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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

SEP 11 2014

SC Court of Appeals

WCC Case No. 0726308

Shannon Cook, Claimant, ...Respondent,

v.

Spartanburg Steel Products, Inc., Defendant, ...Appellant.

APPELLANT'S MOTION FOR REHEARING
AND/OR TO REINSTATE APPEAL

Pursuant to Rules 240(i) and 260(a), SCACR, Appellant Spartanburg Steel Products, Inc. hereby moves this Court for rehearing and/or to reinstate its appeal in the above-referenced case. This Court's August 29, 2014 Order has the effect of dismissing or finally deciding Appellant's appeal, which should be reinstated for the reasons set forth below.

Respondent Shannon Cook, Claimant below, has not and cannot point to any justiciable issue he raised and argued below that was held in abeyance and/or remanded by the Commission. The issues purportedly held in abeyance, Total Temporary Disability ("TTD") and permanency, were never argued to the Commission. Claimant did not present any evidence regarding either issue to the Commission. Furthermore, the issue of permanency is "premature," meaning it has not accrued and, therefore, could not have been determined by the Commission at this time. To

determine that a Commission decision is not final for purposes of appellate review because an unripe, unaccrued and/or unlitigated issue has not yet been decided is the height of procedural formalism. Appellant has clearly exhausted its administrative remedies – there is no issue pending before or remanded by the Commission to be decided, and Claimant has been awarded the relief he requested.

STATEMENT OF FACTS

Claimant sustained a compensable injury by accident to his lumbar spine on September 17, 2007. By Decision and Order dated June 8, 2011, Commissioner Avery B. Wilkerson, Jr., awarded Claimant twenty-five percent (25%) permanent partial disability to the spine. He further ordered that Claimant was entitled to future medical treatment pursuant to Dodge v. Brucoli as directed by Dr. LaTourette on his Form 14B dated June 16, 2010. Specifically, Dr. LaTourette noted Claimant would require future medical care related to the work injury in the form of medications for pain, psychological evaluation and treatment, spinal injections and physical therapy.

Appellant paid the 25% award on June 27, 2011.

Claimant was initially represented by attorney Tom Gagne. On May 9, 2012, within 12 months of Appellant's last payment to Claimant, Mr. Gagne filed a Form 50 (notice of claim only) on Claimant's behalf, alleging a change of condition for the worse and injury to Claimant's "Spine and Psyche" only. Line 13a on the Form 50, which states "I am filing a claim. I am **not** requesting a hearing at this time," was checked. (Att. A) (emphasis added). Attached to this Form 50 was a written medical report and questionnaire from Dr. Yashbir T. Rana.

In 2013, Claimant terminated his relationship with Mr. Gagne and retained Ryan Montgomery as counsel. On or about May 17, 2013,¹ Claimant filed a Form 50 request for hearing, claiming injury not only to his back and psyche, but also to his bilateral legs and hips. (Att. B). However, the May 2013 Form 50 did not indicate or reference the May 2012 Form 50, or allege a change of condition. Furthermore, there were no medical reports attached to the May 2013 Form 50. The May 2013 Form 50 was filed over 22 months after Appellant's last payment to Claimant.

Finally, on August 9, 2013, over 25 months after Appellant's last payment, Claimant filed an Amended Form 50, both requesting a hearing and alleging a change of condition. (Att. C). However, as was the case with the May 2013 Form 50, no medical reports were attached to the August 2013 Form 50.

The parties filed Form 58, Pre-Hearing Briefs. On Claimant's Form 58, he alleged he was entitled to "additional medical [treatment] under the original order or as a change of condition." Specifically, Claimant sought "a finding of change of condition and an order instructing carrier to provide medical as request[ed] by their doctors, repay Medicare for the causally related medical treatment, and for any further relief the Commissioner deems appropriate. Additional permanency is premature at this time and would request this issue be held in abeyance." (Att. D).

The parties came before Single Commissioner Susan S. Barden on September 27, 2013. At that hearing Claimant alleged he has suffered a change of condition for the worse with regard to his admitted back injury, for which he sought surgery. Claimant also sought reimbursement for a C.T. Myelogram which he underwent at his own expense as well as for other co-pays he covered. (Transcript of Single Commissioner Hearing, held September 27, 2013, Att. E, p. 5,

¹ The May 2013 Form 50 is dated May 21, 2013, but the Certificate of Service is dated May 17, 2013.

lines 8-20)) (Id., p. 6, line 14 – p. 7, line 20). Claimant's counsel indicated that he was "satisfied" with Commissioner Barden's recitation of his pending claims. (Att. E, p. 13, lines 15-20). Appellant denied that Claimant had sustained a change of condition for the worse and that, in any event, Claimant's claim was barred because he failed to timely file a request for hearing on the change of condition as required under S.C. Code Ann. § 42-17-90. (Att. E, p. 11 line 4 – p. 12, line 17). Appellant clarified Commissioner Barden's summary of its position by raising the applicability of Regulation 67-203(C). (Att. E, p. 13, line 24 – p. 14, line 5).

Claimant testified that he wanted surgery as recommended by Dr. Charles Kanos. (Att. E, p. 17, lines 12-21). He also testified that he had incurred certain co-pays. (Att. E., p. 16, line 21 – p. 17, line 6). At no point during the hearing before Commissioner Barden did Claimant request any additional relief. (Att. E). In fact, Claimant's counsel specifically objected to a line of cross-examination regarding whether Claimant had been offered a light-duty position with Appellant following his compensable injury, asserting, "Objection. We're here on a change of condition. I don't know what relevance this has." (Att. E, p. 28, lines 3-5). Commissioner Barden overruled the objection on the basis that, "Well, it's cross examination. I'm going to let him continue and see where he's going." (Att. E, p. 28, lines 6-8). This exchange demonstrates that both Claimant and Commissioner Barden understood TTD was not pending before the Commission.

Following the hearing, Commissioner Barden requested that Claimant's counsel draft a Proposed Order, and provided 20 specific Findings of Fact to be included in the order, including findings that Claimant had sustained a change of condition for the worse, that Claimant was entitled to ongoing medical treatment with Dr. Kanos, and that Claimant had not reached maximum medical improvement ("MMI"). She also found that Claimant was entitled to

reimbursement for a \$25.00 fee for a Motion to Compel, as well as co-pays associated with Claimant's treatment with Dr. Kanos. (Att. F). Commissioner Barden's Finding No. 17 simply stated "Permanency is premature." (Att. F, p. 3).

Commissioner Barden issued her Decision and Order dated November 25, 2014. The Order stated that the "Purpose of the Hearing" was "To determine only the issues on the Form 50 Change of Condition Request And/or Additional Medical Pursuant to Commission Order." The Order included the above-referenced findings of fact, along with two additional findings that were not requested but, instead, were inserted by Claimant's counsel. Finding of Fact No. 21 stated that "[a]ny issue relating to TTD and permanency is held in abeyance, **as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse.**" (Att. G., p. 11) (emphasis added). Claimant's counsel also added language to the Conclusions of Law and Ordering paragraphs to the effect that issues not addressed in the order were held in abeyance.

Appellants filed a Form 30 Request for Commission Review on December 9, 2013. An Appellate Panel of the Full Commission heard oral argument on March 17, 2014. (Transcript of Full Commission hearing, held March 17, 2014, Att. H). The **only** issues argued by either party in their briefs or at that hearing concerned: 1) whether Claimant had proven he sustained a change of condition for the worse; and 2) whether the Form 50s filed by Claimant's prior or current counsel in 2012 and 2013 satisfied the requirements of S.C. Code Ann. § 42-17-90 and/or S.C. Code Ann. Reg. § 67-602. (Att. H).²

The Commission issued its Decision and Order, dated May 20, 2014, fully affirming the Single Commissioner. (Att. I). The Commission reiterated Finding of Fact No. 21, stating that

² Claimant also argued that Appellant should be estopped from arguing the second point because Appellant paid for medical examinations. (Att. H).

“[a]ny issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse.”

(Att. I., p. 14) (emphasis added). Although the Commission repeated language in the Conclusions of Law and Ordering paragraphs to the effect that issues not addressed in the order were held in abeyance, as noted above, the only issues before the Commission were whether Claimant had timely claimed and then proved that he sustained a change of condition for the worse. The Commission did not remand **any** issues to Commissioner Barden for consideration or determination. (Att. I).

Appellant timely appealed to this Court. Claimant moved to dismiss Appellant’s appeal, which this Court granted in an Order dated August 29, 2014.

ARGUMENT

Relying on Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012), this Court dismissed the pending appeal in this matter based on the statement in the Commission’s Decision and Order that “[a]ll other issues not addressed herein are hereby held in abeyance pending a final order,” pointing to the issues of TTD and permanency. However, all of the parties agreed that the only issues before the Commission were the determination of whether Claimant timely filed a sufficient claim for change of condition and whether he proved the same. In addition, as explained in more detail below, Bone, which is based on S.C. Code Ann. § 1-23-390, does not apply to this case, which involves an appeal directly from the Commission to this Court under S.C. Code Ann. §§ 1-23-380 and 42-17-60.

As is clear from the facts set forth above, neither TTD nor permanency was argued to either the Single Commissioner or the Commission. In fact, both the Single Commissioner and the Commission readily acknowledged that **“the only issue before the undersigned was**

whether the claimant has sustained a change of condition for the worse.” (Att. G, p. 11) (Att. I, p. 14) (emphasis added). Thus, the “boilerplate” language added to both orders by Claimant’s counsel refers to issues that the orders themselves acknowledge are not pending before the Commission at any level. To allow parties who prevail at the Commission level to add such vague “boilerplate” language to orders they are asked to draft for the Commission, in order to prevent appeal of otherwise final decisions of the Commission, would create a procedural “gotcha” that will be exploited by both sides and will result in wide-spread injustice.

Claimant did not present any evidence to the Commission regarding either TTD or permanency.³ Because those issues were not litigated before either the Single Commissioner or the Commission, and there is no process in place to determine either of those issues, they cannot serve as the basis for finding the Commission Decision is not final for purposes of appellate review. As noted above, the Commission did not remand any issue to the Single Commissioner. The Commission left nothing to be done: it ordered Appellant to pay for Claimant’s additional medical care through Dr. Kanos, including surgery, and to reimburse Claimant for certain costs he had incurred. As is the case with any compensable workers’ compensation claim, at some point issues like permanency and TTD become ripe for determination, but that does not make the initial determination of compensability non-final for purposes of review.

³ Alternatively, to the extent the issue of whether Claimant is entitled to TTD is viewed as an outstanding issue to be resolved by the Commission, even though there was no remand for determination of the same, there is no conflicting evidence in this record regarding that issue which can, therefore, be decided by this Court. *See, e.g., Pack v. South Carolina Dept. of Transp.*, 381 S.C. 526, 534, 673 S.E.2d 461, 465 (Ct. App. 2009) (holding that “when the evidence is susceptible of but one reasonable inference, the question becomes a matter of law”). On cross-examination, Claimant specifically testified that Appellant offered him a light duty position prior to the first hearing before Commission Wilkerson in 2011, but Claimant never responded to that offer in any way. Claimant has not worked since he quit working for Appellant. (Att. E, p. 27, line 17 – 29, line 3) (Att. G, p. 9) (Att. I, p. 7). As noted above, Claimant’s counsel objected to this line of questioning as irrelevant to the issue before the Commission; however, there is absolutely no conflicting evidence. Therefore, to the extent this Court believes this issue was pending before the Commission, which Appellant does not concede, this Court can decide this issue as a matter of law as there is no conflict in the evidence in the record.

It is common in workers' compensation cases to have multiple proceedings throughout the life of a claim, each of which addresses different aspects of an injured worker's entitlement to benefits. For example, there may be one hearing before the Commission that finally determines whether an injury arose out of and in the course of employment. There may be a subsequent hearing that determines whether a claimant has reached MMI and/or a claimant's entitlement to future medical and permanent disability benefits. Just because there are various issues brought before the Commission at various times does not render the decisions concerning those issues interlocutory.⁴ The instant case presents no different scenario. Although the Commission may anticipate that there will be a subsequent determination of Claimant's entitlement to further compensation, the Commission has finally determined the issues that were before it: whether Claimant timely claimed and proved that he sustained a change of condition for the worse and is entitled to medical benefits, including surgery.

In addition, the South Carolina Supreme Court recently explained that Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012), "addressed appealability under the predecessor to section 1-23-390 of the South Carolina Code, which provided that in appeals from an administrative agency, such as the Commission, to the circuit court '[a]n aggrieved party may obtain a review of any final judgment of the circuit court ... by appeal to the Supreme Court.'" Shatto v. McLeod Reg. Med. Ctr., 406 S.C. 470, 474 n.2, 753 S.E.2d 416, 418 n.2 (2013). The instant appeal does not involve an appeal to or order from the circuit court. Moreover, this appeal does not involve a remand from the circuit court to the Commission for further

⁴ For example, this Court recently considered an appeal from the Commission concerning a change of condition, without regard to permanent benefits. See Carter v. Verizon Wireless Southeast, 407 S.C. 641, 757 S.E.2d 528 (2014) (considering whether the claimant suffered a change of condition to her knee as opposed to suffering a condition due to natural progression of a preexisting disease and making a determination as to the claimant's entitlement to future medical treatment). This Court also recently has reviewed Commission decisions concerning compensability without regard to permanency. See, e.g., Nicholson v. South Carolina Dept. of Soc. Servs., 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013).

proceedings, which was the case in Bone and which was the basis for that decision. 399 S.C. at 576-77, 733 S.E.2d at 205.

As the Supreme Court noted in Shatto, as part of Act 387 (2006), workers' compensation appeals for injuries incurred after July 1, 2007 no longer go from the Commission to the circuit court, but instead, go directly from the Commission to this Court.⁵ In addition, the Supreme Court recognized the distinction between appellate review of a "final decision" and a "final judgment." Shatto, 406 S.C. at 474 n.2, 753 S.E.2d at 418 n.2. Both S.C. Code Ann. § 42-17-60, the statute governing appeals from the Commission, and S.C. Code Ann. § 1-23-380, the applicable Administrative Procedures Act ("APA") appellate provision, discuss appeals from a final decision, not a final judgment. Because Bone applies to pre-July 1, 2007 injuries and this case involves a post-July 1, 2007 injury, and because the statutory requirements governing appealability are different for post-July 1, 2007 workers' compensation claims, the requirement of a "final judgment" set forth in Bone and in S.C. Code Ann. § 1-23-390 and cases decided under that statutory provision is neither applicable to nor controlling in this case.

As the Supreme Court held in Shatto, appeals from this Court are pursuant to the South Carolina Appellate Court Rules. 406 S.C. at 474 n.2, 753 S.E.2d at 418 n.2. Rule 242(a), SCACR, provides review of a "final decision" of this Court and does not require a "final judgment." The same is true of S.C. Code Ann. § 1-23-380, which controls in this case and provides for appeal from a "final decision in a contested case." The Commission Decision in this case is a final decision for purposes of appellate review.

Other cases relied on in Bone are not applicable to this case either. See Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dept. of Health & Env't'l Control, 387 S.C. 265, 692

⁵ Although S.C. Code Ann. § 1-23-390 still requires that appeals from the circuit court be from a "final judgment," this case simply does not involve an appeal from the circuit court. Instead, this matter involves a post-July 1, 2007 injury.

S.E.2d 894 (2010) (appeal from an order of the Administrative Law Court which remanded the case to the Department for further proceedings not immediately appealable); Montjoy v. Astenhill Dryer Fabrics, 316 S.C. 52, 446 S.E.2d 618 (1994) (involving pre-July 1, 2007 injuries and holding that “an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable”); and Long v. Sealed Air Corp., 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011) (finding circuit court order remanding to the Commission for further proceedings in a case involving pre-July 1, 2007 injuries not immediately appealable).

Furthermore, the concerns expressed in Bone are not present in this appeal. First, as noted above, this case was not remanded for further proceedings and no further proceedings are contemplated presently. Thus, there is no risk of piecemeal litigation or inefficiency. Second, there is no question regarding exhaustion of administrative remedies – the Commission admittedly has decided all of the issues that were pending before it. (Att. G, p. 11 (the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse”)) (Att. I, p. 14 (same)). The concerns raised in Bone, Charlotte-Mecklenburg, Montjoy, and Long simply are not present here, where the case has not been remanded for any further proceedings.

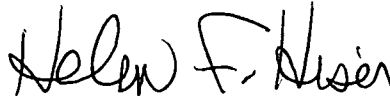
CONCLUSION

For all the reasons stated herein, this Court should grant rehearing of its August 29, 2014

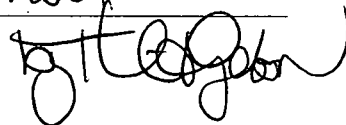
Order and reinstate this appeal.

Respectfully submitted,
McANGUS GOUDELOCK & COURIE, LLC

September 11, 2014



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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC Case No. 0726308

Shannon Cook, Claimant, ...Respondent,

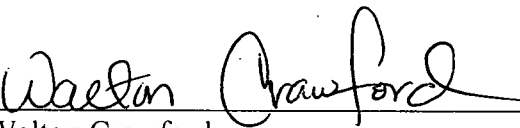
v.

Spartanburg Steel Products, Inc., Defendant, ...Appellant.

PROOF OF SERVICE

I certify that on the 11th day of September 2014, I served the **Appellant's Motion for Rehearing and/or to Reinstate Appeal** on Shannon Cook by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Ryan S. Montgomery, Esq.
Ryan Montgomery Attorney At Law, LLC
108 Mills Ave.
Greenville, SC 29605



Walton Crawford
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC

Attorneys for Appellant

Attachment A



Personal
Injury Practice

Attorney Offices of Thomas Gagne, P.A.

Thomas M. Gagne, Esquire, Owner/President*

Samuel Harms, Esquire, Of Counsel**

May 9, 2012

2920.572

MAY 10 2012

S.C. Workers' Compensation Commission
Claims Department
PO Box 1715
Columbia SC 29202-1715

Re: Our Client: Shannon Cook
SS# 251-49-0214
WCC File # 0726308

Dear Sir or Madame:

Please let this letter serve as notice that I represent the above named individual in his Worker's Compensation claim with Spartanburg Steel Products, Inc. in connection with injuries he suffered on or about 9/17/07.

Enclosed please find the original and one (1) copy of the Form 50 and Certificate of Mailing. I ask that you please return a filed, stamped copy to me in the envelope that has been provided for same.

In that regard, please direct all future correspondence concerning this claim to me at the below address.

Also, please let this letter serve as a lien in the amount of 33.33% of any settlement offers obtained by the Attorney Offices of Thomas M. Gagne, P.A.

I look forward to working with you. Please call me immediately if there are any questions or concerns.

Yours very truly,

Attorney Offices of Thomas Gagne, P.A.

