

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
South Carolina Workers' Compensation Commission

Full Commission Review
Derrick Williams, Commissioner

W.C.C. File No.: 0813280
And
W.C.C. File No.: 0823253

Patricia D. Johnson.....Appellant,

v.

BMW Manufacturing Corporation, LLC.....Employer, Respondent,

And

Hartford Insurance Company of the Midwest
and Specialty Risk Services, Inc.....Carrier, Respondent.

RECORD ON APPEAL

Albert V. Smith
Attorney for Appellant
410 Magnolia Street
Post Office Box 5866
Spartanburg, SC 29304
Telephone: (864) 585-8174
Fax: (864) 573-6843

Vernon F. Dunbar
Attorney for Respondent
Turner Padgett Graham & Laney P.A.
Post Office Box 1509
Greenville, SC 29602
Telephone: 864-552-4601

1 A. SURE. I AGREE.

2 Q. AND YOUR OPINION HERE THAT IT CAME FROM WORK IS
3 BASED UPON WHAT MS. JOHNSON HAS TOLD YOU?

4 A. CORRECT.

5 Q. YOU DON'T HAVE ANY OTHER INDEPENDENT SOURCE TO
6 VERIFY OR CONFIRM WHAT SHE'S TOLD YOU?

7 A. CORRECT.

8 Q. BECAUSE YOU HAVE NOT SEEN THE JOB; CORRECT?

9 A. CORRECT.

10 Q. YOU'VE NOT ASKED HER WHAT SHE DOES AT HOME?

11 A. I PROBABLY HAVE, BUT I DIDN'T DOCUMENT ANY OF
12 THAT.

13 Q. NOW, WITH RESPECT TO CHRONIC PAIN, IT DOES WAX
14 AND WANE?

15 A. CORRECT.

16 Q. NOW, SHE LAST WORKED I BELIEVE SOME TIME IN
17 AUGUST 2008.

18 A. OKAY.

19 Q. COULD THE WORK HAVE JUST BEEN A TEMPORARY
20 EXACERBATION ASSUMING YOUR HYPOTHESIS OR
21 THEORY'S CORRECT, THAT IT WAS JUST A TEMPORARY
22 EXACERBATION AND THAT NOW SHE'S RETURNED TO
23 BASELINE AND SHE'S STILL GOING TO HAVE THESE
24 SAME CHRONIC PROBLEMS THAT SHE'S HAD FROM 2005
25 TO THE PRESENT?

1 A. I KNOW THAT'S A POSSIBILITY, YES.

2 Q. LET ME SHOW YOU A DOCUMENT HERE FROM BMW'S
3 INDUSTRIAL HEALTH SERVICES.

4 A. DO YOU WANT THIS BACK?

5 Q. YES.

6 BY MR. DUNBAR:

7 I'D LIKE TO HAVE THAT MARKED AS DEFENDANT 2.
8 (Court Reporter marks Defendant's exhibit 2,
9 attached hereto.)

10 RE-EXAMINATION RESUMED BY MR. DUNBAR:

11 Q. LOOKING AT THAT DOCUMENT WHERE SHE GOES TO SEE
12 DR. KEN -- I'M SORRY, SHE SEES THE NURSE ON
13 THIS PARTICULAR OCCASION, ANNE GROTE. AND YOU
14 SEE IN QUOTES WHERE IT SAYS "I'M FINE NOW. I
15 JUST NEED TO GET BACK TO WORK."?

16 A. YES.

17 Q. DID SHE EVER INDICATE TO YOU THAT SHE WAS FINE
18 AND NEEDED TO GET BACK TO WORK?

19 A. NO. WE DIDN'T DISCUSS THAT ONE WAY OR THE
20 OTHER.

21 Q. ASSUMING THAT'S HER LANGUAGE, THAT SHE MADE
22 THAT STATEMENT, WOULD THAT CORROBORATE THE
23 THEORY THAT THE PURPORTED INCIDENT OF AUGUST
24 2008 WAS A TEMPORARY EXACERBATION OF HER BACK
25 PAIN AND BECAUSE SHE INDICATES THAT SHE'S FINE,

1 ENABLE TO WORK, THAT IT WAS ONLY TEMPORARY, THE
2 ACCIDENT?

3 A. I'M NOT SURE YOU CAN ALWAYS LOGICALLY SAY THAT
4 SOMETHING IS TEMPORARY. IT'S -- YOU KNOW, WHEN
5 YOU HAVE AN INJURY YOU HAVE GOOD TIMES AND BAD
6 TIMES. IF THE INJURY'S SEVERE ENOUGH, IT MAY
7 NEVER BE PERMANENTLY WELL, ALTHOUGH YOU CAN GET
8 BACK TO BEING OKAY FOR A PERIOD OF TIME.

9 Q. BECAUSE I BELIEVE THAT YOU ACCEPTED WHAT SHE
10 SAID IN TERMS OF WHAT CAUSED THIS INJURY
11 WITHOUT QUESTION, CAN YOU ACCEPT THIS QUOTE
12 WITHOUT QUESTION THAT SHE SAYS SHE FINE AND --

13 A. YES. SHE MADE IT, I CAN ACCEPT IT.

14 Q. AND IF YOU ACCEPT THAT, WOULD YOU BE OF THE
15 OPINION THAT HER BACK PAIN RETURNED TO THE
16 BASELINE LEVEL IN WHICH SHE WAS NO LONGER
17 DISABLED FROM WORK?

18 A. AT THAT TIME, YES.

19 Q. WITH RESPECT TO THE KIDNEY CAUSING BACK
20 PROBLEMS, YOU REFERRED HER TO A UROLOGIST;
21 CORRECT?

22 A. CORRECT.

23 Q. WOULD THE UROLOGIST BE IN THE BEST POSITION TO
24 DETERMINE WHETHER THAT MASS ON HER KIDNEY IS
25 CAUSING INCREASED BACK PAIN?

1 A. YES, BUT I'D BE HIGHLY -- I DOUBT IT, THAT IT'S
2 GOING TO CAUSE IT, PERIOD.

3 Q. NOW, DO YOU KNOW WHEN THE UROLOGIST WILL SEE
4 HER?

5 A. NO. WE SAID WE MADE AN APPOINTMENT FOR HIM TO
6 SEE HER THE NEXT DAY AND I HAVEN'T SEEN HER
7 SINCE THEN.

8 Q. WHAT'S THE NAME OF THE UROLOGIST?

9 A. UROLOGIST. I KNEW YOU WERE GOING TO ASK THAT.
10 I'M NOT SURE. ALL I CAN SAY IS, "WE HAVE MADE
11 AN APPOINTMENT FOR HER TO SEE A UROLOGIST
12 TOMORROW."

13 Q. WOULD THAT BE IN THE SPARTANBURG AREA OR --

14 A. YES.

15 Q. WHICH UROLOGIST DO YOU NORMALLY MAKE REFERRALS?

16 A. ARNETT AND KINARD AND THAT GROUP.

17 Q. ARNETT --

18 A. ARNETT, KINARD, THAT GROUP.

19 Q. OKAY. THANK YOU, SIR.

20 (Court Reporter marks Defendant's exhibit 3,
21 attached hereto.)

22 BY MR. SMITH:

23 OFF THE RECORD.

24 OFF THE RECORD:

25 RE-EXAMINATION BY MR. SMITH:

1 Q. DOCTOR, BMW MANUFACTURING CORPORATION, LLC,
2 YOUR REPORT, DO YOU STILL HAVE THAT?

3 A. NO. I THINK I GAVE IT BACK TO HIM.

4 Q. WELL, I'LL SHOW YOU THIS ONE THAT'S BEEN
5 MARKED.

6 A. OKAY.

7 Q. ON 9-5-2008, SHE TALKS ABOUT IN PARAGRAPH -- OR
8 THE HISTORIAN SAYS, SHE TALKS ABOUT IN THE
9 FIRST PARAGRAPH THERE FOR 9-5-2008, THE THIRD
10 SENTENCE, I BELIEVE. IT STARTS WITH "SHE
11 RECENTLY --" WOULD YOU READ THAT INTO THE
12 RECORD, PLEASE, SIR?

13 A. I'M NOT SURE WHERE YOU'RE TALKING ABOUT.

14 Q. "SHE RECENTLY REPORTED --" JUST UNDER
15 "OXYCODONE," WHERE IT SAYS --

16 A. "SHE IS TAKING AVINZA AND --"

17 Q. NO. THE SENTENCE UNDER THAT.

18 A. "SHE RECENTLY REPORTED THAT HER BACK STARTED
19 HURTING MORE AT WORK FROM BENDING FORWARD TO
20 INSTALL BOLTS AND FILLED A WORK -- AND FILED A
21 WORKMEN'S COMP CLAIM."

22 Q. WOULD YOU LOOK AT THE REPORT OF 9-4-2008, AND
23 JUST ABOVE THE HIGHLIGHTED AREA WHERE IT SAYS
24 "FURTHER STATES --"; WOULD YOU READ THAT INTO
25 THE RECORD.

1 A. "FURTHER STATES THAT SHE DOES NOT UNDERSTAND
2 THIS BECAUSE SHE FEELS THAT HER BACK PAIN WAS
3 RELATED TO INSTALLING "'THE SCREWS IN THE
4 DOOR.'"

5 Q. AND WOULD YOU LOOK AT THE 8-25-08 REPORT,
6 DOCTOR.

7 A. OKAY.

8 Q. WOULD YOU READ THE FIRST SENTENCE INTO THE
9 RECORD THERE, PLEASE, SIR.

10 A. "PC TO ASSOCIATE TO ADVISE THAT SHE NEEDED TO
11 SUBMIT ALL PERSONAL --"

12 Q. NO, NO. I'M SORRY. 8-25-08, BEGINNING WITH
13 "56 YEAR OLD BLACK FEMALE --" THE LAST ONE ON
14 THAT FRONT PAGE, LAST ENTRY DOWN AT THE BOTTOM,
15 "OCCUPATIONAL VISIT."

