problems was the eight (8) feet fall from the ladder onto the concrete. Claimant was released with a six (6%) percent impairment rating to the back, with no surgery.

8. Carrier failed to meet its burden in establishing all necessary elements for partial reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund.

CONCLUSIONS OF LAW

1. Reimbursement from the South Carolina Second Injury Fund is governed by S.C. Code Ann. § 42-9-400.

2. The right of Carrier to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

3. To qualify for reimbursement, Carrier had the burden to prove that Claimant's prior back problem was serious enough to be a hindrance or obstacle to Claimant's employment. Carrier failed to meet its burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400.

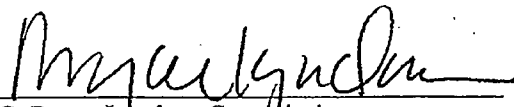
4. Because Carrier did not meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400, it is not entitled to reimbursement from the South Carolina Second Injury Fund, and its claim is denied.

ORDER

IT IS THEREFORE, ORDERED that the Order of the Single Commissioner filed on June 20, 2011, is hereby affirmed by the Appellate Panel, and constitutes the Decision and Order of the Full Commission.

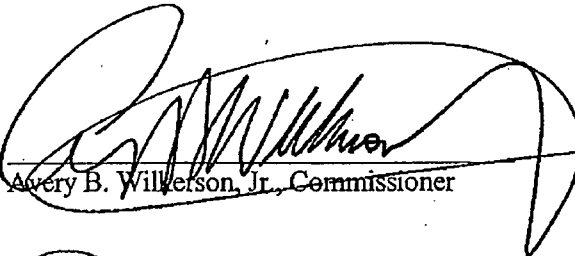
IT IS FURTHER ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to Carrier's statutory right to appeal.

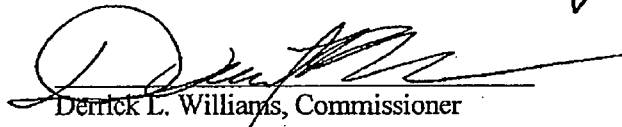
S.C. WORKERS' COMPENSATION COMMISSION


G. Bryan Lyndon, Commissioner

FULL AFFIRMATION

CONCUR:


Avery B. Willkerson, Jr., Commissioner

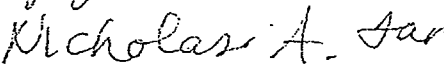

Derrick L. Williams, Commissioner

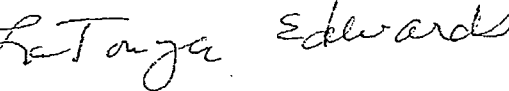
CERTIFICATE OF SERVICE

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

This 29 day of December, 2011
By Valerie D. Decker

Administrative Assistant to the Commissioner



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

JUDGMENT IN A CIVIL CASE

#19

CASE NO. 2012-CP-26-955

Commerce and Industry Insurance Co., et al.
PLAINTIFF(S)

Second Injury Fund of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

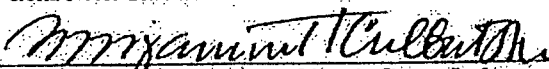
INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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


Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Oct. 14, 2013
Date

For Clerk of Court Office Use Only

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

Nicholas Andrew Farr

Latonya Dilligard Edwards

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Grace Hurley

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text visible on the paper.



Claimant's Name: Daniel Haidet

Employer's Name: Avcraft Support Services

Address: 564 West Oak Circle

Address: 3301 Mustang Street

City: Myrtle Beach State: SC Zip: 29588

City: Myrtle Beach State: SC Zip: 29577

Home Phone: _____ Work Phone: _____

Carrier: Commerce & Industry Insurance Company

Preparer's Name: Nicholas A. Farr

Preparer's Phone #: (864) 271-5347

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$577.72 2. AWW: \$875.00 Date of Injury: 1/1/2005

3. Type of injury and body part(s): Injuries to left elbow and back (thoracic and lumbar spine)

4. Facts in controversy: (See attached Addendum)

5. Legal issues involved: §42-9-400 (see no. 4)

6. Unusual aspects: Not Applicable

7. Witnesses (designate if expert*): (Plaintiffs reserve the right to add witnesses)

8. Exhibits: (See attached Addendum) (Plaintiffs reserve the right to add exhibits)

9. Medical evidence: (indicate report pursuant to R.67-612; deposition or appearance): Pursuant to the APA and Reg. 67-612, executed Second Injury Fund medical certificates of Scott Sauer, D.O. and Gregory Kang, M.D.; medical reports of: (See attached Addendum; Plaintiffs reserve the right to add medical evidence.)

10. Name, address, and specialty, if any, of the treating physician: (See attached Addendum)

11. Impairment rating(s); body part(s); physician and date of opinion: 18% to left upper extremity (11% whole person), Dr. Robert Leak, 7/7/05; 6% to thoracic spine / whole person, Dr. Kang, 8/22/05.

12. I am amending my Form 54 in the following manner: N/A

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

Signature: Nicholas A. Farr

4/15/2011
Date

Email: nfarr@gwblawfirm.com

Date of hearing: May 2, 2011

Time needed for hearing: 30 minutes

On behalf of ☐ Claimant ☒ Employer

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

ADDENDUM

Commerce & Industry Insurance Company

-vs-

S. C. Second Injury Fund

(IN RE: Daniel Haidet v. Avcraft Support Services, Inc.)

W.C.C. File No. 0500022
S.I.F. File No. 119295

4. Commerce & Industry Insurance Company (Commerce) and Avcraft Support Services (Avcraft) seek indemnity and medical reimbursement from the Second Injury Fund for injuries suffered by Mr. Haidet on January 1, 2005, and all treatment directly associated with said injuries

Mr. Haidet's work injury happened after a fall from a ladder. He suffered a radial head fracture of the left elbow and complained of pain to his upper and lower back. While he reached maximum medical improvement with regards to the left upper extremity in July, 2005, he continued to undergo pain management for his thoracic and lumbar spine in 2010.

Employer/Carrier filed a claim for reimbursement against the Second Injury Fund on November 22, 2010, based on pre-existing arthritis in the back (thoracic and lumbar). Alternatively, the Plaintiffs claim was also based on §42-9-400(a), as the prior back problems combined with and were aggravated by the 2005 accident to substantially increase Commerce's overall liability. Along with the SIF claim, the Plaintiffs submitted evidence that Mr. Haidet had problems with his back prior to January 1, 2005. Avcraft was well aware of said problems. The Plaintiffs also submitted medical questionnaires for the thoracic and lumbar spine signed by treating physicians substantiating that Mr. Haidet did have degenerative changes and related problems in his back before January 1, 2005, and that these conditions combined with / were aggravated by the 2005 accident to increase the carrier's liability.

The medical evidence of the case clearly supports the Plaintiffs' claim for pre-existing arthritis in the thoracic and lumbar spine. Furthermore, Avcraft has provided a signed statement affirming knowledge of the claimant's back problems prior to January 1, 2005. The Plaintiffs firmly believe all statutory requirements for a valid Second Injury Fund claim have been met, and we request full reimbursement as described hereinabove.

ADDENDUM

Commerce & Industry Insurance Company and Aircraft Support Services - S. C. Second Injury Fund
(IN RE: Daniel Haidet v. Aircraft Support Services)

Page Two

8. First Report of Injury; Second Injury Fund Notice of Possible Claim Form; executed Employer Knowledge Statement; Workers' Compensation Commission file #0327069 (in possession of Commissioner Barden). Plaintiffs reserve the right to add exhibits.
9. Medical evidence includes reports of: Grand Strand Regional Medical Center; Strand Orthopaedic Consultants; Grand Dunes Surgery Center; The Center for Pain Relief; Coastal Interventional Pain Associates; Pain, Spine & Sports Medicine; Diagnostics. Plaintiffs reserve the right to add medical evidence.
10. Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29570
~ Robert S. Leak, M.D.

Coastal Interventional Pain Associates
210 Village Center Boulevard
Myrtle Beach, SC 29570
~ Scott B. Sauer, D.O.

Pain, Spine & Sports Medicine
3029 Newcastle Loop
Myrtle Beach, SC 29588
~Gregory Kang, M.D.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Commerce & Industry Insurance Company,
Carrier,

and

Avcraft Support Services, Inc.,
Employer,
Plaintiffs,

-vs-

S. C. Second Injury Fund,
Defendant.

(IN RE: Daniel Haidet v. Avcraft Support
Services)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

NOTICE OF WITNESSES AND WRITTEN
REPORT(S)/PHYSICIAN OR OTHER EVIDENCE TO
BE INTRODUCED ON BEHALF OF DEFENDANTS

W.C.C. FILE NO. 0500022

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
LATONYA D. EDWARDS, ESQ.

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

(See attached Plaintiffs' APA SUBMISSIONS)

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the
Plaintiffs: Plaintiffs reserve the right to add witnesses.

Respectfully Submitted,



Nicholas A. Farr
Gallivan, White & Boyd, P.A.
P.O. Box 10589, F.S.
Greenville, SC 29603
(864) 271-9580

Attorney for the Plaintiffs.

Greenville, S.C.
April 15, 2011

cc: Latonya D. Edwards, Esq.

Carrier's APA Submissions Index

Daniel Haidet v. Aircraft Support Services, Inc.
W.C.C. File No.: 0500022

<u>Tab</u>	<u>Physician</u>	<u>Date</u>	<u>Page</u>
1	Grand Strand Regional Medical Center	01/01/2005 – 03/11/2005	1 – 6
2	Strand Orthopaedic Consultants	01/05/2005 – 06/24/2008	7 – 21
3	Long Bay Diagnostic Imaging	04/26/2005 – 08/03/2006	22 – 28
4	The Center for Pain Relief, LLC	05/12/2005 – 04/17/2006	29 – 35
5	Grande Dunes Surgery Center	05/20/2005 – 12/14/2005	36 – 41
6	C. Gregory Kang, MD	08/22/2005 – 09/08/2005	42 – 44
7	Adams & Wilkinson	12/06/2005	45 – 56
8	Coastal Interventional Pain Associates	05/17/2006 – 08/18/2008	57 – 68

Defendant's Exhibits

<u>Tab</u>	<u>Exhibit</u>	<u>Page</u>
A	Notice of Possible Second Injury Fund Claim Form	69
B	Workers Compensation – First Report of Injury or Illness	70
C	Employer Knowledge Affidavit from Mindy Pavilonis	71
D	Medical Certificate from Scott B. Sauer, DO	72
E	Medical Certificate from Gregory Kang, MD	73

5/2/08
Sauer
05000225

GRAND STRAND REGIONAL MEDICAL CENTER
SOUTH STRAND AMBULATORY CARE CENTER

ER REPORT

NAME: HAIDET, DANIEL J
MED REC #: F000441072

PHYSICIAN: JEANJAQUET, MARK S
ACCOUNT #: F01012521028

PT: HAIDET, DANIEL J
DOS: 01/01/2005
DICT PHY: MARK S JEANJAQUET, MD

The patient is a 46-year-old male who had fallen approximately 8 feet off a ladder onto concrete while working on a plane. He denies head injury, loss of consciousness and complains of severe left elbow pain and also some pain in his right hip and his mid back. He denies any shortness of breath, no abdominal pain. No lower leg pain. He has some abrasion to the right arm. He has no extremity weakness and/or numbness.

PMH: B1

ALLERGIES: None.

SH: No local physician, employed at the airport as a mechanic.

FH: Noncontributory.

PE: Temperature is 97.1, pulse
B2 respiratory rate 20, BP 120/80.
B3

male awake and alert, in no distress. Head is atraumatic. Pupils are round and react. Neck is nontender. Back shows tenderness in the low thoracic mid line as well as right paraspinal tenderness. No rib tenderness. Lumbar spine is nontender. Lungs are clear. Heart regular. Abdomen soft, nontender. Right forearm has an abrasion but no bony tenderness. Left arm has significant swelling at the elbow. Pulse and capillary refill, intact. He has full flexor, extensor and intrinsic strength in the hands. He is painless to any movement at all at the elbow. There is significant tenderness in the elbow especially the radial head, milder tenderness over the olecranon, no bony tenderness at the shoulder or clavicles. No bony tenderness of the wrists, hands or fingers. He has mild tenderness over the right hip, some tenderness in the right buttock as well. Pelvis is stable, nontender. Lower extremities with no tenderness. Strength and sensation intact.

ER COURSE: He was given IV morphine, a total of 50 mg IV for his pain. X-rays of the right hip and pelvis are normal. X-rays of the T-spine shows degenerative changes. X-ray of the left elbow shows radial head fracture with displaced fragment.

This case was discussed with the ortho PA, Bethle. He will be placed in a posterior splint and a sling. Will begin B4 for pain. Will follow up with Dr. Leak Monday morning at 9 a.m. in the office. Was written for B5 for pain.

DX:
1. Left elbow fracture.
2. Back and hip contusions.

South Carolina

PCI *LIVE* (PCI: OE Database COCQV)

Run: 01/06/05-14:39 by GERALD, JAMIE M

DRAFT COPY

Page 1 of 2

GRAND STRAND REGIONAL MEDICAL CENTER

NAME: HAIDET, DANIEL J
MED REC# F000441072

ATT. PHY JEANJAQUET, MARK S

=====

IN: XEP/F.HIM/JEAMA/24KT1 S: 01/01/2005

D: 01/01/2005 17:32

T: 01/02/2005 13:08 CONF#: 106195116 / JOB#:15062983

JEANJAQUET, MARK S

South Carolina

PCI *LIVE* (PCI: G3 Database COCQV)

Run: 01/06/05-14:39 by GERALD, JAMIE M

DRAFT COPY

Page 2 of 2

Diagnostic Imaging Report
GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 2957
Phone #: 8436921560 Fax #: 8436921555

Name: HAIDET, DANIEL J Loc: F. OR Radiology No:
DOB: 03/21/1958 Age: 46 Sex: M Status: REG SDC Unit No: F000441072
Phys: LEARO - LEAK, ROBERT Acct: F01012526896
Reason For Exam: PLACEMENT FT 12SEC Exam Date: 01/07/2005

Exams:

000763712 PORTABLE ELBOW L

REASON FOR EXAM:
SURGERY ORIF LEFT RADIUS

Study: Left elbow 3 views.

History of radial head fracture, surgical reduction.

Three views of the elbow were obtained in the OR using portable fluoroscopy equipment. There is a history of radial head fracture. I do note have any preoperative films. The fracture has been surgically reduced and the fixation device stabilizes the radial head. This is held in place with multiple screws. The hardware appears to be in good position.

Impression: Satisfactory postoperative appearance.

** Electronically Signed by GARY L. RIKE MD on 01/08/2005 at 1523 **
Reported and Signed by: GARY L. RIKE, MD

CC: ROBERT LEAK

Dictated Date/Time: 01/07/2005 (1427)
Technologist: BRIAN W CRUMINE RT
Transcribed Date/Time: 01/07/2005 (1815)
Transcriptionist: FRAD.PCS
Electronic Signature Date/Time: 01/08/2005 (1523)
Printed Date/Time: 02/01/2005 (0824)

PAGE 1

Signed Report Printed From PCI

GRAND STRAND REGIONAL MEDICAL CENTER
MYRTLE BEACH, SC 29572

OPERATIVE REPORT

NAME: HAIDET, DANIEL J
MED REC #: F000441072

ATTENDING PHYSICIAN: LEAK, ROBERT
ACCOUNT #: F0101282344

PT: HAIDET, DANIEL J
DICT PHY: ROBERT LEAK, MD -

DATE OF OP: 03/11/2005

SURGEON: Robert Leak, MD -

PREOP DX: Failed ORIF, left radial head.

POSTOP DX: Failed ORIF, left radial head.

PROC:

1. Left radial head replacement (Ascension).
2. Removal of hardware, left elbow.

ANES: General.

IMP FOR PROC: The patient is a 46-year-old male who sustained a left radial head fracture approximately a couple of months ago. I treated it with ORIF. It has not healed and the hardware is failing. He is taken to the operating room today to remove the previously placed hardware and to replace his radial head.

DETAILS: The patient was taken to the operating room and placed in the supine position on the operating room table. General anesthesia was administered without difficulty. The left upper extremity was prepped and draped in the usual sterile manner. The tourniquet was inflated to 110 mmHg pressure. The same lateral incision was used to approach the left lateral side of the elbow. Dissection was carried down through the skin and subcutaneous tissue. The extensor muscles were opened and the joint exposed. There was quite a bit of fluid in the joint. This was all evacuated. The radial head was immediately visible. Clearly it had not healed. I was able to pry loose the radial head, and it remained in its three pieces. The hardware was all removed, the Synthes plate and also the Anttrak screw. I did not feel as though his native radial head was salvageable. It had clearly not healed. Thus decided to do a radial head replacement. Was using the Ascension radial head prosthesis. The neck cut was fairly good. It was shortened just a little bit more. A trial radial head was inserted of a standard size. The radial canal was broached. The radial head was placed with a standard lock. It was reduced, and the elbow was put through a range of motion. The elbow was stable. The trial was removed, and the Ascension radial head prosthesis was opened and inserted into the elbow and stable fit was obtained as well as good elbow range of motion. Final fluoroscopic pictures were taken. Tourniquet was let down. The wound was vigorously irrigated. The capsule was closed. The extensor was closed with 3-0 Vicryl followed by closure of the skin with 3-0 Vicryl and 3-0 Prolene, benzoin, Steri-Strips, 4x4, soft roll and a posterior splint.

COMP: None noted.

DISP: The patient was extubated and taken to the recovery room in satisfactory condition.

South Carolina

PCI *LIVE* (PCI: OR Database COCQV)

Run: 04/07/05-11:20 by REVELL, BARBARA S

DRAFT COPY

Page 1 of 2

GRAND STRAND REGIONAL MEDICAL CENTER

NAME: H. IDET, DANIEL J
MED REC# F000441072

ATT. PHY LEAK, ROBERT

IN: 09/F.HIT/LEADO/24MH2 8: 03/11/2005
D: 04/05/2005 00:37
T: 04/06/2005 03:59 CONF#: 143456116 / JOBS:16000905

LEAK, ROBERT

South Carolina PCI *LIVE* (PCI: OE Database COCIV)

Run: 04/07/05-11:24 by REVELL, BARBARA S

DRAFT COPY

Page 2 of 2

Diagnostic Imaging Report

GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 2957
Phone #: 8436921560 Fax #: 8436921555

Name: HAIDET, DANIEL J Loc: UNK Radiology No:
DOB: 03/21/1958 Age: 46 Sex: M Status: REG SDC Unit No: F000441072
Phys: LEARO - LEAK, ROBERT Acct: F01012822544
Reason For Exam: ORIF LT PROXIMAL RADIUS Exam Date: 03/11/2005

Exams:
000786320 ELBOW LEFT - LIMITED

REASON FOR EXAM:
FRACTURE LT PROXIMAL RADIU

Study: Left elbow two views portable intraoperative images from C-arm
3/11/05.

Comparison: 1/75/05 and 2/22/05 (Strand Orthopedics).

Indication: Left radial head fracture repair.

Findings:

AP and lateral views demonstrate a prosthetic device now in position
at the level of the radial head with good positioning in reference to
the capitellum. There is no evidence for superimposed fracture or the
adjacent bony structures.

Impression:

Surgical prostheses has been positioned at the location of the radial
head. Good positioning is suggested. There is no direct evidence for
an acute superimposed complication.

** Electronically Signed by G.SCOTT MENCKEN MD **
** on 03/12/2005 at 1113 **
Reported and Signed by: G.SCOTT MENCKEN, MD

CC: ROBERT LEAK

Dictated Date/Time: 03/12/2005 (0805)
Technologist: BRENDA B HARRELSON
Transcribed Date/Time: 03/12/2005 (1113)
Transcriptionist: FRAD.WYC
Electronic Signature Date/Time: 03/12/2005 (1113)
Printed Date/Time: 06/24/2005 (1622)

PAGE 1

Signed Report Printed From PCI



STRAND ORTHOPAEDIC
CONSULTANTS, L.L.C.

Re : Daniel Haidet

S: Fell from ladder with dis/acc
radial head fracture.

O: Swollen painful  elbow - pain
over radial head

A  Displaced Radial
Head Fr

Plan → Will require ORIF to
restore elbow function

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 01/10/2005

MYRTLE BEACH OFFICE

CC: "I have injured my upper and lower back"

X
HPI: The patient is a pleasant 36-year-old who ~~works on airplanes at the Myrtle Beach airport for occupation.~~ The patient states that on 01/01/05, at the end of his day, he was closing a compartment on the airplane and ~~he fell from a ladder~~ approximately 9 feet. The patient was attended to by EMS but he was concerned about the plane getting released to carry passengers and refused EMS transport. The patient now states that that was probably not a wise move. The patient did report to the emergency department later that day. He had x-rays of his back, pelvis, and elbow. The patient was found to have an elbow fracture and placed in a posterior splint and instructed to followup with Dr. Leak on the following Monday, which he did. The patient's x-rays revealed he has suffered fractures of the radial head as well as the capitellum and Dr. Leak performed surgery this past Friday on 01/07/05. The patient states that he has also injured his upper and lower back at the time of fall. He denies any fever, chills or night sweats related to his pain but reports he has had some night sweats, which he feels is related to the medication that he is usually placed on. He denies any bowel or bladder problems. He has been constipated since starting the medication. He voices no leg pain at this time. He is ambulating independently. His arm is in a sling. He denies any previous injuries to his lumbar or upper back. His complete past medical history and review of systems sheet has been reviewed.

PHYSICAL EXAMINATION: The patient is awake and aware. He is a well developed, well nourished male in no acute distress. He gets on and off the examination table. His left elbow is in the posterior splint. Inspection of the thoracic spine reveals no gross deformities. He has a small incision/scar from a lipoma excision. He has some diffused tenderness at the level of T8, T9 as well as L4-L5 particularly the right side. He is able to get on and off the examination table independently. He is able to flex his knee to about 50 degrees. Dermatomes are grossly intact for L1 through S1 and are symmetrical. MMTs are 5/5 for L1 through S1 and are symmetrical. DTRs are 2+/4 for knee jerk and Achilles tendon and are symmetrical. Babinski is downgoing. Clonus is negative. Straight leg raise is negative bilaterally. Fabere's test is also negative.

X-RAYS: X-rays brought in were reviewed. They did take additional L-spine x-rays and T-spine x-rays today. I did not see any fractures, blastic or lytic lesions or some mild degenerative disc disease at the L5-S1 level.

DANIEL J HAIDET

-2-

JANUARY 10, 2005.

ASSESSMENT:

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 01/10/2005

MYRTLE BEACH OFFICE

1. Status post left elbow open reduction and internal fixation.
2. Thoracic muscle strain.
3. Lumbar muscle strain.

PLAN: The patient will be referred to physical therapy. He will contact his caseworker to help with arrangements for rides. The patient will continue with his pain medication per Dr. Leak. The patient has been started on Flexeril 10 mg one p.o. t.i.d. p.r.n. muscle spasms and Naprosyn 5 mg one p.o. b.i.d. with food. I will set him up for an MRI of the thoracic and lumbar spine. I will see him back to review his results. He has also been referred to physical therapy. He will call if there are any questions or problems. The patient will remain out of work until further reevaluated.

