

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM APPELLATE PANEL OF THE  
SC WORKERS' COMPENSATION COMMISSION

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Appellate Case No. 2010-174006

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**RECEIVED**

OCT 18 2012

**S.C. Supreme Court**

Geneva Watson ..... Petitioner,

Xtra Mile Driver Training, Inc. and  
Hartford Underwriters Insurance Co., ..... Respondents.

---

**APPENDIX**

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Case Tracking No. 2010174006

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GENEVA WATSON, ..... Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

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**RECORD ON APPEAL**

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treating physician, until the Claimant has reached maximum medical improvement for her causally related and compensable low back injury.

4. The Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83.
5. The Claimant is entitled to temporary total disability benefits from September 22, 2007 and continuing until such time as temporary disability compensation is terminated, reduced, or suspended in accordance with the terms and provisions of the Workers' Compensation Act.
6. The Hearing scheduled for February 11, 2008 is cancelled and the file is to be returned to General Files until such time as a Hearing is requested by either party.
7. No fines or penalties are assessed to either party in this matter.
8. All other issues are held in abeyance.

IT IS, THEREFORE, HEREBY ORDERED that the above stated stipulations are approved and incorporated as findings of the Workers' Compensation Commission in connection with this matter.

IT IS SO ORDERED.

Dated:

February 13, 2008

We Consent:

Stephen J. Wukela, Esquire  
Attorney for the Claimant

Dated:

2/6/08

F. Reid Warder, Jr., Esquire  
Attorney for Defendants

Dated:

2/6/08

Commissioner David W. Huffstetler

#### CERTIFICATE OF SERVICE

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

This 13 day of February, 2008

By

Kellie L. Kunkle  
Administrative Assistant to the Commissioner

SW  
LW

DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

*Rec'd  
2-23-10*

W.C.C. FILE NO.: 0715014

Geneva Watson,  
Employee/Claimant,

-VS-

XTRA Mile Driver Training, Inc.,  
Employer, and Hartford Underwriters  
Insurance Company, Carrier, Defendants.

HEARING:

Held on December 17, 2009 in St.  
Matthews, South Carolina per notices  
timely and properly served upon all parties  
of interest.

APPEARANCES:

Steven J. Wukela, Esquire, Florence, South  
Carolina, appearing on behalf of the  
Claimant.

Kathryn R. Fiehrer, Esquire, Charleston,  
South Carolina, appearing on behalf of the  
Defendants.

PURPOSE OF THE HEARING:

To determine the issues set forth on the  
Forms 50/51/21.

DECISION & ORDER:

By Derrick L. Williams, Commissioner

FILED:

Feb. 17, 2010

### STATEMENT OF THE CASE

This matter is before the Commission pursuant to the Defendants' Form 21, Stop Payment Application, pursuant to Regulation 67-506 based on their position that the Claimant reached maximum medical improvement on August 12, 2009. The Defendants claim credit for overpayment of temporary disability compensation paid after August 12, 2009 and seek a final determination concerning the Claimant's entitlement to further benefits. The Claimant requests additional medical examination and treatment for an injury to her back, right hip, right leg, and psyche. The Claimant further alleges that she is permanently and totally disabled as a result of the injury on September 18, 2007. The Defendants contend the Claimant has no loss of future earnings and that the Claimant is entitled to a scheduled award under §42-9-30 for an injury to her back only, especially in light of the Consent Order dated February 13, 2008. The Claimant requested lump sum payment of total disability benefits. The Defendants objected to lump sum payment based on Claimant's application for social security benefits and further objected to an award of Dodge medicals based on Dr. Chokshi's testimony.

A Motion to Quash Dr. Rakesh P. Chokshi's deposition was filed by the Claimant on December 8, 2009. After a Pre-Hearing Conference, the undersigned Commissioner determined that the transcript from Dr. Rakesh P. Chokshi's deposition taken on December 16, 2009 is admitted into the evidentiary record. The Claimant also objected to the admission of a portion of the functional capacity evaluation submitted as Claimant's APA No. 7. Specifically, the Claimant objected to the conclusion of the FCE and the sedentary strength finding; however, the Claimant did not object to the

restrictions in the report. Such objection was overruled by the undersigned Commissioner.

The record reveals that the Claimant, Geneva Watson, was employed as a director of placement for XTRA Mile Driver Training when she was involved in an admitted accident arising out of and in the course of her employment on September 18, 2007. Following the accident, the Defendants provided the Claimant authorized medical care and treatment primarily with Dr. Rakesh P. Chokshi at Pee Dee Orthopaedic Associates. The Defendants began payment of temporary total disability compensation for the period commencing on September 22, 2007 through the date of the Hearing. The Defendants' Form 21 indicates that a Form 17 was offered on September 2, 2009. Pursuant to the Consent Order dated February 13, 2008, the parties stipulated to an average weekly wage of \$485.71 with a resulting weekly compensation rate of \$323.83. There were no objections to jurisdiction or venue.

### **EVIDENCE SUMMARY**

The Claimant testified on her own behalf. The Defendants relied on the medical records submitted under the Administrative Procedures Act in support of the Stop Payment Application, as well as the deposition testimony of Dr. Rakesh P. Chokshi. Included in the record, pursuant to the Administrative Procedures Act, are records from Bishopville County Emergency Medical Services, Tuomey Healthcare Services, Dr. John Pate, Dr. Rakesh P. Chokshi at Pee Dee Orthopaedic, InMed Diagnostic Services of South Carolina, McLeod Regional Medical Center, and Tuomey Outpatient Rehabilitation Services. Also included in the record pursuant to the Administrative Procedures Act are the Claimant's personnel records, the Consent Order dated September

13, 2008, the vocational assessment by J. Adgar Brown, Jr., MA CDMS, a letter from James D. Seagle, Jr. dated September 22, 2009, the deposition transcript of Jerry Shadbolt, and the deposition transcript of the Claimant.

The Claimant testified that she graduated from high school and attended several training courses in health and life insurance, as well as vocational training school for secretarial duties. The Claimant further testified that she is versed in the operation of computers. The Claimant testified that she is able to keep her own checkbook and pay her own bills. The Claimant stated that since June 2007, she has worked for XTRA Mile Driver Training in the office. The Claimant further testified that on September 18, 2007 she slid on a golf ball left on the floor at work by the owner's grandchildren and fell flat on her back.

The Claimant testified that she has had ongoing problems with her right hip and back since the accident. The Claimant testified that she chose the least invasive procedure to her back after conservative treatment failed. The Claimant testified that she still has pain in her legs periodically, but it is not constant. The Claimant further testified that since her back surgery, there are periods when she does not have pain or numbness in either of her legs. The Claimant clarified that her left leg has never given her any trouble. That said, the Claimant described that she still has pain in her right hip and across the lower part of her back. The Claimant testified that when she is at home, she is able to move and lay down to accommodate her hip pain. The Claimant testified that while sitting in a chair, she must rotate between sitting and standing in order to alleviate the pain in the middle of her back. The Claimant further testified that she can only vacuum

one room at a time now and she uses a steam mop to clean her floors so that she does not have to bend.

The Claimant also testified that she has applied for social security disability ~~benefits and is currently pending a Hearing on that matter.~~ She further testified that she was willing to return to work for XTRA Mile Driver Training upon receipt of a letter from Mr. Seagle. The Claimant testified that when she presented to work at XTRA Mile Driver Training, Mr. Seagle indicated that they could not accommodate her restrictions outlined in the functional capacity evaluation.

On cross-examination, the Claimant admitted that her only medication for her ~~alleged psyche injury~~ was prescribed by Anita Kurl at Dr. John Pate's office. The Claimant testified that she is no longer being prescribed the Prozac medication that she took after her surgery. The Claimant confirmed that she has never treated with a psychiatrist or psychologist. The Claimant also indicated that she no longer takes any anti-inflammatories or pain medication. In regards to the Claimant's prior work experience, she admitted that she has had experience negotiating contracts, processing payroll, working in customer service, working as an account executive, working as an ad designer, and as a secretary. The Claimant further testified that she is willing to work so long as an employer can accommodate her restrictions. The Claimant admitted that she has not looked for any work whatsoever within her restrictions. The Claimant also confirmed that she was able to personally drive within 30 and 35 minutes continually.

Following the Claimant's injury by accident on September 18, 2007, the Claimant was transported by EMS to Tuomey Healthcare Services. Due to the Claimant's ongoing complaints, she was referred to Pee Dee Orthopaedic Associates by Dr. John Pate. The



records reveal that the Claimant was first treated by Dr. Rakesh P. Chokshi at Pee Dee Orthopaedic Associates on October 1, 2007. The Claimant was provided with conservative treatment in the form of a lumbar epidural injections and physical therapy. Dr. Chokshi diagnosed the Claimant with spinal stenosis at the L3/L4 and L4/L5 regions and recommended that the Claimant undergo an open MRI, including an MRI of the pelvis and SI joint. An MRI of the pelvis performed on December 5, 2008 revealed no significant abnormalities of the hips or pelvis. The MRI scan of the lumbosacral spine on December 5, 2008 revealed mild to moderate acquired central canal stenosis due to degenerative facet and ligamentous and disc changes of the L3/L4 and L4/L5 levels. In a letter dated March 6, 2009, Dr. Chokshi recommended that the Claimant undergo a lumbar decompression surgery in the form of a lumbar laminotomy/laminectomy at the L3, L4 and L5 levels due to progressive worsening of the spinal stenosis. The Claimant underwent the lumbar decompression at the L3 through L5 on March 31, 2009 and was determined to have reached maximum medical improvement by August 12, 2009 per Dr. Chokshi. At that time, Dr. Chokshi recommended that the Claimant undergo a functional capacity evaluation at Tuomey Outpatient Rehabilitation Services. Dr. Chokshi also opined that the Claimant sustained a 10% impairment of the whole person given the nature of her injury and residual symptoms.

Ms. Watson underwent a residual functional capacity battery evaluation on July 6, 2009 with Jerry Shadbolt, ATC at Tuomey Outpatient Rehabilitation Services. According to Mr. Shadbolt's testimony, Ms. Watson chose her job title in the Dictionary of Occupational Titles. This job title was the Director of Placement, which established the baseline of Ms. Watson's functional capacity requirements and functional limitation.

Based on the findings, Jerry Shadbolt input the data into the computer, which produced a report summary. Ms. Watson's occupation as Director of Placement was placed in the sedentary strength category. The evaluation found that Ms. Watson meets the strength requirements and may return to work as the Director of Placement. The functional capacity evaluation also indicated that Ms. Watson's maximum lifting capacity is 10 lbs. and her maximum carrying capacity is 10 lbs. The functional capacity evaluation further provided job factor restrictions: no standing for more than 12 minutes continuously, no sitting for more than 3 minutes continuously, no walking for more than 0.1 miles continuously, no pushing more than 20 lbs., no pulling more than 20 lbs., no stooping, and no crawling on hands and feet. Pursuant to the Waddell Nonorganic Signs Test Report, Ms. Watson's behavior was found to be organic. According to the Oswestry Low Back Pain Progress Report, Ms. Watson has a self reported low back pain and disability of 52%. Dr. Chokshi opined that as long as Ms. Watson's work is within the above restrictions, it is reasonable for her to continue working.

Dr. Chokshi testified that the Claimant had degenerative changes on the MRI following her accident on September 18, 2007. Further, Dr. Chokshi testified that those degenerative changes were probably not caused from her injury with XTRA Mile Driver Training; however, she had an exacerbation of the symptoms that you typically see with degeneration. Dr. Chokshi testified that Ms. Watson did not have a separate injury to her right leg or hip outside of the injury to her back resulting from the September 18, 2007 slip and fall. Dr. Chokshi testified that a second MRI showed degenerative changes associated with spinal stenosis at the L3/4 and L4/5 region of the Claimant's back. Due to the Claimant's persistent symptoms, Dr. Chokshi recommended that the Claimant

undergo surgery. Dr. Chokshi testified that the Claimant had some improvement in her symptoms following the lumbar decompression that was performed on March 31, 2009. Dr. Chokshi testified that he also referred the Claimant for a functional capacity evaluation that indicated the Claimant is able to work in the sedentary strength category. Dr. Chokshi testified that he relies on the functional capacity evaluator's assessment, as the evaluator is the one that performs the test and is able to conduct a more thorough review of a patient's capabilities. In addition to any report from a functional capacity evaluator, Dr. Chokshi indicated that he would like to limit the Claimant from any heavy lifting or twisting or turning or bending type of activities that could aggravate her low back condition. Dr. Chokshi confirmed that the Claimant reached maximum medical improvement on August 12, 2009. Dr. Chokshi also indicated that the Claimant has a 10% impairment to her back based on the Fifth Edition of the AMA Guidelines. In regards to any further medical treatment, Dr. Chokshi indicated that it depends on the Claimant's symptoms. Dr. Chokshi testified that if the Claimant's symptoms are aggravated, she might need pain medication, anti-inflammatory medications, a brace, physical therapy, or even lumbar fusion surgery. Dr. Chokshi indicated that he cannot predict what medical treatment the Claimant will require.

### **CONCLUSION**

The undersigned Commissioner has thoroughly reviewed the evidence in the record and reached a decision in this matter. I find that Dr. Rakesh P. Chokshi's deposition testimony is admissible on the grounds that the deposition was properly noticed and Michael T. Miller, Esquire participated in the deposition on behalf of Stephen J. Wukela, Esquire. Based on the evidence presented, I find that the Claimant

sustained an injury to her back as a result of the admitted work-related accident on September 18, 2007. I further find that the Defendants provided the Claimant proper and adequate medical care and treatment and that the Claimant reached a level of maximum medical improvement for injuries causally related to the September 18, 2007 accident by August 12, 2009. The Defendants shall be responsible for the causally related medical treatment which they authorize and which was incurred on or before August 12, 2009, the date of maximum medical improvement. I further find that the Claimant is entitled to future Dodge medicals per Dr. Chokshi which are necessary to lessen the Claimant's causally related disability. I find that the Claimant is a credible witness that testified truthfully and accurately to her physical limitations. The Claimant has no prior workers' compensation claims and no pre-existing issues with her back. I find that the Claimant sustained an admitted accident to her back which also radiated to her right hip. Although the Claimant has symptoms in her right hip, the situs of her injury was her back.

Based on the record as a whole, I find that the Claimant has sustained a 50% permanent partial disability to her back pursuant to §42-9-30 (21). This takes into account the radicular effect of her back issues on her right hip. This finding is also based on her sedentary level work, her credible testimony, and ongoing problems she experiences. I do not find that the Claimant is permanently and totally disabled. She testified that she would be willing to try to work, and given the sedentary nature of her job before this accident, when coupled with her restrictions, it is debatable whether she can actually return to this work. In any event, based on the evidence as a whole, including all medical evidence, the Claimant's testimony, the functional capacity evaluation, the depositions of Dr. Chokshi and Dr. Shadbolt, I find that even though she

is not permanently and totally disabled, her disability is significantly greater than the 10% impairment rating assigned. I find Defendants are entitled to credit for overpayment of temporary total disability compensation paid after August 12, 2009, the date of maximum medical improvement against their liability for permanent disability compensation awarded herein. Additionally, I find the Claimant is entitled to a lump sum award.

#### FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant sustained an injury to her back which also radiates to her right hip in an admitted accident arising out of and in the course of her employment on September 18, 2007. However, the situs of her injury is her back. This finding is supported by the medical evidence as a whole and Dr. Chokshi's deposition.
3. I find the Claimant to be a credible witness. This finding is based on my observation of her and her testimony at the hearing. She testified truthfully and accurately to her physical limitations (compared to the medical evidence). She has no prior workers' compensation claims and no pre-existing issues with her back. She often stood during the hearing, which was not any indication of symptom magnification; rather, it correlated with the functional capacity evaluation restrictions of having to stand every three (3) minutes. My impressions as stated herein are limited to the testimony I heard and my observations of the Claimant's demeanor



on the date of the hearing. Therefore, nothing in this Order precludes a future finding relating to the Claimant's credibility at another hearing regarding permanency, compensability, or any other issue.

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4. The Claimant testified truthfully concerning her ongoing back and hip pain. She testified that her pain is constant, and that a fusion surgery was discussed; however, she opted for the less invasive decompression surgery to start. She has fairly severe restrictions, as noted in the functional capacity evaluation.
5. The Claimant underwent a function capacity evaluation, for which she gave valid effort. The functional capacity evaluation placed her as greater than sedentary-level, but below light duty-level.
6. The Claimant has not returned to work with the Employer. The Claimant was offered work; however, the Employer could not accommodate her restrictions.
7. The Defendants provided the Claimant proper and adequate medical care and treatment for injuries causally related to the September 18, 2007 accident and the Claimant reached a level of maximum medical improvement for injuries related to the September 18, 2007 accident by August 12, 2009.
8. The Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before August 12, 2009. The Claimant is entitled to

future medical treatment that tends to lessen her causally related disability under Dodge, per Dr. Chokshi.

9. The Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.
10. The Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
11. Based on the record as a whole, I find that the Claimant sustained a 50% permanent loss of use to her back pursuant to §42-9-30 (21) as a result of the admitted accident arising out of and in the course of her employment on September 18, 2007. This takes into account the radicular effect of her back issues on her right hip as well. This finding is also based on her sedentary-level of work, her credible testimony, and the ongoing problems she experiences. I do not find that she is permanently and totally disabled. She testified that she would be willing to try to work, and given the sedentary nature of her job before this accident, when coupled with her restrictions, it is debatable whether or not she could actually return to work. In any event, based on the evidence as a whole, including all the medical evidence, the Claimant's testimony, the functional capacity evaluation, the depositions of Jerry Shadbolt and Dr. Chokshi, I find that even though she is not permanently

and totally disabled, her disability is significantly greater than the 10% impairment rating assigned.

12. The Defendants are entitled to a credit of overpayment of ~~temporary disability compensation paid for the period after August~~ 12, 2009, the date of maximum medical improvement per Dr. Chokshi, against their liability for permanent disability awarded herein and all temporary disability compensation paid to the Claimant for the period after August 12, 2009 constitutes payment for permanent partial disability award set forth herein.
13. The Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83.
14. The Claimant is entitled to a lump sum award.

#### **RULINGS OF LAW**

1. Under §42-1-130, the Claimant was a covered employee, and under §42-1-140, the Employer was a covered employer at the time in question.
2. Under §42-1-160, the Claimant sustained an injury to her back in an admitted accident arising out of and in the course of her employment on September 18, 2007.
3. Under §42-15-60, the Defendants provided the Claimant proper and adequate medical care and treatment and the Claimant reached maximum medical improvement for injuries sustained as a result of the September 18, 2007 accident by August 12, 2009. Under



§42-15-60, the Defendants shall be responsible for the causally related medical care and treatment for which they authorized and for which was incurred on or before August 12, 2009, the date of maximum medical improvement.

4. Pursuant to Dodge medical, the Claimant is entitled to future medical care and treatment to her back as necessary to lessen the Claimant's period of causally related disability associated with the September 18, 2007 accident.
5. Under §42-9-260 and Regulation 67-506, the Defendants are entitled to stop payment of temporary disability compensation and that shall be effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.
6. Under §42-9-10, §42-9-20, §42-9-260, and Regulations 67-501 through 67-510, the Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
7. Under §42-9-30 (21), the Claimant sustained a 50% loss of use to her back as a result of the accident on September 18, 2007. Under §42-9-30(21), the Defendants rebutted the presumption that the Claimant is permanently and totally disabled.
8. Under §42-9-210, all temporary disability compensation paid to the Claimant for the period after August 12, 2009 constitutes payment toward the permanent partial disability award set forth

herein and the Defendants are entitled to credit for all temporary disability compensation paid for the Claimant for the period after August 12, 2009 against liability for further compensation benefits awarded herein.

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9. The Claimant is entitled to a lump sum payment pursuant to Regulations 67-1605(A) and 67-1605(E).
10. Under §42-1-40, the Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83.

### **ORDER**

IT IS, THEREFORE, HEREBY ORDERED that the Defendants are responsible for the causally related medical care and treatment for which they authorized and which was incurred on or before August 12, 2009.

IT IS FURTHER ORDERED that the Defendants are responsible for future medical treatment under Dodge as is necessary to lessen the Claimant's causally related disability from the September 18, 2007 accident.

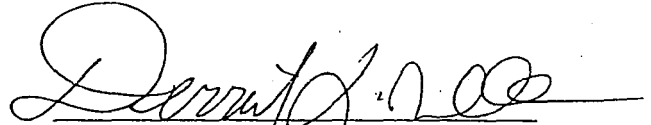
IT IS FURTHER ORDERED that the Defendants' Stop Payment Application is granted and that the Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.

IT IS FURTHER ORDERED that the Defendants have no liability for any further temporary disability compensation.

IT IS FURTHER ORDERED that the Defendants shall pay a lump sum payment to the Claimant pursuant to Regulations 67-1605(A) and 67-1605(E) representing

compensation for 50% permanent loss of use to the back pursuant to §42-9-30(21) with the Defendants being entitled to take credit for all temporary disability compensation paid to the Claimant for the period after August 12, 2009.

IT IS SO ORDERED.

  
Commissioner Derrick L. Williams

Date: 2.17.10

SJW  
KRF

**CERTIFICATE OF SERVICE**  
This is to certify that the undersigned on this date served the order in the above captioned case upon all parties in this cause by first class mail with return receipt requested, postage paid, by registered mail with return receipt requested, the original of which is being filed with the court.  
This 18th day of Feb., 2010  
By Renee B. Smith  
Administrative Assistant to the Commissioner

Hypothetical  
Chapls  
10

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

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WCC FILE NO. 0715014

GENEVA WATSON,

EMPLOYEE,  
CLAIMANT/APPELLANT,

-V-

XTRA MILE DRIVER TRAINING, INC.

EMPLOYER,

AND

HARTFORD UNDERWRITERS INSURANCE CO.

CARRIER,  
DEFENDANTS/RESPONDENTS.

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**FULL AFFIRMATION**

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Appellate Panel Review held in Columbia,  
South Carolina on July 19, 2010 per  
notices timely and properly served upon all  
parties of interest.

Appellate Panel Decision and Order filed

9-10, 2010.

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APPEARANCES:

Claimant/Appellant represented by  
Steven J. Wukela, Esquire of Florence,  
South Carolina.

Defendants/Respondents represented by  
Kathryn R. Fiehrer, Esquire of Charleston,  
South Carolina.

## STATEMENT OF THE CASE

The parties were heard by Commissioner Derrick L. Williams on December 17, 2009 in St. Matthews, South Carolina. On February 17, 2010, Commissioner Williams issued the following Order:

IT IS, THEREFORE, HEREBY ORDERED that the Defendants are responsible for the causally related medical care and treatment for which they are authorized and which was incurred on or before August 12, 2009.

IT IS FURTHER ORDERED that the Defendants are responsible for future medical treatment under Dodge as is necessary to lessen the Claimant's causally related disability from the September 18, 2007 accident.

IT IS FURTHER ORDERED that the Defendants' Stop Payment Application is granted and that the Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.

IT IS FURTHER ORDERED that the Defendants have no liability for any further temporary disability compensation.

IT IS FURTHER ORDERED that the Defendants shall pay a lump sum payment to the Claimant pursuant to Regulations 67-1605(A) and 67-1605(E) representing compensation for 50% permanent loss of use to the back pursuant to §42-9-30(21) with the Defendants being entitled to take credit for all temporary disability compensation paid to the Claimant for the period after August 12, 2009.

Within the statutory period, the attorney for the Claimant filed an application for review in the case setting forth their reasons, copies of which were furnished to all interested parties prior to Oral Argument, which was presented before the Appellate Panel on July 19, 2010. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by Oral Argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectively submits the following:

1. The single Commissioner erred as a matter of fact and Conclusion of Law in failing to find Claimant totally and permanently disability pursuant to §42-9-10.
  2. The single Commissioner erred as a matter of fact and Conclusion of Law in failing to find the Claimant totally and permanently disabled pursuant to §42-9-30(21).
- 
3. The single Commissioner erred as a matter of fact and Conclusion of Law in finding that Defendants rebutted the presumption that Claimant was totally disabled.
  4. The single Commissioner erred as a matter of fact and Conclusion of Law in admitting a portion of the functional capacity evaluation submitted as Claimant's APA No. 7 and in admitting testimony, both containing opinions that the Claimant has a sedentary work capacity and had met strength requirements as a director of placement.
  5. The single Commissioner erred as a matter of fact and Conclusion of Law in awarding Defendants credit for overpayment of temporary disability compensation paid after August 12, 2009.

In an Appellate Review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial Hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, has determined that all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety.

#### **FINDINGS OF FACT**

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

2. The Claimant sustained an injury to her back which also radiates to her right hip in an admitted accident arising out of and in the course of her employment on September 18, 2007. However, the situs of her injury is her back. This finding is supported by the medical evidence as a whole and Dr. Chokshi's deposition.
3. We find the Claimant to be a credible witness. This finding is based on the Hearing Commissioner's observation of the Claimant and her testimony at the hearing. She testified truthfully and accurately to her physical limitations (compared to the medical evidence). She has no prior workers' compensation claims and no pre-existing issues with her back. She often stood during the hearing, which was not any indication of symptom magnification; rather, it correlated with the functional capacity evaluation restrictions of having to stand every three (3) minutes. The Hearing Commissioner's impressions as stated herein are limited to the testimony he heard and his observations of the Claimant's demeanor on the date of the hearing. Therefore, nothing in this Order precludes a future finding relating to the Claimant's credibility at another hearing regarding permanency, compensability, or any other issue.
4. The Claimant testified truthfully concerning her ongoing back and hip pain. She testified that her pain is constant, and that a fusion surgery was discussed; however, she opted for the less invasive

decompression surgery to start. She has fairly severe restrictions, as noted in the functional capacity evaluation.

5. The Claimant underwent a function capacity evaluation, for which she gave valid effort. The functional capacity evaluation placed her as greater than sedentary-level, but below light duty-level.
6. The Claimant has not returned to work with the Employer. The Claimant was offered work; however, the Employer could not accommodate her restrictions.
7. The Defendants provided the Claimant proper and adequate medical care and treatment for injuries causally related to the September 18, 2007 accident and the Claimant reached a level of maximum medical improvement for injuries related to the September 18, 2007 accident by August 12, 2009.
8. The Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before August 12, 2009. The Claimant is entitled to future medical treatment that tends to lessen her causally related disability under Dodge, per Dr. Chokshi.
9. The Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.



10. The Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
11. Based on the record as a whole, we find that the Claimant sustained a 50% permanent loss of use to her back pursuant to §42-9-30 (21) as a result of the admitted accident arising out of and in the course of her employment on September 18, 2007. This takes into account the radicular effect of her back issues on her right hip as well. This finding is also based on her sedentary-level of work, her credible testimony, and the ongoing problems she experiences. We do not find that she is permanently and totally disabled. The Claimant testified that she would be willing to try to work, and given the sedentary nature of her job before this accident, when coupled with her restrictions, it is debatable whether or not she could actually return to work. In any event, based on the evidence as a whole, including all the medical evidence, the Claimant's testimony, the functional capacity evaluation, the depositions of Jerry Shadbolt and Dr. Chokshi, we find that even though she is not permanently and totally disabled, her disability is significantly greater than the 10% impairment rating assigned.
12. The Defendants are entitled to a credit of overpayment of temporary disability compensation paid for the period after August 12, 2009, the date of maximum medical improvement per Dr.

Chokshi, against their liability for permanent disability awarded herein and all temporary disability compensation paid to the Claimant for the period after August 12, 2009 constitutes payment for permanent partial disability award set forth herein.

---

13. The Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83.
14. The Claimant is entitled to a lump sum award.

Based upon the Findings of Fact are the following:

#### **CONCLUSIONS OF LAW**

1. Under §42-1-130, the Claimant was a covered employee, and under §42-1-140, the Employer was a covered employer at the time in question.
2. Under §42-1-160, the Claimant sustained an injury to her back in an admitted accident arising out of and in the course of her employment on September 18, 2007.
3. Under §42-15-60, the Defendants provided the Claimant proper and adequate medical care and treatment and the Claimant reached maximum medical improvement for injuries sustained as a result of the September 18, 2007 accident by August 12, 2009. Under §42-15-60, the Defendants shall be responsible for the causally related medical care and treatment for which they authorized and for which was incurred on or before August 12, 2009, the date of maximum medical improvement.

4. Pursuant to Dodge medical, the Claimant is entitled to future medical care and treatment to her back as necessary to lessen the Claimant's period of causally related disability associated with the September 18, 2007 accident.
5. Under §42-9-260 and Regulation 67-506, the Defendants are entitled to stop payment of temporary disability compensation and that shall be effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.
6. Under §42-9-10, §42-9-20, §42-9-260, and Regulations 67-501 through 67-510, the Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
7. Under §42-9-30 (21), the Claimant sustained a 50% loss of use to her back as a result of the accident on September 18, 2007. Under §42-9-30(21), the Defendants rebutted the presumption that the Claimant is permanently and totally disabled.
8. Under §42-9-210, all temporary disability compensation paid to the Claimant for the period after August 12, 2009 constitutes payment toward the permanent partial disability award set forth herein and the Defendants are entitled to credit for all temporary disability compensation paid for the Claimant for the period after August 12, 2009 against liability for further compensation benefits awarded herein.

9. The Claimant is entitled to a lump sum payment pursuant to Regulations 67-1605(A) and 67-1605(E).
  10. Under §42-1-40, the Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83.
- 

### ORDER

The Order of the Single Commissioner filed in the above-named matter on February 17, 2010 is hereby affirmed by the Appellate Panel of the South Carolina Workers' Compensation Commission and the same shall constitute the Decision and Order of the Appellate Panel.

IT IS, THEREFORE, HEREBY ORDERED that the Defendants are responsible for the causally related medical care and treatment for which they authorized and which was incurred on or before August 12, 2009.

IT IS FURTHER ORDERED that the Defendants are responsible for future medical treatment under Dodge as is necessary to lessen the Claimant's causally related disability from the September 18, 2007 accident.

IT IS FURTHER ORDERED that the Defendants' Stop Payment Application is granted and that the Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.

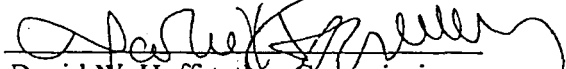
IT IS FURTHER ORDERED that the Defendants have no liability for any further temporary disability compensation.

IT IS FURTHER ORDERED that the Defendants shall pay a lump sum payment to the Claimant pursuant to Regulations 67-1605(A) and 67-1605(E) representing

compensation for 50% permanent loss of use to the back pursuant to §42-9-30(21) with the Defendants being entitled to take credit for all temporary disability compensation paid to the Claimant for the period after August 12, 2009.

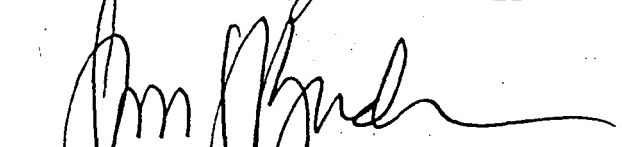
IT IS SO ORDERED.

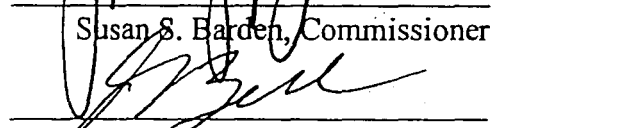
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

  
David W. Huffstetler, Commissioner

FULL AFFIRMATION

CONCUR:

  
Susan S. Barden, Commissioner

  
T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

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

This 10 day of September, 2010  
By Valencia D. Deller

Administrative Assistant to the Commissioner

Steven T. Wukelga  
Kathryn R. Fiehrer

**South Carolina Workers' Compensation Commission**

P.O. Box 1715 • 1612 Marion Street  
Columbia, South Carolina 29202-1715  
(803) 737-5700

WC File # 0715014

Carrier File # 026-CB-A9U5058-F

Carrier Code #

Employer FEIN

Geneva E. Watson

Claimant's Name

SSN

Address

City

State

Zip

Home Phone

Work Phone

XTRA Mile Driver Training, Inc.

Employer's Name

813 Wisacky Highway

Address

Bishopville, SC 29010

City

State

Zip

Hartford Underwriters Insurance Co.

Insurance Carrier

F. Reid Warder, Jr.

Preparer's Name

(843) 577-5732

Phone #

The date of injury reported on the Form 12A is: September 18, 2007

**Check applicable section(s). The employer's representative requests a hearing to:**

- ☒ I. **Stop payment of compensation.** Compensation payments are current as of 09/01/08 (date) and shall continue until otherwise ordered or until a Form 17 is signed by the claimant. A Form 17 was offered and ~~refused~~ on 09/02/09 (date). The basis of the stop payment hearing is (check one):

☒ (a) The authorized health care provider states the claimant has reached maximum medical improvement.

☐ (b) The authorized health care provider states the claimant is able to return to the same or other suitable job and has assigned an impairment rating, if any, and the same or suitable job has been offered to the claimant.

☐ (c) The authorized health care provider states the claimant is unable to return to the same or other suitable job and has assigned an impairment rating, if any.

- ☐ II. **Terminate temporary compensation suspended per R.67-505.** Date suspended: \_\_\_\_\_

The basis for suspension of benefits is (check one):

☐ (a) The claimant refuses medical treatment.

☐ (b) The employer states the claimant is working, has worked for at least fifteen calendar days, and the claimant refuses to sign the Form 17. Requesting: ☐ Informal Conference ☐ Hearing

- ☐ III. **Pay compensation** in the amount of \$ \_\_\_\_\_, based on the following grounds: \_\_\_\_\_

- ☐ IV. **Request Credit for overpayment of temporary compensation.**

- ☐ V. **Reduce Payment of compensation** from \$ \_\_\_\_\_ to \$ \_\_\_\_\_, based on the following grounds: \_\_\_\_\_

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Stephen J. Wukela, Esquire

P.O. Box 13057, Florence, SC 29504-3057

on the 2nd day of September, 2009 by ☒ first class postage, ☐ certified mail, ☐ personal service.

Preparer's Signature

Attorney for the Defendants

Title

September 2, 2009

Date

Address P. O. Box 20550, Charleston, SC 29413

The claimant may respond by writing the preparer at the address above and filing a copy of the response with the Commission's Judicial Department at the address at the top of the form. Refer to R.67-208, R.67-211, R.67-505, R.67-506, and R.67-601 - R.67-616. Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675.

Geneva E. Watson  
Claimant's Name  
SSN  
Address  
City State Zip  
Home Phone Work Phone

XTRA Mile Driver Training, Inc.  
Employer's Name  
813 Wisacky Highway Bishopville, SC 29010  
Address City State Zip  
Hartford Underwriters Insurance Co.  
Insurance Carrier

F. Reid Warder, Jr.  
Preparer's Name

(843) 577-5732  
Phone #

The date of injury reported on the Form 12A is: September 18, 2007

Check applicable section(s). The employer's representative requests a hearing to:

- ☒ I. **Stop payment of compensation.** Compensation payments are current as of 09/01/08 (date) and shall continue until otherwise ordered or until a Form 17 is signed by the claimant. A Form 17 was offered and refused on 09/02/09 (date). The basis of the stop payment hearing is (check one):
- ☒ (a) The authorized health care provider states the claimant has reached maximum medical improvement.
- ☐ (b) The authorized health care provider states the claimant is able to return to the same or other suitable job and has assigned an impairment rating, if any, and the same or suitable job has been offered to the claimant.
- ☐ (c) The authorized health care provider states the claimant is unable to return to the same or other suitable job and has assigned an impairment rating, if any.
- ☐ II. **Terminate temporary compensation suspended per R.67-505.** Date suspended: \_\_\_\_\_  
The basis for suspension of benefits is (check one):
- ☐ (a) The claimant refuses medical treatment.
- ☐ (b) The employer states the claimant is working, has worked for at least fifteen calendar days, and the claimant refuses to sign the Form 17. Requesting: ☐ Informal Conference ☐ Hearing
- ☐ III. **Pay compensation** in the amount of \$ \_\_\_\_\_, based on the following grounds: \_\_\_\_\_
- ☒ IV. **Request Credit for overpayment of temporary compensation.**
- ☐ V. **Reduce Payment of compensation** from \$ \_\_\_\_\_ to \$ \_\_\_\_\_, based on the following grounds: \_\_\_\_\_

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Stephen J. Wukela, Esquire

P.O. Box 13057, Florence, SC 29504-3057

on the 15<sup>th</sup> day of September, 2009 by ☒ first class postage, ☐ certified mail, ☐ personal service.

Preparer's Signature

Attorney for the Defendants  
Title

15  
September 14, 2009  
Date

Address P. O. Box 20550, Charleston, SC 29413

The claimant may respond by writing the preparer at the address above and filing a copy of the response with the Commission's Judicial Department at the address at the top of the form. Refer to R.67-208, R.67-21 1, R.67-505, R.67-506. and R.67-601 - R.67-616. Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675.

**South Carolina Workers' Compensation Commission**

P.O. Box 1715 • 1612 Marion Street  
Columbia, South Carolina 29202-1715  
(803) 737-5700

WCC File # 0715014

Carrier File # 026-CB-A9U5058-F

Carrier Code #

Employer FEIN

Geneva E. Watson

Claimant's Name

SSN

Address

City

State

Zip

Home Phone

Work Phone

XTRA Mile Driver Training, Inc.

Employer's Name

813 Wisacky Highway

Bishopville, SC 29010

Address

City

State

Zip

Hartford Underwriters Insurance Co.

Insurance Carrier

Kathryn R. Fiehrer

Preparer's Name

(843) 577-5732

Phone #

The date of injury reported on the Form 12A is: September 18, 2007

Check applicable section(s). The employer's representative requests a hearing to:

- ☒ I. **Stop payment of compensation.** Compensation payments are current as of 11/08/09 (date) and shall continue until otherwise ordered or until a Form 17 is signed by the claimant. A Form 17 was offered and refused on 09/02/09 (date). The basis of the stop payment hearing is (check one):

☒ (a) The authorized health care provider states the claimant has reached maximum medical improvement.

☐ (b) The authorized health care provider states the claimant is able to return to the same or other suitable job and has assigned an impairment rating, if any, and the same or suitable job has been offered to the claimant.

☐ (c) The authorized health care provider states the claimant is unable to return to the same or other suitable job and has assigned an impairment rating, if any.

- ☐ II. **Terminate temporary compensation suspended per R.67-505.** Date suspended: \_\_\_\_\_

The basis for suspension of benefits is (check one):

☐ (a) The claimant refuses medical treatment.

☐ (b) The employer states the claimant is working, has worked for at least fifteen calendar days, and the claimant refuses to sign the Form 17. Requesting: ☐ Informal Conference ☐ Hearing

- ☒ III. **Pay compensation** in the amount of \$ 100, based on the following grounds: \_\_\_\_\_

- ☒ IV. **Request Credit for overpayment of temporary compensation.**

- ☐ V. **Reduce Payment of compensation** from \$ \_\_\_\_\_ to \$ \_\_\_\_\_, based on the following grounds: \_\_\_\_\_

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Stephen J. Wukela, Esquire

P.O. Box 13057, Florence, SC 29504-3057

on the 9th day of November, 2009 by ☒ first class postage, ☐ certified mail, ☐ personal service.

Kathryn R. Fiehrer  
Preparer's Signature

Attorney for the Defendants  
Title

November 9, 2009  
Date

Address P. O. Box 20550, Charleston, SC 29413

The claimant may respond by writing the preparer at the address above and filing a copy of the response with the Commission's Judicial Department at the address at the top of the form. Refer to R.67-208, R.67-211, R.67-505, R.67-506, and R.67-601 - R.67-616. Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675.



BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0715014

|                            |   |                    |
|----------------------------|---|--------------------|
| Geneva E. Watson,          | ) |                    |
|                            | ) |                    |
| Employee/Claimant,         | ) |                    |
|                            | ) |                    |
| vs.                        | ) | DEPOSITION OF:     |
|                            | ) | JERRY LEE SHADBOLT |
| XTRA Mile Driver Training, | ) |                    |
| Incorporated,              | ) |                    |
|                            | ) |                    |
| Employer,                  | ) |                    |
|                            | ) |                    |
| and                        | ) |                    |
|                            | ) |                    |
| Hartford Underwriters      | ) |                    |
| Insurance Company,         | ) |                    |
|                            | ) |                    |
| Carrier/Defendants.        | ) |                    |
|                            | ) |                    |
|                            | ) |                    |

The deposition of JERRY LEE SHADBOLT was taken pursuant to Notice under the South Carolina Rules of Civil Procedure before Joan B. Branham, a Notary Public in and for the State of South Carolina, at the Lee, Erter, Wilson, James, Holler & Smith Law Firm, Sumter, South Carolina, on November 20, 2009, beginning at 10:00 a.m.

---

JOAN B. BRANHAM  
Court Reporter  
910 Cherokee Road  
Florence, SC 29501  
(843) 662-4163

APPEARANCES OF COUNSEL:

For Jerry Lee Shadbolt: Steven Johnson, Esquire  
Lee, Erter, Wilson, James,  
Holler & Smith  
126 North Main Street  
Sumter, S.C. 29150

For Claimant: Stephen J. Wukela, Esquire  
Wukela Law Firm  
Post Office Box 13057  
Florence, S.C. 29504

For Defendants: Kathryn R. Fiehrer, Esquire  
Wood & Warder  
Post Office Box 20550  
Charleston, S.C. 29413

Also appearing: Geneva E. Watson, Claimant

COURT REPORTER'S NOTE: -- indicates interruption;  
incomplete sentences; trailing off; unfinished sentences.

---

JOAN B. BRANHAM  
Court Reporter  
910 Cherokee Road  
Florence, SC 29501  
(843) 662-4163

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Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above-entitled action, or for both purposes;

That all objections would be reserved until the time of the trial except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was waived.

JERRY LEE SHADBOLT, being first duly sworn  
deposed as follows:

DIRECT EXAMINATION BY MS. FIEHRER:

Q. Mr. Shadbolt, just to introduce myself again, my name is Kate Fiehrer. I represent Xtra-Mile Driver Training and their Workers' Compensation insurance carrier in the claim that Geneva Watson brought. Have you ever been to a deposition before?

1 A. I have not.

2 Q. If I ask you anything that is confusing to you,  
3 please ask me to clarify, otherwise, I will assume  
4 that you answered the question that I have asked.

5 A. OK.

6 Q. Otherwise, all the other guidelines have already  
7 been gone over. Can you list for me your current  
8 employment?

9 A. Sure. I am the manager for out-patient rehab at  
10 Tuomey Healthcare System.

11 Q. And what type of training or education have you had  
12 up to that point to gain that position?

13 A. I have -- I am a certified athletic trainer. Went  
14 to Indiana University, Perdue University at  
15 Indianapolis. I went to graduate school at Clemson  
16 University, got my Masters in Guidance and  
17 Counseling. From there, employment-wise, I worked  
18 at Tuomey -- or I am sorry, at Greenwood Rehab for  
19 three years from -- actually, what was it, 1993 to  
20 ninety -- it was '98, I believe. From 1998 to 2003,  
21 I was assistant professor at Erskine College. I  
22 directed the Athletic Training Education Program and  
23 in 2003, I came to Tuomey Healthcare System as a  
24 manager for out-patient rehab.

25 Q. And part of your job as out-patient rehab manager,

1 do you perform Functional Capacity Evaluations?

2 A. I do. I do.

3 Q. How frequently do you perform those?

4 A. On average, probably once a month. We just started

5 doing them about a year-and-a-half ago.

6 Q. Is it correct, then, that you have done maybe a

7 dozen, fifteen?

8 A. Exactly a dozen.

9 Q. OK. Is it correct that you performed a Functional

10 Capacity Evaluation with Ms. Watson on July 6th,

11 2009?

12 A. Yes.

13 Q. You indicated that there might be some typographical

14 errors or other errors in your report. Do you want

15 to go ahead and list those for us?

16 A. Yes, ma'am. I would like to list those. On Page 3

17 of 5, #13, states "Ms. Watson's crouching ability

18 does not meet the demand minimal functional capacity

19 requirement of stooping at least 75 degrees while

20 bending both knees." That should read "does not."

21 Q. Are there any other errors?

22 A. There are. On Page 5 of 5, the last sentence of

23 Clinical Comments, "Lumbar flexion, range-of-motion

24 invalid. All measurements must be within..." --

25 that should read 5 degrees or 10 percent, "whichever

1 is greater." And my last correction, on your  
2 records for the -- find the page here, the bilateral  
3 hand strength examination Progress Report. It looks  
4 like this.

5 MS. FIEHRER: OK.

6 MR. WUKELA: Let's --

7 A. Does yours read kilograms or pounds?

8 MS. FIEHRER: I am looking at the same thing.

9 MR. WUKELA: Is that Page 1 of 1?

10 A. It is 1 of 1.

11 MR. WUKELA: It's APA 2, Page 51 from your  
12 prior APA's.

13 MS. FIEHRER: I have that separate right now --

14 MR. WUKELA: OK.

15 MS. FIEHRER: -- but.

16 A. Are you in pounds or kilograms?

17 MS. FIEHRER: Mine -- mine indicates pounds.

18 A. OK. Good, I just wanted to make sure that was  
19 indicated in pounds.

20 MS. FIEHRER: OK.

21 MR. WUKELA: So pounds is correct?

22 A. Pounds is correct.

23 MR. WUKELA: I am sorry to interrupt.

24 MS. FIEHRER: Oh, you're fine.

25 A. What are your -- if I may, what -- I want to make

1           sure I -- we did not record that in kilograms  
2           inadvertently. Can I see your --  
3           MS. FIEHRER: Absolutely. We can attach it as  
4           an exhibit if necessary.  
5           MR. WUKELA: I am -- I am sure it is the same  
6           one I have. I tell you what. Let me show him what  
7           is already --  
8           MS. FIEHRER: Been submitted.  
9           MR. WUKELA: -- APA 2, Page 51.  
10          MS. FIEHRER: Sounds good.  
11          A... Thanks.. Correct.. Thanks..  
12          MR. WUKELA: OK. And so, just for the record,  
13          this is APA 2, Page 51 of the September 28th, 2009,  
14          Brief submitted in this case for a prior 21 hearing  
15          which was subsequently withdrawn and I understand  
16          your testimony is that document is free of  
17          typographical errors.  
18          A. Can you say that one more time?  
19          MR. WUKELA: Is -- is that document that you  
20          just looked at, Page 51, free of typographical  
21          errors?  
22          A. Yes.  
23          MR. WUKELA: OK. Sorry, Kate.  
24          MR. FIEHRER: Oh, that's fine.  
25          Q. Mr. Shadbolt, is there any other notes that you

1           wanted to indicate for the record as far as the  
2           report?

3       A.    No.

4       Q.    Did you have to go through any specialized training  
5           in order to be able to complete Functional Capacity  
6           Evaluations?

7       A.    We did.  We used a clinical -- we brought in a  
8           company out.  It was not -- it was 2004 or 2005 and  
9           it was a three-day training course for a different  
10          Functional Capacity Evaluation and we were certified  
11          in that particular evaluation.  This is a different  
12          tool, however, that we started using again a year-  
13          and-a-half ago.  We felt this was more effective.

14       Q.    Was there any type of training for this tool that  
15           you have been using?

16       A.    There's not.  There's not.

17       Q.    Is that by industry standards or?

18       A.    It is -- there is a -- there is a manual and they  
19           publish a short quiz, --

20                   MS. FIEHRER:  OK.

21       A.    -- but our previous training we felt was adequate --

22                   MS. FIEHRER:  OK.

23       A.    -- from a standard standpoint, yes.

24       Q.    OK.  Have you met all the minimum requirements,  
25           then, in order to be able to perform Functional



1 Capacity Evaluations?

2 A. Yes.

3 Q. I wanted to go over a couple of indications that I

4 saw. Is it accurate, then, that Ms. Watson was only

5 able to stand for a period of twelve minutes

6 continuously?

7 A. Yes.

8 Q. And she was only able to sit for a period of three

9 minutes continuously?

10 A. Yes, ma'am.

11 Q. Was that -- how long was this Functional Capacity

12 Evaluation performed over a period of time?

13 A. The entire time, roughly an hour-and-a-half to two

14 hours.

15 Q. So during that hour-and-a-half to two hours, Ms.

16 Watson was only sitting for a period of three

17 minutes maximum?

18 A. Correct. When we do the evaluation, I explain to

19 each client or each patient that we are going to do

20 a sitting tolerance and our goal is to sit as long

21 as you can, and I start the timer and oftentimes, we

22 will perform some of the other activities; i.e., the

23 hand-held dynamiter while she is sitting and she

24 sits in a chair without armrests and we -- I record

25 how long she is able to sit.

1 Q. During those periods, as well?

2 A. Correct.

3 MS. FIEHRER: OK.

4 A. During the sitting evaluation only --

5 MS. FIEHRER: OK.

6 A. -- from a time standpoint. She --

7 Q. Do you --

8 A. -- she may elect to rest after say a carrying  
9 activity, she is permitted to sit.

10 MS. FIEHRER: OK.

11 A. There is a specific instruction to sit as long as  
12 you can tolerate it.

13 Q. During your observance of Ms. Watson, during the  
14 times that were unrecorded, did you ever note her to  
15 be sitting for any period of time to exceed three  
16 minutes?

17 A. Probably not. She was sitting and standing as I  
18 recall --

19 MS. FIEHRER: OK.

20 A. -- somewhat frequently.

21 Q. As far as the restrictions that are noted on Page 4  
22 of your report, --

23 A. Yes, ma'am.

24 Q. -- are all of those restrictions accurate?

25 A. Those are accurate, yes.

1 Q. Do you find that those restrictions meet Ms.  
2 Watson's ability to do sedentary work?

3 MR. WUKELA: And, I want to object on  
4 qualifications. I think his expertise is in testing  
5 limitations but with that objection, please go ahead  
6 and answer.

7 A. Can you repeat that one more time? I am sorry.

8 MS. FIEHRER CONTINUING:

9 Q. Sure. As far as your understanding of Ms. Watson's  
10 occupation as director of placement, do you find  
11 given these job restrictions that she is able to  
12 perform the sedentary job duties?

13 A. I believe we need to define sedentary job duties.  
14 How would you define that so I understand exactly  
15 what you are asking me?

16 Q. What would you define as sedentary?

17 A. I would define a sedentary job activity as a -- as a  
18 desk-type position.

19 MS. FIEHRER: OK.

20 A. I -- I think she could perform a sedentary job if  
21 she were able to stand up and sit down --

22 MS. FIEHRER: OK.

23 A. -- periodically, as needed.

24 MS. FIEHRER: OK.

25 MR. WUKELA: Same objection as to vocational

1 opinion but, go ahead.

2 MS. FIEHRER CONTINUING:

3 Q. Do you believe that Ms. Watson meets the light  
4 strength capacity --

5 A. I do.

6 Q. -- or the capacity to work at light duty?

7 A. I do, based on the results of her exam, yes.

8 Q. So as long as the position is flexible as to the  
9 ability to sit and stand, you believe that Ms.  
10 Watson could perform a sedentary job?

11 MR. WUKELA: Same objection as to a vocational  
12 opinion as opposed to a functional capacity opinion.  
13 Please go ahead and answer.

14 A. I believe so, yes.

15 MS. FIEHRER CONTINUING:

16 Q. Throughout the hour-and-a-half evaluation, did you  
17 note Ms. Watson's effort level?

18 A. I did.

19 Q. Was it to be appropriate?

20 A. I believe Ms. Watson was what I would consider  
21 guarded or apprehensive with some of the activities  
22 due to, my clinical opinion, pain or a possibility  
23 of re-injury.

24 Q. Is that appropriate under the circumstances?

25 A. That is up to each individual. That is up to each

1 client or patient.

2 Q. Did Ms. Watson exuberant enough effort in order for  
3 you to appropriately evaluate her functional  
4 capacity?

5 A. She did.

6 Q. Have you reviewed Dr. Chokshi's notes that were  
7 formulated after your Functional Capacity  
8 Evaluation?

9 A. I have not.

10 MS. FIEHRER: We can attach it as an exhibit if  
11 you would like.

12 Q. Do you want to take a moment to review them?

13 A. Sure. Thanks. OK.

14 Q. Do you feel that Dr. Chokshi accurately interpreted  
15 your Functional Capacity Evaluation?

16 A. I believe he did, yes.

17 Q. Did you find anywhere that given the changes that we  
18 made at the beginning of the deposition as far as  
19 typographical errors that would have made any type  
20 of impact on Dr. Chokshi's --

21 A. No impact whatsoever.

22 DEFENDANTS' EXHIBIT #1 MARKED.

23 Q. The Claimant completed a Vocational Evaluation with  
24 Adger Brown and he made some statements regarding  
25 your Functional Capacity Evaluation. One statement

1 indicates, "If one reads the entire FCE, one will  
2 note a significant inconsistency between the data  
3 collected and the summary opinions of the athletic  
4 trainer who did the Functional Capacity Evaluation."

5 Are you in agreement with Mr. Adger's conclusion?

6 MR. WUKELA: And, I object to pitting  
7 witnesses, but please go ahead and answer.

8 A. Can you repeat that one more time for me?

9 MS. FIEHRER CONTINUING:

10 Q. Certainly. Do you agree that there was any  
11 inconsistency between the data collected and your  
12 opinion in the FCE?

13 A. I would disagree. My opinion is not -- my opinion  
14 is not written in this FCE report. The FCE report  
15 only states what Ms. Watson performed that day.

16 MS. FIEHRER: OK.

17 A. I indicated her comments and her mannerisms but did  
18 not indicate a opinion of anything in the report.

19 Q. As far as the indication that she could work  
20 sedentary duty, --

21 A. Um-hum.

22 Q. -- do you find that that was consistent with the  
23 restrictions during the Functional Capacity  
24 Evaluation?

25 A. Yes, under the light category of working. The FCE -

1           - what I input into the computer generates this  
2       report, --

3           MS. FIEHRER: OK.

4       A.   -- so my opinion never went into it. This all is  
5           inputted into the computer and the computer generates  
6           the results.

7       Q.   The result as far as sedentary duty was generated by  
8           a computer based on the --

9       A.   By --

10      Q.   -- statistics that you entered?

11      A.   Yes. Correct.

12           MS. FIEHRER: OK.

13      A.   Sorry if I wasn't clear about that.

14           MS. FIEHRER: Oh, --

15      A.   Yes, the computer generates the report.

16           MS. FIEHRER: OK.

17      A.   I input the data into the computer.

18      Q.   OK. Do you know if the sedentary work definition  
19           that is used by the computer system is the same as  
20           the U.S. Department of Labor definition in the  
21           Dictionary of Occupational Titles?

22      A.   It is. That is what this program is based on.

23      Q.   Do you know if that definition indicates that one's  
24           ability to lift a maximum of ten pounds on an  
25           occasional basis is the definition for sedentary

1 work?

2 A. I do not.

3 Q. Just so I am clear, you never made the statement  
4 concluding the measurements on the Functional

5 Capacity Evaluation, is that correct?

6 A. What measurements?

7 MS. FIEHRER: I will reiterate it a different  
8 way. I am reading, I am sure you will object,  
9 reading from the vocational evaluator's report on  
10 Page 3. He states, "Although the evaluator states  
11 that Ms. Watson is capable of returning to her  
12 former sedentary job, that is a clearly inaccurate  
13 statement assuming the accuracy of the measurements  
14 the evaluator took."

15 A. Based on what she performed that day and what I  
16 input it, her performance into the computer, the  
17 computer, based on the Dictionary of Occupational  
18 Titles, placed her in that category.

19 MR. WUKELA: Now, again, I object to him giving  
20 any vocational analysis ---

21 MS. FIEHRER: That's fine.

22 MR. WUKELA: -- or to the computer giving any  
23 vocational analysis. I am not sure of the  
24 qualifications of the computer, but I don't dispute  
25 the accuracy of his measurements.



MS. FIEHRER CONTINUING:

Q. Is it correct, then, that you could not make an accurate or inaccurate statement since you weren't the one actually making the statement as to sedentary duty?

A. I could not give, if I understand what you are asking me, if you wanted me to calculate on a piece of paper that data, I have not done that before.

MS. FIEHRER: OK.

A. Does that --

Q. That's --

A. If I understand what you're asking.

MS. FIEHRER: That is sufficient for me. I just wanted to make sure you weren't making any statements on that Functional Capacity Evaluation.

A. I was not -- I was only reiterating her mannerisms and/or under my clinician comments, we take her resting heart rate and her blood pressure from a safety standpoint, as well as after some activities to test her heart rate and everything else I put why she had to stop that activity.

Q. OK. Is that comment area the only area that you make any personal statements during the report?

A. Yes, the clinician comments, the only area.

MS. FIEHRER: I believe those are all the

1 questions I have for you. Thank you for your time.

2 MR. SHADBOLT: You're welcome.

3 CROSS-EXAMINATION BY MR. WUKELA:

4 MR. WUKELA: I have just a few.

5 A. Sure.

6 Q. Make sure I understand. Well, first of all, let's  
7 start, my name is Stephen Wukela. This is the first  
8 time we have ever met, is that correct?

9 A. Yes, sir.

10 Q. Never spoken before?

11 A. Never seen your face before.

12 Q. And, I didn't refer Ms. Watson to you and I have  
13 never referred anyone to you before, is that right?  
14 We haven't been --

15 A. I would have to look at the records. I -- if it is  
16 put on my schedule and --

17 Q. All right.

18 A. -- it shows up and I do the --

19 Q. Well, I will represent that to you, how about that?

20 A. OK.

21 Q. All right. Not that you aren't a fine fellow, I  
22 just --

23 A. I understand.

24 Q. - we haven't had any business relationship before.

25 In fact, it looks like from your records that you

1           were referred by Dr. Chok -- Ms. Watson was referred  
2           to you by Dr. Chokshi, is that right?

3       A.    Yes, sir.

4       Q.    OK.  And the purpose of that referral was for you to  
5           do some testing as to her functional ability, test  
6           how long she could sit, how long she could stand,  
7           how much she could lift, so forth and so on?

8       A.    Yes.

9       Q.    OK.  And you don't have any qualifications or  
10          training in vocational evaluation or knowledge about  
11          what kind of educational requirements or physical  
12          requirements there are for various jobs and what  
13          jobs are available in the marketplace, is that  
14          right?

15      A.    That's correct.

16      Q.    All right.  Your expertise is in doing those tests  
17          and seeing how long she can sit and how long she can  
18          stand and so forth?

19      A.    Yes.

20      Q.    And, in fact, you perform those tests and take those  
21          measurements, and then you input them into a  
22          computer.

23      A.    Yes.

24      Q.    And any opinions as to vocational ability tied to  
25          those tests is a product of that computer program?

1 A. Can you repeat that?

2 Q. Let me say it differently. You plug in how long she

3 can sit or stand or walk or whatever and as to

4 whether that meets light or sedentary or any other

5 vocational level, that opinion is the product of the

6 computer, is that correct?

7 A. That's correct.

8 Q. OK. So stated differently, any opinion as to

9 whether she can do sedentary work is the computer's

10 opinion rather than your opinion?

11 A. That's correct.

12 Q. OK. Now, are you aware of the Department of Labor's

13 Dictionary of Occupational Titles, aware of the ---

14 A. I am aware of it.

15 Q. -- existence of that?

16 A. Yes.

17 Q. OK. Have you ever had opportunity to -- to read

18 that?

19 A. I have looked through it, yes, --

20 MR. WUKELA: OK.

21 A. -- online.

22 Q. All right. Have you ever studied it or -- or been

23 through any courses or training that taught you how

24 to use that?

25 A. When we did our initial training for the other

1           Functional Capacity Evaluation, we reviewed that  
2           particular document.

3       Q.    OK.  Would you agree with me, then, that the  
4           Dictionary of Occupational Titles lists sedentary  
5           work as including the requirement that the worker be  
6           able to sit for six out of eight hours?

7       A.    I would not be -- I would have to look at the book.  
8           I would not be familiar with that.

9       Q.    OK.  So your answer is, I don't know?

10      A.    I don't know.

11      Q.    OK.  Well, let me ask you this, there is a term that  
12           is used in your report "demand minimum functional  
13           capacity."  I think it is defined on the first page  
14           of your report.

15      A.    Yes.

16      Q.    OK.  Tell me what that term means.

17      A.    That, as it states, defines the least acceptable  
18           level.  That is the minimum that someone can do.

19           MR. WUKELA:  OK.

20      A.    That an individual can perform.

21      Q.    All right.  And that is distinguished from the term  
22           residual functional capacity in what way?

23      A.    That, I do not know precisely.

24      Q.    OK.  Well, is the demand minimum functional capacity  
25           the least acceptable level of activity you must have

1 to have to perform a certain job?

2 A. Yes, in a -- in a particular category.

3 Q. In a particular category. The -- the least

4 acceptable level of activity that an individual must

5 possess before returning to work in a particular

6 category of work.

7 A. That's how I understand it.

8 Q. OK. And residual functional capacity is that

9 patient's actual ability, functionally speaking?

10 A. That is what -- I -- I don't -- I don't know

11 specifically how to answer that question.

12 Q. Well, it's -- it defines it in your report as "The

13 patient's performance potential for various

14 activities --

15 A. Correct.

16 Q. -- of daily living and vocational tasks. So

17 residual functional capacity, is their performance

18 potential, --

19 A. Uh-huh.

20 Q. -- and demand minimum functional capacity is what

21 they have to be able to do to do a job?

22 A. I don't know how you would define performance

23 potential for an individual.

24 MR. WUKELA: OK. All right.

25 A. From a number standpoint.

1 Q. Right. Well, let me -- let me then go forward to  
2 your -- the different classifications of I -- I --  
3 what I take to be the performance potential of Ms.  
4 Watson on Page 2 of 5 of your report.

5 A. Um-hum.

6 Q. And particularly, #1 there. You indicate "Ms.  
7 Watson stood for 12 minutes and her standing  
8 tolerance does not meet the demand minimum  
9 functional capacity requirement of standing for 30  
10 minutes continuously."

11 A. The DOT's standard is that a individual should be  
12 able to stand for 30 minutes --

13 MR. WUKELA: OK.

14 A. -- and she did not meet that standard.

15 Q. I follow you. And, then #2 is she sat for three  
16 minutes. Her sitting tolerance does not meet the  
17 demand minimum functional capacity requirement for  
18 sitting for 30 minutes continuously?