Thomas M. Gagne
Thomas Gagne, Esq.
Owner/ President

Enclosure

TMG/hs

"Dedicated To The Injured Person"

Greenville Office: 101 Chapman St., Greenville, SC 29605

Phone: (864) 233-2000

Fax: (864) 233-1913

Spartanburg Office: 412 Magnolia St., Spartanburg, SC 29303

Phone: (864) 591-1114

Fax: (864) 585-1131

Website: www.tgagne.com

E-mail: tgagne@prodigy.net

*Licensed in South Carolina and New York

**Licensed in South Carolina and North Carolina

CERTIFICATE OF SERVICE

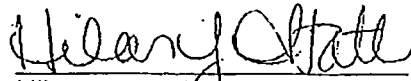
I, the undersigned, of The Attorney Offices of Thomas M. Gagne, L.L.C. do hereby certify that I have served the below addressee with a copy of the pleading herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

S.C. Workers' Compensation Commission
ATTN: Claims Department
PO Box 1715.
Columbia SC 29202-1715

Brad B. Easterling, Esquire
Turner Padgett
PO Box 1509
Greenville, SC 29602

Specialty Risk Services
PO Box 305104
Nashville, TN 3723

Form: Form 50 for change in condition, Treating physician list, Letter of representation, IME report and medical questionnaire from Dr. Tony Rana
Claimant: Shannon Cook
SS#: 251-49-0214
Date of Injury: 9-17-2007
WCC File # 0726309



Hilary State for
Thomas M. Gagne, Esq.
Attorney for Claimant
101 Chapman Street
Greenville, SC 29605
Dial: 864.233.2000
Fax: 864.233.1913

Date: May 9, 2012

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



WCC File #: 0726308
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Shannon Cook SSN: 251-49-0214 Employer's Name: Spartanburg Steel Products, Inc.
Address: 125 Warlick Road Address: 1290 New Cut Road
City: Cowpens State: SC Zip: 29330 City: Spartanburg State: SC Zip: 29303
Home Phone: (864) 327-6551 Work Phone: () Insurance Carrier: Specialty Risk Services
Preparer's Name: Thomas M. Gagne, Esq. Law Firm: Attorney Offices of Thomas M. Gagne, PA Preparer's Phone #: (864) 233 - 2000

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

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 09/17/2007
☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to Spine and Psyche (Part(s) of Body Injured) on 09/17/2007 (Month/Day/Year) in Spartanburg, state of SC.
1b. Body part(s) affected are: See 1a.
Briefly describe how the accident occurred. Claimant was lifting boxes.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 09/17/2007 (Month/Day/Year) in the following manner:
Verbally to Ray Martin his supervisor.
- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: TBD
☒ (b) additional medical examination and treatment for: See attached IME and medical questionnaire from Dr. Tony Rana.
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TBD
- ☒ 8. Due to the injury, the claimant has permanent disability of the following nature and extent (check one): TBD
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss ☐ Partial ☐ Partial
- ☒ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of: TBD
- 10a. At the time of the injury, the claimant was paid weekly wages of \$Request Form 20, and demands accounting of days worked and wages earned as provided by law.
10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:
NA
- 11a. Further grounds or unusual aspects of claim:
Claimant comes on a change of condition. See attached IME and medical questionnaire from Dr. Tony Rana.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Please see attached treating physicians list.
- 11c. To the best of your knowledge, did you have any prior permanent disability? Yes
If yes, describe: 14% to the Spine by Dr. Latourette, MD.
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☒ 13a. I am filing a claim. I am not requesting a hearing at this time.
☐ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: _____

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

Preparer's Signature: Thomas M. Gagne Attorney for Claimant: tgagne@prodigy.net Date: 5/9/12
Title: _____ Email: _____
Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

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

11b. Treating Physician List

Southeastern Neurosurgical & Spine
111 Doctors Drive
Greenville, SC 29605

Carolina Center for the Advanced Management of Pain
1330 Boiling Springs Road, Suite 2700
Spartanburg, SC 29303

Gaffney Family Physicians
101 Professional Park
Gaffney, SC 29340

Spartanburg Regional Occupational Health
8311 Warren H Abernathy Highway
Spartanburg, SC 29301-1249

Greenville Memorial Hospital
701 Grove Road
Greenville, SC 29605

Piedmont Imaging
684 North Pine Street
Spartanburg SC 29303

Spartanburg Regional
101 East Wood Street
Spartanburg, S.C. 29303

Spartanburg Neurosurgical
1075 Boiling Springs Rd.
Spartanburg, SC 29303

Spartanburg Regional Rehab Services
631 North Church Street
Spartanburg, SC 29303-3046

Urology Center of Spartanburg
391 Serpentine Dr
Spartanburg, SC 29303

Upstate Health Professionals
2084 East Main Street
Duncan, SC 29334

Adams & Wilkinson
P.O.Box 537
White Rock, SC 29177-0537

Dr. L. Randolph Waid
1459 Stuart Ingals Blvd, Suite 204A
Mount Pleasant, S.C. 29464

Weldon & Associates
1225 S. Church St.
Greenville SC 29605

Palmetto State Medical, Dr. Rana
1425 John B White SR Blvd
Spartanburg, SC 29306

CAROLINA HEALTH PROFESSIONALS, LLC

PO Box 171982

Spartanburg, SC 29301

Office: 864-381-4171 Fax: 864-804-6613

info@carolinahealthpros.com

Dr. Yashbir T. Rana, MD
1425 John B. White Sr. Blvd
Spartanburg, SC 29306

SC License #15940

PATIENT NAME : Shannon Cook
DATE OF BIRTH : 04-26-1980
DATE OF INJURY : 09-17-2007
DATE(S) OF SURGERY : 05-14-2009 & 05-20-2009
DATE OF EXAM : 02-16-2012

ADDITIONAL RECORDS REVIEWED

- 1- Carolinas Center for Advanced Management of Pain
- 2- David Tollison, PhD

INTRODUCTION

Mr. Cook was previously evaluated on July 14, 2010 at 2084 East Main Street, Spartanburg, SC to determine permanent impairment due to injuries sustained on September 17, 2007. As a result of that evaluation he was assigned 21% impairment to the lumbar spine. He has continued treatment including psychological evaluation and returns for evaluation of worsening of condition.

HISTORY OF PRESENT ILLNESS/REVIEW OF MEDICAL RECORDS

Mr. Cook injured his back on September 17, 2007. He reports that he was lifting a box weighing approximately 40 pounds when he experienced sudden onset lower back pain extending into the left lower extremity. He was initially evaluated by Dr. Trott at Occupational Medicine/Minor Care who diagnosed lumbar sprain/strain. He underwent a course of physical therapy without relief. He then began treatment with Dr. LaTourette at Carolinas Center for Advanced Management of Pain. MRI revealed disc herniation at L4/L5. Discectomy at this level was performed on May 14, 2009 by Dr. Hodge. While in the recovery room, after difficult waking from anesthesia, he fell and began having pain in the left hip. A follow-up procedure was performed on May 20, 2009. He also has undergone trial with a spinal stimulator which was unsuccessful. Treatment since his prior evaluation has included psychological counseling by Dr. Tollison and transforaminal epidural steroid injections by Dr. LaTourette. Further MRI scans have revealed several disc herniations in the thoracic region with the worst being at the T8/T9 level to the right.

CURRENT MEDICATIONS

Kadian 50mg every 12 hours
Valium 10mg tid
Percocet 10mg every 4-6 hours
Ablify 10mg qhs
Effexor 37.5mg tid
Lyrica 150mg tid
Effexor 37.5mg qid

PAST MEDICAL HISTORY/SURGERY

Past medical/surgical history includes hernia repair at three months old and orchidectomy.

PHYSICAL EXAMINATION

Mr. Cook is alert and oriented to time, place, person and circumstances. The spine is central. Straight Leg Raising test is positive bilaterally at 30 degrees. DTR are slightly sluggish at 1+ bilaterally and equal. There is mild paraspinal muscle spasm noted from the T8 level through the lumbar region. There is noted restriction of lumbar range of motion. The measured deficits and related impairments are as follows.

In accordance with Table 15-8, page 407 of the 5th edition of the Guides

True lumbar flexion to 45 degrees	= 2 whole person impairment
True lumbar extension to 20 degrees	= 2 whole person impairment

In accordance with Table 15-9, page 409 of the 5th edition of the Guides

Right lateral bending to 15 degrees	= 2 whole person impairment
Left lateral bending to 15 degrees	= 2 whole person impairment

Total whole person impairment due to lumbar ROM deficit is 8%.

CALCULATION OF IMPAIRMENT

As noted above and in the earlier report dated July 14, 2010, Mr. Cook is assigned 8% whole person impairment due to lumbar range of motion deficit. Additionally, in accordance with Table 15-7, page 404 of the 5th edition of the Guides, he also qualifies under disorder II, Section E and Section G, and is assigned 12% whole person impairment. These figures are combined in accordance with the Combined Values Chart on page 604 of the 5th edition of the Guides resulting in 19% whole person impairment. Conversion to regional impairment in accordance with Section 15.13, page 427 of the 5th edition of the Guides results in a final lumbar spine impairment of 21%.

Additionally, he has been found to suffer from thoracic disc herniation at the T8/T9 level. In accordance with Table 15-7, page 404 of the 5th edition of the Guides, he qualifies under disorder II, Section B and is assigned 2% whole person impairment due to thoracic disc lesion with documented injury, pain and rigidity. Conversion to regional impairment in accordance with Section 15.13, page 427 of the 5th edition of the Guides results in final thoracic spine impairment of 5%.

RECOMMENDATIONS FOR FURTHER TREATMENT/RESTRICTIONS

Mr. Cook has reached MMI for injuries received as a result his accident of September 17, 2007. He remains under the care of Dr. LaTourette for pain management and will likely be in need of this type care on a lifelong basis. Due to his continued severe pain and the medication that he must take to control it, I am doubtful of his ability to be gainfully employed in any capacity. He may suffer psychological impairment as well, however, I will defer to Dr. Tollison for that determination.

All the above is reasonable of medical certainty.

Thank you for allowing me to re-evaluate Mr. Cook. If I may be of any further assistance to you, please do not hesitate to contact me.

Yashbir T. Rana

YR:th

Electronically Signed by: Yashbir T. Rana on Thursday, February 16, 2012

Board Certified in Occupational Medicine (ABPM), (ABOEM)
Medical Review Officer (MRO)
Certified Independent Medical Examiner (IME)

MEDICAL INTERROGATORY

To: Tony Rana, M.D., Carolina Health Professionals
Re: Patient: Shannon Cook
SSN: 251-49-0214
DOA: 9/17/07
Injuries: Spine

Based on your examination of Shannon Cook, his medical history, and to a reasonable degree of medical certainty and most probably, please answer the following questions:

1. Did Mr. Cook most-probably proximately suffer a worsening of condition to his spine?

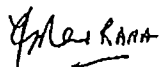
Spine X Yes No

Other Yes X No

2. Please indicate the percentage of permanent partial impairment(s) and identify the body part to which the impairment is assigned.

 5 % partial permanent impairment to the Spine (thoracic)

 21 % partial permanent impairment to the Other (lumbar spine)



YR:th

Electronically Signed by: Yashbir T. Rana on Thursday, February 16, 2012

Board Certified in Occupational Medicine (ABPM), (ABOEM)
Medical Review Officer (MRO)
Certified Independent Medical Examiner (IME)

Very Truly Yours,

Attorney Offices of Thomas M. Gagne, P.A.

Thomas M. Gagne, Esq.,
Owner/President

TMG/hs

Attachment B



RYAN MONTGOMERY

ATTORNEY AT LAW, LLC

May 17, 2013

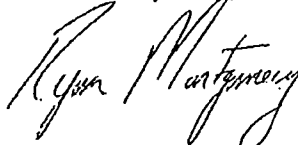
The Honorable Virginia L. Crocker
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Re: Claimant: Shannon Cook
Employer: Spartanburg Steel Products, Inc.
Carrier: Shannon Cook
WCC File No.: 0726308
Claim No.: YDS656635C
D.O.L.: 9/17/2007

Dear Director Crocker:

Please find enclosed our Form 50 requesting a hearing along with a check for \$25.00 to cover the cost of filing same. By copy of this letter to the Defense Attorney, I am serving him with a copy of this Form 50. A certificate of service accompanies this correspondence.

Yours very truly,



Ryan S. Montgomery

cc: Mr. Shannon Cook
Brad Easterling, Esq.

108 MILLS AVENUE • GREENVILLE • SOUTH CAROLINA 29605 • (864) 373-7333 • (864) 373-7334 (FAX)

WWW.RYANMONTGOMERYLAW.COM

51 due 6/14/13
2920, 572



Claimant's Name: Shannon Cook SSN: 251-49-0214 Employer's Name: Spartanburg Steel Products, Inc.
Address: 340 Hart Street Address: 1290 New Cut Road
City: Cowpens State: SC Zip: 29330 City: Spartanburg State: SC Zip: 29303
Home Phone: () - Work Phone: () - Insurance Carrier: Specialty Risk Services
Preparer's Name: Ryan S. Montgomery Law Firm: Ryan Montgomery, Attorney at Law, LLC Preparer's Phone #: 864-373-7333

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

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

Date of Injury or Illness: 9/17/2007

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to back, bilateral legs, hips and psyche. (Part(s) of Body Injured) on 9/17/2007 (Month/Day/Year) in Spartanburg county, state of SC.

1b. Body part(s) affected are: back, bilateral legs, hips and psyche

Briefly describe how the accident occurred. Claimant was lifting a box, twisted and injured his back.

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

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 9/17/07 (Month/Day/Year) in the following manner:

Claimant reported this accident to his supervisor

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

☒ (a) medical examination and treatment for: back, bilateral legs, hips and psyche per recommendation of treating doctors

☒ (b) additional medical examination and treatment for: back, bilateral legs, hips and psyche

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

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

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

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

10a. At the time of the injury, the claimant was paid weekly wages of \$846.64, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:
None

11a. Further grounds or unusual aspects of claim: All that are available under the S.C. Workers' Compensation Act. Attorney fees to be approved as lump sum up front payment and Utica Mohawk language requested in Final Order. Additionally

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Please see attached Addendum.

11c. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____

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

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

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

14. Estimated time needed for hearing: _____

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

Preparer's Signature

Attorney for the Claimant
Title

Ryan@ryanmontgomerylaw.com
Email

May 17, 2013
Date

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

ADDENDUM

St. Francis Workwell
125 Commonwealth Drive
Greenville, SC 29615

VBS
705 S. E. Main Street
Simpsonville, SC 29681

St. Francis Hospital – Downtown
One St. Francis Drive
Greenville, SC 29609

Oaktree Medical Center
115 Brushy Creek Road
Easley, SC 29642

Piedmont Spine & Neurosurgical Group
3 St. Francis Drive
Ste. 330
Greenville, SC 29601

Diagnostic Health
1 Cannon Drive
Greenville, SC 29605

Mary Black Physicians Group
2995 Reidville Road, Suite 100
Spartanburg, SC 29301

Pain Management Associates
115 Brushy Creek Road
Easley, SC 29642

Palmetto Health Baptist Easley
200 Fleetwood Drive
Easley, SC 29604

Associates in General Surgery
317 St. Francis Drive, Suite 360
Greenville, SC 29601

Southeastern Neurosurgical & Spine Institute
109 Doctors Drive
Greenville, SC 29605

Carolina Centers for Advanced Management of Pain
1330 Boiling Springs Road, Suite 270
Spartanburg, SC 29303

Gaffney Family Physicians
101 Professional Park
Gaffney, SC 29340

Spartanburg Regional Occupational Health
1311 Warren H. Abernathy Highway
Spartanburg, SC 29303

Greenville Memorial Hospital
701 Grove Road
Greenville, SC 29605

Piedmont Imaging
84 North Pine Street
Spartanburg, SC 29303

Spartanburg Regional Medical Center
901 Eat Wood Street
Spartanburg, SC 29303

Spartanburg Neurosurgical
1075 Boiling Springs Road
Spartanburg, SC 29303

Spartanburg Regional Rehab Services
North Church Street
Spartanburg, SC 29303

Neurology Center of Spartanburg
91 Serpentine Dr.
Spartanburg, SC 29303

Upstate Health Professionals
1084 East Main Street
Duncan, SC 29334

Adams & Wilkinson
PO Box 537
White Rock, SC 29177

Dr. L. Randolph Waid
1459 Stuart Ingals Blvd. Suite 204A
Mount Pleasant, SC 29464

Weldon & Associates
1225 S. Church Street
Greenville, SC 29605

Palmetto State Medical, Dr. Rana
1425 John B. White Sr. Blvd.
Spartanburg, SC 29306

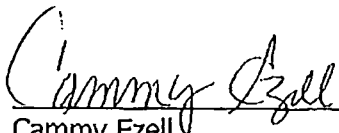
CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at Ryan Montgomery, Attorney at Law, LLC, and that the attached Form 50 requesting a hearing, was served this 17th day of May, 2013, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

The Honorable Virginia L. Crocker
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Mr. Brad Easterling
Turner Padgett Graham & Laney
PO Box 1509
Greenville, SC 29602

Mr. Shannon Cook
340 Hart Street
Cowpens, SC 29330



Cammy Ezell
Paralegal for Ryan S. Montgomery

DATE : May/16/2013
CHE # : 000714
AMOUNT : \$25.00
ACCOUNT: GENERAL - 2
PAID TO: South Carolina Workers Compensation Comm
PO Box 1715
Columbia
SC
29202

000714

Filing Fee Associated with Hearing for Medical Treatment

CLIENT: 00261 - Shannon Cook
MATTER: 00928

RYAN MONTGOMERY ATTORNEY AT LAW, LLC

COST ADVANCE ACCOUNT
108 MILLS AVENUE
GREENVILLE, SC 29605
(864) 373-7933
(864) 373-7334 - FAX

SCBT, N.A.
www.SCBOnline.com
200 E Broad St.
Greenville, SC 29601

67-98/632

000714
000714

CHECK NO.

Twenty Five ***** 00/100

DATE May/16/2013 AMOUNT \$25.00

South Carolina Workers Compensation Comm
PO Box 1715
Columbia, SC 29202

PAY
TO THE
ORDER
OF


AUTHORIZED SIGNATURE MP

Filing Fee Associated with Hearing for Medical Treatment

⑈000714⑈ ⑆053200983⑆1270013824⑈

RYAN MONTGOMERY ATTORNEY AT LAW, LLC

DATE : May/16/2013
CHE # : 000714
AMOUNT : \$25.00
ACCOUNT: GENERAL - 2
PAID TO: South Carolina Workers Compensation Comm
Filing Fee Associated with Hearing for Medical Treatment
00261 - Shannon Cook
MATTER : 00928
LAWYER : Ryan S. Montgomery
140 Hart Street

** GENERAL BALANCES **
UNBILLED DISBS:
A/R BALANCE :

000714

25.00
0.00

** TRUST BALANCES **

TRUST BALANCE : 0.00

lowpens
SC
9330
ISA
Shannon Cook v. Spartanburg Steel Products

Attachment C



RYAN MONTGOMERY

ATTORNEY AT LAW, LLC

August 9, 2013

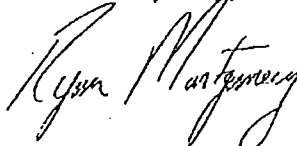
The Honorable Virginia L. Crocker
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Re: Claimant: Shannon Cook
Employer: Spartanburg Steel Products, Inc.
Carrier: Shannon Cook
WCC File No.: 0726308
Claim No.: YDS656635C
D.O.L.: 9/17/2007

Dear Director Crocker:

Please find enclosed our Amended Form 50 requesting a hearing. By copy of this letter to the Defense Attorney, I am serving him with a copy of this Amended Form 50. A certificate of service accompanies this correspondence.

Yours very truly,



Ryan S. Montgomery

cc: Mr. Shannon Cook
Brad Easterling, Esq.
The Honorable Susan S. Barden

108 MILLS AVENUE • GREENVILLE • SOUTH CAROLINA 29605 • (864) 373-7333 • (864) 373-7334 (FAX)

WWW.RYANMONTGOMERYLAW.COM

AUG 13 2013
02920.00572



Claimant's Name: Shannon Cook SSN: 251-49-0214 Employer's Name: Spartanburg Steel Products, Inc.
Address: 340 Hart Street Address: 1290 New Cut Road
City: Cowpens State: SC Zip: 29330 City: Spartanburg State: SC Zip: 29301
Home Phone: () Work Phone: () Insurance Carrier: Specialty Risk Services
Preparer's Name: Ryan S. Montgomery Law Firm: Ryan Montgomery, Attorney at Law, LLC Preparer's Phone #: 864-373-7333

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

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

Date of Injury or Illness: 9/17/2007

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back, bilateral legs, hips and psyche (Part(s) of Body Injured) on 9/17/2007 (Month/Day/Year) in Spartanburg county, state of SC.
1b. Body part(s) affected are: back, bilateral legs, hips and psyche
Briefly describe how the accident occurred. Claimant was lifting a box, twisted and injured his back.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 9/17/07 (Month/Day/Year) in the following manner:
Claimant reported this accident to his supervisor
- ☒ 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: back, bilateral legs, hips and psyche per recommendation of treating doctors
☒ (b) additional medical examination and treatment for: back, bilateral legs, hips and psyche
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
- ☐ 8. Due to the injury, the claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss ☐ Partial ☐ Partial
- ☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the claimant was paid weekly wages of \$846.64, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:
None
- 11a. Further grounds or unusual aspects of claim: All that are available under the S.C. Workers' Compensation Act. Attorney fees to be approved as lump sum up front payment and Utica Mohawk language requested in Final Order. Change of condition.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Please see attached Addendum.
- 11c. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: _____

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

Preparer's Signature

Attorney for the Claimant
Title

Ryan@ryanmontgomerylaw.com
Email

August 9, 2013
Date

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

WCC Form # 50 Revised 9/07

Amended 50

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

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at Ryan Montgomery, Attorney at Law, LLC, and that the attached Form 50 requesting a hearing, was served this 9th day of August, 2013, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

The Honorable Virginia L. Crocker
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

The Honorable Susan S. Barden
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Mr. Brad Easterling
Turner Padgett Graham & Laney
PO Box 1509
Greenville, SC 29602

Mr. Shannon Cook
340 Hart Street
Cowpens, SC 29330

A handwritten signature in cursive script, reading "Cammy Ezell", is written over a horizontal line.

