

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001815

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SC Court of Appeals

Clarence Winfrey, Employee, ... Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

RECORD ON APPEAL
Volume II of III

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Counsel for Respondents

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in turn reported the accident to its insurance carrier for workers' compensation purposes, American Fire and Casualty Company (pursuant to S.C. §42-5-210 the insurance carrier is subrogated to all the rights and duties of the employer and may enforce any such rights in its own name), the Defendant in this action, agreed to authorize and started paying benefits including temporary weekly compensation benefits, medical benefits and other benefits as provided under the South Carolina Workers' Compensation Act. (S.C. Code §42-17-10 provides that an agreement to pay compensation has the same effect as on order/award of the Commission.)

3. That after providing benefits to the Plaintiff including Temporary Total Disability compensation, medical care and other benefits under the Act from June 1, 2013 through September, veribly on Friday, September 13, 2013 and by letter received Monday, September 16, 2013, the carrier abruptly and without notice and without a hearing, filed a Form 15 with the South Carolina Workers' Compensation Commission terminating benefits on the basis checked on the form that, "based on a good faith investigation the claim is denied" and stopped all benefits. This action allegedly taken under the provisions of the statute has given rise for this action.

PARTIES

4. That the Plaintiff is a resident of Lexington County, South Carolina.

5. That the Defendant American Fire and Casualty Company is a corporation chartered under the laws of one of the States in the United States and is licensed to do and does insurance business in South Carolina specifically writing workers' compensation policies for employers to cover their employees in the State of South Carolina. As set forth above, the American Fire and Casualty Company is the insurance carrier for the Employer and pursuant to the Act is subrogated to the rights and benefits of the Employer in this Workers' Compensation Act. Their Attorney of Record in the underlying matter giving rise to this action is:

Landon Hughey, Esquire
McAngus, Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29201

- Copy of the Notification of Representation is attached hereto and incorporated herein by reference as Exhibit "A".

JURISDICTION AND VENUE

6. That as set forth in the Introduction, this matter was brought due to a work-related injury which occurred in Richland County where pursuant to the Workers' Compensation Act and

specifically, S.C. Code §42-17-20, jurisdiction and venue are proper.

DECLARATORY JUDGMENT ACTION
RELIEF SOUGHT

7. That this action is brought under the provisions of the South Carolina Uniform Declaratory Judgment Act, §15-53-10 et seq., South Carolina Code of Laws (1976 as amended) on the basis that a real and actual controversy exists between the parties due to the Defendants stopping benefits under the provisions of S.C. Code §42-9-260 and under S.C. Code §15-53-30 wherein any person whose rights, are affected by a statute may have determined any question of construction or validity (constitutionality) arising under the statute and obtain a declaration of rights thereunder.

8. That the Plaintiff would submit that the provisions of S.C. Code §42-9-260 and specifically subsection (B) (1-6):

(A) violate the Plaintiff's right to due process of law by allowing for a deprivation of his property interest without notice and without a hearing and opportunity to be heard;

(B) that the provisions of §42-9-260 are in direct conflict with the provisions of the Administrative Procedures Act concerning notice and hearing in a contested case; and

(C) denies the Plaintiff equal protection of the laws by creating an irrational classification, i.e., " a legislative

classification which excludes ..., (or treats differently)..., a certain class of persons" ..., which is not, "rationally related to the objective of the statute." The Plaintiff would argue as follows:

A

S.C. CODE §42-9-260 VIOLATES THE FUNDAMENTAL DUE PROCESS RIGHTS OF THE PLAINTIFF UNDER THE UNITED STATES AND SOUTH CAROLINA CONSTITUTIONS.

"In order to be entitled to the procedural safeguards encompassed by the due process clause of the Fourteenth Amendment (notice and an opportunity to be heard) the complaining party must suffer from deprivation of a liberty or property interest."

Board of Regents v. Roth, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.E.2d 548 (1971) (Emphasis added). "Only when such a property interest exists does a constitutional right to a hearing attach." Roth, 408 U.S. at 577, 92 S.Ct. at 2709.

Our Supreme Court has ruled, "workers' compensation benefits constitute a property interest." Last v. MSI Const. Co., Inc., 305 S.C. 349, 409 S.E.2d 334, 336 (1991); Orszula v. Orszula, 292 S.C. 264, 356 S.E. 2d 114 (1987). Therefore, any attempt to deny a Claimant of his "property interest" without a hearing violates the due process clauses of both the United States and South Carolina Constitutions.

In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the United States Supreme Court held that

procedural due process requires that a pre-termination hearing be held when public assistance payments to welfare recipients are discontinued. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). The Court held that even in that situation, the entitlement to welfare benefits constituted a sufficient property interest that due process requirements attached. The Court in Goldberg struck down a New York statute which allowed the termination of benefits prior to a hearing. The Court reasoned that,

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss' . . . and depends upon whether recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication.

* * *

Thus the crucial factor in this context . . . is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress. . . ."

* * *

"[f]rom its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders." Goldberg, 397 U.S. at 262-263, 264, 265-66, 90 S.Ct. at 1019.

Our Courts have similarly stated that compensation laws,

Constitute a form of social legislation and were enacted primarily for the benefit, protection and **welfare** of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for 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 becoming charges on society. Their right to sue to obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficial purposes for which they were enacted. Cokeley v. Robert Lee, Inc., 197 (1941) (Emphasis added).

In Goldberg, the Court stated that public assistance "is not mere charity, but a means to promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity." Goldberg, 397 U.S. at 266, 90 S.Ct. at 1019 (Emphasis added). The Court continued and stated that "pre-termination evidentiary Hearings are indispensable to that end." Id. Our Supreme Court in the case of Hamm v. Mullin's Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940) "quoting from the United States Supreme Court decision in Powell v. Alabama, 287 U.S. 45 at p. 68, 53 S.Ct. 55 at p. 64, 77 Law Ed. 158 at p. 170, 84 ALR 527 stated:

"It never has been doubted by this Court or any other so as far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment and that they together with a legally competent tribunal having jurisdiction of the case, constitute

basic elements of the constitutional requirement of due process of law. The words of Webster so often quoted, that by 'the law of the land' is intended 'a law which hears before it condemns' have been repeated by varying forms of expressions in a multitude of decisions."

In Brown v. S.C. State Bd., of Educ., 301 S.C. 326, 391 S.E.2d 866 (1990), our Court echoed those sentiments and held that "[w]here important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 391 S.E.2d 866, 867 (1990). Therefore, under South Carolina Law, a Claimant, as a matter of fundamental due process, is entitled to a hearing before the termination of his/her disability benefits.

B

THAT S.C. CODE §42-9-260 IS IN DIRECT CONFLICT WITH S.C. CODE §1-23-310(2), AND AS SUCH IS VOID.

Not only does §42-9-260 violate a Claimant's due process rights, it is in direct conflict with S.C. Code §1-23-310(2), which spells out the administrative procedure for all "contested cases". S.C. Code §1-23-310(2) states that a,

"contested case" means a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity to be heard. S.C. Code §1-23-310(2) (as amended 1993) (Emphasis added).

Prior to June 18, 1996, a Claimant's temporary benefits could not be terminated until "after an opportunity to be heard". Id. Since then for the first 150 days, a Claimant is forced to seek a hearing long after their benefits have been stopped. Section 1-23-310, of the Administrative Procedures Act which governs the Workers' Compensation Commission, is in direct conflict with §42-9-260. After reading both statutes and reviewing existing case law, there is no way to reconcile §42-9-260's denial of the Plaintiff's property right to temporary compensation without a pre-termination hearing and §1-23-310's requirement of a hearing.

"Where provisions of the APA and the Workers' Compensation Act conflict, the APA controls." Pringle v. Builders Transport, 298 S.C. 494, 381 S.E.2d 731, 732 (1989) (Emphasis added). Section 1-23-310(2) is not alone though; our Supreme Court has held that due process requires a hearing prior to the termination of benefits. "Due process law is that law that hears before it condemns which proceeds upon inquiry and renders judgment only after a full and complete opportunity to be heard." S.C. and G.R. Co. v. American Tel and Tel Co., 65 S.C. 459, 43 S.E. 970 (1903) (Emphasis added). When those fundamental rights are not provided, fundamental due process is not afforded. Stono River Environmental Protection Assn. v.

S.C. Dept. of Health and Environmental Control, 305 S.C. 90, 406
S.E.2d 340 (1991).

C

THAT S.C. CODE §42-9-260 VIOLATES THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS BY DENYING A CLAIMANT EQUAL PROTECTION UNDER THE LAW.

"The Constitutional guarantee of equal protection under the law requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604, 605 (1978). While the General Assembly has "the right to make reasonable classifications of persons and property for public purposes", those classifications must apply "equally to all members of the class" and must not be "arbitrary but [instead] rest upon some reasonable basis." Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362, 368 (1970) (Emphasis added); Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979).

Section 42-9-260 fails to meet this standard. The statute creates two classes, one class made up of Claimants who have not yet been receiving temporary benefits one hundred and fifty (150) days and those that have been receiving benefits in excess of amount of time whose benefits cannot be stopped until after a hearing and who are entitled to benefits until after a hearing is held and benefits are stopped by Order of the Commission.

This classification serves absolutely no interest, has no rational basis and is purely arbitrary.

The requirement of equal protection is not fulfilled unless the classification rests upon some difference which bears a reasonable and just relation to the legislative purpose sought to be affected. Marley, 245 S.E.2d at 606.

In this case the indiscriminate choice of one hundred and fifty (150) days bears no reasonable and just relation to the legislative purpose of the Workers' Compensation Act, which, as stated earlier is for the "benefit, protection and welfare of working men and their dependents." Cokeley, 14 S.E.2d at 893-94. (Emphasis added).

The South Carolina Supreme Court struck down a similar statute in Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979), which did not allow a passenger in an automobile accident to be compensated for their injuries unless they could show "reckless disregard." In striking down the guest statute, the Court stated that the justifications for passing the statute did not constitute "a rational basis for the differential treatment it spawned." Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883, 885 (1979). The Court could find no justification for allowing the driver of a car to recover for their injuries, yet hold the passenger to a higher standard in order to recover.