16 A. OKAY. "56 YEAR OLD BLACK FEMALE ASSEMBLY
17 ASSOCIATE WHO REPORTS THAT SHE INJURED HER BACK
18 -- HER LOW BACK FOR A SECOND TIME APPROXIMATELY
19 TWO WEEKS AGO."

20 Q. READ THE NEXT SENTENCE TO US AS WELL.

21 A. "SHE REPORTS THAT HER BACK INITIALLY STARTED
22 HURTING ON THE JOB ONE MONTH AGO. SHE REPORTS
23 THAT SHE WAS BENT FORWARD INSTALLING SCREWS ON
24 THE DOOR PANEL WHEN SHE NOTICED THE BACK PAIN."

25 Q. AND THE VERY NEXT SENTENCE.

1 A. "SHE REPORTS THE PAIN BECAME WORSE AND SHE WENT
2 TO HER FAMILY DOCTOR TO EVALUATE HER BACK."

3 Q. OKAY. NOW, WOULD YOU LOOK AT THE SECOND PAGE
4 OF THAT AND THE PARAGRAPH THAT BEGINS WITH
5 "ASSOCIATE ADVISED --," WOULD YOU READ THAT
6 INTO THE RECORD, PLEASE.

7 A. "ASSOCIATE ADVISED THAT SHE HAS ALWAYS RAN THE
8 PURPORTED JOBS THAT SHE IS CURRENTLY WORKING.
9 SHE DESCRIBES PUTTING IN SCREWS IN THE BOTTOM
10 OF THE DOOR AND BENDING TOO LOW AND FELT PAIN."

11 Q. DOCTOR, THOSE ACTIVITIES THAT WE'VE READ INTO
12 THE RECORD FROM EXHIBIT NUMBER 3, ARE THOSE
13 CONSISTENT WITH EITHER CAUSING A BACK PROBLEM
14 AND/OR AGGRAVATING A PREEXISTING CHRONIC --

15 A. YES, IT IS.

16 BY MR. DUNBAR:

17 OBJECTION.

18 EXAMINATION RESUMED BY MR. SMITH:

19 Q. IS THAT YOUR OPINION?

20 A. THAT'S MY OPINION.

21 Q. WITH A REASONABLE DEGREE OF MEDICAL CERTAINTY?

22 A. YES, IT IS.

23 Q. DOCTOR, I SHOW YOU WHAT'S MARKED AS THE
24 DIAGNOSTIC CENTER, MARY BLACK HEALTH CENTER.
25 WOULD YOU STATE INTO THE RECORD WHAT THAT IS,

1 PLEASE, SIR?

2 A. THIS IS A LUMBAR SPINE AND MRI OF THE LUMBAR
3 SPINE.

4 Q. WHAT'S THE DATE ON THAT ONE, SIR?

5 A. 1-12-05.

6 Q. AND I BELIEVE YOU'LL FIND ANOTHER MRI THAT WAS
7 DONE BACK IN AUGUST OF '08. DOES THAT STATE
8 WHO ORDERED THAT MRI, DOCTOR?

9 A. IT SAYS DR. MILES. THAT'S MY PARTNER.

10 Q. OKAY. WOULD YOU FIND THE ONE FROM '08.

11 A. '05?

12 Q. YES, SIR. I'M SORRY, THERE SHOULD BE ONE OF
13 '08, I BELIEVE I THOUGHT I SAW IN THERE. MAYBE
14 I LOOKED WRONG.

15 A. THERE'S ONE HERE ON '08 -- I MEAN, 8-7-08.

16 Q. OKAY. WHO IS THE ORDERING PHYSICIAN ON THAT
17 ONE, SIR?

18 A. THAT WAS ME.

19 Q. OKAY. IS THERE A COMPARISON ON THAT MRI AS TO
20 THE ONE THAT WAS DONE IN '05?

21 A. YES, THERE IS.

22 Q. AND WHAT WAS THAT COMPARISON?

23 A. THE IMPRESSION WAS "POSTOPERATIVE CHANGES AT
24 L4-L5, AND THEN ENLARGEMENT AND REMODELING OF
25 THE LEFT FORAMEN OF L5-S1 AS DESCRIBED. MAY

1 MERELY BE AN ECTATIC NERVE ROOT, BUT THIS IS AN
2 UNUSUAL APPEARANCE. WOULD RECOMMEND A C-T
3 MYELOGRAM FOR FURTHER EVALUATION."

4 Q. WOULD THAT FINDING BE CONSISTENT WITH YOUR
5 OPINION, SIR, THAT THE KIND OF ACTIVITY
6 DESCRIBED IN DEFENDANT'S EXHIBIT NUMBER 3
7 AGGRAVATING OR CAUSING THAT CONDITION, SIR?

8 A. YES.

9 Q. WITH A REASONABLE DEGREE OF MEDICAL CERTAINTY?

10 A. YES.

11 BY MR. SMITH:

12 I'D LIKE TO OFFER THAT AS AN EXHIBIT TO THE
13 DEPOSITION.

14 (Court Reporter marks Claimant's exhibit 1, attached
15 hereto.)

16 EXAMINATION RESUMED BY MR. SMITH:

17 Q. AND DOCTOR, I'LL ASK YOU NOW TO LOOK AT
18 DEFENDANT'S EXHIBIT NUMBER 2, AND IF YOU WILL,
19 ON 9-12-2007, IF YOU WILL LOOK AT THE END OF
20 THE SECOND SENTENCE AND READ THAT INTO THE
21 RECORD, PLEASE, SIR. OUT NEAR THE END WHERE IS
22 SAYS "SHE IS BACK AT WORK --." UNDER "FOLLOW-
23 UP VISIT." "HISTORY OF PRESENT ILLNESS" IS
24 WHAT I'M TALKING ABOUT UNDER THERE.

25 A. OKAY. "PATIENT REPORTS HER HAND IS DOING WELL,

1 AND SHE IS BACK AT WORK FULL TIME."

2 Q. AND WHAT WAS SHE COMPLAINING OF AT THAT TIME,
3 DOCTOR? WHAT WAS SHE THERE FOR? I'M SORRY.
4 OFFICE VISIT FOR --

5 A. I GUESS IT'S A FOLLOW-UP VISIT, A FOLLOW-UP
6 OFFICE VISIT.

7 Q. AND AT THE LOCATION OF THE PAIN ON THAT DATE
8 WAS WHERE, ACCORDING TO THAT RECORD?

9 A. CHRONIC PAIN OF THE LEG AND BACK.

10 Q. AND ON 11-14-2007, FOLLOW-UP VISIT.

11 A. OKAY.

12 Q. AND WHAT DOES IT SAY THE CHIEF COMPLAINT WAS
13 THERE?

14 A. AGAIN, IT'S A FOLLOW-UP OF CHRONIC LEFT LOWER
15 EXTREMITY AND BACK PAIN.

16 Q. AND I BELIEVE THE VERY LAST SENTENCE THERE SHE
17 REPORTS -- WELL, JUST READ THAT HISTORY OF THE
18 PRESENT ILLNESS INTO THE RECORD, PLEASE.

19 A. "PATIENT COMPLAINING OF CRAMPING IN THE LEFT
20 LOWER EXTREMITY LEG AT NIGHT THAT HAPPENS ABOUT
21 ONE TIME A WEEK WHICH SHE REPORTS HAS BEEN
22 GOING ON FOR SEVERAL MONTHS. PATIENT IS NOT
23 SURE IF THIS STARTED WHEN SHE WENT OFF
24 NEURONTIN."

25 Q. COULD THAT KIND OF PAIN OR WOULD THAT KIND OF

1 PAIN IN YOUR MEDICAL OPINION WITH A REASONABLE
2 DEGREE OF MEDICAL CERTAINTY BE CAUSED BY EIGHT
3 TO TEN OR TWELVE HOUR WORK SHIFT DOING WHAT SHE
4 DESCRIBED IN EXHIBIT NUMBER 3?

5 A. YES, IT WOULD BE AGGRAVATED BY IT.

6 Q. AND, IF YOU WOULD, LOOK AT -- I'M SORRY. WOULD
7 YOU LOOK AT THE VISIT FOR 5-19-2008, UNDER
8 "FOLLOW-UP VISIT."

9 A. OKAY.

10 Q. AND WHAT WERE THE CHIEF COMPLAINTS THERE,
11 DOCTOR?

12 A. IT'S AGAIN A FOLLOW-UP VISIT FOR HER TREATMENT
13 OF CHRONIC PAIN OF THE LEG AND BACK AND FOOT.

14 Q. AND THE HISTORY OF THE PRESENT ILLNESS?

15 A. IT SAYS "PATIENT IS WORKING FULL TIME.
16 DENIES --

17 Q. IF A PATIENT IS WORKING FULL TIME WITH THAT
18 KIND OF CONDITION, DOCTOR, DO YOU HAVE A
19 REASONABLE DEGREE OF MEDICAL CERTAINTY OPINION
20 IF THAT WOULD AGGRAVATE THE KIND OF CONDITIONS
21 FOUND IN PLAINTIFF'S EXHIBIT NUMBER 2, FROM THE
22 MRI?