Joseph K. Bethle, PA-C

Robert S. Leak, M.D.
JKB/nk/vbk

Electronically Signed by: Joseph K. Bethle, P.A.-C on Wednesday, January 12, 2005

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 02/01/2005

MYRTLE BEACH OFFICE

HPI: Mr. Haidet is here just over two weeks out from left elbow ORIF of the radial head. He had some recent increased pain.

EXAM: On examination of his left elbow, the wound has healed nicely. No sign of infection. Moderate amount of scarring around the wound. Elbow range of motion is about 30 degrees. No pronation and supination.

X-RAYS: AP and lateral of his left elbow show good alignment of the radial head and good position of the plate.

ASSESSMENT: Open reduction and internal fixation, left radial head fracture.

PLAN: He will get going on some therapy. He will work on range of motion of his elbow. He can take the splint off during the day to shower, otherwise, he will keep it on. He will recheck with me in three weeks with repeat x-rays.

Robert S. Leak, M.D.

RSL/rcr/vbk

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 02/11/2005

MYRTLE BEACH OFFICE

CC: The patient is here for followup of his back.

HPI: The patient states that he is no longer having right or left arm radicular symptoms. He continues to have thoracic spine pain. He denies any fevers, chills or night sweats. He denies any weight loss. He reports that he does get relief for a couple of hours after physical therapy. He denies any shortness of breath. He denies any hematuria.

PHYSICAL EXAMINATION: The patient is awake and aware. The patient does have some point tenderness, specifically over the left scapulothoracic bursa area with increased discomfort with palpation doing passive abduction. No signs of infection. There are no signs of skin breakdown and or any type of skin problems.

TREATMENT: After verbal consent, the patient was placed in a seated position and the left scapulothoracic area was prepped with Betadine and then anesthetized with ethyl chloride. I then injected him with 1 cc of 0.25% Marcaine mixed with 1 cc of Kenalog. The patient tolerated the procedure fine.

ASSESSMENT:

1. Lumbar muscle strain, improved.
2. Left scapulothoracic bursitis.
3. Left elbow fracture per Dr. Leak.

PLAN: The patient will apply ice to the area of injection for the next 48 hours two to three times daily. He will continue physical therapy. We will see how the patient does over the next two to three weeks. If improved, he will be seen back here on a p.r.n. basis, if not we will then consider setting up with an MRI. The patient will remain out of work until he is seen in followup with Dr. Leak.

Joseph K. Bethle, PA-C

Robert S. Leak, M.D.
JKB/nk/sur

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: **DANIEL J HAIDET**

Date of Birth: 03/21/1958

Date of Service: 02/11/2005

MYRTLE BEACH OFFICE

Electronically Signed by: Joseph K. Bethle, P.A.-C on Wednesday, February 16, 2005

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: **DANIEL J HAIDET**

Date of Birth: 03/21/1958

Date of Service: 02/22/2005

MYRTLE BEACH OFFICE

HPI: Mr. Haidet is here for a recheck of his left arm. He states overall his arm is feeling better. He has had a lot of pain when he tries to pronate or supinate. He has had overall less pain in his left elbow.

EXAM: On examination of his left elbow, the wound has healed nicely. Less swelling. Range of motion is from 20 to 95 degrees. He has very minimal pronation and supination. He is able to make a full fist.

X-RAYS: AP and lateral of his left elbow show that the plate on his radial head and neck has broken and the radial head fragment has displaced somewhat. The fracture appears to be healing.

ASSESSMENT: Open reduction and internal fixation, left radial head fracture with failing hardware.

PLAN: I discussed options for treatment with the patient. I think, we are going to have to revise the fixation of his radial head. He needs a revision radial head fixation, radial head replacement, or possible radial head excision. I think he may be a little young to proceed with a radial head excision. We would likely plan on a radial head revision, ORIF versus prosthesis placement. We will work on getting this scheduled here in the next couple of weeks. We will see him back at the time of surgery.

Robert S. Leak, M.D.
RSL/akk/rsd

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 03/17/2005

MYRTLE BEACH OFFICE

Poor Quality

HPI: Mr. Haidet is here for a recheck of his left arm. He states that his left arm feels much better than before. He feels as though the pressure has been taking off his left arm.

EXAM: On examination of his left upper extremity, the wounds are healing very nicely. No sign of infection. He has actually already got a little bit of motion of his elbow.

X-RAYS: AP and lateral of his left elbow shows his radial head prosthesis in good position.

ASSESSMENT: Left radial head prosthesis.

PLAN: He was placed back in a posterior arm splint. I will get him fitted for an elbow brace. We will have him start seeing the hand therapist next week to get the range of motion going his elbow early.

Robert S. Leak, M.D.

RSL/tms/vbk

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 8759SDH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 04/08/2005

MYRTLE BEACH OFFICE

CC: The patient is here for followup of his back.

HPI: The patient underwent revision of surgery of his left elbow with Dr. Leak. He is doing quite well. He continues to have thoracic spine pain. He denies fever, chills, or night sweats. He denies any change with bowel or bladder. He has no radicular symptoms.

PHYSICAL EXAM: The patient is awake and aware. He has some tenderness at the level of T11 and T12, and gets on and off the examination table independently. Strength testing is 5/5 for L1 through S1 and symmetrical. Pulses are +2/4 and symmetrical.

ASSESSMENT: Thoracic/lumbar spine pain with no radicular symptoms.

PLAN: The patient will be set up with an MRI to further evaluate his lumbar spine and to rule out possibility of HNP or any other pathology. The patient will be kept out of work until reevaluated after the MRI. The patient will call us if there are any questions or problems.

Joseph K. Bethle, PA-C

Robert S. Leak, M.D.
JKB/sp/vbk

Electronically Signed by: Joseph K. Bethle, P.A.-C on Tuesday, April 12, 2005

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 04/26/2005

MYRTLE BEACH OFFICE

HPI: Mr. Haidet is here now about six weeks out from left radial head replacement. He is doing much better. His pain seems to be going down. He has been attending therapy.

EXAM: On examination, his left elbow range of motion is from -5 to 125 degrees. Full pronation. Supination lacks about 10 degrees. He is able to make a full fist.

X-RAYS: AP and lateral of his left elbow shows good overall alignment of the radial head prosthesis.

ASSESSMENT: Left radial head prosthesis, left radial head replacement.

PLAN: He will work on range of motion strengthening. Recheck with me in six weeks. He will remain in light duty and continue therapy.

Robert S. Leak, M.D.

RSL/rcr/vbk

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 8759SDH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 04/29/2005

MYRTLE BEACH OFFICE

CC: The patient is here for followup of his thoracic spine pain and results of the MRI.

HPI: The reports that he has seen Dr. Leak and is improving quite well. He states that he continues to have thoracic spine pain. He denies fever, chills, or night sweats and voices no radicular symptoms at this time.

PHYSICAL EXAM: The patient is awake and aware. He gets on and off the examination table. Strength testing is 5/5 for L1 through S1 and is symmetrical. Pulses are +2/4 and symmetrical. Dermatomes are grossly intact for L1 through S1 and are symmetrical. He still has some mild tenderness at T11 and T12.

MRI results were reviewed. MRI of the thoracic spine is unremarkable for any herniated nucleus pulposus or stenosis. MRI of the lumbar spine reveals some anterior wedging at T11 and T12, however, this appears chronic. There is some degenerative joint disease noted particularly at L5 and S1.

ASSESSMENT:

1. Chronic thoracic spine discomfort.
2. Degenerative disc disease, L5-S1.
3. Small annular tear, L5-S1 disc.

PLAN: At this point, the patient is not a surgical candidate. The patient will be referred to Dr. Wenz and Dr. Sauer for other treatment options. The patient would like to get off of the Vicodin prescribed to him by Dr. Leak. We have given him some samples of Ultracet prescription one to two p.o. q.4-6h. p.r.n. pain. The patient has been given a work excuse out of work until evaluated by Dr. Wenz and Dr. Sauer.

DANIEL HAIDET

2

APRIL 29, 2005

The patient will be seen back here for his thoracic and lumbar spine complaints on a p.r.n. basis. The patient agrees with treatment plan.

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 06/07/2005

MYRTLE BEACH OFFICE

HPI: Mr. Haidet is here today for recheck of his left elbow. Overall, he has been doing okay. He has had some pain in his left shoulder and also some pain in his left elbow. He has minimal pain with flexion and extension of his elbow, but pronation and supination causes him some pain in his left elbow.

EXAM: On examination of his left elbow, his wound has healed very nicely. He has near full flexion and extension and near full pronation and supination. She has a little bit of clicking with pronation and supination. He is neurovascularly intact in his left hand.

X-RAYS: AP and lateral of his left elbow shows radial head prosthesis in good overall alignment.

ASSESSMENT: Left radial head replacement.

PLAN: Overall, he is doing fairly well. I think, this will continue to improve. We would like him to do some more work strengthening with the therapist. He should do this for another six weeks and at that time, I will see him and he may be at MMI at that point.

Robert S. Leak, M.D.
RSL/dvr/vbk

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH
Patient Name: DANIEL J HAIDET
Date of Birth: 03/21/1958

Date of Service: 07/07/2005
MYRTLE BEACH OFFICE

RECEIVED

AUG 08 2005

Alpha Operations - DP19

HPI: Mr. Haidet is here today for a recheck of his left elbow. He states that his elbow is doing very well. He has no pain in his elbow. He is using his elbow for all that he can. His only complaint is that of persistent pain in his thoracic spine area.

EXAM: On examination of his left upper extremity, his elbow has healed very nicely. He has full flexion and extension of his elbow. He has full pronation and supination. He is neurovascularly intact distally. Grip strength is not quite full in the left hand.

X-RAYS: AP and lateral of his left elbow show a well positioned radial head prosthesis.

ASSESSMENT: Status post left radial head replacement.

PLAN: Overall, he has done very well. He is at maximum medical improvement with regards to his left elbow, with regards to his left thoracic spine area. He continues to have treatment in that area. He is at maximum medical improvement with regards to his left elbow. His rating is taken out of the Guides to the Evaluation of Permanent Impairment, Fifth Edition, Chapter 16, table 16-27, table 16-34 and table 16-3. His rating is as follows: He has an 8% impairment of his upper extremity from the implant arthroplasty of his radial head. He has a 10% upper extremity impairment from strength loss. These combined to give an 18% left upper extremity impairment rating. This translates to an 11% whole person impairment rating. He will recheck with me on a p.r.n. basis. If he has any problems with his radial head prosthesis in the future, he will let me know. Potential problems include problems between the metallic and bone articulation of the radial capitellar joint. This was all discussed with him. He will recheck with me on a p.r.n. basis.

Robert S. Leak, M.D.
RSL/nag/vrp

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: **DANIEL J HAIDET**

Date of Birth: 03/21/1958

ALP DP33 DEC 2 0 2005

Date of Service: 12/08/2005

MYRTLE BEACH OFFICE

HPI: Mr. Haidet is seen after a long absence. His left elbow is doing remarkably well, but he has noticed some medial sided pain and some numbness into his small finger and ring finger.

EXAM: On examination of his left elbow, full range of motion. He has excellent pronation and supination. He has positive Tinel's at the cubital tunnel. Numbness in his small finger, ring finger, and good interosseous strength.

X-RAYS: AP and lateral of his left elbow show that the radial head prosthesis remains in good alignment. There has been a little bit of stress shielding of the prosthesis.

ASSESSMENT:

1. Left cubital tunnel syndrome.
2. Left radial head replacement.

PLAN: I discussed with him that he has an abrupt ulnar nerve compression of the elbow. I do not think that this is necessarily related to his prosthesis. I discussed with him that these usually get better on their own. He may need something done down the line if it does not get better. If it is not better, he will come back and see me in six weeks.

Robert S. Leak, M.D.

RSL/nag/ajs

022 AIG ALP AUG 08 2008
STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 87595DH

Patient Name: DANIEL J HAIDET

Date of Birth: 03/21/1958

Date of Service: 06/24/2008

MYRTLE BEACH OFFICE

HPI: Mr. Haidet is here for a recheck of his left radial head replacement. He is doing very well. He is not having any symptoms referable to his radial head.

EXAM: On examination, he has excellent range of motion. He has full elbow range of motion. Full pronation and supination. He is nontender. He can make a good full fist.

X-RAYS: X-rays showed good alignment of the radial head prosthesis. There may be some stress shielding going on at the proximal radiuses. He lost a little bit of bone in this area. The capitellum looks fine.

ASSESSMENT: Left radial head replacement.

PLAN: Discussed with him that overall he is doing very nicely. He will probably keep an eye on the stress shielding around his radial head prosthesis. I will see him every year for annular x-rays. In the meantime, he can resume all normal activities.

Robert S. Leak, M.D.

RSL/kps



PATIENT: Haldet, Daniel
DATE OF BIRTH: 3/21/1958
ID Number: 365945
REFERRING PHYSICIAN: Jarrett, Joe

MRI OF THE LUMBAR SPINE

EXAM DATE: 4/26/2005

INDICATION: Patient with recent history of trauma, falling from ladder, now with pain.

TECHNIQUE: Sagittal and selected axial T1 and T2 weighted images were obtained through the lumbar spine on a 1.0 Tesla Siemens MRI unit.

FINDINGS: The patient demonstrates normal bony alignment. There is minimal anterior wedging of T12 and L1 which is likely congenital. Bridging osteophytes are identified. No definite marrow signal abnormality is seen to suggest acute abnormality, however, the exam is limited secondary to lack of T2 fat saturated sagittal or axial imaging. If this patient has symptoms directly referable to this region, a repeat exam with fat saturated images could evaluate for acute marrow signal abnormality. The cord demonstrates normal caliber, contour, signal and termination. The visible paraspinal and retroperitoneal soft tissues are unremarkable.

L3-4: There is no significant central canal, lateral recess or foraminal stenosis.

L4-5: Degenerative facet disease is identified, as well as a small broad-based disc bulge without significant central canal, lateral recess or foraminal stenosis.

L5-S1: There is a broad-based disc bulge with a right intraforaminal component. A small annular tear is identified. This is not causing significant central canal or lateral recess stenosis. There is minimal right foraminal stenosis. The left foramen is patent.

IMPRESSION:

1. ANTERIOR WEDGING OF T12 AND L1 WHICH APPEARS CHRONIC, PARTICULARLY GIVEN THE BRIDGING DEGENERATIVE CHANGE. NO ABNORMAL MARROW SIGNAL IS IDENTIFIED, ALTHOUGH EVALUATION OF THE MARROW IS LIMITED SECONDARY TO LACK OF FAT SATURATED IMAGES.
2. MULTILEVEL DEGENERATIVE CHANGE AS DESCRIBED ABOVE WITH THE MOST SEVERE LEVEL BEING L5-S1.
3. L5-S1 ANNULAR TEAR.



Paul Kuperman, MD MSK

Haldet, Daniel

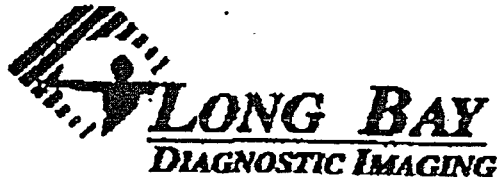
MRN: 365945

Paul Kuperman, MD MSK /mfi
Dictated on 04/26/05

Job # 2023567

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PATIENT: Haidet, Daniel
DATE OF BIRTH: 3/21/1938
ID Number: 365945
REFERRING PHYSICIAN: Jarrett, Joe

MRI OF THE THORACIC SPINE

EXAM DATE: 4/26/2005

INDICATION: Patient with fall from ladder, now with back pain. Pain in the bilateral heels.

TECHNIQUE: Sagittal and selected axial T1 and T2 weighted images were obtained through the thoracic spine. No fat saturated images are provided.

FINDINGS: The patient demonstrates normal bony alignment, vertebral body height and marrow signal. No definite contusion or fracture is seen, although the sensitivity of the exam is decreased secondary to lack of fat saturated images. There is no evidence of central canal or foraminal stenosis. The visible paraspinal soft tissues are unremarkable for technique.

IMPRESSION:

1. NO EVIDENCE OF SIGNIFICANT CENTRAL CANAL OR FORAMINAL STENOSIS.
2. NO GROSS EVIDENCE OF MARROW ABNORMALITY TO SUGGEST CONTUSION OR FRACTURE, HOWEVER, THE EXAM IS SOMEWHAT LIMITED SECONDARY TO THE LACK OF FAT SATURATED T2 WEIGHTED IMAGES.

Paul Kuperman, MD MSK /mfl
Dictated on 04/26/05

Job # 2023546

This document has been electronically reviewed and signed.

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OCT-01-2005 03:13PM FROM LONG BAY DIAGNOSTIC IMAGING

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T-433 P.001/002 F-278



PATIENT: Haldet, Daniel
DATE OF BIRTH: 3/21/1938
ID Number: 365945
REFERRING PHYSICIAN: Sauer, Scott

CLOSED MRI OF THE THORACIC SPINE WITHOUT CONTRAST

EXAM DATE: 10/29/2005

INDICATION: Previous fall, continued pain.**COMPARISON:** April 26, 2005.**TECHNIQUE:** Using a closed 1.5 Tesla GE magnet, the thoracic spine was studied in sagittal and axial spin echo T1 and FSE T2.

FINDINGS: The thoracic vertebral bodies are anatomically aligned. There is minimal anterior wedging of T11 and T12, however, given the bridging osteophytes and normal marrow pattern, this is likely chronic. The remaining vertebral bodies are otherwise anatomically aligned, and of normal high. Aside from some benign-appearing hemangiomas. There is a normal marrow pattern throughout.

At T11-12 there is a subtle broad-based bulge, however, this shows no significant central or exiting foraminal stenosis. The remaining levels appear unremarkable.

Spinal cord is of normal course, caliber and signal intensity.

IMPRESSION:

1. There are old appearing wedge compression deformities of T11 and T12.
2. T11-12 broad-based bulge, however, without any significant central or exiting foraminal stenosis.
3. The remainder of this exam is unremarkable.

EXAM: CLOSED MRI OF THE LUMBAR SPINE WITHOUT CONTRAST.**INDICATION:** Previous injury, pain.**COMPARISON:** April 26, 2005.**TECHNIQUE:** Using a closed 1.5 Tesla GE magnet, the lumbar spine was studied in sagittal and axial spin echo T1 and FSE T2.

FINDINGS: Assuming five non-rib bearing lumbar vertebral bodies, there is minimal wedging of T11 and T12, stable from prior exam. Given the bridging and osteophytes and normal marrow signal intensity, this is likely chronic or congenital. Vertebral bodies are otherwise anatomically aligned, and of normal height. Aside

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T-433 P.002/002 F-275



Russell Derrick, MD MSK

Haldet, Daniel

MRN: 363943

from benign-appearing hemangiomas, the vertebral bodies are of normal marrow signal intensity. The conus medullaris terminates around T12 level.

T12-L1 through L3-4 unremarkable.

L4-5 demonstrates a circumferential broad-based bulge, with facet and ligamentous hypertrophy. These contribute to trefoil central canal narrowing, but no exiting foraminal stenosis.

L5-S1 demonstrates a broad-based bulge, with left posterolateral broad-based disc protrusion. This with facet hypertrophy causes mild trefoil central, and very minimal inferior exiting foraminal narrowing. Overall appearance is unchanged.

IMPRESSION:

1. Old or congenital anterior wedging of T11 and T12.

2. L4-5 and L5-S1 broad-based annular bulges. At L5-S1 there appears to be an annular tear with left posterolateral broad-based disc bulge/protrusion. This with facet hypertrophy, contributes to trefoil central and mild inferior exiting foraminal narrowing greater on the left than the right. However, the overall appearance is unchanged. Mild central canal narrowing at the L4-5 level.

3. The overall appearance of this exam is unchanged from the prior exam.

Russell Derrick, MD MSK /dg
Dictated on 10/31/2005

Job # 2413009

This document has been electronically reviewed and signed.

A handwritten signature in black ink, appearing to be "R. Derrick", is written over the text "This document has been electronically reviewed and signed."

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AUG. 4, 2006 12:47PM

LONG DAY DIAGNOSTIC

**LONG BAY**
DIAGNOSTIC IMAGING**PATIENT:** Haidet, Daniel**DATE OF BIRTH:** 3/21/1958**ID Number:** 365945**REFERRING PHYSICIAN:** Sauer, Scott

MRI CERVICAL SPINE**EXAM DATE:** 8/3/2006

INDICATION: Bilateral hand weakness and numbness.**TECHNIQUE:** Sequences include sagittal T1, sagittal T2, axial T2, and axial gradient.**FINDINGS:** Cervical spinal cord signal is normal. Alignment is anatomic without evidence of marrow infiltration or fracture.**C2-3** demonstrates no disc abnormality or significant stenosis.**C3-4** demonstrates mild left uncovertebral spurring and facet degeneration. This causes mild left foraminal narrowing. No canal or right foraminal stenosis.**C4-5** demonstrates minimal uncovertebral degeneration on the right. Overall, there is not a significant canal or foraminal stenosis.**C5-6** demonstrates minimal degenerative facet arthropathy but no significant overgrowth to cause canal or foraminal stenosis.**C6-7** demonstrates mild facet degeneration but no focal disc abnormality. No canal or foraminal stenosis.**C7-T1** demonstrates no focal disc abnormality or significant stenosis.**IMPRESSION:** Mild degenerative cervical spondylosis. No focal disc abnormality to cause a significant canal stenosis.

Steven Pirttima, MD /sl

Dictated on 8/3/2006

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ROA-52

AUG. 4. 2006 12:47PM

LONG BAY DIAGNOSTIC IMAGING

T-456 P.004/004 F-433



LONG BAY
DIAGNOSTIC IMAGING

Steven Pirutina, MD

Haidet, Daniel

MRN: 365945

Job # 3308783

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ROA-53

**THE CENTER FOR PAIN RELIEF, LLC
CONSULT AND PROCEDURE REPORT**

PATIENT: Daniel J. Haidet
DATE OF VISIT: May 12, 2005
CONSULTING MD: Joe Bethle, PA-C
SURGEON: Scott B. Sauer, D.O.

HISTORY OF PRESENT ILLNESS: Mr. Haidet is a 47 year old white male complaining of pain in the middle of his back, also pain at the base of his neck which is also causing headaches radiating into the posterior portion of his head. He states that these two pains began January 1, after he fell about eight feet off a ladder onto a concrete surface while he was at work. He works as an airplane mechanic at Myrtle Beach Airport. He states he had no pain similar to what he has currently prior to the fall. He describes the pain as a throbbing sensation. The pain is constant and severe. It is rated 8/10. The pain is exacerbated by any type of bending forward or sitting in a stooped position. The pain is alleviated with sitting upright and even placing a pillow behind his back. Getting more of a thoracic extension helps to alleviate the pain. Previous treatments have included Ultracet and an anti-inflammatory which he cannot recall the name. Physical therapy for his back has included ultrasound and TENS unit. MRI has been performed. There is anterior wedging at T12-L1 which appears chronic. He has some multilevel degenerative changes in the lower lumbar region, specifically L5-S1. There is no evidence of significant central canal or foraminal stenosis of the lumbar spine.

PAST MEDICAL HISTORY: Significant for liver dysfunction, diagnosis of Hepatitis C as a child due to a blood transfusion.