The same logic as applied in Ramey dictates that §42-9-260 be struck down. There is no justification as to why one

claimant is entitled to have a hearing before his benefits can be ended yet another is not entitled to a hearing solely on the basis of whether they have received benefits for one hundred and fifty (150) days. This classification bears no rational basis to the fundamental intent of the Workers' Compensation Act, which is to protect injured workers and to provide disability compensation until their disability to work has ended. Section 42-9-260 and the one hundred and fifty (150) day classification is arbitrary, and serves as absolutely no rational basis for stopping a claimant's benefits without a hearing.

Therefore, S.C. Code §42-9-260 (as amended 1996) does not provide equal protection under the law to Claimants due to its arbitrary, irrational and discriminatory effect.

9. That as to both the payment of temporary compensation benefits prior to the passage of one hundred fifty (150) days and to the payment of temporary compensation benefits after the one hundred fifty (150) days, S.C. Code §42-17-10 and 20 provide that where an agreement is reached to pay compensation by the parties as in this case which is filed with the Commission to pay compensation benefits that agreement is enforceable the same as any other Order of the Commission and that if subsequent to such agreement there is a disagreement as to the continuation of such benefits, either party may request a hearing. Prior case law has repeatedly held that a hearing is required before such

termination of benefits under that statute Halks v. Rust Engineering Co. 208 SC 39, 36 S.C. 2d 852 (1939); Gold v. Moragne 202 SC 281, 24 SE 2d 491 (1943). The only thing that §42-9-260 (A) adds is that during the first one hundred fifty (150) days of the payment of such compensation benefits, the Defendants do not waive any grounds for good faith denial. Subsection (B) then in violation of due process and in violation of Administrative Procedure Act and in violation of the other provisions of the Act seeks to allow the Defendants to stop payment of benefits before a hearing is held, thus depriving the Plaintiff of his entitlement to benefits under the Act without due process.

WHEREFORE, the Plaintiff would respectfully pray that the Court:

1. After review of the verified Complaint and the Affidavit attached hereto, issue a Temporary Restraining Order Without Notice as provided in SCRCF, Rule 65(b) ordering that the Defendants reinstate benefits until a hearing can be held on the Motion to Issue a Temporary Restraining Order after notice and after hearing on that Motion issue a Temporary Restraining Order to remain in place until such time as a hearing may be held on the Summons and Complaint as to the unconstitutionality of the statute. The Temporary Restraining Order Without Notice and a Temporary Restraining Order are necessary to prevent

irreparable harm to the Claimant who is out of work, disabled and has no visible means of support or income and wherein the failure to provide medical care could result in irreparable harm up to and including the death of the Claimant due to his severe medical condition both of which are set forth in the Affidavit in support of this Complaint as attached hereto.

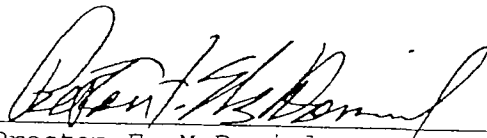
2. Review the provisions of S.C. Code §42-9-260 and specifically those contained in subsection (B) and declare the provisions of subsection (B) unconstitutional and/or in violation of the statutory notice and hearing provisions of the Administrative Procedures Act and the other provisions of the Workers Compensation Act and the Commission Regulations both on the basis of due process and equal protection of the laws as required by both the United States Constitution and our own State Constitution.

3. After making a determination that the statute is unconstitutional and/or in violation of other statutory provisions, issue an Order reinstating benefits and ordering that such benefits may be stopped without a due process hearing giving the Claimant notice as required by law and an opportunity to be heard. Ordering that at such hearing the Defendants have the burden of proof to establish one of the six exceptions as created by §42-9-260 unless the Court determines that such statute is in its entirety unconstitutional and cannot be

separated out to allow for any process to exist under the statute as written.

4. For such other and further relief as the Court may deem just and proper in this situation.

Respectfully submitted,



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

Attorney for Plaintiff

September 27, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

C/A No. 2013-CP-40-05888

RICHLAND COUNTY
FILED
2013 OCT -1 AM 11:59
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TEMPORARY RESTRAINING
ORDER ISSUED WITHOUT NOTICE
PURSUANT TO SCRCP RULE 65(b)

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

As Carrier,

Defendants.

This Court has reviewed the Affidavit and the verified
Complaint and finds that the Plaintiff ^{appears to be} totally disabled from
gainful employment at this time due to his injuries and condition

SCANNED

and has no source of income other than his weekly compensation payments. I further find that failure to continue to provide medical care could result in severe immediate and irreparable damage to the physical condition of the Plaintiff due to his severe medical condition up to and including the death of the Plaintiff.

After due and proper consideration of the verified Complaint and the Affidavit attached thereto and incorporated therein by reference, and a after preliminary determination that the stopping of compensation benefits and medical benefits to the Plaintiff places the Plaintiff in danger of immediate and irreparable injury, loss or damage before a hearing can be properly held on a Motion for a Temporary Restraining Order,

IT IS HEREBY ORDERED that the request for a Temporary Restraining Order Without Notice be and hereby is GRANTED and that the Defendant American Fire and Casualty Co. by and through its Attorneys and Managing Agent, Ms. Terri Hughes, are hereby ordered to reinstitute and bring current temporary compensation benefits and to provide medical care until such time as a hearing may be held on the Motion requesting a Temporary Restraining Order pursuant to the Motion filed with the Court.

Pursuant to the provisions of Rule 65(b) this Order shall expire ten (10) days from the date and time of issuance. This Order is issued on Tuesday, October 1, 2013 (date) at (hour)

11:45, 9: m. o'clock. Upon notice for good cause shown, which shall be include the fact that a hearing cannot be held on the Motion for a Temporary Restraining Order, this Court will entertain an extension for a like period of time unless the Defendant American Fire and Casualty Co., the Defendant in this action, agrees to that this Temporary Restraining Order remains in place until such time as a hearing can be held on the Motion for a Restraining Order, *on October 8, 2013 at 9:00 am at the Richland County Courthouse and until further order of this Court.*
AND IT IS SO ORDERED.

Phil Snee Lee

PRESIDING JUDGE
Fifth Judicial Circuit

October 1, 2013



ATTORNEYS AT LAW

Reply To
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

November 5, 2013

VIA HAND DELIVERY

Commissioner T. Scott Beck
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Commissioner Beck:

Please find enclosed our **Amended** Pre-Hearing Brief and **Supplemental** Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to Preston F. McDaniel, Esquire, Claimant's attorney, we are notifying him of these submissions and serving copies of the same upon him by mail.

Very truly yours,

Landon Hughey

LLH/sso

Enclosures

cc: Preston F. McDaniel, Esquire, The McDaniel Law Firm
Susan Kizer, Archway Services Inc (via email)
Terri Hughes, Liberty Mutual Insurance (via email)

7. Witnesses (designate if expert):* Designated Employer representative.
8. Exhibits: Statement of Bobby Ruppe dated 09/23/13; Emails between Bobby Ruppe and Clarence Winfrey dated 05/27/13; Drivers Daily Logs dated 05/22/13-05/23/13; Letter from Preston McDaniel to Defense Counsel dated 10/16/13; Motion to Quash the Deposition of the Adjuster dated 09/27/13; Motion to Compel and for Costs, P.26710/21/13; Motion for Continuance dated 10/21/13; Summons and Complaint filed by Preston McDaniel dated 09/27/13; Temporary Restraining Order dated 10/01/13.

9. Medical evidence (:indicate report pursuant to R.67-612; deposition or appearance):

Doctors Care, record dated 05/28/13, consisting of 1 page; South Carolina Heart Center, records dated 05/28/13, consisting of 3 pages; Jeffrey Allen Travis, M.D., records dated 05/28/13, consisting of 3 pages; Barry J. Feldman, MD, FACC, FACP, FSCAI, Lexington Heart, record dated 11/04/13, consisting of 1 page. Defendants reserve the right to amend this Pre-Hearing Brief with additional medical evidence if it becomes available prior to the Hearing.

10. Name, address, and specialty, if any, of the treating physician: Jeffrey A. Travis, M.D., Lexington Cardiovascular Surgery; Lanneau D. Lide, M.D.

11. Impairment rating(s); body part(s); physician and date of opinion: No impairment ratings have been given at this point.

12. I am amending my Form 50/51 in the following manner: None.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-4803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

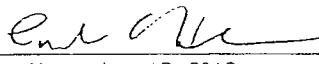
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Preston F. McDaniel, Esquire, The McDaniel Law Firm

1315 Elmwood Avenue

address Columbia, South Carolina 29201

on the 5th day of November 20 13.

by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: 

Email: rhughey@mgclaw.com

Date of Hearing: November 13, 2013

Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-601 through 67-615; as well as Reg. 67-1801. 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 # 53

PRE-HEARING BRIEF

Revised 7/13

AMENDED

58

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

**SUPPLEMENTAL
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, 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	PAGE #
4.	Barry J. Feldman, MD, FACC, FACP, FSCAI	Lexington Heart	11/04/13	13

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: Designated Employer representative.



LANDON HUGHEY
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
November 5, 2013



120 West Hospital Drive • West Columbia, SC 29169

T 803.739.6500 • F 803.739.6300

www.lexheart.com

J. Kevin Baugh, MD, FACC
Barry J. Feldman, MD, FACC, FACP
Jennifer A. Feldman, MD, FRACP
J. Kyle Hewett, MD, FSCAI

Guillermo Pineda, MD, FACC
Vince M. Vismara, MD, FSCAI
Grace Kludo, RN, MSN, ACNP
Phyllis Williamson, MSN, ACNP, CLS

Eric E. Shoup, MS, PAC, CLS
Sandi VanHoosier, PA-C

04 November 13

To Whom It May Concern:

Re: Clarence Winfrey v. Archway Services (Claim No: 22209963)

Dear Sirs:

I am writing to summarize my professional impression after review of the hospital records from Mr. Clarence Winfrey. Mr. Winfrey appears to have presented with a delayed myocardial infarction approximately five days from his initiation of chest pain. He underwent a semi-emergent heart catheterization which demonstrated an occluded right posterior descending artery. This appeared to be a relatively fresh occlusion according to his angiographic report. He was also found to have a VSD in the inferior lateral portion of his ventricular septum which was consistent with this acute occlusion.