19 A. Correct, the standard's 30 minutes and she sat for  
20 three minutes.

21 Q. OK. And --

22 A. That number would be what, from my standpoint, the  
23 target would be.

24 Q. I am with you. I am with you. And she didn't meet  
25 that target?

1 A. She did not meet that target, correct.

2 Q. OK. And, then if you go forward to Page 4 of 5 in

3 your report summary there is a section there "Job

4 Factor Restrictions," and you say "In order for Ms.

5 Watson to successfully return to work as director of

6 placement, the following job factor restrictions

7 must be met," and then you list, "No standing for

8 more than 12 minutes continuously, no sitting for

9 more than 3 minutes continuously," so forth and so

10 on.

11 A. Yes.

12 Q. Is that right?

13 A. That is correct, based on her performance that

14 particular day on what she did, those were the

15 results of the tests.

16 Q. OK. And, therefore, those would be the restrictions

17 that she would operate under at any particular job

18 she -- she would work?

19 A. That would be the recommendation of this FCE, yes.

20 Q. OK. Now, and again, you don't have any training to

21 tell me whether those -- with those restrictions, a

22 person of her education and training and so forth is

23 employable or not, that is not your job. Your job

24 is to measure it and tell me what her restrictions

25 are.



1 A. Yes. My job is to produce a document that gives a  
2 snapshot of what she did that particular day.

3 Q. OK. Now, and the purpose of this testing not only  
4 is to test her ability that day but to -- to -- from  
5 there make an estimation of what you believe her  
6 restrictions would be on a permanent basis, is that  
7 right?

8 A. Correct, or establish guidelines.

9 MR. WUKELA: OK.

10 A. Recommended guidelines.

11 Q. All right. Now, and before we get into the accuracy  
12 of those, that you say -- you mentioned earlier that  
13 there were some typos in this and I want to go back  
14 and make sure I understand these. Page 45, #13,  
15 Page 45 of APA; your Page 3 of 5 of your report.

16 A. Yes, sir.

17 Q. Where it says, "Crouching ability does meet the  
18 demand minimal functional capacity requirement."  
19 You indicated that correctly that should read,  
20 "Crouching ability does not meet." Did I understand  
21 you correctly earlier?

22 A. Let me read this one second if I may.

23 MR. WUKELA: Sure. Please take your time. I  
24 want to make sure we got it right.

25 A. Actually, I gave -- I am sorry. I did give -- I

1 gave you the wrong number.

2 MR. WUKELA: OK.

3 A. It is #9. I was trying to get through that before  
4 we started.

5 MR. WUKELA: OK.

6 A. On #9, the activity is for Ms. Watson to stand on a  
7 narrow beam and crouch for thirty seconds. I am  
8 sorry.

9 MR. WUKELA: OK.

10 A. She can stand on the ground and crouch. She was not  
11 able to stand on the beam --

12 MR. WUKELA: I understand.

13 A. -- which would require balance and crouch. I'm  
14 sorry.

15 MR. WUKELA: I understand.

16 A. My mistake.

17 MR. WUKELA: No, that's fine.

18 A. That should be #9, not #13. I apologize.

19 Q. I am with you. So it is #9 on Page 2 of 5 of your  
20 report --

21 A. Correct. I'm sorry.

22 Q. -- and then the APA's here, it's Page 44. OK. Very  
23 well.

24 A. Sorry.

25 Q. No, no, not a problem. I just wanted to make sure

1 we are straight. And then -- and on Page 5 of 5 of  
2 your report, which is Page 47 of the APA's, the last  
3 sentence of your "Clinician Comments" it reads,  
4 "Must be within 5 percent or 10 percent," and you  
5 said it should be 5 degrees or 10 percent?"

6 A. Yes.

7 MR. WUKELA: I'm with you. OK.

8 A. That's correct.

9 Q. All right. And -- and those were all the errors?

10 A. Yes.

11 Q. OK. Very well. And all the other findings are  
12 accurate and correct?

13 A. Yes.

14 Q. All right. Now, you did do some testing as to  
15 whether you believed her reports were organic or  
16 not, is that right?

17 A. That's correct.

18 Q. And that is found at Page 53 of the APA, a separate  
19 or addendum, I guess, to the report "Waddell Non-  
20 Organic Signs Test Report," and y'all performed the  
21 Waddell test to see if she was exaggerating or -- or  
22 malingering or anything like that, correct?

23 A. Correct.

24 Q. All right. And she scored zero of five indicating  
25 organic behavior as opposed to malingering?

1 A. Correct.

2 Q. OK. Let's see, there is also a report that I had  
3 one question about, the Aulstry Low Back Pain  
4 Progress Support."

5 A. Yes.

6 Q. What is that?

7 A. That is the patient's perception of their pain.

8 MR. WUKELA: Um-hum.

9 A. That is the patient's perception of how they -- how  
10 it affects their everyday lives. Oftentimes we will  
11 use this as a baseline in ther -- it can be used as  
12 a baseline in therapy to see how the patient  
13 progresses.

14 MR. WUKELA: Um-hum.

15 A. We use it as a baseline of the patient's perception  
16 of how their pain affects their daily life.

17 Q. OK. And how do you measure it?

18 A. I have a form in my manual -- a -- a page in my  
19 manual that asks her a series of questions and I  
20 input her answers and the computer generates the  
21 results.

22 Q. OK. And give me just a couple of examples of the  
23 types of questions.

24 A. I can show you the questions themselves.

25 MR. WUKELA: OK.

1       A.    This is done during the sitting.  These are -- this  
2            is the test itself.

3           MR. WUKELA:  All right.

4           MS. FIEHRER:  Do you mind if we make a copy and  
5           attach it as an exhibit --

6           MR. WUKELA:  Sure.

7           MS. FIEHRER:  -- since we're looking at it?

8           MR. WUKELA:  Sure, and -- and -- and let met  
9           just for the record, and we will make this an  
10          exhibit, but it has a number of different sections  
11          entitled -- varying titles from pain intensity,

12          personal care, lifting, walking, sitting, standing,  
13          sleeping, so forth and so on and for each one, they  
14          ask questions like, for example, sitting:  A. I can  
15          sit in a chair as long as I like; B. I can only sit  
16          in my favorite chair as long as I like; C. Pain  
17          prevents me sitting more than an hour; D. Pain  
18          prevents me from sitting more than a half-hour; E.  
19          Pain prevents me from sitting more than ten minutes;  
20          F. Pain prevents me from sitting at all, and they --  
21          all -- all the sections have similar ratings.

22        A.    Yes.

23           MR. WUKELA:  OK.  You can look at that.

24        A.    We use this as a tool for the physician more than  
25           anything else.

CLAIMANT'S EXHIBIT #1 MARKED.

Q. OK. And, I -- I have seen time from time physicians ask questions like rate your pain on a scale of -- of one to ten. This is a similar type?

A. It's a more functional perception of pain -- thanks. Perception of pain zero to ten can vary from person to person. This gives a better snapshot of how they perceive their pain level versus a number --

MR. WUKELA: OK.

A. -- for the physician.

Q. All right. And -- and y'all performed that test on the same day that you performed all these other tests?

A. Correct.

Q. All right. And it resulted in a disability percentage of 52 percent. What does that mean?

A. That's based on her perception that would indicate her level of disability.

MR. WUKELA: OK.

A. Not a -- not a clinical measure of disability based on the FCE, only based on how she perceives --

MR. WUKELA: Right.

A. -- as a baseline --

Q. So you are doing two things in this FCE, 1), you are asking her about her pain and asking a variety of

1 different functional questions related to her pain  
2 and, also, you are testing specific things she does  
3 functionally and measuring those, sitting, standing,  
4 walking, that sort of thing?

5 A. I am asking her after she completes it from, No. 1,  
6 a safety standpoint and No. 2, why did you have to  
7 stop and her answer was frequently pain in her back.

8 Q. And, then the third type of test you have done looks  
9 like is the -- is the Waddell test where you - you -  
10 - you ask some other questions and -- and do some

11 other observations to see if you can reach a  
12 conclusion as to whether this -- these answers are  
13 accurate and organic or whether they're --

14 A. Correct.

15 Q. -- malingering?

16 A. Correct.

17 MR. WUKELA: OK.

18 A. The Waddell itself -- the tool is not designed for  
19 determining whether someone was malingering or not.  
20 It is determined to determine whether they need  
21 psychological intervention because their results are  
22 not organic.

23 MR. WUKELA: Sure.

24 A. That particular test is right here.

25 Q. Is the Waddell test, yeah.

1 A. Yes.

2 Q. And -- and, I -- what I understand you to say is --  
3 is the Waddell test itself was to determine whether  
4 the complaints are the product of some psychosomatic

5 condition as opposed to some physical condition?

6 A. Correct.

7 Q. They are often used to -- to see if as opposed to  
8 psychosomatic condition whether it is the result of  
9 malingering or intentional feigning as opposed to  
10 some organic condition.

11 A. Correct.

12 Q. All right. But your -- the results of your Waddell  
13 test indicated that the -- the source was organic?

14 A. The test indicated that it was organic, correct.

15 Q. OK. OK. Look, thank you for your time here. In  
16 sum, are the results of your tests accurate?

17 A. The results of the tests are accurate based on what  
18 Ms. Watson performed that day, yes.

19 MR. WUKELA: Thank you, sir.

20 RE-DIRECT EXAMINATION BY MS. FIEHRER:

21 MS. FIEHRER: I only have a couple  
22 clarification questions.

23 A. Sure. Sure.

24 Q. When you indicated the RFCC classifications on Page  
25 2 of 5 of your report, how do you come up with the



1 target that you testified to?

2 A. The computer program does based on the Dictionary of  
3 Occupational Titles. Based on what job description  
4 she tells me, I input that into the computer and the  
5 computer identifies that particular job title and  
6 establishes the criteria for that job, as well as  
7 the sitting, standing and walking.

8 Q. Do you recall what was the actual job title placed  
9 into the computer for Ms. Watson?

10 A. It is not in this, it is on my computer, which I

11 have with me. Yes, on Page 4 of 5 her job factor  
12 restrictions: "In order for Ms. Watson to  
13 successfully return to work as a director of  
14 placement." That is what she indicated to me that  
15 her job title was.

16 Q. And that was Ms. Watson's subjective interpretation  
17 of what her job required?

18 A. Correct. That was what she told me she did.

19 Q. Do you know if that is different than any other type  
20 of desk job?

21 A. I don't know.

22 MS. FIEHRER: I believe those are all the  
23 questions I have.

24 MR. SHADBOLT: OK.

25 MS. FIEHRER: Thank you.

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MR. SHADBOLT: You're welcome.  
MR. WUKELA: Thank you for your time.  
MR. SHADBOLT: You are welcome.  
MS. FIEHRER: Thank you.

AND FURTHER THIS DEPONENT SAITH NOT.  
DEPOSITION WAS ENDED AT 11:00 A.M.

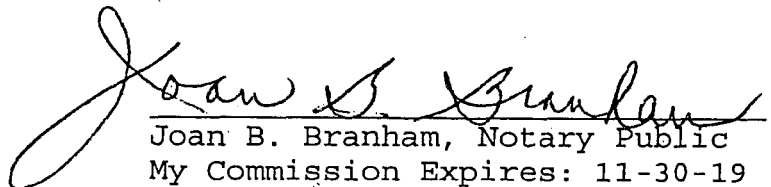
CERTIFICATE OF NOTARY PUBLIC

I, Joan B. Branham, do hereby certify that the foregoing deposition was taken by me, a duly authorized Notary Public, and the same transcribed as a correct transcription of the testimony taken at the time and place indicated therein;

That the witness was duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That I am not related to any of the parties or their counsel nor interested in the outcome of the foregoing litigation financially or otherwise.

Witness my official seal and signature at Florence, South Carolina this third day of December, 2009.

  
Joan B. Branham, Notary Public  
My Commission Expires: 11-30-19



**Pee Dee  
Orthopaedic  
Associates, PA**

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
Deway N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Duniap, Jr., M.D., FACS

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Amendment Dated 08/26/09

There is a typographical error in the Plan... It should read: From my standpoint, she has reached maximum medical improvement. (pln)

Amendment Dated 08/26/09

### Lumbar Decompression Postop Examination

|                    |               |                         |                   |
|--------------------|---------------|-------------------------|-------------------|
| <b>Patient ID:</b> | [REDACTED]    | <b>Date of Service:</b> | 08/12/09          |
| <b>Patient:</b>    | Geneva Watson | <b>Gender:</b>          | female            |
| <b>DOB:</b>        | [REDACTED]    | <b>Age:</b>             | 56 years old      |
| <b>Employer:</b>   | Xtra Mile     | <b>Occupation:</b>      | Placement Manager |

**Referring Physician:** Pate, John, ;  
**Other Physicians:**

### **SURGICAL PROCEDURE:**

| DATE       | TYPE                      | TIME SINCE SURGERY |
|------------|---------------------------|--------------------|
| 03/31/2009 | Lumbar Decompression L3-5 | 5 months           |

**Allergies:** No Known Drug Allergies  
**Current Meds:** Fluoxetine Hydrochloride, NAPROSYN (Dosage: 500MG SIG: 1 TAB PO BID WITH FOOD Dispense: 60 Refills: 0 Note: giving by our workers comp meds ), Fosamax, HCTZ

**REASON FOR VISIT:** 56 years old female here for postop follow up., and POST FCE

**HPI:** Ms. Geneva Watson returns with the functional capacity evaluation. The findings were reviewed by me. The findings were discussed with the patient. Essentially, the work capacity will be based on the Toumey Outpatient Rehabilitation Services' functional capacity evaluation. Her report summary shows her strength category and her job factor restrictions.

**FOCUSED EXAM:** Incision is healing without signs of infection. Motor strength appears to be 5/5 in all the major muscle groups in lower extremities.

**RADIOGRAPHS:** Lumbar radiographs show laminectomy with no evidence of instability. Reviewed by me personally.

### **ASSESSMENT:**

Report Date: August 26, 2009 Patient: Watson, Geneva E DOS: 08/12/09

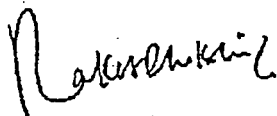
**DIAGNOSIS:** -Status post lumbar decompression.

**PLAN:** As long as the work is within that particular restrictions, I believe it is reasonable for her to continue working. If not, she may have to consider changing her work status. From my standpoint, she has not reached maximum medical improvement. Based on the AMA guidelines, 10% impairment rating of the whole person was given, given the nature of her residual symptoms.

Brace use discussed. Postoperative restrictions discussed. Questions answered.

**PRESCRIPTION:** No data for Prescription

Thank you,



**Rakesh P. Chokshi, M.D.**

Spine Surgeon

Pee Dee Spine Center

Pee Dee Orthopaedic Associates

This document was electronically signed on 08/12/09

Fax Created: Dated: 8/19/2009 10:41:40 AM

Dr. John Pate

# Tuomey Rehabilitation Services

## Modified Oswestry Low Back Pain Disability Questionnaire

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please Read: This questionnaire has been designed to give the doctor information as to how your back pain has affected your ability to manage in every life. Please answer every section and mark in each section only the one box which applies to you. We realize you may consider that two of the statements in any one section relate to you, but please just mark the box which most closely describes your problem.

### Section 1 - Pain Intensity:

- ☐ A. I can tolerate the pain I have without having to use medication.
- ☐ B. The pain is bad but I can manage without taking medication.
- ☐ C. Pain medication provides me with complete relief from pain.
- ☐ D. Pain medication provides me with moderate relief from pain.
- ☐ E. Pain medication provides me with little relief from pain.
- ☐ F. Pain medication have no effect on the pain.

### Section 2 - Personal Care (Washing, Dressing, etc.)

- ☐ A. I can take care of myself normally without causing increased pain.
- ☐ B. I can take care of myself normally but it increases my pain.
- ☐ C. It is painful to take care of myself & I am slow and careful.
- ☐ D. I need help, but I am able to manage most of my personal care.
- ☐ E. I need help everyday in most aspects of self care.
- ☐ F. I do not get dressed, wash with difficulty & stay in bed.

### Section 3 - Lifting

- ☐ A. I can lift heavy weights without increased pain.
- ☐ B. I can lift heavy weights but it causes increased pain.
- ☐ C. Pain prevents me from lifting heavy weights off the floor, but I can manage if the weights are conveniently positioned. (e.g., on the table)
- ☐ D. Pain prevents me from lifting heavy weights but, I can manage light to medium weights if they are conveniently positioned.
- ☐ E. I can lift only very light weights.
- ☐ F. I cannot lift or carry anything at all.

### Section 4 - Walking

- ☐ A. Pain does not prevent me walking any distance.
- ☐ B. Pain prevents me walking more than 1 mile.
- ☐ C. Pain prevents me walking more than 1/2 mile.
- ☐ D. Pain prevents me walking more than 1/4 mile.
- ☐ E. I can only walk with crutches or a cane.
- ☐ F. I am in bed most of the time & have to crawl to the toilet.

### Section 5 - Sitting

- ☐ A. I can sit in any chair as long as I like.
- ☐ B. I can only sit in my favorite chair for as long as I like.
- ☐ C. Pain prevents me sitting more than 1 hour.
- ☐ D. Pain prevents me from sitting more than 1/2 hour.
- ☐ E. Pain prevents me from sitting more than 10 minutes.
- ☐ F. Pain prevents me from sitting at all.

### Section 6 - Standing

- ☐ A. I can stand as long as I want without increased pain.
- ☐ B. I can stand as long as I want, but it increases my pain.
- ☐ C. Pain prevents me from standing for more than 1 hour.
- ☐ D. Pain prevents me from standing for more than 30 minutes.
- ☐ E. Pain prevents me from standing for more than 10 minutes.
- ☐ F. Pain prevents me from standing at all.

### Section 7 - Sleeping

- ☐ A. Pain does not prevent me from sleeping well.
- ☐ B. I can sleep well only by using pain medication.
- ☐ C. Even when I take pain medication, I sleep less than 6 hours.
- ☐ D. Even when I take pain medication, I sleep less than 4 hours.
- ☐ E. Even when I take pain medication, I sleep less than 2 hours.
- ☐ F. Pain prevents me from sleeping at all.

### Section 8 - Social Life

- ☐ A. My social life is normal and does not increase my pain.
- ☐ B. My social life is normal, but it increases my level of pain.
- ☐ C. Pain prevents me from participating in more energetic activities (e.g., sports, dancing, etc.).
- ☐ D. Pain prevents me from going out very often.
- ☐ E. Pain has restricted my social life to my home.
- ☐ F. I have hardly any social life because of pain.

### Section 9 - Traveling

- ☐ A. I can travel anywhere without increased pain.
- ☐ B. I can travel anywhere, but it increases my pain.
- ☐ C. My pain restricts my travel over 2 hours.
- ☐ D. My pain restricts my travel over 1 hour.
- ☐ E. My pain restricts my travel to short necessary journeys under 1/2 hour.
- ☐ F. My pain prevents all travel except for visits to the physician/therapist or hospital.

### Section 10 - Employment/Homemaking

- ☐ A. My normal homemaking/job activities do not cause pain.
- ☐ B. My normal homemaking/job activities increase my pain, but I can still perform all that is required of me.
- ☐ C. I can perform most of my homemaking/job duties, but pain prevents me from performing more physically stressful activities (e.g., lifting, vacuuming).
- ☐ D. Pain prevents me from doing anything but light duties.
- ☐ E. Pain prevents me from doing even light duties.
- ☐ F. Pain prevents me from performing any job or homemaking chores.

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0715014

Geneva Watson, )  
)  
Employee/Claimant, )

vs. )

DEPOSITION OF DR.  
RAKESH PRAVIN CHOKSHI

Xtra Mile Driver Training, )  
Incorporated, )

Employer, )

and )

**COPY**

Hartford Underwriters )  
Insurance Company, )

Carrier/Defendants. )  
)  
)

The deposition of DR. RAKESH PRAVIN CHOKSHI was taken pursuant to Notice under the South Carolina Rules of Civil Procedure before Joan B. Branham, a Notary Public in and for the State of South Carolina, at Pee Dee Orthopaedics, Florence, South Carolina, on December 16, 2009 beginning at 5:10 p.m.

JOAN B. BRANHAM

Court Reporter

910 Cherokee Road

Florence, SC 29501

(843) 662-4163

APPEARANCES OF COUNSEL:

For Claimant: Michael T. Miller, Esquire  
Wukela Law Firm  
Post Office Box 13057  
Florence, South Carolina 29504

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For Defendants: Kathryn R. Fiehrer, Esquire  
Wood & Warder  
Post Office Box 20550  
Charleston, South Carolina 29413

Also appearing: Geneva Watson

COURT REPORTER'S NOTE: -- indicates interruption;  
incomplete sentences; trailing off; unfinished sentences.

JOAN B. BRANHAM

Court Reporter

910 Cherokee Road

Florence, SC 29501

(843) 662-4163



STIPULATIONS:

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above-entitled action, or for both purposes;

That all objections would be reserved until the time of the trial except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was waived.

MR. MILLER: And, Kate, before we get started, I would just like to put on the record that I am Michael Miller. I am here on behalf of Stephen Wukela who is out of the state on official business as the Mayor of the City of Florence. He is in Washington, D.C. I am here under protest that this deposition is occurring but, I am here representing -- I am here protecting the rights of Mr. Wukela's

Rakesh Chokshi, M.D. 12/16/2009

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client. We have attached a copy of Mr. Wukela's Motion to Quash this deposition to this -- to the deposition as an exhibit. And, my presence does not ~~waive that Motion and Mr. Wukela specifically~~ reserves the right to reopen the deposition and resume examination when he returns.

MS. FIEHRER: Basically because the Motion was not ruled upon and the hearing is tomorrow morning, we are going to move forward with the deposition.

DR. RAKESH P. CHOKSHI, being first duly sworn  
deposed as follows:

DIRECT EXAMINATION BY MS. FIEHRER:

Q. Just to introduce myself again, my name is Kate Fiehrer. I am an attorney for Xtra Mile Driver Training and their Workers' Compensation insurance carrier in the claim that Ms. Watson brought. Dr. Chokshi, if you don't mind, can you go through and state your name and your medical training for us?

A. Sure. My full name is Rakesh Pravin Chokshi. I did my medical school in -- at Medical University of South Carolina in Charleston, South Carolina, graduated in 1993. Did my Orthopaedic Surgery residency at Oxner Hospitals and Clinics, graduated there in 1999. Thereafter, I did my spine fellowship at the University of Louisville Spine

Institute or Letterman Spine Center, so I was there from '99 to 2000, and I have been in practice here for ten years thereafter, and I am board-certified orthopaedic surgeon and --

Q. And your board certification, that is in the State of South Carolina?

A. It is, and North Carolina.

Q. In the course of your practice, have you treated Ms. Watson?

A. I have.

Q. Had you treated Ms. Watson prior to October 1st, 2007?

A. Now, let me see when my first encounter with her was. Was October 1st, 2007. I don't believe I treated her before that.

Q. What condition did Ms. Watson present to you at that time?

A. She had the chief complaints of back pain and leg pain for -- after she had an injury per her history on 9-18-2007. While she was at work, she slipped on a golfball, apparently, landing flat on her back.

Q. Were the MRI films consistent with the injury reported to you?

A. She had some degenerative changes on MRI at that point in time. Those changes were probably not

caused from the injury.

Q. Did you see any specific diagnosis that was related to the slip and fall from --

A. She --

Q. -- 9-18-07?

A. She had exacerbation of the symptoms that we typically see with degenerative --

COURT REPORTER: Of the symptoms that , sir?

A. Symptoms were exacerbated with the changes that we saw on her spinal MRI.

Q. At that point, did you just recommend conservative measures?

A. We -- we did. I didn't -- I put her on Naprosen, Skelaxin, Ultracet, started physical therapy program.

Q. After the conservative treatment was rendered, I believe you recommended another MRI?

A. That's correct.

Q. What did the next MRI show?

A. She -- she had persistent symptomatology in spite of, you know, conservative treatment, so we decided to proceed with new MRI which actually suggested degenerative changes associated with spinal stenosis at L-3,4 and L-4,5.

Q. How was that different from the first MRI that was

taken?

- A. You know, I don't know if the quality of the MRI was different or a different location. You know, sometimes two different MRI's can give you slightly different interpretation. I can't remem -- recall where that was done here independently, but let's see. I -- I don't know where the first one was done, but, it is not uncommon when we see some level of changes slightly different from one MRI to another.

Q. Did you recommend any other treatment at that time?

- A. We talked about doing the epidural steroid injections. That is typically the next line of treatment and that is what she underwent.

Q. At the point that you began discussing surgery with Ms. Watson, had there been any injury or incident that caused her to the point of having surgery?

- A. Let me see, I cannot independently recall if there was one or not. If you see it somewhere in my notes, please feel free to tell me the date. No, her symptoms just continued to persist in spite of multiple interventions that we did. You know, I gave her some trigger point injections. I tried the epidural injections. We tried therapy and none of those things were helping her, so then we discussed

surgical option.

Q. Is it fair to say that after you had exhausted all of the conservative measures, surgery was recommended?

A. That's correct.

Q. And, I notice that on December 5th, 2008, you also performed an MRI of Ms. Watson's hips and pelvis.

A. Correct.

Q. What was the reason for that MRI?

A. Well, she -- she was complaining of pain also slightly lower than the typical symptoms that we see in the lower back arena with spinal stenosis and degenerative disc condition. You know, prior to doing anything different, I wanted to just make sure that we were not dealing with SI joint or pelvic pathology that we were overlooking.

Q. Were there any abnormalities noted on that MRI of the hips?

A. I don't believe so.

Q. Did Ms. Watson ever report to you any separate injury to her right hip or her left hip outside of the injury from September -- September 18th, 2007?

A. Not -- not that I can recall.

Q. Did Ms. Watson ever report any injury to her psyche as a result of the injury on September 18th, 2007?

A. You will have to expand on that question for me.

Q. Did Ms. Watson ever request any referral for any psychiatric treatment as a result of her work-related injury?

A. I can't -- again, I can't -- if it is not in my notes, I can't independently recall if we talked about it or not.

Q. Would it be fair to say that if it had been brought to your attention, you would likely have put it in your notes?

A. Well, it is certainly possible, but, you know, we know our notes are far from perfect.

Q. If Ms. Watson had requested a referral from you for psychiatric treatment, would you have made such a referral?

A. I generally -- I generally do it, yeah, so it is certainly possible, but, you know, I have been -- I have overlooked it sometimes, you know, if while we are talking with the patient, if you don't jot it down specifically to dictate, sometimes it does get overlooked, but then there will generally will be a paper that will be generated by a nurse with a referral to somebody, so I don't have the entire chart obviously because it is all electronic now, so we only have limited papers here, but if you need

for me to look into it, I will be happy to look into it.

Q. To the best of your recollection right now, is the only injury your were treating Ms. Watson for her low back?

A. Correct.

Q. And, I believe that the lumbar decompression was performed on March 31st, 2009, is that correct?

A. Correct.

Q. How did Ms. Watson do after the surgery?

A. She had some improvement in her symptoms, but she was still having a fair amount of persistent symptoms.

Q. Have you recommended any other treatment for Ms. Watson?

A. We try to do some post-op rehabilitation and obtained, you know, a Functional Capacity Evaluation to get a little better sense of long-term what would be her work status would be and things like that but mostly, rehabilitation post-operatively.

Q. The Functional Capacity Evaluation, I understand you had a chance to review?

A. That's correct.

Q. In your review of the --

A. I -- I think -- oh, let me make sure I am not ahead



of myself.

Q. I apologize. I am referring to your note dated August 12th, 2009 where it indicates that "Ms. Watson returned with the Functional Capacity Evaluation and those findings were reviewed by me."

A. Uh-huh. Sure. Yeah, there is, you know, obviously, there are several papers that the people who do Functional Capacity Evaluation send our way, so I must have looked it -- looked it over to -- to decide and, generally, we concur with their assessment of what she, or any patient for that matter, can and cannot do. They are a lot more thorough than what we can come up with just from our clinical judgment.

Q. OK. Did you find any inconsistencies of the Functional Capacity Evaluation report?

A. I don't have the report in front of me, so I -- I don't know if anything showed up on that. I will be happy to review it if you have it in front of you.

MS. FIEHRER: Sure. The report that I am showing is from your APA submissions, so I assume no objection, but it is APA page 70 through 73.

DR. CHOKSHI: Thank you.

A. So Tuomey Out-Patient Rehab is where it was done, and then they go on to this little introduction,

definition, overview. So according to the -- the -- and everybody does it slightly differently, they basically make her stand to see what her standing tolerance was, what her sitting tolerance was, how much she could walk, how much she could lift, so she -- they put her under light category for lifting capacity, and then, of course, it did go on to divide it as occasional lifting, frequent lifting, etcetera, and actually they have done a fairly nice job of outlining all those specific things which is outlined here on Page 2 to 5. I don't see anything here that -- let me go look through the whole thing first. So they rated her at the sedentary strength category.

Q. Would you agree with that assessment?

A. You know, I -- I rely on them to -- to make that assessment, because they are the ones that did the test and that's a lot more thorough than, you know, other things.

Q. The reason that I asked is that a vocational evaluator indicated that there is a significant inconsistency between the data collected and the summary opinions of the athletic trainer who performed the Functional Capacity Evaluation.

A. Where -- where is that? Let me see if --

MS. FIEHRER: In a separate report.

A. OK.

MR. MILLER: I would like to just state that we have an objection to that conclusion to the extent that the evaluator testified in his deposition that -- that the conclusion in the report summary were made by a computer program and not by the evaluator him or herself and that the -- the observation of the evaluator are -- are outlined, as Dr. Chokshi was pointing out, in -- in the functional capacity classifications and that this conclusion is not necessarily the conclusion of the evaluator, the person, it is just the computer program's opinion.

MS. FIEHRER: OK. Was that amended or anything? Do you know?

MR. MILLER: I'm sorry?

MS. FIEHRER: Was this report amended?

MR. MILLER: I'm looking at Page 4 of 5 on this -- on here this report summary. According to the dep -- the -- the testimony in the deposition, these summaries about the sedentary strength category were created by the computer program.

MS. FIEHRER: That's correct.

MR. MILLER: OK. And weren't necessarily the opinion of the evaluator.

MS. FIEHRER: But your vocational -- I am just asking you a question about the opinion that you submitted from a vocational evaluation --

---

MR. MILLER: I understand. We are just --

MS. FIEHRER: -- not the Functional Capacity Evaluation.

MR. MILLER: We are just going to have a running objection to -- to this opinion and -- and to the extent that it is not created by a person.

MS. FIEHRER: OK. Noted.

Q. I guess I will rephrase my question. Doctor, do you agree that there -- or disagree that there is any con -- inconsistent data between the opinion of the Functional -- or the result of the Functional Capacity test and the data collected?

A. You know, I -- I -- I -- I assume and generally they send me a report that it is a combination of -- of, you know, factors. The first time I am learning that this is some kind of computerized-generated information and they do that with computer, because a lot of data is just objective, how strong is this trend, how much arm can you lift. I mean, there is not a whole lot of -- of subjectivity there, but, you know, I am not an expert on doing Functional Capacity Evaluations, so I really don't know all the

details of how they -- they come up with it, so --

MS. FIEHRER: OK.

A. -- and I don't have an opinion, in other words.

Q. In your opinion, is Ms. Watson capable of performing sedentary duty job?

A. Well, if she is not able to sit for, you know, certain number of times, that could be a little bit of a difficult situation and I was just looking at, you know, something in the very front says she, "Her sitting tolerance does not meet the demand minimum functional capacity requirements for thirty minutes continuously. So, you know, if you were looking for somebody to do sedentary work and they are not able to sit for that period of time, then that could -- could theoretically have some problems in their work situation. And, I am just quoting number 9, #2 here on the Tuomey Out-Patient Rehab Services Residual Functional Capacity classification -- unless --

Q. I guess I'm --

A. -- unless they are referring to something else here that I'm not sure about.

Q. I guess I am confused if you are referring to -- if you are deferring to the functional capacity evaluator's --

A. I -- I always --

Q. -- conclusion or -- or the --

A. No, I -- oh -- oh, I rely --

Q. -- report conclusion or --

A. -- on them to make that decision for me, because I don't make somebody sit in my office for twenty minutes and see how they respond or I don't get them up and around and weightlifting and moving and all that so that is the whole purpose why we get Functional Capacity Evaluation so it can be hopefully a good representation of that person's ability to do whatever it is that they have to -- are capable of doing.

Q. OK. Do you defer to the opinion of the -- or that report that indicates that she could work --

A. I -- yeah, that -- that's --

Q. -- sedentary duty?

A. That's what I typically do, yes.

MR. MILLER: We would like to note our objection at this point.

MS. FIEHRER CONTINUING:

Q. In this situation, do you defer to the Functional Capacity Evaluation report indicating that Ms. Watson is able to work sedentary duty?

MR. MILLER: Objection.

A. If -- if they -- if after testing and they felt like

that's what she is capable of doing, then, you know, then they obviously tested her.

Q. Do you have any additional restrictions that you would place on Ms. Watson as far as her work?

A. I don't want her to do any heavy lifting or twisting or turning or bending-type activities that can aggravate her low back condition.

Q. Has Ms. Watson reached Maximum Medical Improvement?

A. When I saw her last time I believe I did give her her -- she has.

Q. And what date did she reach maximum medical improvement?

A. When I saw her last 8-12-09.

Q. Did you indicate if Ms. Watson had any impairment at that time?

A. I believe I did.

Q. And what is that impairment?

A. It is according to AMA Guidelines I believe that's 5th Edition, 10 percent impairment rating of the whole person.

Q. Are there any further treatments that you recommend for Ms. Watson to alleviate any of her disability?

A. Well, you know, it just depends on how her symptoms behaved. If they get aggravated from time-to-time, she might need pain medications, she might need

anti-inflammatory medications, she might need a brace or she might need physical therapy if that area deteriorates further, she might even need lumbar fusion surgery. So it just depends on what kind of symptoms proceed, because we pick up a patient on a continuum so, you know, we treat them at this point in time. What's going to happen five years, ten years down the road, I can't predict that for her. Nobody can. So, it just depends on what her symptoms are at any given point in time.

Q. At this point, do you have Ms. Watson on any medications or recommended treatment?

A. According to my last note, I don't know if I prescribed anything to her or not but, then again, computer information is not always accurate, so we'd have to go back and look into the computer to see if anything was prescribed to her. You know, it doesn't always translate onto the notes is what I'm saying. In other words -- in other words, I put her on Naprosen, for example, before I saw her for 8-12-09 and I -- I can't remember if I continued her on it -- on it or not.

Q. Do you find it credible that Ms. Watson can only sit for a period of three minutes?

A. Again, if somebody tells me that they can or cannot,



I have to believe them. There's -- you know, my --  
I'm -- I'm not suffering from the condition she is  
and can you have spinal condition that where  
sometimes sitting tolerance can -- sitting tolerance  
can be an issue, sure.

Q. In the course of your practice, have you ever seen  
anyone?

A. I have, several people who have trouble with long  
sitting, sure.

Q. Does the same pertain to periods of standing?

A. It can.

Q. Have you ever --

A. It can.

Q. Is it credible to have the twelve minute maximum as  
far as standing?

A. Well, again this is a reported thing. If somebody  
says this is what I can do, it just becomes -- that  
just becomes factual information.

Q. Is it subjective information?

A. It can. Yes, it is subjective.

Q. If the sedentary duty position allows Ms. Watson to  
stand and sit as tolerated, do you feel that she can  
complete that type of work?

A. I would think so if she is allowed to move around  
and she is comfortable doing that.

Rakesh Chokshi, M.D. 12/16/2009

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Q. Have all of your testimony today been to a reasonable degree of medical certainty more likely than not?

A. It has.

MS. FIEHRER: I believe those are all the questions for you. I thank you for your time.

CROSS-EXAMINATION BY MR. MILLER:

Q. Dr. Chokshi, I have a couple of -- of follow-up questions. On December of 2008, an MRI was conducted or performed on Ms. Watson's hip. We discussed this earlier.

A. Right.

Q. Why did -- why was an MRI taken of her hip?

A. She -- she had significant amount of pain on that right SI joint area, so I just wanted to make sure that we didn't have anything else in that area that could perhaps be problematic.

Q. So she was complaining of?

A. The symptoms in that area, so just wanted to make sure that she didn't bruise her sacrum or pelvis or something that might explain her symptoms besides what we were seeing on her lumbar MRI.

Q. Has she continued to present with complaints of her hip since the surgery?

A. She -- well, she's had some residual symptoms in

that area, no doubt.

Q. And, then back to this Functional Capacity Evaluation. Are you prepared to give a vocational assessment of Ms. Watson today?

A. When you say vocational assessment, what are you referring to?

Q. Her ability to work and the work that's out there for her to that extent?

A. Well, like I said, you know, I rely on the Functional Capacity Evaluations to come up with those assessments, so -- so, you know, I can't make a patient sit in my office, like I was explaining to her earlier, a period of time. Hers is a little bit simpler in -- in the big scheme of things but, you know, heavy-duty laborers and things like that, there is no way for us to recreate what they go through in our office. So it is very hard for us to clearly assess, and I have to rely on professionals who do this type assessment for us.

Q. OK. And you have -- you said you defer. You concur with the -- with the assessments in the Functional Capacity Evaluation?

A. Because I don't have any other choice. I have to -- I don't have -- I don't have any other way of assessing it myself.

Rakesh Chokshi, M.D. 12/16/2009

22

Q. You didn't perform the various tests?

A. No.

MR. MILLER: That's all I have.

RE-DIRECT EXAMINATION BY MS. FIEHRER:

Q. I just have one clarification question. Do Ms. Watson's hip symptoms stem from the back injury or is it a separate injury to her hips?

A. Well, we have to assume that they are coming from the back because the MRI of the pelvis and hip didn't really show any specific unique pathology to that area.

MS. FIEHRER: No further questions.

AND FURTHER THIS DEPONENT SAITH NOT.

DEPOSITION WAS ENDED AT 5:35 P.M.

CERTIFICATE OF NOTARY PUBLIC

I, Joan B. Branham, do hereby certify that the foregoing deposition was taken by me, a duly authorized Notary Public, and the same transcribed as a correct transcription of the testimony taken at the time and place indicated therein;

That the witness was duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That I am not related to any of the parties or their counsel nor interested in the outcome of the foregoing litigation financially or otherwise.

Witness my official seal and signature at Florence, South Carolina this 16th day of December, 2009.

---

Joan B. Branham, Notary Public

My Commission Expires: 12-15-09

# WUKELA LAW FIRM

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December 9, 2009

VIA U.S. MAIL AND FACSIMILE: 1-803-737-1281

Ms. Virginia Crocker  
Judicial Director  
SC Workers' Compensation Commission  
PO Box 1715  
Columbia SC 29202-1715

Re: WCC File No. 0715014  
Genava Watson vs. XTRA Mile Driver Training

Dear Ms. Crocker:

Enclosed herewith for filing please find a Motion to Quash regarding the above-captioned matter. By copy of this letter, I am serving the Defendant's counsel with a copy of the Motion. Also enclosed is our check in the amount of \$25.00 for the filing of this Motion.

With kind regards, I am,

Yours truly,

WUKELA LAW FIRM

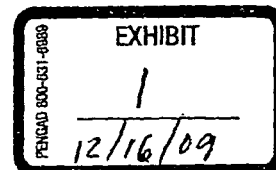
STEPHEN J. WUKELA

SJW:aym

Enclosures

cc: Kathryn R. Fiehrer (via U.S. Mail and facsimile)  
Attorney at Law  
Wood & Warder, LLC  
Post Office Box 20550  
Charleston, SC 29413

Claimant's # 1  
12-16-09 JJS  
Dr. Rakesh Chokshi



BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 0715014

Geneva Watson, Employee )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 XTRA Mile Drier Training, Employer and )  
 Hartford Underwriters Insurance Company, )  
 Carrier, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**MOTION TO QUASH**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND F. REID  
WARDER, JR., ESQUIRE, ATTORNEY FOR DEFENDANTS:

**YOU WILL PLEASE TAKE NOTICE** that the attorney for the Claimant moves the South  
Carolina Workers' Compensation Commission, pursuant to Regulation 67-215 and Rule 30, SCRCF,  
for an Order to Quash the scheduled deposition of Dr. Rakesh P. Chokshi.

1. On or about September 18, 2007, the Claimant sustained an injury when, while  
working as a clerk for XTRA Mile Driver Training, she slipped and fell onto her back and  
suffered an immediate onset of pain in her back and radiating pain in her right hip and right  
leg.
2. On September 2, 2009, Defendant's counsel filed a Form 21 Request for Hearing.
3. By Notice of Hearing dated September 9, 2009, a hearing on the Form 21 was  
scheduled for October 13, 2009 before Commissioner G. Bryan Lyndon.

4. In addition to the request for stop payment previously filed, the Defendant's counsel filed, on September 15, 2009, an Amended Form 21, to include a request for credit of overpayment of temporary total benefits to the Claimant.
5. After the normal course of discovery and preparation for the hearing, on October 6, 2009 the Defendant's counsel withdrew their Form 21.
6. On October 7, 2009, Claimant's counsel properly filed and served a Form 50 Request for Hearing.
7. Subsequently, Defendant's counsel scheduled the deposition of Jerry Shadbolt, of Tuomey Rehabilitation Services, and an updated deposition of the Claimant, Ms. Watson. Defendant's Form 51 was also filed.
8. On November 6, 2009, the defendant scheduled the deposition of Dr. Chokshi for December 30, 2009.
9. Thereafter, on November 9, 2009, Defendant's counsel filed a second Form 21 Request for Hearing.
10. On November 16, Notice of Hearing was received scheduling a hearing on the Forms 50 and 21 for December 17, 2009 before Commissioner Derrick L. Williams.
11. On December 2, 2009, Defendant's counsel attempted to reschedule the deposition of Dr. Chokshi. Upon calling the undersigned's office, Claimant attorney's staff advised the defense counsel's staff that Claimant's attorney had a conflict on December 16, 2009, as Claimant's attorney is scheduled to meet, in his capacity as Mayor of Florence, with U.S. Congressman James E. Clyburn in Washington, D.C., a time that has been arranged by his office for some time.

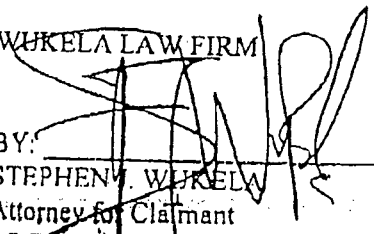


12. The Claimant has no objection to the Defendant deposing Dr. Chokshi after the hearing, using their original date of December 30, 2009, or some other date reasonably soon after the hearing.

WHEREFORE, the Claimant respectfully requests the South Carolina Workers' Compensation Commission issue an Order to Quash the Defendants' re-scheduling of Dr. Chokshi's deposition for December 16, 2009.

WE HEREBY SO MOVE.

WIKELA LAW FIRM

BY: 

STEPHEN W. WIKELA

Attorney for Claimant

PO Box 13057

Florence SC 29504

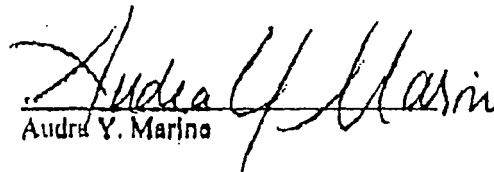
843-669-5634

8 DEC. 2009

CERTIFICATE OF SERVICE

The undersigned, Audra Y. Marine, of the Wukela Law Firm, hereby certifies that on the 9 day of December, 2009, she did place in an envelope, with first class postage prepaid, a copy of the Motion to Quash, in the matter of Geneva Watson vs. XTRA Mile Driver Training and Hartford Underwriters Insurance Company, Case No. 0715014, and deposited the same in the United States Mail. Said envelope being addressed to the following person(s):

Kathryn R. Fiehrer  
Attorney at Law  
Wood & Warder, LLC  
Post Office Box 20550  
Charleston, SC 29413

  
Audra Y. Marine

STATE OF SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
CASE NUMBER - 0715014

GENEVA WATSON,

CLAIMANT,

VS.

XTRA MILE DRIVER  
TRAINING,

EMPLOYER,

HARTFORD UNDERWRITERS  
INSURANCE COMPANY,

CARRIER,

DEFENDANTS.

HEARING

BEFORE

COMMISSIONER WILLIAMS

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN  
BEFORE NADINE A. GARRETT, A NOTARY PUBLIC IN AND FOR  
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF  
11:58 AM ON DECEMBER 17, 2009, AT COUNTY COURT HOUSE  
ANNEX, 102 COURT HOUSE DRIVE, SAINT MATTHEWS, SOUTH  
CAROLINA.

NADINE A. GARRETT  
COURT REPORTER  
POST OFFICE BOX 1205  
IRMO, SOUTH CAROLINA 29063  
803-834-3410

**APPEARANCES****FOR THE CLAIMANT**

STEPHEN J. WUKELA, ESQUIRE  
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 POST OFFICE BOX 13057  
 FLORENCE, SOUTH CAROLINA 29504  
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**FOR THE CARRIER**

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 POST OFFICE BOX 20550  
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 (843) 577-5732

NADINE A. GARRETT  
 COURT REPORTER  
 POST OFFICE BOX 1205  
 IRMO, SOUTH CAROLINA 29063  
 803-834-3410

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NADINE A. GARRETT  
 COURT REPORTER  
 803-834-3410

1           THE COURT: Today's date is December 17, 2009.

2           This is the Workers' Compensation case of Ms. Geneva  
3           Watson versus Xtra Mile Driver Training. Hartford is  
4           the Carrier. This is WCC File No. 0715014. The date  
5           of accident, September 18, 2007.

6           Present for the Claimant is Attorney Stephen  
7           Wukela. Present for the Employer and Carrier is  
8           Attorney Kate Fiehrer.

9           This hearing is set on the Forms 50, 51, and the  
10          Employer/Carrier's Form 21. I believe the parties  
11          would stipulate to the average weekly wage of \$485.71  
12          with a corresponding comp rate of \$323.83.

13          Rating in the file would be from Dr. Chokshi, C-  
14          H-O-K-S-H-I. That's ten percent to the back. That  
15          was issued August 12, 2009.

16          I have handed up APA submissions from both  
17          parties and the deposition of Dr. Chokshi and the  
18          deposition of Jerry Lee Shadbolt, S-HA-D-B-O-L-T. Any  
19          objections to jurisdiction, venue, or the APA  
20          submission? Mr. Wukela?

21          MR. WUKELA: Commissioner, we have one objection  
22          to the APA submissions that actually - it's one of our  
23          submissions. It's the functional capacity evaluation  
24          of Mr. Shadbolt.

25          The history of that is as follows: Dr. Chokshi's

1 an orthopedic who saw Ms. Watson. He found her at MMI  
2 and either he sent her to Mr. Shadbolt of the Carrier.  
3 I'm not sure which one. At any rate, Mr. Shadbolt did  
4 his evaluation and reached his conclusions about her  
5 ~~restriction as far as how much she can sit and stand~~  
6 and lift and so forth and so on. That's at APA 7,  
7 page 71. We don't have any objections to those  
8 conclusions of Mr. Shadbolt's as to her restrictions.  
9 However, at his deposition, Mr. Shadbolt testified  
10 that, after he did those tests and determined what her  
11 lifting and pulling and pushing and so forth  
12 restrictions were, he plugged the information into the  
13 computer that popped out this report. And the report,  
14 at page 73, APA 7 page 73, the report summary  
15 indicates that the Dictionary of Occupational Titles  
16 places Ms. Watson's occupation as a director of  
17 placement in the sedentary strengths and she meets the  
18 strength requirements and may return to that job. Mr.  
19 Shadbolt testified, and you'll read his deposition,  
20 that he did not reach any vocational conclusions about  
21 her ability to do sedentary work. And, in fact, it's  
22 our contentions, particularly if you look at pages 71  
23 and 72, that her restrictions do not meet the demand  
24 minimal functional capacity requirements of her job.  
25 In fact, the report is inconsistent in that regard.

1 It's a sort of unusual situation because Mr. Shadbolt  
2 said that the conclusion that the report reaches about  
3 her ability to do sedentary work, which is obviously a  
4 vocational opinion, is not his opinion and apparently  
5 was the opinion of the computer. Well, you know, we  
6 object to the opinion of the computer. We don't know  
7 what the computer's qualifications are. And we think  
8 the opinion is wrong.

9 THE COURT: You would object to the sedentary  
10 finding, which is basically - the only thing worse  
11 would be below sedentary?

12 MR. WUKELA: That's right.

13 THE COURT: Are you sure you want to object to  
14 that?

15 MR. WUKELA: Commissioner, it's our contention  
16 that the appropriate vocational analysis was done by  
17 the only vocational expert, which is Adger Brown. We  
18 accept Mr. Shadbolt's conclusions about how much she  
19 can lift and push and pull. But -

20 THE COURT: But you don't want the sedentary  
21 finding?

22 MR. WUKELA: But we don't think she meets the  
23 qualifications for sedentary, Commissioner, frankly.  
24 And that is based in large part on Mr. Shadbolt's  
25 finding that she, for example, couldn't sit for more

1       than, I think, three minutes continuously.

2       MS. FIEHRER: May I?

3       MR. WUKELA: Please.

4       MS. FIEHRER: I believe that Jerry Shadbolt  
5       accurately discusses all of this in his deposition.  
6       He discussed the fact that the program was built based  
7       on the Dictionary of Occupational Titles, that the  
8       information was provided based on her occupation from  
9       Ms. Watson herself. And if we're going to throw out  
10      the section of the report, I would think that the  
11      entire report should be inconclusive. Also, Adger  
12      Brown's report discusses this, the inconsistencies of  
13      a computer's opinion. And there is no such  
14      inconsistency with a computer's program, as the data  
15      is entered and the computer generates a report based  
16      on the Dictionary of Occupational Titles. Also, this  
17      is an approved FCE evaluation form. And Dr. Chokshi  
18      discussed how it's relied upon in order to discover  
19      someone's restrictions better than he can do in an  
20      office setting. I would argue then that a section of  
21      the report should not be thrown out if the entire  
22      report is going to be objected to. Does that make  
23      sense?

24      THE COURT: Let's go off the record a second.

25      (WHEREUPON an off-the-record conversation took place.)



1           THE COURT: We're back on the record. I believe  
2 the issues are permanency.

3           Claimant would allege she's permanently and  
4 totally disabled, would seek lump sum, Utica Mohawk  
5 language, as well as lifetime causally related  
6 medicals.

7           The Employer/Carrier would allege some permanency  
8 is due, but that the Claimant is not permanently and  
9 totally disabled. They would seek credit from the  
10 date of MMI, which they would allege is August 12,  
11 2009.

12           With that being stated, anything else the parties  
13 need to state for the record? Mr. Wukela?

14           MR. WUKELA: Commissioner, nothing other than the  
15 objection I previously made to a portion of the FCE,  
16 which we've already stated for the record.

17           THE COURT: That is noted. Ms. Fiehrer, anything  
18 else for the record?

19           MS. FIEHRER: We would object to any lump sum,  
20 based on the Claimant's application for Social  
21 Security Disability. And also, to any Dodge medicals,  
22 based on Dr. Chokshi's deposition testimony.

23           THE COURT: Ms. Watson's in the witness chair.  
24 Let's swear her in.

25    ///

1 GENEVA WATSON,

2 having been first duly sworn, testified as follows:

3 THE COURT: Mr. Wukela.

4 MR. WUKELA: Thank you, Commissioner.

5 DIRECT EXAMINATION

6 BY MR. WUKELA:

7 Q Ms. Watson, state your full name for the record,  
8 please.

9 A Geneva Elizabeth Watson.

10 Q And how old are you, Ms. Watson?

11 A I'm 55.

12 Q Excuse me if my voice goes out. I've been dealing  
13 with a sore throat all morning. And how much  
14 education do you have, Ms. Watson?

15 A I graduated from high school. I've been to several  
16 training courses. One was for health and life  
17 insurance. So, I have my license for that. I've been  
18 to vocational training school where they taught me all  
19 my secretarial duties back into the '70s.

20 Q And are you able to type?

21 A Well, I used to type. But it's been many years now  
22 since I've typed.

23 Q And are you aversed (phonetic) in the operation of  
24 computers and -

25 A Yes, sir.

- 1 Q You went to work at some point for an outfit called  
2 Xtra Mile Driver Training.
- 3 A Yes, sir.
- 4 Q How long ago was that?
- 5 A That was June - I think the end of June of 2007.
- 6 Q Describe generally for me what your job involved.
- 7 A I had to file. I got in touch with trucking companies  
8 to get applications and fax off applications for the  
9 trainer drivers. I had to get in touch with the  
10 drivers after they left school to see where they went  
11 to work. So, I had to put the information in the  
12 computer under QuickBooks.
- 13 Q Xtra Mile Driver Training was a facility that taught  
14 individuals how to drive tractor trailers?
- 15 A Yes, sir.
- 16 Q In hopes of getting their CDL licenses?
- 17 A Yes, sir.
- 18 Q And what you've described so far sounds like a variety  
19 of secretarial type duties. Is that a fair statement?
- 20 A Yes, sir.
- 21 Q Did you work at a desk?
- 22 A Yes, sir.
- 23 Q Had a computer?
- 24 A Yes, sir.
- 25 Q That kind of - now, this is an admitted accident. But

1 I want you to tell me very briefly how you were  
2 injured and the problems you had after the accident.

3 A I was fixing to go around to file some of my  
4 applications that I had. I had gotten - my desk was  
5 ~~like this and there was another desk there.~~ So, there  
6 was a little walkway in between our two desks. And as  
7 I got up and went around to go between the two desks,  
8 out to a little foyer where the filing cabinet was at,  
9 I did not see the golf ball. And my right foot hit  
10 it. And it's a wooden floor. So, when it went to  
11 roll, it just threw my foot up and I fell flat down on  
12 my - I landed straight down on my back.

13 Q There was a golf ball laying in the area of your -

14 A Yes, sir.

15 Q And that was a result of there was some children that

16 -

17 A Yes, sir.

18 Q The children of the owner of the facility?

19 A The grandchildren. Yeah. They kept all their toys  
20 and stuff out and around.

21 Q And the children stayed there from time to time?

22 A Yes, sir.

23 Q Now, describe the problems that you were having after  
24 that fall.

25 A Well, it was my lower back, my right hip. It stayed

1 in the right hip and the lower back. It went down  
2 into the legs, but it didn't stay into the legs. It  
3 didn't leave the right hip or the back.

4 Q Now, you were transported via EMS, it looks like, and  
5 evaluated. And subsequently you ultimately ended up  
6 at Dr. Chokshi's hands; is that right?

7 A Yes, sir.

8 Q And he did a variety - and the medical records speak  
9 for themselves.

10 MR. WUKELA: And I'm not going to burden the  
11 record with all that, Commissioner.

12 THE COURT: Thank you.

13 BY MR. WUKELA:

14 Q He did epidural steroid injections on your back?

15 A Yes, sir.

16 Q He did some physical therapy to try to avoid invasive  
17 treatment?

18 A Yes, sir.

19 Q And ultimately he recommended surgery to you; is that  
20 right?

21 A Yes, sir.

22 Q Now, did you discuss with him a variety of different  
23 types of surgical options?

24 A We did. At the time he said that we had two options.  
25 We could go in and put spacers in between the two and

1 see if that wouldn't alleviate the pain. Or he could  
2 go ahead and put the rods in. And I said, "Well, Dr.  
3 Chokshi, what do you advise," because, you know, I  
4 don't know anything about having back surgery. And he  
5 said, "That has to be up to you. More than likely  
6 we're going to have to do the rods eventually. But if  
7 you want to try the spacers, we'll try the spacers,"  
8 because that's supposed to have been the least  
9 evasive. So, when it was left up to me and that's the  
10 least evasive, I was wanting to try the spacers before  
11 we went as far as putting the rods in. Because during  
12 the discussion, other than the rods on those two, he  
13 said it would start to wearing on the two before and  
14 he couldn't promise, it may be more. So, he was  
15 leaving the elective surgery up to me. So, I chose  
16 the least evasive in the beginning.

17 Q Did he have a discussion with you about the  
18 possibility of a fusion?

19 A Yes, sir.

20 Q And what was that discussion?

21 A Well, he said that I would have to have four. I guess  
22 they're called pins. But they look like rods, if  
23 you've ever seen them. They're about this long. I  
24 would have had to have four put in my back.

25 Q And did he give you some options as to whether to have

1 a fusion or to have a less evasive decompression?

2 A Yeah. The choice was mine. And he did say - you  
3 know, and he told me eventually. But I thought, well  
4 you know, if this fixes my back problem and I have ten  
5 years to worry about it, then I have ten years that I  
6 don't have to worry about putting the pins in to start  
7 irritating the discs before L-4 and L-5.

8 Q And you elected to go forward with the decompression?

9 A Yes, sir. To see if the least evasive would help.

10 Q And he did that at L-3, 4 and L-6, 5?

11 A Uh-huh.

12 Q After that, how did you do?

13 A It took away a lot of the pain from the right hip,  
14 it's in the lower back. But it has come back into the  
15 right hip. So, that's why come I can't sit longer  
16 periods of time.

17 Q How about your legs? Did it have an effect on the  
18 pain in your legs?

19 A It did. It went down into the legs, but it didn't  
20 stay. So, it was kind of like - like on rainy days  
21 and when it's real bad, it'll go down. But they do  
22 not stay there. It's in my right hip and the middle  
23 of my back is where I have most of the pain. But,  
24 yeah, they do come into the legs, too.

25 Q So, if I understand your testimony correctly, you

1 still have pain into your legs periodically, but it's  
2 not a constant pain?

3 A Yes, sir.

4 Q There was some mention of numbness and tingling in the  
5 ~~records in your legs.~~

6 A Yes, sir.

7 Q Is that still a problem?

8 A In the right one sometimes. But, like I say, now,  
9 that won't stay like in my hip, but, yes, it does come  
10 down into the legs. Because when it comes into the  
11 legs and stays, I feel sure that's when I will have to  
12 go in and have the fusion done.

13 Q But there are periods of time now after the surgery  
14 where you don't have pain and you don't have numbness  
15 in either one of your legs?

16 A Yeah.

17 Q Now, has your left leg ever given you any trouble?

18 A No. It's mostly the right one.

19 Q And the problems you've described with your hip.  
20 You're still having pain in your hip?

21 A Yeah. Right here at the top where it had started all  
22 the time at the beginning. That and across the lower  
23 part of the back.

24 Q And is that something that comes and goes or does the  
25 hip problem -



1 A It's there. It stays.

2 Q And the low back, describe the problems you're having  
3 there.

4 A All the time. My lower back hurts me all the time.

5 Q After - at some point, Dr. Chokshi released you; is  
6 that right?

7 A Yes, sir.

8 Q And did he give you any instructions when he released  
9 you?

10 A Well, I am not to bend and stoop absolutely no more  
11 than I have to. I'm not to lift anything heavy. The  
12 whole thing was is to try not to do anything to  
13 irritate it no more than what it is now.

14 Q And did he send you for a functional capacity  
15 evaluation?

16 A Yes, sir, he did.

17 Q And you went and had that performed by Mr. Shadbolt?

18 A Yes. Over there in Sumter.

19 MR. WUKELA: Of course, Commissioner, we've been  
20 over that ad nauseam, so I'm not going to go through  
21 the specifics of that report.

22 THE COURT: Thank you.

23 MR. WUKELA: That's contained in APA 7.

24 BY MR. WUKELA:

25 Q It looks like the job factor restrictions that

1 Mr. Shadbolt summarized is put on page 73. And after  
2 you had this functional capacity evaluation completed,  
3 did you return to Dr. Chokshi?

4 A Yes, sir.

5 Q ~~And did he give you any further instructions as far as~~  
6 treatment or as far as what you were to do with  
7 results of the FCE?

8 A All he said was that if, you know, the pain - if my  
9 pain was not fixed with this, then eventually we would  
10 go back in and have to do the fusion.

11 MR. WUKELA: Now, I'm looking at APA 10,  
12 Commissioner.

13 BY MR. WUKELA:

14 Q You got a letter from the Employer in September 2009,  
15 indicating that they had a position that they had been  
16 holding for you and that you could return to work on  
17 September 28<sup>th</sup>. I'm going to show you page 91 of the  
18 APAs. Do you recognize that?

19 A Yes.

20 Q And did you appear at the workplace on September 28<sup>th</sup>?

21 A Yes, sir, I did.

22 Q And did you take with you the FCE restrictions?

23 A Yes, sir.

24 Q And were you ready to work when you returned?

25 A Yes, sir. I was willing to do what I could.

- 1 Q And did you have any conversations with anybody out  
2 there?
- 3 A Mr. Seagle (phonetic).
- 4 Q And what did he tell you?
- 5 A He told me that my FCA was not any good, that that's  
6 not what he wanted, that he wanted me to leave the  
7 premises. And so he walked me from his office out to  
8 my car for me to leave.
- 9 Q And have you been back?
- 10 A No, sir.
- 11 Q Have you applied for Social Security Disability  
12 benefits?
- 13 A Yes, sir.
- 14 Q You were represented by a lawyer in my office,  
15 Christie McDaniel?
- 16 A Yes, sir.
- 17 Q And you all await a hearing on that matter?
- 18 A Yes, sir.
- 19 Q Do you handle your own money?
- 20 A Such as write my own checks, pay bills, and stuff?
- 21 Q Yeah. Keep your checkbook, pay your bills?
- 22 A Yes, sir.
- 23 Q You confident to do that?
- 24 A Yes, sir. I've been doing it for a long time.
- 25 Q In one of the restrictions in the FCE that's

1 particularly important in this case is no sitting for  
2 more than three minutes continuously.

3 A Yes, sir.

4 Q Tell me - first of all, do you think that's a  
5 reasonable restriction?

6 A Yes, sir, I do.

7 Q And tell me why.

8 A Well, because, you know, like if I'm at the house and  
9 I'm sitting on the couch, I can kind of get on this  
10 side of my hip. I can kind of move or lay down when I  
11 need to. You know, like, if I'm sitting somewhere in  
12 this chair, I have to keep standing up because the  
13 pain is in the middle of my back all the time. But it  
14 sits in that right hip, too. So, it interferes a lot  
15 with my sitting.

16 Q And that's primarily the problems with your hip that  
17 give you those issues?

18 A Yes, sir. The hip and the back.

19 Q Dr. Chokshi at some point did an MRI of your hip; did  
20 he not?

21 A Yes, sir.

22 Q And did he tell you whether there was any particular  
23 thing going on in your hip that he could do anything  
24 about?