Cammy Ezell
Paralegal for Ryan S. Montgomery

ADDENDUM

St. Francis Workwell
125 Commonwealth Drive
Greenville, SC 29615

VBS
705 S. E. Main Street
Simpsonville, SC 29681

St. Francis Hospital – Downtown
One St. Francis Drive
Greenville, SC 29609

Oaktree Medical Center
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Easley, SC 29642

Piedmont Spine & Neurosurgical Group
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Ste. 330
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Mary Black Physicians Group
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Spartanburg, SC 29301

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Easley, SC 29642

Palmetto Health Baptist Easley
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Easley, SC 29604

Associates in General Surgery
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Greenville, SC 29601

Southeastern Neurosurgical & Spine Institute
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Greenville, SC 29605

Carolina Centers for Advanced Management of Pain
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Spartanburg, SC 29303

Gaffney Family Physicians
101 Professional Park
Gaffney, SC 29340

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Spartanburg, SC 29303

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Spartanburg, SC 29303

Spartanburg Regional Medical Center
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Spartanburg, SC 29303

Spartanburg Neurosurgical
1075 Boiling Springs Road
Spartanburg, SC 29303

Spartanburg Regional Rehab Services
North Church Street
Spartanburg, SC 29303

Neurology Center of Spartanburg
91 Serpentine Dr.
Spartanburg, SC 29303

Upstate Health Professionals
1084 East Main Street
Duncan, SC 29334

Adams & Wilkinson
PO Box 537
White Rock, SC 29177

Dr. L. Randolph Waid
1459 Stuart Ingals Blvd. Suite 204A
Mount Pleasant, SC 29464

Weldon & Associates
1225 S. Church Street
Greenville, SC 29605

Palmetto State Medical, Dr. Rana
1425 John B. White Sr. Blvd.
Spartanburg, SC 29306

Orthopedic Specialties of Spartanburg
303 E. Wood Street
Spartanburg, SC 29303

Attachment D



Claimant's Name: Shannon Cook Employer's Name: Spartanburg Steel Products
Address: 340 Hart Street Address: 1290 New Cut Road
City: Cowpens State: SC Zip: 29330 City: Spartanburg SC 29303
Home Phone: () Work Phone: () Carrier: Spartanburg Steel Products, Inc. c/o Specialty Risk Services
Preparer's Name: Ryan S. Montgomery Preparer's Phone #: (864) 373-7333

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$564.46 2. AWW: \$846.64 Date of Injury: 9/17/2007
3. Type of injury and body part(s): Back, bilateral legs, hips and psyche (change of condition)
4. Facts in controversy: Claimant has a previous order in place to provide medical treatment. Claimant has requested medical

And the carrier referred him to Dr. Marco Rodriguez and Dr. Charles Kanos both of whom have opined that the claimant needs additional medical treatment. To date, the carrier has not provided any of the recommended medical treatment from either Rodriguez or Kanos. Claimant has sustained a change of condition as supported by all of the claimant's treating physicians (LaTourette, Rodriguez and Kanos). In addition, claimant had the CT Myelogram recommend through Kanos but denied by carrier through his Medicare which showed "post-surgical changes" thereby reinforcing the change of condition. Either the claimant gets additional medical under the original order or as a change of condition. Carrier has not provided it under either scenario despite an order and multiple requests to do so. Carrier has also not complied with the Order to Compel as they have not re-paid the claimant the \$25.00 filing fee associated with that Order. Claimant seeks a finding of change of condition and an order instructing carrier to provide medical as request by their doctors, repay Medicare for the causally related medical treatment, and for any further relief the Commissioner deems appropriate. Additional permanency is premature at this time and would request this issue be held in abeyance.

5. Legal Issues involved: See #4. Change of Condition
6. Unusual aspects: See #4 and #5.
7. Witnesses (designate if expert):* Shannon Cook. Claimant reserves the right to supplement this and/or call any witnesses listed
On the defendants' pre-hearing brief (Form 58).
8. Exhibits: Job Description, surveillance, previous workers compensation Commission order, correspondence between counsel;
Order to Compel; and Commission file.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See APA Index
10. Name, address, and specialty, if any, of the treating physician: Dr. Phillip LaTourette; Dr. Charles Kanos; Dr. Marco Rodriguez
11. Impairment rating(s); body part(s); physician and date of opinion: Previous ratings outlined in Order; Current rating or change in
rating premature.
12. I am amending my Form 50/51 in the following manner: _____

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

Signature: Ryan S. Montgomery
Ryan S. Montgomery, Attorney for the Claimant

Email: Ryan@RyanMontgomeryLaw.com

Date of hearing: 8/26/13 @ 11:00am with Comm. Barden

Time needed for hearing: 60 minutes

On behalf of ☒ Claimant ☐ Employer

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

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

Attachment E

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0726308

EMPLOYEE/CLAIMANT: SHANNON COOK

EMPLOYER: SPARTANBURG STEEL PRODUCTS

INSURER: (SELF-INSURED)

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 27TH DAY OF
SEPTEMBER, 2013, COMMENCING AT THE HOUR OF 10:32 A.M., IN
GREENVILLE, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN BARDEN,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

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

APPEARANCES

RYAN S. MONTGOMERY, ESQUIRE, OF THE FIRM
RYAN S. MONTGOMERY ATTORNEY AT LAW, LLC
108 MILLS AVENUE
GREENVILLE, SOUTH CAROLINA 29605

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

BRAD B. EASTERLING, ESQUIRE, OF THE FIRM
TURNER PADGET GRAHAM & LANEY, P.A.
POST OFFICE BOX 1509
GREENVILLE, SOUTH CAROLINA 29602

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: JOHN NELSON

I N D E X

PAGE

SHANNON COOK:

DIRECT EXAMINATION BY MR. MONTGOMERY.....	16
CROSS EXAMINATION BY MR. EASTERLING.....	23
CERTIFICATE OF NOTARY PUBLIC.....	30

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

5 * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS SEPTEMBER 27TH, 2013. THIS
8 IS SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
9 FILE NUMBER 0726308. THIS IS THE CASE OF THE
10 CLAIMANT MR. SHANNON COOK WHO IS PRESENT TODAY AND
11 REPRESENTED BY ATTORNEY RYAN MONTGOMERY VERSUS THE
12 EMPLOYER SPARTANBURG STEEL, WHICH IS SELF INSURED
13 AND REPRESENTED BY ATTORNEY BRAD EASTERLING. THE
14 PURPOSE OF TODAY'S HEARING IS TO DETERMINE ISSUES
15 RAISED IN FORMS 50 AND 51. BY PREVIOUS ORDER OF THE
16 COMMISSION, MR. COOK'S AVERAGE WEEKLY WAGE WAS
17 ESTABLISHED AT \$846.64 YIELDING A COMPENSATION RATE
18 OF \$564.46. THE DATE OF THIS ADMITTED ACCIDENT, AND
19 WHEN I SAY ADMITTED, THAT'S THE UNDERLYING ACCIDENT,
20 WAS SEPTEMBER 17TH, 2007.

21 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
22 VENUE OR ANY OTHER ITEMS?

23 BY MR. MONTGOMERY:

24 NO, COMMISSIONER.

25 BY MR. EASTERLING:

1 NONE, COMMISSIONER.

2 ~~BY COMMISSIONER BARDEN:~~

3 THANK YOU BOTH. WITHOUT OBJECTION, THE
4 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
5 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND
6 UNSTIPULATED MEDICAL REPORTS.

7 PRIOR TO GOING ON THE RECORD, WE HELD A
8 PREHEARING CONFERENCE. IT'S THE POSITION OF THE
9 CLAIMANT -- AND HE HAS A COUPLE OF POSITIONS, BUT
10 FIRST OF ALL, HE CONTENDS THAT HE HAS SUSTAINED A
11 COMPENSABLE CHANGE OF CONDITION FOR THE WORSE WITH
12 REGARD TO HIS ADMITTED BACK INJURY, AND ALSO THERE
13 IS PSYCHOLOGICAL OVERLAY INVOLVED AS WELL. IT IS
14 HIS POSITION THAT HIS RADICULAR PROBLEMS INTO HIS
15 LEGS AND HIS HIPS HAVE WORSENERED, THAT HIS BACK
16 CONDITION HAS WORSENERED SUCH THAT AN AUTHORIZED
17 PHYSICIAN, DR. KANOS, HAS RECOMMENDED SURGERY. SO,
18 THEREFORE, THE CLAIMANT SEEKS A FINDING OF
19 COMPENSABILITY OF HIS CHANGE OF CONDITION, AND AS
20 WELL, HE ALSO SEEKS THE SURGERY. IT'S HIS POSITION
21 THAT HIS LAWYER AT THE TIME WHO WAS MR. GAGNE TIMELY
22 FILED A CHANGE OF CONDITION FOR THE WORSE PURSUANT
23 TO SECTION 42-17-90. ALTHOUGH MR. GAGNE DID NOT
24 FILE A REQUEST FOR A HEARING, HE DID IN FACT MEET
25 THE REQUIREMENTS OF THE STATUTE OF LIMITATIONS WHEN

1 HE FILED A REQUEST FOR -- OR HIS FORM 50 WAS NOTICE
2 ~~OF THE CLAIM FOR A CHANGE OF CONDITION, AND THAT~~
3 THERE WAS A STATEMENT ATTACHED AS REQUIRED BY THE
4 STATUTE FROM DR. RANA WHO STATED THAT THE CLAIMANT
5 HAD SUSTAINED A CHANGE OF CONDITION FOR THE WORSE.
6 THE CLAIMANT WILL POINT TO MY ATTENTION THE FACT
7 THAT THE COMMISSION IS CHARGED WITH ADJUDICATING
8 WHETHER OR NOT THERE'S A CHANGE OF CONDITION, BUT
9 PROCEDURALLY WHAT IS REQUIRED WAS COMPLIED WITH, AND
10 THAT WAS THE RANA STATEMENT. AND THEN SUBSEQUENT TO
11 THE RANA STATEMENT, THERE ARE OTHER RECORDS AND
12 OPINIONS FROM DOCTORS WHO STATE THAT THE CLAIMANT
13 HAS IN FACT SUSTAINED A CHANGE OF CONDITION FOR THE
14 WORSE. SO, THE CLAIMANT SEEKS A FINDING OF
15 COMPENSABILITY OF HIS CHANGE OF CONDITION FOR THE
16 WORSE, AND HE SEEKS A DETERMINATION THAT -- OR AN
17 ORDER REQUIRING THE DEFENDANTS TO PROVIDE HIM WITH
18 THE SURGERY, WHICH HAS BEEN RECOMMENDED BY DR.
19 KANOS, AND DR. LATOURETTE HAS STATED THAT HE WOULD
20 DEFER TO DR. KANOS. AND I BELIEVE DR. RODRIGUEZ AS
21 WELL HAS OPINED THAT THE CLAIMANT IS IN NEED OF
22 SURGERY. BUT AGAIN, I'VE JUST BEEN HANDED THESE
23 RECORDS, AND SO I'M NOT CERTAIN AS TO THAT
24 PARTICULAR FACT. ALTERNATIVELY, THE CLAIMANT WOULD
25 CONTEND THAT HE IS ENTITLED TO RECEIVE THE SURGERY

1 AS A DODGE MEDICAL, AND WHILE IT MAY NOT HAVE BEEN
2 ~~MENTIONED WITH ANY SPECIFICITY, THE CLAIMANT'S~~
3 CONDITION HAS WORSENEDED. BUT THE CLAIMANT'S PRIMARY
4 POSITION IS IT'S A RESULT OF A CHANGE OF CONDITION
5 FOR THE WORSE, AND THE CLAIMANT WOULD CONTEND THAT
6 THE MERE FACT THAT THE CLAIMANT NEEDS SURGERY IS --
7 CONNOTES OR SUGGESTS ITSELF THAT THERE HAS BEEN IN
8 FACT A CHANGE OF CONDITION FOR THE WORSE, AND HE
9 DOES BELIEVE THAT HE MEETS NOT ONLY THE PROCEDURAL
10 REQUIREMENTS OF 42-17-90 BUT THE MERITS AS WELL, AND
11 HE HAS PRESENTED EVIDENCE, WHICH SHOWS THAT HE HAS
12 IN FACT SUSTAINED A CHANGE OF CONDITION FOR THE
13 WORSE. REGARDLESS OF WHAT THE RANA OPINION IS,
14 WHICH WAS IN FACT THAT THERE HAD BEEN A CHANGE,
15 THERE HAS BEEN FURTHER CLARIFYING EVIDENCE, WHICH
16 SUPPORTS HIS CONTENTION. FINALLY, THE CLAIMANT
17 SEEKS REIMBURSEMENT FOR THE C.T. MYELOGRAM, WHICH HE
18 UNDERWENT AT HIS OWN EXPENSE. AND WHILE THERE HAS
19 BEEN -- FOR ANY CO-PAYS THAT HE MAY HAVE BEEN
20 RESPONSIBLE FOR. THAT DR. KANOS WHO IS AN
21 AUTHORIZED PROVIDER STATED THAT HE NEEDED, AND HE
22 DID IN FACT UNDERGO THE C.T. MYELOGRAM, WHICH IN
23 FACT SHOWS THAT HE NEEDS SURGERY. SO, SHE REQUESTS
24 REIMBURSEMENT FOR THAT MODALITY. SECONDLY, I SIGNED
25 AN ORDER BASED UPON THE CLAIMANT'S MOTION TO COMPEL

1 AS THE CLAIMANT CONTENDS THAT THE DEFENDANTS HAD NOT
2 PROVIDED THE MODALITIES, WHICH HAD BEEN ORDERED BY
3 COMMISSIONER WILKERSON IN HIS ORDER OF -- I BELIEVE
4 IT WAS JUNE 8TH, 2011, WHICH WOULD INCLUDE PAIN
5 MEDICATION, PSYCHOLOGICAL EVALUATION AND TREATMENT,
6 INJECTIONS AND PHYSICAL THERAPY. AND I DID SIGN AN
7 ORDER TO COMPEL AND ---

8 BY MR. EASTERLING:

9 NOT TO INTERRUPT, I'M SORRY, BUT THAT WAS AN
10 ORDER TO COMPEL PRODUCTION OF SOME DOCUMENTS, SOME
11 SURVEILLANCE DOCUMENTS. IT DIDN'T HAVE ANYTHING TO
12 DO WITH ---

13 BY COMMISSIONER BARDEN:

14 I APOLOGIZE. I THOUGHT THAT WAS FOR FUTURE
15 MEDS.

16 BY MR. EASTERLING:

17 NO, MA'AM.

18 BY MR. MONTGOMERY:

19 NO, COMMISSIONER. THAT WAS ---

20 BY COMMISSIONER BARDEN:

21 WELL, I STAND CORRECTED. OKAY. I THOUGHT ---

22 BY MR. EASTERLING:

23 I APOLOGIZE FOR INTERRUPTING.

24 BY COMMISSIONER BARDEN:

25 IT'S JUST ANOTHER CASE I'M THINKING OF. OKAY.

1 I APPRECIATE THAT CORRECTION. YOU JUST -- I THOUGHT
2 YOU STATED THAT I HAD SIGNED

3 BY MR. EASTERLING:

4 THERE WAS AN ORDER TO COMPEL THE PRODUCTION OF
5 THE SURVEILLANCE DOCUMENTS THAT WE ---

6 BY COMMISSIONER BARDEN:

7 BUT YOU WERE ALSO LOOKING FOR ---

8 BY MR. MONTGOMERY:

9 IT WAS TWO-FOLD. I THINK YOU COMBINED THE TWO.

10 BY COMMISSIONER BARDEN:

11 OKAY.

12 BY MR. MONTGOMERY:

13 SO THE \$25 WAS IN THAT ORDER, WHICH WAS
14 COMPELLING ---

15 BY COMMISSIONER BARDEN:

16 THAT'S WHAT YOU'RE LOOKING FOR TO BE PAID?

17 BY MR. MONTGOMERY:

18 CORRECT.

19 BY COMMISSIONER BARDEN:

20 OKAY.

21 BY MR. MONTGOMERY:

22 AND ALTERNATIVELY, WE HAD ASKED FOR ---

23 BY COMMISSIONER BARDEN:

24 OKAY. I APOLOGIZE FOR THAT.

25 BY MR. MONTGOMERY:

1 AND ALTERNATIVELY IF YOU HAD FOUND THAT THIS
2 ~~WAS NOT A CHANGE OF CONDITION AND WAS DODGE~~
3 MEDICALS, THEN THEY FAILED TO COMPLY WITH THAT
4 UNDERLYING ORDER.

5 BY COMMISSIONER BARDEN:

6 OF COMMISSIONER WILKERSON?

7 BY MR. MONTGOMERY:

8 CORRECT. AND THEY WOULD BE SUBJECT TO
9 SANCTIONS AS YOU DEEM FIT.

10 BY COMMISSIONER BARDEN:

11 I SEE. GO AHEAD. GO AHEAD.

12 BY MR. EASTERLING:

13 AND, I MEAN, COMMISSIONER ROCHE ISSUED AN ORDER
14 ADDRESSING HIS MOTION COMPELLING THE MEDICAL
15 TREATMENT, AND SHE DETERMINED THAT IT -- IT WENT TO
16 THE MERITS.

17 BY COMMISSIONER BARDEN:

18 MERITS, OKAY.

19 BY MR. EASTERLING:

20 AND THAT WE DIDN'T HAVE -- WE WERE NOT DILATORY
21 IN DOING ANYTHING THAT WE WERE SUPPOSED TO.

22 BY COMMISSIONER BARDEN:

23 OKAY. WELL, WE'RE GOING ELECTRONIC, AND I DID
24 FIND THE COMMISSIONER WILKERSON ORDER LAST NIGHT,
25 BUT I DIDN'T SEE THE ROCHE ORDER IN HERE, AND I

1 DON'T KNOW WHETHER IT'S IN HERE OR NOT. I DIDN'T
2 SEE IT. SO, THANK YOU. I APPRECIATE THAT, AND WE
3 NEEDED TO KNOW ALL OF THAT.