His heart appeared to have a focal area of necrosis in the anatomical distribution of this occluded artery consistent with an acute inferior infarct. Overall his ejection fraction was preserved in the 50% range at this time.

In my opinion with reasonable certainty the highest likelihood was that his VSD was acquired from his acute myocardial infarction. His diagnostic arteriogram demonstrated extensive coronary artery disease with the only vessel that could be grafted being a moderate sized ramus intermedius branch.

It is coincidental that he happened to have a myocardial infarction that appears to have occurred the same evening of the day he had an electrocution event. It is possible that this was a spontaneous plaque rupture which had no relation to the electrical shock. This is of the highest certainty since there is no clear cut correlation between plaque ruptures and electrical shocks.

The description of pericardial inflammation is most likely consistent with a possible post MI Dressler's syndrome. It was also noted to have thickened plaque which was calcified in the pericardium which most likely is chronic. The odds of having electrical shock to account for the VSD are quite low given the anatomical relationship of his VSD to his occluded PDA vessel.

If I can shed any further light or offer any additional opinion regarding this case please feel free to contact me personally at any time.

Sincerely yours,

Barry J. Feldman, MD, FACC, FACP, FSCAI

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY, .	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
ARCHWAY SERVICES INC,	}	
	}	
Employer,	}	CERTIFICATE
	}	OF
AND	}	SERVICE
	}	
AMERICAN FIRE & CASUALTY	}	
INSURANCE COMPANY C/O LIBERTY	}	
MUTUAL INSURANCE,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	

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:

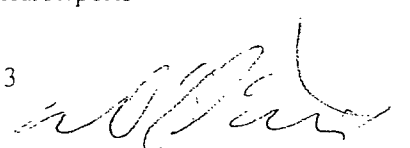
TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY

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

DOCUMENT: Amended Pre-Hearing Brief and Supplemental Notice of Witnesses
and Written Medical Reports

DATE OF MAILING: November 5, 2013


Sharon S. O'Quinn
Secretary to Landon Hughey

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1306305
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Clarence B. Winfrey, Jr. SSN: _____ Employer's Name: Archway Services, Inc.
Address: _____ Address: 2316 Kings Road
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: () - Work Phone: () - Insurance Carrier: American Fire & Casualty Co.
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 or Illness: 5/22/2013

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.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the _____ day of _____ 20____, by ☒ first class postage ☐ certified mail ☐ personal service.

Preston F. McDaniel (14)
Preparer's Signature

ATTORNEY FOR CLAIMANT
Title

preston@pfmcdlaw.com
Email

12-18-13
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Clarence B. Winfrey, Jr. v. Archway Services, Inc.

WCC File No. 1306305

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. That the Hearing Commissioner erred as a matter of law by shifting the burden of proof at a Form 15 hearing to require the Claimant to prove that the Defendants did not conduct a Good Faith Investigation.

3. That the Hearing Commissioner erred as a matter of law concerning the burden of proof based on SC Code §42-9-260 and Commission Reg. 67-504(C) and 67-612(B)(4), all of which provides that the employer and the insurance carrier are the moving parties in a Form 15 stop payment situation and are the moving parties and have the burden of proof to prove that they have complied with the Act and in applying the law established by the Court of Appeals in the case of Martin v. Rapid City Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App. 2006) which held that the employer and its insurance carrier have the burden of proof to prove that they have met one of the conditions under the Act wherein the Court specifically held:

"However, the statute is explicit that even under a Form 15, an employer can only terminate or suspend temporary compensation if one of the specified conditions is met." (Emphasis added).

4. That the Hearing Commissioner erred as a matter of law where the Record is uncontroverted that the Defendants failed to comply with the requirements of SC Code §42-9-260 which provides that, "upon making the first payment, the employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." This is a mandatory provision and the Commissioner

erred by failing to find that the Defendants could not take the benefit of the remainder of the Statute for having failed to comply with the Statute, which would thereafter allow them to take advantage of the stop payments provisions of that Statute.

5. That the Hearing Commissioner not only erred by shifting the burden of proof to the Claimant, but by holding where the Record is uncontroverted that the Claimant's first notice that the Defendants were alleging they were entitled to stop benefits based on a good faith investigation on September 13, 2013, and refusing to allow any evidence on behalf of the Claimant subsequent to that date into the Record therein placing the Claimant in a paradoxical situation of being required to prove that the Defendants did not conduct a Good Faith Investigation, being denied the right to take the deposition of the adjuster after that notice, being denied the file by the Defendants of the adjuster, and being denied the right to submit any evidence after that date that would establish that he had sustained a compensable injury by accident, thus contradicting no evidence to the contrary.

6. That the Hearing Commissioner erred as a matter of law by admitting into evidence and considering both the Defendants' Pre-Hearing Brief and their APA Submissions which were not only not submitted 15 days or more prior to the hearing in accordance with the Commission Regulations, but were not even timely served as a non-moving party and were only served 9 and 8 days respectively prior to the date of the hearing, which is uncontroverted in the Record. The Commission abused his discretion in admitting these documents into the Record and then relying on those documents to rule against the Claimant.

7. That the Hearing Commissioner erred as a matter of law by first finding that there was a stipulation and then setting forth the position of the Claimant that it was the position of the Claimant that the only issue before the Commission was whether the Defendants had properly terminated workers' compensation benefits, wherein to the contrary it was the position of the Claimant that the Defendants had the burden of proof to prove that they had stopped disability benefits without a hearing under the alleged exception to the Act, which allows them to do so, as claimed in this case, that they had conducted a Good Faith Investigation.

8. That the Hearing Commissioner erred as a matter of law by finding that the Defendants had properly stopped payment of benefits where the Defendants had failed to comply with the

requirements of the Rule 67-504(A) by failing to comply with the provisions of that subsection which specifically require that, "shall" serve two copies of the Form 15 immediately on the Claimant according to Rule 67-211 with documentation attached as to the reason for termination or suspension. The Hearing Commissioner erred by failing to apply the law as dictated to the Commission by our Appellate Courts wherein the SC Court of Appeals has specifically held in the case of Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App. 2006) that an employer and its insurance carrier may not stop temporary total disability benefits and shall be required to resume such benefits where it

"Failed to follow the proper procedure for doing so as outline in §42-9-260 and Reg. 67-504. Rapid Plumbing terminated the compensation on August 10, 2002 . . . and failed to attach the supporting documentation as required by §42-9-260. These deficiencies are not mere technicalities but are substantial deviations from the statutory procedure." (Emphasis added).

9. That the Hearing Commissioner erred as a matter of law by not assessing the mandatory 25% penalty and ordering reinstatement where the Defendants had failed to comply with the statute at least admittedly in one regard, that being that they failed to file the mandatory form with the Commission at the time that benefits were started. In Rapid City the Court of Appeals held that the provisions of §42-9-260(G) which provides that the failure to comply with that section (doesn't specify in which regard but generally specifies in any regard) is mandatory as far as the imposition of the 25% penalty and the reinstatement of benefits. The Court of Appeals specifically stated, "the language of §42-9-260(G) is mandatory."

10. That the Hearing Commissioner erred as a matter of law by considering evidence irrelevant and immaterial to the singular issue before the Commission by considering the Motion to Quash the deposition of the adjuster, the Motion to Compel Deposition for cause, the Motion for Continuance, the Summons and Complaint, and a Temporary Restraining Order, all of which were immaterial and irrelevant to the issue before the Hearing Commissioner on a Form 15(III) hearing under SC Code §42-9-260.

11 That the Hearing Commissioner erred as a matter of law by finding in Finding of Fact No. 2 that the Claimant suffered a myocardial infarction, "on May 28, 2013" where there is

absolutely no evidence in the Record to support that finding in that there is no medical doctor opining that the myocardial infarction happened on May 28, 2013. This is surmise, speculation and innuendo on behalf of the Commissioner.

12. That the Hearing Commissioner erred as a matter of law in making Finding of Fact No. 6 and specifically by finding as a fact in violation of the statute that, "a determination was based on the denial of the claim following an investigation." There is no documentation attached to the Form 15 in violation of the Statute to establish that an investigation was conducted and the statute specifically provides that not only must an investigation be conducted, but a, "good faith" investigation must be conducted.

13. That while the Commissioner probably erred as a matter of law in making Findings of Fact Nos. 4-9 in that they refer to statements contained in various forms on file with the Commission as being in evidence and is not based on either testimony, stipulations or documentary evidence submitted pursuant to the Administrative Procedures Act, the Commissioner specifically erred in Finding of Fact No. 8 by finding that the Form 15, section 2, documented that the reason for termination was the employee failed to meet the burden of proof of compensable injury under the Workers' Compensation Act. This is set out again as a Finding of Fact by the Commissioner but is not based on evidence in the Record.

14. That the Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9 and specifically:

A. That the Claimant alleged that he was not properly served with a Form 15 because he was only served with 1 copy wherein the statute specifically provides that the Defendants are required to serve the Claimant with 2 copies. The Commissioner then goes on to make a factual conclusion that the Claimant was in no way, "prejudiced" which is not supported by the law or any evidence in the Record as the Defendants again failed in this regard in their compliance with both the statute and the Commission Regulations.

B. By making the conclusory statement that the Defendants' failure to not only not provide the Claimant with 2 copies of the Form 15 but by not setting forth a separate attachment as to the grounds was not improper where such is an absolute violation of the law and a determination of the law which is contrary to that as dictated by our Appellate Courts in

reference to the Defendants' requirement to "strictly" meet the requirements of the Act.

15. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 10 which is a violation of law and an error of law in that it shifts the burden of proof to the Claimant and provides that the Claimant not only has the burden to prove that the Defendants did not conduct a Good Faith Investigation but makes the blanket factual assumption which is based on surmise, speculation and innuendo that the Claimant did not put up evidence that would, "indicate that the Defendants acted in anything other than good faith during the investigation". There is simply no evidence and this is an error of law because whether or not the Defendants acted in good faith during the investigation is not a requirement under the Act. The requirement is whether or not they conducted a good faith investigation and this is speculation, innuendo and surmise and an abuse of discretion by the Commissioner since it also reaches the factual conclusion that an investigation was performed. The Hearing Commissioner further erred as a matter of law, abused his discretion and subjected his decision to caprice by making the statement that, "this is based on the evidence or lack thereof submitted by the Claimant at the hearing."

16. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 11, which in many ways is not a Finding of Fact, but by specifically making the following statements contained within that Finding that:

A. The Commissioner alleges in that Finding that the Claimant is alleging, "a medically complex condition". This is surmise, speculation and innuendo and a blanket assumption made by the Commissioner that is not supported by any evidence in the Record.

B. Making the statement that it is an "alleged" shock. There is absolutely no evidence in the Record that the Defendants in any way challenged the fact that the Claimant suffered an electrical shock and electrocution on May 22, 2013.

C. As a Finding of Fact under No. 11, the Commissioner makes the statement that a causal relationship between the Claimant's electrical shock and his current medical condition is best determined by review of the medical expert medical reports to which the Defendants had access by operation of §42-15-95. There is absolutely no evidence and this was a

hotly contested issue at the hearing as to when or how the Defendants received any of the belated medical records that they were allowed to put into evidence (only based on the discretionary decision of the Commissioner) and there was simply no testimonial or documentary evidence submitted into the Record that would establish whether or not those records were received before September 13, 2013.

17. That the Hearing Commissioner erred by making a Finding of Fact that is not supported by any facts and evidence that the Defendants' refusal to continue benefits and the reason for stopping benefits was a determination as to whether or not his heart condition was causally related to the alleged electrical shock. The only, and the Claimant would reiterate the only, evidence in the Record as to a causal relationship is that set forth in the statement of the insurance carrier's own assigned rehab nurse wherein she specifically refers to the Claimant's treatment as being directly related to his electrical shock. That in fact is the uncontradicted evidence and the Commissioner's statement in that regard is speculation, surmise and innuendo and is the subject of being capricious and an abuse of discretion.

18. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law 2, subparagraph c, by holding as a matter of law that the Defendants do not have to establish that they conducted a Good Faith Investigation but only that they have to have, "represented to the Commission" that they had conducted such an investigation.

By shifting the burden of proof and requiring that, "the Claimant did not provide any evidence that the Defendants conducted their investigation in anything other than good faith." Thus placing the burden of proof for the Claimant to prove that the Defendants did not conduct a Good Faith Investigation where they did not put in one iota of evidence that they had conducted a Good Faith Investigation or in any way met their burden of proof or even that of a prima facie case.

19. That the Commissioner erred by holding as a matter of law that their investigation, "revealed" a good faith belief that the Claimant had failed to meet his burden of proof. There is absolutely no evidentiary support of an investigation by the Defendants nor that this is what such investigation revealed. Under subsection (e) the Commissioner further erred by shifting the burden of proof to the Claimant where the benefits had been started on the basis that a prima facie case had been

established that the Claimant had suffered a compensable injury. The Hearing Commissioner in a Form 15 hearing which only comes about after the Defendants have started benefits on the basis that a compensable injury has occurred by citing to law under SC Code §42-1-160 as to the Claimant's burden of proof where it is denied that a compensable injury has occurred.

20. That the Hearing Commissioner erred as a matter of law by finding as a Conclusion of Law that, "therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants." The error being among many that the Defendants put up no substantial evidence to meet their burden of proof that they conducted a, "Good Faith Investigation" or that they in fact conducted any investigation as to what factually that investigation was, or the facts that substantiated that the Claimant had not met his burden of proof on compensability. That Finding or actually the Conclusion is and makes the Commissioner's decision based on surmise, speculation and innuendo and the subject of caprice, prejudice and the subject of an abuse of discretion. The Hearing Commissioner failed in his oath of office by not complying with the dictates of the law under the law as dictated by the Legislature, this Commission in its Regulations and under the decisions of the SC Appellate Courts. There is simply no evidence put into the Record to support this conclusion of law and this is an error of law under the law which this Commission is sworn by oath to uphold. It also violates the fundamental principles of the Act, which is that the Act shall be liberally construed in favor of benefits to the injured worker.

21. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law No. 3 which improperly states the position of the Claimant stated on the Record repeatedly, in his Pre-Hearing Brief and at the Hearing, and in the unrecorded Pre-Hearing Motion Conference.

22. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 4 for all the reasons as set forth hereinabove and in addition, by making the statement that it is, "possible" for the Defendants to have drawn a conclusion in good faith based on the Claimant's medical records that he suffered from pre-existing medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify in denying the claim." There is no medical evidence to this effect nor is there any evidence to that

effect, nor is there any testimony nor documentary evidence to that effect and in addition, assuming that the Claimant is correct that the Defendants have the burden of proof, they have a burden of proof to establish by a preponderance of the evidence that they conducted a good faith investigation and the basis for denial based on that good faith investigation, none of which is met in this conclusion or case.

23. That the Hearing Commissioner erred as a matter of law by delaying a decision from November 13, 2013 until December 5, 2013, a period of 22 days where the singular issue before the Commissioner was whether or not the Defendants had established that they conducted a Good Faith Investigation and had denied benefits based on that investigation. The statute contemplates a quick determination as to whether or not the Defendants properly stopped benefits on one of the limited bases as provided for under the Act, wherein in this case the Commissioner not only delayed the Decision for over 22 days but also did not issue the Decision until after a decision on all Motions that had been filed before the Commission.

24. That the Hearing Commissioner erred as a matter of law where the Hearing Commissioner stated that the purpose of the Hearing was to determine whether or not the Claimant was entitled to a reinstatement of benefits by including without notice and holding an off the Record hearing on motions that took over an hour and ruling on all motions before even reaching the only issue of which the parties had notice on the date of the hearing.

25. That the Hearing Commissioner erred as a matter of law in an ancillary and interlocutory Order issued by:

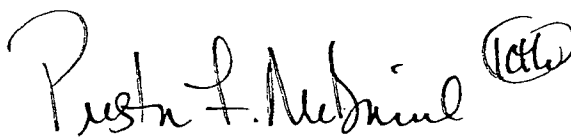
A. Denying the right of the Claimant to take the deposition of the adjuster and in that regard, also by not making a Finding that the Defendants had failed to obtain an Order in reference to the Deposition that had been properly and timely set prior to the time that the Deposition was to take place.

B. By not hearing a Motion to Quash a Subpoena issued for the adjuster's file prior to the date of the hearing on the Form 15(III) hearing where such Subpoena had been issued for the production of the adjuster's file back in September to be produced before the end of September and the hearing was not held on the Motion to Quash prior to the production time nor was it held until the date of the hearing on the Form 15(III).

26. That the Hearing Commissioner erred as a matter of law in his preliminary and interlocutory Order as to all legal bases set out and all conclusions of law as to the Findings of Fact and Conclusions of Law made that would justify the Commissioner's refusal to grant the Claimant the right to take the adjuster's deposition and to quash the Subpoena for that Deposition. That Decision and the hearing on that not being held until the date of the hearing on the Form 15 (III) was prejudicial to the Claimant and in violation of his rights to due process of law in that it failed to give him "an adequate" opportunity to be heard especially in light of the Commissioner's decision in his Order that the Claimant had the duty and responsibility and burden of proof to prove that the Defendants did not, and the Claimant would emphasize did not, conduct a Good Faith Investigation.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted,

A handwritten signature in cursive script, reading "Preston F. McDaniel". To the right of the signature is a circled mark that appears to be the initials "P.F.M.".

Preston F. McDaniel, Esquire
Attorney for the Claimant

December 18, 2013

DECISION AND ORDER
OF
T. SCOTT BECK, COMMISSIONER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1306305

Clarence Winfrey,

Claimant

v.

Archway Services, Inc.,

Employer, and

Liberty Mutual Ins. Co.,

Carrier, Defendants.

Hearing held in Richland County,
South Carolina on November 13th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Preston F. McDaniel, Esquire, for Claimant

Landon L. Hughey, Esquire, and Brett H. Bayne, Esquire for
Defendants

Filed: December 5, 2013

STIPULATIONS

Prior to the Hearing, the parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this claim;
2. Venue, set in Richland County, South Carolina, is proper;
3. Claimant and Employer were both subject to the South Carolina Workers' Compensation Act at all times relevant to this claim;
4. The sole purpose of the Hearing requested by Claimant pursuant to his Form 15, Section III is for the Commission to determine whether Defendants properly terminated workers' compensation benefits in accordance with § 42-9-260(B)(3); and
5. No documentary evidence dated after September 13th, 2013 would be considered by the undersigned in the adjudication of the issues in dispute.

STATEMENT OF THE CASE

This matter was set for a Hearing at the request of the Claimant pursuant to a Form 15, Section III, filed on September 23rd, 2013. Claimant alleges he suffered an injury by accident arising out of and in the course of his employment with Defendants when he sustained an electrical shock on May 22nd, 2013, resulting in an injury to his heart, left hand/arm/shoulder, neck, head (brain), and chest. Claimant asserts that Defendants accepted the claim and began paying temporary total disability benefits and medical treatment, but terminated all benefits on or about September 12th, 2013, citing § 42-9-260(B)(3) as authority to do so. Claimant asserts this termination of benefits was improper under the statute, and that Defendants should be assessed penalties provided for in § 42-9-260(G). Claimant asserts that he has filed a Form 50 Hearing request asking the Commission to award workers' compensation benefits, and that the sole purpose of the Hearing is to determine whether Defendants properly terminated benefits in accordance with § 42-9-260.

Defendants allege that Employer was aware Claimant suffered a medical emergency and began providing workers' compensation benefits, as a precaution to mitigate future damages should the claim be found compensable, to allow Defendants an opportunity to conduct a thorough investigation of the alleged incident to determine if it was a compensable workers' compensation claim. Defendants assert that on or about September 12th, 2013, it properly terminated workers' compensation benefits, following a good faith investigation by Employer that revealed grounds for denial of the claim. Defendants assert that this termination was lawful and proper by action of § 42-9-260(B)(3) and that therefore it should not be subject to sanctions under § 42-9-260(G).

