THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2014-002611
W.C.C. File No.: 1203594

James B. Neff, Employee, ... Appellant,

v.

Lear's Welding & Fabrication, Inc., Employer, and
Bridgefield Casualty Insurance Company c/o Summit
Holdings, Inc., Carrier, ... Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This is a workers' compensation appeal by James B. Neff ("Claimant" or "Appellant") from the Decision and Order of the Full Commission Appellate Panel ("Full Commission"), filed on December 3, 2014, which unanimously reversed the Decision and Order of the Hearing Commissioner. This brief is submitted by Lear's Welding & Fabrication, Inc., and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc. ("Defendants" or "Respondents") in response to the Claimant's appeal.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 50 filed by the Claimant on June 17, 2013, and the Form 21 filed by the Defendants on June 19, 2013. It is the position of the Claimant that he is entitled to additional casually-related medical treatment and/or evaluation for his left clavicle and head as such treatment will tend to lessen his period of disability; and continued temporary total disability benefits until such time as he reached maximum medical improvement (MMI).

It is the position of the Defendants that the Claimant's current problems, both orthopedic and neurological, are not causally-related to his admitted accident but are the result of non-compliance with medical treatment and/or an intervening cause(s). The Defendants assert the medical non-compliance and/or intervening cause(s) occurred on or before October 11, 2012, and that the Claimant is not entitled to any benefits under the Act after this date. Moreover, the Defendants request a credit for temporary total disability benefits paid after October 11, 2012. In addition, Defendants contend the Claimant has not sustained any causally-related permanent partial disability with regard to any of his compensable injuries under Section 42-9-30. Finally, the Defendants requested the Hearing Commissioner to make a determination as to the credibility of the Claimant.

The Hearing in this matter was held on November 14, 2013, in Rock Hill, South Carolina, before Commissioner Gene McCaskill ("Hearing Commissioner"). By way of Decision and Order filed on April 17, 2014, the Hearing Commissioner determined the Claimant sustained compensable injuries to his left wrist, left elbow, neck, ribs, concussion and left clavicle; has reached MMI for his left wrist, left elbow and neck as of October 11, 2012, with no permanent partial disability sustained to these body parts; has not reached MMI with regard to his left clavicle and head (concussion); that the Claimant's current medical problems are not the result of an intervening accident/cause and/or non-compliance with medical treatment; that the Claimant is entitled to additional medical treatment which will tend to lessen his period of disability, including treatment with Dr. Schiffern and a neurological evaluation and treatment with a physician of the Defendants' choosing; that the Claimant's testimony was lacking in credibility and unbelievable; and that temporary total disability benefits shall continue until such time as the Claimant reaches MMI.

The Defendants timely appealed the Decision and Order to the Full Commission. By way of Decision and Order filed on December 3, 2014, the Full Commission unanimously reversed the Decision and Order of the Hearing Commissioner. Specifically, the Full Commission found the Claimant's non-compliance constitutes an independent intervening cause of his current left clavicle and neurological conditions and, therefore, denied him further benefits under the Act. The Full Commission also awarded the Defendants credit for all temporary total disability benefits paid after October 11, 2012. The Claimant has now timely appealed to this Court.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") governs review of decisions of the South Carolina Workers' Compensation Commission by the Court of Appeals. S.C. CODE ANN. § 1-23-380 (Supp. 2006); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). Under the APA, the decisions of the South Carolina Workers' Compensation Commission may be reversed, modified, or remanded if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by error of law. S.C. CODE ANN. § 1-23-380(A)(6)(d)(Supp. 2006).