25 A He said it was deriving from the back.

1 Q Tell me the types of things that you can't do now  
2 that you could do before this accident.

3 A I have only - I don't vacuum my house anymore. I have  
4 done it. I have to do it like - if I do vacuum, it's  
5 like I have to do one room. I have to wait. Used to,  
6 I could vacuum the whole house. I don't attempt it  
7 unless I absolutely have to. I don't mop my own floor  
8 anymore. As a matter of fact, I've ordered me a steam  
9 mop because my sister said that I wouldn't have to  
10 bend, that I could just walk with it. So, stuff that  
11 you normally do, like dusting, that type of stuff,  
12 anything that you've done that you just don't think  
13 about and you just do it, I can't do that anymore. If  
14 I bend down to pick up something and I'm not thinking  
15 about it, I have to put my hands on my knees to walk  
16 myself back up.

17 Q Do you think you'll be able to return to do the work  
18 you previously did at Xtra Mile Driver Training?

19 A I would be willing to try. But I don't think I could  
20 do what I have done.

21 Q And why is that?

22 A Because I can't - my whole job was sitting at a desk,  
23 up, bending down, filing, faxing. And I can't sit  
24 that long period of times anymore.

25 MR. WUKELA: Thank you. That's all from the

1 Claimant, Commissioner.

2 THE COURT: Ms. Fiehrer.

3 CROSS EXAMINATION

4 BY MS. FIEHRER:

5 Q Ms. Watson, I just have a few questions for you.

6 A Yes, ma'am.

7 Q In regards to your indication that you had a  
8 psychological injury, have you ever treated with a  
9 psychiatrist or a psychologist?

10 A No, ma'am.

11 Q And your Prozac medication following this surgery, was  
12 that prescribed by your primary care physician?

13 A Anita Curl, yes, ma'am. From Dr. Pate's office.

14 Q I understand that you are no longer taking that  
15 medication; is that correct?

16 A No, ma'am.

17 Q At this time you are not on any anti-inflammatories or  
18 pain medication?

19 A I just have to take - I take Tylenol Arthritis because  
20 that's the strongest. Because regular medication  
21 makes me nauseous on my stomach and it bothers my  
22 head.

23 Q And you understand that the MRI that your attorney  
24 discussed that was taken in December of 2008, that was  
25 normal essentially. Do you understand that?

- 1 A Only what he told me.
- 2 Q You were present yesterday during Dr. Chokshi's  
3 deposition, where he indicated that there were no  
4 abnormal findings on that MRI?
- 5 A On the hip.
- 6 Q In regards to your prior work experience, you also  
7 have experience negotiating contracts; is that  
8 correct?
- 9 A Yes, ma'am. I was - job placement's what I was  
10 classified as.
- 11 Q And you also had experience processing payroll?
- 12 A No, ma'am.
- 13 Q With your family's company that you had owned?
- 14 A Yes, ma'am. With Palmetto Waste. Not with Xtra Mile.  
15 Yes, ma'am.
- 16 Q You also previously had experience working in customer  
17 service?
- 18 A Yes, ma'am.
- 19 Q Also had experience with being an account consecutive?
- 20 A Yes, ma'am.
- 21 Q With that job, did you also design adds and do other  
22 type of secretarial work?
- 23 A Yes, ma'am.
- 24 Q In your job with Xtra Mile, did you frequently have to  
25 push or pull over 20 pounds?

1 A Mine was mostly on the phone, sitting, stooping,  
2 bending, filing, toting.

3 Q Is that a no then?

4 A Yes, ma'am.

5 Q When you are at the desk, is it flexible as to when  
6 you can stand and sit?

7 A Yes and no, because a lot of mine is on the telephone  
8 and writing down information. And so, mine was mostly  
9 sitting, except when I had to file or fax. My whole  
10 thing was at the desk.

11 Q Is it correct that you can write while you're also  
12 answering on the phone and standing?

13 A Stand and write? I couldn't stand and write, not now.

14 Q As far as your functional capacity evaluation, you  
15 provided your job description to Mr. Shadbolt; is that  
16 correct?

17 A Yes, ma'am.

18 Q And the results that Mr. Shadbolt entered into the  
19 computer, that was based on the restrictions that you  
20 had on that day?

21 A From the test?

22 Q Yes, ma'am.

23 A Yes, ma'am.

24 Q That was how long you thought you could stand and how  
25 long you thought you could sit on that particular day?



1 A Yeah. The test was done that day.

2 Q And you understand that the result of the functional  
3 capacity evaluation indicate that you are capable of  
4 working sedentary duty with that job as director of  
5 placement?

6 MR. WUKELA: Objection that we previously stated  
7 to that report, Commissioner.

8 THE COURT: That's noted. She can answer that.

9 THE WITNESS: Ask me that again, please.

10 BY MS. FIEHRER:

11 Q You understand that the result of the functional  
12 capacity evaluation indicated that you can work  
13 sedentary duty in the job director of placement?

14 A The paper said as long as they were willing to fulfill  
15 my restrictions. Now, that's what I read in the paper  
16 that they gave me, the report.

17 Q And you indicated that you are willing to try to do  
18 that?

19 A I did.

20 Q Have you looked for any work whatsoever within your  
21 restriction?

22 A No, ma'am.

23 Q You drove here today; is that correct?

24 A Yes, ma'am.

25 Q And you're able to personally drive between 30 and 35

- 1 minutes continually?
- 2 A Yeah.
- 3 Q Are you able to drive longer distances if someone -
- 4 A No.
- 5 Q ---with breaks?
- 6 A Not without stopping.
- 7 Q 'If you had breaks, you're able to drive longer
- 8 distances?
- 9 A Yeah. Yes, ma'am.
- 10 Q Is it correct that you do all of your household chores
- 11 as far as grocery shopping and things of that nature?
- 12 A What little bit I do. We eat out a lot. We don't -
- 13 it's just my husband and I.
- 14 Q Does your husband do the grocery shopping for the
- 15 groceries you do buy?
- 16 A Well, we do them together. But sometimes I do them.
- 17 Q The only other question I have for you is just a
- 18 correction. And I'm referring to the vocational
- 19 evaluation that was submitted. It indicated that you
- 20 haven't had any car accidents. Is it correct that you
- 21 did have a car accident in which you sought medical
- 22 treatment, had an attorney, and settled?
- 23 A In what, you know - how long you talking about?
- 24 Q I believe you indicated at the deposition 2000, 2001.
- 25 A Yeah. I may have had one then.

1 Q When you were working for the Talking Yellow Book?

2 A Yeah. He did adjustments to my - I think to my neck.

3 I wasn't having any back problems.

4 MS. FIEHRER: Those are all the questions I have.

5 THE COURT: Any redirect?

6 MR. WUKELA: Just briefly, Commissioner.

7 Commissioner, I'm looking at page 86 of the APA.

8 REDIRECT EXAMINATION

9 BY MR. WUKELA:

10 Q Ms. Watson, Adger Brown, the vocational expert,  
11 rendered an opinion indicating in his report that the  
12 US Department of Labor Dictionary of Occupational  
13 Titles and the Code of Federal Regulations defines  
14 sedentary work. And it defined it as the ability to  
15 lift a maximum of ten pounds on an occasional basis,  
16 lift a negligible amount of weights such as papers and  
17 pencils and ledgers on a frequent basis, and that the  
18 full range of sedentary work is also defined as  
19 required the ability to sit for six out of eight hours  
20 a day. Could you sit for six out of eight hours a  
21 day?

22 A On my job?

23 Q Yes, ma'am.

24 A If I wasn't at lunch, that's what my job was, was  
25 sitting.

1 Q Physically could you do that now?

2 A No, sir. Absolutely not.

3 Q I'm looking at page 71 of the APA and the functional  
4 capacity evaluation indicates, number two, that

5 Ms. Watson sat for three minutes and her sitting  
6 tolerance does not meet the demand minimum functional  
7 capacity requirement of sitting for thirty minutes  
8 continuously. Is that evaluation of your sitting  
9 capacity a fair and accurate evaluation?

10 A Yes, sir, it is.

11 MR. WUKELA: Nothing further, Commissioner.

12 THE COURT: Anything else?

13 MS. FIEHRER: No.

14 EXAMINATION

15 BY THE COURT:

16 Q Ms. Watson, prior to this claim, have you ever had any  
17 other Workers' Compensation claims?

18 A No, sir, I have not.

19 Q Did you ever have any prior back problems prior to  
20 this claim?

21 A No, sir.

22 Q Have there ever been any times you've been out of work  
23 any time period of your working life?

24 A No, sir.

25 Q All things being equal, if you could work, would you

1 be working now?

2 A Yes, sir.

3 Q You are willing to try to work if you could?

4 A Yes, sir.

5 THE COURT: Any other witnesses for the Claimant?

6 MR. WUKELA: Nothing from the Claimant,

7 Commissioner.

8 THE COURT: Witnesses for the Employer/Carrier?

9 MS. FIEHRER: No, Commissioner.

10 THE COURT: That'll conclude this hearing.

11 (This hearing concluded at 12:40 p.m.)

STATE OF SOUTH CAROLINA    )  
                                  )            CERTIFICATE  
COUNTY OF LEXINGTON        )

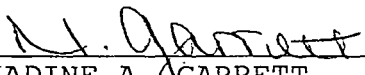
BE IT KNOWN THAT I TOOK THE FOREGOING  
WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN  
AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,  
ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO  
GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY  
SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF  
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF  
ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,  
NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 23<sup>rd</sup> DAY OF JANUARY,  
2010.

  
\_\_\_\_\_  
NADINE A. GARRETT  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES AUGUST 11, 2016

NADINE A. GARRETT  
COURT REPORTER  
803-834-3410

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

**COPY**

\_\_\_\_\_  
GENEVA ELIZABETH WATSON, Employee, )

Claimant, )

vs. )

XTRA MILE DRIVER TRAINING, Employer, )

and )

HARTFORD UNDERWRITERS INSURANCE )  
COMPANY, Carrier, )

Defendants, )  
\_\_\_\_\_

TRANSCRIPT OF  
RECORD

WCC NO. 0715014

Appeal hearing held on July 19, 2010, in Columbia, South Carolina, before  
**COMMISSIONERS DAVID W. HUFFSTETLER, SUSAN S. BARDEN AND T. SCOTT BECK.**

**APPEARANCES**

FOR THE CLAIMANT:

STEPHEN J. WUKELA, ESQUIRE  
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Florence, South Carolina 29504

THE DEFENDANTS:

KATHRYN R. FIEHRER, ESQUIRE  
WOOD & WARDER  
Post Office Box 20550  
Charleston, South Carolina 29413

\*\*\*\*\*

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**EXHIBITS:**

(None.)

**CERTIFICATE:**

16

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**PROCEEDINGS**

**COURT REPORTER:** TODAY IS JULY 19TH, 2010. THIS IS SOUTH CAROLINA WORKERS' COMPENSATION CASE NUMBER 0715014. THIS IS THE CASE OF GENEVA WATSON, CLAIMANT, VERSUS XTRA MILE DRIVER TRAINING, EMPLOYER, AND HARTFORD, CARRIER.

THE APPELLANT IS THE CLAIMANT, REPRESENTED BY STEPHEN J. WUKELA, AND THE RESPONDENT IS REPRESENTED BY KATHRYN R. FIEHRER. EACH SIDE IS ALLOWED TEN MINUTES FOR ORAL ARGUMENT AND THE APPELLANT THREE MINUTES IN REPLY. YOU ARE REQUESTED TO ARGUE THE GROUNDS OF EXCEPTION AND STAY WITHIN THE RECORD.

**COMMISSIONER HUFFSTETLER:** MR. WUKELA.

**MR. WUKELA:** THANK YOU, COMMISSIONERS. GOOD AFTERNOON. THIS IS THE CASE OF BETH WATSON, IT IS AN ADMITTED BACK INJURY CASE. THE CLAIMANT UNDERWENT A LUMBAR DECOMPRESSION IN TWO LEVELS AND CONTINUES TO SUFFER FROM RADIATING PAIN PARTICULARLY INTO HER HIP. THEREAFTER, THE DEFENDANTS FILED A FORM 21 AND SENT THE CLAIMANT FOR A FUNCTIONAL CAPACITY EVALUATION. THAT FUNCTIONAL CAPACITY EVALUATION WAS PERFORMED AND GENERATED A REPORT. THE REPORT IS AT THE CENTER OF THE CONTROVERSY IN THIS CASE. THE REPORT HAD TWO SALIENT FEATURES. THE FIRST WAS MEASUREMENTS OF THE CLAIMANT'S RESIDUAL FUNCTION IN PARTICULAR, THE PERSON WHO PREPARED THE EXAMINATION OR PERFORMED THE EXAMINATION, CONCLUDED THAT THE CLAIMANT COULD NOT SIT FOR MORE THAN THREE MINUTES AND ALSO HAD SOME STANDING RESTRICTIONS, WALKING RESTRICTIONS, LIFTING

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1 RESTRICTIONS AND SO FORTH AND SO ON. THE SITTING WAS OF  
2 PARTICULAR IMPORTANCE BECAUSE HER JOB WAS ESSENTIALLY A  
3 SEDENTARY JOB. SHE RECEIVED CALLS AND PLACED REQUESTS FOR  
4 PEOPLE WHO WANTED TO UNDERGO DRIVER TRAINING --TRACTOR TRUCK  
5 DRIVER TRAINING... AFTER HAVING PERFORMED THOSE MEASUREMENTS,  
6 THE PERSON WHO PREPARED THE EVALUATION TESTIFIED AT DEPOSITION  
7 THAT HE PLUGGED THAT INFORMATION INTO A COMPUTER. THE  
8 COMPUTER SHOT OUT THE REPORT AND HE SENT OFF THE REPORT. NOW,  
9 THE REPORT INDICATED, IF YOU LOOK AT PAGE 73 OF MY APA'S, THAT SHE  
10 MET THE SEDENTARY JOB REQUIREMENTS. DID NOT MENTION HOW LONG  
11 SHE COULD SIT. THEN IF YOU GO DOWN TO THE NEXT PARAGRAPH, IT  
12 TALKS ABOUT "JOB FACTOR RESTRICTIONS" AND IT SAYS IN ORDER FOR  
13 HER TO RETURN "TO WORK AS A DIRECTOR OF PLACEMENT" SHE MUST  
14 MEET THE FOLLOWING RESTRICTIONS: "NO STANDING FOR MORE THAN 12  
15 MINUTES, NO SITTING FOR MORE THAN THREE MINUTES" SO FORTH AND SO  
16 ON. SHE TOOK THOSE RESTRICTIONS TO HER EMPLOYER, HER EMPLOYER  
17 SAID WE CAN'T ACCOMMODATE THOSE RESTRICTIONS. THOSE  
18 RESTRICTIONS OBVIOUSLY DON'T MEET SEDENTARY JOB REQUIREMENTS  
19 AND THAT WAS THE TESTIMONY THAT OUR VOCATIONAL EXPERT, ADGER  
20 BROWN, ARRIVED AT. WE TOOK THE DEPOSITION OF THE FELLOW,  
21 SHADBOLT, WHO PREPARED THIS AND HE TESTIFIED -- THIS IS HOW HE  
22 DESCRIBED IT, THAT HE PREPARED THE MEASUREMENTS, BUT TESTIFIED  
23 THAT THOSE OPINIONS, THAT IS TO SAY THE OPINION AS TO WHETHER SHE  
24 COULD DO SEDENTARY WORK, A VOCATIONAL OPINION, WAS NOT HIS  
25 OPINION. IN FACT, HE DIDN'T HAVE ANY OPINIONS THAT APPEARED IN

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1 THE REPORT AND HE GAVE SOME RATHER EXTRAORDINARY TESTIMONY.  
2 YOU WILL FIND AT PAGE NINE AND TEN OF MY BRIEF WHERE HE TESTIFIED  
3 THAT HE DIDN'T HAVE ANY KNOWLEDGE TO GIVE ANY SORT OF  
4 VOCATIONAL OPINIONS, THAT'S AT THE TOP OF THAT PAGE NINE IN MY  
5 BRIEF. "...YOU DON'T HAVE ANY QUALIFICATIONS OR TRAINING IN  
6 VOCATIONAL EVALUATION OR KNOWLEDGE ABOUT WHAT KIND OF  
7 EDUCATIONAL REQUIREMENTS OR PHYSICAL REQUIREMENTS THERE ARE  
8 FOR VARIOUS JOBS AND WHAT JOBS ARE AVAILABLE IN THE  
9 MARKETPLACE; IS THAT RIGHT?" "THAT'S CORRECT." DOWN AT THE  
10 BOTTOM HE INDICATED, "...MY OPINION IS NOT -- MY OPINION IS NOT  
11 WRITTEN IN THIS FCE REPORT. THE FCE REPORT ONLY STATES WHAT MS.  
12 WATSON PERFORMED THAT DAY." AND YOU GO ON TO PAGE TEN, HE  
13 TESTIFIED DOWN AT THE MIDDLE OF THAT, QUOTE, "...MY OPINION NEVER  
14 WENT INTO IT. THIS IS ALL INPUTTED INTO THE COMPUTER AND THE  
15 COMPUTER GENERATES THE RESULTS." WELL, COMMISSIONERS -- AND I  
16 DON'T MEAN TO SOUND FRIVOLOUS, BUT I DON'T KNOW WHAT THE  
17 COMPUTER'S QUALIFICATIONS ARE. THE COMPUTER WAS NOT QUALIFIED  
18 TO GIVE THE OPINIONS, OBVIOUSLY MR. SHADBOLT WAS NOT GIVING ANY  
19 VOCATIONAL OPINIONS AND WE OBJECTED TO THE COMPUTER'S OPINION,  
20 SO TO SPEAK, AT THE HEARING AND THAT'S WHAT WE OBJECT TO TODAY.  
21 I'M AWARE THAT THE COMMISSION OPERATES UNDER SOMEWHAT  
22 LESS STRINGENT EVIDENTIARY REQUIREMENTS THAN YOU WOULD FIND IN  
23 CIRCUIT COURT, BUT STILL ONE OF THE CENTRAL ELEMENTS OF OUR LAW  
24 IS THE IDEA THAT WITNESSES CAN'T GIVE OPINIONS UNLESS THEY ARE  
25 QUALIFIED AS EXPERTS IN THEIR FIELD. MR. SHADBOLT CERTAINLY

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1 WASN'T QUALIFIED TO GIVE A VOCATIONAL OPINION, HE TESTIFIED TO  
2 THAT. THE COMPUTER GENERATED THIS OPINION AND THE CLAIMANT HAS  
3 NO WAY TO EXAMINE THE COMPUTER'S QUALIFICATIONS IF THAT  
4 CONCEPT EVEN MAKES SENSE. OUR LAW CERTAINLY DOESN'T RECOGNIZE  
5 IT, BUT ONE THING WE KNOW FOR SURE, THE COMPUTER'S REPORT WAS IN  
6 ITSELF INTERNALLY INCONSISTENT WHEN IT SAID SHE HAD THESE  
7 RESTRICTIONS, NAMELY SITTING NO MORE THAN THREE MINUTES THAT  
8 DIDN'T MEET THE REQUIREMENTS OF HER JOB, BUT THEN IN THE SAME  
9 BREATH IT SAID THAT SHE COULD DO SEDENTARY WORK. AND YOU WILL  
10 FIND IT IS OF PARTICULAR NOTE, ON PAGE 71 OF MY APA'S, "1. MS.  
11 WATSON STOOD FOR 12 MINUTES. HER STANDING TOLERANCE DOES NOT  
12 MEET THE DEMAND MINIMUM FUNCTIONAL CAPACITY REQUIREMENT" OF  
13 HER JOB "OF STANDING FOR 30 MINUTES CONTINUOUSLY. 2. MS. WATSON  
14 SAT FOR 3 MINUTES. HER SITTING TOLERANCE DOES NOT MEET THE  
15 DEMAND MINIMUM FUNCTIONAL CAPACITY REQUIREMENT OF SITTING FOR  
16 30 MINUTES CONTINUOUSLY."

17 COMMISSIONERS, THE SINGLE COMMISSIONER FOUND MS. WATSON  
18 CREDIBLE. HE INDICATED PARTICULARLY THAT SHE HAD TO RISE FROM  
19 HER CHAIR A NUMBER OF TIMES DURING THE HEARING, THAT HE FOUND  
20 HER CREDIBLE, THAT SHE OBVIOUSLY HAD PAIN AND THAT HE AGREED  
21 WITH THESE RESTRICTIONS. THERE WAS NO BASIS UPON WHICH TO FIND  
22 THAT MS. WATSON COULD DO HER JOB OR WAS QUALIFIED TO DO ANY  
23 OTHER JOB GIVEN THESE RESTRICTIONS WHICH LEFT HER BELOW  
24 SEDENTARY.

25 THE NEXT ISSUE IS WHETHER SHE IS TOTALLY AND PERMANENTLY

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1 DISABLED. OF COURSE, IT IS OUR CONTENTION THAT WITH RESTRICTIONS  
2 THAT LEAVE HER BELOW SEDENTARY WORK REQUIREMENTS FOR  
3 WORKABILITY THAT SHE IS TOTALLY AND PERMANENTLY DISABLED  
4 UNDER 42-9-10. BUT IT IS ALSO OF NOTE THE COMMISSIONER FOUND AT  
5 THE HEARING UNDER 42-9-30, SHE HAD 50 PERCENT IMPAIRMENT TO HER  
6 BACK. OF COURSE, UNDER OUR NEW LAW, THAT SHIFTS THE BURDEN TO  
7 THE DEFENDANTS TO OVERCOME THE REBUTTABLE PRESUMPTION THAT  
8 SHE IS TOTALLY DISABLED. SO IT IS OUR CONTENTION THAT EVEN IF YOU  
9 LET THIS CONTRADICTORY OPINION FROM THIS COMPUTER INTO  
10 EVIDENCE, IT IS NOT SUFFICIENT TO OVERCOME THE PRESUMPTION OF THE  
11 LAW THAT SHE IS TOTALLY DISABLED WITH A 50 PERCENT DISABILITY TO  
12 HER BACK. IN PARTICULAR, AND IF YOU LOOK AT PAGE 18 OF MY BRIEF, IT  
13 QUOTES THE SINGLE COMMISSIONER'S ORDER AND I WANT TO QUOTE THE  
14 SINGLE COMMISSIONER DIRECTLY, PARAGRAPH 11, PAGE 12 OF HIS ORDER.  
15 HE INDICATED, QUOTE "...SHE TESTIFIED THAT SHE WOULD BE WILLING TO  
16 TRY TO WORK, AND GIVEN THE SEDENTARY NATURE OF HER JOB BEFORE  
17 THIS ACCIDENT, WHEN COUPLED WITH HER RESTRICTIONS, IT IS  
18 DEBATABLE WHETHER OR NOT SHE COULD ACTUALLY RETURN TO WORK"  
19 THIS IS THE COMMISSIONER'S FINDINGS IN THE ORDER. WELL, IF IT IS  
20 DEBATABLE WHETHER OR NOT SHE CAN ACTUALLY RETURN TO WORK,  
21 THE DEFENDANTS HAVE NOT OVERCOME THE PRESUMPTION THAT IS  
22 ESTABLISHED BY LAW WITH A 50 PERCENT DISABILITY THAT SHE IS  
23 TOTALLY AND PERMANENTLY DISABLED AND ENTITLED TO 500 WEEKS.

24 THE LAST ISSUE – COMMISSIONER?

25 COMMISSIONER HUFFSTETLER: I AM JUST CURIOUS, WHAT

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1 RESTRICTIONS DID DR. CHOKSHI ASSIGN?

2 MR. WUKELA: COMMISSIONER, AND I MAY BE -- STAND

3 CORRECTED, BUT I THINK DR. CHOKSHI HIMSELF DIDN'T ASSIGN ANY

4 RESECTIONS, HE HAD HAD HER OUT OF WORK FOR A LONG PERIOD OF TIME

5 BEFORE AND AFTER THE SURGERY, BUT HE REFERRED HER FOR THE

6 FUNCTIONAL CAPACITY EVALUATION FOR THE PURPOSE OF ESTABLISHING

7 RESTRICTIONS AND THEN HE ADOPTED THE FUNCTIONAL CAPACITY

8 EVALUATION'S RESTRICTIONS AS HIS OWN.

9 COMMISSIONER BARDEN: WHO WAS THE EVALUATOR AT THE FCE?

10 MR. WUKELA: JOEL---

11 MS. FIEHRER: JERRY SHADBOLT.

12 MR. WUKELA: JERRY SHADBOLT. THANK YOU.

13 COMMISSIONER HUFFSTETLER: WHAT WERE THE RESTRICTIONS?

14 MR. WUKELA: WHAT WERE THE RESTRICTIONS? LET'S SEE,

15 COMMISSIONER---

16 COMMISSIONER HUFFSTETLER: BECAUSE WHAT YOU READ, THE

17 COMMISSIONER GOES ON TO SAY THAT HE BASED HIS DECISION ON

18 "MEDICAL EVIDENCE, THE CLAIMANT'S TESTIMONY, THE FUNCTIONAL

19 CAPACITY EVALUATION, THE DEPOSITIONS OF JERRY SHADBOLT AND DR.

20 CHOKSHI".

21 MR. WUKELA: YES, COMMISSIONER, AND IF I RECALL---

22 COMMISSIONER HUFFSTETLER: HE DOESN'T TALK ABOUT A

23 COMPUTER, HE JUST TALKS ABOUT THOSE THINGS SO MY QUESTION IS,

24 WHAT ARE THE RESTRICTIONS THAT CAME OF THE FUNCTIONAL CAPACITY

25 EVALUATION?

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1           **MR. WUKELA:** COMMISSIONER, I WILL TURN YOU TO PAGE 71 OF MY  
2           APA AND 72, THERE ARE LISTED – I'M SORRY, AND THEN ONTO 73, ONE  
3           THROUGH 28 LIST SEPARATE RESTRICTIONS. THE FIRST, STANDING DID NOT  
4           MEET THE DEMAND FUNCTIONAL REQUIREMENT OF STANDING FOR 30  
5           MINUTES. SHE STOOD FOR 12 MINUTES, AND THEN HE GOES ON TO  
6           SUMMARIZE THESE, PAGE 73, "JOB FACTOR RESTRICTIONS: NO STANDING  
7           FOR MORE THAN 12 MINUTES..., NO SITTING FOR MORE THAN THREE  
8           MINUTES" AND IF MEMORY SERVES, DR. CHOKSHI ADOPTED THOSE  
9           RESTRICTIONS BOTH IN DEPOSITION AND IN HIS REPORT.

10           **COMMISSIONER HUFFSTETLER:** IS THERE A LIFTING RESTRICTION?

11           **MR. WUKELA:** YES, COMMISSIONER, I BELIEVE THERE WERE AND  
12           WE DON'T KNOW THEM -- YES, LIFTING OF "10.0 POUNDS" YOU WILL FIND  
13           THAT IN PARAGRAPH FOUR OF PAGE 71.

14           **COMMISSIONER HUFFSTETLER:** THANK YOU.

15           **MR. WUKELA:** COMMISSIONER, IT IS OUR CONTENTION THAT THOSE  
16           RESTRICTIONS ARE ACCURATE, WE THINK THOSE MEASUREMENTS WERE  
17           ACCURATE, WE THINK MR. SHADBOLT DID HIS JOB, AS FAR AS MEASURING  
18           HER ABILITY AND FINDING RESTRICTIONS AND WE THINK HE WAS  
19           QUALIFIED TO DO THAT. WHERE WE PART WITH THE FCE IS WHEN THAT'S  
20           TRANSLATED INTO A SEDENTARY WORK CAPACITY. THAT'S A  
21           VOCATIONAL OPINION AND IT DOESN'T MATCH WITH THESE RESTRICTIONS  
22           AS A MATTER OF FACT AND IT DOESN'T HAVE A BASIS OR EXPERTISE TO  
23           GIVE THAT OPINION AS A MATTER OF LAW. IN FACT, THAT'S PRECISELY  
24           WHAT HE SAYS IN HIS DEPOSITION, THAT HE IS NOT QUALIFIED TO GIVE  
25           THOSE OPINIONS AS TO VOCATION.

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1 (TIMER SOUNDS)

2 MR. WUKELA: AND AS TO MMI, IF YOU WOULD LIKE,  
3 COMMISSIONER, I WILL ADDRESS THAT ON REBUTTAL?

4 COMMISSIONER HUFFSTETLER: THANK YOU.

5 MS. FIEHRER:

6 MS. FIEHRER: GOOD AFTERNOON, COMMISSIONERS, WE ARE – I  
7 REPRESENT THE DEFENDANTS, XTRA MILE AND TRAVELERS IN THIS CLAIM.  
8 WE ARE REQUESTING A FULL AFFIRMATION OF THE SINGLE  
9 COMMISSIONER'S ORDER. THE CLAIMANT WAS RATED AS A TEN PERCENT  
10 IMPAIRMENT BY DR. CHOKSHI. DR. CHOKSHI TESTIFIED THAT THE  
11 CLAIMANT COULD RETURN TO HER JOB THAT HE WAS AWARE OF. HE  
12 TESTIFIED THAT SHE NEEDED TO REMAIN IN A SEDENTARY CAPACITY AND  
13 THAT IS EXACTLY WHAT MS. WATSON HAS WORKED IN HER ENTIRE LIFE.  
14 HE ALSO SAID THAT SHE NEEDED TO SIT AND STAND AS SHE FELT SHE  
15 NEEDED TO DO. HE DIDN'T PLACE ANY OTHER RESTRICTIONS ON HER AND  
16 IN FACT, SAID THAT SHE COULD RETURN TO WORK.

17 MS. WATSON HAS EXTENSIVE TRAINING IN ANSWERING  
18 TELEPHONES, COMPUTER DATA, EVERY JOB SHE HAS EVER HAD HAD BEEN  
19 IN A SEDENTARY DUTY CAPACITY. AFTER THAT TEN PERCENT RATING,  
20 THE COMMISSIONER AWARDED HER 50 PERCENT OF 500 WEEKS WHICH WE  
21 FEEL IS MORE THAN FAIR GIVEN MS. WATSON'S OWN TESTIMONY THAT  
22 SHE CAN RETURN TO WORK, SHE JUST HASN'T TRIED TO BECAUSE OF THIS  
23 CLAIM.

24 I BELIEVE THAT MR. WUKELA TOOK PART OF THE ORDER OUT OF  
25 CONTEXT AND I THINK THAT YOU NOTICED THAT. WHEN YOU READ THE

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1 ORDER AS A WHOLE, IT IS SAYING YES IT IS DEBATABLE, BUT WHEN WE  
2 TOOK THE WEIGHT OF THE EVIDENCE, WHEN WE TOOK DR. CHOKSHI'S  
3 TESTIMONY, WHEN WE TOOK THE CLAIMANT'S OWN TESTIMONY, WHEN  
4 WE REVIEWED THE FUNCTIONAL CAPACITY EVALUATION IN ITS ENTIRETY,  
5 THAT THE DEFENDANTS CERTAINLY MET THE BURDEN SHOWING THAT THE  
6 CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED. TO OBJECT  
7 TO ONLY PORTIONS OF A FUNCTIONAL CAPACITY EVALUATION DOES TAKE  
8 THE WHOLE THING OUT OF CONTEXT. IF YOU ACTUALLY READ IT, IT SAYS  
9 SHE CAN DO SEDENTARY DUTY SO LONG AS SHE'S ABLE TO SIT AND STAND  
10 AS NEED BE. IT IS NOT CONTRADICTORY TO ANOTHER PART OF IT, IT IS  
11 SAYING "SO LONG AS". FURTHERMORE, JERRY SHADBOLT'S FUNCTIONAL  
12 CAPACITY EVALUATION IS BASED ON THE CLAIMANT'S OWN INFORMATION  
13 AS FAR AS WHAT HER JOB REQUIRED. IT IS THE BASIS THAT -- ALL THE  
14 INFORMATION SHE PROVIDED IS THE BASIS OF BEING ABLE TO COMPLETE  
15 THAT EVALUATION. HE SAID THAT HE SIMPLY PUT THE DATA AND THE  
16 MEASUREMENTS INTO THE COMPUTER, THE PROGRAM WHICH IS BASED ON  
17 THE DICTIONARY OF OCCUPATIONAL TITLES, THE TITLE OF WHICH MS.  
18 WATSON CHOSE, AND THAT GENERATED THE OUTCOME. THAT OUTCOME  
19 WAS REVIEWED BY DR. CHOKSHI AND HE DETERMINED THAT SHE COULD  
20 GO BACK TO WORK IN A SEDENTARY CAPACITY. PUT SIMPLY, JERRY  
21 SHADBOLT DIDN'T TESTIFY THAT HE WAS A VOCATIONAL EVALUATOR, HE  
22 WAS MERELY DOING HIS JOB AND I WOULD ALSO NOTE IN HIS RECORDS  
23 THAT THE CLAIMANT SHOWS THAT SHE BELIEVES SHE IS 52 PERCENT  
24 DISABLED FROM HER BACK WHICH IS RIGHT ON PAR WITH THE AWARD  
25 FROM THE SINGLE HEARING COMMISSIONER. SHE CERTAINLY DOESN'T

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1 SAY THAT SHE CAN'T DO ANYTHING. I DON'T BELIEVE THAT IT IS AN  
2 ERROR OF ADMITTING AN ENTIRE REPORT INTO EVIDENCE BECAUSE TO  
3 ELIMINATE PORTIONS OF IT TAKES THE ENTIRE CONTEXT AWAY FROM THE  
4 ACTUAL REPORT.

5 AS FAR AS ADGER BROWN'S OPINION, IT IS THE ONLY VOCATIONAL  
6 OPINION IN THE RECORD ASIDE FROM THE ACTUAL AUTHORIZED TREATING  
7 PHYSICIAN, THE FUNCTIONAL CAPACITY EVALUATION THAT HE ORDERED  
8 AND HAD REVIEWED, AND THE CLAIMANT'S OWN TESTIMONY. WE KNOW  
9 THAT ADGER BROWN'S REPORT WAS AT LEAST INCORRECT ON HIS  
10 SUMMARY OF HER MOTOR VEHICLE ACCIDENTS AND PRIOR INFORMATION.  
11 WHO KNOWS THAT THE REST OF IT ISN'T INCORRECT? PLUS, I NOTE THAT  
12 IT IS OUT OF DATE. IT WAS COMPLETED BEFORE DR. CHOKSHI'S  
13 DEPOSITION AND JERRY SHADBOLT'S DEPOSITION WHICH I FEEL  
14 ANALYZED AND ALLOWED SOME INTERPRETATION INTO THE FUNCTIONAL  
15 CAPACITY EVALUATION THAT J. ADGER BROWN, WHO THOUGHT, WAS  
16 CONTRADICTING ITSELF. THE CLAIMANT CERTAINLY IS ABLE TO WORK,  
17 SHE HAS MORE THAN AN EXTENSIVE EXPERIENCE, SHE HAS MORE THAN  
18 EXTENSIVE TRAINING. SHE DROVE TO THE HEARING APPROXIMATELY AN  
19 HOUR AWAY, ADMITTED THAT SHE WAS FINE DOING IT BOTH WAYS, WHICH  
20 I QUESTIONED IF YOU CAN ONLY SIT FOR THREE MINUTES, BUT THAT IS  
21 JUST SOMETHING TO BE NOTED ON THE RECORD.

22 FURTHERMORE, I NOTE THAT THE CLAIMANT DISPUTES CREDIT IN  
23 HIS BRIEF. THE FORM 21 WAS FILED, SHE DIDN'T SIGN THE FORM 17 AND IT  
24 WAS WITHDRAWN IN ORDER TO TAKE THE DEPOSITIONS OF DR.  
25 CHOKSHI AND JERRY SHADBOLT IN ORDER TO CLARIFY THE ISSUES WHICH

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1 WE ARE DISCUSSING TODAY. HOWEVER, PLEASE NOTE THAT THE  
2 CLAIMANT DID NOT MAKE ANY OBJECTION TO OUR REQUEST FOR CREDIT  
3 AT THE HEARING AND THEREFORE DOES NOT HAVE STANDING TO BRING  
4 THIS ISSUE BEFORE THE FULL COMMISSION BECAUSE IT WAS NOT RAISED  
5 AT THE SINGLE COMMISSIONER LEVEL. FURTHERMORE, THE CLAIMANT  
6 WAS FOUND TO BE AT MAXIMUM MEDICAL IMPROVEMENT AND IF SHE IS  
7 NO LONGER ENTITLED TO ANY TEMPORARY TOTAL DISABILITY, I GUESS  
8 WHAT THAT MONEY THAT WAS PAID AFTER THE DATE OF MMI WOULD  
9 ACTUALLY BE CONSIDERED. WE FEEL THAT IT IS CONSIDERED PERMANENT  
10 PARTIAL DISABILITY AND WAS PROPERLY – THE DEFENDANTS WERE  
11 PROPERLY GIVEN CREDIT.

12 AS A SIDE NOTE, THE CLAIMANT OBJECTED IN HIS BRIEF AS TO  
13 JERRY SHADBOLT'S TESTIMONY, NO SUCH OBJECTION WAS ACTUALLY AT  
14 THE HEARING AND OBVIOUSLY THERE HAVE BEEN MULTIPLE CITATIONS  
15 TO MR. SHADBOLT'S TESTIMONY SO I DON'T FEEL THAT THAT'S A PROPER  
16 OBJECTION TO BE BEFORE YOU. FURTHERMORE, IT WASN'T EVER RAISED  
17 IN THE FORM 30 AND SO WITH ALL OF THAT, I REST. I BELIEVE THAT THERE  
18 IS MORE THAN ENOUGH REASON TO SHOW THAT MS. WATSON IS ABLE TO  
19 RETURN TO WORK. SHE INDICATED THAT SHE IS WILLING TO DO SO, SO  
20 LONG AS SHE CAN SIT AND STAND AS SHE FEELS IS NECESSARY AND IN  
21 THAT RESPECT, I REQUEST THAT THE FULL COMMISSION FULLY AFFIRM  
22 THE SINGLE COMMISSIONER'S DECISION AND ORDER.

23 ARE THERE ANY QUESTIONS?

24 COMMISSIONER HUFFSTETLER: OKAY.

25 MR. WUKELA: COMMISSIONER, JUST BRIEFLY, IF YOU WILL LOOK

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1 AT THESE RESTRICTIONS ON PAGE 73 OF THE APA ON THEIR FACE, "NO  
2 STANDING FOR MORE THAN 12 MINUTES", "NO SITTING FOR MORE THAN  
3 THREE MINUTES", "NO WALKING FOR MORE THAN .1 MILES", "NO PUSHING  
4 MORE THAN 20 POUNDS", "NO PULLING MORE THAN 20 POUNDS", "NO  
5 STOOPING", "NO CRAWLING", THE RESTRICTION ON LIFTING THAT WE  
6 TALKED ABOUT EARLIER, SHE TOOK THOSE RESTRICTIONS TO HER  
7 EMPLOYER AND THEY INDICATED TO HER THEY DIDN'T HAVE ANY WORK  
8 FOR HER WITHIN THOSE RESTRICTIONS. THE ONLY QUALIFIED  
9 VOCATIONAL EXPERT'S TESTIMONY IN THE RECORD IS ADGER BROWN AND  
10 HE TESTIFIED THAT WITH THOSE RESTRICTIONS AND HER EDUCATION, SHE  
11 IS TOTALLY DISABLED. MR. SHADBOLT HIMSELF SAID HE DIDN'T - ISN'T  
12 QUALIFIED FOR GIVING A VOCATIONAL OPINION AND THAT'S THE  
13 TESTIMONY IN THE RECORD ABOUT WHAT SHE CAN DO AND WHAT WORK  
14 IS AVAILABLE.

15 WE OBJECTED TO MR. SHA—ANY TESTIMONY AS TO VOCATIONAL  
16 ABILITY IN THE DEPOSITION. WE OBJECTED TO OPINIONS, AS TO  
17 VOCATIONAL OPINIONS, FROM MR. SHADBOLT AT THE HEARING AND WE  
18 DID IT IN OUR APPEAL TO THIS COMMISSION. AND AS TO MMI, IT IS THE  
19 DEFENDANT - I MEAN, AS TO CREDIT, IT IS THE DEFENDANTS' BURDEN TO  
20 PROVE CREDIT. THEY FILED A 21 AND THEN THEY PULLED THEIR 21 ON THE  
21 EVE OF THE HEARING. WAITED A MONTH, FILED ANOTHER 21 AND THEN  
22 ASKED FOR CREDIT BACK TO MMI. NOW, I UNDERSTAND THE  
23 COMMISSION'S POSITION ON CREDIT AND CREDIT ISN'T THE CENTRAL  
24 ISSUE IN THIS CASE. BUT IF YOU PULL YOUR 21, YOU LOSE SOME OF THE  
25 EQUITABLE CLEAN HANDS THAT ARE REQUIRED TO CLAIM CREDIT AND

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1 EQUITY BACK TO THE DATE OF MMI.

2 THANK YOU COMMISSIONERS, THAT'S THE CLAIMANT'S CASE.

3 COMMISSIONER HUFFSTETLER: THANK YOU, THAT CONCLUDES  
4 THE HEARING.

5 REPORTED BY BETTY MOORE, TRANSCRIBED BY KELLIE LINDLER.

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Lexington, South Carolina 29072

**CERTIFICATE OF REPORTER**

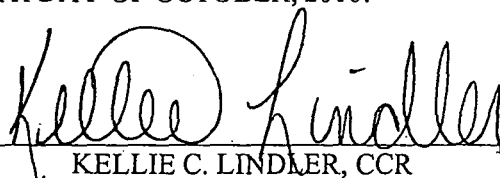
STATE OF SOUTH CAROLINA

SS:

COUNTY OF LEXINGTON

I, KELLIE C. LINDLER, CERTIFIED COURT REPORTER AND  
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT  
LARGE, DO HEREBY CERTIFY THAT THE ABOVE-ENTITLED CAUSE WAS  
HEARD AS HEREINAFTER SET OUT; THAT I WAS AUTHORIZED TO AND  
DID TRANSCRIBE THE SAID PROCEEDING AND EVIDENCE ADDUCED AND  
OFFERED IN THE SAID PROCEEDINGS, AND THAT THE FOREGOING AND  
ANNEXED PAGES, NUMBERED 1 THROUGH 15, INCLUSIVE, CONSTITUTE  
A TRUE AND ACCURATE TRANSCRIPTION OF THE SAID CAUSE TAKEN  
DURING THE SAID HEARING.

IN WITNESS WHEREOF, I HAVE HEREUNTO AFFIXED MY  
SIGNATURE THIS 13TH DAY OF OCTOBER, 2010.

A handwritten signature in cursive script, reading "Kellie C. Lindler", is written over a horizontal line.

KELLIE C. LINDLER, CCR  
MY COMMISSION EXPIRES 10/22/11

**KELLIE C. LINDLER, CERTIFIED COURT REPORTER**  
242 Catawba Trail  
Lexington, South Carolina 29072

# WUKELA LAW FIRM

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Steve Wukela, Jr.  
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December 1, 2009

Honorable Derrick L. Williams  
Commissioner  
SC Workers' Compensation Commission  
PO Box 1715  
Columbia SC 29202-1715

Re: WCC File No. 0715014  
Geneva Watson vs. XTRA Mile Driver Training

Dear Commissioner Williams:

Enclosed please find the Pre-Hearing Brief on behalf of the Claimant in the above-entitled matter. I am, by copy of this letter, forwarding a copy to the attorney for the Defendants.

Also, enclosed is a Notice of Submission on behalf of the Claimant in support of our position at the hearing. This document includes a list of any witnesses who may be called and is submitted pursuant to the provisions of the South Carolina Administrative Procedures Act. Copies of medical reports referenced in the Notice of Submission will be presented to you at the hearing. I am also, by copy of this letter to the Defendants' attorney, notifying her of this filing and serving a copy of the notice upon her.

With kind regards, I am,

Yours truly,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:aym

Enclosures

cc: Kathryn Rose Fiehrer  
Attorney at Law  
Post Office Box 20550  
Charleston, SC 29413



Claimant's Name: Geneva Watson

Employer's Name: XTRA Mile Driver Training

Address: [REDACTED]

Address: 813 Wisacky Highway

City: [REDACTED] State: [REDACTED] Zip: [REDACTED]

City: Bishopville State: SC Zip: 29010

Home Phone: ( ) - Work Phone: ( ) -

Carrier: Hartford Underwriters Insurance Company

Preparer's Name: Stephen J. Wukela

Preparer's Phone #: (843) 669-5634

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$323.83 2. AWW: \$485.71 Date of Injury: 09/18/2007
3. Type of injury and body part(s): Back, right hip, right leg, psyche
4. Facts in controversy: See attached
5. Legal issues involved: See attached
6. Unusual aspects: None
7. Witnesses (designate if expert):\* Geneva Watson
8. Exhibits: See attached
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):  
See attached
10. Name, address, and specialty, if any, of the treating physician: Rakesh P. Chokshi, M.D., Pee Dee Orthopaedic Associates, P.A.,  
Florence, SC; John Pate, M.D., Pate Medical Associates, Bishopville, SC; Tuomey Healthcare Systems, Sumter, SC,
11. Impairment rating(s); body part(s); physician and date of opinion: 10% whole person – Dr. Rakesh P. Chokshi (8/12/09)
12. I am amending my Form 50/51 in the following manner: None

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

Signature: [Signature]  
Stephen J. Wukela, Attorney for Claimant

Email: Stephen@wukelalaw.com

Date of hearing: December 17, 2009

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

\* Commissioners reserve the right to admit expert witnesses at hearings.



This is an admitted claim which comes before the Commission on the Claimant's Form 50.

On September 18, 2007, while working as a clerk for XTRA Mile Driver Training, Claimant slipped and fell onto her back on a golf ball that had been left in the work area by the grandchild of the employer. Claimant suffered an immediate onset of pain in her back and radiating pain in her right hip and right leg.

Defendants accepted the claim by Consent Order dated February 13, 2008. (APA #8).

Immediately after the accident, Claimant was transported via EMS to Tuomey Emergency Room. (APA #1, p. 1). The emergency physician ordered lumbar and thoracic spine x-rays which were not remarkable and then subsequently ordered a lumbar MRI which revealed "suspect hemangiomas within the L3 and L5 vertebral bodies. Mild disc bulges are seen at L1-2 and L2-3, and L3-4 and L4-5, with L3-4 and L4-5 spinal stenosis due to congenitally shortened pedicles, as well as facet hypertrophy worse at L4-5. L5-S1 appears within the expected limits of normal with a minimal bulge. Mild L1-2 through L4-5 disc bulges and spinal stenosis at L3-4 and L4-5 contributed L4-5 disc bulges." (APA #2, p. 10).

The ER physician ordered the Claimant off work the next two days and instructed her to see her doctor or company doctor before returning to work. The Claimant followed-up at her company doctor, Dr. John Pate, on September 19, 2007 and saw nurse practitioner, Anita Curl. Ms. Curl wrote her out of work for one (1) week and referred her to Pee Dee Orthopaedics. (APA #3, p. 19). The Claimant saw Dr. Chokshi on October 1, 2007. Dr. Chokshi ordered epidural steroid injections, which did not improve the Claimant's condition significantly. Ultimately he performed lumbar decompression at L3-4 and L4-5 on March 31, 2009. (APA #6, p. 63).

On June 24, 2009, Dr. Chokshi sent the Claimant for a functional capacity evaluation to establish her permanent work restrictions. (APA #4, p.58). The functional capacity evaluation was performed at Tuomey Outpatient Rehabilitation Service on July 6, 2009. The functional capacity evaluation revealed, in pertinent part:

1. Ms. Watson stood for 12 minutes. Her standing tolerance does not meet the Demand Minimum Functional Capacity requirement of standing for 30 minutes continuously.
2. Ms. Watson sat for 3 minutes. Her sitting tolerance does not meet the Demand Minimum Functional Capacity requirement of sitting for 30 minutes continuously.
3. Ms. Watson walked for 0.1 miles. Her walking tolerance does not meet the Demand Minimum Functional Capacity requirement of walking for one mile continuously (@ 2mph).

4. Ms. Watson has a maximum lifting capacity of 10.0 pounds. This places her into the light category for lifting capacity (as defined by the DOT).

Ms. Watson has an occasional lifting capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent lifting capacity (34% to 66% of the workday) is 5.0 pounds. Her constant lifting capacity (67% to 100% of the workday) is 2.0 pounds.

5. Ms. Watson as a maximum carrying capacity of 10.0 pounds. This places her into the light category for carrying capacity (as defined by the DOT).

Ms. Watson has an occasional carrying capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent carrying capacity (34% to 66% of the workday) is 5.0 pounds. Her constant carrying capacity (67% to 100% of the workday) is 2.0 pounds.

6. Ms. Watson has a pushing capacity of 20.0 pounds. Her pushing capacity does not meet the Demand Minimum Functional Capacity requirement of 100 pounds.

7. Ms. Watson has a pulling capacity of 20.0 pounds. Her pulling capacity does not meet the Demand Minimum Functional Capacity requirement of 80 pounds.

(APA #7, p. 71).

In the Report Summary, the evaluator discusses the Claimant's job factor restrictions and indicated:

**In order for Ms. Watson to successfully return to work as a Director of Placement, the following job factor restrictions must be met:**

**No standing for more than 12 minutes continuously. (reference section 1)**  
**No sitting for more than 3 minutes continuously. (reference section 2)**  
**No walking for more than 0.1 miles continuously. (reference section 3)**  
**No pushing more than 20 pounds. (reference section 6)**  
**No pulling more than 20 pounds. (reference section 7)**  
**No stooping. (reference section 14)**  
**No crawling on hands and feel. (reference section 16)**

(Defendant's APA #7, p. 73).

Further, with reference to Waddell Nonorganic Signs Test Report, the evaluator indicated that Ms. Watson scored 0/5, a score which falls within the acceptable range and suggests organic

behavior. (APA #7, p.80). That is to say, the functional capacity evaluation's test for malingering indicated that the claimant was not malingering.

Inexplicably, however, in the report summary of the FCE, under strength category, the evaluator concluded:

**The Dictionary of Occupational Titles places Ms. Watson's occupation as a Director of Placement in the sedentary strength category. Therefore, Ms. Watson meets these strength requirements and may return to work as a Director of Placement.**

**Based on the strength classifications as established by the Dictionary of Occupational Titles, Ms. Watson is capable of assuming a position in the light strength category. Her maximum lifting capacity is 10.0 pounds, and her maximum carrying capacity is 10.0 pounds. According to the Dictionary of Occupational Titles, the light strength category is defined as having the ability to lift 10 to 20 pounds and carry 5 to 10 pounds.**

(Defendant's APA #7, p.73).

This conclusion obviously is contradictory to the restrictions that the evaluator rated the Claimant has having. In particular, the evaluation found restrictions of no standing more than 12 minutes continuously and no sitting more than 3 minutes continuously, no walking for more than .1 miles continuously. Each of these limitations (as the evaluation noted earlier) leave the claimant without the residual functional capacity to meet the demand minimal functional capacity requirements for her job or any sedentary job.

At deposition, the FCE evaluator, Jerry Shadbolt, testified that while he performed the tests to establish the Claimant's restrictions, and opined that those tests were valid, he did not reach any vocational opinion as to whether the Claimant was qualified for particular types of work given those restrictions, nor was he qualified to so opine. He further testified that the "opinion" contained in his report as to the Claimant's ability to perform sedentary work was not his opinion at all but, instead, was the product of a computer program.

Therefore, the Claimant accepts Mr. Shadbolt's qualification to render an opinion as to the Claimant's restrictions, but objects to the computer's "opinion" as to Claimant's vocational availability for sedentary work.

In addition, the Claimant was interviewed and her records, including the functional capacity evaluation, were reviewed by J. Adger Brown, a vocational analyst well familiar to this Commission and also to the Social Security Administration. Mr. Brown agreed that, by definition, the restrictions provided by the functional capacity evaluation left the Claimant incapable of even sedentary employment. He further noted:

Based on the information available for my review, chiefly the functional capacity evaluation, it is my opinion that Ms. Watson is incapable of returning to her former work and would not be able to compete for any other type of employment for the same reason. When this is combined with an individual of advanced employment age who has been out of work for two years, with a history of back injury and back surgery, it becomes even more apparent that this lady is totally disabled.

(APA #9, p.90).

Claimant received a letter on September 22, 2009 from the employer instructing her to return to work on Monday, September 28, 2009. (APA #10, p. 91). She returned to the job accompanied by her restrictions as listed in her functional capacity evaluation. Upon reviewing those restrictions, her employer declined to offer her any work within her restrictions and instead sent her home.

Thus, it is the Claimant's contention that she is totally and permanently disabled and entitled to a lump sum payment of total disability along with Utica-Mohawk language. She further seeks future treatment for her spine to the extent that it would tend to lessen her period of disability.

| APA #   | PHYSICIAN/<br>OTHER                                   | GROUP/AGENCY                                 | DATE OF<br>REPORT                | PAGES              |
|---------|-------------------------------------------------------|----------------------------------------------|----------------------------------|--------------------|
| APA # 1 | DHEC Patient Care Form                                | EMS                                          | 09/18/07                         | 000001             |
| APA # 2 |                                                       | Tuomey Healthcare<br>Services                | 09/18/07 -<br>05/30/09           | 000002 –<br>000017 |
| APA # 3 | John Pate, M.D.                                       |                                              | 09/19/07 –<br>09/24/07           | 000018 –<br>000019 |
| APA # 4 | Rakesh P. Chokshi, M.D.                               | Pee Dee Orthopaedic<br>Associates, P.A.      | 10/01/07 –<br>08/12/09           | 000020 -<br>000060 |
| APA # 5 |                                                       | InMed Diagnostics Services<br>of S.C., LLC   | 04/07/08                         | 000061 –<br>000062 |
| APA # 6 |                                                       | McLeod Regional Medical<br>Center            | 03/31/09 –<br>04/01/09           | 000063 –<br>000069 |
| APA # 7 |                                                       | Tuomey Outpatient<br>Rehabilitation Services | 07/06/09                         | 000070 –<br>000081 |
| APA # 8 | Consent Order                                         | SC Workers' Compensation<br>Commission       | 09/13/08                         | 000082 –<br>000083 |
| APA # 9 | J. Adger Brown, Jr., MA,<br>CDMS                      |                                              | 09/21/09                         | 000084 –<br>000090 |
| APA#10  | Letter to Claimant from<br>James D. Seagle, Jr.       | XTRA Mile Driver<br>Training, Inc.           | 09/22/09                         | 000091             |
| APA#11  | Deposition of Jerry<br>Shadbolt                       |                                              | 11/20/09                         |                    |
| APA#12  | Deposition of Claimant                                |                                              | 12/02/09                         |                    |
| APA#13  | Deposition of Rakesh P.<br>Chokshi, M.D.              |                                              | 12/30/09                         |                    |
| APA#14  | Investigative File of<br>XTRA Mile Driver<br>Training |                                              | Requested –<br>To Be<br>Produced |                    |

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 0715014

Geneva Watson, Employee

Claimant,

vs.

XTRA Mile Driver Training, Employer and  
Hartford Underwriters Insurance Company,  
Carrier,

Defendants.

**NOTICE OF WITNESSES AND  
WRITTEN REPORTS/PHYSICIAN OR  
OTHER EVIDENCE TO BE INTRODUCED  
DIRECT EVIDENCE ON BEHALF OF  
CLAIMANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND KATHRYN R. FIEHRER, ATTORNEY FOR DEFENDANTS:

YOU ARE HEREBY NOTIFIED THAT THE CLAIMANT, Geneva Watson, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensation Commission and Chapter 23, Article 1, Section 1-23-330(1), Code of Laws of South Carolina, 1976, As Amended, herewith submits the following reports/physician or other evidence as direct evidence on behalf of the Claimant to-wit:

| APA #   | PHYSICIAN/<br>OTHER     | GROUP/AGENCY                                 | DATE OF<br>REPORT      | PAGES              |
|---------|-------------------------|----------------------------------------------|------------------------|--------------------|
| APA # 1 | DHEC Patient Care Form  | EMS                                          | 09/18/07               | 000001             |
| APA # 2 |                         | Tuomey Healthcare<br>Services                | 09/18/07 -<br>05/30/09 | 000002 -<br>000017 |
| APA # 3 | John Pate, M.D.         |                                              | 09/19/07 -<br>09/24/07 | 000018 -<br>000019 |
| APA # 4 | Rakesh P. Chokshi, M.D. | Pee Dee Orthopaedic<br>Associates, P.A.      | 10/01/07 -<br>08/12/09 | 000020 -<br>000060 |
| APA # 5 |                         | InMed Diagnostics Services<br>of S.C., LLC   | 04/07/08               | 000061 -<br>000062 |
| APA # 6 |                         | McLeod Regional Medical<br>Center            | 03/31/09 -<br>04/01/09 | 000063 -<br>000069 |
| APA # 7 |                         | Tuomey Outpatient<br>Rehabilitation Services | 07/06/09               | 000070 -<br>000081 |
| APA # 8 | Consent Order           | SC Workers' Compensation<br>Commission       | 09/13/08               | 000082 -<br>000083 |

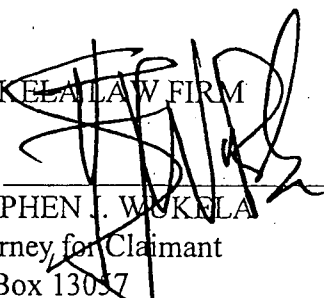
|         |                                                       |                                    |                                  |                    |
|---------|-------------------------------------------------------|------------------------------------|----------------------------------|--------------------|
| APA # 9 | J. Adger Brown, Jr., MA,<br>CDMS                      |                                    | 09/21/09                         | 000084 –<br>000090 |
| APA#10  | Letter to Claimant from<br>James D. Seagle, Jr.       | XTRA Mile Driver<br>Training, Inc. | 09/22/09                         | 000091             |
| APA#11  | Deposition of Jerry<br>Shadbolt                       |                                    | 11/20/09                         |                    |
| APA#12  | Deposition of Claimant                                |                                    | 12/02/09                         |                    |
| APA#13  | Deposition of Rakesh P.<br>Chokshi, M.D.              |                                    | 12/30/09                         |                    |
| APA#14  | Investigative File of<br>XTRA Mile Driver<br>Training |                                    | Requested –<br>To Be<br>Produced |                    |

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the 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, are being forwarded to the South Carolina Workers' Compensation Commission for insertion in their file and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: Geneva Watson.

WUKELA LAW FIRM

BY: 

STEPHEN J. WUKELA

Attorney for Claimant

PO Box 13057

Florence SC 29504

843-669-5634

1 December 2009

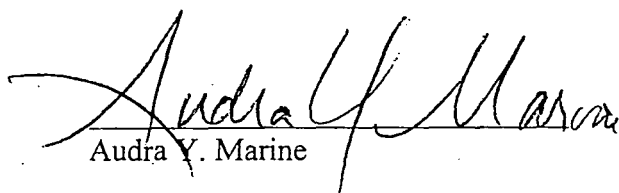
**CERTIFICATE OF SERVICE**

The undersigned, Audra Y. Marine, of the Wukela Law Firm, hereby certifies that on the 1st day of December, 2009, she did place in an envelope, with first class postage prepaid, a copy of the **WCC Form 58 Pre-Hearing Brief and Notice of Witnesses**, in the matter of Geneva Watson vs. XTRA Mile Driver Training, Case No. 0715014, and deposited the same in the United States Mail.