SURGERY HISTORY: Significant for appendectomy, elbow replacement surgery as a result of a fracture due to his fall on January 1.

CURRENT MEDICATIONS: Vicodin which he is trying to take less of and trying to wean himself off that medication.

ALLERGIES: NO KNOWN DRUG ALLERGIES

SOCIAL HISTORY: He is married and does not have any children. He works as an airplane mechanic. He has been off work for five months due to his injury. He has been smoking cigarettes for seven years, about one pack per day. He denies use of any alcohol or any illicit substances.

FAMILY HISTORY: Noncontributory.

REVIEW OF SYSTEMS: Positive for headaches and Hepatitis. He denies any fevers, chills, weight changes, visual changes, bowel or bladder dysfunction, chest pain, shortness of breath, denies any kidney disease, diabetes or thyroid disease, denies any bleeding disorders, anxiety, depression, or panic disorder.

Received on 6/6/2005 3:29:04 PM [Eastern Daylight Time]

Daniel J. Haldet
May 12, 2005
Page 2

PHYSICAL EXAMINATION:

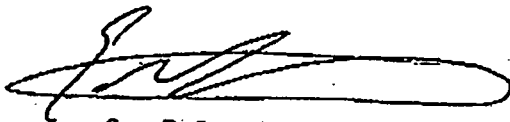
Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. He is pleasant and cooperative. Short and long term memory are intact. Speech is clear and coherent. There is no evidence of impairment. He has a normal gait. Deep tendon reflexes are intact at 2/4 in the upper and lower extremities. No sensory or motor deficit identified in the upper or lower extremities. Straight leg raise is negative in the seated position to 90 degrees. Laseque's testing is negative bilaterally. Palpation of the thoracic region reveals tenderness around the T12-L1 region. Several triggerpoints are identified in this area as well. He has some significant tenderness on palpation over the greater occipital nerves bilaterally.

IMPRESSION:

1. Acute mid thoracic pain. The patient is experiencing an inflammatory condition involving the T12-L1 level. His MRI does show wedging deformity at this level which I do not think was caused by the fall but was likely aggravated by his fall.
2. Occipital neuralgia resulting in periodic headaches.

PLAN:

1. I explained to the patient that I would like to set him up for lumbar thoracic epidural steroid injection at the T12-L1 level.
2. I would also consider some occipital nerve blocks, however, I would like to get him back in physical therapy specifically with traction for the cervical and thoracic region.
3. Place him on Daypro 600 mg 2 x day, Zanaflex 48 mg prn.
4. I am going to keep him out of work since he is not able to work at this point at his previous job in his current condition.
5. Follow up with me next week for his first injection.



Scott B. Sauer, D.O.
SBS/bc

cc: Joe Bethle, PA-C
for Dr. Joe Jarrett

Received on 6/6/2005 3:29:04 PM [Eastern Daylight Time]

THE CENTER FOR PAIN RELIEF, LLC
CONSULT AND PROCEDURE REPORT

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AUG 08 2005

Alpha Operations - DP15

PATIENT: Daniel J. Haidet

DATE OF VISIT: July 22, 2005

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Office Visit

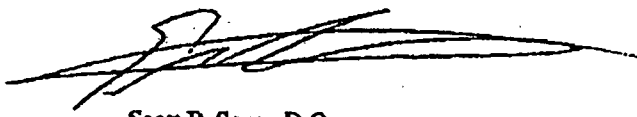
SUBJECTIVE: Mr. Haidet is a 47 year old white male complaining of neck pain and mid thoracic pain as a result of an injury at work. On his last visit on June 17 he underwent thoracic epidural steroid injection. He states he had significant improvement from the injection but only for about two weeks. For those two weeks he was able to take less pain medication. He is currently taking Hydrocodone 5 mg twice a day but he states that over the last week his pain has increased and he really has not noticed much improvement from the medication. He had to discontinue physical therapy because the traction was giving him a severe migraine and he really did not notice much improvement from physical therapy anyway.

OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Patient is pleasant and cooperative. Affect is appropriate. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. He has a normal gait. Palpation in the mid thoracic region is tender around the T11-12 region.

ASSESSMENT: Thoracic radiculitis.

PLAN:

1. I would like to have the patient follow up for repeat thoracic injection since he did not improve from that.
2. Increase his Hydrocodone to 7.5 mg. Hopefully that will help reduce his pain.
3. I will give him a work release to return to work with restrictions.



Scott B. Sauer, D.O.
SBS/bc

ALP DP13 NOV 04 2005

THE CENTER FOR PAIN RELIEF, LLC
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: October 24, 2005

SURGEON: Scott B. Sauer, D.O.

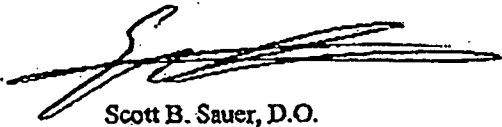
PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47 year old white male with complaint of mid thoracic pain as a result of a work-related injury. During his last visit he was complaining more of lower back pain so I injected L5-S1. Patient is following up 10 days later stating that his pain level is out of control. He rates his pain as 9/10 and it is again back, more in the thoracic region. He is also complaining of pain that radiates into the posterior aspect of the left arm, which he has not mentioned before. He states that his pain seems to be wandering around quite a bit in a very confusing fashion at this time. Patient currently is taking oxycodone for his pain, 5 mg three times a day.

OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Patient is pleasant and cooperative. Affect is appropriate. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. He has a normal gait. Deep tender reflexes remain unchanged in the upper and lower extremities. No sensory or motor deficit identified in the upper or lower extremities. Palpation of the lumbar spine is mildly tender.

ASSESSMENT: Thoracic and lumbar radiculitis.

- PLAN:
1. At this point the patient has not received much benefit from the injection therapy. He is continuing to have significant pain that is uncontrollable. I would like to repeat his MRI to make sure there has been no significant change, thoracic and lumbar.
 2. Start him on Neurontin 300 mg three times a day.
 3. Continue oxycodone.
 4. Follow up with me in two weeks.
 5. Consider facet injections depending on what the MRI has to say.



Scott B. Sauer, D.O.
SBS/bc

ALP DP49 NOV 18 2005

THE CENTER FOR PAIN RELIEF, LLC
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet
DATE OF VISIT: November 7, 2005
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47 year old white male with complaint of mid thoracic pain due to work-related injury. He has lower back pain and pain in his legs as well. During his last visit, I started him on Neurontin. He states that he has had significant improvement with the medication. It drops his pain level down to almost nothing, to a very manageable state. He does note that it only lasts for about six hours. He seems to have a paradoxyl effect with the Neurontin. It seems to give him more energy than its usual sedating properties. He is also complaining of some nightmares at night since he started the medication. He did not notice much improvement at all with the last injection at L5-S1. I did review his MRI with him.

OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Patient is pleasant and cooperative. Affect is appropriate. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. Palpation of the lumbar spine is mildly tender. He has more tenderness around the lumbothoracic junction. No sensory or motor deficit identified in the lower extremities.

ASSESSMENT: 1. Thoracic lumbar radiculitis.
2. Chronic insomnia.

PLAN: 1. Continue Neurontin 300 mg every eight hours.
2. Discontinue Flexcil because he is using that mainly for sedation to help him sleep at night. We will replace that with Lunesta.
3. Continue oxycodone as needed.
4. Follow up with me in December for thoracic epidural.



Scott B. Sauer, D.O.
SBS/bc

THE CENTER FOR PAIN RELIEF, LLC
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: February 17, 2006

SURGEON: Scott B. Sauer, D.O.

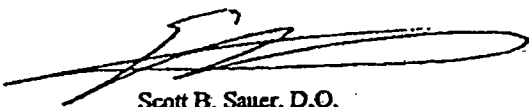
PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47-year-old white male with complaint of mid thoracic pain due to work-related injury. He is following up today for re-evaluation. I had planned on repeating an epidural steroid injection; however, his insurance carrier denied that. Patient states he had excellent improvement in his pain with the last injection. At this point, we are in a bind trying to get his pain under control with medications only, since his insurance carrier will not pay for any more injections at this time. He rates his pain level at 6/10 today. He states that he is doing okay with the current medications. No side effects are identified.

OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. He has a normal gait. Palpation of the lumbar and thoracic region is mildly tender.

ASSESSMENT: 1. Lumbar/thoracic radiculitis.
2. Chronic insomnia.

PLAN: 1. Increase Neurontin to 600 mg three times a day.
2. Continue oxycodone 5 mg three times a day as needed.
3. Continue Flexeril 1-2 tablets at night.
4. Follow up with the medical assistant in one month and I will see him in the office in two months.



Scott B. Sauer, D.O.
SBS/bc

ALP DP33 MAY 19 2006

THE CENTER FOR PAIN RELIEF, LLC
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet
DATE OF VISIT: April 17, 2006
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47-year-old white male with complaint of mid thoracic pain due to work-related injury. His insurance company has refused any further injections stating that they are medically unnecessary, which is quite confusing as the patient states he had significant improvement with the injections. His pain level has increased significantly since he has not been able to have an injection to the point where I actually have to increase his pain medication now. He rates his pain level at 7/10. There has been no change in patient's health status since last seen.

OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. He has a normal gait. Palpation of the thoracic region is mildly tender.

ASSESSMENT: 1. Thoracic/lumbar radiculitis.
2. Chronic insomnia.

PLAN: 1. Patient will discontinue the Rozerem; this is causing headaches for him. We will place him back on Lunesta.
2. Add Duragesic to his regime. I will start him at 25 mcg.
3. Continue oxycodone as needed for any breakthrough pain.
4. Follow up with me in one month and we will see how he is doing with his medication.



Scott B. Sauer, D.O.
SBS/bc

GRANDE DUNES SURGERY CENTER
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet
DATE OF VISIT: May 20, 2005
TRANSCRIPTION: May 24, 2005
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Thoracic ESI at T11-12.

SUBJECTIVE: The patient is a 47 year old white male with complaint of pain in the mid thoracic region. He was initially evaluated on 5/12. At that time he was diagnosed with thoracic radiculitis. He does have anterior wedge deformity at T11-12. I started the patient on Daypro which he states is causing a lot of diarrhea and stomach pain for him. He is taking Zanaflex which he states just makes him tired. There has been no change in his health status since he was seen.

OBJECTIVE: Vital signs are stable and noted in the chart. The patient is alert and oriented x 3 and does not appear to be in any acute distress. His affect is appropriate. He is pleasant and cooperative. Short and long term memory are intact. Speech is clear and coherent. There is no evidence of impairment. Palpation in the thoracic region reveals tenderness at T11-12 region mainly on the left side. No specific sensory or motor deficits are identified in the lower extremities.

ASSESSMENT:

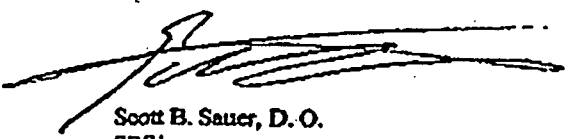
- 1) Thoracic radiculitis.

PLAN:

- 1) Proceed with thoracic epidural steroid injection.
- 2) Have the patient follow up me in two weeks for repeat injection.

PROCEDURE: (Thoracic ESI at T11-12)

Informed consent was obtained. Patient was placed in the prone position. Under fluoroscopic imaging the aforementioned interspace was identified. The skin was cleansed with Betadine x 3; a fenestrated sterile drape was applied. The skin and subcutaneous tissues projecting over the interspace was anesthetized with 3cc of 1% xylocaine. An 20-gauge, 2.5 inch Tuohy needle was then inserted down to the epidural space using "loss of resistance" technique with normal saline under fluoroscopic guidance. Aspiration was negative for blood or CSF. 1cc of Isovue 300 was injected, which showed spread into the epidural space. This was followed by an injection of 4cc of 0.25% marcaine mixed with 80 mg of Depo-Medrol. The Tuohy needle was then flushed with 1cc of preservative-free normal saline and removed. The patient tolerated the procedure well and there was no evidence of procedural complications. The patient was able to ambulate to the recovery area and was monitored for a period of time before being discharged in stable condition. Discharge instructions were given by the RR nurse prior to discharge.



Scott B. Sauer, D.O.
SBS/cc

Received on 6/6/2005 3:29:04 PM [Eastern Daylight Time]

GRANDE DUNES SURGERY CENTER
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel Haidet

DATE OF VISIT: June 3, 2005

TRANSCRIPTION: June 6, 2005

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Thoracic ESI at T11-12, midline.

SUBJECTIVE: The patient is a 47 year old white male with complaint of pain in the mid thoracic region. He was last seen on May 20th. He underwent thoracic epidural steroid injection at T11-12. He did note an improvement of 30%. He is following up today for a second injection. There has been no change in his health status since he was seen.

ASSESSMENT:

- 1) Thoracic radiculitis.

PLAN:

- 1) We will proceed with thoracic epidural steroid injection.
- 2) Have the patient follow up with me in two more weeks for a third injection.

PROCEDURE: (Thoracic ESI at T11-12, midline)

Informed consent was obtained. Patient was placed in the prone position. Under fluoroscopic imaging the aforementioned interspace was identified. The skin was cleansed with Betadine x 3; a fenestrated sterile drape was applied. The skin and subcutaneous tissues projecting over the interspace was anesthetized with 3cc of 1% xylocaine. An 18-gauge, 3.5 inch Tuohy needle was then inserted down to the epidural space using "loss of resistance" technique with normal saline under fluoroscopic guidance. Aspiration was negative for blood or CSF. 1cc of Isovue 300 was injected, which showed spread into the epidural space. This was followed by an injection of 4cc of 0.25% marcaine mixed with 80 mg of Depo-Medrol. The Tuohy needle was then flushed with 1cc of preservative-free normal saline and removed. The patient tolerated the procedure well and there was no evidence of procedural complications. The patient was able to ambulate to the recovery area and was monitored for a period of time before being discharged in stable condition. Discharge instructions were given by the RR nurse prior to discharge.

Scott B. Sauer, D. O.
SBS/cc

GRANDE DUNES SURGERY CENTER
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel Haidet
DATE OF VISIT: June 17, 2005
TRANSCRIPTION: June 17, 2005
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Thoracic ESI at T12-L1, midline.

SUBJECTIVE: The patient is a 47 year old white male with complaint of neck pain and mid thoracic pain which is all as a result of an injury at work. During his last visit he underwent thoracic epidural steroid injection at T11-12. He states he did not notice any improvement from that procedure. This is in contrast to his first injection which he did note significant improvement with. He is following up today for his third injection. There has been no change in his health status since he was seen. He is also asking if I can begin taking over his Hydrocodone for him which Dr. Leak was prescribing for his fractured elbow pain but he is going to be released from Dr. Leak. He states he takes the Hydrocodone maybe once a day or one-half tablet a day depending on the pain level. He also states he also is looking into a job in Savannah and getting back into the airline mechanic business more in a teaching role rather than the physical aspect of it.

ASSESSMENT:

- 1) Thoracic radiculitis.

PLAN:

- 1) We will proceed with thoracic epidural steroid injection today.
- 2) Have the patient follow up with me in two months if he needs for a repeat injection.
- 3) I have agreed to give him a prescription for Hydrocodone 5 mg #60 today.

PROCEDURE: (Thoracic ESI at T12-L1, midline)

Informed consent was obtained. Patient was placed in the prone position. Under fluoroscopic imaging the aforementioned interspace was identified. The skin was cleansed with Betadine x 3; a fenestrated sterile drape was applied. The skin and subcutaneous tissues projecting over the interspace was anesthetized with 3cc of 1% xylocaine. An 18-gauge, 3.5 inch Tuohy needle was then inserted down to the epidural space using "loss of resistance" technique with normal saline under fluoroscopic guidance. Aspiration was negative for blood or CSF. 1cc of Isovuc 300 was injected, which showed spread into the epidural space. This was followed by an injection of 4cc of 0.25% marcaine mixed with 80 mg of Depo-Medrol. The Tuohy needle was then flushed with 1cc of preservative-free normal saline and removed. The patient tolerated the procedure well and there was no evidence of procedural complications. The patient was able to ambulate to the recovery area and was monitored for a period of time before being discharged in stable condition. Discharge instructions were given by the RR nurse prior to discharge.

Scott B. Sauer, D. O.
SBS/cc

GRANDE DUNES SURGERY CENTER
CONSULT AND PROCEDURE REPORT

RECEIVED

AUG 23 2005

Alpha Operations - DR8

PATIENT: Daniel Haidet
DATE OF VISIT: August 16, 2005
TRANSCRIPTION: August 16, 2005
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Thoracic ESI at T12-L1.

SUBJECTIVE: The patient is a 47 year old white male with complaint of mid thoracic pain as a result of a work related injury. He was last seen on June 22nd. He underwent thoracic epidural steroid injection. He noted 100% relief of his pain for two weeks and then he states the pain returned back to its usual state. At this point he states he can mow the lawn and do some activities around the house but usually he has to pay for it the next day if he does too much. The pain medication does help him throughout the day. He is taking Hydrocodone 7.5 mg. He has some concerns about the Tylenol in the medication. He does have a history of Hepatitis C apparently with elevated liver functions. We probably should change that to a pain medicine without Tylenol in it.

ASSESSMENT:

- 1) Thoracic radiculitis.

PLAN:

- 1) We will proceed with repeat thoracic epidural steroid injection today.
- 2) Have the patient follow up with me in two months for repeat injection.
- 3) He has one refill remaining on his current Hydrocodone prescription. I have asked him to go ahead and finish that up and then in one month I will switch him to Percocet 5 mg. I will give him 90 tablets since it will be reducing the dose slightly. He can take one three times a day if needed. He is to give me a call about three days before he runs out of his medication to switch over to the Oxycodone.
- 4) I am also going to give him a referral to Dr. Kang for impairment rating as he states Workers Comp is requesting this and I do not currently do impairment ratings.

PROCEDURE: (Thoracic ESI at T12-L1)

Informed consent was obtained. Patient was placed in the prone position. Under fluoroscopic imaging the aforementioned interspace was identified. The skin was cleansed with Betadine x 3; a fenestrated sterile drape was applied. The skin and subcutaneous tissues projecting over the interspace was anesthetized with 3cc of 1% xylocaine. An 18-gauge, 3.5 inch Tuohy needle was then inserted down to the epidural space using "loss of resistance" technique with normal saline under fluoroscopic guidance. Aspiration was negative for blood or CSF. 1cc of Isovue 300 was injected, which showed spread into the epidural space. This was followed by an injection of 4cc of 0.25% marcaine mixed with 80 mg of Depo-Medrol. The Tuohy needle was then flushed with 1cc of preservative-free normal saline and removed. The patient tolerated the procedure well and there was no evidence of procedural complications. The patient was able to ambulate to the recovery area and was monitored for a period of time before being discharged in stable condition. Discharge instructions were given by the RR nurse prior to discharge.

Scott B. Sauer, D. O.
SBS/cc

GRANDE DUNES SURGERY CENTER
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel Haidet
DATE OF VISIT: October 14, 2005
TRANSCRIPTION: October 14, 2005
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Interlaminar ESI at L5-S1, right.

SUBJECTIVE: The patient is a 47 year old white male with complaint of mid thoracic pain as a result of a work related injury. Today he is complaining of some lower back pain with numbness in the legs, more numbness noted in the right than in the left. He states that this started after his FCE evaluation. He has some improvement in the mid thoracic region from the epidural steroid injections. He is doing well with Percocet but he is asking if I can just change this to plain Oxycodone. He wants to eliminate the Tylenol. He denies any side effects from the medication.

ASSESSMENT:

- 1) Thoracic and lumbar radiculitis.

PLAN:

- 1) We will proceed with lumbar epidural steroid injection at L5-S1 on the right today.
- 2) Have the patient follow up in two months for re-evaluation and repeat injection, thoracic versus lumbar.
- 3) I am going to go ahead and give him just plain Oxycodone in the 5 mg strength.

PROCEDURE: (Interlaminar ESI at L5-S1, right)

Informed consent was obtained. Patient was placed in the prone position. Under fluoroscopic imaging the aforementioned interspace was identified. The skin was cleansed with Betadine x 3; a fenestrated sterile drape was applied. The skin and subcutaneous tissues projecting over the interspace was anesthetized with 3cc of 1% xylocaine. An 18-gauge, 3.5 inch Tuohy needle was then inserted down to the epidural space using "loss of resistance" technique with normal saline under fluoroscopic guidance. Aspiration was negative for blood or CSF. 1cc of Isovue 300 was injected, which showed spread into the epidural space. This was followed by an injection of 4cc of 0.25% marcaine mixed with 80 mg of Depo-Medrol. The Tuohy needle was then flushed with 1cc of preservative-free normal saline and removed. The patient tolerated the procedure well and there was no evidence of procedural complications. The patient was able to ambulate to the recovery area and was monitored for a period of time before being discharged in stable condition. Discharge instructions were given by the RR nurse prior to discharge.



Scott B. Sauer, D. O.
SBS/cc

GRANDE DUNES SURGERY CENTER
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel Haidet
DATE OF VISIT: December 14, 2005
TRANSCRIPTION: December 15, 2005
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Thoracic ESI at T11-12.

SUBJECTIVE: The patient is a 47 year old white male with complaint of mid thoracic pain due to work related injury. He is following up today for repeat injection. He has had some improvement with the previous injections. He is getting improvement with his current medication regime of Oxycodone and Neurontin however he did discontinue Lunesta. He states that it was giving him the side effect of bad taste in his mouth and nightmares. He states that the Flexeril actually worked better for him as far as resting at night and he would rather switch back to that. There has been no change in his health status since he was seen.

ASSESSMENT:

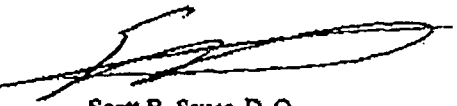
- 1) Lumbar thoracic radiculitis.
- 2) Chronic insomnia.

PLAN:

- 1) We will proceed with a thoracic epidural steroid injection at T11-12 today.
- 2) Have the patient follow up with me in two months for repeat injection if necessary.
- 3) He is to continue Oxycodone and Neurontin as prescribed. I have agreed to change him from Lunesta to Flexeril. He can take one or two tablets at night.

PROCEDURE: (Thoracic ESI at T11-12)

Informed consent was obtained. Patient was placed in the prone position. Under fluoroscopic imaging the aforementioned interspace was identified. The skin was cleansed with Betadine x 3; a fenestrated sterile drape was applied. The skin and subcutaneous tissues projecting over the interspace was anesthetized with 3cc of 1% xylocaine. An 18-gauge, 3.5 inch Tuohy needle was then inserted down to the epidural space using "loss of resistance" technique with normal saline under fluoroscopic guidance. Aspiration was negative for blood or CSF. 1cc of Isovue 300 was injected, which showed spread into the epidural space. This was followed by an injection of 4cc of 0.25% marcaine mixed with 80 mg of Depo-Medrol. The Tuohy needle was then flushed with 1cc of preservative-free normal saline and removed. The patient tolerated the procedure well and there was no evidence of procedural complications. The patient was able to ambulate to the recovery area and was monitored for a period of time before being discharged in stable condition. Discharge instructions were given by the RR nurse prior to discharge.



Scott B. Sauer, D.O.
SBS/cc

ALP DP27 NOV 16 2005

PATIENT: DANIEL HAIDET
DATE: 8/22/2005
REFERRING: Dr. Scott Sauer.