4 ALL RIGHT. CONVERSELY, IT IS THE POSITION OF
5 THE DEFENDANTS THAT THE CLAIMANT'S CONTENTION THAT
6 HE HAS SUSTAINED A COMPENSABLE CHANGE OF CONDITION
7 FOR THE WORSE SHOULD BE DENIED, AND BENEFITS UNDER
8 THE ACT SHOULD BE DENIED OTHER THAN THOSE THAT WERE
9 ORDERED BY COMMISSIONER WILKERSON, WHICH ARE IN FACT
10 -- OR IS IN FACT -- THAT ORDER IS IN FACT AND THE
11 PROVISIONS THEREOF ARE THE LAW OF THE CASE. THE
12 DEFENDANTS BELIEVE THAT THE CLAIMANT'S CLAIM FAILS
13 BOTH PROCEDURALLY AND ON THE MERITS. THE DEFENDANTS
14 BELIEVE THAT THE OPERATIVE WORDS OF THE STATUTE 42-
15 17-90, WHICH OF COURSE IS THE CHANGE OF CONDITION
16 STATUTE AND SPECIFICALLY THE LAST SENTENCE OF
17 PARAGRAPH "A," THAT THE REVIEW MUST NOT BE MADE 12
18 MONTHS AFTER THE DAY OF THE LAST PAYMENT OF
19 COMPENSATION PURSUANT TO COMMISSIONER WILKERSON'S
20 AWARD. THE DEFENDANTS BELIEVE THAT BECAUSE THE
21 CLAIMANT'S PREVIOUS COUNSEL ONLY FILED A NOTICE OF A
22 CLAIM FOR A CHANGE OF CONDITION BUT DID NOT TIMELY
23 FILE A REQUEST FOR HEARING UNTIL AFTER THE 12 MONTHS
24 HAD RUN, AND THEN THE DEFENDANTS BELIEVE THAT THE
25 OPINION OF DR. RANA, WHICH I HAVE NOT READ, IS

1 NEBULOUS AT BEST AND SUCH THAT IT DOES -- IT IS --
2 ~~SHOULD BE FOUND INADMISSIBLE, BUT IT DOES NOT MEET~~
3 OR SERVE TO MEET THE REQUIREMENTS OF 42-17-90. THE
4 DEFENDANTS BELIEVE THAT THE CLAIM IS PROCEDURALLY
5 BARRED. THAT THE REQUEST FOR HEARING WAS NOT FILED
6 UNTIL MAY 17TH, 2013, WHICH IS WELL OUTSIDE THE ONE-
7 YEAR CHANGE OF CONDITION REQUIREMENT. THE
8 DEFENDANTS AS TO THE MERITS, THE DEFENDANTS WOULD
9 POINT TO MY ATTENTION THE FACT THAT DR. RANA -- IN
10 THE RANA REPORT, THE PRE AND POST REPORTS SHOW NO
11 DIFFERENCE, NO SIGNIFICANCE DIFFERENCE IN THE
12 CONDITION. SO, THEREFORE ON THE MERITS, THE
13 DEFENDANTS BELIEVE THAT THE CLAIM FAILS. AS FAR AS
14 -- THE DEFENDANTS CONTEND THAT THERE'S NOT ENOUGH
15 JUST TO FILE A REQUEST FOR A CHANGE OF CONDITION FOR
16 THE WORST TIMELY; THAT IT HAS TO BE A REQUEST FOR
17 HEARING, AND THAT WAS NOT ACCOMPLISHED IN THIS CASE.
18 AS A FUTURE MODALITY, THE DEFENDANTS WOULD POINT TO
19 MY ATTENTION THE FACT THAT SURGERY WAS NOT A
20 MODALITY ORDERED BY COMMISSIONER WILKERSON, AND
21 THEREFORE THE LAW OF THE CASE IS ONLY PAIN
22 MEDICATION, PSYCHOLOGICAL EVALUATION TREATMENT,
23 INJECTIONS, AND PHYSICAL THERAPY. NOWHERE IN THE
24 ORDER IS SURGERY MENTIONED. SO, THEREFORE, SURGERY
25 IS NOT A FUTURE MODALITY FOR WHICH THE DEFENDANTS

1 ARE RESPONSIBLE. SO THEREFORE, UNDER WHETHER IT'S A
2 ~~FUTURE MED OR WHETHER IT'S UNDER A CHANGE OF~~
3 CONDITION FOR THE WORSE, THE DEFENDANTS BELIEVE THAT
4 THE CLAIMANT FAILS ON BOTH FRONTS AND BOTH ACCOUNTS,
5 AND THEREFORE BENEFITS UNDER THE ACT SHOULD BE
6 DENIED. ALL RIGHT. AND OF COURSE, THE DEFENDANTS
7 HAVE PROVIDED TWO CASES, THE ALLEN V. VINSON AND THE
8 YOUNG V. TIDE CRAFT, FOR THE PROPOSITION AS FAR AS
9 THE PROCEDURAL REQUIREMENT THAT AN APPLICATION FOR
10 REVIEW MUST BE NOT HELD WITHIN -- I MEAN, THE REVIEW
11 DOESN'T NEED TO BE HELD, BUT THE APPLICATION MUST BE
12 HELD WITHIN 12 MONTHS, AND THE OTHER CASE FOR THE
13 PROPOSITION THAT AN OPINION CANNOT -- MUST BE BASED
14 ON MORE THAN JUST NEBULOUS CIRCUMSTANCES.

15 ALL RIGHT. Y'ALL SAID A LOT MORE, AND YOU SAID
16 IT A LOT BETTER, BUT IF THERE IS ANYTHING THAT I MAY
17 HAVE OVERLOOKED, MISSTATED, MISCHARACTERIZED, I WILL
18 HEAR FROM YOU NOW. YOU'RE SATISFIED?

19 BY MR. MONTGOMERY:

20 I'M SATISFIED.

21 BY COMMISSIONER BARDEN:

22 MR. EASTERLING IS NOT, SO GO AHEAD.

23 BY MR. EASTERLING:

24 I WOULD ALSO JUST LIKE TO POINT OUT REGULATION
25 67-602-C, WHICH SAYS THAT THE REQUEST FOR HEARING

1 FOR A CHANGE OF CONDITION, THE ACTUAL FORM THAT
2 ~~REQUESTS THE HEARING HAS TO HAVE A MEDICAL OPINION~~
3 ATTACHED TO IT SUPPORTING A CHANGE OF CONDITION.
4 THE FORM 50 THAT WAS FILED REQUESTING A HEARING BY
5 MR. MONTGOMERY HAD NO SUCH DOCUMENT ATTACHED.

6 BY COMMISSIONER BARDEN:

7 OKAY. DO YOU WISH TO RESPOND TO THAT JUST
8 BECAUSE I DIDN'T TAKE THAT UP?

9 BY MR. MONTGOMERY:

10 MY ONLY POINT WAS IT DEFERRED BACK TO THE
11 ORIGINAL 50 THAT HAD THE RECORD. I'M SURPRISED THIS
12 IS BEING RAISED.

13 BY MR. EASTERLING:

14 AND I'VE ALREADY POINTED OUT THE DEFICIENCIES
15 IN THAT RECORD. AND I WOULD ALSO LIKE TO NOTE THAT
16 IN RANA'S I.M.E., THE ONE ATTACHED TO GAGNE'S FORM
17 50 NOTICING THE CLAIM, THAT HE OPINED IN THE CHANGE
18 OF CONDITION REPORT THAT THE CLAIMANT REMAINED AT
19 MAXIMUM MEDICAL IMPROVEMENT.

20 BY COMMISSIONER BARDEN:

21 OKAY.

22 BY MR. EASTERLING:

23 THEREBY SUPPORTING ITS NEBULOUSNESS.

24 BY COMMISSIONER BARDEN:

25 OKAY, ALL RIGHT. I SEE WHERE YOU BOTH ARE

1 COMING FROM.

2 ~~MR. MONTGOMERY, YOUR FIRST AND ONLY WITNESS IS~~

3 MR. COOK; IS THAT CORRECT?

4 BY MR. MONTGOMERY:

5 YES, COMMISSIONER.

6 BY COMMISSIONER BARDEN:

7 MR. COOK, IF YOU WILL RAISE YOUR RIGHT HAND,
8 PLEASE.

9 * * * * * * * * * * * * * *

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

13 SHANNON COOK

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

15 BY COMMISSIONER BARDEN:

16 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

17 BY THE WITNESS:

18 SHANNON WAYNE COOK.

19 BY COMMISSIONER BARDEN:

20 THANK YOU VERY MUCH. PLEASE ANSWER ANY
21 QUESTIONS THAT MR. MONTGOMERY HAS, AND I'M GOING TO
22 ASK AS BEST YOU CAN, IF YOU WILL DIRECT YOUR
23 RESPONSES TO ME.

24 BY MR. MONTGOMERY:

25 THANK YOU, COMMISSIONER.

DIRECT EXAMINATION BY MR. MONTGOMERY:

Q. ~~MR. COOK, I'M GOING TO CUT TO THE CHASE AND GET~~
RIGHT TO THE POINT. AT SOME POINT, WERE YOU
REFERRED TO DR. RODRIGUEZ FOR MEDICAL TREATMENT?

A. YES, SIR.

Q. ALL RIGHT. WHO SENT YOU THERE?

A. DR. LATOURETTE.

Q. OKAY. AND IS DR. LATOURETTE, IS IT YOUR
UNDERSTANDING HE WAS THE AUTHORIZED TREATING
PHYSICIAN IN YOUR EARLIER CASE?

A. YES, SIR.

Q. OKAY. DO YOU HAVE AN UNDERSTANDING AS TO WHAT DR.
RODRIGUEZ RECOMMENDED IN TERMS OF MEDICAL TREATMENT?

A. DR. RODRIGUEZ IS LOOKING FOR A SURGERY -- TO PERFORM
A SURGERY.

Q. ALL RIGHT. AND AT SOME POINT, WERE YOU SENT TO DR.
KANOS FOR A SECOND OPINION?

A. YES, SIR.

Q. ALL RIGHT. DO YOU HAVE AN UNDERSTANDING AS TO WHAT
DR. KANOS ORIGINALLY RECOMMENDED TO YOU?

A. HE WANTED TO HAVE A C.T. MYELOGRAM.

Q. ALL RIGHT. DID THAT EVER GET AUTHORIZED BY THE
CARRIER?

A. NO.

Q. HAVE YOU HAD THAT DONE?

1 A. YES.

2 Q. ~~HOW DID YOU GET IT DONE?~~

3 A. MEDICARE PAID FOR IT.

4 Q. ALL RIGHT. DID YOU HAVE ANY CO-PAYS IN RELATION TO
5 YOUR VISIT TO DR. KANOS OR FOR THE C.T. MYELOGRAM?

6 A. YES.

7 Q. AND WHAT ABOUT TO DR. RODRIGUEZ?

8 A. NO.

9 Q. OKAY. THE CARRIER PAID FOR RODRIGUEZ AS FAR AS YOU
10 KNOW?

11 A. AS FAR AS I KNOW.

12 Q. ALL RIGHT. AFTER YOU HAD THE C.T. MYELOGRAM DONE,
13 HAVE YOU BEEN BACK TO DR. KANOS?

14 A. YES.

15 Q. ALL RIGHT. HAS HE RECOMMENDED ANY FURTHER MEDICAL
16 TREATMENT TO YOU?

17 A. HE RECOMMENDED SURGERY AND TO KEEP FOLLOWING UP WITH
18 DR. LATOURETTE.

19 Q. ALL RIGHT. DO YOU WANT THAT SURGERY AS RECOMMENDED
20 BY DR. KANOS?

21 A. YES.

22 Q. ALL RIGHT.

23 BY COMMISSIONER BARDEN:

24 DO YOU STILL SEE DR. LATOURETTE OR NOW YOU'RE
25 SEEING DR. RODRIGUEZ?

1 BY THE WITNESS:

2 NO, MA'AM, I DON'T SEE RODRIGUEZ.

3 BY COMMISSIONER BARDEN:

4 YOU SEE LATOURETTE?

5 BY THE WITNESS:

6 YES, MA'AM.

7 BY COMMISSIONER BARDEN:

8 OKAY.

9 DIRECT EXAMINATION RESUMED BY MR. MONTGOMERY:

10 Q. ARE YOU STILL TREATING WITH DR. LATOURETTE FOR PAIN
11 MANAGEMENT?

12 A. YES.

13 Q. OKAY. AND THAT'S ALL BEING AUTHORIZED AS FAR AS YOU
14 KNOW BY THE CARRIER?

15 A. YES.

16 Q. ALL RIGHT. DID KANOS -- YOU'VE HAD TWO
17 RECOMMENDATIONS FOR TWO TYPES OF SURGERIES; IS THAT
18 YOUR UNDERSTANDING?

19 A. CORRECT.

20 Q. AND DO YOU WANT TO GO WITH RODRIGUEZ' RECOMMENDATION
21 OR KANOS' RECOMMENDATION OR NEITHER OR BOTH?

22 A. KANOS.

23 Q. OKAY. YOU TRUST KANOS?

24 A. YES, SIR.

25 Q. ALL RIGHT. NOW, OVER THE LAST SIX MONTHS TALKING

1 ABOUT YOUR COMPLAINTS OF PAIN AND PROBLEMS AND WE
2 ~~CALL IT RADICULAR SYMPTOMS, BUT THE STUFF THAT GOES~~
3 INTO YOUR LEG.

4 BY MR. EASTERLING:

5 OBJECT TO THE LEADING QUESTIONS.

6 BY COMMISSIONER BARDEN:

7 ALL RIGHT.

8 BY MR. MONTGOMERY:

9 ALL RIGHT, I'LL REPHRASE IT.

10 BY COMMISSIONER BARDEN:

11 THANK YOU.

12 DIRECT EXAMINATION RESUMED BY MR. MONTGOMERY:

13 Q. HAS THE PAIN GOTTEN WORSE IN YOUR BACK?

14 A. YES.

15 Q. ALL RIGHT. HAVE YOU HAD ANY INCREASE, DECREASE, OR
16 HAS IT STAYED THE SAME IN YOUR LEGS IF AT ALL?

17 A. IT'S BEEN WORSE.

18 Q. ALL RIGHT. IF YOU COULD HAVE THE SURGERY TODAY,
19 WOULD YOU?

20 A. YES.

21 Q. ALL RIGHT. NOW, THE CARRIER HAS PUT IN SOME
22 SURVEILLANCE FOOTAGE. HAVE YOU SEEN A COPY OF THEIR
23 SURVEILLANCE FOOTAGE?

24 A. YES, SIR.

25 Q. ALL RIGHT. IN THE VIDEOS, DOES IT DEPICT YOU DOING

1 SOMETHING WITH A FOOTBALL?

2 A. YES.

3 Q. ALL RIGHT. WHAT DOES IT DEPICT YOU DOING?

4 A. I BELIEVE IT'S JUMPING UP AFTER A FOOTBALL, BLOCKING
5 OR ---

6 BY MR. EASTERLING:

7 JUST SO WE'RE CLEAR, I HAVE NOT SUBMITTED THAT.

8 BY MR. MONTGOMERY:

9 OH, YOU HAVE NOT, OKAY. WAS THERE A SECOND?

10 BY MR. EASTERLING:

11 IT DOESN'T SHOW WHAT HE'S SAYING. IT SHOWS
12 SOMETHING DIFFERENT. I IMAGINE YOU'RE GOING TO GET
13 INTO THAT IN A MINUTE.

14 BY MR. MONTGOMERY:

15 I'LL GET INTO THAT. THANK YOU FOR THE
16 CLARIFICATION.

17 BY COMMISSIONER BARDEN:

18 OKAY.

19 BY MR. MONTGOMERY:

20 WE'LL JUST STRIKE THAT. I THOUGHT IT WAS BOTH.

21 DIRECT EXAMINATION RESUMED BY MR. MONTGOMERY:

22 Q. HAVE YOU SEEN ANY OTHER SURVEILLANCE FOOTAGE?

23 A. YES.

24 Q. ALL RIGHT. WHAT DID THAT SHOW? TELL THE
25 COMMISSIONER WHAT THAT SHOWED.

1 A. THE OTHER ONE SHOWED ME WORKING ON A CAR.

2 Q. ~~ALL RIGHT. WHY WERE YOU WORKING ON YOUR CAR?~~

3 A. THE HEATER BLOWED UP -- IT OVERHEATED ON US.

4 Q. DID THE VIDEO DEPICT THE CAR ACTUALLY BREAKING DOWN
5 OR YOU WORKING ON THE CAR OR BOTH?

6 A. BOTH ACTUALLY.

7 Q. WHY DID YOU WORK ON THE VEHICLE INSTEAD OF TAKING IT
8 TO A GARAGE OR SOMETHING LIKE THAT?

9 A. I DON'T HAVE THE MEANS TO AFFORD IT.

10 Q. ALL RIGHT. DID YOU HAVE ANY CHOICE BUT TO FIX IT?

11 A. NO.

12 Q. ALL RIGHT. NOW, DO YOU HAVE ANY INCOME AT ALL RIGHT
13 NOW?

14 A. SOCIAL SECURITY.

15 Q. ALL RIGHT. HOW MUCH DO YOU GET IF YOU KNOW?

16 A. MINE IS A LITTLE OVER 1600, AND THEN MY CHILDREN
17 DRAW ALSO.

18 Q. IS THAT YOUR ONLY INCOME?

19 A. YES.

20 Q. NOW, AFTER WORKING ON THE CAR, HOW DID YOU FEEL THE
21 NEXT DAY?

22 A. HURTING.

23 Q. ALL RIGHT. DID YOU CONTINUE TO HURT?

24 A. YES.

25 Q. FOR HOW LONG?

1 A. ABOUT THREE TO FOUR DAYS.

2 Q. ~~AFTER THAT THREE TO FOUR DAYS, DID THE PAIN LEVEL~~
3 STAY THE SAME, GET BETTER OR GET WORSE?

4 A. IT WENT BACK TO THE SAME.

5 Q. ALL RIGHT. NOW, WHEN WE'RE TALKING ABOUT THE SAME,
6 WAS THAT BEFORE THIS SIX MONTHS AGO WHEN YOU TALK
7 ABOUT -- SIX OR SEVEN MONTHS AGO WHEN YOU TALK ABOUT
8 THE INCREASE IN BACK PAIN?

9 BY MR. EASTERLING:

10 OBJECT TO LEADING.

11 BY COMMISSIONER BARDEN:

12 CAN YOU REPHRASE THAT QUESTION? IT WAS A
13 LITTLE BIT CONFUSING.

14 BY MR. MONTGOMERY:

15 YES, I'M SORRY.

16 DIRECT EXAMINATION RESUMED BY MR. MONTGOMERY:

17 Q. NOW, HOW LONG AGO WAS THE VIDEO WHEN YOU WERE
18 WORKING ON THE CAR IF YOU KNOW?

19 A. ALMOST A YEAR.

20 Q. OKAY. SINCE THAT TIME, HAS YOUR PAIN GOTTEN WORSE -

21 --

22 BY MR. MONTGOMERY:

23 STRIKE THAT.

24 DIRECT EXAMINATION RESUMED BY MR. MONTGOMERY:

25 Q. OVER THE LAST SEVEN, EIGHT, NINE MONTHS, HAS YOUR

1 PAIN GOTTEN WORSE, STAYED THE SAME OR GOTTEN BETTER?

2 A. ~~IT'S GOTTEN WORSE.~~

3 Q. OKAY. WHERE HAS IT GOTTEN WORSE?

4 A. MY LOWER BACK AND LEFT LEG.

5 Q. ALL RIGHT.

6 BY MR. MONTGOMERY:

7 I DON'T HAVE ANYTHING ELSE.

8 BY COMMISSIONER BARDEN:

9 ALL RIGHT. PLEASE ANSWER ANY QUESTIONS MR.

10 EASTERLING HAS FOR YOU.

11 CROSS EXAMINATION BY MR. EASTERLING:

12 Q. MR. COOK, YOU'VE BEEN TREATING WITH DR. LATOURETTE
13 THE ENTIRE TIME; IS THAT RIGHT?

14 A. YES, SIR.

15 Q. AND MY CLIENT, SPARTANBURG STEEL, HAS PROVIDED THAT
16 TREATMENT FOR YOU THE ENTIRE TIME, CORRECT?

17 A. CORRECT.

18 Q. THERE'S NOT BEEN AT ANY TIME THAT THEY'VE WITHHELD
19 ANY TREATMENT FROM DR. LATOURETTE OTHER THAN THE
20 RECOMMENDATIONS THAT WE'RE HERE TODAY ABOUT SURGERY,
21 RIGHT?

22 A. (NO VERBAL RESPONSE)

23 Q. I MEAN, EVERY TIME YOU GO TO DR. LATOURETTE ---

24 A. I MAINLY WOULD SAY YES.

25 Q. AND MR. MONTGOMERY, YOUR ATTORNEY, ASKED YOU ABOUT

1 THE SURVEILLANCE. DID YOU REVIEW THAT SURVEILLANCE
2 ~~BEFORE TODAY?~~

3 A. YES.

4 Q. AND YOU ACTUALLY REVIEWED IT WHEN WE WERE DEPOSING
5 DR. LATOURETTE IN HIS OFFICE BECAUSE YOU WERE THERE
6 WITH US, WEREN'T YOU?

7 A. CORRECT.

8 Q. DR. LATOURETTE LOOKED AT IT?

9 A. CORRECT.

10 Q. AND IT SHOWS YOU WORKING UNDERNEATH THE HOOD OF YOUR
11 CAR; IS THAT RIGHT?

12 A. CORRECT.

13 Q. AND IT SHOWS YOU DOING THAT FOR APPROXIMATELY AN
14 HOUR. IS THAT FAIR?

15 A. I WOULD SAY AROUND ABOUT THAT TIME.

16 Q. AND DURING THAT HOUR PERIOD OF TIME, THERE'S SEVERAL
17 OCCASIONS WHEN YOU'RE BENT OVER UNDERNEATH THE HOOD
18 OF THE CAR; IS THAT RIGHT?

