

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION S.C. Supreme Court

Opinion No. 2011-UP-162 (S.C. Ct. App. filed Apr.13, 2011)
(withdrawn, substituted, and re-filed June 2, 2011)

Francis J. Bolds, Jr., ... Petitioner,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

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APPEAL FROM THE SOUTH CAROLINA
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Francis J. Bolds, Jr., Appellant,

v.

UTI Integrated Logistics, Inc.,
and American Home Assurance
Company, Respondents.

Appeal From the South Carolina Workers'
Compensation Commission

Unpublished Opinion No. 2011-UP-162
Submitted April 1, 2011 – Filed April 13, 2011

AFFIRMED

John S. Nichols and Blake A. Hewitt, both of
Columbia; and Kenneth W. Harrell, of North
Charleston, for Appellant.

Stephen L. Brown, Catherine H. Chase, and E.
Courtney Gruber, all of Charleston, for Respondents.

PER CURIAM: Francis J. Bolds, Jr. appeals the Appellate Panel of the Workers' Compensation Commission's (the Appellate Panel) single scheduled benefits award for a twenty percent permanent partial disability to his back. On appeal, Bolds argues the Appellate Panel erred in denying him a general disability award because his back injury affected other parts of his body. We affirm.¹

Three types of disability exist under the South Carolina Workers' Compensation Act (the Act): total disability, partial disability, and scheduled disability. Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 105, 580 S.E.2d 100, 102 (2003). "A claimant may obtain total disability in one of three ways under [section] 42-9-10." Wigfall, 354 S.C. at 105, 580 S.E.2d at 102. "First, a claimant may be presumptively totally disabled" by showing "a physical injury enumerated in [section] 42-9-10." Wigfall, 354 S.C. at 105, 580 S.E.2d at 102. "Second, a claimant may establish total disability under [section] 42-9-10 by showing an injury, which is not a [section] 42-9-30 scheduled injury, caused sufficient loss of earning capacity to render him totally disabled." Wigfall, 354 S.C. at 105, 580 S.E.2d at 102. "Third, a claimant may establish total disability through multiple physical injuries." Wigfall, 354 S.C. at 106, 580 S.E.2d at 103.

However, a claimant is precluded from general disability and limited to compensation for a scheduled disability "[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury . . . even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity." Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960). However, an exception permits compensation for a general disability when a claimant can "show that some other part of his body is affected" by the scheduled injury. Id. For the purposes of the Act, impairment encompasses a physical deficiency. Wigfall, 354 S.C. at 104, 580 S.E.2d at 102. In South Carolina, the "situs of injury" test governs the determination of scheduled recovery benefits. Therrell v. Jerry's Inc., 370 S.C. 22, 28, 633 S.E.2d 893, 896 (2006). "[T]he

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

'situs of the injury' approach focuses on the injured body part in determining how the injury is properly compensated." Id. at 27, 633 S.E.2d at 896.

Here, the Appellate Panel did not err in denying Bolds's request for general disability and finding Bolds's back injury was confined to a single scheduled member. Although Bolds argues his back injury affects other parts of his body, Bolds failed to provide evidence showing he suffered from additional physical deficiencies separate from his back injury. See Wigfall, 354 S.C. at 104, 580 S.E.2d at 101-02 (noting a claimant may establish total disability by showing some other part of his body is affected). Moreover, substantial evidence proves the other parts of Bolds's body were not impaired by his back injury. See Fishburne v. ATI Sys. Int'l, 384 S.C. 76, 85, 681 S.E.2d 595, 599 (Ct. App. 2009) ("The substantial evidence rule governs the standard of review in a workers' compensation decision. The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record.") (internal citations omitted). Dr. Patel, Dr. Ahearn, and Dr. Stovall agreed that Bolds's back injury caused radiculopathy² in his left arm and right leg. However, the doctors' reports did not indicate any additional injuries relating to the accident or back injury. Furthermore, Dr. Patel, Dr. Ahearn, and Dr. Stovall noted Bolds did not suffer from any additional physical deficiencies from this injury. Their reports indicated Bolds's arms and legs had normal muscle strength and tone. They also found Bolds had a good range of motion in his arms and legs as well as a normal gait. Accordingly, the Appellate Panel declined to extend general disability benefits to Bolds because no evidence existed showing additional impairment to other parts of the body.³

² "Radiculopathy refers to any disease that affects the spinal nerve roots." Medline Plus, <http://www.nlm.nih.gov/medlineplus/ency/article/000442.htm> (last visited April 4, 2011).

³ Additionally, Bolds's argument regarding the Appellate Panel's application of Therrell is without merit. The Appellate Panel did not improperly apply the situs of injury test nor did the Appellate Panel decline to grant general disability because the back was the site of the injury. Instead, the Appellate Panel declined to award general disability benefits because no evidence existed showing additional impairment to other parts of the body.

AFFIRMED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

RECEIVED
APR 27 2011
SC Court of Appeals

WCC File No. 0715675

Francis J. Bolds, Jr., ... Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Francis Bolds requests that this Court grant rehearing in *Bolds v. UTI Integrated Logistics, Inc.*, Op. No. 2011-UP-162 (S.C. Ct. App. filed Apr. 13, 2011).

This Court's opinion affirmed the South Carolina Workers' Compensation Commission's decision which limited Mr. Bolds to a scheduled award under S.C. Code Ann. § 42-9-30 for the injury to his back. In making this decision, the Court may have overlooked or misapprehended two points:

- (1) The Court May Have Overlooked the Fact That the Basis of the Decision – the Assertion That Mr. Bolds “Failed to Provide Evidence Showing He Suffered from Additional Physical Deficiencies Separate from His Back Injury” – Was *Not* a Finding That the Commission Ever Made.

The opinion in this case provides “[a]lthough Bolds argues his back injury affects other parts of his body, Bolds failed to provide evidence showing he suffered from additional physical deficiencies separate from his back injury.” Slip op. at 3. The opinion also observes that “substantial evidence proves the other parts of Bolds’s body were not impaired by his back injury,” and that “no evidence existed showing additional impairment to other parts of the body.” *Id.*

The Court may have overlooked that the commission did not make any findings of this sort. Nowhere in the commission’s decision, see (R.pp.12-17), is there any finding that Mr. Bolds *failed to provide* evidence that his back injury affected other parts of his body, nor is there a finding that there is *no evidence* that Mr. Bolds’s back injury affected or impaired other parts of his body.

What the commission found was that “there was no evidence that [Mr. Bolds] had any significant permanent *injury* to any body part other than the back.” (R.p.14) (finding 4, emphasis added); also *id.* (finding 8). The commission also found that the only impairment ratings in the records were to the back, *id.* (findings 5 and 6), and that the medical evidence reflected only one scheduled member impaired on a permanent basis. (R.p.15) (finding 21).

And in the very same breath, the commission found that “although [Mr. Bolds] did testify that he did experience radicular symptoms in his arms, leg, and foot, the source of those symptoms was the back.” *Id.* (finding 11).

These findings are a large part of the reason why Mr. Bolds crafted his theory of the case in the way he did. He never claimed that he had any other *injury* than an injury to his back. His claim was that his back injury *affected* other parts of his body. The commission's findings are on both sides of the fence. On one hand, the commission found that "there was only one scheduled member impaired on a permanent basis by this injury," (R.p.15) (finding 21), but on the other, the commission seemed to be crediting Mr. Bolds's testimony that he experienced radicular symptoms – which is neurological pain – in his arms, leg, and foot. (R.p.14) (finding 11). None of these is a finding that Mr. Bolds failed to provide evidence showing additional physical deficiencies caused by his back injury. Instead, the commission found that Mr. Bolds did not present any impairment *ratings*. (R.p.14) (findings 5 and 6).

There is a reason why the commission did not find that Mr. Bolds failed to present any evidence that his back affected other parts of his body – Mr Bolds *did* provide such evidence. He testified that continuous standing causes his right foot to swell, that his left leg hurts if he is standing or moving around "a lot," that he has lower back pain that spreads out to the side, that he has neck pain causing migraines on the left side, and that he has pain in his left shoulder and arm, all the way down into his hand. (R.pp.75-76). The medical evidence in the record recounts constant complaints of pain in his neck, left arm, and left leg. See, e.g., (R.pp.115, 125, 139, 140, 154, 161). A surgical report indicates "neck and arm pain," (R.p.161), and two independent medical evaluations note reduced strength in his left arm. (R.pp.179, 188). An independent medical evaluation that was performed over a year after Mr. Bolds's accident reported "left leg radicular pain with burning and numbness," and that this leg "occasionally gives way making [Mr. Bolds] subject to falling." (R.p.188). In

light of all of this, a finding that there was *no evidence* showing additional impairment to other parts of Mr. Bolds's body would have been appealed as clearly erroneous. Under any definition, this testimony and these medical reports qualify as "evidence."

While it is certainly true that the commission was not required to find that this evidence was credible or use it as a basis for Mr. Bolds's award, the commission must give a reason before rejecting evidence. *Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986). And here, the commission did not reject this evidence. Instead, the commission found that although Mr. Bolds complained of "symptoms" in his arms, leg, and foot, "the source of those symptoms [is] the back." If these symptoms were only "trivial," the commission would have said "Mr. Bolds complained of symptoms in his arms and legs, but we find those symptoms were trivial." If Mr. Bolds's complaints of pain in other parts of his body were exaggerated, the commission would have said "we find that Mr. Bolds exaggerated his symptoms." The commission did not make these sorts of findings, and most importantly, the commission did not find that there was no evidence showing additional impairment to other parts of Mr. Bolds's body. That sort of evidence is throughout the record. Whether to credit it or not is the commission's call.

- (2) **In Holding That the Commission Did Not Use *Therrell v. Jerry's, Inc.* to Mean That Mr. Bolds Was Limited to a Scheduled Award for the Back Because His Back Injury Was the Cause of the Symptoms in the Other Parts of His Body, the Court May Have Overlooked That this Was Precisely the Argument the Respondents Made to the Commission.**

A large part of Mr. Bolds's argument to this Court was that the commission's order construed the Supreme Court's decision in the case of *Therrell v. Jerry's, Inc.*, 370 S.C. 22,

633 S.E.2d 893 (2006) to mean that because Mr. Bolds's back injury was the cause of his arm, leg, and heel pain, Mr. Bolds was limited to a scheduled award for the back. The Court's opinion instructs that this argument is without merit because:

The Appellate Panel did not improperly apply the situs of the injury test nor did the Appellate Panel decline to grant general disability because the back was the site of the injury. Instead, the Appellate Panel declined to award general disability benefits because no evidence existed showing additional impairment to other parts of the body.

Slip. op. at 3 n.3.

The Court may have overlooked that the theory of the case the Respondents presented to the commission was that the law required Mr. Bolds to show multiple *injuries* before he could pursue a general disability award. The Respondents' specifically argued that because Mr. Bolds's symptoms in his arm, leg, and other parts of his body were caused by his back injury, he was limited to an award under the back schedule. This is what the Respondents wrote in their brief to the commission's appellate panel:

The medical evidence reflects that the only *injury* responsible for the claimant's disability is the injury to his back. Although he might have had radiculopathy and pain in his legs, the medical evidence is clear that the cause of pain was his back.

Therrell [rest of citation omitted] held that the situs of the injury was controlling *as to type of disability award available*. The Court specifically rejected the functional limitation position, *which could arguably have allowed for a finding in the present case of impairment and disability to the leg as well as the back*. The Court stated instead that the focus is on the site of the injury. In the present case, the site of the injury is the back (and neck). All of the medical treatment has been rendered to the back. The radiculopathy for which the Claimant has been treated might constitute a "functional limitation" but *Therrell* held that was not sufficient to establish entitlement to a disability award.

(R.p.46) (emphasis added throughout).

The Respondents argued the same thing to the commission in oral argument. They argued that allowing Mr. Bolds to pursue a general disability award because his legs were impaired “would essentially be – be reversing or going against the – the ruling in *Therrell*.” (R.p.110, lines 2-15). Their position was that “[w]e only are focused on the situs of the injury.” (R.p.110, lines 18-19).

Therrell does not say that the site of the injury is controlling as to the type of disability award available. It says that the site of the injury is controlling as to the type of *scheduled* disability award available. 370 S.C. at 29, 633 S.E.2d at 897 (“[O]ur scheduled compensation scheme focuses on the site of the injury and not the resulting functional limitation.”). *Therrell* never says that a person must have multiple *injuries* before they can pursue a general disability award. Instead, it says that “[t]o seek a general disability award, a claimant who has suffered a scheduled injury must show that the injury affects some other part of his body and has resulted in a loss of earning capacity.” *Id.* at 26 n.2, 633 S.E.2d at 895 n.2. That is exactly what Mr. Bolds was seeking the opportunity to do: to show how his back injury and its effects on the other parts of his body impact his ability to earn wages.

In holding that the commission did not construe the *Therrell* case to mean that Mr. Bolds was limited to the back schedule because his back was the site of his injury, the Court may have overlooked that this was the very argument the Respondents presented to the commission. The commission’s findings, in particular, findings numbers 10 and 11, which recite that the back is the “source of pain” and “site of the injury,” see (R.p.14), strongly suggest that the Respondents’ argument carried the day.

CONCLUSION

This is a relatively uncomplicated case. The Respondents' theory of the case was two-fold. First, they contended that Mr. Bolds's arm, leg, and foot pain was not that serious. (R.p.108, lines 6-13). Second, they contended that because these symptoms were caused by Mr. Bolds's back injury, Mr. Bolds was limited to the back schedule. (R.pp.109-110).

The Respondents' first argument is factual, and although this Court's opinion resolves the case on this argument, the commission's findings do not. The commission found that Mr. Bolds's only *injury* was to his back, (R.p.14) (findings 4 and 8), but Mr. Bolds agreed that the only injury he had was to his back. And while the commission found that "the medical evidence reflects there was only one scheduled member impaired on a permanent basis by this injury," (R.p.15) (finding 21), the commission never made any finding rejecting the testimony and medical evidence that Mr. Bolds's back injury causes radicular pain in his left arm, left wrist (causing reduced grip strength), and leg. The commission also found that "although" Mr. Bolds testified to experiencing symptoms in his arms, leg and foot, "the source of those symptoms was the back." (R.p.14) (finding 11).

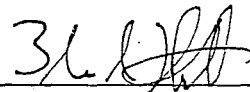
This finding – that the source of Mr. Bolds's symptoms is the back – implicates the Respondents' legal argument to the commission. The argument that the Respondents presented to the commission, and won, was that Mr. Bolds needed to show multiple injuries to be entitled to the opportunity to show how his earning capacity had been affected. It did not matter, they argued, that Mr. Bolds's back injury affected other parts of his body, because his back injury was the "source" of those effects. Their words to the commission make the point. The Respondents wrote that if it was permissible to look at the impairments caused

by Mr. Bolds's back injury, those "could arguably have allowed for a finding in the present case of impairment and disability to the leg as well as the back." (R.p.46).

This is not, and has never been, the law in South Carolina. Mr. Bolds may or may not be totally disabled under the general disability scheme, but he is entitled to have the commission apply the correct law to his claim. That law has always been that where an injury to a scheduled member affects another part of the body, the worker is not limited to the schedule in § 42-9-30 and may show how his injury impacts his earning capacity. The Court may have overlooked that the findings the Court affirmed were not made below, and that the legal argument the opinion dismisses was the precise argument the Respondents made to the commission. Mr. Bolds accordingly requests that the Court grant rehearing.

Respectfully submitted,

April 26, 2011



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(Attorneys for Appellant)

The South Carolina Court of Appeals

Francis J. Bolds, Jr.,

Appellant,

v.

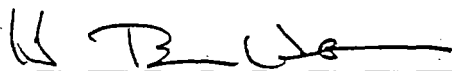
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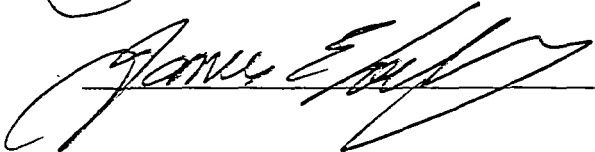
Appellate Panel
Trial Court Case No. 2009-WC-40-15675

ORDER DENYING PETITION FOR REHEARING

After a careful consideration of the Petition for Rehearing, we substitute the attached opinion for Opinion No. 2011-UP-162, filed April 13, 2011. The Petition for Rehearing is otherwise denied.



J.


J.


J.

Columbia, South Carolina

FILED

JUN 02 2011

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Francis J. Bolds, Jr., Appellant,

V.

UTI Integrated Logistics, Inc.,
and American Home Assurance Company, Defendants,

Of Whom UTI Integrated Logistics, Inc., is the, Respondent.

Appeal From the Appellate Panel

Unpublished Opinion No. 2011-UP-162
Submitted April 1, 2011 – Filed April 13, 2011
Withdrawn, Substituted and Refiled June 2, 2011

AFFIRMED

John S. Nichols and Blake A. Hewitt, both of Columbia; and Kenneth W. Harrell, of North Charleston, for Appellant.

Stephen L. Brown, Catherine H. Chase, and E.
Courtney Gruber, all of Charleston, for Respondent.

PER CURIAM: Francis J. Bolds, Jr. appeals the single scheduled benefits award for a twenty percent permanent partial disability to his back by the Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel). On appeal, Bolds argues the Appellate Panel erred in denying him a general disability award because his back injury affected other parts of his body. We affirm.¹

Three types of disability exist under the South Carolina Workers' Compensation Act (the Act): total disability, partial disability, and scheduled disability. Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 105, 580 S.E.2d 100, 102 (2003). "A claimant may obtain total disability in one of three ways under [section] 42-9-10." Id. "First, a claimant may be presumptively totally disabled" by showing "a physical injury enumerated in [section] 42-9-10." Id. "Second, a claimant may establish total disability under [section] 42-9-10 by showing an injury, which is not a [section] 42-9-30 scheduled injury, caused sufficient loss of earning capacity to render him totally disabled." Id. "Third, a claimant may establish total disability through multiple physical injuries." Id. at 106, 580 S.E.2d at 103.

A claimant is precluded from general disability and limited to compensation for a scheduled disability "[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury . . . even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity." Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960). However, an exception permits compensation for a general disability when a claimant can "show that some other part of his body is affected" by the scheduled injury. Id. For the purposes of the Act, impairment encompasses a physical deficiency. Wigfall, 354 S.C. at 104, 580 S.E.2d at 102. In South Carolina, the "situs of injury" test governs the determination of scheduled recovery benefits. Therrell v. Jerry's Inc., 370 S.C. 22, 28, 633 S.E.2d 893, 896 (2006). "[T]he

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

'situs of the injury' approach focuses on the injured body part in determining how the injury is properly compensated." Id. at 27, 633 S.E.2d at 896.

Here, the Appellate Panel did not err in denying Bolds's claim for general disability and finding Bolds's back injury was confined to a single scheduled member. Although evidence was presented showing that Bolds's back injury affected other parts of his body, evidence also existed showing that Bolds's back injury did not result in additional physical deficiencies. See Singleton, 236 S.C. at 471, 114 S.E.2d at 845 (finding an injury will be confined to a scheduled member award unless an impairment of another part of the body exists); see also Wigfall, 354 S.C. at 104, 580 S.E.2d at 102 (noting for the purposes of the Act, impairment encompasses a physical deficiency). Dr. Patel, Dr. Ahearn, and Dr. Stovall agreed that Bolds's back injury caused radiculopathy² in his left arm and right leg. However, Dr. Patel, Dr. Ahearn, and Dr. Stovall noted Bolds did not suffer from any additional physical deficiencies from this injury. Their reports indicated Bolds's arms and legs had normal muscle strength and tone. They also found Bolds had a good range of motion in his arms and legs as well as a normal gait. Accordingly, we find substantial evidence supports the Appellate Panel decision to award a scheduled member award.³

For the foregoing reasons, the decision of the Appellate Panel is

AFFIRMED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

² "Radiculopathy refers to any disease that affects the spinal nerve roots." Medline Plus, <http://www.nlm.nih.gov/medlineplus/ency/article/000442.htm> (last visited May 18, 2011).

³ Additionally, Bolds's argument regarding the Appellate Panel's application of Therrell is without merit. The Appellate Panel did not improperly apply Therrell's situs of injury test as the reason for declining to award general disability. Instead, in making its ruling, the Appellate Panel found Bolds's back injury was the only permanent injury for which he suffered.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0715675

RECEIVED
JUN 17 2011

SC Court of Appeals

Francis J. Bolds, Jr., ... Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Francis Bolds requests that this Court grant rehearing in *Bolds v. UTI Integrated Logistics, Inc.*, Op. No. 2011-UP-162 (S.C. Ct. App. re-filed June 2, 2011).

Like this Court's original opinion, the revised opinion affirms the South Carolina Workers' Compensation Commission's decision which limited Mr. Bolds to a scheduled award under S.C. Code Ann. § 42-9-30 for the injury to his back. In making this decision, the Court may have overlooked or misapprehended the following point:

In Holding That the Appellate Panel Did Not Err in Finding That Mr. Bolds's Injury Was Confined to His Back, the Court May Have Overlooked the Fact That the Commission Did Not Make this Finding.

The revised opinion in this case provides “[h]ere, the Appellate Panel did not err in denying Bolds’s claim for general disability and finding Bolds’s back injury was confined to a single scheduled member.” Slip op. at 3.

As Mr. Bolds’s first petition for rehearing described, what the commission actually found was that “there was no evidence that [Mr. Bolds] had any significant permanent *injury* to any body part other than the back.” (R.p.14) (finding 4, emphasis added); also *id.* (finding 8). The commission also found that the only impairment ratings in the records were to the back, *id.* (findings 5 and 6), and that the medical evidence reflected only one scheduled member impaired on a permanent basis. (R.p.15) (finding 21).

But the commission also found that “although [Mr. Bolds] did testify that he did experience radicular symptoms in his arms, leg, and foot, the source of those symptoms was the back.” *Id.* (finding 11).

This Court’s opinion resolves the case on a finding – the secondary effects of Mr. Bolds’s back injury either do not exist or are not severe-enough to count as “affected” – that the commission did not make. The Court’s opinion credits the records of three doctors whose reports indicate that Mr. Bolds’s arms and legs have “normal strength and tone,” slip op. at 3, and the opinion uses this to support the proposition that Mr. Bolds “did not suffer from additional physical deficiencies from this [back] injury.” *Id.* By implication, this is rejecting the evidence Mr. Bolds offered that continuous standing causes his right foot to swell, that his left leg hurts if he is standing or moving around “a lot,” that he has lower back

pain that spreads out to the side, that he has neck pain causing migraines on the left side, and that he has pain in his left shoulder and arm, all the way down into his hand. (R.pp.75-76). This is also rejecting the medical evidence in the record which recounts constant complaints of pain in his neck, left arm, and left leg. See, e.g., (R.pp.115, 125, 139, 140, 154, 161). A surgical report indicates “neck and arm pain,” (R.p.161), and two independent medical evaluations note reduced strength in his left arm. (R.pp.179, 188). An independent medical evaluation performed over a year after Mr. Bolds’s accident reported “left leg radicular pain with burning and numbness,” and that this leg “occasionally gives way making [Mr. Bolds] subject to falling.” (R.p.188).

The commission’s decision was not based on this sort of analysis; if the commission weighed Mr. Bolds’s testimony against the doctors’ reports of “normal muscle strength and tone” and found one set of evidence less credible than the other, the commission did not set that out in its analysis, make that sort of finding, and give anything that can be construed as a basis for that sort of finding.

As Mr. Bolds’s first petition for rehearing described, from his perspective, the likely reason the commission did not engage in this weighing of evidence was because under the theory of the case the Respondents presented to the commission, it did not have to. The Respondents’ consistent theory of this case to the commission was that the Supreme Court’s decision in the case of *Therrell v. Jerry’s, Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006) meant that because Mr. Bolds’s back injury was the cause of his arm, leg, and heel pain, Mr. Bolds was limited to a scheduled award for the back. In their brief to the Appellate Panel, the Respondents wrote that “[t]he radiculopathy for which the Claimant has been treated might

constitute a 'functional limitation' but *Therrell* held that was not sufficient to establish entitlement to a disability award." (R.p.46). In that phrase, the Respondents were arguing that while Mr. Bolds's back injury and its radicular effects might limit his ability to use other parts of his body, the *Therrell* case stands for the proposition that you look only to the site of the injured worker's injury – in this case, the injury to the back – to determine the appropriate workers' compensation award. This is not the law, it has never been the law, and the Court's opinion does not use this theory to resolve the case. From Mr. Bolds's perspective, the problem with affirming the commission's decision is that the commission believed the Respondents' theory to be the law.

CONCLUSION

In considering this petition for rehearing, Mr. Bolds's asks that the Court consider again the conclusion he offered in his original rehearing petition. That conclusion describes that the Respondents' theory of the case was two-pronged and relatively straightforward. First, the Respondents contended that Mr. Bolds's arm, leg, and foot pain was not that serious. (R.p.108, lines 6-13). Second, they contended that because these symptoms were caused by Mr. Bolds's back injury, Mr. Bolds was limited to the back schedule. (R.pp.109-110). Like this Court's first opinion in this case, the Court's revised opinion resolves the case on a factual point when the commission's findings do not. The commission found that Mr. Bolds's only *injury* was to his back, (R.p.14) (findings 4 and 8), but Mr. Bolds agreed that the only injury he had was to his back. And while the commission found that "the medical evidence reflects there was only one scheduled member impaired on a permanent basis by this injury," (R.p.15) (finding 21), the commission never made any finding rejecting

the testimony and medical evidence that Mr. Bolds's back injury causes radicular pain in his left arm, left wrist (causing reduced grip strength), and leg. The commission also found that "although" Mr. Bolds testified to experiencing symptoms in his arms, leg and foot, "the source of those symptoms was the back." (R.p.14) (finding 11).

This finding – that the source of Mr. Bolds's symptoms is the back – drives the case down the Respondents' legal argument to the commission which was that Mr. Bolds needed to show multiple injuries to be entitled to the opportunity to show how his earning capacity had been affected. It did not matter, the Respondents argued, that Mr. Bolds's back injury affected other parts of his body, because his back injury was the "source" of those effects. In their argument to the commission, the Respondents wrote that if it was permissible to look at the impairments caused by Mr. Bolds's back injury, those "could arguably have allowed for a finding in the present case of impairment and disability to the leg as well as the back." (R.p.46). In terms of the law of general and scheduled disability, this is the story the Respondents were selling to the commission.

This Court should grant rehearing and vacate the commission's decision. In its decision, the Court should reiterate the "exclusivity rule" – the rule about when an injured worker is limited to the injury schedule and when he may pursue a general disability award, and it should instruct the commission to apply that rule to Mr. Bolds's case. Mr. Bolds may or may not be permanently and totally disabled, but if his back injury affects other parts of his body, he is entitled to the opportunity to show the commission how that injury has impacted his ability to earn wages.

June 17, 2011

Respectfully submitted,



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The South Carolina Court of Appeals

Francis J. Bolds, Jr.,

Appellant,

v.

UTI Integrated Logistics, Inc. and
American Home Assurance Company,

Respondents.

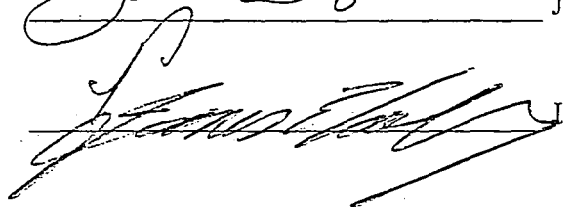
Appellate Panel
Richland County
Trial Court Case No. 2009-WC-40-15675

ORDER DENYING PETITION FOR REHEARING

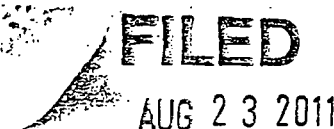
PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina


AUG 23 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SC COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0715675

Francis J. Bolds, Jr., ... Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

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STATEMENT OF ISSUE ON APPEAL

Whether The Workers' Compensation Commission Committed An Error Of Law When It Used The Fact That Mr. Bolds' Back Injury Causes The Symptoms In Other Parts Of His Body To Find That His Impairment Was Limited To A Single Scheduled Member And To Preclude Him From Seeking A General Disability Award.

STATEMENT OF THE CASE

This is an appeal from a decision of the South Carolina Workers' Compensation Commission. The commission granted Appellant Francis J. Bolds, Jr., a scheduled benefits award for a twenty percent permanent partial disability to his back. The Respondents in this appeal are UTI Integrated Logistics, Inc. (Mr. Bolds' employer at the time of his injury) and American Assurance Company (UTI's insurance carrier).

Mr. Bolds' injury occurred October 5, 2007, when another tractor-trailer truck rear-ended Mr. Bolds' tractor-trailer truck while both were traveling on interstate highway 20 in Georgia. (R.pp. 64-65). Mr. Bolds began receiving medical treatment shortly after the accident and he commenced this action with the commission on January 27, 2009, seeking compensation for injuries affecting his back, legs, neck, and left arm. (R.p. 18). Mr. Bolds contended that he was totally disabled under South Carolina law for two reasons. First, Mr. Bolds contended that the effects of his back injury had diminished his earning capacity to the point that he was totally disabled under South Carolina's general disability scheme of recovery. (R.pp. 22, 24). Second, Mr. Bolds contended that the physical impairment the injury caused to his back was, in and of itself, so severe as to render him totally disabled under South Carolina's scheduled scheme of recovery. (R.p. 23).

Respondents conceded that Mr. Bolds' injury was the result of a compensable accident but contested his entitlement to a total disability award. (R.p. 20). With respect to Mr. Bolds' request for a general disability award, Respondents argued that Mr. Bolds' injury affected his back alone and that the evidence Mr. Bolds submitted with respect to his lost earning capacity was speculative. (R.pp. 55-56). With respect to Mr. Bolds' request for a scheduled total disability award, Respondents contended that Mr. Bolds' back injury was not severe enough to render him totally disabled. (R.p. 20).

The single commissioner conducted a hearing March 3, 2009, and filed an order on March 12, 2009 awarding Mr. Bolds benefits. (R.p. 51). With respect to Mr. Bolds' claim for a general disability award, the single commissioner found there was no evidence that Mr. Bolds had any significant permanent injury to any part of his body other than his back; that Mr. Bolds' back injury was the cause of his disabling condition; and that the source of Mr. Bolds' symptoms in his arms, leg, and foot was Mr. Bolds' back. (R.p. 7). Relying on South Carolina's law which limits an injured worker to a scheduled award when a scheduled injury does not affect another part of the injured worker's body, the single commissioner found that Mr. Bolds could not pursue a general disability award. (R.p. 9). On the back injury itself, the single commissioner found that the evidence reflected that Mr. Bolds sustained a twenty percent permanent partial disability to his back. The commissioner awarded Mr. Bolds benefits under South Carolina's scheduled recovery statute on that basis. (R.pp. 7, 10).

On March 24, 2009, Mr. Bolds filed a request that the full commission review the single commissioner's order. (R.p. 27). Mr. Bolds' primary argument before the full commission was that the single commissioner erred in precluding him from seeking a general

disability award. Mr. Bolds argued specifically that although the single commissioner had correctly stated the rule that a worker with a scheduled injury is generally limited to a scheduled recovery, the rule was inapplicable because the single commissioner had found that Mr. Bolds' back injury caused him to experience symptoms in other parts of his body. (R.pp. 39-40). The full commission heard the case on June 23, 2009, and issued an order affirming the single commissioner's decision in its entirety on August 3, 2009. (R.pp. 12-17).

Mr. Bolds served and filed his notice of appeal in this Court on September 1, 2009. (R.pp. 48-50). Mr. Bolds' contention on appeal is that the commission committed an error of law when it used the fact that Mr. Bolds' back injury causes him to experience symptoms in other parts of his body to find that Mr. Bolds' impairment was limited to a single scheduled member. Where the commission found that Mr. Bolds' back injury caused symptoms in other parts of his body, the commission should have analyzed Mr. Bolds' lost earning capacity evidence and given the appropriate general disability award.

STANDARD OF REVIEW

The Administrative Procedures Act governs this Court's review of the Workers' Compensation Commission's decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). In an appeal from the commission, this Court may reverse the commission's decision when the appellant's rights have been prejudiced and the commission's decision is either affected by an error of law; clearly erroneous in view of the reliable, probative, and substantial evidence in the record; or "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C.

Code Ann. § 1-23-380(5) (Supp. 2008). “Substantial evidence” is evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion that the full commission reached. *Lark*, 276 S.C. at 135, 276 S.E.2d at 306 (quoting *Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)).

ARGUMENT

The Workers’ Compensation Commission Committed An Error Of Law When It Used The Fact That Mr. Bolds’ Back Injury Causes The Symptoms In Other Parts Of His Body To Find That His Impairment Was Limited To A Single Scheduled Member And To Preclude Him From Seeking A General Disability Award.

In this case, the commission found that Frances Bolds’ back injury causes him to experience symptoms in his arms, leg, and one foot. (R.p. 7; R.p. 14). The commission nevertheless held that Mr. Bolds’ impairment was limited to a single scheduled member and accordingly denied Mr. Bolds’ request for a general disability award. Mr. Bolds submits that this was an error of law.

The flaw in the commission’s decision is that it repeatedly confuses the guideposts used in scheduled recovery cases with those applicable in general disability cases. This confusion manifested itself in several portions of the commission’s decision. The commission’s decision improperly uses the “site of the injury” approach set forth in the case *Therrell v. Jerry’s Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006), a scheduled recovery case, to judge Mr. Bolds’ entitlement to a general disability award. (R.pp. 7, 10; R.pp. 14, 16). Where the commission should have been examining the evidence of Mr. Bolds’ lost earning capacity, the commission’s decision instead faults Mr. Bolds for failing to present

impairment ratings for the parts of his body affected by his back injury. (R.p. 7; R.p. 14). Impairment rating evidence for specific body parts would be appropriate, but not *required*, of an injured worker seeking a scheduled award, but this evidence is not typically used and has never been *required* for a general disability award. In light of these errors, this Court should reverse the commission's decision. The case should be remanded to the commission for the commission to determine the appropriate general disability award based on how Mr. Bolds' injury has impacted his earning capacity.

A. Scheduled Awards Focus On The Medical Impairment An Injury Causes To A Specific Body Part. In Contrast, General Disability Focuses On Lost Earning Capacity.

The Court may find a bit of background instructive with respect to the two general types of workers' compensation awards. South Carolina's Workers' Compensation Act provides two schemes of recovery; scheduled recovery and general disability. Although both schemes share the common purpose of compensating an injured worker for the disability an injury causes, *Singleton v. Young Lumber Co.*, 236 S.C. 454, 470, 114 S.E.2d 837, 845 (1960), see also 3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, § 80.02 (2003), the two schemes go about determining "disability" in distinctly different ways. The South Carolina Supreme Court has described the general disability scheme as being based on the "economic model" of compensation. *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 104-05, 580 S.E.2d 100, 102 (2003). This model defines an injured worker's disability in terms of his lost earning capacity. *Id.* The opposite of the economic model is the "medical model," which defines disability in terms of the degree of medical impairment an injury causes to a worker's injured body part. *Id.* The scheduled

recovery scheme is based on the medical model. *Id.* The general disability scheme is codified at S.C. Code Ann. §§ 42-9-10 and 20 (1985 & Supp. 2008), and the scheduled recovery scheme is codified at S.C. Code Ann. § 42-9-30 (Supp. 2008).

B. South Carolina Law Is Clear: An Injured Worker With A Scheduled Injury May Pursue A General Disability Award If The Scheduled Injury Affects Other Body Parts.

A further bit of background may also be helpful. South Carolina law adopts what is sometimes termed as the “exclusive” approach to scheduled injuries. This is to say that in South Carolina, an injured worker who has received an injury to a scheduled member may not pursue a general disability award unless the injury affects other parts of the worker’s body. *Singleton*, 236 S.C. at 471, 114 S.E.2d at 845-46. When an injury’s effects are isolated to a scheduled member, the injured worker is limited to recovering under the scheduled recovery statute. *Id.* *Singleton* states the rule twice, using both the terms “impairment” and “affect.” See *Id.* (providing that “[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body . . . the employee is limited to the scheduled compensation,” and also that “[t]o obtain compensation in addition to that scheduled for the injured member, [an injured worker] must show that some other part of his body is affected”). Professor Larson phrases the rule in terms of an injury’s effects and draws the distinction this way:

The great majority of modern decisions agree that, if the effects of the loss of [a scheduled] member extend to other parts of the body and interfere with their efficiency, the schedule allowance for the lost member is not exclusive. A common example of the kind of decision is that in which an amputation of a leg causes pain shooting into the rest of the body, general debility, stiffening of the hip socket, or other extended effects resulting in greater interference with ability to work than would be expected from a simple and

uncomplicated loss of the leg.

LARSON & LARSON, *supra* page 5, at § 87.02. There is a trend in some jurisdictions away from this “exclusivity rule,” see *id.* at § 87.04, but the South Carolina Supreme Court reiterated South Carolina’s adherence to the exclusivity rule in *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 580 S.E.2d 100 (2003).

C. *Therrell v. Jerry’s Inc.* Is A Scheduled Recovery Case Dealing With How To Discern The Location Of A Scheduled Injury. The Case Has No Relevance To Discerning Whether Francis Bolds’ Back Injury Affects Other Parts Of His Body.

The glaring error in the commission’s analysis is apparent in taking stock of the commission’s citation to the case *Therrell v. Jerry’s Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006). In the instant case, the commission’s citation to *Therrell* is problematic because the site of Mr. Bolds’ direct injury was never in dispute. The commission’s citation therefore strongly suggests that the commission misread *Therrell* and used the fact that the symptoms Mr. Bolds experienced in his arm, leg, and heel are caused by Mr. Bolds’ back injury to disqualify him from receiving a general disability award.

In *Therrell*, the South Carolina Supreme Court confronted the question of whether a torn rotator cuff was properly compensated under the scheduled recovery statute as an injury to the arm. 370 S.C. at 24, 633 S.E.2d at 894. The scheduled recovery statute compensates an injured worker both for the loss of a scheduled member and for the “loss of the use” of that member, see S.C. Code Ann. § 42-9-30(20), and the broad question presented in *Therrell* was whether “loss of use” awards under the scheduled statute were limited to instances of direct injury to the specific scheduled member.

The Supreme Court began the analysis in *Therrell* by outlining two approaches to scheduled recovery. Terming one the “functional impairment” view, the court described this approach as providing that the functional impairment caused by an injury is dispositive for determining under what schedule an injury is paid. *Therrell*, 370 S.C. at 26-27, 633 S.E.2d at 895. Applied to the *Therrell* claimant’s case, the functional impairment approach would provide that if the only functional impairment caused by a rotator cuff injury was that the claimant lost the use of the arm below the shoulder, the injury was properly compensable under the arm schedule. *Id.*

The Supreme Court rejected this approach to South Carolina’s scheduled recovery scheme and instead adopted what it termed the “situs of the injury” approach. *Id.* at 28, 633 S.E.2d at 896. This approach focuses on which body part was directly injured in determining the appropriate schedule for payment of benefits. *Id.* at 28, 633 S.E.2d at 896. By virtue of procedurally defaulting her argument, the claimant in *Therrell* was not ultimately victorious in procuring an award that was different from that provided for the arm in the schedule. *Id.* at 30-31, 897-98. But *Therrell* nevertheless stands for the proposition that because the rotator cuff is not part of the arm, it is wrong to use the scheduled award for the loss of use of an arm to compensate a claimant for a rotator cuff injury. Put broadly, the case stands for the proposition that awards under South Carolina’s scheduled recovery scheme are to be determined by looking at the body part which receives the direct injury. If the body part is listed in the schedule, the schedule provides the appropriate award. If the body part is not specifically listed, a scheduled award may only be made under the schedule catch-all, codified at S.C. Code Ann. § 42-9-30(22) (Supp. 2008).

By its very terms, *Therrell* is a scheduled recovery case that answers a scheduled recovery question. The language the Supreme Court used leaves no room for doubt. See 370 S.C. at 26, 633 S.E.2d 895 (“Petitioner’s and Respondents’ views of this issue essentially represent two competing approaches to scheduled recovery schemes.”); see also *id.* at 29, 633 S.E.2d at 897 (“[O]ur scheduled compensation scheme focuses on the site of the injury and not the resulting functional limitation.”). *Therrell* has nothing to do with a general disability analysis, and indeed, the case cites to *Singleton* in distinguishing scheduled recovery from “[South Carolina’s] alternative scheme of recovery, commonly referred to as ‘general disability.’” *Id.* at 26 n.2, 633 S.E.2d at 895 n.2. *Therrell* in fact expressly affirms that “[t]o seek a general disability award, a claimant who has suffered a scheduled injury must show that the injury affects some other part of his body and has resulted in a loss of earning capacity.” *Id.*

The commission’s citation to *Therrell* in the instant case is problematic because there was never any argument in this case about the site of Mr. Bolds’ direct injury. The core holding of *Therrell*, which is that the appropriate scheduled recovery is determined by the location of the injured worker’s direct injury, is totally irrelevant to Mr. Bolds’ claim. The commission’s citation to *Therrell* thus suggests that the commission took the fact that Mr. Bolds’ back injury caused his symptoms in his leg, arm, and heel; applied the site of the injury approach; and then limited Mr. Bolds to a scheduled award because the direct injury was to Mr. Bolds’ back. This interpretation is supported by the commission’s findings that “the injury to the back is the cause of [Mr. Bolds’] disabling condition;” that “the source of pain, and, therefore, the site of injury, is the back;” and that “although [Mr. Bolds] testified

that he [] experience[d] radicular symptoms in his arms, leg, and foot, the source of those symptoms was the back.” (R.p. 7; R.p. 14). Add to this context the fact Respondents’ argument to the full commission was that *Therrell* “held that the situs of the injury was controlling as to [the] type of disability award available,” (R.p. 46), and there is no other reasonable interpretation of the commission’s reliance on *Therrell*.

Therrell, of course, does not hold that the situs of the injury is controlling as to the type of disability award available; it holds that the situs of the injury is controlling as to the type of *scheduled* recovery available. The commission’s analysis completely unhitches *Therrell* from its moorings as a scheduled recovery case and guts *Singleton*’s statement of the exclusivity rule as applicable only to a scheduled injury that does not “affect” other parts of an injured worker’s body. If the commission’s interpretation of *Therrell* is the law, it is no longer the case that a worker with a foot injury that causes shooting pain in the worker’s leg may pursue a general disability award. See LARSON & LARSON, *supra* page 5, at § 87.02 (providing the opposite). An injured worker will be able to pursue a general disability award only when more than one scheduled member has received a direct injury. As both Larson and South Carolina’s worker’s compensation jurisprudence describes, this limitation of an injured worker’s ability to pursue a general disability award would be unjust because scheduled injuries that cause complications in other parts of an injured worker’s body are qualitatively different than uncomplicated scheduled injuries and can thus be presumed to have a greater effect on the injured worker’s earning capacity than uncomplicated scheduled injuries. See LARSON & LARSON, *supra* page 5, at § 87.02; see also *Brown v. Owen Steel Co., Inc.*, 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994). *Therrell* is simply a

scheduled recovery case and nothing more.

D. The Commission Found That Francis Bolds' Back Injury Causes Him To Experience Symptoms In Other Body Parts, And Those Findings Demonstrate That The Exclusivity Rule Does Not Preclude Mr. Bolds' General Disability Claim.

In this case, Mr. Bolds sought a total disability award on two fronts. First, Mr. Bolds argued that his back injury limited his ability to earn wages to such a degree that he was totally disabled. To avoid the exclusivity rule, Mr. Bolds testified about the pain he experienced in other parts of his body after his injury and additionally presented over a year's worth of medical and vocational rehabilitation history detailing his pain and treatment experiences. Second, Mr. Bolds sought a total disability award pursuant to the scheduled recovery scheme for a back injury. Under the back schedule, an injury causing a greater than fifty percent impairment to the back results in a total disability award. See S.C. Code Ann. § 42-9-30(21) (Supp. 2008). Mr. Bolds accordingly presented testimony about how his back injury limited his daily activities and also presented opinion testimony from medical doctors and vocational experts as to the degree to which Mr. Bolds had lost the use of his back as a result of his injury. Mr. Bolds' entitlement to a total disability award under the back schedule is not at issue in this appeal. Stated differently, this appeal does not challenge the commission's factual determination that Mr. Bolds suffered a twenty percent impairment to his back.

The single commissioner and the full commission noted Mr. Bolds' testimony that he experienced symptoms in his arms, leg, and foot, and both levels of the commission found that the source of those symptoms was the back. (R.p. 7; R.p. 14). The evidence in the

administrative record provides the context for what the commission meant by “symptoms.” Mr. Bolds testified that standing causes his right foot to ache and swell and that significant standing and moving causes pain in his left leg spreading around to his lower back. (R.pp. 75-77). Mr. Bolds additionally testified about pain on the left side of his neck causing migraine headaches and pain throughout his left arm causing a reduction in his grip strength. *Id.* This testimony compliments the medical evidence in the administrative record which repeatedly describes Mr. Bolds’ complaints of pain and decreased sensitivity in his extremities. (R.pp. 117, 122, 123, 125, 129, 136, 138, 139, 140, 141, 145, 149, 150, 178, 179, 183). Mr. Bolds’ treating physician’s consistent diagnosis of radiculitis, *id.*, among other conditions, is complimented by the commission’s finding that Mr. Bolds experienced “radicular symptoms” in his arm, leg and foot, (R.p. 7; R.p. 14), and it is worth noting that radiculitis, which is an inflammation of the nerve roots in the spine, results in pain and sensitivity symptoms in a person’s extremities. See TABER’S CYCLOPEDIA MEDICAL DICTIONARY 1113, 1963 (21st ed. 2005) (defining “radiculitis” and “hyperesthesia”). The vocational evidence in the record similarly speaks of Mr. Bolds’ “disabling pain flares” in different parts of his body, (R.p. 188), and although Mr. Bolds’ medical records demonstrate that his pain experiences are sometimes light and sometimes severe, compare (R.pp. 128, 133, 138, 140, 142, 144), there is no dispute that Mr. Bolds requires ongoing medical care to account for these symptoms.

South Carolina’s workers’ compensation jurisprudence contains examples of injuries that are deemed isolated to scheduled members and of those that are not. *Singleton* itself involved an ankle injury where although the injury was severe and rendered the worker, at

least in the commission's determination, unable to work, the injury was confined to the leg where the ankle was injured. 236 S.C. at 457, 568, 114 S.E.2d at 838, 844. Pursuant to the exclusivity rule, the Supreme Court held that the claimant was limited to the scheduled recovery for the loss of use of his leg. *Id.* at 473, 114 S.E.2d at 846. *Wigfall* presented a leg injury along almost identical lines. 354 S.C. at 102-03, 580 S.E.2d at 101. The case *Peoples v. Henry Co.*, 364 S.C. 123, 611 S.E.2d 527 (Ct. App. 2005) addressed the distinction in illustrative terms, albeit in the context of examining which scheduled award would be appropriate. The injured worker there had ruptured his Achilles tendon, the single commissioner had awarded the worker compensation for an impairment to his leg, and the employer appealed arguing that the award should have been limited to the scheduled loss for the worker's foot. *Id.* at 125-26, 611 S.E.2d at 528. The court in *Peoples* rejected the employer's argument and in doing so, the court addressed a case where a crush injury to the foot caused the foot to be amputated. *Id.* at 127-28, 611 S.E.2d 529. To help the amputation heal, the amputation had been performed not at the ankle, but midway between the ankle and knee. *Id.* The *Peoples* court drew a distinction between the amputation's effect on the worker's leg—an effect that was not symptomatic from an injury but merely occurred because of medical convenience—and a foot injury like a ruptured Achilles tendon which caused pain extending into a worker's leg. *Id.*

In the instant case, the commission nevertheless found that there was no evidence that Mr. Bolds had significant "permanent injury" to another body part than his back and specifically noted that the only impairment ratings presented were for Mr. Bolds' back. (R.p. 7; R.p. 14). As a first matter, this was influenced by the commission's skewed reading of

Therrell which caused the commission to classify all of Mr. Bolds' arm, leg, and heel symptoms as parts of his back injury. This analysis would be appropriate in analyzing the proper scheduled award for the back injury, but Mr. Bolds' theory of entitlement to a general disability award was that he could avoid the exclusivity rule because of the fact that his back injury caused these symptoms in other body parts.

As a second matter, South Carolina courts have never required an injured worker to present impairment ratings for the parts of the body that have been affected by an injury to a scheduled member. Indeed, this Court's jurisprudence strongly suggests the opposite. In *Simmons v. City of Charleston*, 349 S.C. 64, 562 S.E.2d 476 (Ct. App. 2002), this Court rejected the argument that an injured worker must offer medical evidence to demonstrate that he is disabled under the general disability statutes. The Court specifically noted that medical testimony is not required to prove total disability under the general disability scheme, and the Court accordingly upheld a finding of total disability where the evidence, which was lay testimony, showed that the injured worker's injury to one leg caused symptoms like swelling to manifest in the other leg. *Id.* at 74-76, 562 S.E.2d at 481-82. This rule—that expert testimony and precise estimations of impairments are not required—holds true even in scheduled recovery cases, where the degree of permanent impairment an injury causes to a scheduled member is the very heart of the analysis. See *Sanders v. Meadwestvaco Corp.*, 371 S.C. 284, 292, 638 S.E.2d 66, 70 (Ct. App. 2006) (the purpose of expert testimony is only to guide the commission in determining the degree of impairment); see also *Lyles v. Quantum Chem. Co.*, 315 S.C. 440, 445, 434 S.E.2d 292, 295 (Ct. App. 1993) (“Although an impairment rating may not rest on speculation or conjecture, it need not be shown by

mathematical precision and it may rely on lay testimony.”). By upping the ante for a general disability award in this way, the commission’s analysis takes impairment ratings—which are part and parcel of the medical model of compensation and the basis for scheduled awards—and grafts these into the general disability analysis. In short, the commission’s analysis has the effect of requiring an injured worker seeking a general disability award to present the commission with both lost earning capacity evidence and impairment ratings.

