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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM THE APPELLATE PANEL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 5308
(SC Ct. App. heard November 5, 2014;
filed April 1, 2015)

Henton T. Clemmons, Jr., Employee, ...Petitioner,

v.

Lowes Home Centers, Inc.-Harbison, Employer,
and Sedgwick Claims Management Services,
Inc., Carrier, ... Respondents.

APPENDIX Volume 1

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2013-001668

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SC Court of Appeals

Henton T. Clemmons, Jr., Employee, ... Appellant,

v.

Lowes Home Centers, Inc.-Harbison, Employer,
and Sedgwick Claims Management Services,
Inc., Carrier, ... Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WHERE THE APPELLATE WAS BACK AT WORK AND HAD NOT MADE A REQUEST FOR AN AWARD UNDER THE ACT, THE COMMISSION ERRED BY SETTING THIS MATTER FOR HEARING BASED ON A REQUEST MADE BY THE DEFENDANTS TO PAY COMPENSATION UNDER THE SIXTY (60) DAY PROVISION IN SC CODE §42-9-260 WHICH PROVIDES ONLY THE STATUTORY AUTHORITY TO STOP PAYMENT OF TEMPORARY COMPENSATION THEREBY FORCING THE APPELLATE TO A PREMATURE DETERMINATION OF HIS PROPERTY RIGHTS TO AN AWARD IN VIOLATION OF HIS DUE PROCESS RIGHTS TO SUCH AN AWARD.
- II. UNDER THE SUBSTANTIAL EVIDENCE IN THE RECORD, THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO MAKE A DETERMINATION THAT THE APPELLANT HAD SUSTAINED A 50% OR GREATER LOSS OF USE OF THE BACK BY CONSIDERING WAGE LOSS AND BY NOT AWARDING THE APPELLANT AN AWARD FOR TOTAL AND PERMANENT DISABILITY FOR HAVING LOST 50% OR MORE OF THE USE OF HIS BACK UNDER THE BACK PRESUMPTION IN THE SCHEDULED MEMBER STATUTE.
- III. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO MAKE AN AWARD FOR THE APPELLANT'S SEPARATE NEUROLOGICAL DISORDER, MYELOPATHY, BASED ON THE SUBSTANTIAL EVIDENCE IN THE RECORD.
- IV. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO MAKE AN AWARD FOR APPELLANT'S LOW BACK INJURY.
- V. THE COMMISSION ERRED AS A MATTER OF LAW BY PLACING GREATER WEIGHT IN THE AUTHORIZED TREATING NEUROSURGEON'S REPORTS WHERE THERE IS AN ABSOLUTE CONTRADICTION OR PARADOX IN THAT DOCTOR'S REPORTS AS TO WHETHER THE MYOPATHY AND THE FUNCTIONAL LOSSES AND SYMPTOMS ASSOCIATED WITH IT PREEXISTED THE INJURY WHERE THERE IS ABSOLUTELY NO EVIDENCE IN THE RECORD TO SUBSTANTIATE THAT THE APPELLANT WAS HAVING ANY NEUROLOGICAL PROBLEMS PRIOR TO THE ACCIDENT.

STATEMENT OF THE CASE

The Appellant sustained a compensable work-related injury on September 12, 2010 which was initially accepted for the payment of both medical and compensation benefits. Those benefits were then stopped without reason. After notification to the Commission filing a formal claim and of representation by counsel on November 16, 2010, on November 30, 2010, Counsel for the Appellant filed a Request for Hearing concerning medical care and compensation benefits. (R. p. 44). The Appellant also filed a Motion on December 2, 2010 to reinstate benefits including the provision of medical care. (R. p. 46). On December 10, 2010, the Appellant filed an Addendum to the Motion adding an additional medical report from the neurosurgeon filed as Exhibit C wherein the neurosurgeon set forth the history of injury to the Appellant's back and the back of his head as part of the fall. (R. p. 58). On December 13, 2010, the Respondents filed a Reply admitting, "compensable injury to the low back and right knee," and providing causally related medical care but alleging that a request of benefits went to the merits. (R. p. 65; emphasis added). The Respondents also filed a responsive Form 51 to the Form 50 that had been filed admitting compensable injury again to the low back and right knee but denying injury to the

head or left lower extremity and the extent of injuries as alleged in the Form 50. (R. p. 68). A Consent Order was entered into resolving the issues of the Motion wherein the Respondents agreed to reinstate temporary total disability benefits and to provide treatment of the back, neck, and right leg and all, "causally-related treatment until the Claimant reaches maximum medical improvement for his admitted injuries". The Consent Order also provided that all other issues were held in abeyance and could be presented at a future hearing. (R. p. 1).

On October 3, 2011 a Commission Form 17 was filed with the Commission agreeing weekly compensation had stopped because the Appellant had returned to work with restrictions on September 10, 2011. (R. p. 69). Subsequently, on January 4, 2012 the Respondents filed a Form 21 seeking to pay compensation and also seeking credit for any overpayment of temporary compensation. (R. p. 72). Based on the Claimant's request for additional medical evaluation, that Form 21 was withdrawn but with the Respondents only specifically agreeing to provide a return evaluation visit with the authorized treating neurosurgeon.

On July 25, 2012, the Respondents again filed a Form 21 requesting only to pay compensation and a credit for any overpayment of temporary total on July 25, 2012 and a

hearing was set on that Form 21 for September 25, 2012. (R. p. 74; p. 77). As the moving party, the Respondents filed their Pre-Hearing Brief and APA Submissions on September 10, 2012 and the Appellant filed his responsive Pre-Hearing Brief and APA Submissions on September 14, 2012 (R. p. 78; p. 126). The hearing was held on September 25, 2012 and the Commissioner issued his notes requesting a proposed Order on September 27, 2012. (R. p. 292; R. p. 209). On October 2, 2012, the Appellant filed a Request for Reconsideration prior to the formal Order of the Commissioner to which a Reply was made by defense counsel on October 3, 2012. (R. p. 212; p. 215).

On October 3, 2012, Appellant filed a request that the Order be strictly limited to the Commissioner's findings and on October 15, 2012, withdrew a request for a lump sum award and requested the Award be paid weekly pursuant to the Act (R. pp. 388 & 390). On October 15, 2012, Counsel for the Respondents objected to the withdrawal of the lump sum request and to the payment of the Award weekly (R. p. 391). On October 16, 2012, Counsel for Appellant replied to the Respondents' objection to the payment of the Award weekly and on November 1, 2012 filed a Request for Clarification of the Commissioner's Award in his notes of, "Dodge" medicals as the Respondents had refused to provide

medicals as set out in the Notes. (R. pp. 392 & 393).

Thereafter, the Commissioner issued his Order on December 6, 2012 and a Form 30 - Request for Commission Review was filed on December 20, 2012. (R. p. 4; p. 217).

The Appellant filed his Full Commission Brief on March 18, 2013 with the Respondents filing their Responsive Brief on April 2, 2013. (R. p. 240; p. 266). A hearing was held before a three-member Commission Panel on April 16, 2013. (R. p. 359). A Request for Proposed Order was forwarded to defense counsel by the Judicial Director on April 30, 2013. (R. p. 291). Objection to the Proposed Order submitted by defense counsel was filed on June 5, 2013 and subsequently the Order was filed as written and submitted on July 2, 2013. (R. p. 394; p. 22). A Notice of Intent to Appeal was timely filed and served and this Appeal follows.

STATEMENT OF FACTS

On September 12, 2010, Mr. Clemmons entered the straw trailer at Lowe's and slipped on wet straw causing his feet to fly out from under him and him landing flat on the truck floor on his back, neck and head. (Mr. Clemmons had had a shunt placed in his head as a child for hydrocephalus which had always been asymptomatic.) Medical care was initially provided on 10/07 - 10/19 through Doctor's Care for low back pain, radiculopathy and swollen knee. (R. pp. 83-89).

On 10/19 due to rapid deterioration, he was referred to Midlands Orthopaedics. (R. p. 89). Upon examination on November 1st, 2012, Dr. Armsey immediately referred him to Dr. Randall Drye. In his report, Dr. Armsey recorded that,

"Mr. Clemmons and his mother report that he was a perfectly functional 38-yr-old male until his work-related accident. Since that time his gait has been severely ataxic, he cannot dress himself because of poor balance, has been bed ridden because of his inability to ambulate. He has had multiple falls because of his poor balance which is all reported as [no (sic)] beginning September 12, 2010. . . ."

* * *

"I am concerned about a brain stem or cerebellar lesion, possibly complications from his intraventricular shunts with his recent trauma. I am certain that his ataxia is not coming from his lumbar spine and his right knee has no mechanical abnormalities on clinical exam and therefore his sensation of instability is likely neurologic at the knee as well. He is essentially wheelchair bound and will not return to work until cleared by a neurosurgeon/neurologist."

On November 8th, Dr. Randall Drye found significant cord compression and myelopathy,

"which is advancing from what I believe is a disc herniation at C6-7 and a significant bulge at C5-6. I am quite alarmed at his presentation and the repetity of his symptoms."

At that point neither medical nor compensation were being paid. A request for hearing was filed and then by Consent Agreement, the employer's SIF agreed to provide medical care through Dr. Drye and compensation benefits. Of special

note, based on a review of Dr. Drye's initial evaluation and all of his records at the time of hospitalization and surgery, there is absolutely no reference to any problems with myelopathy or neurologic symptoms prior to the accident of September 12, 2010. (R. p. 101, emphasis added.) In fact, in no other record submitted by either party from any doctor is there any mention of any problems in reference to his back and/or myelopathy or radiculopathy or involving balance, memory or neurologic or any other type of problem in reference to the spinal cord, prior to the accident.

More importantly, quoting Dr. Randall G. Drye, M.D. on November 30, 2010:

"When we met in the office initially and we garnered his history he clearly reported no prior history of significant neck or neurologic problems prior to a fall at work. This occurred, according to the patient, on 9/12/10 when he slipped on some straw in a trailer and impacted on his back and the back of his head. This mechanism of injury is completely consistent as the force and flexion of the head and neck can result in a tear in the vulnerable disc and subsequent herniation. . . .

* * *

For that reason, I believe that within a reasonable degree of medical certainty, his disc herniations, spinal cord impingement and subsequent myelopathy as well as the intervening surgery were a direct result of his fall at work." (R. p. 105).

Mr. Clemmons continued under treatment by Dr. Randall

Drye including multi-level cervical fusion. He was subsequently released to return to work with restrictions by Dr. Drye and Mr. Clemmons signed a Form 17 agreeing that he was able to and did return to work for the employer on September 10, 2011.

Interestingly in his last evaluation note, Dr. Drye noted that Mr. Clemmons', "gait is still slightly unsteady and he has some difficulty with balance likely owing to some mild residual spasticity and perhaps proprioceptive deficits." (R. p. 110).

The Respondents first filed a Form 21 to pay compensation on January 4, 2012 at which time after discussion between Counsel for the parties wherein Mr. Clemmons requested a second opinion by a neurologist and/or a physical rehabilitation medicine specialist, the Respondents withdrew their Form 21 and sent Mr. Clemmons back to Dr. Randall Drye. While a second opinion was requested by a neurological specialist, no such second opinion was provided.

Subsequently in June, Mr. Clemmons saw Dr. Randall Drye who reiterated his opinion that he was at maximum medical improvement. However, for the first time in his report of June 18, 2012, Dr. Drye makes the following statement in his history,

"At that point he has recovered nicely from surgery though he still has some symptoms referable to his pre-operative cord injury and myelopathy . . . he denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as a long standing, pre-injury inversion of his right foot and ankle." (R. p. 111).

He also reiterated his previous AMA impairment rating of 25% whole person for the cervical spine only. (R. p. 100).

After receipt of this report, the Respondents would not offer a second opinion, though requested, and instead immediately filed a Form 21 but only to pay compensation.

In his Form 58 Mr. Clemmons reiterated his request for a second opinion on his back and neurological dysfunction; noted that he had never had a second opinion and requested reimbursement for the evaluations by a neurologist and an orthopaedic surgeon.

After the refusal to provide a second opinion by a neurological specialist, Mr. Clemmons was seen for evaluation by Dr. Howard Mandell on September 5, 2012, who opinioned that in addition to any impairment to the back that he still suffered from, "spasticity in his legs, hyperreflexia, difficulty with coordination, inability to run and difficulty with balance," and stated the opinion that Mr. Clemmons had sustained an, "additional" 15% whole person neurological injury.

He opinioned that in addition Mr. Clemmons suffered from significant low back pain, that he would perhaps benefit from ongoing physical therapy; may require further cervical intervention above or below the cervical fusion and would require ongoing low back pain management which certainly could include steroid injections or selected nerve block injections and/or medial facet nerve blocks to be determined by the pain management evaluation. He would need ongoing medications to control his ongoing significant low back pain. Dr. Mandell recommended a functional capacity evaluation be performed to objectively determine his limitations but opined Mr. Clemmons would definitely have limitations in bending, twisting, turning, lifting and carrying and would need the flexibility to be able to sit or stand at work as needed to reduce his pain.

More importantly in reference to the statement contained in Dr. Drye's last note of June 18, 2012, Dr. Mandell stated that:

"With regards to the statement by Dr. Drye on 06/18/2012 indicating he 'he had 'long standing pre-injury inversion of the right foot and ankle'. This appears to be not corroborated by his mother, the patient, or my history or Dr. Armsey's history. I do not see it documented in any of the other physicians' history either. From the history I get and the records I reviewed, there was absolutely no preexisting neurological condition limiting this gentleman and I think this is certainly substantiated by the fact that

he worked for three (3) years at Lowe's with heavy lifting, twisting, turning, carrying and a lot of walking without any limitations and able to do his job fully without any adjustments required. I do not believe any of his current problems are related to his previous hydrocephalus and shunting either." (R. pp 86 & 87).

A functional capacity evaluation, performed on September 11, 2012, found that Mr. Clemmons was limited to limited light duty work and that he could tolerate only occasional walking, stair climbing, kneeling, bending, twisting and reaching and that he did not tolerate occasional squatting. All of his lifting at various heights was limited to sedentary/light duty physical capacity levels under the DOT. The physical therapist also noted that Mr. Clemmons had decreased balance and that he was unable to stand single stance on either lower extremity with his eyes closed. (R. p. 143).

Dr. Leonard Forrest, board certified orthopaedic surgeon, saw Mr. Clemmons for an evaluation on September 6th and stated that in his opinion Mr. Clemmons was at maximum medical improvement but would require continuing treatment into the future which would most probably include physical therapy; although invasive treatment may prove to be necessary. Dr. Forrest placed limitations on Mr. Clemmons and found that he had a 40% whole person impairment due to

his neck and low back problems. He stated the opinion to a reasonable degree of medical certainty that Mr. Clemmons had sustained over a 50% loss of the functional use of his back to do work requiring the use of his back. (R. pp. 172 & 173).

An independent medical evaluation was also performed by Dr. Gal G. Margalit. He found Mr. Clemmons had an altered gait and concurred in the findings concerning the myelopathy involving cord compression and with the opinions concerning permanent work restrictions. After review of the functional capacity evaluation and based on his evaluation he stated the opinion Mr. Clemmons had sustained a 50% or greater functional loss of use of his back to do work requiring the use of his back. He recommended future treatment and specifically neuropsychological testing. (R. p. 170).

A vocational evaluation was performed by Ms. Harriet Fowler, CRC, M.Ed. who opined that per the FCE and the restrictions from the treating physician that without accommodation he would not be able to function in his capacity at Lowe's but that Lowe's was to be commended for accommodating his severe restrictions. She performed a labor market analysis using the U.S. Department of Labor's Dictionary of Occupational Titles based on the functional

capacity evaluation and the restrictions and opinions of the independent medical evaluations and of the authorized treating neurosurgeon, and opined that Mr. Clemmons had a residual labor market access to only approximately 417 sedentary unskilled/semi-skilled work titles, thus representing a 99.9400% loss of access to the job market. Even with the restrictions and the accommodations made by Lowe's, she questioned whether under the doctors restrictions and the findings of the FCE, Mr. Clemmons could continue to perform in his current job capacity and stated that work at a sedentary level would be more advisable into the future. (R. pp. 195 & 196).

At the hearing, the Respondents requested that the Commission make an Award based on the admitted back injury and that the Commissioner make an Award for a scheduled member injury permanency award of less than 50% loss of use to the back. In addition to the APA Submissions, the Respondents as the moving party only submitted the testimony of Ms. Lynn Council. Following her testimony, the Commissioner asked,

"Q: Any other witnesses for the employer/
carrier?

A: No, Your Honor."

(R, p. 309, ll. 18-20.)

At that point, the conclusion of the Respondents' case as the moving party, Appellant's Counsel moved for a ruling,

"as to whether or not there has been any evidence to present it (sic, presented) to rebut the 50% loss of the use of the back." (R. p. 309, l. 23 - p. 310, l. 2).

The Commissioner would not rule on the evidence at that point and the Appellant then testified in addition to the medical evidence on that issue and testified he had lost 80% of the use of his back.

Also at the beginning of the Hearing in the off-the-Record pre-hearing conference but as is reflected in the Record, the Appellant reiterated his request for a second opinion and for reimbursement for the evaluations that were performed by Dr. Mandell and Dr. Forrest due to the refusal of the Respondents to offer a second opinion or evaluations from a neurological and orthopaedic standpoint. (R. p. 296, l. 19 - p. 297, l. 6; p. 298, l. 7 - p. 299, l. 12).

In his Pre-hearing Brief, the Appellant set forth his argument that, "the right to compensation for loss of use and/or loss of earning capacity is a property right of the Claimant and it is a denial of due process to determine his entitlement without his request."

The Appellant also argued that the presumption

applicable to injuries to the back as to the Claimant has sustained a 50% loss of the use of the back applies to the character of the injury and that consideration of loss of earning capacity is not a proper consideration under a scheduled member award and the presumption applied to the back.

In reference to the back presumption, the Respondents stated that the only rebuttal they were offering and that it was their position that,

"the basis of the rebuttal presumption obviously is his return to work for almost two (2) years in response to the Appellant's position that he is perm total based on greater than 50% loss of use of the back."

In his Notes, the Commissioner stated in his Finding No. 7 that,

"based on the Record as a whole, I find that the Claimant has sustained a 48% TTD to his back. This includes any radicular symptoms to his right leg. I do not find that he is permanently and totally disabled based on the evidence as a whole. This finding is based on the greater weight of the evidence, including his ability to work for nearly two (2) years (while being accommodated by sitting down), his lack of prescription medication, and the medical reports and conclusions of Dr. Drye."

That Finding is set out in the Order as Findings of Fact 8-12.

The Commissioner further denied reimbursement for the evaluations and ordered future medical care for, "causally

related medical treatment pursuant to Dodge".

ARGUMENTS

- I. WHERE THE APPELLANT WAS BACK AT WORK AND HAD NOT MADE A REQUEST FOR AN AWARD UNDER THE ACT, DID THE COMMISSION ERR BY SETTING THIS MATTER FOR HEARING BASED ON A REQUEST MADE BY THE DEFENDANTS TO PAY COMPENSATION UNDER THE SIXTY (60) DAY PROVISION IN SC CODE §42-9-260 WHICH PROVIDES ONLY THE STATUTORY AUTHORITY TO STOP PAYMENT OF TEMPORARY COMPENSATION THEREBY FORCING THE APPELLANT TO A PREMATURE DETERMINATION OF HIS PROPERTY RIGHTS TO AN AWARD IN VIOLATION OF HIS DUE PROCESS RIGHTS TO SUCH AN AWARD?

There are two statutory interpretation principles that must be applied to this and all workers' compensation issues. The first principle is that:

"It is the established law of this state that any reasonable doubt as to the construction of the workmen's' compensation law must be resolved in favor of the claimant, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed towards the end of providing coverage . . . "

* * *

"Compensation laws constitute a form of social legislation and were enacted for the benefit, protection and welfare of working men and their dependents to relieve them from the uncertainties of a trial in a suit by damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents from becoming charges on society. Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). (Emphasis added).

The second principle is that:

"Since workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights, the Court must strictly

construe such statutes, leaving it to the legislature to amend and define any ambiguities." Wigfall v. Tideland Utility, Inc., 354 S.C. 100, 580 S.E.2d 100, (2003), rehearing. den.

The Supreme Court has repeatedly held that the entitlement to benefits under the Workers' Compensation Act is a property right owned by the claimant, the injured worker. Last v. MSI Construction, Inc., 305 S.C. 349, 409 S.E.2d 334 (1991); Orzsula v. Orzsula, 292 S.C. 264, 356 S.E.2d 114 (1987). Under the Workers' Compensation Act, the injured worker, as the claimant, has the burden of proof to establish by a preponderance of the evidence that he is entitled to an Award under the Act. Walsh v. US Rubber Co., 238 S.C. 411, 120 S.E.2d, 685 (1961). Therefore, there is no question that the entitlement and right to benefits is a property right owned by the Claimant and that the Claimant has the burden of proof to establish his entitlement to an Award under the Act.

Under SC Code §42-3-30, the Commission is granted the authority to promulgate Regulations including forms necessary for the administration of the workers' compensation laws, but such Regulations must be in accordance with the provisions of the Title, "and consistent therewith". Further, while a Regulation has the force of law, it may not alter or add to a Statute; Goodman v. City of Columbia, 318 S.C. 488, 458 S.E.2d 531 (1995)

and where the Regulation is not based on statutory authority, the Commission lacks the authority to enact the Regulations; in this case the Form 21 the Respondents used to file for a hearing for a determination of the employee's property rights to benefits. Allison v. W.L. Gore & Assoc., 394 S.C. 185, 714 S.E.2d 547 (2011); S.C. Workers' Compensation Regulation 67-203(A) and (B) (31) [WCC Form 21].

There are only two Statutes, SC Code §42-17-20 and Code §42-9-260 that provide an employer a statutory basis to file for a hearing. SC Code §42-17-20 provides the statutory authority for both the employee and the employer to file for a hearing when the parties to an agreement to pay temporary compensation, "then disagree as to the continuance of any weekly payments under such agreement . . .". SC Code §42-9-260 commonly referred as to the stop payment section is ancillary to that statute and sets out the specific provisions for how an employer may stop those temporary weekly benefits and under what bases. WCC Form 21 addresses all of those statutory bases but adds a provision to pay compensation.

Under the current version of SC Code §42-9-260, the employer and/or its insurance carrier is given the right to file a stop payment application to terminate or suspend,

"temporary" compensation and under that section a hearing must be held within sixty (60) days. That statute is very clear as to the limited right that it gives to the employer under subsections D and E to ask for a hearing, subsection D specifically states in pertinent part:

" . . . employer may request a hearing to address the termination of temporary disability payments. A hearing must be held within sixty (60) days of the date of the employer's request for a hearing."

Subsection E in pertinent part states:

"an employer may request a hearing at any time to address termination or reduction of temporary disability payments."

At no place in that statute is the employer/carrier given the right to seek a hearing to pay compensation but again is only given the right to stop, "temporary" benefits. The Appellant would submit also that there is absolutely no right under any other provision of the Act for an employer to force a claimant to a premature determination of his property right to an award of benefits under the Workers' Compensation Act.

In fact in two (2) specific cases, the Supreme Court and Court of Appeals (in addition to having repeatedly determined and recognized that the claimant has the burden of proof of establishing that he is entitled to benefits under the Act and thus clearly recognizing that the

claimant must always be the moving party), have found in those cases that in a case where the claimant inadvertently omits production of the proof necessary to establish his case or where he seeks the opportunity to open the Record to present evidence after the hearing has been held that the Claimant should be afforded an opportunity to provide that proof of disability in, "the interest of justice".

Brown v. LaFrance Industries, 286 S.C. 319, 333 S.E.2d 348 (S.C. App. 1985); Morgan v. JPS Automotive, Inc., 321 S.C. 201, 467 S.E.2d 457 (S.C. App. 1996), cert. dismissed, 326 S.C. 261, 486 S.E.2d 263 (1997).

Thus since the Appellant has a constitutionally protected property right in his entitlement to benefits which is a property right owned by the claimant, only the Claimant has a right to bring a cause of action for a determination of those benefits and it is a denial of due process to force the Claimant to a premature determination of those benefits where he has not made a request that he be awarded any benefits whatsoever under the Act. The Appellant has the burden of proof, it is his property right and the Commission lacked jurisdiction and erred by moving forward on an application filed by the Respondents to pay compensation which is not allowed for under the SC Workers' Compensation Act.

"The rights and liabilities of employee and employer under the Workers' Compensation Act are purely statutory and are to be judged by terms of the Act." Owens v. Herndon, 252 S.C. 166, 165 S.E.2d 696 (1969).

If the Legislature intended to give an employer and its carrier the right to file for a determination of benefits over the objection of the employee-claimant when the employer wants to have a determination made, it is the responsibility of the legislature to set that out by statute. Outlaw v. Johnson Service Co., 254 S.C. 486, 176 S.E.2d 152 (1970)¹. This constitutes both a substantive and procedural denial of due process to the injured worker in this case because the Commission lacks the statutory authority to order and hold such a hearing and thus lacks jurisdiction because again the employee has not made a claim for benefits.

" . . . when there exists no pending employee claim for compensation, the Commission lacks the jurisdiction to decide such questions." SC Property & Casualty Ins. Co. Assoc. v. Carolinas Roofing & Sheet Metal Contractors Self-Insured Fund, 303 S.C. 368, 401 S.E.2d. 144 (1991).

The Decision of the Commission should be reversed and vacated and the claim remanded to the Commission until such time as Mr. Clemmons files a claim for an award of benefits.

¹ The Appellant does not believe such proviso would be constitutional but that issue is not pertinent to this appeal.

II. DID THE COMMISSION ERR AS A MATTER OF LAW UNDER THE SUBSTANTIAL EVIDENCE IN THE RECORD BY FAILING TO MAKE A DETERMINATION THAT THE APPELLANT HAD SUSTAINED A 50% OR GREATER LOSS OF USE OF THE BACK AND BY CONSIDERING WAGE LOSS AND BY NOT AWARDING THE APPELLANT AN AWARD FOR TOTAL AND PERMANENT DISABILITY FOR HAVING LOST 50% OR MORE OF THE USE OF HIS BACK UNDER THE BACK PRESUMPTION IN THE SCHEDULED MEMBER STATUTE?

AWARD IS PAID FOR CHARACTER OF THE INJURY.

[Precatory fundamental query to the Court: if wage loss (disability under the Act, S.C. Code §42-1-120) is a factor to be considered under the presumption created by S.C. Code §42-9-30(21), why is the presumption tied to S.C. Code §42-9-10(B) and not tied to S.C. Code §42-9-10(A)?]

While the presumption under SC Code §42-9-30(19) was always rebuttable [now SC Code §42-9-30(21)], the 2007 amendment was enacted to simply set that out in statutory language. The effect of any presumption under our Law was and is as is stated in the SC Rules of Evidence §301:

"In all civil actions..., a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion which remains throughout the trial upon the party on whom it was originally cast."

In other words the Claimant had, has and will always have the burden of proof to put forth a preponderance of evidence, to prove the fact that the injured worker has lost 50% or more of the functional use of the worker's back

to do work requiring the use of the worker's back. Walsh v. US Rubber Co., supra. Where the worker makes that prima facie case the burden to present evidence to rebut it shifts to the Defendants.

The misperception that the Claimant had to prove wage loss or loss of earning capacity under the scheduled member statute existed way before the back was made a scheduled member under SC Code §42-9-30 (See: Outlaw v. Johnson Service Co., supra), and persisted long before the 2007 amendments. However after the back became a scheduled member in 1974 that misperception was put to rest repeatedly by our Appellate Courts in the cases of Bateman v. Town & Country Furniture, 287 S.C. 158, 336 S.E.2d 890 (SC App 1985); McCollum v. Singer, 300 S.C. 103, 386 S.E.2d 471 (SC App. 1989); and Lyles v. Quantum Chemical Company, 315 S.C. 440, 434 S.E.2d 292 (SC App. 1993).

"The Workers' Compensation Commission properly ruled that a Claimant is entitled to benefits even though the injury did not affect his performance in his subsequent job because compensation is based on the character and extent of the injury and not whether the Claimant lost earnings or is otherwise employable in another occupation". Lyles, supra. (Emphasis added).

The fact that wage loss is not a factor to be considered under the presumption is clear from the statute. A worker

is entitled to an award for total and permanent disability for loss of earning capacity under the first paragraph of SC Code §42-9-10 which is subsection (A) after the 2007 Amendments.

The pertinent part of S.C. Code §42-9-30 (21) as Amended in 2007 (the scheduled member back section) reads:

"Where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under §42-9-10 (B)." (Emphasis Added)

Under previous SC Code §42-9-30(19) the subsection read,

"and compensated therefore under paragraph two of §42-9-10". (Emphasis added.)

The link to the "second" paragraph now under SC Code §42-9-10(B) did not change.

S.C. Code §42-9-10 (B) (previously paragraph two) provides that the loss of both hands, arms, shoulders, feet, legs, hips or vision in both eyes or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of that section.

An Award under Section (B) of §42-9-10 like an Award under §42-9-30 (21) is paid due to the, "character of the injury" not wage loss, or in the words of the Supreme Court

the functional loss of use of the scheduled member, organ or bodily part:

"Compensation depends on the functional loss rather than the loss of earnings. Hoke v. Cherokee County, 216 S.C. 376, 58 S.E.2d 330 (1950). Therefore, since compensation is not based upon loss of earnings, but is payable when the member or its function is impaired or lost, the testimony that the loss of vision in the injured eye might be reduced by use of corrective lens is not properly considered in determining whether Respondent has suffered a loss of vision in that eye . . ." Dykes v. Daniel Construction Co., 262 S.C. 98, 202 S.E.2d 646.

Therefore, Awards under §42-9-30 (21) are not paid nor have they ever been paid for wage loss as provided for under §42-9-10 (A)². They are paid for the functional loss of use without any consideration of wage loss. A left handed lawyer is entitled to total and permanent disability if he loses his right foot and right hand and the same is true if he loses 50% of the use of his back; otherwise the connection to (B) not (A) is meaningless.

In this case, there is simply no substantial evidence in the Record that Mr. Clemmons has lost less than 50% of the functional use of his back to do work requiring the use

²Appellant's Counsel is extremely concerned with the lack of commitment to the wording of the Act and the use of the word, "disability" in reference to any Award made under SC Code §42-9-30, the scheduled member award section. Disability has nothing to do with loss of use. It is actually defined under SC Code §42-1-120. This mis-use is second only to the mis-use of the word impairment in reference to the Commission's responsibility as to the awards to be made. The Commission can only make Awards on two bases: 1) loss of earning capacity and 2) loss of use. Disability ≠ loss of use ≠ impairment.

of the back. Two medical doctors that evaluated him stated the opinion in reference to the functional loss of use of the back that he has to do work requiring the use of his back that in their opinion he had lost 50% or greater of the use of his back to do work requiring the use of his back. (R. pp. 170 & 173). In addition Mr. Clemmons testified that in his opinion he had lost more than 50% of the use of the back and in fact testified that he had lost, "about 80%" of the functional use of his back to do work requiring the use of his back. (R. p. 337, l. 10 - p. 338, l. 11). Based on the functional capacity evaluation that was performed, Mr. Clemmons is only capable of performing limited light duty work and under the U.S. Department of Labor's Dictionary of Occupational Titles, five (5) Physical Work Demand Categories of very heavy duty, heavy duty, medium duty, light duty and sedentary duty work, the Appellant is excluded from three (3) of those categories completely and another one of those categories partially. Based on the Vocational Evaluation considering all of those factors, he is excluded from over 99% of all of the jobs available to him in the marketplace. (R. p. 171 and p. 195). There is simply no other evidence concerning the loss of use that Mr. Clemmons had sustained as a result of the injury to his back; i.e., no rebuttal.

It is the responsibility of the Commission where an Award is requested under the Scheduled Member Statute for the Commission to base its decision on the substantial evidence in the Record to determine the functional loss of use that the Claimant has in reference to the particular body part involved; in this case the back. Where the Appellant puts forward evidence to support his claim as is set out above, under the presumption the Respondents are duty bound to present evidence to rebut that.

In addition, the Commission is duty bound where it is dealing with a scheduled member award to make detailed Findings of Fact and Conclusions of Law on that essential issue that are sufficiently definite and detailed enough to enable the Appellate Courts to determine whether the Findings of Fact are supported by the evidence and whether the law has been properly applied to them. Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962). The Commission must therefore make Findings of Fact as to the functional loss of use without regards to whether or not there is any loss of earning capacity. See Dykes v. Daniel Construction Co., supra. In addition, in Wigfall v. Tideland Utilities, Inc., supra, our Supreme Court specifically affirmed this principle again by stating that there are three (3) methods of obtaining compensation,

one being for total disability (wage loss) and the second being for partial disability (wage loss) and the third being for a scheduled member award. The first two methods are premised on the economic model while the third method, "exclusively relies upon the medical model with its presumption of lost earning capacity."

Therefore, first since there is absolutely no substantial evidence in the Record that Mr. Clemmons has lost less than 50% of the functional use of his back, the Commission erred by not making that finding. Second, the Commission erred by considering wage loss in reaching its determination, which it clearly did (See Findings 8-12) in reference to the decision as to whether Mr. Clemmons had lost more than 50% of the functional use of his back, thus the Commission erred again as a matter of law in its Decision.

Finally, the Appellant is aware of the decision by the Court in Watson v. Extra Mile Drivers Training, Inc., 399 S.C. 455, 732 S.E.2d 190 (SC App. 2012) on which a Petition requesting a Writ of Certiorari is pending and on which a request to argue against precedent will be filed to the extent that it infuses wage loss into a scheduled member award.

However, even applying the Watson standard, the

Appellant is entitled to an Award for total and permanent disability under SC Code §42-9-30(21), under the testimony and evidence in this case concerning his ability to work and the expert opinion of a vocational expert in reference to his job market access. Mr. Clemmons testified that without the special accommodations being made by Lowe's and the help of his fellow employees that he could not do his job with Lowe's. He also testified that the only conceivable job that he knew of that he may be able to do, if he lost his job at Lowe's, would be one where he would not have to stay on his feet. (R. p. 333, l. 1 - p. 335, l. 21). The vocational expert's opinion establishes that considering all the doctor's opinions including that of Dr. Drye, the authorized treating physician, and their restrictions and the restrictions found to exist under the functional capacity evaluation that in her opinion Mr. Clemmons had a 99.9400% loss of access to the job market in the United States (R. p. 195). The Commission had to rely on and had to make its decision based on the substantial evidence. Justice Gathers wrote in Watson citing Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996) and McCollum v. Singer Co., supra, [stating to the effect as is set out specifically in the McCollum decision citing from Colvin v. E.I. DuPont de Nemours Co., 227 S.C.

465, 88 S.E.2d 581 (1955)] that:

"evidence that the claimant has been able to earn occasional wages or perform certain limited kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial."

Therefore, even applying this standard under the substantial evidence in the Record here that: the Appellant knows of no actual job he could perform except possibly some job where he did not have to stand and that he is excluded from 99.9400% of the entire job market in the United States under the Dictionary of Occupational Titles, the evidence clearly establishes that he is entitled to an Award for total and permanent disability. Again, that is assuming that wage loss is a factor that should be considered in a request for an Award under the schedule member statute; again the reference to (B) versus (A) would make no sense if it is.

III. DID THE COMMISSION ERR AS A MATTER OF LAW BY FAILING TO MAKE AN AWARD FOR THE APPELLANT'S SEPARATE NEUROLOGICAL DISORDER, MYELOPATHY, BASED ON THE SUBSTANTIAL EVIDENCE IN THE RECORD?

The only doctor to address this issue is Dr. Mandell, a board certified neurologist, who stated the opinion that separate and apart from any impairment to the back that in his opinion from a neurological standpoint that Mr. Clemmons had a 15% whole person impairment affecting his

back and upper extremities and lower extremities. The effect of the myelopathy on Mr. Clemmons was recognized by all doctors involved including the treating neurosurgeon, Dr. Randall Drye. Dr. Drye recognized and agreed that these central nervous system problems existed and were caused by the residual myelopathy. Therefore the only substantial evidence in the Record establishes that Mr. Clemmons is entitled to a separate Award for the separate neurological injury that he incurred. The Commission erred as a matter of law by not making an Award for the neurological deficits separate and apart from the injury to the back and by not making Findings of Fact and Conclusions of Law on that issue. Roper v. Kimbrell's of Greenville, Inc., 231 S.C. 453, 99 S.E.2d 52 (1957).

IV. DID THE COMMISSION ERR AS A MATTER OF LAW BY FAILING TO MAKE AN AWARD FOR APPELLANT'S LOW BACK INJURY?

The treating neurosurgeon Dr. Randall Drye recognized and found that Mr. Clemmons had problems with his low back, addressed those in his last report and set those out as a diagnosis. However, the only medical impairment rating he ever addressed and gave Mr. Clemmons was in reference to his cervical spine injury and there is no evidence he ever evaluated the lumbar spine for medical impairment.

There is a wealth of evidence in the Record concerning

the low back which comes first from Mr. Clemmons who testified as to the problems that he was having with his low back including low back pain, stiffness, limitation of motion, and the other activity limitations he has caused by these problems. In addition, the medical evidence includes: the opinion evidence from Dr. Leonard Forrest who opined that Mr. Clemmons was entitled to a separate 10% whole person impairment due to the problems with his low back; the impairment assessment performed by the physical therapist under the AMA Guidelines; and Dr. Mandell's opinion of permanent low back problems. There is simply no contrary substantial evidence in the Record concerning the low back and as such an Award should have been made addressing the low back problems and the loss of use for those problems. Here again the Commission failed in its responsibility to make detailed and definite Findings of Fact and Conclusions of Law in accordance with Drake v. Raybestos-Manhattan, Inc., supra, the Workers' Compensation Act and Administrative Procedures Act.

V. DID THE COMMISSION ERR AS A MATTER OF LAW BY PLACING GREATER WEIGHT IN THE AUTHORIZED TREATING NEUROSURGEON'S REPORTS WHERE THERE IS AN ABSOLUTE CONTRADICTION OR PARADOX IN THAT DOCTOR'S REPORTS AS TO WHETHER THE MYOPATHY AND THE FUNCTIONAL LOSSES AND SYMPTOMS ASSOCIATED WITH IT PREEXISTED THE INJURY WHERE THERE IS ABSOLUTELY NO EVIDENCE IN THE RECORD TO SUBSTANTIATE THAT THE APPELLANT WAS HAVING ANY NEUROLOGICAL PROBLEMS PRIOR TO THE ACCIDENT?

The Commission made a specific Finding giving, "great weight" to the treating physician's opinion and little or no weight to all of the other evidence in the Record. (R. p. 40).

As is set forth in the Statement of the Case and Facts, all of the evidence in the Record up until the very last visit with Dr. Drye establishes that all of the doctors were of the opinion the Appellant's problems with myelopathy, balance and other neurological problems referred to in Dr. Armsey's initial report stemmed from the work-related injury. However, Dr. Drye in his last report stated the exact opposite.

Quoting directly from Dr. Randall G. Drye, M.D., report of November 30, 2010, which state his and all doctors' opinions:

"When we met in the office initially and we garnered his history he clearly reported no prior history of significant neck or neurologic problems prior to a fall at work. This occurred, according to the patient, on 9/12/10 when he slipped on some straw in a trailer and impacted on his back and the back of his head. This

mechanism of injury is completely consistent as the force and flexion of the head and neck can result in a tear in the vulnerable disc and subsequent herniation. . . .

* * *

For that reason, I believe that within a reasonable degree of medical certainty, his disc herniations, spinal cord impingement and subsequent myelopathy as well as the intervening surgery were a direct result of his fall at work." (R. p. 105).

The Appellant would submit again that the Court will find absolutely no medical record or reference to Mr. Clemmons having any problems prior to the date of the accident. Thus the statement made in Dr. Drye's last report that the myelopathy resulted from, "pre-existing problems" to the fall makes the neurosurgeon's testimony not credible. Therefore the Commission's Findings of Fact that they placed great weight in the treating neurosurgeon's opinions without addressing this critical factual issue in their Findings makes those Findings of Fact and Conclusions of Law inadequate for judicial review and the subject of surmise, speculation and innuendo and also being capricious. The evidence simply does not support any credence to be given to the credibility of the neurosurgeon. The two quoted statements are simply and totally contradictory. The Commission must make Findings on all "essential factual issues." Hill v. Jones, 255 S.C.

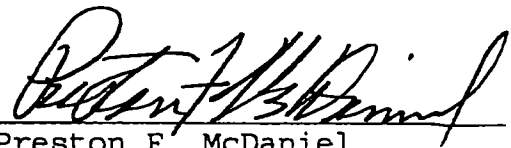
219, 178 S.E.2d 142 (1970).

CONCLUSION

For all the foregoing reasons, the Decision of the Commission should at the least be reversed, vacated, and the claim remanded pending the Appellant making a request for benefits under the Act.

Further, this Court should review the substantial evidence in the Record and since there is no contrary evidence, grant the Appellant an Award as a matter of law for total and permanent disability for having lost more than 50% of the use of his back.

Respectfully submitted,



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1/31/, 2014

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE COMMISSION ERRED BY HOLDING A HEARING TO DETERMINE CLAIMANT'S PERMANENT DISABILITY BENEFITS BY VIRTUE OF CARRIER'S REQUEST FOR A HEARING?
- II. WHETHER SUBSTANTIAL EVIDENCE SUPPORTED THE COMMISSION'S IMPAIRMENT RATING OF 48% TO CLAIMANT'S BACK?
- III. WHETHER THE COMMISSION PROPERLY DECLINED TO SEPARATELY AWARD PERMANENT DISABILITY BENEFITS TO CLAIMANT FOR RESIDUAL MYELOPATHY?
- IV. WHETHER THE COMMISSION PROPERLY DECLINED TO MAKE A SEPARATE PERMANENCY AWARD FOR THE "LOW BACK"?
- V. WHETHER THE COMMISSION'S FINDING THAT IT PLACED GREATER WEIGHT UPON THE OPINION OF DR. DRYE IS REVIEWABLE BY THIS COURT?

STATEMENT OF THE CASE

Claimant was employed with Lowe's on September 12, 2010 when he suffered from a work related injury. (R. p. 2). Pursuant to a Consent Order, the parties agreed that Claimant suffered from an accepted injury to his back, neck and right knee and agreed to continued medical care with the physician the Claimant had already chosen, Dr. Drye. (R. p. 25). In addition, the Carrier agreed to pay Claimant temporary total disability benefits from the date of the accident until properly terminated. (R. p. 25). On June 7, 2011, Claimant was released by Dr. Drye at maximum medical improvement and assigned an impairment rating of 25% whole person to his back. (R. p. 25). Thereafter, Carrier forwarded a Form 17 to Claimant's counsel. (R. p. 382). Carrier asked that, once the Form 17 was executed, Claimant provide a settlement demand pertaining to permanent disability. (R. p. 382). On September 22, 2011, Claimant signed a Form 17 indicating he could return to work. (R. p. 25).

Consequently, on January 4, 2012, Carrier filed a Form 21 requesting a determination of any compensation due for permanent total or partial disability. (R. p. 72). In response to Claimant's request for an additional medical evaluation, Carrier withdrew its request in order to provide for another evaluation from Claimant's treating neurosurgeon, Dr. Drye. (R. p. 384). On June 18, 2012, Dr. Drye examined Claimant and reviewed recently performed magnetic imaging studies of Claimant's lumbar spine and neck. (R. p. 111). Dr. Drye concluded that he had reached maximum medical improvement and reaffirmed his earlier impairment rating of 25% whole person to the back. (R. p. 112). Carrier subsequently requested that Claimant consider settlement "on a Form 16 basis" and "provide ... a settlement demand at [his] earliest convenience." (R. p. 385). Having received no settlement demand, Carrier then filed a Form 21

seeking determination of any permanent compensation and a credit for any overpayment of temporary compensation. (R. p. 74).

At a hearing held on September 25, 2012 before Single Commissioner Derrick L. Williams, Claimant argued that it was his prerogative to request compensation at a time of his choosing; thus, Carrier's Form 21 seeking determination of compensation violated his due process rights. Claimant further argued that he had not reached maximum medical improvement and was entitled to a second opinion regarding his back and an alleged neurological dysfunction. In the alternative, Claimant argued that if the Commission found he had reached maximum medical improvement, then he claimed that he was permanently and totally disabled due to either 1) a greater than fifty percent loss of use to the back pursuant to S.C. Code Ann. § 42-9-30(21) or 2) loss of earning capacity pursuant to S.C. Code Ann. § 42-9-10. (R. pp. 127-131). Carrier argued that Claimant had reached maximum improvement, that a second opinion was unnecessary in light of additional evaluation by his treating physician, and that Claimant was not permanently and totally disabled under S.C. Code Ann. § 42-9-30(21) or S.C. Code Ann. § 42-9-10. The Single Commissioner agreed, awarding Claimant permanent partial disability based upon a finding of 48% impairment to Claimant's back. (R. pp. 4-21).

On December 20, 2012, Claimant filed a Form 30 Request for Commission Review. A hearing was held before the Full Commission on April 16, 2013. By Order entered July 7, 2013, the Full Commission affirmed the Single Commissioner's Order in its entirety. (R. pp. 22-43). Claimant timely noticed an appeal to this Court.

STATEMENT OF THE FACTS

On September 12, 2010, Claimant slipped on wet pine straw while waiting on a customer and fell flat on his back. (R. p. 313, lines 2-15). Subsequently, he complained of low back pain radiating to his legs. (R. p. 90). Initial medical examinations diagnosed Claimant with back strain, radiculopathy and right knee strain. (R. pp. 82, 85, 86). Claimant's condition progressively deteriorated, and he was referred to Dr. Armsey for further evaluation and treatment. (R. p. 90). He was unable to walk due to poor balance. (R. p. 91). On November 1, 2010, Dr. Armsey's examination revealed acute ataxia and Claimant was immediately referred to Dr. Drye, a neurosurgeon. (R. pp. 91-92). Claimant's neurologic examination showed normal strength and reflexes. (R. p. 91). He denied any headache, visual changes, cognitive or memory problems, and very little neck discomfort. (R. p. 101). An MRI showed spinal cord compression from disk herniation. (R. p. 102). Dr. Drye diagnosed Claimant as having a "herniated nucleus pulposus with cord compression and severe myelopathy, C5 and C7." (R. p. 93). On November 9, 2010, Claimant underwent an anterior cervical discectomy and fusion of C5-6 and C-6-7. (R. p. 95).

Post-surgery, Claimant returned to the hospital complaining of poor sensation and control of his legs. (R. pp. 96-97). He was transferred to HealthSouth rehabilitation facility on November 17, 2010. (R. p. 98). By November 24, 2010, Claimant had recovered 90% of normal sensation in his legs with only mild spasticity. (R. p. 104). He reported no issues with pain. (R. p. 104). Following his inpatient rehabilitation, Claimant continued with outpatient physical therapy. (R. p. 106). After completing a full course of physical therapy, Claimant had "regained relatively normal function in the upper extremities with no major complaints of numbness, tingling or weakness." (R. p. 110). He had regained full strength of his upper and lower

extremities. (R. p. 110). However, mild residual spasticity affected his gait and balance. (R. p. 110). During follow-up visits with Dr. Drye on February 16, 2011 and April 12, 2011, Claimant reported "no major pain issues." (R. pp. 107-108). Dr. Drye concluded on June 7, 2011 that Claimant had reached maximum medical improvement, assigning a 25% whole person impairment based on his injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms." (R. p. 110).

On September 16, 2011, Claimant signed a Form 17 indicating he could return to work. Lowe's offered and Claimant accepted a position as cashier with accommodations allowing him to sit as needed and request assistance as needed. (R. p. 124).

On January 4, 2012, Carrier filed a Form 21 requesting a determination of any compensation due for permanent total or partial disability and request credit for overpayment of temporary benefits. (R. p. 72). In response to Claimant's request for an additional medical evaluation, Carrier withdrew its request in order to provide for another evaluation from Claimant's treating neurosurgeon, Dr. Drye. (R. p. 384).

On June 18, 2012, Dr. Drye examined Claimant and reviewed recently performed magnetic imaging studies of Claimant's lumbar spine and neck. (R. p. 111). Claimant reported neck and back stiffness pain experienced in the morning which improved as he moved about. (R. p. 111). Dr. Drye characterized this pain as "axial" and "myofascial" suggestive of "arthritic-type symptoms." (R. p. 111). Dr. Drye also noted that Claimant had gained considerable weight and advised him that losing weight would likely help reduce his back pain. (R. p. 111). Dr. Drye concluded that he had reached maximum medical improvement and reaffirmed his earlier impairment rating of 25% whole person to the back. (R. p. 111). Thereafter, on July 24, 2012,

Carrier filed another Form 21 request credit for overpayment of temporary benefits and to determine any permanent disability award. (R. p. 74).

On September 5, 2012, Claimant went to Dr. Mandell, a neurologist, for an unauthorized independent medical evaluation. (R. pp. 135-140). Dr. Mandell noted that Claimant's "symptoms are stable now, not improving and not worsening for the past several months at least." (R. p. 137). Claimant's mental state was normal. (R. p. 138). Dr. Mandell concluded that Claimant did not "require additional treatment concerning his injuries other than perhaps ongoing physical therapy for balance and gait." (R. p. 140). Dr. Mandell also concluded that, as of the time of his evaluation, there was "no indication" that Claimant required further surgery. (R. p. 140). Dr. Mandell had no disagreement with Claimant's current work restrictions. (R. p. 140).

Claimant's attorney then sent Claimant to Dr. Forrest of the Southeastern Spine Institute for another unauthorized medical evaluation on September 6, 2012. (R. pp. 172-173). Dr. Forrest stated that Claimant had reached maximum medical improvement. (R. p. 173). Dr. Forrest opined that Claimant's permanent impairment rating for his neck and low back was at least 40%. (R. p. 173). Claimant's attorney then sent Claimant to a physical therapist, Tracy Hill, for a functional capacity evaluation ("FCE") on September 11, 2012. (R. pp. 141-165). According to Ms. Hill, Claimant qualified for a whole person impairment rating of 28%, and he also qualified for a whole person impairment rating of 8%. (R. pp. 141-142). Also on September 11, 2012, another unauthorized independent medical evaluation of Claimant was performed by Dr. Margalit of Sunset Family Practice. (R. pp. 166-170). Dr. Margalit concurred with Dr. Drye's opinions concerning continuing work restrictions and weight loss. (R. p. 170).

However, Dr. Margalit disagreed with Dr. Drye's impairment rating, stating that Claimant "lost more than 50% of the functional capacity of his back." (R. p. 170).

After appropriate medical treatment, Claimant returned to work at Lowe's in his same position as cashier, with work restrictions, and even received a raise. (R. p. 301, lines 10-14; p. 302, lines 1-11; p. 324, lines 5-18). To address any claim for total disability pursuant to S.C. Code Ann. § 42-9-10, Claimant underwent a vocational assessment on September 13, 2012. (R. pp. 174-196). The assessment, performed by Harriet Fowler at the request of Claimant's attorney, did not conclude that Claimant had lost earning capacity. The assessment noted that Claimant was currently working at Lowe's in a light duty job in a satisfactory manner. (R. p. 195). Ms. Fowler merely advised that light duty may not be sustainable over a lengthy period of time, and therefore, working at a sedentary level may provide a better chance for sustainable employment. (R. p. 196).

STANDARD OF REVIEW

Judicial review of a Worker's Compensation Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5). *Gray v. Club Group, Ltd.*, 339 S.C. 173, 180, 528 S.E.2d 435, 439 (Ct. App. 2000); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "This Court can reverse or modify the decision of the Commission where the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole." *Trotter v. Trane Coil Facility*, 393 S.C. 637, 644, 714 S.E.2d 289, 293 (2011).

The Commission is the ultimate fact finder in workers' compensation cases. *Ross v. American Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 729 (1989). A reviewing court should affirm the decision of the Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. *Lark*, 276 S.C. at 136, 276 S.E.2d at 307. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action." *Etheridge v. Monsanto Co.*, 349 S.C. 451, 456, 562 S.E.2d 679, 681-82 (Ct. App. 2002). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Ellis v. Spartan Mills*, 276 S.C. 216, 218, 277 S.E.2d 216, 217 (1981). "Where there are conflicts in the evidence over a factual issue, the findings of the Commission are conclusive." *Etheridge v. Monsanto Co.*, 349 S.C. 451, 455, 562 S.E.2d 679, 681 (Ct. App. 2002).

ARGUMENT

I. The Commission did not err in deciding permanent disability benefits at the request of the Carrier.

Claimant argues that the Commission violated his substantive and procedural due process right to request a hearing for determination of permanent disability award at a time of his choosing. By granting Carrier's Form 21 request for a hearing, the Commission, according to Claimant, exceeded its authority under the S.C. Worker's Compensation Act, thereby arbitrarily and capriciously depriving him of his alleged property right in worker's compensation benefits. According to Claimant, only he "has the right to bring a cause of action for a determination of these benefits and it is a denial of due process to force the Claimant to a premature determination of those benefits where he has not made a request that he be awarded any benefits whatsoever under the Act." Appellant's Brief, p. 21. Claimant's argument wholly lacks merit.

To establish a procedural due process claim, a person must show deprivation of his liberty or property interests due to the government's failure to provide notice, an opportunity to be heard in a meaningful way, or judicial review. *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009). Under *Adams v. H.R. Allen, Inc.*, this Court identified "adequate notice," "adequate opportunity for a hearing," "the right to introduce evidence," and "the right to confront and cross-examine witnesses" as the minimal due process requirements in a contested case proceeding such as a Worker's Compensation hearing. 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012). Here, a hearing was conducted after proper notice was provided to all parties. Claimant had the right to call any witness he desired. He was afforded the opportunity to cross-examine all witnesses called by Carrier. He was afforded the opportunity to present any admissible evidence to the Commission. His claim was heard by an impartial adjudicator. Claimant has not complained that he was denied any of these fundamental

procedural rights. The fact that he is able to bring this appeal belies any real contention of a procedural due process violation. See *Harbit v. City of Charleston*, 382 S.C. 383, 394, 675 S.E.2d 776, 781 (Ct. App. 2009) (“The existence of review is an indication of the presence of procedural due process, rather than its absence.”).

To establish a substantive due process claim, a person must show “he possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency.” *Seabrook v. Knox*, 369 S.C. 191, 198, 631 S.E.2d 907, 911 (2006). Claimant appears to confuse constitutional due process protections with due process protections under administrative law. A Due Process Clause inquiry is “far narrower” than an administrative law inquiry into whether agency action is arbitrary and capricious. *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 829 fn. 7 (4th Cir. 1995). “While administrative law focuses on whether an agency’s decision was supported by record evidence and abided by statutory criteria, substantive due process enquires into the conceivable outer limits of legitimate government power.” *Id.* Substantive due process essentially protects against the uncommon situation of truly egregious government conduct as opposed to failure to comply with state law. See *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992) (stating that Due Process Clause is designed “to prevent government from abusing its power, or employing it as an instrument of oppression.”); *International Assoc. of Machinists & Aerospace Workers v. Haley*, 482 Fed. Appx. 759, 766 (4th Cir. 2012) (“Only the most egregious official conduct can be said to be arbitrary in the constitutional sense”); *c.f. Ross v. Medical University*, 328 S.C. 51, 492 S.E.2d 62 (1997) (analyzing constitutional due process claims separately from procedural requirements under the S.C. Administrative Procedure Act).

Claimant appears to argue that the Commission violated the Due Process Clause because it exceeded its statutory authority in granting Carrier's request for a hearing to determine permanent disability benefits. *Ultra vires* acts do not rise to the level of deprivation contemplated under the Due Process Clause. See *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 829 fn. 7 (4th Cir. 1995) ("... to conclude that every agency decision reversed as arbitrary and capricious under state or federal administrative law rises to the level of a constitutional claim would distort the substantive due process doctrine."); *Locust Valley Enters., LLC v. Upper Saucon Twp.*, 2008 U.S. Dist. LEXIS 53232, 26 (E. D. Pa. 2008) ("[T]o sustain a [due process] claim, plaintiff must prove that the government action in question is something more than . . . arbitrary, capricious, or in violation of state law."). Thus, Claimant's argument that the Commission violated his constitutionally protected substantive due process rights necessarily fails as a matter of law.

Instead, Claimant appears to be arguing that this Court should reverse the Commission's decision as action that exceeds the Commission's authority, or as arbitrary and capricious,¹ under S.C. Code Ann. § 1-23-380 of the S.C. Administrative Procedure Act ("APA"). Contrary to Claimant's assertion that Carrier lacked statutory authority to seek a hearing to determine any permanent disability benefits, the APA emphatically states that "in a contested case, all parties must be afforded an opportunity for hearing" S.C. Code Ann. § 1-23-320(A). More specifically, the South Carolina Worker's Compensation Act provides that "[i]f the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title within fourteen days after the employer has knowledge of the injury ... either party may make application to the Commission for a hearing in regard to the matters at issue and

¹ Under the APA, "a decision is arbitrary if it is ... governed by no fixed rules or standards. *Deese v. South Carolina State Bd. of Dentistry*, 286 S.C. 182, 184-185, 332 S.E.2d 539, 541 (Ct. App. 1985).

for a ruling thereon.” S.C. Code Ann. § 42-17-20. Carrier had on two occasions asked for a settlement agreement for permanent disability compensation and received no settlement offer. Because the parties failed to reach agreement as to any award of permanent disability, Carrier had the right to request a hearing to determine compensation for any permanent disability. *McMillan v. Midlands Human Res.*, 305 S.C. 532, 534, 409 S.E.2d 443, 445 (Ct. App. 1991). And the Commission was authorized to act on Carrier’s request pursuant to S.C. Code Ann. § 42-17-20. Therefore, it was within the Commission’s jurisdiction and authority to hold a hearing at the request of Carrier to determine whether Claimant was entitled to permanent disability benefits.

Claimant turns to *SC Property & Casualty Ins. Co. v. Carolinas Roofing & Sheet Metal Contractors Self-Insured Fund* as support for his argument that the Commission lacks jurisdiction to hear Carrier’s Form 21 request because the employee did not initiate the hearing to determine permanent disability benefits. 303 S.C. 368, 401 S.E.2d 144 (1990). In *Carolinas Roofing*, the employee had entered into a settlement agreement with the employer and its workers compensation carrier that fully satisfied any and all liability under the Workers Compensation Act. *Id.* at 370, 145. Thereafter, the carrier became insolvent, making the S.C. Property & Casualty Insurance Guaranty Association (“Guaranty Association”) responsible for providing coverage. *Id.* The Guaranty Association then filed a complaint in the court of common pleas seeking to determine its liability for the claim. *Id.* The circuit court ruled that the Worker’s Compensation Commission had exclusive jurisdiction and entered judgment in favor of defendants. *Id.* On appeal, the Supreme Court held that the settlement agreement terminated the employee’s pending claim before the Worker’s Compensation Commission; therefore, the

Commission lacked jurisdiction to decide the issue raised by the Guaranty Association. *Id.* at 372, 146.

Claimant seizes upon the Court's holding that the Commission lacks jurisdiction ~~when~~ there is no "pending employee claim" before the Commission, arguing that the lack of a Form 50 from Claimant to determine his benefits strips the Commission of jurisdiction to hear Carrier's request via Form 21 to make a determination of any permanent disability award. Claimant's argument is clearly mistaken. Under S.C. Code Ann. § 42-3-180, "all questions arising ~~under~~ [the Act], if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title." The Commission enjoys a broad grant of authority over any dispute related to an award of compensation. *Price v. Peachtree Elec. Servs.*, 396 S.C. 403, 409, 721 S.E.2d 461, 464 (Ct. App. 2011). The Commission's jurisdiction is not determined by which party initiates a determination of compensation.

Claimant's reasoning that the Commission lacks jurisdiction to hear Carrier's Form 21 request because claimants bear the burden of proof in establishing entitlement to permanent disability also falls short. "Subject matter jurisdiction and application of a burden of proof (to a claim within the court's jurisdiction) are different concepts." *Altman v. Griffith*, 372 S.C. 388, 396 fn. 2, 642 S.E.2d 619, 623 fn. 2 (Ct. App. 2007). "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist*, 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994). Subject matter jurisdiction is not triggered or determined by which party has the burden of proof. Unquestionably, Claimant bears the burden of proof as the "party asserting the affirmative of an issue," and the fact that Carrier requested a hearing to determine whether benefits are due does

not shift the burden of proof. 2 AM JUR 2D *Administrative Law* § 354. Claimant's focus on burden of proof in support of his argument that "only the Claimant has the right to bring a cause of action for a determination of ... benefits" is irrelevant.

II. Substantial evidence supports the Commission's finding that Claimant was not permanently and totally disabled due to loss of 50% or more of the use of his back.

Claimant sought total and permanent disability under S.C. Code Ann. § 42-9-30(21) due to an alleged fifty percent loss of use or disability of his back. " ... [I]n cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B)." S.C. Code Ann. § 42-9-30(21). This presumption is rebuttable. *Id.* In Claimant's view, he bears the burden of making out a prima facie case of impairment of 50% or more, which was satisfied merely by putting forward the medical opinions of Drs. Forrest and Margalit, as well as his own testimony. Therefore, Claimant argues, Carrier must rebut the presumption of total permanent disability that he established, and Carrier has utterly failed to overcome the presumption. Thus, according to Claimant, the Commission's finding of 48% impairment to Claimant's back fails for lack of evidence. Claimant's cites no supporting authority for his theory, nor can he, because his proposed manner of determining total permanent disability under S.C. Code Ann. § 42-9-30(21) is contrary to well-settled law applicable to the Commission's fact-finding concerning the extent of impairment.

"The extent of an injured workman's disability is a question of fact for determination by the Appellate Panel and will not be reversed if it is supported by competent evidence. *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 86-87, 681 S.E.2d 595, 600 (Ct. App. 2009). "While an impairment rating may not rest on surmise, speculation or conjecture . . . it is not necessary that the percentage of disability or loss of use be shown with mathematical exactness." *Id.* "The

Appellate Panel is not bound by the opinion of medical experts and may find a degree of disability different from that suggested by expert testimony.” *Id.* “Expert medical testimony is designed to aid the Commission in coming to the correct conclusion; therefore, the Commission determines the weight and credit to be given to the expert testimony. *Id.*

Here, the Commission received varying opinions regarding the extent of Claimant’s impairment. Dr. Drye, Claimant’s attending physician since November 8, 2010, after reviewing imaging studies of Claimant’s lumbar spine and cervical spine and referring to the American Medical Association Guide to the Evaluation of Permanent Impairment, assigned “a 25% whole person impairment based on his injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms.” (R. p. 110). He concluded that Claimant’s stiffness and pain in his back was “strongly suggestive of arthritic-type symptoms,” and advised Claimant that continued stretching exercises as well as weight loss would help with his lumbar symptoms. (R. p. 111).

Dr. Forrest, retained by Claimant’s counsel, opined that, after spending about an hour and half with Claimant, Claimant’s permanent impairment rating for his neck and low back was at least 40%. (R. p. 173); (R. p. 350, lines 10-12). Dr. Margalit, after spending about an hour with Claimant, opined that Claimant “lost more than 50% of the functional capacity of his back.” (R. p. 170); (R. p. 349, lines 20-24). The opinions of Dr. Margalit and Dr. Forrest were apparently made without use of the American Medical Association Guide to the Evaluation of Permanent Impairment.² (R. p. 171); (R. p. 173). Ms. Hill, a physical therapist also retained by Claimant’s counsel, gave a layperson’s assessment that Claimant qualified for a whole person impairment

² Impairment ratings not determined under the A.M.A. guidelines may be given less weight. *Harbin v. Owens-Corning Fiberglas*, 316 S.C. 423, 430, 450 S.E.2d 112, 116 (Ct. App. 1994).

rating of 28% which converted to a 80% cervical spine impairment, and a whole person impairment rating of 8% which converted to a 11% lumbar spine impairment. (R. pp. 141-142).

Additionally, Claimant testified that he thought he had lost 80% of the use of his back. (R. p. 337, line 10 – p. 338, line 11). A great deal of his testimony describing his impairment concerned complaints of stiffness and pain in his neck and lower back. (R. pp. 319, lines 14-19; p. 320, lines 6-10; p. 327, line 21 – p. 328, line 2; p. 327, line 22 – p. 329, line 4; p. 329, lines 5-21; p. 330, lines 3-10; p. 330, lines 17-20; p. 335, lines 23-25). However, he reported to Dr. Drye that this pain is worse in the morning and improves as he moves about. (R. p. 76). Claimant did not ask for, and Dr. Drye did not prescribe any pain medication. (R. p. 76); (R. p. 348, line 23 – p. 58, line 1). He previously testified during his deposition that he experienced no back pain. (R. p. 351, line 7 – p. 352, line 10).

Upon review of this evidence, the Commission found Dr. Drye's conclusions to be the most persuasive. (R. p. 26). After weighing all of the evidence, including evidence concerning Claimant's lumbar spine and radicular symptoms, the Commission found that Claimant sustained a 48% permanent partial disability to his back. (R. p. 26). Substantial evidence supports the Commission's finding of 48% permanent partial disability to his back. "Substantial evidence is evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion that the full commission reached." *Sellers v. Pinedale Residential Ctr.*, 350 S.C. 183, 188, 564 S.E.2d 694, 697 (Ct. App. 2002). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the commission's findings from being supported by substantial evidence." *Id.* Although evidence was entered into the record indicating impairment of Claimant's back to be 50% or more, "where the medical evidence conflicts, the findings of fact of the Commission are conclusive." *Mullinax v. Winn-Dixie Stores*, 318 S.C.

431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995). The Commission considered the evidence and, as it was entitled to do, made a finding of impairment that was different than the ratings put forward by Claimant, but nonetheless well within the evidence presented. *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 88, 681 S.E.2d 595, 601 (Ct. App. 2009). The Commission committed no error in awarding under S.C. Code Ann. § 42-9-30(21) permanent partial disability instead of permanent total disability.

Claimant's assertion that his medical evidence and lay testimony must be accepted by the Commission as meeting his burden of proof of showing impairment of 50% or more to his back directly contradicts the Commission's duty and prerogative to consider all evidence of impairment, and reach its own determination of impairment. The Commission may adopt particular evidence of impairment as its own finding, or it may make a finding of impairment that is greater or lesser than the impairment ratings submitted so long as the Commission's impairment rating is within the evidence in the record. *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 87, 681 S.E.2d 595, 600 (Ct. App. 2009). Claimant's argument, followed to its logical conclusion, would contradict well-settled law holding that medical evidence is not conclusive, and that the Commission is "also given discretion to weigh and consider all the evidence, including both lay and expert testimony." *Ballenger v. Southern Worsted Corp.*, 209 S.C. 463, 467, 40 S.E.2d 681, 682-683 (1946); *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 87, 681 S.E.2d 595, 600 (Ct. App. 2009).

As an additional argument, Claimant attempts to characterize the Commission's rejection of total and permanent disability as hinging upon a rebuttal based upon loss of earning capacity, and argues that, under S.C. Code Ann. § 42-9-30, evidence of lost earning capacity is an error of law. Claimant's Brief, p. 25-29. Claimant misconstrues the Commission's Order. Claimant

sought permanent and total disability on two separate grounds: 1) a 50% or greater loss of use to the back pursuant to S.C. Code Ann. § 42-9-30(21) or 2) loss of earning capacity pursuant to S.C. Code Ann. § 42-9-10. In its findings of fact and conclusions of law, the Commission rejected the first ground by finding that "Claimant sustained a 48% permanent partial disability to his back." (R. p. 42). The Commission then addressed Claimant's request for permanent and total disability under S.C. Code Ann. § 42-9-10. (R. p. 42).

Under the general disability statute, S.C. Code Ann. § 42-9-10, "disability in compensation cases is to be measured by loss of earning capacity." *Stephenson v. Rice Servs.*, 323 S.C. 113, 118, 473 S.E.2d 699, 702 (1996); *Wynn v. People's Natural Gas Co.*, 238 S.C. 1, 11, 118 S.E. 2d 812, 818 (1961). "The generally accepted test of total disability is inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." *Id.* "An employee who is capable of performing other work that is continuously available to him would not be deemed totally disabled simply because he is unable to resume duties of the particular occupation which he was engaged at the time of his injury." *Id.* "An award of compensation must be based upon the claimant's *incapacity* because of injury to earn the wages which (he) was receiving at the time of injury in the same or any other employment." *Shealy v. Algernon Blair Inc.*, 250 S.C. 106, 112, 156 S.E.2d 646, 649 (1967) (emphasis in original). "Loss of earning capacity is the criterion." *Id.* "There is no recognition of the elements of pain and suffering, or of increased discomfort and difficulty in performing the work, as long as there is no diminution in earning capacity." *Id.* An award of total disability "may not rest on surmise, conjecture or speculation and must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 631, 142 S.E.2d 43, 45 (1965).

After reviewing the evidence, the Commission concluded that Claimant was not permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-10 because Claimant “has returned back to work with the employer for almost two years.” (R. p. 40); (R. p. 42). Because Claimant continues to work at Lowe’s, and even received a raise subsequent to his return to work, he cannot show loss of earning capacity. (R. p. 301, lines 10-14; p. 302, lines 1-11; p. 324, lines 5-18). *see Harbin v. Owens-Corning Fiberglas*, 316 S.C. 423, 427, 450 S.E.2d 112, 114 (Ct. App. 1994) (“It is undisputed that Harbin has not suffered any actual loss of earning capacity; he continues to work for Owens and, as the result of a subsequent raise, he now earns more than he did at the time of the accident.”). Claimant was employed as a cashier at Lowe’s before the work injury and continued in this position, with restrictions, when he returned to work. (R. p. 324, lines 5-18). Claimant’s vocational assessment did not conclude that his injury rendered him incapable of finding work. (R. pp. 194-196).

Claimant does not challenge the Commission’s finding or conclusion rejecting total and permanent disability pursuant to S.C. Code Ann. § 42-9-10. He attempts to reframe the Commission’s Order by characterizing its rejection of total and permanent disability pursuant to S.C. Code Ann. § 42-9-10 as a finding or conclusion of rebuttal of the presumption of total and permanent disability under S.C. Code Ann. § 42-9-30(21). The Commission’s Order makes no mention of a rebuttal, and as explained above, clearly considered lack of earning capacity under S.C. Code Ann. § 42-1-10, not § 42-9-30(21).

III. The Commission committed no error in declining to separately award permanent disability benefits to Claimant for residual myelopathy.

Claimant argues that the Commission erred in failing to make an award for myelopathy as a separate neurological injury. As the basis for his argument, Claimant points to Dr. Mandell’s evaluation in which Dr. Mandell opined that:

[Claimant] still has spasticity in his legs, hyperreflexia, difficulty with coordination, inability to run and difficulty with balance. I would say he is probably 85% better but still has this 15% neurological injury left over. (R. p. 139).

