

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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S.C. Supreme Court

Opinion No. 5205

Case No. 2013-000005

Neal Beckman, Employee,.....Respondent,

v.

Sysco Columbia, LLC, Employer, and
Gallagher Bassett Services, Inc., Carrier,.....Petitioners.

APPENDIX

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APPENDIX INDEX

1. Record on Appeal
2. Final Brief of Respondent dated September 9, 2013
3. Final Brief of Petitioners dated September 12, 2013
4. Final Reply Brief of Respondent dated September 9, 2013
5. Decision of Court of Appeals, Opinion No. 5205, filed March 19, 2014; withdrawn, substituted and refiled July 9, 2014
6. Petition for Rehearing dated March 25, 2014
7. Amended Order of the Court of Appeals denying Petition for Rehearing filed on March 25, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Avery B. Wilkerson, Derrick L. Williams, Appellate Panel

WCC File No. 1002925

Neal Beckman, Employee, ... Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett Services, Inc., Carrier, ... Respondents.

RECORD ON APPEAL

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INDEX TO RECORD ON APPEAL

I. ORDERS/JUDGMENTS

Decision and Order of Single Commissioner Susan S. Barden (June 18, 2012)	1
Decision and Order of Full Commission (December 5, 2012)	21

II. PLEADINGS

Claimant's Form 50 (August 5, 2011)	33
Defendants' Form 21 with Attachments (March 8, 2012)	34
Claimant's Form 58 (April 12, 2012)	42
Defendants' Form 58 (April 26, 2012)	45
Claimant's Form 30 (June 26, 2012)	47

III. TRANSCRIPTS

Transcript of Hearing before Single Commissioner Susan S. Barden (April 26, 2012)	49
Caption	49
Preliminary Matters	52
Testimony of Neal Beckman	60
Direct Examination by Mr. Riesen	60
Cross Examination by Ms. Fiehrer	97
Redirect Examination by Mr. Riesen	103
Transcript of Full Commission Hearing (October 22, 2012)	105
Caption	105
Argument for the Appellant by Mr. Riesen	109
Argument for the Respondent by Ms. Walton	114

Reply for the Appellant by Mr. Riesen	119

IV. EXHIBITS

Claimant's APA Submissions:

1. Records of Palmetto Health (March 26, 2010)	121
2. Records of Byron Williams, M.D., Coastal Occupational Medicine (March 29, 2010 - April 12, 2010)	123
3. Records of Coastal Occupational Medicine (March 29, 2010)	128
4. Records of TriCounty Radiology (April 14, 2010)	129
5. Records of Timothy Zgleszewski, M.D., Palmetto Spine & Sports Medicine (April 19, 2010 - September 12, 2011)	131
6. Records of Timothy Zgleszewski, M.D., Palmetto Spine & Sports Medicine (FCE) (April 25, 2011)	194
7. Records of David Price, M.D. (September 10, 2011)	198
8. Records of Scott Boyd, M.D., Columbia Neurosurgical Associates (February 27, 2012)	205
9. Records of Jan Westmoreland, MEd, CRC, The Directors Group (Vocational Assessment) (April 6, 2012)	207
10. Job Description (Delivery Driver)	221
11. Photos of Neal Beckman	224

Defendant's APA Submissions:

1. Records of Scott Boyd, M.D., Columbia Neurosurgical Associates (February 27, 2012)	225
2. Letter to Scott Boyd, M.D. from Kathryn R. Fiehrer, Esquire (February 17, 2012)	227
3. Records of TriCounty Radiology (October 29, 2010 - March 31, 2011)	228

4.	Records of Jan Westmoreland, MEd, CRC, The Directors Group (Vocational Assessment) (April 6, 2012)	233
5.	Records of Global Options Video Surveillance (April 25, 2011 - September 6, 2011)	247
6.	Global Options Video Surveillance	249
7.	Consent Order (September 26, 2011)	250
8.	Respondent's Form 51 (August 26, 2011)	252
9.	Claimant's Form 50 (August 5, 2011)	253
VI.	CERTIFICATE OF COUNSEL	254

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1002925

Neal Beckman,
Employee/Claimant,

-vs-

Sysco Columbia, LLC, Employer, and
Gallagher Bassett Services, Inc., Carrier,
Defendants.

HEARING:

Held on April 26, 2012 in Summerville,
South Carolina per notices timely and
properly served upon all parties in interest.

APPEARANCES:

Fred W. Riesen, Jr., Esquire, North
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behalf of the Claimant.

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

PURPOSE OF THE HEARING:

To determine issues as set forth on the
Form 21, Employer's Request for Hearing.

DECISION & ORDER:

By Susan S. Barden, Commissioner

FILED:

June 18, 2012

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 May 2, 2011 per Dr. Timothy Zgleszewski or alternatively on February 12, 2012 per Dr. Scott Boyd. The Defendants claim credit for overpayment of temporary disability compensation and seek a final determination concerning the Claimant's entitlement to benefits.

The record reveals that the Claimant, Neal Beckman, was employed as a delivery driver with Sysco Columbia, LLC when he was involved in an admitted accident arising out of and in the course of his employment on March 25, 2010. Following the accident, the Defendants provided the Claimant authorized medical care and treatment primarily with Dr. Zgleszewski. The Claimant also underwent a surgical evaluation with Dr. Scott Boyd. The Defendants paid temporary total disability compensation for the period commencing on March 26, 2010 to the present. Per the Defendants' Form 21, a Form 17 was offered on March 8, 2012.

The Defendants assert that the Claimant reached a level of maximum medical improvement on May 2, 2011 per Dr. Zgleszewski's medical note or alternatively by February 27, 2012 per Dr. Scott Boyd's medical note. The Claimant asserted that in the event that the Commissioner determines that he has reached maximum medical improvement, the Defendants shall not be entitled to a credit for overpayment of temporary total disability benefits prior to the Form 21 filing on March 8, 2012. The Defendants assert that the Claimant should be entitled to permanent disability pursuant to §42-9-30. The Claimant contends that any permanency award should be based on a loss

of earnings under §42-9-20. The parties stipulated to an average weekly wage of \$1,062.94 with a resulting compensation rate of \$689.71. The parties further stipulated that the video surveillance submitted into the record by the Defendants contained footage of the Claimant and it was not necessary for David Langfitt, the investigator present at the Hearing, to authenticate the surveillance. There were no objections to any submissions under the Administrative Procedures Act, jurisdiction, or venue.

EVIDENCE SUMMARY

The Claimant testified on his own behalf. The Claimant and Defendants relied on the records submitted pursuant to the Administrative Procedures Act. Pursuant to the Administrative Procedures Act, the Claimant submitted the following records:

No.	Physician	Facility	Dates	Page #.
1.		Palmetto Health	3/26/10	1-2
2.	Dr. Byron Williams	Coastal Occupational Medicine	3/29/10-4/12/10	3-7
3.	MRI-lumbosacral spine	Coastal Occupational Medicine	3/29/10	8
4.	MRI-lumbar spine	Tri-County Radiology	4/14/10	9-10
5.	Dr. Zgleszewski	Palmetto Spine and Sports Medicine	4/19/10-9/12/11	11-73
6.	FCE	Dr. Zgleszewski	4/25/11	74-77
7.	Dr. David Price		9/10/11	78-84
8.	Dr. Scott Boyd	Columbia Neurosurgical Associates	2/27/12	85-86
9.	Jan Westmoreland	The Directions Group	4/6/12	87-100
10.	Job Description	Delivery Driver		101-103
11.	Photos of Neal Beckman	During a flare-up		104

Pursuant to the Administrative Procedures Act, the Defendants submitted the following records:

12. Dr. Scott Boyd	02/27/12		Pages 105 – 106
13. Letter to Dr. Scott Boyd	02/17/12		Pages 107
14. Palmetto Spine &	09/12/11 - 04/19/10		Pages 108 – 146

Sports Medicine			
15. Private Therapy Services	02/17/11 – 09/21/10		Pages 147 – 164
16. TriCounty Radiology	03/31/11 – 04/14/10		Pages 165 – 169
17. Coastal Occupational Medicine	04/12/10 – 03/29/10		Pages 170 – 173
18. Health Works of Palmetto Health	04/07/10		Pages 174
19. The Directions Group Vocational Report	04/06/12		Pages 175 – 188
20. Global Options Video Surveillance CD	04/25/11 – 09/06/11		Pages NA
21. Consent Order	09/27/11		Pages 189 – 190
22. Form 51	08/26/11		Pages 191
23. Form 50	08/05/11		Pages 192
24. Claimant's Payroll Records	06/13/08 – 03/12/10		Pages 193 – 194

The record also includes the Commission's file with the exception of any self-serving declarations or unstipulated medical records.

The record reveals that the Claimant initially treated at Palmetto Health on March 26, 2010. Thereafter he treated with Dr. Byron Williams at Coastal Occupational Medicine from March 29, 2010 through April 12, 2010. Per recommendation of Dr. Byron Williams, the Claimant underwent a lumbosacral spinal MRI on March 29, 2010, which revealed mild appearing degenerative disc disease at the L3-4 and in direct evidence of paravertebral muscle spasm. The Claimant also had an MRI of his lumbar spine at Tricounty Radiology Associates on April 14, 2010, which revealed degenerative changes most pronounced at the L3-4 and L4-5 on the left.

Thereafter, the Claimant treated conservatively with Dr. Zgleszewski at Palmetto Spine and Sports Medicine from April 19, 2010 through September 12, 2011. On May 17, 2010, the Claimant underwent EMG/NCS testing. In reviewing the report, Dr. Zgleszewski indicated on June 7, 2010 that the Claimant did not have any radiculopathy

in either leg pursuant to the EMG/NCS. The Claimant's conservative treatment included injections to the SI joint and left L4, L5, S1 transforminal epidural steroid injections. Following discogram testing, Dr. Zgleszewski also performed a percutaneous discectomy at the L4-L5 level on December 10, 2010. Thereafter, the Claimant attempted rehabilitation therapy, a pain management medication regime, and further injections. Dr. Zgleszewski then ordered a follow up MRI of the lumbar spine, which was reviewed in his office note dated April 11, 2011. According to Dr. Zgleszewski's notes, the MRI revealed that the only change was a reduction in the prior lumbar disc injury that was treated with the percutaneous discectomy. At that point, the Claimant reported no leg pain and indicated that he does not have pain radiating into his legs. The Claimant still reported pain in his back with a shooting pain to the left hip. At the April 11, 2011 appointment, Dr. Zgleszewski ordered a functional capacity evaluation to assess the Claimant's current functional status and help determine his return to work level. The functional capacity evaluation was performed on April 25, 2011 and the report concluded that the Claimant reached a medium physical demand level, which is a reliable representation of his functional capacity. Thereafter, Dr. Zgleszewski completed a Form 14B, Physician Statement, dated September 12, 2011. On the Form 14B, Dr. Zgleszewski indicated that the Claimant reached maximum medical improvement as of May 2, 2011; he is able to return to medium duty work with the restrictions of no repetitive bending, twisting, or lifting; the Claimant has sustained a 10% medical impairment to the back and a 5% medical impairment to the SI joint for a combined rating of 15% to the back; and the Claimant will need SI joint injections over the next two years, up to two to three per year.

Pursuant to Consent Order of the parties, the Claimant was also provided with a surgical evaluation. The surgical evaluation took place with Dr. Scott Boyd on February 27, 2012. Dr. Boyd opined that based on the MRI findings, there is no role for surgery for the Claimant. Furthermore, Dr. Boyd indicated that he agreed with Dr. Zgleszewski's determination that the Claimant reached maximum medical improvement. Dr. Boyd also indicated that the Claimant has sustained an 8% impairment considering the DRE lumbar category II based on the AMA Guides. Dr. Boyd also indicated that he agreed with the findings of the functional capacity evaluation that placed the Claimant at a medium physical demand level for an eight-hour day. According to Dr. Boyd, the Claimant is likely to have further flare-ups, which have been treated well with pain medication and muscle relaxers; therefore, he recommended that the Claimant receive such medications three to four times per year over the next two years as monitored by a regular medical physician. Dr. Boyd opined that the Claimant would not benefit from any further procedures or injections. Further, Dr. Boyd noted that he did not appreciate any significant nerve root compression.

Vocational assessments were submitted into the record by both the Claimant and the Defendants. The Claimant's vocational assessment is dated September 10, 2011 and was performed by David R. Price, M.ED. At the time of Mr. Price's report, the Claimant reported that he could only exercise at a local gym one hour three times weekly, he only fished three times since the injury, and he had been unable to attend church due to his sitting intolerance. The Claimant was also requiring Oxycodone every eight hours for pain control according to the vocational evaluation by David Price. David Price concluded that the Claimant would be capable of working at an entry level semi-skilled

employment in a range of earnings from approximately \$8.00 to \$10.00 per hour working an 8-hour day.

The vocational report submitted into the record by the Defendants was performed by The Directions Group on April 6, 2012. Included in the report were the results of a Beta III examination, which revealed that the Claimant has an IQ of high average intelligence. The Claimant reported to The Directions Group vocational evaluator that he is able to sweep/dust, vacuum, make the bed, wash dishes, mop the floor, perform some cooking, and do laundry. The Claimant indicated that he is able to perform limited yard work and he is able to drive for 45 minutes to 1 hour continuously. The Claimant further reported that he likes to read books, he attends church every Sunday, he participates in woodworking, and he goes fishing every now and then. Further, the Claimant confirmed that he works out at Gold's Gym five times per week. The Directions Group's vocational evaluation concluded that the Claimant can anticipate earnings ranging from \$18,200.00 annually up to \$27,040.00 annually.

The Claimant testified at the Hearing that he is 45 years old and has been married for 26 years. The Claimant testified that he has 2 children, ages 25 and 21. The Claimant further testified that he graduated from high school and attended courses in architectural engineering at Trident Tech. The Claimant testified that he did not graduate from college and he no longer has a commercial drivers' license, although he did at one time. The Claimant testified that his job history includes employment with Ceres Marine Terminals as a stevedore on container ships, a driver for Coca-Cola, food service for Monarch, auto repair work, and as a delivery driver at Pearlstein Distributors (a/k/a Budweiser). The

Claimant asserted that he is not physically able to do any of the work as he previously performed.

The Claimant further testified that he previously injured his low back while working at Sysco Columbia, LLC; however, he only received medical treatment. In regards to the injury on March 25, 2010, the Claimant testified that he has pain in his left groin, upper inner thigh, left hip radiating to his knee, and SI joints on both sides. The Claimant testified pain on his right has subsided but that the left has continued. The Claimant testified regarding the different exercises that he learned to strengthen his lower back and the muscles around his spine. The Claimant testified that the injections and regular exercise at the gym have been beneficial. Furthermore, the Claimant testified that he quit smoking and lost almost 40 lbs. since this accident.

The Claimant testified regarding his current workouts. The Claimant testified that he starts on a treadmill or elliptical and uses the arch trainer and nautilus machines for strength training. The Claimant testified that he has been going to the gym since he was 15 years old and he would like his gym membership to be paid by the insurance Carrier.

In regards to his current condition, the Claimant testified that his worst symptom remains his lower back. The Claimant further testified that he has a debilitation flare-up with his low back pain every two months, but he has lesser flare-ups every couple of weeks. The Claimant testified that the only way to alleviate the pain is to take medication and lay on the floor. The Claimant testified that his last flare-up was on February 14, 2012. The Claimant confirmed that Dr. Scott Boyd's evaluation took place after that flare-up. The Claimant testified that during that flare-up, he took Oxycodone, which was left over from his initial visit with Dr. Zgleszewski. The Claimant testified

that he previously was also prescribed Cymbalta for pain and other issues, but he is no longer having any issues with depression. The Claimant also testified that he is no longer having difficulties with erectile dysfunction.

The Claimant went on to testify regarding his pain in his sacrolitic joint, as well as his left hip that bothers him constantly. According to the Claimant, he has pain that radiates to his knee when his back flares up. Furthermore, the Claimant testified that he has pain in his groin, but it does not happen as often as it was. The Claimant testified that he is able to drive, but that he still has limits with his activities. The Claimant testified that he cannot walk as long as he used to, but he can probably walk for 45 minutes to an hour while sitting down and taking breaks. The Claimant further testified that he has problems sitting for longer to 30 to 45 minutes before it gets really uncomfortable. According to the Claimant, he can stand 40 to 45 minutes before leaning on something. Furthermore, the Claimant testified that he has limitations on bending and stooping, although he can stoop down if he keeps his back straight. The Claimant also testified he can climb a ladder, but that is about it. According to the Claimant's testimony, he does not do half of the activities that he used to. That said, the Claimant testified that he still does a lot of woodworking with small items and birdhouses in his garage. The Claimant also testified that he does what he can as far as yard work, but he has a self-propelled lawnmower and he only does an eighth of the yard. The Claimant testified that he performs light laundry and he can do dishes, but not a whole sink-full. The Claimant testified that he believes he needs medical treatment for longer than two years, which was referenced by Dr. Boyd and Dr. Zgleszewski.

The Claimant testified that he has looked for jobs and the work available appears to be between \$9.00 and \$10.00 per hour. The Claimant testified that he enrolled with SouthCarolinaWorks.org to receive job postings and he also reviewed Craigs List. The Claimant testified that he has computer skills, including the ability to Ebay and Google. In reviewing his list of recent applications, the Claimant testified that he has applied for positions with the Town of Folly Beach on Safety Patrol, which uses a golf cart; as an apprentice of the Charleston Water System for a collections system operator position; entry level positions at Charleston Water Works; manager of the American Red Cross; distribution position with U.S. Foods; delivery driver for Hostess Brand and Fritolays merchandising; route supervisor for Armark Uniform Company, printer apprenticeship; and Coca-Cola for vending machine services. The Claimant testified that he has not received any response from these positions for which he has applied.

The Claimant went on to testify that he has managed his checking account and money throughout his marriage. The Claimant also confirmed that at one point, he had a 401(k), although he has cashed it in at this time. According to the Claimant, he would use the money from this claim to pay off his higher interest credit cards.

On cross-examination, the Claimant admitted that he has not taken a Department of Transportation physical in order to determine if he could pass to obtain his commercial drivers' license. Furthermore, the Claimant confirmed that he is unaware of whether the injection to his hip was a diagnostic procedure. The Claimant further confirmed that the last time he received any prescription was prior to his last visit with Dr. Zgleszewski on May 2, 2011. The Claimant also admitted that he no longer takes any medications on a daily basis. Furthermore, the Claimant confirmed that he has not had any medical

treatment since May 2, 2011 with the exception of the surgical evaluation by Dr. Boyd. The Claimant testified that he is surprised that his medical records indicate that his range of motion, strength, and gait are all normal. Furthermore, the Claimant confirmed the Defendants' vocational evaluation information outlining his daily activities. The Claimant also confirmed that his activities have increased since the vocational evaluation with David Price.

On cross-examination, the Claimant further admitted that he had the gym membership at Gold's Gym prior to this accident. The Claimant also indicated that the surveillance footage submitted into the record at Gold's Gym reveals footage of him working out at Gold's Gym.

CONCLUSION

The undersigned Commissioner has thoroughly reviewed the evidence in the record and reached a decision in this matter. Based on the evidence presented, I find that the Claimant sustained injuries to his back as a result of the admitted work-related accident on March 25, 2010. 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 March 25, 2010 accident by February 27, 2012. The Defendants shall be responsible for the causally related medical treatment which they authorized and which was incurred on or before February 27, 2012, the date of maximum medical improvement. I further find that the Defendants are responsible for the Claimant's future injections per the recommendations of the authorized treating physician, Dr. Zgleszewski, and any future causally related medications as recommended by Dr. Scott Boyd that tend to lessen the Claimant's

causally related disability resulting from the March 25, 2010 injury by accident pursuant to §42-15-60.

Based on the maximum medical improvement finding, I find that the Defendants are entitled to stop payment of temporary disability compensation effective February 27, 2012. The Defendants have paid all temporary disability compensation for which they are liable and have no liability for any future temporary disability compensation. The Defendants are further entitled to a credit for overpayment of temporary disability compensation paid for the period after February 27, 2012 against their liability for disability compensation awarded herein. I find that the Claimant is not entitled to a loss of earnings award pursuant to §42-9-20 as asserted. I find that the Claimant is permanently and partially disabled pursuant to §42-9-30 (21). This finding is based on the lack of evidence to support the Claimant's alleged radiculopathy affecting additional body parts. Alternatively, the objective evidence supports that the situs of the Claimant's injury is his back only.

FINDINGS OF FACT

1. Claimant injured his low back in an admitted accident on March 25, 2010.
2. Claimant alleges that his admitted injury also affects his buttocks, legs, right foot, and right SI joint.
3. Claimant is 45 years of age (testimony of Claimant).
4. Claimant is a high school graduate. He attended one year of technical college when he studied to be an architectural engineer

(testimony of Claimant; Claimant's APA #7, page 81; Defendants' APA #19, page 179).

5. Claimant's IQ is "high average" per Defendants' vocational expert. Claimant's vocational expert states that Claimant's word reading is the grade equivalent of 12.9, his sentence comprehension is the equivalent of 12.9, and his math computation is the equivalent of 12.9. Claimant enjoys reading books and magazines relating to guns (Defendants' APA #19, page 182; Claimant's APA #7, page 81).
6. Claimant's employment history includes work (a) as a stevedore (foreman) on container ships, (b) as a delivery driver for Coke and a beer distributor, and (c) in auto body repair (testimony of Claimant; Defendants' APA #19, pages 179-180; Claimant's APA #7, pages 81-82).
7. Claimant's job with Employer was delivery driver of food and restaurant supplies. This job is considered heavy (testimony of Claimant; Claimant's APA #7, page 81; Defendants' APA #19, page 175; Claimant's APA #10).
8. Claimant is a six-year employee (testimony of Claimant).
9. The objective evidence is interpreted by the authorized treating physician as showing "shallow protrusions, but no significant nerve root compromise" (Defendants' APA #12, page 106; *See also* Claimant's APA #4; Defendants' APA #16).

10. There is no objective evidence of radiculopathy. The authorized treating physician diagnoses radiculitis based upon Claimant's subjective complaints. At one point (post discectomy on April 2011), Claimant reported no leg pain at all (Defendants' APA #14, pages 110 and 115).
11. The Claimant also underwent an EMG/NCS study that revealed normal results with no objective evidence of radiculopathy.
12. I was not persuaded by Claimant's testimony regarding the alleged nine-day episode, including his (a) having to drag his left foot/leg behind him, and (b) description of having the posture/gait of a "mummy" (testimony of Claimant; Claimant's APA #11, containing a photograph of Claimant).
13. Because of his work-related injury, Claimant underwent injections, physical therapy, and a percutaneous discectomy (Claimant's APA #5, page 46).
14. Claimant reached maximum medical improvement on February 27, 2012 (Defendants' APA #12, page 106).
15. The authorized treating physician assigned a 15% combined impairment rating for the back and SI joint. Defendants' IME assigned an 8% impairment rating (Claimant's APA #5, page 73; Defendants' APA #14, page 108; Defendants' APA #12, page 106; Claimant's APA #8, page 86).

16. My observations of Claimant's sitting tolerance at the hearing are very different than those noted by Claimant's vocational expert, as I noted no difficulties during the hour-long hearing. Claimant told Defendants' vocational expert that he attends church "every Sunday," but told his own vocational expert that is "unable to attend church due to his sitting intolerance" of greater than 30 minutes (observations of the undersigned; Claimant's APA #7, pages 79-80; Cf. Defendants' APA #19, page 181).
17. Claimant works out at Gold's Gym five days each week, and has lost approximately 40 lbs. since the date of the accident (testimony of Claimant; Defendants' surveillance video; Defendants' APA #19, page 181).
18. Claimant's statement to his vocational expert that he is socially withdrawn and can no longer tolerate being in crowds is inconsistent with his ability/desire to work out at Gold's Gym five days a week (Claimant's APA #7, page 80).
19. Claimant is able to drive (testimony of Claimant; Defendants' surveillance video).
20. Claimant is able to engage in his hobby of woodworking (testimony of Claimant).
21. Claimant takes no medication on a daily basis. No prescriptions have been written for Claimant within a year's time prior to the date of the hearing (testimony of Claimant).

22. Claimant showed "good" effort in his FCE, and the test results were considered valid by the evaluator (Defendants' APA #12, pages 106 and 111).
23. The restrictions from the FCE limit Claimant to medium duty work, and preclude him from returning to any of his pre-accident jobs (Claimant's APA #5, page 73; Defendants' APA #14, pages 108 and 111; Claimant's APA #6).
24. I give greater weight to the conclusions of Defendants' vocational expert. I base this finding on my review of the medical evidence and on my observations of Claimant at the hearing (Claimant's APA #7; Defendants' APA #19).
25. As to future medicals, Claimant is entitled to receive injections per the recommendation of the authorized treating physician, Dr. Zgleszewski. The surgical opinion by Dr. Scott Boyd suggests future medications although Claimant does not presently take any (Claimant's APA #5, page 73; Defendants' APA #14, page 108; Defendants' APA #8, page 86).
26. The Claimant has sustained a 35% permanent loss of use of the spine (encompassing Claimant's entire spine and including any alleged radiculitis) pursuant to §42-9-30(21).
27. I find that the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident.

28. Claimant is to receive his award in lump sum.
29. Defendants to receive credit for overpayment of temporary benefits paid beyond the date of maximum medical improvement.
30. Claimant's request that Defendants provide him with a gym membership is denied. Claimant has worked out at gyms since he was 15 years of age, and worked out at Gold's Gym prior to the date of the injury (testimony of Claimant).
31. Claimant's average weekly wage is \$1,062.94, yielding a compensation rate of \$689.71.

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 injuries to his low back only in an accident arising out of and in the course of his employment on March 25, 2010.
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 his injuries sustained as a result of the March 25, 2010 accident by February 27, 2012. Further under §42-15-60, the Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before February 27, 2012,

the date of maximum medical improvement. Further under §42-15-60, the Defendants are responsible for the Claimant's injections per the recommendations of the authorized treating physician, Dr. Zgleszewski, and the Claimant's causally related future medications as outlined by Dr. Scott Boyd as is necessary to lessen the Claimant's causally related disability resulting from the March 25, 2010 injury by accident.

4. Under §42-9-260 and Regulation 67-506, the Defendants are entitled to stop payment of temporary disability compensation and that shall be effective February 27, 2012, the date the Claimant reached maximum medical improvement.
5. Under §42-9-10, §42-9-20, §42-9-260, and Regulations 67-501 through 510, the Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
6. Under §42-9-30(21), the Claimant sustained a 35% permanent loss of use to his back as a result of the accident on March 25, 2010.
7. Under §42-9-210, all temporary disability compensation paid to the Claimant for the period after February 27, 2012 constitutes payment towards the permanent partial disability award set forth herein and the Defendants are entitled to credit for all temporary disability compensation paid to the Claimant for the period after

February 27, 2012 against liability for further compensation benefits awarded herein.

8. The Claimant is entitled to a lump sum payment pursuant to Regulations 67-1605(A) and 67-1605(E).
9. Under §42-1-40, the Claimant's average weekly wage is \$1,062.94 with a resulting weekly compensation rate of \$689.71.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Defendants are responsible for the causally medical care and treatment for which they authorized and which was incurred on or before February 27, 2012.

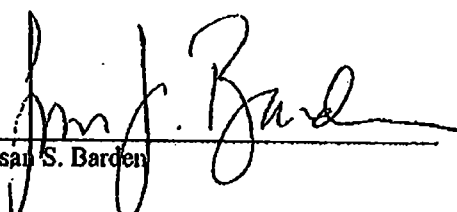
IT IS FURTHER ORDERED that the Defendants are responsible for future medical treatment under §42-15-60 in the form of injections as outlined by Dr. Zgleszewski and future causally related medications as outlined by Dr. Scott Boyd as is necessary to lessen the Claimant's causally related disability from the March 25, 2010 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 February 27, 2012, the date of maximum medical improvement.

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 35% 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 February 27, 2012.

IT IS FURTHER ORDERED that the Claimant is not entitled to a gym membership at the Defendants' expense.

IT IS SO ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
June 18, 2012

By: Kristi Love, Administrative Assistant to Commissioner Barden

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1002925

NEAL BECKMAN, EMPLOYEE,
CLAIMANT/APPELLANT.

-V-

SYSCO COLUMBIA, LLC, EMPLOYER,

AND

GALLAGHER BASSETT SERVICES, INC., CARRIER,
DEFENDANTS/RESPONDENTS.

FULL AFFIRMATION

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

Appellate Panel Decision and Order filed

12/5, 2012.

APPEARANCES:

Claimant/Appellant represented by Fred W. Riesen, Jr., Esquire,
of North Charleston, South Carolina.

Defendants/Appellants represented by
Kathryn F. Walton, Esquire of Charleston,
South Carolina.

RECEIVED

JAN 03 2013

SC Court of Appeals

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden on April 26, 2012 in Summerville, South Carolina. On June 18, 2012, Commissioner Barden issued the following Order:

IT IS, THEREFORE, HEREBY ORDERED that the Defendants are responsible for the causally medical care and treatment for which they authorized and which was incurred on or before February 27, 2012.

IT IS FURTHER ORDERED that the Defendants are responsible for future medical treatment under §42-15-60 in the form of injections as outlined by Dr. Zgleszewski and future causally related medications as outlined by Dr. Scott Boyd as is necessary to lessen the Claimant's causally related disability from the March 25, 2010 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 February 27, 2012, the date of maximum medical improvement.

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 35% 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 February 27, 2012.

IT IS FURTHER ORDERED that the Claimant is not entitled to a gym membership at the Defendants' expense.

Within the statutory period, the attorney for the Claimant filed an application for review setting forth the Claimant's reasons for his request, copies of which were furnished to all interested parties prior to Oral Argument, which was presented before the Appellate Panel on October 22, 2012. 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. Did the hearing commissioner err in finding as a fact and concluding as a matter of law in finding that there is no objective evidence of radiculopathy and that the authorized treating physician diagnosis of radiculitis was based on claimant's subjective complaints, the error being the greater weight of evidence supports just the opposite?
2. Did the hearing commissioner err in finding that the claimants testimony was not persuasive regarding the nine day episode, including having to drag his left foot/leg behind him and description of having the posture/gait of a "mummy", when a photograph of his condition at the time and shown of Defendants' IME doctor 13 days later confirmed the seriousness of this episode and the fact that there was still muscle spasm at the later date which completely refutes commissioner's finding?
3. Did the hearing commissioner err in finding that Claimant's statement, "he is socially withdrawn and can no longer tolerate being in crowds," is inconsistent with his ability/desire to work out at Gold's Gym five days a week. The Commissioner erred by not taking into account i) when the statement was made; ii) the goals Claimant set for himself to achieve through his workouts; and iii) the video and picture from Gold's Gym depicting Claimant work outs showing that the gym is virtually vacant.
4. Did the hearing commissioner err in finding the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident, the error being the greater weight of evidence supports just the opposite?
5. Did the hearing commissioner err in finding that the Claimant was only entitled to an amount of 35% loss of use to the spine pursuant to 42-9-30(21) when he was clearly entitled to an award of permanent partial under section 42-9-20 regarding his wage loss differential as specifically set forth by both claimant and defendants' vocational experts.

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. Claimant injured his low back in an admitted accident on March 25, 2010.
2. Claimant alleges that his admitted injury also affects his buttocks, legs, right foot, and right SI joint.
3. Claimant is 45 years of age (testimony of Claimant).
4. Claimant is a high school graduate. He attended one year of technical college when he studied to be an architectural engineer (testimony of Claimant; Claimant's APA #7, page 81; Defendants' APA #19, page 179).
5. Claimant's IQ is "high average" per Defendants' vocational expert. Claimant's vocational expert states that Claimant's word reading is the grade equivalent of 12.9, his sentence comprehension is the equivalent of 12.9, and his math computation is the equivalent of 12.9. Claimant enjoys reading books and magazines relating to guns (Defendants' APA #19, page 182; Claimant's APA #7, page 81).

6. Claimant's employment history includes work (a) as a stevedore (foreman) on container ships, (b) as a delivery driver for Coke and a beer distributor, and (c) in auto body repair (testimony of Claimant; Defendants' APA #19, pages 179-180; Claimant's APA #7, pages 81-82).
7. Claimant's job with Employer was delivery driver of food and restaurant supplies. This job is considered heavy (testimony of Claimant; Claimant's APA #7, page 81; Defendants' APA #19, page 175; Claimant's APA #10).
8. Claimant is a six-year employee (testimony of Claimant).
9. The objective evidence is interpreted by the authorized treating physician as showing "shallow protrusions, but no significant nerve root compromise" (Defendants' APA #12, page 106; See also Claimant's APA #4; Defendants' APA #16).
10. There is no objective evidence of radiculopathy. The authorized treating physician diagnoses radiculitis based upon Claimant's subjective complaints. At one point (post discectomy on April 2011), Claimant reported no leg pain at all (Defendants' APA #14, pages 110 and 115).
11. The Claimant also underwent an EMG/NCS study that revealed normal results with no objective evidence of radiculopathy.
12. We were not persuaded by Claimant's testimony regarding the alleged nine-day episode, including his (a) having to drag his left

foot/leg behind him, and (b) description of having the posture/gait of a "mununy" (testimony of Claimant; Claimant's APA #11, containing a photograph of Claimant).

13. Because of his work-related injury, Claimant underwent injections, physical therapy, and a percutaneous discectomy (Claimant's APA #5, page 46).
14. Claimant reached maximum medical improvement on February 27, 2012 (Defendants' APA #12, page 106).
15. The authorized treating physician assigned a 15% combined impairment rating for the back and SI joint. Defendants' IME assigned an 8% impairment rating (Claimant's APA #5, page 73; Defendants' APA #14, page 108; Defendants' APA #12, page 106; Claimant's APA #8, page 86).
16. We find that the Hearing Commissioner's observations of Claimant's sitting tolerance at the hearing are very different than those noted by Claimant's vocational expert, as the Hearing Commissioner noted no difficulties during the hour-long hearing. Claimant told Defendants' vocational expert that he attends church "every Sunday", but told his own vocational expert that is "unable to attend church due to his sitting intolerance" of greater than 30 minutes (observations of the undersigned; Claimant's APA #7, pages 79-80; *Cf.* Defendants' APA #19, page 181).

17. Claimant works out at Gold's Gym five days each week, and has lost approximately 40 lbs. since the date of the accident (testimony of Claimant; Defendants' surveillance video; Defendants' APA #19, page 181).
18. Claimant's statement to his vocational expert that he is socially withdrawn and can no longer tolerate being in crowds is inconsistent with his ability/desire to work out at Gold's Gym five days a week (Claimant's APA #7, page 80).
19. Claimant is able to drive (testimony of Claimant; Defendants' surveillance video).
20. Claimant is able to engage in his hobby of woodworking (testimony of Claimant).
21. Claimant takes no medication on a daily basis. No prescriptions have been written for Claimant within a year's time prior to the date of the hearing (testimony of Claimant).
22. Claimant showed "good" effort in his FCE, and the test results were considered valid by the evaluator (Defendants' APA #12, pages 106 and 111).
23. The restrictions from the FCE limit Claimant to medium duty work, and preclude him from returning to any of his pre-accident jobs (Claimant's APA #5, page 73; Defendants' APA #14, pages 108 and 111; Claimant's APA #6).

24. We give greater weight to the conclusions of Defendants' vocational expert. We base this finding on our review of the medical evidence and on the Hearing Commissioner's observations of Claimant at the hearing (Claimant's APA #7; Defendants' APA #19).
25. As to future medicals, Claimant is entitled to receive injections per the recommendation of the authorized treating physician, Dr. Zgleszewski. The surgical opinion by Dr. Scott Boyd suggests future medications although Claimant does not presently take any (Claimant's APA #5, page 73; Defendants' APA #14, page 108; Defendants' APA #8, page 86).
26. The Claimant has sustained a 35% permanent loss of use of the spine (encompassing Claimant's entire spine and including any alleged radiculitis) pursuant to §42-9-30(21).
27. We find that the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident.
28. Claimant is to receive his award in lump sum.
29. Claimant's request that Defendants provide him with a gym membership is denied. Claimant has worked out at gyms since he was 15 years of age, and worked out at Gold's Gym prior to the date of the injury (testimony of Claimant).

30. Claimant's average weekly wage is \$1,062.94, yielding a compensation rate of \$689.71.

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 injuries to his low back only in an accident arising out of and in the course of his employment on March 25, 2010.
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 his injuries sustained as a result of the March 25, 2010 accident by February 27, 2012. Further under §42-15-60, the Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before February 27, 2012, the date of maximum medical improvement. Further under §42-15-60, the Defendants are responsible for the Claimant's injections per the recommendations of the authorized treating physician, Dr. Zgleszewski, and the Claimant's causally related future medications as outlined by Dr. Scott Boyd as is necessary to lessen

the Claimant's causally related disability resulting from the March 25, 2010 injury by accident.

4. Under §42-9-260 and Regulation 67-506, the Defendants are entitled to stop payment of temporary disability compensation and that shall be effective February 27, 2012, the date the Claimant reached maximum medical improvement.
5. Under §42-9-10, §42-9-20, §42-9-260, and Regulations 67-501 through 510, the Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
6. Under §42-9-30(21), the Claimant sustained a 35% permanent loss of use to his back as a result of the accident on March 25, 2010.
7. Under §42-9-210, all temporary disability compensation paid to the Claimant for the period after February 27, 2012 constitutes payment towards the permanent partial disability award set forth herein and the Defendants are entitled to credit for all temporary disability compensation paid to the Claimant for the period after February 27, 2012 against liability for further compensation benefits awarded herein.
8. The Claimant is entitled to a lump sum payment pursuant to Regulations 67-1605(A) and 67-1605(E).
9. Under §42-1-40, the Claimant's average weekly wage is \$1,062.94 with a resulting weekly compensation rate of \$689.71.

ORDER

The Order of the Single Commissioner filed in the above-named matter on June 18, 2012 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 which they authorized and which was incurred on or before February 27, 2012.

IT IS FURTHER ORDERED that the Defendants are responsible for future medical treatment under §42-15-60 in the form of injections as outlined by Dr. Zgleszewski and future causally related medications as outlined by Dr. Scott Boyd as is necessary to lessen the Claimant's causally related disability from the March 25, 2010 accident.

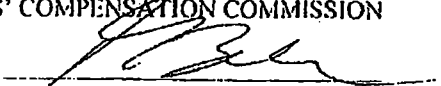
IT IS FURTHER ORDERED that the Defendants' Stop Payment Application is granted and the Defendants are entitled to stop payment of temporary disability compensation effective February 27, 2012, the date of maximum medical improvement.

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(B) representing compensation for 35% 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 after the period of February 27, 2012.

IT IS FURTHER ORDERED that the Claimant is not entitled to a gym membership at the Defendants' expense.

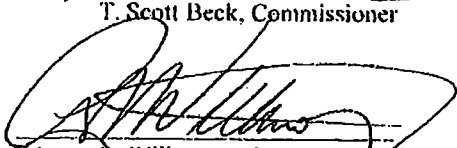
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION


T. Scott Beck, Commissioner

FULL AFFIRMATION

CONCUR:


Avery B. Wilkerson, Commissioner


Derrick L. Williams, Commissioner

CERTIFICATE OF SERVICE

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

By Valerie Deller on December 5, 2012

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



WCC File #: 1002925
Carrier #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Neal Beckman SSN: [REDACTED]
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip: [REDACTED]
Home Phone: (843) 406-3216 Work Phone: ()
Preparer's Name: Fred W. Riesen, Jr. Law Firm: Riesen Law Firm, L.L.P.

Employer's Name: Sysco Columbia, LLC
Address: 131 Sysco Court
City: Columbia State: SC Zip: 29209
Insurance Carrier: Gallagher Bassett Services, Inc.
Preparer's Phone #: (843) 760 - 2450

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

Date of Injury or Illness: 03/25/2010

- 1a. The claimant sustained an injury to back, buttocks, both legs and right foot (Part(s) of Body Injured) on 03/25/2010 (Month/Day/Year) in Charleston county, state of South Carolina.
1b. Body part(s) affected are: back, buttocks, both legs and right foot.

Briefly describe how the accident occurred. While loading a hand truck for a delivery the Claimant pulled muscles in his back injuring his back, buttocks, both legs and right foot.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 03/25/10 (Month/Day/Year) in the following manner: verbally

6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: back, buttocks, both legs and right foot.

7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability:

☒ Total

☐ (2) Specific Disability:

☒ Total

☒ (3) Wage Loss

☐ Partial

☐ Partial

- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____

10a. At the time of the injury, the Claimant was paid weekly wages of \$ 689.71 or to be determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

11a. Further grounds or unusual aspects of claim: _____

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Timothy M. Zgleszewski, Palmetto Spin & Sports Medicine, 3030 Ashley Town Center Drive, Suite A-102, Charleston, SC; Dr. Byron Williams, Coastal Occupational Medicine, 3605 Meeting Street, Suite C, Charleston, SC

11c. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 60 minutes

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

Preparer's Signature

Attorney at Law
Title

Fredriesen@knology.net
Email

08/05/11
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

50

WCC Form # 50
Revised 9/07

Employee's Notice of Claim and/or

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675



WCC File #: 1002925
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Neck Beckman SSN: [REDACTED] Employer's Name: Sysco Columbia, LLC
Address: [REDACTED] Address: 131 Sysco Court
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Columbia State: SC Zip: 29209
Home Phone: () Work Phone: () Insurance Carrier: Gallagher Basset Services, Inc.
Preparer's Name: J. Hubert Wood, III, Esquire Law Firm: Wood & Warder, LLC Preparer's Phone #: (843) 577-5732

The date of injury reported on Form 12A is: 3/25/2010 (m/d/yyyy)

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

- I. ☒ **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 5/2/11 or 2/27/12 (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of 3/7/12 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on 3/8/12 (m/d/yyyy).

- II. ☒ **Address suspension, termination, or reduction of temporary disability payments for any cause.**

- ☐ a. At any time pursuant to § 42-9-260(E).
☒ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is maximum medical improvement opinions of authorized physicians.

- III. ☒ **Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:**

Maximum medical improvement and rating opinions of authorized physicians.

Claimant reached maximum medical improvement on 5/2/11 or 2/27/12 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V. ☐ **Determine amount of compensation for claims involving a fatality.** (Dependency investigation must be attached).

- ☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

A hearing requested pursuant to this section will be set on an expedited basis.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.


Preparer's Signature

Attorney for Defendants

3/8/12

Title

Date

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

Address

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21
Revised 04/18/2011

21

Employer's Request for Hearing

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

WCC File # 1002925
Carrier File # 011924-107312-WC-01
Carrier Code # 00143
Employer FEIN 74-1648137

NEAL BECKMAN		SSN		SYSCO COLUMBIA	
Claimant's Name		SSN		Employer's Name	
Address		City	State	Address	City
843-406-3216			803-361-8493	131 SYSCO COURT COLUMBIA SC 29209	
Home Phone #		Work Phone #		Insurance Carrier	
		ROBERTA WILLIAMS		GALLAGHER BASSETT SERVICES INC.	
		Preparer's Name		205-986-0578	
				Phone #	

1. Date of Injury: 3/25/2010 2. Total Weeks of Compensation Paid: 102
month day year

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

Type: TTO From: 3/26/2010 To: 3/07/2012
Type: From: To:
Type: From: To:

4. Date of First Payment: 4/08/2010
month day year

5. Total Amount Paid (a) Compensation: \$70,350.42
(b) Medical (include Nursing, Hospital Drugs, Etc.): \$35,884.18

6. Informal Conference is Requested: ☐ yes ☒ no
(check one)

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

Robbie Williams
ROBERTA WILLIAMS 205-986-0578
Employer's Representative Phone #

3/07/2012
Date

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

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1002925
Carrier File #: 011924-107-312-WC-01
Carrier Code #: 000143
Employer FEIN #: 74-1648137

Employer's Name: SYSCO COLUMBIA, LLC
Claimant's Name: NEAL BECKMAN SSN: [REDACTED] Address: 131 SYSCO COURT
Address: [REDACTED] City: COLUMBIA State: SC Zip: 29209
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] Insurance Carrier: GALLAGHER BASSETT SERVICES INC.
Home Phone: (843) 406-3216 Work Phone: (803) 361-6493
Preparer's Name: CHERYL HOLLAND Law Firm: [REDACTED] Preparer's Phone #: 864-888-1826

Date of Injury: 03/25/2010 (m/d/yyyy)
(m/d/yyyy)

Date of Notice to Employer of Injury: 03/25/2010

I. Payment of Temporary Compensation Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

☒ A. Temporary Total at the compensation rate of \$689.71 per week. For this period of disability, disability began on 03/26/2010 (m/d/yyyy) and the date of first payment was 04/08/2010 (m/d/yyyy).

☐ B. Temporary Partial at the compensation rate of \$_____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed.
For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury	\$
- Current weekly wage	\$
= Difference in wages before injury and now	\$ 0.00
x .6667	\$ 0.00
Temporary Partial Compensation Rate	\$ 0.00

☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on _____ (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
- ☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

CHERYL HOLLAND
Signature of Claims Administrator

04/12/2010
Date (m/d/yyyy)

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION.
I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 15(II) ☐ Has ☐ Has not been received.

Employer's representative must complete and file Form 18 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1803. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 18 and filing it with Judicial Department.

WCC Form # 15

1 E

TEMPORARY COMPENSATION REPORT

03/13/2011 09:55 8432657436

09/08/2011 08:08 18432657436

PALMETTO SPINE AND S
PALMETTO SPINE

PAGE 02/04
PAGE 01/01

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Neal Beckman

Physician's Name: Timothy M. Zaleski, M.D.

Practice/Clinic: Palmetto Spine & Sports, P.A.

Preparer's Name: Vincent C. Northington, Attorney for the Defendants

Phone: (843) 577-5732

Employer's Name: Proco Columbia, LLC

Insurance Carrier: Callender Bennett Services, Inc.

SCWCC File No: 1002925

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-40, 42-1-172 or 42-11-10.

Date of Injury or Illness: March 25, 2010

Date of first office visit: 4/19/11

Date of last visit: 5/2/11

Diagnosis or nature of injury or illness: T22, L5 - Sacroiliitis; Lumbar disc injury - radiculopathy

Body part(s) injured: Back/Spine Body part(s) affected: Lower Extremity

Date of Maximum Medical Improvement: 5/2/11

Based on the AMA Guidelines, the claimant has sustained a 10 % medical impairment to Back/Spine injured body part(s) and a 5 % medical impairment to FE joint 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:

Medium duty - no repetitive bending/twisting in LFT's

☐ 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:

- up to 2-3 FE joint injections over the next 2 years

[Signature]
Treating Physician

9/12/11
Date



Timothy M. Zgleszewski, MD

• Interventional Pain Medicine • Non-Operative Spine Care • Electrodiagnostics • Musculoskeletal Medicine •
• 3030 Ashley Town Center Drive • Suite A-102 • Charleston, SC 29414 • (843) 573-9997 • fax (843) 377-1446 •
• 3 Southern Court • Suite B • West Columbia, SC 29169 • (803) 791-3773 • fax (803) 791-9997 •
Toll Free (866) 977-4633

Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: May, 02, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/26/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:

Mr. Beckman presents today for follow-up. He is s/p Perc Disc at L4-L5, he notes return of the left lateral upper thigh pain and radiation down the left lateral thigh to the foot this pain has been increasing and over this weekend was severely painful. His pain level today is 7/10. He states his pain is worse than it was when he originally injured his back.
The patient states that he not currently working.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock, radiates to the left lateral thigh, extends past the knee into the posterior leg and foot and The calf pain feels like "it's on fire" when he stands. Pain also radiates to the lateral hip. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 7/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE

Current Medication:

1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/02/2011 Page: 1

3 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep
4 Percocet 7.5-325 Mg Tablet SIG: Take 1 daily
5 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Physical Examination:**CONSTITUTIONAL:**

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are no trigger points in the lumbosacral spine today. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the right PSIS's. There is a positive Fortin Finger test on the right. There is a positive Patricks test on the right. Neural tension signs are positive in the left leg in the seated slumped position.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

HEART:

Cardiovascular exam remains stable compared to initial visit.

LUNGS:

Respiratory exam remains stable compared to initial visit.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or
Radiculitis Not Otherwise Specified 720.2 Sacroiliitis 726.5 Trochanteric Bursitis (Left) 724.8
Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. He is at MMI. Please see Form 14B for future medical care, work restrictions and impairment ratings.

FOLLOWUP: Neal Beckman will follow up in as needed.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/12/2011 at 10:00 AM.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD
William M. Rambo, Jr., MD
Randal G. Dye, MD

Scott B. Boyd, MD
Brett C. Gunter, MD
Karl A. Lozano, MD

720 Rabon Road
Columbia, SC 29203
(803) 482-0423 - (F) 462-0432

Pain Medicine
Steven B. Storck, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 (F) 794-0322

INDEPENDENT MEDICAL EVALUATION

Patient: Neal P. Beckman
Chart: 132423 WC
Date: 2/27/12

HISTORY OF PRESENT ILLNESS: Mr. Beckman is a very pleasant, 45-year-old man who was driving a truck for Sysco when on March 25, 2010, he had an injury to his lower back. This has been well documented and he has received extensive treatment for this. He describes his pain pattern as that most predominantly of low back pain. His pain does occasionally radiate down into his left leg and he states that he has some numbness around his foot. It seems to be worsened with activity. He feels that he is generally improved over the course of his treatment which has been extensive. He has had multiple rounds of physical therapy and has been treated by Dr. Zgleszewski in Charleston with various medications, epidural steroid injections, what sounds like facet blocks as well as even a percutaneous discectomy. None of these really provided any lasting relief. Dr. Z has released him at maximum medical improvement but he has never had a surgical evaluation. Overall Mr. Beckman feels that he is improved and he states that he had actually gotten to the point up to two weeks ago where he was getting around really pretty well with only minimal pain and was off of all medications. He attributes this improvement to a rigorous core strengthening workout program in the gym.

On February 14th he woke up and had another acute episode of pain and spasm in his back that was very severe. He has had a couple of these and this current episode has now finally begun to dissipate. He shows me a picture today of his posture on the day of that episode.

PAST MEDICAL HISTORY: Unremarkable

CURRENT MEDICATIONS: Oxycodone and muscle relaxers as needed.

ALLERGIES: NKDA

SOCIAL HISTORY: The patient does not use tobacco.

FAMILY HISTORY AND REVIEW OF SYSTEMS: Well documented in the chart on the history form. That information has been reviewed and signed and is noncontributory except for the information included in the HPI.

PHYSICAL EXAMINATION: The patient is seated in the exam room and appears generally healthy for age. The patient is awake, alert, and oriented. PERRL. Speech and language are normal, as are attention span and concentration. Affect is grossly normal, and fund of knowledge appears appropriate. Height is 5'10", weight is 240 pounds, and respirations are 14 and regular. He has a slightly flat affect but appears to be in pretty good spirits. On inspecting his back he does appear to have some muscular spasm on the left side. This is not nearly as prominent as what is depicted in the photograph that he has today so it is clearly improved. There is some pain with lumbar ROM. SLR is negative. DTRs are normal. Sensation is intact. He appears to have normal power in his lower extremities. During the course of his exam he did not demonstrate any Waddell signs or symptom magnification. He appeared reasonably comfortable. Gait is steady.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Page 2

Re: Neal P. Beckman

2/27/12

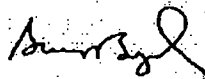
RADIOGRAPHIC STUDIES: MRI of the lumbar spine shows some degenerative disc changes at his lower three lumbar levels. At all levels there is some shallow protrusions but I do not appreciate any significant nerve root compromise.

IMPRESSION/PLAN: Mr. Beckman has discogenic low back pain and his course has been punctuated by periodic flare-ups. He is now getting over a recent flare-up and seems to be getting along reasonably well although he still has clear objective evidence of muscular spasm and back pain. He has been treated extensively with conservative treatment and based on his MRI findings I do not believe that there is any role for surgery here. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Therefore, I agree with Dr. Zgleszewski that Mr. Beckman is at maximum medical improvement. Based on AMA Guides I would assign an impairment rating of 8% considering DRE Lumbar Category II.

He has had a Functional Capacity Evaluation by Dr. Zgleszewski and I have been furnished with a copy of that report. I reviewed that and note that it appears to be valid and good and proper effort was put forth during that evaluation. Therefore, I would agree with its findings that place him at a medium physical demand level for an 8-hour day. Further details are provided in the body of that report.

Mr. Beckman has had multiple episodes of flare-up of his back pain that is consistent with his degenerative disc disease. He is likely to have further flare-ups in the future which historically have been treated well with pain medication and muscle relaxers. Therefore, I suspect that he will need these medications three or four times per year for the next two years. These could be prescribed and monitored by his regular medical physician. I do not believe that he would likely benefit from future procedures or injections.

I have been asked to address psychological issues and depression as well as erectile dysfunction that Mr. Beckman has noted to his previous medical providers. He currently appears to be in pretty good spirits. Of course, these issues are common during periods of high levels of pain from any source and currently Mr. Beckman seems to be fairly comfortable so I do not anticipate that psychological issues or erectile dysfunction will be a long-term problem and currently do not believe he needs specific treatment for this.



Scott B. Boyd, MD

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

SBB/MAH

CNAWT: 4046

CAROLINA WORKER'S COMPENSATION COMMISSION
X 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #1002925
Carrier File
Carrier Code
Employer FEIN

AL BECKMAN
Claimant's Name SSN
[REDACTED]
Address City State Zip
Home Phone Work Phone
FRED W. RIESEN, JR. 843-760-2450
Preparer's Name Phone
Sysco Columbia, LLC
Employer's Name
131 Sysco Court Columbia, SC 29209
Address City State Zip
Gallagher Bassett Services, Inc.
Insurance Carrier

PROVIDE THE INFORMATION REQUESTED IN THE SPACE PROVIDED. USE AN ADDITIONAL SHEET, IF NECESSARY. TYPE OR PRINT ALL INFORMATION.

☒ Injury by accident ☐ Occupational disease ☐ Both Injury by Accident/Disease ☐ Other

1. Date of Accident: 03/25/10 2. AWW: \$ 1,062.94 Comp Rate: \$ 689.71
Anticipated future earnings: \$400.00 a week
Wage difference \$1,062.94 - 400.00 = 662.94
662.94 x .667 = \$442.18
Wage Differential \$442.18

NOTE: this is based on the midrange average of Claimant & Defendant's vocational experts

3. Type of injury and body parts: back, buttocks, right SI joint, both legs, and right foot.
4. Facts in controversy: Compensability and need for additional medical treatment, whether Claimant has reached MMI, and if so what date, extent of disability, whether total, partial, general or scheduled
5. Legal issues involved: Section §42-15-60, §42-9-10, §42-9-20, §42-9-30, §42-9-260, and other applicable statutes, regulations, and case law.
6. Unusual problems: The parties entered into a consent order on 9/23/11 which designated Dr. Stephen Rawe as the IME specialist. The purpose of the IME was to try and find someone both parties could agree upon for recommendation for ongoing medical care, and more specifically the issue of surgery. If Dr. Rawe declined Defendants could then choose another specialist. Both attorneys also agreed that Dr. Patel, a neurosurgeon at MUSC in Charleston, would be an acceptable choice. Unfortunately Vince Northcutt left the Wood & Warder LLC Firm and defense counsel elected to send Mr. Beckman to Dr. Boyd in Columbia. Claimant's counsel has no knowledge whatsoever of Dr. Boyd and his suggestion to send Mr. Beckman to the local neurosurgeon, Dr. Patel at MUSC as previously agreed between Claimant's counsel and Vince Northcutt was not honored.
Given the circumstances, if any credit is granted in this case, it should not be prior to the filing of Defendant's Form 21 on March 8, 2012.
7. Witnesses (designate if expert*): Claimant.
8. Exhibits: Pursuant to A.P.A.:
See Written Medical Reports (attached)
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance: Pursuant to A.P.A.:
Written Medical Reports (attached).

10. Name, address and specialty, if any of the treating physician: Dr. Timothy Zgleszewski, MD Palmetto Spine and Sports Medicine 206 Medical Circle Columbia, SC
11. Impairment rating(s); body part(s); physician and date of opinion:

9/12/11 - Dr. Zgleszewski, the authorized treating physician, stated on a Form 14B that Mr. Beckman injured his back and lower extremity. Based on the AMA Guidelines, the Claimant has sustained a 10% medical impairment to back/spine and a 5% medical impairment to SI joint with a combined rating of 15%. The claimant is able to return to work on medium duty with no repetitive bending/ twisting or lifting. As of the date he last saw this patient, it is his professional medical opinion the claimant will need future medical care and treatment consisting of up to 2-3 SI joint injections over the next 2 years.

9/10/11 - David Price performed a vocational assessment on the Claimant. The most obvious result of Mr. Beckman's back injury on his vocational status is that he will not be able to return to his chosen occupation of the past 33 years. Mr. Beckman can no longer perform this type of work as was demonstrated by his employer's decision to terminate him. Since losing his job Mr. Beckman has surrendered his commercial driver's license secondary to being unable to pass a Department of Transportation Physical. This of course will rule out any chance of returning to work driving a tractor-trailer truck. Driving jobs in general should be avoided as they either require long periods of sitting or frequent getting in and out of a vehicle. Neither of these situations would be compatible with Mr. Beckman's back condition. His requirement for occasional narcotic medication would also be problematic. He would suggest Mr. Beckman limit work to the light physical demand. It is his experience over 30+ years of helping back-injured workers find new employment that they do better when lifts are kept under 20 pounds and not performed repetitively. He would suggest a job that is primarily performed from a seated position but also allows the Claimant to get up at his discretion. With this in mind he believes that Mr. Beckman's injuries not only limit his access to jobs but because of his reduction in skill will also result in a decrease in his wage earning capacity. He estimates that Mr. Beckman is capable at working in an entry-level semi-skilled employment in range of earnings approximately \$8.00 - \$10.00 an hour. He has been approved to work an 8-hour day but he questions his ability to sustain this day to day in the context of the standard 40- hour work week.

Allowances would also be needed for his requirement to lie supine and rest his back. Such accommodations in the workplace are difficult to arrange and will require a very understanding employer, further limiting Mr. Beckman's occupational choices. Ultimately Mr. Beckman may have to be formally retrained for a more sedentary occupation.

Therefore, based on the available information and with a reasonable degree of vocational certainty, it is his opinion that the work injury of 3/25/2010 has resulted in Neal Beckman being unable to return to his usual and customary occupation of tractor-trailer-truck driver/delivery driver. He has lost substantial access to employment opportunities and has experienced a reduction in wage earning capacity. His ability to consistently work an 8 hour day and 40 hour week is unproven. Reasonable accommodations will likely be required to the work place and job duties as related to the repetitive use of the spine, prolonged sitting and ambulation. Mr. Beckman is a good candidate for vocational rehabilitation.

4/6/12 - The Defendant's vocational expert Ian Westmoreland from The Direction's Group did an employability analysis and labor market survey on Neal Beckman. Mr. Beckman's physical capacity range appears to fall within the sedentary to medium physical demand work capacity. Mr. Beckman can anticipate earnings ranging from \$18,200.00 annually up to \$27,040.00 annually for the Charleston/North Charleston/Summerville, SC and surrounding areas. It is her opinion that Mr. Beckman remains employable. If he continues to have difficulty with his back, he should contact SCVRD for participation in their program.

2/27/12 - Dr. Scott Boyd states Mr. Beckman is now getting over a recent flare-up and seems to be getting along reasonably well although he still has clear objective evidence of muscular spasm and back pain. Surgery would involve multi-level fusion which would likely yield very poor results. He has had multiple episodes of flare-ups of his back pain that is consistent with his degenerative disc disease and is likely to have further flare-ups

in the future requiring medicine and muscle relaxers that he will need three or four times a year for the next two years. He placed Claimant at MMI and assigned an impairment rating of 8%. Mr. Beckman has discogenic low back pain with degenerative disc changes at his lower three levels. He would agree with Dr. Zgleszewski's FCE that places Mr. Beckman at medium physical demand level for an 8 hour day.

4/14/10 - MRI of the Lumbar spine. Findings are as follows:

L2-3: Disc bulge and facet hypertrophy. Slightly bilobed appearance of the disc. Mild central and mild bilateral exit narrowing. Crowding of the exiting nerves at the level of the neural foramen. Possible contact of the exiting nerves in a far lateral position at the outer margin of the neural foramen. Mild lateral recess stenosis. Facet hypertrophic changes and mild fluid in the facet joints.

L3-4: Disc bulge and facet hypertrophy. Flattening of the thecal sac anteriorly. Contact of the transitioning L4 nerve roots and mild lateral recess stenosis. Mild to moderate bilateral exit narrowing and contact of the exiting nerves at the level of the neural foramen, left greater than right. Contact, slight deflection of the exiting left L3 nerve. Possible effect on the exiting left L3. Facet hypertrophic changes and mild fluid in the facet joints.

L4-5: disc bulge and facet hypertrophy. Paracentral left shallow disc extrusion with a craniocaudal dimension of roughly 1.4cm extending posteriorly approximately 5.9mm. Contact, slight deflection and possible effect on the transitioning left L5 nerve root. Contact of the transitioning right L5 nerve root. Moderate left and mild right lateral recess stenosis. Moderate bilateral exit narrowing. Crowding of the exiting nerves at the level of the neural foramen. Possible contact of the exiting nerves at the level of the neural foramen. Facet hypertrophic changes and mild fluid in the facet joints.

L5-S1: disc bulge and facet hypertrophy. Central and paracentral right shallow broad-based protrusion. Slight crowding of the transitioning S1 nerve roots. Mild bilateral exit narrowing and slight crowding of the exiting nerves at the level of the neural foramen, right greater than left. Possible contact of the exiting right nerve.

Fred W. Riesen, Jr.
FRED W. RIESEN, JR.

Date of Hearing: April 26, 2012

On Behalf of CLAIMANT

4-12-2012
DATE

Time of Hearing: 1:30 p.m.

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.

