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

COMMISSION PANEL: THE HONORABLE SUSAN S. BARDEN, CHAIR; THE HONORABLE GENE MCCASKILL; THE HONORABLE ANDREA C. ROCHE

SCWCC FILE NO.: 1111934

Thomas Hilton,

Claimant

v.

Flakeboard America Limited,

Employer, and

Liberty Mutual Insurance Company,

Carrier, Defendants.

Hearing held in Columbia,
South Carolina on October 14th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Andrew N. Safran, for Claimant

L. Brenn Watson, for Defendants

Filed: May 21, 2014

STATEMENT OF THE CASE

The instant proceeding was initiated by Defendant/Employer's Form 21 Employer's Request for Hearing dated July 6, 2012 to address termination of temporary disability benefits pursuant S.C. Code §42-9-206(E) and to request credit for overpayment of temporary compensation pursuant to §42-9-210. Also at issue in the Defendant's pleading was whether: (a) Claimant reached MMI, (b) Claimant required further treatment for the consequences of his compensable accident; and (3) Claimant remains temporarily totally disabled. On October 30, 2012 Defendants also filed a Motion for Court Order to Compel the Department of Social Services to produce records in the above referenced matter.

In response, Claimant maintained: (a) any inconsistent and/or inaccurate statements contained in the record (deposition testimony or otherwise) were the product of significant cognitive deficits stemming from physical brain damage, rather than a purposeful/intentional/volitional attempt to mislead; (b) he had not achieved maximum medical improvement as to the consequences of his compensable accident; (c) Defendants were obliged to authorize the various treatment modalities which had been prescribed/recommended by Dr. Healy, their designated treating physician; and (d) he remained temporarily totally disabled.

On June 4, 2013, the single Commissioner issued his Decision and Order containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On August 17, 2011, Mr. Hilton sustained a compensable injury to his left buttocks/upper leg area while transporting material, via tractor trailer, to a location in Virginia. Specifically, while en route to this delivery site, Mr. Hilton was bitten in his buttocks/upper leg area by an insect as he was operating the tractor trailer.

2. At the time he sustained this compensable injury, Mr. Hilton was performing duties arising out of and within the course and scope of his employment as a tractor trailer/delivery driver for Flakeboard America Limited, where had worked since May 3, 2010.

3. After sustaining this injury, Mr. Hilton: (a) reported its occurrence to a representative of Flakeboard America Limited; (b) continued to experience buttocks/upper leg pain; (c) nonetheless completed his delivery assignment; and (d) ultimately returned to his Bennettsville, South Carolina home, where his wife observed evidence of an insect bite at the focal site of his pain.

4. Although he attempted to continue working, Mr. Hilton's symptoms (pain, swelling and redness emanating from the wound) persisted, to the extent he sought treatment through the Marlboro Park Hospital Emergency Room on August 19, 2011. As confirmed by a review of the records generated by this facility, he: (a) reported the sudden onset of buttocks/upper leg pain two days prior; (b) indicated he had since experienced "pain, redness, skin breakdown . . . [and] swelling [from a] single lesion . . . [that he attributed to] being bitten by a spider"; (c) exhibited "a raised, round, red area with obvious bite mark in the center of the . . . [buttocks/upper leg] lesion"; (d) also manifested skin discoloration ("bright red"), tenderness and swelling ("edematous") in the "area surrounding the bite"; (e) was diagnosed to have experienced a spider bite, for which he received an injection of Decadron, as well as a prescription for Percocet; and (f) was instructed to seek further treatment in the event his symptoms did not improve.

5. When his condition progressively worsened, Mr. Hilton was assessed at Agape Senior Primary Care (August 22, 2011), where he: (a) related the same history and mechanism of injury; (b) reported high fever the previous day; (c) exhibited a "[l]arge, warm, red abscessed . . . [area in the] left upper posterior thigh . . . [that measured] approx[imately] . . . 5 inches in diameter [and was] . . . exquisitely painful"; (d) received an injection of Marcaine into the center of this abscessed wound; and (d) was directed to Dr. Chi-Dai Chen for surgical assessment.

6. Upon initially examining Mr. Hilton (August 23, 2011), Dr. Chen: (a) noted persistent complaints "of severe pain and drainage from the wound . . . [with] associated symptoms of fever, nausea, and vomiting"; (b) observed "an area of erythema and induration on the left posterior thigh"; (c) similarly identified "an opening with some underlying necrotic subcutaneous tissue . . . consistent with an abscess with surrounding cellulitis"; and (d) admitted Mr. Hilton to the hospital "for IV antibiotics and . . . local debridement . . . [d]ue to the severity of his symptoms . . . ."

7. During the course of this August 24, 2011 procedure, Dr. Chen: (a) excised the skin overlying Mr. Hilton's abscess, which led to an "immediate finding of underlying

necrotic fat"; (b) engaged in ". . . [b]lunting dissection to breakdown any loculation and purulent draining" after excising this necrotic fat; and (c) obtained an intraoperative culture prior to washing the wound and packing this area "using moist gauze dressing, 4 x 4, and tape." Following this procedure, Dr. Chen inspected the wound on two occasions (September 1, 2011 and September 12, 2011) prior to placing Mr. Hilton on PRN status.

8. While Mr. Hilton had admittedly encountered and sought treatment for predominant left heel/ankle pain prior to his August 17, 2011 injury, consideration of various reports generated by Dr. Jason B. O'Dell of Pee Dee Orthopaedic Associates, P.A. (from whom he received medical care for this problem) verifies: (a) the diagnosis as of July 28, 2011 was "Achilles Tendonitis"; (b) on that date, Mr. Hilton reported the pain (that Dr. O'Dell had diagnosed to be reflective of "Achilles Tendonitis") radiated up the back of his leg ; and (c) on December 1, 2011, the last day he received treatment from this orthopaedic surgeon, Dr. O'Dell's "FOCUSED EXAM. . . remain[ed] unchanged. . . [with] ongoing insertional pain and tenderness", which this physician continued to characterize as the product of "(Chronic). . . Achilles tendinitis."

