

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2013-002607

RECEIVED

JUN 06 2014

SC Court of Appeals

South Carolina Second Injury Fund,.....Appellant,

v.

Sompo Japan Insurance Company,.....Respondent.

RECORD ON APPEAL

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

AND

Duke K. McCall, Jr., Esquire
Smith Moore Leatherwood LLP
Post Office Box 87
Greenville, South Carolina 29602
(864) 242-6440

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

INDEX

S.C. Second Injury Fund v. Sompo Japan Insurance Company

1. Common Law Order and Release (February 20, 2008)	1
2. Single Commissioner Decision and Order (June 28, 2012)	8
3. Appellate Panel Decision & Order (January 17, 2013).....	15
4. Circuit Court Order (November 4, 2013).....	22
5. Single Commissioner Hearing Transcript (May 9, 2012)	24
6. Circuit Court Hearing Transcript (June 20, 2013).....	37
7. S.C. Second Injury Fund’s denial letter (August 8, 2011)	46
8. Medical Records of Dr. William Aldrich (October 31, 2002-July 22, 2003).....	47
9. Medical Records from Doctor’s Care (January 3, 2003-January 9, 2003).....	54
10. Medical Records from Tuomey Health Care (January 7, 2003).....	56
11. Medical Records of Dr, Muhammad Rasul (January 7, 2003).....	57
12. Medical Records of Dr. William C. Aldrich (January 22, 2003).....	58
13. Medical Records of Dr. Stephen Poletti (January 29, 2003-June 13, 2007)	59
14. Form 19, Status Report and Compensation Receipt (February 15, 2008)	83
15. Form 18, Periodic Report (October 29, 2007).....	84
16. Form 54 and letter of Ryan S. Montgomery, Esquire (December 30, 2011)	85
17. SIF Questionnaire of Dr. Stephen Poletti (March 7, 2012).....	88

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Patricia McFadden,)
Employee,)

Claimant,)

v.)

Yanagawa of South Carolina,)
Employer, and)
SOMPO Japan Insurance Company)
of America, Carrier,)

Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

COMMON LAW ORDER AND RELEASE

W.C.C. FILE: 0221928

APPROVED

FEB 20 2008

S. C. Workers' Comp. Comm.

In this matter it appears that Patricia McFadden was the regular employee of Yanagawa of South Carolina engaged in work in Clarendon County, South Carolina. On or about October 29, 2002, the Claimant contends that while engaged in work for Yanagawa of South Carolina, she sustained injuries to her back and legs.

Claimant contends that her average weekly wage was \$309.23 and her compensation rate \$206.16.

The Defendants admit that the accident happened within the scope and course of Claimant's employment but deny that the Claimant was or is now disabled for the period of time she contends. There are further bona fide disputes existing between the parties as to the amount of any permanent disability or disfigurement which the Claimant has sustained.

IN ORDER TO COMPROMISE the disputes existing between the parties, a settlement has been agreed upon whereby the Defendants will pay unto the Claimant the sum of Fifty-Two Thousand and no/100 (\$52,000.00) Dollars **for indemnity only**, in full and final settlement and discharge of any and all claims, demands, actions and causes of action which the

Claimant, her heirs and assigns, may now have or may hereafter have as a result of the alleged accident and the contentions of the Claimant with regard to disability and/or medical benefits and disfigurement. Of the amount being paid, so much thereof as is necessary shall be allocated to permanent and total disability, 30% impairment to the spine, 5% to each leg due to residual pain and weakness in her legs, and any other claim of any kind or nature which the said employee may have under the Workers' Compensation Act of South Carolina against Johnson Controls, Inc. and Underwriter's Safety & Claims, their agents, successors and assigns, arising out of this alleged accident and/or the injuries claimed by the Employee.

The Claimant hereby represents that she has been fully advised of her rights under the South Carolina Workers' Compensation Act and that she is of the opinion that the proposed settlement is reasonable and fair. Claimant's counsel represents that he concurs in the opinion that the settlement is reasonable and fair. Each of them requests the South Carolina Workers' Compensation Commission approve this settlement as set forth in this Agreement. The parties acknowledge that the Commission relies upon the representation of counsel for the Claimant that the Claimant has been fully apprised of her rights under the laws of the South Carolina Workers' Compensation Act.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that the Claimant's entitlement to medical benefits as a result of this accident and injuries she sustained shall remain open and shall not be closed nor her rights diminished by this settlement agreement. The Defendants understand and agree that they will be responsible for the medical treatment and expenses of the Claimant which arose out of and are causally related to her accident of October 29, 2002, including those of her attending physician, Stephen C. Poletti, M.D. The Claimant

understands and agrees that she will not be entitled to any further workers' compensation indemnity benefits.

NOW, THEREFORE, for and in consideration of the foregoing provisions and the sum of Fifty-Two Thousand and no/100 (\$52,000.00) Dollars to the Claimant in hand paid by the employer and the insurance carrier, the receipt whereof is hereby acknowledged, the undersigned Claimant, for herself, her heirs and assigns, does hereby release and forever discharge the said Yanagawa of South Carolina and SOMPO Japan Insurance Company of America of and from any and all types of disability, whether past or present, arising out of or in any way connected with the accidental injuries allegedly sustained by the Claimant on or about the 29th day of October, 2002, and of and from any and all claims for disfigurement arising out of said accident, and/or any other claim or injury which the Claimant may allege herself to have received at any time during employment by Yanagawa of South Carolina.

The Claimant, Patricia McFadden, hereby requests this Commission to approve the allocation of the aforementioned proposed settlement sum of Fifty-Two Thousand and no/100 (\$52,000.00) Dollars as follows:

- A. Thirteen Thousand and no/100 (\$13,000.00) Dollars as reasonable attorneys' fees;
- B. One Thousand, Five Hundred One and 20/100 (\$1,501.20) Dollars as costs;
- C. Thirty-Seven, Four Hundred Ninety-Eight and 80/100 (\$37,498.80) Dollars in compromise settlement of future disability benefits at the rate of \$21.46 per week for her life expectancy of 1747.2 weeks, pursuant to Section 19-1-150, *S. C. Code Annotated*, all of the above payments being in compliance with Section 42-9-10 of the *South Carolina Workers' Compensation Act*, 1976, as amended, and as interpreted by the South Carolina Supreme Court in the decision of *Utica-Mohawk v. Orr*, 227 S.C. 226, 87 S.E.2d 593 (1955).

It is expressly understood that the Defendants take no position and make no representation as to the requested allocation of the proposed settlement sum as set forth herein above and that the proposed allocation in no way affects the absolute release of the Defendants.

IT IS UNDERSTOOD AND AGREED that the terms and provisions of this settlement agreement are considered "confidential" and the parties agree to refrain from disclosing directly or indirectly the terms and provisions of this settlement document, including the amount of the settlement, to other persons, firms or corporations, particularly employees of Yanagawa of South Carolina. This stipulation and agreement shall apply to all terms and provisions of this settlement agreement, including, but not limited to, the amounts being paid hereunder, the amount of disability agreed to, as well as the amount being paid for medical.

The terms and provisions of this agreement may be disclosed only with the written consent of Yanagawa of South Carolina, except for disclosure to the Internal Revenue Service and/or the South Carolina Tax Commission, and/or the Social Security Administration.

IT IS UNDERSTOOD AND AGREED that this settlement shall be full, final and complete and binding upon the parties hereto, their respective heirs, assigns and successors, and not subject to review under any condition by any Commission or Court.

IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties that this matter is determined to be completely and finally ended, and is res judicata.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this

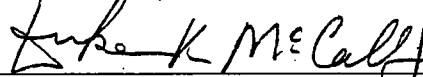
21 day of February, 2008.



Patricia McFadden, Claimant

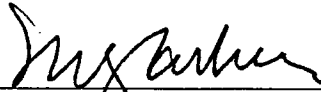
YANAGAWA OF SOUTH CAROLINA
-and-
SOMPO JAPAN INSURANCE COMPANY
OF AMERICA

BY LEATHERWOOD WALKER TODD & MANN, P.C.



Attorneys for the Defendants

I, Nelson R. Parker, attorney for Patricia McFadden, the Claimant in the foregoing Order and Release, do hereby certify that I am the independently employed attorney for the Claimant; that I have personally reviewed the foregoing Order and Release and have explained and/or read the terms and provisions thereof unto the Claimant; that I have explained unto the Claimant her rights and privileges under the laws of the State of South Carolina, and I do hereby certify that the foregoing Order and Release was freely and voluntarily executed by the Claimant in my presence and by and with my consent and approval.



Nelson R. Parker
Attorney for the Claimant

ORDER

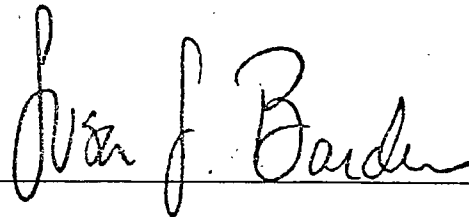
Upon reading and review of the foregoing Order and Release, the South Carolina Workers' Compensation Commission, does hereby consent and approve of said Order and Release.

THEREFORE, IT IS ORDERED AND DECREED that the Carrier and Employer are authorized to finally close their files concerning indemnity benefits in this matter, but the medical shall remain open, and they are discharged from each and every liability or responsibility under the South Carolina Workers' Compensation Act on account of the injuries of the said Employee as is recited in said Agreement, but the medical benefits shall remain open.

IT IS FURTHER ORDERED that these workers' compensation claims of Patricia McFadden versus Yanagawa of South Carolina and SOMPO Japan Insurance Company of America under the South Carolina Workers' Compensation Act is forever ended as to indemnity benefits only, and is res judicata.

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

BY: _____



FEE SUBJECT TO FORM 61

_____, 2008

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC File No: 0221928

[Patricia McFadden,

Employee/Claimant,

vs.]

Yanagawa of S.C.

Employer,

And

Sompo Japan Insurance Company of America,

Carrier/Defendants

vs.

South Carolina Second Injury Fund

Hearing:

Held in Greenville, South Carolina on May 9, 2012.

Appearances:

Duke K. McCall, Jr. of Smith Moore Leatherwood, LLP, appeared as attorneys for Yanagawa of S.C. and Sompo Japan Insurance Co. of America

Latonya Edwards, Esq. of the law firm of Dilligard Edwards, LLC appeared as attorneys for the South Carolina Second Injury Fund

Purpose of Hearing:

To determine issues as set forth on Forms 54 and 55.

Decision and Order:

T. Scott Beck, Commissioner.

Filed:

June 28, 2012

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine issues as set forth on Forms 54 and 55.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. That the average weekly wage of the Claimant is \$309.23, with a corresponding compensation rate of \$206.16.
4. Venue, set in Greenville County, South Carolina, is proper as agreed by all parties.
5. Without objection, with the exception of any self-serving statements or unstipulated medical reports, the Commission's file is made a part of the record.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code Annotated, § 1-23-320, et seq., and Regulation 67-612, the parties submitted the following items as evidence in support of their case:

APA No. 1	Dr. William Aldrich	10/31/02- 07/22/03	pp. 1-7
APA No. 2	Doctor's Care	01/06/03-01/09/03	pp. 8-9
APA No. 3	Radiologist Report, Tuomey Health Care	01/07/03	p. 10
APA No. 4	Dr. Muhammad Rasul	01/07/03	p. 11
APA No. 5	MIR, Dr. William C. Aldrich	01/22/03	p. 12
APA No. 6	Dr. Stephen Poletti	01/29/03-06/13/07	pp. 13-36
APA No. 7	Clincher Agreement	02/20/08	pp. 37-43
APA No. 8	Compensation Receipt, 19	02/15/08	p. 44
APA No. 9	Form 18		p. 45
APA No. 10	Form 54 and letter of Ryan S. Montgomery, Esquire	12/30/11	pp. 46-48
APA No. 11	Dr. Stephen Poletti, SIF Questionnaire	03/7/12	pp. 49-50

STATEMENT OF THE CASE

Prior to the call of the case, a pre-hearing conference was held, during which time the issues were reviewed and refined. This is a case where the Claimant sustained an on the job injury to her back and legs on October 29, 2002. The Claimant had a pre-existing condition of arthritis in her back. The Claimant reached maximum medical improvement on May 2, 2007 at which time the attending physician gave her an impairment of 30% to her back and 5% to each leg.

That the carrier filed for reimbursement with the South Carolina Second Injury Fund, hereinafter referred to as the Fund. The Fund denied the claim for reimbursement and thereafter the carrier file a Form 54 requesting a Hearing before the South Carolina Workers' Compensation Commission.

FINDINGS OF FACT

Based upon the evidence presented the following facts are accordingly made:

1. That Patricia McFadden sustained an admitted on the job injury to her legs and back on October 29, 2002.
2. That Patricia McFadden reached maximum of medical treatment on or about May 2, 2007.
3. That Patricia McFadden sustained a thirty (30%) percent permanent physical impairment rating to her back and a five (5%) permanent physical impairment rating to each leg from her attending physician, Dr. Stephen Poletti, MD.
4. That Patricia McFadden settled the indemnity portion of her workers' compensation claim under a Clincher Agreement, leaving the medicals open, on or about February 21, 2008.
5. That the permanent physical impairments Patricia McFadden sustained to her back

and both of her legs constituted a hindrance and obstacle to employment or re-employment.

6. That prior to her accident of October 29, 2002, Patricia McFadden had a pre-existing condition of arthritis in her back.

7. That Patricia McFadden sustained an aggravation to the arthritis condition in her back as a result of her injury to her back on October 29, 2002.