Claimant cannot contend that Dr. Mandell's casual reference to residual neurological symptoms can reasonably be taken an impairment rating. Rather, Dr. Mandell is simply explaining that Claimant had not recovered 100% of his pre-injury functioning. (R. p. 139).

The only other physician that touched on the issue of myelopathy was Dr. Drye, who noted that Claimant continued to have some altered gait from his previous myelopathy as well as longstanding, pre-injury inversion of the right foot and ankle. (R. p. 111). However, Dr. Drye did not offer nor suggest any separate impairment rating for Claimant's gait problems, and the MRI of Claimant's cervical MRI as well as lumbar study did not indicate any post-surgery nerve compression. (R. pp. 111-112). The lumbar study demonstrated a disc protrusion at L1-2, and at L5-S1 there was very advanced degenerative disc disease. (R. p. 111). However, there was no evidence of any direct nerve root impingement or large disc herniation. (R. p. 111). Dr. Drye opined that Claimant's current symptoms were most consistent with axial and myofascial pain and strongly suggestive of arthritic type symptoms. (R. p. 111).

"The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record." *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 85, 681 S.E.2d 595, 599 (Ct. App. 2009). The substantial evidence in this case does not support a finding that Claimant is entitled to a separate award based upon myelopathy. What is more, the Commission found that "[t]he Claimant's permanent partial disability includes any radicular symptoms to his right leg." (R. p. 40). In other words, the Commission included Claimant's residual myelopathy as part of its finding of 48% impairment to his back. The Commission committed no error.

IV. The Commission did not err in declining to make a separate award for the “low back.”

Claimant contends that he is entitled to an award of permanent partial disability for the pain and alleged impairment to his low back. However, the “low back” is not a scheduled member and is not a body part that is subject to a separate award. Section 42-9-30(21) addresses “loss of use of the back.” The word “back” is not defined in the Act; therefore, the term must be defined according to its plain and ordinary meaning. *Hartford Accident & Indem. v. S.C. Second Injury Fund*, 316 S.C. 420, 422, 450 S.E.2d 110, 111 (Ct. App. 1994). According to the Merriam-Webster Dictionary, the word “back” is defined as “the rear part of the human body especially from the neck to the end of the spine.” See “Back” *Merriam-Webster.com* at <<http://www.merriam-webster.com/dictionary/back>>. Clearly, the word “back” includes the lower back. Nothing in the S.C. Worker’s Compensation Act recognizes the “low back” as separate from the “back.” The Commission committed no error here.

V. The Commission’s finding that it placed greater weight on Dr. Drye’s opinion is not reviewable by this Court.

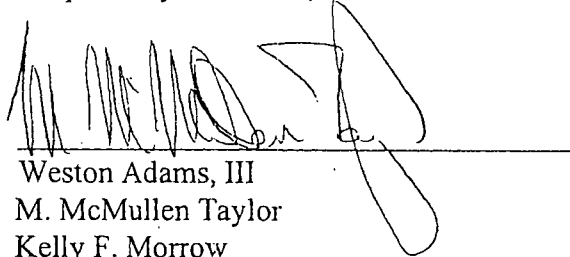
Claimant argues that the Commission erred by giving greater weight to the medical opinion of his attending physician, Dr. Drye. “The Administrative Procedures Act mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case.” *Rogers v. Kunja Knitting Mills, Inc.*, 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994). The “weight to be accorded evidence is reserved to the [...] Commission.” *Etheridge v. Monsanto Co.*, 349 S.C. 451, 455, 562 S.E.2d 679, 681 (Ct. App. 2002). The reviewing court may not substitute its judgment for that of the Commission concerning the weight of the evidence on questions of fact. *Mullinax v. Winn-Dixie Stores*, 318 S.C. 431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995). “It is not the task of the court to weigh the evidence as found by the commission.” *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487,

495, 541 S.E.2d 526, 529 (2001). Thus, Claimant's attempt to persuade this Court to reject the weight given by the Commission to Dr. Drye's opinions is unavailing.

CONCLUSION

For the reasons stated above, this Court should affirm the Commission's Order.

Respectfully submitted,



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Attorneys for Respondents

Jan. 21, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2013-001668

Henton T. Clemmons, Jr., Employee, ... Appellant,

v.

Lowes Home Centers, Inc.-Harbison, Employer,
and Sedgwick Claims Management Services,
Inc., Carrier, ... Respondents.

RECORD ON APPEAL

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SC Court of Appeals

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
HARBISON,

Employer,

AND

SEDGWICK CMS,

Carrier,

Defendants.

CONSENT ORDER

THIS MATTER was scheduled to be heard before the undersigned Commissioner on January 12, 2011, upon the filing of Claimant's Motion, as well as, Forms 50 and 51 which were filed by the parties addressing similar issues. This Consent Order is intended to dispose of both the Motion and Form 50 request for hearing. The Claimant alleged an injury to his head, back, and legs and requested benefits to include: temporary total disability benefits, additional medical treatment, and any fines or penalties he may be entitled to. The Defendants admitted an injury to the low back and right knee, however, denied injury to the head or left lower extremity. The Defendants also denied Claimant's entitlement to treatment for unrelated injuries and his entitlement to temporary total disability benefits. The Claimant is represented by Preston F. McDaniel, Esquire, and the Defendants are represented by Kelly F. Morrow, Esquire.

Prior to the scheduled hearing, the parties advised the Commission that an agreement had been reached regarding the issues presented for determination at the hearing. The parties now desire the agreement to be embodied into a Consent Order of the Commission. Therefore, the agreement of the parties is as follows:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of the claim.
2. On September 12, 2010, the Claimant sustained a compensable injury by accident arising out of and in the course of his employment to the back, neck, and right knee.
3. The Defendants agree to accept the back, neck, and right knee as compensable injuries and agreed to reinstate the Claimant's medical treatment on December 30, 2010.
4. The Defendants will reimburse Claimant's medical providers for all causally-related treatment prior to the date coverage of Claimant's medical care was reinstated, to include Claimant's neck surgery with Dr. Drye. The Defendants will continue to provide authorized, causally-related treatment until Claimant reaches maximum medical improvement for his admitted injuries.
5. The Defendants agree to reinstate Claimant's temporary total disability benefits, to include any previously unpaid temporary total disability benefits for Claimant's time lost from work since the date of accident.
6. The Claimant is entitled to continuing temporary total disability benefits until properly terminated due to a finding of maximum medical improvement, a return to work, further determination of the Commission, or agreement of the parties.

7. All other issues are held in abeyance and such matters may be presented at a future hearing before the jurisdictional Commissioner at the request of either party.

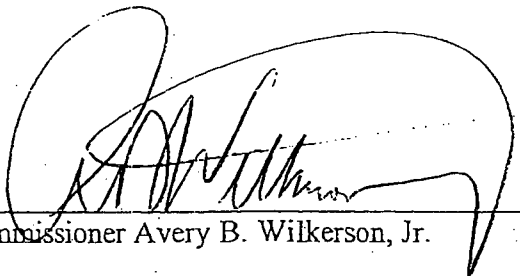
8. This matter shall be returned to general files.

NOW THEREFORE, on joint motion of Preston F. McDaniel, Esquire, attorney for the Claimant, and Kelly F. Morrow, Esquire, attorney for the Defendants, it is

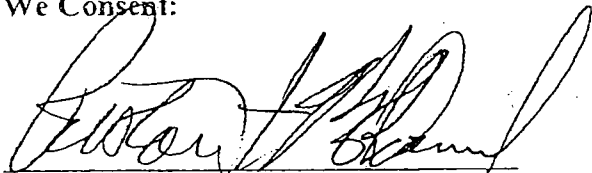
HEREBY ORDERED, ADJUDGED AND DECREED that the agreement of the parties as set forth above is hereby adopted as an Order of this Commission as if fully set forth herein.

IT IS SO ORDERED.

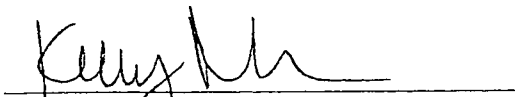
2-2, 2011.


Commissioner Avery B. Wilkerson, Jr.

We Consent:



Preston F. McDaniel, Esquire
Attorney for Claimant



Kelly F. Morrow, Esquire
Attorney for Defendants

PFM
KFM

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.
This 3 day of February, 2011
By Erin M. Bay
Administrative Assistant to the Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
HARBISON,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Columbia, South Carolina on September 25, 2012.

APPEARANCES: Claimant appeared and represented by Preston F. McDaniel, Esquire of The McDaniel Law Firm of Columbia, South Carolina.

Defendants represented by Kelly F. Morrow, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Form 21.

COMMISSIONER: Commissioner Derrick L. Williams

FILED: December 6, 2012

STIPULATIONS

It is stipulated among the parties that:

1. The Claimant was injured while working in the course and scope of his employment on September 12, 2010.
2. The Claimant was an employee of Lowe's on the date of the injury.
3. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
4. Notice of the hearing was timely and properly served upon the parties of interest.
5. Venue is proper in Columbia, South Carolina.
6. The Claimant's average weekly wage is Three Hundred Ninety-One and 19/100 (\$391.19) dollars with a corresponding compensation rate of Two Hundred Sixty and 81/100 (\$260.81).
7. The South Carolina Workers' Compensation Commission file is made a part of the record with the exception of unstipulated medical records and self-serving declarations.

APA SUBMISSIONS

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

The Defendants submitted the following APA Submissions:

1. Doctor's Care dated 10/07/2010 to 10/19/10 consisting of 8 pages. (APA #1).
2. Thomas Armsey, M.D., Midlands Orthopaedics dated 11/01/10 consisting of 3 pages. (APA #2).
3. Lexington Medical Center dated 11/09/10 consisting of 9 pages. (APA #3).

4. Randall G. Drye, M.D., dated 11/08/10 to 06/18/12 consisting of 12 pages. (APA #4).
5. W. Daniel Westerkam, M.D., dated 11/17/10 consisting of 5 pages. (APA #5).
6. Palmetto Imaging dated 10/21/10 consisting of 1 page. (APA #6).
7. Lexington Medical Center – Radiology Department dated 11/04/10 consisting of 5 pages. (APA #7).
8. Interactive Process Form by Lowe's dated 09/16/11 consisting of 1 page. (Ex. #1)

The Claimant submitted the following APA Submissions:

1. Howard Mandell, M.D., FRCPC, Board Certified Neurologist dated 09/05/12 consisting of 6 pages. (APA #8).
2. Columbia Rehabilitation Clinic - Functional Capacity Evaluation dated 09/11/12 consisting of 25 pages. (APA #9).
3. Gal G. Margalit, M.D., dated 09/11/12 consisting of 6 pages. (APA #10).
4. Leonard E. Forrest, M.D., dated 09/06/12 consisting of 2 pages. (APA #11).
5. Harriet Fowler, CRC, M.Ed., Vocational Rehabilitation Manager, dated 09/13/12 consisting of 23 pages. (APA #12).
6. Lexington Medical Center dated 11/04/10 to 06/07/12 consisting of 10 pages. (APA #13).
7. SCDHEC Patient Care Form dated 11/13/10 consisting of 2 pages. (APA #14).

STATEMENT OF THE CASE

The Claimant was employed with Lowe's on September 12, 2010 when he suffered from a work related injury. In particular, the Claimant was standing in the back of the pine straw truck and slipped on wet pine straw causing him to fall landing on his back. The parties agreed pursuant to a Consent Order that the Claimant suffered from an accepted injury to his back, neck and right knee. In addition, Defendants agreed to pay the Claimant temporary total disability

benefits from the date of the accident until properly terminated. Thereafter, the Claimant continued to receive medical treatment for his conditions and he remained out of work until September 10, 2011. The Claimant signed a Form 17 on September 22, 2011 indicating he could return to work. In addition, the Claimant was released by the authorized treating physician at maximum medical improvement and assigned an impairment rating to his back on June 7, 2011. The Claimant continued to make complaints, therefore Defendants agreed to send him back for an additional evaluation with the authorized treating physician and the authorized treating physician again released him again at maximum medical improvement on June 18, 2012 without making an adjustment to his earlier impairment rating.

Defendants filed a Form 21, Request to Pay Permanency, pursuant to the impairment rating assigned by the authorized treating physician. The Claimant alleges that he is entitled to a second opinion regarding his injuries and further indicates that he has not reached maximum medical improvement, and, therefore a hearing on this issue is premature. In the alternative, the Claimant argues that if the Commission finds he has reached maximum medical improvement, then he is claiming that he is permanently and totally disabled due to a greater than fifty percent loss of use to the back. The Claimant seeks lifetime causally related medical treatment and an award under lump sum. In return, Defendants argue that the Claimant has returned back to work and thus isn't entitled to an award for permanent and total disability.

EVIDENCE OF THE CASE

TESTIMONY OF LYNN COUNCIL

Ms. Lynn Council testified on behalf of the employer, Lowe's. She testified that she has worked for Lowe's for the past four and a half years. (Hearing Transcript p. 9 ln. 17). She is employed as the Customer Service Manager and she oversees the cashiers and some of the sales

people on the sales floor. (Hearing Transcript p. 9 ln. 20-25). Ms. Council currently serves as the Claimant's direct supervisor. She testified that the Claimant is working as a cashier and has been in that position since he returned to work with restrictions. (Hearing Transcript p. 10 ln. 6-14).

She further indicated that the employer made accommodations for the Claimant to include allowing him to sit down if needed. (Hearing Transcript p. 10 ln. 20-22).

Ms. Council said that the Claimant is a good employee, he's on time every day, he's dependable, and he'll stay over if they ask him to. He's one of the best employees that she has up front. (Hearing Transcript p. 11 ln. 3-5). Ms. Council testified that the Claimant has never made any complaints to her about limitations or problems that he's having doing his job. (Hearing Transcript p. 11 ln. 12-15). Further, he has never asked her for additional medical treatment since he's returned to work. (Hearing Transcript p. 11 ln. 16-18). Ms. Council said that in her opinion based on her observations of the Claimant performing his job, that he is capable of doing it. (Hearing Transcript p. 11 ln. 19-24).

On cross-examination, Ms. Council testified that she didn't decide what kind of job the Claimant would perform under his work restrictions, that this was handled by Human Resources. (Hearing Transcript p. 12 ln. 13 - 16). She testified that if the Claimant requests a stool or a chair, she will get him one. (Hearing Transcript p. 13 ln. 5-12). She said that they kept a chair at the front of the store for the Claimant for several weeks and he never asked for it, so they put it back where it belonged and told him to let them know if he needed it. (Hearing Transcript p. 13 ln. 19-23). Further, Ms. Council testified that if the Claimant needs help lifting then he can ask for it. (Hearing Transcript p. 14-15 ln. 25-2 and p. 16 ln. 1-3). Claimant's counsel asked Ms. Council whether she had knowledge of other work restrictions to which she denied. However, Defense counsel pointed out that these restrictions were issued by non-authorized treating

doctors. Therefore in response, Ms. Council testified that to her knowledge that she nor anyone else has asked the Claimant to perform work outside of his restrictions. (Hearing Transcript p. 18 ln. 4-7).

TESTIMONY OF CLAIMANT

The Claimant testified on his behalf. He states that he is forty years old and graduated from Irmo High School. He went to Midland's Tech and then Winthrop. (Hearing Transcript p. 20 ln 13-25). His work history consists of working at the B.P. Service Station on Gervais Street, where he worked for ten years. (Hearing Transcript p. 25 ln. 7-20). He then testified that he went to work for Steinmart. Here in worked in receiving; took packages in, and separated merchandise. (Hearing Transcript p. 27 ln. 13-17). After that, he went to work for American Koyo. (Hearing Transcript p. 28 ln. 20-25). After his employment with Koyo, the Claimant said that he started his job at Lowe's. (Hearing Transcript p. 30 ln. 14-15). The Claimant said that he first started out as a night stocker which required him to unload the truck and freight and place it on shelves in departments. (Hearing Transcript p. 30 ln. 18-25). He then started working as a cashier. (Hearing Transcript p. 32 ln. 5-7). The Claimant said that he has been a cashier since he returned back to work. (Hearing Transcript p. 33 ln 5-6) and was a cashier at the time of the injury. (Hearing Transcript p. 33 ln. 16-18). As the cashier, he testified he's responsible for scanning items and receiving payment, and also to call someone if a customer needs help. (Hearing Transcript p. 34 ln. 16-18).

The Claimant was asked to testify regarding the work incident and he explained that he was waiting on a customer at the straw trailer. (Hearing Transcript p. 22 ln. 7). As he walked to the nose of the trailer, he slipped and lost his footing. He fell flat on his back and hit his head. (Hearing Transcript p. 22 ln. 10-17). The Claimant went on to testify regarding his medical

treatment, and said that he went to see Dr. Armsey. Thereafter, he was sent to Dr. Drye and then had surgery. (Hearing Transcript p. 24 ln. 12-15). After his surgery, the Claimant testified that he had to go back to the hospital. (Hearing Transcript p. 24 ln. 19-24).

The Claimant testified that prior to the accident, he used to bike ride and he cannot do that anymore. (Hearing Transcript p. 35 ln. 17-18). He also testified that he likes to play golf, but doesn't play any longer. (Hearing Transcript p. 36 ln. 20-22). The Claimant said that he used to walk the dam, but he no longer does that. (Hearing Transcript p. 45 ln. 13-15). When asked about his daily activities since the date of the injury, the Claimant testified that he gets out of bed and stands there for a minute to get control. He said that he has stiffness that is in his back all day long. He said that he has muscle spasms throughout his lower body. (Hearing Transcript p. 37 ln. 9-25). He went on to state that he has a lot of pain and stiffness. In particular, to his neck, the Claimant said he can only turn to a certain point before it becomes painful. As for his lower back, he has to bend in increments. (Hearing Transcript p. 38 ln. 14-21). The Claimant said he has a hard time controlling his hands. (Hearing Transcript p. 39 ln. 5-8). At the end of the day, he showers, and sits down for an hour or two. He also stretches and then goes back to the chair before he goes to bed. (Hearing Transcript p. 39. ln. 17-24).

Since the date of the injury, the Claimant testified that he has returned back to work. The Claimant's understanding regarding his work restrictions by Dr. Drye is that he was not to lift over twenty pounds and he was to have a stool available when he needs it. (Hearing Transcript p. 40 ln. 19-20). The Claimant said that he asked a head cashier for a stool and he indicates the head cashier told him Lowe's wouldn't allow that. (Hearing Transcript p. 41 ln. 14-19). He further testified that he has problems throughout the day. (Hearing Transcript p. 42 ln. 1-3). He indicates that he accommodates himself since there is not a stool available by leaning against a

metal post or adjusting the counter. (Hearing transcript p. 42 ln. 17-19). The Claimant said that his fellow employees help him out a lot. (Hearing Transcript p. 43 ln. 1-3). If he lost his job at Lowe's, the Claimant said that he would look for a job that would not require him to be on his feet all day. (Hearing Transcript p. 44 ln. 20-21).

The Claimant testified that he thought he's lost 80% loss of use to his back (Hearing Transcript p. 47 ln. 11) and that he would like further physical therapy for his condition as well as pain medication (Hearing Transcript p. 48 ln. 1-11).

On cross-examination, the Claimant testified that he returned back to work in September 2011 and that he's been working as a cashier. He works forty hour weeks, eight hours per day and stands during the entire eight hour period. He also testified that he has access to a pricing gun so that he doesn't have to lift items. (Hearing Transcript p. 49 ln. 4-21). He also dumps trash, and put sodas in the coolers that are located outside of his cashier station. (Hearing Transcript p. 49 ln. 22-25). The Claimant said that he has not attempted to do any other types of work other than his cashier job, so he doesn't know whether he could do it. (Hearing Transcript p. 50 ln. 12-17). He hasn't applied for jobs anywhere else to know if they would accommodate his restrictions. (Hearing Transcript p. 51 ln. 1-4). The Claimant went on to testify that any employee at any time can call a Code 50 which requests lifting assistance. (Hearing Transcript p. 51 ln. 19-24). There's no limitation for him either before the accident or after the accident for him to ask for assistance in lifting. And the Claimant agreed that every time he's asked for assistance he's received it. (Hearing Transcript p. 52 ln. 5-9). The Claimant testified that as a cashier, he has access to team members who can perform lifts for heavier items. (Hearing Transcript p. 53 ln. 1-3). The Claimant said that as a cashier he isn't required to lift pine straw

for eight hours a day, and in fact he's never been asked to perform that job for eight hours. (Hearing Transcript p. 53 ln. 12-19).

Upon further cross-examination, the Claimant testified that he didn't tell Defense counsel about his personal activities like riding a bike and walking at his deposition because he didn't think about it at the time. (Hearing Transcript p. 54 ln. 8-15). He further indicates that when he told Defense counsel in his deposition that while working for his parents B.P. Station that he didn't do auto-repair, he meant that he wasn't doing any major repairs. (Hearing Transcript p. 54 ln. 16-23).

When the Claimant was asked specifically about his earlier testimony regarding the need for a stool, the Claimant said that he spoke with a co-employee about his request for a stool. He did not ask a supervisor for the stool. (Hearing Transcript p. 55 ln. 8-15). The Claimant testified that no co-workers have ever asked him to perform work outside of his restrictions. (Hearing Transcript p. 55 ln. 16-20). Since he returned back to work in September 2011, he has received good performance evaluations and considers himself to be a good employee. He's always on time and he's reliable. (Hearing Transcript p. 56 ln. 8-22).

The Claimant testified that he returned to see Dr. Drye approximately one year after he was released to return to work and told Dr. Drye that he was not having any pain or problems radiating into either one of his arms. (Hearing Transcript p. 57 ln. 7-10). He was released from Dr. Drye at that appointment and he has not been back to see him since. (Hearing Transcript p. 57 ln. 18-22). The Claimant testified that upon his release he was not prescribed pain medication. (Hearing Transcript p. 57-58 ln. 23-1). The Claimant testified that he went to see Dr. Mandell upon the direction of his attorney and he reported to Dr. Mandell that his symptoms were stable. (Hearing Transcript p. 58 ln. 2-19). He also went to see Dr. Gail Margalet who did not provide

him with any medical treatment. (Hearing Transcript p. 59 ln. 1-6). He was also seen by Dr. Forrest in Charleston and Harriet Fowler. (Hearing Transcript p. 59 ln 7-19). During all of the evaluations, the Claimant testified that he continued to work at Lowe's under his work restrictions. (Hearing Transcript p. 60 ln. 3-6). The Claimant said that the surgery Dr. Drye gave him brought back the feeling in his legs, but has not eliminated the pain. However, he testified in his deposition testimony that he wasn't have any pain. The Claimant testified that his work restrictions are as Defense counsel read, that he should not be climbing heights repetitively, climbing steps, he should avoid repetitive overhead reaching, and lift or carry less than 30 pounds occasionally.

SUMMARY OF MEDICAL EVIDENCE

The Claimant treated with various medical providers due to the compensable work related accident. The Claimant initially treated at Doctor's Care on October 7, 2010 when he complained of pain in his low back after falling inside the trailer. (Defendants' APA p. 1). The Claimant later complained of tenderness in his right knee. (Defendants' APA p. 4). He was ultimately referred out for an MRI and to follow up with an orthopaedist as he did not respond to conservative treatment. (Defendants' APA p. 7).

On November 1, 2010, the Claimant was evaluated by Dr. Thomas Armsey with Midlands Orthopaedics. At that time, Dr. Armsey recommended that he see a neurosurgeon. (Defendants' APA p. 11). On November 8, 2010, the Claimant went to see Dr. Randall Drye at Columbia Neurosurgical Associates. Dr. Drye indicates that the Claimant presents with cord compression and myelopathy which is advancing from a disc herniation at C6-7 and a significant bulge at C5-6. Dr. Drye recommended surgery, a two level ACDF and possible corpectomy. (Defendants' APA p. 21). Thereafter, on November 9, 2010 the Claimant underwent surgery to

include a radical anterior discectomy, osteophylectomy and foraminotomy at C5-6 and C6-7, followed by a two level interbody arthrodesis and anterior fixation with Trinica plate C5 to C7. (Defendants' APA p. 12). The Claimant was discharged home on November 10th with instructions to follow up in two weeks. (Defendants' APA p. 15). The Claimant returned to the hospital on November 13th due to the inability to care for himself at home. The Claimant remained in the hospital for approximately four days where he underwent rehab and made improvements. He was transferred to a rehabilitation facility on November 17th. (Defendants' APA p. 18).

On November 24, 2010, the Claimant returned to see Dr. Drye for a follow up appointment. At this time, he reports that his overall condition is markedly improved. Dr. Drye notes that the claimant is making good progress and recommends that he complete the inpatient and outpatient physical therapy. (Defendants' APA p. 24). The Claimant returned on December 29th with reports of near normal sensation and strength in the upper extremities and very minimal neck discomfort. Dr. Drye opined that at this point the Claimant could resume driving. In addition, Dr. Drye indicates that he needs to begin to normalize his activities within reason. They discussed that the Claimant could possibly return to work on light duty for half days. (Defendants' APA p. 26).

The Claimant followed up with Dr. Drye again on February 16, 2011. At this visit, he reports that he has regained the strength in his upper extremities and is ambulating more effectively. He is still actively involved in physical therapy as well as aqua therapy. The Claimant reports that he was unable to return to work after his most recent visit, but Dr. Drye again indicated he could return to work with the restrictions as set forth previously. (Defendants' APA p. 27). On April 12, 2011, the Claimant reports that he has been going to the gym five or

six days per week. He mentions that he has problems with leg difficulties and the feeling that he is having a difficult time controlling them. He has little to no complaints regarding pain. Dr. Drye released him to return to work with the same restrictions and asked him to resume physical therapy. They also discussed the need for possible vocational rehabilitation. (Defendants' APA p. 28).

On June 7th, the Claimant was evaluated by Dr. Drye. He reports completing the physical therapy program, that he continues to do his exercises at home and is walking three times per week. He has regained normal function in the upper extremities with no major complaints. His gait is still slightly unsteady and has some difficulty with balance. Dr. Drye notes that the Claimant appears quite comfortable today. Dr. Drye opines that the Claimant has reached maximum medical improvement. He assigns permanent work restrictions which include no standing or walking more than an hour without the inability to sit for a brief period of time. He also restricts him from climbing heights, repetitively climbing steps, repetitive overhead reaching and should lift or carry less than 30 pounds occasionally. Dr. Drye assigns a 25% whole person impairment rating based on the injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. (Defendants' APA p. 30).

Thereafter, on June 18, 2012, the Claimant returned to see Dr. Drye which is a year after he was originally released at maximum medical improvement. Dr. Drye notes that when he was released, the Claimant had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. At this time, he has returned to work with some physical restrictions and is back at work as a cashier. The Claimant reports that he has some persistent stiffness and pain in the base of the neck which does not radiate into the upper extremities. He denies any recurrent symptoms in the arms and hands. The neck pain is worse in

the morning and seems to improve as he moves about. He denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as long-standing, pre-injury inversion of the right foot and ankle. He has recently undergone cervical and lumbar MRIs for a check for a possible change in condition.

Dr. Drye reports that the cervical MRI as well as lumbar study show that the Claimant has healed beautifully from his surgery with what appears to be stable operative construct with instrumentation. There is no residual high degree of canal stenosis and no obvious impingement of the cord. At C3-5 and C4-5 there are spondylitic change and broad based disc bulge which has not progressed significantly from his previous study. The lumbar study demonstrates a disc protrusion at L1-2 and at L5-S1 there is very advanced degenerative disc disease. There is no evidence of any direct nerve root impingement or large disc herniation.

Dr. Drye opines that the Claimant's current symptoms are most consistent with axial and myofascial pain and it is strongly suggestive of arthritic type symptoms. Dr. Drye encouraged the Claimant to continue stretching and movement and advised him to lose weight. Dr. Drye said there was no reason for any change in terms of his permanent work restrictions, rating or additional intervention or treatment. Dr. Drye released him again. (Defendants' APA p. 31).

After Dr. Drye re-released the Claimant at maximum medical improvement on June 18, 2012, the Claimant's attorney scheduled him for an evaluation with Dr. Howard Mandell, a neurologist. On September 5, 2012, Dr. Mandell reports that the Claimant states his symptoms are stable, not improving and not worsening for the last several months. Dr. Mandell opines that the Claimant's surgery has resolved very nicely and that he has made remarkable recovery though not recovered to pre-injury level of functioning. Further, Dr. Mandell reports that the Claimant did seem to sustain a closed head injury in terms of a concussion but there doesn't

appear to be any brain involvement from this injury. The only area affected has been the spinal cord at the cervical level. Dr. Mandell indicates that the Claimant does not require additional treatment other than ongoing physical therapy. He does not think he requires additional surgery, but possibly ongoing low back pain management. Dr. Mandell finds that he should limit his work and recommends an FCE. (Claimant's APA 8).

On September 5, 2012, the Claimant was evaluated by Harriet Fowler upon recommendation of his attorney. Ms. Fowler indicates that the Claimant can work at a sedentary level in order to sustain employment. (Claimant's APA 12).

On September 6, 2012, the Claimant was seen by Dr. Leonard Forrest at Southeastern Spine Institute. Dr. Forrest indicates that the Claimant has reached maximum medical improvement for his injuries and that he will need further intermittent treatment ongoing into the future. Dr. Forrest assigned him with at least a 30% impairment rating to the neck-related symptoms and problems. He also assigned him a 10% impairment rating for the low back symptoms. He assigned a 25 pound lifting restriction and to avoid climbing or going on a straw trailer. Dr. Forrest goes on to state that this would be over a 50% loss of his functional capabilities. (Claimant's APA 11).

The Claimant's attorney also sent the Claimant for an FCE with Tracy Hill at Columbia Rehabilitation Clinic, Inc. This took place on September 11, 2012 in which Ms. Hill found that he qualified for limited light work. (Claimant's APA 9).

On September 11th, the Claimant was also evaluated by Dr. Gal Margalit at Sunset Family Practice. Dr. Margalit opined that the patient has lost more than 50% of his functional capacity of his back to work based on the on the job injury of 9/12/10 and she concurs with the opinions of his neurosurgeon regarding weight loss and continuing restrictions. Dr. Margalit

further indicates that he may benefit from some neurological testing for mild brain dysfunction, but suspects that this is of a minor nature in relationship to the rest of his injuries. (Claimant's APA 10).

FINDINGS OF FACT

Based upon the testimony and evidence submitted by both parties, the undersigned Commissioner makes the following Findings of Fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission.
2. The Claimant's average weekly wage is \$391.19 with corresponding compensation rate of \$260.81. I base this finding upon stipulation of the parties.
3. The Claimant sustained admitted injuries to his back and right knee. I base this finding upon stipulation of the parties.
4. The Claimant is forty years old and is currently employed with the employer as a cashier. I base this finding upon the Claimant's testimony.
5. The Claimant is a pleasant and believable witness. I do not doubt his testimony concerning some of his limitations, however I do view the entire record and the evidence as a whole.
6. The Claimant has returned to work full duty with the employer for almost two years, and he is a valued employee who is being accommodated. I base this finding upon the Claimant's testimony as well as the testimony of Lynn Council from the employer.
7. Ms. Lynn Council, the Claimant's manager, testified credibly at the hearing. She verified that the Claimant is a good employee, and that the employer has accommodated him if

needed. The Claimant has not made any complaints to the employer nor asked for additional medical treatment. I base this finding upon the testimony of Ms. Council.

8. The greater weight of the evidence shows, based upon review of the medical records, including Independent Medical Evaluations, that Dr. Drye's reports and conclusions are the most persuasive. I base this finding upon the medical records submitted into evidence.
9. The Claimant reached maximum medical improvement as of June 7, 2011. I base this finding on the medical evidence.
10. The Claimant sustained a 48% permanent partial disability to his back. I base this finding on the medical evidence as a whole.
11. The Claimant's permanent partial disability includes any radicular symptoms to his right leg. I base this finding on the medical evidence.
12. The Claimant is not permanently and totally disabled. I base this finding on the greater weight of the evidence, including his ability to work for nearly two years while being accommodated by sitting down, his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
13. The Claimant is not entitled to reimbursement for his Independent Medical Evaluation costs. I base this finding upon the medical evidence which shows that Defendants provided the Claimant with follow-up visits with the authorized treating providers and there is no finding of a lapse in treatment.
14. The Claimant is entitled to a lump sum award.
15. The Claimant is entitled to causally related medical treatment pursuant to Dodge pursuant to Section 42-15-60 as amended. I base this finding on the medical evidence.

16. The Claimant is entitled to lifetime repair, replacement, removal and maintenance of any retained hardware, if any.
 17. The Claimant is entitled to Utica-Mohawk language pursuant to James v. Anne's.
-

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Section 42-1-130 and Section 42-1-140, the Claimant was an employee of the employer
3. Pursuant to S.C. Code Ann. Section 42-1-40 and Section 42-1-50, the Claimant's average weekly wage is \$391.19 with a corresponding compensation rate of \$260.81.
4. Pursuant to S.C. Code Ann. Section 42-1-160, the Claimant suffered from a compensable injury to his back and right knee on September 12, 2010.
5. Pursuant to S.C. Code Ann. Section 42-15-20 notice of the accident as given to the employer.
6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided the Claimant with necessary medical treatment and Dr. Drye's reports and conclusions are controlling as the authorized treating physician.
7. Pursuant to S.C. Code Ann. Section 42-15-60, the Claimant reached maximum medical improvement on June 7, 2011
8. Pursuant to S.C. Code Ann. Section 42-9-30, the Claimant suffers from a 48% permanent partial disability to his back as a result of his work related accident

9. Pursuant to S.C. Code Ann. Section 42-9-10 the Claimant is not permanently and totally disabled as the Claimant has returned back to work with the employer for almost two years.

10. Pursuant to S.C. Code Ann. Section 42-15-60, as amended and Dodge, Claimant is entitled to ongoing causally related medical treatment for his back.

11. The Claimant is entitled to a lump sum award and Utica-Mohawk language pursuant to James v. Anne's.

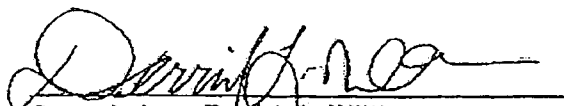
ORDER

IT IS THEREFORE ORDERED that the Claimant sustained compensable injuries which arose out of and in the course and scope of his employment with the employer to his back and right knee

IT IS FURTHER ORDERED the Claimant suffers from a 48% permanent partial disability to his back and is entitled to Dodge medicals

IT IS FURTHER ORDERED that no costs are assessed for this hearing.

IT IS SO ORDERED


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.
December 7, 2012

By: Renee Smith, Administrative Assistant to Commissioner Williams

APPELLATE PANEL
DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

EMPLOYEE,
CLAIMANT/APPELLANT,

V.

LOWES HOME CENTERS, INC.- HARBISON,

EMPLOYER,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES INC.,

CARRIER,
DEFENDANTS/RESPONDENT.

Appellate Panel Review held in
Columbia, South Carolina on April 16, 2013.

Appellate Panel Decision and Order
filed 7-2, 2013.

APPEARANCES:

Claimant/Appellant represented by
Preston F. McDaniel, Esquire of The McDaniel Law Firm
of Columbia, South Carolina.

Defendants/Respondents represented by
Kelly F. Morrow, Esquire of McAngus Goudelock & Courie, L.L.C.
of Columbia, South Carolina.

At the hearing before the Single Commissioner, the following Stipulations and APA Submissions were presented:

STIPULATIONS

It was stipulated at the Single Commissioner Hearing among the parties that:

1. Claimant was injured while working in the course and scope of his employment on September 12, 2010.
2. Claimant was an employee of Lowe's on the date of the injury.
3. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
4. Notice of the hearing was timely and properly served upon the parties of interest.
5. Venue is proper in Columbia, South Carolina.
6. Claimant's average weekly wage is Three Hundred Ninety-One and 19/100 (\$391.19) dollars with a corresponding compensation rate of Two Hundred Sixty and 81/100 (\$260.81).
7. The South Carolina Workers' Compensation Commission file is made a part of the record with the exception of unstipulated medical records and self-serving declarations.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulation of the South Carolina Workers' Compensation Commission, the following records were submitted into evidence at the Single Commissioner Hearing:

Defendants submitted the following APA Submissions:

1. Doctor's Care dated 10/07/2010 to 10/19/10 consisting of 8 pages. (APA #1).

2. Thomas Armsey, M.D., Midlands Orthopaedics dated 11/01/10 consisting of 3 pages.

(APA #2).

~~3. Lexington Medical Center dated 11/09/10 consisting of 9 pages. (APA #3).~~

4. Randall G. Drye, M.D., dated 11/08/10 to 06/18/12 consisting of 12 pages. (APA #4).

5. W. Daniel Westerkam, M.D., dated 11/17/10 consisting of 5 pages. (APA #5).

6. Palmetto Imaging dated 10/21/10 consisting of 1 page. (APA #6).

7. Lexington Medical Center – Radiology Department dated 11/04/10 consisting of 5 pages.

(APA #7).

8. Interactive Process Form by Lowe's dated 09/16/11 consisting of 1 page. (Ex. #1).

Claimant submitted the following APA Submissions:

1. Howard Mandell, M.D., FRCPC, Board Certified Neurologist dated 09/05/12 consisting of 6 pages. (APA #8).

2. Columbia Rehabilitation Clinic - Functional Capacity Evaluation dated 09/11/12 consisting of 25 pages. (APA #9).

3. Gal G. Margalit, M.D., dated 09/11/12 consisting of 6 pages. (APA #10).

4. Leonard E. Forrest, M.D., dated 09/06/12 consisting of 2 pages. (APA #11).

5. Harriet Fowler, CRC, M.Ed., Vocational Rehabilitation Manager, dated 09/13/12 consisting of 23 pages. (APA #12).

6. Lexington Medical Center dated 11/04/10 to 06/07/12 consisting of 10 pages. (APA #13).

7. SCDHEC Patient Care Form dated 11/13/10 consisting of 2 pages. (APA #14).

STATEMENT OF THE CASE

Claimant was employed with Lowe's on September 12, 2010 when he suffered a work related injury. In particular, Claimant was standing in the back of the pine straw truck and

slipped on wet pine straw causing him to fall on his back. The parties agreed pursuant to a Consent Order that Claimant suffered from an accepted injury to his back, neck and right knee.

In addition, Defendants agreed to pay Claimant temporary total disability benefits from the date

of the accident until properly terminated. Thereafter, Claimant continued to receive medical treatment for his condition and he remained out of work until September 10, 2011. Claimant signed a Form 17 on September 22, 2011 indicating he could return to work. In addition, Claimant was released by the authorized treating physician at maximum medical improvement and assigned an impairment rating of 25% whole person to his back on June 7, 2011. Claimant continued to make complaints and Defendants agreed to send him for an additional evaluation with the authorized treating physician. The authorized treating physician again released Claimant at maximum medical improvement on June 18, 2012 without making an adjustment to the earlier 25% whole person impairment rating.

Defendants filed a Form 21, Request to Pay Permanency, pursuant to the impairment rating assigned by the authorized treating physician. Claimant alleged that he is entitled to an additional second opinion regarding his injuries and further indicated that he has not reached maximum medical improvement, and, therefore a hearing on this issue was premature. In the alternative, Claimant argued that if the Commission found he reached maximum medical improvement, then he is permanently and totally disabled due to a greater than fifty percent loss of use to the back. Claimant sought lifetime causally related medical treatment and an award under lump sum. In return, Defendants argued that Claimant returned to work and thus isn't entitled to an award for permanent and total disability.

A hearing in this case was held on September 25, 2012 before Commissioner Derrick L. Williams. Commissioner Williams issued a Decision and Order on December 6, 2012. In that

Decision and Order, Commissioner Williams made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission.
2. Claimant's average weekly wage is \$391.19 with corresponding compensation rate of \$260.81. I base this finding upon stipulation of the parties.
3. Claimant sustained admitted injuries to his back and right knee. I base this finding upon stipulation of the parties.
4. Claimant is forty years old and is currently employed with the employer as a cashier. I base this finding upon Claimant's testimony.
5. Claimant is a pleasant and believable witness. I do not doubt his testimony concerning some of his limitations; however I do view the entire record and the evidence as a whole.
6. Claimant has returned to work full duty with the employer for almost two years, and he is a valued employee who is being accommodated. I base this finding upon Claimant's testimony as well as the testimony of Lynn Council from the employer.
7. Ms. Lynn Council, Claimant's manager, testified credibly at the hearing. She verified that Claimant is a good employee, and that the employer has accommodated him if needed. Claimant has not made any complaints to the employer nor asked for additional medical treatment. I base this finding upon the testimony of Ms. Council.
8. The greater weight of the evidence shows, based upon review of the medical records, including Independent Medical Evaluations, that Dr. Drye's reports and conclusions are the most persuasive. I base this finding upon the medical records submitted into evidence.
9. Claimant reached maximum medical improvement as of June 7, 2011. I base this finding on the medical evidence.
10. Claimant sustained a 48% permanent partial disability to his back. I base this finding on the medical evidence as a whole.

11. Claimant's permanent partial disability includes any radicular symptoms to his right leg. I base this finding on the medical evidence.

12. Claimant is not permanently and totally disabled. I base this finding on the greater weight of the evidence, including his ability to work for nearly two years while being accommodated by sitting down, his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
13. Claimant is not entitled to reimbursement for his Independent Medical Evaluation costs. I base this finding upon the medical evidence which shows that Defendants provided Claimant with follow-up visits with the authorized treating providers and there is no finding of a lapse in treatment.
14. Claimant is entitled to a lump sum award.
15. Claimant is entitled to causally related medical treatment pursuant to Dodge pursuant to Section 42-15-60 as amended. I base this finding on the medical evidence.
16. Claimant is entitled to lifetime repair, replacement, removal and maintenance of any retained hardware, if any.
17. Claimant is entitled to Utica-Mohawk language pursuant to James v. Anne's.

Commissioner Williams also made the following conclusions of law:

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Section 42-1-130 and Section 42-1-140, Claimant was an employee of the employer
3. Pursuant to S.C. Code Ann. Section 42-1-40 and Section 42-1-50, Claimant's average weekly wage is \$391.19 with a corresponding compensation rate of \$260.81.
4. Pursuant to S.C. Code Ann. Section 42-1-160, Claimant suffered from a compensable injury to his back and right knee on September 12, 2010.

5. Pursuant to S.C. Code Ann. Section 42-15-20 notice of the accident as given to the employer.
6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided Claimant with necessary medical treatment and Dr. Drye's reports and conclusions are controlling as the authorized treating physician.
7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant reached maximum medical improvement on June 7, 2011.
8. Pursuant to S.C. Code Ann. Section 42-9-30, Claimant suffers from a 48% permanent partial disability to his back as a result of his work related accident.
9. Pursuant to S.C. Code Ann. Section 42-9-10 Claimant is not permanently and totally disabled as Claimant has returned back to work with the employer for almost two years.
10. Pursuant to S.C. Code Ann. Section 42-15-60, as amended and Dodge, Claimant is entitled to ongoing causally related medical treatment for his back.
11. Claimant is entitled to a lump sum award and Utica-Mohawk language pursuant to James v. Anne's.

Following this Decision and Order, Claimant filed a Form 30, Notice of Appeal, asserting six exceptions to the Decision and Order. These exceptions are as follows:

- I. Did the Hearing Commissioner err by not ordering an authorized second opinion and/or reimbursing Claimant for the unauthorized second opinion he pursued?
- II. Did the Hearing Commissioner err by setting this matter for a hearing under S.C. Code §42-9-260 which provides for a stop payment application and forcing Claimant to a premature determination of his property rights to an award in violation of his due process rights to such award?
- III. Did the Hearing Commissioner err as a matter of law by failing to find Claimant is permanently and totally disabled, by failing to award benefits to Claimant for a great than 50% loss of use to the back and by failing to award Claimant lifetime medical treatment for losing more than 50% of the functional use of his back?

IV. Did the Hearing Commissioner err as a matter of law by failing to make an award for Claimant's neurological disorder and/or myelopathy?

V. Did the Hearing Commissioner err as a matter of law by failing to make an award for Claimant's low back injury?

VI. Did the Hearing Commissioner err as a matter of law by placing greater weight on the authorized treating physician's reports where there is an absolute unbelievable inconsistency in that doctor's reports wherein there is absolutely no evidence in the record to substantiate that Claimant was having any neurological problems prior to the accident and where that doctor himself in fact states that fact in his subsequent reports up to and including his final report in 2011?

As discussed below, we AFFIRM the Single Commissioner Decision and Order in its entirety.

EVIDENCE OF THE CASE

TESTIMONY OF LYNN COUNCIL

Ms. Lynn Council testified on behalf of the employer, Lowe's. She testified that she has worked for Lowe's for the past four and a half years. (Hearing Transcript p. 9 ln. 17). She is employed as the Customer Service Manager and she oversees the cashiers and some of the sales people on the sales floor. (Hearing Transcript p. 9 ln. 20-25). Ms. Council currently serves as Claimant's direct supervisor. She testified that Claimant is working as a cashier and has been in that position since he returned to work with restrictions. (Hearing Transcript p. 10 ln. 6-14). She further indicated that the employer made accommodations for Claimant to include allowing him to sit down if needed. (Hearing Transcript p. 10 ln. 20-22).

Ms. Council said that Claimant is a good employee, he's on time every day, he's dependable, and he'll stay over if they ask him to. He's one of the best employees that she has up front. (Hearing Transcript p. 11 ln. 3-5). Ms. Council testified that Claimant has never made any complaints to her about limitations or problems that he's having doing his job. (Hearing

Transcript p. 11 ln. 12-15). Further, he has never asked her for additional medical treatment since he's returned to work. (Hearing Transcript p. 11 ln. 16-18). Ms. Council said that in her opinion ~~based on her observations of claimant performing his job, that he is capable of doing it.~~ (Hearing Transcript p. 11 ln. 19-24).

On cross-examination, Ms. Council testified that she didn't decide what kind of job Claimant would perform under his work restrictions, that this was handled by Human Resources. (Hearing Transcript p. 12 ln. 13 - 16). She testified that if Claimant requests a stool or a chair, she will get him one. (Hearing Transcript p. 13 ln. 5-12). She said that they kept a chair at the front of the store for Claimant for several weeks and he never asked for it, so they put it back where it belonged and told him to let them know if he needed it. (Hearing Transcript p. 13 ln. 19-23). Further, Ms. Council testified that if Claimant needs help lifting then he can ask for it. (Hearing Transcript p. 14-15 ln. 25-2 and p. 16 ln. 1-3). Claimant's counsel asked Ms. Council whether she had knowledge of other work restrictions to which she denied. However, Defense counsel pointed out that these restrictions were issued by non-authorized treating doctors. Therefore in response, Ms. Council testified that to her knowledge that she nor anyone else has asked Claimant to perform work outside of his restrictions. (Hearing Transcript p. 18 ln. 4-7).

TESTIMONY OF CLAIMANT

Claimant testified on his behalf. He states that he is forty years old and graduated from Irmo High School. He went to Midland's Tech and then Winthrop. (Hearing Transcript p. 20 ln 13-25). His work history consists of working at the B.P. Service Station on Gervais Street, where he worked for ten years. (Hearing Transcript p. 25 ln. 7-20). He then testified that he went to work for Steinman. Here in worked in receiving; took packages in, and separated merchandise. (Hearing Transcript p. 27 ln. 13-17). After that, he went to work for American Koyo. (Hearing

Transcript p. 28 ln. 20-25). After his employment with Koyo, Claimant said that he started his job at Lowe's. (Hearing Transcript p. 30 ln. 14-15). Claimant said that he first started out as a ~~night stocker which required him to unload the truck and freight and place it on shelves in~~ departments. (Hearing Transcript p. 30 ln. 18-25). He then started working as a cashier. (Hearing Transcript p. 32 ln. 5-7). Claimant said that he has been a cashier since he returned back to work. (Hearing Transcript p. 33 ln. 5-6) and was a cashier at the time of the injury. (Hearing Transcript p. 33 ln. 16-18). As the cashier, he testified he's responsible for scanning items and receiving payment, and also to call someone if a customer needs help. (Hearing Transcript p. 34 ln. 16-18).

Claimant was asked to testify regarding the work incident and he explained that he was waiting on a customer at the straw trailer. (Hearing Transcript p. 22 ln. 7). As he walked to the nose of the trailer, he slipped and lost his footing. He fell flat on his back and hit his head. (Hearing Transcript p. 22 ln. 10-17). Claimant went on to testify regarding his medical treatment, and said that he went to see Dr. Armsey. Thereafter, he was sent to Dr. Drye and then had surgery. (Hearing Transcript p. 24 ln. 12-15). After his surgery, Claimant testified that he had to go back to the hospital. (Hearing Transcript p. 24 ln. 19-24).

Claimant testified that prior to the accident, he used to bike ride and he cannot do that anymore. (Hearing Transcript p. 35 ln. 17-18). He also testified that he likes to play golf, but doesn't play any longer. (Hearing Transcript p. 36 ln. 20-22). Claimant said that he used to walk the dam, but he no longer does that. (Hearing Transcript p. 45 ln. 13-15). When asked about his daily activities since the date of the injury, Claimant testified that he gets out of bed and stands there for a minute to get control. He said that he has stiffness that is in his back all day long. He said that he has muscle spasms throughout his lower body. (Hearing Transcript p. 37 ln. 9-25). He went on to state that he has a lot of pain and stiffness. In particular, to his neck, Claimant said

he can only turn to a certain point before it becomes painful. As for his lower back, he has to bend in increments. (Hearing Transcript p. 38 ln. 14-21). Claimant said he has a hard time controlling his hands. (Hearing Transcript p. 39 ln. 5-8). At the end of the day, he showers, and sits down for an hour or two. He also stretches and then goes back to the chair before he goes to bed. (Hearing Transcript p. 39. ln. 17-24).

Since the date of the injury, Claimant testified that he has returned back to work. Claimant's understanding regarding his work restrictions by Dr. Drye is that he was not to lift over twenty pounds and he was to have a stool available when he needs it. (Hearing Transcript p. 40 ln. 19-20). Claimant said that he asked a head cashier for a stool and he indicates the head cashier told him Lowe's wouldn't allow that. (Hearing Transcript p. 41 ln. 14-19). He further testified that he has problems throughout the day. (Hearing Transcript p. 42 ln. 1-3). He indicates that he accommodates himself since there is not a stool available by leaning against a metal post or adjusting the counter. (Hearing transcript p. 42 ln. 17-19). Claimant said that his fellow employees help him out a lot. (Hearing Transcript p. 43 ln. 1-3). If he lost his job at Lowe's, Claimant said that he would look for a job that would not require him to be on his feet all day. (Hearing Transcript p. 44 ln. 20-21).

Claimant testified that he thought he's loss 80% loss of use to his back (Hearing Transcript p. 47 ln. 11) and that he would like further physical therapy for his condition as well as pain medication (Hearing Transcript p. 48 ln. 1-11).

On cross-examination, Claimant testified that he returned back to work in September 2011 and that he's been working as a cashier. He works forty hour weeks, eight hours per day and stands during the entire eight hour period. He also testified that he has access to a pricing gun so that he doesn't have to lift items. (Hearing Transcript p. 49 ln. 4-21). He also dumps

trash, and put sodas in the coolers that are located outside of his cashier station. (Hearing Transcript p. 49 ln. 22-25). Claimant said that he has not attempted to do any other types of work other than his cashier job, so he doesn't know whether he could do it. (Hearing Transcript p. 50 ln 12-17). He hasn't applied for jobs anywhere else to know if they would accommodate his restrictions. (Hearing Transcript p. 51 ln. 1-4). Claimant went on to testify that any employee at any time can call a Code 50 which requests lifting assistance. (Hearing Transcript p. 51 ln. 19-24). There's no limitation for him either before the accident or after the accident for him to ask for assistance in lifting. And Claimant agreed that every time he's asked for assistance he's received it. (Hearing Transcript p. 52 ln. 5-9). Claimant testified that as a cashier, he has access to team members who can perform lifts for heavier items. (Hearing Transcript p. 53 ln. 1-3). Claimant said that as a cashier he isn't required to lift pine straw for eight hours a day, and in fact he's never been asked to perform that job for eight hours. (Hearing Transcript p. 53 ln. 12-19).

Upon further cross-examination, Claimant testified that he didn't tell Defense counsel about his personal activities like riding a bike and walking at his deposition because he didn't think about it at the time. (Hearing Transcript p. 54 ln. 8-15). He further indicates that when he told Defense counsel in his deposition that while working for his parents B.P. Station that he didn't do auto-repair, he meant that he wasn't doing any major repairs. (Hearing Transcript p. 54 ln. 16-23).

When Claimant was asked specifically about his earlier testimony regarding the need for a stool, Claimant said that he spoke with a co-employee about his request for a stool. He did not ask a supervisor for the stool. (Hearing Transcript p. 55 ln. 8-15). Claimant testified that no co-workers have ever asked him to perform work outside of his restrictions. (Hearing Transcript p.

55 ln. 16-20). Since he returned back to work in September 2011, he has received good performance evaluations and considers himself to be a good employee. He's always on time and he's reliable. (Hearing Transcript p. 56 ln. 8-22).

Claimant testified that he returned to see Dr. Drye approximately one year after he was released to return to work and told Dr. Drye that he was not having any pain or problems radiating into either one of his arms. (Hearing Transcript p. 57 ln. 7-10). He was released from Dr. Drye at that appointment and he has not been back to see him since. (Hearing Transcript p. 57 ln. 18-22). Claimant testified that upon his release he was not prescribed pain medication. (Hearing Transcript p. 57-58 ln. 23-1). Claimant testified that he went to see Dr. Mandell upon the direction of his attorney and he reported to Dr. Mandell that his symptoms were stable. (Hearing Transcript p. 58 ln. 2-19). He also went to see Dr. Gail Margalet who did not provide him with any medical treatment. (Hearing Transcript p. 59 ln. 1-6). He was also seen by Dr. Forrest in Charleston and Harriet Fowler. (Hearing Transcript p. 59 ln 7-19). During all of the evaluations, Claimant testified that he continued to work at Lowe's under his work restrictions. (Hearing Transcript p. 60 ln. 3-6). Claimant said that the surgery Dr. Drye gave him brought back the feeling in his legs, but has not eliminated the pain. However, he testified in his deposition testimony that he wasn't have any pain. Claimant testified that his work restrictions are as Defense counsel read, that he should not be climbing heights repetitively, climbing steps, he should avoid repetitive overhead reaching, and lift or carry less than 30 pounds occasionally.

MEDICAL EVIDENCE

Claimant treated with various medical providers due to the compensable work related accident. Claimant initially treated at Doctor's Care on October 7, 2010 when he complained of pain in his low back after falling inside the trailer. (Defendants' APA p. 1). Claimant later

complained of tenderness in his right knee. (Defendants' APA p. 4). He was ultimately referred out for an MRI and to follow up with an orthopaedist as he did not respond to conservative treatment. (Defendants' APA p. 7).

On November 1, 2010, Claimant was evaluated by Dr. Thomas Armsey with Midlands Orthopaedics. At that time, Dr. Armsey recommended that he see a neurosurgeon. (Defendants' APA p. 11). On November 8, 2010, Claimant went to see Dr. Randall Drye at Columbia Neurosurgical Associates. Dr. Drye indicates that Claimant presents with cord compression and myelopathy which is advancing from a disc herniation at C6-7 and a significant bulge at C5-6. Dr. Drye recommended surgery, a two level ACDF and possible corpectomy. (Defendants' APA p. 21). Thereafter, on November 9, 2010 Claimant underwent surgery to include a radical anterior discectomy, osteophytectomy and foraminotomy at C5-6 and C6-7, followed by a two level interbody arthrodesis and anterior fixation with Trinica plate C5 to C7. (Defendants' APA p. 12). Claimant was discharged home on November 10th with instructions to follow up in two weeks. (Defendants' APA p. 15). Claimant returned to the hospital on November 13th due to the inability to care for himself at home. Claimant remained in the hospital for approximately four days where he underwent rehab and made improvements. He was transferred to a rehabilitation facility on November 17th. (Defendants' APA p. 18).

On November 24, 2010, Claimant returned to see Dr. Drye for a follow up appointment. At this time, he reports that his overall condition is markedly improved. Dr. Drye notes that Claimant is making good progress and recommends that he complete the inpatient and outpatient physical therapy. (Defendants' APA p. 24). Claimant returned on December 29th with reports of near normal sensation and strength in the upper extremities and very minimal neck discomfort. Dr. Drye opined that at this point Claimant could resume driving. In addition, Dr. Drye indicates

that he needs to begin to normalize his activities within reason. They discussed that Claimant could possibly return to work on light duty for half days. (Defendants' APA p. 26).

Claimant followed up with Dr. Drye again on February 16, 2011. At this visit, he reports that he has regained the strength in his upper extremities and is ambulating more effectively. He is still actively involved in physical therapy as well as aqua therapy. Claimant reports that he was unable to return to work after his most recent visit, but Dr. Drye again indicated he could return to work with the restrictions as set forth previously. (Defendants' APA p. 27). On April 12, 2011, Claimant reports that he has been going to the gym five or six days per week. He mentions that he has problems with leg difficulties and the feeling that he is having a difficult time controlling them. He has little to no complaints regarding pain. Dr. Drye released him to return to work with the same restrictions and asked him to resume physical therapy. They also discussed the need for possible vocational rehabilitation. (Defendants' APA p. 28).

On June 7th, Claimant was evaluated by Dr. Drye. He reports completing the physical therapy program, that he continues to do his exercises at home and is walking three times per week. He has regained normal function in the upper extremities with no major complaints. His gait is still slightly unsteady and has some difficulty with balance. Dr. Drye notes that Claimant appears quite comfortable today. Dr. Drye opines that Claimant has reached maximum medical improvement. He assigns permanent work restrictions which include no standing or walking more than an hour without the inability to sit for a brief period of time. He also restricts him from climbing heights, repetitively climbing steps, repetitive overhead reaching and should lift or carry less than 30 pounds occasionally. Dr. Drye assigns a 25% whole person impairment rating based on the injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. (Defendants' APA p. 30).

Thereafter, on June 18, 2012, Claimant returned to see Dr. Drye which is a year after he was originally released at maximum medical improvement. Dr. Drye notes that when he was released, Claimant had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. At this time, he has returned to work with some physical restrictions and is back at work as a cashier. Claimant reports that he has some persistent stiffness and pain in the base of the neck which does not radiate into the upper extremities. He denies any recurrent symptoms in the arms and hands. The neck pain is worse in the morning and seems to improve as he moves about. He denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as long-standing, pre-injury inversion of the right foot and ankle. He has recently undergone cervical and lumbar MRIs for a check for a possible change in condition.

Dr. Drye reports that the cervical MRI as well as lumbar study show that Claimant has healed beautifully from his surgery with what appears to be stable operative construct with instrumentation. There is no residual high degree of canal stenosis and no obvious impingement of the cord. At C3-5 and C4-5 there are spondylitic change and broad based disc bulge which has not progressed significantly from his previous study. The lumbar study demonstrates a disc protrusion at L1-2 and at L5-S1 there is very advanced degenerative disc disease. There is no evidence of any direct nerve root impingement or large disc herniation.

Dr. Drye opines that Claimant's current symptoms are most consistent with axial and myofascial pain and it is strongly suggestive of arthritic type symptoms. Dr. Drye encouraged Claimant to continue stretching and movement and advised him to lose weight. Dr. Drye said there was no reason for any change in terms of his permanent work restrictions, rating or additional intervention or treatment. Dr. Drye released him again. (Defendants' APA p. 31).

After Dr. Drye re-released Claimant at maximum medical improvement on June 18, 2012, Claimant's attorney scheduled him for an evaluation with Dr. Howard Mandell, a neurologist. On September 5, 2012, Dr. Mandell reports that Claimant states his symptoms are stable, not improving and not worsening for the last several months. Dr. Mandell opines that Claimant's surgery has resolved very nicely and that he has made remarkable recovery though not recovered to pre-injury level of functioning. Further, Dr. Mandell reports that Claimant did seem to sustain a closed head injury in terms of a concussion but there doesn't appear to be any brain involvement from this injury. The only area affected has been the spinal cord at the cervical level. Dr. Mandell indicates that Claimant does not require additional treatment other than ongoing physical therapy. He does not think he requires additional surgery, but possibly ongoing low back pain management. Dr. Mandell finds that he should limit his work and recommends an FCE. (Claimant's APA 8).

On September 5, 2012, Claimant was evaluated by Harriet Fowler upon recommendation of his attorney. Ms. Fowler indicates that Claimant can work at a sedentary level in order to sustain employment. (Claimant's APA 12).

On September 6, 2012, Claimant was seen by Dr. Leonard Forrest at Southeastern Spine Institute. Dr. Forrest indicates that Claimant has reached maximum medical improvement for his injuries and that he will need further intermittent treatment ongoing into the future. Dr. Forrest assigned him with at least a 30% impairment rating to the neck-related symptoms and problems. He also assigned him a 10% impairment rating for the low back symptoms. He assigned a 25 pound lifting restriction and to avoid climbing or going on a straw trailer. Dr. Forrest goes on to state that this would be over a 50% loss of his functional capabilities. (Claimant's APA 11).

Claimant's attorney also sent Claimant for an FCE with Tracy Hill at Columbia Rehabilitation Clinic, Inc. This took place on September 11, 2012 in which Ms. Hill found that he qualified for limited light work. (Claimant's APA 9).

On September 11th, Claimant was also evaluated by Dr. Gal Margalit at Sunset Family Practice. Dr. Margalit opined that the patient has lost more than 50% of his functional capacity of his back to work based on the on the job injury of 9/12/10 and she concurs with the opinions of his neurosurgeon regarding weight loss and continuing restrictions. Dr. Margalit further indicates that he may benefit from some neurological testing for mild brain dysfunction, but suspects that this is of a minor nature in relationship to the rest of his injuries. (Claimant's APA 10).

FULL COMMISSION FINDINGS OF FACT

Based upon the testimony and evidence submitted by both parties, the Full Commission adopts the Findings of Fact of the Single Commissioner as their own as follows:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission.
2. Claimant's average weekly wage is \$391.19 with corresponding compensation rate of \$260.81. We base this finding upon stipulation of the parties.
3. Claimant sustained admitted injuries to his back and right knee. We base this finding upon stipulation of the parties.
4. Claimant is forty years old and is currently employed with the employer as a cashier. We base this finding upon Claimant's testimony.
5. Claimant is a pleasant and believable witness. We do not doubt his testimony concerning some of his limitations, however We do view the entire record and the evidence as a whole.

6. Claimant has returned to work full duty with the employer for almost two years, and he is a valued employee who is being accommodated. We base this finding upon Claimant's testimony as well as the testimony of Lynn Council from the employer.
7. Ms. Lynn Council, Claimant's manager, testified credibly at the hearing. She verified that Claimant is a good employee, and that the employer has accommodated him if needed. Claimant has not made any complaints to the employer nor asked for additional medical treatment. We base this finding upon the testimony of Ms. Council.
8. The greater weight of the evidence shows, based upon review of the medical records, including Independent Medical Evaluations, that Dr. Drye's reports and conclusions are the most persuasive. We base this finding upon the medical records submitted into evidence.
9. Claimant reached maximum medical improvement as of June 7, 2011. We base this finding on the medical evidence.
10. Claimant sustained a 48% permanent partial disability to his back. We base this finding on the medical evidence as a whole.
11. Claimant's permanent partial disability includes any radicular symptoms to his right leg. We base this finding on the medical evidence.
12. Claimant is not permanently and totally disabled. We base this finding on the greater weight of the evidence, including his ability to work for nearly two years while being accommodated by sitting down, his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
13. Claimant is not entitled to reimbursement for his Independent Medical Evaluation costs. We base this finding upon the medical evidence which shows that Defendants provided

Claimant with follow-up visits with the authorized treating providers and there is no finding of a lapse in treatment.

14. Claimant is entitled to a lump sum award.

15. Claimant is entitled to causally-related medical treatment pursuant to Dodge per Dr. Drye pursuant to Section 42-15-60 as amended. We base this finding on the medical evidence.

16. ~~Claimant is entitled to lifetime repair, replacement, removal and maintenance of any~~ retained hardware, if any.

17. Claimant is entitled to Utica-Mohawk language pursuant to James v. Anne's.

FULL COMMISSION CONCLUSIONS OF LAW

Based upon the testimony and evidence submitted by both parties, the Full Commission adopts the Conclusions of Law of the Single Commissioner as their own as follows:

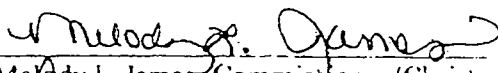
1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Section 42-1-130 and Section 42-1-140, Claimant was an employee of the employer
3. Pursuant to S.C. Code Ann. Section 42-1-40 and Section 42-1-50, Claimant's average weekly wage is \$391.19 with a corresponding compensation rate of \$260.81.
4. Pursuant to S.C. Code Ann. Section 42-1-160, Claimant suffered from a compensable injury to his back and right knee on September 12, 2010.
5. Pursuant to S.C. Code Ann. Section 42-15-20 notice of the accident as given to the employer.

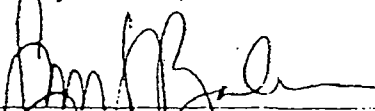
6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided Claimant with necessary medical treatment and Dr. Drye's reports and conclusions are controlling as the authorized treating physician.
7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant reached maximum medical improvement on June 7, 2011
8. Pursuant to S.C. Code Ann. Section 42-9-30 Claimant suffers from a 48% permanent partial disability to his back as a result of his work related accident
9. Pursuant to S.C. Code Ann. Section 42-9-10 Claimant is not permanently and totally disabled as Claimant has returned back to work with the employer for almost two years
10. Pursuant to S.C. Code Ann. Section 42-15-60, as amended and Dodge, Claimant is entitled to ongoing causally related medical treatment for his back per Dr. Drye.
11. Claimant is entitled to a lump sum award and Utica-Mohawk language pursuant to James v. Anne's.

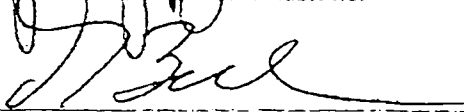
CONCLUSION

For all the foregoing reasons, the Single Commissioner's Decision and Order is AFFIRMED in its entirety.

FULL AFFIRMATION.


Melody L. James, Commissioner (Chair)


Susan S. Barden, Commissioner


Scott T. Beck, Commissioner

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 mail addressed to any unrepresented party.

By Valerie Deller on July 2, 2013

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 171
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: 1015200

Car. File #:

Carrier Code #: 946

Employer FEIN #:

Claimant's Name: Henton T. Clemmons, Jr. SSN: _____ Employer's Name: Lowe's Home Centers Inc.
Address: _____ Address: 390 Harbison Blvd.
City: _____ State: SC Zip: 29070 City: Columbia State: SC Zip: 29212
Home Phone: (803) Work Phone: () Insurance Carrier: Self Insured, Sedgewick CMS
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 781

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

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

Date of Injury or Illness: 9/12/10

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to head, back and legs (Part(s) of Body Injured) on 9/12/10 (Month/Day/Year) in Richland county, state of SC.
- 1b. Body part(s) affected are: head, back and legs
Briefly describe how the accident occurred. Claimant was in the "straw truck" at Lowe's the employer when he slipped on wet, loose straw and after slipping and sliding his legs went out from under him resulting him landing flat on the back of his head, back and buttocks.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 10/7/10 (Month/Day/Year) in the following manner:
While a fellow employee was present in the truck and witnessed the accident and it's aftermath and the Claimant's immediate supervisor, Steve Dawson was aware of the problems that he developed after that involving weakness and pain in his back and legs, the Claimant with a witness from his family who took him to the store, officially notified Ms. Audrey Williams in Human Resources of the injury on 10/7/10.
- ☒ 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: (Initially accepted and then denied, See Attachment)
☐ (b) additional medical examination and treatment for: _____
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Temporary Total was initially started following the Claimant being taken out work by the authorized treating doctors on 10/19/10 but further checks have not been received and no Form 15 has been filed.
- ☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss ☐ Partial ☐ Partial
- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Same employer
- 11a. Further grounds or unusual aspects of claim: In the event that Temporary Total has been stopped, penalties and fines for improper stop payment of Temporary Total Disability benefits. Also penalties and fines for failure to provide medical benefits without such being based on a good faith investigation or medical opinion that his medical problems were not related to the injuries stemming from the accident.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Lexington Medical Center, West Columbia, SC; Dr. Drye- Columbia Neurosurgical, Columbia, SC; Doctors Care, Irmo, SC; Dr. Armsey- Midlands Orthopedics, Columbia, SC; Dr. Hicks- Lexington Family Practice, Lexington, SC
- 11c. To the best of your knowledge, did you have any prior permanent disability? None aware of at this time; subject to amendment
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 1 hour

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

Preston F. McDaniel
Preparer's Signature

Claimant's Attorney
Title

mcdaniellaw@hotmail.com
Email

November 30, 2010
Date

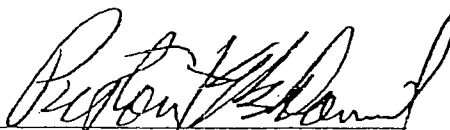
Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

Form 50 Attachment

Henton T. Clemmons, Jr. v. Lowe's Home Centers, Inc.

WCC File Number: 1015200

-
- 6a) The claim was initially accepted and the employer referred the Claimant to Doctors' Care for treatment who provided some initial treatment and referred him for an Orthopedic and Neurosurgical consult. The Claimant was then referred by the insurance carrier to Dr. Armsey, who immediately referred the Claimant, because of the severe conditions involving weakness in his legs and pain throughout his back and legs, to a Neurosurgeon. The adjuster, without just cause or excuse denied further treatment. The Claimant seeks treatment for all the injuries stemming from the accident specifically for the Neurosurgeon's treatment including surgery on his cervical spine and all further treatment for diagnostic purposes and treatment purposes for his head, back and legs and all injuries causally related.



Preston F. McDaniel
Attorney for Claimant

November 30, 2010

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	
COUNTY OF RICHLAND	)	WORKERS COMPENSATION COMMISSION
	)	
Henton T. Clemmons, Jr.	)	WCC File No.: 1015200
	)	
Employee-Claimant,	)	
	)	
v.	)	MOTION TO REINSTATE BENEFITS
	)	
Lowe's Home Centers Inc.,	)	
	)	
Employer, and	)	
	)	
Sedgwick CMS,	)	
	)	
Defendant(s).	)	
	)	

TO: MS. JENNIFER TAYLOR, ADJUSTER AND MANAGING AGENT OF
 SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. FOR LOWE'S HOME
 CENTERS INC., EMPLOYER AND SELF INSURED:

YOU WILL PLEASE TAKE NOTICE THAT pursuant to Commission Reg.
 67-215, the Claimant will move on the tenth (10th) day after
 service hereof or at such other time as may be designated by the
 Commission for an Order of the Commission ordering the Defendants
 to provide ongoing medical treatment and disability benefits,
 which has been previously provided and which were stopped for
 some reason unknown to the Claimant. Said Motion is based upon
 the following:

1. That on September 12, 2010 Mr. Clemmons had a work
 related accident after which the accident was reported and
 accepted and he was referred to Doctors Care for medical

treatment by the employer/self insured. The employer/self insured through its managing agent (TPA) Sedgwick CMS accepted and paid medical treatment through Doctors Care and also through ~~Midlands Orthopaedics under a referral to Dr. Armsey.~~

Subsequently, when the Claimant was referred by Dr. Armsey to a Neurosurgeon, the Defendants without just cause or excuse stopped paying for medical care. See medical records attached hereto as Exhibit A.