CHIEF COMPLAINT:

Back pain.

HISTORY OF PRESENT ILLNESS:

X
Mr. Haidet is a 47-year-old gentleman who suffered work-related back injury on January 1, 2005. He was working at the airport and fell 8 feet. He injured his left elbow; eventually, requiring an elbow replacement done by Dr. Leak. He had good results from the surgery. He also injured his mid lower back. ~~He has had radiographic imaging, which reveals an old compression fracture at T12-L1.~~ There was nothing acute that could be detected. He had a long course of physical therapy, which gave him some relief. He has had epidural steroid injections, which also gave him temporary relief. Most of the pain is in the midback. He reports no paresthesias, numbness, or tingling in the legs. No bowel or bladder dysfunction. No radicular symptoms. He has not been able to work at the present time. He reports driving and walking, and standing – all aggravate pain. Physical activity tends to increase pain as well. He is currently taking hydrocodone, which gives him relief during the daytime.

PAST MEDICAL HISTORY:

Remarkable for hepatitis C, T12-L1 wedge fracture, old. No history of coronary artery disease or diabetes.

PAST SURGICAL HISTORY:

Appendectomy and left elbow replacement.

ALLERGIES:

No known allergies.

SOCIAL HISTORY:

Smokes a pack. Denies alcohol use. He works as an airport mechanic.

MEDICATIONS:

Hydrocodone and aspirin.

REVIEW OF SYSTEMS:

Negative for chronic chest pain, shortness of breath, nausea, vomiting, fevers, chills, or night sweats.

PHYSICAL EXAMINATION

General: Mr. Haidet has a normal body habitus. He is in no acute distress.

HEENT: Normocephalic, atraumatic. Neck is supple.

Chest & Lungs: Regular rate and rhythm. Lungs are clear with no rales or wheezes.

Abdomen: Soft and nontender.

Skin: Intact. No rash or cyanosis.

Musculoskeletal: He has normal lumbosacral range of motion. He has midline tenderness at about T10-T11 region. He has some paravertebral muscle spasm. Gait analysis is normal. The left elbow was tender diffusely. Range of motion is excellent.

Neurological: He is alert and oriented x3. Cranial nerves II through XII are intact. Upper extremity strength is rated 5/5 proximally and distally, except for the left triceps and biceps due to the elbow replacement. Quadriceps, plantar, and dorsiflexor strength are 5/5. Reflexes are 2+ equal and symmetrical. Sensation is intact in all four extremities to light touch in all dermatomes. No clonus or spasticity is present.

DIAGNOSTIC IMPRESSION:

- (1) T12-L1 thoracic compression fracture, old with aggravation due to work-related incident.
- (2) It is my opinion that Mr. Haidet is at maximal medical improvement.
- (3) Based on AMA Guides Fifth Edition, he received 6% impairment for the thoracic spine, which also translates to 6% impairment to the whole person.

RECOMMENDATIONS:

- (1) I am recommending he get a functional capacity evaluation to see what type of work restrictions apply.

Thank you for allowing me to participate in the care of this patient.

C.Gregory Kang, M.D.
Physiatrist

GK/sds

cc: Dr. Scott Sauer

Workers' compensation.

DANIEL HAIDET

2

PATIENT: DANIEL HAIDET
DATE: 9/8/2005

Brief History:

Mr. Haidet returns in followup. Going over the results of his dysfunctional capacity evaluation. He was very consistent in his testing. Basically, the FCE shows that he is able to return the medium-type work with about a 25-pound lifting restriction. He is still suffering from mid back pain on a regular basis. The testings have aggravated it to some degree.

Examination:

Exam today reveals continued lower thoracic pain. There is some associated muscle spasm in that area. No focal deficits in the lower extremity with normal neurological function.

Diagnostic Impression:

1. Thoracic spine strain.
2. History of T12-L1 thoracic compression fracture, old.

Plan:

He is at maximum medical improvement. I am allowing him to return to work at the medium category level with a 25-pound lifting restriction. I have asked him to continue his follow up visits with Dr. Scott Sauer.

Thank you for allowing me to participate in the care of this patient.

C.Gregory Kang, M.D.
Physiatrist

GK/mdg

cc: Dr. Scott Sauer

Workers' compensation.

**Adams & Wilkinson**

Vocational, Ergonomics and Medical Consulting

12/6/05

Jeff Chandler

Oneil & Chandler, LLC

PO Drawer 3909

Myrtle Beach, SC 29578

RECEIVED DEC 08 2005

Injured Worker:

Daniel Haidet

Date of Birth:

03/21/58

Date of Injury:

1/1/05

Employer:

Avcraft

Vocational Assessment**Background information**

Mr. Haidet was referred to Adams and Wilkinson for a vocational assessment and labor market survey. I interviewed Mr. Haidet on November 29, 2005. He was cooperative throughout the interview and able to provide dates of employment as well as a thorough description of his job responsibilities.

Medical Information

Mr. Haidet reports that he was injured on the job on 11/5/04 while working at Avcraft as an aircraft maintenance technician. He fell eight feet off of a ladder and landed on concrete, complaining of pain in his shoulder and left elbow, right hip and mid back. He eventually went to the ER at Grand Strand Regional and was diagnosed with a radial head fracture with displaced fragment of the left elbow, and degenerative changes of the thoracic spine. Right hip and pelvis x rays were normal. He was splinted and referred to Robert S. Leake, MD, at Strand Orthopedics. Dr. Leake performed an open reduction internal fixation of the left elbow on 1/7/05.

On 1/10/05, he was seen by J. K. Bethle, PA-C, also from Strand Orthopedics Consultants, who gave an impression of thoracic and lumbar strain. He ordered an MRI, physical therapy and kept him out of work. Mr. Haidet remained out of work and attended therapy. On 2/11/05, JK Bethle, PA-C, gave him an injection to the scapulothoracic bursa area. On 2/22/05, Dr. Leak viewed x rays of the left elbow and found that the plate on his radial head and neck has broken and the radial head fragment had displaced. He scheduled a second surgical procedure to repair the damage. This surgery on 3/11/05 revealed that no healing had taken

place on the radial head and a prosthetic radial head was installed. He was released to light duty on 4/26/05 with no use of the left arm. He continued to complain of thoracic pain. A lumbar and a thoracic MRI was completed on the same date that showed anterior wedging of T-12 and L1 and multilevel degenerative changes with the most severe being L5-S1. A small annular tear was noted at L5-S1. He was referred to Dr. Sauer/Dr. Wenz for pain management and taken out of work on 4/29/05. Dr. Leake indicated that Mr. Haidet had reached MMI on 7/7/05 and gave him an 18% impairment to the left upper extremity, or an 11% whole man impairment. He indicated that Mr. Haidet had a permanent loss of strength, particularly in the left hand grip.

On May 12, 2005, Mr. Haidet was seen by Dr. Scott Sauer, D.O. His impression was occipital neuralgia and inflammation of a pre-existing condition at T12-L1, likely aggravated by the fall. He recommended thoracic epidural steroid injections, therapy to the cervical spine and then occipital nerve blocks. He told him to remain out of work. He underwent thoracic epidural steroid injections on May 20, June 6, June 17, August 16, and October 14. His medications were changed from Hydrocodone to Percocet to Oxycodone and Neurontin was added with good result. He was given Lunesta for sleep. On 8/22/05, Mr. Haidet was sent to Gregory Kang, MD, physiatrist, for an impairment rating of the thoracic spine. Dr. Kang gave him a 6% to the whole man for his thoracic spine radiculitis. Dr. Kang ordered an FCE that indicated Mr. Haidet could function in the medium level of physical demands with maximum lifting of 25 lbs. He encouraged Mr. Haidet to continue to follow up with Dr. Sauer for pain control.

Secondary Medical:

Mr. Haidet has hepatitis C. His past medical history includes: appendectomy, left ankle fracture in 1974 and carpal tunnel release in 1993.

Current level of functioning:

Mr. Haidet reports that he is unable to sit longer than 20 minutes at a time. He reports that when typing, his hands go numb after about 10 minutes. He reports that he can stand and walk for 30 minutes and then needs to change positions. He reports that he is limited from bending, pushing, pulling, kneeling and squatting secondary to pain. He would be afraid to climb a ladder with his left arm. He is currently taking Neurontin for nerve pain, Oxycodone 3 times a day and Lunesta for sleep. His pain is constant in the thoracic spine at a level of 7-9 and this can be reduced to a 3 with medication. He does not sleep longer than 4 hours per night. He reports that he has about 3 days where he feels that he can

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function and the rest of the days he considers to be "bad" days with little ability to move about.

Education and Training

Mr. Haidet graduated from High School in 1976 in Canton, OH. He served as a sonar technician in the US Navy from 1980-84. He graduated from the Pittsburgh Institute of Aeronautics in 1993 with an associate's degree in Aviation Maintenance. Mr. Haidet reports no difficulty with reading, writing and arithmetic. He reports that he has basic computer skills but can only use a keyboard for brief periods of time secondary to pain in the elbow and thoracic spine. He worked for a year and a half for a company that instructed him in computer-assisted design for electrical systems for airplanes. He states that he learned very specific skills that may or may not be transferable to other areas. He stressed that he would need further training to be hired as a CAD operator.

Work History

Mr. Haidet provided me the following work history:

- Construction Laborer 14 years
- General Motors, forklift operator part time 2 years
- Ogden Aviation airplane load supervisor 1 year
- GE Aircraft Engines assembly and test technician 1.5 years
- ComAir hangar maintenance 1 year
- Flight Systems, Reliance Aviation, Flight International, Reliance Aerotek, hangar supervisor, 2 years
- Gear Buck Aviation maintenance, inspector, 3 years
- Chippewa Aerospace, autoCAD drafter, 1.5 years
- AvCraft, line maintenance coordinator, 1 month

The Dictionary of Occupational Titles provides the following information about Mr. Haidet's occupational subgroup, strength, general educational development and specific vocational preparation. A more detailed explanation follows.

621.281-014 AIRCRAFT ASSEMBLER

GOE: 05.05.09 STRENGTH: M GED: R4 M4 L4 SVP: 7

621.261-010 AIRPLANE INSPECTOR

GOE: 05.07.02 STRENGTH: L GED: R4 M4 L4 SVP: 8

621.131-014 SUPERVISOR, AIRCRAFT MAINTENANCE

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GOE: 05.05.09 STRENGTH: L GED: R4 M4 L4 SVP: 8

248.367-018 AIR-FREIGHT AGENT

GOE: 05.09.01 STRENGTH: M GED: R3 M3 L3 SVP: 5

003.281-014 DRAFTER, ELECTRONIC

GOE: 05.03.02 STRENGTH: S GED: R5 M5 L4 SVP: 7

According to the Dictionary of Occupational Titles, the pre-injury occupations reported by Mr. Haidet indicate the following GED levels:

- Reasoning Development = 4
- Mathematical Development = 4
- Language Development = 4

GED embraces those aspects of education (formal and informal) which contribute to the worker's (a) reasoning development and ability to follow instructions, and (b) acquisition of "tool" knowledge such as language and mathematical skills. Ordinarily, such education is obtained in elementary school, high school, or college. However, it may be obtained from experience and self-study (source: The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991). GED is reported on a scale of 1-6, with 6 being the highest.

Mr. Haidet's pre-injury work history indicates a specific vocational preparation level of 8, over 2 years up to and including four years. Specific vocational preparation is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation (The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991). SVP is reported on a scale of 1-9 with 9 being the most skilled. Mr. Haidet would be considered skilled.

Mr. Haidet's work history indicates a high degree of aptitude/ability in the areas of:

- General Learning Ability
- Spatial Perception
- Form Perception
- Manual Dexterity

Mr. Haidet's work history indicates a medium degree of aptitude/ability in the areas of:

- Verbal Skill
- Numerical Skill

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- Motor Coordination
- Clerical Perception
- Finger Dexterity

Mr. Haidet's work history indicates a low degree of aptitude /ability in the areas of:

- Eye hand foot coordination
- Color Discrimination

Aptitudes are the specific abilities required of an individual to perform a given work activity (The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991). Aptitudes and Abilities are reported on a scale of 1-5, with 5 being the lowest.

Transferable knowledge, skills and abilities

O*NET, a database of occupational information developed by the U.S. Department of Labor, has identified the following knowledge, skills and abilities as being important to the pre-injury occupations reported by Mr. Haidet. Transferable skills are those skills that have at least 75% of importance to the overall functioning of the job. This list is not all-inclusive, but is meant to provide a sampling of the knowledge, skills and abilities acquired through Mr. Haidet's reported work experience.

Knowledge

- Mechanical

Skills

- Management of personnel resources
- Quality control Analysis
- Science

Abilities

- Oral Expression
- Oral Comprehension
- Problem Sensitivity
- Written Comprehension
- Deductive Reasoning
- Inductive Reasoning
- Speech Clarity
- Speech
- Near Vision



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- Written Comprehension
- Problem Sensitivity
- Perceptual Speed

Personal Data

Mr. Haidet is married and lives in Myrtle Beach. They have no children. Mr. Haidet has a vehicle and drivers' license. He reports a clear criminal record. He is not working.

Work Restrictions

Dr. Kang provided the following work restrictions after reviewing the FCE performed at Healthsouth: "I am allowing him to return to work in a medium category level with a 25 lb. lifting restriction." It should be noted that Dr. Kang listed Mr. Haidet's diagnosis as thoracic strain and thoracic compression fracture. He did not address work restrictions for the elbow. Dr. Leak did not address work restrictions for the elbow either.

According to the US Department of Labor, Medium work consists of frequent lifting and carrying of 25 lbs with a maximum occasional lift of 50 lbs. This means that Mr. Haidet actually falls into the Light level of physical demands that is defined as: frequent lifting of 10 lbs with a maximum occasional lift of 20 lbs.

The functional capacity evaluation provides the following information about Mr. Haidet's functional abilities:

- Able to sit stand and walk for 2.5- 5.5 hours per day. All of these activities caused an increase in pain behaviors and termination of the activity as a result of pain.
- Able to climb stairs, but ladder climbing was not tested.
- Able to push/pull frequently, but no weight limits were noted.
- Reaching at overhead, desk, and floor level restricted to less than 2.5 hours a day.
- Grasping firmly, simple grasping and fine motor activity restricted to 2.5- 5.5 hours per day. I assume that for three hours a day the grasping would need to be done close to the body because of reaching restrictions of 2.5 hours.

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- Stooping, kneeling, crouching and crawling also limited to less than 2.5 hours a day.
- Mr. Haidet's performance on the evaluation was considered to be valid with no signs of symptom magnification or malingering.
- The evaluation failed to mention whether or not Mr. Haidet could work consistently for a 40 hour week or for an 8 hour day. There were no activities listed in the as suitable for an 8 hour day except balancing.

It is therefore my vocational assumption that Mr. Haidet is likely able to perform work at the light level of physical demands as long as he can alternate between standing, sitting and walking throughout the workday. Since he is limited from reaching for longer than 2.5 hours per day, it is unlikely that he can perform work requiring keyboarding or assembly unless it is an occasional activity. It is further unclear whether or not Mr. Haidet is capable of working an 8 hour day on a consistent basis for a 5 day week, given his results on the FCE. He appeared to have to discontinue activities secondary to pain complaints throughout the assessment. He would be precluded from sedentary work as he would not be able to sit on a constant basis throughout the workday.

Review of Records

I reviewed these records provided to me by Mr. Chandler:

- Strand Orthopedic Consultants
- Atlantic Physical Therapy
- Healthsouth
- Grand Strand Regional Medical Center
- Long Bay Diagnostic Imaging
- Center for Pain Relief, LLC
- Gregory Kang, MD

Labor Market Survey

I performed a Labor Market Survey for Mr. Haidet within a 50 mile radius of his zipcode. I began with searching the airline websites of all of the airline carriers that fly into Myrtle Beach. I reviewed all of the job postings at each of the following airlines:

- Airtran
- Continental
- Hooters
- Delta

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- NWA
- Spirit
- US Air
- United Express

There were no posted job openings for Myrtle Beach.

I then utilized America's Job Bank, a website of all current openings listed in the State of SC through the SC Employment Security Commission as well as those in other states. I searched the following job areas for suitable employment for Mr. Haidet that utilized his education, work experience, transferable work skills and physical capacities. I searched these job categories:

Food and Lodging 36 jobs

Transportation & Material Moving 117 jobs

Installation, Maintenance and Repair 75 jobs

Construction and Extraction 94

Management 52 jobs

Sales 106 jobs

- Of these 482 jobs, I was unable to identify any jobs for which Mr. Haidet was qualified that even came close to a \$40,000+ a year salary.
- I was unable to identify any job openings in the airline industry in Myrtle Beach area.
- I was only able to identify 3 jobs that fell within Mr. Haidet's physical capacities. They are outside his specialized area of expertise and require skills that he has never demonstrated in the past. All of these jobs will need to be modified in order to be suitable for him. I have included both part time and full time jobs as I have no documentation that states he is capable of working a 40- hour week. These jobs were selected only because they allow him to alternate between sitting, standing and walking and allow some flexibility of schedule. The average salary for these jobs would fall in the range of 15,000 to 20,000 per year.

Summary

State Job ID: SC3277924

Job Title: SECURITY GUARD

State Agency: SOUTH CAROLINA EMPL SEC COMM

Location: US - SC, MYRTLE BEACH, 29577

AJB Reference Number: 24629740

Job Start/End Date: not provided

Job Type: Regular

 **Adams & Wilkinson**

9

Job Classification : Full Time
Hours/Week: 40 hrs/week
Salary Range: not provided
Education: High School Diploma or GED
Required Degree/
Formal Training: not provided
Required Licenses/
Certificates : not provided
Experience: 12 months

Job Description

WILL GAURD, PATROL, AND MONITOR PREMISES AT A RESORT IN THE MYRTLE BEACH AREA. SECURITY GUARD EXPERIENCE PREFERRED, BUT WILL TRAIN. REQUIRES OWN TRANSPORTATION. SLED FEES PAID. PRE EMPLOYMENT DRUG SCREENING REQUIRED. MUST BE ABLE TO WORK AM OR PM SHIFTS, WEEKENDS AND HOLIDAYS. SALARY WILL BE DISCUSSED AT INTERVIEW. CONTACT YOUR LOCAL WORKFORCE CENTER FOR REFERRAL INSTRUCTIONS. NO FAXES!!!

Summary

State Job ID: SC3278219
Job Title: SALES AGENT, INSURANCE
State Agency: SOUTH CAROLINA RMPL SEC COMM
Location: US - SC, CONWAY, 29526
AJB Reference Number: 24657893
Job Start/End Date: not provided
Job Type: Regular
Job Classification : Full Time
Hours/Week: 40 hrs/week
Salary Range: \$ 400 - 400 per week
Education: High School Diploma or GED
Required Degree/
Formal Training: not provided
Required Licenses/
Certificates : not provided
Experience: 0 months

Job Description

WILL ASSIST CUSTOMERS, INDIVIDUALS, FAMILIES AND BUSINESSES WITH THEIR NEEDS FOR LIFE INSURANCE, WEALTH ACCUMULATION, ACCIDENT, SUPPLEMENTAL HEALTH AND EMPLOYEE BENEFITS PRODUCTS. DAYS, HOURS, PAY AND BENEFITS WILL BE DISCUSSED

 **Adams & Wilkinson**

WITH THE EMPLOYER AT TIME OF INTERVIEW. CONTACT YOUR LOCAL WORKFORCE CENTER FOR REFERRAL INSTRUCTIONS. NO FAXES TO CWC!

Summary

Company Job ID: J3G8496JPSKLJ6H20T4

Job Title: Manager Trainee

Company: Combined Insurance

Location: US - SC, Conway, 29526

AJB Reference Number: 22753956

Job Start/End Date: not provided

Job Type: Regular

Job Classification: Full Time

Hours/Week: not provided

Salary Range: not provided

Education: High School Diploma or GED

Required Degree/

Formal Training: not provided

Required Licenses/

Certificates: not provided

Experience: Entry Level (0 - 2 years)

Job Description

A Combined career blends the best of two worlds: the freedom of working independently and the security of being part of a subsidiary of a strong, established Fortune 500 company that is a leader in its field. Our representatives and managers have the opportunity to set their own income goals and achieve their personal and company goals.

We currently have Sales and Management Trainee Careers available and are expanding in the local area.

We have built a strong organization through 80 years of determination and success. This position can lead into management. Many Managers are earning \$50K-\$60K and above. Previous sales experience is not necessary.

Our comprehensive expense paid training and on the job training will help prepare you for our sales and management careers. Company benefits include Medical, Dental, Disability, Stock Purchase Program and 401K. Visit our web site at www.Combined.com.

 **Adams & Wilkinson**

I would not consider these jobs to represent a stable labor market for Mr. Haidet in the Myrtle Beach, SC area.

Vocational Conclusions

Mr. Haidet is suffering from chronic pain in the thoracic spine secondary to a fall from an 8 foot ladder and landing on cement. His left elbow was broken and necessitated two surgical procedures that included the placement of a prosthetic joint. Mr. Haidet will need ongoing pain management services to manage his pain to include Epidural steroid injections, ongoing medication like Oxycodone and Neurontin, medication for sleep and the use of a TENS unit for pain management. His condition is not expected to improve.

From a physical standpoint, he has difficulty with reaching and grasping things and has a weight restriction. He now has to alternate between standing, sitting and walking all day long. His maximum lifting capacity is 25 lbs or less. He is unable to return to any of his former occupations as a result of his physical limitations.

In regards to identifying new careers, if Mr. Haidet were able to re-enter the labor market with his current physical restrictions, he would suffer a significant wage loss of over half of his salary. Of the few jobs I was able to identify as possibilities, none of them have the capacity for promotion or salary growth.

Furthermore, it is my opinion that Mr. Haidet would be able to interview and be offered a job. I do not believe that he is able to attend work on a daily and consistent basis, or meet quality standards on a consistent basis, or meet quantity expectations on a consistent basis as a result of his chronic pain and physical limitations. I do not feel that Mr. Haidet is a candidate for work as he cannot meet the physical demands of a job on a daily basis.

Thank you for this referral to Adams & Wilkinson. We appreciate your business! Feel free to contact me if you have any questions in regard to this report.

Harriet Wilkinson, M.Ed., CRC
Vocational Consultant

I would not consider these jobs to represent a stable labor market for Mr. Haidet in the Myrtle Beach, SC area.

Vocational Conclusions

Mr. Haidet is suffering from chronic pain in the thoracic spine secondary to a fall from an 8 foot ladder and landing on cement. His left elbow was broken and necessitated two surgical procedures that included the placement of a prosthetic joint. Mr. Haidet will need ongoing pain management services to manage his pain to include Epidural steroid injections, ongoing medication like Oxycodone and Neurontin, medication for sleep and the use of a TENS unit for pain management. His condition is not expected to improve.

From a physical standpoint, he has difficulty with reaching and grasping things and has a weight restriction. He now has to alternate between standing, sitting and walking all day long. His maximum lifting capacity is 25 lbs or less. He is unable to return to any of his former occupations as a result of his physical limitations.