19 A. CORRECT.

20 Q. AND THERE ARE OCCASIONS WHEN YOU MOVE AN INDUSTRIAL
21 JACK; IS THAT RIGHT?

22 A. IT'S A FLOOR JACK.

23 Q. IT'S MORE THAN JUST A JACK THAT I PULL OUT OF THE
24 BACK OF MY CAR THOUGH, ISN'T IT?

25 A. YES.

1 Q. HOW MUCH DO YOU THINK THAT JACK WEIGHS?

2 A. I DON'T KNOW.

3 Q. THERE ARE SEVERAL OCCASIONS IN THE VIDEO THOUGH
4 WHERE YOU PULL THE JACK AND MOVE IT FROM PLACE TO
5 PLACE, RIGHT?

6 A. CORRECT.

7 Q. AND THERE ARE OCCASIONS IN THE VIDEO WHERE YOU TAKE
8 YOUR SHIRT OFF AND THEN GO BACK UNDERNEATH THE HOOD,
9 RIGHT?

10 A. YES.

11 Q. OKAY. YOU TALK ABOUT YOUR INABILITY TO PAY FOR THE
12 MECHANICAL STUFF ON THE CAR THAT WAS NEEDED. YOU
13 WERE DRAWING SOCIAL SECURITY AT THE TIME, RIGHT?

14 A. CORRECT.

15 Q. AND YOU ARE IN FACT RECEIVING MONTHLY SOCIAL
16 SECURITY BENEFITS NOW?

17 A. CORRECT.

18 Q. AND YOU HAVE MEDICARE?

19 A. CORRECT.

20 Q. AND SO YOU HAD MEDICARE PAY FOR THE C.T. MYELOGRAM
21 THAT WAS RECOMMENDED IN THIS CASE?

22 A. CORRECT.

23 Q. AND IF YOU NEEDED TO HAVE SURGERY, MEDICARE WOULD
24 PAY FOR IT, RIGHT?

25 BY MR. MONTGOMERY:

1 OBJECTION.

2 BY COMMISSIONER BARDEN:

3 OVERRULED. HE CAN ANSWER THE QUESTION.

4 BY THE WITNESS:

5 I BELIEVE THEY WILL.

6 BY COMMISSIONER BARDEN:

7 BUT I DON'T KNOW WHETHER HE KNOWS.

8 CROSS EXAMINATION RESUMED BY MR. EASTERLING:

9 Q. WHEN I TOOK YOUR DEPOSITION -- I'VE TAKEN YOUR
10 DEPOSITION ONCE OR -- WELL, I KNOW TWICE.

11 A. I BELIEVE SO.

12 Q. AND WHEN I DEPOSED YOU LAST IN NOVEMBER OF 2012, I
13 ASKED YOU IF YOU WERE ABLE TO WORK ON YOUR VEHICLE,
14 AND AT LINE 15, YOU TOLD ME NO. DO YOU REMEMBER
15 THAT?

16 A. NO, SIR, I DON'T. IF IT'S IN THERE, I BELIEVE IT.

17 Q. IF IT'S IN THERE, YOU BELIEVE ME?

18 A. YES, SIR.

19 Q. ALL RIGHT. BUT THE VIDEO SHOWS THAT YOU DO IN FACT
20 OR YOU DID IN FACT WORK ON YOUR VEHICLE?

21 A. CORRECT.

22 BY COMMISSIONER BARDEN:

23 DO YOU HAVE THAT? IS THAT PART OF THIS JUST SO

24 ---

25 BY MR. EASTERLING:

1 I DIDN'T HAND UP THE DEPOSITION.

2 BY MR. MONTGOMERY:

3 ARE YOU TALKING ABOUT THE VIDEO OR THE
4 DEPOSITION?

5 BY COMMISSIONER BARDEN:

6 NO, THE DEPOSITION.

7 BY MR. MONTGOMERY:

8 I DON'T KNOW IF I HANDED ---

9 BY COMMISSIONER BARDEN:

10 OR JUST TELL ME THE DATE OF THE DEPOSITION.

11 BY MR. EASTERLING:

12 THE DATE OF THE DEPOSITION IS NOVEMBER 16TH,
13 2012.

14 BY COMMISSIONER BARDEN:

15 THANK YOU.

16 CROSS EXAMINATION RESUMED BY MR. EASTERLING:

17 Q. DO YOU RECALL THAT BACK WHEN WE HAD THE ORIGINAL
18 HEARING IN THIS CASE IN FRONT OF COMMISSIONER
19 WILKERSON WHEN MR. GAGNE WAS REPRESENTING YOU?

20 A. I REMEMBER THE HEARING, YES, SIR.

21 Q. AND THE EMPLOYER SPARTANBURG STEEL MADE AN OFFER TO
22 YOU TO COME BACK TO WORK LIGHT DUTY?

23 A. YES.

24 Q. AND DO YOU REMEMBER THAT THAT OFFER WAS FOR YOU TO
25 GO INTO THE TOOL ROOM, AND IT WAS BASICALLY A

1 SEDENTARY JOB SEDENTARY SIT-DOWN JOB, CORRECT?

2 A. CORRECT.

3 BY MR. MONTGOMERY:

4 OBJECTION. WE'RE HERE ON A CHANGE OF
5 CONDITION. I DON'T KNOW WHAT RELEVANCE THIS HAS.

6 BY COMMISSIONER BARDEN:

7 WELL, IT'S CROSS EXAMINATION. I'M GOING TO LET
8 HIM CONTINUE AND SEE WHERE HE'S GOING.

9 BY MR. MONTGOMERY:

10 FAIR ENOUGH.

11 CROSS EXAMINATION RESUMED BY MR. EASTERLING:

12 Q. AT NO POINT AFTER ---

13 BY COMMISSIONER BARDEN:

14 YOU HAVE A RUNNING OBJECTION THOUGH TO THIS
15 TESTIMONY.

16 CROSS EXAMINATION RESUMED BY MR. EASTERLING:

17 Q. AT NO POINT AFTER THAT OFFER, DID YOU EVER MAKE AN
18 ATTEMPT TO GO BACK TO SPARTANBURG STEEL, DID YOU?

19 A. NO.

20 Q. AND YOU HAVE NOT SINCE MADE AN ATTEMPT TO GO BACK TO
21 SPARTANBURG STEEL EVEN THOUGH THAT LIGHT-DUTY JOB
22 WAS OFFERED?

23 A. NO.

24 Q. AND DO YOU RECALL THAT DR. LATOURETTE ACTUALLY
25 SUGGESTED OR MADE A RECOMMENDATION THAT MAYBE DOING

1 A LIGHT-DUTY SEDENTARY JOB WOULD BE BENEFICIAL FOR
2 YOU? DID YOU KNOW THAT?

3 A. I BELIEVE SO.

4 Q. HOW OLD ARE YOU?

5 A. THIRTY-THREE.

6 BY MR. EASTERLING:

7 I DON'T HAVE ANY OTHER QUESTIONS.

8 BY COMMISSIONER BARDEN:

9 DID YOU SAY 33?

10 BY THE WITNESS:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 THANK YOU. ALL RIGHT, MR. MONTGOMERY, ANY
14 QUESTIONS?

15 BY MR. MONTGOMERY:

16 NOTHING, COMMISSIONER.

17 BY COMMISSIONER BARDEN:

18 ALL RIGHT. THAT'S THE CLAIMANT'S CASE. DO YOU
19 HAVE ANY WITNESSES, MR. EASTERLING?

20 BY MR. EASTERLING:

21 I DO NOT.

22 BY COMMISSIONER BARDEN:

23 ALL RIGHT. THAT CONCLUDES THIS PROCEEDING
24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
25 CONCLUDED AT THE HOUR OF 10:53 A.M.)

Attachment F

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC #: 0726308

DATE OF HEARING: September 27, 2013

PLACE OF HEARING: Greenville, SC

CLAIMANT: Shannon Cook

EMPLOYER: Spartanburg Steel

CARRIER: Spartanburg Steel

CLAIMANT'S ATTY: Ryan Montgomery

DEFENDANTS' ATTY: Brad Easterling

FINDINGS OF FACT

1. In an admitted accident on September 17, 2007, Claimant injured his back (resulting in bilateral radiculopathy) and sustained admitted psychological overlay. He alleges that (a) he has sustained a change of condition for the worse; or alternatively, (b) Defendants should be required to provide the surgery recommended for Claimant as a *Dodge*/future medical.
2. Claimant is 33 years of age (medical evidence establishing Claimant's date of birth as 4/26/80).
3. Prior to the hearing with Commissioner Wilkerson, Claimant (a) underwent two lumbar surgeries for a "large" herniated disc; and (b) failed a spinal cord stimulator trial (Claimant's APA #1, pages 3, 7, 11, and 19).
4. Commissioner Wilkerson awarded Claimant permanency benefits to the spine (25%) on June 8, 2011. I base this finding on the Commission's file (See also Claimant's APA #7).
5. Defendants paid the permanency award on June 27, 2011.
6. Claimant's counsel (Mr. Gagne) timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse. Attached to the Form 50 was an opinion from Dr. Rana that Claimant has sustained a change of condition for the worse (Claimant's APA #8).
7. On May 17, 2013, Claimant's current counsel (Mr. Montgomery) filed a Form 50 requesting a hearing on the change of condition for the worse (Claimant's APA #9).
8. Pursuant to Section 42-17-90 and a sequential review of the treatment records dated after the hearing before Commissioner Wilkerson, I find that Claimant's lumbar spine condition has significantly worsened: after the permanency award was paid, Claimant's back and leg pain increased, and a cane was prescribed for "antalgic gait and leg weakness." Claimant's

Commissioner's Notes for Decision and Order

Page 1 of 4

medications were no longer relieving his pain, and were therefore changed/increased. Treatment records note that (a) morphine was having "very little effect," (b) Claimant's Waddell's signs were consistently "0/5," and, most importantly, (c) Claimant has "*severe [post-surgical] scar tissue formation.*" Claimant has also undergone multiple injections since the date of the permanency award, and he requested another surgical consult/opinion in December 2011. As all these records are from authorized providers, Defendants had notice of Claimant's worsening condition as well as notice of his request for another surgical opinion (e.g., Claimant's APA #1, pages 5-6, 8, 10, 13, 21, 26, 33, 36, 38-39, 45, 48, 50, 53, 57, 59, 75, 80, 85, 97, 102, 108, 110, 114, and 116; *See also* Claimant's APA #3, page 143).

9. Three authorized physicians state that Claimant has sustained a change of condition for the worse, and that Claimant needs further surgery. There is no competing questionnaire or evidence to the contrary (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 128-128A; Claimant's APA #3, pages 136, 143, and 146; Claimant's APA #5, pages 155, 155A, and 155D).
10. The questionnaires referenced *supra* are clearly supported by the treatment records in evidence, and I therefore accord the questionnaires great weight (medical evidence in its entirety).
11. At the hearing, Claimant appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. I considered the fact that Dr. Kanos found some "exaggerated response" during his exam of Claimant, but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), I find that Claimant may be merely appealing for help. Moreover, Claimant has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, Claimant volunteered the fact that he went out to dinner and a movie with his son, and that he is "trying to do some walking and he is praised." If Claimant were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything (Claimant's APA #1, pages 122 and 126; observations of the undersigned; medical evidence in its entirety; Commission file containing pleadings and Orders).
12. Surgery was not a future medical ordered by Commissioner Wilkerson. Although there is no dispute that Claimant now needs surgery, I am unable to order surgery as a future medical (*See* ORDER language, page 16 of Commissioner Wilkerson's Order, which limits future medicals to those listed on the Form 14B).
13. Claimant has not reached maximum medical improvement, a finding I base on the opinions of three authorized physicians (e.g., Claimant's APA #1, page 128A).
14. Claimant shall receive reimbursement for his \$25 filing fee, such that he is not charged or responsible for the cost of his Motion to Compel (Claimant's APA #10).
15. Claimant shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos: Dr. Kanos (Defendants' IME) requested a CT Myelogram prior to rendering a surgical opinion. Once Dr. Kanos reviewed the results of the CT Myelogram, he agreed that Claimant needs surgery, although Dr. Kanos does not recommend fusion surgery (Claimant's APA #5, pages 155, 155A,

and 156; Claimant's APA #6, pages 156-157).

16. Dr. Kanos is hereby named the treating surgeon. He is very familiar with Claimant's spinal condition, and his surgical approach in Claimant's case is more conservative than that recommended by other physicians in this case.

17. Permanency is premature.

18. I find that the opinion from Dr. Rana is not inadmissible. Dr. Rana's physical examination mentions the lumbar spine no fewer than 5 times, and he opines that Claimant sustained a change of condition to the spine. Whether or not Dr. Rana found Claimant to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission's involvement would be unnecessary. Dr. Rana does opine that Claimant has an "additional" problem of thoracic spine involvement; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to "punish" Claimant for any deficiencies with regard to Dr. Rana's record/opinion, when the authorized treatment records clearly support the an opinion of a worsened condition (Claimant's APA #2).

19. I considered Defendants' video surveillance, but it does nothing to persuade the undersigned to deviate or retreat from this decision.

20. Claimant's average weekly wage is \$846.64, yielding a compensation rate of \$564.46. I base this finding on the Order of Commissioner Wilkerson.

YOU MAY ADD TO/REARRANGE/CLARIFY/AMPLIFY/CORRECT THESE FINDINGS AS NECESSARY IN ORDER TO EFFECTUATE MY INTENT.

INSTRUCTIONS: Attorney Ryan Montgomery to prepare proposed Order unless otherwise agreed upon by the parties. Proposed Order shall include VERBATIM Findings of Fact attached hereto, unless there is a mistake, in which case, it may be corrected. ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION. Any other Findings of Fact not inconsistent with those attached hereto may also be included. Proposed Order shall be submitted within 35 days of the date of these order instructions. If you need a transcript order it *immediately* from court reporter Jan Whitworth *in writing* at Post Office Box 551, Roebuck, South Carolina 29376. Provide a copy of the proposed order to opposing counsel or *pro se* claimant at least five (5) days prior to the time one is submitted to the Commission. IN YOUR COVER LETTER TO ME, PLEASE INCLUDE A STATEMENT THAT THE OPPOSING PARTY HAS NO OBJECTION TO THE ORDER AS WRITTEN.

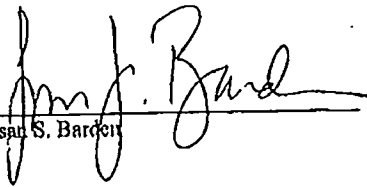


The Commission now requires the proposed order be e-mailed to klove@wcc.sc.gov and all parties in Word format.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)

5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award


Susan S. Barden

South Carolina Workers' Compensation Commission

Attachment G

**DECISION AND ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. FILE NO. 0726308

**Shannon Cook, Employee
v.
Spartanburg Steel, Employer**

HEARING: Held in Greenville, SC
September 27, 2013

APPEARANCES: Employee was represented by:

Ryan S. Montgomery, Esquire
Ryan Montgomery Attorney at Law, LLC
108 Mills Avenue
Greenville, South Carolina 29605

Employer/Carrier was represented by:
Brad B. Easterling, Esquire
Turner Padgett Graham & Laney
200 East Broad Street
Greenville, South Carolina 29601

PURPOSE OF THE HEARING: To determine only the issues on the
Form 50 Change of Condition Request
And/or Additional Medical Pursuant to
Commission Order

DECISION AND ORDER: The Honorable Susan Barden

DATE OF DECISION: November 25, 2014

I. APA SUBMISSIONS/EXHIBITS

Employee:

1.	Carolinas Center for Advanced Management of Pain	7/13/2011 – 9/13/13	1 – 128, 128A
2.	Carolina Health Professionals, LLC	2/16/2012	129 – 132
3.	Orthopedic Specialties of Spartanburg	8/15/2012 – 6/12/2013	133 – 146
4.	Piedmont Imaging	9/13/2012	147 – 148
5.	Southeastern Neurosurgical & Spine	12/14/2012 – 9/11/2013	149 – 155, 155A-E
6.	Greenville Radiology	7/25/2013	156 – 159
7.	Decision and Order	6/8/2011	160 – 175
8.	Prior Form 50	5/9/2012	176 – 181

Employer:

EXHIBIT#

1. Young v. Tide Craft, Inc. 270 S.C. 453; 242 S.E.2d 671 (1978)
2. Allen v. Benson Outdoor Advertising Co., 236 S.C. 22; 112 S.E.2d 722 (1960);
3. Deposition of Claimant
4. Deposition of Dr. Phillips;
5. Deposition of Dr. Kanos (withdrawn at hearing);
6. Surveillance Video

II. Stipulations

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter;
1. Hearing Venue is properly set in Greenville County per party stipulation as the parties hereto previously agreed to move this hearing from Spartanburg to Greenville County;
2. The date of injury is September 17, 2007;
3. Claimant's average weekly wage is \$846.64 yielding a compensation rate of \$564.46;
4. Defendants had previously sought an Order granting a continuance of the hearing in order to take the deposition of Dr. Charles Kanos. At the hearing, this request was withdrawn by the defendants and the parties elected to proceed under the current APA submissions

and legal arguments.

5. Both parties are subject to the provisions of the South Carolina Workers' Compensation Act.

III. STATEMENT OF CASE

A. Employee's Position

It was the position of the employee that he had sustained a change of condition for the worse to include a need for surgery. Procedurally, this matter was originally handled by attorney Tom Gagne of Greenville, South Carolina. The underlying matter went to hearing on June 8, 2011 at which time permanency and the need for future medical was addressed. Commissioner Williams awarded Claimant 25% permanent partial disability to the spine, which award was paid on June 27, 2011. On May 9, 2012, less than one year later, counsel for the claimant, Tom Gagne, filed a Form 50 (notice of claim only) alleging a change of condition for the worse and attached a medical report from Dr. Tony Rana indicating the claimant had sustained a change of condition for the worse. Between that filing and May 17, 2013, the claimant terminated his legal representation with Tom Gagne and retained, attorney Ryan Montgomery of Greenville, South Carolina. On May 17, 2013, Mr. Montgomery filed a supplemental Form 50 requested a hearing to address the change of condition for the worse previously filed by Tom Gagne.

From a medical perspective and once the claimant alleged a change of condition for the worse as of May 9, 2012, the defendants referred the claimant to Dr. Marco Rodriguez who opined that the claimant needed a lumbar fusion. The defendants then referred the claimant to Dr. Charles Kanos who opined that the claimant was in need of a CT myelogram to definitely determine whether or not the Claimant was in need of surgery. Dr. Kanos recommended against the lumbar fusion as recommended by Dr. Rodriguez. At this point the medical treatment from

defendants was discontinued except for the medical treatment with Dr. Phillip LaTourette, the claimant's authorized pain management physician. Claimant on his own obtained the CT myelogram and a return visit to Dr. Charles Kanos. At that appointment, it was the medical opinion of Dr. Kanos that the claimant needed surgery and that his condition had worsened. The claimant took the position on the date of the hearing that Drs. Latourette, Kanos, Rodriguez, and Rana had all opined that the claimant has sustained a change of condition for the worse.

Realizing that the defendants would argue that the case was a legal issue based upon the Form 50 Claim only and the case of the Allen v. Benson Outdoor Advertising, 236 S.C. 22 (1960), claimant responded to the case of Allen v. Benson but arguing the distinction in that case and the case at bar. In the Allen case, the issue was whether the case must be heard within the twelve month period. Allen timely filed an application but it was not heard within one year. That case did not address anything associated with filing the application for a claim only in order to toll the statutory one year requirement as required in §42-17-90. The Allen Court goes onto cite and incorporate additional jurisdictional opinions noting that "the filing of a claim for further compensation within the statutory period and partial but not complete development thereof with such period, with loss of jurisdiction by the Commissioner would be an absurd result which the legislature certainly did not have in mind...a claim if filed within the statutory period applicable to the nature of the claim filed." The Allen court held and only held that the application for review was made within one year and so they had jurisdiction to hear the claim. It did not go beyond that and extrapolating sentences out of context does not change that.

In addition, when claimant filed the Form 50 hearing request, the medical report of Dr. Tony Rana had already been filed in support of the change of condition.

B. Employer's Position

The employer argues claimant has not sustained a change of condition for the worse. However, the defendants' primary position(s) are that the Commission need not reach that decision as it lacks jurisdiction to hear the case based upon the following three arguments:

First, the defendants argue that the claimant's claim is barred by S.C. Code 42-17-90. The last sentence under 42-17-90 reads: "...the review [on a claim for change of condition] must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title." (emphasis added). Defendants submitted the case of Allen v. Benson Outdoor Advertising, 236 S.C. 22 (1960), which defendants contend requires that a Request for Hearing be filed within one year from the date of the last payment of compensation. Defendants argue this requires the filing of a Form 50, Request for Hearing, and not simply a Form 50 – Notice of Claim Only. On May 9, 2012, the claimant's prior counsel, Tom Gagne, only filed a Form 50 – Notice of Claim alleging a change of condition but did not request a hearing. Based on Allen, defendants contend the claimant is barred from proceeding under a change of condition argument and the undersigned Commissioner does not have jurisdiction over the claim.

