

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

W.C.C. NO. 0800718

Denica Powell Appellant

vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

RECORD ON APPEAL

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INDEX

Notice of Appeal with grounds April 28, 2014	1
Decision and Order of the Appellate Panel filed April 1, 2014	3
Order of Commissioner Derrick L. Williams filed August 11, 2012.....	8
Transcript of Hearing (Appellate Panel) September 17, 2013	14
Transcript of Hearing (Commissioner Williams) June 12, 2012	30
Pre-Hearing Brief and APA Submissions [Claimant] for hearing June 12, 2012.....	51
Pre-Hearing Brief and APA Submissions [Employer] for hearing June 12, 2012.....	55
APA 1 Deposition of Dr. Robert Leak	59
APA 2 Strand Orthopaedic Records	88
APA 3 Dr. C. Gregory Kang Records	154
APA 4 Dr. Jonathan A. Simons Records	164
APA 5 Dr. Michael M. Grant Assessment	171
APA 6 Dr. James Brennan Record	172
APA 7 Form 14-B Physicians Statement.....	175
APA 8 Vocational Assessment	177
Certificate of Counsel.....	188

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WCC NO. 0800718

Denica Powell Appellant

vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

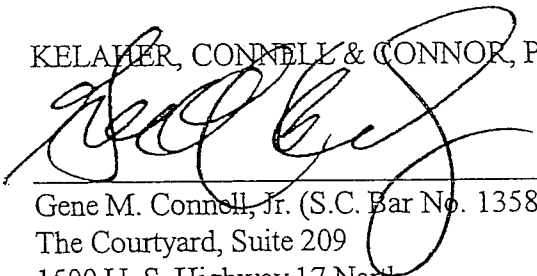
NOTICE OF APPEAL

The Appellant, Denica Powell, appeals the Decision and Order of the Commission Panel of the South Carolina Workers' Compensation Commission dated April 1, 2014 and received by Appellant on April 1, 2014. The grounds for appeal are as follows:

1. The Order of the Commission may not vacate the single Commissioner's decision without reasons given by the Commission.
2. A remand by the Commission is not appropriate without a specific reason for the remand.
3. A hearing *de novo* cannot be ordered without specific reasons given by the Commission.
4. The Commission has no authority to order a *de novo* hearing without specific reasons and thus the findings of fact and law have become the law of the case and this Court should affirm the findings of the single Commissioner. *Hamm v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1940).
5. The Commission in vacating the single Commissioner's opinion without a reason used an unlawful procedure and/or was affected by an error of law.

6. The Commission decision to vacate the Order of the single Commissioner was clearly erroneous since no reason was given for the remand. Accordingly, the single Commissioner rulings should be affirmed as a matter of law.
7. A Commission Order without specific findings does not comply with the requirements of the Workers Compensation Act and are per se, thus this Court should affirm the decision of the single Commissioner as a matter of law.
8. In order to vacate the opinion of the single Commissioner, the full Commission must give clear, cogent reasons and include findings of fact and conclusions of law.

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April 28, 2014
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DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

COMMISSION PANEL: THE HONORABLE MELODY L. JAMES, CHAIR; THE
HONORABLE GENE MCCASKILL; THE HONORABLE AVERY B.
WILKERSON, JR.

SCWCC FILE NO.: 0800718

Denica Powell,

Claimant

v.

Petsmart, Inc.

Employer, and

Phoenix Insurance Co.,

Carrier, Defendants.

Hearing held in Conway,
South Carolina on June 12, 2012
Per notice timely and properly served upon all Parties of Interest.

Appearances: for Claimant/ Appellant
 Defendants/ Respondents

Filed:

April 1, 2014

STATEMENT OF THE CASE

The instant proceeding was initiated by Claimant's Form 50 Request for Hearing dated March 26, 2012 and by Defendant's Form 21 Employer's Request for Hearing dated April 5, 2012. At issue in the pleadings was Claimant's entitlement to a finding of total and permanent disability and entitlement to lifetime medicals, a lump sum and Utica Mohawk language.

Defendant timely filed a responsive pleading to the Form 50. Defendant/Employer admitted that the claim was compensable, but denied that the Claimant was totally and permanently disabled. Furthermore, Defendant asserted that the Claimant reached maximum medical improvement (MMI). Defendant requested that the Commission determine if employer/carrier may stop payment, and if so, to determine if Claimant was entitled to any further benefits. Defendant also requested credit for temporary total benefits paid in excess of award.

On August 11, 2012, the single Commissioner issued his Decision and Order containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Claimant, Denica Powell, was an employee of Petsmart, Inc.
2. Claimant suffered an injury by accident on January 3, 2008 while employed a dog groomer.
3. Employer, Petsmart, Inc., is subject to the Workers' Compensation Act.
4. Claimant was assigned the task of stocking and dog grooming.
5. Claimant's detailed testimony is credible.
6. The treating doctors' records are convincing that Claimant is totally and permanently disabled.
7. Claimant is entitled to lifetime medical care per the Form 14(B) report of the treating physician, Dr. Kang.
8. The medical evidence presented by the Claimant establishes by a preponderance of the evidence, and Claimant is entitled to compensation.

9. Claimant's severe depression and psychological disorder is directly caused by the severe upper extremity injury and the resultant pain.
10. The treating doctor finds that the Claimant has a 70% permanent impairment to the upper extremity.
11. Claimant is totally and permanently disabled and entitled to lifetime medical care.
12. By preponderance of the evidence, the Claimant is entitled to all benefits as provided for under the Workers' Compensation Act.
13. Claimant is entitled to a lump sum payment of the commuted balance of: 500 weeks less the credit for the weeks she has been paid compensation.
14. Claimant is entitled to the following Utica-Mohawk language:

The commuted value of this claim on the date of the hearing, June 12, 2012, is \$159,684.35. This lump sum is compensation for permanent impairment that will affect the Claimant for the remainder of her life. The Claimant's remaining life expectancy is 2,431 weeks. Therefore, even though paid in a lump sum, the Claimant's benefits after attorney's fees for the prosecution of this action shall be considered to be \$43.81 a week for 2,431 weeks beginning as of June 12, 2012; pursuant to Section 42-3-180 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court decision in Utica-Mohawk Mills v. Orr, 227, S.C. 226, 87 S.E.2d 589 and James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (S.C.2010).

RULINGS OF LAW

1. Claimant and Employer are subject to the Workers' Compensation Act.
2. Claimant suffered an injury by accident while employed with Petsmart, Inc.
3. Claimant is entitled to permanent and total disability for the injuries she suffered on January 3, 2008.
4. Claimant was in the course and scope of employment when she suffered this injury.
5. The record in this case is closed.
6. Claimant is entitled to continuing medical treatment pursuant to the Workers' Compensation Act.
7. Claimant is entitled to lifetime medical care and ongoing treatment from Dr. Kang and Dr. Simon.
8. Claimant is to continue to receive all medications and other treatment to lessen her disability.

ORDER AND AWARD

Claimant/Employee is permanently and totally disabled, entitled to lifetime medical care, a lump sum payment, Utica-Mohawk language, and continuous medical treatment from Dr. Simon and Dr. Kang.

ISSUES ON APPEAL

Defendant filed a Form 30 Request for Commission Review on August 27, 2012. Defendant requested the Commission review the single Commissioner's Decision and Order to address 15 questions of law or fact regarding the Commissioner's findings. The Form 30 with attachment is contained in the Commission's file.

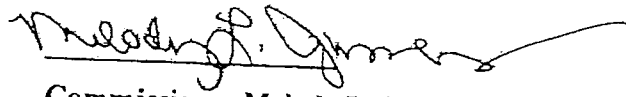
FINDINGS OF THE FULL COMMISSION

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Vacated and Remanded** the matter to the Jurisdictional Commissioner for a hearing de novo.

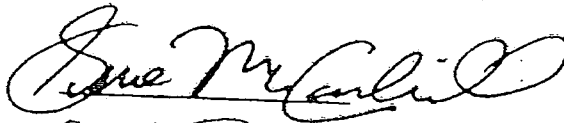
ORDER

IT IS THEREFORE ORDERED that this matter is **Remanded** to the Jurisdictional Commissioner for a hearing de novo. The Full Commission retains jurisdiction over all other issues in contention and will hear oral arguments prior to rendering its final decision on the matter after the Jurisdictional Commissioner makes his or her decision. The matter shall be set for oral arguments during the next available term of Review following the issuance of the single Commissioner's decision on Remand and thirty-days notice to the parties.

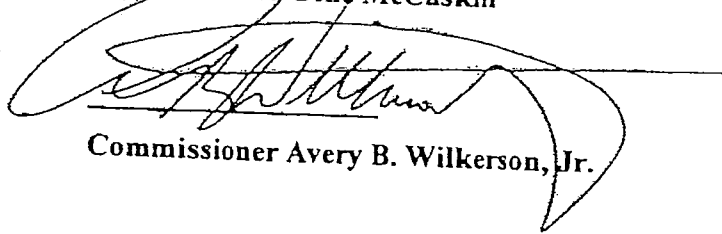
AND SO IT IS ORDERED!



Commissioner Melody L. James, Chair



Commissioner Gene McCaskill



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on April 1, 2014

**ORDER OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0800718**

Denica R. Powell,

Employee/Claimant,

vs.

Petsmart, Inc.,

Employer,

and

Phoenix Insurance Co.

Carrier,
Defendants.

Hearing: Held Horry County Government & Justice Center,
Conway, South Carolina on June 12, 2012 at 1:00 p.m.

Appearances: Claimant represented by Gene M. Connell, Jr., Esq.
of Kelaher, Connell & Connor, P.C.

Defendants represented by F. Reid Warder, Jr., Esq.
of Wood & Warder, LLC

Purpose of Hearing: To determine issues as set forth in Forms 50 and 51 and any other issues
which may have timely come before the Commissioner.

Decision and Order: By Derrick L. Williams, Commissioner

Filed: August 11, 2012

1. 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 Forms 50, 51 (or 52,53) or 21 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) The Claimant's average weekly wage and compensation rate is \$854.37 and \$569.61, respectively.
- (4) Venue, set Horry County, is proper as agreed by all parties.
- (5) The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an alleged accidental injury occurring on January 3, 2008 while in the employ of the Defendant/Employer and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

2. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

APA #1 1-29	Deposition of Dr. Robert Leak	01/12/10	pages
APA #2 30-95	Strand Orthopaedic – Records	01/16/08–01/20/11	pages
APA #3 96-105	Dr. C. Gregory Kang- Records	12/09/10–02/16/12	pages
APA #4	Dr. Jonathan A. Simons-Records	03/24/11–03/27/12	pages 106-112
APA #5	Dr. Michael M. Grant- Assessment	02/22/11	page 113
APA #6 114-116	Dr. James Brennan—Records	05/26/11	pages
APA #7	Physician's Statement Form 14-B	04/02/12	page 117
APA #8	Vocational Assessment	05/25/12	pages 118-128

3. CLAIMANT BIOGRAPHICAL

(List All Entries as Indicated Below)

Age:	35
Weight:	135
Sex:	Female

Marital Status: Divorced
Children: 2
Work History: Dog Groomer
Education: High School

4. STATEMENT OF THE CASE

The parties brought this matter before the undersigned Commissioner on June 12, 2012 for a hearing at 1:00 p.m. The Claimant/Employee requested that the Commission find her totally and permanently disabled and that she was entitled to lifetime medicals, a lump sum and Utica Mohawk language. The Defendant/Employer admitted that the claim was compensable, but denied that the Claimant was totally and permanently disabled. The hearing ended at 1:40 p.m.

5. EVIDENCE OF THE CASE

- A. Only one witness testified, Denica Powell, who was the injured employee. She appeared as a 35-year old mother of two who had a severe injury to her dominant arm. She cried during most of her testimony and was in obviously pain. The Claimant has never had a prior claim and described her pain as intense. She is unable to drive, lives with her parents and relies on them to care for her two kids. It is obvious from her testimony that she suffers from severe psychological distress from the pain. She is unable to use her injured arm in any capacity. Her medication makes her drowsy and sleepy all the time. She spends all of her time on the couch at her parents' home. She doesn't cook or clean and relies on her parents to manage her money. She is being treated by Dr. Simons, a psychologist, and Dr. Kang, a pain medicine specialist. Her medications include Ambien, Cymbalta, Gabapentin, Klonopin and she has had a dorsal column implant to help the pain in her arm. Unfortunately, the stimulator has not helped her pain and she continues to have a severe psychological reaction to the intractable arm pain from her multiple surgeries.

I find her testimony believable and very credible. Her injuries are severe and she has exhausted all of her medical options. She will need medical care for pain management for the rest of her life and is unable to work in any capacity.

- B. Dr. Gregory Kang's medical records were reviewed and it was his opinion that Claimant/Employee had 70% loss of use of her arm. He also stated that he believed her work was the proximate cause of the Claimant/Employee's injury. The Form 14B signed by Dr. Kang dated 04/16/12 reveals the Claimant is unable to return to work and will need future medical care including Neurontin,

Oxycontin, Seroquel, Klonopin and a spinal cord stimulator battery replacement.

- C. I also reviewed the records of Dr. Jonathan Simons, the psychologist who treated Claimant. The records reveal a severely depressed person who has sleep problems and requires constant reevaluation of her depression medications. (APA 4). Dr. Simons hopes to help the Claimant adapt to her pain and cope with her depression by continuous long term treatment. His notes indicate her depression is severe due to her pain. (APA 4). His diagnosis includes major depression disorder, pain disorder with both medical and psychological features and anxiety disorder. Dr. Simons' notes indicate her depression is permanent due to her chronic pain. (APA 4 p. 112).

6. FINDINGS OF FACT

1. The Claimant, Denica Powell, was an employee of Petsmart, Inc.
2. The Claimant, Denica Powell, suffered an injury by accident on January 3, 2008 while employed a dog groomer.
3. The Employer, Petsmart, Inc., is subject to the Workers' Compensation Act.
4. The Claimant, Denica Powell, was assigned the task of stocking and dog grooming.
5. The Claimant's detailed testimony above is credible.
6. The treating doctors' records are convincing that Claimant is totally and permanently disabled.
7. The Claimant is entitled to lifetime medical care per the Form 14(B) report of the treating physician, Dr. Kang.
8. The medical evidence presented by the Claimant establishes by a preponderance of the evidence, and Claimant is entitled to compensation.
9. The claimant's severe depression and psychological disorder is directly caused by the severe upper extremity injury and the resultant pain.
10. The treating doctor finds that the Claimant has a 70% permanent impairment to

the upper extremity.

11. The Claimant is totally and permanently disabled and entitled to lifetime medical care.

12. I find that by preponderance of the evidence, the Claimant is entitled to all benefits as provided for under the Workers' Compensation Act.

13. I find the Claimant is entitled to a lump sum payment of the commuted balance of: 500 weeks less the credit for the weeks she has been paid compensation.

14. I find the Claimant is entitled to the following Utica-Mohawk language:

The commuted value of this claim on the date of the hearing, June 12, 2012, is \$159,684.35. This lump sum is compensation for permanent impairment that will affect the Claimant for the remainder of her life. The Claimant's remaining life expectancy is 2,431 weeks. Therefore, even though paid in a lump sum, the Claimant's benefits after attorney's fees for the prosecution of this action shall be considered to be \$43.81 a week for 2,431 weeks beginning as of June 12, 2012; pursuant to Section 42-3-180 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court decision in Utica-Mohawk Mills v. Orr, 227, S.C. 226, 87 S.E.2d 589 and James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (S.C.2010).

7. CONCLUSIONS OF LAW

I make the following conclusions of law:

1. The Claimant and the Employer are subject to the Workers' Compensation Act.

2. The Claimant suffered an injury by accident while employed with Petsmart, Inc.

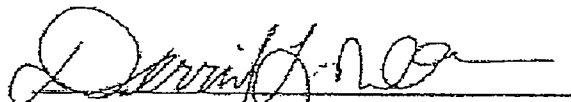
3. The Claimant is entitled to permanent and total disability for the injuries she suffered on January 3, 2008.

4. The Claimant was in the course and scope of employment when she suffered this injury.

5. The record in this case is closed.
6. The Claimant is entitled to continuing medical treatment pursuant to the Workers' Compensation Act.
7. The Claimant is entitled to lifetime medical care and ongoing treatment from Dr. Kang and Dr. Simon.
8. The Claimant is to continue to receive all medications and other treatment to lessen her disability.

8. ORDER

IT IS ORDERED that the Claimant/Employee is permanently and totally disabled, entitled to lifetime medical care, a lump sum payment, Utica-Mohawk language, and continuous medical treatment from Dr. Simon and Dr. Kang.



Commissioner Derrick L. Williams

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.

August 14, 2012

By: Renee Smith, Administrative Assistant to Commissioner Williams

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0800718

DENICA R. POWELL	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	HEARING OF
PET SMART, INC.	)	
	)	DENICA R. POWELL
EMPLOYER,	)	
AND	)	VS
	)	
PHOENIX INSURANCE CO)	)	PET SMART, INCORPORATED
	)	
<u>CARRIER.</u>	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Denica R. Powell versus Pet Smart, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:14 P.M., Tuesday, September 17, 2013, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

APPEARANCES

FOR THE APPELLANT:

Gene M. Connell, Jr., Esquire
Kelaher, Connell and Connor, PC
The Courtyard
1500 U.S. Highway 17 North
Surfside Beach, SC 29587

FOR THE RESPONDENT:

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Warder Law Firm
3 Oak Forest Drive
P.O. Box 31057
Charleston, SC 29417

COMMISSIONERS PRESENT:

Melody James, Chair
Gene McCaskill
Avery Wilkerson

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

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I N D E X

	Page
Argument for the Appellant by Mr. Warder	5:7
Argument for the Respondent by Mr. Connell	9:22
Reply for the Appellant by Mr. Warder	15:8
Certificate	17

STIPULATIONS

Commissioner James: All right, Madame Court Reporter.

Court Reporter: Today is September 17th, 2013. This is South Carolina Workers' Compensation case number 0800718. This is the case of -- is it Denica?

Mr. Connell: Yes, ma'am.

Court Reporter: Denica R. Powell, Claimant, versus Pet Smart, Employer, and Phoenix Insurance Company is the carrier. The Appellant is the Defendant represented by F. Reid Warder, Jr. The Respondent is represented by Gene M. Connell --

Mr. Connell: Yes, ma'am.

Court Reporter: -- Jr. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner Williams.

Commissioner Wilkerson: Is this Pet Smart or is the Pet's Mart?

Mr. Warder: Pet Smart.

Commissioner Wilkerson: Okay. I'm sorry.

Commissioner McCaskill: Just in case you

1 didn't know.

2 Commissioner James: All right. Mr. Warder?

3 Mr. Warder: Pet store cases are always
4 interesting.

5 Commissioner James: All right. Yes, sir?

6 ARGUMENT FOR THE APPELLANT

7 By Mr. Warder:

8 Thank you. Good afternoon. We're here today as
9 we contend that Ms. Powell's injury should be limited
10 to a single scheduled, right upper extremity injury.
11 She injured her arm back in 2008; she has had all sorts
12 of issues with it all of which have been admitted. In
13 terms of the arm, she had a -- I believe an RSD type
14 condition. She alleged numerous other body parts on
15 her Form 50, you know, some of which, brain, etcetera,
16 were not found to be compensable in the -- in the
17 underlying order from Commissioner Williams; however,
18 he did note that she had -- had depression and, in
19 fact, she had been treated by Dr. Simmons for
20 depression from this matter. No, we contend at the
21 end of the day, though, she doesn't have any disability
22 from the depression; that the culmination of these two
23 (2) injuries, even if you were to combine them and keep
24 them off a single schedule, that there isn't enough
25 evidence in the record whatsoever to -- to state that

1 she failed to demonstrate that she has any basis of
2 earnings. She was sent by us to a Vocational
3 Evaluator, Mr. Glenn Adams, respectable at least in my
4 opinion; I've seen him work both sides of the case. He
5 found that she can earn eight (\$8.00) to ten dollars
6 (\$10.00) an hour, which in -- in our opinion is -- is
7 really uncontroverted. There is no evidence in the
8 record whatsoever; there is not a vocational evaluation
9 submitted on behalf of the Claimant. Dr. Simmons has
10 no restrictions for depression whatsoever. This is --
11 the Colonna case, I guess is the correct pronunciation,
12 this -- this case is somewhat similar to that. And we
13 take the position that even if she has depression
14 that's causally related to the injury, that the
15 depression hasn't increased her disability whatsoever
16 and wouldn't lead to a permanent and total disability
17 or even a permanent partial disability finding. She
18 previously had her own business washing dogs, as we
19 understand. She is a smart lady. She had a lot going
20 for her, basic computer skills; things of that nature.
21 There is no evidence she cannot work, in our opinion.
22 And she has a very significant rating; this is a single
23 scheduled part, she's -- a single scheduled member.
24 Dr. Simmons even indicated that although she is
25 depressed she had increased her activity level, things

1 of that nature. Obviously increase of activity level
2 isn't anything that would hurt us. We submit to you
3 that there is nothing in the record from Dr. Simmons
4 that gives any sorts of restrictions, whatsoever,
5 concerning any psychological -- psychological or -- or
6 depression claim. In the Colonna case they even state
7 the claims for a psychological injury are compensable
8 only if the Claimant proves by a preponderance of
9 evidence that they are caused by physical injury or by
10 extraordinary and unusual conditions. Obviously we're
11 dealing with the cause by a physical injury in this
12 case and -- and in our position we don't feel it's
13 caused by the physical injury; however, I have to
14 concede that she was being treated. So, Dr. Kang gave
15 her some -- no use of a dominant right arm; that's the
16 authorized treating pain management physician that she
17 was seeing. And you -- Mr. Adams' vocational
18 evaluation, his assessment, pretty much speaks for --
19 for itself. We feel that -- that she has failed to --
20 to demonstrate that she is unable to perform any of the
21 services that other notes are so limited in quality,
22 dependability and quantity that no reasonable stable
23 market exists and by not proving such that leaves her
24 with a single scheduled body part award. Do you have
25 any questions?

1 Commissioner James: Unless it's two (2) body
2 -- unless it is two (2) body parts and you have a
3 loss of earning capacity but its your position
4 it's --

5 Commissioner Wilkerson: They don't have
6 that.

7 Commissioner James: -- under 42-9-30?

8 Mr. Warder: Our position is there is nothing
9 in the record whatsoever to indicate that she has a
10 loss of earnings; in fact, contrary to that there is a
11 vocational report saying she does have earnings. So,
12 that's a -- therein lies our -- our argument. Without
13 the disability, without any proof whatsoever that the
14 second body part, "The depression" is affecting her
15 disability, I don't even think it comes in --

16 Commissioner James: No, your --

17 Mr. Warder: -- but even if it does --

18 Commissioner James: -- under the Colonna
19 decision?

20 Mr. Warder: -- correct. Under that decision
21 I don't -- I don't see that. But going even further in
22 this evidence, in the record that was put before the
23 single Commissioner, there is no evidence, in my
24 opinion, that she has any -- look at the order, the
25 order itself doesn't state there is a loss of earnings;

1 it just says she is permanently and totally disabled,
2 as I understand. It says that there is a -- it of
3 course points to it in the conclusions of law, I
4 presume.

5 Commissioner Wilkerson: Right.

6 Mr. Warder: Actually, it doesn't. But it
7 says, "The Claimant is entitled to permanent and total
8 disability for the injury she suffered on January 3,
9 2008." well, how so? If nothing else that would be an
10 error of law. You have to have a basis for the
11 permanent and total disability and in this fact -- in
12 this matter the fact is the record was closed and all
13 of the evidence suggests that she is capable of
14 earnings and there is nothing to contradict the
15 vocational evaluation whatsoever.

16 Commissioner James: All right. Thank you,
17 sir.

18 Mr. Warder: Thank you.

19 Commissioner James: Mr. Connell?

20 Mr. Connell: Yes, ma'am.

21 ARGUMENT FOR THE RESPONDENT

22 By Mr. Connell:

23 well, one thing that contradicts the Vocational
24 Evaluator, that is the fact that this lady is
25 thirty-five (35) years old, she has a GED and she

1 cannot use her right dominate hand. It -- it's without
2 controversy that if you've got a GED and you're going
3 to need to use your hands in whatever you do, being a
4 dog groomer, being a greeter at Walmart; you can't do
5 any of those things. So, his argument that -- if you
6 look at the Evaluator's discussion, there is some
7 indication that she could work at the rides and go
8 ahead and advise people which line to get into by using
9 one (1) hand. Well, no one is going to hire anybody in
10 that nature and everybody knows that. And if you'll
11 look at the -- the law on that regard, which defines
12 total disability as inability to perform services so
13 limited in quantity, dependability and quality that a
14 stable market does not exist. And we would submit to
15 you that -- that based upon the fact that she had this
16 psychiatric reaction along with the seventy percent
17 (70%) loss of the use of her arm, which even the
18 Evaluator says she can't even move it from the side --
19 from her side, that the -- that the Single Commissioner
20 was appropriate in finding that she was totally
21 disabled. Also, I -- I was looking at the order again
22 and I -- in the order notes and I can't remember the
23 last time a Single Commissioner said that you should
24 put in this particular order the Claimant was very
25 credible because usually you all put in there we do not

1 make credibility findings unless we tell you that it's
2 -- it's important. And in looking also at the records
3 and the reports, all the doctors were doctors that the
4 insurer asked her to see. There is a 14-B that says
5 this lady is unable to work; that's the last -- that's
6 Exhibit Number Eight (8). There also is Exhibit Number
7 Five (5) that apart --

8 Commissioner James: The 14-B says what?

9 Mr. Connell: -- the Claimant is unable to
10 work.

11 Commissioner James: Okay. Does it say, and
12 I don't have it right in front of me but I
13 remember from the briefs, does it say that the
14 Claimant is unable to work or unable to do that
15 job?

16 Mr. Connell: It says unable to do that job.

17 Commissioner James: Okay.

18 Mr. Connell: I think it's without question
19 that, you know, that -- there's only three (3) boxes on
20 the 14-B, as you know, and if she can't do that job she
21 can't do any of these other jobs with a GED and a
22 seventy percent (70%) impairment rating and a -- the
23 use of medicines.

24 Commissioner McCaskill: You've said that
25 twice. Are you saying that someone who is an

1 amputee can't work?

2 Mr. Connell: No, sir. But what I'm -- I
3 think that you have to look at all the factors. In
4 this case this lady was -- is and is now has been
5 taking significant amounts of medication, pain
6 medication, that don't allow her to do anything:
7 Oxycontin, Cymbalta; there is a whole list of them that
8 she is taking and I think when you look at that and you
9 look at the -- look at her GED situation and you look
10 at the fact that she has a -- a spinal cord stimulator
11 and that didn't work and the -- the insurer sent her to
12 another doctor who said that she has, "Complex
13 depressive order from this injury" and I think when you
14 look at all those factors together that it's not
15 necessary that you have a Vocational Evaluator say,
16 well, she can get a job as a -- stand at the amusement
17 park line and tell people to come with one (1) arm; you
18 just can't do that with all the medicines that she had
19 and with the seventy percent (70%) impairment rating
20 that she's got to her right arm and the psychiatric
21 injury. There is also testimony --

22 Commissioner Wilkerson: But there is nothing
23 in the order that delineates all the medicine she
24 is on.

25 Mr. Connell: -- it's --

1 Commissioner Wilkerson: He says she can get
2 medicine but it doesn't go into the details of due
3 to the medication she can't drive, she can't
4 operate machines; I don't see that in there --

5 Mr. Connell: -- you're --

6 Commissioner Wilkerson: -- but maybe I'm
7 wrong.

8 Mr. Connell: -- you're right.

9 Commissioner Wilkerson: Okay.

10 Mr. Connell: But it -- but --

11 Commissioner Wilkerson: I was looking for
12 it, so.

13 Mr. Connell: -- I would point out that Dr.
14 Kang's -- the treating physician's records clearly say
15 that she's got to have these medicines and he sees her
16 on a --

17 Commissioner Wilkerson: Okay.

18 Mr. Connell: -- regular basis for that.
19 There are two (2) cases that I would point out that
20 have some application here, one is called Williamsburg
21 County versus -- let's see -- Kennedy versus
22 Williamsburg County. A prison guard was beaten up,
23 assaulted, and had a psychiatric reaction and the
24 Supreme Court said that he was totally disabled based
25 on the psychiatric reaction he had from the beating.

1 And then, Getsinger versus Owens-Corning Fiberglass, a
2 1999 case from the Court of Appeals, which talks about
3 a similar situation. So, it's -- it's our position
4 that based on this complex pain management syndrome she
5 has, the Oxycontin and all the other medicines, the
6 psychiatric reaction, the spinal cord stimulator, she's
7 had several nerve wrap surgeries to her right arm, her
8 testimony that she could not do anything; she was not
9 even able to drive, she was not able to help her
10 children in school, she was unable to do anything. And
11 if you look at this -- the psychiatric records, there's
12 even some records that say -- from the Psychiatrist or
13 Psychologist that say she can't do anything at
14 Christmas with her children and he was trying to
15 explain to her, you're going to have to learn how to
16 put your pain in a compartment and that's all -- all we
17 can do in this situation because her pain is such
18 that's its eight (8) out of ten (10) on a scale of ten
19 (10). And there is testimony from even the Claimant
20 wondering whether or not they could cut her arm off to
21 make it so she wouldn't have this pain all day and have
22 to be on these medicines. So, we would argue to the --
23 to the -- to you all that she is a -- she is totally
24 disabled because she can't perform any service and the
25 services that she can perform are so limited in quality

1 that -- that she is totally disabled.