Furthermore, decisions of the Workers' Compensation Commission may be reversed, modified or set aside if unsupported by reliable, probative, or substantial evidence on the whole record. *Ellis v. Spartan Mills*, 276 S.C. 216, 218, 277 S.E.2d 590, 591 (1981); *Lark*, supra.; S.C. CODE ANN. § 1-23-380(A)(6)(e). "Substantial evidence is 'not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.'" *Etheredge v. Monsanto Co.*, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002)(quoting *Miller v. State Roofing Co.*, 312 S.C. 452, 454, 441 S.E.2d 323, 324-25 (1994)); *Broughton v. South of the Border*, 336 S.C. 488, 495, 520 S.E.2d 634, 637 (Ct. App. 1999). As the South Carolina Supreme Court observed,

> a decision of the Workers' Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record. Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action. Quantitatively, substantial evidence is something less than the weight of the evidence.

Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987)(internal citations omitted). Finally, a decision may be reversed or modified if arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. CODE ANN. § 1-23-380(A)(6)(f).

ARGUMENT

I. THE DETERMINATION THAT THE CLAIMANT'S MEDICAL NON-COMPLIANCE RESULTED IN AN INDEPENDENT INTERVENING CAUSE OF HIS CURRENT LEFT CLAVICLE CONDITION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The seminal issue in this matter is whether substantial evidence supports the determination of the Full Commission that the Claimant's admitted non-compliance with authorized medical treatment constitutes an independent intervening cause sufficient to break the chain of causation between his current left clavicle and neurological conditions and his compensable accident of April 12, 2012. It is well-established in South Carolina that "every natural consequence that flows from a compensable injury is also compensable unless the consequence is the result of an independent, intervening cause sufficient to break the chain of causation." *Whitfield v. Daniel Constr. Co.*, 266 S.C. 37, 40-41, 83 S.E.2d 460, 462 (1954); *see also* 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 10.01, 10-1 (2010) (when the primary injury arises out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent, intervening cause attributable to the Claimant's own intentional conduct). Importantly, an independent intervening accident may be established through circumstantial evidence which "need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached." *Whitfield*, 266 S.C. at 43, 83 S.E.2d 463-64.

The Claimant now asserts the Full Commission ignored and misstated the "actual" testimony of Dr. Lehman to reach their "apparently preordained position" regarding the most likely cause of the Claimant's condition. *See* App. Br., p. 6. The Claimant goes to great lengths, citing numerous carefully selected excerpts from Dr. Lehman's deposition, to support his position that his admitted non-compliance was not the proximate cause of his current condition. The Claimant then asserts that Dr. Lehman's opinions are speculative and could not be stated to a reasonable degree of medical certainty. In addition, the Claimant submits the Full Commission failed to appreciate the testimony of Dr. Schiffern that the Claimant's clavicle was not healing prior to break of the plate regardless of whether he happened to be deer hunting.

Importantly, however, the Claimant does not dispute the finding of the Full Commission that he was completely non-compliant with the post-surgery medical instructions given to him by Dr. Lehman, nor does he dispute the ways in which he was non-compliant. Moreover, the Defendants contend the assertions by the Claimant are predicated upon an incomplete review and disregard of the credible deposition testimony of Dr. Lehman and Dr. Schiffern. Instead of addressing why the Full Commission did not rely upon the testimony of these doctors as offered by the Claimant, which is critical to understanding the decision of Full Commission, the Claimant simply submits the testimony as though it were ignored. This is the fatal flaw in the Claimant's argument.

In addition, the Claimant conveniently and completely failed to address the relevance of the compelling medical records submitted by the parties and the incredible hearing testimony of the Claimant himself, both of which unequivocally constitute substantial evidence to support the determination of the Full Commission. Accordingly, the Defendants maintain that when the

evidence in record is considered in its entirety, substantial evidence is present to support of determination of the Full Commission.

A. **Dr. Lehman's Medical Records And Testimony Confirm The Claimant's Non-Compliance Proximately Caused His Current Condition.**

The Claimant asserts Dr. Lehman could not state to a reasonable degree of medical certainty (more likely than not) the cause of the plate breakage and, therefore, the Full Commission erred in giving greater weight to his testimony. As noted by the Supreme Court in *Whitfield*, proving an independent intervening accident requires only circumstantial evidence, not testimony stated to a reasonable degree of medical certainty. *Whitfield*, 266 S.C. at 43, 83 S.E.2d 463-64. In this case, the Claimant has not only misstated the burden of proof, but the evidence in the record as well. Nonetheless, the Full Commission's determination of the independent intervening cause of Claimant's current left clavicle condition is supported by not only circumstantial evidence, but medical evidence stated to a reasonable degree of medical certainty.

