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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Maite Murphy, Circuit Court Judge

RECEIVED

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SC Court of Appeals

Frank Wilson, ... Claimant, Appellant,

v.

American LaFrance, Employer, and AIG C/O Gallagher Bassett Services, Inc.,
Carrier, ... Respondent,

RECORD ON APPEAL

Frank Wilson
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616
Appellant

Erin L. Hantske and Helen F. Hiser
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(843) 576-2900
Attorneys for Respondent

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0506037

FRANK WILSON,

Employee,

Claimant,

vs.

AMERICAN LAFRANCE

Employer,

AND

AIG C/O GALLAGHER BASSETT
SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

• DATE OF HEARING:

Hearing held in North Charleston, South Carolina on April 10, 2007.

APPEARANCES:

Claimant appeared and represented by Steven E. Goldberg, Esquire, of The Steinberg Law Firm, L.L.P. of Summerville, South Carolina.

Defendants represented by Amanda M. Morgan, Esquire of McAngus Goudelock & Courie, L.L.C. of Charleston, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues set forth in the Defendants' Form 21.

COMMISSIONER:

Commissioner J. Alan Bass

FILED:

4/17/2008

STIPULATIONS

The parties stipulated at the hearing the following:

1. The South Carolina Workers Compensation Commission has jurisdiction over this claim.
2. Venue and jurisdiction are proper in Charleston County.
3. The Claimant earns an average weekly wage of \$764.20.
4. The Claimant's compensation rate is \$509.49.
5. The Claimant was involved in an accident on May 16, 2005, arising out of and in the course and scope of his employment with American LaFrance.
6. The Claimant suffered a work-related injury to his back, right shoulder, and ribs on May 16, 2005.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence:

Defendants' Submissions: The Defendants submitted the following medical evidence:

APA No. 1: Medical records of Trident Regional Medical Center dated May 16, 2005 through July 13, 2005, 8 pages.

APA No. 2: Medical records of Dr. Richard M. Gordon, Palmetto Physical Medicine, dated April 18, 2006, 2 pages.

APA No. 3: Medical records of Dr. George Warren, Lowcountry Outpatient Surgery Center, dated February 8, 2006 through July 24, 2006, 4 pages.

APA No. 4: Medical records of Dr. Don Stovall, Lowcountry Orthopaedics and Sports Medicine, dated August 4, 2005 through October 11, 2006, 32 pages.

APA No. 5: Medical records of Dr. Chris Tountas dated June 2, 2006, 5 pages.

APA No. 6: Corvel Vocational Progress Report, 14 pages.

APA No. 9: After the hearing, Dr. Cary Fletcher's deposition transcript was submitted to the Hearing Commissioner on September 17, 2007 by the Defendants.

Claimant's Submissions: The Claimant submitted the following medical evidence:

APA No. 7: Medical records of Dr. Jeffrey Faaberg dated December 19, 2006, 5 pages.

APA No. 8: Medical records of Dr. Carey Fechter dated March 23, 2007, 5 pages.

STATEMENT OF THE CASE

The Claimant was involved in a motor vehicle accident on May 16, 2005 when he was traveling from American LaFrance plant in Summerville to the American LaFrance plant in Jedburg. On the date of the accident, the Claimant was working as a quality assurance associate for American LaFrance. The Claimant was transported by EMS to the emergency room at Trident Regional Medical Center. The Claimant experienced pain in his chest and difficulty breathing on the date of the accident. X-rays taken at Trident Regional Medical Center showed the Claimant experienced bilateral rib fractures. He followed up with Dr. James Benner for his rib and chest pain.

Dr. Benner referred the Claimant to Dr. Don Stovall for treatment of his neck, back, and right shoulder pain. The Claimant was first seen by Dr. Stovall on August 4, 2005. The Claimant received physical therapy and injections in his lower back, neck, and right shoulder while under the care of Dr. Stovall. The Claimant did not complain to Dr. Stovall of pain in his

left shoulder while under his care. On October 11, 2006, Dr. Stovall placed the Claimant at maximum medical improvement for his lumbar spine, cervical spine, and right shoulder.

The Claimant was seen by several other physicians. He was seen by Dr. Chris Tountas on May 31, 2006 for an independent medical evaluation with respect to his orthopaedic condition. He was seen by Dr. Jeffrey Faaberg, Sr. on December 19, 2006 for another independent medical evaluation with respect to his orthopaedic condition. The Claimant was seen by Dr. Cary Fetcher on March 23, 2007 for an evaluation of his lung condition. The Claimant also met with a vocational evaluator, Lynn McCain at Corvel Corp., for a vocational evaluation.

On February 8, 2007, the Defendants filed a Form 21 request for a hearing to stop payment of temporary compensation and requesting a finding of permanency. The Defendants also requested a credit for overpayment of temporary compensation beyond the date of maximum medical improvement of October 11, 2006. The Claimant indicated in his Form 58 Pre-Hearing Brief that he sustained injuries to his back, neck, lungs, right shoulder, and right arm. The Claimant contended he was still in need of additional treatment. In their Form 58 Pre-Hearing Brief, the Defendants admitted the Claimant sustained an injury to his back, right shoulder, and chest as a result of the accident but denied the nature and extent of the injuries. The Defendants asserted the Claimant had reached maximum medical improvement.

A hearing was held in front of the undersigned Commissioner on April 10, 2007 in North Charleston, South Carolina. The Defendants asserted that maximum medical improvement was reached with respect to the Claimant's neck, low back, right shoulder, and ribs on October 11, 2006. They contended the Claimant was limited to an award of permanent partial disability. The

Claimant contended that he was not a maximum medical improvement and that he needed additional medical treatment for his lungs as well as an MRI of his left shoulder and neck.

At the hearing on April 10, 2007, the Defendants objected to the submission of Dr. Fechter's medical report based on the fact that it was not submitted within 10 days from the date that the hearing was first scheduled, which was April 2, 2007. The Defendants also moved to leave the record open to obtain a pulmonologist's Independent Medical Evaluation. The undersigned Commissioner overruled the Defendants' objection and denied the Defendants Motion to leave the record open for a pulmonary Independent Medical Evaluation. The undersigned Commissioner left the record open for 30 days for the parties to take Dr. Fechter's deposition. Dr. Cary Fetcher's deposition was taken on April 24, 2007, and Dr. Fecher's deposition transcript was submitted to the Hearing Commissioner on September 17, 2007.

EVIDENCE OF THE CASE - TESTIMONY

The Defendants called the Claimant as an adverse witness in their case in chief. The Claimant stated that he was hired as an assembly associate by American LaFrance, which eventually led to a job in the quality assurance department at American LaFrance. (Hr. Tr. p. 7, l. 24 - p. 8, l. 4) Working in the quality assurance department, the Claimant inspected trucks and the workmanship of the trucks. (Hr. Tr. p. 8, ll. 8-16) The Claimant also addressed safety issues and insured all processes were conducted according to the quality and safety policies in place. (Hr. Tr. p. 8, ll. 8-13)

The Claimant testified that he was in a motor vehicle accident on May 16, 2005, and he was transported to the emergency room from the accident. (Hr. Tr. p. 8, l. 25 - p. 9, l. 5) X-rays taken showed the Claimant had rib fractures, and the Claimant followed up with Dr. Benner for his rib and chest injuries. (Hr. Tr. p. 9, ll. 6-22) Dr. Benner referred the Claimant to Dr. Don

Stovall for his neck, back, and right shoulder. (Hr. Tr. p. 10, ll. 14-22) The Claimant received injections in his neck, lower back, and right shoulder, as well as physical therapy while under the care of Dr. Stovall. (Hr. Tr. p. 10, ll. 14-22)

The Claimant acknowledged at the hearing that he did not complain to Dr. Stovall about his left shoulder while treating with Dr. Stovall. (Hr. Tr. p. 10, ll. 22-25) The Claimant further admitted that during his initial visit with Dr. Stovall he did not complain about his left shoulder. (Hr. Tr. p. 16, ll. 14-16) The Claimant testified that he did not complain of any pain in his chest or ribs or indicate he was having breathing difficulties when he first saw Dr. Stovall. (Hr. Tr. p. 16, ll. 17-21) When the Claimant was seen for an Independent Medical Evaluation by Dr. Chris Tountas, the Claimant did not indicate to Dr. Tountas that he was experiencing left shoulder pain or breathing problems. (Hr. Tr. p. 17, l. 6 – p. 18, l. 6) The Claimant acknowledged that he did not complain about his left shoulder until his deposition in February 2007. (Hr. Tr. p. 21, ll. 21-24)

When asked if he felt he was able to return to work, the Claimant testified that he still had “open issues” with his left shoulder, chest pain, and breathing problems. (Hr. Tr. p. 18, ll. 7-20) The Claimant acknowledged that he met with a vocational expert from Corvel and that he understood that he had a lifting restriction of 25 pounds. (Hr. Tr. p. 19, l. 24 – p. 20, l. 20) The Claimant stated he would not feel comfortable returning to a job within the 25-pound lifting restriction because he feared re-injuring his left shoulder. (Hr. Tr. p. 20, l. 21 – p. 21, l. 16)

On direct examination, the Claimant testified that when the accident occurred, he experienced breathing problems as well as pain in his back, the right side of his neck going into his shoulder, and chest. (Hr. Tr. p. 23, ll. 17-23) The Claimant testified that he began to experience problems with his left shoulder sometime in July to August 2006, as he was going

through work conditioning and a Functional Capacity Evaluation. (Hr. Tr. p. 23, l. 24 - p. 24, l. 19) With respect to his chest pain, the Claimant indicated that he experienced increased pain in his chest with deeper breathing. (Hr. Tr. p. 25, ll. 15-22) He further testified that he could not lift with his right or left shoulder the way he could prior to the accident, and he wished to follow up with Dr. Faaberg for his neck and left shoulder and would consider surgery on his right shoulder in the future. (Hr. Tr. p. 25, ll. 2-10; p. 26, ll. 9-24)

The Claimant indicated that he wished to return to work in some capacity and felt that once he had an MRI for his neck and had his left shoulder looked into, he would be able to make an informed decision on returning to work. (Hr. Tr. p. 27, ll. 6-19) The Claimant stated that he was not asking anyone to find him totally and permanently disabled at his age. (Hr. Tr. p. 27, ll. 12-14) Upon further questioning, the Claimant admitted that he did not tell Dr. Stovall about his left shoulder pain at the time he was released from treatment. (Hr. Tr. p. 30, ll. 13-20) He further conceded that when he met with Dr. Tountas for an Independent Medical Evaluation, he complained of intermittent pain in the neck from the right to the left side, primarily the right. (Hr. Tr. p. 31, l. 13 - p. 32, l. 8) The Claimant testified that the pain going into his left shoulder appeared approximately a month or two months after his Independent Medical Evaluation with Dr. Tountas while he was participating in the work hardening program and undergoing a Functional Capacity Evaluation. (Hr. Tr. p. 32, l. 9 - p. 33, l. 1) The Claimant indicated that he had not re-injured his neck or left shoulder since the accident. (Hr. Tr. p. 34, ll. 7-13) Finally, the Claimant stated that it was shoulder joint in the left shoulder that was bothering him. (Hr. Tr. p. 34, ll. 23-12)

The Claimant then called David Jackson, the occupational nurse of American LaFrance. (Hr. Tr. p. 36, l. 9 - p. 37, l. 8) Mr. Jackson testified that he had a lot of dealings with the

Claimant, mostly after his accident, and that he believed that the Claimant was a good worker and honest person. (Hr. Tr. p. 37, ll. 6-17)

EVIDENCE OF THE CASE – APA SUBMISSIONS

Defendants' APA #1 are x-ray reports from Trident Regional Medical Center that show the Claimant experienced multiple no fractures bilaterally in the accident of May 16, 2005. The x-ray reports revealed negative impressions of his cervical spine, lumbar spine, and right shoulder.

Dr. Don Stovall first saw the Claimant on August 4, 2005. (Defendants' APA #4) On that date, the Claimant complained of neck pain, lower back pain, and right shoulder pain. Dr. Stovall diagnosed the Claimant with a cervical whiplash injury, right shoulder contusion, and lumbar strain, and he recommended a course of physical therapy. (Defendants' APA #4, p. 15-18)

An MRI scan of the Claimant's cervical spine revealed a disc bulge at C3-4 but no evidence of a large disc rupture or spinal canal stenosis. An MRI scan of the Claimant's lumbar spine revealed some degenerative changes at the L5-S1 level with a broad-based disc bulge. (Defendants' APA #4, p. 20-21) Dr. Stovall recommended the Claimant receive a series of epidural injections, first lumbar then possibly cervical injections. The Claimant received four lumbar epidural injections and two cervical epidural injections in his lumbar spine from Dr. George Warren. (Defendants' APA #3) An MRI of the Claimant's right shoulder revealed supraspinatus tendonitis without evidence of a rotator cuff tear. (Defendants' APA #4, p. 42) The Claimant received two injections in his right shoulder from Dr. Stovall. The Claimant also received physical therapy at the recommendation of Dr. Stovall.

On October 11, 2006, Dr. Stovall placed the Claimant at maximum medical improvement and assigned a 5% impairment of the whole person and 7% regional impairment of the lumbar spine, a 5% whole person impairment and 14% regional impairment of the cervical spine, a 5% impairment of the right upper extremity for rotator cuff tendonitis, and a 3% whole person impairment. Combining these values, Dr. Stovall indicated he would have a 13% whole person impairment.

Also on October 11, 2006, Dr. Stovall recommended the Claimant continue taking Mobic 7.5 mg twice a day and Skelazin 800 mg three times a day as needed and recommended the Claimant continue with the home exercises for his cervical and lumbar spine as learned in physical therapy. Dr. Stovall also stated it would be reasonable for the Claimant to have cervical epidural or lumbar epidural injections every 6 to 12 months. With respect to his right shoulder, Dr. Stovall stated injections every 6 months would be reasonable and that the Claimant would also have the option of surgical intervention which would include an arthroscopy of the Claimant's right shoulder. Dr. Stovall indicated the Claimant could return to medium capacity work and felt the Claimant should be able to return to the work he was performing at American LaFrance prior to the accident. (Defendants' APA #4, p 46-47)

On May 31, 2006, the Claimant was seen by Dr. Chris Tountas for the purpose of performing an Independent Medical Evaluation. (Defendants' APA #5) His chief complaint was intermittent pain in the neck from the right to the left side, primarily the right. The Claimant also told Dr. Tountas that he had symptoms in the right shoulder on the date of the accident and there was pain at the middle of the top of the right shoulder that occurred several times a day. Furthermore, he indicated to Dr. Tountas that he had pain in his entire low back 90% of the time and that it would radiate up the back. Dr. Tountas opined that the Claimant had reached

maximum medical improvement, and he placed permanent restrictions on the Claimant to avoid heavy lifting and carrying more than 25 pounds on a frequent basis. Finally, Dr. Tountas stated the Claimant was not a candidate for surgical intervention.

The Claimant was also seen by Dr. Jeffrey Faaberg, Sr. at Edisto Spine Center on December 19, 2006 for an Independent Medical Evaluation requested by the Claimant. (Claimant's APA #7) After reviewing his treatment history, Dr. Faaberg noted the Claimant developed neck, lower back, chest wall, and right shoulder pain following the accident. When he was seen by Dr. Faaberg, the Claimant complained of multiple areas of pain in the neck, both shoulders, and low back. He assigned a 14% regional impairment of the cervical spine and corresponding 5% whole person impairment. He assigned a 13% regional impairment to the lumbar spine and a corresponding 10% whole person impairment. Finally, he stated the Claimant had a 10% impairment in his right upper extremity.

The Claimant was seen by Dr. Kerry Fechter on March 23, 2007 at the request of the Claimant. (Claimant's APA # 8) The Claimant complained of shortness of breath on exertion and continued chest pain following the accident. Dr. Fechter stated that it was his opinion that the accident initiated a sequence of events which led the Claimant to develop mild asthmatic bronchitis. Dr. Fechter prescribed the Claimant Advair for this condition. Finally, Dr. Fechter stated that the Claimant had a 15% to 20% impairment of the whole person based on the Claimant's lung condition. The Defendants deposed Dr. Fechter on April 24, 2007, and his deposition transcript was submitted to the Hearing Commissioner on September 17, 2007.

On February 9, 2007, a Vocational Evaluation was conducted by Lynn McCain at Corvel Corp. at the request of the Defendants. (Defendants' APA #6) Ms. McCain met with the Claimant to perform her vocational evaluation. It was Lynn McCain's vocational opinion that

the Claimant was capable of returning to work in a sedentary, light or light to medium strength occupation.

FINDINGS OF FACT

The issues for determination are compensability of the Claimant's injuries, permanent partial disability, and future medical treatment. Based on the testimony and the exhibits submitted, the undersigned Commissioner makes the following Findings of Fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is \$764.20 and the Claimant's compensation rate is \$509.49.
3. The Claimant was involved in an accident on May 16, 2005, arising out of and in the course and scope of his employment with American LaFrance.
4. The Claimant suffered a work-related injury to his neck, low back, right shoulder, and ribs on May 16, 2005.
5. The Claimant also suffered injury to his lungs, both in the form of pneumothorax and decreased pulmonary function, per Dr. Cary Fletcher's report of March 23, 2007.
6. The Claimant is not at maximum medical improvement with respect to his lungs and is in need of additional medical treatment for his lungs.
7. According to Dr. Cary Fletcher, continued treatment of the Claimant's lungs would most probably decrease impairment to his lungs.
8. The Claimant is at maximum medical improvement with respect to his neck, low back, right shoulder, and ribs.

9. According to Dr. Stovall, the Claimant should continue with his current medications as of October 11, 2006, and it would be reasonable for the Claimant to have cervical epidural or lumbar epidural injections every 6 to 12 months as well as epidural injections in his right shoulder every 6 months, with the option of arthroscopy of the Claimant's right shoulder in the future.
10. The Claimant continues to be unable to work.

CONCLUSIONS OF LAW

It is concluded that under the South Carolina Workers' Compensation Act and Section 42-1-10 S.C. Code of Law, etc. seq., that:

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of and in the course of employment.
2. Pursuant to Section 42-1-160, the Claimant sustained a compensable injury to his neck, low back, right shoulder, ribs, and lungs arising out of and in the course and scope of his employment with the Defendants on May 16, 2005.
3. Pursuant to Section 42-15-60, the Claimant has not reached maximum medical improvement with respect to his lungs, and Defendants are to provide medical treatment for the Claimant's lungs until he reaches maximum medical improvement.
4. Pursuant to Section 42-9-30 and 42-15-60, the Claimant has reached maximum medical improvement with respect to his neck, low back, right shoulder, and ribs, and the Defendants are to provide orthopaedic management for the Claimant's neck, low back, and right shoulder as recommended by Dr. Stovall on October 11, 2006.

5. Pursuant to Regulation 67-503, the Defendants are to continue to pay temporary total disability benefits to the Claimant.

ORDER

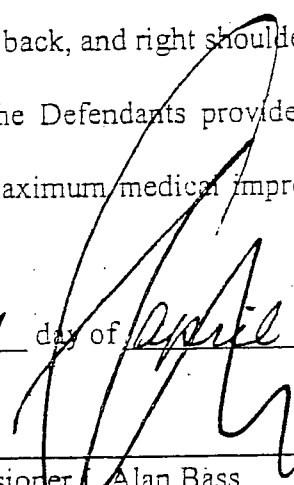
IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that the Claimant suffered a compensable work-related injury to his neck, low back, right shoulder, ribs, and lungs.

IT IS HEREBY ORDERED, that the Defendants continue to pay temporary total disability benefits to the Claimant.

IT IS HEREBY ORDERED, that the Defendants continue to provide orthopaedic management to the Claimant for his neck, low back, and right shoulder.

IT IS HEREBY ORDERED, that the Defendants provide medical treatment for the Claimant's lungs until the Claimant attains maximum medical improvement with respect to his lungs.

AND IT IS SO ORDERED this 17 day of April, 2008.



Commissioner J. Alan Bass

CERTIFICATE OF SERVICE

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

This 17 day of April, 2008

By M. Ballinger

Administrative Assistant to the Commissioner

SEG
AMM
KWH

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Frank Wilson,

Claimant,

vs.

American LaFrance,

Employer,

AIG/Gallagher Bassett,

Carrier,

Defendants.

WCC File No.:0506037

ORDER

Hearing: Held in North Charleston, South Carolina on March 10, 2009.

Appearances: Claimant represented by Lisa Long Cotten, Esquire of the Mike Kelly Law Group, LLC.

Defendants represented by Erin L. Hantske, Esquire of McAngus, Goudelock and Courie.

Purpose of Hearing: To determine the issues as set forth in the Form 21.

Decision and Order: The Honorable David W. Huffstetler, Commissioner

Filed: April 16, 2009

APA Submissions

On behalf of Claimant

1. Low Country Orthopaedics and Sports Medicine
2. Low Country Outpatient Surgery Center
3. Charleston Neurosurgical Associates

4. Dr. Cary E. Fletcher
5. Trident Regional Medical Center
6. Palmetto Cardiovascular and Thoracic Associates
7. Edisto Spine Center
8. Tricountry Radiology Associates
9. Sports Plus
10. Southeastern Spine Institute
11. Ergo Science Physical Work Performance Evaluation Summary

On behalf of Defendants

1. Exhibit A Hearing Transcript
2. Exhibit B Decision and Order
3. Exhibit C Dr. Carey Fechter's deposition transcript.
4. Trident Regional Medical Center
5. Dr. Richard M. Gordon/Palmetto Physical Medicine
6. Dr. George Warren/Low Country Outpatient Surgery Center
7. Dr. Don Stovall/Low Country Orthopaedics and Sports Medicine
8. Dr. Chris Tountas/Spine Orthopaedic Specialists of South Carolina
9. Corvel Vocational Progress Report
10. Dr. Carey Fechter
11. Dr. Michael Spandorfer

STIPULATIONS

Counsel for all parties stipulated at the Hearing to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter;
2. Notice of Hearing was timely and properly served on all parties of interest;
3. Venue is proper in Charleston County;
4. The Claimant's Average Weekly Wage is \$764.20 and the Compensation rate is \$509.49; and
5. The Claimant suffered a compensable injury on May 16, 2005 to his low back, neck, right shoulder and ribs.

STATEMENT OF THE CASE

On May 16, 2005, Claimant was involved in a motor vehicle accident while traveling to an American LaFrance worksite in Jedburg, South Carolina from an American LaFrance worksite in Summerville, South Carolina. As a result of this motor vehicle accident, Claimant suffered multiple traumatic injuries including: a right-sided pneumothorax, multiple rib fractures, a right shoulder injury as well as lumbar and cervical spine injuries.

Claimant was transported to Trident Regional Medical Center following the motor vehicle accident by Berkeley County Emergency Services. Records from Berkeley County EMS note that the claimant was a passenger in the vehicle when it was struck on the passenger side resulting in extensive damage. They noted that Claimant's chief complaint was of chest pain. Records from Trident Regional Medical Center document that Claimant was treated for impaired respiratory function, chest and back pain, impaired

cardiac function and skin abrasions. X-rays taken showed that Claimant experienced bilateral rib fractures. He was treated at the hospital and discharged on May 17, 2005.

Claimant followed up with Dr. Jim Benner in late March of 2005 concerning shortness of breath due to his rib and chest pain. Dr. Benner again noted multiple bilateral rib fractures. Dr. Benner then referred the claimant to Dr. Don Stovall of Lowcountry Orthopaedics and Sports Medicine who first saw the patient on August 4, 2005. Dr. Stovall noted that Claimant complained of neck, right shoulder and lower back pain. He concluded that Claimant's pain was a result of a cervical and lumbar injury. He recommended a regimen of physical therapy and series of epidural injections; which Claimant undertook with Sports Plus Physical Therapy and Dr. George Warren, respectively. Dr. Chris Tountas examined the claimant on May 31, 2006 and concluded that Claimant had reached maximum medical improvement, did not require any future treatment, and that he probably had permanent restrictions for heavy lifting and carrying. Additionally, there was no evidence for neurologic deficit of the upper or lower extremities or any findings for cervical or lumbosacral radiculopathy that would correlate with any of the cervical or lumbosacral MRIs. Dr. Tountas did not list any impairment ratings.

Dr. Stovall continued to have follow-up visits with Claimant through October 11, 2006. His notes indicated that Claimant received some cessation of pain with physical therapy and a variety of injections, but that he continued to suffer discomfort. Dr. Stovall also remarked that Claimant is not a good surgical candidate and had reached maximum medical improvement. He gave a regional impairment rating of the lumbar spine as 7%; of the cervical spine as 14% and of the upper extremity as 5%. He determined that the

whole person impairment rating of all orthopedic issues was 13%.

On March 23, 2007, Dr. Cary Fechter compiled a detailed pulmonary report, based on an extensive review of Claimants' medical records and work history. He stated that regardless of whether Claimant was predisposed or not, the trauma suffered by the claimant in the May 16, 2005 motor vehicle accident greatly affected Claimant's respiratory function and chest pain issues. He suggested that Claimant use bronchodilators and continue use of the medicine prescribed by his orthopedic doctors in order to reduce chest pain and improve pulmonary function. Dr. Fechter determined that the whole person rating of all pulmonary issues was 15-20%.

A hearing was held in this matter on April 10, 2007 pursuant to the Defendant's Form 21. The Commissioner issued an Order dated April 17, 2008 finding that the Claimant suffered a compensable injury to his neck, low back, right shoulder, ribs and lungs; the Defendants were to continue to pay temporary total disability benefits to the Claimant; Claimant was found to be at maximum medical improvement for his neck, low back, right shoulder, and ribs; the Defendants were to continue to provide orthopaedic management to the Claimant for his neck, low back and right shoulder; and the Defendants were to provide medical treatment for the Claimant's lungs until Claimant attained maximum medical improvement with respect to his lungs.

The Claimant continued to have persistent low back pain since his accident. Following the hearing, the Claimant's attorney requested that Defendants provide treatment with an orthopedic other than Dr. Stovall. As such, Defendants requested an evaluation with Dr. James K. Aymond; however, Dr. Aymond refused to evaluate and treat the Claimant. Defendants did not receive any additional correspondence from the

Claimant following the hearing regarding a request for additional evaluation and/or treatment. However, Claimant sought a referral from his primary care physician to a specialist. Claimant was examined by Dr. Thomas F. Roush of Southeastern Spine Institute on June 18, 2008. Dr. Roush recommended at provocative discography to determine whether interventional means of treatment such as disc decompression or arthroplasty or fusion are necessary to make him employable again.

Claimant was last seen by Dr. Stovall on March 2, 2009 for further evaluation. Dr. Stovall stated that in his opinion Claimant was a MMI and he did not feel Claimant was a surgical candidate for his cervical or lumbar spine. He also stated that he saw no indications that Claimant's urinary symptoms were coming from his neck or lower back. Dr. Stovall then recommended EMG and nerve conduction studies of the right lower extremity and evaluation by a sports medicine physician for Claimant's complaints of right shoulder pain.

In an independent medical examination of the claimant's lung function conducted on October 10, 2008, Dr. Michael A. Spandorfer stated that Claimant suffers from reactive airway disease syndrome. He stated that Claimant is at maximum improvement with respect to his lung condition and that Claimant will require lifetime medication, including inhaled corticosteroids, rescue bronchodilator therapy utilizing a spacer device, and leukotrine antagonists. He also stated that Claimant may require quarterly pulmonary physician evaluations; yearly chest radiographs and emergency room or acute physician evaluations twice yearly. This most recent examination determined that in regards to pulmonary function the whole person impairment level of Claimant is 24%.

Another hearing in this matter was held on March 10, 2009 also pursuant to the Defendant's Form 21. The Claimant was represented by Lisa Long Cotten, Esquire. The Employer/Carrier was represented by Erin L. Hantske, Esquire. The Defendants asserted the Claimant reached maximum medical improvement on October 10, 2008. They sought credit for all temporary compensation paid after that date. The Defendants also conceded permanent partial disability to the lungs, back, neck, right shoulder and the ribs, but denied that the Claimant was permanently and totally disabled.

Claimant contended that he has not reached maximum medical treatment and requires further medical treatment. Claimant sought an evaluation for his shoulder injury as recommend by Dr. Stovall and a provocative discography as recommended by Dr. Roush of Southeastern Spine Institute.

EVIDENCE

Claimant testified that he disagreed with Defense counsel's assertion that his left shoulder was not found to be a compensable injury (Hearing Transcript p. 7 lines 1-6). Claimant testified that Commissioner Bass instructed him to get an updated MRI of his cervical spine to rule out that the pain he was experiencing in his left shoulder was not coming from his cervical spine. Claimant testified that there was no significant change in the MRI, so they ruled that out. He stated that he also had an MRI of his left shoulder that showed partial tears (Hr. Tr. p. 11 lines 12-23). Claimant went on to state that Dr. Favor related his left shoulder to the accident and increased the impairment rating to his neck due to his left shoulder (Hr. Tr. p. 12 lines 4-10). The Defense relied upon the Order of Commissioner Bass at Defendant APAs Exhibit B regarding Claimant's compensable injuries, wherein the testimony addressed the Claimant's allegation of a left

shoulder injury, but Commissioner Bass found that he suffered compensable injuries to the neck, low back, right shoulder, ribs, and lungs only.

Claimant then disagreed with the Defense's summation of his follow up visit with Dr. Stovall on March 2, 2009 (Hr. Tr. p. 7 lines 11-19). Dr. Stovall's report stated that Claimant was at MMI and he did not feel Claimant was a surgical candidate for his cervical or lumbar spine. He also stated that he saw no indication that Claimant's urinary symptoms were coming from his neck or lower back. Dr. Stovall then recommended EMG and nerve conduction studies of the right lower extremity and evaluation by a sports medicine physician for Claimant complaints of right shoulder pain (Defendant APA 4a). Claimant testified that Dr. Stovall told him that he would not benefit from the surgery that Dr. Stovall does, but he may gain some benefit from the type of surgery offered at the Southeastern Spine Institute (Hr. Tr. p. 7 lines 22-25). Claimant testified that he went to the Southeastern Spine Institute because he was frustrated with the lack of medical attention to his lumbar and cervical spine and his right and left shoulder (Hr. Tr. p. 12 lines 20-23). Claimant explained the he had not received the orthopaedic management outlined in Commissioner Bass' Order (Defendant APAs Exh. B p. 12-13) (Hr. Tr. p.14 lines 17-25; p. 15 lines 1-13). When questioned as to whether he followed up with the carrier regarding additional medical treatment, Claimant testified that he sent medical reports and MRIs to the insurance carrier and the Workers' Compensation Commission and believed the attorneys were provided copies through the Commission. Claimant stated that he became frustrated because the carrier was aware of his condition but nothing had been done (Hr. Tr. p. 21 lines 2-25 and p. 22 lines 1-7).

Claimant testified that he asked his family doctor to refer him to Southeastern

Spine Institute. Claimant stated that he was hopeful that someone would give him some benefit from the pain he was experiencing on a daily basis (Hr. Tr. p. 13 lines 23-24). Claimant testified that Dr. Roush gave him the option of disc replacement and/or fusion. Claimant indicated that he was interested in going back to Southeastern Spine to have those options explored (Hr. Tr. p. 14 lines 5-11; see also Claimant's APA 18 pp. 153-155). Claimant also indicated that he wished to pursue the referral to a sport medicine physician for further evaluation of his shoulder pain (Hr. Tr. p. 16 lines 21-24) and EMG and nerve conduction studies recommended by Dr. Stovall (Hr. Tr. p. 18 lines 22-23).

Regarding his lung condition, Claimant testified that he had a follow up visit with Dr. Fechter on March 14, 2009 (Hr. Tr. p. 8 line 24). He further indicated that his lung condition is adequately managed on Advair; however, he must remain in environments free from chemicals and/or smoke (Hr. Tr. p. 10 lines 9-18).

Claimant further testified that his multiple injuries and multiple pain levels have prevented him from returning to work (Hr. Tr. p. 19 lines 2-4). He stated that he is hopeful that further treatment with Southeastern Spine Institute will help return to the workplace (Hr. Tr. p. 19 lines 18-25). Claimant also stated that his condition had actually worsened since his last hearing (Hr. Tr. p. 20 lines 17-23).

FINDINGS OF FACT

Based upon the stipulations of the parties, testimony and evidence received and produced at the hearing, the undersigned Commissioner makes the following findings of facts based on a preponderance of the evidence:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter;

2. Notice of Hearing was timely and properly served on all parties of interest;
3. Venue is proper in Charleston County;
4. The Claimant's Average Weekly Wage is \$764.20 and the Compensation rate is \$509.49;
5. The Claimant suffered a compensable injury on May 16, 2005 to his back, neck, right shoulder and ribs;
6. The Claimant has not reached maximum medical improvement;
7. The Claimant is entitled to and the Defense shall provide medical treatment for the Claimant's back through Southeastern Spine Institute; and
8. There was no Form 50 requesting total temporary disability benefits, so I will not speak to that issue.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Workers' Compensation Act, the undersigned Commissioner makes the following Conclusions of Law:

1. S. C. Code Ann. §42-1-160 governs injuries and includes injuries by accident arising out of and in the course and scope of employment;
2. Pursuant to §42-1-160, the Claimant sustained a compensable injury by accident arising out of and occurring in the course and scope of his employment with the Defendants on or about May 16, 2005, to his low back, neck, right shoulder, ribs, and lungs;
3. The Claimant's Average Weekly Wage is \$764.20 and the Compensation rate is \$509.49;

4. The Claimant has not reached maximum medical improvement;
5. Pursuant to §42-15-160, the Claimant is entitled to and the Defense shall provide medical treatment for the Claimant's back through Southeastern Spine Institute.
6. §42-17-30 provides authority to the Commission to order medical evaluation and treatment.
7. §42-9-10 is not applicable to this order, as the Claimant made no claim for compensation for temporary total disability.

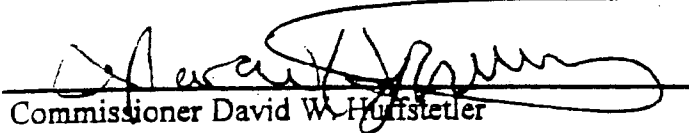
ORDER

IT IS THEREFORE ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein as set forth verbatim.

IT IS THEREFORE ORDERED that Claimant has not reached maximum medical improvement, as the authorized physician, Dr. Stovall, recommends an evaluation to determine the need for surgery and Dr.

IT IS THEREFORE ORDERED that the Defense shall provide medical treatment for the Claimant's back through Southeastern Spine Institute.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION.


Commissioner David W. Huffstetler

Columbia, South Carolina
April 16 2009.

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

This 16 day of April, 2009
By Keller Luster
Administrative Assistant to the Commissioner

LLC
EH

ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NO.: 0506037

FRANK WILSON

EMPLOYEE/CLAIMANT

VS.

AMERICAN LAFRANCE,

EMPLOYER/DEFENDANT,

AND

AMERICAN HOME ASSURANCE
CHARTIS CLAIMS, INC.

CARRIER/DEFENDANT.

Hearing, date and place: March 23, 2010 North Charleston, SC

Appearances: Claimant represented by attorney D. Dusty Rhoades
Defendants represented by attorney Erin Hantske

Hearing Commissioner: Derrick Williams

Court Reporter: Nadine Quattlebaum

Purpose of Hearing: To determine issues set forth in the Forms 50 and 51 and the
hearing notice, and as otherwise stated/stipulated to at the hearing.

Date: April 5, 2010

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

- (1) The purpose of the hearing is to determine the issues set forth in the hearing notice and issues plead in the Forms 50 and 51, and any other issues which may timely come before the commissioner.
- (2) Notice of the hearing was timely and properly served upon all parties of interest.
- (3) Venue, set in Charleston County, is proper and agreed by all parties.
- (4) The claimant seeks additional medical benefits under the South Carolina Workers' Compensation Act, for his left shoulder and tonsils. Defendants deny compensability.
- (5) Defendants admit body parts of neck, low back, right shoulder, ribs and lungs, and deny the left shoulder, and tonsils being causally related to the admitted accident of May 16, 2005.
- (6) Without objection, and with the exception of any self-serving statements or unstipulated medical reports, the Commission's file was made a part of the record

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code § 1-23-320 et. seq., and Regulation 67-612, the parties submitted the following items as evidence in support of their cases:

Claimant's Exhibits

NAME OF PHYSICIAN/OTHER

DATE

PAGE NUMBERS

1. Claimant Background Information		1 - 4
2. Lowcountry Orthopaedics	03/02/09 - 05/05/09	5 - 12
3. Dr. Faaberg	12/19/06 - 06/25/07	13 - 19
4. Dr. Estes	08/20/09 - 09/29/09	20 - 24
5. Dr. Graham	08/05/09 - 02/24/10	25 - 33
6. Southeastern Spine Institute	06/17/09 - 03/03/10	34 - 65b
7. Dr. Spandorfer	10/10/08	66 - 68
8. Dr. Fechter	03/23/07 - 02/05/10	69 - 79
9. Sports Plus PT	08/10/06 - 10/01/06	80 - 94
10.FCE	09/27/06	95 - 103

Defendants' Exhibits

11. Dr. Stovall	08/4/05	104 - 144
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STATEMENT OF CASE

Claimant requested this hearing for the purpose of determining compensability of the tonsils and left shoulder. Defendants admit compensability to the neck, lower back, right shoulder, ribs, and lungs, but deny the left shoulder and tonsils.

CLAIMANT'S POSITION SUMMARY

It is the position of the Claimant that the Claimant suffered a compensable injury to the left shoulder during "work hardening" physical therapy and during a Functional Capacity Evaluation regarding the admitted injuries of the neck, low back, ribs, lungs, and right shoulder. The position of the Claimant is also that the removal of large tonsils would aid in his breathing which was compromised by the injury to his ribs and lungs. It is also the position of the Claimant that the Motion to Postpone the hearing be denied stating that, "The defense has had ample time to schedule a deposition with Dr. Graham since receiving the Form 50, and since learning that the Claimant had set up the appointment to see Dr. Graham to evaluate his shoulders on January 14, 2010.

DEFENDANT'S POSITION SUMMARY

The Defendants deny and dispute that the Claimant has suffered a compensable injury to his left shoulder asserting that no credible evidence that his left shoulder complaints are causally-related to his work-injury. With regard to the Claimant's lung treatment, Defendants contend Dr. Fechter's March 19, 2009 note stating: "...continued tonsillar enlargement, which would contribute to the obstructive sleep symptoms. This is not related to his motor vehicle accident, but would improve his respiratory status if Workers' Compensation will pay for the tonsillectomy", demonstrates clearly that Claimant's need for the removal of his tonsils is not causally-related to the admitted motor vehicle accident. Defendants filed a Motion to Postpone the hearing pursuant to Regulation 67-613 in order to conduct Dr. Graham's deposition based on his February 4, 2010 medical notes addressing right and left shoulders received by Defendants on March 1, 2010. Defendants were unable to schedule the deposition prior to submitting the pre-hearing brief, but have since been able to schedule the deposition for May 6, 2010.

