

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

SCWCC No. 1008356

James Osment, Appellant,

v.

The Timken Company,
and Phoenix Insurance Company, Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. DOES THE RECORD CONTAIN SUBSTANTIAL EVIDENCE TO SUPPORT THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S DECISION THAT OSMENT DID NOT SUSTAIN A COMPENSABLE INJURY TO HIS BACK OR RIGHT HIP AS A RESULT OF HIS WORK-RELATED RIGHT KNEE INJURY ON MAY 20, 2010?

- II. DOES THE RECORD CONTAIN SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S DECISION THAT OSMENT SUSTAINED 60% PERMANENT PARTIAL DISABILITY TO HIS RIGHT LEG AS A RESULT OF HIS MAY 20, 2010 WORK ACCIDENT?

STATEMENT OF THE CASE

Appellant/Claimant James Osment (“Osment”) sustained an admitted injury to his right knee arising out of and in the course of his employment with The Timken Company on May 20, 2010. As a result, Respondents The Timken Company and its workers’ compensation carrier, Phoenix Insurance Company (collectively “Timken”), initially provided Osment with medical treatment from Dr. Walter Grady. On July 14, 2010, Dr. Grady performed an arthroscopic surgery on Osment’s right knee. (R. pp. 206-208). Defendants subsequently referred Osment to Dr. Anthony Sanchez of Orthopedic Specialties of Spartanburg for a second opinion. On October 12, 2011, Dr. Sanchez performed a right total knee replacement. (R. pp. 232-234). Osment continued to treat with Dr. Sanchez following his total knee replacement, and on August 22, 2012, Dr. Sanchez opined Osment had reached maximum medical improvement (“MMI”) with 50% permanent impairment to the right lower extremity. (R. p. 258).

On July 17, 2014, Osment filed a Form 50 alleging an injury to the “right knee, right leg, back, right hip, [and] right foot” as a result of his work accident. (R. p. 46). Timken timely filed a Form 51, admitting an injury to the right knee only and asserting Osment had reached MMI for the same. (R. p. 47). Timken specifically denied Osment injured any other body parts as a result of his May 20, 2010 work accident. *Id.* A hearing was held before Commissioner Susan S. Barden (“the Single Commissioner”) on September 26, 2014, to address the issues regarding compensability of the denied body parts. (R. p. 77).

At the hearing, Osment alleged that in addition to the injury to his right knee, he also sustained a compensable injury to his back and right hip. (R. p. 81). Specifically,

Osment contended that he sustained an injury to his back and right hip as a result of an antalgic gait that he experienced because of his right knee injury. *Id.* Osment asserted that if his back and/or right hip were found compensable, then he was *not* at MMI. (R. p. 82). Osment sought additional medical treatment for his back and right hip, as well as temporary total disability (“TTD”) benefits from September 9, 2013 to the present, and continuing. (R. pp. 81-82). Alternatively, if the alleged injuries to his back and right hip were denied, Osment took the position that he had significant permanent partial disability (“PPD”) to his right knee and that Dr. Sanchez’s 50% impairment rating to the right lower extremity was not an accurate indicator of his residual condition. (R. p. 82).

Timken maintained Osment only sustained an injury to his right knee as a result of the May 20, 2010 work accident. (R. p. 84). Timken specifically denied Osment’s alleged issues with his back and/or hip were causally-related to the work injury. *Id.* Timken contended Osment reached MMI for his right knee on August 22, 2012 and was not entitled to any further TTD benefits. (R. p. 85). Timken further asserted that a PPD award to the leg was appropriate, pursuant to § 42-9-30(16), and took the position that Osment had not sustained any PPD beyond Dr. Sanchez’s impairment rating. (R. pp. 84-85).

On November 24, 2014, the Single Commissioner issued her Decision and Order finding Osment did not sustain a compensable injury to his back or right hip as a result of his May 20, 2012 work accident. (R. p. 42). The Single Commissioner specifically found that Osment’s testimony regarding his alleged back and right hip problems was not credible and that Dr. Sanchez’s “causation” opinion was “equivocal at best.” (R. pp. 39-40). Furthermore, the Single Commissioner found that Osment reached MMI for his right knee

injury on August 22, 2012 and that he had sustained 60% PPD to his right leg as a result of his May 20, 2012 work accident.¹ (R. pp. 41 & 43).

Osment subsequently filed a Form 30, Request for Commission Review, on December 3, 2014. (R. p. 49). Oral arguments were held before the Commission's Appellate Panel on February 25, 2015, and on April 1, 2015, the Appellate Panel issued its Decision and Order fully affirming the Order of the Hearing Commissioner. (R. pp. 1-19). Thereafter, Osment filed a Notice of Appeal with this Court. (R. pp. 51-53).

¹ Based on Osment's compensation rate of \$689.71, 60% PPD to the right leg totaled \$80,696.07.

STATEMENT OF THE FACTS

Osment was employed by Timken as its Lead Maintenance Associate in the Maintenance Department. (R. p. 123, lines 21-24). As Lead Maintenance Associate, Osment's job duties required him to spend approximately half of his time performing sedentary work in his office. (R. p. 124, lines 6-14). During this portion of the day, Osment scheduled the shifts of the maintenance mechanics, entered information into his computer, ordered parts and supplies, and communicated with other departments. (R. p. 124, lines 6-9; R. p. 153, lines 10-21). The other half of his time was spent in the plant checking jobs, assigning tasks, and assisting supervisors in other departments. (R. p. 106, lines 21-25). Timken's plant is approximately 660,000 square feet; however, the Maintenance Department had golf carts that were to be used when Osment, or other employees in the department, needed to go to other areas of the plant. (R. p. 155, lines 10-13; R. p. 161, lines 18-19). The Maintenance Department's golf carts were parked right outside of Osment's office. (R. p. 126, lines 3-6).