9. A review of reports generated by Dr. W. James Evans of Comprehensive Neurologic Services, P.C. (to whom he was referred by Dr. O'Dell) reveals: (a) Mr. Hilton presented to Dr. Evans initially on September 19, 2011 with complaints of bilateral foot pain (worse on the left), mostly involving the heel, which had been present for five (5) months; (b) the upward radiation referenced by Dr. O'Dell had apparently improved, while "[p]ertinent negatives included decreased mobility, instability, limping, night pain, night-time awakening, numbness, swelling, weakness or foot drop"; (c) an acknowledgement that the left foot pain which Dr. O'Dell attributed to Achilles tendonitis was present prior to his August 17, 2011 spider bite (September 19, 2011); (d) by October 31, 2011, Mr. Hilton's left foot pain had worsened; (e) he had subsequently began experiencing "pins and needles pain . . . after the spider bite" (October 31, 2011); and (e) based upon the particular elements of Mr. Hilton's history, this neurologist characterized the newly developed left lower extremity symptoms as the "late complications of the brown recluse spider bite."

10. During this time period (October 21, 2011), Mr. Hilton began receiving authorized treatment for the ongoing left leg symptoms Dr. Evans had attributed to the spider bite through Marlboro Primary Care Associates. While treating at this facility:

(a) he was diagnosed to be suffering from "neuropathic" left leg pain; (b) Mr. Hilton did not receive appreciable benefit from prescribed medications; (c) staff members were apprised of his previously diagnosed left Achilles condition; and (d) he was ultimately referred for neurological consultation by Dr. Gopalbhai Vaghela of this practice.

11. On February 13, 2012, Mr. Hilton was evaluated by Dr. R. Joseph Healy (identified by Dr. Vaghela's assistant as the only neurologist in Florence that accepted workers' compensation cases), who: (a) noted not only the presence of persistent left leg symptoms, but also the non-traumatic onset of low back pain; (b) prescribed Gralise; and (c) recommended proceeding with electrodiagnostic studies. Significantly, the EMG element of this testing, which was performed on March 14, 2012, revealed abnormal nerve function of the left leg, which Dr. Healy characterized as "a non-discogenic sciatica", prompting him to again prescribe Gralise. This authorized physician also ordered a lumbar MRI scan to further assess Mr. Hilton's back pain.

12. Inspection of Dr. Healy's notes/reports for the period April 16, 2012 through July 17, 2012 indicates: (a) his belief Mr. Hilton's left non-discogenic sciatica was the product of compression stemming from the initial consequences of his compensable brown recluse spider bite; (b) this condition was further compromising Mr. Hilton's gait, affecting the foot and the left ankle, and having a potentially aggravating impact on the pre-injury left Achilles tendon problem ("he had problems with the left achilles tendon prior to the bite but he appears to have an achilles tendonitis at this point which may be from posturing of the left foot"); (c) the neuropathic pain condition was reaching a chronic phase (May 17, 2012); and (d) while the Gralise "help[ed] . . .", Mr. Hilton was having difficulty obtaining authorization of this medication by Liberty Mutual.

13. On May 31, 2012, Mr. Hilton was deposed by defense counsel. My review of this nearly two hour deposition reveals that on direct examination, Mr. Hilton: (a) disclosed the occurrence of a 2000 motor vehicle accident that produced a head injury initially resulting in a period of unconsciousness; (b) advised that it also required surgery for ". . . [s]ome bleeding"; (c) recalled only one physician visit following this surgery (for staple removal), while denying any problems associated with this head trauma since the single post-injury doctor visit; (d) admitted a June, 2011 vacation cruise, but required review of a card in his wallet to ascertain when this trip occurred; and (e) testified Dr. Healy had been the only neurologist from whom he had ever received treatment.

14. Additionally, Mr. Hilton testified: (a) the radiating left leg pain that was producing the pins/needles sensation in his foot had only begun some time after the August 17, 2011 spider bite and was distinguishable from the Achilles tendonitis sensations documented by Dr. O'Dell (which had actually extended upward approximately two inches beyond the ankle); (b) the current leg pain was likewise not associated with an incident (small piece of metal became embedded in the skin around his left ankle) that had occurred some years prior (creating no residual problems); (c) the back pain referenced by Dr. Healy developed gradually and had not been present at the time of his August 17, 2011 injury; (d) his driving had substantially decreased since the accident date (estimating once a week when asked to specifically quantify); (e) typical periods of standing fell in the 15 – 20 minute range; (f) the majority of time at his home was spent laying down; (g) he had not joined his wife on a subsequent (October, 2011) cruise; and (h) his appearance/the manner in which he walked, stood, etc. could vary, particularly if he was having a "bad day".

15. In this regard, inspection of records generated by Dr. Bruce S. Solomon of Pinehurst Neurology, P.A. reveals: (a) this motor vehicle accident resulted in "multiple trauma . . . [, including] a closed-head injury"; (b) his particular pathology involved "a subdural and epidural hematoma on the right" that required performance of a craniotomy; (c) receipt of Dilantin therapy for "subsequent seizures", in conjunction with repeated neurological assessment following the 2000 head trauma; (d) he was medically restricted from resuming truck driving until June 13, 2001 ; and (e) Mr. Hilton was continuing to experience "short-term memory problems" (ex. "putting his keys in the refrigerator and a ham in the cabinet") following this injury.

16. Significantly, on February 11, 2011 (approximately six months before sustaining the spider bite), Mr. Hilton was reevaluated by Dr. Solomon, who noted: (a) reports of persistent "memory loss", as well as "mood swings"; (b) the absence of any complaints of "back pain"; and (c) slightly deficient short-term memory per clinical examination.

17. On August 9, 2012, Mr. Hilton was independently evaluated by Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was aware of all material aspects of Mr. Hilton's post-injury history; (b) specifically noted the various symptoms which were exhibited prior to Dr. Chen's surgery, as well as Dr. Evans' belief the worsening of "pre-injury leg pain was the result of the spider bite"; (c) observed limited lumbar range of motion "particularly with extension and concomitant left lateral flexion"; (d) discovered

"significant EHL weakness on the left consistent with an L5 radicular syndrome"; (e) noticed Mr. Hilton's gait favored the left lower extremity; and (f) felt Mr. Hilton had developed "[c]ompensatory low back pain . . . following altered gait" with an associated lumbar facet syndrome.