EVIDENCE OF THE CASE

Medical Evidence Summary and Review

Claimant suffered injuries related to an auto accident on May 16, 2005. Since that date Claimant has been treated for injuries to his neck, back, right shoulder, ribs and lungs. The Claimant underwent physical therapy beginning 8/10/2006 and continuing until 10/1/2006, at which time he was discharged (APAs pgs. 80 - 94). At the start of a work conditioning program, the Claimant's subjective complaints included lower back and cervical pain, right flank pain, and right rotator cuff pain/right shoulder pain (APAs pg. 80). On 9/16/06, while undergoing work conditioning, the Claimant complained of left cervical pain, in particular (APAs pg. 89).

Previously, the Claimant complained of general cervical pain and right shoulder pain (APAs pgs. 80-94).

The Claimant participated in an FCE on 9/27/06 (APA pgs. 95-103). The Claimant testified at the hearing that the FCE further injured his left shoulder. The Claimant also testified that he told the therapist that the exercise he was asked to perform was hurting his shoulders, (including his left shoulder) and was angry when he was asked to continue. The therapist reports on page 99 of the APAs that:

“The client also refused to commit to being able to lift more weight, stating, “You’re the expert, you tell me if I can lift more.” He showed very little incentive to push himself to the maximum. I did not stop adding weight until I saw the signs of maximum effort. This response would continue for the majority of the lifts.”

On 12/19/06 the Claimant underwent an independent medical evaluation with Dr. Faaberg at the request of the Claimant’s attorney. Dr. Faaberg stated that, “He [Claimant] reports pain across the upper margins of the left shoulder but range of motion and strength are intact.” And, “Mr. Wilson has developed multiple areas of pain in the neck, both shoulders, and low back.” (APAs pg.18). The Claimant underwent an MRI of the left shoulder, at the request of Dr. Faaberg, and the impression from the MRI was that Claimant suffered from “Supraspinatus and biceps tendinosis with partial tears.” (APA pg. 19). The Claimant was referred to Dr. Graham for right shoulder pain only on 8/5/09. Dr. Graham recommended that Claimant undergo treatment for his cervical spine and that if the right shoulder pain continued subsequently that further diagnostic testing and treatment for the right shoulder would be considered (APAs pg. 25). The Claimant pursued treatment on his own with Dr. Estes because

the left shoulder injury was denied by the defendants. Dr. Estes reported that Claimant stated he had been experiencing left shoulder pain for about three years (which coincides with the work-conditioning and FCE) (APAs pg. 20). X-rays of the shoulders were abnormal and showed "moderate degenerative changes at the AC joint bilaterally, worse in the right shoulder." (APA pg. 20). Dr. Estes recommended a shoulder scope of both shoulders. (APA pg. 23).

The Claimant was treated with cervical epidural steroid injection on 12/31/09 (APA pg. 62). He returned to Dr. Graham for evaluation of his shoulders. Dr. Graham states:

"In the process of doing work hardening to address his [Claimant's] right shoulder he injured his left shoulder in the third quarter or fourth quarter of 2006. He continues to have pain in his left shoulder with findings similar to that on the right. It does appear that this is causatively related to the right shoulder accident as well given the way the injury occurred and that he was doing work hardening to address his right shoulder pain." (APA pg. 32).

The Claimant was evaluated by pulmonologist, Dr. Cary Fechter, on 5/23/07, because of continued chest pain and shortness of breath related to the auto accident. Dr. Fechter stated:

"Whether he [Claimant] is/was predisposed or not, the fractured ribs affected his respiratory function, and unfortunately there still has not been complete resolution of his chest tenderness." (APA pg. 73).

At the Claimant's 3/14/09 appointment, Dr. Fechter concludes:

"1) Pneumothorax and pleural effusions after motor vehicle accident with just mild residual disease.

2) Continued tonsillar enlargement, which would contribute to the obstructive sleep symptoms. This is not related to his motor vehicle accident, but would improve his respiratory status if Workers' Compensation will pay for the tonsillectomy." (APA pg. 77).

Dr. Fechter stated that:

"Mr. Frank Wilson's lung/breathing, limitations/conditions, are affected negatively by his tonsils, removing his tonsils would, more likely than not, prevent more deterioration of his pulmonary condition" (APA pg. 79).

FINDINGS OF FACT

IT IS FOUND AS A FACT:

- (1) Claimant is a credible witness based on my observation of him, during the course of his testimony at the hearing. I have no reason to doubt his version of what caused his injury to his left shoulder, which occurred when he underwent the FCE and "work-hardening". My impressions as stated herein are limited to the testimony I heard and my observations of Claimant's demeanor on the date of the hearing.
- (2) Nothing in this order is to preclude a future finding relating to Claimant's credibility at another hearing regarding permanency, compensability, or other issues.
- (3) I do not find the tonsils compensable body parts in this case. Based on Dr. Fechter's reports, his notes clearly state that "this is not related to his motor vehicle accident." (See APAs pgs. 77,79).
- (4) I do find the Claimant's left shoulder compensable. This finding is based on the greater weight of, medical evidence as a whole, including Dr. Graham's reports, and the Claimant's credible testimony.

- (5) The Defendants' Motion to Postpone is denied, based on Dr. Graham's February 4, 2010 medical note relating the left shoulder pain to work hardening and the FCE, as well as Claimant's Reply to Motion, which asserts that:

"The Form 50 was filed January 14, 2010, alerting the Defense that the Claimant was claiming injury to the left shoulder;

On January 14, 2010 an appointment was scheduled by the defense (please see attached e-mail). The original appointment was set up by the Claimant to address both shoulders. When the defense learned that the Claimant had already scheduled the appointment, they authorized the same appointment for the right shoulder only. The Claimant, however asked that Dr. Graham address the left shoulder as well; and that, if there was an additional cost to do so, that an invoice be sent to the Claimant's attorney;

The defense has had ample time to schedule a deposition with Dr. Graham since receiving the Form 50, and since learning that the Claimant had set up the appointment to see Dr. Graham to evaluate his left shoulder on January 14, 2010."

- (6) All other motions are held in abeyance.

RULINGS OF LAW

Upon the foregoing findings of fact, and under the Code of Laws of South Carolina, as amended, it is concluded that:

- (1) In a previous Order, filed April 17, 2008 it was concluded, as a matter of law that:

"Pursuant to Section 42-1-160, the Claimant sustained a compensable injury to his neck, low back, right shoulder, ribs and lungs arising out of and in the course and scope of his employment with the Defendants on May 16, 2005."

- (2) Under § 42-1-160, **Injury and Personal Injury Defined**, Claimant sustained an injury by accident arising out of and in the course of the employment, said injury being to left shoulder.

"In workers' compensation action, new injuries resulting indirectly from treatment of the original injury, are also compensable." (See *Mullinax v. Winn-Dixie Stores*, 318 S.C. 431, 458 S.E.2d 76 (S.C. App. 1995)).

This is what applies as a matter of law in this instance.

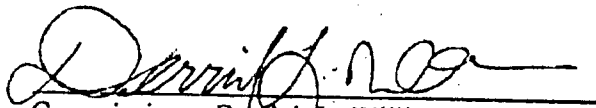
- (3) Under § 42-1-160, **Injury and Personal Injury Defined**, the tonsils are not causally related or connected to the admitted accident and, therefore, are not compensable, but based on the greater weight of the evidence, the left shoulder is a body part affected by the initial injury and is compensable under the Act.
- (4) Pursuant to Regulation 67-613, **Postponement or Adjournment of scheduled hearing**, as a matter of law, the postponement, or adjournment, to take and submit Dr. Graham's deposition after the hearing, is denied.

ORDER

IT IS THEREFORE ORDERED:

- (1) Defendants are to provide Claimant with additional medical evaluation and treatment; with Dr. Graham, for the left shoulder' in addition to the admitted causally related injuries - ribs, lungs, neck, low back, and right shoulder.
- (2) The Defendants' Motion to Postpone is denied.
- (3) All other issues are held in abeyance.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Derrick L. Williams

Date: April 5, 2010

CERTIFICATE OF SERVICE

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

April 5, 2010

By: Renee Smith, Administrative Assistant to Commissioner Williams

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0506037

FRANK WILSON,

Employee,

Claimant,

vs.

FREIGHTLINER,

Employer,

AND

AIG c/o GALLAGHER BASSETT SERVICES,
INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in North Charleston, S.C. on July 21, 2011.

APPEARANCES:

Claimant, Frank Wilson, appeared pro se.

Defendants represented by Erin L. Hantske, Esquire of McAngus
Goudelock & Courie, L.L.C. of Charleston, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER:

Commissioner Andrea C. Roche

FILED:

August 11, 2011

STIPULATIONS

The parties stipulated at the hearing to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
2. Notice of hearing was timely and properly served upon all parties of interest.
3. Venue and jurisdiction are proper in Charleston County.
4. The Claimant's average weekly wage is \$764.20, with a corresponding compensation rate of \$509.49.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence:

CLAIMANT'S SUBMISSIONS:

1. Medical records from Carolina Lung and Critical Care, dated 2/8/11 through 5/17/11, consisting of 32 pages;
2. Deposition packet from A. William Roberts, Jr. & Associates, dated 5/16/11;
3. Deposition packet from Dr. Michael A. Spandorfer at Carolina Lung and Critical Care, dated 4/8/11;
4. Deposition packet from Dr. Cary Fechter at Palmetto Pulmonary and Metabolics, dated 4/27/07;
5. Medical records from Lowcountry Orthopaedics and Sports Medicine, dated 7/26/06 through 5/5/09, consisting of 24 pages;
6. Medical records from Orthopaedic Specialists of Charleston, dated 8/5/09 through 6/29/11, consisting of 39 pages;
7. Medical records from Dr. William Estes at Southern Orthopaedics and Sports Medicine, dated 8/20/09 through 9/29/09, consisting of 9 pages;

8. Medical records from Southeastern Spine Institute, dated 1/25/10 through 6/18/11, consisting of 11 pages;
9. Medical records from Dr. Colin Goudelocke at MUSC Urology, dated 3/16/11 through 4/13/11, consisting of 2 pages;
10. Medical records from Palmetto Interventional Pain Management, dated 2/1/11 through 6/21/11, consisting of 14 pages;
11. Medical records from Trident Sports Medicine and Rehabilitation, dated 6/6/11 through 6/28/11, consisting of 39 pages;
12. Deposition packet from the Claimant, dated 2/15/10;

CLAIMANT'S EXHIBITS:

Exhibit A: 1) Lowcountry Orthopaedics and Sports Medicine; 2) Lowcountry Orthopaedics and Sports Medicine letter; 3) Lowcountry Orthopedics and Sports Medicine letter

Exhibit B: 1) Lowcountry Orthopaedics and Sports Medicine letter; 2) Medical reports and MRI reports

Exhibit C: 1) Lowcountry Orthopaedics and Sports Medicine

Exhibit D: 1) Lowcountry Orthopaedics and Sports Medicine

Exhibit E: 1) Orthopaedic Specialists of Charleston

Exhibit F: 1) Southeastern Spine Institute (Donald R. Johnson, II, M.D.); 2) Southeastern Spine Institute (Donald R. Johnson, II, M.D.); 3) Southeastern Spine Institute (Donald R. Johnson, II, M.D.)

Exhibit G: 1) Palmetto Interventional Pain Management

DEFENDANTS' SUBMISSIONS:

1. Medical records from John Graham at Orthopaedic Specialists of Charleston, dated 8/5/09 through 6/11/11, consisting of 16 pages;
2. Medical records from Dr. Michael Spandorfer, dated 4/5/11 through 5/17/11, consisting of 9 pages.

STATEMENT OF THE CASE

The Claimant suffered a compensable injury by accident in the course and scope of his employment on or about May 16, 2005, when he was involved in a motor vehicle accident. Defendants admit compensable injuries to the neck, low back, right shoulder, left shoulder, ribs, lungs, and bladder. The Claimant is currently receiving the following causally-related medical treatment: lumbar and cervical spine with Dr. Blane Richardson, right and left shoulders with Dr. John Graham including a second surgery to the right shoulder on May 19, 2011, lungs with Dr. Michael Spandorfer including a sleep study on April 20, 2011 as well as an echocardiograph on May 13, 2011, and urological treatment with Dr. Goudelocke.

The parties presented to the hearing with Commissioner Roche on July 21, 2011. The parties had a lengthy pre-trial conference and did not go on the record at the hearing. The Claimant expressed his concern regarding his current shoulder treatment with Dr. Graham. He is not happy with the treatment being provided by Dr. Graham and requested that the Carrier authorize a second opinion with another physician to evaluate his left and right shoulder. The Claimant also expressed his concern regarding the alleged delay by the Carrier regarding authorization for recommended treatment and procedures. Finally, he requested reimbursement for the two visits to Dr. William Estes in 2009 regarding the evaluation for his shoulders.

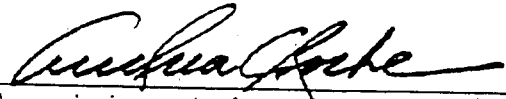
Defendants asserted that the Claimant is currently receiving all appropriate and causally-related medical treatment for his work-injuries. Additionally, Defendants denied responsibility for payment of the visits to Dr. Estes as those visits were not authorized by the Carrier and the compensability of the Claimant's shoulders were in dispute at the time.

ORDER

The parties did not go on the record, but following the lengthy pre-trial conference and review of the parties' respective pre-hearing briefs and the medical evidence submitted, Commissioner Roche ordered the following:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is \$764.20, with a corresponding compensation rate of \$509.49.
3. The Claimant suffered an admitted injury by accident in the course and scope of his employment on or about May 16, 2005, to his neck, low back, left shoulder, right shoulder, ribs, bladder, and lungs.
4. The Claimant is currently receiving all appropriate and causally-related medical treatment with Dr. Richardson, Dr. Graham, Dr. Spandorfer, and Dr. Goudelocke.
5. Per the Claimant's request, Defendants are ordered to provide a second opinion for the Claimant's right and left shoulder and the undersigned will approve the Defendants' choice of a physician prior to authorizing the same. Defendants have selected Dr. James DeMarco at Palmetto Orthopaedics of Charleston for that evaluation.
6. Defendants are to authorize all admitted medical treatment and procedures within fourteen days from receipt of the medical narrative report from the treating physician. Failure to do so will result in a fine to the Carrier pursuant to S.C. Code Ann. Section 42-3-175.
7. Defendants are not responsible for reimbursement related to the Claimant's treatment with Dr. William Estes in 2009.

AND IT IS SO ORDERED.


Commissioner Andrea C. Roche

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0506037

FRANK WILSON,

Employee,

Claimant,

vs.

FREIGHTLINER,

Employer,

AND

AIG c/o GALLAGHER BASSETT
SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Dorchester, S.C. on November 30, 2011.

APPEARANCES:

Claimant, Frank Wilson, appeared *pro se*.

Defendants represented by Erin L. Hantske, Esquire of
McAngus Goudelock & Courie, L.L.C. of Charleston,
South Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Forms 50 and 51,

COMMISSIONER:

Commissioner Avery B. Wilkerson, Jr.

FILED:

10 Feb 2012

STIPULATIONS

The parties stipulated at the hearing to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
2. Notice of hearing was timely and properly served upon all parties of interest.
3. Venue and jurisdiction are proper in Charleston County.
4. The Claimant's average weekly wage is \$764.20, with a corresponding compensation rate of \$509.49.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence:

Claimant's Submissions

1. Medical records from Southeastern Spine Institute dated January 25, 2010, through June 18, 2011, 13 pages;
2. Medical records from Palmetto Interventional Pain Management dated March 26, 2011, through October 25, 2011, 7 pages;
3. Medical records from MUSC Urology dated April 13, 2011, through July 21, 2011, 2 pages;
4. Medical records from Southern Orthopaedics and Sports Medicine dated August 20, 2009, through September 29, 2009, 5 pages;
5. Medical records from Tricounty Radiology Associates dated September 7, 2010, through January 17, 2011, 2 pages;

6. Medical records from Trident Sports Medicine and Rehabilitation dated July 1, 2011, through August 5, 2011, 17 pages;
7. Medical records from Orthopaedic Specialists of Charleston dated June 29, 2011, through September 21, 2011, 4 pages;
8. Medical records from Carolina Lung and Critical Care dated August 31, 2011, 3 pages;
9. Medical records from Lowcountry Orthopaedics and Sports Medicine dated July 26, 2006, through November 2, 2011, 24 pages;
10. Medical records from Lowcountry Orthopaedics and Sports Medicine dated November 14, 2011, 2 pages;
11. Medical records from Roper Hospital dated April 20, 2011, 1 page;
12. Medical records from MUSC Urology dated August 18, 2010, through November 3, 2010, 3 pages;
13. Erin Hantske letter dated October 14, 2011, 2 pages;
14. Erin Hantske letters dated September 26, 2011, through November 2, 2011, 4 pages;
15. Claimant's copy of check used for July 21, 2011, hearing dated July 21, 2011, 1 page;
16. Claimant's American LaFrance termination letter dated December 14, 2005, 1 page;
17. Claimant's American LaFrance performance evaluations dated February 17, 2004, through March 10, 2005, 3 pages.

Defendants' Submissions

- A. Letter from Defense counsel to Dr. James DeMarco dated August 17, 2011, 2 pages;
- B. Letter from Defense counsel to Claimant dated August 30, 2011, 1 page;
- C. Letter from Defense counsel to Dr. David Jaskwhich dated August 30, 2011, 2 pages;
- D. Letter from Defense counsel to Claimant dated September 26, 2011, 1 page;
- E. Letter from Defense counsel to Claimant dated September 29, 2011, 1 page;
- F. Letter from Defense counsel to Dr. James Spearman dated October 20, 2011, 3 pages;
- G. Letter from Defense counsel to Claimant dated October 27, 2011, 1 page;
- H. Letter from Defense counsel to Claimant dated November 2, 2011, 1 page.

STATEMENT OF THE CASE

The Claimant suffered a compensable injury by accident in the course and scope of his employment on or about May 16, 2005, when he was involved in a motor vehicle accident. Defendants admit compensable injuries to the neck, low back, right shoulder, left shoulder, lungs, ribs, and bladder. The Claimant was released at maximum medical improvement by the following physicians: Dr. Johnson on October 12, 2010 (from a surgical standpoint) for his spine with a 21 percent whole person impairment rating secondary to the lower back and a 5 percent whole person impairment rating secondary to the neck; Dr. Colin Goudelocke on April 13, 2011, (from a urology standpoint) with a 21 percent whole person impairment rating; Dr. Michael Spandorfer on August 31, 2011, with a 10 percent impairment rating to the lungs; Dr. John Graham on September 21, 2011, with a 25 percent impairment rating to the right shoulder.

After hearing the arguments presented by both parties, as well as a review of all evidence presented in this instance, the undersigned issued Order instructions to Defendants to prepare a proposed Decision and Order. Defendants completed the proposed Decision and Order and forwarded to Claimant for approval. The Claimant responded with several requested changes and attached a Motion regarding the same. Upon receipt of Claimant's requested changes and Motion, the Defendants requested a telephone conference with the Claimant and the undersigned to discuss any outstanding issues. The parties conducted this telephone conference on January 9, 2012, at which time all remaining issues were discussed and resolved.

ORDER

The parties did not go on the record, but following a lengthy pre-trial conference, review of the parties' respective Pre-Hearing Briefs and the medical evidence submitted, as well as the telephone conference held on January 9, 2012, the undersigned Commissioner ordered the following:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is \$764.20, with a corresponding compensation rate of \$509.49.
3. The Claimant suffered an admitted injury by accident in the course and scope of his employment on or about May 16, 2005, to his neck, low back, left shoulder, right shoulder, ribs, bladder, and lungs.
4. Dr. Donald Johnson of Southeastern Spine Institute released the Claimant at maximum medical improvement on October 12, 2010, from a surgical standpoint and assigned a 21 percent impairment rating to the whole person secondary for his lower back condition as well

as a 5 percent impairment rating to the whole person secondary to his neck condition. Per the Form 14-B, Dr. Johnson opined that the Claimant is unable to return to work at his current employment and he will need future medical care related to his work injury. (Claimant's APA p. 13)

5. Dr. Colin Goudelocke of MUSC Urology released the Claimant at maximum medical improvement from a urology standpoint on April 13, 2011, with a 21 percent impairment rating to the whole person. Per the Form 14-B, Dr. Goudelock opined that the Claimant will need future medical care as related to his work injury. (Claimant's APA p. 22)

6. Dr. Michael Spandorfer of Carolina Lung Associates released the Claimant at maximum medical improvement on August 31, 2011, with a 10 percent impairment rating to the lungs. Per the Form 14-B, he opined that the Claimant was able to return to work with restrictions of avoiding exposure to airborne dust particles, gases, fumes, and extreme humidity and temperature and he will need future medical treatment as related to his work injury. (Claimant's APA p. 53)

7. Dr. John Graham of Orthopaedic Specialists of Charleston released the Claimant at maximum medical improvement for his right shoulder on September 21, 2011, with a 25 percent impairment rating to the shoulder. Per the Form 14-B, Dr. Graham opined that the Claimant is able to return to work with no overhead activities and no lifting over 10 pounds and will need future medical care as related to his work injury. (Claimant's APA p. 50)

8. The Claimant is not yet at maximum medical improvement for his left shoulder. The parties discussed Dr. Spearman's recent refusal to evaluate and treat the Claimant during the telephone conference and agreed that the Defendants will provide Claimant with an authorized evaluation by Dr. William Estes. This appointment is currently scheduled for January 12, 2012.

9. The Defendants further agree to provide Claimant with additional treatment as recommended By Dr. Estes, if any, until he releases the Claimant at maximum medical improvement.

10. The Claimant is not at maximum medical improvement for all accepted body parts and therefore, permanency is premature at this time.

11. The undersigned Commissioner does not have jurisdiction to address the allegation of medical neglect, medical malpractice, bias, or any inappropriate action and/or practice on behalf of the authorized treating physicians. (No. 7 under the Facts in Controversy of the Claimant's Pre-Hearing Brief.)

12. The Claimant requested changes made to the above portion of this Order (#11), by and through his Motion, and again requested these changes during the parties' telephone conference with the undersigned. The Claimant requested this Decision and Order reflect additional physicians by which the Claimant was allegedly mistreated. The South Carolina Workers' Compensation Commission lacks jurisdiction to address those pleadings for relief alleged by the Claimant. Therefore, no changes will be made to the above portion of this Order (#11).

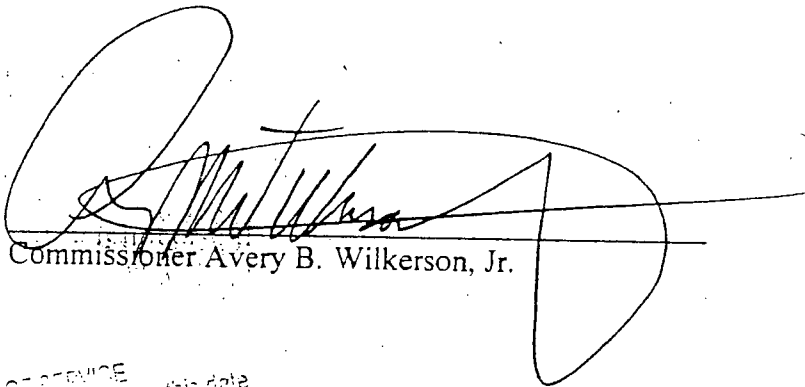
13. The undersigned Commissioner orders the Carrier to pay the bill for the authorized sleep study dated April 20, 2011, within 30 days of approval of this Order. If the Carrier does not comply with this Order, the Claimant is to send a letter to defense counsel and the Commission advising of the same and requesting a hearing. The undersigned Commissioner will retain jurisdiction and will schedule the hearing immediately. Furthermore, the undersigned Commissioner will require a representative to present to the hearing and will charge the Carrier court and transportation costs.

14. The Carrier is to pay all bills for authorized and causally related medical treatment within 30 days of receipt. If the Carrier does not comply with this Order, the undersigned Commissioner will schedule a hearing regarding the same to address the issue.

15. The Claimant is entitled to reimbursement for transportation to one of the two recent hearings (July 21, 2011 and November 30, 2011). Pursuant to the payment reflected in Claimant's APA (page 90), the Carrier is to reimburse the Claimant \$20.00 for the transportation to the hearing on July 21, 2011. During the telephone conference on January 9, 2012, the Commissioner again confirmed the Claimant's entitlement to reimbursement for only one transportation cost.

16. The Carrier will continue to authorize all causally related and appropriate treatment with the Claimant's authorized treating physicians.

AND IT IS SO ORDERED.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE
This is to certify that on this date
served this order on the Carrier in all
parties to the hearing. If the Carrier does not,
postage paid. In the event the order is addressed to
the attorney or other legal representative.

This 10 day of February, 2012
By Elaine M. [Signature]
Administrative Assistant to the Commissioner

FW-c
ELH

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0506037

FRANK WILSON

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

AMERICAN LAFRANCE

EMPLOYER,

AND

AIG C/O GALLAGHER BASSETT
SERVICES, INC..

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on September 18, 2012 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

1/7, 2013

APPEARANCES: Claimant/Appellant appeared *Pro Se*

Defendants/Respondents represented by Erin L. Hantske

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr., on April 18, 2012, in St. Matthews, South Carolina. Based upon the testimony and evidence received and produced at the hearing, the Hearing Commissioner made the following Findings of Fact:

1. The parties hereto are subject to and bound by the South Carolina Worker's Compensation Act.
2. The Claimant's average weekly wage is \$764.20, with a corresponding compensation rate of \$509.49.
3. The Claimant suffered an admitted injury by accident arising out of and in the course of his employment on or about May 16, 2005, to his neck, low back, left shoulder, right shoulder, ribs, bladder, and lungs.
4. On January 17, 2012, Claimant filed a Motion with the South Carolina Workers' Compensation Commission requesting the Commissioner address several issues in conjunction with his Form 50, Request for Hearing. In the regard, the Defendants filed a Reply Motion on January 24, 2012, which was received by the South Carolina Workers' Compensation Commission on January 30, 2012.
5. The Claimant's original Motion was returned as the filing fee did not accompany his hearing request. On February 17, 2012, the Claimant refiled his Form 50, Request for Hearing, along with his Motion, without making any material changes or alterations to the same.
6. The undersigned Commissioner attempted to schedule a telephone conference for March 3, 2012; however, the Claimant could not be reached at that time and a hearing was scheduled for April 18, 2012.
7. The Commission file indicates that the Commissioner's office called the Claimant on March 2, 2012; March 3, 2012; March 5, 2012; and March 9, 2012. The Claimant never

returned those phone calls, but indicated he did call back on April 2, 2012. At that time, this hearing was already scheduled.

8. Following that hearing, the undersigned Commissioner issued directives to the parties on April 27, 2012 and requested the Defendants draft a Decision and Order in this matter.
9. The MRI of the lumbar spine was already authorized at the time of the hearing. A copy of the authorization was provided to the Claimant at the hearing and another copy was sent by e-mail from defense counsel to the Commission that same afternoon.
10. The Claimant testified that he would like treatment before he gets worse.
11. The carrier is to provide all causally-related medical treatment that was previously ordered in this claim.
12. The Claimant wants treatment to both the right and left lower extremities, however those body parts are not compensable under the 2005 case as the Claimant failed to carry his burden of proof establishing compensable injuries to those alleged body parts.
13. The Claimant's prescriptions were delayed by no fault of the Defendants. There was a change with the prescription company and counsel for the Defendants tried to call the Claimant and wrote letters to the Claimant without a response.
14. The Claimant requested transportation costs to attend the hearing. The undersigned Commissioner denies that request as the Claimant requested the hearing and he has been very uncooperative in the resolution of these issues.
15. The carrier is to provide authorized medical treatment on a timely basis.
16. Counsel for the Defendants requested expenses of \$1,150.00 in preparation for this hearing including time spent responding to the Claimant's Motion and Form 50 as well as preparation for and travel to and from the hearing. The undersigned Commissioner would have likely awarded up to \$500.00 in defense costs, but due to the fact that the Defendants would be bearing the cost of writing that Order, the undersigned Commissioner waives awarding costs at this time. The undersigned Commissioner

would strongly consider a 100% reimbursement to the Defendants on any future request for defense costs in further defending this claim.

17. The Claimant testified he is now on social security and his case was accepted back in 2005.
18. The Claimant testified that he is very distrustful of defense counsel, her law firm, and the insurance carrier. The undersigned Commissioner views this as the main problem in this case.
19. The undersigned Commissioner finds defense counsel and her firm to be trustworthy and diligent in efforts to assist the Claimant with his workers' compensation claim.
20. The Claimant agrees to return phone calls to the Commissioner's office and to defense counsel without delay.
21. The Claimant was advised at the hearing on November 30, 2011 and again at the hearing on April 18, 2012 to communicate with all parties to help reduce expenses on all involved.
22. All unauthorized medical care needs to be filed with Medicare now that the Claimant has been accepted by social security.

Accordingly, as provided by S.C. Code Ann. §42-17-40, the Hearing Commissioner made the following Conclusions of Law:

1. Pursuant to S.C. Code Ann. §42-1-160, the Claimant sustained compensable injuries by accident arising out of and in the course of his employment on May 16, 2005 to the neck, low back, right shoulder, left shoulder, lungs, ribs, and bladder.
2. The Claimant has not carried his requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that an injury involving the thoracic spine, right lower extremity, left lower extremity, or any other body part aside from the admitted injuries listed above arose out of or occurred in the course of his employment with the Defendants on May 16, 2005. See Clade v. Champion Laboratories, 330 S.C. 8,

496 S.E. 2d 856 (1998) (the workers' compensation Claimant has the burden of proving the facts that show the injury arose out of employment, and award of benefits must not rest on surmise, conjecture, or speculation;) Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E. 2d 305 (1951) (the burden is upon the Claimant to prove the facts that will render the injury compensable).

3. Pursuant to S.C. Code Ann. §42-15-60, the Claimant is entitled continued causally-related medical care and treatment for his admitted injuries.
4. Pursuant to S.C. Code Ann. §42-9-30, any award for permanency at this time is premature.

Based upon these Findings of Fact and Conclusions of Law, the Hearing Commissioner issued the following Order:

IT IS HEREBY ORDERED that the Defendants are to provide all causally related medical treatment previously ordered for the Defendants' admitted work related accident.

IT IS FURTHER ORDERED that the Claimant failed to carry his burden of proof establishing a compensable injury by accident to his thoracic spine, left lower extremity, or right lower extremity and therefore is not entitled to any causally related medical treatment or further benefits under the Act.

No costs or fees are awarded at this time.

Within the statutory period, the Claimant filed an application for review in the case setting forth his reasons, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on September 18, 2012. All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following:

1. "The Claimant's Back (Thoracic Spine) MRI- supported by APA SUBMISSIONS- PAGES: 6, 9, 10, 11, 12, 14 and 15; Hearing Transcript April 10, 2007- PAGE: 10- Lines 14-22, PAGE: 14 Lines 19-25, PAGE: 15- Lines 1-24; Hearing Transcript-March 10.

2009: PAGE: 13- Lines 16-25, PAGE: 14-Lines 16-25, PAGE: 15-Lines 1-13; Claimant's Deposition February 20, 2007-PAGE: 42- Lines 1-25"

2. "The Claimant's Bilateral Lower Extremity EMG/nerve conduction study- supported by APA SUBMISSIONS- PAGES: 6, 7, 8, 10, 11, 14 and 15"
3. "The Claimant's First Script (Medco) prescription drug coverage...The Claimant received in the mail a new First Script (Medco) prescription drug ID card on or about May 1, 2012. The new First Script (Medco) prescription drug ID card was an exact duplicate First Script (Medco) prescription drug ID card as before. The Claimant presented and submitted the new exact duplicate First Script (Medco) prescription drug ID card to CVS Pharmacy located on 5212 Ashley Phosphate Road North Charleston, SC 29420 at (843) 767-4500. This took place on May 4, 2012. This was also when the Claimant request a prescription refill from CVS Pharmacy for the prescription Promethazine 25MG/Phenergan 25MG and this prescription medication received a rejection message from First Script (Medco). The CVS Pharmacy associate contacted First Script (Medco) by telephone and First Script (Medco) associate replied by stating that the Carrier (Adjuster) would contact CVS Pharmacy in 48 hours as it relates to the Claimant's prescription refill request the prescription Promethazine 25MG/Phenergan 25MG. The Claimant will provide the documentation from CVS Pharmacy for this ongoing and continuing delay(s) as it relates to the Claimant's prescription drug medication(s).- supported by APA SUBMISSIONS- PAGE: 38A – 38E ...The Claimant will provide the documentation for the Claimant's recent prescription drug delay at the Claimant's REQUEST FOR COMMISSION REVIEW Hearing."
4. "The Claimant's South Carolina Workers' Compensation Commission Hearing on April 10, 2007 with Commissioner J Alan Bass to address and determine the issues brought forth... (Form # 58- PRE-HEARING BRIEF- 4.) Facts in controversy: issue # 4.) PAGE: 2 of 7 and PAGE: 3 of 7 was not determined or addressed. - Supported by Hearing

Transcript April 10, 2007- (EXHIBIT: I- PAGES- 1-40) and APA SUBMISSIONS- PAGES: 16-17."

5. "The Claimant's MOTION dated February 27, 2012 and served by the South Carolina Workers' Compensation Commission on February 29, 2012- supported by APA SUBMISSIONS- (EXHIBIT: H- PAGES: 59-72)...The Claimant paid an additional \$25.00 filing fee for the Claimant's MOTION dated February 27, 2012 and served by the South Carolina Workers' Compensation Commission on February 29, 2012. The Claimant's MOTION dated February 27, 2012 was not determined, addressed or filed with the South Carolina Workers' Compensation Commission. This was after the fact of the Claimant paying the additional \$25.00 filing fee for this MOTION to be determined, addressed and or filed by and or with the South Carolina Workers' Compensation Commission."
6. "The Claimant respectfully request that the UTICA-MOHAWK language be included and inserted in any and all of the Claimant's final settlement(s) and or any and all of the Claimant's final agreement(s)."
7. "The Claimant respectfully request reimbursement for, but not limited to, the following: Please refer to the Claimant's (Form # 58- PRE-HEARING BRIEF- 4.) Facts in controversy- issue 7.) — PAGE: 4 of 7) *** (This is due to the ongoing and continuing issues of delays in the Claimant's medical treatment that is requested and recommended by the Authorized Treating Physician(s) this has been an ongoing and continuing issue since the early stages of the Claimant's claim to the present.- supported by Hearing Transcript April 10, 2007- (EXHIBIT I- PAGES: 1-40, Hearing Transcript March 10, 2009- (EXHIBIT K- PAGE: 13-Lines 16-25, PAGE: 14-Lines 16-25, PAGE: 15-Lines 1-13 and issues of delays in the Claimant's medical treatment noted in the Claimant's South Carolina Workers' Compensation Commission Hearing file on July 21, 2011 with Commissioner Andrea C. Roche- (refer to the Claimant's Form # 58- PREHEARING

BRIEF) also refer to APA SUBMISSIONS- PAGES: 1-5, the Defendants delays in providing payment(s) for the Claimant's medical treatment noted in the Claimant's South Carolina Workers' Compensation Commission Hearing file on November 30, 2011 with Commissioner Avery B. Wilkerson Jr.- (refer to the Claimant's Form # 58- PREHEARING BRIEF) and the ongoing and continuing delay(s) as it relates to the Claimant's prescription drug medication(s)- supported by APA SUBMISSIONS- PAGES: 38A-38E...the Claimant will provide additional documentation for the recent delay(s) in the Claimant's prescription drug medication(s) at the Claimant's South Carolina Workers' Compensation Commission (REQUEST FOR COMMISSION REVIEW) Hearing."

8. "The Claimant respectfully request reimbursement for the medical expenses as it relates to the Claimant's Right Shoulder and Left Shoulder evaluation by William J. Estes, MD of Southern Orthopedics And Sports Medicine.- supported by APA SUBMISSIONS- PAGES: 21-38, PAGES: 16-17 and Hearing Transcript April 10, 2007- (EXHIBIT: 1- PAGES: 1-40)"
9. "The Claimant respectfully request lifetime maintenance as it relates to the Claimant's Back injury. The Claimant respectfully request lifetime hardware maintenance as it Relates to the Claimant's Back injury."

****The Claimant disagree with having to provide payment expenses of the Defendants in this claim. This is due to the treatment towards the Claimant as noted throughout the Claimant's South Carolina Workers' Compensation Commission. This would include the unreasonable treatment from the Defendants, including but not limited to, the Carrier, the hand selected Authorized Treating Physicians by the Defendants and the Defendants representation which was and is aware of all the above through the exchanging of APA SUBMISSIONS and during the Claimant's South Carolina Worker's Compensation Commission Hearings."

“***The Claimant strongly disagree with the statement of Commissioner Avery B. Wilkerson Jr. as it states that he finds the Defense counsel and her law firm to be trustworthy and have been trying to assist the Claimant. Commissioner Wilkerson's statement is considered to be very inconsistent with all of the above facts and enclosed information given by the Claimant which is also noted in the Claimant's South Carolina Workers' Compensation Commission file.”

“***If all of the above issues and concerns of the Claimant are not clearly and properly addressed at the Claimant's South Carolina Workers Compensation Commission (REQUEST FOR COMMISSION REVIEW), then the claimant has no other option but to seek the attention of, but not limited to, the South Carolina Sate Governor's office, the South Carolina State Attorney's office, and or the South Carolina State NAACP office.”

In an Appellant Review, the Appellate Panel shall, pursuant to S.C. Code Ann. §42-70-50 (1985) review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. During oral argument, Appellant argued the Respondents omitted a Finding of Fact by the Hearing Commissioner on the previous Decision and Order relating to the Appellant's ability to obtain prescription medication and the credibility of the Defendants. Defendants admitted at the Full Commission hearing this omission was a scrivener's error and not an intentional act of omission. Therefore, the Appellate Panel amends all previous Findings of Fact relating to the credibility of the parties. Based upon a review of the forgoing, we hereby Affirm as Amended.

Accordingly, the Appellate Panel has stated the following Findings of Facts and Conclusions of Law and they shall become the law of the case; and, therefore, the Decision and Order of the Hearing Commissioner is amended as follows.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties pursuant to the Administrative procedure Act, and the Commission file relative to this claim, **WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:**

1. The parties hereto are subject to and bound by the South Carolina Worker's Compensation Act.
2. The Claimant's average weekly wage is \$764.20, with a corresponding compensation rate of \$509.49.
3. The Claimant suffered an admitted injury by accident arising out of and in the course of his employment on or about May 16, 2005, to his neck, low back, left shoulder, right shoulder, ribs, bladder, and lungs.
4. On January 17, 2012, Claimant filed a Motion with the South Carolina Workers' Compensation Commission requesting that the Commission address several issues in conjunction with his Form 50, Request for Hearing. In the regard, the Defendants filed a Reply Motion on January 24, 2012, which was received by the South Carolina Workers' Compensation Commission on January 30, 2012.
5. The Claimant's original Motion was returned as the filing fee did not accompany his hearing request. On February 17, 2012, the Claimant refiled his Form 50, Request for Hearing, along with his Motion, without making any material changes or alterations to the same.
6. The single hearing Commissioner attempted to schedule a telephone conference for March 3, 2012; however, the Claimant could not be reached at that time and a hearing was scheduled for April 18, 2012.
7. The Commission file indicates that the single hearing Commissioner's office called the Claimant on March 2, 2012; March 3, 2012; March 5, 2012; and March 9, 2012. The Claimant never returned those phone calls, but indicated he did call back on April 2, 2012. At that time, the hearing was already scheduled.
8. Following that hearing, the single hearing Commissioner issued directives to the parties on April 27, 2012 and requested the Defendants draft a Decision and Order in this matter.