8. That due to her accident of October 29, 2002 to her back, Patricia McFadden's medical expenses were substantially increased due to the injury combining with her pre-existing arthritis condition.

9. That due to her accident of October 29, 2002 to her back, Patricia McFadden's permanent disability to her back and legs was substantially increased due to the injury combining with her pre-existing arthritis condition.

10. That due to her accident of October 29, 2002 to her back, Patricia McFadden's medical treatment for both her back and legs was prolonged or lengthened due to her back injury combining with her pre-existing arthritis condition.

11. That the permanent disability Patricia McFadden sustained to her legs was as a result of her accident of October 29, 2002 and due to her back fusion and residual pain and weakness.

12. That Patricia McFadden when she reached maximum medical improvement from her medical treatment on May 2, 2007 had sedentary restrictions of no prolong pushing, pulling, bending or twisting and no prolong sitting.

13. That Patricia McFadden's attending physician opined that when she reached maximum medical improvement from her medical treatment on May 2, 2007, that Patricia McFadden would not be able to return to a functional workplace.

14. That the Second Injury Fund's objections to the Defendant's APA's No. 11, pages

49-50 are overruled.

a. I find all "required" information was submitted to the Second Injury Fund to accept or deny the claim for reimbursement.

b. In fact, the Second Injury Fund denied defendants request for reimbursement.

c. Defendant's APA's No. 11, pages 49-50 were prepared in anticipation of this contested hearing.

15. That the Second Injury Fund's arguments concerning Sections 42-7-320 and 42-7-320(b) are without merit.

a. The intent of the statute was not to prohibit the South Carolina Workers' Compensation Commission from deciding cases after December 31, 2011.

17. That the claim for reimbursement from the S.C. Second Injury Fund was timely filed by the carrier, and the Second Injury Fund denied the claim, after which a Form 54 requesting a Hearing was filed by the carrier.

16. That the Defendants, Yanagawa of SC and Sompo Japan Insurance Company of America, have satisfied all requirements for reimbursement from the South Carolina Second Injury Fund.

CONCLUSIONS OF LAW

Accordingly, as provided in South Carolina Code § 42-17-40 (1976 as amended), it is the determination of this Commissioner:

1. That under § 42-1-130, Patricia McFadden was a covered employee at the time of her on-the-job injury which occurred on October 29, 2002.

2. That under Section 42-9-400 the back injury of Patricia McFadden which occurred on October 29, 2002 combined with a pre-existing condition of arthritis in her back so as to make her unemployable, the injury combining with her arthritis condition constituting an obstacle or hindrance to employment or re-employment.

3. That under Section 42-9-400 the back injury of Patricia McFadden which occurred on October 29, 2002 combined with a pre-existing condition of arthritis in her back so as to substantially increase her permanent disability and medical expenses and to prolong her medical treatment.

4. Section 42-1-160 entitled "Injury" and "Personal Injury" applies in this case.

5. Section 42-1-40 applies in this case.

6. Section 42-15-60 applies in this case.

7. That under Section 42-9-400 the Defendants have complied with all the requirements for reimbursement from the Second Injury Fund.

8. That the Second Injury Fund's arguments concerning Sections 42-7-320 and 42-7-320(b) are without merit, because it is the intent of the statute not to prohibit the South Carolina Workers' Compensation Commission from deciding cases after December 31, 2011.

THIS PART OF THIS PAGE WAS LEFT BLANK INTENTIONALLY.

DECISION AND ORDER

IT IS, THEREFORE, ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim and the South Carolina Second Injury Fund shall reimburse the Carrier, Sompco Japan Insurance Company of America, for the indemnity payments and medical expenses, less the statutory deductions under the provisions of Section 42-9-400 of the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

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

June 28, 2012

By: Amy Bracy, Administrative Assistant to Commissioner Beck

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0221928**

SC Second Injury Fund, Appellant.

-v-

Sompo Japan Insurance Company of America, Defendant/Respondent.

[In re: Patricia McFadden v. Yanagawa of SC and Sompo Japan Insurance Co. of America]

Appellate Panel Review held in Columbia,
South Carolina on October 22, 2012 per notices
timely and properly served on all parties.

Appellate Panel Decision and Order filed
1-17, 2013

APPEARANCES: Carrier/Appellant represented by Latonya Dilligard Edwards,
Esquire, of Dilligard Edwards, LLC, Columbia, South Carolina.

Defendant/Respondent represented by Duke K. McCall, Esquire,
of Smith Moore Leatherwood, LLP, Greenville, South Carolina.

STATEMENT OF CASE

On May 9, 2012, Commissioner T. Scott Beck held a hearing on this matter in Greenville, South Carolina and issued the following Order:

"IT IS THEREFORE ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim and the South Carolina Second Injury Fund shall reimburse the Carrier, Sampo Japan Company of America, for the indemnity payments and medical expenses, less the statutory deductions under the provisions of § 42-9-400 of the South Carolina Workers' Compensation Act."

Within the statutory period, counsel for the Second Injury Fund 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 22, 2012. All proffered testimony has been taken and all documentary evidence has been delivered to the individual members of the Full Commission and has since been under advisement and consideration.

By appeal, the Second Injury Fund respectfully submitted the following:

1. The Hearing Commissioner erred in overruling its objection to Carrier's APA No. 11, pp.49-50.
2. The Hearing Commissioner erred in finding that Carrier satisfied all requirements for reimbursement.
3. The Hearing Commissioner erred in concluding that Claimant's back injury was either aggravated by or combined with Claimant's preexisting arthritis and was permanent and serious enough to constitute a hindrance or obstacle to employment or reemployment.

4. The Hearing Commissioner erred in concluding that the Second Injury Fund's arguments concerning § 42-7-320 and § 42-7-320(B) were without merit because it was not the intent of the statute to prohibit the South Carolina Workers' Compensation Commission from deciding cases after December 31, 2011.

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; and as such, they are **Affirmed with Amendments** and shall become the law of the case.

FINDINGS OF FACT

Based upon the evidence presented the following facts are accordingly made:

1. That, Patricia McFadden sustained an admitted on the job injury to her legs and back on October 29, 2002.
2. That Patricia McFadden reached maximum medical treatment on or about May 2, 2007.
3. That Patricia McFadden sustained a thirty (30%) percent permanent physical impairment rating to her back and a five (5%) permanent physical impairment rating to each leg from her attending physician, Dr. Stephen Poletti, MD.

4. That Patricia McFadden settled the indemnity portion of her workers' compensation claim under a Clincher Agreement, leaving the medicals open, on or about February 21, 2008.

5. That prior to her accident of October 29, 2002, Patricia McFadden had a pre-existing condition of arthritis in her back. The presumption that arthritis was a hindrance or obstacle to employment was not rebutted.

6. That Patricia McFadden sustained an aggravation to the arthritis condition in her back as a result of her injury to her back on October 29, 2002.

7. That due to her injury of October 29, 2002 to her back, Patricia McFadden's medical expenses were substantially increased due to the injury combining with her pre-existing arthritis condition.

8. That due to her injury of October 29, 2002 to her back, Patricia McFadden's permanent disability to her back and legs was substantially increased due to the injury combining with her pre-existing arthritis condition.

9. That due to her injury of October 29, 2002 to her back, Patricia McFadden's medical treatment for both her back and legs was prolonged or lengthened due to her back injury combining with her pre-existing arthritis condition.

10. That the permanent disability Patricia McFadden sustained to her legs was a result of her accident of October 29, 2002 and due to her back fusion and residual pain and weakness.

11. That when she reached maximum medical improvement from her medical treatment on May 2, 2007, Patricia McFadden had sedentary restrictions of no prolonged pushing, pulling, bending or twisting and no prolonged sitting.

12. That Patricia McFadden's attending physician opined that when she reached maximum medical improvement from her medical treatment on May 2, 2007, Patricia McFadden would not be able to return to functional work.

13. That the Second Injury Fund's objections to the Defendant's APA's No. 11, pages 49-50 are overruled.

a. We find all "required" information was submitted to the Second Injury Fund to accept or deny the claim for reimbursement.

b. In fact, the Second Injury Fund denied Defendant's request for reimbursement.

c. Defendant's APA's No. 11, pages 49-50 were prepared in anticipation of this contested hearing.

14. That the Second Injury Fund's arguments concerning § 42-7-320 and § 42-7-320(B) are without merit.

a. The intent of the statute was not to prohibit the South Carolina Workers' Compensation Commission from deciding cases after December 31, 2011.

15. That the claim for reimbursement from the S.C. Second Injury Fund was timely filed by the carrier, and the Second Injury Fund denied the claim, after which a Form 54 requesting a Hearing was filed by the carrier.

16. That the Defendants, Yanagawa of SC and Sampo Japan Insurance Company of America, have satisfied all requirements for reimbursement from the South Carolina Second Injury Fund.

CONCLUSIONS OF LAW

Based on the evidence presented and the oral arguments of the parties, we conclude as follows:

1. That under § 42-1-130, Patricia McFadden was a covered employee at the time of her on-the-job injury which occurred on October 29, 2002.
2. That under §42-9-400 the back injury of Patricia McFadden which occurred on October 29, 2002 combined with a pre-existing condition of arthritis in her back so as to make her unemployable, the injury combining with her arthritis condition constituting an obstacle or hindrance to employment or re-employment.
3. That under §42-9-400 the back injury of Patricia McFadden which occurred on October 29, 2002 combined with a pre-existing condition of arthritis in her back so as to substantially increase her permanent disability and medical expenses and to prolong her medical treatment.
4. Section 42-1-160 entitled "Injury" and "Personal Injury" applies in this case.
5. Section 42-1-40 applies in this case.
6. Section 42-15-60 applies in this case.
7. That under § 42-9-400 the Defendants have complied with all the requirements for reimbursement from the Second Injury Fund.

8. That the Second Injury Fund's arguments concerning § 42-7-320 and § 42-7-320(B) are without merit, because it is the intent of the statute not to prohibit the South Carolina Workers' Compensation Commission from deciding cases after December 31, 2011.

ORDER

IT IS THEREFORE ORDERED that the Hearing Commissioner's Order granting Carrier's reimbursement request pursuant to S.C. Code Ann. §42-9-400 and filed on June 28, 2012 is hereby affirmed by the Appellate Panel with Amendments, and constitutes the Decision and Order of the Full Commission.

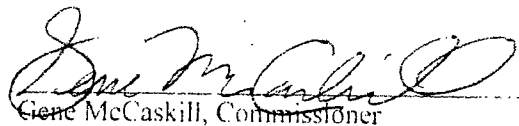
S.C. WORKERS' COMPENSATION COMMISSION



Susan S. Barden, Commissioner

FULL AFFIRMATION
WITH AMENDMENTS

CONCUR:



Gene McCaskill, Commissioner



Andrea C. Roche, Commissioner

CERTIFICATE OF SERVICE

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

By Valerie Deller on January 17, 2013

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP231018

South Carolian Second
Injury Fund

2013 NOV 4 PM 3 37

Sompo Japan Insurance
Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
This matter comes before the Court on appeal from an order of the Appellate Panel of the South Carolina Workers' Compensation Commission. The Panel's findings of fact in the order are not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code § 1-23-380. Therefore, the order of the South Carolina Workers' Compensation Commission Appellate Panel is affirmed.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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



Circuit Court Judge

2162

Judge Code

10/28/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on 11/4/13, and a copy mailed first class or placed in the appropriate attorney's box on 11/4/13, to attorneys of record or to parties (when appearing pro se) as follows:

LaTonya Edwards
3790 Fernandina Road, Suite 103
Columbia, South Carolina 29210

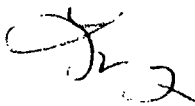
ATTORNEY(S) FOR THE PLAINTIFF(S)

Duke McCall, Junior
Post Office Box 87
Greenville, South Carolina 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter



1 State of South Carolina
2 Before the
3 South Carolina Workers' Compensation Commission
4 WCC File No.: 0221928

4 Patricia McFadden,)
5 Claimant,)
6 vs.)
7 Yanagawa of SC,)
8 Employer,)
9 and)
10 Santo Japan Insurance)
11 Company of America,)
12 Carrier, Defendants.)
_____)

HEARING

May 9, 2012

COPY

13
14 Hearing reported by Deborah S. Thomas,
15 Certified Verbatim Reporter and Notary Public in and
16 for the State of South Carolina; said hearing held
17 before Commissioner T. Scott Beck, and in accordance
18 with the South Carolina Workers' Compensation Laws,
19 at the South Carolina Workers' Compensation
20 Commission, 301 University Ridge, Greenville, South
21 Carolina, on May 9, 2012, at the hour of 11:51 a.m.

22
23 ABACTIS REPORTING SERVICES
24 2117 PINE LAKE DRIVE
25 WEST COLUMBIA, SOUTH CAROLINA 29169
(803) 206-7390

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Appearances

Representing the Defendants:

DUKE K. MCCALL, JR., ESQUIRE
Smith Moore Leatherwood, LLP
300 East McBee Avenue, Suite 500
Greenville, South Carolina 29601

Representing the South Carolina Second Injury Fund:

LATONYA DILLIGARD EDWARDS, ESQUIRE
Dilligard Edwards, LLC
3790 Fernandina Road, Suite 103
Columbia, South Carolina 29210

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONTENTS

Page

Exhibit Index	3
Certificate of Reporter	14
Word Index	

* * * * *

EXHIBIT INDEX

Exhibits: Marked at Page
(None were proffered.)

