

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

**SC Court of Appeals**

Appellate Case No.: 2014-001217

Thomas Contreras, Employee/Claimant, ..... Appellant,

v.

St. John's Fire District, Employer, and  
State Accident Fund, Carrier, ..... Respondents.

**RECORD ON APPEAL**

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Volume II

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1 Q Okay. If they would have tried to give you a  
2 chance to do that, would you have tried to do that job?

3 A Yes.

4 Q Did they think you were ready for that job and  
5 hired you to do it?

6 A No.

7 Q You were asked about Wal-Mart, Carmax, the  
8 government jobs and so forth. Just to be clear, have any of  
9 these potential employers offered you any employment of any  
10 kind?

11 A No.

12 Q At any salary of any kind?

13 A No.

14 Q And you were asked about if you thought you could  
15 do these type of jobs. Until you get there and do those  
16 jobs, can you really know what you're capable of doing?

17 A No.

18 Q Now, with the snack machines that I think you said  
19 you do about three hours a week, how long you been doing  
20 that again?

21 A Since '95.

22 Q You making any money on these machines?

23 A No. I've actually lost money whatever I could  
24 have made because I was out injured with the shoulder.

25 Q If you were able to turn that into a profitable

1 business any time between 1995 and today, would you have  
2 done that?

3 A Not with the machines at the station -- fire  
4 station.

5 Q My point is this: Is there any -- in your view,  
6 is there any prospect of this turning into any type of real  
7 income for you in the future?

8 A Yes, it could be.

9 Q It could be?

10 A It could be.

11 Q Okay. Has it been in the last, let me do my math,  
12 13 years?

13 A No.

14 Q Or, excuse me, 18 years. Has it made you any  
15 money in the last 18 years?

16 A No.

17 Q When you were asked about the yard work and doing  
18 dishes and washing the car and doing things of that nature,  
19 did you have any problems with pain or restrictions doing  
20 those activities prior to this work injury?

21 A Yes. Yard work when I rake, it hurts and I just  
22 stop for a while.

23 Q I'm asking before -- before this work accident,  
24 did you have any problems doing those activities?

25 A No.

1 Q With the left shoulder or right shoulder, did you  
2 have any problems doing the dishes, washing the car, yard  
3 work before this work accident?

4 A No.

5 Q Do you have problems doing those activities now?

6 A Yes.

7 Q Are you able to do those activities pain-free?

8 A No.

9 Q Okay. Tell me about that.

10 A Just like with raking, when I'm raking and pulling  
11 on the leaves, it's just -- just from moving back and forth,  
12 my shoulder will get stiff and my bicep will start hurting.

13 Q Okay. And do you have to take breaks when you do  
14 these activities?

15 A Yes, I take breaks.

16 Q How often you take breaks?

17 A Thirty, 40 minutes until it stops hurting.

18 Q Did you have to take breaks doing any of these  
19 activities before this work accident?

20 A No.

21 Q Now, you were asked about school trying to go and  
22 study human resources and I commend you on that goal. Do  
23 you have the money or ability to pay to go get educated in  
24 human resources?

25 A No.

1 Q Are you in school for human resources right now?

2 A No.

3 Q And, again, until you got in and tried that  
4 program, do you even know if you would be capable of doing  
5 that?

6 A No, I wouldn't know.

7 Q You testified that your plan was to try to find a  
8 full-time job. Has that been your plan since the fire  
9 department terminated you back in January of 2011?

10 A Yes.

11 Q Okay. And we're now over two years past that  
12 point. Has anyone hired you to do full-time work?

13 A No.

14 Q You were asked about when you saw Jean Hutchinson.  
15 Has your condition to your shoulder -- right shoulder or  
16 right arm, has it improved in any way since you last saw  
17 Ms. Hutchinson?

18 A No.

19 MR. CHRISTMAS: That's all I have. Thank  
20 you, Commissioner.

21 MS. URBANIC: Just briefly, Commissioner.

22 RE-CROSS-EXAMINATION

23 BY MS. URBANIC:

24 Q Mr. Contreras, you mentioned when Gary was doing  
25 redirect that you thought you could make money off the snack

1 machines at some point?