2 Commissioner James: All right. Thank you,
3 sir.

4 Mr. Connell: Thank you.

5 Commissioner Wilkerson: Thank you.

6 Commissioner James: Mr. Warder?

7 REPLY FOR THE APPELLANT

8 By Mr. Warder:

9 I really have nothing further to add except the
10 fact of the burden of proof in on the Claimant, it's
11 not on us, and we felt that we actually fulfilled what
12 I like to call the burden of disproof by having a
13 vocational evaluation. There is nothing in the record
14 that says a combination of medications keep her from
15 doing anything; it says she can't use her right arm.
16 There are plenty of people that can work in this world
17 without a right arm and having a GED and we feel that
18 without her having the prerequisite burden of proof
19 completed that there is no loss of earnings capacity
20 argument to be put forth and that the matter should be
21 kept to a scheduled one.

22 Commissioner James: All right.

23 Mr. Warder: If you have any questions I'll
24 be happy to answer them; otherwise, I'll concede the
25 rest of my time.

1 Commissioner James: All right. Thank you
2 all.

3 Commissioner Wilkerson: Thank you all. We
4 appreciate it.

5 Commissioner McCaskill: Have a good
6 afternoon. Good -- good to see you both.

7 Commissioner Wilkerson: Good to see you.

8 Commissioner James: That concludes the
9 hearing.

10 (THERE BEING NO FURTHER DISCUSSION, THE HEARING CONCLUDED
11 AT 2:28 P.M.)
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061212-0800718

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
FILE NO.: 0800718

DENICA R. POWELL,	)	
CLAIMANT	)	HEARING BEFORE
VS.	)	
	)	COMMISSIONER WILLIAMS
PETSMART, INC.,	)	
EMPLOYER	)	
	)	
PHEONIX INSURANCE COMPANY,	)	
CARRIER	)	

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE NADINE A. GARRETT, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 1:15 PM
ON JUNE 12, 2012, AT NEW HORRY COUNTY COURT HOUSE, 1301
2ND AVENUE, CONWAY, SOUTH CAROLINA.

Nadine A. Garrett,
Court Reporter
PO BOX 1205
IRMO, SC 29063
Office: 803-834-3410
Fax: 803-834-3411

061212-0800718

A P P E A R A N C E S:

FOR THE CLAIMANT
GENE M. CONNELL, JR., ESQUIRE
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Surfside Beach, SC 29587

FOR THE EMPLOYER/CARRIER
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Charleston, SC 29413

INDEX OF WITNESSES

DENICA POWELL

Direct By Mr. Connell	5
Cross By Mr. Fultz	15
Examination By The Court	22
CERTIFICATE.	24

3

1 THE COURT: Today's date June 12, 2012. This is
2 the workers' Compensation case of Ms. Denica Powell
3 versus Pestmart. Phoenix Insurance Company is the
4 Carrier. WCC file number 0800718. Attorney Gene

5 Connell for the Claimant. Attorney Matt Fultz for
6 the Employer and Carrier. Date of accident, January
7 3, 2008. Average weekly wage, \$854.37, corresponding
8 comp rate of 569.61. Hearing is set on the Forms 50
9 and 51 and the Employer/Carrier's Form 21. Dr. Kang
10 has given an impairment rating of 70 percent to the
11 right upper. And we have the 14B, which lists all
12 the future medical treatment that will be needed.
13 Have APA submissions handed up from the parties. Any
14 objections to jurisdiction, venue, or the APA
15 submissions? Mr. Connell?

16 MR. CONNELL: None from the Claimant.

17 THE COURT: Mr. Fultz?

18 MR. FULTZ: None, Commissioner.

19 THE COURT: Then the Commission file is part of
20 the record with the exception of any self-serving
21 declarations or any unstipulated medical reports.

22 Admitted injury to the right arm. The Claimant
23 would also allege that she has an injury to her
24 psychological as well. She is seeking a finding that
25 she's is permanently and totally disabled, Section

4

1 42-9-10. would also, I believe, seek lump sum, Utica
2 Mohawk language under James vs. Anne's, lifetime
3 causally related medical treatment per the 14B or
4 whatever Dr. Kang would have set out, and under the
5 Dodge case, and reimbursement for any causally
6 related medicals.

7 The Employer/Carrier does admit an injury to the
8 right arm. However, they do not believe the Claimant
9 is permanently and totally disabled. They have a

Page 3

10 vocational assessment from Mr. Glen Adams that they
11 would site to. They would they argue that permanency
12 should be under 42-9-30. And I believe they would
13 seek credit for overpayment from MMI in this case.

14 That being stated, anything else the parties
15 want to state for the record?

16 MR. CONNELL: Your Honor, just that the 14B
17 indicates that she's unable to return to work. I
18 think you've said that, though.

19 THE COURT: Yes. And Mr. Fultz?

20 MR. FULTZ: Nothing further, Your Honor.

21 THE COURT: All right. Swear Ms. Powell in,
22 please.

23 DENICA POWELL,
24 after being duly sworn, testified as follows:

25 THE COURT: Mr. Connell.

5

1 DIRECT EXAMINATION

2 BY MR. CONNELL:

3 Q Ms. Powell, tell us if you would, please, where you
4 live currently.

5 A With my parents.

6 Q Where is that?

7 A In Ocean Lakes in Surfside.

8 Q How long have you lived with you parents?

9 A Six or seven years. Off and on.

10 Q How long did you work at Petsmart approximately?

11 A Four years, four and a half. I'm bad with dates.
12 I'm sorry.

13 Q And how did you get here today?

- 14 A I had an injury.
- 15 Q How did you get to the courthouse? I'm sorry.
- 16 A Oh, my dad brought me. I'm sorry.
- 17 Q Are you able to drive or does he take you?
- 18 A I only do very short distances if I have to. But
- 19 other than that, my dad or someone takes me.
- 20 Q And the reason why you had to move in with your
- 21 parents is what?
- 22 A Just the help. I have two kids, Isaiah and Brooklyn.
- 23 They're 15 and 13. And they help me with them and
- 24 taking them back and forth to stuff.
- 25 Q Are you divorced?

6

- 1 A Yes.
- 2 Q And what's your current age?
- 3 A Thirty-five.
- 4 Q What kind of education do you have?
- 5 A High school.
- 6 Q And do you have any other training beyond high
- 7 school?
- 8 A I just went to grooming school.
- 9 Q Dog grooming school?
- 10 A Uh-huh. Yes.
- 11 Q How long did you do that kind of work?
- 12 A It was 360 hours. I forget how long it took to
- 13 finish.
- 14 Q And how did you come to work at Petsmart?
- 15 A They -- I actually had my own grooming and boarding
- 16 business.
- 17 Q Yes, ma'am.
- 18 A And they were hiring and I went for an interview with

19 them and got hired.
20 Q Were you going to be a dog groomer there?
21 A Yes.
22 Q And is that what you did there?
23 A Yes.
24 Q Have you -- let's talk a little bit about what you
25 can and can't do now. You've got a strap on your

7

1 right wrist; is that right?
2 A Right.
3 Q And tell me how far up your arm does that go?
4 A Just to here. Past my scar from the nerve wrap
5 surgery.
6 THE COURT: Do you always wear that?
7 THE WITNESS: Always.
8 THE COURT: Are you right-hand dominant?
9 THE WITNESS: Uh-huh. Yes.
10 THE COURT: Okay. Go ahead.
11 BY MR. CONNELL:
12 Q And are you having pain in the right arm currently?
13 A Yes.
14 Q And do you have pain all the time in the right arm?
15 A Always.
16 Q And are you still seeing Dr. Kang?
17 A Uh-huh. Yes.
18 Q And did you have a dorsal column stimulator implanted
19 in your back?
20 A I did.
21 Q And has that helped your pain?
22 A No. But he tells me to keep it on because it could

23 spread.

24 Q The pain could spread to your other arm?

25 A Right.

8

1 Q And if ten's the most excruciating pain and zero's no
2 pain, what number would you put yours at to your
3 right arm?

4 A Seven.

5 Q And what kind of medication are you taking that helps
6 you?

7 A I take Oxycontin, Oxycodone, Gabapentin, Cymbalta,
8 Seroquel. I think that's it.

9 Q Are you -- what does that do to you physically when
10 you take those medicines? Does it make you sleep or
11 does it --

12 A It makes me really tired. But I can't sleep. I'm up
13 and down, up and down.

14 Q Are you having trouble sleeping at night?

15 A Uh-huh.

16 Q How many hours a night do you sleep?

17 A Maybe an hour before getting up. I'm up and down
18 constantly.

19 Q Are you able to use that arm for anything? Are you
20 able to pick up anything with that right arm?

21 A Uh-uh.

22 Q Are you able to write with that right arm?

23 A No.

24 Q Are you -- did you have to retrain yourself to write
25 with your left arm or --

9

1 A I do. Anything that I have to write, I do it left
2 handed or I have somebody to write it for me.
3 Q Dr. Kang suggested that you go to a phycologist?
4 A Yes.
5 Q Dr. Simons?
6 A Uh-huh.
7 Q Are you treating with Dr. Simons?
8 A Yes.
9 Q How long have you been treating with Dr. Simons?
10 A Seven or eight months, I think.
11 Q And what is Dr. Simons able to -- what's he doing for
12 you?
13 A He basically talks to me, just trying to help me get
14 equated that I'm not going to be able to do anything
15 with it because it's so hard to -- it's just a
16 nightmare.
17 Q Is he trying to help you deal with the pain in that
18 arm?
19 A Right.
20 Q And tell me how he does that.
21 A He just talks to me, tries to get me to do different
22 things and whatnot, because I don't leave the house.
23 I'm just constantly miserable.
24 Q And you say you don't leave the house. You don't
25 ever leave the house?

10

1 A Not unless I absolutely have to.
2 THE COURT: Ma'am, do you need a break? Are you
3 all right? You're doing fine.
4 THE WITNESS: I'm okay.

5 THE COURT: You're okay? All right.

6 BY MR. CONNELL:

7 Q Can you describe your day to the Judge?

8 A At home?

9 Q Yes, ma'am.

10 A Doing nothing, on the couch, trying to sleep. I'm

11 always tired, just miserable and trying to sleep.

12 Q Can you describe the pain that you're having in your

13 right arm and shoulder for us?

14 A It's just a constant burning, heavy, throbbing

15 feeling. It's so hard to describe.

16 Q Do you ever get any relief from the pain?

17 A No. The only thing that changes is if I try to do

18 something with it, it just makes it worse.

19 Q You've had two nerve wrap surgeries, I believe,

20 right?

21 A Right.

22 Q And what -- and you've had the dorsal column

23 stimulator surgery.

24 A Right.

25 Q And did that do anything to help your pain?

11

1 A Uh-uh.

2 Q There's some notes in the record that at one point it

3 might -- there was some discussion you might have

4 made it 40 or 50 percent better. Has it gotten any

5 better for you?

6 A Uh-uh.

7 Q Did you have any period after you just got the dorsal

8 column stimulator where you felt better?

9 A No. And that it was worse after that surgery, of

Page 9

10 course, for the couple weeks from the surgery. It
 11 was awful.
 12 Q And you tried to go back to work, I believe, too; is
 13 that right?
 14 A Right.
 15 Q During a period of time?
 16 A Right.
 17 Q And was that before you had the surgery?
 18 A Before the spinal cord surgery, right.
 19 Q And when did you have the spinal cord surgery?
 20 A In June of last year.
 21 Q Does the medication make it difficult for you to
 22 think?
 23 A Not really think. I didn't --
 24 Q Do you feel foggy when you're taking all these
 25 medicines at one time?

12

1 A Yeah.
 2 Q Who helps you pay your bills?
 3 A Just the check that I'm getting.
 4 Q I understand. But does your mother and father help
 5 you pay the bills that you --
 6 A Right.
 7 Q They take care of -- basically they're taking care of
 8 you; is that right?
 9 A Right.
 10 Q And does the include paying your bills, helping you
 11 with the money you get from workers' comp?
 12 A Right. They help with the kids and everything.
 13 Q Tell me what they do -- and why do they have to help

- 14 with the children?
- 15 A Just driving. Like my son has a job, my daughter
- 16 does cheerleading. So, just driving to practices and
- 17 back and forth to work and --
- 18 Q And those are things you cannot do?
- 19 A Right.
- 20 Q And there are things you can't do because you don't
- 21 feel well enough to drive? Tell me why you can't do
- 22 those things.
- 23 A Just the pain. I just can't. Just constantly in
- 24 a -- I just can't.
- 25 Q Just constant pain all the time?

13

- 1 A Right.
- 2 Q And when you see -- when do you see Dr. Simons; is it
- 3 every month?
- 4 A Every month.
- 5 Q And does he prescribe you with medications?
- 6 A No.
- 7 Q Only Dr. Kang does that?
- 8 A Right.
- 9 Q And are you satisfied with what Dr. Kang's doing for
- 10 you?
- 11 A It takes the edge off, I guess, a little bit. I just
- 12 want it fixed and it's not going to be fixed.
- 13 Q That's what I was going to ask you. Is there any
- 14 medical procedure that's been recommended to you that
- 15 you want, that you think would help you at this
- 16 point?
- 17 A I've asked them about amputation if I knew it would
- 18 get rid of that pain, for them to just amputate it.

Page 11

19 I'd rather not have it.
20 Q The pain is so bad that you --
21 A Right.
22 Q And you can't use it, I take it; is that right?
23 A Right.
24 Q And what's been the -- when you discussed that,
25 what's been discussed?

14

1 A The say pains would still be there, so that there's
2 --
3 Q You wouldn't have the arm, but you'd still have the
4 pain?
5 A I'd still have the pain, right.
6 Q Have you ever had the problem with that arm prior to
7 what happened in this --
8 A No.
9 Q Are you able to do any outside activities? Are you
10 able to walk or exercise?
11 A I don't do anything.
12 Q Are you able to get out and do any activities that
13 you liked to do before?
14 A No.
15 Q What did you like to do before? What kind of
16 activities?
17 A Everything; bowling, pass football with my son, just
18 everything.
19 Q And none of those things you can do anymore?
20 A No.
21 Q Have you been able to do -- have you ever had a
22 really good day where you just felt so much better or

23 do you not have any good days?
24 A No.
25 Q It's continually like it is today?

15

1 A Right.

2 MR. CONNELL: Thank you.

3 THE COURT: Mr. Fultz.

4 CROSS-EXAMINATION

5 BY MR. FULTZ:

6 Q Ms. Powell, my name is Matt Fultz. We met a couple
7 years ago at your deposition. I just want to ask you
8 a couple of questions today. Are you good to go or
9 do you need to --

10 A No. I'm okay.

11 Q Ms. Powell, you mentioned that at no time has your
12 arm pain been alleviated at all by this spinal cords
13 stimulator; is that correct?

14 A Right.

15 Q So, you never told the doctors that it got any
16 better?

17 A No. When I had the first trial part done, it was --
18 I was hopeful that it would help, because I can feel
19 it, of course. But it doesn't take away from my arm.

20 Q You said you get the spinal cord stimulator in June
21 of last year?

22 A I think it was June or July of last year.

23 Q June or July.

24 A Yeah.

25 Q But so, at no time after have you had the full

16

1 stimulator inserted has it improved your pain?
2 A Right.
3 Q Was Dr. Simons the first mental health professional
4 you've ever been to?
5 A Yes.
6 Q And who referred you to Dr. Simons?
7 A Dr. Kang.
8 Q Were you initially referred to him for an evaluation
9 regarding the spinal cord stimulator?
10 A Yes.
11 Q And why was that?
12 A I don't know.
13 Q But you know that you were referred to him in an
14 effort to alleviate you for your ability to have the
15 spinal cord stimulator to hopefully alleviate pain in
16 your right arm; is that correct?
17 A Right.
18 Q Has Dr. Simons recommended that you attempt to be
19 more active?
20 A Yes.
21 Q He suggests -- does he suggest that you try to
22 participate in more of your children's activities?
23 A Uh-huh.
24 Q Get out of the house more often?
25 A Right.

17

1 Q What is preventing you from doing that?
2 A The pain, because I can't.
3 Q Does the pain prevent you from leaving the house?
4 A It does. I'm always crying, always miserable from

5 it. So, therefore, I just can't -- like the kids
 6 can't stand me because I never want to go do anything
 7 with them.

8 Q Do you believe that you have the ability to perform
 9 any kind of employment?

10 A No.

11 Q Why not?

12 A I can't. I'm constantly in pain, the medicines I'm
 13 on, constantly tired. I just can't deal -- I can't
 14 function at home.

15 Q I notice you're holding your right arm up. Do you
 16 tend to favor your right arm and hold it?

17 A Yeah. I'm always trying to move it just to get my
 18 mind away from it, but it doesn't do anything.

19 Q I also notice you're motioning a lot with your left
 20 arm. Do you have any pain in your left arm?

21 A Uh-uh.

22 Q Are you able to use your left arm for things that you
 23 would normally use your right arm for?

24 A Right.

25 Q But you are right-hand dominant?

18

1 A Right.

2 Q Can you write with your left hand?

3 A Not legibly, by I try.

4 Q Do you have a computer at home?

5 A Yes.

6 Q Do you use the internet?

7 A No.

8 Q Can you type?

9 A No.

- 10 Q Prior to working for Petsmart, I understand you had
11 your own grooming business; is that correct?
- 12 A Right.
- 13 Q Did you have employees?
- 14 A No.
- 15 Q Describe the scope of the business for me.
- 16 A Just -- I had like 11 rooms for boarding. I did the
17 grooming, day care, doggy daycare, so people would
18 drop their dogs off for daycare and come pick them
19 back up.
- 20 Q How did you get clients for this business? Did you
21 advertise, word of mouth, how did you get out there?
- 22 A Advertise.
- 23 Q Did you field phone calls at the business to bring in
24 clientele when they called?
- 25 A I'm sorry, I don't --

19

- 1 Q If somebody wanted to board their dog, I assume you
2 would answer the phone, set up that appointment?
- 3 A Right.
- 4 Q Same thing for the grooming?
- 5 A Right.
- 6 Q Did you do your bookkeeping for the income at that
7 business?
- 8 A My mom did most of that.
- 9 Q Your mom helped you with that, okay. How was that
10 business formed? Was it an LLC, a partnership, a
11 sole proprietorship?
- 12 A My parents did most of that. I'm not --
- 13 Q And how long was that business in operation?

- 14 A About a year and a half.
- 15 Q Prior to that, you were working for a hotel; is that
- 16 correct?
- 17 A Right.
- 18 Q what did you do there?
- 19 A Front desk and then got promoted to two other
- 20 departments doing telephone calls for RCI, booking
- 21 timeshares. And then promoted to the paper
- 22 department with the leases and all that that we would
- 23 deal with.
- 24 Q what do you mean the paper department?
- 25 A Like when they would sell a timeshare, that would

20

- 1 send the files and stuff up to us for us to put in
- 2 order for the bank and all.
- 3 Q It was a desk job?
- 4 A Right.
- 5 Q And you were also previously in a department where
- 6 you were answering the phone and doing bookings on
- 7 the phone?
- 8 A Right.
- 9 Q Was that exclusively -- the job duties there
- 10 exclusively limited to what you would consider desk
- 11 work?
- 12 A Yes.
- 13 Q Do you think that you would be capable of doing that
- 14 today?
- 15 A No.
- 16 Q why not?
- 17 A I can't. Like right now I just can't -- the pain.
- 18 That's all I think about is the pain.

Page 17

19 Q And the pain we're talking about is in your right
20 arm, correct?
21 A Right.
22 Q And you didn't have any pain in your left arm?
23 A Right.
24 Q Do you recall recently, I believe in May of this year
25 meeting with a gentleman named Glen Adams to have a

21

1 vocational assessment done?
2 A I do.
3 Q And how long did you meet with Mr. Adams?
4 A It was probably an hour and a half or so.
5 Q And were you able to sit through that evaluation
6 comfortably?
7 A I was trying to rush to get it over with.
8 Q How did you get to that evaluation?
9 A My dad.
10 Q Are you trying to be more active as Dr. Simons -- are
11 you trying to be more active?
12 A Not really. Every time I see him, he ask me what
13 I've done to try to -- and it's nothing. I just
14 can't get -- I just can't get myself to do it.
15 Q Do you want to become more active?
16 A Oh, yeah. I would love that.
17 Q Are you working with Dr. Simons towards that goal?
18 A He's trying to get me to get out and do things, a
19 little bit at a time.
20 Q So, Dr. Simons thinks -- in your interactions with
21 Dr. Simons, it's your understanding that he wants you
22 to be more active?

23 A Right. And accept that -- he's trying to get me to
24 accept that it's not going better and to try to do
25 things to take my mind off of it.

22

1 MR. FULTZ: Commissioner, that's all I have.

2 THE COURT: Any redirect?

3 MR. CONNELL: No, Your Honor.

4 THE COURT: You can step down. Wait. Hold on a
5 second.

6 EXAMINATION

7 BY THE COURT:

8 Q Ms. Powell, have you ever had any Workers'
9 Compensation claims or accidents before?

10 A No.

11 Q You have two children you said?

12 A Two.

13 Q How old are they?

14 A Fifteen and thirteen.

15 Q Fifteen and thirteen.

16 A Yes, sir.

17 Q And you testified at first when you got the spinal
18 cord stimulator trial, that helped some. But then
19 since that time, it hadn't really helped?

20 A I was hopeful that it helped with the trial and I was
21 hopeful that that was helping some. But when I got
22 the implant, it --

23 Q And you've had it implanted, it looks like since --
24 has it been since May of last year?

25 A May or June or July or last year.

23

1 Q So, over one year's time?

2 A Right.

3 THE COURT: You can step down. Any other
4 witnesses for the Claimant?

5 MR. CONNELL: No, Your Honor.

6 THE COURT: Mr. Fultz, any witnesses?

7 MR. FULTZ: None, Commissioner.

8 THE COURT: That'll conclude this hearing.

9 (THESE PROCEEDINGS CONCLUDED AT 1:37 PM.)

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
)
)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS'
COMPENSATION HEARING;

061212-0800718

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND
FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO
GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY
SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY
OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY
ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR
INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 26 DAY OF October,
2012.

NADINE A. GARRETT
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES AUGUST 11, 2016



Claimant's Name: Denica R. Powell Employer's Name: Petsmart, Inc.
Address: _____ Address: 1301 Oak Forest Lane
City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29577
Home Phone: _____ Work Phone: () - _____ Carrier: Phoenix Insurance Co
Preparer's Name: Gene M. Connell, Jr. Preparer's Phone #: (843) 238-5648

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 569.61 2. AWW: \$854.37 Date of Injury: 1/03/08
3. Type of injury and body part(s): upper extremity
4. Facts in controversy: Admitted injury; Is Claimant at MMI
5. Legal issues involved: 70% upper extremity and depression from the injury. Is this two (2) body parts thus making Claimant Totally disabled.
6. Unusual aspects: none
7. Witnesses (designate if expert):* Denica Powell; Glenn Adams, Vocational Rehabilitation expert
8. Exhibits: Deposition of Dr. Robert Leak
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Strand Orthopaedic records-1/16/08-1/20/11; Dr. Gregory Kang, Pain, Spine & Sports Medicine-records-12/9/10 - 2/16/12;
Dr. Jonathan A. Simons-records- 3/24/11 - 3/27/12; Dr. Michael M. Grant-record- 2/22/11; Dr. James Brennan-records-5/26/11;
Form 14-B Physician's Statement 4/2/12
10. Name, address, and specialty, if any, of the treating physician: Dr. Robert Leak, Strand Orthopaedic Consultants, Inc.,
849 82nd Parkway, Myrtle Beach, S. C. 29572-4612; Dr. Gregory Kang, Pain, Spine & Sports Medicine, 3029 New Castle Loop,
Myrtle Beach, S. C. 29588; Dr. Jonathan Simons, 1506 Azalea Dr., # 602, Surfside Beach, SC 29575; Dr. James Brennan, 1204 E.
Cheves St., Florence, S. C. 29506
11. Impairment rating(s); body part(s); physician and date of opinion: 70% (right upper extremity) Dr. C. Gregory Kang 2/16/12
12. I am amending my Form 50/51 in the following manner: _____

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

Signature: [Signature]

Email: _____

Date of hearing: June 12, 2012 1:00 PM

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF HORRY	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 0800718
Denica R. Powell,	)	
	)	
Claimant,	)	
	)	
vs.	)	NOTICE OF WITNESSES AND
	)	WRITTEN REPORT(S)/PHYSICIAN
Petsmart, Inc.,	)	OR OTHER EVIDENCE TO BE
	)	INTRODUCED ON BEHALF OF
	)	DENICA POWELL
	)	
Employer,	)	
	)	
and	)	
	)	
Phoenix Insurance Company,	)	
Carrier,	)	
Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; F. REID WARDER, JR., ATTORNEY FOR EMPLOYER/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Employee/Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Employer/Carrier, to wit:

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGES</u>
1. Deposition of Dr. Robert Leak	01/12/10	1 - 29
2. Strand Orthopaedic – Records	01/16/08 – 01/20/11	30 -95
3. Dr. C. Gregory Kang- Records	12/09/10 – 02/16/12	96 - 105
4. Dr. Jonathan A. Simons-Records	03/24/11 – 03/27/12	106 - 112
5. Dr. Michael M. Grant- Assessment	02/22/11	113
6. Dr. James Brennan—Records	05/26/11	114 - 116
7. Physician's Statement- Form 14-B	04/02/12	117

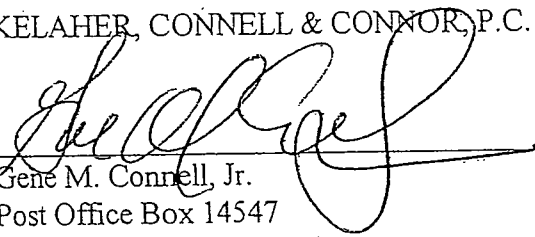
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any

of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant/Employee.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant/Employee: a) Denica R. Powell b) Glenn Adams

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
Post Office Box 14547
Surfside Beach, S.C. 29587
(803) 238-5648
Attorney for Claimant/Employee

May 25, 2012
Surfside Beach, S.C.



Claimant's Name: Denica R. Powell Employer's Name: Petsmart, Inc.
Address: _____ Address: 1301 Oak Forest Lane
City: Myrtle Beach State: SC Zip: 29579 City: Myrtle Beach State: SC Zip: 29577
Home Phone: _____ Work Phone: _____ Carrier: The Phoenix Insurance Company
Preparer's Name: F. Reid Warder, Jr. Preparer's Phone #: (843) 577-5732

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$569.61 2. AWW: \$854.37 Date of Injury: 1/3/08
3. Type of injury and body part(s): Right upper extremity injury.
4. Facts in controversy: Whether Claimant has reached maximum medical improvement; whether further medical treatment is necessary to lessen Claimant's causally related disability, and if so, the extent of same; whether Claimant has been paid temporary disability compensation for all compensable lost time; the extent of any causally related permanent disability or permanent loss of use to any scheduled body part; amount of credit that defendants are entitled to for overpayment of temporary total disability.
5. Legal issues involved: Claimant's entitlement to further medical benefits under §42-15-60; Claimant's entitlement to further compensation benefits under §42-9-10, §42-9-20, §42-9-30, §42-9-260, and Regulations 67-501 through 510; Defendants' entitlement to credit for overpayment of temporary disability compensation under §42-9-210.
6. Unusual aspects: None of which the Defendants are aware.
7. Witnesses (designate if expert):* Employer representative of Petsmart, Inc. may testify.
8. Exhibits: See attached Notice of Submissions.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Submissions and Claimant's APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. Robert Leak (orthopedic surgeon) and Dr. Gregory Kang (pain management specialist).
11. Impairment rating(s); body part(s); physician and date of opinion: 70% to the right upper extremity per Dr. Kang on 2/16/12.
12. I am amending my Form 50/51 in the following manner: _____

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

Signature:  Email: reid@woodwarder.com

Date of hearing: 6/12/12 1:00 p.m. Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF HORRY	)	WORKERS' COMPENSATION COMMISSION
	)	
Denica R. Powell,	)	W.C.C. FILE NO.: 0800718
	)	
Employee/Claimant,	)	
	)	
-vs-	)	NOTICE OF WITNESSES AND
	)	WRITTEN MEDICAL REPORTS
	)	TO BE INTRODUCED AS DIRECT
Petsmart, Inc.,	)	EVIDENCE
	)	
Employer, and	)	
	)	
The Phoenix Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: Gene M. Connell, Jr., Esquire and South Carolina Worker's Compensation Commission:

YOU ARE HEREBY NOTIFIED THAT F. Reid Warder, Jr., pursuant to the provisions of the South Carolina Workers' Compensation Act and S. C. Code section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants; to wit:

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>NUMBER OF PAGES</u>
--------------------------------	-----------------------	------------------------

1. Vocational Assessment	05/25/12	Pages 11
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YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians-others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Employer Representative of Petsmart, Inc. may testify



F. Reid Warder, Jr.
Attorney for Defendants

Dated: May 29, 2012

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0800718

DENICA R. POWELL,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	DEPOSITION OF DR.
	)	ROBERT SIMON LEAK
PETSMART, INC.,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
THE PHOENIX INSURANCE COMPANY,	)	
	)	
Carrier/Defendants.	)	
	)	

The deposition of DR. ROBERT SIMON LEAK was taken pursuant to Notice under the South Carolina Rules of Civil Procedure at Strand Orthopaedics in Myrtle Beach, South Carolina on January 12, 2010, beginning at 12 o'clock noon before Joan B. Branham, a Notary Public in and for the State of South Carolina.

JOAN B. BRANHAM
Court Reporter
910 Cherokee Road
Florence, South Carolina 29501
(843) 662.4163

APPEARANCES OF COUNSEL:

For Employee/Claimant: Gene M. Connell, Jr., Esquire
Kelaher Cohnnell & Connor
P.O. Drawer 14547
Surfside Beach, SC 29587-4547

For Employer/Defendants: Matthew J. Fultz, Esquire
Wood & Warder
P.O. Box 20500
Charleston, SC 29413

Also appearing: Denica R. Powell, Claimant

COURT REPORTER'S NOTE: -- indicates interruption;
incomplete sentences; trailing off; unfinished sentences.