The prior medical reports in the record show that Osment presented to Dr. Austin R. McElhaney of Eastside Family Physicians with complaints of "right back pain" on September 15, 2008. (R. p. 490). It was noted Osment had a history of degenerative arthritis in his back, left knee, and cervical spine. *Id.* Notably, during his examination, Dr. McElhaney specifically stated Osment had a "mildly arthritic gait" and "decreased lumbar flexion." (R. pp. 491-492). Dr. McElhaney diagnosed Osment with a lumbar back strain and "back pain, right," and he prescribed Lortab. (R. pp. 492-493). On December 28, 2009, less than five months *before* his work accident, Osment returned to Dr. McElhaney with a chief complaint of "pain right lower back." (R. p. 500). Dr.

McElhaney noted Osment displayed mild tightness in his right lower paralumbar, as well as stiffness in both his right and left knees. (R. p. 502). Osment was prescribed Meloxicam for his joint stiffness. (R. p. 503). Of note, Osment admitted he walked with a limp in the months leading up to his work accident. (R. p. 139, line 20-p. 140, line 1).

On May 20, 2010, Osment was changing a “chip car” in Timken’s Green Department. (R. p. 95, lines 6-12). As he stepped off the chip car and onto a rail, his right foot slipped, and he twisted his right knee. *Id.* Following his accident, Osment’s co-employees assisted him onto a golf cart and drove him to Timken’s plant nurse’s office. (R. p. 97, lines 5-7). In her report, the plant nurse noted: “Employee step [sic] off of train on track and foot slipped off. Twisting right knee. Braced himself by grabbing side of train.” (R. p. 169). After seeing the plant nurse, Osment was taken to Peachview Medical Park and examined by Dr. Todd Morgan. (R. p. 97, lines 7-22). The initial record from Peachview Medical Park notes Osment “stepped off train onto track twisted right knee some swelling.” (R. p. 170). Osment testified that in addition to his right knee, he also had an immediate onset of pain in his back, right hip, and right groin after his fall. (R. p. 95, line 17-p. 96, line 7). However, neither the plant nurse’s record nor the records from Peachview Medical Center mention any complaints of problems with his back, right hip, or right groin on May 20, 2010. (*See* R. pp. 169-170).

On May 25, 2010, Dr. Morgan ordered an MRI of Osment’s right knee due to his continued complaints of knee pain and swelling. (R. pp. 189-190). The MRI revealed a “flat type tear of the patella cartilage,” significant thinning of the medial femoral condyle, and a mild medial collateral ligament sprain. *Id.*

Following his MRI, Osment was referred to Dr. Walter Grady on June 7, 2010 for an evaluation of right knee pain. (R. p. 196). Osment did not report any back or right hip pain. In fact, Dr. Grady noted Osment specifically denied having a “backache.” (R. p. 197). Dr. Grady diagnosed him with right knee bursitis and MRI consistent with a tear of the patella cartilage and thinning of the medial femoral condyle, and he ordered a venous Doppler ultrasound to rule out deep vein thrombosis (“DVT”) in his right knee area. Id. The right lower extremity venous study was performed on June 10, 2010 and revealed no evidence of DVT. (R. p. 193). Osment followed up with Dr. Grady on June 17, 2010, at which time he was recommended for a right knee arthroscopic surgery. (R. pp. 200-201). On July 12, 2010, Osment returned for a pre-operative visit. (R. pp. 202-204). Notably, there is no mention of any back or right hip problems in Dr. Grady’s reports from June 17, 2010 and July 12, 2010. (R. pp. 200-204). In fact, on both occasions, Dr. Grady specifically noted Osment denied “backache.” Id.

On July 14, 2010, Dr. Grady performed arthroscopic surgery on Osment’s right knee. (R. pp. 206-208). Post-operatively, Osment participated in physical therapy, and he continued to treat with Dr. Grady, who gradually released him to restricted duty work. (R. pp. 212-215). On September 14, 2010, Osment reported continued right knee pain. (R. pp. 216-217). Dr. Grady recommended, and subsequently performed, a series of three viscus injections. (R. pp. 217-220). Following the injections, Osment returned to Dr. Grady on January 20, 2011 and reported the injections did not provide much relief. (R. p. 221). Due to Osment’s ongoing complaints and the advanced degenerative joint disease in his right knee, Dr. Grady recommended a right total knee arthroplasty (“TKR”). (R. p. 222). Importantly, Dr. Grady did not document any complaints of back or right hip problems in

his medical reports following Osment's arthroscopic knee surgery on July 14, 2010. (*See* R. pp. 212-223).

Osment subsequently requested a second opinion evaluation, and on May 2, 2011, Timken referred him to Dr. Anthony A. Sanchez of Orthopedic Specialties of Spartanburg. (R. p. 102, lines 17-18; R. p. 224). Prior to Dr. Sanchez's initial evaluation, Osment completed a patient history form and did not mention having any prior problems with his knees, back, or hips. (R. p. 322, lines 13-16). After his examination on May 2, 2011, Dr. Sanchez diagnosed Osment with right knee arthritis and opined he was a candidate for a TKA. (R. p. 224).

On October 12, 2011, Dr. Sanchez performed a TKA on Osment's right knee. (R. pp. 232-234). Osment continued to treat with Dr. Sanchez following his knee replacement surgery. (R. pp. 236-237). Dr. Sanchez kept him out of work for a couple of months, and he returned to sedentary duty in January of 2012. (R. p. 104, lines 15-23). On January 17, 2012, Dr. Sanchez advanced Osment's duties at work and released him to light duty with no kneeling, crawling, or lifting over 30 pounds. (R. p. 242). Osment subsequently returned to his regular job as Lead Maintenance Associate. (R. p. 104, line 24-p. 105, line 2). Ultimately, on August 22, 2012, Dr. Sanchez placed Osment at MMI and assigned permanent restrictions of no kneeling or crawling. (R. p. 258). Osment was also assigned a permanent restriction of "no walking greater than 100 yards." (R. p. 178; R. p. 128, lines 6-10). Dr. Sanchez examined Osment on numerous occasions between May 2, 2010, the date of his initial evaluation, and August 22, 2012, the date he placed him at MMI; however, there is no mention of any complaints of back or right hip problems in his records during this time period. (*See* R. pp. 224-261).