2. That in addition to the acceptance of the case and provision of medical care, the Defendants started Temporary Disability Benefits to the Claimant and forwarded a check to him for the period from 10/19/10 to 11/01/10 but since that time in addition to stopping medical care the Defendants have stopped providing Temporary Total Disability Benefits. See check stub attached hereto as Exhibit B. The Defendants have not provided a Form 15 or any just cause or excuse or reason and specifically not as set out in South Carolina Code §42-9-260 for the refusal to provide continuing disability benefits under the Workers Compensation Act.

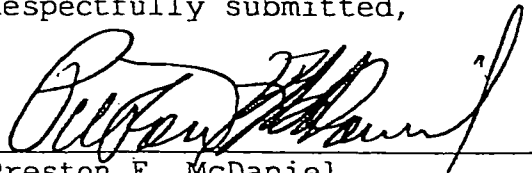
3. That upon information and belief the Defendants have refused to provide medical care and have refused to provide compensation benefits without medical opinion or other evidence establishing that the provision of medical care is not related to and/or as a result of the work related accident and in

addition the Defendants have not complied with the Act in reference to the stop payment of benefits concerning Temporary Total Disability Benefits.

WHEREFORE, the Claimant would respectfully request that Temporary Total Disability Benefits be reinstated with all penalties and fines that are appropriate under the Act and that the Defendants be Ordered to provide medical care unless they can establish just cause based on medical opinion evidence that the need for medical care is not related to the accident which has been accepted and for which benefits were paid.

I SO MOVE.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

December 2, 2010



Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O'Leary, MD
Michael R. Ugino, MD*Michael S. Green, MD * M. David Redmond, MD*
William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
Coleman D. Fowble, MD*Thomas D. Amsey, MD* Ivan LaMotta, MD* Bernard G. Krol, MD

1810 Blanding Street * Columbia, SC 29201* 1013 Lake Murray Boulevard * Irmo, SC 29063
2988 Sunset Boulevard, West Columbia, SC 29169
(803) 258.4107 * www.midlandsortho.com

Initial Exam

NAME: Clemmons, Henton
DATE: 11/01/10
EMPLOYER: Lowe's
REFERRING PHYSICIAN: Karen Greenfield, MD

ACCOUNT:
DOB: Age: 38 years old
OCCUPATION: csa

CC: Low back and right knee pain

DATE OF INJURY/ONSET/SURGERY: 9/12/10 fell in a straw trailer at work and has had significant ataxia since that time which is progressively worsening. (work related)

HPI: The patient is a 38 years old Caucasian male c/o low back pain and right knee instability that began on 9/12/10 with acute work related injury. Symptoms include daily low back and right knee instability, c/o sharp pain and throbbing in low back, right knee pain, numbness, spasms, weakness, popping, and dragging of the feet, pain is 3/10 in intensity, worsens with standing, bending, walking, and sitting to standing, improves with moving around for short periods of time. Treatment received prior to this visit include exam, xrays, ct scan and meds.
Mr. Clemmons and his mother report that he was a perfectly functional 38-year-old male until his work related accident. Since that time his gait has been severely ataxic, he cannot dress himself because of poor balance, has been bedridden because of his inability to ambulate. He has had multiple falls because of his poor balance which is all reported as no beginning September 12, 2010.
He has had ventricular shunts placed as a child.

MEDICAL ILLNESSES:

Past Med Hx: 16. Heart Attack

Surgical History: HEART STENT
shunt

Family History: 01. Arthritis
05. Diabetes
06. Heart Disease
07. High Blood Pressure
08. High Cholesterol

Social History: 03. Alcohol-None
05. Children-Yes
10. Single
13. Special Diet-Yes
19. Non-Smoker
28. Right Hand Dominance

Allergies: No Known Allergies

Current Meds: Crestor
Lisinopril
Metaxalone

Report Date: November 18, 2010 Patient: Clemmons, Henton T DOS: 11/01/10

Metoprolol

REVIEW OF SYSTEMS:

General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT, musculoskeletal, skin and endocrine systems are normal except what is noted: 06. Seasonal/Year round allergies

32. Loss of balance

PHYSICAL EXAM:

Vital Signs HEIGHT: 6'0"
WEIGHT: 289 lbs 0 oz
BMI: 39.2
PULSE: 65
B/P: 136/77

Appearance: moderate distress in a wheelchair - severely ataxic out of chair
Psychiatric: Mood and affect were appropriate.
Skin: Clean, dry, no lesions, no rashes.
Neuro: Alert and Oriented x3.

FOCUSED EXAM: pupils are equally round and reactive, no anisocoria

Lumbar spine: No changes on inspection, no midline tenderness, mild paraspinal tenderness, full strength to flexion/extension/rotation/lateral bending. SLR negative bilaterally, EHL 4/5 bilateral, Waddell test negative. Patellar and Achilles reflexes are hyperreflexic. Neurovascularly intact at bilateral lower extremities. No atrophy at bilateral lower extremities. Unable to ambulate due to poor balance even with a cane and assistance. Unable to flex and extend lumbar spine due to incredibly poor balance in the office

Right knee exam

Inspection: No erythema, no effusion, no atrophy, small patch of psoriasis anteriorly.
Tenderness: No joint line tenderness, no patella femoral tenderness
Range of motion: 0° to 130°
Motor testing: 5/5 strength to flexion extension
Gait assessment: ataxic
Special tests: Lachman and posterior drawer negative. No instability to varus or valgus stress at 0° and 30°. McMurray negative. Apprehension sign negative.

Left hip:

On inspection there are no skin changes. Palpation reveals no tenderness at the trochanteric bursae and no significant inguinal masses. Pulses are full. Range of motion is full with mild tenderness on cross adduction and no tenderness with extremes of internal and external rotation. Strength 4/5 to hip flexion, extension, abduction, adduction. Hip is ligamentously stable on examination

Right hip:

On inspection there are no skin changes. Palpation reveals no tenderness at the trochanteric bursae and no significant inguinal masses. Pulses are full. Range of motion is full with mild tenderness on cross adduction and no tenderness with extremes of internal and external rotation. Strength 4/5 to hip flexion, extension, abduction, adduction. Hip is ligamentously stable on examination

Radiographs: Ct scan of the lumbar spine: mild central osteophyte at L1/2 with left foraminal stenosis only mild

Procedure:

Assessment: -Acute ataxia after fall
-history of intracranial shunt

Report Date: November 18, 2010 Patient: Clemmons, Henton T DOS: 11/01/10

Plan: Mr Clemmons has an urgent issue - he is unable to ambulate due to severe ataxia that began acutely after a fall at work. I am concerned about a brainstem or cerebellar lesion, possibly complications from his intraventricular shunts with his recent trauma. I am certain that his ataxia is not coming from his lumbar spine and his right knee has no mechanical abnormalities on clinical exam and therefore his sensation of instability is likely neurologic at the knee as well.

I would recommend an immediate neurology or neurosurgery referral.

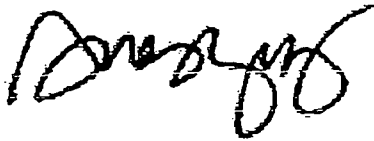
He is essentially wheelchair bound and will not return to work until cleared by a neurosurgeon/neurologist.

Prescriptions: No data for Prescription

Pre-Examination:

WORK STATUS:

() Full Time () Part Time () Restrictions () Out of Work () Non-Applicable



Thomas D. Armsey II, M.D.

Electronically signed
November 01, 2010
5:07 PM

Internal Reply Letters - Dated 11/02/10

Greenfield, MD, Karen - SPECIALTY: Family Practice
Hicks, MD, Kimberly - SPECIALTY: Family Practice

Fax Created - Dated Nov 2 2010 9:48AM

MIDLANDS

Orthopaedics, P.A.

Robert M. Peele, Jr, MD*Robert M. DaSilva, MD* James A. O'Leary, MD
Michael R. Ugras, MD*Michael S. Green, MD* M. David Redmond, MD*
William C. James, MD* Robert D. Santrock, MD* Frederick C. Pehl, MD* Thomas P. Gross, MD
Coleman D. Fowble, MD*Thomas D. Armsey, MD* Ivan LaMotta, MD* Bernard G. Krol, MD

1810 Blanding Street * Columbia, SC 29201* 1013 Lake Murray Boulevard * Irmo, SC 29063
2989 Sunset Boulevard, West Columbia, SC 29169
(803) 258.4107 * www.midlandsortho.com

Work Status Information

NAME: Clemmons, Henton
EMPLOYER: LOWE'S
PHYSICIAN: Thomas D. Armsey II, M.D.
DATE OF ACCIDENT: 09/12/2010
WORKERS' COMP CLAIM NUMBER#
3010107787800011F

ACCOUNT: _____
CARRIER: Bunch & Associates Inc - ~~Loes~~
DATE OF SERVICE: 10/27/10
DIAGNOSIS CODE (S): 781.3;724.2
DIAGNOSIS DESCRIPTION:
lack of coordination; lumbago

WORK STATUS:

- ☐ Regular duty as of with no restrictions
- ☐ Light duty as of with restrictions
(availability of light duty is determined by the employer, not the physician)
- ☒ Remain out of work until seen by Dr. Smith (Neurologist)
- ☐ Part time (whether regular duty or light duty)
- ☐ Full time (whether regular duty or light duty)

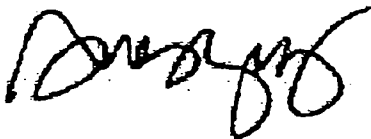
PHYSICAL LIMITATIONS:

- ☐ None
- ☐ No walking
- ☐ No climbing
- ☐ No standing
- ☐ No prolonged standing
- ☐ No sitting
- ☐ No bending or stooping
- ☐ No twisting or stretching
- ☐ No kneeling, squatting, crawling
- ☐ Pushing or Pulling Limit (lbs)
- ☐ Lifting and carrying limit (lbs)
- ☐ Sedentary duties only
- ☐ No overhead work
- ☐ No work involving () L () R (extremity)
- ☐ No overhead work
- ☐ No work at heights

Other:

These restrictions are recommended to promote healing of the body part which is injured or which has had surgery. Unrestricted use is recommended when it will not adversely affect the healing process. This is not a statement as to the capacity to undertake a given task or participate in a given sport, nor is it a warranty against subsequent injury. All restrictions or the lack of such restrictions may be subject to revision or modification if conditions change. It is your responsibility to contact us for any clarification, questions or concerns.

Follow-up plan: ref to Dr. Smith for further evaluation
Follow-up appointment date: pending approval



Thomas D. Armsey II, M.D.

MIDLANDS orthopaedics.

Patient Account No. 234189 Doctor Armsy Date 10.1.10

Is this visit due to any accident? ☒ YES ☐ NO If yes: Motor Vehicle Work Related ☒ Other?

Method of Payment Today: Cash ☐ Check ☐ Visa/MC ☐ Insurance ☐ SELF PAY ☐

(PATIENT INFORMATION) EVER SEEN UNDER OR KNOWN BY OTHER NAME Tony

LAST NAME <u>Chenmoas</u>		FIRST NAME <u>Hector</u>		MIDDLE INITIAL <u>T.</u>
GENDER <u>MALE</u>	DATE OF BIRTH	SS #	MARITAL STATUS ☐ MARRIED ☒ SINGLE ☐ DIVORCED	
ADDRESS		CITY, STATE, ZIP CODE		HOME PHONE <u>(803)</u>
PATIENT'S EMPLOYER <u>Lowes</u>	PATIENT'S OCCUPATION <u>Customer Service Assoc</u>	☒ FULLTIME ☐ PART TIME	WORK PHONE <u>(803) 22</u>	
IS THE PATIENT A STUDENT? ☐ YES ☒ NO		IF YES, NAME AND CITY OF SCHOOL		CELL PHONE <u>(803)</u>
IN CASE OF EMERGENCY (SOMEONE NOT LIVING WITH YOU) <u>Brade Chenmoas</u>		RELATIONSHIP TO PATIENT <u>Parent</u>	HOME PHONE	WORK/CELL
E-MAIL ADDRESS				

(INSURANCE INFORMATION) * COPIES OF YOUR INSURANCE CARDS ARE REQUIRED

INSURANCE #1 (PRIMARY INSURANCE)		INSURANCE #2 (SECONDARY INSURANCE)	
INSURED'S NAME <u>W. Comp</u>	RELATIONSHIP TO PATIENT	INSURED'S NAME	RELATIONSHIP TO PATIENT
SOCIAL SECURITY # OF INSURED (IF DIFFERENT FROM PATIENT)		SOCIAL SECURITY # OF INSURED (IF DIFFERENT FROM PATIENT)	
DATE OF BIRTH OF INSURED		DATE OF BIRTH OF INSURED	
INSURED'S EMPLOYER (IF DIFFERENT FROM PATIENT)		INSURED'S EMPLOYER (IF DIFFERENT FROM PATIENT)	

(GUARANTOR) PERSON RESPONSIBLE FOR THE BILL IF PATIENT IS A MINOR OR STUDENT

FULL NAME		RELATIONSHIP	HOME ADDRESS		CITY, STATE, ZIP
HOME PHONE	WORK PHONE	CELL PHONE	DOB	SS#	

HAS PATIENT SEEN AN ORTHOPAEDIST / NEUROSURGEON FOR THIS PROBLEM?

☐ YES ☒ NO

HAS PATIENT HAD X-RAYS FOR THIS PROBLEM?

☒ YES ☐ NO IF YES* WHERE Doctors Care (Tend)
IF YES* - MUST BRING WITH YOU TO YOUR APPOINTMENT

REFERRED BY <u>Dr. Greenfield</u>	PRIMARY CARE DOCTOR <u>Kimberly Hicks</u>
ADDRESS	ADDRESS
PHONE #	PHONE #

PHARMACY NAME <u>Walgreens</u>	LOCATION <u>Lexington</u>	PHONE #

I hereby acknowledge that by providing insurance information, I have asked and promised to pay for services provided in exchange for this information. I understand that fees for services provided by Midlands Orthopaedics are my responsibility and I agree to pay any balance left unpaid by any insurance company or third party entity immediately upon notification of said balance. If I do not have insurance, I understand that I am responsible for any incurred expenses in their entirety.

Tony Chenmoas
Patient's Guarantor

11-1-10
Date

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Dye, MD Karl A. Lozanne, MD

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Pain Medicine
Steven B. Storick, MD
Eva J. Raw, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE CONSULTATION

Patient: Henton T. Clemmons, Jr.
Chart: 95744
Date: 11/8/10

CHIEF COMPLAINT: Fall at work on 9/12/10 with subsequent weakness and diffuse numbness from the chest below.

HISTORY OF PRESENT ILLNESS: The patient is a 38-year-old gentleman who works as a customer service associate for a local hardware store. He has a history of hydrocephalus developing shortly after birth and ultimately had a VP shunt. According to the patient and his family, who accompanied him today, there have never been any issues with the shunt requiring any revisions. He states that he was in his usual state of health when at work on 9/12/10. He was climbing into a trailer with straw to help a customer when he slipped on the straw and impacted rather dramatically on his back. He was initially stunned but continued to work. Over the next several days he developed diffuse numbness which has progressed rather rapidly. He describes a change in sensation from below the nipple line in the abdomen and back, including both lower extremities all the way to the feet and toes. He has reached a point where it is difficult for him to walk because of some spasticity and stiffness. He reports some difficulty in initiating both bowel and bladder but he has had no frank incontinence and feels that he is emptying both without retention. He has experienced some spasm in the legs, right greater than left, and has some element of back pain. He was seen by Dr. Kimberly Hicks and multiple imaging studies were done. He denies any headache, visual changes, cognitive or memory problems, and has very little in the way of neck discomfort. In fact, he has only some mild hand tingling and discomfort roughly in a C7 distribution and this was thought to be preexisting carpal tunnel syndrome. He denies any phenomenon such as Lhermitte's.

He arrives today at the request of Dr. Kimberly Hicks seeking an urgent neurosurgical evaluation.

HISTORIES: Allergies: NKDA. Medications: Lisinopril, Crestor, metoprolol, aspirin. Illnesses: History of MI with coronary disease and hypertension as well as a history of hydrocephalus at birth. Surgeries: Right-sided VP shunt and cardiac stent placement in September of 2009. Family history and review of systems are well documented in the intake sheet of 11/8/10 and have been reviewed and signed. The information contained is noncontributory except for that in the HPI. Social history: He does not smoke nor drink, is single and employed but has not worked recently.

PHYSICAL EXAMINATION: VITALS: HT 6'0", WT 294

GENERAL: The patient is a well-developed individual who is awake, alert and oriented x3. Speech pattern is normal in form and content with mentation and memory appropriate for age. **HEENT:** Normocephalic and atraumatic. Neck: Supple without masses. Eyes: Conjugate without scleral injection or icterus. Vision: Grossly intact bilaterally. Hearing: Present in both ears with normal-appearing ears, nose and throat. **LUNGS:** Clear to auscultation and percussion. **HEART:** RR. **ABDOMEN:** Soft, nondistended, nontender with bowel sounds present. **EXTREMITIES:** No cyanosis, clubbing or edema. Distal pulses are present. **SKIN:** No rashes or gross abnormalities noted. **MUSCULOSKELETAL:** Normal ROM of the cervical spine without tenderness, rigidity or step-off deformity. Lhermitte's sign is absent. Spurling's maneuver is negative. Shoulder ROM is normal without pain, tenderness or crepitus. ROM at the waist is full. Negative SLR bilaterally at 90 degrees. Patrick's maneuver is negative bilat. Hip ROM is full and nonpainful. Paraspinal

muscles and support structures are nontender to palpation with no active spasm, kyphosis or scoliosis present. NEUROLOGICAL: Cranial nerve exam: II - Vision is normal to finger recognition and tracks the examiner without difficulty. III, IV, VI - Extraocular movements are intact. V - Sensation on the face is intact to light touch. VII - Muscles of facial expression are normal and symmetric. VIII - Hearing is present in both ears. IX, X - Oropharynx elevates symmetrically in the midline. XI - Strength in the sternocleidomastoid and trapezius is intact. XII - Tongue protrudes normally in the midline. Face is symmetric. Strength is 5/5 bilaterally in all muscle groups of the upper and lower extremities though he has some increased spasticity and tone in the lower extremities bilaterally. DTRs are 2/4 and symmetric in the right upper extremity, 2-3/4 in the left upper extremity, and hyperreflexive bilaterally in the lower extremities. Toes are mute. Clonus is present but nonsustained in both feet. Hoffmann's sign is negative. Touch and pinprick and diminished from the nipple line below bilaterally including the lower extremities circumferentially. Cerebellar function is intact with normal finger-to-nose exam though he walks with a clearly spastic gait.

IMAGING STUDIES: Studies done at LMC include a thoracic MRI that showed some mild degenerative changes and scoliosis, but no true thoracic abnormalities of significance. The MRI of the brain demonstrates the right-sided ventricular catheter in place with ventriculomegaly that is likely arrested hydrocephalus. MRI of the cervical spine demonstrates a large right paracentral disc herniation with superior extension behind the C6 vertebral body creating a severe stenosis and cord compression. The cord does demonstrate some high signal abnormality. There is also a bulge at C5-6.

IMPRESSION/PLAN: Mr. Clemmons presents with cord compression and myelopathy which is advancing from what I believe is a disc herniation at C6-7 and a significant bulge at C5-6. I am quite alarmed at his presentation and the rapidity of his symptoms and feel that this makes surgery a reasonable consideration. We have spent well beyond one hour together reviewing the findings, the correlation to his symptoms, treatment options, both surgical and nonsurgical, as well as prognosis. I have emphasized that spinal cord injuries have variable recovery and that the surgery is primarily meant to prevent a worsening of his situation. I have, with his permission, described a two level ACDF and possible corpectomy and have discussed the rationale, the alternatives, the anticipated hospital course and long-term outcomes. We have discussed the purpose of fusion as well as the pros and cons of bone bank vs. autologous bone and plating. I have described the circumstance where a corpectomy would be necessary if the disc cannot be adequately decompressed from above and below. We have discussed the consequences of fusion as well as anticipated recovery. I have addressed his questions as well as those of his family to the best of my ability.

Mr. Clemmons is inclined to go forward with surgery and I would like to admit him today and begin some IV steroids with possible cardiac clearance. However, I would like to proceed as soon as tomorrow with the above surgery if we are able to do so.

I do wish to thank Dr. Hicks for the kind referral and for allowing me to participate in the care of this patient.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Drye, MD

RGD / MEH

CNAWT: 4021

Faxed To: Kimberly Hicks, MD

CERTIFICATE OF SERVICE BY MAIL

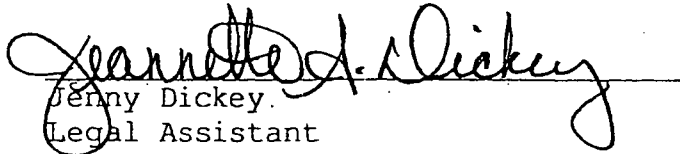
WCC File No. 1015200

I hereby certify that I have on this day served the
following in the matter of Henton T. Clemmons, Jr. v. Lowe's
Home Centers Inc. with a copy of the MOTION TO REINSTATE
BENEFITS by mailing the same as follows:

OFFICIAL POSTAL ADDRESS FROM WORKERS COMPENSATION
COMMISSION:

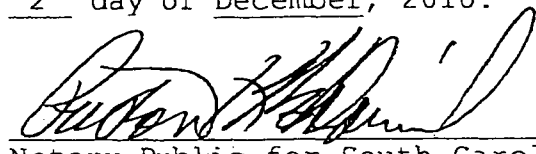
Ms. Jennifer Taylor, Adjuster
Sedgwick CMS
P.O. Box 14671
Lexington, KY 40512

I also hereby certify that a regular communication by
mail exists.


Jenny Dickey
Legal Assistant

SWORN TO BEFORE ME this

2nd day of December, 2010.



Notary Public for South Carolina, (L.S.)
My Commission Expires: 12/28/18

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
OF COUNSEL:
Daniel E. Peagler, P.C.
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

December 10, 2010

Commissioner Avery B. Wilkerson, Jr.
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

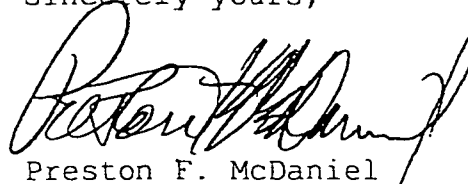
RE: Henton T Clemmons v. Lowe's Home Centers Inc
WCC File Number: 1015200

Dear Commissioner Wilkerson:

Please find attached a report received on December 7, 2010 subsequent to the Motion from the Neurosurgeon which we are supplementing, along with confirmation it was faxed to the Adjuster, to the Motion as Exhibit C. By copy of this letter I am notifying and serving the Adjuster with this Addendum to the Motion. To my knowledge at this time, the Defendants have not obtained counsel to represent them in this matter and I assume that the appearance of the Adjuster as the Managing Agent will be required at the Motion Hearing. Therefore by copy of this letter, again, I am notifying and serving the Adjuster at both her address and at the official address that the Carrier is required to keep on file with the Commission. To ensure service of the Notice of Hearing on the Motion I am also serving her (by copy of this letter) with a copy of the Notice of Hearing which was served electronically.

I look forward to seeing you at the Motion Hearing and hopefully getting benefits reinstated for my client.

Sincerely yours,



Preston F. McDaniel

PFM/jad
Enclosure

cc: Jennifer Taylor, Adjuster
Tommy Clemmons

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

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William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

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Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29189
(803) 794-3700 - (F) 794-0322

November 30, 2010

Mr. Preston McDaniel
Fax 803.252.0709

Patient: Henton T. Clemmons, Jr.
Chart: 95744

Dear Mr. McDaniel:

The following is dictated in response to your inquiry regarding Henton Clemmons.

Mr. Clemmons was seen in our office with signs and symptoms of severe myelopathy and was found to have definite spinal cord compression from disc herniations at C5-6 and C6-7. When we met in the office initially and we garnered his history, he clearly reported no prior history of significant neck or neurologic problems prior to a fall at work. This occurred, according to the patient, on 9/12/10 when he slipped on some straw in a trailer and impacted on his back and the back of his head. This mechanism of injury is completely consistent as the force and flexion of the head and neck can result in the tear of vulnerable discs and subsequent herniation. In fact, his pattern of progressive symptoms involving the upper and lower extremities that evolved over time is also consistent with the progression of the disc herniation with continued activity. Mr. Clemmons' condition was perhaps worsened by the fact that he has congenital stenosis of the spine but again by history, he reports no prior symptoms of radicular nature or spinal cord dysfunction. For that reason I believe that within a reasonable degree of medical certainty, his disc herniations, spinal cord impingement and subsequent myelopathy as well as the intervening surgery were a direct result of his fall at work.

As you are aware, Mr. Clemmons needed fairly urgent surgery and this has been completed. He is currently in the rehab phase and we are very hopeful that he will regain function over time.

I hope this information is helpful to you in your efforts on behalf of Mr. Clemmons.

Sincerely,



Randall G. Drye, MD

RGD/MAH

CNAWT: 4022

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

PRESTON F. McDANIEL
DANIEL E. PEAGLER, P.C.

Telephone (803) 771-7211
Facsimile (803) 252-0709

FAX TRANSMISSION COVER SHEET

Date: December 7, 2010

From: Preston F. McDaniel

To: Jennifer Taylor, Managing Agent

Fax Number Called: (704) 717-7701

Regarding: Henton Thomas Clemmons, Jr.

Comments: Ms. Taylor, Please find enclosed a report we received from Dr. Drye. I have not heard from an attorney representing you although we have filed both a Form 50 Requesting a Hearing and also a Motion which should be heard within the next week or so. Dr. Drye's report makes it very clear that this matter is compensable and I would appreciate it if you would contact me today to see where we are on this file, if not I intend one day this week to have you subpoenaed to come to South Carolina for the Hearing both on the Motion and on the Form 50. If you have counsel, please have them notify me immediately but I hope with Dr. Drye's report we can stop this waste of money and so you don't have to spend a bunch of money on attorneys when this is a very clear-cut, very straightforward case. I look forward to working with you and look forward to hopefully hearing from you today.

Preston F. McDaniel- Attorney-at-Law

We are transmitting 2 pages, including face sheet.
If you have any problems with this transmission, please call me at 803-771-7211.

Transmitted from Fax Number 803-252-0709

Transmitted by: Jenny Dickey- Legal Assistant

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS-VIA U.S. POSTAL SERVICE.

NO. 9208 P. 3
COLUMBIA NEUROSURGICAL ASSOCIATION, P.A.

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Spine & Neurological Surgery

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November 30, 2010

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Sincerely,



Randall G. Drye, MD

RGD/MAH

CNAWT: 4022

**** Transmit Confirmation Report ****

P.1

Dec 7 2010 12:51pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17047177701	Normal	07.12:50pm	0'57"	2	* O K	

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PRESTON F. MCDANIEL
 DANIEL E. PEAGLER, P.C.

Telephone: (803) 771-7211
 Facsimile: (803) 252-0709

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Preston F. McDaniel- Attorney-at-Law

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1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1015200
Carrier File #: B062513208000101625
December 10, 2010

NOTICE OF HEARING

HENTON T CLEMMONS v. LOWE'S HOME CENTERS, INC

Subject: To determine the issues in the Motion.
Date: December 16, 2010 at 11:15 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Avery B. Wilkerson Jr.
803-737-5697, eboyd@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Elaine Boyd, SC Workers' Compensation, December 10, 2010

Party

Employee: HENTON T CLEMMONS

Attorney

Preston F. McDaniel
mcdaniellaw@hotmail.com
803-771-7211

Employer: LOWE'S HOME CENTERS, INC
Carrier: Lowe's Companies, Inc.
Email: char.genemail@sedgwickcms.com

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this day served the following in the matter of Henton T. Clemmons, Jr. v. Lowe's Home Centers Inc. with a copy of the Addendum to Motion and ~~Hearing Notice for December 16, 2010~~ by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

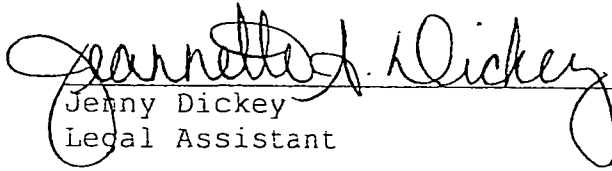
OFFICIAL POSTAL ADDRESS FROM THE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION:

Jennifer Taylor, Adjuster
Sedgwick CMS
P.O. Box 14671
Lexington, KY 40512

PHYSICAL ADDRESS PROVIDED BY SEDGWICK CMS

Jennifer Taylor, Adjuster
Sedgwick CMS
8520 Cliff Cameron Drive
Suite 350
Charlotte, NC 28269

I also hereby certify that a regular communication by mail exists.


Jenny Dickey
Legal Assistant

SWORN TO BEFORE ME this

10th day of December, 2010.


Notary Public for South Carolina (L.S.)

My Commission Expires:

12/20/18

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
HARBISON,

Employer,

AND

SEDGWICK CMS

Carrier,

Defendants.

DEFENDANTS RESPONSE TO
CLAIMANT'S MOTION TO
REINSTATE BENEFITS.

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

The Defendants were served with a Motion to Reinstate Benefits requesting that the Defendants reinstate temporary total disability benefits and reinstate medical care for the above referenced case. The Defendants submit the following response:

1. The Claimant states that this is an accepted case and that benefits have been started and stopped and that medical care was started and stopped and, therefore there is no basis for termination of either. The Defendants respectfully disagree.
2. The Defendants admit the Claimant sustained a compensable injury to the low back and right knee on September 12, 2010 and provided causally-related medical care for those admitted injuries until the authorized treating physician's released the Claimant

from medical care for the authorized injuries. The Claimant has also now alleged an injury to the head that is denied by the Defendants and the Defendants deny his entitlement to medical care or benefits stemming from that alleged body part.

~~3. The Defendants initiated temporary total disability benefits and medical care within the~~

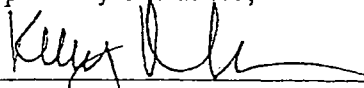
first 150 days of the Claimant's date of accident, September 12, 2010 as allowed under the Act.

4. Within the first 150 days, after the Claimant completed receiving his causally related medical care, the Defendants filed a Form 15 denying further benefits based on a request for continuation of benefits for denied body parts, on November 8, 2010.

5. Furthermore the issue of benefits and entitlement to medical care in addition to compensability of denied members goes to the merits of this case and are not proper on a Motion hearing before the Commission and should not be heard on a Motion but rather on Forms 50 and 51.

Therefore the Defendants move that the Claimant's Motion to Reinstate Benefits be dismissed.

Respectfully Submitted,



KELLY F. MORROW

MCANGUS GOUDELOCK & COURIE, L.L.C.

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor

Columbia, South Carolina 29211-2519

(803) 779-2300

Attorneys for the Employer/Carrier

Columbia, South Carolina
December 13, 2010

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. - HARBISON,

Employer,

AND

SEDGWICK CMS,

Carrier,

Defendants.

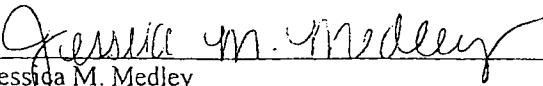
CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

DOCUMENT: Other - Defendants Response to Claimant's Motion to Reinstate Benefits

DATE OF MAILING: December 13, 2010


Jessica M. Medley
Legal Assistant to Kelly F. Morrow

SC Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1333
Columbia, South Carolina 29202-1715
(803)737-5723



WCC File #: 101573

Carrier File #: 301018-0001

Carrier Code #:

Employer FEIN #:

Henton T. Clemmons,
Jr.

Claimant's Name SSN

Address City State Zip

Home Phone #
Kelly F. Morrow

Preparer's Name

Work Phone #
McAngus Goudelock & Courie
Law Firm

Lowe's Home Centers, Inc. - Harbison

Employer's Name
390 Harbison Boulevard
Columbia, South Carolina 29212

Address City State Zip

Sedgwick CMS

Insurance Carrier
(803) 227-2238
Phone Number

Date of Accident: 9/12/10

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

- It is admitted/denied that the employee sustained an injury on or about the date set forth in the application. The reason for denial are: The Employer/Carrier admits the Claimant sustained a compensable injury to the low back and right knee as a result of his work-related accident on September 12, 2010. The Defendants deny the Claimant suffered an injury to the head or the left lower extremity as alleged on the Form 50. The Defendants further deny the extent of the injuries as alleged on the Form 50.
- It is admitted that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See No. 1 above.
- It is admitted that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 1 above.
- It is admitted that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See No. 1 above.
- It is admitted that notice of injury was given to the employer. The reasons for denial are: See No. 1 above.
- It is denied that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: The Claimant is seeking medical treatment for unrelated conditions at this time and has received medical treatment for the causally-related injuries to date.
- It is denied that the employee is entitled to temporary total disability for the period(s) of: The Employer/Carrier maintains there is no medical evidence relative to the admitted injuries to support the Claimant's entitlement to temporary total disability benefits.
- It is denied that the employee is permanently disabled. The reasons for denial are: The Employer/Carrier maintains there is no current medical evidence to support the Claimant's entitlement to permanent disability benefits.
- It is denied that the employee has a serious disfigurement.
- It is contended that an average weekly wage of Form 20 to be submitted applies, according to attached accounting of employee's earnings as provided by law.
- Further contentions or grounds of defense are: The Defendants reserve the right to plead additional defense as they may become available.
- Estimated time needed for hearing: 1 hour

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

on the 29th day of December, 2010 by ☒ first class mail; ☐ personal service; ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Kelly F. Morrow
Preparer's Signature

Attorney for Employer/Carrier kmorrow@mcclaw.com
Title Email

December 29, 2010
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

- 135 -

- 68 -

Employer's Answer to Request for Hearing



ATTORNEYS AT LAW

Reply To
KELLY F. MORROW
Direct Dial: (803) 227-2238
kmorrow@mgclaw.com
COLUMBIA

October 3, 2011

VIA HAND DELIVERY

Vivian Brown
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Henton T. Clemmons, Jr. v. Lowe's Home Centers, Inc. and Sedgwick Claims
Management Services, Inc.
Date of Accident: September 12, 2010
WCC File No.: 1015200
Our File No.: 2073.10044
Claim No.: 30101077878-0001

Dear Ms. Brown:

Enclosed are the original and one copy of the Form 17 in the above-referenced matter. Please file the original and return a clocked copy to us via our courier.

By copy of this letter to Preston F. McDaniel, Esquire, the claimant's attorney, we are notifying him of this submission, and serving a copy of same upon him by mail.

Very truly yours,

Kelly F. Morrow

KFM/rkg
Enclosures

cc: Jennifer Taylor, Sedgwick Claims Management Services, Inc. (VIA FAX ONLY)
Preston F. McDaniel, Esquire, The McDaniel Law Firm

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1015200
Carrier File # 3010107878-0001
Carrier Code # 00946
Employer FEIN 560748358

HENTON T. CLEMMONS

Claimant's Name

SSN

Address

City

State

Zip

Home Phone #

Work Phone #

Jennifer Taylor

Preparer's Name

Lowe's Home Centers, Inc.

Employer's Name

390 HARBISON BLVD. COLUMBIA, SC 29212

Address

City

State

Zip

Lowe's Home Centers, Inc.

Insurance Carrier

(704) 717-7714

Phone #

Date of Injury: 09/12/2010
month day year

1. Temporary Compensation Paid:

Number of Weeks

From

To

Amount

46 wks 4 days

10/19/2011

09/09/2011

\$12,556.14

2. The claimant returned to work on 09/10/2011
month day year

☒ With restrictions but at a salary not less than before the injury.
☐ Without restrictions.

3. The claimant agrees he or she was able to return to work on 09/10/2011
month day year

I agree that I was disabled for the period(s) indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHT TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work or agree I was able to return to work.

Henton T. Clemmons

Claimant's Signature

[Signature]

Employer's Representative Signature

9/12/11

Date Agreement Signed

(Check one) ☒ Witness ☐ Claimant's Attorney

File this form with the Claims Department no later than 31 days from the date the claimant returned to work to terminate temporary compensation after the first 150 days after employer's notice of the injury according to R.67-505. Within the 150 day period, obtain a Form 17 to document that claimant agrees he or she is able to return to work

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. - HARBISON,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY

S.C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Form 17

DATE OF
MAILING: October 4, 2011

for Jessie M. Morrow
Ricki K. Goodwin
Paralegal to Kelly F. Morrow

SC Workers' Compensation Commission

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715



WCC File #: 10158

Carrier File #: 3010-1778-0001

Carrier Code #:

Employer FFIN #:

Henton T. Clemmons,
Jr.

Claimant's Name

SSN

Lowe's Home Centers, Inc. - Harbison

Employer's Name

****DO NOT SEND CORRESPONDENCE****

390 Harbison Boulevard

Columbia, South Carolina 29212

Address City State Zip

Address City State Zip

Home Phone #

Work Phone #

Kelly F. Morrow

McAngus Goudelock & Courie

Sedgwick Claims Management Services, Inc.

Insurance Carrier

(803) 227-2238

Preparer's Name

Law Firm

Phone Number

The date of injury reported on the Form 12A is: 9/12/2010

Check applicable section(s). The employer's representative requests a hearing to:

- I. ☐ Stop payment of compensation. Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on (m/d/yyyy) (copy of medical report must be attached).

Compensation payments are current as of _____ and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.

A Form 17 was offered and refused on _____.

- II. ☐ Address suspension, termination, or reduction of temporary disability payment for any cause.

☐ a. At any time pursuant to § 42-9-260(E).

☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____.

- III. ☒ Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

The authorized treating physician has released the Claimant at maximum medical improvement and assigned a 25% while person impairment rating.

Claimant reached maximum medical improvement on 6/7/2011 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.

- V. ☐ Determine amount of compensation for claims involving a fatality. (Dependency investigation must be attached).

☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.

☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

A hearing requested pursuant to this section will be set on an expedited basis.

• A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.

• An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

on the 4th day of January, 2012 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Kelly F. Morrow
Preparer's Signature

Attorney for Employer/Carrier
Title

January 4, 2012
Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gurner, MD
Randall G. Dye, MD Karl A. Lozano, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine

Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

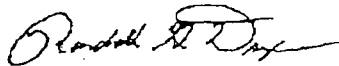
Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 6/7/11

SURGERY: ACDF, C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his mom. He has completed a full course of physical therapy and feels that it has been quite beneficial. He continues to do his exercises at home and is walking three times a week. He has some slight discomfort in the base of the neck but no significant postoperative pain. He has regained relatively normal function in the upper extremities with no major complaints of numbness, tingling or weakness. His gait is still slightly unsteady and he has some difficulty with balance likely owing to some mild residual spasticity and perhaps proprioceptive deficits. He appears quite comfortable today.

On physical exam, his incision has healed quite nicely. He is able to flex, extend, and rotate the neck with reasonable range of motion. He has no tenderness. His upper extremity strength appears to be 5/5 bilaterally throughout as well as in the lower extremities. There is perhaps some very mild increase in tone in the legs bilaterally though his reflexes are symmetric and not particularly hyperactive. He has no sustained clonus.

IMPRESSION/PLAN: Mr. Clemmons has done quite well from his surgery though he continues to have some very mild myelopathic signs. We have again discussed spinal cord injury and recovery which may take up to a year. At this stage it appears that he is doing quite well and I think has reached a point where he is at MMI. We have discussed his return to work which would certainly need to include some permanent restrictions by way of protecting his spine. I have written for a return-to-work statement with permanent restrictions of no standing or walking for more than an hour without inability to sit for a brief period of time. I do not think he should be climbing heights or repetitively climbing steps, should avoid any repetitive overhead reaching and should lift or carry less than 30 pounds only occasionally. If his employer is unable to fulfill these restrictions he would likely be a candidate for voc rehab. I have referred to the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, and would assign him to the DRE Cervical Category 4 resulting in a 25% whole person impairment based on his injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. He is being released today at MMI with the above conclusions and recommendations.



Randall G. Dye, MD
THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED
RGD/MAH CNAWT: 4020

Faxed to: Chandrica Moore, CCM; Kimberly Hicks, MD

SC Workers' Compensation Commission

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715



WCC File #: 1015200

Carrier File #: 3010187878-0001

Carrier Code #:

Employer FEIN #:

Henton T. Clemmons,
Jr.

Claimant's Name SSN

Address City State Zip

Home Phone #

Kelly F. Morrow

Preparer's Name

Work Phone #

McAngus Goudelock & Courie

Law Firm

Lowe's Home Centers, Inc. - Harbison

Employer's Name

390 Harbison Boulevard
Columbia, South Carolina 29212

Address City State Zip

Sedgwick Claims Management Services, Inc.

Insurance Carrier

(803) 227-2238

Phone Number

The date of injury reported on the Form 12A is: 9/12/2010

Check applicable section(s). The employer's representative requests a hearing to:

- I. ☐ **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on ____ (m/d/yyyy) (copy of medical report must be attached).

Compensation payments are current as of ____ and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.

A Form 17 was offered and refused on ____.

- II. ☐ **Address suspension, termination, or reduction of temporary disability payment for any cause.**

☐ a. At any time pursuant to § 42-9-260(E).

☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is ____

- III. ☒ **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

The authorized treating physician has released the Claimant at maximum medical improvement and assigned a 25% while person impairment rating. The Claimant requested a return evaluation with Dr. Drye which was conducted on June 18, 2012, and no adjustments were made to maximum medical improvement.

Claimant reached maximum medical improvement on 6/7/2011 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V. ☐ **Determine amount of compensation for claims involving a fatality.** (Dependency investigation must be attached).

☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.

☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

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- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

on the 24th day of July, 2012 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Preparer's Signature

Attorney for Employer/Carrier
Title

July 24, 2012
Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

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Spine & Neurological Surgery

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Pain Medicine
Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunbelt Court
W. Columbia, SC 29169
(803) 794-3700 • (F) 794-0322

OFFICE VISIT

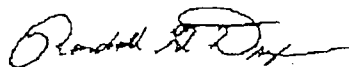
Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 6/7/11

SURGERY: ACDF, C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

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On physical exam, his incision has healed quite nicely. He is able to flex, extend, and rotate the neck with reasonable range of motion. He has no tenderness. His upper extremity strength appears to be 5/5 bilaterally throughout as well as in the lower extremities. There is perhaps some very mild increase in tone in the legs bilaterally though his reflexes are symmetric and not particularly hyperactive. He has no sustained clonus.

IMPRESSION/PLAN: Mr. Clemmons has done quite well from his surgery though he continues to have some very mild myelopathic signs. We have again discussed spinal cord injury and recovery which may take up to a year. At this stage it appears that he is doing quite well and I think has reached a point where he is at MMI. We have discussed his return to work which would certainly need to include some permanent restrictions by way of protecting his spine. I have written for a return-to-work statement with permanent restrictions of no standing or walking for more than an hour without inability to sit for a brief period of time. I do not think he should be climbing heights or repetitively climbing steps, should avoid any repetitive overhead reaching and should lift or carry less than 30 pounds only occasionally. If his employer is unable to fulfill these restrictions he would likely be a candidate for voc rehab. I have referred to the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, and would assign him to the DRE Cervical Category 4 resulting in a 25% whole person impairment based on his injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. He is being released today at MMI with the above conclusions and recommendations.



Randall G. Drye, MD
THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED
RGD/MAH CNAWT: 4020

Faxed to: Chandrica Moore, GCM; Kimberly Hicks, MD

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brian C. Gunter, MD
Randall G. Dye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 (F) 462-0432

Pain Medicine
Steven B. Storick, MD
Cva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29189
(803) 794-3700 (F) 794-0322

OFFICE VISIT

Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 6/18/12

SURGERY: ACDF, C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his mother having been last seen and released approximately a year ago. At that point he had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. Nonetheless we were able to return him to work with some physical restrictions and he is back at work primarily as a cashier. Mr. Clemmons reports that he has some persistent stiffness and pain in the base of the neck which does not radiate into the upper extremities. In fact, he denies any recurrent symptoms in the arms or hands. The neck pain as well as an element of back pain are worse in the morning and seemed to improve as he moves about. Even at work he will often do the previous stretching exercises and changing of posture that he learned in physical therapy. He denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as a long-standing, pre-injury inversion of the right foot and ankle. His mother confirms that this has forever been a problem as he wears out shoes in the lateral aspect. He has no bowel or bladder incontinence or retention and otherwise is doing well. He arrives today having undergone cervical and lumbar MRIs for a check for possible change in condition.

On physical exam, he is quite comfortable in the seated position. He has some mild tenderness in the posterior cervical and lumbar region with no active spasm. He does appear to have gained considerable weight, however. He has a negative SLR bilaterally at 90 degrees and has negative Lhermitte's and Spurling's sign. His strength appears to be 5/5 bilaterally throughout, including all muscle groups of the upper and lower extremities. He does have some mild hyperreflexia in the lower extremities relative to the upper extremities with preserved sensation. There is no evidence of dorsiflexion weakness although his eversion is perhaps diminished on the right which again is a long-standing preinjury problem.

IMAGING STUDIES: Cervical MRI as well as lumbar study done at LMC were reviewed and the results shared with the patient. He appears to have healed beautifully from his surgery with what appears to be a stable operative construct with instrumentation. There was no residual high degree of canal stenosis, no obvious impingement of the cord. There is CSF surrounding the cord at the operative levels. At the adjacent levels above, C3-4 and C4-5, there is some spondylitic change and broad based disc bulge which has not progressed significantly from his previous study. There is CSF surrounding the cord with no evidence of new pathology. The lumbar study demonstrates a disc protrusion at L1-2 eccentric to the left with some effacement of the CSF around the conus. At L5-S1 there is a very advanced degenerative disc with disc space collapse, associated Modic changes within the endplates and a generalized bulge. The canal, however, is otherwise patent and I see no evidence of any direct nerve root impingement or large disc herniation.

IMPRESSION/PLAN: Mr. Clemmons, his mother and I have discussed the findings which for the most part are reassuring. His symptoms are more consistent with axial and myofascial pain and the pattern is strongly suggestive of arthritic-type symptoms. I have encouraged him to continue with what he is doing in terms of stretching and movement and I have advised him to try and lose some weight as this would likely help with the lumbar problem. We have discussed the natural history of

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1015200
Carrier File #: B06251320800010625
July 31, 2012

NOTICE OF HEARING

HENTON T CLEMMONS v. LOWE'S HOME CENTERS, INC

Subject: To determine if employer/carrier is entitled to pay compensation to claimant and if employer/carrier is entitled to credit for TT benefits paid in excess of award.

Date: September 25, 2012 at 10:00 AM

Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500 Hearing Room B
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Derrick L. Williams
803-737-5692, rgsmith@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Renee G Smith, SC Workers' Compensation, July 31, 2012

Party

Employee: HENTON T CLEMMONS

Employer: LOWE'S HOME CENTERS, INC
Carrier: Lowe's Companies, Inc.

Attorney

Preston F. McDaniel
mcdaniellaw@hotmail.com
803-771-7211

Kelly Fitzharris Morrow (5)
kmorrow@mgclaw.com
803-227-2238



Henton T. Clemmons,
Jr.

Claimant's Name SSN

Address City State Zip

Home Phone #

Work Phone #

Kelly F. Morrow

Preparer's Name

Lowe's Home Centers, Inc. - Harbison

Employer's Name

390 Harbison Boulevard
Columbia, South Carolina 29212

Address City State Zip

Sedgwick Claims Management Services, Inc.

Insurance Carrier

(803) 227-2238

Phone Number

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

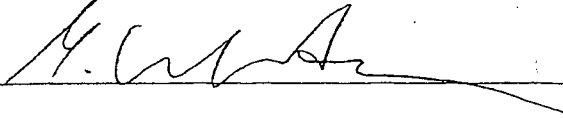
☒ Injury ☐ Illness ☐ Repetitive-Trauma

1. Comp. Rate: See Form 20 2. AWW: \$See Form 20 Date of Injury September 12, 2010
3. Type of injury and body part(s): The injured worker sustained compensable injuries to the back, neck, and right knee as a result of his accident on December 30, 2010.
4. Facts in controversy: Whether the injured worker has reached maximum medical improvement, whether the Employer/Carrier is entitled to any credit for overpayment of benefits during the course of this claim; whether the injured worker is entitled to any additional medical treatment, temporary total disability benefits, and/or permanent total disability benefits.
5. Legal issues involved: Section 42-1-160; Section 42-9-30; Section 42-15-60; Section 42-9-260.
6. Unusual aspects: None anticipated. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to appropriately exercise due process rights afforded by law to cross-examine, respond to, and otherwise oppose the evidence presented by the Claimant.
7. Witnesses (designate if expert) Audrey Williamson, and/or other representatives of the Employer may be called to testify in response to the injured worker's testimony including his current supervisor.
8. Exhibits: Deposition of the injured worker; Interactive Process Form by Lowe's dated 09/16/11 consisting of 1 page; additional portions of the injured worker's personnel file and/or wage information may be submitted at the hearing in response to the injured worker's testimony.
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) Doctor's Care dated 10/07/10 to 10/19/10 consisting of 8 pages; Thomas Armsey, M.D., Midlands Orthopaedics dated 11/01/10 consisting of 3 pages; Lexington Medical Center dated 11/09/10 consisting of 9 pages; Randall G. Drye, M.D., dated 11/08/10 to 06/18/12 consisting of 12 pages; W. Daniel Westerkam, M.D., dated 11/17/10 consisting of 5 pages; Palmetto Imaging dated 10/21/10 consisting of 1 page; Lexington Medical Center - Radiology Department dated 11/04/10 consisting of 5 pages. The Defendants may rely upon certain portions of the medical evidence as submitted by the Claimant. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to procure the deposition testimony of physicians listed by the Claimant, if necessary.
10. Name, address, and specialty, if any, of the treating physician: Randall G. Drye, M.D., Columbia Neurosurgical Associates, 132 Sunset Court, West Columbia, South Carolina 29169.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Drye determined the injured worker reached maximum medical improvement on June 7, 2011 and assigned a 25% whole person impairment rating. The injured worker has permanent work restrictions of no standing or walking for more than an hour without the ability to sit for a brief period of time and is prohibited from climbing heights or repetitively climbing stairs and repetitive overhead reaching and is restricted to carrying less than 30lbs. occasionally.

12. I am amending my Form 50/51 in the following manner: - 145 -

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

SIGNATURE



Email: kmorrow@mqclaw.com

DATE OF HEARING: September 25, 2012

Time needed for hearing: 45 minutes

On behalf of ☐ Claimant ☒ Employer

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

WCC FORM # 58 REV. DATE 9/07

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
HARBISON,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,

Carrier,

Defendants.

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
~~TO BE INTRODUCED AS~~
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1.		Doctor's Care	10/07/10 to 10/19/10	1-8
2.	Thomas Armsey, M.D.	Midlands Orthopaedics	11/01/10	9-11
3.		Lexington Medical Center	11/09/10	12-20
4.	Randall G. Drye, M.D.		11/08/10 to 06/18/12	21-32
5.	W. Daniel Westerkam, M.D.		11/17/10	33-37
6.		Palmetto Imaging	10/21/10	38

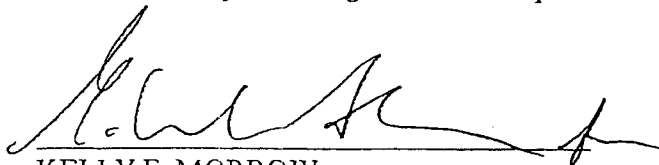
7.		Lexington Medical Center – Radiology Department	11/04/10	39-43

EX#	EXHIBIT	DATES	PAGES
Ex. 1.	Interactive Process Form by Lowe's	09/16/11	44

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Audrey Williamson, and/or other representatives of the Employer may be called to testify in response to the injured worker's testimony including his current supervisor.



KELLY F. MORROW
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
September 10, 2012

10/19/2010 TUE 12:30 FAX 803 551 5477 Doctor's Care-Seven Oaks

RECEIVED: 10/19/2010 12:30 PM

853-868

CHECKOUT TIME

430P
BIAM ROOM TIME

ACCOUNT NUMBER	DATE	TIME	LOCATION	TIME
10237	10/07/10 THURSDAY	04:20pm	DC SEVEN ORKS,	19500

NAME & ADDRESS
CLEMMONS, HENTON

DOB: 3 years)

GENDER: F

ISS:
CELL:INSURANCE
BALANCE \$0.00ACCOUNT
BALANCECURRENT
CHARGESAMOUNT
PAIDNEW
BALANCE

CASH - CHECK - M.O.

WPK:

INSURED: CLEMMONS, HENTON

RELATION: OTHER

INS: WCALOWES **USE FOR ALL**

REASON: - Fall in straw truck caused back & leg injury

NICKNAME:

COPAY: WKC

"Tommy"

Personal Hx Family Hx Social Hx
DM ☒ HTN ☒ Alcohol ☒
Tobacco ☒

R/S (/ or O): Fatigue, Wt. Loss, Fever,
Chills, Nasal Congestion, Sinus Pain, Sore
Throat, CP, SOB, Cough, Sputum, Wheez-
ing, ABD Pain, N, V, D, Constip., Dysuria,
Freq., Urgency, Back Pain, Pelvic Pain, Vag.
D/C, Headache, Syncope, Rash
☐ All others negative

Allergies:

Medications:

NKDA
Lisinipril
crestor
metoprolol
plavix

Prev. chart rev. to sig chg Above Hx reviewed

WGT 292 124 108 16 987
Pulse 108 Resp 16 Temp 98.7

Chief Complaint

PHYSICAL: (see reverse) Omit if N/A
(✓ if nmt, 0 if a nmt & give details)

☐ General
☐ HEENT
☐ Neck
☐ Nodes
☐ Lungs
☐ CV
☐ Abd
☐ Back
☐ Ext
☐ GU
☐ Neuro
☐ Skin/Breasts

☐ I.V.
☐ Injection
☐ Nebulizer
☐ Procedure
☐ Labs - Send Out

c/o low back pain - 1 month
h/o Fall off truck - hand ground
Pain radiates down legs Rt. > Lt.
no prior h/o Back problem
o/e. Back: tender over lumbar spine
positive
S K R T - 2

3 CBC
3 EKG
6 FBS
U Pu
U Home
U HbA1C
U H Pylori
U KOH
U Microalb
Q Mono
Q Strep
Q UA
Q U Preg
Q Wet Prep
Q X-Ray

72100

ASSESSMENT / DIAGNOSIS:

Back Strain 847.9 849.3

☐ Patient Care/Instructions Discussed:
☐ Lifestyle Modification
☐ Preventative Recommendation(s)
☐ Prescription/OTC Meds
☐ Side Effects Discussed
Date to Return:
☐ If worse:
☐ If not better:
☐ For Follow-Up:
Go to ER if:

Referrals, Tests, Treatments

① skel-x - 600 - bid #30
② PT
③ up to Dnt
C# 3010107878001F

PSR Notes:

99203 = 141.55
72100 = 52
NEW

Off Work / School

Sign:

1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the prices of medicine and other health care professionals is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctors Care.
2. I consent to the use and disclosure of my/their patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctors Care Notice of Privacy Practices.
3. I authorize any and all medical benefits to Doctors Care physicians or their designees for services rendered.

Patient or Authorized Person's Signature:

Date: 10-7-10

4. Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation regarding my medical records and the information I have received or will receive.

Patient or Authorized Person's Signature:

Date:

10/18/2010 13:00 8037983335

PAGE 02

EXAM ROOM TIME

RECEIVED: 10/18/2010 14:14 PM
CHECKOUT TIME 863-668-9553

ACCOUNT NUMBER	DATE	TIME	LOCATION	TICKET
102837	10/07/10 THURSDAY	04:20pm	DC SEVEN OAKS,	19S1953

NAME & ADDRESS: CLEMONS, HENTON 357
DOB: [REDACTED]
GENDER: F
INSURANCE BALANCE: \$0.00
ACCOUNT BALANCE: \$0.00
CURRENT CHARGES: [REDACTED]
AMOUNT PAID: [REDACTED]
NEW BALANCE: [REDACTED]
CASH: [REDACTED] CHECK: [REDACTED] M.O.: [REDACTED]

W PK:
INSURED: CLEMONS, HENTON
INS: WEDLOWES **USE FOR ALL**
REASON: - Fall in street, twisted back & leg injury
NICKNAME: "Tommy"
RELATION: OTHER
COPY: WKC

Personal Hx Family Hx Social Hx
DM - DM + Alcohol -
HTN + HTN + Tobacco -

ROS (I or O): Fatigue, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Sore Throat, CP, SOB, Cough, Sputum, Wheezing, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash
All others negative

Allergies:

Medications:

NKDA
Lisinopril
Crestor
Metoprolol

Prev. chart rev., no sig chg. Above Hx reviewed

WGT 292 BA 124 Pulse 108 Resp 16 Temp 98.7
Pulse Ox LMP
Chaperone Tetanus

PHYSICAL: (see reverse) Don't if N/A
If nml. O if abnml. & give details

General

HEENT

Neck

Nodes

Lungs

V

Back

Ext

GU

Neuro

Skin/Breasts

I.V.

Injection

Nebulizer

Procedure

Lab - Send Out

Chief Complaint:

HPI

c/o low back pain - 1 week
h/o fallen off ladder in home garden
no prior h/o back problem
o/c back pain over last week
persistent spine
SLR +ve

CBG
EKG
FBS
Flu
Heme
HgbA1C
H. Pylori
MDH
Microb
Mono
Srep
UA
U-Prop
Wet Prep
X-Ray

72100

ASSESSMENT / DIAGNOSIS:

Back Strain 847.9 849.3

Patient Care Instructions Discussed:

Lifestyle Modification

Preventative Recommendation(s)

Prescriptions / OTC Meds

Side Effects Discussed

Date to Return:

If worse:

If not better:

For Follow-Up:

Go to ER if:

Referrals, Tests, Treatments

(1) Skel-X - 500 - 100 #30
(2) PT
(3) Leg br Dk

PSR Notes:

99203 = 141.56
72.00 = 52

Off Work / School

Self:

I, [Signature], hereby authorize the use of my health care information for purposes of obtaining payment for services rendered to me by the patient, treatment and health care operations consistent with the patient's privacy preferences.

Patient or Authorized Person's Signature:

Date:

I, [Signature], hereby authorize the use of my health care information for purposes of obtaining payment for services rendered to me by the patient, treatment and health care operations consistent with the patient's privacy preferences.

Patient or Authorized Person's Signature:

Date:

10/19/2010 TUE 12:31 FAX 803 551 5477 Doctor's Care-Seven Oaks

0007/00

RECEIVED: 10/19/2010 12:37 PM
863-668-8833

Return To Work Form

- ☐ 4416 ... Drive, Suite A, Columbia, SC 29206 (803) 738-092
☐ 247 ... Via Avenue, Lexington, SC 29072 (803) 359-553
☐ 1029 ... Street NE, Aiken, SC 29801 (803) 648-4119
☐ 10040 Two Notch Road, Columbia, SC 29223 (803) 788-1153
☐ 4214 Hardcastle Road, Columbia, SC 29223 (803) 736-8996
☐ 160 Jimmy Love Lane, Columbia, SC 29212 (803) 772-5030
☐ 2475 Broad Street, Sumter, SC 29150 (803) 778-5555
☐ 2336 Augusta Road, W. Columbia, SC 29870 (803) 939-0544
☐ 3240 Sunset Blvd, West Columbia, SC 29169 (803) 796-1234
☐ 1520 Knox Avenue, N. Augusta, SC 29841 (803) 279-4120

Name: Henton ClemmonsArrival Time: 3:52

Discharge Time: _____

Date: 10/7/10Company Name: Lowes

WORK STATUS: (Check Appropriate Boxes)

☐ 1. May perform full duty activities as of _____ without accommodations.☐ 2. Off duty due to work-related condition.

Estimated return to work date with modified duty: _____

Estimated return to work date for full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON

10/12Time: 12:00 Noon☐ 3. May work with the following accommodations as of: 10/07☒ No lifting more than 20 lbs.☒ No operation of hazardous or fast-moving machinery, no driving.☒ Ground level work only, no ladders or heights.☒ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.☒ No continuous standing and/or sitting. can alternate☒ Minimal walking or climbing (including stairs)☒ Limited use of Back☒ No overhead lifting.☐ No high repetitive hand activities for extended periods of time.☐ No use of _____☐ 4. Has reached Maximum Medical Improvement (MMI)☐ 5. Return for re-evaluation at this office on10/12Time: 12:00 Noon

Additional Comments:

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Back strain

Medications:

☐ as directed☐ as needed

Wound or Injury Care:

☐ keep dry and clean☐ do not remove dressing☐ elevate extremity☐ warm soaks☐ ice every _____☐ apply heat every _____☐ wear elastic support/immobilizer/keep taped☐ home exercise instructions given☐ follow instructions sheet given☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: PT

Date: _____

Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: Anthony ClemmonsDate: 10/10

Physician Signature: _____

AC # 3010107801F

MED-FC-15-107-101

10/19/2010 TUE 12:30 FAX 803 551 5477 Doctor's Care-Seven Oaks

RECEIVED: 10/19/2010 12:23 PM

863-668-9555

DEPART TIME [REDACTED]

FIG. 1

ACCOUNT NUMBER	DATE	TIME		
10837	10/09/10	12:23pm	DC SEVEN OAKS,	195326

NAME & ADDRESS ELEMONS, HENTON 1703	DOB: 05-05-38 (38 years)	INSURANCE BALANCE \$233.50

SA (2) GENDER: ~~F~~ M ACCOUNT

317	70	IBB:	BALANCE	7000
			CURRENT	

CELL:	CURRENT CHARGES

INSURED: CLEMMONS, HENTON	RELATION: OTHER	AMOUNT PAID

INFO: MD/LOWES *USE FOR ALL** REASON: - MD FOLLOW UP 1/25/88	NEW

NICKNAME: 12m COPY: WKC

Tommy) □ □ □

Personal Hx DM	Family Hx DM	Social Hx Alcohol	ROS (I or O): Fatigue, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Sore	Allergies:

HTN + HTN + Tobacco + Throat, CP, SOB, Cough, Sputum, Wheezing, ABD Pain, N, V, D, Constip., Dysuria

Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C. Headache, Syncope, Rash	Medications:

Prev. chart rev. , no sig chg _____ Above Hx reviewed ☐ All others negative

Ward	1394	104	6	982	☐ Pulse Ox _____ ☐ Chaperone _____	☐ Dexam _____ ☐ Tetanus _____	Ureter _____ ☐ Med/Lit Reviewed _____	Net Oprolat

PHYSICAL: (see reverse) Omit if N/A	Chief Complaint	DOB

☒ General

☐ HEENT ☒ Neck ☒ WDRN WML in LTD ☒ Hand a hand ☒ w/ sh = bell flat

☐ Nodes *nodes*
☐ Lungs *on back*

☐ CV
☐ Abd

R. Kiff - mtd *seen 10/7 - mtd*

☐ Back *diffuse* *Stella*
☐ Ext *Stella*

☐ GU ☒ GU ☐ Neuro

Q Skin/Breasts	10/1/00	Q 10/1/00

☐ I.V.
☐ Injection

☐ Nebulizer
☐ Procedure

8179 88493 7744

☐ Labs - Send Out

ASSESSMENT / DIAGNOSIS: Low back pain / radiculopathy

☐ Patient Care Instructions Discussed:	Referrals, Tests, Treatments	PSR Notes:

☐ Lifestyle Modification

☐ Preventative Recommendation(s) 071509 *full immobilizer 99214-101*

U Prescription = 077
U.S. 749 BASIC KNEE SPLINT
ATT. Time 1830 = 9183

Date: 79-96019-004

01#344477878001E

W. Forrow-Up: _____

Off Work / School /

1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice

2. I consent to the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations ~~and~~

3. I authorize payment of medical benefits to Doctors Care physicians or their designees for services rendered.

4. Workers' Compensation patients: I hereby authorize Doctors Care in conjunction with a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation.

patient or authorized Person's Signature: _____ Date: _____

10/19/2010 TUE 12:30 FAX 803 551 5477 Doctor's Care-Seven Oaks

RECEIVED: 10/19/2010 12:30 PM

863-668-8383

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME
14337	10/12/10	12:25pm	DO SEVEN OAKS,

NAME & ADDRESS	DOB:	INSURANCE BALANCE
CLEMMONS, HENTON	11/46	\$506.33
GENDER: M	AGE: 40 years	ACCOUNT BALANCE
ISS: 156	CELL:	\$506.33
RELATION: OTHER		CURRENT CHARGES
REASON: WKO F/U		AMOUNT PAID
NICKNAME:		NEW BALANCE
COPAY: WKO		CASH / CHECK / M.O. / CC

Personal Hx	Family Hx	Social Hx	ROS (I or O): Fatigue, Wt Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Sore Throat, CP, SOB, Cough, Sputum, Wheezing, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash	Allergies:
DM	DM	Alcohol		NKRA
HTN	HTN	Tobacco		Medications:
Prev. chart rev. D sig chg	By	Above Hx reviewed		W'sinopri Orestor
WGT	Pulse	Temp		Sketaxin metpro
111/10	68	98.3		
PHYSICAL: (See reverse) Omit if N/A	Chief Complaint:			
(✓ if nml., O if abnl. & give details)				
☐ General				
☐ HEENT				
☐ Neck				
☐ Nodes				
☐ Lungs				
☐ CV				
☐ Abd				
☐ Back				
☐ Ext				
☐ GU				
☐ Neuro				
☐ Skin/Breast				
☐ I.V.				
☐ Injection				
☐ Nebulizer				
☐ Procedure				
☐ Labs - Send Out				

ASSESSMENT / DIAGNOSIS:

① Back Strain ② Rt. Knee Strain

☐ Patient Care Instructions Discussed ☐ Lifestyle Modification ☐ Preventative Recommendation(s) ☐ Prescription & OTC Meds ☐ Side Effects Discussed Date to Return: ☐ If worse: ☐ If not better: ☐ For Follow-Up Go to ER if:	Referrals, Tests, Treatments ① Skel-x - 800 - hcl ② PT ③ Light Duty Off Work / School	PSR Notes: 99214 141 ESTAI pm

Staff: 1. I authorize the use of any and all health care history and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the decision of medicine and other health care professionals is not on exact science and I further state that no guarantee has been or can be made as to the results of the treatments or examinations at Doctors Care.

2. I consent to the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctors Care Policy of Privacy Practices.

3. I authorize payment of medical benefits to Doctors Care physicians or their designee for services rendered.

Patient or Authorized Person's Signature: Hester J. Clemmons Date: 10-12-10

1. Workers Compensation patients: I hereby authorize Doctors Care to obtain and use my medical records and treatment I have received or will receive for the purpose of my insurance claim or other professional involvement in my care or rehabilitation regarding my

Patient or Authorized Person's Signature: Hester J. Clemmons Date: 10-12-10

10/19/2010 TUE 12:30 FAX 803 551 5477 Doctor's Care-Seven Oaks

RECEIVED: 10/19/2010 12:29:16 PM
863-668-9553

Ret. To Work Form

- ☐ 850 Aiken Mall Drive, Aiken, SC 29803 (803) 648-1464
☐ 511 Bellline Blvd., Columbia, SC 29205 (803) 782-4051
☐ 1060 Highway L South Lugoff, SC 29078 (803) 438-9739
☐ 977 Knox Abbott Drive, Cayce, SC 29033 (803) 794-0476
☐ 7653 Carners Ferry Road, Columbia, SC 29209 (803) 783-2661
☐ 1736 St. Matthews Road, Orangeburg, SC 29116 (803) 536-0613

- ☐ 4415 Forest Drive, Suite A, Columbia, SC 29206 (803) 738-9522
☐ 211 E Avenue, Lexington, SC 29072 (803) 359-5533
☐ 10001 Sunset Blvd., Aiken, SC 29801 (803) 648-4119
☐ 10040 Two Much Road, Columbia, SC 29223 (803) 788-1153
☐ 4214 Hardacre Road, Columbia, SC 29223 (803) 736-8953
☐ 100 Jimmy Love Lane, Columbia, SC 29222 (803) 772-5030
☐ 2475 Broad Street, Sumter, SC 29150 (803) 778-6555
☐ 2836 Augusta Road, W. Columbia, SC 29170 (803) 939-0545
☐ 3240 Sunset Blvd., West Columbia, SC 29169 (803) 796-4251
☐ 1520 Knox Avenue, N. Augusta, SC 29841 (803) 279-4120

Name: Henton Clemmons Arrival Time: 1146 Discharge Time: _____
 Date: 10/12/10 Company Name: _____

WORK STATUS: (Check Appropriate Boxes)

- ☐ 1. May perform full duty activities as of _____ without accommodations.
☐ 2. Off duty due to work-related condition.
 Estimated return to work date with modified duty: _____
 Estimated return to work date for full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON 10/19 Time: 12:00pm

- ☐ 3. May work with the following accommodations as of: 10/12/10
☒ No lifting more than 20 lbs.
☒ No operation of hazardous or fast-moving machinery, ~~no~~ driving.
☒ Ground level work only, no ladders or heights.
☐ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
☒ No continuous standing and/or sitting. can alternate
☒ Minimal walking or climbing (including stairs)
☒ Limited use of Back & R. Knee
☒ No overhead lifting.
☐ No high repetitive hand activities for extended periods of time.
☐ No use of _____

☐ 4 Has reached Maximum Medical Improvement (MMI)

☐ 5 Return for re-evaluation at this office on 10/19 Time: 12:00pm

Additional Comments:

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: ① Back Strain ② R. Knee Strain Medications: ☐ as directed ☐ as needed
 Wound & Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks
☐ ice every _____ ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped
☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: _____ Date: _____ Time: _____
 For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employer Signature: Henton Clemmons Date: 10-12-10

Referring Physician: J. Simon Date: 10/12/10

301010778780011F

(MED-7014-107 10)

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**Doctors
Care**

CHECKOUT TIME

- 88 -

10/19/2010 TUE 12:31 FAX 803 551 5477 Doctor's Care-Seven Oaks

RECEIVED: 10/19/2010 12:29 PM
863-668-9555

Return To Work Form

- ☐ 850 Aiken Mall Drive, Aiken, SC 29803 (803) 648-1464
☐ 511 Belhine Blvd., Columbia, SC 29205 (803) 782-4051
☐ 1060 Highway 1, South Lugoff, SC 29078 (803) 438-9759
☐ 977 Knox Abbott Drive, Cayce, SC 29033 (803) 794-0476
☐ 7653 Carrons Ferry Road, Columbia, SC 29209 (803) 783-2661
☐ 1736 Se-Monthorn Road, Orangeburg, SC 29116 (803) 536-0613

- ☐ 4416 Forest Drive, Suite A, Columbia, SC 29206 (803) 734-9522
☐ 247 Columbia Avenue, Lexington, SC 29072 (803) 359-5533
☐ 1029 York Street NE, Aiken, SC 29801 (803) 648-4119
☐ 10040 Two Notch Road, Columbia, SC 29223 (803) 788-1153
☐ 4214 Handscribble Road, Columbia, SC 29223 (803) 736-8925
☒ 100 Jimmy Love Lane, Columbia, SC 29212 (803) 772-5030
☐ 2475 Broad Street, Sumter, SC 29150 (803) 778-6555
☐ 2106 Augusta Road, W. Columbia, SC 29110 (803) 939-0545
☐ 3240 Sunset Blvd., West Columbia, SC 29149 (803) 796-4251
☐ 1520 Knox Avenue, N. Augusta, SC 29841 (803) 279-4120

Name: H. ClemmonsArrival Time: 10:28 AM

Discharge Time: _____

Date: 10-19-10 Company Name: _____

WORK STATUS: (Check Appropriate Boxes)

☐ 1. May perform full duty activities as of _____ without accommodations.