9. The MRI of the lumbar spine was already authorized at the time of the hearing. A copy of the authorization was provided to the Claimant at the hearing and another copy was sent by e-mail from defense counsel to the Commission that same afternoon.
10. The Claimant testified that he would like treatment before he gets worse.
11. The carrier is to provide all causally-related medical treatment that was previously ordered in this claim.
12. The Claimant wants treatment to both the right and left lower extremities; however those body parts are not compensable under the 2005 case as the Claimant failed to carry his burden of proof establishing compensable injuries to those alleged body parts.
13. The Claimant's prescriptions were delayed by no fault of the Defendants. There was a change with the prescription company and counsel for the Defendants tried to call the Claimant and wrote letters to the Claimant without a response.
14. The Claimant requested transportation costs to attend the hearing. The undersigned deny that request.
15. The carrier is to provide authorized medical treatment on a timely basis.
16. The Claimant testified he is now on social security and his case was accepted back in 2005.
17. The Claimant testified that he is very distrustful of defense counsel, her law firm, and the insurance carrier. The single hearing Commissioner and the Appellate Panel view this as the main problem in this case.
18. The Claimant agrees to return phone calls to the Commission and to defense counsel without delay.
19. The Claimant was advised at the hearing on November 30, 2011 and again at the hearing on April 18, 2012 to communicate with all parties to help reduce expenses on all involved.

20. All unauthorized medical care needs to be filed with Medicare now that the Claimant has been accepted by social security.

CONCLUSIONS OF LAW

In view of these Findings of Fact, it is concluded that under the South Carolina Worker's Compensation Act and pursuant to other applicable law, **WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS A MATTER OF LAW:**

1. Pursuant to S.C. Code Ann. §42-1-160, the Claimant sustained compensable injuries by accident arising out of and in the course of his employment on May 16, 2005 to the neck, low back, right shoulder, left shoulder, lungs, ribs, and bladder.
2. The Claimant has not carried his requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that an injury involving the thoracic spine, right lower extremity, left lower extremity, or any other body part aside from the admitted injuries listed above arose out of or occurred in the course of his employment with the Defendants on May 16, 2005. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E. 2d 856 (1998) (the workers' compensation Claimant has the burden of proving the facts that show the injury arose out of employment, and award of benefits must not rest on surmise, conjecture, or speculation;) Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E. 2d 305 (1951) (the burden is upon the Claimant to prove the facts that will render the injury compensable).
3. Pursuant to S.C. Code Ann. §42-15-60, the Claimant is entitled continued causally-related medical care and treatment for his admitted injuries.
4. Pursuant to S.C. Code Ann. §42-9-30, any award for permanency at this time is premature.

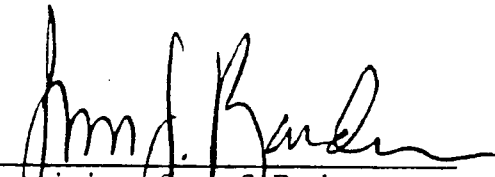
ORDER

IT IS HEREBY ORDERED that the Defendants are to provide all causally related medical treatment previously ordered for the Defendants' admitted work related accident.

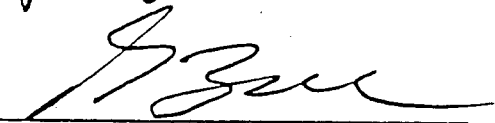
IT IS HEREBY ORDERED that the Claimant failed to carry his burden of proof establishing a compensable injury by accident to his thoracic spine, left lower extremity, or right lower extremity and therefore is not entitled to any causally related medical treatment or further benefits under the Act.

No cost or fees are awarded at this time.

AND IT IS SO ORDERED.


Commissioner Susan S. Barden
For the Appellate Panel

WE CONCUR:


Commissioner T. Scott Beck


Commissioner Melody James

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that the undersigned has this day
served a copy of the above captioned order in the above captioned action
upon the undersigned by depositing a copy thereof
in the United States mail addressed to
the undersigned or attorneys for said parties.

On the 14th day of January, 2013
Valene D. Deller

State of Ohio Assistant to the Clerk

Frank Wilsom (Reg & cert)
Erin L. Hantzke

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Frank Wilson,
Employee/Appellant,

v.

American LaFrance
Employer

and

AIG c/o Gallagher Bassett Services, Inc.,
Carrier,

Respondents.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2013-CP-18-01299

ORDER

CERTIFIED COPY
2013 DEC 17 PM 2:13
CLERK OF COURT
DORCHESTER COUNTY

The matter captioned above came before this Court on an appeal filed by Claimant/Appellant Frank Wilson appealing a Decision and Order by the Appellate Panel of the South Carolina Workers' Compensation Commission ("Full Commission") dated January 7, 2013. The Court heard oral arguments on this appeal in St. George on September 6, 2013. Present at the hearing were Helen F. Hiser, Esq., representing Respondents American LaFrance and AIG c/o Gallagher Basset Services, Inc., and *pro se* Claimant/Appellant Frank Wilson. Although Wilson initially appealed to the South Carolina Court of Appeals, this matter was transferred to this Court since the injury occurred prior to 2007.¹

Throughout this claim's lengthy history, there have been six separate Single Commissioner Decisions to date. The instant proceeding was initiated by Wilson when he appealed the Decision and Order of Single Commissioner Avery B. Wilkerson, filed June 21, 2012, to the Full Commission. Before issuing his Decision and Order, Commissioner Wilkerson held a hearing on the matter on April 18, 2012. After a hearing on September 18, 2012, the Full Commission affirmed the Single Commissioner's June 21, 2012 Order with some slight

¹ S.C. Code Ann. § 42-17-60 provides for direct appeals to the Court of Appeals for injuries occurring after July 1, 2007.

modifications in a Decision and Order dated January 7, 2013. The modifications were not raised as issues on appeal.

The Court finds that the record in this matter appears to be incomplete: transcripts from the Single Commissioner proceeding on April 18, 2012 and the Full Commission proceeding on September 18, 2012 were not provided to the Court. Furthermore, the only transcript present in the Record before this Court is the transcript from a hearing that Single Commissioner Alan Bass held on April 10, 2007. Most significantly, the Decision and Order from Single Commissioner Wilkerson dated June 21, 2012 was not provided to the Court.

The Court finds that without a complete and accurate record, it is impossible for an appellate court to make a determination. In explicating the process in which the reviewing court is to receive a copy of the record on appeal, S.C. Code § 1-23-380 (A)(3) (2005) provides:

Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

Therefore, this Court orders that the Worker's Compensation Commission transmit the record of the proceeding under this Court's review in accordance with the above-cited statutory authority.

When the record has been properly established, this matter should then be scheduled for a hearing during the next available non-jury term.

AND IT IS SO ORDERED.


The Honorable Diane Schafer Goodstein
First Judicial Circuit

December 13, 2013

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1801299

THE COURT OF COMMON PLEAS CERTIFIED CO.

Frank E Wilson

2013 DEC 17 PM 2:13

American LaFrance

Cheryl Williams

PLAINTIFF
CLERK OF COURT
DORCHESTER COUNTY

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

12/17/2013
Date

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

FRANK WILSON)

Claimant/Appellant,)

vs.)

AMERICAN LaFRANCE)

Employer,)

AND)

AIG c/o GALLAGHER BASSETT
SERVICES, INC.)

Carrier,)

Defendants/Rospondents.)

IN THE COURT OF COMMON PLEAS
(NON-JURY)

Civil Action No.: 2013-CP-18-01299

WCC File No.: 0506037

ORDER

CLERK OF COURT
DORCHESTER COUNTY

2014 AUG 19 PM 4:54

CERTIFIED COPY

STATEMENT OF THE CASE

The instant proceeding was initiated by Claimant filing a Form 50 request for hearing with the Commission dated February 17, 2012. Claimant claimed the body parts that were affected by his work related injury were his back, neck, ribs, lungs, right shoulder, left shoulder, bladder, right leg, left leg, right arm, and left arm. He asserted that he was in need of additional medical care for his back and bilateral lower extremities in the form an EMG/nerve conduction study. In an attachment to his Form 50, Claimant raised seven issues, including:

1. That he is entitled to an MRI of his back as recommended by Dr. Donald R. Johnson, II;
2. That he was entitled to a bilateral lower extremity EMG/nerve conduction study as recommended by Dr. Johnson;

3. The lack of prescription drug coverage;
4. Allegation that Commissioner Bass' April 17, 2008 Decision and Order instructed Respondents to "provide the Claimant with a cervical spine MRI to determine if there were any significant changes that could be related to Claimant's left shoulder. If there were no significant changes noted on the Claimant's cervical spine MRI, then [Respondents] would provide the Claimant with a left shoulder MRI to verify and determine if there were any related issues noted on the Claimant's left shoulder MRI that could be related to Claimant's left shoulder pain," leaving the record open thirty days for these tests. Claimant also alleged that the 2008 single Commissioner Decision and Order had been altered and that Respondents purposefully delayed authorized of a cervical spine MRI in order to defeat his claim;
5. That the Commission address issues Claimant raised in a Motion filed on January 17, 2012 (as resubmitted on February 17, 2012 and February 23 2012) regarding "medical neglect, medical malpractice, bias, any inappropriate action and/or inappropriate practice (if any) as it relates to" exhibits presented at a hearing before Commissioner Roche on July 21, 2011;
6. That Utica-Mohawk language be included in any final settlements or agreements; and
7. Reimbursement for filing the Form 50 and for transportation to and from the Commission hearing.

In a Form 50 dated February 27, 2012, Respondents admitted Claimant suffered a compensable injury to his neck, low back, bilateral shoulders, ribs, bladder and lungs only as it relates to his May 16, 2005 work accident and denied compensability to any other body parts. Respondents also disagreed that Claimant was entitled to bilateral lower extremity EMG/nerve

conduction study and/or a thoracic MRI, as neither alleged injury was causally related to his compensable accident. Respondents explained that Claimant's prescription drug coverage through First Script was terminated unilaterally by the provider when that company ceased handling South Carolina claims and that, upon notification by Claimant, Respondent took steps to restore the prescription coverage.

The parties were heard on April 18, 2012 by Commissioner Avery B. Wilkerson, Jr. who issued his Decision and Order on June 21, 2012.¹ Single Commissioner Wilkerson noted that the parties had attempted to resolve the issues via telephone on March 3, 2012, March 5, 2012, and March 9, 2012; however, Claimant failed to return the Commissioner's calls in a timely manner and/or make himself available for these scheduled telephone conferences. Claimant explained that his failure to call during the entire month of March 2012 and/or make himself available for the scheduled telephone conferences was due to being sick.

Commissioner Wilkerson held that Claimant failed to carry his burden of proof, that he was entitled to treatment for his thoracic spine, right lower extremity, left lower extremity, or any other body part aside from the admitted injury body parts. Commissioner Wilkerson found that the delay in Claimant's prescription coverage was not the fault of Respondents, as "[t]here was a change with the prescription company and counsel for [Respondents] tried to call the Claimant and wrote letters to the Claimant without response." Commissioner Wilkerson denied Claimant's request for transportation costs to attend the hearing, because "the Claimant

¹ Throughout this claim's lengthy history, there have been no less than six separate single Commissioner Decisions to date: 1) Decision and Order of Single Commissioner J. Alan Bass, dated April 17, 2008 ("2008 Single Commissioner Decision"); 2) Decision and Order of Single Commissioner David W. Huffstetler, filed April 16, 2009 ("2009 Single Commissioner Decision"); 3) Decision and Order of Single Commissioner Derrick Williams, filed April 5, 2010 ("2010 Single Commissioner Decision"); 4) Decision and Order of Single Commissioner Andrea C. Roche, filed August 11, 2011 ("2011 Single Commissioner Decision"); 5) Decision and Order of Single Commissioner Avery B. Wilkerson, Jr., filed February 10, 2012 ("Feb 2012 Single Commissioner Decision"); and 6) Decision and Order of Single Commissioner Avery B. Wilkerson, Jr., filed June 21, 2012 ("June 2012 Single Commissioner Decision").

requested the hearing and he has been very uncooperative in the resolution of these issues.” Although Respondents requested expenses in the amount of \$1,150.00 incurred in preparing for and attending the hearing, that request was denied. Commissioner Wilkerson stated, “although he was inclined to award Respondents \$500.00 in costs, due to the fact that [Respondents] would be bearing the costs of writing that Order,” he waived awarding costs at that time but advised that he “would strongly consider a 100% reimbursement to [Respondents] on any future requests for defense costs in further defending this claim.” Commissioner Wilkerson found “defense counsel and her firm to be trustworthy and diligent in efforts to assist the Claimant with his workers’ compensation claim.” Claimant agreed to return phone calls and to “communicate with all parties to help reduce expenses on all involved.” Finally, Commissioner Wilkerson held that any award of permanency was premature at this time.

Claimant timely appealed to the Full Commission, raising nine separate issues in a Form 30 dated June 14, 2012, and resubmitted on or around June 27, 2012. In addition to the seven issues listed on his Form 50, Claimant also sought reimbursement for the right and left shoulder evaluation performed by Dr. Estes in 2009 as well as lifetime maintenance including hardware as it relates to his back injury. Claimant disagreed “with having to provide payment expenses of the Defendants in this claim,” and also disputed statements made by Commissioner Wilkerson regarding defense counsel.

The Appellate Panel of the Full Commission heard the parties on September 18, 2012 and issued the Commission Decision and Order on January 7, 2013. With some modifications to the June 2012 Single Commissioner Decision, the Commission held that Claimant failed to carry his burden of proving he was entitled to treatment for his thoracic spine, right lower extremity, left lower extremity or any other body part aside from the admitted injuries. Any award of

permanency was premature and no costs were awarded. The Commission also addressed Claimant's argument that, in his request for a proposed Order, Commissioner Wilkerson included a finding that Claimant "had quite the run around from the carrier for treatment, checks and prescription problems" which has been inadvertently omitted from the June 2012 Single Commissioner Decision. The Commission noted the omission was the result of a scrivener's error and amended "all the previous Findings of Fact relating to the credibility of the parties." The Commission affirmed Commissioner Wilkerson's finding that the delay in prescription coverage was not Respondents' fault, in that "the main problem in this case," is Claimant's distrust of Respondents' counsel, her law firm and the insurance carrier.

Although Claimant initially appealed to the South Carolina Court of Appeals, this matter was transferred to this Court since the injury occurred prior to 2007, and S.C. Code Ann. Section 42-17-60 provides for direct appeals to the Court of Appeal only for injuries occurring after July 1, 2007. Claimant's notice of appeal raises five separate issues:

- 1) Whether his thoracic spine injury is compensable;
- 2) Whether he is entitled to a bilateral lower extremity EMG/nerve conduction study;
- 3) Whether he is entitled to reimbursement for evaluation and treatment expenses for his left shoulder incurred in 2009;
- 4) Issues raised in his February 27, 2012 Motion; and
- 5) Reimbursement for expenses and transportation costs related to the hearings before Single Commissioner Wilkerson and the Appellate Panel. Claimant's Notice of Appeal of the Commission Decision was dated February 6, 2013.

The Court initially heard oral arguments on this appeal in St. George, South Carolina, on September 6, 2013. Present at the hearing were Helen F. Hiser, Esquire, representing

Respondents American LaFrance and AIG c/o Gallagher Bassett Services, Inc., and *pro se* Claimant/Appellant Frank Wilson. Although this Court heard lengthy oral argument, it determined in an order filed December 17, 2013, that the record filed by the parties appeared to be incomplete. This Court found that without a complete and accurate record, it was impossible for an Appellate Court to make a determination on the issues raised on appeal. Pursuant to S.C. Code Ann. Section 1-23-380(A)(3), this Court ordered the South Carolina Workers' Compensation Commission to transmit a complete copy of the record of the proceeding under review.

Once this Court received the record from the Commission, the parties again appeared and were heard on March 12, 2014. At the hearing, the Court ordered the parties to resubmit their previously-filed briefs with the relevant portions of the Commission record attached.

On June 6, 2014, Claimant requested the above appeal be combined with the appeal that was filed on May 8, 2014 in Case No. 14-CP-18-880, stemming from a separate appeal of a separate Decision and Order from the South Carolina Workers' Compensation Commission. In a letter to the parties dated June 19, 2014, this Court advised the parties that the Court was in receipt of both the Respondents' and Appellant's resubmitted briefs with the relevant portions of the Commission record attached and that no further submissions were required from either party.

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2010). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304. (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence

of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by errors of law. S.C. Code Ann. §1-23-380(A)(5). The Administrative Procedures Act “mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case.” Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992).

The Full Commission is the ultimate fact finder in workers’ compensation cases. Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). It is not within the appellate courts’ purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999). Where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E.2d 526, 528 (2001). “The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission’s

finding from being supported by substantial evidence.” Sharpe v. Case Prod., Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999).

DISCUSSION

- I. Claimant did not prove a compensable injury to his thoracic spine, his right lower extremity or his left lower extremity and, therefore, is not entitled to treatment for same.**

The Commission properly held, based on the testimony and evidence before it, that Claimant did not carry “his requisite burden of proof, required under the South Carolina Workers’ Compensation Act, to establish that an injury involving the thoracic spine, right lower extremity, left lower extremity, or any other body part aside from the admitted injuries listed above arose out of or occurred in the course of his employment with [Respondents] on May 16, 2005.” (Commission Decision, p. 12). This conclusion is supported by substantial evidence in the record. *See, e.g., Broughton*, 336 S.C. at 496, 520 S.E.2d at 637.

- 1. Claimant did not prove that any problems he was having with his thoracic spine were related to his compensable injury.**

Although Claimant argues that he is entitled to evaluation of and/or treatment for his thoracic spine based on Commissioner Huffstetler’s 2009 Single Commission Decision, that Decision did not order treatment for his thoracic spine. The only back injury Commissioner Huffstetler found compensable in 2009 was to Claimant’s low back. Thus, the treatment ordered to his “back” was to his low back only.

At the hearing before Commissioner Huffstetler, Claimant argued that he was entitled to shoulder and back surgery. More specifically, he testified that he first started seeing the doctors at Southeastern Spine because he was “getting frustrated with the lack of medical attention that was given to my lumbar spine, cervical spine. This actually took place ... with my family doctor. I asked him to refer me to the best spine doctor that I can go to and off the top of his

head, he said well the best you can go to is Southeastern Spine ... And, at that time, I said, well, can you refer me there ...” (2009 Hr’g Tr. p. 12, line 15 – 13, line 5). Claimant testified to treatment for his lumbar and cervical spine, but did not mention his thoracic spine. (2009 Hr’g Tr. p. 12, line 15 – 15, line 13). Dr. Roush’s notes from June and July 2009 discuss issues with and treatment of Claimant’s lumbar and cervical spine, but do not discuss or propose treatment to his thoracic spine. (Cl. 2010 APA, pp. 48-54). In fact, when reciting the reasons he could not return to work, Claimant pointed to “[m]ultiple pain levels and all of my injuries – my lower back, my lumbar spine, my cervical spine, right shoulder, left shoulder ...” but made no mention of his thoracic spine. (2009 Hr’g Tr. p. 19, lines 1-15). Claimant discussed updated MRI’s he had had for his head, lumbar spine, cervical spine, and left shoulder. (2009 Hr’g Tr. p. 21, line 20 – p. 23, line 5). Commissioner Huffstetler specifically asked Claimant about the problems he was having, including his right shoulder, neck, lower back, right lung, and ribs, but neither Commissioner Huffstetler nor Claimant mentioned Claimant’s thoracic spine. (2009 Hr’g Tr. p. 24, line 20 – p. 28, line 12). Thus, Claimant’s thoracic spine was not raised in the 2009 Hearing and Commissioner Huffstetler was not ordering treatment for a condition that was not before him.

In addition, although Claimant is correct that Commissioner Huffstetler ordered Respondents to “provide medical treatment for the Claimant’s back through Southeastern Spine Institute,” (2009 Single Commissioner Decision p. 11), that treatment was for compensable, work-related injuries only. *See, e.g., Nettles v. Spartanburg Sch. Dist. # 7*, 341 S.C. 580, 589, 535 S.E.2d 146, 150 (Ct. App. 2000) (holding that “Workers Compensation only awards benefits for disabilities causally connected to a work-related injury”); *Munn v. Nucor Steel*, 336 S.C. 28, 32, 518 S.E.2d 289, 290 (Ct. App. 1999) (holding that, under the Workers’ Compensation Act

("Act"), "any medical treatment claimed under § 42-15-60 must be causally related to the 'injury by accident' arising out of and in the course of employment"). Conclusion of Law No. 2 states that Claimant "sustained a compensable injury by accident arising out of and occurring in the course and scope of his employment with [Respondents] on or about May 16, 2005, to his low back, neck, right shoulder, ribs, and lungs." (2009 Single Commissioner Decision p. 10). There is no mention of and no treatment was ordered for Claimant's thoracic spine in the 2009 Single Commissioner Decision. Thus, the treatment ordered for Claimant's back through Southeastern Spine Institute was to his cervical and lumbar spine, which had been determined to be compensable, but not to his thoracic spine, which had not. (2009 Single Commission Decision, pp. 10-11).

Although records from the Palmetto Comprehensive Center for Pain of the Southeastern Spine Institute for December 29, 2011 note that he was complaining of pain in his mid-back, or thoracic region, as well as thoracic radiculitis (Cl. APA pp. 9-10), this report does not link any issues he was having with his thoracic spine to his May 16, 2005 accident. The February 24, 2012 record from the same office noted a diagnosis of thoracic radiculitis, among other things, and notes Claimant was complaining of midback pain but, again, does not link any thoracic issues to his work-related accident. (Cl. APA pp. 11-12).

Furthermore, although Claimant provided Dr. Richardson with a letter, asking whether he agreed with Dr. Johnson's course of treatment and that injuries to his "Back, Legs and Arms" were causally related to his lumbar and cervical spine injuries, Dr. Johnson was treating Claimant for his lumbar spine problems and neither proposed nor provided any treatment whatsoever to his thoracic spine. (Cl. APA pp. 2-6). Specifically, Dr. Johnson provided a diagnosis of "low back injury, L5-S1, neck." (Cl. APA p. 6). Therefore, the only reasonable

interpretation of both Dr. Johnson and Dr. Richardson's statements regarding Claimant's back is that they were referring to his cervical and/or lumbar issues. Finally, simply opining that Claimant would benefit from the treatment outlined in the December 29, 2011 and/or February 24, 2012 office visits only demonstrates that Dr. Richardson agreed with the recommendation for an "MRI of his thoracic spine to rule out any type of thoracic pathology with his new on-set of pain," (Cl. APA p. 10), and that Claimant should "see his primary care physician as soon as possible to confirm that it is not his heart causing the associated symptoms he is having as [the Physician's Assistant] was concerned there may be a component of cardiac disease associated." (Cl. APA p. 12).

The fact that a claimant may benefit from medical care, standing alone, does not establish a causal link between compensable and non-compensable body parts. *See, e.g., Nettles*, 341 S.C. at 589, 535 S.E.2d at 150; *Munn*, 336 S.C. at 32, 518 S.E.2d at 290. Without more, the facts that the Commission ordered treatment for Claimant's back through Southeastern Spine, and that the doctors there recommended that he receive treatment to his thoracic spine simply does not establish a causal connection between his work-related injury and any problems he is having with his thoracic spine. It is beyond debate that a claimant in a workers' compensation proceeding bears the burden of proving he is entitled to compensation and an award cannot rest on surmise, conjecture or speculation. *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998).

To the extent Claimant relies on medical reports that were never admitted as part of and, in fact, post-date the April 18, 2012 hearing before Commissioner Wilkerson, those records are not part of the record in this case and cannot be considered by an appellate forum. S.C. Code Ann. § 1-23-380(4) (appellate review is confined to the record before the Commission). The

Commission's Regulation 67-612(J) provides that "[a]ll available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to R. 67-613." S.C. Code Regs. § 67-612(J). If he believed later medical records, including the June 4, 2012 and January 11, 2013 medical records from Dr. William Blane Richardson and the May 21, 2012 MRI of his thoracic spine, would be relevant to his claim, Claimant could have moved at the hearing before Commissioner Wilkerson to hold the record open for additional evidence. See Martin v. Rapid Plumbing, 369 S.C. 278, 287, 631 S.E.2d 547, 552 (Ct. App. 2006). However, Claimant did not do so. Alternatively, Claimant could have moved to postpone the Hearing before Commissioner Wilkerson pursuant to S.C. Code Regs. §§ 67-613 and 67-708, but did not. In addition, Claimant has never moved the Commission to admit this evidence after the hearing pursuant to Regulation 67-707. S.C. Code Regs. § 67-707. This Court cannot consider this evidence for the first time because, in its appellate capacity, it is limited to determining whether the Commission Decision is supported by substantial evidence in the record but cannot find facts on its own. Ross, 298 S.C. at 492, 381 S.E.2d at 730.

Finally, to the extent Claimant argues that treatment ordered by Commissioner Huffstetler was based on his not receiving the appropriate orthopedic management outlined in the Commissioner Bass's prior order, Claimant is simply mistaken. Although Commissioner Huffstetler noted Claimant's testimony where he, "explained [that] he had not received the orthopaedic management outlined in Commissioner Bass' Order," (2009 Single Commissioner Decision p. 8), that was not a holding but was merely the Commissioner's recitation of the hearing testimony.

2. Claimant did not prove that any bilateral lower extremity problems he was having were related to his compensable injury.

For many of the same reasons that Claimant's thoracic spine is not compensable, Respondents are not responsible for paying for a Bilateral Lower Extremity EMG/nerve conduction study. This is because Claimant has not proven any problems he may be having with his bilateral lower extremities are causally related to his May 16, 2005 accident. The Commission properly and correctly found that Claimant failed to carry his burden of proof establishing compensable injuries to his right and left lower extremities. (Commission Decision, pp. 11-12). As this finding is supported by substantial evidence, this Court upholds the Commission's finding.

Claimant erroneously suggests that, by authorizing treatment with the Southeastern Spine Institute, Commissioner Huffstetler was also ordering treatment of his bilateral lower extremities and/or any other body part treated by Southeastern Spine. The fact that a treating physician ordered a test or treatment of a body part other than those accepted or determined by the Commission to be compensable does not mean those other body parts are automatically deemed compensable. Instead, Respondents are only responsible for paying for treatment for those injuries that have been determined to be causally related to Claimant's work-place accident. *See, e.g., Nettles*, 341 S.C. at 589, 535 S.E.2d at 150; *Munn*, 336 S.C. at 32, 518 S.E.2d at 290.

With respect to the prior recommendation by Dr. Stovall that a nerve conduction study be performed, the "EMG and nerve conduction studies of the right lower extremity reveal[ed] a normal study, no evidence of lumbar radiculopathy." (Resp. 2010 APA pp. 142-143). At the hearing before Commissioner Huffstetler, Claimant agreed that at his last appointment, Dr. Stovall said there were no indications Claimant's urinary symptoms were the result of his neck or lower back. (2009 Hr'g Tr. p. 23, lines 7-11). Thus, Commissioner Huffstetler clearly was

not ordering any studies or treatment of Claimant's bilateral lower extremities. (2009 Hr'g Tr. p. 16, line 25 – p. 17, line 7).

Although records from the Palmetto Comprehensive Center for Pain of the Southeastern Spine Institute for December 29, 2011 note that he had been diagnosed with lumbar radiculitis and that he complained of "new on-set leg pain," and suggests "a bilateral lower extremity EMG/nerve conduction study to further evaluation [sic] this patient's lower extremity pain," (Cl. APA pp. 9-10), this report does not link any issues he was having with his bilateral lower extremities to his May 16, 2005 accident. The February 24, 2012 record from the same office also notes a diagnosis of lumbar radiculitis, among other things, but does not provide any causal link to his work-related injury. (Cl. APA pp. 11-12). Although Claimant provided Dr. Richardson with a letter, asking whether he agreed with Dr. Johnson's course of treatment and that injuries to his "Back, Legs and Arms" were causally related to his lumbar and cervical spine injuries, the only statement in this letter made "to a reasonable degree of medical certainty" was whether Claimant would "benefit from the evaluation and treatment requested and recommended in [Claimant's] December 20, 2011 office visit medical note." (Cl. APA pp. 2-6, 14). Benefitting from treatment is not the same as being causally related. *E.g.*, Munn, 336 S.C. at 32, 518 S.E.2d at 290.

Without more, the fact that the Commission ordered treatment for Claimant's back through Southeastern Spine, and that the doctors there recommended that he undergo a Bilateral Lower Extremity EMG/nerve conduction study does not establish a causal connection between his work-related injury and any problems he may be having with his bilateral lower extremities. The claimant in a workers' compensation proceeding bears the burden of proving he is entitled to

compensation, which award cannot rest on surmise, conjecture or speculation. Clade, 330 S.C. at 11, 496 S.E.2d at 858.

As was the case with Claimant's arguments regarding his thoracic spine, he attempts to rely on medical reports regarding his bilateral lower extremity issue that post-date the April 18, 2012 hearing before Commissioner Wilkerson. Those records are not part of the record in this case and cannot be considered by an appellate forum. *See* S.C. Code Ann. § 1-23-380(4); S.C. Code Regs. § 67-612(J); Martin, 369 S.C. at 287, 631 S.E.2d at 552.

In the end, Claimant simply failed to prove any problems he is having with his bilateral lower extremities are causally linked to his work-related injury. Consequently, the Commission properly declined to order treatment for those body parts. As the Commission Decision is supported by substantial evidence, this Court affirms such findings.

II. Claimant is not entitled to reimbursement for costs incurred in 2009 and before to evaluate and treat his left shoulder.

The Commission properly and correctly declined to order reimbursement for costs incurred by Claimant in 2009 and before related to his left shoulder. To begin with, this issue was resolved in a prior proceeding. Claimant requested "reimbursement for the two visits to Dr. William Estes in 2009 regarding the evaluation for his shoulders," before Commissioner Roche in 2011. (2011 Single Commissioner Decision, p. 4). She held that Respondents "are not responsible for reimbursement related to the Claimant's treatment with Dr. William Estes in 2009." (2011 Single Commissioner Decision, p. 5). This issue was not appealed to the Full Commission and, as such, is now the law of the case. *See, e.g., Brunson v. American Koyo Bearings*, 367 S.C. 161, 165-66, 623 S.E.2d 870, 872 (Ct. App. 2005) (findings of fact and conclusions of law of the Single Commissioner become the law of the case unless appealed to the Full Commission), *citing Green v. City of Columbia*, 311 S.C. 78, 80, 427 S.E.2d 685, 687

(Ct. App. 1999). Because the uncontested 2011 Single Commissioner Decision became the final Commission Decision with respect to this issue, Claimant is barred from raising it again in this proceeding. *See, e.g.,* Garris v. Governing Bd. of the S.C. Reins. Fac., 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998) (explaining that the “primary purposes of the doctrine, commonly known today as claim preclusion, are to bring an end to litigation and prevent a defendant from being forced to defend the same action repeatedly”).

The fact that Claimant was representing himself *pro se* in 2011 when Commissioner Roche issued her Decision does not absolve him of the obligation to preserve issues for appeal and/or to timely appeal decisions by the Single Commissioner or the Full Commission. *See* Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (the requirement of timely appeal is jurisdictional, and “if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline...”); State v. Policao, 402 S.C. 547, 558, 741 S.E.2d 774, 779 (Ct. App. 2013) (*pro se* litigants are responsible for preserving issues for appellate review). Because Claimant did not timely appeal Finding No. 7 in the 2011 Single Commissioner Decision to the Full Commission, it is the law of the case and cannot be overturned at this late date.

Even if this Court were to consider this issue, it would be denied for the same reasons that Commissioner Roche denied it in 2011. The medical appointments Claimant had with Dr. Estes in 2009 were not authorized and his left shoulder had neither been accepted by Respondents nor ordered compensable by the Commission in 2009. Compensability of his left shoulder was in dispute. (2011 Single Commissioner Decision, p. 4) (2012 Hr’g Tr., p. 33, line

13 – p. 37, line 10). It was not until 2010 that Commissioner Williams held Claimant's left shoulder to be compensable. (2010 Single Commissioner Decision, pp. 7-8).

Furthermore, although Claimant asserted in his Pre-Hearing Brief before the Commission that Commissioner Bass left the record open for Claimant's "Cervical Spine MRI and the Claimant's Left Shoulder MRI if there were no significant changes noted on the Claimant's Cervical Spine MRI," (Claimant's Form 58, attachment at p. 3), the only evidence for which the record was left open was the deposition of pulmonologist Dr. Fechter. (2008 Single Commissioner Decision, p. 5) (*see also* 2007 Hr'g Tr. p. 5, lines 19-22). To the extent Claimant argues that reimbursement of evaluation and/or treatment of his left shoulder was authorized by Commissioner Bass in an "off the record" conversation, there simply is no evidence of the same. If Commissioner Bass ordered any evaluation and/or treatment of Claimant's left shoulder, it was incumbent on Claimant to capture that statement on the record or have it included in the 2008 Single Commission Decision.² Claimant has failed to provide any evidentiary support for his allegations regarding what Commissioner Bass ordered, if anything, concerning his left shoulder which are rejected. Hutson v. South Carolina State Ports Auth., 399 S.C. 381, 389, 732 S.E.2d 500, 504 (2012) (Commission decision cannot be based on speculation).

Claimant's assertion that any evaluation of his left shoulder was delayed by Respondents "as an effort to omit [Claimant's] Left Shoulder injury from [Claimant's] South Carolina Workers' Compensation Commission claim," is entirely unsupported. He has presented no evidence of any such motive. Unsupported allegations and conjecture are insufficient to support a compensation award. Clade, 330 S.C. at 11, 496 S.E.2d at 858.

This Court denies Claimant's request for further review of this issue.

² This Court notes that Claimant was represented by counsel at the hearing before Commissioner Bass in 2007.

III. The Commission properly declined to address Claimant's February 23, 2012 Motion.

Claimant's February 23, 2012 Motion seeks to have the Commission investigate various issues of "medical neglect, medical malpractice, bias, any inappropriate action and or any inappropriate practice ..." (Cl. APA pp. 59-60). Claimant raised these issues before Single Commissioner Wilkerson in the lengthy pre-trial conference on November 30, 2011. (Feb. 2012 Single Commissioner Decision p. 5). At that time, Commissioner Wilkerson explained that the Commission lacks jurisdiction to hear the issues of alleged medical neglect or malpractice, bias or inappropriate actions or practices on behalf of the authorized treating physicians, or to list the physicians Claimant alleged mistreated him. (Feb. 2012 Single Commissioner Decision p. 8).

Because Claimant did not appeal Feb. 2012 Single Commissioner Decision, it is the law of this case and cannot be challenged at this late date. *E.g.*, Brunson, 367 S.C. at 165-66, 623 S.E.2d at 872 (findings of fact and conclusions of law of the Single Commissioner become the law of the case unless appealed to the Full Commission). Because the uncontested Feb. 2012 Single Commissioner Decision became the final Commission Decision with respect to this issue, Claimant is barred from raising it again in this proceeding. Garris, 333 S.C. at 449, 511 S.E.2d at 57.

The fact that Claimant is now requesting slightly different relief, *i.e.*, that if the Commission cannot resolve the issues raised in his Motion, the matter be referred to the State Attorney General's office, does not alter the outcome. Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30, 35, 512 S.E.2d 106, 109 (1999) (simply changing the relief sought does not alter the preclusive effect of *res judicata* or claim preclusion).

Even if this Court were to view this as a jurisdictional issue for which it has de novo review under a preponderance of the evidence standard, Pikaart v. A&A Taxi, Inc., 393 S.C. 312,

317, 713, S.E.2d 267, 270 (2011), the Commission Decision nonetheless would be upheld. *See Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 244, 647 S.E.2d 691, 695 (Ct. App. 2007) (explaining that the “question of subject matter jurisdiction is a question of law” and that, on appeal, the appellant bears the burden of showing that the lower tribunal’s “decision is against the preponderance of evidence”). As Commissioner Wilkerson previously held, the Commission lacks jurisdiction to consider issues of medical neglect, malpractice, bias and any inappropriate action or practice. (Feb. 2012 Single Commissioner Decision, p. 8).

The “Commission’s jurisdiction and authority is circumscribed by the Workers’ Compensation Act.” *Price v. Peachtree Elec. Servs., Inc.*, 396 S.C. 403, 409, 721 S.E.2d 461, 464 (Ct. App. 2011), *citing* *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 2 S.E.2d 825 (1939). “An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.” *Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995). “The right to workmen’s compensation is wholly statutory and exists only under the circumstances provided in the Workmen’s Compensation Act. The right of any claimant to compensation is dependent upon the terms of the Act.” *Dameron v. Spartan Mills*, 211 S.C. 217, 218, 44 S.E.2d 466, 467 (1947) (noting that, “the rights acquired under the Workmen’s Compensation Act being purely statutory, the parties are bound by the terms thereof ...”). There is no provision in the Act or the Commission’s Regulations authorizing it to consider and resolve allegations of medical neglect, malpractice, bias and/or any inappropriate action or practice.

Similarly, the Commission does not have statutory authority to forward Claimant’s complaints to the State Attorney General’s office. Under S.C. Code Ann. § 42-9-440, the Commission is required to “report all cases of suspected false statement or misrepresentation, as

defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.” However, that is the only provision of the Act requiring or authorizing the Commission to report anything to the State Attorney General’s office. (See 2012 Hr’g Tr., p. 11, line 15 – p. 14, line 18).

In addition, to the extent Claimant argues, that this issue was not “acknowledged, addressed or determined” by Commissioner Wilkerson at the April 18, 2012 Hearing, he is incorrect. Commissioner Wilkerson explained that he had already ruled on the issue and that neither he nor the Commission had jurisdiction to resolve the medical malpractice/bias issue. (2012 Hr’g Tr., p. 11, line 15 – p. 14, line 18).

Beyond ordering medical care and treatment, and authorizing a change of physicians in appropriate cases (which was done here to accommodate Claimant), the Commission has no authority to hear and decide allegations of medical neglect, malpractice, bias and any inappropriate action or practice. Because the Act is in derogation of the common law, its terms are strictly construed, “leaving it to the Legislature to amend and define its ambiguities.” Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003).

This Court affirms that the Commission lacks authority to resolve this issue for Claimant.

IV. The Commission properly denied Claimant’s request for reimbursement of his expenses for the April 18, 2012 and September 18, 2012 Commission hearings.

The Commission properly denied Claimant’s request for reimbursement of expenses he incurred in the April 18, 2012 and September 18, 2012 hearings. The April 18, 2012 hearing was initiated by Claimant’s filing a Form 50 seeking, among other things, additional medical treatment, resolution of the prescription drug coverage issue, as well as raising the allegations of

medical neglect, malpractice, bias and inappropriate actions on the part of the authorized treating physicians. (June 2012 Single Commissioner Decision, pp. 4-5). Attempts to resolve these issues via a telephone conference were defeated by Claimant's failure to timely return telephone calls to the Commission or to respond to correspondence from Respondents' counsel. (June 2012 Single Commissioner Decision, pp. 6, 10) (2012 Hr'g Tr., p. 3, lines 2-22) (*see also* 2012 Hr'g Tr. p. 7, lines 8-18) (2012 Hr'g Tr. p. 51, lines 19-25). Furthermore, the April 18, 2012 Hearing would have been held in Charleston, instead of St. George (thereby saving Claimant some travel expenses), had Claimant returned Commissioner Wilkerson's phone calls in March 2012. (2012 Hr'g Tr. p. 53, line 18 – p. 55, line 24).