JOAN B. BRANHAM
Court Reporter
910 Cherokee Road
Florence, SC 29501
(843) 662-4163

STIPULATIONS:

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above-entitled action, or for both purposes;

That all objections would be reserved until the time of the trial except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was waived.

DR. ROBERT SIMON LEAK, being first duly sworn, deposed as follows:

DIRECT EXAMINATION BY MR. FULTZ:

Q. OK, Doctor, I just introduced myself off-the record a minute ago. But again, my name is Matt Fultz, and I am here on behalf of the employer and their Workers' Compensation carrier in this matter. We are here today to take your deposition regarding the

treatment of Ms. Powell, and just want to ask you a few questions. If you could begin by giving your full name.

A. Robert Simon Leak.

Q. And if you could give a brief CV for me.

A. I graduated from the University of Oklahoma undergraduate degree in chemistry. And then I graduated from Oklahoma Medical School in '96 with an M.D. and then I did orthopaedic surgery residency at the Oklahoma Health Science Center. And then after the completion of that five-year training, I did a one-year hand surgery fellowship in Philadelphia. And then after that, I came here and I have been in private practice for about eight years in hand surgery.

Q. And has that all been here with this organization?

A. It has all been here with Stand Orthopaedics Consultants, yes.

Q. OK. Could you please tell me what the current diagnosis of Ms. Powell is?

A. The last time I saw her was, let's see, looks like the last time I saw her according to my records was 5-18-2009, and my last diagnosis was right hand palmar cutaneous nerve neuroma. Status post media nerve exploration.

Q. OK. Tell me exactly what that means.

A. What that means is that her nerve is still really irritated after her carpal tunnel release and I had recommended that we explore her nerve to see why.

Q. You say you recommended exploring her nerve to see why, exactly what type of exploration or what type of procedure are you talking about there?

A. Well, the -- what we do is we reopen her incision where we had previously done the carpal tunnel release and we extend it more proximally or further up the forearm and we look all the nerve and see if the nerve is still irritated. If the nerve is still inflamed and irritated, we wrap this thing called a nerve tube around it to try and calm down the nerve.

Q. So, it would be an exploratory incision and determine if it is, in fact, irritated further up, and you would insert something called a nerve tube?

A. Correct.

Q. OK. Is it your opinion to a reasonable degree of medical certainty that all of her complaints with -- with her right upper extremity is due to her on-the-job injury?

A. Yes.

Q. OK. Have you had an opportunity to read Dr. Wilkins' April 4, 2008, note?

A. I don't recall it.

MR. FULTZ: OK. I have got a copy of it. I am sure you have a copy, too.

MR. CONNELL: I do. Are you going to show it to him?

MR. FULTZ: Yeah.

A. OK.

Q. OK. Now, looking at that note, Dr. Wilkins indicates that I believe he says no carpal tunnel, no median nerve involvement by mass of wrist could lead to the upper extremity tremors. Would you agree with that?

A. "Certainly no mechanism by which any blank..."

COURT REPORTER'S NOTE: Blank refers to a blank line in the doctor's notes from which Dr. Leak is reading.

A. (continuing answer) carpal tunnel nor median nerve involvement by mass of the wrist could lead to upper extremity tremor." As far as in general, median nerve compression does not cause a tremor. If you wanted a definitive answer on that, I would say that neither Dr. Wilkins nor I are neurologists.

Q. Are you aware of the tremors that Ms. Powell has been complaining of?

A. I would imagine she has probably mentioned them to me. Let's see, again, I haven't seen her in a long

time.

MR. FULTZ: Right.

A. Most of my notes discuss the nerve-type pain she is having.

MR. FULTZ: Correct.

A. So, I don't have anything documented about her tremors.

Q. OK. So, -- so, you don't have any notes about --

A. Uh-uh.

Q. -- her complaining of tremors?

A. Correct.

MR. FULTZ: OK. Gene, if it is all right, I am going to show the Dr. Haskins' IME report which you also have.

MR. CONNELL: No objection.

MR. FULTZ: OK. Great.

Q. This is Dr. Haskins' independent medical evaluation on July second of this -- of last year.

A. OK.

MR. FULTZ: Take a minute to glance over that, if you like.

DR. LEAK: OK.

Q. OK. And, as you will note in that report, Dr. Haskin indicates that, I believe he says specifically: "There is no problem in the hand that

would cause spontaneous trembling and shaking."

They can't explain the behavior based on his examination. He goes on to say that he agrees with you, that she may have some mild neuralgia but he is doubtful that any surgical procedure is going to affect a positive outcome. He also goes on to place her at Maximum Medical Improvement indicated that she suffered a five percent impairment of the right upper extremity. Would you agree with Dr. Haskin's evaluation of Ms. Powell?

A. I would probably agree with him in the fact that our proposed surgery won't get rid of her tremor. I was never proposing for the tremor, so.

Q. So, with regard to these tremors, and obviously, you haven't had an opportunity to evaluate the tremors as you weren't -- your notes don't indicate you were you were aware of it, would that at all change your opinion on the viability of this surgery?

A. No.

Q. Is there any information in either of these reports from Dr. Haskins or, sorry, Dr. Wilkins that would affect your recommendations for this surgery and a potential nerve wrap?

A. No. I mean, I appreciate second opinions, but I don't -- they haven't really changed my mind, no.

Q. OK. So, it is your opinion to a reasonable degree of medical certainty that your recommended surgery, you would still recommend the surgery to relieve the pain to the nerve?

A. Correct.

Q. But, you have not had any opportunity to evaluate her for the complaints of tremors?

A. Correct. Yeah. Prior to proceeding with surgery, if we were to get it improved -- approved, I would like to see her before that.

Q. Obviously, you can't really opine on this since you haven't had an opportunity, but do the tremors indicate anything to you off the top of your head? Anything different than what you have -- you have recommended today?

A. No, I -- I don't really know what to make of the tremors.

Q. Is it possible that these tremors that Ms. Powell is complaining of could be an indication of some other symptoms, I am sorry. Is it possible that these tremors could be an indication of some other neurological problem that is not related to this injury?

A. It is possible. There is different types of tremors which could be fully evaluated by a neurologist.

Tremors also could be her response to pain. I mean, it is difficult to say what these tremors are from.

Q. Right. You mentioned in your May 18 report from last year at the bottom of the note you noted that "We already have had a second opinion in this case which agreed with the need for this type of surgery. Who gave that second opinion?

A. Well, there is a third hand surgeon in town besides myself, Dr. Haskins, there is a gentleman by the name of Dr. Everman and he apparently saw her and gave us another opinion.

Q. OK. I know you touched on it earlier, but could you explain the details of the proposed surgery?

A. Sure. The thing that had complicated her case in the first time which was probably documented in my op note was we had thought there was a tumor inside her media nerve when we operated, was identified on one of these old MRIs. So, we did probably more dissection to the media nerve than is normal in a carpal tunnel surgery. And I, my feeling is is that added dissection to the median nerve based on an MRI finding has caused her nerve to get more irritated and get more covered in scar tissue. So, the treatment for that to decrease the amount of pain she was having in the distribution of her media

nerve is to put this neuro wrap around it. That was -- and I have had fairly good results with those lately. So that was the only thing I -- I had offered that to her to see if we could help her pain in her localized pain.

Q. Tell me exactly what a nerve wrap is and does.

A. What -- what a nerve wrap does is we never -- when you operate, when you open up the body and you operate on a nerve, sometimes moving the nerve around makes it really inflamed and you get a little blood around it and that as the person is healing that blood sticks to the nerve and it sticks to the skin, you get all this scar tissue. And then when you move the skin, it pulls on the scar tissue. So, in the old days, we didn't have these nerve tubes so we would wrap veins around them. But probably, recently, in the last four or five years, they have developed these synthetic nerve tubes which are, I am not exactly sure what they are made of, I would be happy to find it for you on the manufacturing box, but they are made out of this synthetic stuff you wrap around the nerve. Then with time, this stuff breaks down and allows the nerve to heal in an unscarred position. So, that is essentially what they are. They are fairly new and the results have

been promising.

Q. How many times have you performed this proposed surgery?

A. I would probably say probably five times. They are not very complicated. And, I have done them in patients similar to -- to this patient.

Q. And, if you could, briefly describe the result of those surgeries that you have. Have they been successful?

A. I would say in general, yes. That is why I keep doing them. I have done one, you know, I might have done even more than five because I did one a long time ago that did great. And I have done two recently. One on a similar case to this who has done very well. So, I still have confidence that this would help her.

Q. OK. If you could, estimate how long would the recovery time be for surgery like this?

A. I would probably say, it is not a huge --dissection is not a huge recovery, probably eight weeks.

Q. And, what would you anticipate her prognosis to be after the surgery, best case scenario and a worst case scenario?

A. The best case scenario is that that localized pain is a whole lot better. I certainly would never

guarantee you that all the pain is better. I would certainly say that this is the last, this is the last potential surgery, and the last shot at making her hand better. As far as prognosis, I would think the attempt would be to -- to make -- I think will improve the nerve irritation. I don't think I can say it will totally get rid of it. So, there still would be a -- Dr. Haskins mentions there, he gives her an impairment of five percent. There would still be an impairment of the median nerve somewhere around that five percent number. Again, we would have to look in the Guides to the permanent impairment to figure out what that number would be for the median nerve.

Q. Um-hum. And, sort of on that same line of thinking, is it your opinion to a reasonable degree of certainty that this surgery would tend to lessen her impairment?

A. Potentially. I mean, if -- if the best thing that would happen with this surgery, absolutely, would be that we stick the dura tube in, we give it eight weeks, the nerve is no longer irritated, and then, yeah, that would lessen her impairment because we -- we would need to examine her and tell you for sure. The problem with that is, and it is the same problem

we have with Workers' Compensation cases every time is that for that nerve tube to really work, it takes about probably twelve months. So, if you rate and release someone at MMI at eight weeks, you are probably not there. So, yeah, most people end up getting released prior to their full -- full relief of symptoms. So, can I tell you it is going to be less than five per cent? I don't know.

Q. But you would anticipate regardless of the -- the previous five percent rating, you would anticipate that this surgery would tend to lessen her impairment as of today --

A. Correct.

Q. -- whatever that might be?

A. Correct.

Q. All right. If you had to estimate an impairment today, without the surgery, what would you put a -- what would you suggest she was?

A. You know, I -- I think that number that he has is pretty close. There's an impairment number for nerve irritation. I can't remember exactly what it is, but it's somewhere or I would say five to eight percent. I -- it's not a huge number.

Q. OK. So you think his -- his impairment rating is fairly close?

A. Uh-huh.

Q. But you would disagree with his conclusion that Ms. Powell is at Maximum Medical Improvement?

A. Correct.

Q. I know we kind of touched on this and -- and you discussed the difficulty of ascertaining it, but what would you expect hypothetically her impairment to be after the surgery?

A. Yeah, it's hard to say for sure. I don't -- I mean, it would be based on the rating for the median nerve and they divided into a rating for the motor loss and the sensory loss and we know she has some sensory loss which may be improved by the surgery. I don't think she has motor loss, but, again, I would have to examine her and tell you for sure. But, again, I think that number is the number. I bet he used the number for the median nerve, but it's not sitting here in front of me, so I can't tell you for sure.

Q. OK. And you discussed wanting to evaluate her again, obviously, before performing this surgery. With that evaluation and -- and this information about these tremors in these other reports from different doctors, is it possible that this situation with the tremors would lead you to not

recommend this surgery down the road?

A. Not so much the tremors, but if she -- if I saw her again and her pain was a lot lessened from this palmer cutaneous nerve neuroma, then I would say to her maybe the surgery -- you don't need the surgery. Now, if her pain was exactly the same and she can't use her hand, then I would say that we'd do the surgery.

Q. OK. So it's been long enough since you've seen her, you would want to evaluate her again prior to definitively going with the surgery?

A. Correct. I -- I would like to see her before surgery. There's no -- I haven't -- I mean, that's a long time since I've seen her.

Q. Right.

A. I don't like to operate on people unless I've seen them recently.

Q. Are your conclusions and your recommendation for this surgery based on her subjective complaints?

A. Well, subjective in my objective findings from the office. There isn't a -- there is certainly is not a test that I could say to you let's get a nerve test and you'll identify a palmer cutaneous neuroma. It's not a -- there -- there's no test for that other than subjective and objective findings by the

doctor.

Q. And -- and what were your -- what is the objective evidence that you base your conclusion on?

A. The objective evidence is listed here on my note from the date 5-18-2009 where I say pain -- "She has pain emanating from the median nerve up in the palmer cutaneous nerve distribution and she has some numbness in the volar base of the thumb." That's really all you can do to make that diagnosis.

Q. And you mentioned that this would be sort of a last surgery, last effort to reduce this pain. Is it a one-time thing or do you have to go back in and remove the nerve wrap or?

A. No, the nerve wrap degenerates with time, and so it's a one-time.

Q. So it's a one-time operation?

A.

Q. And what are the potential complications with this surgery?

A. I mean, there is a slight possibility with any nerve surgeries that you make the person worse, because the nerve is already irritated and then you're going in there and you're dissecting out the nerve and putting the tube around it, and I always warn people that potentially you could be more irritated after

the nerve surgery.

Q. So there is a potential for even worsening of the situation?

A. Correct.

Q. I think you may have answered this, but I'll ask you anyway. What, if any, are the potential future treatments or even surgeries that may come after this recommended nerve wrap surgery?

A. The main thing she really needs after the nerve wrap is some hand therapy and with the idea of the thand -- hand therapy is that they work on desensitizing the nerve and, I mean, it's -- it's the same thing she's had before where they -- she's sees the hand therapist three times a week for six weeks. They do local -- we call them modalities to the area to decrease the inflammation in the nerve.

Q. You mentioned that one of the difficulties with Workers' Comp is that nerve wrap surgery can take up to twelve months until you really feel a full effect of the relief. You also mentioned that you would anticipate about an eight-week recovery should everything go according to plan. What would your estimate be for when Ms. Powell would be able to return to work?

A. Probably eight weeks.

Q. So eight weeks you think she would be able to go back to work?

A. One second.

Q. You said you've done approximately five of these nerve wraps. Is it a fairly common procedure with patients like Mrs. Powell -- Ms. Powell?

A. Yes.

MR. FULTZ: I think that's all I've got, Gene.

CROSS-EXAMINATION BY MR. CONNELL:

Q. Doctor, as you probably know, the reason why we're here is because they do not want to provide the surgery for Ms. Powell. That's -- that's why you haven't seen her in all this time and it's our intent to have a hearing in a couple of days and so that's -- I -- sometimes I find that the doctor doesn't really understand why there's such a length of time between May and now, but I -- I'm going to tell you the length of time because there is a dispute about the issue of this surgery which Ms. Powell wants to have.

A. OK.

Q. I have asked Ms. Powell to come today. She is still in the same brace that I think that she left you with. Would that be something she would need after the surgery that you propose?

A. She would need some type of dressing or brace on there for a while as the nerve calms down, correct.

Q. And Ms. Powell reports and continues to report since May that she's having intense pain. Do you think that this particular surgery that you recommend would help lessen that pain that she -- she's having now?

A. Yes. If she's still having pain in the distribution of that nerve root I examined in May, then yes.

Q. All right. And, Doctor, the issue has come up as to what is a nerve study. Is that a generally-accepted medical procedure?

A. Yes. A nerve study is a -- yeah, I mean, it's a good study for lots of different nerves. It's not going to work for her nerve.

Q. Right. And a nerve wrap, is that a generally-accepted medical procedure that is done all the time by hand surgeons?

A. Yes.

Q. And so there's nothing -- there's nothing racy or sexy about it such that you're doing something that -- that another hand surgeon does -- doesn't or wouldn't do?

A. Correct. We -- we've been wrapping nerves for years. We just always used a vein. We'd harvest a

vein and wrap it. Now, we have these nice tubes that are bigger and probably are better.

Q. Kind of like a sheath is what I'm think --

A. Correct.

Q. -- what I'm look -- all right. And, Doctor, is this going to require a hospitalization for her?

A. No.

Q. Out-patient surgery?

A. Yes.

Q. It'd take one day, two, how?

A. Yeah, we do it all in a day. I mean, her surgery itself will be probably an hour, hour-and-a-half.

Q. All right. She continues to hold her bicep with her other hand. What does that tell you about -- about the problem that she's having with her -- with her wrist?

A. I mean, without examining her, I would probably say it's either from some weakness or some -- from pain.

Q. Doctor, when you said eight weeks that she would be out, is it individualized to the person where she may be out less or may be out more depending on how she responds?

A. I think that that's correct, yes.

Q. All right. And, Doctor, the neurologist, you -- you indicated that she's having tremors, it would be

your opinion she seek treatment by a neurologist?

A. Correct.

Q. And you would refer her to the tremors to a neurologist?

A. Yes, I would.

Q. And, Doctor, assuming she didn't have the tremors before, which she did not I'll tell you based on her testimony and work history, she did not have the tremors and now, she has those -- after the injuries she has had. Are the tremors thus related to what has happened to her in regard to her arm or hand?

A. I mean, we -- I think we all accept that she's had a nerve injury to that arm and tremors can follow nerve injuries so --

Q. All right.

A. -- I don't think that's too far of an assumption.

Q. It is kind of a cause and effect, is it not? If you didn't have it before and you have it now, it's pretty clear that you probably have --

A. Yes.

Q. All right. Now, what other treatment besides -- would -- would a neurologist handle the treatment to her hand and arm for the tremors?

A. Yeah, and the treatment for tremors is mainly medical, taking a pill or something, so there's not

Q. I understand.

A. -- too much to be done for that.

Q. And what neurologist would you -- is there a specialist -- a specialized neurologist you'd refer her to for that or who would you refer her to?

A. You know, I -- there's a group of neurologists that are in Myrtle Beach we refer to, that's all.

Q. And who are you talking about, what -- what neurology group?

A. It's the Strand Regional Specialty Associates.

Q. All right. And it's your opinion that that would be appropriate to send her for --

A. Yes.

Q. -- review of? All right. And, Doctor, I know you said you hadn't seen her since May, but you'd like to see her at least one or two more times before you do this particular procedure?

A. Yeah, one time prior to surgery, yeah.

Q. And are you going to need any other additional testing to be done?

A. No.

Q. And after the surgery itself, how many follow-up visits would you intend that she would have?

A. I would usually do my usual regimen, I see them at

one week, two week and six week, and then depending on how she's doing at that point, either make the decision about the eight weeks at work, and then I like to see them, you know, after they've been working to see how it's doing.

Q. There are -- the notes that we're -- that we have, it looks like you've seen this lady for quite a length of time, am I right about that? And it also looks like from the notes that we have from May that you tried to get Workers' Compensation to approve this surgery, is that right?

A. Correct.

Q. And they would not approve it, is that why it was never done?

A. Yes.

Q. And were you able to get the Workers' Compensation insurance carrier to allow you to see her again after May of 2009?

A. I think we've just kind of been in limbo since then, and I didn't know what was going on.

Q. All right. And is -- is the treatment that you recommend, the nerve wrap, is that the best and most reasonable treatment in your opinion based upon your review of her entire case from the day you started seeing her until now?

A. Yes.

Q. And is there any other treatment beyond the neurology treatment that you think would tend to -- to help lessen her pain or her disability at this point other than what you've already recommended?

A. Yeah. The only other treatment would be medical meaning taking a -- a pill.

Q. All right. And she apparently has trouble even to -- even now grasping with her hand and weakness in her hand. Is this surgery going to help her get some of that back?

A. It'll help.

Q. And, I think you said you'd done it five times. That doesn't mean that there's any experimental or specialized --

A. No. No.

Q. It's just that not done that often, is that what I'm understanding?

A. Just done -- not done that often.

Q. And -- and it is a generally-accepted surgical procedure that's performed all over the United States now?

A. Yes.

Q. And is there any other modality, medicine, or anything else that would help her at this point

other than what we have talked about today?

A. Yeah, I can't think of anything else we haven't tried. We've tried the nerve medicines. We've tried lots of different things.

Q. So, I mean, you're -- you're fully satisfied that you had used every conservative measure before trying the nerve wrap?

A. We've exhausted all conservative measures.

Q. And -- and when you say conservative measures, I'm talking about every measure that you learned through your training has been used on this lady's arm and wrist, is that right?

A. Correct. I mean, the main things are -- I'd list there, I mean we've tried the hand therapy and that's number one. Number two is the splints. Number three is the steroid dose pack where they take steroids. We tried rest. So, I mean that's -- you know, that's all that's left.

Q. And there isn't anything else to do, is that right?

A. Correct.

Q. And if the nerve -- if this nerve wrap does not work well, there is nothing else that you know of?

A. Yeah. Well, I think if the nerve wrap didn't work at all, then -- then she's done.

Q. All right.

- A. I mean, there's nothing else we can do.
- Q. Is there any other specialist that she -- that you would recommend she see if that does not work?
- A. No. I mean, I think the only -- the only thing she would potentially need would be -- would be a medication to help for nerve pain.
- Q. All right. And if the nerve wrap does not work, how is that going to affect her ability to use her hand and arm?
- A. I mean, I think she'll have some limitation of use. When you have a painful nerve going into your hand, it's hard to use your hand.
- Q. So that's going to restrict her ability to use her hand in normal activities at home and at work, is that right?
- A. Correct.
- Q. And but at this point without having the nerve wrap and seeing how it works, it's hard to say what will happen until you do that, is that right?
- A. Right.
- Q. All right. I think that's all I have.
- MR. CONNELL: Do you have any questions?
- MR. FULTZ: Yeah, and just a -- and just a couple more.
- RE-DIRECT BY MR. FULTZ:
- Q. Mr. Connell touched on cause and effect regarding the tremors and -- and a neurology recommendation. Is it possible that her tremors and the neurological problems are not relating to this injury?
- A. It's possible.
- Q. Okay. And -- and -- and with Dr. Wilkins' report when he states that -- the report that you read a few minutes ago that he states the patient has obviously has a pre-existing history of psychological dysfunction. Is it possible that this is some dysfunction pre-dating this injury that could be causing these tremors?
- A. I mean, he mentioned the psychological dysfunction and psychological dysfunction doesn't generally cause tremors. I mean, I think that's where the neurologist decides where the tremors are coming from.
- MR. FULTZ: I think that's all I got, Gene.
- MR. CONNELL: OK. Thank you, Doctor, I appreciate it.
- A. Okay. Thank you.
- AND FURTHER THIS DEPONENT SAITH NOT.
- DEPOSITION WAS ENDED AT _____ a.m.

CERTIFICATE OF NOTARY PUBLIC

I, Joan B. Branham, do hereby certify that the foregoing deposition was taken by me, a duly authorized Notary Public, and the same transcribed as a correct transcription of the testimony taken at the time and place indicated therein;

That the witness was duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That I am not related to any of the parties or their counsel nor interested in the outcome of the foregoing litigation financially or otherwise.

Witness my official seal and signature at Florence, South Carolina this _____ day of January, 2010.

Joan B. Branham, Notary Public

My Commission Expires: 12-15-09

Robert S. Leak, M.D. 1/12/2010

29



STRAND ORTHOPAEDIC
CONSULTANTS, L.L.C.

PATIENT
INFORMATION

PATIENT NAME: LAST FIRST MI		TIME 2:31	DOCTOR 4	INT. B3
Mr. ☒ Mrs. ☐ Ms. ☐		DATE OF BIRTH		SEX (circle) M ☐ F ☒
Powell Denice R		MARITAL STATUS (circle one) S ☒ M ☐ W ☐ D ☐ Sep		HOME PHONE # 000/1
STREET ADDRESS		CITY, STATE, ZIP		SOCIAL SECURITY #
PO BOX		CITY, STATE, ZIP		WORK #
PATIENT'S EMPLOYER (Indicate if Student)		OCCUPATION/DEPARTMENT		WORK #
Pet Smart		CITY, STATE, ZIP		PHONE #
EMPLOYER'S ADDRESS		CITY, STATE, ZIP		PHONE #
NAME OF FRIEND OR RELATIVE NOT LIVING WITH YOU		CITY, STATE, ZIP		PHONE #
FAMILY PHYSICIAN		CITY, STATE, ZIP		HOW WERE YOU REFERRED TO OUR OFFICE?
Virginia Bell		CITY, STATE, ZIP		HOW WERE YOU REFERRED TO OUR OFFICE?
WHAT PART OF THE BODY ARE YOU BEING SEEN FOR TODAY?		INJURY? LIST DATE		1-3-08
R wrist R hand		INJURY? LIST DATE		1-3-08
WHERE DID INJURY OCCUR? WORK / AUTO / SCHOOL / OTHER		INSURANCE		

This section refers to your spouse (if applicable):

Mr. ☒ Mrs. ☐ Spouse Employer	Demond Powell	DATE OF BIRTH
SPOUSE EMPLOYER ADDRESS		SOCIAL SECURITY #
SPOUSE EMPLOYER ADDRESS		WORK #

If you are a minor, please fill out the following information:

MOTHER'S NAME	ADDRESS	CITY, STATE, ZIP
MOTHER'S SOCIAL SECURITY #	DOB	PHONE #
MOTHER'S EMPLOYER	ADDRESS	PHONE #
FATHER'S NAME	ADDRESS	CITY, STATE, ZIP
FATHER'S SOCIAL SECURITY #	DOB	PHONE #
FATHER'S EMPLOYER	ADDRESS	PHONE #

PLEASE NOTE: All charges are payable at the time of service. Please refer to our financial policy.

I authorize the release of any medical information necessary to complete this claim, and request payment of benefits either to myself or the party who accepts the assignment. I understand I am responsible for any amount not covered by my insurance.

I HAVE RECEIVED A COPY OF THE NOTICE OF PRIVACY PRACTICES FOR THE ABOVE NAMED PRACTICE.

SIGNATURE

Denice Powell

DATE

OVER



STRAND ORTHOPAEDIC CONSULTANTS, L.L.C.

Medical History & Review of Systems

Name: _____ MR #: _____

What are you being seen for today? _____

Please Check if You Have Experienced Any of the Following:

- | | |
|---|---|
| ☐ Change in Vision | ☐ Bladder / Kidney Infection |
| ☐ Shortness of Breath / Emphysema / Asthma | ☐ Kidney Stones |
| ☐ Heart Disease / Murmur / Irregular Heartbeat | ☐ Prostate Problems |
| ☐ High Blood Pressure | ☐ Sexually Transmitted Disease |
| ☐ Stomach Ulcers / Heartburn / Reflux / Vomiting Blood | ☐ Recent Change in Weight / Energy |
| ☐ Change in Bowel Habits / Rectal Bleeding | ☐ Skin Disease / Rash |
| ☐ Fainting / Dizziness | ☐ Complications from Anesthesia |
| ☐ Stroke / Seizures | ☐ Prolonged Bleeding |
| ☐ Diabetes | ☐ Depression / Anxiety |
| ☐ Hepatitis | ☐ Alzheimer's / Memory Loss |
| ☐ Arthritis / Joint Pain | |

Please Answer the Following Medical History Questions:

List All Hospitalizations / Surgeries (include dates):

Chest reduction, appendix

Family History of Illness: _____

Do You, or Have You Ever, Smoked? Yes Packs per Day: 12 Age Started: _____ Age You Quit: _____

Do You Drink Alcohol? No Average Drinks per Day / Week: _____

Current Medications (include strength & dosage): adacel XR, Lexapro

Allergies to Medication: No

Family History of Illness: _____

Please Answer to the Best of Your Knowledge:

Do You Take Aspirin or Blood Thinners (i.e., Coumadin, Plavix)? (Please List) No

Do you have a Family History of Osteoporosis? No

When was your last Bone Density? No Where? _____

Have You Ever Had an Allergic Reaction to Sulfonamide Drugs? No

Have You Ever Taken Any of the Following?

TYPE OF MEDS	YES/NO	NAME	REACTION
Anti-inflammatory Medication (Ibuprofen, Motrin, Aleve, Daypro, Relafen, Voltaren, Lodine, Cataflam, Arthrotec, Celebrex, etc.)			<u>N/A</u>
Acid Reducer / Ulcer Medication (Pepcid, Tagamet, Zantac, Prilosec, Prevacid, Protonix, Cytotec, Tums, Mylanta, Aciphex, Nexium, etc.)			<u>N/A</u>

Adriana Powell
Patient Signature

11/16/08
Date

(Reviewed & Annotated) Physician Signature

OVER

Rev. 10/07

arb / bsr

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 01/16/2008

MYRTLE BEACH OFFICE

HPI: Ms. Powell states that she works with veterinarians and was bringing a dog back after grooming and tripped over the dog and landed directly on her outstretched right hand approximately two weeks ago. She states that she has had significant pain in the hand and wrist since that time. Her initial films are read as negative. On one view, there is a question of possibility of distal radioulnar dissociation. The patient does have some pain in the region of the distal radioulnar joint as well as moderate discomfort in the region of the anatomic snuffbox.

X-RAYS: Repeat x-rays on AP view shows slight widening at the region of the distal radioulnar joint. The lateral view reveals slight elevation in this area of the radius as well. Clenched fist view shows no evidence of widening of any of the articulations of the wrist joint. There is slight irregularity on the scaphoid view and AP view of the scaphoid but no obvious fracture.

PLAN: Options and alternatives were discussed. We have placed the patient in a supine position in a long-arm splint and we will obtain a wrist CT and have her seen back in follow up by Dr. Leak. We have discussed the diagnosis potential of a scaphoid injury or a distal radioulnar joint injury with the patient. We will continue her out of work until being seen by Dr. Leak.

Steven M. Callihan, M.D.

SMC/kps/sri

Electronically Signed by: Steven M. Callihan, M.D. on Monday, February 11, 2008

Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Denise Powell is currently under my care. After
examining this patient it is my opinion that:

☒ He/She cannot return to work at this time.