WCC FORM #58, Rev. Date 3/96

PRE-HEARING BRIEF

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739
www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1002926

Claimant's Name: Neal Beckman Employer's Name: Sysco Columbia, LLC
Address: [REDACTED] Address: 131 Sysco Court
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Columbia State: SC Zip: 29209
Home Phone: _____ Work Phone: _____ Carrier: Gallagher Bassett Services, Inc.
Preparer's Name: J. Hubert Wood, III 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: \$689.71 2. AWW: \$1,062.94 Date of Injury: 3/25/10
3. Type of Injury and body part(s): Low back (Claimant also alleges effect on his hip, groin and leg which the Defendants deny).
4. Facts in controversy: The body parts affected by admitted low back injury; whether Claimant has reached maximum medical improvement for causally related and compensable injuries; whether further medical treatment is necessary to lessen any causally related and compensable disability; whether Claimant has been paid temporary disability compensation for all compensable lost time; whether Claimant has been overpaid temporary disability compensation; the extent of any causally related and compensable permanent disability or loss of use to a scheduled body part.
5. Legal issues involved: The body parts affected by admitted low back injury under §42-1-160; Claimant's entitlement to further medical benefits under §42-15-60; whether Defendants are entitled to stop payment of temporary disability compensation under §42-9-260 and Regulation 67-506; 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; Claimant's entitlement to any permanent disability award based on a partial loss of earning capacity in a lump sum under §42-9-301 (Defendants object to any such lump sum permanent disability compensation award and alternatively, contend that any such lump sum award should be commuted to present value).
6. Unusual aspects: None.
7. Witnesses (designate if expert): * David Langfitt (private investigator) and Pete Garcia.
8. Exhibits: See attached Notice of Submissions and surveillance videotape.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. Timothy Zgleszewski (physical medicine); Claimant was also seen for a neurosurgical evaluation by Dr. Scott Boyd (neurosurgeon).
11. Impairment rating(s); body part(s); physician and date of opinion: 10% to the back/spine and 5% SI joint for a combined rating of 15% by Dr. Zgleszewski in Form 14B dated 9/12/11; Dr. Boyd rated the Claimant's impairment at 8% considering DRE lumbar category 2 of the AMA Guide.
12. I am amending my Form 50/51 in the following manner: N/A.

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

Signature: [Signature] Email: hubie@woodwarder.com

Date of hearing: April 26, 2012 Time needed for hearing: 1 hour

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.

WCC Form # 58
Rev. 9/07

58

PRE-HEARING BRIEF

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739
www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1002926

Claimant's Name: Neal Beckman Employer's Name: Sysco Columbia, LLC
Address: [REDACTED] Address: 131 Sysco Court
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Columbia State: SC Zip: 29209
Home Phone: _____ Work Phone: _____ Carrier: Gallagher Bassett Services, Inc.
Preparer's Name: J. Hubert Wood, III Preparer's Phone #: (843) 577-5732

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

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5. Legal Issues involved: The body parts affected by admitted low back injury under §42-1-160; Claimant's entitlement to further medical benefits under §42-15-60; whether Defendants are entitled to stop payment of temporary disability compensation under §42-9-260 and Regulation 67-506; 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; Claimant's entitlement to any permanent disability award based on a partial loss of earning capacity in a lump sum under §42-9-301 (Defendants object to any such lump sum permanent disability compensation award and alternatively, contend that any such lump sum award should be commuted to present value).
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7. Witnesses (designate if expert):* David Langfitt (private investigator) and Pete Garcia.
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9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. Timothy Zgleszewski (physical medicine); Claimant was also seen for a neurosurgical evaluation by Dr. Scott Boyd (neurosurgeon).
11. Impairment rating(s); body part(s); physician and date of opinion: 10% to the back/spine and 5% SI joint for a combined rating of 15% by Dr. Zgleszewski in Form 14B dated 9/12/11; Dr. Boyd rated the Claimant's impairment at 8% considering DRE lumbar category 2 of the AMA Guide.
12. I am amending my Form 50/51 in the following manner: N/A.

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

Signature: [Signature] Email: huble@woodward.com

Date of hearing: April 26, 2012 Time needed for hearing: 1 hour

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.

WCC Form # 58
Rev. 9/07

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION
PO BOX 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 1002925
Carrier File #
Carrier Code
Employer FEIN

Neal Beckman
Claimant's Name SSN

Sysco Columbia, LLC
Employer's Name

[REDACTED]
Address City State Zip

131 Sysco Court Columbia, SC 29209
Address City State Zip

Home Phone Work Phone

Gallagher Bassett Services, Inc.
Insurance Carrier

FRED W. RIESEN, JR. 843-760-2450
Preparer's Name Phone

Request for Commission Review by Claimant

Date of Injury: 3/25/10

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See attached.

JUN 27 2012

JUDICIAL

(Check one) Oral argument X 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. Flehrer, Esquire, on this 26 day of June, 2012 by X first class mail; personal service; certified mail and e-mail.

[Signature]
PREPARER'S SIGNATURE

Attorney for the Claimant
TITLE

June 26, 2012
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 4 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.

WCC FORM #30. Rev. Date: 3/97

REQUEST FOR COMMISSION REVIEW

Attachment to Form 30

Neal Beckman v Sysco Columbia, LLC
WCC NO.: 1002925
DOA: 3/25/10

- 1) Did the hearing commissioner err in finding as a fact and concluding as a matter of law in finding that there is no objective evidence of radiculopathy and that the authorized treating physician diagnosis of radiculitis was based on claimant's subjective complaints, the error being the greater weight of evidence supports just the opposite?
- 2) Did the hearing commissioner err in finding that the claimant's testimony was not persuasive regarding the nine day episode, including having to drag his left foot/leg behind him and description of having the posture/gait of a "mummy", when a photograph of his condition at the time and shown to Defendant's IME doctor 13 days later confirmed the seriousness of this episode and the fact that there was still muscle spasm at the later date which completely refutes commissioner's finding?
- 3) Did the hearing commissioner err in finding that Claimant's statement, "he is socially withdrawn and can no longer tolerate being in crowds," is inconsistent with his ability/desire to work out at Gold's Gym five days a week. The Commissioner erred by not taking into account i) when the statement was made; ii) the goals Claimant set for himself to achieve through his workouts; and iii) the video and picture from Gold's Gym depicting Claimant work outs showing that the gym is virtually vacant.
- 4) Did the hearing commissioner err in finding that the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident, the error being the greater weight of evidence supports just the opposite?
- 5) Did the hearing commissioner err in finding that the Claimant was only entitled to an amount of 35% loss of use to the spine pursuant to 42-9-30(21) when he was clearly entitled to an award of permanent partial under section 42-9-20 regarding his wage loss differential as specifically set forth by both claimant and defendant's vocational experts.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1002925

EMPLOYEE/CLAIMANT: NEAL BECKMAN
EMPLOYER: SYSCO COLUMBIA, LLC
INSURER: AMERICAN ZURICH INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 26TH DAY OF
APRIL, 2012, COMMENCING AT THE HOUR OF 1:00 P.M., IN
SUMMERVILLE, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN
BARDEN, ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

FREDERICK W. RIESEN, ESQUIRE, OF THE FIRM
RIESEN LAW FIRM
POST OFFICE BOX 40997
CHARLESTON, SOUTH CAROLINA 29423-0997

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

KATHRYN R. FIEHRER, ESQUIRE, OF THE FIRM
WOOD & WARDER, LLC
POST OFFICE BOX 20550
CHARLESTON, SOUTH CAROLINA 29413

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: PETE GARCIA

I N D E X

PAGE

NEAL BECKMAN:

DIRECT EXAMINATION BY MR. RIESEN.....	12
CROSS EXAMINATION BY MS. FIEHRER.....	49
RE-DIRECT EXAMINATION BY MR. RIESEN.....	55
CERTIFICATE OF NOTARY PUBLIC.....	57

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

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

6 BY COMMISSIONER BARDEN:

7 _____, TODAY'S DATE IS APRIL 26TH, 2012. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1002925. THIS IS THE CASE OF THE CLAIMANT
10 MR. NEAL BECKMAN WHO IS PRESENT TODAY AND
11 REPRESENTED BY ATTORNEY FRED RIESEN VERSUS THE
12 EMPLOYER SYSCO AND ITS CARRIER AMERICAN ZURICH -- OR
13 ZURICH AMERICAN, BOTH OF WHICH ARE REPRESENTED BY
14 ATTORNEY KATE FIEHRER. THE PURPOSE OF TODAY'S
15 HEARING IS TO DETERMINE ISSUES RAISED IN DEFENDANTS'
16 FORM 21 REQUEST TO STOP PAYMENT OF TEMPORARY
17 BENEFITS. THE PARTIES AGREE AND STIPULATE THAT MR.
18 BECKMAN'S AVERAGE WEEKLY WAGE IS \$1062.94 YIELDING A
19 COMPENSATION RATE, WHICH IS THE MAXIMUM FOR 2010, OR
20 \$689.71, AND THE DATE OF THIS ADMITTED ACCIDENT WAS
21 MARCH 25TH, 2010. LET ME JUST -- BEFORE I FORGET,
22 LET'S GO OFF THE RECORD.

23 (OFF THE RECORD)

24 BY COMMISSIONER BARDEN:

25 _____, ALL RIGHT. BACK ON THE RECORD. ARE THERE ANY

1 OBJECTIONS TO APAs, JURISDICTION, VENUE, OR ANY
2 OTHER ITEMS?

3 BY MS. FIEHRER:

4 _____ NO, COMMISSIONER.

5 BY MR. RIESEN:

6 _____ NONE.

7 BY COMMISSIONER BARDEN:

8 _____ THANK YOU. WITHOUT OBJECTION, THE COMMISSION
9 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
10 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED
11 MEDICAL REPORTS.

12 PRIOR TO GOING ON THE RECORD, WE HELD A
13 PREHEARING CONFERENCE. IT'S THE POSITION OF THE
14 DEFENDANTS AS THE MOVING PARTY THAT THE CLAIMANT HAS
15 REACHED MAXIMUM MEDICAL IMPROVEMENT AS OF MAY 2ND,
16 2011, WHICH WOULD BE THEIR PRIMARY POSITION OR
17 ALTERNATIVELY FEBRUARY 27TH, 2012. THE DEFENDANTS
18 REQUEST PERMISSION TO STOP PAYMENT OF TEMPORARY
19 BENEFITS. THEY SEEK A DETERMINATION OF PERMANENCY
20 WITH REGARD TO THE CLAIMANT'S BACK ONLY. THE
21 DEFENDANTS BELIEVE THERE IS NO OBJECTIVE EVIDENCE OF
22 ANY OTHER IMPLICATED BODY PART. THE DEFENDANTS
23 BELIEVE THAT THERE IS NO PERMANENCY BEYOND THE 15
24 PERCENT IMPAIRMENT RATING, AND IF THERE IS, IT'S DE
25 MINIMIS. AND FINALLY, THE DEFENDANTS SEEK A CREDIT

1 FOR OVERPAYMENT OF TEMPORARY BENEFITS PAID BEYOND
2 THE DATE OF MAXIMUM MEDICAL IMPROVEMENT, AND I'VE
3 READ THOSE DATES, PRIMARILY MAY 2ND, 2011, OR
4 ALTERNATIVELY FEBRUARY 27TH, 2012, AND THE
5 DEFENDANTS DO OBJECT TO ANY LUMP SUM AS THEY WISH TO
6 PRESERVE THE RIGHT TO FILE FOR A CHANGE OF CONDITION
7 FOR THE BETTER, AND IF A LUMP SUM IS GRANTED, OF
8 COURSE, THEY WOULD LIKE THAT COMMUTED TO PRESENT DAY
9 VALUE. THE DEFENDANTS WOULD BELIEVE AND WOULD
10 CONTEND THAT GREATER WEIGHT SHOULD BE GIVEN TO THE
11 REPORT OF THEIR VOCATIONAL EXPERT AS IT IS A MORE
12 RECENT EVALUATION.

13 CONVERSELY, IT IS THE POSITION OF THE CLAIMANT
14 THAT WHILE HE DOES AGREE THAT HE HAS REACHED MAXIMUM
15 MEDICAL IMPROVEMENT, THAT THIS IS MORE THAN JUST A
16 BACK INJURY. THAT THIS INJURY AFFECTS HIS BUTTOCKS,
17 HIS RIGHT S.I. JOINT, HIS LEGS AND HIS RIGHT FOOT.
18 IT'S HIS POSITION THAT HE IS PERMANENTLY AND TOTALLY
19 DISABLED, OR IN ANY EVENT, HE HAS SUSTAINED WAGE
20 LOSS UNDER -- LET'S GO OFF THE RECORD.

21 (OFF THE RECORD)

22 BY COMMISSIONER BARDEN:

23 _____ WE'RE BACK ON THE RECORD. HE DOES CONTEND THAT
24 HE IS PERMANENTLY AND TOTALLY DISABLED PURSUANT TO
25 EITHER STATUTORY THEORY WHETHER THAT BE 42-9-10

1 BECAUSE OF THE COMBINATION OF HIS BODY PARTS --
2 INJURED BODY PARTS AND OTHER FACTORS OR
3 ALTERNATIVELY 42-9-30, ITEM 21, IN THAT HE HAS
4 SUSTAINED A 50 PERCENT OR GREATER LOSS OF USE OF HIS
5 BACK. IF HE HAS SUSTAINED A 50 PERCENT OR GREATER
6 LOSS OF USE OF HIS BACK, IT'S HIS CONTENTION THAT
7 THE DEFENDANTS CANNOT REBUT THE PRESUMPTION THAT HE
8 IS PERMANENTLY AND TOTALLY DISABLED, AND OF COURSE
9 THE DEFENDANTS WOULD CONTEND THAT THEY CAN IF HE IS
10 FOUND TO BE MORE THAN 50 PERCENT -- IF HE IS FOUND
11 TO HAVE SUSTAINED MORE THAN 50 PERCENT LOSS OF USE
12 OF HIS SPINE. IN ANY EVENT, HE WOULD CONTEND THAT
13 HE CANNOT RETURN TO HIS PRE-ACCIDENT JOB BECAUSE OF
14 HIS JOB RESTRICTIONS. HE WOULD SEEK FUTURE MEDS AS
15 RECOMMENDED BY THE AUTHORIZED-TREATING PHYSICIAN IN
16 THE FORM OF INJECTIONS. HE ALSO WOULD REQUEST THAT
17 IF HE IS NOT FOUND TO BE PERMANENTLY AND TOTALLY
18 DISABLED, THAT ANY CREDIT FOR OVERPAYMENT OF
19 TEMPORARY BENEFITS NOT BE PRIOR TO THE FILING OF THE
20 FORM 21. IT'S HIS POSITION THAT HE HAS SUFFERED
21 SIGNIFICANT WAGE LOSS WHETHER THAT'S UNDER SECTION
22 10 OR SECTION 20, AND HIS VOCATIONAL REPORT WILL
23 ELABORATE ON THAT FACT. IT'S HIS POSITION THAT THAT
24 IS THE REPORT, THE VOCATIONAL REPORT, THAT SHOULD BE
25 GIVEN THE GREATER WEIGHT.

1 ALL RIGHT. THAT IS AN ABBREVIATED SUMMARY FROM
2 WHAT WE DISCUSSED IN THE PREHEARING CONFERENCE. SO,
3 IF THERE IS ANYTHING THAT I MAY HAVE MISSTATED OR
4 MISCHARACTERIZED, I WANT TO BE CORRECTED. SO, I
5 STARTED WITH YOU AS THE MOVING PARTY, AND I'LL START
6 WITH YOU AGAIN UNLESS YOU ARE SATISFIED WITH THAT.

7 BY MS. FIEHRER:

8 _____ THE MAJORITY OF IT ---

9 BY COMMISSIONER BARDEN:

10 _____ OKAY, GO AHEAD.

11 BY MS. FIEHRER:

12 _____ --- WAS ALL STATED. I JUST WANTED TO MAKE NOTE
13 THAT WE'RE RELYING ON APA 33 AS FAR AS THE RESULTS
14 OF THE NERVE CONDUCTION STUDY AND THE E.M.G. AS FAR
15 AS EVIDENCE THAT THERE IS NO RADICULOPATHY TO ANY
16 OTHER BODY PARTS UNDER SECTION 42-1-160, AS WELL AS
17 DR. BOYD'S REPORT, THAT IS APA 106, AS FAR AS NO
18 NERVE ROOT COMPRESSION. DR. BODY, FOR THE RECORD,
19 ALSO RATED THE CLAIMANT AS AN EIGHT PERCENT LUMBAR
20 D.R.E. CATEGORY ---

21 BY COMMISSIONER BARDEN:

22 _____ OH, OKAY.

23 BY MS. FIEHRER:

24 _____ --- TO THE BACK. I DON'T THINK THAT'S BEEN
25 NOTED. AND I WOULD LIKE TO NOTE THAT WE STIPULATED

1 THAT THE SURVEILLANCE SUBMITTED INTO THE RECORD IS
2 THE CLAIMANT, AND THERE WAS NO NEED TO HAVE A
3 PRIVATE INVESTIGATOR AUTHENTICATE THAT.

4 BY COMMISSIONER BARDEN:

5 _____ THANK YOU FOR BRINGING THAT UP. WE DID RELEASE
6 THE PRIVATE INVESTIGATOR, BECAUSE I DO NOT ACCEPT
7 REPORTS UNLESS THERE IS SOME ISSUE ABOUT THE
8 IDENTIFICATION OF THE PERSON DEPICTED ON THE VIDEO,
9 AND AS THERE IS NOT, I WOULD RATHER WATCH THE VIDEO
10 MYSELF THAN TO VIEW IT THROUGH THE LENS OR FILTER OF
11 A THIRD PERSON. SO, WE DID TALK ABOUT THAT.

12 MR. RIESEN, ARE YOU SATISFIED?

13 BY MR. RIESEN:

14 _____ I WOULD SIMPLY SAY THAT AS SUGGESTED THAT WE
15 THINK HE IS TOTALLY AND PERMANENTLY DISABLED, REALLY
16 WE'RE NOT SUGGESTED THAT.

17 BY COMMISSIONER BARDEN:

18 _____ OH, OKAY.

19 BY MR. RIESEN:

20 _____ OF COURSE, IF YOU FOUND AFTER HIS TESTIMONY, HE
21 WAS 51 PERCENT, OKAY, SURE, THANKS. BUT WE'RE NOT -
22 - WE THINK HE CAN WORK SOMEWHERE.

23 BY COMMISSIONER BARDEN:

24 _____ WELL, YOU BELIEVE IT'S OVER 50 PERCENT SO HE
25 WOULD BE ENTITLED TO HIS AWARD BASED ON 500 WEEKS

1 THOUGH?

2 BY MR. RIESEN:

3 _____THERE YOU GO.

4 BY COMMISSIONER BARDEN:

5 _____OKAY, ALL RIGHT. I THINK I SEE WHERE YOU BOTH
6 ARE COMING FROM.

7 ALL RIGHT, MS. FIEHRER, YOU'RE RELYING ON THE
8 MEDICALS, THE RIGHT TO CROSS EXAMINE MR. BECKMAN AND
9 THE RIGHT TO PRESENT ANY REBUTTAL WITNESSES; IS THAT
10 RIGHT?

11 BY MS. FIEHRER:

12 _____YES, COMMISSIONER. _

13 BY COMMISSIONER BARDEN:

14 _____ALL RIGHT, SIR, IF YOU WILL RAISE YOUR RIGHT
15 HAND, PLEASE.

16 _____ * * * * * * * * * * * * * * *

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

20 NEAL BECKMAN

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

22 BY COMMISSIONER BARDEN:

23 PLEASE, STATE YOUR FULL NAME FOR THE RECORD.

24 BY THE WITNESS:

25 NEAL PATRICK BECKMAN, SR.

1 BY COMMISSIONER BARDEN:

2 _____ THANK YOU SO MUCH. PLEASE, ANSWER ANY
3 QUESTIONS YOUR LAWYER HAS FOR YOU.

4 BY MR. RIESEN:

5 _____ DO YOU WANT HIM OVER THERE OR RIGHT HERE?

6 BY COMMISSIONER BARDEN:

7 _____ HE'S OKAY AS LONG AS I CAN HEAR HIM, MS.
8 WHITWORTH CAN HEAR HIM AND MS. FIEHRER CAN HEAR HIM.
9 SO, WE'RE JUST GOING TO ASK YOU ---

10 BY MR. RIESEN:

11 _____ WHY DON'T YOU SIT HERE.

12 BY COMMISSIONER BARDEN:

13 _____ WELL, NO, SIR, THAT WON'T WORK BECAUSE HE'LL
14 HAVE HIS BACK TO US.

15 BY MR. RIESEN:

16 _____ OH, I'M SORRY.

17 BY COMMISSIONER BARDEN:

18 _____ NO, YOU HAD IT RIGHT THE FIRST TIME.

19 BY MR. RIESEN:

20 _____ OKAY.

21 BY COMMISSIONER BARDEN:

22 _____ I'M JUST GOING TO ASK YOU, SIR, IF YOUR VOICE
23 WAS ON, YOU KNOW, A STEREO SYSTEM, JUST TURN UP THE
24 VOLUME, OKAY.

25 BY THE WITNESS:

1 OKAY.

2 BY COMMISSIONER BARDEN:

3 ALL RIGHT. GO AHEAD, SIR.

4 BY MR. RIESEN:

5 OKAY.

6 DIRECT EXAMINATION BY MR. RIESEN:

7 Q. AGAIN, YOUR FULL NAME FOR THE RECORD, PLEASE.

8 A. NEAL PATRICK BECKMAN, SR.

9 Q. AND, NEAL, HOW OLD ARE YOU?

10 A. FORTY-FIVE.

11 Q. AND WHAT IS YOUR MARITAL STATUS?

12 A. MARRIED.

13 Q. OKAY. HOW LONG?

14 A. TWENTY-SIX YEARS.

15 Q. OKAY. CHILDREN?

16 A. I HAVE TWO BOYS.

17 Q. AGES?

18 A. TWENTY-FIVE AND TWENTY-ONE.

19 Q. AND THE YOUNGEST ONE I THINK IN YOUR DEPOSITION YOU
20 INDICATED WAS AT HOME ---

21 A. CORRECT.

22 Q. --- STILL. AND WHAT IS HE WORKING TOWARDS?

23 A. HE'S GETTING READY TO TAKE HIS NATIONAL EXAM FOR
24 E.M.T./E.M.S. WORK.

25 Q. OKAY. AND WITH REGARDS TO YOUR EDUCATION, HOW FAR

1 DID YOU GO IN SCHOOL?

2 A. ABOUT A YEAR OF TRIDENT TECH.

3 Q. OKAY. HOW LONG AGO WAS THAT?

4 A. THAT WAS 1985.

5 Q. A LONG TIME?

6 A. A LONG TIME.

7 BY COMMISSIONER BARDEN:

8 _____ OKAY. DID YOU GRADUATE FROM HIGH SCHOOL?

9 BY THE WITNESS:

10 I DID.

11 BY COMMISSIONER BARDEN:

12 _____ OKAY. AND WHAT DID YOU STUDY AT TRIDENT TECH
13 WHEN YOU WERE THERE IN 1985?

14 BY THE WITNESS:

15 ARCHITECTURAL ENGINEERING.

16 BY COMMISSIONER BARDEN:

17 _____ OKAY. THANK YOU.

18 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

19 Q. HAVE YOU EVER DONE ANYTHING IN THAT REGARD IN A WORK
20 PLACE?

21 A. NO.

22 Q. DID YOU EVER FINISH UP OVER THERE AT COLLEGE -- TECH
23 COLLEGE?

24 A. NO.

25 Q. OKAY. AND I UNDERSTAND AT ONE POINT, YOU HAD A

1 COMMERCIAL DRIVER'S LICENSE?

2 A. I DID.

3 Q. OKAY. DO YOU STILL HAVE IT?

4 A. NO, I DON'T.

5 Q. WHY NOT?

6 A. MY LICENSE EXPIRED, AND I WAS UNABLE TO PASS THE
7 D.O.T. PHYSICAL FOR THE D.O.T. PHYSICAL CARD.

8 Q. OKAY. LET'S TALK ABOUT YOUR WORK HISTORY, OKAY.
9 HOW LONG HAVE YOU BEEN -- HOW LONG WERE YOU WITH
10 SYSCO?

11 A. RIGHT UNDER SIX YEARS.

12 Q. OKAY. AND PREVIOUS TO THIS -- YOU'RE NOT EMPLOYED
13 WITH THEM NOW; IS THAT RIGHT?

14 A. CORRECT.

15 Q. WHAT HAPPENED IN THAT REGARD?

16 A. I WAS TERMINATED AFTER THE 90 DAYS FAMILY MEDICAL
17 LEAVE ACT.

18 Q. AND PRIOR TO THAT ---

19 BY MR. RIESEN:

20 _____ AGAIN, IF WE'RE NOT OBJECTED TO, I'M GOING TO
21 LEAD ALONG IF YOU DON'T MIND.

22 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

23 Q. CERES, I THINK WAS THE NEXT JOB YOU HAD BEFORE THIS?

24 A. RIGHT.

25 Q. AND WHAT KIND OF WORK WAS THAT?

- 1 A. THAT WAS CERES MARINE TERMINALS. IT WAS -- I WAS A
2 STEVEDORE. I ACTUALLY WORKED CONTAINER SHIPS.
- 3 Q. OKAY. AND THEN PRIOR TO THAT, DO YOU REMEMBER WHERE
4 YOU WORKED?
- 5 A. I WANT TO SAY COCA-COLA.
- 6 Q. OKAY. AND WAS COCA-COLA A SIMILAR JOB AS SYSCO?
- 7 A. IT WAS A TRUCK DRIVING JOB DELIVERY, YES.
- 8 Q. OKAY. THE SAME TYPE OF LIFTING AND PHYSICAL
9 REQUIREMENTS ESSENTIALLY?
- 10 A. A LITTLE LESS BECAUSE IT WAS A LOT OF PALLET JACK
11 WORK.
- 12 Q. OKAY. AND PRIOR TO THAT, WAS THAT WHEN YOU WERE AT
13 MONARCH?
- 14 A. CORRECT.
- 15 Q. AND WHAT IS MONARCH?
- 16 A. IT'S IDENTICAL TO SYSCO; IT'S A FOOD SERVICE
17 COMPANY.
- 18 Q. OKAY. AND THEN I THINK YOU MAYBE DID A LITTLE
19 TEMPORARY WORK WITH YOUR BROTHER-IN-LAW.
- 20 A. I DID.
- 21 Q. AND WHO IS THAT?
- 22 A. IT'S TOMMY ROSS.
- 23 Q. AND WHAT WAS THAT?
- 24 A. THAT WAS A BODY SHOP, AUTO REPAIR.
- 25 Q. OKAY. AND THEN YOU ALSO MENTIONED PEARLSTEIN

1 DISTRIBUTORS?

2 A. CORRECT.

3 Q. AND I PRESUME EVERYBODY KNOWS WHAT THAT MEANS.

4 A. BUDWEISER.

5 Q. OKAY. SAME TYPE OF PHYSICAL REQUIREMENTS?

6 A. YES.

7 BY COMMISSIONER BARDEN:

8 _____ DELIVERY DRIVER?

9 BY THE WITNESS:

10 YES, MA'AM, DELIVERY DRIVER.

11 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

12 Q. ALL RIGHT. AND LET ME ASK YOU. OTHER THAN THAT,
13 ANY OTHER PARTICULAR JOBS THAT YOU'VE EVER DONE THAT
14 WE HAVEN'T GONE OVER?

15 A. NO.

16 Q. ALL RIGHT. AND CAN YOU DO ANY OF THESE JOBS NOW?

17 A. NO.

18 Q. WHY?

19 A. PHYSICALLY UNABLE.

20 Q. BECAUSE OF THE JOB DESCRIPTIONS?

21 A. CORRECT.

22 Q. AND YOUR RESTRICTIONS?

23 A. (NO VERBAL RESPONSE)

24 Q. AND YOUR RESTRICTIONS?

25 A. YES.

1 Q. ALL RIGHT. AND WITH REGARDS TO PRIOR ACCIDENTS, I
2 THINK YOU AGAIN NOTED IN YOUR DEPOSITION THAT YOU
3 HAD A FEW OCCURRENCES FAIRLY MINOR WHILE YOU WERE AT
4 SYSCO?

5 A. YES.

6 Q. TRY TO REMEMBER IF YOU CAN ABOUT WHEN THEY WERE.

7 A. I THINK THE MOST RECENT OTHER THAN WHAT WE'RE
8 DISCUSSING NOW WAS 2009, AND I KNOW THERE WAS
9 ANOTHER IN ---

10 BY COMMISSIONER BARDEN:

11 _____ AND WHAT DID YOU INJURE IN 2009?

12 BY THE WITNESS:

13 THAT WAS MY LOWER BACK AS WELL.

14 BY COMMISSIONER BARDEN:

15 _____ DID YOU JUST RECEIVE MEDICAL TREATMENT, OR DID
16 YOU HAVE HEARING OR RECEIVE A SETTLEMENT?

17 BY THE WITNESS:

18 IT WAS ONLY MEDICAL.

19 BY COMMISSIONER BARDEN:

20 _____ MEDICAL, OKAY.

21 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

22 Q. AND THEN BEFORE THAT ONE?

23 A. I WANT TO SAY IT WAS IN 2007, WHICH AGAIN WAS A
24 LOWER BACK.

25 Q. AND YOU RECEIVED MEDICAL?

- 1 A. CORRECT.
- 2 Q. I THINK ONE OF THOSE, YOU INDICATED YOU MAY HAVE
- 3 RECEIVED LIKE TWO WEEKS OF TEMPORARY TOTAL?
- 4 A. THAT'S CORRECT. I LOOKED AT MY FILES YESTERDAY AT
- 5 GALLAGHER BASSETT'S WEBSITE, AND I BELIEVE IT WAS
- 6 TWO WEEKS OF WORKERS' COMP PAY.
- 7 Q. OKAY. DID YOU EVER HAVE A HEARING?
- 8 A. NO.
- 9 Q. DID YOU EVER HAVE A LAWYER?
- 10 A. NO.
- 11 Q. DID YOU EVER HAVE A SETTLEMENT?
- 12 A. NO.
- 13 Q. YOU EVER HAVE ANY PERMANENT RATING?
- 14 A. NO.
- 15 Q. DID YOU HAVE ANY RESTRICTIONS SET UPON YOU?
- 16 A. NO.
- 17 Q. YOU ALWAYS RETURNED TO YOUR REGULAR JOB?
- 18 A. YES.
- 19 Q. DOING THE SAME JOB?
- 20 A. YES.
- 21 Q. ANY PROBLEMS UNTIL NOW?
- 22 A. NO.
- 23 Q. OKAY. ANY OTHER ACCIDENTS, AND AGAIN THEY TOUCHED
- 24 THIS AGAIN IN YOUR DEPOSITION WITH REGARDS TO LIKE
- 25 WRECKS OR FALLS OR THAT KIND OF STUFF, ANYTHING ELSE

1 WHERE YOU'VE INJURED YOUR BACK?

2 A. NO.

3 Q. AND I BELIEVE YOU MIGHT HAVE HAD A HERNIA YEARS AND
4 YEARS AGO.

5 A. I DID.

6 Q. AND YOU HAD A MENISCUS INJURY YEARS -- SOMETIME
7 BACK, AND IT WAS NOT WORK RELATED, OR AT LEAST YOU
8 DIDN'T PUT IT IN AS WORK RELATED?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND THIS ACCIDENT HAS BEEN ADMITTED, SO YOU
11 DON'T HAVE TO GO INTO A LOT OF DETAIL, BUT COULD YOU
12 BRIEFLY DESCRIBE WHAT OCCURRED.

13 A. I WAS AT MY FIRST STOP OF THE DAY, WHICH WAS THE
14 COUNTRY CLUB OF CHARLESTON. I LOADED UP MY HAND
15 TRUCK AND WAS ROLLING TO THE BACK OF THE ACCOUNT.
16 THEY HAVE I WANT TO SAY FOUR CONCRETE STEPS, MAYBE
17 FIVE STEPS, AND AS I WAS PULLING UP THE STEPS,
18 THAT'S WHEN I FELT THE INITIAL PAIN IN MY LOWER
19 BACK.

20 Q. ALL RIGHT. AND IT LOOKS LIKE YOU IMMEDIATELY
21 REPORTED IT AND ALL THAT KIND OF STUFF, BUT IN
22 REGARDS TO MEDICAL INJURIES SUSTAINED, WHAT INJURY
23 DID YOU SUSTAIN -- WHAT PART OF YOUR BODY -- OR
24 EXCUSE ME, PARTS OF YOUR BODY?

25 A. THE INITIAL PAIN WAS THE LOWER BACK, BUT IT THEN

1 RADIATED TO MY LEFT HIP DOWN TO MY KNEE, AND MY
2 RIGHT TOES ARE NUMB OR HAVE BEEN PERIODICALLY NUMB
3 SINCE.

4 Q. AND WITH REGARDS TO -- YOU ALSO MENTIONED GROIN.
5 TELL US ABOUT THAT.

6 A. WHEN MY -- WHERE THE INITIAL PAIN WAS, I HAD PAIN IN
7 MY LEFT GROIN, UPPER INNER THIGH. LIKE NOW, WHEN MY
8 BACK FLARES UP REALLY BAD, I HAVE SOME PAIN IN MY
9 GROIN AND IN MY LEFT HIP, AND IT RADIATES TO ABOUT
10 MY KNEE.

11 Q. GOTCHA, OKAY.

12 BY COMMISSIONER BARDEN:

13 _____ IS THE RIGHT SIDE STILL BOTHERING YOU OR JUST
14 THE LEFT?

15 BY THE WITNESS:

16 _____ THE RIGHT SIDE WAS A S.I. JOINT. THE DOCTOR
17 WAS GIVING ME INJECTIONS IN BOTH S.I. JOINTS ON BOTH
18 SIDES.

19 BY COMMISSIONER BARDEN:

20 _____ HOW'S THE RIGHT NOW?

21 BY THE WITNESS:

22 _____ MY RIGHT FROM INITIALLY WAS A PROBLEM, BUT
23 AFTER THE INITIAL PAIN STARTED TO WEAR DOWN A LITTLE
24 BIT, MY LEFT PERSISTED, AND MY RIGHT SUBSIDED.

25 BY COMMISSIONER BARDEN:

1 _____ OKAY. HOW'S THE RIGHT NOW?

2 BY THE WITNESS:

3 THE RIGHT IS FINE NOW.

4 BY COMMISSIONER BARDEN:

5 _____ IT'S FINE NOW, OKAY.

6 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

7 Q. SO, ON THE RIGHT SIDE, BASICALLY I UNDERSTAND THE
8 ONLY THING YOU'VE REALLY GOT GOING NOW IS THE
9 NUMBNESS IN YOUR TOES?

10 A. THAT'S CORRECT.

11 Q. OKAY. NOW, AND AGAIN, THIS IS -- THIS IS IN THE
12 RECORD, SO YOU DON'T NEED TO GO INTO DETAIL ABOUT
13 YOUR MEDICAL TREATMENT, BUT I'M GOING TO KIND OF RUN
14 YOU THROUGH. IT LOOKS LIKE YOU HAD -- IT LOOKS LIKE
15 INITIALLY THEY SENT YOU TO COLUMBIA TO SEE SOMEBODY?

16 A. THAT'S CORRECT.

17 Q. AND YOU SAW A PHYSICIAN'S ASSISTANT UP THERE?

18 A. CORRECT.

19 Q. AND THEN IT GOT WORSE AND YOU COULDN'T BE TRAVELING,
20 AND YOU ENDED UP SEEING -- THEY SENT YOU TO DR.
21 BYRON WILLIAMS? _____

22 A. RIGHT.

23 Q. AND THEN HE'S THE ONE THAT ULTIMATELY SENT YOU OVER
24 TO DR. -- I JUST SAY "Z," I CAN'T PRONOUNCE THAT
25 LAST NAME.

- 1 A. YEAH, I DON'T EVEN TRY, BUT THAT IS CORRECT.
- 2 Q. AND HE'S PRIMARILY BEEN YOUR TREATING PHYSICIAN?
- 3 A. THAT'S CORRECT.
- 4 Q. AND THEN THEY SENT YOU FOR AN I.M.E. TO DR. SCOTT
- 5 BOYD IN COLUMBIA THAT YOU RECENTLY WENT TO?
- 6 A. YES.
- 7 Q. OKAY, ALL RIGHT. AND AGAIN, WITH REGARDS TO MEDICAL
- 8 TREATMENT, DETAIL IS NOT NECESSARY, BECAUSE SHE'S
- 9 GOT ALL OF THE RECORDS, BUT IT LOOKS LIKE WHAT YOU
- 10 MOSTLY GOT WAS LIKE MEDICATION, INJECTIONS, VARIOUS
- 11 TYPES OF INJECTIONS, AND P.T. IS THAT KIND OF WHAT
- 12 YOU GOT THERE? AND PER CUTANEOUS, WHAT WAS THAT
- 13 OTHER TYPE OF ---
- 14 A. PER CUTANEOUS DISCECTOMY.
- 15 Q. AND WHAT LEVEL WAS THAT ON, AND WHAT DID HE DO IN
- 16 THAT REGARD?
- 17 A. THAT WAS MORE LIKE A PROCEDURE WHERE HE ACTUALLY
- 18 WENT INTO MY DISCS AND REMOVED PARTS OF THE DISC
- 19 FROM THE CENTER OF MY DISC AND THEN DECOMPRESSED THE
- 20 DISC TO GET THE DISC OFF OF THE NERVE.
- 21 Q. DID IT HELP?
- 22 A. THAT DID HELP.
- 23 Q. OKAY. WITH REGARDS TO -- WE HAD A DISCUSSION HERE
- 24 ABOUT THE TYPE OF TREATMENT YOU GOT IN OTHER PARTS
- 25 OF YOUR BODY. DID YOU GET SEPARATE INJECTIONS TO

1 YOUR HIPS?

2 A. I HAD S.I. JOINT INJECTIONS. I BELIEVE THAT THOSE
3 ARE IN MY HIPS. I'M NOT 100 PERCENT SURE, BUT ALSO
4 INTO MY BURSA JOINT ON MY LEFT.

5 Q. OKAY. AND WERE YOU EVER -- DID YOU EVER GET ANY
6 BILLS BACK FOR THIS?

7 A. NO.

8 Q. AS FAR AS YOU KNEW, THEY TOOK CARE OF THEM?

9 A. EVERYTHING WAS TAKEN CARE OF AS FAR AS I KNOW.

10 Q. OKAY. AND THE INJECTIONS HELPED YOU CERTAINLY WITH
11 REGARDS TO YOUR RIGHT HIP; IS THAT CORRECT?

12 A. ABSOLUTELY.

13 Q. AND DO YOU FEEL LIKE THEY HELPED ALSO WITH REGARDS
14 TO YOUR LEFT?

15 A. ALL THE INJECTIONS WERE BENEFICIAL. THEY ALL
16 ALLEVIATED THE SYMPTOMS.

17 Q. OKAY, THEY HELPED, ALL RIGHT. WHAT TREATMENT DO YOU
18 THINK HELPED THE MOST?

19 A. OBVIOUSLY THE INJECTIONS THAT WE WERE JUST SPEAKING
20 ABOUT HELPED GREATLY.

21 Q. OKAY. AND YOU WENT TO P.T. AS WELL?

22 A. YES, I DID.

23 Q. DID THAT HELP YOU?

24 A. YES.

25 Q. AND DID YOU LEARN TECHNIQUES OF WORKING OUT FROM

1 P.T.?

2 A. I LEARNED DIFFERENT EXERCISES TO STRENGTHEN MY LOWER
3 BACK, THE MUSCLES AROUND MY SPINE.

4 Q. AND AS A RESULT OF THAT, DID YOU FOLLOW UP AND START
5 GOING TO THE GYM ON A REGULAR BASIS?

6 A. YES.

7 Q. SHORT OF THE INJECTIONS, WHAT WOULD YOU SAY HAS BEEN
8 MOST BENEFICIAL FOR YOU?

9 A. THE GOING TO THE GYM REGULARLY AND LOSING WEIGHT.

10 Q. ALL RIGHT. TELL US WHAT YOUR SITUATION WAS BEFORE
11 YOU STARTED GOING TO THE GYM REGULARLY FROM A WEIGHT
12 STANDPOINT, AND WERE YOU ALSO SMOKING AT THAT TIME?

13 A. I WAS.

14 Q. AND DID YOU QUIT SMOKING?

15 A. YES, I DID.

16 Q. AND YOU DIDN'T GAIN WEIGHT AFTER YOU QUIT SMOKING?

17 A. NO, I DID NOT.

18 Q. HOW MUCH WEIGHT HAVE YOU LOST BY GOING TO THE GYM?

19 A. CLOSE TO 40 POUNDS.

20 Q. OKAY. AND THE TYPE OF WORKOUT THAT YOU DO, ARE YOU
21 CAREFUL RELATIVE TO YOUR BACK?

22 A. OH, ABSOLUTELY.

23 Q. AND SO WHAT KIND OF WORKOUTS DO YOU GENERALLY DO
24 THERE?

25 A. I BASICALLY START ON A TREADMILL, ELLIPTICAL.

1 THERE'S ALSO AN ARCH TRAINER, WHICH IS ALL BASICALLY
2 THE SAME TYPE OF LEG MOVEMENTS. IF I DO ANY OF THE
3 NAUTILUS MACHINES, IT'S MACHINES THAT, YOU KNOW, THE
4 WEIGHT IS ADJUSTABLE BY A PIN. I ALWAYS HAVE MY
5 BACK SUPPORTED, OR IF IT'S -- IF IT'S SAY A BENCH
6 PRESS, I'LL HAVE MY BACK UP AGAINST A BENCH GIVING
7 ME SUPPORT. IF IT'S A PULL EXERCISE, I'LL HAVE
8 SOMETHING UP AGAINST MY CHEST. YOU KNOW, I'VE
9 ALWAYS GOT -- MY BODY'S ALWAYS STABLE IN AN ERECT
10 POSITION.

11 Q. YOU'RE FAMILIAR WITH GOING TO A GYM?

12 A. I'VE BEEN GOING TO THE GYM SINCE I WAS 15 YEARS OLD.

13 Q. SO, YOU'RE NOT GOING TO DO ANYTHING THAT'S GOING TO
14 HURT YOU?

15 A. NO.

16 Q. EVERYTHING YOU DID, WAS IT WHAT THE DOCTORS AND THE
17 P.T. PEOPLE AND ALL, EVERYBODY KNEW YOU WERE DOING
18 IT; IT'S NOT SOMETHING YOU WERE TRYING TO HIDE, WAS
19 IT?

20 A. IT WAS ALWAYS STATED TO ME THAT I WAS DOING THE BEST
21 THING I COULD BY GOING TO THE GYM.

22 Q. OKAY. WOULD YOU LIKE TO GET A GYM MEMBERSHIP PAID
23 FOR BY THIS CARRIER?

24 A. OH, ABSOLUTELY.

25 Q. OKAY. LET'S TALK NOW -- LET'S DO A COUPLE OF

1 THINGS. LET'S TALK ABOUT YOUR CURRENT MEDICAL
2 PROBLEMS, AND THEN WE'RE GOING TO TALK ABOUT HOW
3 THEY AFFECT YOU, AND AFTER THAT, WE'RE GOING TO TALK
4 ABOUT THE TYPE OF WORK YOU MAY BE ABLE TO DO AND
5 WHERE YOU MAY HAVE TRIED TO WORK, OKAY?

6 A. OKAY.

7 Q. AT THIS POINT, CURRENT MEDICAL PROBLEMS, WHAT IS
8 YOUR WORST SYMPTOM?

9 A. MY WORST SYMPTOM REMAINS MY LOWER BACK.

10 Q. ALL RIGHT. AND IT'S HARD TO DESCRIBE PAIN, BUT WE
11 KIND OF USE A LITTLE OL' SCALE OF ONE TO TEN, ONE'S
12 A LITTLE BIT; TEN'S LIKE OFF THE CHART. DO YOU KNOW
13 WHAT I'M TALKING ABOUT?

14 A. YES.

15 Q. ALL RIGHT. IF I ASK YOU HOW YOU WOULD RATE IT ON A
16 ONE TO TEN, GIVE US YOUR LEAST AND GIVE US YOUR
17 WORST?

18 A. AS FAR AS WHAT SITUATION?

19 Q. LET'S JUST SAY WHEN DOES YOUR BACK HURT YOU? WHEN
20 YOUR BACK IS HURTING YOU THE LEAST, WHAT NUMBER
21 WOULD YOU PLACE ON IT?

22 A. PROBABLY BETWEEN A TWO AND A THREE.

23 Q. ALL RIGHT. AND WHEN IT'S HURTING YOU THE WORST,
24 WHAT WOULD YOU PUT ON IT?

25 A. WHEN IT HURTS THE WORST IS WHEN I HAVE MY BACK FLARE

1 UP, AN EPISODE IS WHAT THEY'RE CALLED, AND IT WOULD
2 BE A TEN.

3 Q. OKAY. AND HOW FREQUENTLY DO THE LARGE EPISODES
4 OCCUR?

5 A. THE EXTREME EPISODES WHERE IT'S AT A TEN, THOSE
6 RIGHT NOW ARE PROBABLY HAPPENING EVERY TWO MONTHS --
7 DEBILITATING, BUT MY BACK FLARES AND I HAVE PAIN
8 EVERY COUPLE OF WEEKS.

9 Q. OKAY. SO, WHEN YOU HAVE WHAT WE CALL ROUTINE FLARES
10 OR INCREASES OF PAIN, YOU HAVE THOSE EVERY COUPLE OF
11 WEEKS?

12 A. YES.

13 Q. AND SO, IF YOU LOOK AT THOSE TYPE AND YOU AGAIN PUT
14 THAT SCALE, WHERE WOULD THAT SCALE GO?

15 A. WHEN THE PAIN INCREASES, YOU KNOW, WHEN I HAVE THE -
16 - I CALL IT A MILD FLARE, BECAUSE IT'S NOT THE
17 EXTREME LEVEL, IT'S USUALLY AROUND A FIVE OR SIX.

18 Q. AND WHEN YOU HAVE THESE FLARES OR THESE EPISODES,
19 WHAT DO YOU DO TO TRY TO ALLEVIATE THE PAIN?

20 A. OTHER THAN MEDICATION, I FIND THAT IF I LAY ON THE
21 FLOOR ON MY ELBOWS, THAT HELPS, OR IF I LAY ON MY
22 BACK ON THE FLOOR. ON A HARD SURFACE, THAT TENDS TO
23 HELP THINGS A LITTLE BIT.

24 Q. OKAY. LET'S TALK ABOUT YOUR MOST RECENT EXTREME
25 FLARE OR EPISODE; WHEN DID THAT OCCUR?

1 A. THAT WAS FEBRUARY 14TH OF 2012.

2 Q. THAT'S VALENTINE'S DAY?

3 A. VALENTINE'S DAY.

4 Q. OKAY. AND WOULD YOU TELL US WHAT OCCURRED ON THAT
5 DAY.

6 A. I WOKE UP LIKE I NORMALLY DID, DRANK MY COFFEE LIKE
7 I NORMALLY DO, AND I WAS -- AS GRAPHIC AS THIS MAY
8 SOUND, I WAS IN MID SQUAT SITTING ON THE TOILET. I
9 WAS ABOUT HALFWAY THERE, AND YOU KNOW, AS I SAID I
10 WAS SQUATTING DOWN, AND AS I WAS SQUATTING, I GOT A
11 SHARP PAIN IN MY LOWER BACK, AND I JUST FREE FELL
12 (WITNESS CLAPS HANDS) ON THE TOILET. EXCUSE ME.

13 BY COMMISSIONER BARDEN:

14 _____ THAT'S OKAY.

15 THE WITNESS RESUMES ANSWER:

16 A. BUT I FREE FELL TO THE TOILET, AND IT WAS A PRETTY
17 BAD ONE.

18 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

19 Q. HOW LONG DID THE SYMPTOMS LAST FROM THAT EPISODE?

20 A. THAT WAS NINE DAYS.

21 Q. OKAY. AND I UNDERSTAND THAT SHORTLY AFTER THAT, SAY
22 THE NINTH DAY WAS ABOUT WHEN THIS APPOINTMENT WAS
23 SCHEDULED WITH DR. SCOTT BOYD; IS THAT CORRECT?

24 A. I CAN'T REMEMBER EXACTLY HOW CLOSE IT WAS, BUT I
25 KNOW IT WAS WITHIN A WEEK AND A HALF, I'M GUESSING

1 JUST FROM RECOLLECTION.

2 Q. OKAY. AND WE ACTUALLY PUT A PHOTOGRAPH IN THE FILE
3 OF WHAT OCCURRED IN YOUR SITUATION. TELL US WHY
4 THAT PHOTOGRAPH WAS TAKEN AND HOW IT CAME ABOUT?

5 A. WELL, MY WIFE KEPT STATING TO ME THAT I WAS WALKING
6 LIKE I WAS THE LETTER "S," BECAUSE OF THE WAY MY
7 BODY WAS SHAPED. I HAD SUCH BAD SPASMING GOING ON
8 IN MY BACK, IT JUST BASICALLY MADE MY -- THE HIP,
9 THE LEFT HIP, PROTRUDE OUT. SO, I ASKED HER TO TAKE
10 A PICTURE SO I COULD SHOW IT TO THE DOCTOR. YOU
11 KNOW, I HAD A SCHEDULED APPOINTMENT WITH ---

12 Q. DR. BOYD IN COLUMBIA?

13 A. THAT'S CORRECT.

14 Q. AND SO YOU TOOK THAT PICTURE WITH YOU WHEN YOU WENT?

15 A. THAT'S RIGHT.

16 Q. OKAY. AND WHAT OTHER THINGS HAPPENED WHEN YOU HAD
17 THAT? I MEAN, HOW WERE YOU ABLE TO FUNCTION DURING
18 THAT EPISODE?

19 A. THAT'S -- WHEN I HAVE A FLARE UP LIKE THAT, IT'S --
20 IT'S ALMOST LIKE MY LEFT SIDE -- I'M NOT GOING TO
21 SAY PARALYZED, BUT IT'S HARD FOR ME TO LIFT MY LEFT
22 LEG UP NORMALLY TO WALK. SO, YOU'RE ALMOST DRAGGING
23 YOUR LEFT FOOT LIKE -- I CONSIDER IT LIKE LOOKING
24 LIKE A MUMMY.

25 Q. DID YOU HAVE ANY PROBLEMS GETTING OUT OF BED OR

1 GETTING -- MOVING AROUND OR GETTING OFF THE FLOOR OR
2 THOSE TYPE THINGS?

3 A. GETTING OUT OF BED WAS PAINFUL I GUESS ABOUT FIVE
4 DAYS. I'M ASSUMING AROUND THE 18TH OR 19TH OF
5 FEBRUARY, I MADE THE MISTAKE OF LYING ON THE FLOOR
6 TO VISIT MY PUPPY. WE HAVE A GOLDEN RETRIEVER
7 PUPPY, AND I LAID ON THE FLOOR. I WAS HUGGING HER.
8 I TRIED TO GET UP, AND I COULD NOT GET UP OFF THE
9 FLOOR. MY SON AFTER ABOUT TEN OR 15 MINUTES OF ME
10 TRYING HAD TO COME AND LIFT ME UP OFF THE FLOOR.
11 IT'S JUST TOO PAINFUL, YOU KNOW, LIFTING MY TORSO UP
12 OFF THE FLOOR.

13 Q. SO, DID YOU TAKE MEDICATION DURING THAT TIME FRAME?

14 A. I DID.

15 Q. WHAT WERE YOU TAKING?

16 A. I HAD SOME OXYCODONE LEFT OVER FROM THE INITIAL
17 VISITS.

18 Q. OKAY. AND DID THAT HELP SOME?

19 A. IT DID.

20 Q. ALL RIGHT. NOW, WITH REGARD TO MEDICATIONS, WHAT
21 TYPE OF MEDICATIONS WERE YOU BEING PRESCRIBED WHEN
22 YOU WERE BEING SEEN BY DR. "Z"?

23 A. HE PRESCRIBED ME OXYCODONE, CYMBALTA, AND THERE WAS
24 A SLEEPING PILL THAT I CANNOT FOR THE LIFE OF ME
25 REMEMBER WHAT IT WAS, BUT HE PRESCRIBED A SLEEPING

1 PILL BECAUSE THE OXYCODONE MADE ME REALLY RESTLESS
2 IF I TOOK IT LATE IN THE AFTERNOON, AND I COULDN'T
3 SLEEP. SO...

4 Q. WHAT WAS THE CYMBALTA FOR?

5 A. THE CYMBALTA WAS ACTUALLY PAIN MANAGEMENT, BUT IT
6 MAINLY IS PRESCRIBED AS AN ANTI-DEPRESSANT, AND DR.
7 "Z" AND I DISCUSSED THE FEELINGS THAT I WERE HAVING
8 -- OR THAT I WAS HAVING AT HOME, YOU KNOW, BASICALLY
9 FEELING WORTHLESS, AND THEN WE BOTH AGREED THAT THE
10 CYMBALTA WOULD TAKE CARE OF THE PAIN AND TAKE CARE
11 OF THE MENTAL ISSUES AS WELL.

12 Q. DID IT HELP?

13 A. IT DID.

14 Q. ARE YOU STILL HAVING TO TAKE THAT NOW?

15 A. NO.

16 Q. WHY -- WHAT DO YOU ATTRIBUTE THAT TO?

17 A. I THINK THE OBVIOUS REASON IS THAT I RAN OUT OF MY
18 PRESCRIPTION, BUT THE OTHER REASON WOULD BE MY
19 LOSING WEIGHT, YOU KNOW, FEELING LIKE I HAD A
20 SCHEDULE GOING TO THE GYM DAILY, PHYSICALLY FEELING
21 BETTER, GETTING OUT OF THE HOUSE, BEING ABLE TO MOVE
22 AROUND A LITTLE BETTER THAN I WAS.

23 Q. OKAY. AND WITH REGARDS TO THE ERECTILE DYSFUNCTION
24 THAT THERE WAS SOME MENTION OF, BY THE TIME YOU SAW
25 DR. BOYD, YOU HAD BEEN GOING TO THE GYM PRETTY

1 REGULARLY?

2 A. YES.

3 Q. AND SO HAD THAT PRETTY MUCH CLEARED UP AS WELL?

4 A. YES.

5 Q. OKAY. WITH REGARDS WHEN YOU HAVE THESE FLARES OR
6 THESE EPISODES OTHER THAN THIS NINE-DAY ONE, HOW
7 ABOUT THE ONES THAT AREN'T QUITE AS SEVERE; HOW LONG
8 DOES IT USUALLY TAKE YOU TO RECOVER?

9 A. EVERY DAY, THERE ARE REMINDERS. I'M KIND OF TALKING
10 OR SAYING LITTLE PHRASES THAT I'VE BECOME ACCUSTOMED
11 TO OVER THE LAST COUPLE OF YEARS, BUT AS THE DAY
12 GOES, MY BACK INJURY REMINDS ME THAT IT'S STILL
13 THERE. IT COULD BE FIVE TIMES IN ONE DAY THAT I
14 CALL THEM LITTLE JABS. YOU KNOW, IF I TWIST OR TURN
15 THE WRONG WAY, IT KIND OF JUST SAYS "POOP, HEY, I'M
16 STILL HERE." SOME DAYS ARE BETTER THAN OTHERS.
17 SOME DAYS ARE WORSE. USUALLY WHEN -- JUST ON A
18 STANDARD DAY, LIKE THIS MORNING, YOU KNOW, I HAD
19 SOME PAIN IN MY BACK THIS MORNING. IT MIGHT LAST
20 TEN OR FIFTEEN SECONDS. SOMETIMES IT MIGHT LAST TEN
21 MINUTES.

22 Q. WHEN YOU SAY "SOME PAIN," YOU'RE TALKING ABOUT THAT
23 MORE INTENSE PAIN?

24 A. YES.

25 Q. DO YOU FEEL LIKE YOU HAVE PAIN IN YOUR BACK ALL THE

1 TIME?

2 A. THERE'S ALWAYS DISCOMFORT. LIKE I SAID, ON A LOW
3 LEVEL, IT COULD BE A TWO OR A THREE. THAT'S
4 CONSTANT.

5 Q. OKAY. NEXT UP, YOUR JOINT, SACROILIAC JOINT, TELL
6 US ABOUT THAT.

7 A. YOU MEAN, THE S.I. JOINT?

8 Q. YES, SIR.

9 A. THAT WAS DIAGNOSED BY DR. "Z" THAT I NEEDED FURTHER
10 INJECTIONS THERE, WHICH I DON'T THINK I'VE EVER
11 RECEIVED ALL THE THERAPY ON THAT. I FINALLY READ
12 THE FINAL REPORT FROM HIM, AND IT LOOKED LIKE HE WAS
13 WANTING TO TREAT THAT AS WELL.

14 Q. YOU GOT INJECTIONS IN YOUR JOINTS?

15 A. YES, I DID.

16 Q. OKAY. DID THEY HELP?

17 A. YES.

18 Q. DO YOU STILL HAVE PROBLEMS WITH YOUR JOINT?

19 A. YES.

20 Q. AND LET'S GO WITH THAT SAME SCALE, ALL RIGHT, ONE TO
21 TEN; THE LEAST, WHAT WOULD YOU PUT ON IT, AND WHICH
22 HIP ARE YOU TALKING ABOUT RIGHT NOW?

23 A. IT'S THE LEFT HIP THAT BOTHERS ME CONSTANTLY.

24 Q. OKAY. ON A GOOD DAY, WHAT WOULD YOU PUT ON IT?

25 A. PROBABLY A TWO.

- 1 Q. AND A BAD DAY?
- 2 A. IT COULD GO UP TO FIVE OR SIX.
- 3 Q. WHEN YOU HAVE A SEVERE EPISODE, IS IT FIVE OR SIX
- 4 THEN, OR IS THAT -- WHEN IS IT FIVE OR SIX?
- 5 A. ON A SEVERE EPISODE, IT'S A FIVE OR SIX. WHEN I
- 6 HAVE JUST THE REGULAR EVERYDAY PAIN, IT REMAINS
- 7 ABOUT A TWO. BUT IT FLARES UP WHEN MY BACK REALLY
- 8 FLARES UP.
- 9 Q. OKAY. WHEN YOUR BACK FLARES UP, DO YOU ALSO HAVE
- 10 THE LEG PAIN?
- 11 A. IT GOES TO MY KNEE OR ROUGHLY RADIATES TO MY KNEE.
- 12 Q. TO YOUR KNEE, AND WHAT NUMBER WOULD YOU PUT ON IT
- 13 WHEN IT'S INTO THE LEG?
- 14 A. THAT'S AGAIN ABOUT THE SAME, BETWEEN ABOUT A FIVE
- 15 AND A SIX.
- 16 Q. OKAY. AND I THINK YOU'VE ALSO MENTIONED YOUR GROIN?
- 17 A. YES.
- 18 Q. HOW IS THAT DOING NOW?
- 19 A. THAT'S -- IT'S NOT AS -- LET ME BACK UP. IT DOESN'T
- 20 HAPPEN OR IT'S NOT HURTING AS OFTEN AS IT WAS. IT'S
- 21 MAINLY WHEN I HAVE A SEVERE EPISODE LIKE VALENTINE'S
- 22 DAY, YOU KNOW, I WAS HAVING PAIN THERE AGAIN.
- 23 Q. SO, WHAT WOULD YOU PUT IT ON VALENTINE'S DAY?
- 24 A. IN MY GROIN, IT'S PROBABLY ABOUT A FIVE.
- 25 Q. BUT NORMALLY, IT'S VERY LITTLE?

1 A. RIGHT.

2 Q. OKAY.

3 BY MR. RIESEN:

4 _____ COMMISSIONER, I'M GOING TO JUST CALL YOUR
5 ATTENTION TO THE PICTURE THAT'S IN THERE IF YOU WANT
6 TO LOOK AT IT.

7 BY COMMISSIONER BARDEN:

8 _____ OKAY.

9 BY MR. RIESEN:

10 _____ IT'S IN THE FILE. IT'S LIKE THE LAST APA WE
11 HAVE. THAT WOULD BE -- OUR NUMBER LOOKS LIKE MAYBE
12 ELEVEN.

13 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

14 Q. I'M GOING TO SHOW YOU -- I'M SHOWING YOU A PICTURE,
15 AND I'M NOT GOING TO MAKE THIS AN EXHIBIT BECAUSE
16 SHE HAS IT ALREADY. IT'S ALREADY IN THE FILE.

17 A. OKAY.

18 Q. IS THAT A PICTURE OF YOU?

19 A. THAT IS A PICTURE OF ME.

20 Q. AND IS THAT -- WAS THAT -- WHO TOOK THAT PICTURE?

21 A. MY WIFE.

22 Q. WAS THAT SHORTLY AFTER A SEVERE EPISODE?

23 A. THAT'S CORRECT.

24 Q. AND IS THAT REALLY WHAT YOU LOOKED LIKE AT THE TIME?

25 A. IT IS.

1 Q. OKAY. AND WHAT WAS HURTING YOU TO CAUSE YOU TO KIND
2 OF STAND LIKE YOU WERE STANDING?

3 A. MY ENTIRE LEFT SIDE, MY LEFT SIDE OF MY BACK, MY
4 LEFT HIP, MY GROIN, THAT'S IN THE PICTURE IT
5 RADIATES DOWN TO MY KNEE. IT WAS FOR MOST OF THE
6 EPISODE, MOST OF THE NINE DAYS.

7 Q. OKAY. AND WHEN YOU FINALLY GOT TO DR. BOYD -- AND
8 YOU SHOWED HIM A PICTURE OF THIS? _____

9 A. YES.

10 Q. DID HE EXAMINE YOU AT ALL?

11 A. HE DID.

12 Q. AND WERE YOU STILL HAVING SOME MUSCLE SPASMS AT THAT
13 POINT?

14 A. YES.

15 Q. OKAY.

16 BY MR. RIESEN:

17 _____ AND THAT'S IN THE REPORT, YOUR HONOR.

18 BY COMMISSIONER BARDEN:

19 _____ OKAY.

20 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

21 Q. LET'S TALK ABOUT LIMITATIONS NOW. GIVEN WHAT YOU'VE
22 TOLD US ABOUT YOUR SYMPTOMS, TELL US THE PROBLEMS IF
23 ANY THAT YOU'RE HAVING BECAUSE OF YOUR INJURY?

24 A. MY MOBILITY IS DECREASED AS FAR AS LIMITATIONS.
25 I'VE HAD TO ALTER EVERYTHING.

1 BY COMMISSIONER BARDEN:

2 _____ WHAT DO YOU MEAN YOUR MOBILITY IS DECREASED?