2 A If I bought more machines.

3 Q If you bought more machines. Okay. Have you  
4 looked into that at all?

5 A Yes.

6 Q Is that something you're planning on doing?

7 A Am I planning on doing it? It's possible.

8 Q And the jobs we talked about you applied for,  
9 Carmax, Wal-Mart, and the federal positions, that's all been  
10 within the last two months roughly, is that correct?

11 A Yes.

12 Q That's when you started looking for work?

13 A I started looking for work, yeah. Yes.

14 MS. URBANIC: That's all the questions I  
15 have.

16 THE COURT: Anything else, Mr. Christmas?

17 MR. CHRISTMAS: Just one.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. CHRISTMAS:

20 Q Had you been looking for other work other than  
21 those specific jobs prior to that with the bowling alley and  
22 other places?

23 A Yes.

24 Q Since you were released by the fire department in  
25 January of 2011?

1 A Yes.

2 MR. CHRISTMAS: That's all I have.

3 THE COURT: Anything else?

4 MS. URBANIC: No, Commissioner.

5 THE COURT: All right. Thank you, sir. Any other witnesses, Mr. Christmas?

6 MR. CHRISTMAS: No, Your Honor.

7 THE COURT: That's your case?

8 MR. CHRISTMAS: That's our case.

9 THE COURT: Any witnesses, Ms. Urbanic?

10 MS. URBANIC: No, Your Honor.

11 THE COURT: That's your case?

12 MS. URBANIC: Yes, Your Honor.

13 THE COURT: All right. Then that concludes this hearing.

14 (The hearing concluded at 3:09 p.m.)

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CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript of proceedings was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the witness was duly sworn to testify to the truth; that the testimony of the witness and all objections made at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript of proceedings as typed is a true, accurate, and complete record of the proceedings made at the time to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of July, 2013, Richland County, South Carolina.

Kimberly T. Power, Court Reporter  
Notary Public for the State of South Carolina  
My Commission Expires: 07/22/2015

STATE OF SOUTH CAROLINA  
BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC No. 0822640

Thomas Contreras, )  
 )  
Employee/Claimant, )  
 )  
v. )  
 )  
St. John's Fire District )  
Commission, )  
 )  
Employer/Defendant, )  
 )  
and )  
 )  
State Accident Fund, )  
 )  
Carrier/Defendants. )  
----- )

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**FULL COMMISSION HEARING**

\*\*\*\*\*

**Monday, December 16, 2013**  
3:00 p.m. - 3:30 p.m.

The Commission Hearing before Commissioner Susan S. Barden; Commissioner Aisha Taylor; and Commissioner T. Scott Beck, Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 16th day of December, 2013 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.



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**EXHIBITS**

(There were no exhibits marked during the hearing.)



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1 **THE COURT REPORTER:** Today is Monday, December 16th,  
2 2013. This is South Carolina Workers'  
3 Compensation case number 0822640. This is the  
4 case of Thomas Contreras, Claimant versus St.  
5 John's Fire District Commission, Employer and  
6 State Accident Fund, Carrier. The Appellant is  
7 the Defendant represented by Margaret Urbanic  
8 and Respondent is represented by Gary  
9 Christmas. Each side is allowed ten minutes  
10 for oral arguments and the Appellant three  
11 minutes in reply. You are requested to argue  
12 the grounds of exception and stay within the  
13 record.

14 **COMMISSIONER BECK:** Mr. Urbanic.

15 **ARGUMENT BY MS. URBANIC:**

16 **MS. URBANIC:** Thank you. We've appealed this claim  
17 on several grounds. One of the first issues is  
18 where the commission ordered some back TPD, and  
19 let me give you a little background on the  
20 hearing. This hearing was back in May. This  
21 Claimant had two jobs. He worked as a fire  
22 fighter for my employer, the fire district, and  
23 he also had a second job at a bowling alley  
24 working 12 to 14 hours a week there.

25 **COMMISSIONER BECK:** Let me stop you for just a



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1 second. We do not, apparently, have a  
2 transcript of this proceeding.

3 **MS. URBANIC:** Oh, I've got -- I think I have an  
4 extra copy, and I don't think I wrote on this  
5 one.

6 **COMMISSIONER BECK:** Thank you.

7 **COMMISSIONER BARDEN:** Thank you so much.