After being released at MMI, Osment continued to work his regular job, within his restrictions. (R. p. 105, lines 9-14). On November 21, 2012, Osment followed up with Dr. Sanchez and complained of occasional swelling and soreness with prolonged activity. (R. pp. 259-261). Dr. Sanchez also noted Osment “recently went to the beach and had some difficulty walking in the loose sand.” Id. X-rays of his right knee showed excellent alignment of his TKA, and Dr. Sanchez prescribed a hinge sleeve brace and instructed him to continued taking over the counter anti-inflammatories. Id. Osment did not complain of any back or right hip problems on November 21, 2012. Id.

On January 11, 2013, Osment presented to Dr. Sanchez and reported “a fair amount of pain in his knee as well as some swelling with radiation of pain into his groin that did seem to migrate posteriorly and into his low back.” (R. p. 262). Dr. Sanchez noted that his pain was “somewhat migratory” and it was difficult to assess the origin of same. (R. p. 264). Importantly, Dr. Sanchez’s record from January 11, 2013 was the first documented complaint of low back problems following Osment’s work accident on May 20, 2010.

On February 20, 2013, Osment returned to Dr. Sanchez, and his complaints were limited to his right knee. (R. pp. 266-268). Dr. Sanchez recommended a bone scan to assess his TKA prosthesis. Id. A bone scan, dated February 26, 2013, revealed no evidence of prosthetic loosening. (R. p. 269). On April 3, 2013, Dr. Sanchez noted Osment continued to complain of pain medially in his right knee. (R. pp. 271-273). Dr. Sanchez did not document any complaints of back or right hip pain. Id. On July 8, 2013, Osment presented to Dr. Sanchez with complaints of continued soreness and stiffness in his right knee, as well as occasional numbness in his foot. (R. p. 274). Given his complaints, Dr. Sanchez prescribed Neurotin and ordered an EMG/NCV of his right lower extremity. (R.

p. 276). The EMG and nerve conduction studies, taken August 19, 2013, were within normal limits and showed no nerve root compromise or radiculopathy. (R. p. 277).

Osment followed up with Dr. Sanchez on September 9, 2013 and reported some cramping sensation in his calf, as well as an occasional shooting sensation. (R. pp. 279-281). Osment further reported a walking tolerance of ¼ mile, with soreness afterwards, and Dr. Sanchez opined that his work was exacerbating his symptoms. Id. As a result, Dr. Sanchez wrote Osment out of work. Id. On October 28, 2013, Osment returned to Dr. Sanchez and reported that his knee was better, but that his low back began to “hurt more recently,” with radiating pain down the right leg. (R. p. 285). Dr. Sanchez ordered an MRI of his lumbar spine and referred him to a pain management physician in his practice for treatment of his back. (R. p. 287).

On March 19, 2014, Osment presented to Carolina Medical Affiliates with complaints of “chest pain after lifting wood onto an ATV bed.” (R. p. 505). He also complained of groin pain; however, he did not relate his groin pain to his work accident. Id. Instead, Osment reported that he believed he had a hernia in his groin because “his last PCP thought he may be developing a hernia there.” Id. Of note, while his family physician listed 34 “Existing Problems” in her assessment, Osment’s alleged back and right hip problems were not contained in her assessment. (R. p. 507). Osment was diagnosed with chest pain and referred for a stress test. (R. p. 508). He was also diagnosed with scrotal pain and referred to an urologist. Id. Osment returned to his family doctor for a follow up appointment on March 26, 2014. (R. pp. 509-512). During this visit, there are 35 conditions listed under his “Status of Existing Problems.” (R. p. 511). Yet, once again, there is no mention of any back or right hip problems. Id.

Dr. Sanchez completed a check-off questionnaire, at the request of Osment's attorney, and opined that Osment's back, right hip, and right leg problems were causally related to his work accident. (R. p. 302). However, Dr. Sanchez did not provide any explanation for his opinion. *Id.* As a result, counsel for Timken took his deposition on May 23, 2014. (*See* R. p. 314).

At his deposition, Dr. Sanchez testified Osment did not mention any prior back problems in his initial patient history forms, and he confirmed that it was his understanding Osment had never had any kind of back problems before his work accident. (R. p. 322, lines 13-16; R. p. 340, lines 4-8). After reviewing records from Dr. McElhaney from 2008 and 2009, Dr. Sanchez acknowledged Osment had prior back problems, as well as a prior antalgic gait. (R. p. 344, lines 17-21; R. p. 345 lines 16-23). Dr. Sanchez admitted Osment's current back complaints could simply be a continuation of the pre-injury back complaints documented in Dr. McElhaney's records. (R. p. 348, lines 23-p. 349, line 3). Yet, right after reviewing Dr. McElhaney's records, including one record from just a couple months prior to the date of his work accident, Dr. Sanchez inexplicably testified that he believed Osment's back condition was exacerbated in that "I'd almost think that [Osment] didn't have any back symptoms beforehand, and he had it afterward." (R. p. 349, lines 11-15). When questioned by Osment's attorney, Dr. Sanchez opined Osment's back was aggravated by his altered gait. (R. p. 357, lines 6-9). However, Dr. Sanchez never noted an altered gait in his treatment records, and he never opined during his treatment that an altered gait was causing Osment's back pain. (R. p. 351, lines 4-7; *See also* R. pp. 224-261). Further, Dr. Sanchez acknowledged that given the history of an

arthritic gait in the prior records, Osment could still be having his current back problems had he never his work injury. (R. p. 348, line 23-p. 349, line 3; R. p. 352, lines 17-22).

With regards to Osment's alleged *right hip* injury, Dr. Sanchez testified that Osment has arthritis in his hip and that his current condition may be due to a natural age related arthritic progression. (R. p. 354, lines 2-9). Ultimately, he could **not** state to a reasonable degree of medical certainty that Osment's right hip problems were related to his work injury. (R. p. 354, lines 17-20; R. p. 368, line 19-p. 369, line 2).