Prior to the Hearing the parties filed a number of Motions with the Commission. These Motions were considered at the Hearing and were addressed by a separate Order issued by the undersigned on December 5th, 2013, which is incorporated herein by reference.

Following the resolution of the Motions, the parties addressed the merits of the claim raised on Claimant's Form 15, Section III. Both parties offered APA Submissions and Exhibits. Claimant renewed his objection first raised in his letter to the Commission dated November 7th, 2013 objecting to the submission of Defendant's Pre-Hearing Brief, Notice of Witnesses, APA Submissions and Exhibits as untimely. Claimant was offered the opportunity to have the Hearing postponed in order to allow him adequate time to respond to the Defendant's Pre-Hearing Brief, Notice of Witnesses, APA Submissions and Exhibits. Claimant declined to postpone the Hearing, and the following records were received into evidence, with the stipulation that no evidence dated after the date Claimant had actual notice of the denial, September 13th, 2013, would be reviewed or considered by the undersigned:

CLAIMANT'S APA SUBMISSIONS AND EXHIBITS

1. Dr. Lanneau Lide, SC Heart Center, 09/16/13- 10/04/2013, p. 1-2.
2. Dr. Jeffery Travis, Lexington Cardiovascular Assoc., 09/30/13, p. 3.
3. Lexington Medical Center, 05/28/2013 – 05/29/2013, p. 4-8.
4. Dr. Karen Greenfield, Doctors' Care, 05/28/2013 – 09/17/2013, p. 9-16.
5. Kristy Thompson, RN, Genex Services, Inc., 07/22/2013, p. 17-20.

6. "Correspondence", 07/30/2013- 08/07/2013, p. 21-25.

DEFENDANT'S APA SUBMISSIONS AND EXHIBITS

1. Doctors' Care, 05/28/2013, p. 1.
2. South Carolina Heart Center, 05/28/2013, p. 2-4.
3. Jeffrey A. Travis, M.D., Lexington cardiovascular Surgery, 05/28/2013, p. 5-7.
4. Statement of Bobby Ruppe, 09/23/2013, p. 8.
5. Emails between Bobby Ruppe and Claimant, 05/27/2013, p. 9.
6. Driver's Daily Log, 05/22/2013- 05/23/2013, p. 10-11.
7. Letter from Preston McDaniel to Defense Counsel, 10/16/2013, p. 12.
8. Motion to Quash the Deposition of the Adjuster, 09/27/2013, p. 13-21.
9. Motion to Compel Deposition and For Costs, 10/21/2013, p. 22-24.
10. Motion for Continuance, 10/21/2013, p. 25-30.
11. Summons and Complaint filed by Preston McDaniel, 09/27/2013, p. 31-48.
12. Temporary Restraining Order, 10/01/2013, p. 49-51.

FINDINGS OF FACT

Based on my consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, I make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. Claimant suffered a myocardial infarction on May 28th, 2013. This is based on the medical records submitted by the Claimant from Lexington Medical Center.

3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.
7. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
8. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
9. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of the Form 15, Section II. This is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II.

rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

10. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
11. I find the Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of § 42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

RULINGS OF LAW

Based on the foregoing, I make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if . . . a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. *See* Finding of Fact No. 4

- b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. *See* Finding of Fact No. 6.
 - c. Defendants represented to the Commission they conducted a good faith investigation of the claim. *See* Form 15, Section II dated September 12th, 2013.
 - d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. *See* Finding of Fact Nos. 10-11
 - e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". *See* Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. *See* § 42-1-160; *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation Act"); *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (*Internal citations omitted*)); *S.C. Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 576 S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence.").
 - f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.
3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that

the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.

4. Based on the foregoing, I find that Defendants properly stopped benefits under § 42-9-260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. *See* Finding of Fact # 8. This is a permissible ground for termination under the statute. *See* § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had knowledge of the course of Claimant's treatment through its Nurse Case Manager. *See* Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from pre-existing medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. *See e.g.* Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) . . . 3. Coronary artery disease[,] . . . 5. Hypertension[,] 6. Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.
5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

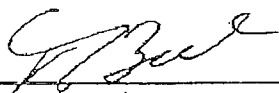
ORDER

IT IS THEREFORE ORDERED that Defendants properly terminated benefits under § 42-9-260 on September 12th, 2013.

IT IS FURTHERMORE ORDERED that Claimant's request for sanctions against Defendants under § 42-9-260(G) for failure to comply with the provisions of that statute is DENIED.

IT IS FURTHERMORE ORDERED that all other issues in contention, specifically including the question of whether Claimant sustained an injury by accident arising out of and in the course of his employment with Defendants resulting in compensable disability is preserved for adjudication at the Hearing set pursuant to Claimant's October 21st, 2013 Form 50 Employee's Request for Hearing.

AND SO IT IS ORDERED!



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

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

December 5, 2013

By: Amy Bracy, Administrative Assistant to Commissioner Beck

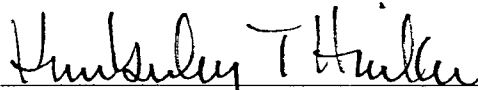
CERTIFICATE OF SERVICE

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the **FORM 30 - REQUEST FOR COMMISSION REVIEW** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

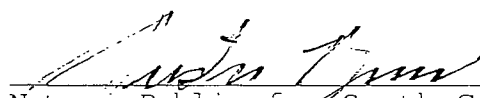
Virginia Crocker - Judicial Director
SC Workers Compensation Commission
1333 Main Street, Ste. 500
Columbia, South Carolina 29202

Landon L. Hughey, Esquire
Brett H. Bayne, Esquire
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
18th day of December, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/22/19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1306305

CLARENCE B. WINFREY, JR.)
)
Employee-Claimant,)
)
v.)
)
ARCHWAY SERVICES, INC.)
)
As Employer, and)
)
AMERICAN FIRE & CASUALTY CO.,)
)
as Carrier,)
)
Defendants.)
_____)

APPELLANT'S BRIEF TO THE
FULL COMMISSION

SCWCC

MAR 03 2014

JUDICIAL

STATEMENT OF THE CASE

This was a Form 15 III hearing. Following the accident on May 22, 2013 compensation benefits and medical care were started and authorized. SC Code §42-9-260(A) specifically provides that, "upon making the first payment, the employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." The Defendants while having started benefits did not comply with the Statute by filing the required form and notification and the Commission fined the Defendants for non-compliance by not filing a Form 12A or initial Form 15 which was admitted. On September 16th, one hundred and eighteen (118) days after the accident, the Claimant's attorney received one copy of a Form 15 III terminating benefits on the basis that: "based on a Good Faith

Investigation, the claim is denied." No proof of service was attached. [See: SCWCC Rule 67-201(B)(1) and 504(A)]. Pursuant to the requirements of the Regulations there was no attached documentation as to the Good Faith Investigation that was alleged to have been performed and/or the results of that investigation. [See: SCWCC Reg. 67-504(A)]. On September 18th and 21st Mr. Winfrey filed and served a Form 15 III with the Commission and the Defendants. The only additional information contained on the form as to the basis that was supposedly found during the alleged Good Faith Investigation (assuming a Good Faith Investigation is found) states the reason denied: "employee failed to meet the burden of a compensable injury under the South Carolina Workers' Compensation Act."

In an effort to determine whether a Good Faith Investigation was conducted and the results of that alleged Investigation, which lead to a termination of benefits without a hearing, the Claimant subpoenaed the adjuster as the, "managing agent", to a deposition and subpoenaed the adjuster's file requesting any and all records maintained by the adjuster and/or the employer in reference to the claim. While a Motion to Quash was filed, no Order was issued quashing the Subpoena prior to the date set for the deposition on October 2, 2013 and the adjuster failed to appear at the time for the deposition even though the Defendants were placed on notice that the deposition would go forward barring an Order quashing the Subpoena as to both the adjuster

and the adjuster's file. A Reply was filed to the Motion to Quash on October 7, 2013. The Defendants also filed Motions for Continuance/ Postponement, to Compel Deposition and for sanctions.

A Hearing Notice was issued on Friday, September 27th via email at 4:46 o'clock p.m. setting a hearing for November 13, 2013 at 1:45 o'clock p.m., listing as its "Subject: To determine if Claimant's temporary compensation was legally terminated." For the hearing set for November 13th, the moving party was required to file its APA Submissions fifteen (15) days prior to the scheduled hearing on or before October 30th (Note: the carrier is deemed to be the moving party in all hearings under Reg. 67-504(C).) The Defendants, not only did not file their Pre-Hearing Brief and APA Submissions on October 30th but did not file them on November 3rd, ten (10) days before the hearing and first filed a Pre-Hearing Brief dated as being served on November 4, 2013 (nine (9) days before the hearing) and filed an Amended Pre-Hearing Brief and Supplemental APAs on November 5th, 2013 (eight (8) days before the hearing).

On November 7, 2013 the Claimant filed a formal objection to the consideration of the Pre-Hearing Brief and APA Submissions of the Defendants and placed objections to various documents that would be submitted to the Commissioner. (See Objection Letter dated November 7, 2013).

At the time for hearing, the Commissioner held a lengthy Pre-Hearing Conference. During that conference, the Commissioner advised that while not on the Hearing Notice, he was going to proceed with all of the Motions, heard those Motions, and then entered Decisions from the Bench on those Motions which are reflected in the Order not issued until December 5, 2013. In addition, a Pre-Hearing Conference was held which was also not recorded during which the Claimant stated his position that under the statute the Defendants are the moving party and have the burden of proof to establish the grounds upon which they allege they stopped benefits. The Claimant moved and argued to exclude the Defendants' APA Submissions and Pre-Hearing Brief on the basis of their failure to comply with the Act. The Claimant also reiterated his argument made in his Pre-Hearing Brief that because the Defendants had failed to file the Form 15 as required by the Statute when benefits were started, they were barred from taking the benefit of the provisions of SC Code §42-9-260. Counsel further argued that because of their failure to comply with the Statute in that regard which is mandatory as to the filing of that form, and because they failed to file two (2) copies of the Form 15III on the Claimant and failed to attach, "documentation attached as to the reason for termination or suspension"; that the Defendants had completely failed to comply with the Statute and could not stop benefits and pursuant to the mandatory provisions of the Act under SC Code §42-9-260(G), the

Defendants had to pay the 25% penalty and had to reinstate benefits withheld in violation of the Code Section which specifically provides that, "the penalty and payment of benefits is mandatory for non-compliance with any part of the Section".

