

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001564

WILLIAM E MILLER, JR., EMPLOYEE, CLAIMANT, APPELLANT,

v.

OWEN STEEL COMPANY INC. EMPLOYER AND GREAT AMERICAN INSURANCE
GROUP C/O STRATEGIC COMP SERVICES, CARRIER, RESPONDENTS.

RECORD ON APPEAL

J. Charles Ormond, Jr.,
Holler Garner Corbett Ormond et al.
Attorney/s for Claimant/Appellant
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 933-9000

Helen Hisert, Esq.
Weston Adams, Esq., Jason Lockhart, Esq.
McAngus Goudelock & Courie, LLC
Attorney's for Respondents
P.O. Box 12519
Columbia, SC 29211

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1213162

WILLIAME E. MILLER, JR.,

EMPLOYEE,
CLAIMANT/APPELLANT,

V.

OWEN STEEL COMPANY, INC.,

EMPLOYER,

AND

GREAT AMERICAN INSURANCE GROUP C/O
STRATEGIC COMP SERVICES,

CARRIER,
DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in
Columbia, South Carolina on April 16, 2013.

Appellate Panel Decision and Order
filed 7-2, 2013.

APPEARANCES:

Claimant/Appellant represented by
J. Charles Ormond, Jr., Esquire, of Dennis, Corbett, Ormond, Plante & Garner
of Columbia, South Carolina

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

STATEMENT OF THE CASE

Claimant filed a Form 50 alleging injury by accident on August 15, 2012. Claimant alleged that he suffered injuries to his head, back, and neck with radicular symptoms to his arms and legs as a result of a physical altercation, which occurred between himself and a co-employee, while in the course and scope of his employment with the Defendants. Claimant sought payment of outstanding causally-related medical treatment and provision of causally-related medical treatment on the basis that the Claimant had not reached maximum medical improvement (MMI). Claimant also requested payment of temporary total disability (TTD) benefits from the date of accident to the present and continuing.

Defendants maintained that Claimant's injuries are not the result of a work-related accident that occurred within the course and scope of the Claimant's employment. Defendants also contended that Claimant is barred from recovery of any benefits, pursuant to S.C. Code Ann. § 42-9-60, on the grounds that, if Claimant were injured during the physical altercation, which occurred between himself and a co-employee, he willfully intended to injure the co-employee. Therefore, any claim for benefits would be barred pursuant to S.C. Code Ann. § 42-9-60. Further, Defendants contended that Claimant could not satisfy his burden of proving a compensable injury by accident or a compensable aggravation of a pre-existing injury pursuant to S.C. Code Ann. § 42-1-160 and § 42-9-35.

A hearing in this matter was held before Commissioner Williams on December 10, 2011. At the conclusion of the hearing, Commissioner Williams issued a Decision and Order making the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim. Venue is proper in Columbia, South Carolina.
2. Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 Dollars (\$862.98) with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 Dollars (\$575.35).
3. Notice of the hearing was timely and properly served on all parties of interests.
4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation. (APA p. 135-137).
5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 - Dr. Boyd's records).
6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to this alleged accident. (APA p. 102, 106, 111, 118, 122)
7. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case. Claimant has demonstrated that he has temper and anger issues. The record reflects that he was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace. (Hr'g Tr. 50:14-18; 50:19 - 51:1; 50:23 - 51:7; 51:17-24; 52:19 - 53:1; 74:17-20; 134:21 - 135:1; 135:15-18; 137:19 - 138:9).

8. S.C. Code Ann. § 42-9-60 does not apply in this case because I do not find enough evidence to show that Claimant willfully intended to injure himself or another employee. However, as noted above, I do not place his current medical condition as being caused by this alleged accident.
9. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, Claimant alleges that he injured his neck before he threw a punch and kicked Mr. Raulerson. This is not believable testimony. (Hr'g Tr. 15:9-12).
10. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the employer witness testimonies as a whole are more believable than Claimant's testimony.
11. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not find enough evidence that Claimant willfully intended to injure himself or Mr. Raulerson.
12. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not place his current medical condition as being caused by this alleged accident.
13. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the Claimant did not satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.
14. All benefits under the South Carolina Workers' Compensation Act are hereby denied.

CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Code Ann. §41-1-40, the Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 (\$862.98) Dollars with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 (\$575.35) Dollars.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. Pursuant to South Carolina Code Ann. §42-1-160, Claimant has not sustained a compensable injury by accident arising out of and in the course of employment.
5. Pursuant to South Carolina Code Ann. §42-9-10, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total.
6. Pursuant to South Carolina Code Ann. §42-9-10, Claimant has not met his burden of proof that he is permanently and totally disabled.
7. Pursuant to South Carolina Code Ann. §42-9-20, Claimant is not entitled to any temporary partial disability benefits for the period of time during which the Claimant's incapacity for work was partial.
8. Pursuant to South Carolina Code Ann. §42-9-20, Claimant has not met his burden of proof that he is permanently and partially disabled.
9. Pursuant to South Carolina Code Ann. §42-9-35, Claimant has not established that a subsequent injury aggravated a pre-existing condition or permanent physical impairment or that a pre-existing condition or permanent physical impairment aggravated the subsequent injury.

10. Pursuant to South Carolina Code Ann. §42-9-10, §42-9-20, and §42-9-30, Claimant is not entitled to any award under the South Carolina Workers' Compensation Act.

Following the Decision and Order, Claimant filed a Form 30 and asserted several exceptions to the Decision and Order. These exceptions are as follows:

- I. Did the Hearing Commissioner err in determining that Claimant's injuries and the neurosurgery undertaken subsequent to the physical altercation at work were not causative when Claimant's neurosurgeon (Dr. Boyd) has specifically given his medical opinion that the altercation most likely did cause the spinal injury to a reasonable degree of medical certainty and he specifically described the "fresh bone fragment" he found in Claimant's neck during surgery; the fact that Claimant's internist (Dr. Levinson) noted the spine injury was unique and indicated causation in his records, and; when there is no contrary medical evidence in the Record supporting or indicating another cause for the injury or that this altercation did cause the injury and subsequent medical treatment?
- II. Did the Hearing Commissioner err in making a specific expert medical determination in his findings, that the February 2012 and September 2012 MRI reports were virtually identical, and therefore finding causation did not exist when the neurosurgeon (Dr. Boyd) specifically reviewed not only the reports but the actual images themselves and his records specifically indicate the difference in the images and Dr. Boyd specifically finds causation to a reasonable degree of medical certainty?
- III. Did the Hearing Commissioner err in apparently considering minor factual disputes between the parties in the altercation in making his finding, stated to be based solely on the medical records, of a lack of causation for the injury sustained after the altercation requiring surgery?

After a review of the record and oral arguments of the parties, as set forth below, we AFFIRM WITH AMENDMENT the Single Commissioner's Decision and Order.

EVIDENCE OF THE CASE

Claimant is a forty-six (46) year old male with a high school diploma and approximately one and a half years of college education. (Hr'g Tr. 8:14-20). He has been employed with Owen Steel since 2004. (Hr'g Tr. 8:25 - 9:1). Claimant stated that his entire work history is comprised of working for various companies as a welder. (Hr'g Tr. 8:21-23). Claimant was hired as a welder with Owen Steel before he was promoted to a fabricator and then to the maintenance department. (Hr'g Tr. 9:4-11).

Claimant testified that he was involved in a physical altercation with Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time in question, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25). Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant "[w]hat seems to be the problem?" (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying

"[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 - 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the altercation was broken up by the Claimant's co-employees. (Hr'g Tr. 16:14-17). Claimant testified that the altercation between her and Mr. Raulerson lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that the reason he threw the welding leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20). Claimant testified that he was briefly

terminated following the altercation for throwing welding leads at Mr. Zimms. (Hr'g Tr. 50:23 - 51:7). Stacey Oxendine testified that Claimant was terminated from Owen Steel due to "multiple cases of aggression and insubordination." (Hr'g Tr. 148:9-14, APA p. 92).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation between the Claimant and Mr. Raulerson. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that, prior to the August 15 altercation, he observed Claimant and Mr. Raulerson involved in other arguments. (Hr'g Tr. 103:6-13). Specifically, Mr. Ingle recalled an argument between the Claimant and Mr. Raulerson, one week prior to the date of accident, where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 - 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that he noticed Claimant "had his fists balled up" and he told Claimant, during this encounter, "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that, after being struck by the Claimant, he shoved Claimant against the wall. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement that occurred between the Claimant and

Mr. Raulerson one week prior to the date of accident. He stated that Claimant had accused him of stealing from the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset with Mr. Raulerson. (Hr'g Tr. 122:16-21).

Ronald Frye testified on behalf of the Defendants. Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a heated confrontation ensued between the Claimant and Mr. Frye. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 - 138:9).

Jackie Osborne testified on behalf of the Defendants. Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Mr. Osborne stated that the Claimant was saying to Mr. Raulerson to stop pushing the Claimant because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85).

John Gardner also testified on behalf of Defendants. Mr. Gardner indicated that he is a supervisor with Owen Steel and has been there for twenty-two years. (Hr'g Tr. 156:16-21). Mr. Gardner testified that he observed Claimant pulling a part off a machine and when he asked Claimant not to do that, Claimant "...hollered out 'Fuck You'." (Hr'g Tr. 157:10-14).

Finally, Cliff Zimms testified on behalf of Defendants. Mr. Zimms has been an electrician with Owen Steel for six years. (Hr'g Tr. 159:7-15). Mr. Zimms testified about working with Claimant at Owen Steel and about an altercation that occurred between himself and Claimant. Mr. Zimms stated that Claimant got mad and threw a welding lead at him. (Hr'g Tr. 160:6-22). Mr. Zimms also testified that he had personally observed Claimant get into verbal altercations with other employees. (Hr'g Tr. 161:15-20).

MEDICAL EVIDENCE

Claimant stated that, after the altercation with Mr. Raulerson, his neck began to get progressively worse. (Hr'g Tr. 22:10-12). He stated that he was having trouble sleeping, experienced numbness in his hands and leg, and had pain shooting down from his shoulders. (Hr'g Tr. 22:14-15). On the morning of August 27, Claimant informed his supervisor, Mr. Sloan that he needed to go see a doctor and left work early for an appointment. (Hr'g Tr. 25:2-10).

Claimant states that he also told Mr. Oxendine that he was upset because they were not making an effort to get him to a doctor. (Hr'g Tr. 25:17-18). He went to see Dr. Levinson and reported complaints of neck pain as a result of being pushed against a wall at work. (Hr'g Tr. 26:17-20).

Claimant testified that he has had prior neck and back issues. (Hr'g Tr. 26:24 - 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant had received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same problems with his neck, before his alleged work-related accident that he was having after his alleged work-related accident. (Hr'g Tr. 28:2-5). However, Claimant testified that the severity of his neck symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident, Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 - 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back problems. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson, prior to the date of his alleged work-related accident, and was still undergoing treatment for his back and neck issues prior to August 15, 2012. (Hr'g Tr. 39:6-15).

Based on the medical records, Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 - 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly

worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23, APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant again presented to Dr. Levinson and complained of the same neck pain and problems, similar to those problems documented in the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI on February 9, 2012. (Hr'g Tr. 42:22 - 43:1, APA p. 136-137). The MRI results show that Claimant had (1) normal cervical cord signal intensity; (2) an asymmetric disc bulge to the right at C2-C3 without stenosis; (3) a congenital shortening of the pedicles throughout the cervical spine; (4) right-sided uncovertebral joint degenerative changes without stenosis at C3-C4; (5) no significant disc bulge or protrusion at C4-C5; (6) disc height loss with osteophytic bulge to the left and mild to moderate left neural foraminal stenosis and mild right foraminal stenosis at C5-C6; (7) left central disc extrusion and left neural foraminal stenosis at C6-C7; and (8) no disc bulge or protrusion at C7-T1. (APA p. 115, 136-137). Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit on February 29, 2012, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 - 44:6, APA p. 115). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 - 45:8, APA p. 118). Claimant saw Dr. Levinson in July 2012 approximately one month prior to the date of his alleged work-related accident. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p.

122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of the alleged work-related accident, Claimant underwent another MRI on September 4, 2012. (APA p. 135). The MRI revealed that (1) the C2-C3 disc is normal; (2) there is no significant disc bulge or protrusion at C3-C4; (3) there is no acquired central canal or foraminal stenosis at C4-C5; (4) there is diffuse disc bulge with uncovertebral joint hypertrophic changes at C5-C6; (5) there is central disc extrusion migrating slightly cephalad which narrows the central canal and deforms the ventral cord at C6-C7; and (6) the disc is normal at C7-T1. (APA p. 135). Claimant then underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr. 66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant vehemently denied this statement, contained in the medical records of Dr. Levinson, and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23). Mr. Ingle testified that Claimant had previously complained of a bad back and neck and that he was seeing a doctor about them. (Hr'g Tr. 101:15-20). Mr. Frye also testified that Claimant had discussed prior back and neck problems. Specifically, Mr. Frye stated that Claimant told him about medications that his doctor had prescribed for neck and back pain. (Hr'g Tr. 139:2-10).

LEGAL ANALYSIS

- I. THE HEARING COMMISSIONER DID NOT ERR IN DETERMINING THAT CLAIMANT'S ALLEGED INJURIES WERE NOT CAUSALLY RELATED TO A WORKPLACE ALTERCATION.

Claimant contends that the Single Commissioner erred by finding that his alleged injuries were not causally related to the workplace altercation. We disagree.

Findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. A judgment upon which reasonable men might differ will not be set aside."

Id at 696 referencing Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304, 307.

Substantial evidence has also been defined as "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers' Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. See Armstrong v. Union Carbide, Inc., 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. Id. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l

Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) *rev'd on other grounds*.

Claimant testified that he has a history of prior neck and back issues. (Hr'g Tr. 26:24 -- 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same symptoms before his alleged accident as he was having after. (Hr'g Tr. 28:2-5). However, Claimant testified that the severity of the symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident, Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 - 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back issues. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson prior to August 15, 2012 and was still undergoing treatment for his back and neck issues. (Hr'g Tr. 39:6-15).

Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 - 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23, APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant

again presented to Dr. Levinson and complained of the same symptoms from the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). Dr. Levinson noted on February 16, 2012 that Claimant's MRI results revealed:

“1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.

2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with unconvertibral joint hypertrophy, left greater than right.

3. Congenital shortening of the pedicles.”

Defendants' APA p. 117.

Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118). Claimant saw Dr. Levinson for the final time prior to the accident in July 2012. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p. 122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of alleged accident, Dr. Atchison issued a report on September 4, 2012 detailing the results of Claimant's MRI following the altercation. These results reveal that Claimant has:

"1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.

3. Congenital shortening of the pedicles."

Defendants' APA p. 135.

There is no question that the MRI report from prior to the August 15, 2012 altercation and the MRI report from after the August 15, 2012 altercation are nearly identical. Both Dr. Levinson and Dr. Atchison determined that Claimant had a disc extrusion at C6-7 causing severe canal stenosis with cord compression. Likewise, both Dr. Levinson and Dr. Atchison determined that Claimant had mild central canal stenosis at C5-6 and mild to moderate bilateral foraminal stenosis at C5-6. Dr. Atchison even notes that this is unchanged from the prior study.

Claimant underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr. 66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant denied this statement and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

The Single Commissioner made the following findings of fact:

"4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation." (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 - Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to the alleged incident. (APA p. 102, 106, 111, 118, 122)."

January 28, 2013 Decision and Order p. 11.

In addition, Claimant testified at the hearing that he injured his neck before he threw a punch and kicked Mr. Raulerson. (Hr'g Tr. 15:9-12). The Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants...[t]his is not believable testimony." (January 28, 2013 Decision and Order p. 12). Further, the Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case." *Id.* Finally, the Single Commissioner found that "...the employer witness testimonies as a whole are more believable than Claimant's testimony." *Id.*

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84).

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Claimant was saying to stop pushing him because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85).

Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back." (APA p. 85).

Findings of Fact 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are an example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] judgment upon which reasonable men might differ will not be set aside." Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

The Commissioner was presented with a Claimant who has a history of severe ongoing back and neck problems as recently as one month before the altercation, was actively treating for the back and neck problems at the time of the altercation, complained to coworkers of the back

and neck problems prior to the altercation, and expressed during the altercation that he had back and neck problems. Further, the Commissioner had the results of two MRI reports that are nearly identical. Because he determined that to find the injuries occurred as a result of the workplace altercation would be "pure speculation" and that parts of Claimant's testimony simply were "not believable," the Commissioner made the determination that the altercation was not the proximate cause of Claimant's alleged injuries. (January 28, 2013 Decision and Order p. 11 and 12).

Rather, the Commissioner determined that the injuries were present before the altercation.

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Single Commissioner's Findings of Fact and Conclusions of Law related to the casual relationship of Claimant's alleged injuries and the workplace are AFFIRMED.

II. THE HEARING COMMISSIONER DID NOT ERR IN MAKING A SPECIFIC DETERMINATION THAT THE FEBRUARY 2012 AND SEPTEMBER 2012 MRI RESULTS WERE VIRTUALLY IDENTICAL.

Claimant contends the Single Commissioner erred by making a finding that the two MRI reports in the record were virtually identical. We disagree.

As noted above, findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by

substantial evidence. A judgment upon which reasonable men might differ will not be set aside."

Id at 696 referencing Lark v. Bi-Lo. Inc., 276 S.C. 130, 276 S.E.2d 304, 307.

Substantial evidence has also been defined as "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers' Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. See Armstrong v. Union Carbide, Inc., 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. Id.

The factual background of Claimant's prior history with neck and back issues has been laid out in great detail above. For purposes of this section, we will only address the evidence related to the MRI reports and their similarities.

The Single Commissioner made the following findings of fact:

"4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation." (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 - Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to the alleged incident. (APA p. 102, 106, 111, 118, 122)."

January 28, 2013 Decision and Order p. 11.

The Single Commissioner specifically relied on the previous and current MRI results in determining that the results were similar and, therefore, the alleged injuries were not the result of a work-related accident. Dr. Levinson noted on February 16, 2012 that Claimant's MRI results revealed:

"1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.

2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with unconvertebral joint hypertrophy, left greater than right.

3. Congenital shortening of the pedicles."

Defendants' APA p. 117.

Dr. Atchison issued a report on September 4, 2012 detailing the results of Claimant's MRI following the altercation. These results reveal that Claimant has:

"1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.

3. Congenital shortening of the pedicles."

Defendants' APA p. 135.

There is no question that the MRI report from prior to the August 15, 2012 altercation and the MRI report from after the August 15, 2012 altercation are nearly identical. Both Dr. Levinson and Dr. Atchison determined that Claimant had a disc extrusion at C6-7 causing severe canal stenosis with cord compression. Likewise, both Dr. Levinson and Dr. Atchison determined

that Claimant had mild central canal stenosis at C5-6 and mild to moderate bilateral foraminal stenosis at C5-6. Dr. Atchison even notes that this is unchanged from the prior study.

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Single Commissioner's Findings of Fact and Conclusions of Law related to Claimant's MRI reports and their nearly identical nature are AFFIRMED.

III. THE HEARING COMMISSIONER DID NOT ERR IN CONSIDERING FACTUAL DISPUTES BETWEEN THE PARTIES INVOLVED IN THE ALTERCATION IN MAKING HIS FINDINGS OF FACT RELATED TO CAUSATION AND CLAIMANT'S ALLEGED INJURY.

Claimant contends the Single Commissioner erred by considering and weighing factual disputes in various parties testimony. We disagree.

Claimant testified that he got into an altercation with Mr. Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25). Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant "[w]hat seems to be the problem?" (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying "[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 - 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the fight was broken up. (Hr'g Tr. 16:14-17). Claimant testified that the entire fight lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that he was briefly terminated following the Zimms altercation for throwing welding leads at Mr.

Zimms. (Hr'g Tr. 50:23 - 51:7). Claimant testified that the reason he threw the leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation. (Hr'g Tr.

89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that prior to the August 15 altercation, Claimant and Mr. Raulerson had been in other arguments. (Hr'g Tr. 103:6-13). Specifically, Mr. Ingle recalled an argument one week prior where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 - 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that noticed Claimant "had his fists balled up" and told Claimant "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that he shoved Claimant against the wall after being struck by him. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement one week prior. He stated that Claimant had accused him of stealing from

the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset. (Hr'g Tr. 122:16-21).

Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a confrontation ensued. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 - 138:9).

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Claimant was saying to stop pushing him because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance

shop. (APA p. 85). Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back." (APA p. 85).

Claimant testified at the hearing that he injured his neck before he threw a punch and kicked Mr. Raulerson. (Hr'g Tr. 15:9-12). The Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants...[t]his is not believable testimony." (January 28, 2013 Decision and Order p. 12). In addition, the Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case." *Id.* Further, the Single Commissioner found that "...the employer witness testimonies as a whole are more believable than Claimant's testimony." *Id.* Finally, the Single Commissioner goes on to find that "[t]he record reflects that [Claimant] was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace." (January 28, 2013 Decision and Order p. 12).

These Findings of Fact are another example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] judgment upon which reasonable men might differ will not be set aside." Palmetto Alliance, Inc. v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

Because the finding of facts and conclusions of law in issue are based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, including a determination of credibility based on live witness testimony, the Hearing Commissioner's Findings of Fact and Conclusions of Law related to the factual disputes between the parties involved in the altercation is AFFIRMED.

FULL COMMISSION FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim. Venue is proper in Columbia, South Carolina.
2. Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 Dollars (\$862.98) with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 Dollars (\$575.35).
3. Notice of the hearing was timely and properly served on all parties of interests.
4. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that this case turns mainly on the medical reports. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that when we review the two MRIs from before and after the alleged accident, they strike this Panel as nearly identical. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that to say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation. (APA p. 135-137).
5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an

alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 - Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that the Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to this alleged accident. (APA p. 102, 106, 111, 118, 122).

7. Based on the substantial evidence, including the medical records of Claimant and testimony of Claimant, we find that the Claimant failed to inform Dr. Boyd that he had back and neck issues prior to the August 15, 2012 altercation. Further, Claimant failed to tell Dr. Boyd that he had received prior treatment for his neck and back including injections. (Hr'g Tr. 36:22 - 37:21, 38:1-16; APA p. 131, 133).

8. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we do not fully believe Claimant's version of events in this case. Claimant has demonstrated that he has temper and anger issues. The record reflects that he was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace. (Hr'g Tr. 50:14-18; 50:19 - 51:1; 50:23 - 51:7; 51:17-24; 52:19 - 53:1; 74:17-20; 134:21 - 135:1; 135:15-18; 137:19 - 138:9).

9. S.C. Code Ann. § 42-9-60 does not apply in this case because we do not find enough evidence to show that Claimant willfully intended to injure himself or another employee. However, as noted above, based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we do not place his current medical condition as being caused by this alleged accident.

10. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, Claimant alleges that he injured his neck before he threw a punch and kicked Mr. Raulerson. We find that this is not believable testimony. (Hr'g Tr. 15:9-12).
11. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we find that the employer witness testimonies as a whole are more believable than Claimant's testimony.
12. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we do not find enough evidence that Claimant willfully intended to injure himself or Mr. Raulerson.
13. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we do not place his current medical condition as being caused by this alleged accident.
14. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we find that the Claimant did not satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.
15. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, we

find that all benefits under the South Carolina Workers' Compensation Act are hereby denied.

CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Code Ann. §41-1-40, the Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 (\$862.98) Dollars with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 (\$575.35) Dollars.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. Pursuant to South Carolina Code Ann. §42-17-50, the Commission may review an award and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.
5. The scope of review of the Commission is not limited. Lowe v. Am-Can Transport Services, 283 S.C. 534, 324 S.E.2d 87 (Cl. App. 1984).
6. The Commission does not have to uphold the findings of the Hearing Commissioner if, in its opinion, the preponderance of the evidence leads to a different finding, whether or not the Hearing Commissioner's findings were based on a preponderance of the evidence. Lowe v. Am-Can Transport Services, 283 S.C. 534, 324 S.E.2d 87 (Cl. App. 1984).
7. The Commission's discretion in reviewing a case is equal to that of the Hearing

Commissioner. Rollins v. Wunda Weve Carpet Company, 255 S.C. 1, 172 S.E.2d 5 (1970).

8. Pursuant to South Carolina Code Ann. §42-1-160 and based on the substantial evidence, we find that the Claimant has not satisfied his burden of proving that he sustained a compensable injury by accident arising out of and in the course of employment.

9. Pursuant to South Carolina Code Ann. §42-9-10 and based on the substantial evidence,

we find that the Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total.

10. Pursuant to South Carolina Code Ann. §42-9-10 and based on the substantial evidence, we find that the Claimant has not met his burden of proof that he is permanently and totally disabled.

11. Pursuant to South Carolina Code Ann. §42-9-20 and based on the substantial evidence, we find that the Claimant is not entitled to any temporary partial disability benefits for the period of time during which the Claimant's incapacity for work was partial.

12. Pursuant to South Carolina Code Ann. §42-9-20 and based on the substantial evidence, we find that the Claimant has not met his burden of proof that he is permanently and partially disabled.

13. Pursuant to South Carolina Code Ann. §42-9-35 and based on the substantial evidence, we find that the Claimant has not satisfied his burden of proving that a subsequent injury aggravated a pre-existing condition or permanent physical impairment or that a pre-existing condition or permanent physical impairment aggravated the subsequent injury.

14. Pursuant to South Carolina Code Ann. §42-9-10, §42-9-20, and §42-9-30 and based on the substantial evidence, we find that the Claimant is not entitled to any award under the South Carolina Workers' Compensation Act.

ORDER

IT IS HEREBY ORDERED, that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is AFFIRMED WITH AMENDMENT.

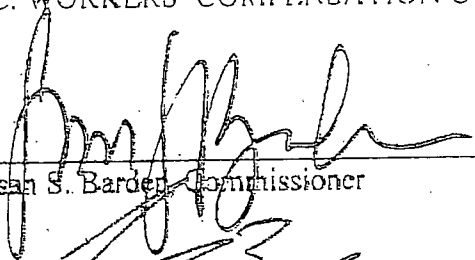
IT IS FURTHER ORDERED, that the substantial evidence supports a finding that this that the greater weight of the evidence supports a finding that this claim is denied because the Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident to the arising out of and in the course of his employment with the Defendants on August 15, 2012.

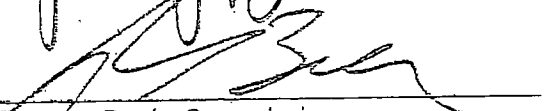
IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing the Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

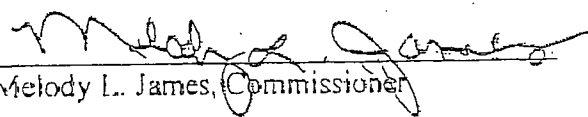
IT IS HEREBY ORDERED.

AFFIRMED WITH AMENDMENT.

S.C. WORKERS' COMPENSATION COMMISSION


Susan S. Barden, Commissioner


T. Scott Beck, Commissioner


Melody L. James, Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1213162

WILLIAM E. MILLER, JR.,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

GREAT AMERICAN INSURANCE
GROUP c/o STRATEGIC COMP
SERVICES,

Carrier,

Defendants.

**AMENDED
DECISION AND ORDER**

DATE OF HEARING:

Hearing held in Columbia, South Carolina on December 10, 2011.

APPEARANCES:

Claimant appeared and represented by J. Charles Ormond, Jr., Esquire of Holler, Dennis, Corbett, Ormond, Plante & Garner of Columbia, South Carolina.

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

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER: Commissioner Derrick L. Williams

FILED: January 27, 2013

STIPULATIONS

1. Jurisdiction is proper with the South Carolina Workers' Compensation Commission.
2. Venue is proper in Columbia, South Carolina.
3. Claimant's average weekly wage is \$862.98 with a corresponding compensation rate of \$575.35.

APA SUBMISSIONS

Claimant's APA submissions:

1. Records of Scott Boyd, M.D. dated September 19, 2012 through October 22, 2012, pages 1-13.
2. Records of Palmetto Health Baptist dated September 26, 2012, pages 14-26.
3. Records of Benjamin Levinson, M.D./South Carolina Internal Medicine dated February 8, 2012 through October 29, 2012, pages 27-66.
4. Records of Scott Boyd, M.D. (Treating Physician Questionnaire) dated November 19, 2012, pages 67-69.
5. Records of Benjamin Levinson, M.D. (Release Letter) dated August 27, 2012, pages 70-71.
6. Records of Scott Boyd, M.D. (Release Letter) dated November 26, 2012, pages 72-73.

Defendants' APA submission:

7. Memorandum of Law in Support of Defendants' Position dated November 26, 2012, pages 74-81.
8. Written Statement of William E. Miller, Jr., page 82.
9. Written Statement of Steve O. Raulerson, page 83
10. Written Statement of Brian Ingle, Page 84.
11. Written Statement of Jackie Osborne, page 85.
12. Written Statement of Jason Frye, page 86.

13. Written Statement of Ray Hollins, page 87.
14. Owen Personnel Action Directive dated November 8, 2009, page 88.
15. Owen Personnel Action Directive dated November 24, 2010, page 89.
16. Owen Personnel Action Directive dated August 28, 2012, page 90.
17. Owen Personnel Action Directive dated August 27, 2012, page 91.
18. Owen Personnel Action Directive dated August 28, 2012, page 92.
19. South Carolina Department of Employment & Workforce – Request for Information dated December 8, 2010, page 93.
20. Owen Steel Company, Inc. – Application for Employment dated January 5, 2005, pages 94-95.
21. Owen Steel Company, Inc. – Session Recap dated August 27, 2012, pages 96-97.
22. Records of South Carolina Internal Medicine Associates & Rehabilitation dated September 11, 2009 through October 8, 2012, pages 98-130.
23. Records of Columbia Neurosurgical Associates, P.A. dated September 17, 2012 through October 22, 2012, pages 131-134.
24. Records of Palmetto Imaging dated September 4, 2012, page 135.
25. Records of Paul Aitchison, M.D. dated February 8, 2012, pages 136-137.
26. Records of Tony Owens, M.D. dated February 20, 2012 through April 10, 2012, pages 138-139.
27. Records of W. Daniel Westerkam, M.D. dated October 4, 2011, pages 140-141.

STATEMENT OF THE CASE

Claimant has filed a Form 50 alleging injury by accident August 15, 2012. Claimant alleges that he suffered injuries to his head, back, and neck with radicular symptoms to his arms and legs as a result of a physical altercation, which occurred between himself and a co-employee, while in the course and scope of his employment with the Defendants. Claimant is seeking

payment of outstanding causally-related medical treatment, and provision of causally-related medical treatment on the basis that the Claimant has not reached maximum medical improvement (MMI). Claimant is also requesting payment of temporary total disability (TTD) benefits from the date of accident to the present and continuing.

Defendants maintain that the Claimant's injuries are not the result of a work-related accident that occurred within the course and scope of the Claimant's employment. Defendants also contend that Claimant is barred from recovery of any benefits, pursuant to S.C. Code Ann. § 42-9-60, on the grounds that, if Claimant were injured during the physical altercation, which occurred between himself and a co-employee, he willfully intended to injure the co-employee. Therefore, any claim for benefits would be barred pursuant to S.C. Code Ann. § 42-9-60. Further, Defendants contend that Claimant cannot satisfy his burden of proving a compensable injury by accident or a compensable aggravation of a pre-existing injury pursuant to S.C. Code Ann. § 42-1-160 and § 42-9-35.

EVIDENCE OF THE CASE

Claimant is a forty-six (46) year old male with a high school diploma and approximately one and a half years of college education. (Hr'g Tr. 8:14-20). He has been employed with Owen Steel since 2004. (Hr'g Tr. 8:25 – 9:1). Claimant stated that his entire work history is comprised of working for various companies as a welder. (Hr'g Tr. 8:21-23). Claimant was hired as a welder with Owen Steel before he was promoted to a fabricator and then to the maintenance department. (Hr'g Tr. 9:4-11).

Claimant testified that he was involved in a physical altercation with Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time in question, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25).

Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant "[w]hat seems to be the problem?" (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying "[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 – 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he

saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the altercation was broken up by the Claimant's co-employees. (Hr'g Tr. 16:14-17). Claimant testified that the altercation between her and Mr. Raulerson lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that the reason he threw the welding leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20). Claimant testified that he was briefly terminated following the altercation for throwing welding leads at Mr. Zimms. (Hr'g Tr. 50:23 - 51:7). Stacey Oxendine testified that Claimant was terminated from Owen Steel due to "multiple cases of aggression and insubordination." (Hr'g Tr. 148:9-14, APA p. 92).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation between the Claimant and Mr. Raulerson. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that, prior to the August 15 altercation, he observed Claimant and Mr. Raulerson involved in other arguments. (Hr'g Tr. 103:6-13).

Specifically, Mr. Ingle recalled an argument between the Claimant and Mr. Raulerson, one week prior to the date of accident, where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 – 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that he noticed Claimant “had his fists balled up” and he told Claimant, during this encounter, “if you want to hit me, hit me.” (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that, after being struck by the Claimant, he shoved Claimant against the wall. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement that occurred between the Claimant and Mr. Raulerson one week prior to the date of accident. He stated that Claimant had accused him of stealing from the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset with Mr. Raulerson. (Hr'g Tr. 122:16-21).

Ronald Frye testified on behalf of the Defendants. Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a “lead-man” which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a “smart aleck” reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked “What did you say?”

Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 – 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a heated confrontation ensued between the Claimant and Mr. Frye. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 – 138:9).

Jackie Osborne testified on behalf of the Defendants. Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Mr. Osborne stated that the Claimant was saying to Mr. Raulerson to stop pushing the Claimant because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85).

John Gardner also testified on behalf of Defendants. Mr. Gardner indicated that he is a supervisor with Owen Steel and has been there for twenty-two years. (Hr'g Tr. 156:16-21). Mr. Gardner testified that he observed Claimant pulling a part off a machine and when he asked Claimant not to do that, Claimant "...hollered out 'Fuck You'." (Hr'g Tr. 157:10-14).

Finally, Cliff Zimms testified on behalf of Defendants. Mr. Zimms has been an electrician with Owen Steel for six years. (Hr'g Tr. 159:7-15). Mr. Zimms testified about working with Claimant at Owen Steel and about an altercation that occurred between himself and Claimant. Mr. Zimms stated that Claimant got mad and threw a welding lead at him. (Hr'g Tr. 160:6-22). Mr. Zimms also testified that he had personally observed Claimant get into verbal altercations with other employees. (Hr'g Tr. 161:15-20).

MEDICAL EVIDENCE

Claimant stated that, after the altercation with Mr. Raulerson, his neck began to get progressively worse. (Hr'g Tr. 22:10-12). He stated that he was having trouble sleeping, experienced numbness in his hands and leg, and had pain shooting down from his shoulders. (Hr'g Tr. 22:14-15). On the morning of August 27, Claimant informed his supervisor, Mr. Sloan that he needed to go see a doctor and left work early for an appointment. (Hr'g Tr. 25:2-10). Claimant states that he also told Mr. Oxendine that he was upset because they were not making an effort to get him to a doctor. (Hr'g Tr. 25:17-18). He went to see Dr. Levinson and reported complaints of neck pain as a result of being pushed against a wall at work. (Hr'g Tr. 26:17-20).

Claimant testified that he has had prior neck and back issues. (Hr'g Tr. 26:24 – 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant had received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same problems with his neck, before his alleged work-related accident that he was having after his alleged work-related accident. (Hr'g Tr. 28:2-5). However, Claimant testified that the severity of his neck symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident,

Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 – 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back problems. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson, prior to the date of his alleged work-related accident, and was still undergoing treatment for his back and neck issues prior to August 15, 2012. (Hr'g Tr. 39:6-15).

Based on the medical records, Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 – 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23; APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant again presented to Dr. Levinson and complained of the same neck pain and problems, similar to those problems documented in the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI on February 9, 2012. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). The MRI results show that Claimant had (1) normal cervical cord signal intensity; (2) an asymmetric disc bulge to the right at C2-C3 without stenosis; (3) a congenital shortening of the pedicles throughout the cervical spine; (4) right-sided uncovertebral joint degenerative changes without stenosis at C3-C4; (5) no significant disc bulge or protrusion

at C4-C5; (6) disc height loss with osteophytic bulge to the left and mild to moderate left neural foraminal stenosis and mild right foraminal stenosis at C5-C6; (7) left central disc extrusion and left neural foraminal stenosis at C6-C7; and (8) no disc bulge or protrusion at C7-T1. (APA p. 115, 136-137). Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit on February 29, 2012, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6, APA p. 115). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118). Claimant saw Dr. Levinson in July 2012 approximately one month prior to the date of his alleged work-related accident. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p. 122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of the alleged work-related accident, Claimant underwent another MRI on September 4, 2012. (APA p. 135). The MRI revealed that (1) the C2-C3 disc is normal; (2) there is no significant disc bulge or protrusion at C3-C4; (3) there is no acquired central canal or foraminal stenosis at C4-C5; (4) there is diffuse disc bulge with uncovertebral joint hypertrophic changes at C5-C6; (5) there is central disc extrusion migrating slightly cephalad which narrows the central canal and deforms the ventral cord at C6-C7; and (6) the disc is normal at C7-T1. (APA p. 135). Claimant then underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr.

66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant vehemently denied this statement, contained in the medical records of Dr. Levinson, and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23). Mr. Ingle testified that Claimant had previously complained of a bad back and neck and that he was seeing a doctor about them. (Hr'g Tr. 101:15-20). Mr. Frye also testified that Claimant had discussed prior back and neck problems. Specifically, Mr. Frye stated that Claimant told him about medications that his doctor had prescribed for neck and back pain. (Hr'g Tr. 139:2-10).

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim. Venue is proper in Columbia, South Carolina.
2. Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 Dollars (\$862.98) with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 Dollars (\$575.35).
3. Notice of the hearing was timely and properly served on all parties of interests.
4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation. (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 – Dr. Boyd's records).
6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to this alleged accident. (APA p. 102, 106, 111, 118, 122)
7. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant's version of events in this case. Claimant has demonstrated that he has temper and anger issues. The record reflects that he was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace. (Hr'g Tr. 50:14-18; 50:19 – 51:1; 50:23 – 51:7; 51:17-24; 52:19 – 53:1; 74:17-20; 134:21 – 135:1; 135:15-18; 137:19 – 138:9).
8. S.C. Code Ann. § 42-9-60 does not apply in this case because I do not find enough evidence to show that Claimant willfully intended to injure himself or another employee. However, as noted above, I do not place his current medical condition as being caused by this alleged accident.
9. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants,

Claimant alleges that he injured his neck **before** he threw a punch and kicked Mr. Raulerson. This is not believable testimony. (Hr'g Tr. 15:9-12).

10. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the employer witness testimonies as a whole are more believable than Claimant's testimony.
11. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not find enough evidence that Claimant willfully intended to injure himself or Mr. Raulerson.
12. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not place his current medical condition as being caused by this alleged accident.
13. Based on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, the Claimant did not satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.
14. All benefits under the South Carolina Workers' Compensation Act are hereby denied.

CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.

2. Pursuant to South Carolina Code Ann. §41-1-40, the Claimant's average weekly wage is Eight Hundred Sixty Two and 98/100 (\$862.98) Dollars with a corresponding compensation rate of Five Hundred Seventy Five and 35/100 (\$575.35) Dollars.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. Pursuant to South Carolina Code Ann. §42-1-160, Claimant has not sustained a compensable injury by accident arising out of and in the course of employment.
5. Pursuant to South Carolina Code Ann. §42-9-10, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total.
6. Pursuant to South Carolina Code Ann. §42-9-10, Claimant has not met his burden of proof that he is permanently and totally disabled.
7. Pursuant to South Carolina Code Ann. §42-9-20, Claimant is not entitled to any temporary partial disability benefits for the period of time during which the Claimant's incapacity for work was partial.
8. Pursuant to South Carolina Code Ann. §42-9-20, Claimant has not met his burden of proof that he is permanently and partially disabled.
9. Pursuant to South Carolina Code Ann. §42-9-35, Claimant has not established that a subsequent injury aggravated a pre-existing condition or permanent physical impairment or that a pre-existing condition or permanent physical impairment aggravated the subsequent injury.

10. Pursuant to South Carolina Code Ann. §42-9-10, §42-9-20, and §42-9-30, Claimant is not entitled to any award under the South Carolina Workers' Compensation Act.

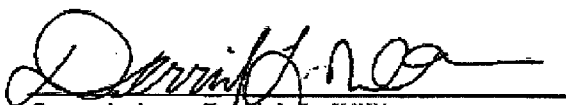
ORDER

IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that this claim is denied because Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident arising out of and in the course of her employment with the Defendants.

IT IS FURTHER ORDERED that the greater weight of the evidence supports a finding that this claim is denied because Claimant failed to satisfy his burden of proof that he suffered a worsening of a pre-existing condition or permanent physical impairment.

IT IS FURTHER ORDERED that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.


Commissioner Derrick L. Williams

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.

January 28, 2013

By: Renee Smith, Administrative Assistant to Commissioner Williams

Subj: William Miller v. Owen Steel Company (WCC #1213162)

To: comond@aol.com, jlockhart@mcclaw.com, brett.bayne@mcclaw.com
 CC: rgsmith@wcc.sc.gov

Attorneys,

When submitting the proposed Order, it is required that you e-mail it to rgsmith@wcc.sc.gov in Word format. Please see all of Commissioner Williams' preferences at <http://wcc.sc.gov>. After reviewing the complete record, my decision is below. If there are any questions, please let me know.

1. This case turns mainly on the medical reports. When I review the 2 MRIs (the one prior to the alleged accident and the one after the alleged accident), they strike me as nearly identical. I cannot speculate that this incident caused the Claimant's current problems.
2. I do not fully believe the Claimant's version of events in this case. Claimant clearly has temper and anger issues, and the record reflects he was written-up several times for behavioral issues at work. Moreover, witness testimony confirms his temper issues even outside of the work environment. Claimant threw a punch and kicked Mr. Raulerson in this case, and Claimant alleges he hurt his neck before he assaulted Mr. Raulerson. This is not believable testimony.
3. The employer witness testimonies as a whole are more believable than the Claimant's testimony.
4. I do not find that § 42-9-60 would apply in this case, as I do not find enough evidence that Claimant willfully intended to injure himself or another employee. However, I do not place his current condition as being caused by this incident.
5. Based on the evidence as a whole, I do not find that Claimant met his burden of proof in this case, under § 42-1-160, § 42-9-60, or § 42-9-35.
6. Claimant had numbness, pain, and other problems even before this.
7. All benefits under the S.C. Workers' Compensation Act are hereby denied.

INSTRUCTIONS: Order to be written by Attorney Jason Lockhart by January 14, 2013. Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however, you may add additional Findings of Fact consistent with the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter, or contact my assistant, Renee Smith, in writing at P.O. Box 1715, Columbia, SC 29202-1715 or via e-mail at rgsmith@wcc.sc.gov. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission. When submitting the proposed Order, please e-mail it to rgsmith@wcc.sc.gov, in Word format.

Matters To Include In The Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties, stated concisely)
4. Evidence of the Case (synopsis of the evidence, including testimony and medical reports)
5. Findings of Fact – numbered (Do NOT delete any of the above findings, however, the prevailing party may add to support the decision, except regarding credibility, unless I have instructed you to)
6. Conclusions of Law (cite applicable statutory sections and case law)

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

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

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

9 WILLIAM MILLER

10 BY COMMISSIONER WILLIAMS:

11 ALL RIGHT. TODAY'S DATE DECEMBER 10, 2012.
12 THIS IS THE WORKERS' COMPENSATION CASE OF MR.
13 WILLIAM MILLER VERSUS OWEN STEEL COMPANY. GREAT
14 AMERICAN INSURANCE COMPANY IS THE CARRIER. WCC FILE
15 NUMBER 1213162. ATTORNEY CHUCK ORMOND FOR THE
16 CLAIMANT. ATTORNEY JASON LOCKHART FOR THE EMPLOYER
17 AND CARRIER, AND BRETT BAYNE IS HERE AS WELL. DATE
18 OF ACCIDENT ALLEGED AS AUGUST 15TH OF 2012. AVERAGE
19 WEEKLY WAGE \$862.98. CORRESPONDING COMP RATE
20 \$575.35. HEARING IS SET ON THE FORMS 50 AND 51. I
21 HAVE APA SUBMISSIONS FROM THE PARTIES. ANY
22 OBJECTIONS TO JURISDICTION, VENUE, OR THE APA
23 SUBMISSIONS? MR. ORMOND?

24 BY MR. ORMOND:

25 NONE, YOUR HONOR.

1 BY COMMISSIONER WILLIAMS:

2 MR. LOCKHART?

3 BY MR. LOCKHART:

4 NONE FROM THE DEFENDANTS, YOUR HONOR.

5 BY MR. ORMOND:

6 I DO -- THERE'S A -- I DO HAVE TWO OBJECTIONS
7 TO THEIR SUBMISSION, AND THERE IS A -- A SUBMISSION
8 OF A PRIOR REQUEST FOR UNEMPLOYMENT; IT'S NUMBER 19,
9 PAGE 93. SHELTON V. OSCAR MAYER HELD THAT NOT TO BE
10 APPLICABLE, AND ESPECIALLY IN THIS CASE, WE'RE
11 TALKING ABOUT A YEAR AND A HALF OR SO PRIOR TO THIS
12 PARTICULAR ALTERCATION. HE WENT OUT ON EMPLOYMENT -
13 - UNEMPLOYMENT FOR A WEEK OR SO -- OR DIDN'T
14 ACTUALLY GO OUT ON UNEMPLOYMENT, BUT THERE WAS AN
15 UNEMPLOYMENT ISSUE AND ---

16 BY COMMISSIONER WILLIAMS:

17 ALL RIGHT, WHAT'S THE OTHER ONE?

18 BY MR. LOCKHART:

19 YOUR HONOR, ---

20 BY MR. ORMOND:

21 THAT'S IT.

22 BY MR. LOCKHART:

23 THIS DOCUMENT ---

24 BY COMMISSIONER WILLIAMS:

25 THAT'S ALL?

1 BY MR. ORMOND:

2 THAT'S ALL, YOUR HONOR.

3 BY COMMISSIONER WILLIAMS:

4 OKAY.

5 BY MR. LOCKHART:

6 YOUR HONOR, THIS DOCUMENT WAS OFFERED UP INTO
7 EVIDENCE BECAUSE IT -- IT GOES TO THE CREDIBILITY OF
8 THE CLAIMANT. HE WAS PREVIOUSLY TERMINATED FOR AN
9 ALTERCATION WITH A ---

10 BY COMMISSIONER WILLIAMS:

11 WAIT. WE'RE GOING TO LEAVE THIS ONE IN FOR NOW
12 'CAUSE I DO SEE SOME OF THE RELEVANCE IN THAT ONE.
13 SO THAT'S -- THAT'S OVERRULED.

14 THE COMMISSION FILE IS PART OF THE RECORD WITH
15 THE EXCEPTION OF ANY SELF-SERVING DECLARATION OR ANY
16 UNSTIPULATED MEDICAL REPORTS. DENIED CLAIM.
17 CLAIMANT WILL ALLEGE HE HAS INJURED HIS NECK AND HIS
18 ARMS IN THIS ACCIDENT. HE WILL SEEK TEMPORARY TOTAL
19 FROM AUGUST 27, 2012, TO THE PRESENT AND
20 REIMBURSEMENT FOR ANY CAUSALLY-RELATED MEDICALS TO
21 DATE. THE EMPLOYER AND CARRIER HAS DENIED THIS
22 CLAIM. THEY DO NOT BELIEVE THE CLAIMANT CAN MEET A
23 BURDEN OF PROVING A COMPENSABLE INJURY BY ACCIDENT
24 IN THE COURSE AND SCOPE OF HIS JOB DUTIES. THEY
25 WOULD CITE SECTION 42-9-60. THEY WOULD ARGUE THAT

1 THE CLAIMANT WILLFULLY INTENDED TO HURT SOMEONE ELSE
2 IN THIS CASE, AND THEY WOULD ALSO ARGUE THAT UNDER
3 SECTION 42-1-160 AND SECTION 42-9-35 THAT THE
4 CLAIMANT CANNOT MEET HIS BURDEN OF PROVING A
5 COMPENSABLE INJURY BY ACCIDENT OR A COMPENSABLE
6 AGGRAVATION OF A PREEXISTING INJURY. I DO HAVE
7 LEGAL MEMORANDUMS FROM BOTH PARTIES HANDED UP, AND
8 THEY ARE VERY WELL DONE BY BOTH PARTIES. SO I HAVE
9 THOSE IN EVIDENCE AS WELL. THAT BEING STATED,
10 ANYTHING ELSE THE PARTIES WANT TO STATE FOR THE
11 RECORD AT THIS POINT?

12 BY MR. ORMOND:

13 NO, YOUR HONOR.

14 BY COMMISSIONER WILLIAMS:

15 ALL RIGHT, MR. LOCKHART?

16 BY MR. LOCKHART:

17 NOTHING FURTHER FROM THE DEFENDANTS, YOUR
18 HONOR.

19 BY COMMISSIONER WILLIAMS:

20 ALL RIGHT. MR. MILLER'S BEEN ---

21 BY MR. ORMOND:

22 SORRY, YOUR HONOR. I'D FORGOTTEN THAT.

23 BY COMMISSIONER WILLIAMS:

24 THAT'S FINE. ALL RIGHT. MR. MILLER'S BEEN
25 SWORN IN. MR. ORMOND, WHENEVER YOU'RE READY.

1 BY MR. ORMOND:

2 THANK YOU.

3 * * * * *

4 WILLIAM MILLER

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

6 DIRECT EXAMINATION BY MR. ORMOND:

7 Q. COULD YOU REPEAT YOUR NAME AND FULL NAME FOR THE
8 RECORD?

9 A. WILLIAM E. MILLER, JUNIOR.

10 Q. AND, WILLIAM, DO YOU GO BY BILL?

11 A. YES, I DO.

12 Q. DO YOU GO BY ANY OTHER NAMES?

13 A. NO, SIR.

14 Q. WHAT'S YOUR AGE?

15 A. I'M 46.

16 Q. AND ABOUT HOW MUCH DO YOU WEIGH?

17 A. ABOUT 212.

18 Q. AND YOUR EDUCATION, WHAT'S THE LAST EDUCATION YOU
19 FINISHED?

20 A. I HAD A YEAR AND A HALF OF COLLEGE.

21 Q. WHAT TYPES OF JOBS HAVE YOU HAD IN THE PAST PRIOR TO
22 OWEN STEEL, JUST GENERALLY THE TYPES?

23 A. WELDING.

24 Q. OKAY.

25 A. AND WHEN WERE YOU HIRED BY OWEN STEEL?

1 A. I BELIEVE AROUND 2004.

2 Q. OKAY. SO YOU'VE BEEN THERE ABOUT EIGHT YEARS OR SO?

3 A. YES, SIR.

4 Q. WHAT WAS YOUR FIRST POSITION WITH OWEN?

5 A. I WAS A WELDER.

6 Q. DID YOU GET ANOTHER POSITION AFTER THAT?

7 A. YES, SIR. A -- I GOT PROMOTED TO FABRICATOR.

8 Q. OKAY. AND DID YOU GET ANOTHER POSITION AFTER THAT?

9 A. YES, SIR. AFTER THAT I WENT INTO MAINTENANCE.

10 Q. IS THAT A PROMOTION?

11 A. YES, SIR.

12 Q. IN MAINTENANCE, DO YOU -- DO YOU FIX ALL THE
13 MACHINES, OR DO YOU SPECIFY -- SPECIALIZE IN SOME
14 SORT OF MACHINES?

15 A. I HAD MY HANDS ON PRETTY MUCH EVERYTHING IN THE
16 SHOP.

17 Q. DO YOU RECALL AN ALTERCATION THAT HAPPENED ON AUGUST
18 15TH, 2012?

19 A. YES, SIR.

20 Q. WHO WAS THAT ALTERCATION WITH?

21 A. MR. RAULERSON. MR. STEVE RAULERSON.

22 Q. CAN YOU REMEMBER THE TIME OF DAY?

23 A. IT WAS AROUND THREE -- THREE O'CLOCK OR SO.

24 Q. ALL RIGHT. WHO IS STEVE RAULERSON?

25 A. HE'S ACTING SUPERVISOR, ASSISTANT SUPERVISOR.

1 Q. OKAY. AND HOW LONG HAD YOU BEEN AT WORK TODAY --
2 THAT DAY, CAN YOU RECALL?

3 A. IT'S ABOUT EIGHT HOURS.

4 Q. COULD YOU TELL ME FROM, YOU KNOW, BEFORE THE
5 BEGINNING OF -- OF THIS ALTERCATION OR FIGHT OR
6 WHATEVER YOU WANT TO CALL IT WHAT HAPPENED?

7 A. I WAS IN BRIAN'S ROOM, AND WE HAD BEEN DISCUSSING
8 SOME THINGS, AND ONE OF THE GUYS FROM THE PAINT SHOP
9 HAD CAME UP AND ASKED ABOUT WHETHER OR NOT THE POWER
10 WOULD BE ON IN THE PAINT SHOP.

11 Q. OKAY. WHAT HAPPENED THEN?

12 A. INTO THE CONVERSATION, STEVE WALKED UP AND ASKED IF
13 THERE WAS A PROBLEM. HE SAID, "WHAT SEEMS TO BE THE
14 PROBLEM?" AND I JUST SAID, "STEVE, THERE'S NO
15 PROBLEM." I SAID, "WE WERE DISCUSSING WHETHER OR
16 NOT THEY HAD POWER."

17 A. OKAY. WELL, THEN WHAT HAPPENED?

18 A. HE -- I STATED THAT I THOUGHT THAT THEY WOULD NOT
19 HAVE POWER -- OR WOULD HAVE POWER, AND HE SAID WELL
20 HE DIDN'T THINK THAT THEY WOULD. AND I SAID, "WELL,
21 I THINK THEY WILL." AND HE SAID, "WELL, COME TO
22 THINK OF IT, YOU WILL -- THEY MIGHT HAVE POWER."
23 AND I SAID, "HUH," AND I GOT UP AND I WALKED AWAY,
24 WENT INTO THE BATHROOM.

25 Q. OKAY. COULD YOU SAY THAT "HUH" IS LOUD ENOUGH FOR

1 HIM TO HEAR IT?

2 A. I REALLY DON'T KNOW. I CAN'T ANSWER THAT.

3 Q. OKAY. WHY DID YOU SAY ANYTHING? CAN YOU ---

4 A. I JUST -- JUST DID. I DON'T KNOW A PARTICULAR
5 REASON, 'CAUSE IT WAS LIKE HE WAS CONSTANTLY
6 QUESTIONING MY INTELLIGENCE BASICALLY.

7 Q. OKAY. HAD YOU ALL WORKED TOGETHER BEFORE?

8 A. YES, SIR.

9 Q. DID YOU WORK WELL WITH HIM?

10 A. NOT REALLY, NO.

11 Q. OKAY. ALL RIGHT. I THINK YOU STOPPED WITH YOU WENT
12 -- YOU WENT TOWARD THE BATHROOM. DID YOU MAKE IT TO
13 THE BATHROOM?

14 A. YES, SIR. I WENT INTO THE BATHROOM, AND I PROCEEDED
15 TO WASH MY HANDS, AND I HEAR STEVE SAY "WHAT DID YOU
16 SAY?" AND I SAID -- YOU KNOW, I'M STANDING THERE
17 WASHING MY HANDS. I REACHED UP AND GRABBED A TOWEL,
18 AND WHEN I TURNED, STEVE WAS IN -- IN MY FACE WITH
19 HIS FINGER IN MY CHEST POUND -- POUNDING HIS FINGER
20 IN MY CHEST SAYING "YOU'RE GOING TO LISTEN TO ME.
21 YOU'RE GOING TO TELL ME WHAT YOU SAID."

22 Q. FOR THE PURPOSE OF JUST -- AND THIS IS A LITTLE
23 DIAGRAM. LET ME ASK YOU THIS, MR. MILLER ---

24 BY MR. LOCKHART:

25 YOUR HONOR, I'M SORRY. I JUST HAVE TO OBJECT

1 UNLESS WE KNOW WHO PREPARED THAT AND IT'S TO SCALE.
2 I MEAN, I -- I HAVEN'T SEEN THIS BEFORE TODAY. SO I
3 APOLOGIZE, BUT I'M GOING HAVE TO OBJECT.

4 BY MR. ORMOND:

5 WELL, I MEAN TO OFFER PROOF OF THAT.

6 BY COMMISSIONER WILLIAMS:

7 OKAY.

8 BY MR. ORMOND:

9 OKAY..

10 BY COMMISSIONER WILLIAMS:

11 FAIR ENOUGH.

12 BY MR. ORMOND:

13 ALL RIGHT.

14 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

15 Q. MR. MILLER, DID YOU ---

16 BY COMMISSIONER WILLIAMS:

17 JASON, YOU WANT TO COME AROUND HERE?

18 BY MR. LOCKHART:

19 SURE.

20 BY MR. ORMOND:

21 AND I THINK I HAD A SMALLER ONE. I JUST BLEW
22 IT UP.

23 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

24 Q. DID YOU DO A VERY QUICK DIAGRAM OF THE AREA?

25 A. YEAH, KIND OF QUICK, YES, SIR.

1 Q. AND THEN DID WE BLOW IT UP TODAY?

2 A. YES, SIR.

3 Q. OKAY. IS THIS IT?

4 A. YES, SIR.

5 Q. IS THIS ALL YOUR WORK?

6 A. YES, SIR.

7 Q. OKAY. IS THIS JUST THE AREA OF THE BUILDING THAT
8 YOU'RE TALKING ABOUT HERE?

9 A. YES, SIR.

10 BY MR. ORMOND:

11 AND, YOUR HONOR, I'M NOT ASKING FOR IT TO BE
12 ADMITTED, JUST IT MIGHT HELP WITH WHERE THINGS WERE
13 AND ---

14 BY COMMISSIONER WILLIAMS:

15 FAIR ENOUGH. ALL RIGHT. GO AHEAD.

16 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

17 Q. ALL RIGHT. ALL RIGHT. WE WERE TALKING -- YOU WERE
18 IN BRIAN'S ROOM EARLIER, (INDICATING) IS THAT WHERE
19 THAT IS?

20 A. YES, SIR.

21 Q. SHOW -- IF I POINTED -- TELL ME WHEN I'M RIGHT IF
22 I'M POINTING TO THE BATHROOM?

23 A. YES, SIR.

24 Q. OKAY. IS THIS A DOOR?

25 A. YES, SIR.

1 Q. OKAY. IS THIS A DOOR?

2 A. YES, SIR.

3 Q. ALL RIGHT. ALL RIGHT. NOW, I THINK YOU WERE SAYING
4 THAT YOU WENT INTO THE BATHROOM AND ---

5 A. YES, SIR. I WENT INTO THE BATHROOM, AND I WAS
6 STANDING AT THE WHAT LOOKS LIKE A DONUT HOLE, BUT
7 IT'S ACTUALLY THE SINK. I WAS STANDING THERE AT
8 THIS SINK, AND STEVE CAME IN THE DOOR, AND HE WAS
9 STANDING HERE WITH MY BACK UP AGAINST THE SINK AND,
10 YOU KNOW, I TRIED -- I TRIED TO WALK -- GO THAT WAY
11 TO GET AROUND HIM, AND HE STEPPED TO THE SIDE, AND
12 THEN I STEPPED THIS WAY TO GET AROUND HIM, AND HE
13 STEPPED TO THAT SIDE. SO I PUT MY HAND UP, KIND OF
14 WENT LIKE THIS JUST TO STIFF ARM HIM TO GET -- TO
15 MOVE HIM OUT OF MY WAY, AND I CAME TO THE DOORWAY
16 OVER HERE (INDICATING), AND AS I GOT IN THE DOORWAY,
17 HE SHOVED ME.

18 Q. OKAY. LET ME ASK YOU THIS. WERE YOU GUYS YELLING
19 AT EACH OTHER AT THIS POINT?

20 A. YES, SIR.

21 Q. WERE YOU BOTH USING CUSS WORDS?

22 A. YES, SIR.

23 Q. ALL RIGHT. SO YOU GOT AROUND HIM, AND WHERE WERE
24 YOU?

25 A. I WAS IN THE HALLWAY.

1 Q. OKAY.

2 A. THAT'S -- (INDICATING) THAT WOULD BE THE HALLWAY.

3 YES, SIR.

4 Q. ALL RIGHT. THEN WHAT HAPPENED?

5 A. WELL, ONCE I GOT SHOVED INTO THE WALL, I FELT

6 SOMETHING IN MY NECK POP. OKAY. AND I LOOK UP, AND

7 STEVE'S STANDING IN THE DOORWAY OF THE BATHROOM LIKE

8 HE'S FIXING TO LUNGE AT ME. SO WHEN I LOOK UP AND

9 AFTER, YOU KNOW, I FELT A POP IN MY NECK, I LOOK UP

10 AND I SEE HIM, AND HE'S, YOU KNOW, RED FACED, AND

11 IT'S LIKE HE'S GOING TO LUNGE AT ME. SO I PUNCHED

12 HIM AND ---

13 Q. DO YOU RECALL HIM TELLING YOU TO HIT HIM SAYING ---

14 BY MR. LOCKHART:

15 YOUR HONOR, I OBJECT TO THE LEADING FORM OF THE

16 QUESTION.

17 BY COMMISSIONER WILLIAMS:

18 OKAY. YOU CAN'T -- CAN YOU REPHRASE?

19 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

20 Q. WHAT DO YOU RECALL HIM SAYING TO YOU?

21 A. I DON'T RECALL HIM SAYING ANYTHING ---

22 Q. OKAY.

23 A. --- AT THAT POINT, SIR.

24 Q. DO YOU RECALL KICKING HIM?

25 A. NO, SIR. I DON'T.

1 Q. IS IT POSSIBLE THAT YOU KICKED HIM AND YOU JUST
2 DON'T RECALL IT?

3 A. IT'S A POSSIBILITY. YES, SIR. EVERYTHING -- THE
4 WAY EVERYTHING HAPPENED, IT WAS SO QUICK THAT IT
5 JUST, YOU KNOW, IT WAS -- IT'S A POSSIBILITY.

6 Q. WHEN YOU WERE IN THE BATHROOM WITH MR. RAULERSON,
7 WAS THERE ANYBODY ELSE IN THERE?

8 A. ABSOLUTELY NOT. NO, SIR.

9 Q. DO YOU -- WHO ELSE DO YOU RECALL WAS OUTSIDE WHEN
10 Y'ALL EMERGED FROM THE BATHROOM IF ANYBODY?

11 A. I DON'T REMEMBER ANYBODY BEING OUT THERE.

12 Q. OKAY.

13 A. NO.

14 Q. AFTER -- WHAT HAPPENED THEN? YOU PUNCHED HIM. WHAT
15 HAPPENED?

16 A. WELL, WHEN I PUNCHED AND TOOK ONE STEP BACK, THE
17 NEXT THING I KNEW THAT IT WAS BEING BROKE UP.

18 Q. OKAY. DO YOU NOT REMEMBER WHO BROKE UP THE FIGHT?

19 A. NO, SIR. NOT RIGHT -- NO, SIR.

20 Q. OKAY. DO YOU REMEMBER IF RAULERSON MAY HAVE PUSHED
21 AWAY -- PUSHED YOU AWAY AFTER THE PUNCH?

22 BY MR. LOCKHART:

23 YOUR HONOR, I HAVE TO OBJECT TO THE LEADING
24 FORM OF THE QUESTION.

25 BY COMMISSIONER WILLIAMS:

1 CAN YOU REPHRASE?

2 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

3 Q. CAN YOU REMEMBER WERE THERE ANY -- ANY PUSHES THAT
4 YOU CAN RECALL AFTER THE PUNCH, AFTER YOU PUNCHED
5 HIM?

6 A. NO, SIR.

7 Q. IS IT POSSIBLE THERE WAS AND YOU DON'T RECALL IT?

8 A. NO, SIR.

9 Q. CAN YOU GIVE ME AN ESTIMATE TO THE BEST OF YOUR
10 ABILITY HOW LONG THIS ALTERCATION LASTED?

11 A. A MINUTE.

12 Q. DURING THE ALTERCATION, DID YOU GET UPSET?

13 A. YES, SIR. I WAS PRETTY UPSET.

14 Q. DID YOU GO INTO THIS ALTERCATION AT ANY TIME WANTING
15 TO INJURE MR. RAULERSON?

16 A. NO, SIR. I DIDN'T INTEND ON INJURING MR. RAULERSON
17 AT ALL. I DIDN'T WANT THE ALTERCATION TO HAPPEN.

18 Q. THAT DAY DID YOU EVER HAVE AN INTENT TO INJURE MR.
19 RAULERSON OR ANYONE ELSE?

20 A. ABSOLUTELY NOT. NO, SIR.

21 Q. AFTER HE FOLLOWED YOU INTO THE BATHROOM AREA, DID
22 YOU INTEND TO INJURE HIM?

23 A. NOT -- NO, SIR.

24 Q. CAN YOU RECALL WHAT YOU WERE THINKING OUT IN THE
25 HALLWAY?

1 A. YES, SIR. WHEN I DID HIT HIM, IT WAS BECAUSE, YOU
2 KNOW, I FIGURED HE NEEDED TO REALIZE THAT, YOU KNOW,
3 HE HURT ME. I FELT MY NECK POP, AND I WAS SCARED,
4 YOU KNOW, AND I LOOK AT HIM, AND HE WAS LIKE TWICE
5 MY SIZE, AND I DIDN'T KNOW IF HE WAS GOING TO PUSH
6 ME AGAIN OR -- OR WHAT WAS GOING TO HAPPEN, YOU
7 KNOW, AND I FELT LIKE IF I DIDN'T HIT HIM, THAT HE
8 WAS GOING TO HURT ME.

9 Q. WERE YOU TRYING TO INJURE HIM WHEN YOU HIT HIM?

10 BY MR. LOCKHART:

11 I'M GOING TO HAVE TO OBJECT TO THE LEADING FORM
12 OF THE QUESTION.

13 BY MR. ORMOND:

14 YOUR HONOR ---

15 BY MR. LOCKHART:

16 THAT'S BEEN ASKED AND ANSWERED.

17 BY COMMISSIONER WILLIAMS:

18 CAN YOU REPHRASE?

19 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

20 Q. WAS THERE ANY INTENT ON YOUR PART TO YOUR
21 RECOLLECTION TO INJURE MR. RAULERSON?

22 A. NO, SIR.

23 Q. AFTER THE FIGHT WAS BROKEN UP, WHAT HAPPENED?

24 A. THE SUPERVISOR, MR. -- MR. OXEDINE, AND PORIAN --
25 PORAN, THEY CAME IN AND STARTED TALKING TO THE OTHER

1 EMPLOYEES, WANTED TO FIND OUT WHAT HAPPENED.

2 Q. OKAY.

3 A. AND SHORTLY AFTER THAT, I WAS CALLED INTO THE OFFICE
4 BY MR. SLOAN.

5 Q. OKAY. WHO IS MR. SLOAN?

6 A. HE'S THE SUPERVISOR, MAINTENANCE SUPERINTENDENT.
7 EXCUSE ME.

8 Q. OKAY. WAS HE YOUR BOSS?

9 A. YES, SIR.

10 Q. WHAT DID HE SAY TO YOU?

11 A. THEY ASKED ME, YOU KNOW, WHAT HAD HAPPENED AND HE --
12 I TOLD HIM MY SIDE OF IT, AND THEY TOLD ME THAT THEY
13 WERE GOING TO GIVE ME FOUR DAYS OFF.

14 Q. OKAY. WHAT DID YOU SAY TO HIM?

15 A. I TOLD MR. SLOAN AND MR. OXEDINE, I SAID, YOU KNOW,
16 "I DIDN'T INTEND ON ANY OF THIS HAPPENING. I DIDN'T
17 FEEL LIKE THAT IT WAS WARRANTED." I SAID, YOU'RE A
18 SUPERVISOR, MR. SLOAN, AND YOU'RE A SUPERVISOR, MR.
19 OXEDINE. I SAID THERE IS NO WAY EITHER ONE OF YOU
20 WOULD PUT -- PUT YOUR HANDS ON ANY EMPLOYEE OUT
21 THERE," AND THEY BOTH AGREE AND GIVE ME THE FOUR
22 DAYS OFF, AND I WALKED OUT. HE SAID -- HE SAID,
23 "I'LL SEE YOU WHEN YOU COME BACK, BUD." HE SAID
24 "BUD." HE CALLED ME "BUD."

25 Q. OKAY. SO SOMETIMES YOU'RE CALLED BUD?

1 A. YES, SIR. WELL, YES, SIR.

2 Q. OKAY. HAVE YOU AND STEVE EVER HAD WORDS PRIOR TO
3 THIS?

4 A. YES, SIR. NOTHING TO THAT EXTENT THOUGH.

5 Q. HAVE YOU EVER HAD AN -- OR A VERBAL DISAGREEMENT
6 WITH ANYONE ELSE AT OWEN?

7 A. YES, SIR.

8 Q. HOW OFTEN?

9 A. JUST ON OCCASION. I MEAN IT'S -- IT'S A STRESSFUL
10 ENVIRONMENT IN -- IN THE MAINTENANCE SHOP.

11 Q. HAVE YOU WITNESSED OTHER VERBAL ALTERCATIONS AND
12 DISAGREEMENTS BETWEEN OTHER MAINTENANCE EMPLOYEES
13 THERE?

14 A. ABSOLUTELY.

15 BY MR. LOCKHART:

16 YOUR HONOR, I HAVE TO OBJECT TO THE FORM OF THE
17 QUESTION. I THINK THAT'S ASKING FOR HEARSAY
18 TESTIMONY.

19 BY MR. ORMOND:

20 I'M ASKING IF WHAT HE'S OBSERVED, YOUR HONOR.

21 BY COMMISSIONER WILLIAMS:

22 OKAY. IF HE CAN GIVE ME HIS -- HIS PERSONAL
23 OBSERVATION.

24 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

25 Q. HAVE YOU EVER HAD OTHER THAN WHAT WE'RE TALKING

1 ABOUT TODAY -- EVER HAD A PHYSICAL ALTERCATION OR A
2 FIGHT WITH AN EMPLOYEE AT OWEN?

3 A. ABSOLUTELY NOT.

4 Q. HAVE YOU EVER HAD A PHYSICAL ALTERCATION IF YOU WILL
5 ANY TIME WHILE YOU WERE WORKING?

6 A. NO, SIR.

7 Q. DID YOU GO HOME AFTER THE ALTERCATION?

8 A. YES, SIR. I DID.

9 Q. ALL RIGHT. AND MY UNDERSTANDING YOU WERE OUT FOR
10 FOUR DAYS?

11 A. YES, SIR.

12 Q. OKAY. AND THIS WAS A WEDNESDAY?

13 A. I CAME BACK ON A WEDNESDAY. YES, SIR.

14 Q. CAN YOU REMEMBER WHAT DAY THE 15TH WAS, THE DAY OF
15 THE ALTERCATION?

16 A. IT WAS EITHER WEDNESDAY OR THURSDAY; I'M NOT SURE.

17 Q. OKAY. I'M GOING TO GIVE YOU A -- A CALENDER IF YOU
18 WANT IT.

19 BY MR. ORMOND:

20 THIS AGAIN NOT FOR -- DO YOU HAVE A PROBLEM
21 WITH THAT?

22 BY MR. LOCKHART:

23 NO.

24 BY MR. ORMOND:

25 OKAY.

DIRECT EXAMINATION RESUMED BY MR. ORMOND:

1 Q. YOU WERE GIVEN FOUR DAYS I UNDERSTAND. CAN YOU TELL
2 ME WHEN YOU CAME BACK? IT LOOKS LIKE THERE'S A
3 WEEKEND IN THERE?
4

5 A. YES, SIR. I CAME BACK ON THAT FOLLOWING WEDNESDAY
6 ON THE 22ND.

7 Q. OKAY. DURING THE SIX DAYS YOU WERE OUT, 'CAUSE I
8 GUESS THERE'S TWO WEEKENDS DAYS DURING THAT TIME ---

9 A. YES, SIR.

10 Q. --- HOW WAS -- HOW WAS YOUR NECK?

11 A. PROGRESSIVELY WORSE. MY NECK HURT. IT WAS PRETTY
12 BAD.

13 Q. OKAY.

14 A. I COULDN'T SLEEP. THERE WAS NUMBNESS IN MY HANDS,
15 MY LEG, PAIN SHOOTING DOWN INTO MY SHOULDERS.

16 Q. WHEN YOU WENT BACK HOME, DID YOU TELL ANYBODY WHAT
17 HAPPENED?

18 A. YES, SIR. I TOLD MY WIFE, AND I TOLD MY MOM AND MY
19 FATHER.

20 Q. DID YOU GO TO THE DOCTOR THAT -- DURING THOSE SIX
21 DAYS?

22 A. NO, SIR.

23 Q. DID YOU WORK A FULL DAY ON WEDNESDAY?

24 A. YES, SIR.

25 Q. DID YOU DRIVE YOURSELF?

1 A. YES, SIR.

2 Q. WERE YOU ABLE TO WORK NORMALLY ON WEDNESDAY?

3 A. WELL, I WAS IN PAIN. YES, SIR.

4 Q. DID YOU COMMUNICATE THE INJURY TO ANY -- THIS TO
5 ANYONE THERE?

6 A. YES, SIR.

7 Q. OKAY. WHO -- WHO DID YOU TALK TO?

8 A. I TALKED WITH MR. SLOAN.

9 Q. WHAT DID YOU SAY TO MR. SLOAN?

10 A. I TOLD HIM THAT I WAS -- I WAS HURT IN THE INCIDENT
11 THAT HAD TAKEN PLACE. THAT I WAS HURT, AND HE SAID
12 THAT HE WOULD TAKE CARE OF IT.

13 Q. WHAT DID YOU UNDERSTAND THAT HE WOULD TAKE CARE OF
14 IT MEAN?

15 A. THAT THEY WOULD GET ME TO A DOCTOR.

16 Q. DID YOU EVER MENTION GOING TO A DOCTOR TO HIM AT
17 THAT TIME?

18 A. YES, SIR. I TOLD HIM I'D LIKE TO GO TO THE DOCTOR.

19 Q. OKAY. ALL RIGHT. DID YOU COME INTO WORK THURSDAY?

20 A. YES, SIR.

21 Q. WERE YOU ABLE TO WORK AS NORMAL?

22 A. AS NORMAL AS POSSIBLE. I WAS -- I WAS STILL IN A
23 LOT OF PAIN, AND IT WAS PROGRESSIVELY GETTING WORSE
24 LIKE I SAID..

25 Q. ALL RIGHT. AND THEN I BELIEVE ANOTHER WEEKEND CAME

1 UP.

2 A. YES, SIR.

3 Q. WHICH WOULD HAVE BEEN THE 25TH AND 26TH; IS THAT
4 CORRECT?

5 A. YES, SIR. YES, SIR.

6 Q. HOW WERE YOU THEN?

7 A. I WAS IN A LOT OF PAIN. I HAD -- I WASN'T ABLE TO
8 DO VERY MUCH OF ANYTHING, SIT AROUND THE HOUSE.

9 Q. DID YOU DISCUSS WITH ANYBODY GOING TO THE DOCTOR
10 THAT TIME?

11 A. NO, SIR.

12 Q. AND WHEN I SAY ANYBODY, I MEAN INCLUDING YOUR WIFE
13 OR ANYBODY ELSE?

14 A. OH, MY WIFE WAS CONSTANTLY, YOU KNOW, BECAUSE OF THE
15 FACT THAT I WAS IN PAIN SHE WANTED ME TO GO TO THE
16 DOCTOR.

17 Q. OKAY. DID YOU MAKE A DETERMINATION AT ALL ON THAT
18 WEEKEND THAT YOU'D GO TO THE DOCTOR?

19 A. YES, SIR. SHE WANTED ME TO GO AS SOON AS POSSIBLE
20 BECAUSE OF THE, YOU KNOW, IT WAS GETTING MORE AND
21 MORE SEVERE, AND WE BOTH AGREED THAT SHE WOULD MAKE
22 AN APPOINTMENT THAT MONDAY MORNING ---

23 Q. OKAY.

24 A. --- IF SHE COULD.

25 Q. MONDAY MORNING WAS THE 27TH OF AUGUST?

1 A. YES, SIR.

2 Q. OKAY. WHAT HAPPENED MONDAY MORNING?

3 A. I WENT IN TO WORK AND SPOKE WITH MR. SLOAN AND TOLD
4 HIM, YOU KNOW, THAT I NEEDED -- I WAS GOING TO THE
5 DOCTOR THAT DAY -- I NEEDED TO GO TO THE DOCTOR THAT
6 DAY, AND I PROCEEDED TO WORK. I WAS ---

7 Q. DID YOU END UP TAKING OFF EARLY THAT DAY?

8 A. YES, SIR. I TOOK OFF. MY WIFE TEXTED ME AND TOLD
9 ME THAT SHE WAS ABLE TO GET A DOCTOR'S APPOINTMENT
10 FOR ME THAT DAY.