23 A. YES, IT WOULD.

24 Q. AND IF YOU WOULD, TURN TO THE LAST PAGE OF
25 THAT, AND DOWN WHERE IT SAYS "FOLLOW-UP VISIT,"

1 IF YOU WILL LOOK DOWN TO WHERE THERE'S A DATE
2 ON THE LEFT, 6-20-08.

3 A. OKAY.

4 Q. YOU SEE THAT?

5 A. "MEDS FILLED ON 6-20-08"?

6 Q. YES, SIR.

7 A. OKAY.

8 Q. AND IF YOU WOULD READ INTO THE RECORD THE NEXT
9 LINE.

10 A. "PATIENT REPORTS BENDING AT WORKING WILL
11 AGGRAVATE PAIN."

12 Q. DO YOU AGREE WITH THAT ASSESSMENT BY HER WITH A
13 REASONABLE DEGREE OF MEDICAL CERTAINTY, DOCTOR?

14 A. I DO.

15 BY MR. DUNBAR:

16 OBJECT TO THE FORM OF THE QUESTION.

17 BY MR. SMITH:

18 THAT'S ALL WE HAVE.

19 RE-EXAMINATION BY MR. DUNBAR:

20 Q. DR. BANNON, JUST A COUPLE OF FOLLOW-UP
21 QUESTIONS. WITH RESPECT TO HER JOB, I THINK
22 IT'S BEEN ESTABLISHED YOU'VE NEVER BEEN THERE,
23 SO YOU DON'T KNOW HOW OFTEN SHE BENDS, WHETHER
24 SHE PERFORMS HER JOB STANDING, SITTING, OR
25 WHETHER SHE'S ALLOWED TO ALTERNATE STANDING OR

1 SITTING, DO YOU?

2 A. CORRECT.

3 Q. YOU DON'T KNOW THE SIZE OR THE WEIGHT OF THE
4 SCREWS THAT SHE'S INSTALLING IN THESE DOORS?

5 A. RIGHT.

6 Q. DO YOU DO NOT KNOW THE TOOLS THAT SHE UTILIZES
7 TO INSTALL THESE SCREWS INTO THE DOOR?

8 A. CORRECT.

9 Q. YOU DON'T KNOW WHETHER SHE WORKS ON A DOOR AN
10 HOUR A DAY OR TEN HOURS A DAY; CORRECT?

11 A. NO.

12 Q. YOU DON'T KNOW WHETHER SHE HAS TO STOOP OR BEND
13 CONSISTENTLY OR REPEATEDLY, DO YOU?

14 A. NO.

15 Q. SO YOUR OPINION IN A LARGE PART IS BASED UPON
16 WHAT MR. SMITH HAS SAID AND WHAT WE'VE GIVEN
17 YOU IN TERMS OF DOCUMENTS?

18 A. YES.

19 Q. AND IN ORDER FOR YOU TO CONCLUDE THAT HER JOB
20 AGGRAVATES IT WITHOUT YOU KNOWING THE
21 SPECIFICS, IT DOES REQUIRE SOME DEGREE OF
22 SPECULATION, WOULD YOU AGREE WITH THAT?

23 A. AN EDUCATED SPECULATION.

24 Q. ALL RIGHT, SIR. NOW, WITH RESPECT TO THE C-T
25 SCAN THAT I THINK WAS JUST DONE IN 2008, I

1 THINK YOU ATTRIBUTED ITS FINDINGS TO HER WORK
2 AT BMW IN TERMS OF AN ENLARGED -- I DON'T HAVE
3 IT IN FRONT OF ME -- BUT WHATEVER THE FINDINGS
4 REFLECTED, YOU INDICATED THAT IT COULD BE
5 RELATED TO HER WORK AT BMW?

6 A. WELL, WHAT'S THAT AN X-RAY OF?

7 Q. THAT IS I BELIEVE PLAINTIFF'S NUMBER 1.

8 BY MR. SMITH:

9 PLAINTIFF'S NUMBER 2.

10 RE-EXAMINATION RESUMED BY MR. DUNBAR:

11 Q. I THINK IT'S THE LAST PAGE, THE MOST RECENT.

12 A. OKAY. THE ONE IN 2008?

13 Q. YES, SIR.

14 A. OKAY.

15 Q. NOW, THE SCAN THAT WAS TAKEN IN 2008, IT DIDN'T
16 RESULT IN YOU REFERRING HER TO AN ORTHOPAEDIC
17 OR A NEUROSURGEON, DID IT?

18 A. NO.

19 Q. THERE'S NOT A HERNIATED DISC OF ANY SORT, IS
20 THERE?

21 A. NO.

22 Q. THAT C-T SCAN REALLY -- OR THAT SCAN REFLECTS A
23 PROGRESSION OF THE DEGENERATIVE DISC DISEASE;
24 IS THAT A FAIR STATEMENT?

25 A. YES. AND THEY DID RECOMMEND A MYELOGRAM.

1 Q. AND THE PROGRESSION OF DEGENERATIVE DISC
2 DISEASE IS COMMON?

3 A. CORRECT.

4 Q. AND BY COMPARING THE 2005 AND 2008 SCANS, IT'S
5 APPARENT THAT IT IS OCCURRING IN MS. JOHNSON'S
6 CASE; CORRECT?

7 A. CORRECT.

8 Q. ABSENT ANY WORK, ABSENT WORKING AT BMW, PUTTING
9 SCREWS IN DOORS, IT'S STILL POSSIBLE AND
10 PROBABLE THAT SHE WOULD HAVE CHRONIC PAIN?

11 A. CORRECT.

12 Q. AS A MATTER-OF-FACT, WHEN SHE'S OFF AND SHE
13 HASN'T WORKED SINCE AUGUST, SHE STILL
14 COMPLAINED OF CHRONIC PAIN WHEN SHE LAST SAW
15 YOU; CORRECT?

16 A. RIGHT.

17 Q. SO BECAUSE SHE HASN'T WORKED AND SHE'S STILL
18 COMPLAINING OF CHRONIC PAIN, IT DOES REQUIRE
19 SOME DEGREE OF SPECULATION TO ASSOCIATE HER
20 SYMPTOMS WITH HER WORK --

21 A. YES.

22 Q. -- WHEN YOU LOOK AT IT -- ALL RIGHT, SIR. NOW,
23 WITH RESPECT TO MY DOCUMENT, AND I'M JUST GOING
24 TO HAND IT TO YOU VERY QUICKLY. THAT'S
25 DEFENDANT'S NUMBER 3, I BELIEVE, AND I'M

1 LOOKING AT PAGE TWO. AND I'VE HIGHLIGHTED
2 WHERE IT SAYS "ASSOCIATE ADVISED THAT SHE HAS
3 ALWAYS RAN THE PURPORTED JOBS THAT SHE IS
4 CURRENTLY WORKING."

5 A. YES.

6 Q. ALL RIGHT, SIR. SO FROM 2005 SHE RAN THAT JOB
7 WITHOUT ASKING FOR ANY TIME FROM WORK OR FILING
8 A NEW WORKERS' COMPENSATION CLAIM; WOULD THAT
9 BE FAIR TO SAY, AFTER SHE --

10 A. AS FAR AS I KNOW.

11 Q. AFTER SHE RETURNED TO WORK. SHE CONTINUED TO
12 WORK NOT ONLY IN 2005, BUT 2006, 2007, AND THE
13 GREATER PART OF 2008; CORRECT?

14 A. AS FAR AS I KNOW, YES.

15 Q. AND SHE INDICATES THAT SHE'S ALWAYS DONE THE
16 SAME JOB.

17 A. UH-HUH (affirmative).

18 Q. SHE KNOWS THE JOB. ISN'T IT FAIR TO SAY THAT
19 IN 2008, DOING THE SAME JOB THAT HAD NOT CAUSED
20 HER ANY PROBLEMS THREE YEARS PRIOR, THAT HER
21 PAIN IS SIMPLY A MANIFESTATION OF THE ONGOING
22 PROGRESSION OF HER DEGENERATIVE DISC DISEASE?

23 A. YES, BUT THE JOB PROBABLY DOES AGGRAVATE IT,
24 EVEN THOUGH SHE HASN'T CHANGED JOBS.

25 Q. AND WHEN SHE'S OUT OF WORK, AS SHE INDICATED,

1 SHE'S FINE, YOU WOULD EXPECT THAT BEING OUT OF
2 WORK THAT HER PAIN WOULD LESSEN TO SOME DEGREE?

3 A. YES.

4 Q. OKAY. THANK YOU, SIR.

5 (There being no further questions, this deposition
6 was concluded at 12:36 a.m.)

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CERTIFICATE OF NOTARY PUBLIC/REPORTER

I, THE UNDERSIGNED, REGINA A. TAGUE, CVR, NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, AS COURT REPORTER, DO HEREBY CERTIFY THAT THE DEPOSITION WAS TAKEN BY ME ON THE 19th DAY OF MARCH, 2009;

THAT THE WITHIN DEPONENT WAS FIRST DULY SWORN TO TELL THE TRUTH AND THAT THE FOREGOING IS AN ACCURATE TRANSCRIPTION OF THE TESTIMONY TAKEN UNDER OATH;

THAT ALL EXHIBITS, IF SO ENTERED, ARE ATTACHED HERETO AND MADE A PART OF THIS DEPOSITION.

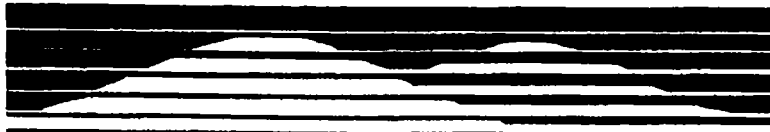
I FURTHER CERTIFY THAT I AM NEITHER COUNSEL NOR SOLICITOR TO ANY OF THE PARTIES IN SAID LITIGATION, NOR INTERESTED IN THE EVENT OF THE CAUSE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THIS 9th DAY OF APRIL, 2009.

REGINA A. TAGUE, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 7-26-2012

(SEAL)

NOTE: RECORDED TAPES RETAINED
FOR SIX MONTHS FROM DATE OF
CERTIFICATION.



FOOTHILLS FAMILY MEDICINE

391 Glenn Springs Road • Pacolet, South Carolina 29372
Telephone (864) 474-3013 • Fax (864) 474-1501

RICHARD B. BANNON, M.D.

CECILIA CANNON, P.A.

MARK MILES, M.D.

November 10, 2008

RE: **PATRICIA JOHNSON**

Ms. Johnson is a patient under my care. She has had back pain for a number of years and in 2005 she had surgery done by Dr. McCorkle for a disc problem. For the past year or two the patient has had increased pain in the low back area as well as in the neck and shoulder. She especially has pain in left leg and foot. The pain has been exacerbated by the multiple body positions required to do her job. She has to stoop and bend and get into a number of awkward positions. I have reviewed her records including her CT and myelogram reports, and it is my opinion that even though she had problems in the past and had surgery on her back, her work activities would definitely aggravate these physical conditions.