☒ 2. Off duty due to work-related condition.

Estimated return to work date with modified duty: _____

Estimated return to work date for full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON 1 week or FW specialist Time: _____
☐ 3. May work with the following accommodations as of: _____

- ☐ No lifting more than _____ lbs.
☐ No operation of hazardous or fast-moving machinery, no driving.
☐ Ground level work only, no ladders or heights.
☐ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
☐ No continuous standing and/or sitting.
☐ Minimal walking or climbing (including stairs)
☐ Limited use of _____
☐ No overhead lifting.
☐ No high repetitive hand activities for extended periods of time.
☐ No use of _____

☐ 4. Has reached Maximum Medical Improvement (MMI)

☐ 5. Return for re-evaluation at this office on _____ Time: _____
Additional Comments: Recommend initiation of PT / MRI / ES spine
+ FW ortho/neurosurgery

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Back strain / R knee pain Medications: ☐ as directed ☐ as needed
 Wound or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks.
☐ ice every _____ ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped
☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: Johnny Clemmons Date: 10-19-10Provider Signature: L. Greenfield Date: 10-1

11/2/2010 9:52 AM FROM: MOPA Fax TO: 1-863-668-9553,,, PAGE: 002 OF 003

RECEIVED: 11/2/2010 9:59:20 AM
863-668-9553**MIDLANDS**

Robert M. Peele, Jr. MD*Robert M. DaSilva, MD* James A. O'Leary, MD
 Michael R. Ugino, MD*Michael S. Green, MD * M. David Redmond, MD*
 William C. James, MD * Robert D. Santrock, MD* Frederick C. Piehl, MD * Thomas P. Gross, MD
 Coleman D. Fowble, MD*Thomas D. Armsey, MD* van LaMotta, MD*Bernard G. Krol, MD

1910 Blanding Street * Columbia, SC 29201 * 1013 Lake Murray Boulevard * Irmo, SC 29063
 2989 Sunset Boulevard, West Columbia, SC 29169
 (803) 256.4107 * www.midlandsortho.com

Initial Exam**NAME:** Clemmons, Henton**DATE:** 11/01/10**EMPLOYER:** Lowe's**REFERRING PHYSICIAN:** Karen Greenfield, MD**ACCOUNT:** 234189**DOB:****Age:** 38 years old**OCCUPATION:** csa**CC:** Low back and right knee pain**DATE OF INJURY/ONSET/SURGERY:** 9/12/10 fell in a straw trailer at work and has had significant ataxia since that time which is progressively worsening. (work related)

HPI: The patient is a 38 years old Caucasian male c/o low back pain and right knee instability that began on 9/12/10 with acute work related injury. Symptoms include daily low back and right knee instability, c/o sharp pain and throbbing in low back, right knee pain, numbness, spasms, weakness, popping, and dragging of the feet, pain is 3/10 in intensity, worsens with standing, bending, walking, and sitting to standing, improves with moving around for short periods of time. Treatment received prior to this visit include exam, xrays, ct scan and meds.

Mr. Clemmons and his mother report that he was a perfectly functional 38-year-old male until his work related accident. Since that time his gait has been severely ataxic, he cannot dress himself because of poor balance, has been bedridden because of his inability to ambulate. He has had multiple falls because of his poor balance which is all reported as no beginning September 12, 2010. He has had ventricular shunts placed as a child.

MEDICAL ILLNESSES:**Past Med Hx:** 16. Heart Attack**Surgical History:** HEART STENT
shunt**Family History:** 01. Arthritis
05. Diabetes
06. Heart Disease
07. High Blood Pressure
08. High Cholesterol**Social History:** 03. Alcohol-None
05. Children-Yes
10. Single
13. Special Diet-Yes
19. Non-Smoker
26. Right Hand Dominance**Allergies:** No Known Allergies**Current Meds:** Crestor
Lisinopril
Metaxalone
Metoprolol

11/2/2010 9:52 AM FROM: MOFA Fax TO: 1-863-668-9553, PAGE: 003 OF 004

RECEIVED: 11/2/2010 8:59:21 AM
863-668-9553

Report Date: November 02, 2010 Patient: Clemmons, Henton T DOS: 11/01/10

REVIEW OF SYSTEMS:

General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT, musculoskeletal, skin and endocrine systems are normal except what is noted: 06. Seasonal/Year round allergies
32. Loss of balance

PHYSICAL EXAM:

Vital Signs HEIGHT: 6'0"
WEIGHT: 289 lbs 0 oz
BMI: 39.2
PULSE: 65
B/P: 136/77

Appearance: moderate distress in a wheelchair - severely ataxic out of chair

Psychiatric: Mood and affect were appropriate.

Skin: Clean, dry, no lesions, no rashes.

Neuro: Alert and Oriented x3.

FOCUSED EXAM: pupils are equally round and reactive, no anisocoria

Lumbar spine: No changes on inspection, no midline tenderness, mild paraspinal tenderness, full strength to flexion/extension/rotation/lateral bending. SLR negative bilaterally, EHL 4/5 bilateral, Waddell test negative.

Patellar and Achilles reflexes are hyperreflexic. Neurovascularly intact at bilateral lower extremities. No atrophy at bilateral lower extremities. Unable to ambulate due to poor balance even with a cane and assistance. Unable to flex and extend lumbar spine due to incredibly poor balance in the office

Right knee exam

Inspection: No erythema, no effusion, no atrophy, small patch of psoriasis anteriorly.

Tenderness: No joint line tenderness, no patella femoral tenderness

Range of motion: 0° to 130°

Motor testing: 5/5 strength to flexion extension

Gait assessment: ataxic

Special tests: Lachman and posterior drawer negative. No instability to varus or valgus stress at 0° and 30°. McMurray negative. Apprehension sign negative.

Left hip:

On inspection there are no skin changes. Palpation reveals no tenderness at the trochanteric bursae and no significant inguinal masses. Pulses are full. Range of motion is full with mild tenderness on cross adduction and no tenderness with extremes of internal and external rotation. Strength 4/5 to hip flexion, extension, abduction, adduction. Hip is ligamentously stable on examination

Right hip:

On inspection there are no skin changes. Palpation reveals no tenderness at the trochanteric bursae and no significant inguinal masses. Pulses are full. Range of motion is full with mild tenderness on cross adduction and no tenderness with extremes of internal and external rotation. Strength 4/5 to hip flexion, extension, abduction, adduction. Hip is ligamentously stable on examination

Radiographs: Ct scan of the lumbar spine: mild central osteophyte at L1/2 with left foraminal stenosis only mild

Procedure:

Assessment: -Acute ataxia after fall
-history of intracranial shunt

Plan: Mr Clemmons has an urgent issue - he is unable to ambulate due to severe ataxia that began acutely after a fall at

11/2/2010 9:52 AM FROM: MOFA Fax TO: 1-563-668-9553,,, PAGE: 004 OF 004
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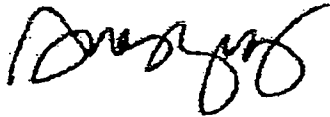
Report Date: November 02, 2010 Patient: Clemmons, Henton T DOS: 11/01/10

work I am concerned about a brainstem or cerebellar lesion, possibly complications from his intraventricular shunts with his recent trauma. I am certain that his ataxia is not coming from his lumbar spine and his right knee has no mechanical abnormalities on clinical exam and therefore his sensation of instability is likely neurologic at the knee as well. I would recommend an immediate neurology or neurosurgery referral. He is essentially wheelchair bound and will not return to work until cleared by a neurosurgeon/neurologist.
Prescriptions: No data for Prescription

Pre-Examination:

WORK STATUS:

☐ Full Time ☐ Part Time ☐ Restrictions ☐ Out of Work ☐ Non-Applicable

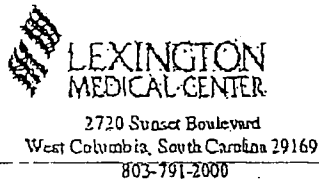


Thomas D. Armsey II, M.D.

Electronically signed
November 01, 2010
5:07 PM

Return Reply Letter(s) - Date: 11/01/10

Greenfield, MD, Karen - SPECIALTY: Family Practice
Hicks, MD, Kimberly - SPECIALTY: Family Practice



95744

OPERATIVE REPORT

PATIENT: CLEMMONS, HENTON T	LOCATION: HNT4P1
ADM. #: H00048418453	M.R. #: M000081012
ADMITTED: 11/08/2010	D: 11/09/2010 1:02 PM
DISCHARGED:	T: 11/10/2010 6:02 AM / alb
PHYSICIAN: RANDALL G DRYE, MD	DATE OF BIRTH:

DATE OF PROCEDURE: November 9, 2010.

PREOPERATIVE DIAGNOSIS(ES): Herniated nucleus pulposus with cord compression and severe myelopathy, C5-6 and C6-7.

POSTOPERATIVE DIAGNOSIS(ES): Same.

PROCEDURE(S) PERFORMED: Radical anterior disectomy, osteophytectomy, and foraminotomy, C5-6 and C6-7, followed by 2-level interbody arthrodesis utilizing tricorticate structural bone bank bone grafts x2, with anterior fixation with Trinica plate, C5 to C7, with fluoroscopic guidance and ongoing neurophysiologic cord monitoring with remote assessment.

SURGEON: Randall G. Drye, MD.

ASSISTANT: Coleman Fravel, PA.

ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: Approximately 50 cc.

FLUIDS: Crystalloid 1300 cc.

COMPLICATIONS: None.

SPECIMEN: Disk material sent to Pathology.

DRAINS: None.

INDICATIONS FOR PROCEDURE: The patient is a 38-year-old gentleman with a history of VP shunt shortly after birth. He was at work when he slipped and fell and shortly thereafter began to develop numbness which progressed from the legs to his thoracic region. In addition, he had developed weakness and this had rapidly progressed to the point that he could not effectively stand and walk. Amazingly, he did not demonstrate obvious urinary or bowel retention or constipation. Imaging studies demonstrated ventriculomegaly. The spinal studies demonstrated a congenitally small canal with degenerative bulging disks and a large disk herniation with superior migration from C6-7 and C5-6. There was a high-signal abnormality within the cord and severe cord compression. The patient was admitted from the office to the hospital where IV steroids were

DEC. 23. 2010 12:50PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 14A

LEXINGTON MEDICAL CENTER

PATIENT: CLEMMONS, HENTON T	LOCATION: HNT4P1
ADM. #: H00048418453	M.R. #: M000081012

begun. He was stabilized and cardiac clearance obtained for surgery. Options were presented to the patient and his family and he elected to proceed with the above-mentioned procedure with a full understanding of the purpose, alternatives, limitations, and risks.

DESCRIPTION OF PROCEDURE: After appropriate consent was obtained, the patient was brought to the Operating Suite where general endotracheal anesthesia was administered without difficulty. Care was taken not to hyperextend the neck during intubation. He received preoperative antibiotics and continued with perioperative steroids. He was placed supine on the operating table with a small roll placed beneath the shoulders and the head supported on an anesthesia pillow in a neutral position. Monitoring leads and electrodes were placed throughout. The right side of the neck was shaved, cleaned, prepped and draped in the usual sterile manner. A localizing needle was placed within a natural skin crease on the right and a fluoroscopic image demonstrated the needle to be at C5. The needle was removed and the skin re-prepped. A slightly lower skin crease was chosen, marked, and the skin infiltrated with 0.5% Xylocaine with epinephrine. The #10 blade was used to incise the skin and the dissection was taken down through the subcutaneous tissues by sharp dissection. Points of bleeding were controlled with the bipole electrocautery. The platysma muscle was split in the direction of its fibers and the avascular plane between the sternocleidomastoid and the medial-most structures was developed by both blunt and sharp dissection. The Kirner instrument was used to sweep the soft tissues from the anterior spine and the longus colli muscles were released bilaterally, allowing placement of a self-retaining retractor. The dental instrument was placed in the upper exposed disk and a fluoroscopic image demonstrated the needle to be at C4-5. C5-6 could be visualized, though C6-7 was obscured by the thickness of his shoulders. The C5-6 level was identified by fluoroscopy and C6-7 was noted to be the next anatomic disk below. With the levels identified, the distraction posts were placed in the body of C5, C6, and C7. Slight disk space distraction was then applied at the lower level. A #11 blade was used to incise the annulus and the annulus and disk material were removed piecemeal with the Love forceps. The cervical curet was used to clean the endplates of additional soft tissue as the discectomy proceeded from front to back. Posteriorly there was an enormous amount of disk material within the canal. With continuous cord monitoring ongoing and the alarm set, the small nerve hook was inserted behind the soft tissue and posterior longitudinal ligament. The ligament was then sharply divided. Immediately we were able to grasp and remove large fragments of disk, particularly from the right side of the canal. The nerve hook was then inserted beneath the C6 vertebral body and we were able to dislodge additional large fragments of cartilaginous disk. The small Kerrison punch was then used to remove additional disk material and foraminotomies were performed. The thecal sac was noted to be quite flattened initially and assumed a more normal rounded caliber with the decompression completed. The exposed canal was then probed with a nerve hook including behind the posterior vertebra and no further compression was noted. The area was copiously irrigated with bacitracin solution and inspected, with no bleeding noted. The sizing instrument was used to choose the appropriately sized bone graft, which was then positioned and tapped into place. With release of distraction there was excellent fixation. The distraction device was then applied at the C5-6 level. This level had some calcification of the anterior portion of the disk and some anterior osteophytes which were removed with the Kerrison punch. The 11 blade was used to incise the annulus and the annulus and disk material were removed piecemeal with the Love forceps. The curets were again used to remove soft tissue as the discectomy proceeded from front to back. At this level there remained some additional disk material which was removed with the nerve hook and up-biting curets. Osteophytic spurs were removed as well with a small Kerrison punch. Again the nerve hook was inserted behind the C6 and C5 vertebra to dislodge additional soft tissue and disk material. The thecal sac assumed a more normal rounded caliber as the decompression was completed. Foraminotomies were performed. The area was again irrigated with bacitracin solution and the bone graft chosen - 161-d and placed in a like manner. The distraction posts

DEC. 23. 2010 12:50PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309—P. 16/24



LEXINGTON
MEDICAL CENTER

2720 Sunset Boulevard
West Columbia, South Carolina 29169
803-791-2000

95744

DISCHARGE SUMMARY

PATIENT: CLEMMONS, HENTON T	LOCATION: HNT4P1
ADM. #: H00048418453	M.R. #: M000081012
ADMITTED: 11/08/2010	D: 11/18/2010 10:02 AM
DISCHARGED: 11/10/2010	T: 11/18/2010 11:50 AM / lte
PHYSICIAN: RANDALL G DRYE, MD	DATE OF BIRTH:
DICTATED BY: JAY ALTEMUS, PA-C	

ADMISSION DIAGNOSIS: Cervical myelopathy.

FINAL DIAGNOSIS: Cervical myelopathy.

PROCEDURES AND DATES PERFORMED: November 9, 2010 anterior cervical discectomy and fusion C5-6 and C6-7.

HOSPITAL COURSE: Patient was admitted the day before surgery with some symptoms of neck and arm pain. He had a history of falling at work September 12, 2010 and had onset of symptoms. Patient's neurologic exam showed strength is 5/5 and he had normal reflexes; however his studies showed cord depression from disk herniation. The patient had a history of a prior placement of a VP shunt in the past. Patient's condition was stable and he went to surgery on the day after admission for the above named procedure. He tolerated this well and was transferred to the recovery room in stable condition. Cardiology saw the patient perioperatively and he had no significant issues and was considered stable throughout his hospital stay. Patient's recovery was uneventful. He was swallowing well and moving all extremities with good strength. Incision was clean and dry and he was allowed to discharge on postoperative day 1.

DISPOSITION/PLAN: Discharge instructions reviewed verbally. Rx Tylox and Flexeril for pain and muscle spasm control. Follow up in 2 weeks.

DATE TIME AM PM

RANDALL G DRYE, MD

cc:

**LEXINGTON
MEDICAL CENTER**
2720 Sunset Boulevard
West Columbia, South Carolina 29169
803-791-2000

95744

HISTORY & PHYSICAL

PATIENT: CLEMMONS, HENTON T	LOCATION: HNT4P1
ADM. #: H00048528988	MR. #: M000081012
ADMITTED: 11/13/2010	D: 11/13/2010 5:17 PM
DISCHARGED:	T: 11/14/2010 3:59 PM / mel
PHYSICIAN: BRETT C GUNTER, MD	DATE OF BIRTH:]
DICTATED BY: RUSSELL MCMURRY, ACNP.	

ADMISSION DIAGNOSIS: Fluctuant myelopathy.

CHIEF COMPLAINT: Inability to care for himself at home with increasing numbness in legs.

HISTORY OF THE PRESENT ILLNESS: The patient is a 38-year-old male status post ACDF of C5-6 and C6-7 by Dr. Drye, done on November 9, who tells me preoperatively he had almost no sensation in his legs but is able to walk fairly well. After surgery he had a boost in sensation but has subsequently declined again with sensation. The family was having considerable difficulty at home today ambulating him, because he seemed to have poor control of his legs. They brought him in to the ED, seeking our assistance.

PAST MEDICAL HISTORY: Hydrocephalus, myocardial infarction, hypertension, cervical myelopathy, AP shunt placement.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: Negative for tobacco, alcohol of illicit drug use.

MEDICATIONS: Crestor, lisinopril, metoprolol, Flexeril, Tylox.

ALLERGIES: None known.

REVIEW OF SYSTEMS: As above, otherwise negative.

PHYSICAL EXAMINATION

VITAL SIGNS: Temperature 99, pulse 76, blood pressure 158/89.

GENERAL: Well-developed, well-nourished appearing, yet moderately obese, in no acute distress.

HEENT: Some mild macrocephaly from hydrocephalus as a child.

NECK: Soft. Incision covered with Steri-Strips.

CV: S1, S2, regular rate and rhythm.

PULMONARY: Clear breath sounds bilaterally.

ABDOMEN: Soft, nontender, nondistended.

SKIN: Warm, dry, intact.

MUSCULOSKELETAL: Moves all 4 extremities. No clubbing, cyanosis or edema.

NEUROLOGIC: Awake, alert, conversant.

DEC. 23. 2010 12:51PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 20/24

LEXINGTON MEDICAL CENTER

PATIENT: CLEMMONS, HENTON T	LOCATION: HNT4P1
ADM. #: H00048528988	M.R. #: M000081012

MOTOR: Strength 5/5 throughout except some spastic movements of lower extremities during examination. Hyperreflexic. Very diminished sensation in lower extremities.

DIAGNOSTIC STUDIES: X-rays of cervical spine show good placement of the hardware.

BNP normal. CBC unremarkable.

IMPRESSION: Fluctuant myelopathy with inability to perform activities of daily living.

PLAN

1. Admit to 4 North Tower.
2. Start low-dose steroids.
3. Medical social worker for inpatient rehab consultation.

DATE

TIME AM PM

BRETT C GUNTER, MD

cc:

DEC. 23. 2010 12:51PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 212



2720 Sunset Boulevard
West Columbia, South Carolina 29169
803-791-2000

95744

TRANSFER SUMMARY

PATIENT: CLEMMONS, HENTON T.	LOCATION: HNT4P1
ADM. #: H00048528988	M.R. #: M000081012
ADMITTED: 11/13/2010	D: 11/17/2010 8:43 AM
DISCHARGED: 11/17/2010	T: 11/17/2010 8:48 AM / lhw
PHYSICIAN: RANDALL G DRYE, MD	DATE OF BIRTH: 12/01/1971
DICTATED BY: COLEMAN FRAVEL, PA-C	

ADMITTING DIAGNOSIS: Fluctuating cervical myelopathy.

DISCHARGE DIAGNOSIS

1. Fluctuating cervical myelopathy.
2. Hematochezia.

PROCEDURES DURING HOSPITALIZATION: None.

CONSULTATIONS: GI.

BRIEF HISTORY: This is a 38-year-old gentleman who underwent ACDF by Dr. Drye for cervical cord compression with myelopathy on November 9. He had ACDF at C5-C6 and C6-C7. Postoperatively, he did well and was ultimately discharged to home. Once he got home, he noted he was having trouble getting around as well as he would like to, and he developed some numbness from his abdomen to his legs. He came into the hospital in the Emergency Department and was evaluated. His power was 5/5, but he had some sensory deficit. He had some plain films of the cervical spine which showed postoperative changes. No acute fractures or subluxation. He was started on IV steroids and placed in the hospital. We got a PT evaluation for rehab placement as it was quite evident that he would be unable to return home in his current condition. The steroids caused his fluctuating myelopathy symptoms to improve, and currently he is without numbness. He was able to get up with therapy today and walk 60 feet. He did report some bright red blood per rectum here during his hospitalization. He did not, however, have any abdominal pain or any reported previous history of bright red blood per rectum. Without a previous diagnosis, GI was consulted for this matter. His HGB was checked because of his reports of large amounts of blood. HGB was 15.4 on November 16. He was not hypotensive or tachycardic during his hospitalization. GI evaluated him and recommended stool softeners on a daily basis. They did not feel that inpatient work-up for GI bleed was warranted and recommended outpatient follow-up in 3 - 4 weeks with colonoscopy and to call the office. At this time, the patient is stable for transfer to inpatient rehab. He has been on a tapering course of Decadron, and we will send him out on some Medrol Dosepak.

FINAL DISPOSITION: Patient will be transferred to rehab today in stable condition. Follow up with Dr. Drye in 3 weeks. Rx Colace 100 mg p.o. daily (#30, no refill), Medrol Dosepak (#1) as directed.

DISCHARGE MEDICATIONS

1. Lisinopril 10 mg daily.
2. Crestor 10 mg daily.
3. Hold aspirin and Plavix as he has been having GI bleeding.

TRANSFER SUMMARY
DATE: 11-16-10

DEC. 23. 2010 12:52PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 - P. 22/24

LEXINGTON MEDICAL CENTER

PATIENT: CLEMMONS, HENTON T	LOCATION: HNT4P1
ADM. #: H00048528988	M.R. #: M000081012

4. Metoprolol 50 mg daily.
5. Flexeril 10 mg daily.

DIET: As tolerated.

DATE TIME AM PM

RANDALL G DRYE, MD

cc:



LEXINGTON
MEDICAL CENTER

DEPARTMENT OF PATHOLOGY & LABORATORY MEDICINE

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Kim R. McMeekin, MD
Beverly W. Daniel, MD
E. Jayne Moffatt, MD
William R. Amos, MD
Robert O. Jones, MD
M. John Spalding, MD

Patient Name:	CLEMMONS JR, HENTON T	Accession #:	L10-13102
Med. Rec. #:	M000081012	Client:	Lexington Medical Center
DOB:		Location:	DISC
Gender:	M	Room #:	493
Soc. Sec. #:		Billing #:	H00048418453W
Physician(s):	Drye, Randall G., MD (113)	Copy To:	
		Taken:	11/9/2010
		Received:	11/9/2010
		Chart #:	

Specimen(s) Received

Cervical material C5-6, 6-7.

Clinical Information

HNP with severe myelopathy; anterior cervical discectomy and fusion. (sh)

Gross Description

Received is an aggregate of pink-tan, irregularly shaped fragments of bone admixed with soft tissue measuring 5.2 x 2.5 x 0.6 cm. RS-2 for decal. (BP:sh 11/9/10)

Microscopic Description

Sections show areas of reactive to even slightly degenerative appearing portions of bone and fibrocartilaginous tissue. Soft tissue does demonstrate foci of neovascularization. No acute inflammatory infiltrates or neoplastic changes are seen.

Diagnostic Opinion:

INTERVERTEBRAL AND VERTEBRAL MATERIAL C5-6, 6-7:

- 1) DEGENERATIVE CHANGES WITH AREAS CONSISTENT WITH HERNIATION.
- 2) NO ACUTE INFLAMMATION OR NEOPLASTIC CHANGES SEEN. (722.0)

MJS:sh 11/10/10 (CLAG)

Electronically Signed Out By Spalding, M. John, MD

Date Finalized: 11/10/2010

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OFFICE CONSULTATION

Patient: Henton T. Clemmons, Jr.
Chart: 95744
Date: 11/8/10

CHIEF COMPLAINT: Fall at work on 9/12/10 with subsequent weakness and diffuse numbness from the chest below.

HISTORY OF PRESENT ILLNESS: The patient is a 38-year-old gentleman who works as a customer service associate for a local hardware store. He has a history of hydrocephalus developing shortly after birth and ultimately had a VP shunt. According to the patient and his family who accompanied him today, there have never been any issues with the shunt requiring any revisions. He states that he was in his usual state of health when at work on 9/12/10. He was climbing into a trailer with straw to help a customer when he slipped on the straw and impacted rather dramatically on his back. He was initially stunned but continued to work. Over the next several days he developed diffuse numbness which has progressed rather rapidly. He describes a change in sensation from below the nipple line in the abdomen and back, including both lower extremities all the way to the feet and toes. He has reached a point where it is difficult for him to walk because of some spasticity and stiffness. He reports some difficulty in initiating both bowel and bladder but he has had no frank incontinence and feels that he is emptying both without retention. He has experienced some spasm in the legs, right greater than left, and has some element of back pain. He was seen by Dr. Kimberly Hicks and multiple imaging studies were done. He denies any headache, visual changes, cognitive or memory problems, and has very little in the way of neck discomfort. In fact, he has only some mild hand tingling and discomfort roughly in a C7 distribution and this was thought to be preexisting carpal tunnel syndrome. He denies any phenomenon such as L hermitte's.

He arrives today at the request of Dr. Kimberly Hicks seeking an urgent neurosurgical evaluation.

HISTORIES: Allergies: NKDA. Medications: Lisinopril, Crestor, metoprolol, aspirin. Illnesses: History of MI with coronary disease and hypertension as well as a history of hydrocephalus at birth. Surgeries: Right-sided VP shunt and cardiac stent placement in September of 2009. Family history and review of systems are well documented in the intake sheet of 11/8/10 and have been reviewed and signed. The information contained is noncontributory except for that in the HPI. Social history: He does not smoke nor drink, is single and employed but has not worked recently.

PHYSICAL EXAMINATION: VITALS: HT 6'0", WT 294

GENERAL: The patient is a well-developed individual who is awake, alert and oriented x3. Speech pattern is normal in form and content with mentation and memory appropriate for age. **HEENT:** Normocephalic and atraumatic. **Neck:** Supple without masses. **Eyes:** Conjugate without scleral injection or icterus. **Vision:** Grossly intact bilaterally. **Hearing:** Present in both ears with normal-appearing ears, nose and throat. **LUNGS:** Clear to auscultation and percussion. **HEART:** RR. **ABDOMEN:** Soft, nondistended, nontender with bowel sounds present. **EXTREMITIES:** No cyanosis, clubbing or edema. Distal pulses are present. **SKIN:** No rashes or gross abnormalities noted. **MUSCULOSKELETAL:** Normal ROM of the cervical spine without tenderness, rigidity or step-off deformity. Lhermitte's sign is absent. Spurling's maneuver is negative. Shoulder ROM is normal without pain, tenderness or crepitus. ROM at the waist is full. Negative SLR bilaterally at 90 degrees. Patrick's maneuver is negative bilaterally. Hip ROM is full and nonpainful. Paraspinal

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Page 2

Re: Henton T. Clemmons, Jr.

11/8/10

muscles and support structures are nontender to palpation with no active spasm, kyphosis or scoliosis present. **NEUROLOGICAL:** Cranial nerve exam: II - Vision is normal to finger recognition and tracks the examiner without difficulty. III, IV, VI - Extraocular movements are intact. V - Sensation on the face is intact to light touch. VII - Muscles of facial expression are normal and symmetric. VIII - Hearing is present in both ears. IX, X - Oropharynx elevates symmetrically in the midline. XI - Strength in the sternocleidomastoid and trapezius is intact. XII - Tongue protrudes normally in the midline. Face is symmetric. Strength is 5/5 bilaterally in all muscle groups of the upper and lower extremities though he has some increased spasticity and tone in the lower extremities bilaterally. DTRs are 2/4 and symmetric in the right upper extremity, 2-3/4 in the left upper extremity, and hyperreflexive bilaterally in the lower extremities. Toes are mute. Clonus is present but nonsustained in both feet. Hoffmann's sign is negative. Touch and pinprick and diminished from the nipple line below bilaterally including the lower extremities circumferentially. Cerebellar function is intact with normal finger-to-nose exam though he walks with a clearly spastic gait.

IMAGING STUDIES: Studies done at LMC include a thoracic MRI that showed some mild degenerative changes and scoliosis, but no true thoracic abnormalities of significance. The MRI of the brain demonstrates the right-sided ventricular catheter in place with ventriculomegaly that is likely arrested hydrocephalus. MRI of the cervical spine demonstrates a large right paracentral disc herniation with superior extension behind the C6 vertebral body creating a severe stenosis and cord compression. The cord does demonstrate some high signal abnormality. There is also a bulge at C5-6.

IMPRESSION/PLAN: Mr. Clemmons presents with cord compression and myelopathy which is advancing from what I believe is a disc herniation at C6-7 and a significant bulge at C5-6. I am quite alarmed at his presentation and the rapidity of his symptoms and feel that this makes surgery a reasonable consideration. We have spent well beyond one hour together reviewing the findings, the correlation to his symptoms, treatment options, both surgical and nonsurgical, as well as prognosis. I have emphasized that spinal cord injuries have variable recovery and that the surgery is primarily meant to prevent a worsening of his situation. I have, with his permission, described a two level ACDF and possible corpectomy and have discussed the rationale, the alternatives, the anticipated hospital course and long-term outcomes. We have discussed the purpose of fusion as well as the pros and cons of bone bank vs. autologous bone and plating. I have described the circumstance where a corpectomy would be necessary if the disc cannot be adequately decompressed from above and below. We have discussed the consequences of fusion as well as anticipated recovery. I have addressed his questions as well as those of his family to the best of my ability.

Mr. Clemmons is inclined to go forward with surgery and I would like to admit him today and begin some IV steroids with possible cardiac clearance. However, I would like to proceed as soon as tomorrow with the above surgery if we are able to do so.

I do wish to thank Dr. Hicks for the kind referral and for allowing me to participate in the care of this patient.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Dye, MD

RGD / MEH

CNAWT: 4021

Faxed To: Kimberly Hicks, MD

11-16100710701

DEC. 23. 2010 12:51PM

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November 10, 2010

Kimberly Hicks, MD
Faxed

Patient: Henton T. Clemmons, Jr.
Chart: 95744

Dear Dr. Hicks:

I wanted to make you aware of the hospitalization and surgery regarding Henton Clemmons.

As you may recall, he presented with progressive and severe myelopathy and had reached a point where he could effectively stand and walk. His MRI of the cervical spine demonstrated very severe cord compression at C5-6 and C6-7 from disc pathology. We achieved cardiac clearance and proceeded with surgery the following day.

Mr. Clemmons underwent an ACDF at C5-6 and C6-7 and we were able to decompress the cord with neurophysiologic monitoring during the case. His numbness improved as soon as we completed the surgery and I am pleased to report that postoperatively his numbness has resolved. He is now walking with less spasticity and is able to stand and maneuver quite well. He is quite pleased with his outcome as am I.

Mr. Clemmons is going home on postoperative day one with follow-up arranged in our office within two weeks. I am trying to arrange outpatient physical therapy to help him regain his strength and balance. We will certainly keep you informed as we see him in follow-up, but I did want to make you aware of his condition, his surgery and his progress. As always, it is a pleasure to share in the care of one of your patients and I thank you again for that opportunity.

Sincerely,

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Drye, MD

RGD/MAH

CNAWT: 4022

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POSTOPERATIVE ONE VISIT

Patient: Henton T. Clemmons, Jr.
Chart: 95744
Date: 11/24/10

SURGERY: ACDF, C5-6, C6-7 with BBB/Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his parents as he remains an inpatient at HealthSouth. He reports that his overall condition is markedly improved. He has recovered what he estimates as 90% of normal sensation and is having little problems with bowel or bladder control or retention. He does, however, still have some difficulties with proprioception and some mild spasticity in the lower extremities affecting his gait. He is working on this diligently in therapy and there are plans for him to move to outpatient daily therapy after his discharge. He is having no issues with pain, has had no problems swallowing, and his incision is well healed. He and his family report that they have retained an attorney regarding his apparent fall at work which he reported at the time of his initial evaluation.

On physical exam, he is able to stand and walk but again shows some signs of spasticity. There is some increased bone bilaterally in the lower extremities with relatively normal strength and tone in the upper extremities. His individual muscle group power appears to be 5/5 bilaterally throughout.

Mr. Clemmons is making good progress and I have encouraged him along these lines. I think the rehab program has benefited him and would strongly encourage him to complete both inpatient and outpatient PT. I would like to see him back in four weeks with a flexion and extension x-ray to assess the operative construct and certainly he is not able to return to work at this time.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Drye, MD

RGD/MAH

CNAWT: 4020

DEC. 23. 2010 12:52PM

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NO. 7309 P. 24/24

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November 30, 2010

Mr. Preston McDaniel
Fax 803.252.0709

Patient: Henton T. Clemmons, Jr.
Chart: 95744

Dear Mr. McDaniel:

The following is dictated in response to your inquiry regarding Henton Clemmons.

Mr. Clemmons was seen in our office with signs and symptoms of severe myelopathy and was found to have definite spinal cord compression from disc herniations at C5-6 and C6-7. When we met in the office initially and we garnered his history, he clearly reported no prior history of significant neck or neurologic problems prior to a fall at work. This occurred, according to the patient, on 9/12/10 when he slipped on some straw in a trailer and impacted on his back and the back of his head. This mechanism of injury is completely consistent as the force and flexion of the head and neck can result in the tear of vulnerable discs and subsequent herniation. In fact, his pattern of progressive symptoms involving the upper and lower extremities that evolved over time is also consistent with the progression of the disc herniation with continued activity. Mr. Clemmons' condition was perhaps worsened by the fact that he has congenital stenosis of the spine but again by history, he reports no prior symptoms of radicular nature or spinal cord dysfunction. For that reason I believe that within a reasonable degree of medical certainty, his disc herniations, spinal cord impingement and subsequent myelopathy as well as the intervening surgery were a direct result of his fall at work.

As you are aware, Mr. Clemmons needed fairly urgent surgery and this has been completed. He is currently in the rehab phase and we are very hopeful that he will regain function over time.

I hope this information is helpful to you in your efforts on behalf of Mr. Clemmons.

Sincerely,



Randall G. Drye, MD

RGD/MAH

CNAWT: 4022

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OFFICE VISIT

Patient: Henton T. Clemmons, Jr.
Chart: 95744
Date: 12/29/10

SURGERY: ACDF C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today having left HealthSouth and now involved in twice a week outpatient rehab. He continues to do exceedingly well. His major problems are loss of stamina and he finds some limitation in the ability to walk for long distances. His lower extremity strength and coordination however is markedly improved. In addition, he reports near normal sensation and strength in the upper extremities and has very minimal neck discomfort. At this stage, he has not been driving and I see no contraindication to him beginning to drive once more.

On physical exam, his incision is healed nicely. He is able to flex, extend and rotate the neck quite reasonably. He has no spasm or point tenderness posteriorly. His upper extremity strength is normal and he has some mild increased tone in the lower extremities.

IMPRESSION/PLAN: Mr. Clemmons is continuing to make progress and I think it is important for him to begin to normalize his activities within reason. I have given him the okay to begin to drive and would like for him to continue with his outpatient rehab. We discussed the possibility of light duty and half day return to work. He will discuss this with his employer and let us know if we need to write such a release. He is certainly not at a point of assuming his normal full schedule at work. Otherwise, we will plan on seeing him back in approximately eight weeks.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Drye, MD

RGD/SB

CNAWT: 4020

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OFFICE VISIT

Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 2/16/11

SURGERY: ACDF, C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his mother. He has been actively involved in physical therapy and it appears that he is benefiting greatly. He has regained strength in the upper extremities and is ambulating more effectively. He does still state that his legs feel "heavy" and are at times hard to move. He is not reporting any major pain issues. He has been doing some aquatic therapy and the therapists seem to indicate that he could benefit from a bit more PT and dedication on his own part. We have discussed this.

On physical exam, his incision has healed well. He is able to flex and extend with only mild loss of range of motion. He has no tenderness or pain. His upper extremity sensation is subjectively normal throughout. He has no hyperreflexia in the upper extremities, and has 4+/5 grip bilaterally. In terms of his lower extremities he does have some mild increase in tone with slightly more hyperreflexive reflexes. His toes are downgoing and there is no sustained clonus.

IMPRESSION/PLAN: Ms. Clemmons was unable to return to work with the requested restrictions. I certainly agree that he needs to dedicate himself to ongoing recovery and would like to continue with physical therapy as well as his home exercise program. At this stage he simply needs more recovery and rehab, and we will plan on seeing him back in approximately eight weeks. I have written for him to return to work with the previously outlined restrictions though this does not appear to be feasible from the employer's standpoint.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Drye, MD

RGD/MAH

CNAWT: 4020

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OFFICE VISIT

Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 4/12/11

SURGERY: ACDF, C5-6, C6-7, with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his mother. He apparently has not been continuing in physical therapy as we had requested because of some coding error and failure of workman's comp to pay the therapist. In any event, he has been going five or six days a week to the gym and continuing the exercises he had learned.

His major problem and concern today is that of continued difficulties with the legs. At times he feels there is less than optimal control, particularly if he is trying to walk and carry something. He has no real pain involving the legs and his strength and sensation in the upper extremities have recovered quite nicely. He has little complaints of pain referable to the neck. He uses a cane for support. He denies any bowel or bladder incontinence or retention. He is very pleased with the outcome of his surgery and yet is becoming a little disappointed that he has not shown full recovery. We spent considerable time again recounting his injury, how severe it might have been and the fact that he has made great strides.

On physical exam, he has some residual hyperreflexia but no sustained clonus. There is certainly increased tone in the lower extremities but this is unchanged from his previous exam. His individual strength appears normal. He does have some altered proprioception in the lower extremities bilaterally. His upper extremity exam demonstrates good return of function.

IMPRESSION/PLAN: Mr. Clemmons has not been back to work as they could not accept the restrictions. I have written a return-to-work statement with the same restrictions and would like for him to resume physical therapy and ask his carrier to work out any problems in terms of their part in funding the therapy which I think is exceedingly important. We also have touched upon the possibility of voc rehab as it is unlikely he will be able to return to his previous level of physical employment. I would like to see him back in eight weeks as he continues in the rehab phase.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Randall G. Drye, MD

RGD/MAH

CNAWT: 4020

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Date: April 20, 2011

Ms. Glee Henderson
Faxed (803)252-0709

Patient: Henton T. Clemmons, Jr.
Chart: 95744

Dear Ms. Henderson:

The following is dictated in response to your fax request of April 15, 2011 regarding Henton Clemmons.

Mr. Clemmons continues to try to recover from a cervical spinal cord injury with myelopathy and as indicated in my office notes, I do feel that physical therapy is medically indicated and necessary in order for Mr. Clemmons to shorten his period of disability from the injuries sustained from his work-related accident. He is showing good progress with therapy and is trying to do what he can on his own. I do believe that within a reasonable degree of medical certainty, the therapy is indicated and would improve his mobility and ability to return to some form of employment. I have strongly advocated therapy and I support this quite adamantly. Any efforts that you could make to try and assist in this endeavor would be greatly appreciated.

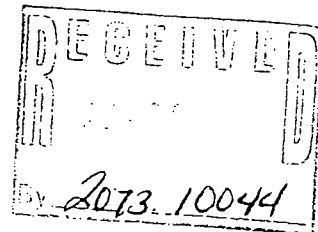
Sincerely,

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Randall G. Drye, MD

RGD/LH

CNAWT: 4022



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OFFICE VISIT

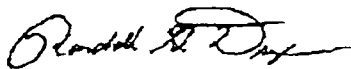
Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 6/7/11

SURGERY: ACDF, C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his mom. He has completed a full course of physical therapy and feels that it has been quite beneficial. He continues to do his exercises at home and is walking three times a week. He has some slight discomfort in the base of the neck but no significant postoperative pain. He has regained relatively normal function in the upper extremities with no major complaints of numbness, tingling or weakness. His gait is still slightly unsteady and he has some difficulty with balance likely owing to some mild residual spasticity and perhaps proprioceptive deficits. He appears quite comfortable today.

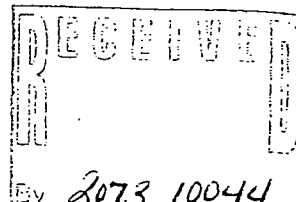
On physical exam, his incision has healed quite nicely. He is able to flex, extend, and rotate the neck with reasonable range of motion. He has no tenderness. His upper extremity strength appears to be 5/5 bilaterally throughout as well as in the lower extremities. There is perhaps some very mild increase in tone in the legs bilaterally though his reflexes are symmetric and not particularly hyperactive. He has no sustained clonus.

IMPRESSION/PLAN: Mr. Clemmons has done quite well from his surgery though he continues to have some very mild myelopathic signs. We have again discussed spinal cord injury and recovery which may take up to a year. At this stage it appears that he is doing quite well and I think has reached a point where he is at MMI. We have discussed his return to work which would certainly need to include some permanent restrictions by way of protecting his spine. I have written for a return-to-work statement with permanent restrictions of no standing or walking for more than an hour without inability to sit for a brief period of time. I do not think he should be climbing heights or repetitively climbing steps, should avoid any repetitive overhead reaching and should lift or carry less than 30 pounds only occasionally. If his employer is unable to fulfill these restrictions he would likely be a candidate for voc rehab. I have referred to the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, and would assign him to the DRE Cervical Category 4 resulting in a 25% whole person impairment based on his injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. He is being released today at MMI with the above conclusions and recommendations.



Randall G. Drye, MD
THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED
RGD/MAH CNAWT: 4020

Faxed to: Chandrica Moore, CCM; Kimberly Hicks, MD



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OFFICE VISIT

Patient: Henton T. Clemmons, Jr.
Chart: 95744 WC
Date: 6/18/12

SURGERY: ACDF, C5-6, C6-7 with BBB and Trinica for HNP with myelopathy, 11/9/10.

Mr. Clemmons returns today accompanied by his mother having been last seen and released approximately a year ago. At that point he had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. Nonetheless we were able to return him to work with some physical restrictions and he is back at work primarily as a cashier. Mr. Clemmons reports that he has some persistent stiffness and pain in the base of the neck which does not radiate into the upper extremities. In fact, he denies any recurrent symptoms in the arms or hands. The neck pain as well as an element of back pain are worse in the morning and seemed to improve as he moves about. Even at work he will often do the previous stretching exercises and changing of posture that he learned in physical therapy. He denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as a long-standing, pre-injury inversion of the right foot and ankle. His mother confirms that this has forever been a problem as he wears out shoes in the lateral aspect. He has no bowel or bladder incontinence or retention and otherwise is doing well. He arrives today having undergone cervical and lumbar MRIs for a check for possible change in condition.

On physical exam, he is quite comfortable in the seated position. He has some mild tenderness in the posterior cervical and lumbar region with no active spasm. He does appear to have gained considerable weight, however. He has a negative SLR bilaterally at 90 degrees and has negative Lhermitte's and Spurling's sign. His strength appears to be 5/5 bilaterally throughout, including all muscle groups of the upper and lower extremities. He does have some mild hyperreflexia in the lower extremities relative to the upper extremities with preserved sensation. There is no evidence of dorsiflexion weakness although his eversion is perhaps diminished on the right which again is a long-standing preinjury problem.

IMAGING STUDIES: Cervical MRI as well as lumbar study done at LMC were reviewed and the results shared with the patient. He appears to have healed beautifully from his surgery with what appears to be a stable operative construct with instrumentation. There was no residual high degree of canal stenosis, no obvious impingement of the cord. There is CSF surrounding the cord at the operative levels. At the adjacent levels above, C3-4 and C4-5, there is some spondylitic change and broad based disc bulge which has not progressed significantly from his previous study. There is CSF surrounding the cord with no evidence of new pathology. The lumbar study demonstrates a disc protrusion at L1-2 eccentric to the left with some effacement of the CSF around the conus. At L5-S1 there is a very advanced degenerative disc with disc space collapse, associated Modic changes within the endplates and a generalized bulge. The canal, however, is otherwise patent and I see no evidence of any direct nerve root impingement or large disc herniation.

IMPRESSION/PLAN: Mr. Clemmons, his mother and I have discussed the findings which for the most part are reassuring. His symptoms are more consistent with axial and myofascial pain and the pattern is strongly suggestive of arthritic-type symptoms. I have encouraged him to continue with what he is doing in terms of stretching and movement and I have advised him to try and lose some weight as this would likely help with the lumbar problem. We have discussed the natural history of

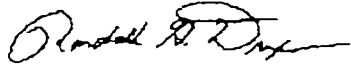
COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Page 2

Re: Henton T. Clemmons, Jr.

6/18/12

such changes and at this stage I think there is nothing in need of neurosurgical intervention. The above was all discussed and I see no reason for any change in terms of his permanent work restrictions, rating or no additional intervention or treatment is required. He is being released today with the above conclusions.



Randall G. Drye, MD

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

RGD/MAH

CNAWT: 4020

HEALTHSOUTH REHABILITATION HOSPITAL
COLUMBIA, SC
HISTORY AND PHYSICAL/POST ADMISSION PHYSICIAN EVALUATION

PATIENT NAME: HENTON CLEMMONS JR.
MR# 44015
RM# 258-B

ADMIT DATE: 11/17/2010
EVAL DATE: 11/17/2010

ATTENDING PHYSICIAN: W. Daniel Westerkam, MD

REFERRING PHYSICIAN: Randall Drye, MD

ADMITTING DIAGNOSIS: Comprehensive rehabilitation for cervical myelopathy with anterior decompression and fusion at C5-6 and C6-7.

OTHER DIAGNOSES:

1. Hypertension.
2. Hydrocephalus.
3. History of stent placement for coronary disease.
4. History of hemorrhoids.

ALLERGIES: NO KNOWN DRUG ALLERGIES. THE PATIENT IS LACTOSE INTOLERANT.

DIET: Regular.

ACTIVITY: Ad lib.

CURRENT MEDICATIONS:

1. Decadron 2 mg by mouth every eight hours with a taper.
2. Colace 100 mg by mouth twice daily.
3. Heparin 5000 units subcutaneous every eight hours.
4. Lisinopril 10 mg by mouth every day.
5. Lopressor 50 mg by mouth twice daily.
6. Protonix 40 mg every morning.
7. Crestor 10 mg by mouth every evening.
8. Percocet 1-2 tablets every four hours as needed for pain.
9. Plavix 75 mg every day.
10. Aspirin 81 mg every day starting tomorrow.

HISTORY OF PRESENT ILLNESS: Mr. Clemmons is a very pleasant, 38-year-old gentleman who underwent an anterior cervical decompression and fusion at C5-6 and C6-7. He went home and seemed to be doing well, but then he developed some numbness and tingling in the lower extremities. He, therefore, was admitted back into the hospital. Workup was essentially negative.

95744 @

He was placed on high-dose steroids and was thought to have myelopathy. The patient started to regain some his strength and feeling back. He did apparently have some blood in his stool. His hemoglobin was stable at 15.4. GI evaluated the patient and thought he might have hemorrhoids. They plan to do further workup as an outpatient. The patient was then thought to be ready for a rehabilitation program and transferred to HealthSouth on 11/17/10.

PAST MEDICAL HISTORY: As above.

SOCIAL HISTORY: The patient lives in a two-story home. There are 6 steps to the front door and 13 steps to his bedroom. He denies any tobacco, alcohol, or drug use. He lives with his mother and father.

PREMORBID FUNCTION: He completely independent. He did not require any assistive devices.

REVIEW OF SYSTEMS: He denies fevers, chills, night sweats, chest pain, shortness of breath, nausea, or vomiting. He denies any significant depression or anxiety.

PHYSICAL EXAMINATION: Patient is 6 feet tall, weighs 283 pounds.

HEENT: Pupils equal, round, react to light. Extraoculars are intact. TMs clear. Oropharynx is pink and moist.

Neck: Supple. No lymphadenopathy, thyromegaly, or carotid bruits.

Chest: Clear to auscultation.

Cardiac: Regular rate and rhythm.

Abdomen: Soft, nontender, nondistended, positive bowel sounds.

Extremities: No significant edema, erythema, clubbing or cyanosis noted.

Neurologically: The patient is alert and oriented x3. Cranial nerves II-XII are intact. Sensation appears to be intact. Manual muscle test reveals essentially 4/5 strength throughout.

FUNCTIONAL STATUS: Functionally, the patient is min assist with bed mobility. Sitting static and dynamic balance is good. Standing static balance is fair. Dynamic is fair.

IMPRESSION AND PLAN: Comprehensive rehabilitation, status post cervical myelopathy. The patient does actually have more brisk reflexes on the left side and poor coordination in the left side. We will begin with physical therapy for general reconditioning, bed mobility, transfer training, wheelchair mobility, and ambulation with assistive devices. We will also provide occupational therapy for upper extremity strengthening, activities of daily living (ADL) training, equipment evaluation. Each therapy will be provided twice a day. We will have case manager work on discharge planning. Nursing will work on bowel and bladder program, as well as nutrition. We will continue the patient on Decadron taper. We will continue heparin for deep venous thrombosis (DVT) prophylaxis, Colace for constipation, lisinopril for hypertension, as well as Lopressor, Protonix for peptic ulcer disease, Crestor for hyperlipidemia. I have talked with the family and they would like to try and start the Plavix and aspirin back tomorrow if possible. We will do that and then we will stop the heparin in a few days. Monitor closely for any signs of

PATIENT NAME: HENTON CLEMMONS JR.

957440
HISTORY & PHYSICAL/POST

ADMISSION PHYSICIAN EVALUATION

Page 3

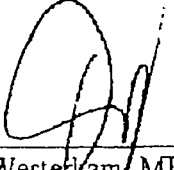
HEALTHSOUTH
Rehabilitation Hospital

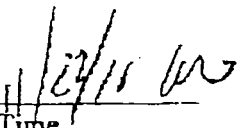
gastrointestinal bleed.

GOALS: Goals for this admission should be supervision for activities of daily living (ADL), supervision for ambulation with assistive devices.

ESTIMATED LENGTH OF STAY: Will be approximately two weeks depending on the rate of recovery.

PREADMISSION EVALUATION: The patient's preadmission evaluation was compared to post admission history and physical and they do appear to be compatible. The patient is an appropriate rehabilitation candidate for anterior cervical decompression and fusion with myelopathy. The patient should be able to tolerate three hours of therapy day five days a week and should be able to go home with his parents at a supervision level.


W. Daniel Westerkam, MD
Physical Medicine and Rehabilitation


Date/Time

WWam1993

dd: 11/17/2010 04:17 PM

dt: 11/17/2010 5:13 PM

JobID: 3134668

HEALTHSOUTH REHABILITATION HOSPITAL
COLUMBIA, SC
DISCHARGE SUMMARY

PATIENT NAME: HENTON CLEMMONS JR

ADMIT DATE: 11/17/2010

MR#: 44015

DISCHARGE DATE: 12/08/2010

RM#: 258-B

REFERRING PHYSICIAN: Randall Drye, MD

ATTENDING PHYSICIAN: W. Daniel Westerkam, MD

DISCHARGE DIAGNOSES:

1. Comprehensive rehabilitation status post cervical myelopathy with anterior decompression and fusion at C5-6 and C6-7.
2. Hypertension.
3. Hydrocephalus.
4. History of stent placement for coronary artery disease.
5. History of hemorrhoids.

HISTORY OF PRESENT ILLNESS: Mr. Clemmons is a very pleasant 38-year-old gentleman who underwent an anterior cervical decompression and fusion at C5-6 and C6-7. He developed increasing numbness and tingling in the lower extremities. He was admitted back into the hospital after the surgery. Workup was essentially negative. He was placed on high-dose steroids and was thought to have cervical myelopathy. He also had some blood in his stools that appear to be related to hemorrhoids. He was transferred to HealthSouth on 11/17/2010.

PERTINENT PHYSICAL FINDINGS AT PRESENTATION: Neurologically, he was alert and oriented x3. Manual muscle test revealed 4/5 strength throughout.

HOSPITAL COURSE: The patient had difficulty with balance and proprioception, but this has gradually improved. His blood sugars have been stable. He has been afebrile. He was weaned off the steroids. His white count has been elevated because of the steroids. Hemoglobin is stable at 15. No more signs of hemorrhoids. SMA-7 essentially within normal limits.

TERMS OF REHABILITATION: The patient received physical therapy and occupational therapy. He has made excellent progress and, by the time of discharge, he was able to ambulate 150 feet with a rolling walker, modified independent. Transfers from sit to stand, mattress, chair, bed, and toilet are all modified independent. The patient is modified independent with eating and grooming; supervision with dressing, bathing, and toileting. The patient's medical condition at the time of discharge is stable.

DISCHARGE DISPOSITION: Home.

DIET: Regular.

PATIENT NAME: HENTON CLEMMONS JR
MR#: 44015

DISCHARGE SUMMARY

Page 2

ALLERGIES: NO KNOWN DRUG ALLERGIES.

ACTIVITIES: Ad lib.

MEDICATIONS:

1. Pepcid 20 mg p.o. b.i.d.
2. Colace 100 mg p.o. b.i.d.
3. Lopressor 50 mg p.o. b.i.d.
4. Crestor 10 mg p.o. q.p.m.
5. Aspirin 81 mg p.o. q.d.
6. Plavix 75 mg p.o. q.d.
7. Prinivil 10 mg p.o. q.d.
8. Percocet 1 to 2 tablets every four hours p.r.n. pain, 50 tablets given.

FOLLOWUP: Dr. Randall Drye, Dr. Wells, and Dr. Kimberly Hicks.

Continue with outpatient PT and OT.

W. Daniel Westerkam, MD
Physical Medicine and Rehabilitation

Date/Time

WW/am2650

dd: 12/07/2010 08:01 AM
dt: 12/07/2010 2:31 PM
JobID: 3206047

cc: Dr. Randall G. Drye
Dr. Kimberly Hicks
Dr. Wells

Fax Server

10/22/2010 8:28:08 PM PAGE 3/008 Fax Server

RECEIVED: 10/22/2010 2:14:18 PM
883-668-9553

2997 Sunset Boulevard
West Columbia, South Carolina 29169
(803) 936-0223 p
(803) 936-0229 f

PATIENT: Clemmens, Henton
MRN: 416820
DATE OF BIRTH:
REF PHYSICIAN: Karen Greenfield, MD
DATE OF EXAM: 10/21/2010
PATIENT PH#:

EXAM: CT LUMBAR SPINE WITHOUT CONTRAST

HISTORY: Patient is status post fall with mid-back pain.

TECHNIQUE: Multidetector CT was performed through the lumbar spine with sagittal and coronal 2-D reconstructions.

FINDINGS: Coronal reconstructions demonstrate minimal curvature to the thoracolumbar spine.

Sagittal reconstructions demonstrate no acute wedging or fracture. There is no evidence of spondylolysis.

At T11-12, there is extensive ventral osteophyte formation with vacuum disc phenomenon. There is a mild asymmetric disc bulge to the right without stenosis.

T12-L1 is within normal limits.

At L1-2, there is a partially ossified left central/foraminal disc protrusion causing mild central canal stenosis and mild left neural foraminal stenosis.

At L2-3, there is no significant disc bulge or protrusion.

At L3-4, there is minimal retrolisthesis with a slight disc bulge and facet arthropathy but no stenosis.

At L4-5, there is mild facet squaring without stenosis.

At L5-S1, there is a central disc osteophytic protrusion with disc height loss and facet arthropathy causing mild bilateral subarticular stenosis.

IMPRESSION:

1. No evidence of acute fracture.
2. Left central/foraminal disc osteophytic protrusion at L1-2 causing mild central canal and left neural foraminal encroachment.
3. Mild bilateral subarticular stenosis at L5-S1 secondary to a chronic central disc osteophytic protrusion with mild facet arthropathy.

Paul Altchison, M.D.



DEC. 23. 2010 12:48PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 5/24

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000061012

ACCT NO: H00048349690

AGE: 38

SSN:

DOB:

REQ NO: 10-0151724

SEX: M

REPORT NO: 1104-0683

ADMITTING DR:

ROOM:

ORDERING DR: KIMBERLY P. HICKS MD

PT LOCATION: HMRI

HICKIM FP

REPORT STATUS: Signed

ORDERED BY: KIMBERLY P. HICKS MD

LOCATION: REG CLI HMRI

STUDY TYPE: 1104-0019 MRI/MRI CERVICAL SPINE

DATE OF EXAM: 11/04/10

CLINICAL DATA: 38M, ATAXIA, HISTORY OF SHUNT

MRI CERVICAL SPINE:

TECHNIQUE: Sagittal and axial T1 and T2-weighted images were obtained utilizing standard protocol. No contrast was administered.

FINDINGS: Marrow signal of the cervical vertebrae is normal. Signal characteristics of the spinal cord are also normal. There is an annular disc bulge at C3-4 with a mild spinal stenosis at this level. At the C5-6 level, there is a right paracentral disc bulge which narrows the lateral recess. Disc material from the C6-7 level extends in the right paracentral region superiorly behind the C6 vertebral body effacing the thecal sac and compressing the spinal cord. There is approximately 50% loss of spinal canal space.

IMPRESSION: Right paracentral, large, C6-7 disc herniation extending posterior to the C6 vertebral body causing spinal canal compromise and cord compression.

Critical report called to Dr. Kimberly Hicks at approximately 2100 hours.

A draft copy of this report was routed to fax to KIMBERLY P. HICKS MD on 11/04/10, 2115

MSC

DANIEL H. GOLWYN JR, MD

REPORT STATUS: Signed

HICKS, KIMBERLY P. MD

ORDER#/PROCEDURE: 1104-0019 MRI/CERV (72141)

EXAM TECH: SAWAT

REP RELEASED BY: GOLDAN RAD 11/05/10 1145

ADD RELEASED BY:

DISC DATE:

PT LOC/ROOM: HMRI

CLEMMONS JR HENTON T

DEC. 23. 2010 12:48PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 6/24

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: - CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

AGE: 38

ACCT NO: H00048349690

DOB:

SSN:

SEX: M

REQ NO: 10-0151725

REPORT NO: 1104-0687

ADMITTING DR:

ROOM:

ORDERING DR: KIMBERLY P. HICKS MD

PT LOCATION: HMRI

HICKIM FP

REPORT STATUS: Signed

ORDERED BY: KIMBERLY P. HICKS MD

LOCATION: REG CL HMRI

STUDY TYPE: 1104-0020 MRI/MRI THORACIC SPINE

DATE OF EXAM: 11/04/10

CLINICAL DATA: 38M, ATAXIA, HISTORY OF VP SHUNT.

MRI THORACIC SPINE:

TECHNIQUE: Sagittal and axial T1 and T2 weighted images were obtained utilizing standard protocol. No IV contrast was administered.

FINDINGS: The marrow signal of the thoracic vertebrae is normal with note made of diffuse degenerative change throughout the thoracic spine. Schmorl's nodes are noted. Thoracic spinal cord is normal in appearance. There is some scoliotic deformity. The localizer image demonstrates focal disc protrusions at the L1-2 level and at L5-S1.

Note is again made of the C5-7 disc herniation causing cord compromise causing cord compression reported separately on MRI cervical.

IMPRESSION: Degenerative changes and scoliosis in the thoracic spine without acute abnormality. Incidental note made of L1-2 and L5-S1 disc herniations which could be further evaluated with MRI lumbar.

A draft copy of this report was routed to print to DR. KIMBERLY HICKS on 11/04/10, 2125.

MSA

DANIEL H. GOLWYN JR, MD

REPORT STATUS: Signed

HICKS, KIMBERLY P. MD

ORDER#/PROCEDURE: 1104-0020 MRI/THOR (72146)

EXAM TECH: SAWAT

REP RELEASED BY: GOLDAN RAD 11/05/10 1145

ADD RELEASED BY:

DISC DATE:

ED DISC DIAG:

PT LOC/ROOM: HMRI

CLEMMONS JR, HENTON T

DEC. 23. 2010 12:48PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 7/24

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

AGE: 38

AGGT NO: H00048349690

DOB:

SSN:

SEX: M

REQ NO: 10-0151723

REPORT NO: 1104-0685

ADMITTING DR:

ROOM:

ORDERING DR: KIMBERLY P. HICKS MD

PT LOCATION: HMRI

HICKIM FP

REPORT STATUS: Signed

ORDERED BY: KIMBERLY P. HICKS MD

LOCATION: REG CL HMRI

STUDY TYPE: 1104-0018 MRI/MRI BRAIN W/BRAINSTEM

DATE OF EXAM: 11/04/10

CLINICAL DATA: 38M, ATAXIA, HISTORY OF VP SHUNT

MRI BRAIN:

No comparison studies are available.

TECHNIQUE: Standard sequences were utilized with multiplanar imaging. No IV contrast was administered.

FINDINGS: Ventricular shunt catheter enters from the right parietal region and has its tip abutted in the anterior aspect of the right lateral ventricle entering the parenchyma. The lateral ventricles as well as the third ventricle are markedly dilated. The brain parenchyma demonstrates some focal areas of increased signal on the T2-weighted images in the region of the white matter. These most likely represent small vessel angiopathic changes. There is also a calcification in the deep white matter parenchyma of the left parietal lobe.

IMPRESSION: Moderately severe hydrocephalus with a right-sided lateral ventricular shunt in place, as described. Small vessel deep white matter changes.

A draft copy of this report was routed to fax to KIMBERLY P. HICKS MD on 11/04/10, 2121.

MSC

DANIEL H. GOLWYN JR, MD

REPORT STATUS: Signed

HICKS, KIMBERLY P. MD

ORDER#/PROCEDURE: 1104-0018 MRI/BRAIN (70551)

EXAM TECH: SAWAT

PT LOC/ROOM: HMRI/

REP RELEASED BY: GOLDAN RAD 11/05/10 1145

ADD RELEASED BY:

DISC DATE:

- 188 -

CLEMMONS JR, HENTON T

ED DISC DIAG:

DEC. 23. 2010 12:48PM

COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 874

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

ACCT NO: H00048349690

AGE: 38

SSN:

DOB:

REQ NO: 10-0152410

SEX: M

REPORT NO: 1104-0711

ADMITTING DR:

ROOM:

ORDERING DR: KIMBERLY P. HICKS MD

PT LOCATION: HMRI

HICKIM FP

REPORT STATUS: Signed

ORDERED BY: KIMBERLY P. HICKS MD

LOCATION: REG CLI HMRI

STUDY TYPE: 1104-0199 RAD/SKULL-LESS THAN 4 VIEWS

DATE OF EXAM: 11/04/10

CLINICAL DATA: 38M, EVALUATION OF SHUNT TUBING FOR
METAL PRIOR TO MRI.

SKULL:

TECHNIQUE: Two views of the skull were obtained.

FINDINGS: There is a ventricular shunt evident on the right side of the skull. No metal is evident.

IMPRESSION: Ventricular shunt on the right without metal.

MSA

DANIEL H. GOLWYN JR, MD

REPORT STATUS: Signed

HICKS, KIMBERLY P. MD

ORDER# / PROCEDURE: 1104-0199 RAD/SKULLLESS (70250)

EXAM TECH: EJGOT

PT LOC/ROOM: HMRI/

REP RELEASED BY: GOLDAN RAD 11/05/10 1145

ADD RELEASED BY:

DISC DATE:

CLEMMONS JR, HENTON T

ED DISC DIAG:

DEC. 23. 2010 12:47PM

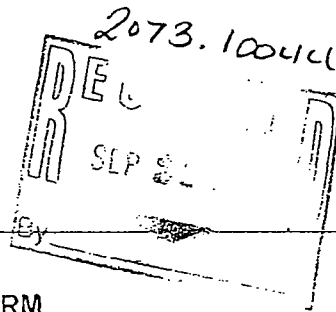
COLUMBIA NEUROSURGICAL ASSOC.

NO. 7309 P. 2/24

PATIENT CHART -
CLEMMONS JR, HENTON T

E: 39 yrs. Acct#: 95744

Form



CONFIDENTIAL

INTERACTIVE PROCESS FORM

Name of Employee/Applicant Requesting Accommodation: Herton Clemmons
Sales ID _____ Store/Facility # 385 Store/Facility Location Wm, SC

Describe the accommodation offered:

The associate, Herton Clemmons, was offered a cashier position. He will be provided a stool which allows him to sit as needed, and he will also be provided assistance as needed. These accommodations are permanent.

If temporary, accommodation to begin on N/A and end on N/A

To be completed by the applicant/employee:

☒ I accept the provided accommodation.

Employee comments:

I accept the accommodation.

Herton Clemmons
Signature of Employee/Applicant Requesting the Accommodation

9-16-11
Date

Lowe's Human Resources Representative:

Print Name: Leia Myndreus

Title: HRM

Signature: [Signature]

Date: 9/16/11

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. - HARBISON,

Employer,

AND

~~SEDGWICK CLAIMS MANAGEMENT~~
SERVICES, INC.,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

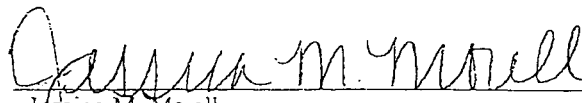
The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY
S. C. WORKERS' COMPENSATION
COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written
Medical Reports

DATE OF MAILING: September 10, 2012


Jessica M. Morell
Legal Assistant to Kelly F. Morrow



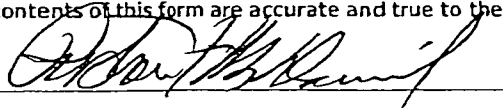
Claimant's Name: Henton T. Clemmons Employer's Name: Lowes Home Centers
Address: _____ Address: 390 Harbison Boulevard
City: _____ State: SC Zip: _____ City: Columbia State: SC Zip: 29212
Home Phone: () - _____ Work Phone: () - _____ Carrier: Sedgewick Claims Management Services
Preparer's Name: Preston F McDaniel Preparer's Phone #: (803) 771-7211

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: _____ 2. AWW: \$ _____ Date of Injury: 09/12/10
3. Type of injury and body part(s): Head, back, and legs.
4. Facts in controversy: See attached.
5. Legal issues involved: See attached.
6. Unusual aspects: None
7. Witnesses (designate if expert):* See Notice of Witnesses.
8. Exhibits: Claimant requests that WCC File Number 1015200 be made a part of the Record.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See Notice of Written Report(s)/Physician(s).
10. Name, address, and specialty, if any, of the treating physician: None.
11. Impairment rating(s); body part(s); physician and date of opinion: Randall Drye, MD, 25% whole person impairment issued 06/07/11 and 06/18/12
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: mcdaniellaw@hotmail.com

Date of hearing: September 25, 2012 Time needed for hearing: 2 hours

On behalf of ☒ Claimant ☐ Employer

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

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

ATTACHMENT TO FORM 58

Henton T. Clemmons v. Lowe's Home Centers, Inc.

WCC FILE NO: 1015200

4. Facts in controversy:

- a) Whether the Employer and Carrier may file and whether they have met the criteria required for the Application for a Determination of Final Compensation. The right to compensation for loss of use and/or loss of earning capacity is a property right of the Claimant and it is a denial of due process to determine his entitlement without his request.
- b) Claimant requested a second opinion on his back and neurological dysfunction which was not granted and he requests reimbursement for the evaluation of Dr. Howard Mandell and Dr. Leonard Forrest.

If it is determined the Employer/Carrier have met their burden of proof to be allowed to Determine if Final Compensation is due, then:

- c) The Claimant's entitlement to an award for total disability based on:
 - 1. The Claimant's age, education, background, experience and the residual physical disability from the injury the Claimant has suffered a permanent economic loss of earning capacity in the marketplace. He is unable to perform services other than those that are so limited in quality, quantity or dependability that a reasonably stable market for them does not exist without specific accommodation the Claimant cannot work. Therefore, the Claimant is totally and permanently disabled.
 - 2. Claimant's entitlement to an award for total and permanent disability based on having lost 50% or more of the functional use of his back to do work with his back. "Compensation depends on functional loss rather than upon the loss of earnings." the loss of earnings." Dykes v. Daniel Construction, 262 S.C. 98, 202 S.E.2d 646.

d) In the alternative if the Commission does not find the Claimant to be totally and permanently disabled, then the Claimant's entitlement to an award for permanent residual disability to the back, legs, arms, brain, and central nervous system.

e) The Claimant requests a lump sum award if a final conclusion of the case is reached.