Said envelope being addressed to the following person(s):

Honorable Derrick L. Williams  
Commissioner  
South Carolina Workers' Compensation  
PO Box 1715  
Columbia SC 29202-1715

Kathryn Rose Fiehrer  
Attorney at Law  
Wood & Warder, LLC  
Post Office Box 20550  
Charleston, SC 29413

  
Audra Y. Marine



| APA #   | PHYSICIAN/<br>OTHER                                   | GROUP/AGENCY                                 | DATE OF<br>REPORT                 | PAGES              |
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| APA # 7 |                                                       | Tuomey Outpatient<br>Rehabilitation Services | 07/06/09                          | 000070 -<br>000081 |
| APA # 8 | Consent Order                                         | SC Workers' Compensation<br>Commission       | 09/13/08                          | 000082 -<br>000083 |
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|---------|------------------------|--------------|-------------------|--------|
| APA # 1 | DHEC Patient Care Form | EMS          | 09/18/07          | 000001 |

| PATIENT IDENTIFICATION (Please Print)   |                                       |                  | DISPOSITION (110-111)                          |                                     | TYPE OF INCIDENT                    |                                                                              | CALL TYPE                             |                                       | PATIENT STATUS |  |  |
|-----------------------------------------|---------------------------------------|------------------|------------------------------------------------|-------------------------------------|-------------------------------------|------------------------------------------------------------------------------|---------------------------------------|---------------------------------------|----------------|--|--|
| LAST NAME (110-39)                      | FIRST NAME (40-48)                    | APT. (49)        | 01 <input type="checkbox"/> TREAT/NO TRANS.    | TRAUMA (112)                        | MEDICAL (113)                       | TO SCENE (114)                                                               | ON SCENE (115)                        | FROM SCENE (116)                      |                |  |  |
| STREET (50-59)                          |                                       |                  | 02 <input type="checkbox"/> DOA AT SCENE       | 1 <input type="checkbox"/> MVA      | 1 <input type="checkbox"/> ENVIRON  | 1 <input type="checkbox"/> EMERGENT                                          | 1 <input type="checkbox"/> URGENT     | 1 <input type="checkbox"/> URGENT     |                |  |  |
| CITY (60-69)                            | STATE (70-79)                         | ZIP CODE (80-84) | 03 <input type="checkbox"/> HOSPITAL ER        | 2 <input type="checkbox"/> MC       | 2 <input type="checkbox"/> BEHAV    | 2 <input type="checkbox"/> NONEMERGENT                                       | 2 <input type="checkbox"/> NON URGENT | 2 <input type="checkbox"/> NON URGENT |                |  |  |
| SSN (90-104)                            |                                       |                  | 04 <input type="checkbox"/> HOSP. DIR. ADMIT.  | 3 <input type="checkbox"/> BIKES    | 3 <input type="checkbox"/> OB/GYN   | CODE 3                                                                       | CODE                                  | CODE                                  |                |  |  |
| SEX (104)                               | RACE (105)                            | AGE (106-109)    | 05 <input type="checkbox"/> PATIENT'S HOME     | 4 <input type="checkbox"/> PED      | 4 <input type="checkbox"/> RESP     | INCIDENT LOCATION                                                            |                                       |                                       |                |  |  |
| 1 <input type="checkbox"/> Male         | 1 <input type="checkbox"/> White      | CHECK ONE        | 06 <input type="checkbox"/> NURSING HOME       | 5 <input type="checkbox"/> ASSAULT  | 5 <input type="checkbox"/> CARDIAC  | ST. OR HWY. NAME OR NO. <u>WISAKY HWY</u>                                    |                                       |                                       |                |  |  |
| 2 <input type="checkbox"/> Female       | 2 <input type="checkbox"/> Black      |                  | 07 <input type="checkbox"/> DR.'S OFFICE       | 6 <input type="checkbox"/> FALL     | 6 <input type="checkbox"/> INTERFAC | CITY <u>Shelbyville</u>                                                      |                                       |                                       |                |  |  |
| 3 <input type="checkbox"/> Undetermined | 3 <input type="checkbox"/> Am. Indian |                  | 08 <input type="checkbox"/> OUTPATIENT         | 7 <input type="checkbox"/> FIRE     | 7 <input type="checkbox"/> OTHER    | County (117-118) <u>311</u> Zip Code (119-123)                               |                                       |                                       |                |  |  |
|                                         | 4 <input type="checkbox"/> Hispanic   |                  | 09 <input type="checkbox"/> PT. REFUSED TREAT. | 8 <input type="checkbox"/> INTERFAC |                                     | SAFETY FOR (124)                                                             |                                       |                                       |                |  |  |
|                                         | 5 <input type="checkbox"/> Asian      |                  | 10 <input type="checkbox"/> EMS TRANSFER       | 9 <input type="checkbox"/> OTHER    |                                     | 1 <input type="checkbox"/> Seatbelts 4 <input type="checkbox"/> Child Seat   |                                       |                                       |                |  |  |
|                                         | 6 <input type="checkbox"/> Other      |                  |                                                |                                     |                                     | 2 <input type="checkbox"/> Helmets 5 <input type="checkbox"/> None           |                                       |                                       |                |  |  |
|                                         |                                       |                  |                                                |                                     |                                     | 3 <input type="checkbox"/> Airbags 6 <input type="checkbox"/> Unkn.          |                                       |                                       |                |  |  |
|                                         |                                       |                  |                                                |                                     |                                     | 1 <input type="checkbox"/> ROADWAY 4 <input type="checkbox"/> RECREATIONAL   |                                       |                                       |                |  |  |
|                                         |                                       |                  |                                                |                                     |                                     | 2 <input type="checkbox"/> RESIDENCE 5 <input type="checkbox"/> AGRICULTURAL |                                       |                                       |                |  |  |
|                                         |                                       |                  |                                                |                                     |                                     | 3 <input type="checkbox"/> INDUSTRIAL 6 <input type="checkbox"/> OTHER       |                                       |                                       |                |  |  |

| PRELIMINARY IMPRESSIONS (MAKE NO MORE THAN 4) (125-127) |                                                |                                                   | PRIMARY IMPRESSION (128-130)                  |                                                 | TREATMENT PROCEDURES (131-174)                   |  |  |
|---------------------------------------------------------|------------------------------------------------|---------------------------------------------------|-----------------------------------------------|-------------------------------------------------|--------------------------------------------------|--|--|
| 003 <input type="checkbox"/> Seizure                    | 024 <input type="checkbox"/> Multitrauma/Shock | 074 <input type="checkbox"/> Respiratory Distress | 01 <input type="checkbox"/> Dressing Applied  | 07 <input type="checkbox"/> Oxygen Given        | 13 <input type="checkbox"/> Cardiac Massage      |  |  |
| 004 <input type="checkbox"/> Diabetic                   | 030 <input type="checkbox"/> Head Injury       | 080 <input type="checkbox"/> Coronary Problems    | 02 <input type="checkbox"/> Limb Splinted     | 08 <input type="checkbox"/> Suction Used        | 14 <input type="checkbox"/> Bleeding Controlled  |  |  |
| 011 <input type="checkbox"/> Abrasion/Contusions        | 032 <input type="checkbox"/> Spinal Injury     | 083 <input type="checkbox"/> Cardiac Arrest       | 03 <input type="checkbox"/> Spine Immobilized | 09 <input type="checkbox"/> Antishock Trousers  | 15 <input type="checkbox"/> Cold Application     |  |  |
| 013 <input type="checkbox"/> Laceration                 | 084 <input type="checkbox"/> Stroke            | Other <input type="checkbox"/>                    | 04 <input type="checkbox"/> Neck Immobilized  | 10 <input type="checkbox"/> Airway Maintained   | 16 <input type="checkbox"/> Patient Restrained   |  |  |
| 023 <input type="checkbox"/> Fracture                   | 051 <input type="checkbox"/> G.I. Problems     | Other <input type="checkbox"/>                    | 05 <input type="checkbox"/> OB Assistance     | 11 <input type="checkbox"/> Antishock Treatment | 17 <input type="checkbox"/> Other (Use Comments) |  |  |
|                                                         |                                                |                                                   | 06 <input type="checkbox"/> Oral Airway Used  | 12 <input type="checkbox"/> Artificial Resp.    | 18 <input type="checkbox"/> Ventilator           |  |  |

| HICPA CODES (175-180) |  | ADVANCED PROCEDURES (190-223) |  |
|-----------------------|--|-------------------------------|--|
|                       |  |                               |  |

| SITE OF TRAUMA (181-189)              |  | REVISED TRAUMA SCORE        |                                                                                    |
|---------------------------------------|--|-----------------------------|------------------------------------------------------------------------------------|
| 1 <input type="checkbox"/> Head       |  | GCS: (242) EYES <u>4</u>    | (247-248) SBP <u>4</u>                                                             |
| 2 <input type="checkbox"/> Face       |  | (243) VERBAL <u>5</u>       | (250-252) RR <u>4</u>                                                              |
| 3 <input type="checkbox"/> Neck       |  | (244) MOTOR <u>6</u>        |                                                                                    |
| 4 <input type="checkbox"/> Chest      |  | (245-248) GLASGOW <u>15</u> | (253) ANATOMICAL INJ. 1 <input type="checkbox"/> YES 2 <input type="checkbox"/> NO |
| 5 <input type="checkbox"/> Abdomen    |  |                             |                                                                                    |
| 6 <input type="checkbox"/> Hip/Pelvis |  |                             |                                                                                    |
| 7 <input type="checkbox"/> Upper Ext. |  |                             |                                                                                    |
| 8 <input type="checkbox"/> Lower Ext. |  |                             |                                                                                    |
| 9 <input type="checkbox"/> Back       |  |                             |                                                                                    |

|                                                                                                     |                                                                                                                     |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| EXPOSURE TO PT.'S BODY FLUIDS? (258) 1. <input type="checkbox"/> YES 2. <input type="checkbox"/> NO | 1st Responder (257) 1. <input type="checkbox"/> YES Name <u>                    </u> 2. <input type="checkbox"/> NO |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|

2/20/08 to a 54 y/o female - Back pain - 77. Found lying supine on the floor of a long back porch. Pt. states she slipped on a golf ball and landed on her back. LOC.

Went to ER - crying - skin w/d - upper extremities - flexed (C7-T8) ROM/straight sensation - (C7) strong upper extremities.

ROM/straight - decreased @ lower extremities due to pain at this time.

| TIME RECORD                   |                | DHCC PERMIT NO. (291-295)  |  | ATTENDANT'S SIGNATURE & CERTIFICATION NO. |               |
|-------------------------------|----------------|----------------------------|--|-------------------------------------------|---------------|
| RUN DATE (289-298)            | MONTH DAY YEAR |                            |  |                                           |               |
| Call Dispatched: (271-274)    | <u>1/5/08</u>  | RECEIVING AGENCY (296-299) |  | PRIMARY ATTENDANT (300-308)               |               |
| Arrive Scene: (275-282)       | <u>13:48</u>   | SENDING AGENCY (300-303)   |  | 2ND ATTENDANT/DRIVER (309-318)            |               |
| Arrive Destination: (287-290) | <u>14:40</u>   | PROVIDER TIME (OPTIONAL)   |  | 3RD ATTENDANT/DRIVER (319-318)            |               |
| CAUSE OF DELAY                |                |                            |  | (RECEIVING NURSE OR PHYSICIAN)            | <u>000034</u> |

| APA #   | PHYSICIAN/<br>OTHER | GROUP/AGENCY                  | DATE OF<br>REPORT      | PAGES              |
|---------|---------------------|-------------------------------|------------------------|--------------------|
| APA # 2 |                     | Tuomey Healthcare<br>Services | 09/18/07 -<br>05/30/09 | 000002 -<br>000017 |

ER

## ADMISSION RECORD

|                                                                                                                                                    |                                                                                                                                                                                                                    |                                                                                                             |                   |                   |                                                       |                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-------------------|-------------------|-------------------------------------------------------|--------------------------------|
| Patient Name / Address<br>WATSON, GENEVA E. (BETH)<br>[REDACTED]<br>Phone [REDACTED]<br>Social Security No. [REDACTED]<br>Employer EXTRA MILE      |                                                                                                                                                                                                                    | Account No.<br>[REDACTED]                                                                                   | Room / Bed        | Type<br>ER        | Location / Service<br>ED                              | Medical Rec. No.<br>[REDACTED] |
| Guarantor / Address<br>WATSON, GENEVA E. (BETH)<br>[REDACTED]<br>Phone [REDACTED]<br>Relationship SAME AS PATIENT<br>Guarantor Employer EXTRA MILE |                                                                                                                                                                                                                    | Date of Birth<br>[REDACTED]                                                                                 | Age<br>[REDACTED] | Sex<br>[REDACTED] | MarStat<br>M                                          | Religion<br>BAP                |
| Financial Class S                                                                                                                                  |                                                                                                                                                                                                                    | Person to Notify / Address<br>WATSON, MICHAEL<br>[REDACTED]<br>Home Phone [REDACTED] Other Phone [REDACTED] |                   | Relationship<br>H |                                                       |                                |
| Insurance Name<br>SELF-PAY                                                                                                                         |                                                                                                                                                                                                                    | Policy Number<br>247968928                                                                                  |                   | Coverage Number   | Subscriber / Insured Name<br>WATSON, GENEVA E. (BETH) |                                |
| Accident Information<br>ACCIDENT OTHER                                                                                                             |                                                                                                                                                                                                                    | Reason for Visit<br>FELL                                                                                    |                   |                   |                                                       |                                |
| Accident Date / Time<br>09/18/07                                                                                                                   |                                                                                                                                                                                                                    | Comments<br>PLS SEE NOTE                                                                                    |                   |                   | Height / Weight                                       | Arrival Mode                   |
| Admit Date / Time<br>09/18/07 1503                                                                                                                 |                                                                                                                                                                                                                    | Admitting Physician                                                                                         |                   |                   | Attending Physician<br>PATE, JOHN B JR                | User<br>ADDCM                  |
| Hospital Days                                                                                                                                      | HOME OMI SNF ICF HH DIED AUTOPSY<br><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | Surgeon                                                                                                     |                   | Consult           |                                                       | Discharge Date / Time          |
|                                                                                                                                                    |                                                                                                                                                                                                                    | Anesthesiologist                                                                                            |                   | Consult           |                                                       |                                |

Admitting Diagnosis

Diagnosis and Procedure  
Code

Principal Diagnosis

Secondary Diagnosis

Procedure

Does pt have Advance Directive (Living Will)? No

If yes, Living Will copy received?

Does pt have Health Care Power of Attorney? No

If yes, Health Care Power of Attorney copy received?

Does patient want info on Advance Directive? No

Are you an organ donor? No



**TUOMEY**  
HEALTHCARE SYSTEM  
Bringing more to life.

129 North Washington Street  
Sumter, South Carolina 29150

Admission Record (ER)



00000 Rev. 01/01/2004

WATSON, GENEVA E. (BETH)  
Acct: [REDACTED] Unit: 236678  
PATE, JOHN B JR  
ER

Age: [REDACTED]

DOS: 09/18/07

DOB: [REDACTED]

156  
000002

TUOMEY HEALTHCARE  
EMERGENCY RECORD

TRIAGE (Tue Sep 18 2007 14:49 JBH)

COMPLAINT: FELL AT WORK.

ADMISSION: URGENCY: 1 - Emergent, BED: 1-T 1.

PATIENT: NAME: Geneva E Watson, AGE: 54, GENDER: Female, DOB: 03/11/53

Latex Allergy: Unknown, Fall related visit: No, New onset

weakness: No, ZIP CODE: 33133, PHONE: 305-444-1234, MEDICAL RECORD

NUMBER: 123456, PAYMENT: Insurance, IBEX NUMBER: 20070918144947.

PREVIOUS VISIT ALLERGIES: Nkda.

NOTES: Patient states she slipped on a golf ball at work. Fell backwards, c/o lower back pain, denies any LOC and has no other complaints. Able to move extremities. On spine board.

TREATMENTS IN PROGRESS: Backboard.

VITAL SIGNS: BP-186/103, Pulse 123, Resp 18, Temp 98.9, Pain 10, O2 Sat 98, Time 1447.

KNOWN ALLERGIES

Nkda.

CURRENT MEDICATIONS (14:50 JBH)

Hydrochlorothiazide: 25mg daily.

HPI FALL (19:18 TDB)

CHIEF COMPLAINT: Patient presents for the evaluation of fall, fall from standing, onto a hard surface, landing on back, Mechanism of Injury: Supine Impact.

HISTORIAN: History obtained from patient.

OCCURRED: Onset was prior to arrival. Complaint is persistent, constant, Injury occurred at work.

LOCATION: Neck pain: None, Back pain: Severe, Type: Spinal.

QUALITY: Pain is described as unable to be described.

SEVERITY: Maximum severity is severe, Currently symptoms are severe.

ASSOCIATED WITH: Alcohol: Denies, Neurologic Symptoms Prior to Patient Arrival not present, LOC: none, GCS: 15. Patient denies clavicle pain, shoulder pain, elbow pain, wrist pain, hand pain, finger pain. Patient states inability to ambulate/bear weight is present, for 1 day, constantly. Patient denies hip pain, knee pain, ankle pain, foot pain.

RISK FACTORS: Spine Injury Risk Factors: None, Intracranial Bleed Risk Factors: None.

NOTES: The patient states that she slipped on a golf ball and landed on her back. She did not hit her head. She had no LOC. She states that she has pain in her lower back and has been unable to move since the fall due to pain. She denies urinary retention, fecal incontinence, numbness, tingling.

PAST MEDICAL HISTORY

MEDICAL HISTORY (Tue Sep 18 2007 14:49 JBH): No past medical history.

SOCIAL HISTORY (Tue Sep 18 2007 14:49 JBH): Denies alcohol abuse, Denies tobacco abuse, Denies drug abuse.

MEDICAL HISTORY (19:19 TDB): No past medical history.

SURGICAL HISTORY (19:19 TDB): Patient has had no previous surgical history.

SOCIAL HISTORY (19:19 TDB): Denies alcohol abuse, tobacco abuse, drug abuse.

Name: Watson, Geneva E Age: F54 MedRec: 236678 AcctNum: 12814215

0000037

TUOMEY HEALTHCARE  
EMERGENCY RECORD

FAMILY HISTORY (19:19 TDB): Family history is not contributory to this case.

NOTES (19:19 TDB): Nursing records reviewed, Medication list reviewed.

ROS (19:19 TDB)

MUSCULOSKELETAL: Historian reports back pain, fall, injury.

ALL SYSTEMS NEGATIVE: All systems were reviewed and are negative except as described above.

PHYSICAL EXAM (19:21 TDB)

CONSTITUTIONAL: Patient is afebrile, Vital signs reviewed. Patient has normal respiratory rate, Well appearing, Alert and oriented X 3, Tachycardic, Hypertensive. Patient appears uncomfortable, to be in pain.

HEAD: Atraumatic, Normocephalic.

EYES: Eyes are normal to inspection, Pupils equal, round and reactive to light. No discharge from eyes, Extraocular muscles intact. Sclera are normal. Conjunctiva are normal.

ENT: Posterior pharynx normal, Mouth normal to inspection.

NECK: Normal ROM, Trachea normal. No abrasions, contusions, Nontender.

RESPIRATORY/CHEST: Assessment includes:.. Breath sounds normal. No respiratory distress.

CARDIOVASCULAR: Assessment includes:.. No murmurs. Normal S1 S2, No rub, No gallop. Rate is tachycardic. Rhythm is tachycardic.

ABDOMEN: Assessment includes:.. Abdomen is nontender. No masses, pulsatile masses, other masses, Bowel sounds normal, No distension, peritoneal signs, McBurney's point, non tender, No Murphy's sign.

BACK: Normal inspection, There is midline tenderness. in the lower back area, There is paraspinal tenderness. There is paraspinal tenderness in the lower back.

LOWER EXTREMITY: Inspection normal. No cyanosis, clubbing, edema. Normal range of motion.

NEURO: GCS is 15. No focal motor deficits, focal sensory deficits, Cranial nerves intact, No cerebellar deficits. Normal DTRs.

SKIN: Skin is warm, Skin is dry, Skin is normal color.

VITAL SIGNS

VITAL SIGNS (Tue Sep 18 2007 14:49 JBH): BP: 186/103, Pulse: 123, Resp: 18, Temp: 98.9, Pain: 10, O2 sat: 98, Time: 1447.

(20:12 KMB): BP: 164/89, Pulse: 91, Resp: 16, Temp: 98.9, Pain: 0, O2 sat: 97 on RA, Time: 1930.

(21:45 KMB): BP: 128/54, Pulse: 74, Resp: 16, Temp: 98.4, Pain: 0, O2 sat: 97 on RA, Time: 2135.

ORDERS

XR THORACIC SPINE 1051 by TDB for TDB on Tue Sep 18 2007 15:25 Status: Active.

XR LUMBAR SPINE 0962 by TDB for TDB on Tue Sep 18 2007 15:25 Status: Active.

INT by TDB for TDB on Tue Sep 18 2007 15:26 Status: Done by JBH Tue Sep 18 2007 15:29.

TUOMEY HEALTHCARE  
EMERGENCY RECORD

Status: Active.

DOCTOR NOTES

INTERVENTIONS (19:21 TDB): Pain medications administered:, HYDROMORPHONE,  
Pain medications were given IV, Antiemetics:, PROMETHAZINE.

DATA REVIEWED (19:21 TDB): Xray data reviewed.

TEXT (21:29 LEM): The mri shows minor disc bulges ans mild spinal  
stenosis, feeling better except that the pain meds made her nauseous.

MEDICATION SERVICE

Dilaudid (18:01 TDB): Order: Dilaudid : 2 mg : IVP

Ordered: Tue Sep 18 2007 18:01

Ordered by: Tracey Bailey, MD

Entered by: Tracey Bailey, MD Tue Sep 18 2007 18:01

Acknowledged by: Jennifer Davis Tue Sep 18 2007 18:01

Documented as given by: Jennifer Davis Tue Sep 18 2007 18:11

Time given: 1810, Amount given: 2mg, IV site 1, Medication administered into left AC, Concentration confirmed prior to administration, IVP, Repeat same medication, Slowly, Catheter placement confirmed via flush prior to administration, IV site without signs or symptoms of infiltration during medication administration, No swelling during administration, No drainage during administration, IV flushed after administration, Correct patient, time, route, dose and medication confirmed prior to administration, Patient advised of actions and side-effects prior to administration, Allergies confirmed and medications reviewed prior to administration, Patient tolerated procedure well, Administered by jennifer davis, rn, Patient in position of comfort, Side rails up, Cart in lowest position, Family at bedside, Call light in reach.

Dilaudid (15:26 TDB): Order: Dilaudid : 2 mg : IVP

Ordered: Tue Sep 18 2007 15:26

Ordered by: Tracey Bailey, MD

Entered by: Tracey Bailey, MD Tue Sep 18 2007 15:26

Acknowledged by: Julie Hancock Tue Sep 18 2007 15:29

Documented as given by: Jennifer Davis Tue Sep 18 2007 15:46

Time given: 1545, Amount given: 2mg, IV site 1, Medication administered into left AC, Concentration confirmed prior to administration, IVP, Initial medication, Slowly, Catheter placement confirmed via flush prior to administration, IV site without signs or symptoms of infiltration during medication administration, No swelling during administration, No drainage during administration, IV flushed after administration, Correct patient, time, route, dose and medication confirmed prior to administration, Patient advised of actions and side-effects prior to administration, Allergies confirmed and medications reviewed prior to administration, Patient tolerated procedure well, Administered by jennifer davis, rn, Patient in position of comfort, Side rails up, Cart in lowest position, Family at bedside, Friend at bedside, Call light in reach.

Fentanyl Citrate (20:46 LEM): Order: Fentanyl Citrate : 75 mcg : IVP



Ordered: Tue Sep 18 2007 20:46

Ordered by: Luis Muniz, MD

Entered by: Luis Muniz, MD Tue Sep 18 2007 20:46

Name: Watson, Geneva E Age: MedRec: AcctNum:

Prepared: Wed Sep 19 2007 05:49 by

Page: 3 of 7

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TUOMEY HEALTHCARE

EMERGENCY RECORD

Acknowledged by: Ken Bates Tue Sep 18 2007 20:52

Documented as given by: Ken Bates Tue Sep 18 2007 21:09

Time given: 2101, Amount given: 75MCG, Medication administered into left AC, Concentration confirmed prior to administration, IVP, Initial medication, Slowly, Catheter placement confirmed via flush prior to administration, IV site without signs or symptoms of infiltration during medication administration, No swelling during administration, No drainage during administration, IV flushed after administration, Correct patient, time, route, dose and medication confirmed prior to administration, Patient advised of actions and side-effects prior to administration, Allergies confirmed and medications reviewed prior to administration, Patient tolerated procedure well, Patient in position of comfort, Side rails up, Cart in lowest position, Family at bedside, Call light in reach.

Phenergan (16:45 TDB): Order: Phenergan : 12.5MG : Intravenous

Time: 1640

Ordered: Tue Sep 18 2007 16:45

Ordered by: Tracey Bailey, MD

Entered by: Jennifer Davis Tue Sep 18 2007 16:45

Documented as given by: Jennifer Davis Tue Sep 18 2007 16:46

Time given: 1640, Amount given: 12.5MG, IV site 1, Medication administered into left AC, Concentration confirmed prior to administration, IVP, Initial medication, Slowly, Catheter placement confirmed via flush prior to administration, IV site without signs or symptoms of infiltration during medication administration, No swelling during administration, No drainage during administration, IV flushed after administration, Correct patient, time, route, dose and medication confirmed prior to administration, Patient advised of actions and side-effects prior to administration, Allergies confirmed and medications reviewed prior to administration, Patient tolerated procedure well, Administered by JENNIFER DAVIS, RN, Patient in position of comfort, Side rails up, Cart in lowest position.

Reglan (21:43 LEM): Order: Reglan : 10 mg : IVP

Time: 2130

Notes: VO

Ordered: Tue Sep 18 2007 21:43

Ordered by: Luis Muniz, MD

Entered by: Ken Bates Tue Sep 18 2007 21:43

Documented as given by: Ken Bates Tue Sep 18 2007 21:44

Time given: 2130, Amount given: 10MG, Medication administered into left AC, Concentration confirmed prior to administration, IVP, Initial medication, Slowly, Catheter placement confirmed via flush prior to administration, IV site without signs or symptoms of infiltration during medication administration, No swelling during administration, No drainage during administration, IV flushed after administration, Correct patient, time, route, dose and medication confirmed prior to administration, Patient advised of actions and side-effects prior to

000006160

administration, Allergies confirmed and medications reviewed prior to administration.

Zofran (20:45 LEM): Order: Zofran : 4 mg : IVP

Ordered: Tue Sep 18 2007 20:45

Ordered by: Luis Muniz, MD

Name: Watson, Geneva E Age: [REDACTED] MedRec: [REDACTED] AcctNum: 12814215

Prepared: Wed Sep 19 2007 05:49 by

Page: 4 of 7

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TUOMEY HEALTHCARE  
EMERGENCY RECORD

Entered by: Luis Muniz, MD Tue Sep 18 2007 20:45

Acknowledged by: Ken Bates Tue Sep 18 2007 20:52

Documented as given by: Ken Bates Tue Sep 18 2007 21:08

Time given: 2100, Amount given: 4MG, Medication administered into left

AC, Concentration confirmed prior to administration, IVP, Initial medication, Slowly, Catheter placement confirmed via flush prior to administration, IV site without signs or symptoms of infiltration during medication administration, No swelling during administration, No drainage during administration, IV flushed after administration, Correct patient, time, route, dose and medication confirmed prior to administration, Patient advised of actions and side-effects prior to administration, Allergies confirmed and medications reviewed prior to administration, Patient in position of comfort, Side rails up, Cart in lowest position, Family at bedside, Call light in reach.

MEDICATION ADMINISTRATION SUMMARY (Wed Sep 19 2007 05:49)

Drug Name: Dilaudid, Dose: 2 milligram(s), Route: IVP, Status: Given,  
Ordered: 15:26 9/18/2007,  
Drug Name: Phenergan, Dose: 12.5MG, Route: Intravenous, Status: Given,  
Ordered: 16:45 9/18/2007,  
Drug Name: Dilaudid, Dose: 2 milligram(s), Route: IVP, Status: Given,  
Ordered: 18:01 9/18/2007,  
Drug Name: Zofran, Dose: 4 milligram(s), Route: IVP, Status: Given,  
Ordered: 20:45 9/18/2007,  
Drug Name: Fentanyl Citrate, Dose: 75 microgram(s), Route: IVP, Status:  
Given, Ordered: 20:46 9/18/2007,  
Drug Name: \*Reglan, Dose: 10 milligram(s), Route: IVP, Status: Given,  
Ordered: 21:43 9/18/2007, \*Additional information available in notes,  
Detailed record available in Medication Service section.

RADIOLOGY INTERPRETATION (19:22 TDB)

BACK: Interpretation of T-spine films shows, T-spine negative, no fracture, no subluxation, no bony lesion, no foreign body, Interpretation of the Lumbar spine x-ray shows, L-spine negative, no fracture, no subluxation, no bony lesion, no spondylolisthesis, no spondylolysis.

INTERPRETER: Preliminary review of x-rays by ED Physician.

DIAGNOSIS (21:29 LEM)

FINAL: PRIMARY: acute back injury, ADDITIONAL: .

PRESCRIPTION (21:31 LEM)

Norflex: Tablet, Extended Release : 100 mg : Oral=Quantity: \*\*\*1\*\*\* Unit:  
tab Route: Oral Schedule: 2 times a day Dispense: \*\*\*20\*\*\*.

Percocet-5/325: Tablet : 325 mg-5 mg : Oral=Quantity: \*\*\*1-2\*\*\* Unit: tab

00000761

Route: Oral Schedule: Every 4 to 6 hours Dispense: \*\*\*30\*\*\*.  
Phenergan: Tablet : 25 mg : Oral=Quantity: \*\*\*1\*\*\* Unit: tab Route: Oral  
Schedule: every 3 to 4 hours Dispense: \*\*\*5\*\*\*.  
NOTES: for nausea or vomiting.

INSTRUCTION (21:30 LEM)

SPECIAL: Take medication as prescribed

Name: Watson, Geneva E Age: MedRec: AcctNum:

Prepared: Wed Sep 19 2007 05:49 by

Page: 5 of 7

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TUOMEY HEALTHCARE  
EMERGENCY RECORD

Return if worse

Off work the next 2 days, see your doctor or company doctor before  
returning to work.

DISPOSITION

PATIENT (21:29 LEM): Disposition: Home, Disposition Transport: Ambulatory,  
Condition: Stable.

(21:46 KMB): Pain Scale: 0, O2 used while in ED?: No, IV stop time  
docd?: YES, Remove from ER.

NURSING PROCEDURE: TRANSPORT TO TESTS (16:04 JAL)

TIME: Patient's identity verified by. patient stating name, hospital ID  
bracelet, Procedure was performed at 1600. Patient transported to,  
X-ray, Patient transported via, cart, Patient accompanied by, ER tech,  
Patient tolerated procedure well.

SAFETY: Side rails up, Cart in lowest position, Family at bedside.

NURSING PROCEDURE: TRANSPORT TO TESTS (18:18 JD3)

TIME: Patient's identity verified by. patient stating name, hospital ID  
bracelet, Procedure was performed at 1815. Patient transported to, MRI,  
Patient transported via, cart, Patient accompanied by, nurse, Patient  
tolerated procedure well.

SAFETY: Side rails up, Cart in lowest position.

NURSING PROCEDURE: NURSE NOTES (20:14 KMB)

TIME: Time: 1925, PT RESTING COMFORTABLY ON STRETCHER W/ FAMILY AT BEDSIDE.  
PT HAS NO C/O PAIN AT PRESENT AFTER MEDS. INFORMED FAMILY WE ARE  
WAITING ON RESULTS OF MRI.

NURSING PROCEDURE: NURSE NOTES (21:44 KMB)

TIME: Time: 2120, ON AMBULATING PT, NAUSEA/VOMITING ENSUED. MD NOTIFIED.

NURSING PROCEDURE: NURSE NOTES (21:44 KMB)

TIME: Time: 2120, ON AMBULATING PT, NAUSEA/VOMITING ENSUED. MD NOTIFIED.

NURSING PROCEDURE: DISCHARGE NOTE (21:46 KMB)

TIME: Patient discharged at 2140. Patient discharged to, home, Patient, is  
in a wheelchair, Transported via friend/family driving, Accompanied by  
husband/wife/spouse, Accompanied by family member, Patient instructed  
not to drive home, IV discontinued with catheter intact. Dressing  
placed to IV site, Discharge instructions given to, Instructions given  
to DAUGHTER, Simple/moderate discharge teaching performed, Teaching  
performed by K BATES RN, Name of prescription(s) given:

PERCOCET, PHENERGAN, NORFLEX, Above Person(s) verbalized understanding of discharge instructions and follow-up care, Patient treated and evaluated by physician.

ADMIN

DIGITAL SIGNATURE (15:49 JD3): Davis, Jennifer.

(17:59 JD3): Davis, Jennifer.

(18:18 JD3): Davis, Jennifer.

(Wed Sep 19 2007 01:06 KMB): Bates, Ken.

Name: Watson, Geneva E Age: MedRec: AcctNum:

Prepared: Wed Sep 19 2007 05:49 by

Page: 6 of 7

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TUOMEY HEALTHCARE

EMERGENCY RECORD

(Wed Sep 19 2007 05:47 LEM): Muniz, MD, Luis.

KEY:

JAL=Lucas, Julie JBH=Hancock, Julie JD3=Davis, Jennifer

KMB=Bates, Ken LEM=Muniz, MD, Luis TDB=Bailey, MD, Tracey

Name: Watson, Geneva E Age: F54 MedRec: 236678 AcctNum: 12814215

Prepared: Wed Sep 19 2007 05:49 by

Page: 7 of 7

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INSTRUCTIONS

\* The examination and treatment you received in the emergency department has been rendered on an emergency basis only and is not meant to replace complete care from a personal physician or clinic. \*

CONTACTS SPECIAL INSTRUCTIONS FINAL DIAGNOSIS acute back injury FOLLOWUP  
Take medication as prescribed. Return if worse Off work the next 2 days, see your doctor or company doctor before returning to work.

\* X-rays. X-rays are read initially by the emergency physician. The X-ray will be read by a radiology physician specialist within 24 hours. If the radiologist notes any differences, you will be contacted by the emergency department. \* \* Lab Work. Results of lab testing done in the Emergency Department are available to your private physician. Lab results cannot be given over the Emergency Department phone. \* IMPORTANT: If your condition gets worse or you have any concerns and you cannot contact your physician, return promptly to Tuomey Healthcare Systems Emergency Department. (803)774-9111 \*\*Disclaimer: Home medications and allergies listed on Patient Medication History Record are as reported by patient/family to Tuomey ED staff.\*\* -DISCHARGE INSTRUCTIONS RECEIPT  
FINAL DIAGNOSIS acute back injury THE FOLLOWING SPECIAL INSTRUCTIONS WERE GIVEN Take medication as prescribed Return if worse Off work the next 2 days, see your doctor or company doctor before returning to work.

Patient Signature

Rn/LPN Ini.

TIME

ACCT NO: [REDACTED] UNIT NO: [REDACTED]  
PATIENT NAME: WATSON, GENEVA  
DOB: [REDACTED] SEX: M  
ORDERING PHYS: BAILEY, TRACEY DENIS

EXAM: MR LUMBAR W/O CONT 0050  
EXAM DATE: 09/18/2007 00:00:00  
PHYS: PARKER, GILBERT E  
REASON: BACK PAIN

MR LUMBAR SPINE WITHOUT CONTRAST

Noncontrasted MR of the lumbar spine demonstrates on the coronal scout exam bladder distension. Suspect hemangiomas within the L3 and L5 vertebral bodies. Mild disc bulges are seen at L1-2 and L2-3, and L3-4 and L4-5, with L3-4 and L4-5 spinal stenosis due to congenitally shortened pedicles, as well as facet hypertrophy worse at L4-5. L5-S1 appears within the expected limits of normal with a minimal bulge.

IMPRESSION: Bladder distension. Mild L1-2 through L4-5 disc bulges and spinal stenosis at L3-4 and L4-5 contributed to by facet hypertrophy and congenitally shortened pedicles. No focal herniated disc.

000010

ACCT NO: [REDACTED] UNIT NO: [REDACTED]  
PATIENT NAME: WATSON, GENEVA  
DOB: [REDACTED] SEX: [REDACTED]  
ORDERING PHYS: BAILEY, TRACEY DENIS

EXAM: XR THORACIC SPINE 1051  
EXAM DATE: 09/18/2007 00:00:00  
PHYS: PARKER, GILBERT E  
REASON: FALL

THORACIC SPINE

Nine views of the thoracic spine were obtained and demonstrate the overall alignment to be relatively well maintained with thoracic marginal osteophytes, but no acute bony abnormality.

IMPRESSION: Thoracic marginal osteophyte formation, but no acute bony abnormality.

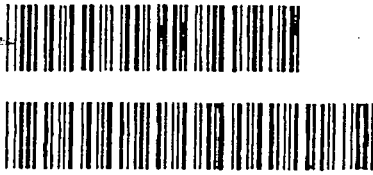
ACCT NO: [REDACTED] UNIT NO: [REDACTED]  
PATIENT NAME: WATSON, GENEVA  
DOB: [REDACTED] SEX: [REDACTED]  
ORDERING PHYS: BAILEY, TRACEY DENIS

EXAM: XR LUMBAR SPINE 0962  
EXAM DATE: 09/18/2007 00:00:00  
PHYS: PARKER, GILBERT E  
REASON: FALL

LUMBAR SPINE

Four views of the lumbar spine were obtained and demonstrate the alignment and disc spaces to be relatively well maintained with mild degenerative changes at L4-5 with mild osteophytes. No focal disc space narrowing.

IMPRESSION: Mild lumbar osteophyte formation, but no acute bony abnormality or focal disc space narrowing.



KC  
48

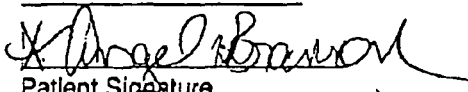
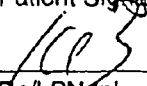
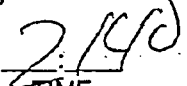
Name: Watson, Geneva E  
Age:   
Gender:   
Medrec:   
Acct:   
Attending: TDB  
Primary Nurse: KMB  
Bed: ED 1-T 2

## TUOMEY HEALTHCARE DISCHARGE INSTRUCTIONS RECEIPT

FINAL DIAGNOSIS  
acute back injury

THE FOLLOWING SPECIAL INSTRUCTIONS WERE GIVEN

Take medication as prescribed  
Return if worse  
Off work the next 2 days, see your doctor or company doctor before returning to work.

  
Patient Signature  
   
Rn/LPN Inl. TIME



Tuomey HealthCare System

Rehab Services Initial Evaluation

Physical Therapy

Patient: WATSON, GENEVA E. (BETH)  
Physician: CHOKSHI, RAKESH P  
Account#: [REDACTED]

---

NAME: WATSON, GENEVA E. (BETH)

U#: [REDACTED]

DATE OF BIRTH: [REDACTED]

DATE OF INITIAL EVALUATION: 05/30/2009

REFERRING PHYSICIAN: Rakesh Chokshi, MD

DIAGNOSIS: Low back pain.

PROBLEM INDICATING NEED FOR THERAPY: The patient is a 56-year-old female with complaints of low back pain which started in September 2007 when she fell at work. She reports slipping on a golf ball that a child had brought into work. In March 2009, she had back surgery and spacers were put in at L4-L5 and L5-S1. This was to take pressure off the nerves in her back and the surgery did relieve pain in the right hip area although she still has pain across her low back.

DIAGNOSTICS: She reports having an x-ray and was told that everything looks okay. She had been treated previously for this condition at Tuomey in 2008.

PAST MEDICAL HISTORY: High blood pressure.

MEDICATIONS: She is on HCTZ, Prozac and Fosamax.

ALLERGIES: None.

OCCUPATION: She used to work at a trucking company, has not worked since September 2007. She was doing primarily a desk job at that time.

PREVIOUS LEVEL OF FUNCTION: Independent.

FUNCTIONAL LIMITATIONS: She reports bending, stooping, getting out of the car, trouble sitting, difficulty doing household chores, popping and vacuuming. She reports that standing is okay for awhile. Pain currently 5/10, worst 7/10, best 3 to 4/10. Location is across the low back. Pain

Tuomey HealthCare System

Rehab Services Initial Evaluation

Physical Therapy

Patient: WATSON, GENEVA E. (BETH)  
Account#: [REDACTED]

quality is described as a dull ache. She reports no numbness. Pain will decrease with the use a TENS unit, Tylenol and cold pack.

PATIENT'S GOALS: Patient's goals are to be able to do her normal stuff pain free.

OBJECTIVE: Range of motion: Lumbar flexion 58 degrees with pain in low back, extension 10 degrees with pain, side bending to the right 22 degrees, left 17 degrees and ankle range of motion within normal limits.

Strength: Right hip flexors 4+/5, left 4/5. Bilateral hip abductor is 4/5 with pain and adductor is 4/5. Bilateral knee extensors 4+/5.

Posture: Lordosis, within normal limits.

Special tests: Patient with negative straight leg raise test. Leg length, positive with the right being slightly shorter than left. The patient also had bilateral tight hamstrings.

Sensation: Within normal limits for light touch L2- S2.

Tenderness: None.

GOALS: Short-term goals to be met by 06/15/09.

1. The patient to be independent with home exercise program.
2. The patient to report pain levels less than or equal to 3/10 at worst.

Long-term goals to be met by 06/29/09.

1. The patient to report pain level 0/10.
2. The patient to increase lumbar spine flexion greater than or equal to 20 degrees.
3. The patient to increase bilateral lower extremity strength greater than or equal to one-third of her manual muscle testing grade.

BARRIERS AFFECTING OUTCOME OF TREATMENT: None.

CRITERIA FOR DISCHARGE: Discharge by MD, all goals met or functional plateau met.

Tuomey HealthCare System

Rehab Services Initial Evaluation

Physical Therapy

Patient: WATSON, GENEVA E. (BETH)  
Account#: [REDACTED]

-----  
TODAY'S TREATMENT: Include initial evaluation, home exercise program and patient education.

PLAN OF CARE: The patient will be seen 1 to 2 times per week for 4 weeks of physical therapy to include strengthening, range of motion, home exercise program modalities as needed and patient education.

REHAB POTENTIAL: Fair to good.

Thank you for this referral. If you have any questions regarding the patient's plan of care, please feel free to contact me at (803) 774-5201.

GEOFF BEMISS, PT

Dict. Date: 06/01/2009 10:32 Trans. Date: 06/02/2009 00:36  
Job: 1077738/374128185

RSGAB

RSGAB

Tuomey HealthCare System

Rehab Services Initial Evaluation

Physical Therapy

Patient: WATSON, GENEVA E. (BETH)  
Account#: [REDACTED]

---

Page 3 of 3

Authenticated and Edited by Geoffrey A. Bemiss, III, P.T. On 6/09/09 4:57:50 PM

| APA #   | PHYSICIAN/<br>OTHER | GROUP/AGENCY | DATE OF<br>REPORT      | PAGES              |
|---------|---------------------|--------------|------------------------|--------------------|
| APA # 3 | John Pate, M.D.     |              | 09/19/07 –<br>09/24/07 | 000018 –<br>000019 |

Elizabeth Watson

9 19 07

Subjective

CC: back hurts

Yesterday the patient slipped on a golf ball at work. She landed on her back on a wooden floor. There was immediate pain. she was taken by ems to Tuomey ER where she was treated and released. She was given endocet 5 mg, orphenadrine 100 , and promethazine 25. She has used 1 of the pain meds today with little relief. No nausea today. The pain is located in the lower R back and sacral area. There is no radiation. The pain is improved if she lays on her side but worse if sitting or supine. No hematuria, fever, incontinence.

Objective

BP 138 / 84 P 98 t 98.4 R 20 ht 5 feet 3.5 inches wt 167 no allergies

This is a 45 year old white female who is guarding her back movement. There are no areas of discoloration, increased warmth, or swelling of the back. There is pain with palpation of the R lumbar paraspinals. She has pulling of the L back with L hip flexion. None of the R side. Patella reflexes are 2/4.

Assessment

Low back pain

Plan

Gentle heat to the back

Out of work 3 days

Use prescribed pain medications

Will recheck Monday before returning to work

Anita Curl NP

AL

00001873

Elizabeth Watson

9 24 07

Subjective

CC: back still hurts

The patient reports that her back is still painful. The pain is located in the R to center mid / lower back. It is constant but worse with movement. she has experienced no new injuries since her fall. She reports no fever, hematuria, dysuria, vomiting. She cannot take the pain meds prescribed at the hospital because they make her feel "funny in the head" and cause nausea.

She has been using 3 motrin 800 at a time with no relief.

Objective

Bp 130 / 86 P 94 t 98.4 R 20 ht 5 feet 3.5 inches wt 162 no allergies

This is a 44 year old white female who is grimacing. The skin of the back remains intact with no open wounds, increased warmth, or edema. There is pain with palpation of the R mid to lower paraspinals. No pain with palpation of the spine. She has a positive R SLL. She could not get on the table for further exam.

Assessment

Low back pain

Plan

She refused a cortisone injection

Prednisone 10 mg 6po x 1 day 5po x 1 day 4po x 1 day 3po x 1 day 2po x 1 day 1 po x 1 day 0 refill

She was given a 1 week sample of aciphex 20 mg to use for any stomach irritation from the motrin

Stop motrin for now

May use phenergan 25 mg prn nausea

Flexaril 10 mg # 30 lpo tid prn back pain 0 refill

Vicoden 5 / 500 # 30 lpo q 4-6 hours prn 0 refill

Gentle heat to the back

Out of work 1 week

She insisted that she needed to see a back specialist

Referral to Pee Dee Orthopedics

Anita Curl Np

0000194

| APA #   | PHYSICIAN/<br>OTHER     | GROUP/AGENCY                            | DATE OF<br>REPORT      | PAGES              |
|---------|-------------------------|-----------------------------------------|------------------------|--------------------|
| APA # 4 | Rakesh P. Chokshi, M.D. | Pee Dee Orthopaedic<br>Associates, P.A. | 10/01/07 –<br>08/12/09 | 000020 -<br>000060 |





**Pee Dee  
Orthopaedic  
Associates, PA**

Joseph W. Dunlap, Jr., M.D., FACS • W.S. "Bill" Edwards, Jr., M.D.  
Rakesh Chokshi, M.D. • Patrick K. Denton, M.D. • Barry L. Clark, D.O.  
Danny W. Nicholls, D.O. • Anthony W. Mexander, M.D.  
Dewey Nelson Ervin, M.D. • A. Cecil Bozard, Jr., M.D.  
Nigel A. R. Watt, M.D.

901 East Cheves Street, Suite 100 • Florence, SC 29506  
(843) 662-5233 • Fax: (843) 678-9003 • www.pdoa.com

Date: October 01, 2007  
Name: Geneva Watson  
Address: [REDACTED]  
[REDACTED]

Case #: 256-429  
Age: [REDACTED]  
Ref By: John B. Pate Jr., M.D.

---Page One (1)---

**FAMILY PHYSICIAN:** Anita C. Curl, M.D.

**CC:** Low back pain.

**HPI:** On 09/18/2007 while at work, she slipped on a golf ball, landing flat on her back. She describes the pain as acute, dull, sharp on occasions to back and buttocks only. Back pain is worse than leg pain. Worsened with bending, sitting, and twisting, improved by use of medication including hydrocodone, Flexeril, prednisone, and also with lying down. The treatments tried thus far, medications. Denies any bowel or bladder complaints.

**ROS:** Review of systems form is reviewed with the patient and found to be as noted.

**PMH:** Past medical history: Hypertension. Surgeries: Bilateral tubal ligation and appendectomy. Current medications: See list. Allergies: No known drug allergies.

**FH:** Unremarkable.

**SH:** Currently employed. Has not worked since 09/18/2007 due to injury. Denies alcohol or tobacco use.

**PE:** GENERAL: Height 5 feet 3 inches and weight 160 pounds. Ms. Watson is a well-developed, well-nourished 54-year-old female, alert and oriented x3, appears to be in no acute distress. Lumbar exam, essentially normal with the exception of paraspinous muscle tenderness with palpation. Severely limited range of motion with flexion, moderately with extension due to low back pain.

**X-RAYS:** Imaging studies AP, lateral, and spot films of the lumbar spine, lumbar spondylosis with decreased intervertebral disc space at multiple levels; otherwise, normal.

MRI of the lumbar spine, multilevel degenerative changes. No evidence of acute herniated nucleus pulposus.

Con't ..... on Page Two (2)

**PEE DEE ORTHOPAEDIC ASSOCIATES, PA**

Watson, Geneva (256-429)

Page two (2)

Con't... from Page One (1)

- IMP:**
1. Low back pain, lumbar sprain/strain.
  2. Lumbar spondylosis with degenerative disc disease at multiple levels, exacerbated by fall.

**PLAN:** Natural history was discussed with the patient. I feel there is no surgical intervention for this patient at this time. We have encouraged activities and weight loss. I have continued her on her out of work status. Started her on Naprosyn 500 mg one by mouth b.i.d. to be taken with food to reduce any GI side effects, Ultracet for pain, and also Skelaxin. I placed her on physical therapy program for stretching, strengthening modalities of lumbar spine. Back Owner's Manual for education and exercises to be performed at home. We will have her return to the office in approximately four weeks to evaluate nonoperative care.

We would like to thank Dr. Pate and Dr. Curl for this kind consult of this nice patient. If there are any further questions regarding the diagnosis or treatment of this patient or if there are any other patients they feel we may be of assistance to, please do not hesitate to ask.

The patient was seen and treated by Dr. Rakesh P. Chokshi.

Thank you,

Rakesh P. Chokshi, M.D./Daniel S Koele, PA-C.  
Spine Surgeon  
Pee Dee Spine Center

(dictated but not read)

DK: mgk

cc: John B. Pate Jr., M.D.

Anita C. Curl, M.D.

000021 177



**Pee Dee  
Orthopaedic**  
Associates, PA

W. S. "Bill" Edwards, Jr., M.D. • Rakesh Chokshi, M.D.  
Patrick K. Denton, M.D. • Barry L. Clark, D.O.  
Anthony W. Alexander, M.D. • Dewey Nelson Ervin, M.D.  
A. Cecil Bozard, Jr., M.D. • Nigel A. R. Watt, M.D.  
Robert E. Elvington, Jr., M.D. • Douglas B. Freels M.D.

901 East Cheves Street, Suite 100 • Florence, SC 29506  
(843) 662-5233 • Fax: (843) 678-9003 • www.pdoa.com

Date: October 31, 2007  
Name: Geneva Watson  
Address:

Case #: 256-429  
Age:  
Ref By:

---Page three (3)---

**HPI:** Ms. Geneva Watson returns for followup. She is known to have facet arthritis at L4-L5 with minimal spinal stenosis. I offered her epidural injection, but she is currently more in favor of continuing lumbar traction. She has mostly mechanical back pain.

**PE:** Neurologically, she is intact in the lower extremities.

**TREATMENT PLAN:** We discussed operative versus nonoperative care for lumbar facet arthropathy as well as spinal stenosis. She at this point in time is not in favor of any aggressive intervention. She will call my office if the symptoms are getting worse.

Thank you.

Rakesh P. Chokshi, M.D.  
Spine Surgeon  
Pee Dee Spine Center  
RC:vsv

(dictated but not read)

cc: John B. Pate Jr., M.D.

Anita C. Curl, M.D.

000022178

## Pee Dee Orthopaedic Associates, P.A.

Name of Patient

Geneva Watson

Date

10-1-07

① Unable to return to work until further notice / Please excuse from school

2. May return to light duty on with the following restrictions:

- Restrictions:
- 1) No lifting over lbs.
  - 2) No repetitive bending, crawl, squat, stooping
  - 3) No work involving use of hand.
  - 4) No pushing/pulling
  - 5) Cannot reach above shoulder
  - 6) No climbing
  - 7) No prolonged walking
  - 8) Other:

3. May return with no restrictions on

Comments

Diagnosis

Return appointment date:

R. Choksi

, M.D.

## Return to Work Authorization

PATIENT MUST GIVE TO EMPLOYER

Pee Dee Orthopaedic Associates, P.A.

Name of Patient Geneva Watson Date 1/16/08

1. Unable to return to work thru 1/16/08 /Please excuse from school \_\_\_\_\_

2. May return to light duty on \_\_\_\_\_ with the following restrictions:

- Restrictions:
- 1) No lifting over \_\_\_\_\_ lbs.
  - 2) No repetitive bending \_\_\_\_\_, crawl \_\_\_\_\_, squat \_\_\_\_\_, stooping \_\_\_\_\_
  - 3) No work involving use of \_\_\_\_\_ hand.
  - 4) No pushing/pulling \_\_\_\_\_
  - 5) Cannot reach above shoulder \_\_\_\_\_
  - 6) No climbing \_\_\_\_\_
  - 7) No prolonged walking \_\_\_\_\_
  - 8) Other: \_\_\_\_\_

3. May return with no restrictions on 1/17/08

Comments \_\_\_\_\_

Diagnosis \_\_\_\_\_

Return appointment date: R. Choklen 5, M.D.

Return to Work Authorization

CHART COPY



**Pee Dee  
Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
Dewey N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Dunlap, Jr., M.D., FACS

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**Follow Up Examination**

**PATIENT ID:** 256429

**PATIENT:** Geneva Watson

**DOB:** [REDACTED]

**Date of Service:** 03/26/08

**Age:** [REDACTED] years old

**PDOA RX HISTORY** No data for Prescription History

**HPI:** Ms. Geneva Watson continues to complain of low back pain and right leg pain. Lumbar flexion-extension films did not show any instability. She is known to have significant facet arthropathy with spinal stenosis during her last visit. She was last seen on 10/31/2007.

**PE:** On today's examination, her motor strength in lower extremity appeared to be 5/5 in all the major muscle groups. She has some tenderness in the lumbar area.

**TREATMENT PLAN:** I would like to proceed with getting a new MRI of the lumbar spine to delineate her facet arthropathy and spinal stenosis further. Clinically her symptoms have gotten worse and clearly her pictures have also gotten worse since last year. Based on the findings of the MRI, we can give her further recommendations for further treatment. This is all discussed with her in great detail.

*Rakesh P. Chokshi*

**Rakesh P. Chokshi  
Spine Surgeon  
Pee Dee Spine Center  
Pee Dee Orthopaedic Associates**

Referral Reply Letter(s) - Dated 03/31/08

Pate, John - SPECIALTY: Family Practice

Pee Dee Orthopaedic Associates, P.A.

Name of Patient Geneva Watson Date 1/16/08

1. Unable to return to work thru 1/16/08 /Please excuse from school \_\_\_\_\_

2. May return to light duty on \_\_\_\_\_ with the following restrictions:

- Restrictions:
- 1) No lifting over \_\_\_\_\_ lbs.
  - 2) No repetitive bending \_\_\_\_\_, crawl \_\_\_\_\_, squat \_\_\_\_\_, stooping \_\_\_\_\_
  - 3) No work involving use of \_\_\_\_\_ hand.
  - 4) No pushing/pulling \_\_\_\_\_
  - 5) Cannot reach above shoulder \_\_\_\_\_
  - 6) No climbing \_\_\_\_\_
  - 7) No prolonged walking \_\_\_\_\_
  - 8) Other: \_\_\_\_\_

3. May return with no restrictions on 1/17/08

Comments \_\_\_\_\_

Diagnosis \_\_\_\_\_

Return appointment date: R. Chokan 5, M.D.

Return to Work Authorization

CHART COPY

000026182



Pee Dee  
Orthopaedic  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
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Follow Up Examination

PATIENT ID: 256429

PATIENT: Geneva Watson

DOB: [REDACTED]

Date of Service: 03/26/08

Age: 69 years old

PDOA RX HISTORY No data for Prescription History

**HPI:** Ms. Geneva Watson continues to complain of low back pain and right leg pain. Lumbar flexion-extension films did not show any instability. She is known to have significant facet arthropathy with spinal stenosis during her last visit. She was last seen on 10/31/2007.

**PE:** On today's examination, her motor strength in lower extremity appeared to be 5/5 in all the major muscle groups. She has some tenderness in the lumbar area.

**TREATMENT PLAN:** I would like to proceed with getting a new MRI of the lumbar spine to delineate her facet arthropathy and spinal stenosis further. Clinically her symptoms have gotten worse and clearly her pictures have also gotten worse since last year. Based on the findings of the MRI, we can give her further recommendations for further treatment. This is all discussed with her in great detail.

Rakesh P. Chokshi  
Spine Surgeon  
Pee Dee Spine Center  
Pee Dee Orthopaedic Associates

Referral Reply Letter(s) - Dated 03/31/08

Pate, John - SPECIALTY: Family Practice

000027183





**Pee Dee  
Orthopaedic**  
Associates, PA

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### Follow Up Examination

**PATIENT ID:** 256429

**PATIENT:** Geneva Watson

**DOB:** [REDACTED]

**Date of Service:** 04/23/08

**Age:** [REDACTED] years old

**Referring Physician:** Pate, John, ;

**Other Physicians:**

**Date of injury/onset:**

**Date:**  
09/18/2007

**Type:**  
DOA

**Chief Complaint:** Follow up for Lumbar Spine MRI

**Review:** ( ) Xray ( ) MRI ( ) CT/Myelogram ( ) Other \_\_\_\_\_

**PDOA Prescription History:** No data for Prescription History

**HPI:** Geneva Watson has right posterior buttock pain. It's well localized. No distal right or left leg pain.

### PHYSICAL EXAM:

**Appearance:** No acute distress

**Psychiatric:** Mood and affect were appropriate.

**Head:** Normocephalic, atraumatic.

**Skin:** Clean, dry, no lesions, no rashes.

**Neuro:** Alert and oriented x 3.

### FOCUSED EXAM:

Local tenderness right paraspinal musculature no motor strength weakness on the right side

### DIAGNOSTIC STUDIES:

**Radiographs:**

**MRI:** Reviewed by me personally, open MRI not the best quality, shows L3-4 and L4-5 spinal stenosis.

**CT/Myelogram:**

**OTHER:**

### ASSESSMENT:

**DIAGNOSIS:** -Lumbar spinal stenosis L3-4, L4-5

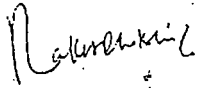
**PLAN:**

Natural history discussed. Operative and nonoperative options discussed. Discussion of conservative, surgical, and pain management treatment options. Side effects and benefits of medications discussed with patient.

Epidural steroid injection at L3-4

If worsening pain, numbness, parasthesias, or weakness occur, notify physician's office or go to nearest emergency room.

Patient to return . Three to four weeks



**Rakesh P. Chokshi, M.D.**

Spine Surgeon

Pee Dee Spine Center

Pee Dee Orthopaedic Associates

**Prescription:** No data for Prescription

cc: Pate, John, ;

Referral Reply Letter(s) - Dated 04/28/08

Pate, John - SPECIALTY: Family Practice



**Pee Dee**  
**Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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Procedure Note

PATIENT ID: 256429

L3-4 interlaminar epidural steroid injection #1

PATIENT: Geneva Watson

Date of Service: 05/15/08

DOB: [REDACTED]

Age: [REDACTED] years old

Referring Physician: Pate, John, ;

Other Physicians:

History of Present Illness: Geneva Watson is a [REDACTED] years old female returns today to undergo her first epidural steroid injections. She rates the pain (10/10).

**Procedure: L3-4 Interlaminar Epidural Injection**

The patient was placed on the table in the prone position with his head and chest supported. The C-arm was set up in the AP plane. The image intensifier was tilted caudally to resolve the parallax at the apophyseal rings. The anesthetic was instilled over the lamina of L4 and 3 cc's of 1% Lidocaine was used to anesthetize the soft tissue in this regions. Once anesthesia was obtained the epidural needle was advanced in the same plane with the needle touching the superior edge of the L4 lamina before advancing over the interlaminar space. A saline filled loss of resistance syringe was attached and the loss of resistance technique was used to advance the tip of the epidural needle into the epidural space. Needle placement was within the midline. The air tap test was used to confirm placement of the tip of the epidural needle into the epidural space. Then a mixture of 2 cc's of 0.9% Sodium Chloride solution was combined with 1 cc of Methylprednisolone 80 mg. and instilled into the epidural space via the epidural needle. The needle was removed and a sterile Band-Aid was applied over the entrance wound. The patient tolerated the procedure well and there were no complications. The patient will follow-up .

Diagnosis: -L3-4 L4-5 lumbar spinal stenosis

PRESCRIPTION: No data for Prescription

*Joseph W. Dunlap, Jr.*

Anthony W. Alexander, M.D.





**Pee Dee  
Orthopaedic**  
Associates, PA

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### Follow Up Examination

PATIENT ID: 256429

PATIENT: Geneva Watson

DOB: [REDACTED]

Employer: Xtra Mile

Date of Service: 06/11/08

Age: 40 years old

Occupation: Placement Manager

Referring Physician: Pate, John, ;

Other Physicians:

Date of injury/onset:

Date: 09/18/2007 Type: DOA

Reason for visit: Follow after LESI

Review: ☐ Xray ☐ MRI ☐ CT/Myelogram ☐ Other

PDOA Prescription History: No data for Prescription History

Note: Returns with lumbar epidural steroid injections. Clinically doing better. No back pain and the leg symptoms are much improved.

### PHYSICAL EXAM:

Appearance: No acute distress

Psychiatric: Mood and affect were appropriate.

Head: Normocephalic, atraumatic.

Skin: Clean, dry, no lesions, no rashes.

Neuro: Alert and oriented x 3.

### FOCUSED EXAM:

Lumbar range of motion mildly limited. Very minimal spinal tenderness. Motor strength in bilateral lower extremity is 5/5 in all the major muscle groups. No significant sensory change.

### DIAGNOSTIC STUDIES:

Radiographs:

MRI:

CT/Myelogram:

OTHER:

### ASSESSMENT:

000032 188

DIAGNOSIS: -L3-4 L4-5 lumbar spinal stenosis;-Lumbar spinal stenosis L3-4, L4-5

**PLAN:** We will initiate another epidural steroid injection at lumbar L3-4 . She has a 5 pound weight restriction. She is to avoid repetitive bending, lifting, squatting, twisting type movements. Follow-up and three to four weeks after the second epidural steroid injection.

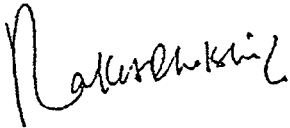
Natural history discussed. Operative and nonoperative options discussed. Discussion of conservative, surgical, and pain management treatment options. Side effects and benefits of medications discussed with patient.

If worsening pain, numbness, parasthesias, or weakness occur, notify physician's office or go to nearest emergency room.

**Prescription:** No data for Prescription

**WORK STATUS:** Addressed in work note.

Thank you,



**Rakesh P. Chokshi, M.D.**  
Spine Surgeon  
Pee Dee Spine Center  
Pee Dee Orthopaedic Associates

cc: Pate, John, ;

Fax Created: Dated 6/16/2008 8:49:35 AM

Referral Reply Letter(s): Dated 06/17/08

Pate, John - SPECIALTY: Family Practice

CH# A945058



Pee Dee  
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Associates, PA

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Patient Name: Geneva E Watson

DATE: 06/11/08

( ) UNABLE TO RETURN TO WORK

(X) RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS ON: 06/12/2008.

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| (X) No Lifting/Carrying over 5 lbs. | (X) No repetitive bending             |
| ( ) No sitting over [ ] hrs./day    | ( ) No repetitive stooping            |
| ( ) No standing over                | ( ) Cannot reach above shoulder       |
| ( ) No prolonged walking            | ( ) No work involving use of [ ] hand |
| ( ) No Climbing                     | (X) No repetitive squatting           |
| ( ) No Kneeling                     | ( ) No repetitive crawling            |
| (X) No repetitive twisting          | ( ) No pushing or pulling             |

Other: work no more than 4 hours a day

Return Appointment [ ]

May return to work with no restrictions on [ ]

*Rakesh P. Chokshi*

Rakesh P. Chokshi, M.D.

Jun 11 08 08:13p

Marvin Kay

1 803 996 1418

p.3

CL# A9 u5058



**Pee Dee**  
**Orthopaedic**  
Associates, PA

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### PEE DEE SPINE CENTER TEST PRESCRIPTION

PATIENT IN OFFICE (X) YES

( ) NO

DATE: 06/11/08

PLEASE PROVIDE PATIENT WITH CD'S

IS PATIENT CLAUSTROPHOBIC ?