8 **MS. URBANIC:** So, the Claimant had two jobs, the  
9 main job as the fire fighter, he's a captain at  
10 the fire department. And he also had a second  
11 job where he'd worked for many years, I think  
12 actually he's still working there, at the  
13 bowling alley. And the day before the hearing  
14 I was sent over by Mr. Christmas' office the  
15 information with regards to his wages from the  
16 bowling alley, a Form 20, a printout of his  
17 payroll records. At the hearing, at the pre-  
18 hearing conference with the commissioner, I  
19 objected to that information as not being  
20 timely. The commission allowed that  
21 information but let me have a couple of days to  
22 take a look at it and respond to it in any way  
23 I needed to respond to it. And Mr. Christmas'  
24 office had emailed the commissioner's office,  
25 Kelly, a case Hudson versus Ports Authority.



1 And I emailed, on May 21st, to Kelly, copied  
2 Mr. Christmas, our position on the wages from  
3 the bowling alley and the TPD issue with regard  
4 to it asking, you know, pursuant to what the  
5 commissioner told me, about giving me time to  
6 respond and making it part of the record. And  
7 at that time, because I wasn't aware until the  
8 hearing that there was this issue of TPD from  
9 the bowling alley and some back TT, and I  
10 attached a Form 17 that had been filed and was  
11 part of the commission's record. Although I  
12 think it was signed by the Claimant before he  
13 was represented by his attorney. Which on that  
14 Form 17 indicated TT was paid from October 18th  
15 of 2010 through September 4th of 2011. And  
16 actually it continued until September 25th, I  
17 believe, because of the date of filing of the  
18 17. So one of the things that the commission  
19 had ruled and ordered was a period of -- he  
20 ordered back TPD from January 1st, 2011,  
21 through August 7th, 2012. Well from January  
22 21st, 2011, we had paid him TT. He was given  
23 the max comp rate. He was the captain at the  
24 fire department and made a very good wage. He  
25 was at the max comp rate for the year of his



1 injury, and we continued that until September  
2 25th, 2011. So he's already got TT for that  
3 time period for the max comp rate pursuant to  
4 the 17 so we don't think it's appropriate for  
5 that to be ordered. He signed a 17 and was  
6 evidenced. And, as every single hearing we all  
7 have ever been to, one of the things you all  
8 say is the commission's file is then part of  
9 the record. It was part of the record, he  
10 signed it. Certainly the Claimant should've  
11 been aware that he'd signed it and was put in  
12 -- so there's never been a request since then  
13 to start up TT. So therefore, we think that  
14 should've been stopped during that time frame  
15 or it should not have been awarded for that  
16 time frame. I know it's a little bit confusing  
17 with all the dates and the overlap and all  
18 that. One of the things, and I know y'all just  
19 got a copy of the transcript, was -- and I went  
20 back and looked at the 58s and I didn't see  
21 specific dates on his 58 for TT. But he  
22 indicated on page eight at the hearing they  
23 were seeking temporary partial from January  
24 21st, 2011, through May 16th, 2011. Those are  
25 the only dates I saw in the hearing, on the



1 transcript that were actually requested, and  
2 again those were dates that were covered in the  
3 Form 17 that were actually paid for temporary  
4 total. And I went through it and I didn't see  
5 any other dates requested but that's with  
6 regards to the back. It's finding of fact  
7 number 26, I believe, of the order that really  
8 addresses all that in the order. We don't  
9 believe we owe that time period back, temporary  
10 partial as the max comp rate as paid for TT.  
11 The bigger issue in this case is that the  
12 Claimant suffered an injury to his right  
13 shoulder. He did it while lifting weights at  
14 the firehouse. All the firefighters workout  
15 lot. Unfortunately, he had to have four  
16 surgeries to his shoulder over the course of  
17 several years. Three of them were by Dr.  
18 Demarco who was the main treating physician.  
19 Dr. Demarco rated him, actually, I believe,  
20 more than once, most recently rated him on 2012  
21 -- August 7th of 2012, where he gave him a nine  
22 percent rating. And he said, in his rating --  
23 he broke it out as to how he got to nine  
24 percent, three percent for biceps, three  
25 percent loss of internal rotation, two percent