Second, the defendants argue that, even if the Form 50 - Notice of Claim only did toll the statute of limitations, the claimant still cannot proceed with his change of condition request as the claimant's prior counsel relied upon (submitted with the May 9, 2012 Form 50 – Notice of Claim only) a medical report from Dr. Tony Rana, which defendants contend is nebulous in nature and gives no factual basis upon which the opinion is based. For this argument, defendants rely on the case of Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978), which holds that expert opinion is inadmissible if its factual foundation is nebulous. In Dr. Rana's February 16,

2012 report, which claimant relies upon to support his claim for change of condition, relative to claimant's lumbar spine, Dr. Rana assigned the exact same medical impairment rating as his did in his earlier July 14, 2010 report. In his February 16, 2012 report, Dr. Rana, as he also did in his July 14, 2010 report, opines claimant remains at MMI for the injuries received as result of his September 17, 2007 work accident. Defendants submit that, inherently, there can be no change of condition if claimant's MMI status is unchanged subsequent to the last payment of compensation. The only difference noted in Dr. Rana's two IME reports is found in his February 16, 2012 report where he references claimant's thoracic disc herniation at the T8/T9 level. However, nowhere in his February 16, 2012 report does Dr. Rana causally relate claimant's thoracic condition to his September 17, 2007 work injury.

Finally, defendants argue that claimant's claim should be barred by South Carolina Workers' Compensation Regulation 67-602(C), which requires the moving party to attach to the hearing request form a medical report(s) indicating a change in claimant's condition. In this claim, there was no medical report attached to the May 17, 2013 Form 50 nor to the August 9, 2013 Form 50, the only two Forms 50 requesting a hearing.

IV. EVIDENCE OF CASE

A. From the Defendants

Defendants submitted the deposition transcript of Dr. LaTourette. The defendants submitted surveillance video which was admitted into evidence without objection.

B. From the Claimant

The claimant by way of previous counsel submitted a Form 50 Change of Condition Application (Claim Only). on and in number 11a of the application states "Claimant comes for a change of condition". See APA 8, pp. 176-177. Pursuant to §42-17-90, the previous counsel

included a medical report from Tony Rana, M.D., dated February 16, 2012. See APA 8, pp. 178-180. Dr. Rana notes that the claimant "returns for evaluation of a worsening of condition." Id. at 178. Dr. Rana went on to provide a basis for his opinion in that he identifies "treatment since his prior evaluation has included psychological counseling by Dr. Tollison and transforaminal epidural steroid injections by Dr. LaTourette" Id.

Following the application for a change of condition, Dr. Latourette referred Mr. Cook on August 15, 2012 for an evaluation with Dr. Marco Rodriguez at Orthopaedic Specialties which was authorized by the defendants. See Clmt. APA 3. Dr. Rodriguez opined that the claimant "shows a positive straight leg raise on the left side." Id. at 136. Dr. Rodriguez recommended and prescribed a MRI conducted at Piedmont Imaging on September 13, 2012. Clmt. APA 4, p. 14. Presumably, Dr. Rodriguez reviewed the MRI film studies and added to his report indicating the MRI showed "L5-S1 recurrent herniation compression the L5 and S1 nerve roots on the left side". Id. "It is truly a recurrent herniation". Id. Dr. Rodriguez further opined that the claimant should be scheduled for surgery to include a lumbar fusion." Dr. Rodriguez also opined that the recurrent herniation was causally related to his work injury of 9/17/07 and that Mr. Cook had sustained a change of condition for the worse. Id. at 146.

The employer/carrier referred Mr. Cook for another medical opinion. This time he was sent to Charles Kanos, M.D. of SouthEastern Neurosurgical. According to the Kanos report of December 14, 2012 "new patient is seen at the neurosurgical consultation at the request of WC for evaluation of low back pain." Clmt. APA 5, p. 149. Kanos noted he had positive straight leg raise on the left. Kanos saw the claimant again on February 27, 2013 on a "WC follow up on low back pain". Id. at 152 Claimant was noted to have post-surgical changes on L5-S1 and noted that the most appropriate treatment plan would be a Lumbar CT myelogram with emphasis

on film myelography looking for fill defects which if there was a defect then a decompression surgery would help. Id. at pp. 152-153.

Claimant terminated his relationship with previous counsel and hired Ryan Montgomery on May 16, 2013 (See record as a whole and claimant's testimony). Current counsel amended the previously filed Form 50 Claim only and filed an application for change of condition by way of a Form 50 requesting a hearing on May 17, 2013 and subsequently filed another Form 50 on August 9, 2013 (See Commission file).

On June 25, 2013, Dr. Kanos opined that the claimant's need for the CT Myelogram was medically necessary and causally related to his workers' compensation injury and that the claimant had sustained a change of condition for the worse. Clmt APA 5, p. 155. Despite the opinion from their own doctor, Dr. Kanos, the carrier failed to provide this CT Myelogram and the claimant underwent that examination on his own the results of which are located at Clmt. APA 6 and incorporated herein by reference.

The claimant then returned to the workers' compensation carrier-selected physician, Dr. Kanos, but this time at his own expense. Clmt. APA, p. 155e. In that appointment, Dr. Kanos opined that the claimant was in need of a L5-S1 decompression and a left L4-5 foraminotomy Clmt APA, p. 155c-d. In addition, Dr. Kanos completed another questionnaire indicating that Mr. Cook had sustained a change of condition for the worse as he needs additional medical treatment. See Clmt APA, p. 155a.

In addition to these authorized physicians (Dr. Rodriguez and Dr. Kanos), the claimant also treated with Dr. Phillip LaTourette, the authorized treating physician for Mr. Cook's pain management. After reviewing the reports from Rodriguez and Kanos, Dr. LaTourette concurred that Mr. Cook had sustained a change of condition for the worse. Clmt. APA, p. 128a.

The defendants submitted a surveillance video received without objection wherein the claimant works under the hood of a vehicle for approximately 1 hour and moves a commercial car jack in the video. The video was taken approximately 9-10 months prior to the hearing. See Defendants' APA and the Hr. Tr. testimony of the claimant generally.

On cross examination, claimant testified that he was offered a light duty position by the employer before the hearing with Commissioner Wilkerson June 8, 2011 but to date he has not contacted the employer with respect to that light duty position. See Hr. Tr. generally.

V. FINDINGS OF FACT

1. In an admitted accident on September 17, 2007, Claimant injured his back (resulting in bilateral radiculopathy) and sustained admitted psychological overlay. He alleges that (a) he has sustained a change of condition for the worse; or alternatively, (b) Defendants should be required to provide the surgery recommended for Claimant as a *Dodge*/future medical.
2. Claimant is 33 years of age (medical evidence establishing Claimant's date of birth as 4/26/80).
3. Prior to the hearing with Commissioner Wilkerson, Claimant (a) underwent two lumbar surgeries for a "large" herniated disc; and (b) failed a spinal cord stimulator trial (Claimant's APA #1, pages 3, 7, 11, and 19).
4. Commissioner Wilkerson awarded Claimant permanency benefits to the spine (25%) on June 8, 2011. I base this finding on the Commission's file (See also Claimant's APA #7).
5. Defendants paid the permanency award on June 27, 2011.
6. Claimant's counsel (Mr. Gagne) timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse. Attached to the Form 50 was an opinion from Dr. Rana that Claimant has sustained a change of condition for the worse (Claimant's APA #8).
7. On May 17, 2013, Claimant's current counsel (Mr. Montgomery) filed a Form 50 requesting a hearing on the change of condition for the worse (Claimant's APA #9).
8. Pursuant to Section 42-17-90 and a sequential review of the treatment records dated after the hearing before Commissioner Wilkerson, I find that Claimant's lumbar spine condition has significantly worsened: after the permanency award was paid, Claimant's

back and leg pain increased, and a cane was prescribed for "antalgic gait and leg weakness." Claimant's medications were no longer relieving his pain, and were therefore changed/increased. Treatment records note that (a) morphine was having "very little effect," (b) Claimant's Waddell's signs were consistently "0/5," and, most importantly, (c) Claimant has "severe [post-surgical] scar tissue formation." Claimant has also undergone multiple injections since the date of the permanency award, and he requested another surgical consult/opinion in December 2011. As all these records are from authorized providers, Defendants had notice of Claimant's worsening condition as well as notice of his request for another surgical opinion (e.g., Claimant's APA #1, pages 5-6, 8, 10, 13, 21, 26, 33, 36, 38-39, 45, 48, 50, 53, 57, 59, 75, 80, 85, 97, 102, 108, 110, 114, and 116; *See also* Claimant's APA #3, page 143).

9. Three authorized physicians state that Claimant has sustained a change of condition for the worse, and that Claimant needs further surgery. There is no competing questionnaire or evidence to the contrary (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 128-128A; Claimant's APA #3, pages 136, 143, and 146; Claimant's APA #5, pages 155, 155A, and 155D).
10. The questionnaires referenced *supra* are clearly supported by the treatment records in evidence, and I therefore accord the questionnaires great weight (medical evidence in its entirety).
11. At the hearing, Claimant appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. I considered the fact that Dr. Kanos found some "exaggerated response" during his exam of Claimant, but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), I find that Claimant may be merely appealing for help. Moreover, Claimant has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, Claimant volunteered the fact that he went out to dinner and a movie with his son, and that he is "trying to do some walking and he is praised." If Claimant were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything (Claimant's APA #1, pages 122 and 126; observations of the undersigned; medical evidence in its entirety; Commission file containing pleadings and Orders).
12. Surgery was not a future medical ordered by Commissioner Wilkerson. Although there is no dispute that Claimant now needs surgery, I am unable to order surgery as a future medical under Commissioner Wilkerson's Order (*See* ORDER language, page 16 of Commissioner Wilkerson's Order, which limits future medicals to those listed on the Form 14B).
13. Claimant has not reached maximum medical improvement, a finding I base on the opinions of three authorized physicians (e.g., Claimant's APA #1, page 128A).
14. Claimant shall receive reimbursement for his \$25 filing fee, such that he is not charged or responsible for the cost of his Motion to Compel (Claimant's APA #10).
15. Claimant shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos:

Dr. Kanos (Defendants' IME) requested a CT Myelogram prior to rendering a surgical opinion. Once Dr. Kanos reviewed the results of the CT Myelogram, he agreed that Claimant needs surgery, although Dr. Kanos does not recommend fusion surgery (Claimant's APA #5, pages 155, 155A, and 156; Claimant's APA #6, pages 156-157).

16. Dr. Kanos is hereby named the treating surgeon. He is very familiar with Claimant's spinal condition, and his surgical approach in Claimant's case is more conservative than that recommended by other physicians in this case.
17. Permanency is premature.
18. I find that the opinion from Dr. Rana is not inadmissible. Dr. Rana's physical examination mentions the lumbar spine no fewer than 5 times, and he opines that Claimant sustained a change of condition to the spine. Whether or not Dr. Rana found Claimant to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission's involvement would be unnecessary. Dr. Rana does opine that Claimant has an "additional" problem of thoracic spine involvement; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to "punish" Claimant for any deficiencies with regard to Dr. Rana's record/opinion, when the authorized treatment records clearly support an opinion of a worsened condition (Claimant's APA #2).
19. I considered Defendants' video surveillance, but it does nothing to persuade the undersigned to deviate or retreat from this decision.
20. Claimant's average weekly wage is \$846.64, yielding a compensation rate of \$564.46. I base this finding on the Order of Commissioner Wilkerson.
21. Any issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse.
22. Based upon the medical records as a whole to include Dr. Kanos' medical notes, I find that the claimant is entitled to additional medical treatment through Dr. Kanos, including but not limited to the recommended surgery, as it is causally related to the underlying injury, medically necessary and will tend to lessen the period of disability;

VI. CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. and based upon the above findings of fact, the APA submissions from all parties, I make the following Conclusions of Law:

1. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, the claimant has sustained a change of condition for worse;
2. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, claimant's previous counsel timely filed an application for a change of condition;
3. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed his Form 50 on or about May 9, 2012;
4. Pursuant to §42-17-90, the evidence as a whole, the above findings of fact and the case of Young v. Tide Craft, Inc. Dr. Rana's opinion was based enough on fact to create an issue as to the merits to be adjudicated at this hearing and does not preclude the claimant from now pursuing a change of condition request;
5. Pursuant to the South Carolina case of Allen v. Benson Outdoor Advertising Co. 236 S.C. 22; 112 S.E2d 722 (1960) this case at bar is not precluded from being brought for a change of condition. The undersigned Commissioner notes the language within the Allen case which allows for "the filing of a claim for further compensation within the statutory period" is enough and that loss of jurisdiction by the commission would be an *absurd* result which legislature certainly did not have in mind. Id. at 30;
6. Pursuant to §42-15-60, the claimant is entitled to additional medical treatment with Dr. Charles Kanos as this treatment is medically necessary, casually related and will tend to lessen the period of disability;
7. Pursuant to §42-15-60, all medical treatment with Dr. Kanos was causally related, medically necessary and would tend to lessen the period of disability. Claimant is entitled to reimbursement of any and all expenses and co-pays associated with this treatment;

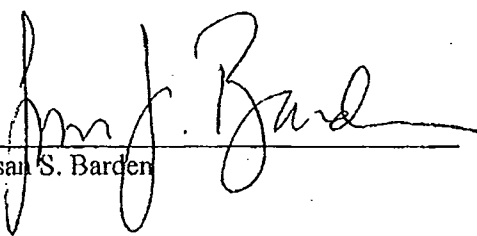
8. Pursuant to Title 42 of the South Carolina Code Annotated, et. seq., all issues not addressed herein are hereby held in abeyance, including but not limited to additional permanency.

VII. ORDER

IT IS, THEREFORE, ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein verbatim and this Order is based upon the above cited Findings of Fact and Conclusions of Law. It is further Ordered:

1. The defendants shall reimburse the claimant his \$25.00 fee associated with the Motion to Compel and previously ordered by Order of the Commission;
2. The defendants shall reimburse the claimant for any and all expenses associated with the medical treatment as directed by or provided by Dr. Charles Kanos;
3. The defendants shall provide ongoing medical care through Dr. Charles Kanos;
and
4. All other issues not addressed herein are hereby held in abeyance pending a final order of the Commission.

AND IT IS SO ORDERED.



Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
November 25, 2013

By: Kristi Love, Administrative Assistant to Commissioner Barden

Attachment H

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0726308

SHANNON COOK,	)	
	)	FULL COMMISSION HEARING
CLAIMANT,	)	PANEL B
vs.	)	
	)	COMMISSIONER McCASKILL
SPARTANBURG STEEL	)	COMMISSIONER WILKERSON
PRODUCTS,	)	COMMISSIONER ROCHE - CHAIR
	)	
AND	)	
	)	
SELF INSURED,	)	
	)	
DEFENDANT.	)	
	)	

 COPY

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
3:44 P.M., MONDAY, MARCH 17, 2014, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

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REPORTED BY

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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EXHIBITS

(No Exhibits Proffered)

CORA ELLIS BRUTON - COURT REPORTER
131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

1 THE COURT REPORTER: Today is March 17, 2014.
2 This is South Carolina Workers' Compensation Case
3 Number 0726308. This is the case of Shannon Cook,
4 Claimant, versus Spartanburg Steel Products, Employer
5 and they are self employed.

6 The Appellant is the Defendant, represented by
7 Attorney Brad B. Easterling. The Respondent is
8 represented by Attorney Ryan S. Montgomery.

9 Each side is allowed ten minutes for oral
10 argument and Appellant three minutes in reply. You
11 are requested to argue the grounds of exception and
12 stay within the record.

13 THE COURT: All right. Mr. Easterling.

14 BY MR. EASTERLING: May it please the Commission.
15 I'm here representing Spartanburg Steel. As brief
16 background; this case involves an admitted injury to
17 Mr. Cook's lumbar spine that occurred back in
18 September of 2007. As Commissioner Wilkerson already
19 stated he heard the underlying claim and issued an
20 Order in June of 2011 wherein he awarded the Claimant
21 25 percent disability to the spine. In addition to
22 that PPD award he gave the Claimant ongoing medical
23 per the Form 14-B that was completed by Dr. Latourette
24 and dated June 16th, 2010. On that Form 14-B the
25 medical that was awarded was pain medication, spinal

1 injections and physical therapy and potentially
2 psychological evaluation and treatment. From the date
3 of that Order -- of Commissioner Wilkerson's Order the
4 Defendant has -- did provide and has continued to
5 provide and still provides the medical as outlined on
6 the Form 14-B. The Defendants paid the 25 percent
7 disability award on June 27th, 2011. The Claimant,
8 while represented by different counsel, filed a Form
9 50, Notice of Claim Only on May 9th, 2012 alleging a
10 Change of Condition. To that May 9th, 2012 Notice of
11 Claim Only he attached an IME report of Dr. Tony Rana
12 which was dated February the 16th of 2012. In that
13 IME report from Dr. Rana which was in support of his
14 Change of Condition claim he had attached to the back
15 a check the box questionnaire which said Claimant had
16 sustained a Change of Condition. On May 17th, 2013
17 more than one year later and two years from the date
18 of the original award, Claimant retained new counsel,
19 Mr. Montgomery, and for the first time filed a request
20 for hearing. No mention was made in that May 2013
21 Form 50 that the Claimant was alleging a Change of
22 Condition. He had only asked, I believe, for more
23 medical, TTD and what have you. Mr. Montgomery filed
24 an Amended Form 50 in August 2013 which did state or
25 ask or allege for a Change of Condition. A hearing

1 was held before Commissioner Barden and by Order dated
2 November 25th, 2013 Commissioner Barden found the
3 Claimant did, in fact, sustain a Change of Condition
4 and she found the Claimant was not at MMI and was
5 entitled to additional medical treatment as directed
6 by Dr. Kanos. The Defendants timely filed a Form 30
7 and we're before this Honorable Commission denying
8 that the Claimant has sustained a Change of Condition.
9 Our Supreme Court has recognized that the purpose of
10 permitting an action for a Change of Condition is to
11 "increase compensation where the facts of the case
12 reveal that the Change in Condition is for the worse,
13 and to allow Defendants to diminish compensation where
14 the change is for the better." Here the facts of this
15 case do not support a Change of Condition for the
16 worse. As you, of course know, the Statute that we
17 rely on is 42-17-90 which provides the -- in essence,
18 the Statute of Limitations for filing a Change of
19 Condition claim or a time restriction, and it states
20 and I quote, "The review must not be made after 12
21 months from the date of the last payment of
22 compensation." The case of Allen v. Benson which was
23 handed up to Commissioner Barden, which I have a copy
24 here if it's not in the file, is the only case that we
25 have -- the only court of record case that we have

1 that addresses this issue of filing a Change of
2 Condition or requesting a hearing, as it were, within
3 the 12 months from the last payment of compensation.
4 That case, an older case obviously, was interpreted
5 though that the hearing for a Change of Condition
6 doesn't have to take place within 12 months because
7 obviously Claimants can't control the docket, they
8 can't control scheduling. But the application for
9 review has to be filed within 12 months from the date
10 of last compensation -- payment of last compensation.
11 Now Mr. Montgomery will likely argue 42-15-40 versus
12 42-17-90 and ask what's the difference, why can we
13 file a Form 50 Notice of Claim and toll 42-15-40 but
14 we can't do it in 42-17-90 cases. Well, if you look
15 at 42-15-40 it states clearly and uses the language,
16 "filing a claim", whereas in 42-17-90 makes no such
17 mention of filing a claim and clearly says that an
18 application for review must be filed. For that reason
19 a Notice of Claim Only, which was filed here in May of
20 2012, it does not toll the Statute of Limitation and
21 would only subject Employers to unreasonable amounts
22 of indefinite ongoing liability if we allowed this
23 practice to continue. You have to obviously ask
24 yourself why did the Legislature come up with 42-17-90
25 in the first place. I mean what was their theory,