The Court should reject this analysis as inappropriate under South Carolina law. As a first matter, it unnecessarily raises an injured worker’s burden with respect to proving his entitlement to a scheduled award. Requiring an injured worker to present specific impairment ratings amounts to nothing short of adopting a rule that an injured worker’s lay testimony with respect to the limitations his injury causes is just not good enough. The *Sanders* and *Lyles* cases all but reject such a rule outright, and looking to general disability jurisprudence, the rubric which should be applicable here, *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 142 S.E.2d 43 (1965) affirmed a general disability award based solely on the injured worker’s testimony. These cases compel the conclusion that a worker seeking a general disability award should not be hamstrung by failing to present the commission with impairment ratings for the compounded effects of his injury.

Allowing a general disability claimant to escape the exclusivity rule by merely showing that his injury causes physical symptoms in other parts of his body is further justified when considering the nature of the two workers’ compensation schemes. The scheduled recovery scheme is based on the notion that the permanent effects of an injury that is isolated to a specific member can be appraised and appropriate benefits provided in terms

of a specified benefit. LARSON & LARSON, *supra* page 5, at § 86.02. This is not to suggest that the scheduled recovery scheme is based on the fact of an injury itself and not on a worker's disability; the theory is that the effect of the injury on the worker's earning capacity has been conclusively presumed by the legislature and provided for in the schedule. *Id.*; see also *Wigfall*, 354 S.C. at 107, 580 S.E.2d at 103 (providing that the scheduled recovery statute simply conclusively presumes the effect of a scheduled injury on a claimant's earning capacity). All that should be required of a worker seeking to recover more than the scheduled award for an injury is that the injury have symptoms affecting other parts of the worker's body. See *Wigfall*, 354 S.C. at 104, 580 S.E.2d at 102 (noting that "impairment" as used in *Singleton* means a physical deficiency). Once an injury manifests physical symptoms in multiple body parts, it is and ought to be appropriate to presume that the injured worker has suffered a greater (or at least a different) interference with his ability to work than would be caused by a simple and uncomplicated injury to a scheduled member. See *Brown*, 316 S.C. at 280, 450 S.E.2d at 58 (stating this precise principle); see also LARSON & LARSON, *supra* page 5, at § 87.02 (discussing that the amputation of a leg which causes shooting pain in other parts of the body can be expected to cause more interference with an injured worker's ability to work than an uncomplicated leg amputation). These policy arguments are buttressed by at least one substantial practical problem with requiring impairment ratings for body parts in which an injury manifests additional complications. Quite simply, these ratings have never been *required* in the past—for either general disability or scheduled awards.

What the commission has done is taken the concepts of "impairment" and "affect"

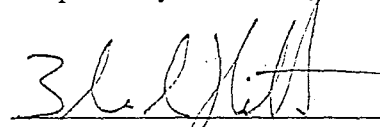
as they appear in the exclusivity rule and equated them with “impairment ratings.” No matter the meaning of these terms, a back injury causing radicular pain in the leg, arm, and swelling in the heel is simply not the type of injury *Singleton* discussed when it described injuries to scheduled members that do not effect other body parts. Mr. Bolds’ injury unquestionably affects his back, the nerves in his back, and the parts of his body at the other end of those nerve endings. Mr. Bolds’ injury is like the injury Larson’s describes as having a greater effect on his ability to work than the schedule presumes for an uncomplicated back injury, and Mr. Bolds’ injury is like the shooting pain example provided in the *Peoples* case. The commission spoke of these effects when it referred to the “symptoms” Mr. Bolds’ back injury causes him to experience in other parts of his body, and the commission accordingly erred when it held that Mr. Bolds was precluded from seeking a general disability award.

CONCLUSION

In the context of Mr. Bolds’ claims and the commission’s finding that Mr. Bolds’ back injury causes him to experience symptoms in other parts of his body, there was no way for the commission to properly use the *Therrell* case in its analysis. The uncontradicted evidence in the record is that the “symptoms” the commission referred to are radicular pain in Mr. Bolds’ arm, leg, and heel, and the commission’s findings and the arguments presented below demonstrate that the commission inappropriately used *Therrell* to preclude Mr. Bolds from pursuing a general disability award for the very reason that his back injury causes these symptoms. This was an error of law, and this Court should reverse the commission’s decision which held that because Mr. Bolds’ back injury caused these symptoms, only one scheduled member was impaired.

March 9, 2010

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

WCC File Number 0715675

Francis J. Bolds, Jr.,

Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company,

Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Commission properly conclude that the Claimant's injury was limited to a single scheduled member and that he was precluded from seeking a general disability award?

INTRODUCTION

The South Carolina Workers' Compensation Commission ("Commission") committed no error of law. Instead, the Claimant is unhappy with the law as written. The Claimant attempts to escape a legislative mandate regarding how one's disability is determined for a scheduled injury. Specifically, the Claimant asks this Court to change the law in a way that the Legislature rejected when it overhauled South Carolina's Workers' Compensation laws in 2007.

STATEMENT OF THE CASE

This case was originally heard before Commissioner David W. Huffstetler ("Single Commissioner") on March 3, 2009. (R. p. 1.) The Claimant/Appellant Francis J. Bolds, Jr. ("Claimant") asserted he sustained a compensable injury by accident to his back, both legs, neck, and left arm on October 5, 2007 that arose out of and in the course of his employment with UTI Integrated Logistics. (R. pp. 19.) Employer UTI Integrated Logistics, Inc. and Carrier American Home Assurance Company ("Employer/Carrier" or "Respondents") filed a Form 51 admitting a minor injury to the Claimant's back but denying the extent of injuries alleged in the Form 50. (R. p. 20.)

On March 12, 2009, the Single Commissioner ordered that (1) the Respondents were entitled to stop payment of temporary total compensation effective November 5, 2008; (2) the Respondents were to pay as permanent partial disability award representing 20% to the back at the weekly rate of \$645.94, less the credit for overpayment of

temporary total compensation from November 5, 2008, the date of maximum medical improvement; and (3) the Respondents were to provide such additional medical treatment as would tend to lessen the Claimant's disability or maintain his level of ability pursuant to Dodge v. Brucolli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). (R. p. 10.)

On March 24, 2009, the Claimant timely filed a Form 30 Request for Commission Review of the Single Commissioner's decision, asserting that the Single Commissioner erred in awarding the Claimant permanent disability benefits under S.C. CODE ANN. § 42-9-30 (Supp. 2008) and other errors. (R. pp. 27-28.) By unanimous vote, the Appellate Panel of the Commission affirmed the Single Commissioner's Decision and Order in its entirety. (R. p. 17.) This appeal follows.

STATEMENT OF FACTS

The facts of this appeal are best set forth by the Commission in its findings of fact.

The Commission found as follows:

IT IS FOUND AS A FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Claimant sustained a compensable injury by accident on October 5, 2007, resulting in injury to his back.
3. That the average weekly wage is \$2,000.00, with a compensation rate of \$645.94 (maximum for 2007).
4. That, although the Claimant had sustained injury to body parts other than the back, there was no evidence that he had any significant permanent injury to any body part other than the back.
5. That the only impairment ratings in the file were to the back.

6. That none of the other body parts of which the Claimant complained or alleged in his Form 50 had been given impairment ratings.

7. That the preponderance of the medical evidence reflected that the Claimant had sustained a 20% permanent partial disability to his back as a result of his injury.

8. That the preponderance of the medical evidence did not reflect that the Claimant sustained any permanent injury to any body part other than the back as a result of this accident.

9. That the preponderance of the evidence supports a finding that the injury to the back is the cause of the Claimant's disabling condition.

10. That the medical evidence supports a finding that the source of pain and, therefore, the site of injury, is the back.

11. That, although the Claimant did testify that he did experience radicular symptoms in his arms, leg, and foot, the source of those symptoms was the back.

12. That the Claimant had a 23-year work history in restaurant management prior to becoming a long-distance truck driver in 1999.

13. That the Claimant is a high school graduate who holds a certificate in computer networking.

14. That the Claimant has qualified to attend a ten-month computer training course through the South Carolina Vocational Rehabilitation Department beginning in July, 2009.

15. That the greater weight and preponderance of the medical evidence reflects that the Claimant's diagnosis was cervical spondylosis, lumbar disc bulge, and left sciatica.

16. That the medical evidence supports a finding that the cervical MRI showed spondylosis at C5-6 and hyper-intensity in the right anterior hemicord adjacent to the C4-5 disc level.

17. That the medical evidence reflects that the lumbar MRI shows an L4 protrusion and a tiny protrusion at L5/S1.

18. That none of the physicians who saw the Claimant recommended surgery; however, the preponderance of the medical evidence reflects that the Claimant does need additional ongoing medical care, to include injections and medications as prescribed by Dr. Don Stovall and Dr. Shailesh Patel, to maintain his level of ability.

19. That the Claimant reached maximum medical improvement on November 11, 2008.

20. That the Defendants are to continue to provide future medical treatment as recommended by Dr. Stovall and Dr. Patel.

21. That the medical evidence reflects that there was only one scheduled member impaired on a permanent basis by this injury, and therefore, an award under either Section 42-9-10 or Section 42-9-20 is not appropriate.

22. That the Defendants' request for a stop payment of temporary total compensation is hereby granted.

23. That the Claimant is not on social security.

24. That the Claimant is enrolled in a computer training course and intends to actively seek employment in the computer repair field when he completes the ten-month South Carolina Vocational Rehabilitation program and, therefore, is not likely to be a Medicare recipient within the next two years.

(R. pp. 13-16.)

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act governs judicial review of the Commission's decisions and establishes the "substantial evidence rule" as the standard for reviewing the Commission's factual findings. S.C. CODE ANN. § 1-23-380 (Supp. 2008); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981). An appellate court

can reverse or modify the Commission's decision only if the Claimant'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." Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); see S.C. CODE ANN. § 1-23-380(5)(d),(e) (Supp. 2008). "The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence." Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001). "Where there is a conflict in the evidence, . . . the findings of fact of the Commission are conclusive." Id. at 492-93, 541 S.E.2d at 528.

ARGUMENTS AND CITATION OF AUTHORITY

I. The Commission properly concluded that the Claimant's injury was limited to a single scheduled member and that he was precluded from seeking a general disability award.

The Commission properly awarded the Claimant benefits under the scheduled loss statute, S.C. CODE ANN. § 42-9-30 (Supp. 2008). Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 843 (1960) ("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. . . .") The Claimant contends the Commission's denial of a general disability award, pursuant to S.C. CODE ANN. §§ 42-9-10 or 42-9-20 (Supp. 2008), was an error of law. This was not an error of law but, instead, a proper application of the law.

Notably, the Claimant's brief fails to mention this Court's recent opinion in Fishburne v. ATI Systems International, 384 S.C. 76, 681 S.E.2d 595 (Ct. App. June 11, 2009), which addressed compensation for a back injury with radicular symptoms. This

Court affirmed the Commission's decision to only award Ms. Fishburne compensation for the disability to her back. Id. at 88, 681 S.E.2d at 601-02. The same logic and reasoning are applicable to this case.

The Claimant attempts to escape the exclusive approach which limits his compensation for his single specific scheduled injury to the scheduled loss statute. The Supreme Court declined to reject the exclusive approach in 2003. Wigfall v. Tidelands Utilities, Inc., 354 S.C. 100, 109-11, 580 S.E.2d 100, 104-05 (2003). The Legislature similarly declined to reject this approach in 2007 when overhauling South Carolina's Workers' Compensation laws. See 2007 S.C. Acts 111, Part I, § 18.

A. The Claimant only challenges the Commission's conclusions of law and not its findings of fact.

The Claimant does not assert any error as to factual findings of the Commission. The Claimant's statement of issue on appeal and brief concedes that this appeal solely challenges whether the Commission erred when using the factual findings to reach its conclusion that the Claimant was limited to recovery for a single scheduled member and precluded from a general disability award. (Appellant's Br. pp. 1, 4, 11 ("[T]his appeal does not challenge the commission's factual determination that Mr. Bolds suffered a twenty percent impairment to his back.") (emphasis added).)

As the factual findings of the Commission were not appealed, they are the law of the case. An "unappealed ruling, right or wrong, is the law of the case and requires affirmance." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 481, 629 S.E.2d 653, 673 (2006) (citing Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000)); see also Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). These unchallenged facts include:

4. That, although the Claimant had sustained injury to body parts other than the back, *there was no evidence that he had any significant permanent injury to any body part other than the back.*

7. That the preponderance of the medical evidence reflected that *the Claimant had sustained a 20% permanent partial disability to his back as a result of his injury.*

8. That *the preponderance of the medical evidence did not reflect that the Claimant sustained any permanent injury to any body part other than the back* as a result of this accident.

9. That the preponderance of the evidence supports a finding that *the injury to the back is the cause of the Claimant's disabling condition.*

10. That the medical evidence supports a finding that the source of pain and, therefore, *the site of injury, is the back.*

(R. p. 14 (emphasis added).)

Assuming, *arguendo*, that the Claimant challenged the factual findings of the Commission, substantial evidence in the record supports these findings.¹ “A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” Clade v. Champion

¹ The diagnoses of the Claimant’s treating physician, Dr. Shailesh Patel, related only to injuries to the spine, except for the diagnosis of obesity. (R. p. 143.) Dr. Patel opined to a reasonable degree of medical certainty that the Claimant “has a 5% impairment of the whole person, a 7% regional impairment of the lumbar spine, and a 14% regional impairment of the cervical spine . . . [and] will need continued pain management.” (R. p. 144.) Mason Ahearn, M.D., Steven C. Poletti, M.D., and Don O. Stovall, Jr., M.D. each performed independent medical evaluations of the Claimant. (R. pp. 177-185; R. pp. 200-203.) Dr. Ahearn’s impression/diagnosis of the Claimant was “cervical strain and lumbar strain with mild [left] cervical & lumbar radiculopathy.” (R. p. 181.) Dr. Poletti diagnosed the Claimant with “1. Cervical disc disruption at C5-6 with possible myelomalacia C4-5 [and] 2. Disc disruption with disc bulging L4-5 and L5-S1.” (R. p.

Labs., 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998). “The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence.” Anderson, 343 S.C. at 492, 541 S.E.2d at 528. “When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive.” Fishburne, 384 S.C. at 86, 681 S.E.2d at 600. The Commission’s finding of fact that the Claimant sustained a permanent injury only to his back is supported by substantial evidence. The decision and order must be affirmed.

B. South Carolina law is clear regarding compensating a worker for an injury to a single scheduled member.

The Claimant notes South Carolina’s longstanding and continued adherence to the exclusive approach, which the Supreme Court thoroughly explained in Wigfall. (Appellant’s Br. pp. 6-7.) See 354 S.C. at 109-11, 580 S.E.2d 100, 104-05. In Wigfall, the Supreme Court clearly reiterated South Carolina’s adherence to the exclusivity approach when a claimant has a single scheduled injury. Id. 118, 580 S.E.2d at 109 (“Because the Legislature’s intent is clear from the statute’s language and the decision by the Legislature not to statutorily overturn *Singleton*, we affirm the rule that where a claimant has only one scheduled injury his recovery is pursuant § 42-9-30.” (emphasis in original)). The Wigfall court specifically declined to accept Wigfall’s equity argument and to overrule Singleton “in the face of the Legislature’s mandates concerning our workers’ compensation system.” Id. at 110, 580 S.E.2d at 105. The Wigfall court invited the Legislature to make such a change if it deemed it appropriate, noting forty years of

184.) Dr. Stovall’s assessment was that the Claimant suffered from “1. Cervical spondylosis [,] 2. Lumbar disc bulg[, and] 3. Left sciatica.” (R. p. 202.)

inactivity on the issue buttressed the court's interpretation. Id. at 111, 116, 580 S.E.2d at 105,108.

In fact, the Legislature accepted the Supreme Court's invitation and recently overhauled South Carolina's Workers' Compensation laws. See 2007 S.C. Acts 111. In doing so, the Legislature clarified such statutes as the scheduled loss statute, § 42-9-30. See id., Part I, § 18.² Notably, when overhauling the South Carolina Workers' Compensation Laws in 2007, the Legislature did **not** adopt the position proposed by the claimant in Wigfall. "The legislature is presumed to be aware of [the] Court's interpretation of its statutes." State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 188, 525 S.E.2d 872, 879 (2000) (citing Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 778 (1997) ("[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.")). Instead, the Legislature enforced its adherence to the exclusive approach by clarifying the introduction to the scheduled loss statute. Compare § 42-9-30 (Supp. 2006) ("In cases included in the following schedule, the disability in each case **shall be deemed to** continue for the period specified and the compensation so paid for such injury **shall be** as specified therein, to wit: . . .") (emphasis added) with § 42-9-30 (Supp. 2008) ("In cases included in the following schedule, the disability in each case **is considered to** continue for the period specified and the compensation paid for such injury **is as specified:**")(emphasis added).

² Act 111 amended the introduction of § 42-9-30 to replace "shall be" with "is" and "deemed" with "considered" and thus removed any potential interpretation that the

"*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." Wigfall, 354 S.C. at 106, 580 S.E.2d at 103 (bold emphasis added). The Claimant failed to show additional specific permanent injuries beyond the injury to his back. As such, the Claimant's disability "is considered to continue for the period specified and the compensation paid for such injury is as specified" for a 20% proportion of three hundred weeks. § 42-9-30(21). The Commission properly limited the Claimant's recovery to the scheduled loss statute, § 42-9-30, and the award must be affirmed.

C. The Commission's reliance on Therrell v. Jerry's Inc. was proper and the decision was also supported by Singleton and substantial evidence in the record.

The Commission's citation to Therrell v. Jerry's Inc., 370 S.C. 22, 633 S.E.2d 893 (2006), the alleged "glaring error" argued by the Claimant to this Court, was not an issue briefed to the Appellate Panel.³ (Appellant's Br. p. 7; R. pp. 29-41.) In fact, the Claimant argued to the Appellate Panel that "the **only** basis for the hearing Commissioner limiting the Claimant's award to § 42-9-30 [was] the hearing Commissioner's position that an injured worker is limited to such an award unless there is evidence of an 'impairment' to more than one scheduled body part." (R. pp. 38-39.) Since the Claimant failed to challenge the Single Commissioner's citation of Therrell in

introductory language of this statute is not mandatory. Accord Wigfall, 354 S.C. at 110-11, 580 S.E.2d at 105.

³ The Claimant's "primary issue raised on appeal [to the Appellate Panel was] whether the hearing Commissioner erred in awarding the Claimant permanent disability benefits

its brief to the Appellate Panel, this issue was abandoned and consideration on it is precluded. State v. NV Sumatra Tobacco Trading Co., 379 S.C. 81, 93, 666 S.E.2d 218, 224 (2008); see also Peoples v. Henry Co., 364 S.C. 123, 130, 611 S.E.2d 527, 530 (Ct. App. 2005).

Addressing the Claimant's argument regarding the Commission's citation to Therrell on its merits, the Claimant attempts to escape the exclusive approach by claiming the Commission improperly relied upon Therrell "because the site of Mr. Bolds' direct injury was never in dispute." (Appellant's Br. p. 7.) The Claimant's argument that the Commission may have "misread" Therrell ignores that the Commission properly relied on Singleton to apply the exclusive approach to the Claimant's single permanent injury. (See R. pp. 16-17, ¶ 6; Appellant's Br. p. 7.)

The Single Commissioner in Singleton found minor injuries to other parts of the claimant's body but noted "[i]t is only the leg which makes up the claimant's **present disabling condition.**" 236 S.C. at 468, 114 S.E.2d at 843-44 (emphasis added). Similarly, in the present case, the Commission found "[t]hat, although the Claimant had sustained injury to body parts other than the back, there was no evidence that he had any significant permanent injury to any body part other than the back" and "[t]hat, the preponderance of the evidence supports a finding that **the injury to the back is the cause of the Claimant's disabling condition.**" (R. p. 14, ¶¶ 4, 9 (emphasis added).) These findings of fact are unchallenged. (See Argument I, A, supra, p. 6.)

The Singleton court held "[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury,

under [the scheduled loss statute,] § 42-9-30 as the evidence clearly supported an award

the employee is limited to the scheduled compensation. . . .” 236 S.C. at 471, 114 S.E.2d at 845. “Since the Commission has found as a fact that it is only the leg which makes up [Singleton’s] disabling condition, and the leg being scheduled under Section 72-153⁴ of the 1952 Code, the respondent is limited to the scheduled compensation fixed in said statute.” *Id.* at 473, 114 S.E.2d at 846 (footnote added). Similarly, in the present case, since the Commission found it was only the back that was “the cause of the Claimant’s disabling condition” (R. p. 14, ¶ 9), and the back being scheduled under § 42-9-30(21), the Claimant is limited to the scheduled compensation fixed in the statute. This Court is “not at liberty to extend by construction the meaning implicit in the language found in the *Workmen’s [sic] Compensation Act* in order to provide a more liberal rule of compensation than that which the legislature has seen fit to adopt.” *Wigfall*, 354 S.C. at 117, 580 S.E.2d at 109 (emphasis in original) (*quoting Singleton*, 236 S.C. at 473, 114 S.E.2d at 846).

The Claimant’s assertion that *Therrell*’s “situs of the injury” analysis applies only after one has decided to seek compensation for a scheduled injury is an absurdly narrow interpretation of the South Carolina Workers’ Compensation Laws. The claimant in *Therrell* sought a general disability award under § 42-9-10 from both the Single Commissioner and the Appellate Panel but was awarded compensation for her rotator cuff injury based solely on the loss of an arm provision of § 42-9-30. 370 S.C. at 24-25, 30, 633 S.E.2d at 894, 897.⁵ The question before the *Therrell* court was “whether

under [the general disability statutes,] § 42-9-10 or § 42-9-20.” (R. p. 30.)

⁴Prior version of S.C. CODE ANN. § 42-9-30 (Supp. 2008).

⁵ The claimant in *Therrell* also injured her left knee in the fall but the case did not involve the portion of the award designated to the knee injury. 370 S.C. at 24, n.1, 633 S.E.2d at 894, n.1.

compensation for a torn rotator cuff is limited to the scheduled recovery for the loss of use of an arm, or whether the injury is instead an unscheduled injury under § 42-9-30(20) [(Supp. 2005)].” Id. at 26, 633 S.E.2d at 895. The court compared two competing approaches—the “functional impairment” approach and “situs of the injury” approach—and concluded “that South Carolina’s statutory scheme best complies with the situs of the injury approach.” Id. at 26-28, 633 S.E.2d at 895-96.

As in Therrell, the Claimant in the present case sought a general disability award under § 42-9-10 for total disability (and additionally under § 42-9-20 for partial disability) but was awarded compensation for his back injury under the scheduled loss statute, § 42-9-30. (R. pp. 4, 9.) The Commission properly relied on Therrell. Even if the Commission’s citation of Therrell was improper, which is specifically denied, such an error did not prejudice any substantial right of the Claimant because the Commission’s decision and order is supported by Singleton, which stands for limiting a claimant to the scheduled loss statute when the injury is confined to a single scheduled member. The Commission’s award was not affected by an error of law and must be affirmed. Shealy, 341 S.C. at 454, 535 S.E.2d at 442.

D. The Commission properly limited the Claimant’s recovery to the scheduled loss statute, § 42-9-30.

The diagnoses of the Claimant’s treating physician, Dr. Shailesh Patel, related only to injuries to the spine, except for his diagnosis of obesity. (R. p. 143.) Dr. Patel opined to a reasonable degree of medical certainty, once the Claimant reached maximum medical improvement (“MMI”), that he “has a 5% impairment of the whole person, a 7% regional impairment of the lumbar spine, and a 14% regional impairment of the cervical spine . . . [and] will need continued pain management.” (R. p. 144.) Dr. Stovall

performed an independent medical evaluation and concluded the Claimant had the same degree of impairment—5% impairment of the whole person/7% regional impairment of the lumbar spine and 5% impairment of the whole person/14% regional impairment of the cervical spine. (R. p. 202.)

Dr. Patel treated the Claimant's back injury and managed the Claimant's radicular pain that resulted from the injury to his lumbar spine and his cervical spine. (See, e.g., R. pp. 151-152, 161-164.) The Claimant admitted that no doctor treated him for the pain in his arms, legs, or foot other than Dr. Patel. (R. p. 51; R. p. 89, lines 1-10.) Clearly Dr. Patel was aware of and accounted for the Claimant's radicular pain in his 5% impairment of the whole person/7% regional impairment of the lumbar spine and 14% regional impairment of the cervical spine. (R. p. 144.)

Radicular symptoms are an essential element used in assigning an impairment rating to the spine using the Diagnosis-Related Estimates ("DRE") method set forth in the American Medical Association's "Guides to the Evaluation of Permanent Impairment." (See R. pp. 204-205.) See Am. Med. Ass'n Guides to the Evaluation of Permanent Impairment, 381-84, 392 (5th ed. 2001).⁶ Radicular pain is part and parcel of the impairment ratings given to the Claimant by his physicians. To conclude that radiculopathy (pain, numbness, and paresthesias resulting from pressure on one or several nerve roots in the spine)⁷ automatically renders a back injury eligible for either a general disability award or multiple scheduled awards would lead to double recovery as an

⁶ The "AMA Guides" is a medical treatise often used in workers' compensation cases and specifically referenced in 25A S.C. CODE ANN. REGS. 67-1101(B) (1976) to assist the Commission in providing impairment ratings to the whole person for unscheduled member injuries. See Therrell, 370 S.C. at 28, 633 S.E.2d at 896.

⁷ Am. Med. Ass'n Guides, 382.

impairment rating to the lumbar spine or the cervical spine already accounts for such symptoms. This conclusion is inconsistent with the Legislature's adoption of and the Supreme Court's adherence to the exclusive approach. Application of the Claimant's proposed approach that a claimant merely needs to show symptoms in another part of the body to avoid the scheduled loss statute would lead to an absurdity in South Carolina's Workers' Compensation laws. Clemson Univ. v. Speth, 344 S.C. 310, 543 S.E.2d 572 (Ct. App. 2001) (*citing* Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) ("The goal of statutory construction is to harmonize statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd"))).

The Commission found the Claimant "sustained a 20% permanent partial disability to his back as a result of his injury." (R. p. 14 ¶ 7.) "The extent of an injured workman's disability is a question of fact for determination by the Appellate Panel and will not be reversed if it is supported by competent evidence." Fishburne, 384 S.C. at 86, 681 S.E.2d at 600 (Ct. App. June 11, 2009) (*citing* Colvin v. E.I. DuPont de Nemours Co., 227 S.C. 465, 468, 88 S.E.2d 581, 582 (1955)).

This Court recently addressed a similar injury and award in Fishburne. Id. Ms. Fishburne injured her back as a result of her employment. Id. at 81, 681 S.E.2d at 597. She testified that she suffered from pain in her low back, right side, right leg, right heel, and right foot. Id. at 84, 681 S.E.2d at 599. Multiple doctors evaluated the claimant and assigned impairment ratings ranging from "five percent for the whole person and entire spine" to "twenty-four percent for the whole person and twenty-seven percent of the lumbar spine." Id. at 88, 681 S.E.2d at 601. One doctor even opined that Ms. Fishburne was "permanently and totally disabled as a result of her physical and psychological

problems related to her work injury.” Id. at 83, 681 S.E.2d at 599. The Commission found Ms. Fishburne sustained “a ten percent loss of use of her back.” Id. at 88, 681 S.E.2d at 601.

In the present case, various physicians assigned impairment ratings ranging from 5% impairment of the whole person/7% regional impairment of the lumbar spine and 5% impairment of the whole person/14% regional impairment of the cervical spine (Drs. Patel and Stovall (R. p. 144; R. p. 202)) to 11% impairment of the whole person/14.67% regional impairment of the lumbar spine and 15% impairment of the whole person/42.9% regional impairment of the cervical spine (Dr. Ahern (R. p. 179)). As in Fishburne, the Commission found the Claimant sustained a disability (20% loss of use to his back) well within the range of the medical evidence. (R. p. 14 ¶ 7.) 384 S.C. at 88, 681 S.E.2d at 601.

Ms. Fishburne also sought an award for loss of use of her right leg, “claim[ing] her back injury negatively affected her right leg.” Id. The Claimant experienced similar radicular symptoms as a result of his back injury but seeks a general disability award (as opposed to the additional scheduled injury award sought by Ms. Fishburne) for his alleged additional impairment. This Court noted the Single Commissioner accounted for Ms. Fishburne’s back injury and right lower extremity radiculopathy in its award of 10% loss of use of her back. Id. at 89, 681 S.E.2d at 601. In concluding that the Commission properly found Ms. Fishburne was not entitled to a separate award for her right lower extremity, this Court noted the Claimant “presented no evidence that she had sustained a **specific injury** to her right lower extremity.” Id. (emphasis added). Contrary to the Claimant’s assertion that “this Court’s jurisprudence strongly suggests” a claimant is not

required to present an impairment rating for parts of the body “affected by an injury to a scheduled member,” the Fishburne court strongly suggests that a claimant must present at least a separate specific injury to receive an award for symptoms to a part of the body affected by another injury. Id. at 88-89, 681 S.E.2d at 601-02. (See Appellant’s Br. p. 14.)

Finally, the Claimant correctly notes his position that “[o]nce an injury manifests physical symptoms in multiple body parts, it is and ought to be appropriate to presume that the injured has suffered a greater (or at least a different) interference with his ability to work than would be caused by a simple and uncomplicated injury to a scheduled member” is a “policy argument[.]” (Appellant’s Br. p. 16.) In fact, all of the Claimant’s arguments are public policy arguments and not assertions of errors of law. Such policy arguments are matters for the Legislature and are not the province of the courts. Wigfall, 354 S.C. at 116, 580 S.E.2d at 109 (“[S]ources of inequities are the province of the Legislature to correct by balancing the interests, risks and rewards of such a large, comprehensive program” as South Carolina’s Workers’ Compensation laws.) “It is not the province of this Court to perform legislative functions.” Id. at 117, 580 S.E.2d at 108 (quoting Spoone v. Newsome Chevrolet Buick, 306 S.C. 438, 440, 412 S.E.2d 434, 434-35 (Ct. App. 1991), *aff’d* 309 S.C. 432, 424 S.E.2d 489 (1992)).

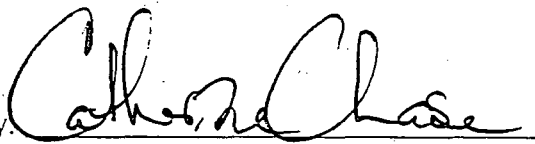
Substantial evidence in the record supports the Commission’s conclusion that the Claimant only sustained a 20% impairment to his back and that his back was the only specifically and permanently injured part of his body. The Commission properly limited the Claimant’s award to a single scheduled loss. The Commission’s decision and order must be affirmed. Anderson, 343 S.C. at 492, 541 S.E.2d at 528.

CONCLUSION

The Commission's decision and order is not affected by any error of law. Instead, the Claimant seeks to change South Carolina's Workers' Compensation laws in the wrong forum. The Commission properly determined that the Claimant's recovery is limited to that of a single scheduled injury. Further, the decision and order is supported by substantial evidence in the record. The award must be affirmed.

Respectfully submitted,

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Dated: March 5, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0715675

Francis J. Bolds, Jr., ... Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

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ARGUMENT

As Appellant Francis Bolds' initial brief described, the issue in this case is a purely legal one and has always been fairly discreet: Is a workers' compensation claimant limited to a scheduled award where an injury to a scheduled member affects other body parts? The question is really one of nomenclature. Respondents contend that an injured worker must show separate "injuries" to multiple body parts. Mr. Bolds contends that the focus is on the worker's injury and the injury's "effects." Mr. Bolds' argument should be more persuasive.

I. Mr. Bolds' Arguments Are Preserved and He Did Not Need to Appeal Any Facts for His Legal Argument to Be Persuasive.

In their brief, (Resp.Br.pp.6-7, 10-11), Respondents argue that Mr. Bolds' case is done-in by his failure to appeal the Workers' Compensation Commission's factual findings and by his failure to object, at the appellate panel level, to the hearing commissioner's citation to the South Carolina Supreme Court's decision in *Therrell v. Jerry's, Inc*, 370 S.C. 22, 633 S.E.2d 893 (2006). These arguments should be unpersuasive.

As Respondents point out, (Resp.Br.p.2), the appellate panel found that there was no evidence that Mr. Bolds had any significant permanent injury to any other part of his body than his back. (R.p. 14). Mr. Bolds never, however, contended that he sustained a discreet or separate "injury" to another part of his body than his back. Mr. Bolds instead contended that his back injury negatively affected his neck, legs, arms, and right foot. (R.p. 39). The appellate panel found that Mr. Bolds' back injury affected other parts of his body, but the appellate panel limited Mr. Bolds to the back schedule because the source of these symptoms was Mr. Bolds' back. (R.pp. 14, 16). This aspect of the appellate panel's decision is a

linchpin of what Mr. Bolds claims is the legal error in his case, and Mr. Bolds' deliberate decision not to appeal the appellate panel's factual findings has provided the framework for this case's purely legal question.

Respondents similarly argue that because Mr. Bolds' brief to the appellate panel did not mention the case *Therrell v. Jerry's, Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006), Mr. Bolds has waived the opportunity to discuss the *Therrell* case and its application. Mr. Bolds advanced the same arguments before the appellate panel that he advances in this Court; specifically, that under South Carolina law a scheduled injury which affects another part of an injured worker's body *should not* be compensated exclusively under the scheduled recovery statute. (R.p. 39).

Respondents argued before the appellate panel that *Therrell* compels a different conclusion. According to Respondents, *Therrell* establishes that the site of the injury is controlling as to the type of disability award available. (R.p. 46).

Mr. Bolds of course disagrees and argues that *Therrell* stands only for the proposition that to determine the appropriate schedule for an isolated injury, you look at the site of the injury. (App.Br.pp.7-10). *Therrell* does not stand for the proposition that a worker who suffers an injury which causes symptoms like pain and swelling in other parts of the body is limited solely to the schedule if the scheduled injury is the cause of those symptoms. This is the question presented in this appeal. It is the same question Mr. Bolds presented to the appellate panel, and Mr. Bolds did not need to first cite the *Therrell* case to the appellate panel in order to discuss the case in his legal argument to this Court.

II. Mr. Bolds Is Not Asking the Court to Overrule the Exclusive Approach to Scheduled Injuries or to Take an Approach Inconsistent with the Legislature's 2007 Amendments to the Workers' Compensation Act.

Respondents also argue that Mr. Bolds is asking this Court to move South Carolina's jurisprudence away from its adherence to the "exclusive" approach to scheduled injuries and to ignore the Legislature's 2007 amendments to the Workers' Compensation Act. (Resp.Br.pp.8-10). These arguments do not accurately characterize Mr. Bolds' claim and the Court should find that they are unpersuasive.

Mr. Bolds' principal brief specifically notes that South Carolina adheres to the exclusive approach to scheduled injuries, (App.Br.p.6), and indeed, no portion of Mr. Bolds' brief quarrels with that adherence. Mr. Bolds' brief instead asks the question of whether a worker with a single scheduled injury is limited to the injury schedule unless he presents impairment ratings for the other parts of his body which are affected and even then, whether he is limited to the schedule because the scheduled injury is the cause of those impairments. The Supreme Court's rejection in *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 580 S.E.2d 100 (2003), of the invitation to move away from the exclusive approach stands on its own. The question presented in this case is whether avoiding the exclusive approach requires multiple discreet "injuries" or an injury with secondary effects that may impact earning capacity in other parts of the body.

Respondents' reliance on the 2007 amendments to the scheduled recovery statute should also be unpersuasive. Respondents argue that the replacement of "shall be deemed" with "is considered" in the preface of the schedule recovery statute "removed any potential interpretation that the introductory language of this statute is not mandatory," (Resp.Br.p.9,

n.2), but the South Carolina Supreme Court had already interpreted the language “shall be deemed” to be mandatory. *Wigfall*, 354 S.C. at 110-111, 580 S.E.2d at 105-06. Again, Mr. Bolds agrees that the scheduled award is the only award available for an injury which is truly isolated to a single scheduled member and affects no other parts of the worker’s body. So he concedes, as he must, that if the Supreme Court’s pronouncement in *Wigfall* that this language was mandatory was not clear enough, the Legislature has made it clear. The determinative question in this case is whether an injured worker whose scheduled injury affects other parts of his body is limited to the scheduled recovery statute.

III. On the Merits, Mr. Bolds’ Argument Is Grounded More Soundly in Law and in Logic.

This case is largely about the meaning of the terms “injury” and “affect.” Respondents contend that the exclusive approach to scheduled injuries set forth most notably in the case *Singleton v. Young Lumber Company*, 236 S.C. 454, 114 S.E.2d 837 (1960), “stands for limiting a claimant to the scheduled loss statute when the injury is confined to a single scheduled member,” (Resp.Br.p.13); that the symptoms Mr. Bolds experiences in other parts of his body were accounted for in the impairment rating to his back; and that application of Mr. Bolds’ approach “that a claimant needs merely to show symptoms in another part of the body” to avoid being limited to the scheduled loss statute would lead to an absurd result. (Resp.Br.p.15) These arguments should be unpersuasive, and both law and logic more fully support Mr. Bolds’ position.

Whether it is termed as “injury”, “affect”, or “symptoms”, South Carolina’s Workers’ Compensation jurisprudence resoundingly supports the notion that a worker who sustains

physical damage to a scheduled member is not limited to the scheduled award for that member if that act of damage causes a physical deficiency in another part of the worker's body. As Mr. Bolds' principal brief describes, (App.Br.pp.6-7), *Singleton* says both that "[w]here the injury is confined to the scheduled member, and there is no *impairment* of any other part of the body . . . the employee is limited to the scheduled compensation," and also that "[t]o obtain compensation in addition to that scheduled for the injured member, [an injured worker] must show that some other part of his body is *affected*." 236 S.C. at 471, 114 S.E.2d at 845-46 (emphasis added). The relevant dicta in *Therrell* provides similarly that "[t]o seek a general disability award, a claimant who has suffered a scheduled injury must show that the injury affects some other part of his body and has resulted in a loss of earning capacity." Professor Larson explains the logic behind the exclusivity rule in these terms:

The great majority of modern decisions agree that, if the effects of the loss of [a scheduled] member extend to other parts of the body and interfere with their efficiency, the schedule allowance for the lost member is not exclusive. A common example of the kind of decision is that in which an amputation of a leg causes pain shooting into the rest of the body, general debility, stiffening of the hip socket, *or other extended effects resulting in greater interference with ability to work than would be expected from a simple and uncomplicated loss of the leg.*

3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, § 87.02 (2003) (emphasis added).

In *Wigfall*, the Supreme Court stated that a worker is limited to the schedule "where a claimant has only one scheduled injury," 354 S.C. at 118, 580 S.C. at 109, but the Court in *Wigfall* defined "injury" to mean a "physical deficiency." *Id.* at 103-04, 580 S.E.2d at

101-02. This was because the injured worker in *Wigfall* was arguing that the impairment of his earning capacity could count as the other part of his body being “affected” under *Singleton*. 354 S.C. at 103-04, 580 S.E.2d at 101-02.

In this case, the appellate panel found as a fact that Mr. Bolds experiences symptoms in other parts of his body, but the appellate panel apparently ruled that because Mr. Bolds’ back injury “caused” these symptoms, Mr. Bolds was limited to the back schedule. Leg pain is a physical deficiency. See (App.Br.p.12). Reduced grip strength is a physical deficiency. *Id.* Decreased sensitivities in one’s extremities is a physical deficiency. *Id.* Swelling in the foot is a physical deficiency. *Id.* Although the appellate panel found that Mr. Bolds had no permanent “injury” to other body parts, it also found that Mr. Bolds experiences symptoms in other parts of his body and that the source of those symptoms is Mr. Bolds’ back. (R.pp. 14-15). Neither the hearing commissioner nor the appellate panel determined that Mr. Bolds’ complaints and descriptions of his symptoms were not credible, so it is entirely possible, if not more than likely, that the commission viewed the fact Mr. Bolds’ back caused these symptoms as precluding Mr. Bolds from pursuing a general disability award.

If the *Therrell* case has any application here, it ought to be to reject Respondents’ argument that the appellate panel’s decision should be upheld because Mr. Bolds’ radicular symptoms are accounted for in the impairment rating to his back. (Resp.Br.p.14). That approach – to look at a symptom, trace its source, and award compensation based on the cause of the symptom – is a first cousin to the analysis that *Therrell* rejects for scheduled injuries. *Therrell* describes how it is inappropriate, under South Carolina law, to take a rotator cuff injury and break it into compensable parts to the degree that it affects scheduled

members like the injured worker's arm, back, and neck. 370 S.C. at 28-29 n.6, 633 S.E.2d at 896 n.6. Respondents ask the Court to countenance an approach where physical deficiencies in other parts of an injured worker's body are compensated based upon the source of those deficiencies – a calculus analytically indistinguishable from compensating an unscheduled injury based solely upon the degree to which the injury impairs the injured worker's scheduled members.

The Court should reject this analysis because it is unnecessary and inconsistent with *Therrell*. Increasing Mr. Bolds' back rating because his back injury affects other parts of his body is not the better approach. The better approach is to provide Mr. Bolds with the opportunity to show how his back injury and its effects in other parts of his body have diminished his earning capacity. See *Brown v. Owen Steel Co.*, 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994) (explaining that the policy behind allowing an injured worker whose injury falls under the scheduled recovery statute but nevertheless affects other parts of the body is to "provid[e] the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section"). The schedule can be presumed to compensate fully for injuries whose effects are truly isolated in the scheduled member. See LARSON & LARSON, *supra* page 5, at § 87.02. The same cannot be said for a scheduled injury causing symptoms and deficiencies elsewhere.

It is not "absurdly narrow" to read *Therrell*'s "situs of the injury" analysis as applicable only to scheduled injuries, see (Resp.Br.p.12); that is what the case says. The Court's analysis in *Therrell* begins with the scheduled recovery statute and instructs that the case calls for a construction of that statute. 370 S.C. at 25-26, 633 S.E.2d at 895. The

Court's holding – “that South Carolina’s statutory scheme best complies with the situs of the injury approach” – appears at the conclusion of a legal analysis that *never mentions* the general disability statutes save the lone reference in a footnote to *Singleton* and the description of general disability as “the alternative system of [Workers’ Compensation] recovery.” See *Id.* at 25-28, 633 S.E.2d at 895-96. The Court’s holding is grounded in the fact that the scheduled statute lists specific parts of the body in the schedule and instructs that other isolated injuries are to be compensated by conversion into a percentage of impairment to the whole person. *Id.* at 28, 633 S.E.2d at 896. In the Court’s words, this construct relieves South Carolina courts “from performing the complicated calculus involved in translating a rotator cuff injury into a percentage of lost use of the arm and other scheduled members.” *Id.* at 28, 633 S.E.2d at 896. *Therrell* is a scheduled recovery case instructing that to find the appropriate schedule for an isolated injury, you look at the site of the injury. In *Therrell*, the rotator cuff was injured. Because the rotator cuff was not a part of the arm, an award under the arm schedule was inappropriate. This rubric has no place in Mr. Bolds’ case.

It is similarly not “absurd” to conclude that an injured worker’s experience of pain, numbness, and other symptoms in his extremities which result from pressure on nerves in the worker’s spine automatically render the injured worker eligible for a general disability award. (Resp.Br.p.15). A leg injury that causes complications in the worker’s other leg is sufficient to entitle an injured worker to an award that is different than the award provided in the leg schedule. See, e.g., *Simmons v. City of Charleston*, 349 S.C. 64, 562 S.E.2d 476 (Ct. App. 2002). Professor Larson instructs that a leg injury causing shooting pain

throughout the rest of the body would be similarly sufficient. LARSON & LARSON, *supra* page 5, at § 87.02. The rationale is that because the effects of the injury extend elsewhere, there can be presumed to be a greater interference with the injured worker's ability to work and the worker is then *allowed* to show the reduction in his earning capacity the injury and its effects have caused. This is no more of an absurdity than the fact that a worker who suffers an injury to an unscheduled member like a rotator cuff can choose to proceed under either under the scheduled recovery catch-all or under the general disability statutes. See *Wigfall*, 354 S.C. at 109, 580 S.E.2d at 104-05. Workers' Compensation law can be nuanced when the nuances are intellectually genuine.

Well-settled law instructs that the focus in these cases should be on whether an injured worker can show that his scheduled injury causes symptoms or manifestations in other parts of his body that can be presumed to have an effect on his ability to work. This is the rationale of *Singleton*, *Wigfall*, and the rule expressed by Professor Larson. It derives from the notion that the schedule constitutes a conclusive presumption that the Legislature has made with respect to the loss of earning capacity caused by injuries to specific members, see *Wigfall*, 354 S.C. at 104 n.2, 580 S.E.2d at 103 n.2 (describing scheduled recovery as the "medical model" of Workers' Compensation), and from the common sense observation that where a scheduled injury causes complications in other body parts which can be expected to have an impact on earning capacity, the injured worker should be provided with the opportunity to show how his earning capacity has been reduced. See, e.g., *Simmons*, 349 S.C. at 76, 562 S.E.2d at 482 (discussing an injury that affects another part of the body in

terms of an injury with “additional complications” affecting disability).¹

IV. The *Fishburne* and *Singleton* Decisions Do Not Compel a Contrary Result.

Neither this Court’s decision in *Fishburne v. All Systems International*, 384 S.C. 76, 681 S.E.2d 959 (2009), nor the Supreme Court’s decision in *Singleton* justify a different conclusion. It is not “notable” that Mr. Bolds’ principal brief did not mention *Fishburne*. (Resp.Br.p.5). The injured worker in *Fishburne* lost her claim due in part to the fact that the commission did not believe that her back caused any symptoms in her right leg. See 384 S.C. at 81-82, 84, 89, 681 S.E.2d at 597-599, 601 (noting several times that the worker’s subjective complaints “far outweighed” physicians’ objective findings). This Court did specifically note in *Fishburne* that the hearing commissioner stated that the impairment awarded to the back “encompassed” any radicular symptoms in the worker’s right leg and that the worker presented no evidence that she sustained a specific injury to her right leg. See 384 S.C. at 88-89, 681 S.E.2d at 601. If these notations were the basis of the Court’s holding in *Fishburne*, Mr. Bolds would argue that the case was controlled by legal error for the same reasons he has set forth in his primary brief and in this reply.

Most importantly, the court in *Fishburne* was not asked the legal question that Mr. Bolds asks here. Second, the court in *Fishburne* also noted that the worker had credibility issues with respect to her complaints of leg pain. *Id.* at 89, 681 S.E.2d at 601. Indeed, the

¹ This is also why S.C. Code Ann. § 42-1-700 (Supp. 2009), which was added to the Workers’ Compensation Act in the 2007 amendments, see Act. No. 111, 2007 S.C. Acts 599, 614-15, instructs that the Form 50 – the injured worker’s initial filing in a compensation case– must set forth with specificity the worker’s “injured” body parts *and* the body parts that are “affected.”

worker's doctor had noted that "he did not see indication of any disc disease that would cause all of her symptoms," and another doctor testified that when he had seen the worker, "she told him the pain was not all the way down her leg and in her foot like it had been." *Id.* at 89, 681 S.E.2d at 601. Following the lead of several medical doctors, this Court expressed a healthy skepticism for the injured worker's complaints of leg pain and rightly concluded that there was evidence in the record supporting the conclusion that the injured worker was not entitled to an award for partial disability to her leg. *Id.* at 89, 681 S.E.2d at 601-02. As an academic aside, the claimant in *Fishburne* was seeking an award under the leg schedule for radicular pain caused by a back injury. *Id.* at 88, 681 S.E.2d at 601. This award would have violated *Therrell's* instruction that the site of the injury governs for scheduled injuries.

Respondents' comparison to *Singleton* should be similarly unpersuasive. The injured worker in *Singleton* fell from a scaffold and fractured two bones in his right leg above his ankle. 236 S.C. at 457, 114 S.E.2d at 838. In addition to the broken leg bones, the fall left the injured worker with bumps and bruises which had "very little effect[]" on the injured worker, and the commission in *Singleton* instructed that it was only the leg that made the worker's condition disabling. *Id.* at 467-67, 114 S.E.2d at 844. This was because the leg prevented the worker from any lifting, climbing, walking, or undertaking "any of the [] activities required of a laborer." *Id.* at 467-68, 114 S.E.2d at 844. The Court limited the worker to the leg schedule because it was the leg injury that prevented the worker from standing, lifting, and walking, and because the schedule conclusively presumes the amount of a disability award when the injury is isolated there. *Id.* at 472-73, 114 S.E.2d at 845.