3 BY THE WITNESS:

4 _____ I MEAN, AS FAR AS I CAN PROBABLY TWIST AND BEND
5 LIKE I COULD, BUT I DON'T BECAUSE I KNOW THE
6 REPERCUSSIONS OF DOING SO. I KNOW -- I HAVE CERTAIN
7 POINTS, YOU KNOW, ON MY BODY OR THE WAY I TWIST OR
8 BEND THAT I CAN'T DO ANYMORE, BECAUSE I KNOW IT'S
9 GOING TO CAUSE PAIN.

10 BY COMMISSIONER BARDEN:

11 _____ ARE YOU ABLE TO DRIVE?

12 BY THE WITNESS:

13 YES.

14 BY COMMISSIONER BARDEN:

15 _____ OKAY.

16 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

17 Q. HOW WOULD YOU SAY IT LIMITS YOUR USUAL ACTIVITIES?

18 A. LENGTH OF TIME THAT I CAN DO THINGS NOW. WALKING, I
19 CAN'T WALK NEAR AS LONG AS I USED TO.

20 BY COMMISSIONER BARDEN:

21 _____ HOW FAR CAN YOU WALK NOW?

22 BY THE WITNESS:

23 _____ DISTANCE WISE, I DON'T KNOW. TIME WISE, I
24 COULD PROBABLY WALK 45 MINUTES TO AN HOUR, BUT
25 SITTING DOWN TAKING BREAKS.

1 BY COMMISSIONER BARDEN:

2 _____ FORTY-FIVE MINUTES TO AN HOUR WITH BREAKS?

3 BY THE WITNESS:

4 YES.

5 BY COMMISSIONER BARDEN:

6 _____ OKAY.

7 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

8 Q. HOW ABOUT SITTING, DO YOU HAVE PROBLEMS SITTING?

9 A. SITTING FOR ABOUT 30 TO 40 MINUTES, I GUESS, IT
10 STARTS TO GET REALLY UNCOMFORTABLE.

11 Q. HOW ABOUT STANDING?

12 A. I CAN STAND 40, 45 MINUTES MAYBE. A LOT OF TIMES IF
13 I'M STANDING SOMEWHERE, I START LEANING, YOU KNOW,
14 TRYING TO TAKE SOME PRESSURE OFF OF EVERYTHING.

15 Q. OKAY. AND LIFTING, WHAT WERE YOU ABLE TO LIFT PRIOR
16 TO THIS?

17 A. I WAS VERY STRONG. I MEAN, SOME OF THE THINGS AT
18 WORK WERE 75, 80 POUNDS, BIG BOXES OF SEAFOOD AND 50
19 POUND BOXES OF SHRIMP. I COULD THROW A BOX OF
20 SHRIMP ON MY SHOULDER AND NOT HAVE ANY PROBLEM.

21 Q. OKAY. BENDING?

22 A. I HAVE LIMITATIONS ON BENDING.

23 Q. STOOPING?

24 A. IF I KEEP MY BACK STRAIGHT, I CAN STOOP DOWN.

25 Q. OKAY, SQUATTING?

1 A. I WOULD THROW THAT IN THE STOOPING RANGE.

2 Q. OKAY. CLIMBING?

3 A. I CAN CLIMB A LADDER BUT THAT'S ABOUT IT.

4 Q. PUSHING, PULLING?

5 A. IF I HAVE MY BACK UP AGAINST SOMETHING, I CAN PUSH.
6 IF I HAVE MY CHEST UP AGAINST SOMETHING, I CAN PULL,
7 GIVING ME SOME SUPPORT.

8 Q. DO YOU HAVE AN ESTIMATE OF WHAT YOU THINK YOU'VE
9 LOST RELATIVE TO THE EXTENT OF THE ACTIVITIES THAT
10 YOU ARE ABLE TO DO?

11 A. AS ACTIVE AS I WAS AND WHERE I'M AT NOW, I PROBABLY
12 DON'T DO HALF THE THINGS THAT I USED TO.

13 Q. OKAY. AND YOU CAN RIDE IN A CAR FOR ABOUT HOW LONG
14 WITHOUT DISCOMFORT?

15 A. A LOT OF FIDGETING, BUT I CAN LAST FOR ABOUT AN HOUR
16 BEFORE I GET OUT AND HAVE TO STRETCH.

17 Q. HOBBIES?

18 A. I DO A LOT OF WOODWORKING, SMALL LITTLE CHAIRS AND
19 BIRD HOUSES AND THINGS LIKE THAT, THINGS THAT I CAN
20 BUILD IN MY GARAGE.

21 Q. DID YOU USED TO DO MORE THAN THAT?

22 A. I USED TO DO A LITTLE HEAVIER -- HEAVIER PROJECTS.
23 I HAVEN'T SINCE. IF I DO ANYTHING WITH ANY
24 SUBSTANTIAL WEIGHT, I HAVE TO GET MY SON TO HELP ME.

25 Q. HOW ABOUT YARD WORK?

1 A. I TRY AND DO WHAT I CAN, BUT THAT'S LIMITED AS WELL.
2 I'LL TRY AND MOW THE LAWN. WE HAVE A SELF-PROPELLED
3 LAWNMOWER, AND I MIGHT DO AN EIGHTH OF THE YARD,
4 MAYBE A LITTLE MORE THAN THAT BEFORE MY WIFE OR MY
5 SON TAKE OVER. BECAUSE THAT'S USUALLY A FAMILY
6 AFFAIR DOING ALL THE YARD WORK.

7 Q. GOTCHA. HOUSEHOLD CHORES?

8 A. I DO LIGHT LAUNDRY. I CAN'T DO A WHOLE SINK OF
9 DISHES, BECAUSE THE STANDING POSITION WITH MY ARMS
10 IN FRONT OF ME CAUSES MY BACK TO START SPASMING, BUT
11 LIGHT DISHES, I CAN DO.

12 Q. OKAY. WITH REGARDS TO ADDITIONAL MEDICAL CARE, DO
13 YOU THINK THAT YOU NEED IT?

14 A. YES.

15 Q. I THINK YOU TESTIFIED THAT IT HELPED YOU?

16 A. YES.

17 Q. ONE THING THAT BLOWS ME AWAY IS THAT I SEE BOTH
18 DOCTORS, ONE SAYING YOU NEED INJECTIONS, THE OTHER
19 ONE SAYS MEDICATION. THEY TALK ABOUT TWO YEARS,
20 (PER COMMISSIONER BARDEN, STATEMENT STRICKEN FROM
21 THE RECORD).

22 BY MS. FIEHRER:

23 _____OBJECTION, SPECULATION.

24 BY COMMISSIONER BARDEN:

25 _____MR. RIESEN, ---

1 BY MR. RIESEN:

2 _____ I APOLOGIZE.

3 BY COMMISSIONER BARDEN:

4 _____ YOU CAN'T TESTIFY. YOU DON'T NEED TO ---

5 BY MR. RIESEN:

6 _____ I APOLOGIZE FOR THAT.

7 BY MS. FIEHRER:

8 _____ AND THIS IS DIRECT EXAMINATION.

9 BY MR. RIESEN:

10 _____ AND I APOLOGIZE FOR THAT.

11 BY COMMISSIONER BARDEN:

12 _____ AND THAT'S STRICKEN FROM THE RECORD. YOU CAN
13 REPHRASE.

14 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

15 Q. WERE YOU EVER -- WAS THERE EVER ANY INDICATION TO
16 YOU THAT WITHIN TWO YEARS YOU WERE GOING TO BE
17 RECOVERED?

18 A. NO.

19 Q. OKAY. WHAT WAS YOUR UNDERSTANDING ABOUT THE
20 TREATMENT YOU WERE GOING TO NEED? HOW LONG WERE YOU
21 GOING TO NEED IT?

22 A. INDEFINITELY.

23 Q. ALL RIGHT. AND YOU WENT FOR A MEDICAL OPINION TO
24 SEE ABOUT SURGERY PRIMARILY; IS THAT CORRECT?

25 A. CORRECT.

- 1 Q. AND IF IN FACT SURGERY WAS RECOMMENDED, WOULD YOU
2 TAKE IT?
- 3 A. IF IT WOULD BE BENEFICIAL AND MAKE ME FEEL BETTER
4 THAN I DO NOW, YES.
- 5 Q. OKAY. WORK ATTEMPTS. HAVE YOU BEEN LOOKING FOR
6 SOMETHING ELSE?
- 7 A. I HAVE BEEN.
- 8 Q. HAVE YOU HAD AN OPPORTUNITY TO LOOK THROUGH THE
9 VOCATIONAL REPORTS OF BOTH THE DEFENDANTS AS WELL AS
10 US?
- 11 A. I HAVE.
- 12 Q. OKAY. AND WITH REGARDS TO THE INCOME THAT YOU FEEL
13 YOU MAY BE ABLE TO MAKE IF YOU FIND SOMETHING YOU
14 CAN DO, WHAT ARE YOUR THOUGHTS ON WHAT YOU MAY BE
15 ABLE TO EARN?
- 16 A. THE THINGS THAT I'VE BEEN SEEING ON LINE WITH THE
17 LACK OF EXPERIENCE I NOW HAVE, I'M LOOKING AT MAYBE
18 NINE TO TEN DOLLARS AN HOUR.
- 19 Q. ALL RIGHT. AND HOW HAVE YOU BEEN LOOKING FOR JOBS?
- 20 A. I ENROLLED ON THE SOUTH CAROLINAWORKS.ORG WEBSITE
21 WHERE IT HAS JOB POSTINGS THERE. I ALSO LOOK ON
22 CRAIG'S LIST DAILY IN THE JOB MARKET SECTION OF
23 CRAIG'S LIST. EVERYTHING LIKE ON THE S.C. WORKS
24 WEBSITE, EVERYTHING IS FUNNELED -- YOU KNOW, ALL JOB
25 POSTINGS ARE FUNNELED TO THAT WEBSITE.

1 Q. DO YOU HAVE SOME MINIMUM COMPUTER SKILLS SO THAT YOU
2 CAN DO SOMETHING ON THE WEB?

3 A. I CAN EBAY, AND I CAN GOOGLE.

4 Q. YOU CAN APPLY FOR JOBS?

5 A. I CAN APPLY MINIMAL -- I CALL IT RECREATIONAL
6 COMPUTER USE. YOU KNOW, I HAVE AVERAGE KNOWLEDGE OF
7 THE COMPUTER.

8 Q. AND I'VE ASKED YOU TO GIVE US A LIST AT LEAST OF
9 SOME OF THE APPLICATIONS THAT YOU'VE PUT DOWN. DID
10 YOU MAKE A LIST IN THAT REGARD?

11 A. YES, I DID.

12 BY MS. FIEHRER:

13 _____ I HAVEN'T SEEN ANY EVIDENCE OF THIS.

14 BY MR. RIESEN:

15 _____ AND I'M GOING TO SHOW YOU THAT RIGHT NOW.

16 BY MS. FIEHRER:

17 _____ IT'S A LATE SUBMISSION.

18 BY COMMISSIONER BARDEN:

19 _____ YOU'RE NOT PUTTING THAT INTO EVIDENCE; YOU'RE
20 JUST ---

21 BY MR. RIESEN:

22 _____ NO, NO, NO. HE CAN EITHER -- IF YOU WANT TO;
23 IT DOESN'T MATTER TO ME.

24 BY COMMISSIONER BARDEN:

25 _____ NO, IF SHE'S NOT GOTTEN IT BEFORE ---

1 BY MR. RIESEN:

2 _____ I'M GOING TO ASK HIM ABOUT WHO HE HAS --- AND
3 OF COURSE, HE'S MADE A LIST SO THAT HE WILL BE ABLE
4 TO REFER TO HIS LIST.

5 BY COMMISSIONER BARDEN:

6 _____ OKAY.

7 BY MR. RIESEN:

8 _____ THESE ARE THE APPLICATIONS THAT HE'S MADE.

9 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

10 Q. HAVE YOU MADE SOME APPLICATIONS? I THINK YOU
11 TESTIFIED IN YOUR DEPOSITION THAT YOU DID.

12 A. YES, I DID.

13 Q. ALL RIGHT. WOULD THIS LIST THAT YOU MADE HELP YOU
14 IN DETERMINING SOME OF THE APPLICATIONS THAT YOU PUT
15 IN?

16 A. YES.

17 Q. OKAY.

18 BY MR. RIESEN:

19 _____ DO YOU HAVE ANY OBJECTION TO HIM ---

20 BY MS. FIEHRER:

21 _____ NOT TO HIM REVIEWING HIS OWN NOTES.

22 BY MR. RIESEN:

23 _____ YES, JUST REVIEW IT. THAT'S ALL HE'S GOING TO
24 DO. AND HE CAN EITHER GIVE THEM TO YOU ORALLY, OR
25 WE CAN HAND IT UP. IT DOESN'T MATTER; WHATEVER IS

1 EASIER FOR YOU.

2 BY COMMISSIONER BARDEN:

3 _____ WELL ---

4 BY MR. RIESEN:

5 _____ HAVE YOU GOT ANY OBJECTION? THIS IS JUST THE
6 ONES THAT HE'S PUT APPLICATIONS IN ON. IF YOU WANT
7 HIM TO TESTIFY TO IT, I'LL BE HAPPY TO LET HIM
8 TESTIFY TO IT.

9 BY COMMISSIONER BARDEN:

10 _____ SHE SAID HE COULD USE IT TO REFRESH HIS MEMORY.
11 SO, WHY DON'T YOU JUST LET HIM LOOK AT IT, AND HE
12 CAN TELL US WHAT HE APPLIED FOR.

13 BY MR. RIESEN:

14 _____ SURE.

15 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

16 Q. TELL US -- IF YOU NEED TO REFER TO YOUR JOB LIST,
17 WHY DON'T YOU TELL US SOME THAT YOU'VE AT LEAST
18 RECENTLY APPLIED FOR.

19 A. THE MOST RECENT WAS TOWN OF FOLLY BEACH. IT'S
20 SAFETY PATROL.

21 Q. OKAY. ANY SUCCESS YET IN THAT?

22 A. NO.

23 Q. HOW ABOUT THE ONE PRIOR TO THAT?

24 BY COMMISSIONER BARDEN:

25 _____ NOW, WITH YOUR INABILITY YOU SAID TO WALK, WHY

1 WOULD YOU APPLY FOR THAT?

2 BY THE WITNESS:

3 THAT WAS ACTUALLY ON A GOLF CART.

4 BY COMMISSIONER BARDEN:

5 _____ ON A GOLF CART, OKAY, THANK YOU.

6 DIRECT EXAMINATION RESUMED BY MR. RIESEN:

7 Q. CHARLESTON WATER SYSTEM, COLLECTION SYSTEM OPERATOR,
8 APPRENTICE?

9 A. YEAH, THOSE ARE -- ALL THREE OF THEM ARE WITH THE
10 CHARLESTON WATER WORKS OR CALLED C.P.W. OR WHATEVER
11 IT IS. THEY WERE ALL ENTRY-LEVEL POSITIONS. ONE OF
12 THEM WAS BASICALLY PAINTING FIRE HYDRANTS, AND YOU
13 KNOW, MAINTAINING FIRE HYDRANTS AND THINGS LIKE
14 THAT. JUST LOOKING AT THE APPLICATIONS AS FAR AS
15 THE LISTING, I CAN'T REMEMBER WHAT ALL THREE OF THE
16 ---

17 Q. BUT YOU FELT LIKE IT WAS SOMETHING YOU COULD PERHAPS
18 DO?

19 A. I THOUGHT IT COULD WITH THE DESCRIPTION THAT THEY
20 HAD ON IT.

21 Q. OKAY. AND YOU'VE GOT ONE HERE THAT SAYS "AMERICAN
22 RED CROSS MANAGER." WHAT IS THAT ABOUT?

23 A. THAT'S JUST MANAGING THE LOCAL, I GUESS, THE
24 AMERICAN RED CROSS. YOU KNOW WHEN SOMEONE HAS A
25 HURRICANE OR WHATEVER, THE PEOPLE THAT HELP

1 DISTRIBUTE THINGS.

2 Q. U.S. FOODS, IS THAT ANOTHER ONE?

3 A. YEAH, BUT I DON'T EVEN KNOW WHY I APPLIED FOR THAT.
4 I DIDN'T HAVE A C.D.L., BUT ONE OF THEM WAS A
5 SHUTTLE DRIVER. THERE'S NO WAY I COULD HAVE EVEN
6 DONE THAT.

7 Q. OKAY. YOU COULDN'T DO THAT NOW?

8 A. NO.

9 Q. AS A HOSTESS?

10 A. HOSTESS BRANDS.

11 Q. AND WHAT WAS THAT?

12 A. THAT'S -- HOSTESS BRANDS ARE LITTLE SNACK CAKES.

13 Q. JUST SOMETHING YOU FELT LIKE YOU ---

14 A. YEAH, IT'S LIKE MERCHANDISING THE STUFF IN THE
15 STORES.

16 Q. FRITO-LAY?

17 A. THAT WAS THE SAME THING, MERCHANDISING.

18 Q. ARAMARK UNIFORM COMPANY?

19 A. THAT WAS ACTUALLY A SUPERVISOR POSITION FOR A ROUTE
20 SUPERVISOR THAT I APPLIED FOR.

21 Q. BOEING?

22 A. THAT WAS A PAINTER, APPRENTICE PAINTER WHO READING
23 THE DESCRIPTION I WAS ASSUMING WAS, YOU KNOW, WITH
24 THE SPRAY GUN SPRAYING THE DIFFERENT PARTS OF THE
25 UPPER SIDE OF THE PLANE.

- 1 Q. OKAY.
- 2 A. THAT'S ASSEMBLY LINE TYPE WORK.
- 3 Q. AND THEN THE COCA-COLA VENDING MACHINE SERVICE?
- 4 A. YEAH, IT WAS I THINK FIXING THE MACHINES.
- 5 Q. OKAY. SO FAR, HAVE YOU HAD ANY POSITIVE RESPONSES?
- 6 A. NO, I HAVE NOT.
- 7 Q. NOW, WE'VE ASKED IF YOU ARE MADE AN AWARD IN THIS
- 8 CASE THAT IT WOULD BE A LUMP SUM?
- 9 A. YES.
- 10 Q. HAVE YOU AND YOUR WIFE TOGETHER MANAGED MONEY
- 11 THROUGHOUT YOUR MARRIAGE?
- 12 A. YES.
- 13 Q. DO YOU HAVE CHECKING ACCOUNTS?
- 14 A. YES.
- 15 Q. GAVE THEY BEEN DEPLETED?
- 16 A. YES.
- 17 Q. DID YOU AT SOME POINT HAVE A 401-K?
- 18 A. I DID.
- 19 Q. DID YOU HAVE TO GET EVERYTHING OUT OF THAT 401-K?
- 20 A. I DID CASH IT IN.
- 21 Q. DO YOU KNOW APPROXIMATELY HOW MUCH IT WAS?
- 22 A. I WANT TO SAY 11,000.
- 23 Q. AND HAVE YOU HAD TO UTILIZE ALL OF THAT?
- 24 A. YES.
- 25 Q. AND WHAT DID YOU HAVE TO UTILIZE IT FOR?

1 A. ACTUALLY PAID OFF MY TRUCK AND HER TRUCK WITH THE
2 MAJORITY OF IT IN PREPARATION FOR WHATEVER MAY
3 HAPPEN, YOU KNOW, THROUGH MY INJURY.

4 Q. HAVE YOU HAD TO SEEK ADDITIONAL CREDIT SINCE THEN?

5 A. WE'VE BOTH MY WIFE AND MYSELF HAVE GOTTEN CREDIT
6 CARDS OVER THE PAST MONTHS.

7 Q. AND YOU'VE GOT BALANCES ON THOSE?

8 A. YES.

9 Q. AND ARE THE INTEREST RATES HIGH ON THOSE?

10 A. YES.

11 Q. IS THAT SOMETHING YOU WOULD LIKE TO PAY OFF?

12 A. I WOULD DEFINITELY PAY THEM OFF AND CLOSE THEM.

13 Q. OKAY.

14 BY MR. RIESEN:

15 _____ I BELIEVE -- LET'S SEE. THAT'S PROBABLY ALL I
16 HAVE.

17 BY COMMISSIONER BARDEN:

18 _____ THANK YOU, MR. RIESEN.

19 PLEASE ANSWER ANY QUESTIONS MS. FIEHRER HAS
20 FOR.

21 BY MS. FIEHRER:

22 _____ THANK YOU, COMMISSIONER.

23 CROSS EXAMINATION BY MS. FIEHRER:

24 Q. MR. BECKMAN, I HAVE A FEW FOLLOW-UP QUESTIONS.

25 A. OKAY.

1 Q. YOU MENTIONED THAT YOU HAD PARTICIPATED IN A D.O.T.
2 PHYSICAL?

3 A. RIGHT.

4 Q. WHEN WAS THAT?

5 A. NO, NO, I COULD NOT. MY D.O.T. CARD EXPIRED, AND I
6 WOULDN'T BE ABLE TO PASS A D.O.T. PHYSICAL.

7 Q. YOU DIDN'T TRY THOUGH; IS THAT CORRECT?

8 A. NO. I DIDN'T -- I WASN'T EMPLOYED BY ANYONE TO SEND
9 ME FOR A D.O.T. PHYSICAL.

10 Q. AS FAR AS THIS INJECTION THAT YOU REFERENCED TO YOUR
11 HIP, DO YOU HAVE ANY IDEA WHETHER OR NOT IT WAS
12 DIAGNOSTIC IN NATURE?

13 A. ALL -- NO, I DON'T.

14 BY MS. FIEHRER:

15 _____ COMMISSIONER, I WOULD LIKE TO DRAW YOUR
16 ATTENTION TO PAGE -- NOW, I LOST IT. I WANT TO SAY
17 IT WAS 133, DR. Z'S NOTES.

18 BY COMMISSIONER BARDEN:

19 _____ OKAY. I'LL PUT APPROXIMATELY; HOW ABOUT THAT?

20 CROSS EXAMINATION RESUMED BY MS. FIEHRER:

21 Q. AND YOU REFERENCED THAT YOU WERE TAKING CYMBALTA
22 THAT WAS PRESCRIBED BY DR. ZGLESZEWSKI; IS THAT
23 CORRECT?

24 A. THAT'S CORRECT.

25 Q. YOU'RE NO LONGER TAKING THAT?

- 1 A. NO.
- 2 Q. AND YOU HAVEN'T TAKEN IT IN ABOUT A YEAR?
- 3 A. I THINK THE LAST PRESCRIPTION WAS APPROXIMATELY A
- 4 YEAR AGO.
- 5 Q. THE LAST TIME YOU SAW DR. "Z" WAS IN MAY -- MAY 2ND,
- 6 2011? _____
- 7 A. YES.
- 8 Q. AND YOU HAVEN'T RECEIVED ANY PRESCRIPTIONS SINCE
- 9 THAT TIME?
- 10 A. CORRECT.
- 11 Q. AND SLEEPING MEDICATIONS, I TAKE IT YOU HAVEN'T
- 12 RECEIVED ANY PRESCRIPTIONS SINCE YOUR LAST
- 13 APPOINTMENT WITH DR. "Z"?
- 14 A. THAT'S CORRECT.
- 15 Q. AND YOU'RE NOT TAKING ANY MEDICATIONS ON A DAILY
- 16 BASIS; IS THAT CORRECT?
- 17 A. THAT'S CORRECT.
- 18 Q. THE OXYCODONE PRESCRIPTION THAT YOU'VE REFERENCED
- 19 THAT YOU TAKE ON AN AS-NEEDED BASIS, DID YOU RECEIVE
- 20 THAT FROM DR. "Z" ON OR BEFORE MAY 2ND, 2011?
- 21 A. YES.
- 22 Q. AND YOU HAVEN'T HAD ANY MEDICAL TREATMENT WHATSOEVER
- 23 SINCE MAY 2ND, 2011, WITH THE EXCEPTION OF THE
- 24 APPOINTMENT WITH DR. BOYD?
- 25 A. THAT'S CORRECT.

1 Q. I BELIEVE YOU TESTIFIED DR. BOYD REVIEWED THAT
2 PICTURE OF YOUR BACK THAT YOU SUBMITTED INTO THE
3 RECORD?

4 A. YES.

5 Q. DR. BOYD DID NOT RECOMMEND THAT YOU CONTINUE
6 RECEIVING ANY INJECTIONS; IS THAT CORRECT?

7 A. READING IN HIS FINAL REPORT, THAT'S CORRECT.

8 Q. YOU TESTIFIED QUITE A BIT ABOUT YOUR PHYSICAL
9 CAPABILITIES. DID YOU ALSO COMPLETE OR PARTICIPATE
10 IN A FUNCTIONAL CAPACITY EVALUATION?

11 A. YES.

12 BY MS. FIEHRER:

13 _____ COMMISSIONER, THAT F.C.E. IS ON PAGE 112 OF THE
14 APAs.

15 BY COMMISSIONER BARDEN:

16 _____ THANK YOU.

17 CROSS EXAMINATION RESUMED BY MS. FIEHRER:

18 Q. DOES IT SURPRISE YOU THAT THE MAJORITY OF YOUR
19 MEDICAL RECORDS INDICATE THAT YOUR RANGE OF MOTION,
20 THAT YOUR STRENGTH, THAT YOUR GAIT IS ALL NORMAL?

21 A. THAT DOES SURPRISE ME.

22 Q. DO YOU REMEMBER PARTICIPATING IN OR HAVING A NERVE
23 CONDUCTION STUDY WITH DR. "Z"?

24 A. YEAH.

25 Q. AND THE RESULTS OF THAT WERE THAT YOU DID NOT HAVE

1 RADICULOPATHY; IS THAT CORRECT?

2 A. THAT WAS HIS FINDING, YES.

3 Q. YOU MET WITH VOCATIONAL EVALUATOR JAN WESTMORELAND
4 ON MARCH 26TH, 2012. DO YOU RECALL THAT MEETING?

5 A. YES.

6 Q. I BELIEVE THE RECORD -- OR IT'S BEEN SUBMITTED. HER
7 REPORT HAS BEEN SUBMITTED INTO THE RECORD. AT THAT
8 TIME, YOU REPORTED THAT YOU WERE ABLE TO SWEEP AND
9 DUST AND VACUUM IN YOUR HOME?

10 A. YES.

11 Q. YOU ARE ABLE TO WASH DISHES?

12 A. YES.

13 Q. YOU ARE ABLE TO MOP; YOU ARE ABLE TO DO LAUNDRY?

14 A. I DON'T KNOW IF I SAID MOP, BUT I DO LAUNDRY, YES.

15 Q. AND YOU GO TO THE GYM APPROXIMATELY FIVE DAYS PER
16 WEEK?

17 A. THAT'S CORRECT.

18 Q. AND NOW YOU CAN SIT THROUGH A CHURCH SERVICE?

19 A. YES.

20 Q. WOULD YOU AGREE THAT YOUR ACTIVITIES HAVE INCREASED,
21 GOTTEN BETTER SINCE THE LAST VOCATIONAL EVALUATION
22 YOU HAD WITH MR. PRICE?

23 A. YES.

24 Q. YOU'VE REQUESTED A GYM MEMBERSHIP AS A RESULT OF
25 THIS CLAIM, CORRECT?

1 A. RIGHT.

2 Q. YOU WERE A MEMBER AT GOLD'S GYM PRIOR TO THIS
3 ACCIDENT, CORRECT?

4 A. I HAD BEEN, YES.

5 Q. YOU WERE ABLE TO PAY FOR YOUR GYM MEMBERSHIP AND SO
6 FORTH; YOU TESTIFIED YOU'VE WORKED OUT SINCE YOU
7 WERE 15 YEARS OLD?

8 A. YES.

9 Q. AND AS YOU'RE AWARE, THERE'S BEEN SURVEILLANCE
10 FOOTAGE OF YOU WHILE AT GOLD'S GYM, AND I BELIEVE
11 YOU'VE STIPULATED THAT THAT'S YOU IN THE VIDEO?

12 A. YES.

13 Q. AND YOU ARE ABLE TO WALK ON THE TREADMILL; IS THAT
14 CORRECT?

15 A. YES.

16 Q. YOU ARE ABLE TO USE THE ELLIPTICAL MACHINE?

17 A. YES.

18 Q. YOU ARE ABLE TO USE THE NAUTILUS MACHINES?

19 A. YES.

20 BY MS. FIEHRER:

21 _____ COMMISSIONER, I BELIEVE THOSE ARE ALL THE
22 QUESTIONS I HAVE.

23 BY COMMISSIONER BARDEN:

24 _____ THANK YOU. MR. RIESEN, ANYTHING ON RE-DIRECT?

25 BY MR. RIESEN:

1 _____ JUST A COUPLE.

2 BY COMMISSIONER BARDEN:

3 _____ ALL RIGHT.

4 RE-DIRECT EXAMINATION BY MR. RIESEN:

5 Q. YOU DID THE F.C.E. HOW WERE YOU AFTER YOU TOOK IT?

6 A. I WAS IN SEVERE PAIN FOR ABOUT THREE DAYS.

7 Q. DID YOU GIVE IT 100 TO 100-PLUS PERCENT?

8 A. OH, ABSOLUTELY.

9 Q. AND AFTER -- WITHIN THOSE THREE DAYS, SUPPOSE YOU
10 HAD TO DO THAT F.C.E. AT WORK, COULD YOU DO IT AND
11 WORK?

12 A. IF MY WORK WEEK WAS ONE DAY.

13 Q. OKAY. ALL RIGHT. AND YOU'VE INDICATED THAT DR. "Z"
14 GAVE YOU INJECTIONS TO YOUR HIPS, AND THEY HELPED?

15 A. YES, CORRECT.

16 BY MR. RIESEN:

17 _____ THAT'S ALL I HAVE.

18 BY MS. FIEHRER:

19 _____ I HAVE NO FOLLOW UP.

20 BY COMMISSIONER BARDEN:

21 _____ YES, GO AHEAD.

22 BY MS. FIEHRER:

23 _____ NO, I DON'T.

24 BY COMMISSIONER BARDEN:

25 _____ OH, YOU HAVE NO FOLLOW UP, ALL RIGHT. ANY

1 REBUTTAL WITNESSES?

2 BY MS. FIEHRER:

3 _____ NO.

4 BY COMMISSIONER BARDEN:

5 _____ THAT CONCLUDES THIS PROCEEDING. THANK Y'ALL.

6 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
7 CONCLUDED AT THE HOUR OF 1:53 P.M.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1002925

NEAL BECKMAN	)	
CLAIMANT,	)	
VS.	)	SC WORKERS' COMPENSATION COMMISSION
	)	
SYSCO COLUMBIA	)	HEARING OF
	)	
EMPLOYER,	)	NEAL BECKMAN
AND	)	
	)	VS
GALLAGHER BASSETT	)	
	)	SYSCO COLUMBIA
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Neal Beckman versus Sysco Columbia, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:50 P.M., Monday, October 22, 2012, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

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REPORTED

BY

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PALMETTO COURT REPORTING
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APPEARANCES

FOR THE APPELLANT:

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COMMISSIONERS PRESENT:

Derrick Williams, Chair
T. Scott Beck
Avery Wilkerson

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

	Page
Argument for the Appellant by Mr. Riesen	5:1
Argument for the Respondent by Ms. Walton	10:25
Reply for the Appellant by Mr. Riesen	15:3
Certificate	17

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STIPULATIONS

Commissioner Williams: You can call the case, Madame Court Reporter.

Court Reporter: Today is October the 22nd, 2012. This is South Carolina Workers' Compensation Case Number 1002925. This is the case of Neal Beckman, Claimant, versus Sysco Columbia, Employer, and American Zurich Insurance Company is the carrier. The Appellant is the Claimant represented by Fred W. Riesen, Junior. The Respondent is represented by Kathryn R. Fiehrer Walton. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner Barden.

Commissioner Williams: All right.

Ms. Walton: The only -- I would note that it's -- Gallagher Bassett is the carrier and not Zurich.

Commissioner Williams: Okay. All right. Mr. Riesen.

Mr. Riessen: All right.

ARGUMENT FOR THE APPELLANT

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1 By Mr. Riesen:

2 Gentlemen, may it please the Appellant Panel?
3 This is a case, it's a pretty much a -- a one (1)
4 issue case, you know, the bottom line is -- is it
5 a Section 42-9-30 or 42-9-20, okay? Essentially,
6 the Defendants filed a 21 and asked for a credit.
7 We ask that it be awarded as what I always refer
8 to as a wage differential case. The bottom line
9 is, obviously, I'm the Appellant so it went the
10 other way. She made a -- a ruling based upon the
11 scheduled award and we felt like it should have
12 been just the opposite. By way of history we've
13 got about a forty-five (45) or forty-six (46) year
14 old guy who it's undisputable, he's been married
15 about twenty-five (25) years, he's got two (2)
16 adult -- adult children; they -- the youngest one
17 is twenty-one (21), been working for this company
18 for about seven (7) years, all of his life he's
19 been primarily engaged in heavy duty lifting type
20 of work. What's kind of unusual about this case
21 is there were two (2) Vocational Experts involved,
22 one (1) from our side and one (1) from their side,
23 both of which felt like that this was a
24 substantial loss of wage -- wage loss and because
25 of that I kind of took two (2) and divided it up

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1 to try to get an idea of what the differential
2 was; obviously, the Hearing Commissioner didn't
3 buy what I was trying to do. Our -- our feeling
4 was that it was -- it was clearly more than one
5 (1) body part involved. The Commissioner held
6 basically that only the back was involved and
7 stated it was because it was not substantial
8 objective evidence to this effect. About the only
9 thing that was not objective that was -- the EMG
10 was -- it was not positive. Notwithstanding
11 that, the -- the treating physician who is Doctor
12 -- like I say, Z, treated him for a year and a
13 half hands-on, did a lot of treatment and
14 concluded unequivocally in his 14-B that in
15 addition to the back, which he broke out between
16 the S-I joint and the lower back, there was a
17 lower extremity, left lower extremity, affected.
18 So, we felt like the evidence was clear that more
19 than one (1) body part was involved.

20 Commissioner Beck: But even assuming that
21 fact, Mr. Riesen, would you dispute that the
22 Commissioner had two (2) approaches to take in
23 this case; one (1), to go either a 20 or -- or a
24 10 case or, two (2), to award to the back taking
25 into account the radiculopathy?

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1 Mr. Riesen: No question.

2 Commissioner Beck: All right.

3 Mr. Riesen: She had -- she could go either
4 way.

5 Commissioner Beck: She could.

6 Mr. Riesen: My feeling though, the workers'
7 Compensation Act -- here me for a minute. I've
8 been probably doing this for thirty (30) plus
9 years, okay? If I had to pick out one (1) section
10 of that statute that told us what the workers'
11 Comp Act was all about, it would be that section.
12 The vast -- and while I still like to do this work
13 today its -- regardless of what you might read in
14 other places -- the vast majority of injured
15 workers, all they want to do is get fixed
16 medically and get back to work, okay? So, if you
17 can go into work every day and help somebody do
18 that it's beneficial. This section does just
19 that. It says look, you're working hard to get
20 back to work; we want you to do that, you know?
21 We recognize that all the voc people have said,
22 and you've said, that you can't make what you were
23 making before so it's going to take you a number
24 of years to get back on top. That's what this
25 gentleman was trying to do, you know? I mean, he

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1 went out of his way, out of his way. He quit
2 smoking, lost forty (40) pounds, went to the gym
3 five (5) days a week.

4 Commissioner Beck: What did the video show
5 at Gold's Gym?

6 Mr. Riesen: The beautiful thing it showed
7 was this: One (1) of two (2) people in there,
8 he's out there doing elliptical or the treadmill
9 and because he had been a -- a gym freak early on
10 in his life, like some of us are, he was making
11 sure he wasn't hurting himself, okay? But if you
12 look in that photograph you can see -- and it's no
13 social setting; it's not a little bunch of doll
14 babies that you're running around there taking
15 classes with. I mean, bottom line, people that
16 know the gym like you know the gym, you go in
17 there and you get done what you've got to get done
18 and you get out of there. And if it's -- it's
19 important -- I'm -- I'm a living example; I can do
20 anything I want to do but the first thing I do is
21 get my workout everyday. I think it's critical;
22 he felt the same way. So, it's almost demeaning
23 when -- when you say that because he felt like
24 socially withdrawn that they would use that gym to
25 suggest because he's doing what -- what the doctor

1 suggested, he's going in there working his butt --
2 working his self off for five (5) days a week and
3 doing what he did, that that would somehow suggest
4 that he's not telling the truth. You know, here's
5 a guy that was eighty-seven percent (87%) on the
6 functional eval. He's done anything and
7 everything that you could possibly ask for to get
8 back to work, okay? He's done it all, you know?
9 In addition to that, he has this flare. The
10 testimony will indicate about every few months he
11 might have a serious flare; every few weeks it's a
12 so-so flare. He had a flare February the 14th,
13 valentine's Day, in 2012, trying to go to the pot.
14 He got laid out for the better part of thirteen
15 (13) days when they had set him up with their --
16 their -- their surgical doctor in Columbia, who
17 looked at -- at -- and his wife took a picture of
18 him and it's in there; the pictures are in my
19 brief of what he looked like, okay? He took that
20 to the doctor up there and that Doctor said wow.
21 Wow. In addition to that, found muscular -- he
22 found spasms and all thirteen (13) days later.
23 And so, to suggest that on one (1) occasion when
24 he was saying he was feeling better that -- that
25 no other part of the body was -- was affected I

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1 think that's a stretch. And it quite frankly, was
2 demeaning to suggest that -- that by going to the
3 gym and trying to do the things that you want to
4 do that, you know, you're setting a different type
5 of tone. I mean, it -- it -- you know, you're
6 socially -- you know, you can -- you're outgoing
7 and all this stuff. I just think it was wrong.
8 So, I -- I believe if you look at -- at the 14-B
9 the Doctor -- the -- the question the Doctor feels
10 that under these circumstances it was
11 radiculopathy as well. He treated him for a year
12 and a half and I just think that -- that under
13 those circumstances that she should have gone
14 with, you know, what you can -- what's best for
15 this man. If you can go either way; why wouldn't
16 you give him the benefit of the doubt? Give him
17 the opportunity to get back in the -- in the
18 workforce, you know? Since then he's found a job,
19 it lasted two (2) days, okay? He couldn't do it.
20 But, anyway, that's where we are and I would ask
21 you to seriously consider sending it back down and
22 reversing it on the -- on -- on those grounds.

23 Commissioner Williams: Okay. Ms. Walton.

24 ARGUMENT FOR THE RESPONDENT

25 By Ms. Walton:

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1 Thank you, Commissioners. I'm here on behalf
2 of Sysco Columbia and Gallagher Bassett.
3 Obviously, we believe that Commissioner Barden
4 reached the correct conclusion in compensating Mr.
5 Beckman for a 42-9-30 case. We feel that this
6 evidence strongly suggests, and certainly the
7 greater weight of the evidence, suggests that only
8 his back was impaired as a result of this
9 accident. The Claimant was compensated for
10 thirty-five percent (35%) loss of use of his back
11 based on the permanency award and, obviously, he's
12 requesting a 42-9-20 award as he said. The
13 objective evidence is really what we have been
14 arguing from the beginning in this case and it's
15 not just a nerve conduction study. Yes, the nerve
16 conduction study did come back normal suggesting
17 that there wasn't any evidence of radiculopathy in
18 either of the lower extremities. Dr. D -- Z did
19 indicate that it's an imperfect tool for
20 diagnosing -- diagnose -- for diagnosing
21 radiculopathy; however, Dr. Scott Boyd, who is a
22 Neurosurgeon, also reviewed the actual MRI and he
23 came to the conclusion that there wasn't any kind
24 of nerve root compromise or impingement that would
25 be substantiating the Claimant's complaints of

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1 radiculopathy as well. And based on both of
2 these, the nerve conduction study and the MRI,
3 having objective evidence that there isn't
4 anything to explain the Claimant's objective
5 complaints, we -- we really feel like that's the
6 greater weight of the evidence in this case and
7 that the Commissioner reached the correct
8 decision. As far as the impairment ratings, the
9 Claimant would certainly -- we're not arguing that
10 he didn't sustain any impairment or that he
11 shouldn't be compensated for his impairment but he
12 -- we believe that this is in accordance with the
13 ratings. Dr. Z indicated that the Claimant had a
14 total of fifteen percent (15%) impairment to the
15 back based on his S-I joint and his lumbar injury.
16 He also indicated that the Claimant could return
17 to work in a medium duty capacity. And I would
18 request that any evidence that's not included in
19 the hearing -- original hearing transcript that
20 was referenced today be stricken from the record
21 because obviously we don't have any way to
22 evaluate or have any information on the Claimant's
23 current working or whether he lost his job after
24 two (2) days or anything along those lines. Dr.
25 Boyd also noted that the Claimant had a steady

1 gait; that is something that was continually
2 referenced through every single medical record
3 even with Dr. Zgleszewski. The Claimant had a
4 steady gait, he had strength in his lower
5 extremities, there didn't seem to be any deformity
6 in that regard and we believe that's what the
7 surveillance shows. And in my opinion the
8 surveillance wasn't submitted to show he was doing
9 something that he shouldn't be doing or that he
10 was lying by any stretch of the imagination but I
11 think it confirms he wasn't just walking on a
12 treadmill, he wasn't just using an elliptical
13 machine but he was using the Nautilus weight
14 machines on a regular basis. And I think that
15 those -- you know, when you're doing a leg press I
16 think it shows that you have use of your lower
17 extremities. I, personally, have a hard time
18 believing subjective complaints of radiculopathy
19 when you can do things along those lines and I
20 think it shows the Claimant's current condition.
21 The Claimant, himself, admitted that during his
22 initial vocational evaluation with David Price
23 that the Claimant's attorney had set up he had
24 additional complaints with regard to his inability
25 to sit for a long period of time, his strength was

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1 less, he had -- was taking pain medications on a
2 regular basis. And by the time he was evaluated
3 by Jan Wesmoreland he wasn't on any medications,
4 he was able to sit longer, go to church, get back
5 to his previous activities; he indicated that he
6 was improving. The Claimant's testimony at the
7 hearing was that he had been released in May of
8 2011, and since that time he hasn't taken any pain
9 medications and I believe this hearing was in
10 April of 2012. He hasn't had any medical
11 evaluations or requests, whatsoever, with the
12 exception of the neurosurgical evaluation that we
13 had approved. So, we really feel like he has been
14 compensated for his current impairment and he
15 certainly -- you know, compliments to him for
16 going to the gym and for losing the weight but I
17 don't believe that that takes it off of a 42-9-30
18 situation when he has been compensated for his
19 impairment and I don't think there's any evidence
20 other than his personal complaints to indicate
21 that there are any other body parts that are
22 affected aside from the back. Any questions?
23 Thank you.

24 Commissioner Beck: All right. Mr. Riesen.

25 Mr. Riesen: Just a couple of follow up

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1 points.

2 RESPONSE FOR THE APPELLANT

3 By Mr. Riesen:

4 No question, this guy is as honest as it can
5 be as far as telling it like it is, okay? No
6 question, he was better between the time we sent
7 him to our voc guy and they sent him to theirs six
8 (6) months later, okay? But what's also critical
9 is this thing comes and it goes and he had this
10 serious flare after, after, going to their voc
11 rehab person. A picture of what the heck he
12 looked like and he took that to the doctor in
13 Columbia and he saw it and had agreed. So, it --
14 that picture shows what he goes through when he
15 has one (1) of these flares. And -- and so, you
16 know, to suggest that here's somebody that -- that
17 grew up knowing what a gym was like, here's
18 somebody that knew what his back was like, he was
19 extremely careful in everything he did with
20 regards to making sure his back was supported and
21 if he's doing some presses, obviously, he could --
22 his test -- testimony was he can't lift near what
23 he did before and doesn't try to because he
24 doesn't want to hurt himself. So, that -- and,
25 again, I apologize for mentioning the fact that he

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1 tried another job, found -- finally found a job
2 and couldn't do it; that's got nothing to do with
3 today. I shouldn't have said that and I apologize
4 for that. But look at the pictures in that gym,
5 just look at them; you'll see what he's in. It's
6 a serious gym. Gold's Gym's a serious gym. It's
7 what somebody goes and they go and they do what
8 they need to do to try to get better and he gave
9 it his best shot and I would hope that the
10 Commission would give it you all's best shot.

11 Commissioner Williams: All right. That will
12 conclude this hearing. Thank you all.

13 (THERE BEING NO FURTHER ARGUMENTS, THE FULL COMMISSION
14 HEARING CONCLUDED AT 3:05 P. M.)

Injury / Illness Examination Record					
PATIENT LAST NAME Beckman		FIRST NAME: Neal	M.I.: P	AGE: 43	GENDER: Male
DATE OF TREATMENT: 03/26/2010	DATE OF INJURY: 03/25/2010	PRACTITIONER'S NAME: Barbara McKellar			

CHIEF COMPLAINT: Patient wrote "back injury".

HISTORY OF PRESENT ILLNESS: This is the initial visit for Neal Beckman, a 43 year-old male, whose primary complaint is moderate numbness and pain which is located in his low back and left leg. He describes it as "aching". He sts he injured his low back yesterday pulling a hand truck. This patient goes on to say this is the 4th injury to his back since last November. He sts he has been treated at Healthworks each time with medication and work modifications. He sts he does not feel his symptoms have ever completely resolved and he is concerned now about the radiculopathy down his left leg. He feels more needs to be done at this point in regards to finding out why he injures his back so frequently and easily.

VITAL SIGNS: Height: 70 inches. Weight: 234 pounds. Blood Pressure: 121/71 sitting. Pulse: 70/min and regular. Respirations: 16/min. Respirations are normal.

PHYSICAL EXAMINATION: Lumbar Spine: ambulates, sits and stands slowly but without difficulty--decreased rom with all motion--c/o pain with forward and lateral flexion to left--slr positive for pain on left--dtr decreased on left

DIAGNOSIS: 1. lumbar strain (922.3).

MEDICAL DECISION MAKING: 1) Ibuprofen 200 mg-1 or 2 every 6 huors if needed for discomfort
2) alternate ice/heat to back every 4 hours-instructed to put ice/heat over clothing
3) return Monday to see Dr. Floyd re: need for mri vs continuing conservative treatment
4) go to ER should sx increase or any incontinence occur

WORK CAPACITY: MODIFIED DUTY -- no lifting >20 lbs.-- no bending, twisting, pushing or pulling--alternate walking, sitting and standing, no strenuous activity

Barbara McKellar NP-C



HealthWorks

Initial Treatment Statement

TO BE COMPLETED BY EMPLOYEE:

Employee: Neal Beckman

Last four of SSN: [REDACTED] DOB: 9-29-66

Employer: Sysco

Job Title: Driver

Description of Injury: Back injury

I hereby authorize the release of all medical information pertaining to this injury/illness to my employer, insurance company, HealthWorks, and any medical provider involved in the diagnosis or treatment of this injury. In addition, authorization is hereby given to this treating facility to perform any and all tests or procedures relative to my injury/illness as deemed necessary by the healthcare provider. If this claim is denied by my employer's Workers Compensation carrier, I am responsible for my bill. Date 3-26-10 Signature [Signature]

TO BE COMPLETED BY PROVIDER:

Visit date: 3-26-10 Visit time: 11:10

Diagnosis L5 Strain

Treatment: ☐ Xrays ☐ MRI ☐ PT ☐ HEP Instructions ☐ Sutures ☐ Wound-care Instructions ☐ Handout
☐ Immobilized with Splint / Brace ☐ Crutches with Instructions ☐ Referred to: _____
☐ Other _____

Work Status

- ☐ Return to regular duty immediately.
- ☒ Return to modified duty on (date) 3-26-10 with the following restrictions:
- ☒ No lifting greater than 20 pounds. ☐ No lifting greater than _____ pounds with involved arm.
 - ☐ Limitations of motion:
 - ☒ No/Minimal bending, twisting, pushing or pulling.
 - ☒ No strenuous activity.
 - ☐ Sedentary activity only.
 - ☐ No/Minimal weight bearing on involved leg.
 - ☐ No climbing or descending stairs or ladders.
 - ☐ No repetitive bending with involved arm.
 - ☐ No over-shoulder level reaching and no strenuous activity with involved arm.
 - ☐ Patient must avoid contact with aggressive patients or individuals.
 - ☐ Patient must keep sutures/wound clean and dry.
 - ☐ Other _____
 - ☐ Must wear brace / splint at work.

☐ Patient is unable to work at this time.

☒ These restrictions apply until (date) 3/29/10 at that time:

☒ restrictions will be reassessed OR ☐ patient may return to full duty.

Instructions:

- ☒ Medications ☒ Ice/Heat Therapy ☐ Rest ☐ Elevation ☐ Wound-care as Instructed ☐ HEP as Instructed.
- ☐ Patient instructed follow-up with HealthWorks in _____ or immediately for any worsening of symptoms or for any signs or symptoms of infection as discussed.

☐ Follow-up appointment (Date / Time)

Provider's signature: [Signature]

Visit Time Out: 11:10 A

Downtown: Taylor at Marion Street
Columbia, SC 29220
Phone 803.296.3500 Fax 803.296.3965
Medical Director Initials: WCF
1090870 4/06 R 5/09

RMH: 9 Medical Park, Suite 360
Columbia, SC 29203
Phone 803.434.7442 Fax 803.434.3587
Form Revised 12-18-2008

Mar. 29. 2010 12:44PM Dr. Williams

Back Injury Disposition Form

No. 9342 P. 1
BYRON WILLIAMS, M.D.
Coastal Occupational Medicine
3605 Meeting Street Rd., Ste. C
Charleston, SC 29405-5760
Phone: (843) 744-3600
Fax: (843) 744-3938

TIME IN: 1125A
TIME OUT: 1250P

877-483-0874
Pete Francia

Name Neal Beckman S.S.# [REDACTED]
Employer Susco Food x LCVRS Occupation DRIVER
Home Address [REDACTED] Home Tel. 843 4010 3210
Sex M Marital Status M Age 42 Birth Date 9/29/1967 Business Tel. 803 299-4000
Date & Time of Injury 3/25/2010 550 AM First Exam 3/29/2010 1030 A.M./P.M.
Allergy? ☒ No ☐ Yes What?

Is there history of: ☐ Diabetes ☐ Heart Trouble ☐ Ulcer ☒ Back Trouble ☐ Arthritis

☐ High Blood Pressure ☐ Asthma PREVIOUS BACK INJURIES STARTING IN 11/2009 -
12/2009 (lumbar strain) (no films or MRI ever done)

State of Last Tetanus Immunization? UNKNOWN Are You Pregnant? N/A

Is Patient on any medication now? ☒ No ☐ Yes What:

Have you previously been seen at COM? ☐ No ☒ Yes Why and When?

History of Injury IT STATES HE WAS PULLING HIS HAND TRUCK UP STAIRS AND FELT
PAIN IN LUMBAR BACK THAT RADIATES AROUND BILATERAL HIP AND RT LEG
INTO FOSS. PT EXPERIENCING NUMBNESS INTO RT LEG.

Location of Pain: lumbar - sacral

Tenderness: Mild

Rotation: 25%

Deep Tendon Reflexes: Normal

Deep Knee Bend: 50%

Heel-Toe Walk Good quality

Extension: 5"

Right Lateral Bend: 100

Radiation: to left foot

Left Lateral Bend: 100

SLR: (R) - (L) pain on exten.

Comment:

Flexes 30° until fingertips come within inches of floor. Reversal of normal lordotic curve

Diagnosis low back sprain

Treatment meds

(1) Medical record release faxed to Dr. Floyd (Healthworks 803-790-3500) (CAB)

(2) Heat/Heat Sheet (CAB)

(3) Hydrocortisone A.P.A.P.

(4) Motrin 800 mg tid # 30

5 mg x 4 q 4-6

(5) Soma 350 mg tid + H.S. # 30

per severe pain

X-Ray L-5 spine

(6) Gait belt for P.T. in case he fell it.

Work Status: ☐ Regular Work ☐ Light Work ☒ Sedentary Work ☐ Resume regular duty as tolerated

Limitations: ☒ Not to lift, push or pull over 10 pounds. ☒ Weight bearing as tolerated

☒ Ground level work.

☒ Bending & Stooping only as tolerated.

Comments: Cannot drive the truck yet.

Date of Next Visit 4/6/10 1000P

Byron Williams M.D.

I hereby authorize Coastal Occupational Medicine to speak to the insurance carrier, my employer, rehabilitation specialists, case managers, defense attorneys or other physicians regarding my medical care/treatment I have received or will receive. I also authorize access to any records the above may have.

Neal Beckman

DATE 3/29/2010

BYRON WILLIAMS, M.D.
 COASTAL OCCUPATIONAL MEDICINE
 3805 MEETING ST. RD. SUITE C
 CHARLESTON, SC 29405

843-744-3500
 Fax: 843-744-3538

Return To Work Slip

M. Neal Beckman

HAS AN APPOINTMENT ON

☐ MON ☒ TUES ☐ WED ☐ THUR ☐ FRI

DATE 4/16 AT 1:00 PM

BYRON WILLIAMS, M.D.

COASTAL OCCUPATIONAL MEDICINE
 3805 MEETING ST. RD. SUITE C
 CHARLESTON, SC 29405

TEL: (843) 744-3500
 FAX: (843) 744-3538

IF UNABLE TO KEEP APPOINTMENT PLEASE GIVE 24 HOURS NOTICE

not drive truck.

☐ Tolerated ☐

☐ pounds

rated

Other Comments:

Return in 4 weeks by 10:00 AM

Dr.

Byron Williams, M.D.

Date:

3/29/2010

area during the first 48 hours.
 least 1 hour before beginning
 ere is a cloth between ice pack
 plying ice. Move ice pack

Following an injury, Apply heat in
 heat regimen again. Never
 between heat pad and skin to

Apr. 6. 2010 10:32AM Dr. Williams

No. 9421 P. 1/1

Patient Return Report

BYRON WILLIAMS, M.D.
Coastal Occupational Medicine
Suite C Pinshaven Professional Bldg.
3605 Meeting St. Rd.
Charleston, S.C. 29405
843-744-3500
FAX: 843-744-3838

TIME IN 1000A
TIME OUT _____

877-483-0874

Employee Neal Beckman

Date 4/6/2010

Employer Sysco Food

Date of Injury 3/25/2010

Diagnosis low back sprain

Date of Last Visit Prior to Return 3/29/2010

Physical Exam pt returns today & slight improvement of low back pain. pt
clo pain mostly on (L) side, and radiating down into (L) leg. pt continues
medications as prescribed Motrin 600mg, Soma 350mg, and Hydrocodone
Emcy. - pt needs refills of medications. pt currently unable to work due
to back injury.

Minimal improvement. DTR's wnl.

Impression: Same (He may have a disc)

Report of X-ray and/or Special Tests Unremarkable

Treatment and/or Disposition - Remarks: (1) Talc therapy x 20min (CAB)
(2) Rx fill meds.
(3) Therap beads back pack (CAB)
(4) Medrol dose pack.

Has reached maximum medical improvement ☐ Yes ☐ No Impairment? ☐ Yes ☐ No

Partial ☐
Temporary ☐
Permanent ☐

Comment: _____

Work Status: Regular Duty ☐ Limited Duty: ☐ Resume regular duty as tolerated ☐

Limitations: Unable to work.

☐ Return in } _____
☐ Call back } _____
if having any residual.

Date of Next Visit 4/13/10 1000A

Byron Williams, M.D.

BYRON WILLIAMS, M.D.
COASTAL OCCUPATIONAL MEDICINE
3605 MEETING ST. RD. SUITE C
CHARLESTON, SC 29405

843-744-3500
FAX 843-744-3938

BY Neal Beyman

HAS AN APPOINTMENT ON

DATE 4/12 AT 1000 PM

BYRON WILLIAMS, M.D.

COASTAL OCCUPATIONAL MEDICINE
3605 MEETING ST. RD. SUITE C
CHARLESTON, SC 29405

IF UNABLE TO KEEP APPOINTMENT KINDLY GIVE 24 HOURS NOTICE

☐ Bedding and sleeping on/as tolerated

Other Comments: (Dr) 4/12 @ 1000

Dr: Byron Williams, M.D. Date: 4/10/2010

Apr. 12. 2010 10:40AM Dr. Williams

No. 9488 P. 1

Patient Return Report

TIME IN 9:00A
TIME OUT 10:00A

877-483-0874

BYRON WILLIAMS, M.D.
Coastal Occupational Medicine
Suite C Pinehaven Professional Bldg.
3606 Meeting St. Rd.
Charleston, S.C. 29405
843-744-3500
FAX: 843-744-3938

Employee Ned Beckman
Employer Sysco Foods

Date 4/12/2010

Date of Injury 3/25/2010

Diagnosis low back sprain

Date of Last Visit Prior to Return 4/6/2010

Physical Exam pt returns today & pain getting worse and a new symptom of pain starting @ (L) groin down back of inside of (L) thigh and (L) foot & toes numbness. pt c/o no feeling in 2-5th toes of (L) foot. pt finished medical cleve pack yesterday. pt continues other medications as prescribed. pt currently out of work.

Impression: Same (I suspect he has a disc)

Report of X-ray and/or Special Tests

Treatment and/or Disposition - Remarks: (1) Can't walk (Has plenty)
(2) MRI L-5 spine -> PDM 800-4656-3221
Prescript 911-782-3101

Has reached maximum medical improvement ☐ Yes ☐ No Impairment? ☐ Yes ☐ No
Partial ☐
Temporary ☐
Permanent ☐

Comment:

Work Status: Regular Duty ☐ Limited Duty: ☐ Resume regular duty as tolerated ☐

Limitations: Unable to work.

☐ Return in } _____ if having any residual.
☐ Call back }

Date of Next Visit 3 days after MRI Byron Williams, M.D.

Coastal Occupational Medicine Radiology Report

Name: Beckman, Neal
Date of Exam: 3/29/2010
Date of Birth: 9/29/1966
Ordering Physician: Byron Williams, M.D.
Clinical Information: Injury, strain

Lumbosacral Spine, 3 views

AP and lateral views, and a lumbosacral spot view. The alignment is normal except for loss of lordosis which may be due to paravertebral muscle spasm. The vertebral body heights are normal. The disc spaces are normal except for mild narrowing of the L3/4 disc space, which also shows mild endplate spurring. There are five non-rib-bearing lumbar vertebrae. There is spina bifida occulta at L5, likely of no clinical significance. The facet joints are unremarkable. The pedicles are intact. No fracture is demonstrated.

Conclusion: Mild appearing degenerative disc disease at L3/4; indirect evidence of paravertebral muscle spasm.

Pamela Coyle, M.D.
Radiologist, ABR Certified 1975
Date of Interpretation: 4/04/10



TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Beckman, Neal
DOB: 9/29/1966
MRN: 455431
PHYSICIAN: Byron Williams, MD
DATE: 4/14/2010

EXAM: MRI OF THE LUMBAR SPINE WITHOUT CONTRAST

HISTORY: Persistent low back pain with bilateral radicular pain and numbness in right foot since back strain on 03/25/2010.

TECHNIQUE: Sagittal T1 and T2 and axial T1 and T2 and sagittal STIR MR images of the lumbar spine obtained on high-field 1.5 Tesla MRI. No contrast.

COMPARISON: No prior studies available for direct comparison.

FINDINGS: From the sagittal views the lumbar vertebral bodies demonstrate normal height, alignment and signal intensity. Smooth endplate irregularities of lower lumbar vertebral bodies suggests remote small Schmorl's nodes. This is also identified at the superior endplate of S1. No acute fracture line seen. Conus medullaris in the expected location at the L1-L2 level. The visualized portion of the thoracic cord is unremarkable. No convincing evidence for stress or insufficiency type fracture from the STIR sagittal images.

T11-12 through L1-2: No significant disc bulge or protrusion. No significant central or exit narrowing.

L2-3: Disc bulge and facet hypertrophy. Slightly bilobed appearance of the disc. Mild central and mild bilateral exit narrowing. Crowding of the exiting nerves at the level of the neural foramen. Possible contact of the exiting nerves in a far lateral position at the outer margin of the neural foramen. No frank impingement. Mild lateral recess stenosis. Facet hypertrophic changes and mild fluid in the facet joints.

L3-4: Disc bulge and facet hypertrophy. Flattening of the thecal sac anteriorly. Contact of the transitioning L4 nerve roots and mild lateral recess stenosis. Mild to moderate bilateral exit narrowing and contact of the exiting nerves at the level of the neural foramen, left greater than right. Contact, slight deflection of the exiting left L3 nerve. Possible effect on the exiting left L3. No frank impingement. Facet hypertrophic changes and mild fluid in the facet joints.

L4-5: Disc bulge and facet hypertrophy. Paracentral left shallow disc extrusion with a craniocaudal dimension of roughly 1.4 cm extending posteriorly approximately 5.9 mm. Contact, slight deflection and possible effect on the transitioning left L5 nerve root. Contact of the transitioning right L5 nerve root. Moderate left and mild right lateral recess stenosis. Moderate bilateral exit narrowing. Crowding of the exiting nerves at the level of the neural foramen. Possible contact of the exiting nerves at the level of the neural foramen. No frank impingement at the level of the neural foramen. Facet hypertrophic changes and mild fluid in the facet joints.

L5-S1: Disc bulge and facet hypertrophy. Central and paracentral right shallow broad-based protrusion. Slight crowding of the transitioning S1 nerve roots. No frank impingement. Mild bilateral exit narrowing and slight crowding of the exiting nerves at the level of the neural foramen, right greater than left. No frank impingement at the level of the neural foramen. Possible contact of the exiting right nerve.

IMPRESSION:

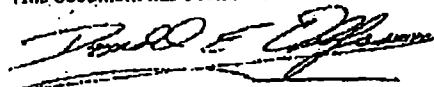
1. Degenerative change as above most pronounced L3-4 and L4-5 on the left.
2. The findings predominate on the left and the history states right. Recommend correlation with physical examination findings.
3. Multilevel remote Schmorl's nodes. Facet arthropathy. Mildly prominent epidural fat noted.