In regards to identifying new careers, if Mr. Haidet were able to re-enter the labor market with his current physical restrictions, he would suffer a significant wage loss of over half of his salary. Of the few jobs I was able to identify as possibilities, none of them have the capacity for promotion or salary growth.

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Thank you for this referral to Adams & Wilkinson. We appreciate your business! Feel free to contact me if you have any questions in regard to this report.

Harriet Wilkinson, M.Ed., CRC
Vocational Consultant

 **Adams & Wilkinson**

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: May 17, 2006

SURGEON: Scott B. Sauer, D.O.

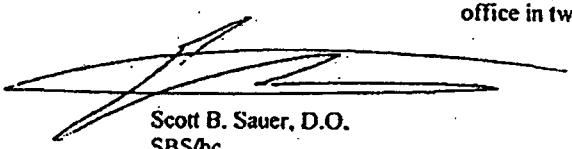
PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47-year-old white male with complaint of mid thoracic pain due to work-related injury. At this point, he is on medication management. During his last visit, I started him on Duragesic 25 mcg in order to get some of his pain under better control as we have been having a difficult time doing that. He rates his pain level at 6/10 today. He feels that the Duragesic has helped him somewhat. He has noticed it mostly at night. He has been able to sleep better, but he still has a lot of pain during the day while he is trying to do his normal activities.

OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. He has a normal gait. Palpation of the thoracic region is mildly tender.

ASSESSMENT: 1. Thoracic and lumbar radiculitis.
2. Chronic insomnia.

PLAN: 1. Increase the Duragesic to 50 mcg.
2. Continue oxycodone as prescribed.
3. Continue Lunesta as prescribed.
4. Follow up with the medical assistant in one month and I will see him in the office in two months.



Scott B. Sauer, D.O.
SBS/bc

ALP DP26 JUL 25 2006

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: July 12, 2006

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47-year-old white male with complaint of new thoracic pain due to work-related injury. He also mentioned the fact that he is getting more worried about the numbness that he is experiencing in his hands and feet. He gets numbness in the fourth and fifth digits of both hands and numbness in his feet. He has mentioned this to me in the past. It continues to persist and is becoming more worrisome for him. It seems to be increasing. His pain level is not very well controlled. He states that he has curtailed almost all activities in order to keep his pain under control. He is becoming non-participatory in social functions. He denies any side effects from the medications.

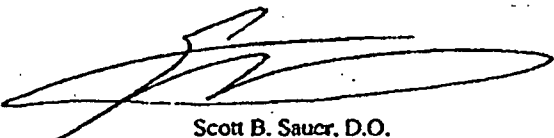
OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment. Palpation of the thoracic region is mildly tender. He has some mild cervical tenderness as well.

ASSESSMENT:

1. Thoracic and lumbar radiculitis.
2. Chronic insomnia.
3. Persistent and increasing numbness in the upper extremities in the fourth and fifth digits, as well as subjective numbness in the feet.

PLAN:

1. Increase his Duragesic to 75 mcg. Increase his oxycodone to 10 mg. At this point, he seems to be withdrawing from more and more activities and this is contrary to the goal that I am trying to keep for him. He should become more active in society and participatory. Hopefully, we can achieve this with getting his pain under better control with increasing the dose of the medications.
2. Also to work up the numbness that he is experiencing, I would like to start with a cervical MRI and consider EMG/NCV. If that proves to be negative, possibly he could follow up with a neurologist.
3. Follow up with me in one month to see how he is doing with the increase in medications.



Scott B. Sauer, D.O.
SBS/bc

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: August 9, 2006

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haidet is a 47-year-old white male with complaint of thoracic pain due to work-related injury. He is still having a lot of numbness in the upper extremities. Also he is stating he is getting numbness in the lower extremities. It is mainly peripherally in the hands and feet. Cervical MRI was negative for any focal pathology. During his last visit, I increased his Duragesic and oxycodone. He states he noticed minimal improvement with increasing the dose. No increase in side effects was identified.

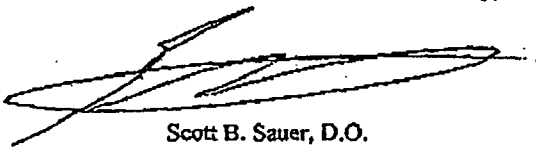
OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Speech is clear and coherent. There is no evidence of impairment. Palpation of the thoracic region is mildly tender.

ASSESSMENT:

1. Thoracic and lumbar radiculitis.
2. Chronic insomnia.
3. Persistent numbness in the upper extremities, now with complaints of numbness in the feet.
4. Cervical MRI was negative.

PLAN:

1. Proceed with EMG/NCV of the upper and lower extremities to see if we can pinpoint the source of the numbness that he is complaining of.
2. Increase his Duragesic to 100 mcg and increase oxycodone to 15 mg, as the patient still has not reached the goals that he should be at as far as functionality.
3. Follow up with me in one month. At that time, we will get a urine drug screen to check his medication levels.

Scott B. Sauer, D.O.
SBS/bc

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haider
DATE OF VISIT: September 19, 2006
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Office Visit

SUBJECTIVE: Mr. Haider is a 47-year-old white male with complaint of thoracic pain due to work-related injury. He has a lot of numbness in the upper extremities and some in the lower extremities. He says that the upper extremities are the worst. He is scheduled for EMG/NCV later this month with Dr. Jordan. Cervical MRI was negative for any pathology. The patient is doing pretty well with his current medications; however, there was an incident where he was visiting some relatives in Kentucky and had some medications missing. Actually, he ended up calling the police and it was noted that his niece and her husband stole some medications. They are being prosecuted by the State for that. Patient will be due for a refill on his medication on October 8. He still has some Roxicodone. He states he can make it stretch until the 8th. He does not want to get a new prescription to make up for what was stolen. He is complaining of a lot of difficulty sleeping even with Lunesta.

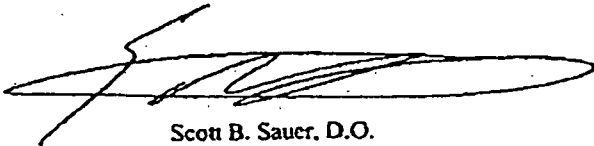
OBJECTIVE: Vital signs are stable and noted in the chart. Patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Short and long term memory intact. Speech is clear and coherent. There is no evidence of impairment.

ASSESSMENT:

1. Thoracic and lumbar radiculitis.
2. Chronic insomnia.
3. Persistent numbness in the upper extremities and with complaints of numbness in the feet.

PLAN:

1. Patient is scheduled for EMG/NCV of the upper extremities.
2. Continue on Duragesic and Roxicodone as prescribed.
3. As noted, he will be due for refills on his medications on October 8.
4. Give the patient a prescription for Ambien in place of the Lunesta that he is currently taking.
5. Follow up with the medical assistant for one month and I will see him in the office in two months.



Scott B. Sauer, D.O.
SBS/bc

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: March 5, 2007

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Office Visit

SUBJECTIVE: The patient is a 47-year-old white male with complaint of thoracic pain due to work-related injury. He has numbness in the upper and lower extremities. We have reduced his pain medication fairly recently. He is currently on 75 mcg of Duragesic. He states he does notice that his pain is worse, especially when he is more active. He is currently not taking much Roxicodone, mainly because it is causing too much side effect for him. He states he would like to become more active and needs something for breakthrough pain. He is also complaining of a lot of depression and anxiety symptoms.

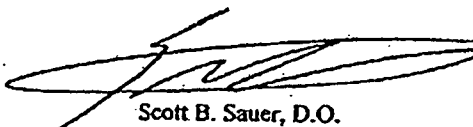
OBJECTIVE: Vital signs are stable and noted in chart. Patient is alert and oriented x 3, does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Speech is clear and coherent. There is no evidence of mental impairment.

IMPRESSION:

1. Carpal tunnel syndrome.
2. Thoracic and lumbar radiculitis.
3. Chronic insomnia.
4. Persistent numbness, upper extremities and feet.

PLAN:

1. Continue Duragesic 75 mcg.
2. Replace his Roxicodone with hydrocodone. Hopefully, he can become more active with that medication and not experience the side effects of sweating that he had with Roxicodone.
3. Start him on Paxil at 20 mg. I instructed him to increase this to 40 mg after two weeks if he is not noticing any improvement in his mood, and to give me a call.
4. Follow up with the medical assistant for the next two months and I will see him in the office in three months.



Scott B. Sauer, D.O.
SBS/bc

Dictated but not read.

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haldet

DATE OF VISIT: June 4, 2007

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Office Visit

SUBJECTIVE: The patient is a 47-year-old male with complaint of thoracic pain due to work-related injury. He is currently on hydrocodone only. He was not able to tolerate Duragesic. He states that hydrocodone seems to take the edge off his pain, but does not really provide a significant amount of pain relief. He rates his pain level today at 6/10. There has been no change in patient's health status since last seen. He is not taking Paxil either, as that is not approved by Workmen's Compensation.

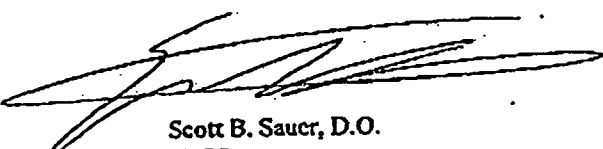
OBJECTIVE: Vital signs are stable and noted in chart. Patient is alert and oriented x 3, does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Long and short term memory intact. Speech is clear and coherent. There is no evidence of mental impairment.

ASSESSMENT:

1. Carpal tunnel syndrome.
2. Thoracic and lumbar radiculitis.
3. Chronic insomnia.
4. Persistent numbness upper extremities and feet, which he states is better now.

PLAN:

1. Continue hydrocodone.
2. He has discontinued Duragesic. He was not able to tolerate that medication.
3. Follow up with the medical assistant for the next two months and I will see him in the office in three months.



Scott B. Sauer, D.O.
SBS/bc

Dictated but not read.

POOR IMAGE QUALITY

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: September 5, 2007

SURGEON: Scott B. Sauer, D.O.

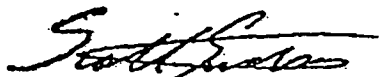
PROCEDURE: Office Visit

SUBJECTIVE: The patient is a 49-year-old male with complaint of thoracic pain due to work-related injuries. He is currently on hydrocodone. He states that he gets by with the medication. He takes four tablets a day. He rates his pain level at about 6/10.

OBJECTIVE: Vital signs are stable and noted in chart. Patient is alert and oriented x 3, does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Long and short term memory intact. Speech is clear and coherent. There is no evidence of mental impairment.

ASSESSMENT: 1. Carpal tunnel syndrome.
2. Thoracic and lumbar radiculitis.
3. Chronic insomnia.
4. Persistent numbness in the upper extremities and feet.

PLAN: 1. Continue hydrocodone.
2. Add Lyrica to his regime. He is to take 75 mg twice a day. Hopefully this will help with some of the pain he is experiencing.
3. Follow up with the medical assistant for the next two months and I will see him in the office in three months.



Scott B. Sauer, D.O.
SBS/bc

Dictated but not read.

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet
DATE OF VISIT: October 8, 2007
SURGEON: Scott B. Sauer, D.O.
PROCEDURE: Office Visit

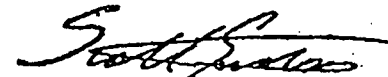
SUBJECTIVE: The patient is a 49-year-old male with complaint of thoracic pain due to work-related injury. He asked to come in today for median nerve block as his carpal tunnel has really been acting up. He has been having a lot of numbness in the first and second digits of both hands, right being worse than the left. I scheduled him for bilateral median nerve block today. There has been no change in patient's usual health status since last seen.

ASSESSMENT: 1. Carpal tunnel syndrome.
2. Thoracic and lumbar radiculitis.
3. Chronic insomnia.
4. Persistent numbness in the upper extremities and feet.

PLAN: 1. Proceed with median nerve block today for carpal tunnel syndrome bilaterally.
2. Continue Lyrica, hydrocodone as prescribed.

PROCEDURE #1: Median Nerve Block Bilateral Wrists

After informed consent was obtained, the patient was placed in the seated position. The wrist skin was cleansed with alcohol. I then inserted a #25-gauge 1.5-inch needle at the wrist crease, directed towards the median nerve. Aspiration was negative for blood. I then injected 1.25 cc of 0.25% Marcaine and 40 mg Depo-Medrol on the left median nerve. The same procedure was then completed on the right median nerve. No complications were encountered.



Scott B. Sauer, D.O.
SBS/bc

Dictated but not read.

ALP DP22 JAN 29 2008

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: December 26, 2007

PHYSICIAN: Scott B. Sauer, DO

PROCEDURE: Office Visit

SUBJECTIVE: The patient is a 49-year-old male with complaint of thoracic pain due to work-related injury. He also has carpal tunnel syndrome. He states that he is doing very well with his current medication regime. His pain level is running about 2/10. His only real complaint today is anxiety. He states he has been having a lot of anxiety lately, and some mild depression. Denies any side effects from the medications.

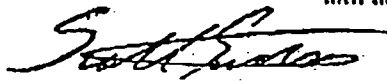
OBJECTIVE: Vital signs are stable and noted in chart. Patient is alert and oriented x 3, does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Long and short term memory intact. Speech is clear and coherent. There is no evidence of mental impairment.

ASSESSMENT:

1. Carpal tunnel syndrome
2. Thoracic and lumbar radiculitis.
3. Chronic insomnia.
4. Persistent numbness upper extremities and feet.
5. Anxiety.

PLAN:

1. Continue hydrocodone and Lyrica. I am going to add low-dose Paxil to his regime to see if that helps with his anxiety. I instructed him to take this for the next month. If no improvement is noted, we will discontinue it.
2. The patient did mention to me that he smokes marijuana for the anxiety and it did help him. I advised him not to do that anymore due to the fact that he is on a controlled substance and that he will have future drug tests. If the tests come back positive for the marijuana, I will not be able to treat him with a controlled substance.
3. Follow up with the medical assistant for the next two months and I will see him in the office in three months.



Scott B. Sauer, DO
SBS/bc

Dictated but not read.

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: DANIEL J. HAIDET

DATE OF VISIT: 01/22/08

TRANSCRIPTION: 02/03/08

SURGEON: Scott B. Sauer, D.O.

PROCEDURE: Office visit

SUBJECTIVE: The patient is a 49 year old male complaining of thoracic pain due to a work-related injury. He also has carpal tunnel syndrome. He is scheduled today for a bilateral carpal tunnel injection; however, he is only approved for the left side. He states that he feels the Paxil is working very well for him. He feels that it helps reduce his anxiety nicely. He'd like to be able to reduce some of his Hydrocodone and he is also taking Lyrica and he is doing well with that. He feels that medicine really helps out with his pain quite a bit.

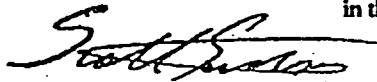
OBJECTIVE: Vital signs are stable as noted in the chart. The patient is alert and oriented x 3 and does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Long and short term memory are intact. Speech is clear and coherent. There is no evidence of mental impairment.

ASSESSMENT:

1. Carpal tunnel syndrome, bilateral, right greater than left.
2. Thoracic and lumbar radiculitis.
3. Chronic insomnia.
4. Persistent numbness, upper extremities and feet.
5. Anxiety.

PLAN:

1. The patient will continue Lyrica and Paxil as prescribed. I'll give him a new prescription of Hydrocodone today. Go ahead and drop him to 120 tablets to see if he can get by with 4 tablets per day.
2. Have him follow up with the MA for the next 2 months. I'll see him in the office in 3.



Scott B. Sauer, D.O.
SBS/ami

Dictated but not read.

ALP DP8 APR 29 2008

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet
DATE OF VISIT: April 21, 2008
PHYSICIAN: Scott B. Sauer, DO
PROCEDURE: Office Visit

SUBJECTIVE: The patient is a 49-year-old male with complaint of thoracic pain due to work related injury. He complains of pain on the whole right side of his body, upper extremity and lower extremity. He states that the media nerve block that I performed really did not help him all that much. He actually called last week for refill on his medications and was several days short on his pain medication. I told him I would not give him another refill. He is following up today. He is in a considerable amount of pain. He rates his pain at about 10/10. I would imagine this is mainly due to the fact that he has not had any pain medicine over the last couple of days.

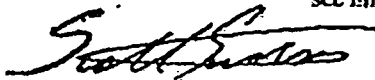
OBJECTIVE: Vital signs are stable and noted in chart. Patient is alert and oriented x 3, does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Long and short term memory intact. Speech is clear and coherent. There is no evidence of mental impairment.

IMPRESSION:

1. Thoracic and lumbar radiculitis.
2. Carpal tunnel syndrome, bilateral, right greater than left.
3. Chronic insomnia.
4. Persistent numbness, upper extremity on the right and right foot
5. Anxiety.
6. History of hepatitis C.

PLAN:

1. Continue current medications. I went over the rules of taking the medication. I explained to him not to take any medicine other than the way it was prescribed.
2. I would like to perform liver function panel on him since he has been on hydrocodone for quite some time and has a history of hepatitis C.
3. Follow up with the medical assistant for the next three months and I will see him in the office in four months.



Scott B. Sauer, DO
SBS/bc

Dictated but not read.

COASTAL INTERVENTIONAL PAIN ASSOCIATES
CONSULT AND PROCEDURE REPORT

PATIENT: Daniel J. Haidet

DATE OF VISIT: August 18, 2008

PHYSICIAN: Scott B. Sauer, DO

PROCEDURE: Office Visit

SUBJECTIVE: The patient is a 49-year-old male with complaint of thoracic pain due to work-related injury. He is currently on hydrocodone. He is doing well with that. It keeps his pain under adequate control. He states he is not able to afford the blood work for his hepatic function so he has not had that done yet. He rates his pain level at 6/10. There has been no change in patient's usual health status since last seen. No side effects are identified from the medication.

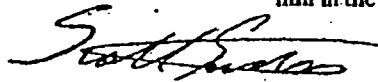
OBJECTIVE: Vital signs are stable and noted in chart. Patient is alert and oriented x 3, does not appear to be in any acute distress. Affect is appropriate. Patient is pleasant and cooperative. Long and short term memory intact. Speech is clear and coherent. There is no evidence of mental impairment.

ASSESSMENT:

1. Thoracic and lumbar radiculitis.
2. Bilateral carpal tunnel syndrome.
3. Chronic insomnia.
4. Persistent numbness, upper extremities on the right and in the right foot.
5. Anxiety.
6. History of hepatitis C.

PLAN:

1. Continue current medications as prescribed.
2. Follow up with the medical assistant for the next three months. I will see him in the office in four months.



Scott B. Sauer, DO
SBS/bc

Dictated but not read.

**NOTICE OF POSSIBLE
SECOND INJURY FUND CLAIM**

Carrier Code	0321
NCCI Ins. Code	15172
Carrier File No.	709-079114
Carrier's Policy No.	004874146
Policy Eff. Date	3/19/2004-3/19/2005
SIF No.	119295

Employee:	Daniel Haidet	Social Security No.:	274-60-9477
Address:	564 West Oak Circle, Myrtle Beach, SC 29588	Date of Accident:	1/1/2005
Employer:	Avcraft Support Services, Inc.	Carrier:	Commerce & Industry Insurance Company
Location:	3301 Mustang St., Myrtle Beach, SC 29577	Address:	P.O. Box 1821, Alpharetta, GA 30023
Employee's Attorney	Jeff C. Chandler	Carrier's Attorney:	H. Mills Gallivan
Address:	P.O. Drawer 1889, Myrtle Beach, SC 29578-3909	Address:	P.O. Box 10589, Greenville, SC 29603

SUBSEQUENT INJURY: Nature of Second Injury:
Injuries to his elbow and back.

Current Status:
Order affirmed by the S.C. Workers' Compensation Commission on November 20, 2006.

Treating Physicians:
Dr. Scott Sauer and Dr. Gregory Kang.

Average Weekly Wage:	\$875.00	Comp Rate:	\$577.72
Date of First Temporary Total:	1/14/2005	Date Returned to Work:	N/A
Weeks of All Benefits Paid:	438.44 weeks	Medical Cost to Date:	\$59634.80

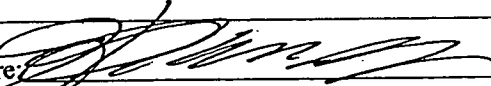
NATURE OF IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d)

- | | |
|---|--|
| ☒ Listed Impairment (1-33; #4 arthritis D/A prior to 7/1/07): | Pre-existing arthritis aggravated by the January 1, 2005 injury. |
| ☐ Other (34a or b; D/A prior to 7/1/07): | |
| ☒ Paragraph (a): | Pre-existing back problems aggravated by the January 1, 2005 injury to increase the carrier's liability. |

KNOWLEDGE REQUIREMENT:

- | |
|---|
| ☒ Employer knew about the pre-existing condition. (Please attach affidavit, application, etc.) |
| ☐ Employee withheld existence of pre-existing condition from employer. (Please attach application, post-employment physical, etc.) |
| ☐ Employee was unaware of existence of pre-existing condition. (Please attach affidavit) (D/A prior to 06/25/03) |

THESE FORMS MUST BE PROVIDED BEFORE CLAIMS CAN BE PROCESSED:		
	(1)	All narrative medical reports
	(2)	Form 12-A
	(3)	Form 15
	(4)	Current Form 18
	(5)	Any W.C.C. Order

Signature:  Date of Claim: 11/22/2010
Mailing address: P.O. Box 10589, Greenville, SC

Effective July 1, 2007, notice requirements were changed per Section 42-9-400 (f). Failure to comply with the provisions of this subsection shall bar an employer or his carrier from recovery from the Fund.