This could not be more different from the instant case because although the appellate

panel determined that “the injury to the back is the cause of [Mr. Bolds’] disabling condition,” it also determined that Mr. Bolds experienced symptoms in other parts of his body and that the cause of those symptoms was his back. (R.p. 14). The symptoms Mr. Bolds experiences are swelling in his foot, pain in his legs and lower back, headaches, and pain causing a reduction in grip strength. See (App.Br.p.12). Unlike the bumps and bruises in *Singleton*, these symptoms can be expected to have impacted Mr. Bolds’ earning capacity. Respondents argued to the appellate panel that in the case of a direct injury to a scheduled member, it would be inappropriate to allow a functional impairment the injury caused in another part of an injured worker’s body to qualify the injured worker for a general disability award. (R.p. 110, lines 2-25). Mr. Bolds submits that this is a mis-statement of *Singleton*, it mis-applies *Therrell*, and it is a mis-statement of the law.

Respondents finally attempt to boot-strap into this Court’s decision in *Fishburne* a suggestion that specific impairment ratings to multiple body parts are required to pursue a general disability award. (Resp.Br.p.17). The relevant analysis in *Fishburne* says nothing about the injured worker not presenting any impairment ratings to her leg, see 384 S.C. at 88-89, 681 S.E.2d at 601, and as a primary matter, if Respondents’ argument is that radicular symptoms like causing reduced grip strength, swelling, and pain are already part-and-parcel of a scheduled back award, (Resp.Br.pp.14-15), separate impairment ratings for Mr. Bolds’ extremities would have been useless.

More importantly, as Mr. Bolds explained in his principal brief, expert testimony is not required in workers’ compensation cases, and indeed, cases stand unequivocally for the opposite proposition. (App.Br.pp.15-16). A contrary rule would work a dramatic change in

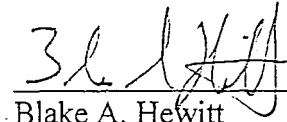
this area of the law and such a change would not be justified. The Workers' Compensation Commission's role contemplates that the commissioners are competent to make such determinations on the basis of the evidence presented to them. See *Sanders v. Meadwestvaco*, 371 S.C. 284, 292, 638 S.E.2d 66, 70 (Ct. App. 2006) ("Expert testimony is merely intended to aid the Appellate Panel in coming to the correct conclusion."); *Lyles v. Quantum Chem. Co.*, 315 S.C. 440, 445, 434 S.E.2d 292, 295 (Ct. App. 1993) (providing that the commission may find a degree of disability different from that suggested by expert testimony and that the degree of disability may rely on lay testimony).

CONCLUSION

Mr. Bolds' arguments in his principal brief and in this reply do contain a good deal of policy, see (Resp.Br.p.17) ("In fact, all of [Mr. Bolds'] arguments are public policy arguments and not assertions of errors of law"), but only insofar as it is the obligation of a litigant to show why his position is justified both in law and in logic. When the commission's decision in this case is coupled with a review of the administrative record, Mr. Bolds submits that it is apparent that the commission concluded that because Mr. Bolds' back injury was the cause of the symptoms he experiences in other parts of his body, Mr. Bolds was limited to the back schedule. This was an error of law, and the commission's decision should be reversed and remanded so that the commission can apply the proper legal analysis. These cases should be analyzed according to the settled rule that a worker with a scheduled injury is not limited to the schedule when his injury affects other parts of his body. "Affects" in this context should mean "causes pain or other symptoms which can be expected to cause a greater interference with the worker's ability to work."

March 9, 2010

Respectfully submitted,



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

RECEIVED

FEB 18 2010

SC Court of Appeals

WCC FILE NO. 0715675

Francis J. Bolds, Jr., ... Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

RECORD ON APPEAL

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DECISION & ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0715675

FRANCIS J. BOLDS, JR.,

Claimant,

vs.

UTI INTEGRATED LOGISTICS, INC.,

Employer,

AMERICAN HOME ASSURANCE COMPANY,

Carrier,
Defendants.

HEARING:

Hearing held in Charleston, South Carolina,
on March 3, 2009.

APPEARANCES:

E. Courtney Gruber, Esquire, on behalf of the
Employer/Carrier.

Ken W. Harrell, Esquire, on behalf of the
Employee/Claimant.

PURPOSE OF HEARING:

To determine issues as set forth on the Forms
50, 51, and 21.

DECISION & ORDER BY:

David W. Huffstetler, Commissioner.

DATE FILED:

March 12, 2009

MAR 16 2009

STIPULATIONS

At the call of the case, the parties stipulated as follows:

1. That both the Claimant and the Defendants were subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That jurisdiction and sufficiency of the notice of the hearing were admitted.
3. That, at the time of the injury, the average weekly wage being earned by the Claimant was the sum of \$2,000.00, resulting in a compensation rate of \$645.94, the maximum for 2007.
4. That venue for this hearing was proper in Charleston County, South Carolina, pursuant to stipulation by the parties.

APA SUBMISSIONS

The following APAs were submitted on behalf of the Employee/Claimant:

<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
Carolina Occupational Health	10/8/2007, 10/15/2007	5
Lowcountry Orthopaedics	10/15/2007-12/11/2008	62
Mason Ahearn, M.D.	7/30/2008	6
Steven C. Poletti, M.D.	9/3/2008	3
Tricounty Radiology	10/27/2007	3
Carolina Eye Care Physicians	10/17/2007	3

The following Exhibits were submitted on behalf of the Employee/Claimant:

David R. Price, M.Ed.	11/26/2008	6
S.C. Vocational Rehabilitation Department	8/21/2008	7

Form 15	Undated	1
2007 1099s	2007	2
2008 1099	2008	1
TTD payment record	7/26/2008	1

The following APAs were submitted on behalf of the Employer/Carrier:

<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
Dr. Don Stovall (IME)	11/5/2008	4
Tricounty Radiology (MRIs)	10/27/2007	3
Lowcountry Orthopaedics	10/15/2007-7/31/2008	30

The following Exhibits were submitted on behalf of the Employer/Carrier:

Vocational Evaluation	12/22/2008	3
<i>Guides to The Evaluation of Permanent Impairment, pages 384 & 392</i>		2

CLAIMANT BIOGRAPHICAL

DATE OF BIRTH: 3/19/1958

SEX: Male

MARITAL STATUS: Single

EDUCATION: High school

WORK HISTORY: Restaurant management — 23 years; truck-driving; approximately 7 years

STATEMENT OF THE CASE

The above case came on to be heard before the undersigned Commissioner in Charleston, South Carolina, on March 3, 2009, pursuant to notice timely and properly served upon all parties of record. The parties stipulated that jurisdiction and venue were

proper. They also stipulated that the Claimant had an average weekly wage of \$2,000.00, with a compensation rate of \$645.94, which was the maximum for 2007. The purpose of the hearing was to determine issues as set forth in the Forms 50 and 51, as well as to determine whether or not the Employer/Carrier was entitled to stop payment and, if so, determine whether or not the Claimant was entitled to any additional benefits. The parties further stipulated that the Claimant had sustained a compensable injury on October 5, 2007; however, there was an issue as to the extent of injury.

The Claimant contended that he was permanently and totally disabled under either § 42-9-10 or § 42-9-30. In the alternative, he contended that he was permanently partially disabled based upon a loss of earning capacity pursuant to § 42-9-20. The Claimant contended further that this case involved multiple body parts, including the back, both legs, neck, left arm, and right foot, and therefore, was not limited to recovery only under a single-scheduled member under § 42-9-30 but was entitled to submit evidence concerning loss of earnings to establish additional disability available under §§ 42-9-10 and 42-9-20. The Claimant was also seeking lifetime medical coverage, a lump-sum award, and Utica-Mohawk structure with any disability award.

The Defendants contended that the Claimant had sustained a compensable injury by accident to this back but denied injury to any other body part. They further contended that the Claimant was limited to a permanent partial disability award pursuant to the single-scheduled member, § 42-9-30, and further contended that the Claimant had sustained less than 50% permanent partial disability to his back as a result of this injury. They did not have an objection to a lump-sum payment in the event of a finding of permanent and total disability under § 42-9-30 or § 42-9-10 but did object to a lump-sum

payment in the event that permanent partial disability under § 42-9-20 was ultimately awarded.

EVIDENCE OF THE CASE

The Claimant testified that he was, at the time of the hearing, 50 years old. He had completed high school and had also completed a course through Beta Tech in 2005 in computer networking. The Claimant, at the time of the hearing, had been accepted into a computer programming course sponsored through the South Carolina Vocational Rehabilitation Department and scheduled to start in July, 2009. The Claimant also had worked approximately 23 years in the restaurant management field. He had worked for 10 years for the Steak 'N Ale restaurant franchise in training and management. Following that, he had worked for 13 years for Applebee's as a store manager. He stopped working for Applebee's in approximately 1999 and began driving a truck for a living after having obtained his CDL. The Claimant testified that he had worked for the Employer since 2000 as a long-distance truck driver.

The Claimant testified briefly as to the circumstances surrounding his accident. He was injured in a motor vehicle accident on October 5, 2007, in Georgia. After receiving medical treatment at the local emergency room, his primary treatment was followed by Dr. Shailesh M. Patel in Charleston, South Carolina. The Claimant walked with a cane and testified that he had pain in his right foot and down his left leg from time to time. He also felt that he was unstable when he walked and had headaches. He also testified that his low back hurt him frequently.

The Claimant testified that he was looking forward to completing the ten-month computer class through South Carolina Vocational Rehabilitation and planned to

get back into the workforce as soon as he could. He was particularly looking forward to getting into the computer repair business.

The Claimant did work some light duty for the Employer in January, February, and March, which included some driving; however, the company went out of business sometime shortly after he returned to work in March of 2008. He testified that he had looked for work in some other areas but had not been able to find any. The Claimant also did testify that he had not looked for work in any restaurants.

The Claimant testified that he had low back pain and that it frequently ran down his left leg. He testified he had a hard time standing for more than 30 minutes at a time. He testified that he was given the cane to use when he was at vocational rehabilitation while undergoing their in-house program from September to October, 2008. The medical records reflected that the physical therapist at the vocational rehabilitation facility recommended that he obtain a cane.

Based upon the stipulations of the parties, the testimony and evidence received and produced at the hearing, as well as my personal observation of the witnesses, the undersigned Commissioner finds the following facts based upon the preponderance of the evidence:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Claimant sustained a compensable injury by accident on October 5, 2007, resulting in injury to his back.

3. That the average weekly wage is \$2,000.00, with a compensation rate of \$645.94 (maximum for 2007).

4. That, although the Claimant had sustained injury to body parts other than the back, there was no evidence that he had any significant permanent injury to any body part other than the back.

5. That the only impairment ratings in the file were to the back.

6. That none of the other body parts of which the Claimant complained or alleged in his Form 50 had been given impairment ratings.

7. That the preponderance of the medical evidence reflected that the Claimant had sustained a 20% permanent partial disability to his back as a result of his injury.

8. That the preponderance of the medical evidence did not reflect that the Claimant sustained any permanent injury to any body part other than the back as a result of this accident.

9. That the preponderance of the evidence supports a finding that the injury to the back is the cause of the Claimant's disabling condition.

10. That the medical evidence supports a finding that the source of pain, and, therefore, the site of injury, is the back

11. That, although the Claimant did testify that he did experience radicular symptoms in his arms, leg, and foot, the source of those symptoms was the back.

12. That the Claimant had a 23-year work history in restaurant management prior to becoming a long-distance truck driver in 1999.

13. That the Claimant is a high school graduate who holds a certificate in computer networking.

14. That the Claimant has qualified to attend a ten-month computer training course through the South Carolina Vocational Rehabilitation Department beginning in July, 2009.

15. That the greater weight and preponderance of the medical evidence reflects that the Claimant's diagnosis was cervical spondylosis, lumbar disc bulge, and left sciatica.

16. That the medical evidence supports a finding that the cervical MRI showed spondylosis at C5-6 and hyper-intensity in the right anterior hemicord adjacent to the C4-5 disc level.

17. That the medical evidence reflects that the lumbar MRI shows an L4 protrusion and a tiny protrusion at L5/S1.

18. That none of the physicians who saw the Claimant recommended surgery; however, the preponderance of the medical evidence reflects that the Claimant does need additional ongoing medical care, to include injections and medications as prescribed by Dr. Don Stovall and Dr. Shailesh Patel, to maintain his level of ability.

19. That the Claimant reached maximum medical improvement on November 11, 2008.

20. That the Defendants are to continue to provide future medical treatment as recommended by Dr. Stovall and Dr. Patel.

21. That the medical evidence reflects that there was only one scheduled member impaired on a permanent basis by this injury; and therefore, an award under either § 42-9-10 or § 42-9-20 is not appropriate.

22. That the Defendants' request for a stop payment of temporary total compensation is hereby granted.

23. That the Claimant is not on social security.

24. That the Claimant is enrolled in a computer-training course and intends to actively seek employment in the computer repair field when he completes the ten-month South Carolina Vocational Rehabilitation program and, therefore, is not likely to be a Medicare recipient within the next two years.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. S.C. Code Ann. § 42-9-30, as to injury to scheduled members;
3. S.C. Code Ann. § 42-9-20, as to amount of compensation for partial disability;
4. S.C. Code Ann. § 42-2-10, as to amount of compensation for total disability;

5. Therrell v. Jerry's, Inc., 370 S.C. 22, 633 S.E.2d 893, as to situs theory of injuries;

6. Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837, as to the holding that, where the injury is confined to a scheduled member and there is no impairment of any other part of the body because of the injury, the Claimant is limited to the scheduled-member statute and a disability award for the single scheduled member.

Based upon the above Statement of Case, Evidence of the Case, Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Defendants are entitled to stop payment of temporary total compensation effective November 5, 2008; it is further

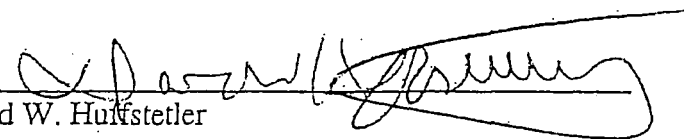
ORDERED, ADJUDGED, AND DECREED that the Defendants are to pay a permanent partial disability award representing 20% to the back at the weekly rate of \$645.94, less the credit for overpayment of temporary total compensation from November 5, 2008, the date of maximum medical improvement; it is further

ORDERED, ADJUDGED, AND DECREED that the Defendants are to provide such additional medical treatment as, in the opinion of the authorized treating physician, would tend to lessen the Claimant's disability or maintain his level of ability pursuant to Dodge. Specifically, that treatment would include pain management, including medications, physical therapy, and epidural steroid injections. There are to be provided by Dr. Shailesh M. Patel, unless the Defendants authorize another physician; it is further

ORDERED, ADJUDGED, AND DECREED that Utica-Mohawk language
is not appropriate in this case as the Claimant is not on social security.

No hearing costs or penalties are assessed in this matter.

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

By: 
David W. Huftstetler
Commissioner

Columbia, South Carolina

Dated: March 12, 2009

CERTIFICATE OF SERVICE

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

This 12 day of March, 2009
By Kellie Kinallen
Administrative Assistant to the Commissioner

KH
CG

DECISION & ORDER
BEFORE THE FULL COMMISSION
APPELLATE PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0715675

FRANCIS J. BOLDS, JR.,

Claimant,

vs.

UTI INTEGRATED LOGISTICS, INC.,

Employer,

AMERICAN HOME ASSURANCE COMPANY,

Carrier,
Defendants.

This matter was originally heard before the Single Commissioner on March 3, 2009.

By Order dated March 12, 2009, the Single Commissioner found as follows:

1. That the Defendants are entitled to stop payment of temporary total compensation effective November 5, 2008.
2. That the Defendants are to pay a permanent partial disability award representing 20% to the back at the weekly rate of \$645.94, less the credit for overpayment of temporary total compensation from November 5, 2008.
3. That the Defendants are to provide such additional medical treatment as, in the opinion of the authorized treating physician, would tend to lessen the Claimant's disability or maintain his level of ability pursuant to Dodge. Specifically, that treatment would include pain management, including medications, physical therapy, and epidural steroid injections. These are to be provided by Dr. Shailesh M. Patel, unless the Defendants authorize another physician.

4. That Utica-Mohawk language is not appropriate in this case as the Claimant is not on social security.

A Form 30, Request for Commission Review, was timely filed by the Appellant/Claimant, and oral arguments were heard by the Appellate Panel of the South Carolina Workers' Compensation Commission on June 23, 2009.

After consideration of the evidence, as well as the arguments of counsel, the Appellate Panel issued a memorandum on July 4, 2009, reflecting that it had unanimously affirmed the Single Commissioner's Order and directing Respondents' counsel to draw the Order.

STATEMENT OF THE CASE

This was an admitted case in which the Claimant/Appellant was seeking a finding of permanent and total disability under either Section 42-9-10 or 42-9-30. In the alternative, he contended that he was permanently partially disabled based upon loss of earning capacity pursuant to Section 42-9-20. The Claimant contended further that this case involved multiple body parts, including the back, legs, neck, left arm, and right foot, and that, therefore, his recovery was not confined to a single member.

The Respondents contended that the Claimant had sustained a compensable injury by accident to his back only but did not injure any other body part and further contended that the Claimant should be limited to a permanent partial disability award pursuant to Section 42-9-30.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

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

2. That the Claimant sustained a compensable injury by accident on October 5, 2007, resulting in injury to his back.

3. That the average weekly wage is \$2,000.00, with a compensation rate of \$645.94 (maximum for 2007).

4. That, although the Claimant had sustained injury to body parts other than the back, there was no evidence that he had any significant permanent injury to any body part other than the back.

5. That the only impairment ratings in the file were to the back.

6. That none of the other body parts of which the Claimant complained or alleged in his Form 50 had been given impairment ratings.

7. That the preponderance of the medical evidence reflected that the Claimant had sustained a 20% permanent partial disability to his back as a result of his injury.

8. That the preponderance of the medical evidence did not reflect that the Claimant sustained any permanent injury to any body part other than the back as a result of this accident.

9. That the preponderance of the evidence supports a finding that the injury to the back is the cause of the Claimant's disabling condition.

10. That the medical evidence supports a finding that the source of pain and, therefore, the site of injury, is the back.

11. That, although the Claimant did testify that he did experience radicular symptoms in his arms, leg, and foot, the source of those symptoms was the back.

12. That the Claimant had a 23-year work history in restaurant management prior to becoming a long-distance truck driver in 1999.

13. That the Claimant is a high school graduate who holds a certificate in computer networking.

14. That the Claimant has qualified to attend a ten-month computer training course through the South Carolina Vocational Rehabilitation Department beginning in July, 2009.

15. That the greater weight and preponderance of the medical evidence reflects that the Claimant's diagnosis was cervical spondylosis, lumbar disc bulge, and left sciatica.

16. That the medical evidence supports a finding that the cervical MRI showed spondylosis at C5-6 and hyper-intensity in the right anterior hemicord adjacent to the C4-5 disc level.

17. That the medical evidence reflects that the lumbar MRI shows an L4 protrusion and a tiny protrusion at L5/S1.

18. That none of the physicians who saw the Claimant recommended surgery; however, the preponderance of the medical evidence reflects that the Claimant does need additional ongoing medical care, to include injections and medications as prescribed by Dr. Don Stovall and Dr. Shailesh Patel, to maintain his level of ability.

19. That the Claimant reached maximum medical improvement on November 11, 2008.

20. That the Defendants are to continue to provide future medical treatment as recommended by Dr. Stovall and Dr. Patel.

21. That the medical evidence reflects that there was only one scheduled member impaired on a permanent basis by this injury, and therefore, an award under either Section 42-9-10 or Section 42-9-20 is not appropriate.

22. That the Defendants' request for a stop payment of temporary total compensation is hereby granted.

23. That the Claimant is not on social security.

24. That the Claimant is enrolled in a computer training course and intends to actively seek employment in the computer repair field when he completes the ten-month South Carolina Vocational Rehabilitation program and, therefore, is not likely to be a Medicare recipient within the next two years.

Based upon the above Statement of the Case and the Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. S.C. Code Ann. § 42-9-30, as to injury to scheduled members;
3. S.C. Code Ann. § 42-9-20, as to amount of compensation for partial disability;
4. S.C. Code Ann. § 42-2-10, as to amount of compensation for total disability;
5. Therrell v. Jerry's, Inc., 370 S.C. 22, 633 S.E.2d 893, as to situs theory of injuries;
6. Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837, as to the holding that, where the injury is confined to a scheduled member and there is no impairment of any

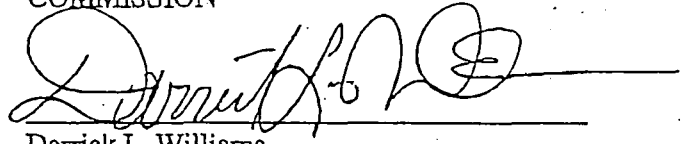
other part of the body because of the injury, the claimant is limited to the scheduled-member statute and a disability award for the single scheduled member.

ORDER

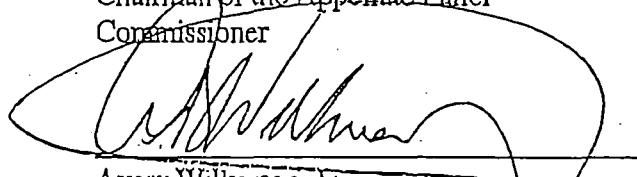
Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that substantial evidence exists to support the findings and decision of the Single Commissioner, and therefore, the Decision & Order issued March 12, 2009, is hereby affirmed in its entirety by unanimous decision of the Appellate Panel of the South Carolina Workers' Compensation Commission.

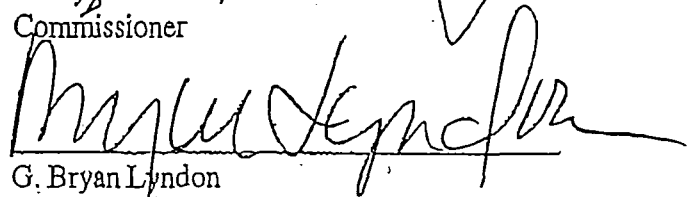
SOUTH CAROLINA APPELLATE
PANELWORKERS' COMPENSATION
COMMISSION



Derrick L. Williams
Chairman of the Appellate Panel
Commissioner



Avery Wilkerson, Jr.
Commissioner



G. Bryan Lyndon
Commissioner

Columbia, South Carolina

Dated: 8-3-09

CERTIFICATE OF SERVICE

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

This 3 day of August, 2009
By Valerie D. Heller

Administrative Assistant to the Commissioner

E. Courtney Gruber
Matthew W. Jackson

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

WCC File # 0715675
Carrier File # 709548499
Carrier Code #
Employer FEIN

Francis Bolds, Jr. UTI Integrated Logistics Inc. T.G.
Claimant's Name SSN Employer
Charleston SC 29412 140 Access Road Gaston SC 29053
Address City State Zip Address City State Zip

American Home Assurance Company
Home Phone # Work Phone # Insurance Company
Ken W. Harrell, Esquire, Joye Law Firm, LLP, 5861 Rivers Avenue, N. Charleston, SC 29406 (843) 554-3100
Preparer's Name Phone #

Complete each information blank. To request a hearing, check box 13. b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, and 8 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: 10/05/07

1. a. The claimant sustained an injury to back; both legs; neck, left arm on 10/05/07 in Haralson County, State of Georgia.
1. b. Body part(s) affected are: back; both legs; neck, left arm
Briefly describe how the accident occurred: claimant was involved in a work-related motor vehicle accident.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
3. The relationship of employer and employee existed at the time of the 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 10/05/07 in the following manner: verbal notice to supervisor.
- ☒ 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; both legs; neck; left arm
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: t.t.d. is current
- ☒ 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 body disfigurement consisting of _____
10. a. At the time of the injury, the claimant was paid weekly wages of \$512.99; and demands accounting of days worked and wages earned as provided by law.
10. b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident.
Employer herein
11. a. Further grounds of claim: Lump sum award and Ulica-Mohawk structuring of disability award sought; and to provide all applicable benefits under the Act
11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Mason Ahearn, M.D., Georgetown, SC; Shailesh M. Patel, M.D., Charleston, SC; Don Stovall, M.D., Steven C. Poletti, M.D.,
11. c. 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.
- ☒ 13. a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13. b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 1 hour

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

Ken W. Harrell Attorney kharrell@joyelawfirm.com January 27, 2009
Signature of Claimant/Representative Title E-mail Date
Refer to R. 67-205, R.67-206, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.
CC Form # 50. Rev. Date 9/90

Employee's Notice of Claim and/or Request for Hearing.

JAN 30 2009

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-15
(803) 737-5700

WCC File # 0715675
Carrier File # 709548499
Carrier Code #
Employer FEIN

Francis Bolts, Jr.

UTI Integrated Logistics Inc.

T.G.

Claimant's Name

SSN

Employer

140 Access Road

Gaston

SC

29053

Address

City

State

Zip

Address

City

State

Zip

American Home Assurance Company

Home Phone #

Work Phone #

Insurance Company

Ken W. Harrell, Esquire, Joye Law Firm, LLP, 5861 Rivers Avenue, N. Charleston, SC 29406 (843) 554-3100

Complete each information blank. To request a hearing, check box 13. b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, and 8 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: 10/05/07

1. a. The claimant sustained an injury to back; both legs; neck; left arm on 10/05/07 in Haralson County, State of Georgia.

1. b. Body part(s) affected are: back; both legs; neck; left arm

Briefly describe how the accident occurred: claimant was involved in a work-related motor vehicle accident

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.

3. The relationship of employer and employee existed at the time of the 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 10/05/07 in the following manner: verbal notice to supervisor

☒ 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; both legs; neck; left arm

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

☒ 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 body disfigurement consisting of

10. a. At the time of the injury, the claimant was paid weekly wages of \$2,000.00; and demands accounting of days worked and wages earned as provided by law.

10. b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. Employer herein

11. a. Further grounds of claim: Lump sum award and Ufica-Mohawk structuring of disability award sought; and to provide all applicable benefits under the Act

11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Mason Ahearn, M.D., Georgetown, SC; Shailesh M. Patel, M.D., Charleston, SC; Don Stovall, M.D., Steven C. Poletti, M.D.

11. c. 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.

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

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

14. Estimated time needed for hearing: 1 hour

SCWCC

JAN 30 2009

JUDICIAL

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

KW. Harrell

Attorney
Title

kharrell@joyelawfirm.com
E-mail

January 28, 2009
Date

Signature of Claimant/Representative

Refer to R. 67-205, R. 67-206, R. 67-207, and R. 67-601 through R. 67-615. Questions about the use of this form may be direct to the Commission's Judicial Department.

WCC Form # 50. Rev. Date 9/90

Employee's Notice of Claim and/or Request for Hearing.

FEB 02 2009

AMENDED

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

File # 0715675
Carrier File # 709-548499
Carrier Code #
Employer FEIN

Francis J. Bolds, Jr. Claimant's Name				SSN	UTI Integrated Logistics, Inc. Employer's Name					
Address				City	State	Zip	P. O. Box 280, Gaston, SC 29053			
Home Phone: ()				Work Phone: ()	Address			City	State	Zip
Date of Injury: 10/5/2007				American Home Assurance Company			Insurance Carrier			
E. Courtney Gruber Preparer's Name:				Young Clement Rivers, LLP Law Firm:				(843) 720-5410 Phone #		

Date of Injury or Illness: 10/5/2007

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~~/DENIED the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Employer/carrier admits only a minor injury to claimant's back and denies extent of injuries alleged on the Form 50.
2. It is ~~ADMITTED~~/DENIED both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
But see number 1.
3. It is ~~ADMITTED~~/DENIED the relationship of employer and employee existed at the time in question. The reasons for denial are:
But see number 1.
4. It is ~~ADMITTED~~/DENIED at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
But see number 1.
5. It is ~~ADMITTED~~/DENIED notice of injury was given the employer. The reasons for denial are:
But see number 1.
6. It is ~~ADMITTED~~/DENIED the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See number 1; no medical evidence.
7. It is ~~ADMITTED~~/DENIED the employee is entitled to temporary total disability for the period(s) of :
See number 1; no medical evidence.
8. It is ~~ADMITTED~~/DENIED the employee is permanently disabled. The reasons for denial are:
See number 1; no medical evidence.
9. It is ~~ADMITTED~~/DENIED the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ Form 20 to be provided applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
See number 1; reserve right to amend.
12. Estimated time needed for hearing: 45 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Matthew W. Jackson, Esquire

Address: P. O. Box 62888, North Charleston, SC 29419-2888

on February 20, 2009 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 Employer/Carrier
Title

cgruber@ycrlaw.com
Email

February 20, 2009
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
P.O. Box 1715 ■ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0715675
Carrier File # 709548499
Carrier Code #
Employer FEIN

Francis Boldt, Jr.

UTI Integrated Logistics Inc.

Claimant's Name

SSN

Employer

140 Access Road

Gaston

SC

29053-9501

Address

City

State

Zip

Address

City

State

Zip

American Home Assurance Company

Home Phone #

Work Phone #

Insurance Company

Ken W. Harrell, Esquire, Joye Law Firm, LLP, 5861 Rivers Avenue, N. Charleston, SC 29406

(843) 554-3100

Preparer's Name

Phone #

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$645.94 2. AWW: \$2,000.00 Date of Injury: 10/5/07

3. Type of injury and body part(s): Back, both legs, neck, left arm, right foot

4. Facts in controversy: Claimant's entitlement to permanent disability benefits - claimant seeks recovery for total and permanent disability under §42-9-10 and/or §42-9-30(21). Claimant seeks lifetime medical coverage, a lump sum award, and Utica-Mohawk structuring of any disability award (See ADDENDUM).

5. Legal issues involved: Same as above.

6. Unusual aspects: Claimant has yet to receive response to 11/20/08 subpoena for his payroll records.

Witnesses (designate if expert)*: Claimant - Francis Boldt, Jr.

8. Exhibits: See #9; vocational assessment of Claimant by David R. Price, M.Ed. dated 11/26/08; S.C. Vocational Rehabilitation Department records dated 8/21/08; Form 15; 2007 1099's; 2008 1099; t.t.d. payment record

9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): See attached

10. Name, address, and specialty, if any, of the treating physician: Shailesh M. Patel, M.D., Lowcountry Orthopaedics & Sports Medicine, 2880 Tricom Street, Charleston, SC 29406 (pain management)

11. Impairment rating(s); body part(s); physician and date of opinion: 5% of whole person, 7% of lumbar spine, 14% of cervical spine - Dr. Patel (7/31/08); 52% of spine - Mason Ahearn, M.D. (7/30/08); 25% of whole person - Steven C. Poletti, M.D. (9/3/08); 10% of whole person - Don O. Stovall, Jr., M.D. (11/5/08)

12. I am amending my Form 50/51 in the following manner: Form 50 amended to add right foot as an injured body part.

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



KEN W. HARRELL, ESQUIRE

DATE OF HEARING: 3/3/09

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.

Form # 58. Rev. Date 9/07

E-Mail: kharrell@joyelawfirm.com

TIME NEEDED FOR HEARING: 1 hour

PRE-HEARING BRIEF

Addendum to #4

1. Claimant's Entitlement to Permanent Disability Benefits

The Claimant maintains that the facts of this case entitle him to an award for total and permanent disability benefits under §42-9-10. The Claimant injured his lumbar and cervical spine (plus a myriad of lesser injuries) as the result of a significant accident while he was working as a tractor trailer driver on October 5, 2007. The Claimant's tractor trailer rig was rear-ended by another tractor trailer traveling approximately 70 miles per hour.

After returning to South Carolina, the Claimant was initially treated at Carolina Occupational Healthcare. When first examined on October 8, 2007, the physician noted that the Claimant complained of cervical and lumbar pain, and pain radiating into both legs. (APA #1, p.1). The Claimant also complained of right heel pain, headaches, and blurry vision in his left eye. (Id.) On October 15, 2007, the physician with Carolina Occupational Healthcare recommended that the Claimant be referred to an orthopaedist, a neurologist, and an ophthalmologist. (APA #1, p. 5).

Thereafter, the Claimant's primary treating physician has been Dr. Shailesh Patel with Lowcountry Orthopaedics. Dr. Patel first examined the Claimant on October 15, 2007, at which time the Claimant was complaining of neck and low back pain, bilateral leg pain, and headaches. (APA #2, p. 6). Dr. Patel recommended that lumbar and cervical MRI scans be performed. (APA #2, p. 9).

On November 1, 2007, Dr. Patel indicated that the lumbar MRI scan revealed that the Claimant had disc protrusions at the L4-5 and L5-S1 levels, contacting the nerve roots. (APA #2, p. 12). Dr. Patel felt the cervical MRI scan revealed that the Claimant had cervical spondylosis and he recommended that the Claimant undergo a cervical epidural steroid injection. (APA #2, p. 13). The epidural steroid injection was performed on November 20, 2007. (APA #2, p. 45). It is also noted that Dr. Patel indicated for the first time that Waddell signs were negative, consistent with the conclusion he reached on several subsequent dates, including November 27, 2007, January 17, 2008, February 11, 2008, March 17, 2008, April 24, 2008, May 22, 2008, June 23, 2008, July 31, 2008, and November 17, 2008. Dr. Patel's consistent findings of the Claimant's credibility and the lack of any symptom magnification are also consistent with the Claimant's attempt to return to work as a truck driver for the defendant employer, and the Claimant's diligent efforts with the South Carolina Vocational Rehabilitation Department.

Throughout the course of Dr. Patel's treatment of the Claimant, the Claimant continued to complain of neck and low back pain, with symptoms in his left arm and in both of his legs. On July 31, 2008, Dr. Patel indicated that he felt the Claimant was at maximum medical improvement. While he only assigned the Claimant a 5% impairment of the whole person (7% impairment of the lumbar spine and 14% impairment of the cervical spine), Dr. Patel indicated that the Claimant's future work activities would be restricted to lifting 15 pounds or less and he would be restricted in regard to climbing and bending (APA #2, p. 35). Previously, on March 17, 2008, Dr. Patel had addressed the Claimant's difficulty trying to return to work as a truck driver, indicating it was "... in his best

interest to look for a new position or an alternate position at work.” (APA #2, p. 26).

On July 31, 2008, Dr. Patel indicated that the Claimant would need to continue receiving pain management treatment which would include future pain medications, follow-up visits, physical therapy, epidural steroid injections, and radiofrequency ablation procedures. (APA #2, p. 35).

Dr. Patel has continued to treat the Claimant subsequent to this date. On November 25, 2008, he performed lumbar radiofrequency ablations for the Claimant. (APA #2, ps. 54-55). On December 11, 2008, he indicated that the Claimant’s previously assigned physical restrictions would remain in place. (APA #2, p. 43). He also recommended that the Claimant continue taking Percocet and Lyrica. (Id.)

The Claimant has undergone three independent medical examinations, two of which were arranged by the insurance carrier.

First, the Claimant was examined by Dr. Mason Ahearn with Bay Orthopaedics on July 30, 2008 pursuant to an appointment scheduled by the insurance carrier. Dr. Ahearn noted that the Claimant was experiencing problems with his neck, back, right heel, and with headaches. (APA #3, p.68). Dr. Ahearn indicated that the Claimant’s future work would include limitations of his being unable to stand more than 30 minutes, and his being unable to sit more than 60 minutes without changing positions, and his being prevented from stooping, bending, crawling, kneeling, and repetitive lifting. (APA #3, p. 70). Dr. Ahearn noted that the Claimant should do no lifting greater than 15 to 20 pounds. (Id.) Dr. Ahearn assigned the Claimant a whole person impairment rating of 11% of the whole person related to the lumbar spine and 15% of the whole person related to the cervical spine. (APA #3, p. 70). However, he went on to state that the Claimant had a 52% impairment of the spine. (Id.) This rating, standing alone, would serve as a basis for awarding the Claimant total and permanent disability benefits under §42-9-30 (21). Dr. Ahearn also completed an estimated physical capacities form. On the same, he indicated that the Claimant would be able to stand no more than one to three hours during an eight-hour work day, and the same limitations would apply to walking and driving. (APA #3, p. 73). Dr. Ahearn also felt the Claimant would be limited to sitting no more than three to five hours during an eight-hour work day. (Id.) Dr. Ahearn noted that the Claimant should never kneel or crawl and he would be restricted when it came to bending, squatting, climbing, and over-head reaching. (Id.) He placed a weight-lifting restriction on the Claimant of 11 to 20 pounds. (Id.)

Dr. Steven Poletti of the Southeastern Spine Institute performed an independent medical examination scheduled by the Claimant’s attorney on September 3, 2008. Dr. Poletti stated that the Claimant continued to complain of neck, low back, and leg pain. The Claimant felt that the nerve blocks Dr. Patel had been doing did take the edge off of his pain. (APA #4, p. 74). Dr. Poletti felt the Claimant had diminished grip strength in his left arm and he noted that the Claimant had numbness symptoms in his left leg. (APA# 4, p. 74). Dr. Poletti recommended that the Claimant undergo an updated cervical MRI scan with gadolinium contrast, stating that the Claimant could be a potential surgical candidate for his neck depending on these test results. (APA #4, p. 76). Dr. Poletti felt that the

appropriate future medical treatment for the Claimant's lumbar spine would be the pain management treatment Dr. Patel was providing. (APA #4, p. 76). Dr. Poletti felt that the Claimant's impairment related to his cervical spine alone would be 10% of the whole person, but he wrote that this impairment rating could be increased depending on the Claimant's future treatment. (APA #4, p. 76). Dr. Poletti assigned the Claimant an over-all impairment rating of 25% of the whole person. (Id.)

Apparently dissatisfied with the results of the independent medical examination performed by Dr. Ahearn, the defendants scheduled a second independent medical examination of the Claimant with Dr. Don Stovall, a practice partner of Dr. Patel's. This evaluation was performed on November 5, 2008. Dr. Stovall essentially confirmed the previously stated opinions of Dr. Patel. Dr. Stovall indicated that the Claimant continued to experience neck, low back, left arm, and left leg pain. (APA #2, p. 36). Dr. Stovall assigned the Claimant a 5% impairment to the whole person for both his lumbar and cervical spine. (APA #4, p. 38). Dr. Stovall agreed with the future pain management treatment recommendations made by Dr. Patel. (APA #2, p. 38).

David Price, a certified rehabilitation counselor, performed a vocational assessment of the Claimant on November 26, 2008. Mr. Price noted that the Claimant spent a significant portion of each day reclining or laying in bed. (Claimant's Exh. A, p. 85). He also noted the Claimant was continuing to take a number of medications, including Oxycodone, Lyrica, and Imitrex for migraine headaches and that the Claimant was using Duralgesic pain patches. (Claimant's Exh. A., p. 86). Mr. Price concluded that the Claimant was totally and permanently disabled. In reaching this opinion, he indicated the following:

At age 50 Mr. Bolds is rapidly approaching older work status. He has been out of the work force for greater than one year. He has significant physical limitations and need for work place modification. Mr. Bolds takes narcotic medications that impair physical coordination, memory, and cognitive function. As such his access to employment opportunities will be drastically reduced. Certainly he will not be capable of returning to work as a truck driver. He has exclusively worked at medium physical demand jobs that required good physical condition and long hours of sitting or being on his feet. . . . Unfortunately, the level of the chronic pain Mr. Bold endures and his inability to sit/stand greater than 60 minutes at a time, his use of narcotic medications combined with no industrial capacity for bending, stooping, squatting, climbing, or lifting greater than 15 pounds will make it extremely difficult for him to be competitive for a job. If he lands an opportunity, his propensity for repetitive pain flares and lack of stamina will certainly cause excessive work place absence and make it hard for him to sustain employment. He would be considered unreliable. This combination of factors most likely renders Mr. Bolds completely disabled. (Claimant's Exh. A, p. 88).

Mr. Price did note Mr. Bolds's diligent efforts to be retrained for less physical work through the South Carolina Vocational Rehabilitation Department. (Claimant's Exh. B). Mr. Price indicated

that if the Claimant was successful in his efforts to be trained and to procure employment as a computer programmer, his annual income would be approximately \$35,000.00. (Claimant's Exh. A, p. 88). An annual income of \$35,000.00 would result in an average weekly wage of \$673.08. The Claimant's payroll records for calendar years 2007 and 2008 (the Claimant returned to work as a truck driver for a brief period during the spring of 2008 before being unable to continue in this position) support a finding that the Claimant's pre-accident average weekly wage was \$2,000.00. (Claimant's Exhs. D & E). An average weekly wage of \$673.08 would be \$1,326.92 less than the Claimant's pre-accident average weekly wage. If an award were made under §42-9-20, the appropriate compensation rate for such an award would remain \$645.94. However, Mr. Price's opinion regarding Mr. Bolds's efforts to find work as a computer programmer are noted. Mr. Price stated, "I am not optimistic about his chances for success. In his current condition, I do not believe that he can work." (Claimant's Exh. A, p. 88).

Francis J. Bolds, Jr. Claimant's Name		SSN		UTI Integrated Logistics, Inc. Employer's Name			
Address		City	State	Zip	P. O. Box 280, Gaston, SC 29053		
()		()			American Home Assurance Company		
Home Phone		Work Phone		Insurance Carrier			
E. Courtney Gruber Preparer's Name		(843) 720-5410		Phone #			

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$645.94 2. AWW: \$TBD Date of Injury: 10/5/2007
3. Type of injury and body part(s): Minor injury to back.
4. Facts in controversy: Extent of permanent disability. Employer/carrier contends that this is a scheduled-member case under 42-9-30 and that claimant has not sustained more than 50% loss of use to his back. Defendants seek credit for overpayment of temporary total disability since MMI.
5. Legal issues involved: 42-9-30.
6. Unusual aspects: Application of AMA guidelines.
7. Witnesses (designate if expert)*: A witness from the employer may be present to testify.
8. Exhibits: Vocational Evaluation - 12/22/2008 (3 pages); Guides to The Evaluation of Permanent Impairment, pages 384 & 392 (2 pages).
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Dr. Don Stovall (IME) - 11/5/2008 (4 pages); Tricounty Radiology (MRIs) - 10/27/2007 (3 pages); Lowcountry Orthopaedics - 10/15/2007-7/31/2008 (30 pages).
10. Name, address, and specialty, if any, of the treating physician: Dr. Shailesh Patel; Dr. Don Stovall.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Patel - 5% - back - MMI - 7/31/2008; Dr. Stovall - 10% - back - MMI - 11/5/2008.
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: E. Courtney Gruber

Email: cgruber@ycrlaw.com

Date of hearing: 3/3/2009

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.



Claimant's Name: Francis Bolds, Jr. SSN: Employer's Name: UTI Integrated Logistics, Inc.
Address: Address: 140 Access Road
City: State: Zip: City: Gaston State: SC Zip: 29053
Home Phone: Work Phone: () Insurance Carrier: American Home Assurance Co.
Preparer's Name: Ken W. Harrell Law Firm: Joye Law Firm, L.L.P. Preparer's Phone #: (843) 554-3100

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 10/5/2007 (m/d/yyyy)

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.

SCWCC

MAR 26 2009

JUDICIAL

Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to E. Courtney Gruber, Esquire
Name

P.O. Box 993, Charleston, SC 29402

in the 24 day of March, 2009 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature

Attorney
Title

March 24, 2009
Date

Check this box if you are not represented by an attorney. ☐

The claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are able to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

1. Whether the hearing Commissioner erred in awarding the Claimant permanent disability benefits under §42-9-30, as the evidence clearly supported an award under §42-9-10 or §42-9-20?
2. Whether the hearing Commissioner erred in ruling that the Claimant was limited to a scheduled member disability award based on his conclusion that there was no evidence that the Claimant "had any significant permanent injury to any body part other than the back"?
3. Whether the hearing Commissioner erred in ruling that the Claimant was limited to a scheduled member disability award under §42-9-30 as the "medical evidence reflects that there was only one scheduled member impaired on a permanent basis by the injury"? (emphasis added)
4. Whether the hearing commissioner erred in ruling that the Claimant was limited to a scheduled member disability award under §42-9-30 per the Singleton v. Young Lumber Co. decision, which the Commissioner summarized as holding that "where the injury is confined to a scheduled member and there is no impairment of any other part of the body because of the injury, the Claimant is limited to the scheduled member statute and a disability award for the single scheduled member"? (emphasis added)
5. Whether the hearing Commissioner erred in failing to provide the Utica-Mohawk structuring of any permanent disability award requested by the Claimant?

T.G.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 0715675

FRANCIS BOLDS, JR.,)

Employee,)

Claimant/Appellant,)

vs.)

UTI INTEGRATED LOGISTICS,)
INC.,)

Employer,)

and)

AMERICAN HOME ASSURANCE)
INSURANCE COMPANY,)

Carrier,)

Defendants/Respondents.)
_____)

CLAIMANT/APPELLANT'S APPELLATE
BRIEF TO THE FULL COMMISSION

SCWCC
MAY 22 2009
JUDICIAL

STATEMENT OF THE CASE

The Claimant sustained multiple injuries as the result of a motor vehicle accident involving his tractor trailer truck within the course and scope of his employment on October 5, 2007. An evidentiary hearing was held before Commissioner David Huffstetler on March 3, 2009 to address the defendants' request that the Claimant's temporary, total disability benefits be terminated and to address the Claimant's entitlement to permanent disability benefits. Commissioner Huffstetler issued a Decision and Order on March 12, 2009 ruling that the Claimant was entitled to a permanent

MAY 27 2009

disability award for a 20% disability of the back, with a reduction for a credit for the temporary, total disability benefits paid after November 5, 2008. The Claimant had contended that his disability award should be made pursuant to §42-9-20 for permanent, partial disability based on the reduction in his earning capacity as the result of his work injuries. Commissioner Huffstetler rejected this claim based on his reliance on Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960), indicating that this decision mandated that "where the injury is confined to a scheduled member and there is no impairment of any other part of the body because of the injury, the Claimant is limited to the scheduled member statute and a disability award for the single scheduled member." (Decision and Order of Commissioner David W. Huffstetler dated March 12, 2009, conclusion of law #6, p. 10).

The Claimant/Appellant filed a Form 30 Request for Commission Review on March 24, 2009. The primary issue raised on appeal is whether the hearing Commissioner erred in awarding the Claimant permanent disability benefits under §42-9-30 as the evidence clearly supported an award under §42-9-10 or §42-9-20. Specifically, the Claimant contends that hearing Commissioner erred in ruling that the Claimant was limited to a scheduled member disability award under §42-9-30 based on the Commissioner's conclusion that South Carolina law requires that more than one scheduled member be impaired on a permanent basis due to the work accident in order for a general disability award to be made under §42-9-10 or §42-9-20.

ISSUE PRESENTED

1. Whether hearing Commissioner erred in ruling that the Claimant was limited to a scheduled member permanent disability award under §42-9-30 on the basis that the Claimant was limited to the scheduled member statute for his disability award since there was no evidence of more than one scheduled member being impaired as the result of the Claimant's October 5, 2007 work accident?

ARGUMENT

The hearing Commissioner erred in limiting the Claimant's permanent disability award to a scheduled member disability under §42-9-30 as the evidence clearly supported an award under §42-9-20 and South Carolina law does not require a showing that more than one scheduled member has been "impaired."

The evidence presented at the evidentiary hearing clearly supports the finding that the Claimant is entitled to an award for permanent, partial disability based on a reduction of his earning capacity under §42-9-20.

The Claimant injured his lumbar and cervical spine (plus a myriad of lesser injuries) due to a significant accident while he was working as a tractor trailer driver on October 5, 2007. The Claimant's tractor trailer rig was rear-ended by another tractor trailer going approximately 70 miles per hour.

After returning to South Carolina, the Claimant was initially treated at Carolina Occupational Health Care. When first examined on October 8, 2007, the physician noted that the Claimant complained of cervical and lumbar pain, pain radiating into both legs, and pain in his right heel. (APA #1, p. 1). The Claimant also complained of headaches and blurry vision in his left eye. (Id.)

Thereafter, the Claimant's primary treating doctor has been Dr. Shailesh Patel with Lowcountry Orthopaedics. Dr. Patel first examined the Claimant on October 15, 2007, at which time the Claimant was complaining of neck and low back pain, bilateral leg pain, and headaches. (APA #2, p. 6). Dr. Patel recommended that lumbar and cervical MRI scans be performed. (APA #2, p. 9). On November 1, 2007, Dr. Patel indicated that the lumbar MRI scan revealed that the Claimant had disc protrusions at the L4-5 and L5-S1 levels, contacting the nerve roots. (APA #2, p. 12). Dr. Patel felt the cervical MRI scan revealed that the Claimant had cervical spondylosis and he

recommended that the Claimant undergo a cervical epidural steroid injection. (APA #2, p. 13). Dr. Patel indicated that Waddell signs were negative on several dates, including November 20, 2007; November 27, 2007; January 17, 2008; February 11, 2008; March 17, 2008; April 24, 2008; May 22, 2008; June 23, 2008; July 31, 2008; and November 17, 2008. Dr. Patel's consistent findings of the Claimant's credibility and the lack of any symptom magnification are consistent with the Claimant's attempt to return to work as truck driver for the defendant employer, and the Claimant's diligent efforts with the South Carolina Vocational Rehabilitation Department.