Patient Name: Beckman, Neal
MRN: 455431
EXAM: MRI OF THE LUMBAR SPINE WITHOUT CONTRAST

Donald E. Olofsson, DO
DO/dg

DD: 4/15/2010 / DT: 4/15/2010
JOB: 10346516

This document has been reviewed and electronically signed by





Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider:
Supervising: Timothy M. Zgleszewski, MD
Performing: Eliza Hough, PA-C

Encounter Date: Apr 19, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

HPI:
NEW PATIENT CONSULTATION

CHIEF COMPLAINT: lower back pain.

HISTORY:
Mr. Beckman is a 43 year old male who presents today secondary to the above complaints.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left posterolateral buttock greater than right, radiates to the posterolateral left thigh greater than the right, and extends past the knee to the right foot, does not radiate to the left foot. The patient describes the pain as a deep aching, gnawing and sharp pain. Aggravating factors include forward bending, sitting, standing, twisting and walking. Alleviating factors include backward bending and lying on the back. The patient's current pain averages around 5/10 in the pain scale. At times it flares up to 7/10 in the pain scale. Pain is minimal upon waking in the morning and then begins to increase 30-45min after getting out of bed.

The patient has not had interventional spinal procedures in the past. The patient has not had physical therapy in the past. The patient has not had chiropractic treatment in the past. The patient's diagnostic testing includes lumbar MRI performed to date. Results were as follows: (scanned).

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 04/19/2010 Page: 1

Current Medication:

- 1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
- 2 Flexeril 10 Mg Tablet (Other MD) SIG: Take 1 four times a day
- 3 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Physical Examination:

CONSTITUTIONAL:

Physical examination reveals well nourished, well-developed, Slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to time, place, and person with normal mood and affect. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There is no lumbar shift present upon examination. There are no new surgical incisions. Pain is increased with extension, right lateral rotation, left lateral rotation and pain is relieved by forward bending. Range of motion of the hips is normal. On palpation, there is tenderness in bilateral lumbar paraspinals. There is tenderness over the left greater trochanter. There is no tenderness over the PSIS's bilaterally. Fortin Finger Test and Patricks test are both negative bilaterally. There are negative neural tension signs in both legs in the seated slumped position. There is a negative Straight leg test bilaterally.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity motor examination is normal today. Deep tendon reflexes of the bilateral patella and Achilles tendon are normal and symmetric today. Bilateral lower extremity sensory examination is normal to soft touch and pinprick today.

HEART:

PMI is nondisplaced and normal in character, no heave or abnormal pulsation. Normal sinus rhythm with normal S1 and S2 without audible click, murmur or rub.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnosis:

- 724.2 Lumbago
- 724.8 Lumbar Facet Syndrome

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. We can assume management of Mr. Beckman's pain medication if needed in the future. Presently Dr. Williams has provided his pain medication.

Mr. Beckman is reporting increased lower back pain with extension, left and right lateral rotation and decreased lower back pain with forward bending. Based on his history and exam above, it is likely that he has facet joint pain. We will perform bilateral diagnostic facet joint injections to the lumbar spine to rule out facet joint pain, if negative we will perform bilateral SI joint injection to rule out SI joint pain.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination but will require further diagnostic testing and treatment as outlined below prior to the initiation of rehabilitation therapy.

DIAGNOSTIC PROCEDURES:

Diagnostic lumbosacral facet nerve blocks to the bilateral L3-L4, L4-L5 and L5-S1 facet joints under fluoroscopic guidance utilizing a pain diary. If positive, Mr. Beckman will need to proceed with therapeutic

facet joint injections with corticosteroids. If no longterm benefit is obtained, then Mr. Beckman will need to proceed with radiofrequency ablation to the medial branches of the involved facet joints. If DFNB is negative we will proceed with a bilateral dx SI joint Injection, to rule out SI joint pain.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted above to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant for this encounter. He has both seen and discussed this patient with the Physician Assistant Eliza C. Hough, PA-C.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/19/2010 at 02:13 PM.
Electronically signed off by Eliza Hough, PA-C on 04/19/2010 at 05:24 PM.



Timothy M. Zgleszewski, M.D.
Board Certified
• Physiatry
• Pain Medicine
• Independent Medical Examiner

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Pre-Procedure Instructions

You have been scheduled for a DFNB procedure on Fri 4/23 at 10:10 am pm.

For your safety, we require that you adhere to the following instructions:

- ☒ **NOTIFY THE OFFICE IF YOU DEVELOP A FEVER OR INFECTION (I.E., SINUS, URINARY TRACT, ETC.) OR IF YOU HAVE UNDERGONE ANY RECENT PROCEDURES (I.E., GI, DENTAL, GYNCOLOGIC).**
- ☒ Please notify the office at 843-573-9997 of any cancellation at least 24 hours prior to your appointment. Without 24-hour notice of cancellation, there may be a fee assessed.
- ☒ You will need a driver. You will be allowed to drive the day after your injection, unless otherwise instructed.
- ☒ Please wear loose clothing without snaps, buckles, belts, etc. No earrings or necklaces.
- ☒ You are to have nothing to eat or drink for 6 hours prior to the procedure.
- ☒ Please take all of your usual prescribed medications (high blood pressure, heart medication, etc.) with a small amount of water the day of the procedure, unless otherwise instructed as below:
- ☒ No Anti-Inflammatories 7 (seven) days prior to the procedure. These include, but are not limited to, the following:
Motrin, Aleve, Ibuprofen, Arthrotec, Naproxen, Advil, etc.
- ☒ No Aspirin or aspirin products such as Goody products or BC for 7 (seven) days prior to procedure.
- ☒ You will need to stop your Coumadin 5 (five) days prior to the injection and will need to arrange for blood work (PT/INR) to be drawn the morning of the procedure.
- ☒ You will need to stop your Plavix (Clopidogrel) 7 (seven) days prior to the procedure.
- ☒ You will need to stop your Ticlid (Ticlopidine) 14 (fourteen) days prior to the procedure.
- ☒ If you are a diabetic and taking Glucophage, you will need to stop it the day prior to the procedure and may resume taking it the day after the procedure. Please be aware, your blood sugar may increase for several days following the procedure.
- ☒ Do not take any of your Pain medications the day of the procedure.
- ☒ You will need to stop your Lovenox 2 days prior to the procedure.
- ☒ Please notify the office of any over the counter or Herbal medication you may be using as they may cause serious side effects with your procedure. The following is an incomplete list of medications to be stopped 7 (seven) days prior to your procedure:
Echinacea, Garlic, Valerian Root, Ginseng, Ginger, Chamomile, Saw Palmetto, Multi-Vitamins, Gingko, St. John's Wort, Vitamin E
- ☒ Ephedra or Kava Kava must be stopped 24 hours prior to the procedure
- ☒ Please notify the office if you are allergic to any of the following:
Iodine, Contrast Dye, IVP Dye, Seafood/Shellfish, Steroids, Lidocaine, Latex

☒ I have read and understand these instructions.

Neal P Beckman
Patient Name

UP P B
Patient Signature

4-19-10
Date / Time

[Signature]
Staff Reviewer
4-19-10
Date / Time

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Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: May 07, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Ilco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:

- 1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
- 2 Flexeril 10 Mg Tablet (Other MD) SIG: Take 1 four times a day
- 3 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:

- 724.2 Lumbago
- 724.8 Lumbar Facet Syndrome

PROCEDURES/TREATMENT:

PROCEDURE: Right L3-L4 L4-L5 L5-S1 Diagnostic medial branch blocks to the lumbar Z-joints with fluoroscopic guidance and contrast enhancement.

DIAGNOSIS: Low Back Pain.

ANESTHESIA: None.

FLUIDS: None.

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all the patient's questions were answered including risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, epidural hematoma, syncope, headache, respiratory or cardiac arrest, spinal cord injury, and scar formation. All vital signs were monitored prior to, during and after the procedure. Oxygen saturation was also monitored and noted to be greater than or equal to 94% throughout the procedure. Cardiac monitoring revealed normal sinus rhythm. The patient was slightly sedated prior to and during the procedure via IV infusion with the anesthesia noted above.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/07/2010 Page: 1

15

The region overlying the Right L3-L4 L4-L5 L5-S1 zygapophyseal joints (z-joints) was localized under fluoroscopic visualization. A 3- to 4-cc volume of 1% lidocaine without epinephrine was injected for local anesthesia. A #22 gauge spinal needle was inserted into each of the above mentioned z-joints. A 0.25 to 0.5cc volume of Omnipaque 300 was injected and partial facet joint arthrogram was obtained. Spot films were obtained of the resulting arthrogram. Following this, a 4-cc volume of fluid containing 3cc of 2% lidocaine without epinephrine and methylprednisolone acetate (80mg/ml) was divided and was injected.

The patient tolerated the procedure well and was discharged after an appropriate period of observation. If there are any complications, the patient was instructed to contact my office. The patient is to follow-up with physician as noted above in 1-2 weeks.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/12/2010 at 01:15 PM.



Timothy M. Zgleszewski, M.D.

Board Certified

- Physiatry
- Pain Medicine
- Independent Medical Examiner

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Post-Procedure Instructions

- ☒ Do not drive any vehicle for 6 hours after your procedure. If you received sedation, please see below under SEDATION.
- ☒ Do not take a bath or use a hot tub for 24 hours.
- ☒ Band-Aids may be removed tomorrow.
- ☒ Be careful when walking on uneven surfaces such as: curbs, rugs, steps, as the anesthetic used today may cause tingling, numbness and/or unsteadiness.
- ☒ For the next 1-3 days you may experience a slight increase or flare up of your typical symptoms. This is normal. If you experience a dramatic increase in pain or a new type of pain in a location other than where you normally have your pain, please call the office at 843-573-9997.
- ☒ Frequently reported symptoms after the injection include: headache, insomnia, mood swings, increased appetite, and hiccups. These symptoms should resolve on their own within several days.
- ☒ You may experience discomfort or soreness at the injection site. You may use ice applied for 15-20 minutes at time every 2 hours to control these symptoms. Do not use ice more than 20 minutes at a given time.
- ☒ If you experience any unusual effects such as: redness and drainage at the injection site, fever, new problems with bowel and urination, severe headaches, stiff neck, or new weakness, call the office at 843-573-9997.
- ☒ If you develop shortness of breath or chest pains, call the office immediately. If you cannot talk to a staff member at Palmetto Spine & Sports Medicine, PA at 843-573-9997 immediately, then you must call 911.
- ☒ Please complete the pain diary as instructed.
- ☒ You may resume your normal pre-procedure level of activity gradually over the next 24-48 hours.
** If this was a diagnostic procedure, you should immediately resume activity that would typically trigger your normal pain as instructed by the staff.
- ☒ You should continue your home exercises and physical therapy as directed the day after the procedure.

If You Received Sedation:

The medication you received today will stay in your body for about 24 hours. You may feel weak, dizzy, or lose your sense of balance. Your judgment and reaction time may also be affected during this time. For your safety, please follow these instructions:

- ☒ Do NOT drive a car or operate any machinery today.
- ☒ Do NOT make any important personal or business decisions today.
- ☒ Do NOT drink alcoholic beverages today.
- ☒ Gradually resume your normal diet as tolerated.
- ☒ Call the office at 843-573-9997 if you have any questions or concerns.

☒ I have read and understand these instructions.

Signature of Responsible Adult

Date

5-7-10

Signature of Nurse

Date

5-7-10

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Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider:
Supervising: Timothy M. Zgleszewski, MD
Performing: Eliza Hough, PA-C

Encounter Date: May 10, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

HPI:

Mr. Beckman presents today for follow-up. Mr. Beckman is here today S/P a DFNB to the right LS facets. He has brought his pain diary with him today for our review. The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the bilateral buttocks and extends past the knee into the posterior RIGHT foot. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip. Aggravating factors include backward bending, forward bending, reaching, sitting, standing and stretching, no problems laying in bed and no problems sleeping. Pain begins to increase after the 1st hour of being out of bed in the morning. Alleviating factors include change in position and lying on the back. The patient's current pain averages around 5/10 in the pain scale. At times it flares up to 8/10 in the pain scale. The patient remains on the below listed medications for pain. He states that his medications are working well. Patient reports no medication side effects. No medication abuse is suspected.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY,
SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED
TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Flexeril 10 Mg Tablet (Other MD) SIG: Take 1 four times a day
3 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

VITALS:

VAS- 5/10 BP: 120/76, Pulse: 94, O2 Sat: 96, VAS: 5/10.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/10/2010 Page: 1

18

Physical Examination:

CONSTITUTIONAL:

Physical examination reveals well nourished, well-developed, Slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to time, place, and person with normal mood and affect. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There is no lumbar shift shift present upon examination. There are no new surgical incisions Pain is increased with extension, right lateral rotation and left lateral rotation. Range of motion of the hips is normal. On palpation, there is tenderness in bilateral lumbar paraspinals. There is tenderness over the left greater trochanter. There is tenderness over the bilateral PSIS's. There is a positive Fortin Finger test bilaterally There is a positive Patricks test bilaterally There are negative neural tension signs in both legs in the seated slumped position. There is a negative Straight leg test bilaterally.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity motor examination is normal today. Deep tendon reflexes of the bilateral patella and Achilles tendon are normal and symmetric today. Bilateral lower extremity sensory examination is normal to soft touch and pinprick today.

HEART:

PMI is nondisplaced and normal in character, no heave or abnormal pulsation. Normal sinus rhythm with normal S1 and S2 without audible click, murmur or rub.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnostic Reviewed:

Right lumbosacral DFNB - NEGATIVE.

Diagnosis:

724.2 Lumbago

724.8 Lumbar Facet Syndrome

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination but will require further diagnostic testing and treatment as outlined below prior to the initiation of rehabilitation therapy.

DIAGNOSTIC PROCEDURES:

Diagnostic lumbosacral facet nerve blocks to the left L3-L4, L4-L5 and L5-S1 facet joints under fluoroscopic guidance utilizing a pain diary. If positive, Mr. Beckman will need to proceed with therapeutic facet joint injections with corticosteroids. If no longterm benefit is obtained, then Mr. Beckman will need to proceed with radiofrequency ablation to the medial branches of the involved facet joints. Diagnostic sacro-iliac (SI) joint injections to the bilateral SI joints under fluoroscopic guidance utilizing a pain diary. If positive, Mr. Beckman will need to proceed with therapeutic SI joint injections with corticosteroids. If no long term benefit is obtained, Mr. Beckman will need to proceed with radiofrequency ablation of the involved SI joints.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted above to maximize his function, control

his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant for this encounter. He has both seen and discussed this patient with the Physician Assistant Eliza C. Hough, PA-C.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/12/2010 at 01:52 PM.
Electronically signed off by Eliza Hough, PA-C on 05/10/2010 at 10:21 AM.

Patient Name: Neal Beckman

Date: 05/10/2010

DIAGNOSIS

Cervical Spine

- ☐ 723.1 Pain
- ☐ 722.0 Cervical Disc Herniation
- ☐ 723.4 Radiculopathy
- ☐ 722.81 Post-Lami Synd
- ☐ 723.0 Stenosis
- ☐ 724.8 Facet Arthropathy

Thoracic Spine

- ☐ 724.1 Pain
- ☐ 722.11 Thoracic Disc Herniation
- ☐ 733.13 Nontraumatic Fx
- ☐ 722.82 Post-Lami Synd
- ☐ 724.8 Facet Arthropathy

Sacrum

- ☐ 720.2 Sacroiliitis
- ☐ 724.79 Coccydynia

Lumbar Spine

- ☒ 724.2 Pain
- ☐ 722.10 Lumbar Disc Herniation
- ☐ 724.4 Radiculopathy
- ☐ 722.83 Post-Lami Synd
- ☐ 724.8 Facet Arthropathy
- ☐ 724.02 Stenosis
- ☐ 721.3 Spondylosis
- ☐ 733.13 Nontraumatic Fx

Shoulder

- ☐ 719.41 Pain
- ☐ 726.19 Sub-Acromial Bursitis
- ☐ 726.10 RTC Tendinitis
- ☐ 727.61 RTC Tear NT
- ☐ 840.4 RTC Tear Trauma
- ☐ 715.11 A-C Jt Arthrosis

Hip

- ☐ 719.45 Pain
- ☐ 716.95 OA
- ☐ 726.5 Bursitis

Knee

- ☐ 719.46 Pain
- ☐ 716.96 OA
- ☐ 717.9 Internal Derangement

Miscellaneous

- ☐ 337.22 RSD/CRPS Lower Limb
- ☐ 337.21 RSD/CRPS Upper Limb
- ☐ 724.8 Back Spasm
- ☐ 719.43 Wrist Pain
- ☐ 719.42 Elbow Pain
- ☐ 719.47 Ankle Pain

PROCEDURE

- 1 ☒ DFNB
- 2 bilateral SIJ ☒ SIJ (dx) ☐ SIJ (bx)
- ☐ Perc. Discectomy
- Other _____
- Region ☐ Lumbar ☐ Cervical ☐ Thoracic ☐ Hip
- Side ☐ Right ☒ Left ☐ Bilateral

☐ TFESI

☐ LESI

☐ Caudal ESI

☐ SSNB

☐ Discogram

☐ IDEA

☐ Disc Compression

☐ Deepwave B E

☐ RF

☐ SCS Trial

☐ Joint Inj.

☐ TPI

☐ Sportswave

☐ Give Patient Info Sheet

☐ Shoulder

☐ Knee

Level: _____

Procedure Room: ☒ YES ☐ NO

Physical Therapy: ☐ YES ☒ NO

Med Script Given: ☐ YES ☐ NO

Diagnostic Testing:

☐ X-ray

☐ EMG/NCS

☐ MRI

☐ Upper

☐ Motor Nerve Each w/o F-Wave

☐ Motor Nerve Each with F-Wave

☐ Sensory Nerves Each

☐ CT

☐ Lower

☐ Bone Scan

☐ Both Bilateral

☐ None

☐ Y ☐ N

☐ Right

☐ Left

H-Wave _____

Work Restrictions: ☐ YES ☐ NO

Follow-up Appt.: _____

_____ days

_____ weeks

_____ months

_____ days after procedure

1-2 weeks after procedure

☐ patient to call ☐ d/c prin



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: May 12, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:
1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Flexeril 10 Mg Tablet (Other MD) SIG: Take 1 four times a day
3 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:
724.2 Lumbago
724.8 Lumbar Facet Syndrome

PROCEDURES/TREATMENT:
PROCEDURE: Left L3-L4, L4-L5 and L5-S1 Diagnostic medial branch blocks to the lumbar Z-joints with
fluoroscopic guidance and contrast enhancement.

DIAGNOSIS: Low Back Pain.

ANESTHESIA: None.

FLUIDS: None.

METHOD OF PROCEDURE:
The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all the patient's questions were answered including risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, epidural hematoma, syncope, headache, respiratory or cardiac arrest, spinal cord injury, and scar formation. All vital signs were monitored prior to, during and after the procedure. Oxygen saturation was also monitored and noted to be greater than or equal to 94% throughout the procedure. Cardiac monitoring revealed normal sinus rhythm. The patient was slightly sedated prior to and during the procedure via IV infusion with the anesthesia noted above.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/12/2010 Page: 1

The region overlying the Left L3-L4, L4-L5 and L5-S1 zygapophyseal joints (z-joints) was localized under fluoroscopic visualization. A 3- to 4-cc volume of 1% lidocaine without epinephrine was injected for local anesthesia. A #22 gauge spinal needle was inserted into each of the above mentioned z-joints. A 0.25 to 0.5cc volume of Omnipaque 300 was injected and partial facet joint arthrogram was obtained. Spot films were obtained of the resulting arthrogram. Following this, a 4-cc volume of fluid containing 3cc of 2% lidocaine without epinephrine and methylprednisolone acetate (80mg/ml) was divided and was injected.

The patient tolerated the procedure well and was discharged after an appropriate period of observation. If there are any complications, the patient was instructed to contact my office. The patient is to follow-up with physician as noted above in 1-2 weeks.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/12/2010 at 02:56 PM.



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: May 14, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Flexeril 10 Mg Tablet (Other MD) SIG: Take 1 four times a day
3 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:

724.2 Lumbago
720.2 Sacroiliitis Not Elsewhere Classified
724.8 Lumbar Facet Syndrome

PROCEDURES/TREATMENT:

DIAGNOSIS:

Low back pain and Sacroiliitis.

PROCEDURE: Diagnostic bilateral sacroiliac joint injection with fluoroscopic guidance and contrast enhancement.

ANESTHESIA AND FLUIDS: None.

FINDINGS: After appropriate needle placement flow of contrast was noted to flow within the inferior portion of the above mentioned SI joint.

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all the patient's questions were answered including risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, epidural hematoma, syncope, headache, respiratory or cardiac arrest, spinal cord injury, and scar formation. All vital signs were monitored prior to, during and after the procedure. Oxygen saturation

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/14/2010 Page: 1

24

was also monitored and noted to be greater than or equal to 94% throughout the procedure. Cardiac monitoring revealed normal sinus rhythm. The patient was slightly sedated prior to and during the procedure via IV infusion with the anesthesia note above.

The fluoroscopic C-arm was positioned to optimize visualization of the bilateral SI joint(s). The inferior portion of the above SI joint was localized under fluoroscopic visualization and 3 cc of 1% lidocaine without epinephrine was utilized for the soft tissue local anesthesia. A #22 gauge needle was inserted into the fluoroscopically "hyperlucent" region within the bilateral SI joint(s). A 0.5 cc volume of Omnipaque 300 was injected into the joint, and radiographs were obtained. Next, 0.5 cc of 0.5 % Marcaine was then injected into the above mentioned SI joint. The needle was withdrawn and found to be intact. The site was cleaned and dressed with a band-aid.

The patient tolerated the procedure well and was discharged after an appropriate period of observation. If there are any complications, the patient was instructed to contact my office. The patient is to follow-up with physician as noted above in 1-2 weeks.

SI JOINT ARTHROGRAM REPORT:

INTERPRETATION:

There are multiple images for review today from a left sacroiliac joint arthrogram performed on Neal Beckman from May 14, 2010. After appropriate needle placement, contrast was noted to travel into the inferior recess of the left SI joint, into the medial and lateral joint spaces. There is no flow into the fascial planes or communication with the caudal epidural space.

SI JOINT ARTHROGRAM REPORT:

INTERPRETATION:

There are multiple images for review today from a right sacroiliac joint arthrogram performed on Neal Beckman from May 14, 2010. After appropriate needle placement, contrast was noted to travel into the inferior recess of the right SI joint, into the medial and lateral joint spaces. there is no flow into the fascial planes or communication with the caudal epidural space.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/14/2010 at 10:10 AM.



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: May 17, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

HPI:

Mr. Beckman presents today for follow-up. Mr. Beckman is here today S/P a DFNB to the left LS facets and diagnostic bilateral SI joint injections. He has brought his pain diary with him today for our review. The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the bilateral buttocks and extends past the knee into the posterior RIGHT foot. The patient describes the pain as a deep achy, throbbing and sitting causes a sharp shooting pain in the left hip. Aggravating factors include backward bending, forward bending, reaching, sitting, standing and stretching, no problems laying in bed and no problems sleeping. Pain begins to increase after the 1st hour of being out of bed in the morning. Alleviating factors include change in position and lying on the back. The patient's current pain averages around 5/10 in the pain scale. At times it flares up to 8/10 in the pain scale. The patient remains on the below listed medications for pain. He states that his medications are working well. Patient reports no medication side effects. No medication abuse is suspected.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Flexeril 10 Mg Tablet (Other MD) SIG: Take 1 four times a day
3 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

VITALS:

VAS- 5/10 BP: 127/87, Pulse: 88, O2 Sat: 94, VAS: 5/10.

Physical Examination:

CONSTITUTIONAL:

Physical examination reveals well nourished, well-developed, Slender male. He is in a minimal to

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/17/2010 Page: 1

26

moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to time, place, and person with normal mood and affect. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There is no lumbar shift present upon examination. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. Range of motion of the hips is normal. On palpation, there is tenderness in bilateral lumbar paraspinals. There is tenderness over the left greater trochanter. There is tenderness over the bilateral PSIS's. There is a positive Fortin Finger test bilaterally. There is a positive Patricks test bilaterally. There are negative neural tension signs in both legs in the seated slumped position. There is a negative Straight leg test bilaterally.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity motor examination is normal today. Deep tendon reflexes of the bilateral patella and Achilles tendon are normal and symmetric today. Bilateral lower extremity sensory examination is normal to soft touch and pinprick today.

HEART:

PMI is nondisplaced and normal in character, no heave or abnormal pulsation. Normal sinus rhythm with normal S1 and S2 without audible click, murmur or rub.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnostic Reviewed:

Diagnostic right SIJ - POSITIVE

Diagnostic left SIJ - negative

Diagnostic left DFNB - negative.

Diagnosis:

724.2 Lumbago

720.2 Sacroiliitis Not Elsewhere Classified

724.8 Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination but will require further diagnostic testing and treatment as outlined below prior to the initiation of rehabilitation therapy.

THERAPEUTIC PROCEDURES:

The patient will require his first therapeutic right SI joint injection under fluoroscopic guidance with corticosteroids.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted above to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant for this encounter. He has both seen and discussed this patient with the Physician Assistant Eliza C. Hough, PA-C.

Prescription:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain QTY: 45.00

Changed/Discontinued Medication(s):

Discontinued: FLEXERIL 10 MG TABLET

Followup:

(1) 1 Week(s) SIJ Tx

right

(2) 2 Week(s) EMG/NCS

and s/p for right SIJ tx

Electronically signed off by Timothy M. Zgleszewski, MD on 05/17/2010 at 10:43 AM.

Electronically signed off by Eliza Hough, PA-C on 05/17/2010 at 10:09 AM.

Patient Name: Neal Beckman

Date: 05/17/2010

DIAGNOSIS

Cervical Spine

- ☐ 723.1 Pain
- ☐ 722.0 Cervical Disc Herniation
- ☐ 723.4 Radiculopathy
- ☐ 722.81 Post-Lami Synd
- ☐ 723.0 Stenosis
- ☐ 724.8 Facet Arthropathy

Thoracic Spine

- ☐ 724.1 Pain
- ☐ 722.11 Thoracic Disc Herniation
- ☐ 733.13 Nontraumatic Fx
- ☐ 722.82 Post-Lami Synd
- ☐ 724.8 Facet Arthropathy

Sacrum

- ☒ 720.2 Sacroiliitis
- ☐ 724.79 Coccydynia

Lumbar Spine

- ☒ 724.2 Pain
- ☐ 722.10 Lumbar Disc Herniation
- ☐ 724.4 Radiculopathy
- ☐ 722.83 Post-Lami Synd
- ☐ 724.8 Facet Arthropathy
- ☐ 724.02 Stenosis
- ☐ 721.3 Spondylosis
- ☐ 733.13 Nontraumatic Fx

Shoulder

- ☐ 719.41 Pain
- ☐ 726.19 Sub-Acromial Bursitis
- ☐ 726.10 RTC Tendinitis
- ☐ 727.61 RTC Tear NT
- ☐ 840.4 RTC Tear Trauma
- ☐ 715.11 A-C Jt Arthrosis

Hip

- ☐ 719.45 Pain
- ☐ 716.95 OA
- ☐ 726.5 Bursitis

Knee

- ☐ 719.46 Pain
- ☐ 716.96 OA
- ☐ 717.9 Internal Derangement

Miscellaneous

- ☐ 337.22 RSD/CRPS Lower Limb
- ☐ 337.21 RSD/CRPS Upper Limb
- ☐ 724.8 Back Spasm
- ☐ 719.43 Wrist Pain
- ☐ 719.42 Elbow Pain
- ☐ 719.47 Ankle Pain

PROCEDURE

- ☐ DFNB
- ☐ FJI
- ☐ TFESI
- ☐ LESI
- ☐ Caudal ESI
- ☐ SSNB

- ☐ SIJ (dx)
- ☒ SIJ (bx)
- ☐ Discogram
- ☐ IDEA
- ☐ Disc Compression
- ☐ Deepwave B E

- ☐ Perc. Disectomy
- ☐ RF
- ☐ SCS Trial
- ☐ Joint Inj.
- ☐ TPI
- ☐ Sportswave

Other _____

☐ Give Patient Info Sheet

Region ☒ Lumbar ☐ Cervical ☐ Thoracic ☐ Hip ☐ Shoulder ☐ Knee

Side ☒ Right ☐ Left ☐ Bilateral

Level: _____

Procedure Room: ☒ YES ☐ NO

Physical Therapy: ☐ YES ☒ NO

Med Script Given: ☐ YES ☒ NO

Diagnostic Testing: ☐ X-ray ☐ MRI ☐ CT ☐ Bone Scan ☐ None
☒ EMG/NCS ☐ Upper ☒ Lower ☐ Both Bilateral ☒ Y ☐ N ☐ Right ☐ Left
☐ Motor Nerve Each w/o F-Wave _____
☐ Motor Nerve Each with F-Wave _____
☐ Sensory Nerves Each _____ H-Wave _____

Work Restrictions: ☐ YES ☐ NO

Follow-up Appl: _____ days _____ weeks _____ months _____ days after procedure

1 weeks after procedure ☐ patient to call ☐ d/c prin



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: May 21, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Clisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:

720.2 Sacroiliitis Not Elsewhere Classified
724.2 Lumbago

PROCEDURES/TREATMENT:

PROCEDURE: Right Sacroiliac joint with fluoroscopic guidance and contrast enhancement.

DIAGNOSIS: Sacroiliitis and Low back pain.

ANESTHESIA: None.

FLUIDS: None.

FINDINGS: After appropriate needle placement flow of contrast was noted to flow within the inferior portion of the above mentioned SI-joint.

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all the patient's questions were answered including risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, epidural hematoma, syncope, headache, respiratory or cardiac arrest, spinal cord injury, and scar formation. All vital signs were monitored prior to, during and after the procedure. Oxygen saturation was also monitored and noted to be greater than or equal to 94% throughout the procedure. Cardiac monitoring revealed normal sinus rhythm. The patient was slightly sedated prior to and during the

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 05/21/2010 Page: 1

30

procedure via IV infusion with the anesthesia note above.

The fluoroscopic C-arm was positioned to optimize visualization of the right SI joint. The inferior portion of the above SI joint was localized under fluoroscopic visualization and 3 cc of 1% lidocaine without epinephrine was utilized for soft tissue local anesthesia. A #22 gauge spinal needle was inserted into the fluoroscopically "hyperlucent" region within the SI joint. A 0.5 cc volume of Omnipaque 300 was injected into the joint and radiograph were obtained. Next, a 2cc volume of solution containing 1 cc of 1% lidocaine without epinephrine and 1 cc of Depo-Medrol (80mg/ml) was then injected into the SI joint.

The patient tolerated the procedure well and was discharged after an appropriate period of observation. If there are any complications, the patient was instructed to contact my office. The patient is to follow-up with physician as noted above in 1-2 weeks.

SI JOINT ARTHROGRAM REPORT:

INTERPRETATION:

There are multiple images for review today from a right sacroiliac joint arthrogram performed on Neal Beckman from May 21, 2010. After appropriate needle placement, contrast was noted to travel into the inferior recess of the right SI joint, into the medial and lateral joint spaces. there is no flow into the fascial planes or communication with the caudal epidural space.

Electronically signed off by Timothy M. Zgleszewski, MD on 05/21/2010 at 10:08 AM.

31



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Jun 07, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

HPI:

Mr. Beckman presents today for follow-up. Mr. Beckman has recently had an EMG/NCS and a therapeutic SIJ to the right SI joint. His primary point of pain is in the left lower back and buttock. In addition, he has pain from his upper lumbar region down to the sacral region. The patient states that the pain is located in the left greater than right lower back. He states his pain radiates to the left buttock. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip. Aggravating factors include backward bending, forward bending, reaching, sitting, standing and stretching, no problems laying in bed and no problems sleeping. Pain begins to increase after the 1st hour of being out of bed in the morning. Alleviating factors include change in position and lying on the back. The patient's current pain averages around 5/10 in the pain scale. At times it flares up to 8/10 in the pain scale. The patient remains on the below listed medications for pain. He states that his medications are working well. Patient reports no medication side effects. No medication abuse is suspected.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

VITALS:

VAS- 6/10 BP: 124/81, Pulse: 86, O2 Sat: 96, VAS: 6/10.

Physical Examination:

CONSTITUTIONAL:

Physical examination reveals well nourished, well-developed, Slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 06/07/2010 Page: 1

32

and oriented to time, place, and person with normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There is no lumbar shift shift present upon examination. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. Range of motion of the hips is normal. On palpation, there is tenderness in bilateral lumbar paraspinal spasm in bilateral lumbar paraspinals. He has sensitivity to light touch over the left lumbosacral skin region. There is tenderness over the left greater trochanter. There are trigger points located in the piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis muscle(s) today. There is tenderness over the bilateral PSIS's. There is a positive Fortin Finger test bilaterally. Neural tension signs are positive in the left leg in the seated slumped position. There is a negative Straight leg test bilaterally.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity motor examination is normal today. Deep tendon reflexes of the bilateral patella and Achilles tendon are normal and symmetric today. Bilateral lower extremity sensory examination is normal to soft touch and pinprick today.

HEART:

Cardiovascular exam remains stable compared to initial visit.

LUNGS:

Respiratory exam remains stable compared to initial visit.

Diagnosis:

- 724.2 Lumbago
- 720.2 Sacroiliitis Not Elsewhere Classified
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 724.8 Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. We will defer repeating the right SIJ at this time given his primary pain complaints have been in the left lower back and buttock. His right lower back/SI joint pain appears to be improved s/p his right SIJ.

Mr. Beckman given his EMG/NCS does not have a radiculopathy in either leg, but EMG/NCS can be an imperfect diagnostic tool for determining radiculopathy. His left leg pain only extends to the left buttock but is intensified by neural tension and reduces with the reduction in tension on the nerve, giving on exam a positive left neural tension sign. We are recommending her have a lumbosacral epidural as we have ruled out lumbar facet pain and left SI joint pain. As stated before his right SI joint pain appears to be improved and his primary pain complaints at this time are on the left lower back and buttock.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination but will require further diagnostic testing and treatment as outlined below prior to the initiation of rehabilitation therapy.

THERAPEUTIC PROCEDURES:

The patient will require his first therapeutic left lumbosacral transforaminal epidural steroid injection under fluoroscopic guidance.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted above to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks.

Timothy M. Zgleszewski, MD provided supervision of Physician Assistant Eliza C. Hough, PA-C for today's patient encounter and he agrees with the above stated treatment plan.

Electronically signed off by Timothy M. Zgleszewski, MD on 06/14/2010 at 02:40 PM.
Electronically signed off by Eliza Hough, PA-C on 06/09/2010 at 04:54 PM.

34



Palmetto Spine & Sports Medicine, P.A.

Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Jun 25, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:

724.2 Lumbago
720.2 Sacroiliitis Not Elsewhere Classified
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified

PROCEDURES/TREATMENT:

PROCEDURE: Left L4, L5, S1 transforaminal epidural steroid injection under fluoroscopic guidance and contrast enhancement.

DIAGNOSIS: Lumbar Disc Injury and Lumbosacral Radiculopathy.

ANESTHESIA: None.

FLUIDS: None.

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all the patient's questions were answered including risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, epidural hematoma, syncope, headache, respiratory or cardiac arrest, spinal cord injury, and scar formation. All vital signs were monitored prior to, during and after the procedure. Oxygen saturation was also monitored and noted to be greater than or equal to 94% throughout the procedure. Cardiac monitoring revealed normal sinus rhythm. The patient was slightly sedated prior to and during the procedure via IV infusion with the anesthesia noted above.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 06/25/2010 Page: 1

35

The C-arm was positioned so that an oblique view of the Left L4, L5, S1 foramen was visualized. The soft tissues overlying this structure were infiltrated with 2-3cc of 1 % lidocaine without epinephrine. A #22 gauge spinal needle was inserted down to the pars interarticularis and then "walked-off" inferiorly into the foramen. Under AP visualization, the needle was advanced so it did not go beyond "6 o'clock" position of the pedicle. A lateral projection was used to confirm position. This was done for each of the noted levels. Then, approximately 1-2cc volume of fluid containing 1cc Depo-Medrol (80mg/ml) and then remainder of the 1% lidocaine without epinephrine was drawn up. Half of this solution was injected into each of the foramen. The needle was withdrawn and found to be intact. A band-aid was placed at the procedure site.

The patient tolerated the condition and was discharged after an appropriate period of observation. If there are any complications, the patient was instructed to contact my office. The patient is to follow-up with the physician within 10-14 days.

Electronically signed off by Timothy M. Zgleszewski, MD on 06/25/2010 at 08:43 AM.



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Jul 09, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

HPI:

Mr. Beckman presents today for follow-up. He is here s/p his lumbar epidural and notes that he did not have pain relief after the injection. He also says that he had increased pain for 3 days right the injection, then his pain returned back to being between the 3-6/10 range. He also did not notice any improvement in his radicular symptoms. The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock. The patient describes the pain as a deep achy, throbbing and sitting causes a sharp shooting pain in the left hip. pain. Aggravating factors include backward bending, forward bending, reaching, sitting, standing and stretching, no problems laying in bed and no problems sleeping. Pain begins to increase after the 1st hour of being out of bed in the morning. Alleviating factors include change in position and lying on the back. The patient's current pain averages around 5/10 in the pain scale. At times it flares up to 8/10 in the pain scale. The patient remains on the below listed medications for pain. He states that his medications are working well. Patient reports no medication side effects. No medication abuse is suspected.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY,
SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED
TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Hydrocodone/apap 5/500 Tab 5-500 Mg SIG: Take 1 three times a day prn pain
2 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

BP: 110/77, Pulse: 72, O2 Sat: 95, VAS: 5/10

Physical Examination:

CONSTITUTIONAL:

Physical examination reveals well nourished, well-developed, Slender male. He is in a minimal to

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 07/09/2010 Page: 1

37

moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to time, place, and person with normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There is no lumbar shift present upon examination. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. Range of motion of the hips is normal. On palpation, there is tenderness in bilateral lumbar paraspinal spasm in bilateral lumbar paraspinal. He has sensitivity to light touch over the left lumbosacral skin region. There is tenderness over the left greater trochanter. There are trigger points located in the piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis muscle(s) today. There is tenderness over the bilateral PSIS's. There is a positive Fortin Finger test bilaterally. Neural tension signs are positive in the left leg in the seated slumped position. There is a negative Straight leg test bilaterally.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity motor examination is normal today. Deep tendon reflexes of the bilateral patella and Achilles tendon are normal and symmetric today. Bilateral lower extremity sensory examination is normal to soft touch and pinprick today.

HEART:

Cardiovascular exam remains stable compared to initial visit.

LUNGS:

Respiratory exam remains stable compared to initial visit.

Diagnosis:

724.2 Lumbago 720.2 Sacroiliitis Not Elsewhere Classified 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 724.8 Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. EMG/NCS did not show a radiculopathy in either leg, but EMG/NCS can be an imperfect diagnostic tool for determining radiculopathy. His left leg pain only extends to the left buttock but is intensified by neural tension and reduces with the reduction in tension on the nerve, giving on exam a positive left neural tension sign. We are recommending repeating the lumbosacral epidural as we have ruled out lumbar facet pain and left SI joint pain.

He mentions he has been fired from his job due to inability to work because of his work injury.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination but will require further diagnostic testing and treatment as outlined below prior to the initiation of rehabilitation therapy.

DEEPWAVE:

The patient will require Deepwave treatment/Percutaneous Electrical Nerve Stimulation (PENS) secondary to Mr. Beckman's lowback pain. Mr. Beckman has failed to receive good outcome from prior treatments with home exercise program, interventional procedure, medications and rehabilitation (PT). He will possibly require a home unit. The Deepwave treatment is expected to decrease pain, increase function, possibly decrease overall medications dosage as well as enhance Mr. Beckman overall quality of life.

THERAPEUTIC PROCEDURES:

The patient will require his second left transforaminal epidural steroid injection under fluoroscopic guidance.

MEDICATION:

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 07/09/2010 Page: 2

38

Mr. Beckman needs to continue his medication regimen as noted above to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant, Eliza C. Hough, PA-C for this encounter and he agrees with the above stated treatment plan.

Prescription:

1 Hydrocodone-apap 10-500 Tablet Mg SIG: Take 1 three times a day QTY: 90.00

Changed/Discontinued Medication(s):

Discontinued: HYDROCODONE/APAP 5/500 TAB 5-500 MG

Electronically signed off by Timothy M. Zgleszewski, MD on 07/12/2010 at 12:06 PM.
Electronically signed off by Eliza Hough, PA-C on 07/09/2010 at 02:51 PM.

Patient Name: Neal Beckman

Date: 07/09/2010

DIAGNOSIS

Cervical Spine

- ☐ 723.1 Pain
- ☐ 722.0 Cervical Disc Herniation
- ☐ 723.4 Radiculopathy
- ☐ 722.81 Post-Lami Synd
- ☐ 723.0 Stenosis
- ☐ 724.8 Facet Arthropathy

Thoracic Spine

- ☐ 724.1 Pain
- ☐ 722.11 Thoracic Disc Herniation
- ☐ 733.13 Nontraumatic Fx
- ☐ 722.82 Post-Lami Synd
- ☐ 724.8 Facet Arthropathy

Sacrum

- ☐ 720.2 Sacroilitis
- ☐ 724.79 Coccydynia

Lumbar Spine

- ☒ 724.2 Pain
- ☒ 722.10 Lumbar Disc Herniation
- ☒ 724.4 Radiculopathy
- ☐ 722.83 Post-Lami Synd
- ☐ 724.8 Facet Arthropathy
- ☐ 724.02 Stenosis
- ☐ 721.3 Spondylosis
- ☐ 733.13 Nontraumatic Fx

Shoulder

- ☐ 719.41 Pain
- ☐ 726.19 Sub-Acromial Bursitis
- ☐ 726.10 RTC Tendinitis
- ☐ 727.61 RTC Tear NT
- ☐ 840.4 RTC Tear Trauma
- ☐ 715.11 A-C Jt Arthrosis

Hip

- ☐ 719.45 Pain
- ☐ 716.95 OA
- ☐ 726.5 Bursitis

Knee

- ☐ 719.46 Pain
- ☐ 716.96 OA
- ☐ 717.9 Internal Derangement

Miscellaneous

- ☐ 337.22 RSD/CRPS Lower Limb
- ☐ 337.21 RSD/CRPS Upper Limb
- ☐ 724.8 Back Spasm
- ☐ 719.43 Wrist Pain
- ☐ 719.42 Elbow Pain
- ☐ 719.47 Ankle Pain

PROCEDURE

- ☐ DFNB
- ☐ FJI
- ☒ TFESI
- ☐ LESI
- ☐ Caudal ESI
- ☐ SSNB

- ☐ SIJ (dx)
- ☐ SIJ (lx)
- ☐ Discogram
- ☐ IDEA
- ☐ Disc Compression
- ☒ Deepwave
- ☒ E

- ☐ Perc. Disectomy
- ☐ RF
- ☐ SCS Trial
- ☐ Joint Inj.
- ☐ TPI
- ☐ Sportswave

Other _____

☐ Give Patient Info Sheet

Region ☒ Lumbar ☐ Cervical ☐ Thoracic ☐ Hip ☐ Shoulder ☐ Knee

Side ☐ Right ☒ Left ☐ Bilateral

Level: L4-L5, L5-S1

Procedure Room: ☒ YES ☐ NO

Physical Therapy: ☐ YES ☐ NO

Med Script Given: ☐ YES ☐ NO

Diagnostic Testing: ☐ X-ray ☐ MRI ☐ CT ☐ Bone Scan ☐ None
☐ EMG/NCS ☐ Upper ☐ Lower ☐ Both Bilateral ☐ Y ☐ N ☐ Right ☐ Left
☐ Motor Nerve Each w/o F-Wave _____
☐ Motor Nerve Each with F-Wave _____
☐ Sensory Nerves Each _____ H-Wave _____

Work Restrictions: ☐ YES ☐ NO

Follow-up Appt.: _____ days _____ weeks _____ months _____ days after procedure

2 weeks after procedure ☐ patient to call ☐ d/c prin



Timothy M. Zgleszewski, MD
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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Jul 16, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 43 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:
1 Hydrocodone-apap 10-500 Tablet Mg SIG: Take 1 three times a day
2 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:
724.2 Lumbago 720.2 Sacroiliitis Not Elsewhere Classified 724.4 Thoracic or Lumbosacral
Neuritis or Radiculitis Not Otherwise Specified

PROCEDURES/TREATMENT:

PROCEDURE: Left L4, L5, S1 transforaminal epidural steroid injection under fluoroscopic guidance and contrast enhancement.

DIAGNOSIS: Lumbar Disc Injury and Lumbosacral Radiculopathy.

ANESTHESIA: None.

FLUIDS: None.

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all the patient's questions were answered including risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, epidural hematoma, syncope, headache, respiratory or cardiac arrest, spinal cord injury, and scar formation. All vital signs were monitored prior to, during and after the procedure. Oxygen saturation was also monitored and noted to be greater than or equal to 94% throughout the procedure. Cardiac monitoring revealed normal sinus rhythm. The patient was slightly sedated prior to and during the procedure via IV infusion with the anesthesia noted above.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 07/16/2010 Page: 1

41

The C-arm was positioned so that an oblique view of the Left L4, L5, S1 foramen was visualized. The soft tissues overlying this structure were infiltrated with 2-3cc of 1 % lidocaine without epinephrine. A #22 gauge spinal needle was inserted down to the pars interarticularis and then "walked-off" inferiorly into the foramen. Under AP visualization, the needle was advanced so it did not go beyond "6 o'clock" position of the pedicle. A lateral projection was used to confirm position. This was done for each of the noted levels. Then, approximately 1-2cc volume of fluid containing 1cc Depo-Medrol (80mg/ml) and then remainder of the 1% lidocaine without epinephrine was drawn up. Half of this solution was injected into each of the foramen. The needle was withdrawn and found to be intact. A band-aid was placed at the procedure site.

The patient tolerated the condition and was discharged after an appropriate period of observation. If there are any complications, the patient was instructed to contact my office. The patient is to follow-up with the physician within 10-14 days.

Electronically signed off by Timothy M. Zgleszewski, MD on 07/16/2010 at 09:48 AM.



Palmetto Spine Sports Medicine, P.A.

Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Nov, 10, 2010

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:
CC: low back pain.

Mr. Beckman presents today for follow-up. He is here today for follow-up from his discogram and for a refill of his medications.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip. pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 4.5/10 in the pain scale. At times it flares up to 6/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:
1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Rozerem 8 Mg Tablet SIG: Take 1 QHS pm sleep
3 Cymbalta 60 Mg Capsule SIG: 1 Capsule(s) at night
4 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 11/10/2010 Page: 1

43

5 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

VAS: 4 /10, BP: 120/85, Pulse: 84, O2 Sat: 97

Physical Examination:

CONSTITUTIONAL:

Physical examination reveals well nourished, well-developed, Slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to time, place, and person. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There is no lumbar shift shift present upon examination. There are no new surgical incisions Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are trigger points located in the piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis muscle(s) today. Neural tension signs are positive in the left leg in the seated slumped position.

HIP:

There is tenderness over the left Greater Trochanter.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity motor examination is normal today. is decreased to soft touch and pinprick bilateral medial thigh .

ABDOMEN:

The abdomen is soft, non-tender without rebound or guarding. Normoactive bowel sounds.

HEART:

There is no heave or abnormal pulsation in the chest noted. He demonstrates a regular rate and rhythm without audible murmurs, rubs or gallops. Skin is pink, capillary refill is <2 seconds. No pitting edema in the extremities is noted.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnostic Reviewed:

(Post Disco CT Scan)

1) L3/L4 left anterolateral annular tear with left extraforaminal marginal extravasation suggested.

2) L4/L5 midline annular tear at the site of protrusion with a small amount of extravasation below the,

Diagnosis:

724.2 Lumbago 720.2 Sacroiliitis Not Elsewhere Classified 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 722.10 Lumbar Disc Displacement Without Myelopathy 724.8 Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted above to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 11/10/2010 Page: 2

44

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks.

Timothy M. Zgleszewski, MD provided supervision of Physician Assistant Eliza C. Hough, PA-C for today's patient encounter and he agrees with the above stated treatment plan.

15 minutes were spent in total visit time with Neal Beckman and greater than 50% of that time was spent in counseling and reviewing the above. Less than 30 minutes were spent in conference with Mr. Beckman's Nurse Case Manager, Hattie Fields.

Prescription:

1 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME QTY: 30.00

2 Rozerem 8 Mg Tablet SIG: Take 1 QHS pm sleep QTY: 30.00

3 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day QTY: 90.00

Patient: Neal Beckman

12/10/2010

PROCEDURE ORDERS:

Diagnoses: 724.2 Lumbago, 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified, 722.10 Lumbar Disc Displacement Without Myelopathy

THERAPEUTIC PROCEDURE ORDERS:

PERCUTANEOUS DISCECTOMY:

Mechanical percutaneous discectomy at the L4-L5 level under fluoroscopic guidance.

Follow-up: 2 weeks

Other:

ALLERGIES: Oyster

Ordered by: Timothy M. Zgleszewski, MD

46



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Jan, 21, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:

Mr. Beckman presents today for follow-up. He is s/p Perc Disc at L4-L5 and notes reduced radiating left hip pain but has increased pain above and below where the Perc Disc was performed. He states he is sleeping better. He still has the right sided low back pain and the numbness in the right foot in the lateral 4 toes. He has not had treatment for the right sided SI joint pain. The patient states that he not currently working.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock. The patient describes the pain as a deep achy, throbbing and sitting causes a sharp shooting pain in the left hip. pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 4.5/10 in the pain scale. At times it flares up to 8/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONAIRE.

Current Medication:

1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day
3 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 01/21/2011 Page: 1

47

4 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep
5 ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

VAS: 4.5 /10, BP: 120/90, Pulse: 92, O2 Sat: 96

Physical Examination:

CONSTITUTIONAL:

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are trigger points located in the piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the right PSIS's. There is a positive Fortin Finger test on the right. There is a positive Patrick's test on the right. Neural tension signs are equivocal.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

ABDOMEN:

The abdomen is soft, non-tender without rebound or guarding. Normoactive bowel sounds.

HEART:

There is no heave or abnormal pulsation in the chest noted. He demonstrates a regular rate and rhythm without audible murmurs, rubs or gallops. Skin is pink, capillary refill is <2 seconds. No pitting edema in the extremities is noted.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 720.2 Sacroiliitis Not Elsewhere Classified 724.8 Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. He will now need to begin rehabilitation therapy s/p the Perc Disc as well as for the right sided SI joint pain. He will need to follow-up in one month. Work restrictions and medications are as noted below. His neural tension signs in the left leg appear to be improved and he has less left radiating hip pain.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination for s/p from Perc Disc at L4-L5 and for right sided SI joint pain.

THERAPEUTIC PROCEDURES:

The patient will require his first therapeutic right SI joint injection under fluoroscopic guidance with corticosteroids.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted below to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 4 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant, Eliza C. Hough, PA-C for this encounter and he agrees with the above stated treatment plan.

15 minutes were spent in total visit time with Neal Beckman and greater than 50% of that time was spent in counseling and reviewing the above. Less than 30 minutes were spent in conference with Mr. Beckman's Nurse Case Manager, Anita Marciniak, RN, COHN.

**PROCEDURE ORDERS (DIAGNOSTIC & THERAPEUTIC:
THERAPEUTIC PROCEDURE ORDERS:**

SIJ Tx: (diagnosis 720.2).

1st therapeutic right SI joint injection under fluoroscopic guidance with corticosteroids.

Prescription:

1 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day QTY: 90.00

2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME QTY: 30.00

3 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep QTY: 30.00

Work Restrictions:

Lifting with knees (with a straight back) not more than 25 lbs up to 15 times/hr; squatting up to 16 times/hr; standing or walking with a 10-minute break at least every 1-2 hours; sitting with a 10-minute break every 1-2 hours; extremes of flexion or extension allowed up to 12 times/hr; extremes of twisting allowed up to 16 times/hr; climbing ladders allowed up to 25 rungs 6 times/hr; driving car or light truck up to a full work day.

Electronically signed off by Eliza Hough, PA-C on 01/21/2011 at 11:56 AM.



Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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REHAB ORDERS

Name: Neal Beckman

Date: 01/21/2011

Diagnosis: 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified, 722.10 Lumbar Disc Displacement without myelopathy, 720.2 Sacroiliitis

Diagnosis Code(s): S1P Percutaneous Discectomy at L4-L5

Frequency and Duration: 2-3 times per week for 4 weeks. Total Visits: 8

Muscle Rehabilitating Program:

- ☒ Lower Extremity & Back (Pelvic Crossed Stretches)
 - ☐ Hamstring
 - ☐ Piriformis
 - ☐ Erector Spinae
- ☐ Lower Extremity & Back (Muscle Re-education)
 - ☐ Glut Max
 - ☐ Glut Med
 - ☐ Rectus Abdominis
 - ☐ Transverse Abdominis
- ☐ Upper Extremity & Neck (Upper Crossed Stretches)
 - ☐ Upper Trap
 - ☐ Levator Scap
 - ☐ SCM
 - ☐ Scalenus
 - ☐ Lat Dorsi
 - ☐ Pectoralis
 - ☐ Deep Neck Extensors
- ☐ Upper Extremity & Neck (Muscle Re-education)
 - ☐ Serratus Anterior
 - ☐ Rhomboids
 - ☐ Lower Trap
 - ☐ Deep Neck Flexors

Neuromobilizations (no tension)

- ☐ Seated Slumped Position
- ☐ Femoral Nerve Stretch Position
- ☐ Hip Capsule Mobilizations
- ☐ Spine Stabilization Program
- ☐ Scapulo-humeral Stabilization
- ☐ McConnell Taping Program
- ☒ Myofascial Stretching Program
- ☒ Home Exercise Program (as part of total program)
- ☒ Posture/body Mechanic Training and Education

- ☒ Other: Perc Disc Protocol and SI Joint Protocol
- ☐ Begin Spine Stabilization program after ___ visits.
- ☐ McKenzie Program Yes No
- ☒ Modalities Yes No may continue for ___ visits

Site: _____

Precautions: ☒ No traction
☐ No resistance therapy

Muscle(s):
☐ Home Exercise Program only
☐ Walking Program

Timothy M. Zgleszewski, MD
Eliza C. Hough, PA-C

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PRESCRIPTION

Timothy M. Zgleszewski, MD
FZ0036118

Eliza C. Hough, PA-C
MH2112011

DATE: 01/20/2011 TIME: 04:11 PM

PATIENT NAME: Beckman, Neal DOB: 09/29/1966
PT. ADDRESS: [REDACTED]
PT. PHONE: 843-406-3216
INSURANCE: Gallagher Bassett INS ID: 011924107312WC01

PRESCRIPTION(S):

DRUG	QTY	#DAYS	SIG	REFILLS	Msg to Pharmacy
1. PERCOCET 7.5-325 MG TABLET	90 Ninety	30 Thirty	Take 1 three times a day		

(Class 2)

Dispense as Written

Substitution Permitted
(unless stated otherwise above)

☒ Timothy M. Zgleszewski, MD
☐ Eliza C. Hough, PA-C

51



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Eliza C. Hough, PA-C

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PRESCRIPTION

Timothy M. Zgleszewski, MD
F70036118

Eliza C. Hough, PA-C
MH2112011

DATE: 01/21/2011 TIME: 11:49 AM

PATIENT NAME: Beckman, Neal DOB: 09/29/1966
PT. ADDRESS: [REDACTED]
PT. PHONE: 843-406-3216
INSURANCE: Gallagher Bassett INS ID: 011924107312WC01

PRESCRIPTION(S): DRUG	QTY	#DAYS	SIG	REFILLS	Msg to Pharmacy
1. CYMBALTA 60 MG CAPSULE	30 Thirty	30 Thirty	1 BEDTIME		
~~2. PERCOCET 7.5-325 MG TABLET~~	~~90 Ninety~~	~~30 Thirty~~	~~Take 1 three times a day~~		
(Class 2) 3. ROZEREM 8 MG TABLET	30 Thirty		Take 1 QHS prn sleep		

Dispense as Written

Substitution Permitted
(unless stated otherwise above)

☐ Timothy M. Zgleszewski, MD
☒ Eliza C. Hough, PA-C

52



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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Jan, 28, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Current Medication:

- 1 Deepwave SIG: 6 Deepwave treatments to lower back
- 2 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day
- 3 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME
- 4 Rozerem 8 Mg Tablet SIG: Take 1 QHS pm sleep
- 5 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or
Radiculitis Not Otherwise Specified 720.2 Sacroiliitis Not Elsewhere Classified 720.2 Sacroiliitis
724.8 Other Back Symptoms/Facet Arthropathy

PROCEDURES/TREATMENT:

PROCEDURE:

1. Right Sacro-Iliac Joint corticosteroid Injection.
2. Ultrasound Guidance, musculoskeletal.

DIAGNOSIS:

1. Sacroiliitis.
2. Low back pain.

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all of the patient's questions were answered including the risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, syncope, headache, respiratory or cardiac arrest, and scar formation.

Using ultrasound-guided technique with a C60e 5-2 MHz 60mm broad band curved array, a linear probe in transverse orientation was initially positioned over the sacral hiatus. In this position, the sacral crest was

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 01/28/2011 Page: 1

53

Identified and the probe was moved cephalad and slightly laterally to the right until the right iliac crest and its shadow was identified at the upper one third of the sacrum.

A 25G needle was then inserted and 3 cc of 1% Lidocaine without epinephrine was instilled for soft tissue local anesthesia. Next a 22G spinal needle was inserted into the right sacroiliac joint where the iliac crest and sacrum intersected. A total solution of 2cc containing 1cc of 1% Lidocaine without epinephrine and 1cc of Depomedrol(80 mg/mL) was instilled after a negative aspirate for blood and joint fluid was performed. There was no reproduction of any right leg pain or right leg paresthesias throughout the procedure. Static real-time views in transverse orientation were obtained for documentation purposes and stored. The needle was withdrawn and found to be intact. The site was cleaned and bandaged.

The patient was observed for an appropriate period of observation post procedure and discharged to home with a driver in stable condition. They will be seen back in the office within about 2 weeks.

Electronically signed off by Timothy M. Zgleszewski, MD on 01/28/2011 at 11:14 AM.

54



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Toll Free (866) 577-4333

Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Feb, 14, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:
CC: low back pain.

Mr. Beckman presents today for follow-up. He is s/p Perc Disc at L4-L5 and is currently in rehabilitation therapy. He states he is still sleeping better. He still has the right sided low back pain and the numbness in the right foot in the lateral 4 toes. The patient states that he not currently working.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock. The patient describes the pain as a deep achy, throbbing and sitting causes a sharp shooting pain in the left hip. pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 4.5/10 in the pain scale. At times it flares up to 6/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY,
SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED
TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 02/14/2011 Page: 1

55

3 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME
4 Rozerem 8 Mg Tablet SIG: Take 1 QHS pm sleep
5 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

VAS: 5/10, BP: 130/87, Pulse: 68, O2 Sat: 98

Physical Examination:**CONSTITUTIONAL:**

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are trigger points located in the piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the right PSIS's. There is a positive Fortin Finger test on the right. There is a positive Patrick's test on the right. There are negative neural tension signs in both legs in the seated slumped position.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

ABDOMEN:

The abdomen is soft, non-tender without rebound or guarding. Normoactive bowel sounds.

HEART:

There is no heave or abnormal pulsation in the chest noted. He demonstrates a regular rate and rhythm without audible murmurs, rubs or gallops. Skin is pink, capillary refill is <2 seconds. No pitting edema in the extremities is noted.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or
Radiculitis Not Otherwise Specified 720.2 Sacroiliitis Not Elsewhere Classified 720.2 Sacroiliitis
724.8 Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. He will need to continue with rehabilitation therapy. Work restrictions and medications are as noted below. His neural tension signs in the left leg appear to be improved and he has less left radiating hip pain.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination for s/p from Perc Disc at L4-L5 and for right sided SI joint pain.

THERAPEUTIC PROCEDURES:

The patient will require his second right SI joint injection under ultrasound guidance with corticosteroids.

MEDICATION:

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 02/14/2011 Page: 2

56

Mr. Beckman needs to continue his medication regimen as noted below to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 4 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant, Eliza C. Hough, PA-C for this encounter and he agrees with the above stated treatment plan.

15 minutes were spent in total visit time with Neal Beckman and greater than 50% of that time was spent in counseling and reviewing the above. Less than 30 minutes were spent in conference with Mr. Beckman's Nurse Case Manager, Anita Marchlak, RN, COHN.

**PROCEDURE ORDERS (DIAGNOSTIC & THERAPEUTIC:
THERAPEUTIC PROCEDURE ORDERS:**

SIJ Tx: (diagnosis 720.2).

2nd therapeutic right SI joint injection under ultrasound guidance with corticosteroids.

Work Restrictions:

Lifting with knees (with a straight back) not more than 25 lbs up to 15 times/hr; squatting up to 16 times/hr; standing or walking with a 10-minute break at least every 1-2 hours; sitting with a 10-minute break every 1-2 hours; extremes of flexion or extension allowed up to 12 times/hr; extremes of twisting allowed up to 16 times/hr; climbing ladders allowed up to 25 rungs 6 times/hr; driving car or light truck up to a full work day.

Electronically signed off by Timothy M. Zgleszewski, MD on 03/29/2011 at 03:33 PM.
Electronically signed off by Eliza Hough, PA-C on 03/28/2011 at 09:24 AM.



Timothy M. Zgleszewski, MD

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Mar, 14, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:

Mr. Beckman presents today for follow-up. He is s/p Perc Diso at L4-L5, he notes return of the left lateral upper thigh pain and radiation down the left lateral thigh to the knee. The pain is less severe as it was prior and he states he is sleeping better. He also mentions he is only requiring pain medication once daily rather than 3 times per day. He is able to tolerate more activity.

He still has the right sided low back pain and the numbness in the right foot in the lateral 4 toes. He has had 2 therapeutic right SIJs with little reduction in pain.
The patient states that he not currently working.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock and radiates to the left lateral thigh. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 4/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 03/14/2011 Page: 1

58

- 1 Deepwave SIG: 6 Deepwave treatments to lower back
- 2 Percocet 7.5-325 Mg Tablet SIG: Take 1 three times a day
- 3 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME
- 4 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep
- 5 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

VAS: 4/10, BP: 123/85, Pulse: 70, O2 Sat: 97

Physical Examination:**CONSTITUTIONAL:**

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are no trigger points in the lumbosacral spine today. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the right PSIS's. There is a positive Fortin Finger test on the right. There is a positive Patricks test on the right. Neural tension signs are equivocal.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

ABDOMEN:

The abdomen is soft, non-tender without rebound or guarding. Normoactive bowel sounds.