At the hearing, Osment testified that in January 2013, he started noticing more problems with his back and right hip, which he related to walking on the cement floors at work. (R. p. 105, lines 17-22). Osment testified he began having to walk more throughout the plant in January 2013 because Timken cut back on the number of golf carts – from three to two – in the Maintenance Department. (R. p. 108, line 13-p. 109, line 2). He specifically testified that he would have to walk to other departments because there were not enough golf carts available. *Id.* Osment testified that the golf carts were regularly unavailable for him because the other employees in the Maintenance Department used them most of the day. (R. p. 126, line 21-p. 127, line 4). He further testified that if a golf cart was unavailable, he was unable to call Raymond Sarratt, his supervisor, and ask for a golf cart. (R. p. 126, lines 12-20).

However, Mr. Sarratt testified Osment regularly used a golf cart, both before and after his work injury. (R. p. 155, lines 20-24). Mr. Sarratt testified Timken accommodated Osment's restrictions following his knee replacement surgery and instructed Osment to always abide by his restrictions. (R. p. 156, lines 3-11; R. p. 158, line 21-p. 159, line 1). Additionally, Mr. Sarratt testified that there were only one or two times when Osment

informed him there was not a golf cart available for him to do his assignment and that on each of those occasions, he instructed Osment to wait until a golf cart came back to the department before going to do his assignment. (R. p. 156, lines 16-23; R. p. 161, line 21-p. 162, line 6).

STANDARD OF REVIEW

The Administrative Procedures Act establishes the rule for judicial review of awards of the Workers' Compensation Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981). In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The appellate court's review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. Lark, 276 S.C. at 135, 276 S.E.2d at 306 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Etheredge v. Monsanto Company, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998). "Substantial evidence" necessary to support a decision of the Commission is:

'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This 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.'

Lark, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *See also*, O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.)

The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987). The appellate court is prohibited from overturning findings of fact of the Commission, unless there is no reasonable probability that the facts could be as related by the witness upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992).

Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999); *See also*, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.") Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

ARGUMENTS

I.

THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S DECISION THAT OSMENT DID NOT SUSTAIN A COMPENSABLE INJURY TO HIS BACK OR RIGHT HIP.

A claimant has the burden on proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation. Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999). In the present case, substantial evidence clearly supports the Commission's decision that Osment did not sustain a compensable injury to his back or right hip. Osment's testimony regarding how and when his alleged back and hip problems occurred was not credible and was contradicted by the medical records. Additionally, when read in its entirety, Dr. Sanchez's deposition testimony regarding causation of Osment's alleged back and hip condition was not persuasive or reliable, given the multiple inconsistencies and "theories."

A. Osment's testimony regarding his alleged back and right hip problems was inconsistent, and not credible.

In workers' compensation cases, the Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The final determination of witness credibility is usually reserved for the Appellate Panel. Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E.2d 691 (Ct. App. 2007). Although the Appellate Panel had the power to make its own findings, it was logical for the Commission which did not have the benefit of observing witnesses to give deference to the Single Commissioner's

opinion on the weight of the evidence and the credibility of the witnesses. See McGuffin v. Slumberger-Sangama, 307 S.C. 184, 414 S.E.2d 162 (1962).

The credibility of the witnesses – Osment and Raymond Sarratt (Osment’s supervisor) – was a crucial factor in this case, as it usually is in a case involving an alleged aggravation of a pre-existing condition. In that regard, the Single Commissioner made **specific findings** regarding the credibility of the witnesses, and these findings were fully affirmed by the Appellate Panel. (R. pp. 39-42; R. pp. 14-17). As indicated by the Supreme Court in McGuffin, the Single Commissioner is the best judge of credibility, since he/she is present to observe the witnesses. 307 S.C. at 186, 414 S.E.2d at 163. The North Carolina Court of Appeals in State v. Sessions, gave a clear explanation of why deference should be given to the trial court on the issue of credibility of witnesses:

We can only read the record and, of course, the written word must stand on its own. But the trial judge is present for the full sensual effect of the spoken word, with the nuances of meaning revealed in pitch, mimicry and gestures, appearances and postures, shrillness and stridency, calmness and composure, all of which add to or detract from the force of the spoken words.

119 N.C. App. 1, 6, 458 S.E.2d 200, 203 (1995), *aff’d per curiam*, 342 N.C. 892, 467 S.E.2d 243 (1996).

In the present case, based on a review of all of the evidence in the record, the Single Commissioner and Appellate Panel specifically found that that “[Osment] is not credible” and found “Raymond Sarratt to be very credible.” (R. pp. 14 & 16). These findings regarding the credibility of the witnesses were based on the Single Commissioner’s observations of the witnesses at the hearing, as well as the demeanor and delivery of their testimony. *Id.* In support of the findings regarding Osment’s lack of

credibility, the Commission noted numerous inconsistencies between Osment's testimony and the medical records, Osment's vocational report, and the credible testimony of Mr. Sarratt. Id.

First, Osment's testimony regarding the timing of his alleged back problems and right hip problems was not consistent. At the hearing, when questioned directly by the Commissioner, Osment testified that in addition to his right knee, he began having problems with his back and right hip *on the date of his work accident – May 20, 2010*:

Q: [By the Commissioner] Well, what did you experience on the date of the accident; any other body parts?

A: [Osment] The day that I fell, I twisted my right knee, and I was having some hip and back problems, and in my groin.

Q: Okay: So, hip, back, and groin on the date of the accident or on the next few days, or when did it appear?

A: It happened the day I fell. It happened then.

Q: That day.

A: Yes.

(R. p. 95, line 16-p. 96, line 7). During cross-examination, Osment again testified that he immediately injured his back and right hip during his work accident on May 20, 2010.