18. Based upon these findings and Mr. Hilton's medical history, Dr. Riber: (a) recommended initial treatment of the radicular pain through a selective nerve root injection; (b) explained the "clinical EHL weakness is certainly consistent with the results of the electrodiagnostic studies"; (c) attributed the current radiculopathy to "initial compression caused by the expanding wound, as well as the venom, which itself can certainly produce nerve root irritation and neuropathic pain"; (d) referenced the previously documented "change in his premorbid symptom pattern" as a basis for attributing Mr. Hilton's current neuropathic pain and the "likely compensatory" back pain to the consequences of the spider bite; and (e) determined Mr. Hilton had not reached maximum medical improvement, while indicating his work status would be "restricted to sedentary" activities with the ability "to change positions per tolerance."

19. On August 12, 2012, Mr. Hilton underwent a forensic psychiatric evaluation by Dr. Donna Schwartz-Watts, a clinical professor of forensic psychiatry affiliated with the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science. At that time, Dr. Schwartz-Watts also interviewed Mrs. Hilton, who reported: (a) her husband manifested "violent mood swings which are in part provoked by his lack of memory"; (b) aggressive denial when reminded of statements he could not remember; (c) activity reflective of confabulation, which she described as "a clinical symptom of cognitive impairment, [that] . . . is not volitional"; and (d) a "general expression of decreased . . . emotion . . . unless he is aggressive."

20. Dr. Schwartz-Watts also conducted a mental a status examination, which verified: (a) Mr. Hilton "had cognitive impairment including difficulty with visual spatial design"; (b) "[h]e perseverated. . . . a clinical symptom of cognitive impairment"; (c) Mr. Hilton "had difficulty abstracting similarities between difficult objects"; (d) he also encountered "difficulty registering and recalling objects and required prompting and forced choice"; (e) poor performance "on a test of verbal fluency", which was also associated with perseveration; and (f) Mr. Hilton "gave a good effort" in connection with this assessment.

21. She further observed: (a) the presence of "end gaze nystagmus" (previously documented by Dr. Solomon); (b) "difficulty performing rapid alternating movements" (which could ultimately be accomplished with practice); (c) Dr. Solomon's records referenced various relevant factors (a right sided subdural and epidural hematoma with a resultant focal motor seizure disorder; "aguesia and olfactory impairment"; "short-term memory problems"; "short-term memory impairment on neurological evaluation"); and (d) neuropsychological assessment was warranted.

22. In accordance with Dr. Schwartz-Watts' directive, Mr. Hilton underwent neuropsychological evaluation by Dr. Tora Brawley of the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science (August 16, 2012), who confirmed: (a)her awareness of the fact "discrepancies . . . in his report of personal history facts . . . [had led to] accusations that he was purposefully being dishonest"; (b) "Mr. Hilton had difficulty correctly recalling some personal information . . . [d]uring the clinical interview"; (c) review of relevant medical records "revealed that he suffered both a subdural and epidural hematoma which required surgical evacuation via a right temporal craniotomy" in 2000; (d) memory issues following the 2000 head trauma; (e) reports of "continued problems with memory loss, mood swings, light headedness and sleep difficulties" to Dr. Solomon in February, 2011; and (f) "his difficulties have worsened following complications from a spider bite in August, 2011."

23. In conjunction with this evaluation, Dr. Brawley, who currently serves as an assistant professor for the University of South Carolina School of Medicine, administered ten neuropsychological instruments, including "the Test of Memory Malingering", which "revealed him to have significant deficits in many areas . . . ." These deficits included "immediate verbal learning", "immediate verbal memory for prose passages", "recall of a complex figure", "controlled verbal fluency", "judgment of line orientation", "nonverbal abstract reasoning and problem solving" and "trail making ability".

24. Dr. Brawley also specifically explained that "[f]ormal effort testing was conducted and performance was completely within normal limits, indicating no evidence of an attempt to exaggerate or malinger cognitive symptoms."

25. Based upon Mr. Hilton's relevant medical history, her clinical interview and the results of this rather extensive neuropsychological testing, Dr. Brawley determined: (a) "testing results revealed the presence of severe cognitive deficits in many areas assessed, including memory"; (b) "[t]hese deficits are consistent with residual organic deficits

from his previous head injury and have likely been exacerbated by more recent . . . physical injuries and psychosocial stressors"; (c) "[t]here was no indication of an attempt to malinger on testing"; (d) "any discrepancies noted in his report of personal history or other areas are related to his cognitive deficits, rather than an attempt to purposely report incorrect information"; and (e) "[t]his [conclusion] . . . is further supported by documented reports and medical evidence of continued memory problems in February, 2011."

26. After considering these neuropsychological test results, in light of her own clinical finding, Mr. Hilton's medical history and the content of his deposition, Dr. Schwartz-Watts: (a) concluded "to a reasonably degree of medical certainty that Mr. Hilton has severe cognitive impairments, including memory disturbance, confabulation and perseveration which can account for the obvious discrepancies in his deposition testimony"; and (b) expressed "grave concerns about his competency to testify in these proceedings due to his memory deficits and inability to learn new information."

27. During this time period (August 14, 2012), Mr. Hilton was also evaluated by Dr. Nicholas A. Lind of Post Trauma Resources, who observed: (a) apparent memory impairment per mental status examination; (b) "Mr. Hilton's score of 84 . . . [on the MMPI-2-RF] is consistent with the memory problems expected from his 2000 head trauma"; (c) his "memory complaints are consistent with his described head injury and appear legitimate as determined by the validity measures of the psychological testing measures used in this evaluation"; (d) "Mr. Hilton's reported memory deficits are more likely than not, with as much certainty reasonable in the field of psychology, legitimate"; and (e) formal neuropsychological testing would better gauge "the validity and extent of Mr. Hilton's memory deficits . . . ."

28. In this regard, after reviewing "the findings and conclusions of Dr. Brawley's 16 August, 2012 neuropsychological evaluation", Dr. Lind (also a practicing neuropsychologist) agreed: (a) "[t]he results are consistent with the psychological evaluation . . . [he had] conducted on 14 August, 2012 and suggests significant deficits in memory as well as executive and dexterity impairments"; and (b) "[t]his additional evidence confirms that Mr. Hilton's reported memory deficits are more likely than not, with as much certainty reasonable in the field of psychology, legitimate and explain the difficulties he continues to experience with recall of his history."

29. During the course of his August 20, 2012 deposition, Dr. Healy was extensively examined as to various contested issues, including the likely source of Mr. Hilton's current symptoms, additional medical needs and work status. He was also repeatedly questioned, through use of medical records and surveillance video footage, relative to various aspects of Mr. Hilton's credibility, particularly as it related to the consequences of his August 17, 2011 spider bite, his physical/functional capabilities and the deposition discrepancies.