Sincerely,

Richard B. Bannon, M.D.
RBB/tmt-09
147653



MARY BLACK PHYSICIAN GROUP

Record on Appeal

000519

6

THE DIAGNOSTIC CENTER
 MARY BLACK HEALTH SYSTEM
 P.O. BOX 3217
 1700 SKYLYN DRIVE
 SPARTANBURG, S.C. 29304
 PHONE (864) 573-3861 FAX (864)573-3160

NAME: JOHNSON, PATRICIA D
 AGE: 53Y DOB: SEX: F SSN:
 ADDRESS: ACCOUNT: 1514628
 PHONE: ROEBUCK, SC 29376
 ROOM: MR

ORDER: 2997228 ADDITIONAL ORDERS:
 LUMBOSACRAL SPINE - 72100

ORDER DATE: 01/12/2005
 ORDERING PHYSICIAN: MARK L. MILES, MD

EX: MARK L. MILES, MD (19088)
 >

LUMBAR SPINE: 1/12/05

HISTORY: sciatica

Three views, AP and lateral and cone down lateral show fairly severe degenerative changes at L4-5 primarily. There are facet arthritic changes at this level and moderate degenerative disk changes at the remainder of the disk spaces. No acute abnormality is noted.

IMPRESSION: Fairly severe degenerative disk change primarily at L4-5, as described with some facet arthritic change.

JOHN G. THORNBURG MD

This document has been electronically reviewed and approved
 by JOHN G. THORNBURG MD 01/13/2005.

\: lba /: 18 JOB: 06167 ID: 000411008
 DD: 01/12/2005 DT: 01/13/2005 1108
 TD: 1748

01/13/05

MRI REPORT

copy

THE DIAGNOSTIC CENTER
MARY BLACK HEALTH SYSTEM

NAME: JOHNSON, PATRICIA D
SSN:

PAGE: 2 OF 2

At L5-S1, there is moderate generalized bulging of the disk. No focal herniation is noted. There are moderate facet arthritic changes.

IMPRESSION: Fairly severe degenerative disk change, mainly at L4-5, with generalized bulging of the disk as described above.

JOHN G. THORNBURG MD

This document has been electronically reviewed and approved
by JOHN G. THORNBURG MD 01/13/2005.

\: cp /: 18 JOB: 06033 ID: 000411008
DD: 01/12/2005 DT: 01/13/2005 0907
TD: 1616

MRI REPORT

COV

RADIOLOGY SERVICES
2995 REIDVILLE ROAD
SPARTANBURG, S.C. 29301

2139
B

PHONE (864) 573-3861 FAX (864)573-3160

NAME: JOHNSON, PATRICIA SSN:
AGE: DOB: SEX: ACCOUNT: 9999998

ORDERING PHYSICIAN:

(OVER READ)

Medical Record Number:

FOOTHILLS FAMILY MEDICINE/ PACOLET

CERVICAL SPINE (FIVE VIEWS): 5/19/05

History: Neck pain

There is narrowing at the disc space C5-6 with hypertrophic end plate changes and sclerosis consistent with degenerative disease. Posterior osteophyte formation is noted with some encroachment on the neural foramina bilaterally at C5-6.

IMPRESSION: Degenerative disc disease with foraminal stenosis as described.

JAMES L. DUNCAN JR., MD

This document has been electronically reviewed and approved by JAMES L. DUNCAN JR., MD 05/24/2005.

\t mg /: 19 JOB: 01263 ID: 000445065
DD: 05/24/2005 DT: 05/24/2005 1148
TD: 0933

fx: RICHARD B. BANNON, MD (07239)
>

RADIOLOGY SERVICES

5-31-05
B

2139

THE DIAGNOSTIC CENTER
MARY BLACK HEALTH SYSTEM
P.O. BOX 3217
1700 SKYLYN DRIVE
SPARTANBURG, S.C. 29304

PHONE (864) 573-3861

FAX (864) 573-3160

NAME: JOHNSON, PATRICIA D.

AGE: DOB:

ADDRESS:

SEX: F

SSN:

ACCOUNT#: 1936645

MRN:

PHONE:

ROOM: MR-

ORDER: 4321398 MRI LUMB SPINE W/WO CONT

ADDITIONAL ORDERS:

EXAM DATE: 08/07/08

ORDERING PHYSICIAN: BANNON, RICHARD B., MD,

Fax: Richard B Bannon, MD

MRI LUMBAR SPINE:

IMPRESSION:

1. POSTOPERATIVE CHANGES AT L4-5.
2. ENLARGEMENT AND REMODELING OF THE LEFT FORAMEN AT L5-S1 AS DESCRIBED. THIS MAY MERELY BE AN ECTATIC NERVE ROOT, BUT THIS IS AN UNUSUAL APPEARANCE. I WOULD RECOMMEND A CT MYELOGRAM FOR FURTHER EVALUATION.

COMPARISON: January 12, 2005.

TECHNIQUE: Sagittal T1, T2 and T2 fat sat, axial T1 and axial T2. Axial and sagittal postcontrast. 14 mL Magnevist.

FINDINGS: Images fail to reveal any significant bony abnormality. Mild discogenic endplate changes are present at L5-S1.

The conus is intact.

At T11-12, there is a minimal circumferential disc bulge.

At L2-3, there is a circumferential disc bulge. Mild foraminal narrowing is noted bilaterally.

At L3-4, there is also a large circumferential disc bulge. Mild foraminal narrowing is present bilaterally. Some facet joint hypertrophy is noted.

At L4-5, there is a small laminectomy defect on the left side and postoperative soft tissue swelling posteriorly. There is a circumferential disc bulge and moderate foraminal narrowing bilaterally. Facet joint hypertrophy is noted.

DIAGNOSTIC SERVICES

8-11-08
D

THE DIAGNOSTIC CENTER
MARY BLACK HEALTH SYSTEM
NAME: JOHNSON, PATRICIA D.
Page 2 of 2

SSN:

At L5-S1, there is enlargement of the left intervertebral foramen and remodeling of the adjacent vertebral body. This appearance was present to some degree on the preoperative study, but is more apparent. This could represent merely a large ectatic nerve root. The right side is similar, but much less marked. There is also a circumferential disc bulge with bilateral foraminal narrowing. On the left side, the foramen is difficult to define due to the abnormal soft tissue within it. No obvious enhancement is seen following contrast. Facet joint hypertrophy is noted.

Coincidentally noted are some hyperintensities in the kidneys, likely cysts.

:This document is electronically signed by Penelope Galbraith MD on 08/07/2008 at 2:33:59 PM (CST) Verification: 2242640920080807143359

Penelope Galbraith, MD

D: 08/07/08 11:26 EST
T: 08/07/08 12:22 EST
QT1
QT2
SUN: MaryB22426409
DJN: 40004836
24907

INCIDENT REPORT

(Please answer every question completely.)

Associate's Name Patricia D. Johnson
First Middle Last

Associate's Badge # 4261 Shift B Cost Center 1800 Work Phone

Address _____

City _____ State _____ Zip _____

Telephone Number _____ Birth Date _____ Hire Date 11/13/00

Social Security Number _____ Job Title Assembly

Department B46 Process Name door Panel Shift Model B

Line _____ Supervisor D. Brown Work Station _____

Date of Injury 8-19-08 Time of Injury 4th Quarter

Fully describe your injury / illness: back Pain

Did the incident occur from one specific incident? bending to low Yes or No (circle)

If yes, describe the incident: Putting screws in bottom of door

Did your injury / illness develop gradually over a period of time? Yes or No (circle)

If yes, indicate period: From (date) _____ To (date) _____

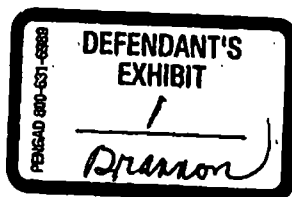
Describe how injury / illness developed: _____

Is there anything else that could have contributed to your injury / illness? Yes or No (circle)

If so, please give details: _____

Explain what caused your injury / illness (describe the process): bending to low

If you were lifting or moving an object when you were injured or became ill, describe the object: NO



TS-64
64-5-2-181
February 3, 2006
Revision 10

Give the approximate weight of the object:

When did you first realize you were injured?

Date:

Time:

When did you first feel pain?

Date:

Time:

Who at work did you first tell about your injury / illness?

Off Line - Donna Mayes

When did you first tell your supervisor?

Next day

Date:

Time:

Name of supervisor you reported your injury / illness to:

D. Brown

If the injury / illness was not reported to your supervisor on the date you were injured or became ill, state the reason it was not reported:

Name(s) of person(s) who witnessed your injury:

List the parts of your body affected:

back

Right, Left or Both (circle)

Name and address of physician(s) who treated you for this injury / illness:

Barnon Date of Visit: 8/19/08

Name and address of hospital where you were treated for this injury / illness:

Have you lost time from work?

NO

If so, indicate the first day you missed from work:

NO

If so, indicate the date you returned to work:

I certify that the answers given to the questions above are correct and accurate to the best of my ability and recollection. I hereby authorize the release of all medical records, including but not limited to psychological, psychiatric, alcohol and drug, and all other pertinent medical information relevant to my workers' compensation claim. Additionally, I authorize BMW Manufacturing Co., LLC and its workers' compensation carrier and their respective agents to communicate directly, both orally and in writing, with all treating physicians or medical providers of any kind regarding all facts and opinions relevant to my workers' compensation claim until my claim has ended. I understand that pursuant to S.C. Code Ann. §42-15-80 that no fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined me, or who may have been present at any examination, is privileged.

Patricia Johnson

Associate's Signature

8-25-08

Date

Almiton

I.H.S. Representative's Signature

08-25-08

Date

WORKERS' COMPENSATION INFORMATION

Any BMW MC associate who sustains a work-related injury or illness and follows proper reporting procedure may be eligible for Workers' Compensation.