(R. p. 136, lines 2-7). However, the plant nurse's medical report simply states: "Employee step off of train on track and foot slipped off. Twisting right knee. Braced himself by grabbing side of train." (R. p. 169). Despite Osment's testimony, **there is no mention of back, right hip, or groin problems in the medical report taken by the plant nurse on the date of his accident.** Id. Notably, Osment signed the plant nurse's medical report certifying that the statement regarding his injury was true. Id.

Osment was also seen at Peachview Medical Park on May 20, 2010 (the date of his accident) and May 21, 2010 (the date after his accident), and there is no mention of

back, right hip, or groin problems in these medical records from Peachview Medical Park. (R. pp. 170-172).

Osment further testified that his back, right hip, and groin problems “eased off some [after the date of injury], but far as going all the way away, they didn’t.” (R. p. 96, lines 8-12). In fact, Osment specifically testified that he told Dr. Grady, the orthopedist who initially treated him, about his back and right hip problems. (R. p. 136, lines 1-14). Yet, while Osment presented to Dr. Grady on *eleven* separate occasions between June 7, 2010 and January 20, 2011, **Dr. Grady’s records are completely devoid of any complaint or mention of any back or right hip problems.** (R. pp. 196-223).

Furthermore, following his January 20, 2011 appointment with Dr. Grady, Osment requested a second opinion, and Timken referred him to Dr. Sanchez. (R. p. 102, lines 16-18). Dr. Sanchez initially evaluated Osment on May 2, 2011. (R. p. 224). Dr. Sanchez diagnosed Osment with right knee arthritis and recommended a total knee arthroplasty. *Id.* On October 3, 2011, Osment returned to Dr. Sanchez for a follow up appointment and indicated that he wanted to proceed with the recommended knee replacement. (R. p. 226). **There is no mention of any back or right hip problems in Dr. Sanchez’s medical reports from May 2, 2011 or October 3, 2011.** (See R. pp. 224-226).

On October 12, 2011, Dr. Sanchez performed a right knee total arthroplasty on Osment. (R. pp. 232-235). Following the surgery, Osment continued to treat with Dr. Sanchez. On August 22, 2012, Dr. Sanchez opined that Osment had reached MMI with respect to his right knee, and he assigned Osment a 50% impairment rating to the right lower extremity. (R. pp. 256-259). While Dr. Sanchez examined Osment on *eight*

separate occasions between the date of his surgery and August 22, 2012, **there is absolutely no mention of any complaints of back or right hip problems in Dr. Sanchez's medical records from these visits.** (See R. pp. 236-259). Notably, Dr. Sanchez testified at his deposition that if Osment would have complained of back or hip pain, he would have documented those complaints in his records:

Q: [Mr. Lewis] If he had complained of having back pain or hip pain, would that have been noted in your records?

A: [Dr. Sanchez] Yes, sir.

(R. p. 326, lines 23-25).

In addition to being contradicted by the medical records from the treating providers, Osment's testimony that he *immediately* injured his back and right hip during his May 20, 2010 work accident is also inconsistent with his own vocational report, which states that Osment "*later* started having the onset of low back pain as well." (R. p. 307).

The first mention of any complaints of low back, right hip, or groin pain in the medical records is Dr. Sanchez's report from January 11, 2013, fifteen months after his knee replacement surgery and approximately five months after he was released at MMI. (See R. p. 262). Seemingly, since there was no medical evidence documenting a right hip or back complaint until nearly three years after the date of the accident, Osment took the position at the hearing that he injured his right hip and back **as a result of an antalgic gait**. Osment, through his counsel, specifically alleged that his back and hip problems resulted from an altered gait. (See R. p. 81, lines 8-15).

However, the post-accident medical records do not support Osment's "altered gait theory." While Dr. Sanchez examined him numerous times following his accident, there

is no mention in his records of Osment having an altered or antalgic gait. (See R. pp. 224-261). Dr. Sanchez also never opined during his treatment that an altered gait was causing Osment's back pain. (R. p. 351, lines 4-7).

Furthermore, Osment's own testimony at the hearing refuted his position that his back and right hip problems were due to an altered gait. Instead, Osment's testimony on multiple occasions proposed a third theory. Refuting an altered gait theory, Osment's testified that his back and hip problems were due to walking on cement floors:

Q: [Mr. Taylor] Okay. Now, when did you start having problems with other body parts, and when did you notice you were having problems, more problems with your knee?

A: [Osment] Up around 2013, probably in January, around there. **My back and hip got to bothering me a whole lot 'cause I was walking more on the cement floors.**

...

Q: When did you experience problems with other parts of your body?

A: **I started experiencing them when I had to do a lot of walking on the cement floors.**

(R. p. 105, lines 17-22; R. p. 109, lines 18-21).

Q: [Mr. Lewis] So did you -- were you limping and that caused your back to give you problems?

A: [Osment] It was from walking. I got the notion that it was from walking on the cement that I was working on.

Q: So it wasn't from limping; it was just walking on the cement?

A: **It was walking on the cement or hard surfaces.**

(R. p. 138, lines 3-9).

Q: [By the Commissioner] And I'm trying to make sure I understand your testimony. It became worse from walking on the cement?

A: [Osment] It did.

Q: **Not from your limp -- or not from your knee but from walking on the cement?**

A: **From walking on it and the pain that would run up that knee into my back and hip and my groin.**

(R. p. 141, lines 9-19).

Additionally, while not dispositive by any means, it is extremely important to note that *Osment walked with an altered gait and had pre-existing back problems which waxed and waned prior to his work accident on May 20, 2010.* On September 15, 2008, Osment presented to Dr. Austin R. McElhaney of Eastside Family Physicians with complaints of “right back pain,” and it was noted Osment had a history of degenerative arthritis in his back, left knee, and cervical spine. (R. p. 490). Notably, during his examination, Dr. McElhaney specifically stated that Osment had a “mildly arthritic gait” and that he had “decreased lumbar flexion.” (R. pp. 491-492). Dr. McElhaney diagnosed Osment with a lumbar back strain and “back pain, right” and prescribed Lortab. (R. pp. 492-493). On December 28, 2009, **less than five months before his work accident,** Osment returned to Dr. McElhaney with a chief complaint of “pain right lower back.” (R. p. 500). Dr. McElhaney noted Osment displayed mild tightness in his right lower paralumbar, as well as stiffness in both his right and left knees. (R. p. 502). Osment was prescribed Meloxicam for his joint stiffness. (R. p. 503). In fact, during cross-examination at the hearing, Osment admitted that he was walking with a limp in the months leading up to his work accident:

Q: [Mr. Lewis] Because you don't deny you went to your doctor on December 28th, 2009, with complaints of low pain down in you -- I mean, back pain in your lower part of your back, weren't you?