( ) YES ( ) NO

PATIENT NAME: Watson Geneva

CHART # 256429

DIAGNOSIS: lumbar stenosis

TREATMENT FACILITY: ☐

APPOINTMENT DATE: ☐

TIME: ☐

#### MRI

|              |                                        |                 |                 |
|--------------|----------------------------------------|-----------------|-----------------|
| ( ) Cervical | ( ) Cervical with & without Gadolinium | ( ) Lt Knee     | ( ) Rt Knee     |
| ( ) Thoracic | ( ) Thoracic with & without Gadolinium | ( ) Lt Hip      | ( ) Rt Hip      |
| ( ) Lumbar   | ( ) Lumbar with & without Gadolinium   | ( ) Lt Shoulder | ( ) Rt Shoulder |

#### CAT SCAN

|                             |                                                    |
|-----------------------------|----------------------------------------------------|
| ( ) Cervical                | ( ) Cervical with Sagittal/ Coronal Reconstruction |
| ( ) Thoracic                | ( ) Thoracic with Sagittal/ Coronal Reconstruction |
| ( ) Lumbar                  | ( ) Lumbar with Sagittal/Coronal Reconstruction    |
| ( ) CTA - Vertebral Vessels |                                                    |

( ) Bone Scan ( ) Bone Density

#### EMG/NCS

|         |         |                  |
|---------|---------|------------------|
| ( ) RLE | ( ) LLE | ( ) BILATERAL LE |
| ( ) RUE | ( ) LUE | ( ) BILATERAL UE |

|         |              |                  |
|---------|--------------|------------------|
| NIVS    | ( ) Arterial | ( ) Venous       |
| ( ) RLE | ( ) LLE      | ( ) BILATERAL LE |
| ( ) RUE | ( ) LUE      | ( ) BILATERAL UE |

(X) ESI ( ) TRANSFORAMINAL ESI ( ) FACET JOINT INJECTION ( ) SNRB

|              |           |               |         |         |         |         |
|--------------|-----------|---------------|---------|---------|---------|---------|
| ( ) Cervical | ( ) 1/2   | ( ) 2/3       | ( ) 3/4 | ( ) 4/5 | ( ) 5/6 | ( ) 6/7 |
| (X) Lumbar   | ( ) 1/2   | ( ) 2/3       | (X) 3/4 | ( ) 4/5 | ( ) 5/1 |         |
| ( ) Left     | ( ) Right | ( ) Bilateral |         |         |         |         |

( ) Diskogram & CT Lumbar with Coronal/ Sagittal Reconstruction at L

#### LABS

|                   |         |             |                                    |
|-------------------|---------|-------------|------------------------------------|
| ( ) CBC w/lt Diff | ( ) BMP | ( ) ESR     | ( ) Rheumatoid profile             |
| ( ) SPEP/UPEP     | ( ) ANA | ( ) HLA B27 | ( ) CRP                            |
|                   |         |             | ( ) Other <input type="checkbox"/> |

FAX RESULTS TO (843) 432-1022

I certify that the above services for the above-named patient are medically necessary.

Rakesh P. Chokshi, M.D.

000035 191





**Pee Dee**  
**Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
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Procedure Note

PATIENT ID: 256429

L3-4 interlaminar epidural steroid injection #2

PATIENT: Geneva Watson  
DOB: [REDACTED]

Date of Service: 07/10/08  
Age: [REDACTED] years old

Referring Physician: Pate, John, ;  
Other Physicians:

History of Present Illness: Geneva Watson is a [REDACTED] years old female who returns today to undergo her second interlaminar epidural steroid injection. The patient rates her pain as a (5/10).

**Procedure: L3-4 Interlaminar Epidural Steroid Injection:**

The patient was placed on the table in the prone position with his head and chest supported. The C-arm was set up in the AP plane. The image intensifier was tilted caudally to resolve the parallax at the apophyseal rings. The anesthetic was instilled over the lamina of L4 and 3 cc's of 1% Lidocaine was used to anesthetize the soft tissue in this regions. Once anesthesia was obtained the epidural needle was advanced in the same plane with the needle touching the superior edge of the L4 lamina before advancing over the interlaminar space. A saline filled loss of resistance syringe was attached and the loss of resistance technique was used to advance the tip of the epidural needle into the epidural space. Needle placement was within the midline. The air tap test was used to confirm placement of the tip of the epidural needle into the epidural space. Then a mixture of 2 cc's of 0.9% Sodium Chloride solution was combined with 1 cc of Methylprednisolone 80 mg. and instilled into the epidural space via the epidural needle. The needle was removed and a sterile Band-Aid was applied over the entrance wound. The patient tolerated the procedure well and there were no complications. The patient will follow-up in two weeks.

Diagnosis: -L3-4 L4-5 lumbar spinal stenosis

PRESCRIPTION: No data for Prescription

Anthony W. Alexander, M.D.



**Piedmont  
Orthopaedic  
Association, PA**

W.B. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Evington, Jr., M.D. \* Douglas B. Frels, M.D.  
Dewey N. Ervin, M.D. \* A. Cecil Beazard, Jr., M.D. \* Joseph W. Dunlap, Jr., M.D., FACS

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(843) 662-5233 - FAX (843) 432-1022 - WWW.PDOA.COM

Patient Name: Geneva E Watson

DATE: 07/15/08

☒ UNABLE TO RETURN TO WORK until next appointment

☐ RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS ON:

- |                                                                                 |                                                                                 |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <input type="checkbox"/> No Lifting/Carrying over <input type="checkbox"/> lbs. | <input type="checkbox"/> No repetitive bending                                  |
| <input type="checkbox"/> No sitting over <input type="checkbox"/> hrs./day      | <input type="checkbox"/> No repetitive stooping                                 |
| <input type="checkbox"/> No standing over                                       | <input type="checkbox"/> Cannot reach above shoulder                            |
| <input type="checkbox"/> No prolonged walking                                   | <input type="checkbox"/> No work involving use of <input type="checkbox"/> hand |
| <input type="checkbox"/> No Climbing                                            | <input type="checkbox"/> No repetitive squatting                                |
| <input type="checkbox"/> No Kneeling                                            | <input type="checkbox"/> No repetitive crawling                                 |
| <input type="checkbox"/> No repetitive twisting                                 | <input type="checkbox"/> No pushing or pulling                                  |

Other: ☐

Return Appointment: ☐

May return to work with no restrictions on ☐

*Rakesh P. Chokshi*

Rakesh P. Chokshi, M.D.



**Pee Dee  
Orthopaedic  
Associates, PA**

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
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**Follow Up Examination**

**PATIENT ID:** 256429

**PATIENT:** Geneva Watson

**Date of Birth** [REDACTED]

**Employer:** Xtra Mile

**Date of Service:** 07/28/08

**Age:** [REDACTED] years old

**Occupation:** Placement Manager

**PDOA RX HISTORY** No data for Prescription History

**REVIEW OF SYSTEMS:**

**Review of Systems:** General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT, musculoskeletal, skin and endocrine systems are normal except what is noted below:

**No abnormal findings known**

**HPI:** The patient comes in with a chief complaint of low back pain. Epidural steroid injection did not give enough relief. There is some focal tenderness in the right paraspinal area. I decided to give her a local injection, 40 mg of Depo-Medrol with 1% lidocaine with 0.5% Marcaine. Currently, we will keep her out of work.

**TREATMENT PLAN:** We will keep her out of work. Follow up in three weeks. She did get a right paraspinal injection, which will hopefully help with these muscular symptoms. Follow up in three weeks.

**WORK STATUS:** Addressed in work note.

**Diagnosis:** -Low back pain.

**Rakesh P. Chokshi  
Spine Surgeon  
Pee Dee Spine Center  
Pee Dee Orthopaedic Associates**

**cc:** Pate, John, ;

**Referral Reply Letter(s) - Dated 08/13/08**

Pate, John - SPECIALTY: Family Practice

000038194



**Pee Dee**  
**Orthopaedic**  
Associates, PA

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(843) 662-5233 - FAX (843) 678-3003 - WWW.PDOA.COM

Patient Name: Geneva E Watson

DATE: 07/28/08

☒ (X) UNABLE TO RETURN TO WORK

☐ ( ) RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS ON:

- |                                                            |                                                            |
|------------------------------------------------------------|------------------------------------------------------------|
| <input type="checkbox"/> ( ) No Lifting/Carrying over lbs. | <input type="checkbox"/> ( ) No repetitive bending         |
| <input type="checkbox"/> ( ) No sitting over hrs./day      | <input type="checkbox"/> ( ) No repetitive stooping        |
| <input type="checkbox"/> ( ) No standing over              | <input type="checkbox"/> ( ) Cannot reach above shoulder   |
| <input type="checkbox"/> ( ) No prolonged walking          | <input type="checkbox"/> ( ) No work involving use of hand |
| <input type="checkbox"/> ( ) No Climbing                   | <input type="checkbox"/> ( ) No repetitive squatting       |
| <input type="checkbox"/> ( ) No Kneeling                   | <input type="checkbox"/> ( ) No repetitive crawling        |
| <input type="checkbox"/> ( ) No repetitive twisting        | <input type="checkbox"/> ( ) No pushing or pulling         |

Other:

Return Appointment:

May return to work with no restrictions on

*Rakesh P. Chokshi*

Rakesh P. Chokshi, M.D.

000039195



**Pee Dee  
Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
Dewey N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Duniap, Jr., M.D., FACS

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Follow Up Examination

PATIENT ID: 256429

PATIENT: Geneva Watson

Date of Birth: [REDACTED]

Employer: Xtra Mile

Date of Service: 10/01/08

Age: [REDACTED] years old

Occupation: Placement Manager

**REVIEW OF SYSTEMS:**

Review of General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT,  
Systems: musculoskeletal, skin and endocrine systems are normal except what is noted below:  
.No abnormal findings known

**HPI:**

Ms. Watson returns, continues to complain of significant amount of low back pain. She is known to have spinal stenosis at L3-L4 and L4-L5 with facet arthropathy. We discussed lumbar epidural injection, which has really not helped her. She is feeling that no treatment so far is really helping her pain. She has done multiple significant conservative interventions. I offered her lumbar decompression at L3-L4 and L4-L5 with possible fusion. She wants to think about this. She will follow up in four weeks.

**PE:**

Motor strength in bilateral lower extremity is 5/5 in all the major muscle groups.

**TREATMENT PLAN:**

I had a detailed discussion regarding surgical intervention. She had lot of questions about lumbar decompression at L3-L4 and L4-L5 with fusion. Follow up in four weeks.

**WORK STATUS:** Addressed in work note.

**Diagnosis:** -Lumbar spinal stenosis at L3-L4 and L4-L5.

Rakesh P. Chokshi  
Spine Surgeon  
Pee Dee Spine Center  
Pee Dee Orthopaedic Associates

cc: Pate, John, ;

Fax Created - Dated 10/20/2008 11:59:18 AM

Dr. John Pate

000040196



**Pee Dee  
Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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Follow Up Visit

PATIENT ID: 256429

Date of Service 11/05/08

PATIENT: Geneva Watson

Gender female

DOB: [REDACTED]

Age: 55 years old

Employer: Xtra Mile

Occupation: Placement Manager

Referring Physician: Pate, John, ;

Other Physicians:

**DATE OF INJURY/ONSET OF SYMPTOMS:**

Date:

Type:

09/18/2007

DOA

Allergies No Known Drug Allergies

Current Medications: HCTZ

REASON FOR VISIT: 55 years old female here in follow up for low back pain.

HPI: Ms. Geneva Watson returns today. She has predominantly right buttock tenderness. She also has some spinal stenosis at L3-L4 and L4-L5. The stenosis was diagnosed pretty strongly by open MRI. Prior to considering any surgical intervention for her lumbar spinal stenosis, I am going to proceed with getting another MRI done with closed MRI in our setting. I am going to also include MRI of the pelvis and SI joints since her tenderness on examination seems to be fairly localized to the right S1 joint. We will consider SI joint injection also if need be.

**PHYSICAL EXAM:**

Appearance: No acute distress

Psychiatric: Mood and affect were appropriate.

Head: Normocephalic, atraumatic.

Skin: Clean, dry, no lesions, no rashes.

Neuro: Alert and oriented x 3.

**FOCUSED EXAM:**

RADIOGRAPHS: Reviewed by me personally.

**ASSESSMENT:**

**WORKING DIAGNOSIS:**

000041 197

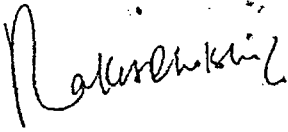
**DIAGNOSIS:** -Low back pain with radiculitis; Questionable right sacroiliac joint pain.

**Plan:** Proceed with getting an MRI of the lumbar spine with pelvis included and include SI joint as well as lumbar MRI. This was discussed with the patient in very detail. She is in favor of further workup. Natural history discussed. Discussion of conservative, surgical, and pain management treatment options. Side effects and benefits of medications discussed with patient.

If worsening pain, numbness, paresthesias, or weakness occur, notify physician's office or go to nearest Emergency Department.

**PRESCRIPTION:** No data for Prescription

Thank you,



**Rakesh P. Chokshi, M.D.**  
Spine Surgeon

Pee Dee Spine Center  
Pee Dee Orthopaedic Associates

cc: Pate, John, ;

Fax Created: Dated: 11/12/2008 10:57:34 AM

Dr. John Pate,

[Redacted line]

[Redacted line]

000042 198

Report Date: November 13, 2008 Patient: Watson, Geneva E DOS: 11/05/08

11/05/08: Message previously sent to Flowers Autumn

**PEE DEE SPINE CENTER TEST PRESCRIPTION****PATIENT IN OFFICE (X) YES****( ) NO**

DATE: 11/05/08

PLEASE PROVIDE PATIENT WITH CD'S

IS PATIENT CLAUSTROPHOBIC ?

( ) YES ( ) NO

PATIENT NAME: Watson Geneva

CHART # 256429

DIAGNOSIS: back and hip  
pain

TREATMENT FACILITY: PDOA-pending WC approval

APPOINTMENT DATE:  
MRI

TIME:

(X)  
Pelvis  
to  
include  
SI joint

(X) Lumbar ( ) Lumbar with &amp; without Gadolinium

**CAT SCAN**( ) Cervical ( ) Cervical with Sagittal/ Coronal Reconstruction  
( ) Thoracic ( ) Thoracic with Sagittal/ Coronal Reconstruction  
( ) Lumbar ( ) Lumbar with Sagittal/Coronal Reconstruction  
( ) CTA -Vertebral Vessels

( ) Bone Scan ( ) Bone Density

**EMG/NCS**( ) RLE ( ) LLE ( ) BILATERAL LE  
( ) RUE ( ) LUE ( ) BILATERAL UE**NIRS**( ) Arterial ( ) Venous  
( ) RLE ( ) LLE ( ) BILATERAL LE  
( ) RUE ( ) LUE ( ) BILATERAL UE

( ) ESI ( ) TRANSFORAMINAL ESI ( ) FACET JOINT INJECTION ( ) SNRB

( ) Cervical ( ) 1/2 ( ) 2/3 ( ) 3/4 ( ) 4/5 ( ) 5/6 ( ) 6/7  
( ) Lumbar ( ) 1/2 ( ) 2/3 ( ) 3/4 ( ) 4/5 ( ) 5/1  
( ) Left ( ) Right ( ) Bilateral

( ) Diskogram &amp; CT Lumbar with Coronal/ Sagittal Reconstruction at L[]

**LABS**( ) CBC with Diff ( ) BMP ( ) ESR ( ) Rheumatoid profile  
( ) SPEP/UPEP ( ) ANA ( ) HLA B27 ( ) CRP ( ) Other []**FAX RESULTS TO (843) 432-1022**

I certify that the above services for the above-named patient are medically necessary.

Rakesh P. Chokshi, M.D.

000043<sub>199</sub>



**ImageCare, LLC-Pee Dee Orthopaedic Associates, PA**  
901 East Cheves Street Suite 100  
Florence, SC 29506  
Phone:(843)662-5233  
Fax:(843)678-9003

---

|                    |               |                      |                                |
|--------------------|---------------|----------------------|--------------------------------|
| <b>Name:</b>       | Geneva Watson | <b>Exam Date:</b>    | 12/5/2008                      |
| <b>Patient ID:</b> | ██████████    | <b>Exam:</b>         | MRI Pelvis without             |
| <b>DOB:</b>        | ██████████    | <b>Reason:</b>       | 719.45 - PAIN IN JOINT         |
| <b>Phone:</b>      |               | <b>Referrer:</b>     | PELVIS/THIGH   719.45          |
| <b>Acc#:</b>       | 231863        | <b>Referrer:</b>     | Pee Dee Orthopaedic Associates |
|                    |               | <b>2nd Referrer:</b> | Rakesh Chokshi                 |
|                    |               | <b>3rd Referrer:</b> |                                |

---

**Results****DATE EXAM PERFORMED: 12-5-08**

MRI SCAN OF THE HIPS AND PELVIS WITHOUT CONTRAST

CLINICAL HISTORY: Pain.

TECHNIQUE: Multislice 6 mm thick coronal and axial T1 and T2-weighted STIR images of the pelvis and hips were obtained.

**FINDINGS:**

The proximal femurs, bony pelvis, sacrum and iliac joints are normal in appearance. No degenerative arthrosis of the hip joint is noted. A joint effusion bursitis of the adjacent soft tissue is noted. The uterus and adnexal soft tissues of the pelvis are normal in appearance. The soft tissues and muscle of the buttocks and proximal thighs are normal-appearing.

**IMPRESSION:****NO SIGNIFICANT ABNORMALITIES OF THE HIPS OR PELVIS ARE NOTED.**

**Report Electronically Signed by: Martin P Dommers Jr, MD**  
**Report Signed on: 12/6/2008 2:25 PM**

---

|                   |                         |             |                    |
|-------------------|-------------------------|-------------|--------------------|
| Transcribed By:   | Annette Rennison        | Pt. Name:   | Geneva Watson      |
| Transcribed Date: | 12/5/2008 5:21:37 PM    | Patient ID: | 1000109909         |
| Dictated Date:    | 12/5/2008               | Exam:       | MRI Pelvis without |
| Interpreting Rad: | Martin P Dommers Jr, MD | Acc:        | 231863             |
| Finalized Date:   | 12/6/2008 2:25 PM       |             |                    |

000044

1:15  
256429  
12-8  
#12  
ImageCare, LLC-Pee Dee Orthopaedic Associates,  
PA  
901 East Cheves Street Suite 100  
Florence 29506  
Phone: (843)662-5233

---

|             |               |             |                                |
|-------------|---------------|-------------|--------------------------------|
| Name:       | Geneva Watson | Exam Date:  | 12/5/2008                      |
| Patient ID: | 1000109909    | Exam:       | MRI L-spine wo contrast        |
| DOB:        | [REDACTED]    | Reason:     | 724.2 - PAIN IN LOWER BACK     |
| Phone:      | [REDACTED]    | Referrer:   | Pee Dee Orthopaedic Associates |
| Acc#:       | 231862        | Referrer 2: | Rakesh Chokshi                 |

---

### Results

**DATE EXAM PERFORMED: 12-5-08**

**MRI SCAN OF THE LUMBOSACRAL SPINE WITHOUT CONTRAST**

**CLINICAL HISTORY:** Back pain.

**TECHNIQUE:** Sagittal and axial T1 and T2-weighted images of the lumbosacral and lower thoracic spine were obtained.

### **FINDINGS:**

There are five lumbar vertebral segments. Mild to moderate acquired central canal stenosis at the L3-4 and L4-5 levels is noted, best seen on axial T2-weighted images 11 and 15 respectively. Mild diffuse symmetric circumferential bulges of the disc margins are noted without significant disc space narrowing. There is some hypertrophic degenerative changes of the facets and thickening of the ligamentum flavum at both levels without spondylolisthesis, disc herniation or foraminal stenosis. The L5-S1 disc is normal with minimal degenerative changes of the facets without central or foraminal stenosis or spondylolisthesis. Mild diffuse symmetric circumferential bulges of the discs are noted at the L2-3 and L1-2 levels without disc herniation or central or foraminal stenosis. The distal two thoracic discs and spine segments are normal-appearing. No intradural or surrounding paraspinal soft tissue abnormalities are noted.

### **IMPRESSION:**

**MILD TO MODERATE ACQUIRED CENTRAL CANAL STENOSIS DUE TO DEGENERATIVE FACET AND LIGAMENTOUS AND DISC CHANGES AT THE L3-4 AND L4-5 LEVELS AS ABOVE.**

**Martin P Dommers Jr, MD**

---

|                   |                         |             |                         |
|-------------------|-------------------------|-------------|-------------------------|
| Transcribed By:   | Annette Rennison        | Pt. Name:   | Geneva Watson           |
| Transcribed Date: | 12/5/2008 3:32:52 PM    | Patient ID: | 1000109909              |
| Interpreting Rad: | Martin P Dommers Jr, MD | Exam:       | MRI L-spine wo contrast |



**Pee Dee  
Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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Dewey N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Dunlap, Jr., M.D., FACS

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Follow-up Imaging Studies

PATIENT ID: 256429

Date of Service 12/08/08

PATIENT: Geneva Watson

Gender female

DOB: [REDACTED]

Age: [REDACTED] years old

Employer: Xtra Mile

Occupation: Placement Manager

Referring Physician: Pate, John, ;

Other Physicians:

**DATE OF INJURY/ONSET OF SYMPTOMS:**

Date: 09/18/2007 Type: DOA

Allergies .No Known Drug Allergies

Current Medications: HCTZ

REASON FOR VISIT: 55 years old female here in follow up for LS MRI review

HPI: Continues to complain of bilateral posterior bottom pain. Decreased walking distance. History suggestive of neurogenic claudication and low back pain.

**PHYSICAL EXAM:**

Appearance: No acute distress

Psychiatric: Mood and affect were appropriate.

Head: Normocephalic, atraumatic.

Skin: Clean, dry, no lesions, no rashes.

Neuro: Alert and oriented x 3.

FOCUSED EXAM: Lumbar extension reproduce the posterior thigh pain.

IMAGING STUDIES: REVIEWED BY ME PERSONALLY

MRI: Lumbar MRI done on December 5 2008 of lumbar spine and pelvis review timing. It showed moderate acquired central canal stenosis at L3-4 and L4-5.

CT/MYELOGRAM:

OTHER:

**ASSESSMENT:**

**WORKING DIAGNOSIS:**

DIAGNOSIS: -Lumbar spinal stenosis at L3-4 and L4-5.

000046 202

**Report Date:** January 12, 2009 **Patient:** Watson, Geneva E **DOS:** 12/08/08

**PLAN:** Natural history discussed. Discussion of conservative, surgical and pain management treatment options. Side effects and benefits of medications discussed with patient.

We had a detailed discussion regarding operative versus nonoperative treatment of her condition. She has decided she wants to pursue surgical treatment. I feel at this point in time micro decompression at L3-4 and L4-5 would be ideal. I explained to her that she has facet arthropathy which could give her ongoing low back pain symptoms. Risks and benefits of surgery discuss with her knee to also.

**Indications for surgery:**

Failure of conservative treatment with pain and dysfunction sufficient to warrant surgery.

**Surgery type and location:**

Lumbar decompression at the level of L3-4 and L4-5 has been scheduled

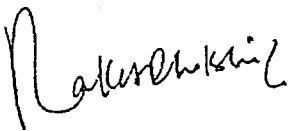
**Precautions for surgery:**

This patient was told that there could be unforeseen and unusual problems or complications of the surgical procedure, including those related to anesthesia such as cardiorespiratory malfunction, allergic reactions to the anesthetic medications, injury to nerves, including the thoracolumbar and sciatic nerves or vessels or failure of regional anesthesia to provide adequate relief of discomfort or duration of effect. It was also understood that there could be untoward results of surgery, including infection, wound break down, tendon injury or rupture, vascular compromise, or failure of the procedure to adequately correct the problem for which it is being performed. Patient also understands that there is the potential for post operative dysfunction of the spinal cord sufficient to produce temporary or permanent paralysis of the lower extremities. Patient also understands that there is the possibility of sexual dysfunction from this surgery. While these complications and problems are quite unlikely, the patient understands that they do occur and do not represent any mal performance of the procedure itself. Patient understands that the surgical procedure may require transfusion of blood and/or blood products.

If worsening pain, numbness, paresthesias, or weakness occur, notify physician's office or go to nearest Emergency Department.

**PRESCRIPTION:** No data for Prescription

Thank you,



**Rakesh P. Chokshi, M.D.**  
Spine Surgeon

Pee Dee Spine Center  
Pee Dee Orthopaedic Associates

Fax Created - Dated 12/17/2008 11:03:21 AM

Dr. John Pate

00004703



## Pee Dee Orthopaedic Associates, PA

March 6<sup>th</sup>, 2009

W. S. (BILL) EDWARDS, JR., M.D.  
SURGERY OF THE SPINE  
SURGERY OF THE NECK & BACK  
SPINE TRAUMA

RAKESH P. CHOKSHI, M.D.  
SURGERY OF THE SPINE  
SURGERY OF THE NECK & BACK  
SPINE DEFORMITY  
SPINE TRAUMA

PATRICK K. DENTON, M.D.  
SURGERY OF THE SHOULDER  
SURGERY OF THE KNEE  
SPORTS MEDICINE

BARRY L. CLARK, D.O.  
TOTAL JOINT RECONSTRUCTION  
GENERAL ORTHOPAEDICS

NIGEL A.R. WATT, M.D.  
SURGERY OF THE HIP & KNEE  
SURGERY OF THE SHOULDER  
GENERAL ORTHOPAEDICS

ROBERT E. ELVINGTON, JR., M.D.  
SURGERY OF THE SHOULDER  
SURGERY OF THE KNEE  
TOTAL JOINT RECONSTRUCTION

DOUGLAS B. FREELS, M.D.  
TOTAL JOINT RECONSTRUCTION  
HIP, KNEE & SHOULDER SURGERY  
SPORTS MEDICINE &  
ARTHROSCOPIC SURGERY  
GENERAL ORTHOPAEDICS

ANTHONY W. ALEXANDER, M.D.  
PHYSIATRY  
SPINE MEDICINE

DEWEY N. ERVIN, M.D.  
OFFICE ORTHOPAEDICS

A. CECIL BOZARD, JR., M.D.  
OFFICE ORTHOPAEDICS

JOSEPH W. DUNLAP, JR., M.D., FACS  
SURGERY OF THE HIP & KNEE

J. LORIN MASON, JR., M.D.  
EMERITUS

To Whom It May Concern:

RE: Geneva Watson

Ms. Geneva Watson has lumbar spinal stenosis. Please see attached notes regarding his symptoms of back pain and buttock pain. She also has a history of neurogenic claudication. Her lumbar spinal stenosis at L3-4 and L4-5 got exacerbated/aggravated. The MRI changes have been progressive with worsening of the stenosis. At this point in time in my opinion she has exhausted all the conservative treatment and I have recommended a lumbar decompressive surgery in the form of lumbar laminotomy/laminectomy at L3, L4 and L5.

The patient has not reached maximum medical improvement. She has currently been out of work. The question No. 6 and 7 does not really apply to her. The amount of restriction she may have would depend on her postoperative status. We will consider physical therapy for rehabilitation and work hardening program on her as need be.

If you need any additional information please feel free to contact my office.

Sincerely,

Rakesh P. Chokshi, M.D.  
Spine Surgeon

Pee Dee Orthopaedic Associates, P.A.  
901 E. Cheves St., Suite 100 • Florence, SC 29506  
1580 Freedom Blvd., Suite 100 • Florence, SC 29505  
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www.pdoa.com

00004804



**Pee Dee  
Orthopaedics  
Associates, PA**

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Deway N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Dunlap, Jr., M.D., FACS

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**DR. RAKESH CHOKSHI  
FAMILY PHYSICIAN PRE-OP EVALUATION**

This patient is scheduled for surgery in the near future. Please complete this form and return to our office at your earliest convenience.

ATTENTION: SHARI SCHWARTZ, CMA FAX # 432-1022

PATIENT NAME: Geneva Watson

SURGERY DATE: 3/31/2009

DIAGNOSIS: stenosis

GENERAL ANESTHESIA

PROPOSED SURGERY: decompression

(X) IN-PATIENT ( ) OUT-PATIENT

SIGNIFICANT PAST MEDICAL HISTORY: OP HTN Breast implants tubal ligation pregnancy  
HTN 25, 4m Fosamax 70 Tylenol 4 times daily - mda

CURRENT MEDICATIONS: see above

DRUG ALLERGIES None known

BP 140/84 PULSE 72 RESP 20 WEIGHT 187 HEIGHT 5'3 1/2"

HEENT Old ruptured 1 tm LUNGS Clear - has breast implants

CARD/VASCULAR RTR no murmurs ABD Soft non tender Liver & spleen non palpable

EXT Edema NEURO/PSYCH Alert and oriented x3

\*\*\* PATIENT IS CLEARED / NOT CLEARED FOR THE ABOVE LISTED SURGERY.

PLEASE PRINT OR USE STAMP Anita Curin NP

NAME AND ADDRESS 116 Hospital Sq Bishopville SC 29016

PHONE NUMBER 803 484 9424

SIGNED: Anita Curin NP MD

DATE: 3 23 09

THANK YOU.

115003063 01-18-10-28  
WATSON, ELIZABETH



03/31/09  
MRSA: VRE:  
CHOKSHI, RAKESH P



**Pee Dee  
Orthopaedic  
Associates, PA**

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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**Pre-op Examination for Lumbar Decompression**

|                    |               |                         |                   |
|--------------------|---------------|-------------------------|-------------------|
| <b>PATIENT ID:</b> | 256429        | <b>Date of Service</b>  | 03/25/09          |
| <b>PATIENT:</b>    | Geneva Watson | <b>Date of Service:</b> | 03/25/09          |
| <b>DOB:</b>        | [REDACTED]    | <b>Age:</b>             | ● years old       |
| <b>Employer:</b>   | Xtra Mile     | <b>Occupation:</b>      | Placement Manager |

**Referring Physician:** Pate, John, ;  
**Other Physicians:**

**Date of injury/onset:**

|              |              |
|--------------|--------------|
| <b>Date:</b> | <b>Type:</b> |
| 09/18/2007   | DOA          |

**REVIEW OF SYSTEMS:**

**Review of Systems:** General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT, musculoskeletal, skin and endocrine systems are normal except what is noted below:  
.No abnormal findings known

**REASON FOR VISIT:** The patient is here to discuss upcoming Lumbar Decompression surgery at L 3/4 and 4/5.

**RISKS AND BENEFITS DISCUSSION:** The risks and benefits of surgery were discussed with the patient in great detail including the risks of infection, bleeding, dural tear with cerebrospinal fluid leak, need for dural repair intraoperative or postoperative, instability at operated segment, need for stabilization with additional surgery like arthrodesis, nerve root injury with neurologic deficit, paralysis (rare), scar formation with worsening symptoms, incomplete relief of symptoms, poor outcome because of medical comorbidities, blood clots in the legs and lungs, heart attack, anesthesia related risks, blood transfusion related complications both with autologous blood donation and blood bank products. The patient understood the risks and benefits.

**ASSESSMENT:**

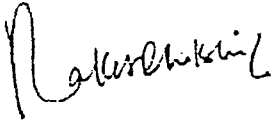
**DIAGNOSIS:** -L3-4 L4-5 lumbar spinal stenosis

**TREATMENT PLAN:** The patient had several questions and I answered them to the patient's satisfaction. The patient wants us to proceed with surgery. Carolina Brace was prescribed. A diagram was drawn and booklet was given regarding the patient's surgery.

**PRESCRIPTION:** No data for Prescription

Thank you,

Report Date: May 14, 2009 Patient: Watson, Geneva E DOS: 03/25/09



Rakesh P. Chokshi, M.D.  
Spine Surgeon

Pee Dee Spine Center  
Pee Dee Orthopaedic Associates  
This document was electronically signed on 03/25/09

Fax Created: Dated 4/8/2009 12:54:40 PM

Dr. John Pate





03/31/09 56 F  
MRSA: VRE:  
CHOKSHI, RAKESH PPee Dee  
Orthopaedic  
Associates, PAW.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
Dewey N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Dunlap, Jr., M.D., FACS901 E. CHEVES ST., SUITE 100 - FLORENCE, SC 29506-2769  
1580 FREEDOM BLVD., SUITE 100 - FLORENCE, SC 29505  
(843) 662-5233 - FAX (843) 432-1022 - WWW.PDOA.COM

Addendum Dated 03/13/09

3/13/2009 According to the patients SCDL her name is Elizabeth Watson.-ss

End Addendum Dated 03/13/09

PRE-ADMISSION ORDERS

PATIENTS NAME: Geneva Watson

DATE OF BIRTH: [REDACTED]

ADMIT PATIENT TO: (X) MCLEOD ( ) CAROLINAS

DATE: 3/31/2009 10.00

DATE OF SURGERY: 3/31/2009

TYPE OF SURGERY: decompression 3/4 4/5

DIAGNOSIS: zRC pre-admission *Lumbar Stenosis 724-2*  
*724-3 w/o myopathy Lumbago*

Allergies: No Known Drug Allergies

*per Austin*  
*3/13/09 10:21*

- (X) 1. CBC WITH DIFFERENTIAL V72.6
- (X) 2. BMP V72.6
- (X) 3. EKG V72.81
- (X) 4. PA CHEST V72.83
- (X) 5. U/A V72.6
- (X) 6. HIV V72.6
- (X) 7. ESR V72.6
- (X) 8. PT/INR V72.6
- (X) 9. PTT V72.6
- (X) 10. TYPE AND SCREEN V72.81

(X) 15. PLEASE FAX RESULTS TO SHARI AT 432-1022/fax to Dr pate

*Rakesh Chokshi*

PHYSICIAN'S SIGNATURE:

RAKESH CHOKSHI, M.D.

This document was electronically signed on 03/10/09 at 3/10/2009

000052

208



Pee Dee  
Orthopaedic  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
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### Lumbar Decompression Postop Examination

Patient ID: 256429

Date of Service: 04/22/09

Patient: Geneva Watson

Gender: female

DOB: [REDACTED]

Age: 56 years old

Employer: Xtra Mile

Occupation: Placement Manager

Referring Physician: Pate, John, ;

Other Physicians:

#### **SURGICAL PROCEDURE:**

| DATE       | TYPE                      | TIME SINCE SURGERY |
|------------|---------------------------|--------------------|
| 03/31/2009 | Lumbar Decompression L3-5 | 3 weeks            |

Allergies: No Known Drug Allergies

Current Meds: Fosamax, NORCO (Dosage: 7.5/325 SIG: 1-2 TABS PO Q 4-6 HOURS PRN PAIN  
Dispense: 75 Refills: 2), HCTZ

REASON FOR VISIT: 56 years old female here for postop follow up.

HPI: Ms. Geneva Watson underwent lumbar decompression at L3-L4 and L4-L5. She is doing reasonably good. She has some soreness, which will improve with time.

PE: She is walking well. She is wearing her braces. Incision is healing well.

IMAGING STUDIES: AP and lateral lumbar films showed laminectomy. No evidence of instability.

TREATMENT PLAN: Currently keep her out of work. The limitations were discussed. Follow up in four to six weeks.

DIAGNOSIS: -Status post lumbar decompression at L3-L4 and L4-L5.

PRESCRIPTION: No data for Prescription

Thank you,

Rakesh P. Chokshi, M.D.  
Spine Surgeon

000053 209



**Pee Dee  
Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
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Patient Name: Geneva E Watson

DATE: 04/22/09

**(X) UNABLE TO RETURN TO WORK**

**( ) RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS ON:**

- |                                                        |                                                        |
|--------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> No Lifting/Carrying over lbs. | <input type="checkbox"/> No repetitive bending         |
| <input type="checkbox"/> No sitting over hrs./day      | <input type="checkbox"/> No repetitive stooping        |
| <input type="checkbox"/> No standing over              | <input type="checkbox"/> Cannot reach above shoulder   |
| <input type="checkbox"/> No prolonged walking          | <input type="checkbox"/> No work involving use of hand |
| <input type="checkbox"/> No Climbing                   | <input type="checkbox"/> No repetitive squatting       |
| <input type="checkbox"/> No Kneeling                   | <input type="checkbox"/> No repetitive crawling        |
| <input type="checkbox"/> No repetitive twisting        | <input type="checkbox"/> No pushing or pulling         |

Other:

Return Appointment: 4-6 weeks

May return to work with no restrictions on

*Rakesh P. Chokshi*

Rakesh P. Chokshi, M.D.



**Pee Dee**  
**Orthopaedic**  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
Dewey N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Dunlap, Jr., M.D., FACS

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**Lumbar Decompression Postop Examination**

Patient ID: 256429 Date of Service: 05/20/09  
Patient: Geneva Watson Gender: female  
DOB: [REDACTED] Age: [REDACTED] years old  
Employer: Xtra Mile Occupation: Placement Manager

Referring Physician: Pate, John, ;  
Other Physicians:

**SURGICAL PROCEDURE:**

| DATE       | TYPE                      | TIME SINCE SURGERY |
|------------|---------------------------|--------------------|
| 03/31/2009 | Lumbar Decompression L3-5 | 2 months           |

Allergies: No Known Drug Allergies  
Current Meds: Fluoxetine Hydrochloride, Fosamax, HCTZ

**REASON FOR VISIT:** 56 years old female here for postop follow up.

**HPI:** Pre-operative symptoms improved; good relief of radicular symptoms.

**FOCUSED EXAM:** Incision is healing without signs of infection. Motor strength appears to be 5/5 in all the major muscle groups in lower extremities.

**RADIOGRAPHS:** Lumbar AP and lateral radiographs show laminectomy with no evidence of instability. Reviewed by me personally.

**ASSESSMENT:**

**DIAGNOSIS:** -Status post lumbar decompression at L3-L4 and L4-L5.

**PLAN:** Brace use discussed. Postoperative restrictions discussed. Questions answered. Currently, and keep her out of work. Start physical therapy. Follow up four to five weeks.

**PRESCRIPTION:** NAPROSYN (Dosage: 500MG SIG: 1 TAB PO BID WITH FOOD Dispense: 60 Refills: 0  
Method: Unknown Note: giving by our workers comp meds)

Thank you,

Rakesh P. Chokshi, M.D.

Report Date: June 01, 2009 Patient: Watson, Geneva E DOS: 05/20/09

## PEE DEE SPINE CENTER THERAPY PRESCRIPTION

PATIENT IN OFFICE ☐ YES ☒ NO

☐ OCCUPATIONAL THERAPY  
☒ PHYSICAL THERAPY

DATE: 05/28/09

PATIENT NAME: Watson Geneva

CHART # 256429

DIAGNOSIS: LBP  
TREATMENT FACILITY: HARTSVILLE PT

APPOINTMENT DATE: 06/02 TIME: 8:30

TO BE TREATED:

☒ L SPINE ☐ T SPINE ☐ C SPINE  
☐ OTHER:

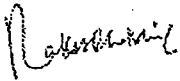
FREQUENCY: 2 X PER WEEK FOR 4 WEEKS

REHAB PLAN OF CARE:

|                                                                 |                                                   |                                                |
|-----------------------------------------------------------------|---------------------------------------------------|------------------------------------------------|
| <input checked="" type="checkbox"/> STRETCH/STRENGTH/MODALITIES | <input type="checkbox"/> LUMBAR/CERVICAL TRACTION | <input type="checkbox"/> FCE / ISOMETRIC       |
| <input type="checkbox"/> WILLIAMS & MCKENZIE                    | <input type="checkbox"/> WORK HARDENING           | <input type="checkbox"/> AQUATIC EXERCISES     |
| <input type="checkbox"/> ANTI-INFLAM. MODALITIES                | <input type="checkbox"/> AEROBIC ACTIVITY         | <input type="checkbox"/> SPINAL STAB.          |
| <input type="checkbox"/> BACK SCHOOL                            | <input type="checkbox"/> TENS UNIT                | <input type="checkbox"/> ROM, ACTIVE & PASSIVE |

PRECAUTIONS: S/P lumbar decompression 3/3/2009

PHYSICIAN SIGNATURE:



Rakesh P. Chokshi, M.D.

Fax Created - Dated 5/28/2009 1:28:04 PM

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212



**Pee Dee  
Orthopaedic**  
Associates, PA

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Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
Dewey N. Ervin, M.D. \* A. Cecil Bozard, Jr. M.D. \* Joseph W. Dunlap, Jr., M.D., FACS

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(843) 662-5233 - FAX (843) 432-1022 - WWW.PDOA.COM

**Patient Name:** Geneva E Watson

**DATE:** 05/28/09

**(X) UNABLE TO RETURN TO WORK until after next visit and P.T.**

**( ) RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS ON:**

- |                                                   |          |                                                        |
|---------------------------------------------------|----------|--------------------------------------------------------|
| <input type="checkbox"/> No Lifting/Carrying over | lbs.     | <input type="checkbox"/> No repetitive bending         |
| <input type="checkbox"/> No sitting over          | hrs./day | <input type="checkbox"/> No repetitive stooping        |
| <input type="checkbox"/> No standing over         |          | <input type="checkbox"/> Cannot reach above shoulder   |
| <input type="checkbox"/> No prolonged walking     |          | <input type="checkbox"/> No work involving use of hand |
| <input type="checkbox"/> No Climbing              |          | <input type="checkbox"/> No repetitive squatting       |
| <input type="checkbox"/> No Kneeling              |          | <input type="checkbox"/> No repetitive crawling        |
| <input type="checkbox"/> No repetitive twisting   |          | <input type="checkbox"/> No pushing or pulling         |

**Other:**

**Return Appointment:**

**May return to work with no restrictions on**

Rakesh P. Chokshi, M.D.

000057213



Pee Dee  
Orthopaedic  
Associates, PA

W.S. (Bill) Edwards, Jr., M.D. \* Rakesh P. Chokshi, M.D.  
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Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freels, M.D.  
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### Lumbar Decompression Postop Examination

Patient ID: 256429

Date of Service: 06/24/09

Patient: Geneva Watson

Gender: Female

DOB: [REDACTED]

Age: 56 years old

Employer: Xtra Mile

Occupation: Placement Manager

Referring Physician: Pate, John, ;

Other Physicians:

### **SURGICAL PROCEDURE:**

| DATE       | TYPE                      | TIME SINCE SURGERY |
|------------|---------------------------|--------------------|
| 03/31/2009 | Lumbar Decompression L3-5 | 3 months           |

Allergies: No Known Drug Allergies

Current Meds: Fluoxetine Hydrochloride, NAPROSYN (Dosage: 500MG SIG: 1 TAB PO BID WITH FOOD Dispense: 60 Refills: 0 Note: giving by our workers comp meds ), Fosamax, HCTZ

REASON FOR VISIT: 56 years old female here for postop follow up.

HPI: Physical therapy is not helping. She continues to have some ongoing low back pain. Posterior thigh and post buttock pain is better.

FOCUSED EXAM: Incision is healing without signs of infection. Motor strength appears to be 5/5 in all the major muscle groups in lower extremities.

RADIOGRAPHS: Lumbar flexion and extension radiographs show laminectomy with no evidence of instability. Reviewed by me personally. Some evidence of spondylosis in other levels as before.

### **ASSESSMENT:**

DIAGNOSIS: -Status post lumbar decompression at L3-L4 and L4-L5.

PLAN: Brace use discussed. Postoperative restrictions discussed. Questions answered. She is having difficulty with trying to work. Function capacity evaluation would be helpful to establish permanent work restriction.

PRESCRIPTION: No data for Prescription

Thank you,



Pee Dee  
Orthopaedic  
Associates, PA

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Patrick K. Denton, M.D. \* Anthony W. Alexander, M.D. \* Barry L. Clark, D.O.  
Nigel A.R. Watt, M.D. \* Robert E. Elvington, Jr. M.D. \* Douglas B. Freela, M.D.  
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(843) 662-5233 - FAX (843) 432-1022 - WWW.PDOA.COM

Addendum - Dated: 08/26/09

There is a typographical error in the Plan... It should read: From my standpoint, she has reached maximum medical improvement. (pln)

End Addendum - Dated: 08/26/09

### Lumbar Decompression Postop Examination

Patient ID: 258429

Date of Service: 08/12/09

Patient: Geneva Watson

Gender: [REDACTED]

DOB: [REDACTED]

Age: [REDACTED] years old

Employer: Xtra Mile

Occupation: Placement Manager

Referring Physician: Pate, John, ;

Other Physicians:

### **SURGICAL PROCEDURE:**

| DATE       | TYPE                      | TIME SINCE SURGERY |
|------------|---------------------------|--------------------|
| 03/31/2009 | Lumbar Decompression L3-5 | 5 months           |

Allergies: No Known Drug Allergies

Current Meds: Fluoxetine Hydrochloride, NAPROSYN (Dosage: 500MG SIG: 1 TAB PO BID WITH FOOD Dispense: 60 Refills: 0 Note: giving by our workers comp meds ), Fosamax, HCTZ

REASON FOR VISIT: 56 years old female here for postop follow up., and POST FCE

**HPI:** Ms. Geneva Watson returns with the functional capacity evaluation. The findings were reviewed by me. The findings were discussed with the patient. Essentially, the work capacity will be based on the Toumey Outpatient Rehabilitation Services' functional capacity evaluation. Her report summary shows her strength category and her job factor restrictions.

**FOCUSED EXAM:** Incision is healing without signs of infection. Motor strength appears to be 5/5 in all the major muscle groups in lower extremities.

**RADIOGRAPHS:** Lumbar radiographs show laminectomy with no evidence of instability. Reviewed by me personally.

### **ASSESSMENT:**



Report Date: August 26, 2009 Patient: Watson, Geneva E DOS: 08/12/09

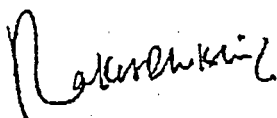
**DIAGNOSIS:** -Status post lumbar decompression.

**PLAN:** As long as the work is within that particular restrictions, I believe it is reasonable for her to continue working. If not, she may have to consider changing her work status. From my standpoint, she has not reached maximum medical improvement. Based on the AMA guidelines, 10% impairment rating of the whole person was given, given the nature of her residual symptoms.

Brace use discussed. Postoperative restrictions discussed. Questions answered.

**PRESCRIPTION:** No data for Prescription

Thank you,



**Rakesh P. Chokshi, M.D.**

Spine Surgeon

Pee Dee Spine Center

Pee Dee Orthopaedic Associates

This document was electronically signed on 08/12/09

Fax Generated: Dated: 8/19/2009 10:41:40 AM

Dr. John Pate

| APA #   | PHYSICIAN/<br>OTHER | GROUP/AGENCY                               | DATE OF<br>REPORT | PAGES              |
|---------|---------------------|--------------------------------------------|-------------------|--------------------|
| APA # 5 |                     | InMed Diagnostics Services<br>of S.C., LLC | 04/07/08          | 000061 –<br>000062 |

# InMed

Diagnostic Services of S.C., LLC

PATIENT NAME:  
DATE OF BIRTH:  
MR#  
STUDY:  
DATE OF STUDY  
REFERRING PHYSICIAN:

GENEVA WATSON  
[REDACTED]  
[REDACTED]  
MRI LUMBAR SPINE  
4-7-08  
CHOKSHI

**HISTORY:** S/P fall. Back pain. Right hip pain with left leg pain.

**TECHNIQUE:** MRI of the lumbar spine was performed with sagittal T1 weighted images, sagittal T2 weighted images, sagittal STIR images, axial T1 weighted images, and axial T2 weighted images obtained.

**FINDINGS:** There is a focus of increased signal seen in the body of L3, which most likely represents a hemangioma. Degenerative disc is noted at L1-L2 with an irregularity seen along the superior endplate of L2 consistent with a herniation pit or Schmorl's node in this area. The vertebral bodies themselves are in good alignment with no obvious subluxations noted. Mild spondylosis evident with small osteophytes at multiple levels. The conus of the spinal cord ends at L1. Axial images through L5-S1 show a mild posterior bulge. No evidence of impingement.

At L4-L5, there is a mild central bulge as well. This presses on the thecal sac and causes a mild stenosis in conjunction with some facet joint disease and hypertrophy of ligamentum flavum. There is some mild narrowing of the right neural foramen at this level secondary to the bulge and facet joint disease.

At L3-L4, there is also a prominent posterior bulge. Once again there is moderate stenosis secondary to the bulge, facet joint disease, and hypertrophy of ligamentum flavum. There appears to be some mild-to-moderate narrowing of the right neural foramen at this level secondary to the bulge.

At L2-L3, there is a mild posterior bulge with no obvious impingement. The study is otherwise unremarkable.

**IMPRESSION:** Degenerative changes are seen throughout the lumbar spine with some diffuse mild spondylosis noted. Degenerative discs are seen at L3-L4 and L4-L5 with posterior bulges at both of these levels.

CONTINUED ON PAGE TWO

**PAGE TWO**

**PATIENT NAME:**  
**DATE OF BIRTH:**  
**MR#**  
**STUDY:**  
**DATE OF STUDY**  
**REFERRING PHYSICIAN:**

**GENEVA WATSON**  
**[REDACTED]**  
**[REDACTED]**  
**MRI LUMBAR SPINE**  
**4-7-08**  
**CHOKSHI**

**These cause mild stenosis at L4-L5 and moderate stenosis at L3-L4 in conjunction with facet joint arthrosis and hypertrophy of ligamentum flavum. There is some moderate narrowing of the right neural foramen at L3-L4. Otherwise, the study is unremarkable with no other significant bulges or herniations noted.**

**Steven B. Glassman, M.D.**

**SBG/skd**

| APA #   | PHYSICIAN/<br>OTHER | GROUP/AGENCY                      | DATE OF<br>REPORT      | PAGES              |
|---------|---------------------|-----------------------------------|------------------------|--------------------|
| APA # 6 |                     | McLeod Regional Medical<br>Center | 03/31/09 –<br>04/01/09 | 000063 –<br>000069 |

## OPERATIVE REPORT

MCLEOD REGIONAL MEDICAL CENTER  
555 East Cheves St  
Florence, SC 29501-0551

NAME: Watson, Elizabeth  
MED. REC. NO.: 01-18-10-28  
DR. DICTATING: Rakesh P. Chokshi, M.D.  
PATIENT NO.: 000115003063  
DATE OF SURGERY: 03/31/2009

11ST110601

PREOPERATIVE DIAGNOSIS: Lumbar spinal stenosis lumbar 3-4, lumbar 4-5.

POSTOPERATIVE DIAGNOSIS: Lumbar spinal stenosis lumbar 3-4, lumbar 4-5.

PRIMARY SURGEON: Dr. Rakesh Chokshi.

FIRST ASSISTANT: Dan Koele, P.A.

PROCEDURE: Lumbar laminectomy L3, L4, L5, three levels decompress L3, L4, L5 nerve roots bilaterally.

ESTIMATED BLOOD LOSS: Less than 50 cubic centimeters.

COMPLICATIONS: None.

ANESTHESIA: General endotracheal.

INDICATIONS FOR SURGERY: Ms. Elizabeth Watson is a 56 year old female with history of back pain and anergic claudication not responding to conservative treatment and as a result surgical treatment is offered to her. Risks and benefits of surgery are discussed with her in detail. She consented for surgery. She understands that she has significant facet arthropathy which may lead to instability in the future for which she might require lumbar fusion surgery. She understands this and wants us to proceed.

PROCEDURE IN DETAIL: The patient was consented, brought to the operating room, placed in the supine position, general endotracheal anesthesia was administered. The patient was then placed in a prone position on a radiolucent Jackson spine top table. The surgical field was prepped and draped in the usual sterile fashion. Extremities padded. Genitalia was protected. Standard midline exposure was made. The subcutaneous tissues were divided meticulously down to the fascia and L3 and L4 and L5 interspaces were identified. Spinous processes \_\_\_\_\_ L3, L4 and L5 as needed be was performed to decompress lateral recess decompression and foraminotomies were performed to decompress L3, L4 and L5 nerve roots bilaterally. Ligamentum flavum was removed. Facet joint undercut as needed be. Ball-tipped probe was placed along the nerve root to make sure there was adequate decompression. Once we were satisfied with the overall decompression the wound was thoroughly irrigated and hemostasis achieved. Valsalva was performed to make sure there was no dural tear. Once we were satisfied with this Gelfoam was placed over the laminectomy site. Paraspinal musculature was replaced in anatomic location. The fascia was reapproximated with the help of 0-Vicryl and #1 Vicryl in interrupted stitches. Subcutaneous tissues closed with the help of 0-Vicryl and 2-0 Vicryl. The skin was closed with subcuticular stitch. Mastisol and Steri-Strips were applied. The patient tolerated the procedure well and was transferred to the recovery room in stable condition.

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Page 1 of 2

000063 ORIGINAL - 221  
Printed By JH

**OPERATIVE REPORT**

**MCLEOD REGIONAL MEDICAL CENTER**  
**555 East Cheves St**  
**Florence, SC 29501-0551**

11ST110601

NAME: Watson, Elizabeth  
MED. REC. NO.: 01-18-10-28  
DR. DICTATING: Rakesh P. Chokshi, M.D.  
PATIENT NO.: 000115003063  
DATE OF SURGERY: 03/31/2009

Electronically Signed By:  
Rakesh P. Chokshi, M.D. 04/06/2009 13:14

Rakesh P. Chokshi, M.D.

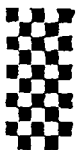
JA  
DD : 03/31/2009 10:48 A  
DT : 04/01/2009 8:11 A  
Job #: 000015510  
CC: Rakesh P. Chokshi, M.D.

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Page 2 of 2  
D... 111

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ORIGINAL - Printed 000064



31/2009 10:18AM

PAGE 1 OF 1

RADIOLOGY REPORT  
**McLEOD REGIONAL MEDICAL CENTER**

555 E. CHEVES STREET FLORENCE, SC 29506-2617

PHONE (843) 777-2087

PATIENT NAME: WATSON, ELIZABETH

DISCHARGE DATE:

PT ACCOUNT#: 000115003063

MR/RAD#: 1181028

ACCESSION#: 3898313

CID#: 1181028

DOB: [REDACTED]

AGE: [REDACTED]

SEX: [REDACTED] RACE: [REDACTED]

PHONE: [REDACTED]

PT CLASS: O FIN CLASS: A

ADDRESS: [REDACTED]

PT TYPE: Q PT NS/ROOM: DAYH-D14401

ORDER DR: RAKESH P CHOKSHI M.D.

ATTEND DR: RAKESH P CHOKSHI M.D.

COPY TO:

DIAGNOSIS: LUMBAR STENOSIS W/O MYOPATHY

TRANSCRIBED D/T: 200903311108

PROCEDURE: LUMBAR /1 VIEW / ORD #: 90006 Accession#: 3898313 CPT: 72020

ORDERED FOR: Mar 31 2009 7:00AM COMPLETED: Mar 31 2009 10:48AM

INDICATIONS/COMMENTS: DONE IN OR

RESULT: Lumbar spine:

There are probes posterior to the L3 and L5 vertebral bodies.

CONCLUSION: Lumbar spine:

There are probes posterior to the L3 and L5 vertebral bodies.

{read dr name}

\*\*\*Final Result\*\*\*

ELECTRONICALLY SIGNED BY:

CHENEY M MEIERE JR, M.D.

On: 200903311108

Printed: March 31, 2009 (11:09AM)

Page 1

FLORENCE RADIOLOGICAL ASSOCIATES

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000065 223



MCLEOD REGIONAL MEDICAL CENTER

WATSON, ELIZABETH 01181028115003063 aem

ender :   
ge :   
sposition : Home, Self Care (1)  
lmit Date : 03/31/2009  
S : 1  
sch Date : 04/01/2009

**edicare DRG Information**

491 BACK & NECK PROC EXC SPINAL FUSION W/O CC/MCC  
CMS wt 0.9383 A/LOS 2.2 G/LOS 1.8

**IC**

008 DISEASES & DISORDERS OF THE MUSCULOSKELETAL SYSTEM & CONN TISSUE

**mit Diagnosis**

72402 Spinal stenosis of lumbar region

**ncipal Diagnosis**

72402 Spinal stenosis of lumbar region  
Present On Admission: Y

**ondary Diagnoses**

4019 Essential hypertension, unspecified benign or malignant  
Present On Admission: Y  
73300 Osteoporosis, unspecified  
Present On Admission: Y

**ncipal Procedure**

0309 Exploration & decompression of spinal canal  
03/31/2009 218206

**er Procedures**

0309 Exploration & decompression of spinal canal  
03/31/2009 218206

# McLeod Health

## Charting Report

|                         |        |                                  |
|-------------------------|--------|----------------------------------|
| Name: WATSON, ELIZABETH | Sex: ● | Med. Rec #: 01181028             |
| DOB: [REDACTED]         | Age: ● | Account ID: 000115003063         |
| Address: [REDACTED]     |        | Admit Date: 03/31/2009 1:12:00PM |
| Phone: [REDACTED]       |        | Room: 110601                     |
| Physician:              |        | Drug Allergies:                  |
| Dept Chart #:           |        | D/C Date: 04/01/2009             |

Date/Time: 04/01/2009 8:08:00AM

Patient Room at Time of Encounter: 10601

### PHYSICAL THERAPY INITIAL EVALUATION ONE-TIME EVALUATION/DISCHARGE SUMMARY

Patient is a ● year old F admitted to MRMC on 03/31/2009 1:12:00 PM with a diagnosis of LUMBAR STENOSIS W/O. The patient was admitted from home.

**HISTORY OF PRESENT ILLNESS:** Pt. is s/p lumbar decompression L3-4 and L4-5.

**PAST MEDICAL HISTORY:** HTN, chronic back pain

**PRECAUTIONS/BARRIERS TO TREATMENT:** Back brace, Fall precautions

**SOCIAL HISTORY:** Per patient:

**HOME ENVIRONMENT:** One story home with steps to enter, handrail is available on both sides

**ASSISTANCE AT HOME:** Family lives with patient.

**EQUIPMENT ACCESS:** The patient does not have access to any needed equipment at this time.

**PRIOR LEVEL OF FUNCTION:** Patient independent with transfers. The patient ambulated independently without assistive device.

**S:** The patient reports that she walked with nurses last night and this am. Reported no pain when lying still.  
**PAIN:**

During PT session: Rated as a 4 out of 10 (measured on a 0-10 scale with 0=no pain and 10=unbearable pain).

Pain location: Back.

Measures taken to address pain: Patient used PCA pump.

**PATIENT GOALS:**

1 ) Patient would like to return home.

**O: GENERAL APPEARANCE:** Upon the therapist's arrival for the evaluation, the patient was found to be lying in bed, on IV and in NAD.

**BRACE TYPE:** Lumbosacral corset

**MENTAL STATUS:** Alert, Oriented X 3. Follows all commands. Patient appears pleasant, cooperative and motivated.

**ROM:** BUE and BLE is WFL.

**STRENGTH:** BUE and BLE is WFL.

**BED MOBILITY:**

(R)log rolling: Independent.

R sidelying <-> sit: Independent. Verbal cues were required for technique.

|                         |                          |                                  |
|-------------------------|--------------------------|----------------------------------|
| Name: WATSON, ELIZABETH | DOB: 01/05/1953          | Admit Date: 03/31/2009 1:12:00PM |
| Med. Record #: 01181028 | Account ID: 000115003063 |                                  |
| Dept Chart #:           |                          |                                  |

**TRANSFERS:**

Sit <-> stand: Standby assistance x 1 .

AMBULATION: Patient ambulated 250 feet x 1 without assistive device with standby assistance x 1 and IV follow. Minimal verbal cues were needed for proper breathing techniques.

BALANCE:

SITTING:

Static: good

Dynamic: good

STANDING:

Static: good

Dynamic: good

SAFETY: Patient is safe without assistance or supervision.

OTHER: N/A

TREATMENT RENDERED: Patient was instructed in the proper application of back brace and was able to verbalize good understanding of this. Patient was able to don/doff brace independently. Required with minimal assistance to tighten brace. Patient was also instructed in proper log rolling and was able to verbalize good understanding of this. Patient was able to log roll independently. Initial evaluation was completed. Mobility performed as above.

A: Patient presents with ROM, bed mobility, transfers, gait and balance WFL.

The patient would not appear to benefit from skilled Physical Therapy services at this time as patient is independent at this time. Rehabilitation potential is excellent based on the established goals. The short term goal (STG) was established with patient and/or caregiver consent and approval.

PROBABLE DISCHARGE PLAN: Home with Family.

SHORT TERM GOALS/LONG-TERM GOALS: (in 1 day):

1) Patient will be independent with gait with or without an assistive device before discharge home.

P: Discharge from Physical Therapy unless further followup requested.

**Treatment Rendered:**

|                       |    |         |
|-----------------------|----|---------|
| INPT PT CONSULT       | 0  | Minute  |
| PTINA - PT EVALUATION | 15 | Minutes |
| PTINA - GAIT TRG      | 15 | Minutes |

Total Treatment Time: 30 Minutes

Electronically Signed by: NORBERTA MONTES - PT

**DISCHARGE SUMMARY**

**MCLEOD REGIONAL MEDICAL CENTER**  
555 East Cheves St  
Florence, SC 29501-0551

NAME: Watson, Elizabeth  
MED. REC. NO.: 01-18-10-28  
DR. DICTATING: Daniel Koele, PA  
PATIENT NO.: 000115003063  
ADMIT DATE: 03/31/2009  
DISCHARGE DATE: 04/01/2009

Daniel Koele, PA dictating for Dr. Rakesh Chokshi

**ADMISSION DIAGNOSIS:**  
Lumbar spinal stenosis lumbar 3-4, lumbar 4-5.

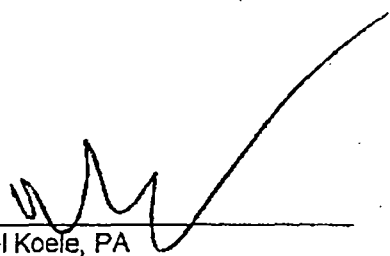
**DISCHARGE DIAGNOSIS:**  
Status post-lumbar decompression lumbar 3-4 and lumbar 4-5.

**HOSPITAL COURSE:** The patient did extremely well following surgical intervention. She did not complain of any lower extremity symptoms. She was afebrile. Vital signs are stable. Neurovascularly intact. Wound is clean and dry at the time of discharge.

**DISCHARGE ORDERS:** The patient is discharged home. Wound care instruction sheet with instructions to followup in the office at a preset time.

Electronically Signed By:  
Rakesh P. Chokshi, M.D. 04/06/2009 13:14

\_\_\_\_\_  
Rakesh P. Chokshi, M.D.