The Commissioner ruled that in his discretion he was going to admit the belatedly filed APAs and Pre-Hearing Brief; consider testimony from any witnesses that the Defendants wanted to put up; and would consider only all APA Submissions prior to, up to, and including the date that the Defendants gave verbal notice of their decision to stop benefits on September 13th. However, the Commissioner also ruled that the same restriction on evidence applied to the Claimant and the Commissioner would not consider any evidence from the Claimant or any of the APAs that were dated after September 13th.

However, the Record only reflects that the position of the parties was set out during the Pre-Hearing Conference (Hearing Transcript, p. 7, ll. 10-12) and that the parties agreed that the sole purpose of the hearing was to determine whether or not the Defendants properly stopped the Claimant's benefits under SC Code §42-9-260. (Hearing Transcript, p. 7, ll. 12-16). (The Claimant would request that the Commission note that Decisions were also made on the Motions that had been filed which the Commissioner heard and decided in an unrecorded Pre-Hearing Conference).

Twenty-two (22) days after the hearing on the same day December 5th, the Commissioner filed two (2) Orders, one addressing the

Motions and one denying the Claimant's entitlement to have benefits reinstated. The Commissioner denied reinstatement on the basis that the Defendants alleged and asserted to the Commissioner that they have conducted a Good Faith Investigation; that the Claimant bears the burden of proof to prove that the Defendants did not conduct a Good Faith Investigation; and specifically held that it is only necessary that the Defendants, "represented to the Commission they conducted a Good Faith Investigation of the claim" . . . and that, "the Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith" and that therefore, "a belief of Defendants formed following a Good Faith Investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants." From that Decision and the Decision on the Motions, this appeal follows.

ARGUMENTS

- I. DID THE HEARING COMMISSIONER ERR AS A MATTER OF LAW BY HOLDING THAT THE DEFENDANTS DO NOT HAVE THE BURDEN OF PROOF TO PROVE THAT THEY CONDUCTED A GOOD FAITH INVESTIGATION ALLOWING THEM TO STOP BENEFITS WITHOUT A HEARING AND BY SHIFTING THE BURDEN OF PROOF REQUIRING THE CLAIMANT TO PROVE THAT THE DEFENDANTS DID, "NOT" CONDUCT A GOOD FAITH INVESTIGATION?

The Commissioner found both as a fact and as a ruling of law that the Defendants, "represented to the Commission" that they had conducted a Good Faith Investigation and they, "represented" that the reasons for the denial was a, "good faith belief", based

on their Investigation that the Claimant had not met his burden of establishing compensable injury. The Commissioner then went on to find that the Claimant, "did not provide any evidence," that the Defendants had not conducted a Good Faith Investigation and that the Defendants' good faith belief that the Claimant had not met his burden of proof of proving compensability was adequate grounds to deny the claim. Since the Defendants are the moving party under the Statute and Commission Regulations, the Commissioner erred by shifting the burden of proof from the Defendants to the Claimant.

First, the Defendants have the burden of proof under SC Code §42-9-260 and under the Commission Regulations implementing the Statute. SC Code §42-9-260(B) provides specifically in pertinent part that,

"once temporary disability benefits are commenced, the payments may be terminated ... if:"

one of the six (6) enumerated conditions is established that is to say proved and one of those is that a Good Faith Investigation conducted by the Employer reveals a grounds for denial. "If" is defined in Webster's Dictionary as a word, "used to say that something must happen before another thing can happen". The statute creates a condition precedent meaning that to be able to stop temporary disability benefits without a hearing they can do that "if" they meet one of the conditions precedent; such as establish a Good Faith Investigation was conducted. The fact

that the Defendants have the burden of proof of proving a Good Faith Investigation to be entitled to the benefits of the statute of stopping benefits without a hearing is made clear by the Commission's Regulations. Regulation 67-504(A) specifically requires that the Defendants/Insurance Carrier attach documentation setting forth, "the reason for termination" and Regulation 67-612(B)(4) specifically states that the Insurance Carrier is the moving party, "the Carrier shall be deemed the moving party in all hearings scheduled pursuant to a request under R. 67-504(C)".

The moving party has the burden of going forward as well as the burden of persuasion in an administrative hearing." 73A CJS, Public Administrative Law and Procedure §240, "Burden of Proof".

The party claiming the benefit of a Statute has the burden of proof and this burden is one of persuasion by a preponderance of the evidence, Pike v. SCDOT, 343 S.C. 224, 540 S.E.2d 87 (2000). Trial Handbook for South Carolina Lawyers, 5th Ed. (2012-2013) Burden of Proof, §9.3 and §9.4, "Statutory Allocation of Burden of Proof". Therefore under both the Statute and the Commission's Regulations, the Defendants have the burden of proof to prove the condition precedent by a preponderance of the evidence which is to prove a Good Faith Investigation which will allow them to obtain the benefit of the Statute to be able to stop benefits without a hearing. Where they start benefits, they can only stop those benefits under certain very limited circumstances and they

have the burden of proof to prove those circumstances apply and thus finally this is the specific holding of the South Carolina Court of Appeals in the case of Martin v. Rapid City Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App 2006) wherein the Court held:

"However, the statute is explicit that even under a Form 15, an employer can only terminate or suspend temporary compensation if one of the specified conditions is met." (Emphasis added).

Therefore, the Commissioner erred as a matter of law by shifting the burden of proof to the Claimant to prove that the Defendants did not conduct a Good Faith Investigation. The Defendants in this case did not submit any testimonial evidence or documentary evidence to prove that they had conducted a Good Faith Investigation prior to stopping of benefits.

II. THE HEARING COMMISSION ERRED AS A MATTER OF LAW BY NOT ORDERING REINSTATEMENT OF BENEFITS WHERE THE DEFENDANTS FAILED TO COMPLY WITH THE MANDATORY REQUIREMENTS OF SC CODE §42-9-260.

It is agreed that following the accident in this case the Defendants started benefits and that they failed to file the required Form 15 placing the Commission on notice that benefits had been started and that they were fined and paid the fine for that failure of compliance.

It is further undisputed that the Defendants did not serve the Claimant with two copies of the Form 15 or any supporting documentation as required by Commission Regulation 67-504 setting forth the reason for termination.

SC Code §42-9-260 is mandatory where there is a, "Failure to comply with this section" which, "shall" result in a 25% penalty in addition to the amount of benefits withheld.

SC Code §42-9-260(A) is also mandatory in the requirement that:

"Upon making the first payment, the Employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." (emphasis added).

This again is a mandatory requirement. Under SC Code §42-3-30 the Commission has the authority to promulgate regulations necessary to implement that the provisions of the Title and pursuant to that authority in reference to stopping payment during the first one hundred and fifty days (150), the Commission has adopted Rule 67-504 which requires under Subsection A that the Employer's representative shall, "file the Form 15 immediately with the Claims Department and shall serve two copies of the Form 15 immediately upon the Claimant according to R. 67-211 with documentation attached as to the reason for termination or suspension." As noted above, the Defendants did not file the mandatory notice form with the Commission when benefits were started; the Defendants did not serve the Claimant with two copies of the Form 15III nor is there actually an Affidavit of Service attached which is also required by the Regulations.

The Supreme Court and Court of Appeals have repeatedly held that where the provisions of the Act are mandatory, failure to

comply with the provisions bars a party from taking the benefit of the statute. Because Workers' Compensation Statutes provide an exclusive compensatory system in derogation of common law rights, the Commission and the Courts must strictly construe the requirements of the statute and leave it to the Legislature to amend or define any ambiguities. Callahan v. Beaufort County School District, 375 S.C. 92, 651 S.E.2d 311 (2007). In that case, the Supreme Court citing other Court of Appeals and Supreme Court decisions found that the provision of SC Code §42-1-560 requiring a Claimant to, "shall" file an S-2 Form notifying the Insurance Carrier/Employer and the Commission that a third party action has been filed was mandatory and failure to comply with that mandatory requirement resulted in an election of remedies and the Claimant not being able to take the benefit of SC Code §42-1-560 and barred from receiving any further benefits under the Act.

Likewise, under SC Code §42-9-260 Subsection G, provides that where there is a failure to comply with the Section in anyway the provisions of Subsection (G) are mandatory that benefits wrongfully withheld be paid to the Claimant and that the 25% penalty be imposed. The same requirement for strict compliance with the Act apply to both the Defendants and the Claimant in a worker's compensation case because as the Court noted, the Workers' Compensation Statute is in derogation of common law rights and as such it must be strictly construed and

strictly complied with. Since the Defendants admittedly did not comply with the statute, they cannot claim the benefit of the statute and the mandatory penalty provisions of the statute must be imposed.

The Court further stated in Callahan that the Circuit Court in that case could not enter into an equity type analysis by excusing compliance and like that decision the Commission has no authority to do anything less than that which is required by the statute. In this case, the Hearing Commissioner thought that it was sufficient that the Defendants were fined for not filing the form in accordance with the Act but that is not the penalty that is called for under the statute. The penalty under the statute is again reinstatement of benefits and a penalty of 25% on all benefits withheld and that penalty must be imposed by the Commission in accordance with law.

III. THE HEARING COMMISSIONER ABUSED HIS DISCRETION BY
CONSIDERING THE LATE FILED PRE-HEARING BRIEF AND THE LATE
FILED APA SUBMISSIONS OF THE DEFENDANTS.