1 loss of flexion and one percent for pain and  
2 muscle spasm. However, the rating is nine  
3 percent for his shoulder. We believe it's only  
4 a shoulder injury. The last surgery that the  
5 Claimant had it did involve his biceps tendon  
6 and how they attached it to the shoulder. When  
7 you look at the notes, all the treatment is to  
8 his shoulder. Dr. Demarco, on the request of  
9 the Claimant's attorney, did do a questionnaire  
10 that was sent over. He checked a variety of  
11 things off and he did check off in there that  
12 the bicep was part of it. We would -- we would  
13 argue that's all part of the right shoulder.  
14 This is a check the box kind of questionnaire.  
15 And the interesting thing is in the order there  
16 was an issue with regards to something that was  
17 in the 14B versus the check the box  
18 questionnaire and the commissioner noted there  
19 was a check the box questionnaire and relied on  
20 the 14B. I know it's in here. So we point out  
21 that the medical records are probably a little  
22 bit more reflective of the actual injury. The  
23 injury was in fact to the right shoulder. The  
24 Claimant also claimed an injury to the  
25 clavicle. Up here it's collarbone. The only



1 doctor to give an opinion with regards to the  
2 clavicle was Dr. Hughes. He was a doctor  
3 giving an independent medical examination as  
4 requested by the Claimant's attorney. There  
5 was no information from Dr. Demarco that that  
6 was part of his injury. We believe Dr.  
7 Demarco's opinion should be considered more  
8 heavily than Dr. Hughes' opinion. Therefore,  
9 we believe it's only an injury to the right  
10 shoulder. It should be found under 42-930 with  
11 regards to any disability. The Claimant's  
12 attorney did have a vocational report done by  
13 Gene Hutchinson. That report was done in 2011.  
14 The Claimant, as I said, he was a captain at  
15 the fire department, had been there a number of  
16 years and obviously had done well to rise to  
17 that high level of rank. He is also fluent in  
18 Spanish and when I took his deposition he had  
19 applied for various jobs with the federal  
20 government, one of them being an interpreter  
21 and some other jobs at Car Max and a few other  
22 places. That was all within a few months prior  
23 to the hearing. So it's not a situation where  
24 even though he left the fire department in  
25 2011, where he'd been looking for work for



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1 years and years and hadn't been successful in  
2 finding work. He'd actually just started  
3 looking for work and actually was looking for  
4 some pretty decent paying jobs. There was a  
5 federal government pay scale and had a good  
6 salary range within it, and during this time  
7 frame he continued working at the bowling  
8 alley. In that job, he was earning \$9.18. The  
9 lost wage analysis that was done uses minimum  
10 wage, which is \$7.25. So the information we  
11 have right now on the job he's been holding for  
12 years and is still working at, he's actually  
13 able to earn more than minimum wage. He hoped  
14 to become a manager there but they closed  
15 another alley and brought a manager in from the  
16 old alley. So he didn't get the management  
17 position there but it seemed very inconsistent  
18 with us that the lost wage calculation wasn't  
19 even using the earnings that he is currently  
20 using.

21 **COMMISSIONER BARDEN:** What was his current earnings  
22 at the bowling alley, what did you say?

23 **MS. URBANIC:** Nine dollars and 18 cents, and that is  
24 what he testified at the time of the hearing.  
25 The vocational report said he could earn



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1 between 7.25 and \$8 an hour, although we did  
2 not have a vocational report done. One because  
3 we felt like it was a 42-930 case and two  
4 because, even without it, we felt like, you  
5 know, somebody who has been a captain at a fire  
6 department may have more skills than just that  
7 of somebody who could lift a person out of a  
8 burning building. He's had an administrative  
9 level job. He's had a management job and  
10 supervised people. He's had to make, you know,  
11 decisions very quickly in stressful situations  
12 as a captain of the fire department. He's  
13 admittedly fluent in Spanish. He has expressed  
14 interest in going back to school and we felt  
15 like his own testimony was very persuasive and  
16 he was very persuasive in person as to what he  
17 was capable of doing.

18 **COMMISSIONER BECK:** Okay. Mr. Christmas?

19 **COMMISSIONER BARDEN:** Mr. Christmas -- and I'm maybe  
20 taking this, reading the 26 -- can you first  
21 address the issue of the temporary partial, the  
22 dates, the -- page eight of the transcript  
23 versus the number ---

24 **MR. CHRISTMAS:** Yeah, I think whenever I was ---

25 **COMMISSIONER BARDEN:** I may have my wires crossed.