As for the Hearing before the Appellate Panel on September 18, 2012, those costs are also denied. Claimant sought review of the 2012 Single Commissioner Decision. Although the Commission revised some of Commissioner Wilkerson's findings, by and large it affirmed the 2012 Single Commissioner Decision. (Commission Decision, p. 9). S.C. Code Ann. Section 42-17-80 provides that, "[i]f the Commission ... shall determine that such proceedings have been brought, prosecuted or defended without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought or defended them." The fact that the Commission did not impose costs indicates that it concluded Respondents' defense was reasonable. *See Dameron*, 211 S.C. at 222, 44 S.E.2d at 467 (finding evidence in the case supported the Commission's factual conclusion regarding imposition of costs). Where a party prevails on most of the points appealed, it can hardly be found to have defended without reasonable grounds. Therefore, the Commission properly declined to award any costs or fees. (Commission Decision, p. 13).

To the extent Claimant is alleging that he is entitled to hearing costs because of the proposed finding in Commissioner Wilkerson's Directive/request for a proposed order, (Directive, mailed on April 27, 2012), his argument fails for several reasons. First, the proposed order was drafted and sent to both Claimant and Commissioner Wilkerson for review. Commissioner Wilkerson did not add or change any findings regarding whether Claimant "has had quite the runaround from the carrier for treatment, checks and prescription problems," prior to signing and issuing his June 2012 Single Commissioner Decision. Second, the Appellate Panel determined that the omission of this directive/finding was an inadvertent scrivener's error and amended "all the previous Findings of Fact relating to the credibility of the parties." (Commission Decision, p. 9). Notably, the Commission did not include any finding reflecting that Claimant has been subjected to a "runaround" but, instead, reaffirmed Commissioner Wilkerson's view that Claimant's distrust of Respondents' counsel and the insurer is "the main problem in this case," and denied his request for costs. (Commission Decision, pp. 9, 11).

Because the Commission Decision to not award Claimant costs is both proper and supported by substantial evidence, this Court affirms such finding.

V. To the extent Claimant attempts to raise the issue of whether Commissioner Wilkerson displayed bias toward him, this issue was not raised to the Commission and is not preserved for appeal.

Claimant filed a Motion with the Commission on January 16, 2013 raising allegations about Commissioner Wilkerson's demeanor toward him during the April 18, 2012 Hearing. The issue of whether Commissioner Wilkerson displayed bias toward Claimant was not raised in his Form 30 notice of appeal and, therefore, is not preserved for appellate review. Only issues raised in the application for review to the Full Commission are preserved for review. *E.g., Brunson*, 367 S.C. at 166, 623 S.E.2d at 872. Furthermore, the issue of whether Commissioner Wilkerson

displayed bias toward Claimant was not argued to the Full Commission. In order to preserve an issue for appeal, it must be raised to the lower tribunal. Transportation Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010) (refusing to consider issues not raised below); Elam, 361 S.C. at 23, 602 S.E.2d at 780 (explaining that “[i]t is axiomatic that an issue cannot be raised for the first time on appeal ...”); *see also* Bazzle, 319 S.C. at 446, 462 S.E.2d at 274 (issues not raised before the lower tribunal need not be addressed by the appellate court). In fact, Claimant’s Motion was not filed until over a week after the Commission Decision was issued. Claimant’s Motion asked that Commissioner Wilkerson be removed from and/or replaced as the Hearing Commissioner for a hearing scheduled for February 4, 2013, which was set to consider issues raised on a Form 50 Request for Hearing that Claimant filed with the Commission on September 6, 2012. Regardless of what issues were set for hearing on February 4, 2013, Claimant’s Motion is beyond the scope of this proceeding and appeal. It is not part of the Record that was before the Commission when it heard the parties on September 18, 2012, as it was not even filed until after the Commission rendered its Decision. Pursuant to S.C. Code Ann. § 1-23-380(4), appellate review must be confined to the record.

Frankly, there is no evidence of and no reason to believe Commissioner Wilkerson was biased or expressing an inappropriate demeanor toward Claimant, simply because he ruled against him in his compensation claim. This Court denies Claimant’s request to review this issue.

VI. Claimant’s request to consolidate his two pending appeals is hereby denied as his second appeal is not immediately appealable

The Order of the South Carolina Workers’ Compensation Commission that is subject of Claimant’s second appeal, Appellate Panel Decision and Order dated April 9, 2014, is not a final decision and, therefore, not immediately appealable. *Montjoy v. Asten-Hill Dryer Fabrics*, 316

S.C. 52, 52, 446 S.E. 2d 618, 618 (1994); *Long v. Sealed Air Corp.*, 391 S.C. 483, 487, 706 S.E. 2d 34, 36 (Ct. App. 2011).

Claimant filed a Workers' Compensation claim against Respondent's alleging entitlement to additional medical treatment and requesting penalties, fines, and sanctions be assessed. After hearing the parties, the Single Commissioner issued an Order on October 8, 2013, finding Appellant entitled to reimbursement for his filing fees, but did not assess any penalties, fines or sanctions as requested by Claimant. Claimant then appealed this decision to the Appellate Panel of the Full Commission. The parties were heard on December 17, 2013 and the Appellate Panel of the Full Commission issued an Order on April 9, 2014. In its Decision and Order, the Commissioners considered the matter and *remanded* the Decision and Order to the Single Commissioner in order to make additional findings relating to the issues presented on appeal including whether the Defendants have complied with a prior Order of the Commission. Once a determination is made by the Single Commissioner, the matter is to be returned for oral argument before the Appellate Panel of the South Carolina Workers' Compensation Commission.

Because "there is some further Act which must be done by the [Single Commissioner] prior to a determination of the rights of the parties," the Commission's April 9, 2014 Decision and Order was interlocutory and not immediately appealable. *Charlotte-Mecklenburg Hosp. Auth. V. South Carolina Dept. of Health and Env'tl Cont.*, 387 S.C. 265, 267, 692 S.E. 2d 894, 894-95 (2010). *Charlotte-Mecklenburg* held that "Judicial Review" may only be sought from a final decision" of administrative agencies. 387 S.C. at 266, 692 S.E. 2d at 894; see also *Puniyani v. Avni Grocers*, 2010 S.C. App. Unpub. LEXIS 362 (June 29, 2010) (dismissing Workers' Compensation Appeal where the decision below had been remanded for further substantive proceedings).

The factual determinations of whether Defendants have complied with previous Decision and Orders of the South Carolina Workers' Compensation Commission and whether the Defendants are subject to penalties, fines or sanctions are substantive factual inquiries to be made by the Single Commissioner on remand. As such, this Court denies Claimant's Motion to consolidate both appeals and hereby dismisses Claimant's appeal in Case No. 14-CP-18-880, as the April 9, 2014 Commission Decision and Order that is the subject of that appeal is not a final Order for purposes of appellate review.

ORDER

Based upon the foregoing, **IT IS ORDERED** that the Decision and Order of the Appellant Panel of the South Carolina Workers' Compensation Commission dated January 7, 2013 is **AFFIRMED IN ITS ENTIRETY**.

IT IS FURTHER ORDERED, Claimant's request to have his second appeal in Case No. 14-CP-18-880 consolidated with the instant appeal is hereby denied. After careful consideration of the record, the Court denies such consolidation and hereby dismisses the appeal in Case No. 14-CP-18-880 as the April 9, 2014 Commission Decision and Order that is the subject of that appeal is not a final Order for purposes of appellate review.

AND IT IS SO ORDERED.

August 18, 2014
St. George, SC



THE HONORABLE MAITE MURPHY

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1801299

Frank E Wilson

2014 AUG 19 PM 4:32

American LaFrance
Gallagher Bassett
Services Inc

AIG

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Maité Murphy
Circuit Court Judge

2166
Judge Code

8/19/2014
Date

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0506037

FRANK WILSON,
Employee/Claimant,

vs.

AMERICAN LaFRANCE, LLC and
AIG AMERICAN HOME ASSURANCE,
Employer/Carrier.

HELD BEFORE: COMMISSIONER J. ALAN BASS

DATE TAKEN: April 10, 2007

TIME TAKEN: 12:15 to 12:52 p.m.

LOCATION: PERIMETER CENTER
4050 BRIDGEVIEW DRIVE
NORTH CHARLESTON, SC

REPORTED BY: Beth W. Kornuta

RECEIVED

JAN 14 2008

S.C. WORKERS' COMP. COMM.
OFFICE OF COMMS BASS

LOWCOUNTRY LEGAL MEDIA
COURT REPORTING & VIDEOGRAPHY
920 Trent Street Charleston, SC 29414
(843) 763-9590 (843) 225-5256 fax
llm@knology.net

1 he needs additional treatment for the lungs and an
2 MRI to the shoulder or the neck to determine
3 what's wrong with the neck and the left shoulder.
4 If he is at MMI, he asks for PPD to the affected
5 body parts with Dodge medical.

6 The parties agree to an average weekly
7 wage of \$764.20, a comp. rate of \$509.49. This is
8 an admitted accident that occurred on May 16th,
9 2005.

10 Those are the issues. Ms. Morgan,
11 anything further from you?

12 MS. MORGAN: Do the Defendants have
13 the right to depose Dr. Fechter?

14 COMMISSIONER BASS: You do.

15 MS. MORGAN: Nothing further from the
16 Defendants.

17 COMMISSIONER BASS: Do you want to?

18 MS. MORGAN: Yes.

19 COMMISSIONER BASS: Okay. All right.
20 The record will be left open for the Defendants to
21 depose Dr. Fechter, as is their right to do under
22 the APAs.

23 MR. GOLDBERG: Commissioner?

24 COMMISSIONER BASS: Yes?

25 MR. GOLDBERG: If I may add from the

1 by "clear?"

2 BY MS. MORGAN:

3 Q The fractures were healed and so that
4 you could go treat for your back and your neck and
5 your shoulder?

6 A According to his statement he sent
7 out, they were in the process of healing. And
8 based on the CT scan that he submitted, he
9 reported that they were in the process of healing.

10 But as far as a follow-up to verify
11 that they healed and there was no further damage
12 to my ribs or to my lung, that didn't take place.
13 And that was a great concern for myself.

14 Q So after you treated with Dr. Benner,
15 just -- I want to get a brief idea of the
16 different type of treatment from Dr. Stovall.
17 Didn't he prescribe physical therapy?

18 A Yes.

19 Q And then also he performed injections
20 on your neck and your lower back, correct?

21 A Actually on my neck, my lower back,
22 middle of my back, and my right shoulder.

23 Q Did you complain to Dr. Stovall at any
24 point about your left shoulder?

25 A No.

1 second. Sir, when you're answering her questions
2 I need you to do two things. One, listen to her
3 question carefully so that you answer what she
4 asks and not go off on tangents.

5 THE WITNESS: Yes, sir.

6 COMMISSIONER BASS: Two, try and avoid
7 telling us what doctors told you unless she asks
8 you or unless you can fairly glean from her
9 question that she wants you to tell us what the
10 doctor said.

11 THE WITNESS: Yes, sir.

12 COMMISSIONER BASS: Go ahead, ma'am.

13 BY MS. MORGAN:

14 Q But, Mr. Wilson, there was a time that
15 you returned and the people at American LaFrance
16 turned you away, saying they needed that note from
17 the doctor, correct?

18 A Yes, ma'am.

19 Q Okay. And when you first went to
20 Dr. Stovall, didn't you fill out a new patient
21 form?

22 A Yes.

23 Q And on that form, do you recall saying
24 you had complaints to your left hand, lower back,
25 mid to upper back?

1 A Can you repeat that for me?

2 Q And I can show you the form.

3 COMMISSIONER BASS: Is that in the
4 records?

5 MS. MORGAN: Yes. It's Defendant's
6 APA 4, page 15.

7 COMMISSIONER BASS: Okay. Thank you.

8 BY MS. MORGAN:

9 Q Is this your handwriting?

10 A Yes, ma'am.

11 Q Okay. And do you recall writing that
12 you had complaints to your left hand, lower back,
13 mid to upper back?

14 A That's probably -- what I meant was
15 left-hand side of my lower back.

16 Q Okay.

17 A Not the left hand. Left-hand side. I
18 apologize for that.

19 Q Okay. So this right here is -- just
20 to make sure we know what you're talking
21 about -- left-hand side to the lower back?

22 A Yes.

23 Q Mid to upper back pain, correct?

24 A Yes, ma'am.

25 Q But on --

1 A This is something that basically got
2 aggravated through a work conditioning/FCE. And
3 they --

4 Q Explain what you were doing then.

5 COMMISSIONER BASS: Well, let's get an
6 answer to your original question, which is when.
7 When did your left shoulder first start giving you
8 problems?

9 A Okay. I want to say from the time
10 frame of July to August of 2006. This is when I
11 noticed that it got aggravated.

12 I've always had pain in the left side
13 of my neck, and it would go into my left shoulder.
14 But when it got aggravated, that's when the pain
15 just began to elevate.

16 And this time frame was during the
17 time frame of going through the work conditioning
18 program/FCE and basically with a whole lot of
19 lifting, going up and down, going forth.

20 And by me having the injury to my
21 right shoulder, just compensating the weight with
22 the left shoulder, trying to compensate for my
23 right shoulder. And I believe at that time it got
24 aggravated.

25

1 BY MR. GOLDBERG:

2 Q Do you want to follow up with any
3 doctor regarding your left side neck and shoulder?

4 A Yes.

5 Q And you went to see Dr. Falberg (ph)
6 on our recommendation, correct?

7 A Yes.

8 Q And would you like to follow up with
9 his recommendations?

10 A Yes.

11 Q Let's talk a little bit about your
12 chest. When does your chest aggravate you
13 currently? How does that affect you and your
14 lung?

15 A Basically just any time I drink
16 anything with caffeine in it, it elevates the pain
17 in my chest. Just going up and down the stairs in
18 my place of residence, it affects my breathing and
19 elevates the pain in my chest.

20 Q The heavier breathing is the more pain
21 as the cause?

22 A Yes.

23 Q Your restrictions are lifting 25
24 pounds. Tell me what activities you are or aren't
25 able to do at the current time that you were able

1 Okay.

2 BY MR. GOLDBERG:

3 Q Dr. Stovall agreed that y'all could
4 wait on it; is that correct?

5 A Yes.

6 Q Okay. You want to return to work in
7 some capacity, don't you?

8 A Yes. Yes, certainly.

9 Q And do you feel with proper treatment
10 you'll be able to return to work?

11 A Yes.

12 Q And you're not asking anyone to find
13 you totally and permanently disabled at your age?

14 A No, no.

15 Q All right. And do you think that once
16 you have the MRI to your neck again and they look
17 into your shoulder that you'll be able to make an
18 informed decision on returning to work?

19 A Sure. Yes.

20 Q All right. Okay. Dr. Fechter has
21 also recommended you some treatment. Would you
22 also want to continue with the treatment that he's
23 recommended, as far as medications?

24 A Yes, yes.

25 MR. GOLDBERG: One second, Your Honor.

1 was out, going through my physical therapy. But
2 at that time I still had restrictions as far as my
3 back, my right shoulder, and my neck. And I
4 hadn't gotten my limitations on what I could do
5 and what I couldn't do.

6 MR. GOLDBERG: I have no further
7 questions.

8 COMMISSIONER BASS: All right.

9 MS. MORGAN: I just have about two
10 follow-up.

11 RE-CROSS EXAMINATION

12 BY MS. MORGAN:

13 Q Mr. Wilson, you stated that you
14 started having this left side of the neck shoulder
15 pain after your FCE, correct?

16 A Well ...

17 COMMISSIONER BASS: Go ahead. Tell
18 her what you said.

19 A It was more aggravated. I mean, the
20 pain was always in my neck, period, rotating from
21 the right side to the left side.

22 COMMISSIONER BASS: He said work
23 hardening/FCE. Sir, you need to listen to her
24 questions and answer what she asks. Okay?

25 THE WITNESS: Yes, sir.

1 says, primarily right.

2 THE WITNESS: Yes.

3 COMMISSIONER BASS: "His chief
4 complaint is intermittent pain in the neck from
5 the right to the left side, primarily right."

6 THE WITNESS: Yes.

7 COMMISSIONER BASS: Is that accurate?

8 THE WITNESS: Yes, sir.

9 COMMISSIONER BASS: And you're saying
10 that the pain going down into the left shoulder
11 appeared between a month or two months later?

12 THE WITNESS: Yes, sir.

13 COMMISSIONER BASS: In July or August.
14 Now, the -- let me see if I get this time sequence
15 right. In the August notes -- well, July 31st,
16 2006, Dr. Stovall recommends a work hardening,
17 work conditioning program for the next four to six
18 weeks. Did you in fact go through that work
19 hardening program?

20 THE WITNESS: Yes, sir.

21 COMMISSIONER BASS: Okay. And August
22 24th, 2006, his note says, "He is completing a
23 work conditioning program and getting ready to
24 undergo an FCE." Did you in fact do an FCE in
25 either late August or early September of '06?

1 THE WITNESS: Yes, sir.

2 COMMISSIONER BASS: Okay. And what
3 type of things did they do for you or to you at
4 work hardening, or during the FCE that aggravated
5 your neck to the point where the left neck pain
6 started radiating into the left shoulder? What
7 were they doing?

8 THE WITNESS: Basically just had me
9 doing a lot of lifting. And just like I said,
10 extended amount of lifting, and doing an extended
11 amount of lifting.

12 COMMISSIONER BASS: Okay. Did they do
13 anything as far as neck exercises or anything of
14 that nature?

15 THE WITNESS: No.

16 COMMISSIONER BASS: Nothing at all to
17 the neck?

18 THE WITNESS: No. Just basically
19 lifting, riding on a bike, stretching. That's
20 basically it.

21 COMMISSIONER BASS: Okay. Did they
22 make you do range-of-motion exercises as far as
23 your neck is concerned?

24 THE WITNESS: No.

25 COMMISSIONER BASS: They didn't make

1 you do this (indicating)?

2 THE WITNESS: Wasn't included.

3 COMMISSIONER BASS: Wasn't included?

4 You were complaining of neck pain and they didn't
5 treat it?

6 THE WITNESS: No, sir.

7 COMMISSIONER BASS: All right. Fair
8 enough. Have you done anything to have -- is
9 there anything that you've done since you were
10 injured on May 16th, 2005 that could have possibly
11 reinjured your neck or your left shoulder?

12 THE WITNESS: No, sir, outside -- no,
13 sir.

14 COMMISSIONER BASS: As far as the
15 problems in your left shoulder, does your neck
16 always hurt first before the shoulder hurts, or
17 does the left shoulder sometimes hurt independent
18 of neck pain?

19 THE WITNESS: Sometimes it's both.
20 And one given time it's just the neck, then it
21 will rotate into the shoulder. Other times, it's
22 just the shoulder.

23 COMMISSIONER BASS: Now when you say
24 the shoulder hurts, is it into the shoulder joint
25 or is it more in the muscles behind the shoulder?

1 THE WITNESS: It's more the shoulder
2 blade itself.

3 COMMISSIONER BASS: The blade? Not
4 the actual point, the shoulder joint? You're
5 talking about behind it?

6 THE WITNESS: No. It's just basically
7 in the blade itself.

8 COMMISSIONER BASS: Is that behind the
9 shoulder? Are you talking about the shoulder
10 blade behind the shoulder or the actual shoulder
11 joint, right at the top?

12 THE WITNESS: The shoulder joint.

13 COMMISSIONER BASS: Okay. I don't
14 have anything else from this fellow. Do we have
15 anything else from you?

16 MR. GOLDBERG: Not at this point.

17 COMMISSIONER BASS: Ms. Morgan?

18 MS. MORGAN: Nothing further.

19 COMMISSIONER BASS: All right. Do you
20 have any witnesses?

21 MS. MORGAN: I don't believe we need
22 to call Dave. I mean, he testified that he did
23 return to work. That was the only -- at certain
24 points.

25 COMMISSIONER BASS: Okay. Okay.

1 MR. GOLDBERG: I'd like to call David
2 as a witness, very briefly.

3 COMMISSIONER BASS: Very good. Can
4 you get him from up there?

5 (At this time there is an off-the-record
6 conversation.)

7 COMMISSIONER BASS: What's your name,
8 sir?

9 THE WITNESS: David Jackson.

10 COMMISSIONER BASS: Raise your right
11 hand.

12 (DAVID JACKSON, having been first duly
13 sworn, testifies as follows:)

14 COMMISSIONER BASS: Okay.

15 DIRECT EXAMINATION

16 BY MR. GOLDBERG:

17 Q And you know Mr. Wilson from work?

18 A Yes, sir.

19 Q All right. So you worked at the old
20 American LaFrance. And what is it called now?

21 A It's called American LaFrance, LLC
22 now.

23 Q Okay. So it's just a change. And you
24 actually went as part of the switch then,
25 obviously?

1 A I was released by Freightliner and
2 taken up by American LaFrance, LLC.

3 Q And what was your relationship with
4 Frank as a boss and employee? How much did
5 witness him and see him work?

6 A Not as a boss, as the Occupational
7 Nurse of American LaFrance. So I had a lot of
8 dealings with Frank, mostly after his accident.

9 Q Do you consider him an honest,
10 hard-working employee?

11 A I do. I think Frank was a very good
12 worker for us.

13 Q Honest?

14 A Yes, sir.

15 Q All right. And truthful with you at
16 all times?

17 A I believe so, yeah.

18 Q All right.

19 MR. GOLDBERG: I have no further
20 questions.

21 COMMISSIONER BASS: Ms. Morgan,
22 anything from you?

23 MS. MORGAN: I have nothing further.

24 COMMISSIONER BASS: Okay.

25 MR. GOLDBERG: That's all, Your Honor.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0506037

EMPLOYEE/CLAIMANT: FRANK WILSON

EMPLOYER: AMERICAN LAFRANCE

INSURER: AMERICAN HOME INSURANCE

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF THE WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 10TH
DAY OF MARCH, 2009, COMMENCING AT THE HOUR OF 2:11
P.M. IN CHARLESTON, SOUTH CAROLINA, ATTENDED BY COUNSEL
AS FOLLOWS:

KATHRYN BOSTROM,
VERBATIM REPORTER

DIXY MOORE TURNER ASSOC., INC.
836 SHORESBROOK DRIVE
SPARTANBURG, S.C. 29301-6515
864-574-1313

1 TO AND OFF THE TOP OF HIS HEAD, HE SAID WELL THE
2 BEST YOU CAN GO TO IS SOUTHEASTERN SPINE. THAT'S
3 ALL THEY DO IS SPINE AND THAT'S THE BEST YOU ARE
4 GOING TO GET. AND, AT THAT TIME, I SAID, WELL, CAN
5 YOU REFER ME THERE, BECAUSE I'M REALLY GETTING
6 FRUSTRATED, AND I NEED THE BEST TO GIVE ME THE BEST
7 EVALUATION IN ORDER TO GIVE ME THE BEST TREATMENT,
8 SO I CAN MAKE SOME PROGRESS ON MY INJURIES WITH MY
9 BACK, MY NECK AND LEFT AND RIGHT SHOULDER.

10 Q SO, YOU WERE STILL HAVING PROBLEMS, THAT'S WHY YOU
11 WENT BACK?

12 A YES, MA'AM.

13 Q OKAY. NOW, WHEN YOU WENT BACK, WAS IT YOUR
14 UNDERSTANDING THAT THERE WAS ADDITIONAL TREATMENT
15 AVAILABLE TO YOU FOR YOUR LUMBAR SPINE?

16 A CAN YOU REPHRASE THAT FOR ME?

17 Q WAS IT YOUR UNDERSTANDING THAT THERE WAS SOMETHING
18 ELSE THAT COULD BE DONE TO ASSIST WITH THE PAIN THAT
19 YOU WERE STILL HAVING IN YOUR BACK?

20 A OUTSIDE OF PAIN MANAGEMENT THAT WAS RECOMMENDED BY
21 COMMISSIONER BASS, WHICH NEVER WAS HONORED, THAT'S
22 HOW SOUTHEASTERN SPINE GOT INTO THE PICTURE. AND,
23 FROM THAT POINT, I WAS JUST HOPEFUL THAT SOMEONE
24 WOULD GIVE ME SOME BENEFITS FROM THE PAIN I WAS
25 EXPERIENCING ON A DAILY BASIS.

1 URINARY PROBLEMS YOU WERE HAVING IN YOUR BACK?

2 A AT THAT TIME, HE STATED NO. HE STATED TWO THINGS,

3 HE SAID "NO", BUT FURTHER STUDY WOULD HAVE TO BE

4 DONE AND HE RECOMMENDED THAT I BE SEEN BY THE

5 TREATING PHYSICIAN I WAS SEEING, BEING SEEN BY IN

6 THE PAST.

7 Q WHICH IS DR. STOVALL, CORRECT?

8 A YES.

9 Q DR. STOVALL INDICATED THAT HE DIDN'T BELIEVE THAT

10 THE URINARY SYMPTOMS WERE RELATED TO YOUR BACK

11 EITHER, IS THAT CORRECT?

12 A YES.

13 Q DO YOU KNOW WHY HE WANTS YOU TO HAVE THAT NERVE

14 STUDY DONE, THEN?

15 A JUST RULING OUT EVERYTHING -- EVERYTHING ELSE, MY

16 PROSTATE IS OKAY, MY BLADDER IS EMPTYING OUT FINE,

17 DOESN'T SEEM LIKE IT IS COMING FROM THE DISK, SO

18 JUST RULING OUT EVERYTHING ELSE -- THERE IS A

19 POSSIBILITY THAT SOME NERVE DAMAGE HAVE OCCURRED

20 SOMEWHERE IN RELATIONSHIP WITH THE MULTIPLE INJURIES

21 THAT I HAVE.

22 Q SO, YOU WISH TO HAVE THAT DONE AS WELL?

23 A YES, MA'AM.

24 Q NOW, HAVE YOU RETURNED TO WORK, MR. WILSON?

25 A NO, MA'AM.

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION FULL COMMISSION
WCC No. 0506037

Frank Wilson,
Claimant/Appellant,
v.
American LaFrance,
Employer/Respondent,
and
AIG c/o Gallagher Basset
Services, Inc.,
Carrier/Respondent.

FULL COMMISSION HEARING

Tuesday, September 18, 2012
9:00 a.m. - 9:22 a.m.

The Full Commission Hearing before Commissioner T. Scott Beck; Commissioner Melody L. James; and Commissioner Susan S. Barden, Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 18th day of September, 2012 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

FRANK WILSON V. AMERICAN LAFRANCE

1 **MR. WILSON:** Yes, ma'am.

2 **COMMISSIONER BARDEN:** All right, sir. If you'll
3 take the podium and you have up to ten minutes.
4 Thank you.

5 Tell us what, if any, reason -- mistakes that
6 Commissioner Wilkerson made and the relief that
7 you're requesting today based on that decision.

8 **ARGUMENT BY MR. WILSON:**

9 **MR. WILSON:** Okay. I would like to start off with
10 the issue number one and that would be the
11 Claimant's back MRI or thoracic spine. And I
12 have the APA submissions that support that
13 claim. And that would be APA submissions page
14 six, nine, ten, 11, 12, 14, 15.

15 Also supporting that same claim would be the
16 hearing transcript from the date of April the
17 10th, 2007. That would be page ten, lines 14
18 through 22; page 14, lines 19 through 25; page
19 15, lines one through 24.

20 Also in supporting that same issue would be
21 hearing transcript from the date of March 10th,
22 2009. That would be page 13, lines 16 through
23 25; page 14, lines 16 through 25; page 15,
24 lines one through 13.

25 Also in support of that same claim, the

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1 Claimant's deposition dated February the 20th,
2 2007; that would be page 42, lines one through
3 25.

4 I also would like to -- in support of that same
5 issue, this would be from the decision and
6 order and hearing transcript of April 2007,
7 page nine, lines 23 through -- well, I'm sorry,
8 lines 22 through 23; page nine, lines 22
9 through 23. That's on issue number one.

10 Issue number two pertains to the Claimant's
11 bilateral lower extremities, EMG/nerve
12 conduction study. This would be supported by
13 the APA submissions page six, page seven, page
14 eight, page ten, page 11, page 14 and page 15.
15 Also, as it relates to issue number two, this
16 would be the decision and order hearing
17 transcript of March 10th, 2009. That would be
18 page 18, lines 13 through 23.

19 As it goes to issue number three, the
20 Claimant's first prescription drug coverage,
21 the Defendants, they stated that the Carrier
22 had changed over the prescription drug coverage
23 company --

24 **COMMISSIONER BARDEN:** And that issue has been
25 addressed, sir. Are you receiving your

FRANK WILSON V. AMERICAN LAFRANCE

1 prescriptions now? I understood from
2 Commissioner Wilkerson's order that you are
3 receiving your prescriptions; is that correct?

4 **MR. WILSON:** There have still been some occasional
5 delays.

6 **COMMISSIONER BARDEN:** Okay.

7 **MR. WILSON:** And the statement that the Defendants
8 made was an untrue statement. I did receive a
9 new card. It was the same identical card as I
10 had before, suggesting that there was no change
11 in companies. So that was an untrue statement.
12 And that would be supported by the transcript,
13 new card that I received.

14 As it relates to issue number four, this would
15 be supported by hearing transcript April the
16 10th, 2007. That would be Exhibit I, page one
17 through 40, and APA submissions page 16 through
18 17.

19 Issue number five, that would be the Claimant's
20 motion and that would be supported by APA
21 submissions Exhibit H, page 59 through 72.

22 Also, the statement that the Commissioner
23 stated that he found the Defendants trustworthy
24 including, I guess, everyone involved in the
25 Defendants, I found that to be inconsistent

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1 with all the findings in my workers'
2 compensation claim or file.

3 And this would be supported -- well, for one,
4 in his directives, in the Commissioner's
5 directives, item number 14, it clearly states:
6 "The Claimant has had quite the runaround from
7 the Carrier for treatments, checks, and
8 prescription problems."

9 So either they're trustworthy, which is not --
10 which is inconsistent with this statement
11 number 14 on his directives: "The Claimant has
12 had quite the runaround from the Carrier for
13 treatment, checks, and prescription problems."

14 And this would be supported by -- actually, I
15 had a hearing with Commissioner Wilkerson on
16 November 30th, 2011, that got filed February
17 the 10th, 2012, approximately two months prior
18 to that April 18th, 2012 hearing. So he had
19 knowledge of the issues that I was going
20 through at that hearing. Plus, off the record,
21 before commencing the hearing, he did a summary
22 of the previous hearing with Commissioner
23 Roche, which took place on July the 21st, 2011.
24 So I (sic) have knowledge of the issues from
25 the previous hearing that took place on

FRANK WILSON V. AMERICAN LAFRANCE

1 November the 30th, 2011, and the hearing prior
2 to that one. Having all that knowledge, and
3 the statement that he made in his directives,
4 item number 14 --

5 **COMMISSIONER BECK:** Which directives are you
6 referring to, sir? Talking about in the order?

7 **MR. WILSON:** The directives that he gave for the --
8 the instructions that he gave for the order.

9 **COMMISSIONER BECK:** Okay. Well, I'm not seeing
10 that -- unless I'm just missing, I'm not seeing
11 that addressed in the order itself.

12 Is it not -- I mean, I see in here where he
13 indicated he was inclined to assess cost
14 against you, but I don't see any reference in
15 here to you getting the runaround in the order.

16 **MR. WILSON:** Can I submit this? It's ...

17 **COMMISSIONER BARDEN:** Let's see if we've got that in
18 our file.

19 **MR. WILSON:** I submitted it in the packet to the
20 Commission and to the Defense along with my
21 appeal.

22 **COMMISSIONER BARDEN:** We're going to stop your time.
23 I don't want to take your time.

24 **MR. WILSON:** Thank you, ma'am.

25 **MS. HANTSKE:** May I just ask, is that from this

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1 April hearing or the November hearing?

2 **MR. WILSON:** This April hearing. It's dated right
3 here (indicating).

4 **COMMISSIONER BECK:** Can I see a copy of what you
5 have?

6 **COMMISSIONER BARDEN:** Yes, sir, if you can bring it
7 up. Thank you.

8 **MR. WILSON:** (Tendering.) It would be item number
9 14, sir.

10 **COMMISSIONER BARDEN:** Ms. Hantske, you have a copy
11 of the directives that we're looking at? I'm
12 sure you do.

13 **MS. HANTSKE:** That is what I am looking for right
14 now. Unfortunately, I'm not sure we actually
15 print those and put a hard copy in our file.

16 **COMMISSIONER BARDEN:** Well, I'll let you look at
17 this gentleman's and we can make a copy, if
18 necessary. This is his only copy, so we need
19 to get this back to him.

20 **MS. HANTSKE:** Yeah, I won't take his ...

21 **COMMISSIONER BARDEN:** He's speaking to number 14.
22 If you'll give that back to him after you've
23 looked at it.

24 **MS. HANTSKE:** (Reading.)

25 **COMMISSIONER BARDEN:** All right, sir. We'll let you

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1 continue your argument. Thank you.

2 **MR. WILSON:** Okay. Just like I stated, due to those
3 inconsistencies, I found it very unreasonable
4 for the Commissioner to make that statement
5 with the inconsistencies.

6 Also, in support of that, just like I stated
7 before, he had knowledge of the issues that I
8 was going through with the hearing that I had
9 with him previously on November the 30th.

10 That hearing -- well, the decision and order
11 didn't get filed until February the 10th, 2012.

12 So two months prior to, he had a chance to
13 review those issues from that hearing.

14 Plus, the summary of the hearing prior to the
15 November the 30th; all that was covered prior
16 to the November the 30th hearing. It was done
17 off the record, but it was a pretty lengthy
18 off-the-record summary of the hearing I was
19 there for, November 30th, and the prior one
20 with Commissioner Roche.

21 So having all that knowledge --

22 **COMMISSIONER BARDEN:** Go ahead and finish your
23 thought, sir.

24 **MR. WILSON:** And having all that knowledge, then to
25 make a statement that he find them trustworthy

FRANK WILSON V. AMERICAN LAFRANCE

1 based on everything I've been through, my
2 argument is simply: With everything I've been
3 through, I just find it very inconsistent --

4 **COMMISSIONER BARDEN:** Okay.

5 **MR. WILSON:** -- with the findings.

6 **COMMISSIONER BARDEN:** You'll have three minutes in
7 reply.

8 All right. Ms. Hantske.

9 **ARGUMENT BY MS. HANTSKE:**

10 **COMMISSIONER BARDEN:** Ms. Hantske, did you prepare
11 the order for Commissioner Wilkerson?

12 **MS. HANTSKE:** Yes, ma'am, it was prepared by my
13 office.

14 **COMMISSIONER BARDEN:** And did you see those
15 directives?

16 **MS. HANTSKE:** I do see those directives and I --

17 **COMMISSIONER BARDEN:** Is there a reason why that
18 finding is not in the order?

19 **MS. HANTSKE:** I -- unfortunately, I can -- I have to
20 say I don't know why that's not in the order.
21 I don't know if it was clearly left out and I
22 guess -- I mean, all I can do is apologize at
23 this point.

24 **COMMISSIONER BARDEN:** All right. Go ahead.

25 **MS. HANTSKE:** I will first respond to the comment

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1 With regard to the issues he addressed, I'm
2 just going to kind of -- the hearing with
3 Commissioner Bass and the motion, it's my
4 position that those are not properly before the
5 Full Commission.

6 He also addressed reimbursement with Dr. Estes.
7 That's not properly before the Commission as
8 that was ruled on at a hearing with
9 Commissioner Roche in July of 2011.

10 And I believe that's all I have. Thank you.

11 **COMMISSIONER BARDEN:** Any questions?

12 All right. Mr. Wilson, you have three more
13 minutes, sir, or up to three minutes.

14 **REPLY BY MR. WILSON:**

15 **MR. WILSON:** Ma'am, I would like to go back and
16 address the prescription card. There was no
17 change in companies. I got the same exact
18 prescription card, suggesting there was no
19 change. So the delays caused by a change in
20 the companies, no support of that nowhere. And
21 I have the proof that I have that same
22 identical card.

23 As it relates to contacting the Commissioner
24 back, I explained to him that I was sick those
25 three days that he called me and by the time I

FRANK WILSON V. AMERICAN LAFRANCE

1 did call him back, the hearing was already
2 scheduled.

3 And as I tried to explain to Commissioner
4 Wilkerson, based on the Defendant's history, a
5 simple phone call was not going to do anything.
6 I've been in the system since 2005. If it was
7 that simple, trust me, I would make a simple
8 phone call. Because when I have to come to a
9 hearing, prepare for a hearing, pay filing
10 fees, preparation -- unfortunately, I don't
11 have an expense fund that I can take from. All
12 this money comes out of my pocket, takes
13 money -- takes food off my table. I don't have
14 the luxury of pulling from an expense fund.
15 So, if I can just pick up a phone, make a phone
16 call, if it's that easy, I'd be the first to do
17 it. Based on the history, which is
18 well-supported in my file, I find it to be
19 unreasonable.

20 Lastly, I had a Social Security disability
21 hearing on January the 19th, 2012, where
22 they -- the judge, he looked at all the
23 evidence, same evidence that I turned into the
24 South Carolina Workers' Compensation
25 Commission, and he found me disabled on the

FRANK WILSON V. AMERICAN LAFRANCE

1 findings back to 2005.

2 The issue of the difference in treatment from
3 the hand-selected authorized treating
4 physicians that were hand-selected by the
5 Defendants, the big difference in treatment,
6 diagnosing, evaluating, he noticed it. He
7 couldn't address it, but he said, "I noticed a
8 difference."

9 And, to me, that's just unfair treatment. And
10 it's been -- okay -- it's been numerous
11 misrepresentations based on -- just the latest,
12 leaving out a key finding, the directive number
13 14, which is something that's key. I don't see
14 how it can be left out. And that's just one
15 misrepresentation of the latest date.

16 **COMMISSIONER BARDEN:** All right. Thank you, sir.
17 That concludes this proceeding.

18 (The proceedings concluded at 9:22 a.m.)
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25

COURT OF COMMON PLEAS

2013-CP-18-01299

TRANSCRIPT OF RECORD

SEPTEMBER 6, 2013
ST. GEORGE, SC

SEPTEMBER 6, 2013
ST. GEORGE, SC

HONORABLE DIANE S. GOODSTEIN

FRANK E. WILSON
Appearing Pro Se

Ruth L. Mott, RPR, CRR
Official Court Reporter

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(NO EXHIBITS MARKED)

- - -

1 THE COURT: I've read the remand from the Court of
2 Appeals back to the Circuit Court. So at this point, I'm
3 going through the decision of the appellate panel for the
4 Workers' Compensation. So that's what I wanted to do. I
5 wanted to have an opportunity to read that. So thank you all
6 for bearing with me.