Dr. Lehman performed a surgical repair of the Claimant's left clavicle fracture in July 2012 and, on August 2, 2012, reported after reviewing an x-ray that "[t]he gap at the nonunion is less than I would have expected." (R. p. 294). Dr. Lehman reported on September 14, 2012, that x-rays of the clavicle showed "a comminuted piece of the fracture at this point which seems to be incorporating perhaps a little bit." (R. p. 300). Dr. Lehman testified the fracture appeared to be partially healing with the hardware and plate still intact. (R. p. 212, lines 18-19). Despite the progress, Dr. Lehman advised the Claimant to continue to exercise "extreme protection" of the clavicle to prevent non-union of the fracture post-surgery. (R. p. 295; p. 208, lines 20-23).

In fact, Dr. Lehman instructed the Claimant to use the sling until he was instructed otherwise. (R. p. 209, lines 4-7).

On October 11, 2012, Dr. Lehman reported the Claimant "still is not in the sling and admits to not using it. He told my assistant that he had been out deer hunting." (R. p. 306). During his examination of the Claimant Dr. Lehman reported "he is not protecting his left shoulder or arm whatsoever." (R. p. 306). Importantly, an x-ray of the Claimant's clavicle for the first time since surgery revealed a broken plate. (R. p. 306; p. 216, lines 21-22). At the conclusion of his report, Dr. Lehman noted, "Mr. Neff has been completely non-compliant with treatment ever since the surgery, not using his sling, going deer hunting, etc., despite my concerns voice[d] day one regarding the potential of continued non-union and fracture of the plate. I have admonished Mr. Neff regarding his non-adherence to protocol and his non-compliance." (R. p. 307). The Claimant never addresses the relevance of his report in his Brief. Defendants assert this report is very compelling and certainly constitutes, when considered with the prior evidence of healing, substantial evidence to support an independent intervening cause of the Claimant's left clavicle condition. In addition, the deposition testimony of Dr. Lehman when considered objectively further supports this assertion.

Dr. Lehman testified at length regarding the significance of the Claimant's non-compliance. Specifically, Dr. Lehman testified he would not have recommended the Claimant deer hunt and/or use a rifle during his recovery from surgery, and was not aware prior to October 11, 2012, that he was doing so. (R. p. 215, line 8-p. 216, line 8). Dr. Lehman also testified "it would take considerable force . . . or repetitive force, I guess, in order to break a plate such as that." (R. p. 217, lines 3-5). Dr. Lehman then testified the Claimant's non-compliance "was certainly a factor" in the plate breaking, and then proceeded to testify to a reasonable degree of

medical certainty that the Claimant's use of his rifle and failure to use his sling caused the plate in his shoulder to break. (R. p. 218, lines 8-10; p. 222, lines 3-10; p. 222, line 20-p. 223, line 8). Like the critical report from October 11, 2012, the Claimant never addresses or disputes the relevance of this testimony.

In sum, Dr. Lehman reported the left clavicle was healing prior to the discovery of the breakage, confirmed his instructions to the Claimant regarding protecting the arm and the Claimant's subsequent "complete" non-compliance with the instructions, and testified to a reasonable degree of medical certainty, i.e. more likely than not, that the cause of the Claimant's current left clavicle condition was the non-compliance. As such, the determination of the Full Commission that the Claimant's non-compliance with medical instructions constitutes the direct intervening cause of his current condition is supported by substantial evidence.