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1 MR. CHRISTMAS: In the pretrial, we had asked for  
2 temporary partial as a general prayer -- I  
3 mean, in the 58. And in the pretrial, I had  
4 said the end date as the wrong end date. The  
5 evidence was before the commissioner, we asked  
6 them to rule upon, was in the record, and it  
7 went to a period where the Claimant actually  
8 reached maximum medical improvement which was a  
9 few months later, in August.

10 COMMISSIONER BARDEN: Okay, in August.

11 MR. CHRISTMAS: Yes, ma'am.

12 COMMISSIONER BARDEN: Okay, thank you.

13 ARGUMENT BY MR. CHRISTMAS:

14 MR. CHRISTMAS: Just to address that briefly. With  
15 regard to the issue of, you know, credit or  
16 being paid temporary partial disability during  
17 that period of time, the Defendant's didn't  
18 bring it up in their form 58. They didn't  
19 bring it up in the pretrial. They didn't bring  
20 it up in the latter post trial with the  
21 commissioner, and they didn't bring it up in  
22 the Form 30. It was not raised. It was not  
23 ruled upon and it would be improper to rule  
24 upon, at this level, something that wasn't  
25 raised and ruled upon at a level below. If



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1 there are questions on it, we'll be happy to  
2 entertain them. Since my time is brief, I want  
3 to get to the 42-920 argument. Specifically,  
4 this is a fireman who worked there -- for the  
5 Employer for 22 years. He has a high school  
6 education, only. He has no computer skills,  
7 he's 52 years old. Post working for the fire  
8 department he has been working for a bowling  
9 alley, 14 hours per week at 9.18 per hour.  
10 That's all he's been able to find, he's been  
11 looking for two and a half years. Despite the  
12 contention that he just started working a few  
13 months before the hearing, I quoted in the  
14 brief and actually laid out the testimony in  
15 the transcript where he says he has been  
16 looking since he was let go by the fire  
17 department.

18 **COMMISSIONER BECK:** Mr. Christmas, the first step is  
19 getting out of 30.

20 **MR. CHRISTMAS:** Yeah. Let me address that.

21 **COMMISSIONER BECK:** The order only addressed right  
22 shoulder and right upper extremity, that I see.  
23 I don't see anything in here with regard to the  
24 clavicle.

25 **MR. CHRISTMAS:** Yes, sir. Let me address that.



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1 **COMMISSIONER BECK:** Your argument that the clavicle,  
2 as another body part, while it may be  
3 dispositive at a hearing, it's sort of -- the  
4 law of the case is not in here.

5 **MR. CHRISTMAS:** Sure.

6 **COMMISSIONER BECK:** Would you disagree with that?

7 **MR. CHRISTMAS:** I would not disagree with that.

8 **COMMISSIONER BECK:** So we've got right shoulder and  
9 right upper extremity. And I assume, by the  
10 right upper extremity, you're referring to the  
11 bicep?

12 **MR. CHRISTMAS:** Yes, sir.

13 **COMMISSIONER BECK:** Was it a detached bicep tendon  
14 that was reattached to the shoulder?

15 **MR. CHRISTMAS:** I believe the fourth surgery, the  
16 one from March 29th, did address just the bicep  
17 by itself. It was different from the previous  
18 three shoulder surgeries.

19 **COMMISSIONER BECK:** What did they do in that  
20 surgery?

21 **MR. CHRISTMAS:** Your Honor, I know there was a  
22 surgery to the bicep, whether they reattached  
23 it or whether they -- the specifics or the  
24 detail of what they did in that I'm not sure  
25 of.



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1 COMMISSIONER BECK: Okay. And that's something that  
2 may be, I don't know about my colleagues, but  
3 may be important to me ---

4 MR. CHRISTMAS: Sure.

5 COMMISSIONER BECK: --- in determining whether or  
6 not it's outside of 30 or whether it stays  
7 within 30. Because if it's all focused on the  
8 shoulder, that's one thing. If there's a  
9 separate and distinct injury to the bicep, it's  
10 a whole different story.