All work-related injuries / illnesses should immediately be reported to the supervisor and Industrial Health Services, unless it is a life threatening emergency. Failure to follow this important step could result in the claim being delayed or denied. South Carolina's Workers' Compensation Program is employer directed.

Industrial Health Services has carefully selected its Healthcare Providers to insure the highest quality medical care to insure providers are knowledgeable about BMW MC and provide us with timely services. After every evaluation by an off-site provider, the associate must report to Industrial Health Services for a post-visit evaluation.

It is the responsibility of the associate to follow Industrial Health Services advice and treatment, including keeping scheduled follow-up appointments and following and any restrictions both on and off of the job. Failure to do so may affect Workers' Compensation, as well as result in disciplinary action.

For any concerns or problems while off-site, the associate should contact Industrial Health Services at (864) 989-5547. Industrial Health Services is staffed weekdays A & B shifts and production Saturdays. If Industrial Health Services is closed, contact Security at (864) 989-6000 for assistance.

Claim Procedure:

1. The associate must report a work-related injury or illness to the supervisor.
2. The associate must report a work-related injury or illness to Industrial Health Services.
3. The associate must follow Industrial Health Services recommended treatment, including restrictions both on and off of the job.
4. It is the associate's responsibility to inform his / her supervisor of the dates and particulars of restricted time or approved time away from work.
5. All treatment must be approved by Industrial Health Services in advance, except for life threatening emergencies.
6. Problems with bills pertaining to Workers' Compensation injuries or illnesses should be directed to Industrial Health Services, who will coordinate problem resolution.

Modified Duty Policy:

For work related cases, BMW MC will provide a limited amount of modified work, if determined by Industrial Health Services, that it would assist in the recovery process. It is the responsibility of the associate to comply with restrictions, both on and off the job. This modified duty is closely monitored and will be reviewed periodically.

Prescription Medications:

All prescriptions for approved job related injuries must be filled at the on-site Associate Family Pharmacy. This includes prescriptions written by I H S physicians and off-site specialists who have been authorized by I H S to provide treatment to associates.

Disability Coverage:

- When an associate is eligible to be off work on Worker's Compensation he/she will receive 66 2/3% of his/her average weekly pay up to the maximum allowed by South Carolina State Law. Eligible Workers' Compensation absences will be counted toward any applicable Family Medical Leave.
- No payments are made by Workers' Compensation for the first seven (7) calendar days of disability, unless the Associate is off work for fifteen (15) calendar days. Once the fifteenth day off work is reached, the first seven (7) days are paid. This is per South Carolina Workers' Compensation Law.
- Workers' Compensation checks for an eligible associate will be mailed directly to the associate's home address (the address is obtained from the incident report completed by associate during initial visit to Industrial Health Services) by the Workers' Compensation carrier.
- After every evaluation by an off-site provider, the associate must report to Industrial Health Services for a post-visit evaluation.

Benefits:

If you are out of work you may continue to participate in the company provided medical and life insurance programs, it is important to remember that any applicable associate paid premiums must be submitted to the BMW Finance Department by the 5th of each month in order to maintain this coverage. If no premium is received within 30 days from the due date your coverage will be terminated. You are responsible for the remittance of these premiums. You will not be invoiced on a monthly basis. While you are no longer receiving a paycheck from BMW any deductions such as 401k will not be taken from your paycheck.

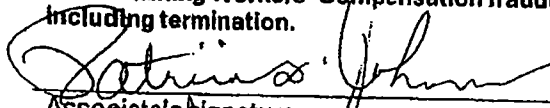
Car Benefit

It is an associate's responsibility to continue making payments on his/her lease vehicle. If three by-weekly payments are missed, the associate will be required to turn in the vehicle to Vehicle Administration. Please contact the Payroll Department to make arrangements for payment. If a payment by check is returned uncollectible, it will be considered a missed payment. The associate will also be required to pay an additional \$25, which is due and payable immediately and this amount will be deducted from the associate's pay if still unpaid upon return to active pay status.


Mileage reimbursement:

An associate is also entitled to mileage reimbursement if required to travel to off-site providers. The associate should submit a "BMW Workers' Compensation Mileage Reimbursement Form", available from Industrial Health Services, to file under Worker's Compensation. The associate will be sent a check directly from the BMW Workers' Compensation insurance carrier. *This process takes an average of three to four weeks once the form has been submitted to the Workers' Compensation insurance carrier.*

I certify that I have read and understand the Workers' Compensation Information form. I understand that obtaining Workers' Compensation fraudulently will result in disciplinary action, up to and including termination.


Associate's signature

8-25-08
Badge number Date


I.H.S. representative's signature

08-25-08
Date

Carolinas Center for Advanced Management of Pain
1330 Boiling Springs Rd Suite 2700 Spartanburg, SC 29303
8645830053 Fax: 8645830390

August 26, 2008
Page 1
Chart Document

MS PATRICIA D JOHNSON
Female 6498
DOB: 08/15/1944

09/12/2007 - Office Visit: Follow-Up Pain
Provider: Kacie Tartaro NP
Location of Care: Carolinas Center for Advanced Mgmt of Pain - Spartanburg Office

Follow-Up Visit

Chief Complaint: here for f/u visit for evaluation and treatment of chronic pain of leg and back
History of Present Illness: pt reports her hand is doing well, she is back to work full time she saw dr mullens last week and will fu in 2 weeks.
pt is taking 3-4 percoet per day and avinza, pt reports pain is controlled.
pt denies any new sx bowel bladder changes weakness or parathesis
patient reports taking meds as prescribed.
pt denies ae's to meds filled 8/15/08 remaining.
pt reports she know neurontin helps but she does not want to take, she wants to take less meds if possible.
she is bending alot at work which she notes can increase pain.

Location Of Pain: leg and back
Description Of Pain: Numbness, Burning
Pain Rating: 4
Activity: Stayed The Same
Did Medications Help? Yes
Is the patient taking any new medications? No
Does the patient have any new medical or surgical problems? No
Is the patient experiencing increased sadness, anxiety, or family problems? No
Comments: pt reports she is coping well -sf -hi

Past, Family, and Social History

Past History (Reviewed - No Changes Since Last Visit): back surgey x 2
trigger finger x 2
CTS left hand
Gastritis
Family History (Reviewed - No Changes Since Last Visit): no family hx of significance
Social History (Reviewed - No Changes Since Last Visit): working full time at BMW
Married, 1 child
high school
no tobacco
no etoh

Review of Systems

General: denies fevers, chills, sweats, anorexia, fatigue, malaise, weight loss
Eyes: denies blurring, diplopia, irritation, discharge, vision loss, eye pain, photophobia
Ear/Nose/Throat: denies ear pain or discharge, tinnitus, decreased hearing, nasal obstruction or discharge, nosebleeds, sore throat, hoarseness, dysphagia
Cardiovascular: Denies chest pain, palpitations, syncope, dyspnea on exertion, orthopnea, PND, peripheral edema
Respiratory: Denies cough, dyspnea, excessive sputum, hemoptysis, wheezing



Carolinas Center for Advanced Management of Pain
1330 Bolling Springs Rd Suite 2700 Spartanburg, SC 29303
8645830053 Fax: 8645830390

August 26, 2008
Page 1
Chart Document



11/14/2007 - Office Visit: Follow-Up Pain
Provider: Kacie Tartaro NP
Location of Care: Carolinas Center for Advanced Mgmt of Pain - Spartanburg Office

Follow-Up Visit

Chief Complaint: here for f/u visit for evaluation and treatment of chronic pain of LLE and back
History of Present Illness: pt co cramping in LLE leg at night that happens about 1 times week which she reports has been going on for several months. pt is not sure if this started when she went off neurontin.
pt reports she tired skelaxin but it did not help pain before surgery. pt has not tried flexeril
pt denies ae's to meds
patient reports taking meds as prescribed.
pt notes the days that she works she ahs to take 4 percocoet if she is not working she can cut back on percocet.
meds filled on 10/15/07
#5 percocoet and # 4 avinza remaining.
pt continue to work full time
pt had physical with pop. she rpeorts labs wer done and she will get results soon.

Location Of Pain: LLE and back
Description Of Pain: Burning
Pain Rating: 5
Activity: Stayed The Same
Did Medications Help? Yes
Is the patient taking any new medications? No
New Meds:
FLEXERIL 10 MG TABS (CYCLOBENZAPRINE HCL) 1/2-1 tablet po q hs prn
Does the patient have any new medical or surgical problems? No
Is the patient experiencing increased sadness, anxiety, or family problems? No

Past, Family, and Social History

Past History (Reviewed - No Changes Since Last Visit): back surgey x 2
trigger finger x 2
CTS left hand
Gastritis
Family History (Reviewed - No Changes Since Last Visit): no family hx of significance
Social History (Reviewed - No Changes Since Last Visit): working full time at BMW
Married, 1 child
high school
no tobacco
no etoh

Review of Systems

General: denies fevers, chills, sweats, anorexia, fatigue, malaise, weight loss
Eyes: denies blurring, diplopia, irritation, discharge, vision loss, eye pain, photophobia
Ear/Nose/Throat: denies ear pain or discharge, tinnitus, decreased hearing, nasal obstruction or

Carolinas Center for Advanced Management of Pain
1330 Boiling Springs Rd Suite 2700 Spartanburg, SC 29303
8645830053 Fax: 8645830390

August 26, 2008
Page 1
Chart Document

MS PATRICIA D JOHNSON
Home
BOBS

05/19/2008 - Office Visit: Follow-Up Pain
Provider: Kacie Tartaro NP
Location of Care: Carolinas Center for Advanced Mgmt of Pain - Spartanburg Office

Follow-Up Visit

Chief Complaint: here for f/u visit for evaluation and treatment of chronic pain of leg and back and foot
History of Present Illness: pt is working full time
pt denies any new sx bowel bladder changes weakness or paraathesis
patient reports taking meds as prescribed.
pt denies ae's to meds
pt repots meds are helping.
avinza filled on 4/21/08 pt took this am.
percocel filled on 4/21/08 #11 remaining
pt took percocel this am.
pain is 3-4/10 w/ht meds

Location Of Pain: leg and back and feet
Description Of Pain: Numbness, Sharp, Aching
Pain Rating: 6
Activity: Stayed The Same
Did Medications Help? Yes
Is the patient taking any new medications? No
Does the patient have any new medical or surgical problems? No
Is the patient experiencing increased sadness, anxiety, or family problems? No
Comments: pt is coping well.