B. **Dr. Schiffern's Opinions Are Without Credibility As They Were Predicated Upon A Lack Of Information And Are Inconsistent With The Indisputable Evidence In The Record.**

The Claimant submits the Full Commission mistakenly afforded greater weight to the medical records and deposition testimony of Dr. Lehman as opposed to that of Dr. Schiffern, as Dr. Schiffern is the "upper extremity specialist to whom Dr. Lehman deferred." *See* App. Br., p. 7. The Claimant then cites Dr. Schiffern's testimony that the Claimant's non-compliance had a limited impact on the failure of the hardware as the "bone wasn't healing" as compelling evidence for this Court to consider. (R. p. 192, line 11). Despite being the Claimant's self-selected medical expert, the Claimant cites to no other testimony or records of Dr. Schiffern. In addition, the Claimant fails to in any way address the flaws with Dr. Schiffern's opinions as expressed by the Full Commission, specifically that the opinions and testimony of Dr. Schiffern were predicated upon a lack of information, the Claimant's failure to disclose pertinent facts to

Dr. Schiffern, and Dr. Schiffern's admitted failure to review the evidence actually provided to him.

1. Dr. Schiffern admits his opinion and testimony regarding the alleged lack of healing of the clavicle is incorrect and, therefore, unreliable.

The Claimant's argument for reversal is based in part upon Dr. Schiffern's testimony that the non-compliance had a limited impact on the failure of the hardware as the "bone wasn't healing." (R. p. 192, line 11; p. 178, lines 17-18). Though not mentioned by the Claimant, Dr. Schiffern further testified that the "gap never really changed that I can tell from [Dr. Lehman's] records over the next three months until the plate broke." (R. p. 149, lines 7-9; p. 421). Of course, this testimony of Dr. Schiffern is contrary to the testimony and medical records of Dr. Lehman. The Defendants assert, and the Full Commission agreed, that the reason for the discrepancy in these opinions is the fact that Dr. Schiffern did not review the actual x-ray scans prior to rendering his opinions.

Dr. Schiffern testified he was not provided the x-ray scans to review prior to or during his evaluations of the Claimant, although he testified reviewing the scans would have been important. (R. p. 160, line 24-p. 162, line 3). Dr. Schiffern was then asked about the report of Dr. Lehman from September 14, 2012, *a report he testified he reviewed*, wherein Dr. Lehman reported the x-ray revealed the Claimant's clavicle **was healing**. (R. p. 170, lines 4-6). Dr. Schiffern admitted that the report was inconsistent with his testimony as to whether the bone was healing. (R. p. 170, lines 11-23; p. 183, lines 14-23). Dr. Schiffern consequently admitted that since he did not review the x-ray scan he would have to rely on Dr. Lehman's interpretation that the clavicle was healing just prior to October 11, 2012, when the non-compliance was discovered. (R. p. 183, lines 4-13).

The Defendants are without an explanation as to how Dr. Schiffern could provide the testimony he did without reviewing the x-ray or the reports of Dr. Lehman, both of which indicate the bone was in fact healing. Regardless, the decision of Full Commission to give greater weight to the opinions of Dr. Lehman is certainly supported by substantial evidence.

2. Claimant admitted non-compliance to Dr. Schiffern.

On February 18, 2013, Dr. Schiffern conducted his initial evaluation of the Claimant and noted the Claimant reported that he "wore a sling for 4 weeks" after surgery, and "once he came out of the sling (after four weeks) he started back to some use of the left arm." (R. p. 410). The Claimant's admission in the report is per se evidence that he violated the restrictions provided to him by Dr. Lehman, a fact actually confirmed by Dr. Schiffern in his deposition. (R. p. 179, lines 15-19). The Claimant again did not address or dispute this compelling evidence in his Brief.

3. Dr. Schiffern was unaware the Claimant was deer hunting.

Dr. Schiffern also admitted the Claimant did not disclose during either his February 2013 or June 2013 evaluation that he was deer hunting just prior to his plate breaking in October 2012. (R. p. 173, lines 9-16; pp. 408-412). Dr. Schiffern testified he would not have allowed the Claimant to conduct such activities due to the risk that such activities would cause the plate to break, and would deem such activities medical non-compliance. (R. p. 174, line 10-p. 175, line 8). Dr. Schiffern then testified as follows:

Q: And could that, according to Dr. Lehman, could that non-compliance have caused his plate to break.