11 MR. CHRISTMAS: Sure. If I could address it in  
12 three ways.

13 COMMISSIONER BECK: Yes, sir.

14 MR. CHRISTMAS: First, the Claimant's testimony, when  
15 he pointed out to the commissioner, was his  
16 shoulder here (indicating) and the biceps at  
17 the bend of the elbow. One of the four  
18 surgeries was to the biceps and the authorized  
19 treating physician's impairment rating was not  
20 only to the shoulder -- I had attached it to  
21 the brief that I ---

22 COMMISSIONER BARDEN: Separate rating to the arm.

23 MR. CHRISTMAS: Separate rating to the arm for the  
24 biceps and then, also, the IME doctor also  
25 found two separate ratings, one to the shoulder



1 and one to the arm, based upon the bicep  
2 injury. And so, you know, with the surgery  
3 being the bicep, one of the four, with his  
4 showing the commissioner two different places  
5 where he's having the injury. Plus, also, Dr.  
6 Demarco and Dr. Hughes also found that the  
7 shoulder effects -- but not only found it,  
8 there are different ratings to the second body  
9 part. That's APA number one pages seven  
10 through eight, APA number three page 15, APA  
11 number eight and APA number two page 14.  
12 Getting out of 30, then you go to whether or  
13 not he is you know suffered wage loss. Since  
14 the accident, he has looked for work, but just  
15 like the court pointed out in Hudson, the  
16 Defendants made the same argument, citing  
17 Sellers v Pine Dale, that testimony of the  
18 Claimant is going to show that he might be able  
19 to earn more money. But the vocational report  
20 I point out Defendants did not depose Dr.  
21 Demarco to find out about the two different  
22 impairments, did not depose Dr. Hughes to ask  
23 about the two separate impairments, did not  
24 depose Claimant's vocational expert to  
25 challenge those opinions, did not offer a



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1 defense vocational report, did not offer a  
2 defense EME to counter any of this evidence.  
3 And so you know, respectfully, you know, the  
4 wage loss was there. So the fact that he  
5 applied for some jobs and then was not hired by  
6 them -- Car Max, Wal-Mart, he gave a list of  
7 them. The fact that he has applied, as the  
8 court pointed out in Hudson, he shouldn't be  
9 punished just for applying. He should, you  
10 know, be speculative. Not only substantial  
11 evidence but barely evidence of whether he  
12 would even be able to do those jobs when he got  
13 to them. He testified that he applied, was not  
14 hired. Even if he was hired, he didn't know if  
15 he would be able to do them. So, you know,  
16 he's in a wage loss situation. He's in an  
17 actual situation where he's only working 14  
18 hours a week at 9.18 per hour. And so the  
19 commissioner, I think, just did a balancing  
20 test and said, based on the vocational opinion,  
21 he's at or near minimum wage which is what that  
22 is. And he found, based upon a 40 hour week,  
23 if you actually did it on the -- he's only  
24 working 14 hours a week. If you went to a 40  
25 hour work week for the hours he's completely



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1 missing, it would actually go up. I think he  
2 was trying to do balancing and kind of split  
3 the baby on what the loss would be. So if it's  
4 -- if it's not -- if that's not a fair balance  
5 then go to what it actually is, which actually  
6 is higher, which is, he's working 14 hours a  
7 week at 9.18 per hour. He has tried to find  
8 work. You know, the gentleman was in the  
9 military, was a captain for the fire  
10 department. He did work there for 22 years.  
11 He has no write-ups for dishonesty. He has no  
12 criminal record and his credibility is there.  
13 So when he tells the commission that, you know,  
14 he's got a problem here (indicating) and here  
15 (indicating), in two separate places, and he  
16 tells the commission I really did look for work  
17 and this is the best I can do. You know, this  
18 isn't a speculative situation. It's an actual  
19 wage loss. He's actually experiencing it and  
20 has been experiencing it since he was let go by  
21 the fire department.

22 **COMMISSIONER BECK:** tell me who did the surgery on  
23 the biceps. Demarco do all of them?

24 **MR. CHRISTMAS:** I believe Demarco did all four, Your  
25 Honor, and I believe the date on that -- let



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1 me find it, is -- it was on March 29th, and  
2 it's APA number four page 54.

3 **COMMISSIONER BECK:** Thank you.

4 **MR. CHRISTMAS:** Yes, sir. So, to conclude, the  
5 evidence as it exists under the current case  
6 law Hudson and that was developed in the  
7 record, you know, shows that he does have  
8 partial wage loss and we respectfully ask this  
9 finding of the hearing commissioner be upheld.