* * * * *

1 This hearing is conducted in
2 accordance with the South Carolina Workers'
3 Compensation Commission Laws.

4 COMMISSIONER BECK: Today's date is
5 May 9, 2012. This is Workers' Compensation File
6 Number 0221928. The Claimant in this matter was
7 Patricia McFadden. The Employer is Yanagawa of
8 South Carolina. The Carrier was Santo Japan
9 Insurance Company of America. They are represented
10 today by Attorney Duke McCall, Junior. This is a
11 Second Injury Fund matter. The Fund is represented
12 today by Attorney Latonya Edwards.

13 I've received A.P.A.s from the Defendant
14 Carrier in this matter. Are there any objections to
15 A.P.A.s, jurisdiction, venue, or any other matter,
16 Mr. McCall?

17 MR. MCCALL: No objections.

18 COMMISSIONER BECK: Ms. Edwards?

19 MS. EDWARDS: None, Your Honor.

20 COMMISSIONER BECK: Without objection
21 the Commission file becomes a part of the record
22 with the exception of self-serving declarations and
23 unstipulated medical reports.

24 Mr. McCall?

25 MR. MCCALL: The Defendants take the

1 position that this is a claim for reimbursement. We
2 have submitted the medical reports of the
3 physicians; Dr. Aldrich, Dr. Rasul, and Dr. Poletti.
4 With the medical records we have also submitted a
5 Second Injury Fund Questionnaire from Dr. Stephen
6 Poletti dated March 7th, 2012.

7 And under the code and evidence submitted
8 we contend that the claim should be reimbursed under
9 42-9-400.

10 COMMISSIONER BECK: Ms. Edwards?

11 MS. EDWARDS: Okay. Just as a
12 preliminary matter, the Fund does object to Carrier
13 A.P.A. Pages 49 and 50 which, as Mr. McCall
14 indicated, is dated March of 2012. And we base that
15 objection on 42-7-320(B)(2) which indicates that all
16 records to support Second Injury Fund claim shall be
17 submitted by June 30th, 2011.

18 I originally had objections to other
19 records, but I'm waiving those and would just
20 maintain the objection to this particular document
21 at Carrier A.P.A. Pages 49 and 50.

22 The other issues that we use to deny the
23 claim, the first one is on the hindrance issue per
24 42-9-400. As it relates to the prior cervical
25 issues, first there are not any prior records

1 regarding the cervical injury, but the post-injury
2 medical records at the following pages we believe
3 support our denial at Carrier A.P.A. Page 1.

4 Claimant complained of neck and shoulder pain two
5 days post-injury. This is October 31st, 2002.
6 Carrier A.P.A. Page 2, Claimant's history of
7 cervical disk disease is noted, but on that day she
8 complained of hip and back -- low back pain.

9 Carrier A.P.A. Page 36, this is
10 January 2003, the treating physician notes that he
11 operated on Claimant several years ago, but like
12 I've indicated we don't know how long ago that was.
13 So I'm not -- don't know how long ago that was, but
14 he said he operated on Claimant several years ago
15 for cervical disk herniation. He does not indicate
16 in that report that there were any ongoing problems
17 with the cervical spine since then, but, once again,
18 we don't know when that surgery occurred.

19 He does indicate that the lumbar spine is
20 problematic at this point. And this is post-injury.
21 We also deny substantial increase. Other than the
22 initial cervical pain two days post-injury at
23 Carrier A.P.A. Page 1, there are no additional
24 medical reports that document any treatment to the
25 cervical spine. All treatment is related to the

1 lumbar.

2 Carrier A.P.A. Pages 30 and 31, Claimant
3 received lumbar injections and a lumbar diskectomy.
4 The injections were January 2003. March 2003 was
5 the surgery. Carrier A.P.A. Page 21, Claimant
6 apparently had back surgery again in 2006, four
7 years post-injury.

8 Carrier A.P.A. Pages 27 and 28. This is
9 May 2007 where Claimant is assigned a 30 percent
10 lumbar spine impairment rating with five percent for
11 residual pain, but no cervical impairment which is
12 the same rating that I believe she received in 2004
13 at Carrier A.P.A. Page 14 in 2004.

14 Carrier A.P.A. Pages 17 and 18. It
15 notes -- and I bring this up for purposes of the
16 substantial increase, denying a substantial increase
17 argument. While it notes -- it doesn't note that
18 the cervical was interfering with recovery, but it
19 does in this record, A.P.A. Pages 17 and 18, note
20 that smoking was potentially interfering with her
21 recovery. She was approximately three months out
22 from the fusion surgery.

23 At Carrier A.P.A. Pages 37 through 43,
24 this is the common law order and release. And the
25 30 percent impairment rating is noted at Carrier

1 A.P.A. Page 38. That is the second page of the
2 clincher. And the 30 percent is to the lumbar
3 spine. And so because that is the rating to the
4 lumbar spine, we would assert that the clincher was
5 based on the lumbar spine. And Carrier didn't make
6 any payment for any cervical injury because there
7 wasn't any impairment to any cervical -- to the
8 cervical spine.

9 And so we believe that that also supports
10 our argument that the preexisting cervical did not
11 substantially increase the liability on the claim.

12 Now, as it relates to my final argument on
13 42-7-320(B), this is the portion of the statute that
14 indicates that the Fund shall not accept a claim --
15 all claims should -- that have not been accepted by
16 the Fund on December 31st, 2011. That the Fund
17 can't, I'm sorry, accept any claim after
18 December 31st, 2011.

19 And that section says that we shall not
20 accept a claim for reimbursement after that date.
21 (B) (3), which I've also cited just for reference
22 says that the Fund shall continue reimbursing
23 employers and insurance carriers for claims accepted
24 by the Fund on or before December 31st, 2011.

25 Certainly we would assert that that means

1 that there is no provision for us reimbursing claims
2 that have not been accepted on or before
3 December 31st, 2011. And so we would assert that
4 all of those reasons are sufficient basis to deny
5 the claim for reimbursement and we would request
6 denial.

7 COMMISSIONER BECK: Anything further,
8 Mr. McCall?

9 MR. McCALL: Yes, sir. I would like
10 to respond if I may. First I would like to say that
11 the medical records really need to be read in their
12 entirety because on Page 3 you are talking about
13 left leg pain radiculopathy. And then you turn over
14 to Page 5 you are talking about right leg pain.
15 There are -- there is an M.R.I. report in here at
16 Page 12. There is a lumbar spine report at Page 10.

17 I'm sorry. The M.R.I., yeah, is 12. And
18 those do primarily address the back and legs and
19 osteophyte formations which are preexisting
20 arthritic in nature. Arthritis in 2002 when this
21 claim occurred was still a part of the criteria for
22 reimbursement by the Second Injury Fund.

23 The 30 percent -- it says in his report of
24 May 2nd, 2007, I said I do think that Ms. McFadden
25 will be at maximum medical improvement or impairment

1 for her lumbar spine is anticipated to 30 percent --
2 in the 30 percent range. She should be on sedentary
3 restrictions. And he goes on and puts an addendum
4 in this which he assigns a 30 percent impairment as
5 a result of segmental instability with radiculopathy
6 resulting in fusion with additional five impairment
7 rating secondary to residual pain and weakness in
8 the legs. This is a separate impairment from her
9 low back.

10 So when you read the restrictions in
11 addition to the rating, you see that the reports
12 from Dr. Poletti indicate very clearly that the
13 claim is in fact by all reasonable standards
14 permanently disabled. And that is what the clincher
15 reflects.

16 Now as to the interpretation here, I take
17 the position that 42-7 -- 42-7-320(B) is
18 inconsistent with Subparagraph 2 because (B) refers
19 to December 31st, 2011. The Second Injury Fund
20 shall not accept a claim for reimbursement. Under
21 (2) it talks about all required information to be
22 submitted to the Fund by June 30th, but it doesn't
23 define what required information is.

24 Under the position taken by the Fund, the
25 first set of A.P.A. documents were submitted and the

1 Fund acknowledges that they had those. And we
2 submit that that falls in the requirement of
3 required information. The Fund subsequently denied
4 the claim. And then the Carrier went back and got
5 A.P.A. Second Amended which is the report that they
6 now object to of Dr. Poletti called a Second Injury
7 Fund Questionnaire dated March 7th, 2012.

8 And it is the Defendants' position in the
9 case that to say that that is barred by
10 42-7-320(B) (2) denies the Carrier the right to
11 appear before the Workers' Comp Commission and have
12 the Workers' Compensation Commission adjudicate the
13 Carrier's right to Second Injury Fund reimbursement.

14 If we would accept the Second Injury
15 Fund's interpretation of it, then they have the sole
16 authority and ability to interpret who is going to
17 get paid and who is not. And that is not in
18 accordance with our judicial system.

19 And if that is, in fact, the
20 interpretation of 42-7-320(B) (2), then I submit it
21 is an invalid statute because it cannot deprive the
22 Workers' Comp Commission the authority granted to it
23 by the Workers' Comp Act in its totality of
24 adjudicating the rights of injured workers and
25 carriers to seek first to workers for compensation

1 and the carriers for reimbursement for the Fund
2 while the Fund existed.

3 So we submit that we have met the
4 requirements of 4-27-320(B) and (B)(2). We submit
5 that there is substantial and persuasive evidence as
6 to obstacle or hindrance to employment or
7 reemployment as set forth in Dr. Poletti's
8 questionnaire, Page 50, Item 6.

9 We -- I would call the Commission's
10 attention, we made an error. We omitted 7 and 8. I
11 don't know why they are not there, but they are not.
12 And 9, which has not been addressed by the Second
13 Injury Fund, Dr. Poletti says that the arthritic
14 condition in her back was aggravated by the fall on
15 October 29th, 2002. And it did create an obstacle
16 or hindrance to employment or reemployment.

17 And when you read his report about the
18 sedentary restrictions that the lady has with the
19 30 percent impairment you can understand that she
20 does have basically a substantial obstacle or
21 hindrance to employment or reemployment.

22 And that if she is no longer able to
23 reenter the workforce, then there is a substantial
24 increase in her medical care prior -- but for the
25 accident because she was working without any

1 hindrance or obstacles to employment or reemployment
2 prior to the accident and she cannot work subsequent
3 to the accident.

4 COMMISSIONER BECK: Anything further,
5 Ms. Edwards?

6 MS. EDWARDS: Nothing further, Your
7 Honor.

8 COMMISSIONER BECK: All right. That
9 concludes this proceeding.

10 (Whereupon, the hearing
11 was concluded at 12:08 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

SECOND INJURY FUND,
PLAINTIFFS.

Transcript of Record
2013-CP-23-01018

-vs-

SPECIALTY RISK SERVICES,
DEFENDANTS.

June 20, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA VERDIN, Judge.

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

LATONYA EDWARDS
Attorney for the Plaintiffs

DUKE K. MCCALL, JR.
Attorney for the Defendants

TRACY MCBRIDE
COURT REPORTER

INDEX

1		
2	STATEMENTS	PAGE
3	By Ms. Edwards	3
4	By Mr. McCall	4
5	Certificate of the Reporter	9
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 THE COURT: Yes, ma'am.

2 MS. EDWARDS: Good morning, Your Honor. I'm Latonya Dilligard Edwards.
3 I represent the Second Injury Fund in this appeal. And everything I am about to say is in
4 my brief. So I'll make it brief as well. The fund is requesting that the decision below is
5 reversed. And we base that on various reasons; just for the benefit of historical
6 background, the statute that's involved in this case, one of them, 42-7-320. That section
7 was added to the workers' comp statute in 2007. So it's a new portion of the statute.
8 And it pretty much calls for the winding down and termination of the Second Fund. And
9 it sets out this--a list of deadlines that have to be complied with in order to I guess allow
10 with the efficient winding down and ultimate termination of the funds, which is going to
11 happen in less than two weeks. The fund is going to be closed July 1, 2013. And so in
12 2007 they put all of those procedures in place to assist with the ultimate termination of
13 fund. Now this--one of the sections 42-7-310 (B)(2), that sets the deadline for when the
14 carriers have to submit materials to the funds in order for the fund to accept compromise,
15 or deny a case, okay? So June 30, 2011 is the date that the carrier has to submit all of the
16 materials. Now in this particular case the carriers submitted a medical questionnaire at
17 pages 49 and 50, I believe, outside of that deadline. And the commission allowed that,
18 okay? Now we objected to it; but over our objection it was admitted. And we believe
19 that that was error because the statute clearly says that all information has to be submitted
20 by June 30. The questionnaire was actually dated March 2012, which is well outside the
21 deadline. And also for, Your Honor's, information and for Mr. McCall, the August 9--
22 there's an August 9, 2011 denial letter that's referenced in my brief and briefed below;
23 but I don't believe that the, Court, has a copy of that. If Mr. McCall does not object to us
24 submitting this denial letter I would be happy to submit it so, Your Honor, will have an
25 opportunity to see the letter that's referenced in that portion of my brief.

1 MR. MCCALL: May it please the, Court? This, I don't believe, was considered
2 by the workers' commission or was introduced into evidence. So therefore I would have
3 to object to it. I think she certainly can argue from it.