A: It certainly could have.

Q: You don't disagree with that testimony [of Dr. Lehman]?

A: I don't, no.

(R. p. 178, lines 1-5).

4. Dr. Schiffern admits he may not have reviewed the deposition testimony and October 11, 2012 report of Dr. Lehman, rendering his opinions and testimony misleading and unreliable.

The Defendants have already confirmed that Dr. Schiffern did not review the important x-ray scans or the Dr. Lehman's corresponding report from September 14, 2012. However, the most critical admission by Dr. Schiffern, especially in light of his testimony, is that he may not have reviewed the October 11, 2012 report of Dr. Lehman documenting the Claimant's non-compliance or the deposition testimony of Dr. Lehman confirming the Claimant's non-compliance was more likely than not the cause of the Claimant's current condition. (R. p. 184, lines 5-11). The testimony proceeded as follows:

Q: You didn't know about the deer hunting before, at least you didn't read the deer hunting part in the notes?

A: No.

Q: Is it fair to say that it's difficult to give opinions, such as D and A [in the affidavit] - - if you didn't actually review all of the records?

A: That's fair.

Q: Would you agree that it's difficult to give opinions as to what the most probably cause of the failure was without reviewing all the records and reviewing the actual x-ray scans, which you weren't provided? Do you agree with that?

A: That's fair.

Q: Is that a yes?

A: Yes.

(R. p. 184, lines 8-24).

The Defendants submit the Claimant's reliance upon the medical opinions and testimony of Dr. Schiffern is misplaced. In fact, Dr. Schiffern's testimony confirms his opinions were rendered without having read the medical reports and deposition testimony he reported and testified he reviewed. His testimony also confirms he did not review the actual x-ray scans which, contrary to his opinion, show the clavicle be healing prior to the report of October 11, 2012. Finally, his testimony establishes he was never advised of the Claimant's admitted non-compliance with medical treatment. Accordingly, the opinions of Dr. Schiffern were correctly afforded less weight by the Full Commission, and this decision is supported by substantial evidence in the record.

C. Claimant's Testimony Also Supports His Admitted Non-Compliance With The Medical Instructions From Dr. Lehman Caused His Current Clavicle Condition.

The final piece of this intervening accident analysis is the Claimant's own admission of medical non-compliance. It is undisputed that the Claimant went deer hunting between the appointments with Dr. Lehman on September 14, 2012, and October 11, 2012. (R. p. 90, line 21-p. 91, line 2). The Claimant proudly admitted performing this activity during both his deposition and Hearing testimony. The Claimant testified he shot his hunting gun (thirty ought six or powder rifle) twice using only his right arm, amazingly killing a deer on both occasions. (R. p. 92, lines 10-23; p. 99, lines 2-25). The Claimant proceeded to advise the Hearing Commissioner upon questioning that "no one told me I could not hunt." (R. p. 99, lines 19-20). Interestingly and conversely, the Claimant admitted in his deposition that he stopped deer hunting because a neighbor told him his activities were being investigated. (R. p. 274, lines 22-25). The Claimant denied giving this deposition testimony during the initial Hearing. (R. p. 116, line

5-p. 118, line 8). Of course, if the Claimant did not feel as though hunting was a potential threat to his recovery, he would not have stopped when alerted by a neighbor.