☐ He/She can return to normal activities effective _____.

☐ He/ She can return to modified duty with the following restrictions:

No more than _____ hours a day.

No lifting greater than _____ pounds.

No use of _____.

Next appointment is scheduled for after CT scan & R. Leg.

[Signature]
Physician's signature

1/16/08
Date

GRAND STRAND REGIONAL MEDICAL CENTER

ER REPORT

NAME: POWELL, DENICA R
MED REC #:

PHYSICIAN: MEZA, YENNEY
ACCOUNT #:

PT: POWELL, DENICA R
DOS: 01/12/2008
DICT PHY: YENNEY MEZA, MD

CC: Hand pain.

HPI: A 31-year-old female with history of ADD consulted after falling 9 days ago on a dorsiflexed hand while grooming one of the dogs, where she works at. Subsequently, developed increasing pain and swelling that affected limb, went to Doctors' Care and had an x-ray, which was negative and put in a splint and discharged home. In the past, there were two previous occasions for worsening symptoms and discharged home. The patient comes in with worsening hand pain and swelling.

ROS: Otherwise negative including 10 systems.

PMH: Noted.

MEDS: Noted.

ALLERGIES: Noted.

SH: No smoking, drugs, or alcohol.

FH: Noncontributory.

PE: VITAL SIGNS: Temperature 97.3, blood pressure 147/84, respiratory rate 20. Pain scale 7 out of 10. GENERAL: In no acute distress, nontoxic, and well-appearing female. HEENT: Normocephalic and atraumatic. Pupils round and reactive to light. Mucous membranes are moist. LUNGS: Clear. HEART: Regular rate and rhythm. ABDOMEN: Soft. MUSCULOSKELETAL: Right hand examination does have some swelling on the dorsum at lower aspect of the hand. Cap refill less than 2 seconds. Median, ulnar, and radial nerves are intact. Palpable bilateral ulnar and radial pulses. She does have tenderness along the snuffbox area on the axial loading. She does have tenderness diffusely throughout the wrist area and does have a bit of swelling of the lower and dorsal aspect of the hand. Otherwise, she has no other acute findings. Arm, compartment soft, and full range of motion of the elbow without difficulty.

ER COURSE: In light of the patient's symptoms, x-rays of both hand and wrist were done to rule out any other occult fracture that mainly noticed on the initial x-rays. X-rays interpreted by me looks like a possible slight irregularity of the scaphoid with distal ulnar as well, but nothing is apparently acute, but just show some bony irregularities, which was treated with the splint. The patient will be put on a thumb spica and told to follow up with orthopedics doctor for reevaluation and continued care and evaluation.

IMP: Right hand contusion, possible scaphoid fracture.

DISPOSITION: Discharged home.

PLAN: Rest, ice, and elevation. Thumb spica. Neurovascularly intact gross splint placement. Follow up with orthopedics.

South Carolina PCI *LIVE* (PCI: OE Database COCQV)

Run: 01/14/08-15:03 by BAGLEY, CRISTIE B

Page 1 of 2

Diagnostic Imaging Report
GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 2957
Phone #: 8436921560 Fax #: 8436921555

Name: POWELL, DENICA R Loc: F.ED Radiology No:
DOB: Age: 31 Sex: F Status: DEP ER Unit No: F000531512
Phys: MEZYE - MEZA, YENNEY Acct: F01018906252
Reason For Exam: Exam Date: 01/12/2008

Exams: REASON FOR EXAM:
001171008 WRIST 3 VIEWS RIGHT FELL/ER 18

Exam: Right wrist series dated January 12, 2008.

Clinical History: 31 year old female status post trauma and concern for fracture.

Comparison: None.

Technique: Three views of the right wrist are available for interpretation without comparison studies.

Findings: Three views of the right wrist demonstrate no acute fracture or dislocation. Alignment is maintained.

Impression:

#1. Unremarkable right wrist series.

P, Dr. Meza

** Electronically Signed by ELIZABETH A KELLEY **
** on 01/13/2008 at 1838 **
Reported and Signed by: ELIZABETH A KELLEY

CC: YENNEY MEZA

Dictated Date/Time: 01/12/2008 (2318)
Technologist: DIANN M. JONES
Transcribed Date/Time: 01/13/2008 (1838)
Transcriptionist: FRAD.BAA
Electronic Signature Date/Time: 01/13/2008 (1838)
Printed Date/Time: 01/14/2008 (1504)

PAGE 1

Signed Report Printed From PCI

GRAND STRAND REGIONAL MEDICAL CENTER

ATT. PHY MEZA, YENNEY

NAME: POWELL, DENICA R
MED REC# . ---
=====

IN: ED/F.HIM/MEZYE/26MS8 S: 01/12/2008
D: 01/12/2008 22:32
T: 01/13/2008 03:23 CONF#: 795215 / JOB#: 26043213

MEZA, YENNEY

Electronically Signed by YENNEY MEZA on 01/13/08 at 2233

South Carolina PCI *LIVE* (PCI: OE Database COCQV)

Run: 01/14/08-15:03 by BAGLEY, CRISTIE B

Page 2 of 2



PATIENT: Powell, Denica
DOB:
MRN:
PHYSICIAN: Steven Callihan, MD
DATE: 1/24/2008

103467

EXAM: CT SCANS OF THE RIGHT FOREARM INCLUDING THE ELBOW AND WRIST AS WELL AS HIGH RESOLUTION CT OF THE RIGHT WRIST BOTH WITHOUT CONTRAST

HISTORY: The patient gives a history of an injury to the scaphoid bone in which in the process of a fall at work. She notes popping in the right elbow.

TECHNIQUE: A posterior splint is present extending from the distal arm to the wrist, and the patient's elbow joint is stabilized in flexion. Serial axial 1.3-mm thick contiguous slices were performed from the elbow through the wrist using a large field of view. This study was repeated using a smaller field of view and serial axial 1.3-mm thick slices.

FINDINGS: Evaluation of the elbow shows normal appearance of the distal humerus as well as the proximal radius and ulna. The shafts of the radius and ulna likewise are intact with no evidence for a fracture. The distal radius and ulna likewise are normal. Sequence performed using a small field of view to evaluate the wrist shows all the carpal bones, including the scaphoid bone are intact with no evidence for a fracture or a dislocation.

IMPRESSION: Normal study with no evidence for an occult fracture.

Beverly Genez M.D.
BG/lb

DD: 1/24/2008
DT: 1/24/2008
Job: 5474275

This document has been reviewed and electronically signed.

Beverly Genez MD

900 21ST AVENUE NORTH
MYRTLE BEACH, SC 29577
(843) 916-1700
(843) 916-9460 FAX

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 01/28/2008

MYRTLE BEACH OFFICE

HPI: The patient is a 31-year-old female who is here today for evaluation of her right wrist and right elbow. She had an injury on 01/03/08 when she fell at work landing heavily on her right wrist and her right elbow. Since that time she has had some popping and pain in her right elbow and also a lot of pain in her wrist. It has gotten quite significant. She did have a CT scan last week, as Dr. Callihan was worried about her scaphoid. The CT scan is negative for bone fractures. She continues to have a lot of pain. It has not gotten better with any type of rest or splinting.

EXAM: This is a healthy appearing 31-year-old female, in no apparent distress. On examination of her right shoulder, she has good range of motion. She is able to raise her arm above her head fairly easily. On examination of her right elbow, she has good flexion and extension. She has a lot of pain along the lateral side of her elbow and also some pain medially. On examination of her right wrist, she has a lot of pain in her scaphoid area and also out over her distal ulna. She can make a full fist.

X-RAYS: Repeat x-rays were taken today in the office including scaphoid view. They show no acute abnormalities.

ASSESSMENT:

1. Right elbow instability.
2. Right wrist sprain.

PLAN: I am concerned about the amount of pain and instability that she is experiencing. I recommended to her that we get a right elbow MRI and a right wrist MRI. I think that will help us to decide what to do with these two injured structures. She was placed back in a splint today. I will see her back after her MRIs.

Robert S. Leak, M.D.
RSL/kps

Electronically Signed by: Robert S. Leak, M.D. on Monday, February 11, 2008

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 02/11/2008

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here today for a recheck of her right wrist and her right elbow. She is still having a lot of pain in her right wrist, particularly on the radial aspect of her right wrist. She also continues to feel the popping sensation in her elbow.

EXAM: On examination, this is a healthy appearing 31-year-old female, in no apparent distress. She does have excellent elbow range of motion with palpation of the radial head with pronation and supination. There is some clicking and what it feels like some synovitis over the radial head. The elbow feels stable to stressing. On examination of the right wrist, her motion is limited secondary to pain. There is a positive Watson's maneuver, which elicits pain and some instability. She is less tender over her scaphoid. She is still tender over her first extensor compartment as well. She can make a full fist.

X-RAYS: X-rays of her right wrist taken today in the office including a clenched fist view show slight widening of the scapholunate interval. X-rays of her right elbow showed no acute abnormalities.

ASSESSMENT:

1. Right wrist injury, likely partial scapholunate ligament tear.
2. Right elbow pain.

PLAN: I discussed with her again that I think she would be best served by a right wrist MRI. I think this would allow us to evaluate the status of the scapholunate ligament and help decide on treatment. I have discussed with her that Workmen's Compensation is currently denying the MRI. If they would like a second opinion on this MRI, they are more than welcome to send her to another physician for management of this patient. My recommendation is a wrist MRI. She was placed back in a splint today. She will be on no use of that arm at work. Recheck with me after the MRI.

Robert S. Leak, M.D.

RSL/Nir/sri

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

- ☐ He / She can return to full duty effective _____.
- ☐ He / She is out of work at this time.
- ☒ He / She can return to light duty with *NO* use Right / Left Arm.
- ☐ He / She can return to light duty with no lifting _____ pounds with Right /
Left Arm.
- ☐ He / She can return to light duty _____.

Next appointment is scheduled for _____.

Rm Leak
Physician's signature

2-11-08
Date



103467 (31)



PATIENT: Powell, Denica
DOB:
MRN:
PHYSICIAN: Robert Leak, MD
DATE: 2/16/2008

EXAM: MRI RIGHT WRIST WITHOUT CONTRAST

HISTORY: The patient gives a history of a fall at work with subsequent pain on the lateral aspect of the wrist radiating into the interphalangeal joints of the thumb.

COMPARISON STUDIES: None

TECHNIQUE: Coronal T2 with fat suppression, coronal T2* gradient echo volume, coronal T1, coronal STIR, axial T1, axial T2 with fat suppression, sagittal T1, sagittal STIR.

CONTRAST: None

FINDINGS:

Bones: The study is performed with the wrist in dorsiflexion and the fingers flexed. Bones have normal alignment and marrow signal is normal. There may be very slight widening of the space between the scaphoid and the lunate bones but this finding may be positional.

Muscles and Tendons: Visualized intrinsic muscles have normal configuration and signal. Axial T2 weighted images demonstrate tenosynovitis of the tendons and the second, third, fourth, and fifth dorsal compartments as well as in the first dorsal compartment. No tendon rupture is identified. Tendons of the carpal tunnel have normal appearance. However, the median nerve appears to be enlarged and the nerve bundles appear to be enlarged with low signal fibers separating the nerve bundles. This finding is suspicious for a lipofibromatous hamartoma of the median nerve. Recommend repeating the study with high resolution images through the median nerve with the wrist in neutral position to evaluate this finding further.

There is no evidence for contusion or occult fracture.

IMPRESSION: MRI of the right wrist demonstrates:

1. Abnormal appearance of the median nerve; high resolution imaging of the median nerve with the wrist in neutral position is recommended.
2. Tenosynovitis of multiple dorsal compartment tendon sheaths.

Beverly Genez M.D.
BG / sl

DD: 2/18/2008
DT: 2/18/2008
Job: 5600335

900 21ST AVENUE NORTH
MYRTLE BEACH, SC 29577
(843) 916-1700
(843) 916-9460 FAX

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: **DENICA R POWELL**

Date of Birth:

Date of Service: 02/25/2008

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here to go over MRI results of her right wrist. She is still having a lot of pain and she feels her arm shaking.

EXAM: On examination of her right wrist, she has a lot of pain along her first extensor compartment. Markedly positive Finkelstein's test. She has some swelling dorsally along her wrist as well.

MRI: Her MRI was reviewed. It shows tenosynovitis of the first, second, third, and fourth compartments.

ASSESSMENT:

1. Right de Quervain's tenosynovitis.
2. Right dorsal extensor tenosynovitis.

PLAN: An injection was made along her first extensor compartment. She tolerated it well. We will have her do some therapy. Recheck with me in four to six weeks time.

Robert S. Leak, M.D.

RSL/asg/cnr

Electronically Signed by: Robert S. Leak, M.D. on Friday, March 21, 2008

103467 (31)

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denise Powell is currently under my care. After
examining this patient it is my opinion that:

- ☐ He / She can return to full duty effective _____.
- ☐ He / She is out of work at this time.
- ☒ He / She can return to light duty with ~~NO~~ use Right / Left Arm.
- ☐ He / She can return to light duty with no lifting _____ pounds with Right /
Left Arm.
- ☐ He / She can return to light duty _____.

Next appointment is scheduled for 4-7-08.

For Leak
Physician's signature

2-25-08
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: .

Patient Name: DENICA R POWELL

Date of Birth: .

Date of Service: 03/11/2008

SURFSIDE OFFICE

HPI: The patient is here for a recheck of her right arm and wrist. She complains of a lot of numbness in her hands and a persistent tremor that is not getting better. She has been going to therapy.

EXAMINATION: On examination of her right hand and wrist, she is overall quite sensitive. She has a lot of pain in her wrist. She does have a very slight tremor that occurs at rest and when I have her do something the tremor goes away. She has numbness in the tips of her fingers, particularly in the distribution of her thumb, index finger, and long finger. She has some pain along her first extensor compartments and pain in her scapholunate area.

ASSESSMENT:

1. Right hand numbness.
2. Right wrist pain.

PLAN: I think we should get an EMG nerve conduction study to see if her median nerve is pinched at the carpal tunnel. There were some changes of her median nerve on the MRI. These should probably be evaluated further. We will have her wear the splint. She will continue to do therapy. Recheck with me after the right upper extremity EMG.

Robert S. Leak, M.D.

RSL/sun/sri

Electronically Signed by: Robert S. Leak, M.D. on Friday, March 21, 2008

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 1111111111
Patient Name: DENICA R POWELL
Date of Birth: 11/11/1111

Date of Service: 03/11/2008
SURFSIDE OFFICE

ADDENDUM: X-rays of her right wrist taken. They show no change in alignment.

Robert S. Leak, M.D.
RSL/Nir

Electronically Signed by: Robert S. Leak, M.D. on Tuesday, April 22, 2008

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After

examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☒ He / She is out of work at this time.

☐ He / She can return to light duty with NO use Right / Left Arm.

☐ He / She can return to light duty with no lifting _____ pounds with Right / Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for 4/8/08.

Rm Leak
Physician's signature

3/11/08
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: **DENICA R POWELL**

Date of Birth:

Date of Service: 04/08/2008

SURFSIDE OFFICE

HPI: Ms. Powell is here today for a recheck of her right hand. She is still having a lot of problems with that hand. It is very numb and painful. She is having some tremors in the hand. I have previously injected her. That helped for a short period.

EXAM: On examination, her hand is slightly less tender than before. She moves it well. She has some numbness in the tips of her fingers particularly the thumb, index finger, and long finger.

ASSESSMENT:

1. Right hand numbness.
2. Right wrist pain.

PLAN: We discussed options for treatment. She did have an EMG/nerve conduction study, which shows a carpal tunnel syndrome at the wrist. She would benefit from a right carpal tunnel release. This was discussed with her. If her wrist pain does not resolve, we may also perform a wrist arthroscopy at the same setting. We will work on getting this approved.

Robert S. Leak, M.D.
RSL/nir/cnr

Electronically Signed by: Robert S. Leak, M.D. on Tuesday, April 22, 2008

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☒ He / She is out of work at this time.

☐ He / She can return to light duty with *NO* use Right / Left Arm.

☐ He / She can return to light duty with no lifting _____ pounds with Right /
Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for _____.

Robert Leak
Physician's signature

4-8-08
Date

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW
SUITE 209
THE COURTYARD
1500 U.S. HIGHWAY 17 NORTH
P.O. DRAWER 14547
SURFSIDE BEACH, SOUTH CAROLINA 29587

103467
RSL

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS
* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

May 13, 2008

Dr. Robert S. Leak
Strand Orthopaedic Consultants, LLC
849 82nd Parkway
Myrtle Beach, SC 29572-4612

Re: Name of Patient: Denica Powell
Date of Birth:
Social Security No.

Dear Dr. Leak:

Please be advised that I represent Denica Powell with regard to injuries which she sustained as a result of a work related accident which occurred on January 3, 2008. I understand that you rendered treatment to Ms. Powell for those injuries and that you recommend that Ms. Powell undergo surgery. I would greatly appreciate your providing me with a report addressing the following issues:

1. To a reasonable degree of medical certainty, are Ms. Powell's injuries and the necessary surgery directly related to the fall on January 3, 2008; *YES*
2. What period of time will Ms. Powell be disabled as a result of the surgery; *6 weeks*
3. But for the fall on January 3, 2008, she would not require the surgery; *Correct*
4. The necessary surgery is directly caused from the fall; and *Yes*
5. The surgery is medically necessary and without the surgery, she will be unable to return to work as a dog groomer. *Correct*

An authorization signed by my client allowing us access to the requested information is enclosed.

per led
5/26/08

Dr. Robert S. Leak
Strand Orthopaedic Consultants, LLC
Page 2
May 13, 2008

I would greatly appreciate receiving a response as soon as possible since I am attempting to get the surgery approved by the worker's compensation carrier.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Gene M. Connell, Jr.", written in a cursive style.

Gene M. Connell, Jr.

GMC,Jr.:dmb
Enclosure
Hand delivered by client



103467

PATIENT: Powell, Denica
DOB:
MRN:
PHYSICIAN: Robert Leak, MD
DATE: 6/10/2008

EXAM: MRI OF THE RIGHT WRIST WITHOUT CONTRAST

HISTORY: Previous study demonstrated possible abnormality of the median nerve. The patient describes burning pain in the right wrist.

COMPARISON STUDIES: February 16, 2008.

TECHNIQUE: Multi-sequential, multi-planar imaging was obtained through the right wrist unenhanced.

FINDINGS: On today's examination, the wrist is in neutral position and the median nerve is better demonstrated than on the previous study. The median nerve is compressed from medial to lateral within the carpal tunnel. Proximal to the carpal tunnel the nerve has more normal shape. The nerve does not have signal hyperintensity on T1 weighted images as might be anticipated if a lipofibromatous hemartoma of the median nerve was present. However, it is compressed between the flexor tendons and the carpal tunnel, and its signal intensity increases while it is in the carpal tunnel. Question whether functional studies, such as nerve conduction velocity or EMG suggests neuropathy of the median nerve. Slight tenosynovitis of the second dorsal compartment is once again noted. The bones are unremarkable.

IMPRESSION: MRI of the wrist demonstrates abnormal appearance of the median nerve within the carpal tunnel. The retinaculum is bowed and the nerve is enlarged with increased signal intensity. Question whether physiologic studies suggest median neuropathy. Absence of high signal on T1 weighted images argues against the possibility of lipofibromatous hemartoma.

Beverly Genez M.D.
BG / dg

DD: 6/11/2008
DT: 6/11/2008
Job: 6330717

This document has been reviewed and electronically signed.

Beverly Genez M.D.

(Signature)

900 21ST AVENUE NORTH
MYRTLE BEACH, SC 29577
(843) 916-1700
(843) 916-9460 FAX

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 06/24/2008

SURFSIDE OFFICE

HPI: Ms. Powell is here today for a recheck of her right wrist and hand. Her wrist pain is much improved; however, she continues to have a lot of numbness and tingling in her digits that has not been improving.

EXAM: On examination of her right hand, she can make a full fist. She has positive Tinel's at the carpal tunnel and numbness and tingling in her thumb, index finger, and long finger. She has a little bit of swelling of her first extensor compartment but Finkelstein's is negative. She has no pain on the ulnar aspect of her wrist. No scapholunate pain.

ASSESSMENT: Right carpal tunnel syndrome.

PLAN: I think it would be prudent at this time to proceed with a right carpal tunnel release. Her symptoms in her wrist have certainly calmed down. She is just left with some chronic symptoms related to carpal tunnel syndrome. I think this would give us our best opportunity to get her back to work. We will schedule her for a right carpal tunnel release. I will see her back at the time of surgery.

Robert S. Leak, M.D.

RSL/kps/cnr

103467

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Dance Rnell is currently under my care. After
examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☒ He / She is out of work at this time.

☐ He / She can return to light duty with *NO* use Right / Left Arm.

☐ He / She can return to light duty with no lifting _____ pounds with Right /
Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for _____.

Robert Leak
Physician's signature

Date

103467

CAROLINA BONE AND JOINT SURGERY CENTER
OPERATIVE REPORT

PATIENT NAME: Powell, Denica
ID NUMBER:
SURGEON: Robert S. Leak, M.D.

DATE OF OPERATION: 07/23/2008

ANESTHESIA: Bier block.

PREOPERATIVE DIAGNOSIS:

1. Right carpal tunnel syndrome.
2. Right DeQuervain's tenosynovitis.

POSTOPERATIVE DIAGNOSIS:

1. Right carpal tunnel syndrome.
2. Right DeQuervain's tenosynovitis.

OPERATION PERFORMED:

1. Right carpal tunnel release.
2. Right first extensor compartment release.

INDICATIONS FOR PROCEDURE: The patient is a 31-year-old female with a lot of pain in her right hand from a work related injury. She had had a magnetic resonance imaging scan which showed questionable fibrous hemartoma of the median nerve. Subsequent studies show less likelihood, however, we will explore the median more proximally than usual just to be certain there are no abnormalities in the median nerve. In the preoperative holding area she informed me that her thumb was giving her a lot of trouble again, which I had previously injected. We discussed options. We decided today to proceed with a first extensor compartment release. This had been a previous plan. I discussed it with her. The consent was appropriately signed for the two above procedures.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room and placed in the supine position on the operating room table. Bier block anesthesia was administered without complication. The right upper extremity was prepped and draped in the usual sterile manner. The tourniquet had been inflated to 250 mmHg pressure.

First attention was taken toward the first extensor compartment. A horizontal incision was made over the first extensor compartment. Dissection was carried down through the skin and subcutaneous tissues. The radial sensory nerve was identified and protected. The first extensor compartment was identified. It was released along its dorsal surface. There was a separate compartment. This was also released. The tendons were all adequately decompressed. The tenosynovectomy was performed as well.

Next an extended carpal tunnel incision was made. It extended from quite distal across the wrist crease in a Brunner type fashion. Dissection was carried down through the skin and subcutaneous tissues. The palmar fascia was fully exposed as was the palmaris longus.

PATIENT NAME: POWELL, DENICA
OPERATIVE REPORT

PAGE 2

The palmar fascia was then released in its entirety as was part of the antebrachial fascia. The median nerve was then visualized proximal to the carpal tunnel. It was somewhat thickened in this area but it looked more like chronic thickening of the tendinous structures around it. Also the epineurium looked a little bit thickened. I thus took a biopsy of the epineurium and sent it to pathology. After doing a tenosynovectomy on the median nerve it did look to have a more normal appearing size. It had just been quite significantly compressed by the swelling of the tendons and tendon sheaths. The median nerve was fully probed. The motor branch was identified as had been the palmar cutaneous nerve.

The tourniquet was let down. The wound was vigorously irrigated. Hemostasis was obtained. The carpal tunnel wound was closed with 4-0 nylon sutures. The first extensor compartment wound was closed with 4-0 Monocryl, 3-0 Prolene followed by Benzoin, Steri-Strips, 4x4's, Sof-Rol and a volar splint.

COMPLICATIONS: None known.

DISPOSITION: The patient was taken to the recovery room in satisfactory condition.

Robert S. Leak, M.D.
RSL/SN/wc5920/sc
D: 07/25/2008 T: 07/28/2008

PATHOLOGY RESULTS
GRAND STRAND REGIONAL MEDICAL CENTER
DEPARTMENT OF PATHOLOGY

809 82nd Parkway Myrtle Beach, South Carolina 29572
Telephone (843) 692-1487 Fax: (843) 449-6213

Patient: POWELL, DENICA R
DOB: 11/11/71 Age/Sex: 31/F
Acct#: 0000531512
Unit#: F000531512

ACCESSION: S-08-9665
Location: F.PA
Room/Bed:
Status: DEP REF
Discharge:
Date of Procedure: 07/23/08
Date of Receipt: 07/23/08

Physician: LEAK, ROBERT

OFFICE: CAROLINA BONE AND JOINT SURGERY CENTER

FINAL DIAGNOSIS:

SOFT TISSUE (RIGHT WRIST MEDIAN NERVE), EXCISION:

- BENIGN FIBROADIPOSE CONNECTIVE TISSUE AND FIBROVASCULAR CONNECTIVE TISSUE WITH SMALL FRAGMENTS OF ENTRAPPED NERVE FIBERS.
- NO INFLAMMATORY INFILTRATES NOTED.

Dict: HOPKINS, MELANIE A
Trans: 07/24/08 - 1037 FLAB.KKH

PREOP DIAGNOSIS

NONE PROVIDED

GROSS DESCRIPTION

One container labeled right wrist median nerve. Received is a tan elongated fragment of soft tissue measuring up to approximately 2 x 0.3 x 0.3 cm. Submitted.

APO

Page 1
** CONTINUED ON NEXT PAGE **
Physician Copy

Edward L. Proctor, Jr., M.D. Charles T. Wallis, Jr., M.D.
Melanie A. Hopkins, M.D.

PATHOLOGY RESULTS
GRAND STRAND REGIONAL MEDICAL CENTER
DEPARTMENT OF PATHOLOGY
809 82nd Parkway Myrtle Beach, South Carolina 29572
Telephone (843) 692-1487 Fax: (843) 449-6213

PATIENT: POWELL, DENICA R

ACCESSION #: S-08-9665

I certify that I personally conducted the diagnostic evaluation of the above
specimen(s) and have rendered the above diagnosis(es).

Signed <<Signature on File>>

MELANIE A HOPKINS

07/24/08

Page 2
** END OF REPORT **
Physician Copy

Edward L. Proctor, Jr., M.D.

Charles T. Walls, Jr., M.D.

Melanie A. Hopkins, M.D.

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 1000000000

Patient Name: **DENICA R POWELL**

Date of Birth: 01/01/1970

Date of Service: 07/31/2008

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here one week out from right carpal tunnel release and right de Quervain's release. She is doing well.

EXAM: On examination, both of her wounds look good. She moves her digits well. She is moderately swollen.

ASSESSMENT: Doing well.

PLAN: She was placed back in a splint. She will return in a week for suture removal. Recheck with me a week after that.

Robert S. Leak, M.D.

RSL/nir/san

Aug. 12. 2008 4:27PM

Strand Orthopaedic

No. 1452 P. 4/4

103467

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denise Duell is currently under my care. After
examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☒ He / She is out of work at this time.

☐ He / She can return to light duty with *NO* use Right / Left Arm.

☐ He / She can return to light duty with no lifting _____ pounds with Right /
Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for 2 weeks - 8-26-8
@ 2:15

Robert Leak
Physician's signature

7-31-08
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 177475

Patient Name: DENICA R POWELL

Date of Birth: 11/11/1971

Date of Service: 08/26/2008

SURFSIDE OFFICE

HPI: Ms. Powell is here one month out from right carpal tunnel release and right de Quervain's release. She is doing okay. She has been in a splint.

EXAM: On examination out of the splint, her wounds are all healing nicely. Her scars have moderately fixed. She has some tenderness around her incisions.

ASSESSMENT: Doing well.

PLAN: We will need to get her on a hand therapy program to do some scar massage, range of motion, and strengthening. Recheck with me in four weeks time.

Robert S. Leak, M.D.

RSL/asg/cnr

103467
KSL

Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

☒ He/She cannot return to work at this time.

☐ He/She can return to normal activities effective _____

☐ He/ She can return to modified duty with the following restrictions:

No more than _____ hours a day.

No lifting greater than _____ pounds.

No use of _____

Next appointment is scheduled for 9-23-08

Denica Powell
Physician's signature

8-26-08
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 1000000000

Patient Name: DENICA R POWELL

Date of Birth: 10/20/1970

Date of Service: 09/23/2008
SURFSIDE OFFICE

HPI: Ms. Powell is here today for a recheck of her right hand and wrist. She is slightly improving. The numbness in her hands is much better. She is still having a lot of pain around the incision as expected.

EXAM: On examination of her right hand, she has good digital range of motion. Her incision scar is fairly thick. She can make a full fist. Much less tenderness into her digits. Her de Quervain's incision is much less tender.

ASSESSMENT:

1. Extended right carpal tunnel release.
2. Right de Quervain's release.

PLAN: She is doing nicely. I think she should continue to improve. I would like her to continue with the wound immobilization and range of motion. She can recheck with me in six weeks time.

Robert S. Leak, M.D.
RSL/kps

103467

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denita Powell is currently under my care. After
examining this patient it is my opinion that:

- ☐ He / She can return to full duty effective _____.
- ☒ He / She is out of work at this time.
- ☐ He / She can return to light duty with *NO* use Right / Left Arm.
- ☐ He / She can return to light duty with no lifting _____ pounds with Right /
Left Arm.
- ☐ He / She can return to light duty _____.

Next appointment is scheduled for 6 weeks.

Dr. Leak
Physician's signature

9/23/08
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:
Patient Name: **DENICA R POWELL**
Date of Birth:

Date of Service: 11/04/2008
SURFSIDE OFFICE

HPI: Ms. Powell is here for a recheck of her right hand and wrist. She is still having a lot of shooting pain of her arm into her hand. She has a lot of scar tenderness and weakness. She is unable to use her hand, as she would like.