5. Legal issues involved:

IN CORRELATION WITH RESPONSES UNDER NUMBER 4:

a) Whether the Employer and Carrier have met the criteria required for and are entitled to make request especially for a Determination of Final Benefits due under §42-9-260 Stop Payment Application. S.C. Code §42-9-10 and §42-1-120 define and establish the Claimant's entitlement to total disability under §42-9-10 for wage loss. S.C. Code §42-9-190 and §42-9-260 set forth the criteria whereby an Employer may stop payment of disability benefits and based on that statutory authority, the Commission has adopted Rules 67-504 through 67-507 for such stop payment application. However, it does not give the defendants the right to request a payment of benefits which is a property right of the claimant. Coleman v. Quality Concrete Product, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Adams v. Rice Services, 313 S.C. 488, 442 S.E.2d 215 (1994, SC App.); Grayson v. Carter Rhode Furniture, et.al., 312 S.C. 250, 454 S.E.2d 320 (1995); Last v. MSI, 305 S.C. 349, 409 S.E.2d 334 (1991); Orszula v. Orszula, 292 S.C. 264, 356 S.E.2d 114 (1987).

b) Claimant's entitlement to reimbursement for evaluations under §42-17-30;

c) 1) §42-9-10 and §42-1-120 defines total disability under §42-9-10; Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont DeNemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Gilliam v. Woodside Mills, 319 S.C. 385, 461 S.E.2d 818 (1995, SC App.); Singleton v. Young Const. Company, 236 S.C. 454, 114 S.E.2d 837 (1960); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699;

2) §42-9-30(19) Linen v. Ruscon Construction Company, 286 S.C. 67, 332 S.E.2d 211 (1985); Lyles v. Quantum Chemical Company, 315 S.C. 440, 434 S.E.2d 292 (S.C. App. 1993);

Bateman v. Town & Country Furniture, 287 S.C. 158, 336 S.E.2d 890 (S.C. App 1985);

- i. Due to the position being taken by some defendants and some indications from some Commissioners that the Commission or some members of the Commission believe that after the 2007 amendments that wage loss has been ~~infused into a determination and as evidence to be~~ considered concerning an Award under S.C. Code §42-9-30(21) for loss of use of the back, the following memorandum is submitted:

AWARD IS PAID FOR CHARACTER OF THE INJURY.

While the presumption under SC Code §42-9-30 (19) was always rebuttable, the 2007 amendment was to simply set that out in Statutory Language. The effect of any presumption under our Law was and is as is stated in SC Rules of Evidence §301:

"In all civil actions..., a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion which remains throughout the trial upon the party on whom it was originally cast."

In other words the Claimant had, has and will always have the burden of proof to put forth evidence, either lay, medical and/or otherwise, that the injured worker has lost 50% or more of the functional use of the worker's back to do work requiring the use of the worker's back which must be sufficient to prove that fact by a preponderance of the evidence.

The misperception that the Claimant has to prove wage loss or loss of earning capacity has been around long before the 2007 amendments and has been put to rest repeatedly by our Appellate Courts in the cases of Bateman, McCollum, and Lyles, supra.

"The Workers' Compensation Commission properly ruled that a Claimant is entitled to benefits even though the injury did not affect his performance in his subsequent

job because compensation is based on the character and extent of the injury and not whether the Claimant lost earnings or is otherwise employable in another occupation". Lyles, supra

A worker is entitled to an award for total and permanent disability for loss of earning capacity under SC §42-9-10 (A).

The pertinent part of S.C. Code §42-9-30 (21) (as Amended 2007) (the scheduled member back section) reads:

"where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under §42-9-10 (B). (Emphasis Added)

S.C. Code §42-9-10 (B) provides the loss of both hands, arms, feet, legs, or vision in both eyes or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of this section.

An Award under Section (B) of §42-9-10 like an Award under §42-9-30 (21) are paid due to the character of the injury not wage loss.

"Compensation depends on the functional loss rather than the loss of earnings." *Dykes v. Daniel Construction Co.*, 262 S.C. 98, 202 S.E.2d 646.

Therefore, Awards under §42-9-30 (21) are not paid nor have they ever been paid for wage loss as under §42-9-10 (A). They are paid for the functional loss of use without any consideration of wage loss. A left handed lawyer is entitled to total and permanent disability if he loses his right foot and right hand and the same is true if he loses 50% of the use of his back.

d) In the alternative, Claimant's entitlement to scheduled member awards under S.C. Code §42-9-30 for permanent residual disability.

e) Claimant's entitlement to a lump sum award pursuant to S.C. Code § 42-9-301 and R. 67-1605 with language in the award that such lump sum as awarded by the Commission is being ordered to be paid in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime (as established by the South Carolina Mortality Table, S.C. Code of Laws §19-1-150) which payment method the Commission may order under SC Code of Laws §42-9-240 and pursuant to James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010):

"The first installment of compensation payable under the terms of our award..shall become due seven days from the date of such an award..Thereafter compensation shall be paid in installments weekly, except when the Commission determines that payment shall be made monthly OR in some other manner."

(Such language will be helpful to the claimant in avoiding any Social Security Setoff and is an Order of payment that can be made by the Commission).

The Claimant will submit a memorandum at the hearing contesting the current commuted value table and calculation of the commutation rate being used by the Commission as being contrary to the statute and law. §42-9-301 is a simple interest statute.

Respectfully Submitted,



Preston F. McDaniel Law Firm
Attorney for Employee/Claimant

September 14, 2012 ..

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
COUNTY OF RICHLAND) WORKERS' COMPENSATION COMMISSION
WCC File No: 1015200

Henton T. Clemmons,
Employee-Claimant,

NOTICE OF WITNESSES AND
~~WRITTEN REPORT(S)/PHYSICIAN~~
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT, HENTON T. CLEMMONS

v.
Lowe's Home Centers Inc,
as Employer, and
Sedgewick Claims
Management Services,
as Carrier,
Defendants.

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
KELLY F. MORROW, ATTORNEY AT LAW, ATTORNEY FOR THE
EMPLOYER/CARRIER

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Henton T.
Clemmons, 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
Claimant, to wit:

Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
8	Howard Mandell, MD, FRCPC Board Certified Neurologist	09/05/12	1-6
9	Columbia Rehabilitation Clinic - Functional Capacity Evaluation	09/11/12	7-31
10	Gal G. Margalit, MD	09/11/12	32-37
11	Leonard E. Forrest, MD	09/06/12	38-39
12	Harriet Fowler, CRC, M.Ed. Vocational Rehabilitation Manager	09/13/12	40-62
13	Lexington Medical Center	11/04/10 - 06/07/12	63-72

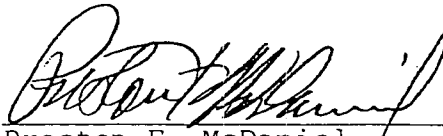
14	SCDHEC Patient care Form	11/13/10	73-74

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.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Brenda Clemmons; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel
Attorney for Claimant
1315 Elmwood Avenue
Columbia, SC 29201

September 14, 2012

STATE OF SOUTH CAROLINA ; BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION COMMISSION
 COUNTY OF RICHLAND) WCC File No: 1015200

Henton T. Clemmons,)
)
 Employee Claimant,)

v.) **DATE OF HEARING: 09/25/12**
) **APA SUBMISSIONS**
)

Lowe's Home Centers Inc.,)
 as Employer, and)
 Sedgewick claims)
 Management Services,)
 as Carrier,)
)
 Defendants.)

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 Preston F. McDaniel, the Attorney for the Claimant, submits the following report(s) in support of and on behalf of the Claimant in this matter:

Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
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Howard Mandell, MD, FRCPC • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD • Shankar Perumal, M.D • Dennis M. Gertelfinger, Emeritus
Michael Leddy, PA-C MMS • Sharon Walter, PA-C
www.metrolinaneurology.com

September 5, 2012

Preston F. McDaniel
McDaniel Law Firm
Attorneys and Counselors at Law
1315 Elmwood Avenue
Columbia, SC 29201

Fax 803-252-0709

RE: Tommy Clemmons

Dear Mr. McDaniel:

Thank you for asking me to perform an Independent Medical Evaluation on your client, Hinton T. Clemmons. The history is obtained from the patient and his mother, who accompanies him, and both are very good historians. Also there is review of the records from Dr. Randall Drye - Columbia Neurosurgical Associates, Doctor's Care to include that from Dr. Greenfield, Midlands Orthopaedics - Dr. Armsey, and physiatrist Dr. Daniel Westerkam as well as reviewing MRI scan including the discs, x-rays, surgical notes, and progress notes.

HISTORY OF PRESENT ILLNESS: In summary, Tommy is a 40-year-old, right-handed gentleman who was in his usual state of good health that is working for the last three years at Lowe's. He was mainly in the garden center which consists of hand loading items, often 40 pound bags of soil and pine straw, a lot of lifting, bending, twisting and walking. He has had no problems doing this strenuous, physical activity. It is in this setting that on September 12th, 2010, when he was performing his usual job, which included going in to a straw trailer to get straw for a customer. There was unfortunately loose straw and moist straw and he hit a "slick spot" and fell "flat on his back". It is not clear but he believes he hit his head, at least he was dazed and it took him a minute or so to gather his thoughts and realize what had happened. There was however no laceration to his head or any swelling. He remembers just lying there for a few minutes not able to get up until he was able to clear his head. He was able to do so and he tried to resume work, hoping that nothing untoward happened to him. However he notes that later that afternoon he felt "stiff". As the day went on and the next day the stiffness increased. His legs progressively became more difficult to coordinate. He developed numbness from his feet up to his waist/chest area. It did not appear to involve his arms at all nor was there any neck pain. He reported this to Human Resources and he was referred to Doctor's Care where he saw Dr. Swami and also Dr. Greenfield. They were concerned about a strained neck and initially recommended physical therapy and treated him symptomatically.

CMC Pineville:
10620 Park Rd, Ste 230
Charlotte, NC 28210
(704)542-6698

Rock Hill Medical Park:
200 S. Herlong Ave, Ste H
Rock Hill, SC 29732
(803)366-6135

CMC-Carolina Lakes Medical Plaza:
7666 Charlotte Hwy
Indian Land, SC 29707
(803) 578-9050

Unfortunately his course continued to progress. He had progressive difficulty dressing. He was not able to stand on one leg to put his pants on. His legs were wobbly and weak. He was off balance. He also had difficulty with constipation and urination. The numbness became more intense across his abdomen and up towards to the chest. He went back to Doctor's Care and it became clear that over time that he had much more of an injury than what was originally suspected. He would fall at work and need help to get up. He was wobbly, weak and no control. He was then sent to Midland Orthopaedics where he saw Dr. Armsey and his notes were reviewed as well. At that point, Dr. Armsey reports that the patient was "complaining of daily low back pain, right knee instability, sharp pain and throbbing in his low back, right knee pain, numbness, spasms, weakness, popping and dragging of the feet. The intensity worsens with standing, bending, walking or sitting. It improves with moving around for short periods of time". He also notes that Mr. Clemmons and his mother reported that he was a "perfectly functional 38-year-old male until his work-related accident". Since that time, his gait has become severely ataxic. He cannot dress himself because of poor balance, has been bedridden because of his inability to ambulate. "He has had multiple falls because of his poor balance which is all reported as beginning September 12th, 2010". He goes on to state that he was quite concerned that something more was going on with the severe ataxia and he was worried about a brain stem or cerebellar lesion, possibly a complication of his intraventricular shunt precipitated by his recent trauma. This was communicated to Dr. Karen Greenfield as well as Dr. Kimberly Hicks and he was then urgently sent to see Dr. Drye at Columbia Neurosurgical Associates where his records I reviewed as well.

At that point, he corroborates the history as stated where he was noted to have change in sensation from below the nipple line down to his feet and toes. He has difficulty walking, spasticity and stiffness. He has difficulty initiating both bowel and bladder but no incontinence. He seemed to be emptying without retention. He was noticing some spasms in his legs, right greater than left and some element of back pain. There was no headache or any other neurologic symptoms and his examination basically corroborated a spinal cord compression and myelopathy. The MRI scan confirmed a disc herniation at C6-C7 and a significant bulge at C5-C6. He was alarmed and placed on steroids immediately and admitted and had surgery the next day. The surgery consisted of anterior discectomy, osteophylectomy and foraminotomy C5-C6 and C6-C7. This was followed by two-level interbody arthrodesis utilizing tricorticate structural bone bank, bone grafts x2, with anterior fixation with Trinica plate C5 to C7. This was done with fluoroscopic guidance and ongoing neurophysiological cord monitoring.

It was noted intraoperatively that "there was an enormous amount of disc material within the canal. These were removed and large fragments of disc, particularly from the right side of the canal. The probe was then inserted beneath the C6 vertebra and they were able to dislodge additional large fragments of cartilaginous disc". A small Kerrison punch was then used to remove additional disc material and foraminotomies were performed. "The thecal sac was noted to be quite flattened initially and did assume a more normal rounded caliber with the decompression completed".

A distraction device was then applied at the C5-C6 level and some calcification of the anterior portion of the disc and some anterior osteophytes were removed. At this level, there remained some additional disc material which was removed and osteophytic spurs were removed. The thecal sac assumed a more normal rounded caliber as the decompression was completed. There were no complications intraoperatively and postoperatively he did extremely well. In fact, it he was "feeling well and moving all four extremities" with good strength and he was discharged on postoperative day one, which would be 11/10/2010.

His course was complicated by temporary decline. His mother notes that once he got home he was able to use a walker, and that was on Wednesday, but by Thursday the next day his numbness increased again, Friday it increased further (three days after surgery), and he was dragging his legs.

On the fourth day, Saturday, he had no feeling in his legs and his mother called 911. He was taken back to the hospital and admitted on 11/13/2010 by Dr. Brett Gunter and his notes were reviewed as well. He was placed on steroids IV. He underwent physical therapy evaluation and was transferred to HealthSouth Rehab for more intensive therapy. "It was quite evident that he would be unable to return home in his current condition. The steroids caused this fluctuating myelopathy symptoms to improve and he is currently without numbness" at time of transfer to HealthSouth Rehab.

He was subsequently evaluated and treated by Dr. Westerkam at HealthSouth Rehab Hospital and his notes were also reviewed. He continued to show significant progress in all aspects of neurological functioning. He participated well in therapy. By the time of discharge, he was able to ambulate 150 feet with a rolling walker, modified independent. He transfers from sit to stand, mattress, chair, bed and toilet are all modified independent. He was modified independent with eating, grooming, and needed supervision with dressing, bathing, and toileting.

Subsequent notes confirm the patient's and mother's history as well in that he continued to improve significantly but has not regained his preinjury level of neurological functioning.

He continues to have stiffness in his lower back, particularly the tailbone. He has difficulty controlling his legs, placing his feet down where he wants them to go. It seems worse in the morning and needs to stand and sort of take a few minutes to get control of his legs. He has difficulty with balance. He cannot run anymore. He has more difficulty going up or down stairs. He needs to hold on to rails. He needs to hold on to furniture. It seems to be mainly a balance difficulty more than a weakness and it seems to be more the right leg than the left. He cannot squat without using his arms to pull himself up. He feels his right leg is weaker than the left. There is no bowel or bladder dysfunction and no numbness.

He believes that his symptoms are stable now, not improving and not worsening for the last several months at least.

Follow-up examinations by Dr. Drye confirm this as well, including notes from 12/29/2012, 02/16/2011, 04/12/2011, 06/07/2011, and 06/18/2012. He does however state on the 06/18/2012 note "he denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as longstanding preinjury inversion of the right foot and ankle. His mother confirms that this has forever been a problem as he wears out shoes on the lateral aspect". This is a major point of contention as both the mother and Mr. Clemmons himself deny that this is the case and in fact he was asymptomatic prior to his injury that was documented by other people's history as well and as well as the initial history by Dr. Drye.

PAST MEDICAL HISTORY: This otherwise includes anterior wall MI in September of 2009 at which time he underwent TCI stenting and subsequently placed on Plavix. He has hypertension and hypercholesterolemia. At age 4 ½ years he had a shunt for hydrocephalus. It was noted by the pediatricians that his head was growing too large but initially they thought it was just genetically large head. Eventually he developed nausea, vomiting and headache, double vision and hydrocephalus was diagnosed. He had a VP shunt placed. The first one apparently was technically unsuccessful and he had to go through a second one. He did however do very well and according to the mother and Mr. Clemmons himself was completely asymptomatic.

SOCIAL HISTORY: He graduated high school and did three years of college, including Winthrop University where he took an art major and English. He does not smoke or drink. He currently works at Lowe's as a cashier. That is strictly standing.

FAMILY HISTORY: This includes ischemic heart disease, hypertension, diabetes, cancer, and arthritis.

ALLERGIES: He has no allergies.

MEDICATIONS: These are lisinopril 10 mg, Plavix 75, Crestor 10, metoprolol 50 b.i.d., and Bayer aspirin 81 mg.

PHYSICAL EXAMINATION:

Appearance: He does have frontal bossing and enlarged head. He is overweight. He is a large gentleman.

Skin: Shows no significant skin lesions or abnormalities, rashes bruises, etc.

Heart: Shows normal rhythms with no significant murmurs detected.

Chest: Suggested normal breath sounds, no rales or rhonchi detected.

Abdomen: Shows the abdomen to be nontender with unremarkable bowel sounds.

Extremities: He does have some muscle spasms in right greater than left leg.

NEUROLOGICAL EXAMINATION:

Mental status testing: He is a very pleasant gentleman. He is awake, alert and oriented times four with a normal mental status.

Language function: Speech is fluent without paraphasic error or dysarthria.

CN II: Fundi show no papilledema.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Carotid Arteries: No bruits heard.

C-Spine: Range of motion of his neck is reduced on forward flexion by 5 degrees, right and left lateral rotation by 15 degrees, extension by 25 degrees, right and left lateral flexion by 15 degrees.

L-S-Spine: Normal ROM for age, negative SLR, non-tender, no muscle spasm.

Motor examination: This reveals both biceps to be 5-. Otherwise arms are 5/5. The right leg iliopsoas is 4 to 4+ and the left 5-. Other muscles are 5/5. There is mild dysmetria in both his legs, a little more the right than the left.

Sensory examination: ~~This shows very mild reduction in vibration in the toes. There is normal proprioception.~~

Reflexes: Reflexes are 1 at both biceps and both brachioradialis, 1+ at both triceps, 2+ at the right knee, 2 at the left knee, 2 at the right ankle, and 1 at the left ankle. Both plantar responses are distinctly upgoing.

Cerebellar testing: Normal finger to nose, heel/knee/shin, and he cannot even attempt to tandem walk falling to either side.

Gait testing: His gait is normal based. He tends to slap his feet when he walks. He drags his right leg with mild circumduction. There is no clonus. He has mildly positive Hoffmann's signs bilaterally in the arms.

LABORATORY/SCANS: Review of imaging studies, MRI scan done on 11/04/2010 ordered by Dr. Kimberly Hicks, shows at C5-C6 there is a right paracentral disc bulge that narrows the lateral recess. Disc material from C6-C7 extends in the right paracentral region behind C6 vertebra effacing the thecal sac and compressing the spinal cord. There is right paracentral large C6-C7 disc herniation causing spinal canal compromise and cord compression.

MRI of the brain done on 11/04/2010 shows ventricular shunt catheter entering the right parietal region in the anterior aspect of the right lateral ventricle. Third ventricles are markedly dilated. There is some increased T2 signal in the region of the white matter periventricularly due to small vessel angiopathic changes. There is moderately severe hydrocephalus.

MRI of the thoracic spine done on 11/04/2010 shows just degenerative disc disease and some scoliosis.

Shunt evaluation seemed to show normal shunting in the abdomen, right neck and chest and skull.

Postoperative MRI scan shows very nice surgical results with complete decompression of the spinal cord.

IMPRESSION AND PLAN: This gentleman presented with a work-related injury where he fell and herniated cervical discs at C5-C6 and C6-C7. This resulted in cord compression and mainly bilateral leg weakness with a sensory level at approximately T4 by history. This however resolved very nicely after urgent surgical decompression and he has made a remarkably good recovery, though not recovered to his preinjury level of functioning. He still has spasticity in his legs, hyperreflexia, difficulty with coordination, inability to run and difficulty with balance. I would say he is probably 85% better but still has this 15% neurological injury left over. He did seem to sustain a closed head injury in terms of a concussion but there does not appear to be any brain involvement from this injury and no higher cortical functioning injury or postconcussive symptomatology persists. The only area affected has been the spinal cord at the cervical level as mentioned.

In addition to this however, he does have significant low back pain without any surgical lesions but this is something that also was not present prior to his injury and as a direct result of his fall.

With regards to your second question, Mr. Clemmons does not require additional treatment concerning his injuries other than perhaps ongoing physical therapy for balance and gait. I do believe this condition is permanent as it has been two years since his injury.

It is always a difficult question to determine what in the future he might need to maintain his current condition. With regards to medical care, once a person has surgery in the spine they have a significant increased risk of having further surgery due to altered mechanics above and below the level of fusion. This is something to consider in the future, though at this point in time there is no indication that he requires any further surgery. He does however require ongoing low back pain management. He does not appear to have a surgical lesion but certainly might require injections whether that is steroid injections or medial facet nerve blocks or selective nerve root blocks would be determined by pain clinic evaluation. Also there should be ongoing treatment with medications to help with this significant low back pain.

He will certainly need his future work adjusted and be selective in which jobs he can and cannot do. He would need limitations in bending, twisting, turning, lifting, limitations in ability to carry and flexibility to be able to sit or stand whenever he needs to in order to reduce his pain. I would recommend a Functional Capacity Evaluation to further objectively determine what he can and cannot do.

With regards to the statement by Dr. Drye on 06/18/2012 indicating that he had "longstanding preinjury inversion of the right foot and ankle". This appears to be not corroborated by his mother, the patient or my history or Dr. Armsey's history. I do not see it documented in any of the other physician's history either. From the history I get and the records I reviewed there was absolutely no preexisting neurological condition limiting this gentleman and I think this is certainly substantiated by the fact that he worked for three years at Lowe's with heavy lifting, twisting, turning, carrying, and a lot of walking without any limitations and able to do his job fully without any adjustments required. I do not believe any of his current problems are related to his previous hydrocephalus and shunting either.

If you require any further information, please let me know.

Sincerely,



Howard Mandell, M.D., FRCPC
Board Certified Neurologist
HM:scs (09/07) 51818359

Dictated but not read to expedite mailing.



Bruce D. Filler, M.Ed., P.T.
Director

www.ccrehab.com

September 11, 2012

Mr. Preston McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, S.C. 29201

Re: Henton Thomas Clemmons, Jr.

Mr. Clemmons is a 40 year old male who sustained a work injury to his cervical and lumbar spine on September 12, 2010. Medical records dated October 9, 2010 indicated low back pain/radiculopathy/right knee pain. A CT of his lumbar spine dated October 21, 2010 indicated left central/foraminal disc osteophyte protrusion at L1-2 causing mild central canal and left neural foraminal encroachment and mild bilateral subarticular stenosis at L5-S1 secondary to a chronic central disc osteophytic protrusion with mild facet arthropathy. Medical records dated November 1, 2010 indicated severe ataxia. A MRI of his cervical spine dated November 4, 2010 indicated a right paracentral, large disc herniation extending posterior to the C6 vertebral body causing spinal cord compression. Mr. Clemmons had an anterior discectomy and a 2-level (C5-C7) arthrodesis on November 9, 2010. Radiograph of the cervical spine dated November 13, 2010 indicated good placement of hardware and soft tissue swelling at C-3 and C-4. Medical records dated June 18, 2012 indicated a stable fusion at C5-C7, some spondylitic changes at C3-C5, a disc protrusion at L1-2, and a very advanced degenerative disc at L5-S1 without nerve root impingement.

Mr. Clemmons reports constant cervical and lumbar pain. He reports difficulty with balance and stairs. He reports inability to squat fully, run, or walk fast since his injury. He reports being fearful of attempting golf since his injury secondary to cervical/lumbar pain and limited balance/stamina.

Mr. Clemmons has limited cervical and lumbar range of motion. Please refer to the enclosed Functional Capacity Evaluation for cervical and lumbar range of motion measurements.

The American Medical Association's Guides to the Evaluation of Permanent Impairment, fifth edition was utilized to determine his impairment. Mr. Clemmons qualifies for DRE (diagnosis-related estimates) Cervical Category IV according to Table 15-5 on page 392. This whole person impairment is 28%. In order to convert a whole person impairment rating into a regional spine impairment, one must divide the whole person impairment rating by 0.35. Please refer to page 427 of the Guides. Dividing 28% by 0.35 results in a 80% cervical spine impairment.

However, the Guides state, "when there is alteration of motion segment integrity (fusions) at multiple levels in the same spinal region", the Range of Motion (ROM) method should be utilized.

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1177 Sunset Boulevard, West Columbia, SC 29169, 794-3440
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- 208 -



BLYTHEWOOD
PHYSICAL THERAPY

428-3 McNulty Rd., Box 219, Blythewood, SC 29016, 728-0421

According to Table 15-7 on page 404, he is assigned a whole person impairment rating of 11%. According to Table 15-12 on page 418, he qualifies for a whole person impairment rating of 3% for loss of cervical flexion range of motion and for a whole person impairment rating of 3% for loss of cervical extension range of motion. According to Table 15-13 on page 40, he qualifies for a whole person impairment rating of 2% for loss of left cervical lateral bending range of motion and for a whole person impairment rating of 2% for loss of right cervical lateral bending range of motion. According to Table 15-14 on page 421, he qualifies for a whole person impairment rating of 2% for loss of right cervical rotation range of motion and for a whole person impairment rating of 2% for loss of left cervical rotation range of motion. Combining the range of motion impairments result in a total whole person impairment rating of 14%. Using the Combined Values Chart on page 604 (combining 11% with 14%), results in a total whole person impairment rating of 23%.

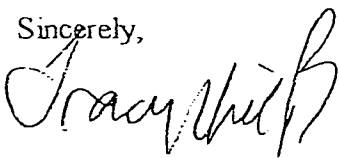
The Guides state, "when the ROM and DRE methods can both be used, evaluate the individual with both methods and award the higher rating". Please refer to page 380 of the Guides. Therefore, based on the DRE method, Mr. Clemmons qualifies for a whole person impairment rating of 28% which converts to a cervical spine impairment rating of 80%.

Mr. Clemmons also qualifies for an impairment rating for his lumbar spine. He had a specific injury and has asymmetrical loss of lumbar range of motion. According to Table 15-3 on page 384, he qualifies for DRE Lumbar Category II. This whole person impairment rating is 8%. In order to convert a whole person impairment rating into a regional spine impairment, one must divide the whole person impairment by 0.75. Please refer to page 427 of the Guides. Dividing 8% by 0.75 results in a 10.66% lumbar spine impairment which rounds up to 11%.

In conclusion, Mr. Clemmons qualifies for a whole person impairment rating of 28% which converts to a 80% cervical spine impairment. He also qualifies for a whole person impairment rating of 8% which converts to a 11% lumbar spine impairment.

Thank you for this referral. If you have any questions please call me at 803-799-7007.

Sincerely,



Tracy Hill, P.T.



Bruce D. Filler, M.Ed., P.T.
Director

www.ccrehab.com

September 11, 2012

Mr. Preston McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, S.C. 29201

Re: Henton Thomas Clemmons, Jr.

Mr. Clemmons was seen on September 11, 2012 for a Functional Capacity Evaluation.

Mr. Clemmons is a 40 year old male who sustained a work injury to his cervical and lumbar spine on September 12, 2010. The patient reported an initial pain level of "6" on a "0-10" pain scale in which "0" represents no pain and "10" represents maximal emergency level pain. The highest reported pain level during today's evaluation was "8" and this occurred with the floor level lift.

The results of the Functional Capacity Evaluation performed on this date indicate that he can meet the demands of limited light work. He tolerates occasional walking, stairclimbing, kneeling, bending, twisting, and reaching. He does not tolerate occasional squatting. He can lift from 10 to 17 pounds at various heights on an occasional basis. He can carry 14 pounds with 2 hands. He can carry 11 pounds in the right hand and 11 pounds in the left hand. He can push 20 pounds loaded in a sled and can pull 0 pounds loaded in a sled. He has a self-reported sitting and standing tolerance of 120 and 60 minutes respectively. He has a self reported standing/walking tolerance of 90 minutes. He was observed to sit for a maximal time of 38 minutes and stand for a maximal time of 15 minutes. He was observed to stand/walk for a maximal time of 45 minutes.

The patient's cervical and lumbar range of motion are limited. Please refer to the enclosed forms for range of motion measurements.

The results of the treadmill test place Mr. Clemmons in the fair Classification of Aerobic Capacity. Mr. Clemmons' Functional Aerobic Capacity qualifies him for light work.

Mr. Clemmons put forth a consistent effort during the evaluation. He qualifies for limited light work. Please refer to page 2 of the enclosed forms for specific lifting ability. He does not tolerate occasional squatting. It should be noted, Mr. Clemmons was noted to have decreased balance. He has difficulty with single stance balance and he was unable to stand single stance on either lower extremity with his eyes closed.

Thank you for this referral. If you have any questions, please call me at (803) 799-7007.

Sincerely,

Tracy Hill, P.T.

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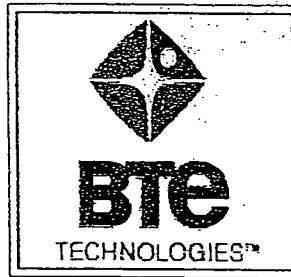
428-3 McNulty Road, Box 219, Blythewood, SC 29016, 728-0421



PREPARED FOR:
Mr. Preston McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, S.C. 29201

Tel: (803) 771-7211

FUNCTIONAL ABILITIES EVALUATION



Client Information

Client Name: Mr. Henton Thomas Clemmons, Jr.

Address:

Injury Date: September 12, 2010

Dominant Hand: Right Hand

SSN:

Date of Birth: December 01, 1971

Gender: Male

Height: 72 inches

Weight: 319 lbs

Employment Information

Occupation: Customer service associate

Employer: Lowes

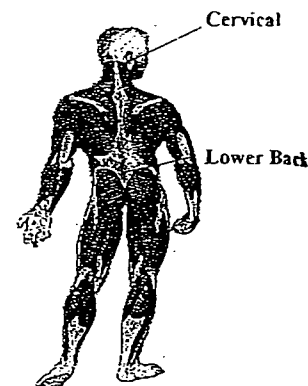
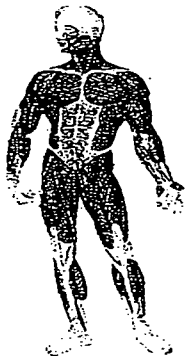
Address: Harbison Boulevard
Irmo
29063

Work Status: Currently working

Start & Finish Date: Sep 11, 2012

Evaluator: Tracy Hill, PT

Areas of Complaint



General Location	Specific Location	Plane	Side	Pain Type	Pain Scale
Lower Back (Lumbosacral)			Central	Stiffness/ache	6 - High Moderate
Neck (Cervical)			Central	Burning/throbbing/stiffness	6 - High Moderate

Tracy Hill PT

Tracy Hill, PT
Physical Therapist



Name Horton Clemmons

Lift	Pounds	Job Demand Category
Floor to Waist	10	limited light
12 Inch to Waist	12	
Waist to Shoulder	17	
Shoulder to Overhead	13	
Carry (2 Handed)	14	
Right Hand Carry	11	
Left Hand Carry	11	
~~Push~~	~~20 (16.4 lb. FF)~~	
Pull	8 (14.2 lb. FF)	✓

Strength



Upper extremity manual muscle test

Sep 11, 2012 9:55:40 AM

Manual Muscle Testing of the upper extremities was performed and the results are as follows:

upper trapezius: Bilat 5/5

deltoid: Bilat 4/5

biceps: Bilat 5/5

triceps: Bilat 4/5

fingers: Bilat 5/5

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Mr. Bentoo Thomas Clemmons, Jr.

Strength

▶ Lower Extremity Manual Muscle Test

Sep 11, 2012 9:59:35 AM

Manual Muscle Testing of the lower extremities was performed and the results are as follows:

Hip Flexion: Bilat 4/5

Knee Extension: Bilat 5/5

Dorsiflexion: Bilat 5/5

Extensor Hallicis Long: Bilat 5/5

Eversion: Bilat 5/5

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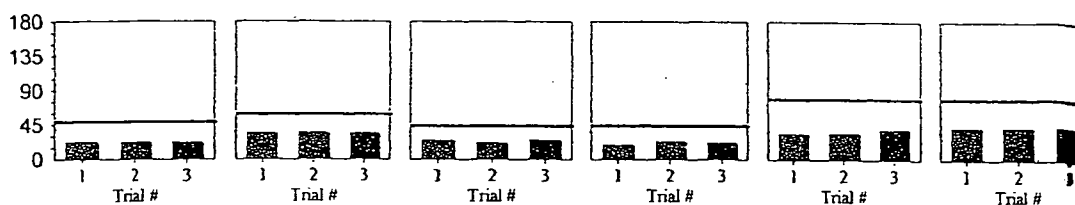
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Mr. Henton Thomas Clemmons, Jr.



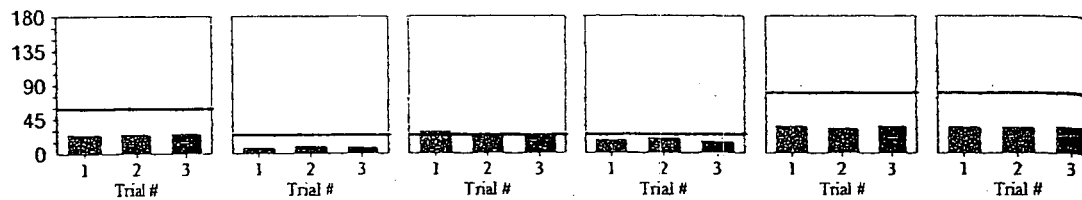
	Flexion	Extension	Left Lateral Flexion	Right Lateral Flexion	Left Rotation	Right Rotation
Normals:	50	60	45	45	80	80
Trial 1:	24	35	26	20	35	43
Trial 2:	24	36	23	25	36	44
Trial 3:	24	35	27	24	41	45

Average	24.0	35.3	25.3	23.0	37.3	44.0
Maximum	24.0	36.0	27.0	25.0	41.0	45.0
AMA Valid	YES	YES	YES	YES	YES	YES
% of Normal	48%	59%	56%	51%	47%	55%

**Reference Information**

American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition

	True Lumbar Flexion	True Lumbar Extension	Left Lateral Flexion	Right Lateral Flexion	Left Straight Leg Raise	Right Straight Leg Raise
Normals:	60	25	25	25	80	80
Trial 1:	25	8	29	18	36	35
Trial 2:	26	10	25	20	34	35
Trial 3:	27	9	24	16	37	36
Average	26.0	9.0	26.0	18.0	35.7	35.3
Maximum	27.0	10.0	29.0	20.0	37.0	36.0
AMA Valid	YES	YES	YES	YES	YES	YES
% of Normal	43%	36%	104%	72%	45%	44%



Reference Information

American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition

The patient was asked to bend forward at the waist 25 repetitions. The results are as follows:

dynamic bending: 25 repetitions

PRE HR 65 POST
HR 74

Evaluator Comments

Mr. Clemmons was able to bend forward at the waist 25 repetitions.

Work Simulation ► Dynamic Rotation

Sep 11, 2012 10:11:32 AM

The patient was asked to rotate at the waist 25 repetitions. The results are as follows:

Dynamic rotation: 25 repetitions

PRE HR 71 POST
HR 73

Evaluator Comments

Mr. Clemmons was able to rotate at the waist 25 repetitions.

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Mr. Henton Thomas Clemmons, Jr.



The patient was asked to assume a squatting position for 2 minutes. The results of squatting are as follows:

squatting: unable

PRE HR 86 POST
HR 86

Evaluator Comments

Mr. Clemmons was unable to squat. He attempted by holding onto plinth but was able to half squat only secondary complaints of increased lumbar and bilateral knee pain.

Work Simulation ► Kneeling

Sep 11, 2012 10:16:36 AM

The patient was asked to assume a kneeling position for 2 minutes. The results are as follows:

Kneeling: 2 minutes

PRE HR 67 POST
HR 74

Evaluator Comments

Mr. Clemmons was able to kneel for 2 minutes. He was noted to have difficulty getting in and out of this position but
~~he was able to complete the test.~~

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Mr. Benton Thomas Clemmons, Jr.



Work Simulation ► Dynamic Reaching

Sep 11, 2012 10:32:03 AM

The patient was asked to transfer 1 lb weights from shoulder level to above head level for 5 minutes. The results are as follows:

Dynamic reaching: 5 minutes

PRE HR 72 POST
HR 86

Evaluator Comments

Ms. Clemmons was able to reach for 5 minutes.

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Mr. Benton Thomas Clemmons, Jr.



Work Simulation ► Stair Climbing

Sep 11, 2012 10:40:29 AM

The patient was asked to ascend/descend a series of 4 stairs for a total of 10 cycles. The results are as follows:

Time (min,secs)	Initial Heart Rate (bpm)	Final Heart Rate (bpm)	Stairs Ascended	Stairs Descended
3:31	73	92	40	40

Evaluator Comments

Mr. Clemmons was able to ascend/descend a series of 4 stairs for a total of 10 cycles. He used a step over step gait pattern and required handrails. He reported "stiff legs and back" but he was able to complete the test.

COLUMBIA REHABILITATION CLINIC, INC.

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Mr. Henton Thomas Clemmons, Jr.

Work Simulation ➤ **Floor to waist lift**

Sep 11, 2012 10:45:58 AM

Floor to waist lifting results are as follows:

Floor to waist: 10 pounds

Physical demand level: limited light

MAX HR 120

Evaluator Comments

Mr. Clemmons was able to lift 10 pounds with difficulty noted. He did not want to attempt additional weight secondary to complaints of increased lumbar pain. He also reported weakness in his legs and was noted to have decreased balance.

Work Simulation. ► 12 inch to waist lift

Sep 11, 2012 10:55:06 AM

The patient was asked to lift from 12 inches off of the floor to waist height. The results are as follows:

12 inch to waist: 12 pounds

Physical demand level: limited light

MAX HR 100

Evaluator Comments

Mr. Clemmons was able to lift 12 pounds. He was noted shifting to the left when performing this lift and he did not want to attempt additional weight secondary to complaints of increased lumbar pain.

COLUMBIA REHABILITATION CLINIC, INC.

2362 TWO NOTCH ROAD COLUMBIA SC 29204 (803) 799-7007

Mr. Henton Thomas Clemmons, Jr.

Work Simulation ► Waist to shoulder lift

Sep 11, 2012 11:05:19 AM

The patient was asked to lift from waist height to shoulder height. The results are as follows:

Waist to shoulder: 17 pounds

Physical demand level: limited light

MAX HR 96

Evaluator Comments

Mr. Clemmons was able to lift 17 pounds with difficulty noted. He did not want to attempt additional weight secondary to complaints of increased cervical and lumbar pain.

The patient was asked to lift from shoulder height to overhead height. The results are as follows:

Shoulder to overhead: 13 pounds

Physical demand level: limited light

MAX HR 98

Evaluator Comments

Mr. Clemmons was able to lift 13 pounds with difficulty noted. He did not want to attempt additional weight secondary to complaints of increased cervical pain.

The patient was asked to carry a box, using both hands, a distance of 30 feet. The results are as follows:

Dynamic 2-handed 14 pounds
carry:

Physical demand level: limited light

MAX HR96

Evaluator Comments

Mr. Clemmons was able to carry 14 pounds with difficulty noted. His speed/ease of gait was noted to decrease and he did not want to attempt additional weight secondary to complaints of increased lumbar pain and lower extremity weakness.

The patient was asked to carry a bucket, using 1 hand, a distance of 30 feet. The results are as follows:

Left-handed carry: 11 pounds

Right-handed carry: 11 pounds

MAX HR 98

Evaluator Comments

Mr. Clemmons was able to carry 11 pounds in his left hand and 11 pounds in his right hand with difficulty noted. His speed/ease of gait was noted to decrease and he did not want to attempt additional weight secondary to complaints of decreased balance/weakness in his lower extremities.

The patient was asked to push and pull a sled a distance of 30 feet. The results are as follows:

Push: 16.0 lb.ft.

Pull: 14.2 lb.ft.

MAX 108

Evaluator Comments

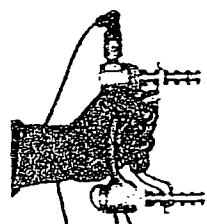
Mr. Clemmons was able to push 20 pounds and pull 0 pounds loaded in a sled with difficulty noted for both. He did not want to attempt additional weight secondary to complaints of increased lumbar pain. He also reported weakness in his bilateral lower extremities.

Hand Grip Strength

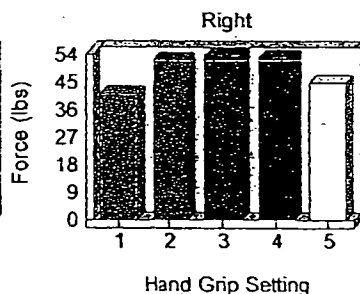
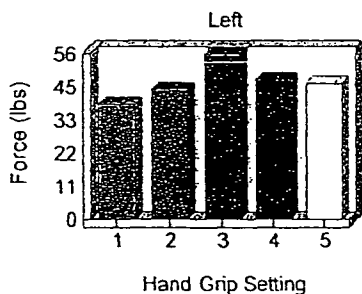
The JAMAR hand dynamometer was used in order to quantify grip strength and determine whether Mr. Henton Thomas Clemmons, Jr. exerted consistent effort during grip strength testing. Mr. Henton Thomas Clemmons, Jr. was tested using the modified maximum voluntary effort hand grip protocol. Mr. Henton Thomas Clemmons, Jr. is right hand dominant. Normative data is based on the assumption that right and left hand dominant subjects, analyzed separately show little functional difference between their mean scores.¹⁻²

Modified Maximum Voluntary Effort (MMVE)

Sep 11, 2012 9:32:34 AM



The hand dynamometer is set to each of the five available positions which vary the client's grip size. The results for each of the average maximum forces during each position are displayed by the corresponding bar graphs.



	Left	COV	Right	COV
Pos #1	38.9 lbs.		41.7 lbs.	
Pos #2	44.1 lbs.	7.4%	52.8 lbs.	8.8%
Pos #3	55.8 lbs.		54.4 lbs.	
Pos #4	47.4 lbs.		53.7 lbs.	
Pos #5	45.9 lbs.		45.2 lbs.	
St. Dev.	5.5 Lbs.		5.1 lbs.	

Using the Modified Maximum Voluntary Effort (MMVE) protocol over a range of five positions on the hand dynamometer, it is expected that the strength graphs obtained results in a bell-shaped curve^{3,11,12,13} even in a disabled population or if the client's hand is injured^{3,13} with the coefficients of variation at position 2 within the acceptable 15% or less limit.

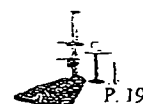
The graph obtained for Mr. Henton Thomas Clemmons, Jr. did demonstrate a bell shaped curve which may be an indicator of maximal effort and the coefficients of variation of the underlying data may be an indicator of consistent effort

¹ Stokes H. 1983. The seriously uninjured hand - weakness of grip. J Occup Med 25(9):683-684.

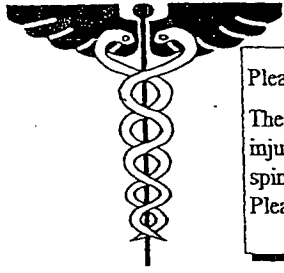
¹¹ Niebuhr B, Marion R. 1990. Voluntary control of submaximal grip strength. Am J Phys Med Rehabil 69(2): 96-101.

¹² Matheson L, Carlton R, Miemeyer L. 1988. Grip strength in a disabled sample: reliability and normative standards. Ind Rehabil Q 1(3):9,17-23.

¹³ Hildreth D, Breidenbach W, Lisiter G, Hodges A. 1989. Detection of submaximal effort by use of the rapid exchange grip. J Hand Surgery 14A(4): 742-745.



The Waddell Signs



Sep 11, 2012

Please read:

The following tests are recommended to test for non-organic physical signs in the case of lower back injuries. The Waddell's NOS should not be used in case situations where the injury involves multiple spinal segments.

Please check whether the patient's response is positive or negative.

1. Tenderness - Should be localized to a skeletal or neuromuscular structure.

Superficial Tenderness - provide light pinch to the skin over the lower back region. If there is widespread tenderness, this is considered non-physiological and is an indication of symptom magnification.

- ☒ Negative
☐ Positive

Non-Anatomic Tenderness - Perform deep palpation to the lumbar paraspinals. If there is tenderness which is widespread and not localized to any specific structures, then this is considered magnification of symptoms.

- ☒ Negative
☐ Positive

2. Simulation Tests - Give the patient the impression that a particular movement is being performed when it actually is not

Axial Loading - To perform this test apply a light downward pressure on the top of the patient's head while they are in the standing position. If increased lower back pain is reported then this is an indication of exaggeration of symptoms.

- ☒ Negative
☐ Positive

Simulated Rotation - With the patient in the stand position and feet together, rotate the pelvis and shoulders simultaneously by applying pressure at the level of the lower forearm. If the patient reports increased pain then this is considered symptom magnification.

- ☒ Negative
☐ Positive

3. Distraction Tests - Retesting of a positive finding in a way that the patient does not recognize or expect

Distraction Test - Perform a straight leg raise with the patient in the supine position. When the SLR shows marked improvement while performed on distraction (i.e. Patient seated) this is considered positive.

- ☒ Negative
☐ Positive

4. Regional Disturbances - Divergence from accepted neuroanatomy

Regional Disturbances - These are present as motor weakness or sensory loss involving widespread regions such as the entire leg or a quarter or half of the body.

- ☒ Negative
☐ Positive

5. Overreaction - Disproportionate verbalization, facial expression, muscular tension and/or tremor or sweating

Overreaction - A disproportionate response such as verbalizations, facial expressions, collapsing etc. can be indicative of symptom magnification.

- ☒ Negative
☐ Positive

If three or more of the categories are positive then the findings are clinically significant for non-organic low back pain.

Scoring: Clinically insignificant.

► **Sitting tolerance**

Sep 11, 2012

The patient's self-reported sitting tolerance is as follows:

.....

Evaluator Comments

Mr. Clemmons has a self reported sitting tolerance of 120 minutes. He reports his sitting tolerance is ~~limited~~ secondary to complaints of increased lumbar pain.

► **Standing tolerance**

Sep 11, 2012

The patient's self-reported standing tolerance is as follows:

Evaluator Comments

Mr. Clemmons has a self reported standing tolerance of 60 minutes. He has a self reported standing/walking tolerance of 90 minutes. He reports his standing/walking tolerance is limited secondary to complaints of increased lumbar and right lower extremity pain.

Cardiovascular Intake ►

Sep 11, 2012

Resting Rate (Min)	Systolic (mm Hg)	Diastolic (mm Hg)
54	130	80

Result	Slow Heart Rate	Normal Blood Pressure	Normal Blood Pressure

Single Stage ► Pre-Testing Heart Disease Questions

Treadmill

Test Date: Sep 11, 2012 10:21:48 AM

1. Have you ever had a heart attack?..... ☒ Yes ☐ No
2. Have you ever had heart surgery?..... ☒ Yes ☐ No
3. Have you ever had an abnormal electrocardiogram?..... ☒ Yes ☐ No
4. Do you have heart disease?..... ☒ Yes ☐ No
5. Have you been told by a physician you have had angina?... ☐ Yes ☒ No
6. Have you been told by a physician you
have had palpitations?..... ☐ Yes ☒ No
7. Have you had a stroke (CVA)?..... ☐ Yes ☒ No
8. Is your blood pressure (BP) 159/100?..... ☐ Yes ☒ No
9. Are you pregnant?..... ☐ Yes ☒ No

Physician Contacted: ... ☒ Yes ☐ No Clearance Granted... ☒ Yes ☐ No

Plan:

Initial Heart Rate Initial Blood Pressure
54 BPM 130 / 80

Stage	Speed	Heart Rate	Blood Pressure	Grade
1. Warm-Up	1mph	92 BPM	0/0	0%
2. Exercise	1mph	97 BPM	0/0	5%
3. Recovery	0mph	0 BPM	0/0	0%

Predicted Maximum VO2	20 ml/Kg/min
	8 ml/Kg/min
Predicted Max Met Level	2 METS
Functional Aerobic Capacity	Light work
Classification of Aerobic Capacity	Fair



SUNSET FAMILY PRACTICE
Gal G. Margalit, M.D.
3935-G Sunset Blvd.
West Columbia, SC 29169
(803) 794-8776
(803) 794-4342 Fax

INDEPENDENT
MEDICAL EVALUATION:

September 11, 2012

PATIENT:

Henton Thomas Clemmons, Jr.
Chart# 23156

AGE:

40

DATE OF BIRTH:

December 1, 1971

DATE OF ACCIDENT/INJURY:

September 12, 2010

HISTORY OF PRESENT ILLNESS: On 09/12/10 while the patient was employed at Lowes, he suffered a slip-and-fall in a trailer that was filled with pinestaw. He slipped on some loose pinestaw and fell flat on his back injuring his back and head on the floor. He did not lose consciousness but he was dazed. He got up slowly. He returned to work for the rest of that day. He developed some tightness in his back later that evening. Approximately two weeks later he noted the onset of numbness from his midsection radiating to his feet.

He reported this to human resources at work and he was sent to Doctors Care where he was evaluated initially by Dr. Swami who diagnosed him with a strained back and treated him with muscle relaxants and anti-inflammatories. He returned to work and got worse. He was referred to Midland Orthopedics where he was seen by Dr. Armsey who told him that he thought he would need to be seen by a neurosurgeon. His primary care physician referred him to Dr. Drye, neurosurgeon, for evaluation. He had MRI performed of his neck and back. He was told that he had ruptured disks with nerve problems and surgery was recommended and undertaken in October 2010.

Following the surgery, symptoms of numbness improved but came back necessitating another visit to the emergency room and for which he was admitted for steroids. He had intensive physical therapy at HealthSouth to teach him how to walk. He finally returned to work with restrictions. He states he has some problems with tightness around his neck. He has some decreased motion of his back. He has weakness in his legs, more so on the right than on the left which occasionally give way on him. He has difficulty with stooping and bending. He feels very stiff in the mornings and has difficulty with his balance. He also describes some difficulty with mentation. He works as a cashier at Lowes and he not only has slow hand motion with his digits when he is operating the cash register, he also thinks slowly, although he states his concentration is intact.

GENERAL PRACTICE

Page Two

Re: Henton Thomas Clemmons, Jr.

September 11, 2012

PAST MEDICAL HISTORY: He has a history of having had an anterior MI in 2009 for which he received a stent. He has had a ventricular peritoneal shunt on the right side inserted as a child for hydrocephalous which has given him no problems prior to this injury. The patient is right-handed. He had an episode of rectal bleeding while in the hospital which was attributed to hemorrhoids.

ALLERGIES: None.

MEDICATIONS: Lisinopril, metoprolol, Plavix, Crestor and aspirin.

FAMILY HISTORY: Hypertension, diabetes and heart attack.

SOCIAL HISTORY: The patient does not smoke tobacco and does not drink alcohol.

PHYSICAL EXAMINATION: The patient is a pleasant, cooperative 40-year-old Caucasian male. Weight 317 pounds, height 72 inches, blood pressure 130/80, pulse 80/minute. General examination of his head, ears, eyes, nose and throat is normal. Cranial examination, II-XII, is normal also. Lungs are clear. Heart sounds 1 and 2 could be heard, no added sounds or murmurs.

The cervical spine range of motion is as follows:

	<u>Left</u>	<u>Right</u>
Lateral Rotation	40	40
Lateral Flexion	20	20
Ventroflexion		20
Dorsiflexion		20

The dorsolumbar range of motion is as follows:

	<u>Left</u>	<u>Right</u>
Lateral Rotation	20	20
Lateral Flexion	20	20
Ventroflexion		60-70
Dorsiflexion		10-20

The patient demonstrates a normal and unrestricted range of motion of the shoulders in forward elevation, backward elevation, abduction, adduction, internal and external rotation. He has general tenderness in dorsolumbar interspaces. There is no sensory loss noted in his upper or lower extremities. He exhibits a normal range of motion of his shoulders, elbows, wrists and hands. He can move his hip, knee and ankle bilaterally without any problems. Reflexes are 1+ for ankles and knees. His grip on the left is stronger than on the right.

Page Three

Re: Henton Thomas Clemmons, Jr.

September 11, 2012

MEDICAL RECORDS: The patient's medical records have been reviewed. I note that he underwent an FCE on 09/11/12 performed by Tracy Hill who opined that he can meet limited light work status, that he showed consistent effort, that he did demonstrate decreased balance. All Waddell's signs were negative. A neurologic evaluation on 09/05/12 by Dr. Howard Mendel evaluated him for a work related injury when he fell and herniated his neck disks at C5-6 and C6-7 with cord compression, bilateral leg weakness with a sensory level of T4 by history. It resolved after cervical decompression and he has made a remarkable recovery, although he is not back to his pre-injury level of functioning.

He still has spasticity of his legs as well as hyper-reflexion, difficulty with coordination, difficulty with running and difficulty with balance. He is approximately 85% better with a 15% neurological injury let over. He had a closed head injury with concussion but does not appear to have any brain injury or involvement from this event. He noted no higher cortical function injury and no post concussive symptoms. He recommended therapy for balance and gait. He felt his condition is permanent and may need treatment to his back in the future. He would have limitations in bending, twisting, turning, lifting, and limitations in his ability to carry or able to sit or stand that he requires flexibility in the workplace with these restrictions and recommended an FCE. He noted no pre-existing history of neurologic disease, specifically noting no previous history of any foot or leg problems.

The patient was seen by Dr. Daniel Westerkam on 12/07/10 who had him admitted to the hospital at HealthSouth from 11/17/10-12/03/10 and noted a diagnosis at discharge of comprehensive rehabilitation after cervical myelopathy with anterior decompression, fusion at C5-6 and C6-7, hypertension, hydrocephalous, stent for CAD and a history of hemorrhoids.

Notes reviewed from Palmetto Imaging from 10/21/10 including a CAT scan of the lumbar spine with contrast revealed no fracture at L1-2. There was less central foraminal disk osteophyte protrusion causing mild central canal and left neuroforaminal encroachment, mild L5-S1 subarticular stenosis secondary to disk osteophyte protrusion with mild facet arthropathy. He also had multiple studies at Lexington on 11/04/10 including a chest x-ray that revealed the right neck shunt tubing, a KUB that revealed a tube in the abdomen. MRI of the cervical spine on 11/04/10 revealed a large herniated disk compressing the cord. MRI of the brain on 11/04/10 showed a moderately severe hydrocephalous, right-sided lateral ventricular shunt and small vessel deep matter changes. MRI of the dorsal spine on 11/04/10 revealed some scoliosis and incidental disk herniation at L1-2 and L5-S1. X-ray of the skull on 11/04/10 revealed a right-sided shunt. He received cardiology clearance from Dr. Penmesta on 11/09/10 having had a previous MI and a stent.

Operative note by Dr. Randle Drye on 11/09/10 revealed a preoperative diagnosis of a herniated disk at C5-6 and C6-7 with cord compression and severe myelopathy. Postoperative impression was the same. Procedure included radical anterior disectomy and osteophyctectomy, foraminotomy at C5-6 and C6-7, two level interbody arthrodesis, bone graft x2 with anterior fixation plate from C5. It was noted in the operative report that the surgeon noted an enormous amount of disk material within the canal at the time of surgery.

Page Four
Re: Henton Thomas Clemmons, Jr.
September 11, 2012

Lexington Medical Center Emergency Room notes from 11/13/10 revealed numbness in his legs and Dr. Drye admitted him for steroid treatment. He also had some bright red bleeding at the time and was seen by Dr. Salibi who recommended a colonoscopy as an outpatient thinking the bleeding was likely secondary to hemorrhoids.

Notes from Dr. Drye on 11/08/10 note that the patient had a slip-and-fall at work and impacted rather dramatically on his back. He developed numbness over several days. He has a history of a CVP shunt without complications and a cardiac stent from 09/08/09. After his examination, he noted a cord compression myelopathy secondary to C6-7 and a bulge at C5-6 and recommended surgery and discussed options. He noted in a letter to Dr. Hicks that he underwent a ACDF at C5-6 and C6-7. He noted in a letter to Mr. McDaniel that his injuries are work-related.

On 12/29/10 he saw the patient for follow-up and he noted loss of stamina, limited in walking long distances. His lower extremity coordination was improved. He had nearly normal sensation and strength in the upper extremities and very minimal neck discomfort. He was to follow-up in eight weeks' time. He saw him on 02/06/11 and he was unable to return to work and requested restrictions. Dr. Drye recommended continued therapy. This was also reiterated on 04/12/11 and 06/07/11. He felt that the patient was at maximum medical improvement and based on the AMA Guidelines, fifth edition, DRE, cervical category 4, he noted a 25% impairment to the whole person.

He also noted permanent restrictions with no walking or standing for one hour without rest, no repetitive climbing of steps, no repetitive overhead reaching and only occasional lifting or carrying of 30 pounds. He saw him again on 06/08/12 and he noticed he had returned to work with some restrictions, that he had persistent stiffness at the base of his neck which did not radiate to his upper extremities, that he had no symptoms in his arms, that he had some cervical lumbar pain worse in the morning and improving with activity, no radicular symptoms in his legs and some altered gait from myelopathy. He noted no bowel or bladder changes. He was mildly tender in the cervical lumbar spine. He had noted that he had gained weight. His muscle groups strength was 5 out of 5 in all muscle groups and he had mild hyporeflexion in his lower limbs with preserved sensation.

He also reviewed his latest MRIs including a cervical spine which revealed stable operative construct with no residual high grade stenosis, lumbar spine revealed disk protrusion at L1-2 to the left and L5-S1 degenerative disk disease which was advanced. He felt the patient's pain was axial myofascial and likely arthritic. He advised him to lose weight without any other recommendations.

ASSESSMENT: Status post on-the-job injury relating to a slip-and-fall while working for Lowes on 09/12/10 with post traumatic disk herniation at C5-6 and C6-7 with cord compression myelopathy requiring surgical decompression and fixation with subsequent requirement for steroids and improvement after therapy and rehabilitation with HealthSouth. He also had a head injury with minimal initial symptoms but with some symptoms of slowness of cognition and difficulty in getting his fingers to move rapidly following the accident but with no loss of concentration.

Page Five

Re: Henton Thomas Clemmons, Jr.

September 11, 2012

STATEMENT: In my opinion, this patient has lost more than 50% of the functional capacity of his back to work based on his on-the-job injury of 09/12/10 and I concur with the opinions of his neurosurgeon regarding weight loss and continuing restrictions. He may benefit from some neurological testing for any mild brain dysfunction that might be ongoing but I would suspect this is of a minor nature in relationship to the rest of his injuries and subsequent recovery.

Gal G. Margalit, M.D.

GGM/pes

09/12/12

Dictated but not Read

Henton Thomas Clemmons, Jr.

Dear Dr. Margalit:

Please provide an answer and opinion to the following question:

1. Based on your evaluation, review of his treatment records, please set forth the restrictions you feel apply such as restrictions on lifting, stooping, bending, and crawling, and after reviewing the results of the FCE, knowing the condition of Tommy's back and knowing under the U.S. Dept. of Labor's Dictionary of Occupational Titles physical demand work categories (of very heavy duty, heavy duty, medium duty, light duty and sedentary physical demand levels) the categories from which he is excluded from work, in your opinion from a physical capacity standpoint and his physical ability to use his back to do full time work, has he lost more than 50% of the use of his back to do work with his back?

☒
Yes

☐
No

GGM
GGM (initials)

The above referenced opinion constitutes my opinion to a reasonable degree of medical certainty based on my treatment and knowledge of the condition of Mr. Clemmons.

Gal G. Margalit, M.D.

9-12-12
Date:

SOUTHEASTERN SPINE INSTITUTE

September 6, 2012

Preston F. McDaniel, Esquire
1315 Elmwood Avenue
Columbia, SC 29210

RE: Henton Clemmons

Patient # 655860

Dear Attorney McDaniel:

Today, I had an opportunity to evaluate Mr. Henton Clemmons. As you know, Mr. Clemmons is a 40-year-old individual who persists with symptoms and residual weakness and difficulty with mobility relating back to a work injury that occurred in September 2010. Specifically, Mr. Clemmons indicates that he was at work at Lowe's on 9/12/2010. He went up into a pine straw trailer. He indicates that evidentially there was a slick spot. He slipped and fell injuring his neck and back. He relates developing extremity symptoms within days and then by about three weeks he was having symptoms of significance that ultimately required him to have a two level cervical spine surgery. He then subsequently required an in-patient rehabilitation over a period of approximately two months. He improved greatly but has been left with some residual symptoms including his neck and also particularly his low back. He has symptoms involving his extremities including some weakness in the right upper extremity and right lower extremity. Mr. Clemmons' level of symptoms at the present time can still be as high as an 8 on a scale of 0 to 10 at times. Despite that, Mr. Clemmons is back to work at Lowe's. He's working as a cashier. Mr. Clemmons indicates that his symptoms are better with walking a little and moving around a little. His symptoms are worse with heavier activities and with standing or sitting in the same position for an extended period of time.

Mr. Clemmons has a history of hydrocephalus, which he had a shunt as a child. It had left him with some cognitive deficits, but overall otherwise he was doing physically well until this injury in September 2010. Mr. Clemmons other medical problems include diabetes and high blood pressure.

Mr. Clemmons filled out the review of systems page on our intake form and I reviewed that.

CLEMMONS, HENTON

Patient # 655860

September 6, 2012

Page 2

Mr. Clemmons is working now, as noted above. He's doing cashier work and customer service. The question is whether he can do heavier physical work than this.

On physical examination, Mr. Clemmons is pleasant and cooperative. He's overweight. His height is 6 foot and weight 300 pounds. He is alert and oriented. There's tenderness over the neck and upper back, its fairly mild at this time. No tenderness over the mid back. There is some tenderness over the low back but this is also mild at the present time. No tenderness over the buttocks. The right upper extremity seems weaker than the left, and also the right lower extremity seems weaker than the left. He does have residual hyperreflexia also. I reviewed the information and studies that you had forwarded to me.

Mr. Clemmons sustained an injury to his neck and low back as a result of a work incident two years ago. It was an injury causing myelopathy, which required decompression and fusion surgery. The myelopathy was such that he had severe impairment of his strength and mobility. He improved greatly with rehabilitation but he remains with some residual deficits, particularly involving his right upper and right lower extremities. He is able to mobilize adequately and in fact is back to the workforce at a level of a cashier and doing customer service work at Lowe's. He does remain with residual symptoms involving his neck and upper back as well as his low back.

In my opinion, Mr. Clemmons is at maximum medical improvement. However, I absolutely believe that he's going to need intermittent treatment ongoing into the future. He will require follow up intermittently, and I anticipate that he will need further studies of his neck and low back. He's very likely to require further treatment, which will probably include physical therapy, although invasive treatment may well prove to be needed.

I would define at least a 30% permanent impairment rating for the neck-related symptoms and problems. For the low-back related symptoms and problems, I would define 10%. As such, the permanent impairment rating here is at least 40%. As for Mr. Clemmons level of function going forward, I understand that he has been given a 25-pound lifting restriction; I would absolutely support that. Further, I would have him avoid such activities such as climbing or going into the straw trailer. I would say customer service and/or cashier work and/or computer work would be best.

As for loss of function of the back as a result of this injury September 2010, it would be over 50% loss of his functional capabilities, in my opinion.

Thank you for referring Mr. Henton Clemmons for this independent medical evaluation. If I can be of further assistance or if you have any questions or comments, please don't hesitate to call or write.

Sincerely,

Leonard E. Forrest, M.D.

LEF/sk

T- 9/10/12

Harriet Fowler, CRC, M.Ed.
Vocational Rehabilitation Services

2143 Marion Street
Columbia, South Carolina 29201
Tel: (803) 256-3213 Fax: (803) 256-2129

Client: Henton Tommy Clemmons	Employer: Lowes
Address:	Columbia, SC
	Date of Birth:
Telephone: (803)	
Date of Injury: 09/12/2010	Date of Referral: 09/05/2012

Initial Evaluation

The following is a result of a request by Attorney Preston F. McDaniel of the McDaniel Law Firm, Columbia, South Carolina for a vocational evaluation. Mr. McDaniel's office provided medical records upon which the medical history was based and work history was a self-report by the client in an interview on 09/07/2012.

Educational/Vocational History:

The client graduated from Irmo High School in Irmo, South Carolina in 1990 with approximately a C average noting he did "make D's in some subjects."

In 1990 he entered Midlands Technical College and took "basic courses" attending 3 to 4 years with taking 12 hours (15 hours is a full load) ending with "C's and D's." In 1995 he transferred to Winthrop and lived on campus until 2000 taking "usually 12 hours" making C's and D's. He noted he was "suspended in 2000 as his grades were too low as he failed math and other grades were C's and D's." He noted he "tried very

hard" and felt he had good study habits, "did not party";
"concentrated on school"; but felt "courses were just too hard."
After 10 years (1990 to 2000) he had accumulated the equivalent
of 2 ½ years of college credits.

In 2000 the client began working with his parents at their BP
and Gulf Stations as a cashier in Columbia, South Carolina.
This job is classified as light in physical demand category and
is semi-skilled (D.O.T. Cashier, 211.462-014). The client worked
at this job for one year until 2001 until he obtained a better
job. Ending pay was \$9.00/hour.

In 2001 the client began working with Kroger in Columbia, South
Carolina as a night stocker. This job is classified as heavy in
physical demand category and is semi-skilled (D.O.T. Stocker,
299.367-014). The client worked at this job for approximately
one year until 2002 until he obtained a better job. Ending pay
was \$9.00/hour.

In 2002 the client began working with Steinmart in Columbia,
South Carolina as a stocker. This job is classified as heavy in
physical demand category and is semi-skilled (D.O.T. Stocker,
299.367-014). The client worked at this job for approximately

one year until 2003 when he obtained a better job. Ending pay was \$9.00/hour.

In 2003 the client began working with Koyo (a manufacturer of wheel bearings) in Columbia, South Carolina as a machine operator (grinding). This job is classified as medium in physical demand category and is semi-skilled (D.O.T. Grinding Machine Tender, 603.685-062). The client worked at this job for 4 to 5 months until he was transferred to quality control lab due to allergic reaction. This job is classified as light in physical demand category and is skilled (D.O.T. Quality Control Inspector, 726.381-010). The client worked at this job for less than one month as he felt the job "too hard" and felt he "did not have enough supervision" and "was left to learn too much on his own." Ending pay was \$9.00/hour. (This job will not be used in the client's capability profile as he was unable to perform it successfully.)

In 06/2004 the client began working with Lowe's as a night stocker. This job is classified as heavy in physical demand category and is semi-skilled (D.O.T. Stocker, 299.367-014). The client worked at this job until he had "surgery for a kidney stone" and was transferred to a cashier job. This job is classified as light in physical demand category and is semi-

skilled (D.O.T. Cashier, 211.462-014). The client worked at this job for approximately one year when he became a lawn and garden customer service worker. This job is classified as light in physical demand category but the client's actual job is medium

as he is required to lift up to 50 pounds in loading lawn and garden materials into customers' vehicles from floor/shelves. It is also semi-skilled (D.O.T. Customer Service Clerk, 299.367-010). The client worked at this job until injury of 09/12/2010 (as described below in Summary and Conclusions.) He then continued on light duty per physician orders. Upon return to work in 09/2011 after his 11/09/2010 surgery he became a cashier in the lawn and garden department continuing his previous salary, currently now \$10.20/hour. He continues there presently. The client states that upon returning to work in 09/2011 Lowe's allowed him to work in the lawn and garden area operating the cash register and "assisting customers by answering questions and showing them products" and he is not required to do any lifting. He states however, he does "stand and/or walk all day" and needs to do this in order to perform his job. He stated that Lowe's did provide an "aluminum chair for him at the register", but noted if he sat in it he was "too low to reach the register" so he does not use it. He states his back hurts "all day long" and he does receive some relief by "standing against a pole outside for several minutes at a time" but does this only when

"not busy." He states that by the end of each 8 hour work day all he is able to do is "sit or lie down after getting home"; whereas before the accident he was much more active.

Summary and Conclusions:

The client stated that on 09/12/2010 he was "in the pine straw trailer" retrieving pine straw for a customer when he "suddenly fell" with "full weight onto the floor flat on his back" and "hitting his head." He noted the floor was moist and had stray pieces of pine straw everywhere before he fell. He noted the floor was "wood and metal." He noted he was "dazed at first" but kept working and in an hour felt stiffness but felt he could "shake it off". He kept coming to work but noted the pain worsened and he experienced numbness from his "stomach on down" and noted his employer sent him to Doctor's Care.

The client was seen on 10/07/2010 at Doctor's Care in Lexington, South Carolina where physician noted the client had had a back and leg injury with low back pain and leg pain for approximately one month following "a fall in a straw trailer." It was noted the client's pain radiated down his legs on the right more than left and exam did reveal spasming of the paraspinal muscles. It was noted there was "no prior history of back problems" before

the 09/2010 work accident. Back strain was diagnosed. Skelaxin was prescribed and physical therapy was ordered.

The client was then seen at Doctor's Care on 10/09/2010 and 10/12/2010 where tenderness and pain were noted in right knee and back, worsened since initial appointment, with only "minimal improvement" with medication. (It was noted the client reported there had been a "witness" to his falling "flat on back" in the trailer.) "Low back pain/radiculopathy" and "back strain and right knee strain" were diagnosed and a knee immobilizer was placed (on 10/09/2010) and "light duty" ordered (on 10/12/2010).

On 10/19/2010 the client was seen again at Doctor's Care where physician noted the client had injury to back and right knee with exam revealing a positive or abnormal straight leg raise test on both the left and the right but worse on the right at severe level of only 30 degrees. (The straight leg raise test is an objective spinal test, if abnormal indicating spinal injury.) Physician diagnosed "back injury" and right knee injury and ordered the client referred to an orthopedist or neurosurgeon, ordered an MRI of the spine, and ordered "cancel physical therapy," noting the client had not yet been to physical therapy due to it not being authorized.

On 10/21/2010 the client underwent a CT of the lumbar spine at Palmetto Imaging in West Columbia, South Carolina which revealed a "T11-12 extensive vertebral osteophyte formation with vacuum disc phenomenon" and "disc bulge to the right"; L5-S1 central disc osteophytic protrusion with disc height loss and facet arthropathy causing bilateral subarticular stenosis; L1-L2 partially ossified left central foraminal disc osteophytic protrusion causing central canal stenosis and mild left lateral foraminal stenosis; L3-L4 retrolisthesis with a disc bulge and facet arthropathy; and L4-L5 facet squaring.

The client was seen on 11/01/2010 at Midlands Orthopedics in Columbia, South Carolina by Thomas D. Armsey, M.D. who noted, "On 09/12/10 fell in a straw trailer at work and has had significant ataxia since that time which is progressively worsening (work related). The patient is a 38 years old Caucasian male with complaints of low back pain and right knee instability that began on 09/12/2010 with acute work related injury. Symptoms include daily low back and right knee instability, complaints of sharp pain and throbbing in low back, right knee pain, numbness, spasms, weakness, popping, and dragging of the feet, pain is 3 out of 10 in intensity, worsens with standing, bending, walking and sitting to standing, improves with moving around for short periods of time. Mr.