As noted above, the Defendants are the moving party and not only do they have the burden of proof but as the moving party, Regulation 67-612(B) requires the Defendants to file their APA Submissions at least fifteen (15) days before the hearing. In addition, Rule 67-611 requires all parties and each attorney representing a party to file a Form 58 with proof of service, "at least ten (10) days before the hearing with the hearing Commissioner's office identified on the Hearing Notice." The

Rule also requires that they shall serve the opposing party in accordance with the other Rules of the Commission. There is no question that the Rule requires not only compliance with the dictates of the Rule but also the dictates of the Administrative Procedures Act concerning the submission of written evidence. The Commissioner ruled that he had the discretion to admit this written hearsay evidence into the Record and while the exclusion of such evidence under the Rule is not mandatory, the Commissioner can only exercise his discretion in accordance with Regulations, specifically R. 67-613(E) and (J), the APA and due process. The Claimant would submit that the Commissioner abused his discretion and that the evidence should not have been admitted nor considered because of the clear-cut violation of the provisions of R. 67-613(B)(1), (E) and (J), the Administrative Procedures Act and due process.

The Claimant would submit first that the Commissioner abused his discretion. For appellate purposes, an abuse of discretion occurs where the ruling is based on an error of law or where the ruling is grounded upon factual findings and is without evidentiary support. Further, where there is an exercise of discretion, we must consider whether or not the exercise of that discretion is prejudicial to a party. Trotter v. Trane Coil Facility, 393 S.C. 637, 714 S.E.2d 289 (2011). There are two Rules that must be considered in reference to the Commissioner's exercise of discretion in admitting the evidence of the

Defendants who are the moving parties in a Form 15 III hearing. The Defendants have the burden of proof and under Rule 67-613(B)(1) as the moving party, they are required to shall file any written evidentiary support such as medical records or other documents at least fifteen (15) days prior to the hearing. While Regulation 67-613(E) is permissive and provides that the evidence may be excluded, one must take into consideration the other provisions of the Regulation, 67-613(J) and the specific provisions of the Administrative Procedures Act that provide that written evidence may only be submitted under SC Code §1-23-330 where there will be no substantial prejudice to the interest of the party. Based on this exercise of discretion by the Commissioner, an abuse should be found because the Defendants again, are the moving party and they failed to provide the Claimant or the Commission with the documentary evidence in accordance with the Statutes and Regulations that they submitted to support their position that they had conducted a Good Faith Investigation. Even under the burden of proof applied by the Commissioner, the Commissioner reviewed this evidence and found that based on its submission only, as the Commissioner surmised that the Defendants based on that evidence could have formed a good faith belief that the Claimant had failed to prove his claim of a compensable injury. In other words, the submission of this evidence was highly prejudicial to the Claimant because it allowed the Commissioner to reach that conclusion based on that

evidence alone since there was absolutely no other evidence presented to substantiate a basis for forming that good faith belief which is the standard the Commissioner applied. Of course, applying the standard that they had to establish a good faith investigation assuming arguendo that this evidence of that issue had this evidence not been submitted there would have been absolutely no other evidence in the Record or of a Good Faith Investigation. This admission under Rule 67-613 under the discretion of the Commissioner is clearly an abuse of discretion that was prejudicial to the Claimant.

Further, the provisions of R. 67-611(B) in reference to the filing of a Pre-Hearing Brief are mandatory wherein the Rule provides that the Pre-Hearing Brief shall be filed with the Commission ten (10) days before the hearing. There is absolutely no discretion for the Commissioner to accept a late filed Pre-Hearing Brief which sets out the issues of fact and law for a decision by the Commission, the position of the parties and a notification of witnesses and the evidence that would be submitted and as to whether or not that evidence is submitted in written form or by deposition. Again, the Commissioner has no discretion in the submission of the Pre-Hearing Brief. The only thing the Commissioner may do is that pursuant to Rule 67-611, if good cause is shown, the Commissioner may postpone the hearing or may mandatorily assess a fine against the attorney of up to \$100.00. The Commissioner did not request a showing of good

cause nor was any good cause shown for the late filing and therefore the Commissioner had no discretion to accept the Pre-Hearing Brief and the evidence that was submitted under it. There is a complete and utter failure of any evidentiary support barring the submission of these late filed APA Submissions and Pre-Hearing Brief which is clearly prejudicial to the Claimant and their admission constitutes an abuse of discretion as it is controlled by an error of law on behalf of the Commissioner.

IV. THE HEARING COMMISSIONER ERRED BY EXCLUDING EVIDENCE FROM THE CLAIMANT AFTER SEPTEMBER 13, 2013.

It is uncontested that the Claimant's first notice that the Defendants were stopping payment which was verbal was on September 13th and that he received written notice on September 16th. At the hearing, the Hearing Commissioner not only excluded all evidence from the Defendants after September 13th but he excluded all evidence from the Claimant after September 13th. Assuming arguendo that the Hearing Commissioner was correct in ruling that the Claimant had the burden of proof to prove that the Defendants did not conduct a Good Faith Investigation, this foreclosed the Claimant from presenting any evidence whatsoever on that issue especially where the Defendants had moved to quash the Claimant's deposition of the adjuster (which was not heard until the day of the Hearing even though it was filed in September), and where the Defendants refused to produce the adjuster's file which again was not ruled on until the day of the

hearing. Thus he had no knowledge of what the Defendants did or did not know prior to September 13th on which they allegedly based their investigation.

Further, the Commissioner found that based on a review of the medical records, they could have formed a, "good faith belief", that there was sufficient evidence to deny the claim. By excluding all evidence after September 13th, the Commissioner excluded all the opinions issued after September 13th from the treating doctors to the contrary. This in effect denied the Claimant due process of law. The Claimant is entitled to a meaningful opportunity to be heard in a meaningful way and this exclusionary ruling denied him that right including the right to submit evidence to disprove any such belief. For this reason, the Decision must be reversed.

V. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDING OF FACT #2 THAT THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION, "ON MAY 28, 2013".

This Finding of Fact was not an issue that was before the Commissioner for decision and is irrelevant to any issue that was before the Commissioner. This Finding is also contradictory to the other Findings, Rulings of Law and Order in this case which is that the Claimant had filed for and would have a determination made at a subsequent compensability hearing where this issue would be addressed.

Further, this Finding is not based on the evidence and is a Finding made on the basis of surmise, speculation and innuendo.

The Commissioner could only surmise this Finding from the medical records because there is absolutely no statement in the medical records that this is in fact true as to when the myocardial infarction occurred. The evidence only establishes that this is simply the date that he was admitted to the hospital. This Finding of Fact must be stricken because it is irrelevant, immaterial and high prejudicial to the Claimant and invades the province of the Commissioner who would be assigned to make the decision on compensability because it would in effect become the law of the case precluding that Commissioner from reviewing the facts and would thus deny the Claimant due process of law.

VI. THE COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING A FINDING OF FACT THAT IS NOT SUPPORTED BY THE EVIDENCE THAT AN INVESTIGATION WAS CONDUCTED AS FOUND IN FINDING OF FACT #6 AND BY MAKING OTHER FINDINGS IN FINDINGS OF FACT #4 THROUGH #9, WHICH ARE NOT SUPPORTED BY THE TESTIMONY, STIPULATIONS OR DOCUMENTARY EVIDENCE SUBMITTED IN THE RECORD.

The Commissioner found as a fact that an investigation was conducted. The Defendants put up no testimonial evidence concerning an investigation being conducted. The only testimonial evidence submitted was that of the Claimant who testified that he had not been contacted. There is no evidence from the one employer witness who testified that he was ever contacted or that any investigation was performed. There is no evidence in the documentary evidence submitted that the insurance company had contacted the employer concerning compensability nor is there any documentary evidence that an

investigation was conducted. The medical records that were placed in the Record are simply that: medical records without any statement on causal relationship. There is no statement nor is there any evidence that these records were even considered by the Defendants as part of any investigation. There is simply no evidence that an investigation was actually conducted or as to what was considered during that investigation that allows them to form a good faith belief that they had grounds to deny the claim. While it is the Claimant's position that the Defendants had the burden of proof to prove that they had conducted a Good Faith Investigation and what that investigation was and what it uncovered that lead to the denial of benefits, there is no question that the Defendants at least had to put up evidence that established the basis for forming a good faith belief. It was surmise, speculation and conjecture for the Commissioner to find that an investigation was conducted when there is simply no evidence of that.

The Commissioner also made other findings that are from forms in the file which are not evidence such as, "the Claimant fails to meet the burden of a compensable injury". In this case, the Commission file like in every other case is made a part of the Record except for self-serving declarations and unstipulated medicals. Any statements on these forms are self-serving declarations and they are not evidence.

VII. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW IN MAKING FINDING OF FACT NO. 9.

The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9 and specifically:

A. Where the Claimant alleged that he was not properly served with a Form 15 because he was only served with 1 copy wherein the statute specifically provides that the Defendants are required to serve the Claimant with two (2) copies, the Commissioner made a factual conclusion that the Claimant was in no way, "prejudiced" which conclusion is not supported by the law or any evidence in the Record as the Defendants again failed in this regard in their compliance with both the statute and the Commission Regulations.

B. By making the Finding that the Defendants' failure to not only not provide the Claimant with two (2) copies of the Form 15 but also by not attaching a separate attachment setting out the grounds was not "prejudiced" and was an excusable non-compliance with the Act. This determination of the law is contrary to that as dictated by our Appellate Courts in reference to "strictly" complying with the requirements of the Act. Cox v. BellSouth Telecommunications, Inc., 356 S.C. 468, 589 S.E.2d 766, reh. den., cert. den. (SC App 2003). It is also a discretionary decision where the Statute does not allow for discretion. For this reason, the Decision must be reversed.

VIII. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDING OF FACT NO. 10.

The Hearing Commissioner erred as a matter of law by making Finding of Fact No. 10 which is an error of law in that it shifts the burden of proof to the Claimant and provides that the Claimant not only has the burden to prove that the Defendants did not conduct a Good Faith Investigation but makes the blanket factual assumption which is based on surmise, speculation and innuendo that the Claimant did not put up evidence that would, "indicate that the Defendants acted in anything other than good faith during the investigation". There is simply no evidence and this is an error of law because whether or not the Defendants acted in good faith during the investigation is not a requirement under the Act. The requirement is whether or not they conducted a good faith investigation and this is speculation, innuendo and surmise and an abuse of discretion by the Commissioner since it also reaches the factual conclusion that an investigation was performed. The Hearing Commissioner further erred as a matter of law, abused his discretion and subjected his decision to caprice by making the statement that, "this is based on the evidence or lack thereof submitted by the Claimant at the hearing."