EXAM: On examination of her right arm, her hand does look a lot better. The color is getting better. The scar is maturing nicely. She can make a full fist. She still is markedly weak with that right hand.

ASSESSMENT:

1. Right carpal tunnel release.
2. Right de Quervain's release.

PLAN: I think she is progressing. I did read through her job description at work. I do not think she is ready for that. I think she needs some strengthening and some work conditioning and then I will get her back to work. I discussed this with her. Prescriptions were written and also try some Lortab for the nerve pain. Follow up with me in six weeks.

Robert S. Leak, M.D.
RSL/kps/enl/

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

- ☐ He / She can return to full duty effective _____.
- ☒ He / She is out of work at this time.
- ☐ He / She can return to light duty with *NO* use Right / Left Arm.
- ☐ He / She can return to light duty with no lifting _____ pounds with Right / Left Arm.
- ☐ He / She can return to light duty _____.

Next appointment is scheduled for 6 wks.


Physician's signature

11/4/08
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 01/06/2009

SURFSIDE OFFICE

HPI: Ms. Powell is here for a recheck of her right hand and wrist. She is still having a lot of burning pain in that right upper extremity and it causes her a lot of discomfort at night. She has a difficult time sleeping.

EXAM: On examination of her right upper extremity, she has good range of motion. On examination of her right hand, she has good range of motion of her hand. Her scars are well healing. She is neurovascularly intact. She still has some burning pain that goes up the midpalm, up her volar forearm.

ASSESSMENT:

1. Right carpal tunnel release.
2. Right de Quervain's release.
3. Right upper extremity neuritic pain.

PLAN: She still has a lot of inflammation of the nerves in that upper extremity. We will increase her Lyrica dose. We are also going to get a Pura compound made that she can put on her hand and forearm topically to see if we can get these nerves to calm down somewhat. I have discussed this all with her. She understands. We will return her to light duty. I will see her back in four weeks time.

Robert S. Leak, M.D.

RSL/Nir/cnr

103467

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☐ He / She is out of work at this time.

☐ He / She can return to light duty with **NO** use Right / Left Arm.

☒ He / She can return to light duty with no lifting 5 pounds with Right /
Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for 2/3/09 1:15.

Dr. Robert Leak
Physician's signature

1/6/09
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 02/03/2009

SURFSIDE OFFICE

HPI: Ms. Powell is here today for a followup of her right hand and wrist. She has been working light duty. She has not had any therapy to prove for her. She is still having a lot of burning pain from the carpal tunnel area.

EXAM: On examination, she has good wrist and digital range of motion. She still has a lot of irritation around her proximal carpal tunnel incision area. The de Quervain's area is nontender.

ASSESSMENT:

1. Right carpal tunnel release.
2. Right de Quervain's release.

PLAN: I think the irritation around her carpal tunnel is coming from the extended incision. We did fully visualize the nerve changes that we have seen on the MRI. It should calm down with time. We are going to try her on some Elavil to see if we can get that nerve pain to calm down. We have discussed this with her. She understands. She will recheck with me in four weeks. We will keep her work status the same.

Robert S. Leak, M.D.

RSL/dsk/Nir

103467

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☐ He / She is out of work at this time.

☐ He / She can return to light duty with *NO* use Right / Left Arm.

☒ He / She can return to light duty with no lifting 5 pounds with Right /
Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for _____.

For Leak
Physician's signature

2/3/09
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 03/26/2009
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here for a recheck of her right upper extremity. Her hand is doing slightly better, however, most of her problems now are from her arm. Her arm feels very tight and heavy.

EXAM: On examination of her right upper extremity, her carpal tunnel wound looks very good. It is less sensitive than before. She still has some slight numbness emanating from the incision but overall it looks much better than before. She is less irritated. She has a lot of pain around her lateral arm up into her shoulder area. She has some restriction of shoulder motion. She has some weakness of her shoulder and also some weakness of grip strength.

ASSESSMENT:

1. Extended right carpal tunnel release.
2. Right de Quervain's release.
3. Right upper extremity weakness.

PLAN: We discussed options for treatment. Her best option would probably be some therapy to try and strengthen that upper extremity and strengthen that arm. I think we neglected the strength loss that she has in that arm. I think doing some more therapy would be prudent. I discussed this with her. She would like to proceed. As far as some of the heavy weakness feeling that is in her arm, I informed her that probably some of that is due to the weakness but some of that may also be due to her cervical radiculopathy type presentation. We discussed all this. Follow up with me in six weeks time.

Robert S. Leak, M.D.
RSL/kps/sha

103467

Dr. Robert Leak
Strand Orthopaedic Consultants
849 82nd Parkway
Myrtle Beach, SC 29572
843-449-9457

Work Status Form

Denica Powell is currently under my care. After
examining this patient it is my opinion that:

☐ He / She can return to full duty effective _____.

☐ He / She is out of work at this time.

☐ He / She can return to light duty with *NO* use Right / Left Arm.

☒ He / She can return to light duty with no lifting 5 pounds with Right /
Left Arm.

☐ He / She can return to light duty _____.

Next appointment is scheduled for _____.

For Leak
Physician's signature

3-26-09
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 04/30/2009
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here to discuss her right hand and wrist again. She tells me that she just cannot live with this burning pain that she has coming from her carpal tunnel area, shoots out in her thumb and she has a lot of discomfort. This has been going on for a while.

EXAM: On examination, her incision is all well healed. She does, however, have a positive Tinel's going out from her carpal tunnel incision to her palmar cutaneous nerve. It does seem as though it is very irritated. She does not want me to touch this area.

ASSESSMENT: Right wrist palmar cutaneous nerve neuroma versus neuritis.

PLAN: Discussed the situation with the patient and the nurse case manager. The only way to know for sure what is going on would be to proceed with exploration of the median nerve and a likely nerve wrap around either the entire median nerve or possibly just the branch of the palmar cutaneous nerve. This was discussed with her and the nurse case manager. They would like to proceed. We will get her scheduled for surgery as an outpatient.

Robert S. Leak, M.D.
RSL/km/cnr

DCN: 20091475270182501 Claim Number: A8M2703 Claimant: 001 Claim Handler: JAO Received: 05/22/2009

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:
Patient Name: **DENICA R POWELL**
Date of Birth:

Date of Service: 05/18/2009
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here today to re-discuss her right hand. She continues to have a lot of pain in the right hand, particularly a burning pain that seems to come from her incision out into her palm area. She is having a difficult time working. She is unable to lift large animals that she needs to be able to lift.

EXAM: On examination, she has pain around the proximal end of her extensor carpal tunnel incision. She has pain emanating from the medial nerve up in the palmar cutaneous nerve distribution. She has numbness of the volar base of the thumb. She can make a full fist. She has good sensation out distally into her digits.

ASSESSMENT: Right hand palmar cutaneous nerve neuroma, status post median nerve exploration.

PLAN: I again discussed options for treatment. We have had a fairly lengthy conservative measures. We have tried splint wear, steroid Dosepak, rest, and limitation activities. These have so far been unsuccessful. This has been going on for six months. She tells me that she cannot live with it any longer. I think the best option at this point would be to re-explore the median nerve and the palmar cutaneous nerve and possibly place a nerve tube around these nerves.

I do not feel there are any other conservative measures that could be undertaken at this time. There is no other diagnostic test that will really help with diagnosing this palmar cutaneous nerve neuroma, as it is more of a clinical diagnosis. I do not believe the steroid shot would help her. We have discussed all of this. We will try and get Workmen's Compensation to approve this surgery. We have already had a second opinion on this case, which agreed with the need for this type of surgery.

Robert S. Leak, M.D.
RSL/dsk/Nir

CAROLINA BONE AND JOINT SURGERY CENTER
OPERATIVE REPORT

163467
PATIENT NAME: Powell, Denica

DATE OF OPERATION: 02/26/10

ID NUMBER:

SURGEON: Robert S. Leak, M.D.

ANESTHESIA: General anesthesia.

PREOPERATIVE DIAGNOSIS:

Persistent right median nerve neuritis status post carpal tunnel release.

POSTOPERATIVE DIAGNOSIS:

Persistent right median nerve neuritis status post carpal tunnel release.

OPERATION PERFORMED:

Right median nerve neurolysis with nerve wrapping with synthetic tube. 1499.9
Rotation of local PDS muscle flap to cover median nerve. 1420

INDICATIONS FOR PROCEDURE: The patient is a 33-year-old female with a very inflamed median nerve. This occurred after we did a carpal tunnel release approximately a year ago. She had a questionable tumor within her median nerve so I opened up the nerve to look at this tumor. It was fairly benign but it has left her with a lot of median nerve scarring that is very painful. She has been unable to live with this. She is taken to the operating room today to do a neurolysis of the nerve and free it up from this scarred in bed. I have discussed the surgery with her, the risks. She understands and would like to proceed.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room and placed in the supine position on the operating room table. General anesthesia was administered without complication. The right upper extremity was prepped and draped in the usual sterile manner. The tourniquet was inflated to 250 mmHg pressure.

The previously made incision was reopened. It was extended distally and proximally. The median nerve was identified first distally and followed proximally. It was then identified proximally no acute distress followed distally down into the scarred in tissue. The nerve was very scarred down, kind of right at level where it enters the carpal tunnel. The nerve adherent to the underlying flexor tendons and bone area. I had to do a very meticulous slow dissection of the median nerve, taking care to protect all of the fascicles and preserve the integrity of the median nerve. This was done. Eventually I was able to free up the median nerve. She did have a lot of inflammation around her flexor tendons. I did do a minimal flexor tenosynovectomy. I felt as though at this point the nerve needed to be well covered. I opened a synthetic tube and wrapped it around the nerve. This was sewn into place with a 6-0 Prolene. I felt as though the nerve was still fairly prominent so I took a local muscle flap and did a reverse rotation flap of the flexor digitorum superficialis to the long finger, pulling the muscle from the flexor digitorum superficialis down distally and then tying it to the side of the carpal tunnel over the top of the median nerve. This covered the median nerve very nicely. Care had been taken to make sure that the median nerve was fully decompressed proximally and distally.

PATIENT NAME: Powell, Denica
OPERATIVE REPORT

PAGE 2

The wound was washed out. Hemostasis was obtained. A drain was placed. The skin was closed with 4-0 nylon suture followed by Adaptic, 4x4's, Sof-Rol and a volar splint.

COMPLICATIONS: None known.

DISPOSITION: The patient was extubated and taken to the recovery room in satisfactory condition.

Robert S. Leak, M.D.
RSL/SN/bcorf/485xx4529xxcarolina100303110828N
D: 03/03/10 11:08 A
T: 03/04/10 06:32 A

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 03/01/2010

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here for a recheck of her right hand. She had her surgery done three days ago. She is here today for drain removal. She is doing okay.

EXAM: On examination of her right hand, the wound really looks good. There is minimal swelling. The drain is present. I removed it today. There was a moderate amount of drainage present. She moves her digits fairly well.

ASSESSMENT: Stable.

PLAN: I discussed what we did with her in surgery today. She did have a fairly extensive surgery. She understands this. She will go back into a volar splint today and work on digital range of motion. Recheck with me in one week's time for wound check.

Robert S. Leck, M.D.

RSJ/dsk/cnr

Electronically Signed by: Robert S. Leck, M.D. on Tuesday, August 03, 2010

103467DP

Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

Donica Powell is currently under my care.
After examining the patient it is my opinion that as of : _____

- ☐ He/She can return to normal work duty.
☒ He/She is out of work at this time.
☐ He/She can return to light duty with NO use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
☐ He/She can return to light duty _____

Next appointment is scheduled for 3-15-10



Physician Signature

3/1/10

Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: 1001
Patient Name: DENICA R POWELL
Date of Birth: 03/15/2010

Date of Service: 03/15/2010
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here for a recheck of her right hand and wrist. She is doing better. She has noticed a lot of numbness in her ring finger and other than that her hand is starting to feel better.

EXAM: On examination, her wound looks good. The sutures were all removed today in the office. She cannot quite make a full fist. She has some wrist tightness.

ASSESSMENT: Right median nerve wrapping.

PLAN: We will have her go and see the therapist and get a splint made for her and do some therapy. Recheck with me in six weeks time.

Robert S. Leak, M.D.

RSL/dsk/sun

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:
Patient Name: DENICA R POWELL
Date of Birth:

Date of Service: 04/26/2010
MYRTLE BEACH OFFICE

Attn: Anna
Brown

HPI: Ms. Powell is here for a recheck of her right hand. It is now two months out from her surgery. She has been doing therapy. She is still having some nerve pain but it is slightly better than preop.

EXAM: On examination, her incision is well healed. She is tender over the median nerve site but less so than before. She can make a full fist. She has less swelling of her hand.

ASSESSMENT: Left median nerve wrapping.

PLAN: I think she is making good progress. I think it is going to take longer to get better than before. I would like her to continue with some therapy, some desensitization and some strengthening. I will see her back in six weeks time to assess her progress.

Robert S. Leak, M.D.
RSL/dsk/kps

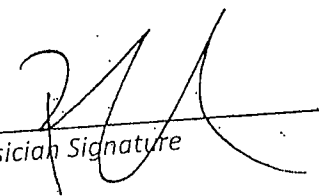
Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

Devita Powell is currently under my care.
After examining the patient it is my opinion that as of: _____

- ☒ He/She can return to normal work duty.
☒ He/She is out of work at this time.
☐ He/She can return to light duty with NO use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
☐ He/She can return to light duty _____

Next appointment is scheduled for 7 wks


Physician Signature

4-26-10
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 06/07/2010
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here today now two months out from right median nerve wrapping and flapping. She has been doing okay. That burning pain never really goes away. Over time, it seemed to improve; however, recently she has had significant onset of a lot of pain and swelling into her hand.

EXAM: On examination of her right hand, the wound has healed nicely. She is moving her digits well. Right around the incision site, there is a lot of fullness with the nerves somewhat inflamed. There is a lot of fullness right in this area more so than I remember before. She moves her digits well.

ASSESSMENT: Right median nerve neuritis, status post wrapping.

PLAN: I discussed options for treatment with her and with the nurse case manager. We will need to see if we can get this to calm down. I do not think this represents an infection, but she does have a lot of inflammation around this nerve. We will start her on Steroid Dosepak and continue with anti-inflammatories. I will check her back in a couple of weeks to make sure that it is calming down.

Robert S. Leak, M.D.
RSL/dsk/cnr

Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

Danica Powell is currently under my care.
After examining the patient it is my opinion that as of: _____

- ☐ He/She can return to normal work duty.
☒ He/She is out of work at this time.
☐ He/She can return to light duty with **NO** use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
☐ He/She can return to light duty _____

Next appointment is scheduled for 7/6/10

[Signature]
Physician Signature

6-7-10
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: ..

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 07/08/2010

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here for a recheck of her right wrist. I had come her in early, as I was concerned about the swelling that she was having around her right wrist. She seems to be doing better.

EXAM: On examination of her right wrist, she can make a full fist. When she goes to flex and extend her wrist, she has a lot of pulling volarly around the incision. She has good sensation in her hand with the exception of her ring finger. There is still a lot of sensitivity at the incision site.

ASSESSMENT: Right median nerve wrapping.

PLAN: We discussed it all. I will try her on a different medication. I will start her on some Elavil, which will hopefully help with the nighttime pain and also help with the sleeping issues that she seems to have related to the pain. This was all discussed with her. I have refilled her pain medicine. She will continue with therapy. Recheck with me in six weeks time.

Robert S. Leak, M.D.

RSL/dsk/cnr

Electronically Signed by: Robert S. Leak, M.D. on Friday, August 27, 2010

Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

Denise Powell is currently under my care.
After examining the patient it is my opinion that as of: _____

- ☒ He/She can return to normal work duty.
☐ He/She is out of work at this time.
☐ He/She can return to light duty with NO use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
☐ He/She can return to light duty _____

Next appointment is scheduled for 8/11/10

[Signature]
Physician Signature

7-8-10
Date



STRAND ORTHOPAEDIC CONSULTANTS, L.L.C.

oe N. Jarrett, Jr., M.D.
Total Joint Replacement
Orthopaedic Surgery
Knee Arthroscopy

Richard W. Ward, M.D.
Sports Medicine
Orthopaedic Surgery
Shoulder Surgery

Steven M. Callihan, M.D.
Orthopaedic Surgery
Total Joint Replacement
Sports Medicine

J. Clark Butler, M.D.
Sports Medicine
Orthopaedic Surgery
Total Joint Replacement

Wayne B. Bauerle, M.D.
Spinal Surgery
Total Joint Replacement
Orthopaedic Surgery

Robert S. Leak, M.D.
Hand & Upper Extremity Surgery
Orthopaedic Surgery

James O. Merritt, IV, M.D.
Total Joint Replacement
Orthopaedic Surgery
Knee Arthroscopy

Alexander J. Pappas, M.D.
Foot and Ankle Surgery
Orthopaedic Surgery

July 22, 2009

Gene M. Connell, Jr.
Attorney At Law
P. O. Drawer 14547
Surfside Beach, SC 29587

RE: DENICA POWELL

Dear Mr. Connell:

This letter is in response to your letter dated May 6, 2009. It is my opinion that the treatment she received from me for cervical radiculopathy to the right upper extremity is related to her work injury.

I hope this information is of benefit.

Sincerely,

Robert S. Leak, M.D.

RSL/sl

8/5/09

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:
Patient Name: DENICA R POWELL
Date of Birth:

Date of Service: 08/19/2010
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here today for evaluation of her right arm. Again, she is still having a lot of difficulty and a lot of sensitivity.

EXAM: On examination, her wound looks very good. It has healed in. She is still very tender over her median nerve. She has a little bit of less fullness than before, but it is still inflamed. She can make a full fist.

ASSESSMENT: Right median nerve neuritis status post nerve wrapping.

PLAN: We discussed again and hopefully this nerve will calm down with time. We will try some different medications. I told this is going to take time before we know what is going to happen with this nerve. We discussed all this. Recheck with me in six weeks time.

Robert S. Leak, M.D.
RSL/dsk/cnr

Electronically Signed by: Robert S. Leak, M.D. on Friday, August 27, 2010

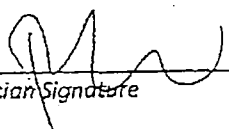
Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

David Small is currently under my care.
After examining the patient it is my opinion that as of: _____

- ☐ He/She can return to normal work duty.
☒ He/She is out of work at this time.
☐ He/She can return to light duty with **NO** use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
☐ He/She can return to light duty _____

Next appointment is scheduled for Sept 30th @ 11:00


Physician Signature

8-19-10
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 09/30/2010
MYRTLE BEACH OFFICE

HPI: Ms. Powell is here today for a recheck of her right hand and wrist. She is feeling very poorly about her current situation. Her hand just does not function like she would like it to. She is requiring continued pain medication and she is very tearful about her situation today in the office. This was discussed with the patient and the nurse case manager.

EXAM: On examination, her hand and wrist look good. It is still very tender over the surgery site. She has a lot of irritation around her nerve. She can make a full fist. She has got good thenar function.

ASSESSMENT:

1. Chronic right hand pain secondary to median nerve neurolysis.
2. Depression.

PLAN: Discussed the situation with the patient and the nurse case manager clearly we need to do something else for this patient. I think some counseling may be in order and also some pain management. I think she should see Dr. Vanhorn and Dr. Spring for their expertise in pain management and counseling. This was discussed with them. We will try and make the referrals and make this happen. She will see me back in five to six weeks time.

Robert S. Leak, M.D.
RSL/lat

103467

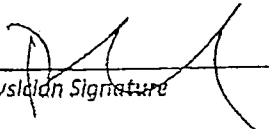
Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

Denica Powell is currently under my care.
After examining the patient it is my opinion that as of : _____

- ☐ He/She can return to normal work duty.
☒ He/She is out of work at this time.
☐ He/She can return to light duty with NO use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm. .
☐ He/She can return to light duty _____

Next appointment is scheduled for 5 WKS


Physician Signature

9/30/10
Date

Acct #: 103467

STRAND ORTHOPAEDIC CONSULTANTS, L.L.C.

Joe N. Jarrett, Jr., MD
Richard W. Ward, MD
Steven M. Callihan, MD

J. Clark Butler, MD
Wayne B. Bauerle, MD
Robert S. Leak, MD
James O. Merritt, IV., MD

Alex J. Pappas, MD
Kimberly Purgavie, DO
Joe K. Bethle, PA-C
David B. Lee, PA-C

REFERRAL REQUEST

Patient Name: Denica Powell Soc. Sec. # _____ Ins: WMC
Phone: _____ Date of Birth: 11/24/76

Patient is to go to: Dr. Van Horn Phone: _____ Please Call Report to: _____
Preparation Needed: _____

Type of Referral/Test/Consult: Medication Mgt.
ICD-9/Description: Neuropathy
X-Rays Sent? _____

Physician Signature: _____
Date: 9/30/18

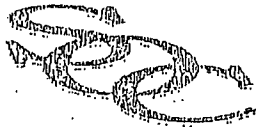
Appointment Date : _____
Arrival Time : _____

Primary Care Physician: _____

210 Village Center Boulevard Myrtle Beach, SC 29579

843.236.3222 phone 843.903.7187 medical fax

www.strandorthopaedic.com

Acct #: 103467

STRAND ORTHOPAEDIC CONSULTANTS, L.L.C.

Joe N. Jarrett, Jr., MD
Richard W. Ward, MD
Steven M. Callihan, MD

J. Clark Butler, MD
Wayne B. Bauerle, MD
Robert S. Leak, MD
James O. Merritt, IV., MD

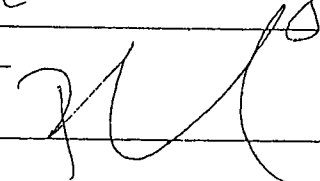
Alex J. Pappas, MD
Kimberly Purgavie, DO
Joe K. Bethle, PA-C
David B. Lee, PA-C

REFERRAL REQUEST

Patient Name: Demica Powell Soc. Sec. # Ins: NMC
Phone: Date of Birth: 11/24/76

Patient is to go to: Dr. Spring Phone:  **STAT**
Preparation Needed: Please Call Report to:

Type of Referral/Test/Consult: Counseling
ICD-9/Description:
X-Rays Sent?

Physician Signature: 
Date: 9/30/10

Appointment Date :
Arrival Time :

Primary Care Physician:

210 Village Center Boulevard Myrtle Beach, SC 29579
843.236.3222 phone 843.903.7187 medical fax
www.strandorthopaedic.com

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID:

Patient Name: DENICA R POWELL

Date of Birth:

Date of Service: 11/18/2010

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here today for a recheck of her right wrist. Her wrist continues to give her significant discomfort. She has a lot of pain and numbness out into her digits. She has also had a lot of trouble getting through pain management.

EXAM: On examination, she continues to have a lot of swelling around her nerve tube in her median nerve area. It is very irritated. She can make a full fist. She has got pretty decent sensation on to her digits. No thenar weakness.

ASSESSMENT:

1. Chronic right arm pain.
2. Status post right median nerve wrapping.

PLAN: Recommended to her that we just continue to give it more time. I think it is very important that she get some pain management close by. She is currently having to go to Charleston for pain management and that is not helping the situation at all. There are a lot of good pain management specialists in Myrtle Beach that she could see. We will see if we can get her approved to see one of them. She will follow up with me in six weeks time.

Robert S. Lcak, M.D.

RSL/dsk/kvn

103467

Robert Leak, MD
Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

T. Demica-Powell is currently under my care.
After examining the patient it is my opinion that as of: _____

- ☐ He/She can return to normal work duty.
- ☒ He/She is out of work at this time.
- ☐ He/She can return to light duty with NO use Right / Left Arm.
- ☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
- ☐ He/She can return to light duty _____

Next appointment is scheduled for _____

Robert Leak
Physician Signature

11-18-10
Date

STRAND ORTHOPAEDIC CONSULTANTS

Patient ID: [REDACTED]

Patient Name: DENICA R POWELL

Date of Birth: [REDACTED]

Date of Service: 01/20/2011

MYRTLE BEACH OFFICE

HPI: Ms. Powell is here for a recheck of her right hand. She has been able to see a local pain management specialist who has been seeing her for three weeks and trying some new things. She says her hand still feels about the same.

EXAM: On examination of her right hand, she is moving it well. The color is better in the hand. She still has a lot of sensitivity right around the incision and pain at the site of the surgery.

ASSESSMENT: Right median nerve wrapping with chronic pain.

PLAN: I discussed with her that hopefully we are getting on the right tract with this new pain management specialist. Maybe things will improve, if we can get her the right medicine. She has tried some stellate ganglion blocks, which she has not noticed any difference but at least they were trying some different things and I discussed this with her. She will recheck with me in six weeks time.

Robert S. Leak, M.D.

RSL/dsk/kps

Robert Leak, MD

Strand Orthopaedic Consultants
210 Village Center Boulevard
Myrtle Beach, SC 29579
843.236.3222

WORK STATUS FORM

Denise Powell is currently under my care.
After examining the patient it is my opinion that as of: _____

- ☒ He/She can return to normal work duty.
☒ He/She is out of work at this time.
☐ He/She can return to light duty with **NO** use Right / Left Arm.
☐ He/She can return to light duty with no lifting _____ pounds
Right / Left Arm.
☐ He/She can return to light duty _____

Next appointment is scheduled for 3/3/11

Robert Leak

Physician Signature

1-20-11

Date

PATIENT: DENICA POWELL
DATE: 12/09/10
REFERRING:

CHIEF COMPLAINT:

Wrist and hand pain.

HISTORY OF PRESENT ILLNESS:

Ms. Powell is a 34-year-old lady who suffered a work related wrist injury in January 2008. She developed a burning, pinching pain in the wrist and hand, which was constant and persistent. She saw Dr. Leak and had carpal tunnel release in June 2008. She still had persistent symptoms, such as burning pain in the wrist and hand going up her arm to the shoulder. She had another operation in February 2010 where her median nerve was wrapped. Despite surgery, she is still having persistent pain. She describes it a severe, burning type of pain. Her arm feels heavy. She basically cannot use the right arm or hand. At times, the right hand feels cooler. She has noticed some swelling in the wrist. It is hypersensitive to touch mainly in the palm of the hand. She rates her pain to be a 9-10 out of 10 on the VAS scale. She describes very poor, disruptive sleep. She reports depression. She pretty much cries throughout the day secondary to pain. She reports irritability during the day secondary to pain as well. She has tried Lidoderm patches, which has not helped. She has not had stellate ganglion block or spinal cord stimulation trial.

PAST MEDICAL HISTORY:

Negative.

PAST SURGICAL HISTORY:

Appendectomy, right carpal tunnel release, right median nerve wrapping.

ALLERGIES:

None.

SOCIAL HISTORY:

Negative for tobacco and alcohol. She denies drug use. She denies any history of drug or alcohol rehab. No DUIs. She lives in Myrtle Beach. She works at Petsmart.

MEDICATIONS:

Gabapentin 300 mg three times daily, Meloxicam daily, Cymbalta 30 mg daily, Ambien 10mg at bedtime as needed, Oxycodone 5 mg three times daily as needed.

REVIEW OF SYSTEMS:

Currently negative for chest pain, shortness of breath, nausea, vomiting, fevers, chills or night sweats.

PHYSICAL EXAMINATION

General: She is in marked emotional distress. She is crying during our visit today. She guards her right wrist and hand.

HEENT: Normocephalic, head atraumatic. Neck is supple.

PATIENT: DENICA POWELL
DATE: 12/09/10
PAGE 2

Cardiovascular: Regular rate and rhythm. Lungs are clear, no rales or wheezes.

GI: Soft and non-tender.

Skin: Intact with no rashes or cyanosis.

Musculoskeletal exam: Reveals normal bilateral shoulder range of motion to forward flexion and abduction. She has a lump in the right wrist. She has allodynia in the palm of the right hand. The wrist itself is also tender to palpation. There are no color changes or temperature change on exam today.

Neurological: Alert and oriented x 3. Cranial nerves II through XII intact. The left upper extremity is normal in the biceps, triceps and hand intrinsic. She has give-away weakness in the right wrist and hand secondary to pain. Sensation is altered in the right hand. Sensation is normal in both lower extremities as well as left upper extremity.

DIAGNOSTIC IMPRESSION:

1. Complex regional pain syndrome, right upper extremity.

RECOMMENDATIONS:

1. Increase Gabapentin to 400 mg three times daily.
2. Discontinue Meloxicam.
3. Continue Cymbalta 30 mg daily. We may increase it to 60 mg the next time we see her.
4. Refilled Ambien.
5. Refilled Oxycodone.
6. I gave her prescription for Ketamine cream to be applied to the right wrist.
7. We will also pre-authorize stellate ganglion blocks on the right side to see if this will give her relief. If it doesn't give her long term, meaningful relief, I have asked her to consider spinal cord stimulation trial.
8. We will also get an MRI of the cervical spine.

C. Gregory Kang, M.D.
Physiatrist

CGK:dh

cc: Worker's Compensation carrier
Dr. Leak

PATIENT: DENICA POWELL
DATE: 01/11/11

Preoperative Diagnosis:

1. Complex regional pain syndrome right upper extremity.

Postoperative Diagnosis:

1. Complex regional pain syndrome right upper extremity.

Procedure:

1. Right cervical stellate ganglion block #1.

Brief History:

Ms. Powell is a 34-year-old lady with complex regional pain syndrome in the right wrist, hand, and upper extremity. She is here for stellate ganglion blocks to help relieve pain.

Procedure in Detail:

After informed consent was obtained, Ms. Powell was placed in the supine position and Betadine was used to sterilely prep the neck in the usual fashion. C-arm fluoroscopy was used to identify the C7 vertebral body using AP fluoroscopy. A 2½-inch, 25-gauge needle was used to approach the anterior lateral aspect of the C7 vertebral body using continuous fluoroscopy. After bony contact was made, c-arm fluoroscopy was then rotated laterally and the needle was confirmed to be in the intra lateral aspect. Omnipaque was then injected in the AP view under real time fluoroscopy, which revealed paravertebral flow without vascular or epidural flow. Then a mixture of 4 cc of 0.5% Marcaine, 2 cc of 1% Xylocaine along with 5 cc of saline was created. This was slowly injected over fifteen minutes into the stellate ganglion area.