30. In discussing the source of Mr. Hilton's current left leg symptoms, Dr. Healy verified: (a) an acknowledgement of pre-injury symptoms that were reflective of some degree of neuropathic pain (Healy Deposition, pp. 31 – 37; 43 – 44); (b) the pins and needles sensation Mr. Hilton was now experiencing, which was clearly indicative of neuropathic pain, had been neither reported nor identified by any medical record prior to August 17, 2011 (Healy Deposition, pp. 95 & 100); (c) the findings documented through pre-surgical treatment notes (pain, redness, skin breakdown, swelling, bite marks, fever, nausea and vomiting) were not only indicative of a brown recluse spider bite, but also a "systemic effect" produced by the injected venom (Healy Deposition, pp. 76 – 79; 85, 87); (d) toxic venom of this nature can, in and of itself, create neuropathic pain of the type described by Mr. Hilton (Healy Deposition, pp. 41,81 & 122); (e) the nature/degree of Mr. Hilton's pre-surgical symptoms (swelling; size of abscess and surrounding inflammation) were also sufficient to create sciatic nerve compression, even in the absence of muscle tissue damage (Healy Deposition, pp. 80 & 88); (f) Mr. Hilton's current left leg symptoms most probably, to a reasonable degree of medically certainty, result from the consequences of the August 17, 2011 spider bite (venom itself and/or nerve compression caused by pre-surgical wound development) and/or the aggravation/acceleration of preexisting pathology by the consequences of this bite (Healy Deposition, pp. 81 – 84, 89 – 90, 103); (g) the symptoms which temporally resulted from the spider bite, as well as the degree of necrosis documented during surgery, could not be faked (Healy Deposition, pp. 84 – 88); (h) the presence of neuropathic injury had been objectively verified by EMG testing (Healy Deposition, pp. 17 & 125); and (i) he was comfortable with his ability to render this opinion as to causal connection, indicating Mr. Hilton's surgeon was in no better position to address this issue (Healy Deposition, pp. 70 & 90).

31. When questioned as to Mr. Hilton's current back symptoms, Dr. Healy explained: (a) an understanding that "his walking was [not] . . . totally normal" pre-injury (Healy Deposition, p. 44); (b) the consequences of the spider bite had further contributed to gait alteration (Healy Deposition, p. 104); (c) while he noticed this gait disturbance, "it wasn't dramatic" (Healy Deposition, p. 7); (d) the video surveillance footage was consistent with his prior observations (Healy Deposition, p. 63); (e) this gait disturbance had resulted in the development of mechanical low back pain (Healy Deposition, p. 72); (e) Mr. Hilton's current back symptoms were compensatory (due to increased gait alteration attributable to neuropathic pain) and had "come on quicker than . . . might have otherwise [been] . . . expected" due to the aggravating/accelerating impact of the causally related increase in neuropathic pain by the consequences of the brown recluse spider bite (Healy Deposition, pp. 103 – 104, 122 - 123); (g) the EHL weakness identified by Dr. Riber was a relatively objective finding that was consistent with the sciatica confirmed by electrodiagnostic studies and "absolutely" reflective of actual nerve dysfunction (Healy Deposition, pp. 119 – 121, 125 – 126); (i) Mr. Hilton required treatment of the nature outlined by Dr. Riber (Healy Deposition, p. 121); (j) given his longstanding professional relationship with Dr. Riber (who he characterized as "the guru" for pain management care), it was his wish that Mr. Hilton receive this treatment through Dr. Riber (Healy Deposition, pp. 119 & 122); and (k) Mr. Hilton had not yet achieved maximum medical improvement (Healy Deposition, p. 132).

32. Additionally, Dr. Healy addressed Mr. Hilton's cognitive capacity, specifically confirming/concluding: (a) while the focus of his treatment had been the neuropathic pain component, he had noticed clinical cognitive limitations (Healy Deposition, p. 45); (b) it was not unusual for someone who has experienced head trauma of the nature Mr. Hilton sustained in 2000 to develop cognitive loss (Healy Deposition, p. 108); (c) persistent memory loss was actually "referenced as an ongoing symptom to a neurologist" before the August 17, 2011 accident date (Healy Deposition, pp. 109 - 110); (d) neuropsychological testing of the nature performed by Dr. Brawley included "not only specific tests, but actual portions of other tests, that are specifically geared towards ferreting out exaggeration and malingering" (Healy Deposition, p. 111); (e) the absence of malingering and exaggeration of cognitive symptoms, as well as the valid assessment of cognitive function verified by the neuropsychological test battery administered by Dr. Brawley were consistent with his own intuitive impressions (Healy Deposition, p. 112);

(f) the results of this testing did not support allegations that Mr. Hilton's actions (including deposition testimony) were reflective of dishonesty and deceit (Healy Deposition, p. 112); (g) these test results were indicative of a "significant problem from the head injury" (Healy Deposition, p. 114); (h) his agreement with Dr. Brawley's determination "that any discrepancies noted in his report of personal history or other areas are related to cognitive deficits rather than an attempt to purposefully report incorrect information" (Healy Deposition, pp. 114 - 115); (i) his impressions were also consistent with those of Drs. Schwartz-Watts and Lind (Healy Deposition, pp. 115 - 116); (j) he had no doubt Mr. Hilton was experiencing "noticeable cognitive damage secondary to brain injury . . . [which is] a very reasonable and more than likely explanation for . . . [the various factual] discrepancies" identified by Defendants (Healy Deposition, pp. 116 - 117); and (k) to a reasonable degree of medical certainty, he was "comfortable that [Mr. Hilton] in his efforts to receive treatment . . . and his testimony has done nothing contrived or purposeful, but rather that any of these discrepancies or conflicts are the results of his brain injury and results of cognitive deficits . . . ." (Healy Deposition, p. 128)

33. After considering the purportedly dishonest behavior alleged by Defendants, Dr. Healy similarly/consistently validated Mr. Hilton's credibility, testifying: (a) although he recognized the presence of certain discrepancies in Mr. Hilton's medical history, he had no concerns as to this gentleman's credibility (Healy Deposition, pp. 31 – 38, 45 - 49); (b) his participation in the October, 2011 cruise was an insufficient basis upon which to characterize Mr. Hilton as "a liar" (Healy Deposition, pp. 55 - 60); (c) the presence of cognitive deficits stemming from the prior brain injury was a reasonable explanation for these alleged inconsistencies (Healy Deposition, p. 117); (d) the need for cues (i.e., testifying accurately after looking at a card bearing the date of a prior cruise) "fits" as an explanation for Mr. Hilton's ability to recall certain information (Healy Deposition, pp. 117 - 118); (e) Mr. Hilton's satisfaction of validity criteria, including the absence of malingering or exaggeration per applicable elements of the neuropsychological test battery administered by Dr. Brawley, supported his belief there was no indication this gentlemen was not credible (Healy Deposition, pp. 112 - 113); (f) he would "not . . . blindly support somebody who is faking, malingering or being less than candid" (Healy Deposition, p. 127); and (g) Mr. Hilton was a credible patient (Healy Deposition, pp. 70 – 71, 106, 131 - 132).