11 Q. DID YOU CONVEY TO ANYONE THAT DAY THAT YOU WERE
12 UPSET?

13 A. YES, SIR. I DID. I CONVEYED TO STACY OXEDINE, MR.
14 OXEDINE, AND MR. SLOAN.

15 Q. WHAT DID YOU CONVEY TO THEM, OR PUT IT THIS WAY,
16 WHAT WERE YOU UPSET ABOUT?

17 A. I WAS UPSET BECAUSE I WAS IN PAIN, AND NOBODY WOULD
18 MAKE ANY EFFORT TO TAKE ME TO A DOCTOR.

19 Q. DID YOU LEARN -- HOW DID YOU KNOW YOU HAD AN
20 APPOINTMENT THAT DAY; WHAT HAPPENED?

21 A. MY WIFE TEXTED ME AND TOLD ME THAT SHE HAD -- SHE
22 WAS SUCCESSFUL IN MAKING THE APPOINTMENT.

23 Q. DID YOU TELL ANYBODY THERE THAT YOU WERE LEAVING TO
24 GO TO THE DOCTOR'S APPOINTMENT?

25 A. YES, SIR. I TOLD MR. SLOAN.

1 Q. DID YOU GO TO THE DOCTOR'S APPOINTMENT THAT DAY?

2 A. YES, SIR.

3 Q. OKAY. CAN YOU RECALL WHAT TIME OF DAY IT WAS AT THE
4 BEST OF YOUR ABILITY?

5 A. AROUND ONE -- ONE O'CLOCK OR SO, I ---

6 Q. OKAY.

7 A. --- I WANT TO SAY.

8 Q. CAN YOU RECALL HOW YOU GOT AN APPOINTMENT SO QUICK?

9 A. MY WIFE'S REQUESTING AN EMERGENCY VISIT, YES.

10 Q. DID YOU TELL MR. LEVINSON WHAT HAPPENED -- DOCTOR --
11 I'M SORRY -- DR. LEVINSON?

12 A. YES, SIR. I SURE DID.

13 Q. IF YOU WOULD LOOK AT PAGE 40 OF WHAT IS CALLED AN
14 APA OR THIS -- THESE DOCUMENTS. IF YOU COULD READ
15 THE C.C., AND TELL ME IF YOU TOLD DR. LEVINSON THAT?
16 IF YOU COULD READ IT?

17 A. (AS READ) "BILL IS A 46-YEAR-OLD WHITE MALE. HE
18 PRESENTS WITH A NECK -- WITH NECK PAIN AS A RESULT
19 OF ASSISTANT SUPERVISOR PUSHING THE MAN UP AGAINST
20 THE WALL."

21 Q. OKAY. DID YOU TELL HIM ANYTHING ELSE THAT YOU
22 RECALL?

23 A. I TOLD HIM ABOUT THE PAIN THAT I WAS IN, YOU KNOW.

24 Q. NOW, HAVE YOU HAD BACK AND -- AND NECK ISSUES PRIOR
25 TO THIS?

1 A. YES, SIR.

2 Q. HAVE YOU GONE TO A DOCTOR ABOUT IT?

3 A. YES, SIR.

4 Q. OKAY. NOW, IS -- IS LEVINSON ONE OF THE DOCTORS
5 YOU'VE GONE TO?

6 A. YES, SIR.

7 Q. DO YOU KNOW IF THERE WAS A DIAGNOSIS?

8 A. I WAS DIAGNOSED WITH SPINAL STENOSIS.

9 Q. OKAY. WHAT WAS YOUR UNDERSTANDING OF WHAT THAT
10 MEANS?

11 A. IT'S NARROWING, AND IT'S THROUGH THE SPINE.

12 Q. HAVE YOU HAD ANY OTHER TREATMENTS, AND THIS IS PRIOR
13 TO THE INJURY, PRIOR TO AUGUST 15TH, ANY TREATMENTS
14 FOR YOUR NECK?

15 A. I HAD INJECTIONS IN MY LOWER BACK AND IN MY NECK.
16 YES, SIR.

17 Q. CAN YOU RECALL ANYTHING ELSE?

18 A. OTHER THAN MEDICATION. NO, SIR.

19 Q. OKAY. DID YOU GO TO A DR. WESTERKAM?

20 A. NO, SIR. I DID NOT.

21 Q. OKAY. DO CALL -- DO YOU -- DO YOU RECALL EVER GOING
22 TO HEALTHSOUTH?

23 A. HEALTHSOUTH? UNLESS THAT'S THE DOCTOR'S OFFICE IN -
24 - NO, SIR. I DON'T.

25 Q. OKAY.

1 A. SORRY.

2 Q. WHAT KIND OF SYMPTOMS WOULD YOU HAVE WITH YOUR NECK
3 OR YOUR BACK PRIOR TO THE AUGUST 15TH ALTERCATION
4 WE'RE TALKING ABOUT?

5 A. I HAD SOME -- SOME OF THE SAME SYMPTOMS, BUT THEY
6 WEREN'T ANYTHING LIKE I WAS EXPERIENCING AFTER THE
7 SITUATION.

8 Q. DURING THE FIRST FOUR OR FIVE, SIX DAYS AFTER THE
9 INCIDENT, DID YOU MAKE ANY ASSUMPTIONS THAT THIS
10 MIGHT GET BETTER?

11 A. NO, SIR. IT WAS PROGRESSIVELY GETTING WORSE.

12 Q. OKAY. ANY OTHER WAYS OTHER THAN THE SEVERITY OR THE
13 LENGTH OF TIME THAT -- THAT YOU'D HAD NECK PAIN --
14 ANY OTHER DIFFERENCES IN THE SYMPTOMS BETWEEN AFTER
15 THE ACCIDENT AND THE KIND OF NECK PAIN YOU'D HAD
16 PRIOR TO THE ACCIDENT?

17 A. YES, SIR. I WAS -- CAN YOU SAY THAT AGAIN? I'M
18 SORRY.

19 Q. ALL RIGHT. BAD QUESTION, LET ME RE-PHASE. PRIOR
20 TO THE ACCIDENT, PRIOR TO AUGUST 15TH, ---

21 A. PRIOR TO.

22 Q. --- DID YOU HAVE AND WHEN YOU HAD NECK PAIN, CAN YOU
23 TELL US ANY DIFFERENCE OTHER THAN THE LENGTH OF TIME
24 THAT YOU WOULD HAVE PAIN BETWEEN THEN AND AFTER THE
25 ACCIDENT? THAT WASN'T A VERY GOOD QUESTION EITHER.

1 A. I'M STILL NOT CLEAR ---

2 Q. OKAY.

3 A. ---ON WHAT YOU'RE ASKING, SIR.

4 Q. I'M TRYING TO GET AN IDEA JUST THE BEST YOU CAN IF
5 YOU COULD DESCRIBE HOW THE SYMPTOMS WERE DIFFERENT
6 AFTER THE ACCIDENT AND THE SYMPTOMS THAT YOU HAD
7 WITH YOUR NECK SOMETIMES PRIOR TO THE ACCIDENT,
8 PRIOR TO AUGUST 15TH?

9 A. THEY WERE MUCH MORE INTENSE AND EXCRUCIATING
10 RADIATING IN, I MEAN, IT WAS VERY VERY HURTFUL. I
11 COULDN'T SLEEP. I MEAN, THERE WAS -- IT WAS BAD.
12 THAT'S ALL CAN SAY; IT WAS BAD.

13 Q. OKAY. WHAT WERE YOU PRESCRIBED MEDICATIONS OR
14 DIAGNOSTICS ON THE 27TH WITH DR. LEVINSON?

15 A. YES, SIR. I WAS.

16 Q. CAN YOU RECALL IF YOU REQUIRED DIAGNOSTICS?

17 A. YES, SIR. HE RECOMMENDED THAT I HAVE AN M.R.I.

18 Q. WHAT ABOUT MEDICATIONS?

19 A. HE GAVE ME SOME PAIN MEDICATION.

20 Q. CAN YOU REMEMBER WHAT KIND THEY WERE?

21 A. PERCOCET.

22 Q. DID YOU RECEIVE A WORK RELEASE FROM DR. LEVINSON?

23 A. YES, SIR. I DID.

24 Q. DO YOU RECALL IF YOU DROVE TO THE PLANT THAT
25 MORNING?

1 A. NO, SIR. MY WIFE DROVE ME TO THE PLANT THE NEXT
2 MORNING.

3 Q. OH, OKAY. CAN YOU -- CAN YOU RECALL WHAT TIME YOU
4 ARRIVED AT THE PLANT?

5 A. IT WAS PROBABLY TWENTY MINUTES TO SEVEN OR SO.

6 Q. OKAY. WHAT WAS THE PURPOSE OF GOING TO THE PLANT?

7 A. TO TAKE IN THE DOCTOR'S EXCUSE FOR THE -- FROM THE
8 DOCTOR.

9 Q. WHO DID YOU GO TO?

10 A. ACTUALLY I WENT INTO THE MAINTENANCE -- THE
11 MAINTENANCE DEPARTMENT TO SEE MR. SLOAN, AND HE
12 WASN'T IN THE -- IN THE OFFICE. SO I ENDED UP GOING
13 INTO THE MAIN OFFICE AND SPOKE WITH MR. SAMUELS.

14 Q. OKAY. AND WHO IS MR. SAMUELS?

15 A. MR. MYRON SAMUELS, HE'S THE SAFETY DIRECTOR.

16 Q. OKAY. SO HE'S A MEMBER OF MANAGEMENT?

17 A. YES, SIR.

18 Q. OKAY. WHAT DID YOU TELL HIM?

19 A. I GAVE HIM A COPY OF THE DOCTOR'S EXCUSE AND ALSO
20 GAVE HIM A COPY OF THE INCIDENT REPORT AND TOLD HIM,
21 YOU KNOW, I ASKED HIM, YOU KNOW, IF HE HAD GOTTEN
22 THIS INFORMATION, AND HE SAID HE HAD HEARD ABOUT IT,
23 AND I SAID, "WELL, THIS IS MY STATEMENT, AND IF YOU
24 NEED ANYTHING ELSE FROM ME, FEEL FREE TO CALL ME."

25 Q. OKAY. DID YOU GIVE HIM THE DOCTOR'S EXCUSE, A COPY?

1 A. YES, SIR.

2 Q. WHEN YOU MENTIONED THE TERM STATEMENT, I'M GOING TO
3 SHOW YOU A STATEMENT.

4 BY MR. ORMOND:

5 MR. COMMISSIONER, IT'S ON PAGE 82 I BELIEVE OF
6 THE APA.

7 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

8 Q. IS THIS THE STATEMENT WE'RE TALKING ABOUT?

9 A. YES, SIR.

10 Q. OKAY. DID YOU EVER -- THE -- IF YOU LOOK AT THE
11 SECOND PAGE, THAT IS NOT IN THE APAs. IS THAT A --
12 A LIST OF WITNESSES YOU THOUGHT MIGHT HAVE SEEN THE
13 PART OF THE FIGHT?

14 A. YES, SIR.

15 Q. OKAY. CAN YOU RECALL FOR SURE WHO IF -- IF YOU GAVE
16 ANYBODY ELSE OR IF YOU GAVE -- OR WHO YOU GAVE THE
17 STATEMENT AT THAT TIME?

18 A. I GAVE A COPY -- I ACTUALLY GAVE A COPY TO MR.
19 SAMUELS AND -- AND THEN AFTER I LEFT HIM, YOU KNOW,
20 I ASKED IF -- IF THEY HAD HAD A MEETING OR SOMETHING
21 THAT MORNING. AFTER I LEFT HIM, I WENT TO THE
22 MAINTENANCE SHOP, AND MY SUPERVISOR MR. SLOAN WAS
23 COMING AROUND THE CORNER, AND I HANDED HIM A COPY OF
24 EVERYTHING THAT I HANDED MR. SAMUELS, AND MR. SLOAN
25 SAID THAT, "BILL, I'M GLAD THAT YOU'VE DONE THIS,"

1 AND HE SAID -- HE ASKED ME IF I WANTED TO TALK FOR A
2 FEW MINUTES, AND I SAID, "NO, SIR." I SAID I NEEDED
3 TO LEAVE I WAS ON MEDICATION.

4 Q. DID HE SAY WHAT -- WHAT HE WAS GLAD YOU DID?

5 A. HE WAS GLAD THAT I WENT TO THE DOCTOR.

6 Q. OKAY. DID YOU GO HOME?

7 A. YES, SIR. I DID.

8 Q. DO YOU RECALL -- WELL, DO YOU RECALL GETTING A CALL
9 FROM HUMAN RESOURCES AT SOME POINT?

10 A. IT WAS ON THE 28TH. IT WAS EITHER THE 28TH OR 29TH,
11 I'M NOT SURE ABOUT THAT FOR SURE, 28TH OR 29TH
12 SOMETHING LIKE THAT. I GOT A CALL FROM MS. DELORES,
13 AND I DIDN'T -- I SAY I GOT A CALL, I DIDN'T RECEIVE
14 THE CALL I -- IT WAS ON MY VOICE MAIL THAT SHE
15 WANTED TO SPEAK WITH ME. SO I CALLED HER BACK
16 SEVERAL TIMES, AND I WAS GOING OUT OF CELL PHONE
17 RANGE, SO I DECIDED TO CALL HER BACK THE FOLLOWING
18 DAY, WHICH I LEFT HER A MESSAGE STATING THAT I WOULD
19 CALL HER.

20 Q. OKAY. DID YOU FINALLY TALK TO HER?

21 A. YES, SIR. AND I WAS TOLD AT THAT POINT THAT I WAS
22 TERMINATED.

23 Q. WHAT DID YOU TELL HER?

24 A. I SAID THAT I DIDN'T UNDERSTAND WHY BECAUSE, YOU
25 KNOW, NOBODY HAD SAID ANYTHING TO ME WHY WAS I

1 TERMINATED?

2 Q. DID YOU -- DID YOU EVER GET AN M.R.I.?

3 A. YES, SIR. I DID.

4 Q. OKAY. DO YOU RECALL WHEN THAT WAS?

5 A. I BELIEVE IT WAS IN SEPTEMBER.

6 Q. MIGHT IT HAVE BEEN SEPTEMBER 4?

7 A. YES, SIR. IT MAY HAVE.

8 Q. AFTER THE M.R.I., DID YOU -- WERE YOU REFERRED TO
9 DR. BOYD?

10 A. YES, SIR. I WAS IMMEDIATELY.

11 Q. WHAT -- WHAT HAPPENED THEN?

12 A. AFTER I WENT AND SEEN MR. BOYD?

13 Q. YES, DR. BOYD.

14 A. OKAY. I SPOKE WITH HIM AND GIVE HIM THE
15 INFORMATION. I TOLD HIM WHAT HAD HAPPENED, AND HE
16 TOLD ME THAT WE NEEDED TO DO SURGERY. HE WAS VERY
17 ADAMANT ABOUT THE FACT THAT I HAD TO HAVE SURGERY.

18 Q. OKAY. DID YOU EVER WEAR A NECK BRACE?

19 A. YES, SIR. HE PRESCRIBED MORE PAIN MEDICATION AND
20 TOLD ME TO WEAR A NECK BRACE AT ALL TIMES.

21 Q. WHEN WAS THE LAST TIME YOU SAW DR. BOYD?

22 A. IT'S BEEN ALMOST A MONTH OR SO.

23 Q. DID HE RELEASE YOU FOR SOME SORT OF LIGHT-DUTY WORK?

24 A. YES, SIR.

25 BY MR. ORMOND:

1 THAT'S PAGE 73, MR. COMMISSIONER.

2 BY COMMISSIONER WILLIAMS:

3 OKAY.

4 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

5 Q. ARE YOU STILL TREATING WITH DR. BOYD?

6 A. YES, SIR.

7 Q. AND DO YOU HAVE A FOLLOW-UP VISIT PLANNED OR

8 SCHEDULED FOR DR. BOYD?

9 A. YES, SIR.

10 Q. DO YOU KNOW ABOUT HOW LONG IN THE FUTURE THAT IS?

11 A. I BELIEVE IT'S ABOUT TWO WEEKS.

12 Q. TWO WEEKS?

13 A. TWO WEEKS..

14 Q. OKAY. BILL, IS -- IS THERE ANYTHING ELSE THAT YOU
15 CAN REMEMBER THAT MIGHT BE IMPORTANT OR RELEVANT
16 THAT YOU'D LIKE TO TELL THE COMMISSIONER ABOUT THIS
17 CASE BEFORE I TURN YOU OVER TO THE OPPOSING COUNSEL?

18 A. NO, SIR. I, YOU KNOW, I HATE THAT THINGS ARE THE
19 WAY THEY ARE.

20 BY MR. ORMOND:

21 THANK YOU. THANK YOU, SIR.

22 BY THE WITNESS:

23 YES, SIR.

24 BY COMMISSIONER WILLIAMS:

25 MR. LOCKHART.

CROSS EXAMINATION BY MR. LOCKHART:

Q. MR. MILLER, GOOD AFTERNOON.

A. GOOD AFTERNOON, SIR.

Q. YOU AND I MET A FEW WEEKS BACK. MY NAME IS JASON LOCKHART. I REPRESENT OWEN STEEL IN YOUR WORKERS' COMPENSATION CASE, AND I HAVE JUST A FEW QUESTIONS TO ASK YOU IN RESPONSE TO SOME OF THE TESTIMONY THAT YOU'VE GIVEN SO FAR THIS AFTERNOON.

A. SURE.

Q. LET'S TALK FOR A MOMENT ABOUT YOUR INITIAL EXAMINATION WITH DR. BOYD. YOUR MEDICAL RECORDS REFLECT THAT YOU SAW HIM FOR THE FIRST TIME IN SEPTEMBER 2012; DOES THAT SOUND FAIRLY ACCURATE TO YOU?

A. YES, SIR.

Q. AND PRIOR TO SEEING DR. BOYD IN HIS OFFICE, I PRESUME YOU WOULD HAVE FILLED OUT DOCUMENTATION ABOUT YOUR MEDICAL HISTORY AND YOUR SYMPTOMS AND ANY TREATMENT YOU HAD RECEIVED IN THE PAST; DOES THAT SOUND FAIRLY ACCURATE TO YOU?

A. YES, SIR.

Q. THE TYPICAL PAPERWORK THAT WE FILL OUT BEFORE SEEING A PHYSICIAN, YOU HAD TO FILL THAT OUT BEFORE SEEING DR. BOYD; IS THAT CORRECT?

A. YES, SIR.

1 Q. ALL RIGHT.

2 BY MR. LOCKHART:

3 YOUR HONOR, I'M LOOKING AT PAGE 131 OF THE
4 DEFENDANTS' APA SUBMISSIONS.

5 BY COMMISSIONER WILLIAMS:

6 OKAY.

7 BY MR. LOCKHART:

8 YOUR HONOR, IF I MAY APPROACH THE WITNESS.

9 BY COMMISSIONER WILLIAMS:

10 GO AHEAD.

11 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

12 Q. MR. MILLER, I'M GOING TO SHOW YOU A COPY OF A -- OF
13 A DOCUMENT FROM COLUMBIA NEUROSURGICAL ASSOCIATES,
14 AND THIS APPEARS TO BE A MEDICAL QUESTIONNAIRE THAT
15 WAS CONTAINED IN YOUR FILE. IS THIS YOUR
16 HANDWRITING ON THIS QUESTIONNAIRE?

17 A. IT LOOKS LIKE IT. YES, SIR.

18 Q. OKAY. AND THE QUESTIONNAIRE ASKED -- ASKED YOU
19 "WHEN DID YOUR SYMPTOMS FIRST APPEAR?" AND YOU PUT
20 THE DATE "AUGUST THE 15TH OF 2012"; IS THAT CORRECT?

21 A. YES, SIR.

22 Q. OKAY. NOW, YOU WOULD AGREE WITH ME THAT THE -- THE
23 SYMPTOMS THAT YOU WERE THERE FOR -- THE SYMPTOMS
24 THAT YOU NECESSITATED YOUR TREATMENT WITH DR. BOYD,
25 NECK PAIN IN PARTICULAR, THAT WAS A PROBLEM THAT

1 EXISTED WELL BEFORE AUGUST THE 15TH OF 2012?

2 A. NOT TO THAT EXTENT, SIR.

3 Q. OKAY. DID YOU HAVE NECK PAIN THAT WARRANTED
4 TREATMENT WITH A MEDICAL PROVIDER PRIOR TO AUGUST
5 15TH OF 2012?

6 A. YES, SIR.

7 Q. SO AS FAR AS WHEN YOUR SYMPTOMS FIRST APPEARED, THEY
8 ACTUALLY APPEARED WELL BEFORE AUGUST THE 15TH. IN
9 OTHER WORDS THIS -- THIS DOCUMENT IS NOT ENTIRELY
10 ACCURATE?

11 A. IN OTHER WORDS, CAN YOU -- I DON'T UNDERSTAND THAT.
12 THIS INCIDENT HAPPENED, AND THE PAIN THAT I WAS
13 HAVING STARTED ON THE 15TH. IT WAS THE -- PRIOR TO
14 THAT, I'D HAD PAIN BUT NOTHING TO THAT EXTENT.

15 Q. YOU TESTIFIED A FEW MOMENTS AGO THAT YOU SOUGHT
16 TREATMENT FROM DR. LEVINSON FOR NECK PAIN, AND THE
17 TREATMENT INCLUDED BOTH MEDICATIONS AND EPIDURAL
18 STEROID INJECTIONS?

19 A. YES, SIR.

20 Q. IS THAT CORRECT?

21 A. YES, SIR.

22 BY MR. LOCKHART:

23 YOUR HONOR, I'M LOOKING AT PAGE 133 OF THE
24 DEFENDANTS' APAs.

25 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

- 1 Q. THE SAME QUESTIONNAIRE THAT YOU FILLED OUT PRIOR TO
2 SEEING DR. BOYD ASKED YOU THE FOLLOWING QUESTION,
3 AND I'M LOOKING AT QUESTION 14. "IF YOU HAVE BACK,
4 LEG, NECK, OR ARM PAIN, PLEASE ANSWER THE
5 FOLLOWING." AND IT ASKED YOU IF HAD EVER UNDERGONE
6 PHYSICAL THERAPY, YOU'D TAKEN MEDICATIONS, AND
7 WHETHER OR NOT YOU HAD EPIDURAL OR HAD STEROID
8 INJECTIONS IN YOUR BACK OR NECK FOR THIS PROBLEM.
9 AND IS THERE -- IS THERE ANY INDICATION THAT YOU
10 INFORMED DR. BOYD THAT YOU HAD ACTUALLY HAD CERVICAL
11 EPIDURAL INJECTIONS? THIS BOX IS NOT CHECKED, IS
12 IT?
- 13 A. WHERE -- WHERE ARE YOU POINTING TO, SIR?
- 14 Q. I'M LOOKING AT 14, SIR.
- 15 A. I HAVE HAD STEROID INJECTIONS IN MY BACK AND NECK.
16 AS -- I MADE A MISTAKE ON CHECKING THAT.
- 17 Q. FLIPPING BACK TO PAGE 132, THIS SAME QUESTIONNAIRE
18 ASKED YOU TO DESCRIBE YOUR -- YOUR PROBLEMS, WHAT --
19 WHAT WE CALL MUSCULOSKELETAL PROBLEMS, AND IT'S --
20 IT'S CLEAR THAT YOU NOTED YOU HAD BACK PAIN, LEG OR
21 ANKLE SWELLING, NECK PAIN, ARM PAIN ON THE RIGHT
22 SIDE, HEADACHES, NUMBNESS IN YOUR HANDS AND ARMS
23 PARTICULARLY ON THE RIGHT; IS THAT A FAIR STATEMENT.
24 THAT'S WHAT YOU INDICATED IN THIS DOCUMENT?
- 25 A. YES, SIR.

1 Q. OKAY. AREN'T THOSE THE EXACT SAME PROBLEMS FOR
2 WHICH YOU SOUGHT TREATMENT WITH DR. LEVINSON PRIOR
3 TO AUGUST THE 15TH OF 2012?

4 A. TO -- YES, SIR. BUT NOT TO THE EXTENT THAT THEY
5 WERE ON THE 15TH.

6 Q. ISN'T IT TRUE THAT YOU HAD -- YOU HAD NEVER BEEN
7 RELEASED BY DR. LEVINSON FOR NECK PAIN OR PROBLEMS
8 PRIOR TO AUGUST 15TH OF 2012? YOU WERE STILL
9 ACTIVELY -- YOU WERE STILL ACTIVELY UNDER HIS CARE
10 FOR NECK PROBLEMS WHEN THIS INCIDENT OCCURRED AT
11 WORK WITH MR. RAULERSON, WEREN'T YOU?

12 A. YEAH, BUT THEY WEREN'T FOR THE SAME SITUATION.

13 Q. SO YOU WERE STILL UNDER THE CARE OF DR. LEVINSON FOR
14 NECK PROBLEMS ON AUGUST THE 15TH OF 2012?

15 A. YES, SIR.

16 Q. LET'S TALK ABOUT DR. LEVINSON FOR A MOMENT. YOU
17 TOLD ME IN YOUR DEPOSITION THAT DR. LEVINSON HAD
18 BEEN YOUR FAMILY DOCTOR FOR QUITE SOME TIME?

19 A. YES, SIR.

20 Q. AND IN YOUR DEPOSITION AT PAGE 34, I ASKED YOU HOW
21 LONG YOU HAD BEEN UNDER THE CARE OF DR. LEVINSON FOR
22 BACK OR NECK PROBLEMS PRIOR TO AUGUST THE 15TH, AND
23 YOU TOLD ME YOU HAD BEEN UNDER HIS CARE FOR NECK OR
24 BACK PROBLEMS FOR ABOUT A YEAR AND A HALF?

25 A. YES, SIR.

1 Q. IS THAT A FAIR STATEMENT?

2 A. YES, SIR.

3 BY MR. LOCKHART:

4 YOUR HONOR, I'M LOOKING AT PAGE 102 OF THE
5 DEFENDANTS' APA SUBMISSIONS.

6 BY COMMISSIONER WILLIAMS:

7 ALL RIGHT.

8 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

9 Q. MR. MILLER, I -- LOOKING AT A RECORD FROM SEPTEMBER
10 THE 9TH OF 2011, IN WHICH YOU WENT TO DR. LEVINSON'S
11 OFFICE COMPLAINING OF LOW BACK PAIN AND BILATERAL
12 HAND PAIN. DO YOU RECALL SEEKING TREATMENT WITH DR.
13 LEVINSON IN SEPTEMBER OF 2001 FOR LOWER BACK PAIN
14 AND BILATERAL HAND PAIN?

15 A. I COULD HAVE. I -- I DON'T REMEMBER THE DATE.
16 SORRY, SIR.

17 BY MR. ORMOND:

18 WHAT PAGE WAS THAT?

19 BY MR. LOCKHART:

20 102 OF THE DEFENDANTS' APAs.

21 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

22 Q. IF THE MEDICAL RECORDS REFLECT THAT YOU SOUGHT
23 TREATMENT WITH HIM ON THAT DATE AND PROVIDED THOSE
24 COMPLAINTS, DO YOU HAVE ANY REASON TO DISPUTE THE
25 ACCURACY OF THE MEDICAL RECORDS?

1 A. I DON'T BELIEVE SO. NO, UNLESS I COULD HAVE MADE A
2 MISTAKE.

3 Q. AND ON THAT OCCASION, IT APPEARS THAT HE PROVIDED
4 WITH YOU WITH TREATMENT IN THE FORM OF PRESCRIPTION
5 MEDICATIONS?

6 A. COULD HAVE.

7 Q. AND BEGAN ADMINISTERING OR PRESCRIBING PERCOCET TO
8 YOU AS FAR BACK AS SEPTEMBER OF 2011?

9 A. COULD HAVE. YES, SIR.

10 BY MR. LOCKHART:

11 YOUR HONOR, I'M LOOKING AT PAGE 106 OF THE
12 DEFENDANTS' APAs.

13 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

14 Q. DO YOU RECALL BEING SEEN BY DR. LEVINSON IN JANUARY
15 OF 2012, JANUARY 16TH, AT WHICH POINT IN TIME YOU
16 PRESENTED WITH COMPLAINTS OF NECK PAIN WHICH HAS
17 BEEN RAPIDLY WORSENING, THE PAIN BEING OF SEVERE
18 INTENSITY. DID YOU PROVIDE COMPLAINTS OF BEING
19 TIGHT IN THE BACK OF YOUR NECK WITH A STABBING PAIN
20 FROM YOUR EARS TO BETWEEN YOUR SHOULDER BLADES? DO
21 YOU RECALL PROVIDING THOSE TYPES OF COMPLAINTS TO
22 DR. LEVINSON?

23 A. COULD HAVE. YES, SIR.

24 Q. ALL RIGHT. IF THE MEDICAL RECORDS THAT WE HAVE FROM
25 JANUARY 2012 INDICATE YOU PROVIDED THOSE COMPLAINTS,

1 WOULD YOU HAVE ANY REASON TO DISPUTE THE ACCURACY OF
2 THOSE RECORDS?

3 A. NO, SIR.

4 Q. AT THAT POINT IN TIME, IT APPEARS THAT DR. LEVINSON
5 CONTINUED TO PROVIDE YOU WITH MEDICATIONS, AND THEN
6 SAW YOU AGAIN IN FEBRUARY OF 2012. DO YOU RECALL
7 SEEING HIM IN FEBRUARY?

8 A. YES, SIR.

9 BY MR. LOCKHART:

10 YOUR HONOR, I'M LOOKING AT PAGE 111 OF THE
11 DEFENDANTS' APAs.

12 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

13 Q. WHEN YOU WERE SEEN IN FEBRUARY OF '11 -- I'M SORRY.
14 FEBRUARY OF 2012 -- I'M SORRY, MR. MILLER. DR.
15 LEVINSON NOTES A DIAGNOSIS OF NECK PAIN THAT'S
16 RAPIDLY WORSENING. IT'S OF SEVERE INTENSITY, VERY
17 TIGHT IN THE BACK OF THE NECK, STABBING PAIN FROM
18 THE EARS TO BETWEEN THE SHOULDER BLADES. DO YOU
19 RECALL PROVIDING THOSE COMPLAINTS TO DR. LEVINSON IN
20 FEBRUARY OF 2012?

21 A. I COULD HAVE. YES, SIR.

22 Q. IT APPEARS AT THAT POINT IN TIME HE RECOMMENDED THAT
23 YOU HAVE AN M.R.I. OF YOUR CERVICAL SPINE. DO YOU
24 RECALL HAVING A M.R.I. OF YOUR CERVICAL SPINE IN
25 FEBRUARY OF 2012?

1 A. YES, I DO.

2 Q. WE HAVE A RECORD.

3 BY MR. LOCKHART:

4 YOUR HONOR, PAGES 136 THROUGH 137.

5 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

6 Q. IT NOTES YOU HAD A M.R.I. OF YOUR CERVICAL SPINE ON
7 FEBRUARY THE EIGHTH OF 2012. DOES THAT SOUND FAIRLY
8 ACCURATE TO YOU?

9 A. IT SOUNDS ACCURATE. YES, SIR.

10 Q. OKAY. ALL RIGHT. AND AFTER YOU HAD THE M.R.I., DO
11 YOU RECALL GOING BACK TO SEE DR. LEVINSON IN FOLLOW-
12 UP?

13 A. YES, SIR.

14 BY MR. LOCKHART:

15 YOUR HONOR, I'M LOOKING AT PAGE 115 OF THE
16 DEFENDANTS' APAs.

17 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

18 Q. DURING THAT VISIT, MR. MILLER, DR. LEVINSON NOTES
19 THAT YOU'RE CONTINUING TO COMPLAIN OF -- OF NECK
20 PAIN, THAT THERE'S RADIATION OF THE PAIN INTO YOUR -
21 - INTO THE POSTERIOR ASPECT OF YOUR SHOULDERS.
22 LIFTING OBJECTS WITH YOUR ARMS AS WELL AS ROTATION
23 OF THE NECK EXACERBATES YOUR PAIN, AND THAT YOU HAVE
24 AN ELECTRIC SENSATION THAT TRAVELS DOWN YOUR ARMS.
25 DO YOU RECALL PROVIDING THOSE COMPLAINTS TO DR.

1 LEVINSON?

2 A. NO, SIR.

3 Q. OKAY. IF HIS MEDICAL RECORDS REFLECT THOSE
4 COMPLAINTS, DO YOU HAVE REASON TO DOUBT OR DISPUTE
5 THE ACCURACY OF THOSE RECORDS?

6 A. NO, SIR.

7 Q. AND IT APPEARS THAT AT SOME POINT IN TIME THEREAFTER
8 YOU HAD YOUR FIRST CERVICAL EPIDURAL INJECTION
9 ADMINISTERED BY A DR. TONY OWENS. DOES THAT SOUND
10 FAMILIAR TO YOU?

11 A. VERY WELL COULD BE.. YES, SIR.

12 Q. IT APPEARED THAT DR. OWENS SAW YOU ON TWO OCCASIONS,
13 ONCE IN FEBRUARY OF 2012 AND THE SECOND TIME IN
14 APRIL GIVING YOU A CERVICAL EPIDURAL STEROID
15 INJECTION. DO YOU RECALL RECEIVING THOSE -- THOSE
16 INJECTIONS FROM DR. OWENS?

17 A. I RECALL RECEIVING THE INJECTIONS.

18 Q. OKAY. DO YOU RECALL SEEING DR. LEVINSON AGAIN IN
19 MARCH OF 2012 AND PROVIDING COMPLAINTS OF ONGOING
20 NECK PAIN, WHICH WAS RAPIDLY WORSENING AND OF SEVERE
21 INTENSITY?

22 A. COULD HAVE. I DON'T -- I REALLY DON'T ---

23 Q. I'M SORRY. GO AHEAD, SIR.

24 A. I'M NOT SURE BUT NO, -- OR YES.

25 BY MR. LOCKHART:

1 YOUR HONOR, I'M LOOKING AT PAGE 118 OF THE
2 DEFENDANTS' APAs.

3 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

4 Q. AND DR. LEVINSON NOTES IN A MARCH 14TH, 2012, NOTE
5 THAT YOU WERE IN HIS OFFICE AT THAT TIME AND
6 PROVIDED WITH THOSE COMPLAINTS TO HIM, DO YOU HAVE
7 ANY REASON TO DOUBT THE ACCURACY OF HIS RECORDS?

8 A. NO, SIR.

9 Q. WERE YOU CONTINUING TO RECEIVE PERCOCET FROM HIM AT
10 THAT TIME FOR NECK PAIN AND PROBLEMS?

11 A. I QUIT TAKING IT.

12 Q. YOU QUIT TAKING IT?

13 A. YES, SIR. THERE WAS A PERIOD IN -- IN TIME THAT I
14 HAD ACTUALLY QUIT TAKING THAT MEDICATION. YES, SIR.

15 Q. DO YOU RECALL AT LEAST THIS VISIT IN MARCH HE NOTES
16 THAT YOU WERE TAKING ULTRACET AT THAT TIME; DOES
17 THAT SOUND FAMILIAR TO YOU?

18 A. YES, SIR.

19 Q. NOW, THIS INCIDENT THAT WE'RE HERE TO TALK ABOUT
20 TODAY HAPPENED ON AUGUST THE 15TH. DO YOU RECALL
21 BEING AT DR. LEVINSON'S OFFICE ABOUT FIVE WEEKS
22 EARLIER IN JULY OF 2012 FOR A VISIT?

23 A. I'M NOT REAL GOOD WITH DATES, BUT IT'S A
24 POSSIBILITY. YES, SIR.

25 BY MR. LOCKHART:

1 YOUR HONOR, I'M LOOKING AT PAGE 122 OF THE
2 DEFENDANTS' APAs.

3 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

4 Q. MR. MILLER, I'M LOOKING UNDER A RECORD FROM DR.
5 LEVINSON DATED JULY 9TH OF 2012. IF WE HAVE A
6 RECORD FROM HIS OFFICE ON THAT DATE, DO YOU HAVE ANY
7 REASON TO DISPUTE THE ACCURACY OF HIS RECORDS?

8 A. NO, SIR.

9 Q. IN THOSE RECORDS, HE NOTES THAT YOU ARE -- THAT YOU
10 ARE HERE IN FOLLOW UP THAT YOU ARE COMPLAINING OF --
11 OF THE FOLLOWING PROBLEM, VERY TIGHT IN THE BACK OF
12 THE NECK, STABBING PAIN FROM EARS BETWEEN THE
13 SHOULDER BLADES, THAT YOU HAVE A DIAGNOSIS OF
14 PERIPHERAL NEUROPATHY THAT IS RAPIDLY WORSENING.
15 IT'S OF SEVERE INTENSITY. THE FREQUENCY OF SYMPTOMS
16 ARE CONSTANT. THE DURATION OF THE SYMPTOMS ARE THE
17 MAJORITY OF THE DAY. DO YOU RECALL PROVIDING THOSE
18 COMPLAINTS TO DR. LEVINSON?

19 A. I MAY HAVE.

20 Q. AND AT THAT POINT IN TIME, IT -- IT APPEARS HE
21 CONTINUED TO PRESCRIBE YOU MEDICATIONS FOR THESE
22 PROBLEMS. DO YOU RECALL TAKING PAIN MEDICATIONS AND
23 BEING ON THOSE MEDICATIONS IN JULY AND AUGUST OF
24 2012?

25 A. I RECALL TAKING MEDICATION. YES, SIR.

1 Q. NOW, YOU'VE SEEN DR. LEVINSON SINCE YOU UNDERWENT
2 THAT SURGERY; IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 BY MR. LOCKHART:

5 YOUR HONOR, I'M LOOKING AT PAGE 127 OF THE
6 DEFENDANTS' APAs.

7 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

8 Q. MR. MILLER, I HAVE A NOTE FROM DR. LEVINSON THAT'S
9 DATED OCTOBER THE 8TH OF 2012. DO YOU RECALL SEEING
10 DR. LEVINSON ON OR ABOUT OCTOBER THE 8TH?

11 A. POSSIBILITY. YES, SIR.

12 Q. OKAY. IF WE HAVE A RECORD FROM HIS OFFICE THAT
13 INDICATES YOU WERE SEEN ON THAT DAY, DO YOU HAVE ANY
14 REASON TO DISPUTE THE ACCURACY OF THAT RECORD?

15 A. NO, SIR.

16 Q. DR. LEVINSON NOTES AND -- AND, MR. MILLER, I'M
17 READING FROM HIS REPORT. HE NOTES THAT DURING HIS
18 VISIT ON OCTOBER THE 8TH THAT YOU PRESENTED WITH A
19 HISTORY OF LOW BACK PAIN. IT'S MOST PROMINENT IN
20 THE LOWER LUMBAR SPINE; IT DOES NOT RADIATE. AND HE
21 NOTES THE FOLLOWING, "THIS IS AN ACUTE EPISODE WITH
22 NO PRIOR HISTORY OF BACK PAIN. HE STATES THAT THE
23 CURRENT EPISODE OF PAIN STARTED THREE DAYS AGO. THE
24 EVENT WHICH PRECIPITATED THIS PAIN WAS USING A
25 JACKHAMMER, AND THIS OCCURRED AT WORK." WHERE WERE

1 YOU WORKING IN OCTOBER OF 2012?

2 A. I DON'T KNOW WHERE YOU GOT YOUR INFORMATION, SIR,
3 BUT I HAVEN'T USED A JACKHAMMER IN A LONG TIME.

4 Q. WELL, DR. LEVINSON, MR. MILLER, IN HIS OCTOBER THE
5 8TH NOTE INDICATES THAT YOU CAME INTO HIS OFFICE ON
6 THAT DAY, YOU COMPLAINED ABOUT LOWER BACK PAIN THAT
7 HAD STARTED THREE DAYS PRIOR, AND THAT THE EVENT IN
8 WHICH PRECIPITATED THE PAIN WAS USING A JACKHAMMER
9 AND THAT THIS OCCURRED AT WORK.

10 A. NO, SIR.

11 Q. WHERE WOULD HE HAVE GOTTEN THAT INFORMATION FROM IF
12 YOU DIDN'T PROVIDE IT TO HIM?

13 A. I DON'T KNOW WHERE THAT INFORMATION CAME FROM ---

14 Q. OKAY.

15 A. --- BECAUSE IT'S A LIE.

16 Q. THIS -- THIS INFORMATION IS A LIE?

17 A. THE INFORMATION THAT YOU'RE PRESENTING TO ME IS NOT
18 CORRECT, SIR.

19 Q. WELL, MR. MILLER, AS I INDICATED TO YOU A MOMENT
20 AGO, I'M -- I'M MERELY READING WHAT DR. LEVINSON
21 NOTED IN HIS REPORTS. NOW, EVERYTHING UP TO THIS
22 POINT THAT I'VE PRESENTED TO YOU YOU'VE DEEMED AS
23 ACCURATE, BUT YOU'RE MAINTAINING THAT THIS
24 INFORMATION THAT'S CONTAINED IN THIS NOTE IS -- IS
25 FALSE, IT'S NOT TRUE?

1 A. IF THAT'S WHAT YOU'RE READING FROM. YES, SIR. I --
2 I'M STATING THAT THAT'S UNTRUE.

3 Q. WELL, I GUESS MY QUESTION AGAIN WOULD BE THIS WAS --
4 THIS IS -- WE'RE IN YOUR MEDICAL RECORDS.

5 A. OKAY.

6 Q. YOUR DATE OF BIRTH IS 6/30/1966?

7 A. YES, SIR.

8 Q. OKAY. YOUR NAME IS WILLIAM E. MILLER, JUNIOR?

9 A. YES, SIR.

10 Q. OKAY. AND YOUR TESTIMONY HERE TODAY IS THAT YOU
11 DIDN'T TELL DR. LEVINSON THAT; YOU WEREN'T USING A
12 JACKHAMMER IN OCTOBER OF 2012?

13 A. NO, SIR.

14 Q. BUT YOU DO RECALL SEEING HIM ON THAT DAY?

15 A. I RECALL SEEING DR. LEVINSON, BUT THE DAY AND TIME I
16 CAN'T REMEMBER THAT FOR SURE.

17 Q. YET THIS NOTE SAYS THAT YOU WERE SEEN ON OCTOBER THE
18 8TH. DO YOU HAVE ANY REASON TO DISPUTE IT?

19 A. YEAH, IF IT'S NOT TRUE, I'M GOING TO DISPUTE IT.

20 Q. DID YOU REVIEW THE -- THE -- ANY OF THESE MEDICAL
21 RECORDS BEFORE OUR HEARING TODAY?

22 A. NO, SIR. I WASN'T PROVIDED WITH THAT INFORMATION.

23 Q. WAS YOUR LAST DAY OF WORK WITH OWEN STEEL ON AUGUST
24 THE 27TH OF 2010 -- 12. I'M SORRY. AUGUST 27TH,
25 2012. MY APOLOGIES.

1 A. I WAS TOLD THAT MY LAST DAY WAS THE 27TH. YES, SIR.

2 Q. WAS THAT THE LAST DAY THAT YOU ACTUALLY WERE AT
3 WORK?

4 A. THAT WAS THE LAST DAY THAT I WENT INTO WORK TO
5 PROVIDE THE INFORMATION FROM THE DOCTOR. YES, SIR.

6 Q. MR. MILLER, LET'S TALK A LITTLE BIT ABOUT THE -- THE
7 ALTERCATION WITH MR. RAULERSON. BUT BEFORE WE GET
8 TO AUGUST THE 15TH, LET ME ASK YOU THIS QUESTION.
9 NOW, YOU'VE HAD OTHER ENCOUNTERS WITH OTHER
10 EMPLOYEES AT THE PLANT BEFORE AUGUST THE 15TH OF
11 2012, HAVEN'T YOU?

12 A. ENCOUNTER AS FAR AS I'M NOT SURE WHAT YOU MEAN BY
13 THAT.

14 Q. WELL, LET ME ASK YOU THIS. PRIOR TO AUGUST 15TH OF
15 2012, HAD YOU EVER BEEN REPRIMANDED BY MANAGEMENT
16 FOR GETTING INTO AN ARGUMENT OR SOME SORT OF
17 CONFRONTATION WITH ANOTHER EMPLOYEE OR A SUPERVISOR?

18 A. YES, SIR.

19 Q. ISN'T IT TRUE THAT YOU WERE REPRIMANDED FOR AN
20 ALTERCATION THAT TOOK PLACE BETWEEN YOU AND JOHN
21 GARDNER?

22 A. YES, SIR.

23 Q. ALL RIGHT. AND ISN'T IT TRUE THAT YOU WERE ACTUALLY
24 REPRIMANDED AND -- AND ACTUALLY TERMINATED FOR AN
25 INCIDENT INVOLVING YOU AND A GENTLEMAN NAMED CLIFF

1 ZIMMS?

2 A. YES, SIR. BUT IT WAS -- THAT WAS WRONG, AND I WAS -
3 - THEY TOLD ME THAT IT WAS A WRONGFUL SITUATION.
4 ALL OF THAT WAS WRONG.

5 Q. YOU THREW SOME WELDING LEADS AT MR. ZIMMS?

6 A. NO, I DIDN'T THROW THEM AT HIM -- OR I THREW THEM AT
7 HIM. I DIDN'T THROW THEM TO HIT HIM IN ANY WAY, NO.

8 Q. YOU -- YOU DIDN'T INTEND TO HIT MR. ZIMMS WITH A ---

9 A. ABSOLUTELY NOT.

10 Q. IS THAT JUST LIKE YOU DIDN'T INTEND TO INJURE MR.
11 RAULERSON WHEN YOU PUNCHED HIM IN THE FACE?

12 A. THAT'S A COMPLETELY DIFFERENT SITUATION, SIR.

13 Q. WELL, IT SOUNDS VERY SIMILAR, I MEAN ---

14 A. NOT REALLY. MR. ZIMMS DID NOT PUT HIS HANDS ON ME.

15 Q. WELL, LET ME ASK YOU ---

16 A. MR. ZIMMS DIDN'T PUSH ME IN THE WALL, SIR.

17 Q. WELL, LET ME ASK YOU THIS. IN BOTH SITUATIONS, YOU
18 GOT ANGRY. YOU GOT ANGRY AT MR. ZIMMS, CORRECT?

19 A. YEAH.

20 Q. YOU GOT ANGRY ENOUGH AT HIM THAT YOU THREW OBJECTS
21 AT HIM?

22 A. TOWARDS HIM, NOT AT HIM.

23 Q. OKAY. YOU THREW OBJECTS TOWARDS HIM?

24 A. YES, SIR.

25 Q. OKAY. WELL, WHAT DID YOU EXPECT THOSE OBJECT TO DO

1 IF THEY HAD LANDED WHERE YOU THREW THEM?

2 A. LAYING ON THE FLOOR ON THE GROUND NEXT TO HIM, SIR.

3 Q. TO DO WHAT?

4 A. TO LAND ON THE FLOOR NEXT TO HIM.

5 Q. TO GET HIS ATTENTION.

6 A. TO GET HIS ATTENTION?

7 Q. WHY WOULD YOU THROW SOMETHING AT SOMEBODY?

8 A. THE MAN WAS BELITTling ME A LOT.

9 Q. JUST LIKE MR. RAULERSON WAS ALLEGEDLY BELITTling YOU
10 ON AUGUST THE 15TH?

11 A. IT WAS -- NO, IT'S NOT THE SAME SITUATION.

12 Q. YOU KICKED MR. RAULERSON IN THE STOMACH, AND YOU
13 PUNCHED HIM IN THE FACE?

14 A. I DON'T RECALL KICKING MR. RAULERSON, SIR ---

15 Q. OKAY.

16 A. --- BUT I DO REMEMBER PUNCHING HIM.

17 Q. SO YOU MAY HAVE KICKED HIM, YOU JUST DON'T REMEMBER?

18 A. NO, SIR. I DON'T.

19 Q. WHAT DID YOU SAY TO MR. GARDNER THAT RESULTED IN YOU
20 BEING REPRIMANDED? WE'RE GROWN -- EVERYBODY HERE IS
21 ---

22 A. GROWN.

23 Q. --- GROWN.

24 A. I SAID "FUCK YOU" TO MR. ---

25 Q. TO MR. GARDNER?

1 A. YES, SIR.

2 Q. AFTER YOU WERE -- YOU WERE LET GO FOLLOWING THIS
3 INCIDENT WITH MR. ZIMMS, I KNOW YOU MENTIONED THAT
4 IT -- THAT WAS A BIG MISTAKE AND YOU WERE BROUGHT
5 BACK, CORRECT?

6 A. CORRECT. YES, SIR.

7 Q. ALL RIGHT. YOU TRIED TO FILE FOR UNEMPLOYMENT
8 BEFORE YOU WERE BROUGHT BACK TO OWEN; IS THAT -- IS
9 THAT CORRECT?

10 A. I DON'T ---

11 Q. AFTER YOU WERE TERMINATED FOLLOWING THE INCIDENT
12 WITH MR. ZIMMS, DID YOU FILE FOR UNEMPLOYMENT
13 BENEFITS?

14 A. I MAY HAVE. YES, SIR.

15 Q. OKAY. BUT THEN YOU WERE BROUGHT BACK BEFORE YOUR
16 CLAIM I GUESS COULD BE PROCESSED. YOU DIDN'T
17 RECEIVE UNEMPLOYMENT?

18 A. NO, UH-UH. ABSOLUTELY NOT.

19 Q. HAVE YOU FILED FOR UNEMPLOYMENT SINCE YOU WERE
20 TERMINATED FOLLOWING THE EVENTS OF AUGUST THE 15TH?

21 A. YEAH, I BELIEVE I HAVE.

22 Q. OKAY. ALL RIGHT. WHAT'S THE STATUS OF YOUR CURRENT
23 UNEMPLOYMENT CLAIM?

24 A. I HAVE NONE.

25 Q. HAS IT BEEN DENIED; IS IT BEING PROCESSED? WHAT IS

1 YOUR UNDERSTANDING OF THE STATUS OF YOUR CLAIM?

2 A. I NEVER WENT THROUGH WITH THE CLAIM.

3 Q. WELL, WHAT DO YOU MEAN? DID YOU FILE AN
4 UNEMPLOYMENT CLAIM OR NOT?

5 A. YES, I DID.

6 Q. OKAY. WELL, ARE YOU RECEIVING THOSE BENEFITS
7 CURRENTLY?

8 A. NO, SIR. I'M NOT.

9 Q. THE BASIS FOR YOUR TERMINATION BY OWEN STEEL WAS
10 INSUBORDINATION; IS THAT YOUR UNDERSTANDING?

11 A. I'M NOT SURE WHAT THE BASIS OF IT WAS, SIR. I WAS -
12 - I WAS NEVER REALLY TOLD.

13 Q. OKAY. DID YOU LEAVE A SAFETY MEETING IN ANGER AFTER
14 FINDING OUT THAT MR. RAULERSON DID NOT SEE --
15 RECEIVE THE SAME NUMBER OF -- OF DAYS OFF AS YOU DID
16 FOLLOWING THIS EVENT?

17 A. NO, SIR.

18 Q. OKAY. DO YOU RECALL STORMING OUT OF THE SAFETY
19 MEETING INFORMING STACY OXEDINE THAT YOU NEEDED TO
20 LEAVE WORK BECAUSE YOU WERE SO ANGRY OVER
21 DISCOVERING THAT MR. RAULERSON DIDN'T RECEIVE THE
22 SAME PUNISHMENT YOU RECEIVED?

23 A. NO, SIR. I DIDN'T STORM OUT OF THE SAFETY MEETING.

24 Q. YOU WORKED FOR KLINE IRON AND STEEL BEFORE YOU
25 WORKED FOR OWEN; IS THAT CORRECT?

1 A. YES, SIR.

2 Q. WHY WERE YOU TERMINATED BY KLINE?

3 A. HORSE PLAY.

4 Q. WHAT WAS THE HORSE PLAY THAT -- THAT WAS THE BASIS
5 FOR YOUR TERMINATION?

6 A. I PUT A RUBBER SNAKE IN A BEAM.

7 BY MR. ORMOND:

8 YOUR HONOR, I DON'T SEE HOW SOMETHING TEN YEARS
9 AGO IS RELEVANT AT ANOTHER COMPANY.

10 BY COMMISSIONER WILLIAMS:

11 HE'S ON -- OKAY. AND HE'S ON CROSS, AND I'LL
12 GIVE HIM A LITTLE BIT.

13 BY MR. ORMOND:

14 ON RELEVANCY. OKAY.

15 BY COMMISSIONER WILLIAMS:

16 FAIR ENOUGH. HE'S ON CROSS. I'LL GIVE HIM
17 SOME LEEWAY.

18 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

19 Q. DID YOU DO THAT TO TRY AND INCITE OR SCARE OR
20 INTIMIDATE ANOTHER EMPLOYEE AT KLINE?

21 A. NO, WE WAS ALL JOKING AROUND. THERE WAS A FEW OF US
22 JOKING AROUND.

23 Q. DO YOU HAVE A PHYSICIAN AT THE PRESENT TIME THAT IS
24 PLACING YOU OUT OF WORK, OR HAVE YOU BEEN RELEASED
25 AND RETURNED TO WORK WITH RESTRICTIONS?

1 A. I'VE BEEN RELEASED TO RETURN TO WORK WITH
2 RESTRICTIONS.

3 Q. HAVE YOU SOUGHT WORK WITHIN THE RESTRICTIONS THAT
4 HAVE BEEN PLACED UPON YOU BY DR. BOYD, I PRESUME?
5 IS IT DR. BOYD WHO'S RELEASED YOU?

6 A. YES, SIR.

7 Q. ALL RIGHT. HAVE YOU SOUGHT WORK WITHIN THE
8 RESTRICTIONS THAT HAVE BEEN PLACED UPON YOU BY DR.
9 BOYD?

10 A. I'VE LOOKED. YES, SIR.

11 Q. WHERE HAVE YOU SOUGHT WORK?

12 A. IN THE PAPER.

13 Q. OKAY. AND IN THAT SENSE, ARE YOU JUST REVIEWING
14 WANT ADS, OR HAVE YOU ACTUALLY APPLIED FOR JOBS AND
15 CONTACTED POTENTIAL EMPLOYERS REGARDING POSSIBLE
16 RETURN TO WORK?

17 A. GOING THROUGH THE ADS.

18 Q. HAVE YOU FILLED OUT ANY APPLICATIONS?

19 A. NO, SIR.

20 Q. IS THERE ---

21 A. I'M NOT -- I DON'T KNOW WHAT I'M -- WHAT THE -- WHAT
22 THE DOCTOR'S GOING TO TELL ME I CAN -- I'M CAPABLE
23 OF DOING. I DON'T -- I CAN'T GO BACK TO DOING THE
24 SAME THING I WAS DOING.

25 Q. I UNDERSTAND THAT, SIR, BUT YOU'VE BEEN RELEASED TO

1 RETURN TO WORK RIGHT NOW WITH RESTRICTIONS, CORRECT?

2 A. RIGHT.

3 Q. ALL RIGHT. WELL, ARE YOU -- ARE YOU SEEKING WORK,
4 OR ARE YOU APPLYING FOR WORK WITHIN THOSE
5 RESTRICTIONS?

6 A. WITHIN THOSE RESTRICTIONS. YES, SIR.

7 Q. OKAY. WELL, WHERE HAVE YOU APPLIED FOR WORK?

8 A. THERE'S -- I CAN'T REMEMBER OFF THE TOP OF MY HEAD
9 FOR TO BE CERTAIN, SIR.

10 Q. ALL RIGHT. WELL, THESE JOBS THAT YOU'VE SOUGHT, DO
11 YOU FEEL AS THOUGH YOU'RE PHYSICALLY CAPABLE OF
12 PERFORMING THEM?

13 A. YES.

14 Q. OTHERWISE YOU WOULDN'T HAVE APPLIED FOR THEM?

15 A. RIGHT.

16 Q. YOU CAN DRIVE AN AUTOMOBILE AT THE PRESENT TIME; IS
17 THAT CORRECT?

18 A. ABSOLUTELY. YES, SIR.

19 Q. AND IN YOUR DEPOSITION, YOU TOLD ME THAT YOU'VE
20 ACTUALLY BEEN ABLE TO ENGAGE IN SOME -- SOME FORM OF
21 YARD WORK. SINCE THIS INCIDENT OCCURRED, YOU'VE
22 BEEN ABLE TO DRIVE YOUR RIDING LAWN MOWER, PERFORM
23 OTHER YARD WORK; IS THAT CORRECT?

24 A. YES, SIR.

25 Q. MR. MILLER, LET'S TALK A LITTLE BIT ABOUT AGAIN AND

1 GO BACK JUST FOR A BRIEF MOMENT ABOUT THE INCIDENT
2 ON THE 15TH. I ASKED YOU IN YOUR DEPOSITION ABOUT
3 THE ACTUAL ALTERCATION WITH MR. RAULERSON, AND I
4 ASKED HIM -- OR I ASKED YOU WHERE YOU -- WHERE YOU
5 HIT HIM, AND YOUR ANSWER TO ME WAS IN THE MOUTH.
6 AND I ASKED YOU IF YOU INTENDED TO -- TO HIT HIM IN
7 THE MOUTH, AND YOUR RESPONSE TO ME WAS "YES." YES,
8 YOU DID?

9 A. YES, SIR.

10 Q. SO WE CAN AGREE THAT WHEN YOU THREW A PUNCH AT MR.
11 RAULERSON, YOU INTENDED TO HIT HIM, AND YOU INTENDED
12 TO HIT HIM IN THE MOUTH; IS THAT CORRECT?

13 A. YES, SIR.

14 Q. OKAY. NOW, WHAT IS YOUR GENERAL UNDERSTANDING OF
15 WHAT WILL HAPPEN IF YOU HIT SOMEBODY IN THE -- IN
16 THE MOUTH OR IN THE FACE; WHAT'S THEIR REACTION
17 TYPICALLY GOING TO BE?

18 A. SURPRISE.

19 Q. INJURY?

20 A. NOT NECESSARILY. NO, SIR.

21 Q. WELL, MR. RAULERSON'S LIP WAS BLEEDING AFTER THIS
22 WASN'T IT?

23 A. I DON'T -- I DIDN'T SEE THAT, SIR.

24 Q. OKAY. YOUR HOPE WAS THAT AFTER YOU HIT HIM THAT HE
25 WOULD BE INJURED TO THE POINT THAT YOU COULD EITHER

1 GET AWAY OR MOVE ON OR DO WHATEVER IT WAS THAT YOU
2 INTENDED ON DOING BEFORE YOU PUNCHED HIM?

3 A. NO, SIR. I DIDN'T INTEND ON INJURING MR. RAULERSON.

4 Q. THEN WHY DID YOU HIT HIM?

5 A. IT WAS SPONTANEOUS. IT'S JUST, YOU KNOW, TO WAKE
6 HIM UP. TO MAKE HIM REALIZE THAT, YOU KNOW, HE --
7 HE NEEDED TO STOP.

8 Q. ISN'T IT TRUE, MR. MILLER, THAT ABOUT A WEEK OR TWO
9 BEFORE THIS INCIDENT HAPPENED, YOU ACCUSED MR.
10 RAULERSON OF STEALING MONEY FROM A -- A KITTY THAT A
11 NUMBER OF THE MAINTENANCE GUYS KEPT FOR YOUR BREAK
12 ROOM SUPPLIES?

13 A. NO, SIR.

14 Q. ALL RIGHT. YOU ACCUSED HIM IN FRONT OF A GROUP OF
15 ANOTHER -- OF OTHER EMPLOYEES OF STEALING MONEY FROM
16 THIS KITTY?

17 A. NO, SIR.

18 Q. YOU TESTIFIED THAT YOU WEREN'T -- OR THAT -- THAT
19 MR. RAULERSON WAS THE ONLY PERSON THAT YOU HAD EVER
20 GOTTEN INTO A PHYSICAL ALTERCATION WITH, BUT ISN'T
21 IT TRUE THAT JASON FRYE -- YOU AND JASON FRYE A
22 COUPLE OF YEARS AGO GOT INTO A SHOIVING MATCH IN THE
23 CAFETERIA INSTIGATED BY YOU?

24 A. NO, SIR.

25 Q. YOU TOLD THE COURT AFTER THE -- THAT AFTER THIS

1 HAPPENED YOU WERE HAVING SIGNIFICANT PHYSICAL
2 PROBLEMS AFTER THIS EVENT OF AUGUST THE 15TH. WHEN
3 YOU DID WORK FOR A PERIOD OF TIME AFTER THIS
4 ACCIDENT HAPPENED, WEREN'T THERE OCCASIONS WHERE YOU
5 DROVE A MOTORCYCLE TO AND FROM WORK EVERY DAY?

6 A. THAT WAS MY ONLY FORM OF TRANSPORTATION AT THE TIME,
7 SIR.

8 Q. SO YOU WERE PHYSICALLY ABLE TO DRIVE A MOTORCYCLE
9 AFTER THIS ACCIDENT HAPPENED?

10 A. I HAD TO GET TO WORK.

11 Q. WERE YOU PHYSICALLY ABLE TO DRIVE A MOTORCYCLE AFTER
12 THIS ACCIDENT HAPPENED?

13 A. TO THAT POINT, YES, SIR. TO THE POINT THE DAY I
14 LEFT.

15 Q. YOU'RE NOT WEARING ANY TYPE OF NECK BRACE TODAY; IS
16 THAT CORRECT?

17 A. NO, SIR.

18 BY MR. LOCKHART:

19 YOUR HONOR, I BEG THE COURT'S INDULGENCE JUST A
20 BRIEF MOMENT.

21 BY COMMISSIONER WILLIAMS:

22 OKAY.

23 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

24 Q. JUST ONE FINAL QUESTION, MR. MILLER, AND I THINK --
25 I THINK I AM DONE. I BELIEVE WE ALL CAN AGREE THAT

1 THE PROBLEMS THAT YOU MAINTAIN DEVELOP OR -- OR --
2 OR WERE PRESENT AFTER THE EVENT OF AUGUST THE 15TH
3 WERE THE EXACT SAME PROBLEMS THAT YOU HAD BEFORE
4 AUGUST 15TH, CORRECT?

5 A. NO, SIR.

6 Q. YOU WERE HAVING NECK PAIN BEFORE AUGUST THE 15TH AND
7 AFTER AUGUST THE 15TH, CORRECT?

8 A. BUT THEY WEREN'T TO THE EXTENT, SIR.

9 Q. OKAY. YOU WERE HAVING NUMBNESS AND PAIN RADIATING
10 FROM YOUR NECK INTO YOUR SHOULDERS AND ARMS BEFORE
11 AUGUST THE 15TH AND AFTER AUGUST THE 15TH?

12 A. YES, SIR. BUT LIKE I SAID, THEY WEREN'T TO THE
13 EXTENT THAT THEY HAD BEEN.

14 Q. THEY WERE -- THEY WERE SIGNIFICANT ENOUGH THAT YOU
15 SOUGHT AND RECEIVED MEDICAL TREATMENT BEFORE AUGUST
16 THE 15TH AND AFTER AUGUST THE 15TH?

17 A. BUT IT WASN'T AS URGENT AFTER THE 15 -- IT WAS MORE
18 URGENT AFTER THE 15TH THAT I SEEN SOMEBODY BECAUSE
19 THE PAIN WAS A LOT WORSE AND THINGS WERE A LOT
20 DIFFERENT THEN.

21 Q. WELL, ACCORDING TO DR. LEVINSON'S RECORDS, IT
22 INDICATES YOUR PAIN AT LEAST IN JULY WAS VERY SEVERE
23 AND GETTING SIGNIFICANTLY WORSE. YOU WOULD AGREE
24 WITH ME THAT'S WHAT HIS MEDICAL RECORDS SAY,
25 CORRECT?

1 A. I UNDERSTAND THAT, SIR. BUT IT -- LIKE I SAID THE
2 SYMPTOMS AND EVERYTHING THAT WENT ALONG WITH THE
3 SITUATION AFTERWARDS WERE MUCH DIFFERENT.

4 BY MR. LOCKHART:

5 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

6 BY COMMISSIONER WILLIAMS:

7 ALL RIGHT. REDIRECT.

8 BY MR. ORMOND:

9 THANK YOU, COMMISSIONER.

10 RE-DIRECT EXAMINATION BY MR. ORMOND:

11 Q. MR. MILLER, WHEN YOU HAD PAIN EVENTS PRIOR TO THE
12 ACCIDENT, WE'RE TALKING ABOUT AT AUGUST 15TH, DID
13 THEY COME AND GO?

14 A. YES, SIR.

15 Q. AFTER THE 15TH WHEN YOU STARTED HAVING PAIN, DID IT
16 COME AND GO?

17 A. NO, SIR. IT WAS CONSISTENT. I SAY CONSISTENT. IT
18 WAS ACTUALLY -- I WAS IN PAIN, BUT IT WAS -- IT WAS
19 PROGRESSIVELY LIKE I SAY GETTING WORSE.

20 Q. DID DR. LEVINSON TALK TO YOU ABOUT WHAT HAD
21 HAPPENED?

22 BY MR. LOCKHART:

23 YOUR HONOR, I HAVE TO OBJECT. ANYTHING DR.

24 LEVINSON SAID ---

25 BY MR. ORMOND:

1 I'M NOT GOING TO ASK HIM WHAT HE SAID. I'M
2 GOING TO POINT HIM TO THE -- TO THE SPECIFIC.

3 BY COMMISSIONER WILLIAMS:

4 ALL RIGHT. GO AHEAD.

5 RE-DIRECT EXAMINATION RESUMED BY MR. ORMOND:

6 Q. DID DR. LEVINSON TALK TO YOU ABOUT WHAT HAD
7 HAPPENED?

8 BY MR. LOCKHART:

9 YOUR HONOR, I HAVE TO OBJECT TO THE FORM OF THE
10 QUESTION. I'M NOT SURE EXACTLY WHAT IT IS ---

11 BY COMMISSIONER WILLIAMS:

12 OKAY. THAT'S -- THAT'S NOTED. LET ME SEE
13 WHERE HE'S GOING WITH IT. OBVIOUSLY HE CAN'T TELL
14 WHAT THE DOCTOR TOLD, BUT LET ME SEE WHERE HE'S
15 GOING.

16 RE-DIRECT EXAMINATION RESUMED BY MR. ORMOND:

17 Q. I'M GOING TO ASK YOU -- AND THAT'S PAGE 68, AND THIS
18 IS FROM DR. BOYD AND -- I'M SORRY. I THINK I SAID
19 DR. LEVINSON. LET ME CHANGE THAT TO DR. BOYD. DID
20 YOU AND DR. BOYD DISCUSS AFTER YOUR SURGERY WHAT HE
21 FOUND?

22 A. YES, SIR.

23 Q. OKAY. AND IF YOU'D READ THE WRITTEN STATEMENTS BY
24 DR. BOYD ON THE BOTTOM OF 88 ---

25 BY MR. LOCKHART:

1 YOUR HONOR, I ---

2 RE-DIRECT EXAMINATION RESUMED BY MR. ORMOND:

3 Q. --- SIXTY EIGHT.

4 BY MR. LOCKHART:

5 YOUR HONOR, AGAIN I'M NOT SURE OF THE RELEVANCY
6 OF THIS. HE'S READING MEDICAL RECORDS THAT ARE
7 ALREADY IN EVIDENCE, AND HE CAN'T TESTIFY AS TO WHAT
8 DR. BOYD SAID TO HIM.

9 BY MR. ORMOND:

10 BUT HE CAN READ JUST LIKE THEY DID WHAT -- WHAT
11 THE APA HAS THAT'S IN THE EVIDENCE ALREADY.

12 BY COMMISSIONER WILLIAMS:

13 FAIR ENOUGH. I MEAN THE RECORD SPEAKS FOR
14 ITSELF.

15 RE-DIRECT EXAMINATION RESUMED BY MR. ORMOND:

16 Q. GO AHEAD AND READ THAT.

17 BY COMMISSIONER WILLIAMS:

18 HANG ON. THE RECORD SPEAKS FOR ITSELF. I CAN
19 READ IT. I DON'T -- I DON'T NEED IT READ TO ME.
20 LET'S SEE WHAT HE SAYS.

21 RE-DIRECT EXAMINATION RESUMED BY MR. ORMOND:

22 Q. DID YOU EVER USE A JACKHAMMER AFTER THIS ACCIDENT?

23 A. NO, SIR. I DON'T -- I DON'T EVEN KNOW WHERE THAT
24 COME FROM.

25 Q. DID YOU EVER GO TO DR. LEVINSON THAT YOU CAN RECALL

1 FOR LOW BACK PAIN AFTERWARDS -- LOW BACK PAIN AFTER
2 THIS ACCIDENT?

3 A. AFTER THE ACCIDENT, I TOLD HIM THAT I WAS HAVING
4 SOME DISCOMFORT BECAUSE OF THE POSITIONS THAT I
5 WOULD HAVE HAD TO BE IN AFTER THE SURGERY. YES,
6 SIR.

7 Q. HAVE YOU EVER USED A JACKHAMMER AND DEVELOPED A BACK
8 PAIN FROM THAT IN THE PAST?

9 A. IN THE PAST?

10 Q. YES.

11 A. PROBABLY, YEAH.

12 Q. CAN YOU RECALL IF YOU MIGHT HAVE DISCUSSED THAT WITH
13 DR. LEVINSON?

14 BY MR. LOCKHART:

15 YOUR HONOR, I HAVE TO OBJECT TO THE LEADING
16 FORM OF THE QUESTION.

17 BY COMMISSIONER WILLIAMS:

18 CAN YOU REPHRASE IT, MR. ORMOND?

19 RE-DIRECT EXAMINATION RESUMED BY MR. ORMOND:

20 Q. DID YOU EVER TELL DR. LEVINSON EVER ABOUT HOW LOWER
21 BACK PAIN MIGHT HAVE OCCURRED IN YOU AT ANY TIME?

22 A. I'M SURE I DID. YES, SIR.

23 Q. HAVE YOU EVER DONE AFTER AUGUST 15TH -- WELL, LET ME
24 ASK YOU WOULD YOU -- DO YOU REMEMBER WHEN YOUR --
25 YOUR SURGERY WAS?

1 A. IT WAS IN SEPTEMBER. THE FIRST PART OF SEPTEMBER, I
2 THINK.

3 Q. YOUR SURGERY FOR NECK, CAN YOU RECALL ABOUT WHEN
4 THAT WAS?

5 A. AUGUST, SEPTEMBER, IT WAS IN SEPTEMBER, I THINK.

6 Q. CAN YOU TELL ABOUT WHEN IN SEPTEMBER?

7 A. I'M NOT SURE ABOUT THE DATE. NO, SIR. AROUND THE
8 16TH, I THINK.

9 Q. MAYBE THIS WILL REFRESH YOUR MEMORY. I'M LOOKING AT
10 PAGE FOUR. THIS IS AN OFFICE VISIT ON 10/22, AND
11 THAT WOULD HAVE BEEN ABOUT TEN DAYS AFTER YOU WENT
12 TO DR. LEVINSON ON THE EIGHTH. LET ME ASK YOU IF
13 YOU'D READ THAT AND TELL ME WHETHER OR NOT YOU WERE
14 RECOVERING FROM SURGERY DURING IN OCTOBER?

15 A. YOU WANT ME TO READ IT OUT LOUD?

16 Q. NO, JUST READ IT TO YOURSELF. AND THEN IF YOU CAN
17 RECALL ABOUT WHEN YOU HAD THE NECK SURGERY. WELL,
18 LET ME -- LET ME REPHRASE IT. ALL RIGHT. LOOK AT
19 PAGE SIX, AND TELL ME WHAT DATE THE SURGERY WAS?

20 A. I WAS ADMITTED ON 9/26.

21 Q. OKAY. HOW LONG DID IT TAKE YOU TO RECOVER FROM
22 SURGERY TO WHERE YOU COULD GET UP AND DO ANYTHING?

23 A. ABOUT A WEEK.

24 Q. THE SECOND WEEK AFTER THAT, WHAT COULD YOU DO?

25 A. NOT A WHOLE LOT. I WAS PRETTY MUCH -- I, YOU KNOW,

1 STAYED IN THE HOUSE AND WASHED DISHES.

2 Q. NOW, BETWEEN EIGHT AND TEN, ELEVEN DAYS AFTER
3 SURGERY, DID YOU USE A JACKHAMMER?

4 A. NO, ABSOLUTELY NOT.

5 Q. DO YOU OWN A JACKHAMMER?

6 A. NO, SIR. I DO NOT.

7 Q. YOU WERE ASKED ABOUT A CONFRONTATION OR SOMETHING
8 WITH MR. RAULERSON ABOUT MONEY IN A KITTY; DOES THAT
9 RING ANY BELLS TO YOU AT ALL?

10 A. NOT -- NO -- NOT TO -- NOT FOR THAT SITUATION. NO,
11 SIR.

12 Q. CAN YOU REMEMBER ANYTHING ABOUT ANYBODY STEALING
13 MONEY OR POSSIBLY STEALING MONEY FROM A KITTY?

14 A. WE HAD A -- YES, SIR.

15 Q. TELL ME ABOUT THAT?

16 A. OKAY. WE HAD AN INCIDENT WHERE WE ALL -- ALL THE
17 MAINTENANCE POOLED \$20 A PIECE 'CAUSE OF THE -- THE
18 LOTTERY HAD ESCALATED TO A LARGE NUMBER, AND WE HAD
19 PUT ALL THE MONEY IN ON TICKETS, AND MR. RAULERSON
20 WAS THE ONE THAT HELD THE TICKETS, AND WE GOT A
21 COUPLE OF NUMBERS, AND I -- I STATED AFTER THE FACT
22 THAT NOBODY HAD EVER FOLLOWED UP WITH MR. RAULERSON
23 ABOUT THIS WHAT MONEY WAS SUPPOSED TO BE
24 DISTRIBUTED.

25 Q. DID Y'ALL WIN THE LOTTERY?

1 A. NO, SIR. IT WOULD HAVE BEEN NICE IF WE WOULD HAVE.

2 Q. SO WHAT MONEY WOULD NEED TO BE DISTRIBUTED?

3 A. WHATEVER MONEY WAS WON ON THE TICKETS.

4 Q. AND WAS THERE ANY MONEY WON ON THE TICKETS?

5 A. I DON'T KNOW. I KNOW THAT THERE WAS A FEW NUMBERS
6 THAT HAD CAME UP.

7 Q. OKAY. WERE YOU QUESTIONING MR. RAULERSON?

8 A. WAS I?

9 Q. YES.

10 A. NO, SIR.

11 Q. DO YOU RECALL EVER LEAVING A SAFETY MEETING --
12 LEAVING A SAFETY MEETING IN AN UPSET CONDITION?

13 A. I LEFT AFTER THE SAFETY MEETING?

14 Q. YEAH?

15 A. I LEFT AND YES AND NOT BECAUSE OF THE SAFETY
16 MEETING. I WAS UPSET. YES, SIR.

17 Q. OKAY. WHY WERE YOU UPSET?

18 A. BECAUSE I WAS IN PAIN, AND I HAD ASKED FOR HELP, AND
19 I WASN'T GETTING ANY HELP.

20 Q. DID YOU HAVE ANY KNOWLEDGE AT THAT TIME HOW MANY
21 DAYS RAULERSON HAD OFF OR NOT?

22 A. NO, I WASN'T SURE ABOUT THE TIME. I WAS TOLD THAT
23 HE GOT THE SAME AMOUNT OF TIME THAT I GOT.

24 Q. OKAY. DID YOU -- DID YOU AND JOHN GARDNER -- WELL,
25 WHEN -- THE JOHN GARDNER ISSUE AND WAS -- WAS THAT

1 IN 2009; CAN YOU RECALL?

2 A. PERHAPS. YES, SIR. I'M NOT SURE ABOUT THE DATE.

3 Q. WAS IT A LONG TIME AGO?

4 A. IT'S BEEN A WHILE. YES, SIR.

5 Q. DID Y'ALL RESOLVE YOUR ISSUES?

6 A. YEAH, I THOUGHT WE DID.

7 Q. WHAT ABOUT THE -- THE CLIFF ZIMM WHERE YOU TOSSED
8 THE WELDING ---

9 A. CLIFF AND I BOTH AGREE, YOU KNOW, I HAD SPOKE WITH
10 CLIFF, AND WE'D TALKED ABOUT THE SITUATION. HE
11 SAID, "BILL," HE SAYS, "I WAS JUST AS MUCH AT FAULT
12 AS YOU WERE AND, YOU KNOW, I WOULD WORK WITH YOU ANY
13 TIME" IS WHAT THE MAN TOLD ME.

14 Q. OKAY. AND WITHIN A WEEK OR TWO, YOU WERE
15 REINSTATED?

16 A. YES, SIR.

17 Q. WERE YOU GIVEN A MERIT INCREASE IN JANUARY OF THIS
18 YEAR '12?

19 A. I BELIEVE SO. YES, SIR.

20 Q. OF ALMOST SEVEN PERCENT?

21 A. YES, SIR

22 BY MR. ORMOND:

23 THAT'S ALL I HAVE.

24 BY MR. LOCKHART:

25 I DON'T HAVE ANY FURTHER QUESTIONS FOR THIS

1 WITNESS, YOUR HONOR.

2 BY COMMISSIONER WILLIAMS:

3 ALL RIGHT. MR. MILLER, LET ME ASK THIS. IT
4 APPEARS FROM THE WITNESS STATEMENTS -- WERE YOU AND
5 MR. RAULERSON -- OBVIOUSLY Y'ALL WERE TALKING BACK
6 AND FORTH; WERE YOU ALSO PUSHING BACK AND FORTH?

7 BY THE WITNESS:

8 PUSHING BACK?

9 BY COMMISSIONER WILLIAMS:

10 YEAH, PUSHING AND SHOIVING EACH OTHER BACK AND
11 FORTH AS YOU WERE TALKING?

12 BY THE WITNESS:

13 HE WAS PUSHING ME UP AGAINST THE -- THERE WAS A
14 -- OR A SINK BEHIND ME AND MR. RAULERSON WAS USING
15 HIS -- HIS WEIGHT, HIS STOMACH TO PUSH UP AGAINST MY
16 CHEST AND POKING HIS FINGER IN MY CHEST RIGHT HERE
17 (INDICATING).

18 BY COMMISSIONER WILLIAMS:

19 DID YOU PUT YOUR HAND UP AND PUSH HIM AWAY?

20 BY THE WITNESS:

21 YES, SIR. I PUT MY HAND UP 'CAUSE I TRIED TO
22 GO TO THE -- TO THE LEFT OR TO THE RIGHT OF HIM AND
23 WHEN I TRIED TO GO AROUND HIM, HE STEPPED TO THAT
24 SIDE AND THEN WHENEVER, YOU KNOW, I COULDN'T GET
25 THAT WAY, I WENT TO THE OTHER WAY -- KIND OF LIKE A

1 DODGE SITUATION, AND WHENEVER I WENT TO THE RIGHT, I
2 PUT MY HAND UP TO KIND OF PUSH HIM OUT OF THE WAY
3 SO THAT JUST STIFF ARM HIM. IT WASN'T A PUSH IT WAS
4 MORE A STIFF ARM THAN ANYTHING SO THAT I COULD GET
5 FROM AROUND HIM.