Clemmons and his mother report that he was a perfectly functional 38 year old male until his work related accident. Since that time his gait has been severely ataxic, he cannot dress himself because of poor balance, has been bedridden

because of his inability to ambulate. He has had multiple falls because of his poor balance which is all reported as now beginning September 12, 2010. He has had ventricular shunts placed in as a child." He noted a past medical history of a heart attack and a heart stent/shunt.

On exam he noted a loss of balance and the client in "moderate distress in a wheelchair-severely ataxic out of chair." He also noted on exam lumbar paraspinal tenderness, extensor hallucis longus 4 over 5 bilaterally; patellar and Achilles reflexes hyperreflexic; unable to ambulate due to poor balance even with a cane and assistance; unable to flex and extend lumbar spine due to incredibly poor balance in the office; left and right hip strength reduced to 4 over 5 to hip flexion, extension, abduction and adduction; and Waddell test negative. (Waddell test if positive reveals non-organic signs of back injury.) He noted that a CT scan of the lumbar spine revealed "osteophyte at L1-L2 with left foraminal stenosis." He diagnosed "acute ataxia after fall" and "history of intracranial shunt." He concluded, "Mr. Clemmons has an urgent issue-he is unable to ambulate due

to severe ataxia that began acutely after a fall at work. I am concerned about a brainstem or cerebellar lesion, possibly complications from his intraventricular shunts with his recent trauma. I am certain that his ataxia is not coming from his

lumbar spine and his right knee has no mechanical abnormalities on clinical exam and therefore his sensation of instability is likely neurologic at the knee as well. I would recommend an immediate neurology or neurosurgery referral. He is essentially wheelchair bound and will not return to work until cleared by a neurosurgeon/neurologist."

On 11/04/2010 the client underwent an MRI of the thoracic spine ordered by family physician Kimberly P. Hicks, M.D. at Lexington Medical Center in West Columbia, South Carolina which revealed, "disc protrusion at the L1-L2 level and at L5-S1"; "C6-C7 disc herniation causing cord compromise"; and degenerative changes and scoliosis in the thoracic spine without acute abnormality. M.D radiologist opined, "incidental note made of L1-2 and L5-S1 disc herniations which could be further evaluated with MRI lumbar." M.D. radiologist also noted, "A draft copy of this report was routed to print to Dr. Kimberly Hicks on 11/04/2010, 2125."

On 11/04/2010 the client also underwent an MRI of the cervical spine at Lexington Medical Center in West Columbia, South Carolina which revealed an annular disc bulge at C3-C4 with a spinal stenosis; C5-C6 right paracentral disc bulge narrowing

the lateral recess. M.D. radiologist also noted, "Disc material from the C6-C7 level extends in the right paracentral region superiorly behind the C6 vertebral body effacing the thecal sac and compressing the spinal cord. There is approximately 50% loss of spinal canal space. Right paracentral, large disc herniation extending posterior to the C5 vertebral body causing spinal canal compromise and cord compression." M.D. radiologist noted, "Large herniated disc compressing spinal cord. Fax to Dr. Drye! Critical care report called to Dr. Kimberly Hicks at approximately 2100 hours."

On 11/04/2010 the client also underwent an MRI of the brain with brainstem at Lexington Medical Center in West Columbia, South Carolina which revealed, "The lateral ventricles as well as the third ventricle are markedly dilated. The brain parenchyma demonstrates some focal areas of increased signal on the T2 weighted images in the regional of the white matter. These most likely represent small vessel anglopathic changes. There is also a calcification in the deep white matter parenchyma of the left parietal lobe." M.D. radiologist summarized, "Moderately severe

hydrocephalus with a right-sided lateral ventricular shunt in place, as described. Small vessel deep white matter changes"; and ordered a copy routed to Kimberly P. Hicks, M.D. "on 11/04/2010, 2121."

The client was then seen on 11/08/2010 at Columbia Neurosurgical Associates, by Randall G. Drye, M.D. in Columbia, South Carolina who noted, "fall at work on 09/12/10 with subsequent weakness and diffuse numbness from the chest below. He has a history of hydrocephalus developing shortly after birth and ultimately had a VP shunt. According to the patient and his family who accompanied him today, there have never been any issues with the shunt requiring any revisions..On 09/12/10 he was climbing into a trailer with straw to help a customer when he slipped on the straw and impacted rather dramatically on his back. He was initially stunned but continued to work. Over the next several days he developed diffuse numbness which has progressed rather rapidly. He describes a change in sensation from below the nipple line in the abdomen and back including both lower extremities all the way to the feet and toes. He has reached a point where it is difficult for him to walk because of some spasticity and stiffness. He reports some difficulty in initiating both bowl and bladder. He has experienced some spasm in the legs, right greater than left, and has sore element of

back pain. He was seen by Dr. Kimberly Hicks and multiple imaging studies were done...he has only some mild hand tingling and discomfort roughly in a C7 distribution and this was thought to be preexisting carpal tunnel syndrome. He arrives today at the request of Dr. Kimberly Hicks seeking an urgent neurological evaluation. History of MI with coronary disease and hypertension as well as a history of hydrocephalus at birth. Surgeries include right sided VP shunt and cardiac stent placement in September of 2009."

On exam he noted, "increased spasticity and tone in the lower extremities bilaterally; deep tendon reflexes 2 over 4 in the right upper extremity, 2 to 3 over 4 in the left upper extremity; hyperreflexive bilaterally in the lower extremities; clonus present but nonsustained in both legs; touch and pinprick diminished from the nipple line below bilaterally including lower extremities circumferentially; and walks with a clearly spastic gait." He noted, "MRI of the cervical spine demonstrates a large right disc herniation with severe stenosis and cord compression at C6-C7" and "also a bulge at C6-C7." He noted thoracic MRI revealed degenerative changes and scoliosis, and MRI of the brain revealed "catheter in place with ventriculomegaly that is likely arrested hydrocephalus." He further noted, "Mr. Clemmons presents with cord compression and

myelopathy which is advancing from what I believe is a disc herniation at C6-C7 and a significant bulge at C5-C6. I am quite alarmed at his presentation and the rapidity of his symptoms ~~and~~ ~~feel that this makes surgery a reasonable consideration. I have~~ emphasized that spinal cord injuries have variable recovery and that the surgery is primarily meant to prevent a worsening of his situation. I would like to proceed as soon as tomorrow with the above surgery if we are able to do so."

On 11/09/2010 Dr. Drye at Lexington Medical Center in West Columbia, South Carolina performed a radical anterior discectomy, osteophylectomy, and foraminotomy, C5-6 and C6-7, followed by 2-level interbody arthrodesis utilizing two tricorticate structural bone bank bone grafts, with anterior fixation with Trinica plate, C5 to C7. He noted pre-operative diagnoses of "herniated nucleus pulposus with cord compression and severe myelopathy, C5-6 and C6-7" and noted, "He was at work when he slipped and fell and shortly thereafter began to develop numbness which progresses from the legs to his thoracic region. In addition, he had developed weakness and this had rapidly progressed to the point that he could not effectively stand and walk. Amazingly, he did not demonstrate obvious urinary or bowel retention or constipation. Imaging studies demonstrated ventriculomegaly. The spinal studies demonstrated a congenitally

small canal with degenerative bulging discs and a large disc herniation with superior migration from C6-7 and C5-6. There was a high-signal abnormality within the cord and severe cord compression." During surgery other abnormalities found were

"thecal sac was noted to be quite flattened"; posteriorly an enormous amount of disc material within the canal; and "large fragments of disc, particularly from the right side of the canal." Dr. Drye noted post-operative diagnosis was the same as pre-operative. The client was released on 11/10/2010 with Tylox and Flexeril.

On 11/13/2010 the client was admitted again to Lexington Medical Center. When he arrived in ER Brett C. Gunter, M.D. noted, "The patient is a 38-year old male status post ACDF of C5-6 and C6-7 by Dr. Drye, done on November 9, who tells me preoperatively he had almost no sensation in his legs but is able to walk fairly well. After surgery he had a boost in sensation but has subsequently declined again with sensation. The family was having considerable difficulty at home today ambulating him, because he seemed to have poor control of his legs" and "they brought him to the ED, seeking our assistance." A cervical x-ray revealed abnormalities of C3-C4 soft tissue swelling. Dr. Gunter noted on exam "spastic movements of lower extremities during examination"; "hyperreflexic"; and "very diminished sensation in

lower extremities." Dr. Gunter diagnosed "fluctuant myelopathy with inability to perform activities of daily living" and immediately admitted the client to the hospital and began "low-dose steroids/Decadron."

The client was seen in the hospital by physical therapist who noted the client unable to move from reclining to sitting or sit due to balance problems, and unable to stand or walk even with a walker. She noted measurements revealed "trunk weakness and instability" and also noted lack of sensation/numbness "waist down through legs bilaterally." In spite of these severe deficits she noted the client "pleasant, cooperative, motivated" and noted he should be admitted for inpatient rehabilitation. She did note the "limitations of spinal injury" were realistic "barriers" to obtaining rehabilitation goals.

On 11/17/2010 the client was seen by Dr. Drye who noted it was "quite evident that he would be unable to return home in his current condition" in spite of the fact that the "steroids caused his fluctuating myelopathy to improve." The client was prescribed Medrol Dosepak and Flexeril upon transfer to inpatient rehabilitation on 11/17/2010.

The client was then admitted to Healthsouth Rehabilitation Hospital in Columbia, South Carolina on 11/17/2010 where he remained until 12/08/2010. Upon discharge it was noted the client was "very pleasant" during rehabilitation and had made "excellent progress." W. Daniel Westerkam, M.D., medical director, summarized, "The patient received physical therapy and occupational therapy. He has made excellent progress and, by the time of discharge, he was able to ambulate 150 feet with a rolling walker, modified independent. Transfers from sit to stand, mattress, chair, bed, and toilet are all modified independent. The patient is modified independent with eating and grooming; supervision with dressing, bathing and toileting." (Modified independent refers to needing assistance but not totally dependent in the referenced areas.) The client was discharged to outpatient therapy and with addition of Percocet to pain medications.

The client was then seen by Dr. Drye on 12/29/2010, 02/16/2011, 04/12/2011, 06/07/2011, and 06/18/2012. During these appointments continued "loss of stamina"; inability to walk for long distances; neck discomfort and legs feeling "heavy" and "hard to move"; "less than optimal control" of legs, "particularly if he is trying to walk and carry something"; continued loss of spinal range of motion (flexion and

extension), grip strength loss at 4 plus over 5 bilaterally; hyperreflexive reflexes; altered proprioception in the lower extremities bilaterally; continued myelopathic signs, unsteady gait, difficulty with balance "likely owing to residual spasticity and perhaps proprioceptive deficits"; and neck pain were noted. These were noted in spite of twice weekly outpatient physical therapy attendance which continued through 06/07/2011, at which time it was noted the client continued with home exercises and walking three times a week. It was noted the client had done "exceedingly well in physical therapy" and it had been "quite beneficial," and he had been "benefitting greatly." Dr. Drye noted that the client had become "a little disappointed that he "had" not shown full recovery and Dr. Drye recounted "how severe" the client's injury had been and that the client had "made great strides" in relation to such severity. By 04/12/2011 Dr. Drye noted the client would "unlikely be able to return to his previous level of physical employment"; and by 06/07/2011 at maximum medical improvement issued permanent restrictions of no standing or walking more than an hour without ability to sit for a brief period of time"; no climbing "heights" or "repetitively climbing steps"; no overhead reaching; lifting or carrying limited to less than 30 pounds and only occasionally. He issued a 25% whole person impairment rating noting cervical spine injury and fusion and residual

myelopathic symptoms. He noted that "spinal cord injury and recovery" could take up to a year.

~~The client was next seen approximately a year later on~~

06/18/2012. Dr. Drye noted the client continued with most of the symptoms noted post-operatively at last appointments.

Unfortunately, Dr. Drye noted that per recent post-operative cervical and lumbar MRI's abnormalities of cerebrospinal fluid (CSF) surrounding the cord at the operative levels; "C3-4 and C4-5 spondylitic change and broad based disc bulge" and "CSF surrounding the cord"; lumbar disc protrusion at L1-2 eccentric to the left "with some effacement of the CSF around the conus"; and L5-S1 "very advanced degenerative disc with disc space collapse, associated Modic changes within the endplates and a generalized bulge". Dr. Drye concluded, "I see no reason for any change in terms of his permanent work restrictions"; and noted the client had returned to Lowe's as a cashier.

The client received 20 sessions of physical therapy from 12/21/2010 to 02/28/2011. Therapist noted that in spite of the client's "good compliance" the client continued with significantly reduced cervical and lumbar range of motion and strength and that the client was only able to reach 38% of his goals. Therapist noted, "Mr. Clemmon's case has been

discontinued due to payor issues," and noted the client "could benefit from continued care." Therapist continued, "We have had to place Tommy's case on hold, effective today due to payer

issues. All Worker's Compensation claims are being denied. We have contacted Tommy's attorney about this problem in the past. We have contacted his Worker's Compensation adjuster several times, but unfortunately cannot get anyone to return our messages. We are placing Tommy's case on hold for two weeks, but will have to discontinue his care after this time frame if we cannot get these issues resolved."

On 09/11/2012 the client underwent a functional capacity evaluation at Columbia Rehabilitation Clinic in Columbia, South Carolina. Physical therapist evaluator noted the client had severely limited cervical range of motion with flexion 24 degrees or 48% of normal; extension 35 degrees or 59% of normal; left lateral flexion 27 degrees or 56% of normal; right lateral flexion 24 degrees or 51% of normal; left rotation 41 degrees or 47% of normal; and right rotation 45 degrees or 55% of normal. In relation to lumbar range of motion, therapist noted severe limitations with true lumbar flexion 26 degrees or 43% of normal; true lumbar extension 9 degrees or 36% of normal; left straight leg raise 35.7 degrees or 45% of normal; and right

straight leg raise 35.3 degrees or 44% of normal. (These represent abnormal straight leg raise tests.)

~~FCE revealed the client unable to lift more than 10 pounds from~~
the floor to waist level, more than 12 pounds from twelve inches above floor to waist, 13 pounds from shoulder to overhead, and 17 pounds from waist to shoulder on only an occasional basis. (These weights place the client in the sedentary category as light duty requires lifting to 25 pounds on an occasional basis.) Per FCE the client is able to walk, reach, kneel, bend, stair climb or twist on only an occasional basis, i.e. maximum of 2.67 hours in an 8 hour day, and is not able to squat even on an occasional basis. (This clearly places the client in the sedentary category as the light category per the Department of Labor requires walking/standing six to eight hours per eight hour day.) Also, the client's maximum observed standing time was 15 minutes and standing/walking maximum 45 minutes, and maximum observed sitting time was 38 minutes. FCE evaluator also recorded, "It should be noted, Mr. Clemmons was noted to have decreased balance. He has difficulty with single stance balance and he was unable to stand single stance on either lower extremity with his eyes closed." She noted the client reported "constant cervical and lumbar pain"; "difficulty with balance and stairs" and "inability to run or walk fast since his

injury." She also completed a permanent impairment rating noting 28% whole person and 80% cervical spine.

~~Significantly, it was noted the client put out maximum effort as~~
revealed by Maximum Voluntary Effort Test, hand dynamometer testing, coefficients of variation, and bell shaped curve graphing analysis.

In conclusion, the client has a high school education and 2 ½ years of college credits; but has been unable to complete college over a 10 year period. He has a work history which consists of cashier, stocker, assembly worker, and customer service worker. These jobs fall into the light, medium and heavy physical demand categories and are semi-skilled with no skilled jobs.

The client, per his FCE, is unable to perform any of his previous positions; however, he does persist at his current job a cashier which falls into the light category. Even his treating neurologist has issued restrictions/limitations which the client is currently exceeding in that Dr. Drye stated he should do no standing or walking more than an hour "without ability to sit for a brief period of time"; and the client reports he is continuously on his feet during his entire shift.

In any case the client is, as a result of his injury, restricted from the medium, heavy and very heavy categories of work and technically from the light category-although obviously he is performing a light duty job, apparently satisfactorily. The

client has currently experienced no wage loss as a result of his injury; but he is working beyond medical recommendations in operating at the light level. However, he has experienced a very significant loss of access in relation to the job market. There are approximately 6,964 sedentary through very heavy unskilled to semi-skilled job titles in the U.S. Department of Labor's Dictionary of Occupational Titles and approximately 417

sedentary unskilled and semi-skilled job titles; thus, representing a 99.94% loss of access to the job market. There are approximately 1,705 sedentary and light unskilled and semi-skilled jobs per the D.O.T. and if one assumes he is able to perform light as well as sedentary jobs he has experienced an approximately 76% access loss. These access losses would come into play if the client lost his job at Lowe's, especially in the current economy, and with his limitations could create difficulty in accessing other employment.

It is commendable that Lowe's has apparently attempted to accommodate the client, and it is commendable that the client has apparently attempted to work to his maximum capacity, but

given that he is working beyond FCE and physician restrictions,
there is the question of whether work at the current level is
sustainable over a lengthy period of time. Working at sedentary
~~level might be advisable for better chances of sustainable~~
employment.

Harriet Fowler

Harriet Fowler, CRC, M.Ed.
Vocational Rehabilitation Manager

September 13, 2012

Date

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

ACCT NO: H00048349690

AGE: 38

SSN:

DCB:

REQ NO: 10-0152410

SEX: M

REPORT NO: 1105-0001

ROOM:

ADMITTING DR:

PT LOCATION: HMRI

ORDERING DR: KIMBERLY P. HICKS MD

HICKIM FP

REPORT STATUS: Signed

ORDERED BY: KIMBERLY P. HICKS MD

LOCATION: REG CLI HMRI

STUDY TYPE: 1104-0200 RAD/CHEST 1 VIEW

DATE OF EXAM: 11/04/10

CLINICAL DATA: 38M, EVALUATION OF VENTRICULAR SHUNT

CHEST (1 VIEW):

A single frontal view of the chest was obtained. Catheter tubing overlies the right neck and chest. No metal foreign bodies are present.

IMPRESSION: Shunt tubing on the right neck and chest without metallic foreign body.

AKH

DANIEL H. GOLWYN JR, MD

REPORT STATUS: Signed

HICKS, KIMBERLY P. MD

ORDER#/PROCEDURE: 1104-0200 RAD/CX1 (71010)

EXAM TECH: MMBOL

REP RELEASED BY: GOLDAN RAD 11/05/10 1145

ADD RELEASED BY:

DISC DATE:

ED DISC DIAG:

PT LOC/ROOM: HMRI/

CLEMMONS JR, HENTON T

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

AGE: 38

ACCT NO: H00048349690

DCB:

SSN:

REQ NO: 10-0152410

SEX: M

REPORT NO: 1105-0002

ADMITTING DR:

ROOM:

ORDERING DR: KIMBERLY P. HICKS MD

PT LOCATION: HMRI

HICKIM FP

REPORT STATUS: Signed

ORDERED BY: KIMBERLY P. HICKS MD

LOCATION: REG CLI HMRI

STUDY TYPE: 1104-0201 RAD/ABD/KJB 1 VIEW

DATE OF EXAM: 11/04/10

CLINICAL DATA: 38M, EVALUATION OF VENTRICULO-PERITONEAL SHUNT

KUB:

TECHNIQUE: A single abdominal film is compared with 2/8/08.

FINDINGS: The shunt catheter overlies the spine with the tip projected at the sacrum. No metallic foreign bodies are present. The bowel gas pattern is nonobstructed.

IMPRESSION: Shunt tubing in the abdomen without metallic foreign body.

AKH

DANIEL H. GOLWYN JR, MD

REPORT STATUS: Signed

HICKS, KIMBERLY P. MD

ORDER#/PROCEDURE: 1104-0201 RAD/ABD/KUB (74000)

EXAM TECH: MMBOL

REP RELEASED BY: GOLDAN RAD 11/05/10 1145

ADD RELEASED BY:

DISC DATE:

ED DISC DIAG:

PT LOC/ROOM: HMRI/

CLEMMONS JR, HENTON T

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

AGE: 39

ACCT NO: H00048418453

DCB:

SSN:

SEX: M

REQ NO: 10-0154581

REPORT NO: 1208-0202

ADMITTING DR: DRYE, RANDALL G MD

ROOM: 493-1

ORDERING DR: RANDALL G DRYE MD

PT LOCATION: HNT4P1

DRYRAN NS

REPORT STATUS: Signed

ORDERED BY: RANDALL G DRYE MD
LOCATION: DIS IN HNT4P1 493
STUDY TYPE: 1109-0008 OR/FLUORO MORE THAN 1 HR

DATE OF EXAM: 11/09/10

CLINICAL DATA: 38M, HERNIATED DISC C5-6, C6-7, SEVERE MYELOPATHY, PROCEDURE DONE IN OR
FLUOROSCOPY (MORE THAN 1 HOUR).

Fluoroscopy was provided by means of a portable image intensifier. No films were taken.

CDG

RADIOLOGY DEPARTMENT

REPORT STATUS: Signed

ORDER#/PROCEDURE: 1108-0008 OR/FL2 (76001)

EXAM TECH: CEEGG
HNT4P1/493

PT LOC/ROOM:

REP RELEASED BY: RADDEP REF 12/08/10 1050

ADD RELEASED BY:

DISC DATE: 11/10/10

CLEMMONS JR, HENTON T

ED DISC DIAG:

Patient Name AMMONS, HENTON

Medical Record No. M000081012

Account Number H00048528988

Date 11/13/2010

ID H00048528988

Lexington Medical Center

Emergency Department Record

History of Present Illness

LB

38 Year Old Male Patient Presents with numbness le's. The Onset is acute. The symptoms are Moderate, w/c can't control. Additional Symptoms or Pertinent History also involve had cspine surg for disc, better but now c numbness. Furthermore, the Patient/Family Denies new injury. Patient states exacerbating Factors that occur are recent surgery here c dad, has been resting since surg on tue(11/9)-worse now-could not walk and went to floor; ROS positive for disc ds.,

Review of Systems

(Symptoms and Signs not covered in the HPI)

GU Neg	Neuro Pos	ENT Neg	Resp Neg	Musculoskeletal Neg	Hematologic/Lymphatic
Skin	Psych	Heart Neg	GI Neg	Endocrine Neg	Allergic/Immunologic Neg
All other ROS negative				Constitutional Sxs Neg	Eyes

✓ Vital Signs/Triage/Nursing
Notes Reviewed and Agree

Hx unobtainable due to Tx
urgency or poor historian(s)

✓ Additional Information from Police,
Ambulance, Nursing Home or Relatives

Old Medical
Records

Past Medical History

Myocardial Infarction, Hypertension, Cervical Disc Hemiation- C4-C7

Social History

Lives with Family

Family History

No significant FMT-bx

Physical Exam

Exam Time 15:22

LB

General Appearance WD WN A&O in NAD cooperative c good affect

HEENT NC/AT, PERRL, ECOMI, MMM, TM's NL, Pharynx NL

Chest RRR's MRG Lungs CTA & tachypnea Chest wall NT

Abdomen

GU

Extremities Throughout all extremities Appearance normal Pulses 2+ (=) Full AROM Nontender

Neuro CN2-12 Intact, Motor (=) 5/5 Gross sensory Intact Bedbound

Skin No pallor/rashes/bruising/petechiae/edema/jaundice, W & Dstenstrips rt ant neck

Back NT, No CVAT, NL RCM, Spine unremarkable throughout

Neck NT, FROM, Thyroid nonpalp, No JVD, Supple, No abnormalities noted

Lymphatics

Repeat or Additional Clinical Notes

MD	Notes	Time	
LB	/Boguski MD-Primary ED Provider. Any lab test results, plain radiographs, ABG's, EKG's, and Pulse Oximetry were independently visualized and interpreted by this provider.	11/13/2010	15:31
LB	feet cold bilat	11/13/2010	15:32

Radiology Department
Lexington Medical Center
2720 Sunset Blvd
West Columbia, SC 29169
(803) 791-2000

Ref: CLEMMONS JR, HENTON T

Unit/Mr No: M000081012
Acct No: H00048528988
Report No: 20101115-0011
Pt Location: ENT4P1

Age: 39 M

DOB:

Patient SSN :

Order Dr: BOGUSKI, LEE J MD

Req No: 10-156797 Dictated By: DAVIS, CLARENCE S, MD

ORDERED BY: LEE J BOGUSKI MD
LOCATION: ADM IN ENT4P1 474
STUDY TYPE: 1113-0129 RAD/CERV SP 2 OR 3 VIEWS OR TRAUMA

DATE OF EXAM: 11/13/10

CLINICAL DATA: 38M, STATUS POST FALL WITH NUMBNESS TO LEGS

CERVICAL SPINE:

FINDINGS: AP, lateral, lateral swimmer's and open-mouth odontoid views of the cervical spine demonstrate findings consistent with anterior fusion via plate and screws from C-5 to C-7. Radiopaque disc spacers are seen at C5-6 and C6-7. Metallic hardware appears to be in satisfactory position. There is no acute fracture or subluxation. There is however mild prevertebral soft tissue swelling at the C-3 and C-4 levels.

IMPRESSION: Post operative changes as described above. No acute fracture or subluxation. There is however prevertebral soft tissue swelling at C-3 and C-4.

Transcribed by: MASMI MARY A SMITH

Report Status: Signed

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: CLEMMONS JR, HENTON T

UNIT/MR NO: M000081012

ACCT NO: H00048528988

AGE: 38

SSN:

DCB:

REG NO: 10-0156797

SEX: M

REPORT NO: 1115-0011

ADMITTING DR: GUNTER, BRETT C MD

ROOM: 474-1

ORDERING DR: LEE J BOGUSKI MD

PT LOCATION: HNT4P1

BOGLEE EM

REPORT STATUS: Signed

ORDERED BY: LEE J BOGUSKI MD
LOCATION: ADM IN HNT4P1 474
STUDY TYPE: 1113-0129 RAD/CERV SP 2 OR 3 VIEWS OR TRAUMA

DATE OF EXAM: 11/13/10

CLINICAL DATA: 38M, STATUS POST FALL WITH NUMBNESS TO LEGS

CERVICAL SPINE:

FINDINGS: AP, lateral, lateral swimmer's and open-mouth odontoid views of the cervical spine demonstrate findings consistent with anterior fusion via plate and screws from C-5 to C-7. Radiopaque disc spacers are seen at C5-6 and C6-7. Metallic hardware appears to be in satisfactory position. There is no acute fracture or subluxation. There is however mild prevertebral soft tissue swelling at the C-3 and C-4 levels.

IMPRESSION: Post operative changes as described above. No acute fracture or subluxation. There is however prevertebral soft tissue swelling at C-3 and C-4.

MAS

CLARENCE S DAVIS MD

REPORT STATUS: Signed

ORDER#/PROCEDURE: 1113-0129 RAD/CERVTRA (72040)

EXAM TECH: JABEL
HNT4P1/474

PT LOC/ROOM:

REP RELEASED BY: DAVCLA RAD 11/15/10 0856

ADD RELEASED BY:

DISC DATE:

- 269 -
- 202 -

CLEMMONS JR, HENTON T

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER -- LEXINGTON
811 WEST MAIN STREET
LEXINGTON, SC 29073
PHONE: (803) 358-6120

PATIENT:	CLEMMONS JR,HENTON T	UNIT/MR NO:	M000081012
		ACCT NO:	X00007090913
AGE:	40	CHART NO:	38794
DOB:		REQ NO:	12-0014009
SEX:	M	REPORT NO:	0608-0049
		PT LOCATION:	LEXMRI
ORDERING MD:	RANDALL G DRYE MD		DRYRAN NS

REPORT STATUS: Signed

ORDERED BY: RANDALL G DRYE MD
LOCATION: REG CLI LEXMRI
STUDY TYPE: 0607-0001 LMRI/MRI CERVICAL W&WO CONTRAST

DATE OF EXAM: 06/07/12

CLINICAL DATA: 40 M, NECK PAIN, STIFFNESS, DECREASING RANGE OF MOTION

MRI CERVICAL SPINE (WITHOUT AND WITH CONTRAST):

COMPARISON: 11/4/10

TECHNIQUE: Parasagittal and axial T1 and T2 weighted imaging was performed through the cervical spine without and following 20 cc of multihance. Prior surgery 2009.

FINDINGS: Previous anterior and intervertebral cervical fusion from C5 through C7 has been performed since the previous exam. Alignment is normal without acute fracture or subluxation. Cervical cord, prevertebral soft tissues, and cervicomedullary junction are normal. There is no abnormal enhancement. Mild broad based disc osteophyte complex at C3-4 and C4-5 are again noted and may be slightly more prominent since the prior study. There is associated uncovertebral spondylosis at both of these levels causing at least mild bilateral neural foraminal narrowing at C3-4 with only minimal bilateral neural foraminal narrowing at C4-5. Fusion site from C5 through C7 appears unremarkable.

IMPRESSION:

1. Relatively stable broad based disc osteophyte complexes at C3-4 and C4-5 as described above. There is associated mild bilateral neural foraminal narrowing at the C3-4 level.

DRYE,RANDALL G,MD

ORDER#/PROCEDURE: 0607-0001 LMRI/CERVWWO (72156)

EXAM TECH: RABRO

PT LOC/ROOM:

LEXMRI/

REP RELEASED BY: MCGKEI RAD 06/08/12 1449

ADD RELEASED BY:

DISC DATE:

CLEMMONS JR,HENTON T

ED DISC DIAG:

2. No abnormal enhancement or postoperative complications identified.

DHF

KEITH A MCGUIRE MD

REPORT STATUS: Signed
<Electronically signed by KEITH A MCGUIRE MD>

DYE, RANDALL G, MD

ORDER#/PROCEDURE: 0607-0001 LMRI/CERVWWO (72156)

EXAM TECH: RABRO

PT LOC/ROOM:

LEXMRI/

REP RELEASED BY: MCGUIRE RAD 06/08/12 1449

ADD RELEASED BY:

DISC DATE:

CLEMMONS JR, HENTON T

ED DISC DIAG:

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER -- LEXINGTON
811 WEST MAIN STREET
LEXINGTON, SC 29073
PHONE: (803) 358-6120

PATIENT:	CLEMMONS JR,HENTON T	UNIT/MR NO:	M000081012
		ACCT NO:	X00007090913
AGE:	40	CHART NO:	38794
DOB:		REQ NO:	12-0014010
SEX:	M	REPORT NO:	0608-0019
		PT LOCATION:	LEXMRI
ORDERING MD:	RANDALL G DRYE MD		DRYRAN NS

REPORT STATUS: Signed

ORDERED BY: RANDALL G DRYE MD
LOCATION: REG CLI LEXMRI
STUDY TYPE: 0607-0002 LMRI/MRI LUMBAR SPINE

DATE OF EXAM: 06/07/12

CLINICAL DATA: 40 M, SEVERE BACK PAIN,

MRI LUMBAR SPINE (WITHOUT CONTRAST):

TECHNIQUE: Sagittal T1 and fast T2 images of the entire lumbar spine were supplemented with axial images through the lower three lumbar discs employing the same pulse sequences.

COMPARISON: No previous.

FINDINGS: Marrow signal is normal except for presumed modic type end plate changes at L5-S1. There is no acute fracture or subluxation identified. There is moderate degenerative disc change at L5-S1. Small to medium sized left paracentral disc herniation noted at L1-2. There is no definite associated neural compromise. This does cause mild anterior left lateral compression of the lower thoracic cord/conus region. In addition, there is a fairly broad based moderate disc herniation at L5-S1 which causes anterior thecal sac compression and mild central canal stenosis but no definite neural compromise is appreciated.

There is a 2 cm hypertense lesion within the mid right kidney. The visualized kidneys are otherwise unremarkable. Remainder of retroperitoneum is unremarkable.

IMPRESSION:

DRYE,RANDALL G,MD
ORDER#/PROCEDURE: 0607-0002 LMRI/LUM (72148)
EXAM TECH: RABRO
REP RELEASED BY: MCGKEI RAD 06/08/12 1449
ADD RELEASED BY:
DISC DATE: CLEMMONS JR,HENTON T
ED DISC DIAG:

1. Small to moderate sized disc herniations at L1-2 and L5-S1 as described above in further detail. In addition there is associated degenerative disc changes at both these levels, worse at L5-S1. L5-S1 has mild to moderate modic type end plate changes.

2. A 2 cm indeterminate hyperintense lesion within the right kidney. This likely represents a cyst. However, confirmation with renal ultrasonography is recommended.

DHF

KEITH A MCGUIRE MD

REPORT STATUS: Signed
<Electronically signed by KEITH A MCGUIRE MD>

DRYE,RANDALL G,MD
ORDER#/PROCEDURE: 0607-0002 LMRI/LUM (72148)
EXAM TECH: RABRO
REP RELEASED BY: MCGKEI RAD 06/08/12 1449
ADD RELEASED BY:
DISC DATE:
ED DISC DIAG:

PT LOC/ROOM:

LEXMRI/

CLEMMONS JR,HENTON T

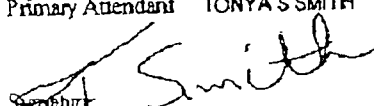
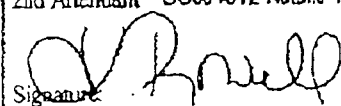
11/14/2010
02:03:04PM

South Carolina Department of Health and Environmental Control

Patient Care Form

04419-11/13/2010-10-01-024930-1

H48528988

Patient Identification		Patient Location		Time Record	
Name: HENTON T CLEMMONS JR	Sex: Male	118 TUCKER L	City	Call Received:	
Address:	Race: White	GILBERT SC 29034	32	Call Dispatched:	
addr:	Age: 38 Yrs.	Site of Incident: 2 Residence		Departed Base:	
SSN:	DOB:	Patient Status		Arrive Scene:	
Disposition: Treated, Transported by EMS	To Scene	On Scene	From Scene	Departed Scene:	
Receiving Agency: 2011 Lexington Medical Center	Emergency	Non-Urgent	Non-Urgent	Arrive Destination:	
Safety Equipment:	Site of Trauma			Provider Time:	
Incident: 7 Other-Medical	Head	Hip/Pelvis		Cause of Delay:	
Impressions	Face	Upper Extremity		HCFA Codes	
Primary: Other	Neck	Lower Extremity		Transfer Agency:	
Preliminary	Chest	Back			
	Abdomen				
Treatment Procedures		Advanced Procedures			
Dressing Applied	Antishock Trousers	EKG Monitored	Rhythm:	Time:	
Limb Splinted	Airway Maintained	1st Defib Attempted	Wait Sec:	Rhythm:	
Spine Immobilized	Antishock Treatment	2nd Defib Attempted	Wait Sec:	Rhythm:	
Neck Immobilized	Artificial Respiration	3rd Defib Attempted	Wait Sec:	Rhythm:	
OB Assistance	Cardiac Massage	Intubated	Method:	Size:	
Oral Airway Used	Bleeding Controlled	External Pacing	Blood Drawn	Dextrose BGL:	
Oxygen Given	Cold Application	Intraosseous Infusion	Automatic Defib		
Suction Used	Patient Restrained	IV Started Gauge:	Sol:	Rate:	Time:
X Other (See Comments)	Ventilator	IV Started Gauge:	Sol:	Rate:	Time:
		Pleural Decompression	Patient Assisted Meds	# IV Times: 0	
		Ordering Physician:			
Drugs Used		Revised Trauma Score		Anatomical Injuries? No	
Drug Code and Name	Dose	Time	GCS: Eyes: SBP:	Pene Head, Neck	Limb Paralysis
			Verbal: RR:	Flail Chest	Amputation
			Motor: RTS	Trauma With Burns	
			GLASCOW:	Long Bones Fract.	
			Exposure to Pt's Body Fluids? No	Pelvic Fractures	
			1st		
		Vital Signs			
		BP	Pulse	Respiration	Level of
			Rate R/L	Rate R/L	Pupils
					Consc.
					Time
		124/90	77 R	18 N	Equal
		160/90	80 R	18 N	Equal
		156/98	93 R	18 N	Equal
					Alert
					Alert
					Alert
Primary Attendant TONYA S SMITH		2nd Attendant SC004512 Natalie Rowell		Permit Number: 04419 Run Date: 11/13/2010	
Signature: 		Signature: 		Trip Number: 10-01-024930 Sequence: 1	
3rd Attendant		4th Attendant		Receiving Nurse/Physician	
Signature:		- 274 - - 207 -		Signature:	

11/13/2010
02:03:04PM

Patient Care Form

04419-11/13/2010-10-01-024930-1

Commedicals:

CC: NUMBNESS IN LEGS UNABLE TO WALK

HPI: PT STATES THAT HE HAD SURGERY THIS PAST TUESDAY
AND NOW IS UNABLE TO WALK

PMH: BACK INJURY IN SEPT 2010, MI STENTS, DM, HTN

Med: SEE LIST

Allg: SEE LIST

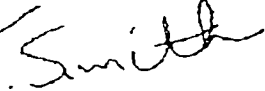
PE: UPON ARRIVAL FOUND 38 Y/O MALE SITTING ON FLOOR
WITH HIS BACK AGAINST A CHAIR. CAO X 4, PATENT AIRWAY,
SKIN W/D, PEARL.
PT IS COMPLAINING WITH NOT HAVING THE ABILITY TO WALK.
PT STATES THAT HE WAS INJURED IN HIS BACK IN SEPT OF
THIS YEAR. PT HAS BEEN ABLE TO WALK WITH A WALKER
WHILE SLIDING HIS FEET. PT HAD SURGERY LAST TUESDAY ON
DISC IN HIS NECK. PT STATES THAT HE WAS GETTING UP TO
GO TO THE BATHROOM AND WAS UNABLE TO WALK. PT SLIDE
DOWN INTO A SITTING POSITION ON FLOOR. PT IS IN NO PAIN
DIFFERENT FROM PAIN DUE TO SURGERY. PT'S FEET AND
ANKLES ARE COLD TO THE TOUCH. PT IS ABLE TO MOVE TOES
AND FEET BUT UNABLE TO BARE WEIGHT. PT REQUESTED
TRANSPORT TO LEX ER.

RX: PT WAS LIFTED TO STAIR CHAIR VIA THREE MAN LIFT.
GILBERT FIREMEN ON SCENE. PT THEN LIFTED TO STRETCHER
OUTSIDE. PT STRAPPED AND SECURED IN UNIT. VITALS TAKEN
AND MONITORED EN ROUTE. PT WAS PLACED IN ER 3. ORAL
AND WRITTEN REPORT GIVEN TO NURSE.

Additional Comments:

SaO2 93% @ 14:30 SaO2 98% @ 14:45 SaO2 98% @ 15:00

Primary Attendant TONYA S SMITH

Signature: 

2nd Attendant SC004512 Natal's Rowell

Signature: 

Permit Number: 04419

Run Date: 11/13/2010

Trip Number: 10-01-024930 Sequence: 1

Form Left In:

3rd Attendant

4th Attendant

Receiving Nurse/Physician

FW: Henton Clemmons v. Lowe's (WCC #1015200)

From: **Preston McDaniel** (mcdaniellaw@hotmail.com)

Sent: Thu 9/27/12 10:22 AM

To: Patty Boatwright (pbmcdlaw@hotmail.com)

From: dwilliams@wcc.sc.gov

To: mcdaniellaw@hotmail.com; kmorrow@mgclaw.com

CC: rgsmith@wcc.sc.gov

Date: Thu, 27 Sep 2012 10:14:57 -0400

Subject: Henton Clemmons v. Lowe's (WCC #1015200)

Attorneys,

When submitting the proposed Order, it is required that you e-mail it to rgsmith@wcc.sc.gov, in Word format. Please see all of Commissioner Williams' preferences at <http://wcc.sc.gov>.

After reviewing the complete record, my decision is below. If there are any questions, please let me know.

1. Claimant sustained admitted injuries to his back and right knee. He is a 40 year old cashier for the employer. He is not currently taking any prescription medications and is working.
2. Claimant is a pleasant and believable witness. I do not doubt his testimony concerning some of his limitations, however, I do view the entire record and the evidence as a whole.
3. Claimant has returned to work full-duty with the employer (for almost 2 years), and he is a valued employee who is being accommodated..
4. Ms. Lynn Council, the Claimant's manager, testified credibly at the hearing. She verified that the Claimant is a good employee, and that the employer has accommodated him if needed. The Claimant has not complained or asked for medical treatment.
5. Claimant's request for reimbursement of his IME costs is denied. Defendants provided follow-up visits with the authorized treaters in this case, and I do not find there has been any lapse or lack of treatment in this case.
6. All the medical reports have been reviewed, including the IME reports. I find that Dr. Drye's reports and conclusions are the most persuasive, in this instance, and I assign them the greatest weight in this case.
7. Based on the record as a whole, I find that the Claimant has sustained a 48% PPD to his back. This includes any radicular symptoms to his right leg. I do not find that he is permanently and totally disabled, based on the evidence as a whole. This finding is based on the greater weight of the evidence, including his ability to work for nearly 2 years (while being accommodated by sitting down), his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
8. Claimant reached MMI as of June 7, 2011.
9. Claimant is awarded a lump sum.
10. Claimant is entitled to Dodge medicals per Dr. Drye.

11. Claimant is entitled to Utica-Mohawk language in the order, pursuant to James v. Anne's, if he needs it.
12. Claimant is entitled to lifetime repair, replacement, removal, and maintenance of any retained hardware, if any.

INSTRUCTIONS: Order to be written by Attorney Kelly Morrow by October 29, 2012. Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however, you may add additional Findings of Fact consistent with the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter, or contact my assistant, Reneé Smith, in writing at P.O. Box 1715, Columbia, SC 29202-1715 or via e-mail at rgsmith@wcc.sc.gov. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission.

Matters To Include In The Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties, stated concisely)
4. Evidence of the Case (synopsis of the evidence, including testimony and medical reports)
5. Findings of Fact – numbered (Do NOT delete any of the above findings, however, the prevailing party may add to support the decision, except regarding credibility, unless I have instructed you to)
6. Conclusions of Law (cite applicable statutory sections and case law)
7. Award

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commissioner Derrick L. Williams

S.C. Workers' Compensation Commission

1333 Main Street

Columbia, SC 29201

dwilliams@wcc.sc.gov

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
OF COUNSEL:

Telephone (803) 771-7211

Facsimile (803) 252-0709

Michael Johnson, P.C.

October 2, 2012

VIA EMAIL dwilliams@wcc.sc.gov
Commissioner Derrick L. Williams
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Henton T Clemmons v. Lowe's Home Centers Inc
WCC File Number: 1015200

Dear Commissioner Williams:

I am in receipt of your findings concerning Mr. Clemmons and while I am of course extremely disappointed I fully understand and respect your decision but please consider this my request either for reconsideration and/or amendment to your findings. I would be glad to send you the case law that holds that your decision is subject to reconsideration prior to the time that your final order is issued but I am sure you are aware of those decisions and did not include those but again will be glad to submit that case law if you would like to have it in support of this request.

As to the issues upon which I would request reconsideration or amendment they are as follows:

1. You make the specific finding that, "I do not find that he is permanently and totally disabled, based on the evidence as a whole." You make this finding in reference to your finding of fact concerning the "48% permanent partial disability" award that you made. I have been told by several Commissioners that since the 2007 amendments it is their position that you cannot award greater than 50% loss of use of the back in a situation where you do not find that the Claimant is totally and permanently disabled. Since you made that specific finding I was wondering if you are now of that opinion, and if you are would you simply set that out in your findings, especially knowing the severe condition of Mr. Clemmons' back including he has been diagnosed by Dr. Drye (and I am going to reference only Dr. Drye since you have referenced him throughout your findings) with a permanent myelopathy on the right side. Nobody questions

the weakness this man has in his entire right side. Therefore I would simply ask that you consider explaining the importance of that finding in reference to the award that you made.

2. Since Mr. Clemmons in his testimony stated his opinion and two doctors in their opinions (the only doctors that actually addressed loss of use) found that Mr. Clemmons had sustained a greater than 50% loss of use of his back to do work requiring the use of his back would you consider reviewing the evidence and making a greater award to the back while still not finding him permanently and totally disabled.

3. Would you consider reviewing the evidence and making a specific finding of fact as to how much limitation he has in your opinion to the job market based on the condition of his back and his permanent myelopathy. For example, I would appreciate it if you would review the evidence and consider expressing an opinion based on that evidence as to whether or not in your opinion he is excluded from very heavy duty category jobs, heavy duty category jobs, medium duty category jobs under the US Department of Labor's Dictionary of Occupational Titles Physical Demand Category System in the workplace based on his condition. For example he cannot even work in his cashier job without accommodations which is in the light duty category under DOT and you specifically note that he is being accommodated to do that job in your findings.

4. I am not sure if you noted this but the neurologist gave him a 15% whole person impairment due to the residual neurological deficits alone and every doctor has opined that he has a permanent myelopathy in his right side. I would appreciate it if you would consider giving a separate award for that problem. Also under the AMA Guides they specifically provide for a separate impairment and I believe you'll find that a separate impairment and loss of use is well documented in the right leg and also in the left leg but mostly in the right leg.

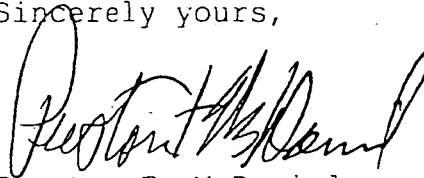
5. Would you mind delineating the medical care Mr. Clemmons is to have available in the future.

I appreciate your consideration in addressing these issues at least one way or the other and as always it is a pleasure appearing before you. I do hope you will decide to address these issues so that I can understand the importance of your findings and decision on total and permanent disability in reference to a man's back and the award to be made by the

Commissioner Derrick L. Williams
October 2, 2012
Page 3 of 3

statute. By copy of this email again I am forwarding this to Kelly Morrow.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel". The signature is fluid and cursive, with the first name "Preston" being more prominent.

Preston F. McDaniel

PFM/bre

cc: Kelly F. Morrow, Attorney-at-Law
(via email Kmorrow@mgclaw.com)

RE: Clemmons v. Lowe's Home Centers Inc.

From: **Kelly Morrow** (kmorrow@mgclaw.com)

Sent: Tue 10/02/12 2:49 PM

To: Patty Boatwright (pbmcdlaw@hotmail.com); dwilliams@wcc.sc.gov

Cc: rsmith@wcc.sc.gov

Commissioner Williams—

In the interest of time (as I have been out of the office in hearings and will be for the remainder of the week), please accept this as my response to the attached Request for Reconsideration of your Order instructions as issued on 9/27/12 in this case.

After thoroughly evaluating the attached correspondence, I believe that the large majority of the requests made in this correspondence exceed the requests/positions set forth at the hearing which would not be proper for determination at this time as they would be matters that exceed the scope of the record that is now closed.

To address the stated requests in particular:

1. This request most plainly states assumptions of other Commissioner's and states conclusions made by them that are not directly related to this case. There were no other judicial opinions by the Single Commissioners that were presented at the hearing in the APA's or PHB's in this case as persuasive opinions or rulings that were submitted with a request for consideration in ruling in this case. To consider opinions not in the records and not presented to the Defendants by simply stating that other Commissioners have ruled as such or adopted opinions in the past after the hearing has closed is inherently unfair and prejudicial to the Defendants as they are unable to respond with contrary opinions. Furthermore the Defendants attest that your conclusion in regards to the disability assigned in this case at 48% to the back is quite clear based on the ratings that were submitted in the PHB's and APA submissions.
2. The Defendants would object to the reconsideration of the disability rating as provided in the Order instructions as it clearly indicates that it was based on the Single Commissioner's review of the record as a whole and that the greatest weight was placed on the opinion of Dr. Drye (findings of fact # 6& 7)
3. The Defendants object to a further finding of limitations in the job market as that exceeds the scope of the finding of an award under 42-9-30 for a single member injury in this case to the back as this case was awarded. The Order instructions in this case clearly take into consideration his testimony regarding his return to work status, the comments made by his supervisor, and his abilities to perform his current job with the Defendants. Any further findings in that regard the Defendants submit exceed the scope of the determination in this case.
4. The Defendants object to the request for a further award of PPD for the residual neurological deficits in this case. The proposed Order clearly states that award of 48% to the back also includes the evaluation of all IME's that were performed and gives consideration or inclusion to

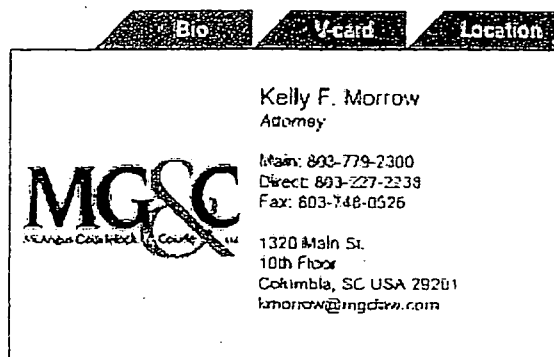
the radical symptoms that the Defendant described to his doctors and in his testimony (findings of Fact 6 & 7)

5. The Defendants contend that the future medical care is clearly outlined with specificity per Finding of Fact #10 which states that the Claimant shall be entitled to future medical care under Dodge, per Dr. Drye. He is also entitled to (FF #10) lifetime repair, replacement, removal and maintenance of any hardware, if any. No further delineation appears necessary.

As always, we appreciate your consideration of our response to the Claimant's request for reconsideration. If any further clarification is required from the Defendants, please do not hesitate to give me a call.

Sincerely,

Kelly Morrow



*Please consider the environment
before printing this email.*



Claimant's Name: Henton T. Clemmons, Jr. SSN: _____ Employer's Name: Lowe's Home Centers, Inc.
Address: _____ Address: 390 Harbison Boulevard
City: Leesville State: SC Zip: 29070 City: Columbia State: SC Zip: 29212
Home Phone: () Work Phone: () Insurance Carrier: Sedgewick Claims Management Services
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 9-12-2010 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See Attachment.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Kelly F. Morrow, Attorney at Law

Name

McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211

Address

on the 20th day of December, 2012 by ☒ first class mail ☐ personal service ☐ certified mail.

Preston F. McDaniel
Preparer's Signature

Attorney for the Claimant.
Title

December 20, 2012
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

ATTACHMENT TO FORM 30

Henton T. Clemmons, Jr. v. Lowe's Home Centers, Inc.
W.C.C. File No. 1015200

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. Where the Claimant was back at work and had already signed a Form 17 stopping temporary disability benefits and where the Form 21 filed with the Commission requesting a hearing was filed under SC Code §42-9-260 and the stop payment provisions of the Act but only requested a determination of the Claimant's entitlement to an Award in this matter, did the Hearing Commissioner err by holding a hearing where the Claimant had made no request for an Award pursuant to the Workers' Compensation Act and objected to an Award being made?

3. Where the Defendants forced the Claimant to a premature determination of his right to benefits and where the Claimant had made no request for benefits under the Workers' Compensation Act either for loss of use of a member, organ or bodily part or for wage loss under SC Code §42-9-10 and §42-9-20 and where such entitlement to benefits is a property right of the Claimant, did the Commissioner deny the Claimant due process of law by forcing a determination of his property rights where no such right or entitlement to a determination at the request of the Defendants is provided for under the Act and where the Defendants have absolutely no right to force a claimant to a decision on his entitlement to benefits without his request? The request for benefits under the Workers' Compensation Act is the course of action belonging to the Claimant and is the same as the right to file a Complaint in Court for a determination of benefits to which the Plaintiff is entitled. It is a right created as a matter of law under the Workers' Compensation Act.

4. Where the Defendants had withdrawn a previous request for a Form 21 hearing which was filed after the Claimant was already back at work on the basis that they agreed to provide an evaluation by the original treating neurosurgeon as to whether or not anything further from a neurological standpoint needed to

be done and where the Defendants also indicated that they would agree to a, "full second opinion" by another physician as to all other issues including the issues with the neck, back, right arm, neuropathy, right leg and possible central neurological and/or brain damage and based on the Commission policy of generally granting a claimant a second opinion, where requested timely, prior to a determination of benefits being made, did the Hearing Commissioner err by not ordering a second opinion and/or reimbursing the Claimant for the second opinion obtained by a neurologist and also from an orthopaedic surgeon and did the Commissioner err by not at least addressing the findings of these two doctors whose findings are uncontested in the medical records and medical evidence presented?

5. Did the Commissioner err by failing to make an Award for the Claimant's low back and for his myelopathy, which is a central neurological problem where there is absolutely no evidence to the contrary that the Claimant sustained these injuries as a result of his work related accident? The authorized treating neurosurgeon, Dr. Randall Drye, in both his evaluation in 2011 and 2012 found that he, "does have some mild hyperreflexia in the lower extremities relative to the upper extremities with perceived sensation." These same problems were noted in the physical examination of Dr. Howard Mandell, a neurologist who saw the Claimant, and by Dr. Leonard Forrest, the orthopaedic surgeon who saw the Claimant. The only rating given by the authorized treating physician was that due to the Claimant's surgery to the cervical spine wherein he gave a 25% whole person impairment. Note: he did not address the lumbar spine as far as permanent residual impairment nor the central neurological impairments. Dr. Leonard Forrest addressed these and gave a 30% whole person impairment due to the cervical spine and an additional 10% whole person impairment due to the lumbar spine. Dr. Howard Mandell in addition gave a whole person 15% neurological impairment due to the Claimant's documented myelopathy and neurologic dysfunction. Therefore, there is absolutely no substantial evidence in the Record either from the lay testimony or in the medical records and medical opinion evidence. Thus, the Commissioner also erred as a matter of law by failing to make Awards and/or to make specific Findings of Fact on these issues based on the substantial evidence in the Record and making detailed Findings of Fact and Conclusions of Law concerning these issues from the Record.

6. Based on the uncontested medical opinion evidence in the Record, the uncontested testimony from the Claimant and lay witnesses in the Record, and based upon the fact that at the Hearing the Claimant only requested an Award for having lost more than 50% of the use of his back and where there is

absolutely no contrary medical or lay evidence to that of the lay opinion evidence submitted into the Record and the medical opinion evidence submitted into the Record without objection as to the functional loss of use of the Claimant's back, and where all medical doctors addressing that issue and where the lay testimony addressing that issue was to the effect that the Claimant had lost more than 50% of the functional use of his back, did the Hearing Commissioner err as a matter of law based on the reliable, probative and substantial evidence in the Record by not awarding the Claimant benefits for loss of use of the back in excess of 50%? Further, where the uncontested medical evidence and lay opinion evidence is that the Claimant had lost more than 50% of the functional use of his back, did the Commissioner err as a matter of law by failing to award the Claimant an Award for the maximum Award which is the residual value of the residual number of weeks left for an Award under the Act, generally referred to as an Award for total and permanent disability and by failing to award the Claimant lifetime medical benefits for having lost more than 50% of the functional use of his back?

7. Did the Hearing Commissioner err as a matter of law by including Findings of Fact on wage loss where the Claimant at the Hearing had limited his request for an Award to that of having lost more than 50% of the functional use of his back which is a scheduled member and wherein our Courts have held that wage loss and whether or not there is any wage loss involved in a case is a totally improper consideration concerning an Award under a request for an Award in reference to the loss of use of the back or any other scheduled member, organ or bodily part as is set out under SC Code §42-9-30 and Rule 67-1101?

8. Did the Hearing Commissioner err as a matter of law by placing greater weight in the authorized treating neurosurgeon's reports where there is an absolute unbelievable inconsistency in that doctor's reports wherein there is absolutely no evidence in the Record to substantiate that the Claimant was having any neurological problems prior to the accident and where that doctor himself in fact states that fact in his subsequent reports up to and including his final report in 2011? Then for some unknown reason the doctor states that the Claimant had longstanding preexisting neurological problems when the Claimant was returned to him for further evaluation in 2012 and reported that he was having substantial problems with balance and gait, which were noted in his evaluation at that time but which for some unknown reason he decides to attribute to long standing neurological problems, again which are not substantiated anywhere in the Record as having existed prior to this injury?

9. Did the Hearing Commissioner err as a matter of law specifically in reference to Finding of Fact No. 7 in his notes and Findings of Fact No. 10, 11 and 12, which together indicate without question that the Hearing Commissioner considered wage loss in his Award under §42-9-30 which is a clear cut violation of law and the Commissioner's responsibility to apply the law as dictated to this Commission by the SC Court of Appeals and SC Supreme Court? The Supreme Court has repeatedly held that wage loss is not a factor to be considered in Awards made under §42-9-30. The question simply is, was and always will be the functional loss of use that the Claimant has and in this case, the Hearing Commissioner erred in an improper consideration and wage loss and also by failing to address and/or make Awards for the myelopathy and injury to the central nervous system, to the low back and to the leg. The Hearing Commissioner did not even address the fact that the Claimant's authorized treating neurosurgeon while noting these problems on examination did not even address ratings to the low back and the leg or the arm, or the central neurological problems which he again specifically diagnosed as a myelopathy in his own records.

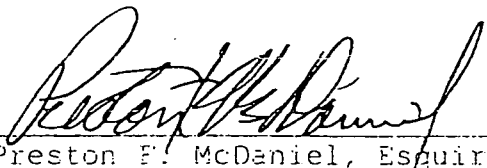
10. Where the Claimant submitted evidence of 50% functional loss of use of the back, did the Commissioner err as a matter of law by not making detailed Findings of Fact and Conclusions of Law setting out the evidence relied on, if any exists, to rebut the presumption and by failing to address the applicable law in reference to the presumption?

11. Based on the Supreme Court's directive to the Commission to apply a liberal construction of the Act and based on the Oath of Office taken by the Commission, did the Commissioner err by not making detailed Findings of Fact and Conclusions of Law and by not awarding the Claimant an Award for having sustained a 50% of loss of use to the back based on the undisputed evidence on that issue in the Record?

12. Where the treating physician's impairment evaluation was performed under the AMA Guidelines which state that the impairments in the Guides are in reference to the ability to perform the activities of daily living (ADLs) and have nothing with the ability to do work or perform work activities, can an impairment estimate under those Guides constitute the basis for an Award for loss of use under SC Code §42-9-30 which is contrary to the evidence in the Record on loss of use of the back?

The above-referenced Exceptions are subject to amendment. Further the Claimant would request that he be allowed to appear before the Commission pursuant to SC Code §42-17-50, that the Commission receive additional evidence and that since an allegation of gait derangement and disfigurement are involved, that the Claimant requests a viewing by the Full Commission and that this matter be set for an expanded hearing to allow for the taking of additional testimony. Also, the Claimant requests the right to submit additional testimony if the Defendants object as to the Claimant's previous request for not only a return visit with the authorized treating physician but also their tentative agreement to a second opinion and also the timing of the filing of the Form 21 in this matter.

Respectfully submitted,



Preston F. McDaniel, Esquire
Attorney for the Claimant

December 20, 2012

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
HARBISON,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Columbia, South Carolina on September 25, 2012.

APPEARANCES: Claimant appeared and represented by Preston F. McDaniel, Esquire of The McDaniel Law Firm of Columbia, South Carolina.

Defendants represented by Kelly F. Morrow, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Form 21.

COMMISSIONER: Commissioner Derrick L. Williams

FILED: December 6, 2012

STIPULATIONS

It is stipulated among the parties that:

1. The Claimant was injured while working in the course and scope of his employment on September 12, 2010.
2. The Claimant was an employee of Lowe's on the date of the injury.
3. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
4. Notice of the hearing was timely and properly served upon the parties of interest.
5. Venue is proper in Columbia, South Carolina.
6. The Claimant's average weekly wage is Three Hundred Ninety-One and 19/100 (\$391.19) dollars with a corresponding compensation rate of Two Hundred Sixty and 81/100 (\$260.81).
7. The South Carolina Workers' Compensation Commission file is made a part of the record with the exception of unstipulated medical records and self-serving declarations.

APA SUBMISSIONS

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

The Defendants submitted the following APA Submissions:

1. Doctor's Care dated 10/07/2010 to 10/19/10 consisting of 8 pages. (APA #1).
2. Thomas Armsey, M.D., Midlands Orthopaedics dated 11/01/10 consisting of 3 pages. (APA #2).
3. Lexington Medical Center dated 11/09/10 consisting of 9 pages. (APA #3).

4. Randall G. Drye, M.D., dated 11/08/10 to 06/18/12 consisting of 12 pages. (APA #4).
5. W. Daniel Westerkam, M.D., dated 11/17/10 consisting of 5 pages. (APA #5).
6. Palmetto Imaging dated 10/21/10 consisting of 1 page. (APA #6).
7. Lexington Medical Center – Radiology Department dated 11/04/10 consisting of 5 pages. (APA #7).
8. Interactive Process Form by Lowe's dated 09/16/11 consisting of 1 page. (Ex. #1)

The Claimant submitted the following APA Submissions:

1. Howard Mandell, M.D., FRCPC, Board Certified Neurologist dated 09/05/12 consisting of 6 pages. (APA #8).
2. Columbia Rehabilitation Clinic - Functional Capacity Evaluation dated 09/11/12 consisting of 25 pages. (APA #9).
3. Gal G. Margalit, M.D., dated 09/11/12 consisting of 6 pages. (APA #10).
4. Leonard E. Forrest, M.D., dated 09/06/12 consisting of 2 pages. (APA #11).
5. Harriet Fowler, CRC, M.Ed., Vocational Rehabilitation Manager, dated 09/13/12 consisting of 23 pages. (APA #12).
6. Lexington Medical Center dated 11/04/10 to 06/07/12 consisting of 10 pages. (APA #13).
7. SCDHEC Patient Care Form dated 11/13/10 consisting of 2 pages. (APA #14).

STATEMENT OF THE CASE

The Claimant was employed with Lowe's on September 12, 2010 when he suffered from a work related injury. In particular, the Claimant was standing in the back of the pine straw truck and slipped on wet pine straw causing him to fall landing on his back. The parties agreed pursuant to a Consent Order that the Claimant suffered from an accepted injury to his back, neck and right knee. In addition, Defendants agreed to pay the Claimant temporary total disability

benefits from the date of the accident until properly terminated. Thereafter, the Claimant continued to receive medical treatment for his conditions and he remained out of work until September 10, 2011. The Claimant signed a Form 17 on September 22, 2011 indicating he could return to work. In addition, the Claimant was released by the authorized treating physician at maximum medical improvement and assigned an impairment rating to his back on June 7, 2011. The Claimant continued to make complaints, therefore Defendants agreed to send him back for an additional evaluation with the authorized treating physician and the authorized treating physician again released him again at maximum medical improvement on June 18, 2012 without making an adjustment to his earlier impairment rating.

Defendants filed a Form 21, Request to Pay Permanency, pursuant to the impairment rating assigned by the authorized treating physician. The Claimant alleges that he is entitled to a second opinion regarding his injuries and further indicates that he has not reached maximum medical improvement, and, therefore a hearing on this issue is premature. In the alternative, the Claimant argues that if the Commission finds he has reached maximum medical improvement, then he is claiming that he is permanently and totally disabled due to a greater than fifty percent loss of use to the back. The Claimant seeks lifetime causally related medical treatment and an award under lump sum. In return, Defendants argue that the Claimant has returned back to work and thus isn't entitled to an award for permanent and total disability.

EVIDENCE OF THE CASE

TESTIMONY OF LYNN COUNCIL

Ms. Lynn Council testified on behalf of the employer, Lowe's. She testified that she has worked for Lowe's for the past four and a half years. (Hearing Transcript p. 9 ln. 17). She is employed as the Customer Service Manager and she oversees the cashiers and some of the sales

people on the sales floor. (Hearing Transcript p. 9 ln. 20-25). Ms. Council currently serves as the Claimant's direct supervisor. She testified that the Claimant is working as a cashier and has been in that position since he returned to work with restrictions. (Hearing Transcript p. 10 ln. 6-14). She further indicated that the employer made accommodations for the Claimant to include allowing him to sit down if needed. (Hearing Transcript p. 10 ln. 20-22).

Ms. Council said that the Claimant is a good employee, he's on time every day, he's dependable, and he'll stay over if they ask him to. He's one of the best employees that she has up front. (Hearing Transcript p. 11 ln. 3-5). Ms. Council testified that the Claimant has never made any complaints to her about limitations or problems that he's having doing his job. (Hearing Transcript p. 11 ln. 12-15). Further, he has never asked her for additional medical treatment since he's returned to work. (Hearing Transcript p. 11 ln. 16-18). Ms. Council said that in her opinion based on her observations of the Claimant performing his job, that he is capable of doing it. (Hearing Transcript p. 11 ln. 19-24).

On cross-examination, Ms. Council testified that she didn't decide what kind of job the Claimant would perform under his work restrictions, that this was handled by Human Resources. (Hearing Transcript p. 12 ln. 13 - 16). She testified that if the Claimant requests a stool or a chair, she will get him one. (Hearing Transcript p. 13 ln. 5-12). She said that they kept a chair at the front of the store for the Claimant for several weeks and he never asked for it, so they put it back where it belonged and told him to let them know if he needed it. (Hearing Transcript p. 13 ln. 19-23). Further, Ms. Council testified that if the Claimant needs help lifting then he can ask for it. (Hearing Transcript p. 14-15 ln. 25-2 and p. 16 ln. 1-3). Claimant's counsel asked Ms. Council whether she had knowledge of other work restrictions to which she denied. However, Defense counsel pointed out that these restrictions were issued by non-authorized treating

doctors. Therefore in response, Ms. Council testified that to her knowledge that she nor anyone else has asked the Claimant to perform work outside of his restrictions. (Hearing Transcript p. 18 ln. 4-7).

TESTIMONY OF CLAIMANT

The Claimant testified on his behalf. He states that he is forty years old and graduated from Irmo High School. He went to Midland's Tech and then Winthrop. (Hearing Transcript p. 20 ln 13-25). His work history consists of working at the B.P. Service Station on Gervais Street, where he worked for ten years. (Hearing Transcript p. 25 ln. 7-20). He then testified that he went to work for Steinmart. Here in worked in receiving; took packages in, and separated merchandise. (Hearing Transcript p. 27 ln. 13-17). After that, he went to work for American Koyo. (Hearing Transcript p. 28 ln. 20-25). After his employment with Koyo, the Claimant said that he started his job at Lowe's. (Hearing Transcript p. 30 ln. 14-15). The Claimant said that he first started out as a night stocker which required him to unload the truck and freight and place it on shelves in departments. (Hearing Transcript p. 30 ln. 18-25). He then started working as a cashier. (Hearing Transcript p. 32 ln. 5-7). The Claimant said that he has been a cashier since he returned back to work. (Hearing Transcript p. 33 ln 5-6) and was a cashier at the time of the injury. (Hearing Transcript p. 33 ln. 16-18). As the cashier, he testified he's responsible for scanning items and receiving payment, and also to call someone if a customer needs help. (Hearing Transcript p. 34 ln. 16-18).

The Claimant was asked to testify regarding the work incident and he explained that he was waiting on a customer at the straw trailer. (Hearing Transcript p. 22 ln. 7). As he walked to the nose of the trailer, he slipped and lost his footing. He fell flat on his back and hit his head. (Hearing Transcript p. 22 ln. 10-17). The Claimant went on to testify regarding his medical

treatment, and said that he went to see Dr. Armsey. Thereafter, he was sent to Dr. Drye and then had surgery. (Hearing Transcript p. 24 ln. 12-15). After his surgery, the Claimant testified that he had to go back to the hospital. (Hearing Transcript p. 24 ln. 19-24).

The Claimant testified that prior to the accident, he used to bike ride and he cannot do that anymore. (Hearing Transcript p. 35 ln. 17-18). He also testified that he likes to play golf, but doesn't play any longer. (Hearing Transcript p. 36 ln. 20-22). The Claimant said that he used to walk the dam, but he no longer does that. (Hearing Transcript p. 45 ln. 13-15). When asked about his daily activities since the date of the injury, the Claimant testified that he gets out of bed and stands there for a minute to get control. He said that he has stiffness that is in his back all day long. He said that he has muscle spasms throughout his lower body. (Hearing Transcript p. 37 ln. 9-25). He went on to state that he has a lot of pain and stiffness. In particular, to his neck, the Claimant said he can only turn to a certain point before it becomes painful. As for his lower back, he has to bend in increments. (Hearing Transcript p. 38 ln. 14-21). The Claimant said he has a hard time controlling his hands. (Hearing Transcript p. 39 ln. 5-8). At the end of the day, he showers, and sits down for an hour or two. He also stretches and then goes back to the chair before he goes to bed. (Hearing Transcript p. 39 ln. 17-24).

Since the date of the injury, the Claimant testified that he has returned back to work. The Claimant's understanding regarding his work restrictions by Dr. Drye is that he was not to lift over twenty pounds and he was to have a stool available when he needs it. (Hearing Transcript p. 40 ln. 19-20). The Claimant said that he asked a head cashier for a stool and he indicates the head cashier told him Lowe's wouldn't allow that. (Hearing Transcript p. 41 ln. 14-19). He further testified that he has problems throughout the day. (Hearing Transcript p. 42 ln. 1-3). He indicates that he accommodates himself since there is not a stool available by leaning against a

metal post or adjusting the counter. (Hearing transcript p. 42 ln. 17-19). The Claimant said ~~that~~ his fellow employees help him out a lot. (Hearing Transcript p. 43 ln. 1-3). If he lost his job at Lowe's, the Claimant said that he would look for a job that would not require him to be on ~~his~~ feet all day. (Hearing Transcript p. 44 ln. 20-21).

The Claimant testified that he thought he's lost 80% loss of use to his back (Hearing Transcript p. 47 ln. 11) and that he would like further physical therapy for his condition as well as pain medication (Hearing Transcript p. 48 ln. 1-11).

On cross-examination, the Claimant testified that he returned back to work in September 2011 and that he's been working as a cashier. He works forty hour weeks, eight hours per day and stands during the entire eight hour period. He also testified that he has access to a pricing gun so that he doesn't have to lift items. (Hearing Transcript p. 49 ln. 4-21). He also dumps trash, and put sodas in the coolers that are located outside of his cashier station. (Hearing Transcript p. 49 ln. 22-25). The Claimant said that he has not attempted to do any other types of work other than his cashier job, so he doesn't know whether he could do it. (Hearing Transcript p. 50 ln. 12-17). He hasn't applied for jobs anywhere else to know if they would accommodate his restrictions. (Hearing Transcript p. 51 ln. 1-4). The Claimant went on to testify that any employee at any time can call a Code 50 which requests lifting assistance. (Hearing Transcript p. 51 ln. 19-24). There's no limitation for him either before the accident or after the accident for him to ask for assistance in lifting. And the Claimant agreed that every time he's asked for assistance he's received it. (Hearing Transcript p. 52 ln. 5-9). The Claimant testified that as a cashier, he has access to team members who can perform lifts for heavier items. (Hearing Transcript p. 53 ln. 1-3). The Claimant said that as a cashier he isn't required to lift pine straw

for eight hours a day, and in fact he's never been asked to perform that job for eight hours. (Hearing Transcript p. 53 ln. 12-19).