Past, Family, and Social History

Past History (Reviewed - No Changes Since Last Visit): back surgey x 2
trigger finger x 2
CTS left hand
Gastritis
Family History (Reviewed - No Changes Since Last Visit): no family hx of significance
Social History (Reviewed - No Changes Since Last Visit): working full time at BMW
Married, 1 child
high school
no tobacco
no etoh

Review of Systems

General: denies fevers, chills, sweats, anorexia, fatigue, malaise, weight loss
Eyes: denies blurring, diplopia, irritation, discharge, vision loss, eye pain, photophobia
Ear/Nose/Throat: denies ear pain or discharge, tinnitus, decreased hearing, nasal obstruction or discharge, nosebleeds, sore throat, hoarseness, dysphagia
Cardiovascular: Denies chest pain, palpitations, syncope, dyspnea on exertion, orthopnea, PND, peripheral edema

Carolinas Center for Advanced Management of Pain
 1330 Boiling Springs Rd Suite 2700 Spartanburg, SC 29303
 8645830053 Fax: 8645830390

August 26, 2008
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 Chart Document

MS PATRICIA D JOHNSON
 8/26/08
 1303
 1303
 1303

07/23/2008 - Office Visit: Follow-Up Pain

Provider: Kacie Tartaro NP

Location of Care: Carolinas Center for Advanced Mgmt of Pain - Spartanburg Office

Follow-Up Visit

Chief Complaint: here for f/u visit for evaluation and treatment of chronic pain of back leg and feet

History of Present Illness: pt saw pcp for headaches and neck pain

pt has neck pain and left frontal headaches. seh has q day and is waking up in pain.

pt was told she has disc problems in neck causing pain. she is not sure if she had MRI, pt reports this has been going on for some time. pt is not sure what has been done with neck will request records. pt was given naproxen, she took for 2 days then stopped due to urinary frequency but was told by pharmacy this was not listed as side effect. pt has not taken in 2-3 days and she is no longer urinated more frequently. pt is also using ice.

she reports is helped and she went without headaches for a few days but is now sure when that occurred and if naproxen or ice is helping. she did not have headaches yesterday. pt will fu with pcp in 1 month.

pt denies any new sx bowel bladder changes weakness or parathesis

patient reports taking meds as prescribed.

pt took last dose of meds yesterday

pt denies ae's to meds

meds filled on 8/20/08

pt reports bending at working will aggravate pain.

pt told we need to see you back before she is out of meds

pt is taking citriceal for constipation. she has BM 1-2 times per week. but reports seh does not keep up with it. she says he is having to strain alot. she has taken warm prune juice, senakote, mirilax without significant relief.

she reports nothing has really worked for constipation, discussed options on amitiza trial but these did not want to try due to ae's listed.

Location Of Pain: back leg and foot

Description Of Pain: Numbness, Sharp, Aching, Burning

Activity: Decreased

Is the patient taking any new medications? No

Does the patient have any new medical or surgical problems? Yes

New Problems:

NECK PAIN (ICD-723.1)

Is the patient experiencing increased sadness, anxiety, or family problems? No

Past, Family, and Social History

Past History (Reviewed - No Changes Since Last Visit): back surgey x 2

trigger finger x 2

CTS left hand

Gastritis

Family History (Reviewed - No Changes Since Last Visit): no family hx of significance

Social History (Reviewed - No Changes Since Last Visit): working full time at BMW

Married, 1 child

high school

no tobacco

no etoh

BMW Manufacturing Corp., LLC
1400 Highway 101 South
Greer, SC 29651

Industrial Health Services

Progress Notes

09/05/2008
Page: 1

Name	JOHNSON, PATRICIA D.	Incident Date	08/19/2008/
SSN/ID		Injury/Illness	Sprain/Strain Back - Low
Company	BMW	Description	
Cost Center	DOORS E53	Case Number	

Record Review on 09/05/2008 by Hommel, Ken

09/05/2008 02:24am KH

Associate is s/p two lumbar spinal surgeries. She has chronic low back pain which is treated with pain management. I reviewed her personal low back medical records that were submitted for review. According to her last pain management medical note dated 8-14-08, she is taking Avinza and Oxycodone 4-5 times a day to control her back pain. This associate works an on line assembly production job. She recently reported that her back started hurting more at work from bending forward to install bolts and filed a work comp claim. She was sent out of work pending receipt and review of her personal medical records concerning her back. In my opinion, it is contraindicated to work on line and take these medications on a schedule that could be hazardous to the safety of herself or her coworkers. Furthermore, if her back problem is so severe that it requires these types of medications to control her symptoms then she needs permanent restrictions also. I would recommend that Work Comp carrier and personal insurance review her case to determine what she needs to do with regards to her current lost time.

(Created on 9/05/2008 at 2:24am by QT43039, Dr. Ken Hommel)

Telephone Call on 09/04/2008 by Grote, Anne

09/04/2008 11:54pm AG

PC from assoc. Voices concern over being out of work and not knowing how her absence is going to be covered or paid. Reports her claim re: low back is being reviewed under WC. Reports she has applied for STD, but Dr Bannan "refuses" to complete proper RTW paperwork "because he didn't put me out of work." Further states that she does not understand this cause she feels that her back pain was related to installing "the screws in the door." "I'm fine now. I just need to get back work." Reports that I H S has received all of her medical records re: back. Assoc. advised that communication will be sent to Absence Manager.

(Created on 9/04/2008 at 11:54pm by QT32552, Anne Grote)

Telephone Call on 08/25/2008 by Grote, Anne

08/25/2008 11:22pm AG

PC to assoc. to advise that she needed to submit all personal medical records pertaining to her back to I H S. She was given the fax number for the medical records. Assoc. reports that she has just seen 1 doctor for her back. Upon further questioning she reports that she does not see a pain management doctor "I just go there to get my medications refilled." Assoc. advised that medication refills must be authorized by a MD and to request medical records. Assoc. reports that she attempted to contact Aetna today to initiate an STD claim, but was not successful. She was given R. McGraw's extension.

(Created on 8/25/2008 at 11:22pm by QT32552, Anne Grote)

08/27/2008 02:14am AG

Scanned Authorization Release/Pain Management Records

(Created on 8/27/2008 at 2:14am by QT32552, Anne Grote)

Occupational Visit - Initial on 08/25/2008 by Hommel, Ken

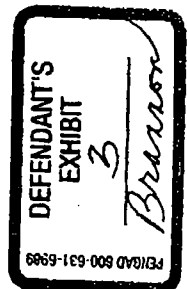
08/25/2008 06:23am KH

S- 56yo BF assembly associate who reports that she injured her low back for a second time approximately 2 weeks ago. She reports that her back initially started hurting on the job one month ago. She reports that she was bent forward installing screws on the door panel when she noticed the back pain. She reports the pain became worse and she went to her family doctor to evaluate her back. She reports that he did an MRI of her low back. She reports that she did not understand the MRI results when they were explained to her. She reports that the back pain has eased off some now. She denies any radiation of pain or numbness into her lower extremities. She has a hx of chronic low back pain for which she takes oxycontin and avinza for pain. She had two lumbar spine surgeries in 2005. She reports that she goes to pain management once per month for her back. She is treated by Dr. Latterette.

O- In NAD Ambulates with slight limp

lumbar spine- Nontender. No spasm palpated. Negative sitting straight leg raise bilaterally. Strength 5/5 symmetrical in lower extremities. DTR+1 in lower extremities. Full ROM. Reports discomfort with flexion to 80 degrees.

A- Low back pain- long hx of chronic low back pain treated with narcotics and pain management visits. She has also had



BMW Manufacturing Corp., LLC
1400 Highway 101 South
Greer, SC 29651

Industrial Health Services

Progress Notes

09/05/2008

Page:2

Name	JOHNSON, PATRICIA D.	Incident Date	08/19/2008/
SSN/ID		Injury/Illness	Sprain/Strain Back - Low
Company	BMW	Description	
Cost Center	DOORS E53	Case Number	

epidural injections. She reports that she recently had onset of increased low back pain while working. She is not currently having any radicular symptoms. In my opinion, her back pain is probably related to her underlying personal back condition. I will not allow her to continue working today. She will be sent home. She needs to have copies of her personal medical records pertaining to her low back condition including her MRI report sent to IHS. I will refer case to Work Comp for review.

P- No work in plant

Have back medical records sent to IHS for review

F/U to be determined

(Created on 8/25/2008 at 6:23am by QT43039, Dr. Ken Hommel)

08/25/2008 06:01pm KH

Received case for review and spoke w/ the Associate.

Associate advised that she has always ran the purported jobs that she is currently working; she describes putting in screws in the bottom of the door and bending too low and felt pain. The Associate completed the paperwork that her date of injury was 8/19/08, but advised that this onset actually occurred on 8/5/08. Associate advised that she went to her MD and was ordered an MRI. MRI results were received and Associate was advised that her records from her PCP were needed; she alleged that she was not aware anything other than the MRI report was needed. I advised that I would refer to Nurse Grote for anything additional that Dr. Hommel would need.

Based on history, it appears that the Associate has had 2 back surgeries and is currently/actively seeking treatment from pain management specialist through prescriptions and injections.

File will be referred to SRS.

Associate was provided with the STD Carrier Information to initiate a claim.