34. This authorized treating physician's testimony further establishes: (a) due to his causally related symptoms and the potentially impairing effects of medication, in light of the nature of his occupation, Mr. Hilton had been maintained on out-of-work status (Healy Deposition, pp. 18, 63 – 64, 67); (b) his primary instructions in terms of activities of daily living were to avoid "anything extreme", while attempting to function within tolerance levels (Healy Deposition, pp. 19, 66 - 67); (c) the surveillance video did not depict Mr. Hilton engaging in any unacceptable activity (Healy Deposition, pp. 66 & 74); and (d) although Mr. Hilton remained on out-of-work status, he had no objection to an attempt to engage in sedentary activity in accordance with Dr. Riber's recommendation (which he felt could be therapeutic) (Healy Deposition, p.127)

35. Shortly after deposing Dr. Healy, Defendants solicited Dr. Chen's testimony. While this general surgeon initially opined that he did not believe Mr. Hilton's abscess or area of inflammation was large enough to create compression on the sciatic nerve, he subsequently conceded: (a) he neither was nor considered himself an expert in the field of neurology (Chen Deposition, p. 38); (b) he likewise was not an expert in terms of the ultimate implications of venomous bites (Id.); (c) he had no reason to dispute Mr. Hilton was bitten by an insect on August 17, 2011 (Chen Deposition, p. 41); (d) Mr. Hilton's post-injury complaints/symptoms were "consistent with . . . ones that are commonly attributable to a Brown Recluse spider bite" (Chen Deposition, p. 43); (e) the presence of the same reported symptoms upon which Dr. Healy had concluded Mr. Hilton was manifesting "a systemic effect" produced by spider venom (Chen Deposition, pp. 46 - 48); (f) the tissue damage discovered during surgery was consistent with the destructive process caused by venom or infection (Chen Deposition, p. 52); (g) "venom itself can create damage to an underlying nerve" (Id.); and (h) venom can likewise "create nerve irritation and neuropathic pain." (Chen Deposition, p. 53).

36. Dr. Chen also candidly acknowledged/agreed: (a) nerve root injury "would actually fall more within . . . a neurologist['s] . . . area of expertise than a surgeon's in terms of delineating etiology of nerve irritation or nerve damage" (Chen Deposition, pp. 53 - 54); (b) he would "normally defer to a neurologist in terms of making a conclusion as to what is the cause of nerve root damage in a scenario" (Chen Deposition, p. 54); (c) Dr. Healy's finding of non-discogenic sciatic per electrodiagnostic studies had "some degree of objectivity" (Id.); (d) he would defer to the specialist's (Dr. Healy's) opinion relative to the causal relationship of Mr. Hilton's non-discogenic sciatica and the

consequences of the spider bite (Chen Deposition, pp. 54 - 55); (e) he did not "have the specialty or knowledge to disagree with" Dr. Healy's opinion (Chen Deposition, p. 55); (f) Dr. Evans' opinion that Mr. Hilton's current left lower extremity symptoms represented the late complication of a brown recluse spider bite was consistent with Dr. Healy's conclusion "in terms of etiology" (Chen Deposition, p. 57); (g) he would likewise defer to Dr. Evans' opinion on this point (Id.); and (h) he did not "hold [him]self . . . out as being an expert in [n]eurology . . . . (Id.).

37. This physician further testified: (a) identification of the source of nerve damage identified by an EMG was outside his area of expertise (Chen Deposition, p. 60); (b) he did not possess the expertise to decide the question of causation (Chen Deposition, p. 60 - 61); (c) he was consequently deferring to the neurologist "in terms of cause and effect as far as what . . . [Mr. Hilton's] current problems are and how they relate to the spider bite" (Chen Deposition, p. 61); (d) any opinions offered in response to defense counsel's questions on this point were "really . . . outside [his] . . . area of specialization and expertise" (Chen Deposition, p. 65); and (e) given this lack of expertise, he "would defer to the [n]eurologist . . . as to his determination of the source of [Mr. Hilton's] . . . symptoms . . . ." (Chen Deposition, p. 76).

38. Pursuant to questionnaire responses dated November 7, 2012, Dr. Schwartz-Watts confirmed: (a) ". . . . [g]iven the nature/degree of his previous head trauma (involving both subdural and epidural hematoma requiring surgical evacuation via right temporal craniotomy), [her] . . . clinical findings and the results of his valid neuropsychological testing, . . . Mr. Hilton's current cognitive deficits (including severe memory compromise) most probably result from physical brain damage"; (b) ". . . [i]n view of the nature/degree of Mr. Hilton's previous head trauma, [her] . . . clinical findings and the results of neuropsychological testing, . . . the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of his August 17, 2011 work related injury"; (c) ". . . [g]iven the nature/degree of Mr. Hilton's physical brain damage, [her] . . . clinical findings and the results of neuropsychological testing, . . . inconsistencies/ inaccuracies arising in connection with his testimony, as well as any inconsistent/inaccurate information he has provided when questioned as to prior events and/or statements (i.e., requiring reliance on his memory), are most probably the result of this physical brain damage, rather than a purposeful/intentional/ volitional attempt to mislead"; (d) "the cognitive deficits

produced by Mr. Hilton's physical brain damage (including the aggravation created by the consequences of his August 17, 2011 work related injury) most probably negatively effect and/or impair his behavioral judgment, including the manner in which he responds to stressors and conducts his daily activities"; and (e) "lapses in behavioral judgment would also most probably be attributable to the aggravation of Mr. Hilton's cognitive deficits by the consequences of his August 17, 2011 work related injury . . . ."