4 THE COURT: Let's leave it at that.

5 MS. EDWARDS: That's fine; the reason it was not an issue until--the
6 commission used that as one of the reasons that they denied it. One of the things that
7 they cited in their brief is that the fact that we denied a claim was evidence that they had
8 that the carrier had submitted all of the information, which actually that was not correct.
9 The letter actually said that one of the reasons we were denying the claim was because all
10 of the information was not in. And so I didn't want the, Court, to use that--accept that as
11 true, which in fact the denial letter specifically says that the medical questionnaire was
12 not submitted. They didn't have that; but the commission in its decision seem to say that
13 because of that we can't deny a claim until all of the information is in; and that's actually
14 an inaccurate interpretation of--not inaccurate, it's--rather it's an erroneous interpretation
15 of the statute; and in this case I agree the letter was not apart of this submission because it
16 didn't come up until the commission ruled something in reference to the denial, which
17 was not in fact in that letter. So I will just argue what I argued; and I won't submit that
18 document; but one of the reasons in that document that this case was denied was because
19 there was no Second Injury Fund questionnaire provided by the treating physician. And I
20 am reading that verbatim from the letter. It cites a variety of other reasons; but that was
21 one of the reasons that it was denied; and low and behold the commission allowed the
22 carrier to submit the questionnaire outside of that deadline, which the questionnaire is
23 dated the 20th and it should have been in June 30, 2011. So we believe that their allowing
24 that submission was a statutory violation and is enough to bar reimbursement because the
25 statute specifically says that if all information is not submitted to the fund by June 30,

1 that bar is declined for reimbursement. We believe the injury should have stopped right
2 there and it didn't. So the other reasons that we are asserting that the decision below is
3 error is because that section also 42-7-320 (B) sets out another deadline December 31,
4 2011. That's the date that the fund has to accept, deny or--accept or deny a case. And we
5 believe that this case, since this case was not accepted and in fact it was denied in
6 August, the carrier had sufficient time to do everything it needed to do by the real
7 deadline, which was December 31, 2011, for us to make a decision on the case; but we
8 believe that because the fund did not accept this case by December 31, 2011 and was
9 subsequently heard by the commission in May of 2012, we believe that that violates the
10 statutory language because we believe that the December 31, 2011 date is an absolute
11 date. Now on, just briefly, on the other substantive issue why we believe that the
12 decision below is not supported by substantial evidence and should be reversed. And one
13 of the things that we assert is the pre-existing condition.

14 I think they allege prior cervical was not a hindrance to employment. We would
15 point to ABA submission one, noting no prior complaints. We don't have any prior
16 medical record or outlining shoulder or neck problem; but the first notation of complaint
17 of neck or shoulder problems--a neck or shoulder problem is two days post injury. That's
18 a carrier ABA page one. We would assert that the neck and shoulder problem stemmed
19 from the injury and not due to some alleged prior cervical problem. ADA page 36, the
20 treating physician indicated that any ongoing--that did not indicate any ongoing cervical
21 problems but did note a prior lower back problem, not a cervical or neck problem. And
22 so therefore we believe that the prior cervical, prior alleged were not permanent and a
23 hindrance to employment pursuant to 42-9-400. We also cite the file ADA to support our
24 argument that the pre-existing condition was not a hindrance to employment; carrier
25 ADA 29 claimant received a prescription for pain or weakness but none to the cervical.

1 We also would note that we also would reference those same ADA's to submit our
2 assertion that the alleged pre-existing condition that the carrier alleged did not
3 substantially increase carriers liability and would assert that that evidence is sufficient to
4 have the case reversed.

5 THE COURT: All right, thank you, ma'am.

6 MS. EDWARDS: Thank you, very much.

7 THE COURT: Yes, sir?

8 MR. MCCALL: May I begin by handing up a copy of the transcript of the
9 hearing of May 9, 2012. I mentioned that---

10 MS. EDWARDS: And I have no objection to him submitting that even though it
11 was not apart of the evidence.

12 MR. MCCALL: I did ask when the record was--transcript was sent to me that
13 that be added. So let me start with 42-7-320(B). It talks about, under subsection 2, all
14 required information but it never defines it. There is no testimony by the Second Injury
15 Fund as to what they consider all required information was. They never came forth and
16 said this is what we want in the file. This is what we need. These are the list of things
17 that should have been submitted, which is interesting; second, if you read this section it's
18 talking about the fund accepting the claim. The fund has got to accept the claim by
19 December 31, 2011; but in this case the fund had already denied the claim on August 29,
20 2011. So why is that statute relevant? It's already denied the claim. Once that claim is
21 denied then it moves into a contested claim before the South Carolina Workers'
22 Compensation Commission. And I submit that no matter how you interpret the statute
23 you cannot devise the Workers' Compensation Commission of its primary
24 responsibilities, which is to adjudicate claims of injured employees in this State and also
25 to adjudicate claims against the Second Injury Fund. That's its primary responsibility.

1 Now once the claim was denied the ADA had already been submitted; but once the
2 claims became controversial, at that point you cannot then deprive the carrier of the right
3 to introduce evidence after that date as to why it believes it has a compensable claim to
4 the Second Injury fund questionnaire was part of the defenses evidence to establish the
5 compensability of this claim after the Second Injury Fund had denied its responsibility.
6 And so when the Workers' Compensation Commissioner heard this case and it
7 considered and balanced out the rights of all the parties it was very clear in looking at the
8 ABA submissions, which is the only evidence in the case that this is a compensable claim
9 because of arthritis; this case arises from 2002. Arthritis, in 2002, is presumed to be a
10 hindrance to employment under the statute. And that's raised by the appellate panel
11 when it came in in it's hearing of January 17, 2013 and modified I think; it was a finding
12 of fact number five in which it sets forth that arthritis was presumed to be--hinders
13 employment and that there was no evidence from the second injury fund that overcame
14 that presumption. So if you, no matter how you look at that statute, you're adjudicating
15 the rights and responsibilities of the parties under the evidence submitted. We would
16 submit that the decision of the South Carolina Workers' Compensation hearing
17 commissioner as affirmed by the appellate panel should be affirmed by this Court.

18 THE COURT: All right, thank you.

19 MS. EDWARDS: Just briefly.

20 THE COURT: You got about a minute left.

21 MS. EDWARDS: I have a minute, sure. Just briefly, the statute doesn't define
22 what required information is but certainly it says what's required. It says you have to
23 have a pre-existing condition and subsequent injury that's permanent. The pre-existing
24 condition must be permanent and a hindrance to employment and carrier must have some
25 kind of substantial greater liability. So any information that the carrier submits on the

1 element should have been submitted by June 30, 2011. Our position is what the
2 Workers' Comp did was allow evidence in that the carrier had done--they kind of went
3 back and corrected something that the carrier couldn't correct because they didn't submit
4 it by the deadlines; but the Workers' Comp allowed it in. So they did something that the
5 carrier-- they corrected a mistake that the carrier made; and so we don't believe that the
6 statute allows them to do that. We believe that the statute is absolute. Any information
7 on the elements of reimbursement as outlined in 42-400 should have been submitted
8 earlier.

9 THE COURT: Thank y'all. I'll take this matter under advisement and I'll issue
10 an order briefly.

11

12

13

14

15

16

17

18

19

20

21

22

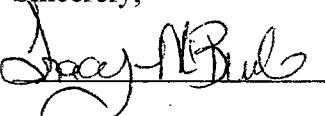
23

24

25

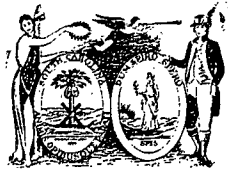
1 I, Tracy McBride, Court Reporter for the 13th Judicial Circuit hereby certify that
2 the previous 8 pages are true, accurate and complete to the best of my abilities including
3 all exhibits, if any, in the case that took place in Greenville County, South Carolina.

4 I further certify that I am not interested in the outcome of this case nor am I
5 related to any of the parties in this case.

6
7
8
9
10
11
12
13
14
15
16 Sincerely,
17 
18 Tracy McBride

19 Court Reporter
20
21
22
23
24
25

The South Carolina Second Injury Fund



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

WILLIAM E. GUNN
INTERIM DIRECTOR

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

August 9, 2011

MauraHirl-Ritz
IRG
959 Concord Street
Suite 200
Framingham, MA 01701

RE: Patricia McFadden vs Yanagawa of SC
SIF# 99925 WCC File # 0221928


Dear Maura:

Thank you for the submissions regarding the above mentioned claim. After a careful review of this matter, I find that it does not meet the requirements for Second Injury Fund reimbursement.

There are several problems with this claim. First there was no SIF questionnaire provided by the treating physician. Second, you only provided priors and knowledge for a neck injury but it appears the subsequent injury is to the lumbar spine. I do not see a combination/aggravation and with that in mind, I have no choice but to deny this claim for benefits.

The Second Injury Fund reserves the right to utilize any additional defenses available should you decide to pursue this claim.

Sincerely,


Marla I. Rehborn
Claims Analyst

Cypress Family Medicine

Patient Name: Patricia McFadden DOB: 4-31-58 Allergies: Sulfa

Date: 10/31/02 Workmen's Comp Progress Notes

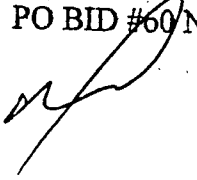
10/31/02 No she hurts between neck + shoulder - as
 went to ER - 10-4-02 no labs or Xray - as

Patricia McFadden Chart# 2689 10/31/02

S: The patient comes in with complaint of pain between her neck and shoulder. States she hurt it on the job with a hand jack. Stated it did not immediately hurt but when she went back to the line it started hurting. Of interest she was in the ER on 10/4 for the same complaint. I discussed this with her. Initially she stated that she thought she reinjured her neck and shoulder with the most recent injury then when I went back in the room she said she had actually almost fallen at work and hadn't told anybody. I instructed her it is very important to report this to your supervisor ASAP.

O: Non toxic. NAD. Afebrile. VS stable. HEENT unremarkable. No pain along the MVL. Lungs clear. Cardiac S1 S2 RRR. FROM of the shoulder. Pain on pushing and with grip strength. No pain with pulling. Actually states it felt better. Some palpable pain in her shoulder area on the back.

A&P:
 1. Neck and shoulder pain. Will obtain x-ray of the C-spine and shoulder. Placed on Naprosyn EC 500mg 1 PO BID #60 NR. Skelaxin 400mg 2 TID PRN #40 NR.
 JNE/dbn



11/14/02 C/O pain in her @ hip down @ leg, pt. also here for pap; pt. having white thick vaginal discharge & other bad odor (13)
 LMP: June 2001 Doctors Care - (steroids po)

O: LOC. alert & oriented x3
 Neck supple & nodes
 breasts: Symmetrical nodular pattern bilat & distinct lesions, masses & d/c
 chest: clear APX
 GU: (-) CMT; OS mid line unasc; unable to palpate adnexa

Wet prep: blue cells (47) hyphae 47

Cypress Family Medicine

Patricia McFadden DOB: 7-31-58 Allergies: Sulfa

Progress Notes

A: Bextra P ap / CBE
BV

P: Flazyl po

may need MRI
chronic Low Back Pain

1/13/03

Bextra 20mg called in for pain - Bp

1/16/03

40 (D) hip pain no relief - CR.
steroid Bextra didn't help - " - palletti
Cydolone - open MRI

Percocet 5/325 QID # 60 ✓ 1
Toradol 60

Toradol with given (D) flexibles - CR

* out of work 1-16-03 thru 1-27-03

* MRI Scheduled for 1-23-03

Patricia McFadden

Chart# 2689

1/16/03

S: The patient comes in with left hip pain without relief. She is on a steroid. Bextra did not help. Has a history of cervical disc disease. She is allergic to Sulfa.

O: Afebrile. Vital signs stable. Weight is stable. Actually fair ROM of the left hip. I feel her problem is in the lower left back area.

A&P:

1. Back pain. She is given Toradol 60mg QD. Put on Percocet 1 QID #60 and no refills. Consider referral to Dr. Palletti, again. Consider open MRI of the lumbosacral spine. She will be out of work from 1/16 to 1/27.

WA/dbn

Patricia McFadden

Chart# 2689

1/27/03

S: See written note.

WA/dbn

ic: follow-up + MRI Results
& claims for disability benefits for to be filled-out

1/27/03 Dubois 10, Pharynx 25, eyes 1m
(L) distant

* Exam eye for indefinite period per Dr. address

GENERAL:

- () Well Groomed () Unkept () Talkative () Quiet

HEENT:

- (X) NC () AT () PERRL () Accommodates () EOMI
() Conjunctive clear () Sinuses Non-tender () Rhinorrhea
() Teeth good () Dentures () Gums pink () Membranes moist
() Pharynx pink () Tonsils normal () No exuates
() Right TM normal () Left TM normal

***ABNORMALITIES OR OTHER FINDINGS

NECK:

- (X) Lymph nodes normal () Lymph nodes enlarged
() Thyroid normal () No JVD () No carotid bruits

HEART:

- (X) RRR w/o murmur () Irregular () Murmur

LUNGS:

- (X) CTA bilaterally () Wheezes () Crackles
() Coarse airway noise () Labored () Shallow

ABDOMEN:

- () Pos BS () Soft () Flat () Protuberant () No Masses
() No organomegaly () No bruits () No scars () Scars
() No rebound () No guarding () Suprapubic tenderness

EXTREMITIES:

- (X) Warm and dry () Brisk CRT () No rashes (X) No edema
() No unusual skin lesions () Nail fungus () Healthy nails
() Scars () Neck spasm () Flank pain

NEURO:

- (X) Alert () Oriented () Pleasant () Tearful () Flat affect
() Good strength (X) DTRs intact () Normal gait () Tremor
() Good memory recall () Math skills intact
() C.N.s 2-12 intact () Follows basic commands

Physicians FULL signature:

STUDIES:

ASSESSMENT:

- 1. Neck 5x by ap
- 2. L4/L5 disc dist
- 3.
- 4.