A: [Osment] I had some pain down there. I did.

Q: And you were also limping at that time, weren't you?

A: I was.

(R. p. 139, line 20-p. 140, line 1).

Since the evidence clearly supports the Commission's decision (1) that Osment did not immediately injure his back or right hip as a result of his work accident and (2) that Osment's alleged back and hip problems were not the result of his alleged altered gait, Osment's third theory became that his back and right hip were aggravated as a result of walking on cement floors at work following his right knee replacement. However, Osment's testimony regarding the amount of time he had to walk on cement floors was exaggerated and contradicted by the credible testimony of Raymond Sarratt.²

Osment's position with Timken was Lead Maintenance Associate in the Maintenance Department. (R. p. 123, lines 21-24). As Lead Maintenance Associate, Osment spent approximately half of his time performing sedentary work in his office, which is located in the shop. (R. p. 124, lines 6-14). During this portion of the day, Osment scheduled the shifts of the maintenance mechanics, input information into his computer, ordered parts and supplies for the shop, and communicated with other departments. (R. p. 124, lines 6-9; R. p. 153, lines 10-21). The other half of his time was spent in the plant checking and assigning jobs and assisting supervisors in other departments. (R. p. 106, lines 21-25). While Timken's plant is approximately 660,000 square feet, the Maintenance Department had golf carts that were to be used when

² The Single Commissioner found that, based on her observations of the witnesses at the hearing, Mr. Sarratt's testimony was more credible than Osment's testimony. (R. p. 42). These findings were affirmed and adopted by the Appellate Panel. (R. p. 16-17). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel." Brunson v. Am. Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (Ct. App. 2011) (citing Frame v. Resort Servs. Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004)).

Osment, or other employees in the department, needed to go to other areas of the plant. (R. p. 155, lines 10-13; R. p. 161, lines 18-19). The Maintenance Department's golf carts were parked right outside of Osment's office. (R. p. 126, lines 3-6).

Following his knee replacement surgery in October of 2011, Osment was out of work for a couple of months, and he returned to sedentary duty in January of 2012. (R. p. 104, lines 15-23). On January 17, 2012, Dr. Sanchez advanced Osment's duties at work and released him to light duty with no kneeling, crawling, or lifting over 30 pounds. (R. p. 242). Osment subsequently returned to his regular job as Lead Maintenance Associate. (R. p. 104, line 24-p. 105, line 2). Ultimately, on August 22, 2012, Dr. Sanchez placed Osment at MMI and assigned Osment permanent restrictions of no kneeling or crawling. (R. p. 258). Osment was also assigned a permanent restriction of "no walking greater than 100 yards." (R. p. 178; R. p. 128, lines 6-10).

Osment continued to work his regular job, within his restrictions, after being released at MMI. (R. p. 105, lines 9-14). However, Osment testified that in January 2013, he started noticing more problems with his back and right hip, which he related to walking on the cement floors at work. (R. p. 105, lines 17-22). Osment testified that in January 2013, he began having to walk more throughout the plant, on its cement floors, because Timken cut back on the number of golf carts – from three to two – in the Maintenance Department. (R. p. 108, line 13-p. 109, line 2). He specifically testified that he would have to walk to other departments because there were not enough golf carts available. *Id.* Osment testified that the golf carts were regularly unavailable for him because the other employees in the Maintenance Department used them most of the day. (R. p. 126, line 21-p. 127, line 4). He further testified that if a golf cart was unavailable, he

was unable to call Raymond Sarratt, his supervisor, and ask for a golf cart. (R. p. 126, lines 12-20).

While Osment alleges that he had to perform a significant amount of walking on the concrete floors following his knee replacement, this allegation is clearly contradicted by the credible testimony of Raymond Sarratt. Despite Osment's testimony to the contrary, Mr. Sarratt testified that Osment regularly used a golf cart, both before and after his work injury. (R. p. 155, lines 20-24). Mr. Sarratt confirmed that Osment's restrictions following his knee replacement surgery included no walking over 100 yards, and he testified that Timken accommodated and instructed Osment to always abide by his restrictions. (R. p. 156, lines 3-11; R. p. 158, line 21-p. 159, line 1). Additionally, while Osment testified that the golf carts were regularly unavailable for him, Mr. Sarratt testified that there were only one or two times when Osment informed him that he needed a golf cart to do his assignment but there was not one available. (R. p. 161, line 21-p. 162, line 6). Mr. Sarratt testified that on those occasions, he instructed Osment to wait until a golf cart came back to the department before going to do his assignment. (R. p. 156, lines 16-23). Mr. Sarratt credibly explained that Osment was never forced to walk excessively.³ Osment's allegation of the same is merely self-serving testimony which is not supported by the credible evidence presented.

Based on the foregoing, it is clear substantial evidence supports the Commission's finding that Osment's testimony regarding his alleged back and right hip problems was inconsistent, and simply not credible.

³ The Appellate Panel, relying on the Single Commissioner's observations of Sarratt's demeanor and delivery of his testimony at the hearing, specifically found Sarratt's testimony regarding the golf cart and Timken's accommodation of Osment's restrictions to be credible, straightforward, and not embellished. (R. p. 16).