EMPLOYER (NAME & ADDRESS INCL ZIP)		CARRIER/ADMINISTRATOR CLAIM NUMBER		OSHA LOG CASE #		REPORT PURPOSE CODE	
AVCRAFT SUPPORT SERVICES INC		JURISDICTION		JURISDICTION CLAIM NUMBER			
3301 MUSTANG ST		SC					
MYRTLE BEACH, SC 29577		INSURED REPORT NUMBER					
INDUSTRY CODE		EMPLOYER FEIN		EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)		LOCATION #	
		20-0437594				UNK	
						PHONE #	
						(703) 737-6700	
CARRIER/CLAIMS ADMINISTRATOR							
CARRIER (NAME, ADDRESS, & PHONE #)		POLICY PERIOD		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)			
COMMERCE AND INDUSTRY		03/19/2004					
70 PINE ST		TO					
NEW YORK, NY 10270		03/19/2005					
		CHECK IF APPROPRIATE					
		☐ SELF INSURANCE					
CARRIER FEIN		POLICY/SELF-INSURED NUMBER		ADMINISTRATOR FEIN			
13-1938623		004874146					
AGENT NAME & CODE NUMBER							
EMPLOYEE/INJURED							
NAME (LAST, FIRST, MIDDLE)		DATE OF BIRTH		SOCIAL SECURITY NUMBER		DATE HIRED	
HAIDET, DANIEL		03/21/1958		274-60-9477		11/08/2004	
ADDRESS (INCL ZIP)		SEX		MARITAL STATUS		OCCUPATION/JOB TITLE	
4920 S FIRST ST		☒ MALE		☐ UNMARRIED		MECHANIC	
MURRELLS INLT, SC 29576		☐ FEMALE		☒ SINGLE/DIVORCED		EMPLOYMENT STATUS	
		☐ UNKNOWN		☐ MARRIED		FULL-TIME	
PHONE		# OF DEPENDENTS		☐ SEPARATED			
				☐ UNKNOWN			
RATE PER		DAY		DAYS WORKED/WEEK		FULL PAY FOR DAY OF INJURY?	
\$ 20.00		WEEK		5		☐ YES ☐ NO	
		☒ OTHER: HR				DID SALARY CONTINUE?	
						☐ YES ☐ NO	
CURRENT EMPLOYMENT							
TIME EMPLOYEE BEGAN WORK		DATE OF INJURY/ILLNESS		TIME OF OCCURRENCE		LAST WORK DATE	
☐ AM ☐ PM		01/01/2005		☒ CANNOT BE DETERMINED		01/01/2005	
						DATE EMPLOYER NOTIFIED	
						01/03/2005	
CONTACT NAME/PHONE NUMBER		TYPE OF INJURY/ILLNESS		PART OF BODY AFFECTED			
TOM YOUNAN		FRACTURE		ELBOW			
(843) 232-1338 x204							
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES?		EXPOSURE CODE		INVESTIGATION CODE			
☐ YES ☒ NO							
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED					
TERMINAL		LADDER					
MYRTLE BEACH AIRPORT							
MYRTLE BEACH, SC 29577							
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED					
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL							
SNP ON LADDER/LOST BALANCE/FELL/FRACTURE TO ELBOW							
DATE RETURN(ED) TO WORK		IF FATAL, GIVE DATE OF DEATH		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?		☐ YES ☐ NO	
				WERE THEY USED?		☐ YES ☐ NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS)				INITIAL TREATMENT	
SOUTH STRAND MEDICAL						☐ NO MEDICAL TREATMENT	
5050 HWY 17 BYPASS						☐ MINOR: BY EMPLOYER	
MYRTLE BEACH, SC 29577						☒ MINOR CLINIC/HOSP	
						☐ EMERGENCY CARE	
						☐ HOSPITALIZED > 24 HRS	
						☐ FUTURE MAJOR MEDICAL/	
						☐ LOST TIME ANTICIPATED	
OTHER							
WITNESSES (NAME & PHONE #)							
DATE ADMINISTRATOR NOTIFIED		DATE PREPARED		PREPARER'S NAME & TITLE		PHONE NUMBER	
01/03/2005		01/03/2005		TOM YOUNAN		x204	
				Via - CALL		(843) 232-1338	
				CONTROLLER			

Re: SIF – Daniel Haidet v. Avcraft Support Services, Inc.

W.C.C. No.: 0500022

SIF File No.: 119295

Soc. Sec. No.: 274-60-9477

Date of Injury: 1/1/2005

To Whom It May Concern:

I, Mindy Pavilonis, am the Human Resource Manager at Avcraft Support Services based in Myrtle Beach, South Carolina. During my time as Human Resource Manager, I was familiar with Daniel Haidet's work activities while he was on the aviation maintenance crew.

Prior to his work-related accident on January 1, 2005, I was aware that Mr. Haidet was experiencing back pain. He told me directly prior to January 1, 2005 that he was taking medication for his back problems.



Mindy Pavilonis
Human Resource Manager
Avcraft Support Services, Inc.

October 5, 2010

Date

Re: SIF – Daniel Haidet v. Aircraft Support Services

W.C.C. No.: 0500022

SIF File No.: 119295

Soc. Sec. No.: 274-60-9477

Date of Injury: 1/1/2005

To the best of my knowledge and within a reasonable degree of medical certainty:

A. The patient had a T12-L1 wedging deformity prior to January 1, 2005.

Yes ☒ No ☐

B. The pre-existing T12-L1 wedging deformity is permanent and serious enough to constitute a hindrance or obstacle to employment or re-employment.

Yes ☒ No ☐

C. The injury of January 1, 2005 combined with or aggravated the pre-existing T12-L1 wedging deformity (i.e., had the patient had a previously healthy back it is likely this accident would have resulted in a less severe overall condition?)

Yes ☒ No ☐

D. The aggravation or combination of the pre-existing T12-L1 wedging deformity with the injury of January 1, 2005 resulted in:

1. Substantially greater lost time from work (i.e., had the patient not had pre-existing T12-L1 wedging deformity, is it likely he would have lost less time from work?)

Yes ☒ No ☐

2. Substantially greater permanent disability (i.e., had the patient not had pre-existing T12-L1 wedging deformity, is it likely he would have suffered less permanent disability?)

Yes ☒ No ☐

3. Substantially greater medical costs (i.e., had the patient not had pre-existing T12-L1 wedging deformity, is it likely his overall medical costs would have been reduced?)

Yes ☒ No ☐


Scott B. Sauer, D.O.

Coastal Interventional Pain Associates

Date

11/17/10

Re: SIF - Daniel Haidet v. Aircraft Support Services

W.C.C. No.: 0500022

SIF File No.: 119295

Soc. Sec. No.: 274-60-9477

Date of Injury: 1/1/2005

To the best of my knowledge and within a reasonable degree of medical certainty:

- A. The patient had a T12-L1 thoracic compression fracture prior to January 1, 2005.
Yes ☒ No ☐
- B. The pre-existing T12-L1 compression fracture is permanent and serious enough to constitute a hindrance or obstacle to employment or re-employment.
Yes ☒ No ☐
- C. The injury of January 1, 2005 combined with or aggravated the pre-existing T12-L1 thoracic compression fracture (i.e., had the patient had a previously healthy back it is likely this accident would have resulted in a less severe overall condition?)
Yes ☒ No ☐
- D. The aggravation or combination of the pre-existing T12-L1 thoracic compression fracture with the injury of January 1, 2005 resulted in:
1. Substantially greater lost time from work (i.e., had the patient not had a pre-existing T12-L1 thoracic compression fracture, is it likely he would have lost less time from work?)
Yes ☒ No ☐
 2. Substantially greater permanent disability (i.e., had the patient not had a pre-existing T12-L1 thoracic compression fracture, is it likely he would have suffered less permanent disability?)
Yes ☒ No ☐
 3. Substantially greater medical costs (i.e., had the patient not had a pre-existing T12-L1 thoracic compression fracture, is it likely his overall medical costs would have been reduced?)
Yes ☒ No ☐

Date

10/12/05

Gregory Kang, M.D.
Pain, Spine & Sports Medicine

The South Carolina Second Injury Fund



100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTÉE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

WILLIAM E. GUNN
INTERIM DIRECTOR

(803) 798-2722
FAX: (803) 798-5290

April 25, 2011

The Honorable Susan S. Barden, Commissioner
South Carolina Workers' Compensation Commission
PO BOX 1715
Columbia, South Carolina 29202-1715

RE: COMMERCE & INDUSTRY INSURANCE VS. S.C. SECOND INJURY FUND
(IN RE: DANIEL J. HAIDET VS. AVCAFT AVIATION SERVICES
SCWCC NO.: 0500022; SIF NO.: 119295)

Dear Commissioner Barden:

Enclosed is the Fund's Amended Pre-Hearing Brief in the above referenced case. By copy of this letter, I am serving same on the parties listed below.

With kind regards, I am

Yours very truly,


LATONYA D. EDWARDS
GENERAL COUNSEL

LE:scb
Enclosure
cc: Nicholas A. Farr

South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, South Carolina 29202-1715 (803)737-5700

AMENDED

WCC File # 0500022
webbier File # 119295
webbier Code # 00321
Employer FEIN

DANIEL J. HAIDET 247-60-9477
Claimant's Name

Address City State Zip

Home Phone # Work Phone #

LATONYA D. EDWARDS

Preparer's Name Address

AVCRAFT AVIATION SERVICES

Employer's Name

3301 MUSTANG ST., MYRTLE BEACH, SC 29577

Address City State Zip

COMMERCE & INDUSTRY INSURANCE

Insurance webbier

803 798-2722 EXT. AMEND

Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☐ Injury by Accident ☐ Occupational Disease ☒ Both Injury by Accident and Disease ☐ Other

1. Date of accident: 01/01/2005 2. AWW: \$ Comp. Rate: \$ 577.72

3. Type of injury and body part(s) Claimant sustained left elbow and back injuries.

4. Facts in controversy: None.

5. Legal issues involved: Whether Claimant's preexisting condition was a hindrance and whether Carrier had knowledge of Claimant's preexisting condition as per 42-9-400.

6. Unusual problems: None.

7. Witnesses (designate if expert)*

8. Exhibits: Email Correspondence between Second Injury Fund and Claimant.

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)
The Fund reserves the right to add medical evidence.

10. Name, address, and specialty, if any, of the treating physician: Grand Strand Reg. Med. Ctr; Strand Orthopaedic Consultants; Long Bay Diagnostic Imaging; Grand Dunes Surgery Ctr.; Ctr for Pain Relief; Dr. Gregory Kang.

11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Leak assigned 18% LUE, 7/7/05;
Dr. Kang assigned 6% to thoracic spine, 8/22/05.

DATE OF HEARING: 05/02/2011

TIME OF HEARING: 8:30 a.m.

SIGNATURE

DATE 04/25/2011

On behalf of ☐ Claimant ☐ Employer ☒ SC Second Injury Fund

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

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO: 0500022

COMMERCE & INDUSTRY INSURANCE	)	
	)	
PLAINTIFF/CARRIER,	)	A M E N D E D
	)	NOTICE OF WITNESSES AND
v.	)	WRITTEN MEDICAL REPORTS
	)	TO BE INTRODUCED AS
SOUTH CAROLINA SECOND INJURY FUND,	)	DIRECT EVIDENCE ON
	)	BEHALF OF DEFENDANT
DEFENDANT.	)	SOUTH CAROLINA SECOND
	)	INJURY FUND
	)	
In Re: DANIEL J. HAIDET,	)	
	)	
Employee/Claimant,	)	
	)	
v.	)	
	)	
AVCRAFT AVIATION SERVICES,	)	
	)	
Employer.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND
NICHOLAS A. FARR, ESQUIRE, ATTORNEY FOR EMPLOYER/CARRIER

YOU ARE HEREBY NOTIFIED that the Defendant South Carolina Second Injury Fund, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendant South Carolina Second Injury Fund, to wit:

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	NUMBER OF PAGES
-----	-----	-----

(SEE ATTACHMENT)

UEF NO: 119295
SCWCC NO: 0500022

ATTACHMENT - NOTICE OF WITNESSES AND MEDICAL REPORTS

NAME OF PHYSICIAN/OTHER -----	DATE OF REPORT -----	NUMBER OF PAGES -----
----------------------------------	-------------------------	--------------------------

FUNDS WILL RELY ON CLAIMANT'S ATTORNEY TO FILE/SERVE ALL CAUSALLY-RELATED MEDICAL RECORDS/REPORTS AND RESERVES ITS RIGHT TO SUPPLEMENT AS REQUIRED.

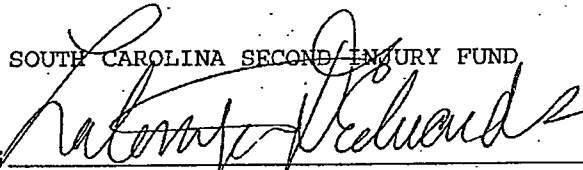
Email Correspondence between Second Injury Fund & Claimant	4/20/2011	pgs. 1-3
---	-----------	----------

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendant South Carolina Second Injury Fund:

SOUTH CAROLINA SECOND INJURY FUND

By: 

LATONYA D. EDWARDS, GENERAL COUNSEL
100 Executive Center Drive
Suite 101
Columbia, South Carolina 29210
(803) 798-2722

April 25, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

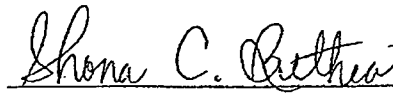
*
* CERTIFICATE OF SERVICE
*

The undersigned employee of the South Carolina Second Injury Fund, 100 Executive Center Drive, Suite 101, Columbia, South Carolina, 29210, does hereby certify that he or she has served the following named individual(s) with a copy of the pleading indicated below by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

NICHOLAS A. FARR
GALLIVAN, WHITE & BOYD
PO BOX 10589
GREENVILLE, SC 29603

PLEADING:	AMENDED	FORM 58 - SECOND INJURY FUND'S PRE-HEARING BRIEF
	AMENDED	NOTICE OF WITNESSES AND WRITTEN MEDICAL REPORTS



SHONA C BETHEA

April 25, 2011
Columbia, South Carolina

Deal, Gail

From: ph [jellybeanmax2002@yahoo.com]
Sent: Wednesday, April 20, 2011 4:40 PM
To: Deal, Gail
Cc: Jeff Chandler
Subject: Re: FW: SIF# 119295 Daniel Haidet

Dear Gail,

Please be advised as I have told Mr. Chandler, there has never been a problem with my back. I have never told an employer, or anyone else, for that matter that I've ever had a back problem prior to 1/1/2005.

I will be glad to answer any other questions should they arise in the future.

Sincerely,

Daniel Haidet

4606 Hwy. 127 N.
Glencoe, Ky. 41046

Ph. 843-997-8520
Email: jellybeanmax2002@yahoo.com

--- On Wed, 4/20/11, Deal, Gail <gdeal@sif.sc.gov> wrote:

From: Deal, Gail <gdeal@sif.sc.gov>
Subject: FW: SIF# 119295 Daniel Haidet
To: "'jellybeanmax2002@yahoo.com'" <jellybeanmax2002@yahoo.com>
Date: Wednesday, April 20, 2011, 10:10 AM

Mr. Haidet,

I am forwarding this email to you and requesting your help.
Please call me if you have any questions.
Gail

From: jeffcchandler@aol.com [mailto:jeffcchandler@aol.com]
Sent: Tuesday, April 19, 2011 4:41 PM
To: Deal, Gail
Subject: Re: SIF# 119295 Daniel Haidet

no problem....

Jeff C. Chandler

4/21/2011

ROA-105

The Chandler Law Firm
Bank of America Building
2501 Oak Street
Myrtle Beach, South Carolina 29577
843-448-HELP (4357)

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION. The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or by email to jeffcchandler@aol.com by replying to this message. Please destroy all copies of this message and all attachments thereto.

-----Original Message-----

From: Deal, Gail <gdeal@sif.sc.gov>
To: 'jeffcchandler@aol.com' <jeffcchandler@aol.com>
Sent: Tue, Apr 19, 2011 4:39 pm
Subject: RE: SIF# 119295 Daniel Haidet

Thanks so very much.

From: jeffcchandler@aol.com [mailto:jeffcchandler@aol.com]
Sent: Tuesday, April 19, 2011 4:39 PM
To: Deal, Gail
Subject: Re: SIF# 119295 Daniel Haidet

Here is the contact info I have on the client. My file is closed. I let him know you would be in touch with him.

25 Marksberry Lane
Sparta, Kentucky 41086

843-997-8520

Jeff C. Chandler

The Chandler Law Firm
Bank of America Building
2501 Oak Street
Myrtle Beach, South Carolina 29577
843-448-HELP (4357)

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-----Original Message-----

From: Deal, Gail <gdeal@sif.sc.gov>
To: 'jeffcchandler@aol.com' <jeffcchandler@aol.com>
Sent: Tue, Apr 19, 2011 4:10 pm
Subject: SIF# 119295 Daniel Haidet

Jeff,

The Workers Comp Carrier has filed a claim for a partial reimbursement from the Second Injury Fund. In order for us to consider this **we need to know if your client told anyone at the employer prior to the 1/1/05 d/a that he had prior back problems and was taking medication for these problems.**

If he told his employer, we just need to the name of the person, when he told them (the date prior to the 1/1/05 d/a) . If he never mentioned it, we need a statement to that effect.

If you have any questions please call. 803-798-2722 ext120

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



WCC File #: 0500022
Prior File #: 709-079114
Carrier Code #: 0321
Employer FEIN #:

Claimant's Name: Daniel Haidet SSN: 274-60-9477 Employer's Name: Avcraft Support Services
Address: 564 W Oak Circle Address: 3301 Mustang Street
City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29577
Home Phone: Work Phone: () - Insurance Carrier: Commerce & Industry
Preparer's Name: Nicholas A. Farr Law Firm: Gallivan, White, & Boyd, P.A. Preparer's Phone #: (864) 271-5347

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: 1/1/2005 (m/d/yyyy)

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

SEE ATTACHED EXCEPTIONS. THE DEFENDANTS RESERVE THE RIGHT TO CHANGE, MODIFY, OR ADD TO THE FOLLOWING GROUNDS FOR APPEAL AFTER RECEIPT AND REVIEW OF THE HEARING TRANSCRIPT.

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

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

South Carolina Second Injury Fund, 100 Executive Center Drive, Columbia, SC 29210

on the 8th day of June, 2011 by ☐ first class mail ☐ personal service ☒ certified mail.

Preparer's Signature: Nicholas A. Farr

Attorney at Law
Title

July 5, 2011
Date

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

the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 10 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

EXCEPTIONS

Commerce & Industry Insurance Company and
Aircraft Support Services v. S. C. Second Injury Fund

(IN RE: Daniel Haidet v. Aircraft Support Services)

WCC File No. 0500022

SIF File No.: 119295

- (1) The Hearing Commissioner erred in admitting into evidence the Second Injury Fund's Amended Form 58 and email correspondence submitted by the Fund (SIF Ex. No. 1), the error being that this admission is an abuse of discretion afforded under Reg. 67-612(E) in that the email was unsworn, unsigned and unable to be authenticated.
- (2) The Hearing Commissioner erred in admitting into evidence the email correspondence submitted by the Fund (SIF Ex. No. 1), the error being that the admission was arbitrary and capricious in that the email was unsworn, unsigned, and unable to be authenticated.
- (3) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 2) that the only reference to the claimant's prior back problems was contained in the knowledge affidavit of the Carrier, the error being that this finding was clearly erroneous in view of the reliable, probative, and substantial evidence of the case, specifically the medical reports of the treating physicians.
- (4) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 2) that the employer's knowledge statement was assigned equal weight as the Fund's email correspondence, the error being that this finding was clearly erroneous in view of the reliable, probative, and substantial evidence of the case, specifically the fact that the employer's statement was signed and dated by the employer and not objected to by the Fund.
- (5) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 3) that the medical reports did not indicate that the claimant had prior back problems, the error being that this finding was clearly erroneous in view of the reliable, probative, and substantial evidence of the case. Specifically the medical report of the treating physicians indicated the pre-existing conditions and is further supported by the uncontested medical questionnaires completed by the same treating physicians.

- (6) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 4) that the claimant's pre-existing conditions were not a hindrance to employment, the error being that this finding is clearly erroneous in view of the reliable, probative, and substantial evidence of the case, specifically the medical questionnaires from Dr. Sauer and Dr. Kang indicating that the conditions were a hindrance.
- (7) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 4) that the claimant's pre-existing conditions were not a hindrance to employment, the error being that this finding is arbitrary and capricious and clearly erroneous in that it is so indefinite or general as to afford no reasonable basis to determine whether the finding is supported by the record.
- (8) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 6) that the medical evidence did not support the medical questionnaires of Dr. Sauer and Dr. Kang, the error being that this finding was clearly erroneous in view of the reliable, probative, and substantial evidence of the case.
- (9) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 8) that the carrier failed to meet its burden in establishing all necessary elements for reimbursement pursuant to S.C. Code Ann. § 42-9-400, the error being that this finding is clearly erroneous in view of the reliable, probative, and substantial evidence of the case.
- (10) The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 8) that the carrier is not entitled to reimbursement from the South Carolina Second Injury Fund, the error being that this finding is clearly erroneous in view of the reliable, probative, and substantial evidence of the case.
- (11) The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that the carrier failed to meet its burden to prove the claimant's pre-existing back problem were serious enough to be a hindrance or obstacle to the claimant's employment, the error being that this conclusion is arbitrary and capricious and not supported by the substantial evidence of the case.
- (12) The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann § 42-9-400 that the carrier did not meet all requirements for reimbursement, the error being that this conclusion is arbitrary and capricious and not supported by the substantial evidence of the case.

- (13) The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann § 42-9-400 that the carrier is not entitled to reimbursement from the South Carolina Second Injury Fund, the error being that this conclusion is arbitrary and capricious and not supported by the substantial evidence of the case.
- (14) The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann § 42-9-400 that the carrier's claim for reimbursement is denied, the error being that this conclusion is arbitrary and capricious and not supported by the substantial evidence of the case.
- (15) The Hearing Commissioner erred in ordering that the carrier's claim for reimbursement pursuant to S.C. Code Ann. §42-9-400 is denied and dismissed with prejudice subject to its statutory right to appeal, when the reliable, probative, and substantial evidence of the case supports an order that the carrier is entitled to reimbursement from the South Carolina Second Injury Fund.
- (16) The Hearing Commissioner erred in not finding as a fact that the pre-existing back injury combined with and was aggravated by the injury on January 1, 2005, the error being that the reliable, probative, and substantial evidence of the case supports such a finding.
- (17) The Hearing Commissioner erred in not finding as a fact that the Second Injury Fund failed to present any evidence that the claimant's pre-existing back injury was not a permanent condition of such seriousness to constitute a hindrance or obstacle to employment or re-employment, the error being that the reliable, probative, and substantial evidence of the case supports such a finding.
- (18) The Hearing Commissioner erred in not finding as a fact that the Second Injury Fund failed to present any evidence that the claimant's pre-existing back injury did not combine with or were not aggravated by his January 1, 2005 injury to substantially increase the overall liability of the employer and carrier, the error being that the reliable, probative, and substantial evidence of the case supports such a finding.
- (19) The Hearing Commissioner erred in not finding as a fact that the evidence in the medical record supports the carrier's claim for Second Injury Fund recovery, the error being that the reliable, probative, and substantial evidence of the case supports such a finding.

(20)

The Hearing Commissioner erred in not concluding as a matter of law under S.C. Code Ann. § 42-9-400(c) that the Carrier established employer knowledge of the pre-existing back injury prior to the January 1, 2005 work injury, the error being that such a conclusion is supported by the reliable, probative, and substantial evidence of the case.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Commerce and Industry Insurance Company, Carrier
AND Aircraft Support Services, Employer

☒ Plaintiff

v.