HEART:

There is no heave or abnormal pulsation in the chest noted. He demonstrates a regular rate and rhythm without audible murmurs, rubs or gallops. Skin is pink, capillary refill is <2 seconds. No pitting edema in the extremities is noted.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 720.2 Sacroiliitis 726.5 Trochanteric Bursitis (Left) 724.8 Other Back Symptoms/Facet Arthropathy

PROCEDURES/TREATMENT:**PROCEDURE:**

1. Left Gluteus Medius (Trochanteric) Bursa corticosteroid injection.
2. Ultrasound Guidance, musculoskeletal.

DIAGNOSIS:

1. Left Gluteus Medius (Trochanteric) Bursitis

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all of the patient's questions were answered including the risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, syncope, headache, respiratory or cardiac arrest, and scar formation.

Using ultrasound-guided technique with a C60e 5-2 MHz 60mm broad band curved array, a linear probe in

long axis orientation was initially positioned over the anterior left hip. In this position, the left greater trochanter was identified. Next, the transducer was slid posteriorly over the greater trochanter until the left gluteus medius bursa was identified. Fluid was noted in the left gluteus medius bursa.

A 25G needle was then inserted and 3 cc of 1% Lidocaine without epinephrine was instilled for soft tissue local anesthesia. Next a 22G spinal needle was inserted into the left gluteus medius bursa under live ultrasound guidance. A total solution of 2cc containing 1cc of 1% Lidocaine without epinephrine and 1cc of Depomedrol (40 mg/mL) was instilled after a negative aspirate for blood and fluid was performed. Static real-time views in transverse orientation were obtained for documentation purposes and stored. The needle was withdrawn and found to be intact. The site was cleaned and bandaged.

The patient was observed for an appropriate period of observation post procedure and discharged to home with a driver in stable condition. They will be seen back in the office within about 2 weeks.

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. Mr. Beckman appears to have some remaining pain in the left greater trochanter bursa despite the perc dic at L4-L5 and the treatment of the right SIJ. This greater trochanter bursitis is secondary to his work injury and is due to the lumbosacral pelvic muscle imbalances from his lower back injury. A left greater trochanter bursa injection is recommended at this time for the remaining pain complaints. He will complete his remaining rehab sessions and return 2/25/11 to undergo an FCE to be done here at PSSM.

His Percocet was decreased to once daily today.

He should reach MMI within 2 weeks, he may require future SI joint injections or RF to the SI joint.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination.

THERAPEUTIC PROCEDURES:

The patient will require Left greater trochanter.

Functional Capacity Evaluation (FCE) to be performed here at PSSM to help assess Mr. Beckman current functional status and to help determine his return to work level.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted below to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 4 weeks.

Timothy M. Zgleszewski, MD was present onsite and provided direct supervision of the Physician Assistant, Eliza C. Hough, PA-C for this encounter and he agrees with the above stated treatment plan.

25 minutes were spent in total visit time with Neal Beckman and greater than 50% of that time was spent in counseling and reviewing the above. Less than 30 minutes were spent in conference with Mr. Beckman's Nurse Case Manager, Anita Maronlak, RN, COHN.

PROCEDURE ORDERS (DIAGNOSTIC & THERAPEUTIC):
THERAPEUTIC PROCEDURE ORDERS:

JOINT/BURSA INJECTION:

GREATER TROCHANTER BURSA INJECTION - LEFT SIDE and to be done under ultrasound guidance.

Prescription:

- 1 Percocet 7.5-325 Mg Tablet SIG: Take 1 daily QTY: 30.00**
- 2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME QTY: 30.00**
- 3 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep QTY: 30.00**

Changed/Discontinued Medication(s):

Changed: PERCOCET 7.5-325 MG TABLET

Electronically signed off by Timothy M. Zgleszewski, MD on 04/12/2011 at 11:30 AM.
Electronically signed off by Eliza Hough, PA-C on 03/15/2011 at 08:52 AM.



Timothy M. Zgleszewski, MD

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Mar, 21, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:

Mr. Beckman presents today for follow-up. He is a/p Perc Disc at L4-L5, he notes return of the left lateral upper thigh pain and radiation down the left lateral thigh to the foot this pain has been increasing and over this weekend was severely painful. His pain level today is 7/10. He states his pain is worse than it was when he originally injured his back. The patient states that he not currently working.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock, radiates to the left lateral thigh, extends past the knee into the posterior leg and foot and The calf pain feels like "it's on fire" when he stands. Pain also radiates to the lateral hip. The patient describes the pain as a deep achy, throbbing and sitting causes a sharp shooting pain in the left hip. pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 7/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 03/21/2011 Page: 1

62

3 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep
4 Percocet 7.5-325 Mg Tablet SIG: Take 1 daily
6 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Physical Examination:**CONSTITUTIONAL:**

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the upper and lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are no trigger points in the lumbosacral spine today. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the right PSIS's. There is a positive Fortin Finger test on the right. There is a positive Patrick's test on the right. Neural tension signs are positive in the left leg in the seated slumped position.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

HEART:

Cardiovascular exam remains stable compared to initial visit.

LUNGS:

Respiratory exam remains stable compared to initial visit.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or
Radiculitis Not Otherwise Specified 720.2 Sacroiliitis 726.5 Trochanteric Bursitis (Left) 724.8
Other Back Symptoms/Facet Arthropathy

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. He has a positive left neural tension sign and will require a new lumbar MRI with contrast. We will hold off on rehab until further notice. He may be able to return to rehab once the MRI has been reviewed.

REHABILITATION THERAPY:

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination.

DIAGNOSTIC TESTING ORDERED:

An MRI of the lumbar spine.

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted below to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 1 weeks.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 03/21/2011 Page: 2

63

Timothy M. Zgleszewski, MD provided supervision of Physician Assistant Eliza C. Hough, PA-C for today's patient encounter and he agrees with the above stated treatment plan.

15 minutes were spent in total visit time with Neal Beckman and greater than 50% of that time was spent in counseling and reviewing the above.

Diagnostic/Lab Orders:

Diagnostic:

MRI LUMBAR SPINE W/WO CONTRAST

Electronically signed off by Timothy M. Zgleszewski, MD on 03/23/2011 at 03:34 PM.
Electronically signed off by Eliza Hough, PA-C on 03/21/2011 at 01:06 PM.



Timothy M. Zgleszewski, MD

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Apr, 06, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:
Mr. Beckman presents today for follow-up. He is here for follow-up of his new lumbar MRI. Unfortunately, the radiology group did not compare the new lumbar MRI to the older lumbar MRI when dictating the report. This has been requested. We will go ahead and refill his medications today. The patient states that he not currently working.

He notes some reduction in his lumbar pain but is still experiencing significant pain exacerbation and left lateral buttock and upper thigh pain. The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock, radiates to the left lateral thigh, extends past the knee into the posterior leg and foot and The calf pain feels like "it's on fire" when he stands. Pain also radiates to the lateral hip. The patient describes the pain as a deep achy, throbbing and sitting causes a sharp shooting pain in the left hip. pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 3/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 04/06/2011 Page: 1

65

3 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep
4 Percocet 7.5-325 Mg Tablet SIG: Take 1 daily
6 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

VAS: 3/10, BP: 124/90, Pulse: 88, O2 Sat: 95

Physical Examination:**CONSTITUTIONAL:**

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. On palpation, there is tenderness in bilateral lumbar paraspinal spasm in bilateral lumbar paraspinals. There is tenderness over the left greater trochanter. There are trigger points located in the left piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the the right PSIS's. There is a positive Fortin Finger test on the right. Neural tension signs are equivocal.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

ABDOMEN:

The abdomen is soft, non-tender without rebound or guarding. Normoactive bowel sounds.

HEART:

There is no heave or abnormal pulsation in the chest noted. He demonstrates a regular rate and rhythm without audible murmurs, rubs or gallops. Skin is pink, capillary refill is <2 seconds. No pitting edema in the extremities is noted.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnostic Reviewed:

reviewed 3/2011 lumbar MRI but comparison was not made by radiologist to the MRI pre-perc disc.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 720.2 Sacroiliitis 726.5 Trochanteric Bursitis (Left) 724.8 Other Back Symptom/Facet Arthropathy V58.69 Encounter for Long-Term Use of Other Medications V58.83 Encounter for Therapeutic Drug Monitoring

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses. He will need to return once the corrected MRI report has been received. His medications were refilled today. He has a positive left piriformis trigger point that reproduces his left leg radiating pain upon deep palpation. He has several rehabilitation therapy sessions remaining. This piriformis trigger point may resolve with rehab, if not he may require a left piriformis TPI. This trigger point with a reasonable degree of medical certainty would directly be related to his lumbosacral pelvic muscle imbalances that have developed from his lower back work injury.

REHABILITATION THERAPY:

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 04/06/2011 Page: 2

66

The patient will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances as noted in the physical examination he needs to complete his remaining sessions.

THERAPEUTIC PROCEDURES:

The patient will require a first therapeutic trigger point injection with corticosteroids to the left piriformis if his left piriformis trigger point pain does not improve with his remaining rehab.

Functional Capacity Evaluation (FCE) to be performed here at PSSM to help assess Mr. Beckman current functional status and to help determine his return to work level. (this has been deferred until review of the new lumbar MRI as compared to the lumbar MRI prior to the per disc).

MEDICATION:

Mr. Beckman needs to continue his medication regimen as noted below to maximize his function, control his pain and increase his overall quality of life. The risks and benefits of his medications were reviewed with him today and he consents to further treatment.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 1 weeks.

Timothy M. Zgleszewski, MD provided supervision of Physician Assistant Eliza C. Hough, PA-C for today's patient encounter and he agrees with the above stated treatment plan.

15 minutes were spent in total visit time with Neal Beckman and greater than 50% of that time was spent in counseling and reviewing the above.

Electronically signed off by Timothy M. Zgleszewski, MD on 04/11/2011 at 10:46 AM.
Electronically signed off by Eliza Hough, PA-C on 04/08/2011 at 12:05 AM.



Timothy M. Zgleszewski, MD

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Visit Note - Office Visit

Provider: Timothy M. Zgleszewski, MD
Encounter Date: Apr, 11, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1966 Age: 44 year
Address: [REDACTED]
Injury Date: 03/26/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:

Mr. Beckman presents today for follow-up. His MRI of the LS spine was reviewed and compared to his prior one. It showed the only change to be a reduction in his prior lumbar disc injury that was treated with his percutaneous discectomy.
The patient states that he not currently working.

He reports no leg pain today. The patient states that the pain is located in the Left greater than right lower back. His pain does not radiate into the legs. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip. pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 2/10 in the pain scale. At times it flares up to 3/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

- 1 Deepwave SIG: 6 Deepwave treatments to lower back
- 2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME
- 3 Rozerem 8 Mg Tablet SIG: Take 1 QHS prn sleep
- 4 Percocet 7.5-325 Mg Tablet SIG: Take 1 daily

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 04/11/2011 Page: 1

68

5 Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Vital Signs:

VAS: 3/10, BP: 120/87, Pulse: 95, O2 Sat: 94

Physical Examination:**CONSTITUTIONAL:**

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonantalgic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. On palpation, there is tenderness in bilateral lumbar paraspinal spasm in bilateral lumbar paraspinals. There is tenderness over the left greater trochanter. There are trigger points located in the left piriformis muscles today with a positive twitch response. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the the right PSIS's. There is a positive Fortin Finger test on the right Neural tension signs are equivocal.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

ABDOMEN:

The abdomen is soft, non-tender without rebound or guarding. Normoactive bowel sounds.

HEART:

There is no heave or abnormal pulsation in the chest noted. He demonstrates a regular rate and rhythm without audible murmurs, rubs or gallops. Skin is pink, capillary refill is <2 seconds. No pitting edema in the extremities is noted.

LUNGS:

Lungs are clear to auscultation bilaterally. No wheezes, rales, rubs or rhonchi are noted.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or
Radiculitis Not Otherwise Specified 720.2 Sacroiliitis 726.5 Trochanteric Bursitis (Left) 724.8
Other Back Symptoms/Facet Arthropathy

PROCEDURES/TREATMENT:**PROCEDURE:**

1. Left Gluteus Medius (Trochanteric) Bursa corticosteroid injection.
2. Ultrasound Guidance, musculoskeletal.

DIAGNOSIS:

1. Left Gluteus Medius (Trochanteric) Bursitis

METHOD OF PROCEDURE:

The patient was prepped and draped in a sterile fashion in the prone position after informed consent was signed and all of the patient's questions were answered including the risks, benefits, alternative treatment options, and prognosis. The risks include but are not limited to infection, allergic reaction, nerve damage, paralysis, syncope, headache, respiratory or cardiac arrest, and scar formation.

Using ultrasound-guided technique with a C80e 5-2 MHz 60mm broad band curved array, a linear probe in long axis orientation was initially positioned over the anterior left hip. In this position, the left greater trochanter was identified. Next, the transducer was slid posteriorly over the greater trochanter until the left gluteus medius bursa was identified. Fluid was noted in the left gluteus medius bursa.

Patient: Beckman, Neal DOB: 09/29/1966 Visit: 04/11/2011 Page: 2

A 25G needle was then inserted and 3 cc of 1% Lidocaine without epinephrine was instilled for soft tissue local anesthesia. Next a 22G spinal needle was inserted into the left gluteus medius bursa under live ultrasound guidance. A total solution of 2cc containing 1cc of 1% Lidocaine without epinephrine and 1cc of Depomedrol(40 mg/mL) was instilled after a negative aspirate for blood and fluid was performed. Static real-time views in transverse orientation were obtained for documentation purposes and stored. The needle was withdrawn and found to be intact. The site was cleaned and bandaged.

The patient was observed for an appropriate period of observation post procedure and discharged to home with a driver in stable condition. They will be seen back in the office within about 2 weeks.

Plan/Discussion:

After reviewing today's history, physical examination, review of the medical records and provided diagnostic testing, Mr. Beckman has the above diagnoses.

THERAPEUTIC PROCEDURES:

The patient will require a repeat left hip joint injection under ultrasound guidance with corticosteroids and that was performed today with authorization given by his case manager.

Functional Capacity Evaluation (FCE) to be performed here at PSSM to help assess Mr. Beckman current functional status and to help determine his return to work level.

The risks, benefits, alternative treatment options, and prognosis regarding the above treatment plan were discussed with Mr. Beckman today, and he agrees to have the above treatment. He understands any problems in the interim; he can contact this office anytime.

FOLLOW-UP: Neal Beckman will follow up in 2 weeks after his FCE.

Prognosis:

He should reach maximum medical. Time frame: 2 week(s) (i.e. once his FCE is performed.).

CC:

holland, Cheryl : 04/12/2011

Electronically signed off by Timothy M. Zgleszewski, MD on 04/12/2011 at 01:09 PM.



Timothy M. Zgleczewski, MD
Eliza C. Hough, PA-C

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Visit Note - Office Visit

Provider: Timothy M. Zgleczewski, MD
Encounter Date: May, 02, 2011

Patient: Beckman, Neal
Gender: Male DOB: Sep 29, 1968 Age: 44 year

Address: [REDACTED]
Injury Date: 03/25/2010
Employer: Cisco Foods
Insurance: Gallagher Bassett
Claim No.: 011924107312WC01

Allergy:
Oyster

HPI:

Mr. Beckman presents today for follow-up. He is a Pcp Disc at L4-L5, he notes return of the left lateral upper thigh pain and radiation down the left lateral thigh to the foot this pain has been increasing and over the weekend was severely painful. His pain level today is 7/10. He states his pain is worse than it was when he originally injured his back. The patient states that he not currently working.

The patient states that the pain is located in the Left greater than right lower back. He states his pain radiates to the left buttock, radiates to the left lateral thigh, extends past the knee into the posterior leg and foot. The left pain feels like "it's on fire" when he stands. Pain also radiates to the lateral hip. The patient describes the pain as a deep aching, throbbing and sitting causes a sharp shooting pain in the left hip, pain. There is no change in Mr. Beckman's aggravating and alleviating factors. The patient's current pain averages around 7/10 in the pain scale.

The patient remains on the below listed medications for pain. He states that his medications are working well. Medication side effects felt by the patient include insomnia and itching.

ALLERGIES, CURRENT MEDICATIONS, PAST MEDICAL HISTORY, PAST SURGICAL HISTORY, SOCIAL HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS ALL PERSONALLY REVIEWED TODAY AND AS NOTED IN THE INTAKE QUESTIONNAIRE.

Current Medication:

1 Deepwave SIG: 6 Deepwave treatments to lower back
2 Cymbalta 60 Mg Capsule SIG: 1 BEDTIME

Patient: Beckman, Neal DOB: 09/29/1968 Visit: 05/02/2011 Page: 1

3. Roxerem 8 Mg Tablet SIG: Take 1 QHS pm sleep
 4. Percocet 7.5-325 Mg Tablet SIG: Take 1 daily
 5. Ibuprofen 800 Mg Tablet (Other MD) SIG: Take 1 three times a day

Physical Examination:

CONSTITUTIONAL:

Physical exam reveals a well nourished, well developed, slender male. He is in a minimal to moderate amount of pain. Grooming, nutrition and body habitus is normal for his age. The patient is alert and oriented to person place and time. The patient does not appear to be in acute distress. Patient demonstrates a normal mood and affect. Gait and station is nonataxic and able to raise up on his heels and toes.

LUMBOSACRAL:

Inspection of the lower extremities demonstrates intact radial and pedal pulses and no edema. Inspection of the low back demonstrates normal lumbar lordosis. There are no new surgical incisions. Pain is increased with extension, right lateral rotation and left lateral rotation. There is tenderness over the left greater trochanter. There are no trigger points in the lumbosacral spine today. There is tightness noted in the left piriformis and Gluteals muscle(s) today. There is tenderness over the right PSIS's. There is a positive Ferni Finger test on the right. There is a positive Patrick's test on the right. Neural tension signs are positive in the left leg in the seated slumped position.

LOWER EXTREMITY MOTOR/SENSORY/DTR:

Bilateral lower extremity examination is stable and unchanged from previous exam.

HEART:

Cardiovascular exam remains stable compared to initial visit.

LUNGS:

Respiratory exam remains stable compared to initial visit.

Diagnosis:

722.10 Lumbar Disc Displacement Without Myelopathy 724.4 Thoracic or Lumbosacral Neuritis or
 Radiculitis Not Otherwise Specified 720.2 Sacroiliitis 726.6 Trochanteric Bursitis (Left) 724.8
 Other Back Symptoms/Patet Arthropathy

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Neal Beckman
Physician's Name: Vincent M. Zalesowski, M.D.
Practice/Clinic: Palmetto Spine & Sports, P.A.
Preparer's Name: Vincent C. Northcutt, Attorney for the Defendant
Phone: (843) 977-5732

Employer's Name: Sunco Columbia, LLC
Insurance Carrier: Gallagher Bassett Services, Inc.
SCWCC File No: 2002923

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her Injury by accident pursuant to §§42-15-80, 42-1-172 or 42-11-10.

Date of Injury or Illness: March 25, 2010

Date of first office visit: 4/19/10 Date of last visit: 5/2/11
Diagnosis or nature of injury or illness: T22, L5 - Sacroiliitis, Lumbar disc injury - radiculopathy
Body part(s) injured: Back/Spine Body part(s) affected: Lower Extremity
Date of Maximum Medical Improvement: 5/2/11

Based on the AMA Guidelines, the claimant has sustained a 10 % medical impairment to Back/Spine injured body part(s) and a 5 % medical impairment to SE joint - combined only = 15% 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:

Medium duty - no repetitive bending/twisting or lifting

☐ 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:

- up to 2-3 SE joint injections over the next 2 years

Treating Physician

9/12/11
Date



Timothy M. Zgleszewski, M.D.

Board Certified

- *Physiatry*
- *Pain Medicine*
- *Independent Medical Examiner*

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Functional Capacity Physician Interpretation Report

Date: April 25, 2011

Claimant: Neal Beckman

DOB: September 26, 1966

DOI: March 25, 2010

Case#: 011924107312WC01

Mr. Beckman was referred today for a Functional Capacity Evaluation. The results of today's evaluation indicate that this individual scored moderate on the pain profile and that validity criterion suggest consistent results. During the Functional Capacity Evaluation, Mr. Beckman had a pre-testing heart rate of 64bpm, a testing heart rate average of 87bpm and a post-test heart rate of 87bpm.

During the material-handling portion of the evaluation, Mr. Beckman reached the MEDIUM physical demand level. No comment can be made at this time with regard to the claimant's work status; as a job description was not provided.

Based upon the above results, the physical demand level achieved during the materials handling portion of the test is a reliable representation of Mr. Beckman's functional capacity. These results may be used for medical or vocational planning. It should be noted that this functional capacity evaluation does not address any medication or psychological issues.

Electronically signed by Timothy M. Zgleszewski, MD on 04/25/2011 at 11:04:12 AM

Timothy M. Zgleszewski, M.D.

Certified Blankenship FCE Evaluator

Board-Certified Physical Medicine Rehabilitation
Sub-Specialty Board Certified, Pain Medicine
Fellowship Trained Interventional Spine/Pain Medicine

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74



Timothy M. Zglezewski, M.D.

Board Certified

- Primary
- Pain Medicine
- Independent Medical Examiner

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Date: April 25, 2011

Claimant: Neal Beckman
 DOB: September 26, 1966
 DOI: March 25, 2010
 Case #: 011924107312WC01
 Test Date: April 25, 2011

Dear Ms. Anita Marciniak:

Thank you for referring Mr. Neal Beckman for a Functional Capacity Evaluation. It was performed on April 25, 2011 at our Charleston location. Today's FCE began at 8:15 am and was completed at 10:30 am. Mr. Beckman was cooperative and pleasant throughout the FCE period. Below are the results of today's FCE. Today's FCE results represent Mr. Beckman's preferred physical demand level and do not necessarily represent his actual physical demands. Clinical and medical correlation is necessary to identify Mr. Beckman's actual Physical Demand Capabilities.

This functional capacity evaluation does not address any medication or psychological issues.

FUNCTIONAL CAPACITY EVALUATION RESULTS

Prior to the evaluation, Mr. Beckman was explained thoroughly the FCE process and its precautions. He was informed that at no time would he be made to perform any activity that he considered harmful to his injury and that he may stop any test secondary to pain, if he so desired. Mr. Beckman acknowledged this risk and signed the consent form. The claimant also stated that he had not taken any pain medication prior to this FCE. The FCE results indicate that Mr. Beckman's preferred level of functional ability is most consistent with the MEDIUM Physical Demand Level for an 8 hour day according to the Dictionary of Occupational Titles, U.S. Department of Labor, 1991. His specific lifting capabilities were 60# on the floor lift, 10#(2" knuckle lift combination leg-torso, and a 40# shoulder lift. The detailed results are recorded on the FCE form.

EXTRAPOLATIONS

Mr. Beckman was tested dynamically in 8 functional lift positions for the occasional physical demand, as well as 9 positional activities for the non-material handling activities. The frequent and constant physical demands were determined using extrapolated information based on Mr. Beckman's actual tested data. The enclosed FCE form is highlighted to indicate this extrapolated information.

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75

CLAIMANT:

DATE:

Page 2

Neal Beckman

April 25, 2011

BLANKENSHIP SYSTEM BEHAVIOR PROFILE

Mr. Beckman was asked to complete a total of 5 pain questionnaires. A Numeric Pain Scale was used to allow Mr. Beckman to rate his pain levels prior to and after each test performed. According to these results, Mr. Beckman scored low on 4 moderate on 3, and high on 6 of criteria tested and rated his pain levels an average of 4.2 indicating a moderate score on the pain profile. Mr. Beckman accumulated a score of 45/52 or 87% of validity criteria during the FCE, suggesting consistent FCE results. Based on this profile, other data should be considered to help understand the true functional ability and to assist with medical and vocational planning.

PRE FCE DATA

Pain Rating: 3/10+
Standing Heart Rate: 66bpm
Seated Heart Rate: 64bpm
B/P: 118/82

POST FCE DATA

Pain Rating: 5/10+
Standing Heart Rate: 93bpm
Seated Heart Rate: 87bpm
B/P: 115/82

Again, thank you for referring Mr. Neal Beckman for this evaluation.

Sincerely,

Palmetto Spine & Sports Medicine, P.A.

Electronically signed by Jennifer E. Mackenzie, MS, ATC, SCAT on 04/25/2011 at 10:58:40 AM

Jennifer E. Mackenzie, MS, ATC, SCAT
Certified Blankenship FCB Evaluator

Reviewed by:

Electronically signed by Timothy M. Zgleszewski, MD on 04/25/2011 at 11:03:20 AM

Timothy M. Zgleszewski, M.D.

Certified Blankenship FCB Evaluator

Board Certified Physical Medicine Rehabilitation
Sub-Specialty Board Certified, Pain Medicine
Fellowship Trained Interventional Spine/Pain Medicine

Enclosure:

76

Palmetto Spine & Sports Medicine, P.A.
FUNCTIONAL CAPACITY/PHYSICAL CAPABILITY FORM
(PATIENT PREFERRED RESULTS)

Claimant Name: Neal BeckmanSSN: [REDACTED] Age: 44Sex: MaleHt: 70 inchesTest Date: April 25, 2011
Wt: 258 lbs.**Material Handling Results****PHYSICAL DEMAND CLASSIFICATION: MEDIUM**

	<u>Occasional</u> 1-32 hrs/mo	<u>Frequent</u> 33-66 hrs/mo	<u>Constant</u> 67-100 hrs/mo
Torso Lift	N/A	N/A	N/A
Leg Lift	N/A	N/A	N/A
Knee Lift (handles are 12" from the floor)	60 lbs.	30 lbs.	12 lbs.
Shoulder Lift	10 lbs.	50 lbs.	20 lbs.
Overhead Lift	40 lbs.	20 lbs.	8.0 lbs.
2 Hand Carry (30ft)	20 lbs.	10 lbs.	4.0 lbs.
1 Hand Carry (30ft)	30 lbs.	15 lbs.	6.0 lbs.
Push/Pull (30ft)	45 lbs.	22.5 lbs.	9.0 lbs.
	50 lbs.	25 lbs.	10 lbs.

Evaluator Comments: Torso lift was not assessed secondary to a history lumbar disc injury

Non-Material Handling Activities

	<u>NEVER</u> 0% of the Day	<u>OCCASIONAL</u> 1-33% of the Day 1-100 hrs/mo	<u>FREQUENT</u> 34-66% of the Day 101-300 hrs/mo	<u>CONSTANT</u> 67-100% of the Day 301-1000 hrs/mo
Sitting				
Standing				
Walking				
Bending				
Forward Reach				
Overhead Reach				
Squatting				
Kneeling				
Crawling				
Stair Climbing ** (Ladder climbing not tested)				

Evaluator Comments:

Special Activities

	<u>Daily Functional Balancing</u>	<u>Arm Controls</u>	<u>Foot Controls</u>
Left Side			
Right Side			

Evaluator Comments:

Hand Function

	<u>CANNOT USE</u>	<u>SIMPLE GRASPING</u>	<u>FINE WORK</u>	<u>PUSHING/PULLING</u>	<u>LOW SPEED ASSEMBLY</u>	<u>HIGH SPEED ASSEMBLY</u>
Left Side						
Right Side						

Evaluator Comments:

AUTHORIZATION

The above data is accurate according to our test protocol.

EVALUATOR: Jennifer E. Mackenzie, MS, ATC, SCAT, FCE Evaluator Date: 04/25/11

Jennifer E. Mackenzie, MS, ATC, SCAT, Certified Blankenship FCE Evaluator

I have reviewed this FCE and agree with the results with my changes as indicated.

Electronically signed by Timothy M. Zgleszewski, MD on 04/25/2011 at 11:02:03 AM



DAVID R. PRICE M.ED.

Certified Rehabilitation Counselor

September 10, 2011

VOCATIONAL ASSESSMENT OF NEAL BECKMAN

Introduction:

Neal Beckman is a 44 year old Tractor-Trailer-Truck Driver/Delivery Driver formerly employed by Sysco Inc. He was pulling a loaded handtruck up a flight of stairs on March 25, 2010 when he injured his low back. Mr. Beckman was diagnosed with multiple levels of lumbar degenerative disc disease. He has completed a program of conservative treatment including lumbar nerve blocks, epidural steroid injections, trigger point injections, and deepwave treatments. Ultimately Mr. Beckman required percutaneous discectomy at L4-5. Maximum improvement has been obtained and he has undergone Functional Capacity Evaluation. He is approved for MEDIUM Physical Demand for an 8 hour day. A rating of permanent impairment is pending assignment by Mr. Beckman's treating physician. Mr. Beckman's job requires him to make repetitive lifts in excess of 50 lbs and to use his spine for repetitive mechanical functions such as bending and twisting. Job duties exceed his recommended physical tolerances. Consequently he was terminated from employment in June 2010. He has not worked since his injury. Mr. Beckham has residual back pain and left lower extremity weakness. His pain is aggravated by repetitive use of the spine, prolonged sitting or standing. Average daily pain levels range from 4/10 to 7/10. Overexertion increases pain and can result in prolonged flares greater in length than one day. As such Mr. Beckman has adopted a sedentary lifestyle. He avoids activities that produce pain and spends much of his time inside his home sitting in a comfortable recliner chair. Future vocational objectives are vague. Mr. Beckman has an open South Carolina Worker's Compensation Claim. He is scheduled for a hearing in the near future to resolve issues of permanent disability. In that regard he is referred by his attorney for vocational assessment and opinion on his employability.

A vocational interview was conducted on September 9, 2011. Mr. Beckman's history was taken and he was tested for assessment of intelligence and educational achievement. His medical file was reviewed and a thorough symptoms list recorded. Based on the available information and with a reasonable degree of vocational certainty, the conclusions and recommendations contained in this report represent my professional opinion as a certified vocational rehabilitation counselor.

Records Reviewed:

Palmetto Health

Byron Williams, M.D. -Coastal Occupational Medicine

Timothy M. Zgleszewski, M.D. -Palmetto Spine & Sports Medicine

78

Functional Capacity Evaluation April 25, 2011

Treatment Summary:

Initial care was provided by the physicians of Palmetto Health. Mr. Beckman was seen once and prescribed anti-inflammatory medication for a lumbar sprain. He was referred to occupational medicine physician Byron Williams, M.D. where he was seen several times and eventually referred for lumbar MR Imaging. Results dictated a referral to spine specialist Timothy Zgleszewski, M.D. Dr. Zgleszewski diagnosed degenerative disc disease L3-4, L4-5, L5-S1. Mr. Beckman was prescribed a comprehensive conservative treatment plan. He had physical therapy, medications, multiple lumbar injections, deepwave treatments, and ultimately percutaneous discectomy L4-5. On April 25, 2011 Mr. Beckman underwent Functional Capacity Evaluation and was approved for *MEDIUM Physical Demand* for an 8-hour day. No comment was made regarding his ability to participate in the standard 40 hour week. Dr. Zgleszewski's rating of permanent impairment is not available at the current time. Work restrictions are consistent with the parameters of the FCE.

Observations:

Mr. Beckman was on time and appropriately attired for vocational interview. He was pleasant and cooperative. Mood and affect were good. There were no signs of thought disorder or delusional process. Speech was fluent. Orientation was to person, place, and time. Mr. Beckman appeared to answer interview questions in a candid manner. Memory was grossly intact. Effort on standardized testing was good.

Mr. Beckman was observed to walk without gait impairment. He was noted to be a male Caucasian, age 44, 5'10" tall with weight of 230 lb. When seated Mr. Beckman had difficulty maintaining comfort and frequently shifted weight and moved about. He got up at intervals of about 30 minutes to stretch and walk.

Symptoms Report/Activities of Daily Living:

Mr. Beckman reported daily back pain rated 4/10 to 7/10 on the analog pain scale. He reported having good days when he could perform light activity and bad days when he was incapable of any meaningful activity. On average Mr. Beckman reported one bad day per week when he did not feel like dressing, leaving home, or engaging in any significant physical activity. Pain is located in the mid-lumbar spine. The left leg is reported to be weaker with a give-way response at the knee to weight bearing after prolonged ambulation. Spasms develop in the lumbar spine. A limp is reported to develop after long periods on the feet. Occasionally a cane is required for balance and support. One-time standing/walking tolerance is estimated as 30 minutes. In an average day Mr. Beckman is currently spending 2-3 hours in intermittent ambulation. He states that he is incapable of performing repetitive lifting or using his back in a repetitive mechanical manner for bending and twisting. Mr. Beckman states that pain is increased by squatting, stooping, or kneeling. He does not crawl. He avoids ladders, repetitive

79

stair climbing, and rough uneven surfaces. Driving is limited to about 30 minutes. Mr. Beckman states that he can lift 25 lbs from floor to waist level one or two times but cannot perform it repetitively. Overhead he can lift about 10 lbs. He feels that the Functional Capacity Evaluation is an overestimation of his true physical ability. Mr. Beckman states that he was instructed to give maximum performance on the FCE, which he did. He states that his pain levels were maximized. For the following two days Mr. Beckman reports that he basically stayed inside his home unable to perform any significant activity. He states that he was not contacted by the FCE evaluator for a follow-up report on his status.

Currently Mr. Beckman states that he spends up to 14 hours per day sitting in a recliner chair or lying on the couch trying to stay comfortable. Activity increases pain and as such he avoids things that hurt him. By recommendation of his physical therapist Mr. Beckman works out at the local gym on exercise machines, treadmill, and stationary bicycle for one hour three times weekly. He cuts his ¼ acre lot using a push mower. He states that it takes two days to complete the task and afterward he is incapable of activity the following day. Mr. Beckman is a recreational fisherman and states that he has been able to go fishing only three times since injury. His wife had to launch his 12' skiff for him and after one hour he had to return to the shore secondary to pain and discomfort. Home and vehicle maintenance are contracted out. Mr. Beckman describes himself as a tinkerer and states that he attempts to spend time in his garage shop on small projects. He will walk his dog but has been unable to attend church due to his sitting intolerance. He will perform light housework but states that he must work slowly and carefully taking frequent breaks. Each afternoon around 1 pm his back fatigues and requires a supine rest period of about one hour. Secondary to his pain Mr. Beckman is experiencing erectile dysfunction which he states was never a problem before injury.

Mr. Beckman also reports mild to moderate periods of depression that affect his motivation and energy level. He admits to loss of self-esteem, being grumpy, and easily frustrated. He has become increasingly socially withdrawn and no longer can tolerate being in crowds or loud environments.

Medications:

Mr. Beckman requires Oxycodone 7.5 mg every 8 hours as needed for pain control. He states that he is very sensitive to the medication and attempts to avoid it as much as possible. Mr. Beckman reports that the medication make him sleepy, dulls thinking, and makes it difficult to maintain attention and concentration. He reports dizziness, blurry vision, and balance issues. Mr. Beckman states that the medication impairs his memory, judgment and decision making. He avoids driving when taking medication.

Past Medical History:

Mr. Beckman reports a long history of low grade back pain and multiple minor injuries at work resulting in periods of lost time. Until his most recent injury he has always been able to return to work. Surgeries are positive for left knee menisectomy and inguinal

hernia repair. Major sickness and hospitalization are denied. There is no admission to alcohol abuse, drug abuse, or previous treatment for depression or mental illness. There are no known allergies.

Social History:

Mr. Beckman is a long-term resident of the Charleston, S.C. area. He currently resides in James Island, S.C. He has been married for 25 years. His wife is an office manager for Ross Paint and Collision Center. The couple has to children that live independently. There are no grandchildren. Mr. Ross has no criminal history or major driving violations. His current income is exclusive to \$681.36 per week in worker's compensation benefits.

Education:

Mr. Beckman graduated from Garrett High School in 1984. He attended Trident Technical College for one year taking remedial and general courses. He did not earn a certificate. His computer and keyboard skills are described as "not too good". Mr. Beckman earned a commercial driver's license (CDL) through on-the-job training At Pearlstine Distributors. He has no military training.

The Wide Range Achievement Tests, 4th Revision, Green Form was administered to assess current academic levels:

	<u>Standard Score</u>	<u>Percentile</u>	<u>Grade Equivalent</u>
Word Reading-	103	58	>12.9
Sentence Comprehension-	104	61	>12.9
Math Computation-	105	63	>12.9
Reading Composite-	103	58	N.A.

Reading Scores fall in the *Average Range*. Math Score is in the *Average Range*.

Intelligence was measured with the *Beta III*:

IQ Score- 106
Percentile-66

Intelligence is measured in the *Average Range*.

Employment History:

Mr. Beckman has been a *Delivery Driver/Tractor-Trailer-Truck Driver* since 1988 or 33 years. He worked 5 ½ years for Sysco delivering food and restaurant supplies where his average weekly wage was \$1075.39. He worked as a Stevedore for Ceres Marine for 3 ½ years. Mr. Beckman was a driver for Coca-Cola for 7 ½ years. He worked for PYA-Monarch for 7 years a delivery truck driver. His occupation is described in *The Dictionary of Occupational Titles, 4th Edition, Volume I* as:

292.353-010 Driver, Sales Route (any industry)

The occupation is listed by The U.S. Department of Labor as *MEDIUM Physical Demand* or:

"Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects."

Conclusions and Recommendations:

Mr. Beckman is a 44 year old tractor-trailer-delivery-truck driver. He injured his back at work on 03/25/2010 pulling a loaded handtruck up a flight of stairs. He was diagnosed with multiple levels of lumbar degenerative disc disease. Ultimately he required percutaneous discectomy at L4-5. Maximum medical improvement has been obtained and Mr. Beckman has been released to return to medium physical demand. A rating of permanent impairment has yet to be assigned. Mr. Beckman was terminated from his job secondary to his inability to perform the repetitive heavy lifting required. He has not worked since injury.

Mr. Beckman has residual back pain and left leg weakness that interferes with his ability to perform his usual daily activities or to participate in gainful employment. He reports that he cannot tolerate periods of sitting or standing over 30 minutes. He reports ability to lift 25 lbs floor to waist several times but not repetitively. Overhead he is comfortable with 10 lbs. Prolonged physical activity or one-time overexertion results in a dramatic increase in pain levels. He denies the ability to perform repetitive or sustained physical activity. As such Mr. Beckman is in strong disagreement with the physical demand level he was assigned through functional capacity evaluation. He did not receive any follow-up from the FCE therapist post evaluation and states that for two days he was in pain and unable to perform meaningful activity. Mr. Beckman states that typically any significant activity may result in a pain flare that will disable him for longer than one day. To avoid such flares he is very careful performing tasks. He works slowly and takes frequent breaks. Around 1 pm of each day his back is fatigued and requires a supine rest of about one hour. Mr. Beckman diligently works out at his local gym following recommendations provided by his physical therapist but has not been able to improve his current level of function. Pain averages 4/10 on the vas scale and increases to 7/10 with activity. Consequently he is spending up to 14 hours per day in an easy chair or lying on the couch. A narcotic analgesic is required for pain control. Unfortunately Mr. Beckman is unable to take the medication as needed because he is very sensitive to the side effects. He reports significant sedation and impairment of cognitive and physical function. Mr. Beckman's pain and loss of function have led him to feel depressed and report loss of self-esteem, energy, and motivation. He is anxious over his unemployment and cannot verbalize a solid plan for returning to the workforce.

The most obvious result of Mr. Beckman's back injury on his vocational status is that he will not be able to return to his chosen occupation of the past 33 years. Truck driving, especially jobs that require delivering heavy food stuffs and other such materials require good physical conditioning and a strong back. Mr. Beckman can no longer perform this type of work as was demonstrated by his employer's decision to terminate him. Since losing his job Mr. Beckman has surrendered his commercial driver's license secondary to being unable to pass a Department of Transportation Physical. This of course will rule out any chance of returning to work driving a tractor-trailer truck. Driving jobs in general should be avoided as they either require long periods of sitting or frequent getting in and out of a vehicle. Neither of these situations would be compatible with Mr. Beckman's back condition. His requirement for occasional narcotic medication would also be problematic. Because of his intolerance to repetitive lifting, bending, and prolonged periods on his feet it would be my recommendation that Mr. Beckman completely avoid delivery jobs and material handling occupations. I would suggest he avoid industries such as retail sales, manufacturing, production, and assembly where he would be required to be on his feet for long periods of time without a sitting break. Mr. Beckman does not possess good work skills for management, administration, or clerical work. Through injury he has lost the ability to use most of the skills he has acquired over his years of working. At this point I would consider him semi-skilled at best.

While Mr. Beckman has incurred a large loss of access to the job market I do not think that it completely rules him out from returning to work. Certainly I believe he should be able to function adequately as a radio dispatcher or possibly as an emergency dispatcher or in this general capacity. He has good intelligence and educational ability and is certainly capable of being retrained. Going forward I would suggest Mr. Beckman limit work to the light physical demand. It is my experience over 30+ years of helping back-injured workers find new employment that they do better when lifts are kept under 20 pounds and not performed repetitively. The emphasis should be on using the upper extremities and not the spine. I would recommend a job that is primarily performed from a seated position but also allows Mr. Beckman to get up at his discretion. Likewise he should not be required to be on his feet for long periods, climb stairs repetitively, stoop, crouch, or crawl. With this in mind I believe that Mr. Beckman's injuries not only limit his access to jobs but because of his reduction in skills will also result in a decrease in his wage earning capacity. Taken as he presently is I would estimate that Mr. Beckman is capable of working at entry level semi-skilled employment in a range of earnings approximately \$8.00-\$10.00 per hour. He has been approved to work an 8-hour day but I question his ability to sustain this day to day in the context of the standard 40-hour work week. His medical providers have made no projection in this regard. Presently under very sheltered conditions Mr. Beckman is experiencing an average of one pain flare per week that prevents him from performing any meaningful activity for an entire day. Work absences of this frequency will certainly result in termination. I would also question Mr. Beckman's ability to work at a persistent production rate as he is known to require frequent breaks and to work at a slower pace. Allowances would also be needed for his requirement to lie supine and rest his back. Such accommodations in the workplace are difficult to arrange and will require a very understanding employer, further limiting Mr. Beckman's occupational choices. Ultimately Mr. Beckman may have to be formally

retrained for a more sedentary occupation. He will surely meet with employer discrimination as he has history of a spine injury and worker's compensation claim.

Therefore, based on the available information and with a reasonable degree of vocational certainty, it is my opinion that the work injury of 03/25/2010 has resulted in Neal Beckman being unable to return to his usual and customary occupation of tractor-trailer-truck driver/delivery driver. He has lost substantial access to employment opportunities and has experienced a reduction in wage earning capacity. His ability to consistently work an 8 hour day and 40 hour week is unproven. Reasonable accommodations will likely be required to the work place and job duties as related to the repetitive use of the spine, prolonged sitting and ambulation. Mr. Beckman is a good candidate for vocational rehabilitation. Should he choose this option I would refer him to the S.C. Department of Vocational Rehabilitation for evaluation and development of a retraining program.

Submitted by:

David R. Price

David R. Price M. Ed., CRC

Certified Vocational Rehabilitation Counselor

84

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

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INDEPENDENT MEDICAL EVALUATION

Patient: Neal P. Beckman
Chart: 132423 WC
Date: 2/27/12

HISTORY OF PRESENT ILLNESS: Mr. Beckman is a very pleasant, 45-year-old man who was driving a truck for Sysco when on March 25, 2010, he had an injury to his lower back. This has been well documented and he has received extensive treatment for this. He describes his pain pattern as that most predominantly of low back pain. His pain does occasionally radiate down into his left leg and he states that he has some numbness around his foot. It seems to be worsened with activity. He feels that he is generally improved over the course of his treatment which has been extensive. He has had multiple rounds of physical therapy and has been treated by Dr. Zgleszewski in Charleston with various medications, epidural steroid injections, what sounds like facet blocks as well as even a percutaneous discectomy. None of these really provided any lasting relief. Dr. Z has released him at maximum medical improvement but he has never had a surgical evaluation. Overall Mr. Beckman feels that he is improved and he states that he had actually gotten to the point up to two weeks ago where he was getting around really pretty well with only minimal pain and was off of all medications. He attributes this improvement to a rigorous core strengthening workout program in the gym.

On February 14th he woke up and had another acute episode of pain and spasm in his back that was very severe. He has had a couple of these and this current episode has now finally begun to dissipate. He shows me a picture today of his posture on the day of that episode.

PAST MEDICAL HISTORY: Unremarkable

CURRENT MEDICATIONS: Oxycodone and muscle relaxers as needed.

ALLERGIES: NKDA

SOCIAL HISTORY: The patient does not use tobacco.

FAMILY HISTORY AND REVIEW OF SYSTEMS: Well documented in the chart on the history form. That information has been reviewed and signed and is noncontributory except for the information included in the HPI.

PHYSICAL EXAMINATION: The patient is seated in the exam room and appears generally healthy for age. The patient is awake, alert, and oriented. PERRL. Speech and language are normal, as are attention span and concentration. Affect is grossly normal, and fund of knowledge appears appropriate. Height is 5'10", weight is 240 pounds, and respirations are 14 and regular. He has a slightly flat affect but appears to be in pretty good spirits. On inspecting his back he does appear to have some muscular spasm on the left side. This is not nearly as prominent as what is depicted in the photograph that he has today so it is clearly improved. There is some pain with lumbar ROM. SLR is negative. DTRs are normal. Sensation is intact. He appears to have normal power in his lower extremities. During the course of his exam he did not demonstrate any Waddell signs or symptom magnification. He appeared reasonably comfortable. Gait is steady.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Page 2

Re: Neal P. Beckman

2/27/12

RADIOGRAPHIC STUDIES: MRI of the lumbar spine shows some degenerative disc changes at his lower three lumbar levels. At all levels there is some shallow protrusions but I do not appreciate any significant nerve root compromise.

IMPRESSION/PLAN: Mr. Beckman has discogenic low back pain and his course has been punctuated by periodic flare-ups. He is now getting over a recent flare-up and seems to be getting along reasonably well although he still has clear objective evidence of muscular spasm and back pain. He has been treated extensively with conservative treatment and based on his MRI findings I do not believe that there is any role for surgery here. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Therefore, I agree with Dr. Zgleszewski that Mr. Beckman is at maximum medical improvement. Based on AMA Guides I would assign an impairment rating of 8% considering DRE Lumbar Category II.

He has had a Functional Capacity Evaluation by Dr. Zgleszewski and I have been furnished with a copy of that report. I reviewed that and note that it appears to be valid and good and proper effort was put forth during that evaluation. Therefore, I would agree with its findings that place him at a medium physical demand level for an 8-hour day. Further details are provided in the body of that report.

Mr. Beckman has had multiple episodes of flare-up of his back pain that is consistent with his degenerative disc disease. He is likely to have further flare-ups in the future which historically have been treated well with pain medication and muscle relaxers. Therefore, I suspect that he will need these medications three or four times per year for the next two years. These could be prescribed and monitored by his regular medical physician. I do not believe that he would likely benefit from future procedures or injections.

I have been asked to address psychological issues and depression as well as erectile dysfunction that Mr. Beckman has noted to his previous medical providers. He currently appears to be in pretty good spirits. Of course, these issues are common during periods of high levels of pain from any source and currently Mr. Beckman seems to be fairly comfortable so I do not anticipate that psychological issues or erectile dysfunction will be a long-term problem and currently do not believe he needs specific treatment for this.



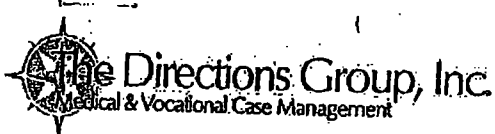
Scott B. Boyd, MD

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

SBB/MAH

CNAWT: 4046

86



**EMPLOYABILITY ANALYSIS
AND
LABOR MARKET SURVEY**

DATE: April 6, 2012

RE: NEAL BECKMAN

ADDRESS: [REDACTED]

REC REC: 3/19/2012

DOB: 9/29/1966

DOI: 3/25/2010

DOR: 3/16/2012

DOE: 3/26/2012

REFERRAL INFORMATION: This file was referred to complete an employability analysis to determine Mr. Beckman's current access to employment and anticipated earnings with respect to his physical capabilities, education, geographic location and age.

INJURY: The following information was obtained from a meeting with Mr. Beckman at his attorney's office in North Charleston SC. I entered the office area at 9:45 a.m. Mr. Beckman arrived and we met in the lobby. We were escorted to the conference room. The purpose of the evaluation was explained and Mr. Beckman was advised that I was not his vocational counselor or providing vocational case management but was requested to complete a vocational evaluation and labor marker survey.

Mr. Beckman is a 45-old male who was employed with the Sysco Food Company in Charleston SC as a delivery driver. He would deliver food products to a designated account on a predetermined route. His injury occurred on 3/27/10. He reported pulling the hand truck upstairs (3 or 4 steps). He felt a sudden stabbing pain as he was taking the load up these steps. He called work immediately to inform them of the incident. He reduced the load on the hand truck and completed the delivery. He continued to work for approximately 5.6 hours before a relief driver arrived from Columbia. He was in Folly Beach at the time of the arrival of the relief driver. He was sent home. The following day, he went to a physician in Columbia at HealthWorks. He was seen by the nurse practitioner. She informed him that he would have to rescheduled the following Monday in order to be seen by the physician.

He called the office on Monday to inform them that he was unable to drive to Columbia due to the pain and would need to be seen by someone in the Charleston area. He was examined by Dr. Bryon Williams. An x-ray was taken but did not show anything. He later had a MRI done which showed 3 of his discs "were in bad shape in the lower back". He was referred to a back specialist at Columbia Neurosurgical 4 weeks later.

Mr. Beckman reported on Valentine's morning, he was trying to sit on the toilet and his back "went out" and he collapsed onto the toilet. He reported being told by the physician that surgery could be performed on the bottom 3 discs but he might be in worse shape afterwards.

After being treated by Dr. Williams, he saw Dr. Zgleszewski. He attended PT and had a percutaneous discectomy.

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His last appointment with Dr. Zgleszewski was approximately 9 months ago. He is seen at Doctor's Care for any minor illnesses. The last time he was seen at Doctor's Care was over 2 years ago.

RECORDS REVIEWED:

- Coastal Occupational Medicine-Bryon Williams, MD
- Health Works of Palmetto Health
- TriCounty Radiology Associates
- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C
- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C
- Columbia Neurosurgical Associates, PA-Scott B. Boyd, MD
- Personnel/Payroll
- Resume of Neal Beckman
- Sysco Columbia, LLC
- Deposition of Neal Beckman, September 13, 2011

MEDICAL SUMMARY:

- Coastal Occupational Medicine-Bryon Williams, MD: 3/29/10-Injured back on 3/25/10. Had previous back injuries starting in 11/2009. Had lumbar strain in 6/2009. Diagnosis: Low back pain. Concerned about the radicular component. X-ray L spine. Referred to PT. X-ray showed mild appearing degenerative disc disease at L3/4; indirect evidence of paravertebral muscle spasm. 4/12/10-Diagnosis: Low back sprain. Unable to work. Obtain MRI LS spine.
- Health Works of Palmetto Health: 4/07/10-Diagnosis: Lumbar strain. Prescribed Ibuprofen, ice and heat. Return on Monday to see Dr. Floyd. Work capacity: No lifting greater than 20 pounds. No bending, twisting, pushing or pulling. Alternate walking, sitting and standing. No strenuous activity.
- TriCounty Radiology Associates: 4/14/10-MRI of lumbar spine. Impression: Degenerative change most pronounced L3-4 and L4-5 on the left. The findings predominate on the left and the history states right. Recommend correlation with physical examination findings. Multilevel remote Schmorl's nodes. Facet arthropathy. Mildly prominent epidural fat noted. 10/29/10-Lumbar spine CT. Impression: L3/4 left anterolateral annular tear with left extraforaminal marginal extravasation suggested. L4/5 midline annular tear at the site of protrusion with a small amount of extravasation below the endplate. 3/31/11-Corrected report MRI lumbar spine. Corrected patient demographics (MRN). Impression: Mild degenerative disc disease and facet arthropathy most pronounced L3-4 through L5-S1. Neural contact above L3-4 and L5-S1. No significant stenosis or frank impingement. Small annular fissures centrally and at the left neural foramen L3-4, centrally at L4-5. These are potential sources of pain. Possible irritation from the annular fissures at L3-4 and L4-5.
- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C: 4/19/10-Diagnosis Lumbago. Lumbar Facet Syndrome. Can assume management of pain medication if needed in the future. Will require rehabilitation therapy to address the segmental lumbo-pelvic hip muscle imbalances. Will require further diagnostic testing and treatment prior to the initiation of rehabilitation therapy. Diagnostic lumbosacral facet nerve blocks to the bilateral L3-L4, L4-L5 and L5-S1 facet joints. Is to utilize a pain diary. If positive, will need to proceed with therapeutic facet joint injections with corticosteroids. If no long term benefit is obtained, then will need to proceed with radiofrequency ablation to the medial branches of the involved facet joints.

88

If DFNB is negative, will proceed with a bilateral diagnosis SI joint injection to rule out SI joint pain. Needs to continue his medication regimen. 5/07/10-Right L3-L4, L4-L5 and L5-S1 diagnostic medial branch blocks to the lumbar Z-joints. 5/10/10-S/P a DFNB to the right LS facets. Pain is located in the left greater than right lower back. Will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances. Will require further diagnostic testing and treatment prior to the initiation of rehabilitation therapy. Diagnostic lumbosacral facet nerve blocks to the left L3-L4, L4-L5 and L5-S1 facet joints. If positive, will need to proceed with therapeutic facet joint injections with corticosteroids. If no long term benefit is obtained, will need to proceed with radiofrequency ablation to the medial SI joints. If positive, will need to proceed with therapeutic SI joint injections with corticosteroids. If no long term benefit is obtained, will need to proceed with radiofrequency ablation of the involved SI joints. 5/12/10-Procedure: Left L3-L4, L4-L5 and L5-S1 diagnostic medial branch blocks to the lumbar Z-joints. Diagnosis: Lumbago. Sacroillitis not elsewhere classified. Lumbar facet syndrome. Procedure: Diagnostic bilateral sacroiliac joint injection. SI joint arthrogram report: There is no flow into the fascial planes or communication with the caudal epidural space. SI joint arthrogram report: Contrast was noted to travel into the inferior recess of the right SI joint, into the medial and lateral joint spaces. 5/17/10-Diagnostic right SIJ-positive. Diagnostic left SIJ-negative. Diagnostic left DFNB-negative. Will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances. Will require further diagnostic testing and treatment prior to the initiation of rehabilitation therapy. Is to continue medication regimen. 5/21/10-Procedure: Right sacroiliac joint. Contrast is noted to travel into the inferior recess of the right SI joint, into the medial and lateral joint spaces. There is no flow into the fascial planes or communication with the caudal epidural space. 10/29/10-Diagnosis: Lumbar disc injury. L2-L3 was injected. Nucleogram is normal. Had a consistent pain free response. L3-L4 was injected. The nucleogram is normal. Had a consistent pain free response. L4-L5 was injected. The endpoint was spongy. The nucleogram is regular. This disc was rechecked and had a consistent concordant pain response. The discs were injected in the order of L2-L3, L3-L4 and L4-L5. Was sent for post discography CT scan. 11/10/10-Diagnostics reviewed. L3/L4 left anterolateral annular tear with left extraforaminal marginal extravasation suggested. L4/L5 midline annular tear at the site of protrusion with a small amount of extravasation. Needs to continue medication regimen. 12/10/10-Procedure orders for percutaneous discectomy at L4-L5 level. 1/21/11-S/P Perc Disc at L4-L5 and notes reduced radiating left hip pain but has increased pain above and below there the Perc disc was performed. Is sleeping better. Still has right sided low back pain and the numbness in the right foot in the lateral 4 toes. Will now need to begin rehabilitation therapy s/p Perc disc as well as for the right sided SI joint pain. Will require his first therapeutic right SI joint injection. First therapeutic right SI joint injection. Work restrictions: Lifting with knees (with a straight back) not more than 25 pounds up to 15 times/hour; squatting up to 16 times/hour; standing or walking with a 10-minute break at least every 1-2 hours; sitting with a 10-minute break every 1/2 hours; extremes of flexion or extension allowed up to 12 times/hour; extremes of twisting allowed up to 16 times/hour; climbing ladders allowed up to 25 rungs 6 times/hour; driving car or light truck up to a full work day. 3/21/11-Has a positive left neural tension sign and will require a new lumbar MRI with contrast. Will hold off on rehab until further notice. May be able to return to rehab once the MRI has been reviewed. Ordered MRI of lumbar spine. Needs to continue his medication regimen. 4/11/11-Reviewed MRI of LS spine. Showed the only change to be a reduction in his prior lumbar disc injury that was treated with his percutaneous discectomy. Procedure: Left gluteus medius (Trochanteric) Bursa corticosteroid injection. Ultrasound guidance, musculoskeletal. Diagnosis: Left gluteus medius (Trochanteric) Bursitis. Will require a repeat left hip joint injection.

89

FCE to be completed to assess his current functional status and to help determine his return to work level. 4/25/11-Reviewd FCE results and concur with findings. Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12'-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing. 5/02/11-Is at MMI. 9/12/11-MMI as of 5/02/11. Has sustained a 10% medical impairment to back/spine and a 5% medical impairment to SI joint with a combined rating of 15%. Is able to return to work with the following restrictions: Medium duty with no repetitive bending/twisting or lifting. Will need future medical care as follows: Up to 2-3 SI joint injections over the next 2 years.

- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C: 4/25/11-FCE. Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12'-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing.
- Columbia Neurosurgical Associates, PA-Scott B. Boyd, MD: 2/27/12-Independent Medical Evaluation. MRI of the lumbar spine shows some degenerative disc changes at his lower three lower lumbar levels. At all levels, there is some shallow protrusions but do not appreciate any significant nerve root compromise. Impression: Has discogenic low back pain and has been punctuated by periodic flare-ups. Do not believe there is any role for surgery. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Agree with Dr. Zgleszewski that he is at MMI. Would assign an impairment rating of 8% considering DRE Lumbar Category II. Had FCE. Would agree with its findings that place him at a medium physical demand level for an 8-hour day. Is likely to have further flare-ups in the future which historically have been treated well with pain medication and muscle relaxers. Suspect that he will need these medications 3 or 4 times per year for the next two years. Do not believe that he would likely benefit from future procedures or injections. Seems to be fairly comfortable so do not anticipate that psychological issues or erectile dysfunction will be a long-term problems and currently do not believe he needs specific treatment for this.

SECONDARY MEDICAL CONDITIONS: Mr. Beckman had hernia surgery and surgery for a torn left meniscus. He has a family history of high blood pressure and cancer. His father had both of these.

Previous Hospitalizations/Surgeries:

- 1988 or 1992 Hernia
- 2006 Torn left meniscus

Other Medical History: Mr. Beckman is 5' 10" tall and weighs 220 pounds. Prior to his injury, he weighed approximately 230 pounds. He is right handed.

SUBJECTIVE PHYSICAL LIMITATIONS:

- Vision Wears reading glasses
- Reading/Responding No reported problems; no observed problems
- Hearing No reported problems; no observed problems
- Writing No reported problems; no observed problems
- Speaking No reported problems; no observed problems

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90

• Lifting/Carrying	Was unsure of the exact limits
• Standing	Able to stand for a maximum of 20 to 30 minutes
• Walking	Able to walk for in the store for 20 to 30 minutes
• Sitting	Able to sit for 15 minutes
• Climbing	Can use a step stool
• Stooping/Squatting	Can perform this activity but is limited
• Bending/Twisting	No reported problems; no observed problems
• Kneeling	No reported problems; no observed problems
• Arms/Hands (reaching)	No reported problems; no observed problems
• Comprehending	No reported problems; no observed problems
• Breathing	No reported problems; no observed problems
• Balancing	No reported problems; no observed problems

CURRENT COMPLAINTS-SUBJECTIVE: On 3/26/2012, Mr. Beckman reported:

- Back At beltline hurts and 3 to 4 inches above. Is a constant pain. At the onset of the assessment-2/10. At the conclusion of the assessment-3/10.

When his "back goes out", the pain will radiate down the left leg and sometimes into the left hip.

MEDICATIONS: On 3/26/2012, Mr. Beckman reported taking Oxycodone for pain, which is left over from his last appointment with Dr. Zgleszewski. He does not have a current prescription.

ORTHOTICS/SELF-HELP DEVICES/EQUIPMENT: Mr. Beckman uses a walking stick to walk around his neighborhood. He purchased the walking stick and it is not physician prescribed. He works out at Gold's Gym, 5x/week.

EDUCATIONAL BACKGROUND: Mr. Beckman completed the 12th grade in 1984 from Garrett High School in North Charleston SC. He described himself as a "barely minimum student". He was in a regular classroom setting. He failed English in his senior year and took summer school. He attended Trident Technical College and studied Architectural Engineering. He attended for 1 year and took basic classes. He reported "being burned out" so did not return.

EMPLOYMENT HISTORY:

Employer: Pearlstine Distributors
Location: Charleston SC
Length: 4 years
Job Title: Truck Driver
Duties: Delivered beer to designated accounts by using a hand truck
Reason for leaving: More money
Wages: \$35,000/year

Employer: PYA Monarch
Location: Charleston SC then Walterboro SC
Length: 6 years
Job Title: Driver/Dispatcher
Duties: Delivered food products via hand truck on predetermined accounts. As a dispatcher, duties included but not limited to routing trucks, settling up with drivers as they finished routes. Scheduled routes.
Reason for leaving: Promoted to supervisor in Walterboro but disliked it, wanted to return to driver but was not allowed and resigned
Wages: \$40,000-\$45,000/year

Employer: Coca Cola
Location: Charleston SC
Length: 3 years
Job Title: Bulk Delivery Driver
Duties: Deliver Coke products to large chain accounts by using an electric pallet jack
Reason for leaving: Better position
Wages: \$17.00/hour

Employer: Ceres
Location: Charleston SC
Length: 3 years
Job Title: Stevedore
Duties: Was foreman on vessel while loading and unloading containers on ship
Reason for leaving: Hours, mainly on the week-end
Wages: \$39,000/year

Employer: Sysco Food Company
Location: Charleston SC
Length: 6 years
Job Title: Driver
Duties: Delivered food products to designated accounts on a predetermined route. Worked 12 to 15 hour days, 4 days per week
Reason for leaving: Injured
Wages: \$52,000-\$56,000/year

MILITARY HISTORY: None reported

ARREST HISTORY: None reported

MEANS OF TRANSPORTATION: Mr. Beckman has a SC driver's license and has access to a 2004 Ford F150 4x4 with automatic transmission, power steering and power brakes. The vehicle is in "very good" condition. He no longer has a CDL. He reported his driving record is in good condition.