6 BY COMMISSIONER WILLIAMS:

7 AND YOU SAID WHEN HE PUSHED YOU OUTSIDE THE
8 BATHROOM YOUR SHOULDER HIT THE WALL, YOUR HEAD HIT
9 IT AND FELT -- FELT A POP. WHY DID YOU THROW THE
10 PUNCH THAT INSTANT IF YOU FELT YOUR NECK POP?

11 BY THE WITNESS:

12 BECAUSE I -- WHEN I FELT MY NECK POP, SIR, I
13 LOOKED UP, AND MR. RAULERSON WAS TAKING A STANCE ON
14 ME, AND IT WAS LIKE HE WAS -- AND I LOOKED AT HIS
15 FACE AND HIS FACE WAS ALL RED, AND HE WAS LIKE HE
16 WAS LUNGING TOWARDS ME, AND AS HE WAS LUNGING
17 TOWARDS ME, I HIT HIM.

18 BY COMMISSIONER WILLIAMS:

19 ALL RIGHT. AND AFTER YOU PUNCHED HIM, YOU SAID
20 "I HAVE A BAD BACK AND A BAD NECK." THE PART I'M
21 TRYING TO FIGURE OUT IS YOU HEARD YOUR NECK POP, WHY
22 DID YOU EVEN THROW A PUNCH AT ALL?

23 BY THE WITNESS:

24 'CAUSE I WAS ---

25 BY COMMISSIONER WILLIAMS:

1 WERE YOU WORRIED ABOUT RE-INJURING YOUR NECK AT
2 ALL WHEN YOU THREW THAT PUNCH, OR YOU WEREN'T
3 WORRIED ABOUT THAT?

4 BY THE WITNESS:

5 WELL, AT THE TIME, I DIDN'T REALIZE HOW SEVERE
6 -- WHAT THE DEAL WAS -- WAS WITH MY NECK. I THOUGHT
7 IT JUST, YOU KNOW, I HEARD IT POP.

8 BY COMMISSIONER WILLIAMS:

9 NOW, IN TERMS OF ANY OTHER DISCIPLINARY ACTIONS
10 I SEE A -- A FEW HERE. THERE'S NO OTHER WAY TO ASK
11 THIS. DO YOU HAVE A BAD TEMPER?

12 BY THE WITNESS:

13 NO, SIR. I THINK -- I DON'T THINK SO.

14 BY COMMISSIONER WILLIAMS:

15 ALL RIGHT.

16 BY THE WITNESS:

17 I GET ALONG WITH ALL -- ALL THEM FELLOWS OUT
18 THERE. I HAVE THE UPMOST RESPECT FOR QUITE, YOU
19 KNOW, FOR EVERYBODY THAT I WORK -- THEY'VE TAUGHT ME
20 A LOT ---

21 BY COMMISSIONER WILLIAMS:

22 ALL RIGHT.

23 BY THE WITNESS:

24 --- COMING UP.

25 BY COMMISSIONER WILLIAMS:

1 THERE'S AN INCIDENT REPORT OR A PERSONNEL
2 DIRECTIVE FROM BACK IN NOVEMBER 5TH OF 2009
3 INSUBORDINATION TOWARD SUPERVISOR, YOU GOT TWO DAYS
4 OFF WITH OUT PAY. WHAT HAPPENED IN THAT INCIDENT --

5
6 BY THE WITNESS:

7 I ---

8 BY COMMISSIONER WILLIAMS:

9 --- BACK IN 2009?

10 BY THE WITNESS:

11 BACK IN 2009?

12 BY COMMISSIONER WILLIAMS:

13 YEAH.

14 BY THE WITNESS:

15 AND THAT WAS WITH MR. GARDNER, JOHN?

16 BY COMMISSIONER WILLIAMS:

17 I'M NOT SURE WHO -- WHO WAS IT WAS WITH. THIS
18 WOULD HAVE BEEN NOVEMBER 5TH; YOU GOT TWO DAYS OFF
19 WITHOUT PAY.

20 BY THE WITNESS:

21 THE ONLY INCIDENT THAT I REMEMBER WOULD BE WITH
22 -- WITH JOHN, AND -- AND THAT WAS -- THAT SITUATION
23 WAS HE WAS -- HE AND I WERE BADGERING BACK AND
24 FORTH, AND HE NEEDED THE MACHINE RUNNING THAT I WAS
25 WORKING ON, AND TO BE HONEST WITH YOU I THOUGHT WE

1 WERE JOKING AROUND, YOU KNOW, AND I WAS OVER ON THE
2 OTHER SIDE OF THE SHOP, AND HE MADE A STATEMENT "I
3 ALREADY GOT ONE MACHINE TORE UP. DON'T TEAR UP
4 ANOTHER ONE." YOU KNOW, NOT THAT I HAD TORE THE
5 MACHINE UP, BUT I WAS ACTUALLY TRYING TO REPAIR HIS
6 MACHINE, AND THAT'S WHEN I SAID WHAT I DID. IT
7 WASN'T IN ANY MALICE AND I, YOU KNOW, I ---

8 BY COMMISSIONER WILLIAMS:

9 WHAT DID YOU SAY TO HIM?

10 BY THE WITNESS:

11 I USED THE "F" -- I SAID "F-YOU, JOHN."

12 BY COMMISSIONER WILLIAMS:

13 OKAY.

14 BY THE WITNESS:

15 YES, SIR.

16 BY COMMISSIONER WILLIAMS:

17 ON NOVEMBER 23RD OF 2010, A COUPLE OF YEARS
18 AGO, I GUESS -- THIS IS WHAT IT SAYS. "BILL STARTED
19 HAVING A FIT, STARTED THROWING WELDING LEADS AT
20 CLIFF ZIMMS." WHAT -- WHAT HAPPENED WITH THIS
21 INCIDENT?

22 BY THE WITNESS:

23 THAT INCIDENT WAS MR. ZIMMS AND -- AND I WENT
24 DOWN TO -- WE WERE CALIBRATING SOME MACHINES, SOME
25 WELDING MACHINES, AND THERE WAS LITERALLY HUNDREDS

1 OF -- OF LINES, YOU KNOW; ELECTRICAL LINES AND
2 THINGS OF THAT NATURE LAYING ON THE FLOOR, AND I WAS
3 MR. ZIMMS' HELPER, AND HE'D TOLD ME TO PICK UP A
4 WELDING LEAD, AND I COULDN'T -- I COULDN'T FIND THE
5 WELDING LEAD THAT HE WAS TALKING ABOUT, AND HE GOT
6 ANGRY ABOUT IT, AND HE STARTED CUSSING ME, AND --
7 AND I STARTED CUSS -- I CUSSED HIM BACK, AND I
8 REACHED DOWN, AND HE SAID, "THAT FUCKIN' WELDING
9 LEAD RIGHT THERE," AND I REACHED DOWN, AND I GRABBED
10 THE WELDING LEAD, AND I THREW IT, AND I SAID,
11 "THERE'S YOUR FUCKIN' WELDING LEAD."

12 BY COMMISSIONER WILLIAMS:

13 OKAY. AND THEN OBVIOUSLY THE INCIDENT -- THIS
14 INCIDENT WAS I GUESS WHEN YOU CAME BACK TO WORK THIS
15 IS AUGUST 27. IT SAYS, "BILL CAME AND REQUESTED TO
16 LEAVE WORK EARLY BECAUSE HE WAS SO ANGRY HE NEEDED
17 TO GO HOME." WHY ARE YOU SO ANGRY THAT YOU HAD TO
18 GO HOME?

19 BY THE WITNESS:

20 'CAUSE I -- I WAS IN A LOT OF PAIN, SIR, AND
21 THERE WASN'T -- NOBODY WOULD EVEN, YOU KNOW,
22 ACKNOWLEDGE. I SAID THAT I NEEDED TO GO TO THE
23 DOCTOR. I WAS TOLD THAT IT WOULD BE TAKEN CARE, OF
24 AND IT WAS HARD FOR ME TO DO ANYTHING AT -- AT THE
25 TIME, AND I WAS IN A LOT OF PAIN.

1 BY COMMISSIONER WILLIAMS:

2 OKAY. HOW LONG WERE YOU AND MR. RAULERSON
3 ARGUING TOTAL?

4 BY THE WITNESS:

5 ABOUT A MINUTE OR SO.

6 BY COMMISSIONER WILLIAMS:

7 ALL RIGHT. MR. ORMOND, ANY OTHER QUESTIONS?

8 BY MR. ORMOND:

9 NO, SIR.

10 BY COMMISSIONER WILLIAMS:

11 ALL RIGHT. MR. LOCKHART?

12 BY MR. LOCKHART:

13 NOTHING FURTHER FROM US, YOUR HONOR.

14 BY COMMISSIONER WILLIAMS:

15 OKAY. LET'S GO OFF THE RECORD A SECOND.

16 (OFF THE RECORD)

17 BY COMMISSIONER WILLIAMS:

18 DO YOU HAVE ANY OTHER WITNESSES, MR. ORMOND?

19 BY MR. ORMOND:

20 YES.

21 BY COMMISSIONER WILLIAMS:

22 CHUCK, YOU WANT TO CALL THE WIFE?

23 BY MR. ORMOND:

24 JUST REAL QUICK.

25 BY COMMISSIONER WILLIAMS:

1 ALL RIGHT. ALL RIGHT. GO AHEAD AND BRING HER
2 IN.

3 MS. MILLER.

4 BY THE WITNESS:

5 YES, SIR.

6 BY COMMISSIONER WILLIAMS:

7 YOU CAN COME ON UP. WHAT'S YOUR FIRST NAME?

8 BY THE WITNESS:

9 TALISA.

10 BY COMMISSIONER WILLIAMS:

11 SPELL THAT FOR ME.

12 BY THE WITNESS:

13 T-A-L-I-S-A.

14 BY COMMISSIONER WILLIAMS:

15 SWEAR MS. MILLER IN, PLEASE.

16 BY THE COURT REPORTER:

17 * * * * *

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

21 TALISA MILLER

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

23 BY COMMISSIONER WILLIAMS:

24 ALL RIGHT. MR. ORMOND.

25 GO AHEAD, YOU CAN SIT DOWN.

DIRECT EXAMINATION BY MR. ORMOND:

Q. THANK YOU. MS. MILLER, HOW LONG HAVE YOU BEEN
MARRIED TO MR. MILLER?

A. TWELVE AND A HALF YEARS.

Q. OKAY. DO YOU RECALL THE DAY HE CAME HOME AFTER
HAVING A FIGHT?

A. I DO.

Q. AND HE WAS OUT ABOUT FIVE OR SIX DAYS?

A. ABOUT -- ABOUT SIX DAYS.

Q. AND TWO OF THOSE DAYS WERE THE WEEKEND?

A. YES.

Q. CAN YOU RECALL WHAT DATE THAT WAS, THE DAY HE GOT IN
THE FIGHT?

A. THE DATE HE GOT WAS -- CAME HOME FROM WORK OF THE
ALTERCATION WAS THE 15TH OF AUGUST.

Q. OKAY. DURING THOSE SIX DAYS, DID YOU HAVE TIME TO
OBSERVE HIM?

A. OH, I DID.

Q. OKAY. CAN YOU TELL ME WHAT THE DIFFERENCES HOW HE
WAS FEELING AND WHAT YOU COULD OBSERVE -- NOT HOW HE
WAS FEELING, BUT WHAT YOU COULD OBSERVE ABOUT HIM?

A. HE HAD A LOT OF STIFFNESS IN HIS NECK, AND HIS RANGE
OF MOTION WAS REALLY INHIBITED I WOULD SAY. I MEAN
HE COULD HARDLY TURN HIS NECK FROM SIDE TO SIDE. IT
WOULD GET -- IT WAS GETTING WORSE, AND HE WAS UP AND

1 DOWN ALL NIGHT, COULDN'T SLEEP.

2 Q. HAD HE HAD NECK ISSUES PRIOR TO THIS?

3 A. HE DID, BUT NOTHING TO THIS EXTREME AT ALL.

4 Q. HAD HE GONE TO THE DOCTOR TO YOUR KNOWLEDGE PRIOR TO
5 THIS FOR NECK ISSUES AND BACK ISSUES?

6 A. YES.

7 Q. DID -- DID HE GO TO DOCTOR THAT -- DURING THOSE SIX
8 DAYS?

9 A. NO, I TRIED TO GET HIM TO GO, BUT HE DID NOT.

10 Q. OKAY. AND THEN WHEN HE CAME BACK AFTER THAT, DID HE
11 GO TO WORK?

12 A. HE DID GO TO WORK THE WEDNESDAY -- I'M NOT SURE OF
13 THE DATE.

14 Q. OKAY. AND THEN THERE WAS ANOTHER WEEKEND?

15 A. YES.

16 Q. OKAY. HOW -- FROM YOUR OBSERVATIONS, HOW WAS HIS
17 CONDITION AFTER THAT?

18 A. AFTER HE WENT BACK TO WORK AFTER THE FOUR-DAY
19 SUSPENSION, HE -- HIS -- IT WAS A LOT WORSE AFTER
20 THOSE TWO DAYS, WEDNESDAY AND THURSDAY OR THURSDAY
21 AND FRIDAY. I'M NOT SURE WHICH DAYS, BUT IT -- IT
22 WAS A LOT WORSE, AND OVER THAT WEEKEND I BEGGED HIM
23 TO GO TO THE EMERGENCY ROOM.

24 Q. OKAY. DID YOU DECIDE -- DID Y'ALL DECIDE TOGETHER
25 TO ---

- 1 A. WE DID. WE DECIDED SUNDAY EVENING THAT HE WOULD GO
2 TO OUR REGULAR DOCTOR ON MONDAY IF I COULD GET HIM
3 IN.
- 4 Q. OKAY. DID HE GO TO WORK THAT MORNING?
- 5 A. HE DID.
- 6 Q. WAS THAT THE 27TH OF AUGUST?
- 7 A. IT WAS, UH-HUH. HE WENT TO WORK, BECAUSE I TOLD HIM
8 I SAID, "YOU KNOW, I'LL CALL THE DOCTOR. I'M NOT
9 SURE IF I CAN GET YOU IN TODAY." HE SAID, "WELL,
10 I'M GOING TO GO AHEAD AND GO INTO WORK."
- 11 Q. OKAY. DID YOU GET HIM AN APPOINTMENT?
- 12 A. I DID, UH-HUH.
- 13 Q. DID YOU LET HIM KNOW THAT?
- 14 A. YES, I TEXTED HIM. I THINK I TEXTED HIM. IT WAS A
15 TEXT OR A PHONE CALL.
- 16 Q. OKAY. AND THEN DID HE COME HOME?
- 17 A. HE DID.
- 18 Q. OKAY. DID YOU GO TO THE DOCTOR WITH HIM?
- 19 A. I DROVE HIM TO THE DOCTOR, YES.
- 20 Q. OKAY. DID -- DID THE -- DID YOU GO WITH HIM INTO
21 THE EXAMINATION ROOM?
- 22 A. I DID.
- 23 Q. DID THE DOCTOR GIVE HIM A SLIP TO BE OUT OF WORK?
- 24 A. HE DID.
- 25 Q. THE NEXT DAY DID HE GO INTO TO WORK?

1 A. I DROVE HIM THAT -- THE -- THE FOLLOWING MORNING,
2 WHICH WAS THE 28TH OF AUGUST TO WORK TO TURN IN THE
3 DOCTOR'S EXCUSE AND THE I GUESS HIS RECOLLECTION OF
4 THE INCIDENT THAT WE TYPED UP.

5 Q. OKAY. PRIOR TO THE SURGERY, WAS HE REQUIRED TO WEAR
6 A NECK BRACE FOR A WHILE?

7 A. YES, HE WAS.

8 Q. DO YOU RECALL HOW LONG?

9 A. I'M --I'M REALLY NOT SURE. IT WAS SEVERAL DAYS, I
10 MEAN, UP UNTIL THE SURGERY.

11 Q. CAN YOU REMEMBER WHEN HIS SURGERY WAS?

12 A. SOMETIME IN SEPTEMBER.

13 Q. DO YOU REMEMBER IF IT WAS LATE OR EARLY SEPTEMBER?

14 A. I WANT TO SAY MID -- MID SEPTEMBER.

15 Q. OKAY. DO YOU KNOW IF HE'S WORKED AT ALL AFTER THAT?

16 A. HE HAS NOT.

17 Q. DO YOU KNOW IF HE'S USED A JACKHAMMER AFTER THAT?

18 A. NO.

19 Q. AFTER SURGERY, DID -- DID HE REQUIRE A WEEK OR TWO
20 TO CONVALESCE?

21 A. YES. I MEAN, I -- I HAD TO HELP HIM WITH DAILY --
22 DAILY THINGS LIKE GETTING UP OFF OF THE COUCH AND
23 GOING TO THE RESTROOM AND DIFFERENT -- I MEAN, YOU
24 KNOW, HELPING HIM TO THE RESTROOM AND ---

25 Q. FROM YOUR OBSERVATION AFTER SURGERY, HOW HAS HE

1 BEEN?

2 A. HE'S BEEN SOME BETTER. I MEAN HE'S NOT FROM MY
3 OBSERVATION, I BEEN WITH HIM FOR 15 YEARS, SO I MEAN
4 HE'S NOT ONE HUNDRED PERCENT BETTER, BUT HE'S BETTER
5 THAN WHAT HE WAS.

6 BY MR. ORMOND:

7 OKAY. THAT'S ALL I HAVE.

8 BY COMMISSIONER WILLIAMS:

9 ALL RIGHT. MR. LOCKHART.

10 CROSS EXAMINATION BY MR. LOCKHART:

11 Q. MS. MILLER, WAS YOUR HUSBAND ACTIVELY UNDER THE CARE
12 OF DR. LEVINSON FOR NECK PROBLEMS PRIOR TO AUGUST
13 15TH OF 2012?

14 A. HE -- HE HAD BEEN UNDER HIS CARE, YES, FOR NECK AND
15 BACK -- BACK PROBLEMS.

16 Q. TO -- TO YOUR KNOWLEDGE, HAD HE UNDERGONE AT LEAST
17 TWO EPIDURAL STEROID INJECTIONS ---

18 A. YES.

19 Q. --- ONE IN FEBRUARY OF 2012 AND ANOTHER IN APRIL IN
20 2012?

21 A. YES.

22 Q. AND TO YOUR KNOWLEDGE, WAS HE ACTIVELY TAKING
23 PRESCRIPTION MEDICATIONS FOR NECK PROBLEMS ON OR
24 ABOUT AUGUST THE 15TH OF 2012 OR IN THE WEEKS
25 LEADING UP TO THAT DAY?

1 A. FOR NECK PROBLEMS?

2 Q. YES, MA'AM.

3 A. NO, SIR.

4 Q. ALL RIGHT. ARE YOU SURE ABOUT THAT?

5 A. I DON'T THINK HE WAS TAKING ANY PRESCRIPTIONS FOR
6 NECK PROBLEMS. I KNOW HE WAS TAKING SOME
7 PRESCRIPTIONS FOR A RESTLESS LEG SYNDROME AND HIS
8 BACK, BUT I'M NOT SURE ABOUT THE NECK.

9 Q. WERE YOU AWARE THAT HE WAS PRESCRIBED A VARIETY OF
10 MEDICATIONS BY DR. LEVINSON INCLUDING ULTRACET,
11 KLONOPIN, NAPROSYN, AND A VARIETY OF OTHER
12 MEDICATIONS IN JULY OF 2012 ---

13 A. YES.

14 Q. --- FOLLOWING THE DIAGNOSIS OF NECK PROBLEMS?

15 A. I -- I KNOW HE WAS PRESCRIBED MEDICATION, BECAUSE I
16 WOULD GO PICK THEM UP FOR HIM OR SEND THEM IN TO THE
17 -- TO THE INSURANCE COMPANY, BUT I DON'T KNOW. I'M
18 NOT A DOCTOR. I DON'T KNOW WHAT THEY WERE
19 PRESCRIBED FOR.

20 Q. DID YOUR HUSBAND HAVE ANY CONFLICTS WITH ANY OF YOUR
21 NEIGHBORS?

22 A. NO.

23 Q. NONE WHATSOEVER?

24 A. NO.

25 Q. ARE YOU AWARE OF ANY INCIDENT INVOLVING YOUR HUSBAND

1 COMING IN CONFLICT WITH A NEIGHBOR AND SHOOTING A
2 NEIGHBOR'S DOG?

3 A. NO. SHOOTING A NEIGHBOR'S DOG?

4 Q. YES, MA'AM.

5 A. NO.

6 Q. ANY RECOLLECTIONS OF YOUR HUSBAND BEING INVOLVED IN
7 ANY PHYSICAL ALTERCATIONS WITH ANY OF YOUR
8 NEIGHBORS?

9 A. I WASN'T HOME, BUT I WAS TOLD THAT THERE WAS A -- AN
10 ALTERCATION. THE NEIGHBOR CAME TO OUR HOUSE.

11 Q. OKAY. DID YOU -- DID THE NEIGHBOR AND YOUR HUSBAND
12 GET INTO A -- A PHYSICAL FIGHT?

13 A. AS FAR AS I KNOW, I WASN'T HOME, SO I DON'T KNOW. I
14 -- I DID NOT SEE IT MYSELF.

15 Q. DO YOU RECALL WHEN IT HAPPENED?

16 A. I THINK IT WAS AROUND CHRISTMAS.

17 Q. CHRISTMAS OF?

18 A. OH, GEEZ TWO -- 2010 MAYBE. I'M NOT SURE. I -- I
19 DON'T KNOW. I KNOW IT WAS AROUND CHRISTMAS TIME. I
20 DON'T THINK -- 2010 OR 2011 MAYBE.

21 BY MR. LOCKHART:

22 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

23 BY COMMISSIONER WILLIAMS:

24 ANY REDIRECT?

25 BY MR. ORMOND:

1 NO, YOUR HONOR.

2 BY COMMISSIONER WILLIAMS:

3 HANG ON, MS. MILLER.

4 BY THE WITNESS:

5 OKAY. I'M SORRY.

6 BY COMMISSIONER WILLIAMS:

7 NO, THAT'S ALL RIGHT. I'M OBVIOUSLY NOT TRYING
8 TO CAUSE ANY PROBLEMS, BUT I HAVE TO ASK YOU THIS.
9 DOES YOUR HUSBAND HAVE A PROBLEM WITH ANY ANGER
10 ISSUES? I'D ASKED HIM THIS PREVIOUSLY.

11 BY THE WITNESS:

12 I MEAN, HE HAS A TEMPER BUT NO ANGER ISSUES.

13 NO, SIR.

14 BY COMMISSIONER WILLIAMS:

15 OKAY. WHEN YOU SAY HE HAS A TEMPER, WHAT
16 EXACTLY DO YOU MEAN?

17 BY THE WITNESS:

18 I MEAN, EVERYBODY CAN GET UPSET EVERY ONCE IN A
19 WHILE. I MEAN, IT'S NOT ANYTHING LIKE A, YOU KNOW,
20 SCREAMING, YELLING OR ANYTHING LIKE THAT ALL THE
21 TIME. HE'S JUST, YOU KNOW -- I MEAN, HE HAS A SHORT
22 FUSE. I HAVE A SHORT FUSE, AND ---

23 BY COMMISSIONER WILLIAMS:

24 HAS HE TOLD YOU ABOUT ANY OF THE ALTERCATIONS
25 THAT AT WORK NOT -- NOT THE ONE THAT -- THAT WE'RE

1 HERE ABOUT, ANY ALTERCATIONS PRIOR?

2 BY THE WITNESS:

3 HAS HE TOLD ME ABOUT THEM?

4 BY COMMISSIONER WILLIAMS:

5 YES.

6 BY THE WITNESS:

7 I KNOW OF ONE WHERE HE AND ANOTHER GENTLEMAN
8 GOT INTO A VERBAL CONFRONTATION.

9 BY COMMISSIONER WILLIAMS:

10 ALL RIGHT. WHAT HAPPENED WITH THAT; DO YOU
11 REMEMBER?

12 BY THE WITNESS:

13 FROM WHAT I UNDERSTAND, THEY WERE ARGUING, AND
14 -- AND THE OTHER GUY WAS CALLING HIM AN IDIOT, AND
15 BILL CAME BACK WITH, YOU KNOW, YOU -- YOU DON'T NEED
16 TO TALK TO ME LIKE THAT AND THREW SOME LEAD WIRES OR
17 SOMETHING. I DON'T KNOW THE ---

18 BY COMMISSIONER WILLIAMS:

19 FAIR ENOUGH. ANY OTHER QUESTIONS FOR MS.
20 MILLER?

21 BY MR. ORMOND:

22 NO, SIR.

23 BY COMMISSIONER WILLIAMS:

24 MR. LOCKHART, DO YOU HAVE ANY OTHER QUESTIONS?

25 BY MR. LOCKHART:

1 NONE FROM THE -- NONE FROM THE DEFENDANTS, YOUR
2 HONOR.

3 BY COMMISSIONER WILLIAMS:

4 THANK YOU. YOU CAN STEP DOWN.

5 MR. ORMOND.

6 BY MR. ORMOND:

7 YES, STEVE RAULERSON.

8 BY COMMISSIONER WILLIAMS:

9 OKAY.

10 BY MR. LOCKHART:

11 YOUR HONOR, HE'S IN THE RESTROOM.

12 BY COMMISSIONER WILLIAMS:

13 OKAY.

14 BY MR. LOCKHART:

15 SORRY ABOUT THAT.

16 BY COMMISSIONER WILLIAMS:

17 ALL RIGHT.

18 BY MR. ORMOND:

19 I'LL CALL BRIAN INGLE.

20 BY COMMISSIONER WILLIAMS:

21 YOU SURE?

22 BY MR. ORMOND:

23 PARDON?

24 BY COMMISSIONER WILLIAMS:

25 I SAID ARE YOU SURE 'CAUSE HE'S PROBABLY --

HE'LL PROBABLY BE HERE RIGHT OUT IN A SECOND.

BY MR. ORMOND:

I MEAN, AS WE'RE GETTING LATE, I -- I SENSE OF

BY COMMISSIONER WILLIAMS:

THAT'S FINE.

BY MR. LOCKHART:

ALL RIGHT. BRIAN, COME ON. BRIAN IF YOU WOULD
HAVE A SEAT IN THAT CHAIR RIGHT THERE.

YOUR HONOR, THIS IS MR. BRIAN INGLE.

BY COMMISSIONER WILLIAMS:

ALL RIGHT. B-R-I-A-N?

BY THE WITNESS:

YES, SIR.

BY COMMISSIONER WILLIAMS:

I-N-G-L-E?

BY THE WITNESS:

YES, SIR.

BY COMMISSIONER WILLIAMS:

OKAY. SWEAR MR. INGLE IN, PLEASE.

BY THE COURT REPORTER:

* * * * *

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

BRIAN INGLE

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

BY COMMISSIONER WILLIAMS:

MR. ORMOND.

DIRECT EXAMINATION BY MR. ORMOND:

Q. MR. INGLE, ARE YOU STILL AN EMPLOYEE WITH OWEN STEEL?

A. YES, SIR.

Q. AND DID YOU SEE A PORTION OF THE EVENTS OF AUGUST 15?

A. YES, SIR.

Q. ON ABOUT AUGUST 28TH, YOU WROTE A STATEMENT ABOUT WHAT YOU SAW, CORRECT?

A. YES, SIR.

Q. AND THAT STATEMENT WAS WHAT YOU SAW AS BEST AS YOU COULD RECOLLECT?

A. YES, SIR.

Q. AND IT WAS IN THE SEQUENCE THAT YOU SAW IT?

A. YES, SIR.

Q. AND YOU AND I HAVE HAD TIME TO MEET BEFORE, AND I TOOK YOUR DEPOSITION, CORRECT?

A. YES, SIR.

Q. AND YOU TOOK -- YOU MADE THE STATEMENT ON AUGUST 25TH -- OR 28TH, CORRECT?

A. I'M NOT FOR SURE ON THE DATE, BUT I DID MAKE A

1 STATEMENT. YES, SIR.

2 Q. AND IS ---

3 BY COMMISSIONER WILLIAMS:

4 IS THIS PAGE -- IS THIS PAGE 84? IS THAT THE
5 ONE THAT WE'RE REFERENCING?

6 BY MR. ORMOND:

7 YES. YES, YOUR HONOR.

8 BY COMMISSIONER WILLIAMS:

9 OKAY. ALL RIGHT, THANK YOU. GO AHEAD.

10 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

11 Q. AND DID YOU DO THE STATEMENT WITH THE OTHER FOLKS --

12 -

13 A. YES, SIR.

14 Q. --- SAME TIME? AND IT WAS A COUPLE OF WEEKS AFTER
15 THE ACTUAL EVENT?

16 A. I'M NOT FOR SURE OF THE DATE, SIR. I THINK THE DATE
17 IS ON THE PAPER, BUT I DON'T HAVE -- HAVE IT IN
18 FRONT OF ME.

19 Q. OKAY. I'M GOING TO SHOW YOU YOUR STATEMENT. ALL
20 RIGHT. NOW, MY UNDERSTANDING FROM YOUR DEPOSITION

21 WAS YOU WERE IN YOUR OFFICE, AND IT'S SOMETIMES
22 PEOPLE CALL IT YOUR OFFICE 'CAUSE IT'S AN AREA THAT
23 YOU WORK OUT OF; IS THAT CORRECT?

24 A. YES, SIR.

25 Q. (INDICATING) AND THAT'S THIS AREA HERE. DO YOU

1 RECOGNIZE THIS? IS THIS A ROUGH DRAWING OF THE
2 AREA?

3 A. YES, SIR.

4 Q. OKAY. AND THERE'S A BATHROOM OVER HERE
5 (INDICATING), AND THIS IS WHERE YOU GUYS WERE?

6 A. YES, SIR.

7 Q. AND THERE'S A HALLWAY (INDICATING) OUT HERE?

8 A. YES, SIR.

9 Q. OKAY. AND YOU SAW STEVE, AND THAT'S MR. RAULERSON?

10 A. YES, SIR.

11 Q. AND BILL, AND THAT'S MR. MILLER ---

12 A. YES, SIR.

13 Q. --- PUSHING EACH OTHER, RIGHT?

14 A. UH...

15 Q. WELL, LOOK AT YOUR STATEMENT?

16 A. YEAH. I MEAN, YEAH. I SEEN THEM.

17 Q. THEN YOU SAY, "BILL," THAT WOULD BE MR. MILLER,
18 CORRECT?

19 A. RIGHT.

20 Q. "KICKED STEVE AND HIT STEVE IN THE FACE." THEN BILL
21 SAID, "DON'T HIT ME. I HAVE A BAD NECK AND BACK."
22 THEN JASON FRYE BROKE THEM UP?

23 A. YES, SIR.

24 Q. IS THERE ANYTHING ELSE THAT -- AND THIS IS MAYBE NOT
25 TWO WEEKS AFTER IF IT'S -- IS IT ANY -- IS IT ANY

1 LONGER AFTER THE EVENT THAT YOU WROTE THIS STATEMENT
2 DOWN?

3 A. NO, SIR.

4 Q. OKAY. SO IT WAS EITHER TWO WEEKS OR SO OR ON THE
5 28TH OR EVEN EARLIER THAN THAT; IS THAT CORRECT?

6 A. MM-HMM.

7 Q. SO YOUR -- YOUR RECOLLECTION OF THE EVENTS I ASSUME
8 WOULD BE BETTER THEN?

9 A. YES.

10 Q. AND YOU DIDN'T WRITE ANYTHING ELSE DOWN?

11 A. NO, SIR.

12 Q. AND YOU CAN'T REMEMBER WHAT THE ARGUMENT'S ABOUT,
13 CAN YOU?

14 A. NO, SIR.

15 Q. AND YOU AGREE THAT YOU ONLY SAW THE TAIL END OF THE
16 INCIDENT?

17 A. YES, SIR.

18 Q. AND YOU DIDN'T SEE MR. MILLER AND RAULERSON GO INTO
19 THE BATHROOM, BUT YOU DID SEE THEM COME OUT OF THE
20 BATHROOM, RIGHT?

21 A. YES, SIR.

22 Q. AND PRIOR TO THAT, IT DID GET -- WHILE THEY WERE IN
23 THE BATHROOM, IT DID GET LOUD BETWEEN THEM? THEY
24 WERE YELLING AND CUSSING AT EACH OTHER, RIGHT?

25 A. I DIDN'T HEAR NOTHING COME OUT OF THE BATHROOM. I

1 HEARD -- BEFORE I WALKED IN, I HEARD SOME NOISES,
2 BUT I DON'T -- I DON'T KNOW IF IT WAS IN THE
3 BATHROOM OR WHICH ROOM IT WAS IN.

4 Q. OKAY.. WELL, THEN THEY EXITED OUT INTO THE HALLWAY,
5 RIGHT?

6 A. YES, SIR.

7 Q. FROM THE BATHROOM? AND YOU DON'T KNOW WHAT HAPPENED
8 IN THE BATHROOM?

9 A. I DON'T, SIR.

10 Q. DO YOU KNOW OF ANYONE ELSE IN THE BATHROOM?

11 A. NO, SIR.

12 Q. AND WHEN THEY CAME OUT OF THE BATHROOM, MR. MILLER
13 WAS FACING MR. RAULERSON WITH HIS BACK TO THE WALL?

14 A. YES, SIR.

15 Q. DID YOU SEE THAT?

16 A. I DID.

17 Q. OKAY. AND PRIOR TO THAT, THEY HAD BEEN PUSHING AND
18 SHOVING EACH OTHER, RIGHT?

19 A. I ONLY SEEN THE PUSHING AND SHOVING RIGHT THERE AT
20 THAT DOOR.

21 Q. OKAY. AND THEN YOU SAW -- AFTER THAT, YOU SAW MR.
22 MILLER PUNCH MR. RAULERSON?

23 A. HE KICKED HIM AND PUNCHED HIM.

24 Q. OKAY. AND MR. RAULERSON'S A PRETTY BIG FELLOW,
25 CORRECT?

1 A. YES, SIR.

2 Q. HE'S GOT A PRETTY BIG GIRTH?

3 A. YES, SIR.

4 Q. AND HE'S ABOUT 340 POUNDS?

5 A. YES, SIR.

6 Q. AND RAULERSON AND MILLER DID BUTT HEADS FROM TIME TO
7 TIME DURING THAT PERIOD, RIGHT?

8 A. MAYBE VERBAL.

9 Q. YES. YOU NEVER SEEN THEM ---

10 A. NO.

11 Q. --- HIT EACH OTHER OR ANYTHING. AND SOMETIMES OTHER
12 PEOPLE IN THE -- OTHER FOLKS IN THE MAINTENANCE
13 DEPARTMENT AND EVEN JUST IN THE PLANT HAVE VERBAL
14 ALTERCATIONS, CORRECT?

15 A. YES, SIR.

16 Q. SOMETIMES THINGS CAN GET A LITTLE BIT LOUD AND A
17 LITTLE NASTY?

18 BY MR. LOCKHART:

19 YOUR HONOR, I HAVE TO OBJECT TO THE LEADING
20 FORM OF THE QUESTION.

21 BY MR. ORMOND:

22 I'M CROSSING, YOUR HONOR.

23 BY MR. LOCKHART:

24 YOUR HONOR, THIS -- HE WAS NOT CALLED AS A
25 HOSTILE WITNESS. THERE WAS NO -- THERE WAS NO

1 IDENTIFICATION OF THIS WITNESS AS BEING ADVERSE OR
2 HOSTILE. HE WAS CALLED DIRECTLY BY THE CLAIMANT,
3 YOUR HONOR.

4 BY COMMISSIONER WILLIAMS:

5 SUSTAINED.

6 BY MR. ORMOND:

7 WELL, I'LL ASK ---

8 BY COMMISSIONER WILLIAMS:

9 SUSTAINED.

10 BY MR. ORMOND:

11 I'LL ASK YOU NOW TO TREAT HIM AS A HOSTILE
12 WITNESS.

13 BY COMMISSIONER WILLIAMS:

14 I'LL OVERRULE THAT. I THINK YOU CAN ASK HIM
15 DIRECT QUESTIONS WITHOUT ANY PROBLEM.

16 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

17 Q. ARE YOU STILL AN EMPLOYEE?

18 A. YES, SIR.

19 Q. HAVE YOU BEEN CALLED HERE BY YOUR -- YOUR SUPERVISOR
20 TO COME?

21 A. YES. YES.

22 BY MR. ORMOND:

23 I'D RE-ASK THAT I CAN LEAD THE WITNESS, YOUR
24 HONOR, JUST FOR THE RECORD.

25 BY COMMISSIONER WILLIAMS:

1 OVERRULED.

2 BY MR. ORMOND:

3 ARE YOU GOING TO ALLOW ME TO LEAD ANY
4 WITNESSES?

5 BY COMMISSIONER WILLIAMS:

6 NOT THE ONES YOU'RE GOING TO CALL.

7 BY MR. ORMOND:

8 SO IF I CALL A WITNESS, IT'S YOUR POSITION THAT
9 I CAN'T LEAD THEM?

10 BY COMMISSIONER WILLIAMS:

11 I'M NOT SAYING THAT YOU CAN'T LEAD THEM. WITH
12 THIS WITNESS, ---

13 BY MR. ORMOND:

14 OKAY.

15 BY COMMISSIONER WILLIAMS:

16 --- I'M NOT GOING TO LET YOU LEAD HIM.

17 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

18 Q. OTHER THAN WHAT YOU'VE TOLD ME TODAY RIGHT NOW ABOUT
19 YOUR RECOLLECTION OF EVENTS, DO YOU REMEMBER
20 ANYTHING?

21 A. JUST WHAT I'VE GOT ON THE PAPER.

22 Q. AND WHEN -- WHEN YOU SAW THEM PUSHING PRIOR TO THE
23 HIT, DO YOU RECALL WHO WAS DOING MOST OF THE
24 PUSHING?

25 A. I SEEN -- THE ONLY PERSON I SEEN WAS WHEN HE STRUCK

1 HIM AND HE PUSHED HIM BACK.

2 BY COMMISSIONER WILLIAMS:

3 WHEN YOU SAY "HE, WHO WAS THAT?

4 BY THE WITNESS:

5 MR. RAULERSON PUSHED HIM BACK AFTER BILL HAD
6 HIT HIM.

7 BY COMMISSIONER WILLIAMS:

8 OKAY. THANK YOU.

9 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

10 Q. WELL, LET'S LOOK AT YOUR STATEMENT AGAIN. DID YOU
11 SAY "I SEEN STEVE AND BILL PUSHING EACH OTHER. THEN
12 BILL KICKED STEVE AND HIT STEVE IN THE FACE"; DO YOU
13 RECALL THAT?

14 A. YEAH, I GUESS. IT -- IT WAS REAL QUICK. I MEAN, I
15 JUST WALKED RIGHT IN ON IT.

16 Q. HOW LONG DID THIS ALTERCATION LAST?

17 A. I SEEN ABOUT 15 SECONDS OF IT PROBABLY.

18 Q. ALL RIGHT. I'M GOING TO ASK YOU IF YOU'D TAKE A
19 LOOK AT YOUR DEPOSITION.

20 BY MR. ORMOND:

21 AND, YOUR HONOR, I HAVE THE ORIGINAL. WOULD
22 YOU LIKE IT?

23 BY COMMISSIONER WILLIAMS:

24 YEAH. THAT'S FINE.

25 BY MR. ORMOND:

1 YES, YOUR HONOR.

2 BY COMMISSIONER WILLIAMS:

3 THANK YOU.

4 BY MR. ORMOND:

5 DID -- OH.

6 BY MR. LOCKHART:

7 I'VE GOT MINE.

8 BY MR. ORMOND:

9 ALL RIGHT. PAGE SEVEN, START ON -- ON NUMBER
10 NINE -- IT'S LINE NINE. DO YOU HAVE THE ONE WITH
11 THE -- LET ME SEE WHAT KIND HE HAS.

12 BY COMMISSIONER WILLIAMS:

13 HE HAS A CONDENSED.

14 BY MR. ORMOND:

15 OKAY. YOU HAS THE CONDENSED, OKAY.

16 BY COMMISSIONER WILLIAMS:

17 YEAH.

18 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

19 Q. IT'S TO THE RIGHT UPPER HAND. IT'D BE PAGE SEVEN
20 RIGHT UP IN THE RIGHT UPPER HAND AND START WITH
21 NINE. AND I ASKED YOU, "WELL, WHAT DID SEE YOU
22 THEN?" CAN YOU TELL ME WHAT YOU ANSWERED?

23 A. "WHEN I GOT THERE TO MY OFFICE, I GO IN THROUGH THE
24 LITTLE HALLWAY, AND THERE WAS THE BATHROOM TO THE
25 LEFT. THEY WERE STANDING IN THE DOORWAY OF THE

1 BATHROOM."

2 Q. OKAY.

3 A. OKAY.

4 Q. I GUESS YOU ANSWER "OKAY" ALSO WITH A QUESTION MARK.
5 AND THEN I SAY, "OKAY." WHAT DID YOU SAY?

6 A. "THERE WAS SOME PUSHING AND SHOVING."

7 Q. DID YOU -- AND I ASKED YOU "DID YOU SEE WHO WAS
8 DOING THE PUSHING AND SHOVING?" AND THERE'S AN
9 ANSWER?

10 A. "IT WAS SORT OF LIKE EQUAL."

11 Q. AND THEN YOU SAY, "I GUESS."

12 A. "I GUESS," YEAH. "THEN I SAW BILL KICK HIM AND ON
13 AND ON."

14 Q. OKAY. THAT WAS AFTER THE PUSHING AND SHOVING THEN,
15 WASN'T IT?

16 A. NO VERBAL RESPONSE.

17 Q. YES, SIR?

18 A. YES, SIR.

19 Q. OKAY. AND THEN I ASKED YOU "WHO WAS TOWARDS THE
20 WALL?" AND WHAT DID YOU ANSWER?

21 A. "BILL WAS."

22 Q. THEN I ASKED, "SO RAULERSON WAS IN FRONT OF THE
23 WALL, AND HE WAS -- AND MR. MILLER WAS TOWARD THE
24 WALL -- WAS IN FRONT OF HIM?" -- I'M SORRY. LET ME
25 CORRECT THAT. "SO RAULERSON WAS IN FRONT OF HIM AND

1 HE WAS, MR. MILLER, WAS TOWARD THE WALL?" WHAT DID
2 YOU ANSWER?

3 A. "YES, SIR."

4 Q. OKAY. DO YOU REMEMBER ANYTHING MORE ABOUT THIS
5 FIGHT?

6 A. NO, SIR.

7 BY MR. ORMOND:

8 THAT'S ALL I HAVE, YOUR HONOR.

9 BY COMMISSIONER WILLIAMS:

10 OKAY.

11 BY MR. ORMOND:

12 WELL, LET ME ASK ONE FURTHER QUESTION. I'M

13 SORRY.

14 BY COMMISSIONER WILLIAMS:

15 GO AHEAD. GO AHEAD.

16 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

17 Q. WERE YOU -- WAS -- WAS MR. MILLER -- DID YOU AND HE
18 WORK TOGETHER WELL?

19 A. YES.

20 Q. DID HE WORK TOGETHER WITH MOST OF THE PEOPLE OUT
21 THERE WELL?

22 A. YEAH. THEY HAD ALTERCATIONS HERE AND THERE, BUT ---

23 Q. DID LOTS OF PEOPLE HAVE ALTERCATIONS HERE AND THERE?

24 A. YES.

25 Q. OKAY.

1 BY MR. ORMOND:

2 THAT'S ALL I HAVE, YOUR HONOR.

3 BY COMMISSIONER WILLIAMS:

4 ALL RIGHT. MR. LOCKHART.

5 CROSS EXAMINATION BY MR. LOCKHART:

6 Q. MR. INGLE, HOW LONG HAVE YOU BEEN WORKING WITH OWEN
7 STEEL?

8 A. FIVE YEARS.

9 Q. AND WHAT'S YOUR CURRENT JOB THERE?

10 A. A MECHANIC.

11 Q. IN YOUR STATEMENT THAT'S BEEN OFFERED UP INTO
12 EVIDENCE, YOU NOTED THAT YOU OVERHEARD MR. MILLER
13 SAY THAT HE HAD A BAD NECK AND BACK ---

14 A. YES.

15 Q. --- IS THAT CORRECT? ALL RIGHT. WHAT COMMENTS IF
16 ANY BEFORE THE DATE OF THIS INCIDENT, BEFORE AUGUST
17 15TH, HAD YOU HEARD FROM MR. MILLER REGARDING HIS
18 BACK OR NECK?

19 A. JUST THAT HE HAD A BAD BACK AND NECK AND WAS SEEING
20 A DOCTOR ABOUT THEM.

21 Q. WOULD HE MAKE THOSE COMMENTS TO YOU, OR WOULD YOU
22 OVERHEAR THOSE COMMENTS FROM MR. MILLER?

23 A. YEAH, JUST OVERHEAR 'EM.

24 Q. HOW FREQUENTLY WOULD HE DISCUSS HIS BACK AND NECK
25 PROBLEMS AND THE FACT THAT HE WAS UNDER THE CARE OF

1 A DOCTOR?

2 A. I -- I HEARD HIM ONCE OR TWICE, NO MORE THAN THAT.

3 Q. AND WOULD IT -- THIS HAD BEEN BEFORE THE ---

4 A. BEFORE THE INCIDENT.

5 Q. --- THE DAY OF THIS INCIDENT WITH MR. RAULERSON?

6 WHAT TYPE OF MEDICAL TREATMENT DID HE TELL YOU HE

7 WAS RECEIVING FOR HIS NECK AND BACK PROBLEMS?

8 A. HE REALLY DIDN'T DISCUSS THAT WITH ME, THE TYPE OF
9 MEDS OR ANYTHING.

10 Q. YOU WERE ASKED BY MR. MILLER'S LAWYER IF -- IF -- IF
11 MR. MILLER GOT ALONG WITH PEOPLE IN THE PLANT, DO
12 YOU RECALL?

13 A. UH-HUH.

14 Q. WHAT ARGUMENTS HAVE YOU OBSERVED BETWEEN MR. MILLER
15 AND OTHER EMPLOYEES, IF ANY?

16 A. JUST ONE BETWEEN HIM AND -- HIM AND STACY.

17 Q. STACY?

18 A. OXEDINE.

19 Q. STACY OXEDINE, OKAY. AND HOW LONG AGO HAS IT BEEN
20 SINCE YOU OVERHEARD THAT ARGUMENT BETWEEN THE TWO OF
21 THEM?

22 A. THAT WAS RIGHT BEFORE -- WELL, THAT WAS AFTER THIS
23 INCIDENT.

24 Q. OKAY. WHERE WERE YOU WHEN YOU SAW MR. MILLER AND
25 MR. OXEDINE ARGUING?

1 A. I WAS IN THE SHOP.

2 Q. WHAT ARGUMENTS, IF ANY, HAVE YOU OBSERVED BETWEEN
3 MR. MILLER AND STEVE RAULERSON BEFORE AUGUST THE
4 15TH?

5 A. REPEAT THAT?

6 Q. YES, SIR. WHAT ARGUMENTS, IF ANY, HAVE YOU OBSERVED
7 BETWEEN MR. MILLER ---

8 A. OH.

9 Q. --- AND MR. RAULERSON BEFORE THIS ALTERCATION OF
10 AUGUST THE 15TH?

11 A. ABOUT A WEEK PRIOR, THEY HAD AN ARGUMENT IN THE --
12 THE BREAK ROOM OVER AN ISSUE WITH MONEY. YOU KNOW,
13 WE HAVE A -- HAVE LIKE A CANTEEN.

14 Q. WHAT DO Y'ALL USE THE CANTEEN FOR?

15 A. JUST TO BUY LIKE PLATES AND CUPS AND STUFF LIKE
16 THAT.

17 Q. WHAT DID YOU HEAR MR. MILLER SAY TO MR. RAULERSON?

18 A. I REALLY CAN'T REMEMBER A LOT OF IT. THEY WERE JUST
19 -- HE WASN'T AGREEING WITH WHAT WAS GOING ON.

20 Q. HE -- HE BEING?

21 A. ~~AND BILL'S NOT AGREEING WITH, YOU KNOW, THEM LETTING~~
22 HIM HOLD THE MONEY AND WHATNOT.

23 Q. HIM BEING STEVE?

24 A. STEVE. YES, SIR.

25 Q. HOW DID MR. RAULERSON REACT TO THIS ARGUMENT?

1 A. I THINK BILL JUST LEFT THE ROOM IF I REMEMBER
2 CORRECTLY. I -- I DON'T -- I MEAN IT -- IT DIDN'T
3 BECOME ANY, YOU KNOW, A BIG HEATED ARGUMENT AS IN
4 PHYSICAL OR ANYTHING LIKE THAT.

5 Q. WHAT WAS MR. MILLER'S REPUTATION WITHIN THE PLANT
6 AMONGST OTHER EMPLOYEES?

7 BY MR. ORMOND:

8 YOUR HONOR, I'D HAVE TO OBJECT TO THAT
9 QUESTION, ---

10 BY MR. LOCKHART:

11 HE ASKED YOU ---

12 BY MR. ORMOND:

13 --- CALLS FOR SPECULATION.

14 BY MR. LOCKHART:

15 HE OPENED THE DOOR ON -- HE OPENED THE DOOR ON
16 DIRECT AND ASKED HIM IF HE WAS -- WHAT TYPE OF
17 PERSON HE WAS TO WORK WITH, AND I'M ASKING HIM FOR
18 HIS -- HIS ---

19 BY COMMISSIONER WILLIAMS:

20 CAN YOU RE-PHASE THAT ONE?

21 BY MR. LOCKHART:

22 SURE, I'D BE GLAD TO.

23 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

24 Q. WHAT WAS YOUR IMPRESSION OF MR. MILLER AS IT
25 PERTAINS TO HIS TEMPER OR LACK THEREOF?

1 A. HE HAD A TEMPER.

2 Q. WERE YOU EVER THE OBJECT OF -- OF HIS TEMPER?

3 A. NO, SIR. I WASN'T.

4 Q. BASED ON YOUR CONVERSATIONS WITH MR. MILLER, WHAT
5 OTHER ALTERCATIONS OUTSIDE OF WORK WERE YOU AWARE
6 THAT HE'D BEEN INVOLVED IN?

7 A. A TUSSELE WITH HIS NEIGHBOR.

8 BY MR. ORMOND:

9 YOUR HONOR, OTHER THAN WHAT MR. MILLER SAID, I
10 DON'T THINK YOU CAN GO INTO THIS.

11 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

12 Q. WHAT DID MR. MILLER TELL YOU ABOUT THIS TUSSELE WITH
13 HIS NEIGHBOR?

14 A. HE DIDN'T ACTUALLY TELL ME IT WAS LIKE A ---

15 Q. WELL, LET ME STOP YOU THERE. HAS MR. MILLER EVER
16 SPOKEN TO YOU DIRECTLY ABOUT A TUSSELE WITH HIS
17 NEIGHBOR?

18 A. NO, THIS WAS JUST. ---

19 Q. OKAY. WELL, THEN YOU -- YOU CAN'T TESTIFY AS TO
20 WHAT SOMEONE ELSE SAID.

21 A. OKAY.

22 BY COMMISSIONER WILLIAMS:

23 YEAH.

24 BY MR. LOCKHART:

25 YOUR HONOR, I BEG THE COURT'S INDULGENCE JUST A

1 BRIEF MOMENT.

2 BY COMMISSIONER WILLIAMS

3 OKAY.

4 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

5 Q. AND, MR. INGLE, JUST TWO -- TWO FINAL QUESTIONS AND
6 I WANT TO MAKE SURE I'M CLEAR. I THINK YOUR
7 STATEMENT MAKES THIS CLEAR. DID YOU SEE MR. MILLER
8 PUNCH STEVE RAULERSON?

9 A. I DID.

10 Q. DID YOU SEE MR. MILLER KICK STEVE RAULERSON?

11 A. YES, SIR.

12 BY MR. LOCKHART:

13 YOUR HONOR, THOSE ARE ALL THE QUESTIONS I HAVE.

14 BY COMMISSIONER WILLIAMS:

15 ALL RIGHT, MR. ORMOND.

16 BY MR. ORMOND:

17 NO FOLLOW UP, YOUR HONOR.

18 BY COMMISSIONER WILLIAMS:

19 ALL RIGHT. THANK YOU, SIR. I DON'T KNOW IF
20 YOU RODE WITH ANYBODY, BUT IF YOU DID YOUR -- YOUR
21 FREE TO LEAVE.

22 BY THE WITNESS:

23 OKAY. THANK YOU.

24 BY COMMISSIONER WILLIAMS:

25 OKAY. MR. ORMOND.

1 BY MR. LOCKHART:

2 MR. RAULERSON. DO YOU JUST WANT TO HAVE A SEAT
3 RIGHT THERE WHERE THAT CHAIR IS.

4 BY THE WITNESS:

5 OKAY.

6 BY MR. LOCKHART:

7 THANK YOU, SIR.

8 BY COMMISSIONER WILLIAMS:

9 MR. RAULERSON, HOW ARE YOU?

10 BY THE WITNESS:

11 ALL RIGHT.

12 BY COMMISSIONER WILLIAMS:

13 ALL RIGHT. SWEAR MR. RAULERSON IN.

14 BY THE COURT REPORTER:

15 * * * * *

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

19 STEVE RAULERSON

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

21 BY COMMISSIONER WILLIAMS:

22 IT'S R-A-U-L-E-R-S-O-N?

23 BY THE WITNESS:

24 THAT IS CORRECT.

25 BY COMMISSIONER WILLIAMS:

1 OKAY.

2 BY MR. ORMOND:

3 AND YES, YOUR HONOR, I WOULD ASK THAT WE BE
4 ABLE TO LEAD THIS WITNESS.

5 BY COMMISSIONER WILLIAMS:

6 WOULD YOU LIKE TO TREAT HIM AS A HOSTILE
7 WITNESS?

8 BY MR. ORMOND:

9 YES.

10 BY COMMISSIONER WILLIAMS:

11 I THINK THAT'S WHAT YOU WERE -- OKAY. I WILL
12 ALLOW THAT.

13 DIRECT EXAMINATION BY MR. ORMOND:

14 Q. MR. RAULERSON, YOU GAVE A STATEMENT REGARDING THIS
15 INCIDENT ON THE 15TH. CAN YOU REMEMBER THE INCIDENT
16 ITSELF ON THE 15TH, SOME OF IT?

17 A. YES, SIR.

18 Q. CAN YOU REMEMBER GIVING A STATEMENT ON AUGUST 28TH,
19 '12?

20 BY MR. ORMOND:

21 PAGE 83, YOUR HONOR, APA.

22 BY COMMISSIONER WILLIAMS:

23 THANK YOU. I GOT IT.

24 THE WITNESS ANSWERS:

25 A. I DON'T REMEMBER EXACTLY WHAT DAY IT WAS BUT YES,

1 SIR. I DO REMEMBER ---

2 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

3 Q. WELL, TAKE A LOOK AT IT.

4 A. YES, SIR. IT IS.

5 Q. ALL RIGHT. NOW, IN READING THIS, MY UNDERSTANDING
6 IS THAT YOU CAME INTO WHAT IS SOMETIMES CALLED
7 BRIAN'S OFFICE, BRIAN INGLE; IS THAT CORRECT? I
8 UNDERSTAND IT'S NOT REALLY HIS, BUT IT'S WHERE HE
9 WORKS, CORRECT?

10 A. THAT'S CORRECT, SIR.

11 Q. NOW, I'M GOING TO SHOW YOU A VERY ROUGH DIAGRAM OF
12 THIS AREA, AND I'M GOING TO SHOW YOU WHERE IT SAYS
13 "BRIAN'S ROOM," AND I'D LIKE YOU TO TELL ME WHETHER
14 OR NOT THIS DEPICTION OR THIS SCHEMATIC OF THE AREA
15 THAT WE'RE TALKING ABOUT IS ROUGHLY CORRECT?

16 A. (WITNESS VIEWS DIAGRAM) YES, SIR. IT'S ROUGHLY
17 CORRECT.

18 Q. OKAY. AND THERE'S BRIAN'S ROOM, (INDICATING)
19 THERE'S A LITTLE HALLWAY HERE AND A DOOR, CORRECT?

20 A. YES, SIR. THE DOOR STAYS BLOCKED OPEN ALL DURING
21 THE DAY. IT'S NOT IN THAT POSITION THOUGH.

22 Q. AND THE DOOR STAYS OPEN, AND THEN THERE'S A
23 RESTROOM, CORRECT?

24 A. YES, SIR.

25 Q. ALL RIGHT. AND YOU CAME INTO BRIAN'S ROOM, AND THEY

1 HAD BEEN -- "THEY" MEANING SOME FOLKS IN THERE
2 INCLUDING BILL MILLER HAD BEEN TALKING ABOUT WHEN
3 ELECTRICITY WOULD BE ON IN CERTAIN AREAS OF THE
4 PLANT, CORRECT?

5 A. YES, SIR.

6 Q. AND THEN YOU BELIEVE THAT MR. MILLER SAID SOMETHING
7 UNDER HIS BREATH THAT YOU DIDN'T HEAR?

8 A. YES, SIR. BUT YOUR GETTING A LITTLE BIT AHEAD BUT -
9 - YES, SIR. YES, SIR. THAT -- THAT -- THAT DID
10 HAPPEN.

11 Q. ALL RIGHT. YOU MADE SOME STATEMENTS ABOUT WHAT YOU
12 -- WHO -- WHAT AREAS YOU BELIEVED WOULD BE WITH
13 POWER AND WHAT AREAS WOULD BE WITHOUT POWER?

14 A. YES, SIR.

15 Q. OKAY. AND YOU DIDN'T KNOW THAT THAT WAS DIFFERENT
16 THAN WHAT BILL MILLER HAD SAID?

17 A. YES, SIR. I DID NOT KNOW, YOU KNOW, WHAT -- WHAT
18 HAD BEEN SAID. LIKE I SAID, I WALKED UP ON THE END
19 OF THAT CONVERSATION.

20 Q. OKAY. AND SO YOU DIDN'T KNOW NECESSARILY THAT YOU
21 HAD CONTRADICTED WHAT BILL MILLER THOUGHT?

22 A. NO, SIR. I DID NOT KNOW.

23 Q. AND HE MAY HAVE KNOWN THAT OR MAY HAVE NOT HAVE,
24 CORRECT?

25 A. YES, SIR. THAT'S CORRECT.

1 Q. OKAY. AND THEN -- AND YOU SAY IN YOUR -- YOUR
2 STATEMENT THAT THEY, MEANING MILLER AND A FEW
3 OTHERS, RIGHT?

4 A. YES, SIR.

5 Q. AND THIS IS ON -- THIS IS -- IF YOU WANT TO LOOK AT
6 IT, IT'S AT THE THIRD SENTENCE. "THEY WERE TALKING
7 ABOUT THE CRANES WOULD BE WORKING AND COMING UP THAT
8 WEEKEND"?

9 A. YES, SIR.

10 Q. AND THEN YOU STARTED IN ON THE CONVERSATION "BILL
11 MILLER GOT UP OUT OF THE CHAIR HE WAS SITTING IN AND
12 SORT OF MUMBLED SOMETHING," RIGHT?

13 A. YES, SIR.

14 Q. OKAY. AND YOU FELT THAT HIS BODY LANGUAGE, HE WAS
15 TRYING TO BE SMART OR FUNNY TOWARDS YOU; IS THAT
16 RIGHT?

17 A. THAT'S CORRECT.

18 Q. OKAY. AND HE WENT TOWARD THE RESTROOM, RIGHT?

19 A. YES, SIR.

20 Q. OKAY. AND YOU WENT BEHIND HIM?

21 A. YEAH, I WALKED BEHIND HIM. YES, SIR.

22 Q. OKAY. AND THEN YOU SAY YOU WERE ASKING HIM WHAT HE
23 SAID AND WHAT HIS PROBLEM WAS?

24 A. YES, SIR.

25 Q. OKAY. BUT YOU DIDN'T REALIZE AND IT'S THE NEXT

1 SENTENCE THAT MAYBE YOU HAD WALKED INTO A
2 CONVERSATION AND YOU WEREN'T SURE WHAT HAPPENED?

3 A. YES, SIR.

4 Q. OKAY. OKAY. AND YOU THOUGHT THAT HE MIGHT BE
5 DEGRADING YOU BY WALKING AWAY, CORRECT?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND THEN YOU EXCHANGE WORDS IN THE BATHROOM,
8 RIGHT?

9 A. YES, SIR.

10 Q. OKAY. AND DURING THAT TIME, YOU ADMIT YOU POKED
11 YOUR FINGERS INTO HIS CHEST?

12 A. YES, SIR.

13 Q. AND Y'ALL WERE BOTH CUSSING AT EACH OTHER, AND THE
14 ARGUMENT WAS HEATED, CORRECT?

15 A. YES, SIR. CORRECT.

16 Q. AND YOU WEIGH ABOUT 340 POUNDS?

17 A. THAT'S CORRECT.

18 Q. AND I BELIEVE YOU AGREE THAT IT'S POSSIBLE MR.
19 MILLER FELT A LITTLE BIT MORE INTIMIDATED BY YOU
20 THAN YOU MIGHT HAVE THOUGHT.

21 BY MR. LOCKHART:

22 YOUR HONOR, I HAVE TO OBJECT TO THE FORM OF THE
23 QUESTION. HE'S ASKING FOR THE CLAIMANT'S PERCEPTION
24 OF THE EVENT. SO I DON'T THINK HE HAS ANY CAPACITY
25 TO TESTIFY TO THAT.

1 BY COMMISSIONER WILLIAMS:

2 SUSTAINED.

3 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

4 Q. WOULD YOU BELIEVE THAT IT MIGHT BE POSSIBLE FOR
5 ANYONE TO BE A BIT INTIMIDATED BY YOU IF YOU
6 OUTWEIGH THEM BY 130 OR 120 POUNDS?

7 BY MR. LOCKHART:

8 YOUR HONOR, AGAIN, HE'S ASKING -- I HAVE TO
9 OBJECT TO THE FORM. HE'S ASKING FOR THE PERCEPTION
10 OF SOMEONE ELSE. THAT IS HEARSAY.

11 BY COMMISSIONER WILLIAMS:

12 SUSTAINED.

13 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

14 Q. AND YOU GUYS WERE FACING EACH OTHER, AND THEN HE
15 WENT TO GET AROUND YOU OUT OF THE BATHROOM, RIGHT?

16 A. CORRECT.

17 Q. AND YOU TESTIFIED IN YOUR DEPOSITION THAT YOU
18 BELIEVE YOUR -- YOUR SHOULDERS TOUCHED OR THERE WAS
19 A PHYSICAL TOUCHING, CORRECT?

20 A. CORRECT.

21 ~~Q. DO YOU RECALL WHETHER OR NOT HE MIGHT HAVE BEEN~~
22 TRYING TO GET AROUND YOU LIKE THIS (DEMONSTRATING)?

23 A. NO, SIR. IT WASN'T THAT WAY.

24 Q. AND THIS AREA HAS SOME WALLS. (INDICATING) THIS IS
25 THE AREA OF THE BATHROOM, CORRECT? THE RESTROOM?

1 A. YES, SIR.

2 Q. OKAY. AND THERE'S A WALL HERE (INDICATING) BY THE
3 SINK?

4 A. YES, SIR.

5 Q. WHERE HE WAS?

6 A. WELL, HE WAS -- (INDICATING) HE WAS MORE OR LESS
7 WHERE THE "R" IS, SIR.

8 Q. OKAY. SO IT'S YOUR TESTIMONY HE WAS WHERE THE "R"
9 IS?

10 A. YES, SIR.

11 Q. AND THERE'S A WALL THERE (INDICATING) TO HIS RIGHT
12 AND TO HIS LEFT, CORRECT?

13 A. YEAH.

14 Q. OKAY. AND THEN HE DID GET AROUND YOU?

15 A. YEAH.

16 Q. AND YOU FOLLOWED HIM OUT?

17 A. I TURNED AROUND. I WAS STANDING IN THE DOORWAY, AND
18 HE REALLY DIDN'T TURN AROUND.

19 Q. OKAY. AND SOMEHOW, I GUESS, HE ENDS UP OUT IN THE
20 HALL WITH HIS BACK TO THE WALL, RIGHT?

21 A. YEAH.

22 Q. OKAY. AND YOU WERE IN FRONT OF HIM?

23 A. I WAS IN THAT DOORWAY.

24 Q. YOU WERE IN THIS DOORWAY?

25 A. YEAH.

1 Q. OKAY. YOU DIDN'T COME TOWARD HIM?
2 A. I WAS STANDING IN THE DOORWAY.
3 Q. ALL RIGHT. THE WHOLE TIME?
4 A. YES.
5 Q. HE WAS ON THE -- ON THE -- (INDICATING) THIS WALL
6 THE WHOLE TIME?
7 A. HE WASN'T LEANING AGAINST THE WALL, BUT HE WAS OVER
8 NEXT TO THE WALL, YES.
9 Q. HOW FAR AWAY WAS HE FROM YOU?
10 A. HE WAS PROBABLY MAYBE TWO-AND-HALF, THREE FEET.
11 Q. AND YOU DIDN'T LUNGE TOWARD HIM?
12 A. NO.
13 Q. THEN HE HIT YOU?
14 A. WELL, HE HAD HIS FIST BALLED UP, AND HE HAD IT
15 LOOKED FIRE IN HIS EYES, AND I SAID, "WELL, IF YOU
16 WANT TO HIT ME, GO AHEAD AND HIT ME" ---
17 Q. OKAY.
18 A. --- AND I -- I PROBABLY SAID THAT TWICE AND THEN ---
19 Q. HE MOVED TOWARD YOU TO DO IT?
20 A. HE -- HE PROBABLY STEPPED A LITTLE BIT TO ME, BUT HE
21 ~~COME AROUND AND HIT ME.~~
22 Q. WHERE?
23 A. HE KICKED ME FIRST AND THEN HIT ME AGAIN.
24 Q. WELL, HOW FAR AWAY FOR YOU -- WERE YOU WHEN HE HIT
25 YOU?

1 A. ARM REACH.

2 Q. SO HE HAD TO STRETCH TO HIT YOU; IS THAT YOUR
3 TESTIMONY?

4 A. HE HIT ME. I DON'T UNDERSTAND THAT QUESTION.

5 Q. IT'S YOUR TESTIMONY THAT HE WENT FORWARD TO HIT YOU?

6 A. HE SWUNG AT ME. YES, SIR.

7 Q. OKAY. AND THEN YOU SAY YOU SHOVED HIM UP AGAINST
8 THE WALL?

9 A. AFTER HE KICKED ME AND HIT ME AND SEVERAL ATTEMPTS
10 TO HIT ME AGAIN, I DID PUSH HIM AGAINST THE WALL
11 WITH BOTH HANDS.

12 Q. OKAY. SO IT'S YOUR TESTIMONY THAT HE TRIED TO HIT
13 YOU A NUMBER OF DIFFERENT TIMES?

14 A. YES, SIR.

15 Q. ALL RIGHT. AND YOU SAY THAT BILL WAS YELLING AND
16 CUSSING THE WHOLE TIME?

17 A. WELL, WE BOTH WERE USING SOME LANGUAGE WE SHOULDN'T
18 HAVE USED. YES, SIR.

19 Q. AND YOU SAY AT THE END OF THIS THAT YOU REGRET
20 HAVING ANY CONFLICT WITH ANYONE, AND YOU DON'T WISH
21 ANY HARM FOR BILL OR ANYONE ELSE?

22 A. AMEN.

23 Q. AND THERE ARE CONFLICTS IN -- IN THIS -- IN THIS
24 MAINTENANCE DEPARTMENT, CORRECT? AND MAYBE THEY
25 EVEN HAPPEN IN THE WHOLE PLANT?

1 A. I MEAN, IT'S A POSSIBILITY ANYWHERE.

2 Q. WELL, HAVE YOU SEEN ALTERCATIONS WITH OTHER PEOPLE
3 HAPPEN?

4 A. YES, SIR.

5 Q. DID YOU HAVE AN ALTERCATION WITH MIKE SMITH A COUPLE
6 OF YEARS PRIOR TO THAT WITH A CHAIN SAW?

7 A. NO, WE WERE PLAYING AROUND, BUT YEAH, IT WASN'T NO
8 FIGHTING OR NOTHING. WE WERE JUST PICKING AT EACH
9 OTHER. YEAH, I NEVER HAD A PROBLEM WITH MIKE.

10 Q. AND YOU SHOULDN'T HAVE FOLLOWED BILL IN THERE TO
11 START WITH?

12 A. IF I HAD TO REDO IT, YEAH, I PROBABLY WOULDN'T.

13 Q. HOW LONG DID THIS FIGHT LAST? LESS THAN A MINUTE?

14 A. PROBABLY. I MEAN, ALL TOGETHER IT PROBABLY -- WITH
15 ALL THE CUSSING AND EVERYTHING JUST A COUPLE OF
16 MINUTES.

17 Q. PRIOR TO THIS ALTERCATION, DID -- DO HAVE ANY
18 EVIDENCE OR ANY INFORMATION THAT -- THAT MR. MILLER
19 WANTED TO HARM YOU PHYSICALLY?

20 A. WELL, WE DIDN'T SEE EYE TO EYE ON A LOT OF THINGS
21 BUT NOT THAT DAY, NO.

22 Q. HAS HE EVER TOLD YOU HE WANTS TO HARM YOU PHYSICALLY
23 PRIOR?

24 A. HE NEVER ACTUALLY TOLD ME HE WANTED TO HARM ME, BUT
25 WE HAD SOME ROUNDS. I HAD SEVERAL PROBLEMS WITH

1 BILL PRIOR TO THIS INCIDENT.

2 Q. YOU GUYS DIDN'T GET ALONG THAT WELL?

3 A. YOU COULD PROBABLY SAY THAT. I TRIED.

4 Q. AND YOU'VE HAD -- EITHER -- BRUELS (SIC) -- WORDS
5 WITH AT LEAST ANOTHER EMPLOYEE IN MAINTENANCE,
6 CORRECT?

7 A. YEAH, ME AND JACK HAD A WORD ONE DAY.

8 Q. AND JASON?

9 A. WELL, THAT WAS ON A WORK ISSUE, BUT IT WAS NOTHING
10 TO THE POINT LIKE THAT. I MEAN, IT WAS JUST SOME
11 PROBLEMS WE HAD ON A CRANE.

12 Q. AND WHEN YOU REPORTED IT, YOU CALLED IT A SCUFFLE,
13 CORRECT, BETWEEN YOU AND BILL?

14 A. YES, SIR. IT WAS.

15 Q. I UNDERSTAND.

16 BY MR. ORMOND:

17 THAT'S ALL I HAVE.

18 BY COMMISSIONER WILLIAMS:

19 ALL RIGHT. MR. LOCKHART.

20 CROSS EXAMINATION BY MR. LOCKHART:

21 Q. MR. RAULERSON, HOW LONG HAVE YOU BEEN WITH OWEN
22 STEEL?

23 A. FIFTEEN YEARS, SIR.

24 Q. AND PRIOR TO -- WELL LET ME BACK UP FOR A MOMENT.
25 AS A RESULT OF THIS EVENT ON THE 15TH OF AUGUST,

1 WHAT TYPE OF REPRIMAND OR PUNISHMENT DID YOU RECEIVE
2 FROM THE PLANT?

3 A. FROM THIS INCIDENT?

4 Q. YES, SIR.

5 A. I HAD TIME OFF FROM WORK, SIR. I GOT SUSPENDED.

6 Q. AND DID YOU RECEIVE ANY OTHER PUNISHMENT AS A
7 RESULT?

8 A. SUSPENDED FOR A FEW DAYS. WELL, YEAH. I MEAN,
9 YEAH, YOU COULD SAY SO, I LOST MY SUPERVISOR SLOT OR
10 MY FOREMAN SLOT.

11 Q. HOW LONG HAD YOU BEEN A FOREMAN UP TO THE POINT?

12 A. PROBABLY EIGHT OR NINE YEARS IN MAINTENANCE.

13 Q. AND -- AND PRIOR TO AUGUST THE 15TH, HAD YOU EVER
14 LOST YOUR FOREMAN'S SPOT BECAUSE OF A ---

15 A. NO, SIR.

16 Q. --- ALTERCATION WITH ANOTHER EMPLOYEE?

17 A. NO, SIR.

18 Q. LET'S TALK ABOUT THE INCIDENT ON THE 15TH FOR A
19 MOMENT. I THINK YOU TOLD THE COURT A FEW MOMENTS
20 AGO THAT MR. MILLER KICKED YOU IN THE STOMACH AND

21 THEN PUNCHED YOU IN THE MOUTH; IS THAT CORRECT?

22 A. YES, SIR. HE HIT ME IN THE LIP, YEAH.

23 Q. AND WAS YOUR LIP DAMAGED BLOODIED AS A RESULT?

24 A. YES, SIR. IT SWOLE (SIC) UP AND WAS BLEEDING AT
25 THAT TIME, SIR.

1 Q. AND ONCE YOU WERE PUNCHED AND KICKED BY MR. MILLER,
2 WAS IT THEN AND ONLY THEN THAT YOU PUSHED HIM UP
3 AGAINST THE WALL?

4 A. THAT'S CORRECT, SIR.

5 Q. ALL RIGHT. ONCE YOU PUSHED HIM UP AGAINST THE WALL,
6 WHAT COMMENTS IF ANY DID HE MAKE ABOUT HIS BACK OR
7 NECK?

8 A. HE WAS -- STARTED HOLLERING AFTER THAT HAPPENED,
9 JASON GRABBED HIM. HE STARTED HOLLERING ABOUT
10 "DON'T HIT ME. DON'T HIT ME, MY NECK, MY BACK" OR
11 SOMETHING. I COULDN'T UNDERSTAND EVERYTHING HE WAS
12 SAYING, BUT HE DID START IN THE -- IN THE -- THAT
13 DISCUSSION.

14 Q. WHAT COMMENTS IF ANY HAD MR. MILLER MADE ABOUT HIS
15 BACK OR NECK BEFORE YOUR ALTERCATION WITH HIM ON THE
16 15TH OF AUGUST?

17 A. WELL, HE -- HE HAD MENTIONED TO ME I KNOW AT LEAST
18 TWO -- TWO OCCASIONS THAT HIS BACK AND ALL WAS
19 BOTHERING HIM THAT HE WOULDN'T BE ABLE TO DO A TEST
20 THAT WE HAD HIM TO DO THAT DAY. AND ONE INCIDENT I
21 ~~REMEMBER TELLING HIM DO WHAT HE COULD DO AND, YOU~~
22 KNOW, DON'T -- "DON'T RE-HURT YOURSELF. JUST TRY TO
23 DO WHAT YOU CAN DO." AND THEN ANOTHER DAY HE HAD A
24 PROBLEM. I PUT JACK WITH HIM TO GO HELP HIM DO, YOU
25 KNOW, SOME OF THE -- SO THAT DAY HE WAS ACTUALLY

1 INSTALLING AN LM-9 IN THE LOWER SHOP, AND THAT CABLE
2 AND ALL'S PRETTY HEAVY, AND SO I HAD JACK HELP THAT
3 DAY.

4 Q. WHAT -- WHAT PERIOD OF TIME ARE WE TALKING ABOUT
5 BEFORE YOUR ALTERCATION WITH HIM DURING WHICH HE WAS
6 COMPLAINING ABOUT HAVING BACK AND NECK PROBLEMS?

7 A. PROBABLY, GUESSTIMATING NOW, PROBABLY A COUPLE OF
8 MONTHS PRIOR TO. HE'D BEEN HAVING SOME PROBLEMS,
9 BUT, YOU KNOW, THAT WAS WHEN HE HAD SAID SOMETHING
10 TO ME ABOUT IT.

11 Q. WHAT TYPE OF TREATMENT WAS HE RECEIVING?

12 A. I DON'T KNOW, SIR.

13 Q. OKAY. ALL RIGHT. WAS THE INCIDENT OF THE AUGUST
14 THE 15TH THE ONLY ALTERCATION OR ARGUMENT THAT YOU
15 HAD EVER HAD WITH MR. MILLER?

16 A. NO, SIR. IT WAS NOT.

17 Q. WHEN WAS THE MOST RECENT ARGUMENT YOU HAD HAD WITH
18 HIM BEFORE AUGUST THE 15TH?

19 A. THAT SAME WEEK IN THE BREAK ROOM ON A -- ON A MONDAY
20 MORNING AFTER OUR SAFETY MEETING. WE KEEP A KITTY

21 ~~OF MONEY, AND I HAD TOOK UP MONEY THAT MORNING.~~

22 WHEN WE GET LOW, I ASK FOR ALL THE EMPLOYEES, YOU
23 KNOW, TO PUT IN MONEY, AND WE KEEP IT IN THE OFFICE;
24 WE KEEP A RECORD OF IT. AND HE HAD SOME WORDS ABOUT
25 THE MONEY WANTING TO KNOW WHERE -- WHERE IT WAS

1 GOING AND HOW CAN WE GET, YOU KNOW, HOW CAN THE
2 MONEY GET GONE THAT QUICK AND ALL. AND, YOU KNOW,
3 WHICH I -- I DID REAL GOOD THAT MORNING. I -- I
4 JUST TOLD HIM, YOU KNOW, THAT IF HE WANTED TO SEE
5 THE RECORDS OF THE MONEY, I HAD ALL OF IT IN THE
6 OFFICE ON THE COMPUTER, ALL WE'D HAVE TO DO IS GO IN
7 THERE AND LOOK. HE HAD A FEW WORDS, GOT MAD, GOT UP
8 AND LEFT OUT.