South Carolina Second Injury Fund, (In Re: Daniel
Haidet v. Aircraft Support Services)

☐ Defendant

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

WCC FILE NO. 0500022

2012 UP 26 955

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Check box above indicating submitting party

Name and address of plaintiff's attorney

Nicholas A. Farr
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, SC 29603
Phone: (864) 271-5341 Fax: (864) 271-7502

Name and address of defendant's attorney

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

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

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

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

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

January 27, 2012

Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID – AMOUNT: \$150.00**

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

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

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

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

☐ Other: Workers' Compensation Appeal

JUDGE'S SECTION

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

☐ Other: _____

JUDGE

CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED – AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Commerce and Industry Insurance)
Company,)
Carrier,)
)
And)
)
Avcraft Support Services,)
Employer,)
)
vs.)
)
South Carolina Second Injury Fund,)
Defendants.)
)
(In Re: Daniel Haidet v. Avcraft)
Support Services))

IN THE COURT OF COMMON PLEAS

**NOTICE OF APPEAL AND PETITION
FOR JUDICIAL REVIEW**

W.C.C. FILE NO. 0500022

FILED
HORRY COUNTY
2012 FEB -7 AM 8:16
MELANIE HUGGINS-WARD
CLERK OF COURT

**TO: MS. MELANIE HUGGINS-WARD, CLERK OF COURT, HORRY COUNTY;
MS. VIRGINIA L. CROCKER, JUDICIAL DIRECTOR, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION AND MS. LATONYA
EDWARDS, ATTORNEY FOR THE SECOND INJURY FUND.**

YOU WILL PLEASE TAKE NOTICE that the appellants, Avcraft Support Services and Commerce and Industry Ins. Company, pursuant to §42-17-60 (as applied to injuries before July 1, 2007) and §1-23-380, of the Code of Laws of the State of South Carolina (1976) as amended, and Pee Dee Regional Transp. v. S.C. Second Injury Fund, 650 S.E.2d 464 (S.C. 2007) (holding that jurisdiction for appeals concerning injuries before July 1, 2007 lies in the Court of Common Pleas), by and through their undersigned attorneys, do appeal from the Order of the South Carolina Workers' Compensation Commission filed and received by Appellant on December 29, 2011 and petition this court for an Order reversing the findings, conclusions and order of the South Carolina Workers' Compensation Commission upon the following grounds and exceptions:

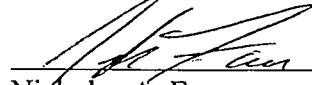
Exceptions

- (1) The Full Commission erred in allowing into evidence the Second Injury Fund's Amended Form 58 and email correspondence submitted by the Fund (SIF Ex. No. 1), the error being that this admission denied due process and is an abuse of discretion afforded under Reg. 67-612(E) in that the email was unsworn, unsigned and unable to be authenticated.
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Respectfully Submitted,



Nicholas A. Farr

H. Mills Gallivan

Gallivan, White & Boyd, P.A.

P.O. Box 10589, F.S.

Greenville, SC 29603

(803) 271-5382

Attorney for Appellants

January 27, 2012

Greenville, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Commerce and Industry Insurance)
Company,)
Carrier,)
And)
Avcraft Support Services,)
Employer,)
vs.)
South Carolina Second Injury Fund,)
Defendants.)
(In Re: Daniel Haidet v. Avcraft Support)
Services).)

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

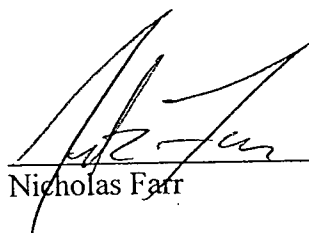
W.C.C. FILE NO. 0500022

FILED
HORRY COUNTY
2012 FEB -7 AM 8:16
MELANIE HUGGINS-WARD
CLERK OF COURT

The undersigned Nicholas Farr, attorney for the plaintiffs, certifies that on the 27th day of January, 2011, he served a NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW upon the parties listed below, by depositing in the United States Mail, Certified Mail, with due and proper postage affixed thereto, a copy of the same addressed to:

Ms. Virginia L. Crocker
Judicial Director
South Carolina Worker's Compensation Commission
PO Box 1715
Columbia, SC 29202-1715
(via certified mail)

Latonya D. Edwards, Esq.
S.C. Second Injury Fund
100 Executive Center Drive
Santee Building, Suite 101
Columbia, SC 29210
(via regular U.S. Mail)



Nicholas Farr

January 27, 2011

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER 0500022

COMMERCE AND INDUSTRY,)
)
CARRIER,) SINGLE COMMISSION HEARING
)
VS.) BEFORE
)
SOUTH CAROLINA SECOND) COMMISSIONER SUSAN S. BARDEN
INJURY FUND,)
)
IN RE:)
)
DANIEL HAIDET,)
)
CLAIMANT,)
)
VS.)
)
AVCRAFT SUPPORT SERVICE,)
)
EMPLOYER.)
_____)

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
8:28 AM ON MONDAY, MAY 2, 2011, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA.

SARA QUATTLEBAUM, Independent Court Reporter
148 LAKE HARBOR DRIVE
LEXINGTON, SC 29072
(803)447-0272

ROA-120

1 THE COURT: Today's date is May 2, 2011. This is
2 South Carolina Workers' Compensation Commission File
3 No. 0500022.

4 This is the case of the Carrier, Commerce and
5 Industry versus the South Carolina Second Injury Fund,
6 in re Daniel Haidet versus Avcraft Aviation Service.

7 Representing the Carrier is Attorney T.J. Hadley
8 and representing the South Carolina Second Injury Fund
9 is Attorney Latonya Edwards.

10 The purpose of today's hearing is to determine
11 issues raised in Forms 54 and 55. The parties agree
12 and stipulate that the Claimant's compensation rate is
13 \$577.72, the maximum compensation rate for 2005.

14 The date of the underlying accident was January
15 1, 2005.

16 Before I ask if there are any objections, I'm
17 going to preempt Ms. Hadley. She does object on the
18 basis of timeliness to an email correspondence from
19 the Claimant back and forth or I guess to and from -
20 well, I guess it's actually the Claimant's response to
21 Ms. Edwards on behalf of the Second Injury Fund.

22 Ms. Edwards' original document or prehearing
23 brief was timely, but she - she did amend her brief to
24 include the correspondence of the Claimant. And it is
25 because of the untimeliness of that additional

1 information that the Carrier objects.

2 However, as I told the parties in the prehearing
3 conference, the Claimant is not here for me to observe
4 his demeanor and the delivery of his testimony, nor is
5 the email in affidavit form, and of course it is not
6 sworn deposition testimony. So I think it would go to
7 the weight.

8 But I am exercising my discretion under and
9 pursuant to Regulation 67-612, which provides that the
10 untimely information may be excluded and that the
11 Commission has jurisdiction to make that
12 determination.

13 So over Ms. Hadley's objection on behalf of her
14 clients, that email information is going to come into
15 evidence.

16 Now, having said all that I have said, you know,
17 the fact that the Claimant is not here, if I feel like
18 there is other evidence that supports that, then that
19 email may carry the day for Ms. Edwards on behalf of
20 her clients. But, you know, the other evidence will
21 have to support it. That, in and of itself, is not
22 going to be the lynchpin of anybody's case is what I'm
23 trying to communicate here.

24 So I will review all of the evidence. It will be
25 all the evidence and not just one little piece which

1 will carry the day for either party.

2 All right. And of course, Ms. Hadley has a
3 running objection to that document and any statements
4 made regarding that document.

5 Are there any other objections to APAs,
6 jurisdiction, venue or any other items?

7 MS. HADLEY: No, ma'am.

8 MS. EDWARDS: None.

9 THE COURT: Thank you. Without objection the
10 commission file becomes a part of the record with
11 exception of self-serving declarations and
12 unstipulated medical reports.

13 At this time I'm going to ask each party to put a
14 brief position on the record. And because you
15 represent the moving party, Ms. Hadley, I will begin
16 with you.

17 MS. HADLEY: We are here seeking reimbursement
18 from the South Carolina Second Injury Fund on behalf
19 of the Carrier. We have met all of the statutory
20 requirements for knowledge, hindrance and obstacle to
21 employment or reemployment and increased liability.

22 This is a ***in the alternative it falls under
23 combined facts and aggravation under Section
24 42-9-400(a) of the South Carolina Workers'
25 Compensation Act on the date of the injury, January 1;

1 2005.

2 Just a little quick brief fact. He was working
3 at the Avcraft on the aviation maintenance crew when
4 he fell off the air tank and injured his elbow and
5 back. And the Employer is stating in this case that
6 the Employer requirement was met because Mr. Haidet
7 informed the Employer and the manager, Mr. Papolonus
8 (phonetic) prior to the accident that he had
9 experienced the back pain and was taking medication
10 for his back problem. He signed a statement to that
11 effect, and that is Carrier APA Exhibit C.

12 The preexisting permanent conditions are
13 according to 42-9-400(a), the impairment is the
14 leading cause or origin. And then in addition the
15 permanent physical impairment found under Section
16 42-9-400(b) as any client condition whether congenital
17 or due to injury or disease. Mr. Haidet's impairment
18 is a prior back injury, specifically preexisting
19 arthritis in the thoracic spine which preexists his
20 work injury, as well as a prior compression fracture
21 to the spine.

22 The medical questionnaires signed by the treating
23 physician, Dr. Scott Sauer, indicated that the T12/L1
24 wedge preexisted and is permanent. That is Carrier
25 APA Exhibit D.

1 Also the medical questionnaire signed by Dr.
2 Kang, which is at Carrier APA Exhibit E indicates that
3 the T12/L1 compression fracture preexisted and is a
4 permanent condition.

5 Also, the medical records support this fact at
6 APA No. 4 from Dr. Sauer found on Page 30. He
7 indicated on May 12, 2005 that Mr. Haidet had a
8 wedging deformity at the indicated levels, and he
9 didn't think it was caused by the fall but rather was
10 aggravated by the fall and that was clearly a
11 preexisting condition.

12 Also he noted that Mr. Haidet has some multilevel
13 degenerative changes in L5/S1. And that is APA No. 4,
14 Page 29.

15 The medical records from Dr. Kang at APA No. 6,
16 Page 42 indicates that on August 22, 2005 that Mr.
17 Haidet has an old T12/L1 thoracic compression fracture
18 which was aggravated due to his work injury.

19 Lastly, the medical records from Grand Strand
20 Regional Medical Center on the date of the accident,
21 which is APA No. 1, Page 1, specifically the ER report
22 indicated the x-ray of the thoracic spine was
23 degenerative, which would clearly indicate that it was
24 preexisting and the doctors indicates that it was
25 permanent as previously stated.

1 As to the hindrance question, Mr. Haidet's prior
2 back injury was a hindrance or obstacle to his
3 employment or reemployment. He has become unemployed
4 at this time. The medical questionnaires have been
5 signed by both doctors, Sauer, which is APA Exhibit D
6 as well as the medical questionnaire signed by
7 Dr. Kang at APA Exhibit E.

8 Also, the medical evidence supports that
9 Mr. Haidet had a preexisting back injury combined with
10 and aggravated by this injury before, and that is at
11 APA No. 4, Page 30.

12 THE COURT: But strictly the back is the
13 reimbursement, not the elbow fracture.

14 MS. HADLEY: Right. Yes.

15 Mr. Haidet's injury is a hindrance to
16 reemployment as evidenced by the Adams and Wilkinson
17 report, which is APA No. 7, Page 56, which indicates
18 he is not a candidate for work and he can't meet the
19 physical demands of the job on a daily basis.

20 Specifically on Page 56 of the APA report
21 indicates that Mr. Haidet is able to attend work on a
22 daily basis and a consistent basis, but he can't meet
23 quality standards. He has a long history of doing
24 these heavy physical labor jobs and he clearly can't
25 do that afterwards as indicated by the report in its

1 entirety.

2 As to the increased liability, the greater weight
3 of the evidence is that the Carrier incurred
4 substantially greater liability for compensation of
5 medical payments combined with the fact that the
6 preexisting impairment and subsequent injury and by
7 reason of aggravation of the preexisting impairment.

8 The subsequent injury occurred alone according
9 the Section 42-9-400(a) is evidenced by the - again,
10 by the medical questionnaires by the treating
11 physicians, Dr. Sauer and Dr. Kang which are - they
12 said he was P&T. Also the medical questionnaires
13 submitted specifically addresses the question of
14 increased disability while the Claimant was out of
15 work and increased medical costs, which all of the
16 doctors agree that the preexisting condition increased
17 the liability for that.

18 As well, Mr. Haidet had increased disability
19 following the injury. Prior to the January 1, 2005 he
20 didn't have an impairment rating to the back. But he
21 did have a preexisting permanent condition which
22 hindered his ability to work. And he was assigned a
23 six percent impairment rating by Dr. Kang, which is
24 APA No. -

25 THE COURT: Now, I note after the accident they

1 did x-rays and they saw mild degenerative disc
2 disease. Where was the - so there was an old
3 compression fracture?

4 MS. HADLEY: Well, he didn't have an MRI until a
5 few months after. They tried treating him
6 conservatively. And then once he had the MRI and he
7 went to the spine specialist, both Dr. Kang and
8 Dr. Sauer indicated that the compression fracture was
9 clearly preexisting and that it was aggravated by the
10 injury.

11 THE COURT: Did they acknowledge that the x-rays
12 right after the accident didn't show much?

13 MS. HADLEY: Right, it didn't show - well, they
14 did talk about how the compression fracture on the MRI
15 was clearly old and that it wasn't caused by the
16 accident but was preexisting at the date of the
17 accident.

18 THE COURT: Do you have any treatment records
19 showing that he had previous back problems? I really
20 - again, I don't think it is dispositive what he said,
21 especially if he had gone through his sworn testimony
22 in a hearing saying I don't have any back problems and
23 then we find out that he did. You know, I don't see
24 any reason for him to do a 180 on that now.

25 Do you have medical records showing that he was

1 either treated for prior back problems or had a
2 problem?

3 MS. HADLEY: We don't have any records prior to
4 the date of the accident.

5 THE COURT: That's what I'm asking for.

6 MS. HADLEY: No. No.

7 THE COURT: Okay. All right. Go ahead. I
8 interrupted you.

9 MS. HADLEY: Also the permanent lifting
10 restrictions indicate that he had increased disability
11 after the accident. He aggravates the preexisting
12 preexisting permanent impairment resulting in
13 Mr. Haidet not being able to return to his job. And
14 the vocational evaluation indicated he was only able
15 to return to a sedentary type job.

16 THE COURT: He had back surgery, right? I'm
17 sorry, but he had back surgery after this?

18 MS. HADLEY: Um -

19 THE COURT: He did not, did he?

20 MS. HADLEY: No, he didn't have back surgery, he
21 -

22 THE COURT: It looks like the main injury was the
23 arm.

24 MS. HADLEY: Right.

25 THE COURT: He had what I have. Well, he had

1 open reduction.

2 MS. EDWARDS: Oh, okay.

3 MS. HADLEY: Right. And then they had to go back
4 in and -

5 THE COURT: So he had some problems with that?

6 MS. HADLEY: Right. But he doesn't receive a
7 lot of treatment. They say that it was aggravated and
8 made worse because he had this old compression
9 fracture to his spine. And then he has this fall at
10 work which aggravated his injuries.

11 We present all of our evidence in this case
12 supporting our request for reimbursement to the South
13 Carolina Second Injury Fund. The Second Injury Fund
14 has not exhibited any evidence that he had a
15 preexisting condition other than the unsworn
16 statements of the Claimant. But the Employer was
17 directly told by the Claimant and signed these
18 statement to that affect that he was taking medication
19 for his back and that he had preexisting back pain.
20 The Carrier and Employer contend that we have met all
21 the statutory requirements under Section 42-9-400 and
22 are asking for an order requiring the South Carolina
23 Second Injury Fund reimburse us. Thank you.

24 THE COURT: Thank you. Okay. Ms. Edwards.

25 MS. EDWARDS: Thank you. Just briefly, the

1 Second Injury Fund is denying that the Claimant had a
2 preexisting condition that was a hindrance to
3 employment.

4 THE COURT: We are talking about the back.

5 MS. EDWARDS: Yes.

6 THE COURT: There is a lot of elbow stuff in
7 here.

8 MS. EDWARDS: Right, and they are not asking for
9 that. But I'm just going to stick with the back.

10 THE COURT: Thank you.

11 MS. EDWARDS: The Claimant was hired - let me
12 just give you a bit of background.

13 THE COURT: Okay. Sure.

14 MS. EDWARDS: The Claimant was hired on November
15 8, 2004. That's per the Carrier, APA Page 70 and was
16 injured approximately eight weeks later on January 1,
17 2005.

18 At Carrier APA Page 71, which is the knowledge
19 affidavit of the HR manager saying that she was aware
20 that Claimant was experiencing back pain because he
21 told her before he was injured.

22 Now, as it relates to the questionnaires at 72
23 and 73, we deny that -

24 THE COURT: Where is that woman that signed that
25 statement? She's not a witness; is she?

1 MS. EDWARDS: She is not. She is not.

2 And, you know, that probably would have been a
3 good idea for me to do. She's not. She's not.
4 You're right. She's not. So I make mistakes
5 sometimes.

6 THE COURT: No, no, no. I'm not suggesting that
7 you -

8 MS. EDWARDS: No, I know, but sometimes -

9 THE COURT: I think this is an interesting case.

10 MS. EDWARDS: Sometimes things get away from me,
11 and you're right. You're right.

12 THE COURT: It was just a question.

13 MS. EDWARDS: No, no, no. I understand. As it
14 relates to the questionnaires at 72 and 73, the
15 preexisting conditions in the back that are indicated
16 on those forms are T12, L1 -

17 THE COURT: That is a fracture.

18 MS. EDWARDS: Correct, it's a fracture. So let
19 me - I just wanted to say that -

20 THE COURT: It says a compression deformity, but
21 I don't - is that tantamount to a -

22 MS. EDWARDS: Right. And that's what I'm getting
23 ready to say. It's not - those positions are not
24 listed conditions. None of the doctors have indicated
25 that any of those conditions are arthritis. Some

1 doctors say degenerative disc disease is and some say
2 they don't. And I've had questionnaires saying both.
3 But none of those questions say that those conditions
4 are arthritis. And so I deny that there is a listed
5 condition that exists in this Claimant.

6 The Fund APA Page 3 which I fully admit is not
7 notarized. It's not sworn. It is not deposition
8 testimony. The Claimant sends an email in response to
9 an email from our claims department. He lives in
10 Kentucky. He says that he told his attorney and - he
11 said he told his attorney he never had a problem with
12 his back and he had never told his employer -

13 THE COURT: So what are the records doing -

14 MS. EDWARDS: And that's what I'm getting ready
15 to add to that, also. Even if you just throw away his
16 email, there aren't any prior medical records that
17 show that he's ever even been treated for prior back
18 pain. So even if you just say we're not going to look
19 at the email at all.

20 THE COURT: Let's go off the record.

21 MS. EDWARDS: Yes.

22 (OFF THE RECORD)

23 THE COURT: We're back on the record.

24 MS. EDWARDS: So even if you disregard that, we
25 think that the fact that there was not any treatment

1 before, that we don't have records and the Carrier
2 doesn't have records on it, that certainly we think
3 that it's credible evidence that what he is saying may
4 be true, that he didn't have a problem with his back.

5 At Carrier APA Page 8 shortly after the injury it
6 doesn't cite any factors, but it does say mild
7 degenerative disc disease at the L5/S1 level.

8 At Carrier APA Page 11 it does talk about his
9 lumbar strain at Page 11, but it says that it was
10 improving. Now, of course, this was approximately
11 maybe five weeks after the injury. And so I
12 understand, you know, the email and it not being
13 notarized and all that. I certainly understand all
14 that. But even if you disregard that, we think that
15 the evidence is that the Claimant worked there eight
16 weeks, was injured. There is no medical evidence in
17 the records that shows he had any treatment for back
18 problems before this injury. The first medical record
19 appears on the date of the injury and thereafter.

20 Carrier APA Page 8 says no fractures, mild
21 degenerative disc disease. Carrier APA Page 11
22 indicates the lumbar strain had improved.

23 And so that is really all I would say as to why
24 we think that reimbursement should be denied in this
25 case.

1 And unless the Commissioner has any questions,
2 that's it.

3 THE COURT: Thank you, Ms. Edwards. No, I don't.

4 All right. Ms. Hadley, do you have anything in
5 reply?

6 MS. HADLEY: Just briefly. The Carrier stated
7 they did not have any medical records predating the
8 date of the accident. But I would like to point to
9 you down on Page 30 of Carrier APA and which
10 specifically says his MR shows a deformity but it was
11 not caused by the fall; it was likely aggravated by
12 the fall. As well as Carrier APA, specifically on
13 Page 43 that says that it is a compression fracture
14 with aggravation due to the work - work related
15 incident, as well as to the fact that the -

16 THE COURT: It says minimal wedging of C11 and 12
17 disabled from prior exam.. They called it minimal.

18 MS. HADLEY: Um -

19 THE COURT: I mean, minimal - well, go ahead.

20 MS. HADLEY: Well, I guess that I would say that
21 the doctors thought it was minimal it would have
22 increased his time off of work and medical costs as
23 well. His disability - even if the medicals don't
24 specifically say arthritis, the fact that it's not a
25 listed condition isn't - we should not be denied the

1 reimbursement because under 42-9-400(b) it says that
2 any condition, whether it's by injury disease or
3 congenital.

4 And as to the Claimant's unsigned statement by
5 email, if you look closely at the email the contact
6 information given by the Claimant's attorney is an -
7 there is an email address included in that. I'm not
8 saying that they made up anything. But there is no
9 way for you to actually know where it came from. It's
10 not signed or anything of that nature. And the human
11 resources manager was explicitly told by the Claimant
12 that he was taking medication for his back and that he
13 was having serious back problems.

14 That's all.

15 THE COURT: Okay. Ms. Edwards, anything on
16 reply?

17 MS. EDWARDS: I don't have anything in reply.

18 THE COURT: That concludes this proceeding.

19 (The hearing concluded at 8:45 AM.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2012-CP-26-00955

Commerce and Industry Company)
And Aircraft Support Services,)

Plaintiffs,)

vs.)

S.C. Second Injury Fund,)

Defendant.)

Transcript of Record

October 9, 2013

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Nicholas Andrew Farr, Esquire
Attorney for Plaintiffs

Latonya Dilligard Edwards, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 (On the record, October 9, 2013.)

2 THE COURT: All right, this is case number 2012-CP-26-
3 955, Commerce and Industry Insurance Company and Aircraft
4 Support Services versus South Carolina Second Injury Fund. It
5 just says Workers' Compensation. What are we here for today?

6 MR. FARR: Your Honor, my name is Nick Farr. I'm
7 with Gallivan, White & Boyd. I'm here on behalf of Commerce
8 and Industry, Aircraft Support Services. This is an appeal of
9 a Second Injury Fund matter heard by the Full Commission. The
10 date of injury in this case was January 1st, 2005. For any,
11 for any injury after January 1st, 2007, those appeals are heard
12 by the Court of Appeals. This is a pre-2007 date of injury.

13 THE COURT: All right.

14 MR. FARR: We're here in your court.

15 MS. DILLIGARD-EDWARDS: Your Honor, I'm Latonya
16 Dilligard Edwards of Dilligard-Edwards, LLC, and I represent
17 the Second Injury Fund. We're the respondent.

18 THE COURT: All right, all right, Mr. Farr, this is
19 your appeal?

20 MR. FARR: Yes, Your Honor.

21 THE COURT: All right, let me hear from you.

22 MR. FARR: Your Honor, as I just mentioned, this is
23 an appeal from a decision of the Full Commission denying
24 Commerce and Industry Company reimbursement from the Second
25 Injury Fund. In order to obtain reimbursement from the Second

1 Injury Fund pursuant to 42-9-400 the employer or the insurance
2 carrier in this matter needs to be able to show that the
3 Claimant, the employee, had a pre-existing condition that was
4 a hindrance to employment, that the employee - that the
5 employer knew about that pre-existing condition and then the
6 claimant eventually developed a second injury that resulted in
7 a substantially greater liability from medical costs and
8 indemnity payments and stuff like that.