1 what was their -- what were they thinking? Obviously
2 it was to limit the liability to Employers and not
3 have them subjected to ongoing medical indefinitely
4 into the future, not allowing Claimants to file a
5 Notice of Claim Only, toll -- effectively toll the
6 Statute of Limitations and then, you know, develop a
7 claim however many years, months later when a Change
8 of Condition may or may not occur. And our point
9 again, is that it would subject Employers to
10 unreasonable liability. Now, in regards to the IME
11 report that was attached to the Claimant's original
12 Notice of Claim Only from Dr. Tony Rana, we will
13 obviously argue that the claim is barred procedurally
14 per the arguments that I just made, but more -- or in
15 addition is the fact that Dr. Rana's report -- his IME
16 report that was issued in support of Change of
17 Condition is nebulous or has -- and it's not based on
18 any fact. In the underlying claim that Commissioner
19 Wilkerson heard, previous counsel sent his client to
20 Dr. Rana originally and that IME report was dated July
21 of 2010. In support of his Change of Condition claim
22 previous counsel sent the Claimant back to Dr. Rana
23 who issued another report dated February 16th, 2012
24 and again, as I mentioned before, this is the report
25 that had him check the box, "has the Claimant

1 sustained a Change of Condition?" and that check the
2 box was, of course, checked "yes". But if you look at
3 the two reports, the one from the underlying claim and
4 then the one supporting the Change of Condition,
5 they're almost identical reports save for the check
6 the box. In the -- in the IME -- in the subsequent
7 report that's submitted to support the Change of
8 Condition Dr. Rana opines that the Claimant is still
9 at MMI, remains at MMI and has the exact same
10 impairment rating that he had in the underlying claim.
11 All he did was attach a statement that said -- or
12 check the box that said the Claimant has sustained a
13 Change of Condition for the worse. Our South Carolina
14 Courts have said in the case of Young v. Tidecraft,
15 which was also handed up at the original -- at the
16 Change of Condition hearing, it says, "It is well
17 established in our law that opinions of an expert must
18 be based upon facts sufficient to form a basis for an
19 opinion. Expert evidence is inadmissible if its
20 factual foundation is nebulous." If you look at these
21 two reports they're exactly the same and I can't
22 understand how a Claimant can change -- can claim a
23 Change of Condition claim for the worse when he has an
24 IME report in support of that contention that says
25 he's still at MMI. And also says that he has the same

1 impairment rating as he had before. That is also --
2 Commissioner Barden highlighted that fact in her Order
3 and she also had problem with the report of Dr. Rana
4 at Finding of Fact 18 she's quote -- and the Order
5 quotes, "I'm unwilling to punish the Claimant for any
6 deficiencies in Dr. Rana's report." So -- I mean in
7 the Order itself Commissioner Barden acknowledges the
8 weakness or the nebulousness, for lack of a better
9 word, in Dr. Rana's report. And my client cannot be
10 punished for a Claimant's poor choice in IME
11 physicians. Dr. Rana's report is based in no way on
12 any fact and again, is essentially the same report as
13 he -- as he had in the underlying claim. I would also
14 point out that this is, in effect, not a Change of
15 Condition. That the Claimant has not sustained a
16 Change of Condition and is -- and this is merely a
17 continuation of his problems that he's had. And
18 again, the Defendants are not making light of the
19 condition -- I mean of the Claimant's injury; he
20 sustained a significant injury. He was diagnosed with
21 post laminectomy syndrome which is a diagnosis that
22 Dr. Latourette gave him very early on; obviously much
23 before a Change of Condition claim was filed. And in
24 his deposition -- his deposition was actually -- Dr.
25 Latourette who is the treating physician, who

1 continues to treat the Claimant now, in his deposition
2 that was taken once in July of 2012 and his deposition
3 again was taken in August of 2013. Once it was taken
4 while Mr. Montgomery -- I'm sorry, while Mr. Gagne
5 represented the Claimant and again subsequently when
6 Mr. Montgomery got involved. And after he -- after
7 his deposition was taken the first time after the
8 Notice of Claim for Change of Condition was filed Dr.
9 Latourette --

10 THE COURT: Finish your thought.

11 MR. EASTERLING: I'm sorry?

12 THE COURT: Finish your thought. You're out of
13 time but you can finish your thought.

14 MR. EASTERLING: Oh, okay. I can't hear that,
15 I'm sorry. He testified in that deposit that the
16 Claimant had not sustained a Change of Condition and
17 that testimony came in after the Notice of Claim was
18 filed. In his August 2013 deposition --

19 THE COURT: Okay. Thank you.

20 MR. EASTERLING: -- he said the same thing.

21 THE COURT: Mr. Montgomery.

22 BY MR. MONTGOMERY: Thank you. May it please the
23 Commission. Ryan Montgomery on behalf of Mr. Shannon
24 Cook, the Claimant. I'm going to take Mr.
25 Easterling's arguments and go in reverse if that's

1 okay with you, because I think the greater weight is
2 probably with his first argument, so I want to address
3 the other one upfront. The Form 50 with the medical
4 report, I think this Appellate Commission will
5 recognize and has held in the past that while the
6 Regulation requires a medical record be attached, that
7 actually strengthens the law, makes it harder on the
8 Claimant and that's been taken up at the Circuit Court
9 before in the case of Backman v. CVS, which basically
10 says while the medical documentation is requested it's
11 not -- can't be required because it makes the Statute
12 stricter in its essence. Now that all being said I
13 think the main thrust of this is whether the Claim 50
14 -- the Form 50 claim only is enough to toll the
15 Statute or whether it's not. That's how I see it in
16 my simple thought process. I think the Legislature's
17 intent is to put all parties on notice of whether a
18 party intends to pursue a Change of Condition for the
19 worse. The timeline is important in this case,
20 because as Mr. Easterling states the facts, he is
21 correct, it -- the claim was filed prior to the date
22 of the Statute of Limitations run; the Claim Only with
23 the required medical record attached. Following that,
24 though, the Defendants sent the Claimant back to Dr.
25 Latourette, the authorized treating physician, who

1 sent him to Dr. Marco Rodriguez, an orthopedic. And
2 not only did he go there one time, he went there three
3 times, all paid for by the Defendants. Dr. Rodriguez
4 requested an MRI be prescribed and approved; it was.
5 It was then determined by Dr. Rodriguez that the
6 Claimant needed a lumbar fusion. Now that was in
7 December -- I'm sorry, on October 1st of 2012, long
8 after the Change of Condition Statute would have run,
9 but for the fact that the application was filed. The
10 Defendants didn't stop there. They then sent him to
11 Dr. Kanos for a second opinion to determine whether
12 the lumbar fusion was medically necessary -- was
13 medical and necessary. And he saw Dr. Kanos on
14 December 4th, 2012. Dr. Kanos said, you know what, I
15 need the benefit of an MRI and he waited for the
16 report or the disc to come over from Dr. Rodriguez.
17 He goes back to see the Claimant in February 27th of
18 2013, now with the benefit of the MRI. Okay? So here
19 we are, filed this Form 50 in May 9th of 2012 and here
20 we are February 27th, of 2013. Had he filed for a
21 hearing then the hearing would have long occurred and
22 they're still sending him to a doctor to determine and
23 fully develop whether he's had a Change of Condition;
24 the Defendants are, not the Claimant. Okay? Kanos
25 then recommends a CT Myelogram to tell definitively

1 whether he needs a surgery. At that point and only at
2 that point was the medical treatment then denied and a
3 Form 50 Request for Hearing on Change of Condition
4 submitted. Now, to that point Mr. Easterling is
5 correct in that he cites the Allen case, but what he
6 doesn't draw your attention to is what the Allen case
7 says in the anecdotes. They cite a West Virginia case
8 and quote, "The filing of a claim for further
9 compensation within the statutory period and partial
10 but not complete development thereof within such
11 period with loss of jurisdiction", which is what he's
12 asking for, "by the Commissioner during the progress
13 of the case would be an absurd result." Okay? So
14 normally I could stand up here and say I just want you
15 to affirm the findings. I want you to affirm the
16 finding. In fact, I want an additional finding in
17 this case; I want a proactive step by the Commission
18 that the Defendants are estopped from arguing this,
19 because when he put them on notice of a potential
20 Change of Condition they sent him to three doctors to
21 determine that. And for him to now say there's no
22 Change of Condition when Dr. Marco Rodriguez has said
23 he needs a fusion and Dr. Kanos has said he has a
24 laminectomy and Dr. Latourette, the treating
25 physician, agrees with both and all three of the

1 Defendants' selected physicians have said he had a
2 Change of Condition for the worse, would be that, it
3 would be an absurd result. Now, to that point, two
4 out of the three Commissioners on this Panel have sat
5 on the case of Xena Fletcher versus Dick's Sporting
6 Goods where a Form 50 Request for Hearing was filed.
7 It went before the single Commissioner and that Form
8 50 Request for a Hearing was withdrawn thereby leaving
9 only the Claim Only pending. That came before you,
10 Commissioner Wilkerson, and Commissioner Roche, at
11 which point you said that was enough. The claim was
12 still pending and the Statute was tolled. So there
13 has to be consistency in the sense that there's only
14 one form to file to toll that application, and it's
15 the Form 50. There's no special application for
16 review and as we sit here in armchair quarterback of
17 1965 -- or sorry, 1960 case, the Commission's
18 Regulations and the Commission's Forms are very -- are
19 just that, a Form 50; it's the only application we
20 have. That being said, in liberally construing the
21 Workers' Comp Act, the tie, if there is a tie, goes to
22 the Claimant in this case; and that's what
23 Commissioner Barden meant. "I'm not going to punish
24 the Claimant", I'm going to liberally construe the Act
25 and a tie goes to the Claimant. Nevertheless, the

1 thrust of the argument is that the Defendants are
2 estopped from arguing this because of their proactive
3 actions. They sent him to all of those physicians,
4 not me. And all of those physicians say he has a
5 Change of Condition for the worse. To this day he
6 sits at home waiting on the surgery as Ordered by
7 Commissioner Barden.

8 Thank you.

9 THE COURT: Okay. Mr. Easterling.

10 BY MR. EASTERLING: Briefly. It should be
11 pointed out that prior counsel, Tom Gagne, never
12 called or never requested that Defendant send the
13 Claimant back to the doctor during that one year
14 period of time after the original award was made. The
15 Notice of Claim was the first time that we heard from
16 the Claimant about whether -- about wanting another
17 opinion about whether Change of Condition had gone --
18 had taken place. During that entire time we had
19 continued to send the Claimant to Dr. Latourette as
20 you -- as Commissioner Wilkerson's Order required,
21 continued to pay for the injections and his -- his
22 psychological evaluation. Gagne then deposed
23 Latourette after he filed his Notice of Claim alleging
24 a Change of Condition. And Dr. Latourette testified,
25 "He has not sustained a Change of Condition." That

1 was the treating physician's testimony. And then he
2 says it again in August of 2013 when Mr. Montgomery
3 represented the Claimant. "I can't say that the
4 Claimant has sustained a Change of Condition." The
5 three questionnaires that were submitted at the
6 hearing that say, yes he has, in fact, sustained a
7 Change of Condition for the worse, didn't come until
8 two years after the original award was made. And it
9 -- it always -- I always get amused when a Claimant
10 stands up here and says, well, the Defendant should be
11 punished because they were -- they were -- they
12 provided the treatment to the Claimant, they were
13 trying to do the right thing. The point is, is that
14 Latourette, after his deposition said, well, to be
15 sure let me send him to Rodriguez and we'll find out.
16 Well Rodriguez says he needs a fusion. And at that
17 point Defendants said, well, we deny Change of
18 Condition.

19 THE COURT: All right. Thank you. That
20 concludes the hearing.

21 (The hearing concluded at 4:02 p.m.)
22
23
24
25

Attachment I

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: **0726308**

Shannon Cook	)	
	)	
Claimant/Respondent	)	
	)	
v.	)	<u>APPELLATE PANEL DECISION AND ORDER</u>
	)	
Spartanburg Steel Products, Inc.	)	
	)	
Defendant/Appellant	)	

A hearing before the Single Commissioner, Susan S. Barden, was heard September 27, 2013. The Claimant/Respondent, Shannon Cook, was represented by attorney Ryan Montgomery of Ryan Montgomery Attorney at Law, LLC. The Defendant/Appellant, Spartanburg Steel Products, Inc. was represented by Brad B. Easterling of McAngus, Goudelock and Courie. The matter was set on the claimant's Form 50 request for a Change of Condition. At that hearing, the Single Commissioner found that the claimant had sustained a change of condition for the worse as identified in the Single Commissioner Findings of Fact herein and below. Defendants' timely filed a Form 30 request for Appeal. This matter came before the Appellate Panel of the Full Commission on March 17, 2014 to address the issues raised in the Form 30.

I. STATEMENT OF CASE

A. Employee's Position

It was the position of the employee that he had sustained a change of condition for the worse to include a need for surgery. Procedurally, this matter was originally handled by attorney Tom Gagne of Greenville, South Carolina. The underlying matter went to hearing on June 8, 2011 at which time permanency and the need for future medical was addressed. Commissioner Wilkerson awarded Claimant 25% permanent partial disability to the spine, which was paid on

June 27, 2011 On May 9, 2012 less than one year later, counsel for the claimant, Tom Gagne, filed a Form 50 (claim only) alleging a change of condition for the worse and attached a medical report from Dr. Tony Rana indicating the claimant had sustained a change of condition for the worse. Between that filing and May 17, 2013, the claimant terminated his legal representation with Tom Gagne and retained, attorney Ryan Montgomery of Greenville, South Carolina. On May 17, 2013 Mr. Montgomery filed a supplemental Form 50 requested a hearing to address the change of condition for the worse previously filed by Tom Gagne.

From a medical perspective and once the claimant alleged a change of condition for the worse as of May 9, 2012, the defendants referred the claimant to Dr. Marco Rodriguez who opined that the claimant needed a lumbar fusion. The defendants then referred the claimant to Dr. Charles Kanos who opined that the claimant was in need of a CT Myelogram to definitely determine whether or not the Claimant was in need of surgery. Dr. Kanos recommended against the lumbar fusion as recommended by Dr. Rodriguez. At this point the medical treatment from defendants was discontinued except for the medical treatment with Dr. Phillip LaTourette, the claimant's authorized pain management physician. Claimant on his own obtained the CT Myelogram and a return visit to Dr. Charles Kanos. At that appointment it was the medical opinion that Dr. Kanos that the claimant needed surgery and that his condition had worsened. The claimant took the position on the date of the hearing, Drs. Latourette, Kanos, Rodriguez and Rana had all opined that the claimant has sustained a change of condition for the worse.

Realizing that the defendants would argue that the case was a legal issue based upon the Form 50 Claim only and the case of the Allen v. Benson Outdoor Advertising, 236 S.C. 22 (1960), claimant responded to the case of Allen v. Benson but arguing the distinction in that case and the case at bar. In the Allen case, the issue was whether the case must be heard within the twelve month period. Allen timely filed an application but it was not heard within one year.

That case did not address anything associated with filing the application for a claim only in order to toll the statutory one year requirement as required in §42-17-90. The Allen Court goes on to cite and incorporate additional jurisdictional opinions noting that "the filing of a claim for further compensation within the statutory period and partial but not complete development thereof with such period, with loss of jurisdiction by the Commissioner would be an absurd result which the legislature certainly did not have in mind...a claim if filed within the statutory period applicable to the nature of the claim filed". The Allen court held and only held that the application for review was made within one year and so they had jurisdiction to hear the claim. It did not go beyond that and extrapolating sentences out of context does not change that.

In addition, when claimant filed the Form 50 hearing request, the medical report of Dr. Tony Rana had already been filed in support of the change of condition.

During the argument on appeal in front of the Full Commission Appellate panel, claimant by and through his attorney specifically requested a finding that the defendants were estopped from arguing a statute of limitations issue as their actions of providing medical caused the claimant to detrimentally rely upon those actions and reasonable inferred that the Defendants were going to provide medical treatment for the change of condition. See Full Commission Tr., pp. 13-14.

B. Employer's Position

The employer argues claimant has not sustained a change of condition for the worse. However, the defendants' primary position(s) are that the Commission need not reach that decision as it lacks jurisdiction to hear the case based upon the following three arguments:

First, the defendants argue claimant's claim is barred by S.C. Code 42-17-90. The last sentence under 42-17-90 reads: "...the review [on a claim for change of condition] must not be

made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title." (emphasis added). Defendants submitted the case of Allen v. Benson Outdoor Advertising, 236 S.C. 22 (1960), which defendants contend requires that a Request for Hearing be filed within one year from the date of the last payment of compensation. Defendants argue this requires the filing of a Form 50, Request for Hearing, and not simply a Form 50 – Notice of Claim Only. On May 9, 2012, claimant's prior counsel, Tom Gagne, only filed a Form 50 – Notice of Claim alleging a change of condition but did not request a hearing. Based on Allen, defendants contend the claimant is barred from proceeding under a change of condition argument and the undersigned Commissioner does not have jurisdiction over the claim.

Second, the defendants argued that, even if the Form 50 - Notice of Claim only did toll the statute of limitations, the claimant still cannot proceed with his change of condition request as the claimant's prior counsel relied upon (submitted with the May 9, 2012 Form 50 – Notice of Claim only) a medical report from Dr. Tony Rana, which defendants contend is nebulous in nature and gives no factual basis upon which the opinion is based. For this argument, defendants rely on the case of Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978), which holds that expert opinion is inadmissible if its factual foundation is nebulous. In his February 16, 2012 report, which claimant relies upon to support his claim for change of condition, relative to claimant's lumbar spine, Dr. Rana assigned the exact same medical impairment rating as his did in his earlier July 14, 2010 report. In his February 16, 2012 report, Dr. Rana, as he also did in his July 14, 2010 report, opines claimant remains at MMI for the injuries received as result of his September 17, 2007 work accident. Defendants submit that, inherently, there can be no change of condition if claimant's MMI status is unchanged subsequent to the last payment of compensation. The only difference noted in Dr. Rana's two IME reports is found in his February 16, 2012 report where he references claimant's thoracic disc herniation at the T8/T9 level.

However, nowhere in his February 16, 2012 report does Dr. Rana causally relate claimant's thoracic condition to his September 17, 2007 work injury.

Finally, defendants argue that claimant's claim should be barred by South Carolina Workers' Compensation Regulation 67-602 C., which requires the moving party to attach to the hearing request form a medical report(s) indicating a change in claimant's condition. In this claim, there was no medical report attached to the May 17, 2013 Form 50 nor to the August 9, 2013 Form 50, the only two Forms 50 requesting a hearing.

II. EVIDENCE OF CASE

The claimant by way of previous counsel submitted a Form 50 Change of Condition Application (Claim Only) on and in number 11a of the application states "Claimant comes for a change of condition". See APA 8, pp. 176-177. Pursuant to §42-17-90, the previous counsel included a medical report from Tony Rana, M.D. dated February 16, 2012. See APA 8, pp. 178-180. Dr. Rana notes that the claimant "returns for evaluation of a worsening of condition". Id. at 178. Dr. Rana went on to provide a basis for his opinion in that he identifies "treatment since his prior evaluation has included psychological counseling by Dr. Tollison and transforaminal epidural steroid injections by Dr. LaTourette" Id.

Following the application for a change of condition, Dr. Latourette referred Mr. Cook on August 15, 2012 for an evaluation with Dr. Marco Rodriguez at Orthopaedic Specialties which was authorized by the defendants. See Clmt. APA 3. Dr. Rodriguez opined that the claimant "shows a positive straight leg raise on the left side". Id. at 136. Dr. Rodriguez recommended and prescribed a MRI conducted at Piedmont Imaging on September 13, 2012. Clmt. APA 4, p. 14. Presumably, Dr. Rodriguez reviewed the MRI film studies and added to his report indicating the MRI showed "L5-S1 recurrent herniation compression the L5 and S1 nerve roots on the left

side". Id. "It is truly a recurrent herniation". Id. Dr. Rodriguez, further opined that the claimant should be scheduled for surgery to include a lumbar fusion". Rodriguez also opined that the recurrent herniation was causally related to his work injury of 9/17/07 and that Mr. Cook had sustained a change of condition for the worse. Id. at 146.

The employer/carrier referred Mr. Cook for another medical opinion. This time he was sent to Charles Kanos, M.D. of SouthEastern Neurosurgical. According to the Kanos report of December 14, 2012 "new patient is seen at the neurosurgical consultation at the request of WC for evaluation of low back pain". Clmt. APA 5, p. 149. Kanos noted he had positive straight leg raise on the left. Kanos saw the claimant again on February 27, 2013 on a "WC follow up on low back pain". Id. at 152 Claimant was noted to have post-surgical changes on L5-S1 and noted that the most appropriate treatment plan would be a Lumbar CT myelogram with emphasis on film myelography looking for fill defects which if there was a defect then a decompression surgery would help. Id. at pp. 152-153.