  
\_\_\_\_\_  
Daniel Koele, PA

TJ  
DD: 04/01/2009 7:28 A  
DT: 04/02/2009 1:41 P Job #: 000015802  
cc: Rakesh P. Chokshi, M.D.  
Daniel Koele, PA

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Page 1 of 1

ORIGINAL -

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| APA #   | PHYSICIAN/<br>OTHER | GROUP/AGENCY                                 | DATE OF<br>REPORT | PAGES              |
|---------|---------------------|----------------------------------------------|-------------------|--------------------|
| APA # 7 |                     | Tuomey Outpatient<br>Rehabilitation Services | 07/06/09          | 000070 –<br>000081 |

## Tuomey Outpatient Rehabilitation Services

Patient: Watson, Geneva  
Date of Onset: 9/18/2007  
Referral: Dr. Chokshi

Date of Birth: [REDACTED]  
Date of Test: 7/6/2009

### Dictionary of Occupational Titles Residual Functional Capacity (DOT-RFC) Battery

#### Introduction:

This report is rendered as the result of Ms. Watson's participation in a functional capacity evaluation (FCE) which occurred on Monday, July 06, 2009. This FCE is based on the Dictionary of Occupational Titles-Residual Functional Capacity (DOT-RFC) Battery. The DOT-RFC consists of a battery of job related tasks from job factors defined in the Dictionary of Occupational Titles (DOT). The DOT-RFC battery is one of the few functional capacity evaluations that has been published in peer reviewed journals<sup>1,2</sup>. The DOT-RFC battery has the distinction of being published in two journals. The importance of publication in a peer reviewed journal cannot be overstated. Unlike the majority of unpublished functional capacity evaluations, the reliability and validity of the DOT-RFC battery has been established<sup>1,2</sup>.

#### Definitions:

1. Dictionary of Occupational Titles (DOT) is a U.S. government publication that provides a description of occupational titles for most jobs in the United States, and establishes a strength classification for each of these occupations. These strength classifications are Sedentary, Light, Medium, Heavy, and Very Heavy.
2. Job Factors are specific job related tasks that are defined by the DOT for each occupation. These "job factors" include standing, walking, sitting, lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crawling, handling, fingering, and feeling.
3. Residual Functional Capacity (RFC) is defined as "the patient's" performance potential for various activities of daily living and vocational tasks.
4. Demand Minimum Functional Capacity (DMFC) is defined as the "least" acceptable level of activity that an individual may possess before returning to work.

#### Overview:

The RFC accomplishes three specific tasks. First, it is used to establish the degree of a person's medical impairment. Second, it translates that impairment into functional limitations. Third, it determines a person's work capacity based upon those functional limitations. However, testing residual functional capacity may not accurately reveal that a person can return to a specific occupation, as each job description has a minimal or specific work capacity defined as the "demand minimal functional capacity" (DMFC). The DMFC is based on the physical demands of each occupation. This DMFC as established by Fishbain<sup>1,2</sup> utilizes the DOT to standardize the Demand Minimum Functional Capacity. The establishing of standards allows for accurate assessment of determining if a person can return to an occupation. Therefore, individuals must be able to meet the established DMFC for each job factor as defined in the DOT in order to return to work. The establishing of values for the RFC distinguishes the DOT-RFC from other functional capacity evaluations that do not define the RFC.

## Tuomey Outpatient Rehabilitation Services

Patient: Watson, Geneva

Date of Birth: [REDACTED]

Date of Onset: 9/18/2007

Date of Test: 7/6/2009

Referral: Dr. Chokshi

### Residual Functional Capacity Classifications:

The following statements reflect the functional status of Ms. Watson on Monday, July 06, 2009. All statements pertain directly to the specific criteria for each activity performed under the DOT-RFC guidelines. The Demand Minimum Functional Capacity classification is stated when indicated:

1. Ms. Watson stood for 12 minutes. Her standing tolerance does not meet the Demand Minimum Functional Capacity requirement of standing for 30 minutes continuously.
2. Ms. Watson sat for 3 minutes. Her sitting tolerance does not meet the Demand Minimum Functional Capacity requirement of sitting for 30 minutes continuously.
3. Ms. Watson walked for 0.1 miles. Her walking tolerance does not meet the Demand Minimum Functional Capacity requirement of walking for one mile continuously (@ 2 mph).
4. Ms. Watson has a maximum lifting capacity of 10.0 pounds. This places her into the light category for lifting capacity (as defined by the DOT).  
  
Ms. Watson has an occasional lifting capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent lifting capacity (34% to 66% of the workday) is 5.0 pounds. Her constant lifting capacity (67% to 100% of the workday) is 2.0 pounds.
5. Ms. Watson has a maximum carrying capacity of 10.0 pounds. This places her into the light category for carrying capacity (as defined by the DOT).  
  
Ms. Watson has an occasional carrying capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent carrying capacity (34% to 66% of the workday) is 5.0 pounds. Her constant carrying capacity (67% to 100% of the workday) is 2.0 pounds.
6. Ms. Watson has a pushing capacity of 20.0 pounds. Her pushing capacity does not meet the Demand Minimum Functional Capacity requirement of 100 pounds.
7. Ms. Watson has a pulling capacity of 20.0 pounds. Her pulling capacity does not meet the Demand Minimum Functional Capacity requirement of 80 pounds.
8. Ms. Watson does meet the Demand Minimal Functional Capacity requirement of standing on a narrow beam for at least 30 seconds.
9. Ms. Watson does meet the Demand Minimal Functional Capacity requirement of crouching on a narrow beam for at least 30 seconds.
10. Ms. Watson does meet the Demand Minimal Functional Capacity requirement of walking on a narrow beam for at least 6 feet.
11. Ms. Watson was able to reach for objects in all directions with both arms. Her reaching ability does meet the Demand Minimum Functional Capacity requirement of reaching with the left and/or right arm.

## Tuomey Outpatient Rehabilitation Services

Patient: Watson, Geneva

Date of Birth: [REDACTED]

Date of Onset: 9/18/2007

Date of Test: 7/6/2009

Referral: Dr. Chokshi

12. Ms. Watson was able to climb up and down one flight of stairs. Ms. Watson does meet the Demand Minimum Functional Capacity requirement of climbing up and down one flight of stairs.
13. Ms. Watson's crouching ability does meet the Demand Minimal Functional Capacity requirement of stooping at least 75° while bending both knees.
14. Ms. Watson's stooping ability does not meet the Demand Minimum Functional Capacity requirement of flexing the trunk at least 75 degrees.
15. Ms. Watson did meet the Demand Minimal Functional Capacity requirement of kneeling on one knee and on both knees.
16. Ms. Watson is able to crawl on hands and knees, but she is not able to crawl on hands and feet. She does meet the Demand Minimum Functional Capacity requirement of crawling on hands and knees for six feet, but does not meet the Demand Minimum Functional Capacity requirement of crawling on hands and feet for six feet.
17. Ms. Watson is able to seize an object with either hand. She meets the Demand Minimum Functional Capacity requirement of seizing an object using either hand.
18. Ms. Watson is able to hold an object with either hand. She meets the Demand Minimum Functional Capacity requirement of holding an object using either hand.
19. Ms. Watson is able to grasp an object with either hand. She meets the Demand Minimum Functional Capacity requirement of grasping an object using either hand.
20. Ms. Watson is able to turn an object with either hand. She meets the Demand Minimum Functional Capacity requirement of turning an object using either hand.
21. Ms. Watson is able to pick up a nut using all fingers of either hand. She meets the Demand Minimum Functional Capacity requirement of picking up a nut using all fingers of either hand.
22. Ms. Watson has a left hand tip pinching capacity of 14.0 pounds. Her left hand tip pinching capacity meets the Demand Minimum Functional Capacity requirement of 4 pounds.  
  
Ms. Watson has a right hand tip pinching capacity of 12.0 pounds. Her right hand tip pinching capacity meets the Demand Minimum Functional Capacity requirement of 4 pounds.
23. Ms. Watson has a left hand key pinching capacity of 19.0 pounds. Her left hand key pinching capacity meets the Demand Minimum Functional Capacity requirement of 7 pounds.  
  
Ms. Watson has a right hand key pinching capacity of 17.0 pounds. Her right hand key pinching capacity meets the Demand Minimum Functional Capacity requirement of 7 pounds.



## Tuomey Outpatient Rehabilitation Services

Patient: Watson, Geneva

Date of Birth: [REDACTED]

Date of Onset: 9/18/2007

Date of Test: 7/6/2009

Referral: Dr. Chokshi

24. Ms. Watson has a left hand Palmer (3-Chuck) pinching capacity of 19.0 pounds. Her left hand Palmer (3-Chuck) pinching capacity meets the Demand Minimum Functional Capacity requirement of 6 pounds.

Ms. Watson has a right hand Palmer (3-Chuck) pinching capacity of 17.0 pounds. Her right hand Palmer (3-Chuck) pinching capacity meets the Demand Minimum Functional Capacity requirement of 6 pounds.

25. Ms. Watson is able to recognize different shapes with her hands. She meets the Demand Minimum Functional Capacity requirement of tactile shape recognition without visual assistance.

26. Ms. Watson is able to recognize different sizes with her hands. She meets the Demand Minimum Functional Capacity requirement of tactile size recognition without visual assistance.

27. Ms. Watson is able to distinguish between hot and cold with her hands. She meets the Demand Minimum Functional Capacity requirement of tactile temperature recognition without visual assistance.

28. Ms. Watson is able to recognize different textures with her hands. She meets the Demand Minimum Functional Capacity requirement of tactile texture recognition without visual assistance.

### Report Summary

#### Strength Category:

The Dictionary of Occupational Titles places Ms. Watson's occupation as a Director Of Placement in the sedentary strength category. Therefore, Ms. Watson meets these strength requirements and may return to work as a Director Of Placement.

Based on the strength classifications as established by the Dictionary of Occupational Titles, Ms. Watson is capable of assuming a position in the light strength category. Her maximum lifting capacity is 10.0 pounds, and her maximum carrying capacity is 10.0 pounds. According to the Dictionary of Occupational Titles, the light strength category is defined as having the ability to lift 10 to 20 pounds and carry 5 to 10 pounds.

#### Job Factor Restrictions:

In order for Ms. Watson to successfully return to work as a Director Of Placement, the following job factor restrictions must be met:

- No standing for more than 12 minutes continuously. (reference section 1)
- No sitting for more than 3 minutes continuously. (reference section 2)
- No walking for more than 0.1 miles continuously. (reference section 3)
- No pushing more than 20 pounds. (reference section 6)
- No pulling more than 20 pounds. (reference section 7)
- No stooping. (reference section 14)
- No crawling on hands and feet. (reference section 16)

## Tuomey Outpatient Rehabilitation Services

Patient: Watson, Geneva

Date of Birth: [REDACTED]

Date of Onset: 9/18/2007

Date of Test: 7/6/2009

Referral: Dr. Chokshi

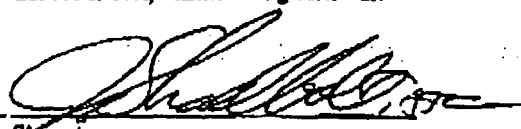
| Patient Strength Capacities |            |          |          |
|-----------------------------|------------|----------|----------|
| Strength Category: Light    |            |          |          |
|                             | Occasional | Frequent | Constant |
| Lifting                     | 10 pounds  | 5 pounds | 2 pounds |
| Carrying                    | 10 pounds  | 5 pounds | 2 pounds |

### Clinician Comments:

Client resting BP 124/93, HR 83. Client stopped walking tolerance stating "low back pain". Client stopped sitting stating "pressure and back pain". Client stopped standing stating "pressure and back pain". Lifting - client began holding right lateral hip with 10 pounds. Client stopped stating "back pain won't let me pick up box". Carrying - client began holding right quad. Client stopped carrying, stating "pulled in my low back". Client stopped pushing at 20 pounds, stating "low back pain". Client stopped pulling at 20 pounds, holding her low back and stating "low back pain". Client did not attempt crouching on beam. Client post-stairs BP 130/84, HR 119. Client grimaced during the kneeling tasks. Lumbar flexion ROM invalid; all measurements must be within 5% or 10%, whichever is greater - the client's measurements were 54, 43, 50

Jerry Shadbolt, ATC

Provider:

Signature: 

Provider:

Signature:

### References:

- 1) Fiskbine DA, et al. Measuring residual functional capacity in chronic low back pain patients based on the Dictionary of Occupational Titles, Spine 1994;19(8):872-880.
- 2) Fiskbine DA, et al. Validity of the Dictionary of Occupational Titles-Residual Functional Capacity Battery. Clinical Journal of Pain 1999;15(2):102-110.
- 3) U.S. Department of Labor, Employment and Training Administration. Dictionary of Occupational Titles, 4th edition: Supplement. Washington, DC: U.S. Government Printing Office, 1986.

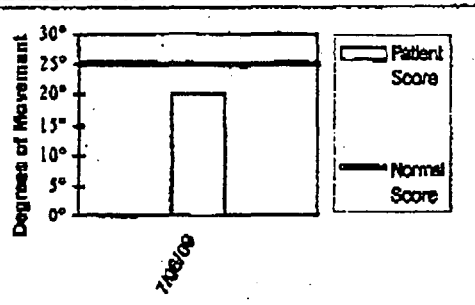
## Tuomey Outpatient Rehabilitation Services

### AMA Lumbar Spine Range of Motion Progress Report

Patient: Watson, Geneva

Date of Onset: 9/18/2007

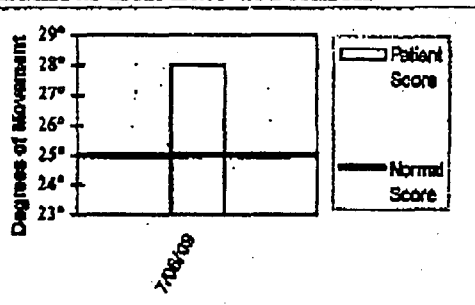
#### Lumbar Extension



| Date of Exam | Patient Score | Normal Score | Percent Improvement | Percent Deficit |
|--------------|---------------|--------------|---------------------|-----------------|
| 7/6/09       | 20.0          | 25.0         | Baseline            | 20.00%          |

Testing By: Tuomey Outpatient Rehabilitation Services  
Normative Data: American Medical Association<sup>1</sup>

#### Lumbar Left Lateral Flexion



| Date of Exam | Patient Score | Normal Score | Percent Improvement | Percent Deficit |
|--------------|---------------|--------------|---------------------|-----------------|
| 7/6/09       | 28.0          | 25.0         | Baseline            | No Deficit      |

Testing By: Tuomey Outpatient Rehabilitation Services  
Normative Data: American Medical Association<sup>1</sup>

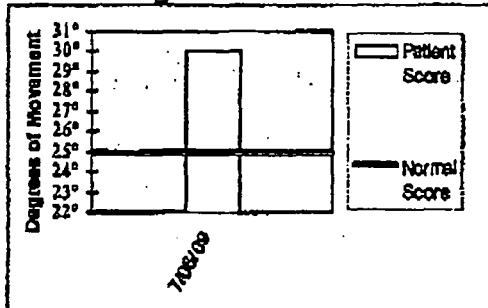
## Tuomey Outpatient Rehabilitation Services

### AMA Lumbar Spine Range of Motion Progress Report

Patient: Watson, Geneva

Date of Onset: 9/18/2007

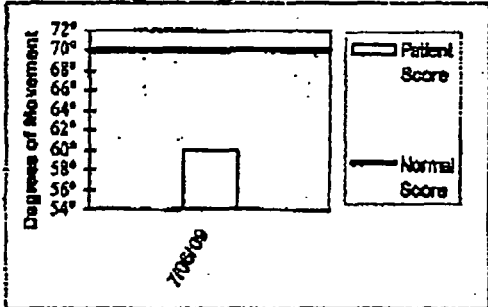
#### Lumbar Right Lateral Flexion



| Date of Exam | Patient Score | Normal Score | Percent Improvement | Percent Deficit |
|--------------|---------------|--------------|---------------------|-----------------|
| 7/6/09       | 30.0          | 25.0         | Baseline            | No Deficit      |

Testing By: Tuomey Outpatient Rehabilitation Services  
Normative Data: American Medical Association<sup>1</sup>

#### Left Straight Leg Raise



| Date of Exam | Patient Score | Normal Score | Percent Improvement | Percent Deficit |
|--------------|---------------|--------------|---------------------|-----------------|
| 7/6/09       | 60.0          | 70.0         | Baseline            | 14.29%          |

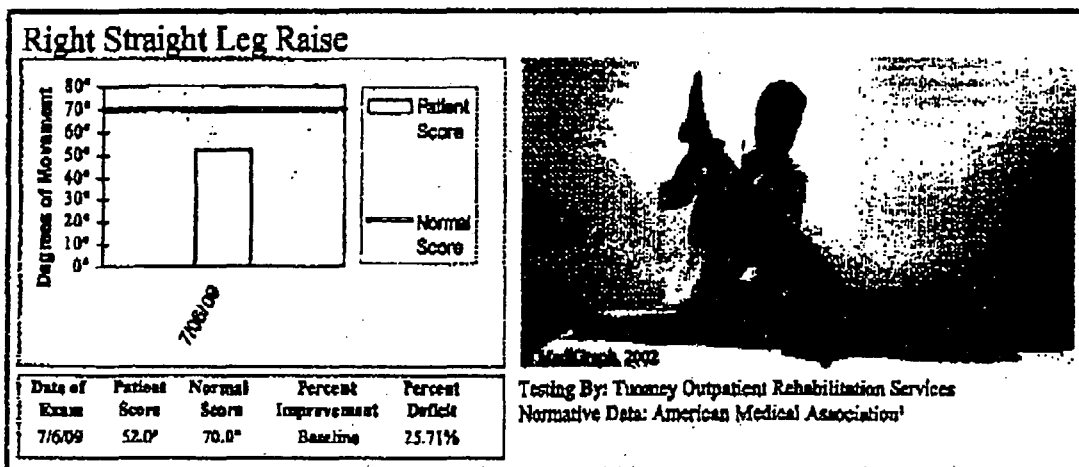
Testing By: Tuomey Outpatient Rehabilitation Services  
Normative Data: American Medical Association<sup>1</sup>

## Tuomey Outpatient Rehabilitation Services

### AMA Lumbar Spine Range of Motion Progress Report

Patient: Watson, Geneva

Date of Onset: 9/18/2007



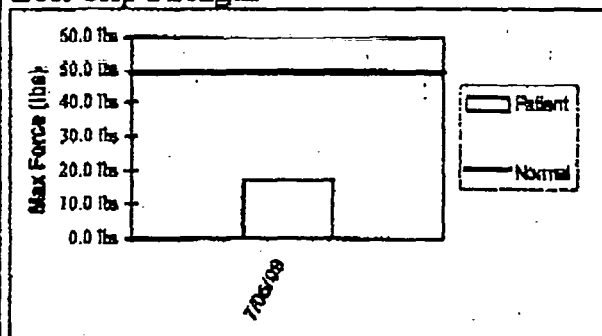
# Tuomey Outpatient Rehabilitation Services

## Bilateral Hand Strength Examination Progress Report

Patient: Watson, Geneva

Date of Onset: 9/18/2007

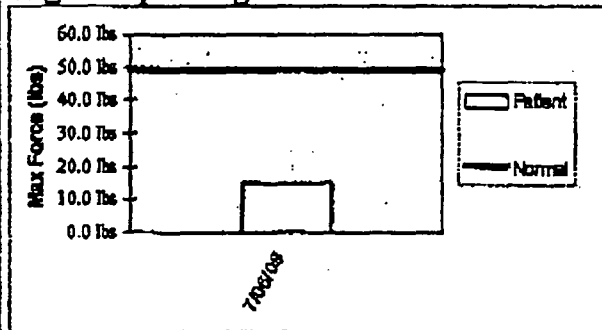
### Left Grip Strength



| Date of Exam | Patient Score | Normal Score | Coefficient of Variation | Percent Improvement | Percent Deficit |
|--------------|---------------|--------------|--------------------------|---------------------|-----------------|
| 7/6/09       | 17.0 lbs.     | 49.2 lbs.    | 23.5%                    | First Test          | 65.4%           |

Testing By: Tuomey Outpatient Rehabilitation Services  
Normative Data From Swenson AB(1)

### Right Grip Strength



| Date of Exam | Patient Score | Normal Score | Coefficient of Variation | Percent Improvement | Percent Deficit |
|--------------|---------------|--------------|--------------------------|---------------------|-----------------|
| 7/6/09       | 15.0 lbs.     | 49.2 lbs.    | 6.7%                     | First Test          | 69.5%           |

Testing By: Tuomey Outpatient Rehabilitation Services  
Normative Data From Swenson AB(1)

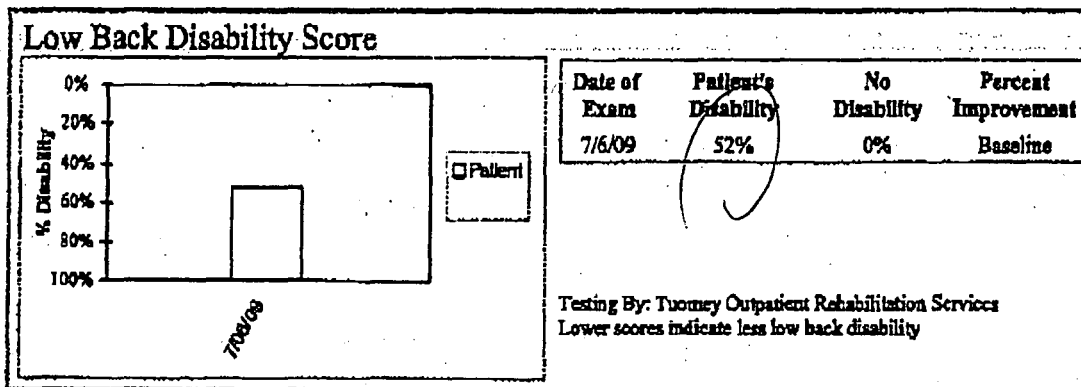
## Tuomey Outpatient Rehabilitation Services

### Oswestry Low-Back Pain Progress Report (Modified Version)

Patient: Watson, Geneva

Date of Onset: 9/18/2007

The Modified Oswestry Low Back Disability Index is a self-reported measure of a patient's perceived low back pain and difficulty with various activities of daily living (pain intensity, personal care, sitting, standing, walking, lifting, sleeping, social life, traveling, and employment). It was originally described by Fairbanks and colleagues (1) in 1980 and was slightly modified by Fritz and Irrgang (2) in 2001. The Modified Oswestry Low Back Disability Index is divided into ten sections with each section containing six individual statements. Each individual statement is rated from 0 (no pain or difficulty) to 5 (severe pain or difficulty). Overall scores range from 0 to 100% with lower scores indicating less disability. The Oswestry Low Back Disability Index is a well-known outcome measure used for treatment planning, monitoring progress, and to determine one's disability as it relates to his or her daily functional activities. Two day test-retest reliability of the Oswestry Disability Questionnaire was excellent (1,2). It also demonstrated evidence of good internal consistency, content validity (2) and concurrent validity (1,3,4). The Modified Oswestry Low Back Disability questionnaire demonstrated superior measurement properties compared with the Quebec Back Pain Disability Scale (2).



#### References

- 1) Fairbanks JCT, Cooper JD, Davis JB, O'Brien JP. The Oswestry disability questionnaire. *Physiotherapy*. 1980;66:271-273.
- 2) Fritz JM, Irrgang JJ. A comparison of a modified Oswestry low back pain disability questionnaire and the Quebec back pain disability scale. *Physical Therapy* 2001;81(2):776-786.
- 3) Kaplan GM, Wurtzle SK, Gillis D. Maximal effort during functional capacity evaluations: An examination of psychological factors. *Arch Phys Med Rehabil*. 1996;77:161-164.
- 4) Strong J, Ashton R, Large RG. Function and the patient with chronic low back pain. *Clin J Pain* 1994;10:191-196.

## Tuomey Outpatient Rehabilitation Services

### Waddell Nonorganic Signs Test Report

Patient: Watson, Geneva

Date of Onset: 9/18/2007

The Waddell Nonorganic Signs (WNOS) test was originally developed by Gordon Waddell and colleagues, and won the 1979 Volvo Award in Clinical Science. A total of eight physical signs were developed and grouped into five categories. Each sign is scored as either negative or positive. In categories with more than one physical sign, only one positive score for that particular category can be registered yielding a maximum total score of five. Waddell defines nonorganic low back pain as signs that are distinguishable from the standard clinical signs of pathology, and correlate with other psychological data (1). Observation of nonorganic signs will identify individuals whose recovery from injury may be affected by psychosocial factors, and who may benefit from psychosocial intervention or treatment. The WNOS test is frequently used in clinical practice, in standardized examinations, and in regulatory guidelines that address symptom magnification or exaggeration (2,3). The WNOS test is also used to "detect whether patients were accurately reporting pain (4), and to "establish the authenticity or validity of pain reports (5). The WNOS test has been shown to have a high degree of interrater reliability (1,6-8), and in analysis of concurrent validity, it is used as the "gold standard" (9). The validity of nonorganic signs supports the prediction of treatment outcomes (1,5-9).

#### Interpretation of Scores:

A patient with positive Waddell signs is one who scores positive in three or more categories and is considered to have nonorganic behavior. Nonorganic low back pain is abnormal behavior that does not follow a normal pattern of musculoskeletal and neurological signs and symptoms.

A patient with negative Waddell signs is one who scores positive in less than three categories and is considered to have organic behavior. Organic low back pain is normal behavior that usually follows a normal pattern of musculoskeletal and neurological signs and symptoms.

#### Patient Test Score(s):

On Monday, July 06, 2009 Ms. Watson scored a 0/5. This score falls within the acceptable range and suggests organic behavior.

#### References

- 1) Waddell G, McCulloch JA, Kummel E, Venner RM. Nonorganic physical signs in low-back pain. *Spine*. 1980;5:117-125.
- 2) Leebner DE, Bradbury J, Bradley LA. Detecting sincerity of effort: a summary of methods and approaches. *Phys Ther*. 1998;78:867-887.
- 3) Saunders RL, Beisner KL. Estimates of weight that subjects can lift frequently in functional capacity evaluations. *Phys Ther*. 1997;77:1717-1728.
- 4) Lehmann TR, Russell DW, Spratt KP. The impact of patients with nonorganic physical findings on controlled trial of transcutaneous electrical nerve stimulation and electroacupuncture. *Spine*. 1983;8:625-634.
- 5) Spratt KP, Lehmann TR, Weinstein JN. A new approach to the low-back physical examination: behavior assessment of mechanical signs. *Spine*. 1990;15:96-102.
- 6) Waddell G, Main CJ, Morris EW, et al. Normality and reliability in the clinical assessment of backache. *Br Med J Clin Res*. 1982;284:1519-1523.
- 7) Driebe RB, Doney NC. A prospective investigation into the orthopedic and psychologic predictors of outcome of first lumbar surgery following industrial injury. *Spine*. 1984;9:614-623.
- 8) Karas R, McIntosh G, Hall H, et al. The relationship between nonorganic signs and centralization of symptoms in prediction of return to work for patients with low back pain. *Phys Ther*. 1997;77:354-360.
- 9) Ohlund C, Lindstrom I, Areskog B, Bak C, Peterson LE, Nachemson A. Pain behavior in industrial subacute low back pain. Part I. Reliability: concurrent and predictive validity of pain behavior assessments. *Pain*. 1994;58:201-209.





Name: Watson, Geneva E  
Age: ●  
Gender: ●  
Medrac: 236678  
Acct: 12814215  
Attending: TDB  
Primary Nurse: KMS  
Bed: ED 1-T 2

## TUOMEY HEALTHCARE DISCHARGE INSTRUCTIONS

\* The examination and treatment you received in the emergency department has been rendered on an emergency basis only and is not meant to replace complete care from a personal physician or clinic. \*

FINAL DIAGNOSIS  
acute back injury

FOLLOWUP CONTACTS

### SPECIAL INSTRUCTIONS

Take medication as prescribed  
Return if worse  
Off work the next 2 days, see your doctor or company doctor before returning to work.

\* X-rays. X-rays are read initially by the emergency physician. The X-ray will be read by a radiology physician specialist within 24 hours. If the radiologist notes any differences, you will be contacted by the emergency department. \*

\* Lab Work. Results of lab testing done in the Emergency Department are available to your private physician. Lab results cannot be given over the Emergency Department phone.

\* IMPORTANT: If your condition gets worse or you have any concerns and you cannot contact your physician, return promptly to Tuomey Healthcare Systems Emergency Department. (803)774-9111

\*\*Disclaimer: Home medications and allergies listed on Patient Medication History Record are as reported by patient/family to Tuomey ED staff.\*\*

| APA #   | PHYSICIAN/<br>OTHER | GROUP/AGENCY                           | DATE OF<br>REPORT | PAGES              |
|---------|---------------------|----------------------------------------|-------------------|--------------------|
| APA # 8 | Consent Order       | SC Workers' Compensation<br>Commission | 09/13/08          | 000082 –<br>000083 |

## BEFORE THE

## SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| Geneva E. Watson,                    | ) | W.C.C. FILE NO. 0715014 |
|                                      | ) |                         |
| Employee/Claimant,                   | ) |                         |
|                                      | ) |                         |
| -vs-                                 | ) |                         |
|                                      | ) |                         |
| XTRA Mile Driver Training, Inc.,     | ) | CONSENT ORDER           |
|                                      | ) |                         |
| Employer, and                        | ) |                         |
|                                      | ) |                         |
| Hartford Underwriters Insurance Co., | ) |                         |
|                                      | ) |                         |
| Carrier,                             | ) |                         |
|                                      | ) |                         |
| Defendants.                          | ) |                         |

STATEMENT OF THE CASE

This matter was scheduled for a Hearing before the undersigned Commissioner on February 11, 2008 pursuant to the Claimant's Form 50. Disputes existed between the parties concerning the Claimant's entitlement to medical and compensation benefits under the Workers' Compensation Act. In an effort to resolve the current disputed issues between the parties and avoid the need for the Hearing scheduled on February 11, 2008, the parties have agreed to stipulate to the following terms and request that the same be incorporated and approved as an Order of the Workers' Compensation Commission:

1. All parties in this proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act.
2. The Claimant sustained an injury to her low back by accident arising out of and in the course of her employment with XTRA Mile Driver Training, Inc. on September 18, 2007.
3. The Claimant has not reached maximum medical improvement for her low back injury and the Defendants are responsible for all causally related medical treatment to date and further causally related medical care and treatment as directed by Dr. Rakesh P. Chokshi, who shall be the Claimant's authorized

00008242

treating physician, until the Claimant has reached maximum medical improvement for her causally related and compensable low back injury.

4. The Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83.
5. The Claimant is entitled to temporary total disability benefits from September 22, 2007 and continuing until such time as temporary disability compensation is terminated, reduced, or suspended in accordance with the terms and provisions of the Workers' Compensation Act.
6. The Hearing scheduled for February 11, 2008 is cancelled and the file is to be returned to General Files until such time as a Hearing is requested by either party.
7. No fines or penalties are assessed to either party in this matter.
8. All other issues are held in abeyance.

IT IS, THEREFORE, HEREBY ORDERED that the above stated stipulations are approved and incorporated as findings of the Workers' Compensation Commission in connection with this matter.

IT IS SO ORDERED.

Dated: February 13, 2008

We Consent:

[Signature]  
Stephen J. Wukela, Esquire  
Attorney for the Claimant

Dated: 2/6/08

[Signature]  
F. Reid Warder, Jr., Esquire  
Attorney for Defendants

Dated: 2/6/08

[Signature]  
Commissioner David W. Huffstetler

#### CERTIFICATE OF SERVICE

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

This 13 day of February, 2008  
By [Signature]  
Administrative Assistant to the Commissioner

| APA #   | PHYSICIAN/<br>OTHER              | GROUP/AGENCY | DATE OF<br>REPORT | PAGES              |
|---------|----------------------------------|--------------|-------------------|--------------------|
| APA # 9 | J. Adger Brown, Jr., MA,<br>CDMS |              | 09/21/09          | 000084 –<br>000090 |

J. Adger Brown, Jr., MA, CDMS  
Rehabilitation Consulting

Tel: (803) 738-0347

Fax: (803) 787-8662

4705 Crystal Drive  
Columbia, SC 29206

September 21, 2009

TRANSMITTED VIA E-MAIL

Mr. Stephen J. Wukela, Attorney at Law  
Wukela Law Firm  
Post Office Box 13057  
Florence, SC 29504-3057

RE: Claimant :Elizabeth Watson  
Employer :Xtra Mile Driver's Training, Inc.  
DOA :9/18/07  
SSN :  
Date of Interview :9/18/09  
Our File No. :09-0937

Dear Mr. Wukela:

Attached please find my evaluation report on your client, Beth Watson. As I have stated, I believe this lady is totally disabled based largely on the functional capacity evaluation completed at Tuomey. When I was at your office, I discussed the numerous problems surrounding the FCE including, but not limited to, the evaluator's gross misinterpretation of their own data; however, I do not dispute the evaluator's capacity to measure and report their observations of this lady's functional abilities. When one looks at the data that was collected, the only conclusion that can be drawn is that this individual is incapable of any sustained employment.

Thank you for allowing me to assist you in this lady's evaluation. If you have any questions, please don't hesitate to call me.

Sincerely yours,

*J. Adger Brown, Jr.*

J. Adger Brown, Jr., MA, CDMS  
Rehabilitation Consultant

JAB:gl

000034245

J. Adger Brown, Jr., MA, CDMS  
Rehabilitation Consulting

Tel: (803) 738-0347  
Fax: (803) 787-8662

4705 Crystal Drive  
Columbia, SC 29206

September 21, 2009

TRANSMITTED VIA E-MAIL

RE: Claimant :Elizabeth Watson  
Employer :Xtra Mile Driver's Training, Inc.  
DOA :9/18/07  
SSN :[REDACTED]  
Date of Interview :9/18/09  
Our File No. :09-0937

**VOCATIONAL EVALUATION REPORT**

**INTRODUCTION:**

Beth Watson is a [REDACTED] year old female kindly referred to me by her attorney in connection with a work-related injury occurring back in September 2007. Ms. Watson, who was employed as a driver placement specialist for Xtra Mile Driver's Training, a CDL truck driver training company, sustained an injury when she inadvertently slipped on a golf ball that had been left on the floor by one of the company's owner's children. She fell her legs went out from under her, with her landing on her lower back. Ms. Watson's complaints are relative to pain in the lower back and difficulty being in one position or another for more than short periods of time.

This evaluation is sought to discuss the impact of Ms. Watson's injury on her ability to return to her former work or any other type of employment consistent with her age, education, work experience, and physical limitations. The report that follows is based on my clinical interview with Ms. Watson and also on a review of medical records, including the Emergency Room records of Dr. John M. Pate, Jr., M.D., office notes of Dr. Rakesh Chokshi, M.D., who has been the only significant medical provider in this case, physical therapy records from Tuomey Healthcare, and a functional capacity evaluation also from Tuomey Healthcare.

**MEDICAL HISTORY:**

Ms. Watson advises me that her history is negative for any prior work-related injuries, significant motor vehicle accidents, or any serious personal injuries. Her history is likewise negative for any

000035-246

serious illnesses during her lifetime. When Ms. Watson was about twelve years old, she underwent an appendectomy, had a tubal ligation about twenty-five years ago and a couple of years thereafter had an tubular pregnancy.

As relates to the current matter, the records show that this lady was transported by ambulance to Tuomey Hospital where she was seen by Dr. John Pate, who documented the mechanics of the injury and took her out of work for a couple of days. By September 24, 2007, she was no better and wisely insisted on seeing an orthopaedic specialist.

It is at this point that Ms. Watson began her long-term treatment with Dr. Chokshi of Pee Dee Orthopaedics. Dr. Chokshi saw this lady for the first time on October 1, 2007, diagnosing a lumbar sprain/strain with lumbar spondylosis, with degenerative disc changes at multiple levels exacerbated by her fall. Initially, he did not see her as being a surgical candidate but kept her out of work and started her on medication. An epidural injection was tried without benefit. On October 1, 2008, her condition had apparently progressed to the point that Dr. Chokshi was recommending lumbar decompression at L3-4 and L4-L5 with a possible fusion. A preoperative MRI showed central canal stenosis at the aforementioned disc levels. Surgery was performed on March 31, 2009, consisting of a lumbar laminectomy at L3, L4 and L5 with decompression of the nerve roots at the same level bilaterally.

Immediately following surgery, Ms. Watson was doing fairly well. with her symptoms improved and having good relief of her radicular symptoms. She was placed in a brace and then apparently a course of physical therapy, which was noted on June 24, 2009, as not being of any help. Dr. Chokshi then made recommendations for the completion of a functional capacity evaluation.

A functional capacity evaluation was performed at Tuomey Outpatient Rehabilitation Services on July 6, 2009. If one reads the entire FCE, one will note a significant inconsistency between the data collected and the summary opinions of the athletic trainer who did the functional capacity evaluation. The data that was collected during the course of the FCE shows that Ms. Watson could only stand for twelve minutes, more importantly sit for no more than three minutes, walk for about a tenth of a mile, and lift no more than a maximum of ten pounds. Such findings are, by definition, indicative of an individual who is incapable of even sedentary employment, and in fact describes such a limited a range of sedentary activity as to preclude any type of sustained work activity.

For the reader's benefit, sedentary work is defined by the US Department of Labor in the *Dictionary of Occupational Titles* and the *Code of Federal Regulations* as the ability to lift a maximum of ten pounds on an occasional basis (up to one-third of the day) and lift a negligible amount of weight such as paper, pencils, and ledgers, on a frequent basis. The full range of sedentary work is also defined as requiring the ability to sit for six out of eight hours a day, although brief periods of standing and



requiring regular reading and writing. There is no history of any military service.

#### **WORK HISTORY:**

At the time of Ms. Watson's injury, she was employed by Xtra Mile Driver's Training, Inc., as a truck driver placement specialist. She began this work in June of 2007, was injured on September 18, 2007 stating that was her last day of employment. It is noted that there are several references in Dr. Chokshi's records about this lady having trouble working or continuing her job; however, it is understood this lady has never worked since the date of accident. In her job, she was making \$450.00 an hour for work that was largely sedentary in nature and skilled. In short, Ms. Watson's responsibilities were to arrange for placement of truck drivers upon completion of their CDL training. She would regularly contact trucking companies to assess their needs, secure application blanks from them, pre-interview drivers, assist them in filling out applications, and matching perspective drivers to employers. Ms. Watson performed other secretarial duties such as typing letters of introduction, doing filing, answering the phone, and other work that kept her pretty much confined to a desk, although brief standing was part of her work.

Between 2000 and 2007, Ms. Watson worked for White Directory Publishing as a sales associate, selling Yellow Pages ads. This was a combination of inside and outside sales, making telephone contacts, setting up appointments, visiting customers, demonstrating different ad styles on a laptop computer, negotiating and concluding the sales, and arranging for print advertising to be placed in the Yellow Pages. This work was light and skilled, for which she was being paid approximately \$52,000 a year, with that salary including both base salary and commission.

Between 2000 and 2004, Ms. Watson also worked for Palmetto Waste Services, a company owned by her husband, as the operating manager. Part of the time she worked for Palmetto Waste Services overlaps with the time she worked for White Directory Publication. In her job at Palmetto Waste, she handled the accounts payable, accounts receivable, general accounting, wrote the checks and generally handled the day-to-day operations of her husband's business which was one of commercial and residential waste collection. This work was skilled and performed at the sedentary to light level of physical exertion, with her being variably compensated depending on the business's income, but usually in the range of \$200.00 to \$250.00 per week. Prior to 2000, Ms. Watson states that she worked for a number of companies, the names of which she could not specifically recall but always in the area of some sort of outside or inside sales work analogous to the work at White Directory Publishing, newspaper advertising sales, or the like.

In summary, all of Ms. Watson's work has been in the light to sedentary level of exertion of a clerical, sales, secretarial type. She has acquired a number of skills in preparing reports, negotiating

walking are tolerated.

---

Although the evaluator states that Ms. Watson is capable of returning to her former sedentary job, that is a clearly an inaccurate statement assuming the accuracy of the measurements the evaluator took. Returning to Dr. Chokshi, he endorsed the restrictions of the FCE, stating that she could function within those limitations.

According to Ms. Watson, she is not experiencing any significant numbness or tingling, denies any particular problems reaching overhead, but describes the ability to sit for no more than a few minutes to perhaps ten minutes at a maximum, can stand and walk in combination for perhaps thirty minutes on a regular basis but for no more than an hour at a time. She further states that she is avoiding all bending activities, preferring instead to kneel or. She describes the ability to lift perhaps ten pounds on a one-time basis under ideal conditions with the inability to do any significant lifting on a sustained basis. She reports climbing stairs slowly, denying any problems with the use of her hands, her speech is normal, she states she wears contacts, and has some loss of hearing on her left side due to a punctured eardrum.

Ms. Watson notes significant problems with sleep, having difficulty falling asleep and waking up frequently throughout the night. She states that she believes she gets somewhere between four and five hours of broken sleep on a good night. She drives in the local area without difficulty, but has problems with longer trips.

Ms. Watson is a left-hand dominant individual who is five feet three inches tall and now weighs 161 pounds. She reports that at the time of her accident she weighed 147 pounds, gained up to her highest level of 172 pounds and has been trying to lose weight to reduce the pressure on her back. Presently, she is taking high blood pressure medication, prescription medication for weight control and Fosamax to strengthen her bones. Ms. Watson is not on any prescription pain medication, anti-inflammatories or muscle relaxants. She does use over-the-counter arthritis strength Tylenol and calcium supplements. In addition to her medication, she tries to stay active by walking some to keep herself loosened up. Ms. Watson is no longer under active medical care, having been discharged by Dr. Chokshi, but does follow with her family doctor for general health problems.

#### **EDUCATIONAL BACKGROUND:**

Ms. Watson advises me that she graduated from the twelfth grade at ██████████ in 1971. She then took some secretarial courses in the early 1980s at the Kershaw County Vocational Center. Based on Ms. Watson's education, self-report, and work history, the assumption can reasonably be made that this is a literate individual who would not have any problems in a job

with others, closing sales, keeping records, filing, and other skills that would be readily transferrable to other work at the light or sedentary level of exertion assuming an individual had the physical capacity for this type of employment.

#### **OBSERVATIONS:**

Ms. Watson arrived on time for her scheduled appointment with me. Her presentation was that of a neatly and professionally dressed lady who appeared her stated age. Throughout the course of our interview, which lasted approximately an hour and twenty minutes, Ms. Watson sat uncomfortably in a straight-back, office-style chair, shifting about frequently and frequently getting up and changing positions, apparently being quite uncomfortable and unable to be in one position or another for more than about five to ten minutes at a time.

The information Ms. Watson provided was consistent with the medical record. There was no evidence of exaggeration or embellishment, with her overall demeanor being consistent with someone who is frustrated with her inability to work, would like to return to work but is being stymied by her physical limitations. There was nothing in Ms. Watson's presentation to suggest anything less than a cooperative and forthright attitude. In short, this lady's presentation is consistent with the data collected in the FCE; that is, an individual who would like to return to work but can't as she can't be in one position or another long enough to do any significant amount of work.

#### **CONCLUSIONS:**

Beth Watson is a [REDACTED] year old lady who, for employment purposes, is now considered an older worker. She has been out of work for over two years, statistically making it unlikely that she will ever return to employment as older workers usually face such significant problems, discrimination and limitations that return to work is quite problematic. Ms. Watson was involved in a bizarre, yet serious work accident, in September 2007, was under prolonged treatment by Dr. Rakesh Chokshi, and underwent low back surgery in March 2009. The only document that speaks to this lady's functional limitations is a functional capacity evaluation performed at Tuomey Hospital in July of 2009. The data collected is very clear that this lady is incapable of being in one position or another for more than a few minutes. Specifically, Ms. Watson was found incapable of sitting for any more than about three minutes, and is unable to meet the minimum demands for even sedentary employment.

One of the most basic requirements of any employment is that an individual physically show up at the job on a regular and consistent basis. Once they are at the jobsite, it is necessary that the person

Elizabeth Watson  
September 21, 2009  
Page 6

do work of value to the employer. In order to perform any type of work, you have to be at your workstation performing physically within the limits required by the employment. In short, someone has to be able to physically sit, stand, or walk long enough to do something of value. The functional capacity evaluation shows that Ms. Watson has to constantly be changing positions, can't sit for more than for a few minutes, can't stand for more than a few minutes, and can perform only a negligible amount of lifting. In Ms. Watson's prior employment, she did not have to do much in the way of lifting but, as is the case with sedentary employment, but had to sit for extended periods of time. Ms. Watson is clearly unable to engage in even this minimal activity.

Based on the information available for my review, chiefly the functional capacity evaluation, it is my opinion that Ms. Watson is incapable of returning to her former work and would not be able to compete for any other type of employment for the same reason. When this is combined with an individual of advanced employment age who has been out of work for two years, with a history of back injury and back surgery, it becomes even more apparent that this lady is totally disabled.

I understand that Ms. Watson has placed her application for social security disability benefits. As a vocational expert for the Social Security Administration, if I were to assume an individual of this lady's age, education, work history, and functional limitations, it would be my opinion that she would undoubtedly qualify for social security disability benefits under Grid Rule 201.02, which presumes such an individual to not only be unhireable but physically incapable of sustained work.

*J. Adger Brown, Jr.*

J. Adger Brown, Jr., MA, CDMS  
Rehabilitation Consultant

JAB:gl

| APA #  | PHYSICIAN/<br>OTHER                             | GROUP/AGENCY                       | DATE OF<br>REPORT | PAGES  |
|--------|-------------------------------------------------|------------------------------------|-------------------|--------|
| APA#10 | Letter to Claimant from<br>James D. Seagle, Jr. | XTRA Mile Driver<br>Training, Inc. | 09/22/09          | 000091 |

# **XTRA MILE DRIVER TRAINING, INC.**

855 Highway 15 North  
BISHOPVILLE, SC 29010  
803-484-6313 866-484-6313 FAX 803-484-6217

---

**September 22, 2009**

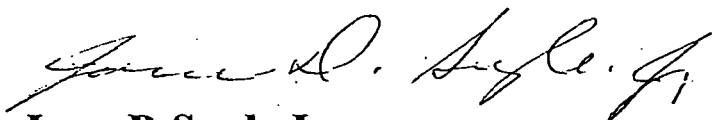
**Mrs. Geneva Watson**  
[REDACTED]  
[REDACTED]

**Dear Mrs. Watson:**

**Subject: Return to work**

**Mrs. Watson, Xtra Mile still has a position that we have been holding for you. If you wish to fulfill this position, please return to work on Monday, September 28, 2009.**

**Regards,**



**James D. Seagle, Jr.  
Director/President**

**JDS/wss**

**cc: Wukela Law Firm  
Wood & Warder, LLC**

000091253

| APA #  | PHYSICIAN/<br>OTHER             | GROUP/AGENCY | DATE OF<br>REPORT | PAGES |
|--------|---------------------------------|--------------|-------------------|-------|
| APA#11 | Deposition of Jerry<br>Shadbolt |              | 11/20/09          |       |

| APA #  | PHYSICIAN/<br>OTHER    | GROUP/AGENCY | DATE OF<br>REPORT | PAGES |
|--------|------------------------|--------------|-------------------|-------|
| APA#12 | Deposition of Claimant |              | 12/02/09          |       |



| APA #  | PHYSICIAN/<br>OTHER                      | GROUP/AGENCY | DATE OF<br>REPORT | PAGES |
|--------|------------------------------------------|--------------|-------------------|-------|
| APA#13 | Deposition of Rakesh P.<br>Chokshi, M.D. |              | 12/30/09          |       |

| APA #  | PHYSICIAN/<br>OTHER                                   | GROUP/AGENCY | DATE OF<br>REPORT                | PAGES |
|--------|-------------------------------------------------------|--------------|----------------------------------|-------|
| APA#14 | Investigative File of<br>XTRA Mile Driver<br>Training |              | Requested –<br>To Be<br>Produced |       |

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WOOD & WARDER, LLC  
ATTORNEYS AT LAW  
ONE WESLEY DRIVE  
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J. HUBERT WOOD, III  
F. REID WARDER, JR.

JASON A. WILLIAMS  
VINCENT C. NORTHCUTT  
KATHRYN R. FIEHRER  
MATTHEW J. FULTZ

REPLY TO  
P.O. Box 20550  
CHARLESTON, SOUTH CAROLINA 29413

December 7, 2009

**CERTIFIED MAIL**

Commissioner Derrick L. Williams  
S. C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Re: Geneva E. Watson v XTRA Mile Driver Training, Inc.  
W.C.C. #: 0715014  
Date of Accident: September 18, 2007  
Our File No.: 29.294

Dear Commissioner Williams:

Enclosed please find the Pre-Hearing Brief with regard to the above-named matter which is scheduled for a hearing on December 17, 2009.

By Proof of Service to the Claimant's attorney, I am notifying him that I have submitted the Brief and I am providing him with copies of the medicals and documents which will be submitted at the time of the hearing to be made a part of the record in the case under the Administrative Procedures Act.

Very truly yours,



Kathryn R. Fiehrer

KRF/hss  
Enclosure

cc: Ms. Bridgett Hurst (w/enc.)  
Stephen J. Wukela, Esquire (w/enc.)



Claimant's Name: Geneva E. Watson Employer's Name: XTRA Mile Driver Training, Inc.  
Address: [REDACTED] Address: 813 Wisacky Highway  
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Bishopville State: SC Zip: 29010  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Carrier: Hartford Underwriters Insurance Co.  
Preparer's Name: Kathryn R. Fiehrer, Esquire Preparer's Phone #: (843) 577-5732

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$323.83 2. AWW: \$485.71 Date of Injury: 9/18/07
3. Type of injury and body part(s): Back only.
4. Facts in controversy: Whether Claimant has reached maximum medical improvement for causally related and compensable injury; whether Claimant has been paid temporary disability compensation for all compensable lost time; whether Defendants overpaid the Claimant temporary disability compensation; whether further medical treatment is necessary to lessen Claimant's causally related and compensable disability; the extent of any causally related permanent disability or permanent loss of use to a scheduled body part.
5. Legal issues involved: Claimant's entitlement to further medical benefits under §42-15-60; Claimant's entitlement to further compensation benefits under §42-9-10, §42-9-20, §42-9-30, §42-9-260, and Regulations 67-501 through 510; Defendants' entitlement to credit for overpayment of temporary disability compensation under §42-9-210.
6. Unusual aspects: Defendants have not received the Claimant's social security records, which were subpoenaed upon knowledge of the Claimant's filing for disability; therefore, those records may be submitted upon receipt.
7. Witnesses (designate if expert):\* Representative of XTRA Mile Driver Training, Inc., Dr. Rakesh P. Chokshi\* via deposition, and FCE evaluator, Jerry Shadbolt\* via deposition.
8. Exhibits: See attached Notice of Submissions.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Submission.
10. Name, address, and specialty, if any, of the treating physician: Dr. Rakesh P. Chokshi, Pee Dee Orthopaedics, Florence, SC.
11. Impairment rating(s); body part(s); physician and date of opinion: 10% to the Claimant's back per Dr. Rakesh Chokshi on 8/12/09.
12. I am amending my Form 50/51 in the following manner: \_\_\_\_\_

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

Signature: *Kathryn R. Fiehrer* Email: kate@woodwarder.com  
Date of hearing: December 17, 2009 Time needed for hearing: 30 minutes

On behalf of ☐ Claimant ☒ Employer

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



Claimant's Name: [REDACTED] Employer's Name: XTRA Mile Driver Training, Inc.  
Address: [REDACTED] Address: 813 Wisacky Highway  
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Bishopville State: SC Zip: 29010  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Carrier: Hartford Underwriters Insurance Co.  
Preparer's Name: Kathryn R. Fiehrer, Esquire Preparer's Phone #: (843) 577-5732

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$323.83 2. AWW: \$485.71 Date of Injury: 9/18/07
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5. Legal issues involved: Claimant's entitlement to further medical benefits under §42-15-60; Claimant's entitlement to further compensation benefits under §42-9-10, §42-9-20, §42-9-30, §42-9-260, and Regulations 67-501 entitlement to credit for overpayment of temporary disability compensation under §42-9-210. *Responded on 10/2/09*
6. Unusual aspects: Defendants have not received the Claimant's social security records, which of the Claimant's filing for disability; therefore, those records may be subr
7. Witnesses (designate if expert):\* Representative of XTRA Mile Driver Training, Inc., Dr. Rakesh FCE evaluator, Jerry Shadbolt\* via deposition.
8. Exhibits: See attached Notice of Submissions.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Submission.
10. Name, address, and specialty, if any, of the treating physician: Dr. Rakesh P. Chokshi, Pee Dee Orthopaedics, Florence, SC.
11. Impairment rating(s); body part(s); physician and date of opinion: 10% to the Claimant's back per Dr. Rakesh Chokshi on 8/12/09.
12. I am amending my Form 50/51 in the following manner: \_\_\_\_\_

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

Signature: [Signature] Email: kate@woodwarder.com  
Date of hearing: December 17, 2009 Time needed for hearing: 30 minutes

On behalf of ☐ Claimant ☒ Employer

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

STATE OF SOUTH CAROLINA )

COUNTY OF FLORENCE )

Geneva E. Watson, )

Employee/Claimant, )

-vs- )

XTRA Mile Driver Training, Inc., )

Employer, and )

Hartford Underwriters Insurance Co., )

Carrier, )

Defendants. )

BEFORE THE  
SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0715014

NOTICE OF WITNESSES AND  
WRITTEN MEDICAL REPORTS  
TO BE INTRODUCED AS DIRECT  
EVIDENCE

TO: Stephen J. Wukela, Esquire and South Carolina Worker's Compensation  
Commission:

YOU ARE HEREBY NOTIFIED THAT Kathryn R. Fiehrer, pursuant to the  
provisions of the South Carolina Workers' Compensation Act and S. C. Code section 1-  
23-330, (1976, as amended), herewith submits the following medical reports as direct  
evidence on behalf of the Defendants; to wit:

| <u>NAME OF PHYSICIAN/OTHER</u> | <u>DATE OF REPORT</u> | <u>NUMBER OF PAGES</u> |
|--------------------------------|-----------------------|------------------------|
|--------------------------------|-----------------------|------------------------|

|                   |                     |          |
|-------------------|---------------------|----------|
| 1. Personnel File | 03/14/08 – 05/29/07 | Pages 18 |
|-------------------|---------------------|----------|

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Representative of XTRA Mile Driver Training, Inc.  
Jerry Lee Shadbolt (via deposition)  
Dr. Rakesh P. Chokshi (via deposition)

  
\_\_\_\_\_  
Kathryn R. Fiehrer  
Attorney for Defendants

Dated: December 7, 2009

## PROOF OF SERVICE

I hereby certify that on this 7<sup>th</sup> of December 2009, I served the foregoing Claimant, Geneva E. Watson, with copies of the attached Pre-hearing Brief, Notice of Witnesses and Written Medical <sup>Reports</sup> and attached records which are being submitted to be made a part of the record in the case under the Administrative Procedures Act, by having mailed first class postage pre-paid, to the Claimant's attorney addressed as follows:

Stephen J. Wukela, Esquire  
P.O. Box 13057  
Florence, SC 29504-3057

  
\_\_\_\_\_  
Kathryn R. Fiehrer  
Attorney for Defendants

Charleston, South Carolina



# **XTRA MILE DRIVER TRAINING, INC.**

813 WISACKY HIGHWAY  
BISHOPVILLE, SC 29010  
803-484-6313 866-484-6313 FAX 803-484-6217

---

**March 14, 2008**

**Mrs. Geneva Watson**  
[REDACTED]  
[REDACTED]

**Dear Mrs. Watson:**

**Subject: Return to work**

**Mrs. Watson, Xtra Mile still has a position that we have been holding for you. If you wish to fulfill this position, please notify me by March 31, 2008**

**Mrs. Watson, if you have any work restrictions, please notify me of this, also.**

**Regards,**

**James D. Seagle, Jr.**  
**Director/President**

**JDS/wss**

**cc: Wukela Law Firm**  
**Wood & Warder, LLC**

### Beth Watson's Duties:

Beth handled the placement of Xtra Mile's students. This involved making sure the students received applications for various trucking companies, verifying the applications were filled in correctly, faxing the applications to the trucking companies for pre-hires, and tracking the placement. A part of the replacement was to follow up on the students after graduation to insure they had gone to work and notify the case managers as to the students' status. She was to enter the information in QuickBooks about the students' placement information, but this fell by the wayside often because of her lack of productivity.

Some of the other duties Beth was supposed to perform were to help answer the phone and take leads from the phone. She did not start taking the leads until the last week of August, 2007. This was because of a meeting all of the office staff had during the last week of August and each person was reminded that they were to answer the phone and take leads.

Beth was to handle the book keeping because she indicated that she was familiar with book keeping and QuickBooks when she came in for her interview, but this did not happen. I continued to do the book keeping because I felt more comfortable doing so. Beth could not maneuver herself around QuickBooks unless I stood over her to give her instructions. She could not remember from day to day what I had shown her. When I told Beth that I would continue to do the accounting, she said she was fine with that. Beth's job was to consist of other office duties such as filing, going through the students' files to ensure everything was in the file per a checklist and to make sure everything was in order, but she would not take on any additional duties.

After, Beth had been out of work about a month; another lady (within the office) was put into handling placement because it was getting farther and farther behind. I could not keep up and do all of my other duties which involved me being out of the office for conferences and orientations at other locations. Many pre-hire letters were found in the desk drawer that Beth used. These pre-hire letters were to be distributed to the students, but they were not. Beth would only make trips to the classroom to get soft drinks, instead of distributing applications or pre-hires to the student out in the classroom.

**Xtra Mile Driver Training, Inc.**  
**813 Wisacky Hwy, Bishopville SC 29010**

**APPLICATION FOR EMPLOYMENT**

Date of Application May 29 07 Position Applied For any Phone [REDACTED]  
Name Beth Watson Social Security No. [REDACTED]  
List your addresses of residency for the past 3 years.  
Current Address [REDACTED] City [REDACTED] State [REDACTED] Zip [REDACTED]  
Previous Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Previous Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Do you have the right to work in the United States? yes Date of Birth [REDACTED] Can you provide proof of age? yes  
Have you worked for this company before? NO Where? \_\_\_\_\_  
Dates From \_\_\_\_\_ To \_\_\_\_\_ Rate of Pay \_\_\_\_\_ Position \_\_\_\_\_  
Reason for Leaving \_\_\_\_\_  
Are you now employed? NO If not, how long since leaving last employment? 1-12-07  
Who referred you? Bubba Copeland Rate of Pay Expected \_\_\_\_\_  
Is there any reason you might be unable to perform the functions of the job for which you have applied [as described in the attached job description]? none  
If yes, explain if you wish. \_\_\_\_\_

**EMPLOYMENT HISTORY**

Commercial driver applicants to drive a commercial motor vehicle [Includes vehicles having a GVWR of 26,001 or more, vehicles designed to transport 15 or more passengers, or any size vehicle used to transport hazardous materials in a quantity requiring placarding] must provide the following information on all employers during the preceding 10 years. List complete mailing address, street number, city, state and zip code. (NOTE: List all employers in reverse order starting with the most recent. Add another sheet as necessary.)

|                    |                                          |
|--------------------|------------------------------------------|
| Employer           | <u>W. Palmetto St. Florence SC 29501</u> |
| Address            | <u>Dean Howell</u>                       |
| Contact Person     | <u>(843) (662-2841)</u>                  |
| City               | <u>Florence</u>                          |
| State              | <u>SC</u>                                |
| Zip                | <u>29501</u>                             |
| From               | <u>10-06</u>                             |
| To                 | <u>1-07</u>                              |
| Position Held      | <u>Sales</u>                             |
| Wage               | <u>300<sup>00</sup> wk plus</u>          |
| Reason for Leaving | <u>Bell South had 90% of Business</u>    |
| Employer           | <u>[REDACTED]</u>                        |
| Address            | <u>[REDACTED]</u>                        |
| Contact Person     | <u>[REDACTED]</u>                        |
| City               | <u>Bishopville</u>                       |
| State              | <u>S.C.</u>                              |
| Zip                | <u>29010</u>                             |
| From               | <u>4-2000</u>                            |
| To                 | <u>4-2004</u>                            |
| Position Held      | <u>Ram officer</u>                       |
| Wage               | <u>400<sup>00</sup> wk</u>               |
| Reason for Leaving | <u>Sold Business</u>                     |

Employer [REDACTED]  
Address [REDACTED] City [REDACTED] State SC Zip [REDACTED]  
Contact Person None Phone Number [REDACTED]  
Dates: From 10-1999 To 8-2002 Position Held Sales Wage 600<sup>00</sup> / wk  
Reason for Leaving I was only sales rep. responsible for  
book's 1 quarter across all Pee Dee area.  
Employer [REDACTED]

|                    |    |               |           |
|--------------------|----|---------------|-----------|
| Employer           |    |               |           |
| Address            |    | City          | State Zip |
| Contact Person     |    | Phone Number  |           |
| Dates: From        | To | Position Held | Wage      |
| Reason for Leaving |    |               |           |

|                    |    |               |           |
|--------------------|----|---------------|-----------|
| Employer           |    |               |           |
| Address            |    | City          | State Zip |
| Contact Person     |    | Phone Number  |           |
| Dates: From        | To | Position Held | Wage      |
| Reason for Leaving |    |               |           |

Circle highest grade completed: 1 2 3 4 5 6 7 8 High School: 9 10 11 12 College: 1 2 3 4  
Last school attended: [redacted] Vocational [redacted] City, State: [redacted]

Accident record for past 10 years (attach sheet if more space is needed). If none, write none.

Traffic convictions and forfeitures for the past 10 years (other than parking violations). If none, write none.

| DATE | CHARGE      | LOCATION | PENALTY |
|------|-------------|----------|---------|
|      | <u>None</u> |          |         |
|      |             |          |         |
|      |             |          |         |
|      |             |          |         |
|      |             |          |         |

**EXPERIENCE AND QUALIFICATIONS – DRIVER**

| DRIVER<br>LICENSES | STATE | LICENSE NO. | TYPE | EXPIRATION DATE |
|--------------------|-------|-------------|------|-----------------|
|                    |       |             |      |                 |
|                    |       |             |      |                 |
|                    |       |             |      |                 |

- A. Have you ever been denied a license, permit, or privilege to operate a motor vehicle? Yes \_\_\_ No X
- B. Has any license, permit, or privilege ever been suspended or revoked? Yes \_\_\_ No X
- If the answer to A or B is yes, please explain in detail.