39. A questionnaire executed by Dr. Brawley on November 8, 2012 similarly: (a) attributes "Mr. Hilton's current cognitive deficits (including severe memory compromise) . . . [to] physical brain damage"; (b) recognizes "the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of . . . [Mr. Hilton's] August 17, 2011 work related injury"; (c) relates any "inconsistencies/inaccuracies arising in connection with his testimony, as well as any inconsistent/inaccurate information he has provided when questioned as to prior events and/or statements (i.e., requiring reliance on his memory) . . . [to] the result[s]. . . of this physical brain damage, rather than an purposeful/intentional/volitional attempt to mislead"; (d) recognized "the cognitive deficits produced by Mr. Hilton's physical brain damage (including the aggravation created by the consequences of his August 17, 2011 work related injury) most probably affect and/or impair his behavioral judgment, including the manner in which he responds to stressors and conducts his daily activities"; and (e) ties these "lapses in behavioral judgment . . . to his previous brain damage and the aggravation of Mr. Hilton's cognitive deficits by the consequences of his August 17, 2011 work related injury . . . ." Dr. Lind also offered identical opinions, from a neuropsychological standpoint, via questionnaire responses dated November 8, 2012.

40. Significantly, when asked to address these questions, Dr. Healy verified (agreed): (a) Mr. Hilton's "current cognitive deficits (including severe memory compromise) most probably result from physical brain damage"; (b) "the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of Mr. Hilton['s] . . . August 17, 2011 work related injury"; (c) the testimonial inaccuracies (which Defendants alleged to be reflective of a knowing effort to deceive) "are most probably the result of this physical brain damage, rather than a purposeful/intentional/volitional attempt to mislead"; and (d) the negative impact Mr. Hilton's aggravated cognitive deficits are producing on his behavioral judgment.

41. The undersigned also reviewed various medical records (dating back to 2001), which Defendants maintain are relevant to the source of Mr. Hilton's current symptoms. These records include: (a) November 28, 2001 notes from Marlboro Park Hospital that reference complaints of a left knee contusion; (b) January 10, 2003 reports from the same hospital that relate to low back pain following a motor vehicle accident; (c) chiropractic treatment records identifying receipt of spinal (cervical, thoracic and lumbar) care for soft tissue injury stemming from this motor vehicle accident (January 13, 2003 until March 29, 2003), as well as the chiropractor's assignment of a 5% impairment rating; (d) reports from Marlboro Park Hospital relative to the assessment/removal of the previously referenced piece of metal that had become embedded in Mr. Hilton's left ankle area; and (e) October 13, 2008 x-rays of Mr. Hilton's left foot and knee, which revealed on "an old fifth metatarsal fracture".

42. The undersigned also considered records generated by Carnival Cruise Lines, which reflect: (a) Mr. Hilton traveled on six cruises (ranging from three to five days in duration) from April 15, 2009 through early June, 2012; (b) two of these cruises occurred following his accident date; (c) he participated in an October 24, 2011 – October 29, 2011 cruise; (d) during the course of this cruise, various charges were incurred under the name of Michelle Hilton at several facilities on the ship ("Stars Bar", "Diamonds Disco", "Bogarts Café", "Wine Sensation", "Puttin on Ritz", and "Pool"), while other charges were attributed to Mr. Hilton's "FOLIO" number; (e) two others accompanied he and his wife on the June, 2012 cruise (which also lasted five days); and (f) on-ship charges (identifying substantially the same venues) were incurred through Mrs. Hilton's account.

43. However, the Carnival Cruise Line data offers limited insight as to Mr. Hilton's activity level during these cruises. Essentially, the records confirm unspecified purchases during the duration of the cruise (several of which occurring after midnight), but generally do not differentiate between purchases of food/beverages, services, etc.

44. Additionally, the undersigned reviewed the video surveillance footage submitted by Defendants. While the surveillance involved observing Mr. Hilton at multiple locations, the bulk of this footage focused on several hours spent at Mr. Covington's place of business ("Collision Repair Center") during the afternoon of March 27, 2012. The surveillance depicts Mr. Hilton standing for finite periods of time, walking short distances, engaging in limited bending/leaning and sitting in a vehicle. This time-

stamped footage (conducted between 11:47 AM and 6:25 PM) also contains segments, totaling well over an hour, where Mr. Hilton is either sitting or completely out of sight.

45. During exhaustive cross-examination, Mr. Hilton was noticeably confused and did not always remember what he had said during his previous deposition. He actually apologized more than once for inaccurate/incorrect statements made during the deposition, including his failure to remember going on the October, 2011 cruise. Mr. Hilton also recalled certain elements of his post-head trauma medical history (involving not only treatment received for the August 17, 2011 spider bite, but also previous health issues), while confirming his wife generally attended medical appointment with him in order to assist in the provision of information.

46. In this regard, I find Mr. Hilton's testimony remained consistent relative to: (a) his recollection that the previous incidents referenced by Defendants (involving his left leg and back) had not resulted in any permanent or long term symptoms/limitations; (b) his receipt of treatment from Dr. O'Dell for left leg symptoms prior to the August 17, 2011 accident date; (c) the distinction between symptoms attributable to Achilles tendonitis and the left leg pain which developed in the aftermath of the brown recluse spider bite; and (d) the nature of his current back symptoms.

47. Given Mr. Hilton's well-documented cognitive deficits, the testimony of his wife proved to be particularly enlightening. Specifically, Mrs. Hilton: (a) corroborated the circumstances surrounding her husband's 2000 head trauma (from a standpoint of someone who was in the vehicle at the time of impact, on the scene following his ejection from their vehicle and present for most of his treatment); (b) noted Mr. Hilton had changed following this accident; (c) provided examples of the cognitive problems he had exhibited following the 2000 head trauma; (d) acknowledged his recollection of events occurring prior to the 2000 accident remained good; (e) outlined the "routine" they had implemented to facilitate her husband's continued employment rather than pursuing disability benefits; (f) confirmed Mr. Hilton's cognitive compromise had not resolved with the passage of time and remained problematic, to the extent they had returned to Dr. Solomon in the hope of obtaining medical assistance approximately six months prior to the August 17, 2011 spider bite; and (g) indicated his memory lapses, mood swings, level of agitation, ability to measure time, attention/focus and frequency of inaccuracy had clearly worsened following the spider bite.