Claimant terminated his relationship with previous counsel and hired Ryan Montgomery on May 16, 2013. See record as a whole and claimant's testimony. Current counsel amended the previously filed Form 50 Claim only and filed an application for change of condition by way of a Form 50 requesting a hearing on May 17, 2013 and subsequently filed another Form 50 on August 9, 2013. See Commission file.

On June 25, 2013, Dr. Kanos opined that the claimant's need for the CT Myelogram was medically necessary and causally related to his workers' compensation injury and that the claimant had sustained a change of condition for the worse. Clmt. APA 5, p. 155. Despite the opinion from their own doctor, Dr. Kanos, the carrier failed to provide this CT Myelogram and the claimant underwent that examination on his own the results of which are located at Clmt. APA 6 and incorporated herein by reference.

The claimant then returned to the workers' compensation carrier selected physician, Dr. Kanos, but this time at his own expense. Clmt. APA, p. 155e. In that appointment, Dr. Kanos opined that the claimant was in need of a L5-S1 decompression and a left L4-5 foraminotomy Clmt APA, p. 155c-d. In addition, Dr. Kanos completed another questionnaire indicating that Mr. Cook had sustained a change of condition for the worse as he needs additional medical treatment. See Clmt. APA, p. 155a.

In addition to these authorized physicians (Dr. Rodriguez and Dr. Kanos), the claimant also treated with Dr. Phillip LaTourette, the authorized treating physician for Mr. Cook's pain management. After reviewing the reports from Rodriguez and Kanos, Dr. LaTourette concurred that Mr. Cook had sustained a change of condition for the worse. Clmt. APA, p. 128a.

The defendants submitted a surveillance video received without objection wherein the claimant works under the hood of a vehicle for approximately 1 hour and moves a commercial car jack in the video. The video was taken approximately 9-10 months prior to the hearing. See Defendants' APA and the Hr. Tr. testimony of the claimant generally.

On cross examination, claimant testified that he was offered a light duty position by the employer before the hearing with Commissioner Wilkerson June 8, 2011 but to date he has not contacted the employer with respect to that light duty position. See. Hr. Tr. generally.

III. SINGLE COMMISSIONER FINDINGS OF FACT

Based upon a review of the above evidence as well as the entire record, the Single Commissioner made the following Findings of Fact:

1. In an admitted accident on September 17, 2007, Claimant injured his back (resulting in bilateral radiculopathy) and sustained admitted psychological overlay. He alleges that (a) he has sustained a change of condition for the worse; or alternatively, (b) Defendants should be required to provide the surgery recommended for Claimant as a *Dodge*/future medical.

2. Claimant is 33 years of age (medical evidence establishing Claimant's date of birth as 4/26/80).
3. Prior to the hearing with Commissioner Wilkerson, Claimant (a) underwent two lumbar surgeries for a "large" herniated disc; and (b) failed a spinal cord stimulator trial (Claimant's APA #1, pages 3, 7, 11, and 19).
4. Commissioner Wilkerson awarded Claimant permanency benefits to the spine (25%) on June 8, 2011. I base this finding on the Commission's file (See also Claimant's APA #7).
5. Defendants paid the permanency award on June 27, 2011.
6. Claimant's counsel (Mr. Gagne) timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse. Attached to the Form 50 was an opinion from Dr. Rana that Claimant has sustained a change of condition for the worse (Claimant's APA #8).
7. On May 17, 2013, Claimant's current counsel (Mr. Montgomery) filed a Form 50 requesting a hearing on the change of condition for the worse (Claimant's APA #9).
8. Pursuant to Section 42-17-90 and a sequential review of the treatment records dated after the hearing before Commissioner Wilkerson, I find that Claimant's lumbar spine condition has significantly worsened: after the permanency award was paid, Claimant's back and leg pain increased, and a cane was prescribed for "antalgic gait and leg weakness." Claimant's medications were no longer relieving his pain, and were therefore changed/increased. Treatment records note that (a) morphine was having "very little effect;" (b) Claimant's Waddell's signs were consistently "0/5;" and, most importantly, (c) Claimant has "*severe [post-surgical] scar tissue formation.*" Claimant has also undergone multiple injections since the date of the permanency award, and he requested another surgical consult/opinion in December 2011. As all these records are from authorized providers, Defendants had notice of Claimant's worsening condition as well as notice of his request for another surgical opinion (e.g., Claimant's APA #1, pages 5-6, 8, 10, 13, 21, 26, 33, 36, 38-39, 45, 48, 50, 53, 57, 59, 75, 80, 85, 97, 102, 108, 110, 114, and 116; See also Claimant's APA #3, page 143).
9. Three **authorized physicians** state that Claimant has sustained a change of condition for the worse, and that Claimant needs further surgery. There is no competing questionnaire or evidence to the contrary (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 128-128A; Claimant's APA #3, pages 136, 143, and 146; Claimant's APA #5, pages 155, 155A, and 155D).
10. The questionnaires referenced *supra* are clearly supported by the treatment records in evidence, and I therefore accord the questionnaires great weight (medical evidence in its entirety).
11. At the hearing, Claimant appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. I considered the fact that Dr. Kanos found some

"exaggerated response" during his exam of Claimant, but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), I find that Claimant may be merely appealing for help. Moreover, Claimant has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, Claimant volunteered the fact that he went out to dinner and a movie with his son, and that he is "trying to do some walking and he is praised." If Claimant were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything (Claimant's APA #1, pages 122 and 126; observations of the undersigned; medical evidence in its entirety; Commission file containing pleadings and Orders).

12. Surgery was not a future medical ordered by Commissioner Wilkerson. Although there is no dispute that Claimant now needs surgery, I am unable to order surgery as a future medical under Commissioner Wilkerson's Order. (See ORDER language, page 16 of Commissioner Wilkerson's Order, which limits future medicals to those listed on the Form 14B).
13. Claimant has not reached maximum medical improvement, a finding I base on the opinions of three authorized physicians (e.g., Claimant's APA #1, page 128A).
14. Claimant shall receive reimbursement for his \$25 filing fee, such that he is not charged or responsible for the cost of his Motion to Compel (Claimant's APA #10).
15. Claimant shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos: Dr. Kanos (Defendants' IME) requested a CT Myelogram prior to rendering a surgical opinion. Once Dr. Kanos reviewed the results of the CT Myelogram, he agreed that Claimant needs surgery, although Dr. Kanos does not recommend fusion surgery (Claimant's APA #5, pages 155, 155A, and 156; Claimant's APA #6, pages 156-157).
16. Dr. Kanos is hereby named the treating surgeon. He is very familiar with Claimant's spinal condition, and his surgical approach in Claimant's case is more conservative than that recommended by other physicians in this case.
17. Permanency is premature.
18. I find that the opinion from Dr. Rana is not inadmissible. Dr. Rana's physical examination mentions the lumbar spine no fewer than 5 times, and he opines that Claimant sustained a change of condition to the spine. Whether or not Dr. Rana found Claimant to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission's involvement would be unnecessary. Dr. Rana does opine that Claimant has an "additional" problem of thoracic spine involvement; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to "punish" Claimant for any deficiencies with regard to Dr. Rana's record/opinion, when the authorized treatment records clearly support an opinion of a worsened condition (Claimant's APA #2).

19. I considered Defendants' video surveillance, but it does nothing to persuade the undersigned to deviate or retreat from this decision.
20. Claimant's average weekly wage is \$846.64, yielding a compensation rate of \$564.46. I base this finding on the Order of Commissioner Wilkerson.
21. Any issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse;
22. Based upon the medical records as a whole to include Dr. Kanos' medical notes, I find that the claimant is entitled to additional medical treatment through Dr. Kanos, including but not limited to the recommended surgery, as it is causally related to the underlying injury, medically necessary and will tend to lessen the period of disability.

IV. SINGLE COMMISSIONER CONCLUSIONS OF LAW

Based upon a review of the above evidence and Findings of Fact as well as the entire record, the Single Commissioner made the following Conclusions of Law:

1. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, the claimant has sustained a change of condition for worse;
2. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, claimant's previous counsel timely filed an application for a change of condition;
3. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed his Form 50 on or about May 9, 2012;
4. Pursuant to §42-17-90, the evidence as a whole, the above findings of fact and the case of Young v. Tide Craft, Inc. Dr. Rana's opinion was based enough on fact to create an issue as to the merits to be adjudicated at this hearing and does not preclude the claimant from now pursuing a change of condition request;
5. Pursuant to the South Carolina case of Allen v. Benson Outdoor Advertising Co. 236 S.C. 22; 112 S.E2d 722 (1960) this case at bar is not precluded from being brought for a

change of condition. The undersigned Commissioner notes the language within the Allen case which allows for "the filing of a claim for further compensation within the statutory period" is enough and that loss of jurisdiction by the commission would be an *absurd* result which legislature certainly did not have in mind. Id. at 30;

6. Pursuant to §42-15-60, the claimant is entitled to additional medical treatment with Dr. Charles Kanos as this treatment is medically necessary, casually related and will tend to lessen the period of disability;
7. Pursuant to §42-15-60, all medical treatment with Dr. Kanos was causally related, medically necessary and would tend to lessen the period of disability. Claimant is entitled to reimbursement of any and all expenses and co-pays associated with this treatment;
8. Pursuant to Title 42 of the South Carolina Code Annotated, et. seq., all issues not addressed herein are hereby held in abeyance, including but not limited to additional permanency.

V. SINGLE COMMISSIONER ORDER

IT IS, THEREFORE, ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein verbatim and this Order is based upon the above cited Findings of Fact and Conclusions of Law. It is further Ordered:

1. The defendants shall reimburse the claimant his \$25.00 fee associated with the Motion to Compel and previously ordered by Order of the Commission;
2. The defendants shall reimburse the claimant for any and all expenses associated with the medical treatment as directed by or provided by Dr. Charles Kanos;
3. The defendants shall provide ongoing medical care through Dr. Charles Kanos; and
4. All other issues not addressed herein are hereby held in abeyance pending a final order of the Commission;

VI. FULL COMMISSION FINDINGS OF FACT

After considering all of the evidence contained in the record, by unanimous Affirmation, we affirm the Single Commission Order in its entirety and therefore make the following Findings of Fact:

1. In an admitted accident on September 17, 2007, Claimant injured his back (resulting in bilateral radiculopathy) and sustained admitted psychological overlay. He alleges that (a) he has sustained a change of condition for the worse; or alternatively, (b) Defendants should be required to provide the surgery recommended for Claimant as a *Dodge*/future medical.
2. Claimant is 33 years of age (medical evidence establishing Claimant's date of birth as 4/26/80).
3. Prior to the hearing with Commissioner Wilkerson, Claimant (a) underwent two lumbar surgeries for a "large" herniated disc; and (b) failed a spinal cord stimulator trial (Claimant's APA #1, pages 3, 7, 11, and 19).
4. Commissioner Wilkerson awarded Claimant permanency benefits to the spine (25%) on June 8, 2011. We base this finding on the Commission's file (See also Claimant's APA #7).
5. Defendants paid the permanency award on June 27, 2011.
6. Claimant's counsel (Mr. Gagne) timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse. Attached to the Form 50 was an opinion from Dr. Rana that Claimant has sustained a change of condition for the worse (Claimant's APA #8).
7. On May 17, 2013, Claimant's current counsel (Mr. Montgomery) filed a Form 50 requesting a hearing on the change of condition for the worse (Claimant's APA #9).
8. Pursuant to Section 42-17-90 and a sequential review of the treatment records dated after the hearing before Commissioner Wilkerson, we find that Claimant's lumbar spine condition has significantly worsened: after the permanency award was paid, Claimant's back and leg pain increased, and a cane was prescribed for "antalgic gait and leg weakness." Claimant's medications were no longer relieving his pain, and were therefore changed/increased. Treatment records note that (a) morphine was having "very little effect," (b) Claimant's Waddell's signs were consistently "0/5," and, most importantly, (c) Claimant has "*severe [post-surgical] scar tissue formation.*" Claimant has also

undergone multiple injections since the date of the permanency award, and he requested another surgical consult/opinion in December 2011. As all these records are from authorized providers, Defendants had notice of Claimant's worsening condition as well as notice of his request for another surgical opinion (e.g., Claimant's APA #1, pages 5-6, 8, 10, 13, 21, 26, 33, 36, 38-39, 45, 48, 50, 53, 57, 59, 75, 80, 85, 97, 102, 108, 110, 114, and 116; *See also* Claimant's APA #3, page 143).

9. Three **authorized physicians** state that Claimant has sustained a change of condition for the worse, and that Claimant needs further surgery. There is no competing questionnaire or evidence to the contrary (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 128-128A; Claimant's APA #3, pages 136, 143, and 146; Claimant's APA #5, pages 155, 155A, and 155D).
10. The questionnaires referenced *supra* are clearly supported by the treatment records in evidence, and I therefore accord the questionnaires great weight (medical evidence in its entirety).
11. At the hearing, Claimant appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. We considered the fact that Dr. Kanos found some "exaggerated response" during his exam of Claimant, but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), we find that Claimant may be merely appealing for help. Moreover, Claimant has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, Claimant volunteered the fact that he went out to dinner and a movie with his son, and that he is "trying to do some walking and he is praised." If Claimant were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything (Claimant's APA #1, pages 122 and 126; observations of the undersigned; medical evidence in its entirety; Commission file containing pleadings and Orders).
12. Surgery was not a future medical ordered by Commissioner Wilkerson. Although there is no dispute that Claimant now needs surgery, we are unable to order surgery as a future medical under Commissioner Wilkerson's Order. (*See* ORDER language, page 16 of Commissioner Wilkerson's Order, which limits future medicals to those listed on the Form 14B).
13. Claimant has not reached maximum medical improvement, a finding we base on the opinions of three authorized physicians (e.g., Claimant's APA #1, page 128A).
14. Claimant shall receive reimbursement for his \$25 filing fee, such that he is not charged or responsible for the cost of his Motion to Compel (Claimant's APA #10).
15. Claimant shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos: Dr. Kanos (Defendants' IME) requested a CT Myelogram prior to rendering a surgical opinion. Once Dr. Kanos reviewed the results of the CT Myelogram, he agreed that Claimant needs surgery, although Dr. Kanos does not recommend fusion surgery.

(Claimant's APA #5, pages 155, 155A, and 156; Claimant's APA #6, pages 156-157).

16. Dr. Kanos is hereby named the treating surgeon. He is very familiar with Claimant's spinal condition, and his surgical approach in Claimant's case is more conservative than that recommended by other physicians in this case.
17. Permanency is premature.
18. We find that the opinion from Dr. Rana is not inadmissible. Dr. Rana's physical examination mentions the lumbar spine no fewer than 5 times, and he opines that Claimant sustained a change of condition to the spine. Whether or not Dr. Rana found Claimant to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission's involvement would be unnecessary. Dr. Rana does opine that Claimant has an "additional" problem of thoracic spine involvement; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to "punish" Claimant for any deficiencies with regard to Dr. Rana's record/opinion, **when the authorized treatment records clearly support an opinion of a worsened condition** (Claimant's APA #2).
19. We considered Defendants' video surveillance, but it does nothing to persuade the undersigned to deviate or retreat from this decision.
20. Claimant's average weekly wage is \$846.64, yielding a compensation rate of \$564.46. We base this finding on the Order of Commissioner Wilkerson.
21. Any issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse;
22. Based upon the medical records as a whole to include Dr. Kanos' medical notes, we find that the claimant is entitled to additional medical treatment through Dr. Kanos, including but not limited to the recommended surgery, as it is causally related to the underlying injury, medically necessary and will tend to lessen the period of disability.

VII. FULL COMMISSION CONCLUSIONS OF LAW

After considering all of the evidence contained in the record, by unanimous Affirmation, we affirm the Single Commission Order in its entirety and therefore make the following Conclusions of Law:

2. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, claimant's previous counsel timely filed an application for a change of condition;
3. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed his Form 50 on or about May 9, 2012;
4. Pursuant to §42-17-90, the evidence as a whole, the above findings of fact and the case of Young v. Tide Craft, Inc. Dr. Rana's opinion was based enough on fact to create an issue as to the merits to be adjudicated at this hearing and does not preclude the claimant from now pursuing a change of condition request;
5. Pursuant to the South Carolina case of Allen v. Benson Outdoor Advertising Co. 236 S.C. 22; 112 S.E2d 722 (1960) this case at bar is not precluded from being brought for a change of condition. The undersigned Commissioner notes the language within the Allen case which allows for "the filing of a claim for further compensation within the statutory period" is enough and that loss of jurisdiction by the commission would be an *absurd* result which legislature certainly did not have in mind. Id. at 30;
6. Pursuant to §42-15-60, the claimant is entitled to additional medical treatment with Dr. Charles Kanos as this treatment is medically necessary, causally related and will tend to lessen the period of disability;
7. Pursuant to §42-15-60, all medical treatment with Dr. Kanos was causally related, medically necessary and would tend to lessen the period of disability. Claimant is entitled to reimbursement of any and all expenses and co-pays associated with this treatment;

8. Pursuant to Title 42 of the South Carolina Code Annotated, et. seq., all issues not addressed herein are hereby held in abeyance, including but not limited to additional permanency.

VIII. FULL COMMISSION ORDER

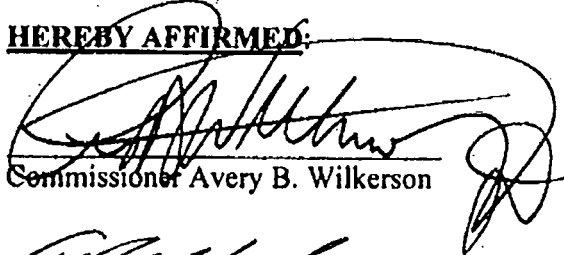
After considering all of the evidence contained in the record, by unanimous Affirmation, we affirm the Single Commission Order in its entirety and hereby Ordered, Adjudged and Decreed that:

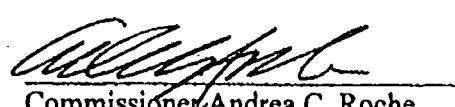
1. The defendants shall reimburse the claimant his \$25.00 fee associated with the Motion to Compel and previously ordered by Order of the Commission;
2. The defendants shall reimburse the claimant for any and all expenses associated with the medical treatment as directed by or provided by Dr. Charles Kanos;
3. The defendants shall provide ongoing medical care through Dr. Charles Kanos;
4. All other issues not addressed herein are hereby held in abeyance pending a final order of the Commission; and
5. The Single Commissioner Findings of Fact, Conclusions of Law, and Order is hereby affirmed by unanimous affirmation.

(signatures to follow)

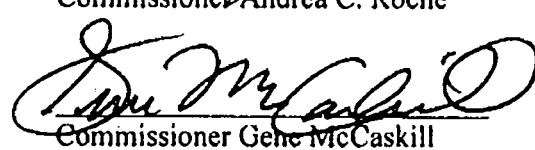
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

HEREBY AFFIRMED:


Commissioner Avery B. Wilkerson


Commissioner Andrea C. Roche

Date: May 20, 2014
Columbia, SC


Commissioner Gene McCaskill

Copies to:
Ryan S. Montgomery, Esquire
Brad Easterling, Esquire

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on May 20, 2014

RECEIVED

SEP 11 2014

SC Court of Appeals



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

September 11, 2014

Via hand delivery

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

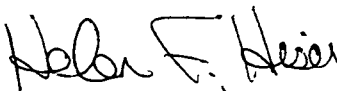
RE: Shannon W Cook vs. Spartanburg Steel Product and Hartford Insurance
Company of the Midwest c/o Sedgwick Claims Management Services, Inc.
Date of Accident: September 17, 2007
WCC File No.: 0726308
Our File No.: 20194.14124
Claim No.: YDS65635
Appellate Case No.: 2014-001372

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellant's Motion for Rehearing and/or to Reinstate Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

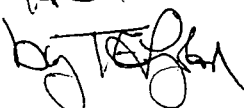
If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC


Helen F. Hiser

Enclosures

cc: Ryan S. Montgomery, Esquire

 **RECEIVED**

SEP 11 2014

SC Court of Appeals