Post Injection:

She was noted to have a Horner's syndrome on the right side. She was observed in the office for thirty minutes prior to discharge.

C. Gregory Kang, M.D.
Physiatrist

CGK:dh

cc: Dr. Leak
Worker's Compensation carrier

PATIENT: DENICA POWELL
DATE: 01/19/11

Preoperative Diagnosis:

1. Complex regional pain syndrome right upper extremity.

Postoperative Diagnosis:

1. Complex regional pain syndrome right upper extremity.

Procedure:

1. Right stellate ganglion block with fluoroscopic guidance.

Brief History:

Ms. Powell is a 34-year-old lady with history of right hand injury, which resulted in complex regional pain syndrome. She had her first stellate ganglion block last week with no relief in pain. She is here for her second block.

Procedure in Detail:

After informed consent was obtained, Ms. Powell was placed in the supine position and Betadine was used to sterilely prep the neck in the usual fashion. 1% Xylocaine was used for local anesthesia. C-arm fluoroscopy was used to identify the C7 vertebral body using AP fluoroscopy. A 2½-inch, 25-gauge needle was used to approach the anterior lateral aspect of the C7 vertebral body using continuous fluoroscopy. After bony contact was made, Omnipaque 240 was injected under real time fluoroscopy, which revealed paravertebral flow without vascular or epidural flow. Then 10 cc of 0.25% Marcaine was slowly injected over fifteen minutes. She was monitored with pulse oximetry as well as non-invasive blood pressure monitoring. She remained hemodynamically stable.

Post Injection:

She had a Horner's syndrome on the right side. She had minimal relief of pain.

I had a discussion with Ms. Powell today. It appears that stellate blocks will not be effective for pain control. The Oxycodone is not helping either. We decided to try Methadone 5 mg three times daily. We also discussed spinal cord stimulation as a potential option. The procedure was explained in detail to the patient and she is willing to proceed with a trial. We will try to get authorization with the worker's compensation carrier.

C. Gregory Kang, M.D.
Physiatrist

CGK:dh

cc: Worker's Compensation
Dr. Leak

PATIENT:
DATE:

DENICA POWELL
04/25/11

BRIEF HISTORY:

Ms. Powell returns in follow-up. She finally got her stimulation trial approved. The pain in the right hand is unchanged. The Oxycodone seems to be helping some with the pain. She gets about three to four hours of mild pain relief. Poor sleep at night is still reported. She does report that her depression and anxiety seems to be a little bit better as well.

PHYSICAL EXAMINATION

Examination today reveals that she is alert. Her speech is fluent. Emotionally, she seems to be doing better. The right hand is unchanged.

DIAGNOSTIC IMPRESSION:

1. Complex regional pain syndrome.

RECOMMENDATIONS:

1. We will proceed with stimulation trial.
2. I gave her Oxycontin 30 mg three times daily.
3. Refilled Gabapentin, Klonopin, and Cymbalta.

C. Gregory Kang, M.D.
Physiatrist

CGK/dh

cc: Worker's Compensation carrier

PATIENT:
DATE:

DENICA POWELL
05/24/11

BRIEF HISTORY:

Ms. Powell returns in follow-up. She had her seven day spinal cord stimulation trial. She had at least 50% reduction in pain in the hand and arm. She was able to rest better. She took less narcotics. She was happy with the results.

Today, we removed the trial lead without complications. No signs of infection. We will set up a referral for permanent implantation with paddle lead.

C. Gregory Kang, M.D.
Physiatrist

CGK/dh

cc: Worker's Compensation carrier

PATIENT: DENICA POWELL
DATE: 11/21/11

BRIEF HISTORY:

Ms. Powell returns in follow-up. She seems to be adjusting a little bit better to her condition. She rates her pain to be a 6 out of 10 on the VAS scale. The increase in the opioids seems to have helped her some. She is trying to be more active. She is trying to do more with her daughter. She still has hypersensitivity to touch in the right forearm, wrist, and hand.

PHYSICAL EXAMINATION

Examination today reveals allodynia in the flexor aspect of the wrist and hand. There are no color changes today. It does appear to be a little swollen when compared to the left side.

DIAGNOSTIC IMPRESSION:

1. Complex regional pain syndrome, right upper extremity.
2. Major depression with anxiety.

RECOMMENDATIONS:

1. Continue with psychological treatment.
2. Continue current dose of Oxycontin and Oxycodone.
3. Continue with Cymbalta and Gabapentin.
4. We will increase Seroquel to 100 mg at bedtime.
5. We will see her back next month and reassess her.

C. Gregory Kang, M.D.
Physiatrist

CGK/dh

cc: Worker's Compensation carrier

PATIENT: DENICA POWELL
DATE: 12/19/11

BRIEF HISTORY:

Ms. Powell returns in follow-up. She is still having inadequate pain control. It is an 8 out of 10 on the VAS scale. It is a burning, neuropathic type pain in the right wrist and hand. The Oxycontin was previously working well but it doesn't seem to be as effective any longer.

PHYSICAL EXAMINATION

Examination today, she is crying and is in some distress. She has a glove on the right hand. She has allodynia and very little range of motion.

DIAGNOSTIC IMPRESSION:

1. Complex regional pain syndrome.
2. Major depression with anxiety.

RECOMMENDATIONS:

1. Increase Oxycontin to 100 mg three times daily.
2. Refilled Oxycodone.
3. Continue Gabapentin.
4. Refilled Cymbalta.
5. Continue current dose of Seroquel.
6. We will see her back next month.

We will continue with medical management. She is pretty much at MML. Her medications need to be adjusted. I don't think she is capable of working.

C. Gregory Kang, M.D.
Physiatrist

CGK/dh

cc: Worker's Compensation carrier

PATIENT: DENICA POWELL
DATE: 01/16/12

BRIEF HISTORY:

Ms. Powell returns today in follow-up. She reports slight improvement in pain with the increase in the Oxycontin but the benefits are short term and she is back to where she was. Her pain is still a 7 out of 10 primarily in the right arm and hand. She denies constipation. She has that regulated.

PHYSICAL EXAMINATION

Examination today reveals that her hand is covered up and sensitive to touch. She is still emotionally in some distress. Otherwise, no changes.

DIAGNOSTIC IMPRESSION:

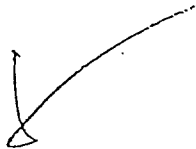
1. Complex regional pain syndrome.

RECOMMENDATIONS:

1. We will increase her Oxycontin one more time to 120 mg three times daily.
2. Refilled Oxycodone.
3. We increased her Gabapentin to 800 mg three times daily as well.
4. If the increase in the opioids does not help, we may actually decrease it on our next visit. We may just give her 30 mg Oxycodones.
5. We will also consider compounded creams to help with the pain.
6. We will also consider Ketamine infusion therapy and possible referral to Wake Forest Pain Management.

C. Gregory Kang, M.D.
Physiatrist

CGK/dh



PATIENT: DENICA POWELL
DATE: 02/16/12

BRIEF HISTORY:

Ms. Powell returns in follow-up. Her pain is actually a little bit better with the increase in Oxycontin. She rates her pain to be a 7 or 8 out of 10 on the VAS scale. Her right arm pretty much is non-functional. She can't use her hand for anything. She doesn't use it to feed herself, brush her hair, nothing. The pain becomes too severe with any type of cutaneous stimulation. She has to use her left hand and arm for most purposes. Constipation is regulated with Miralax powder. She remains depressed and anxious.

PHYSICAL EXAMINATION

Examination today reveals that she is alert. Her speech is fluent. She is visibly in emotional distress and in pain. Neurologically, no changes. She has weakness in the right hand and arm due to pain. Sensation is altered. She has allodynia as well.

DIAGNOSTIC IMPRESSION:

1. Complex regional pain syndrome, right upper extremity.
2. Depression with anxiety secondary to pain.

RECOMMENDATIONS:

1. I think she is pretty much at maximal medical improvement. Based on the AMA guides, 5th edition, under chronic pain syndrome section, I am giving her a 70% right upper extremity impairment rating.
2. Refilled Oxycontin.
3. Continue Seroquel, Gabapentin, and Klonopin.

C. Gregory Kang, M.D.
Physiatrist

CGK/dh

cc: Worker's Compensation carrier



JONATHAN A. SIMONS, Ph.D., P.C.
Licensed Clinical Psychologist
Certified Family/Divorce Mediator

1506 Azalea Dr., #602
Surfside Beach, SC 29575
Phone: (843) 828-0502
Fax: (843) 828-4402

Greg Kang, M.D.
Via Fax: 215-9555

March 24, 2011

Re: Denica Powell
DOB:

Dear Greg:

I have seen Ms. Powell for an initial diagnostic evaluation (03/16/11) and one follow-up session (03/24/11). We will work on cognitive/behavioral approaches to her depression. I would like her to see you to re-evaluate her depression medications. In addition, I am hoping that you can help her with sleep problems.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Jonathan A. Simons, Ph.D.
Licensed Clinical Psychologist

JAS/ts

2

Confidential

Jonathan A. Simons, Ph.D./Clinical Psychologist/1586 Azalea Dr. Suite B Beach, SC 29575 (843) 828-0502 Fax 843-4402

Progress Notes

Patient: Powell, Denica

Chart #: _____

3/24/11 90806 About the same. Tearful, 1/8
desperate, helpless, despairing. In bed a lot
still but has walked around the block.
Played a little w/ daughter, & encourage
her to keep going in that direction: stay
out of bed during the day, & time outside
& walking; & activity w/ daughter; &
distracting beh. Retn 1 week J.A. Simons, PhD

3/31/11 90806 Doing a little better. Went out 2/1
2x w/ daughter. Hard. Had to fake it some
to keep going, but daughter appreciated.
Denica feels a little better about herself.
Not really out of bed more. We talk
about noticing even small changes in
pain, & resp. Keeping pain log (do @ mealtime)
to get more precise noting fluctuations.
She will also take delight out this
weekend. Retn 1 week J.A. Simons, PhD

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Jennifer A. Simon, Ph.D. Clinical Psychologist / 1506 Arden Dr. Surfside Beach, SC 29575 (843) 328-0501 Fax 828-4487

Progress Notes

Patient: Powell, Denise

Chart #: _____

3/8

4/6/11 90806 Depressed, fearful, but able to smile occasionally. Has noticed at least some variability in fear. Able to take daughter on outings. Sitting on porch as opposed to going back to bed. Despite continued depression, I'm releasing her to have stimulator trial (see letter). I have rec. followup w/ her post trial.

J. A. Simon, Ph.D.



JONATHAN A. SIMONS, Ph.D., P.C.

Licensed Clinical Psychologist
Certified Family/Divorce Mediator

1506 Azalea Dr., #602
Surfside Beach, SC 29575
Phone: (843) 828-0502
Fax: (843) 828-4402

Greg Kang, MD
Via Fax: 215-9555

April 12, 2011

Re: Denica R Powell
DOB:
Claim # A8M2703

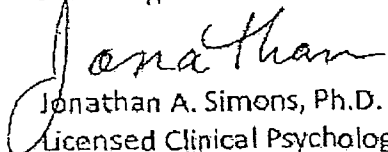
Dear Greg:

Thank you for referring Denica Powell for treatment of her depression. As you know, Ms. Powell had a brief psychological evaluation with Dr. Michael Grant on February 22, 2011. At that time, Dr. Grant felt that Ms. Powell's depression would interfere significantly with her ability to benefit from a spinal cord stimulator trial.

I have had three treatment sessions with Ms. Powell since my initial diagnostic interview on 03/16/11. While she is still depressed, she has been able to increase her activity level. She has been able to take her daughter on more outings, which improves her self esteem as well as her daughter's emotional health. Most of her depression is caused by her pain, so I do not think it is reasonable to expect a great deal of improvement in her depression before she has some relief from her pain. Instead, we have worked on Ms. Powell's ability to change her behavior, despite her pain, so that she can engage in behavioral components of depression management once her pain is reduced. She has made some progress in this area and I am ready to release her for a spinal cord stimulator trial. I do think it would be good for her to follow up with me following the trial, since her depression has been severe.

Thank you again for inviting me to participate in Ms. Powell's care. Please feel free to contact me if you have any questions or concerns.

Sincerely,


Jonathan A. Simons, Ph.D.
Licensed Clinical Psychologist

JAS/ts

Confidential

Jonathan A. Stronsky, Ph.D./Clinical Psychologist/1506 Azalea Dr., Surfside Beach, SC 29575/(843)828-0507 Fax: 828-4402

Progress Notes

Patient: Powell, Denica

Chart #: _____

4/6

11/11/11 90806 Genuquel helping crying,
Went to game to see daughter cheerlead.
Had trouble enjoying it 2° to pain, but
proud of self for going. Plan for
next week is outing w/ daughter
& w/ dad. J.A. Stronsky, Ph.D.

5/6

11/14/11 90806 Did her 2 assignments
but very depressed. Ruminating about injury,
pain, & ask her to continue @ least
2 outings a week. Return 2 weeks. J.A. Stronsky, Ph.D.

11/30/11 cancel - strep JAS

12/15/11 90806 Really suffering. Had
strep, so in isolation. We talk
about acceptance. Emphasize finding
characteristics, a plan for her life post
injury. She will need continued care
as she remains very depressed.
Return after New Year. J.A. Stronsky, Ph.D.

6/6

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Jonathan A. Simons, Ph.D./Clinical Psychologist/1506 Azalea Dr. Surfside Beach, SC 29575/(843)878-0502 Fax 828-4402

Progress Notes

Patient: Powell, Denica

Chart #:

12/30/11 - Becky Hobbs/Travelers called & authorized
6 sessions

1/4/12 90806 About the same, Chronic
pain interfered w/ her ability to
fully enjoy X-Mas, Not doing things
w/ kids, Feels guilty but can't bring
herself to participate, Not sleeping,
I suggest she ask Dr. Kane for
more aggressive treatment of insomnia,
she vents & I support Petr 1 week

1/9/12 cancel - conflict in schedule
NV: 1/23/12 @ 2PM



JONATHAN A. SIMONS, Ph.D., P.C.
Licensed Clinical Psychologist
Certified Family/Divorce Mediator

1506 Azalea Dr., #602
Surfside Beach, SC 29575
Phone: (843) 828-0502
Fax: (843) 828-4402

Gene M. Connell, Jr.
Via Fax: 238-5050

March 27, 2012

RE: Denica Powell
DOB: [redacted]
File No.: 2008-0158C

Dear Mr. Connell:

I am responding to your inquiry of March 26, 2012, requesting a letter regarding Ms. Powell's disability status. I have been treating Ms. Powell since March 16, 2011. I have been treating her for depression secondary to her chronic pain and muscular-skeletal problems. I have diagnosed her with Pain Disorder with Both Medical Features and Psychological Features; Major Depressive Disorder, Recurrent, Severe without Psychotic Features; and Anxiety Disorder, NOS. As Ms. Powell's chronic pain is likely to continue through the future, her depression will also be permanent. Her level of pain itself must be rated by the physician treating the underlying illness.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Jonathan A. Simons, Ph.D.
Licensed Clinical Psychologist

JAS/ts

Travelers Insurance Assessment Inquiry Regarding Spinal Stimulation/Intrathecal Pump Placement

Claimant Name: DENICA POWELL
 Examiner: MICHAEL M. GRANT
 Date of Examination: 2/22/2011
 Date This Form was Completed:
 Claimant Date of Birth:
 Case Number:

Basis of Psychological Evaluation: (check all that apply)

- ☒ Clinical Interview
☒ Records review
☒ Collateral interviewee(s) name(s) and degrees (if applicable)
☒ Battery for Health Improvement - 2
☐ SF-36v2
☐ MMPI
☒ (Other) BDI, BAI

Check one item below related to spinal stimulation or intrathecal pump placement.
 We are not requesting a diagnosis or information on causation of any medical or psychological problem.

☐ Claimant has psychological problems or characteristics that would preclude a good treatment response at this time. Explain if necessary:

☒ Claimant has psychological problems or characteristics that would, at this time, make a good response significantly less likely to occur than in the average pain patient. Explain if necessary:

CLAIMANT HAS A SEVERE PRESENTATION OF BOTH DEPRESSION AND PANIC DISORDER (ANXIETY). WHILE THESE DO NOT PRECLUDE A GOOD RESPONSE TO A SPINAL CORD STIMULATION IMPLANT, IT WOULD BE WISE TO ADDRESS THESE DISORDERS THAT ARE CO-MORBID WITH

☐ Claimant has no psychological problems or characteristics that would interfere with a good response to surgical implantation. (No explanation needed)

Psychologist Signature and Date

Michael M. Grant Ph.D. REDUCE HER

OVERALL BURDEN OF 'SUFFERING' AND TO HELP IMPROVE A STIMULATOR'S OVERALL OUTCOME IN REDUCING HER PHYSICAL PAIN

Florence Neurosurgery & Spine

1204 E. Cheves Street ~ Florence, S.C. 29506

ph: 843 673 0122 ~ fax: 843 673 0227

www.florenceneurosurgery.com

Andrew H. Rhea, M.D.

James J. Brennan, M.D.

Elizabeth A. Snoderly, D.O.

William B. Naso, M.D.

Christopher G. Paramore, M.D.

Patient Name: DENICA POWELL (45528E)

DOB:

Date of Service: 05/26/2011

HISTORY AND PHYSICAL**HISTORY:****Chief Complaint:** Chronic right arm and hand pain secondary to an injury**History of Present Illness:** The patient is a 34-year-old right-handed white female who suffered an injury to her right arm in January 2008. She has undergone two surgeries, and continues to have significant pain in her arm and especially her right hand. She has been treated with multiple interventions, and recently underwent her psychological screening and a dorsal column stimulator trial which gave her greater than 70% pain relief. She is referred for permanent implantation of a paddle cervical stimulator.**Past Medical History:** No high blood pressure, diabetes, asthma, heart disease, heart attacks, cancer, ulcers, bleeding disorders, alcoholism or liver disease.**Past Surgical History:** Includes the surgeries on her arm.**Review of Systems:** I would refer to the health history form dated May 26, 2011. This was reviewed with the patient and is essentially negative.**Medications:**KLONOPIN ORAL TABLET 1 MG,
CYMBALTA ORAL CAPSULE ENTERIC COATED 60 MG, daily
NEURONTIN ORAL CAPSULE CONVENTIONAL 300 MG,
OXYCODONE HCL ORAL TABLET 12 HR 30 MG,**Allergies:**

NKDA

Social History:**MARITAL STATUS:** Divorced.**# OF CHILDREN:** 2**OCCUPATION:** Unemployed.**SMOKING:** Has no smoking history.**ALCOHOL:** Does not give any significant history of alcohol usage.**Family History:** Positive history of insulin dependent diabetes, positive history of hypertension.

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Andrew H. Rhea, M.D. James J. Brennan, M.D. Elizabeth A. Snoderly, D.O.
William B. Naso, M.D. Christopher G. Paramore, M.D.

Patient Name: DENICA POWELL (45528E)

DOB:

Date of Service: 05/26/2011

PHYSICAL EXAMINATION:**Vitals:**

VS-TEMPERATURE: 97.1°F Tympanic
VS-PULSE: 62 Right Radial, Regular
VS-BLOOD PRESSURE: 120/60 Right Arm Sitting
VS-RESPIRATION: 18
VS-HEIGHT: 5ft4in
VS-WEIGHT: 160lbs.

General: This is a well-developed white female in some distress secondary to right arm pain. She is alert and cooperative to exam.

HEENT: The patient is normocephalic atraumatic. Cranial nerve 2 shows grossly intact vision, cranial nerves 3, 4, and 6 reveal pupils are equal and active to light and accommodation and extraocular movements are intact. Cranial nerve 5 shows facial sensation intact in all 3 groups bilaterally. Cranial nerve 7 shows symmetric facial grimace. Cranial nerve 8 shows grossly intact hearing bilaterally with canals clear. Cranial nerves 9, 10 and 12 show spontaneous swallow and cranial nerve 11 shows acceptable shoulder shrug.

Neck: Shows full range of motion. There is no jugular venous distention noted. No carotid bruits auscultated.

Chest: Clear to auscultation.

CV: Heart has a regular rate and rhythm. No murmurs noted.

Abdomen: Bowel sounds are positive, soft, nontender.

Extremities: No cyanosis, clubbing, or edema. They are warm to touch. Pulses appear to be intact. There is good muscle tone and no atrophy noted in muscle groups noted, except for some trophic changes in her right hand.

Neuromusculoskeletal:

Neurologically, patient is alert and oriented x 3. eyes and cranial nerves are as stated above. Recent and remote memory are grossly intact. Attention span and fund of knowledge appear to be within acceptable limits. Speech is appropriate in context and use.

Motor Exam: 5/5 in all groups tested, except for a decrease in her right grip secondary to pain.

Sensory Exam: Intact in all groups tested, in upper and lower extremities, except for numbness in her right hand.

Deep tendon reflexes: 1+ and symmetrical throughout.

Coordination: Appears to be intact in both upper and lower extremities.

Florence Neurosurgery & Spine

1204 E. Cheves Street ~ Florence, S.C. 29506

ph: 843 673 0122 - fax: 843 673 0227

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Andrew H. Rhea, M.D. James J. Brennan, M.D. Elizabeth A. Snoderly, D.O.
William B. Naso, M.D. Christopher G. Paramore, M.D.

Patient Name: DENICA POWELL (45528E)

DOB:

Date of Service: 05/26/2011

Gait: Normal.

There are no cerebellar changes noted.

MEDICAL DECISION MAKING:

Data Review/Radiographic Studies: None.

Diagnosis/Assessment: 1) Complex regional pain syndrome secondary to a previous right arm and hand injury.

Management Options/Plan:

I do believe the patient is a candidate for a dorsal column stimulator. I have reviewed the procedure with the patient. I have reviewed the risks of bleeding, infection, spinal cord injury, CSF leak, spinal nerve injury, failure to control her pain, need for lead revision, soft tissue injury, chest injury, abdominal injury, need for battery revision, death, coma, and paralysis. I would like her to undergo an MRI scan of her cervical spine confirms face for lead, otherwise the procedure would be done with the laminectomy. Her battery will be placed in the left flank. She desires to proceed and will be scheduled in the near future.

cc: Dr. Gregory Kang

Electronically Signed by: James J. Brennan, M.D. on Tuesday, May 31, 2011 10:20 am

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

Physician's Statement

Claimant's Name: Denica Powell
Physician's Name: Dr. Gregory Kang
Practice/Clinic: Dr. Gregory Kang
Preparer's Name: Paula Chavis
Phone: (704) 544-3533

Employer's Name: Petsmart Inc
Insurance Carrier: The Phoenix Insurance Co
SCWCC File No: 0800718

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 first office visit: 12/9/11 Date of last visit: 3/21/12 Date of Injury or Illness: _____
Diagnosis or nature of injury or illness: (R) Upper extremity injury (RPS)
Body part(s) injured: Right Wrist/Hand Body part(s) affected: _____
Date of Maximum Medical Improvement: 2/16/12 Upper extremity
Based on the AMA Guidelines, the claimant has sustained a 7.0 % 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.

____ The claimant is able to return to work with the following restrictions:

☒ 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:

Medications → Oxycodone, Serenol, Plavix, Neurontin
Spiral (CORN) Stimulator battery replacement

Treating Physician [Signature]

Date 4/6/12

APA SUBMISSIONS

DENICA R. POWELL V. PETSMART, INC.

W.C.C. FILE NO.: 0800718

8. Vocational Assessment	05/25/12		Pages 118 – 128
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Vocational Assessment

Date May 25, 2012

Name of referral source Matthew J. Fultz, Attorney at Law
Address Wood & Warder, LLC
One Wesley Drive
Charleston, SC 29407

Injured Worker: Denica R. Powell
Date of Birth: -
Age: 35
SSN:

WCC #: 0800718
Claim #: 026-CB-A8M2703N

Employer: Petsmart, Inc.

Date of Injury: January 3, 2008
Date of Assessment: May 14, 2012

Background information

This vocational assessment was requested by the defense attorney to determine the vocational impact of Ms. Powell's injuries sustained on January 3, 2008 while working for Petsmart. The assessment was conducted at her attorney's office in Myrtle Beach. Prior to beginning the assessment, the following disclosures were provided to Ms. Powell: the purpose of the assessment, referral source, the scope of services requested, and limits of confidentiality. Ms. Powell was alert and oriented. She immediately became tearful when the assessment started. She exhibited a depressed, anxious affect for most of the assessment. She held her right arm in a guarded position and was not observed actively using the right arm for anything. She frequently repositioned her right arm. During testing she used her left hand to write her responses. She avoided use of her right hand to steady the test paper as she wrote on it. The assessment was concluded in two and one-half hours.

118

Medical Information

Ms. Powell provided the following information in the vocational interview.

History of injury. Ms. Powell was injured on January 3, 2008 as a salon manager. She had a dog on a leash and the dog sat on her foot, resulting in her falling on concrete on her right wrist. She underwent carpal tunnel surgery. She later underwent the nerve wrap surgery. She received a spinal cord implant from Dr. Brennan. She also saw Dr. Kang for treatment. She states that he recommended disability. She will see Dr. Kang in mid-June. She last saw Dr. Kang in April. She sees him monthly.

Ms. Powell has been seeing Dr. Simon for psychological care due to anxiety and depression. The carrier approved this treatment. She began this treatment about 8 or 9 months ago. He recommended Seroquel and Dr. Kang provided the prescription. She sees Dr. Simon once a month. Her next appointment is on May 23rd.

Secondary medical issues. She denies any other medical problems. She had an appendectomy sometime around 2000.

Current medical status. Her spinal cord stimulator is currently activated. She currently takes the following medications. The medications in **bold** were taken prior to the appointment:

- Cymbalta
- Oxycodone
- Oxycontin
- Neurontin
- Klonopin
- Seroquel

She states that her spinal cord stimulator is active all of the time. She makes adjustments as needed. She does not have the remote with her. She experiences pain, burning, and tingling in the right arm constantly. She sleeps for an hour, and then is up for two hours. She is up and down all of the time. The pain is always present. She pain is currently rated at 7/10. The pain ranges from 7/10 to 10/10. She states that she "wishes they would cut it off, hate it". The pain encompasses the entire arm up to the shoulder. She wears a wrist splint that covers up to mid-forearm. She wears a sleeve under the splint. She has a surgical scar on her palm and ventral forearm. She cannot rely on the right hand to pick up items. She always keeps the sleeve and brace on her right wrist.

Daily activities. She states that she does nothing during the day. She tries to sleep. She does no cooking or laundry. Her father drove her to the appointment today. She drives only when it is "very necessary". She does not use her right hand for anything. Her daughter helps her to comb her hair. She stated the following: "Horrible, can't do anything". She is up and down all of the time. She is tired and needs to sleep.

Education and Training

Ms. Powell attended the 12th grade and obtained her GED. She believes that she had all of the course credits to obtain her diploma. She attended pet grooming school consisting of 360 hours, full time. This time consisted of bookwork and hands-on training.

Military Experience

She has no military experience.

Work History

1. Petsmart, 2004 or 05, groomer. She checked dogs in and out. She used scissors and clippers. She bathed dogs. She was required to lift the dogs to the table. She also used hand dryers. She scheduled appointments and printed a receipt for the customer to take to the front to pay. She became a salon manager and was required to continue performing all groomer duties. She handled scheduling and paperwork. She was responsible for 8 - 9 groomers who were full-time and part-time employees. She completed performance evaluations on her employees. She ordered grooming supplies such as shampoo, brushes, ear cleaner and clippers. She used a computer system to monitor the performance of the salon. She modified the grooming schedule to improve performance. She received a stipend plus commission. Her take-home pay was in the range of \$1100 and \$1600 weekly. Ms. Powell was out of work for about three weeks after her injury. She returned to work and performed her supervisory duties. She tried to answer phones. She worked in this capacity for a few weeks and could not continue.

418.674-010 DOG GROOMER

SVP: 4

GED: 3 2 3

STRENGTH: M

2. Cuddles Avenue, grooming salon. She owned the salon. She had no employees. The shop was located in Murrells Inlet. When Petsmart opened she was offered a job. She ran her own shop for a year. In terms of her income, she stated that she was "getting by".

418.674-010 DOG GROOMER

3. Plantation Resort, 6 years. She started as a front desk clerk, where she worked for two and one-half years. She checked in guests, issued keys and handled payments. She took an accounting job that involved receiving new paperwork for time-shares and processing it. She entered all of the information into a computer.

238.367-038 HOTEL CLERK

SVP: 4

GED: 3 3 3

STRENGTH: L

205.367-022 CREDIT CLERK

SVP: 4

GED: 4 3 4

STRENGTH: S

Analysis of Worker Traits

This information results from the analysis of Ms. Powell's work history utilizing information provided in the Dictionary of Occupational Titles.

Ms. Powell's work history indicates an **above average** (66th – 89th percentile) **aptitude ability** in the areas of:

- Clerical Perception
- Motor Coordination

Ms. Powell's work history indicates an **average** (34th – 65th percentile) **aptitude ability** in the areas of:

- General Learning Ability
- Verbal Ability
- Numerical Perception
- Spatial Aptitude
- Form Perception
- Finger Dexterity

- **Manual Dexterity**

Ms. Powell's work history indicates a **below average** (10th – 33rd percentile) **aptitude ability** in the areas of:

- **Eye/Hand/Foot Coordination**
- **Color Discrimination**

Ms. Powell's work history indicates a **specific vocational preparation** level of 4 (semi-skilled): 3 months up to and including 6 months. Specific vocational preparation is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation (The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

According to the Dictionary of Occupational Titles, the occupations reported by Ms. Powell indicate the following **GED levels**. GED levels are expressed on a scale of 1 – 6, with 1 representing the lowest level of function and 6 representing the highest.