Throughout the course of Dr. Patel's treatment of the Claimant, the Claimant continued to complain of neck and low back pain, with symptoms in his left arm and in both of his legs. On July 31, 2008, while Dr. Patel only assigned the Claimant a 5% impairment of the whole person (7% impairment of the lumbar spine and 14% impairment of the cervical spine), the doctor indicated that the Claimant's future work activities would be restricted to lifting 15 pounds or less and he would be restricted in regard to climbing and bending. (APA #2, p. 35). Previously, on March 17, 2008, Dr. Patel had addressed the Claimant's difficulty when he tried to return to work as a truck driver, indicating it was "... in his best interest to look for a new position or an alternate position at work." (APA #2, p. 26).

On July 31, 2008, Dr. Patel indicated that the Claimant would need to continue receiving pain management treatment which would include future pain medications, follow-up visits, physical therapy, epidural steroid injections, and radio-frequency ablation procedures. (APA #2, p. 35).

Dr. Patel has continued to treat the Claimant. On December 11, 2008, he indicated that the previously assigned physical restrictions would remain in place and he recommended that the Claimant continue taking Percocet and Lyrica. (APA #2, p. 44).

The Claimant also had three independent medical examinations performed, two of which were arranged by the insurance carrier.

First, the Claimant was examined by Dr. Mason Ahearn with Bay Orthopaedics on July 30, 2008 based on appointment scheduled by the insurance carrier. Dr. Ahearn noted that the Claimant was experiencing problems with his neck, back, right heel and with headaches. (APA #3, p. 68). Dr. Ahearn indicated that the Claimant's future work would include limitations of his being unable to stand more than 30 minutes, and his being unable to sit more than 60 minutes without changing positions, and his being prevented from stooping, bending, crawling, kneeling, and repetitive lifting. (APA #3, p. 70). Dr. Ahearn noted that the Claimant should do no lifting greater than 15 to 20 pounds. (Id.) Dr. Ahearn assigned the Claimant a whole person impairment rating of 11% of the whole person related to the lumbar spine and 15% of the whole person related to the cervical spine. (APA #3, p. 70). However, he went on to state that the Claimant had a 52% impairment of the spine. (Id.) Dr. Ahearn also completed an estimated physical capacities form. On the same, he indicated the Claimant would be able to stand no more than one to three hours during an eight-hour work day, and the same limitations would apply to walking and driving. (APA #3, p. 73). Dr. Ahearn also felt the Claimant would be limited to no more than three to five hours of work during an eight-hour work day. (Id.) Dr. Ahearn noted that the Claimant should never kneel or crawl and he would be restricted when it came to bending, squatting, climbing, and over-head reaching. (Id.) Again, it is noted that Dr. Ahearn performed an independent medical examination which was scheduled by the defendants.

Dr. Steven Poletti of the Southeastern Spine Institute performed an independent medical examination scheduled by the Claimant's attorney on September 3, 2008. Dr. Poletti stated that the

Claimant continue to complain of neck, low back, and leg pain. Dr. Poletti felt the Claimant had diminished grip strength in his left arm and he noted that the Claimant had numbness symptoms in his left leg. (APA #4, p. 74). Dr. Poletti recommended that the Claimant undergo an updated cervical MRI scan with gadolinium contrast, stating that the Claimant could be a potential surgical candidate for his neck depending on these test results. (APA #4, p. 76). Dr. Poletti felt that the appropriate future medical treatment for the Claimant's lumbar spine would be the pain management treatment Dr. Patel was providing. (APA #4, p. 76).

Dr. Poletti felt the Claimant's impairment related to his cervical spine alone would be 10% of the whole person, but he wrote that this impairment rating could be increased based on the Claimant's future treatment. (Id.) Dr. Poletti assigned the Claimant an over-all impairment rating of 25% of the whole person. (Id.)

Apparently dissatisfied with the results of the independent medical examination performed by Dr. Ahearn, the defendants scheduled a second independent medical examination of the Claimant with Dr. Don Stovall, a practice partner of Dr. Patel's. On November 5, 2008, Dr. Stovall essentially confirmed the previously stated opinions of Dr. Patel. Dr. Stovall indicated that the Claimant continued to experience neck, low back, left arm, and left leg pain. (APA #2, p. 36). Dr. Stovall assigned the Claimant a 5% impairment of the whole person for both his lumbar and cervical spine. (APA #4, p. 38). Dr. Stovall agreed with the future pain management treatment recommendations made by Dr. Patel. (APA #2, p. 38).

At the hearing, the Claimant testified that his work history consisted of having served in the Army, working as a manager for two restaurant chains for over 20 years combined, and working as a tractor trailer driver. (Hrg. Tran., p. 10, l. 13 to p. 11, l. 11). The Claimant stated that he had been

working as a tractor trailer driver since 1996. (Hrg. Tran., p.11, l. 10). The Claimant said that he had never performed a job which was not physically strenuous in nature as the restaurant manager jobs involved his doing a lot of kitchen work and tasks such as unloading the trucks. (Hrg. Tran., p. 11, ls. 11-21). The Claimant testified that after he was injured on October 5, 2007, he attempted to return to work as a truck driver for approximately seven weeks in the winter and the early spring of 2008. (Hrg. Tran., p. 20, ls. 3-6). The Claimant testified that he was unable to tolerate his increased pain after he attempted to return to work driving a truck and he went back to Dr. Patel. (Hrg. Tran., p. 19, l. 23 to p. 20, l. 2). As noted previously, when Dr. Patel examined the Claimant on March 17, 2008, he concluded, "I also recommended that he not work until he has had this procedure in order to prevent worsening of his lower back pain symptoms. Given the nature of his position requiring extensive driving in a sitting position, this will only exacerbate his pain complaints, even with the radio-frequency ablation. As such, I have discussed with the patient that it may be in his best interest to look for a new position or alternate position at work." (APA #2, p. 26). Dr. Patel took the Claimant completely out of work again on March 17, 2008. (APA #2, p. 63).

The Claimant testified that he had been unable to work since he last worked for the defendant employer in March of 2008. (Hrg. Tran., p. 20, ls. 11-13). The Claimant said he was no longer employed with the defendant employer because it closed its Charleston operation. (Hrg. Tran., p. 21, ls. 11-17). The Claimant said that he would definitely not be able to return to work as a truck driver in his current condition because of the continuing pain he was experiencing in his neck and back, and he also did not feel that he would be able to do any of the other jobs he had previously done because of the physical requirements. (Hrg. Tran., p. 21, l. 18 to p. 22, l. 7). The Claimant testified that he has been working diligently with the South Carolina Vocational Rehabilitation

Department, including his attending a four-week pain management program in Columbia and his getting qualified to participate in a computer programming class, which he is scheduled to start in July of 2009. (Hrg. Tran., p. 22, ls. 8-23). The Claimant testified that he was aware that there no guarantees but it was his hope that he would be able to return to work after he finishes the computer programming course. (Hrg. Tran., p. 23, ls. 10-17). The Claimant also testified that he had contacted other prospective employers but he had yet to receive any job offers.

In describing his current symptoms, the Claimant stated that he had pain in his right foot, his left leg, his low back, his neck, and in his left arm. (Hrg. Tran., p. 25, l. 19 to p. 26, l. 8). The Claimant said that he was using a cane which he had been given by the vocational rehabilitation department when he went through the pain management program in Columbia. (Hrg. Tran., p. 27, ls. 2-13).

The Claimant had two vocational evaluations completed, both of which support the Claimant's entitlement to a recovery of permanent, partial disability benefits under §42-9-20. Rena Spencer, a rehabilitation nurse and certified rehabilitation consultant, performed a vocational assessment for the defendants on December 22, 2008. In summarizing the Claimant's work abilities, Ms. Spencer stated, "He does have limitations. He can work sedentary duties. He would need to alternate positions frequently between sitting, standing, and walking. During the interview he demonstrated a need to change positions. It would be immediately obvious that he has a handicap upon interview as he walks with a significant limp and requires a cane. This will limit his opportunity when interviewing with other workers without limitations." (Defendant's APA #4, p. 40).

In conclusion, Ms. Spencer stated:

Mr. Bolds is a 50 year old male attempting to locate work while having work restrictions. I would be supportive of a plan to get additional training in computer programming and or data entry. S.C. Department of Vocational Rehabilitation recommended ergonomic evaluations to determine helpful sitting and job site adaptations when a job was located. It will be difficult for Mr. Bolds to locate employment independently. Job shadowing and placement assistance available through SC Department of Vocational Rehabilitation will be helpful in demonstrating to an employer his abilities. He is on the right track by utilizing the resources through vocational rehabilitation. I believe he would be most successful in a part time position until his pain can be better managed. (Defendant's APA #4, p. 40).

David Price, a certified rehabilitation counselor, performed a vocational assessment of the Claimant on November 26, 2008. Mr. Price noted that the Claimant spent a significant portion of each day reclining or laying in bed. (Claimant's Exh. A, p. 85). He also noted that the Claimant was continuing to take a number of medications, including Oxycontin, Lyrica, and Imitrex for migraine headaches, and that the Claimant was using duralgesic pain patches. (Claimant's Exh. A, p. 86). Mr. Price concluded that the Claimant was totally and permanently disabled. In reaching this opinion, he indicated the following:

At age 50, Mr. Bolds is rapidly approaching older work status. He has been out of the work force for greater than one year. He has significant physical limitations and need for work place modification. Mr. Bolds takes narcotic medications that impair physical coordination, memory, and cognitive function. As such his access to employment opportunities will be drastically reduced. Certainly he will not be capable of returning to work as a truck driver. He has exclusively worked at medium physical demand jobs that required good physical condition and long hours of sitting or being on his feet . . . Unfortunately, the level of the chronic pain Mr. Bolds endures and his inability to sit/stand greater than 60 minutes at a time, his use of narcotic medications combined with no industrial capacity for bending, stooping, squatting, climbing, or lifting greater than 15 pounds will make it extremely difficult for him to be competitive for a job. If he lands an opportunity, his propensity for repetitive pain flares and lack of stamina will certainly cause excessive work place absence and make it hard for him to sustain employment. He would be considered unreliable. This combination of factors most likely renders Mr. Bolds completely disabled. (Claimant's Exh. A, p. 88).

Mr. Price did note Mr. Bolds's diligent efforts to be retrained for less physical work through the South Carolina Vocational Rehabilitation Department. (See Claimant's Exh. B). Mr. Price indicated that if the Claimant was successful in his efforts to be trained and to procure employment as a computer programmer, his annual income would be approximately \$35,000.00. (Claimant's Exh. A, p. 88). An annual income of \$35,000.00 would result in an average weekly wage of \$673.08. At the hearing, the parties stipulated that the Claimant's pre-accident average weekly wage was \$2,000.00. Therefore, a post-accident average weekly wage of \$673.08 would be \$1,326.92 less than the Claimant's pre-accident average weekly wage. As a result, the appropriate compensation rate for an award of disability benefits under §42-9-20 would be \$645.94. Mr. Price was not optimistic about the Claimant's efforts to find work as a computer programmer as he noted, "I am not optimistic about his chances for success. In his current condition, I do not believe that he can work." (Claimant's Exh. A, p. 88).

Given the evidence summarized above, there is no evidentiary basis for not awarding the Claimant a permanent disability award under §42-9-20. All of the medical evidence confirms that the Claimant is unable to return to work as a truck driver (where he was making \$2,000.00 a week) and even the defendants' vocational consultant confirmed the difficulties the Claimant would have in finding future employment while indicating that she supported his efforts to try to return to work as a computer programmer after completing the vocational rehabilitation department program. The evidence established that the Claimant's earning capacity as a computer programmer would be \$35,000.00 a year. In light of the evidence presented, the only basis for the hearing Commissioner limiting the Claimant's award to §42-9-30 is the hearing Commissioner's position that an injured worker is limited to such an award unless there is evidence of an "impairment" to more than one

Aug. 12, 2007 4:22 PM NO. 1127 10

scheduled body party. This conclusion is not consistent with South Carolina law.

The Commissioner's holding was based on the statement in Singleton that "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 scheduled compensation." Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960). The Commissioner's analysis leaves out the important part of Singleton where the Court states, "to obtain compensation in addition to that scheduled for the injured member, Claimant must show that some other part of his body has been 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 matter of law without further inquiry. However, if the actual injury is confined to only 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.); 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). (See Peoples v. Henry Co., 364 S.C. 123, 611 S.E.2d 527 (Ct. App. 2005) (award of 68% to the leg affirmed because of ruptured achilles tendon injury not limited to foot because pain traveled up to leg); Mixon v. Westinghouse Electric 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 a member of body requires evidence of direct injury to member itself).

It does not matter that Claimant's left arm and left leg pain are a radicular component of his

spine injury rather than a direct injury to the arm or the leg. A Claimant must show either injuries to multiple body parts or if the injury is confined to the scheduled member, he must show impairment (meaning physical deficiency) to some other part of the body because of such injury. Lumbar and cervical radiculopathy affect the legs and arms, causing a physical deficiency. As such, radiculopathy is all that is needed to allow an injured worker to seek compensation for general disability.

As further evidence of the appropriate focus being on whether more than one body part has been affected, Claimant's counsel refers to the language on the Workers' Compensation Commission's Form 14B, which asks a treating doctor to address the "body parts injured" and the "body parts affected." (Emphasis added).

The evidence in this case is clear that the Claimant has sustained a substantial loss of earnings capacity. As an award under §42-9-20 would be larger than the single member award made by the Commissioner, the full Commission should reverse and enter an award for general disability under §42-9-20. The Commission is required to apply whichever statutory provision provides the greatest benefits for the Claimant. The policy behind the general disability portion of the Act provides the Claimant with the opportunity to establish a disability greater than the presumptive disability provided under the scheduled member section. Brown v. Owens Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994).

This concept is practically identical to North Carolina's doctrine of munificent remedy. It would defeat the purposes of the Act to deny a claimant of the opportunity to establish a greater disability than he would receive under the scheduled member statute. Under this doctrine, "if two remedies are created side by side under the statute, the Claimant should have the benefit of the more

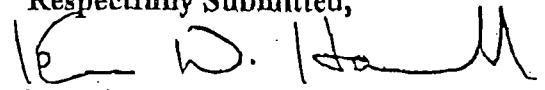
favorable." Gupton v. Builders Transport, 357 S.E.2d 674 (N.C. 1987), Larson's The Law of Workman's Compensation §58.25 (1987). In other words, where a Claimant has established entitlement to a greater award under §42-9-10 or §42-9-20 than he would receive for a scheduled member award, the Commission is required to make the most favorable award. See McLean v. Eaton Corp., 481 S.E.2d 289 (N.C. App. 1997) (error for the Commission to award partial permanent disability under scheduled injury statute without assessing whether or not the lost income statute would provide a munificent remedy).

CONCLUSION

For the foregoing reasons, this Commission should reverse the Order of the hearing Commissioner and award the Claimant benefits for permanent loss of earnings capacity under §42-9-20 in the amount of \$162,048.72 (294.1584 weeks times \$645.94, minus \$27,959.96, the amount paid for the §42-9-30 award).

Respectfully Submitted,

By:



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North Charleston, South Carolina

May 21, 2009.

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0715675

Francis J. Bolds, Jr.,)
)
 Claimant,)
)
 vs.)
)
UTI Integrated Logistics, Inc.,)
 Employer,)
)
American Home Assurance Company,)
 Carrier,)
 Defendants.)

RESPONDENTS' BRIEF

This matter was heard before the Single Commissioner on March 3, 2009. The issues to be determined were as set forth in forms 50, 51, and 21. The claimant was seeking of finding permanent and total disability under either §42-9-10 or §42-9-30 or permanent partial disability based upon §42-9-20. The defendants contended that the claimant had reached Maximum Medical Improvement and had sustained less than 50% permanent disability of the back. They further contended that he was entitled only to a permanent partial disability to the back as a scheduled member under §42-9-30.

The Single Commissioner found that the claimant had sustained 20% permanent disability to his back and further found that the defendants were entitled to a credit for overpayment for temporary total compensation from November 5, 2008. He also determined that the claimant was entitled to additional medical treatment pursuant to the Dodge case.

The claimant has appealed this decision alleging that the Single Commissioner erred in limiting permanent disability to a scheduled member disability under §42-9-30.

The Respondents contend that substantial evidence exists to support the Single Commissioner's finding that the claimant sustained only an injury to a single scheduled member and therefore permanent partial disability awarded §42-9-30 was appropriate.

Standard of Proof

The Appellate Panel is the ultimate fact-finder in workers' compensation cases and is not bound by the Single Commissioner's findings of fact. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). When reviewing evidence in the award of the Single Commissioner, the Full Commission makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984); S.C. Code Ann. § 42-17-50 (1985). South Carolina law is clear that a Single Commissioner's award may not rest on surmise, conjecture, or speculation; rather, it must be founded on evidence of sufficient substance to afford it a reasonable basis. Linen v. Ruscon Const. Co., 286 S.C. 67, 332 S.E.2d 211 (1985) (emphasis added).

A claimant who asserts his right to compensation must establish by a preponderance of the evidence the facts that will entitle him to an award under the Workers' Compensation Act. Polk v. E.I. duPont de Nemours Co., 250 S.C. 468, 158 S.E.2d 765 (S.C. 1968). A claimant has the burden of proving the facts essential to his right to compensation, and an award cannot be based on conjecture or speculation. Where the only reasonable inference from the record is that the claimant failed to sustain the burden, it would be futile to remand the case. Shealy v. Algernon Blair, 250 S.C. 106, 156 S.E.2d 646 (S.C. 1967).

ARGUMENT

- I. Substantial evidence supports the Single Commissioner's finding that the claimant had sustained an injury only to a scheduled member and therefore permanent partial disability was appropriate under 42-9-30.

The claimant was, at the time of the hearing, 50 years old. He had a high school diploma and some training in computer programming. He had worked approximately 23 years in restaurant management for two restaurants before getting his CDL in 1996.

The claimant was injured when the truck he was driving was rear-ended by another truck on October 5, 2007. Although the Claimant initially had complaints of "legs, right heel of foot, lower back, neck, eyes and head" (APA p 26), there was no indication of any permanent injury to any body part but the back and neck. The claimant was conservatively treated primarily by Dr. Patel beginning October 15, 2007. Dr. Patel released him at Maximum Medical Improvement on July 31, 2008 with 5% impairment for the whole man based upon combined impairments of the lumbar and cervical spine. Dr. Patel also noted that the claimant would need continued conservative pain management and stated the claimant could return to work on light duty. At no time did Dr. Patel recommend surgery.

The Claimant was also evaluated from a surgical standpoint by Dr. A. Mason Ahearn, July 30, 2008. Dr. Ahearn noted that the Claimant had a 26% impairment to the whole man based upon regional cervical and lumbar spinal treatments. Dr. Ahearn concurred with the recommendation of continued conservative treatment for the back.

The claimant was also seen by Dr. Don Stovall who was in the same medical group as Dr. Patel but was an orthopedic surgeon. Dr. Stovall noted at the time of his evaluation that the

claimant had 10% impairment to the whole man based upon the regional impairments to both the cervical and lumbar spine. This evaluation which took place November 5, 2008 concurred with the recommendation of continued conservative pain management.

There was an issue of the involvement of other body parts in addition to the back. Specifically, the Claimant alleged that his pain in his left leg was constant and so significant that he used a cane all of the time. The Claimant testified that he had been given the cane by a physical therapist at South Vocational Rehabilitation Center in October, 2008. The Claimant also testified that he had a limp during the course of his treatment and had no explanation as to why the reports of Dr. Patel and Dr. Ahearn stated otherwise.

Dr. Patel's initial evaluation performed on 10/15/07 indicated that "there is an antalgic gait without assistive device. He is unable to walk on toes and heels secondary to pain" (APA p. 31) According to Dr. Patel's records, however, by the next appointment, on 11/1/07, the claimant "showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty." (APA p. 34) This observation was consistent throughout the course of Dr. Patel's treatment of the Claimant.

Dr. Ahearn also noted that, at the time of his evaluation on July 30, 2008, "he had a normal gait without limp. He stood normally and got on and off the examining table in a coordinated manner...The patient displayed no braces or assistive devices." (APA p. 18)

The Claimant was also seen by Dr. Stovall on 11/5/08. Dr. Stovall noted for the first time that the Claimant walked with a cane. This was the first mention of use or need for a cane by a medical doctor.

With regard to any other injuries, specifically to the right heel and eyes, there was no evidence that the Claimant had any permanent problem with those areas.

The medical evidence reflects that the only injury responsible for the claimants' disability is the injury to his back. Although he might have had radiculopathy and pain in his legs, the medical evidence is clear that the cause of the pain was in his back.

In Singleton v Young Lumber, 236 SC 454; 114 S.E. 2d 837; 1960, the Court held when an injury is confined to a scheduled member and there is no impairment of any other part of the body because of such injury, the employee is limited to compensation under the scheduled member statute. The Court further held that where it is only injury to single member that rendered the Claimant disabled, the employee was limited to recovery for that scheduled member only, under the scheduled member statute.

In the present case, there is no evidence of any other permanent injury to any other body part but the back. Had the Claimant not injured his back (and neck) in this accident, he would not have radicular pain in his legs. Radiculopathy is the manifestation of the injury to the back and is not evidence of impairment to the legs.

Therrell v Jerry's Inc., 370 SC 22; 633 S.E. 2d 893; 2006 held that the situs of the injury was controlling as to type of disability award available. The Court specifically rejected the functional limitation position, which could arguably have allowed for a finding in the present case of impairment and disability to the leg as well as the back. The Court stated instead that the focus is on the site of the injury. In the present case, the site of the injury is the back (and neck). All of the medical treatment has been rendered to the back. The radiculopathy for which the Claimant has been treated might constitute a "functional limitation" but Therrell held that was not sufficient to establish entitlement to a disability award.

In conclusion, the Single Commissioner's ruling is supported by the substantial evidence in the file and and therefore, it is respectfully requested that the Decision and Order be affirmed in its entirety.

Respectfully Submitted,

YOUNG CLEMENT RIVERS, LLP

BY: *E. Courtney Gruber*
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Attorneys for the Employer/Carrier

Charleston, South Carolina

May 29, 2009

STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Avery Wilkerson, Jr., Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0715675

Francis J. Bolds, Jr., ... Appellant,

v.

UTI Integrated Logistics, Inc., and
American Home Assurance Company, ... Respondents.

NOTICE OF APPEAL

Francis J. Bolds, Jr. appeals the decision and order of the South Carolina Workers' Compensation Commission's Appellate Panel dated August 3, 2009, which affirmed the decision of the Commission's Hearing Commissioner dated March 12, 2009. Pursuant to S.C. Code Ann. § 42-17-60 (Supp. 2008), Mr. Bolds states the following grounds for the appeal as well as the alleged errors of law:

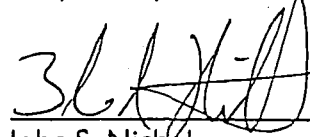
1. The appellate panel erred as a matter of fact in finding that there was no evidence of significant permanent impairment to Mr. Bolds' arms, legs, neck, and feet.
2. The appellate panel erred as a matter of fact in finding that the only

impairment ratings presented to the Workers' Compensation Commission were to Mr. Bolds' back.

3. The appellate panel erred as a matter of law in analyzing Mr. Bolds' entitlement to a general disability award on the basis of his ability to show injuries to more than one body part. Under South Carolina law, a claimant may obtain a general disability award where a single injury, though focused on a scheduled body part, impairs the claimant's use of other body parts and results in a loss of earning capacity.

September 1, 2009

Respectfully submitted,



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T.G.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0715675

EMPLOYEE/CLAIMANT: FRANCIS BOLDS

EMPLOYER: UTI

INSURER: AMERICAN HOME ASSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 3RD DAY OF
MARCH, 2009, COMMENCING AT THE HOUR OF 11:09 A.M., IN
NORTH CHARLESTON, SOUTH CAROLINA, BEFORE THE HONORABLE
DAVID W. HUFFSTETLER, ATTENDED BY COUNSEL AS FOLLOWS:

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VERBATIM REPORTER

DIXY MOORE TURNER ASSOC., INC.

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ATTORNEY FOR THE DEFENDANT.

I N D E X

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FRANCIS BOLDS:

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CERTIFICATE OF NOTARY PUBLIC.....	42
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* RECORDED TAPES RETAINED FOR SIX (6) MONTHS FROM DATE
OF CERTIFICATION.

PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
PUBLIC FOR THE STATE OF SOUTH CAROLINA, BY CONSENT OF ALL
PARTIES.

* * * * *

BY COMMISSIONER HUFFSTETLER:

THIS IS WORKERS' COMPENSATION FILE NUMBER
0715675. THE CASE OF THE CLAIMANT, FRANCIS BOLDS.
VERSUS THE EMPLOYER, U.T.I. THE CARRIER IS AMERICAN
HOME ASSURANCE COMPANY. THE CLAIMANT IS PRESENT.
HE IS REPRESENTED BY ATTORNEY KENNETH W. HARRELL.
THE EMPLOYER/CARRIER IS REPRESENTED BY ATTORNEY E.
COURTNEY GRUBER. THE CASE IS SET TO CONSIDER ISSUES
OUTLINED IN FORMS 50 AND 51, AND ALSO TO CONSIDER AN
APPLICATION FILED BY THE DEFENSE TO STOP PAYMENT OF
COMPENSATION. THE PARTIES AGREE TO AN AVERAGE
WEEKLY WAGE OF \$2,000, WITH A COMPENSATION RATE OF
\$645.94. DATE OF ACCIDENT IS OCTOBER 5, 2007. ARE
THERE ANY OBJECTIONS TO THOSE ITEMS, JURISDICTION,
VENUE, OR ANY OF THE A.P.A. SUBMISSIONS?

BY MR. HARRELL:

NO, SIR.

BY MS. GRUBER:

NO, SIR.

BY COMMISSIONER HUFFSTETLER:

1 WITHOUT OBJECTION, THE COMMISSION FILE BECOMES
2 PART OF THE RECORD WITH THE EXCEPTION OF SELF
3 SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
4 REPORTS.

5 THE DEFENSE TAKES THE POSITION THAT THE
6 CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT ON JULY
7 31, 2008. THEY SEEK CREDIT FOR ALL TEMPORARY
8 COMPENSATION PAID AFTER THAT DATE. THEY CONCEDE
9 SOME PERMANENT PARTIAL DISABILITY TO THE BACK.

10 THE CLAIMANT TAKES THE POSITION HE SUFFERED
11 INJURIES TO HIS BACK, HIS LEFT LEG, HIS NECK, LEFT
12 ARM, AND HIS RIGHT FOOT. HE SEEKS AN AWARD OF
13 COMPENSATION FOR PERMANENT AND TOTAL DISABILITY. HE
14 ASKS THAT TO BE PAID IN A LUMP SUM WITH UTICA MOHAWK
15 LANGUAGE. HE WOULD TAKE AN ALTERNATE POSITION OF
16 COMPENSATION UNDER SECTION 42-9-20M AND IN THAT,
17 TAKING THE POSITION THAT HIS EARNINGS HAVE REDUCED
18 FROM \$2,000 PER WEEK TO \$673.08.

19 I WOULD NOTE IN REVIEWING THE FILE THERE WAS A
20 CONSENT ORDER DATED, WHICH WAS FILED ON JANUARY 30,
21 2009, FOR ADDITIONAL MEDICAL TREATMENT, SENDING THE
22 CASE TO THE GENERAL FILES AND THEN THE PARTIES EACH
23 FILED FOR HEARING. FORM 50, ACTUALLY, THREE DAYS
24 BEFORE IT WAS APPROVED, AND THE FORM 21 THE DAY IT
25 WAS APPROVED.

1 HAVE I STATED YOUR POSITIONS CORRECTLY?

2 BY MR. HARRELL:

3 YES, SIR, COMMISSIONER.

4 BY MS. GRUBER:

5 YEAH. COMMISSIONER, WE DON'T -- IF THERE'S A
6 FINDING OF PERMANENCY, I DON'T HAVE ANY OBJECTION TO
7 A LUMP SUM PAYMENT EXCEPT IF THERE'S A FINDING AS TO
8 PERMANENT PARTIAL DISABILITY UNDER 42-9-20. WE
9 WOULD OBJECT TO A LUMP SUM AWARD IN THAT EVENT. AND
10 ALSO, I'D LIKE TO -- IT IS OUR POSITION THAT THERE
11 IS, IT'S ONLY A SINGLE MEMBER ISSUE, SO THE 42-9-20
12 IS NOT APPLICABLE. AND ALSO, THAT THE EVIDENCE THAT
13 COULD ARGUABLY SUPPORT A PERMANENT LOSS OF EARNINGS
14 IS SPECULATIVE, YOUR HONOR, SO. BUT OTHER THAN
15 THAT, WE AGREE WITH EVERYTHING ELSE YOU SAID.

16 BY COMMISSIONER HUFFSTETLER:

17 OKAY.

18 FRANCIS BOLDS,

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

20 BY COMMISSIONER HUFFSTETLER:

21 PLEASE STATE YOUR NAME, PLEASE.

22 BY THE WITNESS:

23 FRANCIS BOLDS.

24 BY COMMISSIONER HUFFSTETLER:

25 GO AHEAD, SIR.

1 BY MR. HARRELL:

2 THANK YOU.

3 DIRECT EXAMINATION BY MR. HARRELL:

4 Q. MS. BOLDS, LET ME ASK YOU A FEW BACKGROUND
5 QUESTIONS. HOW OLD ARE YOU NOW?

6 A. I'M 50 YEARS OLD.

7 Q. OKAY. YOU TURN 51 IN A COUPLE OF WEEKS?

8 A. YES, SIR.

9 Q. ALL RIGHT. BEFORE THIS WORK ACCIDENT ON OCTOBER 5,
10 2007, WHAT WAS THE GENERAL STATE OF YOUR HEALTH?

11 A. PRETTY GOOD. DRIVING A TRUCK, YOU KNOW, HAVING A
12 GOOD TIME.

13 Q. OKAY. DID YOU HAVE ANY PROBLEMS DOING THE PHYSICAL
14 TASKS THAT WOULD BE RELATED TO DRIVING A TRACTOR
15 TRAILER TRUCK BEFORE OCTOBER 5, 2007?

16 A. NO, I DIDN'T.

17 Q. ALL RIGHT, SIR. HAD YOU EVER HAD ANY PRIOR PROBLEMS
18 WITH YOUR BACK BEFORE OCTOBER 5, 2007?

19 A. NO.

20 Q. HAD YOU EVER HAD ANY PRIOR PROBLEMS WITH YOUR NECK
21 BEFORE OCTOBER 5, 2007?

22 A. I DID HAVE A MINOR CAR ACCIDENT AROUND '98, I
23 BELIEVE, WHICH I SAW A CHIROPRACTOR. I WAS STILL
24 WORKING AT THE TIME. JUST DID SOME MINOR
25 ADJUSTMENTS AND I WAS, NEVER HAD ANY PROBLEMS.

1 Q. AND HOW LONG DID THAT CHIROPRACTIC TREATMENT LAST
2 WHEN YOU HAD YOUR PREVIOUS NECK INJURY ABOUT TEN
3 YEARS AGO?

4 A. ABOUT SIX WEEKS.

5 Q. ALL RIGHT, SIR. AND WERE YOU HAVING ANY PROBLEMS
6 WITH YOUR NECK IMMEDIATELY BEFORE THIS WORK ACCIDENT
7 ON OCTOBER 5, 2007?

8 A. NO.

9 Q. ALL RIGHT, SIR. HAD YOU EVER HAD ANY PRIOR PROBLEMS
10 WITH YOUR LEGS, SPECIFICALLY, YOUR LEFT LEG BEFORE
11 OCTOBER 5, 2007?

12 A. NEVER.

13 Q. HAD YOU EVER HAD ANY PROBLEMS WITH YOUR ARMS BEFORE
14 OCTOBER 5, 2007?

15 A. I HAD A SHOULDER OPERATION ON MY RIGHT SHOULDER IN
16 '74. AND OTHER THAN THAT, NEVER HAD ANY PROBLEMS.

17 Q. HAD YOU EVER HAD PROBLEMS WITH ANY RADIATING PAIN
18 GOING DOWN INTO ONE OF YOUR ARMS BEFORE THIS WORK
19 ACCIDENT?

20 A. NO.

21 Q. ALL RIGHT, SIR. HAVE YOU EVER HAD ANY PREVIOUS
22 WORKERS' COMPENSATION CLAIMS PRIOR TO THIS CLAIM?

23 A. NO. NO, NOT AS FAR AS THAT. I DID HAVE A SMALL
24 SETTLEMENT AFTER MY OTHER ACCIDENT WHICH COVERED MY
25 MEDICAL EXPENSES, BUT OTHER THAN THAT, NO.

1 Q. THAT WAS YOUR CAR ACCIDENT?

2 A. YES.

3 Q. ALL RIGHT. I BELIEVE IN YOUR DEPOSITION YOU
4 TESTIFIED THAT YOU GOT ABOUT \$2,000 FROM THAT?

5 A. YES. YES.

6 Q. DOES THAT SOUND RIGHT?

7 A. YES.

8 Q. ALL RIGHT, SIR. ALL RIGHT. CAN YOU TELL US BRIEFLY
9 WHAT YOUR EDUCATIONAL BACKGROUND IS?

10 A. HIGH SCHOOL GRADUATE FROM JAMES ISLAND HIGH. I TOOK
11 SOME COURSES OVER AT TRIDENT TECH, BUT THAT NEVER
12 PANNED OUT. IN 2005, I DECIDED TO GO BACK TO SCHOOL
13 AND WENT TO BETA TECH FOR COMPUTER NETWORKING, AND
14 GOT A CERTIFICATE FROM THAT.

15 Q. OKAY. AND SO, THE CLASSES AT TRIDENT TECH, WAS THAT
16 BACK IN THE EARLY 1980s, ABOUT 25 YEARS OR SO AGO?

17 A. YES.

18 Q. ALL RIGHT. BUT YOU DID GET A CERTIFICATE IN
19 COMPUTER NETWORKING FROM BETA TECH?

20 A. YES.

21 Q. HERE WITHIN THE LAST FEW YEARS?

22 A. YES, 2006.

23 Q. OKAY. AND OTHER THAN THAT CERTIFICATION RELATED TO
24 THOSE STUDIES, DO YOU HAVE ANY OTHER SPECIAL
25 CERTIFICATES OR QUALIFICATIONS AS IT RELATES TO YOUR

1 WORK HISTORY?

2 A. I HAD SAFETY AWARDS FROM DRIVING.

3 Q. AND YOU HAVE A CERTIFIED C.D.L. DRIVER'S LICENSE AT
4 THIS POINT?

5 A. YES, I DO. I HAVE THAT, TOO.

6 Q. OKAY. YOU MENTIONED YOUR COMPUTER STUDIES. HAVE
7 YOU EVER WORKED AS A COMPUTER PROGRAMMER BEFORE?

8 A. NO, NEVER.

9 Q. OKAY. ALL RIGHT. AND AS FAR AS YOUR WORK HISTORY
10 IS CONCERNED, CAN YOU JUST BRIEFLY TELL US WHAT SORT
11 OF WORK YOU HAVE DONE IN THE PAST UP UNTIL THE TIME
12 OF THIS ACCIDENT?

13 A. WELL, I WAS IN THE ARMY. I STAYED IN FOR ABOUT A
14 YEAR, BUT BECAUSE OF MY RIGHT SHOULDER, IT CAUSED ME
15 TO COME OUT, AND I DID GET AN HONORABLE DISCHARGE ON
16 THAT. I THEN WORKED FOR TWO DIFFERENT RESTAURANT
17 COMPANIES, STEAK AND ALE AND APPLEBEE'S. AT STEAK
18 AND ALE, I WAS A TRAINER/MANAGER. I OPENED STORES
19 ACROSS THE COUNTRY. CAME BACK TO CHARLESTON AND WE
20 BECAME A TRAINING STORE, SO ALL OF OUR MANAGERS CAME
21 THROUGH THERE. WITH APPLEBEE'S, I, EXCUSE ME, I
22 WORKED AS A TRAINER, OPENER, AND A MANAGER. SAME
23 FUNCTIONS, BUT THE JOB WAS OFFERED TO ME IN
24 CHARLESTON TO BECOME A FULL-TIME TRAINING MANAGER
25 HERE, AND I TOOK THAT AND DOWN THE ROAD BECAME A

1 GENERAL MANAGER.

2 Q. OKAY. AND THOSE TWO RESTAURANTS, I BELIEVE YOU
3 WORKED FOR THOSE FOR SOMEWHERE BETWEEN 20 TO 25
4 YEARS. DOES THAT SOUND RIGHT? THOSE TWO CHAINS?

5 A. YES. STEAK AND ALE WAS TEN YEARS. APPLEBEE'S WAS
6 13.

7 Q. OKAY. AND THEN, YOU STARTED WORKING AS A TRACTOR
8 TRAILER DRIVER. WAS IT THE LATE 1990s WHEN YOU
9 STARTED DOING THAT WORK?

10 A. YES, AROUND '96.

11 Q. OKAY. YOU MENTIONED THESE OTHER JOBS. HAVE YOU
12 EVER HELD A JOB WHICH WAS NOT PHYSICALLY STRENUOUS
13 IN NATURE?

14 A. OH, NO. NEVER.

15 Q. WHAT ABOUT THE RESTAURANT WORK? I MEAN, WHAT SORT
16 OF PHYSICAL REQUIREMENTS WERE INVOLVED IN DOING
17 THOSE TWO JOBS?

18 A. A LOT OF PAPER WORK. A LOT OF ON HANDS IN ALL
19 AREAS. BEING A GENERAL MANAGER OR A TRAINER, I DID
20 A LOT OF KITCHEN WORK, UNLOADING TRUCKS, OUT ON THE
21 FRONT FLOOR. ALWAYS ON MY FEET.

22 Q. OKAY. HAVE YOU EVER HELD WHAT I WOULD REFER TO AS A
23 DESK JOB?

24 A. NO, NOT REALLY. I MEAN, YOU DO A LITTLE BIT OF
25 PAPER WORK, BUT YOU KNOW, THAT'S, YOU KNOW, THE

1 RESTAURANT BUSINESS.

2 Q. OKAY. HOW LONG HAD YOU BEEN WITH U.T.I., THE
3 COMPANY YOU WERE WORKING FOR WHEN YOU WERE HURT,
4 BEFORE YOUR OCTOBER 5, 2007, ACCIDENT?

5 A. SINCE 2000.

6 Q. SO, RIGHT AT SEVEN YEARS?

7 A. YES.

8 Q. OKAY. AND WHAT WAS YOUR JOB WITH U.T.I.?

9 A. I WAS A DRIVER FOR THEM.

10 Q. TRACTOR TRAILER DRIVER?

11 A. YES, SIR.

12 Q. ALL RIGHT. AND I'M FAMILIAR WITH WHAT A TRACTOR
13 TRAILER DRIVER DOES, BUT WHAT REGIONS DID YOU COVER
14 AS FAR AS THE DRIVING THAT YOU WERE DOING?

15 A. I DID A LOT IN THE SOUTHEAST, BUT EVERY ONCE IN A
16 WHILE, I, YOU KNOW, I'D VOLUNTEER WHERE NOBODY ELSE
17 WOULD AND TAKE A LOAD OUT WEST OR GO MIDWEST STATES,
18 UP NORTH, YOU KNOW, ANYTHING AND EVERYTHING I COULD.

19 Q. OKAY. ALL RIGHT. BUT THIS WAS NOT JUST LOCAL
20 DELIVERIES ---

21 A. OH, NO, NO. NO.

22 Q. OKAY. ALL RIGHT. AND FROM A LIFTING STANDPOINT, I
23 JUST WANT TO ASK YOU ABOUT A FEW PHYSICAL
24 REQUIREMENTS. WHAT SORT OF LIFTING WAS INVOLVED
25 WITH THIS JOB, THE TRACTOR TRAILER POSITION FOR

1 U.T.I.I.?

2 A. NOT A WHOLE LOT. A LOT OF IT WAS NO TOUCH FREIGHT,
3 BUT, EXCUSE ME, EVERY ONCE IN A WHILE, YOU WOULD
4 HAVE TO, YOU'D GET TO A STOP WHERE YOU MIGHT HAVE TO
5 GET IN THE BACK OF THE TRUCK AND HELP THE CUSTOMER A
6 LITTLE BIT, IF YOU WANT TO GET BACK, AND YOU KNOW,
7 GET ANOTHER RUN. USUALLY AT, YOU KNOW, SHORT
8 HANDED, BUT YOU KNOW, ALWAYS PITCH A HAND.

9 Q. AND WHEN YOU WERE DOING THAT SORT OF WORK, HELPING
10 OUT WHOEVER YOU WERE DELIVERING THE GOODS TO, CAN
11 YOU GIVE US AN ESTIMATE OF THE AMOUNT OF WEIGHT THAT
12 YOU WOULD BE LIFTING THEN?

13 A. TWENTY-FIVE, 50 POUNDS.

14 Q. OKAY. OBVIOUSLY, I TAKE IT THERE WAS A GOOD BIT OF
15 CONTINUOUS SITTING IN THAT JOB?

16 A. OH, YES. LIKE I SAID, DRIVING OUT WEST, I MEAN,
17 THERE'S TIMES WHERE, YOU KNOW, YOU'RE DRIVING ONE
18 WAY FOR THREE AND FOUR DAYS, OR YOU KNOW, SOMETHING
19 LIKE THAT.

20 Q. OKAY. HOW ABOUT BENDING, STOOPING, AND SQUATTING?
21 WAS THAT REQUIRED IN THE JOB?

22 A. ALWAYS. GETTING IN THE TRUCK, GOING UP ON THE
23 CATWALK, CLIMBING UP IN THE BACK OF THE TRUCK.

24 Q. YOU'RE REFERRING TO CLIMBING. HOW ABOUT BENDING,
25 STOOPING, AND SQUATTING?

1 A. DOING PRE-TRIPS TO THE TRUCK. PRETTY MUCH, YOU'D
2 HAVE TO GET UNDER AND CHECK EVERYTHING UNDERNEATH
3 YOUR TRUCK AND TRAILER.

4 Q. SUCH AS?

5 A. CHECKING BRAKES ON THE TRUCK AND TRAILER. CHECKING
6 YOUR AIR LINES, THINGS OF THAT SORT. JUST BASICALLY
7 DOING A FULL PRE-TRIP OF YOUR TRUCK. CHECKING THE
8 TIRES.

9 Q. OKAY. AND YOU WERE TALKING ABOUT CLIMBING. WHAT
10 SORT OF CLIMBING WAS INVOLVED WITH THE JOB?

11 A. CLIMBING IN AND OUT OF MY TRUCK ALL THE TIME,
12 GETTING UP ON THE CATWALK, CHECKING THE AIR LINES,
13 HOOKING UP AIR LINES, MAKING SURE THE TRAILER IS
14 HOOKED UP. SOMETIMES YOU'D HAVE TO GO -- WELL, ALL
15 THE TIME, YOU'D GO IN THE BACK OF THE TRUCK
16 ESPECIALLY IF YOU WANT TO INSPECT THAT, SO YOU'RE
17 ALWAYS CLIMBING.

18 Q. ALL RIGHT. THIS IS AN ADMITTED ACCIDENT, BUT CAN
19 YOU JUST BRIEFLY DESCRIBE HOW WERE HURT ON OCTOBER
20 5, 2007?

21 A. I HAD JUST PICKED UP A LOAD OF PAPER IN ALABAMA ON
22 I-20. I WAS COMING BACK. I HAD TO CROSS THE
23 GEORGIA STATE LINE. STOPPED AT THE REST AREA FOR A
24 MINUTE JUST TO STRETCH AND CALL A BUDDY OF MINE.
25 AFTER I FINISHED, GOT IN THE TRUCK, CAME OUT OF THE

1 REST AREA, GOT ABOUT A QUARTER OF A MILE PAST THE
2 REST AREA AND I WAS SLAMMED IN THE REAR. THE TRUCK
3 THAT HIT ME HIT ME SO HARD IT BULGED THE SIDES OF
4 THE TRUCK AND IT TORE MY SEAT FROM THE FLOOR AND
5 JUST THREW ME AGAINST THE WINDSHIELD. AND I WAS
6 WEARING A SEAT BELT AT THE TIME.

7 Q. MM-HMM (AFFIRMATIVE RESPONSE).

8 A. I BLACKED OUT FOR A MINUTE AND THAT WAS ABOUT IT.

9 Q. OKAY. WE'VE GOT YOUR TREATMENT RECORDS IN EVIDENCE,
10 SO I DON'T WANT TO BELABOR THAT. WERE YOU
11 EVENTUALLY REFERRED TO DR. PATEL WITH LOW COUNTRY
12 ORTHOPAEDICS?

13 A. YES.

14 Q. FOR TREATMENT? ALL RIGHT. AND CAN YOU BRIEFLY
15 SUMMARIZE THE TREATMENT THAT DR. PATEL HAS BEEN
16 PROVIDING TO YOU OVER THE PAST YEAR AND A HALF?

17 A. STEROID INJECTIONS IN MY BACK AND NECK, RADIO
18 FREQUENCY INTO THE BACK AND NECK.

19 Q. AND THOSE ARE INJECTIONS, ALSO?

20 A. YES.

21 Q. ALL RIGHT. HOW ABOUT MEDICATIONS? IS HE STILL
22 PRESCRIBING MEDICATIONS FOR YOU?

23 A. YES. I'M TAKING PERCOCET. I WAS TAKING LYRICA. I
24 ALSO HAVE PATCHES AND CREAM.

25 Q. OKAY. THE INJECTIONS THAT YOU HAVE BEEN RECEIVING

1 FROM DR. PATEL, HAVE THOSE BEEN HELPFUL FOR YOU?

2 A. YES. AT FIRST, THEY RELIEVED A LOT OF PAIN, BUT
3 UNFORTUNATELY, THEY DON'T LAST FOR A LONG TIME.
4 THEY WEAR OFF AFTER A COUPLE OF MONTHS, AND THEN I
5 JUST HAVE TO GO BACK.

6 Q. OKAY.

7 A. AND IT JUST GETS TO A POINT WHERE, YOU KNOW, I JUST
8 CAN'T TAKE THE PAIN ANYMORE.

9 Q. ALL RIGHT. OTHER THAN DR. PATEL, I KNOW YOU ALSO
10 WERE SENT TO SEE DR. STOVALL WHO IS A PRACTICE
11 PARTNER OF HIS, BUT OTHER THAN DR. PATEL AND DR.
12 STOVALL, DID THE WORK COMP INSURANCE COMPANY SEND
13 YOU TO SEE ANY OTHER SPECIALISTS FOR YOUR NECK AND
14 BACK PROBLEMS?

15 A. YES. DR. AHERN ---

16 Q. OKAY.

17 A. IN GEORGETOWN. AND TO THIS DAY, I STILL DON'T
18 UNDERSTAND WHY I HAD TO GO TO GEORGETOWN.

19 Q. THAT WAS JUST A ONE-TIME EVALUATION ---

20 A. YES, SIR.

21 Q. --- THEY SENT YOU TO? OKAY. AND YOU ALSO HAVE BEEN
22 SEEN ONCE BY DR. POLETTI AT SOUTHEASTERN SPINE BASED
23 ON THE APPOINTMENT THAT MY OFFICE SCHEDULED FOR YOU?

24 A. YES.

25 Q. OKAY. WHAT ADDITIONAL MEDICAL TREATMENT WOULD YOU

1 LIKE TO RECEIVE IN THE FUTURE FOR YOUR WORK
2 INJURIES?

3 A. JUST TO KEEP SEEING DR. PATEL IF I NEED THE
4 INJECTIONS OR I NEED MEDICATIONS, THAT I'LL BE ABLE
5 TO SEE HIM AND GET THAT THROUGH HIM.

6 Q. OKAY. DO YOU BELIEVE THAT THAT FUTURE TREATMENT AND
7 THE ABILITY TO GET THAT FUTURE TREATMENT WILL BE
8 NECESSARY TO HELP YOU GET BACK INTO THE WORK PLACE?

9 A. OH, YES. YES. I'VE BEEN TRYING MY BEST, YOU KNOW,
10 TO DO ALL I CAN TO GET BACK TO WORK.

11 BY COMMISSIONER HUFFSTETLER:

12 CAN I ASK YOU A QUESTION?

13 BY THE WITNESS:

14 YES, SIR.

15 BY COMMISSIONER HUFFSTETLER:

16 SINCE THIS IS A POST JULY THE 1, 2007 CASE, IS
17 THERE A MEDICAL REPORT THAT YOU RELY ON FOR THE
18 FUTURE MEDICAL TREATMENT?

19 BY MR. HARRELL:

20 YES, SIR. THERE ARE SEVERAL.

21 BY COMMISSIONER HUFFSTETLER:

22 WHAT PAGE NUMBERS?

23 BY MR. HARRELL:

24 DR. PATEL, IT LOOKS LIKE ---

25 BY MS. GRUBER:

PAGE 35 OF OUR SUBMISSIONS, I THINK.

BY MR. HARRELL:

OKAY. THANKS, COURTNEY.