48. She further verified: (a) Mr. Hilton's inability to recall the October, 2011 cruise (absent reviewing something to prompt his memory) was not usual; (b) her husband's physical activities were noticeably limited during each of the cruises; (c) while she and her husband drank alcohol and generally remained at one of the on-ship venues (as opposed to in the cabin) during the cruises, he did not engage in dancing or spend appreciable times on his feet; (d) she was present during a portion of the March 27, 2012 surveillance period; and (e) actually observing Mr. Hilton sitting (either in her vehicle or on a sofa inside Mr. Covington's building) during her husband's March 27, 2012 visit to this location.

49. Mrs. Hilton's testimony was substantially corroborated by Mr. Covington, a longtime friend of her husband. When questioned as to his observations/impressions, Mr. Covington explained: (a) he had been afforded ample opportunity to interact with Mr. Hilton both before and after the 2000 head trauma; (b) Mr. Hilton exhibited no difficulties with memory, focus, mood disturbance, etc. prior to the 2000 accident; (c) noticeable changes had occurred subsequent to this accident, particularly involving memory and Mr. Hilton's reaction to these memory deficits; and (d) the nature of Mr. Hilton's pre-August 17, 2011 memory dysfunction had caused him to question how his friend was still being allowed to operate a tractor trailer.

50. After thoroughly reviewing all evidence of record and observing each of the witnesses during the course of the hearing, I specifically find: (a) Mr. Hilton's presentation (both live and through deposition) is completely consistent with the material level of cognitive dysfunction confirmed by Drs. Healy, Schwartz-Watts, Brawley and Lind; (b) the inaccuracies/inconsistencies in his testimony, as well as incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage documented by at least four duly qualified specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information; (c) Mr. Hilton has been experiencing cognitive dysfunction since the 2000 head trauma, which clearly produced some degree of physical brain damage (as evidenced by his post-motor vehicle accident pathology, need for brain surgery and the symptoms documented through February 11, 2011); (d) the persistent symptoms referenced by Dr. Solomon in 2011, coupled with the unanimous opinions expressed by Drs. Healy, Schwartz-Watts, Brawley and Lind, firmly establish the presence of appreciable cognitive dysfunction prior to April 17, 2011; (e)

these experts, as well as the lay testimony, also verify his current level of cognitive dysfunction; (f) this explanation for any alleged credibility issues is founded upon uncontradicted medical evidence (objective and/or wholly validated through use of devices specifically aimed toward identifying malingering/embellishment); and (g) the current circumstances unquestionably verify the legitimacy of Mr. Hilton's cognitive loss, while dispelling any notion that the implications of his pre-existing brain damage were contrived.

51. I further find: (a) great weight should be afforded to the opinions expressed by Dr. Healy, particularly with respect to the issue of maximum medical improvement, as this authorized treater not only had the opportunity to assess Mr. Hilton on multiple occasions, but also considered Defendants' allegations (including the assertion his current left leg and back symptoms are purely the result of preexisting conditions) and the products of their surveillance; (b) after reviewing the surveillance footage and being apprised as to aspects of prior medical history which Defendants believe to be particularly relevant, Dr. Healy concluded Mr. Hilton had not achieved maximum medical improvement and required further treatment through Dr. Riber; (d) he similarly verified the consequences of Mr. Hilton's compensable injury continued to prohibit resumption of his pre-injury employment activities; (e) upon reviewing the results of neuropsychological testing, in light of his own clinical observations, Dr. Healy agreed Mr. Hilton's 2000 head trauma had produced appreciable cognitive deficits secondary to physical brain damage; and (f) Defendants' designated authorized treater likewise validated Mr. Hilton's credibility, repeatedly declining to endorse Defendants' contention that this gentleman had presented himself and/or testified in a dishonest, deceptive or misleading fashion.

52. I likewise find Mrs. Hilton's testimony to be a key element in connection with my assessment of her husband's presentation, as she: (a) provided a compelling account of the circumstances surrounding the 2000 head trauma, as well as its impact on Mr. Hilton's cognitive abilities (as compared to his prior state); (b) convincingly outlined the nature/persistence of Mr. Hilton's cognitive dysfunction in a manner which was wholly consistent with his valid neuropsychological test results and the unanimous opinions expressed by the medical experts; (c) made no effort to disavow the occurrence of various activities which were the focus of Defendants' credibility allegations, instead offering

explanations for this conduct in the context of his longstanding cognitive problems; and (d) reliably noted the current state of his cognitive disorder.

53. I also find: (a) Mr. Hilton has not achieved maximum medical improvement relative to the consequences of his compensable accident, which continue to produce left leg and back symptoms; (b) his left leg and back symptoms proximately result from the aggravation of preexisting, nondisabling conditions by the consequences of his August 17, 2011 compensable accident; (c) Mr. Hilton requires further treatment for these injury components in accordance with Dr. Healy's recommendations; (d) his receipt of this treatment is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his compensable accident; (e) the current circumstances warrant Dr. Healy's continued service as Mr. Hilton's authorized treating physician, as well as his receipt of particular treatment modalities identified and/or endorsed by this neurological specialist; and (f) Mr. Hilton remains temporarily totally disabled by the consequences of his compensable accident.

54. I finally find: (a) any discrepancies, inconsistencies, errors, etc. in connection with either Mr. Hilton's testimony or conduct result from the cognitive dysfunction confirmed by no less than four medical specialists; (b) the testimony and conduct which Defendants maintain warrants termination of Mr. Hilton's claim were/are neither volitional nor reflective of dishonesty; (c) entry of a finding as to a lack of credibility is not warranted in this instance; (d) I would not find him not to be credible; (e) the issues currently in dispute, including the presence of cognitive dysfunction explaining/rebutting Defendants' allegations as to a lack of credibility, are clearly medically driven; and (f) the evidence of record amply supports Mr. Hilton's contentions as to this issue.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On August 17, 2011, Mr. Hilton, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2002), sustained a compensable injury to his left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Flakeboard America Limited, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). This injury

ultimately produced a back injury component, the consequences of which are likewise compensable per Section 42-1-160. See, Whitfield v. Daniel Construction Company, 226 S.C. 337, 83 S.E. 2d 460, 462 (1954); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E. 2d 76, 79 (Ct. App. 1995). (Every natural consequence of compensable injury is likewise compensable).