7 All right. There are obviously an awful lot of
8 documents, as there's an extensive file from the Workers'
9 Compensation Commission and a number of documents from the
10 Court of Appeals. And I'm looking for -- and maybe you all
11 can just pass it up. I'm looking for the notice of appeal
12 from the Workers' Compensation Commission is what I am
13 looking for.

14 And I gather it's, I'm confident -- can you hand me
15 that, Mr. Wilson. Keep me from -- because there have been
16 motions and any number of different matters filed. And it
17 really would help me if you could pass that forward.

18 MS. HISER: Your Honor, may I approach the bench? I
19 believe I have a copy of it.

20 THE COURT: If you'll just show it to Mr. Wilson and be
21 sure that he agrees that's what it is. Because I think I've
22 got everything else, but I just cannot seem to put my hands
23 on that.

24 MS. HISER: Unfortunately, my copy has some -- two
25 handwritten notes and my highlighting on them.

1 THE COURT: Oh, it does?

2 MS. HISER: Yeah.

3 THE COURT: Okay. Well, I can keep looking.

4 MS. HISER: We can black that out and have someone make
5 a photocopy without the highlighting.

6 THE COURT: Is it small enough to cover with a sticky?

7 MS. HISER: Absolutely.

8 THE COURT: Okay. Now, as I'm reading the appeal, and,
9 Mr. Wilson, it appears that you are appealing the
10 determination of the Workers' Compensation appellate panel as
11 it regards to the finding that the damage to your thoracic
12 spine was determined to be noncompensatory. In other words,
13 it wasn't caused by the accident.

14 I notice that the lumbar spine is compensable.
15 Shoulders are compensable, but that the thoracic spine, if
16 you will, your mid back, was -- the determination was made
17 that you had failed to meet your burden of proof to show that
18 there was any injury as a result of the accident to your
19 thoracic spine.

20 MR. WILSON: Yes, ma'am.

21 THE COURT: Yes? I'm listening to you, Mr. Wilson.

22 Tell me what you want to tell me. And what I need you to do
23 is to point me to different parts of the record, because I've
24 got to make a determination based on the record, that you
25 believe show that, in fact, that there was damage, an injury

1 to your thoracic spine as a result of the accident. Okay?

2 MR. WILSON: Yes, ma'am.

3 THE COURT: All right. If you need to stay seated
4 because of your back injury, that's fine with me, too.

5 MR. WILSON: Yes, ma'am. Appreciate it.

6 THE COURT: All I need you to do is keep your voice up
7 so that our court reporter, Ms. Mott, can hear you.

8 MR. WILSON: Yes, ma'am. Just to be brief, just to give
9 a brief narrative of the accident.

10 THE COURT: Sure.

11 MR. WILSON: On about May 16, 2005 in route or in the
12 course of my employment --

13 THE COURT: Yes.

14 MR. WILSON: -- was involved in a work-related motor
15 vehicle accident, which initially had multiple bilateral
16 fractured ribs, a collapsed lung on the right side. I did
17 get admitted to the emergency room for approximately two to
18 two and a half days.

19 Once I departed the emergency room, I was referred to
20 Dr. Spandorfer, Don Spandorfer. And he's the doctor or the
21 treating doctor where the initial back complaints were made.

22 I would have -- to support this issue as it relates to
23 the thoracic spine, I would like to begin on the first
24 deposition that mentions the mid to upper back or the
25 thoracic spine. And that would be the deposition or the

1 hearing deposition that took place on April the 10th, 2007.
2 And at that time, it was with the Honorable Bass. And the
3 actual date was April the 10th, 2007.

4 THE COURT: Okay. And tell me what page.

5 MR. WILSON: That would be Page 14.

6 THE COURT: Okay.

7 MR. WILSON: And I would like to begin on Line 19.

8 THE COURT: Okay.

9 MR. WILSON: And this was the question asked of myself,
10 the claimant.

11 THE COURT: Yes.

12 MR. WILSON: It says, "Okay. And when you first went to
13 Dr. Stovall, didn't you fill out a new patient form?"

14 Now, the form that we are referring to is the Low
15 Country Orthopedics and Sports Medicine new patient
16 information form which is dated August the 8th, 2005, which
17 was the first date that I commenced to see Dr. Don O. Stovall
18 for my back injury.

19 THE COURT: Okay.

20 MR. WILSON: If we go down to the medical information
21 section, it says "medical information" in bold print.

22 THE COURT: Okay.

23 MR. WILSON: And the complaints of symptoms would be the
24 left-hand lower back pain, mid to upper back pain, etc. So
25 at that time, it was the left side of the lower back, which

1 would be the lumbar spine, and the mid to upper back pain,
2 which would be the thoracic spine.

3 Upon my going to Dr. Don Stovall on
4 August the 4th, 2005, I was just finishing up some treatment
5 for my bilateral multiple fractured ribs with
6 Dr. James Benner.. And he basically released me to
7 Dr. Don Stovall on or about July 21st, 2005.

8 In his note -- or that document is titled Palmetto
9 Cardiovascular and Thoracic Associations, PA, [sic], and it's
10 also dated July 21st, 2005. And it basically says,
11 "Dear Dr. Stovall, I have the pleasure of sending you
12 Mr. Wilson, who was involved in a motor vehicle accident and
13 sustained multiple rib fractures. He has healed nicely from
14 that, and he has complained of multiple orthopedic injuries."

15 And a little bit further down it states, "He complains
16 of right shoulder pain, some upper thoracic discomfort, some
17 lower thoracic discomfort." And it goes on to say, "I have
18 treated him symptomatically," and was basically releasing him
19 to -- releasing myself to Dr. Stovall.

20 Going back to the initial new patient paperwork, it
21 clearly states "mid to upper back and the lower back."

22 THE COURT: Okay.

23 MR. WILSON: Now, throughout my course of treatment with
24 Dr. Don O. Stovall, which commenced on or about
25 August the 4th, 2005, up until about March of 2009,

1 Dr. Stovall, he failed to include the mid to upper back pain
2 that was noted on the new patient information page. This
3 would go up throughout the course of my treatment with
4 Dr. Stovall.

5 Finally, upon ending my care with Dr. Stovall, due to
6 his opinion of me reaching maximum medical improvement, I
7 challenged that decision because I felt that I was not at
8 maximum medical improvement.

9 At that time I requested that my primary care physician,
10 which at the time was Dr. Lloyd Hepburn, give me a good
11 recommendation of someone who can look at my back that would
12 give me some options as for as treatment and a good
13 evaluation that would determine what further treatment would
14 be necessary.

15 He recommended the Southeastern Spine Institute -- this
16 is how the Southeastern Spine Institute came into play -- on
17 a personal visit. This commenced on or about June 2008 on a
18 self-pay visit.

19 Upon a hearing dated on or about March 2009 with
20 Commissioner -- or the Honorable Huffstetler of the Workers'
21 Compensation Commission, at that time the defendant's stating
22 that I was at maximum medical improvement for my back. I
23 disagreed, and I requested that I explore the options that
24 Southeastern Spine Institute were going to give me.

25 Now, I do admit that my lower back were the worst

1 between my lumbar spine and my thoracic spine. The lumbar
2 spine required surgery.

3 Once Dr. Donald Johnson -- he's the doctor that
4 performed my lumbar spine surgery. He stated that "I see no
5 need for you to have any surgery to your thoracic spine, but
6 I will release you to the Southeastern Spine Institute pain
7 management to review your thoracic spine on a pain management
8 basis, along with your lumbar spine and along with your
9 cervical spine."

10 At my initial visit at the pain management from the
11 Southeastern Spine Institute, I was being seen for my lumbar
12 spine postsurgery, L5-S1 fusion, and somehow there were some
13 mix-up or there was a mix-up by one of the PAs, which is
14 explained in a medical document that was generated by the
15 Southeastern Spine Institute, which, by the way, is the
16 authorized treating physician for my back.

17 Now, on June 4th, 2012 --

18 THE COURT: Just to be clear, what you're telling me is
19 that after that hearing that was held, the Commission allowed
20 you to pursue the care with Southeastern Spine. I think
21 there's some reference in the order that said MRI's already
22 scheduled.

23 MR. WILSON: Yes, ma'am.

24 THE COURT: And it's appropriate to allow you to go
25 forward to explore what, if any, care or improvement you

1 could have from Southeastern Spine; is that right?

2 MR. WILSON: Yes, ma'am.

3 THE COURT: Okay.

4 MR. WILSON: This was via a direct order.

5 THE COURT: I understand.

6 Okay. So now we're at Southeastern Spine. Dr. Johnson
7 does surgery, says, "I think we can manage the pain through
8 the pain clinic." So you were referred after the surgery and
9 your recuperative time with Dr. Don Johnson, you were then
10 referred to the pain clinic at Southeastern Spine, their pain
11 clinic.

12 MR.. WILSON: Yes, ma'am.

13 THE COURT: Got it.

14 MR. WILSON: And this is for my lumbar spine --

15 THE COURT: Yes.

16 MR. WILSON: -- postsurgery.

17 THE COURT: And then you said there was a bit of a
18 mix-up. Now, tell me about that. Let me see if I can find
19 those documents. Okay?

20 MR. WILSON: Okay. That document is dated
21 June the 4th, 2012 --

22 THE COURT: Okay.

23 MR. WILSON: -- from the Southeastern Spine Institute.

24 THE COURT: Okay.

25 MR. WILSON: Initially, when I went to the Southeastern

1 Spine Institute pain management, they were under the
2 impression that I was just there for my lumbar spine and my
3 cervical spine. And they did not --

4 THE COURT: Include.

5 MR. WILSON: -- include the thoracic spine --

6 THE COURT: Okay.

7 MR. WILSON: -- until after I was at an office visit at
8 the Southeastern Spine Institute. And they stated,
9 "Mr. Wilson, the area that you're referring to, we're no
10 longer talking about your lumbar spine. That's your thoracic
11 spine."

12 And at that point, Dr. William Blane Richardson, which
13 he's part of the pain management physicians at Southeastern
14 Spine Institute, he carefully reviewed my medical history as
15 it relates to my back and my cervical spine.

16 This would include the new patient information sheet
17 that clearly states that I was having pain prior to coming to
18 the Southeastern Spine to the mid to upper back pain or mid
19 to upper back and the lumbar spine. And also he noticed that
20 it was documented in a deposition that the defendants
21 requested that I participate in.

22 Also, based on the way the accident happened with the
23 major chest wall injuries involving the multiple fractured
24 ribs bilaterally and the collapsed lung, based on the
25 extensive medical history, they came to the conclusion that

1 the thoracic spine should have been included with the initial
2 injuries as noted when I initially saw Dr. Stovall.

3 Why Dr. Stovall omitted that from all of his reports
4 when it's clearly documented on the new patient information
5 sheet, I'm not aware.

6 But to get started with my thoracic spine treatment, I
7 began to pursue treatment with the Southeastern Spine
8 Institute as an out-of-pocket pay patient while the issue was
9 being pursued with the South Carolina Workers' Compensation
10 Commission.

11 Also at the time, as the thoracic spine injury
12 progressed, they brought about great concern by
13 Dr. William Blane Richardson, and he generated a medical
14 report with some type of urgency. It's dated, I believe,
15 January the 11th, 2013. And he requested that I notify
16 everyone involved in my case.

17 So I immediately forwarded a copy to the Southeastern
18 Spine Institute. I immediately forwarded a copy to Gallagher
19 Bassett Services, Incorporated, which is the carrier for the
20 defendants, and I immediately forward a copy to the
21 defendants, Ms. Erin Hantske, the defendants or the attorney
22 for the employer. Everyone was notified.

23 And that was one of the issues that was placed upon me
24 that anytime something like this comes up, I'm to notify
25 everybody, give everybody notice. And then from there,

1 hopefully the proper measures would take place.

2 As of today, September the 6th, 2013, the thoracic spine
3 has not been addressed, although the authorized treating
4 physician has referred the injury to the original motor
5 vehicle injury due to the information that's on the new
6 patient information document with Dr. Stovall dated
7 August the 4th, 2005, due to the extensive chest wall damage
8 around and about the thoracic spine location, due to the
9 testimony given by the claimant on a deposition, which the
10 defendants requested that the claimant participate in, and it
11 clearly, was the deposition from the hearing that took place
12 on April the 10th, 2007, Page 14, and I believe we referred
13 to Line 19 through 25.

14 Upon the -- continuing my treatment with Dr. Stovall up
15 until the March 2009 date, I notified Dr. Stovall that my
16 lumbar spine had worsened in a great deal. Somehow that got
17 omitted from my medical report.

18 Finally, they -- when I got back to the Southeastern
19 Spine Institute, they performed a -- or an emergency MRI of
20 my lumbar spine to determine the increased pain. That would
21 be the MRI that took place on July the 11th, 2009 of the
22 lumbar spine.

23 THE COURT: 2009?

24 MR. WILSON: Yes.

25 THE COURT: Okay. Okay.

1 MR. WILSON: Yes, ma'am. This is shortly after I left
2 Dr. Stovall and started treating with Southeastern Spine
3 Institute.

4 THE COURT: Okay. Okay.

5 MR. WILSON: At that time they noticed that at the L5-S1
6 level that the disc material had totally collapsed. And it
7 goes into more detail on the MRI report dated
8 July the 11th, 2009. The lumbar MRI was actually done at the
9 Tricounty Radiology Associates location.

10 THE COURT: Yes, I saw that. It says you're bone on
11 bone.

12 MR. WILSON: Yes.

13 THE COURT: Right?

14 MR. WILSON: Yes, ma'am.

15 THE COURT: Yes.

16 MR. WILSON: Also, that played a role in
17 Dr. William Blane Richardson's decision on -- due to the
18 compression of the discs being bone on bone and the stress on
19 the levels above the lumbar spine, that would only bring
20 further damage to the thoracic spine. And also, the claimant
21 participated in an independent medical evaluation as it
22 relates to the claimant's back.

23 THE COURT: That would be you.

24 MR. WILSON: Yes, ma'am.

25 THE COURT: Okay. Who was that with?

1 MR. WILSON: That would be with the Edisto Spine Center.

2 And I believe that's dated December the 19th, 2006.

3 THE COURT: '06? We're going backwards.

4 MR. WILSON: Yes, ma'am. I apologize.

5 THE COURT: I was in '09, now you got me in '06.

6 MR. WILSON: I apologize. I'm a little bit out of sync.

7 THE COURT: The accident was in '05, right?

8 MR. WILSON: Yes, ma'am. Yes, ma'am.

9 THE COURT: Okay. This is an independent eval in '06.

10 MR. WILSON: Yes, ma'am.

11 THE COURT: And what did Edisto say?

12 MR. WILSON: The '06 came into play after I got released
13 as being at maximum medical improvement, and I disagreed with
14 that.

15 THE COURT: I understand.

16 MR. WILSON: And then this is how the independent --

17 THE COURT: And that's when you went to Southeastern
18 Spine?

19 MR. WILSON: After I went to the Edisto Spine Center.

20 THE COURT: Does Edisto talk about lumbar?

21 MR. WILSON: Yes, ma'am.

22 THE COURT: Okay.

23 MR. WILSON: It would be actually on Page 2 of 5.

24 THE COURT: Okay.

25 MR. WILSON: On the report dated

1 December the 19th, 2006.

2 THE COURT: Okay.

3 MR. WILSON: Where it says, "A current history," on or
4 about the second sentence, it refers to the mid and lower
5 back.

6 THE COURT: Yes. Okay. Right.

7 MR. WILSON: This was another deciding factor with
8 Dr. William Blane Richardson at the Southeastern Spine
9 Institute when he determined, based on all of the medical
10 evidence and based on the way the accident happened with all
11 of the thoracic chest wall damage, he would refer the injury
12 to be related medically and just the way the accident
13 happened.

14 THE COURT: And that's -- and when did Richardson do
15 that report?

16 MR. WILSON: On June the 4th, 2012.

17 THE COURT: Okay. Hold on. Let me see if I can find
18 that one.

19 Now, have you got that right in front of you?

20 MR. WILSON: Yes, ma'am.

21 THE COURT: Read me the lumbar part.

22 MR. WILSON: On or about the third line.

23 THE COURT: Okay.

24 MR. WILSON: Towards the end -- well, towards the
25 beginning, "Specifically, has lower back as well as mid back

1 pain."

2 THE COURT: Okay.

3 MR. WILSON: "He got an MRI of his thoracic spine
4 showing a disc bulge at the T6-T7 with no stenosis at that
5 level. He has had complaint -- or he has had complaints of
6 lower back pain since 2007 which was documented in his
7 deposition after his injury at the time where he stated he
8 had both lower back, mid back and neck pain."

9 The deposition that he's referring to is the
10 April the 10th, 2007 deposition. And I believe we were
11 referring to Page 14.

12 THE COURT: Yes.

13 MR. WILSON: So this is part of the information that he
14 gathered and made his decision on, also based on the initial
15 paperwork filled out at the initial visit with Dr. Stovall on
16 August the 4th, 2005. He did go on to further state that
17 there was some mix-up with the PAs documenting the mid back
18 or thoracic spine injury due to one of the PAs.

19 But after he got involved and he thoroughly reviewed my
20 medical history, he immediately cleared that up and recommend
21 that I submit this report to any and everybody involved in
22 the case.

23 THE COURT: And that was done -- is that the one from
24 June or is that the one from January '13?

25 MR. WILSON: June the 4th, 2012.

1 THE COURT: '12. Okay. Got it. Okay. Got it.

2 MR. WILSON: Okay. Yes, ma'am. And this was in the
3 beginning stages, the January the 11th, 2013, that says the
4 thoracic spine injury began to progress.

5 THE COURT: Right.

6 MR. WILSON: And he began to get, I would guess, you
7 would say concerned.

8 THE COURT: Sure.

9 MR. WILSON: And this is when he recommended that I
10 notify everybody involved in the case. And this is when
11 everybody was notified. And this would just be on the
12 thoracic spine injury being related to the initial
13 work-related injury on or about May 16, 2005.

14 THE COURT: I've got it. I've got it.

15 In other words, what you're telling me is that from
16 ab initio that there is a history of reports of lumbar
17 problems throughout your care and that initially you
18 certainly complained of pain in your back in the lumbar area.
19 There's no question about the cervical problems and the lower
20 back problems. The issue really became the lumbar part.

21 MR. WILSON: The thoracic.

22 THE COURT: I mean thoracic. Did I say -- I meant
23 thoracic. Lumbar is not a problem. Lumbar is accepted.

24 MR. WILSON: Yes, ma'am.

25 THE COURT: It's the thoracic. And I think what you're

1 telling me is that -- and it looks like there might be some
2 reference in the reports by Dr. Richardson where they're
3 talking about the fact that you had substantial thoracic
4 injuries, lots of broken ribs.

5 And -- but once all of that healed, what remained, you
6 would say, I think, clearly lumbar back pain. Although,
7 throughout the period, you're talking about lumbar discomfort
8 in your back. Did I say lumbar? I mean thoracic.

9 MR. WILSON: Yes, ma'am.

10 THE COURT: Thoracic pain in your back, although you've
11 got a lot of thoracic injury also.

12 MR. WILSON: Yes, ma'am. I believe --

13 THE COURT: But there's a history, and you've pointed to
14 the history that goes throughout. Although at a couple of
15 times, the reference to the thoracic problems with your back
16 gets dropped, but based upon your contacting the physicians,
17 they have come back and picked it up, like Dr. Richardson, to
18 come back and say, you know, "We had a worker that was
19 working with Mr. Wilson that's referring to the lumbar, not
20 to the thoracic, but it's thoracic also."

21 MR. WILSON: Yes, ma'am.

22 THE COURT: Okay.

23 MR. WILSON: And I believe I used the word "low back
24 pain" and "mid to upper back," which, you know, it's only two
25 parts of the back, the lower back and the thoracic, which is

1 the mid to upper back. I admit I did not use the word
2 "thoracic," but mid to upper back, we can come to the
3 conclusion that the mid to upper back --

4 THE COURT: I don't think you're an orthopedist, though,
5 right? You probably feel like you're becoming an
6 orthopedist, but, at least at the beginning of this, you are
7 not an orthopedic doctor, right?

8 MR. WILSON: No, ma'am.

9 THE COURT: And so you would describe it as being mid
10 back pain.

11 MR. WILSON: Mid to upper back pain.

12 THE COURT: Yes, I understand. And there's no question
13 but that the shoulders have been accepted, right?

14 MR. WILSON: They have been accepted at a later date.

15 THE COURT: Okay.

16 MR. WILSON: But the evidence proved that the date that
17 the left shoulder was accepted should have been accepted
18 earlier based on the evidence.

19 THE COURT: I understand. I'm with you. I'm with you.

20 MR. WILSON: Yes, ma'am.

21 THE COURT: So now, am I correct that at this point, at
22 this point the question is your thoracic spine, yes?

23 MR. WILSON: Yes, ma'am.

24 THE COURT: Okay. Now let me ask you this question,
25 because obviously, I've got a January the 11th, 2013 letter

1 from Dr. Richardson -- or report, I should say, from
2 Dr. Richardson. What is your position with regards to
3 whether you have reached maximum medical healing or not as of
4 this point?

5 MR. WILSON: I feel I have not reached maximum medical
6 improvement to my lumbar spine.

7 THE COURT: Got it.

8 MR. WILSON: Thoracic spine.

9 THE COURT: I understand.

10 MR. WILSON: Cervical spine.

11 THE COURT: I got it. I got it. I got it.

12 MR. WILSON: Yes, ma'am.

13 THE COURT: Yes, ma'am. I'll listen to you.

14 MS. HISER: Your Honor, the evidence that Mr. Wilson's
15 pointing to, the June 4th, 2012 letter, the January 11, 2013
16 letter, those are not part of the record. In fact,
17 June 12th, that appointment fell after the hearing with
18 Commissioner Wilkerson, which was in April of 2012. And
19 Mr. Wilson never moved to have any of this evidence moved
20 into the record; so the Commission's never seen those medical
21 records that he relies on now.

22 So, in essence, what he's asking you is to become the
23 fact finder in this case, which, as an appellate forum, you
24 simply cannot do. All you can do is look at the record that
25 was in front of the Commission and decide whether or not

1 substantial evidence supports the Commission's factual
2 findings.

3 Whether or not the thoracic spine is going to be
4 included is a matter that Mr. Wilson needs to bring up again
5 in another hearing at the Commission. So you can't even
6 really evaluate, for purposes of this decision, those later
7 medical records, because they're just not part of the
8 Commission record.

9 He does point to various places. He had a lot of
10 medical treatment. This was a terrible injury. And he does
11 point to a few places where he mentions his mid back. He
12 also relies on medical reports from Dr. Stovall that he says
13 he mentioned his thoracic spine or his mid back, but
14 Dr. Stovall just didn't write it down. Well, you know,
15 there's just no way to prove or disprove that.

16 And the fact of the matter is he didn't claim his
17 thoracic spine until some six years after the injury. And
18 that's why the carrier has and the employer have declined to
19 admit those injuries. The only medical -- recent medical
20 documentation that's in the file says that these are new
21 injuries.

22 Now, I know he wants to rely on this non-record material
23 to say that that's not true but, you know, if we're going to
24 look at Dr. Richardson, I mean, the carrier has the right to
25 depose Dr. Richardson to find out, you know, who's correct

1 there, whether the PA is correct or whether Dr. Richardson is
2 correct there. I don't believe you have the authority to
3 resolve that conflict at this point for Mr. Wilson.

4 And I think that, in large part, that's part of the
5 problem that's happening here is a misunderstanding of what
6 can and cannot be done procedurally for this case. That
7 decision has to be made by the Commission, first off. So --

8 THE COURT: As I understand, there is no determination
9 at this point that Mr. Wilson has reached maximum medical
10 healing.

11 MS. HISER: Not for everything. At various points --

12 THE COURT: That's right.

13 MS. HISER: This has been in front of the Commission
14 numerous times.

15 THE COURT: Yes.

16 MS. HISER: At various points he's been found to be at
17 MMI for his shoulders, for his lungs, I believe, for various
18 body parts, but there's always been something that has not
19 been at MMI; so he's still receiving treatment.

20 But, you know, quite frankly this is a simple decision
21 for you. It's a substantial evidence question, and you're
22 confined to looking at the evidence that the Commission had
23 in front of it when it made this decision.

24 And Mr. Wilson did not move to have any of these medical
25 records admitted as part of this. It wasn't put in front of

1 Commissioner Wilkerson. It wasn't put in front of the
2 appellate panel. So the Commission's never seen these later
3 reports from Dr. Richardson. So they're just not part of the
4 case at this point.

5 THE COURT: Got it.

6 MS. HISER: If you have any other questions, I'll answer
7 them, but, you know, frankly, it is a substantial evidence
8 issue, and there's more than enough evidence in the record to
9 support the Commission's decision that he did not meet his
10 burden of proof. He bears the burden of proving the
11 compensability of any injuries that he alleges.

12 THE COURT: Okay. All right. Very well.

13 Yes, sir.

14 MR. WILSON: Yes, ma'am. I would just have to refer
15 back to when I first saw Dr. Don Stovall on
16 August the 4th, 2005. At my initial visit, I filled out
17 documentation with complaints of the symptoms I was having.
18 It clearly states August the 4th, 2005 in my new patient
19 information document that the claimant was having lower back
20 pain, mid to upper back pain. That goes all the way back to
21 2005.

22 Also, the deposition given by the defendants requesting
23 that I participate in, this was the deposition dated
24 April the 10th, 2007, where I was asked by the defendants,
25 "Okay, when you first went to Dr. Stovall, didn't you fill

1 out new patient forms -- or didn't you fill out a new patient
2 form?"

3 I replied, "Yes."

4 "And on that form, do you recall you had complaints of
5 your left-hand lower back, mid to upper back?" There it goes
6 again.

7 Also, the defendants go on to challenge me on that
8 question and stated, "Is that your handwriting?"

9 I said, "Yes, ma'am. That's my handwriting," when I was
10 referring to, yes, I did have lower back pain and mid to
11 upper back pain. It clearly states it in the deposition
12 taken by the defendants, which the claimant participated in.
13 And this dates all the way back to April the 10th, 2007.

14 So it's clearly documented, going back to the
15 independent medical evaluation, December the 19th, 2006.

16 Now, how Dr. Jeffrey Fabere came into picture -- or came
17 into the picture, this mid to upper back pain, which
18 Dr. Stovall continued to omit from all of his reports, I
19 wanted to get an independent medical evaluation to get it
20 documented and get evaluated.

21 I have a hard time understanding how one doctor can make
22 sure it gets in his report, but the authorized treating
23 physician, which was hand selected by the defendants, it gets
24 omitted out of his report every time. I just have a hard
25 time comprehending that from the defendants.

1 THE COURT: So this is the Edisto that you're telling me
2 about?

3 MR. WILSON: Yes, ma'am.

4 THE COURT: Tell me the language in the Edisto report.

5 MR. WILSON: It's dated December 19th, 2006 --

6 THE COURT: Okay.

7 MR. WILSON: -- on Page 2.

8 THE COURT: Okay.

9 MR. WILSON: And starting on the -- at the end of the
10 first line, which says "Current history," it says,
11 "Mr. Wilson complains of pain in the mid to lower back, right
12 side of the neck and both shoulders."

13 Once again, it says "mid and lower back." Once again,
14 2006.

15 THE COURT: Okay.

16 MR. WILSON: In the doctor's note.

17 THE COURT: I got it.

18 MR. WILSON: And it seems like they only --

19 THE COURT: I got it.

20 MR. WILSON: I'm sorry.

21 THE COURT: I got it. I'm with you. I understand
22 exactly what you're telling me. In other words, it is
23 clearly your position that there is a history.

24 MR. WILSON: Yes, ma'am.

25 THE COURT: And that unfortunately, based on your

1 review, the Workers' Comp Commissioner and the appellate
2 commission failed to give proper weight to your evidence
3 where you were continually, based on your view, complaining
4 of mid -- sometimes you call it mid to lower, sometimes you
5 call it mid to upper.

6 MR. WILSON: Yes, ma'am.

7 THE COURT: But there's certainly evidence in the
8 record, as it was developed, where you are continually
9 complaining of thoracic, meaning mid back difficulties.

10 MR. WILSON: Yes, ma'am.

11 THE COURT: I got it.

12 MR. WILSON: Yes, ma'am.

13 THE COURT: Got to leave it with me now. I've got it.
14 All right. Thank you.

15 I'm going to issue a decision, and I will probably draft
16 it myself and let you all know. Got it.

17 MR. WILSON: Yes, ma'am.

18 THE COURT: Thank you so much.

19 MR. WILSON: It's a couple of more issues. That was
20 just the first issue.

21 THE COURT: I'm so sorry. Tell me what else you've got.

22 MR. WILSON: Okay. Now, the second issue would be the
23 request by the authorized treating physician --

24 THE COURT: Yes.

25 MR. WILSON: -- for the bilateral lower extremities to

1 perform an EMG/nerve conduction study.

2 THE COURT: Yes.

3 MR. WILSON: This really came into play after my back
4 surgery and after --

5 THE COURT: Was this before or after the appeal now? I
6 want to be sure that -- is this before the appeal or after
7 the appeal?

8 MR. WILSON: Before the appeal.

9 THE COURT: Before the appeal. Okay. All right.

10 MR. WILSON: Yes, ma'am. And this would be supported by
11 the claimant's --

12 THE COURT: That would be you.

13 MR. WILSON: Yes, ma'am.

14 THE COURT: Okay.

15 MR. WILSON: This would be supported by the medical
16 report diagnosing the claimant with lumbar spine radiculitis,
17 just referring to pain radiating down the legs. That's a
18 symptom as a result of back surgery.

19 Also, before I had my back surgery, I was bone on bone
20 compressing on nerves. So this is how the authorized
21 physician, Dr. William Richardson, came about the request and
22 the recommendation of the bilateral lower extremity EMG/nerve
23 conduction study.

24 The pain radiating down both of my legs, it began to
25 worsen after the back surgery of the lumbar spine, which

1 included the L5-S1 fusion.

2 THE COURT: And did that not get paid for?

3 MR. WILSON: This is something that was in dispute by
4 the defendants.

5 THE COURT: Okay.

6 MR. WILSON: And this was also -- came from the
7 Southeastern Spine Institute, the authorized treating
8 physician.

9 THE COURT: I understand. And so that wasn't paid for
10 because it was associated with the lumbar spine?

11 MR. WILSON: The defendant just flat out denied it.

12 THE COURT: Okay. Hold on one second.

13 Was that not paid because it was associated with the
14 lumbar spine?

15 MS. HISER: It was not paid because it's associated with
16 the lower right and left extremities, which have not been
17 found to be compensable.

18 THE COURT: Got it. Okay.

19 And your position is that it's associated with the
20 surgery. The radiculopathy and the need for the conduction
21 study was as a result of the surgery and not as a result of
22 any individualized injury to your lower extremities, yes?

23 MR. WILSON: Yes, ma'am.

24 THE COURT: Okay.

25 MR. WILSON: And that would be also supported by a

1 physician statement --

2 THE COURT: Right.

3 MR. WILSON: -- from the Southeastern Spine Institute --

4 THE COURT: Right.

5 MR. WILSON: -- Dr. Donald Johnson --

6 THE COURT: Right.

7 MR. WILSON: -- which is the surgeon that performed the
8 surgery.

9 THE COURT: Right.

10 MR. WILSON: That would be dated June the 18th, 2011.

11 THE COURT: And he says if you keep having problems,
12 then we need to do these studies.

13 MR. WILSON: Well, the doctor or the authorized treating
14 physician, he just related that the body parts affected from
15 the surgery or from the injury would be the back, the legs,
16 as it relates to the back injury.

17 THE COURT: Okay.

18 MR. WILSON: So the back injury and the back surgery,
19 the body parts that would be related would be the legs, due
20 to the radiating pain from the back surgery. And, I'm sorry,
21 ma'am, that would be --

22 THE COURT: It's actually Richardson.

23 MR. WILSON: Dr. Donald Johnson.

24 THE COURT: Well, of course, this is the late report --
25 so this is not part of the record -- where Richardson is

1 talking about if you continue to have problems, then you need
2 to go back to Johnson for revaluation.

3 MR. WILSON: Yes, ma'am.

4 THE COURT: Okay.

5 MR. WILSON: And upon Dr. -- when Dr. Johnson released
6 me after performing the lumbar spine surgery --

7 THE COURT: Yes.

8 MR. WILSON: -- he completed a physician's statement.
9 This is a South Carolina Workers' Compensation form.

10 THE COURT: Yes.

11 MR. WILSON: It's called a Form 14B, and it is dated
12 June 18th, 2011. At the top right-hand corner it says,
13 "Physician statement."

14 THE COURT: Okay.

15 MR. WILSON: And where it says the body parts that are
16 affected, it clearly states that the back would be affected
17 from the surgery. The legs would be affected. And this
18 would just be due to the radiating pain.

19 THE COURT: Okay. I've got it.

20 MR. WILSON: And this is included on the physician
21 statement.

22 THE COURT: Okay. All right. I've got that one. What
23 else?

24 MR. WILSON: Other than referring back to the lumbar
25 spine MRI that took place on January the 11th, 2009, where

1 the disc was bone on bone.

2 THE COURT: That got paid for.

3 MR. WILSON: Yes, ma'am.

4 THE COURT: Okay.

5 MR. WILSON: But as a result, compressing on the nerves.

6 THE COURT: Yes.

7 MR. WILSON: Further damaging the nerves radiating down
8 my legs. Also, after the lumbar spine surgery, I did acquire
9 a bladder dysfunction.

10 THE COURT: That's been determined to be compensable.

11 MR. WILSON: Yes, ma'am.

12 THE COURT: Got that, yes.

13 MR. WILSON: And I would rest on that issue.

14 THE COURT: Got it. Any other issues?

15 MR. WILSON: Next we have the left shoulder evaluation
16 and treatment that I had to come out of pocket. And I'm just
17 asking for reimbursement.

18 THE COURT: And when was that? What was the date of
19 that?

20 MR. WILSON: On or about August 2009.

21 THE COURT: Okay.

22 MR. WILSON: And at that time, the defendants denied the
23 left shoulder injury, but according to the documentation,
24 this was also as a result of the hearing that took place on
25 April the 10th, 2007 with the Honorable Bass.

1 THE COURT: Right..

2 MR. WILSON: At that hearing this was simply a
3 conference that took place off the record as it relates to my
4 left shoulder and my neck pain. The neck injury had been
5 accepted. The left shoulder had not.

6 But in order to refer the pain or relate the pain, the
7 commissioner, or the -- Commissioner Bass, he referred or
8 recommended that the defendants supply me with a cervical
9 spine MRI to rule out any pain coming from the cervical spine
10 that was not related to the shoulder. And if it wasn't any
11 significant change from the previous cervical spine MRI, he
12 instructed the defendants to authorize a left shoulder MRI.

13 This was to be conducted within 30 days, which is the
14 timeframe that the record was going to be left open. The
15 defendants, they did authorize the neck or the cervical spine
16 MRI within the 30 days, but they delayed -- they delayed the
17 left shoulder MRI till after the 30 days, where the record
18 would no longer be left open.

19 And I believe, this is my opinion, that that was done on
20 purpose to omit the left shoulder injury and making it not
21 part of the claim.

22 They did eventually authorize the left shoulder MRI
23 after the 30 days that the record was going to be left open.
24 And on that MRI, I would refer to the left shoulder MRI
25 that's dated May 31st, 2007. It also was performed at

1 Tricounty Radiology Associates. And this is an MRI that
2 shows partial tears within the left shoulder.

3 At this time the defendants still denied the claim from
4 the left shoulder, although they provided the left shoulder
5 MRI, which they were instructed to. That's the only reason
6 why they volunteered and ordered the MRI.

7 THE COURT: Yes.

8 MR. WILSON: I also have the receipt where they paid for
9 the left shoulder MRI back in 2007, further relying on this
10 evidence, stating that they were aware of the left shoulder
11 injury but just left it out of the decision and order.

12 Now, the defendants' position is that they authorized
13 the left shoulder MRI just as a courtesy to the claimant,
14 which I kind of find hard to believe. I've been in this
15 system, going through this process, for over eight years.
16 And to do a courtesy to the claimant, I find that to be
17 somewhat suspect.

18 And the only way they would provide medical treatment
19 would be from an order, which was off the record. I admit.
20 It was not captured in the record, but it was off the record
21 that it was to take place within the timeframe. They did not
22 meet the timeframe, but they did authorize it. And once they
23 got the results from the MRI, they continued to deny the left
24 shoulder injury, although they saw the evidence on the MRI.

25 THE COURT: Okay.

1 MR. WILSON: Finally, we went to -- presented ourself to
2 another hearing, 2010, where some of the same evidence was
3 brought about at that hearing. It was ordered that the left
4 shoulder should be included --

5 THE COURT: Right.

6 MR. WILSON: -- in the original injury.

7 THE COURT: Right.

8 MR. WILSON: And presently, we are now -- I am now being
9 treated for that body part.

10 THE COURT: I knew that. So you have an MRI which has
11 not been compensated for for the left shoulder?

12 MR. WILSON: Well, the -- actually, the office visit was
13 out of pocket.

14 THE COURT: Okay.

15 MR. WILSON: And actually, the authorized treating
16 physician, as we speak, for my right and left shoulder is
17 actually the same doctor that I went to and paid out of
18 pocket.

19 THE COURT: Okay.

20 MR. WILSON: He just subsequently became the authorized
21 treating physician as an agreement with the defendants.

22 THE COURT: Okay.

23 MR. WILSON: So I'm just simply asking for reimbursement
24 for the office visit that I had to pursue on my own.

25 THE COURT: And was that -- that was made a part of the

1 record with the Commission below when you asked the original
2 commissioner for that money?

3 MR. WILSON: No, ma'am. At that time --

4 THE COURT: Okay.

5 MR. WILSON: -- the drafting of the decision and order,
6 normally they give 30 days to complete the drafting of the
7 decision and order. Somehow, on this decision and order, it
8 was -- it was over a year before that decision and order got
9 turned back into the Commission with the alterations and the
10 omissions of the left shoulder.

11 THE COURT: Okay.

12 MR. WILSON: And by that time, Commissioner Bass, he had
13 retired. So --

14 THE COURT: I understand. So have you raised the
15 failure to award that amount of money, have you raised that
16 as an issue up to this point?

17 MR. WILSON: I raised it, but it never got addressed.

18 THE COURT: I understand. And did you appeal the fact
19 that there was a failure for the single commissioner to
20 address the reimbursement of that office visit as part of the
21 appeal?

22 MR. WILSON: No, ma'am. I didn't appeal it. There was
23 really no decision to appeal. He never addressed it.

24 THE COURT: Okay. I've got it. I've got that.

25 MR. WILSON: Yes, ma'am.

1 THE COURT: What else have we got? Because I can only
2 address stuff now that you've raised in the appeal.

3 Here's what I've got: I've got what's raised is the
4 lumbar spine. We've been over that. The bilateral lower
5 extremity EMG nerve conduction study reimbursement, I've got
6 that. And I've got the left shoulder evaluation and
7 treatment expenses reimbursement. That's what you just told
8 me about.