SOCIO-ENVIRONMENTAL: Mr. Beckman is married and lives with his wife and 21-year old son. The son plans to take the EMS exam. He receives \$2,758.84/month from Worker's Compensation. He has not applied for Social Security Disability. His expenses include insurances, utilities, telephone, house payment, food, installment loan and transportation. He indicated the accident has resulted in financial difficulty for him and his family.

ACTIVITIES OF DAILY LIVING: He wakes up at 7:00 a.m. He goes to bed at 10:30 p.m. He described the quality of his sleep as "pretty good". He indicated attaining 4 hours of continuous sleep per night. He gets up around 3:30 a.m. to go to the restroom. He denied any prior difficulties with sleeping.

Mr. Beckman is able to dress himself but sometimes needs assistance with his socks and shoes. He is able to take care of his personal/sanitary needs. He is able to sweep/dust, vacuum, make the bed, wash dishes, mop the floors, perform some cooking and do laundry. He is able to perform limited yard work. His son and wife will help with the yard work. His wife has a garden each year. He is able to drive for 45 minutes to 1 hour before needing to stop to take a break. He seldom rides as the passenger.

Mr. Beckman watches television during the day. He likes to read books and magazines about guns. He attends church every Sunday. He has been fishing every now and then. He likes to make things from wood. He likes watching sports on the television. He is able to perform light repairs around his home. His hobbies include: working out, doing wood work, fishing and going to the beach. He goes to Gold's Gym 5 times per week. He "tinkers" in the garage. He will assist his wife with refinishing furniture. He sometimes takes his small boat out.

He does not nap during the day. He denied smoking or using any other tobacco products. He drinks socially. He drinks 1 glass of tea per day, 1 cup of coffee per day and then drinks water the rest of the day.

BEHAVIORAL OBSERVATIONS: On 3/26/12, I met Mr. Beckman at his attorney's office in North Charleston SC. He drove to the appointment independently. I arrived at 9:45 a.m. He arrived immediately after me and we were shown to the conference room.

I introduced myself again and explained that I was asked to complete a vocational evaluation and labor market survey. He expressed understanding. He was encouraged to take breaks as needed, to stand, move about the area, visit the restroom and do whatever was necessary to be as comfortable as possible throughout the evaluation. He was encouraged to ask questions if he did not understand a question or was curious regarding the purpose of a question. He was encouraged not to answer any questions that made him uncomfortable.

He stood at 11:12 a.m. to get some water and immediately to his seat. He took a restroom break at 11:35 a.m. and returned to his seat at 11:38 a.m. He turned his chair from side to side during the interview. He indicated that he "never knows when the back will act up".

Mr. Beckman maintained eye contact during the evaluation. He answered questions. He was able to provide information regarding his employment which consisted of 5 jobs. He recalled the date, time and address. He recalled his telephone number and social security number.

The evaluation concluded at 12:45 p.m.

OTHER VOCATIONAL CONSIDERATIONS: Mr. Beckman's work history has been as a truck driver (delivery), dispatcher and stevedore. He has been able to maintain the physical ability to perform his job duties. He has not contacted may wish to contact the South Carolina Vocational Rehabilitation Department or the South Carolina Department of Employment and Workforce for job assistance. He has not sought the assistance of any private employment service.

VOCATIONAL GOALS: Mr. Beckman is interested in woodworking and photography. He has completed some book keeping, scheduling, supervising, shipping/receiving and trained others on the job. He would be interested in re-training. He can use a computer and has one at his home. He and his wife pay the bills together.

RESULTS OF VOCATIONAL TESTING: The following tests were administered with results indicated.

Revised BETA Examination (BETA III): Mr. Beckman was administered the revised Beta Examination for the appreciation of his nonverbal intelligence. Results of this examination are as follows:

Sum of scale scores	61
BETA IQ	114
Percentile	82.0

**Norm used: Ages 45-54 years*

His test results indicate an IQ representing "high average" intelligence. When his scores were calculated to include the Standard Error of Measurement (SEM) at a 95% confidence, the following confidence span of IQ ranges emerged:

- 105 through 123 (average to superior)

Based upon the Beta, there is a 95% chance that Mr. Beckman's nonverbal intelligence fall between the 1052 to 123 point range.

Slosson Intelligence Test, Revised (SIT-R-3): Mr. Beckman was administered the Slosson Intelligence Test for appreciation of his verbal intelligence. Results for this instrument are as follows:

Total Standard Score (TSS)	105
Percentile rank	62

**Norm used: Ages 18+ years of age*

Interpretation of data gated via the Slosson Intelligence test indicates Mr. Beckman is functioning in the "average" range of verbal intelligence. When using a confidence interval of 95%, Mr. Beckman's Total Standard Score falls within the range of:

- 94 through 116 (average to above average)

There is a 95% chance that Mr. Beckman's verbal intelligence falls within the 94-116 point range.

Mr. Beckman was able to memorize numbers in order and reverse order based on the instructions. He was able to complete simple mathematical problems in his head.

Self-Directed Search-Form R, 4th edition: Mr. Beckman completed the Self-Directed Search in order to discover his pattern of vocational interests and competencies. His highest-ranking category of interest was "Realistic". Individuals scoring high in this area are usually described as "doing" rather than "thinking". They enjoy working with things rather than people and explicit, practical or manual tasks, autonomous or solitary situations and concrete and technical things such as use of machines, tools and materials. They may be described as persistent, precise and methodical. They are successful in careers such as gardener, aircraft pilot, baker, machinery operator, zookeeper, firefighter, mechanic, forestry worker, sportsperson and police officer.

His 2nd highest ranking area of interest was "Social". Individuals scoring high in this area are usually described as convincing, cooperative, friendly, generous, helpful, idealistic, kind, patient, responsible, social, sympathetic, tactful, understanding and warm. These individuals generally like occupations that allow them to help, teach and counsel people more than engage in mechanical or technical activity. They enjoy careers working around other people and helping them with their problems. Matching careers include nurse, speech therapist, teacher, religious worker and counselor.

His 3rd highest ranking area of interest was "Conventional". Individuals scoring high in this area are usually described as conforming, practical, careful, thrifty, efficient, orderly, persistent and conscientious. These individuals generally like activities that involve explicit, ordered systematic manipulation of data to meet predictable organizational demands or specific standards. They enjoy systematic or structured activities and prescribed plans. They tend to focus on information accuracy, conservation and business achievement. Matching careers include accountant, data processing operator, prison officer, taxation agent, architectural draftsman, credit loan officer, customs agent, clerk, purchasing officer, auditor and secretary.

Individuals scoring highest with the RSC category combination tend to be successful in positions such as bicycle repairer, chair upholsterer or mail handler.

Combinations of the RSC are: RCS, SRC, SCR, CRS or CSR. Individuals in these categories tend to be successful in positions such as upholsterer, building cleaner, parts clerk, light truck driver, mortgage clerk, small products assembler or parking lot attendant. Other positions may include: job development specialist, food management aide, recreation aide, fast food worker, complaint clerk, file clerk surveillance system monitor or garment assembler.

PHYSICAL LIMITATIONS/RETURN TO WORK GUIDELINES:

- On 4/25/11, a PCE was completed at Palmetto Spine & Sports Medicine. It was determined that Mr. Beckman: Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12"-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing.
- On 4/25/11, Dr. Zgleszewski reviewed FCE results and concur with findings. Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12"-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing.
- On 5/02/11, Dr. Zgleszewski determined: Is at MMI.
- On 9/12/11, Dr. Zgleszewski indicated: MMI as of 5/02/11. Has sustained a 10% medical impairment to back/spine and a 5% medical impairment to SI joint with a combined rating of 15%. Is able to return to work with the following restrictions: Medium duty with no repetitive bending/twisting or lifting. Will need future medical care as follows: Up to 2-3 SI joint injections over the next 2 years.
- On 2/27/12, Dr. Boyd performed an Independent Medical Evaluation. Impression: Do not believe there is any role for surgery. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Agree with Dr. Zgleszewski that he is at MMI. Would assign an impairment rating of 8% considering DRE Lumbar Category II. Had FCE. Would agree with its findings that its findings that place him at a medium physical demand level for an 8-hour day. Is likely to have further flare-ups in the future which historically have been treated well with pain medication and muscle relaxers. Suspect that he will need these medications 3 or 4 times per year for the next two years. Do not believe that he would likely benefit from future procedures or injections. Seems to be fairly comfortable so do not anticipate that psychological issues or erectile dysfunction will be a long-term problems and currently do not believe he needs specific treatment for this.

After review of medical reports and my clinical interview, Mr. Beckman's physical capacity range appears to fall within the sedentary to medium physical demand work capacity.

As a guideline, *The Dictionary of Occupational Titles, Volume 2, Fourth Edition, Revised 1991, US Department of Labor*, describes sedentary to medium below as:

Sedentary Work—Exerting up to 10 pounds of force occasionally (1/3rd of time) and/or a negligible amount of force frequently (1/3rd to 2/3rd of time) to lift, carry, push or otherwise move objects. Involves sitting most of the time but may involve walking or standing for brief periods.

Light Work—Exerting up to 20 pounds of force occasionally, and/or 10 pounds of force frequently, and/or a negligible amount of force constantly (2/3rd or more of time) to move objects. Jobs are considered light work when it requires walking or standing to a significant degree, sitting most of the time but entails pushing and/or pulling of arm or leg controls, and working at a producing rate pace entailing constant pushing and/or pulling of materials even though the weight of materials is negligible.

Medium Work—Exerting 20-50 pounds of force occasionally, and/or 25-50 pounds of force frequently and/or 10-20 pounds of force constantly to move objects.

TRANSFERABLE SKILLS ANALYSIS/EMPLOYABILITY ANALYSIS: An OASYS Transferability Skills Analysis (TSA) was conducted to review Mr. Beckman's work history, aptitudes and worker traits. The resulting profile identified the following for his previous work history.

Mr. Beckman's specific vocational preparation profile is 5. This reflects 6 months and up to and including 1 year required time to learn the techniques, acquire the information and develop the facility needed for average job performance. General educational development levels reflect formal and informal education in his reasoning, language and mathematics skills.

His work history indicated the ability to apply commonsense understanding to carry out instructions furnished in written, oral or diagrammatic form. He has been able to deal with problems involving several concrete variables in or from standardized situations.

In his work, he has been able to add, subtract, multiply and divide all units of measure. He has been able to perform the four operations with like or common decimal fractions. He has been able to compute ratio, rate and percent. He has been able to perform arithmetic operations involving all American monetary units.

His work history indicated the ability to read a variety of novels, magazines, atlases and encyclopedias. He has been able to read safety rules, instructions in the use and maintenance of shop tools and equipment and methods and procedures in mechanical drawing and layout work. He has been able to write reports and essays with proper format, punctuation, spelling and grammar, using all parts of speech. He has been able to speak before audience with poise, voice control and confidence, using correct English and well-modulated voice.

Work history strengths required Mr. Beckman to exert physical demand levels of medium work on average. He has had to climb, stoop, kneel, crouch, finger, use near acuity and accommodation occasionally. He has been able to reach, handle, talk, hear, use far acuity, depth perception, color vision and field of vision frequently.

Specifically, work history reflected the ability to understand instructions and underlying principles, to reason, to understand meanings of words and use them effectively and to comprehend language.

His work history indicated average aptitude in general learning ability, verbal aptitude, numerical aptitude, spatial aptitude, clerical aptitude, motor coordination, manual dexterity and eye-hand-foot coordination.

Based on Mr. Beckman's work history, previous work situations included the following: influencing people, dealing with people and making judgments and decisions.

Work functions dealing with data included the following: compiling and comparing. Work functions dealing with people indicate: persuading and speaking-signaling. Work functions dealing with things indicate driving-operating.

Given Mr. Beckman's work history, aptitudes and transferable skills; he should be able to return to several jobs consistent with his post-injury profile. Some potential jobs, which capitalize on his experience and interests and accommodate his limitations, are listed below.

These positions may require a period of training, orientation and/or on-the-job preparation. His preliminary vocational profile indicates that he possesses the ability to adapt to new tasks and to follow verbal instructions and can, therefore, adapt to new work situations.

LABOR MARKET SURVEY (LMS) AND REVIEW: A labor market survey and review was completed to determine whether jobs exist in the Charleston/North Charleston/Summerville SC and surrounding areas that compliment Mr. Beckman's abilities and limitations, given his education, physical status, transferable skills, worker traits and age.

Attention was given to part-time employment as well as full-time employment. An electronic search was conducted using the SC Job Bank, Monster.com and Careerbuilder.com websites.

The Department of Employment and Work Force was consulted and positions identified that match his vocational profile. Employers were contacted directly to identify currently available, anticipated and/or recently filled positions.

These are the job possibilities reviewed in the labor market survey, which are considered entry level or capitalize the work experience for him. These positions were found to be open or recently filled and reflect his abilities and aptitudes.

Included are the following positions: customer service representative, call center representative, telecommunicator, telecommunicator specialist, counter sales representative, security officer, dispatcher, call center agent or dispatch support clerk/administrative support. He can anticipate earnings ranging from \$18,200 annually up to \$27,040 annually for the Charleston/North Charleston/Summerville SC and surrounding areas.

POSITION	COMPANY	BRIEF DESCRIPTION	SALARY
Customer Service Representative	Live Smart Solutions	Answer inbound calls. Assist customers with product information over the telephone and by email.	\$13.00/hour
Call Center Representative	NCO	Answer customer inbound calls. Assist with reviewing bill statements. Accept payments over the telephone. Troubleshoot customer accounts.	\$9.08/hour
Telecommunicator	City of Charleston	Answer emergency and non-emergency telephone lines. Dispatch calls to proper law enforcement, fire or EMS agency. Monitor and operate NCIC computer. Maintain records of call.	\$14.08/hour
Telecommunication Specialist	Town of Mt. Pleasant	Answer emergency and non-emergency telephone lines. Dispatch calls to proper law enforcement, fire or EMS agency. Monitor and operate NCIC computer. Maintain records of call.	\$13.55/hour
Counter Sales Representative	Hertz	Greet customers and process customer rentals. Assist in resolving customer issues. Sell other optional services.	To be discussed at time of hire

Security Officer	Allied Barton	Answer telephone and direct calls. Monitor closed circuit TV and cameras. Sign individuals in/out. Patrol area.	\$8.75- \$9.00/hour
Dispatcher	Performance Team	Monitor drivers and routes. Ensure loads are distributed among drivers. Keep contact with drivers regarding pick up/deliveries. Maintain logs, records and schedules of the calls.	Not disclosed
Call Center Agent	iQor	Handle customer inbound/make outboard calls. Answer product questions, service accounts and create new accounts. Document calls and customer information.	\$9.00- \$11.00/hour
Dispatch Support Clerk/Administrative Support	Remedy Intelligent Staffing	Answer telephones. Assist with customer needs via email and telephone. Handle driver's paperwork for settlements. File, type reports and assist with dispatcher duties.	\$11.00- \$12.00/hour

General information pertaining to these occupations, including wage estimates and numbers of positions in the Charleston/North Charleston/Summerville SC and surrounding areas follow:

May, 2011 Metropolitan and NonMetropolitan Area Occupational Employment and Wage Estimates
Charleston/North Charleston/Summerville South Carolina nonmetropolitan area, MSA, US Department of Labor, Bureau of Labor Statistics

Occupation Title (number of positions)	Median Hourly	Mean Hourly	Mean Annual
Customer Service Representative (5,680)	\$14.91	\$15.43	\$32,100
Police, Fire and Ambulance Dispatchers (230)	\$14.89	\$15.04	\$31,280
Security Guard (2,040)	\$10.64	\$12.06	\$25,080
Dispatchers, Except Police, Fire and Ambulance (450)	\$19.56	\$19.64	\$40,840
Receptionist and Information Clerks (2,790)	\$12.37	\$12.68	\$26,360

A labor market analysis of the Charleston/North Charleston/Summerville SC Metropolitan and NonMetropolitan Area was completed. The unemployment rates for the Charleston/North Charleston/Summerville SC area for January 2012 is 7.7%. The unemployment rate for the state of South Carolina for February 2012 is 9.5%. The unemployment rate for the nation for February 2012 was 8.3%.

CONCLUSIONS: Mr. Beckman is a 45-old male who was employed with the Sysco Food Company in Charleston SC as a delivery driver. His route was in James Island and the Folly Beach areas. Return to work guidelines were listed above. The appointment began at 9:45 a.m. and concluded at 12:45 p.m.

Upon review of available medical records, vocational interview, interest testing, education, employability analysis, labor market reviews and published data, it is my opinion that Mr. Beckman remains employable. This assumes he can work part-time (20 hours) or full-time (40 hours) employment.

After review of medical reports and my clinical interview, Mr. Beckman's physical capacity range appears to fall within the sedentary to medium physical demand work capacity. He can anticipate earnings ranging from \$18,200 annually up to \$27,040 annually for the Charleston/North Charleston/Summerville SC and surrounding areas.

If he continues to have difficulties with his back, Mr. Beckman should contact SCVRD for participation in their program.

He may benefit from career counseling and direct placement into an employment opportunity that has been deemed most suitable for his with close consideration given to his return-to-work guidelines as well as assets. These services are available at no cost. Employment opportunities would be enhanced with direct placement provided by Vocational Rehabilitation.

Should Mr. Beckman find that additional assistance is needed in locating suitable employment, he may want to register with SC Department of Employment and Workforce in Charleston or Summerville at no cost to receive job placement assistance. He may register online or in person at his local SC Works Center. He is encouraged to check the website, visit the office regularly or contact his VR Counselor as job order requests change frequently and positions filled with local employers.

It is my vocational opinion that Mr. Beckman is employable in the local labor market and positions exist in the local labor market that meets his current restrictions. Although potential positions have been identified and recommended for Mr. Beckman's consideration, prior to pursuing a new position, he should contact his personal and/or treating physicians to clarify any concerns regarding essential functions.

The above opinions are rendered with a reasonable degree of professional vocational certainty and are based upon my review of Mr. Beckman's records, employability analysis, current labor market survey, education and experience. The above conclusions are based upon the information currently available to me. It is assumed that the information is factual and correct.

Should new information become available, I would be pleased to review and revise my findings and opinions, if indicated. The above-noted vocational information and employability analysis are provided as a general guide. If you have any questions or I may be of any additional assistance, please do not hesitate to contact me.

Respectfully submitted,

(Signed electronically)

Jan Westmoreland, MEd, CRC

Vocational Rehabilitation Consultant

jwestmoreland@thedirectionsgroup.com

**SYSCO COLUMBIA, LLC
JOB DESCRIPTION**

Date:	July 1, 2008
Position Title:	Delivery Driver
Department:	Operations
Reports to:	Driver Supervisor
Pay Grade:	

Job Summary: Deliver and/or pick-up orders to/from our customers on time, in good condition, and in a professional manner. Must be able to safely operate a vehicle in all types of road and weather conditions.

Essential Duties and Responsibilities (other duties may be assigned):

1. Ability to safely operate 19'-22' straight truck in accordance with state and federal licensing requirements.
2. Ability to safely operate 28'-48' tractor/trailer in accordance with state and federal licensing requirements.
3. Knowledge of state roads and highways.
4. Ability to read maps.
5. Ability to use hand truck and lift 1 pound to 100+ pound boxes of varying dimensions from floor to shoulder level on a consistent basis.
6. Possess a courteous and polite demeanor in daily interaction with our customers.
7. Must be able to maintain attendance standards as set by the company.
8. Deliver food and related items to customers.
9. Collect and count C.O.D. orders.
10. Maintain DOT required logs, physicals, CDL-Class A license and hours of service.
11. Correctly mark invoices noting returns, shorts, etc.
12. Unload and verify all returns and pickups. Verify pickups have been returned.
13. Organize invoices, cash and checks for check-in procedures.
14. Accurately count and load back-haul products.
15. Familiar with DOT regulations.
16. Overnight runs may be required.
17. Follow all safety requirements.
18. Good communication skills.
19. Must be able to operate Roadnet and CADEC Operating Systems.
20. Help create a positive work environment.

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21. Responsible for protecting company assets (product, money and equipment) from damage, theft, and mishandling in any way.
22. Perform other duties as deemed necessary by management.

Qualifications Requirements:

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Education and/or Experience:

High School education or GED Equivalent.

At least one year tractor trailer driving.

Possess basic mechanical ability.

Continuous driving.

Basic reading, writing and math skills.

Meet all DOT Regulations.

Excellent driving record.

Ability to add and subtract two digit numbers and to multiply and divide with 10's and 100's. Ability to perform these operations using units of American money and weight measurements, volume, and distance. Ability to create, analyze, and monitor measurements.

Ability to apply common sense understanding to carry out detailed but involved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.

Must maintain a Class "A" CDL in good standing.

Ability to work efficiently at a rapid pace. Good attendance and ability to work in a team atmosphere required.

102

Physical Demands:

The employee is required to climb or balance; stoop, kneel, crouch, or crawl; talk and hear on a frequent and consistent basis for approximately 12 hours per day. The employee must frequently lift and/or move up to 75 pounds to 100 pounds. The employee must be able to lift an average of 18,000 to 20,000 pounds per day. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus. The employee frequently is required to walk, use hands, and fingers, handle, or feel objects, tools, or controls, and reach with hands and arms. The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is regularly required to stand.

Ability to physically operate all trucking and refrigeration equipment as well as have ability to physically unload trucks and carry merchandise into customer facilities on a constant and independent basis. Must be able to drive 10 to 12 hours per day.

Ability to work in extreme weather conditions for a prolonged period of time including extreme heat, rain, ice and snow.

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions of this job. An individual should contact his or her supervisor or the Human Resource department if he or she believes that an accommodation is needed.

Work Environment:

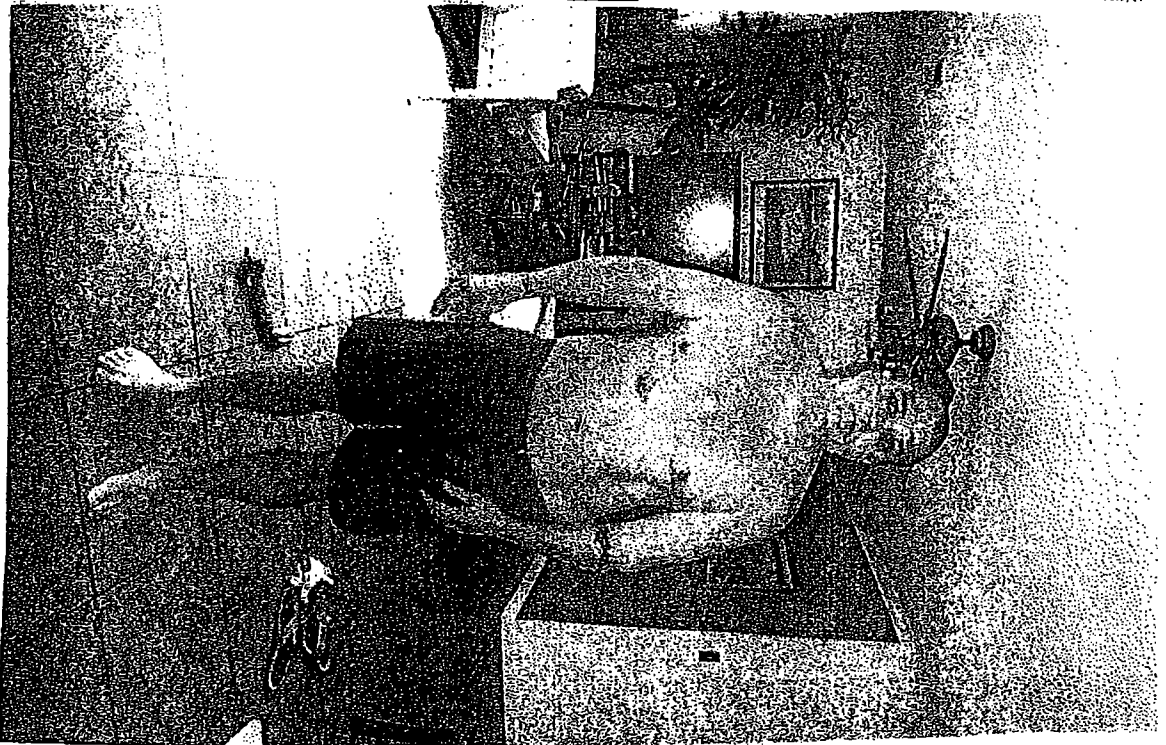
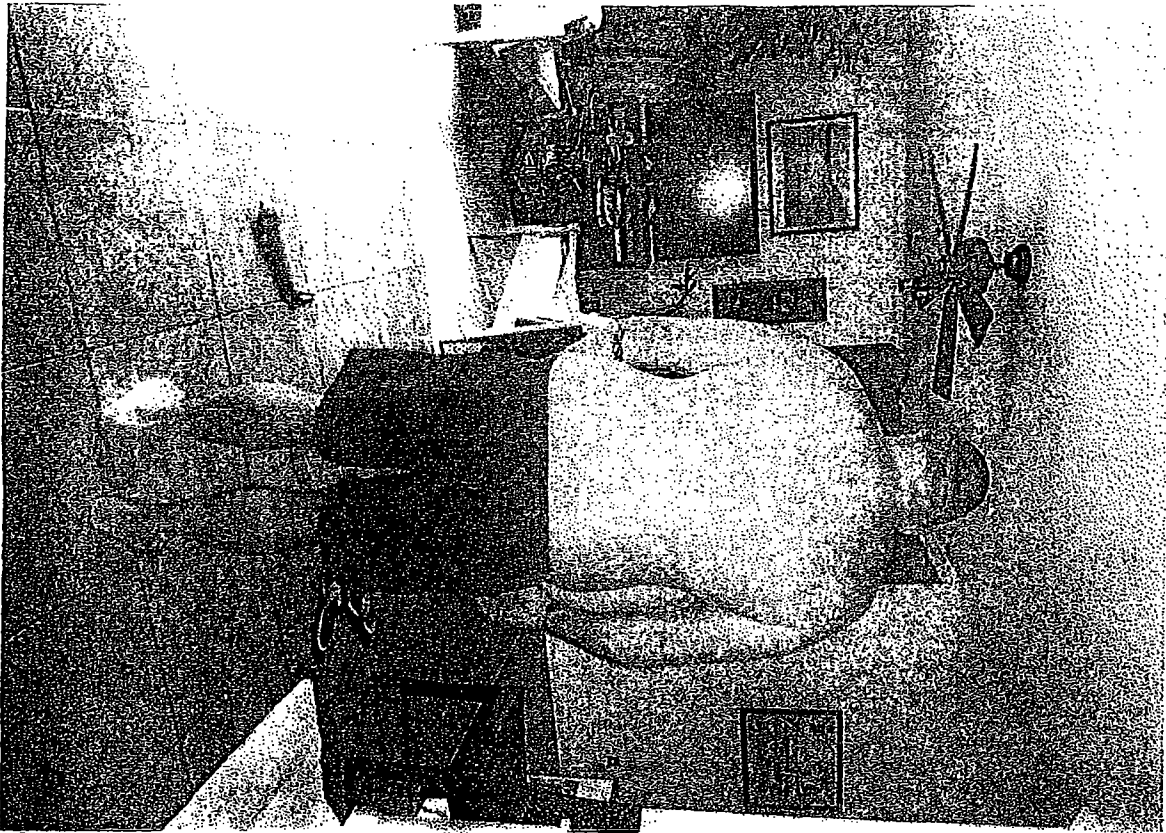
The work environment characteristics described here are representative of those the employee encounters while performing the essential functions of this job. While performing the duties of this job, the employee works near moving mechanical parts and is frequently exposed to vibration. The employee occasionally works in high, precarious places and is occasionally exposed to vibration, fumes, airborne particles, various chemicals, extreme cold, and risk of electrical shock. The noise level in the work environment is usually loud.

The above statement reflects the general details necessary to describe the principal functions of the occupation described and shall not be construed as a detailed description of all the work requirements that may be inherent in the occupation.

Approved:

Date

103



COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

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132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 (F) 794-0322

INDEPENDENT MEDICAL EVALUATION

Patient: Neal P. Beckman
Chart: 132423 WC
Date: 2/27/12

HISTORY OF PRESENT ILLNESS: Mr. Beckman is a very pleasant, 45-year-old man who was driving a truck for Sysco when on March 25, 2010, he had an injury to his lower back. This has been well documented and he has received extensive treatment for this. He describes his pain pattern as that most predominantly of low back pain. His pain does occasionally radiate down into his left leg and he states that he has some numbness around his foot. It seems to be worsened with activity. He feels that he is generally improved over the course of his treatment which has been extensive. He has had multiple rounds of physical therapy and has been treated by Dr. Zgleszewski in Charleston with various medications, epidural steroid injections, what sounds like facet blocks as well as even a percutaneous discectomy. None of these really provided any lasting relief. Dr. Z has released him at maximum medical improvement but he has never had a surgical evaluation. Overall Mr. Beckman feels that he is improved and he states that he had actually gotten to the point up to two weeks ago where he was getting around really pretty well with only minimal pain and was off of all medications. He attributes this improvement to a rigorous core strengthening workout program in the gym.

On February 14th he woke up and had another acute episode of pain and spasm in his back that was very severe. He has had a couple of these and this current episode has now finally begun to dissipate. He shows me a picture today of his posture on the day of that episode.

PAST MEDICAL HISTORY: Unremarkable

CURRENT MEDICATIONS: Oxycodone and muscle relaxers as needed.

ALLERGIES: NKDA

SOCIAL HISTORY: The patient does not use tobacco.

FAMILY HISTORY AND REVIEW OF SYSTEMS: Well documented in the chart on the history form. That information has been reviewed and signed and is noncontributory except for the information included in the HPI.

PHYSICAL EXAMINATION: The patient is seated in the exam room and appears generally healthy for age. The patient is awake, alert, and oriented. PERRL. Speech and language are normal, as are attention span and concentration. Affect is grossly normal, and fund of knowledge appears appropriate. Height is 5'10", weight is 240 pounds, and respirations are 14 and regular. He has a slightly flat affect but appears to be in pretty good spirits. On inspecting his back he does appear to have some muscular spasm on the left side. This is not nearly as prominent as what is depicted in the photograph that he has today so it is clearly improved. There is some pain with lumbar ROM. SLR is negative. DTRs are normal. Sensation is intact. He appears to have normal power in his lower extremities. During the course of his exam he did not demonstrate any Waddell signs or symptom magnification. He appeared reasonably comfortable. Gait is steady.

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Page 2

Re: Neal P. Beckman

2/27/12

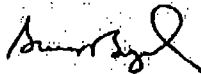
RADIOGRAPHIC STUDIES: MRI of the lumbar spine shows some degenerative disc changes at his lower three lumbar levels. At all levels there is some shallow protrusions but I do not appreciate any significant nerve root compromise.

IMPRESSION/PLAN: Mr. Beckman has discogenic low back pain and his course has been punctuated by periodic flare-ups. He is now getting over a recent flare-up and seems to be getting along reasonably well although he still has clear objective evidence of muscular spasm and back pain. He has been treated extensively with conservative treatment and based on his MRI findings I do not believe that there is any role for surgery here. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Therefore, I agree with Dr. Zgleszewski that Mr. Beckman is at maximum medical improvement. Based on AMA Guides I would assign an impairment rating of 8% considering DRE Lumbar Category II.

He has had a Functional Capacity Evaluation by Dr. Zgleszewski and I have been furnished with a copy of that report. I reviewed that and note that it appears to be valid and good and proper effort was put forth during that evaluation. Therefore, I would agree with its findings that place him at a medium physical demand level for an 8-hour day. Further details are provided in the body of that report.

Mr. Beckman has had multiple episodes of flare-up of his back pain that is consistent with his degenerative disc disease. He is likely to have further flare-ups in the future which historically have been treated well with pain medication and muscle relaxers. Therefore, I suspect that he will need these medications three or four times per year for the next two years. These could be prescribed and monitored by his regular medical physician. I do not believe that he would likely benefit from future procedures or injections.

I have been asked to address psychological issues and depression as well as erectile dysfunction that Mr. Beckman has noted to his previous medical providers. He currently appears to be in pretty good spirits. Of course, these issues are common during periods of high levels of pain from any source and currently Mr. Beckman seems to be fairly comfortable so I do not anticipate that psychological issues or erectile dysfunction will be a long-term problem and currently do not believe he needs specific treatment for this.



Scott B. Boyd, MD

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

SBB/MAH

CNAWT: 4048

WOOD & WARDER, LLC
ATTORNEYS AT LAW
ONE WESLEY DRIVE
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(843) 577-5732 FAX (843) 577-4326

J. HUBERT WOOD, III
F. REID WARDER, JR.

KATHRYN R. FIEHRER
MATTHEW J. FULTZ

REPLY TO
P.O. Box 20550
CHARLESTON, SOUTH CAROLINA 29413

February 17, 2012

Dr. Scott Boyd
Columbia Neurosurgical Associates
132 Sunset Court
West Columbia, SC 29169

Re: Neal Beckman v. Sysco Columbia, LLC
WCC File No.: 1002925
Date of Accident: March 25, 2010
Carrier File No.: 011924-107312-WC-01
Our File No.: 32.64

Dear Dr. Boyd:

This letter is in reference to the above named workers' compensation claim. Thank you for agreeing to perform the independent medical evaluation on February 27, 2012 at 11:00 a.m. at your West Columbia office. For your review in performing the independent medical evaluation, please find enclosed a CD from Tricounty Radiology Associates containing the images of the lumbar spine performed on April 14, 2010, October 29, 2010, and March 31, 2011. If possible, I would appreciate you returning the CD to me with your report following the independent medical evaluation. Thank you for your time and attention to this matter.

Very truly yours,



Kathryn R. Fiehrer

KRF/lap
Enclosure

cc: Fred W. Riesen, Jr., Esquire (w/o enc.)
Ms. Roberta Williams (w/o enc.)

TriCounty Radiology Associates

(843) 529-0800
North Charleston
Summerville
West Ashley

PATIENT: Beckman, Neal
DOB: 9/29/1966
MRN: 455431
PATIENT PHONE: 843-406-3216
PHYSICIAN: Timothy Zgliczewski, M.D.
DATE: 3/31/2011

EXAM: CORRECTED REPORT - MRI LUMBAR SPINE WITH AND WITHOUT CONTRAST

CORRECTED PATIENT DEMOGRAPHICS (MRN)

HISTORY: 924.4, thoracic or lumbosacral neuritis or radiculitis; 722.21, lumbar disc displacement. Low back pain, left hip pain and numbness in right foot for one year.

TECHNIQUE: Sagittal T1 and T2 and sagittal STIR and axial T1 and T2-weighted MR images of the lumbar spine. Post contrast sagittal and axial MR images of the lumbar spine obtained with fat saturation following uneventful intravenous administration of 20 cc Magnevist gadolinium contrast.

FINDINGS: Mild degenerative disc disease. Multilevel intervertebral joint space narrowing most pronounced L3-4 through L5-S1. No spondylolysis or significant spondylolisthesis. Conus medullaris in the expected location at the L1-L2 level. The visualized portions of the thoracic cord are unremarkable. Mild endplate irregularities suggesting degenerative disc disease or healing Schmorl's nodes inferior endplate of L4 and superior endplate of L5 with minimal enhancement at this site. No convincing evidence for diskitis. There is a 1.3 cm bone island in the left iliac bone. This has low signal on all sequences and there are characteristic thorny projections.

T11-12 through L2-3: No significant disc bulge or protrusion. No significant central or exit stenosis.

L3-4: Disc bulge and shallow left intraforaminal enhancing protrusion. There is a central annular fissure, and an annular fissure extending from the left neural foramen into the far left lateral position. Slight flattening of ventral aspect of the thecal sac. Mild lateral recess stenosis. No significant central stenosis. Mild left and no significant right exit narrowing. Contact of the exiting left nerve. Possible irritation of the exiting left nerve from the annular fissure.

L4-5: Disc bulge and paracentral left shallow protrusion. Central enhancing annular fissure. This is a potential source of nonradicular pain and may irritate the left L5 nerve root. Mild lateral recess stenosis left greater than right. Possible contact of left L5 nerve root. Mild bilateral exit narrowing. Shallow right intraforaminal protrusion. Possible contact of the exiting right nerve. No significant stenosis or frank impingement. Mild facet hypertrophic changes.

L5-S1: Predominately central shallow protrusion and shallow right intraforaminal protrusion. No significant central stenosis. Mild right and no significant left exit narrowing. Possible contact of the exiting right nerve at the outer margin of the right neural foramen. No significant stenosis or frank impingement. Mild facet hypertrophic changes.

IMPRESSION:

1. Mild degenerative disc disease and facet arthropathy most pronounced L3-4 through L5-S1.
2. Neural contact as noted above L3-4 through L5-S1. No significant stenosis or frank impingement.
3. Small annular fissures centrally and at the left neural foramen L3-4, also centrally at L4-5. These are potential sources of pain. Possible irritation from the annular fissures at L3-4 and L4-5 as noted above.

Donald E. Olofsson, DO



Apr. 4. 2011 11:15AM

No. 1552 P. 3

Patient Name: Beckman, Neal

MRN: 455431

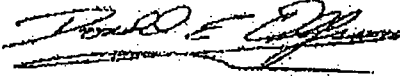
EXAM: CORRECTED REPORT - MRI LUMBAR SPINE WITH AND WITHOUT CONTRAST

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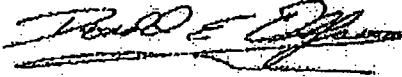
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This document has been reviewed and electronically signed by



CORRECTION DT: 4/1/2011/ch

This document has been reviewed and electronically signed by



TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Beckman, Neal
DOB: 9/29/1966
MRN: 455431
PHYSICIAN: Timothy Zgleszewski, MD
DATE: 10/29/2010

EXAM: LUMBAR SPINE CT WITHOUT CONTRAST

HISTORY: Low back pain.

COMPARISON: Lumbar MRI 4/14/2010.

TECHNIQUE: 2.5 mm axial images angled to disc spaces L2/3 through L4/5 after intradiscal contrast placement by an outside facility.

FINDINGS: No fracture or malalignment demonstrated. L3/4 concentric disc osteophyte complex. Mild aortoiliac atherosclerotic calcifications, with otherwise unremarkable paraspinal soft tissues as visualized. *Findings by level:*

L2/3: Contrast is concentrated centrally in the nucleus pulposus with a normal disc morphology.

L3/4: Diffuse increase in intradiscal contrast volume with evidence of annular thinning posteriorly, left far laterally, and left anterolaterally. Small volume marginal extravasation is suggested left extraforaminally. There may be an anterolateral left paramidline annular tear as suggested on image 19.

L4/5: Diffuse increase in intradiscal contrast volume. Posterior annular thinning extends from right to left neuroforamina with focal annular tear suggested centrally associated with a disc protrusion. Tiny foci of gas in the protrusion may represent vacuum phenomenon. This protrusion contributes to mild left recess narrowing and may deflect transiting left L5. Tiny inferior extravasation at the midline suggested image 33 below the level of the endplate.

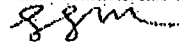
IMPRESSION:

1. L3/4 left anterolateral annular tear with left extraforaminal marginal extravasation suggested.
2. L4/5 midline annular tear at the site of protrusion with a small amount of extravasation below the endplate.

Troy Marlow, M.D.
TM/sl

DD: 10/29/2010 / DT: 10/29/2010
JOB: 11624642

This document has been electronically reviewed and signed.



Apr. 15. 2010 12:41PM

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No. 9381 P. 1.

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Beckman, Neal
DOB: 9/29/1966
MRN: 455431
PHYSICIAN: Byron Williams, MD
DATE: 4/14/2010



EXAM: MRI OF THE LUMBAR SPINE WITHOUT CONTRAST

HISTORY: Persistent low back pain with bilateral radicular pain and numbness in right foot since back strain on 03/25/2010.

TECHNIQUE: Sagittal T1 and T2 and axial T1 and T2 and sagittal STIR MR images of the lumbar spine obtained on high-field 1.5 Tesla MRI. No contrast.

COMPARISON: No prior studies available for direct comparison.

FINDINGS: From the sagittal views the lumbar vertebral bodies demonstrate normal height, alignment and signal intensity. Smooth endplate irregularities of lower lumbar vertebral bodies suggests remote small Schmorl's nodes. This is also identified at the superior endplate of S1. No acute fracture line seen. Conus medullaris in the expected location at the L1-L2 level. The visualized portion of the thoracic cord is unremarkable. No convincing evidence for stress or insufficiency type fracture from the STIR sagittal images.

T11-L2 through L1-2: No significant disc bulge or protrusion. No significant central or exit narrowing.

L2-3: Disc bulge and facet hypertrophy. Slightly bilobed appearance of the disc. Mild central and mild bilateral exit narrowing. Crowding of the exiting nerves at the level of the neural foramen. Possible contact of the exiting nerves in a far lateral position at the outer margin of the neural foramen. No frank impingement. Mild lateral recess stenosis. Facet hypertrophic changes and mild fluid in the facet joints.

L3-4: Disc bulge and facet hypertrophy. Flattening of the thecal sac anteriorly. Contact of the transitioning L4 nerve roots and mild lateral recess stenosis. Mild to moderate bilateral exit narrowing and contact of the exiting nerves at the level of the neural foramen, left greater than right. Contact, slight deflection of the exiting left L3 nerve. Possible effect on the exiting left L3. No frank impingement. Facet hypertrophic changes and mild fluid in the facet joints.

L4-5: Disc bulge and facet hypertrophy. Paracentral left shallow disc extrusion with a craniocaudal dimension of roughly 1.4 cm extending posteriorly approximately 5.9 mm. Contact, slight deflection and possible effect on the transitioning left L5 nerve root. Contact of the transitioning right L5 nerve root. Moderate left and mild right lateral recess stenosis. Moderate bilateral exit narrowing. Crowding of the exiting nerves at the level of the neural foramen. Possible contact of the exiting nerves at the level of the neural foramen. No frank impingement at the level of the neural foramen. Facet hypertrophic changes and mild fluid in the facet joints.

L5-S1: Disc bulge and facet hypertrophy. Central and paracentral right shallow broad-based protrusion. Slight crowding of the transitioning S1 nerve roots. No frank impingement. Mild bilateral exit narrowing and slight crowding of the exiting nerves at the level of the neural foramen, right greater than left. No frank impingement at the level of the neural foramen. Possible contact of the exiting right nerve.

IMPRESSION:

1. Degenerative change as above most pronounced L3-4 and L4-5 on the left.
2. The findings predominate on the left and the history states right. Recommend correlation with physical examination findings.
3. Multilevel remote Schmorl's nodes. Facet arthropathy. Mildly prominent epidural fat noted.

Apr. 15. 2010 12:41PM

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No. 9381 P. 2

Patient Name: Beckman, Neal

MRN: 435431

EXAM: MRI OF THE LUMBAR SPINE WITHOUT CONTRAST

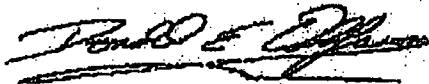
Donald E. Olafsson, DO

DO / dg

DD: 4/15/2010 / DT: 4/15/2010

JOB: 10346316

This document has been reviewed and electronically signed by



**EMPLOYABILITY ANALYSIS
AND
LABOR MARKET SURVEY**

DATE: April 6, 2012

RE: NEAL BECKMAN

ADDRESS: 1148 Mariner Drive
Charleston SC 29412

REC REC: 3/19/2012

DOB: 9/29/1966

DOI: 3/25/2010

DOR: 3/16/2012

DOE: 3/26/2012

REFERRAL INFORMATION: This file was referred to complete an employability analysis to determine Mr. Beckman's current access to employment and anticipated earnings with respect to his physical capabilities, education, geographic location and age.

INJURY: The following information was obtained from a meeting with Mr. Beckman at his attorney's office in North Charleston SC. I entered the office area at 9:45 a.m. Mr. Beckman arrived and we met in the lobby. We were escorted to the conference room. The purpose of the evaluation was explained and Mr. Beckman was advised that I was not his vocational counselor or providing vocational case management but was requested to complete a vocational evaluation and labor marker survey.

Mr. Beckman is a 45-old male who was employed with the Sysco Food Company in Charleston SC as a delivery driver. He would deliver food products to a designated account on a predetermined route. His injury occurred on 3/27/10. He reported pulling the hand truck upstairs (3 or 4 steps). He felt a sudden stabbing pain as he was taking the load up these steps. He called work immediately to inform them of the incident. He reduced the load on the hand truck and completed the delivery. He continued to work for approximately 5.6 hours before a relief driver arrived from Columbia. He was in Folly Beach at the time of the arrival of the relief driver. He was sent home. The following day, he went to a physician in Columbia at HealthWorks. He was seen by the nurse practitioner. She informed him that he would have to rescheduled the following Monday in order to be seen by the physician.

He called the office on Monday to inform them that he was unable to drive to Columbia due to the pain and would need to be seen by someone in the Charleston area. He was examined by Dr. Bryon Williams. An x-ray was taken but did not show anything. He later had a MRI done which showed 3 of his discs "were in bad shape in the lower back". He was referred to a back specialist at Columbia Neurosurgical 4 weeks later.

Mr. Beckman reported on Valentine's morning, he was trying to sit on the toilet and his back "went out" and he collapsed onto the toilet. He reported being told by the physician that surgery could be performed on the bottom 3 discs but he might be in worse shape afterwards.

After being treated by Dr. Williams, he saw Dr. Zgleszewski. He attended PT and had a percutaneous discectomy.

His last appointment with Dr. Zgleszewski was approximately 9 months ago. He is seen at Doctor's Care for any minor illnesses. The last time he was seen at Doctor's Care was over 2 years ago.

RECORDS REVIEWED:

- Coastal Occupational Medicine-Bryon Williams, MD
- Health Works of Palmetto Health
- TriCounty Radiology Associates
- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C
- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C
- Columbia Neurosurgical Associates, PA-Scott B. Boyd, MD
- Personnel/Payroll
- Resume of Neal Beckman
- Sysco Columbia, LLC
- Deposition of Neal Beckman, September 13, 2011

MEDICAL SUMMARY:

- Coastal Occupational Medicine-Bryon Williams, MD: 3/29/10-Injured back on 3/25/10. Had previous back injuries starting in 11/2009. Had lumbar strain in 6/2009. Diagnosis: Low back pain. Concerned about the radicular component. X-ray L spine. Referred to PT. X-ray showed mild appearing degenerative disc disease at L3/4; indirect evidence of paravertebral muscle spasm. 4/12/10-Diagnosis: Low back sprain. Unable to work. Obtain MRI LS spine.
- Health Works of Palmetto Health: 4/07/10-Diagnosis: Lumbar strain. Prescribed Ibuprofen, ice and heat. Return on Monday to see Dr. Floyd. Work capacity: No lifting greater than 20 pounds. No bending, twisting, pushing or pulling. Alternate walking, sitting and standing. No strenuous activity.
- TriCounty Radiology Associates: 4/14/10-MRI of lumbar spine. Impression: Degenerative change most pronounced L3-4 and L4-5 on the left. The findings predominate on the left and the history states right. Recommend correlation with physical examination findings. Multilevel remote Schmorl's nodes. Facet arthropathy. Mildly prominent epidural fat noted. 10/29/10-Lumbar spine CT. Impression: L3/4 left anterolateral annular tear with left extraforaminal marginal extravasation suggested. L4/5 midline annular tear at the site of protrusion with a small amount of extravasation below the endplate. 3/31/11-Corrected report MRI lumbar spine. Corrected patient demographics (MRN). Impression: Mild degenerative disc disease and facet arthropathy most pronounced L3-4 through L5-S1. Neural contact above L3-4 and L5-S1. No significant stenosis or frank impingement. Small annular fissures centrally and at the left neural foramen L3-4, centrally at L4-5. These are potential sources of pain. Possible irritation from the annular fissures at L3-4 and L4-5.
- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C: 4/19/10-Diagnosis Lumbago. Lumbar Facet Syndrome: Can assume management of pain medication if needed in the future. Will require rehabilitation therapy to address the segmental lumbo-pelvic hip muscle imbalances. Will require further diagnostic testing and treatment prior to the initiation of rehabilitation therapy. Diagnostic lumbosacral facet nerve blocks to the bilateral L3-L4, L4-L5 and L5-S1 facet joints. Is to utilize a pain diary. If positive, will need to proceed with therapeutic facet joint injections with corticosteroids. If no long term benefit is obtained, then will need to proceed with radiofrequency ablation to the medial branches of the involved facet joints.

If DFNB is negative, will proceed with a bilateral diagnosis SI joint injection to rule out SI joint pain. Needs to continue his medication regimen. 5/07/10-Right L3-L4, L4-L5 and L5-S1 diagnostic medial branch blocks to the lumbar Z-joints. 5/10/10-S/P a DFNB to the right LS facets. Pain is located in the left greater than right lower back. Will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances. Will require further diagnostic testing and treatment prior to the initiation of rehabilitation therapy. Diagnostic lumbosacral facet nerve blocks to the left L3-L4, L4-L5 and L5-S1 facet joints. If positive, will need to proceed with therapeutic facet joint injections with corticosteroids. If no long term benefit is obtained, will need to proceed with radiofrequency ablation to the medial SI joints. If positive, will need to proceed with therapeutic SI joint injections with corticosteroids. If no long term benefit is obtained, will need to proceed with radiofrequency ablation of the involved SI joints. 5/12/10-Procedure: Left L3-L4, L4-L5 and L5-S1 diagnostic medial branch blocks to the lumbar Z-joints. Diagnosis: Lumbago. Sacroillitis not elsewhere classified. Lumbar facet syndrome. Procedure: Diagnostic bilateral sacroiliac joint injection. SI joint arthrogram report: There is no flow into the fascial planes or communication with the caudal epidural space. SI joint arthrogram report: Contrast was noted to travel into the inferior recess of the right SI joint, into the medial and lateral joint spaces. 5/17/10-Diagnostic right SIJ-positive. Diagnostic left SIJ-negative. Diagnostic left DFNB-negative. Will require rehabilitation therapy to address the segmental lumbo-pelvic-hip muscle imbalances. Will require further diagnostic testing and treatment prior to the initiation of rehabilitation therapy. Is to continue medication regimen. 5/21/10-Procedure: Right sacroiliac joint. Contrast was noted to travel into the inferior recess of the right SI joint, into the medial and lateral joint spaces. There is no flow into the fascial planes or communication with the caudal epidural space. 10/29/10-Diagnosis: Lumbar disc injury. L2-L3 was injected. Nucleogram is normal. Had a consistent pain free response. L3-L4 was injected. The nucleogram is normal. Had a consistent pain free response. L4-L5 was injected. The endpoint was spongy. The nucleogram is regular. This disc was rechecked and had a consistent concordant pain response. The discs were injected in the order of L2-L3, L3-L4 and L4-L5. Was sent for post discography CT scan. 11/10/10-Diagnostics reviewed. L3/L4 left anterolateral annular tear with left extraforaminal marginal extravasation suggested. L4/L5 midline annular tear at the site of protrusion with a small amount of extravasation. Needs to continue medication regimen. 12/10/10-Procedure orders for percutaneous discectomy at L4-L5 level. 1/21/11-S/P Perc Disc at L4-L5 and notes reduced radiating left hip pain but has increased pain above and below there the Perc disc was performed. Is sleeping better. Still has right sided low back pain and the numbness in the right foot in the lateral 4 toes. Will now need to begin rehabilitation therapy s/p Perc disc as well as for the right sided SI joint pain. Will require his first therapeutic right SI joint injection. First therapeutic right SI joint injection. Work restrictions: Lifting with knees (with a straight back) not more than 25 pounds up to 15 times/hour; squatting up to 16 times/hour; standing or walking with a 10-minute break at least every 1-2 hours; sitting with a 10-minute break every 1/2 hours; extremes of flexion or extension allowed up to 12 times/hour; extremes of twisting allowed up to 16 times/hour; climbing ladders allowed up to 25 rungs 6 times/hour; driving car or light truck up to a full work day. 3/21/11-Has a positive left neural tension sign and will require a new lumbar MRI with contrast. Will hold off on rehab until further notice. May be able to return to rehab once the MRI has been reviewed. Ordered MRI of lumbar spine. Needs to continue his medication regimen. 4/11/11-Reviewed MRI of LS spine. Showed the only change to be a reduction in his prior lumbar disc injury that was treated with his percutaneous discectomy. Procedure: Left gluteus medius (Trochanteric) Bursa corticosteroid injection. Ultrasound guidance, musculoskeletal. Diagnosis: Left gluteus medius (Trochanteric) Bursitis. Will require a repeat left hip joint injection.

FCE to be completed to assess his current functional status and to help determine his return to work level. 4/25/11-Reviewed FCE results and concur with findings. Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12'-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing. 5/02/11-Is at MMI. 9/12/11-MMI as of 5/02/11. Has sustained a 10% medical impairment to back/spine and a 5% medical impairment to SI joint with a combined rating of 15%. Is able to return to work with the following restrictions: Medium duty with no repetitive bending/twisting or lifting. Will need future medical care as follows: Up to 2-3 SI joint injections over the next 2 years.

- Palmetto Spine & Sports Medicine, PA-Timothy M. Zgleszewski, MD; Eliza C. Hough, PA-C: 4/25/11-FCE. Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12'-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing.
- Columbia Neurosurgical Associates, PA-Scott B. Boyd, MD: 2/27/12-Independent Medical Evaluation. MRI of the lumbar spine shows some degenerative disc changes at his lower three lower lumbar levels. At all levels, there is some shallow protrusions but do not appreciate any significant nerve root compromise. Impression: Has discogenic low back pain and has been punctuated by periodic flare-ups. Do not believe there is any role for surgery. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Agree with Dr. Zgleszewski that he is at MMI. Would assign an impairment rating of 8% considering DRE Lumbar Category II. Had FCE. Would agree with its findings that place him at a medium physical demand level for an 8-hour day. Is likely to have further flare-ups in the future which historically have been treated well with pain medication and muscle relaxers. Suspect that he will need these medications 3 or 4 times per year for the next two years. Do not believe that he would likely benefit from future procedures or injections. Seems to be fairly comfortable so do not anticipate that psychological issues or erectile dysfunction will be a long-term problems and currently do not believe he needs specific treatment for this.

SECONDARY MEDICAL CONDITIONS: Mr. Beckman had hernia surgery and surgery for a torn left meniscus. He has a family history of high blood pressure and cancer. His father had both of these.

Previous Hospitalizations/Surgeries:

- 1988 or 1992 Hernia
- 2005 Torn left meniscus

Other Medical History: Mr. Beckman is 5' 10" tall and weighs 220 pounds. Prior to his injury, he weighed approximately 230 pounds. He is right handed.

SUBJECTIVE PHYSICAL LIMITATIONS:

• Vision	Wears reading glasses
• Reading/Responding	No reported problems; no observed problems
• Hearing	No reported problems; no observed problems
• Writing	No reported problems; no observed problems
• Speaking	No reported problems; no observed problems

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• Lifting/Carrying	Was unsure of the exact limits
• Standing	Able to stand for a maximum of 20 to 30 minutes
• Walking	Able to walk for in the store for 20 to 30 minutes
• Sitting	Able to sit for 15 minutes
• Climbing	Can use a step stool
• Stooping/Squatting	Can perform this activity but is limited
• Bending/Twisting	No reported problems; no observed problems
• Kneeling	No reported problems; no observed problems
• Arms/Hands (reaching)	No reported problems; no observed problems
• Comprehending	No reported problems; no observed problems
• Breathing	No reported problems; no observed problems
• Balancing	No reported problems; no observed problems

CURRENT COMPLAINTS-SUBJECTIVE: On 3/26/2012, Mr. Beckman reported:

- Back At beltline hurts and 3 to 4 inches above. Is a constant pain. At the onset of the assessment-2/10. At the conclusion of the assessment-3/10.

When his "back goes out", the pain will radiate down the left leg and sometimes into the left hip.

MEDICATIONS: On 3/26/2012, Mr. Beckman reported taking Oxycodone for pain, which is left over from his last appointment with Dr. Zgleszewski. He does not have a current prescription.

ORTHOTICS/SELF-HELP DEVICES/EQUIPMENT: Mr. Beckman uses a walking stick to walk around his neighborhood. He purchased the walking stick and it is not physician prescribed. He works out at Gold's Gym, 5x/week.

EDUCATIONAL BACKGROUND: Mr. Beckman completed the 12th grade in 1984 from Garrett High School in North Charleston SC. He described himself as a "barely minimum student". He was in a regular classroom setting. He failed English in his senior year and took summer school. He attended Trident Technical College and studied Architectural Engineering. He attended for 1 year and took basic classes. He reported "being burned out" so did not return.

EMPLOYMENT HISTORY:

Employer: Pearlstine Distributors
Location: Charleston SC
Length: 4 years
Job Title: Truck Driver
Duties: Delivered beer to designated accounts by using a hand truck
Reason for leaving: More money
Wages: \$35,000/year

Employer: PYA Monarch
Location: Charleston SC then Walterboro SC
Length: 6 years
Job Title: Driver/Dispatcher
Duties: Delivered food products via hand truck on predetermined accounts. As a dispatcher, duties included but not limited to routing trucks, settling up with drivers as they finished routes. Scheduled routes.
Reason for leaving: Promoted to supervisor in Walterboro but disliked it, wanted to return to driver but was not allowed and resigned.
Wages: \$40,000-\$45,000/year

Employer: Coca Cola
Location: Charleston SC
Length: 3 years
Job Title: Bulk Delivery Driver
Duties: Deliver Coke products to large chain accounts by using an electric pallet jack
Reason for leaving: Better position
Wages: \$17.00/hour

Employer: Ceres
Location: Charleston SC
Length: 3 years
Job Title: Stevedore
Duties: Was foreman on vessel while loading and unloading containers on ship
Reason for leaving: Hours, mainly on the week-end
Wages: \$39,000/year

Employer: Sysco Food Company
Location: Charleston SC
Length: 6 years
Job Title: Driver
Duties: Delivered food products to designated accounts on a predetermined route. Worked 12 to 15 hour days, 4 days per week
Reason for leaving: Injured
Wages: \$52,000-\$56,000/year

MILITARY HISTORY: None reported

ARREST HISTORY: None reported

MEANS OF TRANSPORTATION: Mr. Beckman has a SC driver's license and has access to a 2004 Ford F150 4x4 with automatic transmission, power steering and power brakes. The vehicle is in "very good" condition. He no longer has a CDL. He reported his driving record is in good condition.

SOCIO-ENVIRONMENTAL: Mr. Beckman is married and lives with his wife and 21-year old son. The son plans to take the EMS exam. He receives \$2,758.84/month from Worker's Compensation. He has not applied for Social Security Disability. His expenses include insurances, utilities, telephone, house payment, food, installment loan and transportation. He indicated the accident has resulted in financial difficulty for him and his family.

ACTIVITIES OF DAILY LIVING: He wakes up at 7:00 a.m. He goes to bed at 10:30 p.m. He described the quality of his sleep as "pretty good". He indicated attaining 4 hours of continuous sleep per night. He gets up around 3:30 a.m. to go to the restroom. He denied any prior difficulties with sleeping.

Mr. Beckman is able to dress himself but sometimes needs assistance with his socks and shoes. He is able to take care of his personal/sanitary needs. He is able to sweep/dust, vacuum, make the bed, wash dishes, mop the floors, perform some cooking and do laundry. He is able to perform limited yard work. His son and wife will help with the yard work. His wife has a garden each year. He is able to drive for 45 minutes to 1 hour before needing to stop to take a break. He seldom rides as the passenger.

Mr. Beckman watches television during the day. He likes to read books and magazines about guns. He attends church every Sunday. He has been fishing every now and then. He likes to make things from wood. He likes watching sports on the television. He is able to perform light repairs around his home. His hobbies include: working out, doing wood work, fishing and going to the beach. He goes to Gold's Gym 5 times per week. He "tinkers" in the garage. He will assist his wife with refinishing furniture. He sometimes takes his small boat out.

He does not nap during the day. He denied smoking or using any other tobacco products. He drinks socially. He drinks 1 glass of tea per day, 1 cup of coffee per day and then drinks water the rest of the day.

BEHAVIORAL OBSERVATIONS: On 3/26/12, I met Mr. Beckman at his attorney's office in North Charleston SC. He drove to the appointment independently. I arrived at 9:45 a.m. He arrived immediately after me and we were shown to the conference room.

I introduced myself again and explained that I was asked to complete a vocational evaluation and labor market survey. He expressed understanding. He was encouraged to take breaks as needed, to stand, move about the area, visit the restroom and do whatever was necessary to be as comfortable as possible throughout the evaluation. He was encouraged to ask questions if he did not understand a question or was curious regarding the purpose of a question. He was encouraged not to answer any questions that made him uncomfortable.

He stood at 11:12 a.m. to get some water and immediately to his seat. He took a restroom break at 11:35 a.m. and returned to his seat at 11:38 a.m. He turned his chair from side to side during the interview. He indicated that he "never knows when the back will act up".

Mr. Beckman maintained eye contact during the evaluation. He answered questions. He was able to provide information regarding his employment which consisted of 5 jobs. He recalled the date, time and address. He recalled his telephone number and social security number.

The evaluation ended at 12:45 p.m.

OTHER VOCATIONAL CONSIDERATIONS: Mr. Beckman's work history has been as a truck driver (delivery), dispatcher and stevedore. He has been able to maintain the physical ability to perform his job duties. He has not contacted may wish to contact the South Carolina Vocational Rehabilitation Department or the South Carolina Department of Employment and Workforce for job assistance. He has not sought the assistance of any private employment service.

VOCATIONAL GOALS: Mr. Beckman is interested in woodworking and photography. He has completed some book keeping, scheduling, supervising, shipping/receiving and trained others on the job. He would be interested in re-training. He can use a computer and has one at his home. He and his wife pay the bills together.