BY COMMISSIONER HUFFSTETLER:

OKAY.

BY MR. HARRELL:

I THINK IT'S THE JULY NOTE.

BY MS. GRUBER:

JULY 31ST.

BY MR. HARRELL:

JULY 1ST NOTE, COMMISSIONER. IT'S A.P.A.

NUMBER TWO, PAGE 35. IT TALKS ABOUT THE ONGOING
NEED FOR FUTURE PAIN MANAGEMENT TREATMENT TO INCLUDE
FUTURE PAIN MEDICATIONS, FOLLOW UP VISITS, PHYSICAL
THERAPY, EPIDURAL STEROID INJECTIONS ---

BY COMMISSIONER HUFFSTETLER:

THAT'S OKAY. I JUST NEEDED TO KNOW WHERE IT
IS.

BY MR. HARRELL:

AND ALSO DR. STOVALL ---

BY COMMISSIONER HUFFSTETLER:

IF THAT GOES IN THE ORDER, I HAVE TO BE ABLE TO
IDENTIFY WHAT THAT TREATMENT ---

BY MR. HARRELL:

YES, SIR.

1 BY COMMISSIONER HUFFSTETLER:

2 --- WOULD BE.

3 BY MR. HARRELL:

4 AND DR. STOVALL CONFIRMED THE SAME. IF I
5 REFERENCE HIS REPORT, HE CONFIRMED THOSE
6 RECOMMENDATIONS, I THINK. ESSENTIALLY, EVERY DOCTOR
7 THAT HAS SEEN HIM HAS TALKED ABOUT THE NEED FOR
8 FUTURE MEDICAL CARE.

9 DIRECT EXAMINATION RESUMED BY MR. HARRELL:

10 Q. ALL RIGHT, SIR. DO YOU HAVE ANY FUTURE APPOINTMENTS
11 SET WITH DR. PATEL NOW?

12 A. YES, I DO. THIS THURSDAY AT 9:30.

13 Q. ALL RIGHT, SIR. ALL RIGHT. HAVE YOU WORKED SINCE
14 YOU SUSTAINED YOUR INJURY ON OCTOBER 5, 2007?

15 A. YES, BRIEFLY. I DID SOME LIGHT DUTY.

16 Q. AND THIS WAS FOR U.T.I.?

17 A. OH, NOT BEFORE U.T.I.

18 Q. NO, I'M SORRY.

19 A. EXCUSE ME.

20 Q. YOU DID SOME LIGHT DUTY FOR WHOM? FOR U.T.I.?

21 A. YES.

22 Q. OKAY.

23 A. YES, AND I EVENTUALLY TRIED TO GET BACK INTO THE
24 TRUCK IN LATE JANUARY. I DROVE FOR SEVERAL WEEKS
25 AND I JUST COULDN'T TAKE ANY MORE OF THE PAIN. I

1 PUSHED MYSELF A LITTLE BIT TOO MUCH AND ENDED UP
2 GOING BACK TO DR. PATEL.

3 Q. OKAY. AND ACCORDING TO RECORDS I'VE SEEN, I BELIEVE
4 YOU WORKED FOR ABOUT SEVEN WEEKS IN THE WINTER AND
5 EARLY SPRING OF 2008?

6 A. YES.

7 Q. IS THAT CORRECT? ALL RIGHT. THE RECORDS I SAW, I
8 BELIEVE, MARCH 21, 2008, WAS THE LAST DATE THAT YOU
9 WORKED. DOES THAT SOUND RIGHT TO YOU?

10 A. YES, AROUND THERE.

11 Q. OKAY. AND HAVE YOU BEEN ABLE TO WORK SINCE YOU LAST
12 WORKED FOR U.T.I. IN MARCH OF 2008?

13 A. NO, I HAVEN'T.

14 Q. HAVE YOU BEEN PAID WORKERS' COMPENSATION BENEFITS
15 FOR THE TIME THAT YOU'VE BEEN OUT OF WORK?

16 A. YES, I HAVE.

17 Q. AND HAVE YOU WORKED ANYWHERE ELSE SINCE YOU LAST
18 WORKED FOR U.T.I. IN MARCH OF 2008?

19 A. NO, I HAVEN'T.

20 Q. HAVE YOU RECEIVED ANY INCOME FROM ANY OTHER SOURCE
21 OTHER THAN THE WORKER'S COMPENSATION OVER THAT
22 PERIOD OF TIME?

23 A. NO, I HAVEN'T.

24 Q. ARE YOU PURSUING SOCIAL SECURITY DISABILITY BENEFITS
25 AT THIS TIME?

1 A. YES AND NO RIGHT NOW. I JUST RECENTLY APPLIED ABOUT
2 A MONTH AGO, AND THAT'S JUST AS A NET FOR RIGHT NOW.
3 I'M -- I REALLY WANT TO GO BACK TO WORK, BUT I JUST
4 NEED TO HAVE SOME SAFEGUARDS IF I CAN'T GET BACK TO
5 WORK.

6 Q. OKAY. SO, YOU'VE GOT AN APPLICATION PENDING, BUT
7 IT'S YOUR HOPE THAT YOU'LL BE BACK TO WORK ---

8 A. YES.

9 Q. SO, YOU CAN DROP THAT APPLICATION PROCESS?

10 A. YES.

11 Q. ALL RIGHT. YOU TOUCHED ON THIS. NOW, YOU'RE STILL
12 EMPLOYED WITH U.T.I., AT THIS POINT?

13 A. NO, I HAVEN'T.

14 Q. AND IS THAT OPERATION, HAS IT BEEN CLOSED HERE IN
15 CHARLESTON?

16 A. YES. THE COMPANY SOLD THE CONTAINER DIVISION
17 OUTLETS WORKING FOR TO MASON DIXON.

18 Q. OKAY. DO YOU BELIEVE THAT YOU WOULD BE ABLE TO GO
19 BACK TO WORK AS A TRUCK DRIVER GIVEN YOUR CURRENT
20 CONDITION?

21 A. NO, NO.

22 Q. AND WHY IS THAT?

23 A. JUST AS FAR AS THE BACK AND NECK PAINS RIGHT NOW.
24 THE DISTANCE I'M GOING TO HAVE TO DRIVE TO MAKE
25 MONEY, I WOULDN'T BE ABLE TO, YOU KNOW, WITHSTAND A

1 WHOLE LOT OF THAT.

2 Q. OKAY. DO YOU BELIEVE THAT YOU CAN DO ANY OF YOUR
3 PREVIOUS JOBS? JOBS THAT YOU HAVE DONE IN THE PAST,
4 DO YOU THINK YOU'RE PHYSICALLY CAPABLE OF DOING ANY
5 OF THOSE JOBS NOW?

6 A. NO, I DON'T THINK SO. JUST THE STANDING AND RUNNING
7 AROUND THE RESTAURANT, IT'S -- I JUST DON'T SEE IT.

8 Q. YOU KNOW, I BELIEVE YOU HAD TOUCHED ON THIS, BUT
9 HAVE YOU BEEN WORKING WITH THE VOC REHAB DEPARTMENT
10 SINCE YOU SUSTAINED YOUR INJURY?

11 A. YES, I HAVE. IN SEPTEMBER OF LAST YEAR, I WENT UP
12 TO COLUMBIA FOR A FOUR-WEEK PROGRAM FOR PAIN
13 MANAGEMENT. I TOOK A LOT OF TESTS UP THERE AND
14 WORKED REAL CLOSE WITH THEM UP THERE. I WAS TRYING
15 TO GET INTO A PROGRAM UP THERE, A COMPUTER
16 PROGRAMMING CLASS. I, AS FAR AS MY TEST SCORES, I
17 DIDN'T DO WELL THE FIRST TIME, SO I CAME BACK TO
18 CHARLESTON. I DID SOME STUDYING. TOOK THE TEST
19 AGAIN, AND JUST, YOU KNOW, SCORED REAL HIGH ON IT.

20 Q. OKAY. SO, ARE YOU NOW LINED UP TO TAKE THE COMPUTER
21 PROGRAMMING COURSE THROUGH VOC REHAB?

22 A. YES, I PRETTY MUCH GOT INTO IT. IN JULY, I'LL BE
23 GOING BACK UP THERE FOR THE PROGRAM THERE.

24 Q. OKAY. NOW, YOU'VE GOT THAT CERTIFICATE FROM BETA
25 TECH. WHY HAVE YOU BEEN LOOKING AT THIS -- CAN YOU

1 EXPLAIN THE DIFFERENCE BETWEEN WHAT THIS PROGRAM
2 WOULD INVOLVE AND WHAT YOU GOT PREVIOUSLY FROM BETA
3 TECH WITH THE COMPUTER NETWORKING?

4 A. THE NETWORKING IS A LOT OF HANDS ON REPAIR WORK, A
5 LOT OF LIFTING, WHICH I HAVEN'T BEEN ABLE TO DO.
6 I'VE -- AND VERSUS THE PROGRAMMING, I'LL BE LOOKING
7 MORE INTO POWER POINT, WORD, MICROSOFT, EXCEL, AND
8 SOMETHING OF THAT SORT WHERE I DON'T HAVE TO GET UP
9 AND PICK UP ANYTHING.

10 Q. OKAY. AND WHAT ARE YOUR PLANS AFTER YOU FINISH THAT
11 PROGRAM? WHAT DO YOU HOPE TO DO WITH WHATEVER
12 DEGREE YOU RECEIVE?

13 A. WELL, I HOPE TO GET A JOB AFTER THAT, BUT I
14 UNDERSTAND THERE'S, YOU KNOW, THERE'S NO GUARANTEES,
15 THE WAY MY BACK IS. THE WAY MY NECK IS. YOU KNOW,
16 JUST CONTINUOUS PAIN THERE. AND BUT, I'VE BEEN
17 STRIVING AND TRYING TO MANAGE.

18 Q. HOW LONG IS THE PROGRAM? HOW LONG WILL IT TAKE FOR
19 YOU TO FINISH IT?

20 A. TEN MONTHS.

21 Q. HAVE YOU LOOKED INTO ANY ALTERNATIVE JOBS? HAVE YOU
22 CONTACTED ANY POTENTIAL EMPLOYERS SINCE YOU ---

23 A. YES.

24 Q. --- LAST WORKED FOR U.T.I.?

25 A. YES.

1 Q. AND TELL US ABOUT THAT.

2 A. I LOOKED INTO DISPATCH JOBS, COMPUTER JOBS. AS FAR
3 AS JUST AS A TRAINEE TRYING TO LEARN A LITTLE BIT
4 MORE OF THE SOFTWARE ASPECTS OF COMPUTER WORK. I'VE
5 TRIED FOR, YOU KNOW, LATE NIGHT JOBS SITTING DOWN,
6 BUT THAT -- ALL THOSE REQUIRE, YOU KNOW, LIFTING
7 ABOUT 25-50 POUNDS, WHICH I'M NOT ABLE TO DO.

8 Q. HAVE YOU RECEIVED ANY JOB OFFERS UP TO THIS POINT?

9 A. NO.

10 Q. OKAY. BASED ON THE WORK THAT YOU'VE LOOKED AT, HAVE
11 YOU LOOKED INTO WHAT YOUR POTENTIAL EARNINGS WOULD
12 BE AS A COMPUTER PROGRAMMER? AND WHAT INFORMATION
13 HAVE YOU GATHERED ALONG THOSE LINES

14 A. THERE WILL BE ---

15 BY MS. GRUBER:

16 I'M GOING TO OBJECT TO THIS IF IT CALLS FOR
17 HEARSAY, COMMISSIONER.

18 BY COMMISSIONER HUFFSTETTLER:

19 DO YOU HAVE A REPLY?

20 BY MR. HARRELL:

21 WELL, I DON'T KNOW IF IT WOULD CALL FOR HEARSAY
22 IF IT'S A LISTED SALARY THAT HE HAS LOOKED INTO JOBS
23 AND HE KNOWS WHAT THE COMPENSATION WOULD BE.

24 BY COMMISSIONER HUFFSTETTLER:

25 WELL, IF IT'S SOMETHING SOMEONE TOLD HIM, THEN

1 OF COURSE, THAT WOULD BE HEARSAY. IF IT WAS OTHER
2 EVIDENCE, THEN IT -- I MEAN, IF YOU HAVE DOCUMENTS
3 YOU'D LIKE TO OFFER, THEN WE CAN LOOK AT THAT, BUT
4 YOU CAN TESTIFY TO WHAT SOMEONE SAID IF THEY'RE A
5 PARTY TO THE HEARING. YOU ARE A PARTY. THE
6 EMPLOYER IN THIS CASE, U.T.I., IS A PARTY, AND THE
7 INSURANCE CARRIER IS A PARTY. BUT THE OTHER FOLKS,
8 LIKE DOCTORS AND NURSES, POTENTIAL EMPLOYERS, ARE
9 NOT PARTIES.

10 BY THE WITNESS:

11 OKAY.

12 BY COMMISSIONER HUFFSTETLER:

13 SO, I CAN SUSTAIN THE OBJECTION.

14 BY MR. HARRELL:

15 THAT'S FINE. THAT'S -- I WOULD REFER TO
16 CLAIMANT'S EXHIBIT A, WHICH DOES ADDRESS THAT ISSUE,
17 COMMISSIONER.

18 DIRECT-EXAMINATION RESUMED BY MR. HARRELL:

19 Q. YOU'VE TOUCHED ON YOUR PHYSICAL PROBLEMS. WHAT SORT
20 OF PHYSICAL PROBLEMS ARE YOU HAVING NOW THAT YOU
21 WOULD RELATE TO YOUR WORK ACCIDENT INJURIES?

22 A. WELL, WITH MY RIGHT FOOT, JUST CONTINUOUS STANDING,
23 IT TENDS TO ACHE AND SWELL THERE. PAINS IN MY LEFT
24 LEG IF I'M UP STANDING OR MOVING AROUND A WHOLE LOT.
25 LOWER BACK AND IT SPREADS OUT TO THE SIDE. NECK

1 PAINS WHICH CAUSE MIGRAINES ON THE LEFT SIDE.

2 DEPENDING ON THE WEATHER, YOU KNOW, YOU KNOW, IT --
3 I'M ALWAYS HAVING UP AND DOWN DAYS. I MAY HAVE A
4 REAL BAD MIGRAINE ONE DAY AND THEN OTHER DAYS, I'M
5 DOING GREAT. PAIN IN MY LEFT SHOULDER, ARM, ALL THE
6 WAY DOWN INTO MY HAND SOMETIMES WHICH MAKES IT HARD
7 TO GRASP, BUT YOU KNOW, EACH DAY IS A LITTLE BIT
8 DIFFERENT.

9 Q. OKAY. YOU MENTIONED THE PAIN GOING DOWN TO YOUR
10 LEFT ARM AND YOUR LEFT HAND. ARE YOU RIGHT HANDED
11 OR LEFT HANDED?

12 A. I'M LEFT HANDED.

13 Q. AS FAR AS YOUR MOBILITY IS CONCERNED, HOW HAS THAT
14 BEEN AFFECTED BY YOUR WORK INJURIES?

15 A. WELL, IT HAS LIMITED ME FROM, YOU KNOW, DOING THINGS
16 THAT I NORMALLY WOULD DO, AS FAR AS, YOU KNOW,
17 DRIVING, GETTING AROUND.

18 Q. I'M TALKING ABOUT WALKING AROUND. HOW HAS YOUR
19 ABILITY TO WALK AROUND BEEN AFFECTED?

20 A. ROUGH SOMETIMES. I'M UP AND ABOUT MAYBE, YOU KNOW,
21 20 OR 30 MINUTES, YOU KNOW, WALKING. IF I'M UP TOO
22 MUCH, YOU KNOW, IT STARTS BOTHERING ME, SO I JUST
23 TRY TO SIT DOWN AND RELAX.

24 Q. YOU SAY IT STARTS TO BOTHER YOU. WHAT STARTS TO
25 BOTHER YOU?

1 A. LEFT LEG WILL BOTHER ME. LOWER BACK WILL BOTHER ME.

2 Q. ALL RIGHT. NOW, YOU'VE GOT A CANE WITH YOU. WHERE
3 DID YOU GET THE CANE?

4 A. WHEN I WAS AT THE REHAB CENTER IN COLUMBIA, THEY SAW
5 SOME OF THE PROBLEMS I WAS HAVING AND THEY SUGGESTED
6 ME TO USE A CANE THERE, WHICH DID HELP OUT, TAKING
7 SOME OF THE WEIGHT OFF MY RIGHT FOOT AND I KIND OF
8 STUMBLED A LITTLE BIT, AND THEY SAID, WELL, YOU
9 KNOW, USE THIS AS A, YOU KNOW, CRUTCH.

10 Q. IS THAT WHO GAVE YOU THE CANE?

11 A. YES.

12 Q. WAS THE VOC REHAB DEPARTMENT?

13 A. YES.

14 Q. ALL RIGHT, SIR. HOW ABOUT YOUR ABILITY TO LIFT?
15 HOW HAS THAT BEEN IMPACTED BY YOUR INJURIES?

16 A. I TRY NOT TO LIFT A WHOLE LOT. JUST DOING THAT
17 CAUSES PAIN IN MY LOWER BACK.

18 Q. NOW, YOU SAY NOT A WHOLE LOT. I MEAN, CAN YOU BE
19 MORE SPECIFIC WITH US AND GIVE US SOME IDEA OF WHAT
20 YOU ARE ABLE TO LIFT NOW?

21 A. TEN, 15 POUNDS, BUT NO MORE THAN THAT.

22 Q. ARE THERE ANY SPECIFIC ACTIVITIES THAT YOU SEE THAT
23 TEND TO AGGRAVATE YOUR PAIN TO MAKE IT WORSE THAN
24 THE BASELINE PAIN?

25 A. A LOT OF BENDING OVER. THE WEATHER CHANGE. JUST

1 OVERDOING MY WORK ACTIVITIES.

2 Q. OKAY.

3 A. YOU KNOW, AROUND THE HOUSE.

4 Q. YOU MENTIONED YOU'RE TAKING PERCOCET NOW. HOW MANY
5 PERCOCET DO YOU TAKE EACH DAY OR EACH WEEK?

6 A. I'VE BEEN TRYING TO GET OFF OF THAT. I'M TAKING,
7 YOU KNOW, MAYBE THREE TIMES OUT OF THE WEEK, YOU
8 KNOW, IF THAT. JUST, YOU KNOW, THE STUFF MAKES ME
9 SICK IN THE STOMACH AND IT'S HARD TO FUNCTION. IT
10 JUST MAKES YOU REAL DROWSY.

11 Q. OKAY. IS THERE ANYTHING ELSE THAT YOU USE OTHER
12 THAN THE PERCOCET, WHICH I TAKE IT IS JUST FOR THE
13 FLARE-UPS IF IT'S ONLY THREE TIMES A WEEK. ARE
14 THERE OTHER MEDICATIONS YOU TAKE THEN?

15 A. THE PATCHES. I MIGHT USE A HEATING PAD, CREAM. I
16 THINK THAT'S ABOUT IT.

17 Q. OKAY. ALL RIGHT. LET ME ASK YOU JUST ABOUT A FEW
18 SPECIFIC NON-WORK ACTIVITIES. FIRST, YARD WORK.
19 HOW HAS YOUR ABILITY TO DO ANY YARD WORK BEEN
20 AFFECTED BY THE INJURIES THAT YOU'VE GOT?

21 A. WELL, VERY HARD. WE LIVE ON A SMALL FARM ON ---

22 Q. WHO IS "WE"?

23 A. MY FATHER AND I.

24 Q. OKAY.

25 A. AND HE'S 81. HE, YOU KNOW, HAS A LITTLE GARDEN OUT

1 THERE, AND YOU KNOW, I MAY TO TRY TO GET OUT THERE
2 AND HELP HIM A LITTLE BIT, BUT YOU KNOW, AFTER A
3 WHILE, THERE'S A LOT OF PAIN, AND YOU CAN SEE IT,
4 AND I'M BASICALLY IN THE WAY. AND YOU KNOW, YOU
5 KNOW, I GO BACK IN THE HOUSE AND JUST TAKE IT EASY.

6 Q. WHAT ABOUT MOWING THE GRASS? NOW, WHO CUTS THE
7 GRASS?

8 A. HE DOES.

9 Q. ALL RIGHT. HOUSE WORK. YOU TALKED ABOUT SOME
10 NORMAL, DAILY ACTIVITIES. WHAT SORT OF -- HOW HAS
11 IT AFFECTED YOUR ABILITY TO DO HOUSE WORK, THE
12 INJURIES THAT YOU'VE GOT?

13 A. I MAY VACUUM OR TRY TO SWEEP, YOU KNOW, AND ABOUT
14 15, 20 MINUTES INTO IT, I HAVE TO TAKE A BREAK. SO,
15 IT'S PRETTY MUCH AN ALL DAY TASK FOR ME.

16 Q. HAS YOUR ABILITY TO DRIVE BEEN IMPACTED AT ALL BY
17 YOUR INJURIES?

18 A. YES. LIKE I SAID, WITH THE PERCOCET, I CAN'T TAKE
19 THAT AND DRIVE. THAT JUST MAKES ME DROWSY
20 ALTOGETHER. JUST CAN'T, EVEN IF I DON'T TAKE IT,
21 JUST CONTINUOUS DRIVING HURTS MY BACK, MY NECK, YOU
22 KNOW, AND I START TO GET HEADACHES.

23 Q. HAVE YOU DRIVEN ANYWHERE OTHER THAN OUTSIDE THE
24 LOCAL AREA SINCE YOU OBVIOUSLY STOPPED DRIVING A
25 TRACTOR TRAILER TRUCK BACK IN MARCH OF 2008?

1 A. NOT OUTSIDE CHARLESTON. I MAY GO TO THE STORE AND
2 BACK, OUT IN NORTH CHARLESTON AND BACK, BUT AS FAR
3 AS DOCTOR'S APPOINTMENTS. YOU KNOW, IF I'VE GOT TO
4 GO SOMEWHERE, YOU KNOW, FURTHER OUT IN NORTH
5 CHARLESTON, I USE ZONE CARE WHICH THE INSURANCE
6 COMPANY ALLOWED ME TO USE GOING TO ANY DOCTOR'S
7 APPOINTMENTS, GOING TO COLUMBIA OR SOMETHING OF THAT
8 SORT.

9 Q. SO, GOING TO COLUMBIA IS WHEN YOU WENT TO THE VOC
10 REHAB PROGRAM. WERE YOU PROVIDED WITH
11 TRANSPORTATION TO GO THERE?

12 A. YES, I WAS. YES, I WAS.

13 Q. ALL RIGHT. ONE OF THE THINGS WE'VE ASKED FOR IN
14 YOUR CASE IS A LUMP SUM AWARD. WHY DO FEEL THAT A
15 LUMP SUM AWARD WOULD BE IN YOUR BEST INTEREST?

16 A. WELL, RIGHT NOW, I JUST HAVE NUMEROUS BILLS. I HAVE
17 PROBABLY ABOUT \$25,000 OR \$30,000 WORTH OF BILLS
18 RIGHT NOW STEMMING FROM A DAUGHTER IN COLLEGE, FROM
19 ME GOING BACK TO SCHOOL MYSELF. I OWE THE I.R.S.,
20 CREDIT CARDS AND IT WOULD BE GOOD TO BE DEBT FREE,
21 SO ---

22 BY COMMISSIONER HUFFSTETLER:

23 THERE'S NO OBJECTION ON LUMP SUM UNLESS IT'S A
24 42-9-20 CASE, RIGHT?

25 BY MS. GRUBER:

1 THAT'S CORRECT. YES, SIR.

2 BY MR. HARRELL:

3 ALL RIGHT. THAT'S FINE. ALL RIGHT, SIR.

4 THAT'S ALL I'VE GOT. PLEASE ANSWER ANY QUESTIONS
5 MS. GRUBER HAS FOR YOU.

6 CROSS-EXAMINATION BY MS. GRUBER:

7 Q. MR. BOLD, DIDN'T YOU GO BACK TO DO SOME WORK FOR
8 U.T.I. BEFORE IT WENT OUT OF BUSINESS IN, AT THE END
9 OF MARCH OF 2008?

10 A. YES, I DID SOME LIGHT DUTY, AND I DID TRY TO GO BACK
11 AND DRIVE.

12 Q. OKAY. AND WERE YOU ABLE TO WORK AN EIGHT HOUR DAY
13 THEN?

14 A. I TRIED TO AND I THINK, YOU KNOW, I WAS HAVING
15 PROBLEMS THEN. I DID HAVE TO GO BACK AND SEE DR.
16 PATEL AND I THINK THE FINAL STRAW, I TOOK A LONG
17 TRIP I WASN'T SUPPOSED TO DO. I DIDN'T THINK I WAS
18 UP TO IT, BUT I DID IT ANYWAY AND ENDED UP HAVING TO
19 GET HELP GETTING BACK BECAUSE MY BACK AND JUST
20 MIGRAINE HEADACHES.

21 Q. OKAY. BUT THE REASON THAT YOU QUIT THAT JOB ON,
22 WELL -- THE REASON THAT YOU HAD TO QUIT THAT JOB WAS
23 BECAUSE U.T.I. WENT OUT OF BUSINESS?

24 A. YES.

25 Q. AND I'M SORRY, BUT YOU WERE WORKING, YOU WERE ABLE

1 TO WORK AN EIGHT-HOUR DAY, 40-HOUR WEEK WHILE YOU
2 WERE WORKING LIGHT DUTY?

3 A. NO, NO.

4 Q. YOU WEREN'T PAID FOR THAT?

5 A. IN FACT, I WASN'T. I DID THE LIGHT DUTY FOR ABOUT A
6 WEEK AND HAD PROBLEMS WITH MY BACK, AND THEY DID NOT
7 PAY ME. A.I.G. GAVE ME A SMALL CHECK, BUT I DIDN'T
8 GET PAID FOR THAT WEEK.

9 Q. OKAY. NOW, ARE YOU TALKING ABOUT THE SECOND OR THE
10 THIRD TIME THAT YOU WENT BACK FOR LIGHT DUTY?
11 BECAUSE THERE ARE THREE TIMES THAT I'M SHOWING THAT
12 YOU WENT BACK TO WORK LIGHT DUTY.

13 A. THREE DAYS IN ONE WEEK.

14 Q. WELL, YOU WENT BACK FROM JUNE THE 2ND UNTIL JUNE THE
15 7TH. THEN YOU WENT TO WORK -- I'M SORRY THERE ARE
16 TWO PERIODS. FROM JANUARY THE 22ND UP UNTIL MARCH.
17 IS THAT WHEN YOU WERE DRIVING?

18 A. UP UNTIL MARCH, YES.

19 Q. OKAY.. AND THEN YOU WERE NOT ABLE TO GO BACK BECAUSE
20 THE COMPANY WENT OUT OF BUSINESS? IS THAT CORRECT?

21 A. YES. I WAS WILLING TO COME BACK AND DO SOME LIGHT
22 DUTY, AND THEY SAID THEY DIDN'T HAVE ANYTHING AND
23 THE COMPANY WAS ON THE MARKET TO BE SOLD.

24 Q. OKAY. AND AT THAT TIME, YOU HAD BEEN DRIVING? IS
25 THAT WHAT YOU WERE TELLING ME?

1 A. FROM THE END OF JANUARY TO MID MARCH, YES.

2 Q. OKAY. NOW, THE -- YOU GOT YOUR CANE FROM THE
3 PHYSICAL THERAPIST AT VOCATIONAL REHABILITATION?

4 A. YES.

5 Q. AND THAT WAS IN OCTOBER OF THIS PAST YEAR? 2008?

6 A. IN SEPTEMBER.

7 Q. OKAY. WELL, YOU WERE THERE FROM SEPTEMBER UNTIL
8 OCTOBER, RIGHT?

9 A. YES.

10 Q. OKAY. BUT WHEN YOU WERE SEEING DR. PATEL, HE
11 EXAMINED YOU EVERY TIME YOU WENT IN, DIDN'T HE?

12 A. YES.

13 Q. OKAY. AND HE DID THE HEEL/TOE? DID HE GET YOU TO
14 WALK, TO GO HEEL TO TOE WITH YOUR WALKING?

15 A. NO, HE DIDN'T.

16 Q. OKAY.

17 A. NO, DR. AHERN DID.

18 Q. I'M SORRY.

19 BY MS. GRUBER:

20 COMMISSIONER, I'M LOOKING AT PAGE 34.

21 CROSS-EXAMINATION RESUMED BY MS. GRUBER:

22 Q. HE DIDN'T SHOW, HE DIDN'T GET YOU TO WALK ON YOUR
23 TOES AND YOUR HEELS WHEN YOU WENT TO SEE HIM? DR.
24 PATEL DIDN'T?

25 A. NO, I DON'T RECALL THAT.

1 Q. OKAY. SO, IF HIS NOTES SHOW, IF HIS NOTES MAKE
2 REFERENCE TO THAT YOU WERE ABLE TO WALK ON YOUR TOES
3 AND HEELS WITHOUT ANY DIFFICULTY EVERY TIME YOU WENT
4 TO SEE HIM, THEN THOSE NOTES WOULD BE INCORRECT?

5 A. YEAH, I GUESS. I DON'T REMEMBER THAT.

6 Q. OKAY. AND ON JULY THE 31, 2008, HIS NOTE SHOWS,
7 THIS IS PAGE 34, SHOWED A NORMAL GAIT WITHOUT
8 ASSISTIVE DEVICE OR BRACES. SO, YOU WEREN'T LIMPING
9 WHEN YOU SAW DR. PATEL, WERE YOU?

10 A. I MEAN, I STAND FOR SO LONG. I MEAN, EVERY TIME I
11 SAW DR. PATEL, I WAS USUALLY SITTING, BUT I DID NOT
12 DO A WHOLE LOT OF WALKING THEN. AND I DID HAVE A
13 SLIGHT LIMP.

14 Q. BUT IF HIS NOTES SHOW THROUGHOUT THE COURSE OF HIS
15 TREATMENT OF YOU THROUGH JULY 31, 2008, THAT YOU
16 WERE NOT LIMPING, THAT YOU HAD A NORMAL GAIT, AND
17 THAT YOU DIDN'T HAVE A CANE OR ANY KIND OF ASSISTIVE
18 DEVICE OR BRACES, WOULD THOSE NOTES BE INCORRECT?

19 A. WHATEVER HE SAYS, YOU KNOW, I WOULD AGREE WITH HIM.

20 Q. OKAY. SO, YOU WEREN'T LIMPING WHEN YOU WERE SEEING
21 DR. PATEL, BUT YOU WERE LIMPING WHEN YOU WENT TO
22 VOCATIONAL REHABILITATION IN SEPTEMBER? IS THAT
23 CORRECT?

24 A. YES.

25 Q. AND THEN WHEN -- YOU SAW DR. AHERN ALSO ON JULY THE

1 30TH OF 2008, AND HE ALSO DID SOME HEEL/TOE TESTING,
2 TOO, GOT YOU TO WALK FOR HIM?

3 A. YES.

4 Q. OKAY. AND HE SAID ---

5 BY MS. GRUBER:

6 AND I'M LOOKING AT, THIS IS PAGE 69 OF THE
7 CLAIMANT'S A.P.A.s, COMMISSIONER.

8 CROSS-EXAMINATION RESUMED BY MS. GRUBER:

9 Q. HE NOTED THAT YOU WERE, THAT YOU DIDN'T HAVE ANY
10 BRACES OR ASSISTIVE DEVICES AND THAT YOU HAD A
11 NORMAL GAIT WITHOUT A LIMP. AND THAT WAS IN JULY
12 THE 30TH OF 2008. THAT'S DR. AHERN.

13 A. YES.

14 Q. WOULD YOU AGREE WITH THAT STATEMENT? OKAY. SO, IN
15 JULY WHEN YOU SAW DR. AHERN, YOU DIDN'T HAVE A LIMP
16 EITHER, RIGHT?

17 A. YES.

18 Q. OKAY. YOU DIDN'T HAVE A CANE?

19 A. AND EVEN THEN, YOU KNOW, IT'S, YOU KNOW, I DIDN'T DO
20 A WHOLE LOT OF WALKING ONCE I GOT INTO HIS OFFICE.
21 I DID SOME SITTING. BUT USUALLY, IF I'M UP AND
22 ABOUT AND DOING A LOT OF WALKING, THAT'S USUALLY
23 WHEN I'M, YOU KNOW, HAVING PAIN IN MY RIGHT FOOT.

24 Q. ALL RIGHT. NOW, WHEN YOU WERE WORKING AT THESE
25 RESTAURANTS, AT THE APPLEBEE'S -- APPLEBEE'S WAS THE

1 MORE RECENT RESTAURANT WHERE YOU WORKED?

2 A. YES, IT IS.

3 Q. AND YOU WORKED THERE UNTIL, HOW LONG -- WHEN DID YOU
4 STOP WORKING AT APPLEBEE'S?

5 A. WINTER OF '99.

6 Q. OKAY. AND YOU WERE A GENERAL MANAGER WHEN YOU QUIT
7 WORKING?

8 A. YES, I WAS.

9 Q. OKAY. AND YOU WERE RESPONSIBLE FOR DOING A LOT OF
10 THE PAPER WORK?

11 A. YES.

12 Q. HAVE YOU LOOKED FOR ANY OTHER RESTAURANT MANAGEMENT
13 JOBS SINCE YOU LEFT U.T.I.?

14 A. NO. NO, I HAVEN'T.

15 Q. NOW, NONE OF THE DOCTORS HAVE RECOMMENDED SURGERY
16 FOR YOU, HAVE THEY?

17 A. THEY -- WELL, I WENT TO THE SPINAL INSTITUTE AND HE
18 ASKED ME IF NEED BE, WOULD I CONSIDER. AND AT THE
19 TIME, I TOLD HIM NO BECAUSE SURGERY KIND OF SCARES
20 ME AFTER MY SHOULDER OPERATION.

21 Q. OKAY. THAT WAS DR. POLETTI? THAT WAS THE DOCTOR
22 YOUR LAWYER SENT YOU TO?

23 A. YES.

24 Q. OKAY. BUT THE OTHER, DR. PATEL DIDN'T WANT TO DO
25 SURGERY ON YOU, DID HE?

1 A. NO.

2 Q. DID HE? AND DR. STOVALL DIDN'T WANT TO DO SURGERY
3 ON YOU, DID HE?

4 A. NO.

5 Q. AND DR. AHERN DIDN'T WANT TO DO SURGERY ON YOU, DID
6 HE?

7 A. NO.

8 Q. OKAY.

9 A. AND, IN FACT, I DON'T THINK THOSE -- ONLY DR. PATEL
10 ASKED ME THAT QUESTION. THE OTHER DOCTORS, I
11 BELIEVE, NEVER ASKED ME THAT.

12 Q. OKAY. WELL, THEY DON'T REALLY NEED TO ASK YOU THAT.
13 THEY'RE THE ONES THAT DECIDE WHETHER THEY THINK YOU
14 NEED IT OR NOT, SO ---

15 A. OKAY.

16 Q. BUT THEY DIDN'T DISCUSS IT WITH YOU?

17 A. NO.

18 Q. SO, IT WOULD BE BAD IF YOU TOLD ME THEY HAD DECIDED
19 TO DO IT AND DID IT AND THEY DIDN'T TELL YOU ABOUT
20 IT.

21 A. RIGHT.

22 Q. OKAY. MR. BOLDS, WOULD IT BE FAIR TO SAY THAT YOU
23 WERE NOT PARTICULARLY ACTIVE WORKING AROUND YOUR
24 FATHER'S FARM BEFORE THIS ACCIDENT?

25 A. BEFORE THE ACCIDENT? I MOWED THE LAWN WHENEVER I

1 GOT HOME. YOU KNOW, HELPED HIM OUT IN HIS GARDEN.

2 Q. OKAY. BUT Y'ALL HAVE A FARM, DON'T YOU? OUT THERE
3 ON JAMES ISLAND?

4 A. YES.

5 Q. OKAY. I MEAN, THAT WASN'T REALLY YOUR INTEREST, WAS
6 IT?

7 A. NO, BUT THAT'S MY FATHER SO ---

8 Q. RIGHT.

9 A. YOU KNOW, I GET OUT THERE AND, YOU KNOW, I WORK WITH
10 HIM.

11 Q. OKAY. AND DOES HE GROW VEGETABLES ALL THROUGH THE
12 WINTER, TOO, OR JUST IN THE SUMMER TIME?

13 A. SUMMER, FALL, WINTER. JUST FINISHED A CROP AND
14 THEY'RE GETTING READY TO CUT UP THE FIELD NOW.

15 Q. OKAY. AND ARE YOU GOING TO, WHEN -- THE COMPUTER
16 PROGRAM STARTS IN APRIL? I'M SORRY. JULY?

17 A. JULY.

18 Q. OKAY. AND HOW LONG DOES THAT PROGRAM GO?

19 A. TEN MONTHS.

20 Q. AND NONE OF THE DOCTORS RECOMMENDED ANY TREATMENT
21 FOR YOUR FOOT, DID THEY?

22 A. NO, I'VE MENTIONED IT TO EVERY SINGLE DOCTOR, BUT I
23 -- NOBODY HAS REALLY DONE ANYTHING ABOUT THAT OR IT
24 JUST, YOU KNOW, I GUESS IT JUST GOT SWEEPED UNDER THE
25 CARPET.

1 Q. OKAY. SO, THE ANSWER TO THAT WOULD BE NO, NOBODY
2 RECOMMENDED ANY TREATMENT FOR YOUR FOOT?

3 A. NO, NO.

4 Q. OKAY. AND YOU HAVEN'T HAD ANY TREATMENT RECOMMENDED
5 FOR YOUR LEGS, HAVE YOU?

6 A. NO.

7 Q. OKAY. AND YOUR ARMS?

8 A. JUST THE MEDICATION THAT HAS BEEN GIVEN TO ME.

9 Q. THAT DR. PATEL GIVES YOU?

10 A. YES.

11 Q. OKAY. OKAY.

12 BY MS. GRUBER:

13 I DON'T HAVE ANY OTHER QUESTIONS, COMMISSIONER.

14 BY MR. HARRELL:

15 JUST A FEW, COMMISSIONER

16 RE-DIRECT EXAMINATION BY MR. HARRELL:

17 Q. LET ME REFER YOU TO THE CLAIMANT'S EXHIBIT TWO, PAGE
18 63, AND THIS IS A DISABILITY FORM THAT WAS COMPLETED
19 BY DR. PATEL IN MID MARCH OF 2008. WAS THAT -- IS
20 THAT WHEN YOU ENDED WORKING WITH U.T.I., WAS MID
21 MARCH OF 2008?

22 A. YES. YES.

23 Q. AND ACCORDING TO THIS NOTE, HE TOOK YOU COMPLETELY
24 OUT OF WORK AT THAT POINT IN TIME.

25 A. YEAH.

1 Q. DO YOU RECALL HIS TAKING YOU OUT OF WORK THEN BASED
2 ON THE COMPLAINTS THAT YOU HAD WHEN YOU RETURNED TO
3 HIM AFTER DOING THAT LONG DISTANCE DRIVE?

4 A. YES. YES.

5 Q. I ALSO WANT TO ASK YOU BECAUSE YOU WERE ASKED ABOUT
6 SOME OF DR. PATEL'S FINDINGS. EACH ONE OF HIS
7 RECORDS, AS I READ THEM, THEY SEEM TO BE THREE OR
8 FOUR PAGES LONG FOR EVERY TIME THAT YOU GO THERE,
9 BUT IT APPEARS TO BE THE SAME REPORT EXCEPT FOR THE
10 BEGINNING AND THE END EACH TIME. HOW LONG DID HE
11 TYPICALLY SPEND WITH YOU WHEN YOU WENT TO AN
12 EXAMINATION WITH DR. PATEL?

13 A. MAYBE FIVE, TEN MINUTES, AND A LOT OF TIMES, WE'LL,
14 YOU KNOW, WE'LL SIT THERE AND WE'LL TALK.

15 Q. AND EACH TIME THAT YOU WENT THERE, BECAUSE THERE ARE
16 A NUMBER OF DIFFERENT TESTS HE TALKS ABOUT IN EVERY
17 SINGLE REPORT. I MEAN, DID HE HAVE YOU DO A
18 HEEL/TOE WALK EVERY TIME YOU WENT TO SEE HIM?

19 A. NO.

20 Q. YOU WERE ALSO ASKED ABOUT SOME OF THE OBSERVATIONS
21 THAT VOCATIONAL REHABILITATION WHEN YOU WERE THERE.
22 THE TREATMENT YOU GOT AT VOC REHAB, WAS THAT
23 TREATMENT YOU WERE RECEIVING WITH THE VARIOUS
24 THERAPISTS THAT HAVE THE REPORTS UNDER EXHIBIT B,
25 WERE THOSE THERAPISTS THAT WERE SEEING YOU FOR

1 ESSENTIALLY EIGHT TO TEN HOURS A DAY FOR FIVE DAYS A
2 WEEK?

3 A. YES. YES.

4 Q. AND SO THEIR OBSERVATIONS, IN TERMS OF WHETHER OR
5 NOT YOU WERE LIMPING OR NOT, WAS THAT BASED ON
6 HAVING THE OPPORTUNITY TO SEE YOU FOR 40 PLUS HOURS
7 EACH WEEK?

8 A. YES, YES, IT IS.

9 BY MR. HARRELL:

10 ALL RIGHT. THAT'S ALL I'VE GOT, COMMISSIONER.

11 BY COMMISSIONER HUFFSTETLER:

12 IS THERE ANYTHING ELSE?

13 BY MS. GRUBER:

14 I DON'T HAVE ANYTHING ELSE, COMMISSIONER.

15 BY MR. HARRELL:

16 NO, SIR.

17 BY COMMISSIONER HUFFSTETLER:

18 ALL RIGHT. THEN THAT CONCLUDES THE HEARING.

19 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
20 CONCLUDED AT THE HOUR OF 11:53 A.M.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0715675

FRANCIS BOLDS, JR.	)	
	)	
CLAIMANT,	)	SC WORKERS' COMPENSATION COMMISSION
	)	
VS.	)	FULL BOARD HEARING OF
	)	
UTI INTEGRATED LOG	)	FRANCIS BOLDS, JR.
EMPLOYER,	)	
	)	
AND	)	VS
	)	
AMERICAN HOME ASSUR	)	UTI INTEGRATED LOGISTICS, INC.
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Francis Bolts, Jr., versus UTI Integrated Logistics, Inc, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 1:35 P.M., Tuesday, June 23, 2009, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

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REPORTED

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COMMISSIONER PRESIDING:
G. Bryan Lyndon, Chairman
Avery B. Wilkerson
Derrick Williams

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

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STIPULATIONS

Commissioner Lyndon: If you would call the case, Gigi, please.

Court Reporter: Today is June 23rd, 2009. This is South Carolina Workers' Compensation Case Number 0715675. This is the case of Francis Bolts, Jr, Claimant versus UTI Integrated Logistics, Incorporated, Employer and American Home Assurance is the Carrier. The Appellant is the Claimant, represented by Ken W. Harrell. The Respondent is represented by E. Courtney Gruber. Each side is allowed ten (10) minutes for oral argument and 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 Huffstetler.

Commissioner Lyndon: Okay. Mr. Harrell.

Mr. Harrell: Thank you, Commissioner.

Commissioner Lyndon: We just have a kitchen timer. Somebody fell in love with our digital timer.

Mr. Harrell: Oh, no.

Commissioner Lyndon: So, if it sounds like 60 Minutes back here you'll know what's going on.

Mr. Harrell: Okay. Thanks. At least I know it's

1 not a bomb back there.

2 ARGUMENT FOR THE APPELLANT

3 By Mr. Harrell:

4 Thank you, Commissioner. This is a -- one of the rare
5 cases that I was reading Courtney's brief again this
6 morning where I think there's -- there's probably
7 little dispute about the facts that are involved in the
8 issue that we're asking you to address and it really
9 just hinges on one (1) legal issue. And that issue is
10 whether in order to recovery General Disability
11 Benefits, and it's my position that the award --
12 42-9-20 would be the -- the appropriate basis for the
13 award in this case, where the injured worker has to
14 show that more than one (1) body part has been
15 impaired, as was the decision of Commissioner
16 Huffstetler, in order to recover General Disability
17 Benefits, or does the law require that the injured --
18 injured worker only have to show that more than one (1)
19 body part has been adversely affected. Just to -- to
20 summarize the facts very briefly, though, so I can, I
21 think, show how clear the facts are about what the
22 appropriate award would be, my client is fifty (50)
23 years of age, he's been a truck driver since 1996 and
24 there was a stipulation by the parties that his average
25 weekly wage before this accident was two thousand

1 dollars (\$2,000.00) per week; so, he was making
2 significant wages as a truck driver. He testified that
3 he attempted to return to work as a truck driver in the
4 winter and the early spring of 2008, for approximately
5 seven (7) weeks and he simply wasn't able to -- to
6 tolerate it; the pain was too much. He went back to
7 the authorized treating doctor, Dr. Patel. On that
8 date, March 17, 2008, Dr. Patel stated, "Given the
9 nature of his position, requiring extensive driving in
10 a sitting position, this will only exacerbate his pain
11 complaints even with the radiofrequency ablation. As
12 such, I have discussed with the patient that it may be
13 in his best interest to look for a new position or
14 alternate position at work". When Dr. Patel -- and he
15 took him completely out of work at that point and when
16 we subsequently assigned him an impairment rating in
17 July of 2008, he indicated that he should -- he should
18 do no lifting greater than fifteen (15) pounds. I
19 would also reference the independent medical
20 examination performed by Dr. Mason Ahearn, who is an
21 Orthopedic Surgeon that the Defendants sent my client
22 to; so, this was a Defense IME. And Dr. Ahearn, when
23 he addressed the Claimant's work abilities, he stated
24 that the Claimant can not stand more than thirty (30)
25 minutes, was unable to sit more than sixty (60) minutes

1 without changing positions, was prevented from
2 stooping, bending, crawling, kneeling and repetitive
3 lifting, should do no lifting greater than fifteen (15)
4 to twenty (20) pounds and of -- the upmost significance
5 to me for a truck driver, he stated that he would be
6 able to stand no more that one (1) to three (3) hours
7 during an eight (8) hour workday and the same
8 limitations would apply to walking and driving. Also
9 indicated that he could work no more than three (3) to
10 five (5) hours of work during an eight (8) hour work
11 day. And, again, this was an IME scheduled by the
12 Defendants for my client. The Claimant has been very
13 active with Voc-Rehab. He came up to Columbia last
14 fall, participated in the four (4) week pain management
15 program. He subsequent tested because he didn't get
16 approved at first but he has tested and studied and he
17 has now been approved to start a course next month, a
18 computer programing course that Voc-Rehab offers. So,
19 this is a person that is determined and wants to return
20 to work; he does not want to be totally disabled at --
21 at age fifty (50). we had two (2) vocational
22 assessments, which were done and they also support the
23 award under 42-9-20. First the Defendant's vocational
24 assessment by Ms. Rena Spencer; she stated the
25 following, "He can work sedentary duties. He would

1 need to alternate positions frequently between sitting,
2 standing and walking. During the interview he
3 demonstrated the need to change positions. It would be
4 immediately obvious that he has a handicap upon
5 interview as he walks with a significant limp and
6 requires a cane." She went on to note that he was
7 attempting to locate work while having work
8 restrictions. "I would be supportive of a plan to get
9 additional training in computer programing and/or data
10 entry. I believe he would be most successful in a part
11 time position until his pain could be better managed".
12 And again, that's the Defendant's vocational
13 assessment. David Price, is the Rehab Counselor that I
14 set up for vocational assessment by. Mr. Price was
15 actually of the opinion, he thought that he was totally
16 and permanent disabled because he noted the significant
17 medications he was continuing to take: Oxycontin,
18 Lyrica, Immitrex and also the use of the Duragesic Pain
19 Patches. But he did note the Claimant's diligent
20 efforts to be retrained for less physical work and he
21 stated that if the -- if the Claimant was successful in
22 his efforts to be trained and to procure employment as
23 a computer programer, and again he has been approved to
24 start that course next month, Mr. Price's opinion was
25 that his annual income would be approximately

1 thirty-five thousand dollars (\$35,000.00) per year.
2 So, the undisputed facts that we have, based on the
3 record and -- and in large part based on the opinions
4 of the Defendant's experts, is that the Claimant's
5 earning potential has been reduced from two thousand
6 dollars (\$2,000.00) per week, which was pre-accident,
7 to six hundred, seventy-three dollars and eight cents
8 (\$673.08) per week and that's best case scenario if he
9 can find work as a computer programmer. So, for an
10 award under 42-9-20 the appropriate compensation rate
11 would be the 2007 maximum, six forty-five, ninety-four
12 (\$645.94). And that brings us to the legal issue.
13 What the Commissioner held, the Hearing Commissioner,
14 is that he based his decision on a statement in
15 *Singleton* that states, "where the injury is confined to
16 the scheduled member and there is no impairment to any
17 other part of the body because of such injury, the
18 employee is limited to scheduled compensation". What
19 the Commissioner's analysis leaves out is the important
20 part of *Singleton*, which states as follows, "To obtain
21 compensation in addition to the scheduled compensation
22 for the injured member Claimant must show that some
23 other part of the body has been affected". And
24 affected is, to me, is the key term that's used by the
25 *Singleton* in accord. What this means is that if

1 there's two (2) or more scheduled members that have
2 been injured the the Claimant is clearly entitled to
3 proceed under the General Disability Provisions as a
4 matter of law type inquiry. But if the actual injury
5 is confined to one (1) body part, and I would agree
6 that the -- the evidence in this case would indicate
7 that this is a spine injury, both cervical and lumbar,
8 the Claimant can still proceed under General Disability
9 Provisions, 42-9-20 or 42-9-10, if he can show that
10 some other part of his body is affected. That's
11 consistent with the decision in *Simmons v. City of*
12 *Charleston*, 349 S.C. 64 562 S.E. 2nd 476, which held
13 that in an injury to a scheduled member that affected
14 other parts of the body is compensable as General
15 Disability.