PLAN:

- 1. See polio
 - 2.
 - 3.
 - 4.
- FAX to Dr. Polio

OUT OF WORK/SCHOOL

FROM indefinitely

RETURN VISIT 3mth

aticin McFadden AGE 44 ALLERGIES Sulfa

DATE 3-3-03

FLU appt - 4/0 pain @ leg

Phx surgy on back 55L x 2 No help
told she needs surgery Phx MVA x 2.

GENERAL:

() Well Groomed () Unkept () Talkative () Quiet

HEENT:

() NC () AT () PERRL () Accommodates () EOMI
() Conjunctive clear () Sinuses Non-tender () Rhinorrhea
() Teeth good () Dentures () Gums pink () Membranes moist
() Pharynx pink () Tonsils normal () No exuates
() Right TM normal () Left TM normal

***ABNORMALITIES OR OTHER FINDINGS

Chest + over chest

NECK:

() Lymph nodes normal () Lymph nodes enlarged
() Thyroid normal () No JVD () No carotid bruits

No D or JVD

HEART:

() RRR w/o murmur () Irregular () Murmur

LUNGS:

() CTA bilaterally () Wheezes () Crackles
() Coarse airway noise () Labored () Shallow

ABDOMEN:

() Pos BS () Soft () Flat () Protuberant () No Masses
() No organomegaly () No bruits () No scars () Scars
() No rebound () No guarding () Suprapubic tenderness

EXTREMITIES:

() Warm and dry () Brisk CRT () No rashes () No edema
() No unusual skin lesions () Nail fungus () Healthy nails
() Scars () Neck spasm () Flank pain

NEURO:

() Alert () Oriented () Pleasant () Tearful () Flat affect
() Good strength () DTRs intact () Normal gait () Tremor
() Good memory recall () Math skills intact
() C.N.s I-XII intact () Follows basic commands

Physicians FULL signature:

[Handwritten signature]

STUDIES:

See MRI
Wx MVA x 2 + recent MVA

ASSESSMENT:

- 1. Needline
- 2. _____
- 3. _____
- 4. _____

PLAN:

- 1. Needs Sx
- 2. _____
- 3. _____
- 4. _____

OUT OF WORK/SCHOOL

FROM N/A
RETURN N/A

RETURN VISIT

3 months

- I would not go to chiropractor
- Does not need 2nd op - she refuses

[Handwritten mark]

NAME: Patricia McFadden AGE 44 ALLERGIES Sulfa DATE 06/06/03

CC: Pt complains of @ lower back pain that radiates to feet & leg. She also states that she returned to work and is now hurting from her neck to her feet - post Back Surgery. Shts she wd wear a work posture, does a lot of Bemy

GENERAL:

() Well Groomed () Unkept () Talkative () Quiet

HEENT:

() NC () AT () PERRL () Accommodates () EOMI
() Conjunctive clear () Sinuses Non-tender () Rhinorrhea
() Teeth good () Dentures () Gums pink () Membranes moist
() Pharynx pink () Tonsils normal () No exudates
() Right TM normal () Left TM normal

ABNORMALITIES OR OTHER FINDINGS

NECK:

() Lymph nodes normal () Lymph nodes enlarged
() Thyroid normal () No JVD () No carotid bruits

HEART:

() RRR w/o murmur () Irregular () Murmur

LUNGS:

() CTA bilaterally () Wheezes () Crackles
() Coarse airway noise () Labored () Shallow

ABDOMEN:

() Pos BS () Soft () Flat () Protuberant () No Masses
() No organomegaly () No bruits () No scars () Scars
() No rebound () No guarding () Suprapubic tenderness

EXTREMITIES:

() Warm and dry () Brisk CRT () No rashes () No edema
() No unusual skin lesions () Nail fungus () Healthy nails
() Scars () Neck spasm () Flank pain

NEURO:

() Alert () Oriented () Pleasant () Tearful () Flat affect
() Good strength () DTRs intact () Normal gait () Tremor
() Good memory recall () Math skills intact
() C.N.s I-XII intact () Follows basic commands

Physicians FULL signature:

STUDIES: will not be able to work until 6/17 and 1/2 hr phys

ASSESSMENT:

- 1. _____
- 2. (L) shoulder
- 3. _____
- 4. _____

PLAN:

- 1. _____
- 2. percort 5/500 #90
- 3. _____
- 4. _____

OUT OF WORK/SCHOOL FROM May 16 6/02/03 RETURN _____

RETURN VISIT 2wks

Referral: See chabshi?

Lab:

DATE 10/23/03 CHART # 2689 NAME Patricia McFadden AGE 44 SEX F

ALLERGIES Sulfur

TEMP 97° B/P 117/75 PLUSE 68 RESP. _____ WT 176 BS _____ (fasting/non fasting)

CHIEF COMPLAINT pt here for Follow-up
lost job, c/o Back pain

GENERAL: () WELL GROOMED () UNKEPT () TALKATIVE () QUIET

HEENT: () NC () AT () PERRL () ACCOMODATES () EOMI () Conjunctivae Clear () Sinuses Non-tender
() Rhinorrhea () Teeth good () Dentures () Gums pink () Membranes moist () Pharynx pink () Tonsils normal
() No exuates () right TM normal () left TM normal

NECK: () Lymph nodes normal () Lymph nodes enlarged () Thyroid normal () No JVD () No carotid bruits

HEART: ✓ RRR w/o murmur () Irregular () Murmur

LUNGS: ✓ CTA bilaterally () Wheezes () Crackles () Coarse airway noise () Labored () Shallow

ABDOMEN: () Pos BS () Soft () Flat () Protuberant () No masses () No organomegaly () No bruits () No scars
() Scars () No rebound () No guarding () Suprapubic tenderness

EXTERMITIES: ✓ Warm and dry () Brisk CRT () No rashes () No edema () No unusual skin lesions () Nail fungus
() Healthy nails () Scars () Neck spasm () Flank pain Sweater bag

NEURO: () Alert () Oriented () Pleasant () Tearful () Flat affect () Good strength () DTRs intact () Normal gait
() Tremor () Good memory recall () Math skills intact () CNs-IXII intact () Follows basic commands

ABNORMALITIES OR OTHER FINDINGS: ambulatory well

INJECTIONS: None

STUDIES: None

REFERRAL: None

ASSESSMENT: Back pain
1. LS Disc Disease
2. Low Back Pain @ exercise
3. _____
4. _____

PLAN: dy Better
1. muscle relaxer Tapered
2. Continue
3. _____
4. _____

OUT OF WORK/SCHOOL FROM: ? No light duty
RETURN: _____

RETURN VISIT: see me 2 weeks
needs light duty

Physician's Signature/FNP: [Signature]

DATE 07/22/03 CHART # 2689 NAME Patricia Mcadden AGE 44 SEX F

ALLERGIES Sulfas

TEMP 97.2 B/P 116/75 PLUSE 72 RESP. WT 178 BS (fasting/non fasting)

CHIEF COMPLAINT Falling a back pain. ↓ sleep

GENERAL: (X) WELL GROOMED () UNKEPT () TALKATIVE () QUIET

HEENT: () NC () AT () PERRL () ACCOMODATES () EOMI () Conjunctivae Clear () Sinuses Non-tender () Rhinorrhea () Teeth good () Dentures () Gums pink () Membranes moist () Pharynx pink () Tonsils normal () No exuates () right TM normal () left TM normal

NECK: () Lymph nodes normal () Lymph nodes enlarged () Thyroid normal () No JVD () No carotid bruits

HEART: (X) RRR w/o murmur () Irregular () Murmur

LUNGS: CTA bilaterally () Wheezes () Crackles () Coarse airway noise () Labored () Shallow

ABDOMEN: (X) Pos BS () Soft () Flat () Protuberant () No masses () No organomegaly () No bruits () No scars () Scars () No rebound () No guarding () Suprapubic tenderness

EXTERMITIES: () Warm and dry () Brisk CRT (X) No rashes (X) No edema () No unusual skin lesions () Nail fungus () Healthy nails () Scars () Neck spasm () Flank pain Bell's palsy LE.

NEURO: (X) Alert () Oriented () Pleasant () Tearful () Flat affect () Good strength () DTRs intact () Normal gait () Tremor () Good memory recall () Math skills intact () CNs-IX|| intact () Follows basic commands

ABNORMALITIES OR OTHER FINDINGS: finished therapy - done to Georgia. Now hurt low back 3/03 now unemployed. Radiology: "My Back is broken"

INJECTIONS:

STUDIES: None

REFERRAL: None

ASSESSMENT: 1. Back pain

PLAN: 1. work therapy, 2. Ambien 1/2 tab, 3. Lorazepam (want Percocet)

OUT OF WORK/SCHOOL FROM: RTW RETURN:

RETURN VISIT: 3 wks

My go back to work - get diff of

Physician's Signature/FNP

Doctor's Care SUNTER
220 BROAD ST
SUNTER SC 29150
(803) 778-6585

CHART #
Encounter #: 122973
628521.0

DATE: 01/06/03

NAME
FIRST PATRICIA

PAT #
MCADDEN
LAST

45

TIME: Mon Jan 6 18:36

SEX: F AGE: 44

BIRTH DATE: 07/31/58

HOME ADDRESS: 3924 ELLIOTT RD
PINELAND SC 29125

HOME PHONE: (803) 452-6686

EMPLOYER: YANANGALIA

BUSINESS PHONE: (803) 505-9100

REG. M.D.

LEGALLY RESPONSIBLE PARTY if pt a minor/Relationship

SS#

Patricia McAdden

ECBS COLUMBIA SERVICE

STATEMENT OF PROBLEM OR INJURY

LAST-TETANUS: 977

MED. ALLERGIES

Sulfu

mva 12-14.02

Wt 170 182 170 P 88 170 915

HISTORY:

RAIN IN HIP AND DOWN LEFT LEG

MEDICATIONS (pt. now on):

HCTZ, Skelaxin

Also 40 cough

Onset last thursday

PHYSICAL:

Unremarkable Problem

MENTAL	_____
EYES	_____
EARS	_____
NOSE	_____
THROAT	_____
NODES	_____
LUNGS	_____
HEART	_____
ABDOMEN	_____
PERINEUM	_____
ARMS	_____
LEGS	_____
NEURO	_____
SKIN	_____
INJURY	_____
OTHER	_____

*90 (L) sided ball pain -
radiating down d, leg
into (L) foot.
was a bendy / lefty heavy*

pmH

O/E

ND

Back non sp tend

(L) low back

SLR (L) Paid Doctor's Care

45-60 Cash Cr. Card

DTR BIC Check # 15

tend / w heavy SMC lead

Services Rendered

Results

Notes

LOOD WORK _____
NJECTIONS _____
RINALYSIS _____
-RAY _____
OTHER _____

*PP 2
724*

99214 99

DIAGNOSIS:

LBP - Radicular -

SM Lead

INSTRUCTIONS & PRESCRIPTIONS & TREATMENT:

*VIOXX 25 x 4d (8pm) set LS spin in Am
- Steroid 100 - 6d
- Skelaxin 400 TID x 4d (already)*

1/6 -> 1/9

STAFF:

Monstella, Staller, M. F...

M.D.

RELEASE OF MEDICAL INFORMATION & ASSIGNMENT OF BENEFITS

AUTHORIZE THE RELEASE OF MEDICAL INFORMATION NECESSARY TO PROCESS THIS CLAIM AND AUTHORIZE PAYMENT OF MEDICAL BENEFITS TO DOCTOR'S CARE PHYSICIANS OR THEIR DESIGNEE FOR SERVICES DESCRIBED ABOVE

1/6/03

Patricia McAdden

Doctor's Care SUMTER
220 BROAD ST
SUMTER SC 29150
(803) 778-6555

CHART #
Encounter #: 123073
PAT # 628521.0

DATE: 01/09/03

NAME
FIRST: PATRICIA
LAST: MCCADDEN

130

TIME: Thu Jan 9 13:13 SEX: F AGE: 44 BIRTH DATE: 07/21/58

HOME ADDRESS: 3920 ELLIOT RD
PINEWOOD SC 29126 HOME PHONE: (803) 452-5686

EMPLOYER: YANANGAWA BUSINESS PHONE: (803) 505-9100

REG. M.D. LEGALLY RESPONSIBLE PARTY if physician Relationship: SS#
CBS COLUMBIA SERVICE

STATEMENT OF PROBLEM OR INJURY: LAST TETANUS: 977 MED. ALLERGIES: Sulfa
WGT: BP P R T 98.1

HISTORY: PAIN IN HIP AND DOWN LEFT LEG
EVALUATION: MEDICATIONS (pt now on): VIOXX 25, Sterapred D's, Skelaxin AOD, HCTZ

PHYSICAL: Unremarkable Problem

MENTAL	_____
EYES	_____
EARS	_____
NOSE	_____
THROAT	_____
NODES	_____
LUNGS	_____
HEART	_____
ABDOMEN	_____
PERINEUM	_____
ARMS	_____
LEGS	_____
NEURO	_____
SKIN	_____
INJURY	_____
OTHER	_____

evaluation
LBP - Radicular pain
Still hurt L, lower back
SLR - 45-60 deg
Tends to be waddling / walking gait
LS - spine (+) osteophytic
As
ADT/BRK
Day 02 Sterapred

Doctor's Care
Check Cash Cr. Card
Check # 1500

Services Rendered

GOOD WORK	_____
INJECTIONS	_____
LABORATORY ANALYSIS	_____
X-RAY	_____
THERAPY	_____

Results: 724.2
Notes: 99214 99
SM/Lord

DIAGNOSIS: LBP - Osteophytic arthritis Radicular

INSTRUCTIONS & PRESCRIPTIONS & TREATMENT:
Cont Sterapred D/skelaxin Fluvastatin
VIOXX 25 PT Given to DM

STAFF: [Signature] H. [Signature] REFERRAL NEEDED M.D.