RESULTS OF VOCATIONAL TESTING: The following tests were administered with results indicated.

Revised BETA Examination (BETA III): Mr. Beckman was administered the revised Beta Examination for the appreciation of his nonverbal intelligence. Results of this examination are as follows:

Sum of scale scores	61
BETA III	114
Percentile	82.0

*Norm used: Age 45-54 years

His test results indicate an IQ representing "high average" intelligence. When his scores were calculated to include the Standard Error of Measurement (SEM) at a 95% confidence, the following confidence span of IQ ranges emerged:

- 105 through 123 (average to superior)

Based upon the Beta, there is a 95% chance that Mr. Beckman's nonverbal intelligence fall between the 1052 to 123 point range.

Slosson Intelligence Test, Revised (SIT-R-3): Mr. Beckman was administered the Slosson Intelligence Test for appreciation of his verbal intelligence. Results for this instrument are as follows:

Total Standard Score (TSS)	105
Percentile rank	62

*Norm used: Age 18+ years of age

Interpretation of data gated via the Slosson Intelligence test indicates Mr. Beckman is functioning in the "average" range of verbal intelligence. When using a confidence interval of 95%, Mr. Beckman's Total Standard Score falls within the range of:

- 94 through 116 (average to above average)

There is a 95% chance that Mr. Beckman's verbal intelligence falls within the 94-116 point range.

Mr. Beckman was able to memorize numbers in order and reverse order based on the instructions. He was able to complete simple mathematical problems in his head.

Self-Directed Search-Form R, 4th edition: Mr. Beckman completed the Self-Directed Search in order to discover his pattern of vocational interests and competencies. His highest-ranking category of interest was "Realistic". Individuals scoring high in this area are usually described as "doing" rather than "thinking". They enjoy working with things rather than people and explicit, practical or manual tasks, autonomous or solitary situations and concrete and technical things such as use of machines, tools and materials. They may be described as persistent, precise and methodical. They are successful in careers such as gardener, aircraft pilot, baker, machinery operator, zookeeper, firefighter, mechanic, forestry worker, sportsperson and police officer.

His 2nd highest ranking area of interest was "Social". Individuals scoring high in this area are usually described as convincing, cooperative, friendly, generous, helpful, idealistic, kind, patient, responsible, social, sympathetic, tactful, understanding and warm. These individuals generally like occupations that allow them to help, teach and counsel people more than engage in mechanical or technical activity. They enjoy careers working around other people and helping them with their problems. Matching careers include nurse, speech therapist, teacher, religious worker and counselor.

His 3rd highest ranking area of interest was "Conventional". Individuals scoring high in this area are usually described as systematic, practical, careful, thrifty, efficient, orderly, persistent and conscientious. These individuals generally like activities that involve explicit, ordered systematic manipulation of data to meet predictable organizational demands or specific standards. They enjoy systematic or structured activities and prescribe them. They tend to focus on information accuracy, conservation and business achievement. Matching careers include accountant, data processing operator, prison officer, taxation agent, architectural draftsman, credit loan officer, customs agent, clerk, purchasing officer, auditor and secretary.

Individuals scoring high in the RSC category combination tend to be successful in positions such as bicycle repairman, shoe holsterer or mail handler.

Combinations of the LSC are: RCS, SRC, SCR, CRS or CSR. Individuals in these categories tend to be successful in positions such as upholsterer, building cleaner, parts clerk, light truck driver, mortgage clerk, small parts assembler or parking lot attendant. Other positions may include: job development specialist, food market aide, recreation aide, fast food worker, complaint clerk, file clerk surveillance system monitor or game assembler.

PHYSICAL LIMITATIONS/RETURN TO WORK GUIDELINES:

- On 4/25/11, a FCE was completed at Palmetto Spine & Sports Medicine. It was determined that Mr. Beckman: Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12"-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing.
- On 4/25/11, Dr. Zgleszewski reviewed FCE results and concur with findings. Reached the Medium physical demand level. Specific lifting capabilities were 60 pounds on the floor lift, 10 pounds 12"-knuckle lift combination leg-torso and a 40 pound shoulder lift. Occasional-standing, walking, bending, forward reach, overhead reach and crawling. Frequent: sitting, squatting, kneeling and stair climbing.
- On 5/02/11, Dr. Zgleszewski determined: Is at MMI.
- On 10/11, Dr. Zgleszewski indicated: MMI as of 5/02/11. Has sustained a 10% medical impairment to the right hip and a 5% medical impairment to SI joint with a combined rating of 15%. Is able to return to work with the following restrictions: Medium duty with no repetitive bending/twisting or lifting. Anticipated future medical care as follows: Up to 2-3 SI joint injections over the next 2 years.
- On 11/27/12, Dr. Boyd performed an Independent Medical Evaluation. Impression: Do not believe there is a need for surgery. In fact, any surgery would involve a multi-level fusion which almost certainly would yield very poor results. Agree with Dr. Zgleszewski that he is at MMI. Would assign an impairment rating of 8% considering DRE Lumbar Category II. Had FCE. Would agree with its findings that place him at a medium physical demand level for an 8-hour day. Is likely to need future flare-ups in the future which historically have been treated well with pain medication and non-steroidal anti-inflammatories. Suspect that he will need these medications 3 or 4 times per year for the next two years. Do not believe that he would likely benefit from future procedures or injections. Seems to be fairly confident, so do not anticipate that psychological issues or erectile dysfunction will be a long-term problem and currently do not believe he needs specific treatment for this.

After review of all medical reports and my clinical interview, Mr. Beckman's physical capacity range appears to fall within the capacity to medium physical demand work capacity.

As a guide, I refer to the *Dictionary of Occupational Titles, Volume 2, Fourth Edition, Revised 1991, US Department of Labor*. The range for sedentary to medium below as:

Sedentary - Exerting up to 10 pounds of force occasionally (1/3rd of time) and/or a negligible amount of force frequently (2/3rd of time) to lift, carry, push or otherwise move objects. Involves sitting most of the time but may involve walking or standing for brief periods.

Light Work - Exerting up to 20 pounds of force occasionally, and/or 10 pounds of force frequently, and/or a negligible amount of force constantly (2/3rd or more of time) to move objects. Jobs are considered light work when it requires frequent or standing to a significant degree, sitting most of the time but entails pushing and/or pulling of objects, controls, and working at a producing rate pace entailing constant pushing and/or pulling of materials. The weight of materials is negligible.

Medium - Exerting 20-50 pounds of force occasionally, and/or 25-50 pounds of force frequently and/or 10-20 pounds of force constantly to move objects.

TRANSFERABLE SKILLS ANALYSIS/EMPLOYABILITY ANALYSIS: An OASYS Transferability Skills Analysis (TSA) was conducted to review Mr. Beckman's work history, aptitudes and worker traits. The resulting file identified the following for his previous work history.

Mr. Beckman's specific vocational preparation profile is 5. This reflects 6 months and up to and including 1 year required time to learn the techniques, acquire the information and develop the facility needed for average job performance. General educational development levels reflect formal and informal education in his reasoning, language and mathematics skills.

His work history indicated the ability to apply commonsense understanding to carry out instructions furnished in written, oral or diagrammatic form. He has been able to deal with problems involving several concrete variables or first standardized situations.

In his work he has been able to add, subtract, multiply and divide all units of measure. He has been able to perform the four operations with like or common decimal fractions. He has been able to compute ratio, rate and percent. He has been able to perform arithmetic operations involving all American monetary units.

His work history indicated the ability to read a variety of novels, magazines, atlases and encyclopedias. He has been able to read shop rules, instructions in the use and maintenance of shop tools and equipment and methods and procedures in mechanical drawing and layout work. He has been able to write reports and essays with proper format, punctuation, spelling and grammar, using all parts of speech. He has been able to speak before an audience with poise, self control and confidence, using correct English and well-modulated voice.

Work history strongly required Mr. Beckman to exert physical demand levels of medium work on average. He has had to climb, stoop, kneel, crouch, finger, use near acuity and accommodation occasionally. He has been able to reach, handle, lift, hear, use far acuity, depth perception, color vision and field of vision frequently.

Specific work history reflected the ability to understand instructions and underlying principles, to reason, to understand meanings of words and use them effectively and to comprehend language.

His work history reflected average aptitude in general learning ability, verbal aptitude, numerical aptitude, spatial aptitude, close proximity, motor coordination, manual dexterity and eye-hand-foot coordination.

Based on Mr. Beckman's work history, previous work situations included the following: influencing people, dealing with people, making judgments and decisions.

Work functions dealing with data included the following: compiling and comparing. Work functions dealing with people indicate controlling and speaking-signaling. Work functions dealing with things indicate driving-operating.

Given Mr. Beckman's work history, aptitudes and transferable skills; he should be able to return to several jobs consistent with his injury profile. Some potential jobs, which capitalize on his experience and interests and accommodate his limitations are listed below.

These positions may require a period of training, orientation and/or on-the-job preparation. His preliminary vocational profile indicates that he possesses the ability to adapt to new tasks and to follow verbal instructions and can, therefore, adapt to new work situations.

LABOR MARKET SURVEY (LMS) AND REVIEW: A labor market survey and review was completed to determine whether jobs exist in the Charleston/North Charleston/Summerville SC and surrounding areas that comply with Mr. Beckman's abilities and limitations, given his education, physical status, transferable skills, worker's age and more.

Attention was given to part-time employment as well as full-time employment. An electronic search was conducted using the SC Job Bank, Monster.com and Careerbuilder.com websites. The Department of Employment and Work Force was consulted and positions identified that match his vocational profile. Employers were contacted directly to identify currently available, anticipated and/or recently filled positions.

These are job possibilities reviewed in the labor market survey, which are considered entry level or capitalizing work opportunities for him. These positions were found to be open or recently filled and reflect his abilities and title.

Included in the following positions: customer service representative, call center representative, telecommunications center, computer operator, computer specialist, counter sales representative, security officer, dispatcher, call center operator, clerk/administrative support. He can anticipate earnings ranging from \$18,200 annually to \$27,000 annually for the Charleston/North Charleston/Summerville SC and surrounding areas.

POSITION	COMPANY	BRIEF DESCRIPTION	SALARY
Customer Service Representative	Live Smart Solutions	Answer inbound calls. Assist customers with product information over the telephone and by email.	\$13.00/hour
Customer Representative	NCC	Answer customer inbound calls. Assist with reviewing bill statements. Accept payments over the telephone. Troubleshoot customer accounts.	\$9.08/hour
Telecommunications	City of Charleston	Answer emergency and non-emergency telephone lines. Dispatch calls to proper law enforcement, fire or EMS agency. Monitor and operate NCIC computer. Maintain records of call.	\$14.08/hour
Telecommunications	Town of Mt. Pleasant	Answer emergency and non-emergency telephone lines. Dispatch calls to proper law enforcement, fire or EMS agency. Monitor and operate NCIC computer. Maintain records of call.	\$13.55/hour
Counter Sales Representative	Hertz	Greet customers and process customer rentals. Assist in resolving customer issues. Sell other optional services.	To be discussed at time of hire

Security Officer	Armed Barton	Answer telephone and direct calls. Monitor closed circuit TV and cameras. Sign individuals in/out. Patrol area.	\$8.75-\$9.00/hour
Dispatcher	Performance Team	Monitor drivers and routes. Ensure loads are distributed among drivers. Keep contact with drivers regarding pick up/deliveries. Maintain logs, records and schedules of the calls.	Not disclosed
Customer Agent	iQor	Handle customer inbound/make outboard calls. Answer product questions, service accounts and create new accounts. Document calls and customer information.	\$9.00-\$11.00/hour
Dispatch Support Clerk/Administrator	Ready Intelligent Staffing	Answer telephones. Assist with customer needs via email and telephone. Handle driver's paperwork for settlements. File, type reports and assist with dispatcher duties.	\$11.00-\$12.00/hour

General information pertaining to these occupations, including wage estimates and numbers of positions in the Charleston/North Charleston/Summerville SC and surrounding areas follow:

May 2012 Metropolitan and Non-Metropolitan Area Occupational Employment and Wage Estimates
Charleston/North Charleston/Summerville South Carolina nonmetropolitan area, MSA, US Department of Labor Bureau of Labor Statistics

Occupation	Employment (positions)	Median Hourly	Mean Hourly	Mean Annual
Customer Service Representative (5,680)		\$14.91	\$15.43	\$32,100
Police Officer (230)		\$14.89	\$15.04	\$31,280
Security Guard (2,600)		\$10.64	\$12.06	\$25,080
Dispatcher (2,600)		\$19.56	\$19.64	\$40,840
Receptionist (2,500)		\$12.37	\$12.68	\$26,360

Charleston/North Charleston/Summerville SC Metropolitan and Non-Metropolitan Area Occupational Employment and Wage Estimates for January 2012 is 7.7%. The unemployment rate for the state of South Carolina is 7.7%. The unemployment rate for the nation for February 2012 was 8.3%.

CONCLUSION: The subject is a 45-old male who was employed with the Sysco Food Company in Charleston. His route was in James Island and the Folly Beach areas. Return to work appointment began at 9:45 a.m. and concluded at 12:45 p.m.

Upon review of the subject's records, vocational interview, interest testing, education, employability and published data, it is my opinion that Mr. Beckman remains employable. (20 hours) or full-time (40 hours) employment.

After review of medical report and my clinical interview, Mr. Beckman's physical capacity range appears to fall within the Federal Bureau of Investigation physical demand work capacity. He can anticipate earnings ranging from \$18,200 annually up to \$77,000 annually for the Charleston/North Charleston/Summerville SC and surrounding areas.

If he continues to have difficulties with his back, Mr. Beckman should contact SCVRD for participation in their program.

He may benefit from direct placement and direct placement into an employment opportunity that has been given close consideration given to his return-to-work guidelines as well as assets. These services are available at no cost. Employment opportunities would be enhanced with direct placement services.

Should Mr. Beckman find that additional assistance is needed in locating suitable employment, he may want to register with the Department of Employment and Workforce in Charleston or Summerville at no cost to receive job placement assistance. He may register online or in person at his local SC Works Center. He is encouraged to check the website frequently or contact his VR Counselor as job order requests change with local employers.

It is my professional opinion that Mr. Beckman is employable in the local labor market and positions exist in the current restrictions. Although potential positions have been identified and are under consideration, prior to pursuing a new position, he should contact his VR Counselor to clarify any concerns regarding essential functions.

The above findings are based upon a reasonable degree of professional vocational certainty and are based on records, employability analysis, current labor market survey, education and experience. The above findings are based upon the information currently available to me. It is assumed that the information is accurate and complete.

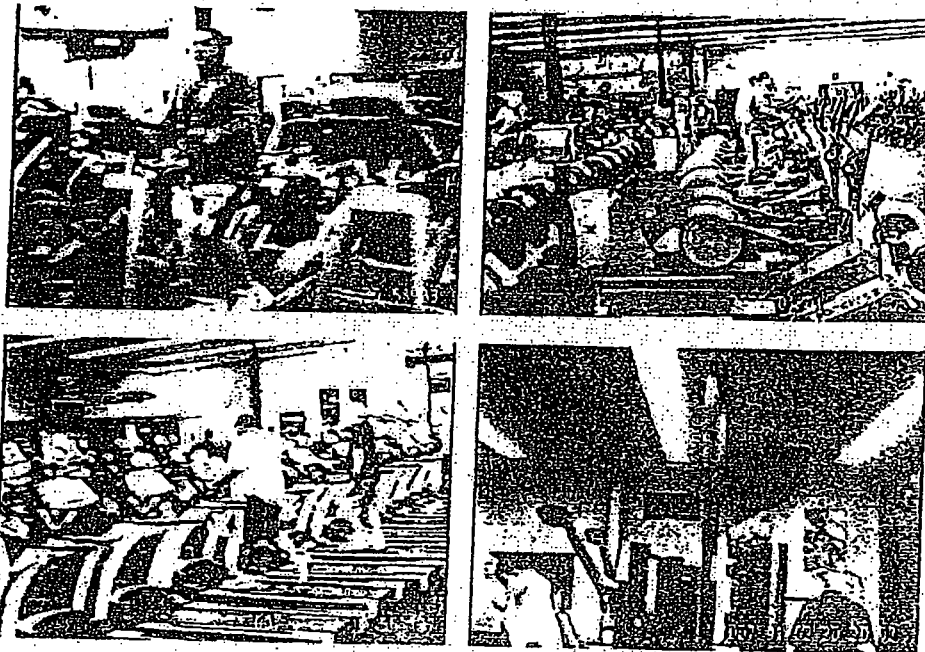
Should you have any questions, please contact me. If you have any questions, please do not hesitate to contact me. If you have any questions, please do not hesitate to contact me.

Respectfully,
[Signature]

Charleston, South Carolina
Jan 11, 2011
Vocational Rehabilitation
jwv@thecharleston.com

- 12:28 PM A spot-check of the subject's residence was conducted. No change or activity was observed. Stationary surveillance was re-established along the route of departure.
- 01:46 PM A spot-check of the subject's residence was conducted. No change or activity was observed. Stationary surveillance was re-established along the route of departure.
- 03:00 PM A spot-check of the subject's residence was conducted. No change or activity was observed. Stationary surveillance was re-established along the route of departure.
- 04:00 PM Due to a lack of further observable activity, surveillance was discontinued.

VIDEO STILL PHOTOGRAPHS



Subject: Neal Beckman
Claim No: 011924-107312-WC-01

5
GlobalOptions



INVESTIGATION COMPLETED BY: David Langfitt

REPORT COMPLETED BY: MP / NS

"PRIVILEGED COMMUNICATIONS"

This report is confidential and is intended solely for the use and information of the client to whom it is addressed.

This report is intended solely for the purposes of evaluating a claim.
This information should not be used for any employment-related purposes.
Client agrees and certifies the ordering of and the use of this report is in strict compliance with the Fair Credit Reporting Act.

Subject: Neal Beckman
Claim No: 011924-107312-WC-01

6
GlobalOptions

PLC
PROLEGAL COPIES

**Beckman
Surveillance**

519 East Bay Street
Charleston, SC 29403
843-853-2888 Fax: 843-853-7050

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

STATE OF SOUTH CAROLINA)

W.C.C. FILE NO. 1002925

COUNTY OF CHARLESTON)

Neal Beckman,)

Employee/Claimant,)

-vs-)

CONSENT ORDER

Sysco Columbia, LLC,)

Employer, and)

American Zurich Insurance Company c/o)
Gallagher Bassett Services, Inc.)

Carrier,)

Defendants.)

STATEMENT OF CASE

This matter was scheduled for a Hearing before the undersigned Commissioner on September 27, 2011 in North Charleston, SC pursuant to a Form 50 (Request for Hearing) filed by the Claimant's undersigned attorney on or about August 5, 2011 and the Defendants' Form 51 (Answer) filed by the Defendants' undersigned attorney on or about August 26, 2011.

The parties have agreed that this matter is currently premature for adjudication on September 27, 2011; and therefore, the parties hereto now agree and stipulate the September 27, 2011 Hearing should be cancelled so to allow the completion of an Independent Medical Evaluation (hereinafter "IME") pursuant to §42-15-80 and the Claimant's request for the same. The IME will be conducted by Stephen Rawe, M.D., a neurosurgeon, as soon as is practically possible. As of the date of this Consent Order, the parties have submitted all necessary medical records and a Pre-IME letter to Dr. Rawe in accordance with §42-15-95. In the event Dr. Rawe refuses to conduct the IME, the Defendants will designate another duly qualified neurosurgeon or orthopedic spine surgeon to perform an IME as soon as is practically possible.

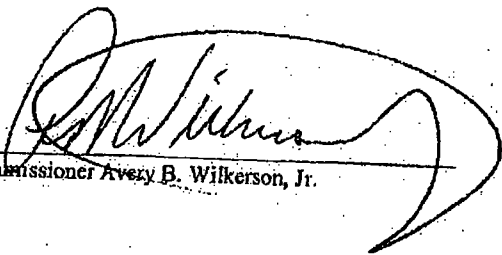
2011 09-26

Ve 6236 P. 2

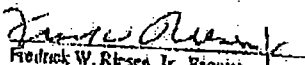
The Defendants also agree that the cancellation of the September 27, 2011 Hearing was pursuant to an agreement of the parties and shall not constitute a withdrawal with prejudice of the Claimant's November 10, 2010 Form 50 (Request for Hearing).

Finally, the parties further consent and stipulate that this matter shall be returned to General Files pending further Request(s) for Hearing and/or Motion(s) of the parties.

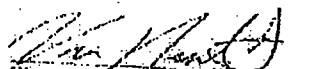
IT IS SO ORDERED.


Commissioner Avery B. Wilkerson, Jr.

WE SO CONSENT:


Frederick W. Riesen, Jr., Esquire
Attorney for Claimant

9-26-2011
Date


Vincent C. Northcutt, Esquire
Attorney for Defendants

9-23-2011
Date

CERTIFICATE OF SERVICE

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

By Elaine M. Boyd on September 27, 2011

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



File #: 1002925
Carrier File #: 011924-107312-WC-01
Carrier Code #: 000143
Employer FEIN #: 74-1648137

Claimant's Name: Neal Beckman SSN: 251-45-6231 Employer's Name: Sysco Columbia, LLC
Address: 1022 Arbor Wood Drive Address: 131 Sysco Court
City: Charleston State: SC Zip: 29412 City: Columbia State: SC Zip: 29201
Home Phone: (843) 406-3216 Work Phone: N/A Insurance Carrier: Gallagher Bassett Services, Inc.
Date of Injury: 03/25/2010
Preparer's Name: Vincent C. Northcutt, Esquire Law Firm: Wood & Warder, LLC Preparer's Phone #: (843) 577-5732

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is Admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: N/A. The Defendants admit the Claimant sustained an injury by accident to his lower back only on or about March 25, 2010. The Defendants deny the Claimant sustained any other compensable injuries and/or aggravations in the March 25, 2010 accident, and the Defendants deny the causality and compensability of all other injuries and/or conditions alleged by the Claimant.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: N/A, but see #1 above.
3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are: N/A, but see #1 above.
4. It is Admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: N/A, but see #1 above.
5. It is Admitted notice of injury was given the employer. The reasons for denial are: N/A. Defendants admit notice of accident with a resulting lower back injury only so as to satisfy the requirements of §42-15-20.
6. It is Admitted the employee is entitled to additional medical care as a result of injury or illness. The reasons for denial are: The Defendants admit the Claimant is entitled to causally related and compensable medical treatment for his low back injury until he is determined to have reached maximum medical improvement. Once the Claimant is determined to have reached maximum medical improvement, the Commission must determine what, if any, additional medical treatment the Claimant is entitled to pursuant to §42-15-60 and/or Dodge.
7. It is Admitted the employee is entitled to temporary total disability for the period(s) of: The Defendants admit the Claimant is entitled to temporary total disability benefits for all periods for which said benefits have been voluntarily paid prior to the date of maximum medical improvement as determined by the Commission. The Defendants request credit for all temporary total disability benefits paid after the date of maximum medical improvement.
8. It is neither Admitted nor Denied the employee is permanently disabled. The reasons for denial are: The Claimant has not been any assigned any impairment rating(s). Permanent disability is therefore premature.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$1,062.94 (Per Form 20) applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: The Defendants reserve the right to amend.
12. Estimated time needed for hearing: One (1) Hour.

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Fred W. Riesen, Jr., Esquire

Address: P.O. Box 40997, Charleston, SC 29423-0997

on the 26th day of August, 2011 by: ☒ first class mail ☐ personal service ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for Defendants
Title

vince@woodwarder.com

Email

August 26, 2011

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

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



WCC File #: 1002925
Carrier #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Neal Beckman SSN: [REDACTED]
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip: [REDACTED]
Home Phone: (843) 406-3216 Work Phone: ()
Preparer's Name: Fred W. Riesen, Jr. Law Firm: Riesen Law Firm, L.L.P.

Employer's Name: Sysco Columbia, LLC
Address: 131 Sysco Court
City: Columbia State: SC Zip: 29209
Insurance Carrier: Gallaqher Bassett Services, Inc.
Preparer's Phone #: (843) 760 - 2450

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Repetitive Trauma

Date of Injury or Illness: 03/25/2010

- 1a. The claimant sustained an injury to back, buttocks, both legs and right foot (Part(s) of Body Injured) on 03/25/2010 (Month/Day/Year) in Charleston county, state of South Carolina.
Body part(s) affected are: back, buttocks, both legs and right foot.

Briefly describe how the accident occurred. While loading a hand truck for a delivery the Claimant pulled muscles in his back injuring his back, buttocks, both legs and right foot..

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 03/25/10 (Month/Day/Year) in the following manner: verbally

6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: back, buttocks, both legs and right foot.

7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

8. Due to the injury, the claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability:

☒ Total
☐ Partial

☐ (2) Specific Disability:

☒ Total
☐ Partial

- ☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of: _____

10a. At the time of the injury, the claimant was paid weekly wages of \$ 689.71 or to be determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident: _____

11a. Further grounds or unusual aspects of claim: _____

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Dr. Timothy M. Zgleszewski, Palmetto Spin & Sports Medicine, 3030 Ashley Town Center Drive, Suite A-102, Charleston, SC; Dr. Byron Williams, Coastal Occupational Medicine, 3605 Meeting Street, Suite C, Charleston, SC

11c. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 60 minutes

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

Preparer's Signature

Attorney at Law
Title

Fredriesen@knology.net
Email

08/05/11
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

50

WCC Form # 50
Revised 9/07

Employee's Notice of Claim and/or

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,



Stephen B. Samuels
Samuels Law Firm, LLC
1320 Richland Street
Columbia, South Carolina 29201
(803) 779-4000
Stephen@SamuelsLawFirm.net

Attorney for Appellant

Columbia, South Carolina

August 26, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1002925

Neal Beckman, Employee, ... Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett Services, Inc., Carrier . . . Respondents.

FINAL BRIEF OF APPELLANT

Fred W. Riesen, Jr.
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3660 W. Montague Avenue
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(843) 760-2450

Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000
stephen@samuelslawfirm.net

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
STANDARD OF REVIEW	6
ARGUMENT	7
1. The Commission erred in limiting Beckman to a scheduled member disability award when the evidence showed disability should have been awarded under the loss of earnings capacity statute	7
A. SI Joint Injury.	9
B. Radiculopathy	12
CONCLUSION	15
CERTIFICATE OF COUNSEL	16

TABLE OF AUTHORITIES

CASES

<u>Burnette v. City of Greenville,</u> 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)	6, 9, 13-15
<u>Crisp v. SouthCo Inc.,</u> 738 S.E.2d 835, 401 S.C. 627 (2013)	14
<u>Gilliam v. Woodside Mills,</u> 461 S.E.2d 818, 319 S.C. 385 (1995)	9-12
<u>Hutson v. S.C. State Ports Authority,</u> 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010)	12, 12 n.2
<u>Hutson v. S.C. State Ports Authority,</u> 399 S.C. 381, 732 S.E.2d 500 (2012)	6
<u>Lark v. Bi-Lo, Inc.,</u> 276 S.C. 130, 276 S.E.2d 304 (1981)	6
<u>Mixson v. Westinghouse Elec. Corp.,</u> 304 S.C. 31, 402 S.E.2d 893 (Ct. App. 2005)	9
<u>Peoples v. Henry Co.,</u> 364 S.C. 123, 611 S.E.2d 527 (Ct. App. 2005)	9
<u>Pierre v. Seaside Farms, Inc.,</u> 386 S.C. 534, 689 S.E.2d 615 (2010)	6
<u>Potter v. Spartanburg Sch. Dist. 7,</u> 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011)	6, 14
<u>Simmons v. City of Charleston,</u> 349 S.C. 64, 562 S.E.2d 476 (Ct.App.2002)	9
<u>Singleton v. Young Lumber Co.,</u> 236 S.C. 454, 114 S.E.2d 837 (1960)	7-8
<u>Wigfall v. Tideland Utils., Inc.,</u> 354 S.C. 100, 580 S.E.2d 100 (2003)	8-9, 10-11 n.1

Wynn v. People's Natural Gas Co. of S. C.,
238 S.C. 1, 118 S.E.2d 812 (1961)

6

STATUTES

S.C. Code Ann. § 1-23-380 (Supp. 2011)

6

S.C. Code Ann. § 42-9-10 (2007)

7

S.C. Code Ann. § 42-9-20 (2007)

2, 7

S.C. Code Ann. § 42-9-30 (2007)

2, 7, 10-11 n.1

STATEMENT OF ISSUES ON APPEAL

Whether the Workers Compensation Commission erred in finding Appellant was limited to a disability award for the back as a scheduled member despite the undisputed fact he suffered a permanent loss of earnings capacity when:

- A. The sacroiliac (SI) joint is an unscheduled member as a matter of law; and
- B. Appellant suffered documented radiculopathy into his left leg, such that the leg was affected by the back injury as a matter of law.

STATEMENT OF THE CASE

This workers' compensation appeal arises out of work-related injuries sustained by the Appellant, Neal Beckman, on March 25, 2010. The Employer and Carrier accepted Beckman's claim and began providing various benefits under Title 42, the Workers' Compensation Act. Beckman received medical treatment primarily from Dr. Timothy Zgleszewski, M.D. The Employer paid temporary total disability compensation for the period commencing on March 26, 2010.

On March 8, 2012, Employer filed a Form 21 (Employer's Request for Hearing) seeking to terminate temporary compensation and have an award made for permanent disability compensation. [R. p. 34].

A hearing was held before Commissioner Susan S. Barden on April 26, 2012. At that hearing, Employer asserted that Beckman should be entitled to permanent partial disability compensation to the back pursuant to S.C. Code Ann. § 42-9-30 (21) (2007). Beckman asserted the disability compensation should be based on his demonstrated loss of earnings capacity under S.C. Code Ann. § 42-9-20 (2007).

Commissioner Barden issued a Decision and Order on June 18, 2012. Commissioner Barden made the following pertinent findings of fact:

The Claimant has sustained a 35% permanent loss of use of the spine (encompassing Claimant's entire spine and including any alleged radiculitis) pursuant to § 42-9-30(21).

I find the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident. [R. p. 16].

Beckman timely filed a Form 30 (Notice of Appeal) on Jun 26, 2012. [R. pp. 47-48].

The Appellate Panel heard oral arguments on October 22, 2012. The Appellate Panel issued

a Decision and Order on December 5, 2012, in which it affirmed the decision of the Single Commissioner. [R. pp. 21-32].

This appeal followed.

STATEMENT OF THE FACTS

Neal Beckman was employed as a delivery truck driver for the Employer, Sysco, for 6 years. On March 25, 2010, while loading a hand truck for a delivery, Beckman injured his back, buttocks, legs, right foot and SI joints.

Beckman immediately reported his injury to Employer. His workers' compensation claim was accepted, and he was sent for medical treatment the next day on March 26, 2010. He was taken out of work and began receiving temporary total disability compensation.

After the initial treatment at Palmetto Health, Beckman received treatment with Dr. Byron Williams at Coastal Occupational Health from March 29, 2010 through April 12 2010. An MRI scan on March 29, 2010, revealed disc protrusions causing nerve root contact at L3/4 and L4/5.

Due to the seriousness of the injury and the MRI evidence documenting muscle spasms and radiculopathy, Beckman's treatment was transferred to a specialist, Dr. Timothy Zgleszewski. Dr. Zgleszewski treated Beckman from April 19, 2010 through September 12, 2011. Treatment included:

- Diagnostic bilateral sacroiliac joint (SI joint) injections.
- Therapeutic right SI joint injections.
- Left L4, L5 and S1 epidural steroid injections.
- Percutaneous discectomy.
- Medication and physical therapy.

During the course of treatment, Beckman also took personal steps to improve his physical condition. He quit smoking, lost 40 pounds and started going to the gym regularly.

The medical records consistently document ongoing complaints of left upper thigh pain and radiation down the left lateral thigh to the foot, along with numbness in the foot. Throughout the course of Dr. Zgleszewski's treatment, he continued the diagnosis of lumbar radiculopathy.

At the April 11, 2011 appointment, Dr. Zgleszewski ordered a functional capacity evaluation (FCE) to assess Beckman's current functional status and work capacity. The FCE was done on April 25, 2011. It showed Beckman gave full effort and was able to perform at medium duty. [R. pp. 194-197].

On September 12, 2011, Dr. Zgleszewski completed a Form 14B (Physician's Statement). On the 14B, Dr. Zgleszewski gave his final diagnosis of "Sacroiliitis; lumbar disc injury & radiculopathy." He listed the body parts injured as the "Back/Spine" and the body parts affected as the "Lower Extremity." He opined that Beckman had reached MMI on May 2, 2011 with a 10% medical impairment to the "Back/Spine" and a 5% medical impairment to the "SI joint" for a combined rating of 15%. Dr. Zgleszewski stated Beckman could return to work with restrictions of "Medium duty with no repetitive bending/twisting or lifting." He further stated Beck would need "Up to 2-3 SI joint injections over the next 2 years." [R. p. 193].

In the interim, Beckman continued to have ongoing symptoms of low back pain radiating into his left leg with numbness around the foot. [R. p. 205]. He also had periodic flare-ups with severe muscle spasms several weeks.

Due to his ongoing symptoms of radiculopathy punctuated with flare-ups, Beckman was sent to Columbia by the Employer for a surgical evaluation with Dr. Scott Boyd. Dr. Boyd confirmed

the history of low back with pain radiating into the left leg and numbness around the foot. Dr. Boyd noted "clear objective evidence of muscular spasm and back pain." He opined that as "any surgery would involve a multi-level fusion which would almost certainly yield very poor results . . . I do not believe that there is any role for surgery here." [R. pp. 205-206]. Dr. Boyd assigned an 8% impairment rating and concurred with the medium duty restrictions and treatment recommendations from Dr. Zgleszewski.

Both parties obtained expert vocational evaluations. The experts agreed that Beckman cannot return to any of his previous employment due to the restrictions from his injury. [R. p. 27]. The experts also agree that Beckman has suffered a permanent loss of earnings capacity.

Beckman's expert, David R. Price, opined Beckman would be capable of working at an entry level semi-skilled position earning approximately \$8.00 to \$10.00 per hour. As such, his residual earning capacity is lowered all the way down to \$320.00 to \$400.00 per week. [R. p. 198-204].

Employer's expert, Jan Westmoreland, concluded Beckman's future earnings would range from \$18,200.00 up to \$27,400.00. On a weekly basis, his residual earning capacity would be reduced to \$350.00 to \$520.00 per week. [R. p. 207-220].

In his job with Employer, Beckman earned \$1,062.94 per week or \$55,272.88 per year. Even with Westmoreland's most optimistic scenario, Beckman has lost more than half his earning capacity as a result of his injury.

STANDARD OF REVIEW

The Administrative Procedures Act (“APA”) provides the standard for judicial review of decisions by the Commission. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133-34, 276 S.E.2d 304, 306 (1981). Under the APA, the appellate court can reverse or modify the decision of the Commission if the substantial rights of the appellant 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. S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2011).

“[T]he guiding principle undergirding our workers’ compensation system [is] that the Act is to be liberally construed in favor of the claimant. The second is the equally compelling evidentiary principle that an award may not rest upon surmise, conjecture, or speculation.” Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012). The Commission’s decision “must be founded on evidence of sufficient substance to afford a reasonable basis for it.” Wynn v. People’s Natural Gas Co. of S. C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961).

The Commission is permitted to disregard medical evidence only when there is other competent evidence in the record to support their conclusion. Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011). Where a finding is based on “the medical opinion of the single commissioner, adopted by the Commission,” rather than on the opinion of a medical provider, the finding must be reversed as unsupported by substantial evidence. Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012). A conclusion by the Commission “based on rank speculation . . . cannot now be used as the basis for denying [an injured worker’s] claim for lost wages. Hutson at 504, 732 S.E.2d 694.

ARGUMENT

The primary issue on appeal is the erroneous application of the “two body-part rule” set out in Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960). Although the primary injury was to the back, Beckman also injured his SI joint. Moreover, his left leg has been affected by the radiculopathy caused by the back injury.

The evidence shows Beckman’s injury is not limited to his back. He therefore proved his right to proceed under the loss of earnings capacity statutes. S.C. Code Ann. § 42-9-20 (2007). As the undisputed evidence shows he has suffered a loss of earnings capacity, this case must be reversed and remanded to the Appellate Panel to determine the extent of lost earnings capacity and enter an award under the loss of earnings statute.

1. The Commission erred in limiting Beckman to a scheduled member disability award when the evidence showed disability should have been awarded under the loss of earnings capacity statute.

At the Commission, Beckman consistently argued that his injury was not limited to his back – such that the disability award should have been made for loss of earnings capacity under S.C. Code Ann. § 42-9-20 (2007). Beckman adduced proof that he injured an unscheduled body part – the SI joint – and that his back injury had caused radiculopathy in his left leg. This proof, combined with the definitive proof of an actual loss of earnings capacity, confirm that the Appellate Panel erred in limiting his disability award to a single member under S.C. Code Ann. § 42-9-30 (2007).

The Workers’ Compensation Act provides three methods to obtain compensation for permanent disability: 1) total disability under S.C. Code Ann. § 42-9-10; 2) partial disability under S.C. Code Ann. § 42-9-20; and 3) scheduled disability under S.C. Code Ann. § 42-9-30. The first two methods are premised on the economic model. Under the economic model, the injured worker must

prove an actual loss of earnings capacity. The third method conclusively relies upon the medical model with its presumption of lost earning capacity. Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 580 S.E.2d 100 (2003). The Commission is required to apply whichever statute provides the greatest benefits for the Claimant.

In this case, the Commission only addressed disability under the medical model. See S.C. Code Ann. § 42-9-30 (21)(2007)(providing compensation paid for loss of use to the back is 300 weeks). Had Beckman not suffered the injury to his SI joint and radiculopathy into his left leg, such that his injury was entirely limited to his back, then he would be limited to a maximum compensation of 300 weeks – notwithstanding the fact he suffered a loss of more than half his pre-injury earning capacity. The basic rule set out in Singleton states, “Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation.” Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960). The principle espoused in Singleton recognizes “the common-sense fact that, when two or more scheduled injuries [or a scheduled and non-scheduled injury] occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together.” Wigfall, 354 S.C. 100, 106-07, 580 S.E.2d at 103. This rule is colloquially referred to as the “two-body part rule.”

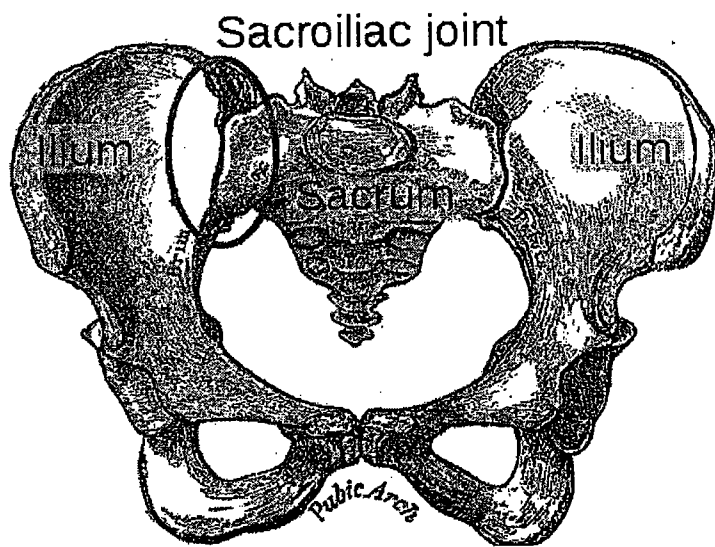
The part of Singleton relevant to this case states, “To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is affected.” [Id.]. The point here is that if two or more scheduled members are injured, the claimant is entitled to proceed under general disability as a matter of law without further inquiry. However, if the actual injury is confined strictly to one body part, the claimant can still proceed under the general disability

statutes if he can "show that some other part of his body is affected." Id. See, also Simmons v. City of Charleston, 349 S.C. 64, 75, 562 S.E.2d 476, 482 (Ct.App.2002) (injury to scheduled member that affected other parts of body compensable as general disability). It is enough that the other body part be *affected*. There is no requirement that a separate impairment rating be given. "The Singleton Court intended 'impairment' to encompass a physical deficiency." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 103, 580 S.E.2d 100, 101 (2003). Cf. Peoples v. Henry Co., 364 S.C. 123, 611 S.E.2d 527 (Ct. App. 2005)(award of 68% to leg affirmed because ruptured Achilles tendon not limited to foot because pain traveled up into leg); Mixson v. Westinghouse Elec. Corp., 304 S.C. 31, 402 S.E.2d 893 (Ct. App. 2005)(for workers' compensation purposes, there is no requirement that loss of use, or partial loss of use, of member of body requires evidence of direct injury to member itself).

A. SI Joint Injury.

The Appellate Panel found as a fact that: "We find the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident. [R. p. 28]. This finding is patently erroneous. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)("the medical opinion of the single commissioner, adopted by the Commission," is not evidence and cannot form the basis of a finding). Beckman also injured his sacroiliac joint. The SI joint is an unscheduled member as a matter of law. See Gilliam v. Woodside Mills, 461 S.E.2d 818, 319 S.C. 385 (1995)("as a matter of law the hip socket is part of the pelvis and not part of the leg for workers' compensation purposes").

The SI joint is the articulation between the sacrum and the ilium of the hip bone. Taber's Medical Dictionary. The sacrum supports the spine and is supported in turn by an ilium on each side. The illustration below shows the exact location of the SI joint:



The SI joint is by definition an unscheduled body part. Virtually the same issue presented here was definitively addressed in Gilliam v. Woodside Mills, 461 S.E.2d 818, 319 S.C. 385 (1995). In Gilliam, the employee injured her hip and required a hip replacement. She had no other injuries. The Commission refused to make a general disability award, instead holding that Gilliam was limited to a scheduled member award because the hip socket was part of the leg. This Court and the Supreme Court reversed holding “the hip socket is part of the pelvis and not part of the leg for

workers' compensation purposes."¹ Id. The Supreme Court held the issue was one of law – expressly rejecting the employer's contention that it was a substantial evidence issue. As the injury was to an unscheduled member, the Court remanded to the Appellate Panel for a determination of disability under the general disability statute.

Gilliam commands reversal in the instant case. The evidence is overwhelming that the SI joint was permanently injured in the accident. Dr. Zgleszewski specifically assigned a 5% medical impairment to the SI joint. [R. p. 193]. The Appellate Panel found as a fact that "The authorized treating physician assigned a 15% combined impairment rating for the back and SI joint." [R. p. 26]. The Panel further found "Claimant is entitled to receive injections per the recommendation of the authorized treating physician, Dr. Zgleszewski." [R. p. 28]. As the injections are specifically "SI joint injections," the Commission must necessarily have found that the SI joint was injured in the accident.

Indeed, Respondents do not even dispute that the SI joint was permanently injured. Instead, they "contend that the SI joint is not a separate scheduled body part as the sacrum is a portion of the spine located below the lumbar vertebral column; therefore Claimant was properly compensated under § 42-9-30 (21) for his total impairment [sic] to his back." This is the same argument the employer made to the Appellate Panel in Gilliam – completely overlooking the fact that the SI joint by definition is the joint between the sacrum and the ilium (which itself is part of the pelvis). And,

¹In 2007, the Legislature amended the Act to add the hip and shoulder as scheduled members with a value of 300 weeks each. S.C. Code Ann. § 42-9-30 (2007). The fact the hip and shoulder are given greater value as scheduled members than the leg (195 weeks) and arm (220 weeks) recognizes "the common-sense fact that, when two or more scheduled injuries [or a scheduled and non-scheduled injury] occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 106-7, 580 S.E.2d 100, 103 (2003).

as in Gilliam, the Appellate Panel erred as a matter of law in finding the SI joint was limited to the back.

The SI joint is an unscheduled member. As in Gilliam, an injury to an unscheduled member allows an injured worker to proceed under the general disability statute. Accordingly, the decision below must be reversed and the case must be remanded for a determination of Beckman's loss of earnings capacity.

B. Radiculopathy.

The overwhelming weight of the evidence shows that Beckman's back injury resulted in radiculopathy into his left leg. Dr. Zgleszewski diagnosed Beckman with radiculopathy throughout the entire course of treatment, culminating with the specific diagnosis of "lumbar disc injury & radiculopathy" upon reaching MMI. Dr. Zgleszewski explicitly opined that the "Lower Extremity" was a body part affected by the back/spine injury. [R. p. 193]. See Hutson v. S.C. State Ports Authority, 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010), *reversed on other grounds*, 732 S.E.2d 500, 399 S.C. 381 (2012)(affirming Commission's finding that radicular symptoms in the right leg showed an injury to the back "with affects to the right leg.")² Moreover, the 10% medical impairment to the back/spine necessarily encompasses radiculopathy (as does the 8% assigned by Dr. Boyd).

The Commission's disability award of 35% loss of use of the spine recognized the existence

²Hutson's radicular symptoms met the requirements of Singleton and Wigfall. As such, he was legally entitled to prosecute his disability claim under both the wage loss model and the medical model. The Court of Appeals held his wage loss claim failed for a lack of proof of wage loss; not because of the two-body part rule. The Supreme Court reversed holding the Commission's finding regarding no proof of wage loss was based on "rank speculation." Hutson v. S.C. State Ports Authority, 732 S.E.2d 500, 399 S.C. 381 (2012)

of the radiculopathy, as the award “encompass[ed] Claimant’s entire spine and *including any alleged radiculitis . . .*” [R. p. 28]. The Commission would not make such a statement nor base an award on radiculitis had there not been sufficient evidence to do so.

The crux of the error below is that the Appellate Panel substituted its own medical opinion for that of the doctors. The specific error is shown where the Appellate Panel states:

There is no evidence of radiculopathy. The authorized treating physician diagnoses radiculitis based upon Claimant’s subject complaints. At one point (post discectomy on April 2011), Claimant reported no leg pain at all. [R. p. 25].

It is facially absurd for the Appellate Panel to state there is *no* evidence of radiculopathy. The authorized treating physician (Dr. Zgleszewski) diagnosed radiculopathy. He never waived from this opinion – repeating it on September 12, 2011. [R. p. 193]. Signs and symptoms of radiculopathy are present in virtually every medical report – save the one in April 2011 where Beckman reported short-term improvement of his radicular symptoms following the percutaneous discectomy – which was before he reached MMI. These same symptoms had returned by the time Beckman saw Dr. Zgleszewski on May 2, 2011, and were still present when he saw Dr. Boyd on February 27, 2012. [R. pp. 205-206].

The one scintilla of evidence which arguably undercuts the radiculopathy diagnosis is the EMG/NCS study. This is obviously the basis for the Appellate Panel’s finding as they state: “The Claimant also underwent an EMG/NCS study that revealed normal results with no objective evidence of radiculopathy.” [R. p. 25].

The problem here is that this statement is based on the Single Commissioner’s own medical opinion – not that of Dr. Zgleszewski. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)(medical opinion of a commissioner is not evidence). Dr. Zgleszewski

personally reviewed and interpreted the EMG/NCS study – and maintained his diagnosis of radiculopathy. He repeatedly stated that the test is an “imperfect diagnostic tool” for diagnosing radiculopathy. [R. pp. 153, 158]. The EMG/NCS is a confirmatory test. If positive, it confirms the clinical diagnosis of radiculopathy. However, as it is prone to a high percentage of false negatives, a normal test in the face of clinical evidence means nothing.

There is nothing magical about so-called objective testing versus the clinical diagnoses made by medical providers. See Crisp v. SouthCo Inc., 738 S.E.2d 835, 844, 401 S.C. 627 (2013) (“In light of [testimony for multiple valid methods of diagnosing brain injury], we are reluctant to require use of a specific diagnostic tool in proving these medically-technical brain injury cases.”). The Appellate Panel must rely on the opinions of the doctors involved in treating and evaluating the patient. These opinions may be based on imaging studies and other technology based diagnostic tools – or they may be based on physical examination along with the history and complaints reported by the patient.

Dr. Zgleszewski has a double advantage over the Commissioners. He is a trained physician and he treated Beckman for over a year. To be sure, the Appellate Panel has the authority to reject Dr. Zgleszewski’s expert opinions – but only if there is other competent evidence in the record to support a different conclusion. Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011). In this case, there is no other evidence. Beckman consistently presented with signs and symptoms of radiculopathy in his left leg and foot. Dr. Boyd never addressed the issue one way or the other – but did document continuing radicular symptoms of pain in the left leg and numbness around the foot. [R. pp. 205-206].

As in Burnette, “The record contains [Beckman’s] medical records and testimony, as well as written opinions by [his] treating physicians and a vocational rehabilitation expert. We find no

evidence that challenges the conclusions of [Beckman's] doctors concerning [his . . .] development of radiculopathy." Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012). The Appellate Panel repeated the error it made in Burnette when it substituted its own medical opinions for the opinions of the doctors. This is reversible error. This Court should reverse the finding that the injury is limited to the back and remand to the Appellate Panel for a determination of Beckman's loss of earnings capacity.

CONCLUSION

For the foregoing reasons, the Court should reverse the Decision and Order of the Appellate Panel and remand for a determination of Beckman's loss of earnings capacity under S.C. Code Ann. § 42-9-20 (2007).

Respectfully Submitted,



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September 9, 2013
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1002925

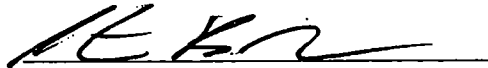
Neal Beckman, Employee, ... Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett Services, Inc., Carrier . . . Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. File No. 1002925

Case No. 2013-000005

Neal Beckman, Employee.....Appellant,

v.

Sysco Columbia, LLC, Employer, and
Gallagher Bassett Services, Inc., Carrier.....Respondents.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW.....	12
ARGUMENTS	
I. The Full Commission properly awarded compensation to the Appellant pursuant to S.C. Code Ann. §42-9-30.....	13
II. Substantial evidence supports the Full Commission's finding that the Appellant is only entitled to compensation for permanent loss of use of the back (encompassing the entire spine and alleged radiculitis) pursuant to §42-9-30(21).....	15
A. SI Joint.....	15
B. Radiculopathy.....	17
CONCLUSION.....	22
CERTIFICATE OF COUNSEL.....	23

TABLE OF AUTHORITIES

Cases

<i>Burnette v. City of Greenville</i> , Opinion No. 5059, filed December 5, 2012.....	21, 22
<i>Colona v. Marlboro Park Hospital</i> , Opinion No. 5117, filed April 17, 2013.....	13, 14
<i>Fishburne v. ATI Systems Intern</i> , 384 S.C. 76, 681 S.E.2d 595 (Ct.App., 2009).....	19, 20
<i>Gibson v. Spartanburg School Dist. No. 3</i> , 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000).....	13
<i>Gilliam v. Woodside Mills</i> , 461 S.E.2d 818, 319 S.C. 385 (1995).....	16
<i>Gray v. Club Group, Ltd.</i> , 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000).....	12
<i>Hoxit v. Michelin Tire Corporation</i> , 304 S.C. 461, 405 S.E.2d 407 (1991).....	13
<i>Hutson v. SC State Ports Authority</i> , 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010).....	20
<i>Lark v. Bilo, Inc.</i> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	12
<i>Mgmt. Recruiters v. R.J.R. Mech., Inc.</i> , 304 S.C. 399, 404 S.E.2d 908 (Ct.App. 1991)...	16
<i>Pratt v. Morris Roofing, Inc.</i> , 357 S.C. 619, 594 S.E.2d 272 (2004).....	13
<i>Rogers v. Kunja Knitting Mills Co.</i> , 312 S.C. 377, 440 S.E.2d 401, re-hearing denied (Ct. App.1994).....	12
<i>Ross v. American Red Cross</i> , 298 S.C. 490, 381 S.E.2d 728 (1989).....	13, 15
<i>Sanders v. MeadWestvaco Corp.</i> , 371 S.C. 284, 638 S.E.2d 66 (Ct.App. 2006).....	16
<i>Schulknicht v. City of N. Charleston</i> , 352 S.C. 175, 574 S.E.2d 194 (2002).....	16
<i>Shealy v. Aiken Cnty.</i> , 341 S.C. 448, 535 S.E.2d 438 (2000).....	14
<i>Singleton v. Young Lumbar Company</i> , 236 S.C. 454, 114 S.E.2d 837 (1960).....	14, 15
<i>Stokes v. First National Bank</i> , 306 S.C. 46, 410 S.E.2d 248 (1991).....	13
<i>Wigfall v. Tideland Utils., Inc.</i> , 354 S.C. 100, 580 S.E.2d 100.....	14

Statutes

S.C. Code Ann. §1-23-380 (1976, as amended).....	12
S.C. Code Ann. §42-1-40 (1976, as amended).....	12
S.C. Code Ann. §42-1-130 (1976, as amended).....	11
S.C. Code Ann. §42-1-160 (1976, as amended).....	11
S.C. Code Ann. §42-9-10 (1976, as amended).....	11
S.C. Code Ann. §42-9-20 (1976, as amended).....	2, 11, 20
S.C. Code Ann. §42-9-30 (1976, as amended).....	1, 2, 10, 11, 13, 15, 16
S.C. Code Ann. §42-9-210 (1976, as amended).....	11
S.C. Code Ann. §42-9-260 (1976, as amended).....	11
S.C. Code Ann. §42-15-60 (1976, as amended).....	11

Regulations

S.C. Code Reg. 67-506 (1990, as amended).....	2, 11
S.C. Code Reg. 67-1605 (1990, as amended).....	12

STATEMENT OF ISSUES ON APPEAL

- I. The Full Commission properly awarded compensation to the Appellant pursuant to S.C. Code Ann. §42-9-30.
- II. Substantial evidence supports the Full Commission's finding that the Appellant is only entitled to compensation for permanent loss of use of the back (encompassing the entire spine and alleged radiculitis) pursuant to §42-9-30(21).

STATEMENT OF THE CASE

The Appellant, Neal Beckman, was employed as a delivery driver with Sysco Columbia, LLC when he was involved in an admitted accident arising out of and in the course of his employment on March 25, 2010. Following the accident, Sysco Columbia, LLC and Gallagher Bassett Services, Inc. (hereinafter "Respondents") provided the Claimant authorized medical care and treatment primarily with Dr. Timothy Zgleszewski. The Appellant also underwent a surgical evaluation with Dr. Scott Boyd. The Respondents paid temporary total disability compensation from March 26, 2010 through the Decision & Order of the single Commissioner dated June 18, 2012.

A Hearing was held before the single Commissioner in Summerville, South Carolina on April 26, 2012 to address the issues set forth in the Respondents' Form 21 pursuant to Regulation 67-506 based on their position that the Appellant reached maximum medical improvement. The Respondents claimed credit for overpayment of temporary disability compensation paid after the Appellant reached maximum medical improvement and sought a final determination concerning the Appellant's entitlement to benefits.

The Respondents asserted that the Appellant reached a level of maximum medical improvement on May 2, 2011 per Dr. Zgleszewski's medical note or alternatively by February 27, 2012 per Dr. Scott Boyd's medical note. The Respondents further asserted that the Appellant should be entitled to permanent disability pursuant to §42-9-30. The Appellant argued that any permanency award should be based on a loss of earnings under §42-9-20.

The record reveals that the Appellant initially treated at Palmetto Health on March 26, 2010 (R.p. 123). Thereafter he treated with Dr. Byron Williams at Coastal Occupational Medicine from March 29, 2010 through April 12, 2010 (R.pp. 123-127). Per recommendation of Dr. Byron Williams, the Claimant underwent a lumbosacral spinal MRI on March 29, 2010, which revealed mild appearing degenerative disc disease at the L3-4 and indirect evidence of paravertebral muscle spasm (R.p. 128). The Appellant also had an MRI of his lumbar spine at Tricounty Radiology Associates on April 14, 2010, which revealed degenerative changes most pronounced at the L3-4 and L4-5 on the left (R.pp. 129-130).

Thereafter, the Appellant treated conservatively with Dr. Zgleszewski at Palmetto Spine and Sports Medicine from April 19, 2010 through September 12, 2011 (R.pp. 131-193). On May 17, 2010, the Appellant underwent EMG/NCS testing. In reviewing the report, Dr. Zgleszewski indicated on June 7, 2010 that the Appellant did not have any radiculopathy in either leg pursuant to the EMG/NCS (R.p. 153). The Appellant's conservative treatment included injections to the SI joint and left L4, L5, S1 transforminal epidural steroid injections (R.pp. 157-165). Following discogram testing, Dr. Zgleszewski also performed a percutaneous discectomy at the L4-L5 level on December 10, 2010 (R.p. 166). Thereafter, the Appellant attempted rehabilitation therapy, a pain management medication regime, and further injections (R.pp. 167-187). Dr. Zgleszewski then ordered a follow up MRI of the lumbar spine, which was reviewed in his office note dated April 11, 2011 (R.p. 189). According to Dr. Zgleszewski's notes, the MRI revealed that the only change was a reduction in the prior lumbar disc injury that was treated with the percutaneous discectomy (R.p. 188). At that point, the Appellant

reported no leg pain and indicated that he did not have pain radiating into his legs (R.p. 188). The Appellant still reported pain in his back with a shooting pain to the left hip (R.p. 188). At the April 11, 2011 appointment, Dr. Zgleszewski ordered a functional capacity evaluation to assess the Appellant's current functional status and help determine his return to work level (R.p. 190). The functional capacity evaluation was performed on April 25, 2011 and the report concluded that the Appellant reached a medium physical demand level, which is a reliable representation of his functional capacity (R.pp. 194-197). Thereafter, Dr. Zgleszewski completed a Form 14B, Physician Statement, dated September 12, 2011 (R.p. 193). On the Form 14B, Dr. Zgleszewski indicated that the Appellant reached maximum medical improvement as of May 2, 2011; he is able to return to medium duty work with the restrictions of no repetitive bending, twisting, or lifting; the Appellant has sustained a 10% medical impairment to the back and a 5% medical impairment to the SI joint for a combined rating of 15% to the back; and the Appellant will need SI joint injections over the next two years, up to two to three per year (R.p. 193).

Pursuant to Consent Order of the parties, the Appellant was also provided with a surgical evaluation (R.pp. 250-251). The surgical evaluation took place with Dr. Scott Boyd on February 27, 2012. Dr. Boyd opined that based on the MRI findings, there is no role for surgery for the Appellant (R.pp. 225-226). Furthermore, Dr. Boyd indicated that he agreed with Dr. Zgleszewski's determination that the Appellant reached maximum medical improvement (R.pp. 225-226). Dr. Boyd also opined that the Appellant has sustained an 8% impairment considering the DRE lumbar category II based on the AMA Guides (R.pp. 225-226). Dr. Boyd also indicated that he agreed with the findings of the

functional capacity evaluation that placed the Appellant at a medium physical demand level for an eight-hour day (R.pp. 225-226). According to Dr. Boyd, the Appellant is likely to have further flare-ups, which have been treated well with pain medication and muscle relaxers; therefore, he recommended that the Appellant receive such medications three to four times per year over the next two years as monitored by a regular medical physician (R.pp. 225-226). Dr. Boyd opined that the Appellant would not benefit from any further procedures or injections (R.pp. 225-226). Further, Dr. Boyd noted that he did not appreciate any significant nerve root compression (R.pp. 225-226).

Vocational assessments were submitted into the record by both the Appellant and the Respondents. The Respondents asserted that the Appellant's vocational assessment was outdated and should not be relied upon as evidence of the Appellant's permanent disability. The Appellant's vocational assessment is dated September 10, 2011 and was performed by David R. Price, M.ED. At the time of Mr. Price's report, the Appellant reported that he could only exercise at a local gym one hour three times weekly, he only fished three times since the injury, and he had been unable to attend church due to his sitting intolerance (R.pp. 199-200). The Appellant was also requiring Oxycodone every eight hours for pain control according to the vocational evaluation by David Price (R.p. 200). David Price concluded that the Appellant would be capable of working at an entry level semi-skilled employment in a range of earnings from approximately \$8.00 to \$10.00 per hour working an 8-hour day (R.p. 203).

The vocational report submitted into the record by the Respondents was performed by The Directions Group on April 6, 2012. Included in the report were the results of a Beta III examination, which revealed that the Claimant has an IQ of high

average intelligence (R.p. 214). The Appellant reported to The Directions Group vocational evaluator that he is able to sweep/dust, vacuum, make the bed, wash dishes, mop the floor, perform some cooking, and do laundry (R.p. 213). The Appellant indicated that he is able to perform limited yard work and he is able to drive for 45 minutes to 1 hour continuously (R.p. 213). The Appellant further reported that he likes to read books, he attends church every Sunday, he participates in woodworking, and he goes fishing every now and then (R.p. 213). Further, the Appellant confirmed that he works out at Gold's Gym five times per week (R.p. 213). The Directions Group's vocational evaluation concluded that the Appellant can anticipate earnings ranging from \$18,200.00 annually up to \$27,040.00 annually (R.p. 100).

The Appellant testified at the Hearing that he is 45 years old and has been married for 26 years (R.p. 60, lines 11-14). The Appellant further testified that he graduated from high school and attended courses in architectural engineering at Trident Tech (R.p. 61, lines 8-15). The Appellant testified that he did not graduate from college and he no longer has a commercial drivers' license, although he did at one time (R.p. 61, line 22 – R.p. 62, line 7). The Appellant testified that his job history includes employment with Ceres Marine Terminals as a stevedore on container ships, a driver for Coca-Cola, food service for Monarch, auto repair work, and as a delivery driver at Pearlstein Distributors (a/k/a Budweiser) (R.p. 62, line 8 – R.p. 64, line 10). The Appellant asserted that he is not physically able to do any of the work as he previously performed (R.p. 64, lines 16-19).

In regards to the injury on March 25, 2010, the Appellant testified that he has pain in his left groin, upper inner thigh, left hip radiating to his knee, and SI joints on both

sides (R.pp. 74-81). The Appellant testified pain on his right has subsided but that the left has continued (R.p. 81). The Appellant testified regarding the different exercises that he learned to strengthen his lower back and the muscles around his spine. The Appellant testified that the injections and regular exercise at the gym have been beneficial (R.p. 72, lines 2-9).

The Appellant testified regarding his current workouts. The Appellant testified that he starts on a treadmill or elliptical and uses the arch trainer and nautilus machines for strength training (R.p. 102, lines 13-19). The Appellant testified that he has been going to the gym since he was 15 years old and he would like his gym membership to be paid by the insurance Carrier (R.p. 102, lines 2-8).