B. The Commission correctly gave little weight to Dr. Sanchez's "causation" opinion.

On March 19, 2014, Dr. Sanchez completed a check-off questionnaire, at the request of Osment's attorney. (R. p. 302). In the questionnaire, Dr. Sanchez was asked "1. To a reasonable degree of medical certainty, which body parts listed below are causally related to James Osment's workplace accident of May 20, 2010." Id. In response, Dr. Sanchez marked back, right hip, and right leg. Id. However, Dr. Sanchez provided absolutely no explanation for his opinion. Id. As a result, counsel for Timken deposed Dr. Sanchez on May 23, 2014, to question him regarding the basis of his causation opinion in the questionnaire. When read in its entirety and when compared with the other evidence in the record, Dr. Sanchez's deposition testimony clearly establishes that his causation opinion is neither probative nor reliable.

First, Dr. Sanchez had no knowledge of Osment's prior back problems when he completed the questionnaire for Osment's attorney. **Even though Osment had treated for back pain just a few months before his work accident, Dr. Sanchez testified that Osment did not mention any prior back problems in his initial patient history forms.** (R. p. 322, lines 13-16). In fact, Dr. Sanchez testified that it was his understanding Osment had never had any kind of back problems before his work accident:

Q: [Mr. Lewis] Based on the patient history that Mr. Osment completed, was it your understanding that he had never had any kind of back problems before?

A: [Dr. Sanchez] Right, he had never said on -- on the initial sheets that we -- we looked at.

(R. p. 340, lines 4-8).

After reviewing records from Dr. McElhaney from 2008 and 2009, Dr. Sanchez testified that Osment did apparently have prior back problems, as well as a prior "arthritic

gait,” which he confirmed was the equivalent of an antalgic gait. (R. p. 344, lines 17-21; R. p. 345, lines 16-23). Dr. Sanchez acknowledged that based on the fact that Osment had a history of back problems and that he had a prior antalgic gait, Osment’s current back complaints could just be a continuation of the pre-injury back complaints documented in Dr. McElhaney’s records. (R. p. 348, line 23-p. 349, line 3). Yet, right after reviewing Dr. McElhaney’s records, *including one record just mere months prior to the date of the accident*, Dr. Sanchez inexplicably testified that he believed Osment’s back was exacerbated in that “I’d almost think that [Osment] didn’t have any back symptoms beforehand, and he had it afterward.” (R. p. 349, lines 11-15). As the Commission noted in its findings, “this makes his testimony appear outcome determinative for his patient.” (R. p. 14).

Additionally, while Dr. Sanchez opined that Osment’s back was aggravated by his altered gait when questioned by Osment’s attorney, Dr. Sanchez never noted an altered gait in his treatment records, and he never opined during his treatment that an altered gait was causing Osment’s back pain. (R. p. 351, lines 4-7; R. p. 357, lines 6-9; R. pp. 224-261). Further, Dr. Sanchez acknowledged Osment’s pre-injury records reveal an arthritic gait prior to the work injury and that given the history in the prior records, Osment could still be having some of his current back problems had he never his work injury. (R. p. 348, line 23-p. 349, line 3; R. p. 352, lines 17-22).

With regards to Osment’s *right hip*, Dr. Sanchez testified that Osment has arthritis in his hip that has been progressing with wear and tear. (R. p. 354, lines 2-9). He testified that his condition may just be natural age related arthritic progression. *Id.* Ultimately, he could **not** state to a reasonable degree of medical certainty that his hip

problems were related to his work injury. (R. p. 354, lines 17-20; R. p. 368, line 19-p. 369, line 2).

Finally, and very importantly, Dr. Sanchez's deposition testimony does not reconcile, or even address, the March 2014 records from Osment's primary care physician. On March 19, 2014, Osment presented to Carolina Medical Affiliates with complaints of "chest pain after lifting wood onto an ATV bed." (R. p. 505). At the hearing, Osment testified that "lifting wood" was actually a small piece of a 2x4 that he bent over to pick up. (R. p. 144, lines 5-11). The Single Commissioner, as well as the Appellate Panel, specifically found that this testimony was not believable or credible, based upon his demeanor and delivery of this testimony. (*See* R. p. 12). One would not describe the lifting of a *small* piece of 2x4 as "lifting wood." It was also noted in the March 19, 2014 report from Carolina Medical Affiliates that Osment complained of groin pain; however, he did not relate his groin pain to his work accident. (R. p. 505). Instead, the physician noted Osment "reports that he thinks he may have a hernia in his groin" because "his last PCP thought he may be developing a hernia there." *Id.* Most importantly, in her assessment, Osment's family physician noted that he had 34 current problems; however, Osment's alleged back and right hip problems were not contained in her assessment. (R. p. 507). Osment returned to his family doctor for a follow up appointment on March 26, 2014. (R. pp. 509-512). During this visit, there are 35 conditions listed under his "Status of Existing Problems." (R. p. 511). Yet, once again, there is no mention of any back or right hip problems. *Id.*

In his Brief, Osment asserts that "[t]he only possible inference to be drawn from absence of mention of back/hip problems in these records is that no one is going to be

thinking about mentioning ongoing back and hip problems that are already being treated by an orthopedic specialist when one goes to his family doctor complaining of chest pain.” (Brief of Appellant, p. 24). But, this argument is refuted by the fact that his work-related right knee pain *is* specifically recorded, along with a number of other conditions, including cervical disc disease with radiculopathy, groin pain, CTS, rotator cuff syndrome, urinary frequency, hypertension, high cholesterol, and GERD. (See R. p. 511)

Osment also argues that there was “no contrary evidence to Dr. Sanchez’s opinion” and asserts that there is “literally nothing” on the other side of the scale in weighing opinions. (Brief of Appellant, p. 8). However, what Osment does not account for is the reliability and credibility of Dr. Sanchez’s opinion. The credibility and weight of a doctor’s testimony is for the trier of facts. Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (1967). Where there is a conflict in the evidence, either of different witnesses or of the same witness, the findings of fact of the Commission, as triers of fact, are conclusive. Walsh v. U.S. Rubber Co., 238 S.C. 441, 120 S.E.2d 685 (1961); Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999). In the present case, the Commission considered Dr. Sanchez’s questionnaire and deposition testimony as to causation of the alleged body parts and specifically found that “Dr. Sanchez ‘flip flops’ in a rather significant way [during his deposition].” (R. p. 14). Due to the “multiple inconsistencies” in his testimony, as discussed above, Dr. Sanchez’s causation opinion was not probative and the Commission appropriately gave it little weight. Id.