9 Q. WHAT TYPE OF ACCUSATIONS WERE -- WAS HE MAKING
10 TOWARDS YOU ON THAT DAY?

11 A. MORE OR LESS THAT I'M STEALING. THE WAY -- THE WAY
12 I TOOK IT AND SEVERAL OTHER PEOPLE IN THERE TOOK IT.

13 Q. WHAT WAS HIS VOLUME TOWARDS YOU DURING THIS -- THIS
14 EXCHANGE?

15 A. SIR?

16 Q. HIS VOLUME, WHAT WAS HIS VOLUME? WAS HE SPEAKING --

17
18 A. HE -- HE WAS UPSET.

19 Q. WAS HE RAISING HIS VOICE? WAS HE SPEAKING IN A
20 NORMAL ---

21 A. HE WAS -- NO, HE WASN'T SPEAKING NORMAL. NO.

22 Q. WHAT TYPE OF LANGUAGE WAS HE USING TOWARDS YOU?

23 A. HE JUST SAID HE DIDN'T UNDERSTAND THAT - HMM HMM.

24 Q. YOU CAN ---

25 A. YOU KNOW, F-ING MONEY WHERE IT COULD GO AND, YOU

1 KNOW, DON'T SEE HOW WE -- WE'RE LOSING THAT MUCH
2 MONEY. IN OTHER WORDS, THE WAY I WAS TAKING IT AND
3 LIKE I SAY SEVERAL OTHER PEOPLE THAT I WAS ACTUALLY
4 STEALING FROM THE -- FROM -- YOU KNOW, FROM THE
5 KITTY.

6 Q. OKAY. AND HOW DID YOU RESPOND ON THAT PARTICULAR
7 DAY?

8 A. I -- I DID REAL GOOD. I JUST CALMLY TOLD HIM. A
9 MATTER OF FACT, I HAD SEVERAL PEOPLE PATTED ME ON
10 THE BACK AND SAID "YOU DID REAL GOOD," BECAUSE --
11 YEAH, IT UPSET ME BUT. YOU KNOW, IT WASN'T THE
12 FIRST TIME.

13 Q. WHAT OTHER TIMES HAD HE CURSED AT YOU BESIDES ON
14 THIS OCCASION?

15 A. SEVERAL. ONE INCIDENT, WE WERE CLEANING UP THE
16 SHOP. COLIN WAS OUT THAT WEEK, AND I ASKED HIM TO
17 DO SOMETHING IN THE BACK OF THE SHOP, AND OF COURSE
18 HE REFUSED POINT BLANK AND, YOU KNOW, WENT TO
19 RAISING CANE.

20 Q. WHAT TYPE OF LANGUAGE WAS HE USING TOWARDS YOU?

21 A. ~~VERY BAD.~~

22 Q. OKAY. WHAT HAPPENED NEXT?

23 A. I TOLD HIM, I SAID, "BILL, IF YOU DON'T WANT TO DO
24 IT," I SAID, "THEN WE'RE GOING TO HAVE TO GO OVER
25 THERE AND SEE THE BOSS," WHICH AT THAT TIME THAT WAS

1 THE SUPERINTENDENT, 'CAUSE COLIN'S NOT THERE, SO I'M
2 ACTING SUPERVISOR, YOU KNOW, ON TOP OF THAT. SO I
3 TOOK HIM TO STACY'S OFFICE, AND STACY SET US DOWN
4 AND TALKED TO US ABOUT WHAT HAD JUST HAPPENED AND --
5 AND, YOU KNOW, SO FORTH, AND MORE OR LESS HE TOLD
6 BILL THAT IN OUR CONVERSATION THAT WHEN -- WHEN
7 COLIN'S NOT HERE OR EVEN IF COLIN'S HERE I DO -- I
8 AM, YOU KNOW, HIS FOREMAN OR HIS SUPERVISOR, AND I
9 WOULD HAVE TO DO AND RESPOND AND DO WHAT HE SAYS
10 UNLESS IT'S SOMETHING UNSAFE.

11 Q. WHAT ARGUMENTS IF ANY HAVE YOU OBSERVED BETWEEN MR.
12 MILLER AND OTHER EMPLOYEES IN THE PLANT?

13 A. SEVERAL. SEVERAL.

14 Q. WHO WERE SOME OF THE EMPLOYEES WHO YOU OBSERVED IN
15 ARGUMENTS WITH MR. MILLER?

16 A. SOME THAT I HAVE OBSERVED WAS CLIFF ZIMMS FOR ONE, A
17 COUPLE OF TIMES WITH CLIFF THAT I OBSERVED. HE HAD
18 A COUPLE MORE THAT I DIDN'T GET TO SEE. HE HAD ONE
19 WITH JASON.

20 Q. JASON WHO?

21 A. FRYE. AND HIM AND RONNIE FRYE GOT INTO IT ONE TIME.

22 Q. HOW FREQUENT WOULD -- WOULD THESE ARGUMENTS BE? THE
23 ONES YOU OBSERVED HOW -- HOW FREQUENTLY WOULD THEY
24 OCCUR BASED ON YOUR OBSERVATIONS?

25 A. I'D SAY PROBABLY AT LEAST A COUPLE A MONTH, AND

1 THAT'S, YOU KNOW, THAT'S JUST ESTIMATING.

2 Q. YOU -- YOU -- YOU TESTIFIED A MOMENT AGO THAT YOU
3 WERE FOR A PERIOD OF TIME MR. MILLER'S SUPERVISOR;
4 IS THAT CORRECT?

5 A. YES, SIR.

6 Q. ALL RIGHT. BASED ON YOUR OBSERVATIONS OF HIM
7 PERFORMING HIS JOB AT OWEN STEEL, DID HE WORK WELL
8 WITH OTHER EMPLOYEES?

9 A. NOT REALLY, SIR.

10 BY MR. LOCKHART:

11 YOUR HONOR, I BEG THE COURT'S INDULGENCE.

12 BY COMMISSIONER WILLIAMS:

13 OKAY.

14 BY MR. LOCKHART:

15 YOUR HONOR, THOSE ARE ALL THE QUESTIONS THAT I
16 HAVE.

17 BY COMMISSIONER WILLIAMS:

18 ALL RIGHT. ANY OTHER QUESTIONS, MR. ORMOND?

19 RE-DIRECT EXAMINATION BY MR. ORMOND:

20 Q. AFTER THE EVENT OF THE 15TH, YOU TESTIFIED TO YOUR -
21 - THE COMPANY'S ATTORNEY ABOUT WHAT YOU SAID. DO
22 YOU RECALL SAYING PRIOR TO GOING INTO THE BATHROOM,
23 "THIS SHIT IS GOING TO STOP, OLD BOY. YOU WILL SHOW
24 ME SOME RESPECT" TO BILL?

25 A. I -- I PROBABLY DID SAY THAT, SIR.

1 Q. AND DO YOU RECALL SHOVING BILL ---

2 A. IN THE RESTROOM?

3 Q. --- AT THAT TIME?

4 A. IN THE RESTROOM, WE -- WE SHOVED, YOU KNOW, WE
5 SHOVED EACH OTHER IN THERE. THEN HE CAME OUT, AND
6 THAT'S WHEN WE TURNED -- I TURNED AROUND, AND HE
7 TURNED AROUND AND FACED ME OUTSIDE THE DOOR THERE.

8 Q. OKAY.

9 BY MR. ORMOND:

10 NOTHING ELSE, YOUR HONOR.

11 BY MR. LOCKHART:

12 YOUR HONOR, JUST ONE QUESTION.

13 RE-CROSS EXAMINATION BY MR. LOCKHART:

14 Q. MR. RAULERSON, PRIOR TO MR. MILLER PUNCHING YOU IN
15 THE FACE AND KICKING YOU IN THE STOMACH, HAD HE
16 REMARKED THAT HIS NECK WAS INJURED IN ANY WAY?

17 A. NO, SIR. HE DID NOT.

18 BY MR. LOCKHART:

19 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

20 BY COMMISSIONER WILLIAMS:

21 ~~OKAY. ALL RIGHT. SIR, YOU CAN STEP DOWN.~~

22 UNLESS YOU RODE WITH SOMEBODY ELSE, YOU DON'T HAVE
23 TO STAY, MR. RAULERSON. YOU CAN LEAVE UNLESS YOU
24 RODE WITH SOMEONE ELSE ---

25 BY THE WITNESS:

1 OKAY.

2 BY COMMISSIONER WILLIAMS:

3 --- YOU CAN LEAVE.

4 BY THE WITNESS:

5 OKAY, THANK YOU.

6 BY COMMISSIONER WILLIAMS:

7 ALL RIGHT. MR. ORMOND.

8 BY MR. ORMOND:

9 JASON FRYE.

10 BY MR. LOCKHART:

11 MR. FRYE, YOU JUST HAVE A SEAT RIGHT THERE,

12 SIR, IF YOU WOULD.

13 BY THE WITNESS:

14 THANK YOU.

15 BY COMMISSIONER WILLIAMS:

16 HOW ARE YOU DOING, SIR?

17 BY THE WITNESS:

18 I'M DOING ALL RIGHT. HOW ARE YOU?

19 BY COMMISSIONER WILLIAMS:

20 F-R-Y-E?

21 BY THE WITNESS:

22 YES, SIR.

23 BY COMMISSIONER WILLIAMS:

24 OKAY. SWEAR MR. FRYE IN, PLEASE.

25 BY THE WITNESS:

1 I'M SORRY?

2 BY COMMISSIONER WILLIAMS:

3 SHE'S GOING TO SWEAR YOU IN.

4 BY THE COURT REPORTER:

5 * * * * *

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

9 JASON FRYE

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

11 BY COMMISSIONER WILLIAMS:

12 ALL RIGHT. MR. ORMOND.

13 BY MR. ORMOND:

14 THANK YOU, YOUR HONOR.

15 DIRECT EXAMINATION BY MR. ORMOND:

16 Q. MR. -- MR. FRYE, MY NAME IS CHUCK ORMOND. I'M AN
17 ATTORNEY, AND I REPRESENT MR. MILLER. DO YOU RECALL
18 THE AUGUST 15TH INCIDENT?

19 A. YES, SIR.

20 Q. AND YOU DIDN'T SEE ALL OF IT, DID YOU?

21 A. I SEEN MOST OF IT BUT NOT ALL OF IT.

22 Q. DID YOU SEE ANYTHING THAT HAPPENED IN THE BATHROOM?

23 A. JUST A LITTLE SHOVING IN THE BATHROOM.

24 Q. OKAY. AND YOU WROTE A STATEMENT, I BELIEVE, ON THE
25 28TH OF AUGUST, CORRECT?

1 A. YES, SIR.

2 Q. OKAY. AND THE EVENT ITSELF HAPPENED ON THE 15TH OF
3 AUGUST. DO YOU REMEMBER THAT, IF THAT'S CORRECT?

4 A. I DON'T REMEMBER THE EXACT DATE, NO.

5 Q. WAS IT A COUPLE OF WEEKS AFTER THE EVENT THAT YOU
6 MADE THE STATEMENT?

7 A. YES, SIR.

8 Q. I'M GOING TO TAKE -- WOULD YOU TAKE A LOOK AT THIS
9 STATEMENT.

10 BY MR. ORMOND:

11 IT'S PAGE 86, YOUR HONOR.

12 BY COMMISSIONER WILLIAMS:

13 EIGHTY-SIX. OKAY, GOT IT.

14 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

15 Q. LET ME START WITH YOU ON -- ON IT'S -- IT'S REALLY
16 THE FOURTH PARAGRAPH. YOU SAY, "BILL GOT UP AND
17 STARTED TO WALK AWAY." WAS THAT FROM BRIAN'S OFFICE
18 OR ROOM THAT THAT HAPPENED?

19 A. YES, SIR.

20 Q. OKAY. AND I'M GOING TO SHOW YOU REAL QUICK A DIRTY

21 ~~OUTLINE OF THE AREA. (INDICATING) IS THIS BRIAN'S~~

22 ROOM WE'RE TALKING ABOUT? THERE'S A BATHROOM HERE,
23 AND IS THIS A ROUGH DEPICTION WHERE YOU ALL WERE
24 WORKING WHERE Y'ALL WERE AT DURING THAT TIME?

25 A. YEAH, ROUGHLY. YEAH.

1 Q. OKAY. AND THEN THERE'S A DOOR'S THAT'S -- THAT'S
2 NOT LOCKED OPEN, OR IT'S -- IT'S A BRICK OR
3 SOMETHING'S PUT ON IT, RIGHT, TO KEEP IT OPEN?

4 A. YES, SIR.

5 Q. OKAY. AND Y'ALL WERE IN BRIAN'S ROOM, AND THEN BILL
6 MILLER WALKED OUT?

7 A. UH-HUH.

8 Q. OKAY. AND WHERE WERE YOU, IN BRIAN'S ROOM?

9 A. YEAH, I WAS RIGHT THERE IN THE MIDDLE OF BRIAN'S
10 ROOM.

11 Q. OKAY. AND "HE GOT UP AND STARTED TO WALK AWAY WHEN
12 STEVE WENT IN -- WENT AFTER HIM HASTILY REPEATEDLY
13 SAYING NO YOU'RE GOING TO TELL ME WHAT YOU SAID,"
14 RIGHT?

15 A. YES, SIR.

16 Q. OKAY. AND THIS WAS SOMETHING THAT -- THAT BILL HAD
17 UTTERED, AND NOBODY KNOWS WHAT IT WAS; IS THAT
18 RIGHT?

19 A. YES, SIR.

20 Q. AND THEN THEY WALKED OUT OF YOUR LINE OF SIGHT FOR A

21 WHILE. NOW, THE WHOLE -- WHOLE EVENT -- THIS WHOLE
22 THING, HOW LONG DID IT TAKE?

23 A. MAYBE THREE OR FOUR MINUTES.

24 Q. OKAY. AT MOST?

25 A. AT MOST.

1 Q. ALL RIGHT. THEN YOU STOOD IN THE MECHANICS ROOM,
2 YOU SAY, "AND I SAW BILL AND STEVE RETURN AND ARGUE
3 IN FRONT OF THE MAINTENANCE SHOP RESTROOM"?

4 A. YES, SIR.

5 Q. "AND THEY WERE CURSING AT EACH OTHER, AND STEVE PUT
6 HIS FINGER IN BILL'S FACE SAYING THIS" -- AND I'M
7 GOING TO REPEAT IT -- "THIS SHIT WITH YOU IS GOING
8 TO STOP, OLD BOY; YOU WILL SHOW ME SOME RESPECT";
9 AND THEN -- IS THAT CORRECT?

10 A. YES, SIR.

11 Q. ALL RIGHT. AND THIS IS DONE A COUPLE OF WEEKS
12 AFTER. YOUR STATEMENT IS DONE A COUPLE OF WEEKS
13 AFTER THIS EVENT OCCURRED, CORRECT?

14 A. YES, SIR.

15 Q. ALL RIGHT. AND YOU WOULD HAVE -- YOUR MEMORY WOULD
16 HAVE BEEN FRESHER THEN; IS THAT RIGHT?

17 A. YES, SIR.

18 Q. AND YOU WERE REMEMBERING THE SEQUENCE OF EVENTS,
19 CORRECT?

20 A. YES, SIR.

21 Q. AND THAT'S HOW YOU WERE PUTTING IT DOWN INTO THE
22 STATEMENT?

23 A. YES, SIR.

24 Q. AND THEN YOU SAY "IT WAS THEN THAT BILL SHOVED STEVE
25 INTO THE RESTROOM"; DO YOU RECALL THAT?

1 A. YES, SIR.

2 Q. OKAY. "AND THEN STEVE SHOVED BILL BACK." WAS THAT
3 OUTSIDE OR IN THE RESTROOM?

4 A. HE SHOVED HIM OUT OF THE RESTROOM ---

5 Q. OKAY.

6 A. --- FROM THE INSIDE OF THE RESTROOM.

7 Q. AND -- "AND BILL THEN WENT BACK TOWARD" -- WE'RE OUT
8 OF THE RESTROOM NOW, RIGHT? BECAUSE YOU CAN SEE IT,
9 AND BILL WENT -- I'M SORRY -- (INDICATING) BACK
10 TOWARD THIS WALL HERE?

11 A. YES, SIR.

12 Q. OKAY. DID YOU SEE THAT IMPACT?

13 A. YES, SIR.

14 Q. OKAY. DID HE HIT THE WALL?

15 A. YES, SIR.

16 Q. OKAY. THEN YOU SAY "IT WAS THEN THAT BILL SHOVED
17 STEVE IN THE RESTROOM. STEVE SHOVED BILL BACK."
18 AND WE'VE JUST TALKED ABOUT THAT, RIGHT? "AND THEN
19 BILL PUNCHED STEVE IN THE MOUTH WITH HIS RIGHT
20 HAND"?

21 A. YES, SIR.

22 Q. "STEVE STOOD FAST. I RAN OUT OF THE MECHANICS ROOM
23 PUSHING BILL BACK, AND AS SOON AS I GOT ENOUGH ROOM
24 TO DO SO I GOT MY OTHER OR -- ARM OUT TO HOLD STEVE
25 BACK"; IS THAT CORRECT?

1 A. YES, SIR.

2 Q. STEVE'S A PRETTY BIG GUY, PROBABLY HARD TO HOLD HIM
3 BACK, RIGHT?

4 A. YEAH.

5 Q. AND THEN THE REST OF IT IS ABOUT WHAT HAPPENED AFTER
6 THAT. AND AGAIN THIS FIGHT WAS A PRETTY SHORT LIVED
7 SPONTANEOUS THING, RIGHT?

8 BY MR. LOCKHART:

9 YOUR HONOR, I HAVE TO OBJECT TO THE LEADING
10 FORM OF THE QUESTION.

11 BY MR. ORMOND:

12 FAIR ENOUGH. I'LL WITHDRAW IT.

13 DIRECT EXAMINATION RESUMED BY MR. ORMOND:

14 Q. WELL, AND THIS IS THE ACCURATE -- MOST ACCURATE
15 RECOLLECTION OF THE EVENT AT LEAST AT THAT TIME,
16 CORRECT?

17 A. YES, SIR.

18 Q. OKAY. AND DO YOU REMEMBER ANYTHING ELSE THAT'S NOT
19 IN HERE?

20 A. NO, SIR.

21 Q. OKAY. NOW, AFTER THAT I BELIEVE THE SUPERVISORS --
22 SOME SUPERVISORS GOT INVOLVED, AND DO YOU REMEMBER
23 THAT BOTH PARTIES GOT FOUR DAYS SUSPENSION, OR DO
24 YOU KNOW?

25 A. I DON'T EXACTLY REMEMBER RIGHT NOW. I THINK -- I

1 THINK BILL MAY HAVE HAD LONGER.

2 Q. PARDON?

3 A. I'M NOT EXACTLY SURE.

4 Q. OKAY.

5 BY MR. ORMOND:

6 THAT'S ALL I HAVE.

7 BY COMMISSIONER WILLIAMS:

8 ALL RIGHT. MR. LOCKHART.

9 CROSS EXAMINATION BY MR. LOCKHART:

10 Q. MR. FRYE, GOOD AFTERNOON.

11 A. GOOD AFTERNOON.

12 Q. HOW LONG HAVE YOU BEEN WITH OWEN STEEL?

13 A. TEN YEARS.

14 Q. AND WHAT'S YOUR CURRENT JOB WITH OWEN?

15 A. CRANE TECHNICIAN MAINTENANCE.

16 Q. HOW LONG HAVE YOU BEEN IN MAINTENANCE?

17 A. NINE YEARS.

18 Q. YOU TESTIFIED THIS AFTERNOON ABOUT THE INCIDENT THAT

19 YOU SAW INVOLVING MR. MILLER AND MR. RAULERSON?

20 A. YES, SIR.

21 Q. WHAT INCIDENTS IF ANY HAVE YOU BEEN INVOLVED IN WITH
22 MR. MILLER?

23 A. WE HAD ONE SCUFFLE BACK ABOUT FIVE YEARS AGO.

24 Q. AND DID THIS OCCUR WHILE YOU BOTH WERE WORKING AT
25 OWEN?

1 A. YES, SIR.

2 Q. CAN YOU TELL THE COURT ABOUT THE EVENTS THAT LED TO
3 THE SCUFFLE BETWEEN YOU AND MR. MILLER?

4 A. ME AND A GUY WERE -- WERE DISCUSSING SOME -- SOME
5 PLANS FOR CHANGING SOME LIGHTS OVER AT THE MAIN
6 OFFICE. WE WERE SITTING ON THE CORNER OF THE -- OF
7 THE BREAK ROOM TABLE WHERE WE, YOU KNOW, WE HAVE A
8 BREAK IN OUR MAINTENANCE SHOP. IN THE MIDDLE OF US
9 TALKING ABOUT -- OR I WAS BASICALLY SHOWING A GUY
10 WHO WAS FAIRLY NEW WHERE TO GO TO CHANGE THESE
11 LIGHTS. BILL CAME IN AND ASKED ME TO GET UP OUT OF
12 HIS SEAT, AND I -- I TOLD HIM TO HOLD ON THAT WE
13 WERE -- WE WERE DISCUSSING THAT. HE ASKED ME AGAIN,
14 AND I SAID THE SAME THING JUST HOLD ON JUST A SECOND
15 ME AND HIM WERE GOING OVER THIS MAP. AND THEN HE
16 REACHED DOWN AND PINCHED ME ON MY ARM, AND I STOOD
17 UP AND -- AND WE GOT INTO A LITTLE CONFRONTATION.
18 IT GOT PHYSICAL.

19 Q. WHEN YOU SAY "IT GOT PHYSICAL," WHAT HAPPENED?

20 A. I PUSHED BILL BACK. HE CAME BACK AT ME AGAIN. I
21 ~~PUSHED HIM BACK AGAIN. -- WE ENDED UP JUST ABOUT~~
22 COMING TO BLOWS, AND WE GOT -- WE GOT BROKE UP BY
23 CLIFF ZIMMS.

24 Q. MR. ZIMMS IS AN ELECTRICIAN?

25 A. YES, SIR.

1 Q. BESIDES THE ALTERCATION BETWEEN YOU AND MR. MILLER
2 AND THE ONE THAT YOU SAW MR. MILLER AND MR.
3 RAULERSON GET INTO, HAVE YOU EVER SEEN OR ARE YOU
4 AWARE PERSONALLY OF ANY OTHER ALTERCATIONS BETWEEN
5 MR. MILLER AND OTHER EMPLOYEES THAT YOU'VE WITNESSED
6 WITH YOUR OWN EYES?

7 A. PHYSICAL?

8 Q. PHYSICAL, VERBAL?

9 A. HE AND CLIFF ZIMMS GOT INTO -- TO ALTERCATIONS. HE
10 AND RONNIE FRYE GOT INTO SEVERAL ALTERCATIONS. IT
11 WAS ALL VERBAL. AS FAR AS PHYSICAL, I HAVEN'T SEEN
12 ANYTHING LIKE THAT.

13 Q. OTHER THAN WHAT HAPPENED WITH YOU AND WHAT HAPPENED
14 WITH STEVE?

15 A. YES, SIR.

16 Q. WHAT TYPE OF REPUTATION DID MR. MILLER HAVE BASED ON
17 THESE OBSERVATIONS THAT YOU JUST TOLD ME ABOUT?
18 WHAT WAS HIS REPUTATION AMONGST THE PLANT?

19 BY MR. ORMOND:

20 YOUR HONOR, THAT'S ASKING WHAT OTHER PEOPLE ARE

21 THINKING.

22 BY MR. LOCKHART:

23 OKAY. WELL, I'LL -- I'LL REPHRASE IT.

24 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

25 Q. I'LL ASK YOU WHAT WAS YOUR IMPRESSION OF MR. MILLER

1 AS IT PERTAINED TO HIS ABILITY OR INABILITY TO
2 INTERACT WITH OTHER EMPLOYEES?

3 A. WELL, A LOT OF TIMES HE WAS -- HE WAS HARD TO GET
4 ALONG WITH, BUT SOMETIMES HE WAS ALL RIGHT TO GET
5 ALONG WITH. I HAVEN'T ACTUALLY WORKED WITH HIM A
6 WHOLE LOT MYSELF. I MEAN, YOU KNOW, LIKE I SAID,
7 I'M THE CRANE TECHNICIAN. HE'S PROBABLY BEEN JUST
8 ON A HANDFUL OF CRANES WITH ME. I JUST KNOW THERE
9 ARE A LOT OF TIMES THAT -- THAT PEOPLE HAD TROUBLE
10 WORKING WITH HIM.

11 Q. WHAT ALTERCATIONS ARE YOU AWARE IF ANY INVOLVING MR.
12 MILLER THAT HAVE TAKEN PLACE OUTSIDE OF OWEN STEEL?

13 A. BETWEEN MYSELF AND MR. MILLER?

14 Q. BETWEEN MR. MILLER AND ANYONE?

15 A. THE ONLY OTHER INSTANCES I KNOW OF ARE, YOU KNOW,
16 BASICALLY HEARSAY.

17 Q. OKAY.

18 A. I HAVEN'T WITNESSED ANY.

19 Q. HAVE YOU HEARD HIM DISCUSS ALTERCATIONS AT WORK WITH
20 YOU OR OTHER PEOPLE?

21 A. YES.

22 Q. WHAT HAVE YOU HEARD MR. MILLER SAY AT WORK INVOLVING
23 ALTERCATIONS?

24 A. HE DISCUSSED WITH US ABOUT GETTING IN A FIGHT WITH A
25 NEIGHBOR.

1 Q. HOW RECENTLY -- 'HOW -- HOW RECENTLY WAS THAT
2 DISCUSSION?

3 A. MONTHS BEFORE THE INCIDENT.

4 Q. MONTHS BEFORE THE INCIDENT WITH MR. RAULERSON?

5 A. YES, SIR.

6 Q. WHAT DID MR. MILLER SAY ABOUT THIS INCIDENT WITH HIS
7 -- WITH HIS NEIGHBOR?

8 A. I'M NOT EXACTLY SURE. A LOT OF IT, I MEAN, HE
9 BASICALLY SAID IT WAS OVER A DOG. YOU KNOW, I
10 COULDN'T REALLY TELL YOU MUCH MORE THAN THAT.

11 Q. BUT THESE WERE THINGS YOU HEARD HIM SAY?

12 A. YES, SIR.

13 Q. LET'S GO BACK TO THE 15TH OF AUGUST FOR JUST A
14 MOMENT. YOU SAID IN THE STATEMENT THAT YOU SAW MR.
15 MILLER PUNCH MR. RAULERSON IN -- IN -- IN THE MOUTH
16 IN THE FACE; IS THAT A FAIR STATEMENT?

17 A. YES, SIR.

18 Q. WHEN YOU WERE OBSERVING THEM BEFORE YOU -- LET ME
19 BACK UP FOR A MINUTE. YOU BROKE THE FIGHT UP?

20 A. YES, SIR.

21 Q. YOU GOT BETWEEN THE TWO OF THEM?

22 A. RIGHT.

23 Q. BEFORE YOU BROKE THE FIGHT UP, WHAT COMMENTS IF ANY
24 DID YOU HEAR MR. MILLER MAKE ABOUT HIS BACK OR HIS
25 NECK? DID YOU HEAR HIM MAKE ANY AT ALL?

1 A. BEFORE?

2 Q. BEFORE YOU BROKE THE FIGHT UP?

3 A. A FEW WEEKS -- A FEW WEEKS BEFORE THE INCIDENT, HE
4 WAS -- HE WAS TELLING US ABOUT SOME MEDICATIONS THAT
5 THE DOCTOR HAD HIM ON PERTAINING TO THE NECK AND
6 BACK PROBLEMS?

7 A. SO BEFORE HIS ALTERCATION WITH MR. RAULERSON, YOU
8 OVERHEARD MR. MILLER TALK ABOUT BEING UNDER THE CARE
9 OF THE DOCTOR FOR NECK PROBLEMS?

10 A. YEAH.

11 Q. WHEN MR. RAULERSON AND MR. MILLER WERE YELLING AT
12 ONE ANOTHER IN THE HALLWAY BEFORE YOU BROKE THE
13 FIGHT UP -- WHEN THEY WERE YELLING AT ONE ANOTHER IN
14 THE HALLWAY, DID YOU HEAR MR. MILLER SAY ANYTHING AT
15 ALL ABOUT HIS NECK HAVING BEEN INJURED OR HIS BACK
16 HAVING BEEN INJURED?

17 A. NO, SIR.

18 Q. WERE HIS FIRST COMMENTS ABOUT HIS NECK BEING INJURED
19 AFTER YOU BROKE THE FIGHT UP?

20 A. YES, SIR.

21 Q. WERE YOU -- YOU MENTIONED A FEW MOMENTS AGO THAT
22 YOU'D OVERHEARD MR. MILLER DISCUSS BEING UNDER THE
23 CARE OF A DOCTOR FOR NECK AND BACK PROBLEMS BEFORE
24 THE -- THE FIGHT WITH MR. RAULERSON. DO YOU KNOW
25 WHAT TYPE OF MEDICATION HE WAS TAKING OR WHAT TYPE

1 OF MEDICAL CARE HE WAS RECEIVING?

2 A. IT SEEMED LIKE I REMEMBER HIM SAYING THE NAME OF THE
3 PRESCRIPTION, BUT I CAN'T REMEMBER IT RIGHT OFF
4 HAND, NO.

5 Q. YOU SAID IN YOUR STATEMENT TOO THAT YOU HAD SEEN MR.
6 MILLER OR HAD SEEN MR. MILLER RIDING A MOTORCYCLE TO
7 AND -- TO AND FROM WORK AFTER THIS ACCIDENT
8 HAPPENED?

9 A. YES, SIR.

10 Q. IS THAT A FAIR STATEMENT?

11 A. YES, SIR.

12 Q. AND HOW MANY TIMES HAD YOU SEEN THAT?

13 A. MAYBE TWICE.

14 BY MR. LOCKHART:

15 YOUR HONOR, I BEG THE COURT'S INDULGENCE FOR
16 JUST A BRIEF MOMENT.

17 BY COMMISSIONER WILLIAMS:

18 OKAY.

19 BY MR. LOCKHART:

20 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

21 BY COMMISSIONER WILLIAMS:

22 MR. ORMOND, ANY OTHER QUESTIONS?

23 BY MR. ORMOND:

24 NO REDIRECT.

25 BY COMMISSIONER WILLIAMS:

1 STEP DOWN, SIR. Y'ALL COME UP HERE A SECOND.

2 (OFF THE RECORD DISCUSSION WITH ATTORNEYS)

3 BY COMMISSIONER WILLIAMS:

4 LET'S GO OFF THE RECORD

5 (OFF THE RECORD)

6 BY COMMISSIONER WILLIAMS:

7 ANY OTHER WITNESSES, MR. ORMOND?

8 BY MR. ORMOND:

9 NO, SIR.

10 BY COMMISSIONER WILLIAMS:

11 ALL RIGHT. MR. LOCKHART.

12 BY MR. LOCKHART:

13 YOUR HONOR, WE CALL STACY OXEDINE.

14 BY COMMISSIONER WILLIAMS:

15 OKAY.

16 BY MR. LOCKHART:

17 STACY.

18 BY COMMISSIONER WILLIAMS:

19 SPELLED O-X-E-D-I-N-E, S-T-A-C-Y.

20 BY MR. LOCKHART:

21 YOU GO AHEAD AND HAVE A SEAT IN THAT CHAIR.

22 BY COMMISSIONER WILLIAMS:

23 MR. OXEDINE, HOW ARE YOU?

24 BY THE WITNESS:

25 I'M PRETTY GOOD, YOURSELF?

1 BY COMMISSIONER WILLIAMS:

2 ALL RIGHT. GOOD. SWEAR MR. OXEDINE IN,
3 PLEASE.

4 BY THE COURT REPORTER:

5 * * * * *

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

9 STACY OXEDINE

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

11 BY COMMISSIONER WILLIAMS:

12 ALL RIGHT. MR. LOCKHART.

13 DIRECT EXAMINATION BY MR. LOCKHART:

14 Q. MR. OXEDINE, GOOD AFTERNOON, SIR.

15 A. GOOD AFTERNOON.

16 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

17 A. OWEN STEEL COMPANY.

18 Q. AND HOW LONG HAVE YOU BEEN WITH OWEN STEEL?

19 A. JANUARY 3RD OF '96.

20 Q. OKAY. AND WHAT IS YOUR CURRENT POSITION WITH OWEN
21 STEEL?

22 A. PRODUCTION ENGINEER.

23 Q. AND WAS THAT POSITION THAT YOU HELD IN AUGUST OF
24 THIS YEAR?

25 A. YES, SIR.

1 Q. HOW LONG HAVE YOU BEEN IN THAT POSITION?

2 A. A YEAR-AND-A-HALF.

3 Q. OKAY. AND PRIOR TO THAT WHAT POSITION WERE YOU IN?

4 A. PLANT MANAGER.

5 Q. AND HOW LONG WERE YOU IN THAT POSITION?

6 A. THREE YEARS.

7 Q. MR. OXEDINE, WE'RE HERE THIS AFTERNOON IN REGARDS TO
8 A WORKERS' COMPENSATION CLAIM FILED BY A GENTLEMAN
9 NAMED WILLIAM MILLER ARISING OUT OF AN EVENT THAT
10 HAPPENED ON AUGUST THE 15TH. I WANT TO TALK TO YOU
11 FOR A MOMENT ---

12 BY MR. LOCKHART:

13 AND, YOUR HONOR, MAY I APPROACH THE WITNESS?

14 BY COMMISSIONER WILLIAMS:

15 SURE.

16 DIRECT EXAMINATION RESUMED BY MR. LOCKHART:

17 Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT SOME EVENTS
18 THAT OCCURRED WITH MR. MILLER PRIOR TO THAT AUGUST
19 2012 INCIDENT. MR. OXEDINE, I WANT TO SHOW YOU A
20 DOCUMENT THAT'S BEEN MARKED AS PAGE 88 OF -- OF THE
21 DEFENDANTS' APAs. THIS IS KNOWN AS A PERSONNEL
22 ACTION DIRECTIVE; IS THAT CORRECT?

23 A. UH-HUH.

24 Q. AND IT HAS YOUR SIGNATURE ON IT; IS THAT CORRECT?

25 A. YES, SIR.

1 Q. ALL RIGHT. CAN YOU TELL THE COURT IF YOU WOULD WHAT
2 INCIDENT LED TO MR. MILLER BEING PROVIDED WITH A
3 WRITTEN WARNING ON OR ABOUT NOVEMBER THE -- NOVEMBER
4 THE 8TH OF 2009?

5 A. THIS WOULD HAVE BEEN AN ALTERCATION BETWEEN HE AND A
6 SUPERVISOR BY THE NAME OF JOHN GARDNER. I BELIEVE
7 BILL WAS WORKING ON A PIECE OF EQUIPMENT THAT WAS
8 BROKEN. MR. MILLER WAS GOING TO TAKE A PART OUT OF
9 ANOTHER MACHINE TO CONFIRM WHETHER OR NOT IT WAS OR
10 WAS NOT THE CULPRIT ON THE BROKEN MACHINE, AND MR.
11 GARDNER TOLD HIM NOT TO REMOVE IT, AND BILL SAID
12 SOME WORDS TO MR. GARDNER THAT -- THAT WASN'T TAKEN
13 TOO TOO KINDLY.

14 Q. PAGE 89 OF THE DEFENDANTS' APAs IS ANOTHER PERSONNEL
15 ACTION DIRECTIVE THAT ALSO HAS YOUR SIGNATURE ON IT,
16 DOES IT NOT?

17 A. YES, SIR.

18 Q. OKAY. AND THIS WAS FROM -- THIS WAS DATED NOVEMBER
19 THE 24TH, 2010. WHAT INCIDENT LED TO THE PERSONNEL
20 ACTION DIRECTIVE FROM NOVEMBER OF 2010?

21 A. THIS WAS AN ALTERCATION BETWEEN BILL AND CLIFF
22 ZIMMS. HE'S ONE OF OUR MAINTENANCE MEN; HE'S AN
23 ELECTRICIAN. I BELIEVE THEY WERE WORKING ON A
24 WELDING MACHINE. BOTH HAD IDEAS OF WHAT WAS WRONG
25 WITH IT BUT DIFFERING IDEAS, AND IT LED TO WORDS

1 BEING SAID, AND MR. MILLER THREW SOMETHING IN THE
2 DIRECTION OF MR. ZIMMS. IT WAS WITNESSED BY ONE OF
3 OUR OTHER SUPERVISORS AND THAT'S WHAT...

4 Q. PAGE 90 OF THE APAs, THIS ALSO IS A PERSONNEL ACTION
5 DIRECTIVE, CORRECT?

6 A. YES, SIR.

7 Q. WITH YOUR SIGNATURE ON IT?

8 A. YES, SIR.

9 Q. AND WAS THIS ONE ARISING OUT OF THE EVENT BETWEEN
10 MR. RAULERSON AND -- AND MR. MILLER?

11 A. YES, OKAY.

12 Q. OKAY. ALL RIGHT. NOW, ACCORDING TO THE PERSONNEL
13 ACTION DIRECTIVE, MR. MILLER RECEIVED A FOUR-DAY
14 DISCIPLINARY LAYOFF; IS THAT CORRECT?

15 A. YES, SIR.

16 Q. OKAY. AND TO YOUR KNOWLEDGE, WHAT -- WHAT WAS THE
17 LAYOFF RECEIVED BY MR. RAULERSON FOR THE SAME
18 INCIDENT?

19 A. TWO DAYS.

20 Q. OKAY?

21 A. THE FOUR DAYS WAS COUNTING I BELIEVE MR. MILLER LEFT
22 AT 3:30. SO IT WAS THREE FULL DAYS AND A PORTION OF
23 THE FOURTH.

24 Q. AND YOU WERE PART OF THE DECISION TO ASSESS THIS
25 PARTICULAR PENALTY OR PUNISHMENT TO MR. MILLER?

1 A. CORRECT.

2 Q. WHY WERE THEIR PUNISHMENTS DIFFERENT? WHAT WAS THE
3 RATIONAL BEHIND THE DIFFERENT PUNISHMENTS?

4 A. BECAUSE MR. MILLER PUNCHED MR. RAULERSON AND KICKED
5 HIM, AND MR. RAULERSON DID NOT HIT HIM BACK.

6 Q. WELL, DID MR. MILLER RETURN TO WORK AT SOME POINT?

7 A. YES, HE DID.

8 Q. OKAY. TURN WITH ME IF YOU WOULD TO PAGE 91 OF THE
9 APAs. THIS IS ANOTHER PERSONNEL ACTION DIRECTIVE;
10 IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND THIS HAS YOUR SIGNATURE ON IT?

13 A. YES, SIR.

14 Q. ALL RIGHT. CAN YOU TELL THE COURT IF YOU WOULD WHAT
15 OCCURRED -- WHAT EVENTS LED TO THE PREPARATION OF
16 THIS PARTICULAR DOCUMENT?

17 A. I BELIEVE THIS WAS A MONDAY. MR. MILLER CAME BACK
18 TO WORK ON A WEDNESDAY. HE WORKED WEDNESDAY,
19 THURSDAY, FRIDAY, SATURDAY, AND THIS DATE 8/27 WOULD
20 HAVE BEEN THE FOLLOWING MONDAY. WE NORMALLY GO OVER

21 OUR -- GO OVER OUR HOURLY -- OUR HOURS FROM THE WEEK
22 BEFORE EACH -- EACH INDIVIDUAL LOOKS AT THE WEEKLY
23 SUMMARY AND INITIALS THAT THE HOURS ARE CORRECT
24 BEFORE THEY GO INTO PAYROLL, AND MR. MILLER DURING
25 THE TIME THAT WE DO THAT'S NORMALLY IN OUR FIRST

1 BREAK WHEN WE HAVE OUR SAFETY MEETING ON MONDAYS.
2 AND DURING THE COURSE OF GOING OVER THAT AND
3 REVIEWING HIS TIME, I HAD MADE SOME EYE CONTACT WITH
4 BILL, AND I COULD TELL THAT HE WAS GETTING UPSET
5 OVER SOMETHING, AND I REALLY DIDN'T KNOW WHAT UNTIL
6 REALLY AFTERWARDS UNTIL -- BUT RIGHT AFTER THE
7 MEETING, BILL WAS PRETTY MAD, AND HE CAME TO US AND
8 SAID THAT HE WAS -- HE WAS PRETTY UPSET, AND THAT IT
9 WOULD BE BEST FOR HIM TO GO HOME.

10 Q. WHAT WAS HE UPSET ABOUT BASED ON HIS STATEMENTS TO
11 YOU?

12 A. THAT HE -- HE RECOGNIZED THAT HE WAS SUSPENDED FOR -
13 - FOR FOUR DAYS AS IT WOULD SAY AND STEVE FOR THREE,
14 AND I DON'T THINK THAT HE FELT THAT IT WAS FAIR, AND
15 HE WAS MAD ABOUT IT AND DECIDED TO GO HOME.

16 Q. WHAT ACTIONS DID HE TAKE DURING THE MEETING
17 REGARDING THE -- THE TIME IN QUESTION -- THE TIME
18 SHEETS?

19 A. HE KEPT LOOKING AT THE TIME SHEET DURING THE
20 MEETING, BUT LIKE I SAID, THERE WAS PEOPLE GOING
21 ~~OVER THE SAFETY TOPIC WHILE HE WAS REVIEWING IT, AND~~
22 HE KEPT JUST KIND OF REALLY LOOKING AT THE -- THE
23 HOURS, AND HE WAS JUST GETTING UNCOMFORTABLE. AS HE
24 WENT TO LEAVE AFTER THE MEETING WAS OVER AND -- AND
25 BREAK WAS GETTING OVER WITH, AS HE TURNED IN THE --

1 THE TIME SHEET, HE TOOK A PHOTO OF THE TIME SHEET
2 THAT THIS -- THE TIME SHEET'S SUMMARY.

3 Q. WAS MR. MILLER ULTIMATELY TERMINATED BY OWEN STEEL?

4 A. YES, SIR.

5 BY MR. LOCKHART:

6 AND PAGE 92 OF THE DEFENDANTS' APAs, YOUR
7 HONOR.

8 DIRECT EXAMINATION RESUMED BY MR. LOCKHART:

9 Q. MR. OXEDINE, IS THIS YOUR SIGNATURE ON THIS DOCUMENT
10 PAGE 92?

11 A. YES, SIR.

12 Q. IT SAYS "EMPLOYEE IS TERMINATED DUE TO MULTIPLE
13 CASES OF AGGRESSION AND INSUBORDINATION"?

14 A. YES, SIR.

15 Q. OKAY. ALL RIGHT. AND JUST SO WE ARE CLEAR HERE
16 TODAY, THE MULTIPLE CASES OF AGGRESSION AND
17 INSUBORDINATION. ---

18 BY MR. ORMOND:

19 YOUR HONOR, I THINK THAT'S A BIT LEADING.

20 BY MR. LOCKHART:

21 OKAY.

22 DIRECT EXAMINATION RESUMED BY MR. LOCKHART:

23 Q. WHAT ARE THE MULTIPLE CASES OF AGGRESSION AND
24 INSUBORDINATION THAT LED TO MR. MILLER BEING
25 TERMINATED?

1 A. THE PERSONNEL DIRECTIVES THAT WERE JUST BROUGHT UP,
2 THE ALTERCATION BETWEEN MR. GARDNER, THE ALTERCATION
3 BETWEEN MR. ZIMMS, STEVE RAULERSON. THERE'S BEEN
4 WORDS WITH OTHER PEOPLE THAT DIDN'T END UP AS
5 WRITTEN PERSONNEL DIRECTIVES TO GO IN THE FILE.
6 ALTERCATIONS BETWEEN BEFORE HE WAS IN MAINTENANCE
7 AND WHILE I WAS IN A -- A PLANT MANAGER'S POSITION
8 WITH OTHER WELDERS ON THE FLOOR. IT WAS JUST -- IT
9 -- IT'S CASE AFTER CASE AFTER CASE.

10 BY MR. LOCKHART:

11 NO FURTHER QUESTIONS, YOUR HONOR.

12 BY COMMISSIONER WILLIAMS:

13 ALL RIGHT. MR. ORMOND.

14 BY MR. ORMOND:

15 THANK YOU.

16 CROSS EXAMINATION BY MR. ORMOND:

17 Q. MR. OXEDINE, WHEN YOU WERE TALKING ABOUT BILL MILLER
18 SEEMED UPSET, WERE YOU AWARE THAT HE HAD SPOKEN WITH
19 HIS DIRECT SUPERVISOR SLOAN ABOUT GOING TO A DOCTOR?

20 A. NO, SIR.

21 Q. WERE YOU AWARE THAT HE WAS ACTUALLY -- ALREADY HAD
22 AN APPOINTMENT TO GO TO A DOCTOR THAT MONDAY?

23 A. NO, SIR.

24 Q. OKAY. AND WERE YOU AWARE THAT MR. SLOAN HAD ALREADY
25 TOLD HIM PRIOR -- THE PRIOR WEEK, I BELIEVE THAT

1 WOULD HAVE BEEN THE 22ND OR 23RD, THAT HE WOULD TRY
2 TO TAKE CARE OF GETTING HIM TO A DOCTOR?

3 A. NOT AWARE OF THAT.

4 Q. OKAY. SO COULD THAT HAVE BEEN PART OF THE REASON HE
5 MIGHT BE UPSET WHEN HE LEFT?

6 A. I DIDN'T TAKE IT AS THAT.

7 Q. DO YOU REMEMBER OR DO YOU KNOW THAT HE TOLD MR.
8 SLOAN THAT HE WAS LEAVING TO GO TO THE DOCTOR THAT
9 DAY?

10 A. NO, SIR.

11 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT'S NOT TRUE?

12 A. NO, SIR. I DON'T.

13 Q. OKAY. WE REQUESTED THE PERSONNEL FILE OF MR.
14 MILLER, AND WE NOTICED A NUMBER OF PERFORMANCE
15 EVALUATIONS ALTHOUGH THEY ONLY WENT UP TO ABOUT
16 2009. DID YOU ALL STOP DOING PERFORMANCE
17 EVALUATIONS AT SOME POINT?

18 A. THEY DON'T HAPPEN YEARLY.

19 Q. OKAY. WELL, THE LAST ONE I SEE, I BELIEVE IT'S AN
20 '09, "PRODUCTION IS GOOD." THERE WAS MORE -- MORE

21 MEET -- I MEAN, MORE EXCEEDS EXPECTATIONS THAN EVEN
22 MEETS EXPECTATIONS, AND THERE WAS NOTHING NEGATIVE
23 IN IT. WAS HE A PRETTY GOOD EMPLOYEE?

24 A. I'M NOT CERTAIN WHAT TIME HE MOVED TO MAINTENANCE
25 BUT AT THE TIME IT WAS '09 ---

1 Q. IT SAYS "HE'S A MECHANIC." THAT MEANS HE'S IN THE
2 DEPARTMENT OF MAINTENANCE, CORRECT?

3 A. CORRECT.

4 Q. DO YOU WANT TO TAKE A LOOK AT THIS?

5 A. YES, SIR.

6 Q. ALL RIGHT. AND YOU SIGNED IT. DID YOU LOOK AT THE
7 BACK PAGE. AND I DON'T WANT TO GET TOO FAR OFF
8 FIELD THERE, BUT ISN'T IT TRUE THAT HE'S NEVER HAD A
9 BAD PERFORMANCE EVALUATION?

10 A. I DO NOT KNOW THE ANSWER TO THAT. I KNOW -- I KNOW
11 THIS ONE.

12 Q. WELL, WHAT ABOUT THE ONES PRIOR TO THAT. I HAVE
13 THOSE?

14 A. I'M NOT PRIVY TO THOSE.

15 Q. OKAY. IF I TOLD YOU THEY WERE ALL VERY GOOD, WOULD
16 YOU DISAGREE WITH THAT?

17 BY MR. LOCKHART:

18 YOUR HONOR, I HAVE TO OBJECT TO THE
19 CHARACTERIZATION OF THE EVIDENCE BY OPPOSING
20 COUNSEL.

21 BY COMMISSIONER WILLIAMS:

22 OKAY.

23 CROSS EXAMINATION RESUMED BY MR. ORMOND:

24 Q. WOULD YOU HAVE WAYS ---

25 BY COMMISSIONER WILLIAMS:

1 OKAY. SUSTAINED.

2 CROSS EXAMINATION RESUMED BY MR. ORMOND:

3 Q. --- AND TO AGREE -- TO DISAGREE. I'LL REPHRASE.
4 WOULD YOU HAVE ANY KNOWLEDGE OR ANY REASON TO
5 DISAGREE THAT THE PERFORMANCE EVALUATION OF MR.
6 MILLER PRIOR TO THE ONE YOU JUST LOOKED AT OF '09
7 WERE GOOD?

8 A. I HAVE NO KNOWLEDGE.

9 Q. OKAY. AND THIS YEAR IN LATE JANUARY, HE WAS GIVEN A
10 MERIT PROMOTION OF ALMOST SEVEN PERCENT INCREASE IN
11 PAY, CORRECT?

12 A. YES, SIR.

13 Q. AND THIS APPEARS TO BE YOUR SIGNATURE HERE, IS IT
14 NOT?

15 A. YES, SIR.

16 Q. OKAY. AND IF WOULD READ THE REMARKS BELOW
17 SUPERVISORS ACTION, PLEASE?

18 A. IT SAYS, "BILLY -- BILL IS A VERY GOOD MECHANIC, AND
19 HE HAS LEARNED A LOT ABOUT WELDERS AND HOW TO REPAIR
20 THEM."

21 Q. OKAY. AND HE WAS GIVEN A SIGNIFICANT WELL OVER A
22 DOLLAR AN HOUR RAISE?

23 A. YES, SIR.

24 Q. AND THAT WAS JUST THIS JANUARY, CORRECT?

25 A. YES, SIR.

1 Q. NOW, DID YOU WITNESS THE INCIDENT WITH ZIMMS? AND I
2 MAY BE SAYING THAT NAME WRONG. AM I CORRECT IN
3 SAYING THE MAN WAS NAMED ZIMMS?

4 A. IT IS CORRECT. IT'S ZIMMS.

5 Q. OKAY. YOU WEREN'T THERE FOR THAT, WERE YOU?

6 A. I WAS NOT THERE FOR IT.

7 Q. AND WERE YOU AND MR. MILLER FRIENDLY?

8 A. YES, SIR.

9 Q. OKAY. AND DID YOU ALL EVEN TEXT EACH OTHER WHILE HE
10 WAS ON SUSPENSION?

11 A. YES, SIR.

12 Q. OKAY. AND IT'S HARD TO BE A SUPERVISOR AND A
13 FRIEND?

14 A. IT IS.

15 Q. RIGHT? AND YOU EVEN SAID THAT IN ONE OF THE TEXTS?

16 A. YES, SIR.

17 Q. OKAY. NOW, DO YOU RECALL LEARNING THAT MR. MILLER
18 HAD RECEIVED AN OUT-OF-WORK EXCUSE FROM HIS DOCTOR
19 ON THE 27TH OR THAT MONDAY OF AUGUST?

20 A. NO, SIR. I'M NOT AWARE OF THAT.

21 Q. OKAY. WERE YOU AWARE THAT TUESDAY MORNING, THE 28TH
22 OF AUGUST, HE CAME IN AND DELIVERED THAT LEAVE SLIP
23 TO I BELIEVE MR. SAMUELS AND ALSO A STATEMENT OF
24 WHAT HAD HAPPENED IN THIS EVENT AND TO MR. SLOAN HIS
25 DIRECT SUPERVISOR; DO YOU HAVE ANY KNOWLEDGE OF

1 THAT?

2 A. OKAY. I -- I -- I AM AWARE OF THAT.

3 Q. OKAY. AND THEN THAT DAY, THE PEOPLE THAT SAW OR THE
4 WITNESSES TO THIS EVENT WERE ALL CALLED INTO A
5 MEETING, CORRECT? AND ASKED TO SIGN STATEMENTS?

6 A. THE STATEMENTS THAT WERE SIGNED WERE THE DATE OF THE
7 INCIDENT.

8 Q. WELL, LET'S TAKE A LOOK AT THAT. IF THEY WERE
9 MARKED THE 28TH, I GUESS THE STATEMENTS CAN SPEAK
10 FOR THEMSELVES, BUT IF THEY WERE MARKED OR DATED THE
11 28TH OF AUGUST, WOULD THAT NOT BE CORRECT?

12 A. WHAT'S THE DATE OF INCIDENT ---

13 Q. THE DATE OF INCIDENT'S THE 15TH?

14 A. --- OF HIM AND MR. RAULERSON? THEY SHOULD ALL BE
15 DATED THE 15TH AT THE LATEST THE 16TH.

16 Q. BUT IF THEY WEREN'T DATED THEN, THEY WERE ACTUALLY
17 DATED THE 28TH. DID YOU HAVE ANYTHING TO DO WITH
18 GETTING STATEMENTS WRITTEN ON THE 28TH OF AUGUST?

19 A. NO, SIR. I HAD STATEMENTS WRITTEN ON THE DAY OF THE
20 EVENT.

21 Q. WELL, THE ONLY STATEMENTS I GOT WERE EITHER NOT
22 DATED OR THEY WERE ON THE 28TH OF AUGUST.

23 A. I'M NOT AWARE OF THE DATES.

24 Q. AND HE WAS GIVEN A FOUR-DAY SUSPENSION, MR. MILLER,
25 CORRECT?

1 A. AS THE PERSONNEL DIRECTIVE SAID, YES.

2 Q. OKAY. AND DID YOU HAVE ANY KNOWLEDGE THAT HE WAS
3 HAVING AT LEAST MORE SEVERE NECK PAIN AND DIFFERENT
4 ISSUES AFTER THE EVENT?

5 A. NO, SIR.

6 BY MR. ORMOND:

7 THAT'S ALL I HAVE.

8 BY COMMISSIONER WILLIAMS:

9 MR. LOCKHART, DO YOU HAVE ANY QUESTIONS?

10 BY MR. LOCKHART:

11 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

12 BY COMMISSIONER WILLIAMS:

13 YOU CAN STEP DOWN, SIR. THANK YOU, SIR. MR.

14 LOCKHART.

15 BY MR. LOCKHART:

16 YOUR HONOR, I HAD -- IF IT'S OKAY, I'D ASK THAT

17 THIS WITNESS BE EXCUSED ---

18 BY COMMISSIONER WILLIAMS:

19 YEAH, SURE.

20 BY MR. LOCKHART:

21 --- AND THE THREE PRIORS SO THEY CAN LEAVE. IS

22 THAT OKAY?

23 BY COMMISSIONER WILLIAMS:

24 SURE, THAT'S FINE.

25 BY MR. LOCKHART:

MR. GARDNER, IF YOU WOULD GO HAVE A SEAT, SIR.

BY COMMISSIONER WILLIAMS:

MR. GARDNER, HOW ARE YOU DOING?

BY THE WITNESS:

GOOD.

BY COMMISSIONER WILLIAMS:

ALL RIGHT. SWEAR MR. GARDNER IN, PLEASE.

BY THE COURT REPORTER:

* * * * *

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

JOHN GARDNER

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

DIRECT EXAMINATION BY MR. LOCKHART:

Q. MR. GARDNER, SIR, WHERE ARE YOU CURRENTLY EMPLOYED?

A. OWEN STEEL.

Q. AND HOW LONG HAVE YOU BEEN WITH OWEN?

A. TWENTY-TWO YEARS.

Q. AND WHAT'S YOUR JOB WITH OWEN?

A. I'M A SUPERVISOR.

Q. OKAY. HOW LONG HAVE YOU BEEN A SUPERVISOR?

A. NINE YEARS.

Q. AND IN WHAT PARTICULAR DEPARTMENT ARE YOU A
SUPERVISOR?

1 A. C AND T.

2 Q. OKAY. MR. GARDNER, I JUST HAVE A FEW BRIEF
3 QUESTIONS FOR YOU. WE'RE HERE THIS AFTERNOON
4 REGARDING A WORKERS' COMPENSATION CLAIM INVOLVING
5 WILLIAM MILLER. IN THE -- IN THE EVIDENCE THAT'S
6 BEEN SUBMITTED TODAY IS A DOCUMENT REGARDING AN ACT
7 OF INSUBORDINATION THAT OCCURRED INVOLVING MR.
8 MILLER AND YOURSELF?

9 A. CORRECT.

10 Q. COULD YOU BRIEFLY TELL THE COURT ABOUT THAT EVENT?

11 A. WELL, HE WAS DOWN THERE WORKING ON A SAW, AND I JUST
12 HAPPENED TO NOTICE HIM GOING TO ANOTHER MACHINE, AND
13 I SEEN HIM PULL THE PART OFF, AND I ASKED HIM NOT TO
14 DO IT, AND HE HOLLERED OUT, "FUCK YOU," LIKE THAT.
15 AND SO I CALLED MY SUPERVISOR AND GOT HIM INVOLVED
16 IN IT.

17 Q. HAVE YOU HAD ANY OTHER ENCOUNTERS WITH MR. MILLER
18 BESIDES THIS ONE?

19 A. NO, NOT AT ALL.

20 Q. AND IS IT YOUR UNDERSTANDING HE RECEIVED A -- A
21 PUNISHMENT FOR THAT?

22 A. YES. YES, SIR.

23 BY MR. LOCKHART:

24 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

25 BY MR. ORMOND:

1 I DON'T HAVE ANY, YOUR HONOR.

2 BY COMMISSIONER WILLIAMS:

3 OKAY. THANK YOU, MR. GARDNER.

4 BY MR. LOCKHART:

5 THANK YOU, MR. GARDNER.

6 BY THE WITNESS:

7 OKAY.

8 BY MR. LOCKHART:

9 PLEASE HAVE A SEAT RIGHT THERE, SIR. THANK YOU
10 VERY MUCH.

11 BY THE WITNESS:

12 WHERE, RIGHT THERE?

13 BY MR. LOCKHART:

14 YES, SIR. THAT CHAIR RIGHT UP THERE. YEP.

15 YOUR HONOR, THIS IS MR. CLIFF ZIMMS.

16 BY COMMISSIONER WILLIAMS:

17 MR. Z-I-M-S.

18 BY THE WITNESS:

19 Z-I-M-M-S.

20 BY COMMISSIONER WILLIAMS:

21 M-M-S. SWEAR MR. ZIMMS IN, PLEASE.

22 BY THE COURT REPORTER:

23 * * * * *

24 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
25 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE

1 MATTER HEREIN:

2 CLIFF ZIMMS

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

4 BY COMMISSIONER WILLIAMS:

5 OKAY. MR. LOCKHART

6 DIRECT EXAMINATION BY MR. LOCKHART:

7 Q. MR. ZIMMS, WHERE ARE YOU CURRENTLY EMPLOYED, SIR?

8 A. OWEN STEEL.

9 Q. AND HOW LONG HAVE YOU BEEN WITH OWEN?

10 A. SIX YEARS.

11 Q. AND WHAT'S YOUR CURRENT JOB WITH OWEN?

12 A. ELECTRICIAN.

13 Q. ALL RIGHT. AND HAVE YOU BEEN AN ELECTRICIAN FOR
14 THEM THE ENTIRE SIX YEARS YOU'VE BEEN WORKING THERE?

15 A. YES.

16 Q. MR. ZIMMS, WE'RE HERE THIS AFTERNOON IN REGARDS TO A
17 WORKERS' COMPENSATION CLAIM FILED AGAINST OWEN STEEL
18 BY A GUY NAMED WILLIAM BILL MILLER?

19 A. YES.

20 Q. ALL RIGHT. ARE YOU -- DO YOU KNOW MR. MILLER?

21 A. YES, I DO.

22 Q. HAVE YOU WORKED WITH HIM IN THE PAST AT OWEN STEEL?

23 A. YES.

24 Q. OKAY. MR. ZIMMS, YOU'VE BEEN CALLED TO TESTIFY
25 TODAY IN REGARDS TO AN EVENT THAT LED TO MR. MILLER

1 RECEIVING A -- A REPRIMAND FROM OWEN STEEL. ARE YOU
2 FAMILIAR WITH THE EVENT IN QUESTION?

3 A. IS IT -- IS IT THE EVENT INVOLVING ME?

4 Q. WAS THERE AN EVENT INVOLVING YOU AND MR. MILLER?

5 A. YES.

6 Q. OKAY. CAN YOU TELL THE COURT ABOUT THAT IF YOU
7 WOULD. WHAT HAPPENED?

8 A. WE WERE TRACING SOME CABLES OUT LOOKING -- THERE'S A
9 LOT OF WELDING MACHINES IN THE PLANT AND WELDING
10 LINES CROSSING ALL OVER EACH OTHER, AND WE WERE
11 TRACING THEM OUT TRYING TO FIGURE OUT WHERE THEY
12 WENT, AND HE -- HE HAD -- THEY DUCK DOWN UNDER A
13 FLOOR 'CAUSE WE HAVE A GANTRY THING THAT RUNS BY ON
14 LIKE RAILROAD TRACKS AND IS CUT IN THE CONCRETE
15 FLOOR WITH THE STEEL PLATES OVER IT, AND THEY WENT
16 OVER TO THE SIDE OF THAT, AND WE WERE HAVING A HARD
17 TIME FINDING THEM. IT WAS HOT DAY, AND I KEPT
18 SAYING IT WAS THIS CABLE, BUT HE WAS ALL ABOUT FROM
19 TO WHERE THEY'RE SITTING (INDICATING) BACK THERE BY
20 THE WALL AWAY FROM ME. IT'S VERY NOISY, AND I HAVE
21 BAD HEARING. SO IT -- IT -- IT -- HE GOT MAD, AND
22 HE THREW IT AT ME. I MEAN, IT DIDN'T EVEN COME NEAR
23 HITTING ME BUT, YOU KNOW, THE OTHER SUPERVISOR OUT
24 THERE SAW WHAT HAPPENED, AND THAT'S -- THAT'S WHY HE
25 GOT REPRIMANDED. I WAS JUST GOING TO WALK BACK TO

1 THE SHOP 'CAUSE SOMETIMES YOU JUST HAVE TO SIT DOWN
2 AND COOL OFF.

3 Q. WHAT DID HE THROW AT YOU AGAIN?

4 A. A -- A -- A WELDING -- YOU EVER SEE THAT THING THEY
5 HOLD THE WELDING ROD IN THE LITTLE STINGER LEAD THEY
6 CALL IT?

7 Q. WHAT DOES IT LOOK -- I'M -- WHAT DOES IT LOOK LIKE?
8 CAN YOU DESCRIBE IT FOR US?

9 A. OH IT'S -- IT'S JUST LIKE A CLAMP THAT JUST IT'S --
10 IT'S SPRING LOADED, AND YOU PUT A WELDING ROD IN THE
11 END AND GO AHEAD AND WELD.

12 Q. ALL RIGHT. AND ARE YOU AWARE THAT -- THAT MR.
13 MILLER WAS REPRIMANDED FOR THIS INCIDENT?

14 A. YES.

15 Q. OKAY. ALL RIGHT. WHAT OTHER INCIDENTS HAVE YOU
16 SEEN INVOLVING MR. MILLER AND OTHER EMPLOYEES? HAVE
17 YOU SEEN OTHER INCIDENTS INVOLVING HIM AND OTHER
18 EMPLOYEES?

19 A. I'D SEEN HIM HAVE WORDS WITH PEOPLE. I'VE NEVER
20 SEEN HIM, YOU KNOW, ANYTHING PHYSICAL.

21 Q. OKAY. AFTER THIS EVENT OCCURRED BETWEEN YOU AND MR.
22 MILLER -- AND I THINK THE RECORDS INDICATE IT
23 HAPPENED TOWARDS THE END OF 2010, NOVEMBER OF 2010,
24 DOES THAT SOUND ABOUT RIGHT?

25 A. ABOUT RIGHT.

1 Q. ALL RIGHT. FOLLOWING THE -- THE 2000 -- THIS 2010
2 INCIDENT, HOW OFTEN WOULD YOU WORK WITH MR. MILLER
3 AFTER THAT?

4 A. OFF AND ON. YOU KNOW, MAYBE I'D WORK WITH HIM ON --
5 ON CERTAIN PROJECTS THINGS LIKE THAT. IT WASN'T AN
6 EVERY DAY THING.

7 Q. OKAY. ALL RIGHT. WERE THERE ANY OTHER INCIDENTS
8 BETWEEN THE TWO OF YOU WHERE -- WHERE ANYTHING
9 SIMILAR TO WHAT HAPPENED IN 2010 OCCURRED?

10 A. ONE TIME WE WERE PUTTING A MOTOR ON A -- ON A CRANE
11 IN A MAN LIFT, AND HE GOT A LITTLE HOT 'CAUSE I
12 COULDN'T GET MY BOLT IN, BUT I WAS TRYING TO TELL
13 HIM THAT THE BOLT -- SEE TWO OTHER PEOPLE TOOK THE
14 MOTOR OFF, AND WE WERE PUTTING IT BACK ON, AND THEY
15 LEFT -- THE FOUR BOLTS WERE SUPPOSED TO BE LEFT UP
16 THERE, AND ONE OF THEM WAS TOO SHORT. IT WASN'T THE
17 RIGHT SIZE BOLT, AND I COULDN'T GET IT TO GO 'CAUSE
18 THE FLANGE IS ABOUT THAT THICK (INDICATING), AND I
19 COULDN'T GET IT TO FIT THROUGH, AND IT'S A 20-HORSE
20 MOTOR, SO YOU KNOW HIS HEAD'S ON THIS SIDE, AND

21 WE'RE TRYING TO GET THOSE TWO BOLTS. WE GOT A CRANE
22 HOLDING THE MOTOR UP IN THE AIR, AND WE'RE TRYING TO
23 LINE IT UP SO THAT THE SPINDLE WILL GO IN TO THE
24 GEAR BOX BASICALLY.

25 Q. WHAT DID HE SAY TO YOU?

1 A. HE JUST GOT REAL UPSET AND -- AND WE JUST HAD TO
2 COME 'DOWN OUT OF THE MAN LIFT. I HAD TO GO UP WITH
3 SOMEONE ELSE TO FINISH THE JOB. IT WAS JUST ---

4 Q. HOW WOULD YOU DESCRIBE HIS TEMPERAMENT BASED ON YOUR
5 HAVING WORKED WITH HIM OVER THE YEARS?

6 A. USUALLY FAIRLY GOOD BUT YOU KNOW HE HAD HIS DAYS.
7 YOU KNOW, HE COULD -- HE COULD, YOU KNOW, EVERY ONCE
8 IN A WHILE, YOU JUST -- HE'D HAVE ONE OF THOSE DAYS
9 THAT YOU JUST DO -- DON'T MESS WITH HIM, DO YOU KNOW
10 WHAT I MEAN?

11 BY MR. LOCKHART:

12 NO FURTHER QUESTIONS, YOUR HONOR.

13 BY COMMISSIONER WILLIAMS:

14 ALL RIGHT. MR. ORMOND.

15 CROSS EXAMINATION BY MR. ORMOND:

16 Q. ONE QUESTION, MR. ZIMMS, AFTER THE ISSUE WITH THE
17 WELDING YOU WERE TALKING ABOUT EARLIER, DID Y'ALL
18 DISCUSS THAT AFTERWARD, YOU AND BILL -- MR. MILLER?

19 A. YEAH.

20 Q. DID Y'ALL KIND OF MAKE UP AND RESOLVE YOUR ISSUES?

21 A. PRETTY MUCH, YEAH.

22 Q. THAT'S ALL?

23 A. WE GOT ALONG OKAY AFTER THAT.

24 BY MR. ORMOND:

25 ALL RIGHT. THAT'S ALL I HAVE.

1 BY COMMISSIONER WILLIAMS:

2 ALL RIGHT. THANK YOU, SIR.

3 BY MR. LOCKHART:

4 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

5 BY COMMISSIONER WILLIAMS:

6 THANK YOU, SIR. YOU CAN STEP DOWN. YOU'RE
7 FREE TO GO.

8 ANY OTHER WITNESSES, MR. LOCKHART?

9 BY MR. LOCKHART:

10 NOTHING FURTHER, YOUR HONOR. I UNDERSTAND FROM
11 CLAIMANT'S COUNSEL THAT THERE'S STATEMENTS FROM A
12 JACK OSBORNE THAT ARE GOING TO BE OFFERED UP AND
13 ADMITTED IN THE INTEREST OF JUDICIAL ECONOMY; IS
14 THAT -- IS THAT MY UNDERSTANDING?

15 BY MR. ORMOND:

16 WE'D STIPULATE THAT THOSE COULD BE IN THE
17 RECORD. THEY'RE ALREADY THERE.

18 BY MR. LOCKHART:

19 OKAY.

20 BY COMMISSIONER WILLIAMS:

21 I CAN SEE.

22 BY MR. ORMOND:

23 I CAN'T REMEMBER THE PAGE NUMBERS, YOUR HONOR.

24 BY COMMISSIONER WILLIAMS:

25 OKAY. YEAH, I SEE IT PAGE 85. GOT IT. MR.

1 ORMOND, ANYTHING ELSE?

2 BY MR. ORMOND:

3 NO, YOUR HONOR.

4 BY COMMISSIONER WILLIAMS:

5 ALL RIGHT. THAT BEING THE CASE, THAT WILL
6 CONCLUDE THIS HEARING.

7 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
8 CONCLUDED AT THE HOUR OF 5:18 P.M.)

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1213162

William E. Miller,)
)
Employee,)
)
v.)
)
Owen Steel,)
)
Employer,)
)
and)
)
Great American Alliance Insurance)
Company,)
)
Carrier/Defendants.)
-----)

FULL COMMISSION PANEL HEARING

Tuesday, April 16, 2013
2:06 p.m. - 2:25 p.m.

The Full Commission Panel Hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 16th day of April, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

COMMISSION PANEL:

Melody James, Chair
Susan Barden
Scott Beck

J. Charles Ormond, Jr., Esquire
Holler, Dennis, Corbett, Ormond, Plante & Garner
1777 Bull Street
Columbia, South Carolina 29201
Attorney for the Claimant

Jason W. Lockhart, Esquire
McAngus, Goudelock & Courie
1320 Main Street, 10th Floor
Columbia, South Carolina 29201
Attorney for the Defendants

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EXHIBITS

(There were no exhibits marked during this hearing.)

1 COURT REPORTER: Today is April 16th, 2013. This is
2 South Carolina Workers' Compensation Case
3 Number 1213162. This is the case of William E.
4 Miller, Claimant, versus Owen Steel, Employer,
5 and Great American Alliance Insurance Company
6 is the Carrier. The Appellant is the Claimant
7 represented by Charles J. Ormond, Jr.. The
8 Respondent represented by Jason W. Lockhart.

9 MR. ORMOND: Thank you, Commissioners. I think the
10 relevant facts in the case are, there was an
11 altercation. We had a seven or eight year
12 employee. He had been with them, and he was a
13 welder, and he was promoted up and finally was
14 in the Maintenance Department. There was an
15 altercation on August 15th. The altercation
16 undisputedly was about work. It was about
17 whether or not power would be in the facilities
18 during the time that maintenance was going to
19 be there that weekend or whether it would not
20 be. The claimant, Miller, stated that he
21 thought it would be, and then the interim lead
22 man, Rollerson, came in and suggested that it
23 would not be. Miller said something under his
24 breath like "Huh", walked away to the bathroom,
25 and Rollerson, a very large man, 340 pounds,

1 not heavy, but just big, followed him in the
2 bathroom, wanted to know what he said. There
3 was yelling, cursing and pushing. That's
4 undisputed. They came out of the bathroom.
5 There were some witnesses that saw this part
6 and the earlier part. He pushed Miller against
7 the wall. That's most of the testimony.
8 Rollerson said he didn't push him until after
9 Mr. Miller, the claimant, hit him, but either
10 way, he was pushed against the wall. Mr.
11 Miller states he heard a neck pop. They were
12 suspended, both of them. During that week,
13 that time off and the weekend itself during
14 that period of time, Mr. Miller began having
15 significant neck problems, swelling. He
16 couldn't move it. He had a brain freeze. It's
17 undisputed that he had been diagnosed with
18 stenosis, had neck problems, had back problems
19 in the past and had been diagnosed with spinal
20 stenosis about 18 months, I think, earlier
21 prior to this, had neck issues, hadn't missed
22 work for it, but had neck issues and so forth.
23 He came back -- this is undisputed in the
24 record. He told his supervisor, Sloan, that he
25 needed to go see a doctor, that he had been

1 were involved in the altercation gave
2 statements, and the Claimant, Miller, was told
3 it was either the 29th or the 30th, called up
4 and told he was fired retroactively on the
5 27th. The medicals continued. He goes for the
6 MRI on the 4th, September 4th. He follows up
7 with doctor Levinson on the 5th. A
8 neurosurgeon is recommended -- or referred, I
9 guess would be the better statement, referred
10 to the neurosurgeon, and the neurosurgeon
11 reviews the medical records, reviews the MRI,
12 looks at the MRI, and decides surgery is the
13 best option after, I think, a couple of days
14 where the claimant was hoping not to have
15 surgery. The claimant agrees to have surgery,
16 and the surgery is done on the 26th. The
17 medical records are the basis of the
18 Commissioner's decision, the Hearing
19 Commissioner's in this case, and there is
20 simply no records which do not state this was
21 an acute trauma, most likely caused by this
22 event. Yes, Mr. Miller had prior stenosis, and
23 as a matter of fact, stenosis is a narrowing
24 that makes you more susceptible to this kind of
25 injury. He clearly was more susceptible, and

1 he had this injury most likely on that date.
2 Dr. Boyd, the neurosurgeon, states
3 specifically, "This is a recent traumatic
4 injury", both in his questionnaire and in his
5 medical records, and he states this to a
6 reasonable degree of medical certainty. In
7 light of the -- even though, essentially, the
8 entire hearing was related to the events of the
9 altercation, at least from my perspective as
10 I've had employee issues with fights with a
11 lawyer. I've seen those issues in employment
12 cases and these kind of cases. The facts
13 really are not that badly disputed. The only
14 dispute that the Commissioner pointed out is he
15 felt Rollerson -- the push came before the neck
16 pop. You wouldn't -- I think he felt like --
17 the Commissioner felt like you wouldn't hit
18 after you had been pushed and you felt a neck
19 pop. I don't see that personally, but that
20 seemed to be the entire issue that the
21 Commissioner focussed on, and I think both
22 defense counsel and myself came into this
23 hearing not worrying too much about the medical
24 issues, although they were provided and
25 developed in the APA. The issue was whether or

1 not this fell under the section -- or the
2 provision for whether or not you're going to
3 hurt yourself and others in an altercation
4 setting. I think it's 160 or Section 60. I
5 can't recall. I admit I've never had this
6 issue come up before. The Hearing Officer
7 ruled that he didn't feel that it raised or
8 came to that level, but did rule that the
9 medicals didn't provide causation. I don't see
10 any medical evidence other than the fact that
11 there are two MRIs. One of them is on February
12 8th -- stated in there on the 18th, by
13 Dr. Boyd, but on the 8th of February of 2012,
14 about seven or eight months prior to this, and
15 then the one on September 15th, and certainly,
16 they are similar, but they also have a
17 difference, and both the physicians that
18 reviewed both of those note the difference, and
19 they specifically state they looked at both of
20 those images, and came up both -- at least
21 Dr. Boyd, certainly to the confusion that this
22 was an acute trauma. The MRIs had changed, and
23 Dr. Boyd in specific, obviously as a surgeon,
24 had the opportunity not only to see the remote
25 images, the MRI, but also to get in there and

1 do the surgery himself and see what had
2 happened, see whether it was a traumatic injury
3 and recent.

4 **MR. LOCKHART:** Your Honors, may it please the panel.