9 MR. WILSON: Yes, ma'am.

10 THE COURT: Yes.

11 MR. WILSON: I'm looking for the next item.

12 THE COURT: Then you've got your motion dated
13 February the 27th, 2012. And then finally, the claimant is
14 respectfully requesting reimbursement for expenses as it
15 would relate to the single commissioner, that's
16 Commissioner Wilkerson's April the 18th, 2012 hearing,
17 claimant's filing fees, photocopying fees, mailing and
18 postage fees, transportation to and from the hearings, as
19 well as the previous South Carolina Workers' Compensation two
20 hearings.

21 Then you've got the motion from February 27th, 2012. So
22 what was in the motion? What was in the February 27th, 2012
23 motion?

24 MR. WILSON: In my opinion, just some of the treatment I
25 was getting from the hand-selected authorized treating

1 physicians --

2 THE COURT: Okay.

3 MR. WILSON: -- by the defendants.

4 THE COURT: Okay.

5 MR. WILSON: I felt that there was some bias.

6 THE COURT: Okay.

7 MR. WILSON: And in my opinion, one, how the
8 Southeastern Spine came into the picture for my back and my
9 neck was due to a lack of orthopedic management. That was
10 the term that the commissioner used when he ordered the
11 defendants to send me to the Southeastern Spine for my back
12 and my cervical spine.

13 THE COURT: Okay.

14 MR. WILSON: Particularly my back was due to not -- the
15 order previously not being honored as it relates to
16 orthopedic management.

17 THE COURT: Okay.

18 MR. WILSON: I would like to go ahead and conclude.

19 THE COURT: Okay.

20 MR. WILSON: And this would be at the
21 single-commissioner hearing, which took place on
22 April the 18th, 2012.

23 THE COURT: Yes.

24 MR. WILSON: There were some directives that were issued
25 for the -- to be placed in the decision and order, and that

1 would be the directives dated April the 27th, 2012. It's
2 Pages 1 through 3.

3 THE COURT: Okay.

4 MR. WILSON: And these were directives that were to be
5 written and included in the decision and order. In
6 particular, there was one omission by the defendants.

7 THE COURT: Okay.

8 MR. WILSON: They had the option of preparing and
9 drafting out the decision and order.

10 THE COURT: Okay.

11 MR. WILSON: What was left out of the decision and order
12 was the directive No. 14. It's on Page 2 of 3.

13 THE COURT: Okay.

14 MR. WILSON: And it just simply says, "The claimant has
15 had quite the runaround from the carrier for treatment,
16 checks and prescription problems."

17 And there were directives from No. 1 to 16. That was
18 the only one that got deleted.

19 THE COURT: Okay.

20 MR. WILSON: Which would, in my opinion, I can't -- I
21 can't see how one would get deleted -- one would get deleted
22 when you're reading straight from the directives numbered 1
23 through 16.

24 THE COURT: Okay.

25 MR. WILSON: And once again, No. 14 is -- clearly

1 states, "The claimant had had -- the claimant has had quite
2 the runaround from the carrier for treatment, checks and
3 prescription problems."

4 Now, clearly, that's something that would rest on the
5 defendants' credibility. And I just don't know how that
6 could be left out as just simply a clerical error, which was
7 the only defense by the defendants.

8 THE COURT: Okay.

9 MR. WILSON: Now, my second problem with that omission
10 was that the single commissioner, he signed off on that order
11 with that omission that he ordered to be in the decision and
12 order.

13 THE COURT: Okay.

14 MR. WILSON: And that brought about a great amount of
15 suspicion on my part, and I felt that I was being treated
16 unfairly. On -- just to add to that thought, this hearing
17 that took place that Commissioner -- or the single
18 commissioner that heard the case did not even have a
19 jurisdiction to hear the case. So that was another red flag.

20 THE COURT: So let me ask you this question: When that
21 was omitted, did you make a motion for the Commission to
22 reconsider the order?

23 MR. WILSON: Well, I responded back to the defendants
24 and to the Commission requesting that that directive be
25 included --

1 THE COURT: Okay.

2 MR. WILSON: -- in the order.

3 THE COURT: Okay.

4 MR. WILSON: And it got dismissed --

5 THE COURT: Okay.

6 MR. WILSON: -- without it being submitted in the order.

7 THE COURT: Okay.

8 MR. WILSON: Once again, at the -- I brought this up at

9 the Commission review or the Workers' Compensation appeal

10 hearing. I brought that up, and it's well documented in the

11 hearing transcript from the Commission review hearing that

12 took place on September the 18th, 2012.

13 THE COURT: Okay.

14 MR. WILSON: Also brought it up again, requested that

15 this directive be placed in the decision and order as

16 instructed.

17 THE COURT: Okay.

18 MR. WILSON: And that got dismissed at the appeals level

19 with the South Carolina Workers' Compensation Commission.

20 THE COURT: Got it. I got it.

21 MR. WILSON: I just have a hard time understanding why.

22 THE COURT: Okay. I've got it. I got it.

23 MR. WILSON: Yes, ma'am.

24 THE COURT: Thank you.

25 Response.

1 MS. HISER: Your Honor, I'd like to go through some
2 points very quickly --

3 THE COURT: All right.

4 MS. HISER: -- on each of these issues.

5 The bilateral lower extremity EMG nerve conduction
6 study, again, this is a substantial evidence question. And
7 the fact that there may be some evidence on this or on the
8 thoracic spine that supports Mr. Wilson's position does not
9 mean that substantial evidence doesn't support the
10 Commission. In fact, there is substantial evidence in the
11 record to support the Commission's factual findings.

12 The Commission is not bound by a particular doctor's
13 report. They evaluate medical reports just as they do the
14 rest of the evidence, and it's the Commission's prerogative
15 to weigh the evidence how they see fit. So the EMG study
16 they denied because Mr. Wilson failed to meet his burden of
17 proof on that issue.

18 The question about the reimbursement of costs for his
19 left shoulder was raised and ruled on by Commissioner Roach
20 in a 2011 hearing, which, again, wasn't on the record, but
21 she issued a decision and denied reimbursement of those
22 costs. Mr. Wilson did not appeal that order; so it is now
23 the ruling of the case. And he cannot -- he's barred from
24 raising it again at this point.

25 The February 2012 motion, I believe when he said

1 Commissioner Wilkerson didn't have jurisdiction, that may be
2 what he's talking about. The only thing
3 Commissioner Wilkerson didn't have jurisdiction to hear was
4 his complaint about his treatment by his doctors. That's an
5 issue that he can raise in civil court at some point. The
6 Commission simply has no authority to hear that issue.

7 That also had been decided by Commissioner Wilkerson in
8 February 2012. And then Mr. Wilson raised it again and
9 caused the defendants to have to write responses to his
10 motions on the issue again. It's just clearly not
11 jurisdictional. The Commission can't touch it.

12 And that's part of the reason Commissioner Wilkerson
13 talked about awarding costs. He didn't award costs to the
14 defendants, but there's been a continual history of issues
15 being raised, ruled on and then raised again. And at some
16 point, that has to stop and the process needs to move
17 forward.

18 With respect to reimbursement of the hearing expenses,
19 the Commission has authority under 421780, when a case is
20 defended or prosecuted without reasonable grounds, and
21 clearly having prevailed on most of the grounds raised on
22 appeal here, the employer has reasonable grounds to defend
23 their claim.

24 I know there are a number of things that Mr. Wilson
25 feels are unfair. I'm very sympathetic to his position. I

1 have two back surgeries behind me as well. But there are
2 certain things the Commission can do and can't do. And as
3 the Commission makes its decision, it has to make its
4 decision on the evidence that's in front of it at the time.

5 And the -- this issue of Commissioner Wilkerson's
6 demeanor wasn't raised to the full Commission; so I don't
7 believe that's available for you to review. The full
8 Commission clearly found that the failure to include a
9 directive in the single-commissioner order was an inadvertent
10 error. And as Mr. Wilson noted, the commissioner signed off
11 on it even though that was raised to his attention.

12 And I believe I'll just, I filed a brief with the Court.

13 THE COURT: You did.

14 MS. HISER: And I will rest on those arguments unless
15 you have any further questions.

16 THE COURT: I think I've got it.

17 MR. WILSON: Ma'am, going back to the directive that was
18 omitted from the order which was drafted by the defendants,
19 it clearly states, "The claimant has had quite the runaround
20 from the carrier for treatment, checks and prescription
21 problems." I just can't see how that can be deleted.

22 THE COURT: Can I tell you why? Because the -- just so
23 you know. Just so you know what -- because you raised it.
24 You did everything you could do. I mean, you raised it. You
25 raised it.

1 MR. WILSON: Yes, ma'am.

2 THE COURT: You said, "This was supposed to be in there.
3 It wasn't in there. I think it ought to be in there, because
4 I" -- and I understand why you want it in there, because you
5 would like it to reflect the fact that that is the way that
6 you have felt.

7 Obviously, you have a commissioner that agrees with you.
8 You'd like to have it in the order, right? I would if I was
9 in your shoes. Why wouldn't you?

10 MR. WILSON: This is a statement that he made.

11 THE COURT: Exactly, you didn't make it. The
12 commissioner made it. You'd like to have it in there, right?

13 MR. WILSON: Yes, ma'am.

14 THE COURT: Well, here's what the law says about that:
15 What the law says about that is even if there's something
16 orally that is stated by the Court, the commissioner, and it
17 isn't in the written order, then that hearing officer, the
18 fact finder, here the commissioner, has the right to not put
19 it in there even if it's stated.

20 You did everything you could do. You raised it.

21 "Hello."

22 MR. WILSON: Yes, ma'am.

23 THE COURT: "I would like this to be in here."

24 Apparently, the commissioner chose not to include that
25 in the final order. And I was clear, that is a prerogative

1 of the fact finder. So you've raised it. You've done
2 everything you can do, but that lies within the discretion of
3 the fact finder to put that in or not put that in.

4 I've heard about it. I've got it, and I hear what
5 you're saying. But what our law is very clear about is that
6 if you say something, you have the ability to change your
7 mind and not put it in the written order.

8 But, again, you did everything you could do to have that
9 issue raised and ruled on. You did everything you could do
10 about it. It was apparently, the commissioner, for whatever
11 reason, chose not to put that in the written order, because
12 it was obviously signed. But you did everything -- again,
13 you did what you could do about that. Do you see what I'm
14 saying?

15 MR. WILSON: Yes, ma'am. This --

16 THE COURT: And the standard for me, just so you know
17 whether or not that would be an abuse of discretion, it would
18 not be an abuse of discretion. But I've got where you're
19 coming from, and I've got it. I heard it. Are you with me?

20 MR. WILSON: Just the last two issues.

21 THE COURT: Okay.

22 MR. WILSON: Just to comment on the statement that the
23 defendants brought forth as it relates to the commissioner
24 having the discretion to make particular decisions as it
25 relates to a case, I find it hard to understand to override a

1 medical expert when a commissioner is not deemed a medical
2 expert. I kind of -- I'm trying to understand the weight of
3 a medical expert versus the opinion of a nonmedical expert or
4 per se a commissioner. I just have a hard time understanding
5 that.

6 THE COURT: I'm with you. I got you. I understand.
7 And at the end of the day, here's the question: The question
8 is whether or not there was substantial evidence for the
9 commissioner to find as the commissioner found.

10 You have done an excellent job of pointing out medical
11 doctors, treating doctors who interacted with you along the
12 way. And the question is, is there substantial evidence to
13 support the Commission finding as the Commission found.

14 Now, just so you know what's going to happen, I'm going
15 to go back through, and I don't mind telling you, I'll just
16 tell you straight up, I'm focused on the thoracic injury.
17 Are you with me?

18 MR. WILSON: Yes, ma'am.

19 THE COURT: Because I think that's -- I think that's the
20 main part of your appeal. So what I'm going to do, so that
21 you know, is that I'm going to go back through the record. I
22 know the ones I can't look at because they're not part of the
23 record, but I'm going to go back through what you talked to
24 me about.

25 I'm going to go back through and I'm going to take a

1 look at it. I'm going to take a look at whether or not there
2 is a stream of evidence showing thoracic back injury and
3 whether or not -- and then I'm going to weigh that.

4 And, by the way, I'm not relying on it being called
5 thoracic back injury. I'm looking at mid back injury. Are
6 you with me?

7 MR. WILSON: Yes, ma'am.

8 THE COURT: Whether it's mid back, neck, mid back, lower
9 back. Okay?

10 MR. WILSON: Yes, ma'am.

11 THE COURT: I'm going to take a look at that thread
12 throughout your history with the exception of those two
13 letters that are not part of this record. I'm going to
14 compare that with what the Commission based its finding on,
15 and I'm going to make a determination of whether or not I
16 think there's substantial evidence to support the Commission
17 finding as it found. Okay?

18 MR. WILSON: Yes, ma'am.

19 THE COURT: Are you with me?

20 MR. WILSON: Yes, ma'am.

21 THE COURT: Okay.

22 MR. WILSON: Just to conclude --

23 THE COURT: Okay.

24 MR. WILSON: Now, the defendants also stated that, as it
25 relates to Commissioner Wilkerson having jurisdiction --

1 THE COURT: Right.

2 MR. WILSON: -- there was a mis -- a misquoted
3 statement.

4 THE COURT: Okay.

5 MR. WILSON: Now, I was referring to the venue
6 jurisdiction --

7 THE COURT: Yes.

8 MR. WILSON: -- and having the claimant travel up to 100
9 miles to come to a hearing where there are other venues
10 within the claimant's jurisdiction.

11 THE COURT: Okay.

12 MR. WILSON: I find that hard to --

13 THE COURT: In other words, your issue is venue. Why
14 did you have to go so far to this particular commissioner
15 when there are Commission hearings closer to where you are,
16 yes?

17 MR. WILSON: Yes. And also, there was --

18 THE COURT: And not being reimbursed.

19 MR. WILSON: I understand sometimes, you know, the
20 commissioners may leave the record open, so they may follow
21 the case until that decision has come to an end.

22 THE COURT: Sure.

23 MR. WILSON: But everything was closed so that he had no
24 reason to follow, or me, in my case, follow him.

25 THE COURT: Okay. I'm with you.

1 What about that? Do you understand what he's saying?

2 MS. HISER: Well, the reason the hearing was held here
3 in St. George is because there was an attempt to resolve some
4 or all of these issues telephonically, and Mr. Wilson was not
5 available. Once the Commission heard from him, this hearing
6 had already been set. I didn't participate in that hearing.

7 THE COURT: Okay. I remember reading that.

8 MS. HISER: But my understanding is that if they had had
9 earlier communication, they could have had the hearing in
10 Charleston, which would have been more convenient for
11 Mr. Wilson. But because of the delay in communication, this
12 was where it had to occur. So --

13 THE COURT: Okay. I'll take a look at that. I'll take
14 a look at it.

15 MR. WILSON: We also had a hearing following that
16 hearing that the defendants just mentioned, having me travel
17 even further. Now we're up to over 200 miles, coming all the
18 way from Charleston, South Carolina, to Columbia. Now,
19 that's way out the venue jurisdiction.

20 THE COURT: Mm-hmm.

21 MS. HISER: And -- that's the full Commission.

22 THE COURT: I got you, yes.

23 MR. WILSON: No, not the full Commission. This is still
24 Commissioner Wilkerson, single commissioner.

25 THE COURT: I'm going to look at it. Hello. Can you

1 hear me? I'm going to look at it.

2 MR. WILSON: I'm sorry. I'm sorry.

3 THE COURT: Meanwhile back at the ranch, here you are in
4 the country for your hearing today.

5 MR. WILSON: Yes, ma'am.

6 THE COURT: I got it. I'll take a look at that as well.
7 Okay?

8 MR. WILSON: Yes, ma'am.

9 THE COURT: Thank you so much. You've got to leave it
10 with me. You've got to leave it all with me now.

11 MR. WILSON: Yes, ma'am. Thanks for being patient.

12 THE COURT: I'm listening. You're very articulate, both
13 of you. And I've got it, and I'm going to review it. Okay?

14 MR. WILSON: Yes, ma'am.

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COURT OF GENERAL SESSIONS

2013-CP-18-01299

TRANSCRIPT OF RECORD

MARCH 12, 2014

ST. GEORGE, SC

HONORABLE MAITÉ MURPHY

FRANK WILSON
Appearing Pro Se

Ruth L. Mott, RPR, CRR
Official Court Reporter

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(NONE MARKED)

1 THE COURT: Good afternoon. You're Mr. Wilson?

2 MR. WILSON: Yes, ma'am.

3 THE COURT: All right. And, Counsel, your name?

4 MS. HANTSKE: Erin Hantske.

5 THE COURT: Nice to see you.

6 MS. HANTSKE: Thank you. You too.

7 THE COURT: And what do we have here? This is your
8 motion?

9 MS. HANTSKE: This is his appeal.

10 MR. WILSON: Yes, ma'am.

11 THE COURT: Okay. This is the one where boxes of the
12 documents were sent to our office?

13 MS. HANTSKE: Yes, ma'am.

14 THE COURT: Okay.

15 MS. HANTSKE: Judge Goodstein heard it initially, or I
16 guess it was a lengthy pretrial conference. Another lawyer
17 in my office attended on my behalf for that one, and I
18 believe she wanted additional documents from the Workers'
19 Comp Commission. And I think you were the lucky one that
20 received those.

21 THE COURT: Well, as it turns out -- funny that you say
22 that -- we've reviewed the rules in effect at the time. And
23 basically, that puts the burden on the parties to provide an
24 accurate record and transcript of record.

25 Two boxes of untabbed or unorganized documents is not

1 going to cut it. You two need to get together and provide an
2 accurate record to the Court for this appeal to be heard, or
3 it's subject to being dismissed. It's just nonsensical to
4 file that with the Court with, like I said, two full boxes of
5 documents that are in no way organized or in no shape or
6 fashion for the Court to determine how a record was
7 transcribed in this case.

8 So John's going to go get those boxes for you. I will
9 give them to you to transcribe a record for the Court to be
10 able to make a -- any kind of heads or tails out of what
11 transpired below for the Court to properly hear the appeal.
12 And if it's not done, the appeal will be dismissed.

13 MS. HANTSKE: With all due respect, Your Honor, I'm more
14 than happy to assist with this, but this is not my appeal.

15 THE COURT: I understand.

16 MS. HANTSKE: And so whatever -- I mean, whatever I can
17 do, I'm more than happy to do on behalf of my client so that
18 you get everything you need.

19 THE COURT: I appreciate that. And if you would get
20 with Mr. Wilson to see if you all could put it together in an
21 organized fashion for the Court to be able to make a
22 determination, I would certainly appreciate that.

23 But, Mr. Wilson, if that's not done, your appeal goes
24 away.

25 MR. WILSON: Ma'am, I was sent the document -- well, a

1 certified document where an order was put in place ordering
2 the Workers' Compensation Commission to provide the Court
3 with an orderly entire file of the claimant's Workers'
4 Compensation case file.

5 THE COURT: Yes, sir.

6 MR. WILSON: Now, due to the unorderly or the fashion it
7 came in, that falls on the burden that the order was placed
8 on, which is Workers' Compensation Commission. And I have
9 no -- I have no -- no concerns with that. I mean, I have
10 no -- it's out of my hands. It was an order sent directly to
11 the Workers' Compensation Commission. Orders statelty --
12 clearly stated that they were to provide an entire case file
13 to the Court for this hearing.

14 THE COURT: Okay. I see the order now where
15 Judge Goodstein actually ordered -- did order the Workers'
16 Compensation Commission to transmit the record of the
17 proceeding. So it appears that she's put the burden on your
18 client.

19 But, Mr. Wilson, if they need your assistance in any
20 way, you need to cooperate with that.

21 MR. WILSON: I have no problem in that. I -- I filed
22 some documents myself that were pretty detailed. I filed
23 some motions, some pretty detailed files pertaining to the
24 case. And anything additional pretty much was out of my
25 hands. I had no knowledge of what was necessary or what was

1 needed. Based on what the order stated, the burden was on
2 the Commission.

3 THE COURT: And I see that here in Judge Goodstein's
4 order dated December 13.

5 So, Counsel, if you don't mind, we'll give you the
6 documents to have your firm try to put together a proper
7 record of the proceedings so that we can proceed. Okay? And
8 if you need his assistance, he's stated on the record that
9 he's happy to help.

10 MS. HANTSKE: Okay.

11 THE COURT: All right. Thank you.

12 MR. WILSON: Ma'am, is it any way we could move forward
13 with what we have?

14 THE COURT: No, sir. We don't have the proper record
15 before us. We have these two boxes full of documents that is
16 not in any kind of recognizable order, and that's not the
17 Court's job to provide the transcript of record. We're going
18 to have to wait until that's done, or the case will be
19 dismissed.

20 MS. HANTSKE: And, Your Honor, I apologize. I know
21 there was correspondence via email to the appellate lawyer in
22 my office and, you know, I believe she went back and forth
23 and was double-checking to make sure everything arrived
24 properly, and I assume there may have been some
25 miscommunication. I guess we were advised that everything

1 got here, and so I sincerely apologize.

2 THE COURT: No. I mean, I'm not upset with you at all
3 or your firm. It's just when they came, there's just --
4 there's two boxes full of documents with no heads or tails or
5 any kind of organization to it at all. And, you know,
6 frankly, the Court doesn't have the time to compile that for
7 the parties. I think that's upon the parties to do so
8 pursuant to Judge Goodstein's order, so we'll allow you the
9 time to do that.

10 We're not upset with you, it's just that the manner in
11 which it came in is just not --

12 MS. HANTSKE: Oh, I completely understand.

13 THE COURT: It's just not workable. So, you know, if
14 the appeal is to be heard, it needs to be in the proper
15 fashion. So we'll adjourn --

16 MR. WILSON: Could I see the order pertaining to that
17 case where the order stated that --

18 THE COURT: Judge Goodstein's order of December 2013?

19 Ms. Hantske, my law clerk will help you carry those
20 boxes to the car if you need those boxes carried.

21 MS. HANTSKE: All right. Thank you.

22 THE COURT: Mr. Wilson, do you have a copy of the order?

23 MR. WILSON: Dated December 17th, 2013?

24 THE COURT: Yes, sir. So you were correct in what you
25 told the Court as to what Judge Goodstein's ruling was.

1 MR. WILSON: And, ma'am, just to comment on the
2 Commission, I've -- it's really been a burden on me. And
3 I've been getting the runaround with the Commission. And now
4 this has come up. I mean, I've traveled to one hearing to be
5 heard by this Court, which I didn't mind, because all the
6 documents were not provided. And the order, I would think
7 Workers' Comp have everything in a fashionly order, being
8 that they are professionals. And I spent time coming down
9 here. I had to get a taxi down here, and I'll probably have
10 to get a taxi back. And this is just -- I've been getting
11 the runaround, not with just the -- the defendants but with
12 the Workers' Compensation Commission itself. And once these
13 issues are reviewed and the evidence is reviewed, it will be
14 clear that I have been clearly been discriminated against,
15 bias shown against, and the evidence is in black and white.
16 So I was anxious to get this hearing commenced on today.

17 THE COURT: Yes, sir.

18 MR. WILSON: Based on the evidence, everything is clear
19 in black and white.

20 THE COURT: I understand your concern, and certainly I
21 empathize with you regarding the inconvenience of coming to
22 court. It's certainly a difficult process, but we have to
23 have the right tools to make the right decisions, and I don't
24 have that.

25 MR. WILSON: Yes, ma'am.

1 THE COURT: And so certainly I'm hopeful that you will
2 have your day in court where you can present your side of
3 your case and dispose of this matter in a fair way, but
4 unfortunately, that can't happen today.

5 MR. WILSON: I did accompany myself with some motions
6 that appeared to have got overlooked at the last hearing.
7 And can I present these to the Court right now?

8 THE COURT: You'll have to file them with the Clerk of
9 Court so that they make it in the accurate court record.

10 MR. WILSON: They've been filed. I paid the filing fee.

11 THE COURT: Oh, you did, okay.

12 MR. WILSON: Yes, ma'am.

13 THE COURT: Sure. Are those extra copies?

14 MR. WILSON: Yes.

15 THE COURT: If they've been filed, they should be in the
16 Court record. But if you have an extra copy, we can put it
17 in there.

18 MR. WILSON: And I believe someone had mentioned some of
19 the filings is -- during the transition from the other court
20 that was going to hear the case and this court, some of the
21 filing may have gotten mixed up, but I have copies of all the
22 filing fees that I've filed.

23 THE COURT: Well, Mr. Wilson --

24 MR. WILSON: And all the motions that I've filed.

25 THE COURT: Sure. And certainly, Counsel, if you would,

1 obviously, before you submit the transcript of record, make
2 sure he receives a copy of it to ensure that everything's in
3 it, make sure we're not missing something that would assist
4 the Court in having a complete record.

5 MS. HANTSKE: Yes, ma'am.

6 MR. WILSON: The defendants, I've mailed them a copy
7 also.

8 THE COURT: Okay.

9 MS. HANTSKE: But, Your Honor, this is for the Court of
10 Appeals.

11 THE COURT: Okay. So that won't go in our record, sir.

12 MR. WILSON: Even though they transferred all the
13 documents from that court to this court?

14 THE COURT: If you want to give us a copy of it and
15 include it in the documentation, if it's proper for it to --
16 I don't know anything about the facts of the case or the
17 procedure of it; so I can't answer your question. But if you
18 would like to include it in there for them to consider in
19 compiling the record, I'm happy to allow you to do so.

20 MR. WILSON: Yes, ma'am, I appreciate it so much.

21 THE COURT: Anything else for the record?

22 MS. HANTSKE: Your Honor, I apologize. Doing Workers'
23 Comp and skipping Circuit Court since 2007 cases, you know,
24 just kind of for the record, I do apologize that we just kind
25 of did believe that the Commission would kind of get

1 everything to you that you needed; so I do apologize for the
2 inconvenience.

3 THE COURT: No, no, apology accepted. Certainly, it's
4 an old matter and not something that comes up every day; so I
5 certainly understand that.

6 MS. HANTSKE: We'll get everything -- I'll get with Mr.
7 Wilson, and we'll get everything together so that we both
8 agree on it and come back.

9 THE COURT: Sounds good. Thank you all. Have a good
10 afternoon.

11 --- END OF TRANSCRIPT OF RECORD ---
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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 12th of March, 2014.

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

15 December 18, 2014

16 
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

FRANK WILSON,
Employee,

vs.

WCC NO. 0506037

AMERICAN LaFRANCE,
Employer,

and

AIG c/o GALLAGHER BASSETT SERVICES, INC.,
Insurer.

THE DEPOSITION OF FRANK WILSON, taken
on behalf of the Employer/Insurer, on February 20,
2007, commencing at 2:00 p.m., at the offices of
Steinberg Law Firm, 61 Broad Street, Charleston,
South Carolina.

REPORTED BY: Christine A. Smith, Court Reporter
SPECTRUM REPORTING, LLC
P.O. Box 1296
Mt. Pleasant, SC 29465
Telephone: (843) 849-0133



P.O. Box 1296 Mt. Pleasant, SC 29465
843.849.0133 phone 843.849.0132 fax

1 Q. So when you arrived to work on May
2 16th, 2005, at 5:30 a.m. did you go about your day
3 as usual?

4 A. On that day I was filling in for
5 someone at our sister plant which is located in
6 Jedburg, and me and another work associate were
7 departing American LaFrance, going en route to our
8 sister plant in Jedburg which is SPP and leaving
9 the plant. I guess we left the plant probably
10 between 5:35 a.m. or 5:40 a.m., somewhere around
11 that time frame en route to SPP which was in
12 Jedburg.

13 Prior to arriving at Jedburg, which is
14 when the accident happened, and the accident
15 happened off of Highway 78, exiting on the road
16 going to Jedburg turning left.

17 Q. Is SPP what you just called the sister
18 plant in Jedburg?

19 A. Yes.

20 Q. You can continue. I'm sorry. You were
21 exiting on Highway 78?

22 A. Yes, I made a left turn, and at that
23 time that's when the accident happened. I ended up
24 getting T-boned. At the time I was the front
25 passenger. I ended up getting T-boned on the front

1 passenger's side, and as a result, that's when I
2 gained the multiple injuries to my lung, my back,
3 my right shoulder, the ribs, left shoulder, and the
4 hip, left hip.

5 Q. Going back to when you left the big
6 American LaFrance plant, who told you to go to the
7 Jedburg plant?

8 A. I was instructed to by my supervisor,
9 Brian Hook.

10 Q. And who was with you?

11 A. Mark Crisp.

12 Q. Was Mr. Crisp driving?

13 A. Yes.

14 Q. Were you driving any kind of company
15 vehicle?

16 A. No, his personal vehicle.

17 Q. Whose car was it?

18 A. Mark Crisp's.

19 Q. Just give me a couple more details
20 about the accident. How did this happen as far
21 as -- who hit who?

22 A. Okay. As I can recall, going down 78
23 making an exit to go to get on the road to go to
24 Jedburg, prior to making the left turn, I want to
25 say it was dark that morning. It was real early.

1 guess it was a little bit out of his field. He's
2 basically an orthopedic. He treated me for my back
3 and my right shoulder.

4 Q. When you were at the hospital initially
5 were you having pain in either of your shoulders?

6 A. It wasn't noticeable. The pain was
7 just so noticeable and was just the chest and the
8 breathing. It was just overbearing everybody else.

9 Q. Who referred you to Dr. Stovall?

10 A. Dr. James Benner.

11 Q. So Dr. Benner. Where is he located?

12 A. I want to say out of Trident Medical
13 Center.

14 Q. So when did you first feel that you
15 were experiencing pain in either one of your
16 shoulders?

17 A. Shortly after I got released from
18 Dr. Benner, and once that pain left from my ribs
19 and most of that pain was gone, and I got some of
20 my breathing back that's when I noticed the pain in
21 my back and my neck and my shoulder.

22 Q. Which shoulder are you indicating right
23 now?

24 A. Right shoulder.

25 Q. When you first went to Dr. Stovall did

1 you tell him you were having pain in your neck,
2 your back, and your right shoulder?

3 **A. Yes. I gave him three parts, my neck,**
4 **my shoulder, and my back.**

5 Q. Are there any other body parts that you
6 first told Dr. Stovall about?

7 **A. No. Initially it was just my neck, my**
8 **right shoulder, and my back.**

9 Q. And I understand Dr. Stovall has
10 treated you for those three body parts. Has
11 Dr. Stovall treated you for any another body parts?

12 **A. No.**

13 Q. Have you had any pain in your left
14 shoulder?

15 **A. Yes.**

16 Q. Have you told Dr. Stovall about that?

17 **A. Yes.**

18 Q. When is the first time you started
19 having pain in your left shoulder?

20 **A. When I first noticed it was post -- a**
21 **work conditioning program through workmans' comp.**

22 Q. Do you know approximately the date of
23 this work conditioning program?

24 **A. I want to say approximately -- between**
25 **August -- between July and August of 2006.**

1 Q. Can you describe the pain you were
2 having in your left shoulder?

3 A. It was mainly in my left shoulder blade
4 similar to what I was experiencing in my right
5 shoulder. Similar, having got that severe but
6 dissimilar symptoms that I was feeling in my right
7 shoulder in the beginning stage is what I'm feeling
8 in my left shoulder. At that time was when I told
9 Dr. Stovall about it, and I really didn't know if
10 it was coming from the left side of my neck going
11 into my shoulder or if it was something isolated.
12 That's something that -- something that I will
13 recommend getting looked at.

14 Q. Did all of your lung problems resolve
15 themselves?

16 A. I still have problems breathing.

17 Q. When were you diagnosed with having a
18 collapsed lung?

19 A. 5/16/05, May 16th, 2005.

20 Q. And as far as Dr. Stovall's treatment,
21 what kind of things did he do for you to relieve
22 the pain?

23 A. Epidural injections, physical therapy,
24 the work conditioning programs, home exercise, pain
25 medication, and epidural injections.

1 Q. Have you underwent any surgeries to
2 your neck, your back, your right or left shoulder?

3 A. No.

4 Q. Do you know if that's a possibility?

5 A. The right shoulder they left it open
6 for surgery as an option for myself.

7 Q. Is that something that you would be
8 interested in?

9 A. I would try to delay it as long as
10 possible, just to try to go with other means of
11 treatment.

12 Q. Did you receive any injection in your
13 left shoulder?

14 A. No.

15 Q. What kind of treatment have you
16 received for your left shoulder?

17 A. None at all.

18 Q. Are you still having pain in your left
19 shoulder?

20 A. Yes.

21 Q. Has it gotten any better through
22 physical therapy?

23 A. No.

24 Q. What were Dr. Stovall's recommendations
25 for the left shoulder then?

1 A. It was something he really didn't
2 comment too much on. This was something that came
3 about as a result of -- I want to say the work
4 conditioning program and the physical therapy.

5 Q. Why do you feel that it came about as a
6 result of the work conditioning program?

7 A. My daily activity outside of that
8 program was very light and very limited, and I
9 didn't go past my limitations. Anything that
10 brought on pain I just didn't do. And when it
11 comes down to the work conditioning and -- another
12 thing, the FCE, that was something that brought on
13 a whole lot of pain and it was elevated in the left
14 shoulder after the FCE, and I told that to the
15 instructor that was over the FCE that it was
16 bringing on a whole lot of pain.

17 Q. Did you do the activities that were
18 causing you pain?

19 A. Yes.

20 Q. You went through with them?

21 A. Yes. I did what I was instructed to
22 do. I told him about the pain and he stated, I
23 think you can do more. I said well, I'm in pain.
24 Well, I think you can do more. And that's when I
25 just told him, you're the instructor. I'm here to

1 to do what you're telling me to do, but it's
2 bringing me pain.

3 Q. At the time that this injury occurred
4 I'm assuming you were written out of work, but did
5 you ever get written back to work?

6 A. Yes.

7 Q. When were you first released to return
8 to work in any capacity?

9 A. I want to say approximately August of
10 2005 approximately.

11 Q. Were you released to return to full
12 duty or light duty?

13 A. Light duty, restricted duty.

14 Q. Did you contact your supervisor or
15 somebody at American LaFrance about this?

16 A. Yes.

17 Q. Did in fact you return to restricted
18 duty?

19 A. Yes.

20 Q. What were you doing when you returned
21 to restricted duty?

22 A. I was still doing quality work, but I
23 didn't do any lifting, didn't do any bending,
24 didn't do any access standing, I constantly changed
25 my position, from standing to sitting, didn't do

1 to the emergency room?

2 **A. Trident. Trident Medical Center.**

3 Q. When was the last time you went to the
4 emergency room because of shortness of breath?

5 **A. I want to say approximately early 2000,**
6 **early to mid 2006 approximately.**

7 Q. At any time have any of the doctors
8 either at Trident Medical Center or Dr. Stovall
9 referred you to a specialist for the pain,
10 shortness, of breath, and concern you're having
11 with your ribs and chest?

12 **A. No.**

13 Q. Have you asked to be seen by somebody?

14 **A. Yes.**

15 Q. Who did you ask?

16 **A. Dr. Stovall.**

17 Q. What was his response?

18 **A. I think you must just have a case of**
19 **gas. That was basically his response. I recommend**
20 **you see your family physician.**

21 Q. Today what are the body parts you're
22 having trouble with or experiencing any kind of
23 pain?

24 **A. My neck, right shoulder, left shoulder,**
25 **my lung, chest, and my back.**

1 Q. Where on your back?

2 A. Low back to mid back.

3 Q. And you've received injections -- let
4 me get this straight -- for your lower back, your
5 neck, and your right shoulder, correct?

6 A. Yes. I have had one facet block in the
7 back of my back just to block off pain riding up my
8 back, but the other injections have been at the
9 left side of my low back.

10 Q. Have you been released by Dr. Stovall?

11 A. Yes. He released me October 11, 2006.

12 Q. And since then have you applied for any
13 jobs?

14 A. I've been looking but it's -- I've been
15 looking, pending getting my restrictions and seeing
16 how they're going to continue to treat me as far as
17 epidural injections and limitations? Basically
18 just continuing the ongoing treatment for my neck,
19 my chest area, my lung, my shoulders, and my back.

20 Before the accident happened, I was a
21 very upbeat guy, just like -- I stay by myself.
22 I'm used to doing everything by myself. I'm
23 staying in Charleston, South Carolina by myself. I
24 have no relatives down here, so I'm put in a
25 position where I have to be dependent because I

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
0506037

FRANK WILSON,)
)
 Employee,)
 Claimant,)
)
 vs.)
)
 AMERICAN LA FRANCE,)
)
 Employer,)
)
 and)
)
 AIG c/o GALLAGHER)
 BASSETT SERVICES, INC,)
)
 Carrier,)
 Defendants.)

* * * * *

DEPOSITION OF: FRANK WILSON
DATE TAKEN: 02/15/2010
TIME: 2:00 p.m.
PLACE: D. Dusty Rhoades, Esquire
828 St. Andrews Boulevard
Charleston, SC
REPORTED BY: DENISE LAUDER
Registered Professional
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 50.

2 Q. Is that Dr. Spandorfer?

3 A. Dr. Spandorfer or Dr. Fechter.

4 Q. When was the last time you saw Dr.
5 Stovall?

6 A. On or about October -- March 2nd, 2009.
7 On or about that time frame.

8 Q. So he's just continuing to prescribe
9 these medications?

10 A. Yes.

11 Q. He hasn't requested that you come back
12 in for evaluation?

13 A. No, ma'am.

14 Q. Do you know exactly what they were
15 prescribed for?

16 A. I believe one was for -- a muscle
17 relaxer, one was for pain.

18 Q. All right. Just -- I want to go
19 through kind of what problems, if any, you're
20 having today. I know that the upcoming hearing is
21 based on your allegation of an injury to your left
22 shoulder and need for tonsil surgery. So if you
23 will, kind of start with the left shoulder.

24 A. Okay.

25 Q. Take me through what kind of problems,

1 if any, you're having today.

2 A. Just basically left shoulder pain.

3 Q. Where in your left shoulder?

4 A. Pretty much in the left shoulder blade,
5 and this can be confirmed through MRI that was
6 taken of my left shoulder and x-rays that was taken
7 of my left shoulder.

8 Q. Okay. I want to go through your
9 objective complaints right now, not like nothing
10 regarding an MRI or x-ray. You said you had pain
11 in your left shoulder blade?

12 A. Yes.

13 Q. So are we talking the back of your
14 shoulder?

15 A. Just the left shoulder blade, inside
16 the blade.

17 Q. Point to me on your shoulder where
18 you're having pain.

19 A. Just inside the shoulder blade.

20 (Indicating)

21 Q. You're kind of pointing right in
22 between the neck and the shoulder --

23 A. Yes, ma'am.

24 Q. -- on the top?

25 A. Well, it radiates up and down.

1 Q. Up and down -- and I'm just trying to
2 get this clear for the record. Up and down where?

3 A. Sometimes from my neck to my shoulder
4 and sometimes from my shoulder to my neck. It
5 radiates down my arm. I mean, it just radiates up
6 and down.

7 Q. How -- sorry, go ahead.

8 A. A doctor probably can better explain
9 since I'm not a physician. I'm just telling you
10 based on my pain, up and down to my neck, down from
11 my neck to my shoulder, radiates down the arm.