PATIENT NAME: MCFADDEN, PATRICIA
MRN: QUORTU358997
ACCOUNT # (Opt): 12010186
DATE OF BIRTH: 07-31-1958
REQUESTING DR: RASUL, MUHAMMAD
ATTENDING DR:
ORDER LOCATION: OP
ROOM NUMBER:
SERVICE DATE: 01-07-2003 14:15
REPORT DATE: 01-08-2003 12:43

TUOMEY HEALTHCARE SYSTEM

STUDY: RAD.LSP XR LUMBAR SPINE 0962
REASON: REASON :LBP

LUMBAR SPINE

Views of the lumbar spine show a small osteophyte formation at L2-3, L3-4, L4-5, and L5-S1. Osteophytes are most pronounced at L3-4. Bony alignment is normal and no acute bone injuries are seen.

TRANSCRIPTIONIST: CALLAHAN, SHARON
READING RADIOLOGIST: PANNELL, TIMOTHY

This report has been reviewed and released by:

PANNELL, TIMOTHY

Patient Name: MCFADDEN, PATRICIA
Unit No: 358997
Exam Date: 01/07/2003

LUMBAR SPINE

Views of the lumbar spine show a small osteophyte formation at L2-3, L3-4, L4-5, and L5-S1. Osteophytes are most pronounced at L3-4. Bony alignment is normal, and no acute bone injuries are seen.

ml

CC: MUHAMMAD RASUL

Technologist: JENNIFER WILLIAMS, RT(R) (M)

ACR Code:

Transcribed Date/Time: 01/08/2003 (1247)

Transcriptionist: INPHACT

Printed Date/Time: 01/09/2003 (1334)

TIMOTHY L. PANNELL, M.D.

PAGE1

Signed Report

XR LUMBAR SPINE 0962

Name: MCFADDEN, PATRICIA
Phys: RASUL, MUHAMMAD
Dob: 07/31/1958 AGE: 44 SEX: F
Acct No: 12010186 LOCATION: XR
Exam Date: 01/07/2003 STATUS: REG CLI
Unit No: 358997

Patient Name: MCFADDEN, PATRICIA
Unit No: 358997
Exam Date: 01/22/2003

ABNORMAL

MRI OF THE LUMBAR SPINE

DATE: 1/22/03.

FINDINGS: Standard MRI of the lumbar spine demonstrates the conus medullaris to be at a normal level without mass. A moderate-sized herniated disc is seen at L4-5, posterior leftward, impinging upon the exiting nerve root on the left at this site. The remainder of the disc spaces are well maintained with no other disc herniations evident.

IMPRESSION: Moderate L4-5 posterior leftward herniated disc impinging upon the exiting nerve root at this level.

CC: WILLIAM C ALDRICH MD

Technologist: TAMMY B ROBINSON, RT(R) (CT)

ACR Code:

Transcribed Date/Time: 01/23/2003 (0904)

Transcriptionist: INPHACT

Printed Date/Time: 01/28/2003 (1651)

GILBERT E PARKER JR MD

PAGE1

Signed Report

OP/MR L SPINE W/O 0050

Name: MCFADDEN, PATRICIA
Phys: ALDRICH, WILLIAM C
Dob: 07/31/1958 AGE: 44 SEX: F
Acct No: 12014493 LOCATION: OPIMAGIN
Exam Date: 01/22/2003 STATUS: REG CLI
Unit No: 358997

SOUTHEASTERN SPINE INSTITUTE

MCFADDEN, PATRICIA
Patient #48872

June 13, 2007

Ms. McFadden in returns in follow up. She is continuing to have some measure of right leg pain and numbness. I saw her on May 2, 2005, at which point I gave her restrictions and an impairment rating. She still takes analgesics. I do not think that she needs to consider something along the lines of a dorsal column stimulator, although it is theoretically an option for her.

My recommendation is for observation. She is to follow up with me on a q. 4 month basis. Her x-rays show her fusion mass in my opinion to be solid and there is no neurologic deficit other than dysesthesia in the distribution of her L5 root on the right without weakness.

Steven C. Poletti, MD
SCP/gb

Dictated but not read.
T:07/08/07

26207 JL

McFADDEN, PATRICIA

Patient #48872

May 2, 2007

Ms. McFadden returns in follow-up. Her MRI is reviewed and it really does not indicate any problems with her MRI scan as far as retropulsion of the interbody device or right sided root entrapment at the L4-5 level. There is some right sided disc bulging at L5-S1 but nothing that would be surgically amenable. I think this situation is stable. I have given her a follow-up to see me in 6 weeks time. I do think that Ms. McFadden will be at maximum medical improvement, her impairment for her lumbar spine is anticipated to be in the thirty percent (30%) range. She should be on sedentary restrictions. I am going to refill her Percocet. She is going to follow-up is to be with me in 6 weeks.

ADDENDUM: I do believe that Ms. McFadden will have an impairment of thirty percent (30%) to the spine as a result of segmental instability with radiculopathy resulting in fusion with an additional five percent (5%) impairment rating secondary to residual pain and weakness in her legs. That is a separate impairment from her low back.

Ms. McFadden's impairment is such that she may not be able to return to a functional workplace. She is given sedentary restrictions, she should not do any kind of prolonged bending, twisting, pushing, pulling, no prolonged sitting. She will remain on Percocet on a long-term basis. She may be a candidate in pursuing social security disability

Steven C. Poletti, MD
SCP/dam

Dictated but not read.
T-05/10/07

RECEIVED

MAY 15 2007

CRAWFORD & COMPANY

SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

April 18, 2007

Patricia returns in follow-up.

Her x-rays continue to show unchanged position of the interbody device and hardware.


She is ambulatory and is not limping with ambulation. We are going to get an MRI with gadolinium contrasting to make sure there is no other pathology present. She is in agreement. She will follow up with me after this.

X-ray Report:

X-rays: Her x-rays continue to show unchanged position of the interbody device and hardware.

Steven Poletti, M.D.
SCP/dmp

Dictated but not read
T- 4/25/07



SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

March 7, 2007

Patricia returns in follow-up. She has continued to complain of this throbbing right leg pain, non-progressive in physical therapy.

Her x-rays show adequate position of the interbody device. I still don't see a lot of bone in the interspace but certainly no screw loosening or evidence of pseudarthrosis. With bone morphogenic protein I would expect this to consolidate over the course of the next several months.

She has a difficult situation in that her pain is actually worse on the contralateral side postoperative. I can detect no specific weakness. She has normal toe extension strength. She has some dysesthesia in the distribution of her L5 root.

My recommendation is for observation. She is going to follow up with me in six weeks time at which point we will consider potential scanning if she is no better.

X-ray Report:

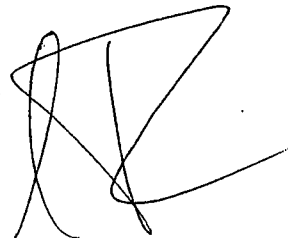
X-rays: Her x-rays show adequate position of the interbody device.

Steven Poletti, M.D.

SCP/dmp

Dictated but not read

T- 4/25/07



SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

January 22, 2007

Ms. McFadden is seen in followup. She is continuing to have some measure of pain in her low back. She has been followed by Dr. Aldrich. She has tried Fentanyl patch and Percocet. She remains with moderately severe low back pain. She is on moderate-dose analgesic medication. The fusion shows slow incorporation of the fusion mass. She continues to smoke cigarettes, which is somewhat of a problem. I think that we should observe this. She may end up requiring some form of inpatient pain management if she continues to take our analgesics.

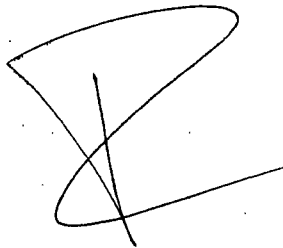
My recommendation is for observation. She will follow up with me in six weeks time, and we'll consider physical therapy at that point. X-rays show adequate position of the interbody device and lateral fusion albeit not solid interposition interbody grafting at this point.

X-ray report:

X-rays: X-rays show adequate position of the interbody device and lateral fusion albeit not solid interposition interbody grafting at this point.

Steven C. Poletti, MD
SCP/dmp

Dictated but not read.
T-2/23/07



SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

December 20, 2006

Ms. McFadden returns in followup.

Her x-rays show early inner position bridging of bone, and the fusion is not fully healed. She is still smoking, which is not ideal in the fusion stage; and at this point she is just over three months postoperative.

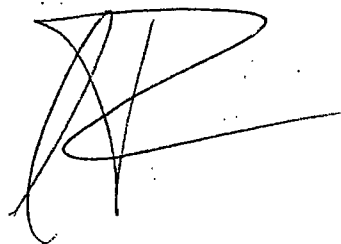
My recommendation is for observation. She is somewhat frustrated that she is having some axial pain, but there is nothing that would suggest a need for further imaging.

X-ray report:

X-rays: Her x-rays show early inner position bridging of bone, and the fusion is not fully healed.

Steven C. Poletti, MD
SCP/dmp

Dictated but not read.
T-1/8/07



SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

November 15, 2006

Patricia returns in follow-up. She is S/P surgical intervention. Her x-rays look adequate. The interbody bone is in adequate position. She is ambulatory.

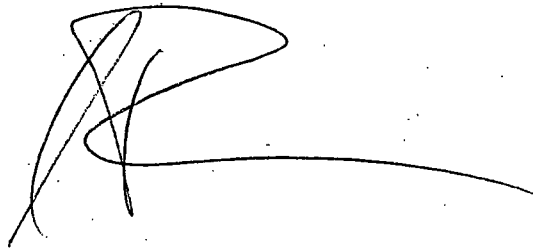
My recommendation is for observation. She apparently saw Dr. Aldrich and he gave her a Fentanyl 25microgram patch and 180 10mg Percocet. She states that she is not getting any relief with the 10/650's and wants to switch her medication. I don't think that we need to do this. I have told her it would be best to stick with one doctor as far as the analgesics are concerned. She was given 180 Percocet on 10/18.

My recommendation is for observation. Follow-up to be with me in 5 weeks time. She is on off duty status. She is to continue utilizing her lumbar brace.

X-RAY REPORT: Her x-rays look adequate. The interbody bone is in adequate position.

Steven C. Poletti, MD
SCP/dam

Dictated but not read.
T-11/27/06



SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

October 18, 2006

Ms. McFadden is seen in follow-up, she is here for a second postoperative visit. She has some persistent tingling and numbness into the right leg. Her ankle dorsiflexion strength is improved. Her x-rays look very good, she is S/P interbody fusion at the L4-5 level. She is ambulatory. My recommendation is for observation. She is on off duty status. She will follow-up with us in 1 months time.

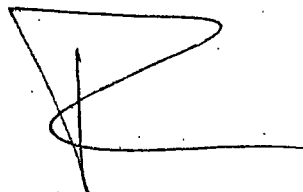
X-RAY REPORT: Her x-rays look very good.

Steven C. Poletti, MD

SCP/dam

Dictated but not read.

T-10/30/06



SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

September 22, 2006

POST OP VISIT: Ms. McFadden is S/P PLIF L4-L5, this was done on 9/12/06. Her staples were removed today, she is well healed, she has no signs of infection. I did review all precautions and scar care with this patient. She is currently walking with a walker, she does report some right calf pain and tenderness with swelling. She was examined today, she is tender to palpation of her calf or dorsiflexion of her right ankle. She reports no bowel or bladder problems at today's visit, she has had a positive bowel movement since leaving the hospital.

AP/lateral x-rays were taken today, she has good placement of her screws, her rod, her interbody is well placed, her lateral fusion shows signs of consolidation. It is noted today that she did tell me that she dropped all of her pain medication in the toilet on Tuesday and has been out since Tuesday. She states that our office gave her a new script and she tried to have it filled at Wal Mart and they stated they would not fill it for her.

ASSESSMENT/PLAN :

1. We will give her a prescription for Ultram 50mg 1-2 PO q 4-6 hours p.r.n. pain #90 with no refills.
2. We will send her over to East Cooper Hospital for a non-invasive vascular study of her right lower extremity. We will call her with the results.
3. She will return to the clinic in approximately 3-4 weeks with x-ray.

X-RAY REPORT: AP/lateral x-rays were taken today, she has good placement of her screws, her rod, her interbody is well placed, her lateral fusion shows signs of consolidation.


Daniel R. Butler, PA-C

DRB/dam

Dictated but not read.

T-09/27/06

SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

September 22, 2006

Mrs. McFadden was sent over for a non-invasive ultrasound vascular study of her right lower extremity. This was completed today. It was reviewed by Dr. Norman Khoury; it was negative per his report. The patient was called with the results.

Daniel L. Butler, P.A.-C
DLB/dmp

Dictated but not read
T:10/11/06

SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

January 31, 2006

Ms. McFadden is seen in follow-up. In the meantime she has been through a ride in nonoperative modality. She has had a follow-up MRI scan in Florence indicating the presence of previous laminectomy at the L4-5 level, foraminal encroachment greater on the left and facet arthropathy. There is enhancing tissue soft tissue changes around the left L-5 root. There is a very mild degenerative change at the L3-4 level but the main change is at the L4-5 level. The issue for her is that she is potentially a candidate to consider surgical intervention on her low back to involve complete discectomy and interbody fusion. I have told Ms. McFadden in no uncertain terms that surgical intervention to involve complete discectomy and interbody fusion is far from a magic wand answer and truly a last resort with regards to helping her with regards to this significant pain. This lady had discectomy done for a foot drop. Postoperatively she has continued back pain, there is some measure of disc space collapse, she has low back pain, buttock pain, hip pain, and leg pain. She understands that surgical intervention to involve discectomy and fusion is a last resort. Even with successful surgical intervention she is likely to have some measure of residual symptoms. She understands the risks associated with surgical intervention and wishes to proceed. We have had a lengthy discussion with regards to this today. We will go ahead and schedule surgical intervention pending approval and defer an opinion with regards to maximum medical improvement until she recovers from surgical intervention as described.