3. "Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which will lessen the degree of impairment." O'Banner v. Westinghouse Electric Corporation, 319 S.C. 24, 459 S.E. 2d 324, 327 (Ct. App. 1995); Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876, 887 (Ct. App. 2006).

4. As previously noted, neither Dr. Healy (Defendants' designated treating physician) nor Dr. Riber believe Mr. Hilton has achieved maximum medical improvement as to the consequences of his compensable accident. Similarly, the parties have agreed the issue relating to the current source(s) of Mr. Hilton's cognitive dysfunction needs to be addressed by the Commission at a later date. Further, Dr. Chen's opinions: (a) limit any determination of maximum medical improvement to the August 24, 2011 debridement procedure itself; and (b) consistently defer to Dr. Healy's judgment/conclusions as to the effects of Mr. Hilton's neurologic/nerve injury. I consequently conclude the evidence of record firmly establishes Mr. Hilton has not achieved maximum medical improvement.

5. While Defendants argue Mr. Hilton's purported lack of credibility authorizes a determination that he has reached maximum medical improvement, I conclude: (a) achievement of maximum medical improvement is a purely medical determination (See, Williams v. South Carolina Department of Mental Retardation, 308 S.C. 438, 418 S.E. 2d 555 (Ct. App. 1992) (Commission finding of maximum medical improvement on date that did not coincide with medical evidence held erroneous); See also, Collins v. Speedway Motor Sport Corp., 165 N.C. App. 113, 598 S.E. 2d 185, 191 (2004) ("MMI is a 'purely medical determination . . . .'")); and (b) the evidence of record clearly establishes he has not attained maximum medical improvement.

6. I also conclude: (a) the existence of physical brain damage in the context of the disputes currently before me is a medically driven issue (i.e., the allegations as to Mr. Hilton's lack of credibility); (b) the medical evidence of record, including opinions expressed by Mr. Hilton's designated authorized treating neurologist, unequivocally verifies any inaccuracies/inconsistencies in Mr. Hilton's testimony, as well as

incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage confirmed by four duly qualified medical specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information; (c) the lay witnesses have likewise provided convincing testimony as to the nature/impact of Mr. Hilton's previous and current levels of cognitive dysfunction(both following the 2000 motor vehicle accident and at present); and (d) an adverse credibility finding is neither warranted nor justified in this instance.

7. Defendants are financially responsible for all causally related medical modalities which Mr. Hilton has heretofore received/undergone through Dr. Healy or any other authorized providers, as these modalities were reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (A) (2007). In this regard, I also conclude: (a) Defendants are financially responsible for the additional medical treatment modalities provided/prescribed/recommended by Dr. Healy relative to Mr. Hilton's compensable left leg and back injury components, including the particular modalities identified by Dr. Riber; (b) Dr. Healy shall remain Mr. Hilton's designated/authorized treating physician for the purposes of this claim, notwithstanding the fact certain treatment modalities may be provided/performed by other specialists; and (c) the parties otherwise retain their respective rights per this statute.

8. I also conclude Mr. Hilton remains temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (2007).

9. I finally conclude that the issue involving whether the consequences of Mr. Hilton's compensable accident have produced injury components other than his left leg and back shall be held in abeyance pending further agreement of the parties or Order of this Commission. Resolution of the disputed average weekly wage/compensation rate issue shall similarly be held in abeyance.

ORDER AND AWARD

Defendants shall: (a) continue to pay Mr. Hilton weekly temporary total disability compensation; (b) accept financial responsibility for all causally related medical modalities heretofore provided/prescribed by any authorized physicians/specialists in

connection with the treatment of his compensable injury components; (c) authorize Mr. Hilton's receipt of the causally related treatment modalities provided/prescribed by Dr. Healy; and (d) similarly accept financial responsibility for causally related medical modalities through other specialists in accordance with the prescriptions/recommendations of Dr. Healy, who shall remain Mr. Hilton's designated treating physician for the purposes of this claim.

ISSUES ON APPEAL

Defendant filed a Form 30 Request for Commission Review on June 17, 2013. Defendant requested the Commission review the single Commissioner's Decision and Order to address 54 questions of law or fact regarding the Commissioner's findings. The Form 30 with attachments is contained in the Commission's file.

FINDINGS OF THE FULL COMMISSION

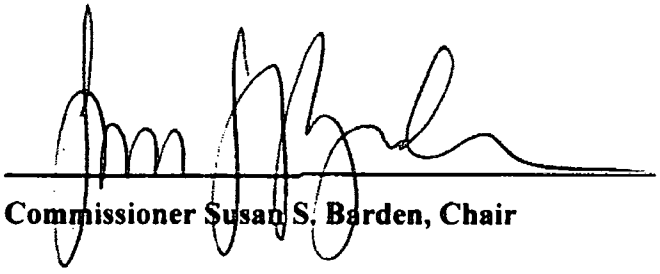
This matter was heard before the above-mentioned South Carolina Workers' Compensation Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Vacate and Remand** the Decision and Order to the Jurisdictional Commissioner to determine whether or not the Claimant is competent to testify and whether or not the Claimant needs a Guardian ad Litem pursuant to §42-15-55. They also order the Defendants to send the Claimant to a neurologist of their choice for an evaluation as to the causation and extent of the Claimant's problems.

ORDER

IT IS THEREFORE ORDERED that this matter is **Vacated and Remanded** to the Jurisdictional Commissioner for the purposes of making a determination as to whether or not the Claimant is competent to testify and whether or not the Claimant needs a Guardian ad Litem pursuant to §42-15-55. It is also Ordered that the Defendants to send the Claimant to a neurologist of their choice for an evaluation as to the causation and

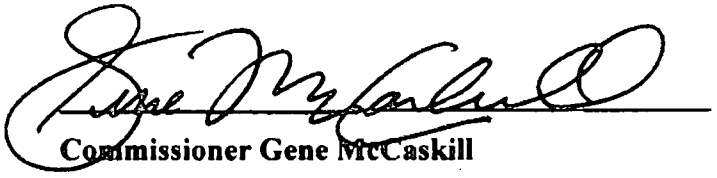
extent of the Claimant's problems. Such evaluation shall be made available to the single Commissioner for his or her consideration.

AND SO IT IS ORDERED!



Commissioner Susan S. Barden, Chair

Commissioner Andrea C. Roche



Commissioner Gene McCaskill

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on May 21, 2014