Upon further cross-examination, the Claimant testified that he didn't tell Defense counsel about his personal activities like riding a bike and walking at his deposition because he didn't think about it at the time. (Hearing Transcript p. 54 ln. 8-15). He further indicates that when he told Defense counsel in his deposition that while working for his parents B.P. Station that he didn't do auto-repair, he meant that he wasn't doing any major repairs. (Hearing Transcript p. 54 ln. 16-23).

When the Claimant was asked specifically about his earlier testimony regarding the need for a stool, the Claimant said that he spoke with a co-employee about his request for a stool. He did not ask a supervisor for the stool. (Hearing Transcript p. 55 ln. 8-15). The Claimant testified that no co-workers have ever asked him to perform work outside of his restrictions. (Hearing Transcript p. 55 ln. 16-20). Since he returned back to work in September 2011, he has received good performance evaluations and considers himself to be a good employee. He's always on time and he's reliable. (Hearing Transcript p. 56 ln. 8-22).

The Claimant testified that he returned to see Dr. Drye approximately one year after he was released to return to work and told Dr. Drye that he was not having any pain or problems radiating into either one of his arms. (Hearing Transcript p. 57 ln. 7-10). He was released from Dr. Drye at that appointment and he has not been back to see him since. (Hearing Transcript p. 57 ln. 18-22). The Claimant testified that upon his release he was not prescribed pain medication. (Hearing Transcript p. 57-58 ln. 23-1). The Claimant testified that he went to see Dr. Mandell upon the direction of his attorney and he reported to Dr. Mandell that his symptoms were stable. (Hearing Transcript p. 58 ln. 2-19). He also went to see Dr. Gail Margalet who did not provide

include a radical anterior discectomy, osteophylectomy and foraminotomy at C5-6 and C6-7, followed by a two level interbody arthrodesis and anterior fixation with Trinica plate C5 to C7. (Defendants' APA p. 12). The Claimant was discharged home on November 10th with instructions to follow up in two weeks. (Defendants' APA p. 15). The Claimant returned to the hospital on November 13th due to the inability to care for himself at home. The Claimant remained in the hospital for approximately four days where he underwent rehab and made improvements. He was transferred to a rehabilitation facility on November 17th. (Defendants' APA p. 18).

On November 24, 2010, the Claimant returned to see Dr. Drye for a follow up appointment. At this time, he reports that his overall condition is markedly improved. Dr. Drye notes that the claimant is making good progress and recommends that he complete the inpatient and outpatient physical therapy. (Defendants' APA p. 24). The Claimant returned on December 29th with reports of near normal sensation and strength in the upper extremities and very minimal neck discomfort. Dr. Drye opined that at this point the Claimant could resume driving. In addition, Dr. Drye indicates that he needs to begin to normalize his activities within reason. They discussed that the Claimant could possibly return to work on light duty for half days. (Defendants' APA p. 26).

The Claimant followed up with Dr. Drye again on February 16, 2011. At this visit, he reports that he has regained the strength in his upper extremities and is ambulating more effectively. He is still actively involved in physical therapy as well as aqua therapy. The Claimant reports that he was unable to return to work after his most recent visit, but Dr. Drye again indicated he could return to work with the restrictions as set forth previously. (Defendants' APA p. 27). On April 12, 2011, the Claimant reports that he has been going to the gym five or

six days per week. He mentions that he has problems with leg difficulties and the feeling that he is having a difficult time controlling them. He has little to no complaints regarding pain. Dr. Drye released him to return to work with the same restrictions and asked him to resume physical therapy. They also discussed the need for possible vocational rehabilitation. (Defendants' APA p. 28).

On June 7th, the Claimant was evaluated by Dr. Drye. He reports completing the physical therapy program, that he continues to do his exercises at home and is walking three times per week. He has regained normal function in the upper extremities with no major complaints. His gait is still slightly unsteady and has some difficulty with balance. Dr. Drye notes that the Claimant appears quite comfortable today. Dr. Drye opines that the Claimant has reached maximum medical improvement. He assigns permanent work restrictions which include no standing or walking more than an hour without the inability to sit for a brief period of time. He also restricts him from climbing heights, repetitively climbing steps, repetitive overhead reaching and should lift or carry less than 30 pounds occasionally. Dr. Drye assigns a 25% whole person impairment rating based on the injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. (Defendants' APA p. 30).

Thereafter, on June 18, 2012, the Claimant returned to see Dr. Drye which is a year after he was originally released at maximum medical improvement. Dr. Drye notes that when he was released, the Claimant had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. At this time, he has returned to work with some physical restrictions and is back at work as a cashier. The Claimant reports that he has some persistent stiffness and pain in the base of the neck which does not radiate into the upper extremities. He denies any recurrent symptoms in the arms and hands. The neck pain is worse in

the morning and seems to improve as he moves about. He denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as long-standing, pre-injury inversion of the right foot and ankle. He has recently undergone cervical and lumbar MRIs for a check for a possible change in condition.

Dr. Drye reports that the cervical MRI as well as lumbar study show that the Claimant has healed beautifully from his surgery with what appears to be stable operative construct with instrumentation. There is no residual high degree of canal stenosis and no obvious impingement of the cord. At C3-5 and C4-5 there are spondylitic change and broad based disc bulge which has not progressed significantly from his previous study. The lumbar study demonstrates a disc protrusion at L1-2 and at L5-S1 there is very advanced degenerative disc disease. There is no evidence of any direct nerve root impingement or large disc herniation.

Dr. Drye opines that the Claimant's current symptoms are most consistent with axial and myofascial pain and it is strongly suggestive of arthritic type symptoms. Dr. Drye encouraged the Claimant to continue stretching and movement and advised him to lose weight. Dr. Drye said there was no reason for any change in terms of his permanent work restrictions, rating or additional intervention or treatment. Dr. Drye released him again. (Defendants' APA p. 31).

After Dr. Drye re-released the Claimant at maximum medical improvement on June 18, 2012, the Claimant's attorney scheduled him for an evaluation with Dr. Howard Mandell, a neurologist. On September 5, 2012, Dr. Mandell reports that the Claimant states his symptoms are stable, not improving and not worsening for the last several months. Dr. Mandell opines that the Claimant's surgery has resolved very nicely and that he has made remarkable recovery though not recovered to pre-injury level of functioning. Further, Dr. Mandell reports that the Claimant did seem to sustain a closed head injury in terms of a concussion but there doesn't

appear to be any brain involvement from this injury. The only area affected has been the spinal cord at the cervical level. Dr. Mandell indicates that the Claimant does not require additional treatment other than ongoing physical therapy. He does not think he requires additional surgery, but possibly ongoing low back pain management. Dr. Mandell finds that he should limit his work and recommends an FCE. (Claimant's APA 8).

On September 5, 2012, the Claimant was evaluated by Harriet Fowler upon recommendation of his attorney. Ms. Fowler indicates that the Claimant can work at a sedentary level in order to sustain employment. (Claimant's APA 12).

On September 6, 2012, the Claimant was seen by Dr. Leonard Forrest at Southeastern Spine Institute. Dr. Forrest indicates that the Claimant has reached maximum medical improvement for his injuries and that he will need further intermittent treatment ongoing into the future. Dr. Forrest assigned him with at least a 30% impairment rating to the neck-related symptoms and problems. He also assigned him a 10% impairment rating for the low back symptoms. He assigned a 25 pound lifting restriction and to avoid climbing or going on a straw trailer. Dr. Forrest goes on to state that this would be over a 50% loss of his functional capabilities. (Claimant's APA 11).

The Claimant's attorney also sent the Claimant for an FCE with Tracy Hill at Columbia Rehabilitation Clinic, Inc. This took place on September 11, 2012 in which Ms. Hill found that he qualified for limited light work. (Claimant's APA 9).

On September 11th, the Claimant was also evaluated by Dr. Gal Margalit at Sunset Family Practice. Dr. Margalit opined that the patient has lost more than 50% of his functional capacity of his back to work based on the on the job injury of 9/12/10 and she concurs with the opinions of his neurosurgeon regarding weight loss and continuing restrictions. Dr. Margalit

further indicates that he may benefit from some neurological testing for mild brain dysfunction, but suspects that this is of a minor nature in relationship to the rest of his injuries. (Claimant's APA 10).

FINDINGS OF FACT

Based upon the testimony and evidence submitted by both parties, the undersigned Commissioner makes the following Findings of Fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission.
2. The Claimant's average weekly wage is \$391.19 with corresponding compensation rate of \$260.81. I base this finding upon stipulation of the parties.
3. The Claimant sustained admitted injuries to his back and right knee. I base this finding upon stipulation of the parties.
4. The Claimant is forty years old and is currently employed with the employer as a cashier. I base this finding upon the Claimant's testimony.
5. The Claimant is a pleasant and believable witness. I do not doubt his testimony concerning some of his limitations, however I do view the entire record and the evidence as a whole.
6. The Claimant has returned to work full duty with the employer for almost two years, and he is a valued employee who is being accommodated. I base this finding upon the Claimant's testimony as well as the testimony of Lynn Council from the employer.
7. Ms. Lynn Council, the Claimant's manager, testified credibly at the hearing. She verified that the Claimant is a good employee, and that the employer has accommodated him if

needed. The Claimant has not made any complaints to the employer nor asked for additional medical treatment. I base this finding upon the testimony of Ms. Council.

8. The greater weight of the evidence shows, based upon review of the medical records, including Independent Medical Evaluations, that Dr. Drye's reports and conclusions are the most persuasive. I base this finding upon the medical records submitted into evidence.
9. The Claimant reached maximum medical improvement as of June 7, 2011. I base this finding on the medical evidence.
10. The Claimant sustained a 48% permanent partial disability to his back. I base this finding on the medical evidence as a whole.
11. The Claimant's permanent partial disability includes any radicular symptoms to his right leg. I base this finding on the medical evidence.
12. The Claimant is not permanently and totally disabled. I base this finding on the greater weight of the evidence, including his ability to work for nearly two years while being accommodated by sitting down, his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
13. The Claimant is not entitled to reimbursement for his Independent Medical Evaluation costs. I base this finding upon the medical evidence which shows that Defendants provided the Claimant with follow-up visits with the authorized treating providers and there is no finding of a lapse in treatment.
14. The Claimant is entitled to a lump sum award.
15. The Claimant is entitled to causally related medical treatment pursuant to Dodge pursuant to Section 42-15-60 as amended. I base this finding on the medical evidence.

16. The Claimant is entitled to lifetime repair, replacement, removal and maintenance of any retained hardware, if any.
17. The Claimant is entitled to Utica-Mohawk language pursuant to James v. Anne's.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Section 42-1-130 and Section 42-1-140, the Claimant was an employee of the employer
3. Pursuant to S.C. Code Ann. Section 42-1-40 and Section 42-1-50, the Claimant's average weekly wage is \$391.19 with a corresponding compensation rate of \$260.81.
4. Pursuant to S.C. Code Ann. Section 42-1-160, the Claimant suffered from a compensable injury to his back and right knee on September 12, 2010.
5. Pursuant to S.C. Code Ann. Section 42-15-20 notice of the accident as given to the employer.
6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided the Claimant with necessary medical treatment and Dr. Drye's reports and conclusions are controlling as the authorized treating physician.
7. Pursuant to S.C. Code Ann. Section 42-15-60, the Claimant reached maximum medical improvement on June 7, 2011
8. Pursuant to S.C. Code Ann. Section 42-9-30, the Claimant suffers from a 48% permanent partial disability to his back as a result of his work related accident

9. Pursuant to S.C. Code Ann. Section 42-9-10 the Claimant is not permanently and totally disabled as the Claimant has returned back to work with the employer for almost two years
10. Pursuant to S.C. Code Ann. Section 42-15-60, as amended and Dodge, Claimant is entitled to ongoing causally related medical treatment for his back.
11. The Claimant is entitled to a lump sum award and Utica-Mohawk language pursuant to James v. Anne's.

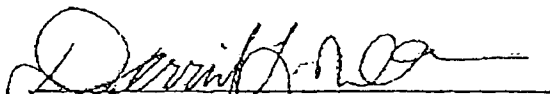
ORDER

IT IS THEREFORE ORDERED that the Claimant sustained compensable injuries which arose out of and in the course and scope of his employment with the employer to his back and right knee

IT IS FURTHER ORDERED the Claimant suffers from a 48% permanent partial disability to his back and is entitled to Dodge medicals

IT IS FURTHER ORDERED that no costs are assessed for this hearing.

IT IS SO ORDERED


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.
December 7, 2012

By: Renee Smith, Administrative Assistant to Commissioner Williams

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC File No.: 1015200

HENTON T. CLEMMONS, JR.,)
Employee-Claimant,)
v.)
LOWE'S HOME CENTERS INC.,)
Employer, and)
SEDGWICK CMS,)
Carrier,)
Defendant(s).)

APPELLANT'S BRIEF TO THE
FULL COMMISSION

POSITION ON APPEAL

Not one Commissioner who will hear this appeal has never denied a claimant a second opinion to the knowledge of this writer, especially where there is a profound injury as there is in this case. Primarily Mr. Clemmons would request that the Commission vacate the Order and order that Mr. Clemmons be sent to a neurologist and/or neurosurgeon and/or a physical medicine rehabilitation specialist chosen by the Defendants for the second opinion he was never given although repeatedly requested.

Mr. Clemmons will be at the hearing and would request that he be granted at least 15 minutes extra so that the Commission alone may question him under oath about his condition pursuant

to SC Code §42-17-50.

STATEMENT OF THE CASE

On September 12, 2010, Mr. Clemmons entered the straw trailer at Lowe's and slipped on wet straw causing his feet to fly out from under him and him landing flat on the truck floor on his back, neck and head. (Mr. Clemmons had had a shunt placed in his head as a child for hydrocephalus which had always been asymptomatic.) Medical care was initially provided through Doctor's Care, and then Midlands Orthopaedics, where upon examination Dr. Armsey immediately referred him to Dr. Randall Drye. In his report, Dr. Armsey recorded that,

"Mr. Clemmons and his mother report that he was a perfectly functional 38-yr-old male until his work-related accident. Since that time his gait has been severely ataxic, he cannot dress himself because of poor balance, has been bed ridden because of his inability to ambulate. He has had multiple falls because of his poor balance which is all reported as 'no' (sic apparent error) beginning September 12, 2010. . ."

* * *

"I am concerned about a brain stem or cerebellar lesion, possibly complications from his intraventricular shunts with his recent trauma. I am certain that his ataxia is not coming from his lumbar spine and his right knee has no mechanical abnormalities on clinical exam and therefore his sensation of instability is likely neurologic at the knee as well. He is essentially wheelchair bound and will not return to work until cleared by a neurosurgeon/neurologist."

Dr. Randall Drye found significant cord compression and

myelopathy,

"which is advancing from what I believe is a disc herniation at C6-7 and a significant bulge at C5-6. I am quite alarmed at his presentation and the repetity of his symptoms."

At this point medical was not being provided nor were compensation benefits under the Act. A Form 50 Request for Hearing was filed and by Consent Agreement, the SIF employer agreed to provide medical care through Dr. Drye and compensation benefits. Of note based on a review of Dr. Drye's initial evaluation and all the records at the time of hospitalization and surgery, there is absolutely no reference to any problems with myelopathy or symptoms in that regard prior to the accident of September 12, 2010. (Defendants' APA Submissions, p. 21). In fact, in no other record submitted by any party from any doctor is there any mention of any problems prior to the accident in reference to his back and/or myelopathy or radiculopathy or involving balance, memory or any other type of problem in reference to the spinal cord.

More importantly, quoting words right out of the neurosurgeon's mouth, on November 30, 2010 Dr. Randall G. Drye, M.D. stated:

"When we met in the office initially and we garnered his history he clearly reported no prior history of significant neck or neurologic problems prior to a fall at work. This occurred, according to the patient, on 9/12/10 when he slipped on some straw in a trailer and impacted

on his back and the back of his head. This mechanism of injury is completely consistent as the force and flexion of the head and neck can result in a tear in the vulnerable disc and subsequent herniation. . . .

* * *

For that reason, I believe that within a reasonable degree of medical certainty, his disc herniations, spinal cord impingement and subsequent myelopathy as well as the intervening surgery were a direct result of his fall at work." (Defendants' APA Submissions, p. 25).

The Claimant then proceeded under treatment by Dr. Randall Drye including multiple level cervical fusion. The Claimant was subsequently released to return to work with restrictions by Dr. Drye and the Claimant signed a Form 17 agreeing that he was able to and did return to work on September 10, 2011.

Interestingly in his last evaluation note, Dr. Drye noted that the Claimant's, "gait is still slightly unsteady and he has some difficulty with balance likely owing to some mild residual spasticity and perhaps proprioceptive deficits." (Defendants' APA Submissions, p. 30).

The Defendants first filed a Form 21 to stop compensation on January 4, 2012 at which time after discussion between Counsel for the parties wherein a request was made for a second opinion by a neurologist and/or a physical rehabilitation medicine specialist, the Defendants withdrew their Form 21 and sent the Claimant back to Dr. Randall Drye. While a second

opinion was requested and/or evaluation by a neurologist and/or physical rehabilitation medicine specialist, no such evaluation or second opinion was provided.

Subsequently in June, the Claimant saw Dr. Randall Drye who reiterated his opinion that the Claimant is at maximum medical improvement. For the first time in his report of June 18, 2012, Dr. Drye makes the following statement in his history at that office visit,

"At that point he had recovered nicely from surgery though he still have some symptoms referable to his pre-operative cord injury and myelopathy . . . he denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as a long standing, pre-injury inversion of his right foot and ankle." (Defendants' APA Submissions, p. 31).

After receipt of this report, the Defendants would not offer a second opinion though requested from any other doctor and instead immediately filed a Form 21 but only to pay compensation.

In his Form 58 the Claimant reiterated his request for a second opinion on his back and neurological dysfunction; noted that he had never had a second opinion and requested reimbursement for the evaluations by a neurologist and an orthopaedic surgeon.

After the refusal to provide a second opinion or a neurological evaluation, the Claimant was seen for an evaluation

by Dr. Howard Mandell on September 5, 2012, who opinioned that in addition to any impairment to the back that the Claimant still suffered from, "spasticity in his legs, hyperreflexia, difficulty with coordination, inability to run and difficulty with balance," and stated the opinion that Mr. Clemmons had sustained an additional 15% neurological injury.

He opinioned that in addition to this that the Claimant suffered from significant low back pain, that he would perhaps benefit from ongoing physical therapy and that in reference to his back he may require further cervical intervention above or below the cervical fusion and would require ongoing low back pain management which certainly might require injections, either steroid injections or medial facet nerve blocks, or selected nerve block injections to be determined by the pain management evaluation and would need ongoing treatment with medications to control his ongoing significant low back pain. He recommended that a functional capacity evaluation be performed to objectively determine his limitations but that he would definitely need limitations in bending, twisting, turning, lifting and in the ability to carry and the flexibility to be able to sit or stand at work whenever he needs to in order to reduce his pain.

More importantly in reference to the statement contained in Dr. Drye's last note of June 18, 2012, Dr. Mandell stated that:

"With regards to the statement by Dr. Drye on 06/18/2012 indicating he 'he had 'long standing pre-injury inversion of the right foot and ankle'. This appears to be not corroborated by his mother, the patient, or my history or Dr. Armsey's history. I do not see it documented in any of the other physicians' history either. From the history I get and the records I reviewed, there was absolutely no preexisting neurological condition limiting this gentleman and I think this is certainly substantiated by the fact that he worked for three (3) years at Lowe's with heavy lifting, twisting, turning, carrying and a lot of walking without any limitations and able to do his job fully without any adjustments required. I do not believe any of his current problems are related to his previous hydrocephalus and shunting either." (Claimant's APA Submissions, pp. 5-6).

A functional capacity evaluation performed on September 11, 2012 found that the Claimant was limited to limited light duty work and that he could tolerate only occasional walking, stair climbing, kneeling, bending, twisting and reaching and that he did not tolerate occasional squatting. All of his lifting at various heights was limited to sedentary light duty physical capacity levels under the DOT. The physical therapist also noted that Mr. Clemmons had decreased balance and that he was unable to stand single stance on either lower extremity with his eyes closed. (Claimant's APA Submissions, p. 9).

Dr. Leonard Forrest, board certified orthopaedic surgeon, saw the Claimant for an independent evaluation on September 6th who stated that in his opinion the Claimant was at maximum medical improvement but would require continuing treatment into

the future which would most probably include physical therapy although invasive treatment may prove to be necessary. Dr. Forrest placed limitations on the Claimant and found that he had a 40% whole person impairment due to his neck and low back problems. He stated the opinion to a reasonable degree of medical certainty that he had sustained over a 50% loss of the functional use of his back to do work requiring the use of his back.

An independent medical evaluation was performed by Dr. Gal G. Margalit who opined that the Claimant had an altered gait and concurred in the findings concerning the myelopathy that involved cord compression myelopathy and it was his opinion that the Claimant had lost as a result of his injury, 50% of the functional capacity of the use of his back to do work requiring the use of his back and that he concurred with the opinions of his neurosurgeon in reference to continuing restrictions. He also opined after review of the functional capacity evaluation and his own evaluation that in his opinion the Claimant had sustained a 50% or greater loss of functional use of his back to do work requiring the use of his back. He also recommended future treatment and specifically neuropsychological testing. (Claimant's APA Submissions, pp. 36-37).

In addition, a vocational evaluation was performed by Ms. Harriet Fowler, CRC, M.Ed. She found that per the FCE and the

restrictions from the treating physician that without accommodation he would not be able to function in his capacity at Lowe's but that Lowe's was to be commended for accommodating his severe restrictions. Based on a labor market analysis based on the functional capacity evaluation and the other independent medical evaluations and the opinion of the authorized treating neurosurgeon, the Claimant had a residual labor market access to approximately 417 sedentary unskilled semi-skilled work titles, thus representing a 99.9400% loss of access to the job market. She questioned even with the restrictions and the accommodations made by Lowe's as to whether or not under the doctors restrictions and the findings of the FCE the Claimant could continue to perform in his current capacity and that work at a sedentary level would be more advisable into the future. (Claimant's APA Submissions, pp. 22-23).

At the hearing, the Defendants requested that the Commission make an Award based on the admitted back injury and would request that the Commission make an Award for a scheduled member injury and requested that the permanency award be less than 50% loss of use. In addition to the APA Submissions, the Defendants only submitted the testimony of Ms. Lynn Council. Following her testimony, the Commissioner asked,

"Q: Any other witnesses for the employer/
carrier?

E: No, Your Honor."

(Hearing Transcript, p. 18, ll. 18-20.)

At the conclusion of the testimony and evidence presented by the Defendants, the Claimant moved for a ruling,

"as to whether or not there has been any evidence to present it to rebut the 50% loss of the use of the back." (Hearing Transcript, p. 18, l. 23 - p. 19, l. 2).

The Commissioner would not rule on the evidence presented and the Claimant submitted testimony in rebuttal.

Also at the beginning of the Hearing in the off-the-Record pre-hearing conference and as is reflected in the Record, the Claimant reiterated his request for a second opinion and that the Claimant requested reimbursement for the evaluations that were performed by Dr. Mandell and Dr. Forrest due to the refusal of the Defendants to offer a second opinion or evaluations of a neurological and orthopaedic standpoint. (Hearing Transcript, p. 5, l. 19 - p. 6, l. 6; p. 7, l. 7 - p. 8, l. 12).

In the Claimant's Pre-hearing Brief, the Claimant set forth his argument that, "the right to compensation for loss of use and/or loss of earning capacity is a property right of the Claimant and it is a denial of due process to determine his entitlement without his request."

The Claimant also argued that the presumption under the scheduled member award for injuries to the back as having lost

50% of the use of the back applies to the character of the injury and that evidence of loss of earning capacity was not a proper consideration under a scheduled member award to the back and the presumption that applies to the back.

The Defendants argued that the only rebuttal that they were offering and that it was their position that, "the basis of the rebuttal presumption obviously is his return to work for almost two (2) years in response to the Claimant's position that he is perm total based on greater than 50% loss of use of the back."

In his notes, the Commissioner stated under his Findings No. 7 that,

"based on the Record as a whole, I find that the Claimant has sustained a 48% TTD to his back. This includes any radicular symptoms to his right leg. I do not find that he is permanently and totally disabled based on the evidence as a whole. This finding is based on the greater weight of the evidence, including his ability to work for nearly two (2) years (while being accommodated by sitting down), his lack of prescription medication, and the medical reports and conclusions of Dr. Drye."

That Finding set out in the Order as Findings of Fact 8-12.

The Commissioner further denied reimbursement for the evaluations as requested. From the Decision of the Hearing Commissioner, this appeal follows.

ARGUMENTS

- I. WHERE THE CLAIMANT WAS BACK AT WORK AND HAD NOT MADE A REQUEST FOR AN AWARD UNDER ANY BASIS UNDER THE ACT, DID THE COMMISSIONER ERR BY SETTING THIS MATTER FOR HEARING UNDER

SC CODE §42-9-260 WHICH PROVIDES FOR A STOP PAYMENT APPLICATION AND FORCING THE CLAIMANT TO A PREMATURE DETERMINATION OF HIS PROPERTY RIGHTS TO AN AWARD IN VIOLATION OF HIS DUE PROCESS RIGHTS TO SUCH AWARD.

There are two statutory interpretation principles that must be set out in reference to this issue. The first principle is that:

"It is the established law of this state that any reasonable doubt as to the construction of the workmen's' compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties towards the end of providing coverage . . . "

In furtherance of the purposes for which it was designed:

"Compensation laws constitute a form of social legislation and were enacted for the benefit, protection and welfare of working men and their dependents to relieve them from the uncertainties of a trial in a suit by damages, to cast upon the industry in which they are employed a share of the burden while resulting from industrial accidents, and to prevent the burden of injured employees and their dependents from becoming charges on society. Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). (Emphasis added).

The second principle is that:

"Since workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights, the Court must strictly construe such statutes, leaving it to the legislature to amend and define any ambiguities."
Wigfall v. Tideland Utility, Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003).

In repeated cases, the Supreme Court has held that the entitlement to benefits under the Workers' Compensation Act is a

property right owned by the claimant, the injured worker. Last v. MSI Construction, Inc., 305 S.C. 349, 409 S.E.2d 334 (1991). Therefore, there is no question that the entitlement and right to benefits is a property right owned by the claimant.

Under the current version of SC Code §42-9-260, the employer and/or its insurance carrier is given the right to file a stop payment application to stop temporary compensation and under that section a hearing must be held within sixty (60) days and that statute is very clear as to the limited right that it gives to the employer under subsection D specifically states:

"If an employee has been declared as having reached maximum medical improvement, the employer may request a hearing to address the termination of temporary disability payments. A hearing must be held within sixty (60) days of the date of the date of the employer's request for a hearing."

At no place in that statute is the carrier given the right to seek a hearing to pay compensation only. The Claimant would submit also that there is absolutely no right under any other provision of the Act for an employer to force a claimant to a premature determination of benefits. In fact in two (2) specific cases, the Supreme Court and Court of Appeals in addition to having repeatedly determined and recognized that the claimant has the burden of proof of establishing that he is entitled to benefits under the Act, and thus clearly recognizing that the claimant must always be the moving party the Courts found in

those cases that in a case where the claimant inadvertently omits production of the proof necessary to establish his case or where he seeks the opportunity to open the Record or to present evidence after the hearing has been held that the Claimant should be afforded an opportunity to provide that proof of disability in, "the interest of justice". Brown v. LaFrance Industries, 286 S.C. 319, 333 S.E.2d 348 (S.C. App. 1985); Morgan v. JPS Automotive, Inc., 321 S.C. 201, 467 S.E.2d 457 (S.C. App. 1996), cert. dismissed, 326 S.C. 261, 486 S.E.2d 263 (1997).

Thus since the Claimant has a constitutionally protected property right in his entitlement to benefits which is a property right owned by the Claimant, only the Claimant has a right to bring a cause of action for a determination of those benefits and it is a denial of due process to force the Claimant to a premature determination of those benefits where he has not made a request that he be awarded any benefits whatsoever under the Act. The Claimant has the burden of proof, it is his property right and the Commissioner lacked jurisdiction and erred by moving forward on an application filed by the Defendants to pay compensation which is not allowed for under the SC Workers' Compensation Act.

"The rights and liabilities of employee and employer under the Workers' Compensation Act are purely statutory and are to be judged by terms of

the Act." Owens v. Herndon, 252 S.C. 166, 165 S.E.2d 696 (1969).

If the Legislature intended to give an employer and its carrier the right to a determination of benefits when it wants to have a determination, it is the responsibility of the legislature to set that out by statute. Outlaw v. Johnson Service Co., 254 S.C. 486, 176 S.E.2d 152 (1970). This constitutes both a substantive and procedural denial of due process to the injured worker in this case and the Decision should be reversed.

II. UNDER THE EVIDENCE IN THIS CASE, DID THE COMMISSION ERR AS A MATTER OF LAW BY NOT AWARDING THE CLAIMANT AN AWARD FOR TOTAL AND PERMANENT DISABILITY FOR HAVING LOST MORE THAN 50% OF THE USE OF HIS BACK AND BY FAILING TO MAKE A DETERMINATION THAT THE CLAIMANT HAD SUSTAINED A 50% OR GREATER LOSS OF USE OF THE BACK?

AWARD IS PAID FOR CHARACTER OF THE INJURY.

While the presumption under SC Code §42-9-30 (19) was always rebuttable, the 2007 amendment was enacted to simply set that out in Statutory Language. The effect of any presumption under our Law was and is as is stated in SC Rules of Evidence §301:

"In all civil actions..., a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion which remains throughout the trial upon the party on whom it was originally cast."

In other words the Claimant had, has and will always have the burden of proof to put forth evidence, either lay, medical and/or otherwise, that the injured worker has lost 50% or more

of the functional use of the worker's back to do work requiring the use of the worker's back which must be sufficient to prove that fact by a preponderance of the evidence.

The misperception that the Claimant has to prove wage loss or loss of earning capacity was the law before the back was made a scheduled member (see Outlaw v. Johnson Service Co., supra) and persisted long before the 2007 amendments but was put to rest repeatedly by our Appellate Courts in the cases of Bateman, McCollum, and Lyles, supra.

"The Workers' Compensation Commission properly ruled that a Claimant is entitled to benefits even though the injury did not affect his performance in his subsequent job because compensation is based on the character and extent of the injury and not whether the Claimant lost earnings or is otherwise employable in another occupation". Lyles, supra.

A worker is entitled to an award for total and permanent disability for loss of earning capacity under SC §42-9-10 (A).

The pertinent part of S.C. Code §42-9-30 (21) (as Amended 2007) (the scheduled member back section) reads:

"Where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under §42-9-10 (B)." (Emphasis Added)

S.C. Code §42-9-10 (B) provides that the loss of both hands, arms, feet, legs, or vision in both eyes or any two thereof,

constitutes total and permanent disability to be compensated according to the provisions of this section.

An Award under Section (B) of §42-9-10 like an Award under §42-9-30 (21) are paid due to the character of the injury not wage loss.

"Compensation depends on the functional loss rather than the loss of earnings." Dykes v. Daniel Construction Co., 262 S.C. 98, 202 S.E.2d 646.

Therefore, Awards under §42-9-30 (21) are not paid nor have they ever been paid for wage loss as under §42-9-10 (A). They are paid for the functional loss of use without any consideration of wage loss. A left handed lawyer is entitled to total and permanent disability if he loses his right foot and right hand and the same is true if he loses 50% of the use of his back.

In this case, there is simply no substantial evidence in the Record that the Claimant has lost less than 50% of the functional use of his back to do work requiring the use of the back. Two medical doctors that evaluated the Claimant stated the opinion in reference to the functional loss of use of the back that the Claimant has to do work requiring the use of his back that in their opinion the Claimant had lost 50% or greater of the use of his back to do work requiring the use of his back. Dr. Leonard E. Forrest's evaluation, APA Submissions p. 39, and evaluation of Dr. Gal G. Margalit, M.D. pp. 37 and 38. In addition the Claimant testified that in his opinion he had lost more than 50% of the use of the back and in fact testified that

he had lost, "about 80%" of the functional use of his back to do work requiring the use of his back. (Tr., p. 46, l. 10 - p. 47, l. 11). There is simply no other evidence concerning the loss of use that the Claimant had sustained as a result of the injury to his back.

It is the responsibility of this Commission where an Award is requested under the Scheduled Member Statute for this Commission based on the substantial evidence in the Record to determine the functional loss of use that the Claimant has in reference to the particular body part involved, in this case the back. This Commission is duty bound where it is dealing with a scheduled member award to make the Award as set out above as determined by our Appellate Courts which this Commission is required to follow for the functional loss of use without regards to whether or not there is any loss of earning capacity. See Dykes v. Daniel Construction Co., supra. In addition, in Wigfall v. Tideland Utilities, Inc., supra, our Supreme Court specifically affirmed this again by stating that there are three (3) methods of obtaining compensation, one being for total disability and the second being for partial disability and the third being for a scheduled disability. The first two methods are premised on the economic model while the third method, "exclusively relies upon the medical model with this presumption of lost earning capacity."

Therefore, first since there is absolutely no substantial evidence in the Record that the Claimant has lost less than 50% of the functional use of his back, the Hearing Commissioner erred by not making that finding. (This Commission is duty bound to apply a liberal interpretation of the Act in furtherance of paying benefits to the injured worker). Second, the Hearing Commissioner erred by considering wage loss in reaching his determination and since the undisputed substantial evidence establishes that the Claimant has lost more than 50% of the functional use of his back, the Commissioner erred by not making an Award for total and permanent disability entitling the Claimant to the maximum benefits available under the Act which is only 500 weeks of compensation minus what has already been paid in temporary weekly benefits in this claim.

Further, this writer is more than aware of the decision by the Court of Appeals in Watson v. Extra Mile Drivers Training, Inc., 399 S.C. 455, 732 S.E.2d 190 (S.C. App. 2012). However, a Petition requesting a Writ of Certiorari is pending and that decision, until a decision is made on that Petition, has no precedential value.

However, even applying the Watson standard, the Claimant is entitled to an Award for total and permanent disability under S.C. Code §42-9-30(21), under the testimony and evidence in this case concerning the Claimant's ability to work and the expert

opinion of a vocational expert in reference to his job market access. The Claimant testified that without the special accommodations being made by Lowe's and the help of his fellow employees that he could not do his job with Lowe's. He also testified that the only conceivable job that he knew of that he may be able to do; if he lost his job at Lowe's would be one where he would not have to stay on his feet. (Tr., p. 42, l. 1 - p. 44, l. 21). The vocational expert's opinion establishes that considering all the doctor's opinions including that of Dr. Drye, the authorized treating physician, and their restrictions and the restrictions found to exist under the functional capacity evaluation that in her opinion the Claimant had lost 99.9400% loss of access to the job market in the United States (APA Submissions, p. 61). (Note: no contrary evidence is in the Record as compared to any of the doctor's opinions or the vocational expert's opinion or the FCE). This Commission must rely on and make its decision based on the substantial evidence. Justice Gathers wrote citing Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996) and McCollum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (S.C. App. 1989) and stated to the effect as is set out specifically in the McCollum decision citing from Colvin v. E.I. DuPont de Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955) that

"evidence that the claimant has been able to earn

occasional wages or perform certain limited kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial."

Therefore, even applying this standard under the substantial evidence in the Record here that is to say the Claimant knows of ----- no actual job he could perform except possibly some job where he did not have to stand (by the way, there is no evidence in the Record he has ever had any experience in that type of a job) and that he is excluded from 99.9400% of the entire job market in the United States under the Dictionary of Occupational Titles, thus the evidence clearly establishes that he is entitled to an Award for total and permanent disability. Again, even assuming that wage loss is a factor that should be considered in a request for an Award under the schedule member statute.

III. DID THE HEARING COMMISSIONER ERR AS A MATTER OF LAW BY FAILING TO MAKE AN AWARD FOR THE CLAIMANT'S SEPARATE NEUROLOGICAL DISORDER, MYELOPATHY, UNDER THE SUBSTANTIAL EVIDENCE IN THE RECORD.

The only doctor to address this issue is Dr. Mandell, a board certified neurologist, who stated the opinion that separate and apart from any impairment to the back that in his opinion from a neurological standpoint that the Claimant had a 15% whole person impairment affecting his back and upper extremities and lower extremities. The effect of the myelopathy on claimant is recognized by all doctors involved including the treating neurosurgeon, Dr. Randall Drye. Dr. Drye recognized

and agreed that these central nervous system problems existed and were caused by the residual myelopathy. Therefore the only substantial evidence in the Record establishes that the Claimant is entitled to a separate Award for the separate neurological injury that he incurred. The Commissioner erred by not making an Award for the neurological deficits separate and apart from the injury to the back because this affected other parts of the body other than the back.

IV. DID THE HEARING COMMISSIONER ERR AS A MATTER OF LAW BY FAILING TO MAKE AN AWARD FOR THE CLAIMANT'S LOW BACK INJURY?

The treating neurosurgeon Dr. Randall Drye recognized and found that the Claimant had problems with his low back and set those out as a diagnosis. However, the only impairment rating he ever gave the Claimant was in reference to his cervical spine injury.

The only evidence in the Record comes from the Claimant who testified as to the problems that he was having with his low back including low back pain and the limitations he had caused by problems that he had in that area and the medical opinion evidence submitted by Dr. Leonard Forrest who stated that the Claimant was entitled to a separate 10% whole person impairment due to the problems with his low back. There is simply no other substantial evidence in the Record concerning the low back and as such an Award should have been made addressing the low back

problems and the loss of use for those problems.

V. DID THE HEARING COMMISSIONER ERR AS A MATTER OF LAW BY PLACING GREATER WEIGHT IN THE AUTHORIZED TREATING NEUROSURGEON'S REPORTS WHERE THERE IS AN ABSOLUTE UNBELIEVABLE INCONSISTENCY IN THAT DOCTOR'S REPORTS WHEREIN THERE IS ABSOLUTELY NO EVIDENCE IN THE RECORD TO SUBSTANTIATE THAT THE CLAIMANT WAS HAVING ANY NEUROLOGICAL PROBLEMS PRIOR TO THE ACCIDENT AND WHERE THAT DOCTOR HIMSELF IN FACT STATES THAT FACT IN HIS SUBSEQUENT REPORTS UP TO AND INCLUDING HIS FINAL REPORT IN 2011?

There is no question from a review of the Hearing Commissioner's Decision that he gave great weight to the treating physician's opinion and gave little or no weight to all the other evidence in the Record. This Commission in the past has criticized various doctors' opinions for being inconsistent or stating two totally different set of facts or not being based on the facts.

As is set forth in the Statement of the Case, all of the evidence, and the Claimant would reiterate all of the evidence, in the Record until the very last time that the Claimant was sent back to Dr. Drye indicates and establishes that all of the doctors are of the opinion that the Claimant's problems with myelopathy, balance and all other neurological problems referred to in Dr. Armsey's report stemmed from the work-related injury.

Again, quoting words right out of the neurosurgeon's mouth, on November 30, 2010 Dr. Randall G. Drye, M.D. stated:

"When we met in the office initially and we garnered his history he clearly reported no prior history of significant neck or neurologic

problems prior to a fall at work. This occurred, according to the patient, on 9/12/10 when he slipped on some straw in a trailer and impacted on his back and the back of his head. This mechanism of injury is completely consistent as the force and flexion of the head and neck can result in a tear in the vulnerable disc and subsequent herniation.

* * *

For that reason, I believe that within a reasonable degree of medical certainty, his disc herniations, spinal cord impingement and subsequent myelopathy as well as the intervening surgery were a direct result of his fall at work." (Defendants' APA Submissions, p. 25).

The Claimant would submit again that the Commission will find absolutely no medical record or reference to the Claimant having any problems prior to the date of the accident and thus the subsequent statement made in Dr. Drye's last report that the myelopathy resulted from pre-existing problems to the fall makes the neurosurgeon's testimony completely not credible. Therefore the Hearing Commissioner's Finding of Fact that he placed great weight on the treating neurosurgeon's opinions was improper and makes his Findings of Fact and Conclusions of Law the basis of surmise, speculation and innuendo and also the subject of caprice. The evidence simply does not support any credence to be given to the credibility of the neurosurgeon. These two statements are simply and totally contradictory.

CONCLUSION

For all the foregoing reasons, the Decision of the Hearing

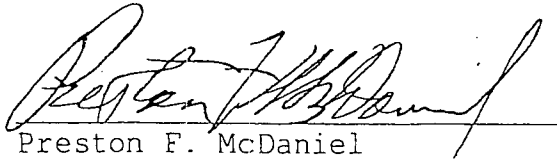
Commissioner should be reversed and the Claimant should be granted a second opinion by a neurologist, neurosurgeon or physical rehabilitation medicine specialist or other specialist again chosen by the Defendants particularly as to whether or ~~not~~ he is at maximum medical improvement and what further medical care he needs for treatment of his cervical spine, lumbar spine and admitted myelopathy and any other problems that that doctor determines to be causally related to the Claimant's injury.

In the alternative, the Decision should be reversed and vacated pending the Claimant making a request for benefits under the Act.

In the further alternative, this Commission should review the evidence in the Record and grant the Claimant an Award for total and permanent disability for having lost more than 50% of the use of his back.

In the further alternative, at a minimum this Commission should enter a finding that the Claimant has lost more than 50% of the functional use of his back to do work requiring the use of his back, make a whole person Award for his injuries to his cervical spine, make a separate Award for the injuries to his lumbar spine, and make an Award for his neurological deficits in the form of a myelopathy which affects his legs and arms or make an Award to the legs and arms as being affected by the myelopathy.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Preston F. McDaniel", is written over a horizontal line.

Preston F. McDaniel

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Attorney for the Appellant

March 18, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1015200

HENTON T. C LEMMONS, JR.,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC. -
HARBISON,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.

Carrier,

Defendants.

RESPONDENTS' REPLY BRIEF

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

STATEMENT OF THE CASE

Claimant was employed with Lowe's on September 12, 2010 when he suffered from a work related injury. In particular, Claimant was standing in the back of the pine straw truck and slipped on wet pine straw causing him to fall and land on his back. Pursuant to a Consent Order, the parties agreed that Claimant suffered from an accepted injury to his back, neck and right knee and accept continued medical care with the physician the Claimant had already chosen, Dr. Drye. In addition, Defendants agreed to pay Claimant temporary total disability benefits from the date of the accident until properly terminated. Thereafter, Claimant continued to receive medical treatment for his conditions and he remained out of work until September 10, 2011. Claimant

signed a Form 17 on September 22, 2011 indicating he could return to work. In addition, Claimant was released by the authorized treating physician at maximum medical improvement and assigned an impairment rating of 25% whole person to his back on June 7, 2011. Claimant continued to make complaints, therefore Defendants agreed to send him back for an additional evaluation with the authorized treating physician. The authorized treating physician released him again at maximum medical improvement on June 18, 2012 without making an adjustment to his earlier impairment rating of 25% whole person to the back.

Defendants filed a Form 21, Request to Pay Permanency, pursuant to the impairment rating assigned by the authorized treating physician. A hearing in this case was held on September 25, 2012 before Commissioner Derrick L. Williams. Claimant alleged that he was entitled to a second opinion regarding his injuries and further indicated that he had not reached maximum medical improvement, and, therefore a hearing on this issue was premature. In the alternative, Claimant argued that if the Commission found he had reached maximum medical improvement, then he claimed that he was permanently and totally disabled due to a greater than fifty percent loss of use to the back. Claimant sought lifetime causally related medical treatment and an award under lump sum. In return, Defendants argued that Claimant has returned back to work and thus isn't entitled to an award for permanent and total disability.

QUESTIONS RAISED BY APPELLANT

- I. Did the Hearing Commissioner err by not ordering an authorized second opinion and/or reimbursing Claimant for the unauthorized second opinion he pursued?
- II. Did the Hearing Commissioner err by setting this matter for a hearing under S.C. Code §42-9-260 which provides for a stop payment application and forcing Claimant to a premature determination of his property rights to an award in violation of his due process

rights to such award?

- III. Did the Hearing Commissioner err as a matter of law by failing to find Claimant is permanently and totally disabled, by failing to award benefits to Claimant for a great ~~than~~ 50% loss of use to the back and by failing to award Claimant lifetime medical treatment for losing more than 50% of the functional use of his back?
- IV. Did the Hearing Commissioner err as a matter of law by failing to make an award ~~for~~ Claimant's neurological disorder and/or myelopathy?
- V. Did the Hearing Commissioner err as a matter of law by failing to make an award ~~for~~ Claimant's low back injury?
- VI. Did the Hearing Commissioner err as a matter of law by placing greater weight on ~~the~~ authorized treating physician's reports where there is an absolute unbelievable inconsistency in that doctor's reports wherein there is absolutely no evidence in ~~the~~ record to substantiate that the Claimant was having any neurological problems prior to the accident and where that doctor himself in fact states that fact in his subsequent reports up to and including his final report in 2011?

BRIEF ANSWERS TO QUESTIONS RAISED BY APPELLANTS

- I. The Hearing Commissioner did not err by refusing to order Defendants' to provide a second opinion or pay for Claimant's bills related to an unauthorized second opinion.
- II. The Hearing Commissioner did not err in holding a hearing or making an Award pursuant to Defendants' properly filed Form 21 regardless of whether Claimant made a request for the Award nor did the Hearing Commissioner deny Claimant his due process rights by holding a hearing and determining Claimant's entitlement to benefits pursuant to Defendants' properly filed Form 21 regardless of whether Claimant made a request for

the Award.

- III. The Hearing Commissioner did not err as a matter of law by finding that Claimant is not permanently and totally disabled, by finding Claimant sustained a 48% permanent partial disability to his back and by refusing to award Claimant lifetime medical treatment for losing more than 50% of the functional use of his back?
- IV. The Hearing Commissioner did not err by failing to make an award for Claimant's neurological disorder and/or myelopathy.
- V. The Hearing Commissioner did not err by failing to make an award for Claimant's low back injury.
- VI. The Hearing Commissioner did not err by placing greater weight on the authorized treating physician's reports than he did on Claimant's own independent medical reports.

ANALYSIS AND ARGUMENT

I. THE HEARING COMMISSIONER DID NOT ERR BY REFUSING TO ORDER DEFENDANTS' TO PROVIDE A SECOND OPINION OR PAY FOR CLAIMANT'S BILLS RELATED TO AN UNAUTHORIZED SECOND OPINION.

Claimant asserts that Defendants are required to provide authorization for second opinion because the Commission "...has a policy of generally granting a second opinion, where requested timely, [and] prior to a determination of benefits being made..." In the alternative, Claimant asserts he is entitled to reimbursement for unauthorized medical care that he received in the form of acquiring his own second opinion from unauthorized physicians.

Regulation 67-609 states that while a claimant is receiving temporary compensation benefits, "[t]he employer's representative chooses an **authorized** health care provider and pays for **authorized** treatment." (emphasis added). However, under S.C. Code Ann. § 42-15-60, "[i]n case of a controversy arising between employer and employee, the Commission **may** order such

further medical, surgical, hospital, or other treatment as may in the discretion of the Commission be necessary....” (emphasis added). The South Carolina Court of Appeals in Gattis held this to mean that the “...full commission is afforded much discretion...where it deems it necessary, the commission may override an employer’s choice of medical provider...” (emphasis added). In Gattis, the court reversed the order of the circuit court concluding the commission did not have the discretion to order the employer to pay for medical treatment rendered to claimant by her out-of-state medical providers.

In Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E.2d 876 (Ct. App. 2006), the Court of Appeals held that the Commissioner has the discretion to authorize medical treatment from an unauthorized provider under certain scenarios. The claimant in Hall received a second surgical opinion. When the carrier would not authorize the surgery, he underwent the surgery on his own. The Court stated that a claimant is not required to sacrifice much needed treatment merely to comply with an employer’s choice of physicians. However, in Turner v. SCDHEC, 377 S.C. 540, 661 S.E.2d 118 (Ct. App. 2008), the Court of Appeals stated that claimants cannot compel defendants to declare claimants’ doctors as authorized physicians and to pay for such medical costs as that would be inconsistent with S.C. Code Ann. §42-15-60 and §42-9-10.

On or about January 16, 2012, Claimant’s attorney sent correspondence to the Defendants requesting a second opinion. On that same day, the Defendants responded to Claimant’s attorney and informed him that they would agree to send Claimant back to Dr. Drye, the authorized treating physician, for a follow up and to help rule out any future surgical intervention. At the time, there was discussion between the parties about sending Claimant to another doctor for a full second opinion evaluation. However, Defendants’ position was that a full second opinion evaluation may not be needed depending on the outcome of Dr. Drye’s evaluation. Following

these conversations, Defendants withdrew their first Form 21 to allow Claimant to have a follow up visit and any recommended treatment with Dr. Drye.

After Claimant returned to Dr. Drye, he was released for the second time at maximum medical improvement on June 18, 2012. (Def. APA 4, p. 31). He was also released with the same impairment rating (25% whole person) and work restrictions as the June 7, 2011 release. (Def. APA 4, p. 30-32). Dr. Drye stated that Claimant had some persistent stiffness and pain in the base of the neck that did not radiate into the upper extremities. (Def. APA 4, p. 31). Further, Claimant denied any recurrent symptoms in his arms or hands. Id. He further denied any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy. Id. Dr. Drye also stated that he has a long-standing, pre-injury inversion of the right foot and ankle and that Claimant's mother confirmed it has "forever been a problem" and that he "wears out shoes" in the lateral aspect. Id.

Dr. Drye also took a cervical MRI and a lumbar study. Id. The results of these tests indicated that Claimant had "healed beautifully from his surgery" and that the operative construct and instrumentation was stable. Id. Further, there was no residual high degree of canal stenosis and no obvious impingement of the cord. Id. He goes on to state that his current symptoms are more consistent with axial and myofascial pain and the pattern is strongly suggestive of arthritic-type symptoms. Id. Dr. Drye encouraged Claimant to continue his stretching and movement and recommended he lose weight as that would likely help with the lumbar pain. Id.

Following the second rating and release by Dr. Drye, Claimant's attorney sent Claimant to receive unauthorized second opinion evaluations with Drs. Mandell and Forrest. Dr. Mandell agrees with Dr. Drye and states in his report that Claimant "...does not require additional

treatment concerning his injuries other than perhaps ongoing physical therapy for balance and gait.” (Cl. APA 8, p.6). Further, Dr. Mandell again agrees with Dr. Drye when he states that “...at this point in time there is no indication that [Claimant] requires any further surgery.” Id. He does conclude that Claimant needs ongoing lower back pain management in the form of injections and/or medications. Id. Notably, Dr. Mandell states that Claimant will need work accommodations—including the ability to sit and stand, if needed—but takes no issue with Claimant’s current work arrangement or restrictions. Id.

Dr. Forrest also agrees with Dr. Drye in his report when he indicates that Claimant is at maximum medical improvement. (Cl. APA 11, p. 39). Dr. Forrest stated that he believes Claimant will likely need future treatment in the form of physical therapy but does admit that invasive treatment may be needed. Id. Dr. Forrest assigned a 30% impairment rating to Claimant for his neck related symptoms. Id. He also stated that the low-back symptoms, if included in a rating, would add 10% to Claimant’s impairment rating. Id. Dr. Forrest stated that he agrees with the 25-pound lifting restriction. Id. Finally, Dr. Forrest states that Claimant is suited for customer service, cashier work, and/or computer work. Id.

Claimant sought and was provided with a follow-up evaluation through the authorized treating physician. After an extensive evaluation and work-up, Dr. Drye re-released Claimant at maximum medical improvement with the same rating and restrictions. The second opinions the Claimant sought on his own mostly agree with Dr. Drye’s reports that Claimant is at maximum medical improvement, that no surgical intervention is necessary, and that he is able to work. Claimant presented no evidence to the Hearing Commissioner that would give him grounds to order additional second opinions or to require Defendants to pay for unauthorized treatment. Claimant obviated the need to secure a second opinion provided by the Defendants by securing

multiple evaluations on his own that confirmed the second evaluation by Dr. Drye. As noted above, the decision to order additional treatment or require Defendants to pay for unauthorized treatment is within the discretion of the Commission. Further, under S.C. Code Ann. § 42-15-60 the treatment must be necessary and, under Hall, the treatment must be "much needed." Claimant cannot say that an additional second opinion evaluation is either much needed or necessary as his own un-authorized independent medical examinations reveal a concurrence with the authorized treating physician. The refore, the Hearing Commissioner was correct to refuse to order an additional second opinion and evaluation and correct to deny Claimant's request for Defendants to pay for unauthorized care that was not much needed or necessary.

II. THE HEARING COMMISSIONER DID NOT ERR IN HOLDING A HEARING OR MAKING AN AWARD PURSUANT TO DEFENDANTS' PROPERLY FILED FORM 21 REGARDLESS OF WHETHER CLAIMANT MADE A REQUEST FOR THE AWARD NOR DID THE HEARING COMMISSIONER DENY CLAIMANT HIS DUE PROCESS RIGHTS BY HOLDING A HEARING AND DETERMINING CLAIMANT'S ENTITLEMENT TO BENEFITS PURSUANT TO DEFENDANTS' PROPERLY FILED FORM 21 REGARDLESS OF WHETHER CLAIMANT MADE A REQUEST FOR THE AWARD.

At the outset, Claimant asserts in his brief that the "...Commissioner lacked jurisdiction..." to hear this claim. (see Appellant's Brief to the Full Commission p. 14). Unfortunately, Claimant waived this argument at the hearing. Commissioner Williams specifically asked Claimant whether he had any objection to "...jurisdiction, venue, or the APA submissions... ." (Hr'g Tr. 4:19-20) (emphasis added). Claimant responded with "None, Commissioner." (Hr'g Tr. 5:1). Therefore, any jurisdictional argument made by Claimant has not been preserved for Appellate review and Claimant's appeal on these issues should be dismissed. However, for purposes of this brief, the issues raised by Claimant are addressed below.

Employers and their insurance carriers may request a hearing to request permission to stop payment of temporary compensation after 150 days after notice of the injury by filing a

Form 21, Employer's Request for Hearing. A hearing to stop payment of compensation is required by S.C. Code Ann. §42-9-260 and governed by Regulations 67-208, 505, and 506. Pursuant to Regulation 67-208(B), employer or employer's representative are required to file a Form 21 "[t]o request a hearing for permission to pay compensation due to death, permanent partial, or permanent total compensation." Further, S.C. Code Ann. §42-9-260(E) allows an employer to request such hearing at any time. Fredrick v. Wellman, Inc., 682 S.E.2d 516, 385 S.C. 8 (S.C.App. 2009).

In the present case, Defendants properly filed with the Judicial Department and served on Claimant a Form 21 on January 5, 2012. Defendants stated that the purpose of the hearing request was to "[d]etermine if compensation is due pursuant to § 42-9-10, § 42-9-20, or § 42-9-30 and, if so, in what amount..." Defendants go on to state that their grounds for determination of compensation are "[t]he authorized treating physician has released the Claimant at maximum medical improvement and assigned a 25% while [sic] person impairment rating. Claimant reached maximum medical improvement on 6/7/2011." Prior to the hearing, Defendants withdrew their Form 21 as a matter of right and entered into a Consent Order with Claimant.

On July 25, 2012, Defendants again properly filed a Form 21 with the Judicial Department and served it on Claimant. On this Form 21, Defendants stated that the purpose of the hearing was, again, to "[d]etermine if compensation is due pursuant to § 42-9-10, § 42-9-20, or § 42-9-30 and, if so, in what amount..." Defendants go on to state that their grounds for determination of compensation are "[t]he authorized treating physician has released the Claimant at maximum medical improvement and assigned a 25% while [sic] person impairment rating. The Claimant requested a return evaluation with Dr. Drye which was conducted on June 18, 2012, and no adjustments were made to maximum medical improvement." A hearing was held

pursuant to the second Form 21.

The face of the Form 21 issued by the South Carolina Workers' Compensation Commission as well as Regulation 67-208 clearly lays out that an employer or employer's representative may request a hearing to pay compensation due to death, permanent partial disability, or permanent total disability. The Form 21 states that "[t]he employer's representative requests a hearing to: III. Determine if compensation is due _____." In practice, this form and subsequent blank is filled in by employer, employer's representative, or defense counsel with the specific compensation that defendants want the Commission to determine. Further, as noted above, Regulation 67-208(B) clearly states an employer or employer's representative are required to file a Form 21 "[t]o request a hearing for permission to pay compensation due to death, permanent partial, or permanent total compensation."

It is within the Hearing Commissioner's discretion to grant Defendants request to pay compensation pursuant to Regulation 67-208 and Claimant does not have the right to deny Defendants right to request a hearing pursuant to Regulation 67-208. Claimant's contention that he objected to the award is not relevant to a determination as to whether the Hearing Commissioner had the authority to conduct a hearing and issue an award pursuant to the Act. The Hearing Commissioner did not err in holding a hearing pursuant to Defendants' properly filed Form 21. To the contrary, the Hearing Commissioner was required to hold a hearing based on the Form 21. Further, the Hearing Commissioner did not err in making an award of compensation to Claimant pursuant to the Form 21. Defendants have the right, pursuant to Regulation 67-208(B) to request permission to pay compensation due to permanent partial or permanent total disability.

Defendants also have a right to request a hearing pursuant to S.C. Code Ann. § 42-17-20.

S.C. Code Ann. § 42-17-20 states "If the employer and the injured employee...fail to reach an agreement in regard to compensation under this Title within fourteen days after the employer has knowledge of the injury...either party may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon." (emphasis added).

Claimant has also raised a substantive due process challenge to South Carolina Workers' Compensation Act. Specifically, Claimant contends in his assignment of error that he was denied due process of law by "[the Commissioner] forcing a determination of his property rights where no such right or entitlement to a determination at the request of the Defendants is provided for under the Act and where the Defendants have absolutely no right to force a claimant to a decision on his entitlement to benefits without his request." Claimant goes on to state "[t]he request for benefits under the Workers' Compensation Act is the course of action belonging to the Claimant..."

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. XIV, 1; S.C. Const. Art. I, 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004); Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). A "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." Joytime Distribs. and Amusement Co., 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

Courts in South Carolina have held that the standard for reviewing all substantive due process challenges to state statutes is whether the statute bears a reasonable relationship to any legitimate interest of government. Sunset Cay, 357 S.C. at 430, 593 S.E.2d at 470; R.L. Jordan

Co. v. Boardman Petroleum, Inc., 338 S.C. 475, 477, 527 S.E.2d 763, 765 (2000). "The purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them." In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) *citing* Zinerman v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975, 983, 108 L.Ed.2d. 100, 113 (1990) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662, 668 (1986)). "The substantive due process guarantee ensures that legislation which deprives a person of a...property right [has], at a minimum, a rational basis, and not be arbitrary or over vague. 19 S.C. Juris. *Constitutional Law* § 71 (1993).

When an act is challenged under the due process clause, the Supreme Court "...only requires the act to be reasonably designed to accomplish its purposes, unless some fundamental right or suspect class is implicated." State v. Hornsby, 326 S.C. 121, 125-26, 484 S.E.2d 869, 872 (1997). Legislation that does not infringe on a fundamental right¹ is subject only to a rational basis test. 19 S.C. Juris. *Constitutional Law* § 71 (1993). The one who attacks the law bears the burden of showing it is unconstitutional. *See State v. Hornsby*.

The property right Claimant asserts in this case is his entitlement to workers' compensation benefits. Defendants do not contest that Claimant has a property interest in his entitlement to workers' compensation benefits. However, Claimant has not been deprived of the interest in his property without due process.

Administrative agencies are required to meet minimum standards of due process. Smith v. South Carolina Dept. of Mental Health, 329 S.C. 485, 494 S.E.2d 630 (S.C.App. 1997)

¹ The "fundamental rights" are enumerated in the Bill of Rights. Additional rights that have been carved by the Supreme Court include (1) the right to interstate travel, (2) the right to intrastate travel, (3) the right to privacy, (4) the right to marriage, (5) the right to procreate, (6) the right for a woman to choose to have an abortion, (7) the right to private education, (8) the right to contraception, (9) the right to family relations. The right to own property or

referring to S.C. Const. Art. I, §3; see also Stono River Environmental Protection Ass'n v. South Carolina Dept. of Health and Environmental Control, 305 S.C. 90, 406 S.E.2d 340 (1991).

In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses. Id.; see also Brown v. South Carolina State Bd. Of Educ., 301 S.C. 326, 391 S.E.2d 866 (1990); Tall Tower, Inc. v. South Carolina Procurement Review Panel, 294 S.C. 224, 363 S.E.2d 683 (1987). A court may reverse or modify the decision of an administrative agency when an appellant's substantial rights have been prejudiced because the agency's findings, inference, conclusions, or decision are, among other things, in violation of constitutional or statutory provisions, or made upon unlawful procedure. Garris v. Governing Bd. of South Carolina Reinsurance Facility, 333 S.C. 432, 511 S.E.2d 48 (1998) citing S.C. Code Ann. §1-23-380(A)(6)(Supp. 1997).

"[A] fair trial in a tribunal is a basic requirement of due process, [and] [t]his applies to administrative agencies which adjudicate as well as to courts." Id. citing Withrow v. Larkin, 421 U.S. 35, 46, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712, 723 (1975). Agency officials or members who adjudicate a matter are presumed to be honest, fair, and unbiased. Id. A party challenging the combination of investigative and adjudicative functions must convince the court that, under a realistic appraisal of psychological tendencies and human weakness, conferring both functions on the same individuals poses such a risk that it is likely to violate due process. Id. citing Withrow at 47, 95 S.Ct. at 1464, 43 L.Ed.2d at 724.

While Withrow established the parameters of due process safeguards in administrative proceedings under the federal constitution, Article I, Section 22 of the South Carolina constitution explicitly addresses procedural due process in such proceedings. Article I, Section 22 specifically states:

maintain an interest in property is not an enumerated fundamental right.

"No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review."

It is clear that Section 22 provides only an opportunity to be heard, an impartial adjudicator, and judicial review.

In the present case, Claimant was released to return to work and determined to be at maximum medical improvement. He signed a Form 17. Thereafter, Defendants filed a Form 21 to request a hearing before the Commission. As noted previously, the basis for this hearing was to "[d]etermine if compensation is due pursuant to § 42-9-10, § 42-9-20, or § 42-9-30 and, if so, in what amount..." This Form 21 was filed pursuant to Regulation 67-208(B) which states Defendants must file a Form 21 in order "[t]o request a hearing for permission to pay compensation due to death, permanent partial, or permanent total compensation." There is a specific right clearly enumerated in the South Carolina Workers' Compensation Act assigned to an employer and/or an employer's representative to ask the Commission for permission to pay compensation due to permanent partial or permanent total disability. Nowhere in the Act is a claimant given sole right of control over the payment of benefits he is entitled to.

In addition, Claimant was afforded the opportunity to be heard and an impartial adjudicator. Claimant had the right to call any witness he desired. He had the right to cross-examine all witnesses called by Defendants. He had the right to present any admissible evidence to the Commission. And he had the right to have his claim heard by an impartial adjudicator—the Commissioner, all of which were provided to him at the hearing at hand.

Claimant has not been deprived of any right—fundamental or otherwise. Defendants

properly filed the Form 21 pursuant to the Act and Regulation. A hearing was conducted ~~after~~ proper notice was provided to all parties. All parties had a chance to present evidence ~~and~~ witnesses. Claimant has not raised any issue related to not being able to present a complete ~~case~~ to the Commission. There is a clear statutory scheme for determining the value of an injury under the Act. The Commissioner followed the Act and Regulations in conducting a hearing ~~and~~ reaching his conclusions. Further, the value of an award to a claimant does not increase ~~or~~ decrease based on when it comes before the Commission. Claimant was not denied any ~~due~~ process of law as it relates to his property interests in a workers' compensation award. Therefore, the Decision and Order as a whole should be affirmed.

III. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY FINDING THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED, BY FINDING CLAIMANT SUSTAINED A 48% PERMANENT PARTIAL DISABILITY TO HIS BACK AND BY REFUSING TO AWARD CLAIMANT LIFETIME MEDICAL TREATMENT FOR LOSING MORE THAN 50% OF THE FUNCTIONAL USE OF HIS BACK?

S.C. Code Ann. § 42-9-30 states that “[i]n cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified therein.” The schedule lists a back injury at 300 weeks if disability is 49% or less and at 500 weeks if disability is at 50% or more.

When the injury does not result in complete loss, or loss of use, of a scheduled body part, there are two issues for the Commission to address: (1) to what extent has the claimant suffered impairment to the body part in questions; and (2) what is the resulting disability?

The first question is answered by the authorized treating physician or other medical professionals qualified to give that opinion. However, lay testimony, including testimony of a claimant, may be admissible and relevant to the determination. See Bundrick v. Powell's Garage & Wrecker Service, 248 S.C. 496, 151 S.E.2d 437 (1966); Linen v. Ruscon Constr. Co., 286 S.C.

67, 332 S.E.2d 211 (1985). The answer to the second question is determined exclusively by the Commission. Each Commissioner must come to a conclusion based on his or her assessment of both the medical and non-medical information.

The Commission is not always limited by the degree of disability established by expert medical testimony. The Commissioner has the ability and the right to disregard testimony from medical experts if the circumstances so warrant. In Pruitt v. Thermo-Kinetics Industries, 295 S.C. 431, 368 S.E.2d 913 (Ct. App. 1988), the Court of Appeals held the Commission properly disregarded testimony from a neurosurgeon, a general and thoracic cardiovascular surgeon, as well as an orthopedic surgeon. While the Commissioner in that case ignored the medical experts and awarded a higher disability rating, the principle stands that a Commissioner has the authority to disregard medical expert testimony and award disability on the entirety of the evidence.

Additionally, in Sanders v. Meadwestvaco Corporation, 371 S.C. 284, 638 S.E.2d 66 (Ct. App. 2006), the Court of Appeals held that while an impairment rating in a workers' compensation case may not rest on surmise, speculation, or conjecture, it is not necessary that the percentage disability or loss of use be shown with mathematical exactness. However, the Court of Appeals did hold that a Commissioner could not base claimant's award of 40% impairment rating to the back upon the potential need for future surgery when there was no evidence that future surgery would be needed.

In the present case, Claimant has received two ratings from his authorized treating physician. In addition several other doctors and lay witnesses have weighed in on Claimant's percentage of impairment. Dr. Drye has twice released Claimant with a 25% whole person impairment for the injury to his back. (Def. APA 4, p. 30, 32). Dr. Forrest, Claimant's own IME physician, stated that Claimant sustained a 30% impairment rating for his neck related

symptoms. (Cl. APA 11, p. 39). Dr. Mandell, Claimant's other IME physician, did not issue an impairment rating but did indicate that Claimant requires no additional treatment other than physical therapy for balance and gait. (Cl. APA 8, p. 6). Tracy Hill, Claimant's own lay witness, estimated that Claimant sustained a 28% whole person impairment rating. (Cl. APA 9, p. 8). Claimant testified that he felt like he sustained an 80% loss of use of his back. (Hr'g Tr. 47:11)

Claimant also testified that he returned to work for Employer in September 2011. (Hr'g Tr. 49:2-7). Claimant stated that he returned to 40 hour weeks and 8 hour shifts at that time. (Hr'g Tr. 49:8-14). The majority of Claimant's time since he returned in September 2011 has been standing. (Hr'g Tr. 49:15-17). Ms. Lynn Council, Claimant's direct supervisor, testified that Claimant remains with Employer working as a cashier. (Hr'g Tr. 10:14). She testified that he is provided with accommodations including the ability to sit down and/or ask for a chair. (Hr'g Tr. 10:20-22). Claimant has never requested a stool or chair from Employer. (Hr'g Tr. 17:22-25). Further, Claimant has never been asked to perform job duties outside of his stated work restrictions. (Hr'g Tr. 18:4-7). Ms. Council stated that Claimant is one of the best employees she has—he shows up on time every day, he is dependable, and he even received a raise in February 2012. (Hr'g Tr. 11:3-8). Ms. Council further stated that Claimant has made no complaints about his limitations at work and she believed that he was capable of performing the job duties. (Hr'g Tr. 11:12-24).

The Hearing Commissioner accepted the entirety of the evidence submitted and issued a Finding of Fact that Claimant sustained a 48% permanent partial disability to his back based on the medical evidence as a whole. This means that the Hearing Commissioner considered the findings of Drs. Drye, Mandell, and Forrest as well as other reports in the record. The Hearing Commissioner also considered the testimony elicited at the hearing. After reviewing all of the

evidence and each assigned impairment rating, the Hearing Commissioner fairly and properly determined that Claimant had sustained a 48% permanent partial disability to his back. The substantial evidence in the record supports the Hearing Commissioner's determination that Claimant sustained a 48% permanent partial disability to his back.

Claimant also contends that he is permanently and totally disabled. However, Claimant presented no medical evidence to the Commission indicating that he is permanently and totally disabled.

Dr. Mandell indicated that Claimant will need accommodations in his future work but did not directly disagree with the restrictions assigned by Dr. Drye. (Cl. APA 8, p. 6). Tracy Hill issued an increased impairment rating to Claimant's neck but made no mention that Claimant is unable to work, let alone that he is permanently and totally disabled. (Cl. APA 9, p. 8). Dr. Gal Margalit stated that she concurs with the opinions of Claimant's authorized treating physician when it comes to recommended weight loss and continuing work restrictions. (Cl. APA 10, p. 36). Dr. Forrest agreed with Dr. Drye's work restrictions and a 25-pound lifting restriction. (Cl. APA 11, p. 39). Dr. Forrest further stated that Claimant can do customer service, cashier, and/or computer work. *Id.* Harriett Fowler, Claimant's own vocational rehabilitation expert, determined that Claimant is not permanently and totally disabled. (Cl. APA 12, p. 62). Her opinion is that Claimant *might* be best suited in sedentary work for continued sustainable employment. *Id.* However, she does not rule out continued light duty work within the restrictions set forth by Dr. Drye. *Id.*

A claimant is permanently disabled or under a permanent disability when his actual or presumed ability to engage in gainful activity is reduced or absent because of his impairment. The evaluation of a permanent disability is an appraisal of a claimant's present and future ability

to engage in gainful activity as it is affected by such diverse factors as age, sex, education, economic, and social environment.

Simply put, Claimant is permanently disabled but he is not permanently and totally disabled. No doctor or vocational expert has stated in the evidence that Claimant is permanently and totally disabled. On the contrary, each doctor and witness definitively states that he is able to work with restrictions and that he is not permanently and totally disabled.

Claimant also alleges the Hearing Commissioner erred by determining Claimant is not entitled to lifetime medical treatment. In total and permanent disability cases, "reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit." S.C. Code Ann. § 42-15-60.

As noted above, Claimant did not sustain loss of more than 50% of the functional use of his back. The Hearing Commissioner properly determined that Claimant sustained a 48% permanent partial disability to his back. Even if Claimant had lost more than 50% of the functional use of his back, he still must be found permanently and totally disabled to trigger the lifetime medical treatment of S.C. Code Ann. § 42-15-60. The Hearing Commissioner also properly found that Claimant is not permanently and totally disabled.