12 Q. Okay. How far down your arm?

13 A. Stops right about at my hand.

14 Q. Does it go into your hands?

15 A. No, ma'am.

16 Q. Any pain or anything in your fingers?

17 A. No, ma'am.

18 Q. How often do you have the pain in your
19 left shoulder?

20 A. Daily.

21 Q. How often do you have the radiating
22 pain?

23 A. Daily.

24 Q. Is there anything that you do that
25 aggravates it?

1 A. Lifting, if I sleep on it the wrong
2 way, I wake up in pain, overhead reaching.

3 Q. Does the Skelaxin or do the medications
4 help at all?

5 A. Minimize it until I'm active. I mean
6 -- so it's more like a muscle relaxer, but once
7 I'm active or attempt to do any overhead reaching,
8 any lifting, aggravates the pain. And by it being
9 a shoulder injury, from time to time it radiates
10 into my neck, and I already have a neck injury.

11 Q. I understand that. When did you first
12 start having pain in your left shoulder?

13 A. First noticed it in between the time
14 frame of a work conditioning program and an FCE
15 program.

16 Q. Do you recall when those were?

17 A. On or about the third or fourth quarter
18 of 2006.

19 Q. All right. You were still treating
20 with Dr. Stovall at that time, correct?

21 A. Yes, ma'am.

22 Q. Okay. My medical records show that he
23 released you at maximum medical improvement
24 October 11, 2006. Does that sound about right?

25 A. Yes, ma'am.

1 Q. Did you ever mention -- were you having
2 pain in your left shoulder while you were treating
3 with Dr. Stovall?

4 A. I was having pain in my left shoulder,
5 but I didn't consider it as being a left shoulder
6 injury. I was told that since I had a neck injury,
7 the pain could be coming from my neck.

8 Q. Did you ever mention to anybody that
9 you were having problems with your left shoulder,
10 whether it be from the neck or not?

11 A. At the FCE, when I was doing lifting, I
12 told the instructor that I was having pain in my
13 left shoulder when he had me do the left hand
14 lifting. When I first experienced pain, I told him
15 that I had pain in the left shoulder. And he said,
16 well, I think you can lift more, so lift more.

17 Q. Was the FCE at the end of -- was it
18 before Dr. Stovall released you?

19 A. Yes.

20 Q. When you returned back to Dr. Stovall
21 after the FCE, did you mention the pain you were
22 having in your left shoulder?

23 A. No. Just like I stated before, I was
24 told that it could be coming from my neck going
25 into my shoulder. The first time I mentioned it as

1 the pain increased in my shoulder, I said, hey, we
2 might have a problem. So this is when I told my
3 attorney at the time, Steven Goldberg. He said,
4 well, you've already saw Dr. Stovall, he released
5 you so we'll see if we can get you back in.

6 Q. Let me ask you something. You said
7 that you were told the pain may be coming from your
8 neck. Who told you that?

9 A. People at the work conditioning
10 program, I was told that by Dr. Stovall. And not
11 being sure if it was a shoulder injury or just pain
12 coming from my neck, I didn't know, doctor didn't
13 know because there was no tests taken.

14 Q. Dr. Stovall actually discussed the left
15 shoulder with you?

16 A. No. He just stated that the pain could
17 be coming from the neck going into your left
18 shoulder.

19 Q. Which means he discussed it --

20 A. It would be impossible to actually know
21 that if the MRI is not done or an x-ray is not
22 done. He's guessing, I'm guessing.

23 Q. All right.

24 A. So until -- until actually an MRI was
25 done, no one can confirm that. The doctor's

1 guessing, I'm guessing, until actually the pain got
2 so severe, I said, we need to check this out.

3 Q. When did the pain get, quote, so
4 severe?

5 A. At the FCE, when I told the instructor
6 I'm having pain in this left shoulder. He stated,
7 well, I think you can do more so he made me lift
8 more.

9 Q. All right. You -- what treatment, if
10 any, did you receive or request for your shoulder
11 between the time you were released by Dr. Stovall
12 in October of 2006 and I guess the time you
13 presented to Dr. Graham for a right shoulder
14 evaluation in August of 2009? We have a three-year
15 period there.

16 A. Okay. My first contact was with my
17 attorney at the time, Steven Goldberg, I told him.
18 He said, well, we need to try to get you back in to
19 get that left shoulder checked out to see if it's
20 actually coming from your neck or it's something
21 totally separate. And I said, okay, that sounds
22 good.

23 So two weeks went by, close to a month
24 went by, nothing. I called him and I said, hey,
25 what's going on? So he stated, well, this is

1 what's going on. We're not getting any cooperation
2 with the defense. So he said, we've got you set up
3 for an independent medical exam. This is where Dr.
4 Jeffrey Faaberg came into the picture. And I'm
5 confident that you have the medical records from
6 Dr. Faaberg.

7 Q. Hold on one second.

8 A. Yes, ma'am.

9 Q. All right. What, if anything, did Dr.
10 Faaberg recommend to you?

11 A. He recommended that I first do an
12 updated cervical spine MRI to see if the pain was
13 actually coming from my neck and going into my left
14 shoulder. Then he said, if there's no significant
15 change in the previous cervical spine MRI, we would
16 then do a left shoulder MRI. So first we did the
17 updated cervical spine MRI.

18 Q. Okay.

19 A. That came back, no significant change.
20 So from there I did a left shoulder MRI.

21 Q. Which showed?

22 A. Tears.

23 Q. All right. Then what?

24 A. Then from there we had a hearing, and
25 that evidence was turned into -- to my attorney to

1 bring to the hearing. And this was a hearing with
2 Commissioner Bass, and he recommended that -- he
3 recommended that -- as that evidence was brought
4 in, he went on the recommendations of Dr. Faaberg.
5 And that's when the cervical spine MRI took place
6 and left shoulder MRI took place.

7 Q. All right. Well, I'm not going into
8 the history of a previous hearing, but --

9 A. The left shoulder was addressed first
10 December 19, 2006. That's when it was first
11 addressed.

12 Q. All right. When did you have the left
13 shoulder MRI?

14 A. Somewhere in the time frame of June
15 2007, on or about that time frame. And this was
16 based on the recommendation of Commissioner Bass.

17 Q. All right. Prior to the FCE that you
18 did in late 2006, had you ever had any problems
19 with your left shoulder before?

20 A. No, ma'am.

21 Q. So that was -- when you were lifting at
22 the FCE, that was the first indication of -- let me
23 finish my question.

24 A. I'm sorry.

25 Q. That's okay. That was the first

1 indication of any problems -- any pain you felt
2 since your accident in May of 2005?

3 A. Well, it was the first time I
4 experienced pain enough to say, hey, this is
5 something I need to get checked out. Because it
6 was -- in the beginning I was feeling pain from my
7 neck into my shoulder, so I didn't say anything
8 because I was told, well, you've got a neck injury,
9 so the pain could be coming from your neck going
10 into your shoulder, and it was just mild. And it
11 went from mild to moderate to severe at the FCE
12 when he had me lifting the heavy equipment.

13 Q. All right. I want to move on to your
14 treatment with Dr. Spandorfer and Dr. Fechter.

15 A. Okay.

16 Q. I understand you saw Dr. Spandorfer it
17 was I believe October of 2009?

18 A. Yes.

19 Q. Have you -- who have you seen since
20 then regarding your lung condition?

21 A. Dr. Fechter.

22 Q. When did you see Dr. Fechter?

23 A. This was approximately February 5th,
24 2010.

25 Q. What brought about the need for that



Palmetto Cardiovascular and Thoracic Associates, P.A.

James M. Benner, M.D.
Edd P. Chariker, M.D.
Antonio Laudito, M.D.

Don Stovall, M.D.
Low Country Orthopedics and Sports Medicine
2880 Tricom Street
Charleston, SC 29406

RE: Frank Wilson

July 21, 2005

Dear Dr. Stovall,

I have the pleasure of sending to you Mr. Wilson who was involved in a motor vehicle accident and sustained multiple rib fractures. He has healed nicely from that and he has complained of multiple orthopedic injuries and radiologic examination has failed to show any obvious injury. He complains of right shoulder pain, some upper thoracic discomfort, some lower thoracic discomfort. There do appear to be some degenerative changes in his low back. I have treated him symptomatically, prescribed physical therapy, and given anti-inflammatory medications, but he is still complaining of persistent discomfort.

I am referring him to you to evaluate and treat. If there are any questions that arise concerning his care, please do not hesitate to call. Again, thank you very much for being involved in the care of Mr. Wilson.

Sincerely,

James M. Benner, M.D.

JMB/asp

**LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE**
Don O. Stovall, Jr., M.D.

PATIENT: Frank Wilson
CHART NO: 103325
DOB: 02/07/69

7/31/06 (Continued):

We did discuss future treatment with the patient as far as his shoulder is concerned. Under sterile conditions today, we injected the right subacromial space with Marcaine and 80 mg of Depo Medrol. I would recommend a work hardening/work conditioning program for the patient over the next 4-6 weeks. At that time, we would consider MMI for his work injuries. DOSjr/tg (8/2)

8/9/06: Medical records prepared to be sent to Atty Steven Goldberg. tlc

08/24/06: Worker's Compensation DOI: 05/16/05

DIAGNOSIS: Cervical spondylosis, lumbar DDD, right shoulder impingement

HISTORY OF PRESENT ILLNESS: The pt comes in today for follow up. He got relief with the shoulder injection on the last visit. He has not had any recurrence since then. He is completing a work conditioning program. And getting ready to undergo FCE. He complains of some pain in the left lower lumbar spine region. This is the particular area that bothers him. Otherwise, he is gradually increasing his activities. No other changes in history.

PHYSICAL EXAMINATION: He has a tender trigger point region in the left lower lumbar spine region. He has mild limited flexibility. He has good ROM of the shoulder without pain.

ASSESSMENT:

1. Cervical spondylosis
2. Right shoulder impingement
3. Lumbar degenerative disc disease
4. Left lumbar sacral trigger point

RECOMMENDATIONS: I discussed the diagnosis with the pt. He does not have time today so we will set him up for a trigger point injection in the near future. He will continue work conditioning and given a home exercise program. We will set him up for a FCE. DOSjr/mlh (08/29)*

TRANSMISSION VERIFICATION REPORT

TIME : 03/06/2008 12:58
 NAME : THE UPS STORE 5851
 FAX : 18435528526
 TEL : 18435528524
 SER.# : 000E6J637439

DATE, TIME	03/06 12:58
FAX NO./NAME	7973633
DURATION	00:00:29
PAGE(S)	02
RESULT	OK
MODE	STANDARD
	ECM

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FAX

LOWCOUNTRY ORTHOPAEDICS
 AND SPORTS MEDICINE

Frank E. Wilson
 3319 Mountainbrook Ave. Apt. 6
 North Charleston, SC 29420

To	ATTENTION:	From
Company	DR. DON D. STOVALL, JR., M.D. DR. GEORGE E. WARREN, M.D.	Phone number
Fax number	(843) 797-3633	(843) 760-1705
Date	3/6/08	Fax number
Job number	INJECTIONS (PAIN MANAGEMENT)	N/A
		Total pages
		2

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FAX

Frank E. Wilson
3319 Mountainbrook Ave. Apt. 8
North Charleston, SC 29420

To LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
ATTENTION: DR. DON O. STOVALL, JR., M.D.
DR. GEORGE F. WARREN, M.D.
From Phone number (843) 760-1705
Company Fax number (843) 797-3633
Fax number N/A
Date 3/6/08
Total pages 2
Job number INJECTIONS (PAIN MANAGEMENT)

March 6, 2008

To: **Lowcountry Orthopaedics & Sports Medicine**
Office of Dr. Don O. Stovall, Jr MD & Dr. George F. Warren, MD

Re: Injections to assist with pain management for the following lower lumbar back region, both right and left sides, cervical, neck region- both right and left sides and right shoulder region. Injuries on 5/16/2005. DOB 02/07/1969.

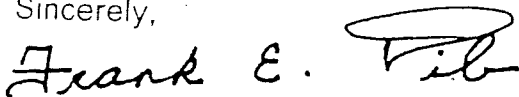
I Frank E. Wilson patient, Steven E Goldberg, and Jonathan Altman were both the legal counsel for self have made several attempts to schedule and set up appointments for the above subject. These attempts started approximately on or around the same time frame as the beginning third quarter of 2006.

All of these attempts went without response from the office of Dr. Don O. Stovall Jr. MD and Dr George F Warren MD.

I Frank E Wilson make this updated attempt for the above subject. I can be contacted at 843-760-1705.

Thank you for your assistance in the above matter.

Sincerely,



Frank E. Wilson

TRANSMISSION VERIFICATION REPORT

TIME : 03/10/2008 13:20
 NAME : THE UPS STORE 5851
 FAX : 18435528526
 TEL : 18435528524
 SER.# : 000E6J637439

DATE, TIME
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Frank E. Wilson
 3319 Mountainbrook Ave. Apt. 8
 North Charleston, SC 29420

FAX

LOWCOUNTRY ORTHOPAEDICS
 AND SPORTS MEDICINE

To	ATTENTION:	From	
Company	DR. DON O. STOVALL, JR. M.D.	Phone number	(843) 760-1705
Fax number	DR. GEORGE F. WARREN, M.D.	Fax number	N/A
Date	(843) 797-3633	Total pages	2
Job number	3/10/08		
	REQUEST FOR INJECTION		
	AT THE LEFT SHOULDER REGION...		

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North Charleston, SC 29420
843.552.8526 fax



FAX

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE

Frank E. Wilson
3319 Mountainbrook Ave. Apt. 6
North Charleston, SC 29420

To.	ATTENTION:		From	
Company	DR. DON O. STOVALL, JR., M.D. DR. GEORGE F. WARREN, M.D.		Phone number	(843) 760-1701
Fax number	(843) 797-3633		Fax number	N/A
Date	3/10/08		Total pages	2
Job number	REQUEST FOR INJECTION AT THE LEFT SHOULDER REGION...			

March 10, 2008

To: Lowcountry Orthopaedics & Sports Medicine

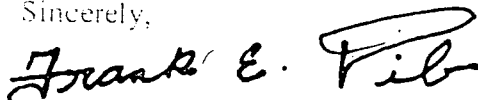
Attention: Dr. Don O. Stovall, Jr., MD & Dr. George F. Warren,
MD

Re: Request injection to assist with pain management at the left
shoulder region. Injury in connection with 5/16/05 injuries. DOB
02/07/1969.

I (Frank E. Wilson) can be contacted at (843) 760-1705.

Thank you for your assistance in the above matter.

Sincerely,

A handwritten signature in cursive script that reads "Frank E. Wilson". The signature is written in dark ink and is positioned above the printed name.

Frank E. Wilson

TRANSMISSION VERIFICATION REPORT

TIME : 02/26/2009 18:52
 NAME : THE UPS STORE 5851
 FAX : 18435528526
 TEL : 18435528524
 SER.# : 000E6J637439

DATE, TIME	02/26 18:51
FAX NO./NAME	7973633
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RESULT	OK
MODE	STANDARD
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FAX

LOWCOUNTRY ORTHOPAEDICS
 AND
 SPORTS MEDICINE

Frank E. Wilson
 8755 Jessica Court
 North Charleston, SC 29405

To	ATTENTION:	From	
Company	DR. DON O. STOVALL, JR., MD	Phone number	(843) 327-9616
Fax number	(843) 797-3633	Fax number	NONE
Date	FEBRUARY 26, 2009	Total pages	TWO (2)
Job number	FEBRUARY 26, 2009 LETTER... TO DR. DON O. STOVALL, JR., MD		

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FAX

LOWCOUNTRY ORTHOPAEDICS
AND
SPORTS MEDICINE

Frank E. Wilson
8755 Jessica Court
North Charleston, SC 29406

To

ATTENTION:

From

Company

DR. DON O. STOVALL, JR., MD

Phone number

(843) 327-9614

Fax number

(843) 797-3633

Fax number

NONE

Date

FEBRUARY 26, 2009

Total pages

TWO (2)

Job number

FEBRUARY 26, 2009

LETTER... TO DR. DON O. STOVALL, JR., MD

Frank E. Wilson
8755 Jessica Court
North Charleston, SC. 29406
(843) 327-9616
Date Of Birth: 2/7/1969

February 26, 2009

To: Lowcountry Orthopaedics & Sports Medicine

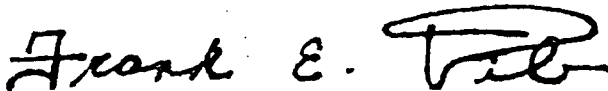
Attention: Dr. Don O. Stovall, Jr., MD

Re: March 2, 2009...Medical Evaluation Appointment at 1:10 P.M.

Dr. Stovall please have your office request the updated M.R.I. films for the following: Head (Brain) M.R.I. (1/23/08), Lumbar Spine M.R.I. (1/9/08) and Cervical Spine M.R.I. (1/9/08) from Neurosciences MRI Center at (843) 724-2150...Left Shoulder M.R.I. (5/30/07) from Tricounty Radiology Associates at (843) 529-0600. I have all of the M.R.I. reports in my possession and will bring them to my appointment on March 2, 2009 at 1:10 P.M...

Thank you in advance for your assistance in the above matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank E. Wilson". The signature is stylized with a large, looped "F" and a cursive "Wilson".

Frank E. Wilson

MEDICAL REPORTS AND MRI REPORTS
(For Dr. Don O. Stovall, Jr., MD...March 2, 2009 Medical Evaluation Appointment...)

FRANK E. WILSON
(DATE OF ACCIDENT: 5/16/05)

Medical Reports

- | | |
|--------------------------------|--------------------|
| 1.) Jeffrey E. Faaberg Sr., MD | (12/19/06) |
| 2.) Cary E. Fechter, MD | (3/23/07) |
| 3.) Jeffrey E. Faaberg Sr., MD | (6/25/07) |
| 4.) George Del Porto, MD | (11/27/07) |
| 5.) Stephen E. Rawe, MD | (1/7/08 – 1/17/08) |
| 6.) Thomas F. Roush, MD | (6/18/08) |
| 7.) Cary E. Fechter, MD | (10/25/08) |

MRI Reports

- | | |
|--------------------|-----------|
| 1.) Head (Brain) | (1/23/08) |
| 2.) Lumbar Spine | (1/9/08) |
| 3.) Cervical Spine | (1/9/08) |
| 4.) Left Shoulder | (5/31/07) |
| 5.) Right Shoulder | (4/12/06) |

**LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE**
Don O. Stovall, Jr., M.D.

PATIENT: Frank Wilson
CHART NO: 103325
DOB: 02/07/69

11/28/06: Medical records faxed to Dr. Hepburn. TLC/tg (3/5)

3/2/09: Worker's Compensation-DOI: 5/16/05

DIAGNOSIS: Cervical spondylosis, right shoulder impingement, lumbar DDD

The patient comes in today for further evaluation. He was discharged from care on 10/11/06 at MMI. He comes in today with medical reports from several physicians. He has undergone spine evaluation with Dr. Rawe and Dr. Roush. He has undergone urological evaluation as well. The patient states that he continues to have some neck pain, no significant upper extremity pain other than his right shoulder pain. The pain is bothering him more and aggravates him with overhead activity and reaching. He has had multiple injections in the right shoulder in the past.

The patient continues to complain of lower back pain. He has occasional pain in the medial aspect of the right thigh. There is no significant numbness in the lower extremity. He does complain of some urinary urgency and occasional mild incontinence. He had an MRI scan of his neck and lower back approximately one year ago.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY/FAMILY HISTORY/SOCIAL HISTORY: Documented, reviewed and signed in the chart.

ASSESSMENT: Cervical spondylosis, right shoulder impingement, lumbar DDD

RECOMMENDATIONS: I discussed the diagnosis with the patient. My opinion is that the patient remains at MMI. I do not feel that he is a surgical candidate for his cervical spine or his lumbar spine. I see no indications that his urinary symptoms are coming from his neck or lower back.

As far as updated studies are concerned, I have recommended EMG and nerve conduction studies of the right lower extremity.

As far as his right shoulder is concerned, he continues to have pain and has a diagnosis of tendinopathy and subacromial bursitis. I recommended evaluation by a sports medicine physician for his right shoulder. DOSjr/tg (3/5)

03/18/09: Medical records sent to Atty Mike Kelly. TLC/mlh (04/24)

**LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE**
Shailesh M. Patel, M.D.

PATIENT: Frank Wilson
CHART NO: 103325
DOB: 02/07/69

04/22/09: **CONSULTATION:** Consulting physician, Don O. Stovall, Jr. M.D.

CHIEF COMPLAINT: Low back pain, right leg pain

Workers' Compensation-DOI: 05/16/05

HISTORY OF PRESENT ILLNESS: Mr. Wilson is a 40 YOM pt here for initial consultation at the request of Dr. Stovall in regards to his lower back pain with radiation into the right lower extremity. The pt has had an extensive spine evaluation with Dr. Stovall, Dr. Rawe, and Dr. Dr. Roush, whom have stated that the pt is not a surgical candidate in regards to his lower back pain. He is having some continued radiation into the right leg with numbness and tingling in the medial thigh. He does report some hx of bladder incontinence. He states that he did see a urologist who referred him to spine surgery for evaluation. He has some mild complaints on the left. He has not had any back surgery.

PHYSICAL EXAMINATION:

GENERAL: Pt is in no apparent distress.

EYES: Normal, non-icteric sclera, extra-ocular muscles intact.

LYMPHATIC: There are no enlarged cervical or inguinal lymph nodes.

SPINE EXAM: The lumbar area is symmetrical without kyphosis or scoliosis. Range of motion is normal in all planes. There is mild tenderness to palpation in the lumbar paraspinals. ROM limited due to pain and flexion and lateral rotation.

SKIN: Skin is without lesions, rashes or scarring at the back and flank and no lesions on trunk or both feet and hands.

NEUROLOGIC: Sensory is intact to light touch. Motor exam is 5/5 in bilateral lower extremities. Reflexes are symmetrical at 2+. Muscle tone is normal with no clonus or muscle atrophy present. Lower extremity special testing of straight leg raise is normal.

EXTREMITIES: Pulse are intact distally with no cyanosis, clubbing, or edema.

**LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE**
Shailesh M. Patel, M.D.

PATIENT: Frank Wilson
CHART NO: 103325
DOB: 02/07/69

04/22/09: (Continued):

PSYCHOLOGICAL: Waddell signs negative.

DIAGNOSTIC TESTING: EMG/NCS performed today reveal no evidence for a chronic right lumbar radiculopathy. Please see EMG/NCS for further details.

DIAGNOSIS/IMPRESSION:

1. Lumbar degenerative disc disease
2. Right lumbar radiculopathy
3. Bladder incontinence

COMMENTARY/MEDICAL DECISION MAKING: Mr. Wilson is a 40 YOM pt here for initial consultation at the request of Dr. Stovall in regards his lower back pain with radiation into the right lower extremity. There is no electrodiagnostic evidence for a chronic right lumbar radiculopathy. Of note, EMG/NCS does not evaluate small sensory pain fibers. Thus a lack of active denervation does not exclude an active radiculopathy. The pt appears to be more concerned about his bladder incontinence. Review of his last MRI shows only a mild disc bulge at L5-S1 that would not likely be the cause of any bladder incontinence. I would recommend that he follow back up with his urologist for further bladder workup as needed.

RECOMMENDATIONS:

1. Follow up with urology for bladder incontinence
2. Continue pain medications as prescribed by Dr. Stovall

SMP/mlh (04/24)

4/27/09 Su EMG/NCS w/ Dr. Yb

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Frank Wilson
CHART NO: 103325
DOB: 02/07/69

4/27/09 Worker's Compensation-DOI: 5/16/05

DIAGNOSIS: Cervical spondylosis, right shoulder impingement, lumbar DDD

The patient comes in today for follow up. He had his EMG and nerve conduction studies performed of the right lower extremity. He has not yet seen a sports medicine physician.

DIAGNOSTIC TESTING: EMG and nerve conduction studies of the right lower extremity reveal a normal study, no evidence of lumbar radiculopathy.

ASSESSMENT: Lower back pain, lumbar DDD, right shoulder pain

PLAN: I discussed the diagnosis with the patient and went over the results of the EMG and nerve conduction studies with him. I will continue to recommend evaluation by sport medicine for his right shoulder.

As far as his back is concerned, he is not a candidate for surgical intervention or any further evaluation at this time. DOSjr/tg (4/30)

5/15/09 - R/L Bil Shoulder

Edisto Spine Center
Jeffrey E. Faaberg Sr. MD
5790 Memorial Boulevard
St. George, SC 29477
PH (843)563-4506 FAX (843)563-9336

INDEPENDENT MEDICAL EVALUATION

The following is an independent medical examination. This patient has not been a previous patient of Edisto Spine Center or Jeffrey E. Faaberg, MD. The patient consented to this examination and a full release of medical records. The patient was instructed to stop any motions or activities that produced pain.

Date: 12/19/2006

Referring Attorney: Steven E. Goldberg

Location: Edisto Spine Center

Patient Name: Frank Wilson

Date of Injury: 5/16/2005

Circumstances of Injury: Mr. Frank Wilson was a right front seat passenger of a Nissan automobile on 5/16/2005. While exiting I-26 and making a left hand turn his vehicle was T-boned from the right by a pick up truck. Mr. Wilson was thrown to the left inside the vehicle.

Treatment History: Mr. Wilson was brought to Trident Regional Medical Center. He was treated for multiple trauma including a collapsed lung and bilateral rib fractures. He was admitted for 3 ½ days. He states that he had a collapsed lung but does not have any memory of a chest tube being inserted.

Mr. Wilson developed neck, lower back, and right shoulder pain. He also had chronic chest wall pain following this accident.

Mr. Wilson was referred to Low Country Orthopedics and was seen by Dr. George Warren of orthopedics and Dr. Don Stovall of orthopedic spine surgery.

Mr. Wilson has had multiple MRI scans of the right shoulder, cervical spine, and lumbar spine. Mr. Wilson has also had multiple injections including lumbar epidurals x 3-4, facet joint injections, trigger point injections and a right shoulder injection. He states that he has had a maximum of 3-4 weeks of relief with all the injections except for the facet injections which gave him very brief relief.

Mr. Wilson's work involved assembly for American LaFrance. He tried a brief period of light duty but was terminated on 12/14/2005.

Current Activity of Daily Living Tolerance: Sitting 30-45 minutes, standing 20-30 minutes, lifting 25lb maximum infrequently. Mr. Wilson currently owns no vehicle and is not driving.

Current History: Currently Mr. Wilson complains of multilocal pain in the mid and lower back, right side of the neck, and both shoulders. He also has persistent chest wall pain. Pain intensity is about 7/10. He reports that he has gotten brief relief with epidural injections and warm showers. Prolonged standing, sitting, bending, stress, and lifting worsen his pain. Current medications include Mobic and Skelaxin.

Past Medical History:

Allergies: None.

Co-existing Medical Conditions: Patient denied other medical conditions.

Previous Surgeries: Patient denied previous surgeries.

Previous Injuries: Patient denied previous injuries.

Review of Studies: Patient brought several scans including a right shoulder MRI scan.

Cervical spine MRI: This indicates a disc osteophyte with protrusion at the C3-4 level. There is moderate bulging at other levels.

There were several lumbar MRI's. The patient has significant loss of disc space height with protrusion at L5-S1 and slight bulging at other levels.

Review of Medical Records:

Trident Regional Medical Center: Emergency room encounter and multiple laboratory tests and computer generated reports.

Chris P. Tountas MD: Independent Medical Evaluation. Dr. Tountas opines that the patient is at maximum medical improvement and was not a candidate for surgical intervention and had no evidence of neurologic deficit of the upper or lower extremities and no findings of cervical or lumbosacral radiculopathy that would correlate with any of the cervical or lumbosacral MRI's. He mentions a right pneumothorax with fracture of the right 5th rib and pulmonary contusion right upper lobe. He also mentions Dr. Benner; apparently he was the trauma specialist in this regard. Physical therapy is also mentioned as is lack of airbag deployment and multiple epidural steroid injections. There are x-ray reports, CT imaging which is negative for sternal fracture, and moderate degenerative disc disease L5-S1.

With a reasonable degree of medical certainty, Mr. Wilson's condition will not significantly change or improve in the next calendar year and I would deem him at maximum medical improvement. Using the 5th ed. Guides to Evaluation of Permanent Impairment I would assign the following regional impairments:

Cervical spine: 5% whole person / 14% regional impairment of the cervical spine.

Lumbar spine: Mr. Wilson has significant loss of lumbar spine range of motion in extension and lateral flexion. He has an obvious disc protrusion with loss of disc space height at L5-S1 with positive straight leg raising. I would assign 10% whole person / whole spine impairment which translates to 13% regional impairment of the lumbar spine using DRE classification. Mr. Wilson does have weakness at the left knee and I would attribute this to spine changes as a radicular change.

Right upper extremity: 10% regional impairment. Mr. Wilson has loss of strength in three motions of the right shoulder.

Mr. Wilson has persistent pain in the left shoulder. This may represent changes due to his disc osteophyte situation at C3-4. I would suggest a follow up MRI of the cervical spine and also left shoulder to rule out joint pathology vs. changes secondary to radicular phenomenon.

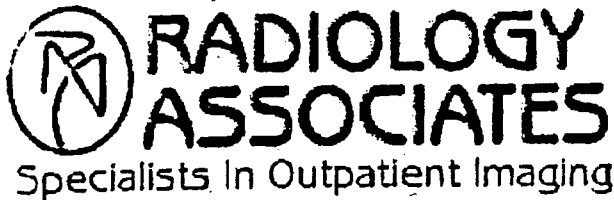
Mr. Wilson has a significant reduction in his ability to carry out activities of daily living. His maximum lifting is 25lb on an infrequent basis. His maximum sitting and standing is less than one hour. He is currently not operating a motor vehicle. Unless a functional capacity evaluation can be produced to dissuade otherwise I would place Mr. Wilson in the light physical demand category but he would require significant sheltering with change in position and maximum lifting of 25lb and frequent lifting of less than 10lb.

Mr. Wilson is a candidate for ongoing medical care and as above I would suggest follow up scan of his cervical spine and also the left shoulder. He has had 3-4 week responses from spinally administered steroid in the past. I would suggest no more than 3-4 of these procedures in a calendar year to avoid incurring systemic side effects of spinally administered corticosteroid. Mr. Wilson is also a candidate for behavioral medicine work up and maximization of cognitive and coping skills. He should also be evaluated and managed by a physical therapist to avoid incurring further impairment.

This independent medical evaluation may be amended if any additional information becomes available.

Jeffrey E. Faaberg, Sr., MD, DABPM
JEF/mh

Tricounty



Jeffery Faaberg, MD
5790 Memorial Blvd
St George, SC 29477

PATIENT: Wilson, Frank
Phone #: 843-760-1705
ID Number: 396150
Birthdate: 2/7/1969

EXAM: MRI LEFT SHOULDER

EXAM DATE: 5/31/2007 **COMPARISON:** None.

CLINICAL HISTORY: "Internal derangement."

TECHNIQUE: Routine MRI of the shoulder was performed at the Tricom 1.5 Tesla Siemens MRI utilizing sagittal oblique PD/T2, oblique coronal T1, fat saturated axial PD, and oblique coronal PD/T2 sequences.

FINDINGS: Diffuse thickening in the supraspinatus tendon at the insertion consistent with chronic degeneration with areas of mild increased signal intensity. Additionally there is an area of focal thinning of the tendon anteriorly felt to be consistent with a partial thickness tear involving approximately 50% of the thickness of the tendon. No evidence of a full thickness rotator cuff tear. There is no significant atrophy of the rotator cuff muscles. The long head biceps tendon is broadened over the humeral head with longitudinal areas of increased T2 signal intensity suggesting longitudinal partial tears. No evidence of tendon rupture. Unremarkable glenoid labrum. No glenohumeral joint effusion. AC joint is intact with mild osteoarthritis. There is a minimally curved acromion present.

IMPRESSION: Supraspinatus and biceps tendinosis with partial tears. No evidence of a full thickness rotator cuff tear.

James A. Thesing, D.O. / car

Dictated on 06/04/2007

Job # 4318848

This document has been electronically reviewed and signed.

FRANK E. WILSON
8755 JESSICA COURT
NORTH CHARLESTON, SC 29406

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX.

☒ Track your expenses...

☐ TAX DEDUCTIBLE ITEM

1405

☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other: _____

8/20/09

SOUTHERN ORTHOPEDICS
AND SPORTS MEDICINE
THREE HUNDRED EIGHTY DOLLARS AND

(DR. WILLIAM ESTES
RIGHT AND LEFT SHOULDER
MEDICAL EVALUATION)

BALANCE
FORWARD

THIS ITEM

BALANCE

DEPOSIT

OTHER

BALANCE
FORWARD

380.00

NO CENTS

1405

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

FRANK E. WILSON
8755 JESSICA COURT
NORTH CHARLESTON, SC 29406

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX		1429
☒ Track your expenses...	☐ TAX DEDUCTIBLE ITEM	
☐ Clothing	☐ Food	
☐ Credit Card	☐ Transportation	
☐ Entertainment	☐ Utilities	
☐ Insurance	☐ Mortgage	
☐ Other:	☐ Other:	
9/29/09		
SOUTHERN ORTHOPEDICS AND SPORTS MEDICINE		
SEVENTY — EIGHT DOLLARS AND NO CENTS		
WILLIAM J. ESTES, MD		
FOLLOW — UP		
(9/29/09)		
1429		
For added security, your name and account number do not appear on this copy.		
NOT NEGOTIABLE		

ORTHOPAEDIC SPECIALISTS OF CHARLESTON**John M. Graham, Jr., MD****Patient Name:** WILSON, FRANK**DOB:** 2/7/1969**PATIENT #:** 77-52-9**2093 Henry Tecklenburg Drive****Suite 200 East****Charleston, SC 29414****Telephone (843) 958-2500****Fax (843) 958-2680****Date of Service:** 2/4/2010**FOLLOW-UP**

The patient is seen today for evaluation of his shoulders. He has continued to have discomfort in both shoulders, the right worse than the left. He has also been followed by Dr. Johnson with respect to his lumbar spine. He continues to have severe back pain which continues evaluation and MRI scan has demonstrated degeneration, but discogram has been recommended and not yet obtained. With respect to his shoulder he has restricted range of motion and ongoing pain. Previous MRI dated 2006 demonstrates a small tear of the distal portion of the supraspinatus tendon on the right. Because of ongoing discomfort despite therapy and injection and conservative measures, it appears that he is a candidate for arthroscopy of his right shoulder. This will likely be delayed until after a completed evaluation with respect to his lumbar spine. Risks, benefits and possible complications are discussed with respect to his right shoulder. In the process of doing work hardening to address his right shoulder he injured his left shoulder in the third or fourth quarter of 2006. He continues to have pain in his left shoulder with findings similar to that on the right. It does appear that this is causatively related to the right shoulder accident as well given the way the injury occurred and that he was doing work hardening to address his right shoulder pain. The patient's left shoulder will be subsequently evaluated as needed.

John M. Graham, Jr., MD

JMG/gl

DD: 2/4/2010 9:34:00 AM

DT: 2/9/2010 2:15:23 PM

10920422

This document was electronically signed by John Graham, Jr., MD

Date and Time: 2/10/2010 9:47:37 PM



TRICOUNTY RADIOLOGY ASSOCIATES

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Wilson, Frank
DOB: 2/7/1969
MRN: 396150
PHYSICIAN: Thomas Roush, MD
EXAM DATE: 7/11/2009

EXAM: LUMBAR MRI WITHOUT CONTRAST

COMPARISON: 07/26/2006.

HISTORY: Lumbar disc disease.

TECHNIQUE: Multiplanar multisequence images lumbar spine without contrast.

FINDINGS: *Alignment and bony structures:* Preserved alignment and marrow. *Conus medullaris:* Normal signal and caliber. *Findings by level:*

T12/L1 - L1/2: Normal.

L2/3: Mild disc bulge. No stenosis.

L3/4: Mild disc bulge. Mild left exit narrowing.

L4/5: Disc bulge converts to shallow protrusion biforaminally, extending slightly extraforaminally on both sides. Right intra to extraforaminal linear annular tear. Facet hypertrophy with small right effusion. Mild exit narrowing.

L5/S1: Shallow central protrusion converts to disc osteophyte complex left intra to extraforaminally and also extends right intra to extraforaminally without significant disc component. Facet hypertrophy. Moderate exit and mild left recess narrowing. Slight contact and flattening bilateral exiting L5s, without impingement.

IMPRESSION: L4-5 spondylosis with biforaminal disc bulges has progressed since prior study, though no significant stenotic effect is present at this level at this point. Most impressive level remains L5-S1, where protrusion causes left greater than right moderate exit stenosis with contact and crowding exiting L5s is unchanged since prior exam. Correlation for left greater than right L5 radiculopathies might be helpful.

Troy Marlow, M.D.
TM / cm

DD: 7/13/2009 / DT: 7/13/2009
Job: 8522574

This document has been electronically reviewed and signed.

SOUTHEASTERN SPINE INSTITUTE

WILSON, FRANK

Patient #133723

October 12, 2009

This patient is a patient of Dr. Tom Roush's. I have reviewed his MRI, his imaging studies. He has a severely collapsed L5-S1 disc but has progression of the level above on the 7/11/09 scan. In fact the radiologist compared this to a 7/26/06 scan and states there is progression. Additionally the patient has complaints of severe neck pain which he feels is worsening. He last had a scan of his 1/08.

The patient has seen Dr. Billy Estes. Dr. Estes has advised that he will need arthroscopic shoulder surgery bilaterally.

At this point in regards to the patient's low back I would delay having an L5-S1 fusion done. I think it would be important for him firstly to have a diagnostic discogram to make sure as much as possible that the L4-L5 disc is not additionally involved in this situation. If it is then the patient may be looking at a two level fusion.

I would suggest firstly a diagnostic discogram. Additionally I think an updated cervical MRI needs to be obtained.

DRJ/dm

T- 10/16/09

Donald R. Johnson, MD

WILSON, FRANK

Patient #133723

January 25, 2010

Mr. Wilson returns today, he has not had the discogram that I previously recommended per my October note. Mr. Wilson relates that his insurance company did send him for an updated MRI scan, which in my opinion probably was unnecessary. He had a scan that I previously have reviewed which was just a few months old. He has severe changes at the 5-1 level with severe disc space collapse and almost bone on bone. He may be a candidate for surgical intervention, but I am concerned about the level above, which on the MRIs is not normal. This is the reason that I have recommended a discogram be done. This would be short, an outpatient procedure, take no more than 15 minutes and would help us with planning. The patient after discography may not be a candidate for any surgery, but certainly I don't think I can make a reasonable recommendation in regards to whether he needs surgery or not and which surgery he might need without a discogram. I think it is paramount at this point that the patient have a discogram previously recommended and unfortunately updating MRIs will not help us with this issue.

Donald R. Johnson, M.D.

DRJ/dam

T- 1/28/10

Cc: Dusty Rhoades, Esquire
Patient



Physician's Statement

Claimant's Name: Frank E. Wilson
Physician's Name: Donald R. Johnson, II, MD
Practice/Clinic: Southeastern Spine Institute
Preparer's Name: Donald R. Johnson, II, MD
Phone: (843) 849-1551

Employer's Name: American LaFrance
Insurance Carrier: AIG: C/O Gallagher Bassett Services, Inc.
SCWCC File No: 0506037

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

Date of Injury or Illness: 5/16/03
Date of first office visit: 6/18/08 Date of last visit: 10/12/10
Diagnosis or nature of injury or illness: low back injury, L5-S1, neck
Body part(s) injured: spine Body part(s) affected: back + legs, arm
Date of Maximum Medical Improvement: 10/12/10 from surgical standpoint
Based on the **AMA Guidelines**, the claimant has sustained a _____ % **medical impairment** to _____ injured body part(s) and a _____ % **medical impairment** to _____ other affected body part(s).
____ The claimant is **able to return to work** without restriction. 21% whole person
____ The claimant is **able to return to work with the following restrictions:** 2% lower back
(Not disability but impairment) 5% whole person
2% neck
☒ The claimant is **unable to return to work** at his or her current employment.