16 Commissioner Lyndon: Let me ask you a question.

17 Mr. Harrell: Yes, sir.

18 Commissioner Lyndon: If you took the exact same
19 set of circumstances and used two (2) other body
20 parts, a crush injury to the foot or a crush
21 injury to the hand, no doubt it would affect the
22 arm and the leg. would you have the same
23 argument?

24 Mr. Harrell: I think that you would,
25 Commissioner, but whatever reason I know that it's been

1 treated differently at times in some of the decisions
2 that I've received and I don't know if that's based on
3 the *Lai7* decision, which talks about --

4 Commissioner Lyndon: *Lai7*, and it's partly *Lai7*
5 but I was just curious to know, you could have a
6 bad foot, I'm trying to figure out why on earth
7 you would have any use of your leg.

8 Mr. Harrell: -- correct.

9 Commissioner Lyndon: You've got a hundred and
10 forty (140) week body part versus a hundred
11 ninety-five (195) week body part.

12 Mr. Harrell: Right.

13 Commissioner Lyndon: The same thing with your
14 fingers; they add up to a hundred and eighty-five
15 (185) weeks and if you can't use all your fingers
16 it looks like to me you've got a hand injury; even
17 though they may have been amputated up to here and
18 absolutely no hand, not affected one way or the
19 other or if you crushed your hand it seems like it
20 would have to affect your arm.

21 Mr. Harrell: Right.

22 Commissioner Lyndon: And if you used the exact
23 same logic you're doing, you -- often times, I
24 mean, I'm not editorializing, when a person has a
25 real bad back injury and there's referred pain or

1 radicular pain to the leg, you can -- I've seen
2 findings of fact by Commissioners saying, they
3 pump the rating up saying the situs of the injury
4 was the back; however, there is -- they happen to
5 have radicular pain to the right leg or whatever.
6 And the only time that I've seen that changed is
7 if there was something like foot drop, where a
8 person literally had no functional use of the leg,
9 in which case the leg was rated. And that's just
10 as an aside that -- the things that I've noticed.

11 Mr. Harrell: And I think that -- to me La77 was
12 probably the reason that those types of situations have
13 been treated differently from what we more commonly
14 see, which is radicular symptoms. And the medical
15 evidence is clear in this case that the claimant has
16 had radicular problems with his left leg and with his
17 left arm.

18 Commissioner Lyndon: So, if it was a cervical
19 problem and it involved the arm you would have the
20 same position; is that right?

21 Mr. Harrell: Yes, I would. Yes sir,
22 Commissioner.

23 Commissioner Lyndon: All right, sir. All right.

24 Mr. Harrell: And my position is that
25 radiculopathy is all that is needed to be shown if the

1 the medical evidence reveals radiculopathy and it can
2 be supported by the Claimant's testimony, and here it
3 clearly was because he talked about problems that he's
4 having with his arm and with his legs, that that is all
5 that is needed to allow an injured worker to seek
6 compensation for General Disability.

7 Commissioner Lyndon: And that was a wage loss
8 case you quote, you just cited based on -- is
9 there a wage loss case, a 42-9-20 case, based on
10 back and leg?

11 Mr. Harrell: You know, Commissioner, I'm not
12 sure. I don't want to represent that there is because
13 I'd have to --

14 Commissioner Lyndon: Okay. That's fine.

15 Mr. Harrell: -- to go back -- I'm just --

16 Commissioner Lyndon: All right.

17 Mr. Harrell: -- I'm not certain. And -- and I
18 guess, you know, the final point that I would make is
19 -- and I came across it as I was talking with a doctor
20 the other day and we were talking about -- I was asking
21 her to reconsider what she had put on the Form 14B
22 because it was a similar situation, and she had not
23 filled out anything for body parts affected. And as I
24 looked at the form then it became very clear to me, if
25 we look at the very language of the Form 14B it's got

1 two (2) questions on there for the doctors. First,
2 what are the body parts injured? The next question,
3 you move over to the right. What are the body parts
4 affected? And my position is that that's consistent
5 with South Carolina law; that's consistent with the law
6 that --

7 (Alarm sounded)

8 Mr. Harrell: -- that focuses on having to prove

9 --

10 Commissioner Lyndon: Go ahead, finish your
11 thought.

12 Mr. Harrell: -- that there's been another body
13 part affected; otherwise, why would that language be on
14 the form? It simply would have no meaning at all.

15 Commissioner Lyndon: All right. Thank you.

16 Courtney, I mean, Ms. Gruber.

17 ARGUMENT FOR THE RESPONDENT

18 By Ms. Gruber:

19 May it please the Appellant Panel. As Kenny -- as
20 Kenny said, you know, the -- most of the facts are not
21 really in dispute. This man is fifty (50) years old.
22 He has -- had not had any surgery; he has just been
23 treated conservatively for his back. He really hasn't
24 had any surgery to any body part as a result of this
25 accident. There was no evidence of any pre-existing

1 permanent problems that he had. He also was -- was
2 getting ready to -- at that time in July of this year,
3 he was getting ready to go into a computer training
4 class to learn to be a computer programmer; so he's got
5 some -- he's a high school educated man. He actually
6 spent twenty (20) -- I think twenty-five (25) years, if
7 I'm not mistaken -- no, I'm sorry, twenty-three (23)
8 years restaurant management. So, this -- so, this is
9 an individual who has more going for -- for him from a
10 vocational and a intellectual standpoint than a lot of
11 the other people that we see. And -- and also the fact
12 that he didn't have any surgery. With -- with the
13 exception of Dr. Ahearn's rating, the ratings were
14 fairly -- were fairly conservative in this case. He
15 got, I believe, ten percent (10%) from Dr. Stovall and
16 Dr. Patel, who are both in the same practice. We sent
17 him back to Dr. Stovall to get a surgical opinion. And
18 I believe he got twenty-five percent (25%) from doctor
19 -- Dr. Poletti; so -- and -- and that would be on the
20 high side. And Dr. Ahearn, if you look at his ratings,
21 I -- when I looked at them it looked to me like he was
22 -- he -- he added them up in a different way than I've
23 ever seen them added. He kind of did it -- he did it
24 -- it reminded me of a used car salesman; so, I'm not
25 sure what he was doing with the ratings. But anyway,

1 the point of the matter is we have a, you know, a
2 fairly minor injury to the back. Now, this man has
3 been having some pain. There was some discrepancy in
4 his testimony, however. He showed up at the hearing
5 with a cane that he had been given by -- about a month
6 before at -- by a Physical Therapist when he went to
7 the -- that inpatient vocational rehabilitation program
8 that they have here in Columbia. When I asked him
9 about it, because none of the doctors who had seen him
10 before, including Dr. Patel, who saw him for a couple
11 of years; well, up in -- from the date of the accident
12 until then. The doctors, they had noted that he didn't
13 walk with any limp, that he didn't have any problem
14 doing heel-toe, heel-toe, when he was -- when they were
15 examining him. And doctor -- and I would call your
16 attention to Dr. Patel's notes, specifically. And so,
17 it -- it appeared to me, looking from the records and
18 we pointed this out in the -- in the record -- in the
19 transcript that he did not have a limp until he
20 apparently went to vocational rehabilitation in -- in
21 September and October of 19 -- of 2008 and at which
22 time he impressed upon somebody there that he needed a
23 cane. After -- after that point he went to see Dr.
24 Stovall and it was noted at that time that he had a
25 cane and he had a limp. So, there's some question

1 about the -- certainly about the -- the severity of any
2 radiculopathy that he had or any problems that he had
3 with his legs. From a -- we feel that the -- that the
4 single Commissioner made precisely the right decision
5 in -- in holding that this -- this case involved a
6 single member only under 42-9 -- 42-9-30. That it's
7 the correct application of the case law and that
8 there's not -- well, there's not impairment given to
9 the legs, that's true, but there's also not any --
10 there's not any real evidence that he has any problems
11 with his legs other than the problem to his back and
12 there's some question as to the severity of the problem
13 with his legs. There's no -- no question that he needs
14 -- he's going to need ongoing pain management and that
15 sort of thing and that was really not an issue. But
16 the -- the fact that he, you know, that -- that he
17 didn't -- there was no medical documentation of him
18 having a limp until he went to vocational
19 rehabilitation shortly before this hearing was sort of
20 telling on the severity of the injury. And I don't
21 think there's anything in the cases that -- that Kenny
22 has cited where it says that -- that the mere fact that
23 another body part is affected in -- in some minor -- in
24 any way, makes that -- makes that case one for, you
25 know, for treatment under 42-9-20 or 42-9-30. I don't

1 think that necessarily takes it out of the scheduled --
2 the scheduled member statute. The other thing I'd like
3 to point out is the -- is some of the language in the
4 -- I never know how to pronounce this, *Therrell* --
5 *Therrell v. Jerry's*. That case had an opposite result
6 and the cite on that is 370 S.C. 22 633 S.E. 2nd 893,
7 it's a 2006; I'm sure you all know that. In that case
8 they -- obviously this was about a shoulder and the --
9 and the -- the Claimant was arguing that the situs of
10 the injury was -- was the shoulder and that's where --
11 that's where they -- they -- that -- that -- and they
12 were entitled to the General Disability Statute and the
13 -- of course, the Defendants were arguing that it was
14 really -- it affected the arm and therefore it should
15 be an arm case. The Court analyzed what they saw as
16 two (2) separate models. And they said, well, we can
17 go with the functional impairment model, which some --
18 sometimes the jurisdictions use, which would -- which
19 would mean that we would -- we would look at what was
20 function -- the body part that was functionally
21 impaired and -- which would be arm and we'll rate him
22 on that or we could go along with the situs of the
23 injury. And that's how they came about that -- with
24 the decision that allowed them to go into the General
25 Disability Statute based on the shoulder and it was an

1 unscheduled member and -- and you all know the rest of
2 that. The point I'm -- the point I'm making is, and
3 this is -- on this case it's kind of in reverse because
4 we're arguing that it should be a narrow -- that --
5 that -- that his benefits should be decreased rather
6 than increased by this analysis -- analysis but to --
7 to -- we would argue that to -- to go along with what
8 -- what Kenny is -- Mr. Harrell is suggesting and that
9 you would -- you would essentially be -- be reversing
10 or going against the -- the ruling in *Therrell* because
11 you would be -- you would be saying we agree that
12 there's a functional impairment to the legs and,
13 therefore, we're going to allow this to -- we're going
14 to allow that functional impairment to -- to affect the
15 disability award in this case. All right, and -- and
16 we would argue that if the correct application of
17 *Therrell* to this case would say, there is no functional
18 -- that functional impairment is out. We only are
19 focused on the situs of the injury and in that case the
20 situs of the injury is conclusion of fact and that's
21 what the Commissioner -- that's what we would submit
22 the Hearing Commissioner was saying. So, we would ask
23 that the -- that all of you consider the -- the case
24 and the applicable case law and affirm the single
25 Commissioner's findings. Thank you.

1 Commissioner Lyndon: All right. Thank you,
2 ma'am. All right, Kenny, Mr. Harrell.

3 REPLY FOR THE APPELLANT

4 By Mr. Harrell:

5 Thank you, Commissioner, very briefly. Just a couple
6 of things. First, in -- in response to Courtney's
7 contention that this was not a surgery case. I -- I
8 would just ask you to look at what the Defendant's
9 experts have said. If you look at the opinion of Dr.
10 Patel, Dr. Ahearn and Rena Spencer, just take out
11 anything that's been said by Dr. Poletti or David
12 Price; it still supports the award under 42-9-20.
13 That's from the restrictions and the work limitations
14 that those people have placed on Mr. Bolds. Now, his
15 work as a restaurant manager he testified, and not
16 surprising it's very physical work, that he would not
17 be able to go back to doing that type of work, which is
18 why he's working so hard to become a computer
19 programmer to do something that he thinks that he would
20 be able to do. Yes, he does have more going on for him
21 than the average Claimant or at least my average
22 client, which is why he's working to get back in the
23 program. But it's still going to take -- I mean, he's
24 going from two thousand dollars (\$2,000.00) a week to
25 best case scenario situation would put him at about six

1 hundred and seventy dollars (\$670.00). The cane issue
2 that I -- and Courtney did discuss that at great length
3 in her brief. I would just note that Dr. Patel, as I
4 counted, I think it's one (1), two (2), three (3), four
5 (4) -- you know, close to ten (10) times and virtually
6 every report he stated, Waddell signs are negative.
7 And -- and I think that's consistent with my client's
8 efforts to try to put himself in a position to get back
9 to work. I mean, what's he -- what's he faking with
10 the cane? I mean, he's wanting to go back to work;
11 he's been diligent in his efforts to get involved with
12 Voc-Rehab and to get involved in this program. And as
13 to *Therrell* and the situs of the injury case, and --
14 and I know -- and with all due respect to the Hearing
15 Commissioner that I have a lot of respect for, but we
16 have always disagreed on this issue and his
17 interpretation of *Singleton* and his interpretation of
18 *Therrell* and how it applies to cases involve d in spine
19 injuries with radicular symptoms. And in *Therrell* what
20 they basically were saying is that if you have a
21 shoulder injury, then it needs to be treated as a
22 shoulder injury, not as an arm injury. As I read
23 *Therrell*, I mean, the -- the basic gap, I guess, or the
24 problem with the Claimant's case is that they failed to
25 present ample evidence to show general disability.

1 well, that evidence is in this case; in fact, it's
2 overwhelming in this case. To me *Therre77* -- and if
3 you look at -- you know, if you have a neck injury, for
4 example, let's just look at the neck, and if you've
5 depression or some psychiatric overlay. well,
6 certainly you can't come in and say, oh well, you know,
7 there can be no recovery for general disability because
8 the situs of the injury is the neck. well, it may have
9 been but it lead to other symptoms and in this case it
10 lead to the problems with the arm and with both of the
11 legs. We would ask that the Hearing Commissioner's
12 decision be reversed and an award under 42-9-20 be made
13 with a credit for the amount, which has been paid by
14 the Defendant's under 42-9-30.

15 Commissioner Lyndon: All right. Thank you. That
16 completes this proceeding. It was good to see you
17 all. Charleston's Finest.

18 (There being no further discussion, the hearing concluded
19 at 2:06 P.M.)
20
21
22
23
24
25

Francis Bolds, Jr. v. UTI Integrated Logistics, Inc.

WCC File No.: 0715675

Date of Hearing: March 3, 2009

D/A: 10/5/07

SSN: 247-29-6075

CLAIMANT'S APA SUBMISSIONS

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LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Shailesh M. Patel, M.D.

PATIENT: Francis Bolds
CHART NO: 113431
DOB: 3/19/58

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10/15/07: Physiatry Spine Center Consultation

REFERRING PHYSICIAN: Alexandre Morin, M.D.

CHIEF COMPLAINT: Headaches, neck and back pain

HISTORY OF PRESENT ILLNESS: Mr. Bolds is a 49 YOM who was sent here for initial evaluation, consultation and recommendations in regards to the patient's pain complaints. The patient describes a ten day history of headaches, neck and lower back pain with onset on 10/5/07 after being involved in a rear end collision with a tractor trailer. The patient is a truck driver and reports he was hit by another tractor trailer while driving at 70 mph. He reports that he was restrained. There was no air bag deployment, but he does report loss of consciousness for approximately one minute. He states that the seat that he was in had broken off and was slumped forward. He does not recall hitting his head on the windshield. The patient was taken to the ER via a stretcher at Higgins Hospital in Georgia, where he had x-rays of the neck, back and lower extremities which showed no gross abnormalities. Apparently he reports that he continues to have daily and constant pain in the neck and lower back which he rates as an 8/10. He describes it as an achiness, deep pressure sensation with no radiation into the upper extremities. He does report point tenderness along the bilateral lower extremities, anterior aspects of both legs, left side worse than right.

In addition, the patient also reports episodes of headaches that seem to originate from the neck and spread upwards into the posterior aspect of the scalp. He also describes episodes of blurry vision along the left eye and "floating spots". He states that these headaches are sometimes worsened by bright lights and relieved by darkness. Of note, the patient does report a childhood history of migraine headaches, but had not been on any previous headaches medications before the accident.

He reports no previous injury to his neck or back and reports no previous history of bowel or bladder incontinence. He also denies any previous neck or back surgery. He states the pain is made worse with lying down and better with neck pillows, medications and Tylenol. The pain limits him in his ability to drive a truck.

PAST MEDICAL HISTORY: Hypertension.

PAST SURGICAL HISTORY: Right shoulder dislocation repair, 1974.

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10/15/07 (Continued):

MEDICATIONS: Flexeril 10 mg one tablet po b.i.d. PRN. Vicodin 7.5 mg one tablet po q 6 hours PRN.

ALLERGIES: NKDA.

FAMILY HISTORY/SOCIAL HISTORY: See comprehensive questionnaire on the chart.

REVIEW OF SYSTEMS: See comprehensive 16 point system on the chart.

PHYSICAL EXAMINATION:

Vital signs:

Height 5'6"
Weight 236 lbs
Blood pressure 154/108
Pulse 76
Respirations 14
Temperature 97.9°

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM in the cervical spine is limited in all planes secondary to pain.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation, reproducing pain.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

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Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. No presence of Hoffman or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel, Phalen, Roos, and Spurling testing were normal.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

Spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursas or the iliotibial band.

Neurologic: There is an antalgic gait without assistive device. He is unable to walk on toes and heels secondary to pain. Coordination is intact. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity, which shows decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral lower extremities. Reflexes are symmetrical at 2+ for lower extremities. No Babinski sign is present. Muscle tone is normal with no clonus or muscle atrophy present. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness along the bilateral SI joints, left side worse than the right.

IMAGING: X-rays of the cervical spine, dated 10/5/07, demonstrated no acute traumatic injury.

X-rays of the left tibia and fibula and the left ankle, dated 10/5/07, were also unremarkable.

DIAGNOSIS/IMPRESSION:

- 1) Cervical whiplash syndrome
- 2) Cervical dystonia
- 3) Cervical facet arthropathy
- 4) Craniocervical headache
- 5) Occipital neuralgia

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10/15/07 (Continued):

- 6) Migraine headaches
- 7) Lumbar and cervical myofascial pain with muscle spasms
- 8) Lumbar facet arthropathy
- 9) Left lumbar radiculitis
- 10) Bilateral sacroiliac joint dysfunction
- 11) Obesity
- 12) Cervical sprain

COMMENTARY/MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM who was sent by Dr. Alexandre Morin for evaluation of pain complaints which are described as neck and lower back pain. Based on careful review of history, physical examination and relevant imaging, I believe the patient's pain complaints are multifactorial in etiology. The patient appears to be suffering from a headache syndrome since the truck accident that may be secondary to an occipital neuralgia versus migraine headaches. Given the patient's relatively recent traumatic injury, if the headaches do not resolve on their own, then further work up may be needed and referral to neurology may be indicated.

In addition, the patient does appear to be suffering from a cervical dystonia, likely secondary to his whiplash injury during the car accident that is accounting for the majority of his neck pain complaints; however, further imaging of the cervical spine is indicated to rule out any nerve root compression or more serious spinal pathology.

In regards to the lumbar spine, his symptoms may be coming from a bilateral sacroiliac joint dysfunction. It is relatively common to have a sacroiliac joint dysfunction after a traumatic injury involving high velocity and high force. If the patient does not receive substantial relief with physical therapy and pain medications, then interventional injections may be indicated for both the cervical spine and SI joints.

At this time, we are recommending that the patient continue his conservative treatment course with medications and therapy. Should he fail the treatment options outlined below, then consideration may be given to surgical evaluation in the future.

RECOMMENDATIONS:

- 1) Consider for diagnostic purposes an MRI of the cervical spine and the lumbar spine to rule out any gross spinal pathology and/or radiculitis.
- 2) Consider for physical therapy for cervical and lumbar evaluation to include treatment with superficial modalities as needed, ROM, stretching/strengthening exercises, spine school, home exercise program, TENS unit and aerobic exercise program.

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- 3) For medication options, consider Celebrex 200 mg one tablet po b.i.d. and Ultram 100 mg one tablet po b.i.d. The patient was given a one month supply and was advised of the side effects. He understood and agreed to take the medications as directed. The primary care provider may renew medications as needed.
- 4) Consider for diagnostic and therapeutic options, left followed by right sacroiliac joint injection. The patient may also consider radiofrequency ablation if the injection is deemed beneficial.
- 5) Consider Botox injections into the bilateral cervical paraspinals, semispinalis capitis, trapezius and levator scapulae if he has no improvement with the above conservative treatment plan.
- 6) Consider bilateral lumbar medial branch blocks, L3-S1 on the left, followed by right, if no relief with the above. Again, radiofrequency ablation may be considered if injections are deemed beneficial.
- 7) Consider diagnostic and therapeutic trigger point injections for occipital neuralgia if he has no resolution of headaches in 2-4 weeks.
- 8) Consider referral to neurology for evaluation for migraine headaches if there is no resolution of headaches.
- 9) The patient may follow up on any of these options as listed above.
- 10) The patient may follow up with his primary care provider for further management, medication refills and therapy renewals.

SMP/tg (10/19)*

11/1/07: CHIEF COMPLAINT: Neck and back pain

Mr. Boldo returns today for follow up in regards to his neck and back pain complaints. He was last seen on 10/15/07, at which time he was prescribed Celebrex 200 mg b.i.d. and Ultram ER 100 mg b.i.d. The patient reports that he had to stop the Celebrex because of "heart palpitations". He reports that he has been taking the Ultram which has been improving his symptoms. He states overall his neck and back pain complaints have improved since the last time he was here and that his headache frequency has decreased. He is here today for review of his MRI of the cervical spine and lumbar spine. The patient did report that he has initiated physical therapy which also has been improving his symptoms; however, he does report that he has continued neck pain greater than back pain with radiation into both the left shoulder and the left medial aspect of the lower extremity. He reports no bowel or bladder incontinence at this time.

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PHYSICAL EXAMINATION: Vital signs are stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel, Phalen, Roos, and Spurling testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right.

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Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

IMAGING: MRI of the lumbar spine dated 10/27/07 was personally reviewed by myself with the patient present. Findings showed a left L4-5 paracentral broad based disc protrusion with moderate left neural foraminal stenosis deflecting the left L4 nerve root. There was also noted an L5-S1 intraforaminal disc protrusion with site contact of the exiting left L5 nerve root.

MRI of the cervical spine dated 10/27/07 was also personally reviewed by myself with the patient present. Findings showed diffuse cervical spondylosis, primarily at C5-6 and neural foraminal stenosis affecting the left C6 nerve root secondary to a disc osteophyte complex. Also noted was a focal T2 hyperintensity in the right anterior hemicord adjacent to the C4-5 disc level without associated compression.

DIAGNOSIS/IMPRESSION:

- 1) Cervical radiculitis, left C5 versus C6
- 2) Cervical dystonia
- 3) Cervical whiplash syndrome
- 4) Cervical facet arthropathy
- 5) Craniocervical headache
- 6) Migraine headaches
- 7) Lumbar and cervical myofascial pain and muscle spasms
- 8) Left lumbar radiculitis, L4 versus L5
- 9) Bilateral sacroiliac joint dysfunction
- 10) Obesity

COMMENTARY/MEDICAL DECISION MAKING: Mr. Bolds is a 49 YOM who is here for follow up in regards to his neck and lower back pain complaints. Based on careful review of the patient's history, physical exam and relevant imaging, the patient's pain complaints are multi factorial in origin. In part, he has significant cervical and lumbar spondylosis that is accounting for the majority of his axial neck and back pain complaints; however, he does have a radicular component to his symptoms which can be explained by the MRI findings of a left cervical C5 versus C6 radiculopathy and a left lumbar L4 radiculopathy. To better evaluate the radiculopathy, EMG and nerve conduction study is recommended. In addition, the patient was instructed to continue his physical therapy and pain medications; they have been

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improving his symptoms significantly. The patient also was instructed to consider epidural steroid injection for the neck and later for the lower back in regards to his radicular complaints. At this time, the patient is not a surgical candidate as he is responding to conservative treatment options; however, should his symptoms worsen or fail to improve, then consideration for surgery may be done in the future.

RECOMMENDATIONS:

- 1) Continue physical therapy for cervical and lumbar evaluation.
- 2) For medication options, continue Ultram ER 100 mg one tablet po b.i.d.
- 3) Consider for diagnostic and therapeutic options, cervical epidural steroid injection with catheter to left C5.
- 4) Consider Botox injections to the bilateral cervical paraspinals, semispinalis capitis, trapezius and levator scapulae if no improvement with the above.
- 5) Consider bilateral lumbar medial branch blocks, L3 to S1, first on the left than followed by the right if no relief with the above for mechanical back pain. Radiofrequency ablation may be considered if injections are deemed beneficial.
- 6) Consider bilateral medial branch blocks for the neck, left followed by right, again followed by radiofrequency ablation if successful.
- 7) Consider diagnostic and therapeutic SI joint injections if no relief with the above, followed by radiofrequency ablation.
- 8) Consider diagnostic and therapeutic trigger point injections for occipital neuralgia if the headaches do not completely resolve by his next follow up visit.
- 9) Consider referral to neurology for evaluation for migraine headaches in the future if needed.
- 10) The patient may follow up on any of these options listed above.
- 11) The patient may follow up with his primary care provider for further management, medication refills and therapy renewals. SMP/tg (11/8)

11/27/07: CHIEF COMPLAINT:

1. Neck and upper extremity pain
2. Back and left lower extremity pain

HISTORY OF PRESENT ILLNESS: Mr. Bolds returns today for follow up in regards to his neck and back pain complaints. He was last seen on 11/01/07 at which time it was recommended that the pt proceed with a cervical translaminar epidural steroid injection.



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11/27/07 (Continued):

The pt had the epidural on 11/20/07 and reports significant relief of his left upper extremity pain complaints. He states that his VAS pain score in regards to his neck and left upper extremity is currently a 2/10. He reports extreme satisfaction with the results of the procedure. The pt will be continuing PT to address his mechanical deficits in the neck and upper extremity. At this time, the pt does report continued low back pain with radiation into the left lower extremity. He reports that the pain is worse in his back than it is in his leg and describes that the majority of the discomfort is in the early morning when he noted that he has been increasingly stiff. He does report sensations of numbness and tingling along the left anterior aspect of the thigh. The pt has had a previous MRI of the lumbar spine, which did indicate a possible left lumbar L4 radiculopathy.

PHYSICAL EXAMINATION:

Vital signs: Stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

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11/27/07 (Continued):

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel, Phalen, Roos, and Spurling testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

1. Cervical radiculitis left C5 versus C6
2. Cervical dystonia
3. Cervical whiplash syndrome
4. Cervical facet arthropathy
5. Left lumbar radiculitis L4 versus L5
6. Left lumbar facet arthropathy
7. Bilateral sacroiliac dysfunction
8. Obesity
9. Craniocervical headache

COMMENTARY/MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM pt who is here today for follow up in regards to his neck and lower back pain complaints. At this time, the pt's neck pain and left upper extremity is well controlled with his medications and the recent cervical translaminal epidural steroid injection. At this point, we recommend continued conservative treatment with PT and pain medications in regards to his neck and left upper extremity pain complaints.

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11/27/07 (Continued):

As far as his lower back pain complaints it appears the majority of the pain is axial and mechanical in nature, but he does report some neuropathic complaints in the left lower extremity. As his back pain complaints are worse than his leg pain complaints it is recommended that he undergo a trial of left lumbar medial branch blocks followed by radio frequency ablation if successful. If no relief is offered with the medial branch blocks than consideration should be given for a lumbar epidural steroid injection. The pt was also encouraged to continue PT for the lumbar spine. At this time, the pt is not a surgical candidate as he is responding to conservative treatment options and has not exhausted all available treatment possibilities. Should his symptoms worse or fail to improve than consideration for surgery may be needed in the future.

RECOMMENDATIONS:

1. Continue PT for cervical and lumbar evaluation.
2. For medication options continue Ultram extended release 100 mg one table po bid.
3. Consider for diagnostic and therapeutic options lumbar medial branch blocks, left L3 to S1, followed by radio frequency ablation if successful.
4. Consider repeat cervical translaminar epidural injection if left upper extremity pain symptoms worse.
5. If no relief with above consider for diagnostic and therapeutic purposes sacroiliac joint injections followed by radio frequency ablation.
6. Consider Botox injections to the bilateral cervical paraspinals, semispinalis capitis, trapezius and levator scapulae if no improvement with the above.
7. The pt may follow up on any of these options listed above.
8. The pt may return to the primary care provider for further management, medication refill, and therapy renewals. SMP/mlh (12/03)

12/17/07: CHIEF COMPLAINT:

1. Neck pain
2. Lower back pain
3. left upper extremity pain
4. Left lower extremity pain

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12/17/07 (Continued):

HISTORY OF PRESENT ILLNESS: Mr. Bolds is here today for follow up in regards to his neck and back pain complaints. He was last seen here on 11/27/07. The pt has had a previous epidural injection on 11/20/07. He currently states that his neck is feeling much better. He reports his VAS pain score is 2-3/10. He states that he is headaches have subsided dramatically and his left upper extremity arm pain has also subsided dramatically. However, he does continue to report significant lower back pain as an 8-9/10. It is worse in the morning when he is first waking up and improved with some physical activity. He states that sitting in a prolonged position or standing in a prolonged position seems to worsen his pain. The pt is a truck driver by occupation and is concerned about driving long distances, secondary to his lower back pain.

PHYSICAL EXAMINATION:

Vital signs: Stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

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12/17/07 (Continued):

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel, Phalen, Roos, and Spurling testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

1. Left cervical radiculitis
2. Cervical dystonia.
3. Spasmodic torticollis
4. Left lumbar radiculitis, L4 versus L5
5. Lumbar facet arthropathy
6. Bilateral sacroiliac joint dysfunction
7. Obesity
8. Craniocervical headache

COMMENTARY/MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM who is here today for follow up in regards to his neck and lower back pain complaints. At this time the pt reports satisfactory decrease of symptoms in his neck and left upper extremity. He wants to focus his treatment plan on his lower back. He has gone through PT for his lower back, but feels like therapy has worsened his symptoms. Therefore, I have requested that he stop therapy temporarily. In addition, I am recommending the pt undergo a trial of lumbar medial branch blocks followed by radio frequency ablation if successful.

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12/17/07 (Continued):

If no relief is offered with the medial branch blocks that consideration should be given to a lumbar epidural steroid injection. At this point, the pt is not a surgical candidate as he has not exhausted all his conservative treatment options. The pt is able to return back to work as long as his pain symptoms do not worsen.

RECOMMENDATIONS:

1. Continue for medication options Ultram 100 mg bid. Also consider Ultra Derm anti-inflammatory cream applied to the lower back.
2. Consider for diagnostic and therapeutic purposes lumbar medial branch blocks, left L3 to S1 followed by radio frequency ablation if successful.
3. Consider repeat cervical translaminal epidural steroid injection if left upper extremity pain symptoms worsen.
4. If no relief with above consider for diagnostic and therapeutic purposes SI joint injections followed by radio frequency ablation.
5. Consider Botox injections to the bilateral cervical paraspinals, semispinalis capitis, trapezius, and levator scapulae if no improvement with the above.
6. The pt may follow up on any of these options listed above.
7. The pt may return to the primary care provider for further management, medication refill, and therapy renewals. SMP/mlh (12/26)*

1/17/08: Worker's Compensation-DOI: 10/5/07

CHIEF COMPLAINT: Neck pain, low back pain

Mr. Bolds returns today for follow up regarding his neck pain and low back pain complaints. The patient reports his current VAS pain score is 1-2/10. He states that he notes almost 80% improvement in his symptoms after his recent right medial branch block. He does report as of the last couple of days his symptoms are starting to return, especially in the right side. He continues to report significant relief of symptoms in the neck and left upper extremity. He states that his pain appears to be worse with physical activities, especially lifting or bending. The patient is a truck driver by occupation and would like to return to driving.

PHYSICAL EXAMINATION: Vital signs are stable.

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1/17/08 (Continued):

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

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1/17/08 (Continued):

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Cervical dystonia
- 3) Spasmodic torticollis
- 4) Lumbar facet arthropathy
- 5) Bilateral sacroiliac joint dysfunction
- 6) Obesity

COMMENTARY/MEDICAL DECISION MAKING: Mr. Bolds is a 49 YOM who is here today for follow up in regards to his lower back pain complaints. The patient has responded very well to cervical ESI and to his right medial branch blocks. In regards to his lower back, I would recommend follow up procedure with radiofrequency ablation for more longer lasting treatment of his lumbar facet syndrome. Further repeat medial branch blocks may also be considered for the right side as well. Currently, he reports his symptoms on the left side are not significant enough to warrant treatment.

RECOMMENDATIONS:

- 1) Continue for medication options, Ultram and Neuroderm anti-inflammatory topical cream.
- 2) Consider for diagnostic and therapeutic purposes, a lumbar radiofrequency ablation of left L3-S1.
- 3) Consider for diagnostic and therapeutic purposes, repeat right lumbar medial branch blocks, right L3-S1.
- 4) Consider repeat cervical translaminar epidural steroid injection if left upper extremity worsens.
- 5) If no relief with the above, consider for diagnostic and therapeutic purposes, SI joint injections followed by radiofrequency ablation.
- 6) Consider Botox injections to the bilateral cervical paraspinals, semispinalis capitis, trapezius and levator scapulae if no improvement with the above.
- 7) The patient may follow up on any of these options as noted above.
- 8) The patient may return to his primary care provider for further management, medication refills and therapy renewals. SMP/tg (1/24)*

2/4/08 - FTKA

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PATIENT: Francis Bolds
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02/04/08: FTKA

02/11/08: Worker's Compensation-DOI: 10/05/07

CHIEF COMPLAINT: Low back pain

HISTORY OF PRESENT ILLNESS: Mr. Bolds is a 49 YOM pt here for follow up in regards to a work related injury to his lower back and neck. He continues to report significant relief of his neck pain symptoms after his cervical epidural steroid injection. Recently he had a left sided medial branch block performed, which he reports was effective in reducing his back pain complaints by over 70%. He has also had the same procedure done on the right, which he also report was 50 to 80% effective in improving his pain complaints. He reports no other major pain complaints at this time.

PHYSICAL EXAMINATION:

Vital signs: Stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

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02/11/08 (Continued):

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

1. Left cervical radiculitis
2. Cervical dystonia
3. Spasmodic torticollis
4. Lumbar facet arthropathy
5. Bilateral sacroiliac joint dysfunction
6. Obesity

COMMENTARY/MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM who is here today for follow up in regards to his lower back pain and neck pain complaints. In regards to the neck as he is still responding well to his previous cervical epidural steroid injection I would recommend no further treatment at this time. In regards to his lower back the pt now has had medial branch blocks performed bilaterally and has had 50 to 80% improvement in his pain complaints after these diagnostic blocks.

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02/11/08 (Continued):

As such, I believe a radio frequency ablation performed at the same levels with off him significant relief of his lower back mechanical pain symptoms.

RECOMMENDATIONS:

1. Consider for diagnostic and therapeutic purposes a lumbar radio frequency ablation, right L3 to S1 followed by a left L3 to S1 on a separate visit.
2. Consider repeat cervical translaminar epidural steroid injection if left upper extremity pain worsens.
3. The pt may follow up on any of these options listed above.
4. The pt may return to the primary care provider for further management, medication refill, and therapy renewals.
5. The pt was instructed to continue the Celebrex 200 mg bid and the Ultram ER 100 mg bid as previously prescribed. SMP/mlh (02/15)

03/17/08: CHIEF COMPLAINT: Low back pain

Worker's Compensation-DOL: 10/05/07.

HISTORY OF PRESENT ILLNESS: Mr. Bolds is a 49 YOM pt here today for follow up in regards to a work related injury to his lower back and neck. The pt reports that he continues to have no neck pain symptoms after his cervical epidural steroid injection. He reports that his right side of his back continues to do quite well after his radio frequency ablation that was performed on 03/04/08. Since then he has returned back to work and went a 1000 mile truck drive, which was his previous position and now reports a significant reaggravation of his lower back complaints, primarily on the left side. He has had previous medial branch blocks on the left side, which reduced his pain by over 70%. He reports no other pain major pain complaints at this time.

PHYSICAL EXAMINATION:

Vital signs: Stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

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Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinell's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

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03/17/08 (Continued):

DIAGNOSIS/IMPRESSION:

1. Left cervical radiculitis
2. Lumbar facet arthropathy
3. Sacroiliac joint dysfunction
4. Left cervical dystonia
5. Obesity

COMMENTARY/MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM pt here today for follow up in regards to his lower back pain complaints, primarily on the left side. As he received such good relief of his mechanical lower back pain with the radio frequency ablation I would recommend the same procedure on the left side. I also recommended that he not work until he has had this procedure in order to prevent worsening of his lower back pain symptoms. Given the nature of his position requiring extensive driving in a sitting position this will only exacerbate his pain complaints, even with the radio frequency ablation. As such, I have discussed with the pt that it may be in his best interest to look for a new position or an alternate position at work.

RECOMMENDATIONS:

1. Consider for diagnostic and therapeutic purposes a left L3 to S1 lumbar radio frequency ablation.
2. Consider repeat cervical translaminar epidural steroid injections if the left upper extremity pain worsens.
3. For medication options consider Flector topical anti-inflammatory patch and Percocet 5 mg 3 times a day as needed. The pt was instructed to continue the Celebrex and Ultram that he was previously prescribed.
4. The pt may follow up on any of these options listed above.
5. The pt may return to the primary care provider for further management, medication refill, and therapy renewals. SMP/mlh (03/25)

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PATIENT: Francis Boldt
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4/24/08: Mr. Boldt returns today for follow up in regards to his lower back pain after radiofrequency ablation was performed approximately two weeks ago. He reports significant relief of his lower back pain symptoms. He continues to report relief of his right lower back symptoms. Overall, he reports his pain is 3-4/10 on the VAS pain scale. He feels he is now ready to return for work in a light duty fashion. He reports no other major complaints at this time.

PHYSICAL EXAMINATION: Vital signs are stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No

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4/24/08 (Continued):

presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Lumbar facet arthropathy
- 3) Sacroiliac joint dysfunction
- 4) Left cervical dystonia
- 5) Obesity

COMMENTARY/MEDICAL DECISION MAKING: Mr. Boldo is a 49 YOM who is here today for follow up in regards to his lower back pain which is primarily due to lumbar facet arthropathy. As he has received excellent relief of his pain symptoms with RFA, I would like to recommend that the patient return to work at modified duty fashion with restrictions as noted on his work form with lifting less than 15 lbs and restricted sitting for $\leq$ to two hours. We will see the patient back in follow up in one month. At that time, we will determine if he is at MMI.

RECOMMENDATIONS:

- 1) Continue Flector anti-inflammatory patch and Percocet 5 mg as needed.
- 2) Return to work at modified duty with restrictions.
- 3) The patient may follow up on any of these options as listed above.
- 4) Consider repeat cervical translaminal epidural steroid injections if left upper extremity symptoms worsen. SMP/tg (4/30)

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5/22/08: Worker's Compensation-DOI: 10/5/07

CHIEF COMPLAINT: Low back pain, left lower extremity pain

Mr. Bolds is a 50 YOM who is here today for follow up in regards to his lower back and left lower extremity pain complaints. The patient has done quite well with his recent radiofrequency ablation procedures in regards to his lower back pain; however, he now reports a radiating pain down the left leg which has been quite bothersome, especially with driving. He otherwise has no new complaints at this time.

PHYSICAL EXAMINATION: Vital signs are stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower

LOWCOUNTRY ORTHOPAEDICS
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PATIENT: Francis Boldo
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5/22/08 (Continued):

extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Lumbar facet arthropathy
- 3) Sacroiliac joint dysfunction
- 4) Left cervical dystonia
- 5) Obesity
- 6) Left lumbar radiculopathy
- 7) Left sciatica

COMMENTARY/MEDICAL DECISION MAKING: Mr. Boldo is a 49 YOM who is here today for follow up in regards to his lower back pain due to lumbar facet arthropathy and his left leg pain due to lumbar radiculopathy. In regards to the left sciatica, I would recommend a series of epidural steroid injections as he has not had these performed before. The patient is currently working at modified duty; I would recommend him continuing to do so.

RECOMMENDATIONS:

- 1) Continue Flector and Percocet.
- 2) Consider for diagnostic and therapeutic purposes, a left L4-5/L5-S1 transforaminal epidural steroid injection. This may need to be done in a series of three for optimal relief.
- 3) The patient has responded well to previous interventions for the lower back and therefore, I would like for him to continue working at modified duty with weight lifting

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restrictions of 15 lbs or less. The patient may consider repeat cervical translaminar epidural steroid injections if left upper extremity symptoms worsen.

4) The patient may follow up on any of these options as listed above. SMP/tg (5/30)

6/10/08: Medical records sent to Vocational Rehabilitation. TLC/tg (7/9)

6/23/08: Worker's Compensation-DOI: 10/5/07

CHIEF COMPLAINT: Neck pain, low back pain

Mr. Bolds returns today for continued complaints of neck pain with radiation into the left arm, all the way down into the fingers, as well as left back pain with radiation down into the foot. He has not had any previous epidural steroid injections and given his largely radicular symptoms, this may be indicated at this time. This recommendation was made at his last visit; however, it has yet to be approved. He otherwise has no new complaints at this time.

PHYSICAL EXAMINATION: Vital signs are stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

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Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Lumbar facet arthropathy
- 3) Sacroiliac joint dysfunction
- 4) Left cervical dystonia
- 5) Obesity
- 6) Left lumbar radiculopathy
- 7) Left sciatica

COMMENTARY/MEDICAL DECISION MAKING: Mr. Bolds is a 49 YOM who is here today for follow up in regards to his multiple complaints. In part, he does have a lumbar facet arthropathy that has responded quite well to radiofrequency ablation. In addition, he also has neuropathic pain symptoms in both the left leg and the left arm which are largely radicular in nature. Therefore, I would like to consider a trial of epidural steroid injections, both for the neck and the lower back. I would also recommend that the patient continue working at modified duty.

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PATIENT: Francis Bolds
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6/23/08 (Continued):

RECOMMENDATIONS:

- 1) Continue Flector and Percocet as previously prescribed.
- 2) Consider for diagnostic and therapeutic purposes, a left L4-5/L5-S1 transforaminal epidural steroid injection.
- 3) Consider for diagnostic and therapeutic purposes, cervical epidural steroid injections.
- 4) The patient will continue working at modified duty. SMP/tg (7/9) (Dictated: 6/26)

7/10/08: Medical records prepared to be sent to Attorney Jon Sexton. TLC/tg (8/7)

7/31/08: Worker's Compensation-DOI: 10/5/07

CHIEF COMPLAINT: Neck pain, low back pain

Mr. Bolds returns today for follow up in regards to his left cervical radiculopathy as well as his lumbar facet arthropathy. The patient is status post two RFAs to his lower back and has also had two cervical epidural steroid injections. He reports that his back and his neck are both feeling better. Overall, he reports at least a 60-70% improvement in both areas. He has no other major complaints at this time.

PHYSICAL EXAMINATION: Vital signs are stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to

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PATIENT: Francis Bolds
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pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinell's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Lumbar facet arthropathy
- 3) Sacroiliac joint dysfunction
- 4) Left cervical dystonia
- 5) Obesity
- 6) Left lumbar radiculopathy
- 7) Left sciatica

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7/31/08 (Continued):

COMMENTARY/MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM who is here today for follow up in regards to his left cervical radiculopathy and his lumbar facet arthropathy. The patient has responded well to interventional spinal treatment, including both radiofrequency ablation and epidural steroid injections. At this time, it is my opinion to a reasonable degree of medical certainty that the patient has reached MMI. It is also my opinion to a reasonable degree of medical certainty that the patient has a 5% impairment of the whole person, a 7% regional impairment of the lumbar spine and a 14% regional impairment of the cervical spine. It is also my opinion to a reasonable degree of medical certainty that the patient will need continued pain management, including, but not limited to pain medications, follow up visits, physical therapy sessions, epidural steroid injections and repeat radiofrequency ablation procedures. At this time, I would like for the patient to increase his Lyrica to 150 mg b.i.d. and to continue the Percocet 5 mg t.i.d. PRN. The patient may return to work at light duty with weight lifting restrictions of 15 lbs or less and restricted climbing or bending.

RECOMMENDATIONS:

- 1) Increase Lyrica to 150 mg b.i.d. Continue Percocet 5 mg t.i.d. PRN.
- 2) The patient may return to work at light duty with restrictions as noted above.
- 3) The patient may follow up with me on an as needed basis. SMP/tg (8/7)

11/17/08: Worker's Compensation – DOI 10/5/07.

CHIEF COMPLAINT: Neck pain. Low back pain.

HISTORY OF PRESENT ILLNESS: Mr. Bolds is a 50 YOM pt here for f/u in regards to his continued neck and lower back pain sx's. Pt had an IME on 11/5/08. the Conclusion of the IME was that the pt would need continued pain management as we have been providing. Mr. Bolds states that he had been doing well until about two or three weeks ago when he began noticing recurrence in his lower back pain on both sides, left greater than right. He states that he has been more active at home, doing more work around the house which may have contributed to his exacerbation in his sx's. He also reports that he is currently undergoing Voc Rehab to find a new occupation as his previous company has shut down. He otherwise states that he needs to new pain medications at this time. He does have some persistent headaches and has recently been prescribes some Imitrex presumably for migraines by Dr. Meriweather.

INDEPENDENT MEDICAL EVALUATION

RE: Francis Bolds
Our Chart No.: 113431
DOB: 03/19/58
November 05, 2008

Worker's Compensation-DOL: 10/05/07

CHIEF COMPLAINT:

- 1) Neck pain
- 2) Lower back pain

HISTORY OF PRESENT ILLNESS: The examinee is a 50 YOM who was originally seen by Dr. Patel in October of 2007 for injuries that occurred in a truck accident. The pt was a driver for UTL since the year 2000. He was involved in a truck accident in which there was a rear-end collision in which he was hit from behind by another truck. At the time he reported that he was hit while driving approximately 70 m.p.h. He was restrained and there was no airbag deployment. He did report a loss of consciousness for approximately one minute. Apparently the seat that he was in had broken off and he was slumped forward. He does not recall hitting his head on the windshield. The pt was taken to the ER at Higgins Hospital in Georgia where he had radiographs taken and he was evaluated.

The pt complains of a moderate aching pain in the cervical spine. He has some pain that radiates into the left upper extremity. He has had occasional numbness and tingling in his left finger tips. He denies any right upper extremity symptoms. His pain is aggravated with neck motion and overhead activity, it is somewhat relieved with rest.

The pt also complains of mild to moderate aching pain in the lower lumbar spine. He has some mild radiation of pain into the left leg. No pain in the right lower extremity. He has some burning occasionally in the left lateral lower leg. His back pain is aggravated with standing and walking, somewhat relieved with sitting and changing positions. He currently walks with a cane. The pt denies any bowel or bladder dysfunction.

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The pt reports no previous injury to his neck or back and no previous history of problems. The pt has undergone treatment including medial branch blocks and radio frequency ablation in the lower two lumbar levels. He has also undergone cervical epidural steroid injections. He has had fairly significant improvement with these injections.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY/FAMILY HISTORY/SOCIAL HISTORY:
Documented, reviewed and signed in the chart.

PHYSICAL EXAMINATION:

Vital signs: Height 5ft. 6in. Weight 220 lbs. Pulse 70.

General: The pt is a well nourished male in no apparent distress. The pt is oriented x3 and cooperative with the exam.

Cervical spine: Inspection reveals no skin changes. There is some tenderness at the base of the cervical spine. There is some limited motion in flexion and extension, fairly good rotation. Negative Spurling's maneuver.

Cervical lymphatic exam: There is no palpable lymphadenopathy within the neck.

Right upper extremity: Inspection reveals no edema, atrophy or skin changes. Palpation reveals no tenderness or masses. Full ROM of the shoulder, elbow and wrist without pain or crepitation. Joint stability is adequate without subluxation or laxity. Muscle strength and tone are normal in the muscle groups of the right upper extremity.

Left upper extremity: Inspection reveals no edema, atrophy or skin changes. Palpation reveals no tenderness or masses. Full ROM of the shoulder, elbow and wrist without pain or crepitation. Joint stability is adequate without subluxation or laxity. Muscle strength and tone are normal in the muscle groups of the left upper extremity.

Neurologic: (Upper extremity) DTRs are 1+ and symmetric in the upper extremities. Sensation is intact throughout.