- **Reasoning Development = 4**
- **Mathematical Development = 3**
- **Language Development = 4**

GED embraces those aspects of education (formal and informal) which contribute to the worker's (a) reasoning development and ability to follow instructions, and (b) acquisition of "tool" knowledge such as language and mathematical skills. Ordinarily, such education is obtained in elementary school, high school, or college. However, it may be obtained from experience and self-study (source: The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

Ms. Powell's work history is reflective of the following **Job Temperaments**, defined as common situations to which the worker must adapt:

- Making judgments and decisions
- Dealing with people
- Performing a variety of duties
- Attaining precise set limits, tolerances and standards

Ms. Powell's work history is reflective of the following **Work Fields**, defined as categories of technologies that reflect how work gets done and what gets done as a results of the work activities of a job:

Semi-Skilled

- VERBAL RECORDING-RECORDKEEPING
- NUMERICAL RECORDING-RECORDKEEPING
- INVESTIGATING
- INFORMATION-GIVING
- ACCOMMODATING

Ms. Powell's work history is reflective of the following **Materials, Products, Subject Matter, or Services (MPSMS)**:

- ANIMALS, OTHER
- FINANCIAL SERVICES
- LODGING SERVICES
- BEAUTY AND BARBERING SERVICES

Personal Data

Ms. Powell currently lives at 6001 South King's Highway, number 117 in Myrtle Beach (29575), where she has lived for 6 - 7 years. She lives with her parents. She is right-hand dominant. She was married in approximately 2004 and was separated in September of 2007. She was divorced in 2008. She has two children who are 13 and 15 years old. They both live with her and her parents. She lived in Ohio and West Virginia in the past. She has lived in South Carolina since 1997. She does not smoke or use alcohol. She believes that she was required to pass a background check for Petsmart.

Basic Skills

She states that she was never an active reader. She has never had an interest in reading. She used a computer while at Petsmart to enter customer information. She used a computer while at Plantation Resort to enter information for time-share sales. She used a computer at Petsmart to check dogs in and out. She pulled customer information up and entered information. She manages her own finances. She gives her parents money for the utilities. She has reconciled a checking account in the past.

Avocational

She currently has no hobbies. Prior to her injury she enjoyed bowling, playing football and badminton with her son, swimming and going to the water park.

Financial Data

She has started her SSDI paperwork on the computer. She has been unable to complete the paperwork due to her symptoms. She states that her parents will

help her finish the paperwork. She currently receives \$569.61 in weekly workers compensation benefits. She has not attempted to work anywhere since last working for Petsmart.

Work Restrictions

Physician's description.

02-16-12 – C. Gregory Kang, MD: No use of her dominant arm

Vocational Plans

She stated that she cannot function at home. There is nothing she can do. She would love to be able to go back to her work.

Vocational Test Results

The Wide Range Achievement Test, Revision 4 (WRAT4, green form) was administered to the claimant. Ms. Powell was able to complete all subtests administered according to standardized test conditions. She used her left hand to provide all written responses. The results of the test are shown below.

	Raw score	Standard Score	Qualitative Description	Grade Equivalent
Word Reading	57	93	Average	11.7
Sentence Comprehension	45	92	Average	11.8
Spelling	46	101	Average	>12.9
Math Computation	31	76	Low	4.9

Review of Records

PETsMART, Inc. Job Description: Stylist/Groomer: occasionally lift and/or move up to 100 pounds

PETsMART, Inc. Job Description: Pet Salon Manager: occasionally lift and/or move up to 100 pounds

Doctor's Care notes reviewed

06-12-03 Time Warner Termination Notice, Denica Powell
Position: CSR

01-12-08 Grand Strand Regional Emergency consult for hand pain

01-16-08 Steven M. Callihan, MD consult
01-24-08 CT right upper extremity
01-28-08 Robert S. Leak, MD consult
02-11-08 Robert S. Leak, MD follow-up
02-16-08 MRI right wrist
02-25-08 Robert S. Leak, MD follow-up
03-11-08 Robert S. Leak, MD follow-up
04-04-08 Jeffrey C. Wilkins, MD consult for right hand pain
04-04-08 Jeffrey Wilkins, MD electrodiagnostic testing
04-08-08 Robert S. Leak, MD follow-up
06-10-08 MRI right wrist
06-24-08 Robert S. Leak, MD follow-up
07-23-08 Robert S. Leak, MD operative report for right carpal tunnel release
07-27-08 Grand Strand Regional Emergency consult for stitch popped out
07-31-08 Robert S. Leak, MD follow-up
08-26-08 Robert S. Leak, MD follow-up
09-23-08 Robert S. Leak, MD follow-up
11-04-08 Robert S. Leak, MD follow-up
01-06-09 Robert S. Leak, MD follow-up
02-03-09 Robert S. Leak, MD follow-up
02-18-09 David Everman, MD IME
03-26-09 Robert S. Leak, MD follow-up
04-30-09 Robert S. Leak, MD follow-up
05-18-09 Robert S. Leak, MD follow-up
07-02-09 J. Stewart Haskin, Jr., MD IME: She is right-hand dominant
12-08-09 Deposition of Denica Powell:
She lives at 6001 South Kings Highway, Number 117, Myrtle Beach.
She went to high school in Fairmont, WV. She attended the 12th grade

and obtained her GED.

She received a certification from grooming school.

She worked at Petsmart for about two and a half years.

She was the salon manager. She earned commission only. She was earning \$800 – 1300 weekly plus commission. Her take-home pay was \$1100 – 1600 weekly. She was overseeing the salon and the grooming associates, scheduling. She was the manager for 10 months.

She was a groomer before that.

She had her own shop called Cuddles Avenue for about a year. She did grooming and boarding. She had no employees.

She worked at Plantation Resort for 6 years. She did front desk and accounting.

- 01-12-10 Deposition of Dr. Robert Simon Leak
- 02-26-10 Robert S. Leak, MD operative report for right median nerve wrapping
- 03-01-10 Robert S. Leak, MD follow-up
- 03-15-10 Robert S. Leak, MD follow-up
- 04-26-10 Robert S. Leak, MD follow-up
- 06-07-10 Robert S. Leak, MD follow-up
- 07-09-10 Robert S. Leak, MD follow-up
- 08-19-10 Robert S. Leak, MD follow-up
- 09-30-10 Robert S. Leak, MD follow-up
- 11-18-10 Robert S. Leak, MD follow-up
- 12-09-10 C. Gregory Kang, MD consult
Diagnostic impression: Complex regional pain syndrome, right upper extremity
- 01-20-11 Robert S. Leak, MD follow-up
- 03-10-11 Robert S. Leak, MD follow-up
- 02-16-12 C. Gregory Kang, MD follow-up: "... Her right arm pretty much is non-functional. She can't use her hand for anything. She doesn't use it to feed herself, brush her hair, nothing. The pain becomes too severe with any type of cutaneous stimulation. She has to use her left hand and arm for most purposes..." He recommended MMI and 70 percent right upper extremity impairment.

Reviewed Dr. Simons treatment notes and letters

Vocational Analysis and Conclusions

Ms. Powell is a 35-year-old dog groomer and salon manager who was working for Petsmart on January 3, 2008, performing duties related to dog grooming, when a dog sat on her foot, resulting in her falling forward onto her right hand. Nine days later she was evaluated at the emergency department at Grand Strand Regional for right hand pain. She entered into treatment with Dr. Leak and was evaluated by Dr. Wilkins on April 4, 2008. She underwent a right carpal tunnel release with Dr. Leak on July 23, 2008. She continued to follow-up with Dr. Leak. She saw Dr. Haskin one time. She underwent a second surgery with Dr. Leak on February 26, 2010 consisting of a nerve wrap. She continued to follow-up with Dr. Leak. Dr. Kang evaluated her on December 9, 2010 and diagnosed complex regional pain syndrome. She received a spinal cord stimulator. She saw Dr. Kang on February 16, 2012, at which time Dr. Kang recommended MMI and 70 percent right upper extremity impairment. He also stated that she has no functional use of her right upper extremity. She also received psychological treatment for pain, depression and anxiety from Dr. Simon. She remains under his care.

Ms. Powell's work at Petsmart is classified as "medium" in physical demands. She maintained her groomer duties and managed the work activities of up to 9 groomers. She completed performance evaluations on the groomers and scheduled grooming services. Other past work includes working as a hotel front desk clerk. This work is classified as "light" in physical demands. She performed usual duties of a hotel desk clerk, including checking guests in and out, handling payments and issuing room keys. She took a position that involved processing timeshare loan paperwork. This work is classified as "sedentary". Overall her past work ranges from "sedentary" to "medium" in physical demands, and is "semi-skilled" according to the Dictionary of Occupational Titles.

Positive factors in Ms. Powell's vocational profile include possession of her GED; possession of basic computer skills used in an occupational setting; customer service and cash-handling skills; and clerical skills related to her job at Plantation Resort. Negative factors in her profile include ongoing pain and dysfunction, as reported by her, significantly impacting her daily activities. She clearly does not perceive herself as capable of doing anything. She exhibited outward signs of depression and anxiety throughout the vocational interview. A careful review of Dr. Simon's treatment notes and correspondence revealed no statements prohibiting her from working from a psychological perspective.

A transferable skills analysis was performed to determine the presence of "sedentary" and "light" transferable occupations. A large number of occupations were identified through this analysis, including clerical and customer service/retail occupations. It is important to note that Ms. Powell has lost the use of her dominant upper extremity. Therefore, many of the occupations for which she qualifies would require accommodations from a potential employer. However, jobs remain in her labor market area that require minimal use of the hands and arms. These jobs are found in the tourism industry. For example tourist attractions exist where employees perform activities such as scanning of tickets (requiring the use of one hand) and directing patrons on where to go.

With appropriate management of her anxiety, depression and pain symptoms, viable options exist for Ms. Powell in her labor market as described above. She may benefit from the services provide at South Carolina Vocational Rehabilitation, where personnel are available to assist her with adaptive technologies and strategies to allow her to work without the use of her dominant arm. A stable labor market remains for clerical and customer service jobs in her labor market for which she qualifies. Given the nature of her injury and the loss of use of her dominant arm, her earnings capacity will fall within a range of approximately \$8 and \$10 hourly. This estimate is based on Bureau of Labor Statistics wage data and real wage data found in the labor market.

Thank you for this referral to Adams & Wilkinson.



Glen K. Adams, MRC, CRC, CEES
Vocational Consultant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

W.C.C. NO. 0800718

Denica Powell Appellant

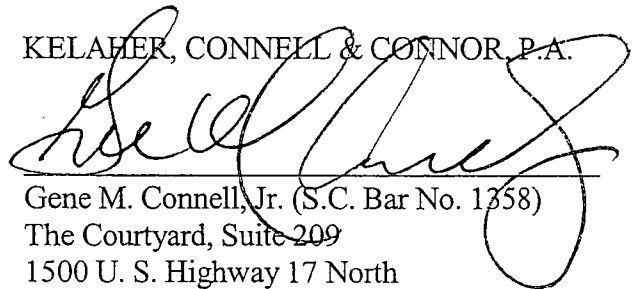
vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

CERTIFICATE OF COUNSEL

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

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August 7, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

W.C.C. NO. 0800718

Denica Powell Appellant

vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case.....	1
Standard of Review	2
Arguments	3
I. The Appellate Panel of the Workers' Compensation Commission may not vacate the single Commissioner's Decision without giving reasons including findings of fact and conclusions of law.....	3
II. The Appellate Panel of the South Carolina Workers' Compensation Commission may not order a de novo hearing without specific direction to the single Commissioner	7
III. This Court should affirm the Decision of the single Commissioner as a matter of law.....	8
Conclusion.....	14

TABLE OF AUTHORITIES

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<i>Able Communications, Inc. v. South Carolina Public Service Commission</i> , 290 S.C. 409, 351 S.E.2d 151 (1986)	13
<i>Bazen v. Badger R. Bazen Company, Inc.</i> , 388 S.C. 58, 693 S.E.2d 436 (S.C. App. 2020)	14
<i>Burnette v. City of Greenville</i> , 401 S.C. 417 737 S.E.2d 200 (Ct.App. 2012)	11
<i>Carolinas Recycling Group v. S.C. Second Injury Fund</i> , 398 S.C. 480, 730 S.E. 2d 324, 326 (Ct.App. 2012)	2
<i>Carter v. Verizon Wireless and American Home Ins. Co.</i> , 689 S.E.2d 615 (SC 2010)	11
<i>Charlotte-Mecklenburg Hospital Association v. S.C. Dept. of Health and Environmental Control</i> , 387 S.C. 265, 267, 692 S.E.2d 894 (2010)	7, 8
<i>Douglas v. Spartan Mills</i> , 245 S.C. 265, 140 S.E.2d 173 (1967)	12
<i>Grant v. Grant Textiles</i> , 372 S.C. 196, 641 S.E.2d 869 (S.C. 2007)	13
<i>James v. Anne’s Inc.</i> , 390 S.C. 188, 701 S.E.2d 730 (S.C.2010)	4
<i>Jordan v. Dixie Chevrolet</i> , 218 S.C. 73, 77, 615 S.E.2d 654, 656 (1950)	12, 13
<i>Lark v. Bi-Lo</i> , 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981)	2, 7
<i>Lyles v. Quantum Chem. Co.</i> , 315 S.C. 440, 434 S.E.2d 292 (Ct.App. 1993)	6
<i>Martinez v. Spartanburg County</i> , 394 S.C. 224, 230, 715 S.E.2d 339 (Ct.App. 2011)	2, 6
<i>North American Rescue Products v. Richardson</i> , 720 S.E.2d 53, 58 (S.C. Ct.App. 2011)	7
<i>Palmetto Alliance, Inc. v. S.C. Public Service Commission</i> , 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)	2
<i>Pierre v. Seaside Farms, Inc.</i> , 386 S.C. 534, 680 S.E.2d 615 (S.C. 2010)	10, 14
<i>Shealy v. Algernon Blair Inc.</i> , 250 S.C. 106, 156 S.E.2d 646 (S.C. 1967)	12
<i>Tennant v. Beaufort County School District</i> , 381 S.C. 617, 620, 674 S.E.2d 488, 490 (2009)	10
<i>Utica-Mohawk Mills v. Orr</i> , 227, S.C. 226, 87 S.E.2d 589	3, 4

Statutes

S.C. Code § 1-23-380(5)(e) (Sup. 2012)	2
S.C. Code Ann. § 1-23-350 (2005)	1, 2, 6, 13, 14

STATEMENT OF ISSUES ON APPEAL

- I. The Appellate Panel of the South Carolina Workers' Compensation Commission may not vacate the single Commissioner's Decision without articulating a reason in the record.
- II. A hearing "de novo" cannot be ordered without specific reasons by the Appellate Panel.
- III. The Commission has no authority to order a "de novo" hearing without specific reasons and thus the findings of fact and law by the single Commissioner have become the law of the case.
- IV. The full Commission used an unlawful procedure in vacating the single Commissioner's opinion without a reason which was affected by an error of law.
- V. An Appellate Panel's Order reversing the single Commissioner without specific findings does not comply with the requirements of the South Carolina Worker' Compensation Act and is per se illegal.
- VI. In order to vacate the opinion of the single Commissioner, the Appellate Panel must give clear, cogent reasons and include findings of fact and conclusions of law pursuant to S.C. Code Ann. § 1-23-350 (2005).

STATEMENT OF THE CASE

This matter is before the Court based on an appeal filed by the Employee of the Appellate Panel's Decision to remand to the single Commissioner for a "hearing de novo." (R. p. 3-6). The single Commissioner issued an Order on August 11, 2012 with fourteen findings of fact and eight conclusions of law. (R. pp. 8-13). The Appellate Panel of the Workers' Compensation Commission issued its Order on April 1, 2014 remanding this matter to the single Commissioner without addressing any of the questions of law or fact cited by the single Commissioner in his written ruling in violation of S.C. Code Ann. § 1-23-350 (2005). (R. pp. 3-6).

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) S.C. Code Ann. § 1-23-350 (2005) establishes the standard of review for decisions by the Appellate Panel of the Workers' Compensation Commission. See *Carolinas Recycling Group v. S.C. Second Injury Fund*, 398 S.C. 480, 730 S.E. 2d 324, 326 (Ct.App. 2012). Under the scope of review established in the APA, the Court of Appeals may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if substantial rights have been prejudiced or the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." See S.C. Code Ann. § 1-23-380(5)(e) (Sup. 2012). Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. *Lark v. BiLo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) ("the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.") *Palmetto Alliance, Inc. v. S.C. Public Service Commission*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

Further, any decision of the Appellate Panel of the Workers' Compensation Commission must include specific findings and conclusions of law to comport with S.C. Code Ann. § 1-23-350. See *Martinez v. Spartanburg County*, 394 S.C. 224, 230, 715 S.E.2d 339 (Ct.App. 2011).

ARGUMENT

I. THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION MAY NOT VACATE THE SINGLE COMMISSIONER'S DECISION WITHOUT GIVING SPECIFIC REASONS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In this particular case, the single Commissioner entered a well-reasoned Order on August 11, 2012 which was appealed to the Appellate Panel. The Order listed fourteen findings of fact and eight conclusions of law; and based on those findings of fact and conclusions of law, the single Commissioner held:

It is ordered that the Claimant/Employee is permanently and totally disabled, entitled to lifetime medical care, a lump sum payment, Utica-Mohawk language, and continuous medical treatment from Dr. Simon and Dr. Kang.

In making his ruling, the single Commissioner made the following Findings of Fact which are a part of the record as follows:

FINDINGS OF FACT

1. The Claimant, Denica Powell, was an employee of Petsmart, Inc.
2. The Claimant, Denica Powell, suffered an injury by accident on January 3, 2008 while employed a dog groomer.
3. The Employer, Petsmart, Inc., is subject to the Workers' Compensation Act.
4. The Claimant, Denica Powell, was assigned the task of stocking and dog grooming.
5. The Claimant's detailed testimony above is credible.
6. The treating doctors' records are convincing that Claimant is totally and permanently disabled.

7. The Claimant is entitled to lifetime medical care per the Form 14(B) report of the treating physician, Dr. Kang.

8. The medical evidence presented by the Claimant establishes by a preponderance of the evidence, and Claimant is entitled to compensation.

9. The claimant's severe depression and psychological disorder is directly caused by the severe upper extremity injury and the resultant pain.

10. The treating doctor finds that the Claimant has a 70% permanent impairment to the upper extremity.

11. The Claimant is totally and permanently disabled and entitled to lifetime medical care.

12. I find that by preponderance of the evidence, the Claimant is entitled to all benefits as provided for under the Workers' Compensation Act.

13. I find the Claimant is entitled to a lump sum payment of the commuted balance of: 500 weeks less the credit for the weeks she has been paid compensation.

14. I find the Claimant is entitled to the following Utica-Mohawk language:

The commuted value of this claim on the date of the hearing, June 12, 2012, is \$159,684.35. This lump sum is compensation for permanent impairment that will affect the Claimant for the remainder of her life. The Claimant's remaining life expectancy is 2,431 weeks. Therefore, even though paid in a lump sum, the Claimant's benefits after attorney's fees for the prosecution of this action shall be considered to be \$43.81 a week for 2,431 weeks beginning as of June 12, 2012; pursuant to Section 42-3-180 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court decision in Utica-Mohawk Mills v. Orr, 227, S.C. 226, 87 S.E.2d 589 and James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (S.C.2010).

The single Commissioner also made the following legal conclusions in his Order:

CONCLUSIONS OF LAW

1. The Claimant and the Employer are subject to the Workers' Compensation Act.
2. The Claimant suffered an injury by accident while employed with Petsmart, Inc.
3. The Claimant is entitled to permanent and total disability for the injuries she suffered on January 3, 2008.
4. The Claimant was in the course and scope of employment when she suffered this injury.
5. The record in this case is closed.
6. The Claimant is entitled to continuing medical treatment pursuant to the Workers' Compensation Act.
7. The Claimant is entitled to lifetime medical care and ongoing treatment from Dr. Kang and Dr. Simon.
8. The Claimant is to continue to receive all medications and other treatment to lessen her disability.

However, when the Appellate Panel of the Full Commission issued its Order it addressed no issues in the single Commissioner's Order. In fact, the findings of the Full Commission were as follows:

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term

of Review.¹ The Commissioners considered the matter and **Vacated and Remanded** the matter to the Jurisdictional Commission for a hearing de novo.²

The Appellate Panel of the Workers' Compensation Commission made no findings of fact or conclusions of law in remanding and vacating the opinion of the single Commissioner for a hearing "de novo". Nor did it address the questions of law or fact regarding the Commissioner's findings. The full Commission nor any administrative body may vacate and remand a decision of a single Commissioner without specific findings of fact and conclusions of law. (See S.C. Code Ann. § 1-23-350 (2005).) A remand to the single Commissioner without reasons given is patently illegal and clearly erroneous as a matter of law. It is well settled the Appellate Panel of the South Carolina Workers' Compensation Commission must have substantial evidence to support its decision. In this case, because there is not one reason given by the Appellate Panel, the Appellant's rights are substantially affected and the Commission's decision is clearly erroneous as a matter of law. The Appellate Panel of the South Carolina Workers' Compensation Commission ordered a new hearing by a new Commissioner, but gives no reason why a new hearing should be held, nor gives any guidance as to what the new single Commissioner should do when the case is remanded to him or her for a hearing on the merits. It is axiomatic in our system of justice that an Appellate Panel which reverses a Commissioner must give legal reasons for its decision. To do otherwise affects Appellant's substantial rights and is simply a "do over" without reason which prejudices her.

¹ This Order violates *Martinez v. Spartanburg County*, 394 S.C. 224, 230, 715 S.E.2d 339 (Ct.App. 2011) ("The Findings of Fact made by the Appellate Panel must be sufficiently detailed to enable the reviewing court to determine whether the evidence supports the findings.")

² This Order makes no findings and is not supported by substantial evidence, thus, this Court should set aside the Order of the full Commission. *Lyles v. Quantum Chem. Co.*, 315 S.C. 440, 434 S.E.2d 292 (Ct.App. 1993).

In the landmark case of *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981) our Supreme Court was asked to determine the credibility of witnesses. The Court affirmed the Appellate Panel of the South Carolina Workers' Compensation Commission because there were sufficient reasons stated in the Appellate Panel's decision to require the case be affirmed. In this case, there is not sufficient reason nor is there any reason given for the remand. The Appellate Panel simply orders a remand without instruction and without clear and cogent reasons or guidance. Here, the Appellate Panel's decision is arbitrary and accordingly affects Appellant's substantial rights.

II. THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION MAY NOT ORDER A DE NOVO HEARING WITHOUT SPECIFIC DIRECTION TO THE SINGLE COMMISSIONER.

It is well settled in South Carolina a court may order a de novo hearing if a question of law has been raised. See *North American Rescue Products v. Richardson*, 720 S.E.2d 53, 58 (S.C. Ct.App. 2011). Here, the Appellate Panel of the South Carolina Workers' Compensation Commission raises no question of law in ordering a de novo review, nor does the Appellate Panel tell the single Commissioner what should be done at the de novo hearing. Without this guidance and instruction, the Appellate Panel's ruling cannot be sustained by this court.

A good example of an inappropriate order of the Appellate Panel of the South Carolina Workers' Compensation Commission is found in *Charlotte-Mecklenburg Hospital Association v. S.C. Dept. of Health and Environmental Control*, 387 S.C. 265, 267, 692 S.E.2d 894 (2010). In that case, unlike this one, the circuit court judge gave specific reasons for the remand. In *Charlotte-Mecklenburg*, a circuit court judge, Jackson V. Gregory, found the Commission erred by considering evidence outside the record. The employer and the

insurer appealed. The difference here is that no reason is offered for the remand. However, in *Charlotte-Mecklenburg* the court gave specific reason for the remand, *i.e.*, considering evidence outside of the record.

III. THIS COURT SHOULD AFFIRM THE DECISION OF THE SINGLE COMMISSIONER AS A MATTER OF LAW.

The Appellate Panel of the Workers' Compensation Commission issued an order in this case without any specific findings of fact or law as to why the matter should be remanded. A review of the whole record in this case indicates the matter should have been affirmed by the Appellate Panel based on the evidence presented to him.

This evidence produced at the hearing included the fact that the Claimant testified that she was in severe pain, unable to drive more than short distances (R. p. 34, line 18); had severe limitations in holding her right wrist up (R. p. 35, line 3); was right hand dominant and was in pain all the time (R. p. 35, lines 9-15); had a dorsal column stimulator implanted in her to help her pain (R. p. 35, line 20); is unable to write with her right hand (R. p. 36, lines 23-24); is unable to leave her home because she is so miserable and in constant pain (R. p. 37, lines 22-23); has been seen by Dr. Simons, a psychologist, who helps her to understand her predicament (R. pp. 37-41); has no pain relief (R. p. 38, lines 16-17); has had two nerve wrap surgeries (R. p. 38, line 19); has tried to go back to work (R. p. 39, lines 14-18); the medication she is on makes her feel foggy (R. p. 39, lines 23-24); her mother and father have to take care of her and her children (R. p. 39, lines 7-12); is helped with everything (R. p. 39, lines 12-13); is in constant all-day pain (R. p. 40, lines 24-25); has even asked that her arm be amputated so that the pain could stop (R. p. 40, lines 17-18, p. 41, lines 19-25); is unable to do anything or any activities (R. p. 41, lines 11-17); had never seen a mental health professional before this accident (R. p. 43, lines 3-6); is unable to work and

cannot function at all (R. p. 44, lines 10-12); can't type or go on the internet (R. p. 44, lines 6-9); all she thinks about is pain (R. p. 46, lines 18-19); and has had no prior worker's compensation claims (R. p. 48, lines 9-10).

The medical evidence presented at the single Commission hearing was just as powerful. Dr. Leak, the treating physician testified by deposition and through his medical records. The Form 14B indicated that the Claimant had a 70% impairment to the right upper extremity and was unable to return to her work (R. p. 175). Further, Dr. Kang opined that Ms. Powell will need future medical care including medications and a spinal cord battery replacement (R. p. 175).

Dr. Leak also testified that he had performed two nerve wrap surgeries on Powell and had exhausted all conservative treatment measures (R. p. 84).

Ms. Powell was also seen by Dr. James J. Brennan, of Florence Neurosurgery and Spine for a second opinion. Dr. Brennan diagnosed her with complex regional pain syndrome secondary to a right arm and hand injury. (R. p. 174).

Further, Ms. Powell was referred to Dr. Jonathon Simons, a licensed clinical psychologist, because of her severe depression as a result of the traumatic injury to her right upper extremity. As late as January 4, 2012, Dr. Simons wrote in his notes about Denica Powell:

About the same, chronic pain interfered with her ability to fully enjoy Christmas, not doing things with kids, feels guilty but can't bring herself to participate, not sleeping and suggest she ask Dr. Kang for more aggressive treatment of insomnia. (R. pp. 164-170).

Further, the employer/insurer, Phoenix Insurance Company, sent Denica Powell for an assessment in regard to a spinal stimulator. She was seen by Dr. Michael Grant, a psychologist on February 22, 2011. Dr. Grant wrote:

Claimant has psychological problems or characteristics that would, at this time, make a good response significantly less likely to occur than in the average pain patient. Claimant has a severe presentation of both depression and panic disorder. (R. p. 171).

Finally, Claimant is under the care of a physiatrist, Dr. Gregory Kang, who diagnosed her with complex regional pain syndrome of the right upper extremity (R pp. 155-156). On her last visit with Dr. Kang on February 16, 2012, Dr. Kang noted:

Her right arm is pretty much non-functional. She can't use her hand for anything. I am giving her a 70% right upper extremity impairment rating. She needs Oxycontin, Seroquel, Klonopin and Gabapentin. My diagnosis is complex regional pain syndrome depression with anxiety secondary to pain. (R. p. 163).

Despite all of this evidence produced before the single Commissioner, the Appellate Panel of the Workers' Compensation Commission gives no reason for the remand. No facts, no law, no evidence is cited in the Appellate Panel's Decision. When this occurs, this Court has the duty and authority to reverse the Appellate Panel's decision.

In *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 680 S.E.2d 615 (S.C. 2010), the Supreme Court noted that a reviewing Court must determine if the Commission's findings of fact are supported by substantial evidence in the record. Appellant's substantial evidence is not a mere scintilla of evidence but evidence which considering the record as a whole would allow reasonable minds to reach a conclusion the agency reached. *Tennant v. Beaufort County School District*, 381 S.C. 617, 620, 674 S.E.2d 488, 490 (2009).

In *Pierre*, the Court noted: "An Appellate Court can reverse or modify the Workers' Compensation Commission's decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative and substantial evidence in the whole record." The Appellant submits to the Court that the record clearly indicates that remand was not appropriate, especially without findings of fact or conclusions of law, and that as a result this

Court should affirm the single Commissioner's decision in this case. Here, the substantial evidence in the record does not support the Appellate Panel's finding of a remand as is required by law. See *Carter v. Verizon Wireless and American Home Ins. Co.*, 689 S.E.2d 615 (SC 2010) (the circuit court's determination and substantial evidence in the record does not support appellate panel's finding and is not appropriate based on the record.)

Appellant concedes that the Commission is the ultimate finder of fact in workers' compensation cases. However, when the order of remand makes no findings of fact or conclusions of law such an order is clearly erroneous. In this case, the only evidence in the record is that Claimant suffered a total and permanent disability and accordingly the Commission was without authority to issue an order of remand without a particular or specific reason. Here, reasonable minds would not allow the court to reach the conclusion the Commission reached because no evidence, finding of facts or conclusions of law have been cited in the order of remand. As a result, this Court is left with findings of facts and conclusions of law of the single Commissioner along with the substantial evidence in the record and thus must reverse the Appellate Panel of the Workers' Compensation Commission and reinstate the single Commissioner's order as the law of the case.