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

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

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

with Dr. B. Richardson in pain management
Ongoing 2-3% wks + Rxmt

Donald R. Johnson II, MD
Treating Physician DONALD R. JOHNSON II, MD

6/18/11
Date

**PALMETTO COMPREHENSIVE CENTER FOR PAIN
OF THE SOUTHEASTERN SPINE INSTITUTE**

913 Bowman Road, Suite B, Mount Pleasant, SC 29464
Phone 843-388-6552 FAX 843-388-6555

WILSON, FRANK

Patient #133723

DOB: 02/07/1969

November 22, 2011

Mr. Wilson is seen today in our clinic on November 22, 2011. He comes in today for a follow-up visit and states, "I have a hearing coming up."

He continues to have pain in his low back and into his bilateral lower extremities. He describes his pain as a dull, aching. He rates his pain as a 7 out of 10 on the numeric analog scale. It is worse with walking and sitting. It is better with showering and elevating his legs in the recliner. He states that his left leg pain is worse than his right.

Review of Systems: He denies chest pain. He does have some mild shortness of breath with exertion. He denies any GI issues. He does feel like his bladder issues may be worsening. He has some mild urgency that has worsened over the past month. He is also leaking at night. He is planning to see Dr. Rovner on December 1.

Past Medical History: He denies any changes in his past medical history.

Social History: He is a nonsmoker, no alcohol, no marijuana.

Allergies: No known drug allergies.

Current Medications: Oxy-IR, Skelaxin, Phenergan, and Neurontin.

Vital Signs: His vital signs were taken today to include a weight of 224Lbs, blood pressure of 117/68, pulse of 64, oxygen saturation of 98% on room air.

Physical Examination: On exam, he is a well-developed, well-nourished male who is well-groomed with a normal affect. He has 5/5 strength noted in his bilateral lower extremities. Dorsi and plantar flexion are intact. Negative straight leg raise bilaterally. 1+ reflexes noted in his lower extremities. Normal muscle tone. He does ambulate into our clinic today with an antalgic gait. He is alert and oriented x3. Cranial nerves II through XII are grossly intact.

WILSON, FRANK

Patient #133723

DOB: 02/07/1969

November 22, 2011

We reviewed his most recent MRI and discussed his care in detail and discussed multiple options to control his pain.

Impression: This is a patient with lumbar radiculitis and post-laminectomy syndrome of the lumbar spine.

Plan: At this time, we would like to move forward with a caudal injection. We will refill his medications today and see him back in our clinic in four weeks for follow-up.

My supervising physician has reviewed this plan and he is in agreement.

Virginia G. Blease, PA-C

VGB/jls

T- 12/06/2011

**PALMETTO COMPREHENSIVE CENTER FOR PAIN
OF THE SOUTHEASTERN SPINE INSTITUTE**

913 Bowman Road, Suite B, Mount Pleasant, SC 29464

Phone 843-388-6552 FAX 843-388-6555

WILSON, FRANK

Patient #133723

DOB: 02/07/1969

December 29, 2011

Mr. Wilson is seen today in our clinic on December 29, 2011. He comes in today for a follow-up visit and states, "I can't complain too much."

He continues to have pain in his neck and his shoulders, his mid-back and his lower-back. He describes his pain as dull and aching. His new pain is sharp. He rates it today as a 4 out of 10 on the numeric analog scale. It is worse with walking, sitting and activity. It is better with rest, medications, heat, showers, and being in his recliners.

He states that he had increased left-sided neck pain after his right-sided rhizotomy. He states that he is experiencing increased pain on the left side after his right sided rhizotomy and he occasionally has pain on the right side of his neck. He states that he is having increasing pain on the left side that shoots to his sternal area and he states that this has been going on two to three weeks and that it happens daily.

Review of Systems: He has neck pain, back pain, shortness of breath, chronic cough, wheezing. He does have chest pain with thoracic and back pain. Shortness of breath with the above. He has some GU issues with bladder urgencies and incontinent in the night time. He has been seeing neurology at MUSC for proper workup. He denies any GI issues. He has not had his caudal injection that was ordered at his last visit.

Past Medical History: He denies any changes in his past medical history other than those listed above. He has recently been diagnosed with pulmonary hypertension. His last procedure was a right-sided rhizotomy at C4-5-6. It did help him. He got about fifty percent pain relief.

Social History: He is a nonsmoker, no alcohol, no marijuana.

Allergies: No known drug allergies.

WILSON, FRANK

Patient #133723

DOB: 02/07/1969

December 29, 2011

Current Medications: Oxy-IR and he states that he has been out since last week. Neurontin which we increased the dose on the last time he was here however he did not increase his dose however he felt like this may have been a mistake so he has continued to take 100mg four times a day. He continues to take Skelaxin and Phenergan.

Vital Signs: His vital signs were taken today to include a blood pressure of 147/93, pulse of 95, oxygen saturation of 98% on room air, and temperature of 99.

Physical Examination: On exam, he is a well-developed, well-nourished male who is well-groomed with a normal affect. He has 5/5 strength noted in his bilateral upper and lower extremities. Equal grip strength bilaterally. Dorsi and plantar flexion are intact. Negative straight leg raise bilaterally. Normal muscle tone. He does ambulate into our clinic today with an antalgic gait. He is alert and oriented x3. Cranial nerves II through XII are grossly intact. Normal myofascial tone. He does have some tenderness to palpation on the left side of his thoracic spine.

Impression: This is a patient with lumbar radiculitis, post-laminectomy syndrome of the lumbar spine, and thoracic radiculitis.

Plan: At this time, we did review his lumbar MRI again in detail with the patient. We also discussed that at this time he is not a surgical candidate for correction of his L4-5 disc however he continues to complain of new on-set leg pain therefore we would like to get a bilateral lower extremity EMG/nerve conduction study to further evaluation this patient's lower extremity pain as well as his concern over his L4-5 area.

We would like for him to have his caudal injection as soon as possible. We also would like to get an MRI of his thoracic spine to rule out any type of thoracic pathology with his new on-set pain. We did spend greater than forty-five minutes face-to-face time with this patient evaluating and discussing his care. We will see him back in our clinic in eight weeks for follow-up.

My supervising physician has reviewed this plan and he is in agreement.

Virginia G. Blease, PA-C

VGB/jls

T- 01/09/2012

**PALMETTO COMPREHENSIVE CENTER FOR PAIN
OF THE SOUTHEASTERN SPINE INSTITUTE**

913 Bowman Road, Suite B, Mount Pleasant, SC 29464

Phone 843-388-6552 FAX 843-388-6555

WILSON, FRANK

Patient #133723

DOB: 02/07/1969

February 24, 2012

Mr. Wilson is seen in our clinic today on February 24, 2012. He has a diagnosis at this time of lumbar radiculitis, post lumbar laminectomy syndrome, thoracic radiculitis, lumbar spondylosis and cervical spondylosis. He comes in today for a follow-up visit and states he is surviving. He has pain in the low back, the midback, the neck and the shoulders. He describes his pain as aching, states it is worse on the left than the right side. He rates it as a 6/10 on the numeric analog scale. It is worse with activities, better with rest, medications and heat. He states workers' comp denied the EMG as well as the thoracic MRI so he has requested a hearing. He also states on March 14th he has surgery scheduled on the right shoulder for a new tear. I have explained to him that he is welcome to have all this done, but that if they need to write him additional pain medications he needs to let us know before these are filled. He also is endorsing at this time some chest pain on the left side that is radiating around from his ribs. He does have associated shortness of breath with this. Otherwise he denies any additional chest pain, shortness of breath, GI or GU difficulties or any additional changes.

PAST MEDICAL HISTORY: He does have pulmonary hypertension. He doesn't smoke, drink or use marijuana. He is not married, not working, he is on workers' compensation.

ALLERGIES: NKDA.

He take Enablex, ~~Jurvonie~~, Advair, ProAir and Singular. His medications include OxyIR, Neurontin, Skelaxin and Phenergan from our office.

The patient does ambulate into our clinic today with an antalgic gait. He is well developed, well nourished, well groomed, normal affect. He has 4/5 musculoskeletal strength bilateral upper and lower extremities bilaterally. His grip strength is equal bilaterally. His grip strength is equal bilaterally. dorsi and plantar flexion are intact. He has a negative straight leg raise on the right, positive on the left and he states the pain is worse on the left than the right side with rising. He is alert and oriented x3, cranial nerves II to XII are grossly intact per examination.

IMPRESSION: This is a patient with cervical spondylosis, lumbar radiculitis, lumbar spondylosis, post lumbar laminectomy syndrome and thoracic radiculitis.

(continued)

WILSON, FRANK

Patient #133723

DOB: 02/07/1969

February 24, 2012

PLAN: At this time we would like t his patient to proceed with a thoracic MRI and I am assuming that afterwards he will most likely need a TESI but we will evaluate the scan first. I also would like him to see his primary care physician as soon as possible to confirm that it is not his heart causing the associated symptoms he is having as I am concerned there may be a component of cardiac disease associated. We will also change his Skelaxin to Baclofen as this patient is having a difficult time getting Skelaxin. We will continue his other medications as listed above. I did spend greater than 20 minutes time in consultation with this patient today, in addition to his examination and we will see him back in our office in 4 weeks time.

It is also of note that Dr. Richardson does write home health assistance for maintenance of the inside and outside of the patient's home and we will continue that at this time.

Suzanne E. Livengood, PA-C

SEL/dam

T- 03/06/12

Frank E. Wilson
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616
Date of Birth: February 7, 1969

February 24, 2012

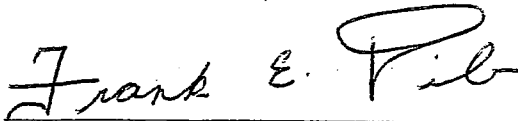
VIA HAND DELIVERY

W. Blane Richardson, MD
Comprehensive Center For Pain Of Southeastern Spine Institute
913 Bowman Road Suite B
Mount Pleasant, SC 29464
(843) 388-6552

Dear Dr. Richardson:

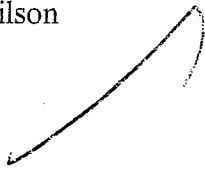
I am a patient of yours at The Comprehensive Center For Pain Of Southeastern Spine Institute. I was referred to The Comprehensive Center For Pain Of Southeastern Spine Institute by Donald R. Johnson, II, MD of Southeastern Spine Institute. This was for the purpose of pain management for my **Back injury and Cervical Spine injury**. At the present time, I am currently preparing myself for a South Carolina Workers' Compensation Commission Hearing. This is for the purpose of addressing and determining the evaluation and treatment (**Back MRI and Bi-lateral Lower Extremity EMG/nerve conduction study**) requested and recommended at my December 29, 2011 Comprehensive Center For Pain Of Southeastern Spine Institute office visit. The requested and recommended evaluation and treatment noted in my patient office note dated December 29, 2011 is well supported by the **Form 14B- (Physician's Statement)** completed by Donald R. Johnson, II, MD of Southeastern Spine Institute dated June 18, 2011. Dr. Johnson clearly stated on the **Form 14B- (Physician's Statement)** that the *Body part(s) affected from the patient's **Lumbar Spine injury and Cervical Spine injury** were the *Back, Legs and Arms. The patient's **Form 14B- (Physician's Statement)** completed by Donald R. Johnson, II, MD of Southern Spine Institute dated June 18, 2011 is a part of my Comprehensive Center For Pain Of Southeastern Spine Institute patient medical file. Dr. Richardson, I request that if you are in agreement with Dr. Johnson's comments noted on the patient's **Form 14B- (Physician's Statement)** dated June 18, 2011 stating that the Body part(s) affected from the patient's **Lumbar Spine injury and Cervical Spine injury** were the patient's Back, Legs and Arms which makes the Back, Legs and Arms casually related to the patient's **Lumbar Spine and Cervical Spine injury**. Dr. Richardson if you are in agreement with Dr. Johnson's comments noted on the patient's **Form 14B- (Physician's Statement)** dated June 18, 2011, this would be based on your **professional medical opinion** and based on a reasonable degree of medical certainty (more likely than not) the patient would benefit from the evaluation and treatment requested and recommended in the patient's December 29, 2011 office visit medical note. Dr. Richardson if you would sign and date this document, it would assist in getting the necessary evaluation

and treatment (**Back MRI and Bilateral Lower Extremity EMG/nerve conduction study**) requested and recommended in the patient's December 29, 2011 office visit medical note. I would like to thank you and your staff in advance for your assistance in this matter.



Frank E. Wilson

Date: February 24, 2012


W. Blane Richardson, MD

Comprehensive Center For Pain Of Southeastern Spine Institute
913 Bowman Road Suite B
Mount Pleasant, SC 29464
(843) 388-6552

Date: 2/24/12



Claimant's Name: Frank E. Wilson SSN: 333-64-9269 Employer's Name: American LaFrance
Address: 8755 Jessica Court Address: 1090 Newton Way
City: North Charleston State: SC Zip: 29406 City: Summerville State: SC Zip: 29406
Home Phone: (843) 327 - 9616 Work Phone: (N/A) N/A - N/A Insurance Carrier: AIG: C/O Gallagher Bassett Services, Inc.
Preparer's Name: Frank E. Wilson Law Firm: N/A Preparer's Phone #: (843) 327 - 9616

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: May 16, 2005

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to Back/Neck/Ribs/Lungs/Right Shoulder/Left Shoulder/Bladder (Part(s) of Body Injured) on May 16, 2005 (Month/Day/Year) in Berkley county, state of SC.

1b. Body part(s) affected are: Back/Neck/Ribs/Lungs/Right Shoulder/Left Shoulder/Bladder/Right Leg/Left Leg/Right Arm/Left Arm

Briefly describe how the accident occurred. M. V. A.

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 May 16, 2005 (Month/Day/Year) in the following manner:

The Employer was called while the injured employee was awaiting on the arrival of the EMS Department.

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

☐ (a) medical examination and treatment for:

☒ (b) additional medical examination and treatment for: Back And Bilateral Lower-Extremity- EMG/Nerve Conduction Study

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

☒ 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 \$ 764.20, 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:

American LaFrance: American LaFrance terminated the Claimant's employment on December 14, 2005.

11a. Further grounds or unusual aspects of claim:

***SEE ENCLOSED WCC Form # 50- PAGES: 2 thru 4

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:

***SEE ENCLOSED WCC Form # 50- PAGES: 4 thru 5

11c. To the best of your knowledge, did you have any prior permanent disability? No

If yes, describe: N/A

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: Two (2) Hours

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

Frank E. Wilson

Claimant

N/A

February 17, 2012

Preparer's Signature

Title

Email

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

50

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

241

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form # 50
(Employee's Request for Hearing)

11a. Further grounds or unusual aspects of claim:

(The Claimant respectfully request that the following issues be addressed and determined at this Hearing): ***The Claimant respectfully request that this Hearing be held on the record for the purpose of generating a transcript to have for any future Hearing(s) and or future Hearing(s) set for Commission review (Appeal).

- 1.) The Claimant's Back MRI which was requested and recommended by the Authorized Treating Physician at the Claimant's Palmetto Comprehensive Center For Pain Of The Southeastern Spine Institute office visit of December 29, 2011. The Claimant's Back MRI would be well supported by the DECISION AND ORDER by The Honorable David W. Huffsteler, Commissioner from the Hearing Date of March 10, 2009...states that the Defense shall provide medical treatment for the Claimant's Back through Southeastern Spine Institute. The Claimant's Back MRI would also be well supported by the Claimant's Form 14B (Physician's Statement) from Southeastern Spine Institute (Donald R. Johnson, II, MD) dated June 18, 2011-*Body part(s) affected: Back , Legs and Arms.
- 2.) The Claimant's Bilateral Lower Extremity EMG/nerve conduction study which was requested and recommended by the Authorized Treating Physician at the Claimant's Palmetto Comprehensive Center For Pain Of The Southeastern Spine Institute office visit of December 29, 2011. The Claimant's Bilateral Lower Extremity EMG/nerve conduction study would be well supported by the Claimant's Form 14B (Physician's Statement) from the Claimant's Form 14B (Physician's Statement) from Southeastern Spine Institute (Donald R. Johnson, II, MD) dated June 18, 2011- *Body part(s) affected: Back, Legs and Arms.
- 3.) The Claimant's First Script (Medco) prescription drug coverage was terminated by the Carrier on January 31, 2012. The Claimant presently has no prescription drug coverage. The Claimant contacted First Script (Medco) on January 31, 2012 at 4:29PM at 1 866 445-7344 and the Claimant spoke with First Script (Medco) associate (Rafael) while at CVS Pharmacy (The Pharmacy used by the Claimant). The First Script (Medco) associate (Rafael) related and confirmed to the Claimant and the CVS Pharmacy associate that the Carrier had terminated the Claimant's First Script (Medco) prescription drug coverage. The First Script (Medco) associate (Rafael) stated to the Claimant that he would contact the Carrier/Adjuster and would give the Claimant notice of any updated information. The Claimant left his telephone contact number of (843) 327-9616 with the First Script (Medco) associate (Rafael). The Claimant currently has no prescription drug coverage.

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form # 50

(Employee's Request for Hearing)

- 4.) The Claimant had a South Carolina Workers' Compensation Commission Hearing on April 10, 2007 with Commissioner J. Alan Bass to address and determine the issues brought forth. The **DECISION AND ORDER** as it relates to the Claimant's **Left Shoulder** was that the Defendants would provide the Claimant a **Cervical Spine MRI** to determine if there were any significant changes that could be related to the Claimant's **Left Shoulder pain**. If there were no significant changes noted on the Claimant's **Cervical Spine MRI**, then the Defendants would provide the Claimant with a **Left Shoulder MRI** to verify and determine if there were any related issues noted on the Claimant's **Left Shoulder MRI** that could be related to the Claimant's **Left Shoulder pain**. Commissioner Bass stated that the record would be held open for thirty (30) days for the Claimant's **Cervical Spine MRI** and the Claimant's **Left Shoulder MRI** if there were no significant changes noted on the Claimant's **Cervical Spine MRI**. This would include the involvement of Don O. Stovall, Jr., MD of Lowcountry Orthopaedics And Sports Medicine and Jeffrey E. Faaberg, Sr., MD of Edisto Spine Center. The Claimant's **Cervical Spine MRI** took place on April 24, 2007 and revealed no significant changes from the Claimant's **Cervical Spine MRI** that took place on September 17, 2005. Therefore as a result of there being no significant changes **Cervical Spine MRIs**, it would be necessary to move forward with the Claimant's **Left Shoulder MRI**. The Defendants authorized the Claimant's **Cervical Spine MRI** on April 24, 2007. The Defendants delayed the authorizing of the the Claimant's necessary **Left Shoulder MRI** until twenty-three (23) days after Commissioner Bass stated that the record would be held open for the Claimant's **Cervical Spine** and or the Claimant's **Left Shoulder MRI**. This would be an effort to determine the Claimant's **Left Shoulder pain**. It is the Claimant's opinion that the delay in the Defendants authorizing the Claimant's **Left Shoulder MRI** twenty-three (23) days after the record for the South Carolina Workers' Compensation Commission Hearing held on April 10, 2007 would be held open was simply an effort to omit the Claimant's **Left Shoulder** claim. The Claimant respectfully request that this issue be addressed and determined by The South Carolina Workers' Compensation Commission. Furthermore, the original **DECISION AND ORDER** from The South Carolina Workers' Compensation Commission Hearing with Commissioner Bass on April 10, 2007 was altered from its original version of April 10, 2007. The Claimant's **Left Shoulder MRI** report and the Claimant's **Left Shoulder** claim was omitted from the original **DECISION AND ORDER** from The South Carolina Workers' Compensation Commission Hearing with Commissioner Bass on April 10, 2007. The original **DECISION AND ORDER** from The South Carolina Workers' Compensation Commission Hearing with Commissioner Bass on April 10, 2007 was not returned to The South Carolina Workers' Compensation Commission until over one (1) year later after the Hearing date of April 10, 2007. Commissioner Bass signed the altered **DECI**

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form # 50
(Employee's Request for Hearing)

SION AND ORDER on April 17, 2008. The Claimant respectfully request that this issue be addressed and determined The South Carolina Workers' Compensation Commission. The Claimant will include and provide supporting documents through the presenting and submitting of the Claimant's **Form 58- (PRE-HEARING BRIEF)**.

- 5.) The Claimant respectfully request that any and all of the issues not completed on the Claimant's **MOTION** originally submitted to The South Carolina Workers' Compensation Commission and the Defendants on January 17, 2012 (via **CERTIFIED MAIL/RRR**) be addressed and completed at this Hearing. The Claimant will resubmit and include the Claimant's **MOTION** (originally dated and submitted on January 17, 2012) at the Claimant's Hearing. The Claimant will date the **MOTION** February 17, 2012.
- 6.) The Claimant respectfully request that the **UTICA-MOHAWK** language be included and inserted in any and all of the Claimant's final settlement(s) and or any and all of the Claimant's final agreement(s).
- 7.) The Claimant respectfully request reimbursement for, but not limited to, the following: *******(This is due to the ongoing and continuing issues brought forth at this Hearing request: see the Claimant's previous six (6) South Carolina Workers' Compensation Commission Hearings **DECISION AND ORDER**)
 - 1.) The Claimant's **Form 50 (Employee's Request for Hearing)** filing fee
 - 2.) The Claimant's postage fee for, but not limited to, the mailing of the Claimant's **Form 50 (Employee's Request for Hearing)** to The South Carolina Workers' Compensation Commission and to the Defendants
 - 3.) The Claimant's postage fee for, but not limited to, the mailing of the Claimant's **Form 58 (PRE-HEARING BRIEF)** and the Claimant's **APA SUBMISSIONS** and supporting documents to The South Carolina Workers' Compensation Commission and to the Defendants
 - 4.) The Claimant's transportation cost to and from The South Carolina Workers' Compensation Commission Hearing

The Claimant will provide receipts for the cost of all of the Claimant's reimbursement request to The South Carolina Workers' Compensation Commission and to the Defendants.

- 11b. List names and addresses of all physicians or medical specialists who have seen or treated the Claimant as a result of the accident:

C. J. Malie, MD and Trident Medical Center 9330 Medical Plaza Drive, North Charleston, SC 29406; **Orthopaedics**: Don O. Stovall, Jr., MD/Chad R. Burgoyne, MD 2880 Tricom Street North

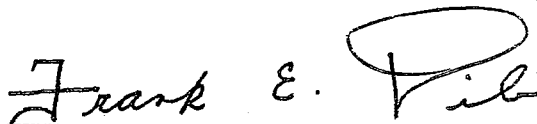
South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form # 50

(Employee's Request for Hearing)

Charleston, SC 29406; George Warren, MD 93A Springview Lane, Summerville, SC 29408; John M. Graham, Jr., MD 594 Lone Drive, Bldg. 6, Mount Pleasant, SC 29464
William J. Estes, MD 1300 Hospital Drive, Suite 150, Mount Pleasant, SC 29464; James D. Spearman, MD 93A Springview Lane, Summerville, SC 29408; **Spine:** Chris P. Tountas, MD 1311 Chuck Dawley Boulevard, Mount Pleasant, SC 29464; Jeffrey E. Faaberg, Sr., MD 5790 Memorial Boulevard, St. George, SC 29477; Thomas Roush, MD/Donald R. Johnson, II, MD 1106 Chuck Dawley Boulevard, Suite 200, Mount Pleasant, SC 29464;
Spine/Interventional Pain Management: W. Blane Richardson, MD 913 Bowman Road, Suite B, Mount Pleasant, SC 29464; **Cardiovascular & Thoracic:** James M. Benner 9313 Medical Plaza Drive, Suite 304, North Charleston, SC 29406; **Physical Medicine:** Richard Gordon, MD North Charleston, SC 29406; **Neurologist:** Stephen E. Rawe, MD 2145 Henry Tecklenburg Drive, Charleston, SC 29414; **Pulmonary/Lungs:** Cary E. Fechter, MD 105 Wappoo Creek Drive, Suite 4-A, Charleston, SC 29412; Michael A. Spandorfer, MD 2097 Henry Tecklenburg Drive, Suite 305, Charleston, SC 29414; **Urologist:** Colin M. Goudelocke, MD/Eric S. Rovner, MD 1156 Bowman Road, Suite 104, Mount Pleasant, SC 29464



Frank E. Wilson

Date: February 17, 2012



Claimant's Name: Frank E. Wilson

Employer's Name: American LaFrance

Address: 8755 Jessica Court

Address: 1090 Newton Way

City: North Charleston State: SC Zip: 29406

City: Summerville State: SC Zip: 29483

Home Phone: 843 327 9616 Work Phone: N/A

Carrier: AIG: C/O Gallagher Bassett Services, Inc.

Preparer's Name: Frank E. Wilson

Preparer's Phone #: 843 327 9616

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$509.49 2. AWW: \$ 764.20 Date of Injury: May 16, 2005
3. Type of injury and body part(s): M.V.A. Back/Neck/Ribs/Lungs/Right Shoulder/Left Shoulder/Bladder
4. Facts in controversy: ***SEE Form # 58 (PRE-HEARING BRIEF)- PAGES: 2 thru 5
5. Legal issues involved: ***The Claimant's MOTION dated February 27, 2012. The Claimant's MOTION dated February 27, 2012 was processed and served by The South Carolina Workers' Compensation Commission on February 29, 2012.
6. Unusual aspects: American LaFrance terminated the Claimant's employment on December 14, 2005.
7. Witnesses (designate if expert):* The Claimant and The Claimant's Deposition(s)
8. Exhibits: EXHIBITS: A thru G, EXHIBITS: A thru F, EXHIBIT: H- (The Claimant's MOTION dated February 27, 2012: *(processed and served on February 29, 2012), EXHIBIT: I, EXHIBIT: J and EXHIBIT: K
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Medical evidence report pursuant to R.67-612
10. Name, address, and specialty, if any, of the treating physician: ***SEE Form # 58 (PRE-HEARING BRIEF)- PAGE: 6 of 7
11. Impairment rating(s); body part(s); physician and date of opinion: ***SEE Form # 58 (PRE-HEARING BRIEF)- PAGES: 6 thru 7
12. I am amending my Form 50/51 in the following manner: ***SEE Form # 58 (PRE-HEARING BRIEF)- PAGE: 4- *Item 4.) and *Item 8.) and PAGE: 5- *Item 9.) and *Item 10.)

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

Signature:

Frank E. Wilson

Email:

N/A

Date of hearing: April 3, 2012 at 12:00PM

Time needed for hearing: Two (2) Hours

On behalf of ☒ Claimant ☐ Employer

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

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

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form # 58

(PRE-HEARING BRIEF)

(Date Of Hearing: April 3, 2012 at 12:00PM)

***The Claimant respectfully request that this South Carolina Workers' Compensation Commission Hearing be held on the record for the purpose of generating a transcript to have for any future Hearing(s) and or any future Hearing(s) set for Commission review (Appeal).

(The Claimant respectfully request that the following issues be addressed and determined at this South Carolina Workers' Compensation Commission Hearing).

4.) Facts in controversy:

- 1.) The Claimant's Back MRI which was requested and recommended by the Authorized Treating Physician at the Claimant's Palmetto Comprehensive Center For Pain Of The Southeastern Spine Institute office visit of December 29, 2011 and February 24, 2012. The Claimant's Back MRI would be well supported by the DECISION AND ORDER by The Honorable David W. Huffstetler, Commissioner from the Hearing Date of March 10, 2009...states that the Defense shall provide medical treatment for the Claimant's Back through Southeastern Spine Institute. The Claimant's Back MRI would also be well supported by the Claimant's Form 14B (Physician's Statement) from The Southeastern Spine Institute (Donald R. Johnson, II, MD) dated June 18, 2011- *Body part(s) affected: Back, Legs and Arms.
- 2.) The Claimant's Bilateral Lower Extremity EMG/nerve conduction study which was requested and recommended by the Authorized Treating Physician at the Claimant's Palmetto Comprehensive Center For Pain Of The Southeastern Spine Institute office visit of December 29, 2011. The Claimant's Bilateral Lower Extremity EMG/nerve conduction study would be well supported by the Claimant's Form 14B (Physician's Statement) from The Southeastern Spine Institute (Donald R. Johnson, II, MD) dated June 18, 2011- *Body part(s) affected: Back, Legs and Arms.
- 3.) The Claimant's First Script (Medco) prescription drug coverage was terminated by the Carrier on January 31, 2012. The Claimant currently has prescription drug coverage through Caremark but this prescription drug coverage process has been interrupted and delayed causing delays in getting the Claimant's prescription drug medication processed and authorized by the Carrier (Adjuster) in a timely manner. Furthermore, the Claimant has not received his Caremark prescription drug ID card as of March 18, 2012.
- 4.) The Claimant had a South Carolina Workers' Compensation Commission Hearing on April 10, 2007 with Commissioner J. Alan Bass to address and determine the issues

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form #58

(PRE-HEARING BRIEF)

(Date Of Hearing: April 3, 2012 at 12:00PM)

brought forth. The **DECISION AND ORDER** as it relates to the Claimant's **Left Shoulder** was that the Defendants would provide the Claimant a **Cervical Spine MRI** to determine if there were any significant changes that could be related to the Claimant's **Left Shoulder pain**. If there were no significant changes noted on the Claimant's **Cervical Spine MRI** in comparison to the Claimant's previous **Cervical Spine MRI**, then the Defendants would provide the Claimant with a **Left Shoulder MRI** to verify and determine if there were any related issues noted on the Claimant's **Left Shoulder MRI** that could be related to the Claimant's **Left Shoulder pain**. Commissioner Bass stated that the record would be held open for thirty (30) days for the Claimant's **Cervical Spine MRI** and the Claimant's **Left Shoulder MRI** if there were no significant changes noted on the Claimant's **Cervical Spine MRI**. This would include the involvement of Don O. Stovall, Jr., MD of Lowcountry Orthopaedics And Sports Medicine and Jeffrey E. Faaberg, Sr., MD of Edisto Spine Center. The Claimant's **Cervical Spine MRI** took place on April 24, 2007 and revealed no significant changes from the Claimant's **Cervical Spine MRI** that took place on September 17, 2005. Therefore as a result of there being no significant changes on the Claimant's two (2) **Cervical Spine MRIs**, it would be necessary to move forward with the Claimant's **Left Shoulder MRI**. The Defendants authorized the Claimant's **Cervical Spine MRI** on April 24, 2007. The Defendants delayed the authorizing of the Claimant's necessary **Left Shoulder MRI** until twenty-one (21) days after Commissioner Bass stated that the record would be held open for the Claimant's **Cervical Spine MRI** and or the Claimant's **Left Shoulder MRI**. This would be an effort to determine the Claimant's **Left Shoulder pain**. It is the Claimant's opinion that the delay in the Defendants authorizing the Claimant's **Left Shoulder MRI** twenty-one (21) days after Commissioner Bass stated that the record for the South Carolina Workers' Compensation Commission Hearing held on April 10, 2007 would be held open was simply an effort by the Defendants to omit the Claimant's **Left Shoulder claim**. The Claimant respectfully request that this issue be addressed and determined by The South Carolina Workers' Compensation Commission. Furthermore, the original **DECISION AND ORDER** from The South Carolina Workers' Compensation Commission Hearing held on April 10, 2007 with Commissioner Bass was altered from its original version of April 10, 2007. The Claimant's **Left Shoulder MRI** report and the Claimant's **Left Shoulder Claim** was omitted from the original **DECISION AND ORDER** from The South Carolina Workers' Compensation Commission Hearing held with Commissioner Bass on April 10, 2007. The original **DECISION AND ORDER** from The South Carolina Workers' Compensation Commission Hearing with Commissioner Bass on April 10, 2007 was not returned to The South Carolina Workers' Compensation Commission until over one (1) year later after the Hearing date of April 10, 2007. Commissioner Bass signed the altered **DECISION AND ORDER** on April 17, 2008. The Claimant respectfully request that this issue be addressed and determined by The South Carolina Workers' Compensation Commission. The Claimant will include and provide supporting documents through the presenting and submitting of the Claimant's **Form # 58 (PRE-**

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form #58

(PRE-HEARING BRIEF)

(Date Of Hearing: April 3, 2012 at 12:00PM)

HEARING BRIEF), the Claimant's APA SUBMISSIONS, the Claimant's supporting documents and the Claimant's testimony.

- 5.) The Claimant respectfully request that any and all issues not completed on the Claimant's **MOTION** originally submitted to The South Carolina Workers' Compensation Commission and to the Defendants on January 17, 2012 (via CERTIFIED MAIL/RRR). The Claimant resubmitted the **MOTION** on February 17, 2012 to The South Carolina Workers' Compensation Commission and to the Defendants (via CERTIFIED MAIL/RRR). The Claimant resubmitted the Claimant's **MOTION** on February 27, 2012 with the **MOTION** filing fee of \$25.00 included. The Claimant submitted the **MOTION** dated February 27, 2012 to The South Carolina Workers' Compensation Commission and to the Defendants (via CERTIFIED MAIL/RRR). The Claimant's **MOTION** dated February 27, 2012 was processed and served by The South Carolina Workers' Compensation Commission on February 29, 2012.
- 6.) The Claimant respectfully request that the **UTICA-MOHAWK** language be included and inserted in any and all of the Claimant's final settlement(s) and or any and all of the Claimant's final agreement(s).
- 7.) The Claimant respectfully request reimbursement for, but not limited to, the following:
*** (This due to the **continuing and ongoing issues** brought forth at this Hearing request: see the Claimant's previous six (6) South Carolina Workers' Compensation Commission Hearings **DECISION AND ORDER** included in the Claimant's South Carolina Workers' Compensation Commission file).
 - 1.) The Claimant's **Form 50 (Employee's Request for Hearing)** filing fee of \$25.00.
 - 2.) The Claimant's postage fee for, but not limited to, the mailing of the Claimant's **Form 50 (Employee's Request for Hearing)** to The South Carolina Workers' Compensation and to the Defendants.
 - 3.) The Claimant's postage fee for, but not limited to, the mailing of the Claimant's **Form 58 (PRE-HEARING BRIEF)** and the Claimant's **APA SUBMISSIONS** and supporting documents to The South Carolina Workers' Compensation Commission and to the Defendants.
 - 4.) The Claimant's transportation cost to and from The South Carolina Workers' Compensation Commission Hearing.

The Claimant will provide receipts for the cost of all of the Claimant's reimbursement request to The South Carolina Workers' Compensation Commission and to the Defendants.
- 8.) The Claimant respectfully request reimbursement for the medical expenses as it relates to the Claimant's **Right Shoulder** and **Left Shoulder** evaluation by William J. Estes, MD of Southern Orthopedics And Sports Medicine. The Claimant's **Right Shoulder** and **Left Shoulder** evaluation

South Carolina Workers' Compensation Commission

WCC FILE NO. 0506037

WCC Form # 58

(PRE-HEARING BRIEF)

(Date Of Hearing: April 3, 2012 at 12:00PM)

by William J. Estes, MD of Southern Orthopedics And Sports Medicine took place due to the ongoing and continuing delays in the evaluation and treatment of the Claimant's Left Shoulder injury and the ongoing and continuing worsening of the Claimant's Left Shoulder injury. This would be well supported by the facts explained on the Claimant's Form 50 (Employee's request for Hearing)- 11a. Further grounds or unusual aspects of claim: *issue 4.) and The South Carolina Workers' Compensation Commission Hearing transcript from the Hearing with Commissioner J. Alan Bass on April 10, 2007. As it relates to the Claimant's Right Shoulder injury, this would be well supported by the facts explained on the Claimant's EXHIBITS: A thru G and EXHIBITS: A thru F. Furthermore, this would also be due to the Claimant's ongoing and continuing worsening of the Claimant's Right Shoulder injury.

- 9.) The Claimant respectfully request lifetime maintenance as it relates to the Claimant's Back injury. The Claimant respectfully request lifetime hardware maintenance as it relates to the Claimant's Back injury.
- 10.) The Claimant respectfully request lifetime maintenance as it relates to the Claimant's Right Shoulder injury. The Claimant respectfully request lifetime hardware maintenance as it relates to the Claimant's Right Shoulder injury. This would be well supported by the Claimant's Right Shoulder MRI and MRI report dated February 8, 2012.
- 5.) Legal issues involved:
***The Claimant's MOTION dated February 27, 2012. The Claimant's MOTION dated February 27, 2012 was processed and served by The South Carolina Workers' Compensation Commission on February 29, 2012. The Claimant's MOTION dated February 27, 2012 will be introduced *EXHIBIT: H at the Claimant's South Carolina Workers' Compensation Commission Hearing on April 3, 2012 at 12:00PM.
- 6.) Unusual aspects:
American LaFrance terminated the Claimant's employment on December 14, 2005. The Claimant's employment termination was due to the Claimant's South Carolina Workers' Compensation claim.
- 7.) Witnesses (designate if expert):*
Claimant and Claimant's Deposition(s)
- 8.) Exhibits:
EXHIBITS: A thru G, EXHIBITS: A thru F, EXHIBIT: H- (The Claimant's MOTION dated February 27, 2012: *(processed and served on February 29, 2012), EXHIBIT: I, EXHIBIT: J and EXHIBIT: K

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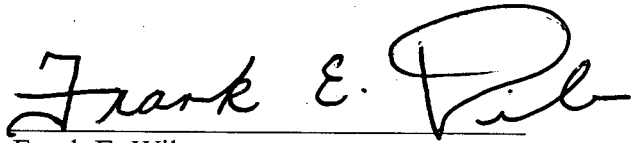
Certificate of Appellant

JUL 24 2015

SC Court of Appeals

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

July 15, 2015

A handwritten signature in cursive script, reading "Frank E. Wilson". The signature is written in dark ink and is positioned above a horizontal line.

Frank E. Wilson
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616
Appellant

RECEIVED

JUL 24 2015

SC Court of Appeals

PROOF OF SERVICE OF A RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2014-001996

Frank Wilson,

Appellant,

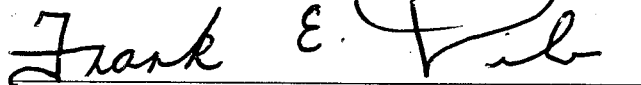
v.

American LaFrance, Employer, and AIG C/O Gallagher Bassett Services, Inc.,
Carrier, Respondent,

PROOF OF SERVICE

I certify that I have served the Record on Appeal on American LaFrance, Employer, and AIG C/O Gallagher Bassett Services, Inc., Carrier by depositing a copy of it in the United States Mail, postage paid, on July 15, 2015, addressed to the attorneys of record, Erin L. Hantske and Helen F. Hiser, Post Office Box 650007, Mount Pleasant, SC 29465.

July 15, 2015



Frank E. Wilson
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616
Appellant