Vascular: (Upper extremity) Radial pulse is 2+ and symmetric. Good capillary refill distally.

Thoracolumbar exam: Inspection reveals normal thoracic kyphosis and lumbar lordosis. There is some tenderness across the lumbosacral junction. There is some limited flexibility. Pelvis is stable to anterior and lateral compression.

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Right lower extremity: Inspection reveals no edema, atrophy, deformity or skin changes. Palpation reveals no tenderness or masses. ROM of the hip, knee and ankle is good without pain or crepitation. Stability exam reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the right lower extremity.

Left lower extremity: Inspection reveals no edema, atrophy, deformity or skin changes. Palpation reveals no tenderness or masses. ROM of the hip, knee and ankle is good without pain or crepitation. Stability exam reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the left lower extremity.

Neurologic: (Lower extremity) DTRs are 1+ and symmetric at the knee and ankle. Sensation is decreased over the lateral aspect of the left lower leg. He has negative SLR bilaterally.

Vascular: (Lower extremity) Dorsalis pedis and posterior tibial pulses are 2+ and symmetric. Good capillary refill distally.

RADIOGRAPHIC REVIEW: MRI scan of the cervical spine reveals a mild disc osteophyte complex at C4-5. At C5-6 there is a left disc osteophyte complex is mild. The rest of the levels appears relatively normal.

MRI scan of the lumbar spine reveals a left L4-5 disc bulge and annular tear with left exit stenosis. The rest of the levels appear normal with no evidence of herniated disc, spinal canal stenosis, or nerve root impingement.

ASSESSMENT:

1. Cervical spondylosis
2. Lumbar disc bulge
3. Left sciatica

RECOMMENDATIONS: It is my opinion to a reasonable degree of medical certainty that Francis Bolds has reached MMI regarding the injuries he has sustained on October 05, 2007. The pt would have a 5% impairment of the whole person and 7% regional impairment of the lumbar spine for his diagnosis. He will also have a 5% impairment of the whole person and 14% regional impairment of the cervical spine for his diagnosis. It is my opinion to a reasonable degree of medical certainty that the pt would need continued treatment in order to lessen his disability and keep him at MMI. This would include continued pain management including medications, PT, and epidural steroid injections. These have been provided in the past by Dr. Patel, I would recommend that he continue under his care for occasional pain management. At this time the pt does not appear to be a candidate for surgical intervention.

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If his symptoms worsen or persist despite pain management he may be a candidate for further evaluation and MRI.

Sincerely,

Don O. Stovall, Jr. M.D.

DOSjr/mlh

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PATIENT: Francis Bolds
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11/17/08 (Continued):

PHYSICAL EXAMINATION:

Vital signs are stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal.

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There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Lumbar facet arthropathy
- 3) Sacroiliac joint dysfunction
- 4) Left cervical dystonia
- 5) Obesity
- 6) Left lumbar radiculopathy
- 7) Left sciatica

COMMENTARY MEDICAL DECISION MAKING: Therefore, Mr. Bolds is a 49 YOM pt here today for f/u in regards to his left cervical radiculopathy and lumbar facet arthropathy. As the pt's sx's are more mechanical, I believe that a repeat RFA is indicated. Will start with the left side. He has gotten approximately six or seven months relief after his previous RFA which is quite good. I'll have him continue to f/u with Dr. Meriweather regarding his headaches and his Imitrex prescription.

RECOMMENDATIONS:

- 1) Consider for diagnostic and therapeutic purposes a repeat left L3 to S1 lumbar medial branch RFA. This would be the second procedure.
- 2) Consider for diagnostic and therapeutic purposes RFA procedure for the right side if needed.
- 3) F/U with Dr. Meriweather regarding Imitrex and migraine headaches
- 4) Patient may follow-up on any of the options listed above. SMP/la (11/24)

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PATIENT: Francis Bolds
CHART NO: 113431
DOB: 3/19/58

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12/11/08: Workers' Compensation-DOI: 10/05/07

CHIEF COMPLAINT: Low back pain

HISTORY OF PRESENT ILLNESS: The pt is here today for followup in regards to his lower back pain due to lumbar facet arthropathy. The pt reports that after his last radio frequency ablation procedure he feels much better. He reports at least a 60 to 70% improvement in his pain symptoms after that procedure. The pt currently has some social stressors in his life, he is taking care of 6 kids as he waits for his wife to arrive from the Philippines. He has no other major complaints at this time and has been taking his pain medications as prescribed.

PHYSICAL EXAMINATION:

Vital signs: Stable.

General: Patient is well developed, well nourished, in no acute distress and is alert and oriented x4 with appropriate mood and affect.

Eyes: Normal, nonicteric sclera, extraocular muscles intact.

Lymphatic: There are no enlarged cervical or inguinal lymph nodes.

Cervical spine: The cervical area is symmetrical without kyphosis or scoliosis. There is noted tenderness to palpation along the bilateral cervical paraspinals. ROM of the cervical spine is limited in all planes secondary to pain.

Lumbar spine: The lumbar area is symmetrical without kyphosis or scoliosis. Pelvic obliquity is not noted. Leg length discrepancy is not noted. ROM is limited in all planes secondary to pain. There was noted tenderness to palpation along the bilateral lumbar paraspinals. There is no tenderness to palpation noted in the trochanteric bursa or iliotibial band.

Upper extremity: Paraspinals, trapezius, levator scapulae, semispinalis capitis are all tender to palpation reproducing pain, left greater than right.

Lower extremity: Pulse is intact distally with no cyanosis, clubbing or edema.

Skin: Skin without lesions, rashes or scarring at the neck or trunk with no lesions on either feet and hands.

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12/11/08 (Continued):

Neurologic: Showed a normal gait without assistive device or braces. Able to walk on toes and heels without any difficulty. Coordination intact. Sensory is intact to light touch, cold and pin prick in the upper extremity. Sensory is intact to light touch, cold and pin prick in the lower extremity except the left lower extremity which showed decreased sensation throughout in a non-dermatomal pattern. Motor exam is 5/5 in bilateral upper extremities. Reflexes are symmetrical at 2+ for upper extremities. Motor exam is 5/5 in bilateral lower extremities. No presence of Hoffmann's or Babinski. Muscle tone is normal without clonus or muscle atrophy present. Upper extremity special testing of Tinel's, Phalen's, Roos, and Spurling's testing were normal. Lower extremity special testing of SLR, piriformis and fabere tests were normal. There was noted tenderness in the bilateral SI joints, left side worse than right. Facet floating was positive bilaterally.

Vascular: Pulse is intact distally with no cyanosis, clubbing, or edema.

Psychological: Waddell signs negative.

DIAGNOSIS/IMPRESSION:

- 1) Left cervical radiculitis
- 2) Lumbar facet arthropathy
- 3) Sacroiliac joint dysfunction
- 4) Left cervical dystonia
- 5) Obesity
- 6) Left lumbar radiculopathy

COMMENTARY MEDICAL DECISION MAKING: The pt is here today for lumbar facet arthropathy and recently had a second radio frequency ablation procedure done on the left side. He again, reports excellent relief with his lower back pain. He does have some mild pain complaints on the right side, but he states it is manageable with pain medications. He can return back to work with previous restrictions.

RECOMMENDATIONS:

1. Consider for diagnostic and therapeutic purposes a radio frequency ablation procedure for the right side if needed in the future.

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12/11/08 (Continued):

2. The pt is a MMI and again may need continued treatment including PT, pain medications, injections, and radio frequency ablation procedures to maintain him at MMI. He will continue to followup with Dr. Meriweather regarding his migraine headaches.
3. Continue Percocet 5 mg tid prn and Lyrica 150 mg bid. SMP/mlh (12/18)

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1. 31

PATIENT: BOLDS, FRANCIS

MR #: 5523

DATE OF SURGERY: 11/20/07

SURGEON: Shailesh M. Patel, M.D.

PREOPERATIVE DIAGNOSES: 1. Cervical radiculopathy.
2. Spondylosis without myelopathy.

POSTOPERATIVE DIAGNOSES: 1. Cervical radiculopathy.
2. Spondylosis without myelopathy.

OPERATION: 1. Translaminar cervical epidural steroid injection, C7-T1 with catheter to C5 with anesthesia.
2. Fluoroscopic guidance.

ESTIMATED BLOOD LOSS: Minimal.

COMPLICATIONS: None.

INDICATIONS: Neck and arm pain.

CONSENT: Signed informed consent was obtained, and the risks, benefits and alternatives were discussed with the patient which included, but are not limited to bleeding, infection, pain at the site of injection, minimal effectiveness of the procedure, nerve damage, weakness, numbness, paralysis and worsening pain. The patient agreed to the procedure.

PROCEDURE: The patient was brought into the operating room and draped and prepped in a normal fashion in the prone position. Blood pressure, pulse, oxygenation, and saturation monitors were placed on the patient and the vital signs remained stable throughout the entire procedure. IV was placed for fluids and access for general light sedation with Versed 1 mg. Local skin was anesthetized with 3 cc of 1% Xylocaine. A 17 gauge, 3-1/2 inch Tuohy needle was advanced using intermittent fluoroscopic guidance, with lateral views, and the loss of resistance technique was employed to direct the needle into the interlaminar epidural space of the indicated levels. Once appropriate needle placement was achieved, aspiration revealed negative CSF and negative heme. Next a spinal catheter was inserted through the spinal needle and directed to the C5 vertebral level. At this point 2 cc of contrast dye was instilled to confirm epidural space location. The mixture for injection was 80 mg of Depo-Medrol, 2 cc of 1% lidocaine, and 3 cc of normal saline. The needle was removed and the site was cleaned and dressed. The patient was brought back into the recovery room without any complications or problems.

EPIDUROGRAM: The cervical epidural space was identified with 2 cc of contrast and no vascular uptake was noted.

PLAN: 1. Followup in clinic as needed.
2. Followup for repeat injection as needed.
3. Call Dr. Patel's office for any complications.

SHAILESH M. PATEL, M.D.

DD: 11/20/07

DT: 11/21/07

SMP/ETS:ftw.1120-069

113431

PATIENT: BOLDS, FRANCIS
MR #: 5523
DOB: 03/19/58
DATE OF SURGERY: 01/08/08
SURGEON: Shailesh M. Patel, M.D.
PREOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.
POSTOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.
OPERATION: 1. Right L3-4, L4-5, L5-S1 medial branch block with
anesthesia.
2. Fluoroscopic guidance.
ESTIMATED BLOOD LOSS: Minimal.
COMPLICATIONS: None.
INDICATIONS: Back pain.

CONSENT: Signed informed consent was obtained, and the risks, benefits and alternatives were discussed with the patient which included, but are not limited to bleeding, infection, pain at the site of injection, minimal effectiveness of the procedure, nerve damage, weakness, numbness, paralysis and worsening pain. The patient agreed to the procedure.

PROCEDURE: The patient was brought into the operating room and draped and prepped in a normal fashion in the prone position. Blood pressure, pulse, oxygenation, saturation monitors were placed on the patient and the vital signs remained stable throughout the entire procedure. IV was placed for fluids and access for general light sedation with Versed 2 mg. Local skin was anesthetized with 3 cc of 1% Xylocaine. Using intermittent fluoroscopic guidance and an oblique view, three 22 gauge, 3-1/2 inch spinal needles were advanced to the junction of the superior articular process and the transverse process at each indicated level. Once all the needles were placed, a lateral view was obtained to help guide appropriate needle placement. At this point, aspiration revealed negative CSF, negative heme. Next, 2 cc of contrast dye was instilled to further confirm appropriate needle location. The mixture for injection was 3 cc of 0.25% Marcaine and 40 mg of Depo-Medrol divided between the indicated levels. The needles were removed and the site was cleaned and dressed. The patient was brought back into the recovery room without any complications or problems.

PRE-PROCEDURE FACET LOADING VAS: 10 out of 10

POST-PROCEDURE FACET LOADING VAS: 5 out of 10

PATIENT: BOLDS, FRANCIS
MR #: 5523
DATE OF SURGERY: 01/08/08
SURGEON: Shailesh M. Patel, M.D.

PLAN: 1. Followup in clinic as needed.
2. Followup for repeat injection and/or radiofrequency ablation as needed.
3. Call Dr. Patel's office for any complications.

SHAILESH M. PATEL, M.D.

DD: 01/08/08
DT: 01/09/08
SMP/ETS:ftw 0108-074

113431

PATIENT: BOLDS, FRANCIS
MR #: 5523
DOB: 03/19/58
DATE OF SURGERY: 01/22/08
SURGEON: Shailesh M. Patel, M.D.
PREOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.
POSTOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.
OPERATION: 1. Left L3-4, L4-5, L5-S1 medial branch block with
anesthesia.
2. Fluoroscopic guidance.
ESTIMATED BLOOD LOSS: Minimal.
COMPLICATIONS: None.
INDICATIONS: Back pain.

CONSENT: Signed informed consent was obtained, and the risks, benefits and alternatives were discussed with the patient which included, but are not limited to bleeding, infection, pain at the site of injection, minimal effectiveness of the procedure, nerve damage, weakness, numbness, paralysis and worsening pain. The patient agreed to the procedure.

PROCEDURE: The patient was brought into the operating room and draped and prepped in a normal fashion in the prone position. Blood pressure, pulse, oxygenation, saturation monitors were placed on the patient and the vital signs remained stable throughout the entire procedure. IV was placed for fluids and access for general light sedation with Versed 1 mg. Local skin was anesthetized with 3 cc of 1% Xylocaine. Using intermittent fluoroscopic guidance and an oblique view, three 22 gauge, 3-1/2 inch spinal needles were advanced to the junction of the superior articular process and the transverse process at each indicated level. Once all the needles were placed, a lateral view was obtained to help guide appropriate needle placement. At this point, aspiration revealed negative CSF, negative heme. Next, 2 cc of contrast dye was instilled to further confirm appropriate needle location. The mixture for injection was 6 cc of 0.25% Marcaine and 40 mg of Depo-Medrol divided between the indicated levels. The needles were removed and the site was cleaned and dressed. The patient was brought back into the recovery room without any complications or problems.

PRE-PROCEDURE FACET LOADING VAS: 10 out 10

POST-PROCEDURE FACET LOADING VAS: 5 out of 10

PATIENT: BOLD, FRANCIS
MR #: 5523
DATE OF SURGERY: 01/22/08
SURGEON: Shailesh M. Patel, M.D.

- PLAN:
1. Followup in clinic as needed.
 2. Followup for repeat injection and/or radiofrequency ablation as needed.
 3. Call Dr. Patel's office for any complications.

SHAILESH M. PATEL, M.D.

DD: 01/22/08
DT: 01/23/08
SMP/ETS:ftw 0122-048

113431

PATIENT: BOLDS, FRANCIS
MR #: 5523
DOB: 03/19/58
DATE OF SURGERY: 03/04/08
SURGEON: Shailesh M. Patel, M.D.
PREOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.
POSTOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.
OPERATION: 1. Right L3-4, L4-5, L5-S1 medial branch
radiofrequency ablation with anesthesia.
2. Fluoroscopic guidance.
ESTIMATED BLOOD LOSS: Minimal.
COMPLICATIONS: None.
INDICATIONS: Back pain.

CONSENT: Signed informed consent was obtained, and the risks, benefits and alternatives were discussed with the patient which included, but are not limited to bleeding, infection, pain at the site of injection, minimal effectiveness of the procedure, nerve damage, weakness, numbness, paralysis and worsening pain. The patient agreed to the procedure.

PROCEDURE: The patient was brought into the operating room and draped and prepped in a normal fashion in the prone position. Blood pressure, pulse, oxygenation, saturation monitors were placed on the patient and the vital signs remained stable throughout the entire procedure. IV was placed for fluids and access for general light sedation with Versed 2 mg. Local skin was anesthetized with 5 cc of 1% Xylocaine. Using intermittent fluoroscopic guidance and an oblique view, three 22 gauge, 3-1/2 inch spinal needles were advanced to the junction of the superior articular process and the transverse process at each indicated level. Once all the needles were placed, a lateral view was obtained to help guide appropriate needle placement. Sensory stimulation was used to guide needle placement adjacent to the medial branches, and motor stimulation confirmed no movement in the legs. At this point, aspiration revealed negative CSF, negative heme. Next, 1.5 cc of 1% Xylocaine was injected at each level and then radiofrequency ablation was accomplished using 90 degrees for 90 seconds at each level. Subsequently, a total of 80 mg of steroid was divided into each level equally to prevent neuroma formation. The needles were removed and the site was cleaned and dressed. The patient was brought back into the recovery room without any complications or problems.

PRE-PROCEDURE FACET LOADING VAS: 10 out 10

POST-PROCEDURE FACET LOADING VAS: 5 out of 10

PATIENT: BOLDS, FRANCIS
MR #: 5523
DATE OF SURGERY: 03/04/08

- PLAN:
1. Followup in clinic as needed.
 2. Followup for repeat injection and/or radiofrequency ablation as needed.
 3. Call Dr. Patel's office for any complications.

SHAILESH M. PATEL, M.D.

DD: 03/04/08
DT: 03/05/08
SMP/ETS:ftw 0304-064

113431

PATIENT: BOLDS, FRANCIS

MR #: 5523

DOB: 03/19/58

DATE OF SURGERY: 07/18/08

SURGEON: Shailesh M. Patel, M.D.

PREOPERATIVE DIAGNOSES: 1. Cervical radiculopathy.
2. Spondylosis without myelopathy.

POSTOPERATIVE DIAGNOSES: 1. Cervical radiculopathy.
2. Spondylosis without myelopathy.

OPERATION: 1. Left C7-T1 cervical translaminar epidural
steroid injection with catheter to C5 with
anesthesia.
2. Fluoroscopic guidance.

ESTIMATED BLOOD LOSS: Minimal.

COMPLICATIONS: None.

INDICATIONS: Neck and arm pain.

CONSENT: Signed informed consent was obtained, and the risks, benefits and alternatives were discussed with the patient which included, but are not limited to bleeding, infection, pain at the site of injection, minimal effectiveness of the procedure, nerve damage, weakness, numbness, paralysis, post-dural puncture headache, and worsening pain. The patient agreed to the procedure.

PROCEDURE: The patient was brought into the operating room and draped and prepped in a normal fashion in the prone position. Blood pressure, pulse, oxygenation, and saturation monitors were placed on the patient and the vital signs remained stable throughout the entire procedure. IV was placed for fluids and access for general light sedation with Versed 2 mg. Local skin was anesthetized with 3 cc of 1% Xylocaine. An 18 gauge, 3-1/2 inch Tuohy spinal needle was advanced using intermittent fluoroscopic guidance, with lateral views, and the loss of resistance technique was employed to direct the needle into the interlaminar epidural space of the indicated levels. Once appropriate needle placement was achieved, aspiration revealed negative CSF and negative heme. Next an Arrow spinal catheter was inserted through the spinal needle and directed to the C5 vertebral level. At this point 2 cc of contrast dye or iodine-free contrast was instilled to confirm epidural space location. The mixture for injection was 80 mg of Depo-Medrol, 2 cc of 1% lidocaine, and 3 cc of normal saline. The needle was removed and the site was cleaned and dressed.

The patient was brought back into the recovery room without any complications or problems.

PATIENT: BOLDS, FRANCIS
MR #: 5523
DATE OF SURGERY: 07/18/08

- PLAN: 1. Followup in clinic as needed.
2. Followup for repeat injection as needed.
3. Call Dr. Patel's office for any complications.

SHAILESH M. PATEL, M.D.

DD: 07/18/08
DT: 07/21/08
SMP/ETS:ftw 0718-072

113431

PATIENT: BOLDS, FRANCIS

MR #: 5523

DOB: 03/19/58

DATE OF SURGERY: 11/25/08

SURGEON: Shailesh M. Patel, M.D.

PREOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.

POSTOPERATIVE DIAGNOSES: 1. Lumbar facet arthropathy.
2. Degenerative disc disease.
3. Spondylosis without myelopathy.

OPERATION: 1. Left L3-4, L4-5, L5-S1 lumbar radiofrequency ablation of the medial branches with anesthesia.
2. Fluoroscopic guidance.

ESTIMATED BLOOD LOSS: Minimal.

COMPLICATIONS: None.

INDICATIONS: Back pain.

CONSENT: Signed informed consent was obtained, and the risks, benefits and alternatives were discussed with the patient which included, but are not limited to bleeding, infection, pain at the site of injection, minimal effectiveness of the procedure, nerve damage, weakness, numbness, paralysis and worsening pain. The patient agreed to the procedure.

PROCEDURE: The patient was brought into the operating room and draped and prepped in a normal fashion in the prone position. Blood pressure, pulse, oxygenation, saturation monitors were placed on the patient and the vital signs remained stable throughout the entire procedure. IV was placed for fluids and access for general light sedation with Versed 2 mg. Local skin was anesthetized with 5 cc of 1% Xylocaine. Using intermittent fluoroscopic guidance and an oblique view, three 20 gauge, 15 cm straight-tip radiofrequency probes were advanced to the junction of the superior articular process and the transverse process at each indicated level. Once all the needles were placed, a lateral view was obtained to help guide appropriate needle placement. Sensory stimulation was used to guide needle placement adjacent to the medial branches, and motor stimulation confirmed no movement in the legs. At this point, aspiration revealed negative CSF, negative heme. Next, 4 cc of 0.25% Marcaine was injected at each level and then radiofrequency ablation was accomplished using 90 degrees for 90 seconds at each level. The needles were removed and the site was cleaned and dressed. The patient was brought back into the recovery room without any complications or problems.

PRE-PROCEDURE FACET LOADING VAS: 10 out of 10

POST-PROCEDURE FACET LOADING VAS: 4 out of 10

PATIENT: BOLDS, FRANCIS
MR #: 5523
DATE OF SURGERY: 11/25/08

- PLAN:
1. Followup in clinic as needed.
 2. Followup for repeat injection and/or radiofrequency ablation as needed.
 3. Call Dr. Patel's office for any complications.

SHAILESH M. PATEL, M.D.

DD: 11/25/08
DT: 11/26/08
SMP/ETS:ftw 1125-047

PATIENT INFORMATION

Patient full Name: Francis J. holds Jr Marital status: single Age: 49 Birthdate: 3/19/58 F ()
 Mailing Address: _____ City: _____ State: _____ Zip: _____
 Street Address: _____ City: _____ State: _____ Zip: _____
 Home Phone #: _____ Work Phone: _____ Cell Phone: _____
 SSN: _____ Employed by: UTI How long: 2
 Name of Spouse (if applies) _____ Employed by: _____ Phone: _____
 Spouse SSN: _____ Birthdate: _____

If The Patient Is A Child Or Full Time Student

Mothers Name: Dardan SSN: _____ Birthdate: _____
 Employed by: _____ Phone: _____ How long: _____
 Fathers Name: _____ SSN: _____ Birthdate: _____
 Employed by: _____ Phone: _____ How long: _____
 Other Guardian (If applies): _____ SSN: _____ Birthdate: _____
 Employed by: _____ Phone: _____ How long: _____

Patient Medical Information

Complaint or symptom: legs, right heel of foot, lowerback, neck, ~~right~~ head Right _____ Left _____
 Where were you injured? School _____ Work _____ Home _____ Auto Accident _____ Other Truck accident
 Date/Onset of injury/illness? 10/5/07 If injury is work related was a report filed? Yes ✓ No _____
 How injury occurred? Truck hit me from behind at 70mph
 Occupation: Truck driver Have you hired an attorney? not yet
 Have x-rays been taken for this injury/problem? Yes ✓ No _____ Date taken? 10/5/07
 Did you bring film or disk? no Where was x-ray/film taken: Higgins hospital in Ga
 Had another physician refer you? no Dr. First Name: _____ Last Name: _____
 Whom may we thank for this referral? Family Member _____ Friend _____ Other ALG
 Name Of Family Physician: none but looking Phone Number: _____
 Name of Physician you are scheduled to see today: Petal
 Primary Ins Company: _____ Secondary Ins Co.: _____
 Patient/Parent/Guardian Signature: Francis J. holds Jr Date: 10/15/07

PLEASE PROVIDE INSURANCE CARD AND PICTURE IDENTIFICATION

Important information on back, please turn over read & sign

SOCIAL HISTORY

Marital Status: ☐ Single ☐ Married ☐ Widowed ☒ Divorced

Type of Work: truck driver

Tobacco Use: no packs per day

Alcohol Use: ☐ Daily ☐ Weekly ☐ Socially ☐ Rarely

Special Diet: ☒ No ☐ Yes If yes, list type of diet _____

FAMILY HISTORY

Please mark the following conditions for which your Parents, Grandparents, and Siblings (blood relatives only) have been treated:

☐ Bleeding disorders ☐ Osteoporosis ☐ Rheumatoid Arthritis ☐ Lupus ☐ Heart Disease ☐ Stroke

☒ High Blood Pressure ☐ Cancer ☐ Diabetes

MEDICAL AND SURGICAL HISTORY

List Current Medical Problems and Illnesses	List Past Surgeries	Surgery Date:
<u>legs, lower back neck, head & eyes</u>		

MEDICATIONS AND ALLERGIES

List All Current Medications	Dosage	List All Allergies	Type of Reaction
<u>cyclobenzaprine</u>	<u>1 as needed</u>	<u>key fever</u>	
<u>hydrocodone-Apop</u>	<u>every 4 hours</u>		

Are you allergic to Latex? ☐ Yes ☒ No If yes, type of reaction: _____

Reviewed by: [Signature]
 Reviewed by: _____
 Reviewed by: _____
 Reviewed by: _____

Date: 10/15/07
 Date: _____
 Date: _____
 Date: _____

Updated by patient: _____

Updated by patient: _____

To assist our office in this process, please complete the following:

1. Can messages or appointment reminders be left on your

* Voice mail / yes no none
* Answering machine / yes no none
* With family members / yes no none
* E-mail / yes no none

if yes e-mail address: darknite647@netzero.com

2. Can you be contacted at your place of employment?

 yes / no not employed

3. Can a postcard as an appointment reminder be mailed to your home address? yes no

4. The following people have my permission to speak with a representative of Lowcountry Orthopaedics and Outpatient Surgery Center regarding my treatment/care plan or financial account:

<u>Francis J. Bolds Sr.</u>	<u>Father</u>	<u>FB</u>
Name	Relationship	Patient's Initial
<u>Shantole L. Haley</u>	<u>Daughter</u>	<u>SH</u>
Name	Relationship	Patient's Initial
<u>Ken Mitchell</u>	<u>Friend</u>	<u>KB</u>
Name	Relationship	Patient's Initial

Lowcountry Orthopaedic Associates, PA is required by law to abide by the terms outlined in this notice. However, Lowcountry Orthopaedics reserves the right to change the terms of this Privacy Notice and make the new provisions effective for all protected health information that we maintain. Any revisions of this notice will be posted and distributed during office appointments.

The contact person for additional information or to report a problem is Martha Faulkner, Medical Records Administrator. Phone number (843) 266-4877.

If you need help reading or understanding this form please tell the Receptionist!

Patient Name: Francis J. Bolds Jr. Chart Number: 113431

Francis J. Bolds Jr.
Patient/Guardian Signature

10/15/06
Date

 /
Witness

10/15/07
Date

** Copy available upon request **

To: _____
Fax: _____
Date: _____

**Lowcountry Orthopaedics and
Sports Medicine**

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

113431

Employee: Frances Bolds SSN#: _____

Injury Date: _____ Next Appointment: _____

____ Initial Treatment

☒ Follow up visit

☒ Work Related

____ Not work related

Diagnosis: Cervical + Lumbar Fract

Arthropathy / Radiculitis

Treatments

Work Status

Physical Ability

____ Wound Care

____ Suture Removal

____ X-rays

____ Lab Work

____ Meds. Prescribed

____ Other _____

____ Return to regular duty on:

date _____

☒ Return to modified duty on:

date 11/15/07

____ Unable to work until:

date _____

____ Discharged from current care on:

date _____

____ Return for follow-up with

Dr. _____

☒ Restricted standing, walking

☒ Restricted climbing, bending,
stooping

____ Limited use of ____ R ____ L
hand/arm

____ No working around moving
machinery

☒ Driving yes ☒ no

____ Alternate position (sit, stand,
walk)

☒ Weight lifting restrictions

R ____ O# ☒ 1-15# ____ 16-35# ____ 36-50#

L ____ O# ☒ 1-15# ____ 16-35# ____ 36-50#

☒ No overhead work

____ Keep dressing clean & dry

____ Other _____

Instructions, Limitations, Recommendations: Light Duty

Patients ____ has ____ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 10/15/07

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____ Date _____

To: _____
Fax: _____
Date: _____

Lowcountry Orthopaedics and
Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: Francis Bold SSN#: _____

Injury Date: _____ Next Appointment: _____

☐ Initial Treatment ☒ Work Related Diagnosis: Cervical Radiculopathy
☒ Follow up visit ☐ Not work related Lumbar Facet Arthropathy

Treatments

Work Status

Physical Ability

☐ Wound Care
☐ Suture Removal
☐ X-rays
☐ Lab Work
☐ Meds. Prescribed
☐ Other _____

☐ Return to regular duty on:
date _____
☒ Return to modified duty on:
date 12/26/07
☐ Unable to work until:
date _____
☐ Discharged from current care on:
date _____
☐ Return for follow-up with
Dr. _____

☐ Restricted standing, walking
☒ Restricted climbing, bending,
stooping
☐ Limited use of ☐ R ☐ L
hand/arm
☐ No working around moving
machinery
☐ Driving ☐ yes ☐ no
☒ Alternate position (sit, stand,
walk)
☒ Weight lifting restrictions
R ☐ O# ☒ 1-15# ☐ 16-35# ☐ 36-50#
L ☐ O# ☒ 1-15# ☐ 16-35# ☐ 36-50#
☐ No overhead work
☐ Keep dressing clean & dry
☐ Other _____

Instructions, Limitations, Recommendations: Light Duty

Patients ☒ has ☐ has not reached MMI Expected MMI date _____

Physicians Signature Shad R. Allen Date 12/17/07

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____ Date _____

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To: _____
Fax: _____
Date: _____

Lowcountry Orthopaedics and
Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: Francis Boldo SSN#: _____

Injury Date: _____ Next Appointment: _____

_____ Initial Treatment ☒ Work Related Diagnosis: Genid DDD

☒ Follow up visit _____ Not work related Lumbar Facet Abnormality

Treatments

Work Status

Physical Ability

_____ Wound Care

_____ Return to regular duty on:

_____ Restricted standing, walking

_____ Suture Removal

_____ date _____

☒ Restricted climbing, bending,
stooping

_____ X-rays

☒ Return to modified duty on:
date 1/21/08

_____ Limited use of _____ R _____ L
hand/arm

_____ Lab Work

_____ Unable to work until:
date _____

_____ No working around moving
machinery

_____ Meds. Prescribed

_____ Discharged from current care on:
date _____

☒ Driving ☒ yes _____ no

_____ Other _____

☒ Return for follow-up with
Dr. Pate pm

_____ Alternate position (sit, stand,
walk)

☒ Weight lifting restrictions

R ☒ O# _____ 1-15# _____ 16-35# _____ 36-50#

L ☒ O# _____ 1-15# _____ 16-35# _____ 36-50#

_____ No overhead work

_____ Keep dressing clean & dry

_____ Other _____

Instructions, Limitations, Recommendations: Return to work as CDL Driver;

NO lifting/bending

Patients _____ has ☒ has not reached MMI Expected MMI date: _____

Physicians Signature [Signature] Date 1/17/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____

Date _____

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To: _____
Fax: _____
Date: _____

Lowcountry Orthopaedics and
Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

113413-07

Employee: Francis Boldt SSN#: _____

Injury Date: _____ Next Appointment: _____

_____ Initial Treatment

☒ Work Related

Diagnosis: Lumbar DDD

☒ Follow up visit

_____ Not work related

Lumbar Facet Arthropathy

Treatments

Work Status

Physical Ability

_____ Wound Care

_____ Return to regular duty on:

_____ Restricted standing, walking

_____ Suture Removal

_____ date _____

_____ Restricted climbing, bending,
stooping

_____ X-rays

☒ Return to modified duty on:

date 2/11/08

_____ Limited use of _____ R _____ L
hand/arm

_____ Lab Work

_____ Unable to work until:

date _____

_____ No working around moving
machinery

_____ Meds. Prescribed

_____ Discharged from current care on:

date _____

_____ Driving _____ yes _____ no

_____ Other _____

☒ Return for follow-up with

Dr. Lat

_____ Alternate position (sit, stand,
walk)

_____ Weight lifting restrictions

R _____ O# _____ 1-15# _____ 16-35# _____ 36-50#

L _____ O# _____ 1-15# _____ 16-35# _____ 36-50#

_____ No overhead work

_____ Keep dressing clean & dry

_____ Other _____

Instructions, Limitations, Recommendations:

REA

Patients _____ has _____ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 2/11/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

628

To: And, merit
 Fax: 866-743-016
 Date: _____

Lowcountry Orthopaedics and Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: Francis Bold SSN#: _____
 Injury Date: 10-5-07 Next Appointment: _____
 _____ Initial Treatment ☒ Work Related Diagnosis: 721.3 722.10
 _____ Follow up visit ☐ Not work related 722.52 724.2
☒ Follow up visit

Treatments

_____ Wound Care
 _____ Suture Removal
 _____ X-rays
 _____ Lab Work
 _____ Meds. Prescribed
 _____ Other _____

Work Status

_____ Return to regular duty on:
 date _____
 _____ Return to modified duty on:
 date _____
☒ Unable to work until:
 date RFA
 _____ Discharged from current care on:
 date _____
☒ Return for follow-up with
 Dr. and

Physical Ability

_____ Restricted standing, walking
 _____ Restricted climbing, bending, stooping
 _____ Limited use of _____ R _____ L hand/arm
 _____ No working around moving machinery
 _____ Driving _____ yes _____ no
 _____ Alternate position (sit, stand, walk)
 _____ Weight-lifting restrictions
 R _____ O# _____ 1-15# _____ 16-35# _____ 36-50#
 L _____ O# _____ 1-15# _____ 16-35# _____ 36-50#
 _____ No overhead work
 _____ Keep dressing clean & dry
 _____ Other _____

Instructions, Limitations, Recommendations: (L) RFA

Patients _____ has ☒ has not reached MMI Expected MMI date _____

Physicians Signature RA Date 3/17/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Received on 3/17/2008 3:08:21 PM [Eastern Daylight Time] _____ Date _____

To: _____
 Fax: _____
 Date: _____

Lowcountry Orthopaedics and Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: Francis Bold SSN#: _____
 Injury Date: 10-5-07 Next Appointment: _____
☐ Initial Treatment ☒ Work Related Diagnosis: Lumbar Facet Arthropathy
☒ Follow up visit ☐ Not work related

Treatments

Work Status

Physical Ability

☐ Wound Care
☐ Suture Removal
☐ X-rays
☐ Lab Work
☐ Meds. Prescribed
☐ Other _____

☐ Return to regular duty on:
 date _____
☒ Return to modified duty on:
 date 4/25/08
☐ Unable to work until:
 date _____
☐ Discharged from current care on:
 date _____
☐ Return for follow-up with
 Dr. Pate
1 mth.

☐ Restricted standing, walking
☒ ^{≤ 20} Restricted climbing, bending, stooping, sitting
☐ Limited use of ☐ R ☐ L hand/arm
☐ No working around moving machinery
☐ Driving ☐ yes ☐ no
☐ Alternate position (sit, stand, walk)
☒ Weight lifting restrictions
 R ☐ O# ☒ 1-15# ☐ 16-35# ☐ 36-50
 L ☐ O# ☒ 1-15# ☐ 16-35# ☐ 36-50
☐ No overhead work
☐ Keep dressing clean & dry
☐ Other _____

Instructions, Limitations, Recommendations: P.T.

Patients ☒ has ☐ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 4/24/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____ Date _____

Lowcountry Orthopaedics and
Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: Francis Boldo SSN#: _____Injury Date: 10-5-07 Next Appointment: _____

____ Initial Treatment

☒ Work Related

Diagnosis: _____

☒ Follow up visit

____ Not work related

Wmbs Facet Artho

Treatments

____ Wound Care

____ Suture Removal

____ X-rays

____ Lab Work

____ Meds. Prescribed

____ Other _____

Work Status

____ Return to regular duty on:

date _____

☒ Return to modified duty on:date 5/22/08

____ Unable to work until:

date _____

____ Discharged from current care on:

date _____

☒ Return for follow-up withDr. Pat

Physical Ability

____ Restricted standing, walking

☒ Restricted climbing, bending,
stooping____ Limited use of ____ R ____ L
hand/arm____ No working around moving
machinery

____ Driving ____ yes ____ no

____ Alternate position (sit, stand,
walk)☒ Weight lifting restrictions

R ____ O# ____ 1-15# ____ 16-35# ____ 36-50#

L ____ O# ____ 1-15# ____ 16-35# ____ 36-50#

____ No overhead work

____ Keep dressing clean & dry

____ Other _____

Instructions, Limitations, Recommendations: ESTPatients ____ has ☒ has not reached MMI. Expected MMI date _____Physicians Signature [Signature] Date 5/22/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____ Date _____ 65

To: _____
Fax: _____
Date: _____

Lowcountry Orthopaedics and Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

113431

Employee: Francis Bolds SSN#: _____

Injury Date: 10-5-07 Next Appointment: _____

____ Initial Treatment

☒ Work Related

Diagnosis: Cervical DDD

☒ Follow up visit

____ Not work related

Lumbar Facet Arthrop

Treatments

Work Status

Physical Ability

____ Wound Care

____ Return to regular duty on:

____ Restricted standing, walking

____ Suture Removal

____ date _____

☒ Restricted climbing, bending, stooping

____ X-rays

☒ Return to modified duty on:
date 6/24/08

____ Limited use of ____ R ____ L
hand/arm

____ Lab Work

____ Unable to work until:
date _____

____ No working around moving
machinery

____ Meds. Prescribed

____ Discharged from current care on:
date _____

____ Driving ____ yes ____ no

____ Other _____

☒ Return for follow-up with
Dr. Dak

____ Alternate position (sit, stand,
walk)

☒ Weight lifting restrictions

R ____ O# ☒ 1-15# ____ 16-35# ____ 36-50

L ____ O# ☒ 1-15# ____ 16-35# ____ 36-50

____ No overhead work

____ Keep dressing clean & dry

____ Other _____

Instructions, Limitations, Recommendations: ESI (Cervical & Lumbar)

Patients ____ has ☒ has not reached MMI Expected MMI date _____

Physicians Signature SNAT

Date 6/23/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____ Date _____

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To: _____
 Fax: _____
 Date: _____

Lowcountry Orthopaedics and Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

113431

Employee: Francis Boldt SSN#: _____
 Injury Date: 10-5-07 Next Appointment: _____

☐ Initial Treatment
☒ Follow up visit
☐ Work Related
☐ Not work related

Diagnosis: Cervical DDD
Lumbar Facet Arthropathy

Treatments

☐ Wound Care
☐ Suture Removal
☐ X-rays
☐ Lab Work
☐ Meds. Prescribed
☐ Other _____

Work Status

☐ Return to regular duty on:
 date _____
☒ Return to modified duty on:
 date 7/31/08
☐ Unable to work until:
 date _____
☐ Discharged from current care on:
 date _____
☒ Return for follow-up with
 Dr. Patt

Physical Ability

☐ Restricted standing, walking
☒ Restricted climbing, bending, stooping
☐ Limited use of _____ R _____ L hand/arm
☐ No working around moving machinery
☐ Driving ☐ yes ☐ no
☐ Alternate position (sit, stand, walk)
☒ Weight lifting restrictions
 R ☐ 0# ☒ 1-15# ☐ 16-35# ☐ 36-50#
 L ☐ 0# ☒ 1-15# ☐ 16-35# ☐ 36-50#
☐ No overhead work

☐ Keep dressing clean & dry

☐ Other _____

Instructions, Limitations, Recommendations: Pt will need continued pain management (Epidurals / RFA / Facet Inj / Meds / PT).

Patients ☒ has ☐ has not reached MMI Expected MMI date 7/31/08

Physicians Signature [Signature] Date 7/31/08

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: _____ Date _____

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Bay Orthopaedic Associates
1001 North Fraser Street P.O. Box 1777
Georgetown, SC 29442 (843)527-4447

Office Notes

Mason Ahearn, M. D., FACS
Wright S. Skinner, III, M. D.

Page: 1
Chart# 40154
Patient: Frances Bolds
Referral:

July 30, 2008

An Independent Medical evaluation is accomplished at the request of IMX. Records enclosed with the request are reviewed prior to the encounter. Principally reviewed are office and procedure notes by Shailesh M. Patel of Low Country Orthopedic Sports Medicine, Charleston, South Carolina. These are incomplete in that they begin on his page 5, October 15, 2007 and proceed to his page 26 on May 22, 2008. They do reflect management, primarily conservative of neck and lumbar back pain. MRIs cervical October 27, 2007 does reveal degenerative changes diffuse, worst at C5-6 with left 6th nerve root compression. Lumbar exams reveal L5-S1 radiculopathy on the left side. Treatment has been with Celebrex, various medications, multiple injections both cervical and lumbar. Epidural injections, piriformis injections, then radiofrequency ablation multiple branches left being L3-4, L4-5, and then the same procedure on the right side. Basically Dr. Patel thought of return to work at modified duty with restrictions of lifting less than 15 pounds and sitting for less than 2 hours at a time.

The patient was next encountered. He presented as a 50-year-old high school graduate with about 3 years of post graduate computer classes, which he has taken along and along. His day job has been that of a long-distance trucker. He has been employed by United Truck International. He is now on Worker's Compensation but is still an employee of this firm. He does his problems of the neck, the back, the right heel, and headaches to October 5, 2007. At that time he was operating a long-distance truck. He had just exited a rest area and was accelerating at approximately 45 miles per hour as the belted driver when he was struck in the rear by another truck on the interstate traveling, he estimates, at 70 miles an hour. The accident occurred in the vicinity of the Georgia-Alabama state line. He was taken to the local ER, treated and released. He then returned to Charleston. UTI sent him to, he believes, the Midlands Orthopedic Clinic in Columbia for a couple of visits and then he was transferred to Dr. Patel. He has been seeing Dr. Patel monthly. Treatment has outlined above.

The patient tells me that he had almost a negative past history prior to the accident at issue. He admits freely to being struck in the rear in a minor accident, again in the truck in 1998. Very slight neck pain. No lost time from work. Chiropractic manipulation for about a month. No return of discomfort until the accident at issue. He also admits to being T-boned in 1988. Sore ribs. One week out of work. No back or neck problem with that accident. He also admits to being injured in high school. Dislocating right shoulder. Surgery in 1972. Good resolution and no recurrent dislocations. Otherwise, the patient denies any problems with the related areas prior to the accident. Further denies medical visits, chiropractic or therapy visits, advice regarding surgery or bracing.

Bay Orthopaedic Associates

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Georgetown, SC 29442 (843)527-4447

Office Notes

Page: 2
Chart# 40154
Patient: Frances Bolds
Referral:

Mason Ahearn, M. D., FACS

Wright S. Skinner, III, M. D.

use of oral analgesics or antiarthritic medication, epidural or other injections, physical therapy, lost time from work or pleasurable activities because of any problems in this areas. Further denies other auto accidents with injuries, falls more than a few feet, sports related injuries, broken bones, admission to hospital for injuries. He also denies any and all injuries occurring after October 5, 2007. Surgery has never been discussed with the patient. The patient lives in a house with a yard. He lives with his father. He does his own ADLs. Both gentlemen cook, both gentleman clean. The father does the yard work. He does own a vehicle without a handicap sticker but does very little driving. He does go to Wal-Mart and the food market. He pushes a cart. He attends rare movies. Does not eat meals out. Goes to church 1-2 times per month. He is now under Vocational Rehabilitation sponsorship and will be taking additional computer course. He did graduate from Beta Tech in Charleston in 2006 in the computer area. He anticipates ultimate placement in the computer field. The medical history is otherwise uninvolved. He does not have a primary care physician. He did have the right shoulder surgery as his only operation. He denies any allergies. Dad is alive at 80 in excellent health. Mom died at 40 of a heart attack. He has never used tobacco, alcohol, or recreational drugs. His prescription medicines by Dr. Patel are Celebrex, and medication for pain, Flector and Percocet. Currently the patient complains of a rather constant neck pain bilaterally with left worse than right and with rather constant burning sensation in the 8th distribution on the left side. He says the pain is about 3 of 10. Also complains of bilateral para lumbar or SI pain with sciatic radiation down to but not past the left knee. Some tingling in the S1 distribution. Finally he complains of headaches which he treats with OTC medicines and intermittent pain in the posterior and inferior portion of the left heel.

The patient was examined in a gown as a 226 pound 5 foot 5 inch left dominant 50-year-old African-American male who appeared his stated age. He had a 48 inch waist circumference. The patient displayed no braces or assistive devices. He was cooperative throughout the encounter and there was no evidence of contrivance. He had a normal gait without limp. He stood normally and got on and off the examining table in a coordinated manner. He walked on heels and toes. He did heel-toe walk with good balance. He did about half a squat because of back pain. The patient had full cervical motion. He had pain at each extreme. Cervical palpation revealed tenderness and muscular spasm on the left side. Spurling gave the patient left trapezius corner pain on each maneuver, in other words, to the right as well as to the left. Spinal compression same. The patient had full motion all joints upper extremities to include right shoulder. Anterior delta pectoral scar here. Obviously he had an excellent surgical result. He had good gross mechanical dexterity on the JMAR and he had good fine mechanical dexterity with his fingers and thumb. Made circles. Made and unmade fist. Abducted and adducted fingers. Opposed fingertips to hypothenar eminence and to thumbs in sequence. Neurologic exam upper

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Office Notes

Mason Ahearn, M. D., FACS
Wright S. Skinner, III, M. D.

Page: 3
Chart# 40154
Patient: Frances Bolds
Referral:

extremities revealed circumferential measurements of arms equal at 35 cm and forearms right 26, left 27 cm. Grip strength 3 attempts JMAR dynamometer right 28, 28, 30 kilograms and left 10, 10, 10 kilograms. He did have a burning sensation over the 8th root below the elbow. No muscular weakness noted. I think the performance of the JMAR was pain induced rather than true neurologic weakness. No reflex changes upper extremities. The patient had lumbar motion forward flexion fingertips even with mid calves. Straight leg raising very slight similar loss of other lumbar motion parameters. Straight leg raising was positive on the left side at about 90 degrees in the sitting position with buttock pain and at about 50 degrees in the supine position. Negative on the right side. Patrick's and reverse Patrick's negative. The patient had full range of motion all joints lower extremities. Neurologic exam lower extremities revealed circumferential measurements of thighs right 62, left 61 cm and calves equal at 40 cm. There were no muscular, sensory, or reflex changes in the lower extremities. Examination of the left heel revealed tenderness to palpation at the base of the Achilles tendon and no swelling or edema.

We were asked not to obtain x-rays if not necessary.

It appears that this individual suffered injuries to both the cervical spine and the lumbar spine and a contusion to the left heel in a work related motor vehicle accident October 5, 2007. There is certainly a suggestion that at least the cervical component represented aggravation of a previous but hitherto asymptomatic situation. In any case, the motor vehicle accident was the cause of his need for the therapy administered and for his current condition. I believe Dr. Patel's restrictions are reasonable. I would further add the patient should not do any work involving standing for more than 60 minutes at a time, sitting more than 60 minutes at time without change of position. He should not stoop, bend, crawl, kneel, negotiate repeated flights of stairs, lift any object repetitively, lift any objects singly of more than 15-20 pounds. I think he could function in computer repair and probably limited installation. I believe the patient has reached MMI. He tells me that each shot from the doctor makes him feel good for a few days but not for a long period of time. I think it would be reasonable to query Dr. Patel and to ask for a rigid management plan, rather than just a program of injections for the rest of his life. I think the patient can return to work now as restricted above. Consultation with Volume V JAMA Guide, page 384, table 15-3 would suggest the patient to be in DRE Lumbar Category III with 11% impairment to the whole person or 14.67% to the low back, the lumbar spine, or the spine. Page 392, table 15-5 would suggest the patient to be in DRE Cervical Category III with 15% impairment to the whole person which translates to 42.9% impairment to the neck, the upper spine, or the cervical spine. These 2 spinal impairments combine to a total spinal impairment of 52%.



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Office Notes

Mason Ahearn, M. D., FACS
Wright S. Skinner, III, M. D.

Page: 4
Chart# 40154
Patient: Frances Bolds
Referral:

The specific questions asked in the cover letter, not covered above, are answered. Physical capabilities are that as described in Dr. Patel's and my restrictions. Again, as to further treatment, I would ask for a definite plan from Dr. Patel. Otherwise, I would place him at complete MMI. The accident caused the conditions by forcing the patient's spine through inordinate positions at the time of impact and the contra coup reaction.