**DRIVING EXPERIENCE (If none, write none.)**

| CLASS OF EQUIPMENT       | TYPE OF EQUIPMENT<br>(VAN, TANK, FLAT, ETC.) | DATES<br>FROM | TO | APPROX. NO. OF MILES<br>(TOTAL) |
|--------------------------|----------------------------------------------|---------------|----|---------------------------------|
| Straight Truck           |                                              |               |    |                                 |
| Tractor and Semi-Trailer |                                              |               |    |                                 |
| Tractor – Two Trailers   |                                              |               |    |                                 |
| Motorcoach – School Bus  |                                              |               |    |                                 |
| Other                    |                                              |               |    |                                 |

States operated in for the last five years. \_\_\_\_\_

Show special courses or training that will help you as a driver. \_\_\_\_\_

Which safe driving awards do you hold and from whom. \_\_\_\_\_

**EXPERIENCE AND QUALIFICATIONS – OTHER**

Show any trucking, transportation or other experience that may help your work for this company. \_\_\_\_\_

Show courses and training other than shown elsewhere in this application. \_\_\_\_\_

special equipment or technical materials you can work with (other than those already shown). \_\_\_\_\_

**BE READ AND SIGNED BY THE APPLICANT**

I certify that this application was completed by me, and that all entries on it and information in it and information are true and complete to the best of my knowledge.

I authorize you to make such investigations and inquiries of my personal, employment, financial, or medical history or other related matters as may be necessary in arriving at an employment decision. (Generally inquiries regarding medical history will be made only if and after a conditional offer of employment has been extended.) I hereby release employers, schools, health care providers and other persons from all liability in responding to inquiries and releasing information in connection with my application.

In the event of employment, I understand that false or misleading information given in my application or interview(s) will result in discharge. I understand, also, that I am required to abide by all rules and regulations of the Company.

Applicant's Signature Beth Watson Date May 29, 07  
Geneva Elizabeth Watson

**EMPLOYMENT RECORD**

Applicant Hired \_\_\_\_\_ Rejected \_\_\_\_\_  
Employed \_\_\_\_\_ Point Employed \_\_\_\_\_  
Employment \_\_\_\_\_ Classification \_\_\_\_\_

Action to be filled in by responsible officer or company representative.

|                          | SUPERIOR | GOOD | FAIR | BELOW<br>AVERAGE | POOR | WRITTEN<br>RECORD ON FILE |
|--------------------------|----------|------|------|------------------|------|---------------------------|
| APPLICATION              |          |      |      |                  |      |                           |
| INTERVIEW                |          |      |      |                  |      |                           |
| EMPLOYMENT               |          |      |      |                  |      |                           |
| ON EXAM                  |          |      |      |                  |      |                           |
| TEST                     |          |      |      |                  |      |                           |
| LEGAL AND<br>CONVICTIONS |          |      |      |                  |      |                           |

Name of interviewing officer \_\_\_\_\_

**TERMINATION OF EMPLOYMENT**

Terminated \_\_\_\_\_ Department Released From \_\_\_\_\_

Discontinued \_\_\_\_\_ Voluntarily Quit \_\_\_\_\_ Other \_\_\_\_\_

Report Placed in File \_\_\_\_\_ Supervisor \_\_\_\_\_

## Beth Watson

[REDACTED]  
[REDACTED]  
[REDACTED] cell [REDACTED]

---

### Work History

1999 to 2002 *Account Executive* - [REDACTED]

I am currently an account executive for the publishers of [REDACTED] covering the Florence, Camden and Columbia markets. My job duties include making sales calls to existing advertisers and also cold calling on non advertisers within a local market. I analyze the needs of the customer regarding yellow pages advertising and make a recommendation that will fulfill the needs and advertising budget of those customers. I design ads, perform various customer service duties including collecting money and maintaining the status of the accounts assigned to me.

2000 to 2004 *Office Manager* - [REDACTED]

I sell residential and commercial trash pickup service, including negotiating contracts, both long and short term. I also process payroll, handle customer service and keep financial books for this business.

1997 to 1999 *Account Executive* - [REDACTED]

Sold advertising on menus to independent restaurant owners. Job duties were similar to my position with the [REDACTED]. My territory included Bishopville, Camden, Sumter, Manning, Summerton, Hartsville, and all areas in between.

1990 to 1997 *Sales Associate* - [REDACTED]

Sold out of town customers into this local newspaper. Did cold calling, sold to existing customers and collected past due accounts. Attended Chamber of Commerce functions as a representative of my company and attended all annual seminars to advance my knowledge. Company was sold and this position was eliminated.

**Beth Watson (continued)**

**803-428-5737**

**Education**

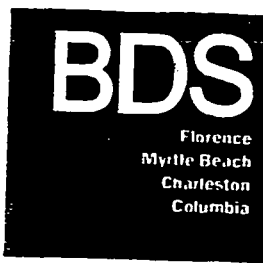
**1972 to 1973**

**[REDACTED] - Received certificate**  
**[REDACTED] - Graduated**

**Skills**

I have years of proven sales ability, can relate to all kinds of people, and am honest, dependable and trustworthy. I am also familiar with all kinds of office equipment and procedures.





BUSINESS  
DATA  
SYSTEMS

3105 W. PALMETTO STREET  
FLORENCE, SC 29501

Phone: (803) 484-9431

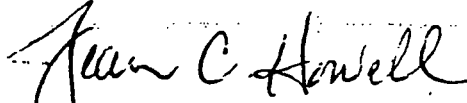
January 16, 2006

To Prospective Employers:

Beth Watson worked with [REDACTED] as an outside tele representative.

The staff at [REDACTED] found Beth to be very conscientious, hard working and dependable worker and gets along well with her associates. I believe she with which she is connected.

Sincerely,

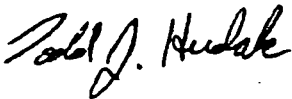
  
Jean C. Howell

To Whom It May Concern

I was Beth Watson's supe advertising salesperson. Be of the business.

I found Beth to be a hard w to work with, as well as pi

Sincerely,



Todd J. Hudak

September 16, 1997

To Whom It May Concern:

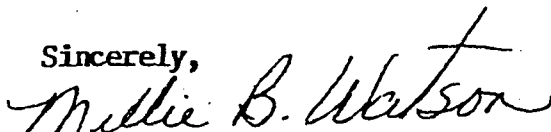
It is my pleasure to recommend Beth Watson to you as I have worked closely with her for the past six years. I feel qualified to give you correct information as to her character, personality, work habits and reputation.

Beth worked under me as advertising sales associate when I was advertising manager at the [REDACTED]. She was always professionally dressed, knowledgeable of her product and was helpful with her advertisers needs.

I found Beth to be a lady of the highest integrity--conscientious, truthful and loyal.

As a sales professional and manager myself, I highly recommend Beth Watson to any position in which she applies for.

Sincerely,

A handwritten signature in cursive script that reads "Millie B. Watson". The signature is fluid and elegant, with a large initial "M".

Millie B. Watson

Gentlemen/Ladies:

---

I have been in sales for <sup>14</sup>12 years. I relate to all types of people and build relationships quickly.

My desire is to learn everything I can about the product or service I am embracing in order to be very confident and knowledgeable to fulfill our clients needs. My goal is always to provide ultimate customer satisfaction.

I feel I am the perfect candidate for this sales position due to my sales experience and ability to relate to people. I am honest, dependable and trustworthy. The opportunity to work for your company would be greatly appreciated and I would be a very dedicated employee.

Thank you for your consideration.

Sincerely Yours,

Beth Watson

MESSAGE ID: HUGHESJ 0600 SUBJECT: BETH  
FROM USERID: HUGHESJ  
FROM USER...: HUGHES, JULIA R

CREATED: 05/20/07 DELETE DATE: 05/2

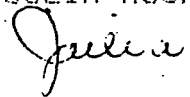
THIS LETTER IS TO INTRODUCE YOU TO MRS. BETH WATSON WHOM I HAVE  
KNOWN FOR APPROXIMATELY TWO YEARS. SHE IS A MEMBER OF CALVARY  
BAPTIST CHURCH OF WHICH MY HUSBAND IS THE MINISTER.  
SHE CONFIDED IN ME THAT SHE HAD APPLIED FOR A POSITION WITH  
YOUR COMPANY IN BISHOPVILLE, S.C.

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO TELL YOU A LITTLE BIT  
ABOUT BETH. FIRST OF ALL SHE IS AN HONEST PERSON. DURING THE TIME  
I HAVE KNOWN HER, SHE HAS A WILLING HEART AND A WILLINGNESS TO  
HELP THOSE IN NEED. SHE NEVER SAYS NO TO ANY PROJECT THAT SHE IS  
APPROACHED WITH. VERY THOROUGH AND ALWAYS FINDS A SOLUTION TO ANY  
PROBLEM AND FOLLOWS THROUGH. SHE IS VERY GENEROUS OF HEART, TIME  
AND TALENT.

SHE WILL BE VERY DEDICATED TO ANY ASSIGNMENT YOU GIVE HER AND WILL  
ALWAYS BE DEPENDABLE. I KNOW SHE WILL USE METHODS THAT ARE PROFESSIONAL  
AND EFFECTIVE TO GET THE JOB DONE AS SET WITHIN YOUR GUIDELINES.  
SHE WILL BE ABLE TO REASON, COMPARE, UNDERSTAND AND THINK RATIONALLY  
ON ANY JOB ASSIGNED TO HER. MAINTAINS COMPOSURE AND HAS SOUND JUDGEMENT.  
HAS EXCELLENT COMMUNICATION SKILLS, VERBALLY AND WRITTEN.  
BETH IS VERY MUCH A PEOPLE PERSON AND I AM WRITING THIS BECAUSE I  
KNOW SHE WOULD BE AN EXCELLENT ADDITION TO YOUR COMPANY. I HOPE YOU  
WILL CONSIDER HER FOR THE JOB SHE HAS APPLIED FOR.  
SHE WILL BE A DEDICATED AND AN ASSET TO YOUR COMPANY

THANK YOU FOR YOUR CONSIDERATION OF MRS. WATSON.

JULIA HUGHES.



scnewhire.com► Employer Information

FEIN 14-1891677  
Employer Name Xtra Mile Driver Training, Inc  
Employer Address 813 Wisacky Highway  
Bishopville, SC 29010  
Employer Phone 803-484-6313

Contact Name Wilhelmina (Puddin) Seagle  
Phone 803-484-6313  
E-mail xtramiledrivertraining@yahoo.com

[Edit Employer Information](#)► Employee Information[Do Not Add Employee](#)

Employee SSN [REDACTED] No Dashes. Ex: 123551234.  
Employee First Name Geneva  
Employee Middle Initial E Optional.  
Employee Last Name Watson  
Employee Address Line 1 [REDACTED]  
Employee Address Line 2 Optional.  
Employee City [REDACTED]  
Employee State [REDACTED]  
Employee Zip [REDACTED] - First 5 Required. +4 Optional.  
Employee Date of Birth [REDACTED] mm/dd/yyyy Optional. No Dashes or Slashes.  
Employee Date of Hire 06 / 04 / 2007 mm/dd/yyyy Optional. No Dashes or Slashes.

[Submit Employee Information](#)scnewhire.com

Last day at work - September 18, 2007

I Donna Stroebe heard a loud sound to which I thought a stack of files had fallen off someone's desk. I got up from my desk to see Beth laying on the floor. I went up to her to offer help when she refused and told me not to touch her. Barbara came up behind me and offered her help and Beth asked her to call 911 and her mother. I seen nothing anywhere around that would have caused her to fall.

9-18-07

My statement Barbara Lighty.  
I did not see the fall, I heard it. I was on the phone. I turned my chair to see what happen. I saw Beth lying on floor on her back, a golf ball rolling toward me as I walked fast toward her. I got on my knees, held her hand and ask her what happen. She said she slip on a golf ball. I called Puddin'. Still on my knees by her, I asked her what hurts, she said her back. Puddin' ask me to call 911 and I did call from Beth phone. I went back to Beth on the floor, on my knees, I held her hand, waiting for the rescue squad. Deloris came in the back door and also Misty. Beth ask ~~for~~ Deloris to call her mother. Deloris miss dial and Misty called her mother. She whispered what number to dial. I stood up Misty was down on her knees by Beth. I went on the porch to smoke. I saw Dakota pick up the golf ball, left the office (<sup>Melissa</sup> ~~my~~ office) through Jim's office.

Barbara Lighty<sup>279</sup>

September 18, 2007

Early afternoon, I was in Jim's office on the phone. I heard Barbara calling me. I got off the phone and headed toward the office that Beth, Deloris, and I share by route through Melissa's office into the foyer. I noted that Beth Watson was laying on her back with her legs straight out and her hands parallel alongside her body with hands facing up. I also, noticed that she had nothing in her hands. I went closer toward Beth and heard her making some kind of sound like a weak sob. Barbara was leaning toward her and was repeatably asking Beth if she had slipped on a golf ball. Barbara got on her knees beside Beth's upper body and starting holding her hand. I leaned toward Beth and asked her three times what had happened. Beth did not answer me. Barbara looked as if she was going to slide a hand under Beth's neck and I told her not touch her. I told Barbara to call 911. Barbara got up and proceeded to call 911 from Beth's desk. I leaned closer to Beth and as I did, Beth screeched, "Don't touch me!" Don't touch me!" I stood up and walked off. Also, I noticed as I was standing over Beth that there were no tears coming from her eyes. She was dry eyed. I walked into Jim's office and called him to let him know what had happened. I walked back and forth to the foyer waiting for the EMS to arrive. When EMS arrived I tried to help by making some room for them to come in with their body support stretcher. I stood back and observed as they tried to give her something from a small cylinder and asking questions. During their time here, Beth's mother and father had arrived. I did not know who they were until one of the ladies had identified them and said they had called her mother because she had requested it. As the EMS carried Beth outside with her parents, nothing was said to me about where was she being taken.

This had happened not long after Beth had gotten back from lunch. Delores had gone out to the classroom, Barbara and Donna were in Melissa's office, Misty had gone to lunch, Melissa was out at a conference, and I was in Jim's office. Dakota, my grandson was lying on the sofa in the den area watching TV. Jim had picked him up from school that morning because he had called and said he was throwing up. Jim picked him up and brought him back to the office. I knew that he was not his usual self because he was not bothering me for food. Jim picked Cheyenne up from school around 1200 and brought her back. Cheyenne did not come in the office at all because Mr. Woods had greeted them Jim and Cheyenne, before she entered the house. He took Cheyenne with him for a visit. I had been back and forth from Jim's office to the office Beth, Delores, and I share many times. I do the QuickBooks on the computer, access to the files in the office the three of us share and had not seen any golf balls laying on the floor. I am not in slow motion when I am going through these offices. I am also at my desk quite a bit to do paperwork in the main office, along with the trip to the fax machine, and copy machine (located in the foyer). There were many, many trips made through the foyer into the main office and again I did not see anything on the floor. I am always conscientious about things lying on the floor. If I see even a pencil on the floor, I will pick it up.

Wendelmina S. Seale

September 18, 2007



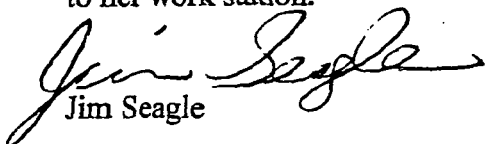
September 27, 2007

To Whom It May Concern:

On Tuesday, September 18, 2007, Beth Watson said she needed to talk to me. I asked her into my office and she stated that her ninety (90) day probation was up and that she wanted her raise. I told Beth that Puddin and I had talked and that neither one of us was pleased with her work performance. She interrupted and stated "you promised me a raise at the end of my ninety (90) day probation.!" I asked Beth if Puddin had talked with her recently about her tardiness and job performance, she stated that she had only been tardy one time. I told her that Puddin had documented twice in the last week. She stated that maybe she stated that she had been tardy twice; I told Beth that I am usually out in the yard or in the classroom when the office staff showed up and that I had seen her come to work after eight o'clock A.M. at least six (6) times. She said nothing to challenge this. I further told Beth that her attitude needed to improve. She asked what I meant by that. I told her that when Melissa had her meeting with the office staff and was told that Friday hours were changed, she acted very immature. She went out of her way not to speak to Melissa and was very short and rude with Puddin, Melissa, and myself. Beth had been told by Puddin that the hours being changed on Friday's, was changed by my orders, but Beth still held it more against Melissa.

I further told Beth that she had been hired to give some relief to other office staff members, as well as taking care of Student Placement. Beth had originally said that she would take on more, but to go at it slower, so that she would not be overwhelmed.

I told Beth that ninety (90) days had gone by, but that she was doing no more than when she first started. I told Beth that her work on Placement was good, but that I for one was not pleased with her progress and her willingness to take on more. Second that I was not pleased with her attitude and willingness to work with others, and third, I was placing her on thirty (30) days probation to correct the above. Beth huffed out of my office and went to her work station.

  
Jim Seagle

11:24 AM

11/27/07

**Xtra Mile Driver Training, Inc.**  
**All Transactions for Geneva E. Watson**

All Transactions

- Paid Bi-weekly

| Type     | Date      | Paid Through | Account             | Net Amount      | Gross |
|----------|-----------|--------------|---------------------|-----------------|-------|
| Paycheck | 9/21/2007 | 9/21/2007    | First Citizens Bank | 745.15          | # 900 |
| Paycheck | 9/7/2007  | 9/7/2007     | First Citizens Bank | 745.15          | 900   |
| Paycheck | 8/24/2007 | 8/24/2007    | First Citizens Bank | 745.15          | 900   |
| Paycheck | 8/10/2007 | 8/10/2007    | First Citizens Bank | 745.15          | 900   |
| Paycheck | 7/27/2007 | 7/27/2007    | First Citizens Bank | 745.15          | 900   |
| Paycheck | 7/13/2007 | 7/13/2007    | First Citizens Bank | 745.15          | 900   |
| Paycheck | 6/29/2007 | 6/29/2007    | First Citizens Bank | 745.15          | 900   |
| Check    | 6/27/2007 |              | First Citizens Bank | 500.00          | 900   |
| Paycheck | 6/15/2007 | 6/15/2007    | First Citizens Bank | 745.15          | 900   |
| Total    |           |              |                     | <u>6,461.20</u> |       |

\* Bonus  
 for Vacation?  
 She got the  
 Extra money  
 she had  
 not been  
 here for  
 90 days



Claimant's Name: Geneva Watson SSN: \_\_\_\_\_ Employer's Name: XTRA Mile Driver Training, Inc.  
Address: \_\_\_\_\_ Address: 813 Wisacky Highway  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ City: Bishopville State: SC Zip: 29010  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: Hartford Underwriters Insurance Company  
Preparer's Name: Stephen J. Wukela Law Firm: Wukela Law Firm Preparer's Phone #: 843-669-5634

### REQUEST FOR COMMISSION REVIEW

Request for Commission Review by: ☒ claimant ☐ employer (check one) Date of injury: 09/18/2007

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).

Claimant herein appeals the decision of Commissioner Derrick L. Williams dated February 17, 2010.

**\*\*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 Kathryn R. Fiehrer, Wood & Warder,  
Name

P.O. Box 20550, Charleston SC 29413

On the 26<sup>th</sup> day of February, 2010 by ☐ first class mail ☐ personal service ☒ certified mail.

Preparer's Signature: \_\_\_\_\_ Attorney for Claimant \_\_\_\_\_ February 26<sup>th</sup> 2010  
Title \_\_\_\_\_ Date \_\_\_\_\_

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.

1. THE SINGLE COMMISSIONER ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW IN FAILING TO FIND CLAIMANT TOTALLY AND PERMANENTLY DISABLED PURSUANT TO §42-9-10.
2. THE SINGLE COMMISSIONER ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW IN FAILING TO FIND THE CLAIMANT TOTALLY AND PERMANENTLY DISABLED PURSUANT TO §42-9-30(21).
3. THE SINGLE COMMISSIONER ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW IN FINDING THAT DEFENDANTS REBUTTED THE PRESUMPTION THAT CLAIMANT WAS TOTALLY DISABLED.
4. THE SINGLE COMMISSIONER ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW IN ADMITTING A PORTION OF THE FUNCTIONAL CAPACITY EVALUATION SUBMITTED AS CLAIMANT'S APA NO. 7 AND IN ADMITTING TESTIMONY, BOTH CONTAINING OPINIONS THAT THE CLAIMANT HAD A SEDENTARY WORK CAPACITY AND HAD MET STRENGTH REQUIREMENTS AS A DIRECTOR OF PLACEMENT.
5. THE SINGLE COMMISSIONER ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW IN AWARDING DEFENDANTS CREDIT FOR OVERPAYMENT OF TEMPORARY DISABILITY COMPENSATION PAID AFTER AUGUST 12, 2009.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

---

Case Tracking No. 2010174006

---

GENEVA WATSON, ..... Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

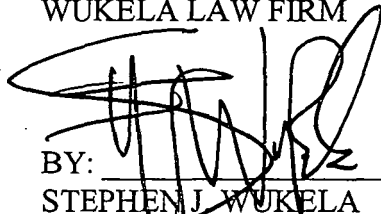
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**CERTIFICATE OF COMPLIANCE**

---

The undersigned certifies that the Record on Appeal complies with the Supreme Court Order of August 13, 2007, in that there are no personal data identifiers included in the Appellant's Record on Appeal, or they have been redacted where necessary.

WUKELA LAW FIRM

BY: 

STEPHEN J. WUKELA  
ATTORNEY FOR APPELLANT  
WUKELA LAW FIRM  
PO BOX 13057  
FLORENCE SC 29504  
843-669-5634

January 19<sup>th</sup>, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Case Tracking No. 2010174006

GENEVA WATSON, ..... Appellant,

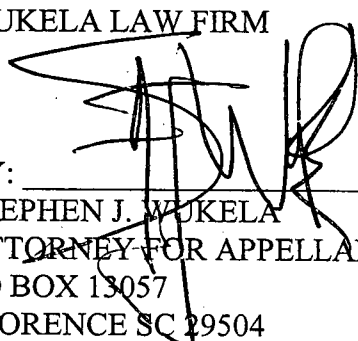
vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

CERTIFICATE OF COUNSEL

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.

WUKELA LAW FIRM

BY:   
STEPHEN J. WUKELA  
ATTORNEY FOR APPELLANT  
PO BOX 13057  
FLORENCE SC 29504  
843-669-5634

January 28<sup>th</sup>, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Case Tracking No. 2010174006

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GENEVA WATSON, ..... Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

---

**FINAL BRIEF OF APPELLANT**

---

STEPHEN J. WUKELA  
ATTORNEY FOR APPELLANT  
WUKELA LAW FIRM  
PO BOX 13057  
FLORENCE SC 29504  
843-669-5634

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE COMMISSION ERR AS A MATTER OF FACT AND CONCLUSION OF LAW IN ADMITTING THE VOCATIONAL OPINION THAT CLAIMANT'S WORK RESTRICTIONS ALLOWED HER TO DO SEDENTARY WORK CONTAINED IN DEFENDANTS' FUNCTIONAL CAPACITY EVALUATION REPORT?
- 
- II. DID THE COMMISSION ERR AS A MATTER OF FACT AND CONCLUSION OF LAW IN FAILING TO FIND TOTAL AND PERMANENT DISABILITY UNDER §42-9-10 OR, IN THE ALTERNATIVE, §42-9-30(21)?
- A. THE COMMISSION ERRED IN FAILING TO FIND THE CLAIMANT SUFFERED TOTAL AND PERMANENT DISABILITY PURSUANT TO §42-9-10.
- B. HAVING FOUND THAT THE CLAIMANT SUFFERED A FIFTY (50%) PERCENT PERMANENT PARTIAL DISABILITY TO HER SPINE THE COMMISSION ERRED IN FINDING THAT THE DEFENDANTS HAD REBUTTED THE PRESUMPTION THAT CLAIMANT WAS TOTALLY AND PERMANENTLY DISABLED PURSUANT TO §42-9-30(21).
- III. DID THE COMMISSION ERR AS A MATTER OF FACT AND CONCLUSION OF LAW IN GRANTING THE DEFENDANTS' CREDIT FOR ALL TEMPORARY DISABILITY COMPENSATION PAID AFTER AUGUST 12, 2009, THE DATE OF MAXIMUM MEDICAL IMPROVEMENT?

## STATEMENT OF THE CASE

This is an admitted Workers' Compensation claim which was before the Workers' Compensation Commission on the Claimant's Form 50 seeking an award of permanency.

On September 18, 2007, while working as a clerk for XTRA Mile Driver Training, Claimant slipped and fell onto her back on a golf ball that had been left in the work area by the grandchild of the employer. Claimant suffered an immediate onset of pain in her back and radiating pain in her right hip and right leg.

Defendants accepted the claim and paid back and continuing temporary total disability benefits by Consent Order dated February 13, 2008. (R. pp. 1-2).

Immediately after the accident, Claimant was transported via EMS to Tuomey Emergency Room. (R. p. 154). The emergency physician ordered lumbar and thoracic spine x-rays which were not remarkable and then subsequently ordered a lumbar MRI which revealed:

... suspect hemangiomas within the L3 and L5 vertebral bodies. Mild disc bulges are seen at L1-2 and L2-3, and L3-4 and L4-5, with L3-4 and L4-5 spinal stenosis due to congenitally shortened pedicles, as well as facet hypertrophy worse at L4-5. L5-S1 appears within the expected limits of normal with a minimal bulge. Mild L1-2 through L4-5 disc bulges and spinal stenosis at L3-4 and L4-5 contributed L4-5 disc bulges.

(R. p. 164).

The ER physician ordered the Claimant off work the next two days and instructed her to see her doctor or company doctor before returning to work. The Claimant followed-up at her company doctor, Dr. John Pate, on September 19, 2007 and saw nurse practitioner, Anita Curl. Ms. Curl wrote her out of work for one (1) week and referred her to Pee Dee

Orthopaedics. (R. p. 174). The Claimant saw Dr. Rakesh Chokshi, orthopaedic surgeon at Pee Dee Orthopaedic, on October 1, 2007. Dr. Chokshi ordered epidural steroid injections, which did not improve the Claimant's condition significantly. Ultimately he performed lumbar decompression surgery at L3-4 and L4-5 on March 31, 2009. (R. p. 221).

On June 24, 2009, Dr. Chokshi sent the Claimant for a functional capacity evaluation to establish her permanent work restrictions. (R. p. 214). The functional capacity evaluation was performed at Tuomey Outpatient Rehabilitation Service on July 6, 2009. The functional capacity evaluation revealed, in pertinent part:

1. **Ms. Watson stood for 12 minutes. Her standing tolerance does not meet the Demand Minimum Functional Capacity requirement of standing for 30 minutes continuously.**
2. **Ms. Watson sat for 3 minutes. Her sitting tolerance does not meet the Demand Minimum Functional Capacity requirement of sitting for 30 minutes continuously.**
3. **Ms. Watson walked for 0.1 miles. Her walking tolerance does not meet the Demand Minimum Functional Capacity requirement of walking for one mile continuously (@ 2mph).**
4. **Ms. Watson has a maximum lifting capacity of 10.0 pounds. This places her into the light category for lifting capacity (as defined by the DOT).**
5. **Ms. Watson has an occasional lifting capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent lifting capacity (34% to 66% of the workday) is 5.0 pounds. Her constant lifting capacity (67% to 100% of the workday) is 2.0 pounds.**
6. **Ms. Watson as a maximum carrying capacity of 10.0 pounds. This places her into the light category for carrying capacity (as defined by the DOT).**
7. **Ms. Watson has an occasional carrying capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent carrying capacity**

(34% to 66% of the workday) is 5.0 pounds. Her constant carrying capacity (67% to 100% of the workday) is 2.0 pounds.

8. Ms. Watson has a pushing capacity of 20.0 pounds. Her pushing capacity does not meet the Demand Minimum Functional Capacity requirement of 100 pounds.

---

9. Ms. Watson has a pulling capacity of 20.0 pounds. Her pulling capacity does not meet the Demand Minimum Functional Capacity requirement of 80 pounds.  
(R. p. 230).

In the Report Summary, the evaluator discusses the Claimant's job factor restrictions and indicated:

**In order for Ms. Watson to successfully return to work as a Director of Placement, the following job factor restrictions must be met:**

- No standing for more than 12 minutes continuously.  
(reference section 1)**
- No sitting for more than 3 minutes continuously.  
(reference section 2)**
- No walking for more than 0.1 miles continuously.  
(reference section 3)**
- No pushing more than 20 pounds. (reference section 6)**
- No pulling more than 20 pounds. (reference section 7)**
- No stooping. (reference section 14)**
- No crawling on hands and feet. (reference section 16)**  
(R. p. 232).

Further, with reference to Waddell Nonorganic Signs Test Report, the evaluator indicated that Ms. Watson scored 0/5, a score which falls within the acceptable range and suggests organic behavior. (R. p. 239). That is to say, the functional capacity evaluation's test for malingering indicated that the claimant was not malingering.

Inexplicably, however, in the report summary of the Functional Capacity Evaluation, under strength category, the evaluator concluded:

The Dictionary of Occupational Titles places Ms. Watson's occupation as a Director of Placement in the sedentary strength category. Therefore, Ms. Watson meets these strength requirements and may return to work as a Director of Placement.

---

Based on the strength classifications as established by the Dictionary of Occupational Titles, Ms. Watson is capable of assuming a position in the light strength category. Her maximum lifting capacity is 10.0 pounds, and her maximum carrying capacity is 10.0 pounds. According to the Dictionary of Occupational Titles, the light strength category is defined as having the ability to lift 10 to 20 pounds and carry 5 to 10 pounds.  
(R. p. 232).

This conclusion obviously is contradictory to the restrictions that the evaluator rated the Claimant has having. In particular, the evaluation found restrictions of no standing more than 12 minutes continuously and no sitting more than 3 minutes continuously, no walking for more than .1 miles continuously. Each of these limitations (as the evaluation noted earlier) leave the claimant without the residual functional capacity to meet the demand minimal functional capacity requirements for her job or any sedentary job.

At deposition, the Functional Capacity Evaluator, Jerry Shadbolt, testified that while he performed the tests to establish the Claimant's restrictions, and opined that those tests were valid, he did not reach any vocational opinion as to whether the Claimant was qualified for particular types of work given those restrictions, nor was he qualified to so opine. He further testified that the "opinion" contained in his report as to the Claimant's ability to perform sedentary work was not his opinion at all but, instead, was the product of a computer program.

At trial, and throughout the deposition of Mr. Shadbolt, the Claimant accepted Mr.

Shadbolt's qualification to render an opinion as to the Claimant's restrictions, based, as they were, on his measurements, but objected to the computer's "opinion" as to Claimant's vocational availability for sedentary work. (R. pp. 42-43, 47; R. p. 102).

In addition, the Claimant was interviewed and her records, including the functional capacity evaluation, were reviewed by J. Adger Brown, a vocational analyst well familiar to this Commission and also to the Social Security Administration. Mr. Brown agreed that, by definition, the restrictions provided by the functional capacity evaluation left the Claimant incapable of even sedentary employment. He further noted:

**Based on the information available for my review, chiefly the functional capacity evaluation, it is my opinion that Ms. Watson is incapable of returning to her former work and would not be able to compete for any other type of employment for the same reason. When this is combined with an individual of advanced employment age who has been out of work for two years, with a history of back injury and back surgery, it becomes even more apparent that this lady is totally disabled.**  
(R. p. 251).

Claimant received a letter on September 22, 2009 from the employer instructing her to return to work on Monday, September 28, 2009. (R. p. 253). She returned to the job accompanied by her restrictions as listed in her functional capacity evaluation. Upon reviewing those restrictions, her employer declined to offer her any work within her restrictions and instead sent her home. (R. p. 113, line 14 - p. 114, line 10).

Thus, at hearing, it was the Claimant's contention that she is totally and permanently disabled and entitled to a lump sum payment of total disability along with Utica-Mohawk language. She further sought future treatment for her spine to the extent that it would tend

to lessen her period of disability.

In the Claimant's Pre-hearing Brief, (R. p. 143), at the hearing, (R. p. 103), and during Mr. Shadbolt's testimony, (R. pp. 42-43, p. 47), the Claimant objected to the admission of any vocational opinions contained in the Functional Capacity Evaluation found at Claimant's APA No. 7, as well as in the deposition of the individual who performed the Functional Capacity Evaluator, Jerry Lee Shadolt. The Commissioner allowed the vocational opinions over Claimant's objection. Moreover, the Commissioner ruled:

2. The Claimant sustained an injury to her back which also radiates to her right hip in an admitted accident arising out of and in the course of her employment on September 18, 2007. However, the situs of her injury is her back. This finding is supported by the medical evidence as a whole and Dr. Chokshi's deposition.
3. I find the Claimant to be a credible witness. This finding is based on my observation of her and her testimony at the hearing. She testified truthfully and accurately to her physical limitations (compared to the medical evidence). She has no prior workers' compensation claims and no pre-existing issues with her back. She often stood during the hearing, which was not any indication of symptom magnification; rather, it correlated with the functional capacity evaluation restrictions of having to stand every three (3) minutes. My impressions as stated herein are limited to the testimony I heard and my observations of the Claimant's demeanor on the date of the hearing. Therefore, nothing in this Order precludes a future finding relating to the Claimant's credibility at another hearing regarding permanency, compensability, or any other issue.
4. The Claimant testified truthfully concerning her ongoing back and hip pain. She testified that her pain is constant, and that a fusion surgery was discussed; however, she opted for the less invasive

decompression surgery to start. She has fairly severe restrictions, as noted in the functional capacity evaluation.

5. The Claimant underwent a function[sic] capacity evaluation, for which she gave valid effort. The functional capacity evaluation placed her as greater than sedentary-level, but below light duty-level.
6. The Claimant has not returned to work with the Employer. The Claimant was offered work; however, the Employer could not accommodate her restrictions.
7. The Defendants provided the Claimant proper and adequate medical care and treatment for injuries causally related to the September 18, 2007 accident and the Claimant reached a level of maximum medical improvement for injuries related to the September 18, 2007 accident by August 12, 2009.
8. The Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before August 12, 2009. The Claimant is entitled to future medical treatment that tends to lessen her causally related disability under Dodge per Dr. Chokshi.
9. The Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi.
10. The Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
11. Based on the record as a whole, I find that the Claimant sustained a 50% permanent loss of use to her back pursuant to §42-9-30(21) as a result of the admitted accident arising out of and in the course of her employment on September 18, 2007. This takes into account the radicular effect of her back issues on



her right hip as well. This finding is also based on her sedentary-level of work, her credible testimony, and the ongoing problems she experiences. I do not find that she is permanently and totally disabled. She testified that she would be willing to try to work, and given the sedentary nature of her job before this accident, when coupled with her restrictions, it is debatable whether or not she could actually return to work. In any event, based on the evidence as a whole, including all the medical evidence, the Claimant's testimony, the functional capacity evaluation, the depositions of Jerry Shadbolt[sic] and Dr. Chokshi, I find that even though she is not permanently and totally disabled, her disability is significantly greater than the 10% impairment rating assigned.

12. The Defendants are entitled to a credit of overpayment of temporary disability compensation paid for the period after August 12, 2009, the date of maximum medical improvement per Dr. Chokshi, against their liability for permanent disability awarded herein and all temporary disability compensation paid to the Claimant for the period after August 12, 2009 constitutes payment for permanent partial disability award set forth herein.  
(R. p. 12 ¶2 - p. 15, ¶12).

Defendants appealed to the Appellate Panel of the Workers' Compensation Commission. By Order dated September 10, 2010, the Appellate Panel affirmed and adopted as its own the factual findings and legal conclusions of the Single Commissioner and further the Appellate Panel specifically found:

The Order of the Single Commissioner filed in the above-named matter on February 17, 2010 is hereby affirmed by the Appellate Panel of the South Carolina Workers' Compensation Commission and the same shall constitute the Decision and Order of the Appellate Panel.

This appeal followed.

## STANDARD OF REVIEW

The Administrative Procedures Act ("APA") governs this Court's review of decisions of the Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The Court can reverse or modify the Commission's decision if the substantial rights of the appellants have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See S.C. Code Ann. §1-23-380(A)(6)(d), (e)(Supp. 1997).

## ARGUMENT

### **I. THE COMMISSION ERRED IN ADMITTING THE VOCATIONAL OPINION THAT CLAIMANT'S WORK RESTRICTIONS ALLOWED HER TO DO SEDENTARY WORK CONTAINED IN DEFENDANTS' FUNCTIONAL CAPACITY EVALUATION REPORT. (R. p. 229).**

The Commission erred in admitting the "opinion" of the Defendants' computer indicating that the Claimant was capable of sedentary work. South Carolina Courts have long held that, pursuant to Rule 702 of the South Carolina Rules of Evidence, a witness qualified as an expert by knowledge, experience, training or education may testify in the form of an opinion only where such opinion testimony will assist the trier of fact, the expert witness is qualified, the underlying science is reliable, and the probative value of the testimony outweighs its prejudicial effect. See State v. Council, 335 S.C. 1 (1999)(citing State v. Jones, 273 S.C. 723 (S.C. 1979)). Moreover, in considering the reliability of the science underlying the expert's opinion, our Supreme Court has indicated that the Courts should evaluate reliability factors including publications and peer review, prior application

of the method, quality control procedures, and consistency of the method with recognized scientific laws and procedures. State v. Jones, 273 S.C. 723 (S.C. 1979).

The Defendants in the case at bar offered no evidence whatsoever to support the admission of the "opinion" of their computer, as required by Rule 702 and State v. Council,

---

335 S.C. 1 (1999). The Commission below admitted that opinion into evidence over the Claimant's objection without addressing the requirements of Rule 702 or State v. Council.

The unusual set of circumstances that led to the Defendants' offering, and the Claimant objecting to, the opinion of the computer are as follows:

Claimant's authorized treating physician, Dr. Rakesh Chokshi, referred the Claimant for a Functional Capacity Evaluation which was performed on July 6, 2009 by Mr. Jerry Lee Shadbolt. Mr. Shadbolt testified at deposition that he is a certified athletic trainer with an undergraduate degree from Indiana University and Masters in Guidance and Counseling from Clemson University. He testified that he had performed a grand total of twelve (12) Functional Capacity Evaluations in his entire career as a Functional Capacity Evaluator. (R. p. 36, line 8). He further testified that:

**Q.   Ok. And you don't have any qualifications or training in vocational evaluation or knowledge about what kind of educational requirements or physical requirements there are for various jobs and what jobs are available in the marketplace. Is that right?**

**A.   That's correct.**

**Q.   All right. Your expertise is in doing those tests and seeing how long she can sit and how long she can stand and so forth?**

A. Yes.

Q. And, in fact, you perform those tests and take those measurements, and then you input them into a computer.

A. Yes.

Q. And any opinions as to vocational ability tied to those tests is a product of that computer program?

A. Can you repeat that?

Q. Let me say it differently. You plug in how long she can sit or stand or walk or whatever and as to whether that meets light or sedentary or any other vocational level, that opinion is the product of the computer. Is that correct?

A. That's correct.

(R. p. 50, line 9 - p. 51, line 11).

He further testified that:

Q. Certainly. Do you agree that there was any inconsistency between the data collected and your opinion in the FCE?

A. I would disagree. My opinion is not — my opinion is not written in this FCE report. The FCE report only states what Ms. Watson performed that day.

MS. FIEHRER: Ok.

A. I indicated her comments and her mannerisms but did not include an opinion of anything in the report.

Q. As far as the indication that she could work sedentary duty. ---

A. Um-hum.

Q. — do you find that that was consistent with the

restrictions during the Functional Capacity Evaluation?

- A. Yes, under the light category of working. The FCE - what I input into the computer generates this report. --

---

MS. FIEHRER: Ok.

- A. -- so my opinion never went into it. This all is inputted into the computer and the computer generates the results.

- Q. The result as far as sedentary duty was generated by a computer based on the --

- A. By --

- Q. -- statistics that you entered?

- A. Yes. Correct.  
(R. p. 45, line 10 - p. 46, line 11).

\* \* \*

- A. Based on what she performed that day and what I input it, her performance into the computer, the computer, based on the Dictionary of Occupational Titles, placed her in that category.

- Q. MR. WUKELA: Now, again, I object to him giving any vocational analysis --

- A. MS. FIEHRER: That's fine.

- Q. MR. WUKELA: -- or to the computer giving any vocational analysis. I am not sure of the qualifications of the computer, but I don't dispute the accuracy of his measurements.

- A. MS. FIEHRER CONTINUING:

- Q. Is it correct, then that you could not make an

accurate or inaccurate statement since you weren't the one actually making the statement as to sedentary duty?

- A. I could not give, if I understand what you are asking me, if you wanted me to calculate on a piece of paper that date, I have not done that before.

MS. FIEHRER: Ok.

(R. p. 47, line 15 - p. 48, line 9).

In sum, Mr. Shadbolt, the individual who performed the Functional Capacity Evaluation, testified explicitly that he did not have any qualifications to give any vocational opinions and that his only qualifications were to test Claimant's physical restrictions and report the results of his findings. He testified that the vocational opinion as to whether the Claimant's restrictions qualify her for sedentary work which was found in the report, (R. p. 273), were not his opinions but instead were the product of a computer into which he had input the physical lifting and sitting and so forth requirements that he obtained. Mr. Shadbolt testified explicitly that he had no vocational opinion whatsoever nor was he qualified to give one.

The Defendants offered no evidence whatsoever establishing that their computer qualified as an expert. Indeed, the Defendants offered no testimony whatsoever from any qualified vocational expert as to whether the Claimant's restrictions qualified her for sedentary work. Instead, they relied on the report produced by a computer, without offering any evidence establishing the nature of the program employed by the computer, prior application of the program's method, quality control procedures, consistency of the program's method with recognized vocational rules and procedures, or any evidence

whatsoever establishing that the computer's "opinion" was in any way reliable.

Indeed, to the contrary, the computer's opinions were themselves inconsistent. In particular, with regard to the Residual Functional Capacity classifications, the report indicates Ms. Watkins can sit for 3 minutes. Her sitting tolerance does not meet the demand minimum functional capacity requirement of sitting for 30 minutes continuously. To the contrary, the computer report summary indicated under strength category:

The Dictionary of Occupational Titles places Ms. Watson's occupation as a Director Of Placement in the sedentary strength category. Therefore, Ms. Watson meets these strength requirements and may return to work as a Director Of Placement.

Based on the strength classifications as established by the Dictionary of Occupational Titles, Ms. Watson is capable of assuming a position in the light strength category. Her maximum lifting capacity is 10.0 pounds, and her maximum carrying capacity is 10.0 pounds. According to the Dictionary of Occupational Titles, the light strength category is defined as having the ability to lift 10 to 20 pounds and carry 5 to 10 pounds.

Job Factor Restrictions:

In order for Ms. Watson to successfully return to work as a Director Of Placement, the following job factor restrictions must be met:

No standing for more than 12 minutes continuously.  
(reference section 1)

No sitting for more than 3 minutes continuously.  
(reference section 2)

No walking for more than 0.1 miles  
continuously. (reference section 3)

No pushing more than 20 pounds. (reference section 6)

No pulling more than 20 pounds. (reference  
section 7)

No stooping. (reference section 14)

No crawling on hands and feet. (reference  
section 16)  
(R. p. 232).

The Claimant's vocational expert, J. Adger Brown, who is qualified as a vocational expert and is well familiar to this Commission and the Social Security Administration and has been admitted to testify to his opinion in vocational matters on enumerable occasions before both agencies, and whose opinions were accepted into evidence in this case without objection, pointed out this contradictory "vocational opinion" offered by the Defendants' computer. (R. p. 247).

Mr. Brown noted that the U.S. Department of Labor's Dictionary of Occupational Titles and the Code of Federal Regulations define the full range of sedentary work as "requiring the ability to sit for 6 out of 8 hours a day". (R. p. 86). Clearly, Ms. Watkins' restrictions of no sitting for more than 3 minutes continuously as set out by Mr. Shadbolt's measurements, (R. p. 232), would not meet the Department of Labor's definition of sedentary work. Claimant's attorney questioned Mr. Shadbolt regarding this fact and he indicated:

Q. Ok. Would you agree with me, then, that the Dictionary of Occupational Titles lists sedentary work as including the requirement that the worker be able to sit for six out of eight hours?

A. I would not be -- I would have to look at the book. I would not be familiar with that.

Q. Ok. So your answer is, I don't know?

A. I don't know.  
(R. p. 52, lines 3-10).

Of course, Mr. Shadbolt never held himself out as a vocational expert and he testified



specifically to the contrary. (R. p. 50, lines 9-15). No testimony was offered by Defendants' computer on this issue. Therefore, Claimant contends that the Commissioner erred in allowing the opinion of the Defendants' computer into evidence.

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**II. ~~THE COMMISSION ERRED IN FAILING TO~~  
~~FIND TOTAL AND PERMANENT DISABILITY~~  
~~UNDER §42-9-10 OR, IN THE ALTERNATIVE,~~  
~~§42-9-30(21).~~**

**A. THE COMMISSION ERRED IN  
FAILING TO FIND THE  
CLAIMANT SUFFERED TOTAL  
AND PERMANENT DISABILITY  
PURSUANT TO §42-9-10.**

On June 24, 2009, Dr. Chokshi sent the Claimant for a functional capacity evaluation to establish her permanent work restrictions. (R. p. 214). The functional capacity evaluation was performed at Tuomey Outpatient Rehabilitation Service on July 6, 2009. The functional capacity evaluation revealed, in pertinent part:

1. **Ms. Watson stood for 12 minutes. Her standing tolerance does not meet the Demand Minimum Functional Capacity requirement of standing for 30 minutes continuously.**
2. **Ms. Watson sat for 3 minutes. Her sitting tolerance does not meet the Demand Minimum Functional Capacity requirement of sitting for 30 minutes continuously.**
3. **Ms. Watson walked for 0.1 miles. Her walking tolerance does not meet the Demand Minimum Functional Capacity requirement of walking for one mile continuously (@ 2mph).**
4. **Ms. Watson has a maximum lifting capacity of 10.0 pounds. This places her into the light category for lifting capacity (as defined by the DOT).**
5. **Ms. Watson has an occasional lifting capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent lifting capacity (34% to**

66% of the workday) is 5.0 pounds. Her constant lifting capacity (67% to 100% of the workday) is 2.0 pounds.

6. Ms. Watson has a maximum carrying capacity of 10.0 pounds. This places her into the light category for carrying capacity (as defined by the DOT).

---

7. Ms. Watson has an occasional carrying capacity (0% to 33% of the workday) of 10.0 pounds. Her frequent carrying capacity (34% to 66% of the workday) is 5.0 pounds. Her constant carrying capacity (67% to 100% of the workday) is 2.0 pounds.
8. Ms. Watson has a pushing capacity of 20.0 pounds. Her pushing capacity does not meet the Demand Minimum Functional Capacity requirement of 100 pounds.
9. Ms. Watson has a pulling capacity of 20.0 pounds. Her pulling capacity does not meet the Demand Minimum Functional Capacity requirement of 80 pounds.  
(R. p. 230).

In the Report Summary, the evaluator discusses the Claimant's job factor restrictions and indicated:

**In order for Ms. Watson to successfully return to work as a Director Of Placement, the following job factor restrictions must be met:**

- No standing for more than 12 minutes continuously. (reference section 1)**
  - No sitting for more than 3 minutes continuously. (reference section 2)**
  - No walking for more than 0.1 miles continuously. (reference section 3)**
  - No pushing more than 20 pounds. (reference section 6)**
  - No pulling more than 20 pounds. (reference section 7)**
  - No stooping. (reference section 14)**
  - No crawling on hands and feet. (reference section 16)**
- (R. p. 232).

Further, with reference to Waddell Nonorganic Signs Test Report, the evaluator

indicated that Ms. Watson scored 0/5, a score which falls within the acceptable range and suggests organic behavior. (R. p. 239). That is to say, the functional capacity evaluation's test for malingering indicated that the claimant was not malingering.

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In addition, the Claimant was interviewed and her records, including the functional capacity evaluation, were reviewed by J. Adger Brown, a vocational analyst well familiar to this Commission and also to the Social Security Administration. Mr. Brown agreed that, by definition, the restrictions provided by the functional capacity evaluation left the Claimant incapable of even sedentary employment. He further noted:

**Based on the information available for my review, chiefly the functional capacity evaluation, it is my opinion that Ms. Watson is incapable of returning to her former work and would not be able to compete for any other type of employment for the same reason. When this is combined with an individual of advanced employment age who has been out of work for two years, with a history of back injury and back surgery, it becomes even more apparent that this lady is totally disabled.**  
(R. p. 251).

Claimant received a letter on September 22, 2009 from the employer instructing her to return to work on Monday, September 28, 2009. (R. p. 253). She returned to the job accompanied by her restrictions as listed in her functional capacity evaluation. Upon reviewing those restrictions, her employer declined to offer her any work within her restrictions and instead sent her home. (R. p. 113, line 14 - p. 114, line 10).

Given the evidence, the Commission erred in failing to find the Claimant totally disabled pursuant to §42-9-10.

B. HAVING FOUND THAT THE CLAIMANT SUFFERED A FIFTY (50%) PERCENT PERMANENT PARTIAL DISABILITY TO HER SPINE THE COMMISSION ERRED IN FINDING THAT THE DEFENDANTS HAD REBUTTED THE PRESUMPTION THAT CLAIMANT WAS TOTALLY AND PERMANENTLY DISABLED PURSUANT TO §42-9-30(21).

The Commission found that Claimant suffered a fifty (50%) percent permanent loss of use to her spine pursuant to §42-9-30(21). (R. p. 14, ¶11).

§42-9-30(21) provides:

(21) for the loss of use of the back in cases where the loss of use is forty-nine percent or less, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks. In cases where there is fifty percent or more loss of use of the back, sixty-six and two-thirds percent the average weekly wages during five hundred weeks. The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases **where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B). The presumption set forth in this item is rebuttable.** (emphasis added).

A presumption in the Worker's Compensation Act will be applied where it meets the requirements. Davis v. Bypass Auto Parts, 304 S.C. 75, 403 S.E.2d 133 (1991). To rebut the presumption requires direct, substantial evidence that it does not apply. Floyd v. W.O. Green Plumbing & Heating Company, 255 S.C. 352, 179 S.E.2d 28 (1971); Suburban Propane Gas Company v. DesChamps, 298 S.C. 230, 379 S.E.2d 301 (Ct. App. 1989);

Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 459 (Ct. App. 1999). No such evidence was submitted herein.

Outside of the objectionable, and internally contradictory, vocational opinions of the Defendants' computer discussed above, the Defendants offered no evidence whatsoever, much less direct and substantial evidence, to rebut the statutory presumption of total disability. When taken with the Claimant's significant work restrictions and limited education and work experience and the Employer's own indication that they could not employ Claimant given her restrictions, the evidence of record establishes the Claimant's total and permanent disability. In fact, in their Order, the Commission found:

... She testified that she would be willing to try to work, and given the sedentary nature of her job before this accident, when coupled with her restrictions, it is debatable whether or not she could actually return to work.  
(R. p. 14, ¶11)(emphasis added).

This finding of the Commission that "it is debatable whether or not she could actively return to work" is relied upon by the Defendants in overcoming the statutory presumption that the Claimant is totally and permanently disabled. It is not sufficient.

Direct and substantial evidence that a presumption does not apply is required to rebut a statutory presumption. See Floyd v. W.O. Green Plumbing & Heating Company, 255 S.C. 352, 179 S.E.2d 28 (1971); Suburban Propane Gas Company v. DesChamps, 298 S.C. 230, 379 S.E.2d 301 (Ct. App. 1989); Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 459 (Ct. App. 1999).

As set out in the Claimant's vocational evaluation by Adger Brown when one takes the Claimant's work restrictions, particularly the undisputed limitation that she is unable to

sit for more than 3 minutes, combined with the Claimant's limited education and work experience, as well as the Employer's indication that they have no work for her within her restrictions, and further combined with the Commission's findings that the Claimant sustained a fifty (50%) percent disability to the spine resulting in a statutory presumption of total and permanent disability, this Court can be left with no conclusion but that the Claimant is totally and permanently disabled.

**III. THE COMMISSION ERRED IN GRANTING THE DEFENDANTS' CREDIT FOR ALL TEMPORARY DISABILITY COMPENSATION PAID AFTER AUGUST 12, 2009, THE DATE OF MAXIMUM MEDICAL IMPROVEMENT.**

On August 12, 2009, Dr. Chokshi, the Claimant's treating orthopaedist, reviewed the Functional Capacity Evaluation performed by Mr. Shadbolt, endorsed the restrictions contained therein and found the Claimant at maximum medical improvement. (R. pp. 215-216). Thereafter, on September 2, 2009, Defendants filed a Form 21 requesting a stop payment. On September 9, 2009, the Commission set a hearing on Defendants' Form 21 for October 13, 2009. On September 15, 2009, the Defendants filed an amended Form 21, this time requesting credit for overpayment of temporary compensation. On October 6, 2009, one week before the scheduled hearing, the Defendants withdrew their Form 21. Upon receiving notice of that withdrawal on October 7, 2009, Claimant filed a Form 50 and requested that the October 13 hearing go forward. The Commission denied Claimant's request to go forward on the October 13 hearing.

Over a month later, on November 9, 2009, the Defendants filed a second Form 21 and requested credit for overpayment of temporary compensation. On November 16, 2009, a

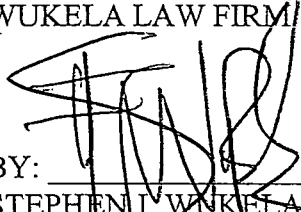
hearing was held before the Single Commissioner on that Form 21 for December 17, 2009.

Claimant opposed the Defendants' request for credit. The Single Commissioner awarded the Defendants credit for all temporary compensation paid beyond August 12, 2009.

The Defendants withdrew their first Form 21 voluntarily and, over the Claimant's  
objection, the original hearing set for October 13, 2009, was cancelled. Defendants did not file a second Form 21 until November 9, 2009, and the hearing was not reset until December 17, 2009. Equity does not allow the Defendants to withdraw their request for hearing and then come back and request credit for an overpayment of temporary compensation created by that withdrawal. Certainly, equity would estopp the Defendants from this request for credit for any overpayment inasmuch as it was self-inflicted.

Respectfully submitted.

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January 20<sup>th</sup>, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

---

Case Tracking No. 2010174006

---

GENEVA WATSON, ..... Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

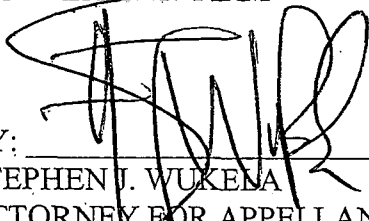
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**CERTIFICATE OF COMPLIANCE**

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The undersigned certifies that the Appellant's Final Brief complies with the Supreme Court Order of August 13, 2007, in that there are no personal data identifiers included in the Appellant's Final Brief, or they have been redacted where necessary.

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January 26<sup>th</sup>, 2011



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
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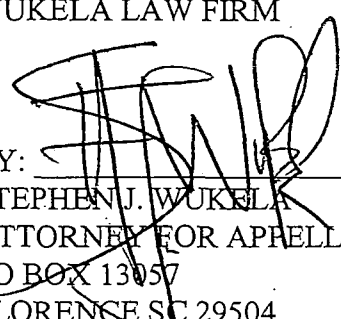
**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Final Brief complies with Rule 211(b),  
SCACR.

January 28<sup>th</sup>, 2011

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Case Tracking No. 2010174006

GENEVA WATSON

Appellant

VS.

EXTRA MILE DRIVER TRAINING, INC. and  
HARTFORD UNDERWRITERS INSURANCE CO.

Respondents

FINAL BRIEF OF RESPONDENTS

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XTRA Mile Driver Training, Inc. and Hartford Underwriters Insurance Co. (hereinafter "Respondents"), by and through their undersigned attorney, respectfully submit their Respondents' Brief to the South Carolina Court of Appeals:

### **STATEMENT OF THE CASE**

---

#### **1. Procedural History**

This matter was before the South Carolina Workers' Compensation Commission pursuant to the Defendants' Form 21, Stop Payment Application, pursuant to Regulation 67-506 based on their position that the Claimant reached maximum medical improvement on August 12, 2009. (R. p. 31). The Claimant also filed a Form 50, Request for Hearing, on October 7, 2009. The Defendants timely filed a Form 51, Employer's Answer, on November 11, 2009. A Hearing was held before the Single Commissioner on December 17, 2009. At the Hearing, the Defendants claimed credit for overpayment of temporary disability compensation paid after August 12, 2009 and sought a final determination concerning the Claimant's entitlement to further benefits. The Claimant requested additional medical examination and treatment for an injury to her back, right hip, right leg, and psyche. The Claimant further alleged that she is permanently and totally disabled as a result of the injury on September 18, 2007. The Defendants contend the Claimant had no loss of future earnings and that the Claimant was entitled to a scheduled award under §42-9-30 for an injury to her back only, especially in light of the Consent Order dated February 13, 2008. (R. pp. 1-2). The Claimant requested lump sum payment of total disability benefits. The Defendants objected to lump sum payment based on Claimant's application for social security benefits and further objected to an award of Dodge medicals based on Dr. Chokshi's testimony.

A Motion to Quash Dr. Rakesh P. Chokshi's deposition was filed by the Claimant on December 8, 2009. After a Pre-Hearing Conference, the undersigned Commissioner determined that the transcript from Dr. Rakesh P. Chokshi's deposition taken on December 16, 2009 would be admitted into the evidentiary record. The Claimant also objected to the admission of a portion of the functional capacity evaluation (hereinafter "FCE") submitted as Claimant's APA No. 7. (R. pp. 229-239). Specifically, the Claimant objected to the conclusion of the FCE and the sedentary strength finding; however, the Claimant did not object to the restrictions in the report. Such objection was overruled by the Single Commissioner.

Following the Form 21/50/51 Hearing, the Single Commissioner issued an Order, dated February 17, 2010, finding *inter alia* (1) all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act; (2) the Claimant sustained an injury to her back which also radiates to her right hip in an admitted accident arising out of and in the course of her employment on September 18, 2007; (3) the Claimant is a credible witness; (4) the Claimant testified truthfully concerning her ongoing back and hip pain; she testified that her pain is constant, and that a fusion surgery was discussed; however, she opted for the less invasive decompression surgery to start; (5) the Claimant underwent a function capacity evaluation, for which she gave valid effort; the functional capacity evaluation placed her as greater than sedentary-level, but below light duty-level; (6) the Claimant has not returned to work with the Employer; the Claimant was offered work; however, the Employer could not accommodate her restrictions; (7) the Defendants provided the Claimant proper and adequate medical care and treatment for injuries causally related to the September 18,

2007 accident and the Claimant reached a level of maximum medical improvement for injuries related to the September 18, 2007 accident by August 12, 2009; (8) the Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before August 12, 2009; the Claimant is

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entitled to future medical treatment that tends to lessen her causally related disability under Dodge, per Dr. Chokshi; (9) the Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi; (10) the Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation; (11) based on the record as a whole, the Claimant sustained a 50% permanent loss of use to her back pursuant to §42-9-30(21) as a result of the admitted accident arising out of and in the course of her employment on September 18, 2007; this takes into account the radicular effect of her back issues on her right hip as well; this finding is also based on her sedentary-level of work, her credible testimony, and the ongoing problems she experiences; she is not permanently and totally disabled; she testified that she would be willing to try to work, and given the sedentary nature of her job before this accident, when coupled with her restrictions, it is debatable whether or not she could actually return to work; in any event, based on the evidence as a whole, including all the medical evidence, the Claimant's testimony, the functional capacity evaluation, the depositions of Jerry Shadbolt and Dr. Chokshi, she is not permanently and totally disabled; however, her disability is significantly greater than the 10% impairment rating assigned; (12) the Defendants are entitled to a credit of overpayment of temporary disability compensation paid for the period after August 12, 2009, the date of maximum

medical improvement per Dr. Chokshi, against their liability for permanent disability awarded herein and all temporary disability compensation paid to the Claimant for the period after August 12, 2009 constitutes payment for permanent partial disability award set forth herein; (13) the Claimant's average weekly wage is \$485.71 with a resulting weekly compensation rate of \$323.83; and (14) the Claimant is entitled to a lump sum award. (R. pp. 3-16).

Thereafter, the Claimant/Appellant filed a Form 30, Request for Commission Review. (R. pp. 283-284). Oral arguments were held before the Full Commission Appellate Panel on July 19, 2010 and the Full Commission issued its own Decision and Order dated September 10, 2010, wherein it affirmed the February 17, 2010 Order of the Single Commissioner in its entirety. (R. pp. 19-28). From the Decision and Order of the Full Commission, the Appellants appealed to this Honorable Court by filing a Notice of Appeal dated October 5, 2010.

## 2. The Evidence Presented at the Hearing

The record reveals that the Claimant, Geneva Watson, was employed as a director of placement for XTRA Mile Driver Training when she was involved in an admitted accident arising out of and in the course of her employment on September 18, 2007. (R. p. 106, line 1-p. 107, line 12; Hearing Transcript pg. 9-10). Following the accident, the Defendants provided the Claimant authorized medical care and treatment primarily with Dr. Rakesh P. Chokshi at Pee Dee Orthopaedic Associates. (R. pp. 176-216; APA #4). The Defendants began payment of temporary total disability compensation for the period commencing on September 22, 2007 through the date of the Hearing. The Defendants' Form 21 indicates that a Form 17 was offered on September 2, 2009. (R. p. 31). Pursuant



to the Consent Order dated February 13, 2008, the parties stipulated to an average weekly wage of \$485.71 with a resulting weekly compensation rate of \$323.83. (R. pp. 1-2). There were no objections to jurisdiction or venue.

The Claimant testified on her own behalf. The Defendants relied on the medical records submitted under the Administrative Procedures Act in support of the Stop Payment Application, as well as the deposition testimony of Dr. Rakesh P. Chokshi. Included in the record, pursuant to the Administrative Procedures Act, are records from Bishopville County Emergency Medical Services, Tuomey Healthcare Services, Dr. John Pate, Dr. Rakesh P. Chokshi at Pee Dee Orthopaedic, InMed Diagnostic Services of South Carolina, McLeod Regional Medical Center, and Tuomey Outpatient Rehabilitation Services. Also included in the record pursuant to the Administrative Procedures Act are the Claimant's personnel records; the Consent Order dated February 13, 2008; the vocational assessment by J. Adgar Brown, Jr., MA CDMS; a letter from James D. Seagle, Jr. dated September 22, 2009; the deposition transcript of Jerry Shadbolt; and the deposition transcript of the Claimant.