The Claimant then proceeded to deny that Dr. Lehman ever told him to wear his sling after surgery. (R. p. 108, lines 3-13). The Claimant later retracted this testimony and admitted he was only required to wear the sling until September 14, 2012, when he testified Dr. Lehman told him to remove it. (R. p. 109, line 15-p. 110, line 1). Of course this is contrary to the aforementioned reports and testimony of Dr. Lehman who confirmed the Claimant should have been wearing the sling through his appointment on October 11, 2012. (R. p. 213, lines 11-15). In addition, the Claimant testified that Dr. Schiffern's report that the he stopped using the sling two or three weeks before the September 2012 visit "[is] a lie." (R. p. 114, lines 5-12). This testimony is not only inconsistent, but questions the opinions of the same physician the Claimant asked to provide an expert opinion.

Accordingly, the Claimant's admission of performing activities impliedly forbidden by Dr. Lehman, and his inconsistent and implausible testimony regarding the clear medical instructions provided to him by Dr. Lehman, constitute additional substantial evidence to support the finding of the Full Commission that his non-compliance caused the plate to break thereby resulting in his current condition.

II. FULL COMMISSION PROPERLY FOUND THE CLAMIANT WAS NOT ENTTILED TO FURTHER NEUROLOGICAL TREATMENT.

A. Claimant's Arguments Are Conclusory And Should Be Deemed Abandoned On Appeal.

The Claimant has failed to cite any legal authority to this Court to support his arguments for reversing the decision of the Full Commission as it pertains to an intervening cause of his neurological condition and, therefore, has abandoned his appeal as a matter of law.

It is well-established by our appellate courts that conclusory arguments, or arguments which fail to cite any supporting legal authority, are deemed abandoned on appeal. *Pack v. Department of Transportation*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009) (*citing Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994). In the matter at bar, the Claimant contends the findings of the Full Commission are "fallacious" and cites to this Court numerous reasons, none of which are supported by any legal authority or citations to the record. They are simply conclusory arguments. The Claimant then proceeds to accuse the Defendants of "obstructionism" without citing one piece of evidentiary support for the accusation. Again, this is simply a conclusory argument. As such, the appeal should be abandoned as a matter of law.

B. <u>The Determination That The Alleged Current Neurological Condition Is The Result Of An Independent Intervening Cause Is Supported By Substantial Evidence.</u>

The Full Commission found the Claimant's non-compliance with medical treatment extended beyond his left clavicle injury to his failure to comply with the instructions provided by the medical providers treating his purported neurological condition. In fact, the Claimant directly violated the medical instructions provided by his medical providers, which likely resulted in his current neurological condition, if any. The Full Commission applied this circumstantial evidence and found the violation resulted in an intervening cause sufficient to break the chain of causation between the accident and his alleged current neurological problems. *Whitfield*, 266 S.C. at 43, 83 S.E.2d 463-64 (An independent intervening accident may be established through circumstantial evidence which "need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached."). This determination is supported by substantial evidence.

On July 23, 2012, Dr. Hemanth Rao diagnosed the Claimant with post-concussive syndrome with symptoms of vertigo and memory loss, and requested him return for additional treatment, if necessary, after he completed surgery for his orthopedic injuries. (R. pp. 394-395). On August 27, 2012, the Claimant reported to Dr. Trevor Goldberg, an ear, nose and throat specialist with complaints of ringing in his ears. (R. p. 403). Dr. Goldberg noted that Claimant has a history of industrial noise exposure and recreational gunfire with and without using hearing protection. (R. p. 406). Dr. Goldberg diagnosed the Claimant with tinnitus and instructed him to "avoid loud noise exposure and wear hearing protection in noisy environments." (R. p. 405). On September 24, 2012, Dr. Rao reported the Claimant was continuing to have problems with memory loss. (R. p. 401). Three weeks later, the Defendants discovered the Claimant's medical non-compliance. (R. pp. 306-307).

During the Hearing, the Claimant unequivocally admitted he did not wear hearing protection as instructed by Dr. Goldberg during the alleged two occasions he was hunting from in September and October of 2012. (R. p. 128, lines 8-12). It stands to reason that firing a gun without hearing protection is problematic for a person allegedly dealing with post-concussive syndrome, hence the reason the Claimant was prohibited from doing so by his treating physician. Moreover, it is again inequitable to intentionally and grossly violate clear medical restrictions and then request additional medical treatment to treat the same condition which necessitated the restrictions.