Steven C. Poletti, MD
SCP/dam

Dictated but not read
T-2/20/06

SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

November 29, 2005: Ms. McFadden returns in follow up. She has been seen by Dr. Greg Jones in second opinion in April of this year. Dr. Jones' MRI is reviewed by me and it is voluminous and it states that the patient is "likely at maximal medical improvement", but also a candidate for epidural injection, EMG studies, and significant trigger point injections.

Basically, to summarize, Ms. McFadden had a job injury, underwent epidural injections ultimately followed by laminectomy/discectomy on 3/11/03. She was last seen by me in February of this year and given a fifteen (15) percent permanent impairment rating. She had an MRI scan done by me in February, showing she had a worsening of her medical condition, status post discectomy.

There is not a simple answer for this lady's problem. Certainly, the recommendations from Dr. Jones' independent medical evaluation would not change the underlying condition of disc disruption in her spine. She may be a candidate for further operative intervention, but understands this is a last resort. My opinion is that she is either a candidate for further intervention to involve discectomy and interbody fusion versus living with the problem as it is.

My recommendation is get an updated MRI scan to see if there is any new change in her medical condition, and she is in agreement. She has low back pain with positive straight leg raising and toe extension weakness noted.

Follow up will be with me after this.

Steven C. Poletti, M. D.
SCP/hcs

Dictated but not read.
T-12/28/05

Guy C. Heyl, Jr., MEDICATION, FACS, FAAOS
Orthopedic Consultants, P. A.

3415 Meadow Drive
Aiken, SOUTH CAROLINA 29801-2883
803-649-2600
January 12, 2004

Orthopedic Disability Evaluation

Mr. Nelson R. Parker, Esquire
Attorney at Law
Post Office Box 138
Manning, South Carolina 29102

Dear Mr. Parker:

I saw Ms. Patricia McFadden, a 45-year-old woman, in the office on 1/12/04 at your request for the purpose of doing a comprehensive independent medical evaluation. I obtained medical information from the patient and from medical records sent with the patient. This woman was injured on or about 10/29/02 in the course of her employment at a manufacturing plant, Yanagawa of South Carolina. She was attempting to remove parts in a basket from one place and move them to another when the basket hung up and she jerked and twisted her neck and back. She experienced acute onset of pain in her neck and over the next several days in her low back and left leg. She reported this to her employer and continued to attempt to work, but gradually got more and more difficulties with pain in her low back with radiation into her left leg. She consulted Dr. William C. Aldrich, M.D., at Cypress Family Medicine in Manning, on 10/31/02. She continued to work, but continued to have significant pain in her back and into her left leg. On an office visit 1/16/03, Dr. Aldrich recommended referral to Dr. Steven Poletti, who had previously treated this woman for another problem.

Dr. Steven C. Poletti, M.D., an Orthopedic surgeon, who was then at the Carolina Spine Institute in Mt. Pleasant, S.C. saw her January 29, 2003. He recommended an epidural steroid injection which was carried out but did not do any good at all. He reviewed an MRI of the lumbar spine and read by Dr. Gilbert E. Parker, Jr., M.D., radiologist, as showing a moderate sized herniated disc at L4-5 on the left. On the basis of this finding and the fact that she did not get better with the epidural steroid injections, he recommended surgical treatment which was carried out at East Cooper Regional Medical Center in Mt. Pleasant on 3/11/03. At surgery, a significant disc herniation was noted and it was removed surgically. Dr. Poletti followed her in his office for multiple visits. She was discharged from his treatment on May 28, 2003.

At the time of my examination, Ms. McFadden states that following the surgery she had significant relief of the pain in her leg, but has continued to have back pain. She states that she attempted to return to work on June 2, 2003, but was placed back at a job requiring that she pick up a five-pound object from a basket and place it in another basket which was on the floor, requiring her

to yield a 30% impairment of the whole person. I think this woman may get worse with further time, but will not respond, in my opinion, to further medical treatment, therefore, she should be considered to have reached maximum medical improvement. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy C. Heyl, Jr.", written in a cursive style.

Guy C. Heyl, Jr., M.D.

GCH/kd

Guy C. Heyl, Jr MD
Orthopedic Consultants, PA
3415 Meadow Drive
Aiken, SC 29801-2850

Impairment Analysis According to AMA Guide
Evaluation of Permanent Impairment - ~~3rd~~ Edition (revised) ~~1994~~
5th *2000*

PATIENT INFORMATION

Account: 4X04
Dominant Extremity: r
Name: MS. PATRICIA MCFADDEN 250-15-2721
Notes: Atty: Mr. Nelson R. Parker, Esquire

IMPAIRMENT SUMMARY

Impairment of the Whole Person is **30%**

Impairment Breakdown

- Lower Extremity (left) **14%**
- Pain & Motor Deficits (ILE left) 2 % ILE
- Spine 25 % IWP
- Spine (Cervical Region) 8 % IWP
- Spine (Lumbosacral Region) 18 % IWP

Guy C. Heyl, Jr MD
Orthopedic Consultants, PA
3415 Meadow Drive
Aiken, SC 29801-2850

Impairment Analysis According to AMA Guide
Evaluation of Permanent Impairment - ~~3rd~~ Edition (revised) ~~1994~~
5th *2000*

Total Impairment of Lumbosacral Region = 18 % Impairment of Whole Person

Combining Regional Values of the Spine For Total Spine Impairment ...
Total Impairment of the Spine = 25 % Impairment of the Whole Person

ANALYZING PELVIS ...

FINAL CALCULATIONS - CALCULATING WHOLE PERSON IMPAIRMENT ...

Combining ...
Lower Extremity (LEFT) % of Whole Person - *6%*
Spine % of Whole Person - 25 %

Total Impairment of the Whole Person = *30%*

END OF CALCULATIONS ...

Date: 01-12-2004 11:42:35

Guy C. Heyl, Jr MD
Orthopedic Consultants, PA
3415 Meadow Drive
Aiken, SC 29801-2850

Impairment Analysis According to AMA Guide
Evaluation of Permanent Impairment - ~~3rd~~ Edition (revised) ~~1991~~
576 *2000*

WORKING CALCULATIONS FOR PATIENT MS. PATRICIA MCFADDEN ...

ANALYZING UPPER EXTREMITY (RIGHT) ...

ANALYZING LOWER EXTREMITY (RIGHT) ...

ANALYZING UPPER EXTREMITY (LEFT) ...

ANALYZING LOWER EXTREMITY (LEFT) ...

Grade 2 Pain/Loss of Sensation of Nerve - L-4 = 1 %
Grade 2 Pain/Loss of Sensation of Nerve - L-5 = 1 %
Combining Lower Extremity Nerve Impairments ...
Total PNS Impairment = 2 % Impairment of Lower Extremity

TOTAL IMPAIRMENT OF THE LOWER EXTREMITY (LEFT) ...

Combining ...
Peripheral Nervous System Impairment - 2 %
Total Impairment of Lower Extremity = *14* %
Lower Extremity Accounts for 40 % of Whole Person ...
Total Impairment of Lower Extremity = *6* % Impairment of Whole Person

Grade of dorsiflexion weakness Double
T 17-8 P 532 12% LLE

ANALYZING SPINE ...

Cervical Region Intervertebral Disc or Other Soft-Tissue Lesion
Unoperated, With Medically Documented Injury And A Minimum of Six
Months of Medically Documented Pain And Rigidity Associated With
None-to-Minimal Degenerative Changes On Structural Tests = 4 %

Cervical Region Right Lateral Flexion of 40 deg = 1 %
Cervical Region Left Lateral Flexion of 40 deg = 1 %
Cervical Region Right Rotation of 60 deg = 1 %
Cervical Region Left Rotation of 65 deg = 1 %
Adding Cervical Region Flexion, Extension, Lateral Flexion, Rotation ...
Combining Cervical Region Abnormal Motion, Fractures, Compressions, Dislocations, Other Disorders % ...
Total Impairment of Cervical Region = 8 % Impairment of Whole Person

Lumbosacral Region Intervertebral Disc or Other Soft-Tissue Lesion
Surgically Treated Disc Lesion With Residual Symptoms = 10 %

Lumbosacral Region True Lumbar Extension of 20 deg = 2 %
Lumbosacral Region True Lumbar Flexion of 30 deg With Sacral (Hip) Flexion of 40 deg = 7 %
Adding Lumbosacral Region Flexion, Extension, Lateral Flexion ...
Combining Lumbosacral Region Abnormal Motion, Fractures, Compressions, Dislocations, Other Disorders % ...

EAST COOPER REGIONAL MEDICAL CENTER
1200 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

REPORT OF OPERATION

Patient Name: MCFADDEN, PATRICIA
DOB: 07/31/1958

MRN: 113-63-26
Pt. Class: Inpatient Room/Bed: - -

Surgeon: STEVEN POLETTI, M.D.
Assistants:

Date of Operation: 3/11/03
Anesthesia:
Anesthetist:

INTERPRETATION:

Preoperative Diagnosis: Disk herniation left L4-5.

Postoperative Diagnosis: Same as above.

Operation Title: Laminectomy diskectomy L4-5.

ESTIMATED BLOOD LOSS : Minimal.

INDICATIONS: The patient has a left-sided herniation with foraminal herniation causing L4 and L5 root compromise with EHL weakness, positive straight-leg raising, dysesthesia in L5 distribution. The patient is admitted for surgical intervention to involve laminectomy diskectomy. The patient understands the remote possibility of infection, bleeding and death and spinal fluid leakage, the fact that she may have risk of recurrent disk herniation and the fact that she may have some permanent nerve injury as a result of the disk herniation pressing significantly against the nerve root. She understands the risk of surgical intervention and wishes to proceed.

PROCEDURE: The patient was intubated and placed prone on the spine frame. The back was prepped and draped in a sterile fashion. C-arm fluoroscopy was used. An 11 blade was used for an 18 mm incision and further dilated with Metrics self retaining retractor placed with 18 mm width with the muscle splitting approach. This showed the interlaminar space at L4-5 on the patient's left. Ligamentum flavum was elevated. Minimal laminotomy was done to identify the L5 root which was retracted medially. Just lateral to the pedicle was a significant disk herniation with pseudocapsule elevated with rongeur. Pituitary rongeur was used to remove all free nuclear material. There was significant epidural bleeding controlled with bipolar cautery. The root was freely mobile after this. The back was irrigated with bacitracin and saline. The fascia was infiltrated with Marcaine solution and closed with 2-0 Vicryl and the skin with staples. Sterile dressing was placed. The patient was sent to the recovery room in stable condition.

STEVEN C POLETTI, M.D.

Dictated on: Mar 12 2003 12:00A Transcribed By: CF on Mar 13, 2003

EAST COOPER REGIONAL MEDICAL CENTER
1200 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

REPORT OF OPERATION

Patient Name: MCFADDEN, PATRICIA MRN: 113-63-26
DOB: 07/31/1958 Pt. Class: Outpatient Room/Bed: --

Surgeon: GEORGE RICHARDSON, M.D. Date of Operation: 1/29/03
Assistants: Anesthesia:
Anesthetist:

INTERPRETATION:

Preoperative Dx: Lumbar disk displacement.
Postoperative Dx: Same as above.
Operation Title: Left L4-5 lumbar epidural steroid injection

PROCEDURE: After IV placement, the patient was positioned prone on the fluoroscopy table. Conscious sedation was obtained using IV Versed. Under fluoroscopy the appropriate sites of injection were identified and the overlying skin marked. The area was prepped and draped in the usual sterile fashion. Skin and subcutaneous tissue were anesthetized with 1% lidocaine. A 3 1/2 inch 17 gauge Tuohy needle was advanced to the appropriate interspace. The position within the epidural space was confirmed with Isovue contrast. A solution of 2 cc 1% Xylocaine and 160 mg Depo-Medrol was injected. Patient tolerated the procedure satisfactorily. Vital signs were monitored including blood pressure, pulse, and O₂ saturation prior to, during, and after the procedure.

Follow up evaluation of the patient in the recovery area showed that the patient was doing well post procedure and was discharged from the hospital without incident:

GEORGE R RICHARDSON III, M.D.

Dictated on: Jan 29 2003 12:00A Transcribed By: CF on Jan 30, 2003

SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA
Patient #48872

May 28, 2003

Ms. McFadden returns in follow-up. Her leg is improved. She is having some right sided low back pain. She has undergone discectomy on 03/11/03. Her leg is improved. She has back pain. I think she should do some physical therapy for strengthening.

Of note is that there is some question about her disability involved with this situation post operatively. There is some question that there is not adequate documentation. Ms. McFadden was first seen by me for her back problem on January 20th when she was having some back and her left leg where she had this significant disc herniation and the report of her MRI from 01/22/03 indicates a moderate left sided disc herniation with impingement at L4-5. She had an injection. We saw her on February 19th and I felt that she had an increase in her neurologic deficit with a partial foot drop and she underwent surgery. Post operatively she was improved. She was allowed to drive. She was seen on March 27th and placed on off duty status. She followed with me on April 23rd. Her strength was improved. She remained on off duty status until now. She is allowed to return to work at this point. I think it is reasonable that her period of out of work post surgical is 2 1/2 months and this is reasonable for a disc herniation of this size having undergone the type of surgery that she has.