A. Mason Ahearn, M.D., FACS

jlw

IMX

Medical Management Services

Two Bala Plaza, Suite 600, PO Box 557, Bala Cynwyd, PA 19004

Phone: (610) 667-4463 • Fax: (610) 667-4784
Toll free: (800) 707-0575MEDICAL EVALUATION
FAX IMPRESSION SHEET

FAX MESSAGE TO: IMX Medical Management Services

FAX #: (610) 667-1439

CLAIMANT NAME: Francis Bolds

CLAIM/FILE #: 709-548499

CLAIMANT ATTENDED EXAMINATION: YES / NO (Circle One)

IMPRESSION / DIAGNOSIS:

Cervical strain and lumbar
strain with mild D cervical +
lumbar radiculopathy

RECOMMENDATIONS:

Use Relief Retraining
Unless Dr Patel has specific Hx Plan, Hx)

PROGNOSIS:

No real improvement

RECOVERED: (circle)

YES / NO

WORK STATUS: (If applicable)

RETURN TO WORK: YES / NO

WORK RESTRICTIONS: YES / NO

RETURN TO WORK DATE:

Now

CAUSAL RELATIONSHIP: (If applicable)

Yes

DATE:

Jul 30 08

PHYSICIAN SIGNATURE:

Mason Ahearn, MD

(Please note that this information is preliminary and may or may not be reflected in the final report based upon further review of the medical documentation).

Estimated Physical Capacities



Patient Name: Francis Bolds

Patient May - Work Full Time ☐ YES ☐ NO

Patient May - Work Part Time ☐ YES ☐ NO

Patient Can - Return to Former Job with No Restrictions: ☐ YES ☐ NO

Patient Can - Return to Work with the Restrictions Below: ☐ YES ☐ NO

In an eight (8) hour day, patient can stand:	☐ None	☒ 1-3hrs	☐ 3-5hrs	☐ 5-8hrs	☐ No Restrictions
In an eight (8) hour day, patient can sit:	☐ None	☐ 1-3hrs	☒ 3-5hrs	☐ 5-8hrs	☐ No Restrictions
In an eight (8) hour day, patient can sit/stand:	☐ None	☐ 1-3hrs	☐ 3-5hrs	☒ 5-8hrs	☐ No Restrictions
In an eight (8) hour day, patient can walk:	☐ None	☒ 1-3hrs	☐ 3-5hrs	☐ 5-8hrs	☐ No Restrictions
In an eight (8) hour day, patient can drive:	☐ None	☒ 1-3hrs	☐ 3-5hrs	☐ 5-8hrs	☐ No Restrictions

Patient is able to:	Never	Occasional 0-33%	Frequent 34-66%	Constant 67-100%	No Restrictions
Bend at the waist	☐	☒	☐	☐	☐
Squat at the knees	☐	☒	☐	☐	☐
Climb	☐	☒	☐	☐	☐
Reach above the shoulder	☐	☒	☐	☐	☐
Kneel	☒	☐	☐	☐	☐
Crawl	☒	☐	☐	☐	☐
Use Feet (foot controls)	☐	☐	☒	☐	☐

Patient can use Upper Extremities for Repetitive:

Simple Grasping	Right	☒ yes ☐ no	Left	☒ yes ☐ no	☒ No Restrictions
Firm Grasping	Right	☒ yes ☐ no	Left	☒ yes ☐ no	☒ No Restrictions
Fine Manipulation	Right	☒ yes ☐ no	Left	☒ yes ☐ no	☒ No Restrictions

In an eight (8) hour day, Patient can Lift, Carry:

Physical Demand Level	Occasional 0-33%	Frequent 34-66%	Constant 67-100%
Sedentary	0-10lbs	Negligible	Negligible
Light	<u>11-20lbs</u>	1-10lbs	Negligible
Medium	21-50lbs	11-20lbs	1-10lbs
Medium-Heavy	51-75lbs	21-35lbs	11-15lbs
Heavy	76-100lbs	36-50lbs	16-20lbs
Very Heavy	Over 100lbs	Over 50lbs	Over 20lbs

Comments: _____

Provider Signature: _____

Date: Jul 30 '08

Provider Name: Mason Ahearn, MD

SOUTHEASTERN SPINE INSTITUTE

BOLDS, JR., FRANCIS
Patient #135036

September 3, 2008: Mr. Bolds is seen for the purposes of an independent medical evaluation.

This man has a history of a work related injury which occurred on October 5, 2007. He has provided a long typewritten history of his version of the accident, which occurred while he was driving an 18-wheeler.

Since the time of the accident, he has had neck pain, paracervical pain, low back pain, and leg pain. He was seen by Dr. Patel. He has been seen in second medical opinion by Dr. Ahern. He has been assigned permanent impairment by his treating physician Patel at LowCountry Orthopaedic and Sports Medicine.

At the date that he was recommended for maximal medical improvement per Dr. Patel, it was also his opinion that he would require continued pain management, including, but not limited to pain medications, follow-up visits, physical therapy sessions, epidural steroid injections, and repeat radio frequency ablation procedures, and wanted the patient to increase his Lyrica to 150mg twice a day, and continue on Percocet, as well as being given prescriptions to return to work at a light duty status.

He was given an as-needed follow up on that day.

He has undergone radio frequency rhizotomy, with what is described as an excellent result, but has unfortunately recurred. He has been through physical therapy at Sport Plus, and undergone injections in the cervical spine and perhaps even been considered for Botox injections in the bilateral paracervical spinal muscles.

He describes his pain as 8/10 on the visual analogue pain scale. He has not worked since 10/05/07. In the past, he has had surgery for a right dislocated shoulder and was hospitalized for anxiety in 2004. He states that nerve blocks have taken the edge off of his pain. He continues to be maintained on Lyrica and Oxycodone.

He describes himself currently as having headaches on the left side of his head, behind his left eye with neck problems and pain going down his left arm with numbness in the fingers. He has numbness in his left toe, low back, and stabbing pain into his right ankle and radicular pain into his left leg.

He has had MRI scanning of the cervical spine and lumbar spine.

Exam shows him to have a straight spine. He has pain with extension, pain with rotation of his neck to the left. Biceps, triceps, brachioradialis reflexes are intact. He has some slight diminution of his grip strength on the left compared to the right. He has slight diminution of his thumb extension compared to the right. He has positive straight leg raising on the left. He has

SOUTHEASTERN SPINE INSTITUTE

BOLDS, JR., FRANCIS

Patient #135036

9/3/08

Page Two

dysesthesia in the posterolateral aspect of the hip and left leg. He has no lower extremity long tract signs. He has slight toe extension weakness on the left.

His MRI scan indicates him to have a significant spondylosis at the C5-6 level, with left paracentral disc protrusion, contributing to the exiting C6 neuroforaminal stenosis. There is focal T2 hyperintensity in the hemi cord in addition to the C4-5 disc, described as showing mild right hemi cord flattening.

Recommendation from the radiologist at that date for an enhanced view to fully delineate the nature of this edema, and I am in agreement.

In regards to the lumbar spine, the MRI indicates left paracentral broad based protrusion contributing to the moderate left exit foraminal stenosis and deflection of the exiting L4 root. There is disc bulging and left facet hypertrophy at the L5-S1 level.

Diagnosis:

1. Cervical disc disruption at C5-6 with possible myelomalacia C4-5.
2. Disc disruption with disc bulging L4-5 and L5-S1.

Comment: To a reasonable degree of medical certainty, this man's cervical and lumbar disc condition was aggravated and/or caused to become symptomatic by the accident. He has disc herniations at C5-6, L4-5, and L5-S1. There is this troubling swelling within the spinal cord at the C4-5 level, and I am in agreement that this man should have updated cervical imaging studies to include MRI scanning of the cervical spine with gadolinium contrasting.

With regards to his current impairment, it would be 15 percent to the lumbar spine, based on a diagnosis of disc disruption at L4-5 and L5-S1, necessitating non-operative care to include multi-injection therapy and surgical intervention to include rhizotomy at the L4-5 and L5-S1 levels.

The second diagnosis is cervical disc disruption, with myelomalacia possible in the C4-5 level with C5-6 disc disruption and left C6 radiculopathy.

This man has some situations which may require further care, prior to being considered at maximum medical improvement. He, theoretically, could require surgical intervention at the C5-6 level and C4-5 level, based on the results of the MRI scans. I believe that he should get these prior to being considered at maximum medical improvement.

With regards to the lumbar spine, he has had rhizotomies and does have two-level disc bulging and I think that he most likely should just stay on the Lyrica and analgesic medications.

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SOUTHEASTERN SPINE INSTITUTE

BOLDS, JR., FRANCIS

Patient #135036

9/3/08

Page Three

I do understand the rationale behind recommending continued pain management while at the same time being considered at maximal medical improvement. However, I would strongly recommend that this man get the MRI scan as the radiologist has recommended and receive a regular follow up from Dr. Patel, or alternative treating physician to monitor his response to the increase in Lyrica that was necessitated on his last visit when he was given an as-needed follow up.

In addition, he may require continued follow up for analgesic management. I do think that there is a chance that he could undergo surgical intervention in the cervical spine and the impairment to his cervical spine of 10 percent currently would be subject to change should he undergo surgical intervention.

He has an impairment of 25 percent. These are whole person impairment ratings. I am in receipt of and independent medical evaluations from Dr. Ahern, where this is broken down into a regional impairment.

I have not gone that far with the impairment; I am only providing whole person impairments which, again, for the cervical spine are related to the results of the MRI, which I believe that he should have, based on the recommendations of the radiologist.

I have seen him for the purposes of an independent medical evaluation and hold these opinions true to a reasonable degree of medical certainty.

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

Cc: Joye Law Firm (FAX 554-6539)

Dictated but not read.
T-10/15/08

Vocational & Occupational
Counseling Services L.L.C.
222 King Rall Lane
Huger, SC 29450



DAVID R. PRICE M.Ed.
Certified Rehabilitation Counselor

Phone & Fax: 843-336-4902
E-mail: PriceAdvice@msn.com
Mobile: 843-810-6592

November 26, 2008

VOCATIONAL ASSESSMENT OF FRANCIS BOLD

Introduction:

Francis Bold is a fifty year old tractor-trailer-truck driver. He was rear ended by another trucker on I-20 in Alabama on October 5, 2007. Mr. Bold injured his neck, low back, and right foot in the collision. He has been diagnosed with a cervical disc disruption at C5-6 and two lumbar disc disruptions at L4-5 and L5-S1. Mr. Bold has completed a course of conservative treatment that included multiple cervical and lumbar epidural injections as well as radiofrequency ablation of the nerves at L3-4 and L4-5. Maximum Medical Improvement was assigned by the treating physician, Shailesh Patel, M.D., on July 31, 2008. Permanent impairment was assessed as 7% of the lumbar spine and 14% of the cervical spine. Mr. Bold had two independent medical evaluations. On July 30, 2008 Mason Ahearn, M.D. stated that maximum improvement had been reached. He rated Mr. Bold with 15% whole person for the neck injury and 11% whole person for the back. A third Independent Medical Evaluation was done by Stephen Poletti, M.D. on September 3, 2008. He stated that Mr. Bold potentially needed surgery on his neck and recommended a new cervical MRI scan before maximum medical improvement was assigned. His current ratings of impairment were 15% for the back and 10% for the neck to combine for a 25% whole person rating. Current physical restrictions place Mr. Bold in the sedentary to light categories of physical demand with significant limitations on sitting, standing, lifting and the mechanical use of the spine. These restrictions will not allow for a return to work as a truck driver. As such, Mr. Bold is referred for vocational assessment.

Mr. Bold was interviewed on November 25, 2008. His history was taken and he was tested for intelligence and academic levels. His medical file has been reviewed. The conclusions and recommendations contained in this report were developed through this process and represent my professional opinion as a certified vocational rehabilitation counselor.

Records Reviewed:

Steven Poletti, M.D. -Southeastern Spine Institute
Mason Ahearn, M.D. -Bay Orthopaedic Associates
Shailesh Patel, M.D. -Lowcountry Orthopaedics & Sports Medicine
Troy Marlowe, M.D. -Tricounty Radiology Associates
Summerville Medical Center

Tanner Medical Center Higgins
Carolina Occupational Healthcare
SportsPlus

Medical Treatment:

Following initial emergency care and follow up with his employer's occupational medicine physician, Mr. Bold was referred to Shailesh Patel, M.D., on September 3, 2008. Dr. Patel had neurodiagnostic studies and MRI imaging of the cervical and lumbar spine. Mr. Bold was diagnosed with multi-level degenerative disc disease of the cervical spine with a disc disruption at C5-6. The lumbar spine was diagnosed with disc disruptions at L4-5 and L5-S1. Treatment was conservative and consisted of medications, physical therapy, multiple epidural steroid injections of the cervical and lumbar spines, and bilateral radiofrequency ablation of the nerves at L3-4 and L4-5. On July 31, 2008 Dr. Patel's progress note states:

"At this time, it is my opinion to a reasonable degree of medical certainty that the patient has a 5% impairment of the whole person, a 7% regional impairment of the lumbar spine and a 14% regional impairment of the cervical spine. It is also my opinion to a reasonable degree of medical certainty that the patient will need continued pain management, including, but not limited to pain medications, follow up visits for physical therapy sessions, epidural steroid injections and repeat radiofrequency ablation procedures."

Independent Medical Evaluation was accomplished by Mason Ahearn, M.D., on July 30, 2008. Dr. Ahearn's report states:

"MRI's cervical October 27, 2007 does reveal degenerative changes diffuse, worst at C5-6 with left 6th nerve root compression. Lumbar exams reveal L5-S1 radiculopathy on the left side."

"Consultation with Volume V JLAMA Guide, page 384, table 15-3 would suggest the patient to be in DRE Lumbar Category III with 11% impairment to the whole person or 14.67% to the low back, the lumbar spine, or the spine. Page 392, table 15-5 would suggest the patient to be in DRE Cervical Category III with 15% impairment to the whole person which translates to 42% impairment to the neck, the upper spine, or the cervical spine. These 2 spinal impairments combine to a total spinal impairment of 52%."

A second IME was done by Steven Poletti, M.D., spine surgeon, on September 3, 2008. He states:

"He has disc herniations at C5-6, L4-5, and L5-S1. There is this troubling swelling within the spinal cord at the C4-5 level, and I am in agreement that this man should have updated cervical imaging studies to include MRI scanning of the cervical spine with gadolinium contrasting."

"With regards to his current impairment, it would be 15 percent to the lumbar spine, based on a diagnosis of disc disruption at L4-5 and L5-S1..."

"This man has some situations which may require further care, prior to being considered at maximum medical improvement."

"I do think that there is a chance that he could undergo surgical intervention in the cervical spine and the impairment to his cervical spine of 10 percent currently would be subject to change should he undergo surgical intervention."

"He has an impairment of 25%. These are whole person impairment ratings."

Restrictions:

Mason Ahearn, M.D., 07/30/08- *"I believe Dr. Patel's restrictions are reasonable. I would further add the patient should not do any work involving standing for more than 60 minutes at a time, sitting more than 60 minutes at a time without change of position. He should not stoop, bend, crawl, kneel, negotiate repeated flights of stairs, lift any object repetitively, lift any object singly of more than 15-20 pounds."*

Shailesh Patel, M.D., 07/31/2008- *"The patient may return to light duty with weight lifting restrictions of 15 lbs or less and restricted climbing or bending."*

Restrictions provided above are consistent with the U.S. Department of Labor's definition of "sedentary" physical demand.

Symptoms:

Mr. Bold reports that his low back is his most painful condition. He reports a constant nagging pain that is aggravated by exertion or movement. Sitting or standing longer than 30-45 minutes is intolerable. Mr. Bold states that he is unable to bend, stoop, squat, or twist without pain. Disabling pain flares are frequent. He cannot crawl or climb ladders. He walks with a right antalgic gait. A cane is used in the left hand for balance and support. Mr. Bold has left leg radicular pain with burning and numbness. It occasionally gives way making him subject to falling. He gets no more than 3-4 hours sleep per night secondary to pain and discomfort. He has been impotent since injury.

Pain is reported in the mid cervical area with radiation into the left upper extremity with weakness and numbness extending into the small and ring fingers. Weights greater than 10 lbs cannot be handled with the left arm. He cannot use it for repetitive overhead tasks. Mr. Bold reports daily headaches that last nearly all day. He is sensitive to light and noise. Headaches lead to nausea and dizziness. He reports easy frustration and irritability.

Mr. Bold spends all but three hours per day in a recliner chair watching television or lying in bed. He is minimally doing household work. If he does it is in short periods

followed by a recovery period. He does not do yard, vehicle, or home maintenance. Mr. Bold is not involved socially and only occasionally goes on a shopping trip. When he does he uses the motorized handicap carts for ambulation. He lives with his father who provides him with assistance. Average daily pain is rated as 7/10 on the visual analog scale.

Medications:

Oxycodone 5/325 mg every 8 hours for pain
Duragesic patch 1.3% every 12 hours for pain
Lyrica 150 mg every 12 hours for pain
Imetrex every 12 hours for headaches

Observations:

Mr. Bolds was on time for his interview. He was appropriately attired and groomed. Mood and affect were pleasant. Speech was delivered articulately in clear sentences with no evidence of impediment or slur. No evidence of emotional or psychiatric issues was noted. He had some difficulty with short term memory which he attributed to the dampening effects of narcotic medications. Mr. Bolds was observed to walk with a limp and use a cane in the left hand for support. He had difficulty sitting longer than 30 minutes. He was hit by a lumbar muscle spasm and required a break for to regain composure. Effort on standardized testing was good. Results are accepted as valid.

Past Medical History:

Mr. Bolds reports right shoulder surgery in 1974 for a dislocation that occurred while on his high school wrestling team. In 2003 he was hospitalized for depression following a nasty divorce from his wife. Otherwise his history is negative for any other serious accident, disease, surgery, hospitalization, or allergy. Mr. Bolds is 5'5" tall with weight of 226 lbs. Ethnic background is African-American. He does not smoke or use alcohol.

Social:

Mr. Bolds describes himself as a service brat, making reference to his father's military service and frequent relocation. He currently lives on James Island, S.C. with his father on 20 acres of farm land. He divorced in 2006 after 23 years of marriage. He has a 20 year old daughter in college and a 28 year old daughter that is married with two children.

Mr. Bold is currently working with the S.C. Department of Vocational Rehabilitation and is being considered for retraining as a computer programmer.

Education:

Mr. Bolds graduated James Island High School in 1977. He joined the army after graduation and served one year before being discharged secondary to recurrent

dislocations of his right shoulder. He got a commercial driver's license in 1996. He attended Beta Technical Institute in 2005-6 and earned a certificate in computer networking.

The Wide Range Achievement Tests were administered for assessment of current academic levels:

Reading- 7th Grade Level
Arithmetic- High School Level

Intelligence was measured with the Revised Beta Examination, 2nd Edition.

IQ Score- 108
Percentile -70

Employment History:

Mr. Bolds worked for UTI Trucking Company as a tractor-trailer-truck driver from 2000 through 2007. He left UTI's employment for about five months when he moved to Iowa and drove for Hershback Transportation. He returned to UTI and worked about one week before he was injured in October 2007.

Mr. Bolds worked as general manager for Applebee's Restaurant for thirteen years. He was Kitchen manager for Steak and Ale for 8 ½ years.

Description of Occupation:

904.383-010 Tractor-Trailer-Truck Driver (any industry)

The occupation is classified by the U.S. Department of Labor in the physical demand category of "medium". This requires the ability to make an occasional maximum lift of 50 lbs and frequent lifts of 20 lbs.

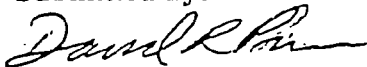
Conclusions and Recommendations:

Francis Bolds is a 50 year old tractor-trailer-truck driver. He was injured when his truck was rear-ended on 10/05/07. Mr. Bolds was diagnosed with a herniated cervical disc at level C5-6 and two herniated lumbar discs at L4-5 and L5-S1. He has been treated conservatively with therapy, injections, and radiofrequency ablation of L3-4 and L4-5 nerves. He obtained temporary relief but has since regressed and is currently at his pre-treatment baseline. Mr. Bolds is currently rated with 25% whole person impairment for his neck and back condition. Physical capacity is in the sedentary class but with inability for complete function in this range secondary to chronic pain and significant functional limitations on use of the spine, sitting and standing. Mr. Bolds is potentially a candidate for cervical surgery at C4-5 and C5-6. IME of 09/03/2008 has recommended new MRI

imaging before Mr. Bolds is considered to be at MMI. Symptoms remain constant with neck pain and left arm radiculopathy, lumbar pain and right leg radiculopathy. Pain is severe and activity so limited that Mr. Bolds spends most days in a recliner watching television or lying in bed resting his back. Exertion, activity, or even an unguarded movement can elicit a pain flare that will last for several days. Pain levels on average are rated as 7/10. Mr. Bolds has not been able to work since his accident.

At age 50 Mr. Bolds is rapidly approaching older worker status. He has been out of the work force for greater than one year. He has significant physical limitations and need for work place modification. Mr. Bolds takes narcotic medications that impair physical coordination, memory, and cognitive function. As such his access to employment opportunities will be drastically reduced. Certainly he will not be capable of returning to work as a truck driver. He has exclusively worked at medium physical demand jobs that required good physical condition and long hours of sitting or being on his feet. As such his work in the food service industry will also be ruled out as alternative employment. As a restaurant manager, Mr. Bolds developed skills in supervision, clerical and administration that transfers to sedentary work. He has a certificate in computer networking. While this occupation will exceed his physical ability, secondary to the requirement to lift heavy servers and computer equipment, his keyboarding and computer skills will be transferable. Unfortunately, the level of chronic pain Mr. Bold endures and his inability to sit/stand greater than 60 minutes at a time, his use of narcotic medications combined with no industrial capacity for bending, stooping, squatting, climbing, or lifting greater than 15 lbs will make it extremely difficult for him to be competitive for a job. If he lands an opportunity, his propensity for repetitive pain flares and lack of stamina will certainly cause excessive work place absence and make it hard for him to sustain employment. He would be considered unreliable. This combination of factors most likely currently renders Mr. Bold completely disabled. He is however, a very motivated individual. He has contacted the South Carolina Department of Rehabilitation and is making plans to get additional training as a computer programmer. This is a light duty job. While it exceeds sedentary restrictions, Mr. Bold is willing to give it a try. Whether he can be successful at this is an unknown factor. Should he be, I estimate that he can enter the work place with an annual income of approximately \$35K. I am not optimistic about his chances for success. In his current condition I do not believe that he can work. He is going to need ongoing pain management. The effectiveness of this treatment will be directly related to his success at vocational rehabilitation. If surgery is required, I do not believe that long term vocational implications should be addressed until Mr. Bold has recovered and has clearly defined physical capacity.

Submitted by:



David R. Price M. Ed., CRC
Certified Vocational Rehabilitation Counselor

SOUTH CAROLINA VOCATIONAL



REHABILITATION DEPARTMENT

*Enabling eligible South Carolinians with disabilities to
prepare for, achieve, and maintain competitive employment.*

Larry C. Bryant, Commissioner

August 21, 2008

Dear Kelly Leighty:

Your client, **Francis Bolds**, is scheduled to begin a comprehensive vocational evaluation on **Sunday, September 21, 2008**. The Evaluation Center opens at 2 p.m. on **Sunday** so that clients who are going to be residents can be admitted. Resident clients are asked to arrive no later than 4 p.m. on their admission date. Mr. Bolds will share a semi-private room with one other client.

Mr. Bolds should expect to stay approximately four weeks to receive a complete evaluation. If client has pending surgery, a court hearing, a sick spouse, or anything of this nature, you may want to consider rescheduling the entrance date for a different time. This is to insure that Mr. Bolds receives the maximum benefits of the program. Please contact Jody Vassey at 896-6040 as soon as possible if the client needs to be rescheduled.

While at the Center, Mr. Bolds will participate in vocational evaluation, job readiness classes, career exploration, occupational therapy, nutrition counseling, physical therapy, adaptive aquatic therapy, and exercise physiology unless services are not indicated for a particular area. Classes are scheduled Monday-Friday from 9:00 a.m. to 4:00 p.m. On Friday, classes will end at 2:15 p.m. The Center closes at 5 p.m. on Friday, so please make sure Mr. Bolds will have the necessary transportation arrangements to leave no later than 5 p.m. If Mr. Bolds qualifies for transportation assistance, please issue funds to cover the initial trip here. After your client arrives, we will provide the transportation assistance. The Center will reopen on Sunday at 2 p.m. for residents to begin returning—please no later than 9 p.m.

Resident clients will need to bring any medication(s) currently being taken in its **"original"** prescription bottle(s). Any equipment for daily living that Mr. Bolds uses at home should be brought to the Center. This includes such items as specialized eating utensils, canes, braces, walkers, wheelchairs, eyeglasses, scooters and catheters. Comfortable, casual clothes should be brought to be used when exercising. No halter or tank tops are allowed. Closed-toe, rubber soled shoes will also be needed as well as one-piece swimming attire (dark t-shirts and shorts are also appropriate). Personal money may be needed to buy stamps and to purchase items from the vending machines. A small radio, CD player or MP3 player is permissible, but televisions are not. There is, however, a television lounge area. Bed linen, towels, washcloths, soap, toilet paper, kleenex, and a hamper will be provided. There is a washing machine with detergent already added, a dryer, and an iron and ironing board located within the facility.

Mr. Bolds will be contacted by Janet Spires, Head Nurse, to confirm participation in the program. If no contact has been made by Thursday morning before the admission date, please advise your client to call Janet Spires at (803) 896-6150.

jv

SCVR EVALUATION CENTER DISCHARGE SUMMARY

STAFF NOTE: 10/17/2008

CLIENT: Francis Boldo

COUNSELOR: K. Leighty #210/1201

CASE NO.:

Mr. Boldo was referred to the Evaluation Center to participate in a comprehensive vocational evaluation with a focus on pain management and training at ITTC, but did not meet selection criteria. Mr. Boldo was on roll from 09/21/08 to 10/17/08. The enclosed results represent the actions of all therapy areas in an effort to determine appropriate recommendations congruent with SCVR service.

Vocational objective of Motor Vehicle Dispatcher (249.167-014) was selected for consideration based on interests, physical limitations, recommended work level and work history. Mr. Boldo expressed an interest in pursuing PHS training; however, current achievement scores do not support PHS training.

Observations related to basic worker traits were determined by all staff and are based upon demonstrated behaviors, client activity, and levels of participation. Mr. Boldo was cooperative, motivated and hard working in PT, MDR and AAT.

The determination of physical capacities is a consensus of standardized evaluation and professional interpretation of Mr. Boldo's participation. Mr. Boldo was able to tolerate a full day of activity for the 4-week period at the sedentary to light work level. Mr. Boldo will need accommodations for no kneeling, crouching, stooping, climbing or crawling activities and would benefit from frequent position changes between sitting, standing and walking. Upper extremities were rated as frequent in reaching on both sides; constant in handling/fingering/feeling on the right; frequent in handling/fingering and constant in feeling on the left.

Mr. Boldo was an involved and attentive participant in OT, the vocational area, educational classes and group activities. Mr. Boldo has been working on typing skills using the Typing Instructor Deluxe.

Beyond the general information outlined in this summary, other issues of importance have been identified by the specialty areas and can be found in the respective reports. Recommendations from the Center staff are noted below; however, the counselor is strongly encouraged to review each report for specific, additional information and recommendations.

1. Pursue Rehab Tech for seating/job site evaluations/accommodations when vocationally appropriate.
2. Upgrade academic levels through community education to prepare for PHS training.
3. WorkKeys referral.
4. Classes in computer/keyboarding to enhance employability.
5. Pursue CBE's: shadowing/tryouts to explore new vocational choice/transition to employment.
6. Job placement assistance.
7. Continue PT back exercise home program.
8. See PT report recommending purchase of a standard straight cane if vocationally appropriate.
9. Participate in regular exercise program with an aquatics program being beneficial at a local facility if available.
10. See OT report regarding observations and any recommendations.
11. Pursue weight loss.
12. See attached USC Speech/Language/Hearing Screening Report re: complete audiological evaluation if vocationally appropriate.



Carol C. Teal
CPE Specialist II



Debra Rzepkowski
Administrator

Francis Bolds

OCCUPATIONAL THERAPY

October 17, 2008

Client was evaluated in the following areas:

Activities of Daily Living
Assistive Technology
Visual Perceptive Skills
Vision Screening

Cognitive/ Communication Skills
Upper Extremity Evaluation
Work Task Observation
Body Mechanics

Results are:

Activities of Daily Living / Assistive Technology: This client is independent in completing self-care and daily activities, but reported increased difficulty in bending, lifting, and walking. Alternative techniques for the performance of tasks that cause pain were reviewed, as well as different types of adaptive equipment.

Visual Perceptive Skills: Visual-perception, spatial orientation and form reproduction skills tested in the average range.

Vision Screening: The client's vision is adequately corrected at this time.

Cognitive/ Communication Skills: The client completed assigned exercises involving basic math, deductive reasoning, logic, and problem solving satisfactorily and had no difficulty in using or following verbal and written directions.

Upper Extremity Evaluation: Functional range of motion, strength and dexterity were exhibited during light work tasks and tests, but he has difficulty with grasp in his left hand and would not be able to handle heavy objects or do repetitive work with it.

Work Task Observation: The client demonstrated independent problem solving, attention to task, concern for quality, time management, and responsibility for the work area and materials.

Body Mechanics: The client was given information regarding proper methods of moving, lifting, and performing daily tasks at home, at work, and recommended sleeping postures.

Behavioral Observations: The client rated the degree to which pain is perceived to interfere in daily life at the beginning of the program, and at the end. The emotional response to pain during work situations and physical activities was also rated initially and then after vocational goals were explored. A high fear rating indicates less chance of successful pain management.

Daily Activities Interference	75% changed to 75%	Fear-Pain Avoidance scale showed a positive improvement with new vocational goals and management techniques.
Work/Leisure Activities Interference	80% changed to 80%	
Anxiety/ Depression	90% changed to 55%	
Social Interest Interference	80% changed to 35%	

Recommendations

- Ergonomic seating with attention to elbow support to relieve neck pain would be beneficial. Consult Rehabilitation Technology for assistance.
- Benefits would be found in pacing work tasks changing positions frequently, and considering the practice of TaiChi exercises as a method of maintaining conditioning.

Marlise Guillerault
Marlise Guillerault, OTR/L

Francis Rolde

10/17/08

PHYSICAL THERAPY

Client participated in the following activities:

PT. Assessment	Strengthening Exercises	Range of Motion
Home Exercise Program	Modalities	Gait Training
Endurance Exercises		

Behavioral Observations:

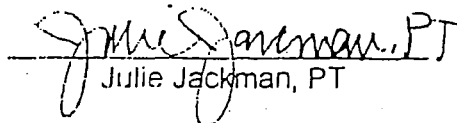
Client was on time and cooperative in physical therapy. Client participated in the back pain class and did well with most of the exercises, though some needed to be modified. Client also complained of left sided weakness compared to the right, a right foot injury, and migraines. Other exercises were discussed to address these areas in PT. In addition, client utilized our weight room and pool. Client also used a straight cane while on our campus to relieve the foot pain.

Vocational Implications/Accommodations:

Client physically tolerated a full day of activity for the four-week evaluation period at the sedentary to light work level. Client would need accommodations for no kneeling, crouching, stooping, climbing or crawling activities. Client would also benefit from changing positions frequently between sitting, standing, and walking.

Recommendations:

1. Recommend client continue the back exercise home program.
2. Recommend the purchase of a standard straight cane IF vocationally appropriate.


Julie Jackman, PT

Francis Bolds

October 17, 2008

EXERCISE/FITNESS

Client participated in the following activities:

Fitness education

Aerobic activities

Strengthening exercises

Behavioral Observations:

Mr. Bolds was on time for his scheduled exercise sessions in the Muscular Development Room. He was independent with his exercise program and recording his activities. He followed a consistent exercise routine. Gains in lower extremity strength and endurance were noted.

Vocational Implications:

Mr. Bolds was hardworking, friendly and cooperative with the staff. He worked hard within his limitations. He demonstrated good effort and took initiative with his exercise program. Participation was limited due to pain issues. Participation varied depending upon pain level. Pain behaviors were noted through facial grimacing and slow, guarded movements.

Recommendations:

Mr. Bolds should participate in a regular exercise program geared towards aerobic conditioning, muscular strengthening and weight loss. Frequency of exercise should be three to five times per week to his tolerance. An aquatic environment would be beneficial for Mr. Bolds.

Wyflesha Hayes MS, EXSC
Wyflesha Hayes Exercise Physiologist

Francis, Bolde

10/17/08

NUTRITION

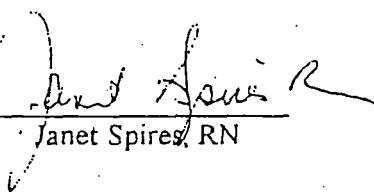
Mr. Bolde attended regular nutrition classes. He received information on basic nutrition, fats, cholesterol and labels

Behavioral Observations:

Mr. Bolde participated in class discussions. He demonstrated understanding of the subjects. He participated in a menu plan.

Recommendations:

Continue to make healthy food choices and an exercise program to promote a healthy life style.


Janet Spires, RN

Francis Bolds

10/17/08

NURSING

History:

Mr. Bolds is a 50 year old African American male with the diagnosis of cervical radiculitis, lumbar radiculopathy and obesity. He complained of back and right foot pain upon admission and during his stay at VREC. He took pain medicine as needed. He also complained of migraine headaches and on 10/09/08 he was seen by Dr. Meriwether and Imitrex was ordered. He is independent with activities of daily living and has no known allergies.

Medications at discharge:

Citalopram 40mg daily, Lyrica 75mg 2 times daily, Imitrex 25mg as needed for headache, Lyrica 150mg 2 times daily as needed, Oxycodone/APAP 5-325mg 3 times daily as needed for pain and Capsaicin 0.075% 3-4 times daily to lower back as needed.

Behavioral observations:

Mr. Bolds was cooperative with nursing staff and interacted with other clients. He participated in evening activities. He was admitted on 09/21/08 and discharged on 10/17/08.

Sherwin Hopkins LPN

10/23/08

SH/sh

Francis J. Bolds, Jr. v. UTI Integrated Logistics, Inc.
WCC No. 0715675

APA SUBMISSIONS

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGE NO.</u>
<u>APAs:</u>		
(1) Dr. Don Stovall (IME)	11/5/2008	1-4
(2) Tricounty Radiology (MRIs)	10/27/2007	5-7
(3) Lowcountry Orthopaedics	10/15/2007-7/31/2008	8-37
<u>Exhibits:</u>		
(4) Vocational Evaluation	12/22/2008	38-40
(5) <i>Guides to The Evaluation of Permanent Impairment</i> , pages 384 & 392		41-42



Lowcountry Orthopaedics & Sports Medicine

JOEL R. FOX, JR., MD
JAMES J. MCCOY, JR., MD
JAMES T. SPEARMAN, MD
DON O. STOVALL, JR., MD
RICHARD H. ZIMLICH, MD
DAVID H. JASKWICH, MD
SHAILESH M. PATEL, MD
CHAD R. BURGOYNE, MD
JASON R. TRIGIANI, PA-C
AMY M. BLANTON, PA-C
ASHLEY L. BURLESON, APRN

INDEPENDENT MEDICAL EVALUATION

RE: Francis Bolds
Our Chart No.: 113431
DOB: 03/19/58
November 05, 2008

Worker's Compensation-DOI: 10/05/07

CHIEF COMPLAINT:

1. Neck pain
2. Lower back pain

EFFECTIVE, COMPREHENSIVE CARE FOR:

- Back & neck pain
- Arthritic conditions
- Foot & ankle pain
- Knee, shoulder & hip pain
- Joint replacement
- Sports injuries
- Work injuries
- Elbow & hand conditions
- Adult & pediatric spinal disorders
- Fractures

FOR YOUR CONVENIENCE:

- Emergencies seen immediately
- Certified Technician Assistants
- Full-service physical therapy facilities
- Thorough examinations
- On-site X-rays and EMGs
- On-site MRI scans
- Insurance billing assistance

ON STAFF AT:

- Lowcountry Outpatient Surgery Center
- Trident Medical Center
- Summerville Medical Center
- Trident Surgery Center
- Roper Hospital
- Roper Berkeley Day Hospital
- Bon Secour St. Francis Hospital
- East Cooper Regional Medical Center
- Charleston Rehabilitation Hospital
- Charleston Surgery Center

HISTORY OF PRESENT ILLNESS: The examinee is a 50 YOM who was originally seen by Dr. Patel in October of 2007 for injuries that occurred in a truck accident. The pt was a driver for UTI since the year 2000. He was involved in a truck accident in which there was a rear-end collision in which he was hit from behind by another truck. At the time he reported that he was hit while driving approximately 70 m.p.h. He was restrained and there was no airbag deployment. He did report a loss of consciousness for approximately one minute. Apparently the seat that he was in had broken off and he was slumped forward. He does not recall hitting his head on the windshield. The pt was taken to the ER at Higgins Hospital in Georgia where he had radiographs taken and he was evaluated.

The pt complains of a moderate aching pain in the cervical spine. He has some pain that radiates into the left upper extremity. He has had occasional numbness and tingling in his left finger tips. He denies any right upper extremity symptoms. His pain is aggravated with neck motion and overhead activity, it is somewhat relieved with rest.

The pt also complains of mild to moderate aching pain in the lower lumbar spine. He has some mild radiation of pain into the left leg. No pain in the right lower extremity. He has some burning occasionally in the left lateral lower leg. His back pain is aggravated with standing and walking, somewhat relieved with sitting and changing positions. He currently walks with a cane. The pt denies any bowel or bladder dysfunction.

2380 Tricorn Street • N Charleston, SC 29406
convenient locations in Moncks Corner & Summerville
Internet address: www.lowcountryortho.com Fax 843-797-3633

RE: Francis Boldo
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November 05, 2008
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The pt reports no previous injury to his neck or back and no previous history of problems. The pt has undergone treatment including medial branch blocks and radio frequency ablation in the lower two lumbar levels. He has also undergone cervical epidural steroid injections. He has had fairly significant improvement with these injections.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY/FAMILY HISTORY/SOCIAL HISTORY:

Documented, reviewed and signed in the chart.

PHYSICAL EXAMINATION:

Vital signs: Height 5ft. 6in. Weight 220 lbs. Pulse 70.

General: The pt is a well nourished male in no apparent distress. The pt is oriented x3 and cooperative with the exam.

Cervical spine: Inspection reveals no skin changes. There is some tenderness at the base of the cervical spine. There is some limited motion in flexion and extension, fairly good rotation. Negative Spurling's maneuver.

Cervical lymphatic exam: There is no palpable lymphadenopathy within the neck.

Right upper extremity: Inspection reveals no edema, atrophy or skin changes. Palpation reveals no tenderness or masses. Full ROM of the shoulder, elbow and wrist without pain or crepitation. Joint stability is adequate without subluxation or laxity. Muscle strength and tone are normal in the muscle groups of the right upper extremity.

Left upper extremity: Inspection reveals no edema, atrophy or skin changes. Palpation reveals no tenderness or masses. Full ROM of the shoulder, elbow and wrist without pain or crepitation. Joint stability is adequate without subluxation or laxity. Muscle strength and tone are normal in the muscle groups of the left upper extremity.

Neurologic: (Upper extremity) DTRs are 1+ and symmetric in the upper extremities. Sensation is intact throughout.

Vascular: (Upper extremity) Radial pulse is 2+ and symmetric. Good capillary refill distally.

Thoracolumbar exam: Inspection reveals normal thoracic kyphosis and lumbar lordosis. There is some tenderness across the lumbosacral junction. There is some limited flexibility. Pelvis is stable to anterior and lateral compression.

RE: Francis Bolds
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Page Three

Right lower extremity: Inspection reveals no edema, atrophy, deformity or skin changes. Palpation reveals no tenderness or masses. ROM of the hip, knee and ankle is good without pain or crepitation. Stability exam reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the right lower extremity.

Left lower extremity: Inspection reveals no edema, atrophy, deformity or skin changes. Palpation reveals no tenderness or masses. ROM of the hip, knee and ankle is good without pain or crepitation. Stability exam reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the left lower extremity.

Neurologic: (Lower extremity) DTRs are 1+ and symmetric at the knee and ankle. Sensation is decreased over the lateral aspect of the left lower leg. He has negative SLR bilaterally.

Vascular: (Lower extremity) Dorsalis pedis and posterior tibial pulses are 2+ and symmetric. Good capillary refill distally.

RADIOGRAPHIC REVIEW: MRI scan of the cervical spine reveals a mild disc osteophyte complex at C4-5. At C5-6 there is a left disc osteophyte complex is mild. The rest of the levels appears relatively normal.

MRI scan of the lumbar spine reveals a left L4-5 disc bulge and annular tear with left exit stenosis. The rest of the levels appear normal with no evidence of herniated disc, spinal canal stenosis, or nerve root impingement.

ASSESSMENT:

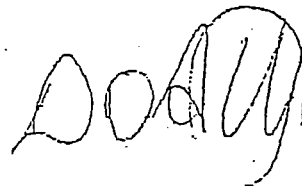
1. Cervical spondylosis
2. Lumbar disc bulge
3. Left sciatica

RECOMMENDATIONS: It is my opinion to a reasonable degree of medical certainty that Francis Bolds has reached MMI regarding the injuries he has sustained on October 05, 2007. The pt would have a 5% impairment of the whole person and 7% regional impairment of the lumbar spine for his diagnosis. He will also have a 5% impairment of the whole person and 14% regional impairment of the cervical spine for his diagnosis. It is my opinion to a reasonable degree of medical certainty that the pt would need continued treatment in order to lessen his disability and keep him at MMI. This would include continued pain management including medications, PT, and epidural steroid injections. These have been provided in the past by Dr. Patel, I would recommend that he continue under his care for occasional pain management. At this time the pt does not appear to be a candidate for surgical intervention.

RE: Francis Bolds
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Page Four

If his symptoms worsen or persist despite pain management he may be a candidate for further evaluation and MRI.

Sincerely,

A handwritten signature in black ink, appearing to read "Don O. Stovall, Jr.", written in a cursive style.

Don O. Stovall, Jr. M.D.

DCSjr/mlh

In cases where the abnormalities discussed above are present on imaging studies and are known or assumed to have preexisted an injury being rated, physicians should acknowledge these antecedent conditions. If requested, physicians may need to assess whether the condition was previously symptomatic and whether any aggravation occurred as a result of the injury. Physicians should be aware of the statutory definition in the involved jurisdiction pertaining to *aggravation* to ensure their use of the term is consistent with their state's legal interpretation.

DRE categories are discussed in the following three sections.

15.4 DRE: Lumbar Spine

The lumbar spine DRE categories are summarized in Table 15-3. Apart from category I, each category includes a range to account for the resolution or continuation of symptoms and their impact on the ability to perform ADL.

Table 15-3. Criteria for Rating Impairment Due to Lumbar Spine Injury

DRE Lumbar Category I 0% Impairment of the Whole Person	DRE Lumbar Category II 5%- 8% Impairment of the Whole Person	DRE Lumbar Category III 10%-13% Impairment of the Whole Person	DRE Lumbar Category IV 20%-23% Impairment of the Whole Person	DRE Lumbar Category V 25%-28% Impairment of the Whole Person
No significant clinical findings, no observed muscle guarding or spasm, no documentable neurologic impairment, no documented alteration in structural integrity, and no other indication of impairment related to injury or illness; no fractures	Clinical history and examination findings are compatible with a specific injury; findings may include significant muscle guarding or spasm observed at the time of the examination, asymmetric loss of range of motion, or nonverifiable radicular complaints, defined as complaints of radicular pain without objective findings; no alteration of the structural integrity and no significant radiculopathy or individual had a clinically significant radiculopathy and has an imaging study that demonstrates a herniated disk at the level and on the side that would be expected based on the previous radiculopathy, but no longer has the radiculopathy following conservative treatment or fractures: (1) less than 25% compression of one vertebral body; (2) posterior element fracture without dislocation (not developmental spondylolysis) that has healed without alteration of motion segment integrity; (3) a spinous or transverse process fracture with displacement without a vertebral body fracture, which does not disrupt the spinal canal	Significant signs of radiculopathy, such as dermatomal pain and/or in a dermatomal distribution, sensory loss, loss of relevant reflex(es), loss of muscle strength or measured unilateral atrophy above or below the knee compared to measurements on the contralateral side at the same location; impairment may be verified by electrodiagnostic findings or history of a herniated disk at the level and on the side that would be expected from objective clinical findings, associated with radiculopathy, or individuals who had surgery for radiculopathy but are now asymptomatic or fractures: (1) 25% to 50% compression of one vertebral body; (2) posterior element fracture with displacement disrupting the spinal canal; in both cases, the fracture has healed without alteration of structural integrity	Loss of motion segment integrity defined from flexion and extension radiographs as at least 4.5 mm of translation of one vertebra on another or angular motion greater than 15° at L1-2, L2-3, and L3-4, greater than 20° at L4-5, and greater than 25° at L5-S1 (Figure 15-3); may have complete or near complete loss of motion of a motion segment due to developmental fusion, or successful or unsuccessful attempt at surgical arthrodesis or fractures: (1) greater than 50% compression of one vertebral body without residual neurologic compromise	Meets the criteria of DRE lumbosacral categories III and IV; that is, both radiculopathy and alteration of motion segment integrity are present; significant lower extremity impairment is present as indicated by atrophy or loss of reflex(es), pain, and/or sensory changes within an anatomic distribution (dermatomal), or electromyographic findings as stated in lumbosacral category III and alteration of spine motion segment integrity as defined in lumbosacral category IV. or fractures: (1) greater than 50% compression of one vertebral body with unilateral neurologic compromise

15.6 DRE: Cervical Spine

15.6a Criteria for Rating Impairment Due to Cervical Disorders

For cervical problems localized to the cervical or cervicothoracic region, use Table 15-5. If the cervical spine problem also leads to isolated bowel and/or bladder dysfunction not due to corticospinal damage, obtain the appropriate estimates for bowel and

bladder dysfunction from the gastrointestinal and urology chapters (Chapters 6 and 7) and combine these with the appropriate cervical spine DRE category from DRE I to V, listed in Table 15-5. If the cervical spine problem is due to corticospinal tract involvement, use Table 15-6 alone.

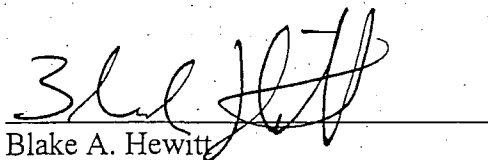
The DRE cervical categories are summarized in Table 15-5.

Table 15-5. Criteria for Rating Impairment Due to Cervical Disorders

DRE Cervical Category I 0% Impairment of the Whole Person	DRE Cervical Category II 5%-8% Impairment of the Whole Person	DRE Cervical Category III 15%-18% Impairment of the Whole Person	DRE Cervical Category IV 25%-28% Impairment of the Whole Person	DRE Cervical Category V 35%-38% Impairment of the Whole Person
No significant clinical findings, no muscular guarding, no documentable neurologic impairment, no significant loss of motion segment integrity, and no other indication of impairment related to injury or illness; no fractures	Clinical history and examination findings are compatible with a specific injury; findings may include muscle guarding or spasm observed at the time of the examination by a physician, asymmetric loss of range of motion or nonverifiable radicular complaints, defined as complaints of radicular pain without objective findings; no alteration of the structural integrity or individual had clinically significant radiculopathy and an imaging study that demonstrated a herniated disk at the level and on the side that would be expected based on the radiculopathy, but has improved following nonoperative treatment or fractures: (1) less than 25% compression of one vertebral body; (2) posterior element fracture without dislocation that has healed without loss of structural integrity or radiculopathy; (3) a spinous or transverse process fracture with displacement	Significant signs of radiculopathy, such as pain and/or sensory loss in a dermatomal distribution, loss of relevant reflex(es), loss of muscle strength, or unilateral atrophy compared with the unaffected side, measured at the same distance above or below the elbow; the neurologic impairment may be verified by electrodiagnostic findings or individual had clinically significant radiculopathy, verified by an imaging study that demonstrates a herniated disk at the level and on the side expected from objective clinical findings with radiculopathy or with improvement of radiculopathy following surgery or fractures: (1) 25% to 50% compression of one vertebral body; (2) posterior element fracture with displacement disrupting the spinal canal; in both cases the fracture is healed without loss of structural integrity; radiculopathy may or may not be present; differentiation from congenital and developmental conditions may be accomplished, if possible, by examining preinjury roentgenograms or a bone scan performed after the onset of the condition	Alteration of motion segment integrity or bilateral or multilevel radiculopathy; alteration of motion segment integrity is defined from flexion and extension radiographs as at least 3.5 mm of translation of one vertebra on another, or angular motion of more than 11° greater than at each adjacent level (Figures 15-3a and 15-3b); alternatively, the individual may have loss of motion of a motion segment due to a developmental fusion or successful or unsuccessful attempt at surgical arthrodesis; radiculopathy as defined in cervical category III need not be present if there is alteration of motion segment integrity or fractures: (1) more than 50% compression of one vertebral body without residual neural compromise	Significant upper extremity impairment requiring the use of upper extremity external functional or adaptive device(s); there may be total neurologic loss at a single level or severe, multilevel neurologic dysfunction or fractures: structural compromise of the spinal canal is present with severe upper extremity motor and sensory deficits but without lower extremity involvement

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.

A handwritten signature in black ink, appearing to read 'Blake A. Hewitt', is written over a horizontal line.

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February 17, 2010