5 This afternoon, we're asking you to affirm
6 Commissioner Williams' decision and find that
7 the claimant did not satisfy his burden of
8 proof under either 42-1-160 or 42-9-35. The
9 claimant, in their brief, and to a certain
10 extent in oral argument today, wants to discuss
11 a questionnaire from Dr. Boyd as being sort of
12 the only piece of evidence that you need to
13 look at when considering whether or not this
14 injury was compensable. I point out to the
15 panel, as you know, Section 42-17-40 of the
16 Act, which governs the conduct of hearings,
17 gives you great discretion as the Hearing
18 Officer to consider all the evidence in making
19 a determination as to whether or not someone
20 has satisfied their burden of proof under the
21 Act. And there's one case in particular,
22 Poston Southeastern Construction Company which
23 is a case interpreting 42-17-40 that says, "A
24 medical opinion will not be permitted to
25 control the determination of a factual

1 controversy". In this particular case, there
2 was a controversy, "Was the claimant's neck
3 problems causally related to his work injury or
4 not", and ultimately Commissioner Williams
5 found that it was not. What the appellant is
6 asking you to do, at least in their brief, is
7 asking you to, again, reduce your analysis of
8 this case to one questionnaire, and I think
9 there's too much additional evidence that needs
10 to be considered, and I think there's a
11 significant amount of evidence that
12 Commissioner Williams considered in reaching
13 his decision, evidence based on both testimony
14 provided by lay witnesses as well as medical
15 records. Well, let's look at the medical
16 evidence for just a moment. Mr. Miller was
17 actively treating with his family physician for
18 significant cervical problems in the months
19 leading up to this August of 2012 event as
20 documented in the medical records of
21 Dr. Levinson, who was his family doctor. Going
22 as far back as January of 2012, the claimant
23 was complaining to Dr. Levinson of severe neck
24 pain which was constant and which was
25 worsening. Pages 106, 111 and 115 of our

1 submissions note his complaints. In February
2 of 2012, six months before the date of the
3 injury, approximately, he undergoes an MRI of
4 the cervical spine which shows not just neck
5 issues, I think that they've been termed, but
6 shows that he had a cervical extrusion at C6-7,
7 and this is -- the MRI comparison is noted at
8 Page 18 of our brief. One of the things that
9 Commissioner Williams did was, he looked at the
10 MRI reports, the scans, the radiology reports,
11 and if you look at those as they're outlined in
12 our brief, they appear to be almost identical,
13 and that was a very important piece of evidence
14 to Commissioner Williams based on at least our
15 reading of his order. Another thing that I
16 think is important to point out is, the
17 claimant was not only actively treating with
18 Dr. Levinson in the form of receiving
19 prescription medications, Ultracet, for his
20 neck problems. He underwent two cervical
21 epidural injections in the month leading up to
22 the August, 2012 event, one in February of 2012
23 and a second in April of 2012. Five weeks
24 before this incident takes place during a visit
25 in July of 2012, he's in Dr. Levinson's office

1 complaining of severe neck pain that had
2 worsened, as well as what sounds like radicular
3 complaints of neck pain in the back of his
4 neck, posterior neck pain radiating into the
5 area between his shoulder blades. So, his
6 complaints that he provides both prior to and
7 subsequent to this accident are essentially
8 identical. One of the things that's
9 problematic about Dr. Boyd's records -- and the
10 Claimant at the hearing and in his brief points
11 to the medical records of Dr. Boyd in support
12 of his position. One of the things that's
13 problematic about Dr. Boyd's medical records is
14 it's clear the claimant didn't provide him with
15 accurate information regarding the extent of
16 his pre-existing problems during his initial
17 examination with Dr. Boyd. If you look at Page
18 131 of the APA submissions, and this is the
19 medical questionnaire that the claimant
20 completed before his initial exam with
21 Dr. Boyd, he made no mention of his prior neck
22 problems and said his neck problems began or on
23 about August 15th of 2012. He does not
24 indicate that he had been actively under the
25 care of Dr. Levinson for nearly seven months

1 before this work injury occurred. When given
2 the opportunity when asked if he had undergone
3 any previous epidural injections, he indicated
4 -- he left that part of the report blank. In
5 his complaints to Dr. Boyd during this initial
6 examination in Dr. Boyd's office, when compared
7 to his complaints to Dr. Levinson throughout
8 the spring and summer of 2012, are again
9 similar, if not identical, severe neck pain
10 peripheral neuropathy, complaints of radiation
11 from the posterior neck into his shoulder
12 blades. And essentially, Commissioner Williams
13 agreed with our contention that if the case
14 should be denied based on the defenses outlined
15 in 42-9-60, the intentional act or the fight,
16 that the claimant couldn't satisfy his burden
17 of proof under either 42-9-35 or 42-1-160. The
18 credibility of this claimant is one of many
19 factors that Commissioner Williams considered
20 in making his decision, and there are multiple
21 findings of fact in the order that address that
22 the claimant was not a particularly believable
23 person. On cross examination -- and really,
24 why it's important again goes to the weight to
25 be given to Dr. Boyd's medical records. On

1 cross examination, the claimant testified that
2 he didn't tell Dr. Boyd about the extent of his
3 prior neck problems, that he didn't inform him
4 that he had had two cervical steroid
5 injections. He also went on to say on cross
6 examination that he had not actually been
7 released from the care of Dr. Levinson for his
8 neck pain or problems prior to this event in
9 August of 2012. Testimony from co-employees,
10 two in particular, said that in the months
11 leading up to this event in August, the
12 claimant was complaining in the workplace about
13 not only his neck pain but the fact that he was
14 under the active care of a physician for neck
15 problems, and this was at the Pages 102 and 121
16 of the hearing transcript where those witnesses
17 were asked about the claimant providing
18 complaints in the workplace, and the claimant
19 reluctantly admitted that he had the same
20 symptoms both prior to and subsequent to this
21 August 2012 event, although his contention is
22 that they increased in severity. We would
23 argue that the medical records show that they
24 basically had not changed. One of the things
25 that's also problematic from our standpoint

1 about the medical records of Dr. Boyd is, that
2 in the medical records of Dr. Boyd, the
3 claimant notes that he had experienced gradual
4 improvement of his neck problems over time.
5 When you look at Dr. Levinson's records, he's
6 constantly indicating that his problems are
7 worsening during the time he was under
8 Dr. Levinson's care. So, clearly, we have
9 contradictory evidence or information when you
10 compare the medical records in this case. He
11 also told Dr. Boyd that he had quote "never had
12 similar symptoms" similar to the ones that he
13 complained to Dr. Boyd about during his initial
14 examination, and that clearly is not supported
15 by the medical evidence when you look at
16 Dr. Levinson's records. So, we would argue
17 again that any opinion that Dr. Boyd provided
18 was based upon information, based upon quite
19 candidly a cascade of falsities that the
20 claimant provided to Dr. Boyd during his
21 initial examination, and Commissioner Williams
22 did not find the claimant to be particularly
23 believable. He didn't use the terms "He is not
24 credible" in his findings, but if you read the
25 findings in total, you will see that he placed

1 more weight upon what was said by the defense
2 witnesses than what was said by the claimant.
3 I know that there was an appeal raised by the
4 appellant in his brief, in his 130, about
5 Commissioner Williams erring in making findings
6 of fact about the events of August 15th. I
7 think that findings regarding the credibility
8 of the witnesses are tantamount in any denied
9 case which is certainly what this one was. I
10 think Commissioner Williams exercised his
11 discretion in 42-17-40 to weigh the testimony
12 to determine the credibility of the witnesses.
13 You all do that on a regular basis. In
14 determining whether or not a witness is
15 credible is essential to evaluating the
16 validity or the integrity of medical evidence
17 that's submitted in support of the parties'
18 respective positions, and that's exactly what
19 Commissioner Williams did in this case. Again,
20 multiple Findings of Fact, Finding of Fact 7,
21 9, 10, 12 and 13 all address the claimant's
22 suspect testimony, quite honestly, and he
23 specifically said in Finding of Fact 9 that he
24 didn't believe that the claimant injured his
25 neck before the claimant, not only punched, but

1 he also kicked a co-employee as part of this
2 altercation on August 15th of 2012. So, we
3 maintain that substantial evidence supports
4 Commissioner Williams' decision, and we would
5 ask you to affirm that decision today. Thank
6 you.

7 **MR. ORMOND:** In view of the record, there was
8 testimony from co-workers that Mr. Miller had
9 complained about his neck and back, and Mr.
10 Miller never suggested otherwise, but never
11 said he was under a Doctor's Care, and even
12 though he was, that is not in the record.
13 Other employees said that Miller stated he was
14 under a Doctor's Care. I don't know how
15 relevant that would be, but that's just not in
16 there from my recollection. There is -- any
17 administrative agency must base their findings
18 on substantial evidence. There must be some
19 evidence. There is no dispute that there was
20 an altercation and that Mr. Miller was pushed
21 up against the wall. There was nobody
22 suggesting otherwise. The only difference in
23 testimony was the chronology of events, whether
24 or not Mr. Miller punched and was then pushed
25 up against the wall, or whether he was pushed

1 up against the wall and punched, and the reason
2 why I brought up the credibility issue is,
3 there's credibility as far as whether disputed
4 facts -- one set of disputed facts wins over
5 another set of disputing facts, but in this
6 case, if you look at the testimony and the
7 statements in the record of Mr. Miller and all
8 but Mr. Rollerson, all state that he was pushed
9 up against the wall and then punched. I'm not
10 sure how much that matters, but it sure
11 mattered to the Hearing Commissioner, and
12 that's why I brought that up. And it's easy
13 when you're listening to a bunch of folks
14 describe a fight, each one of them from a
15 different perspective, each one of them
16 thinking about it in a different time frame,
17 all of whom said this took about a minute.
18 None of them were likely lying about what they
19 understood happened. The medical records when
20 you're talking about whether or not a surgery
21 is indicated and it was the result of a
22 traumatic very recent injury is up to a doctor.
23 That is something that a lay jury, for example,
24 couldn't determine on their own. If there was
25 another doctor or any other medical evidence,

1 any other medical evidence suggesting that, no,
2 this was not the cause, then, certainly, you
3 could make a determination in the record as to
4 which is more likely, which is disputable, but
5 in this case, there's nothing medically that
6 suggests this was not the cause. And if you
7 really think about the lie that Mr. Miller
8 would have to tell all the way prior to his
9 termination to make this work and then go
10 through surgery, it makes absolutely no sense.

11 (Whereupon, the Full Commission Panel Hearing
12 concluded at 2:25 o'clock p.m.)
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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W. C. C. FILE NO: 12- 13162

William Miller)
)
 Claimant/employee,)
)
 vs.)
)
 Owen Steel)
)
 Defendant/employer,)
)
 Strategic Comp. Services, Great American)
 Insurance Co.,)
 Carrier,)
 _____)

BRIEF OF CLAIMANT

STATEMENT OF THE CASE:

Claimant is requesting a Commission Review of the Decision and Order filed on January 31, 2013. A hearing was conducted in December of 2012 pursuant to a Form 50 filed by Claimant's attorney. Claimant, William Miller, was in an altercation with a co-worker and, after being pushed into a wall, heard and felt his neck "pop." Claimant reported the injury and requested medical attention as the symptoms worsened and he then sought medical treatment on his own. After an MRI, he was referred by his family physician to a neurosurgeon who recommended immediate surgery due to a dislodged bone fragment in Claimant's neck. The neurosurgeon notes in the record that the Claimant had a previously diagnosed stenosis (narrowing) of the cervical spine and the altercation/incident was the likely cause of the acute trauma to the Claimant's neck. The expert opinion testimony is made to a reasonable degree of medical certainty. There is no medical evidence or testimony in the record which contradicts or questions the findings of the neurosurgeon (Dr. Boyd) or the internist. (Dr. Levinson)

The Hearing Commissioner denied compensability based, as set forth in his Order, on his

reading of MRI reports. William Miller, Claimant, requests review of the medical records by the Full Commission (Panel) as the record contains undisputed medical documentation, by the only two physicians treating Mr. Miller, stating that the acute spinal trauma resulted from the altercation. The record contains a specific expert medical opinion as to causation by the treating neurosurgeon stating directly that the neck injury and resulting surgery was due to acute trauma most likely suffered in the altercation.

GENERAL/BACKGROUND FACTS:

William Miller, an eight year employee of Owen Steel (Tr. P. 9 L. 2-3) and his supervisor (Steve Raulerson), a 340 lb man, had an altercation on August 15, 2012 in which Miller¹ was pushed against a wall. All witnesses agree that during the altercation Raulerson pushed Miller against the wall. Upon impact with the wall, Claimant heard his neck pop.² Both Claimant and the other employee involved in the altercation were suspended and during this time Claimant's neck began to swell, he experienced shooting pain and brain freeze along with other symptoms. On his return, August 22, 2013, Claimant reported to his direct Supervisor that he had been hurt in the altercation and reported the symptoms. Claimant asked for the Company to send him to a doctor, however, the employer did not send him to a physician. After a few days of worsening symptoms and with no word from the Company about sending him to a doctor, Claimant went to his family physician, Dr. Levinson, on August 27, 2013. Dr. Levinson gave Claimant a work excuse, prescribed medication (pain and other) and prescribed an MRI diagnostic. Claimant was terminated three days later, while on medical leave, made effective on the 27th of August. After

¹ Claimant had been diagnosed with spinal stenosis approximately eighteen months earlier and had several bouts of symptoms related to his neck and back. (APA P. 2,3;)

² Although the facts of the versions of altercation are basically similar, the Claimant and Raulerson differ on the exact chronology of events.

the MRI, Levinson referred Claimant to a neurosurgeon, Dr. Boyd.

Dr. Boyd saw Claimant, in mid September of 2012 and reviewed the MRI ordered by Dr. Levinson. Dr. Boyd specifically compared it to a former MRI of Claimant's neck (February 2012) (APA P. 59-61) and he recommended surgery immediately for fear of paralysis absent the surgical procedure. (APA P. 3). Surgery was performed on Sept. 26, 2012 (APA P. 6-8) and Dr. Boyd specifically stated he found a fresh bone fragment in Claimant's neck and opined to a reasonable degree of medical certainty that the recent trauma was the most likely cause of the acute neck issue. (APA P. 67) Plaintiff has not reached MMI at this time.

The Hearing was to determine compensability only and was conducted on December 10, 2012. Employer/carrier argued that Compensability should be denied. The focus of the Employer's argument was an allegation that Claimant intended harm during the altercation and benefits should be barred pursuant to SC Code Ann. §42-9-60 as set forth in its pre-hearing brief. (APA P. 74) Employer/Carrier offered no medical evidence from differing physicians for the record related to causation. The Hearing Commissioner determined that the evidence did not support a finding of intended injury to himself or others pursuant to SC Code Ann. §42-9-60. (Order P. 12, 16 as attached) However, the Hearing Commissioner ruled that the medical evidence did not support that Claimant's injuries were caused by the altercation. (Order P. 12, 16) Claimant's position is that the Hearing Commissioner erred in finding no causation when the only evidence in the record overwhelmingly supports causation.

CHRONOLOGY UNDISPUTED IN THE RECORD:

- 2004: William Miller was hired by Employer. (Tr. P. 9)³
- 2011: Claimant diagnosed with spinal (foraminal) stenosis and disc herniation. Caused

³Subsequent to his hire, in 2009 and early 2011 there is evidence of two disciplinary actions involving verbal arguments with co-workers. These are set forth in the record.

intermittent pain, shooting sensations other symptoms. (APA P. 27-67)(Tr. P. 27 L. 7-8)

- January 2012: Claimant given a 7% merit promotion and the manager's statement: "Billy is a very good mechanic..." (Tr. P. 152, L. 9-24; Oxendine)

- August 15 2012: Altercation with acting supervisor. (Raulerson) Claimant pushed against a wall and heard his neck "pop." Claimant punched Raulerson at end of altercation. Both men suspended.

- August 16 through 21st, 2012: Claimant suspended 4 work days. Claimant's neck became worse with numbness in hands, leg, brain freeze and shooting pain. (Tr. P. 22 L. 5-19)
Claimant's wife observes symptom manifestations independently tries to get Claimant to go to the Doctor. (Tr. P. 78 L. 16-25; P. 79 L. 1- 10)

- August 22nd, 2012: Claimant returned to work and informed his supervisor (Sloan) that he had been hurt (neck) in the incident and asked his supervisor to go to the doctor. Sloan stated he would "take care of it." (Tr. P. 23 L. 4-20) Claimant not sent to the doctor.

- August 23rd - August 26th: Claimant returned the following day but stayed out that weekend and the pain and lack of movement increased to the point that Claimant decided, along with his wife, that he would have to see a doctor that Monday (27th Aug). (Tr. P. 24) (Tr. P. 80 L. 1- 19)

- August 27 2012: Claimant's wife made an appointment Monday (27th Morning) for 1:00 pm that day (27th) with Dr. Levinson. (Tr. P. 80) Claimant told his supervisor (Sloan) that he was going to leave work early to go to the doctor. (Tr. 25 L. 1-7) Claimant went to the physician and he (Dr. Levinson) prescribed medications and an MRI and wrote Claimant out of work. (APA P. 70)(Tr. P. 80 L. 23, 24)

- August 28, 2012. Tuesday. Claimant was driven by his wife prior to working hours to deliver the physician note. (Tr. P. 81 L. 1-5) Claimant gave the Safety Director (Myron Samuels) a copy of the medical leave note and his written statement about what happened the day of the altercation. (15th August)(Tr. P. 30) Claimant also gave his direct supervisor the note and Sloan stated that he was glad Bill (Claimant) went to the doctor.(Tr. P. 31 L. 18-25 P. 32 L. 1- 4)

- August 29, 2012. Claimant contacted by employer and told he was terminated effective August 27, 2012 for insubordination. (Tr. P. 31 L. 8-25)

MEDICAL CHRONOLOGY/RECORDS:

- August 27, 2012: Dr. Levinson (Family physician) "He (Claimant) **presents with neck pain as a result of his assistant supervisor pushing him against the wall..**" - - **"Additionally, he presents with history of neck pain.** The location of discomfort is posterior." "The pain is characterized as severe, stabbing, and patient states it feels like a knife is slicing doen (sic) his neck. Initial onset was two weeks ago. ... His assistant manager pushed him up against the wall and patient felt and heard a pop in his neck. He (Claimant) also states he has the sensation of

a “brain freeze” as a result of this.” (APA P. 40) “Out of work until I see him back in 8 days.” (APA P. 42, 43)(APA P. 73)

- September 4, 2012: Dr. Levinson follow up visit: Pain medication **prescribed and Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical prescribed.** (APA P. 38) Palmetto Imaging MRI study conducted. (APA P. 135)

- September 13, 2012: Dr. Levinson follow up visit: record states. “Bill (Claimant) presents with diagnosis of cervical disc extrusion. **This was diagnosed 09/05/2012.** The course has been progressively worsening. It is of severe intensity. Prior work-up has included a Cervical spine without contrast MRI (results: central disc extrusion at C6-7 causing severe central canal stenosis with cord compression). **The left central/foraminal component has contracted in the interval since prior study.** There is no residual left neural foraminal stenosis.” (APA 32) Recommend neurosurgical evaluation / Boyd. (APA. P. 35)

- September 19, 2012: Dr. Boyd initial visit. “Mr. Miller is a 46 year old heavy equipment operator who stated that on August 15th he was pushed against the wall by his supervisor. He felt an immediate pop in his neck. He states that shortly after that he had severe neck pain and stiffness and began developing numbness, tingling and weakness in his arms. This has progressed since the incident. He has constant numbness in his hands. He can not move his neck because of severe stiffness.” “... He (Claimant) states that in the past he has been diagnosed with cervical stenosis and probably also has degenerative disc disease. He states that he was doing fine with his neck until this incident” (APA P. 2)

(Boyd Continued) “MRI of the cervical spine done at Palmetto Imaging shows a large C6-7 disc herniation with **extruded fragment** that has migrated slightly cephalad. This causes significant central canal stenosis and cord compression. I believe on the T2 weighted sagittal images there is some suggestion of high signal in the cord. **This is compared to a February 18 (sic) 2012** (APA P. 136) **study that apparently showed a left central and foraminal disc protrusion at C6-7 but that has contracted since the previous study.**” (APA P. 2)

“He (Claimant) has a disc herniation with **extruded fragment** causing cord compression and I believe some signal change in his cord. He (Claimant) is hesitant to consider surgery and I have been careful to explain the **risks of not doing surgery which would include paralysis.**” (APA. P. 3)

- September 26, 2012: Spine Surgery, Dr. Scott Boyd: ... “Radical discectomy was performed and there was a large central defect in the posterior annulus ligament. **A single large fragment of soft disc material was pulled through this opening** and represented all of the large disk fragment noted on preoperative imaging.” (APA P. 6-7)

- October 8, 2012: Dr. Levinson follow up visit. (APA P. 28)

- October 22, 2012: Dr. Boyd follow up visit. (APA P. 4)

- November 11, 2012: Dr. Boyd reports through a questionnaire that the patient (Claimant)

reported that he had an altercation and heard a pop in his neck and this report of trauma was consistent with the injury to his cervical spine which required surgery. (APA. P. 69) Further, the Neurosurgeon states specifically in the record that based on his review of the records, the radiographic study of 9/4/12, information gained during the surgery and the discussions with and statements by the patient (Miller) that **the injury most probably occurred as a result of recent trauma to the neck/spine.** Dr. Boyd included a statement that he found a “**very large, fresh/acute disc fragment compressing (the) spinal cord.**” (APA P. 68 ¶ 4) Dr. Boyd stated his opinions to a reasonable degree of medical certainty. (APA P. 67-69)

DISCUSSION OF RELEVANT UNDISPUTED FACTS:

Although a great part of the record and almost the entire transcript deals with facts associated with the altercation, the Hearing Commissioner ruled that Claimant was not excluded from benefits pursuant to S. C. Code Ann. §42-9-60⁴ as he did not find that Claimant intended to injure himself or others. (Order P. 12 ¶8)⁵ The altercation was spontaneous and occurred between co-employees lasting from one to two minutes. The Commissioner did not find compensability, however, based on his reading of two MRI reports, stating that they were nearly identical. (Order P. 11 ¶ 4 P. 16 note) The Hearing Commissioner found that, based on the medical records he can not speculate that the altercation caused the neck surgery and related physical issues.

It is not and has never been disputed that Claimant had been diagnosed with spinal stenosis, a narrowing through the spine or portions of the spine.⁶ (Tr. P 27) Just after the altercation and the day of his return from suspension (August 22), well prior to his termination, it

⁴The Hearing Commissioner did provide for the drafting of the Decison/Order that he (Commissioner) found that the Claimants version of the altercation (that Claimant swung and punched the other employee) after hearing his neck pop was not credible. (Order P. 16)

⁵The Hearing Commissioner’s noted findings state “when I review the 2 MRIs (the one prior to the alleged accident and the one after the alleged accident), they strike me as nearly identical. I can not speculate that this incident caused the Claimant’s current problems.” (Order P. 16 as attached)

⁶It is common medical knowledge that stenosis of the spine creates greater risk of spine injury.

is undisputed that Bill Miller told his supervisor (Sloan) that he had been hurt in the scuffle and his neck was in great pain. (Tr. P. 23 L. 7-15) He (Claimant) asked for the supervisor (Sloan) to send him to a doctor and Sloan stated he would take care of it. (Tr. P. 23) The stiffness, pain and other symptoms got worse while Claimant waited for the Employer to send him to its doctors.(Tr. P. 23-25) The Employer never did send Claimant to a doctor. Finally, over the weekend of August 25, 26, Claimant and his wife decided to make an appointment with their family (internist) physician.(Tr. P. 25, 26) It is undisputed that Mr. Miller went to work that morning, August 27th, and told his supervisor (Sloan) that he would be leaving early for a doctor's appointment. (Tr. P. 25 L. 1-10) It is undisputed that Mr. Miller went to the appointment and was prescribed medications, given an "out of work slip" (APA 70) and prescribed an MRI for the cervical spine.(APA : P. 40-44)(Tr. P. 26, 27) It is further not disputed that Claimant was driven to work the following morning and Claimant gave the physician's excuse to the safety manager (Tr. P. 30) and his direct supervisor, Sloan, along with his written statement of what happened during the incident.(APA P. 30) It is further not disputed that Sloan, his direct supervisor, stated that he was glad Bill (Claimant) was going to the doctor.⁷ Two days later⁸ Claimant was informed he was terminated effective the prior Monday (August 27)(Tr. P. 32)(APA P. 92)

The medical facts in the record are not disputed. Claimant was in an altercation on August 15 and he heard/felt his neck pop. It has never been disputed that Claimant had been diagnosed with prior neck issues including spinal stenosis and related symptoms. There is not

⁷ Employer's manager Oxendine stated that Claimant was angry that day and assumed it was because he was treated differently than the other employee in the altercation. However, Oxendine had no knowledge that Claimant had been asking about going to a physician and was angry that the Company had not sent him to a doctor. (Tr. P. 149 L. 17-25, P. 150 L. 1-12)

⁸The Employer witness statements were all taken later on the 28th of August.

disputing evidence that Claimant came into work each day prior to the altercation although he did have back and neck pain in the year prior and sought treatment for those symptoms.(APA P. 27-67) He (Bill Miller) had an MRI of the neck in February 2012, seven months prior to the altercation. These facts are clear in Claimant's testimony and he (Claimant) informed his neurosurgeon of the prior diagnosis and issues as noted in the records.(APA. P.2, 3)

DISCUSSION / ARGUMENT

1) The Hearing Commissioner erred in finding that Claimant's acute spine injury requiring neurosurgery subsequent to the physical altercation at work were not causative when Claimant's neurosurgeon (Dr. Boyd) provided his medical opinion, to a reasonable degree of medical certainty, that the altercation trauma most likely did cause the spinal injury and he specifically described the "fresh/acute bone fragment" he found in Claimant's neck during surgery especially in light of the fact that there is contrary medical evidence or opinion or non medical fact indicating another cause for the injury.

The Hearing Commissioner in his initial ruling note stated as follows:

"This case turns mainly on the medical reports. When I review the 2 MRIs (the one prior to the alleged accident and the one after the accident), they strike me as nearly identical. I cannot speculate that this incident cause the Claimant's current problems."(Commissioner findings Order P. 12 and 16)

In essence, the Hearing Commissioner interpreted two reports of MRIs to determine that there was no causation. The actual images were not part of the record and the Commissioner could not have actually viewed the images to make a comparison. It is not disputed that Bill Miller, prior to knowledge of his termination, informed his physicians that his neck had been doing well prior to the incident on August 15th and each physician specifically notes the incident in his own medical records. (APA P. 40, 41: Levinson)(APA P. 2, 3: Boyd)

The only two physicians who saw the Claimant after the incident did review and contrast the two MRIs, both the images and the reports. Dr. Levinson (internist) did so on September 13, 2012. Dr. Levinson stated:

"Bill (Claimant) presents with diagnosis of cervical disc extrusion. **This was diagnosed**

09/05/2012 (after altercation). The course has been progressively worsening. It is of severe intensity. Prior work-up has included a cervical spine without contrast MRI (results: central disc extrusion at C6-7 causing severe central canal stenosis with cord compression). **The left central/foraminal component has contracted in the interval since prior study.** (APA. 35)

Dr. Levinson had ordered and reviewed the first MRI in February 2012. After reviewing the September (post incident) MRI, he referred Mr. Miller to a neurosurgeon, Boyd. Dr. Boyd states in the records:

“He (Claimant) presents with neck pain as a result of his assistant supervisor pushing him against the wall..” - - “Additionally, he presents with history of neck pain. The location of discomfort is posterior.” “The pain is characterized as severe, stabbing, and patient states it feels like a knife is slicing down (sic) his neck. Initial onset was two weeks ago. ... His assistant manager pushed him up against the wall and patient felt and heard a pop in his neck. He (Claimant) also states he has the sensation of a “brain freeze” as a result of this.” (APA. P. 40) “Out of work until I see him back in 8 days.” (APA P. 42, 43)(APA P. 73)

Some of Claimant’s symptoms had been recorded in the past but many are new symptoms never before articulated by Claimant prior to the incident. Dr. Levinson referred Mr. Miller (Claimant) to a neurosurgeon; (Dr. Boyd) Dr. Boyd in his first interview states as follows:

“Mr. Miller is a 46 year old heavy equipment operator who stated that on August 15th he was pushed against the wall by his supervisor. He felt an immediate pop in his neck. He states that shortly after that he had severe neck pain and stiffness and began developing numbness, tingling and weakness in his arms. This has progressed since the incident. He has constant numbness in his hands. He can not move his neck because of severe stiffness.” “... He (Claimant) states that in the past he has been diagnosed with cervical stenosis and probably also has degenerative disc disease. He states that he was doing fine with his neck until this incident” (APA P. 2)

As is apparent in the notes, Claimant clearly informed Dr. Boyd about prior diagnoses and neck issues but states also that his neck had been doing fine recently until this incident. Dr. Boyd then discusses the comparison of the two actual images (prior image in February of 2012) and the recent post accident MRI (September 2012) The Neurosurgeon compares as follows:

“MRI of the cervical spine done at Palmetto Imaging shows a large C6-7 disc herniation with **extruded fragment** that has migrated slightly cephalad. This causes significant central canal stenosis and cord compression. I believe on the T2 weighted sagittal images there is some suggestion of high signal in the cord. **This is compared to a February 18 (sic) 2012 (APA P. 136) study that apparently showed a left central and foraminal disc protrusion at C6-7 but that has contracted since the previous study.**” (APA P. 2)

It is clear that the neurosurgeon actually viewed the MRI and compared the images, not just the reports. Dr. Boyd states that the MRI images are not identical. The Hearing Commissioner simply compared two written reports of the MRI (pre and post accident) without the images and made what was in essence a medical conclusion. Dr. Boyd reviewed both the images and reports and immediately prescribed a neck cast/brace to completely limit Claimant's head movement and recommended surgery stating that time was of the essence and failure to undergo surgery could result in paralysis. (APA. P. 3)

In this matter, Claimant provided expert opinion evidence, to a reasonable degree of medical certainty, that the push against the wall by his supervisor, when Claimant felt/heard his neck pop was the likely trauma that created the acute injury to the neck requiring surgery. (APA 67-69 Dr. Boyd) The initial treating physician (Levinson) also notes that the injury was caused by the altercation in his records. Absent opposing evidence in the record, expert medical opinion from a treating physician or physicians are entitled great deference and should only be dismissed if there is other competent evidence in the record. *Lorick v. S.C. Elec. & Gas Co.*, 141 S.E.2d 662 (SC 1965)(medical causation should be established with expert opinion in all but simple cases); *Ballenger v. Southern Worsted Corp.*, 40 S.E.2d 681 (SC 1946). Further, expert testimony is necessary when the subject matter falls outside of the realm of the general public. 5 *Star, Inc. V. Ford Motor Co., Inc.*, 718 S.E.2d 220 (SC App. 2011) Claimant had neck issues prior to the injury and he been diagnosed with spinal stenosis, making his spine more susceptible to injury. *Hargrove v. Titan Textile Co.*, 599 S.E.2d 604 (SC Ct. App. 2004)(employer takes the employee as it finds him or her); *Brown v. R.L. Jordan Oil Co.*, 353 S.E.2d 280 (SC 1977)(a work related accident which aggravates or accelerates a pre-existing condition, infirmity or disease is compensable)

The Hearing Commissioner did not consider that there was no medical opinion in the

medical record which disputes causation. The only credible and admissible evidence as to the medical cause of the injury is through the physician records, notes and hearing testimony. Each treating physician stated that Claimant's condition was new / altered subsequent to the recent trauma in which Claimant heard/felt a "pop" in his neck. The Commissioner need not speculate about the cause of the spinal condition after the injury as both physicians diagnosed it as an acute condition from trauma which had changed from the Claimant's condition prior to the altercation. The only conclusion which could be drawn from the evidence in the record is that the workplace altercation was the cause of the break or dislodgement of the bone fragment requiring surgery.

2) The Hearing Commissioner erred in making a specific expert medical determination in his findings, that the February 2012 and September 2012 MRI reports were virtually identical and therefore finding causation did not exist, when the neurosurgeon (Dr. Boyd) specifically reviewed not only the reports but the actual images themselves and actually saw the dislodged bone fragment during surgery.

In this matter, the Hearing Commissioner reviewed two MRI reports and then determined that the medical evidence did not support a finding of causation. (Order P. 12, 16 as attached) Certainly, if opposing expert testimony is offered, a lay fact finder can make a determination as to a complex medical issue. In this matter, however, there is no opposing or contrary medical evidence or opinion. Further, not only do the treating physicians have the requisite medical knowledge to make such a review but they also were able to review the actual MRI images. Such images were not available to the Hearing Commissioner. The initial treating physician states clearly that the extrusion was diagnosed in September of 2012, after the incident. (APA P. 35)

"Bill (Claimant) presents with diagnosis of cervical disc extrusion. **This was diagnosed 09/05/2012.** The course has been progressively worsening. It is of severe intensity. Prior work-up has included a cervical spine without contrast MRI (results: central disc extrusion at C6-7 causing severe central canal stenosis with cord compression). **The left central/foraminal component has contracted in the interval since prior study.** "

The treating neurosurgeon had the benefit of medical training, the actual MRI images to contrast and, most importantly, Dr. Boyd was the only person or surgeon to actually open up the patient (Claimant) and see what had actually happened during surgery. He states as follows:

November 11, 2012: Dr. Boyd reports through a questionnaire that the patient (Claimant) reported that he had an altercation and heard a pop in his neck and this report of trauma was consistent with the injury to his cervical spine which required surgery. (APA P. 69) Further, the Neurosurgeon states specifically in the record that based on his review of the records, the radiographic study of 9/4/12, information gained during the surgery and the discussions with and statements by the patient (Miller) that **the injury most probably occurred as a result of recent trauma to the neck/spine.** Dr. Boyd included a statement that he found a **“very large, fresh/acute disc fragment compressing (the) spinal cord.”** (APA P. 68 ¶ 4) Dr. Boyd stated his opinions to a reasonable degree of medical certainty. (APA P. 67-69)

The finding of the Hearing Commissioner is contrary to the stated opinion of the neurosurgeon and is based, as stated in the record, on the Hearing Commissioner's own interpretation of the MRI reports in the record. A non-physician finder of fact, especially when not in possession of the actual MRI images, may not determine his own medical opinions related to a complex medical issue when the record contains no opposing medical or expert evidence. Further, a non medical fact finder should defer to a physician who has actually viewed the spine issues directly during surgery.

Virtually the entire substance of the hearing and Employer's APA was about the altercation.⁹ Most of the factual recitations in the Decision and Order also relate to the altercation and the Hearing Commissioner finds in his Order that the Claimant's version of the events of the altercation were not credible in light of the Claimant's testimony that he struck the other employee after, rather than prior to, being pushed against the wall. There is no conflicting evidence¹⁰ in the record, however, that Claimant was in fact pushed against the wall by Raulerson;

⁹The employer also provided allegations of discipline more than year prior to the August 2102 injury.

¹⁰Both Claimant and Raulerson as well as the other witnesses seeing that portion of the event testified to the push into the wall. Raulerson states, however, that the push was after the

a 340 pound man. (Tr. P. 112 L. 16, 17) There is no conflicting evidence that Claimant had been diagnosed with spinal stenosis prior to the accident and had symptoms of neck and upper back pain in the past year and a half.¹¹ (APA p. 2, 3)(Tr. P. 27) There is no conflicting evidence in the record that Claimant heard and felt a neck pop during the altercation and after that point began having pain, numbness in limbs, brain freeze, reduced movement and other symptoms. (APA 2, 6, 40-44) There is no evidence of any kind disputing that Claimant (Miller) upon his return to work informed his direct supervisor (Sloan) that his neck was in pain from the incident and that he wanted to be sent to the doctor. There is no dispute that Claimant's condition worsened over the next several days as testified to by the Claimant and his wife. No disputing evidence exists that Claimant went to his own physician seeking treatment, prior to his termination or knowledge that he might be terminated, and reported the incident and symptoms to the physician. (APA P. 40-44) Finally, there is no dispute that his physician (Levinson) ordered an MRI and medications for pain on the 27th and wrote the Claimant out on that day. The sequence of the altercation is not relevant to causation.

It is certainly not disputed that after Claimant met with Dr. Boyd he was required to wear a full (no motion) neck brace and then undergo surgery on his neck/spine because a fragment had been broken loose. (APA P. 2, 6-7, 67-69) Again, although there are some disputes in the record about the specific events and chronology of the altercation itself, there are no facts in evidence from which the Commissioner could determine that the push against the wall was not the likely cause of the breaking or dislodgement of the disc fragment. The Hearing Commissioner made a lay determination of a complex medical issue contradicting the only physicians in the record and did so without the actual images, without direct information from doing the surgery

punch by Claimant. (Tr. P. 108-118)

¹¹Claimant was treated through steroid injections which did alleviate the symptoms for a period of time.

and without supporting medical opinion, medical evidence or non medical evidence.

3) The Hearing Commissioner erred in considering differing testimony regarding the sequence of events recited by the parties to the altercation in making a finding on causation when such facts are not relevant to the issue of causation and the employee witnesses actually support the Claimant's chronology of events.

The major portion of the findings and recitations of fact in the Order relate to the specific events and chronology of the altercation. The Order further recites allegations brought up by the Employer including remote in time prior disciplinary actions and anecdotes unrelated to the incident. It is not disputed, however, that Mr. Miller was an employee at the time of the altercation and the most recent employment action by the Company was a large merit increase in pay and the statement that William Miller (Claimant) was a very good welder. (Tr. P. 152) As it appears the Hearing Commissioner determined that the chronology of the altercation was not as stated by Mr. Miller and such determination was set forth in the Order and considered in determining causation, a review of the testimony is necessary.

A review of the record testimony indicates that the altercation events and chronology were actually not as highly disputed as suggested in the Order. The major events occurred as follows:

1) Mr. Miller (Claimant) and others were discussing whether power would be out in the plant that weekend when Raulerson came up.

Miller: (Tr. P. 10) Steve (Raulerson) walked up asked if there was a problem. Miller said they were talking about power being on or off and Raulerson initially disagreed and then agreed. Miller said "Huh" and walked toward the bathroom. Raulerson followed him.

Raulerson: (Tr. P. 110, 111) Raulerson agrees that he walked in toward the end of the conversation about power. He states Miller said something under his breath and Miller went toward the bathroom and he, Raulerson, followed him asking what his (Miller's) problem was.

The witnesses who state they witnessed this portion of the altercation event agree that there was a discussion about power, Miller walked away toward the bathroom and Raulerson pursued him. (Tr. P. 89-134)(APA. P. 82-87)

2) Only the two employees (Miller and Raulerson) were in the bathroom and the stories are not

identical. (Tr. P. 111, 112)

Raulerson: Admits to following Miller into the bathroom exchanging some "words," sticking his fingers in Miller's chest. Miller then went to get around Raulerson (a much bigger man at 340 lbs) and there was contact. Raulerson states that Miller went out of the bathroom and he (Raulerson) followed him out. (Tr. P. 114) Both Miller and Raulerson and all relevant witnesses state that they were yelling and cursing each other.

3) The third and final portion of the event is agreed by all to be out in the hallway.

Miller: Claimant stated that he went out of the bathroom and his back was to the wall in the hallway. (Tr. P. 15 L. 1-3) Miller testified that Raulerson then shoved him into the wall and he felt and heard his neck pop. Raulerson then appears to want to lunge at him again and he punches him. (Tr. P. 15)

Raulerson: Stated that Miller was in fact on the wall facing him from the doorway. (Tr. P. 114 L. 19-24) However, Raulerson testified that he did not lunge at Miller until after Miller punched him and Raulerson testified that he told Miller to go ahead and hit him prior to Miller actually punching him. (Tr. P. 115)(APA P. 83) Raulerson then stated that he pushed Miller against the wall with both hands. (Tr. P. 116 L. 9-11) Raulerson's testimony was somewhat different than his statement made on Aug. 28. (APA P. 83)

The chronology of the push and punch or vice versa is the only significant contested fact in the matter and this fact, regardless of which version is believed, is not relevant to causation. The Hearing Commissioner stated in the record, however, that he believed the witnesses were more credible on this issue. The witnesses, all still employed with the Employer at the time of hearing, did testify about the final event in the hallway and they provided evidence about the sequence of events that supported Miller's version.

Ingle: Brian Ingle stated in his statement that "Steve and Bill" were pushing each other and then Bill (Miller) hit and kicked Steve and Bill said don't hit me I have a bad neck and the fight was broken up. (APA. P. 84) In Hearing Ingle testified that the pushing and shoving was before the punch. A. "Then I saw Bill (Claimant) kick him" Q. Okay, that was after the pushing and shoving then, wasn't it? A. No verbal response. Q. Yes sir? A. Yes sir. (Tr. P. 99 L. 10-18)

Jackie Osborne: "I turn to see Steve Raulerson and Bill Miller face to face yelling at each other. Bill Miller stated quit pushing me I've got a bad back and neck while bellying up to Steve pushing each other a couple more times. Steve stated I know you want to hit me so go ahead. Then all at once Bill punch Steve in the face, Steve step forward, Bill kick him in the belly. Bill back out into the maintenance shop where Jason Frye steps in front of Bill and I step in front of Steve to stop the fight. (APA P. 85)

Jason Frye: "...Steve shoved Bill (Miller) back. Bill punched Steve in the mouth with his right hand. Steve stood fast. I ran out of the Mechanic's room pushing Bill back, and as soon as I got enough room to do so I got my other arm out to hold Steve back.(APA P. 86 Para. 7) Frye testified at the Hearing that Raulerson pushed Bill into the wall from the restroom door and he (Miller) hit the wall. (Tr. P. 132 L. 7-15) It was after the pushing and impact that Miller hit Steve. (Tr. P. 132 L. 16-21)

All the witnesses that testified to the event all stated that the punch by Miller was after the pushing and after Mr. Miller's impact with the wall. Although the chronology of the events of the fight are not relevant as to causation in this matter, the Hearing Commissioner may not have had the time to review the transcript and the witness testimony and statements or may have misheard the witnesses. This issue appears to be the focus of Commissioner's determination that the Claimant was not credible. The witnesses clearly indicate in statements within the record and in testimony that the punch by Miller was in fact after the push and all state that immediately after the punch of Raulerson by Miller the fight was broken up.

Although all witnesses as well as the parties directly involved in the altercation have somewhat different versions of the events, the fact of the push by Raulerson and the wall impact is not disputed in the record by any witness or statement. It is certainly possible and even likely that none of the witnesses intentionally made false statements about this event. The altercation was spontaneous and viewed and perceived from many different angles and perspectives. The Hearing Commissioner erred in apparently determining that Claimant did not suffer an injury based on his testimony related to the sequence of events.

CONCLUSION:

The Workers' Compensation Act is remedial legislation which is entitled to a liberal construction in order to accomplish the ends and purposes for which the Act was enacted.¹²

¹²*Flemon v. Dickert-Keowee, Inc.*, 199 S.E.2d 751 (SC 1972); *Baldwin v. Pepsi Cola Bottling Co.*, 108 S.E.2d 409 (SC 1959)

Claimant injured himself in a work related altercation and injured his neck/spine, already diagnosed with spinal stenosis, when a piece of the spinal disc lodged in the column. He reported the injury, requested the Company send him for care, then went to his family physician. He required a neck brace then spinal surgery within weeks of the injury. The medical evidence in the record contains expert opinion from the surgeon stating the most likely cause of the acute, dislodged bone fragment in the neck and need for surgery was the altercation and impact with the wall. There is no medical evidence or opinion contrary to that determination.

The only substantial evidence in the record demonstrates that Claimant injured himself in the altercation on August 15, 2012, including his acute spinal injury requiring surgery.

Claimant's injury is Compensable under the Act.

Respectfully Submitted,

By:

J. Charles Ormond, Jr.

Holler Garner Corbett Ormond Plante & Dunn
1777 Bull Street at Laurel
P.O. Box 11006
Columbia, SC 29211
803) 765-2968 //933-9000

March 24, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1213162

WILLIAM E. MILLER, JR.,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

GREAT AMERICAN INSURANCE
GROUP C/O STRATEGIC COMP
SERVICES

Carrier,

Defendants.

DEFENDANTS' REPLY BRIEF

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND J.
CHARLES ORMOND, JR., ESQUIRE:

COME NOW Defendants Owen Steel Company, Inc. and Great American Insurance
Group c/o Strategic Comp Services, by and through the undersigned attorney, and would reply to
Claimant's Brief on his Request for a Full Commission Hearing.

STATEMENT OF THE CASE

Claimant filed a Form 50 alleging an injury by accident on August 15, 2012. Claimant
alleged that he suffered injuries to his head, back, and neck with radicular symptoms to his arms
and legs as a result of a fight between himself and Mr. Steve Raulerson. Claimant sought
permanent and total disability for his injuries. In addition, Claimant sought payment of
temporary total disability from the date of accident and payment of all causally related medicals.

Defendants denied the claim because they disputed that Claimant's injuries were a result of an accident within the course and scope of his employment. Defendants also contended that Claimant was barred from recovery under S.C. Code Ann. § 42-9-60 on the grounds that, if Claimant were injured during the altercation, the Claimant's injury was the result of his willful intent to injure Mr. Raulerson. Further, Defendants contended that, under S.C. Code Ann. § 42-1-160 and § 42-9-35, Claimant could not meet his burden of proving a compensable injury by accident or a compensable aggravation of a pre-existing injury.

A hearing on the Form 50 was held in December 2012. The Single Commissioner issued a signed Decision and Order on January 31, 2013. In that Decision and Order, the Single Commissioner denied compensability of Claimant's injuries based on a review of the medical records and the testimony received at the Hearing. Claimant timely filed a Form 30 on February 6, 2013. The Full Commission issued a Notice of Brief Request on March 6, 2013.

ISSUES ON APPEAL

- I. Did the Hearing Commissioner err in determining that Claimant's injuries and the neurosurgery undertaken subsequent to the physical altercation at work were not causative when Claimant's neurosurgeon (Dr. Boyd) has specifically given his medical opinion that the altercation most likely did cause the spinal injury to a reasonable degree of medical certainty and he specifically described the "fresh bone fragment" he found in Claimant's neck during surgery; the fact that Claimant's internist (Dr. Levinson) noted the spine injury was unique and indicated causation in his records, and; when there is no contrary medical evidence in the Record supporting or indicating another cause for the injury or that this altercation did cause the injury and subsequent medical treatment?
- II. Did the Hearing Commissioner err in making a specific expert medical determination in

his findings, that the February 2012 and September 2012 MRI reports were virtually identical, and therefore finding causation did not exist when the neurosurgeon (Dr. Boyd) specifically reviewed not only the reports but the actual images themselves and his records specifically indicate the difference in the images and Dr. Boyd specifically finds causation to a reasonable degree of medical certainty?

- III. Did the Hearing Commissioner err in apparently considering minor factual disputes between the parties in the altercation in making his finding, stated to be based solely on the medical records, of a lack of causation for the injury sustained after the altercation requiring surgery?

EVIDENCE OF THE CASE

TESTIMONY

Claimant is a forty-six (46) year old male with a high school diploma and approximately one and a half years of college education. (Hr'g Tr. 8:14-20). He has been employed with Owen Steel since 2004. (Hr'g Tr. 8:25 – 9:1). Claimant stated that his entire work history is comprised of working for companies as a welder. (Hr'g Tr. 8:21-23). With Owen Steel, Claimant was hired as a welder before he was promoted to a fabricator and then to the maintenance department. (Hr'g Tr. 9:4-11).

Claimant testified that he got into an altercation with Mr. Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25). Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant “[w]hat seems to be the problem?” (Hr'g

Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying "[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to "move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 – 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the fight was broken up. (Hr'g Tr. 16:14-17). Claimant testified that the entire fight

lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that he was briefly terminated following the Zimms altercation for throwing welding leads at Mr. Zimms. (Hr'g Tr. 50:23 - 51:7). Claimant testified that the reason he threw the leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation. (Hr'g Tr. 89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that prior to the August 15 altercation, Claimant and Mr. Raulerson had been in other arguments. (Hr'g Tr. 103:6-13). Specifically, Mr. Ingle recalled an argument one week prior where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 - 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart.

(Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that noticed Claimant "had his fists balled up" and told Claimant "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that he shoved Claimant against the wall after being struck by him. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement one week prior. He stated that Claimant had accused him of stealing from the fund that was used to pay for supplies for the break room. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset. (Hr'g Tr. 122:16-21).

Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a confrontation ensued. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk

about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 – 138:9).

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Claimant was saying to stop pushing him because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85). Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back." (APA p. 85).

MEDICAL EVIDENCE

Claimant stated that, after the fight with Mr. Raulerson, his neck began to get progressively worse. (Hr'g Tr. 22:10-12). He stated that he was having trouble sleeping, experienced numbness in his hands and leg, and had pain shooting down from his shoulders. (Hr'g Tr. 22:14-15). On the morning of August 27, Claimant informed his supervisor Mr. Sloan that he needed to go see a doctor and left work early for an appointment. (Hr'g Tr. 25:2-10). Claimant states that he also told Mr. Oxendine that he was upset because they were not making an effort to get him to a doctor. (Hr'g Tr. 25:17-18). He went to see Dr. Levinson and reported complaints of neck pain as a result of being pushed against a wall at work. (Hr'g Tr. 26:17-20).

Claimant testified that he has had prior neck and back issues. (Hr'g Tr. 26:24 – 27:1). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr'g Tr. 26:4-6). Prior to the alleged work accident, Claimant had received injections in his lower back and neck. (Hr'g Tr. 27:12-16). He stated that he was having the same symptoms before his alleged accident as he was having after. (Hr'g Tr. 28:2-5). However, Claimant testified

that the severity of the symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident, Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he was having back and neck pain prior to the August 15, 2012 altercation. (Hr'g Tr. 36:22 – 37:21, APA p. 131). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back issues. (Hr'g Tr. 38:1-16, APA p. 133). Claimant also testified that he had never been released by Dr. Levinson prior to August 15, 2012 and was still undergoing treatment for his back and neck issues. (Hr'g Tr. 39:6-15).

Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 – 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly worsening neck pain with severe intensity. (Hr'g Tr. 41:14-23, APA p. 106). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant again presented to Dr. Levinson and complained of the same symptoms from the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive

injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118). Claimant saw Dr. Levinson for the final time prior to the accident in July 2012. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p. 122). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of alleged accident, Claimant underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr. 66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from “using a jackhammer...[while] at work” (Hr'g Tr. 47:16-25). Claimant vehemently denied this statement and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

Mr. Raulerson testified that Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test. (Hr'g Tr. 120:14-19). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23).

LEGAL ARGUMENTS

I. THE HEARING COMMISSIONER DID NOT ERR IN DETERMINING THAT CLAIMANT'S ALLEGED INJURIES WERE NOT CAUSALLY RELATED TO A WORKPLACE ALTERCATION.

Findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See Palmetto Alliance,

Inc., v. S.C. Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

“...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. **A judgment upon which reasonable men might differ will not be set aside.**”

Id at 696 *referencing Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304, 307 (emphasis added).

Substantial evidence has also been defined as “...relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers’ Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. *See Armstrong v. Union Carbide, Inc.*, 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. Id. Workers’ Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat’l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) *rev’d on other grounds*.

The Hearing Commissioner did not err in determining that Claimant’s alleged injuries were not causally related to a workplace altercation where **Claimant testified that he has a history of prior neck and back issues.** (Hr’g Tr. 26:24 – 27:1) (emphasis added). He also stated that Dr. Levinson is one of the doctors that he has treated with for prior neck and back issues. (Hr’g Tr. 26:4-6). Prior to the alleged work accident, Claimant received injections in his lower

back and neck. (Hr'g Tr. 27:12-16). He stated that **he was having the same symptoms before his alleged accident as he was having after.** (Hr'g Tr. 28:2-5) (emphasis added). However, Claimant testified that the severity of the symptoms increased after the alleged accident. (Hr'g Tr. 28:5-7). Following the alleged accident, Claimant underwent an MRI. (Hr'g Tr. 29:16-17). After the MRI, Dr. Boyd recommended that Claimant undergo surgery for his ongoing back and neck issues. (Hr'g Tr. 33:13-17).

On cross-examination, Claimant admitted that he did not inform Dr. Boyd that he **was having back and neck pain prior to the August 15, 2012 altercation.** (Hr'g Tr. 36:22 – 37:21, APA p. 131) (emphasis added). Further, Claimant failed to notify Dr. Boyd that he had received prior treatment, including injections, for his neck and back issues. (Hr'g Tr. 38:1-16, APA p. 133) (emphasis added). Claimant also testified that **he had never been released by Dr. Levinson prior to August 15, 2012 and was still undergoing treatment for his back and neck issues.** (Hr'g Tr. 39:6-15) (emphasis added).

Dr. Levinson treated Claimant for back and neck pain beginning in September 2011. (Hr'g Tr. 40:9 – 41:2, APA p. 102). At that time, Dr. Levinson provided prescription medication to help Claimant manage his issues. (Hr'g Tr. 41:3-9, APA p. 102). **Claimant returned to Dr. Levinson in January 2012 for further treatment of rapidly worsening neck pain with severe intensity.** (Hr'g Tr. 41:14-23, APA p. 106) (emphasis added). Claimant described the pain as stabbing pain from his ears to his shoulder blades. (Hr'g Tr. 41:14-23, APA p. 106). In February 2012, Claimant again presented to Dr. Levinson and complained of the same symptoms from the January 2012 visit. (Hr'g Tr. 42:13-22, APA p. 111).

After the February 2012 visit, Claimant underwent an MRI. (Hr'g Tr. 42:22 – 43:1, APA p. 136-137). Dr. Levinson noted on February 16, 2012 that Claimant's MRI results revealed:

"1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.

2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with unconvertibral joint hypertrophy, left greater than right.

3. Congenital shortening of the pedicles."

Defendants' APA p. 117.

Following the MRI, Claimant again returned to Dr. Levinson for a follow up visit. During this visit, Claimant complained of neck pain radiating into the shoulders along with electric sensations down his arms and noted that lifting objects exacerbates the pain. (Hr'g Tr. 43:18 – 44:6) (emphasis added). After this visit, Dr. Levinson referred Claimant to Dr. Tony Owens to receive injections for pain management. (Hr'g Tr. 44:7-11).

In March 2012, Claimant returned to Dr. Levinson complaining of rapidly worsening neck pain of severe intensity. (Hr'g Tr. 44:18 – 45:8, APA p. 118) (emphasis added). Claimant saw Dr. Levinson for the final time prior to the accident in July 2012. (Hr'g Tr. 45:19-24, APA p. 122). On July 9, 2012, Claimant complained of a very tight back and neck with stabbing pain from the ears between the shoulder blades. (Hr'g Tr. 46:9-13, APA p. 122) (emphasis added). Dr. Levinson diagnosed Claimant with peripheral neuropathy that is rapidly worsening and of severe intensity. (Hr'g Tr. 46:13-15, APA p. 122). Claimant complained of the symptoms being constant and occurring for the majority of the day. (Hr'g Tr. 46:15-17).

After the date of alleged accident, Dr. Atchison issued a report on September 4, 2012 detailing the results of Claimant's MRI following the altercation. These results reveal that Claimant has:

"1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.

3. Congenital shortening of the pedicles."

Defendants' APA p. 135.

There is no question that the MRI report from prior to the August 15, 2012 altercation and the MRI report from after the August 15, 2012 altercation are nearly identical. Both Dr. Levinson and Dr. Atchison determined that Claimant had a disc extrusion at C6-7 causing severe canal stenosis with cord compression. Likewise, both Dr. Levinson and Dr. Atchison determined that Claimant had mild central canal stenosis at C5-6 and mild to moderate bilateral foraminal stenosis at C5-6. Dr. Atchison even notes that this is unchanged from the prior study:

Claimant underwent surgery with Dr. Boyd on September 26, 2012. (Hr'g Tr. 66:16-20). Following the surgery, Claimant returned to Dr. Levinson on October 8, 2012 complaining of lower back pain resulting from "using a jackhammer...[while] at work" (Hr'g Tr. 47:16-25). Claimant vehemently denied this statement and indicated that Dr. Levinson was lying. (Hr'g Tr. 48:2-15).

The Single Commissioner made the following findings of fact:

"4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as nearly identical. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation." (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that

Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 – Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, **Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to the alleged incident.** (APA p. 102, 106, 111, 118, 122)."

January 28, 2013 Decision and Order p. 11 (emphasis added).

In addition, Claimant testified at the hearing that he injured his neck **before** he threw a punch and kicked Mr. Raulerson. (Hr'g Tr. 15:9-12). The Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants...[t]his is **not believable testimony.**" (January 28, 2013 Decision and Order p. 12) (emphasis added). Further, the Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, **I do not fully believe Claimant's version of events in this case.**" *Id.* (emphasis added). Finally, the Single Commissioner found that "...the employer witness testimonies as a whole are more believable than Claimant's testimony." *Id.*

Mr. Raulerson testified that **Claimant had mentioned on two previous occasions that his back was bothering him and that he wouldn't be able to do a test.** (Hr'g Tr. 120:14-19) (emphasis added). He also specifically recalled one incident where he informed Claimant to only do what he could do and not to reinjure himself. (Hr'g Tr. 120:20-23).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other

and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). **Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back.** (APA p. 84) (emphasis added).

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). **Claimant was saying to stop pushing him because he had a bad back.** (APA p. 85) (emphasis added). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85).

Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. **He did hear Claimant say "Don't hit me, I've got a bad neck and back."** (APA p. 85) (emphasis added).

This finding of fact is an example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] judgment upon which reasonable men might differ will not be set aside." Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) (emphasis added).

The Commissioner was presented with a Claimant who has a history of severe ongoing back and neck problems as recently as one month before the altercation, was actively treating for the back and neck problems at the time of the altercation, complained to coworkers of the back and neck problems prior to the altercation, and expressed during the altercation that he had back and neck problems. Further, the Commissioner had the results of two MRI reports that are nearly identical. Because he determined that to find the injuries occurred as a result of the workplace

altercation would be "pure speculation" and that parts of Claimant's testimony simply were "not believable," the Commissioner made the determination that the altercation was not the proximate cause of Claimant's alleged injuries. (January 28, 2013 Decision and Order p. 11 and 12). Rather, the Commissioner determined that the injuries were present before the altercation.

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Hearing Commissioner's Findings of Fact and Conclusions of Law related to the casual relationship of Claimant's alleged injuries and the workplace altercation should be affirmed.

II. THE HEARING COMMISSIONER DID NOT ERR IN MAKING A SPECIFIC DETERMINATION THAT THE FEBRUARY 2012 AND SEPTEMBER 2012 MRI RESULTS WERE VIRTUALLY IDENTICAL.

As noted above, findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *See Palmetto Alliance, Inc., v. S.C. Public Service Commission*, 282 S.C. 430, 319 S.E.2d 695

(1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. **A judgment upon which reasonable men might differ will not be set aside.**"

Id at 696 *referencing Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304, 307 (emphasis added).

Substantial evidence has also been defined as "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Hunter v. Patrick Construction Company*, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers' Compensation Commission is the fact finder and

makes the final determination of witness credibility and the weight to be given evidence. *See Armstrong v. Union Carbide, Inc.*, 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. *Id.*

The Hearing Commissioner did not err in making a specific determination that the February 2012 and September 2012 MRI results were virtually identical. The factual background of Claimant's prior history with neck and back issues has been laid out in great detail above. For purposes of this section, the Respondents will only address the evidence related to the MRI reports and their similarities.

The Single Commissioner made the following findings of fact:

"4. This case turns mainly on the medical reports. When I review the two MRIs from before and after the alleged accident, they strike me as **nearly identical**. To say that the altercation in the workplace caused Claimant's alleged injuries would be pure speculation." (APA p. 135-137).

5. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, I find that Claimant's symptoms contained in the medical reports prior to August 15, 2012 closely mirror the symptoms complained of as an alleged result of the August 15, 2012 altercation. (APA p. 102, 106, 111, 118, 122, 127-130; Claimant's APA #1 – Dr. Boyd's records).

6. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, **Claimant complained of numbness, tingling, stabbing and rapidly worsening pain, tightness, and multiple other problems with this neck, back, and arms prior to the alleged incident.** (APA p. 102, 106, 111, 118, 122)."

January 28, 2013 Decision and Order p. 11 (emphasis added).

The Single Commissioner specifically relied on the previous and current MRI results in determining that the results were similar and, therefore, the alleged injuries were not the result of a work-related accident. Dr. Levinson noted on February 16, 2012 that Claimant's MRI results

revealed:

"1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.

2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with unvertebral joint hypertrophy, left greater than right.

3. Congenital shortening of the pedicles."

Defendants' APA p. 117 (emphasis added).

Dr. Atchison issued a report on September 4, 2012 detailing the results of Claimant's MRI following the altercation. These results reveal that Claimant has:

"1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.

3. Congenital shortening of the pedicles."

Defendants' APA p. 135 (emphasis added).

There is no question that the MRI report from prior to the August 15, 2012 altercation and the MRI report from after the August 15, 2012 altercation are nearly identical. Both Dr. Levinson and Dr. Atchison determined that Claimant had a disc extrusion at C6-7 causing severe canal stenosis with cord compression. Likewise, both Dr. Levinson and Dr. Atchison determined that Claimant had mild central canal stenosis at C5-6 and mild to moderate bilateral foraminal stenosis at C5-6. Dr. Atchison even notes that this is unchanged from the prior study.

Because the finding of fact and conclusion of law in issue is based on the evidence

presented at the hearing and the Single Commissioner provided rationale for his decisions, the Hearing Commissioner's Findings of Fact and Conclusions of Law related to Claimant's MRI reports and their nearly identical nature should be affirmed.

III. THE HEARING COMMISSIONER DID NOT ERR IN CONSIDERING FACTUAL DISPUTES BETWEEN THE PARTIES INVOLVED IN THE ALTERCATION IN MAKING HIS FINDINGS OF FACT RELATED TO CAUSATION AND CLAIMANT'S ALLEGED INJURY.

Claimant testified that he got into an altercation with Mr. Steve Raulerson on August 15, 2012 at around three o'clock in the afternoon. (Hr'g Tr. 9:17-23). At the time, Mr. Raulerson was an acting assistant supervisor for Owen Steel. (Hr'g Tr. 9:24-25). Claimant testified that he was speaking to Brian Ingle when someone from the paint shop approached and asked whether or not power would be on in the paint shop over the weekend. (Hr'g Tr. 10:7-10). At some point, Mr. Raulerson came into the area and asked Claimant "[w]hat seems to be the problem?" (Hr'g Tr. 10:12-14). Claimant stated that a discussion ensued about whether the power would be on over the weekend and that Mr. Raulerson initially disagreed with Claimant about the power. (Hr'g Tr. 10:15-20). At some point, Mr. Raulerson admitted that Claimant may be correct. (Hr'g Tr. 10:21-22). Claimant testified that he responded with "[h]uh" then got up and walked away into the bathroom. (Hr'g Tr. 10:23-24). Claimant stated that he made this comment because he felt Mr. Raulerson was questioning his intelligence. (Hr'g Tr. 11:5-6).

Claimant next testified that he was in the bathroom washing his hands when Mr. Raulerson got into his face and demanded to know what Claimant said. (Hr'g Tr. 11:14-18). Claimant alleged that Mr. Raulerson was "pounding his finger" into his chest and saying "[y]ou're going to listen to me. You're going to tell me what you said." (Hr'g Tr. 11:19-21). Claimant testified that he tried to leave the bathroom by walking past Mr. Raulerson. (Hr'g Tr. 14:10-13). During this process, Claimant stated that he put his hand up to "stiff arm him" to

"move him out of my way." (Hr'g Tr. 14:13-15). After trying to move Mr. Raulerson, Claimant stated that Mr. Raulerson shoved him. (Hr'g Tr. 14:17).

Throughout the confrontation, both Claimant and Mr. Raulerson were yelling at each other and exchanging curse words. (Hr'g Tr. 14:18-22). After getting around Mr. Raulerson, Claimant stated that he and Mr. Raulerson were in the hallway adjacent to the bathroom. (Hr'g Tr. 14:23 - 15:3). At this point, Claimant alleges he felt something in his neck pop after being shoved by Mr. Raulerson. (Hr'g Tr. 15:5-6). After feeling his neck pop, Claimant states that he saw Mr. Raulerson preparing to lunge at him and pre-empted this by punching Mr. Raulerson. (Hr'g Tr. 15:9-12). Claimant testified he did not recall kicking Mr. Raulerson but that it was possible that he did not recall kicking Mr. Raulerson. (Hr'g Tr. 16:1-3). After punching Mr. Raulerson, the fight was broken up. (Hr'g Tr. 16:14-17). Claimant testified that the entire fight lasted approximately one minute. (Hr'g Tr. 17:9-11).

On cross-examination, Claimant testified that he had been reprimanded in the past for getting into arguments with other employees and supervisors. (Hr'g Tr. 50:14-18). These incidents involved Mr. John Gardner and Mr. Cliff Zimms. (Hr'g Tr. 50:19 - 51:1). He was reprimanded for saying "Fuck You" to Mr. Gardner. (Hr'g Tr. 52:19 - 53:1). Claimant testified that he was briefly terminated following the Zimms altercation for throwing welding leads at Mr. Zimms. (Hr'g Tr. 50:23 - 51:7). Claimant testified that the reason he threw the leads at Mr. Zimms was because he got angry. (Hr'g Tr. 51:17-24). The incident report indicates that Claimant "...started having a fit, started throwing welding leads at Cliff Zimms." (Hr'g Tr. 74:17-20).

Mr. Brian Ingle testified on behalf of Claimant. Mr. Ingle is an employee of Owen Steel. (Hr'g Tr. 89:6-8). Mr. Ingle testified that he gave a statement following the altercation. (Hr'g Tr.

89:12-14, APA p. 84). Mr. Ingle stated that he saw Claimant and Mr. Raulerson pushing each other and then saw Claimant punch Mr. Raulerson and kick him. (APA p. 84). Following the kick, Claimant told Mr. Raulerson not to hit him because he had a bad back. (APA p. 84). Mr. Ingle also testified that prior to the August 15 altercation, Claimant and Mr. Raulerson had been in other arguments. (Hr'g Tr. 103:6-13). Specifically, Mr. Ingle recalled an argument one week prior where Claimant disagreed with letting Mr. Raulerson hold the money for the company canteen. (Hr'g Tr. 103:17-22). Finally, Mr. Ingle stated that Claimant had a reputation for having a temper. (Hr'g Tr. 104:5 – 105:1).

Claimant next called Mr. Steve Raulerson to testify. He stated that he confronted Claimant in the bathroom. (Hr'g Tr. 113:14-16). After Claimant exited the bathroom, Mr. Raulerson testified that he and Claimant were approximately two and a half to three feet apart. (Hr'g Tr. 115:9-10). Mr. Raulerson stated during his deposition that noticed Claimant "had his fists balled up" and told Claimant "if you want to hit me, hit me." (Hr'g Tr. 115:13-16; Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Hr'g Tr. 115:19-23; Raulerson Deposition Tr. 13:14-15). Mr. Raulerson testified that he shoved Claimant against the wall after being struck by him. (Hr'g Tr. 116:7-11). Finally, Mr. Raulerson testified about the disagreement one week prior. He stated that Claimant had accused him of stealing from the fund that was used to pay for supplies for the breakroom. (Hr'g Tr. 122:9-12). He stated that Claimant had a raised voice and was upset. (Hr'g Tr. 122:16-21).

Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. (APA p. 86). As he passed through Mr. Raulerson asked Claimant a question about the job. (APA p. 86). Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. (APA p. 86). Claimant ignored Mr. Raulerson at first

and then Claimant made a "smart aleck" reply to Mr. Raulerson. (APA p. 86). Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. (APA p. 86). Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. (APA p. 86). Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." (APA p. 86). Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth. (APA p. 86).

Mr. Frye also testified that he had been in a prior altercation with Claimant. (Hr'g Tr. 134:21 - 135:1). Mr. Frye testified that Claimant wanted him to get out of a seat so he could sit down. (Hr'g Tr. 135:11-12). When Mr. Frye did not get up, Claimant pinched him on the arm and a confrontation ensued. (Hr'g Tr. 135:15-18). Mr. Frye also testified that he heard Claimant talk about getting into a fight with his neighbor over a dog. (Hr'g Tr. 137:19 - 138:9).

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. (APA p. 85). Claimant was saying to stop pushing him because he had a bad back. (APA p. 85). Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." (APA p. 85). Claimant then punched Mr. Raulerson and kicked him in the belly. (APA p. 85). Claimant then left and walked back into the maintenance shop. (APA p. 85). Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. (APA p. 85). He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back." (APA p. 85).

Claimant testified at the hearing that he injured his neck before he threw a punch and kicked Mr. Raulerson. (Hr'g Tr. 15:9-12). The Single Commissioner found that "[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the

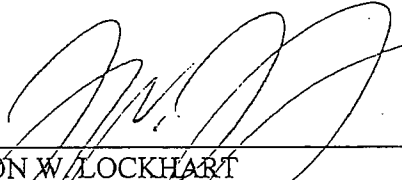
Claimant, and the testimony of the representatives of the Defendants...[t]his is not believable testimony.” (January 28, 2013 Decision and Order p. 12) (emphasis added). In addition, the Single Commissioner found that “[b]ased on the substantial evidence, including the medical records of the Claimant, the testimony of the Claimant, and the testimony of the representatives of the Defendants, I do not fully believe Claimant’s version of events in this case.” *Id.* (emphasis added). Further, the Single Commissioner found that “...the employer witness testimonies as a whole are more believable than Claimant’s testimony.” *Id.* (emphasis added). Finally, the Single Commissioner goes on to find that “[t]he record reflects that [Claimant] was written up several times for behavioral issues at work. Moreover, witness testimony confirms his temper and anger issues even outside the workplace.” (January 28, 2013 Decision and Order p. 12).

This is another example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, “[a] judgment upon which reasonable men might differ will not be set aside.” Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) (emphasis added).

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, including a determination of credibility based on live witness testimony, the Hearing Commissioner’s Findings of Fact and Conclusions of Law related to the factual disputes between the parties involved in the altercation should be affirmed.

CONCLUSION

For the foregoing reasons, the Single Commissioner's Decision and Order should be
AFFIRMED in full.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
April 1, 2013

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 12-13162
Carrier File # _____
Carrier Code # _____
(803) 737-5700 Employer FEIN _____

<u>William E. Miller Jr.</u>				<u>Owen Steel</u>					
Claimant's Name		SSN		Employer's Name					
<u>1499 Charleston Road Leesville, SC 29070</u>				<u>727 Mauney Dr. Columbia, SC 29201</u>					
Address		City	State	Zip	Address		City	State	Zip
<u>(803) 530-9446</u>		<u>NA</u>			Insurance Carrier: <u>Strategic Comp Services</u>				
Home Phone #		Work Phone #		Great American Ins. Group					
				<u>John Charles Ormond, Jr.</u>		<u>803-765-2968</u>			
				Preparer's Name		Phone#			

Provide the information requested in the space provided. Use additional sheet, if necessary. Type or print all information.
☒ Injury by Accident ☐ Occupational Disease ☐ Both Injury by Accident and Disease ☐ Other

1. Date of the accident: 8/15/2012
2. AWW: \$862.98 Comp. Rate: \$575.35 (per Form 20)
3. Type of injury and body part (s): Neck / spine - affecting arms legs
4. Facts in controversy: Compensability - Total Temporary Disability / Claimant not at MMI
5. Legal Issues Involved: Compensability: Youmans v. Coastal Petroleum Co., 508 S.E. 2d 43 (S.C. Ct. App. 1998); Thompson v. Cisson Construction, 659 S.E.2d 171 (SC Ct. App. 2008); Non - Payment of Total Temporary Disability: prior to MMI and 42-9-260; Martin v. Rapid Plumbing, 631 S.E.2d 547 (SC Ct. App. 2006); Last v. MSI Const. Co., Inc., 409 S.E.2d 334 (SC 1991); ///
6. Unusual problems: See Attached:
7. Witnesses (designate if expert)*: William Edward Miller / Talisa L. Miller / Steve Raulerson, Jackie Osborne, Ray Hollins, Jason Frye, Brian Ingle / // Benjamin Levinson MD* (treating internal medicine): Scott Boyd, MD.* (treating neurosurgeon).
8. Exhibits: SEE Attached list:
9. Medical evidence: (indicate report pursuant to R. 67-612; deposition or appearance) Reports and evaluation of treating physicians: Benjamin Levinson MD* (treating internal medicine): Scott Boyd, MD.* (treating neurosurgeon)
10. Name, address and speciality, if any, of the treating physician: Benjamin Levinson MD* (treating internal medicine): Scott Boyd, MD.* (treating neurosurgeon) (132 Sunset Court, West Columbia, 29169)
11. Impairment rating(s); body part(s); physician and date of opinion: Not Applicable at this time.
12. I am amending my Form 50 in the following manner: Not Applicable:

SIGNATURE _____

DATE OF HEARING: December 10, 2012

Time of Hearing: 1:30 pm / Columbia, SC

On behalf of Claimant (Miller) Employer

File this form and proof of service on the opposing party according to R. 67-611 and R. 67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 12-13162
Carrier File # _____
Carrier Code # _____
(803) 737-5700 Employer FEIN _____

William E. Miller Jr.
Claimant's Name SSN
1499 Charleston Road Leesville, SC 29070
Address City State Zip
(803) 530-9446 NA
Home Phone # Work Phone #

Owen Steel
Employer's Name
727 Mauney Dr. Columbia, SC 29201
Address City State Zip
Insurance Carrier: Strategic Comp Services
Great American Ins. Group

J. Charles Ormond, Jr. 803-765-2968
Preparer's Name Phone#

Exhibit List: APA LIST

- 1) Medical Records / Scott Boyd, MD (Neurosurgery)
- 2) Medical Records / Benjamin Levinson, MD (Internal Medicine)
- 3) Medical Records / Palmetto Richland Baptist
- 4) Scott B. Boyd, MD / treating physician medical questionnaire - causation.
- 5) Benjamin Levinson, MD / August 27, 2012 Release from Work.
- 6) Scott B. Boyd, MD / treating physician - return to work - light duty 11/27/2012

SUPPLEMENT: Memorandum in Support of Claimant's position:

SUPPLEMENTAL SUBMISSION:

**CLAIMANT'S MEMORANDUM IN SUPPORT OF CLAIMANT'S
POSITION**

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W. C. C. FILE NO: 12-13162

William E. Miller, Jr.

Claimant/employee,

vs.

Owen Steel Company, Inc.

Defendant/employer,

Great American Insurance Group /
Strategic Comp Services

Carrier,

**MEMORANDUM IN SUPPORT OF
CLAIMANT'S POSITION**

TO: THE WORKERS COMPENSATION COMMISSION:

This matter is up for hearing on the question of compensability. Defendant/employer through its attorneys, have provided numerous proposed exhibits and an eight page brief in support of its position. William E Miller, through his attorney submits the following Memorandum of Law (Brief) as a Responsive Brief to Defendant's submitted Memorandum and in Support of his claim for Workers Compensation benefits.

Many of the proposed exhibits cited by Defendant/employer are not admissible in and of themselves, absent a testifying witness, and some documents proposed may be ruled irrelevant. However, a responsive memorandum is necessary in light of the Defendant's memorandum to the Commission. The evidence presented through witnesses and documents will create the record

on which a determination will be made.

CASE SUMMARY

William ("Bill") Miller was an maintenance department employee with Owen Steel for approximately eight years. On August 15th, 2012 there was a physical altercation at work, between Bill Miller (Claimant) and Steve Raulerson. The disagreement began when the two disagreed about whether or not power at a portion of the plant would be on or off over the coming weekend. During the altercation, Raulerson followed Miller out of the room and into the bathroom and fighting words were exchanged by both. Raulerson poked his fingers into Miller's chest and then Raulerson pushed Claimant (Miller) against the wall and he (Miller) heard and felt his neck "pop." It is not disputed that Claimant then struck Raulerson in the face after which the altercation was broken up by other employees. William Miller had a prior diagnosis (approximately one and a half years prior to the accident) of spinal stenosis. It is not disputed with medical evidence that this August 15th 2012 trauma; push into the wall resulting in the neck popping, resulted in the dislodgement of a "very large, fresh /acute disc fragment which compressed the spinal cord" (APA Exh. 4 Dr. S. Boyd treating neurosurgeon: questionnaire P. 67-69) resulting in required surgery.

The altercation was short lived and almost immediately broken up. Both men were suspended for a period of time. Claimant's neck began to stiffen and the pain worsened every day from that point forward and, although he had neck and back problems prior to the accident with numbing and radiating symptoms, the symptoms subsequent to this event were different and more severe. After returning to work, the week after the incident, Claimant (Miller) informed

his supervisor that he needed to be sent to the doctor as he was having worsening problems with his neck after the fight. He was told by his direct supervisor (Sloan) that he would take care of it. He was not sent to the doctor by the Employer and the symptoms became progressively more severe. By the following Monday morning, August 27th 2012, Bill Miller could barely move his neck and had great shoulder pain. He came into work that morning and reported the pain reiterated the need to see a doctor. He was upset that nothing had been done about going to a doctor by the Company. He left work at approximately 9:30, after a meeting, and was very upset that nothing had been done regarding going to a doctor. He called his physician (Levinson) and was seen immediately on an emergency basis. The physician indicated that an MRI was needed immediately. His physician wrote him out on that day, Monday the 27th.

Early the following morning, Tuesday 28th of August, Miller provided his supervisor and safety manager with the Doctors excuse of the 27th. His supervisor (Sloan) told him he was glad he (Miller) did this; went to the doctor. Miller went home. Two days later he received a voice mail from a woman with Human Resources. He returned the call that day and tried again the following day. He was informed on Friday the 31st of August that his employment had been terminated for insubordination.

PRE-HEARING RECORD FACTS:

1) The Altercation:

Bill Miller began as a welder with Owen approximately eight years ago. He then became a fabricator and was then promoted to maintenance. (Miller Dep. P. 15) On August 15, 2012, mid afternoon, Mr. Miller was in the area with an employee named Brian Ingle. A third

employee came into the room and asked if the power to the paint room and other parts of the plant would be on that weekend. (Miller Dep. P. 25, 26) Miller answered that it likely would not have power. (Id) Steve Raulerson (a lead man) came into the area at that time (Miller Dep. P. 27) and Raulerson disagreed about whether the power would be on (Id) and Miller said "oh-really" and got up and began walking to the bathroom. Steve Raulerson testified:

A. Like I said, I don't really know what he said in his statement prior to me walking up. When I spoke up, they had done discussed in depth, I reckon, on what would and would not be running.
Q. Okay.

A. And when I started speaking my part - - I say my part. When I started speaking my words of what would be running and what would not be running, that's when, you know, he kind of gestured that - - you know, give me that (makes noise) and stood up and went to walking off and he mumbled something and I didn't hear what he said.

(Raulerson Dep. P. 9 L. 1-12) Mr. Raulerson's statement made on the 28th of August, states:

"They were talking about the cranes that would be working that up coming weekend. I started in on that conversation when Bill Miller got up out of the chair he was sitting in and sort of mumbled something. His body language made me feel he was trying to be smart and funny. He went to the restroom and I was behind him asking him what he said and what his problem was.

(Def. Exhibit 9 P. 83 submission) Mr. Miller went into the bathroom and began washing his hands and Raulerson followed him into the bathroom.. (Miller Dep. P. 28) Raulerson came face to face with Miller and poked his fingers in his chest. (Id.) They cursed at each other and he (Miller) felt threatened and could not get around the larger Raulerson who weighs 340 lbs.

(Miller Dep. P. 28) Miller then put up his arm to get around and began out of the restroom when Raulerson lunged toward him and pushed Miller against the wall just adjacent to the bathroom.

Bill Miller heard his neck pop. Mr. Miller testifies as follows:

Q. Okay what happened next?

A. Pushed me up against the wall and I felt something in my neck pop and I - - it was kind of a scary situation for me. I looked up and I seen somebody - - you know, this man is twice my size

and he like lunging towards me. And he lunging toward's me, I doubled my fist up and I punched him.