10 **COMMISSIONER BECK:** Mr. Christmas?

11 **MR. CHRISTMAS:** Yes, sir.

12 **COMMISSIONER BECK:** The APA you just cited me to,  
13 looking at the preoperative diagnosis, the  
14 postoperative diagnosis, everything shows right  
15 shoulder.

16 **MR. CHRISTMAS:** Okay. The -- and I do not have the  
17 brief with me. The ---

18 **COMMISSIONER BECK:** It addresses some bicep  
19 tendinopathy but it's right shoulder, long head  
20 of bicep tendinopathy.

21 **MR. CHRISTMAS:** Right. So long head of bicep  
22 tendinopathy -- the bicep is a separate body  
23 part from the shoulder which has the -- you  
24 know, the other mechanisms of the shoulder.  
25 And so if it goes into that area, it is a



1 separate body part. It also is affected by the  
2 shoulder injury itself and it also was  
3 independently rated based upon the significance  
4 of the injury.

5 **COMMISSIONER BECK:** Okay.

6 **MR. CHRISTMAS:** I guess if the standard is that he  
7 has to have a surgery to the second body part,  
8 I guess I would be ---

9 **COMMISSIONER BECK:** Well, it has to be impaired or  
10 injured.

11 **MR. CHRISTMAS:** Right. and I think a three percent  
12 impairment ---

13 **COMMISSIONER BECK:** And injured, I think.

14 **MR. CHRISTMAS:** Yes, Your Honor, and I would say  
15 that a three percent impairment from the  
16 authorized treating physician after four  
17 surgeries recognizing the two separate injuries  
18 should rise to the level of two body parts.

19 **COMMISSIONER BECK:** All right.

20 **MR. CHRISTMAS:** Thank you, Your Honor.

21 **COMMISSIONER BECK:** Thank you. Ms. Urbanic?

22 **REPLY BY MS. URBANIC:**

23 **MS. URBANIC:** Thank you. A few things in response.  
24 With regards to this issue of whether or not we  
25 preserved the Form 17 and the requesting credit



1 for overpayment, as Mr. Christmas said,  
2 initially on his 58, he said a generic  
3 statement about TT. And it wasn't, as I said,  
4 until we got the records the day before the  
5 hearing, I objected to them and the  
6 commissioner gave me additional time, were we  
7 aware there was any real issue with regards to  
8 temporary total benefits. And that's when the  
9 commissioner graciously gave me a couple of  
10 days to look at it and give him a response,  
11 which I did by email to his assistant and a  
12 copy to Mr. Christmas, on that, back on May  
13 21st, 2013, bringing intent to the Form 17,  
14 which is obviously part of y'all's record, the  
15 workers' comp commission's record, and laid out  
16 our position with regards to that. And on our  
17 Form 30, it was raised. It was, though, on the  
18 second page. I've had so many issues on appeal  
19 we did, see attachment and it ended up on page  
20 two. But we also, on the first page, raised an  
21 objection to the finding of fact number 26,  
22 which is the finding that dealt with all this  
23 which showed it encompassed that as well. One  
24 of the statements I also wanted to clarify was  
25 on page 48 of the transcript ---



1 **COMMISSIONER BARDEN:** Well, can you address the TPD  
2 through the date of MMI versus May. Mr.  
3 Christmas said he misspoke and he believes it's  
4 August. Can you just address that?

5 **MS. URBANIC:** You know, I went back through it this  
6 morning because I'm trying to line up the dates  
7 with everything and unfortunately I couldn't  
8 find my notes from the actual hearing. Because  
9 I will admit, in my email that I sent back on  
10 May 21, 2013, I actually had included -- sorry,  
11 January 20 -- I think Gary just said until  
12 August.

13 **COMMISSIONER BARDEN:** It was August, right. He says  
14 that May was just a mistake.

15 **MS. URBANIC:** August of 2000?

16 **COMMISSIONER BARDEN:** Eleven.