Accordingly, the unequivocal and specific instructions of Dr. Golberg as well as the testimony of the Claimant constitute substantial evidence to support the finding of the Full Commission that the Claimant's non-compliance likely produced an intervening cause of his current alleged neurological condition sufficient to break the chain of causation.

C. Further Neurological Treatment Is Not Supported By Medical Evidence.

Section 42-15-60 provides that an employer is required to authorize medical treatment for "a period not exceeding ten weeks from the date of an injury . . . and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty." S.C. CODE ANN. § 42-15-60. In the matter at bar the Claimant has failed to provide any medical evidence stated to a reasonable degree of medical certainty that additional neurological treatment will tend to lessen his period of disability. In fact, the Claimant does not even argue to the contrary, but only cites to the Court two instances of inappropriate testimony by the Claimant, which the Claimant summarily rationalizes as the result of some neurological injury. This of course does not constitute expert medical evidence as required by Section 42-15-60.

The Defendants assert that the most relevant medical evidence regarding the status of the Claimant's neurological condition is provided by Dr. Schiffern, who evaluated his neurological status during an examination of the Claimant on June 20, 2013. By way of background, Dr. Schiffern reported during his initial evaluation on February 18, 2013, that the Claimant was still experiencing hearing problems, vision problems and dizziness. (R. pp. 411-412). However, on June 20, 2013, none of these problems were reported and, in fact, Dr. Schiffern noted the Claimant was no longer having dizziness. (R. p. 409). Again, the Claimant has not provided contemporaneous or more recent medical evidence to the contrary. Accordingly, the determination the Claimant is not entitled to additional neurological treatment under Section 42-15-60 is supported by substantial evidence.

CONCLUSION

Based upon the foregoing, the Defendants respectfully request the Court of Appeals to affirm the Decision and Order of the South Carolina Workers' Compensation Commission.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned, Nicolas L. Haigler, Esquire, certifies that the herein Final Brief of Respondents complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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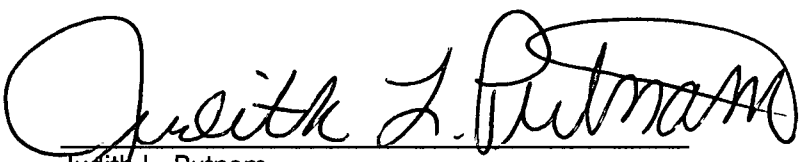
PROOF OF SERVICE

I certify that I have served three copies of the Final Brief of Respondents on James B. Neff, by depositing a copy in the United States Mail, postage prepaid, on July 27, 2015, addressed to his attorneys of record, Everett Hope Garner, Esquire, Holler, Dennis, Corbett, Ormond, Plante & Garner, 1777 Bull Street at Laurel, Post Office Box 11006, Columbia SC 29211.



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July 27, 2015

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: James B. Neff v. Lear's Welding & Fabrication, Inc.
WCC File No.: 1203594
Date of Accident: 04/12/12
Claim No.: 967830
Our File No.: 6288/8088

Appellate Case No.: 2014002611

Dear Ms. Kitchings:

Please find enclosed herewith the original and twenty (20) copies of the Respondents' Final Brief, in the above-referenced matter. We would appreciate your filing the original and fourteen (14) and returning the remaining six (6) clocked-in copies to us via our courier.

By copy of this letter and aforementioned document to the claimant's attorney, we are serving him with three (3) copies of the Respondents' Final Brief, as evidence on the enclosed Proof of Service.

Very truly yours,

Nicolas L. Haigler
SC Bar No. 76684

NLH:jlp
Enclosures
cc: Everett Hope Garner, Esquire (w/enclosure)
Ms. Sharon Sanders (w/enclosure)(via facsimile only)
Mr. Jackie Lear (w/enclosure)