(Miller Dep. P. 29 L. 10-17) Mr. Raulerson testified in his statement that "I asked Bill what his problem was and there is where we got into an argument face to face and a push / shove took place in the door way of the restroom." (Def. Exhibit 9 P. 83 submission) A witness, Jackie Osborne recalls "I turn to the corner to see Steve Raulerson and Bill Miller face to face yelling at each other - Bill Miller stated quit pushing me I've got a bad back and neck while bellying up to Steve pushing each other." (Def. Exhibit 10 P. 85 submission)

Each recount of the incident is somewhat different as would be expected in a very quick and spontaneous event. The altercation was broken up and Bill Miller was later called into the supervisor's office where he was told he would be on a short suspension. Mr. Miller stated to his supervisors that the altercation was not his fault and was only defending himself.

2) Post Altercation.

During the four day suspension and two day weekend, Bill Miller's neck began to swell and stiffen. His shoulders had shooting pain and he could not sleep or manage well. Mr. Miller had arm pain and neck pain in the past but this situation was different. On Wednesday, he returned to work and did the best he could. The following day his neck was worse and he told his supervisor, that he needed to go to a doctor as he had been hurt in the altercation. His supervisor said he would take care of it. Mr. Miller worked Friday the best he could. On the following Monday, the 27th of August, the pain in his neck had become too difficult to ignore. Mr. Miller came into work and then told his supervisor he had to leave and go to the doctor and was upset that he had not yet been sent to the doctor by the Company. (Miller Dep. P. 37-39) In

light of the symptoms described, the physician saw him that day. Dr. Levinson prescribed medicine and an MRI and wrote Mr. Miller out of work from that point, August 27 2012, forward. (Exh. 5 submission P. 71)

Bill Miller's wife drove him to work the following morning early and Bill, at first not finding his supervisor, gave the physician note to the safety manager. The safety manager said he would look for the paperwork and take care of the situation. On the way out he (Miller) did find his supervisor and gave him a copy of the physician note. (Exh. 5 Levinson Excuse P. 71) His supervisor (Sloan) stated that he was glad Bill had gone to the doctor.

LEGAL ANALYSIS:

As stated in the Defendant's Legal Memorandum, the issue in this matter is whether or not S.C. Code Ann §42-9-60 bars Mr. Miller from benefits under the law. This provision provides for an affirmative defense to an employee's recovery and the burden of proof rests with the party asserting the defense. *Zieglar v. South Carolina Law Enforcement Div.*, 157 S.E.2d 598, 599 (SC 1967)¹ The seminal case interpreting this defense is *Youmans v. Coastal Petroleum Co.*, 508 S.E.2d 43 (SC Ct. App. 1998). In *Youmans*, an employee undisputedly assaulted his supervisor (Parsons) and was injured in the altercation. The facts, although disputed between the parties to the altercation, were that Parsons made a racial slur toward Youmans (Claimant) and a fight occurred injuring Youmans. (Id. At 47) The facts most favorable to the Claimant in that matter were that a racial slur was made (denied by supervisor)

¹ (Sled agent (deceased) threatened and then shot at another Sled agent who returned fire, killing agent, after prior disagreements held to have willfully intended injury or death).

and Claimant confronted Parsons about the remark and was then pushed (denied by Parsons). He and Parsons then got into a spontaneous fight. The Commission found for the Claimant and, after the Circuit Court reversed, the Court of Appeals upheld the Claimant's right to compensation.

Neither the fault of the employer nor that of the employee is a critical factor in determining whether an employee is entitled to workers compensation benefits. *Youmans v. Coastal Petroleum Co.*, 508 S.E.2d 43, 47 (SC Ct. App. 1998) The term wilful intention is defined as the forming of a deliberate intention, *Reeves v. Carolina Foundry & Machine Works et al*, 9 S.E.2d 919 (Sc 1940) and determining the aggressor is not a deciding factor. *Youmans* at P. 47 The affirmative defense pursuant to S.C. Code Ann §42-9-60 is applicable only when "the acts of the employee are so serious and aggravated as to evince a willful intent to injure." *Id. At 47; citing: Ziegler v. South Carolina Law Enforcement Div.*, 157 S.E.2d 598, 599 (SC 1967) The defense is not available if the altercation is "spontaneous, impulsive, instinctive or otherwise lacking a deliberate or formed intention to do injury. *Youmans v. Coastal Petroleum Co.*, 508 S.E.2d 43, 47 (SC Ct. App. 1998) In essence, the law is clear that if a spontaneous fight occurs between employees at work and relating to work², such an altercation does not generally indicate deliberate and wilful intent to injure.

In this matter, it can not be disputed that the argument was about work related issues and Raulerson felt that Miller had stated something under his breath that he took to be condescending. It is not disputed that Raulerson went after Miller to confront him. Although

² *Stone v. Traylor Brothers, Inc.*, 600 S.E.2d 551 (SC Ct. App. 2004)(subject of the assault must relate to work)

the exact details of what happened next are in some dispute, there is no dispute that Raulerson did push Miller and there is no testimony disputing the fact that Miller was pushed against a wall and his neck (spine) "popped." There is no dispute that Miller then punched Raulerson and the fight or altercation was broken up. These facts do not provide any evidence of the kind of deliberate intent to injure described by the Courts. Defendant appears to focus its argument on the punch by Miller. First, the punch to Miller was after Miller had been pushed against the wall resulting in the neck injury. Second, there is no evidence that the punch was anything more than a spontaneous response to the altercation. In *Kinsey v. Champion AM. Service Center*, 232 S.E.2d 720 (SC 1977), the Court, in considering only the version of the non claimant party (least favorable to the claimant) a supervisor (Brown) and employee (Kinsey: claimant) had a disagreement over the employee's drinking and told him to go home. The claimant drew a tire on the supervisor. Later Brown thought he heard Kinsey say something under his breath and a hammer was thrown. The Supervisor retrieved the hammer and instructed Kinsey to sit and later "they were on the ground fighting" and Kinsey was injured. The *Kinsey* Court found that the fight was spontaneous as a matter of law and reversed the lower Court's and Commission's decision against Kinsey. In this matter, Defendant cites Claimant's deposition testimony in arguing a deliberate intent to injure. The testimony was as follows:

Q. Okay what happened next?

A. At that point he lunged at me again.

Q. What happened next?

A. Pushed me up against the wall and I felt something in my neck pop and I - - it was kind of a scary situation for me. I looked up and I seen somebody - - you know, this man is twice my size and he's like lunging towards me. And he's lunging towards me. I doubled my fist up and punched him."

Q. Where did you hit him?

A. In the mouth.

Q. Did you intend to hit him in the mouth.

A. Yes, I did.

Q. Did you intend to injure him?

A. I intended to alarm him to the fact that I was not going to take him pushing me around.

Q. What was your hope would be the result of punching him in the mouth?

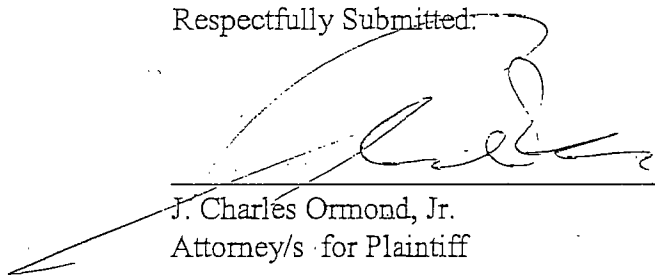
A. For him to back down and leave me alone.

(Miller Dep. P. 29 L. 9-25, P. 30 L. 1-2) Bill Miller's injury (neck pop) had already occurred prior to the punch and Miller was reacting to being pushed by a man who outweighed him by over one hundred and thirty pounds. Raulerson agreed in his deposition that maybe, in light of his size, he was more intimidating to Miller than he might have assumed he was. (Raulerson Dep. P. 12) Raulerson testified that he had altercations with others during work and others had arguments in the shop also. (Raulerson Dep. P. 14) Altercations occurred in this workplace and occur in many workplaces.

SUMMARY:

Claimant Miller and Raulerson had a disagreement about work issues and an altercation followed, on August 15, 2012, resulting in injury to Miller. Although a hearing is upcoming, the evidence and testimony through deposition as well as the proposed exhibits in Defendant's submission do not provide any evidence supporting the affirmative defense under S.C. Code Ann. §42-9-60. The fact a punch, push, lunge, or any other physical act occurred in a physical altercation does not provide this affirmative defense. The defense is applicable only to "those cases where it is shown that the acts of the employee are so serious and aggravated as to evince a wilful intent to injure." *Kinsey v. Champion AM. Service Center*, 232 S.E.2d 720 (SC 1977); *Youmans v. Coastal Petroleum Co.*, 508 S.E.2d 43, 47 (SC Ct. App. 1998)

Respectfully Submitted:



J. Charles Ormond, Jr.
Attorney/s for Plaintiff

Holler Garner Corbett Ormond Plante & Dunn
1777 Bull Street at Laurel
P.O. Box 11006
Columbia, SC 29211
803) 765-2968 //933-9000

December 7, 2012

1.

SCOTT B. BOYD, MD - COLUMBIA NEUROSURGICAL
ASSOCIATES PA.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.www.columbianeurosurgical.com**Spine & Neurological Surgery**

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Guntar, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 • (F) 462-0432

Pain Medicine
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29168
(803) 794-3700 • (F) 794-0322

OFFICE CONSULTATION

Patient: William E. Miller
Chart: 135730
Date: 9/19/12

HISTORY OF PRESENT ILLNESS: Mr. Miller is a 46-year-old heavy equipment worker who states that on August 15th he was pushed against the wall by his supervisor. He felt an immediate pop in his neck. He states that shortly after that he had severe neck pain and stiffness and began developing numbness, tingling and weakness in his arms. This has progressed since the incident. Now he again feels weak in his arms. He has constant numbness in his hands. He cannot move his neck because of severe stiffness. He has sharp pains in his medial scapular border on the right. He states that in the past he has been diagnosed with cervical stenosis and probably also degenerative disc disease. He had epidural steroid injections for this and his neck condition gradually improved. He states that he was doing fine with his neck until this incident and he states he has never had symptoms like this before. He denies any problems with his gait but his wife says that he is clumsy with his walking. He denies any bowel or bladder dysfunction.

PAST MEDICAL HISTORY: Remarkable for neuropathy, restless leg syndrome.

CURRENT MEDICATIONS: Trilipix, Synthroid, Naprosyn, hydrocodone, aspirin, Tramadol, oxycodone.

ALLERGIES: NKDA

SOCIAL HISTORY: He is a cigar smoker.

FAMILY HISTORY AND REVIEW OF SYSTEMS: Family history and review of systems are well documented in the intake sheet and have been reviewed and signed. The information contained is noncontributory except for that in the HPI.

PHYSICAL EXAMINATION: The patient is seated in the exam room and appears very uncomfortable. The patient is awake, alert, and oriented. PERRL. Speech and language are normal, as are attention span and concentration. Affect is grossly normal, and fund of knowledge appears appropriate. Height is 6'1", weight is 222, and respirations are 14 and regular. Exam of the posterior cervical region reveals mild tenderness to palpation. There is severely diminished cervical ROM. Spurling's sign is negative. He has a subtle Lhermitte's sign with extension of his neck. He has 4+/5 grip strength weakness; weaker on the right than the left. He has pathologically brisk reflexes at 3-4+ throughout. He has a mild Hoffmann's sign on the right. Sensation is intact. He ambulates with a steady but somewhat wide-based gait.

RADIOGRAPHIC STUDIES: MRI of the cervical spine done at Palmetto Imaging shows a large C6-7 disc herniation with extruded fragment that has migrated slightly cephalad. This causes significant central canal stenosis and cord compression. I believe on the T2 weighted sagittal images there is some suggestion of high signal in the cord. This is compared to a February 18, 2012 study that apparently showed a left central and foraminal disc protrusion at C6-7 but that has contracted since the previous study. There has been no change to mild changes at C5-6.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

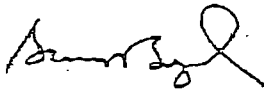
Page 2

Re: William E. Miller

9/19/12

IMPRESSION/PLAN: Mr. Miller has a significant cervical myelopathy. He has a disc herniation with extruded fragment causing cord compression and I believe even some signal change in his cord. I am quite concerned that unless he is surgically decompressed soon he will progress. I have strongly recommended surgery in the form of an anterior cervical discectomy and fusion. This likely could be done as an outpatient and at this point I believe there is a good chance that his myelopathy is reversible. However, if his cord compression persists this may not be the case. I am going to put him on a Medrol Dosepak steroids. He is hesitant to consider surgery and I have been careful to explain the risks of not doing the surgery which would include paralysis. He understands, will consider his options, and call us back if he wishes to proceed.

The surgical procedure that has been offered was described in detail, and risks, benefits and alternatives were discussed. A model was used to demonstrate this, and the patient voiced an understanding. I have been careful not to guarantee relief of symptoms or improvement of the condition, but at this point surgery appears to be a reasonable option. The patient voices understanding and wishes to proceed.



Scott B. Boyd, MD

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

SBB/MAH

CNAWT: 4041

Faxed To: Benjamin J. Levinson, MD

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

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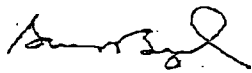
OFFICE VISIT

Patient: William E. Miller
Chart: 135730
DOB: 6/30/66
Date: 10/22/12

Mr. Miller returns for follow up. He is four weeks out from an ACDF at C6-7 for a large disc herniation causing significant cord compression and also a right myeloradiculopathy. He had uneventful surgery and today says that the hard pain that he was having in his arm is better but he still has numbness and weakness. He says that he feels that he is swallowing stones although this seems to be improving slightly. He feels that his voice is somewhat hoarse but also improving. He has not been back to driving yet and his family has been restricting his activity quite a bit.

On exam; his incision is well healed. He has pretty good power in his upper extremities although persistent weakness in his right upper extremity. He has reasonably good cervical ROM.

IMPRESSION/PLAN: I think Mr. Miller is clearly improved. I think it is going to take some time but I do believe that he is coming along. He had significant cord compression and that is going to take longer than a simple nerve root problem. I have explained this to him and he seems to understand. I want him to increase his activity now. It is okay for him to drive. I would like to see him back in 4-6 weeks with films.



Scott B. Boyd, MD

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED
SBB/LH CNAWT: 4040

Faxed To: Benjamin J. Levinson, MD

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWAU0002
Ordering Provider: Levinson, Benjamin J
Order Number: 05-1000344
Collection: 06/05/2012 10:18:30
10:18:30

Result: 06/05/2012

Y00Y DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNIT	EXPECTED

72141 - MR-Service Spine Without Contrast

Radiology Report: Imaging Center: 06-548

MRI OF THE CERVICAL SPINE: PATIENT: MILLER JR, WILLIAM

MRN: 758895

DATE OF BIRTH: 6/30/1966

REF PHYSICIAN: DR J LEVINSON, MD

DATE OF EXAM: 6/6/2012

PATIENT PHO: 800-530-3800

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain with bilateral hand pain and numbness.

TECHNIQUE: The following sequences were performed on a GE Signa HD-Excite 1.5 Tesla magnet: sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. Comparison is made to previous study dated 02/18/12.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass.

The C2-3 intervertebral disc is within normal limits.

At the C3-4 level, there is no significant disc bulge or protrusion.

At the C4-5 level, there is no acquired central canal or foraminal stenosis.

At the C5-6 level, there is a diffuse disc bulge with uncovertebral joint hypertrophic changes, left greater than right.

At the C6-7 level, there is a central disc extrusion migrating slightly cephalad. This narrows the central canal to under 6mm and deforms the ventral cord.

The C7-T1 intervertebral disc is normal.

IMPRESSION:

1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

*He has
never
covered
stenosis
at C6-C7*

*However I feel he
needs to see a
neurosurgeon
keep follow
up 9-13-12
Byrd/Barber now*



09/26/2012

09/26/2012

Send #52727 - - 09/26/2012 From: 09/26/2012 To: 09/26/2012

Page 1

Palmetto Health Baptist
Taylor @ Marion, Columbia SC 29220

Operative Note

Name: MILLER, WILLIAM
MR#: 000710302
Dictating: Scott B. Boyd, MD

DOB: 06/30/1968
Admit: 09/26/2012

DATE OF OPERATION: 09/26/2012

SURGEON: Scott B. Boyd, MD

ASSISTANT SURGEON: Russel McMurry, P.A.

PREOPERATIVE DIAGNOSIS: Cervical herniated disk.

POSTOPERATIVE DIAGNOSIS: Cervical herniated disk.

PROCEDURES:

1. Anterior cervical discectomy and fusion, C6-7
2. Anterior plate instrumentation, C6-7
3. Application of intervertebral interbody implant, C6-7.
4. Harvested morsellized autograft.

ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: 20 mL.

COMPLICATIONS: None.

DESCRIPTION OF PROCEDURE: The patient was brought to the operating room where he underwent full induction of general anesthesia, prepped and draped in the usual sterile fashion over anterior cervical area. A right transverse incision was made sharply through the skin and then carried down through the platysma with the Bovie. The avascular plane was bluntly dissected between sternocleidomastoid and strap muscles just medial to the carotid sheath. This was carried down easily through the anterior spine and C6-7 disk space was identified with fluoroscopy. Radical discectomy was performed and there was a large central defect in the posterior annulus ligament. A single large fragment of soft disk material was pulled through this opening and represented all of the large disk fragment noted on preoperative imaging. Midas Rex was used to bore down posterior osteophytes and the ligament was opened widely all the way across the epidural space. The epidural space particularly behind the C6 vertebral body was probed and no further disk material was found. The dura was then returned to its normal position indicating good decompression. The fusion was performed by preparing the endplates and using a 6-mm PEEK implant packed with autograft which was harvested from the anterior lip of the C6 vertebral body. This was gently tapped into place. This seated well and then a 14-mm Stryker titanium plate was

05/26/2012

05:54 PM

Send MESSAGE - - PAGE:10 From : 0637944322 To :

0637944322

Page 2

Palmetto Health Baptist
Taylor @ Marion, Columbia SC 29220

Operative Note

Name: MILLER, WILLIAM
MR#: 000710302
Dictating: Scott B. Boyd, MD

DOB: 06/30/1966
Admit: 09/26/2012

Page 2

secured over this using 14-mm screws. The locking rings were engaged and this formed good solid flush construct. The wound was then copiously irrigated with bacitracin irrigation. Complete hemostasis was achieved and the wound was then closed in anatomic layer. Sterile dressing was applied. The operation was terminated. The patient was taken to the recovery room in good condition without apparent complications.

D: 09/26/2012 12:38 T: 09/26/2012 12:59 TID: sm

Job #: 40716 Doc #: 20617822

cc: Scott B. Boyd, MD

Benjamin J Levinson, MD

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 8:51 pm.

SUBJECTIVE:CC:

Bill is a 46 year old white male. This is a follow-up visit. 1 week.

HPI:

Patient to be evaluated for acquired hypothyroidism. He is currently taking Synthroid, 125 mcg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

With regard to the other hyperlipidemia, current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 08/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Dx with neck pain: the location of discomfort is posterior. It radiates to the upper back and intrascapular area. The pain is characterized as severe, stabbing, and patient states it feels like a knife is sliding down his neck. Initial onset was 2 weeks ago. The precipitating event seems to have been Patient was in altercation with his assistant supervisor on 08/15/2012. His assistant supervisor pushed him up against the wall and patient felt and heard a pop in his neck. This is where the altercation ended. Patient moved away from him and two people got in between. Patient states it feels like a knot on the inside. Patient was terminated from his job on 08/27/2012 for insubordination.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Positive for neck pain.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 8/4/2012 11:35:53 AM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy, right knee: 08/2011: Procedures: colonoscopy mid 2000s polyp found: 11/11/08=Polyp, rectosigmoid junction

Miller Jr, William E. 08/30/1968

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 8:51 pm.

Tubular Adenoma EGD on 8/21/07. antral gastritis, reflux esophagitis, negative for helicobacter

Family History Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift.

Marital Status: Vick Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 8/4/2012 11:35:58 AM by Levinson, Benjamin J

Tobacco: Current Smoker: He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions:

Measles (rubella)

Mumps

Rubella

Current Problems:

Last Reviewed on 8/4/2012 11:35:57 AM by Levinson, Benjamin J

Peripheral neuropathy

Acquired hypothyroidism

Neck pain

Other hyperlipidemia

Immunizations:

None

Allergies:

Last Reviewed on 8/4/2012 11:35:41 AM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Miller Jr, William E. 08/30/1968

3 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 8:51 pm.

Last Reviewed on 9/4/2012 11:35:50 AM by Levinson, Benjamin J

Perocet 10mg/325mg Tablet Take 1 tablet(s) by mouth every 4 hours as needed for pain

Colace 100mg Capsules 1 po bid

DEXILANT 60 mg 1 po q day

Livolo 2mg Tablet Take 1 tablet(s) by mouth daily

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Topamax 25mg Tablet Take 2 tablet(s) by mouth bid

Trilix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain

Prednisone 20mg Tablet 3 po qd

Drisdol 50,000IU Capsules 1 capsule by mouth monthly

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Ultracet 87.5mg/325mg Tablet 1-2 q 4-6 hrs prn

OBJECTIVE:

Vitals:

Current: 9/4/2012 11:34:24 AM

Ht: 5 ft, 1 in; Wt: 222 lbs; BMI: 28.8

BP: 140/80 mm Hg; sCr: 0.89 mg/dL; GFR: 112.78

Exam:

PHYSICAL EXAM:

GENERAL: anxious, seems to be in pain;

EYES: EOMI; PERRLA: normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits; very stiff with limited motion in all directions and pain worse with R lateral flexion. He has some pain radiation down R lateral forearm with maneuvers

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

723.1 Neck pain
244.8 Acquired hypothyroidism
272.4 Other hyperlipidemia

ORDERS:

Medx Prescribed:

Lorab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #60 (Sixty) tablet(s) Refills: 0

Miller Jr, William E. 06/30/1966

4 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Lewinson, MD (Supervisor: Benjamin Lewinson, MD; Assistant: Elizabeth Delaney, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Lewinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 3:51 pm.

Radiology/Test Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

PLAN:

Neck pain at this point he is going to get an attorney. I will order a neck C-spine to evaluate him and see if anything else can be done.

TESTS/PROCEDURES ordered today include C-spine MRI.

MEDICATIONS: At this point, will discontinue Lortab and prednisone.

FOLLOW-UP: Schedule a follow-up appointment in 1 week.

Prescriptions:

Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #60 (Sixty) tablet(s) Refills: 0

Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

MILLER, WILLIAM
PAGE TWO

SSN: 3013

10/04/11

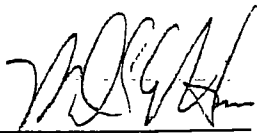
ELECTRONEUROMYGRAPHIC EXAMINATION

Muscles	IA	Normal	Rest				Minimal Contraction MUAP	Maximum Recruitment Pattern
			Spontaneous Fibs	Activities SW+	Other	FASC		
RIGHT & LEFT	normal	normal	0	0	0	normal shape size & amplitude	full	
vastus medialis								
anterior tibialis								
gastrocnemius								
extensor hallucis longus								

SUMMARY: Normal needle EMG of the above muscles tested.

CONCLUSION: This is an ^{ab}normal study. There is electrodiagnostic evidence of bilateral median nerve entrapments at the wrists. These are moderate cases of bilateral carpal tunnel syndrome. There is no electrodiagnostic evidence of peripheral neuropathy or lumbar radiculopathy at this time. The patient does appear to have bilateral decreased sensation in an L4 nerve root distribution and therefore I suspect the patient has some degenerative disc disease around the L4 nerve with subsequent mild stenosis. However, fortunately at this time the patient does not appear to have any significant nerve damage.

I would like to thank Dr. Levinson and Dr. Owens for referral of this pleasant patient. If there are any questions regarding this examination, please do not hesitate to call.



W. Daniel Westerkam, M.D.

WDW/kph

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER - IRMO
7035 ST ANDREWS ROAD
COLUMBIA SC 29212
PHONE: (803) 407-4100

PATIENT: MILLER, WILLIAM E

AGE: 45
DOB: 06/30/1966
SEX: M

UNIT/MR NO: M001652204
ACCT NO: Y00004334744
SSN: 276-76-3013
REQ NO: 11-0015004
REPORT NO: 0817-0025

ORDERING DR: PHILIP C HONIG MD

PT LOCATION: IMRI
HONPHI FP

REPORT STATUS: Signed

PRIMARY CARE: SUSAN M. MSN RN-C AN GRIFFIN
ORDERED BY: PHILIP C HONIG MD
LOCATION: REG CLI IMRI
STUDY TYPE: 0816-0008 IMRI/MRI LUMBAR SPINE

530 3900

DATE OF EXAM: 08/16/11

CLINICAL DATA: 45M, SEVERE LOW BACK PAIN, SOME LEG PAIN,
DIFFICULTY WALKING.

MRI LUMBAR SPINE:

COMPARISON: Comparison is made to a CT study of 9/16/07.

TECHNIQUE: Sagittal and axial T1 weighted and T2 weighted sequences were obtained. Sagittal inversion recovery sequence is obtained. This report assumes there are five non-rib-bearing lumbar vertebrae. The sagittal images include from the lower aspect of T12 to mid S4. The axial images were obtained from the lower one-third of L3 to mid S1.

FINDINGS: There is an oval area of low signal centrally in the L4 vertebral body on the T1 weighted sequence. This is increased in signal on both the T2 weighted sequence and the inversion recovery sequence. It has a somewhat striated appearance on the T2 weighted sequence. On the CT study of 9/16/07 there is a subtle area of sclerosis in this portion of the vertebral body at L4. This is felt to represent an atypical hemangioma. The visible bone marrow signal is otherwise unremarkable.

No significant disc bulge or disc herniation is seen. There is suspicious of some element of mild spinal stenosis at L3-4 likely related to short pedicles.

The conus medullaris is unremarkable.

READING:

1. Atypical hemangioma in the L4 vertebral body.
2. Mild spinal stenosis at the L3-4 level which is felt to be related to congenital short pedicles.

*Planned
Ref to M. Jones*

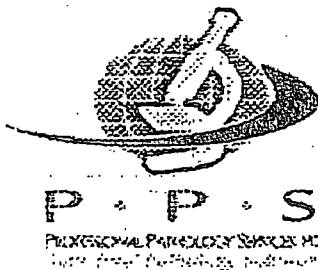
SHM

LAYNE R CLEMENZ MD

Elisla

2.

PALMETTO HEALTH BAPTIST



Palmetto Health Baptist
SURGICAL PATHOLOGY DIVISION
One Science Court, Suite 200
Columbia, SC 29203
(803) 252-1913
Surgical Pathology Report

Patient Name: **MILLER, WILLIAM EDWARD**
DOB/Age: 6/30/1966 (Age: 46)/M
Soc. Sec. #: 276-76-3013
Client: Palmetto Health Baptist
MRN: 000710302
Physician: Scott Boyd, MD

Accession #: **BS12-S354**
Date of Service: 9/26/2012
Date Received: 9/26/2012
Date Reported: 9/27/2012
Account #: 1226901282
Location: OPS (BAP)

CLINICAL DATA:

Herniated nucleus pulposus cervical 6 - cervical 7

DIAGNOSIS:

DISC MATERIAL, EXCISION:

FIBROCARILAGE WITH DEGENERATIVE CHANGES, COMPATIBLE WITH INTERVERTEBRAL
DISC MATERIAL.

LDG/fs 09-27-12

Electronically Signed Out by Lawrence Grant, MD

GROSS DESCRIPTION:

Received in formalin labeled "disc material" is a 3.0 x 3.0 x 0.7 cm aggregate of pink-white cartilaginous fragments. Representative pieces submitted in a single cassette.

MS/tw 09/26/12

MICROSCOPIC DESCRIPTION:

The sections have multiple fragments of fibrocartilage with degenerative changes, compatible with intervertebral disc contents.

LDG/fs 09-27-12



TAYLOR AND MARION ST.
COLUMBIA, SC 29204

INPATIENT ADMISSION FORM

135770

PATIENT ACCOUNT NO. 1226901282		SERVICE DATE & TIME 08/26/2012 00:30		DISCHARGE DATE & TIME		PT. TYPE PSB		AC SUR		SV CODE 1		ADMIT SOURCE 3		TYPE 01		STATION OPS		ROOM BED		MEDICAL RECORD NO. 006710382	
ACCIDENT TYPE		ACCIDENT DATE & TIME		DENOMINATION Baptist		CHURCH		PUBLICITY YES DIRECTORY		LIVING WILL No											
NAME AND ADDRESS MILLER, WILLIAM EDWARD 4199 CHARLESTOWN RD LEESVILLE SC 29070				SOCIAL SECURITY NUMBER 276763013		COUNTY Lexington PHONE (803)530-3900		EMPLOYER UNEMPLOYED		OCCUPATION		STATUS Not Employed									
SEX M	RACE 80	MARITAL STATUS M	DATE OF BIRTH 06/30/1966	AGE 46Y	DATE OF LAST VISIT 12/05/2005	MOTHER'S MAIDEN NAME MILLER		PLACE OF BIRTH OH													
GUARANTOR NAME AND ADDRESS MILLER, WILLIAM EDWARD 4199 CHARLESTOWN RD LEESVILLE, SC 29070				SOCIAL SECURITY NUMBER 276-76-3013		RELATIONSHIP Self PHONE (803)530-3900		GUARANTOR EMPLOYER UNEMPLOYED		OCCUPATION		STATUS Not Employed									
NOTIFY IN CASE OF EMERGENCY MILLER, TALISA 4127 GREENWOOD DRIVE CELL 351-1537 WEST COLUMBIA SC 29170				RELATIONSHIP Spouse PHONE (803)530-9446		NEXT OF KIN		RELATIONSHIP													
INSURANCE 1 SELF-PAY MILLER, WILLIAM EDWARD 276763013				INSURANCE 2		INSURANCE 3		INSURANCE 4													
INSURED DOB 06/30/1966				INSURED DOB		INSURED DOB		INSURED DOB													
ADMITTING DIAGNOSIS/CHIEF COMPLAINT CERVICAL HNP				DATE OF LAST VISIT 12/05/2005		ADMITTING PHYSICIAN 12377 BOYD, SCOTT B		ADM. PHN. PHONE (803)794-3700													
ORGAN DONOR N				Primary Care Physician 11901 LEVINSON, BENJAMIN J																	

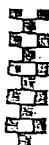
THIS SECTION FOR INPATIENT USE (ER/OUTPATIENT OPTIONAL)

DRG DATA

FINAL DIAGNOSIS Date: 9/26/12		CODE NUMBER	PROVISIONAL DRG:
HX RESISTANT DRG Dr: cerv. HNP			ALOS:
Date: 407/6#			DATE ASSIGNED
Proc: 1) ADF C6-7		CPT: 22551	DISCHARGE STATUS: PROJECTED
2) plate		22845	1. INPATIENT CARE (ROUTING)
3) uniplant		22851	2. INPATIENT CARE (ROUTING)
4) autograft		20936	3. GENERAL HOSPITAL
Ref: Ben Levinson			4. INF
Asst: M & Wherry			5. HOSPITAL OTHER THAN SHORT TERM
CONSULTATION WITH			6. HOME WITH HOME HEALTH CARE SERVICE AND
RESULTS DISCOVERED NOT TREATED DISPROVED NOT IMPROVED AUTOPSY		INFECTIONS ONCOLOGICAL OPIC-OF OTHER COMMUNITY ACQUIRED	
"I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge."		DATE	
		ATTENDING PHYSICIAN	

Printed on 09/25/2012 01:17 PM





09/26/2012

02:53 PM

Send H06P2224 - - PAGE: 0 From : 0053964823 To :

0037740022

Page 1

Palmetto Health Baptist
Taylor @ Marion, Columbia SC 29220

Operative Note

Name: MILLER, WILLIAM
MR#: 000710302
Dictating: Scott B. Boyd, MD

DOB: 06/30/1966
Admit: 09/26/2012

DATE OF OPERATION: 09/26/2012

SURGEON: Scott B. Boyd, MD

ASSISTANT SURGEON: Russel McMurry, P.A.

PREOPERATIVE DIAGNOSIS: Cervical herniated disk.

POSTOPERATIVE DIAGNOSIS: Cervical herniated disk.

PROCEDURES:

1. Anterior cervical disectomy and fusion, C6-7
2. Anterior plate instrumentation, C6-7
3. Application of intervertebral interbody implant, C6-7
4. Harvested morselized autograft.

ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: 20 mL.

COMPLICATIONS: None.

DESCRIPTION OF PROCEDURE: The patient was brought to the operating room where he underwent full induction of general anesthesia, prepped and draped in the usual sterile fashion over anterior cervical area. A right transverse incision was made sharply through the skin and then carried down through the platysma with the Bovie. The avascular plane was bluntly dissected between sternocleidomastoid and strap muscles just medial to the carotid sheath. This was carried down easily through the anterior spine and C6-7 disk space was identified with fluoroscopy. Radical disectomy was performed and there was a large central defect in the posterior annulus ligament. A single large fragment of soft disk material was pulled through this opening and represented all of the large disk fragment noted on preoperative imaging. Midas Rex was used to bore down posterior osteophytes and the ligament was opened widely all the way across the epidural space. The epidural space particularly behind the C6 vertebral body was probed and no further disk material was found. The dura was then returned to its normal position indicating good decompression. The fusion was performed by preparing the endplates and using a 6-mm PEEK implant packed with autograft which was harvested from the anterior lip of the C6 vertebral body. This was gently tapped into place. This seated well and then a 14-mm Stryker titanium plate was

Palmetto Health Baptist
Taylor @ Marion, Columbia SC 29220

Operative Note

Name: MILLER, WILLIAM
MR#: 000710302
Dictating: Scott B. Boyd, MD

DOB: 06/30/1966
Admit: 09/26/2012

Page 2

secured over this using 14-mm screws. The locking rings were engaged and this formed good solid flush construct. The wound was then copiously irrigated with bacitracin irrigation. Complete hemostasis was achieved and the wound was then closed in anatomic layer. Sterile dressing was applied. The operation was terminated. The patient was taken to the recovery room in good condition without apparent complications.

D: 09/26/2012 12:38 T: 09/26/2012 12:59 TID: sm
Job #: 40716 Doc #: 20617822
cc: Scott B. Boyd, MD
Benjamin J Levinson, MD

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: WMLWIL0002

Ordering Provider: Lovinson, Benjamin J

Order Number: 05-1696344

Collection: 09/05/2012 10:18:30

10:18:30

Results: 09/05/2012

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED
72141 - MR-Cervical Spine Without Contrast				
Radiology Report: Imaging Center: 05-546				
MRI OF THE CERVICAL SPINE: PATIENT: Miller Jr, William				
MRN: 759995				
DATE OF BIRTH: 6/30/1966				
REF PHYSICIAN: Ben J Lovinson, MD				
DATE OF EXAM: 9/4/2012				
PATIENT PHN: 803-530-3900				

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain with bilateral hand pain and numbness.

TECHNIQUE: The following sequences were performed on a GE Signa HD-Excite 1.5 Tesla magnet: Sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. Comparison is made to previous study dated 02/16/12.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass.

The C2-3 intervertebral disc is within normal limits.

At the C3-4 level, there is no significant disc bulge or protrusion.

At the C4-5 level, there is no acquired central canal or foraminal stenosis.

At the C5-6 level, there is a diffuse disc bulge with uncovertebral joint hypertrophic changes, left greater than right.

At the C6-7 level, there is a central disc extrusion migrating slightly cephalad. This narrows the central canal to under 6mm and deforms the ventral cord.

The C7-T1 intervertebral disc is normal.

IMPRESSION:

1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component was contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

*He has
never
curved
sternis
at C6-C7*

*Monson I feel he
needs to see a
neurosurgeon
keep report
Appt 9-13-12
Bryel/Hande ran*

1 of 4

Miller Jr, William E. 06/30/1968

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 3:51 pm.

SUBJECTIVE:CC:

Bill is a 46 year old white male. This is a follow-up visit. 1 week.

HPI:

Patient to be evaluated for acquired hypothyroidism. He is currently taking Synthroid, 125 mcg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

With regard to the other hyperlipidemia, current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 08/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Dr with neck pain; the location of discomfort is posterior. It radiates to the upper back and interscapular area. The pain is characterized as severe, stabbing, and patient states it feels like a knife is slicing down his neck. Initial onset was 2 weeks ago. The precipitating event seems to have been Patient was in altercation with his assistant supervisor on 08/15/2012. His assistant supervisor pushed him up against the wall and patient felt and heard a pop in his neck. This is where the altercation ended. Patient moved away from him and two people got in between. Patient states it feels like a knot on the inside. Patient was terminated from his job on 08/27/2012 for insubordination.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Positive for neck pain.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 9/4/2012 11:35:53 AM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee: 08/2011; Procedures: colonoscopy mid 2000s polyp found: 11/11/08-Polyp, rectosigmoid junction

Miller Jr, William E. 06/30/1986

2 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 9:51 pm.

Tubular Adenoma EGD on 8/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 9/4/2012 11:35:58 AM by Levinson, Benjamin J

Tobacco: Current Smoker. He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/15/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/15/2012 3:20:06 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/15/2012 3:20:10 PM by Smith, April

Reportable health conditions:

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 9/4/2012 11:35:37 AM by Levinson, Benjamin J

Peripheral neuropathy

Acquired hypothyroidism

Neck pain

Other: hyperlipidemia

Immunizations:

None

Allergies:

Last Reviewed on 9/4/2012 11:35:41 AM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

3 of 4

Miller Jr, William E. 03/30/1965

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 3:51 pm.

Last Reviewed on 9/4/2012 11:35:50 AM by Levinson, Benjamin J

Percocet 10mg/325mg Tablet Take 1 tablet(s) by mouth every 4 hours as needed for pain

Colace 100mg Capsules 1 po bid

DEXILANT 60 mg 1 po a day

Livalb 2mg Tablet Take 1 tablet(s) by mouth daily

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Topamax 25mg Tablet Take 2 tablet(s) by mouth bid

Trilipix 195mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain

Prednisone 20mg Tablet 3 po qd

Drisdol 50,000IU Capsules 1 capsule by mouth monthly

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Ultracet 37.5mg/325mg Tablet 1-2 q 4-8 hrs prn

OBJECTIVE:Vitals:

Current: 9/4/2012 11:34:24 AM

Ht: 6 ft, 1 in; Wt: 222 lbs; BMI: 28.8

BP: 140/80 mm Hg; sCr: 0.89 mg/dL; GFR: 112.76

Exams:**PHYSICAL EXAM:****GENERAL:** anxious, seems to be in pain;**EYES:** EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;**ENT:** normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;**NECK:** supple, full ROM; no thyromegaly; no carotid bruits; very stiff with limited motion in all directions and pain worse with rt lateral flexion. He has some pain radiation down rt lateral forearm with maneuvers**RESPIRATORY:** lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;**CARDIOVASCULAR:** regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;**GASTROINTESTINAL:** nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;**MUSCULOSKELETAL:** Normal range of motion, strength and tone;**ASSESSMENT:**

729.1 Neck pain

244.8 Acquired hypothyroidism

272.4 Other hyperlipidemia

ORDERS:Meds Prescribed:

Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #60 (Sixty) tablet(s) Refills: 0

Miller Jr, William E. 06/30/1966

4 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delus, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 09/10/2012 at 3:51 pm.

Radiology/Test Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

PLAN:

Neck pain at this point he is going to get an attorney. I will order a neck C-spine to evaluate him and see if anything else can be done.

~~TESTS/PROCEDURES ordered today include C-spine MRI.~~

MEDICATIONS: At this point, will discontinue Lortab and prednisone.

FOLLOW-UP: Schedule a follow-up appointment in 1 week.

Prescriptions:

Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #60 (Sixty) tablet(s) Refills: 0

Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.
Spine and Neurological Surgery

Carolina Spine Center
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.
PH (803) 462-3602 Fax (803) 462-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

WILLIAM E MILLER JR

276763013

135730

Patient Name

Patient social security #

Chart #

Employer Name

Insurance Carrier

09/19/2012

Case #

Date of Service

Date of Accident

Diagnosis code(s) and/or description of condition for which patient is being treated

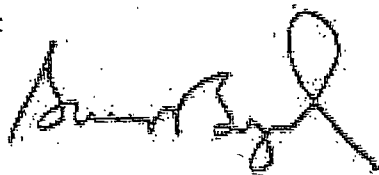
Remain out of work for pending surgery

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: SCOTT B. BOYD, MD

Signature:



Palmetto Health Baptist
Taylor @ Marion, Columbia SC 29220

Operative Note

Name: MILLER, WILLIAM
MR#: 000710302
Dictating: Scott B. Boyd, MD

DOB: 06/30/1966
Admit: 09/26/2012

DATE OF OPERATION: 09/26/2012

SURGEON: Scott B. Boyd, MD.

ASSISTANT SURGEON: Russel McMurry, P.A.

PREOPERATIVE DIAGNOSIS: Cervical herniated disk.

POSTOPERATIVE DIAGNOSIS: Cervical herniated disk.

PROCEDURES:

1. Anterior cervical discectomy and fusion, C6-7
2. Anterior plate instrumentation, C6-7
3. Application of intervertebral interbody implant, C6-7
4. Harvested morselized autograft.



ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: 20 mL.

COMPLICATIONS: None.

DESCRIPTION OF PROCEDURE: The patient was brought to the operating room where he underwent full induction of general anesthesia, prepped and draped in the usual sterile fashion over anterior cervical area. A right transverse incision was made sharply through the skin and then carried down through the platysma with the Bovie. The avascular plane was bluntly dissected between sternocleidomastoid and strap muscles just medial to the carotid sheath. This was carried down easily through the anterior spine and C6-7 disk space was identified with fluoroscopy. Radical discectomy was performed and there was a large central defect in the posterior annulus ligament. A single large fragment of soft disk material was pulled through this opening and represented all of the large disk fragment noted on preoperative imaging. Midas Rex was used to bore down posterior osteophytes and the ligament was opened widely all the way across the epidural space. The epidural space particularly behind the C6 vertebral body was probed and no further disk material was found. The dura was then returned to its normal position indicating good decompression. The fusion was performed by preparing the endplates and using a 6-mm PEEK implant packed with autograft which was harvested from the anterior lip of the C6 vertebral body. This was gently tapped into place. This seated well and then a 14-mm Stryker titanium plate was

Palmetto Health Baptist
Taylor @ Marion, Columbia SC 29220

Operative Note

Name: MILLER, WILLIAM
MR#: 000710302
Dictating: Scott B. Boyd, MD

DOB: 06/30/1966
Admit: 09/26/2012

Page 2

secured over this using 14-mm screws. The locking rings were engaged and this formed good solid flush construct. The wound was then copiously irrigated with bacitracin irrigation. Complete hemostasis was achieved and the wound was then closed in anatomic layer. Sterile dressing was applied. The operation was terminated. The patient was taken to the recovery room in good condition without apparent complications.

D: 09/26/2012 12:38 T: 09/26/2012 12:59 TID: sm
Job #: 40716 Doc #: 20617822
cc: Scott B. Boyd, MD
Benjamin J Levinson, MD

3.

BENJAMIN LEVINSON, MD / SOUTH CAROLINA INTERNAL
MEDICINE

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. This is a follow-up visit.

HPI:

Follow up of cervical disc extrusion. Patient had surgery on 9/26/12 with Dr. Boyd. See docman for full report

In regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily. TSH was last checked one year ago. Free T4 was last checked 8 months ago.

Dx with other hyperlipidemia; current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Additionally, he presents with history of low back pain. The discomfort is most prominent in the lower lumbar spine. It does not radiate. He characterizes it as intermittent, moderate in intensity, sharp, and aching. This is an acute episode with no prior history of back pain. He states that the current episode of pain started 3 days ago. The event which precipitated this pain was using jackhammer. This occurred at work. The pain worsens with back flexion and back extension.

Concerning constipation, this has been a problem for 2 weeks. The stool is hard in consistency.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Positive for constipation.

MUSCULOSKELETAL: This system is negative except as noted in HPI.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 10/8/2012 4:32:46 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Miller Jr, William E. 06/30/1966

2 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 10/10/2012 at 3:52 pm.

Arthroscopy: right knee; 03/2011; **Procedures:** colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for **Pulmonary Embolism (father)**.

Positive for **Bipolar Disorder (brother)**.

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 10/8/2012 4:32:49 PM by Levinson, Benjamin J

Tobacco: Current Smoker. He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 10/8/2012 4:26:02 PM by Delucy, Elizabeth M

Neck pain

Peripheral neuropathy

Acquired hypothyroidism

Cervical disc extrusion

Other hyperlipidemia

Constipation

Immunizations:

None

Allergies:

Last Reviewed on 10/8/2012 4:26:04 PM by Delucy, Elizabeth M

No Known Drug Allergies.

Current Medications:

Last Reviewed on 10/8/2012 4:38:10 PM by Levinson, Benjamin J

Miller Jr, William E. 06/30/1966

3 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 10/10/2012 at 3:52 pm.

Colace 100mg Capsules 1 po bid

DEXILANT* 60 mg 1 po a day

Livalo 2mg Tablet Take 1 tablet(s) by mouth daily

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Topamax 25mg Tablet Take 2 tablet(s) by mouth bid

Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain

Drisdol 50,000IU Capsules 1 capsule by mouth monthly

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

OBJECTIVE:

Vitals:

Current: 10/8/2012 4:32:19 PM

Ht: 6 ft, 1 in; Wt: 225 lbs; BMI: 29.7

BP: 140/80 mm Hg; sCr: 0.89 mg/dL; GFR: 113.43

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: conjunctiva and cornea are normal; pupils and irises are normal;

NECK: range of motion is normal; trachea is midline;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: normal rate; rhythm is regular;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

NEUROLOGICAL: cranial nerves, motor and sensory function, reflexes, gait and coordination are all intact;

ASSESSMENT:

724.2 Low back pain
722.10 Cervical disc extrusion
244.8 Acquired hypothyroidism
272.4 Other hyperlipidemia
564.01 Constipation

ORDERS:

Meds Prescribed:

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

Nucynta ER (Tapentadol) 200mg Tablets, Extended Release Take 1 tablet(s) by mouth q12h #60 (Sixty) tablet(s)

Refills: 0

Lactulose 10gm/15ml Syrup Take 3 Tablespoon by mouth daily prn and repeat q 2 hrs prn #1 (One) 1920 ml bottle

Refills: 5

PLAN:

Low back pain refer to pain mgt

Prescriptions:

Miller Jr, William E. 06/30/1966

4 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 10/10/2012 at 3:52 pm.

Nucynta ER (Tapentadol) 200mg Tablets, Extended Release Take 1 tablet(s) by mouth q12h #60 (Sixty) tablet(s)
Refills: 0

Cervical disc extrusion fu with DR Boyd as doing

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

Constipation

Prescriptions:

Lactulose 10gm/15ml Syrup Take 3 Tablespoon by mouth daily prn and repeat q 2 hrs prn #1 (One) 1920 ml bottle
Refills: 5

Other Prescriptions:

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Thu, Sep 13, 2012 12:33 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/13/2012 03:40:27 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. This is a follow-up visit. 1 week, discuss MRI results.

HPI:

Bill presents with acquired hypothyroidism. He is currently taking Synthroid, 125 mg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

With regard to the other hyperlipidemia, current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

With regard to the neck pain, the location of discomfort is posterior. It radiates to the upper back and intrascapular area. The pain is characterized as severe, stabbing, and patient states it feels like a knife is slicing down his neck. Initial onset was 3 weeks ago. The precipitating event seems to have been Patient was in altercation with his assistant supervisor on 08/15/2012. His assistant supervisor pushed him up against the wall and patient felt and heard a pop in his neck. This is where the altercation ended. Patient moved away from him and two people got in between. Patient states it feels like a knot on the inside. Patient was terminated from his job on 08/27/2012 for insubordination. Pain is now radiating into right side of shoulder.

Bill presents with a diagnosis of cervical disc extrusion. This was diagnosed 09/05/2012. The course has been progressively worsening. It is of severe intensity. Prior work-up has included a Cervical spine without contrast MRI (results: central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since prior study. There is no residual left neural foraminal stenosis.).

Bill presents with a diagnosis of near-syncope. This was diagnosed 1 week ago. The course has been episodic. It is of severe intensity. He estimates that the frequency of symptoms is this happens every time patient bends over. The typical duration of an episode is less than a minute. Aggravating factors include bending over. Patient states that now when riding in a car he can become dizzy and light-headed with some nausea.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Positive for neck pain.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Thu, Sep 13, 2012 12:33 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/13/2012 03:40:27 PM

Printed on 10/10/2012 at 3:52 pm.

... Last Reviewed on 9/13/2012 12:37:52 PM by Delucy, Elizabeth M

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; **Procedures:** colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for **Pulmonary Embolism** (father).

Positive for **Bipolar Disorder** (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 9/13/2012 12:37:56 PM by Delucy, Elizabeth M

Tobacco: Current Smoker. He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 9/13/2012 12:37:40 PM by Delucy, Elizabeth M

Peripheral neuropathy

Acquired hypothyroidism

Cervical disc extrusion

Near-syncope

Neck pain

Other hyperlipidemia

Miller Jr, William E. 06/30/1966

3 of 4

Office/Outpatient Visit

Visit Date: Thu, Sep 13, 2012 12:33 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/13/2012 03:40:27 PM

Printed on 10/10/2012 at 3:52 pm.

Immunizations:

None

Allergies:

Last Reviewed on 9/13/2012 12:37:43 PM by Delucy, Elizabeth M

No Known Drug Allergies.

Current Medications:

Last Reviewed on 9/13/2012 2:37:47 PM by Levinson, Benjamin J

Colace 100mg Capsules 1 po bid

DEXILANT* 60 mg 1 po a day

Livalo 2mg Tablet Take 1 tablet(s) by mouth daily

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Topamax 25mg Tablet Take 2 tablet(s) by mouth bid

Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Lortab 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain

Drisdol 50,000IU Capsules 1 capsule by mouth monthly

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Ultracet 37.5mg/325mg Tablet 1-2 q 4-6 hrs prn

OBJECTIVE:

Vitals:

Current: 9/13/2012 2:34:19 PM

Ht: 6 ft, 1 in; Wt: 222.2 lbs; BMI: 29.3

BP: 132/72 mm Hg; sCr: 0.89 mg/dL; GFR: 112.83

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

780.2 Near-syncope
722.10 Cervical disc extrusion
723.1 Neck pain
244.8 Acquired hypothyroidism
272.4 Other hyperlipidemia

ORDERS:

Miller Jr, William E. 06/30/1966

4 of 4

Office/Outpatient Visit

Visit Date: Thu, Sep 13, 2012 12:33 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/13/2012 03:40:27 PM

Printed on 10/10/2012 at 3:52 pm.

Meds Prescribed:

Butrans (Buprenorphine HCl) 10mcg/1hr Transdermal Patch Apply 1 patch to upper arms or upper torso every week. # 4 (Four) patch(es) Refills: 0

Refill of: Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #90 (Ninety) tablet(s) Refills: 0

PLAN:

Near-syncope suspect sx from neck add brace

Cervical disc extrusion Pt has a C6-C7 disk extrusion with cervical stenosis. Feet needs neurosurgical evaluation. Neck brace added

REFERRALS: Referral initiated to a neurosurgeon.

FOLLOW-UP: Schedule a follow-up visit in 1 month.

Prescriptions:

Butrans (Buprenorphine HCl) 10mcg/1hr Transdermal Patch Apply 1 patch to upper arms or upper torso every week. # 4 (Four) patch(es) Refills: 0

Refill of: Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #90 (Ninety) tablet(s) Refills: 0

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. This is a follow-up visit. 1 week.

HPI:

Patient to be evaluated for acquired hypothyroidism. He is currently taking Synthroid, 125 mcg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

With regard to the other hyperlipidemia, current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Dx with neck pain; the location of discomfort is posterior. It radiates to the upper back and intrascapular area. The pain is characterized as severe, stabbing, and patient states it feels like a knife is slicing down his neck. Initial onset was 2 weeks ago. The precipitating event seems to have been Patient was in altercation with his assistant supervisor on 08/15/2012. His assistant supervisor pushed him up against the wall and patient felt and heard a pop in his neck. This is where the altercation ended. Patient moved away from him and two people got in between.. Patient states it feels like a knot on the inside. Patient was terminated from his job on 08/27/2012 for insubordination.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Positive for neck pain.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 9/4/2012 11:35:53 AM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Miller Jr, William E. 06/30/1966

2 of 4

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 10/10/2012 at 3:52 pm.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 9/4/2012 11:35:56 AM by Levinson, Benjamin J

Tobacco: Current Smoker: He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 9/4/2012 11:35:37 AM by Levinson, Benjamin J

Peripheral neuropathy

Acquired hypothyroidism

Neck pain.

Other hyperlipidemia

Immunizations:

None

Allergies:

Last Reviewed on 9/4/2012 11:35:41 AM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Last Reviewed on 9/4/2012 11:35:50 AM by Levinson, Benjamin J

Percocet 10mg/325mg Tablet Take 1 tablet(s) by mouth every 4 hours as needed for pain

Colace 100mg Capsules 1 po bid

DEXILANT* 60 mg 1 po a day

Livalo 2mg Tablet Take 1 tablet(s) by mouth daily

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Topamax 25mg Tablet Take 2 tablet(s) by mouth bid

Trilipix 327mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 10/10/2012 at 3:52 pm.

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain

Prednisone 20mg Tablet 3 po qd

Drisdol 50,000IU Capsules 1 capsule by mouth monthly

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Ultracet 37.5mg/325mg Tablet 1-2 q 4-6 hrs prn

OBJECTIVE:

Vitals:

Current: 9/4/2012 11:34:24 AM

Ht: 6 ft, 1 in; Wt: 222 lbs; BMI: 29.3

BP: 140/80 mm Hg; sCr: 0.89 mg/dL; GFR: 112.78

Exams:

PHYSICAL EXAM:

GENERAL: **anxious, seems to be in pain;**

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits; very stiff with limited motion in all directions and pain worse with rt lateral flexion. He has some pain radiation down rt lateral forearm with maneuvers

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

723.1 Neck pain
244.8 Acquired hypothyroidism
272.4 Other hyperlipidemia

ORDERS:

Meds Prescribed:

Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #60 (Sixty) tablet(s)

Refills: 0

Radiology/Test Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

PLAN:

Neck pain at this point he is going to get an attorney. I will order a neck C-spine to evaluate him and see if anything else can be done.

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Tue, Sep 4, 2012 10:41 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 09/04/2012 12:05:58 PM

Printed on 10/10/2012 at 3:52 pm.

TESTS/PROCEDURES ordered today include C-spine MRI.

MEDICATIONS: At this point, will discontinue Lortab and prednisone.

FOLLOW-UP: Schedule a follow-up appointment in 1 week.

Prescriptions:

Lortab (Hydrocodone/Acetaminophen) 7.5mg/500mg Tablet Take 1 tablet(s) by mouth q6h prn #60 (Sixty) tablet(s)

Refills: 0

Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Aug 27, 2012 01:23 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 08/27/2012 02:10:00 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. He presents with neck pain as a result of his assistant supervisor pushing him up against the wall..

HPI:

Patient presents with acquired hypothyroidism. He is currently taking Synthroid, 125 mcg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

Dx with other hyperlipidemia; current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Additionally, he presents with history of neck pain. the location of discomfort is posterior. It radiates to the upper back and intrascapular area. The pain is characterized as severe, stabbing, and patient states it feels like a knife is slicing down his neck. Initial onset was 2 weeks ago. The precipitating event seems to have been Patient was in altercation with his assistant supervisor on 08/15/2012. His assistant supervisor pushed him up against the wall and patient felt and heard a pop in his neck. This is where the altercation ended. Patient moved away from him and two people got in between.. Patient received a bruise on his right forearm arm and right wrist. Since then patient states his right arm goes numb and that the pain is so severe he is unable to sleep at night. He also states he has the sensation of a "brain freeze" as a result of this. Patient is employed at Owens Steel and has been for 8 years. Percocet helps short time but before this he did not need it anymore.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Positive for neck pain.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 8/27/2012 1:25:49 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid

Miller Jr, William E. 06/30/1966

2 of 4

Office/Outpatient Visit

Visit Date: Mon, Aug 27, 2012 01:23 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 08/27/2012 02:10:00 PM

Printed on 10/10/2012 at 3:52 pm.

junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for **Pulmonary Embolism** (father).

Positive for **Bipolar Disorder** (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 8/27/2012 1:26:39 PM by Levinson, Benjamin J

Tobacco: Current Smoker. He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 8/27/2012 1:24:22 PM by Levinson, Benjamin J

Peripheral neuropathy

Acquired hypothyroidism

Neck pain

Other hyperlipidemia

Immunizations:

None

Allergies:

Last Reviewed on 8/27/2012 1:24:25 PM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Last Reviewed on 8/27/2012 1:38:27 PM by Levinson, Benjamin J

Colace 100mg Capsules 1 po bid

DEXILANT* 60 mg 1 po a day

Livalc **331** Tablet Take 1 tablet(s) by mouth daily

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Mon, Aug 27, 2012 01:23 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 08/27/2012 02:10:00 PM

Printed on 10/10/2012 at 3:52 pm.

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily
Topamax 25mg Tablet Take 2 tablet(s) by mouth bid
Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily
Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily
Drisdol 50,000IU Capsules 1 capsule by mouth monthly
Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime
Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid
Ultracet 37.5mg/325mg Tablet 1-2 q 4-6 hrs prn
Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

OBJECTIVE:

Vitals:

Current 8/27/2012 1:38:03 PM

Ht: 6 ft, 1 in; Wt: 224 lbs; BMI: 29.6

BP: 132/82 mm Hg; sCr: 0.89 mg/dL; GFR: 113.21

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits; very stiff with limited motion in all directions. Pain increase with left lateral flexion to rt sided muscle area

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

723.1 Neck pain
244.8 Acquired hypothyroidism
272.4 Other hyperlipidemia

ORDERS:

Meds Prescribed:

Refill of: Percocet (Oxycodone/Acetaminophen) 10mg/325mg Tablet Take 1 tablet(s) by mouth every 4 hours as needed for pain #180 (One Hundred and Eighty) tablet(s) Refills: 0

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain #120 (One Hundred and Twenty) tablet(s) Refills: 5

Prednisone 20mg Tablet 3 po qd #100 (One Hundred) tablet(s) Refills: 0

PLAN:

Neck pain Pt to discuss with attorney on route to take.

In the interim place on steroids 60 mg a day for a week and increase percocet and methocarbamol. Out of work until I

Miller Jr, William E. 06/30/1966

4 of 4

Office/Outpatient Visit

Visit Date: Mon, Aug 27, 2012 01:23 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 08/27/2012 02:10:00 PM

Printed on 10/10/2012 at 3:52 pm.

see him back in 8 days.

Prescriptions:

Refill of: Percocet (Oxycodone/Acetaminophen) 10mg/325mg Tablet Take 1 tablet(s) by mouth every 4 hours as needed for pain #180 (One Hundred and Eighty) tablet(s) Refills: 0

Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain #120 (One Hundred and Twenty) tablet(s) Refills: 5

Prednisone 20mg Tablet 3 po qd #100 (One Hundred) tablet(s) Refills: 0

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Patient Education Handouts:

Hypothyroidism

Other hyperlipidemia

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

Refill of: DEXILANT* 60 mg 1 po a day #90 (Ninety) capsule(s) Refills: 3

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

Refill of: Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #360 (Three Hundred and Sixty) tablet(s) Refills: 5

Refill of: Drisdol (Ergocalciferol) 50,000IU Capsules 1 capsule by mouth monthly QS for 90 day(s) Refills: 3

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

Refill of: Drisdol (Ergocalciferol) 50,000IU Capsules 1 capsule by mouth monthly QS for 90 day(s) Refills: 3

Refill of: Livalo (Pitavastatin) 2mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Lab Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

PLAN:

Acquired hypothyroidism

LABORATORY: Lab studies ordered include total thyroxine and TSH.

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up visit in 3 months.

Prescriptions:

Refill of: Synthroid (Levothyroxine Sodium) 0.125mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills:

3

Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

Patient Education Handouts:

Hypothyroidism

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up visit in 3 months.

Prescriptions:

Refill of: Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #90 (Ninety) capsule(s) Refills: 3

Refill of: Livalo (Pitavastatin) 2mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Change in bowel habits do miralax

Prescriptions:

Colace (Docusate Sodium) 100mg Capsules 1 po bid #180 (One Hundred and Eighty) capsule(s) Refills: 3

Peripheral neuropathy

Prescriptions:

Refill of: Topamax (Topiramate) 25mg Tablet Take 2 tablet(s) by mouth bid #360 (Three Hundred and Sixty) tablet(s) Refills: 3

Refill of: Naprosyn (Naproxen) 500mg Tablet Take 1 tablet(s) by mouth bid #180 (One Hundred and Eighty) tablet(s) Refills: 3

Other Prescriptions:

333

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM -

Printed on 10/10/2012 at 3:52 pm.

Livalo 1mg Tablet Take 1 tablet(s) by mouth daily

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Drisdol 50,000IU Capsules 1 a week po for vitamin d deficiency

Ultracet 37.5mg/325mg Tablet 1-2 q 4-6 hrs prn

Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

OBJECTIVE:

Vitals:

Current: 7/9/2012 1:42:21 PM

Ht: 6 ft, 1 in; Wt: 222.4 lbs; BMI: 29.3

BP: 108/72 mm Hg; sCr: 0.89 mg/dL; GFR: 112.87

Repeat: 122/72

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion, no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial,

femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

244.8 Acquired hypothyroidism

272.4 Other hyperlipidemia

787.99 Change in bowel habits

356.9 Peripheral neuropathy

ORDERS:

Meds Prescribed:

Refill of: Synthroid (Levothyroxine Sodium) 0.125mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Refill of: DEXILANT* 60 mg 1 po a day #90 (Ninety) capsule(s) Refills: 3

Refill of: Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #90 (Ninety) capsule(s) Refills: 3

Refill of: Topamax (Topiramate) 25mg Tablet Take 2 tablet(s) by mouth bid #360 (Three Hundred and Sixty) tablet(s) Refills: 3

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

Refill of: Naprosyn (Naproxen) 500mg Tablet Take 1 tablet(s) by mouth bid #180 (One Hundred and Eighty) tablet(s) Refills: 3

Refill of: Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #360 (Three Hundred and Sixty) tablet(s) Refills: 5

Colace (Docusate Sodium) 100mg Capsules 1 po bid #180 (One Hundred and Eighty) capsule(s) Refills: 3

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for **Pulmonary Embolism** (father).

Positive for **Bipolar Disorder** (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 7/9/2012 1:52:56 PM by Levinson, Benjamin J

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 7/9/2012 1:46:25 PM by Levinson, Benjamin J

Acquired hypothyroidism

Other hyperlipidemia

Peripheral neuropathy

Change in bowel habits

Immunizations:

None

Allergies:

Last Reviewed on 7/9/2012 1:46:28 PM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Last Reviewed on 7/9/2012 1:52:41 PM by Levinson, Benjamin J

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

DEXILANT* 60 mg 1 po a day

Topamax 3375mg Tablet Take 2 tablet(s) by mouth bid

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. This is a follow-up visit.

HPI:

Bill presents with a diagnosis of peripheral neuropathy. This was diagnosed 6 to 9 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include **Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.**

Additionally, he presents with history of acquired hypothyroidism. he is currently taking Synthroid, 125 mcg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

With regard to the other hyperlipidemia, current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Bill presents with a diagnosis of change in bowel habits. This was diagnosed one year ago. The course has been constipation mixed with several stools a day. Patient states that miralax has not helped and the fiber made it worse. Patient states he feels swollen in RUQ, but there is no pain associated with this.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Positive for **abdominal bloating, constipation and gas.**

MUSCULOSKELETAL: Negative for arthralgias, back pain, and myalgias.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: This system is negative except as noted in HPI.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 7/9/2012 1:52:44 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 45 year old White male. This is a follow-up visit. 5 week and review labs. patient would like to get off of Percocet

HPI:

Bill presents with a diagnosis of peripheral neuropathy. This was diagnosed 1-2 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include **Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.**

In regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily.

In regard to the other hyperlipidemia, current treatment includes Crestor and Trilipix and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 286 mg/dl on 1/24/12), triglycerides (357 mg/dl), HDL (42 mg/dL), and LDL cholesterol (173 mg/dl).

Bill presents with a diagnosis of hyperglycemia. This was diagnosed 2 weeks ago. Prior work-up has included labwork (including HbA1C: 6.4 (02/29/2012);).

Bill presents with a diagnosis of neck pain. This was diagnosed 4 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include **Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.**

Bill presents with a diagnosis of vitamin D deficiency. The course has been progressively worsening. It is of moderate intensity. Associated symptoms include **bone pain and aches, and fatigue.**

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: **This system is negative except as noted in HPI.**

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Negative for arthralgias, back pain, and myalgias.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: **This system is negative except as noted in HPI.**

ENDOCRINE: **This system is negative except as noted in HPI.**

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 3/14/2012 8:55:08 AM by Levinson, Benjamin J

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; **Procedures:** colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for **Pulmonary Embolism** (father).

Positive for **Bipolar Disorder** (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 3/14/2012 8:55:20 AM by Levinson, Benjamin J

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 3/14/2012 8:52:31 AM by Levinson, Benjamin J

Neck pain

Acquired hypothyroidism

Other hyperlipidemia

Peripheral neuropathy

Immunizations:

None

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

Allergies:

Last Reviewed on 3/14/2012 8:52:35 AM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Last Reviewed on 3/14/2012 8:55:57 AM by Levinson, Benjamin J

Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

DEXILANT* 60 mg 1 po a day

Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Topamax 25mg Tablet one qhs x 7, then 2 qhs x7, then one am and 2 qhs x7, then 2 bid thereafter

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Lamisil 250mg Tablet Take 1 tablet(s) by mouth daily for 12 weeks for toenail.

OBJECTIVE:

Vitals:

Current: 3/14/2012 8:57:37 AM

Ht: 6 ft, 1 in; Wt: 236.8 lbs; BMI: 31.2

BP: 122/72 mm Hg (right arm, sitting); sCr: 0.89 mg/dL; GFR: 117.12

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

790.6	Hyperglycemia
244.8	Acquired hypothyroidism
272.4	Other hyperlipidemia
356.9	Peripheral neuropathy
723.1	Neck pain
268.9	Vitamin D deficiency

ORDERS:

Meds Prescribed:

Drisdol (Ergocalciferol) 50,000IU Capsules 1 a week po for vitamin d deficiency #13 (Thirteen) capsule(s) Refills: 3

Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #120 (One Hundred and Twenty) tablet(s) Refills: 5

Livalo (Pitavastatin) 1mg Tablet Take 1 tablet(s) by mouth daily #30 (Thirty) tablet(s) Refills: 5

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Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

Lab Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

PLAN:

Hyperglycemia

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: watch hga1c over time..

Acquired hypothyroidism

LABORATORY: Lab studies ordered include total thyroxine and TSH.

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up visit in 3 months.

Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

Other hyperlipidemia went over Berkely will add vit d with livalo

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up visit in 3 months.

cmet lipid ahead

FOLLOW-UP ORDERS:

LABORATORY: Labs to be scheduled in the future include comprehensive metabolic panel, HgbA1C, Lipid NMR, and Vitamin D.

Prescriptions:

Livalo (Pitavastatin) 1mg Tablet Take 1 tablet(s) by mouth daily #30 (Thirty) tablet(s) Refills: 5

Patient Education Handouts:

Hyperlipidemia (Hyperlipoproteinemia)

Neck pain refer to DR Owens for fu DC percocet.

Prescriptions:

Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #120 (One Hundred and Twenty) tablet(s) Refills: 5

Vitamin D deficiency

MEDICATIONS: (no change to current medication regimen)

Prescriptions:

Drisdol (Ergocalciferol) 50,000IU Capsules 1 a week po for vitamin d deficiency #13 (Thirteen) capsule(s) Refills: 3

Miller Jr, William E. 06/30/1966

1 of 3

Office/Outpatient Visit

Visit Date: Thu, Feb 16, 2012 03:51 pm

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: April Smith, RN)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 02/29/2012 10:38:28 AM.

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC: Follow up on back pain.

HPI: Mr. Miller is a pleasant 45 year old male with a history of lumbar back pain preceded by no inciting event. He is currently on a medication regimen of Percocet and Lyrica. Previous medication trials include Lortab, Morphine, Tramadol, Wellbutrin and Ryzolt.

He has undergone the following interventions with the indicated benefit:

1. September 2011, bilateral L3-S1 medial branch blocks performed by myself. This provided him with great than 50% pain relief in the lumbar region.

William has slowly discontinued his Lyrica and his cramps have resolved. He continues to utilize his Percocet due to a new problem regarding his neck. He tells me that he continues to receive significant benefit from his lumbar medial branch block and is not in need of treatment for this condition at this time.

His new pain today is reported as a 5/10 on the NRS with a sharp and occasional sensation. The pain is in the cervical spine with radiation into the posterior aspect of his bilateral shoulders. Lifting objects with his arms, as well as lateral rotation of his neck, tends to exacerbate this pain. Percocet alleviates this pain to some extent. He reports this pain is associated with occasional dizziness and an electric sensation that travels down his arms.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever and weight change.

EYES: Negative for double vision, blurred vision, redness, eye pain and discharge

ENT/MOUTH: Negative for bleeding, throat swelling, ulcers, lip lesions and mouth dryness.

RESPIRATORY: Negative for shortness of breath, wheezing, chest tightness and coughing up blood/puss.

CARDIOVASCULAR: Negative for chest pain, palpitations, passing out and extremity swelling.

GASTROINTESTINAL: Negative for nausea, vomiting, heartburn bleeding and constipation.

GENTOURINARY: Negative for incontinence, impotence, genital burn, difficult urination and discharge.

MUSCULOSKELETAL: Positive for pain.

NEUROLOGICAL: Negative for headache, seizures, vertigo, memory loss and concentration difficulty.

PSYCHIATRIC: Negative for anxiety, depression, insomnia and homicidal/suicidal thoughts.

Past Medical History / Family History / Social History:

... Last Reviewed on 2/16/2012 3:20:01 PM by Smith, April

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; **Procedures:** colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Thu, Feb 16, 2012 03:51 pm

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: April Smith, RN)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 02/29/2012 10:38:28 AM

Printed on 10/10/2012 at 3:52 pm.

Tobacco/Alcohol/Supplements:

... Last Reviewed on 2/16/2012 3:20:04 PM by Smith, April

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions:

Measles (rubeola)

Mumps

Rubella

Allergies:

Last Reviewed on 2/16/2012 3:19:53 PM by Smith, April

No Known Drug Allergies.

OBJECTIVE:

Vitals:

Current 2/16/2012 3:53:02 PM

Ht: 6 ft, 1 in

BP: 120/70 mm Hg (right arm, sitting); P: 78 bpm; R: 16 bpm; sCr: 0.71 mg/dL; GFR: 109.86

O2 Sat: 97 %

Pain Index: 5

Exams:

CONSTITUTIONAL: Well-nourished and in no apparent distress.

EYES: Negative for PERRL; non-icteric sclera.

RESPIRATORY: Clear to auscultation bilaterally.

CARDIOVASCULAR: Normal rate and rhythm. No murmurs, gallops, or rubs.

NEUROLOGICAL:

Cranial Nerves: II - XII intact.

Reflex Exam: DTR's are 2+ in the bilateral upper and lower extremities.

Sensory Exam: No gross deficits noted.

Tenderness to palpation: C-spine and L-spine (worse with extension).

Miller Jr, William E. 06/30/1966

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Office/Outpatient Visit

Visit Date: Thu, Feb 16, 2012 03:51 pm

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: April Smith, RN)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 02/29/2012 10:38:28 AM

Printed on 10/10/2012 at 3:52 pm.

PSYCHIATRIC: Alert and oriented to person, place and time. Cognition intact. Non-pressured speech. Normal affect.

Lab/Test Results: IMPRESSION:

1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.
2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with uncovertebral joint hypertrophy, left greater than right.
3. Congenital shortening of the pedicles.

SC Pharmacy query was evaluated today and reflected adherence to the prescribed regimen.

ASSESSMENT:

724.2	Low back pain
356.9	Peripheral neuropathy
729.5	Limb pain
338.4	Chronic pain syndrome
724.6	Sacroiliac pain
723.4	Cervical radiculopathy
722.4	Degeneration of cervical intervertebral disc

PLAN: 1. Regarding William's lumbar pain, he continues to receive significant benefit from his lumbar medial branch blocks and no further treatment is warranted at this time.

2. Regarding his neck pain, he did recently undergo an MRI of the cervical spine which shows that he suffers from cervical degenerative disc disease and foraminal stenosis. I have scheduled him for a series of cervical steroid injections to address this pathology.

3. Due to the fact that Lyrica causes intolerable side effects, it will be discontinued. I have initiated him on a trial of Topamax in an effort to gain better control of his radicular symptoms. Topamax will also likely assist him with his weight loss efforts.

4. I will continue his Percocet as previously prescribed.

5. He will follow up in clinic with me in eight weeks for further evaluation.

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Feb 8, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 02/08/2012 05:29:55 PM

Printed on 10/10/2012 at 3:52 pm.

Allergies:

Last Reviewed on 2/8/2012 8:01:29 AM by Legg, Betty L

No Known Drug Allergies.

Current Medications:

Last Reviewed on 2/8/2012 8:02:32 AM by Legg, Betty L

DEXILANT* 60 mg 1 po a day

Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

OBJECTIVE:

Vitals:

Current: 2/8/2012 8:01:14 AM

Ht: 6 ft, 1 in; Wt: 253.6 lbs; BMI: 33.5

sCr: 0.71 mg/dL; GFR: 151.15

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: conjunctiva and cornea are normal; pupils and irises are normal;

NECK: range of motion is normal; trachea is midline;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: normal rate; rhythm is regular;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

NEUROLOGICAL: cranial nerves, motor and sensory function, reflexes, gait and coordination are all intact;

ASSESSMENT:

272.4 Other hyperlipidemia
244.8 Acquired hypothyroidism
780.4 Dizziness
723.1 Neck pain
726.91 Bone spur
459.81 Venous insufficiency

ORDERS:

Medis Prescribed:

Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #30 (Thirty) capsule(s)

Refills: 11

Radiology/Test Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical
Radiologic examination; calcaneus, minimum of two views

Procedures Ordered:

Follow up appointment in 5 weeks

Miller Jr, William E. 06/30/1966

4 of 4

Office/Outpatient Visit

Visit Date: Wed, Feb 8, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 02/08/2012 05:29:55 PM

Printed on 10/10/2012 at 3:52 pm.

PLAN:

Other hyperlipidemia trial of trilipix and watch for myalgias

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up appointment in 5 weeks.

FOLLOW-UP ORDERS:

LABORATORY: Labs to be scheduled in the future include Benkley Adv. Profile, Benkley Genetic Profile, comprehensive metabolic panel, HgbA1C, and Vitamin D.

Prescriptions:

Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #30 (Thirty) capsule(s)

Refills: 11

Orders:

Follow up appointment in 5 weeks

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up appointment in 5 weeks.

Dizziness sx resolved

Neck pain

TESTS/PROCEDURES ordered today include C-spine MRI. If + get Dr Owens to see.

Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

Bone spur xray left heel has a callous and ? spur under it
add heel cup for conservative mgt for now.

RADIOLOGY: I have ordered a heel x-ray.

Orders:

Radiologic examination, calcaneus, minimum of two views

Venous insufficiency keep fu with Dr Miller.

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER - IRMO
7035 ST ANDREWS ROAD
COLUMBIA SC 29212
PHONE: (803) 407-4100

PATIENT: MILLER, WILLIAM E

AGE: 45
DOB: 06/30/1966
SEX: M

UNIT/MR NO: M001652204
ACCT NO: Y00004334744
SSN: 276-76-3013
REQ NO: 11-0015003
REPORT NO: 0817-0023

ORDERING DR: PHILIP C HONIG MD

PT LOCATION: IMRI
HONPHI FP

REPORT STATUS: Signed

PRIMARY CARE: SUSAN M GRIFFIN RN
ORDERED BY: PHILIP C HONIG MD
LOCATION: REG CLI IMRI
STUDY TYPE: 0816-0007 IMRI/MRI THORACIC SPINE

DATE OF EXAM: 08/16/11

CLINICAL DATA: 45M, SEVERE BACK PAIN, DIFFICULTY WALKING,
PAIN BETWEEN THE SHOULDER BLADES, LEFT
HAND TINGLING

MRI THORACIC SPINE (WITHOUT CONTRAST):

COMPARISON: None.

TECHNIQUE: Sagittal T2 weighted, sagittal T1 weighted, sagittal inversion recovery and sagittal 3-D volume T2 weighted sequences were obtained. Axial images were reformatted from the sagittal 3-D volume data.

FINDINGS: The visible bone marrow signal is unremarkable. No significant disc bulge or disc herniation is seen. The thoracic cord is unremarkable.

READING: Unremarkable MRI of the thoracic spine.

MAS

LAYNE R CLEMENZ MD

REPORT STATUS: Signed

HONIG, PHILIP C, MD
ORDER#/PROCEDURE: 0816-0007 IMRI/THOR (72146)
EXAM TECH: PMKUB

PT LOC/ROOM: IMRI/

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number : 08-1374504

Collection: 02/09/2012 12:14:55

Results: 02/09/2012

12:14:55

Electronically signed off by Dr. Benjamin J Levinson, MD on 02/13/2012

TEST DESCRIPTION

OUT-OF-RANGE

IN-RANGE

UNITS

EXPECTED

72141 - MR-Cervical Spine Without Contrast

Radiology Report: Imaging Center: 08-548

MRI OF THE CERVICAL SPINE: PATIENT: Miller Jr, William

MRN: 759995

DATE OF BIRTH: 6/30/1966

REF PHYSICIAN: Ben Levinson, MD

DATE OF EXAM: 2/8/2012

PATIENT PH#: 803-530-3900

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain radiating to both shoulders.

TECHNIQUE: The following sequences were performed on a GE Signa HD-Excite 1.5 Tesla magnet: Sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. There are no priors for comparison.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass. The cervical cord is normal in signal intensity. There is an asymmetric disc bulge to the right at C2-3 without stenosis. There is congenital shortening of the pedicles throughout the cervical spine.