Her situation is well documented in all of her notes and if there is any question about any of the details of her medical care I would be glad to answer any questions directly. Her follow-up will be with me as needed.

Steven C. Poletti, M.D.
SCP/cdb

Cc: Patricia McFadden

Dictated but not read
T-06/03/03

Addendum: Apparently I made a note of an x-ray on Ms. McFadden from previous. This was an error. She underwent neck surgery in the past and had an x-ray but did not have an x-ray last month and did not have an x-ray on her exam today. Again, her follow-up is to be with me as needed.

SOUTHEASTERN SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

April 23, 2003

Ms. McFadden returns in follow-up. X-rays look very good. She is ambulating better. Her strength is better.

My recommendation is for observation. She is going to continue with observation, she is going to follow-up with me in 1 months time.

Steven C. Poletti, M.D.

SCP/dam

Dictated but not read.

T-5/7/03

CAROLINA SPINE INSTITUTE

McFADDEN, PATRICIA
Patient #48872

March 27, 2003

Ms. McFadden returns in follow-up. She is post operative from discectomy. She is complaining of proximal pain but no distal pain. Overall I think she is doing fairly well. She is allowed to drive. She is on off duty status. She is going to follow-up with me in four week's time.

Steven C. Poletti, M.D.
SCP/cdb

Dictated but not read
T-03/27/03

900 Bowman Road, #300
1941 Savage Rd., Ste. 100-E
9295 Medical Plaza Drive

Mt. Pleasant, SC 29464
Charleston, SC 29414
N. Charleston, SC 29413

SC: 849-1553
SC: 763-2720
SC: 863-8542

Fax 884-0629
Fax 763-6022
Fax 863-1012

CAROLINA SPINE INSTITUTE

McFADDEN, PATRICIA

Patient #48872

February 19, 2003

Ms. McFadden returns in follow-up. The injection really has not helped her at all. She still has significant radiating pain.

I don't think Ms. McFadden is going to get better without surgery. She has a partial foot drop and the sequestered disc fragment. I do think discectomy would be predictable and help with her radicular pain. She is in agreement. She will see us back after this.

Steven C. Poletti, M.D.

SCP/dam

Dictated but not read.

T-2/24/03

900 Bowman Road, #300
1941 Savage Rd., Ste. 100-E
9295 Medical Plaza Drive

Mt. Pleasant, SC 29464
Charleston, SC 29414
N. Charleston, SC 29418

(843) 849-1551
(843) 763-2720
(843) 863-8542

Fax 884-0629
Fax 769-6022
Fax 863-1012

CAROLINA SPINE INSTITUTE

McFADDEN, PATRICIA
Patient #48872

January 29, 2003

Ms. McFadden is seen in follow-up. I operated on her years ago for a cervical disc herniation. She now has low back pain, buttocks pain, and left hip and leg pain. She has had a MRI of her lumbar spine.

Exam indicates her to have positive straight leg raising and EHL weakness with dysesthesia in the posterolateral aspect of her left leg.

My recommendation is that she consider a selective epidural injection on the left at L4-5 based on a MRI showing a moderate left sided L4-5 disc herniation. She is in agreement. She will follow-up with me after this.

Steven C. Poletti, M.D.
SCP/cdb

Dictated but not read
T-02/03/03

900 Bowman Road, #300
1941 Savage Rd., Ste. 100-E
9295 Medical Plaza Drive

Mt. Pleasant, SC 29464
Charleston, SC 29414
N. Charleston, SC 29418

(843) 849-1551
(843) 763-2720
(843) 863-8542

Fax 884-0629
Fax 769-6022
Fax 863-1012



Claimant's Name: Patricia McFadden SSN: _____ Employer's Name: Yanagawa of South Carolina
 Address: 9 s. Boundary Street Address: Clarendon County Industrial Park
 City: Manning State: SC Zip: 2910 City: Manning State: SC Zip: 2910
 Home Phone: (803) 435-8074 Work Phone: () - Insurance Carrier: SOMPO Japan Insurance Company
 Preparer's Name: Duke K. McCall, Jr. Preparer's Phone #: (864) 240-2403

Compensation Paid:	Number of Weeks	From	To	Amount
1. Number of Weeks T.T.	_____	_____	_____	\$ _____
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ <u>52000.00</u>
Total Compensation Paid				\$ _____
6. Total Medical Benefits* Paid	_____	_____	_____	\$ _____
7. Funeral Benefits	_____	_____	_____	\$ _____

Case Denied

Date of Injury: 10/29/2002
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Patricia McFadden
 Claimant

By: Duke K McCall, attorney
 Employer's Representative

2/15/08
 Date

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	_____	\$ _____
B. Attorney's Fee Paid by Employer	_____	\$ _____
C. Attorney's Fee Paid by Claimant <small>(Non-contingent fees only)</small>	_____	\$ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

South Carolina Workers' Compensation Commission
P. O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0221928
Carrier File # 2313-26207
Carrier Code #
Employer FEIN

Patricia McFadden
Claimant's Name
9 Boundary Street Manning SC 29102
Address City State Zip
803-435-8074
Home Phone # Work Phone #

Yanagawa of South Carolina
Employer's Name
1878 Joe Roberts Jr. Blvd Manning SC 29102
Address City State Zip
Broadspire
Insurance Carrier
704-364-2252 x 21
Phone #

James H. Lawton
Preparer's Name

1. Date of Injury: 10 29 2002
month day year

2. Total Weeks of Compensation Paid: 205

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TTD From: 9-12-2006 To: 01/21/2008
Type: PPD 10% leg / 33.76% back From: Per form 16 To: 121 1/7 WEEKS
Type: From: To:

4. Date of First Payment: month day year

5. Total Amount Paid : (a) Compensation: \$37,165.24

(b) Medical (Include Nursing, Hospital Drugs, etc): \$74,832.30

6. Informal conference is requested: Yes No
(Check one)

7. Use these lines to send a memo to the Commission:

J. H. Lawton 704-364-2252 10-29-2007
Employer's Representative Phone # Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information. WCC Form # 18 Rev. Date 3/96

PERIODIC REPORT

18



WCC File #: 0221428

Carrier File #: 2313-26207

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Patricia McFadden SSI _____ Employer's Name: Yanagawa of South Carolina
Address: 9 South Boundary Street Address: 1878 Joe Rogers Jr. Boulevard
City: Manning State: SC Zip: 29102 City: Manning State: SC Zip: 29102
Home Phone: (864) 366-0805 Work Phone: () Carrier: Sompo Japan Insurance Company
Preparer's Name: Ryan S. Montgomery Preparer's Phone #: (864) 242-3991

Check applicable claims and complete all blanks.

1. The employee sustained a compensable accidental injury to the Back (part of the body) on 10/29/2002 (date) in Clarendon (county), State of South Carolina (state).
2. That the Second Injury Fund was put on notice of the claim on 8/18/2003 (date).
3. That the carrier concluded the disability claim by Award Agreement on _____ (date).
4. That the subsequent injury combined with or was aggravated by the below-named permanent impairment under S.C. Code Section 42-9-400(d):
 - a. Listed Impairment - (1) - (33) Spinal Fusion
 - b. (34) (a) _____
 - c. (34) (b) _____
5. a. That the impairment preexisted;
 b. That the impairment was permanent; and
 c. That the impairment is a physical condition.
6. That the prior impairment combined with or was aggravated by the subsequent injury.
7. That the combination/aggravation substantially increased the liability of the carrier for: disability medical or both.
8. That the impairment was a hindrance or obstacle to employment or re-employment.
9. a. That the employer has knowledge of the prior impairment;
 b. That the impairment was unknown to the employee and the employer; or
 c. That the employee concealed the prior impairment from the employer.
10. That the subsequent injury would not have occurred "but for" the prior impairment.
11. That the above claim qualifies for reimbursement under S.C. Code Section 42-9-410 because:
See # 4 (a).
See Also 5-9.
12. Other grounds for claim: All available under §42-9-400

Signature

Date December 30, 2011

B | B | M | BLACK
BLACK &
MONTGOMERY
LLC
ATTORNEYS AT LAW

December 30, 2011

The Honorable Virginia L. Crocker, Judicial Director
S.C. WORKERS' COMPENSATION COMMISSION
Post Office Box 1715
Columbia, SC 29202

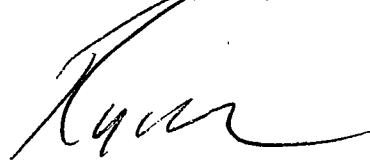
Re: Claimant: Patricia McFadden
Employer: Yanagawa of South Carolina
Carrier: Sompo Japan Insurance Co.
WCC File No.: 0221428
Claim No.: 2313-26207
D.O.L.: Alleged 10/29/02

Dear Ginger:

Please be advised that I have been retained to represent the interests of Insurance Recovery Group and Yanagawa of South Carolina as it pertains to the above-referenced matter. Please find the employer/carrier's Form 54 and check in the amount of \$25.00 enclosed herein. By copy of this correspondence to Pete Calamas, I am serving him with a copy of the same.

With warmest regards,

Yours very truly,



Ryan S. Montgomery

Enclosure

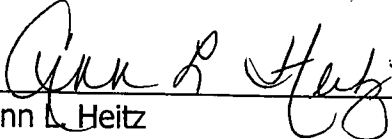
CC: Pete Calamas
Maura Hirl

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at Black, Black and Montgomery Law Firm, LLC, and that the attached **Form 54** was served this 30th day of December 2011, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

The Honorable Virginia L. Crocker, Judicial Director
SC WORKERS' COMPENSATION COMMISSION
Post Office Box 1715
Columbia, SC 29202-1715

Pete Calamas, Director
South Carolina Second Injury Fund
100 Executive Center Drive, Ste. 101
Santee Building
Columbia, SC 29210



Ann L. Heitz
Paralegal to Ryan S. Montgomery

SECOND INJURY FUND QUESTIONNAIRE

PATRICIA McFADDEN, Patient

Date of Accident: October 29, 2002

1. In your professional judgment to a reasonable degree of medical certainty, did Patricia McFadden aggravate a pre-existing condition in her back and/or legs as a result of pulling a basket out with a pallet jack and got it caught on another basket on or about October 29, 2002?

YES / scf (Initials)
No _____

2. In your professional judgment to a reasonable degree of medical certainty, were the medical expenses substantially increased due to the pre-existing arthritis combining with Patricia McFadden's back injury she sustained as a result of pulling a basket out with a pallet jack and got it caught on another basket on or about October 29, 2002?

YES / scf (Initials)
No _____

3. In your professional judgment to a reasonable degree of medical certainty, did Patricia McFadden have a pre-existing arthritis condition in her back prior to her accident of October 29, 2002 when she was pulling a basket out with a pallet jack and got it caught on another basket on or about that date?

YES / scf (Initials)
No _____

4. In your professional judgment to a reasonable degree of medical certainty, was Patricia McFadden's permanent impairment to her back and legs substantially increased due to the arthritis condition in her back which combined with her back and leg injuries when she was pulling a basket out with a pallet jack and got it caught on another basket on or about October 29, 2002?

YES / scf (Initials)
No _____

5. In your professional judgment to a reasonable degree of medical certainty, was Patricia McFadden's medical treatment prolonged or lengthened due to her underlying pre-existing arthritis condition in her back, which combined with her back and leg injuries on or about October 29, 2002?

Yes / scf (Initials)
No _____

Dated: 3-7 , 2012

By: [Signature] M. D.
Dr. Steven E. Poletti

SECOND INJURY FUND QUESTIONNAIRE

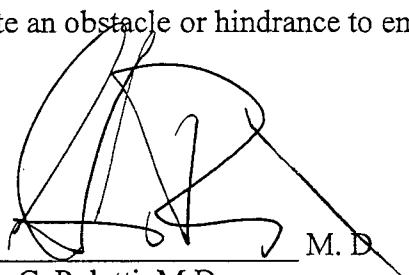
Patricia McFadden, Patient
Date of Accident: 10/29/2002
Page 2

6. In your professional judgment to a reasonable degree of medical certainty did Patricia McFadden's back surgeries create an obstacle or hindrance to employment and/or reemployment?

Yes SP (Initials)
No _____

9. In your professional judgment to a reasonable degree of medical certainty did Patricia McFadden arthritis in her back which was aggravated by her fall at work on October 29, 2002 create an obstacle or hindrance to employment and/or reemployment?

Yes SP (Initials)
No _____

By:  M.D.
Dr. Steven C. Poletti, M.D.

Dated: 3-7, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2013-002607

RECEIVED

JUN 06 2014

SC Court of Appeals

South Carolina Second Injury Fund,.....Appellant,

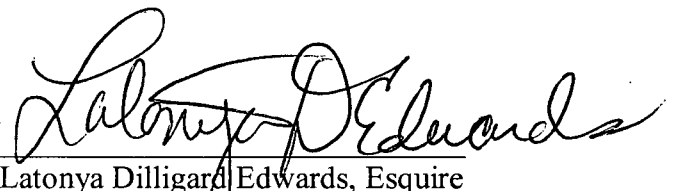
v.

Sompo Japan Insurance Company,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal complies with Rule 210(c),
SCACR.

June 6, 2014



Latonya Dilligard Edwards, Esquire
Dilligard Edwards, LLC
3790 Fernandina Road, Suite 103
Columbia, South Carolina 29210
S.C. Bar #: 14593
(803) 750-2214 (telephone)
(803) 750-2377 (facsimile)

ATTORNEY FOR APPELLANT