17 **MS. URBANIC:** Eleven. And the date of our MMI was -  
18 - I apologize. I'm getting myself confused  
19 with all these dates and now I can't find my  
20 58. We had a date of MMI from the 14B from Dr.  
21 Demarco of September 14th, 2012. So, you know,  
22 if Mr. Christmas' position is now it should've  
23 been through August of 2011 that still would be  
24 in the time -- and maybe I'm mixing up these  
25 years and I apologize but that still would be



1 in the time period covered under the Form 17  
2 because those benefits ran through September  
3 25th of 2011. So I think that's where I'm  
4 getting confused commissioner. I apologize.  
5 I'm not trying to confuse y'all with it. One  
6 other thing, one second. The rating that's on  
7 page 12 of my APA's and I know it's also on his  
8 APA submissions as well, but it's the final  
9 rating from Dr. Demarco the authorized doctor.  
10 He gives a nine percent and then he says what  
11 it -- how he got to the nine percent. So it's  
12 nine -- it's not nine percent plus three  
13 percent for the biceps, three percent for the  
14 loss of internal rotation. He is saying how he  
15 got to the nine percent because the following  
16 ratings add up to nine percent. And if you  
17 read it the way it's written he has a permanent  
18 partial impairment of nine percent, period.  
19 Three percent for biceps, three percent for  
20 loss of internal rotation, et cetera, et  
21 cetera. So our contention is the nine percent  
22 actually includes the biceps as commissioner  
23 Beck noted. It wasn't a separate surgery for  
24 the biceps. It wasn't detached. It was biceps  
25 -- not tendinitis. Not tendinitis but close --



1 a word close to that but I can't say it, was  
2 part of the fourth surgery with regard to that  
3 and really all the injury is that of the right  
4 shoulder. Thank you.

5 **COMMISSIONER TAYLOR:** Thank you.

6 **COMMISSIONER BECK:** Thank you. This concludes the  
7 proceeding.

8 (There being nothing further, the proceeding  
9 concluded at 3:30 p.m.)

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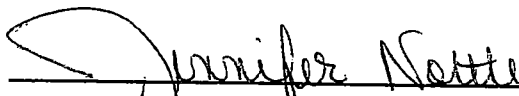


**CERTIFICATE**

This is to certify that the within hearing consisting of twenty-four (24) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on June 25, 2014.



Jennifer Nottle  
Court Reporter

Notary Public for South Carolina  
My Commission Expires: 7/11/2023

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

Appellate Case No.: 2014-001217

Thomas Contreras, Employee/Claimant, ..... Appellant,

v.

St. Johns Fire District, Employer, and  
State Accident Fund, Carrier, ..... Respondents.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Attorney for Appellant

February 27, 2015  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

Appellate Case No.: 2014-001217

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SC Court of Appeals

Thomas Contreras, Employee/Claimant, ..... Appellant,

v.

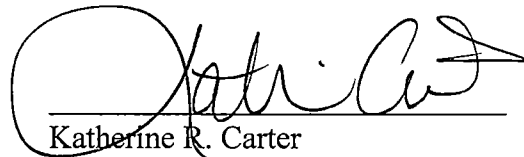
St. Johns Fire District, Employer, and  
State Accident Fund, Carrier, ..... Respondents.

**PROOF OF SERVICE**

I certify that I, Katherine Carter, am a paralegal to Stephen B. Samuels and I have caused the **Record on Appeal** to be served on the parties below, by placing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed as follows:

Margaret M. Urbanic  
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April 1, 2015



STEPHEN B. SAMUELS  
ATTORNEY AT LAW

April 1, 2015

RECEIVED  
APR 01 2015  
SC Court of Appeals

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

RE: Thomas Contreras v. St. Johns Fire Department  
Appellate Case No.: 2014-001217

Dear Ms. Kitchings:

Enclosed for filing are the unbound original and fifteen copies of **Record on Appeal** and a **Proof of Service**, in the above case.

By copy of this letter and enclosure to Margaret Urbanic and Ellen Goodwin, counsel of record for the Respondents, we are serving a copy of the **Record on Appeal** upon each of them as indicated by the attached Proof of Service.

Thank you for your consideration in this matter. Please contact us with any questions or if further information is needed from our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine R. Carter", written over a large, stylized circular flourish.

Katherine R. Carter  
Paralegal for Stephen B. Samuels

/krc

Enclosure(s) as stated

cc w/encl.: Margaret Urbanic, Esq.  
Ellen Goodwin, Esq.  
Gary Christmas, Esq.

WE WORK FOR THE PEOPLE WHO WORK.