Based on the foregoing, substantial evidence clearly supports the Commission’s decision to give Dr. Sanchez’s causation opinion little weight. Accordingly, Timken

respectfully requests this Court affirm the Commission's decision that Osment did not sustain a compensable injury to his back or right hip.

II.

THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S DECISION THAT OSMENT SUSTAINED 60% PERMANENT PARTIAL DISABILITY TO HIS RIGHT KNEE AS A RESULT OF HIS MAY 20, 2010 WORK ACCIDENT.

As outlined above, the right knee was the only body part Osment injured as a result of his May 20, 2010 work accident. On August 22, 2012, Dr. Sanchez opined that Osment reached MMI and assigned a 50% impairment rating to his right knee as a result of his work accident. (R. p. 258). Even though Dr. Sanchez also assigned Osment permanent restrictions, Timken accommodated his restrictions, and he was able to continue working his regular job for over a year after being released at MMI. Dr. Sanchez ultimately wrote Osment out of work on September 9, 2013; however, Dr. Sanchez's basis for taking him out of work was Osment's subjective report that his *unrelated* symptoms were worsening. (R. p. 336, line 11-p. 337, line 24). In fact, Dr. Sanchez specifically testified that when considering solely the limitations related to his right knee, Osment could have at least continued performing sedentary duty. (R. p. 337, lines 23-24). Notably, Timken would have been able to accommodate sedentary restrictions. (R. p. 37, lines 8-13). When considering the evidence in the record as a whole, including the fact that Osment's testimony was not credible, substantial evidence justifies the Commission's finding that Osment sustained 60% PPD to his right knee.

III.

ASSUMING ARGUENDO THAT THE COURT REVERSES THE COMMISSION'S DECISION AND FINDS OSMENT SUSTAINED A COMPENSABLE INJURY TO EITHER HIS BACK OR RIGHT HIP, OSMENT'S ASSERTION THAT HE IS ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS IS NOT PROPER.

Osment argues in his Brief that he must be found permanently and totally disabled pursuant to Section 42-9-10 (assuming the back and/or right hip are found compensable). Yet, this is inconsistent with the position he took at the hearing. Prior to receiving testimony, the Single Commissioner put the parties' positions on the record and stated:

The Claimant's position is that if either the back or both, with regard to the right hip and the back, if either one of those is found compensable or both are found compensable, then the Claimant has not reached maximum medical improvement because Dr. Sanchez recommends a hip injection with fluoroscopy and also an MRI of the back to determine what, if any, other treatment is necessary.

(R. p. 82, lines 5-12). After stating the parties' positions, Osment's attorney confirmed that if the back and/or right hip were found compensable, then it was his position Osment was not at MMI. (R. p. 86, lines 7-14). In addition, when defense counsel attempted to question Osment regarding his planned retirement, Osment's counsel objected to the line of questioning as being irrelevant, in part, because the issue of permanent and total disability was not an issue at the time "given the limited facts that we're on." (R. p. 134, line 13-p. 135, line 3). The Single Commissioner responded by stating: "I don't see the need [for questioning about the retirement issue] because it's either a knee injury or he's not at M.M.I." (R. p. 135, lines 14-15). Thus, Osment cannot now seek a finding of permanent and total disability, when such was not put before the Single Commissioner.

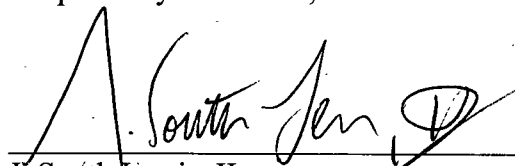
Otherwise, Timken would have been able to delve into the issues regarding retirement and such other issues that would impact a disability determination.

As outlined above, the Commission correctly denied Osment's alleged injury to his back and right hip. However, if this Court reverses the Commission's decision and finds that Osment sustained a compensable injury to either his back or right hip, then a decision regarding permanency is premature since Osment will no longer be at MMI, as he stipulated at the hearing on September 26, 2014.

CONCLUSION

The findings of fact made by the South Carolina Workers' Compensation Commission should be affirmed in full because they are supported by substantial evidence. Based on the foregoing, substantial evidence supports the Commission's decision that Osment failed to prove by a preponderance of the credible, probative, and reliable evidence that he sustained a compensable injury to his back or right hip. Substantial evidence also supports the Commission's decision regarding Osment's permanent partial disability to his right leg. Accordingly, Respondents respectfully request this Court affirm the Commission's Decision and Order in its entirety.

Respectfully submitted,



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November 12, 2015

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 1008356

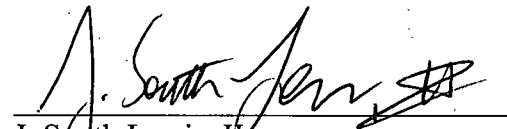
James Osment, Appellant,

v.

The Timken Company,
and Phoenix Insurance Company, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief of Respondents complies with Rule 211(b), SCACR.



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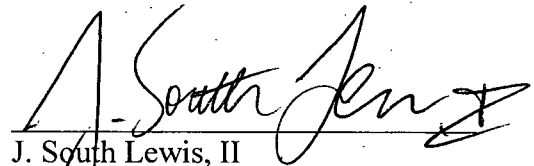
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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents and Certificate of Counsel on James Osment by depositing a copy of each in the United State Mail, postage prepaid, on November 12, 2015, addressed to his attorneys of record, John D. Hawkins, Esquire; George Randall Taylor, Esquire; and Charles Logan Rollins, Esquire, Hawkins Law Firm, P.O. Box 5048, Spartanburg, South Carolina 29304.

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