The Claimant testified that she graduated from high school and attended several training courses in health and life insurance, as well as vocational training school for secretarial duties. (R. p. 105, lines 15-22; Hearing Transcript, pg. 8, lines 15-22). The Claimant further testified that she is versed in the operation of computers. (R. p. 105, lines 23-25; Hearing Transcript, pg. 8, lines 23-25). The Claimant testified that she is able to keep her own checkbook and pay her own bills. (R. p. 17, lines 19-22; Hearing Transcript, pg. 17, lines 19-22). The Claimant stated that since June 2007, she had worked for XTRA Mile Driver Training in the office. (R. p. 106, lines 1-24; Hearing

Transcript, pg. 9, lines 1-24). The Claimant further testified that on September 18, 2007, she slid on a golf ball left on the floor at work by the owner's grandchildren and fell flat on her back. (R. p. 107, lines 3-12; Hearing Transcript, pg. 10, lines 3-12).

The Claimant testified that she has had ongoing problems with her right hip and back since the accident. (R. p. 108, lines 1-3; Hearing Transcript, pg. 11, lines 1-3). The Claimant testified that she chose the least invasive procedure to her back after conservative treatment failed. (R. p. 108, line 4-p. 109, line 24; Hearing Transcript, pg. 11 and 12). The Claimant testified that she still has pain in her legs periodically, but it is not constant. (R. p. 110; lines 13-24; Hearing Transcript, pg. 13, lines 13-24). The Claimant further testified that since her back surgery, there are periods when she does not have pain or numbness in either of her legs. (R. p. 111, lines 1-16; Hearing Transcript, pg. 14, lines 1-16). The Claimant clarified that her left leg has never given her any trouble. (R. p. 111, lines 17-18; Hearing Transcript, pg. 14, lines 17-18). That said, the Claimant described that she still has pain in her right hip and across the lower part of her back. (R. p. 111, lines 19-23; Hearing Transcript, pg. 14, lines 19-23). The Claimant testified that when she is at home, she is able to move and lay down to accommodate her hip pain. (R. p. 115, lines 8-15; Hearing Transcript, pg. 18, lines 8-15). The Claimant testified that while sitting in a chair, she must rotate between sitting and standing in order to alleviate the pain in the middle of her back. (R. p. 115, lines 8-15; Hearing Transcript, pg. 18, lines 8-15). The Claimant further testified that she can only vacuum one room at a time now and she uses a steam mop to clean her floors so that she does not have to bend. (R. p. 116, lines 3-16; Hearing Transcript, pg. 19, lines 3-16).

The Claimant also testified that she has applied for social security disability benefits and is currently pending a Hearing on that matter. (R. p. 114, lines 11-18; Hearing Transcript, pg. 17, lines 11-18). She further testified that she was willing to return to work for XTRA Mile Driver Training upon receipt of a letter from Mr. Seagle.

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(R. p. 113, lines 14-25; Hearing Transcript, pg. 16, lines 14-25). The Claimant testified that when she presented to work at XTRA Mile Driver Training, Mr. Seagle indicated that they could not accommodate her restrictions as outlined in the FCE. (R. p. 114, lines 1-8; Hearing Transcript, pg. 17, lines 1-8).

On cross-examination, the Claimant admitted that her only medication for her alleged psyche injury was prescribed by Anita Kurl at Dr. John Pate's office. (R. p. 117, lines 7-13; Hearing Transcript, pg. 20, lines 7-13). The Claimant testified that she is no longer being prescribed the Prozac medication that she took after her surgery. (R. p. 117, lines 11-16; Hearing Transcript, pg. 20, lines 11-16). The Claimant confirmed that she has never treated with a psychiatrist or psychologist. (R. p. 117, lines 7-10; Hearing Transcript, pg. 20, lines 7-10). The Claimant also indicated that she no longer takes any anti-inflammatories or pain medication. (R. p. 117, lines 17-22; Hearing Transcript, pg. 20, lines 17-22).

In regards to the Claimant's prior work experience, she admitted that she has had experience negotiating contracts, processing payroll, working in customer service, working as an account executive, working as an ad designer, and as a secretary. (R. p. 118, lines 6-23; Hearing Transcript, pg. 21, lines 6-23). The Claimant further testified that she is willing to work so long as an employer can accommodate her restrictions. (R. p. 120, lines 11-19; Hearing Transcript pg. 23, lines 11-19). The Claimant admitted that

she has not looked for any work whatsoever within her restrictions. (R. p. 120, lines 20-22; Hearing Transcript, pg. 23, lines 20-22). The Claimant also confirmed that she is able to personally drive within 30 and 35 minutes continually. (R. p. 120, line 25-p. 121, line 2; Hearing Transcript, pg. 23, line 25 through pg. 24, line 2).

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Following the Claimant's injury by accident on September 18, 2007, the Claimant was transported by EMS to Tuomey Healthcare Services. (R. pp. 154-171; APA #1 and #2). Due to the Claimant's ongoing complaints, she was referred to Pee Dee Orthopaedic Associates by Dr. John Pate. (R. pp. 173-174; APA #3). The records reveal that the Claimant was first treated by Dr. Rakesh P. Chokshi at Pee Dee Orthopaedic Associates on October 1, 2007. (R. p. 176; APA pg. 20). The Claimant was provided with conservative treatment in the form of lumbar epidural injections and physical therapy. (R. p. 176-216; APA #4). Dr. Chokshi diagnosed the Claimant with spinal stenosis at the L3/L4 and L4/L5 regions and recommended that the Claimant undergo an open MRI, including an MRI of the pelvis and SI joint. (R. p. 181 and 184; APA pg. 25 and 28). An MRI of the pelvis performed on December 5, 2008 revealed no significant abnormalities of the hips or pelvis. (R. p. 200; APA pg. 44). The MRI scan of the lumbosacral spine on December 5, 2008 revealed mild to moderate acquired central canal stenosis due to degenerative facet and ligamentous and disc changes of the L3/L4 and L4/L5 levels. (R. p. 201; APA pg. 45). In a letter dated March 6, 2009, Dr. Chokshi recommended that the Claimant undergo a lumbar decompression surgery in the form of a lumbar laminotomy/laminectomy at the L3, L4 and L5 levels due to progressive worsening of the spinal stenosis. (R. p. 204; APA pg. 48). The Claimant underwent the lumbar decompression at the L3 through L5 on March 31, 2009 and was determined to have

reached maximum medical improvement by August 12, 2009 per Dr. Chokshi. (R. p. APA pg. 59). At that time, Dr. Chokshi recommended that the Claimant undergo a FCE at Tuomey Outpatient Rehabilitation Services. (R. p. 215; APA pg. 59). Dr. Chokshi also opined that the Claimant sustained a 10% impairment of the whole person given the nature of her injury and residual symptoms. (R. p. 216; APA pg. 60).

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Ms. Watson underwent a residual functional capacity battery evaluation on July 6, 2009 with Jerry Shadbolt, ATC at Tuomey Outpatient Rehabilitation Services. (R. pp. 229-240; APA #7). According to Mr. Shadbolt's testimony, Ms. Watson chose her job title in the Dictionary of Occupational Titles. (R. p. 64, lines 2-18; Jerry Shadbolt's Deposition Transcript, pg. 33, lines 2-18). This job title was the Director of Placement, which established the baseline of Ms. Watson's functional capacity requirements and functional limitation. (R. p. 64, lines 8-15; Jerry Shadbolt's Deposition Transcript, pg. 33, lines 8-15). Based on the findings, Jerry Shadbolt input the data into the computer, which produced a report summary. (R. p. 64, lines 2-18; Jerry Shadbolt's Deposition Transcript, pg. 33, lines 2-18). Ms. Watson's occupation as Director of Placement was placed in the sedentary strength category. (R. p. 232; APA pg. 73). The evaluation found that Ms. Watson meets the strength requirements and may return to work as the Director of Placement. (R. p. 232; APA pg. 73). The FCE also indicated that Ms. Watson's maximum lifting capacity is 10 lbs. and her maximum carrying capacity is 10 lbs. (R. p. 232; APA pg. 73). The FCE further provided job factor restrictions: no standing for more than 12 minutes continuously, no sitting for more than 3 minutes continuously, no walking for more than 0.1 miles continuously, no pushing more than 20 lbs., no pulling more than 20 lbs., no stooping, and no crawling on hands and feet. (R. p. 232; APA pg.

73). Pursuant to the Waddell Nonorganic Signs Test Report, Ms. Watson's behavior was found to be organic. (R. p. 239; APA pg. 80). According to the Oswestry Low Back Pain Progress Report, Ms. Watson has a self reported low back pain and disability of 52%. (R. p. 238; APA pg. 79). Dr. Chokshi opined that as long as Ms. Watson's work is within the above restrictions, it is reasonable for her to continue working. (R. p. 85, line 13-p. 86, line 2; Dr. Chokshi's Deposition Transcript, pgs. 16 and 17).

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Dr. Chokshi testified that the Claimant had degenerative changes on the MRI following her accident on September 18, 2007. (R. p. 74, lines 24-25; Dr. Chokshi's Deposition Transcript, pg. 5, lines 24-25). Further, Dr. Chokshi testified that those degenerative changes were probably not caused from her injury with XTRA Mile Driver Training; however, she had an exacerbation of the symptoms that you typically see with degeneration. (R. p. 75, lines 2-10; Dr. Chokshi's Deposition Transcript, pg. 6, lines 2-10). Dr. Chokshi testified that Ms. Watson did not have a separate injury to her right leg or hip aside from the injury to her back resulting from the September 18, 2007 slip and fall. (R. p. 77, lines 20-23; Dr. Chokshi's Deposition Transcript, pg. 8, lines 20-23). Dr. Chokshi testified that a second MRI showed degenerative changes associated with spinal stenosis at the L3/4 and L4/5 region of the Claimant's back. (R. p. 75, lines 20-24; Dr. Chokshi's Deposition Transcript, pg. 6, lines 20-24). Due to the Claimant's persistent symptoms, Dr. Chokshi recommended that the Claimant undergo surgery. (R. p. 76, line 2-p. 77, line 5; Dr. Chokshi's Deposition Transcript, pg. 7). Dr. Chokshi testified that the Claimant had some improvement in her symptoms following the lumbar decompression that was performed on March 31, 2009. (R. p. 79, lines 10-13; Dr. Chokshi's Deposition Transcript, pg. 10, lines 10-13). Dr. Chokshi testified that he also referred the Claimant

for a FCE that indicated the Claimant is able to work in the sedentary strength category. (R. p. 79, line 14-R.p. 81, line 19). Dr. Chokshi testified that he relies on the functional capacity evaluator's assessment, as the evaluator is the one that performs the test and is able to conduct a more thorough review of a patient's capabilities. (R. p. 81, lines 15-19;

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Dr. Chokshi's Deposition Transcript, pg. 12, lines 15-19). In addition to any report from a functional capacity evaluator, Dr. Chokshi indicated that he would like to limit the Claimant from any heavy lifting or twisting or turning or bending type of activities that could aggravate her low back condition. (R.p. 86, lines 3-7; Dr. Chokshi's Deposition Transcript, pg. 17, lines 3-7). Dr. Chokshi confirmed that the Claimant reached maximum medical improvement on August 12, 2009. (R. p. 86, lines 8-13; Dr. Chokshi's Deposition Transcript, pg. 17, lines 8-13). Dr. Chokshi also indicated that the Claimant has a 10% impairment to her back based on the Fifth Edition of the AMA Guidelines. (R. p. 86, lines 17-20; Dr. Chokshi's Deposition Transcript, pg. 17, lines 17-20). In regards to any further medical treatment, Dr. Chokshi indicated that it depends on the Claimant's symptoms. (R. p. 86, line 21-p. 87, line 10; Dr. Chokshi's Deposition Transcript, pg. 17, lines 21-24). Dr. Chokshi testified that if the Claimant's symptoms are aggravated, she might need pain medication, anti-inflammatory medications, a brace, physical therapy, or even lumbar fusion surgery. (R. p. 86, line 24-p. 87, line 10; Dr. Chokshi's Deposition Transcript, pg. 17, line 24 through pg. 18, line 10). Dr. Chokshi indicated that he cannot predict what medical treatment the Claimant will require. (R. p. 86, line 24-p. 87, line 10; Dr. Chokshi's Deposition Transcript, pg. 17, line 24 through pg. 18, line 10).

## STANDARD OF REVIEW

The Administrative Procedures Act establishes the standard for judicial review of the Workers' Compensation Commission's decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-135, 276 S.E.2d 304, 306 (1981). The Appellate Court can reverse or modify a

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decision if the findings and conclusions of the agency are affected by error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *See Gray v. Club Group, Ltd.*, 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000); *See also* S.C. Code Ann. §1-23-380(G) (1986, as amended). In considering an appeal from a Decision and Order of the Commission, the Court's role is of an appellate capacity and is limited to deciding whether the Commission's decision is supported by substantial evidence or is controlled by some error of law. *See Rogers v. Kunja Knitting Mills Co.*, 312 S.C. 377, 440 S.E.2d 401, re-hearing denied (Ct. App. 1994). In an appeal from the Commission, the Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. *See Gibson v. Spartanburg School Dist. No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000), citing S.C. Code Ann. § 1-23-380(a)(6) (1976, as amended). A decision of the Commission must be affirmed if factual findings are supported by substantial evidence. *See Stokes v. First National Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency



reached in order to justify its action. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004). Substantial evidence is that evidence which would require refusal to direct a verdict if the matter were before a jury and is something less than the weight of the evidence. *See Hoxit v. Michelin Tire Corporation*, 304 S.C. 461, 405 S.E.2d 407 (1991). The possibility of drawing two inconsistent conclusions from the evidence does not prevent administrative findings from being supported by substantial evidence. *Id.* If the factual findings of the Commission are supported by substantial evidence, the Commission's conclusions must be affirmed. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989).

### ARGUMENT

I. SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE FULL COMMISSION'S DECISION TO ADMIT THE SUMMARY PORTION OF THE FUNCTIONAL CAPACITY EVALUATION REPORT INTO THE EVIDENTIARY RECORD.

The Claimant was referred for the FCE by Dr. Chokshi, the authorized treating physician. (R. p. 215; APA pg. 59). The computer that was involved in the FCE was operated by Jerry Shadbolt and is the property of Tuomey Outpatient Rehabilitation Service. The Claimant's reference to the "Defendants' computer" on page 12 and 13 of her brief is erroneous in suggesting that the computer is owned by XTRA Mile Driver's Training, Inc. and/or Hartford Underwriters Insurance Company.

Furthermore, the report in controversy was submitted by the Claimant as APA No. 7 and the Claimant simply should not be allowed to omit portions of the report by objecting to her own submission. To eliminate portions of a report by objection allows a party to change the context of a submitted record. Further, the Claimant had an

opportunity to cross-examine Jerry Shadbolt regarding the report and that testimony be read in conjunction with the report.

Of note, on Page 7 of the Claimant's brief, she alleges that she objected to the admission of the deposition of Jerry Shadbolt into the record; however, such an objection was not made or ruled upon by the Single Commissioner or Full Commission Appellate Panel. (See R. pp. 98-123; Hearing Transcript). Furthermore, the Claimant submitted Jerry Shadbolt's deposition transcript into the record as APA No. 11. (R. p. 254). The Claimant also did not preserve this issue for appeal via Form 30 or Notice of Appeal to the Court of Appeals; therefore, the issue is not properly before this Honorable Court. See *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 63, 156 S.E.2d 318, 320 (1967); *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E.2d 114 (1995) rehearing denied, certiorari denied.

Further, the summary portion of the FCE report was appropriately allowed into evidence as it is not contradictory to the report data and such was outlined by Jerry Shadbolt at his deposition. Jerry Shadbolt explained that he conducted a Functional Capacity Test and not a Vocational Analysis. Furthermore, Mr. Shadbolt has no personal opinion and the result of the test was generated by a computer. (R. p. 46, lines 1-6; Jerry Shadbolt's Deposition Transcript, pg. 15, lines 1-6). The Claimant's attorney fails to mention that the baseline for compiling the summary is based on the Claimant's own description her job and the job duties she was required to perform. (R. p. 64, lines 16-18; Jerry Shadbolt's Deposition Transcript, pg. 33, lines 16-18). The computer program is based on the Dictionary of Occupational Titles; therefore, the program is able to analyze

the Claimant's ability to return to her occupation based on her description of her occupation. (R. p. 64, lines 2-7; Jerry Shadbolt's Deposition Transcript, pg. 33, lines 2-7).

Jerry Shadbolt also explained that the restrictions are incorporated to the Claimant's sedentary employment classification, not contrary thereto. (R. p. 55, lines 2-19; Jerry Shadbolt's Deposition Transcript, pg. 24, lines 2-19). The testing concluded that the Claimant was able to return to sedentary duties *so long as* the sedentary position accommodates the restrictions outlined in the report. (R. p. 232; APA pg. 73). This report summary is not an "opinion of the Defendants' computer." The report is also not expert testimony subject to Rule 702 of the South Carolina Rules of Evidence, as alleged by the Appellant. The Defendants therefore do not need to offer evidence of the computer's qualifications as alleged on page 10 of the Appellant's brief. Furthermore, the Defendants do not need to offer testimony from the computer as referenced on pages 14-17 of the Appellant's brief. The computer used during the FCE is a tool and not an expert witness pursuant to Rule 702 of the South Carolina Rules of Evidence. In conclusion, the Claimant's motion to suppress portions of the functional capacity evaluation was appropriately overruled.

II. SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE COMMISSION'S FINDING THAT THE CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED UNDER §42-9-10 OR §42-9-30(21).

a. THE CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED UNDER §42-9-10.

In order for the Claimant to be found permanently and totally disabled pursuant to S.C. Code Ann. §42-9-10, she must establish a total incapacity to work. §42-9-10 states "when the incapacity for work resulting from injury is total, the employer shall pay, or

cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation..." not to "exceed five hundred weeks...". The Claimant in this matter, however, did not show a total incapacity to work.

The Claimant's experience is extensive in the sedentary work capacity. The Claimant testified that she graduated from high school and attended several training courses in health and life insurance, as well as vocational training school for secretarial duties. (R. p. 105, lines 15-22; Hearing Transcript, pg. 8, lines 15-22). The Claimant further testified that she is versed in the operation of computers. (R. p. 105, lines 23-25; Hearing Transcript, pg. 8, lines 23-25). The Claimant testified that she is able to keep her own checkbook and pay her own bills. (R. p. 114, lines 19-22; Hearing Transcript, pg. 17, lines 19-22). In regards to her prior work experience, the Claimant admitted that she has had experience negotiating contracts, processing payroll, working in customer service, working as an account executive, working as an ad designer, and as a secretary. (R. p. 118, lines 6-23; Hearing Transcript, pg. 21, lines 6-23). The Claimant further testified that she is willing to work so long as an employer can accommodate her restrictions; however, she has not looked for any work whatsoever. (R. p. 120, lines 11-22; Hearing Transcript, pg. 23, lines 11-22). The Claimant also confirmed that she is able to personally drive between 30 and 35 minutes continually; therefore, she can independently travel to and from work. (R. p. 120, line 25-p. 121, line 2; Hearing Transcript, pg. 23, line 25 through pg. 24, line 2).

Furthermore, the Claimant failed to show that she is unable to perform services other than those so limited in quality, dependability, or quantity that no reasonable stable market exists. *Wynn v. Peoples Natural Gas Co.*, 238 S.C. 1, 118 S.E.2d 812 (1961). To

the contrary, the Claimant has a wide variety of experience in sedentary work and has been released to return to sedentary work by her treating physician. (R. p. 216; APA pg. 60). The Claimant has not attempted to find gainful employment within her restrictions. It is clear that substantial evidence exists in the record to support the Finding that the Claimant is not permanently and totally disabled under S.C. Code Ann. §42-9-10. The medical, vocational and testimonial evidence points to the conclusion that the Claimant has the sufficient vocational and physical abilities to return to the workforce in numerous other sedentary positions; therefore, the Decision and Order of the Full Commission should be affirmed.

b. THE DEFENDANTS REBUTTED THE PRESUMPTION THAT THE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED UNDER §42-9-30(21).

§42-9-30(21) states “in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B). The presumption set forth in this item is rebuttable.” For many of the reasons addressed hereinabove, the Full Commission found that the Defendants rebutted this presumption and showed the Claimant is not permanently and totally disabled.

In part, the Full Commission relied upon the opinion of the authorized treating physician, Dr. Chokshi. Dr. Chokshi stated, “As long as the work is within that particular restrictions, I believe it is reasonable for her to continue working.” (R. p. 216; APA pg. 60). Dr. Chokshi further opined that the Claimant has a 10% impairment given the nature of her residual symptoms. (R. p. 216; APA pg. 60). While the Single Commissioner ruled that the Claimant had a greater than 10% disability, he also found that the

Defendants rebutted the presumption that the Claimant is permanently and totally disabled. To find that the Claimant is permanently and totally disabled based on a 10% impairment when a Claimant has not even attempted to find work within her restrictions would have been excessive in light of the evidence as a whole. Therefore, the Full Commission's affirmation of the Single Commissioner's Decision and Order is supported by substantial evidence.

Furthermore, J. Adger Brown's vocational analysis is the only evidence suggesting that the Claimant could be permanently and totally disabled. Mr. Brown misinterpreted the FCE and opined that there is "a significant inconsistency between the data collected and the summary opinions of the athletic trainer who did the functional capacity evaluation." (R. p. 247; APA pg. 86). We know from Mr. Shadbolt's deposition that he did not add his personal opinion to the report. Mr. Brown also indicates that his opinion is based on the US Department of Labor *Dictionary of Occupational Titles*, as was the FCE report. (R. p. 247; APA pg. 86). The opinion from Mr. Brown; however, is based on his subjective interpretation instead of the objective analysis performed by the computer program based on the Claimant's FCE performance.

In short, the Single Commissioner and Full Commission appropriately placed greater weight on the objective FCE conclusion and the opinion of the authorized treating physician rather than the subjective opinion of J. Adger Brown. Therefore, Full Commission's decision that the Claimant is not permanently and totally disabled is certainly based upon substantial evidence in the record and not an error of law.

**III. SUBSTANTIAL EVIDENCE SUPPORTS THE FULL  
COMMISSION'S DECISION TO GRANT THE  
DEFENDANTS CREDIT FOR ALL TEMPORARY  
DISABILITY COMPENSATION PAID AFTER THE  
DATE OF MAXIMUM MEDICAL IMPROVEMENT.**

The Defendants first filed a Form 21 on September 2, 2009. (R. p. 29). A Form 17 was offered to the Claimant on September 2, 2009. (R. p. 29). The Claimant elected not to sign the Form 17 and her temporary total disability benefits continued through the Hearing. Due to the outstanding issues with the FCE (addressed herein above), the Defendants withdrew the Form 21 to take the depositions of Jerry Shadbolt and Dr. Chokshi. The Defendants scheduled such depositions and timely refilled the Form 21 on November 9, 2009. (R. p. 31). The Claimant never disputed or opposed the Defendants' request for credit when it was presented at the Hearing or on her Form 50 Request for Hearing. (See R. p. 104; Hearing Transcript, pg. 7). Therefore, the Claimant has no standing to bring an issue on appeal that was not raised before the Single Hearing Commissioner and this Honorable Court has no jurisdiction over an issue not raised at the initial Hearing before the Single Commissioner. *See Riddle v. Fairforest Finishing Co.*, 198 S.C. 419, 18 S.E.2d 341 (1942).

To the extent that the issue is properly before this Honorable Court, there is substantial evidence to support that the Claimant reached maximum medical improvement; therefore, any compensation paid after the date of maximum medical improvement is payment toward permanency and not temporary disability payment. Because an employee's eligibility for temporary disability benefits ceases on the date of maximum medical improvement, any benefits paid after such date become payment toward the permanent disability award. *Hendricks v. Pickens County*, 335 S.C. 405, 517

S.E.2d 698 (S.C.App.,1999). Therefore, the Full Commission did not err in granting the Defendants credit towards the permanency award for all payment of benefits after the date the Claimant reached maximum medical improvement.

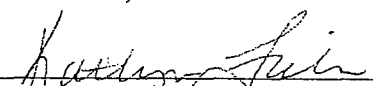
**CONCLUSION**

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For the foregoing reasons, the Respondents respectfully request that this Honorable Court affirm the Full Commission's Decision and Order dated September 10, 2010 in its entirety.

RESPECTFULLY SUBMITTED,

Wood & Warder, LLC  
P.O. Box 20550  
Charleston, SC 29413

  
\_\_\_\_\_  
Kathryn R. Fiehrer  
Attorney for Respondents

February 2, 2011  
Charleston, SC



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Case Tracking No. 2010174006

GENEVA WATSON,.....Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO.,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondents' Final Brief complies with Rule 2011(b) of the South Carolina Appellate Court Rules.

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By:   
Kathryn R. Fiehrer, Esquire  
Attorney for Respondents

Date: February 2, 2011

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Geneva Watson, Appellant,

v.

Xtra Mile Driver Training, Inc., and Hartford  
Underwriters Insurance Co., Respondents.

Appellate Case No. 2010-174006

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Appeal From Richland County  
Appellate Panel, Workers' Compensation Commission

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Published Opinion No. 5013  
Heard January 26, 2012 – Filed August 1, 2012

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**AFFIRMED**

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Stephen J. Wukela, of Wukela Law Firm, of  
Florence, for Appellant.

Kathryn Rose Fiehrer, of Wood & Warder, LLC,  
of Charleston, for Respondents.

**WILLIAMS, J.:** In this workers' compensation appeal, Geneva Watson (Watson) challenges the Workers' Compensation Appellate Panel's (Appellate Panel) decision to admit into evidence the strength category portion of the functional capacity evaluation (FCE). Additionally, Watson asserts the Appellate Panel erred in failing to find her permanently and totally disabled. Watson also claims the

Appellate Panel erred in granting her employer, XTRA Mile Driver Training, Inc., and its insurance company, Hartford Underwriters Insurance Company (collectively, XTRA), credit for all temporary disability compensation paid after the date of maximum medical improvement (MMI). We affirm.

## FACTS

On September 18, 2007, while working as Director of Placement for XTRA, Watson slipped on a golf ball and fell on her back. Watson was transported to Tuomey Emergency Room where the emergency room physician ordered lumbar and thoracic spine x-rays, which did not reveal any significant injury. A subsequent lumbar MRI of Watson's back revealed, in pertinent part, suspect hemangiomas, mild disc bulges, and spinal stenosis in Watson's back. The emergency room physician ordered Watson not to return to work for two days and instructed her to see a physician before returning to work.

On September 22, 2007, XTRA began paying Watson temporary total disability (TTD) compensation. Five months later, on February 12, 2008, XTRA and Watson executed a consent order wherein the parties stipulated to an average weekly wage of \$485.71, with a resulting weekly compensation rate of \$323.83.

In accordance with the emergency room physician's instructions, Watson went to XTRA's doctor, Dr. John Pate, and saw XTRA's nurse practitioner, Anita Curl. Ms. Curl ordered Watson not to return to work for one week and referred her to Pee Dee Orthopaedics. On October 1, 2008, Watson saw Dr. Rakesh Chokshi, an orthopaedic surgeon at Pee Dee Orthopaedics. Dr. Chokshi ordered epidural steroid injections, which did not significantly improve Watson's condition. Ultimately, Dr. Chokshi performed lumbar decompression surgery at Watson's L3-4 and L4-5 discs on March 31, 2009.

Dr. Chokshi then referred Watson to Tuomey Outpatient Rehabilitation Service for an FCE to establish her permanent work restrictions. The manager of outpatient rehabilitation at Tuomey Healthcare System, Jerry Shadbolt, performed the FCE on July 6, 2009. Shadbolt testified that during the FCE, he conducted a series of tests to measure Watson's ability to perform physical activities, such as sitting, walking, and standing.<sup>1</sup> Based on Watson's ability to perform physical activities,

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<sup>1</sup> The results of the tests revealed, in pertinent part: (1) Watson has a maximum lifting capacity of ten pounds, placing her into the light category for lifting capacity; and (2) Watson has a maximum carrying capacity of ten pounds, placing

Shadbolt identified Watson's physical restrictions.<sup>2</sup> Shadbolt testified he entered Watson's physical restrictions and Watson's job title<sup>3</sup> into a computer, which utilized a software program to generate a report on Watson's strength and ability to return to work based on the DOT<sup>4</sup> guidelines. This report was listed in the strength category of the FCE and concluded:

The Dictionary of Occupational Titles places Ms. Watson's occupation as a Director of Placement in the sedentary strength category. Therefore, Ms. Watson meets these strength requirements and may return to work as Director of Placement.

Based on the strength classifications as established by the Dictionary of Occupational Titles, Ms. Watson is capable of assuming a position in the light strength category. Her maximum lifting capacity is 10 pounds, and her maximum carrying capacity is 10 pounds. According to the Dictionary of Occupational Titles, the light strength category is defined as having the ability to lift 10 [to] 20 pounds and carry 5 to 10 pounds.

Shadbolt testified that his opinion as to whether Watson could return to work was not contained in the strength category of the FCE report. Shadbolt noted he is only an expert in conducting the tests to see how long Watson can perform physical tasks, and the computer generates the report based on the results of those tests.

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her in the light category for carrying capacity as defined by the Dictionary of Occupational Titles (DOT).

<sup>2</sup> Watson's job factor restrictions included: (1) no continuous standing for more than twelve minutes; (2) no continuous sitting for more than three minutes; (3) no continuous walking for more than 0.1 miles; (4) no pushing more than twenty pounds; (5) no pulling more than twenty pounds; (6) no stopping; and (7) no crawling on her hands and feet.

<sup>3</sup> Watson selected her job title, Director of Placement, in the Dictionary of Occupational Titles, which established the strength category necessary to perform that occupation.

<sup>4</sup> The DOT is a U.S. government publication that provides a description of occupational titles for most jobs in the United States and establishes a strength classification for each of these occupations. These strength classifications are sedentary, light, medium, heavy, and very heavy.

However, Shadbolt testified he believed the strength category report's conclusion that Watson could return to light strength work was consistent with Watson's physical restrictions contained in the FCE.

XTRA sent Watson a letter instructing her to return to work on Monday, September 28, 2009. Watson returned to work accompanied by her restrictions as listed in the FCE. Upon reviewing those restrictions, XTRA declined to offer her any work within the restrictions and sent her home.

At Watson's request, J. Adger Brown, a vocational analyst, reviewed Watson's FCE. Brown found the job factor restrictions provided by the FCE left Watson totally and permanently disabled and incapable of even sedentary employment.

## **PROCEDURAL HISTORY**

On November 9, 2009, XTRA filed a Form 21 claiming Watson reached MMI on August 12, 2009.<sup>5</sup> Watson filed a Form 50, and XTRA timely responded by filing a Form 51.

At the hearing before the single commissioner, Watson alleged she was permanently and totally disabled and requested a lump sum payment of total disability benefits and lifetime causally-related medical treatment. XTRA claimed credit for overpayment of TTD paid after August 12, 2009, and sought a final determination concerning Watson's entitlement to future benefits.

Although Watson admitted the FCE into evidence before the single commissioner, she objected to the strength portion of the FCE generated by the computer, which used the DOT guidelines to conclude Watson was capable of assuming an employment position in the light strength category. The single commissioner overruled Watson's objection.

Taking into account the record as a whole, including Watson's testimony, the FCE, medical reports, the consent order, the depositions of Dr. Chokshi and Shadbolt, and the vocational assessment by Brown, the single commissioner found, in pertinent part: (1) Watson sustained an injury to her back as a result of the work-related accident; (2) XTRA provided Watson adequate medical care; (3) Watson

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<sup>5</sup> XTRA previously filed a Form 21 on September 2, 2009, and September 15, 2009, but filed an amended Form 21, which began the current action, on November 9, 2009.

reached MMI for injuries causally related to the accident by August 12, 2009; (4) Watson was not permanently and totally disabled; and (5) Watson sustained a 50% permanent partial disability to her back pursuant to section 42-9-30(21) of the South Carolina Code (Supp. 2011).

In accordance with these findings, the single commissioner ordered: (1) XTRA was responsible for all causally-related medical treatment that was incurred on or before August 12, 2009; (2) Watson was entitled to future *Dodge*<sup>6</sup> medical treatment as needed to lessen Watson's causally-related disability from the September 18, 2007 accident; (3) XTRA's stop payment application was granted, and XTRA was entitled to stop payment of TTD effective August 12, 2009; (4) XTRA had no liability for any further TTD; and (5) XTRA must pay a lump sum payment to Watson representing compensation for 50% permanent loss of use to the back, while XTRA was allowed to take credit for all TTD paid to Watson for the period after August 12, 2009.

Watson appealed the single commissioner's order. The Appellate Panel affirmed the single commissioner in full, and this appeal followed.

## STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the substantial evidence standard for judicial review of decisions by the Appellate Panel. S.C. Code Ann. § 1-23-380 (Supp. 2011); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). Under the substantial evidence standard of review, this court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse when the decision is affected by an error of law. *Stone v. Traylor Bros., Inc.*, 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusions the [Appellate Panel] reached in order to justify its actions." *Broughton v. S. of the Border*, 336 S.C. 488, 495, 520 S.E.2d 634, 637 (Ct. App. 1999) (internal citation omitted).

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<sup>6</sup> *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 579-80, 514 S.E.2d 593, 596 (Ct. App. 1999) (holding a finding that claimant has reached MMI does not preclude an award of additional medical benefits for purposes of lessening the period of disability).

## **LAW/ANALYSIS**

### **I. The FCE**

Watson argues the Appellate Panel erred in admitting the strength category contained in the FCE that indicates Watson was capable of light strength work. Watson asserts the vocational opinion was generated by a computer system, and XTRA offered no evidence to establish the computer was qualified as a vocational expert to give an opinion under Rule 702 of the South Carolina Rules of Evidence. We disagree.

Because the South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission, and Watson offers no other authority for this court to reverse the Appellate Panel, we affirm the decision to admit the FCE into evidence. *See Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 70, 528 S.E.2d 667, 668 (2000) ("[T]he South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission."); *Hallums v. Micheline Tire Corp*, 308 S.C. 498, 504, 419 S.E.2d 235, 239 (1992) (holding the Workers' Compensation Commission is allowed wide latitude of procedure and is not restricted to the strict rule of evidence adhered to in a judicial court); *see also Conran v. Joe Jenkins Realty, Inc.*, 263 S.C. 332, 334, 210 S.E.2d 309, 310 (1974) (holding appellant has the burden of proof to convince a reviewing court that the lower court was in error, and to do this, appellant must place in the record a sufficient foundation for his or her argument).

Accordingly, we affirm the Appellate Panel's decision to admit the strength category portion of the FCE into evidence.

### **II. Permanent and Total Disability**

Watson argues the Appellate Panel erred in failing to find permanent and total disability (PTD) under section 42-9-10 of the South Carolina Code (Supp. 2011) or, in the alternative, section 42-9-30(21) of the South Carolina Code (Supp. 2011). We disagree.

#### **A. Section 42-9-10**

First, Watson contends the Appellate Panel erred in failing to find PTD under section 42-9-10. We disagree.

Section 42-9-10 provides for PTD "when the incapacity for work resulting from an injury is total." The extent of disability is a question of fact to be proved as any other fact is proved. *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 384, 335 S.E.2d 91, 95 (Ct. App. 1985). In *Wynn v. Peoples Natural Gas Co. of S.C.*, 238 S.C. 1, 11-12, 118 S.E.2d 812, 817-18 (1961), our supreme court stated:

Disability in compensation cases is to be measured by loss of earning capacity. Total disability does not require complete helplessness. . . . The generally accepted test of total disability is inability to perform services other than those that are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist."

(internal citations omitted).

Here, there is substantial evidence in the record to support the Appellate Panel's conclusion that Watson is not permanently and totally disabled. At the hearing before the single commissioner, Watson testified as to her education and work experience: (1) she graduated high school and attended several training courses in health and life insurance, as well as vocational training in secretarial duties; (2) she is versed in the operation of computers; (3) she has experience in contract negotiation, customer service, accounting, ad design, and other types of secretarial work; and (4) she has extensive experience and training in occupations of a sedentary nature. As to her physical capabilities, Watson testified: (1) she is able to drive continually for thirty to thirty-five minutes and can drive longer if she takes breaks; (2) she performs some household chores; (3) she goes grocery shopping; (4) she handles all her money and pays her bills; and (5) she no longer takes any anti-inflammatories or pain medication.

Further, both Dr. Chokshi and Shadbolt evaluated Watson and testified she could return to work in an occupation that complied with her job factor restrictions. While the dissent points out Watson's restrictions, we find Watson's testimony describing her capabilities, and the testimony of Dr. Chokshi and Shadbolt provide substantial evidence to conclude Watson is not permanently and totally disabled.

Based on the record as a whole, we find Watson failed to show that she was unable to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist. *See Coleman v.*



*Quality Concrete Prods., Inc.*, 245 S.C. 625, 630, 142 S.E.2d 43, 45 (1965) (holding the burden is on the employee to prove he or she is totally disabled, specifically that he or she is unable to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist). Therefore, we affirm the Appellate Panel's conclusion that Watson was not permanently and totally disabled under section 42-9-10.

**B. Section 42-9-30(21)**

Watson also contends the Appellate Panel erred in failing to find PTD under section 42-9-30(21). We disagree.

While PTD is generally based on loss of earning capacity, section 42-9-30(21) states there is a rebuttable presumption of PTD when a claimant has 50% or more loss of use of the back. Therefore, a claimant with 50% or more loss of use of the back is not required to prove loss of earning capacity to establish PTD. *Bateman v. Town & Country Furniture Co.*, 287 S.C. 158, 160, 336 S.E.2d 890, 891 (Ct. App. 1985) (holding a claimant who suffers a 50% or more loss of use of the back need not show a loss of earning capacity to recover PTD).

Here, the Appellate Panel affirmed the single commissioner's finding that Watson sustained 50% impairment to the use of her back. The Appellate Panel also agreed that while there was a presumption Watson was totally and permanently disabled under section 42-9-30(21), XTRA rebutted that presumption. We find there is substantial evidence in the record to support the Appellate Panel's conclusion that XTRA rebutted the presumption that Watson was permanently and totally disabled.

The Appellate Panel relied, in part, on the FCE, which concluded Watson is capable of assuming a position in the light strength category. The Appellate Panel also reviewed the testimony of Dr. Chokshi who stated, "As long as the work is within the particular restrictions, I believe it is reasonable for her to continue working." Dr. Chokshi also determined that according to the American Medical Association (AMA) guidelines, Watson had a 10% impairment rating of the whole person. Shadbolt testified he believes Watson could perform a sedentary job if she was able to stand up and sit down periodically. Further, Watson testified she is willing to work within her strength restrictions, but admitted she has not looked for any employment within those restrictions.

We recognize the testimony of Brown, the vocational analyst, who asserted the conclusions of the FCE were inconsistent, and Watson was permanently and totally

disabled. However, the Appellate Panel is reserved the task of weighing the evidence, and it ultimately concluded Watson was not permanently and totally disabled. *See Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (holding the appellate panel is specifically reserved the task of assessing the credibility of the witnesses and the weight to be accorded evidence). We find the Appellate Panel's conclusion that Watson is not permanently and totally disabled is supported by substantial evidence in the record. Accordingly, we affirm the Appellate Panel.

### **III. Credit for TTD**

Watson argues the Appellate Panel erred in granting XTRA credit for all TTD paid after Watson reached MMI on August 12, 2009. We disagree.

We find substantial evidence in the record to support Watson reached MMI; therefore, we hold XTRA is entitled to recover any payment it made to Watson for TTD after that date. Dr. Chokshi found Watson reached MMI on August 12, 2009. On appeal, Watson does not object to Dr. Chokshi's finding of MMI, but instead argues equity demands that XTRA not receive credit for payments it made to Watson after she had reached MMI. Because equity follows the law, XTRA is entitled to credit for any TTD compensation payments it made to Watson after the date of MMI. *See Curiel v. Envtl. Mgmt. Servs. (MS)*, 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007) ("[T]he date of maximum medical improvement signals the end of entitlement to temporary total disability benefits."); *Smith v. S.C. Dep't of Mental Health*, 335 S.C. 396, 398-401, 517 S.E.2d 694, 695-97 (1999) (finding employer was entitled to stop payment of temporary total disability benefits upon a showing that the claimant has reached maximum medical improvement); *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011) (holding a court may not ignore statutes, rules, and other precedent when providing an equitable remedy).

Accordingly, the Appellate Panel's decision is

**AFFIRMED.**

**SHORT, J., concurs.**

**GEATHERS, J., concurs in part, and dissents in part.**

**GEATHERS, J., concurring in part and dissenting in part.**

Respectfully, I concur in part and dissent in part. I concur with the majority's holdings that: (1) Watson's strength assessment was properly admitted into evidence, and (2) the employer is entitled to a credit for payment of temporary disability benefits made after Watson reached maximum medical improvement. I respectfully dissent, however, from the majority's holding that Watson is not permanently and totally disabled, pursuant to sections 42-9-10 and 42-9-30(21) of the South Carolina Code (Supp. 2011).

In South Carolina, there are two models of workers' compensation; the first, an economic model, compensates workers for reductions in earning capacity, while the second is based on the degree of medical impairment:

"South Carolina's workers' compensation law represents a combination of two competing models of workers' compensation, one economic and the other medical." *Stephenson v. Rice Servs., Inc.*, 323 S.C. 113, 116, 473 S.E.2d 699, 700 (1996). Under the more traditional economic theory, the goal of worker's [sic] compensation law is to compensate workers for reductions in their earning capacity caused by work-related injuries. *Id.* This is the criterion for compensation under the Workers' Compensation Act. *See* S.C. Code Ann. § 42-1-120 (1985) ("The term 'disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.").

"Notwithstanding the definition of disability in section 42-1-120, South Carolina's workers' compensation law also recognizes a competing concept of disability that is tied to medical impairment rather than to wage loss or to any reduction in earning capacity. *The schedule[d] injuries, which typically provide for fixed awards of workers' compensation based on degrees of medical impairment to certain listed body parts, are compensable without regard to whether the employee is able to continue working at the same job.* In other words, with schedule[d] injuries, the fact the employee still is able to

work constitutes no bar to compensation." *Stephenson*, 323 S.C. at 117, 473 S.E.2d at 701 (emphasis added). Under the medical theory, the focus is on the medical impairment of the employee. *Id.*

*Simmons v. City of Charleston*, 349 S.C. 64, 73-74, 562 S.E.2d 476, 480-81 (Ct. App. 2002).

While an award under general disability requires proof of a loss in earning capacity, an award under a scheduled loss does not require such proof:

Under our Worker's Compensation Act, a claimant may proceed under § 42-9-10 or section 42-9-20 to prove a general disability; *alternatively*, he or she may proceed under § 42-9-30 to prove a loss, or loss of use of, a member, organ, or part of the body for which specific awards are listed in the statute. It is well-settled that an award under the general disability statutes must be predicated upon a showing of a loss of earning capacity, whereas an award under the scheduled loss statute does not require such a showing. The commission may award compensation to a claimant under the scheduled loss statute rather than the general disability statutes so long as there is substantial evidence to support such an award.

*Fields v. Owens Corning Fiberglas*, 301 S.C. 554, 555, 393 S.E.2d 172, 173 (1990) (emphasis added) (citations omitted). In my opinion, Watson is permanently and totally disabled pursuant to both statutory models (economic and medical).

The following facts are undisputed: (1) in a workplace setting, Watson now can sit continuously for no longer than three minutes; (2) in a workplace setting, Watson now can stand continuously for no longer than twelve minutes and can walk no farther than 0.10 mile; (3) Adger Brown, the vocational analyst who reviewed Watson's restrictions, found these job factor restrictions rendered Watson permanently and totally disabled; and (4) when claimant returned to her job, which is classified as sedentary, her employer sent her home, stating there was no work available that could accommodate Watson's job restrictions.

As stated by the majority, the standard for determining total disability under section 42-9-10 is the inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist. *Wynn v. Peoples Natural Gas Co. of S.C.*, 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961). In other words, "[t]he ability to perform limited tasks for which no stable job market exists does not prevent an employee from proving total disability." *Simmons*, 349 S.C. at 74, 562 S.E.2d at 481 (citation omitted).

The majority reasons that because Watson's strength rating was "sedentary" and because her work at the time of injury was also sedentary, Watson remains capable of returning to sedentary work within the restrictions of sitting no more than three minutes and standing no more than twelve minutes. However, the very existence of these restrictions beg the question of whether they so limit the quality, dependability, or quantity of the services Watson is able to perform that there exists no stable job market for those services. The record includes compelling evidence that the sitting and standing restrictions on Watson's work renders her services unmarketable. When Watson attempted to return to her sedentary job, unsurprisingly, her employer informed her that it could provide no work within her job restrictions.

The majority points out the fact that Watson had previously worked as a secretary. However, there is no relevant distinction between the nature of Watson's former job and that of a secretary. Watson's secretarial skills, which also require "sedentary" strength, do not mitigate the impact of the restrictions on her sitting, standing, and walking—basic requirements of all sedentary jobs. Contrary to the majority viewpoint, I would contend there is no "reasonably stable" market for services that can be performed by this claimant. In my opinion, Watson cannot perform workplace services other than those that are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Accordingly, I would hold that Watson is permanently and totally disabled pursuant to section 42-9-10.

I also disagree with the majority's analysis under the scheduled disability statute, section 42-9-30(21). It is particularly significant that section 42-9-30(21) provides a rebuttable presumption of total and permanent disability when a claimant has experienced a loss of use of 50% or more of the back. Here, the Commission found that, as a result of Watson's workplace accident, Watson had sustained a 50% loss of use to her back, which triggered the presumption that Watson is totally disabled. The majority found the employer successfully rebutted this presumption by relying on Dr. Chokshi's statement that Watson can work within her restrictions

and Watson's testimony that she was willing to work within her restrictions. In my opinion, these statements are not probative of the existence of a stable market for work as severely restricted as Watson's work is. See *McCollum v. Singer Co.*, 300 S.C. 103, 107, 386 S.E.2d 471, 474 (Ct. App. 1989) ("Under Workers' Compensation Law 'total disability' does not require complete, abject helplessness. Rather it is an inability to perform services *other than those that are so limited in quality, dependability, or quantity that no reasonably stable market exists for them.*" (emphasis added)). There is simply no probative evidence in the record to rebut the presumption of Watson's total disability under section 42-9-30(21). *Id.* (rejecting an employer's argument that the claimant's ability to drive a car for an hour, walk for ten minutes, and go shopping made the claimant employable).

For the foregoing reasons, under each of the workers' compensation models—economic and medical—I would reverse the Commission's holding that Watson is not totally and permanently disabled.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Opinion No. 5013  
WCC File No. 0715014

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GENEVA WATSON, ..... Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

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**PETITION FOR REHEARING**

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Appellant respectfully requests the Court rehear the above matter. Appellant believes that the Court may have misapprehended certain elements of the Appellant's argument as follows:

**I. THE VOCATIONAL OPINION GENERATED  
BY THE DEFENDANTS' COMPUTER SHOULD  
HAVE BEEN EXCLUDED FROM EVIDENCE.**

The Court ruled that the South Carolina Rules of Evidence do not apply in Workers' Compensation hearings and affirmed the Commission's decision to admit the vocational opinion generated by the Defendants' computer that the Claimant/Appellant's work restrictions allowed her to do sedentary work. Appellant respectfully requests the Court reconsider this holding in light of the following:

In Gadson v. Mikasa, 368 S.C. 214, 628 S.E.2d 262 (S.C. App. 2006), this Court evaluated the admissibility of vocational expert reports in Workers' Compensation hearings. Judge Anderson writing for the Court explained:

The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. Wilson v. Rivers, 357 S.C. 447, 593 S.E.2d 603 (2004). Rule 702, SCRE, articulates guidelines for the admissibility of expert testimony.

Rule 702 provides:

'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.' Rule 702, SCRE. There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the

jury's good judgment and common knowledge. State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1997). For a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony. Ellis, 358 S.C. at 525, 595 S.E.2d at 825. ...

The party offering the expert has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony." Henry, 329 S.C. at 274, 495 S.E.2d at 466. See also, Brown v. La France, 286 S.C. 319, 333 S.E.2d 348 (S.C. App. 1985), finding: (p. 6). Gadson v. Mikasa, 368 S.C. 214, 628 S.E.2d 262 (S.C. App. 2006)(emphasis added).

Here, Mr. Shadbolt, the FCE technician, admitted that he had no qualifications to render a vocational opinion.

**Q. Ok. And you don't have any qualifications or training in vocational evaluation or knowledge about what kind of educational requirements or physical requirements there are for various jobs and what jobs are available in the marketplace. Is that right?**

**A. That's correct.**  
(R. p. 50, lines 9-15).

The vocational "opinion" was provided by Defendants' computer program and Defendant failed to meet their burden or offer any evidence in support of reliability as expert scientific evidence as required by Gadson.

The Court here, citing S.C. Code §1-23-330(1) and Hamilton v. Bob Bennett Ford, 339 S.C. 68, 528 S.E.2d 667 (S.C. 2000), correctly noted that "the South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission." However, while the Supreme Court in Hamilton, cited S.C. Code §1-23-330 for the

proposition that the South Carolina Rules of Evidence do not apply in Workers' Compensation hearings, it went on to, in the next paragraph, exclude hearsay testimony in a Workers' Compensation hearing holding:

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However, even under the proper standard, Powell's hearsay testimony is still inadmissible. Hearsay testimony may be admissible in workers' compensation matters if corroborated by facts, circumstances, or other evidence. Ham, 193 S.C. at 82, 7 S.E.2d at 719. We find that Powell's hearsay was not corroborated by any evidence presented at the hearing. Moreover, Powell's testimony regarding her conversation with Mr. Keith does not meet the requirements of an admission against interest by a party opponent and thus was not admissible on that ground. See Burch v. Cobb, 273 S.C. 445, 257 S.E.2d 225 (1979).

Thus, the Supreme Court in Hamilton acknowledged that the formal rules of evidence do not apply in Workers' Compensation hearings; nevertheless, the Court excluded hearsay testimony that was not corroborated. The only way to reconcile the Supreme Court's hearsay exclusion in Hamilton and its finding that, pursuant to S.C. Code §1-23-330, the Rules of Evidence do not apply, is to conclude that, even where formal Rules of Evidence do not apply, common law and due process require that, to be admissible, evidence must be subject to cross-examination or otherwise established as reliable by corroboration.

The evidentiary requirement of confrontation and cross-examination necessary for due process in Workers' Compensation hearings were also acknowledged recently by this Court in the case of Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (S.C. App. 2012). In Adams this Court reversed the Workers' Compensation Commission's attempt to reconstruct a lost transcript through a hybrid rehearing procedure which allowed witnesses to testify without cross-examination. This Court noted:

The South Carolina Constitution provides that in procedures before administrative agencies:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ... Art. I, §22 (2009 & Supp. 2011).

The South Carolina Supreme Court has explained:

Procedural due process requirements are not technical; no particular form of procedure is necessary. The United States Supreme Court has held, however, that at a minimum certain elements must be present. These include (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.

In re Dickey, 395 S.C. 336, 360, 718 S.E.2d 739, 751(2011)(quoting In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003)).

Thus, the Adams Court held that because cross-examination was an essential element of due process, the Workers' Compensation Commission's procedure allowing witnesses to testify without cross-examination was in error. Adams, at 658, and see also S.C. Code §1-23-330(3)(providing: "any party may conduct cross-examination").

Thus, even in the absence of formal Rules of Evidence, the Supreme Court's limitations of hearsay testimony in Hamilton are in accord with due process evidentiary requirements which necessitate that a party have a right to cross-examine testimony, unless its reliability is established by corroboration in the absence of cross-examination.

Similarly, the Supreme Court in State v. Council, 335 S.C. 1 (1999), and State v. Jones, 273 S.C. 723 (S.C. 1979)(and their predecessor Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), decided before the advent of formal Rules of Evidence), acknowledged

reliability requirements for scientific or opinion evidence especially where, as here, the scientific evidence offered is not susceptible of cross-examination. Certainly, those requirements were later codified in the Rules of Evidence, particularly Rule 702. However, the due process requirements that underlie those rules are essential to fair hearings and persist even where formal Rules of Evidence do not apply, as has been acknowledged, if only implicitly, by the Supreme Court in Hamilton and this Court in Gadson and Adams.

Here, the computer report offered by the Defendants supporting their contention that the Claimant was capable of performing light work was not susceptible of cross-examination. While Mr. Shadbolt, the FCE technician, was cross-examined, he testified that the opinion that the Claimant could perform light work was the computer's, not his, (R. p. 45, line 10 - p. 46, line 11), and that he had no qualifications to give such vocational opinions. (R. p. 50, lines 9-15).

The Defendants offered no evidence to support the reliability of that opinion, although it was their burden to do so. See Gadson at 270 (finding "the party offering the expert has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony.").

In fact, the computer's "opinion" that "Ms. Watson is capable of assuming a position in the light strength category.", (R. p. 232), was itself contradictory to the same report's finding that she did not meet the sitting tolerance requirement of her previous sedentary job. (R. pp. 230, noting "2. Ms. Watson sat for 3 minutes. Her sitting tolerance does not meet the demand minimum functional capacity requirement of sitting for 30 minutes continuously.").

The computer's opinion was also in conflict with the U.S. Department of Labor's

Dictionary of Occupational Titles. The Claimant's vocational expert, J. Adger Brown, noted that the U.S. Department of Labor's Dictionary of Occupational Titles and the Code of Federal Regulations define the full range of sedentary work as "requiring the ability to sit for 6 out of 8 hours a day" (R. p. 86). Clearly, Ms. Watkins' restrictions of no sitting for more than 3 minutes continuously as set out by Mr. Shadbolt's measurements, (R. p. 230), would not meet the Department of Labor's definition of sedentary work. Claimant's attorney questioned Mr. Shadbolt regarding this fact and he indicated:

Q. Ok. Would you agree with me, then, that the Dictionary of Occupational Titles lists sedentary work as including the requirement that the worker be able to sit for six out of eight hours?

A. I would not be – I would have to look at the book. I would not be familiar with that.

Q. Ok. So your answer is, I don't know?

A. I don't know.  
(R. p. 52, lines 3-10).

As such, the computer's opinion that the Claimant was capable of light work should have been excluded from evidence.

Furthermore, the trend in Workers' Compensation common law and statutory law has been to require higher standards of evidence. For example, in McLeod v. Piggly Wiggly, 280 S.C. 46, 313 S.E.2d 38 (S.C. 1984), this Court reviewed a Workers' Compensation award of 25% loss of use to the back under S.C. Code §42-9-30. The Court noted:

Unless the question of the extent of partial loss of use under [now Section 42-9-30] is so technically complicated as to require exclusively, expert professional testimony, medical or other, [cf. Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118

S.E.(2d) 812, and Dennis v. Williams Furniture Corporation, 243 S.C. 53, 132 S.E.(2d) 1], lay testimony is, of course, admissible.

The Court of Appeals in McLeod went on, however, to reverse the award of the Commission finding that the Claimant's lay testimony and the "non-expert opinion" of her general practitioner as to her impairment was insufficient to support the award even under the substantial evidence standard. The Court held:

Here, we are concerned with the back, a much more complicated area of the body. The area of the body, the congenital defect and the type of injury sustained are factors which require a higher degree of expertise than was presented to determine the degree of partial loss of use. We therefore find error in this award and reverse for a redetermination of the award.

This trend of requiring higher standards of evidence in Workers' Compensation cases continued with the legislature's amendments to the Workers' Compensation Act in 2007. Those amendments include additional evidentiary requirements in repetitive trauma cases, §42-1-172; in cases where an aggravation of a pre-existing condition is alleged, §42-9-35; and (as in McLeod), in medically complex cases, §42-1-160. In each case, the legislative amendments required expert opinions stated to a reasonable degree of medical certainty.

In the recent case of Michau v. Georgetown County, 396 S.C. 589, 723 S.E.2d 805 (S.C. 2012), the Supreme Court excluded the report of the Defendants' physician expert because that opinion was not stated to a reasonable degree of medical certainty. While Michau dealt with a repetitive trauma case under §42-1-172, the statutory language is the same there, as in medically complex cases, under §42-1-160.

Thus, this Court's ruling, if left unaltered, would result in the incongruous result that



the computer's opinion here would be admissible, but that the same opinion as to impairment as a result of a workers' compensation injury, offered by an orthopaedic surgeon would be excluded if not stated to a reasonable degree of medical certainty.

In sum, formal Rules of Evidence notwithstanding, common law rules and due process require that expert and scientific evidence, especially that which, as here, is not susceptible to cross-examination, must be excluded from evidence, unless the party offering such evidence meets the standards of reliability set out in Jones and Council. Defendants did not meet that standard and the opinion generated by Defendants' computer should be excluded.

**II. DEFENDANTS DID NOT PRODUCE SUFFICIENT EVIDENCE TO REBUT THE STATUTORY PRESUMPTION THAT THE CLAIMANT WAS TOTALLY AND PERMANENTLY DISABLED.**

It is the law of this case that, pursuant to §42-9-30(21), the Claimant "... shall be presumed to have suffered total and permanent disability..." To rebut such a presumption requires direct and substantial evidence that it does not apply. Floyd v. W.O. Green Plumbing & Heating Co., 255 S.C. 352, 179 S.E.2d 28 (1971); Suburban Propane Gas Company v. DesChamps, 298 S.C. 230, 379 S.E.2d 301 (Ct. App. 1989); Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 459 (Ct. App. 1999).

As the dissent points out:

The following facts are undisputed: (1) in a workplace setting, Watson now can sit continuously for no longer than three minutes; (2) in a workplace setting, Watson now can stand continuously for no longer than twelve minutes and can walk no farther than 0.10 mile; (3) Adger Brown, the vocational

analyst who reviewed Watson's restrictions, found these job factor restrictions rendered Watson permanently and totally disabled; and (4) when claimant returned to her job, which is classified as sedentary, her employer sent her home, stating there was no work available that could accommodate Watson's job restrictions.

Watson v. Xtra Mile, Op. No. 5013 (S.C. 2012).

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In finding that that presumption was rebutted, the Workers' Compensation Commission and the majority relied on the testimony of Dr. Chokshi that "As long as the work is within that particular restrictions, I believe it is reasonable for her to continue working.", as well as Ms. Watson's extensive experience and training in an occupation of a sedentary nature.

As the dissent points out, however, the standard of total disability, the presumption of which the Defendants must overcome in this case, is not whether the Claimant could do sedentary work if jobs were available within her significant restrictions, but instead whether there are in fact jobs available within those restrictions in the competitive marketplace.

That is, the standard for determining total disability under S.C. Code §42-9-10 is the ability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist. Wynn v. Peoples Natural Gas Company, 238 S.C. 1, 118 S.E.2d 812 (1961). "[t]he ability to perform limited tasks for which no stable job market exists does not prevent an employee from proving total disability." Simmons v. City of Charleston, 349 S.C. 64, 73-74, 562 S.E.2d 476, 480-81 (Ct. App. 2002).

The fact that the Claimant, in a workplace setting, can sit continuously for no longer than 3 minutes is undisputed. Adger Brown, the Claimant's Vocational Expert, testified that

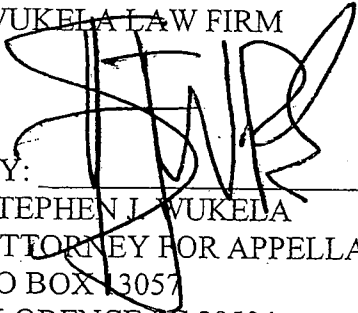
there were no jobs available that could accommodate Ms. Watson's job restrictions. The Employer itself, which had previously employed Ms. Watson in a sedentary capacity, indicated that it could not accommodate her work restrictions. By virtue of her 50% award to the back, the law presumes that there are no jobs which could accommodate her work restrictions.

Notwithstanding the fact that Dr. Chokshi testified the Claimant could work if there were jobs available within her restrictions, the Defendants produced, and the Commission and the majority cited, no evidence indicating that there are jobs that the Claimant can perform within her restrictions.

Therefore, the Defendants failed to meet their burden of direct and substantial evidence necessary to overcome the presumption of total and permanent disability and the Claimant respectfully requests this Court reconsider its decision to affirm the Commission's denial of an award of total and permanent disability.

Respectfully submitted,

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Florence, South Carolina

August 14<sup>th</sup>, 2012

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Opinion No. 5013  
WCC File No. 0715014

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GENEVA WATSON, ..... Appellant,

vs.

XTRA MILE DRIVER TRAINING, INC., and  
HARTFORD UNDERWRITERS INSURANCE CO., ..... Respondents.

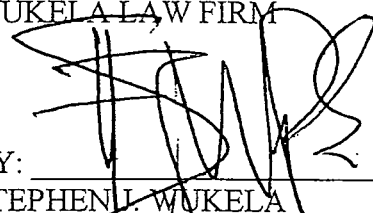
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**PROOF OF SERVICE**

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I certify that I have served the Appellant's Petition for Rehearing on the Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on August 14, 2012, addressed to their attorney of record, Ms. Kathryn R. Fiehrer, Reed & Warder, LLC, PO Box 20550, Charleston, SC, 29413.

WUKELA LAW FIRM

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# The South Carolina Court of Appeals

Geneva Watson, Appellant,

v.

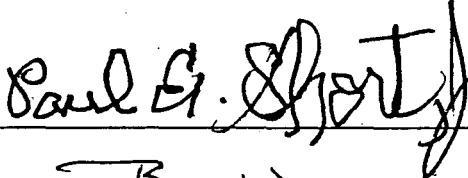
Xtra Mile Driver Training, Inc., and Hartford

Underwriters Insurance Co., Respondents.

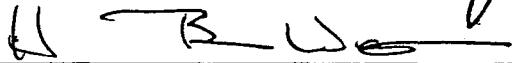
Appellate Case No. 2010-174006

## ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

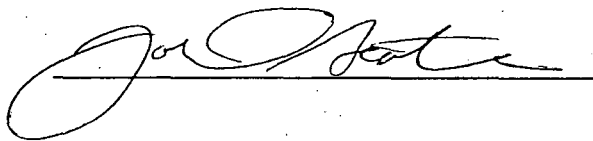


J. Short



J. Williams

I would grant the petition for rehearing.



J. Geathers

Columbia, South Carolina

cc:

Stephen J. Wukela

Kathryn Rose Fiehrer

**FILED**

20 September 2012