In regards to his current condition, the Appellant testified that his worst symptom remains his lower back. The Appellant testified that his last flare-up was on February 14, 2012 (R.p. 75, line 24 – R.p. 76, line 1). The Appellant confirmed that Dr. Scott Boyd's evaluation took place after that flare-up (R.p. 76, lines 21-25). The Appellant testified that during that flare-up, he took Oxycodone, which was left over from his initial visit with Dr. Zgleszewski (R.p. 78, lines 13-17).

The Appellant went on to testify regarding his pain in his sacrolitic joint, as well as his left hip that bothers him constantly (R.p. 81, lines 5-25). According to the Appellant, he has pain that radiates to his knee when his back flares up (R.p. 82, lines 9-11). Furthermore, the Appellant testified that he has pain in his groin, but it does not happen as often as it was (R.p. 82, lines 16-22). The Appellant testified that he is able to drive, but that he still has limits with his activities (R.p. 87, lines 8-24). The Appellant testified that he cannot walk as long as he used to, but he can probably walk for 45

minutes to an hour while sitting down and taking breaks (R.pp. 85-86). The Appellant further testified that he has problems sitting for longer to 30 to 45 minutes before it gets really uncomfortable (R.p. 86, lines 8-10).

Following the Hearing, the single Commissioner issued her Decision and Order, wherein she set forth the following Findings of Fact:

1. Claimant injured his low back in an admitted accident on March 25, 2010.
2. Claimant alleges that his admitted injury also affects his buttocks, legs, right foot, and right SI joint.
3. Claimant is 45 years of age (testimony of Claimant).
4. Claimant is a high school graduate. He attended one year of technical college when he studied to be an architectural engineer (testimony of Claimant; Claimant's APA #7, page 81; Defendants' APA #19, page 179).
5. Claimant's IQ is "high average" per Defendants' vocational expert. Claimant's vocational expert states that Claimant's word reading is the grade equivalent of 12.9, his sentence comprehension is the equivalent of 12.9, and his math computation is the equivalent of 12.9. Claimant enjoys reading books and magazines relating to guns (Defendants' APA #19, page 182; Claimant's APA #7, page 81).
6. Claimant's employment history includes work (a) as a stevedore (foreman) on container ships, (b) as a delivery driver for Coke and a beer distributor, and (c) in auto body repair (testimony of Claimant; Defendants' APA #19, pages 179-180; Claimant's APA #7, pages 81-82).
7. Claimant's job with Employer was delivery driver of food and restaurant supplies. This job is considered heavy (testimony of Claimant; Claimant's APA #7, page 81; Defendants' APA #19, page 175; Claimant's APA #10).
8. Claimant is a six-year employee (testimony of Claimant).
9. The objective evidence is interpreted by the authorized treating physician as showing "shallow protrusions, but no significant nerve root compromise" (Defendants' APA #12, page 106; *See also* Claimant's APA #4; Defendants' APA #16).
10. There is no objective evidence of radiculopathy. The authorized treating physician diagnoses radiculitis based upon Claimant's subjective

complaints. At one point (post discectomy on April 2011), Claimant reported no leg pain at all (Defendants' APA #14, pages 110 and 115).

11. The Claimant also underwent an EMG/NCS study that revealed normal results with no objective evidence of radiculopathy.
12. I was not persuaded by Claimant's testimony regarding the alleged nine-day episode, including his (a) having to drag his left foot/leg behind him, and (b) description of having the posture/gait of a "mummy" (testimony of Claimant; Claimant's APA #11, containing a photograph of Claimant).
13. Because of his work-related injury, Claimant underwent injections, physical therapy, and a percutaneous discectomy (Claimant's APA #5, page 46).
14. Claimant reached maximum medical improvement on February 27, 2012 (Defendants' APA #12, page 106).
15. The authorized treating physician assigned a 15% combined impairment rating for the back and SI joint. Defendants' IME assigned an 8% impairment rating (Claimant's APA #5, page 73; Defendants' APA #14, page 108; Defendants' APA #12, page 106; Claimant's APA #8, page 86).
16. My observations of Claimant's sitting tolerance at the hearing are very different than those noted by Claimant's vocational expert, as I noted no difficulties during the hour-long hearing. Claimant told Defendants' vocational expert that he attends church "every Sunday", but told his own vocational expert that is "unable to attend church due to his sitting intolerance" of greater than 30 minutes (observations of the undersigned; Claimant's APA #7, pages 79-80; Cf. Defendants' APA #19, page 181).
17. Claimant works out at Gold's Gym five days each week, and has lost approximately 40 lbs. since the date of the accident (testimony of Claimant; Defendants' surveillance video; Defendants' APA #19, page 181).
18. Claimant's statement to his vocational expert that he is socially withdrawn and can no longer tolerate being in crowds is inconsistent with his ability/desire to work out at Gold's Gym five days a week (Claimant's APA #7, page 80).
19. Claimant is able to drive (testimony of Claimant; Defendants' surveillance video).
20. Claimant is able to engage in his hobby of woodworking (testimony of Claimant).

21. Claimant takes no medication on a daily basis. No prescriptions have been written for Claimant within a year's time prior to the date of the hearing (testimony of Claimant).
22. Claimant showed "good" effort in his FCE, and the test results were considered valid by the evaluator (Defendants' APA #12, pages 106 and 111).
23. The restrictions from the FCE limit Claimant to medium duty work, and preclude him from returning to any of his pre-accident jobs (Claimant's APA #5, page 73; Defendants' APA #14, pages 108 and 111; Claimant's APA #6).
24. I give greater weight to the conclusions of Defendants' vocational expert. I base this finding on my review of the medical evidence and on my observations of Claimant at the hearing (Claimant's APA #7; Defendants' APA #19).
25. As to future medicals, Claimant is entitled to receive injections per the recommendation of the authorized treating physician, Dr. Zgleszewski. The surgical opinion by Dr. Scott Boyd suggests future medications although Claimant does not presently take any (Claimant's APA #5, page 73; Defendants' APA #14, page 108; Defendants' APA #8, page 86).
26. The Claimant has sustained a 35% permanent loss of use of the spine (encompassing Claimant's entire spine and including any alleged radiculitis) pursuant to §42-9-30(21).
27. I find that the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident.
28. Claimant is to receive his award in lump sum.
29. Claimant's request that Defendants provide him with a gym membership is denied. Claimant has worked out at gyms since he was 15 years of age, and worked out at Gold's Gym prior to the date of the injury (testimony of Claimant).
30. Claimant's average weekly wage is \$1,062.94, yielding a compensation rate of \$689.71.

(R.pp. 12-17, Decision & Order dated June 18, 2012).

As support for the aforementioned findings, the single Commissioner issued the following 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 injuries to his low back only in an accident arising out of and in the course of his employment on March 25, 2010.
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 his injuries sustained as a result of the March 25, 2010 accident by February 27, 2012. Further under §42-15-60, the Defendants shall be responsible for the causally related medical care and treatment which they authorized and which was incurred on or before February 27, 2012, the date of maximum medical improvement. Further under §42-15-60, the Defendants are responsible for the Claimant's injections per the recommendations of the authorized treating physician, Dr. Zgleszewski, and the Claimant's causally related future medications as outlined by Dr. Scott Boyd as is necessary to lessen the Claimant's causally related disability resulting from the March 25, 2010 injury by accident.
4. Under §42-9-260 and Regulation 67-506, the Defendants are entitled to stop payment of temporary disability compensation and that shall be effective February 27, 2012, the date the Claimant reached maximum medical improvement.
5. Under §42-9-10, §42-9-20, §42-9-260, and Regulations 67-501 through 510, the Defendants have paid all temporary disability compensation for which they are liable and have no liability for any further temporary disability compensation.
6. Under §42-9-30(21), the Claimant sustained a 35% permanent loss of use to his back as a result of the accident on March 25, 2010.
7. Under §42-9-210, all temporary disability compensation paid to the Claimant for the period after February 27, 2012 constitutes payment towards the permanent partial disability award set forth herein and the Defendants are entitled to credit for all temporary disability compensation paid to the Claimant for the period after February 27, 2012 against liability for further compensation benefits awarded herein.

8. The Claimant is entitled to a lump sum payment pursuant to Regulations 67-1605(A) and 67-1605(E).
9. Under §42-1-40, the Claimant's average weekly wage is \$1,062.94 with a resulting weekly compensation rate of \$689.71.

(R.pp. 17-19, Decision & Order dated June 18, 2012).

From this Decision and Order, the Claimant timely filed a Form 30, Request for Full Commission Review. The Full Commission affirmed the single Commissioner's Decision and Order in its entirety by Order dated December 5, 2012. (R.p. 21-32). The Appellant appeals the December 5, 2012 Order to this Honorable Court.

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 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. The Full Commission properly awarded the Appellant compensation pursuant to S.C. Code Ann. §42-9-30.

As the Court addressed recently in *Colonna*, an individual is limited to scheduled compensation pursuant to §42-9-30 where there is no impairment to any other part of the body and an individual is not limited to scheduled benefits under section 42-9-30 if the individual can show additional injuries. *Colona v. Marlboro Park Hospital*, Opinion No.

5117, filed April 17, 2013 citing *Singleton v. Young Lumbar Company*, 236 S.C. 454, 471, 845, 114 S.E.2d 837, 845 (1960) and *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 106, 580 S.E.2d 100, 103. The Court also referenced that the individual must prove that another body part was impaired or injured otherwise the individual is limited to the scheduled compensation pursuant to §42-9-30. *Id.* citing *Singleton* at 471, 845 and *Wigfall* at 106, 103. As in *Colona*, the Appellant in this matter has failed to establish that he has sustained impairment to an additional body part other than the back.

The Appellate Panel of the Commission is reserved the task of weighing the evidence and in weighing the evidence it ultimately concluded that the Appellant's disability is contained to the back. 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 afforded evidence). The MRI and EMG/NCS do not support the Appellant's alleged radiculopathy (R.pp. 153, 206, 228-232). Further, the SI joint was addressed by the authorized treating physician as a portion of the back (R.p. 193). Therefore, the Commission in reviewing the evidence found that the Appellant's disability is contained to the spine. As the finder of fact, the Commission has the authority to reach this conclusion so long as there is substantial evidence to support such in the record.

The Appellant argues that the *Singleton* case requires that he be compensated based on a loss of earnings capacity due to injury to two or more body parts; however, the Appellant failed to show that some other part of his body was affected by the March 25, 2010 accident. *Singleton v. Young Lumbar Company*, 236 S.C. 454, 114 S.E.2d 837

(1960). As outlined herein below, there is substantial evidence in the record to find that only the Appellant's back was affected by the March 25, 2010 accident.

II. Substantial evidence supports the Full Commission's Decision that the Claimant is only entitled to compensation for permanent loss of use of the back (encompassing the entire spine and alleged radiculitis) pursuant to §42-9-30(21).

The Commission's findings of fact are conclusive; therefore, only substantial evidence is required to support the Commission's finding that the Claimant has sustained a 35% permanent loss of use of the spine (encompassing Claimant's entire spine and including any alleged radiculitis) pursuant to §42-9-30(21). *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989). The Appellant alleges that the Commission erred in finding that there was no other affected body part other than the back in light of the finding that the Appellant was entitled to treatment for his SI joint and the fact that the treating physician references radiculopathy. The Respondents however assert that the Appellant's impairment to his SI joint was included in the authorized treating physician's rating of 15% to the spine and there is no evidence of any impairment to the lower extremities to allow the Appellant to be compensated for a loss of earnings as opposed to a scheduled award.

A. SI joint.

The Form 14B, Physician's Statement, completed by Dr. Zgleszewski on September 12, 2011 states the Appellant has a 10% impairment to the back/spine and a 5% impairment to the SI joint for a combined rating of 15% (R.p. 193). As such, the Respondents contend that the Appellant has a total impairment of 15% to the back, which takes into account any SI joint impairment. Further, the Respondents contend that the SI

joint is not required to be considered a separate unscheduled body part as the sacrum is a portion of the spine located below the lumbar vertebral column.

Although the Supreme Court confirmed in *Gilliam* that the hip socket is part of the pelvis, the SI joint was not specifically addressed. *Gilliam v. Woodside Mills*, 461 S.E.2d 818, 319 S.C. 385 (1995). Appellant's assertion that this is the same issue as in *Gilliam* is in error. When the Commission has addressed the SI joint in the disability award to the back, the decision has previously been upheld by this Court. The Respondents assert that this scenario is similar to *Sanders* wherein the Claimant's disability for his SI joint and his lumbar spine was compensated based on his loss of use of his back. *See Sanders v. MeadWestvaco Corp.*, 371 S.C. 284, 638 S.E.2d 66 (S.C.App. 2006) (An award of benefits to a workers' compensation claimant for "permanent loss of the use of the lumbar spine and sacroiliac joint (SI joint)" was not reversible error, even though the statute that provided for compensation for an injury to the back did not specifically mention the lumbar spine or the SI joint; the order and record reflected that claimant's injury and subsequent disability was to his back). In *Sanders*, the Court of Appeals stated:

[E]ven though the SI joint and lumbar spine are not specifically mentioned in section 42-9-30, we find no reversible error in the manner in which the Appellate Panel characterized Sanders' injuries. A review of the Appellate Panel's order and the record reflects Sanders' injury and subsequent disability was clearly to his back. This approach is consistent with our policy of liberally construing the Workers' Compensation Act in favor of coverage. *Schulknicht v. City of N. Charleston*, 352 S.C. 175, 178, 574 S.E.2d 194, 195 (2002); *see also Mgmt. Recruiters v. R.J.R. Mech., Inc.*, 304 S.C. 399, 401, 404 S.E.2d 908, 909 (Ct.App.1991) (finding when construing a judgment, the determinative factor is the "intent of the officer who wrote it, as gathered not from an isolated part of the judgment, but from all parts thereof").

Sanders at 69-70, 290-291.

Dr. Zgleszewski clearly addressed the SI joint in the "combined" rating of 15% to the back; therefore, the SI joint was included in the Appellant's impairment to his back (R.p. 193). As such, the Commission awarded the Appellant compensation based on his disability to his back.

B. Radiculopathy.

The Appellant's subjective complaint is the only evidence of his back injury affecting any other body part. The single Commissioner had the opportunity view the Appellant at the Hearing and weigh his testimony verse the objective medical evidence in the record. The Appellant has alleged that Dr. Zgleszewski's notes referencing the Appellants subjective radicular complaints are the only evidence in the record; however, a surgical opinion was rendered by Dr. Boyd and diagnostics were performed (Appellant's Brief page 14). As referenced by the Commission's Finding of Fact No. 9, the Appellant's MRIs did not show any significant nerve root compromise to explain the alleged radiculopathy complaints (R.pp. 206, 228-232). Furthermore, Dr. Boyd performed a surgical evaluation on February 27, 2012 and specifically indicated that he does not appreciate any significant nerve root compromise (R.p. 206). Dr. Boyd noted that the Appellant had normal power in his lower extremities and a steady gait (R.p. 205). In addition to the MRIs, the Appellant also underwent an EMG/NCS study. Dr. Zgleszewski reviewed the results of the EMG/NCS with the Claimant on June 7, 2010 (R.p. 152). At that time, Dr. Zgleszewski noted that the Claimant's bilateral lower extremity motor examination was normal (R.p. 153). Dr. Zgleszewski indicated that based on the EMG/NCS, the Claimant does not have radiculopathy in either leg (R.p. 153). Although Dr. Zgleszewski also noted that the EMG/NCS can be an imperfect

diagnostic tool for determining radiculopathy, there is no other evidence of any radiculopathy aside from the Appellant's subjective complaints and reference to such by Dr. Zgleszewski (R.p. 153).

The Appellant's complaints also continued to decrease throughout the course of his conservative treatment. At the Appellant's visit on July 9, 2010, his bilateral lower extremity motor examination was normal and Dr. Zgleszewski indicated that they ruled out lumbar facet pain and left SI joint pain (R.p. 158). On November 10, 2010, Dr. Zgleszewski also indicated that the Appellant had a normal bilateral lower extremity motor examination (R.p. 164). The Appellant underwent a mechanical percutaneous discectomy at the L4/L5 level on December 10, 2010 (R.p. 166). Following the discectomy, the Appellant presented for follow up on January 21, 2011 and noted reduced radiating left hip pain (R.p. 167). The Appellant also had a bilateral lower extremity examination at that time, which was stable and unchanged (R.p. 168). On February 14, 2011, the Appellant again had a bilateral lower extremity examination that was stable and unchanged (R.p. 176). At the visit on March 14, 2011, Dr. Zgleszewski indicated that the Appellant was expected to reach maximum medical improvement within two weeks (R.p. 180). The Appellant then returned to Dr. Zgleszewski on March 21, 2011 referencing an increase in his left lateral upper thigh pain radiating down to the foot, which was increasing over the weekend (R.p. 182). That said, Dr. Zgleszewski noted that the Appellant's gait and station was non-antalgic and he was able to raise up on his heels and toes (R.p. 183). The Appellant also had a stable and unchanged bilateral lower extremity examination (R.p. 183). The Appellant then was referred for a functional

capacity evaluation, which was performed on April 25, 2011, showing the Appellant could work in a medium physical demand capacity (R.pp. 194-197).

Importantly, at the Appellant's visit with Dr. Zgleszewski on April 11, 2011 another MRI was reviewed and he had no changes to his spine (R.p. 188). The Appellant also reported no leg pain and no pain radiating into his legs (R.p. 188). Respondents assert that this report from April 11, 2011 is the best indication of the Appellant's complaints immediately prior to his release from treatment (R.p. 188). At the return visit on May 2, 2011, the Appellant's gait and station was noted to be non-antalgic and he was able to raise up on his heels and toes (R.p. 191). Further, the Appellant's bilateral lower extremity examination was still stable and unchanged from the previous exam (R.p. 191). As such, Dr. Zgleszewski indicated that the Appellant reached maximum medical improvement (R.p. 191). On the Form 14B, Dr. Zgleszewski indicated that the Appellant reached maximum medical improvement as of May 2, 2011; he is able to return to medium duty work with the restriction of no repetitive bending, twisting, or lifting; the Claimant had sustained a 10% medical impairment to the back and a 5% medical impairment to the SI joint for a combined rating of 15% to the back (R.p. 193).

The Court in *Fishburne* addressed facts similar to this situation. *Fishburne v. ATI Systems Intern*, 384 S.C. 76, 681 S.E.2d 595 (Ct.App., 2009). In *Fishburne*, the Claimant did not have any objective evidence to support her radicular complaints according to the EMG/NCS and MRI. *Id.* at 87-88, 601. The Court upheld the decision of Appellate Panel of the Commission which found the Claimant was not entitled to a separate award for permanent partial disability benefits for her right lower extremity after having determined that the ten percent permanent partial disability award for the Claimant's back

injury encompassed any right lower extremity radiculopathy. *Id.* at 89, 601. Further, the Court stated that the Claimant presented no evidence that she had sustained a specific injury to her right lower extremity and the orthopedic physician noted he did not see indication of any disc disease that would cause all of her symptoms. *Id.* at 89, 601. The Appellant also lacks objective evidence to support an award of permanent partial disability to his lower extremity. Further, there is substantial evidence to support the award of 35% permanent partial disability to the Appellant's back including the alleged radiculopathy.

The Appellant relies on *Hutson* to argue that he should be entitled to compensation based on the loss of earnings capacity pursuant to §42-9-20; however, the facts are distinguishable. *Hutson v. SC State Ports Authority*, 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010), *reversed on other grounds*. The Claimant in *Hutson* had an affected right leg and back which was recognized by the hearing Commissioner. *Id.* at 116, 467. Further, the Order in *Hutson* contained a finding that the Claimant suffered from radicular symptoms in his right leg that affected the functioning of that limb. *Id.* at 117, 467. Therefore the Claimant had established a prima facie case for compensating his leg injury in addition to his back injury. *Id.* The opposite is the situation in this case where the single Commissioner found that the Appellant did not suffer injury to any body part other than his back.

In short, the Respondents assert that substantial evidence in the record suggests that the Appellant does not have any impairment to any body part other than his low back. Dr. Zgleszewski confirmed that the Appellant's EMG/NCS revealed that he did not have radiculopathy in either leg (R.p. 153). Furthermore, immediately before being

released from treatment by Dr. Zgleszewski, the Appellant reported that he did not have any leg pain or pain radiating into his legs (R.p. 188). Throughout the Appellant's entire treatment with Dr. Zgleszewski, his bilateral lower extremity examination was stable. Although the Appellant had various complaints of radiculopathy in his buttocks, legs, and right foot, Dr. Boyd confirmed on February 27, 2012 that there was not any significant nerve root compromise (R.p. 206). Furthermore, Dr. Boyd noted that the Appellant had normal power in his lower extremities and a steady gait (R.p. 205). According to the functional capacity evaluation, the Appellant is able to work medium duty (R.pp. 194-197) and the Appellant's physical strength can be reviewed in the surveillance submitted of him working out at Gold's Gym (R.p. 249). As such, the Commission found that greater weight should be afforded to the objective evidence showing that the Appellant did not have any radiculopathy as opposed to the Appellant's subjective complaints. The Respondents further assert that the award of 35% permanent loss of use to the back under §42-9-30(21) more than compensates the Appellant for his disability in view of Dr. Boyd's opinion that the Appellant had an 8% permanent impairment to his back and Dr. Zgleszewski's opinion that the Appellant had a 15% combined impairment rating to the back.

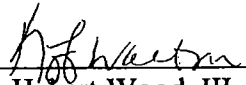
As outlined above, there is substantial evidence in the record to support the Commission's finding that the Appellant's radicular complaints are contradicted by the objective evidence. This finding is not based on the single Commissioner's medical opinion as alleged by the Appellant in referencing the *Burnette* decision. (Appellant's Initial Brief, p. 13). In *Burnette*, the record lacked evidence to support the single Commissioner's statements regarding the medical evidence. *Burnette v. City of*

Greenville, Opinion No. 5059, filed December 5, 2012. In this situation, Dr. Boyd was the person who interpreted the MRI and determined that there was no nerve root impingement (R.p. 205). Further, Dr. Zgleszewski reviewed the EMG/NCS and indicated the results were normal (R.p. 153). Both physicians provided physical examinations of the lower extremities and noted the normal gait. Although Dr. Zgleszewski indicated that the EMG/NCS is an imperfect tool, there is other competent evidence in the record, such as the MRIs and Dr. Boyd's surgical evaluation, to support the finding that only the Claimant's back was the only affected body part.

CONCLUSION

The Respondents respectfully request that the Commission's Order dated December 5, 2012 be affirmed in full based on the substantial evidence in the record and the applicable law.

RESPECTFULLY SUBMITTED:
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Date: September 12, 2013

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC File No. 1002925

Case No. 2013-000005

Neal Beckman, Employee, ...Appellant,

v.

Sysco Columbia, LLC, Employer, and
Gallagher Bassett Services, Inc., Carrier, ...Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondents' Final Brief complies with Rule
211(b) of the South Carolina Appellate Court Rules.

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
ARGUMENT	1
I. Cindy Dozier is permanently and totally disabled as there are no jobs available to someone with permanent restrictions of no more than occasional lifting up to 5 pounds	1
II. Employer is procedurally barred from denying the existence of CRPS	5
III. The Commission erred in finding Dozier did not suffer from CRPS at the time of the hearing	8
CONCLUSION	10
CERTIFICATE OF COUNSEL	11

TABLE OF AUTHORITIES

CASES

<u>Brown v. Owen Steel Co.,</u> 316 S.C. 278, 450 S.E.2d 57 (Ct.App.1994)✓	4 n.4, 5
<u>Burnette v. City of Greenville,</u> 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)	8
<u>Colonna v. Marlboro Park Hospital, Op. No. 5117</u> (S.C.Ct.App. withdrawn, submitted and refiled June 26, 2013) (Shearouse Adv.Sh. No. 29 at 16)	1-2
<u>Doe v. South Carolina Dept. of Disabilities and Special Needs,</u> 377 S.C. 346, 660 S.E.2d 260 (2008)	8
<u>Gilliam v. Woodside Mills,</u> 461 S.E.2d 818, 319 S.C. 385 (1995)	3
<u>Hutson v. S.C. State Ports Authority,</u> 399 S.C. 381, 732 S.E.2d 500 (2012)	6-7
<u>Mizell v. Glover,</u> 351 S.C. 392, 570 S.E.2d 176 (2002) ✓	2 n.1
<u>National Bank of Honea Path v. Thomas J. Barrett, Jr., & Co.,</u> ✓ 174 S.E. 581, 173 S.C. 1 (1934)	5
<u>Sanders v. MeadWestvaco Corp.,</u> 371 S.C. 284, 638 S.E.2d 66 (Ct. App. 2006)✓	3-5
<u>Shealy v. Aiken Cnty.,</u> 341 S.C. 448, 535 S.E.2d 438 (2000) ✓	5
<u>Singleton v. Young Lumber Co.,</u> 236 S.C. 454, 114 S.E.2d 837 (1960)	4 n.4
<u>Therrell v. Jerry's Inc.,</u> 633 S.E.2d 893, 370 S.C. 22 (2006)	3
<u>Wigfall v. Tideland Utilities, Inc.,</u> 580 S.E.2d 100, 354 S.C. 100 (2003)	2, 4 n.4

STATUTES

S.C. Code Ann. § 42-9-20 (2007) 5, 9

S.C. Code Ann. § 42-9-30 (2007) 1

SECONDARY SOURCES

John Adams, *Argument in Defense of the Soldiers in the Boston Massacre Trials*,
December 1770. 3 n.2

ARGUMENT

1. The Commission erred in limiting Beckman to a scheduled member disability award when the evidence showed disability should have been awarded under the loss of earnings capacity statute.

Respondents begin their argument with a discussion of Colonna v. Marlboro Park Hospital, Op. No. 5117 (S.C.Ct.App. withdrawn, submitted and refiled June 26, 2013)(Shearouse Adv.Sh. No. 29 at 16). However, Colonna provides no support for their argument and is easily distinguished.

First off, Colonna affirmed the general principle applicable here, to wit: “the common-sense fact that, when two or more scheduled injuries [or a scheduled and non-scheduled injury] occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together.” Id., quoting, Wigfall v. Tideland Utilities, Inc., 580 S.E.2d 100, 106-7, 354 S.C. 100, 103 (2003). As Respondents themselves state, “an individual is not limited to scheduled benefits under section 42-9-30 if the individual can show additional injuries.” [Brief of Respondents, pag 13]. Respondents omit the essential point made in Colonna which is “To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is *affected*.” Id. (emphasis in original).

In Colonna, the claimant suffered from a foot and ankle injury, which ultimately required surgical implantation of a spinal cord stimulator to treat severe intractable felt in the foot due to the complication of Reflex Sympathetic Dystrophy (RSD). The Commission made a partial disability award to the leg under S.C. Code Ann. § 42-9-30 (2004). Colonna appealed, contending that the surgical implantation of the spinal cord stimulator in her back necessarily resulted affected her back – thus enabling her to seek a permanent and total disability award under S.C. Code Ann. § 42-9-30 (2004).

The issue framed by the Court was whether the *successful* implantation of a medical device (without additional injuries from surgical complications) constituted an affected body part within the meaning of Wigfall and Singleton. This Court found “Colonna’s argument flawed because she failed to demonstrate that the implantation of the spinal cord stimulator injured her back or caused additional back impairment.” Colonna.

Colonna is distinguishable for two reasons: (1) it involved a medical device rather than an actual injury;¹ and (2) and there was no evidence of impairment or injury to any part of the body other than the foot. In the instant case, Neal Beckman suffers from a medically documented injury with permanent impairment and injury to his back, SI joint, and left leg. As such, this case involves a very different issue and very different level of proof than Colonna. Moreover, in Colonna, the Commission’s orders never even acknowledged the existence of the RSD and the spinal cord stimulator. Here, the Appellate Panel found as a fact that “The authorized treating physician assigned a 15% combined impairment rating for the back and SI joint.” [R. p. 26]. The Panel further found “Claimant is entitled to receive injections per the recommendation of the authorized treating physician, Dr. Zgleszewski.” [R. p. 28]. As the injections are specifically “SI joint injections,” the Commission must necessarily have found that the SI joint was injured in the accident.

A. SI Joint Injury.

Respondents are forced to concede that Dr. Zgleszewski opined Beckman “has a 10% impairment to the back/spine and a 5% impairment to the SI joint for combined rating of 15%.”

¹Colonna did not reach the issue of whether the RSD that required implantation of the spinal cord stimulator was itself a separate injury. See Mizell v. Glover, 351 S.C. 392, 570 S.E.2d 176 (2002) (“Reflex Sympathetic Dystrophy (‘RSD’) is a rare condition affecting the sympathetic nervous system, usually in an extremity, resulting in ongoing cycles of extreme pain.”).

[Brief of Respondents, page 15]. Despite the explicit listing of two separate impairment ratings for two separate body parts, Respondents persist in arguing that “the SI joint is not required to be considered a separate body part as the sacrum is a portion of the spine located below the lumbar vertebral column.” [Brief of Respondents, page 15-16]. This argument might have some appeal had the injury been confined solely to the *sacrum* itself. However, as John Adams famously stated, “Facts are stubborn things.”² The stubborn facts here are that Beckman suffered injury and impairment to the sacrum *and* the iliac – each of which constitute injury and impairment to the back and pelvis, respectively. See Gilliam v. Woodside Mills, 461 S.E.2d 818, 319 S.C. 385 (1995)(claimant not limited to scheduled member award because “as a matter of law the hip socket is part of the pelvis and not part of the leg for workers’ compensation purposes”).

Respondents then contend that even though the analysis in Gilliam is identical, Gilliam does not apply because “although the hip socket is part of the pelvis, the SI joint was not specifically addressed.” [Brief of Respondents, page 15-16]. This statement is effectively the unavoidable concession that anatomically the SI joint is indeed the joint encompassing the pelvis and the back, and that Gilliam is the controlling case. See Therrell v. Jerry’s Inc., 633 S.E.2d 893, 370 S.C. 22 (2006)(relying on Gilliam to hold “compensation for a torn rotator cuff [which “is a group of muscles, ligaments, and cartilage attaching the humerus (armbone) to the chest”] should not be limited to the scheduled recovery for the loss of an arm”).

Respondents direct the Court to Sanders v. MeadWestvaco Corp., 371 S.C. 284, 638 S.E.2d 66 (Ct. App. 2006), where this Court affirmed an award of “40% permanent partial disability to [the]

²“Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.” John Adams, *Argument in Defense of the Soldiers in the Boston Massacre Trials*, December 1770.

lumbar spine and sacroiliac joint (SI joint).” Id. The key to Sanders is the procedural posture.

In Sanders, the Commission made two separate partial disability awards: 13% to the leg and 40% to the back. The employee did not appeal at all; the *employer* appealed the award of 40% to the back on the grounds that it was too high because it was “based upon impairment to functional units of the back, *i.e.*, the lumbar spine and SI joint which are not scheduled for compensation under section 42-9-30.”³ Id. at 289-290, 638 S.E.2d at 69. This Court rejected such a strained interpretation, noting the “argument that because the Appellate Panel’s order was too specific in identifying the regions of the back where Sanders’ loss of use occurred and that these regions are somehow separate from the back itself is without merit.” Id.

The issue in Sanders was the propriety of increasing a scheduled member disability award to the back by including additional functional impairment located in the SI joint. Sanders involved a disability award under § 42-9-30; not under §§ 42-9-10 or 42-9-20.⁴ The Sanders court was never asked to rule on the issue presented here – which is specifically whether the SI joint is an

³The employer did not appeal the Appellate Panel’s 13% disability award to the leg.

⁴At the hearing before the single commissioner, Sanders had claimed he was permanently and totally disabled. As he suffered injuries to two scheduled members (the back and the leg) and one unscheduled member (the SI joint), he met the legal threshold for the Commission to make an award under the economic model. See Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960)(claimant can proceed under the general disability statutes if he can “show that some other part of his body is affected.”).

The opinion does not record why the Commission made separate scheduled disability awards to the leg and back rather than a permanent and total disability award, nor was that question an issue before the Court. It can be safely inferred that Sanders failed to prove an *actual* loss of earnings capacity, so the award was made under the *presumed* disability statute. See Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 580 S.E.2d 100 (2003)(comparing the economic model of disability with the medical model’s presumption of disability); Brown v. Owen Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct.App.1994)(“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.”).

unscheduled body part – and generally whether a scheduled injury (10% impairment to the back) and unscheduled injury (5% impairment to the SI joint) allow a claimant to prosecute a loss of earnings claim under § 42-9-20.

In the instant case, both parties presented expert testimony confirming that Beckman suffered an *actual* loss of earnings capacity. There remains a dispute over the *extent* of the earning loss – which must be resolved by the Commission on remand – but the *existence* of the earning loss is undisputed. [R. pp. 198-204; 207-220].

As the situs of the injury was to both the back and the SI joint, Beckman must be given “the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section.” Brown v. Owen Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994). Therefore, the Court should reverse the Appellate Panel and remand with instructions to determine the extent of Beckman’s loss of earnings capacity.

B. Radiculopathy.

Respondents argue “that substantial evidence in the record suggests that the Appellant does not have any impairment to any body part other than his low back.” [Brief of Respondents, page 20]. Yet, they contradict themselves by also stating “there is substantial evidence to support the award of 35% permanent partial disability to the Appellant’s back *including the alleged radiculopathy.*” [Brief of Respondents, page 20 (emphasis added)]. This second statement is simply another way of stating that the Commission found as a fact that Beckman’s left leg radiculopathy was a physical deficiency which contributed to his disability.

Respondents focus on a single medical report from April 11, 2011 as “the best indication of the Appellant’s complaints immediately prior to his release from treatment.” [Brief of Respondents,

page 19; R. p. 188]. If the standard of review were a scintilla of evidence, then it would be enough for the prevailing party below to find the one piece of paper that somewhat supports the decision and that would be the final answer. However, while substantial evidence is a relatively deferential standard of review, “Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached.” Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). See also, National Bank of Honea Path v. Thomas J. Barrett, Jr., & Co., 174 S.E. 581, 173 S.C. 1 (1934)(“If it be conceded that there may be deduced by a process of unusual finesse of reasoning that there is a scintilla of evidence . . . nevertheless there is another rule, more founded upon common sense and reason, to the effect that when only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the court, and not a question of fact for the jury.”) The role of the appellate courts is to meaningfully analyze the entire record evidence under this standard – not to mine the record for inconsequential nuggets.

To illustrate just how inconsequential this one report is, the Appellate Panel stated “At one point (post discectomy on April 2011), Claimant reported no leg pain at all.” [R. p. 25]. The specific mention of this one report shows that it differed from *every other medical record*. Even more critically, the finding leads to the inescapable inference that the discectomy provided only temporary relief. It would be rank speculation to use that one report as a basis for the decision. See Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012)(reversing Court of Appeals because lay testimony relied on to affirm Commission was not only contrary to expert testimony but also rested solely on speculation, “thus, there is no evidence in the record supporting the commissioner's

order.”).

Beckman’s radicular complaints had returned by the next visit with Dr. Zgleszewski on May 2, 2011. In fact, his back and radicular pain was “worse than it was when he originally injured his back.”⁵ [R. p. 191]. Radicular symptoms were still present when he saw Dr. Boyd on February 27, 2012 when “His pain does occasionally radiate down into his left leg and he states that he has some numbness around his foot.” [R. p. 205]. In the 14B dated September 9, 2011, Dr. Zgleszewski made a final diagnosis at MMI of “Sacroiliitis; lumbar disc injury & radiculopathy.” [R. p. 193]. The Appellate Panel simply relied on a stale medical report.

The Appellate Panel also put undue reliance on an “imperfect diagnostic tool” for diagnosing radiculopathy. [R. pp. 33, 38]. The commissioners are not themselves qualified to interpret diagnostic testing and make diagnoses. A commissioner’s own medical opinion is not evidence.

The one scintilla of evidence which arguably undercuts the radiculopathy diagnosis is the EMG/NCS study. This is obviously the basis for the Appellate Panel’s finding as they state: “The Claimant also underwent an EMG/NCS study that revealed normal results with no objective evidence of radiculopathy.” [R. p. 25].

The problem here is this statement is based on the Single Commissioner’s own medical opinion – not that of Dr. Zgleszewski. Dr. Zgleszewski personally reviewed and interpreted the EMG/NCS study – and maintained his diagnosis of radiculopathy. He repeatedly stated that the test is an “imperfect diagnostic tool” for diagnosing radiculopathy. [R. pp. 33, 38]. This is exactly what

⁵Dr. Zgleszewski’s May 2, 2011 report also stated, “He is [status post Percutaneous Discectomy] at L4-L5, he notes return of the left lateral upper thigh pain and radiation down the left laterla thigh to the foot . . . He states his pain radiates to the left buttock; radiates to the left laterl thigh, extends past the knee into the posterior leg and foot and The calf pain feels lite ‘it’s on fire’ when he stands.” [R. p. 191].

happened in Burnette where this Court reversed the Commission because “We find no evidence that challenges the conclusions of Burnette’s doctors concerning her herniated disk at L5-S1, lower back pain, or development of radiculopathy.” Burnette v. City of Greenville, 737 S.E.2d 200, 206, 401 S.C. 417 (Ct. App. 2012).

The evidence here is overwhelming that Beckman’s back injury caused left leg radiculopathy. There is no genuine conflict in the evidence nor is there substantial evidence to support the Commission’s finding that the “greater weight of the evidence shows only the Claimant’s back was affected by the March 25, 2010 admitted injury by accident.” [R. p. 28].

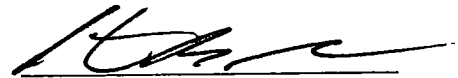
See Doe v. South Carolina Dept. of Disabilities and Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008)(reversing Commission for relying on other factors when “The only evidence of causation is that Claimant's [injury was caused by her work activities as] stated by [her doctor]”).

The Appellate Panel repeated the error it made in Burnette when it substituted its own medical opinions for the opinions of the doctors. This is reversible error. Furthermore, the fact the 35% award to the back ^{included} ~~included~~ *radiculopathy* confirms that the left leg radiculopathy was a compensable second body part. This Court should reverse the finding that the injury is limited to the back and remand to the Appellate Panel for a determination of Beckman’s loss of earnings capacity.

CONCLUSION

For the foregoing reasons, the Court should reverse the Decision and Order of the Appellate Panel and remand for a determination of Beckman's loss of earnings capacity under S.C. Code Ann. § 42-9-20 (2007).

Respectfully Submitted,



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September 9, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1002925

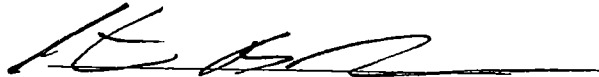
Neal Beckman, Employee, ... Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett Services, Inc., Carrier . . . Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Neal Beckman, Employee, Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett
Services, Inc., Carrier, Respondents.

Appellate Case No. 2013-000005

Appeal From The Workers' Compensation Commission

Opinion No. 5205

Heard February 20, 2014 – Filed March 19, 2014

Withdrawn, Substituted and Refiled July 9, 2014

REVERSED AND REMANDED

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Law Firm, LLC, of Columbia, for Appellant.

Joseph Hubert Wood, III, and Kathryn Fiehrer Walton,
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Respondents.

SHORT, J.: In this appeal from the Workers' Compensation Commission (Commission), Neal Beckman argues the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) erred in finding he was limited to a disability award for his back as a scheduled member because the evidence showed

he should have been awarded disability under the loss of earning capacity statute. We reverse and remand.

FACTS

Beckman, a delivery driver, was injured on March 25, 2010, while loading a hand truck for his employer, Sysco Columbia, LLC (Sysco). Beckman alleged in his Workers' Compensation Form 50 that he pulled muscles in his back, injuring his back, buttocks, both legs, and right foot. Sysco admitted Beckman's back injury, but denied his other injuries. Following the accident, Sysco provided Beckman with authorized medical care and treatment, primarily with Dr. Timothy Zgleszewski. Beckman also underwent an independent medical evaluation with Dr. Scott Boyd.

On March 8, 2012, Sysco filed a Form 21 seeking to terminate temporary compensation and have an award made for permanent disability compensation. Sysco asserted Beckman reached a level of maximum medical improvement on May 2, 2011, per a note by Dr. Zgleszewski, or alternatively, by February 27, 2012, per a note by Dr. Boyd.

During the hearing before the single commissioner, Sysco asserted Beckman was entitled to permanent disability pursuant to section 42-9-30(21) of the South Carolina Code. Beckman asserted any permanency award should be based on a loss of earnings under section 42-9-20.¹ In her order, the single commissioner found Beckman "sustained a 35% permanent loss of use of the spine (encompassing [Beckman's] entire spine and including any alleged radiculitis) pursuant to § 42-9-30(21)." The single commissioner further found Beckman's treating physician assigned a 15% combined impairment rating for Beckman's back and sacroiliac joint (SI joint), and the independent medical examiner assigned an 8% impairment rating. However, the single commissioner also found the greater weight of the evidence showed only Beckman's back was affected by the March 25, 2010 admitted injury by accident. The commissioner ordered Sysco to pay a lump sum payment to Beckman representing compensation for 35% permanent loss of use to the back pursuant to § 42-9-30(21), with Sysco being entitled to take

¹ The parties stipulated to an average weekly wage of \$1,062.94, with a resulting compensation rate of \$689.71.

credit for all temporary disability compensation paid to Beckman for the period after February 27, 2012.

Beckman filed a Form 30 notice of appeal. After a hearing, the Appellate Panel issued an order affirming the decision of the single commissioner in full. This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions by the Appellate Panel. *Carolinas Recycling Grp. v. S.C. Second Injury Fund*, 398 S.C. 480, 482, 730 S.E.2d 324, 326 (Ct. App. 2012). Under the scope of review established in the APA, 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 or modify the Appellate Panel's decision if the appellant's substantial rights 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(5)(e) (Supp. 2013). "It is not within our province to reverse findings of the Appellate Panel which are supported by substantial evidence." *Hall v. United Rentals, Inc.*, 371 S.C. 69, 79-80, 636 S.E.2d 876, 882 (Ct. App. 2006). Our supreme court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

LAW/ANALYSIS

Beckman argues the Appellate Panel erred in finding he was limited to a disability award for his back as a scheduled member because the evidence showed he should have been awarded disability under the loss of earning capacity statute in section 42-9-20 of the South Carolina Code. We agree.

"[T]he guiding principle undergirding our workers' compensation system [is] that the Act is to be liberally construed in favor of the claimant." *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012). In a workers'

compensation case, the extent of impairment "need not be shown with mathematical precision." *Linen v. Ruscon Constr. Co.*, 286 S.C. 67, 68, 332 S.E.2d 211, 212 (1985). However, an award "may not rest on surmise, conjecture, or speculation; it must be founded on evidence of sufficient substance to afford it a reasonable basis." *Id.*

Dr. Zgleszewski assigned a 10% medical impairment to Beckman's back and spine, and a 5% medical impairment to his SI joint, for a combined 15% impairment rating. Dr. Zgleszewski also stated Beckman would need two to three SI joint injections over the following two years. Dr. Boyd assigned Beckman with an impairment rating of 8%. The Appellate Panel's order adopted the single commissioner's finding that Beckman's treating physician assigned a 15% combined impairment rating for Beckman's back and SI joint. The Appellate Panel also adopted the single commissioner's finding that the greater weight of the evidence showed only Beckman's back was affected by the March 25, 2010 admitted injury by accident. Furthermore, the Appellate Panel agreed with the single commissioner's finding that there was no objective evidence of radiculopathy, and Dr. Zgleszewski diagnosed radiculitis based on Beckman's subjective complaints.

Beckman argues the Appellate Panel erred in applying the "two body-part rule" set forth in *Singleton v. Young Lumber Co.*, 236 S.C. 454, 114 S.E.2d 837 (1960). In *Singleton*, Singleton suffered a sole injury to a scheduled member, his leg, and no other condition was claimed to have contributed to his disability. *Id.* at 471, 114 S.E.2d at 845. Singleton argued the injury to his leg was so disabling that he should be found totally disabled. *Id.* at 468, 114 S.E.2d at 844. The court held that because the injury was confined to a scheduled member, compensation must be determined under the scheduled injury statute as provided by the legislature. *Id.* at 473, 114 S.E.2d at 846. Thus, an impairment involving only a scheduled member is compensated under the scheduled injury statute and not the general disability statute. *Id.* The court stated that "[t]o obtain compensation in addition to that scheduled for the injured member, [Singleton] must show that some other part of his body is affected." *Id.* at 471, 114 S.E.2d at 845.

In *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 106-07, 580 S.E.2d 100, 103 (2003) (citation omitted), our supreme court summarized its holding in *Singleton*:

Singleton stands for the exclusive rule that a claimant with one scheduled injury is limited to the recovery under

§ 42-9-30 alone. The case also stands for the rule that an individual is not limited to scheduled benefits under § 42-9-30 if he can show additional injuries beyond a lone scheduled injury. This principle recognizes "the common-sense fact that, when two or more scheduled injuries [or a scheduled and non-scheduled injury] occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together."

Similarly, in *Simmons v. City of Charleston*, 349 S.C. 64, 76, 562 S.E.2d 476, 482 (Ct. App. 2002), this court affirmed the Workers' Compensation Commission's finding that the claimant was entitled to proceed under the general disability statute, as substantial evidence was presented that the claimant suffered additional complications to another part of the body, other than a scheduled member. "The policy behind allowing a claimant to proceed under the general disability § 42-9-10 and § 42-9-20 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section." *Id.* (quoting *Brown v. Owen Steel Co.*, 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994)). "All that is required is that the injury to a scheduled member also affect another body part." *Id.*

Beckman asserts that although the primary injury was to his back, he also injured his SI joint, and he suffered radiculopathy in his left leg caused by the back injury. He argues that because the evidence shows his injury is not limited to his back, he is entitled to proceed under the loss of earnings capacity statute found in section 42-9-20 of the South Carolina Code. Section 42-9-20 provides:

Except as otherwise provided in § 42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the average weekly wage in this State for the

preceding fiscal year. In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

S.C. Code Ann. § 42-9-20 (1976). Thus, he asserts the Appellate Panel erred in only addressing his disability under the medical model found in section 42-9-30(21) of the South Carolina Code. S.C. Code Ann. § 42-9-30(21) (Supp. 2013).

Beckman cites to *Gilliam v. Woodside Mills*, 319 S.C. 385, 461 S.E.2d 818 (1995), as addressing virtually the same issue as in this case. In *Gilliam*, the employer asserted this court erred in holding as a matter of law that the hip is not part of the leg. *Id.* at 387, 461 S.E.2d at 819. The employer contended the only question presented to the court was whether there was substantial evidence to support the Appellate Panel's finding that Gilliam's injury was confined to her leg. *Id.* Our supreme court disagreed with the employer, noting that on appeal from the Appellate Panel, this court may reverse where the decision is affected by an error of law.² *Id.* The supreme court stated this court joined several jurisdictions that have held as a matter of law that the hip socket is part of the pelvis and not part of the leg for workers' compensation purposes, and the court did not find error with this view. *Id.* Beckman, therefore, argues *Gilliam* supports his argument that the SI Joint, which is located in the pelvis, is not a part of the back for workers' compensation purposes.

Sysco cites to *Sanders v. MeadWestvaco Corp.*, 371 S.C. 284, 638 S.E.2d 66 (Ct. App. 2006), in support of its position that Beckman's disability for his SI joint is compensated based on his loss of use of his back. In *Sanders*, the Appellate Panel awarded Sanders compensation under section 42-9-30(19) for an injury to his back

² The employer further contended the determination whether the hip is part of the leg is a question of fact instead of a question of law. *Id.* The supreme court found there was no dispute that Gilliam suffered an injury to her hip, resulting in a hip replacement. *Id.* Thus, the supreme court found this court correctly ruled, given the undisputed facts in this case, that it was a matter of law whether the hip socket is part of the pelvis or part of the leg. *Id.*

due to permanent loss of use of his lumbar spine and SI joint. *Id.* at 290, 638 S.E.2d at 69. The employer argued the circuit court erred in affirming an award of benefits for his back based upon impairment to the lumbar spine and SI joint, which are not scheduled for compensation under section 42-9-30. *Id.* at 289-90, 638 S.E.2d at 69. This court found no reversible error, noting a review of the Appellate Panel's order and the record reflected Sanders' injury and subsequent disability was clearly to his back. *Id.* at 290, 638 S.E.2d at 69. Thus, the court did not specifically hold as a matter of law that the SI joint is a part of the back for workers' compensation purposes.

Regardless of whether the SI joint is a part of the back for workers' compensation purposes, we hold the Appellate Panel's finding that Beckman was limited to a disability award for his back as a scheduled member is not supported by substantial evidence. Instead, the evidence in the record indicates Beckman suffered from radiculopathy as a result of his back injury. Although Dr. Zgleszewski's notes from June 7, 2010, state Beckman's "EMG/NCS does not have a radiculopathy in either leg," the note continues that "EMG/NCS can be an imperfect diagnostic tool for determining radiculopathy." In fact, Dr. Zgleszewski's notes from June 7, 2010, and July 9, 2010, state a diagnosis of radiculitis. Dr. Zgleszewski's notes from June 7 and July 9 provide Beckman complained of pain that radiated to his left buttock and left hip. Dr. Zgleszewski noted during his physical examinations of Beckman: "There is tightness noted in the left piriformis muscle(s) today. There is tenderness over the bilateral PSIS's. There is a positive Fortin Finger test bilaterally[.] Neural tension signs are positive in the left leg in the seated slumped position." Dr. Zgleszewski's notes from November 10, 2010, state Beckman was still suffering from pain that radiated to his left buttock and left hip. His physical examination noted: "There is tightness noted in the left piriformis muscle(s) today. Neural tension signs are positive in the left leg in the seated slumped position. . . . There is tenderness over the left Greater Trochanter." Dr. Zgleszewski's notes from March 21, 2011, and May 2, 2011, again provide Beckman continued to suffer pain that radiated to his left buttock and left thigh and down to his left foot. He also noted the pain radiated to his left hip. Dr. Zgleszewski further noted during his physical examinations: "There is tenderness over the left greater trochanter"; "There is tightness noted in the left piriformis and Gluteals muscle(s) today"; and "Neural tension signs are positive in the left leg in the seated slumped position." Dr. Zgleszewski's statement to the Commission, dated September 2, 2011, states Beckman suffered from "sacroiliitis; lumbar disc injury & radiculopathy." Furthermore, Dr. Boyd's notes from Beckman's independent

medical evaluation on February 27, 2012, state Beckman suffered pain that radiated down into his left leg, and he had numbness around his foot.

Therefore, we find the Appellate Panel's order was clearly erroneous in view of the substantial evidence in the record that Beckman suffered from radiculopathy as a result of his back injury. *See* S.C. Code Ann. § 1-23-380(5)(e) (Supp. 2013) ("The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."). As a result, Beckman is entitled to proceed under the loss of earnings capacity statute found in section 42-9-20 of the South Carolina Code.

CONCLUSION

Accordingly, we reverse the Appellate Panel and remand the case to the Commission to address Beckman's eligibility for an award under section 42-9-20 of the South Carolina Code because the Appellate Panel's finding that Beckman's injury is confined to a scheduled member is not supported by substantial evidence.

REVERSED AND REMANDED.

HUFF and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Opinion No. 5205

Case No. 2013-000005

RECEIVED
MAR 31 2014
SC Court of Appeals

Neal Beckman, Employee,.....Appellant,

v.

Sysco Columbia, LLC, Employer, and
Gallagher Bassett Services, Inc., Carrier,.....Respondents.

PETITION FOR REHEARING

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TABLE OF AUTHORITIES

Cases

<i>Fishburne v. ATI Systems Intern</i> , 384 S.C. 76, 681 S.E.2d 595 (Ct.App., 2009).....	5
<i>Gibson v. Spartanburg School Dist. No. 3</i> , 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000).....	1
<i>Hargrove v. Titan Textile Co.</i> , 260 S.C. 267, 599 S.E.2d 604.....	5
<i>Hoxit v. Michelin Tire Corporation</i> , 304 S.C. 461, 405 S.E.2d 407 (1991).....	1
<i>Pratt v. Morris Roofing, Inc.</i> , 357 S.C. 619, 594 S.E.2d 272 (2004).....	1
<i>Rogers v. Kunja Knitting Mills Co.</i> , 312 S.C. 377, 440 S.E.2d 401, re-hearing denied (Ct. App.1994).....	1
<i>Ross v. American Red Cross</i> , 298 S.C. 490, 381 S.E.2d 728 (1989).....	2
<i>Shealy v. Aiken Cnty.</i> , 341 S.C. 448, 535 S.E.2d 438 (2000).....	5, 6
<i>Stokes v. First National Bank</i> , 306 S.C. 46, 410 S.E.2d 248 (1991).....	1

Statutes

S.C. Code Ann. §42-9-20 (1976, as amended).....	2
S.C. Code Ann. §42-9-30 (1976, as amended).....	2

The Respondents respectfully submit that the Court may have misapplied the standard of evidence in addressing the Appellant's appeal and specific evidence may have been overlooked; therefore, the Respondents' petition this Honorable Court for a rehearing based on the following:

1. The appropriate standard of review is determining whether the South Carolina Workers' Compensation Commission's Decision and Order dated December 5, 2012 is supported by substantial evidence.

The Appellate Court in considering an appeal from a Decision and Order of the South Carolina Workers' Compensation Commission (hereinafter "Commission"), is limited to deciding whether the Commission's Decision is supported by substantial evidence or is controlled by some error of law. *Rogers v. Kunja Knitting Mills Company*, 312 S.C. 377, 440 S.E.2d 401, rehearing denied (Ct.App. 1994). In an appeal from the Commission, the Appellate Court may not substitute its judgment for that of the Commission as to the weight of evidence on questions of fact but may reverse where the Decision is affected by some error of law. *Gibson v. Spartanburg School District No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct.App. 2012). Therefore, a Decision of the Commission must be affirmed if the factual findings are supported by substantial evidence. *Stokes v. First National Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991). Substantial evidence is not a mere scintilla of evidence but is evidence that in 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). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the administrative findings from being supported by substantial evidence. *Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991).

If the factual findings of the Commission are supported by substantial evidence, the Commission's conclusions must be affirmed. *Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989).

The pertinent findings of fact of the Commission's Decision which were addressed on appeal include: the Claimant has sustained a 35% permanent loss of use of the spine (encompassing Claimant's entire spine and including any alleged radiculitis) pursuant to §42-9-30(21) and that the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident. (R. 28). In Opinion No. 5205, the Court states that there is evidence to support the Appellant's contention that he is entitled to disability under the §42-9-20 loss of earnings capacity statute as opposed to being limited to a scheduled loss of use of his back under §42-9-30. The Respondents respectfully submit that the Court should have reviewed whether there was substantial evidence to support the above findings of the Commission as opposed to determining that there is evidence in the record to support the Appellant's allegations that he suffered from radiculopathy as a result of his back injury.

The Court concluded that the Commission's Decision was erroneous in view of the evidence that the Appellant suffered from radiculopathy as a result of his back injury; however, the weight of the evidence on this factual matter was reserved for the Commission. The Commission weighed the evidence of the Appellant's alleged radiculopathy as well as the evidence discussed herein below and reached the conclusion that the Claimant is limited to an award for a permanent loss of use of his back only. As this Court may not substitute its judgment for that of the Commission as to the weight of evidence on questions of fact, the Respondents respectfully request that the Court rehear

this matter in order to determine whether there is substantial evidence to support the Commission's December 5, 2012 Decision and Order, not substantial evidence to support the Appellant's arguments.

2. The Respondents respectfully submit that the Court may have overlooked or miscited pertinent evidence in the record.

In discussing the evidence in the record to support that the Appellant suffered from radiculopathy, the Court cited to evidence from Dr. Scott Boyd who provided a surgical evaluation on February 27, 2012. Opinion No. 5205 references that Dr. Boyd states that the Appellant suffered pain that radiated into his left leg and he had numbness around his foot. The report of Dr. Boyd actually states the Appellant "describes his pain pattern as that most predominantly of low back pain. His pain does occasionally radiate down into his left leg and he states that he has some numbness around his foot." The Respondents hereby submit that Dr. Boyd summarized the Appellant's subjective complaints reported to him but Dr. Boyd did not conclude or diagnose the Appellant with radiculopathy and numbness in his lower extremity. (R. 205). Further, Dr. Boyd's surgical evaluation states that he does not appreciate any significant nerve root compromise which would explain the Appellant's alleged radicular complaints. (R. 206). Dr. Boyd does not discuss any additional affected body parts in addition to the low back throughout his impressions and plan. (R. 206). Dr. Boyd only discussed objective evidence of a muscular spasm and pain in the lumbar spine. (R. 206). Dr. Boyd further indicated that the Appellant is not a surgical candidate, assigned an 8% impairment of the back, agreed that the Appellant could perform medium physical duty work for an 8-hour day and indicated in the future the Appellant may only benefit from pain medication and

muscle relaxers. (R. 206). As such, Dr. Boyd's report does not provide evidence to support the Appellant's alleged radiculopathy as discussed in Opinion No. 5205.

In addition to the report of Dr. Boyd, there is additional evidence in the record to support the Commission's Decision that the Appellant was entitled to an award for permanent loss of use of his back only and that he did not have any additional affected body parts as a result of the back injury. The diagnostic studies reveal that there is no impingement or nerve root compromise. (R. 129 - 130, 228 - 229). The authorized treating physician, Dr. Timothy Zgleszewski, reviewed the EMG/NCS and stated that given the EMG/NCS, the Appellant did not have radiculopathy in either leg. (R. 153). Furthermore, Dr. Zgleszewski and Dr. Boyd both provided a physical exam of the Appellant. According to Dr. Boyd, the Appellant appeared to have normal power in his lower extremities and a steady gait. (R. 205). In the medical notes from April 19, 2010 through May 2, 2011, Dr. Zgleszewski noted the Appellant's gait and station to be nonantalgic and further noted that he was able to raise up on his heels and toes. (R. 131-192). Dr. Zgleszewski further noted that the bilateral lower extremity examination was normal and it remained stable and unchanged throughout the course of treatment (R. 131-192). Further, the Appellant's lower extremity physical capabilities while using an elliptical machine, treadmill and weights at Gold's Gym were captured on surveillance and submitted into the evidentiary record. (R. 249 and CD video). At the visit prior to his release, the Appellant reported no leg pain and no pain radiating to his legs (R. 188). Thereafter, despite the Appellant's alleged radiculopathy and pain complaints, there was no medical treatment rendered and no medications were prescribed over the year prior to

the Single Commissioner Hearing on April 26, 2012. (R. 99, Hearing Transcript page 51, lines 3 - 25).

The Respondents respectfully submit that the above evidence may have been overlooked by this Honorable Court. The Commission reviewed the above evidence and found that the Appellant's disability is contained to the loss of use of his back and there is not an affect on any additional body parts. As the Commission is reserved the task of weighing the evidence and reaching the findings of fact, the Commission's Decision should not be reversed so long as there is substantial evidence to support the Commission's Decision. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). Although there may be conflicting evidence as to whether the Appellant's back injury had an affect on another body part, when the evidence is conflicting over a factual issue, the findings of the Commission are conclusive. *Hargrove v. Titan Textile Company*, 260 S.C. 267, 290, 599 S.E.2d 604, 611 (Ct.App. 2004).

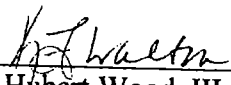
As support for the request for a rehearing, the Respondents also refer to the Court's analysis in *Fishburne v. ATI Systems International*, 384 S.C. 76, 681 S.E.2d 595 (Ct.App. 2009). Similarly, the Appellant in *Fishburne* asserted that the Commission erred in finding that she was only entitled to a schedule loss award - 10% loss for her back including her right lower extremity. *Fishburne's* EMG/NCS was negative and *Fishburne* reported to the pain management specialist at one point that the pain was not all the way down her leg like it was when she was first injured. *Id.* at 83, 598. The Court stated that the objective medical evidence did not support *Fishburne's* claim that she suffered from a serious medical condition, the MRIs only showed mild degenerative disc disease, and none of *Fishburne's* physicians recommended she have any surgery. *Id.* at

87 - 88, 601. Despite *Fishburne's* claims that her back injury negatively affected her right leg, this Court determined that the Commission's Decision awarding *Fishburne* a permanent partial disability of 10% loss of use of her back including her right lower extremity was within the medical evidence and testimony presented to the Commission. *Id.* at 88, 601. The Appellant in this matter also has a negative EMG/NCS, is not a surgical candidate and does not have any nerve root compromise on his MRIs. Therefore, the Respondents respectfully contend that the objective evidence in this case supports the Commission's Decision that the Appellant is entitled to 35% loss of use of his back only. Although the Appellant had subjective complaints of radiculopathy which were recognized by Dr. Zgleszewski, there is also evidence to support that the Appellant did not have any additional affected body parts. The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding that the Appellant is only entitled to permanent loss of use of his back from being supported by substantial evidence. As such, the Respondents respectfully request a rehearing of this matter.

RESPECTFULLY SUBMITTED,

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Ph.: 843-577-5732

By: _____


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Kathryn Fiehrer Walton
Attorneys for Respondents

March 26, 2014
Charleston, South Carolina

The South Carolina Court of Appeals

Neal Beckman, Employee, Appellant,

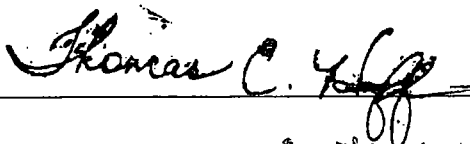
v.

Sysco Columbia, LLC., Employer, and Gallagher Bassett
Services, Inc., Carrier, Respondents.

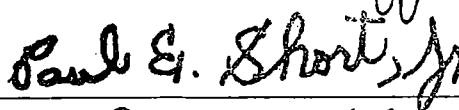
Appellate Case No. 2013-000005

AMENDED ORDER

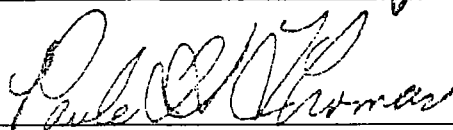
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. However, the attached opinion is substituted for the previous opinion, number 5205, which is withdrawn. The June 12, 2014 order is vacated.



J.



J.



J.

Columbia, South Carolina

cc:

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Frederick W. Riesen, Jr., Esquire
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FILED

SF 7/9/14