9 The Full Commission erred in - their decision was clearly
10 erroneous in light of the reliable, probative and substantive
11 evidence in the case regarding whether or not the employee had
12 a pre-existing condition, whether the employer knew about it
13 and ultimately whether it led to an increased liability.
14 We'll start with the, the issue of, of knowledge. The - in
15 this case the carrier submitted a statement from Avcraft
16 Support Services from their human resources director who had
17 had - who had - she indicated that she had been in a
18 conversation with the employee prior to this injury. He had
19 mentioned - he had indicated that he had had some back
20 problems. She signed that statement. It was submitted to the
21 Second Injury Fund and never contested.

22 The medical records from the two treating physicians, Dr.
23 Scott Sauer and Dr. Gregory Cain, they both submitted medical
24 questionnaires which - in which they indicated that the
25 employee had pre-existing injuries with his back, one, one was

1 a T-12 wedging deformity and the other one some general
2 degenerative changes in the back that would have been known by
3 the employee.

4 The, the only evidence in this case that the carrier put
5 forward was an e-mail that was sent to, sent to us six days
6 prior to the hearing. There was an e-mail chain. The e-mail
7 was unauthenticated in any way, shape or form. It was sent by
8 an e-mail address, Jellybeanmax2002@yahoo.com., allegedly from
9 the Claimant saying, "I've never had any back problems." The
10 Claimant was not there to testify to attest to that. There's
11 no chain of command about how that - I don't know who
12 Jellybeanmax2002@yahoo.com is. There is a - the initial e-
13 mail is an e-mail from the fund to the employee's attorney
14 from the underlying comp case saying, "We need to get in touch
15 with this guy. We're just going to ask him if he ever had any
16 back problems before." Then you get a response from the
17 attorney saying, "Sure, you can contact him." He sent him his
18 address and his telephone number, doesn't mention his e-mail
19 address at all. So then we get this e-mail and that's the
20 only evidence talking that was going to refute at all any
21 claim that the Claimant had of a pre-existing condition or
22 that it was known by the employer.

23 The Single Commissioner waived that, she decided to allow
24 that e-mail to come into evidence despite the fact that it was
25 unauthenticated, it was not signed and it was from

1 Jellybeanmax2002@yahoo.com. The, the Commissioner indicated
2 that she was going to afford it equal weight with that of the
3 employer knowledge statement submitted by the employer. First
4 of all that - to find - to - I question whether or not it was
5 actually afforded equal weight considering the remaining
6 evidence in the case, all the medical records and the medical
7 statements that were provided by the doctors. Second of all,
8 to assign it equal weight even if it was done so would be
9 clearly erroneous the fact that we submitted a statement to
10 the Second Injury Fund on time, it was signed by the employer,
11 it was never contested and it meets with what the statute
12 requires us to do.

13 For the other issues of hindrance and greater liability,
14 again, Scott, Dr. Scott Sauer and Dr. Gregory Cain submitted
15 medical, medical statements on all three of those issues,
16 confirming all three of those issues, but those statements
17 aren't just rouge statements that they, they submitted for the
18 purposes of this case. Those statements are extremely
19 consistent with the actual language in their medical record
20 which was over two years of treatment of this employer.

21 Dr. Sauer indicated that there was a - that he had a T-
22 12, L-1 wedging deformity and his records say it was not
23 caused by but it was aggravated by the accident. Dr., Dr.
24 Gregory Cain in his records repeatedly says he has an old
25 appearing T-12, L-1 thoracic compression fracture with

1 aggravation due to work-related, that were due to a work-
2 related incident, and that's what the medical records show,
3 that's what the statements say and that's the only evidence in
4 this case. The Second Injury Fund never, never submitted any
5 medical records at all to, to rebut any of that.

6 There are two recent - the, the Single Commissioner
7 indicated that she made her findings based upon all the
8 evidence in the record, but the Commissioner, the Commission
9 is required to make very specific findings just to - from
10 based on the evidence in the record. That's from Gray versus
11 Laurens Mill, 371 S.C. 488. Not only that - is that not
12 specific, it just doesn't support what the records actually
13 show. There's two recent Court of Appeal's decisions dealing
14 with a very similar issue, the first being Burnette versus
15 City of Greenville, which is 401 S.C. 417. In that case they
16 reversed the findings of the Commission because they found
17 that the Commission, the findings of the Commission did not,
18 they did not originate from any medical provider and they
19 didn't - they were not supported by the records in the case.
20 Secondly, in Carolina Recycling Group versus the South
21 Carolina Second Injury Fund, 398 S.C. 480, the - once again
22 the Commission, reversed the decision of the Commission, find
23 that the Commission had relied only on one statement from an
24 IME, from somebody that never actually saw the Claimant and
25 they ignored the diagnostic tests, the medical records and the

1 medical statements submitted by the employer, and so for those
2 reasons the findings of the Full Commission were clearly,
3 clearly erroneous in light of the substantial evidence in the
4 case.

5 THE COURT: All right, thank you.

6 MS. DILLIGARD-EDWARDS: Your Honor, I'll just cut right
7 to it. The only issue in dispute here is whether the pre-
8 existing condition was permanent and serious enough to be a
9 hindrance or obstacle to employment pursuant to 42-9-400(D).
10 Now, we stipulate they meet knowledge. We don't have a - so
11 I'm not going to discuss that, and so we stipulate that the
12 Claimant did have a pre-existing condition. The issue in this
13 case is the issue of whether it was permanent and a hindrance
14 and the Commission appropriately determined that it wasn't
15 based on the following substantial evidence that was in the
16 record. At the - on the - at the record on appeal page 94
17 first and only reference to prior back problem is the
18 knowledge statement of the employer.

19 THE COURT: Wait a minute, wait a minute, where are
20 you?

21 MS. DILLIGARD-EDWARDS: Page 94 of the record on appeal
22 that I believe Mr. Farr submitted, should be page 94. It's
23 dated, the record is dated April 30th, 2013.

24 THE COURT: Page 94, got it.

25 MS. DILLIGARD-EDWARDS: Okay.

1 THE COURT: All right.

2 MS. DILLIGARD-EDWARDS: That's the first and only
3 reference to a prior back problem. Record on appeal, page 31,
4 Claimant denied previous problems to - with his back, no
5 indication that Claimant received any and let me back up a
6 minute because the statute also does not define what is
7 permanent and a hindrance to employment, but you can look at
8 other case law to make that determination and I've cited that
9 in my Respondent's brief as well, page 3 of my brief. One of
10 the requisite elements is permanent, that it be a permanent
11 and a hindrance to employment and once I - once again the
12 statute doesn't define that but you can look at the plain
13 meaning in Webster's Dictionary as well as Crisp versus
14 SouthCo, citation 401 S.C. 627. It's a 2013 case. That case
15 says that whether something is - was - is permanent makes room
16 for the fact that the Claimant may receive, may be required to
17 receive specialized health care without the means to earn a
18 living. That's one potential definition of what being
19 permanent and a hindrance to employment would mean.
20 Additionally Larsons instructs that whether a condition is a
21 hindrance to employment depends on whether an employer would
22 hire, employ or promote the Claimant knowing all of the facts.
23 That's an additional definition, and also just the plain
24 meaning in Webster's, Webster's defines hinder, hinder an
25 obstacle, respectively, as that which causes delay or

1 difficulty or to prevent from doing or happening or something
2 that obstructs or hinders progress. We would assert that this
3 prior back problem where there's no evidence of any treatment
4 for or that it was a hindrance to employment doesn't fall
5 within the purview of any of those definitions, but also as it
6 relates to the medical records that are in evidence and
7 Carrier makes much to do about the fact that we didn't submit
8 any evidence, but I think his argument more so goes to the
9 weight of the evidence which we already know is fully accorded
10 to the Commission. So the fact that I didn't put in any
11 additional evidence really is irrelevant because the evidence
12 in the record already proves what the Commission has decided.
13 Now, the fact that they disagree with the weight given to that
14 evidence is of no consequence and doesn't prevent it from
15 being supported by substantial evidence in the record and let
16 me go back to my pages, page, record, record on appeal pages
17 31 and 80, Claimant's lumbar x-rays, this is nine days post
18 injury, notes ---

19 THE COURT: All right, hold, let me get there.

20 MS. DILLIGARD-EDWARDS: Yes.

21 THE COURT: Page 31?

22 MS. DILLIGARD-EDWARDS: Yes, sir, and 80. I think the
23 diagnostic might actually be on page 80.

24 THE COURT: All right, I got them both. Go ahead.

25 MS. DILLIGARD-EDWARDS: Okay, that shows some mild

1 degenerative disk disease but no fractures or lesions and the
2 post injury assessment one year post injury, which I think
3 actually is page 80, I think the other one was 31, assessment,
4 one year post injury revealed no evidence of impairment. So
5 the record on appeal also from pages 24 through 32 ---

6 THE COURT: All right, excuse me for a second. I'm
7 looking on 80.

8 MS. DILLIGARD-EDWARDS: Yes, sir.

9 THE COURT: Where - and I'm looking for no ---

10 MS. DILLIGARD-EDWARDS: Let me, let me, let me - I can -
11 because I think I have that highlighted in mine. So just give
12 me a second, please, at - on, on that page at the - next to
13 the objective section.

14 THE COURT: Correct.

15 MS. DILLIGARD-EDWARDS: Second from the bottom sentence,
16 there is no evidence of impairment. He has a normal gait.

17 THE COURT: Okay.

18 MS. DILLIGARD-EDWARDS: Okay.

19 THE COURT: Normal gait, okay.

20 MS. DILLIGARD-EDWARDS: Yes, normal gait, palpitation of
21 the thoracic region is mildly tender.

22 THE COURT: Palpation of the thoracic region is
23 mildly tender, got you.

24 MS. DILLIGARD-EDWARDS: That's correct.

25 THE COURT: All right, go ahead.

1 MS. DILLIGARD-EDWARDS: Okay, next, pages 24 through 32,
2 let me get to that for Your Honor also, 24, okay, 24 through
3 32, you know what, and I'm citing this for the - because this
4 is where it cites the eight foot fall on the day of the
5 injury, January 1st, 2005, claimant fell from an eight - from
6 eight feet and fell on the concrete; and so I'm citing these
7 pages for the proposition that the Commission determined that
8 the cause of Claimant's back problem was the January 2005 fall
9 wherein he fell eight feet onto the concrete and that also is
10 in one of the findings of fact in the order which I did not
11 reference but I can.

12 THE COURT: So that's the date of the incident giving
13 rise to this ---

14 MS. DILLIGARD-EDWARDS: Yes, they didn't ---

15 THE COURT: --- claim.

16 MS. DILLIGARD-EDWARDS: Right, right.

17 THE COURT: Got you.

18 MS. DILLIGARD-EDWARDS: Okay, and then after Claimant
19 sustained the work injury, this is at the record on appeal
20 pages 40 and 66, Claimant was deemed not to be a candidate for
21 surgery, was released with six percent impairment rating to
22 the back; and so, while the, the Claimant did have an
23 impairment none before this work injury and the impairment
24 subsequent to the work injury was six percent which we totally
25 believe and we believe the evidence supports as relative to

1 the eight foot fall onto the concrete. Now, in determining
2 whether the condition was a hindrance to employment if you
3 look at the record the Commission also determined the type of
4 job that this Claimant performed and in this particular case
5 the Claimant was an airport mechanic. This is on page eight
6 of the record, finding of fact number four, and at page 31 of
7 the record, both - all of which reference that the - what the
8 Claimant did and that the Commission considered the type of
9 work that he did in determining whether his prior back problem
10 was a hindrance to employment.

11 Now, the carrier mentioned the knowledge affidavit and
12 knowledge. We do not dispute that they had knowledge of a
13 prior back problem, but when you look at the record it does
14 not indicate that he had any documented complaints prior to
15 this work injury about any back problem and once again the
16 post injury diagnostic testing which I have cited before at
17 pages 31, 80 and 94 revealed mild degeneration, no fractures
18 or lesions, no evidence of impairment, and once again carrier
19 makes a big issue about the fact that - about the e-mail and
20 let me just go ahead and jump to that. I'm sorry to skip over
21 but let me go ahead and jump to that and I'll come back. The
22 e-mail that Mr. Farr references, now, the Commission - first I
23 disagree that it was - the Commission gave it equal footing as
24 the knowledge statement. I think she gave it no weight at
25 all. If you look at the decision and order at page - and I'm

1 not sure what page that is in the record. It might not be
2 numbered consecutively with the record but I did want to just
3 mention it because I'm sure the Court has it, finding of fact
4 number two, the only reference to the back problem, this is
5 the finding of fact, Claimant is alleged to have had prior
6 back problems. "The only reference to the prior back problem
7 was contained in the knowledge affidavit, which is signed more
8 than five years post injury and is not notarized or sworn,
9 which puts the knowledge statement on the same footing as the
10 Fund's e-mail to which I assign no weight in this matter." So
11 really the Commission assigned no weight to the Fund's e-mail,
12 but I believe in their consideration of the decision they
13 assigned weight to the knowledge statement or else, otherwise,
14 Claimant - Carrier wouldn't be able to meet the knowledge
15 requirement if they didn't give that statement any weight.

16 Also, the Commission also cited in its opinion that the
17 knowledge statement was not notarized either because I think
18 Mr. Farr indicates that there was no way to authenticate the
19 e-mail, the knowledge statement wasn't notarized but I believe
20 that the Commission allowed that in as evidence of their
21 knowledge and so I disagree that the e-mail was given equal
22 footing because the e-mail was given no weight, the knowledge
23 was given weight to allow them to meet the knowledge
24 requirement in 42-9-400. So I think that that's probably just
25 a misstatement of the decision and order on the issue of

1 knowledge.

2 Also, as it relates to - let me cite also the regulation.
3 The Commission has discretion to admit any record that is
4 submitted outside of the time requirements. That's regulation
5 67-612(E). Now I say that because in the event you find
6 somehow that the e-mail was given weight certainly we would
7 assert that it's consistent with the regulations if they
8 decided to do that. It says that, "Failure to provide reports
9 and notices as required under this section may result in
10 exclusion of such reports from the evidence of the case. This
11 paragraph shall not be construed to limit the discretionary
12 authority of a hearing commissioner to accept reports,
13 depositions or other evidence outside," and that's, again, at
14 Commission Regulation 67-612(E).

15 As it relates to - I think Mr. Farr cited some recent
16 case law that Your Honor should rely on to reverse the case,
17 but certainly we would assert that this decision is consistent
18 with those. One of the cases cited was Carolina's Recycling.
19 In that case the Commission was reversed because the Appellate
20 Panel according to the Court of Appeals relied exclusively
21 upon an evaluation by a non-treating physician who only met
22 with the Claimant on one occasion.

23 Now, we certainly would assert that Carolina's Recycling
24 Group was based solely on medical issues. The medical issue
25 in that case was whether the pre-existing condition combined

1 with the work injury to create substantially greater medical
2 costs and permanent disability. The issue of hindrance was
3 not even an issue in that case. The issues in Carolina's
4 Recycling were medical issues. This case whether something is
5 a hindrance or obstacle to employment, it can be a medical
6 issue, but certainly we would, we would assert that it's also
7 a vocational issue that can be determined by, you can use
8 Claimant's testimony, there's nothing that requires
9 specialized expert testimony on the issue of hindrance, and in
10 fact the issue of hindrance you don't even have to resort to
11 any interpretation of CT scans, diagnostics, MRIs, anything of
12 that sort. So we would assert that that case is totally
13 different.

14 The same with Burnette, in Burnette the Court of Appeals
15 remanded the case back to the Commission for a finding, for
16 additional findings, but the reason they did it was because
17 they determined that the decision was based on the medical
18 opinion, I think they said the medical opinion of a Single
19 Commissioner and not based on what was in the medical records.
20 Once again that's not an issue here. The medical issues are
21 not at issue in this case. The issue of whether a preexisting
22 condition was a hindrance or obstacle to employment is what's
23 at issue and we dispute that that's solely a medical issue.

24 As it relates to the - I think I addressed the e-mail
25 already, Your Honor. On the issue of hindrance, I think I

1 addressed all of that, Your Honor. I don't want to be
2 repetitive, but let me also point out in Anderson because I
3 think this goes to my weight of the evidence argument,
4 Anderson versus Campbell Tile Company, 203 S.C. 54, 24 S.E.2d
5 104. That, once again I think that the Carrier's arguments
6 are primarily based on their dispute with the, with the weight
7 of the evidence given by the Commission to the evidence in the
8 record, and once again in this case as well Anderson
9 indicates, Anderson says that the opinions of medical experts
10 may constitute substantial evidence, but it doesn't - it
11 doesn't say it must. So it's not mandatory and also it
12 doesn't exclude the Commission from considering other evidence
13 that's sufficiently compelling on the issue of any of the
14 elements that are required to be met and also the case of
15 Ballenger versus South - Southern Worsted Corporation, 209
16 S.C. 463, 467 I'm sorry, that's the pinpoint cite, 40 S.E.2d
17 681, pinpoint cite 682 through 683. That case indicates that
18 the Commission is not required to give medical questionnaire's
19 conclusive effect to the exclusion of other more compelling
20 medical evidence. So certainly we believe that the Commission
21 clearly acted within the scope of its authority. It looked at
22 all of the medical evidence in the record. Certainly Carrier
23 disagrees with that evidence, but once again, I think that the
24 Commission is accorded to give whatever weight to whatever
25 evidence they deem appropriate and if it's supported by

1 substantial evidence in the record it should be affirmed.
2 Now, if, you know, it's not just that reasonable minds differ
3 because reasonable minds might differ on the issue, and so if
4 Mr. Farr had had another Commissioner he may have gotten
5 another decision but that doesn't preclude this decision from
6 being supported by substantial evidence and because of that,
7 Your Honor, we believe that the Commission's decision below
8 was supported by substantial evidence in the record and
9 certainly we would request that it be affirmed.

10 THE COURT: All right.

11 MS. DILLIGARD-EDWARDS: Do you have any questions of me,
12 Your Honor?

13 THE COURT: I think that's got it. Thank you.

14 MS. DILLIGARD-EDWARDS: Thank you, uh-huh.

15 MR. FARR: All right, Your Honor, if I - just a
16 couple of points, the fund just or Latonya just indicated that
17 the - that they're - that they're not contesting that there
18 was knowledge of a pre-existing condition. That's the first
19 time that's ever been said.

20 MS. DILLIGARD-EDWARDS: No, it's not.

21 MR. FARR: Well, well, well, even if it's not, let's,
22 let's just go with - if they're not contesting that we had
23 knowledge of a pre-existing condition that must have been -
24 must mean that there was a pre-existing condition for us to
25 have knowledge of. Secondly, the medical records, the

1 emergency room report from the day of the accident, which is
2 the record on appeal page 24, cites degenerative changes in
3 the thoracic spine. He had degenerative changes on the day of
4 the accident. Everything that the fund mentioned - just
5 brought up is all about records following the accident. They
6 have not touched on one thing about what - whether or not he
7 had - it was a hindrance before the accident which is what the
8 issue is about.

9 THE COURT: Well, she referenced - it was on page 80,
10 Coastal Interventional Pain Associates, wait a minute, is that
11 ---

12 MR. FARR: Is that the record where it says no
13 impairment?

14 THE COURT: Yeah.

15 MR. FARR: Again, that's, that's after the accident.

16 THE COURT: Okay, that's subsequent, okay.

17 MR. FARR: That's - that is all subsequent to the
18 accident. The only thing in the record in this case that
19 speaks of anything before the accident are the records of Dr.
20 Sauer and Dr. Cain, which Carolina Pain Associates, that is -
21 that's Dr. Sauer and he confirms that it would have been a
22 hindrance to employment. They also - the Commission also made
23 a finding regarding his job description. There was nothing in
24 the record about what his job description actually entailed.
25 The only thing in the record was that he was a mechanic. They

1 don't know if he was holding a, holding a wrench for somebody
2 else or if he was, you know, doing heavy labor. There's - so
3 there's, there's no support for the fact that what his job
4 was, therefore it couldn't have been a hindrance to
5 employment.

6 THE COURT: Well, let me ask you this, is it - is the
7 burden on your client to prove that there was a hindrance to
8 employment?

9 MR. FARR: The burden is on, is on the employer.

10 THE COURT: Okay, so, what, what in the record
11 indicates that there was a hindrance to employment?

12 MR. FARR: The statements from Dr. Gregory Cain and
13 Dr. Scott Sauer, they were both asked whether this condition,
14 because they asked us - they say that he had this condition
15 and then they are asked whether it would have been a hindrance
16 or an obstacle to his employment and they both confirmed yes.

17 THE COURT: Okay.

18 MR. FARR: That is the only thing in the record that
19 actually speaks of hindrance or obstacle to employment.
20 Everything else is dealing with post accident medical records.

21 THE COURT: All right, all right, I'll take it under
22 advisement. I've just - I've got to read the record on
23 appeal.

24 MS. DILLIGARD-EDWARDS: Sure, sure.

25 THE COURT: I don't know what all's in there. So,

1 I'll have to take a look at it.

2 MS. DILLIGARD-EDWARDS: Sure.

3 THE COURT: And let you know.

4 MS. DILLIGARD-EDWARDS: Thank you very much, Your Honor.

5 MR. FARR: All right, thank you, Your Honor,

6 THE COURT: All right, thank you, but I'm - this is an
7 appeal where they denied the carrier's claim for benefits from
8 the Second Injury Fund?

9 MR. FARR: Yes, Your Honor.

10 MS. DILLIGARD-EDWARDS: That's correct.

11 THE COURT: Okay, got you.

12 MR. FARR: Thank you.

13 THE COURT: Thank you.

14 MS. DILLIGARD-EDWARDS: Thank you, Your Honor.

15 (Adjourned.)

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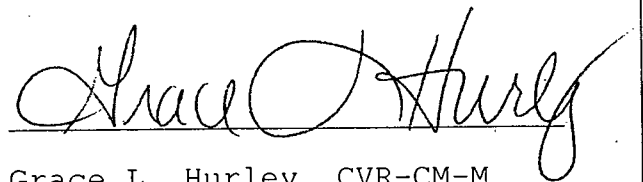
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Commerce and Industry Insurance Company and Aircraft Support Services versus South Carolina Second Injury Fund, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on October 9, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

December 18, 2013.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2013-002487

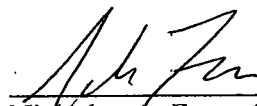
Commerce and Industry Insurance Company, ...Appellant,

v.

Second Injury Fund of South Carolina, ...Respondent.

CERTIFICATE OF COUNSEL

The undersigned does hereby certify that this **RECORD ON APPEAL** complies with Rule
210(c)(g), SCACR.



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May 8, 2014

Attorney for Appellant

THE STATE OF SOUTH CAROLINA

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APPEAL FROM HORRY COUNTY
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Benjamin H. Culbertson, Circuit Court Judge

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Commerce and Industry Insurance Company, ...Appellant,

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PROOF OF SERVICE

I do hereby certify that on the 8th day of May, 2014, I served a copy of the **RECORD ON APPEAL** upon the attorney for the Respondent, and others as specified below, by placing a copy of the same in the United States Mail, with due and proper postage affixed thereto, to the following:

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MAY 14 2014

SC Court of Appeals

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Judicial Director
S. C. Workers' Compensation Commission
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