At the C3-4 level, there are right-sided uncovertebral joint degenerative changes without stenosis.

At the C4-5 level, there is no significant disc bulge or protrusion.

At the C5-6 level, there is disc height loss with an asymmetric disc osteophytic bulge to the left as well as bilateral uncovertebral joint hypertrophy narrowing the central canal to just under 9mm. There is mild to moderate left neural foraminal stenosis and mild right neural foraminal stenosis.

At the C6-7 level, there is a left central disc extrusion migrating cephalad and spanning 9mm in sagittal dimensions. This compresses the ventral cord and narrows the central canal to 6mm. There is a left neural foraminal stenosis as well.

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002
Ordering Provider: Levinson, Benjamin J
Order Number : 08-1374504
Collection: 02/09/2012 12:14:55

Results: 02/09/2012 12:14:55

Electronically signed off by Dr. Benjamin J Levinson, MD on 02/13/2012

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED

At the C7-T1 level, there is no disc bulge or protrusion.

IMPRESSION:

1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.
2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with uncovertebral joint hypertrophy, left greater than right.
3. Congenital shortening of the pedicles.

Paul Aitchison, M.D.
PA / b1

DD: 2/9/2012
DT: 2/9/2012
Job: 14533599

This document has been reviewed and electronically signed by

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number : 08-1486344

Collection: 09/05/2012 10:19:30
10:19:30

Results: 09/05/2012

TEST DESCRIPTION

OUT-OF-RANGE

IN-RANGE

UNITS

EXPECTED

72141 - MR-Cervical Spine Without Contrast

Radiology Report: Imaging Center: 08-548

MRI OF THE CERVICAL SPINE: PATIENT: Miller Jr, William

MRN: 759995

DATE OF BIRTH: 6/30/1966

REF PHYSICIAN: Ben J Levinson, MD

DATE OF EXAM: 9/4/2012

PATIENT PH#: 803-530-3900

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain with bilateral hand pain and numbness.

TECHNIQUE: The following sequences were performed on a GE Signa HD-Excite 1.5 Tesla magnet: Sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. Comparison is made to previous study dated 02/18/12.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass.

The C2-3 intervertebral disc is within normal limits.

At the C3-4 level, there is no significant disc bulge or protrusion.

At the C4-5 level, there is no acquired central canal or foraminal stenosis.

At the C5-6 level, there is a diffuse disc bulge with uncovertebral joint hypertrophic changes, left greater than right.

At the C6-7 level, there is a central disc extrusion migrating slightly cephalad. This narrows the central canal to under 6mm and deforms the ventral cord.

The C7-T1 intervertebral disc is normal.

IMPRESSION:

1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILLWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number : 08-1486344

Collection: 09/05/2012 10:19:30

Results: 09/05/2012 10:19:30

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED
2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.				
3. Congenital shortening of the pedicles.				

Paul Aitchison, M.D.

PA / b1

DD: 9/5/2012

DT: 9/5/2012

Job: 15790856

This document has been reviewed and electronically signed by

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number: 08-1486344

Collection: 09/05/2012 10:19:30

Results: 09/05/2012

10:19:30

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED

72141 - MR-Cervical Spine Without Contrast

Radiology Report: Imaging Center: 08-548

MRI OF THE CERVICAL SPINE: PATIENT: Miller Jr, William

MRN: 759995

DATE OF BIRTH: 6/30/1966

REF PHYSICIAN: Ben J Levinson, MD

DATE OF EXAM: 9/4/2012

PATIENT PH#: 803-530-3900

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain with bilateral hand pain and numbness.

TECHNIQUE: The following sequences were performed on a GE Signa HD-Excite 1.5 Tesla magnet: Sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. Comparison is made to previous study dated 02/18/12.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass.

The C2-3 intervertebral disc is within normal limits.

At the C3-4 level, there is no significant disc bulge or protrusion.

At the C4-5 level, there is no acquired central canal or foraminal stenosis.

At the C5-6 level, there is a diffuse disc bulge with uncovertebral joint hypertrophic changes, left greater than right.

At the C6-7 level, there is a central disc extrusion migrating slightly cephalad. This narrows the central canal to under 6mm and deforms the ventral cord.

The C7-T1 intervertebral disc is normal.

IMPRESSION:

1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.

*He has
severe
Cervical
stenosis
at C6-C7*

*Keep BMT
Appt 9-13-12*

*However I feel he
needs to see a
neurologist*

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002
Ordering Provider: Griffin, Susan M
Order Number : 08-1274563
Collection: 08/19/2011 15:09:23
15:09:23

Results: 08/19/2011

Electronically signed off by FNP Susan M Griffin, N.P. on 08/22/2011

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED
93970 - US-Duplex Doppler-Extremity Veins Complete				
Radiology Report:	Imaging Center: 08-552			
ULTRASOUND OF THE DEEP VEINS OF BOTH LEGS: PATIENT:			Miller Jr, William	
MRN:	759995			
DATE OF BIRTH:	6/30/1966			
REF PHYSICIAN:	Susan Griffin, NP			
DATE OF EXAM:	8/19/2011			
PATIENT PH#:	803-530-3900			

EXAM: ULTRASOUND WITH DOPPLER OF VEINS IN BOTH LEGS

HISTORY: Low back pain and edema.

TECHNIQUE: The deep veins of both legs were examined using real-time ultrasound, color Doppler and spectral Doppler.

FINDINGS: There is full compressibility of the common femoral veins bilaterally, the greater saphenous veins, the femoral veins in the proximal, mid and distal thigh and the popliteal vein. There is normal spectral Doppler of the deep veins with respiratory variation and augmentation. There is normal color Doppler of the deep veins. There is normal color Doppler of the posterior tibial veins in the calf. There is calf edema.

IMPRESSION: No evidence of deep vein thrombosis.

Robin Daum-Kowalski, MD
RD / kp

DD: 8/19/2011
DT: 8/19/2011
Job: 13410682

This document has been electronically reviewed and signed.

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number : 08-1360593

Collection: 01/17/2012 10:48:36

Results: 01/17/2012

10:48:36

Electronically signed off by Dr. Benjamin J Levinson, MD on 01/19/2012

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED
70220 - XR-Sinuses-Complete; min 3 views				
Radiology Report:		Imaging Center: 08-11699		
SINUS X-RAY: PATIENT:		Miller Jr, William		
MRN:	759995			
DATE OF BIRTH:	6/30/1966			
REF PHYSICIAN:	Ben Levinson, MD			
DATE OF EXAM:	1/16/2012			
PATIENT PH#:	803-530-3900			

EXAM: SINUS X-RAY

HISTORY: Congestion.

FINDINGS: Three views of the skull show hyperplasia of the bilateral frontal sinuses. Remaining sinuses are clear without air-fluid levels or asymmetric opacification.

IMPRESSION: Normal radiographic appearance of the sinuses with note of hypoplastic frontal sinuses.

Perry Edenfield, MD

WE / ab

DD: 1/17/2012

DT: 1/17/2012

Job: 14385023

This document has been reviewed and electronically signed.

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number : 08-1374517

Collection: 02/08/2012 16:26:19

Results: 02/08/2012

16:26:19

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED

73650 - XR-Calcaneus; min 2 Views

Radiology Report: Imaging Center: 08-11699

LEFT CALCANEUS X-RAY: PATIENT: Miller Jr, William

MRN: 759995

DATE OF BIRTH: 6/30/1966

REF PHYSICIAN: Ben Levinson, MD

DATE OF EXAM: 2/8/2012

PATIENT PH#: 803-530-3900

EXAM: LEFT CALCANEUS X-RAY

HISTORY: Bone spur.

FINDINGS: Lateral and Brodens views of the left calcaneus show no fracture. There is no joint arthropathy or disc dislocation. There is no significant plantar heel spurring or Achilles tendon enthesopathy.

IMPRESSION: Normal left calcaneus.

Perry Edenfield, MD

WE / ab

DD: 2/8/2012

DT: 2/8/2012

Job: 14526741

This document has been reviewed and electronically signed.

*Sit up
Ankle
Dr. Methuen
to see her
to remove
Bunion*

4.

SCOTT B. BOYD, MD.// TREATING PHYSICIAN QUESTIONNAIRE

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 1213162
Carrier File # _____
Carrier Code # _____
(803) 737-5700 Employer FEIN _____

William E. Miller Jr.
Claimant's Name SSN _____
1499 Charleston Road Leesville, SC 29070
Address City State Zip
(803) 530-9446 NA
Home Phone # Work Phone #

Owen Steel
Employer's Name
727 Mauney Dr. Columbia, SC 29201
Address City State Zip
Insurance Carrier: Strategic Comp Services
Great American Ins. Group
803-765-2968
Preparer's Name Phone#

TREATING PHYSICIAN // MEDICAL QUESTIONNAIRE

- 1) Was Mr. William E. Miller referred to your practice in September of 2012 by Dr. Levinson for neck pain, limb numbness, lack of motion and other complaints?

Yes: ☒ No: ☐

- 2) Did you treat Mr. Miller for this condition or injury including a surgical procedure for an injured C6-7 disc / cervical discectomy and fusion?

Yes: ☐ No: ☒

- 3) Had the patient (William Miller) been given a prior diagnosis of spinal stenosis?

Yes: ☒ No: ☐

History per patient

- 4) Based on your review of the prior records, the radiographic study of 9/4/12, information gained during the surgery and the discussions with and statements by the patient (William Miller); did this injury most probably occur as a result of recent trauma to the neck/spine?

Yes: ☒ No: ☐

Very large, fresh/acute disc
fragment compressing spinal cord

- 5) Did the patient (William Miller) convey on his initial visit that he felt a pop during a physical altercation at work on or about August 15th after which his symptoms began and increased prior to his treatment?

Yes: ☒ No: ☐

- 6) Is this incident as reported consistent with the injury to his cervical spine requiring surgery and resulting in his current medical condition?

Yes: ☒ No: ☐

- 7) Does Mr. William Miller continue to need care and medical treatment, through pharmaceuticals and/or other methods currently associated with his NECK/SPINE injury?

Yes: ☒ No: ☐

met for follow-up with

me in early December

- 8) Has Mr. William Miller reached Maximum Medical Improvement (MMI) at this time?

Yes: ☐ No: ☒

- 9) Will he (William Miller) most likely continue to require treatment for this injury in the foreseeable future?

Yes: ☒ No: ☐

I, Scott B. Boyd, MD, certify that my responses to the listed questions above represent my opinions, to a reasonable degree of medical certainty, as to each issue.

SB Boyd

Scott B. Boyd, MD

11/19/12

Date:

5.

WORK RELEASE LETTER: BENJAMIN J. LEVINSON, MD.



SOUTH CAROLINA INTERNAL MEDICINE ASSOCIATES & REHABILITATION, L.L.C.
1 WELLNESS BOULEVARD, SUITE 200
IRMO, SOUTH CAROLINA 29063
PHONE: (803) 749-1111 • FAX: (803) 749-0050

Monday, August 27, 2012

RE: Return to Work Notice for William Miller Jr

To Whom It May Concern,

Please be advised that Mr. Miller Jr is currently under my medical care. He will be excused from work effective 08/27/2012 through 09/04/2012.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Benjamin J. Levinson, MD

South Carolina Internal Medicine Associates and Rehabilitation, L.L.C.

6.

Scott B. Boyd, MD / treating physician: return to work / light duty 11/27/2012

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1213162

William E. Miller, Jr. 276-76-3013

Claimant's Name SSN
1499 Charleston Road
Leesville, South Carolina 29070

Address City State Zip
(803) 530-9446

Home Phone #

Work Phone #
Jason W. Lockhart
Preparer's Name

Owen Steel Company, Inc.

Employer's Name
727 Mauney Drive
Columbia, South Carolina 29201

Address City State Zip
Great American Insurance Group c/o Strategic Comp
Services

Insurance Carrier
(803) 227-2283
Phone Number

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$575.35

2. AWW: \$862.98

Date of Injury August 15, 2012

3. Type of injury and body part(s): The Claimant allegedly sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.

4. Facts in controversy: Whether the Claimant can satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment; Whether the Claimant's current problems with his head, back, and/or neck are causally connected to his alleged August 15, 2012 work-related accident; Whether the Employer/Carrier are responsible for any additional medical treatment, temporary total disability benefits, and/or permanent partial disability benefits; Whether the Claimant's alleged work-related accident is barred based on the Claimant's willful intention to injure another employee.

5. Legal issues involved: Section 42-1-160; Section 42-9-30; Section 42-9-35; Section 42-9-60; Section 42-9-260; Section 42-15-60.

6. Unusual aspects: The Defendants maintain that the Claimant's alleged injury is barred by his willful intention to injure another employee pursuant to Section 42-9-60. Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to appropriately exercise due process rights afforded by law to cross-examine, respond to, and otherwise oppose evidence presented by the Claimant.

7. Witnesses (designate if expert): Myron Samuels, Steve Raulerson, Brian Ingle, Jason Frye, Jackie Osborne, John Gardner, Stacy Oxedine, Cliff (last name unknown), and/or other representatives of the Employer.

8. Exhibits: Portions of the Claimant's personnel file and/or wage information may be submitted at the hearing in response to the Claimant's testimony; Memorandum of Law in Support of Defendants' Position (dated 11/26/12)(consisting of 8 pages); Written Statement of William E. Miller, Jr. (consisting of 1 page); Written Statement of Steve O. Raulerson (consisting of 1 page); Written Statement of Brian Ingle (consisting of 1 page); Written Statement of Jackie Osborne (consisting of 1 page); Written Statement of Jason Frye (consisting of 1 page); Written Statement of Ray Hollins (consisting of 1 page); Owen Personnel Action Directive (dated 11/24/10)(consisting of 1 page); Owen Personnel Action Directive (dated 8/28/12)(consisting of 1 page); Owen Personnel Action Directive (dated 8/27/12)(consisting of 1 page); Owen Personnel Action Directive (dated 8/28/12)(consisting of 1 page); South Carolina Department of Employment & Workforce Request for Information (dated 12/8/10)(consisting of 1 page); Owen Steel Company, Inc. Application for Employment (dated 1/5/05)(consisting of 2 pages); Owen Steel Company, Inc. Session Recap (dated 8/27/12)(consisting of 2 pages).

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) South Carolina Internal Medicine Associates & Rehabilitation, LLC (dated 9/11/09-10/8/12)(consisting of 33 pages); Columbia Neurosurgical Associates, P.A. (dated 9/17/12-10/22/12)(consisting of 4 pages); Palmetto Imaging (dated 9/4/12)(consisting of 1 page); Paul Aitchison, M.D. (dated 2/8/12)(consisting of 2 pages); Tony Owens, M.D. (dated 2/20/12-4/10/12)(consisting of 2 pages); W. Daniel Westerkam, M.D. (dated 10/4/11)(consisting of 2 pages). The Defendants rely upon certain portions of the evidence submitted by the Claimant. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to procure the deposition testimony of physicians listed by the Claimant, if necessary.

Name, address, and specialty, if any, of the treating physician: Scott B. Boyd, M.D., Columbia Neurosurgical Associates,
P.A., 132 Sunset Court, West Columbia, SC 29169.

Impairment rating(s); body part(s); physician and date of opinion: None known.

I am amending my Form 50/51 in the following manner: Not applicable.

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

SIGNATURE

Email: jlockhart@mcclaw.com

DATE OF HEARING: December 10, 2012

Time needed for hearing: 4 hours

on behalf of ☐ Claimant ☒ Employer

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

MC FORM # 58 REV. DATE 9/07

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1213162

WILLIAM E. MILLER, JR.,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

GREAT AMERICAN INSURANCE
GROUP C/O STRATEGIC COMP
SERVICES,

Carrier,

Defendants.

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

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
J. CHARLES ORMOND, JR., ESQUIRE:

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

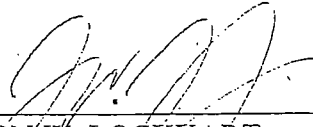
APA#	DOCTOR/EXHIBITS	DATES	PAGES
7.	Memorandum of Law in Support of Defendants' Position	11/26/12	74-81
8.	Written Statement of William E. Miller, Jr.		82
9.	Written Statement of Steve O. Raulerson		83
10.	Written Statement of Brian Ingle		84
11.	Written Statement of Jackie Osborne		85
12.	Written Statement of Jason Frye		86
13.	Written Statement of Ray Hollins		87

14.	Owen Personnel Action Directive	11/8/09	88
15.	Owen Personnel Action Directive	11/24/10	89
16.	Owen Personnel Action Directive	8/28/12	90
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21.	Owen Steel Company, Inc. Session Recap	8/27/12	96-97
22.	South Carolina Internal Medicine Associates & Rehabilitation, LLC	9/11/09-10/8/12	98-130
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27.	W. Daniel Westerkam, M.D.	10/4/11	140-141

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Myron Samuels, Steve Raulerson, Brian Ingle, Jason Frye, Jackie Osborne, John Gardner, Stacy Oxedine, Cliff (last name unknown), and/or other representatives of the Employer.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
November 30, 2012

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1213162

William E. Miller, Jr. 276-76-3013

Claimant's Name SSN
1499 Charleston Road
Leesville, South Carolina 29070
Address City State Zip
(803) 530-9446

Home Phone # Work Phone #
Jason W. Lockhart
Preparer's Name

Owen Steel Company, Inc.

Employer's Name
727 Mauney Drive
Columbia, South Carolina 29201
Address City State Zip
Great American Insurance Group c/o Strategic Comp
Services
Insurance Carrier
(803) 227-2283
Phone Number

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

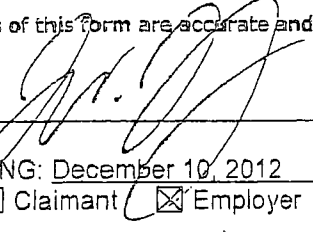
1. Comp. Rate: \$575.35 2. AWW: \$862.98 Date of Injury August 15, 2012
3. Type of injury and body part(s): The Claimant allegedly sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment with the Defendants.
4. Facts in controversy: Whether the Claimant can satisfy his burden of proving that he sustained a compensable injury to the head, back, and/or neck while in the course and scope of his employment; Whether the Claimant's current problems with his head, back, and/or neck are causally connected to his alleged August 15, 2012 work-related accident; Whether the Employer/Carrier are responsible for any additional medical treatment, temporary total disability benefits, and/or permanent partial disability benefits; Whether the Claimant's alleged work-related accident is barred based on the Claimant's willful intention to injure another employee.
5. Legal issues involved: Section 42-1-160; Section 42-9-30; Section 42-9-35; Section 42-9-60; Section 42-9-260; Section 42-15-60.
6. Unusual aspects: The Defendants maintain that the Claimant's alleged injury is barred by his willful intention to injure another employee pursuant to Section 42-9-60. Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to appropriately exercise due process rights afforded by law to cross-examine, respond to, and otherwise oppose evidence presented by the Claimant.
7. Witnesses (designate if expert) Myron Samuels, Steve Raulerson, Brian Ingle, Jason Frye, Jackie Osborne, John Gardner, Stacy Oxedine, Cliff (last name unknown), and/or other representatives of the Employer.
8. Exhibits: Portions of the Claimant's personnel file and/or wage information may be submitted at the hearing in response to the Claimant's testimony; Memorandum of Law in Support of Defendants' Position (dated 11/26/12)(consisting of 8 pages); Written Statement of William E. Miller, Jr. (consisting of 1 page); Written Statement of Steve O. Raulerson (consisting of 1 page); Written Statement of Brian Ingle (consisting of 1 page); Written Statement of Jackie Osborne (consisting of 1 page); Written Statement of Jason Frye (consisting of 1 page); Written Statement of Ray Hollins (consisting of 1 page); Owen Personnel Action Directive (dated 11/8/09)(consisting of 1 page); Owen Personnel Action Directive (dated 11/24/10)(consisting of 1 page); Owen Personnel Action Directive (dated 8/28/12)(consisting of 1 page); Owen Personnel Action Directive (dated 8/27/12)(consisting of 1 page); Owen Personnel Action Directive (dated 8/28/12)(consisting of 1 page); South Carolina Department of Employment & Workforce Request for Information (dated 12/8/10)(consisting of 1 page); Owen Steel Company, Inc. Application for Employment (dated 1/5/05)(consisting of 2 pages); Owen Steel Company, Inc. Session Recap (dated 8/27/12)(consisting of 2 pages).
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) South Carolina Internal Medicine Associates & Rehabilitation, LLC (dated 9/11/09-10/8/12)(consisting of 33 pages); Columbia Neurosurgical Associates, P.A. (dated 9/17/12-10/22/12)(consisting of 4 pages); Palmetto Imaging (dated 9/4/12)(consisting of 1 page); Paul Aitchison, M.D. (dated 2/8/12)(consisting of 2 pages); Tony Owens, M.D. (dated 2/20/12-4/10/12)(consisting of 2 pages); W. Daniel Westerkam, M.D. (dated 10/4/11)(consisting of 2 pages). The Defendants rely upon certain portions of the medical evidence submitted by the Claimant. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to procure the deposition testimony of physicians listed by the Claimant, if necessary.

Name, address, and specialty, if any, of the treating physician: Scott B. Boyd, M.D., Columbia Neurosurgical Associates,
P.A., 132 Sunset Court, West Columbia, SC 29169.

Impairment rating(s); body part(s); physician and date of opinion: None known.

I am amending my Form 50/51 in the following manner: Not applicable.

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

SIGNATURE 

Email: jlockhart@mgclaw.com

DATE OF HEARING: December 10, 2012
on behalf of ☐ Claimant ☒ Employer

Time needed for hearing: 4 hours

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1213162

WILLIAM E. MILLER, JR.,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

GREAT AMERICAN INSURANCE
GROUP C/O STRATEGIC COMP
SERVICES

Carrier,

Defendants.

MEMORANDUM IN SUPPORT OF
DEFENDANTS' POSITION

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
J. CHARLES ORMOND, JR., ESQUIRE:

COMES NOW Defendants Owen Steel Company and Great American Insurance Group
c/o Strategic Comp Services, by and through their undersigned attorney, and submits the
following Memorandum in Support of Defendant's Position as a supplement to Defendants' Pre-
Hearing Brief filed with the Commission.

ISSUE FOR DETERMINATION AT THE HEARING

Whether Claimant's claim for benefits under the South Carolina Workers' Compensation
Act should be denied when the Claimant's injuries resulted from Claimant's willful intention to
injure another employee?

BRIEF ANSWER

A claimant can be denied compensability of a claim for injury that arises out of a fight or assault under S.C. Code Ann. § 42-9-60. Generally, fault is not an issue when it pertains to compensability for an injury. However, Section 42-9-60 provides for an exception to this general rule and denies compensation if an employee's injury is caused by the "willful intention of the employee to injure or kill himself or another."

STATEMENT OF CASE AND FACTS

At the time Claimant sustained his injuries, he was employed at Owen Steel Company. A review of Claimant's employment record shows multiple instances of prior aggressive conduct. On August 15, 2012, Claimant got into an altercation with an employee named Steve Raulerson. The record in this case contains several accounts of the altercation from eyewitnesses and Claimant.

Claimant alleges he was sitting in Brian Ingle's office at approximately 3 P.M. (Miller Deposition Tr. 26:3-4). At some point during this time, he was talking with another employee about whether or not there would be power in the building over the weekend. (Miller Deposition Tr. 26:10-21). While this discussion was ongoing, Mr. Raulerson approached and asked Claimant: "what's going on?" or "what's the problem?" (Miller Deposition Tr. 26:22 – 27:6). After some discussion about the status of power, Claimant got up and walked away. (Miller Deposition Tr. 27:18-19). Claimant stated that he walked into the bathroom to wash his hands and when he tried to exit, Mr. Raulerson was there and he said: "infer, what did you say to me." (Miller Deposition Tr. 27:25 – 28:5). Claimant stated that he responded by telling Mr. Raulerson to "get out of his face" and by asking him "what is your problem?" (Miller Deposition Tr. 28:5-7). Claimant then stated that he and Mr. Raulerson were cursing at each other while Mr. Raulerson was "pounding" his finger into Claimant's chest. (Miller Deposition Tr. 28:16-21). At some point, Claimant indicated

that he tried to move around Mr. Raulerson by putting his hand up and onto Mr. Raulerson's chest in a "stiff arm" motion. (Miller Deposition Tr. 29:1-8). After putting his hand on Mr. Raulerson's chest, Claimant stated that Mr. Raulerson lunged towards him and pushed him into a wall. (Miller Deposition Tr. 29:9-12). This is when Claimant's shoulders hit the wall and he felt a pop in his neck. (Miller Deposition Tr. 29:12-13). After he felt the pop in his neck, Claimant stated that he "doubled my fist up and I punched him." (Miller Deposition Tr. 29:17). Claimant punched Mr. Raulerson in the mouth. (Miller Deposition Tr. 29:18-19). Claimant stated that he intended to hit Mr. Raulerson in the mouth and that his intent for striking Mr. Raulerson was to "maybe alarm him to the fact that I was not going to take him pushing me around." (Miller Deposition Tr. 29:18-24). Claimant stated that he may have kicked Mr. Raulerson but that he did not specifically recall kicking Mr. Raulerson. (Miller Deposition Tr. 30:5-8).

There are numerous written eyewitness statements that contradict or otherwise dispute Claimant's version of the events. Brian Ingle gave a written statement in which he stated that he saw Mr. Raulerson and Claimant pushing each other and then saw Claimant kick and hit Mr. Raulerson in the face. After striking Mr. Raulerson, Claimant yelled out not to hit him because he had a bad neck and back.

Jackie Osborne also gave a written statement in which he stated that he saw Mr. Raulerson and Claimant face to face yelling at each other. Claimant was saying to stop pushing him because he had a bad back. Mr. Raulerson was in Claimant's face and said "I know you want to hit me so go ahead." Claimant then punched Mr. Raulerson and kicked him in the belly. Claimant then left and walked back into the maintenance shop. Ray Hollins' written statement indicated that he saw Claimant kicking and punching at something. He did not see Mr. Raulerson until the fight was broken up. He did hear Claimant say "Don't hit me, I've got a bad neck and back."

Ronald Frye's written statement indicated that he saw Claimant sitting in the mechanic's room when Mr. Raulerson passed through. As he passed through Mr. Raulerson asked Claimant a question about the job. Mr. Raulerson was a "lead-man" which gave him certain duties to check on the status of jobs. Claimant ignored Mr. Raulerson at first and then Claimant made a "smart aleck" reply to Mr. Raulerson. Mr. Raulerson turned around and asked "What did you say?" Claimant got up and walked away when Mr. Raulerson chased after him demanding to know what was said. Frye stated he then saw Claimant and Mr. Raulerson arguing and cussing at each other. Mr. Raulerson put his finger in Claimant's face saying "this shit with you is gonna stop, ol' boy, and you will show me some respect." Claimant then shoved Mr. Raulerson into the restroom. Mr. Raulerson shoved Claimant back and Claimant punched Mr. Raulerson in the mouth.

Mr. Raulerson stated during his deposition that he confronted the Claimant and, when he noticed Claimant "had his fists balled up", told Claimant "if you want to hit me, hit me." (Raulerson Deposition Tr. 13:11-13). Claimant then kicked Mr. Raulerson and hit him in the mouth. (Raulerson Deposition Tr. 13:14-15). In addition, Claimant testified during his deposition that he and Mr. Raulerson had disagreements in the past. (Miller Deposition Tr. 33:4-10). Claimant indicated that these disagreements would be verbal in nature and that there was more than one. (Miller Deposition Tr. 33:11-20).

ANALYSIS

To receive a worker's compensation award in South Carolina, an employee must show that her injury arose "out of" and "in the course of employment." Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). While the term "in the course of" refers to the time, place, and circumstances of the accident, the term "arising out of" refers to the origin or the cause of the accident. Id. An injury arises out of one's employment "when there is a causal

connection between the conditions under which the work is required to be performed and the resulting injury." Broughton v. S. of the Border, 336 S.C. 488, 497, 520 S.E.2d 634, 638 (Ct.App.1999). The injury need not be expected or even foreseeable, but "it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence." Carter v. Penney Tire & Recapping Co., 261 S.C. 341, 345, 200 S.E.2d 64, 65 (1973).

Generally, neither the fault of the employer nor that of the employee is a critical factor in determining whether an employee is entitled to workers' compensation benefits. Zeigler v. South Carolina Law Enforcement Div., 250 S.C. 326, 157 S.E.2d 598 (1967); Reeves v. Carolina Foundry & Mach. Works, 194 S.C. 403, 9 S.E.2d 919 (1940). S.C. Code Ann. § 42-9-60 provides for an exception to this general rule and denies compensation if an employee's injury is caused by the "wilful intention of the employee to injure or kill himself or another." The statute operates as a defense to the employee's recovery and the burden of proof rests on the party asserting it. Zeigler, 250 S.C. at 329, 157 S.E.2d at 599.

Whether an employee acted with willful intent to injure is a question of fact for the commission to determine. Id. The term "willful intention" is defined as a deliberate or formed intention. Reeves, 194 S.C. at 409, 9 S.E.2d at 921. In determining whether an employee acted with willful intent to injure, the deciding factor is not necessarily who was the aggressor or struck the first blow. Kinsey v. Champion Am. Serv. Ctr., 268 S.C. 177, 181, 232 S.E.2d 720, 721 (1977). Rather, the defense is applicable only when "the acts of the employee are so serious and aggravated as to evince a wilful intent to injure." Zeigler, 250 S.C. at 329, 157 S.E.2d at 599. The defense is not available if the altercation is "spontaneous, impulsive, instinctive or otherwise

lacking a deliberate or formed intention to do injury." Kinsey, 268 S.C. at 181, 232 S.E.2d at 722.

In Youmans v. Coastal Petroleum Co., 508 S.E.2d 43, 333 S.C. 195 (S.C. App. 1998), the claimant and a supervisor named Parsons had a work-related disagreement. Claimant alleged that Parsons ordered him to "get [his] ass in the office." Once inside the office, Parsons closed and locked the door before using a racial slur towards the claimant. When claimant confronted Parsons about the comment, Parsons shoved claimant and then they got into a spontaneous fight. Claimant alleges to have struck back only after being shoved by Parsons. Parsons disputed the claimant's account of the fight and insisted that claimant lost control and attacked him after receiving a negative performance review.

The Court in Youmans found that the claimant was acting in self-defense when he struck Parsons. This decision reversed the circuit court and reinstated the findings of the commission for the claimant. Their reasoning was based on the conflicting testimony of the parties. The claimant's testimony of how the altercation occurred provided substantial evidence to support the commission's findings of fact that the claimant acted spontaneously and without willful intent to injure.

In Stone v. T aylor Brothers, Inc., 600 S.E.2d 551, 360 S.C. 271 (S.C. App. 2004), the claimant was involved in a physical altercation with another employee that she was dating at the time. They were separated by other employees but later resumed their fight and had to be separated a second time. Claimant alleged that she was dragged across the parking lot by her hair and injured in the process of the altercation. The Commissioner concluded that the injuries were not compensable and denied an award of benefits. The basis of this finding was that the dispute and altercation arose out of a personal relationship that had begun to deteriorate before

employment with the same employer began. The Full Commission affirmed but the Circuit Court reversed. The appellate court reversed the Circuit Court and reinstated the Commission findings.

In the present claim, Claimant was involved in the altercation with his supervisor. There are conflicting reports about how the altercation began and exactly what happened. Claimant alleges that he was confronted by Mr. Raulerson without any provocation. However, other witness statements, and even portions of Claimant's deposition, call Claimant's version of events into question. Frye indicates that he believes Claimant started the altercation. Claimant stated that he put his hand in Mr. Raulerson's chest because Mr. Raulerson was poking Claimant's chest. Because of the contact and escalating tension, Claimant punched Mr. Raulerson in the mouth. All witness statements indicate that Claimant and Mr. Raulerson were in each other's faces prior to the altercation occurring. Likewise, all eyewitness statements indicate that each person observed Claimant kicking and punching Mr. Raulerson. Mr. Raulerson's testimony indicates that Claimant kicked and struck him first after he told the Claimant "if you want to hit me, hit me." (Raulerson Deposition Tr. 13:14-15).

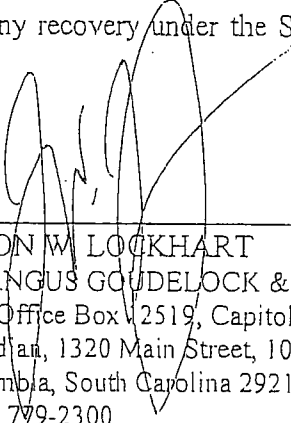
The deposition of testimony of the Claimant and Mr. Raulerson, along with the written statements of the eyewitnesses, indicates that the Claimant was not acting in self-defense. While Mr. Raulerson was within a close proximity of Claimant and loud, cursing language was being used, both men were escalating the situation. Claimant alleges that Mr. Raulerson had a finger on Claimant's chest. However, this particular act does not give rise to the need for a physical act of self-defense. Claimant testified during his deposition that he and Mr. Raulerson had more than one prior verbal altercation or disagreement. Simply put, Claimant was familiar with verbal disagreements with Mr. Raulerson and was aware that he was not in danger of physical harm.

The statements and deposition testimony show that the first true "physical act" occurred when Claimant punched and/or kicked Mr. Raulerson during the verbal altercation. Claimant stated that he intended to strike Mr. Raulerson. When asked if he intended to injure him, Claimant responded with a non-answer to the effect that he intended to "alarm" Mr. Raulerson. Claimant did not explicitly deny intending to injure Mr. Raulerson. The statements and deposition testimony tend to show that Claimant *did* intend to injure Mr. Raulerson by escalating the verbal altercation to an overtly physical altercation by kicking and punching Mr. Raulerson.

Under S.C. Code Ann. § 42-9-60, a claimant can be denied compensability of a claim for injury that arises out of a fight. The requirement to prove this defense is to show that the employee's injury was caused by the "willful intention of the employee to injure or kill...another." Based on the foregoing, Claimant should be denied any recovery under the South Carolina Workers' Compensation Act.

CONCLUSION

Claimant intended to injure Mr. Raulerson. As a result of this intention, Claimant engaged in a physical altercation with Mr. Raulerson. During this altercation, Claimant alleges that he was injured. Because Claimant had the intent to injure Mr. Raulerson, and pursuant to S.C. Code Ann. § 42-9-60, Claimant should be prohibited from any recovery under the South Carolina Workers' Compensation Act.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 2519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
November 26, 2012

On August 15, 2012 at approximately 3pm in the afternoon Brian and I were sitting in his work room; one of the guys from the paint shop came in and asked Brian if they would have power in their shop over the weekend. Brian told him he did not know, and asked me if I knew if they would have power, I said "No I do not believe there will be power in the paint shop over the weekend, because a few weeks ago when lightening hit only part of detail and the girder shop were the only shops with power." Brian said, "I don't know for sure but I think you are right." At this time Steve came walking up and said "What's the problem?" I said "No problem, he was just asking about the power this weekend." Steve asked "What about it?" I replied "He wanted to know if they were going to have power in the paint shop this weekend and I told him that when they had the outage that the paint shop did not have power, the girder shop and part of detail were the only one's that had power." Steve said "No, paint shop, girder shop and main member prep will have power this weekend." I replied to Steve saying "Well, paint shop did not have power when SCE&G came out here and we had all of the lines out of the transformer and Steve said "No they won't have power", and I said "huh" and walked away.

I walked into the bathroom and started washing my hands. A minute or so later I hear Steve say "WHAT DID YOU SAY?!" I did not think he was talking to me because I had walked away and our conversation was over. I reached for a paper towel to dry my hands and I turn to see Steve right in my face pointing his finger into my chest with his stomach pushing me backwards. He continues to poke me in the chest and pushing me backwards with his stomach and cussing me saying "LISTEN HERE MOTHERFU**ER YOU ARE GOING TO RESPECT ME". All the while he is pounding his finger into my chest and pushing against me with all of his weight. I put my right hand up as a defense mechanism and pushed him away from me and said "Look man, you need to stop poking me and back off of me." Then he said "Oh YOU ARE going to listen" and he lunged towards me; once again he was in my face pounding with his finger in my chest and pushing me with all of his weight. I put my right hand back out and tried to push him away again and said "Man, Just stop Steve and BACK OFF OF ME" as I tried to exit the bathroom and the situation, Steve pushed me into the wall outside the bathroom, my shoulders hit the wall and at the same time my head hit and I felt a pop in my neck. I looked up and Steve was lunging at me again. At this point I felt threatened so I defended myself by throwing a punch to his jaw. I told him "I have a bad back and a bad neck and this is bullsh**, you have NO RIGHT putting your hands on me and pushing me around. At this point a few of the guys jumped in and separated him from me. Ray stood up and something to Steve. Steve looked at me and said "YOU have fu**ed up now OLD BOY".

Since the incident the pain in my neck has been getting worse and worse.

I had just finished working on crane P2 and was walking back to the Maintenance Shop with Jason Frye. As we walked into Brain's room there were people standing in the door way where I stopped. They were talking about the cranes that would be working that up coming weekend. I started in on that conversation when Bill Miller got up out of the chair he was sitting in and sort of mumbled something. His body language made me feel he was trying to be smart and funny. He went toward the restroom and I was behind him asking him what he said and what his problem was. At that time I didn't realize that I had walked up on the end of everyone's conversation and I guess Bill thought he had settled same conversation before I walked in. Anyway, I asked Bill what he said and he replied with "F. You" just leave me alone. I asked Bill what his problem was and there is where we got into an argument face to face and a push / shove took place in the door way of the restroom. We came out of the restroom and we were still fussing and cussing each other. Bill then balled his fist and I told him if he wanted to hit me, to hit me. And so he did. Then I shoved him against the wall and at that time Jason Frye and Jack Osborne stepped in and broke us up. Bill was still yelling and cussing throughout the Maintenance shop. I called Colen Sloan on the phone and told him what was going on. I went to the office and sat down to wait for Colen and Stacey. I regret having any conflict with anyone and wish no harm for Bill or anyone else. I realize we are grown people and I should have never followed behind Bill to start with. I should have kept focus on my original intent when I came into the Maintenance shop.

Steve C. Raulerson

On Aug. 15 I Brian Ingle seen
Steve & Bill Pushing EACH OTHER
Then Bill Kicked Steve and
Hit Steve In The Face Then
Bill said Don't Hit me I have
A Bad Neck And Back Then Jason
Frye Broke Then up

Brian Ingle

ON THE SAID DATE OF 15 AUGUST 2012 IN
QUESTION I WAS WORKING IN THE MAINTANCE
SHOP. WHEN I HEARD TWO PEOPLE RAISING
THEIR VOICES AT EACH OTHER I TURN THE
CORNER TO SEE STEVE RAULERSON AND BILL
MILLER FACE TO FACE YELLING AT EACH OTHER
BILL MILLER STATED QUIT PUSHING ME
I'VE GOT A BAD BACK + NECK WHILE
BELLING UP TO STEVE PUSHING EACH OTHER
A COUPLE MORE TIMES, STEVE STATED
I KNOW YOU WANT TO HIT ME SO
GO AHEAD, THEN ALL AT ONCE BILL
PUNCH STEVE IN THE FACE, STEVE STEP
FORWARD, BILL KICK HIM IN THE BELLY
BILL BACK OUT INTO THE MAINTANCE SHOP
WHERE JASON FLYE STEP IN FRONT OF
BILL AND I STEP IN FRONT OF STEVE
TO STOP THE FIGHT,

THIS IS WHAT I SEEN & HEARD
TO THE BEST OF MY KNOWLEDGE AND
IS SWORN TO BE THE TRUTH

Jackie O'Brien

AFFIDAVIT

I, Ronald Jason Frye, do swear and affirm that the following Statement is true and correct to the best of my knowledge and belief:

STATEMENT

Bill Miller was sitting in the mechanic's room when Steve Raulerson passed through to the back door of the room. As Steve was passing through the mechanic's room he turned and asked Bill a question pertaining to a job.

Steve was the maintenance "Lead-man" at the time which entitled him certain duties such as checking up on the status of jobs. Bill ignored Steve at first and Steve started out of the back door of the mechanic's room. Bill then came with a smart aleck reply under his breath so to speak, almost as if not wanting Steve to hear it. Steve turned around and asked, "What did you say?" I didn't hear Bill's reply.

Bill got up and started to walk away when Steve went after him hastily and repeatedly saying, "No! You're going to tell me what you said"

They walked out of my line of sight for a mere 10 seconds.

As I stood in the Mechanic's room, I saw Bill and Steve return and argue in front of the maintenance shop restroom. Both were cussing at each other. Steve put his finger in Bill's face saying, "This shit with you is gonna stop, ol' boy, you will show me some respect". It was then that Bill shoved Steve into the restroom.

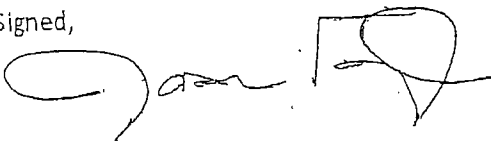
Steve shoved Bill back. Bill punched Steve in the mouth with his right hand. Steve stood fast. I ran out of the Mechanic's room pushing Bill back, and as soon as I got enough room to do-so, I got my other arm out to hold Steve back.

Steve went to the office, and Bill went to the back of the maintenance shop.

These are my utmost accurate recollections of the whole incident.

I also would like to add that Bill (William E. Miller) has ridden his motorcycle to work on several occasions following the incident.

Signed,



August 28, 2012

AFFIDAVIT

I, Ray Hollins, do swear and affirm that the following Statement is true and correct to the best of my knowledge and belief:

STATEMENT

I had seen, after hearing a lot of noise, Bill Miller kicking at, and punching at something. I did not see Steve Raulerson until Jason Frye broke them up. I seen Steve coming after him and I heard Bill saying, "Don't hit me, I've got a bad neck and a bad back" So I told Steve "Don't do that".

Signed, 

August 28, 2012

This statement was taken and typed by Jason Frye due to Mr. Hollins illiteracy. I have read the document back to Ray Hollins for his approval.

Signed,



EMPLOYEE'S NAME LAST <u>Miller</u> FIRST <u>William</u> MIDDLE INIT.		DEPARTMENT <u>Maintenance</u>	AREA - LOCATION
JOB TITLE	JOB CLASS	EMPLOYEE NUMBER <u>19010</u>	DATE OF EMPLOYMENT

EFFECTIVE DATE OF PERSONNEL ACTION 11.5.09

Please Check ☐ for PERSONNEL ACTION requested:

A. ☐ NEW EMPLOYEE (Circle one) NEW or REHIRE	Starting Rate	B. ☐ COMPLETION OF PROBATIONARY PERIOD New Employee Bonus Due? ☐ Yes ☐ No
C. ☐ TRANSFER: From _____ To _____	D. ☐ OTHER ACTION:	
E. ☐ TERMINATION ☐ Retired ☐ Discharged ☐ Voluntary ☐ Other ☐ Oul with Notice ☐ Assumed Resign Reason _____ Eligible for Rehire: (Check One) ☐ Yes ☐ No If NO please explain: _____	F. ☒ DISCIPLINARY ACTION: ☐ Written Warning ☐ Disciplinary Layoff ☐ Administrative Suspension ☐ Discharge ☐ Extended Probationary Period (Comments Below)	G. ☐ LEAVE OF ABSENCE: ☐ Family Medical Leave ☐ Sick Leave ☐ Maternity ☐ Military (Comments Below)

H. ☐ RATE CHANGE:	Effective Date	Rate From	Rate To	Annualized % Change	Explanation: Merit Promotion, Job Change, Other
Prior Change					
This Change					

REMARKS OF SUPERVISOR INITIATING ACTION: (Must be some remarks for every action)

Insubordination toward another supervisor
2 Day OFF without Pay
Thursday 11-5-09, Friday 11-6-09

ADDITIONAL COMMENTS OF OTHERS:

Supervisor Initial and Date <u>AS</u> <u>11/4/09</u>	Departmental Approval <u>Shirley L. Owen</u> <u>11/4/09</u>	VP - GM <u>11/4/09</u>	Personnel <u>11/5/09</u>



PERSONNEL ACTION DIRECTIVE

DATE 11/23/10

EMPLOYEE'S NAME LAST FIRST MIDDLE INIT. <u>Miller William</u>	DEPARTMENT <u>Maints.</u>	AREA / LOCATION
JOB TITLE	JOB CLASS	EMPLOYEE NUMBER <u>19010</u>
EFFECTIVE DATE OF PERSONNEL ACTION <u>11/23/10</u>		DATE OF EMPLOYMENT

Please Check ☐ for PERSONNEL ACTION requested:

A. ☐ NEW EMPLOYEE (Circle one) NEW or REHIRE	Starting Rate	B. ☐ COMPLETION OF PROBATIONARY PERIOD New Employee Bonus Due? ☐ Yes ☐ No
C. ☐ TRANSFER: From _____ To _____	D. ☐ OTHER ACTION:	
E. ☒ TERMINATION Date Last Worked <u>11/23/10</u> ☐ Retired ☐ Discharged ☒ Voluntary ☐ Other ☐ Oult with Notice ☐ Assumed Resign Reason _____ Eligible for Rehire: (Check One) ☐ Yes ☐ No If NO please explain: _____	F. ☐ DISCIPLINARY ACTION: ☐ Written Warning ☐ Disciplinary Layoff ☐ Administrative Suspension ☐ Discharge ☐ Extended Probationary Period (Comments Below)	G. ☐ LEAVE OF ABSENCE: ☐ Family Medical Leave ☐ Sick Leave ☐ Maternity ☐ Military (Comments Below)
H. ☐ RATE CHANGE:	Explanation: Merit Promotion, Job Change, Other	
Prior Change	Effective Date	Rate From
This Change	Rate To	Annualized % Change

REMARKS OF SUPERVISOR INITIATING ACTION: (Must be some remarks for every action)

Bill started having a fit, started throwing
Wet/dry LEADS At Cliff Zimmers

#9 Fighting or disorderly conduct.

ADDITIONAL COMMENTS OF OTHERS:

Supervisor Initial and Date <u>11/23/10</u> <u>387</u>	Departmental Approval <u>11/23/10</u>	VP - GM	Personnel <u>11/24/10</u>



PERSONNEL ACTION DIRECTIVE

DATE 8/15/12

EMPLOYEE'S NAME LAST <u>Miller</u> FIRST <u>William</u> MIDDLE INIT. <u></u>	DEPARTMENT <u>Maints</u>	AREA - LOCATION <u></u>
JOB TITLE <u></u>	JOB CLASS <u></u>	EMPLOYEE NUMBER <u>19010</u>
DATE OF EMPLOYMENT <u></u>		

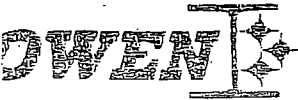
EFFECTIVE DATE OF PERSONNEL ACTION 8/15/12Please Check ☐ for PERSONNEL ACTION requested:

A. ☐ NEW EMPLOYEE (Circle one) NEW or REHIRE <u></u> Starting Rate <u></u>	B. ☐ COMPLETION OF PROBATIONARY PERIOD New Employee Bonus Due? ☐ Yes ☐ No
C. ☐ TRANSFER: From <u></u> To <u></u>	D. ☐ OTHER ACTION: <u></u>
E. ☐ TERMINATION Date <u></u> Last Worked <u></u> ☐ Retired ☐ Discharged ☐ Voluntary ☐ Other ☐ Quit with Notice ☐ Assumed Resign Reason <u></u> Eligible for Rehire: (Check One) ☐ Yes ☐ No If NO please explain: <u></u>	F. ☐ DISCIPLINARY ACTION: ☒ Written Warning ☒ Disciplinary Layoff ☐ Administrative Suspension ☐ Discharge ☐ Extended Probationary Period (Comments Below) G. ☐ LEAVE OF ABSENCE: ☐ Family Medical Leave ☐ Sick Leave ☐ Maternity ☐ Military (Comments Below) <u></u>
H. ☐ RATE CHANGE: Effective Date <u></u> Rate From <u></u> Rate To <u></u> Annualized % Change <u></u> Explanation: Merit Promotion, Job Change, Other <u></u> Prior Change <u></u> This Change <u></u>	

REMARKS OF SUPERVISOR INITIATING ACTION: (Must be some remarks for every action)

Fighting on the job 8-15-12Wrote warning with 4 disciplinary layoff
Days Thurs 8-16-12 Fri 8-17-12
Monday 8-20-12 Tues 8-21-12
(OS)ADDITIONAL COMMENTS OF OTHERS:

Supervisor Initial and Date <u>8/15/12</u>	Departmental Approval <u>Sherry L. [Signature]</u> <u>8/16/12</u>	VP - GM <u></u>	Personnel <u>[Signature]</u> <u>8/28/12</u>



PERSONNEL ACTION DIRECTIVE

DATE 8/27/12

EMPLOYEE'S NAME LAST FIRST MIDDLE INIT. MILLER William	DEPARTMENT MAINT	AREA - LOCATION
JOB TITLE MAINT MECH	JOB CLASS	EMPLOYEE NUMBER 19010
DATE OF EMPLOYMENT		

EFFECTIVE DATE OF PERSONNEL ACTION

Please Check ☒ for PERSONNEL ACTION requested:

A. ☐ NEW EMPLOYEE	(Circle one) NEW or REHIRE	Starting Rate	B. ☐ COMPLETION OF PROBATIONARY PERIOD	New Employee Bonus Due? ☐ Yes ☐ No
C. ☐ TRANSFER:	From _____ To _____		D. ☐ OTHER ACTION:	
E. ☐ TERMINATION	Date Last Worked _____ ☐ Retired ☐ Discharged ☐ Voluntary ☐ Other ☐ Quit with Notice ☐ Assumed Resign Reason _____ Eligible for Rehire: (Check One) ☐ Yes ☐ No If NO please explain: _____	F. ☐ DISCIPLINARY ACTION: ☒ Written Warning ☐ Disciplinary Layoff ☐ Administrative Suspension ☐ Discharge ☐ Extended Probationary Period (Comments Below)	G. ☐ LEAVE OF ABSENCE: ☐ Family Medical Leave ☐ Sick Leave ☐ Maternity ☐ Military (Comments Below)	

H. ☐ RATE CHANGE:	Effective Date	Rate From	Rate To	Annualized % Change	Explanation: Merit Promotion, Job Change, Other
Prior Change					
This Change					

REMARKS OF SUPERVISOR INITIATING ACTION: (Must be some remarks for every action)

BILL CAME AND REQUESTED TO LEAVE WORK EARLY

BECAUSE HE WAS SO ANGRY HE NEEDED TO GO HOME.

ADDITIONAL COMMENTS OF OTHERS:

Supervisor Initial and Date 8/27/12	Departmental Approval [Signature]	VP - GM	Personnel



PERSONNEL ACTION DIRECTIVE

DATE 8/28/12

EMPLOYEE'S NAME LAST FIRST MIDDLE INIT. <u>MILLER</u> <u>William</u>		DEPARTMENT <u>MAINT.</u>		AREA - LOCATION							
JOB TITLE <u>MAINT. MECH.</u>		JOB CLASS		EMPLOYEE NUMBER <u>19010</u>							
EFFECTIVE DATE OF PERSONNEL ACTION <u>8/28/12</u>		Please Check ☒ for PERSONNEL ACTION requested:									
A. ☐ NEW EMPLOYEE (Circle one) NEW or REHIRE		B. ☐ COMPLETION OF PROBATIONARY PERIOD New Employee Bonus Due? ☐ Yes ☐ No		C. ☐ TRANSFER: From _____ To _____							
D. ☐ OTHER ACTION:		E. ☐ TERMINATION Date <u>8/27/12</u> ☐ Retired ☒ Discharged ☐ Voluntary ☐ Other ☐ Out with Notice ☐ Assumed Resign Reason _____ Eligible for Rehire: (Check One) ☐ Yes ☐ No If NO please explain: _____		F. ☐ DISCIPLINARY ACTION: ☐ Written Warning ☐ Disciplinary Layoff ☐ Administrative Suspension ☒ Discharge ☐ Extended Probationary Period (Comments Below)							
G. ☐ LEAVE OF ABSENCE: ☐ Family Medical Leave ☐ Sick Leave ☐ Maternity ☐ Military (Comments Below)		H. ☐ RATE CHANGE:									
		Effective Date		Rate From		Rate To		Annualized % Change		Explanation: Merit Promotion, Job Change, Other	
Prior Change											
This Change											

REMARKS OF SUPERVISOR INITIATING ACTION: (Must be some remarks for every action)

EMPLOYEE IS TERMINATED DUE TO MULTIPLE
CASES OF AGGRESSION AND INSUBORDINATION

ADDITIONAL COMMENTS OF OTHERS:

Supervisor Initial and Date <u>8/28/12</u>	Departmental Approval <u>Stacy L. Hendrix</u> <u>8/28/12</u>	LP - GW	Personnel

LET-101
Rev. 6/10

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
REQUEST FOR INFORMATION
UNEMPLOYMENT INSURANCE BENEFITS

CLAIMANT'S NAME: WILLIAM E MILLER

SS #: 276-76-3013

NAME WORKED UNDER:

DATE MAILED: 2010-12-07

EMPLOYER'S ACCOUNT #: 377139

EMPLOYER'S NAME: OWEN STEEL COMPANY INC

RETURN WITHIN SCESC

12 DAYS OF THE 714 South Lake Drive

ADDRESS:

DELDORIS WALTERS

ABOVE DATE TO: P. O. BOX 1769

727 MAUNEY DRIVE

LEXINGTON, SC 29071

COLUMBIA, SC 29201-5177

FAX NUMBER:

803-356-5839

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please explain the reason this person no longer works for you so that a determination can be made on eligibility for benefits. If you reply by letter, fax, or email, you must include all information requested, as well as the claimant's name and social security number. For instructions about responding by email, please go to our agency website at www.dew.sc.gov. YOU WILL RECEIVE A DETERMINATION ON HIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BONA FIDE AND/OR LIABLE EMPLOYER.

☒ CLAIMANT'S Reason for Separation: DISCHARGED/FIRED/TERMINATED

VERBAL DISAGREEMENT WITH ANOTHER EMPLOYEE

☒ A telephone interview has already been scheduled for the claimant on 01/12/2011 at 02:00 PM.
☐ Please respond by mail, fax, email, telephone, or personal visit to the local ESC office above.

SEPARATION INFORMATION

☐ LACK OF WORK (No additional written explanation is necessary.)

☒ DISCHARGED: (Give specific reason.)

Disorderly Conduct

State company policy that claimant violated, if applicable, and describe the final incident leading to the separation:

Disciplinary action, up to and including discharge, may be imposed for fighting and disorderly conduct. Last incident occurred on 11/23/10. Employee was upset, throwing of it and then holding leads at another employee.

If discharged for absenteeism, list dates of absences:

☐ VOLUNTARILY QUIT (Give specific reason.):

☐ OTHER (Explain in detail.):

Dates of Employment:

FROM:

1-31-05

TO:

11-23-10

During all terms of employment, have you paid this claimant as much as: \$

2608.00

☒ YES

☐ NO

If NO, how much have you paid this claimant in all terms of employment? \$

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay?

☐ YES

☒ NO

If YES, what amount? \$

PER

Did claimant contribute to pension plan?

☐ YES

☐ NO

If YES, what percent? %

EMPLOYER NAME:

Owen Steel Company

ACCOUNT NUMBER:

377139

EMPLOYER SIGNATURE: **

Deldoris Walters

TITLE:

HR Manager

TELEPHONE NUMBER:

(803) 251-7504

DATE:

12-8-10



APPLICATION FOR EMPLOYMENT

Owen Steel Company, Inc. - P.O. Box 18 (29202)
727 Mauney Drive - Columbia, SC 29201 - 803/251-7680

Our Company is an Equal Employment, Affirmative Action Employer. Applicants will be considered for employment without regard to race, national origin, age, sex, disability or veteran status. The Company complies with the reasonable accommodation requirement of the Americans with Disabilities Act. Notice to Applicants: All applicants must successfully pass the pre-employment drug and/or alcohol screening as a condition of hire. This application is considered active for 90 days after the date of application. After 90 days, applicants must notify the company in writing if still interested in being considered for employment. Incomplete applications will not be considered. Applications are taken for open positions only.

Date of Application: 1-5-85

PERSONAL INFORMATION

NAME Miller William Edward
Last First Middle
SOCIAL SECURITY NUMBER 276-76-3013 CITIZEN OF USA? ☒ YES ☐ NO If no, do you have a legal right to accept employment in the USA? ☐ YES ☐ NO
PRESENT ADDRESS 4127 Greenwood Drive W/Columbia SC 29170
Street City State ZIP
TELEPHONE NUMBER (803) 755-0695
IF RELATED TO ANYONE IN OUR EMPLOY, PLEASE STATE NAME AND RELATION: N/A REFERRED BY:
ARE YOU WILLING TO ACCEPT SHIFT WORK? ☒ YES ☐ NO

EMPLOYMENT DESIRED

POSITION Welder or Fabrication DATE YOU CAN START: 1-12-85 SALARY DESIRED: 12.00
ARE YOU PRESENTLY EMPLOYED? ☒ YES ☐ NO If yes, may we inquire of your present employer? ☐ YES ☐ NO EVER APPLIED TO THIS COMPANY BEFORE? ☐ YES ☒ NO If yes, where and when:

EDUCATION

	NAME AND LOCATION OF SCHOOL	YEARS ATTENDED	DATE GRADUATED	SUBJECTS STUDIED	DEGREE RECEIVED
HIGH SCHOOL	<u>Green High</u>	<u>3</u>	<u>1985</u>		
COLLEGE					
GRADUATE SCHOOL					
TRADE, BUSINESS OR CORRESPONDENCE SCHOOL	<u>Mechanics Tech</u>	<u>1 1/2</u>		<u>Radiological tech</u>	<u>MT</u>

SKILLS

PLEASE INDICATE LENGTH OF EXPERIENCE IN YEARS AND MONTHS IN THE APPROPRIATE AREAS:

Machine Operation		Electrical	1 1/2	Typing (Indicate WPM)	20	Computer	
Welding	13 Fitter 3	Plumbing/Piping	Minor	Shorthand (Indicate WPM)	NA	Word Processing	Some
Forklift Operation	13	Computer Installation/Maintenance	NA	Dictaphone (Indicate WPM)	NA	Data Processing	Some
Auto Mechanics	Back End	Filing	NA	Calculator/10 Key ☒ By Touch ☐ By Sight		Spreadsheet	Some
Diesel Mechanics		Receptionist	NA	General Ledger		CAD/CAM	NA
Driver-Over-the-Road	NA					Programming	
Detailing/Drawing	2					Other (Identify)	

(Continued on other side)

FORMER EMPLOYERS (Please list six employers, starting with most recent employer.)

DATE MONTH & YEAR	NAME & ADDRESS OF EMPLOYER	SALARY	POSITION	NAME OF SUPERVISOR	REASON FOR LEAVING
FROM -04	Miles Specialties	START 12 ⁰⁰	Welder	Mike S.	Family owned
TO 1-05	5950 Edmund Hwy	FINAL 12 ⁰⁰			Business no to Small benefits
FROM 7-03	West Side Truck & Trailer	START 12 ⁰⁰	Truck and	Clyde	No benefits
TO 9-04	Hwy 321	FINAL 12 ⁰⁰	Tractor Maintenance	Shealy	
FROM 5-04	Kline Iron & Steel	START	Welder	Morgan	Fired
TO 10-04	Williams Street	FINAL	Fabricator	Watts	Horse play
FROM		START			
TO		FINAL			
FROM		START			
TO		FINAL			
FROM		START			
TO		FINAL			

VETERAN OF U.S. ARMED FORCES? ☐ YES ☒ NO BRANCH MA SERIAL NUMBER MA DATE ENTERED MA RANK ON ENTERING MA

DATE OF DISCHARGE MA RANK AT DISCHARGE MA TYPE OF DISCHARGE: ☐ HONORABLE/OTHER ☒ DISHONORABLE MA

REFERENCES (Please list three people not related to you who you have known at least one year.)

NAME	ADDRESS	TELEPHONE	YEARS ACQUAINTED
1. Jamie Fullmer		(Cell) 600-7163	2 1/2
2. William Martin		(Home) 568-2089	6
3. Russel Rouse		(Home) 794-1964	5 1/2

HAVE YOU EVER BEEN CONVICTED OF A FELONY? ☐ YES ☒ NO If yes, explain and give dates

IN CASE OF EMERGENCY NOTIFY: Talisha Miller Wife 4127 Greenwood Dr Home 755-0493 Cell 351-153

NAME RELATIONSHIP ADDRESS PHONE NUMBER

IMPORTANT—READ THOROUGHLY

I authorize the Company to fully investigate all references and information furnished in this application, and also authorize and release each employer and person given in this application as an employer or as a reference to give any information that may be sought in connection with this application, or concerning my work habits or character. I further authorize the Company to obtain information relating to my credit history. I declare all statements contained in this application to be true and correct. I understand that false or misleading statements contained in this application will result in my not being hired or my immediate discharge. Following a conditional job offer, I understand that the successful completion of a medical exam is required by the Company as a condition of employment. Once hired, I may be required to take a job-related medical exam to determine my current fitness to perform my job as a condition of continued employment. I UNDERSTAND THAT IF HIRED, MY EMPLOYMENT WILL BE FOR AN INDEFINITE TIME AND THAT MY EMPLOYMENT MAY BE TERMINATED FOR ANY REASON AT ANY TIME WITHOUT ADVANCE NOTICE. I UNDERSTAND THE COMPANY MAY AMEND, MODIFY OR REVOKE ANY OF ITS RULES OR EMPLOYMENT POLICIES, INCLUDING ITS EMPLOYEE HANDBOOK AT ANY TIME WITHOUT NOTICE. I ALSO UNDERSTAND THAT THESE RULES OR EMPLOYMENT POLICIES, INCLUDING THE EMPLOYMENT HANDBOOK, DO NOT CREATE A CONTRACT OF EMPLOYMENT, OR AN IMPLIED CONTRACT OF EMPLOYMENT. I UNDERSTAND THAT THE COMPANY DOES NOT ENTER INTO ANY WRITTEN, IMPLIED OR ORAL CONTRACTS OF EMPLOYMENT.

DATE 1-5-05 APPLICANT'S SIGNATURE Wm. Martin

DO NOT WRITE BELOW THIS LINE

INTERVIEWED BY: _____ DATE _____

REMARKS _____

HIRED _____ DEPARTMENT _____ POSITION _____ START DATE _____ PAY _____

393

APPROVED _____

Session Recap

SCDEW - NET-101 (Shopping Cart ID: 472189)

<u>DEW Account #::</u>	XXXXXXX
<u>DEW PIN #::</u>	XXXX
<u>Claimant's Last Name::</u>	MILLER
<u>Separation Reason::</u>	Discharged
<u>Claimant's SSN::</u>	XXX-XX-3013
<u>Reason for Discharge::</u>	Other
<u>When was the claimant discharged?:</u>	08/28/2012
<u>What was the reason for discharge?:</u>	Disorderly conduct / insubordination
<u>Does your company have a policy regarding this reason for discharge?:</u>	Yes
<u>Which method would you prefer to enter the information?:</u>	Enter Text
<u>What is the company policy? Specify if/when the company policy was communicated to the claimant and how it was communicated::</u>	All employees are expected to abide by company rules and regulations. Disciplinary action, up to and including discharge, may be imposed for fighting or disorderly conduct / insubordination. Policy communicated through employee handbook during new hire orientation.
<u>Had the claimant been warned?:</u>	Yes
<u>Which method would you prefer to enter the information?:</u>	Enter Text
<u>Provide dates, reasons for warnings, who gave the warnings, and how the warnings were communicated::</u>	11/05/09 - written warning with a 2 day suspension for insubordination given and communicated by supervisor 11/23/10 - terminated for disorderly conduct (rehired on 12/13/10). Communicated by

supervisor
08/15/12 - written warning with a
4 day suspension for fighting /
disorderly conduct. Given and
communicated by supervisor.

What was the final incident that caused the discharge?:

Final incident was on 8/27/12.
Employee requested to go home
early on this day because he was
angry about the amount of days
he was given off over the fight /
disorderly conduct suspension.

Enter the date of the final incident::

08/27/2012

Enter the dates of employment::

From: 01/31/2005 To: 08/28/2012

During all terms of employment, have you paid the claimant at
least \$2608.00?:

Yes

Are you paying or will you pay the claimant a pension or
retirement pay?:

No

Who is the point of contact for this NET-101 verification?:

Deloris Walters

What is the title for this contact?:

H. R. Manager

What is the email address for this contact?:

deloris.walters@owensteel.com

What is the phone number for this contact?:

(803)251-7504

Local Office Fax #::

8033565839

Current:

Via U. S. Mail

Elden Annas
EnviroSep • Fluid and Heat Recovery Systems
P. O. Box 857
Georgetown, SC 29442

Via U. S. Mail

Christopher Rehkow
National Credit Systems, Inc.
117 e. 24TH St. Fl 5
New York NY 10010-2937

Via U. S. Mail

Bill French / Environmental Manager
Carolina Pride Foods, Inc.
P.O. Box 188
One Packer Avenue
Greenwood, South Carolina 29648

Via U. S. Mail

Joni J. Fletcher
Director of Legal Services, PBA Southern States
2155 Highway 42 South
McDonough, GA 30252-7636

Via U. S. Mail

Andy Wilson
ARM Environmental Services, Inc.
P.O. Box 50285
Columbia, SC 29250

Via U. S. Mail

Gary Krantz
April Tax Service
820 Pavillion Ave
Columbia, SC 29205

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Fri, Sep 11, 2009 09:29 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Amanda Kolesar, MA)

Location: SC Internal Medicine Associates and Rehabilitation, LLC

Electronically signed by Benjamin Levinson, MD on 09/11/2009 10:04:34 AM

Printed on 10/10/2012 at 3:47 pm.

SUBJECTIVE:

CC:

Bill is a 43-year-old male. He presents with joint pain and headache.

HPI:

Headache noted. Onset was more than 12 months ago. The location is primarily left and right occipital. The pain radiates to the left and right neck. He has had prior headaches similar to this one. He characterizes it as moderate in severity and severe.

Joint pain, multiple sites details; the patient notes diffuse muscle pain and diffuse joint pain. This has been a problem for the past 7 to 9 months. He describes the discomfort as moderate in severity. Symptoms have been mild or transient punctuated by episodic flare-ups. Primary joints affected include the whole body. Muscle groups affected include the latissimus dorsi, both gastronemius, and the deltoids. The patient denies any particular aggravating factors.

Dx with hypercholesterolemia; current treatment includes a lipid lowering agent and diet. Compliance with treatment has been good. He reports muscle pain.

Acquired hypothyroidism details; he is currently taking Synthroid, 125 mcg daily. T4H was last checked two months ago. The result was reported as high. He denies any related symptoms. He reports no symptoms suggestive of adverse medication effect.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: Negative for chest pain, palpitations, tachycardia, orthopnea, and edema.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Negative for arthralgias, back pain, and myalgias.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

Past Medical History / Family History / Social History:

Past Medical History:

Hyperlipidemia

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems. Father has a PE

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd

Occupation: welder owns steel night shift;

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Fri, Sep 11, 2009 09:29 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Amanda Kolesar, MA)

Location: SC Internal Medicine Associates and Rehabilitation, LLC

Electronically signed by Benjamin Levinson, MD on 09/11/2009 10:04:34 AM

Printed on 10/10/2012 at 3:47 pm.

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

Tobacco: Currently smokes 1-5 cigarettes per day.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

Marijuana: Prior (no current use).

Mental Health History:

NEGATIVE

Communicable Diseases (eg STDs):

Reportable health conditions; NEGATIVE

Immunizations:

None

Allergies:

No Known Drug Allergies.

Current Medications:

Lovaza 1gm Capsules Take 2 capsule(s) by mouth twice daily

Meloxicam 15mg Tablet Take 1 tablet(s) by mouth daily

Prevacid 30mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Vytorin 10mg/20mg Tablet Take 1 tablet(s) by mouth daily in the evening.

OBJECTIVE:

Vitals:

Current: 9/11/2009 9:39:46 AM

Ht: 73 inches; Wt: 232 lbs; BMI: 30.61

BP: 120/80 mm Hg; sCr: 0.82 mg/dL; GFR: 128.60

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

Miller Jr, William E. 06/30/1966

3 of 4

Office/Outpatient Visit

Visit Date: Fri, Sep 11, 2009 09:29 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Amanda Kolesar, MA)

Location: SC Internal Medicine Associates and Rehabilitation, LLC

Electronically signed by Benjamin Levinson, MD on 09/11/2009 10:04:34 AM

Printed on 10/10/2012 at 3:47 pm.

719.49 Joint pain, multiple sites
272.0 Hypercholesterolemia
244.8 Acquired hypothyroidism
784.0 Headache

ORDERS:

Meds Prescribed:

Refill of: Meloxicam 15mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3
Refill of: Prevacid 30mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #90 (Ninety) capsule(s) Refills: 3
Refill of: Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3
Refill of: Vytorin 10mg/20mg Tablet Take 1 tablet(s) by mouth daily in the evening #90 (Ninety) tablet(s) Refills: 3
Ryzolt* 200mg 1 po qd #30 (Thirty) tablet(s) Refills: 5

Lab Orders:

Lipid panel (total cholesterol, HDL, triglycerides)
Comprehensive metabolic panel

PLAN:

Joint pain, multiple sites lyme titers cmet lipid tsh t4 sed rate cpk RF ana uric acid

Prescriptions:

Ryzolt* 200mg 1 po qd #30 (Thirty) tablet(s) Refills: 5

Hypercholesterolemia

LABORATORY: Lab studies ordered today include lipid panel, comprehensive metabolic panel, and these are to be completed 1 week prior to follow-up appointment.

MEDICATIONS: At this point, will discontinue Vytorin.

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up visit in 1 month.

Orders:

Lipid panel (total cholesterol, HDL, triglycerides)
Comprehensive metabolic panel

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up visit in 1 month.

Headache resolved

Other Prescriptions:

Refill of: Meloxicam 15mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3
Refill of: Prevacid 30mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #90 (Ninety) capsule(s) Refills: 3
Refill of: Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3
Refill of: Vytorin 10mg/20mg Tablet Take 1 tablet(s) by mouth daily in the evening #90 (Ninety) tablet(s) Refills: 3

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Fri, Sep 11, 2009 09:29 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Amanda Kolesar, MA)

Location: SC Internal Medicine Associates and Rehabilitation, LLC

Electronically signed by Benjamin Levinson, MD on 09/11/2009 10:04:34 AM

Printed on 10/10/2012 at 3:47 pm.

ADDENDUMS:

Addendum: 09/14/2009 12:55 PM - Levinson, Benjamin J

add 36415, 86038 86431 84550 84439 84443 85652 82550 86618 to charges

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Fri, Sep 9, 2011 10:00 am

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: Lisa Shealy MA)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 10/23/2011 04:42:39 PM

Printed on 10/10/2012 at 3:48 pm.

SUBJECTIVE:

CC: Low back pain.

HPI: The patient is a pleasant 45-year-old male, kindly referred to me by Dr. Levinson. He has an approximate 15-year history of lumbar back pain which was preceded by no inciting event. He describes his pain a 6/10 on the NRS with an electric cramping, sharp, stabbing, shooting and frequent sensation. His pain is in the lumbosacral spine with radiation to the bilateral lower extremities in a multi dermatomal pattern. Lying down, being sedentary and not utilization his current medication regimen tends to exacerbate his pain while his current medication regimen does alleviate his pain to some extent. He reports that his pain is associated with symptoms of lower extremity weakness and shortness of breath.

Regarding management of this condition, he reports no previous surgeries or interventions to control his pain symptoms. He has not participated in physical therapy, chiropractic manipulation, massage therapy or other treatment modalities for pain control. Regarding medication management, he reports previous trials of morphine, tramadol, Wellbutrin and Rizalt, all of which have failed to provide him with effective pain control. She unfortunately continues to suffer from significant breakthrough pain.

In addition to the patient's primary complaint, he also reports bilateral hand pain. This pain is been present for approximately one year. He describes this pain as 5/10 the NRS with a numb sensation. Nothing tends to exacerbate or alleviate this pain complaint. He has undergone no interventions or other treatments in an effort to gain control of this pain symptom.

ROS:

CONSTITUTIONAL: Positive for fatigue, weight gain and general weakness. Negative for fever, sweats or weight loss.

EYES: Negative for double vision, blurred vision, redness, eye pain and discharge

ENT/MOUTH: Positive for mouth dryness. Negative for bleeding, throat swelling, sores or lip lesions.

RESPIRATORY: Positive for shortness of breath. Negative for wheezing, chest tightness or coughing up blood/puss.

CARDIOVASCULAR: Positive for extremity swelling. Negative for chest pain, palpitations or passing out.

GASTROINTESTINAL: Positive for heartburn. Negative for nausea, bleeding or constipation.

GENTOURINARY: Negative for incontinence, impotence, genital burn, difficult urination and discharge.

MUSCULOSKELETAL: Positive for pain, weakness, joint pain and muscle loss. Negative for cramps.

NEUROLOGICAL: Positive for headache. Negative for seizures, vertigo, memory loss or concentration difficulty.

PSYCHIATRIC: Positive for insomnia. Negative for anxiety, depression or homicidal or suicidal thoughts.

Past Medical History / Family History / Social History:

... Last Reviewed on 10/14/2011 4:24:55 PM by Shealy, Lisa

Past Medical History:

Hyperlipidemia

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd

Occupation: maintenance man owns steel night shift;

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Fri, Sep 9, 2011 10:00 am

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: Lisa Shealy, MA)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 10/23/2011 04:42:39 PM

Printed on 10/10/2012 at 3:48 pm.

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 10/14/2011 4:24:57 PM by Shealy, Lisa

Tobacco: Current Smoker: He currently smokes every day, 1-5 cigarettes per day.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

Marijuana: Prior (no current use).

Mental Health History:

NEGATIVE

Communicable Diseases (eg STDs):

Reportable health conditions; NEGATIVE

Allergies:

Last Reviewed on 10/14/2011 4:24:51 PM by Shealy, Lisa

No Known Drug Allergies.

Current Medications:

Last Reviewed on 10/14/2011 4:24:53 PM by Shealy, Lisa

Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Wellbutrin 100mg Tablet Take 1 tablet(s) by mouth bid

Lyrica 50mg Capsules 2 capsule by mouth in AM and 2 cap in PM

OBJECTIVE:

Vitals:

Current: 9/20/2011 9:41:18 AM

Ht: 6 ft, 1 in

BP: 122/62 mm Hg (right arm, sitting); P: 76 bpm; R: 16 bpm; sCr: 0.97 mg/dL; GFR: 80.41

O2 Sat: 96 %

Exams:

CONSTITUTIONAL: Well-nourished and in no apparent distress.

EYES: Negative for PERRL; non-icteric sclera.

ENT/MOUTH: No ear lesions present. Mucous membranes moist.

RESPIRATORY: Clear to auscultation bilaterally.

CARDIOVASCULAR: Normal rate and rhythm. No murmurs, gallops, or rubs.

ABDOMEN: Negative for tenderness. No present masses or lesions.

Miller Jr, William E. 06/30/1966

3 of 4

Office/Outpatient Visit

Visit Date: Fri, Sep 9, 2011 10:00 am

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: Lisa Shealy MA)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 10/23/2011 04:42:39 PM

Printed on 10/10/2012 at 3:48 pm.

NEUROLOGICAL:

Cranial Nerves: II - XII intact.

Reflex Exam: DTR's are 2+ in the bilateral upper and lower extremities.

Hoffmann's Sign: Negative bilaterally.

Clonus: 1 beat bilaterally.

Sensory Exam: No gross deficits noted.

Patrick's Test: Negative bilaterally.

Fortin's Point: Negative bilaterally.

Straight Leg Test: Negative bilaterally.

Tenderness to palpation: Negative.

MUSCULOSKELETAL:

Gait: Non-antalgic.

Muscle Atrophy: None noted.

Right Motor Exam: 5/5 strength in shoulder, arm, hand grip, hip, leg, dorsiflexion and plantarflexion muscles.

Left Motor Exam: 5/5 strength in shoulder, arm, hand grip, hip, leg, dorsiflexion and plantarflexion muscles.

PSYCHIATRIC: Alert and oriented to person, place and time. Cognition intact. Non-pressured speech. Normal affect.

Lab/Test Results: MRI Left knee Date of Exam 03/17/11.

1. Complex tear of the posterior horn of the medial meniscus with both vertical and horizontal components.
2. Possible intrasubstance tear of the anterior horn of the lateral meniscus.
3. Bland joint effusion

8/16/11 MRI of Thoracic and Lumbar spine

THORACIC: The visible bone marrow signal is unremarkable. No significant disc bulge or disc herniation is seen. The thoracic cord is unremarkable.

LUMBAR: 1. Atypical hemangioma in L4 vertebral body. 2. Mild spinal stenosis at L3-4 level which is felt to be related to congenital short pedicles.

Urine drug screen today was consistent with the prescribed regimen.

SC Pharmacy query was evaluated today and reflected adherence to the prescribed regimen.

ASSESSMENT:

724.2	Low back pain
338.4	Chronic pain syndrome
729.5	Limb pain
356.9	Peripheral neuropathy
721.3	Sacroccygeal arthritis
V70.3	Other medical exams for various administrative purposes

ORDERS:

Lab Orders:

Drug screen; single drug class

PLAN: 1. Regarding patient's lumbar pain, the description he gives for his lumbar pain, as well as physical exam findings, support a diagnosis of facetogenic mediated pain. As such, I have scheduled him for bilateral L3-S1 medial branch blocks.

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Fri, Sep 9, 2011 10:00 am

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: Lisa Shealy, MA)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 10/23/2011 04:42:39 PM

Printed on 10/10/2012 at 3:48 pm.

2. The patient appears to be suffering from a peripheral neuropathy of unknown origin. I will be checking B-6, B12 and folate levels and will also send him to Dr. Westerkam in order for upper and lower extremity nerve conduction studies to be performed. I will follow the labs and studies up at his next office visit which will hopefully elucidate the etiology of his pain complaints in the upper and lower extremities.