It is an illegal procedure for the Appellate Panel of the Workers' Compensation Commission to simply reverse and remand the order of the single Commissioner without a reason and the Administrative Procedures Act clearly provides that such a decision violates Appellant's substantial rights and is clearly erroneous. See *Burnette v. City of Greenville*, 401 S.C. 417 737 S.E.2d 200 (Ct.App. 2012) ("we conclude the Commission's findings holding Burnette neither injured or aggravated a prior injury to her lower back in the 2007 incident are not supported by substantial evidence").

In sum, where the only reasonable inference from the record is the Claimant has sustained his burden of establishing his right to compensation, the case should not be remanded but should be affirmed by this Court and should not be remanded since this Court should find as a matter of law the Claimant is entitled to benefits. See *Shealy v. Algernon Blair Inc.*, 250 S.C. 106, 156 S.E.2d 646 (S.C. 1967).

Finally, to hold otherwise and remand this matter to the Appellate Panel of the Workers' Compensation Commission is prejudicial to the employee. The record has been established and is closed. The Appellate Panel of the Commission gives no cogent or clear reason why the case should be tried de novo and the evidence establishes as a matter of law that the employee is entitled to benefits. When such is proven and the record is clear, this Court has not only the duty but the obligation to find based on the substantial evidence presented that the full Commission erred in ordering a remand. To hold otherwise allows the Appellate Panel of the Commission to remand cases without reason back to the single Commissioner thus delaying compensation and a quick resolution of the employee's compensation claim when the law provides that workers' compensation benefits should be liberally construed in favor of the employee. While the Appellate Panel of the Commission may not like a decision, an order of remand without any reason affects the employee's substantial rights and is an error of law. Thus, it is reversible as a matter of law. See *Douglas v. Spartan Mills*, 245 S.C. 265, 140 S.E.2d 173 (1967) (when evidence is not in dispute, the question of whether or not the employee sustained an injury arising out of and in the course of his employment becomes a question of law for the court). See also *Jordan v. Dixie Chevrolet*, 218 S.C. 73, 77, 615 S.E.2d 654, 656 (1950) ("upon admitted or

established facts the question of whether an accident is compensable is a question of law and this is not an invasion of the fact finding held by the commission on the part of the Court.”)

See also *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007) (when under *Grant* the facts are undisputed we must examine whether the Commission’s decision...was affected by an error of law.) (This Court must be deferential to the Commission on questions of fact but this deference does not prevent the court from overturning the full commission’s decision when it is legally incorrect.) *Grant* 372 S.C. at 201, 641 S.E.2d at 872).

See also S.C. Code Ann. § 1-23-350 (2005) (a final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings...). See also, *Able Communications, Inc. v. South Carolina Public Service Commission*, 290 S.C. 409, 351 S.E.2d 151 (1986) (an order of the Public Service Commission with no other findings of fact violates S.C. Code Ann. § 1-23-350).

Thus, the APA requires the full Commission to fully set forth the underlying facts upon which it relied to support its conclusion and a failure to do so mandates reversal. (*Grant v. Grant Textiles*, 372 S.C. 196, 641 S.E.2d 869 (S.C. 2007).)³

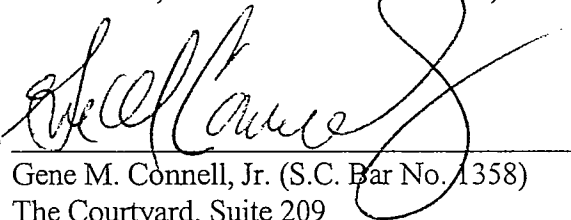
³ The full Commission does not take issue with one fact or question of law. It simply vacates a well-reasoned Order for no reason.

CONCLUSION

Accordingly, the employee requests that this Court affirm the single Commissioner's Workers' Compensation Commission Order based on the evidence presented and record on appeal consistent with the law of this case. See *Pierre v. Seaside Farms, Inc.* 386 S.C. 534, 680 S.E.2d 615 (2010) (appellate court may modify workers' compensation commission decision affected by error of law or clearly erroneous in light of the reliable and probative substantial evidence in the whole record). See also *Bazen v. Badger R. Bazen Company, Inc.*, 388 S.C. 58, 693 S.E.2d 436 (S.C. App. 2020) (if claimant's rights are prejudiced, Appellate Court may modify the Appellate Panel of the Workers' Compensation Commission's decision.) Finally, all orders of the Appellate Panel of the Workers' Compensation Commission must comply with S.C. Code Ann. § 1-23-350 (2005). Accordingly, Appellant asks for reversal and reinstatement of the single Commissioner's Order as a matter of law.

Respectfully submitted,

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August 27, 2014
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

W.C.C. NO. 0800718

Denica Powell Appellant

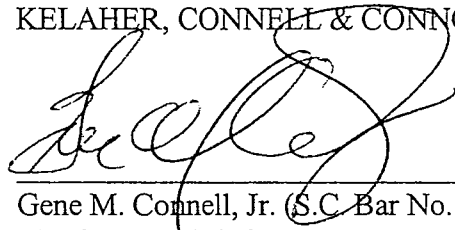
vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.

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August 27, 2014

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WORKERS' COMPENSATION COMMISSION

W.C.C. NO. 0800718

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vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served **Final Brief of Appellant** on the Respondents, through counsel of record, and on the South Carolina Workers' Compensation Commission, by depositing a copy of same in the United States Mail, postage prepaid, to:

F. Reid Warder, Jr., Esquire
John D. Stroud, Esquire
Warder Law Firm, LLC
P. O. Box 31057
Charleston, SC 29417

DATE OF MAILING: August 27, 2014

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 27th day of August, 2014

Shelia Y. McCumbee
Notary Public for South Carolina
My Commission Expires: 2-25-19

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

W.C.C. NO. 0800718

Denica Powell Appellant

vs.

Petsmart, Inc. and Phoenix Insurance Co. Respondents

RESPONDENT'S FINAL BRIEF

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Table of Contents

TABLE OF AUTHORITIES.....	i
SUMMARY OF EVIDENCE.....	1
ARGUMENT.....	5
I. THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION MAY NOT VACATE THE SINGLE COMMISSIONER'S DECISION WITHOUT GIVING SPECIFIC REASONS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW.	5
II. THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION MAY NOT ORDER A DE NOVO HEARING WITHOUT SPECIFIC DIRECTION TO THE SINGLE COMMISSIONER.....	5
III. THIS COURT SHOULD REMAND THE CASE BACK TO THE APPELLATE PANEL AND NOT AFFIRM THE DECISION OF THE SINGLE COMMISSIONER.....	6
CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<u>Baldwin v. James River Corp.</u> , 304 S.C. 485 (S.C.App. 1991)	5, 6, 7, 8
<u>Bobo v. Marshane Corp.</u> , 302 S.C. 86 (S.C.App. 1990)	6
<u>Coleman v. Quality Concrete Products, Inc.</u> , 245 S.C. 625, 142 S.E.2d 43	8
<u>Dameron v. Spartan Mills</u> , 211 S.C. 217, 44 S.E.2d 465	8
<u>Drake v. Raybestos-Manhattan, Inc.</u> , 241 S.C. 116, 124, 127 S.E.2d 288, 292-93 (1962)	5, 8
<u>Herndon v. Morgan Mills, Inc.</u> , 246 S.C. 201, 143 S.E.2d 376	9
<u>Hunt v. Whitt</u> , 279 S.C. 343, 306 S.E.2d 621 (1983)	5
<u>Poole v. E. I. du Pont de Nemours & Co.</u> , 227 S.C. 232, 87 S.E.2d 640	8
<u>Shealy v. Algernon Blair Inc.</u> , 250 S.C. 106, 156 S.E.2d 646 (S.C. 1967)	8, 9
<u>Wynn v. Peoples Natural Gas Company</u> , 238 S.C. 1, 118, S.E.2d 812 (1961).....	10, 12

Statutes

S.C. Code Ann. § 1-23-350 (2005)	1, 5
S.C. Code Ann. § 42-9-20	13
S.C. Code Ann. § 42-9-30	13
S.C. Code Ann. § 42-9-10	10

SUMMARY OF EVIDENCE

On August 11, 2012, the single Commissioner issued an Order that consisted of fourteen findings of fact and eight conclusions of law. Both parties appealed. The Appellate Panel of the Workers' Compensation Commission issued an Order on April 1, 2014 vacating and remanding the matter to the single Commissioner without addressing any of the findings of fact or questions of law cited by the single Commissioner, which violates S.C. Code Ann. § 1-23-350 (2005).

Respondents do not believe it is proper to summarize the evidence of the Hearing before the single Commissioner for this Court, as no findings of facts or conclusions of law have been ordered by the South Carolina Workers' Compensation Appellate Panel for this Court to review. However, because the Appellant is alleging that "the only evidence in the record is that Claimant suffered a total and permanent disability," Respondents will summarize the evidence contradicting the Appellant's position that this Court should affirm the Order of the Single Commissioner.

The Claimant testified at the Hearing and relied on APA Submissions, including records from Strand Orthopaedic, Dr. C. Gregory Kang, Dr. Jonathan A. Simons, Dr. Michael M. Grant, Dr. James Brennan, and the deposition testimony of Dr. Robert Leak. The Defendants relied upon the records submitted pursuant to the Administrative Procedures Act as well as their own APA submission of the vocational assessment of Glenn K. Adams, MRC, CRC, CEES.

The record reveals that the Claimant injured her right wrist and arm during a fall sustained in the course and scope of her employment with Petsmart, Inc. on January 3,

2008. The Claimant was initially seen at Doctor's Care as a result of her fall on January 3, 2008. The Claimant was subsequently referred to Strand Orthopaedic Consultants for treatment and evaluation on January 16, 2008 (R. p. 90). At that time, the Claimant was placed out of work by Strand Orthopaedic Consultants (R. p. 91). The Claimant continued to be treated conservatively by Dr. Leak at Strand Orthopaedic Consultants until undergoing right carpal tunnel release and right first extensor compartment release on July 23, 2008 (R. p. 112-113). The Claimant testified she underwent a carpal tunnel release surgery; however, she stated that she did not experience significant improvement in her pain levels (R. p. 41, lines 19-25). The Claimant underwent a subsequent procedure on February 26, 2010 with Dr. Leak to include right median nerve neurolysis with nerve wrapping with synthetic tube and relocation of local FDS muscle flap to cover median nerve (R. pp. 132-133).

The Claimant began to see Dr. Kang in December 2010 on referral for pain management from Dr. Leak (R. p. 154). Dr. Kang initially saw the Claimant on December 9, 2010 and diagnosed her with complex regional pain syndrome in the right upper extremity (R. p. 155). The Claimant was also seen by Dr. James Brennan on May 26, 2011 for implant of a dorsal column stimulator (R. pp. 172- 174). The Claimant testified that she experienced no improvement as a result of the dorsal column stimulator; however, she believes the stimulator is preventing the pain from spreading further (R. p. 42, lines 11-14). Dr. Kang's note from May 24, 2011 indicates that the Claimant had 50% reduction in the pain in her hand and arm as a result of the stimulator trial (R. p. 159).

The Claimant continued to treat with Dr. Kang for medical pain management of her right arm pain. On February 12, 2012, Dr. Kang placed the Claimant at maximum medical

improvement and issued a 70% right upper extremity impairment rating (R. p. 163). Dr. Kang also completed a Form 14B on April 6, 2012 stating that the Claimant suffers from a right upper extremity injury and has sustained a 70% medical impairment to the right upper extremity and is unable to return to work at her current employment (R. p. 175). Dr. Kang's Form 14B also indicated the Claimant will need future medical care and treatment to include medications of Oxycotone, Serquel, Klonopin, and Neurotin, as well as spinal cord stimulator battery replacement; there were no other specified future medical care or treatment recommendations advised by Dr. Kang on his April 6, 2012 Form 14B (R. p. 175) or his February 16, 2012 office note placing the Claimant at maximum medical improvement (R. p. 163). The Claimant testified that Dr. Kang provides Oxycontin, Oxycodone, Gabapentin, Cymbalta and Seroquel to help control her pain (R. p. 36, lines 7-8). The Claimant went on to testify that the pain medication provided by Dr. Kang takes the edge off her pain (R. p. 40, lines 9-12).

The Claimant testified she has also been seeing Dr. Jonathan Simons for psychological care due to anxiety and depression allegedly related to her January 3, 2008 injury (R. p. 37, lines 3-10). Dr. Simons opined on April 12, 2011 that while the Claimant is still depressed, she has been able to increase her activity level (R. p. 167). The Claimant testified that Dr. Simons encourages her to be more active and get out of her house (R. p. 43, lines 18-25). As a result of the Claimant's improvement with her depression according to Dr. Simons, she was permitted to proceed with the spinal cord stimulator trial, which she had previously been denied as a result of depression (R. p. 167).

The Claimant was seen for a vocational assessment performed by Glenn Adams, MRC, CRC, CEES on May 14, 2012 (R. p. 177-187). The Claimant testified she sat for an hour

and a half for her vocational evaluation with Mr. Adams (R. p. 47, lines 3-7). Glenn Adams' vocational assessment was based on Dr. Kang's February 16, 2012 permanent restriction of no use of the dominant arm (right arm) for Claimant's future work opportunities (R. p. 183). Mr. Adams' vocational assessment indicated that the Claimant's vocational profile includes possession of a GED, possession of basic computer skills per use in an occupational setting, customer service and cash handling skills, and clerical skills (R.p.186). Mr. Adams' report indicated that Dr. Simons' treatment notes and correspondence reveal no statements prohibiting the Claimant from working from a psychological perspective (R. p. 186). This fact is confirmed upon review of Dr. Simons entire chart which makes no mention of the Claimant's inability to work from a psychological perspective; in fact, it makes no mention of her inability to work whatsoever (R. pp. 164-170). Mr. Adams' vocational assessment also reported that the Claimant qualifies for sedentary and light duty jobs, including clerical, customer service/retail, and the tourism industry (R. p. 187). Specifically, Mr. Adams' report opined that the Claimant has a current earning capacity within the range of approximately \$8.00 to \$10.00 an hour (R. p. 187). While Dr. Kang did opine that the Claimant could not return to her former employment (R. p. 175), there is no objective evidence indicating that the Claimant is unable to return to work in any capacity. The Claimant also testified that she had owned and operated her own business prior to her injury (R. p. 46, lines 10-12). The Claimant also testified that she had exposure working a "desk job" for a hotel/timeshare company (R. p. 46, lines 15-25, lines 3-12). The Claimant further testified that she has full use of and no pain in her left arm (R. p. 44, lines 19-24).

ARGUMENT

I. THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION MAY NOT VACATE THE SINGLE COMMISSIONER'S DECISION WITHOUT GIVING SPECIFIC REASONS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Respondents agree with the Appellant on this issue. S.C. Code Ann. § 1-23-350 states:

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

The order issued on April 1, 2014 by the Appellate Panel clearly violates S.C. Code Ann. § 1-23-350 (2005) as it states no findings of fact or conclusions of law. Respondents are prejudiced by this decision as payments are still being issued and the appeal has not been properly ruled upon. Therefore, vacating and remanding the case for a de novo hearing is illegal and erroneous.¹

II. THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION MAY NOT ORDER A DE NOVO HEARING WITHOUT SPECIFIC DIRECTION TO THE SINGLE COMMISSIONER.

¹ See Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 124, 127 S.E.2d 288, 292-93 (1962) overruled on other grounds, Hunt v. Whitt, 279 S.C. 343, 306 S.E.2d 621 (1983) (holding remand proper on a court's own motion in a workers' compensation case where the commission failed to make essential findings of fact because "[t]o hold otherwise would in such cases make the determination of the rights of the parties turn upon the neglect of the Commission to make essential findings of fact or would require the appellate court to make the omitted findings of fact which our statute forbids"); Baldwin v. James River Corporation, 405 S.E.2d 421 (Ct.App.1991) (wherein the court of appeals remanded the case to the workers' compensation commission because the commission made insufficient findings of fact as to permit appellate review of the commission's decision denying an award); 73A C.J.S. supra § 143, at 98 ("[T]he failure of an agency to make a finding to support its decision is a technical defect which the agency should be permitted to remedy."); cf. S.C.Code Ann. § 1-23-350 (1986) ("Findings of fact ... shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.").

Respondents agree with the Appellant that a de novo hearing without guidance or instruction is improper. Respondents contend that the commission may, in its discretion, have a de novo hearing on the merits; however not specifying what the de novo hearing is would raise issues as to the scope of the de novo hearing. "Where a case that has been appealed is remanded by the court to the workers' compensation commission with specific directions, the commission must proceed in accordance with those directions." Bobo v. Marshane Corp., 302 S.C. 86 (S.C.App. 1990) citing 101 C.J.S. Workmen's Compensation § 790 at 37 (1958). "In such a case, the order limits the authority of the commission." Id. Without specifically stating the scope of the de novo hearing, the single commissioner would have no way of knowing if it is in accordance with the Appellate Panel's Order.

III. THIS COURT SHOULD REMAND THE CASE BACK TO THE APPELLATE PANEL AND NOT AFFIRM THE DECISION OF THE SINGLE COMMISSIONER

Appellant's argument that the proper remedy in this case would be to affirm the decision of the single Commissioner is unfounded. Appellant is requesting that this Court review the record of the Hearing before the single Commissioner as a whole when the Appellate Panel has not made any findings of facts or conclusions of law for this Court to review. Clearly, for this Court to affirm the single commissioner's ruling would permanently extinguish the Respondent's appeal that has not been properly ruled upon by the ultimate finder of fact. The proper action for this Court would be to remand the Hearing back to the Appellate Panel.

Appellant is asking this court to reinstate the findings of the single commissioner, which has been discussed in Baldwin v. James River Corp., 304 S.C. 485 (S.C.App. 1991). In

Baldwin, the single commissioner awarded Baldwin compensation for permanent partial disability to his right arm totaling twenty percent of that member and that Baldwin sustained a back injury as well, but awarded no permanent partial disability for that injury. Baldwin, 304 S.C. 485 (1991). Defendants appealed to the Appellate Panel, which found that Baldwin suffered no injury to his back and no permanent partial disability of his right arm as a result of the injury. Id. The Circuit court, after reviewing the evidence, found that the Appellate Panel made only conclusory findings of fact and held that it could not conclude that the decision of the Panel is in any way supported by substantial evidence. Id. The Circuit Court then reversed the panel's decision and reinstated the award of the single commissioner. Id. The Court of Appeals affirmed the circuit court's finding that the Appellate Panel's findings were conclusory and insufficient, but reversed the decision to reinstate the award of the single commissioner. Id. The Court found "[w]ithout specific and definite findings upon the evidence, a court on review of the panel's decision cannot determine whether to uphold the general finding or conclusion [of the lower court]." Id. at 422. As a result, the Court stated:

Rather than reinstate the single commissioner's award after finding the panel's findings of fact conclusory and thus insufficient, the circuit court should have remanded the case to the commission to make definite and detailed findings of fact upon the evidence sufficient to enable a reviewing court to determine whether its findings of fact are supported by the evidence and whether it has properly applied the law to them. In effect, what the circuit court did here in reinstating the single commissioner's award was to determine the facts from conflicting evidence. Only the commission is authorized to do this. We therefore vacate the circuit court's order and remand the case to the commission for it to determine anew on the present record the issues raised by [defendants] in its grounds for review. This time the commission shall make sufficient findings of fact as to afford a reasonable basis for appellate review.

Id. at 422-423. The Appellant is asking this court to make the same error that the circuit court made in Baldwin. The proper remedy in this case is remanding the case back to the Appellate Panel to make sufficient findings of fact as to afford a reasonable basis for appellate review.

The Appellant has misinterpreted Shealy v. Algernon. Appellant seems to believe that Shealy allows the Appellate court to affirm the Single Commissioner's award if the only reasonable inference from the record is the Claimant has sustained his burden of establishing his right to compensation. Shealy v. Algernon Blair Inc., 250 S.C. 106, 156 S.E.2d 646 (S.C. 1967). However, Shealy found the complete opposite of this position, affirming the single commissioner's findings that the Claimant had not sustained its burden of proof. In Shealy, the employer appealed the opinion and award of the Commission upon the two-fold ground that it required the payment of compensation without a supporting finding of fact that the claimant suffered a disability and without any substantial evidence on which such a finding could be based. The Supreme Court of South Carolina held:

It is the duty of the Commission to make specific findings upon which a claimant's entitlement to compensation may rest and upon which the amount of compensation due him may be calculated by one of the statutory formulae. We have held that awards without such specific findings do not comply with the requirements of the act and are illegal. Dameron v. Spartan Mills, 211 S.C. 217, 44 S.E.2d 465; Poole v. E. I. du Pont de Nemours & Co., 227 S.C. 232, 87 S.E.2d 640. Only the Commission is authorized to pass upon the weight of the evidence in a workmen's compensation case, and it is proper to remand a case to it for required findings where the record contains evidence from which such findings may be made. Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288. However, a claimant has the burden of proving the facts essential to his right to compensation, and an award may not be based upon conjecture or speculation. Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43; Herndon v.

Morgan Mills, Inc., 246 S.C. 201, 143 S.E.2d 376. Where the only reasonable inference from the record is that the claimant has failed to sustain this burden, it would be futile to remand the case. An award which is without support in the evidence should be reversed on appeal whether or not it is legally sufficient as to form and content.

Id. at 109-110. The full reading within the context of this ruling clearly points to the Claimant's burden, and no such burden rests on the employer. Additionally, only the employer appealed the decision in Shealy, and thus the Claimant did not have a substantial right affected by this decision. In this case, however, both parties appealed and to affirm the single Commissioner's ruling would in effect dismiss Respondent's appeal that has not been properly ruled upon by the ultimate finder of fact, which prejudices the Respondent's constitutional right to due process.

The procedural history in Shealy differs greatly from the case at hand. In Shealy, the circuit court affirmed the opinion of the South Carolina Industrial Commission, which affirmed and adopted the opinion of the hearing commissioner. This already is drastically different from the case at hand, as the Appellate Panel issued an order with findings of facts and rulings of law. The reviewing court had a record from the ultimate finder of fact that it could base its decision on. Here, there are no findings of fact or conclusions of law from the Appellate Panel for this court to review. Without such, this court has no choice but to remand the case back to the Appellate Panel.

Appellant's argument that the only evidence in the record is that the Claimant suffered a total and permanent disability is unfounded. In fact, this was the entire basis of the defendant's appeal to the Appellate Panel, and to summarily affirm the single commissioner's ruling in this case would substantially affect defendant's right to appeal. Defendants have consistently denied that the Claimant is permanently and totally

disabled, and point to many medical records and a vocational assessment completed by Glenn Adams in support of this position. In order for the Claimant to be found permanently and totally disabled pursuant to S.C. Code Ann. §42-9-10, she must establish a total incapacity to work. S.C. Code Ann. § 42-9-10 states "when the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation ... not to exceed 500 weeks ... " In this instance, the Claimant did not demonstrate a total incapacity to work. In fact, the Claimant offered no objective evidence from any medical provider or vocational experts indicating that she was totally unable to work in any capacity. The Claimant failed to demonstrate that she is unable to perform services other than those so limited in quality, dependability, or quantity that no reasonable stable market exists Wynn v. Peoples Natural Gas Company, 238 S.C. 1, 118, S.E.2d 812 (1961).

The Claimant testified that she graduated from high school and completed a 360-hour training course for dog grooming (R. p. 34, lines 11-12). The Claimant further testified that she owned and operated her own pet grooming business prior to coming to work for Petsmart (R. p. 34, lines 15-16). Specifically, the Claimant noted that she managed this business with no employees and no help and performed all job duties to include administrative, telephone duties, booking clients, and other associated tasks (R. p. 45, lines 10-25, lines 1-15). The Claimant further testified that she previously worked at the front desk of a hotel where she performed general customer service duties, telephone duties, and other light duty and was promoted to their timeshare department and performed general office tasks to include filing, telephone duties, and other administrative work (R. p. 46, lines 15-25, lines 1-12). Finally, the Claimant noted that she does not

experience pain in her left arm (R. p. 47, lines 19-21). The Claimant further stated that she uses her left arm now to perform all duties for which she had previously used her right arm (R. pp. 47-48, lines 22-24). The Claimant's testimony indicates that she has extensive experience in light and sedentary duty office work.

Glen Adams prepared a vocational evaluation dated May 25, 2012, wherein he notes the Claimant completed high school through the majority of 12th grade and obtained her GED and believes that she had enough course credit to obtain her diploma (R. p. 179). Glen Adams' vocational evaluation further indicates the Claimant's pet grooming school consisted of 360 hours of full-time training to include book work and hands on training (R. p. 179). The vocational assessment of the Claimant further indicates that she is computer savvy based on her use of computers at Petsmart and Plantation Resort (R. p. 179). The vocational assessment also indicates the Claimant would like to be able to go back to work (R. p. 183). Glen Adams' vocational assessment concludes that the Claimant should be able to work in a sedentary to light duty capacity and that a number of occupations are available to her to include clerical and customer service/retail occupations (R. p. 187). While noting that any potential employers may have to accommodate the Claimant's impaired use of her dominant upper extremity, jobs remain available in her labor market that require minimal use of hands and arms (R. p. 187). Further, the vocational assessment indicates that the Claimant could expect to earn approximately \$8.00 to \$10.00 hourly based on her current physical restrictions (R. p. 187).

The Claimant offered no vocational evaluation or opinion of a vocational expert of any kind through APA Submissions or testimony at the Hearing before the single Commissioner. Further, there is no indication in Dr. Kang's medical notes that the

Claimant is permanently and totally disabled or completely unable to work in any capacity. Specifically, Dr. Kang opined that the Claimant is unable to return to work at her current employment on his April 6, 2012 Form 14B; however, he never mentions a total incapacity for another type of work in any note (R. p. 175). Further, an in-depth evaluation of Dr. Simons' notes related to his psychological treatment of the Claimant reveals no indication whatsoever of any permanent inability to work in any capacity. In fact, no statements prohibiting or restricting the Claimant from working from a psychological perspective can be found in Dr. Simons' treatment notes or correspondence. In fact, there is no medical evidence whatsoever in the record indicating that the Claimant is permanently and totally disabled and unable to work in any capacity. The Claimant relies on Dr. Kang's Form 14B indicating she cannot return to her former employment to demonstrate permanent and total disability under S.C. Code Ann. § 42-9-10. The lack of any vocational opinion indicating the Claimant is unable to return to work in any capacity and the lack of medical evidence indicating that the Claimant is unable to return to work in any capacity coupled with the Defendants' vocational evaluation indicating that the Claimant can perform light and sedentary work establishes that the Claimant is not permanently and totally disabled under S.C. Code Ann. § 42-9-10. The Claimant has not met her burden to establish permanent and total disability under S.C. Code Ann. § 42-9-10 or Wynn v. Peoples Natural Gas Company, 238 S.C. 1, 118, S.E.2d 812 (1961).

Clearly there is plenty of evidence in the record that would allow a reasonable mind to conclude that the Claimant did not sustain her burden in proving that she was permanently disabled. Respondents maintain the position that the Commissioner erred in determining that the Claimant is permanently and totally disabled, as the greater weight

of the evidence in the record shows that the Claimant can return to work in some capacity and is not permanently and totally disabled. The single Commissioner should have restricted the Claimant's award to a single scheduled body part under S.C. Code Ann. § 42-9-30 or a permanent partial disability running award under S.C. Code Ann. § 42-9-20.

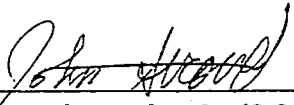
CONCLUSION

Respondents agree with the Appellant that the Order on April 1, 2014 vacating and remanding this matter to the single Commissioner without addressing any of the findings of fact or questions of law cited by the single Commissioner was an error of law.

Respondents also agree with the Appellant that remand ordering a de novo hearing should be accompanied by guidance or specific instructions to ensure that the single commissioner does not hear evidence outside the scope of the de novo hearing.

Respondents maintain their position that Shealy is inapplicable to the case at hand at that a review of the record before the single commissioner is improper before this court. However, if this Court finds that Shealy is applicable and a review of the record before the single commissioner is proper, it is clear that there is evidence in the record that would allow a reasonable mind to conclude that the Claimant did not sustain her burden in proving that she was permanently disabled. Therefore, even if Shealy is applicable, the proper action for this Court would be to remand the case back to the Appellate Panel with instructions to specify findings of fact and rulings of law. To affirm the single Commissioner's ruling would destroy the defendant's substantial right to have a proper appeal before the Appellate Panel.

Respectfully submitted,


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July 8, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COMMISSION PANEL
OF THE SOUTH CAROLINA WORKER'S
COMPENSATION COMMISSION

APPELLATE CASE NO. 2014-000930
W.C.C. NO. 0800718

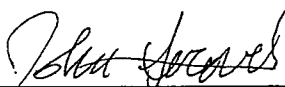
Denica Powell.....Appellant

vs.

Petsmart, Inc. and Phoenix Insurance Co. Defendants

CERTIFICATE OF COUNSEL

The undersigned certifies that all Respondent's Final Briefs filed with the South Carolina Court of Appeals in the above named matter comply with Rule 211(b) SCACR.



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM COMMISSION PANEL
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W.C.C. NO. 0800718

Denica Powell.....Appellant

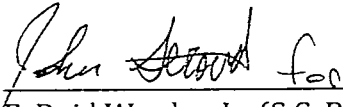
vs.

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PROOF OF SERVICE

I hereby certify that on this 2nd day of September, 2014, I have caused a true and correct copy of the attached Respondent's final Brief which was mailed first class to the South Carolina Court of Appeals by mailing a copy of same, first class, postage pre-paid, to all interested parties addressed as follows:

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