Because Claimant has not suffered an impairment of more than 50% to the back and because Claimant is not permanently and totally disabled, Claimant is not entitled to lifetime medical benefits pursuant to the Act. The Hearing Commissioner's determinations on these issues should be affirmed.

IV. THE HEARING COMMISSIONER DID NOT ERR BY FAILING TO MAKE AN AWARD FOR CLAIMANT'S NEUROLOGICAL DISORDER AND/OR MYELOPATHY.

Claimant contends that he is entitled to an award of permanent partial disability for the pain and alleged impairment for his neurological disorder and/or his myelopathy.

On June 7th, 2011, Claimant was evaluated by Dr. Drye. Dr. Drye noted that Claimant has reached maximum medical improvement. He assigned permanent work restrictions which include no standing or walking more than an hour without the inability to sit for a brief period of time. He also restricted him from climbing heights, repetitively climbing steps, repetitive overhead reaching and should lift or carry less than 30 pounds occasionally. Dr. Drye assigned a 25% whole person impairment rating **based on the injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms**. (Def. APA p. 30).

Thereafter, on June 18, 2012, Claimant returned to see Dr. Drye. Dr. Drye noted that, when he was released, Claimant had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. At the time, he had returned to work with some physical restrictions and was back at work as a cashier. Claimant denied any radicular symptoms down the leg but continued to have some altered gait from his previous myelopathy as well as longstanding, pre-injury inversion of the right foot and ankle. He had recently undergone cervical and lumbar MRIs for a check for a possible change in condition. Dr. Drye reported that the cervical MRI as well as lumbar study showed that Claimant healed beautifully from his surgery with what appeared to be stable operative construct with instrumentation. There was no residual high degree of canal stenosis and no obvious impingement of the cord. At C3-5 and C4-5 there were spondylitic change and broad based disc bulge which had not progressed significantly from his previous study. The lumbar study demonstrated a disc protrusion at L1-2 and at L5-S1 there was very advanced degenerative disc disease. However, there was no evidence of any direct nerve root impingement or large disc

herniation.

Dr. Drye opined that Claimant's current symptoms are most consistent with axial and myofascial pain and strongly suggestive of arthritic type symptoms. Dr. Drye encouraged Claimant to continue stretching and movement and advised him to lose weight. Dr. Drye said there was no reason for any change in terms of his permanent work restrictions, rating or additional intervention or treatment. (Def. APA p. 31). After Dr. Drye re-released Claimant at maximum medical improvement on June 18, 2012, the Claimant's attorney scheduled him for an evaluation with Dr. Howard Mandell, a neurologist. On September 5, 2012, Dr. Mandell reported that Claimant stated his symptoms are stable and not improving and not worsening for the last several months. Dr. Mandell opined that Claimant's surgery resolved very nicely and that he made remarkable recovery. Dr. Mandell indicated that Claimant does not require additional treatment other than ongoing physical therapy. (Cl. APA 8).

In the Decision and Order, the Hearing Commissioner determined that Claimant's permanent partial disability rating for his injuries was 48%. In a finding of fact on this point, the Hearing Commissioner noted "[t]he Claimant's permanent partial disability includes any radicular symptoms to his right leg. I base this finding on the medical evidence."

Findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an

administrative agency's finding from being supported by substantial evidence. **A judgment upon which reasonable men might differ will not be set aside."**

Id at 696 *referencing Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304, 307 (emphasis added).

Substantial evidence has also been defined as "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Hunter v. Patrick Construction Company*, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers' Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. *See Armstrong v. Union Carbide, Inc.*, 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. *Id.*

This is an example of the Single Commissioner weighing the evidence presented at the hearing and making a determination based on that evidence. Further, this appears to be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] **judgment upon which reasonable men might differ will not be set aside."** *Palmetto Alliance, Inc., v. S.C. Public Service Commission*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) (emphasis added).

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Hearing Commissioner's Findings of Fact and Conclusions of Law related to Claimant's alleged myelopathy and/or neurological disorder should be affirmed.

V. THE HEARING COMMISSIONER DID NOT ERR BY FAILING TO MAKE AN AWARD FOR CLAIMANT'S LOW BACK INJURY.

Claimant contends that he is entitled to an award of permanent partial disability for the pain and alleged impairment to his low back. However, the "low back" is not a scheduled

member and is not a body part that is subject to a separate award. S.C. Code Ann. § 42-9-30(21) states "...for the loss of use of the back in cases where the loss of use is forty-nine percent or less, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks."

As noted above, Claimant has received two ratings from his authorized treating physician. In addition several other doctors and lay witnesses have weighed in on Claimant's percentage of impairment. Dr. Drye has twice released Claimant with a 25% whole person impairment for the injury to his back. (Def. APA 4, p. 30, 32). Dr. Forrest, Claimant's own IME physician, stated that Claimant sustained a 30% impairment rating for his neck related symptoms. (Cl. APA 11, p. 39). Dr. Mandell, Claimant's other IME physician, did not issue an impairment rating but did indicate that Claimant requires no additional treatment other than physical therapy for balance and gait. (Cl. APA 8, p. 6). Tracy Hill, Claimant's own lay witness, estimated that Claimant sustained a 28% whole person impairment rating. (Cl. APA 9, p. 8).

The Hearing Commissioner accepted the entirety of the evidence submitted and issued a Finding of Fact that Claimant sustained a 48% permanent partial disability to his back based on the medical evidence as a whole. This means that the Hearing Commissioner considered the findings of Drs. Drye, Mandell, and Forrest as well as other reports in the record. The Hearing Commissioner also considered the testimony elicited at the hearing. After reviewing all of the evidence and each assigned impairment rating, the Hearing Commissioner fairly and properly determined that Claimant had sustained a 48% permanent partial disability to his back. The substantial evidence in the record supports the Hearing Commissioner's determination that Claimant sustained a 48% permanent partial disability to his back.

Based on the nature of the rating assigned by Drs. Drye, Mandell, and Forrest, and the fact that the "low" back cannot receive a separate award under S.C. Code Ann. § 42-9-30, it is

clear that the Commissioner considered and weighed Claimant's alleged "low" back problems and included this in the 48% permanent partial disability rating. Therefore, the Hearing Commissioner did not err in "failing" to make an award for Claimant's "low" back injury and the Decision and Order should be affirmed.

VI. THE HEARING COMMISSIONER DID NOT ERR BY PLACING GREATER WEIGHT ON THE AUTHORIZED TREATING PHYSICIAN'S REPORTS THAN HE DID ON CLAIMANT'S OWN INDEPENDENT MEDICAL REPORTS.

Findings of fact can be reversed only if the determination was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *See Palmetto Alliance, Inc., v. S.C. Public Service Commission*, 282 S.C. 430, 319 S.E.2d 695 (1984). Substantial evidence is

"...evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached, or must have reached in order to justify its action. Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. **A judgment upon which reasonable men might differ will not be set aside.**"

Id. at 696 referencing *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304, 307 (emphasis added).

Substantial evidence has also been defined as "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Hunter v. Patrick Construction Company*, 289 S.C. 46, 344 S.E.2d 613 (1986). The Workers' Compensation Commission is the fact finder and makes the final determination of witness credibility and the weight to be given evidence. *See Armstrong v. Union Carbide, Inc.*, 308 S.C. 235, 417 S.E.2d 597 (1992). The findings of the Commission will be set aside only if unsupported by substantial evidence. *Id.*

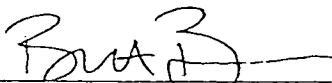
This is a clear example of the Single Commissioner weighing the evidence presented at

the hearing and making a determination based on that evidence. Further, this appears to simply be an issue where there are two conclusions that can be drawn from the same evidence. As noted above, "[a] judgment upon which reasonable men might differ will not be set aside" Palmetto Alliance, Inc., v. S.C. Public Service Commission, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) (emphasis added).

Because the finding of fact and conclusion of law in issue is based on the evidence presented at the hearing and the Single Commissioner provided rationale for his decisions, the Single Commissioner's Findings of Fact and Conclusions of Law related to the weight he gave to the evidence should be affirmed.

CONCLUSION

For the foregoing reasons, the Decision and Order in this case should be AFFIRMED in its entirety.



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Columbia, South Carolina
April 2, 2013

Subject: Clemmons

Date: Tue, 30 Apr 2013 14:31:14 +0000

Below is a request for a proposed decision and order.

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Henton T Clemmons Jr. v Lowe's Home Center
SCWCC: 1015200
Commission Panel: Barden, Beck, James; Chair
Order Assigned to Commissioner: James
Court Reporter – Jill Vickers – 803-252-3445

Preston F. McDaniel
Kelly F. Morrow

Claimant/Appellant
Defendants/Respondents

NOTE NEW SERVICE REQUIREMENTS

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 find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order.

Ms. Morrow please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at vcrocker@wcc.sc.gov or call at 803.737.5739.

Virginia L. Crocker
Judicial Director

Transmitted via email and regular this 30 April 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1015200

EMPLOYEE/CLAIMANT: HENTON T. CLEMMONS

EMPLOYER: LOWE'S HOME CENTERS, INCORPORATED

INSURER: LOWE'S COMPANIES, INCORPORATED

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 25TH DAY OF
SEPTEMBER, 2012, COMMENCING AT THE HOUR OF 11:19 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE DERRICK L. WILLIAMS,
ATTENDED BY COUNSEL AS FOLLOWS:

SHEILA ROBISON
VERBATIM REPORTER

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

APPEARANCES

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ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: TOMMY CLEMMONS
BRENDA CLEMMONS

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

5 * * * * *
6

7 BY COMMISSIONER WILLIAMS:

8 TODAY'S DATE IS SEPTEMBER 25TH, 2012. THIS IS
9 THE WORKERS' COMPENSATION CASE OF MR. HENTON
10 CLEMMONS VERSES LOWE'S HOME CENTERS, INC., SELF-
11 INSURED, W.C.C. FILE NUMBER 1015200. DATE OF
12 ACCIDENT SEPTEMBER 12TH OF 2010. AVERAGE WEEKLY
13 WAGE \$391.19, CORRESPONDING COMP RATE \$260.81.
14 ATTORNEY PRESTON MCDANIEL FOR THE CLAIMANT, ATTORNEY
15 KELLY MORROW FOR THE EMPLOYER/CARRIER. THE HEARING
16 IS SET ON THE EMPLOYER/CARRIER'S FORM 21. RATINGS
17 ARE LISTED IN THE FILE, AND THEY'RE IN THE APA
18 SUBMISSIONS, WHICH I HAVE HANDED UP FROM BOTH
19 PARTIES.

20 ANY OBJECTION TO JURISDICTION, VENUE, OR THE
21 APA SUBMISSIONS, MS. MORROW?

22 BY MS. MORROW:

23 NO, YOUR HONOR.

24 BY COMMISSIONER WILLIAMS:

25 MR. MCDANIEL?

BY MR. MCDANIEL:

1 NONE, COMMISSIONER.

2 BY COMMISSIONER WILLIAMS:

3 ALL RIGHT. THEN THE COMMISSION FILE IS PART OF
4 THE RECORD WITH THE EXCEPTION OF ANY SELF-SERVING
5 DECLARATIONS AND ANY UNSTIPULATED MEDICAL REPORTS.
6 ADMITTED ACCIDENT, ADMITTED CLAIM. EMPLOYER/CARRIER
7 ADMITS AN INJURY TO THE CLAIMANT'S BACK IN THIS
8 CASE. THEY WOULD ADMIT ALSO AN INJURY TO HIS NECK
9 AND I BELIEVE HIS RIGHT KNEE AS WELL. THEY WOULD --
10 THEY FILED A 21 SEEKING A FINDING OF M.M.I., SEEKING
11 TO PAY PERMANENCY TO THE BACK. THEY WOULD ALLEGE
12 IT'S A SCHEDULED MEMBER INJURY, AND THEY WOULD SEEK
13 CREDIT I BELIEVE -- IS THERE ANY CREDIT ISSUE? I
14 KNOW HE'S BEEN BACK AT WORK.

15 BY MR. MCDANIEL:

16 NO.

17 BY MS. MORROW:

18 NO.

19 BY COMMISSIONER WILLIAMS:

20 THERE'S NO CREDIT ISSUE. BUT THEY WOULD SEEK
21 THE PERMANENCY IN THIS CASE TO THE BACK AT A
22 PERMANENCY AWARD OF LESS THAN 50 PERCENT LOSS OF
23 USE. THE CLAIMANT WOULD ALLEGE -- FIRST ALLEGE THAT
24 HE'S ENTITLED TO A SECOND OPINION IN THIS CASE, THAT
25 HE HAS NOT YET REACHED M.M.I. HOWEVER, IF HE HAS

1 REACHED M.M.I., CLAIMANT WOULD ALLEGE HE'S
2 PERMANENTLY AND TOTALLY DISABLED FOR A GREATER THAN
3 50 PERCENT LOSS OF USE TO HIS BACK. HE WOULD SEEK
4 LIFETIME CAUSALLY RELATED MEDICAL TREATMENT UNDER
5 DODGE, A LUMP SUM, AND I WOULD GUESS UTICA LANGUAGE
6 UNDER JAMES VERSES ANNE'S.

7 THAT BEING SAID, DO THE PARTIES WANT TO STATE
8 ANYTHING ELSE FOR THE RECORD, MS. MORROW?

9 BY MS. MORROW:

10 YOUR HONOR, I JUST WANT TO ADD THAT THE BASIS
11 OF THE REBUTTAL PRESUMPTION OBVIOUSLY IS HIS RETURN
12 TO WORK FOR ALMOST TWO FULL YEARS IN RESPONSE TO THE
13 CLAIMANT'S POSITION THAT HE'S PERM TOTAL BASED ON
14 GREATER THAN 50 PERCENT LOSS OF USE OF THE BACK. DO
15 YOU WANT ME TO REITERATE PRETRIAL AS FAR AS THE
16 INDIVIDUAL REPORTS?

17 BY COMMISSIONER WILLIAMS:

18 . YOU DON'T NEED TO, BUT IF YOU WANT TO -- I'VE
19 GOT IT DOWN, BUT EITHER WAY IS FINE.

20 BY MS. MORROW:

21 WE'RE JUST ESTABLISHING MAXIMUM MEDICAL
22 IMPROVEMENT PER THE AUTHORIZED TREATING PHYSICIAN,
23 DR. DRYE, AS OF JUNE 18TH, 2012. AND AS FAR AS ANY
24 FUTURE MEDICAL IS CONCERNED, UNDER THE P.P.T. AWARD
25 UNDER 42-9-30 WOULD BE LIMITED TO 42-15-60, AS

1 SPECIFICALLY STATED THAT WOULD EXCEED ONE YEAR UNDER
2 THAT STATUTE.

3 BY COMMISSIONER WILLIAMS:

4 ALL RIGHT. MR. MCDANIEL, ANYTHING ELSE FOR THE
5 RECORD?

6 BY MR. MCDANIEL:

7 COMMISSIONER, I WILL RELY ON MY MEMORANDUM IN
8 LARGE PART CONCERNING THE PRESUMPTION TO BE
9 REBUTTED.

10 BY COMMISSIONER WILLIAMS:

11 OKAY.

12 BY MR. MCDANIEL:

13 BUT WAGE LOSS HAS ABSOLUTELY NOTHING TO DO WITH
14 AN AWARD UNDER 42-9-30. IT IS -- THE PRESUMPTION
15 THAT IS TO BE REBUTTED IS WHETHER OR NOT THE
16 CLAIMANT HAS LOST 50 PERCENT OF THE FUNCTIONAL USE
17 OF HIS BACK. WITH THAT SAID, THE ONLY OTHER THING
18 I'D LIKE TO POINT OUT TO THE COMMISSIONER IS THAT WE
19 HAD REQUESTED A SECOND OPINION. WHEN THAT WAS NOT
20 GIVEN, WE SENT MR. CLEMMONS TO DR. MANDELL FOR AN
21 EVALUATION CONCERNING NEUROLOGICAL PROBLEMS AND TO
22 DR. LEONARD FORREST FOR EVALUATION CONCERNING THE
23 ORTHOPAEDIC PROBLEMS. AND WE WOULD ASK THAT UNDER
24 42-17-30 AND THE AUTHORITY OF THIS COMMISSION UNDER
25 42-15-60 THAT THE DEFENDANTS HAVING FAILED TO GIVE

1 US A SECOND OPINION BY ANOTHER DOCTOR, THAT YOU
2 AWARD US OR ASK THAT THEY PAY US THE COST OF THOSE
3 EVALUATIONS ON THAT BASIS. IT'S NOT WHERE WE SIMPLY
4 WERE FACED WITH A 21 AND WE WE'RE REQUESTING AN
5 I.M.E. WE WERE ACTUALLY -- HAD REQUESTED EVALUATION
6 OF THE NEUROLOGICAL PROBLEMS, AND THAT WAS NOT
7 PROVIDED. WE WOULD ASK YOU UNDER THAT BASIS TO
8 CONSIDER GRANTING US AN AWARD FOR THOSE WHEN
9 REQUESTED AND NOT GRANTED AND THEN WE SENT THEM TO
10 SOMEBODY FOR THAT EVALUATION. SO WITH THAT SAID, I
11 WILL NOT STATE ANYTHING FURTHER ON THE RECORD. I
12 THINK MY POSITION IS CLEAR.

13 BY COMMISSIONER WILLIAMS:

14 ALL RIGHT. ANYTHING ELSE RELATED TO MR.
15 MCDANIEL'S LAST ARGUMENT?

16 BY MS. MORROW:

17 WE WOULD JUST FORMALLY OBJECT TO THE PARCEL
18 READING OF 42-17-30 IN ORDER FOR REIMBURSEMENT FOR
19 THE EVALUATIONS THAT THE CLAIMANT SOUGHT. OUR BASIS
20 FOR THAT IS WE RETURNED HIM TO THE AUTHORIZED
21 TREATING PHYSICIAN A YEAR AFTERWARDS UNDER A REQUEST
22 FOR ANOTHER EVALUATION AND DID NOT HONOR A THIRD
23 EVALUATION AT THAT POINT. I DON'T THINK THAT GIVES
24 A SUFFICIENT BASIS FOR THE CLAIMANT TO PROCEED FOR
25 REIMBURSEMENT.

1 BY COMMISSIONER WILLIAMS:

2 ALL RIGHT. I THINK I GOT IT. ALL RIGHT, LET'S

3 SWEAR MS. COUNCIL IN PLEASE.

4 BY THE COURT REPORTER:

5 * * * * *

6 LYNN COUNCIL

7 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

8 BY COMMISSIONER WILLIAMS:

9 MS. MORROW.

10 DIRECT EXAMINATION BY MS. MORROW:

11 Q. GOOD MORNING, MS. COUNCIL. DO YOU MIND IF I CALL
12 YOU "LYNN"?

13 A. I DON'T MIND.

14 Q. OKAY. CAN YOU TELL THE COMMISSIONER WHERE YOU WORK?

15 A. I WORK AT LOWE'S OF IRMO.

16 Q. HOW LONG HAVE YOU WORKED THERE?

17 A. FOUR AND A HALF YEARS.

18 Q. OKAY. AND WHAT'S YOUR POSITION OVER AT LOWE'S IN
19 IRMO?

20 A. CUSTOMER SERVICE MANAGER.

21 Q. ALL RIGHT. WHAT DEPARTMENT DO YOU OVERSEE OR
22 MULTIPLE DEPARTMENTS DO YOU OVERSEE IN THAT
23 CAPACITY?

24 A. THE CASHIERS AND SOME OF THE SALES PEOPLE ON THE
25 SALES FLOOR.

1 Q. OKAY. DO YOU KNOW -- I UNDERSTAND HE GOES BY

2 "TOMMY," ---

3 A. YES.

4 Q. --- MR. CLEMMONS?

5 A. YES.

6 Q. OKAY. IS HE IN ONE OF THE DEPARTMENTS, OR IS HE
7 CURRENTLY WORKING IN ONE OF THE DEPARTMENTS THAT YOU
8 SUPERVISE?

9 A. YES.

10 Q. ALL RIGHT. HAS HE BEEN IN THAT POSITION SINCE HE
11 CAME BACK TO WORK WITH RESTRICTIONS?

12 A. YES.

13 Q. WHERE'S HE WORKING?

14 A. HE'S A CASHIER.

15 Q. OKAY. ARE THERE ANY ACCOMMODATIONS BEING MADE FOR
16 HIM IN THE POSITION THAT HE'S CURRENTLY WORKING?

17 A. IF NEEDED, YES.

18 Q. OKAY. DO YOU HAPPEN TO KNOW WHAT ACCOMMODATIONS,
19 ARE YOU FAMILIAR WITH THEM?

20 A. IT WAS FOR HIM TO SIT DOWN IF HE NEEDED TO -- IF HE
21 ASKED TO SIT DOWN, ASKED FOR A CHAIR, FOR US TO
22 PROVIDE HIM WITH A CHAIR TO SIT DOWN.

23 Q. OKAY. TELL ME WHAT KIND OF AN EMPLOYEE IS MR.
24 CLEMMONS SINCE HE'S BEEN BACK TO WORK AFTER THIS
25 ACCIDENT?

1 A. HE'S A GOOD EMPLOYEE.

2 Q. OKAY. IS HE ON TIME?

3 A. HE'S ON TIME EVERY DAY. HE'S DEPENDABLE. HE'LL
4 STAY OVER IF WE ASK HIM TO. HE'S ONE OF THE BEST
5 EMPLOYEES I HAVE UP FRONT.

6 Q. OKAY. DO YOU KNOW WHETHER OR NOT HE'S RECEIVED A
7 RAISE SINCE HE CAME BACK AFTER THIS ACCIDENT?

8 A. HE HAS RECEIVED A RAISE IN FEBRUARY OF THIS YEAR.

9 Q. OKAY. BY ALL ACCOUNTS, RECEIVED POSITIVE REVIEWS
10 SINCE HE'S BEEN BACK?

11 A. YES. YES.

12 Q. OKAY. HAS HE EVER PERSONALLY MADE ANY COMPLAINTS TO
13 YOU ABOUT LIMITATIONS OR PROBLEMS HE'S HAVING DOING
14 HIS JOB SINCE HE'S COME BACK TO WORK FOR US?

15 A. NO.

16 Q. HAS HE EVER ASKED YOU FOR MEDICAL TREATMENT SINCE
17 HE'S COME BACK TO WORK FOR US?

18 A. NO.

19 Q. IN YOUR OPINION, BASED ON WHAT YOU'VE SEEN AS FAR AS
20 HIM DOING -- PERFORMING HIS JOB, DO YOU BELIEVE THAT
21 HE'S CAPABLE -- AGAIN, IN YOUR OPINION AND BASED ON
22 YOUR OBSERVATIONS, IN DOING THE JOB THAT HE'S
23 CURRENTLY IN?

24 A. YES.

25 BY MS. MORROW:

1 THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS,
2 YOUR HONOR.

3 BY COMMISSIONER WILLIAMS:

4 MR. MCDANIEL.

5 CROSS EXAMINATION BY MR. MCDANIEL:

6 Q. I'M SORRY, "LYNN"?

7 A. LYNN.

8 Q. LYNN, OKAY. DO YOU MIND IF I CALL YOU "LYNN"?

9 A. I DON'T MIND.

10 Q. OKAY. LYNN, I DIDN'T KNOW THEY WERE GOING TO PUT
11 YOU UP, AND I'M NOT GOING TO BE MEAN ON YOU, OKAY?

12 A. OKAY. THANK YOU.

13 Q. LET ME ASK YOU, WHO ACTUALLY WAS INVOLVED WITH THE
14 ACCOMMODATIONS OR DECIDING WHAT ACCOMMODATIONS WOULD
15 BE MADE WHEN TOMMY CAME BACK TO WORK?

16 A. IT WAS THE HUMAN RESOURCE MANAGER DIRECTED IT TO ME.

17 Q. OKAY. THEY ACTUALLY -- YOU DIDN'T ACTUALLY REVIEW
18 THE DOCTOR'S REPORT AND DON'T KNOW WHAT HE SAID; IS
19 THAT CORRECT?

20 A. YES.

21 Q. HUMAN RESOURCES CAME OUT AND SAID, "WE NEED TO
22 ACCOMMODATE SOME RESTRICTIONS"?

23 A. YES.

24 Q. OKAY. DO YOU REMEMBER ANYTHING ABOUT THEM OFFERING
25 HIM A -- NOT A STOOL, BUT ACTUALLY A METAL

1 STEPLADDER OR LADDER TO SIT ON?

2 A. NO, IT WAS EITHER A STOOL OR A CHAIR.

3 Q. OKAY. ALL RIGHT.

4 A. I PERSONALLY OFFERED IT TO HIM.

5 Q. OKAY. DOES HE HAVE A STOOL OR CHAIR BEHIND HIS WORK
6 STATION?

7 A. NO.

8 Q. WHY NOT?

9 A. HE -- UPON REQUEST. IF HE TELLS ME HE NEEDS ONE,
10 I'LL GO AND GET IT. AND IT'S ALSO FOR -- YOU KNOW,
11 WE DON'T HAVE A STATION WHERE WE CAN PUT A CHAIR OR
12 A STOOL. BUT IF HE ASKS FOR ONE, I CAN BRING HIM
13 ONE.

14 Q. OKAY. SO, IN OTHER WORDS, THE WAY YOUR
15 UNDERSTANDING IS IS THAT IT WASN'T THAT HE WAS --
16 YOU WERE NEVER TOLD THAT THE DOCTOR HAD SAID THAT HE
17 NEEDED TO HAVE A STOOL AT HIS WORK STATION TO WHERE
18 HE COULD SIT OR STAND AS NEEDED?

19 A. WELL, WHAT THEY TOLD ME WAS I HAVE TO HAVE ONE
20 AVAILABLE. AND WE KEPT ONE ON THE FRONT END FOR
21 SEVERAL WEEKS, AND HE NEVER ASKED FOR IT, SO WE PUT
22 IT BACK WHERE IT BELONGED AND TOLD HIM THAT IF HE
23 NEEDED IT, JUST LET US KNOW.

24 Q. OKAY. SO -- BUT NO -- AND I'M NOT -- HERE AGAIN,
25 I'M NOT FAULTING YOU, LYNN.

1 A. OKAY.

2 Q. BUT THEN, IN OTHER WORDS, HE -- IN OTHER WORDS, HE
3 HAS TO ASK FOR A STOOL, THERE'S NOT ONE MADE
4 AVAILABLE AT HIS WORK STATION; IS THAT CORRECT?

5 A. CORRECT.

6 Q. OKAY. ALL RIGHT. NOW, WHAT'S A CODE 50?

7 A. THAT IS WHERE WE ASK SOMEONE TO COME UP AND HELP
8 LOAD A CUSTOMER.

9 Q. OKAY. TELL ME ABOUT TOMMY IN REFERENCE TO -- I
10 BELIEVE YOU KNOW THAT HE'S GOT RESTRICTIONS ON
11 LIFTING?

12 A. YES.

13 Q. AND I'M GOING TO TELL YOU TOMMY TELLS ME THAT ALL
14 Y'ALL WORK TOGETHER AND HE HASN'T HAD TO PICK UP
15 ANYTHING.

16 A. ABSOLUTELY.

17 Q. AND AS A MATTER OF FACT, WHENEVER SOMEBODY COMES TO
18 A CASH REGISTER WITH SOMETHING, Y'ALL PRETTY MUCH
19 RUN OVER THERE TO MAKE SURE HE DOESN'T PICK UP
20 ANYTHING; ISN'T THAT CORRECT? Y'ALL MAKE SURE HE
21 DOESN'T PICK UP ANYTHING, WOULD THAT BE FAIR?

22 A. NO.

23 Q. OKAY. WELL, TELL ME WHAT YOUR UNDERSTANDING IS OF
24 HIS RESTRICTIONS ABOUT ON LIFTING.

25 A. I'M NOT SURE, BUT HE KNOWS WHAT HIS LIMITATIONS ARE,

1 AND IF HE CAN LIFT IT, HE LIFTS IT, AND IF NOT, THEN
2 HE DON'T.

3 Q. OKAY.

4 A. BUT WE WON'T, YOU KNOW, STOP HIM IF HE CAN LIFT IT.

5 Q. I BELIEVE HE NORMALLY WORKS ON THE OUTSIDE REGISTER
6 IN THE GARDEN CENTER?

7 A. YES.

8 Q. NOW, WHERE DO YOU NORMALLY WORK?

9 A. I WORK BETWEEN OUTSIDE, UP FRONT; I MONITOR THE
10 WHOLE FRONT END.

11 Q. OKAY. AND HERE AGAIN, I'M JUST WANTING TO KNOW,
12 RIGHT THERE ON THE -- HOW MANY EMPLOYEES WORK IN THE
13 GARDEN CENTER?

14 A. CASHIERS, GARDEN ASSOCIATES?

15 Q. NO, JUST GARDEN ASSOCIATES.

16 A. MAYBE ABOUT FIVE OR SIX.

17 Q. OKAY. SO, THERE'S NORMALLY A GOOD NUMBER OF PEOPLE
18 THAT CAN HELP TOMMY IF HE NEEDS IT?

19 A. AT TIMES, I -- I GUESS. I MEAN, IT DEPENDS -- THAT
20 DEPENDS.

21 Q. OKAY.

22 A. WE CAN HAVE CALL OUTS. WE CAN HAVE FIVE PEOPLE
23 SCHEDULED AND ONLY TWO PEOPLE SHOW UP WHEN THE DAY'S
24 OFF, SO IT -- IT DEPENDS.

25 Q. OKAY. BUT AS FAR AS YOU KNOW THAT HE -- BETWEEN YOU

1 AND HE, BASICALLY, IF HE NEEDS ASSISTANCE HE CAN ASK
2 FOR IT AND HE'S GIVEN IT?

3 A. YES.

4 Q. OKAY. AND I WOULD IMAGINE JUST PART OF YOUR DAY IS
5 SPENT OUT THERE. SO FOR AN EIGHT-HOUR SHIFT, YOU
6 WOULDN'T BE OUT THERE CONSTANTLY TO OBSERVE HOW MANY
7 TIMES ANYBODY HAS TO HELP HIM; WOULD THAT BE FAIR?

8 A. NO, I'M -- I'M -- I'M OUT THERE ALL THE TIME. I'M
9 BACK AND FORTH. I GIVE OVERRIDES. I HELP
10 CUSTOMERS, SO I'M BACK AND FORTH THROUGHOUT MY
11 EIGHT-HOUR SHIFT.

12 Q. OKAY. ALL RIGHT. SO, GOING BACK TO HUMAN
13 RESOURCES, HUMAN RESOURCES DID NOT TELL YOU THAT HE
14 WAS NOT TO PICK UP ANYTHING OVER 25 POUNDS?

15 A. I CAN'T RECALL. I CAN'T RECALL.

16 Q. OKAY. THAT'S FINE. DID YOU KNOW HE HAD
17 RESTRICTIONS ON BENDING, STOOPING, AND LIFTING?

18 A. I CAN'T REMEMBER.

19 Q. OKAY. THAT'S FINE. SO -- I'M JUST TRYING TO
20 ESTABLISH TWO THINGS. NUMBER ONE, YOU KNOW, WHAT
21 YOU WERE TOLD BY HUMAN RESOURCES, AND ALSO YOUR DAY-
22 TO-DAY WORK AND OPERATIONS AND WHAT TOMMY DOES,
23 OKAY?

24 A. OKAY.

25 BY MS. MORROW:

1 YOUR HONOR, I JUST WANT TO POINT OUT THAT THE
2 ONLY RESTRICTIONS THE EMPLOYER WOULD EVER HAVE BEEN
3 PRESENTED WITH OR NEEDED TO ACCOMMODATE WERE THOSE
4 INDICATED BY DOCTOR DRYE IN HIS RELEASE NOTE OF JUNE
5 7TH, 2011, NOT ANY INDEPENDENT MEDICAL EXAMINATIONS
6 THAT WERE PREPARED IN TERMS OF TODAY'S HEARING.
7 THAT MAY NEED TO BE SPECIFIED TO THE WITNESS.

8 BY COMMISSIONER WILLIAMS:

9 ANY OTHER QUESTIONS FOR MS. COUNCIL?

10 BY MR. MCDANIEL:

11 JUST ONE MINUTE.

12 BY COMMISSIONER WILLIAMS:

13 OKAY.

14 BY MR. MCDANIEL:

15 COMMISSIONER, THAT'S ALL I HAVE.

16 BY MS. MORROW:

17 YOUR HONOR, I JUST HAVE SOME FOLLOW-UP
18 QUESTIONS.

19 BY COMMISSIONER WILLIAMS:

20 OKAY.

21 RE-DIRECT EXAMINATION BY MS. MORROW:

22 Q. YOU WERE ASKED ABOUT THIS STOOL BEING MADE
23 AVAILABLE. IS IT RIGHT IN SAYING THAT MR. CLEMMONS
24 HAS NOT ASKED YOU FOR THE STOOL?

25 A. YES.

1 Q. OKAY. AND IF HE WERE TO PRESENT YOU WITH THAT
2 REQUEST, WOULD YOU PROVIDE IT TO HIM?

3 A. YES.

4 Q. OKAY. HAVE YOU OR ANYONE ELSE. TO YOUR KNOWLEDGE,
5 ASKED HIM TO PERFORM ANY WORK ACTIVITIES OUTSIDE THE
6 RESTRICTIONS AS FAR AS YOUR -- YOU UNDERSTAND THEM?

7 A. NO.

8 BY MS. MORROW:

9 THANK YOU.

10 BY COMMISSIONER WILLIAMS:

11 MR. MCDANIEL, ANY OTHER QUESTIONS FOR MS.

12 COUNCIL?

13 BY MR. MCDANIEL:

14 NONE, COMMISSIONER.

15 BY COMMISSIONER WILLIAMS:

16 ALL RIGHT. THANK YOU, MA'AM, YOU CAN STEP
17 DOWN.

18 ANY OTHER WITNESS FOR THE EMPLOYER/CARRIER?

19 BY MS. MORROW:

20 NO, YOUR HONOR.

21 BY COMMISSIONER WILLIAMS:

22 MR. MCDANIEL, CALL YOUR WITNESS.

23 BY MR. MCDANIEL:

24 COMMISSIONER, AT THIS POINT, I MOVE FOR A
25 RULING AS TO WHETHER OR NOT THERE'S BEEN ANY

1 EVIDENCE TO PRESENT IT TO REBUT THE 50 PERCENT LOSS
2 OF THE USE OF THE BACK.

3 BY COMMISSIONER WILLIAMS:

4 OBVIOUSLY I HAVE TO READ ALL THE MEDICAL
5 EVIDENCE. I HAVEN'T HEARD FROM THE CLAIMANT. WE
6 DON'T -- IT'S NOT LIKE IN A CIVIL CASE.

7 BY MR. MCDAINEL:

8 I MEAN, MAKE A -- OF COURSE I -- YOU NOTICE HOW
9 I PHRASED THAT, I DID NOT PHRASE THAT AS A MOTION
10 FOR DIRECT VERDICT.

11 BY COMMISSIONER WILLIAMS:

12 I KNOW. WE DON'T DO THAT EITHER WAY. MR.
13 CLEMMONS, COME ON UP.

14 BY MR. MCDANIEL:

15 THANK YOU, COMMISSIONER.

16 BY MS. MORROW:

17 I WOULD OBJECT.

18 BY COMMISSIONER WILLIAMS:

19 IT'S NOTED.

20 MR. CLEMMONS, HOW ARE YOU DOING TODAY?

21 BY THE WITNESS:

22 PRETTY GOOD.

23 BY COMMISSIONER WILLIAMS:

24 ALL RIGHT. MADAM COURT REPORTER, IF YOU WOULD,
25 PLEASE SWEAR MR. CLEMMONS IN.

1 BY THE COURT REPORTER:

2 * * * * *

3 HENTON T. CLEMMONS

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

5 BY COMMISSIONER WILLIAMS:

6 ALL RIGHT, MR. MCDANIEL.

7 DIRECT EXAMINATION BY MR. MCDANIEL:

8 Q. TOMMY, MR. CLEMMONS, I'M GOING TO REFER TO YOU AS
9 "TOMMY." I DON'T THINK I COULD DO IT ANY OTHER WAY.
10 TOMMY, TELL ME -- LET'S FIRST GO OVER, HOW OLD ARE
11 YOU, SIR?

12 A. FORTY.

13 Q. FORTY, AND TELL ME ABOUT YOUR EDUCATIONAL
14 BACKGROUND.

15 A. I RECEIVED SOME COLLEGE.

16 Q. LET'S TALK ABOUT -- DID YOU FINISH HIGH SCHOOL?

17 A. YES, SIR.

18 Q. WHERE'D YOU FINISH HIGH SCHOOL?

19 A. IRMO.

20 Q. ALL RIGHT. AND AFTER LEAVING IRMO HIGH SCHOOL, DID
21 YOU GO TO COLLEGE?

22 A. YES, SIR, I WENT TO MIDLAND'S TECH.

23 Q. OKAY. AND THEN AFTER MIDLAND'S TECH, I BELIEVE YOU
24 WENT ---

25 A. TO WINTHROP.

1 Q. WINTHROP, IN THE FINE CITY OF ROCK HILL?

2 A. YES, SIR.

3 Q. ALL RIGHT. AND THEN AFTER -- YOU DIDN'T ACTUALLY
4 COMPLETE YOUR DEGREE. HOW CLOSE ARE YOU TO GETTING
5 YOUR FOUR-YEAR DEGREE?

6 A. WITHIN ABOUT A SEMESTER AND A HALF.

7 Q. OKAY, ALL RIGHT. NOW, LET ME BACK UP AND ASK YOU
8 ONE THING BEFORE WE GO ANY FURTHER ABOUT YOUR WORK
9 HISTORY AND ALL THAT. I BELIEVE WHEN YOU WERE A
10 TEENAGER YOU HAD A SHUNT PLACED IN THE BACK OF YOUR
11 HEAD; IS THAT CORRECT?

12 A. ACTUALLY FOUR AND A HALF, WHEN I WAS FOUR AND A
13 HALF.

14 Q. ALL RIGHT. WERE YOU UNDER ANY ACTIVE TREATMENT FOR
15 ANY PROBLEMS RELATED TO THAT SHUNT AT THE TIME OF
16 THIS ACCIDENT OR ANYTIME WHILE YOU WERE EMPLOYED AT
17 LOWE'S?

18 A. NO, SIR.

19 Q. HAVE YOU HAD ANY ACTUAL TREATMENT FOR -- IN
20 REFERENCE TO THE SHUNT AFTER YOUR HIGH SCHOOL YEARS?

21 A. I'D SAY MY TREATMENT, MY DAILY -- OR MY VISITS TO
22 THE DOCTOR, NOT ACTUALLY TREATMENT, WERE ENDED ABOUT
23 HIGH SCHOOL.

24 Q. OKAY, ALL RIGHT. SO, YOU'VE BEEN IN NO TREATMENT
25 AFTER THAT?

1 A. RIGHT.

2 Q. OKAY. NOW -- ALL RIGHT. NOW, LET'S ALSO -- BEFORE
3 WE TALK ABOUT YOUR WORK BACKGROUND, LET'S JUST TELL
4 THE COMMISSIONER THE DYNAMICS OF THE INJURY, ABOUT
5 WHAT HAPPENED TO YOU. WHAT HAPPENED TO YOU IN THE
6 ACCIDENT?

7 A. I WAS WAITING ON A CUSTOMER AT THE STRAW TRAILER,
8 AND AS I ---

9 Q. YOU CAN TALK TO THE COMMISSIONER, THAT'S FINE.

10 A. AND AS I APPROACHED THE -- THE NOSE OF IT, ABOUT --
11 MAYBE ABOUT FOUR OR FIVE FEET FROM THE NOSE, FROM
12 ALL OF THE MOISTURE AND THE LOOSE STRAW ON THE
13 FLOOR, I SLIPPED AND LOST MY FOOTING. I COULDN'T
14 GAIN -- REGAIN IT, AND I KIND OF DID LIKE A BACK-
15 PEDDLE, AND I FELL FLAT ON MY BACK.

16 Q. I BELIEVE YOU LANDED ON YOUR BACK AND YOUR HEAD?

17 A. YES, SIR.

18 Q. ALL RIGHT. AND THEN I BELIEVE -- OF COURSE -- SO,
19 LET'S -- LET'S TALK ABOUT -- I BELIEVE AFTER THAT
20 YOU WENT TO DOCTORS CARE, AND THEN THEY FOUND SEVERE
21 PROBLEMS, AND THEY SENT YOU TO DR. ARMSEY ---

22 BY MS. MORROW:

23 YOUR HONOR, I'M JUST GOING TO OBJECT TO THE
24 LEADING FORM OF THE QUESTIONS AT THIS POINT.

25 BY COMMISSIONER WILLIAMS:

1 TRY NOT TO LEAD, MR. MCDANIEL.

2 BY MR. MCDANIEL:

3 COMMISSIONER, TAB TWO OF THE DEFENDANTS' APA
4 SUBMISSIONS, DR. ARMSEY.

5 BY COMMISSIONER WILLIAMS:

6 I SEE IT.

7 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

8 Q. WOULD YOU AGREE THAT IF DR. ARMSEY WAS REPORTING
9 THAT YOU HAD SEVERE PROBLEMS WITH LOW BACK PAIN,
10 RIGHT KNEE PAIN, NUMBNESS, SPASMS, WEAKNESS, YOU HAD
11 PROFOUND WEAKNESS THAT WAS AFFECTING YOUR GAIT, AND
12 YOU HAD SEVERE ATAXIA, ---

13 BY MR. MORROW:

14 YOUR HONOR, I WOULD OBJECT TO THE LEADING FORM
15 OF THE QUESTION. AND ADDITIONALLY THE MEDICAL
16 RECORDS SPEAK FOR THEMSELVES.

17 BY COMMISSIONER WILLIAMS:

18 OKAY, SUSTAINED.

19 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

20 Q. HAD YOU LOST ACTUALLY VOLUNTARILY COORDINATION?

21 A. YES, SIR.

22 BY MS. MORROW:

23 I OBJECT TO THE LEADING FORM OF THE QUESTION.

24 BY COMMISSIONER WILLIAMS:

25 SUSTAINED. ASK HIM WHAT PROBLEMS HE HAD.

1 BY MR. MCDANIEL:

2 NO, THAT'S FINE.

3 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

4 Q. TELL ME, WHEN YOU GOT TO DR. ARMSEY, HOW WERE YOU
5 GETTING AROUND?

6 A. THEY -- JUST BY MYSELF. NO -- NO TYPE OF WALKER OR
7 NOTHING.

8 Q. OKAY. DID THEY PUT YOU IN A WHEELCHAIR?

9 A. THEY -- FROM -- THEY -- LOWE'S DID NOT PROVIDE A
10 WHEELCHAIR AT THE TIME. THEY USED ONE AT DR.
11 ARMSEY'S OFFICE THOUGH.

12 Q. OKAY. AND THEN HE GOT YOU TO DR. DRYE?

13 A. YES, SIR.

14 Q. ALL RIGHT. AND THEN YOU HAD SURGERY?

15 A. YES, SIR.

16 Q. ALL RIGHT. NOW, LET'S GO BACK AND I BELIEVE YOU
17 WERE IN THE HOSPITAL. YOU ACTUALLY HAD SURGERY AND
18 THEN -- HOW DID YOU DO AFTER SURGERY?

19 A. AT FIRST WITHIN PROBABLY ABOUT A WEEK, I GOT ALL THE
20 FEELING BACK. BUT A COUPLE OF DAYS AFTER THAT, I
21 LOST ALL MY FEELING AGAIN FROM MY STOMACH TO MY
22 FEET.

23 Q. OKAY, ALL RIGHT. AND YOU HAD TO BE RE-HOSPITALIZED?

24 A. YES, SIR.

25 Q. OKAY. AND YOU HAD WHAT KIND OF FEELING IN YOUR

1 LEGS?

2 A. NUMBNESS. AT THE TIME, I HAD NUMBNESS, YES, SIR.

3 Q. AND THEN YOU WENT THROUGH REHAB AFTER THAT?

4 A. YES, SIR.

5 Q. NOW, LET'S TALK -- LET'S GO BACK AND -- LET'S GO
6 BACK TO COLLEGE. YOU LEAVE WINTHROP AND YOU GO BACK
7 TO WORK. WHERE DO YOU -- WHERE DO YOU GO TO WORK AT
8 THAT TIME?

9 A. FOR MY PARENTS AT THE SERVICE STATION.

10 Q. OKAY. WHAT SERVICE STATION DOES YOUR DAD OPERATE?

11 A. GERVAIS STREET B.P.

12 Q. B.P. ON GERVAIS STREET?

13 A. UH-HUH, GULF B.P.

14 Q. THAT'S THE ONE RIGHT UP HERE -- RIGHT UP -- USED TO
15 BE RIGHT UP THE STREET HERE?

16 A. RIGHT.

17 Q. NOW, HOW LONG DID YOU WORK FOR THEM?

18 A. TEN YEARS.

19 Q. ABOUT TEN YEARS?

20 A. UH-HUH.

21 Q. AND WHAT DID -- WHAT -- TELL ME ABOUT THE WORK YOU
22 DID THERE.

23 A. I STARTED OUT DOING MINOR REPAIRS LIKE TIRE REPAIRS
24 AND HELP FILL CARS UP WITH GAS OR CASHIERING,
25 WHATEVER WAS NEEDED.

1 Q. CHANGE TIRES?
2 A. YES, SIR.
3 Q. CHANGE OIL?
4 A. I DIDN'T CHANGE OIL.
5 Q. YOU DIDN'T CHANGE OIL, OKAY. CHANGE TIRES?
6 A. UH-HUH.
7 Q. DID THAT -- DID THAT JOB REQUIRE BENDING?
8 A. YES, SIR.
9 Q. STOOPING?
10 A. STOOPING, UH-HUH.
11 Q. LIFTING?
12 A. UH-HUH.
13 Q. BEING ABLE TO LIFT OVER 20 POUNDS?
14 A. YES, SIR.
15 Q. ALL RIGHT. DID YOU HAVE TO STAND ON YOUR FEET
16 CONSTANTLY?
17 A. I DID.
18 Q. ALL RIGHT. COULD YOU GO BACK TO DOING THAT WORK
19 NOW?
20 A. THE CASHIERING BUT NOT THE -- OF COURSE THAT WOULD
21 BE STANDING CONSTANTLY AS WELL. BUT NOT -- NOT THE
22 CHANGING TIRES, NO, SIR.
23 Q. SO, TO DO THAT -- ALL THE ACTIVITIES OF THAT JOB,
24 YOU COULDN'T DO IT?
25 A. RIGHT.

1 Q. WHAT KIND OF PROBLEMS WOULD YOU HAVE?
2 A. NOW?
3 Q. YEAH, WITH -- IF YOU WERE TRYING TO DO THAT KIND OF
4 JOB?
5 A. WEAKNESS IN MY BACK AND KEEPING MY BALANCE.
6 NUMBNESS STILL GOES DOWN THE RIGHT SIDE OF MY BODY.
7 Q. OKAY, ALL RIGHT. NOW, WE'RE GOING TO TALK MORE
8 ABOUT THAT IN A MINUTE. SO, YOU COULDN'T GO BACK TO
9 DOING ANY KIND OF JOB AS A SERVICE TECH IN A -- IN A
10 ---
11 A. RIGHT.
12 Q. NOW, WHAT JOB DID YOU GO TO FROM THERE?
13 A. FROM THERE I WENT TO STEIN MART.
14 Q. ALL RIGHT. WHAT DID YOU DO FOR STEIN MART?
15 A. BASICALLY RECEIVED -- WORKED IN RECEIVING AND TOOK
16 THE PACKAGES IN AND WENT THROUGH MERCHANDISE,
17 SEPARATING IT.
18 Q. BY THE WAY, I DON'T THINK I MENTIONED THIS; I
19 BELIEVE YOUR DAD CLOSED THE STATION?
20 A. YES, SIR.
21 Q. ALL RIGHT. SO, YOU WERE IN SHIPPING AND RECEIVING
22 AT STEIN MART?
23 A. UH-HUH.
24 Q. OKAY. DID THAT REQUIRE LIFTING 20 OR MORE POUNDS?
25 A. AT TIMES, YES, SIR.

- 1 Q. ALL RIGHT. DID IT REQUIRE BENDING?
- 2 A. UH-HUH.
- 3 Q. STOOPING?
- 4 A. YES.
- 5 Q. TWISTING?
- 6 A. YES.
- 7 Q. ALL RIGHT. DID IT REQUIRE BEING ABLE TO STAND ON
- 8 YOUR FEET FOR LONG PERIODS OF TIME?
- 9 A. YES.
- 10 Q. ALL RIGHT. KNOWING THE REQUIREMENTS OF THAT JOB AND
- 11 YOUR CURRENT PROBLEMS WE'LL TALK ABOUT NOW A LITTLE
- 12 BIT LATER, COULD YOU GO BACK TO DOING THAT JOB?
- 13 A. (WITNESS SHAKES HEAD SIDE TO SIDE).
- 14 Q. WHY NOT, WHAT -- WHAT KIND OF PROBLEMS WOULD YOU
- 15 HAVE? JUST TELL THE COMMISSIONER WHAT KIND OF
- 16 PROBLEMS YOU'D HAVE DOING THAT JOB.
- 17 A. JUST WALKING, AND IT'S STILL -- IT'S HARD FOR ME TO
- 18 BEND AND STOOP. SOMETIMES IT'S IMPOSSIBLE; THE PAIN
- 19 GOES THROUGH MY BACK.
- 20 Q. THE -- ALL RIGHT, LET'S GO -- WHAT'S -- WHAT'S YOUR
- 21 NEXT JOB YOU WENT TO FROM STEIN MART?
- 22 A. KOYO.
- 23 Q. KOYO?
- 24 A. YES, SIR.
- 25 Q. AMERICAN KOYO?

1 A. UH-HUH.

2 Q. WHICH -- WHICH PLANT, WHICH...

3 A. BLYTHEWOOD.

4 Q. WHAT DID YOU DO FOR AMERICAN KOYO?

5 A. I STARTED OUT WORKING AT THE -- AT THE RING GRINDER,

6 I THINK THEY CALLED IT. IT'S A MACHINE THAT GRINDS

7 THE INNER RINGS FOR THE WHEEL BEARINGS. CONSTANTLY

8 ON MY FEET THERE TOO.

9 Q. NOW, DID -- IN DOING THAT RING GRINDING JOB, I'VE

10 REPRESENTED A FEW FOLKS OUT AT KOYO, I BELIEVE THAT

11 THAT -- DO YOU HAVE TO PICK UP TRAYS OF PARTS, ---

12 A. YES, SIR.

13 Q. --- METAL PARTS, STEEL PARTS?

14 A. (WITNESS NODS HEAD UP AND DOWN).

15 Q. AND THEN FEED THEM INTO THE MACHINE AND THEN -- AND

16 THEN AFTER -- SO THAT REQUIRES STANDING CONSTANTLY?

17 A. UH-HUH.

18 Q. DID THAT REQUIRE BENDING?

19 A. YES, SIR.

20 Q. STOOPING?

21 A. (WITNESS NODS HEAD UP AND DOWN).

22 Q. SQUATTING?

23 A. YES, SIR.

24 Q. TWISTING?

25 A. (WITNESS NODS HEAD UP AND DOWN).

1 Q. AND LIFTING OVER 20 POUNDS?

2 A. RIGHT.

3 Q. HOW HEAVY ARE THOSE STEEL PARTS, THOSE TRAYS OF
4 PARTS; DO YOU HAVE ANY IDEA?

5 A. PROBABLY ABOUT 30 POUNDS, I GUESS, 30 OR 40.

6 Q. COULD YOU GO BACK TO DOING THAT JOB?

7 A. NO, SIR.

8 Q. WHY NOT?

9 A. 'CAUSE WHEN I -- THE PAIN THROUGH MY ARMS AND
10 THROUGH MY BACK AND -- MY WHOLE BODY BASICALLY.

11 Q. WE'RE GOING TO TALK ABOUT YOUR LIMITATIONS IN A
12 MINUTE. ALL RIGHT, AFTER YOU LEFT THAT JOB, WHERE
13 DID YOU GO TO WORK THEN?

14 A. LET'S SEE. I WENT FROM KOYO -- I WAS OUT ABOUT A
15 YEAR. I STARTED AT LOWE'S.

16 Q. OKAY. AND WHAT JOB WERE YOU DOING AT THAT TIME, AND
17 ARE YOU DOING THE SAME JOB NOW?

18 A. WHEN I STARTED OUT AT LOWE'S, I STARTED AS A NIGHT
19 STOCKER.

20 Q. NIGHT STOCKER?

21 A. (WITNESS NODS HEAD UP AND DOWN).

22 Q. OKAY. TELL ME WHAT YOU HAD TO DO AS A NIGHT
23 STOCKER.

24 A. UNLOAD THE TRUCK AND THE FREIGHT AND PLACE IT ON THE
25 SHELVES FROM DEPARTMENT TO DEPARTMENT.

1 Q. SO, THAT WOULD REQUIRE BENDING, ---

2 A. UH-HUH.

3 Q. --- STOOPING, LIFTING, HEAVY LIFTING?

4 A. RIGHT.

5 BY MS. MORROW:

6 YOUR HONOR, I OBJECT TO THE LEADING FORM OF THE
7 QUESTION.

8 BY MR. MCDANIEL:

9 WELL, OKAY.

10 BY COMMISSIONER WILLIAMS:

11 TRY NOT TO LEAD, MR. MCDANIEL.

12 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

13 Q. DID THAT INVOLVE ALL THE STOCK AT LOWE'S?

14 A. THEY -- THEY SET US UP IN DIFFERENT DEPARTMENTS.

15 USUALLY I WAS -- I WAS HANDLING THE FLOORING.

16 Q. OKAY, FLOORING?

17 A. OF COURSE, SOMETIMES WE WOULD GO AND HELP OTHER
18 LOADERS OR OTHER EMPLOYEES.

19 Q. BUT THE FLOORING, WOULD THAT BE BOTH THE WOOD
20 FLOORING AND THE TILE FLOORING AND THE -- ALL THE
21 GRANITE FLOORING AND THAT KIND OF THING?

22 A. YES, SIR.

23 Q. HOW MUCH DID THOSE BUNDLES WEIGH?

24 A. ANYWHERE FROM 60 TO 80 I'D SAY.

25 Q. ALL RIGHT. NOW, COULD YOU -- COULD YOU DO THAT JOB

1 IF THAT WAS ---

2 A. NO, SIR.

3 Q. WHY NOT?

4 A. THE TIGHTNESS IN MY BACK.

5 Q. ALL RIGHT. NOW, FROM THE NIGHT STOCKER, WHERE DID
6 YOU GO -- WHAT DID YOU GO DO?

7 A. CASHIERING.

8 Q. CASHIERING?

9 A. (WITNESS NODS HEAD UP AND DOWN).

10 Q. OKAY. IS THERE -- TOMMY, IS THERE -- AND WE FIRST
11 REFERENCED TO CASHIERING, IS -- IS THAT A DIFFERENT
12 JOB THAN WE HEARD EARLIER ABOUT GARDEN ASSOCIATES;
13 IS THERE A DIFFERENCE BETWEEN JUST SIMPLY A CASHIER
14 AND AN ASSOCIATE THAT SAY WORKS IN THE PLUMBING
15 DEPARTMENT OR AN ASSOCIATE THAT WORKS IN THE GARDEN
16 DEPARTMENT, OR ARE ALL THOSE CONSIDERED CASHIERS?
17 JUST TELL -- I -- I DON'T KNOW.

18 A. THE -- IS EVERY DEPARTMENT -- WHAT'S YOUR QUESTION?

19 Q. WELL, NOT THE SAME, BUT IN OTHER WORDS, YOU KNOW, I
20 BELIEVE LYNN REFERRED -- OBVIOUSLY I REFERRED TO HER
21 AS "LYNN," 'CAUSE ACTUALLY -- HONESTLY I CAN'T
22 REMEMBER HER LAST NAME RIGHT NOW. LYNN REFERRED TO
23 THAT THEY WERE GARDEN ASSOCIATES OUT IN THE GARDEN,
24 ---

25 A. RIGHT.

1 Q. --- AND THEN THERE WERE CASHIERS. SO THERE IS A
2 DIFFERENCE BETWEEN THE GARDEN ASSOCIATE OR SAY A
3 ~~PLUMBING ASSOCIATE AND A CASHIER; IS THAT RIGHT?~~

4 A. YES, SIR.

5 Q. OKAY. SO, YOU'VE ALWAYS BEEN A CASHIER?

6 A. SINCE I'VE BEEN BACK, YES, SIR.

7 Q. OKAY. ALL RIGHT. SINCE YOU'VE BEEN BACK THERE?

8 A. (WITNESS NODS HEAD UP AND DOWN).

9 Q. NOW, WHAT ABOUT BEFORE, I KNOW YOU WERE A NIGHT
10 STOCKER, ---

11 A. UH-HUH.

12 Q. --- AND THEN WERE YOU -- HAD YOU GONE TO ANOTHER JOB
13 BEFORE THEN?

14 A. MAJORITY -- MAJORITY OF THE TIME I'VE BEEN A
15 CASHIER.

16 Q. OKAY, ALL RIGHT. SO, YOU WERE A CASHIER AT THE TIME
17 THE INJURY HAPPENED?

18 A. RIGHT.

19 Q. ALL RIGHT. NOW, NORMALLY I -- I KNOW THAT LOWE'S
20 HAD MADE SOME ACCOMMODATIONS, BUT IN REFERENCE TO A
21 CASHIER, TELL ME ABOUT WHAT A CASHIER DOES. WHAT
22 WERE YOU DOING WITH THE CUSTOMER THE DAY YOU GOT
23 INJURED; WERE YOU HELPING THE CUSTOMER?

24 A. YES, SIR. I WAS HELPING HIM OR HER GET SOME PINE
25 STRAW.

1 Q. OKAY. AND ARE THESE THE BALES OF PINE STRAW?

2 A. THEY ARE, YES, SIR.

3 Q. OKAY. SO, WE'RE TALKING ABOUT LIKE A NORMAL BALE OF
4 PINE STRAW STRAPPED -- GOT A STRING AROUND IT?

5 A. UH-HUH.

6 Q. OKAY. IS THAT PRETTY HEAVY?

7 A. NOT -- NO, SIR, THEY AREN'T -- THEY AREN'T THAT
8 HEAVY, NO, SIR.

9 Q. YOU THINK -- COULD YOU REGULARLY PICK UP THOSE BALES
10 OF HAY -- I MEAN, STRAW AT THIS TIME?

11 A. I DON'T KNOW IF I COULD DO IT EIGHT HOURS A DAY, NO,
12 SIR.

13 Q. ALL RIGHT. AND LIKE ANYBODY -- ANY CUSTOMER BRINGS
14 ANYTHING UP TO THE CASHIER, WHAT'S THE CASHIER'S
15 RESPONSIBILITY?

16 A. TO SCAN AND RECEIVE THE PAYMENT. AND ALSO, IF THE
17 CUSTOMER NEEDS HELP THAT YOU CALL SOMEONE TO DO
18 THAT.

19 Q. OKAY. NOW YOU CALL SOMEONE, BUT BEFORE THIS
20 ACCIDENT, WHAT DID YOU DO?

21 A. I WOULD HELP LOAD.

22 Q. OKAY. SO, WOULD THAT MEAN -- LET'S SAY THEY CAME IN
23 AND BOUGHT A BUNCH OF THOSE DECORATIVE ROCK -- BAGS
24 OF DECORATIVE ROCK, WOULD YOU HELP WITH THAT?

25 A. YES, SIR.

- 1 Q. FIVE-GALLON BUCKETS OF PAINT?
- 2 A. (WITNESS NODS HEAD UP AND DOWN).
- 3 Q. COULD YOU GO BACK TO LIFTING MANY OF THE THINGS ~~THAT~~
- 4 YOU -- AT LOWE'S?
- 5 A. NO, SIR.
- 6 Q. ALL RIGHT. NOW, LET'S TALK ABOUT -- LET'S TALK
- 7 ABOUT YOU NOW. TELL ME ABOUT WHAT KIND OF PROBLEMS
- 8 ARE YOU HAVING?
- 9 A. WELL, CAN I START OUT BY THE BEGINNING OF MY DAY?
- 10 Q. YEAH, YOU CAN. AS A MATTER OF FACT, I'D LIKE TO ASK
- 11 YOU THIS BEFORE YOU DO THAT, BUT -- AND THAT'S THIS.
- 12 ARE THERE ANY ACTIVITIES ON A PERSONAL BASIS OUTSIDE
- 13 OF LOWE'S AND WORK THAT YOU LIKED TO DO BEFORE THIS
- 14 ACCIDENT THAT YOU DON'T DO ANYMORE?
- 15 A. YES, SIR.
- 16 Q. WHAT ARE THOSE?
- 17 A. I -- I USED TO LIKE TO BIKE RIDE, AND I CANNOT DO
- 18 THAT ANYMORE.
- 19 Q. TELL ME ABOUT YOUR BIKE RIDING.
- 20 A. JUST -- I HAVE TRIED IT, BUT IT -- IT -- I FEEL LIKE
- 21 I CAN'T KEEP MY BALANCE ANYMORE OR CONTROL MY FEET
- 22 TO PEDAL IT, SOMETHING AS SIMPLE AS THAT.
- 23 Q. OKAY, I BELIEVE YOU WERE TELLING ME YOU GOT A NEW
- 24 BIKE ACTUALLY BUT YOU CAN'T USE IT ANYMORE?
- 25 A. RIGHT.

1 BY MS. MORROW:

2 YOUR HONOR, I OBJECT TO THE LEADING FORM OF THE
3 QUESTIONS.

4 BY MR. MCDANIEL:

5 OKAY. ALL RIGHT.

6 BY COMMISSIONER WILLIAMS:

7 MR. MCDANIEL, TRY NOT TO LEAD.

8 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

9 Q. HOW OLD'S YOUR BIKE?

10 A. HOW OLD IS IT?

11 Q. YEAH.

12 A. ABOUT THREE YEARS SINCE I'VE HAD IT.

13 Q. WHEN'S THE LAST TIME YOU RODE IT?

14 A. PROBABLY ABOUT -- MAYBE -- RIGHT AFTER I GOT IT I
15 GUESS I TRIED TO RIDE IT.

16 Q. HAVE YOU TRIED TO RIDE IT SINCE THE ACCIDENT?

17 A. NO, SIR.

18 Q. WHAT ELSE DO YOU LIKE -- DID YOU LIKE TO DO THAT YOU
19 HAVE PROBLEMS DOING?

20 A. PLAY GOLF.

21 Q. DO YOU STILL PLAY GOLF?

22 A. NO, SIR.

23 Q. WHY NOT?

24 A. THE BENDING, I CAN'T EVEN BEND. IT'S HARD FOR ME TO
25 -- JUST THINKING ABOUT BENDING AND PLACING THE BALL,

1 I CAN'T EVEN DO THAT, KEEP MY BALANCE TO DO THAT, OR
2 PAIN IN THE SHOULDERS, NECK.

3 Q. NOW, YOU WERE -- BEFORE I SO RUDELY INTERRUPTED YOU,
4 YOU WERE ABOUT TO TELL ME ABOUT YOUR DAY. AND IF
5 THAT'S THE EASIEST WAY FOR YOU TO DO IT JUST GO
6 AHEAD AND TELL ME WHAT YOUR TYPICAL DAY IS LIKE.
7 TELL THE COMMISSIONER WHAT KIND OF PROBLEMS YOU
8 HAVE.

9 A. STARTING OUT GETTING OUT OF THE BED, I HAVE TO --
10 WHEN I GET UP TO MY FEET, I HAVE TO STAND THERE FOR
11 A MINUTE TO GET CONTROL OF MY MOTIONS TO START
12 MOVING MY FEET, AND IT'S KIND OF LIKE A CHOPPING
13 MOVEMENT. AND THEN IT'LL -- IT'LL GRADUALLY GET
14 BETTER THROUGHOUT THE DAY, BUT I STILL HAVE
15 STIFFNESS IN MY BACK ALL DAY LONG. AND WHEN THEY
16 PLACE ME OUTSIDE, I LIKE -- I PREFER TO GO OUTSIDE
17 'CAUSE THEY HAVE A POST I CAN LEAN AGAINST AND
18 STRETCH THROUGHOUT THE DAY. BUT THEN COMING HOME IN
19 THE AFTERNOON, EVEN WHEN I'M DRIVING HOME, SOMETIMES
20 I HAVE MUSCLE SPASMS THROUGHOUT MY LOWER BODY. I
21 CAN'T CONTROL MY FEET DRIVING, AND SO ---

22 Q. WHAT DO YOU MEAN BY YOU CAN'T CONTROL YOUR FEET
23 DRIVING?

24 A. ESPECIALLY ON MY RIGHT SIDE, MY -- MY LEG WILL START
25 JUMPING COMPLETELY. I CAN'T CONTROL THAT. AND THEN

1 WALKING UP THE STAIRS IS -- SOMETIMES I CAN'T -- I
2 DON'T WANT TO SAY IT'S IMPOSSIBLE, BUT I HAVE A LOT
3 OF PAIN AND STIFFNESS, AND I DO IT REAL SLOWLY TO GO
4 UP OR DOWN.

5 Q. LET'S TALK ABOUT -- LET'S TALK ABOUT YOUR NECK --
6 NECK AREA AND ARM, THAT KIND OF THING. DESCRIBE
7 WHAT KIND OF PROBLEMS YOU'VE HAVING THERE, AND THEN
8 TELL ME ABOUT THE PROBLEMS YOU'RE HAVING IN YOU'RE
9 LOW BACK. LET'S TALK ABOUT YOUR NECK AND YOUR ARM
10 TO START WITH. YOU -- I KNOW YOU DESCRIBED SOME OF
11 THOSE, BUT JUST SORT OF TELL ME WHAT KIND OF
12 PROBLEMS -- THE ACTUAL PHYSICAL PROBLEMS YOU'RE
13 HAVING.

14 A. WITH MY NECK, I CAN ONLY TURN IT TO A CERTAIN POINT.
15 ABOUT WHERE I HAVE IT NOW IS WHERE I TURN IT BEFORE
16 IT STARTS GETTING PAINFUL (DEMONSTRATING). AND AS
17 FAR AS THE LOWER BACK, I -- ANY BENDING I DO, I HAVE
18 TO DO IT LIKE IN INCREMENTS. I CAN'T JUST GO
19 STRAIGHT DOWN TO DO WHATEVER I NEED. THEN I HAVE
20 PAIN, BASICALLY SHARP PAINS, THROUGH THE RIGHT SIDE
21 OF MY BODY, DOWN MY LEG.

22 Q. IN YOUR RIGHT ARM, HOW'S YOUR STRENGTH AND ALL THAT
23 IN YOUR RIGHT ARM?

24 A. MY -- THEY TESTED MY STRENGTH, AND IT'S -- IT'S NOT
25 AS STRONG AS IT NEEDS TO BE. I GUESS I'VE -- I'VE

1 GAINED BACK PROBABLY ABOUT 20 PERCENT, 30 PERCENT OF
2 WHAT ---

3 Q. DO YOU HAVE ANY NUMBNESS OR TINGLING IN ANY PART OF
4 YOUR ARM OR LEGS OR ANYTHING?

5 A. DON'T HAVE ANY NUMBNESS IN MY ARMS, JUST HAVE A HAND
6 TIME CONTROLLING LIKE -- WHEN I WAS GETTING CHANGE
7 FOR A CUSTOMER, I -- SOMETIMES I CANNOT CONTROL
8 GOING FROM ONE HAND TO THE NEXT. IT TAKES ME A
9 WHILE TO DO THAT. BUT I DO HAVE, LIKE I SAID, THE
10 SHARP PAIN THROUGH MY RIGHT SIDE OF MY LEGS.

11 Q. NOW, TELL ME ABOUT THEN AT THE END OF THE DAY. YOU
12 WERE TELLING ME ABOUT THE DRIVING HOME, A LOT OF
13 TIME THAT'S WHEN THE SPASMS SEEM TO BE WORSE IS AT
14 THE END OF THE DAY?

15 A. YES, SIR.

16 Q. ALL RIGHT. TELL ME ABOUT AT NIGHT.

17 A. AT NIGHT WHEN I -- IF I SIT -- SIT DOWN AFTER I GET
18 HOME, GET MY SHOWER, A LOT OF TIMES MY LOWER BACK
19 WILL START HURTING SO BAD I HAVE TO GO PROBABLY SIT
20 DOWN FOR AN HOUR OR TWO. I HAVE TO ADJUST AND GO
21 DOWN TO THE FLOOR AND STRETCH OUT. AND IF THAT
22 DOESN'T HELP SO I'D GO BACK UP TO THE CHAIRS TO SEE
23 IF THAT'LL HELP. I DON'T KNOW HOW MANY TIMES I DO
24 THAT BEFORE I GO TO BED.

25 Q. AND NOW, LET'S TALK ABOUT -- ABOUT THE

1 ACCOMMODATIONS AT LOWE'S. THE DEFENDANTS -- MS.
2 MORROW PUT IN AN EXHIBIT, WHICH IS AN INTERACTIVE
3 DOCUMENT.

4 BY MR. MCDANIEL:

5 IT'S FOUND IN EXHIBIT ONE, COMMISSIONER.

6 BY COMMISSIONER WILLIAMS:

7 THANK YOU.

8 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

9 Q. I BELIEVE YOU TALKED TO HUMAN RESOURCES ABOUT THAT,
10 ABOUT THE ACCOMMODATIONS FOR YOU TO COME BACK TO
11 WORK?

12 A. YES, SIR.

13 Q. TELL ME YOUR UNDERSTANDING FROM YOUR DOCTOR, DR.
14 DRYE, OF WHAT ACCOMMODATIONS WERE GOING TO NEED TO
15 BE MADE OR WHAT KIND OF SPECIAL THINGS LOWE'S WAS
16 GOING TO HAVE TO DO OR YOU WERE GOING TO NEED TO BE
17 ABLE TO CONTINUE WORKING. WHAT KIND OF RESTRICTIONS
18 DID HE PUT ON YOU TO YOUR UNDERSTANDING?

19 A. TO NOT LIFT OVER 20 POUNDS AND ALSO TO HAVE A STOOL
20 AVAILABLE WHEN I NEED IT.

21 Q. OKAY. AND WHAT ABOUT STANDING FOR A LONG PERIOD OF
22 TIME?

23 A. THEY WERE SUPPOSED TO ACCOMMODATE ME WHENEVER I
24 NEEDED TO ADJUST.

25 Q. OKAY. NOW, TELL ME ABOUT WHEN YOU FIRST WENT BACK