(Created on 8/25/2008 at 6:01pm by QT53300, Lulu Person)

08/26/2008 03:27am KH

Scanned Personal Medical Record - MRI

(Created on 8/26/2008 at 3:27am by QT32552, Anne Grote)

08/29/2008 02:39am KH

SCANNED PERSONAL MEDICAL RECORDS DR BANNON

(Created on 8/29/2008 at 2:39am by QT49676, Michelle Somers)

WORKERS' COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL. ZIP) BMW 1400 Highway 101 South Greer SC 29651		CARRIER/ADMINISTRATOR CLAIM NUMBER		REPORT PURPOSE CODE
JURISDICTION		JURISDICTION CLAIM NUMBER		
INSURED REPORT NUMBER				
EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)			LOCATION # 01820	PHONE # (864)989-5547
SIC CODE	EMPLOYER FEIN 223190143			
CARRIER/CLAIMS ADMINISTRATOR CARRIER (NAME, ADDRESS & PHONE NO.) Hartford Casualty PO Box 17286 Nashville TN 37217- (864)258-2193		POLICY PERIOD 01/01/08 TO 12/31/08	CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO.) Hartford Casualty PO Box 14205 Lexington, KY 40512 (866)803-8089	
CARRIER FEIN	POLICY/SELF-INSURED NUMBER 20WND68700		ADMINISTRATOR FEIN	
AGENT NAME & CODE NUMBER				
EMPLOYEE/WAGE				
NAME JOHNSON, PATRICIA D.		DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE HIRED 11/13/00
ADDRESS (INCL ZIP)		SEX <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN	MARITAL STATUS <input type="checkbox"/> UNMARRIED SINGLE/DIVORCED <input checked="" type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> UNKNOWN	STATE OF HIRE SC
PHONE		# OF DEPENDENTS 0	OCCUPATION/JOB TITLE PRODUCTION ASSOCIATE	
RATE PER: <input type="checkbox"/> DAY WEEK <input checked="" type="checkbox"/> MONTH OTHER		DAYS WORKED/WEEK 4	EMPLOYMENT STATUS ACTIVE	
			FULL PAY FOR DAY OF INJURY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO DID SALARY CONTINUE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
OCCURRENCE/TREATMENT				
TIME EMPLOYEE BEGAN WORK 08:00	DATE OF INJURY/ILLNESS 03/14/08	TIME OF OCCURRENCE <input type="checkbox"/> AM <input type="checkbox"/> PM	LAST WORK DATE	DATE EMPLOYER NOTIFIED 03/14/08
CONTACT NAME/PHONE Jerry DeYoung (864)989-5547		TYPE OF INJURY/ILLNESS Sprain/Strain		PART OF BODY AFFECTED Right Shoulder
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED Assembly - 1820		ALL EQUIPMENT MATERIALS OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED Hammer		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED Assoc. alleges while using hammer to install seals on window frame		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		
Signed by QT32552 on 3/26/2008 at 4:56am				
Auto Assembly				
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL. Assoc. alleges while using hammer to install seals on window frame, right shoulder pain occurred.				
Signed by QT32552 on 3/26/2008 at 4:57am				
DATE RETURN(ED) TO WORK		IF FATAL, GIVE DATE OF DEATH	CAUSE OF INJURY CODE	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) Dr. Ken Hommel		HOSPITAL (NAME & ADDRESS) BMW 1400 Highway 101 South Greer SC 29651.		INITIAL TREATMENT <input type="checkbox"/> NO MEDICAL TREATMENT <input type="checkbox"/> MINOR: BY EMPLOYER <input checked="" type="checkbox"/> MINOR CLINIC/HOSP <input type="checkbox"/> EMERGENCY CARE <input type="checkbox"/> HOSPITALIZED > 24 HRS <input type="checkbox"/> FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED
WITNESSES (NAME & PHONE #)				
DATE ADMINISTRATOR NOTIFIED 03/14/08	DATE PREPARED 03/26/08	PREPARER'S NAME & TITLE Grote, Anne R.N.-COHN		PHONE NUMBER (864)989-5547
SEE BACK FOR IMPORTANT STATE INFORMATION/SIGNATURE				

The Record is replete with expert and lay testimony that the Appellant suffered an accidental injury sometime around August 19 or August 23, 2008. Therefore the Full Commission should reverse the Order of the single Commissioner and find the event compensable because of the accidental injury or, in the alternative, an injury due to repetitive motion. The Respondents consent to repetitive trauma as a cause of upper extremities insult, but deny that repetitive trauma could aggravate or cause a back condition is inconsistent. In order for the judicial process to function properly, litigants must approach it in a truthful manner. Although *421 parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. Quinn v. Sharon Corp. 343 S.C. 411, 421, 540 S.E.2d 474, 479 (S.C.App.,2000). Therefore, the Appellant would argue a reversal is in order.

ARGUMENT II

THAT THE COMMISSONER ERRED IN FINDING THAT THE CLAIMMANT DID NOT SUFFER A COMPENSABLE INJURY BY ACCIDENT AS A RESULT OF AGGRAVATION OF A PREEXISTING INJURY FROM THE WORK SITE WHEN IN FACT THE COMMISSIONER ACCEPTED THE EMPLOYOER AND CARRIER'S POSITION THAT INDEED THE CLAIMKANT DID SUFFER AN AGGRAVATION OF PREEXISTING INJURIES AND/OR REPETITIVE INJURY TO HER UPPER EXTREMITIES, AND THE FINDINGS AS TO THE BACK ARE INCONSISTENT WITH THE ADMISSIONS MADE BY THE EMPLOYER AND CARRIER AT THE TIME OF THE HEARING ON THE UPPER EXTDREMITIES.

The record is void of the Appellant ever having any damage to the upper extremities, yet, the Respondents, at the hearing on the back, admit into the record that repetitive trauma caused injures to the Appellant's upper extremities that arose out of and

in the course of her employment. How are the Respondents going to take the back out of the repetitive motion scenario? It is amazing how the Respondents want one to believe that repetitive motion could damage two otherwise healthy upper extremities but do no damage to the lower back since November 2005 when the Appellant returned to work from back surgery. In order for the judicial process to function properly, litigants must approach it in a truthful manner. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. Quinn, supra.

Therefore, because of the inconsistent position taken by the Respondents, the Full Commission should reverse the single Commissioner and find the claim of the Appellant compensable.

ARGUMENT III

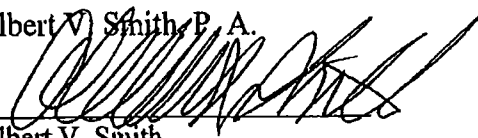
THAT THE COMMISSIONER ERRED IN FAILING TO FIND THAT CLAIMANT WAS ENTITLED TO TTD COMPENSATION BENEFITS AND MEDICAL TREATMENT AS A RESULT OF THE WORK RELATED ACCIDENT CAUSED BY REPETITIVE TRAUMA AND/OR AN ACCIDENT SPECIFICALLY WHEN THE GREATER WEIGHT OF THE EVIDENCE CLEARLY SHOWS BY THE EMPLOYER AND CARRIER'S ADMISSION THAT THERE WAS REPETITIVE REQUIREMENTS AT THE CLAIMANT'S JOB SITE ON THE DATE OF THE ALLEGED INJURES.

It would be the position of the Appellant that she suffered an accidental injury specifically in August of 2008 that aggravated her preexisting back condition, or in the alternative, that she injured her back as result of the repetitive trauma induced by the job to her back, and she therefore should be entitled to compensation under the South Carolina Workers' Compensation Act to include medical services and TTD. If you believe Dr. Latourette's statement that she is totally disabled and the testimony of Dr. Bannon and Dr. McCorkle that her back has been aggravated by the repetitive nature of

her job, then the Appellant should receive these benefits. (A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun. Code 1976 § 42-9-260. The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. Code 1976 § 42-15-60.

The Appellant, therefore, requests that the Full Commission review the record and find that the greater weight of the evidence supports a full reversal of the single Commissioner's Order and Award.

Respectfully submitted,

By: 
Albert V. Smith,
Attorney for Appellant
410 Magnolia Street
Post Office Box 5866
Spartanburg, S. C. 29304
Phone: (864) 576-3867
Fax: (864) 573-6843
Email: smithoffice1@albertsmithatty.com

Dated: November 23, 2009

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Patricia Johnson Employer's Name: _____
 Physician's Name: Dr. Timothy Brown Insurance Carrier: _____
 Practice/Clinic: The Hand Center SCWCC File No: _____
 Preparer's Name: Same
 Phone: _____

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 3-14-08

Date of first office visit: 2-24-09 Date of last visit: 8-18-09

Diagnosis or nature of Injury or illness: Right Medial Epicondylitis

Body part(s) Injured: Right Elbow Body part(s) affected: _____

Date of Maximum Medical Improvement: 8-18-09

Based on the AMA Guidelines, the claimant has sustained a 2 % medical impairment to Right upper extremity injured body part(s) and a 0 % medical impairment to _____ other affected body part(s).

The claimant is able to return to work without restriction.
 The claimant is able to return to work with the following restrictions:

The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

TJB 10/15/09
Treating Physician

Date

(B)

+ R Elbow

SHOULDER EXAM

History

RHD LHD

Complaint

Duration of Sxs

Employer at Time of Injury

Occupation

long time just hurt

just banging

pub ar triple.