3. I have also started him on a titration of Lyrica in an effort to gain better control of his likely neuropathic pain symptoms.

4. I have discontinued Lortab due to lack of benefit and will start him on Percocet in an effort to gain better controlled his pain symptoms.

5. He will follow up in clinic in 6 weeks to assess the effectiveness of the intervention and medication changes mentioned above and to followup on his nerve conduction studies and labs. I will make further treatment recommendations at that time.

Thank you Dr. Levinson for allowing me participate in the care of Mr. Miller.

Other medical exams for various administrative purposes

Orders:

Drug screen; single drug class

Miller Jr, William E. 06/30/1966

1 of 5

Office/Outpatient Visit

Visit Date: Mon, Jan 16, 2012 02:57 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 01/17/2012 04:42:29 PM

Printed on 10/10/2012 at 3:48 pm.

SUBJECTIVE:

CC:

Bill is a 45 year old White male. Medical problems to be addressed today include Obstructive Sleep Apnea. He is here for an annual exam.

HPI:

Bill presents with acquired hypothyroidism. He is currently taking Synthroid, 125 mg daily. TSH was last checked two months ago. The result was reported as 3.02. He denies any related symptoms. He reports no symptoms suggestive of adverse medication effect.

With regard to the other hyperlipidemia, current treatment includes Crestor and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include fasting glucose (102 mg/dL on 12/20/11), total cholesterol level (fasting 230 mg/dL on 12/20/11), triglycerides (393 mg/dL), HDL (40 mg/dL), and LDL cholesterol (111 mg/dL). He quit crestor 3 weeks ago but it did not make difference in pain.

Dizziness details; the duration is unclear. He describes the sensation as near-fainting, without loss of consciousness and lightheadedness. This is fairly mild in severity. The frequency of the episodes is once every few days. The average duration of each episode is 2-3 minutes. Associated symptoms include diaphoresis. Blood sugar was 102,(12/20/2012)

Bill presents with a diagnosis of neck pain. This was diagnosed 1-2 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.

Bill presents with a diagnosis of lower limb edema. This was diagnosed 6 to 9 months ago. The course has been progressively worsening. It is of moderate intensity.

Bill presents with a diagnosis of macules. This was diagnosed 6 to 9 months ago. The course has been progressively worsening. It is of moderate intensity. on legs

Bill presents with a diagnosis of sleep apnea. The course has been stable and non-progressive. It is of moderate intensity. He estimates that the frequency of symptoms is minimal on current treatment modalities. The typical duration of an episode is intermittent nightly. He denies fatigue and daytime somnolence. The quality of life now since diagnosis is much better. Prior work-up has included positive sleep study and CPAP compliance study done and treatment initiated.

Additionally, he presents with history of GERD. the location of the discomfort is primarily epigastric. He describes the pain as dull. It is mild in intensity. this has been a chronic, recurrent problem for several years. The discomfort is aggravated by food. Symptoms are improved with Tums.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

Miller Jr, William E. 05/30/1966

Office/Outpatient Visit

Visit Date: Mon, Jan 16, 2012 02:57 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 01/17/2012 04:42:29 PM

Printed on 10/10/2012 at 3:48 pm.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: This system is negative except as noted in HPI.

GENITOURINARY: Negative for dysuria, genital lesions, hematuria, impotence, polyuria, and changes in urine stream.

MUSCULOSKELETAL: This system is negative except as noted in HPI.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: This system is negative except as noted in HPI.

HEMATOLOGIC/LYMPHATIC: Negative for easy bruising, bleeding, and lymphadenopathy.

ENDOCRINE: This system is negative except as noted in HPI.

ALLERGIC/IMMUNOLOGIC: Negative for allergies, frequent illnesses, HIV exposure, and urticaria.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 1/16/2012 3:23:52 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 1/16/2012 3:24:45 PM by Levinson, Benjamin J

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 1/16/2012 3:24:58 PM by Levinson, Benjamin J

Marijuana: Prior (no current use).

Mental Health History:

NEGATIVE

Communicable Diseases (eg STDs):

Reportable health conditions; NEGATIVE

Current Problems:

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Jan 16, 2012 02:57 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 01/17/2012 04:42:29 PM

Printed on 10/10/2012 at 3:48 pm.

Last Reviewed on 1/16/2012 3:09:58 PM by Levinson, Benjamin J

Peripheral neuropathy

Acquired hypothyroidism

Dizziness

Other hyperlipidemia

Immunizations:

None

Allergies:

Last Reviewed on 1/16/2012 3:20:54 PM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Last Reviewed on 1/16/2012 3:22:35 PM by Levinson, Benjamin J

DEXILANT* 60 mg 1 po a day

Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

OBJECTIVE:

Vitals:

Current: 1/16/2012 4:25:27 PM

Ht: 6 ft, 1 in; Wt: 247 lbs; BMI: 32.6

BP: 136/80 mm Hg (right arm, sitting); sCr: 0.71 mg/dL; GFR: 149.47

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial,

femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals

normal tone, no masses, and guaiac negative stool;

GENITOURINARY: penile and testicular exams are normal, without masses, tenderness, or lesions;

LYMPHATICS: no adenopathy in cervical, supraclavicular, axillary, or inguinal regions;

SKIN: no significant rashes or lesions; no suspicious moles;

MUSCULOSKELETAL: Normal range of motion, strength and tone; 1+ brawny edema in legs with some varicosities

NEUROLOGICAL: cranial nerves, motor and sensory function, reflexes, gait and coordination are all intact;

PSYCHIATRIC: appropriate affect and demeanor; normal speech pattern; grossly normal memory;

Lab/Test Results:

FIT Hemocult: Negative

LABORATORY RESULTS: Glucose: Negative (01/16/2012), Bilirubin: Negative (01/16/2012), Ketones: Negative

(01/16/2012), Specific Gravity: 1.025 (01/16/2012), Blood: Negative (01/16/2012), pH: 6.0 (01/16/2012), Protein:

Negative (01/16/2012), Urobilinogen: Normal (0.2-1 EU) (01/16/2012), Nitrite: Negative (01/16/2012), Leukoctye

Esterase: Negative (01/16/2012)

ECG INTERPRETATION:

normal rate, rhythm, and axis; no ST-T abnormalities; rate is approximately 74 bpm;

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Jan 16, 2012 02:57 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 01/17/2012 04:42:29 PM

Printed on 10/10/2012 at 3:48 pm.

ASSESSMENT:

V70.0 Annual exam
 780.4 Dizziness
 723.1 Neck pain
 782.3 Lower limb edema
 327.23 Obstructive sleep apnea (adult) (pediatric)
 530.81 GERD
 244.8 Acquired hypothyroidism
 272.4 Other hyperlipidemia
 709.8 Macules
 V76.51 Screening for cancer of colon

ORDERS:

Meds Prescribed:

DEXILANT* 60 mg 1 po a day #30 (Thirty) capsule(s) Refills: 11

Radiology/Test Orders:

Electrocardiogram, routine with at least 12 leads; with interpretation and report
 Echocardiography, transthoracic, real-time with image documentation w/wo M-mode recording; complete

Lab Orders:

Urinalysis, automated, without microscopy
 FIT Hemocult

PLAN:

Annual exam

FOLLOW-UP ORDERS:

LABORATORY: Labs to be scheduled in the future include ANA, CBC, comprehensive metabolic panel, Free T4, Lipid
 NMR, rheumatoid factor, TSH, Vitamin D, and sed rate.

Orders:

Urinalysis, automated, without microscopy

Dizziness xray sinus

RECOMMENDATIONS given include: maintain good blood pressure control, limit salt in diet, rest whenever possible while symptoms persist, try and get some daily exercise if that means only walking a few blocks, and use caution when driving.

FOLLOW-UP: Instructed to call if he develops new or worsening symptoms, including blurry vision, chest pain, decreased hearing, headache, nausea, vomiting, palpitations, slurred speech, tinnitus, and weakness.

Orders:

Electrocardiogram, routine with at least 12 leads; with interpretation and report

Neck pain wonder if pain due to pt having a sinus problem

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Jan 16, 2012 02:57 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 01/17/2012 04:42:29 PM

Printed on 10/10/2012 at 3:48 pm.

FOLLOW-UP: Schedule a follow-up appointment in 3 weeks.

Lower limb edema vein clinic r/o rheumatologic disorder

TESTS/PROCEDURES ordered today include echocardiogram.

RECOMMENDATIONS given include: limitation of excessive use of the swollen extremity, elevation of the legs as much as possible, and restriction of sodium intake.

FOLLOW-UP: Instructed to call if he develops new or worsening symptoms, including calf pain, dyspnea, extremity pain, and orthopnea.

Orders:

Echocardiography, transthoracic, real-time with image documentation w/wo M-mode recording; complete

Obstructive sleep apnea (adult) (pediatric)

MEDICATIONS: (see today's med list)

RECOMMENDATIONS given include: Maintain current CPAP and use nightly as directed..

GERD

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: elevation of the head of the bed, weight loss, and avoid eating 3-4 hours before bed.

Prescriptions:

DEXILANT* 60 mg 1 po a day #30 (Thirty) capsule(s) Refills: 11

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up visit in 1 month.

Other hyperlipidemia

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

Screening for cancer of colon

Orders:

FIT Hemocult

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Feb 8, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 02/08/2012 05:29:55 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 45 year old White male. This is a follow-up visit. Patient here for 3 week f/u and review labs and Echocardiogram. He presents with bone spur.

HPI:

Patient to be evaluated for other hyperlipidemia. Current treatment includes Crestor and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 286 mg/dl on 1/24/12), triglycerides (357 mg/dl), HDL (42 mg/dL), and LDL cholesterol (173 mg/dl).

With regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily. TSH was last checked two weeks ago. The result was reported as 1.41. The result was reported as 1.1. He denies any related symptoms. He reports no symptoms suggestive of adverse medication effect.

With regard to the dizziness, the duration is unclear. He describes the sensation as near-fainting, without loss of consciousness and lightheadedness. This is fairly mild in severity. The frequency of the episodes is once every few days. The average duration of each episode is 2-3 minutes. Associated symptoms include diaphoresis.

Bill presents with a diagnosis of neck pain. This was diagnosed 1-2 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will use percocet, but helps very little. Associated symptoms include Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.

Bill presents with bone spur. Patient states he has bone sticking out of left heel. It has been there for some time, however, he states he recently hit it and it is hurting now.

Bill presents with a diagnosis of venous insufficiency. The course has been progressively worsening. It is of moderate intensity. Associated symptoms include myalgias, paresthesias and pain and swelling. Dr Miller has found that has bad valves. He is on TED stockings with planned fu in a month or so.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: This system is negative except as noted in HPI.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: This system is negative except as noted in HPI.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Miller Jr, William E. 06/30/1966

2 of 4

Office/Outpatient Visit

Visit Date: Wed, Feb 8, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 02/08/2012 05:29:55 PM

Printed on 10/10/2012 at 3:52 pm.

Past Medical History / Family History / Social History:

... Last Reviewed on 2/8/2012 8:02:51 AM by Legg, Betty L

Past Medical History:

Hyperlipidemia

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 2/8/2012 8:03:08 AM by Legg, Betty L

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/8/2012 8:03:17 AM by Legg, Betty L

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/8/2012 8:03:20 AM by Legg, Betty L

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/8/2012 8:04:15 AM by Legg, Betty L

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 2/8/2012 8:01:27 AM by Legg, Betty L

Dizziness

Peripheral neuropathy

Acquired hypothyroidism

Other hyperlipidemia

Immunizations:

None

Miller Jr, William E. 06/30/1956

Office/Outpatient Visit

Visit Date: Wed, Feb 8, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 02/08/2012 05:29:55 PM

Printed on 10/10/2012 at 3:52 pm.

Allergies:

Last Reviewed on 2/8/2012 8:01:29 AM by Legg, Betty L

No Known Drug Allergies.

Current Medications:

Last Reviewed on 2/8/2012 8:02:32 AM by Legg, Betty L

DEXILANT* 60 mg 1 po a day

Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

OBJECTIVE:

Vitals:

Current: 2/8/2012 8:01:14 AM

Ht: 6 ft, 1 in; Wt: 253.6 lbs; BMI: 33.5

sCr: 0.71 mg/dL; GFR: 151.15

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: conjunctiva and cornea are normal; pupils and irises are normal;

NECK: range of motion is normal; trachea is midline;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion no dyspnea;

CARDIOVASCULAR: normal rate; rhythm is regular;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

NEUROLOGICAL: cranial nerves, motor and sensory function, reflexes, gait and coordination are all intact;

ASSESSMENT:

272.4 Other hyperlipidemia
244.8 Acquired hypothyroidism
780.4 Dizziness
723.1 Neck pain
726.91 Bone spur
459.81 Venous insufficiency

ORDERS:

Meds Prescribed:

Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #30 (Thirty) capsule(s)

Refills: 11

Radiology/Test Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

Radiologic examination; calcaneus, minimum of two views

Procedures Ordered:

Follow up appointment in 5 weeks

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Feb 8, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Betty Legg, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 02/08/2012 05:29:55 PM

Printed on 10/10/2012 at 3:52 pm.

PLAN:

Other hyperlipidemia trial of trilipix and watch for myalgias

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up appointment in 5 weeks.

FOLLOW-UP ORDERS:

LABORATORY: Labs to be scheduled in the future include Benkley Adv. Profile, Benkley Genetic Profile, comprehensive metabolic panel, HgbA1C, and Vitamin D.

Prescriptions:

Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #30 (Thirty) capsule(s)

Refills: 11

Orders:

Follow up appointment in 5 weeks

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up appointment in 5 weeks.

Dizziness sx resolved

Neck pain

TESTS/PROCEDURES ordered today include C-spine MRI. If + get Dr Owens to see.

Orders:

Magnetic resonance imaging, spinal canal and contents, with and without contrast, cervical

Bone spur xray left heel has a callous and ? spur under it
add heel cup for conservative mgt for now.

RADIOLOGY: I have ordered a heel x-ray.

Orders:

Radiologic examination; calcaneus, minimum of two views

Venous insufficiency keep fu with Dr Miller.

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Thu, Feb 16, 2012 03:51 pm

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: April Smith, RN)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 02/29/2012 10:38:28 AM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC: Follow up on back pain.

HPI: Mr. Miller is a pleasant 45 year old male with a history of lumbar back pain preceded by no inciting event. He is currently on a medication regimen of Percocet and Lyrica. Previous medication trials include Lortab, Morphine, Tramadol, Wellbutrin and Ryzolt.

He has undergone the following interventions with the indicated benefit:

1. September 2011, bilateral L3-S1 medial branch blocks performed by myself. This provided him with great than 50% pain relief in the lumbar region.

William has slowly discontinued his Lyrica and his cramps have resolved. He continues to utilize his Percocet due to a new problem regarding his neck. He tells me that he continues to receive significant benefit from his lumbar medial branch block and is not in need of treatment for this condition at this time.

His new pain today is reported as a 5/10 on the NRS with a sharp and occasional sensation. The pain is in the cervical spine with radiation into the posterior aspect of his bilateral shoulders. Lifting objects with his arms, as well as lateral rotation of his neck, tends to exacerbate this pain. Percocet alleviates this pain to some extent. He reports this pain is associated with occasional dizziness and an electric sensation that travels down his arms.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever and weight change.

EYES: Negative for double vision, blurred vision, redness, eye pain and discharge.

ENT/MOUTH: Negative for bleeding, throat swelling, ulcers, lip lesions and mouth dryness.

RESPIRATORY: Negative for shortness of breath, wheezing, chest tightness and coughing up blood/pus.

CARDIOVASCULAR: Negative for chest pain, palpitations, passing out and extremity swelling.

GASTROINTESTINAL: Negative for nausea, vomiting, heartburn bleeding and constipation.

GENTOURINARY: Negative for incontinence, impotence, genital burn, difficult urination and discharge.

MUSCULOSKELETAL: Positive for pain.

NEUROLOGICAL: Negative for headache, seizures, vertigo, memory loss and concentration difficulty.

PSYCHIATRIC: Negative for anxiety, depression, insomnia and homicidal/suicidal thoughts.

Past Medical History / Family History / Social History:

... Last Reviewed on 2/16/2012 3:20:01 PM by Smith, April

Past Medical History:

Hyperlipidemia
Sleep Apnea
Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07; antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).
Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago
Occupation: maintenance man owns steel night shift;
Marital Status: Vicki Rowe's daughter

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Thu, Feb 16, 2012 03:51 pm

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: April Smith, RN)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 02/29/2012 10:38:28 AM

Printed on 10/10/2012 at 3:52 pm.

Tobacco/Alcohol/Supplements:

... Last Reviewed on 2/16/2012 3:20:04 PM by Smith, April

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Allergies:

Last Reviewed on 2/16/2012 3:19:53 PM by Smith, April

No Known Drug Allergies.

OBJECTIVE:

Vitals:

Current: 2/16/2012 3:53:02 PM

Ht: 6 ft, 1 in

BP: 120/70 mm Hg (right arm, sitting); P: 78 bpm; R: 16 bpm; sCr: 0.71 mg/dL; SpO2: 109.86

O2 Sat: 97 %

Pain Index: 5

Exams:

CONSTITUTIONAL: Well-nourished and in no apparent distress.

EYES: Negative for PERRL; non-icteric sclera.

RESPIRATORY: Clear to auscultation bilaterally.

CARDIOVASCULAR: Normal rate and rhythm. No murmurs, gallops, or rubs.

NEUROLOGICAL:

Cranial Nerves: II - XII intact.

Reflex Exam: DTR's are 2+ in the bilateral upper and lower extremities.

Sensory Exam: No gross deficits noted.

445 Tendon Reflex: 4+ to 5+ to palpation: C-spine and L-spine (worse with extension).

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Thu, Feb 16, 2012 03:51 pm

Provider: Tony Owens, MD (Supervisor: Tony Owens, MD; Assistant: April Smith, RN)

Location: SC Pain Associates, Dr. Tony Owens

Electronically signed by Tony Owens, MD on 02/29/2012 10:38:28 AM

Printed on 10/10/2012 at 3:52 pm.

PSYCHIATRIC: Alert and oriented to person, place and time. Cognition intact. Non pressured speech. Normal affect.

Lab/Test Results: IMPRESSION:

1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.
2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with uncovertebral joint hypertrophy, left greater than right.
3. Congenital shortening of the pedicles.

SC Pharmacy query was evaluated today and reflected adherence to the prescribed regimen.

ASSESSMENT:

724.2	Low back pain
356.9	Peripheral neuropathy
729.5	Limb pain
338.4	Chronic pain syndrome
724.6	Sacroiliac pain
723.4	Cervical radiculopathy
722.4	Degeneration of cervical intervertebral disc

PLAN: 1. Regarding William's lumbar pain, he continues to receive significant benefit from his lumbar medial branch blocks and no further treatment is warranted at this time.

2. Regarding his neck pain, he did recently undergo an MRI of the cervical spine which shows that he suffers from cervical degenerative disc disease and foraminal stenosis. I have scheduled him for a series of cervical steroid injections to address this pathology.

3. Due to the fact that Lyrica causes intolerable side effects, it will be discontinued. I have initiated him on a trial of Topamax in an effort to gain better control of his radicular symptoms. Topamax will also likely assist him with his weight loss efforts.

4. I will continue his Percocet as previously prescribed.

5. He will follow up in clinic with me in eight weeks for further evaluation.

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 45 year old White male. This is a follow-up visit. 5 week and review labs. Patient would like to get off of Percocet

HPI:

Bill presents with a diagnosis of peripheral neuropathy. This was diagnosed 1-2 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.

In regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily.

In regard to the other hyperlipidemia, current treatment includes Crestor and Trilipix and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 286 mg/dl on 1/24/12), triglycerides (337 mg/dl), HDL (42 mg/dL), and LDL cholesterol (173 mg/dl).

Bill presents with a diagnosis of hyperglycemia. This was diagnosed 2 weeks ago. Prior work-up has included labwork (including HbA1C: 6.4 (02/29/2012);).

Bill presents with a diagnosis of neck pain. This was diagnosed 4 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.

Bill presents with a diagnosis of vitamin D deficiency. The course has been progressively worsening. It is of moderate intensity. Associated symptoms include bone pain and aches, and fatigue.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Negative for abdominal pain, heartburn, constipation, diarrhea, and stool changes.

MUSCULOSKELETAL: Negative for arthralgias, back pain, and myalgias.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: This system is negative except as noted in HPI.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... 4457 Reviewed on 3/14/2012 8:55:08 AM by Levinson, Benjamin J

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 3/14/2012 8:55:20 AM by Levinson, Benjamin J

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 3/14/2012 8:52:31 AM by Levinson, Benjamin J

Neck pain

Acquired hypothyroidism

Other hyperlipidemia

Peripheral neuropathy

Immunizations:

None

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

Allergies:

Last Reviewed on 3/14/2012 8:52:35 AM by Levinson, Benjamin J

No Known Drug Allergies.

Current Medications:

Last Reviewed on 3/14/2012 8:55:57 AM by Levinson, Benjamin J

Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

DEXILANT* 60 mg 1 po a day

Percocet 5mg/325mg Tablet Take 1-2 tab(s) by mouth every 6 hours as needed for pain

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily

Topamax 25mg Tablet one qhs x 7, then 2 qhs x7, then one am and 2 qhs x7, then 2 bid thereafter

Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid

Lamisil 250mg Tablet Take 1 tablet(s) by mouth daily for 12 weeks for toenail.

OBJECTIVE:

Vitals:

Current: 3/14/2012 8:57:37 AM

Ht: 6 ft, 1 in; Wt: 236.8 lbs; BMI: 31.2

BP: 122/72 mm Hg (right arm, sitting); sCr: 0.89 mg/dL; GFR: 117.12

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial, femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

790.6	Hyperglycemia
244.8	Acquired hypothyroidism
272.4	Other hyperlipidemia
356.9	Peripheral neuropathy
723.1	Neck pain
268.9	Vitamin D deficiency

ORDERS:

Meds Prescribed:

Drisdol (Ergocalciferol) 50,000IU Capsules 1 a week po for vitamin d deficiency #13 (Thirteen) capsule(s) Refills: 3

Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #120 (One Hundred and Twenty) tablet(s) Refills: 5

Livalo (Pitavastatin) 1mg Tablet Take 1 tablet(s) by mouth daily #30 (Thirty) tablet(s) Refills: 5

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Wed, Mar 14, 2012 07:55 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, MA)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 03/14/2012 09:51:51 AM

Printed on 10/10/2012 at 3:52 pm.

Lab Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

PLAN:

Hyperglycemia

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: watch hga1c over time..

Acquired hypothyroidism

LABORATORY: Lab studies ordered include total thyroxine and TSH.

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up visit in 3 months.

Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

Other hyperlipidemia went over Berkely will add vit d with livalo

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up visit in 3 months.

met lipid ahead

FOLLOW-UP ORDERS:

LABORATORY: Labs to be scheduled in the future include comprehensive metabolic panel, HgbA1C, Lipid NMR, and Vitamin D.

Prescriptions:

Livalo (Pitavastatin) 1mg Tablet Take 1 tablet(s) by mouth daily #30 (Thirty) tablet(s) Refills: 5

Patient Education Handouts:

Hyperlipidemia (Hyperlipoproteinemia)

Neck pain refer to DR Owens for fu DC percocet.

Prescriptions:

Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #120 (One Hundred and Twenty) tablet(s) Refills: 5

Vitamin D deficiency

MEDICATIONS: (no change to current medication regimen)

Prescriptions:

Drisdol (Ergocalciferol) 50,000IU Capsules 1 a week po for vitamin d deficiency #13 (Thirteen) capsule(s) Refills: 3

Miller Jr, William E. 06/30/1966

1 of 5

Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. This is a follow-up visit.

HPI:

Bill presents with a diagnosis of peripheral neuropathy. This was diagnosed 6 to 9 months ago. The course has been rapidly worsening. It is of severe intensity. He estimates that the frequency of symptoms is constant. The typical duration of an episode is the majority of the day. Aggravating factors include coughing and sneezing, yawning. Symptoms are relieved with patient will uses percocet, but helps very little. Associated symptoms include Very tight in the back of the neck, stabbing pain from ears to between shoulder blades.

Additionally, he presents with history of acquired hypothyroidism. he is currently taking Synthroid, 125 mcg daily. TSH was last checked 8 months ago. Free T4 was last checked 8 months ago.

With regard to the other hyperlipidemia, current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Bill presents with a diagnosis of change in bowel habits. This was diagnosed one year ago. The course has been constipation mixed with several stools a day. Patient states that miralax has not helped and the fiber made it worse. Patient states he feels swollen in RUQ, but there is no pain associated with this.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Positive for abdominal bloating, constipation and gas.

MUSCULOSKELETAL: Negative for arthralgias, back pain, and myalgias.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: This system is negative except as noted in HPI.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 7/9/2012 1:52:44 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found ; 11/11/08-Polyp, rectosigmoid

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

junction: Tubular Adenoma. EGD on 9/21/07, -antral gastritis, reflux esophagitis; negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 7/9/2012 1:52:56 PM by Levinson, Benjamin J

Tobacco: He has a past history of cigarette smoking; quit date: 10/2011.

Alcohol:

Drinks alcohol very infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 7/9/2012 1:46:25 PM by Levinson, Benjamin J

Acquired hypothyroidism

Other hyperlipidemia

Peripheral neuropathy

Change in bowel habits

Immunizations:

None

Allergies:

Last Reviewed on 7/9/2012 1:46:28 PM by Levinson, Benjamin J.

No Known Drug Allergies.

Current Medications:

Last Reviewed on 7/9/2012 1:52:41 PM by Levinson, Benjamin J

Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily

DEXILANT* 60 mg 1 po a day

Topamax 25mg Tablet Take 2 tablet(s) by mouth bid

Miller Jr, William E. 06/30/1966

3 of 5

Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

Livalo 1mg Tablet Take 1 tablet(s) by mouth daily
Aspirin (ASA) 81mg Tablets, Enteric Coated Take 1 tablet by mouth daily
Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime
Naprosyn 500mg Tablet Take 1 tablet(s) by mouth bid
Drisdol 50,000IU Capsules 1 a week po for vitamin d deficiency
Ultracet 37.5mg/325mg Tablet 1-2 q 4-6 hrs prn
Trilipix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily

OBJECTIVE:

Vitals:

Current: 7/9/2012 1:42:21 PM

Ht: 6 ft, 1 in; Wt: 222.4 lbs; BMI: 29.3

BP: 108/72 mm Hg; sCr: 0.89 mg/dL; GFR: 112.87

Repeat: 122/72

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;

EYES: EOMI; PERRLA; normal lids, conjunctiva, and fundoscopic exam;

E/N/T: normal EACs, TMs, nasal/oral mucosa, teeth, gingiva, and oropharynx;

NECK: supple, full ROM; no thyromegaly; no carotid bruits;

RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;

CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI; 2+ carotid, radial,

femoral, and pedal pulses; no aortic or femoral bruits;

GASTROINTESTINAL: nontender, nondistended; no hepatosplenomegaly or masses; no bruits; rectal exam reveals

normal tone, no masses, and guaiac negative stool;

MUSCULOSKELETAL: Normal range of motion, strength and tone;

ASSESSMENT:

244.8 Acquired hypothyroidism

272.4 Other hyperlipidemia

787.99 Change in bowel habits

356.9 Peripheral neuropathy

ORDERS:

Meds Prescribed:

Refill of: Synthroid (Levothyroxine Sodium) 0.125mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Refill of: DEXILANT* 60 mg 1 po a day #90 (Ninety) capsule(s) Refills: 3

Refill of: Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #90 (Ninety) capsule(s) Refills: 3

Refill of: Topamax (Topiramate) 25mg Tablet Take 2 tablet(s) by mouth bid #360 (Three Hundred and Sixty) tablet(s) Refills: 3

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

Refill of: Naprosyn (Naproxen) 500mg Tablet Take 1 tablet(s) by mouth bid #180 (One Hundred and Eighty) tablet(s) Refills: 3

Refill of: Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #360 (Three Hundred and Sixty) tablet(s) Refills: 5

Refill of: 429 (Docusate Sodium) 100mg Capsules 1 po bid #180 (One Hundred and Eighty) capsule(s) Refills: 3

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Please complete this medical questionnaire. The answers to these questions are very important in helping us take care of you. Where appropriate, fill in complete answers. Thank-you for your time and patience.

Name: William E Miller M F Date of Visit: _____
(circle one)

Age: 46 Height 6'1" Weight: 222 Date of Birth: 06/30/66

Referring Doctor: Benjamin Lewinson Family Doctor: _____

1. I am (x) right handed () left handed.

2. Chief complaint or reason for visit: Neck Pain

3. When did your symptoms first appear? 8-15-2012

4. Did you have an injury? (x) Yes () No If yes, was it work related? (x) Yes () No () Other _____

5. I have been treated for this problem by: Dr Lewinson

6. What did they do or recommend? Pain meds Refered to neurologist

7. My medication allergies are: () None or list allergies: _____

EUTHROMYALIN

8. My current medications are: (include dose and # of times taken per day)

on the list

9. PAST MEDICAL HISTORY: List prior injuries & illnesses, conditions, medical problems that you have (ex: diabetes, high blood pressure, heart disease) Write HOSP. beside any for which you were admitted to the hospital.

Reason (Give Diagnosis of problem if known)

Approx. date High Cholesterol

10. PAST SURGICAL HISTORY: List all surgeries, even if done as an outpatient:

Reason

Approx. date Both Knees

Lobectomy

11. SOCIAL HISTORY: Check box or fill in blank:

(x) I do not use tobacco. () I do use tobacco: _____ packs/per day

() I do not use beer, wine or liquor. (x) I do use beer, wine or liquor () daily () weekly (x) monthly

I am (x) married () widowed () divorced () single Years of formal education 13

I have (2) children, ages: 18, 20

I work as a _____ for _____

() I have been disabled since _____ due to (list reason) _____

12. FAMILY HISTORY: Please list any illness that your grand parents, parents, brothers, sisters or children have had.

(for example: cancer, diabetes, heart disease, high blood pressure, stroke)

Grand Mother Diabetes Grand Father Blood Clots, Diabetes

Mother Diabetes, Liver, Thyroid Father Diabetes, High blood Pressure, COPD, Blood Clots

Sister Thyroid, Blood Clots Brother Blood Clots, High Blood Pressure

Children _____

13. SYSTEMS REVIEW: Please check any that apply to you:

Constitutional: _____ Fever in last 72 hrs: _____ hot or cold spells

_____ generalized weakness _____ generalized lack of energy

_____ unplanned weight loss _____ lbs over _____ months

Other: _____

Eyes: _____ declining vision _____ blurred vision _____ double vision _____ seeing spots of light

_____ black areas in field of vision _____ eye disease (cataracts, glaucoma, etc.) _____

Other: _____

Ear Nose, Mouth Throat:

- ☐ ear aches ☐ decreased hearing ☐ ringing in ears
☐ frequent nosebleeds ☐ chronic sinus ☐ mouth ulcers
☐ mouth/throat cancer ☒ voice changes or hoarseness
 Other: _____

Cardiovascular:

- ☐ chest pain () sharp () dull () happens only when exercising
☐ history of heart attack ☐ heart surgery or catheterization
☐ palpitations ☐ heart murmur ☐ heart rhythm disturbance
☐ shortness of breath () happens only when exercising
☐ I have a pacemaker
 Other: _____

Respiratory:

- History of:
- ☐ pneumonia ☐ bronchitis ☐ tuberculosis
☐ asthma ☐ emphysema ☐ lung cancer
☐ I cough up blood from time to time
 Other: _____

Gastrointestinal:

- ☐ difficulty swallowing ☒ nausea/vomiting last 48hrs
☐ stomach ulcers ☐ heart burn
☐ diarrhea ☐ change in appetite
☐ stomach or bowel cancer ☐ liver disease
☐ bulimia ☐ anorexia
☐ hernia ☐ hepatitis
 Other: _____

Genitourinary:

- ☐ frequent urinary tract infection ☐ difficulty urinating ☐ painful urination
☐ blood in urine ☐ prostate problems ☐ vaginal infections
☐ miscarriage ☐ venereal disease: () gonorrhea () herpes () syphilis
 Other: _____

Musculoskeletal:

- ☐ joints that dislocate ☒ leg or ankle swelling ☐ osteoporosis
☐ arthritis ☐ gout ☐ fractures ☐ polio
☒ back pain ☐ leg pain () right () left
☐ back pain is relieved completely when I lie down
☐ back pain is relieved mostly when I lie down
☐ Lying down does not help my back pain
☒ neck pain () right side () left side (☒) both sides
☒ arm pain (☒) right () left () both

Integumentary:

- ☐ skin rashes
☐ skin cancer-- Type: _____
☐ breast disease _____

Neurological:

- ☒ headaches: How often _____ ☒ with nausea ☐ with blurred vision
☐ fainting spells ☐ history of migraines
☐ confusion ☐ declining memory
☐ history of head trauma ☐ history of brain tumor
☐ facial numbness ☐ dizziness
☐ multiple sclerosis ☐ epilepsy
☒ numbness in hands or arms (☒) right () left () both
☐ difficulty using hands () right () left () both
☐ difficulty walking/numbness in legs () right () left () both

Psychiatric:

- ☐ I have been treated/hospitalized for:
☐ schizophrenia ☐ depression ☐ suicide attempt
☐ alcoholism ☐ chemical dependency

Endocrine:

- ☒ thyroid ☐ goiter ☐ diabetes
 I take the following hormone supplements: _____

Pathologic/Lymphatic:

☐ bleeding disorder ☐ easy bruising ☐ anemia
☐ tendency to form blood clots in legs ☐ swollen lymph nodes
☐ AIDS ☐ HIV

Immunologic: ☐ Lupus ☐ Scleroderma ☐ Rheumatoid arthritis

Other: ☒ chicken pox ☐ measles ☒ mumps ☐ Mononucleosis
☐ scarlet fever ☐ whooping cough ☐ typhoid fever ☐ rheumatic fever

14. If you have back, leg, neck or arm pain, please answer the following:

☐ I have taken physical therapy in the last 6 months for this problem
☒ I have taken medicines like Motrin, Aleve, muscle relaxants or pain medicine to help relieve the pain.
☐ I have had steroid injections in my back or neck for this problem.

Rate the severity of your pain on a scale from 1 to 10, with 1 the least painful and 10 being the most severe. 8

Type of pain:

☒ sharp ☒ dull ☒ throbbing ☒ aching ☐ shooting ☐ burning
☒ tingling ☒ numbness ☒ stiffness ☐ swelling ☐ cramps
 Other: _____

☒ the pain comes and goes ☐ If so, how often do you have this pain? _____
☒ the pain is constant

Does the pain interfere with ☒ work ☒ sleep ☒ daily routine ☒ recreation

Activities or movements that are painful to perform:

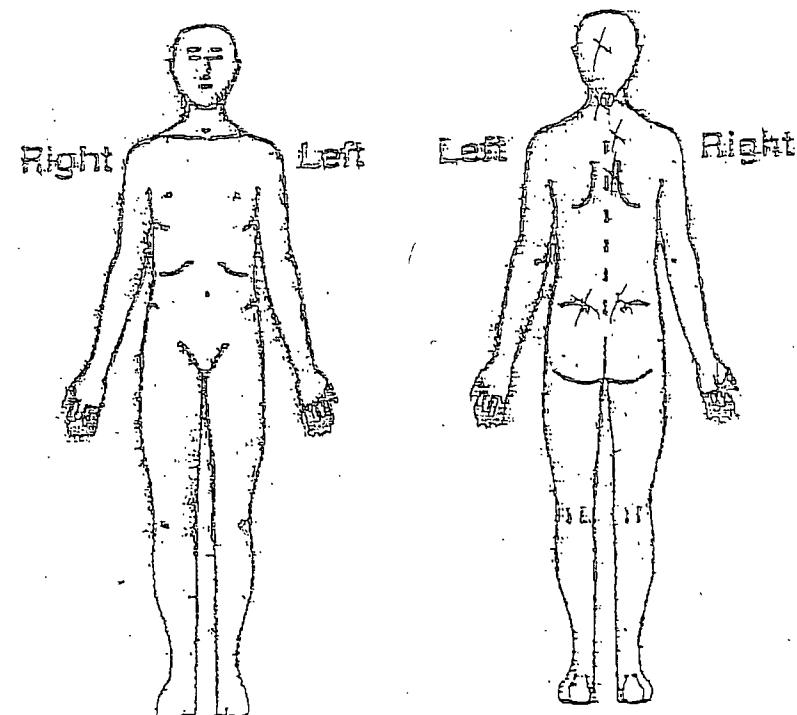
☒ sitting ☒ standing ☒ walking ☒ bending ☒ lying down
 How do you sleep? ☐ back ☒ side ☐ stomach

15. Date of your last:

Physical exam _____ Spinal exam _____ MRI, CT or Bone Scan 9-4-2012
 Spinal X-ray _____ Chest x-ray _____ Blood test _____

16. I am claustrophobic (fear of being in a closed/confined place) () Yes (X) No
 I have metal in my body. () Yes (X) No If yes, where? _____

Mark an X on the picture where you have pain, numbness or tingling.



Walter M...
 Patient Signature

Samuel...

Physician Signature

9-17-2012
 Date

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

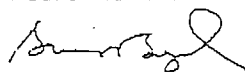
OFFICE VISIT

Patient: William E. Miller
Chart: 135730
DOB: 6/30/66
Date: 10/22/12

Mr. Miller returns for follow up. He is four weeks out from an ACDF at C6-7 for a large disc herniation causing significant cord compression and also a right myeloradiculopathy. He had uneventful surgery and today says that the hard pain that he was having in his arm is better but he still has numbness and weakness. He says that he feels that he is swallowing stones although this seems to be improving slightly. He feels that his voice is somewhat hoarse but also improving. He has not been back to driving yet and his family has been restricting his activity quite a bit.

On exam, his incision is well healed. He has pretty good power in his upper extremities although persistent weakness in his right upper extremity. He has reasonably good cervical ROM.

IMPRESSION/PLAN: I think Mr. Miller is clearly improved. I think it is going to take some time but I do believe that he is coming along. He had significant cord compression and that is going to take longer than a simple nerve root problem. I have explained this to him and he seems to understand. I want him to increase his activity now. It is okay for him to drive. I would like to see him back in 4-6 weeks with films.



Scott B. Boyd, MD

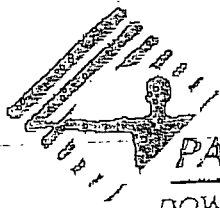
THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

SBB/LH

CNAWT: 4040

Faxed To: Benjamin J. Levinson, MD

RECEIVED
NOV - 2 2012



PALMETTO IMAGING
DOWNTOWN • IRMO • W. COLUMBIA

2997 Sunset Boulevard
West Columbia, South Carolina 29169
(803) 936-0223 p
(803) 936-0229 f

PATIENT: Miller Jr, William
MRN: 759995
DATE OF BIRTH: 6/30/1966
REF PHYSICIAN: Ben J Levinson, MD
DATE OF EXAM: 9/4/2012
PATIENT PH#: 803-530-3900

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain with bilateral hand pain and numbness.

TECHNIQUE: The following sequences were performed on a GE Signa HD-Excite 1.5 Tesla magnet: Sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. Comparison is made to previous study dated 02/18/12.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass.

The C2-3 intervertebral disc is within normal limits.

At the C3-4 level, there is no significant disc bulge or protrusion.

At the C4-5 level, there is no acquired central canal or foraminal stenosis.

At the C5-6 level, there is a diffuse disc bulge with uncovertebral joint hypertrophic changes, left greater than right.

At the C6-7 level, there is a central disc extrusion migrating slightly cephalad. This narrows the central canal to under 6mm and deforms the ventral cord.

The C7-T1 intervertebral disc is normal.

IMPRESSION:

1. Central disc extrusion at C6-7 causing severe central canal stenosis with cord compression. The left central/foraminal component has contracted in the interval since the prior study. There is no residual left neural foraminal stenosis.
2. Mild central canal stenosis and mild to moderate bilateral neural foraminal stenosis at C5-6, unchanged from prior study.
3. Congenital shortening of the pedicles.

Paul Aitchison, M.D.
PA / bl

DD: 9/5/2012
DT: 9/5/2012



Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct #: MILWIL0002

Ordering Provider: Levinson, Benjamin J

Order Number : 08-1374504

Collection: 02/09/2012 12:14:55

Results: 02/09/2012

12:14:55

Electronically signed off by Dr. Benjamin J Levinson, MD on 02/13/2012

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED

72141 - MR-Cervical Spine Without Contrast

Radiology Report: Imaging Center: 08-548

MRI OF THE CERVICAL SPINE: PATIENT: Miller Jr, William

MRN: 759995

DATE OF BIRTH: 6/30/1966

REF PHYSICIAN: Ben Levinson, MD

DATE OF EXAM: 2/8/2012

PATIENT PH#: 803-530-3900

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck pain radiating to both shoulders.

TECHNIQUE: The following sequences were performed on a GE Signa HD Excite 1.5 Tesla magnet: Sagittal and axial fast spin echo T2, sagittal fast spin echo T1 and axial T2* imaging was performed through the cervical spine. There are no priors for comparison.

FINDINGS: The prevertebral soft tissue structures are normal. The visualized posterior fossa is without mass. The cervical cord is normal in signal intensity. There is an asymmetric disc bulge to the right at C2-3 without stenosis. There is congenital shortening of the pedicles throughout the cervical spine.

At the C3-4 level, there are right-sided uncovertebral joint degenerative changes without stenosis.

At the C4-5 level, there is no significant disc bulge or protrusion.

At the C5-6 level, there is disc height loss with an asymmetric disc osteophytic bulge to the left as well as bilateral uncovertebral joint hypertrophy narrowing the central canal to just under 9mm. There is mild to moderate left neural foraminal stenosis and mild right neural foraminal stenosis.

At the C6-7 level, there is a left central disc extrusion migrating cephalad and spanning 9mm in sagittal dimensions. This compresses the ventral cord and narrows the central canal to 6mm. There is a left neural foraminal stenosis as well.

Patient: Miller Jr, William E DOB: 6/30/1966 Sex: M Acct#: MILWIL0002
Ordering Provider: Levinson, Benjamin J
Order Number : 08-1374504
Collection: 02/09/2012 12:14:55

Results: 02/09/2012 12:14:55

Electronically signed off by Dr. Benjamin J Levinson, MD on 02/13/2012

TEST DESCRIPTION	OUT-OF-RANGE	IN-RANGE	UNITS	EXPECTED

At the C7-T1 level, there is no disc bulge or protrusion.

IMPRESSION:

1. Left central disc extrusion at C6-7 causing severe central canal stenosis with cord compression as well as left neural foraminal stenosis. There is no cord edema.
2. Mild to moderate bilateral neural foraminal stenosis and mild central canal stenosis at C5-6 on the basis of a disc osteophytic bulge with uncovertebral joint hypertrophy, left greater than right.
3. Congenital shortening of the pedicles.

Paul Aitchison, M.D.
PA / bl

DD: 2/9/2012

DT: 2/9/2012

Job: 14533599

This document has been reviewed and electronically signed by

Patient: Miller Jr, William E
DOB: 6/30/1966
Date of Exam: 02/20/2012



Dr. Tony Owens
SC Pain Associates
Phone: (803) 457-7246
Fax: (803) 454-6544

Cervical Epidural Steroid Injection (Interlaminar Approach) without Sedation

Indication: Neck Pain

CPT code(s): 62310

ICD 9 code(s): 723.4

Pre-procedural diagnosis: Cervical Radiculopathy

Post-procedural diagnosis: Cervical Radiculopathy

Procedure:

- 1) Cervical Epidural Steroid Injection (Interlaminar Approach)
- 2) Fluoroscopy

The patient was identified in the holding room. Written informed consent was obtained including a discussion of the risks, benefits and alternatives to the procedure. The patient was positioned prone on the fluoroscopic table and monitors were applied. The patient's cervical area was prepped and draped in a sterile fashion with Betadine x 3. Then the C7-T1 interspace was identified with A/P fluoroscopy. 3 cc of 1% Lidocaine was used for local skin anesthesia at this target site using a 25 gauge 1&1/2" needle. Then an 18 gauge Tuohy needle was advanced towards this interspace under intermittent biplanar fluoroscopic A/P and lateral guidance using a midline approach into the posterior epidural space. After the ligamentum flavum was engaged, loss of resistance technique as well as lateral imagery was used to confirm proper placement. After negative aspiration for blood or CSF, 2 cc of Isovue contrast was injected under live fluoroscopy to confirm epidural placement, with good epidural spread of contrast visualized. Then a 5cc solution containing 80 mg of Kenalog and 3cc of 0.5% Lidocaine was slowly and incrementally injected into the epidural space after negative aspiration for blood or CSF. The needle was removed intact and hemostasis was appreciated. Meaningful verbal contact was maintained with the patient throughout the entire procedure. The patient was allowed to recover in a monitored setting for 30 minutes prior to discharge. No complications were noted.

This document has been electronically verified and signed by Tony Owens, M.D. 02/20/2012

atient: Miller Jr, William E
DOB: 6/30/1966
Date of Exam: 04/10/2012



Dr. Tony Owens
SC Pain Associates
Phone: (803) 457-7246
Fax: (803) 454-6544

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This document has been electronically verified and signed by Tony Owens, M.D. 04/10/2012

MILLER, WILLIAM

SSN: 3013

10/04/11

DOB: 06/30/66

PHYSICAL MEDICINE AND REHABILITATION
ELECTRODIAGNOSTIC EVALUATION

W. Daniel Westerkam, M.D.

Technician: Bill Ewing

REFERRING PHYSICIAN: Dr. Levinson, Dr. Owens

REASON FOR EVALUATION: Bilateral hand numbness and tingling and bilateral lower extremity numbness and tingling.

HISTORY OF PRESENT ILLNESS: The patient is a very pleasant 35 year old gentleman who for years has had back problems and numbness and tingling in the lower extremities. He also has numbness and tingling in his hands. He works in maintenance. He states symptoms are aggravated by prolonged standing. He denies any bowel or bladder difficulty. The patient's hands frequently fall asleep at night.

PHYSICAL EXAM: Reveals positive Tinel's of both wrists, positive Phalen's test. DTRs in the upper and lower extremities are 1+ and symmetric. Sensation is slightly decreased on the lateral portion of both shins. Manual muscle testing reveals 5/5 strength throughout.

ELECTRODIAGNOSTIC EXAMINATION

Nerve Conduction Study

NERVE TESTED	SEGMENT	Motor AMPLITUDE			Sensory AMPLITUDE		
		ms	M/SEC	MV	ms	M/SEC	UV MS
Right median	middle finger to the wrist				5.6		4.9
Right median	ABP to wrist	6.3		5.0			
	to the elbow	10.7	52	4.1			
Left median	middle finger to the wrist				5.1		13
Left median	APB to wrist	6.2		5.1			
	to the elbow	10.6	51	4.3			
Right peroneal	EDB to ankle	5.1		4.8			
	to fib head	13.9	44	2.7			
Right sural	ankle to calf				4.2		12.2
Left peroneal	EDB to ankle	5.5		3.9			
	to fib head	13.8	43	2.5			
Left sural	ankle to calf				4.0		9.7
Right H-reflex	calf to the popliteal fossa	31.68					
Left H-reflex	calf to the popliteal fossa	31.94					

SUMMARY: The right and left median motor and sensory distal latencies are within normal limits for this lab. The bilateral peroneal and sural nerves and H-reflexes are also within normal limits.

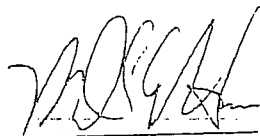
ELECTRONEUROMYGRAPHIC EXAMINATION

Muscles	IA	Normal	Rest				Minimal Contraction MUAP	Maximum Recruitment Pattern
			Spontaneous Fibs	SW+	FASC	Other		
RIGHT & LEFT	normal	normal	0	0	0	0	normal shape size & amplitude	full
vastus medialis								
anterior tibialis								
gastrocnemius								
extensor hallucis longus								

SUMMARY: Normal needle EMG of the above muscles tested.

CONCLUSION: This is an ^{Ab}normal study. There is electrodiagnostic evidence of bilateral median nerve entrapments at the wrists. These are moderate cases of bilateral carpal tunnel syndrome. There is no electrodiagnostic evidence of peripheral neuropathy or lumbar radiculopathy at this time. The patient does appear to have bilateral decreased sensation in an L4 nerve root distribution and therefore I suspect the patient has some degenerative disc disease around the L4 nerve with subsequent mild stenosis. However, fortunately at this time the patient does not appear to have any significant nerve damage.

I would like to thank Dr. Levinson and Dr. Owens for referral of this pleasant patient. If there are any questions regarding this examination, please do not hesitate to call.



W. Daniel Westerkam, M.D.

WDW/kph

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # _____
Carrier File # _____
Carrier Code # _____
(803) 737-5700 Employer FEIN _____

William E. Miller Jr.	276-76-3013	Owen Steel
Claimant's Name	SSN	Employer's Name
1499 Charleston Road	Leesville, SC 29070	727 Mauney Dr. Columbia, SC 29201
Address	City State Zip	Address City State Zip
(803) 530-9446	NA	Insurance Carrier: Strategic Comp Services
Home Phone #	Work Phone #	Great American Ins. Group
	John Charles Ormond, Jr.	803-765-2968
	Preparer's Name	Phone#

Complete each information blank. To request a hearing, check box 13b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8 and 9, and file this form in duplicate.

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

- 1a. The claimant sustained an accidental injury to neck/head/spine Richland County, State of South Carolina
08/15/2012
- 1b. Describe briefly how the accident occurred physical altercation with co-employee/ neck/ slammed against wall.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer/hospital on 08/15/12 in the following manner:
Reported to management.
- X 6. Due to the injury, the claimant is in need of (check one):
X (a) medical examination and treatment for neck / spinal stenosis - arising from injury
X (b) additional medical examination and treatment for Same as above
- X 7. Due to the injury, the claimant requests temporary total/partial disability benefits because of lost compensable time from work and wages for; intermittent lost work from: Approx. April 2012 through (present)
- X 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
X (1) General Disability: Partial (2) Specific Disability: Partial
Body part(s) affected are: neck - head - spine
9. Due to the injury, the claimant has a serious bodily disfigurement consisting of N/A
- 10a. At the time of the injury, the claimant was paid weekly wages of \$ request form 20 and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident.
/None other than employer above //
- 11a. Further grounds of claim: Any and all remedies available under the Act
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Columbia Neurosurgery
- 11c. To the best of your knowledge, did you have any prior permanent disability? No /
If yes, describe: NA
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- X 13b. I am requesting a hearing. (to determine medical payment, compensability, TTD/ if MMI/ permanency)

SCWCC

OCT 12 2012

JUDICIAL

Signature of Claimant/Representative

Date: September 26, 2012

Refer to R.67-205, R.67-206, R.67-207 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.



WCC File #: 1213162

Carrier File #: 564579791

Carrier Code #:

Employer FEIN #:

Workers' Compensation Commission
Main Street, suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
803-757-5723

William E. Miller, Jr. 276-76-3013

Claimant's Name SSN

99 Charleston Road
Columbia, South Carolina 29070

Address City State Zip

(803) 530-9446

Home Phone # Work Phone #

William W. Lockhart McAngus Goudelock & Courie

Attorney's Name Law Firm

Owen Steel Company, Inc.

Employer's Name

727 Mauney Drive
Columbia, South Carolina 29201

Address City State Zip

Great American Insurance Group c/o Strategic Comp
Services

Insurance Carrier

(803) 227-2283

Phone Number

Date of Accident: 8/15/12

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

It is **denied** that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: The investigation of the Employer/Carrier does not reveal a compensable injury by accident within the course and scope of the Claimant's employment. In addition, the Employer/Carrier maintain that the Claimant's current problems with his back, head, and/or neck are not causally connected to the Claimant's alleged August 15, 2012 work-related accident.

It is **admitted** that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See Number 1 above.

It is **admitted** that the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 1 above.

It is **denied** that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See Number 1 above.

It is **admitted** that notice of injury was given to the employer. The reasons for denial are: See Number 1 above.

It is **denied** that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to additional medical treatment.

It is **denied** that the employee is entitled to temporary total disability for the period(s) of: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to temporary total disability benefits.

It is **denied** that the employee is permanently disabled. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to permanent disability benefits.

It is **denied** that the employee has a serious disfigurement.

It is contended that an average weekly wage of \$Form 20 to be submitted applies, according to attached accounting of employee's earnings as provided by law.

Further contentions or grounds of defense are: The Employer/Carrier maintain that the Claimant cannot satisfy his burden of proving a compensable injury to the back, head, and/or neck pursuant to Section 42-1-160 and/or Section 42-9-35 of the Act. In addition, the Employer/Carrier maintain that the Claimant's right to compensation may be barred pursuant to Section 42-9-60 of the Act.

Estimated time needed for hearing: 2 hours.

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

Charles Ormond, Jr., Esquire
Miller, Dennis, Corbett, Ormond, Plante & Garner
Post Office Box 11006
Columbia, South Carolina 29211

On the 12th day of October, 2012 by ☒ first class mail; ☐ personal service; ☐ certified mail.
I declare the contents of this form are accurate and true to the best of my knowledge.

Attorney for Employer/Carrier jlockhart@mcclaw.com
Title Email

October 12, 2012
Date

Carrier's Signature
Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial
Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

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



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

Claimant's Name: William E. Miller SSN: 276-76-3013 Employer's Name: Owen Steel Company
Address: 1499 Charleston Road Address: 727 Mauney Drive
City: Leesville State: SC Zip: 29070 City: Columbia State: SC Zip: 29201
Home Phone: 803-530-9446 Work Phone: _____ Insurance Carrier: Great American Ins. Co. c/o Strategic Comp Services
Preparer's Name: J. Charles Ormond, Jr. Law Firm: Holler Garner Corbett Ormond et al Preparer's Phone #: 803 765 2968

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 08/15/2012

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

SEE ATTACHED:

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Jason W. Lockhart, Esq.
Name

Attorney for Carrier and Employer

on the 6th day of February, 2013 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature [Signature] Attorney [Signature] Date 2/6/12
Title _____

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

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W. C. C. FILE NO: 12- 13162

William Miller	)	
	)	
Claimant/employee,	)	
	)	
vs.	)	
	)	
Owen Steel	)	
	)	
Defendant/employer,	)	
	)	
Strategic Comp. Services, Great American	)	
Insurance Co.	)	
Carrier,	)	
_____	)	

CLAIMANT'S ATTACHED GROUNDS FOR REVIEW:

- 1) Did the Hearing Commissioner err in determining that Claimant's injuries and the neuro-surgery undertaken subsequent to the physical altercation at work were not causative when Claimant's neurosurgeon (Dr. Boyd) has specifically given his medical opinion that the altercation most likely did cause the spinal injury to a reasonable degree of medical certainty and he specifically described the "fresh bone fragment" he found in Claimant's neck during surgery; the fact that Claimant's internist (Dr. Levinson) noted that the spine injury was unique and indicated causation in his records, and; when there is no contrary medical evidence in the Record supporting or indicating another cause for the injury or that this altercation did cause the injury and subsequent medical treatment.

- 2) Did the Hearing Commissioner err in making a specific expert medical determination in his findings, that the February 2012 and September 2012 MRI reports were virtually identical, and therefore finding causation did not exist when the neurosurgeon (Dr. Boyd) specifically reviewed not only the reports but the actual images themselves and his records specifically indicate the difference in the images and Dr. Boyd specifically finds causation to a reasonable degree of medical certainty.

- 3) Did the Hearing Commissioner err in apparently considering minor factual disputes between the parties in the altercation in making his finding, stated to be based solely on the medical records, of a lack of causation for the injury sustained after the altercation requiring surgery.

HOLLER GARNER CORBETT ORMOND PLANTE & DUNN

1777 Bull Street at Laurel
Columbia, South Carolina 29211
(803) 765-2968 Phone (803) 252-8290 Facsimile

J. Ed Holler
Everett Hope Garner
James Corbett
J. Charles Ormond, Jr.*†
Benjamin Dunn
Anthony R. Plante*

Of Counsel
Stanley G. Freeman
Steve D. Dennis

Reply To:
PO Box 11006
Columbia, SC 29211
*Certified Mediator S.C.
†Professional Geologist

December 14, 2012

Via Hand Delivery

South Carolina Workers Compensation Commission
Commissioner Derrick L. Williams
1333 Main Street, Ste. 500
P. O. Box 1715
Columbia, South Carolina 29202

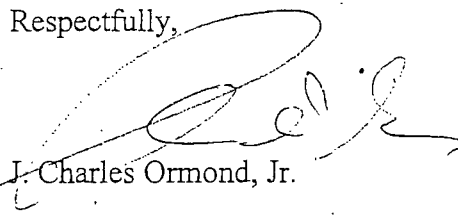
RE: William Miller v. Owen Steel // WC# 12-13162
Form 58 APA / Requested Post Hearing Record Supplement:

Dear Commissioner Williams:

Please find a post hearing motion to supplement the record with a medical record addendum recognizing the error in medical records (Dr. Levinson) on October 8, 2012. Although this record date is post surgery and may not have been a determinative issue, in light of the statements of credibility in the pre-order notice, we would respectfully request only that this record addendum be allowed in the APA record, post hearing, in light of the error and the cross examination questions and claimant testimony related to the substance of the error.

I thank you in advance for your kind consideration. I am,

Respectfully,


J. Charles Ormond, Jr.

Enc: Motion with Supplemental Medical Record w/ fax: (explaining error in Oct. 8, notation) /
cc: Jason W. Lockhart, Esquire // client

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W. C. C. FILE NO: 12-13162

William E. Miller, Jr.)
)
Claimant/employee,)
)
vs.)
)
Owen Steel Company, Inc.)
)
)
Defendant/employer,)
)
Great American Insurance Group /)
Strategic Comp Services)
)
Carrier,)
_____)

**MOTION TO INCLUDE ADDITIONAL
EVIDENCE IN RECORD**

Claimant moves the Commission, Honorable Derrick Williams, Commissioner, to allow additional evidence in the APA submission record. Such motion is made pursuant to SC Reg. 67-707. Such evidence may be material in that cross examination testimony relating to notations of claimant statements, found within a medical record of Dr. Levinson (P. 28 - 32 APA) has been supplemented by the medical provider to reflect the error in such written notations within the medical provider's records and an addendum entered to the medical records to reflect the error. (Exhibit A)

Such evidence may be material as credibility of the Claimant was an issue in the Hearing and within the substance and findings of the Commissioner. The notation within the medical records (now amended to be in error) was used to impeach Claimant on his alleged actions (the use of a jackhammer) just after his neck surgery. The errata notation was not available to

Claimant prior to the hearing and the medical record was supplemented by the medical provider on December 12, 2012.

Claimant would therefore respectfully request that such new evidence in the form of an addendum to the medical records within the APA submission be granted and considered.

Respectfully Submitted:



J. Charles Ormond, Jr.

Attorney/s- for Claimant

Holler Garner Corbett Ormond Plante & Dunn
1777 Bull Street at Laurel
P.O. Box 11006
Columbia, SC 29211
803) 765-2968 //933-9000

December 14, 2012

Surb S. Guram, M.D.
Joseph N. Gabriel, M.D.
Benjamin J. Levinson, M.D.
Philip C. Honig, M.D.



Carlotta M. Davis, APRN
Jennifer H. Padgett, APRN
Wanda Copeland, APRN
Susan Griffin, APRN

1 WELLNESS BOULEVARD, SUITE 200
IRMO, SOUTH CAROLINA 29063
• PHONE: (803) 749-1111 •
• FAX: (803) 749-0050 •

FAX COVER SHEET

TO: Mr. Charles Ormond

FAX#: 252-8290

BENJAMIN LEVINSON, MD

FROM: _____

DATE: 12 / 13 / 12

TOTAL FAXED PAGES: 16

MESSAGE:

Concerning : William E. Miller Jr.

Mr. Ormond,

Please see page 4 of 1st office
visit note dated (10-8-12) an addendum
has been added explaining the error
with the "jackhammer."

Included are 3 preceding visits which
clearly state what happened to this
patient on Aug. 15, 2012.

Thank You,

Elizabeth Delucy

(CRN for
Ben Levinson)

WARNING: All information in this fax transmittal is privileged and strictly confidential and is intended only for the use of the individual or entity named above. Any recipient is advised that the following information cannot be disclosed to any unauthorized party. If you have received this communication in error, please notify us by phone immediately.

Miller Jr, William E. 06/30/1968

4 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 12/13/2012 at 5:07 pm.

Nucynta ER (Tapentadol) 200mg Tablets, Extended Release Take 1 tablet(s) by mouth q12h #60 (Sixty) tablet(s)

Refills: 0

Cervical disc extrusion fu with DR Boyd as doing

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

Constipation

Prescriptions:Lactulose 10gm/15ml Syrup Take 3 Tablespoon by mouth daily prn and repeat q 2 hrs prn #1 (One) 1920 ml bottle
Refills: 5Other Prescriptions:

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

ADDENDUMS:Addendum: 12/13/2012 05:06 PM - Levinson, Benjamin J

In HPI there is mention of low back pain, this should not be there, it was put in error.

Patient's pain is in his neck as stated in visit notes dated: 08/27/2012, 09/04/2012, and 09/13/2012

Please see these for accurate account of patient's present neck and spinal problems.

Miller Jr, William E. 06/30/1966

1 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 12/13/2012 at 5:07 pm.

SUBJECTIVE:**CC:**

Bill is a 46 year old White male. This is a follow-up visit.

HPI:

Follow up of cervical disc extrusion . Patient had surgery on 9/26/12 with Dr. Boyd. See docman for full report

In regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily. TSH was last checked one year ago. Free T4 was last checked 8 months ago.

Dx with other hyperlipidemia; current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Additionally, he presents with history of low back pain. the discomfort is most prominent in the lower lumbar spine. It does not radiate. He characterizes it as intermittent, moderate in intensity, sharp, and aching. This is an acute episode with no prior history of back pain. He states that the current episode of pain started 3 days ago. The event which precipitated this pain was using jackhammer. This occurred at work. The pain worsens with back flexion and back extension.

Concerning constipation, this has been a problem for 2 weeks. The stool is hard in consistency.

ROS:**CONSTITUTIONAL:** Negative for chills, fatigue, fever, and weight change.**EYES:** Negative for blurred vision, eye pain, and photophobia.**E/N/T:** Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.**CARDIOVASCULAR:** This system is negative except as noted in HPI.**RESPIRATORY:** Negative for cough, dyspnea, and hemoptysis.**GASTROINTESTINAL:** Positive for constipation.**MUSCULOSKELETAL:** This system is negative except as noted in HPI.**INTEGUMENTARY:** Negative for atypical moles, dry skin, pruritis, and rashes.**NEUROLOGICAL:** Negative for dizziness, headaches, paresthesias, and weakness.**ENDOCRINE:** This system is negative except as noted in HPI.**PSYCHIATRIC:** Negative for anxiety, depression, and sleep disturbances.**Past Medical History / Family History / Social History:**

... Last Reviewed on 10/8/2012 4:32:46 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Miller Jr, William E. 06/30/1966

2 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 12/13/2012 at 5:07 pm.

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid.2000s-polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma-EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 10/8/2012 4:32:49 PM by Levinson, Benjamin J

Tobacco: Current Smoker: He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very Infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marijuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 10/8/2012 4:26:02 PM by Delucy, Elizabeth M

Neck pain

Peripheral neuropathy

Acquired hypothyroidism

Cervical disc extrusion

Other hyperlipidemia

Constipation

Immunizations:

None

Allergies:

Last Reviewed on 10/8/2012 4:26:04 PM by Delucy, Elizabeth M

No Known Drug Allergies.

Current Medications:

Last Reviewed on 10/8/2012 4:38:10 PM by Levinson, Benjamin J

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1213162

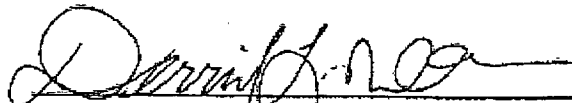
William Miller,	EMPLOYEE,	)	
		)	
	CLAIMANT,	)	
VS.		)	
		)	
Owen Steel Company, Inc.		)	
	EMPLOYER,	)	
		)	ADMINISTRATIVE ORDER
AND		)	
		)	
Strategic Comp Services		)	
	CARRIER,	)	
		)	
	DEFENDANTS,	)	

A Motion regarding the following issue(s) has been received:

X Motion to Supplement the Record.

The following dispositions have been made:

Denied. As the doctor was never deposed prior to the hearing, nor was clarification sought on this point, Claimant's Motion is denied.



Commissioner Derrick L. Williams

December 20, 2012

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.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.
Spine and Neurological Surgery

Carolina Spine Center
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.
PH (803) 462-3502 Fax (803) 462-3547

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

WILLIAM E MILLER JR	276763013	135730
Patient Name	Patient-social security #	Chart #
Employer Name		Insurance Carrier
Case #	11/26/2012	Date of Accident
	Date of Service	

Diagnosis code(s) and/or description of condition for which patient is being treated

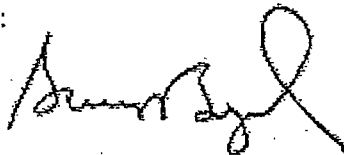
Part time- Return to Light Work with restrictions on 11/27/2012- Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical Demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an Industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: SCOTT B. BOYD, MD

Signature:



Miller Jr, William E. 06/30/1966

4 of 5

Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

Refill of: Drisdol (Ergocalciferol) 50,000IU Capsules 1 capsule by mouth monthly QS for 90 day(s) Refills: 3
Refill of: Livalo (Pitavastatin) 2mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Lab Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

PLAN:

Acquired hypothyroidism

LABORATORY: Lab studies ordered include total thyroxine and TSH.

MEDICATIONS: (no change to current medication regimen)

FOLLOW-UP: Schedule a follow-up visit in 3 months.

Prescriptions:

Refill of: Synthroid (Levothyroxine Sodium) 0.125mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Orders:

Total thyroxine

Thyroid stimulating hormone (TSH)

Patient Education Handouts:

Hypothyroidism

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

RECOMMENDATIONS given include: exercise, low cholesterol/low fat diet, and weight loss.

FOLLOW-UP: Schedule a follow-up visit in 3 months.

Prescriptions:

Refill of: Trilipix (Fenofibric Acid) 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily #90 (Ninety) capsule(s) Refills: 3

Refill of: Livalo (Pitavastatin) 2mg Tablet Take 1 tablet(s) by mouth daily #90 (Ninety) tablet(s) Refills: 3

Change in bowel habits dx miralax

Prescriptions:

Colace (Docusate Sodium) 100mg Capsules 1 po bid #180 (One Hundred and Eighty) capsule(s) Refills: 3

Peripheral neuropathy

Prescriptions:

Refill of: Topamax (Topiramate) 25mg Tablet Take 2 tablet(s) by mouth bid #360 (Three Hundred and Sixty) tablet(s) Refills: 3

Refill of: Naprosyn (Naproxen) 500mg Tablet Take 1 tablet(s) by mouth bid #180 (One Hundred and Eighty) tablet(s) Refills: 3

Other Prescriptions:

CPT 99211-99215 are trademarks of the American Medical Association

- 125 -

Miller Jr, William E. 06/30/1966

5 of 5

Office/Outpatient Visit

Visit Date: Mon, Jul 9, 2012 10:00 am

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 07/09/2012 02:21:22 PM

Printed on 10/10/2012 at 3:52 pm.

Refill of: DEXILANT* 60 mg 1 po a day #90 (Ninety) capsule(s) Refills: 3

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

Refill of: Ultracet (Tramadol/Acetaminophen) Tablet 1-2 q 4-6 hrs prn #360 (Three Hundred and Sixty) tablet(s) Refills: 5

Refill of: Drisdol (Ergocalciferol) 50,000IU Capsules 1 capsule by mouth monthly QS for 90 day(s) Refills: 3

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 10/10/2012 at 3:52 pm.

SUBJECTIVE:

CC:

Bill is a 46 year old White male. This is a follow-up visit.

HPI:

-Follow up of cervical disc extrusion. Patient had surgery on 9/26/12 with Dr. Boyd. See docman for full report.

In regard to the acquired hypothyroidism, he is currently taking Synthroid, 125 mcg daily. TSH was last checked one year ago. Free T4 was last checked 8 months ago.

Dx with other hyperlipidemia; current treatment includes Livalo and diet. Compliance with treatment has been good; he takes his medication as directed, maintains his low cholesterol diet, follows up as directed, and maintains his exercise regimen. He denies experiencing any hypercholesterolemia related symptoms. Most recent lab tests include total cholesterol level (fasting 208 mg/dl on 06/26/2012), triglycerides (fasting 102 mg/dl), HDL (fasting 41 mg/dL), and LDL cholesterol (fasting 147 mg/dl).

Additionally, he presents with history of low back pain. The discomfort is most prominent in the lower lumbar spine. It does not radiate. He characterizes it as intermittent, moderate in intensity, sharp, and aching. This is an acute episode with no prior history of back pain. He states that the current episode of pain started 3 days ago. The event which precipitated this pain was using jackhammer. This occurred at work. The pain worsens with back flexion and back extension.

Concerning constipation, this has been a problem for 2 weeks. The stool is hard in consistency.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

EYES: Negative for blurred vision, eye pain, and photophobia.

E/N/T: Negative for hearing problems, E/N/T pain, congestion, rhinorrhea, epistaxis, hoarseness, and dental problems.

CARDIOVASCULAR: This system is negative except as noted in HPI.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GASTROINTESTINAL: Positive for constipation.

MUSCULOSKELETAL: This system is negative except as noted in HPI.

INTEGUMENTARY: Negative for atypical moles, dry skin, pruritis, and rashes.

NEUROLOGICAL: Negative for dizziness, headaches, paresthesias, and weakness.

ENDOCRINE: This system is negative except as noted in HPI.

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

Past Medical History / Family History / Social History:

... Last Reviewed on 10/8/2012 4:32:46 PM by Levinson, Benjamin J

Past Medical History:

Hyperlipidemia

Sleep Apnea

Hypothyroidism

Surgical History: Partial Thyroid lobectomy

Miller Jr, William E. 06/30/1966

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM

Printed on 10/10/2012 at 3:52 pm.

Arthroscopy: right knee; 03/2011; Procedures: colonoscopy mid 2000s polyp found; 11/11/08-Polyp, rectosigmoid junction-Tubular Adenoma EGD on 9/21/07, antral gastritis, reflux esophagitis, negative for helicobacter

Family History: Mother has thyroid and liver problems.

Positive for Pulmonary Embolism (father).

Positive for Bipolar Disorder (brother).

Social History: Chews tobacco 1 can every 3 days smokes 1-2 cigs qd he quit 2 months ago

Occupation: maintenance man owns steel night shift;

Marital Status: Vicki Rowe's daughter

Tobacco/Alcohol/Supplements:

... Last Reviewed on 10/8/2012 4:32:49 PM by Levinson, Benjamin J

Tobacco: Current Smoker: He currently smokes some days, 1 cigar per week.

Alcohol:

Drinks alcohol very Infrequently.

Substance Abuse History:

... Last Reviewed on 2/16/2012 3:20:06 PM by Smith, April

Marjuana: Prior (no current use).

Mental Health History:

... Last Reviewed on 2/16/2012 3:20:08 PM by Smith, April.

NEGATIVE

Communicable Diseases (eg STDs):

... Last Reviewed on 2/16/2012 3:20:10 PM by Smith, April

Reportable health conditions;

Measles (rubeola)

Mumps

Rubella

Current Problems:

Last Reviewed on 10/8/2012 4:26:02 PM by Delucy, Elizabeth M

Neck pain

Peripheral neuropathy

Acquired hypothyroidism

Cervical disc extrusion

Other hyperlipidemia

Constipation

Immunizations:

None

Allergies:

Last Reviewed on 10/8/2012 4:26:04 PM by Delucy, Elizabeth M

No Known Drug Allergies.

Current Medications:

Last Reviewed on 10/8/2012 4:38:10 PM by Levinson, Benjamin J

Miller Jr, William E. 06/30/1966

3 of 4

Office/Outpatient Visit

Visit Date: Mon, Oct 8, 2012 04:19 pm

Provider: Benjamin Levinson, MD (Supervisor: Benjamin Levinson, MD; Assistant: Elizabeth Delucy, RN)

Location: South Carolina Internal Medicine

Electronically signed by Benjamin Levinson, MD on 10/08/2012 05:17:18 PM
Printed on 10/10/2012 at 3:52 pm.

Colace 100mg Capsules 1 po bid
DEXILANT* 60 mg 1 po a day
Livalo 2mg Tablet Take 1 tablet(s) by mouth daily
Synthroid 0.125mg Tablet Take 1 tablet(s) by mouth daily
Topamax 25mg Tablet Take 2 tablet(s) by mouth bid
Triklix 135mg Capsules, Delayed Release Take 1 capsule(s) by mouth daily
Methocarbamol 500mg Tablets 2 po q 6 hrs for muscle pain
Drisdol 50,000IU Capsules 1 capsule by mouth monthly
Klonopin 0.5mg Tablet Take 1 tablet by mouth at bedtime

OBJECTIVE:

Vitals:

Current: 10/8/2012 4:32:19 PM
Ht: 6 ft, 1 in; Wt: 225 lbs; BMI: 29.7
BP: 140/80 mm Hg; sCr: 0.89 mg/dL; GFR: 113.43

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;
EYES: conjunctiva and cornea are normal; pupils and irises are normal;
NECK: range of motion is normal; trachea is midline;
RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion no dyspnea;
CARDIOVASCULAR: normal rate; rhythm is regular;
MUSCULOSKELETAL: Normal range of motion, strength and tone;
NEUROLOGICAL: cranial nerves, motor and sensory function, reflexes, gait and coordination are all intact;

ASSESSMENT:

724.2 Low back pain
722.10 Cervical disc extrusion
244.8 Acquired hypothyroidism
272.4 Other hyperlipidemia
564.01 Constipation

ORDERS:

Meds Prescribed:

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3
Nucynta ER (Tapentadol) 200mg Tablets, Extended Release Take 1 tablet(s) by mouth q12h #60 (Sixty) tablet(s)
Refills: 0
Lactulose 10gm/15ml Syrup Take 3 Tablespoon by mouth daily prn and repeat q hrs prn #1 (One) 1920 ml bottle
Refills: 5

PLAN:

Low back pain refer to pain mgt

Prescriptions:

Miller Jr, William E. 06/30/1966

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Refills: 0

-Cervical disc extrusion fu with DR Boyd as doing

Acquired hypothyroidism

MEDICATIONS: (no change to current medication regimen)

Other hyperlipidemia

MEDICATIONS: (no change to current medication regimen)

Constipation

Prescriptions:

Lactulose 10gm/15ml Syrup Take 3 Tablespoon by mouth daily prn and repeat q 4 hrs prn #1 (One) 1920 ml bottle
Refills: 5

Other Prescriptions:

Refill of: Klonopin (Clonazepam) 0.5mg Tablet Take 1 tablet by mouth at bedtime #90 (Ninety) tablet(s) Refills: 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001564

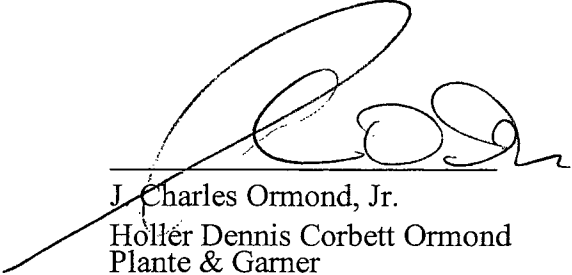
WILLIAM E MILLER, JR., EMPLOYEE, CLAIMANT, APPELLANT,

v.

OWEN STEEL COMPANY INC. EMPLOYER AND GREAT AMERICAN INSURANCE
GROUP C/O STRATEGIC COMP SERVICES, CARRIER, RESPONDENTS.

CERTIFICATION

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



J. Charles Ormond, Jr.
Holler Dennis Corbett Ormond
Plante & Garner
1777 Bull Street
Columbia, SC 29201
(803) 765-2968
Counsel for Appellant

THE STATE OF SOUTH CAROLINA
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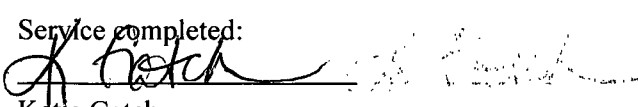
OWEN STEEL COMPANY INC. EMPLOYER AND
GREAT AMERICAN INSURANCE GROUP C/O
STRATEGIC COMP SERVICES, CARRIER, DEFENDANTS..... RESPONDENTS.

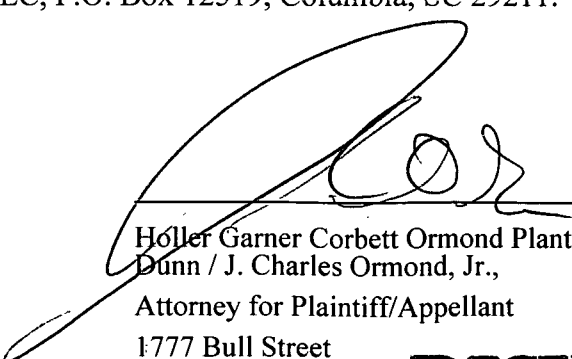
PROOF OF SERVICE

I certify that I have served a copy (3 copies) of the RECORD ON APPEAL on Respondents (Great American Insurance Group c/o Strategic Comp. Services, by **(Hand Delivery)**, on April 9, 2014, its/their attorney/s of record, Helen Hiser, Esq., Weston Adams, III, Jason Lockhart McAngus Goudelock & Courie, LLC, P.O. Box 12519, Columbia, SC 29211. Meridian Building, Columbia, SC. 29201.

April 9, 2014

Service completed:


Katie Gatch


Holler Garner Corbett Ormond Plante &
Dunn / J. Charles Ormond, Jr.,

Attorney for Plaintiff/Appellant

1777 Bull Street
Columbia, SC 29201

(803) 765-2968 933-9000

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SC Court of Appeals