Pain Location

(L) + R shoulder + R Elbow

Exacerbates

banging

Alleviates

nothing

Previous Treatment

NSAIDS

Therapy

Injections - 3 -> R shoulder - temporary help
come back

XRAYS

Where

When

Results

(R) films reviewed 1/15/09

Results

(L) Report only 4/06

Out B/08
Short term
R Humeral

MRI

Cervical Pain

EXAMINATION

Inspection

atrophy

winging

S-T asymmetry

Palpation

AC

Corocoid

Biceps

Scalenes

ROM

Flexion

Abduction

IR

ER

IR @ 90

ER @ 90

Provocative

X-chest

Hawkins

Neer

Speed's

Yergason's

Internal impinge

AP load & shift

Apprehension

Relocation

Lift-off

SLAP

- lat ϕ AC

(+) (B)

- + R

(-)

(+) (B)

(+) (B)

(+) (B)

- R > L

Strength

SS

IS

Liftoff

deltoid

bicep

tricep

C-spine

extension

lat bend

spurling's

some in
trunk

sure
ext
+ Ret

(P) (-) caps tend 5/16/08 / fuels
(+) Med Epca Rest pm - 10-

THE HAND CENTER, P.A.
1011 FRONTAGE ROAD
GREENVILLE, SC 29615

DATE: FEBRUARY 24, 2009
PATIENT: JOHNSON, PATRICIA D.
PATIENT ID#: 106465
DATE OF BIRTH:
EMPLOYER:

CHIEF COMPLAINT: Both shoulders and right elbow.

HISTORY: Patricia Johnson is a 57-year-old right hand dominant assembly worker at BMW seen at the request of Dr. Hommel for evaluation of both shoulders and her right elbow. She reports that both shoulders have been hurting for a long time. She had an MRI of the left shoulder in 2006, and an MRI of the right shoulder in January of 2009. She has also had an MRI of the right elbow. She complains of pain with elevating either shoulder. She complains of pain in the medial aspect of the right elbow. She denies any numbness or tingling in the ring or little fingers. She reports that her pain is exacerbated with banging on the door line and it has not been alleviated by anything. She did have one injection into the right shoulder which gave her temporary relief but the pain came back. She has been out on short-term disability since August of 2008, and has not noted any improvement. She reports no neck pain other than some pain in the distal portion of the trapezius. She has been through therapy, has had one injection, and has been out on short-term disability and has not noted any improvement.

PAST MEDICAL HISTORY: Past medical history is in the Medical History Form in the chart dated 7/12/07. It is updated today, 2/24/09 with no significant changes reported by the patient.

PHYSICAL EXAM: In general, she is a well developed adult female. She is in good spirits. Examination of her skin reveals no scars about either shoulder or the elbow. With range of motion of her neck she has a little bit of neck soreness but no radicular symptoms and no pain in the shoulders with range of motion of her neck. With palpation she has no tenderness over the acromioclavicular joints bilaterally. She does have lateral and anterior acromial tenderness. She is also tender over the right medial epicondyle and the flexor pronator origin. There is no swelling or atrophy on inspection of either shoulder, but there is some atrophy of the most proximal portion of the flexor pronator mass. She has full range of motion of both shoulders, the right elbow, and the left elbow. Testing for instability reveals no pain with crossover adduction testing. She has pain with Hawkins and Neer impingement tests bilaterally. She has positive Speed's testing on the right; negative on the left. She has negative Yergason's tests bilaterally. She has positive lift-off bilaterally. She has pain when testing for internal derangement on the right worse than the left. She has pain with resisted forearm pronation as well as with internal rotation of the elbow with pressure against the wrist. She has normal sensation throughout. She has negative Tinel's over the cubital tunnels bilaterally and she has good strength throughout her range of motion, but a good bit of soreness when testing through the transition zone.

STUDIES: I have reviewed the MRI of the right shoulder and its report, and it is included in the chart. It is significant for moderate-to-severe tendinopathy of the supraspinatus and infraspinatus as well as possible subluxation of the biceps tendon. The MRI report from the left shoulder from 4/4/06 demonstrates an acromial configuration

THE HAND CENTER, P.A.
PATIENT: JOHNSON, PATRICIA D.
ID# 106465

FEBRUARY 24, 2009

CONTINUATION - PAGE TWO

predisposing to impingement. There is evidence of chronic tendinosis at the supraspinatus tendon. Those films are not available for review. The MRI of the right elbow is reviewed which shows changes in the medial epicondyle and flexor pronator origin and findings which suggested ulnar neuritis.

IMPRESSION:

1. Bilateral shoulder impingement syndrome.
2. Right medial epicondylitis.

DECISION MAKING:

She is not having any symptoms related to the ulnar nerve and I do not feel she requires any further treatment for this. Regarding her bilateral shoulders, she has had months, if not years, of symptoms and changes in the MRIs of the shoulders. She would likely be a candidate for an arthroscopic acromioplasty and evaluation of the rotator cuff with possible rotator cuff repairs if she chose. There is no significant pain over the acromioclavicular joints on examination today. Regarding the right elbow, she does not have any signs related to cubital tunnel syndrome. The majority of her pain is in the flexor pronator origin, consistent with medial epicondylitis. She has been through conservative treatment for all three of these diagnoses and is continuing to have pain despite being out of work on short-term disability. She would be a candidate for surgical treatment of the left shoulder and the right shoulder, and also the right medial elbow and I have discussed the limitations of the surgical procedures in all three areas with her. She does not wish to make a decision today. She would like to think about it. I plan to see her back in approximately a month for recheck. I have not made changes to any restrictions given by Dr. Hommel. I have not assigned any new restrictions today.

Timothy R. Brown, M.D.

TRB/jeg

cc: WC

Dr. Hommel, BMW Manufacturing Co., LLC, Fax # 864.801.7938

THE HAND CENTER, P.A.
PATIENT: JOHNSON, PATRICIA D.
ID# 106465

MARCH 24, 2009

Patricia Johnson is seen in follow-up from the bilateral shoulder impingement syndrome and the right medial epicondylitis. She is continuing to have a lot of pain about the shoulders despite being out on short-term disability. She is also having problems with the right medial elbow and has not noted much pain relief with the rest.

On exam she continues to have pain with Hawkins and Neer impingement tests bilaterally. She has pain with pronation and resisted gripping with the right elbow at the medial epicondyle.

IMPRESSION:
right medial epicondylitis.

Bilateral shoulder impingement syndrome and

DECISION MAKING:

I had another discussion with her about her treatment choices ranging from observation to working through the pain, continuing different treatments such as medications or therapy, or considering surgery for each of the involved portions. After discussion with her, she reports she is uncertain if she will be able to return to heavy work given her age and the multiple back surgeries or hand surgeries she has had as well as the problems she is having in her shoulder and right elbow. For the time being she thinks she would like to continue on disability. Based on this I plan to obtain a CUEE and then rate both shoulders and the right elbow. This will be forwarded whenever the CUEE has been completed. If she does choose to pursue surgical intervention in the future, I would be happy to see her again as needed.

Timothy R. Brown, M.D.

TRB/jeg

cc: WC

BMW Manufacturing Co., LLC, Fax # 864.801.7938

THE HAND CENTER, P.A.
PATIENT: JOHNSON, PATRICIA D.
ID# 106465

APRIL 2, 2009

Patricia Johnson is seen in follow-up at her request for her bilateral shoulder impingement syndrome. She reports that the left side has gotten bad enough that she simply does not want to leave it alone. She is here to talk about her choices.

On exam she continues to have pain with Hawkins and Neer impingement tests bilaterally. The left side seems worse than the right. She has pain with pronation and resisted gripping at the right elbow and the medial epicondyle.

She reports she is out of work because of her back and this has not helped her shoulders.

IMPRESSION: Bilateral shoulder impingement syndrome with right medial epicondylitis.

DECISION MAKING: After discussion with her, I have injected her left shoulder in the subacromial space with 1 cc of Celestone mixed with lidocaine under aseptic conditions. She tolerated it well. I will see her back in a month for recheck. There are no restrictions to her shoulders. It is my understanding she is out of work because of her back.

Timothy R. Brown, M.D.

TRB/jeg

cc: WC
BMW Manufacturing Co., LLC, Fax # 864.801.7938

THE HAND CENTER, P.A.
PATIENT: JOHNSON, PATRICIA D.
ID# 106465

AUGUST 18, 2009 Patricia Johnson is seen in follow-up from the bilateral shoulder impingement syndrome with right medial epicondylitis. She reports that her back continues to be her major problem. She is out of work and is likely going to go on long-term disability because of her back. She has not had the chance to test her shoulders at work since her last visit. She complains of pain particularly on the left side at the shoulders but also at the right side and in the right medial elbow.

On exam she has positive Hawkins and Neer impingement tests bilaterally, worse on the left than the right. She has normal strength throughout the transition zone and still has some tenderness over the right medial elbow at the flexor pronator origin.

IMPRESSION: Bilateral shoulder impingement syndrome with right medial epicondylitis.

DECISION MAKING: I have once again reviewed her treatment choices. She reports that because of her back it is unlikely that she will return to work and does not wish to consider going through a surgical procedure on either shoulder if it is unlikely that she will return to work. It seems that she has come to a reasonable decision for her. Based on this, however, it is my opinion she is at MMI for her bilateral shoulders and her right elbow. Because of her back, it is also my opinion that she would likely have trouble fully participating in a comprehensive upper extremity evaluation. Therefore it is my opinion that she has 10% impairment to the left upper extremity as a result of her left shoulder impingement syndrome and 10% impairment to the right upper extremity as a result of her right shoulder impingement syndrome and right medial epicondylitis. As the AMA Guidelines do not have a rating category for the shoulder, it is my opinion she would have 10% impairment to the left shoulder and 8% impairment to the right shoulder. This means there would be 2 % impairment to the right upper extremity as a result of her right medial epicondylitis. She has no permanent work restrictions.

Timothy R. Brown, M.D.

TRB/jeg

cc: WC

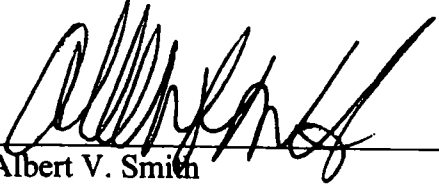
BMW Manufacturing Co., LLC, Fax # 864.801.7938

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.

The undersigned further certifies that the Record on Appeal has been prepared in compliance with the August 13, 2007 Order of the South Carolina Supreme Court.

October 29, 2010


Albert V. Smith
ALBERT V. SMITH, P.A.
P.O. Box 1853
Spartanburg, SC 29304
(864) 585-8174 Phone
(864)573-6843 Fax
Attorney for Appellant