IX. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDING OF FACT NO. 11.

This Finding in many ways is not a Finding of Fact, but specifically the following statements contained within Finding of Fact #11 constitute errors of law and fact:

A. The Commissioner alleges that the Claimant is alleging, "a medically complex condition". This is surmise, speculation and innuendo and a blanket assumption made by the Commissioner that is not supported by the Record nor any evidence in the Record.

B. Making the statement that there was an "alleged" shock. There is absolutely no evidence in the Record that the Defendants in any way challenged the fact that the Claimant suffered an electrical shock and electrocution on May 22, 2013.

C. In Finding of Fact under No. 11, the Commissioner makes the statement and Finding that a causal relationship between the Claimant's electrical shock and his current medical condition is best, "determined by review of the medical expert medical reports to which the Defendants had access by operation of §42-15-95". There is absolutely no evidence and this was a hotly contested issue at the hearing as to when the Defendants received any of the belated medical records that they were allowed to put into evidence (based on the discretionary decision of the Commissioner) and there was simply no testimonial or documentary evidence submitted into the Record that would establish whether or not those records were received by the Defendants before September 13, 2013.

X. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY DELAYING A DECISION FROM NOVEMBER 13, 2013 UNTIL DECEMBER 5, 2013.

November 13, 2013 to December 5, 2013 is a period of

twenty-two (22) days where the singular issue before the Commissioner was whether or not the Defendants had established that they conducted a Good Faith Investigation and had denied benefits based on that investigation. The Statute contemplates a quick determination as to whether or not the Defendants properly stopped benefits on one of the limited bases as provided for under the Act. In this case the Commissioner not only delayed that Decision for over twenty-two (22) days but also did not issue the Decision until after a decision on all Motions that had been filed before the Commission.

XI. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY HOLDING A PRE-HEARING CONFERENCE FOR OVER AN HOUR AND MAKING SUBSTANTIVE DECISIONS ON MOTIONS THAT WERE NOT PROPERLY NOTICED AND WHICH INCLUDED THE PARTIES' POSITIONS ON THE ISSUES BEFORE THE HEARING COMMISSIONER.

The Hearing Commissioner held an hour long Pre-Hearing Conference of which there is absolutely no Record. During this conference he made numerous decisions on Motions that had been filed and also during which the Claimant and the Defendants extensively argued their position as to the issue before the Commissioner. There is no Record as to the arguments made and/or as to what was considered. None of this is in the Record but yet the Commissioner in his Order recites the position of the Claimant on various issues that are key to the Decision in this case. It was, is, and will always be the Claimant's position that the Defendants have the burden of proof in a Form 15 hearing but yet this is nowhere specifically reflected in the

Record and is belittled in the Commissioner's statement of the Claimant's position.

Further, it is ironic and the Claimant would submit that it is prejudicial and that the Commissioner went outside of the Record wherein he made the Findings specifically not only that the Claimant had the burden of proof, but that the Claimant had to prove that the Defendants did not conduct a Good Faith Investigation and to dispel a belief on a basis for that belief. Further, in the Motions, which were not noticed to be heard at this hearing and which are outside of the issues before the Commissioner, is a Complaint filed in a Declaratory Judgment action in the Circuit Court in which the Claimant is requesting that the Circuit Court make a decision on the law as to the Defendants having the burden of proof under the Statute and Regulations to prove that they had conducted a Good Faith Investigation. The Finding and holding of the Commissioner in this case that the Claimant has the burden of proof which is not in the Statute or Regulations is indicative that the Commissioner went outside of the Record and wrote an Order clearly contradictory to the Claimant's position, that is contrary to the dictates to the Statute and is in fact a ruling of law not supported by any previous Decision by the SC Court of Appeals or Supreme Court. This makes the Decision the subject of capriciousness.

XII. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW IN HIS
ANCILLARY AND INTERLOCUTORY ORDER CONCERNING THE MOTIONS
THAT HAD BEEN FILED.

That Order:

A. Denied the right of the Claimant to take the deposition of the adjuster as a managing agent which is clearly contrary to our Rules and case law. See for example: Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (SC App 1996). Also the Commissioner erred by not making a Finding that the Defendants had failed to obtain an Order in reference to the Deposition that had been properly and timely set prior to the time that the Deposition was to take place.

B. By not hearing a Motion to Quash a Subpoena issued for the adjuster's file prior to the date of the hearing on the Form 15(III) where such Subpoena had been issued for the production of the adjuster's file back in September to be produced before the end of September and the hearing was not held on the Motion to Quash prior to the production time nor was it held until the date of the hearing on the Form 15(III).

The Hearing Commissioner erred as a matter of law in his preliminary and interlocutory Order as to all legal bases set out and all conclusions of law as to the Findings of Fact and Conclusions of Law made that would justify the Commissioner's refusal to grant the Claimant the right to take the adjuster's deposition and to quash the Subpoena for that Deposition. That Decision and the hearing on that not being held until the date of

the hearing on the Form 15 (III) was prejudicial to the Claimant and in violation of his rights to due process of law in that it failed to give him "an adequate" opportunity to be heard especially in light of the Commissioner's decision in his Order that the Claimant had the duty and responsibility and burden of proof to prove that the Defendants did not, and the Claimant would emphasize did not, conduct a Good Faith Investigation.

CONCLUSION

For all the forgoing reasons, the Decision of the Hearing Commissioner should be reversed, the Defendants found to have failed to establish that they had conducted a Good Faith Investigation and failed to comply with the Statute and the claimant must be awarded the past due benefits in addition to the 15% mandatory penalty.

Respectfully submitted,



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2014

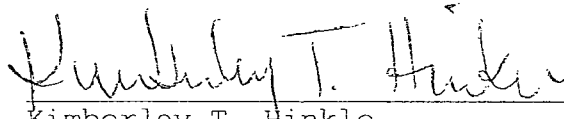
CERTIFICATE OF SERVICE BY MAIL

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the APPELLANT'S BRIEF TO THE FULL COMMISSION by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia Crocker - Judicial Director
SC Workers Compensation Commission
1333 Main Street, Ste. 500
Columbia, South Carolina 29202

Brett H. Bayne, Esquire
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this

28th day of February, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: 10/28/18

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL GROUP

Carrier,

Defendants.

**RESPONDENTS' REPLY BRIEF TO
THE FULL COMMISSION**

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

STATEMENT OF THE CASE

This claim arises out of an alleged accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. Claimant had scheduled time off after May 23, 2013. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant

indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before the Hearing Commissioner. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, the Hearing Commissioner conducted a standard pre-hearing conference as well as a Motions Hearing wherein the Hearing Commissioner ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing

and were necessary to have prior to the hearing. The Hearing Commissioner gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for the Hearing Commissioner to determine was whether or not Defendants had conducted a good faith investigation. In order to make that determination, the Hearing Commissioner limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, the Hearing Commissioner issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30 and this appeal followed.

LEGAL ISSUES RAISED BY CLAIMANT

- I. Did the Hearing Commissioner err as a matter of law by holding that the Defendants do not have the burden of proof to prove that they conducted a good faith investigation allowing them to stop benefits without a hearing any by shifting the burden of proof requiring the Claimant to prove that the Defendants did, “not” conduct a good faith investigation?
- II. The Hearing Commissioner erred as a matter of law by not ordering reinstatement of benefits where the Defendants failed to comply with the mandatory requirements of SC Code §42-9-260.
- III. The Hearing Commissioner abused his discretion by considering the late filed pre-hearing brief and the late filed APA submissions of the defendants.
- IV. The Hearing Commissioner erred by excluding evidence from the Claimant after September 13, 2013.
- V. The Hearing Commissioner erred as a matter of law by making the Finding of Fact #2 that the Claimant suffered a myocardial infarction, “on May 28, 2013”.
- VI. The Commissioner erred as a matter of law by making a finding of fact that is not supported by the evidence that an investigation was conducted as found in finding of fact #6 and by making other findings of fact #4 through #9, which are not supported by the testimony, stipulations or documentary evidence submitted in the record.
- VII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9.

- VIII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 10.
- IX. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 11.
- X. The Hearing Commissioner erred as a matter of law by delaying a decision ~~from~~ November 13, 2013 until December 5, 2013.
- XI. The Hearing Commissioner erred as a matter of law by holding a pre-hearing conference for over an hour and making substantive decisions on motions that were not properly noticed and which included the parties' positions on the issues before the Hearing Commissioner.
- XII. The Hearing Commissioner erred as a matter of law in his ancillary and interlocutory order concerning motions that has been filed.

EVIDENCE OF THE CASE

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 complaining that he woke up sweating. (Def. APA p. 1). Doctor's Care noted that he had some tenderness in his shoulder and neck area. Id. Further, Doctor's Care noted that Claimant did not complain of any chest pressure. Id. Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred

Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

LEGAL ANALYSIS

The legal issues raised by Claimant as noted above have been rephrased below for clarity. They retain their original numbering in accordance with Claimant's Brief.

I. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY DETERMINING CLAIMANT WAS REQUIRED TO PRESENT REBUTTAL EVIDENCE PROVING DEFENDANTS DID NOT CONDUCT A GOOD FAITH INVESTIGATION AFTER THE HEARING COMMISSIONER DETERMINED DEFENDANTS HAD MET THE REQUIREMENTS FOR CONDUCTING A GOOD FAITH INVESTIGATION.

The record is clear that the Hearing Commissioner reviewed all of the evidence relevant to the hearing¹, received testimony, and rendered a decision on whether or not Defendants conducted a good faith investigation as required by S.C. Code § 42-9-260. The record is also clear that the Hearing Commissioner determined by a preponderance of the evidence (i.e. more likely than not) that Defendants conducted a good faith investigation based on the medical records available by statute at the time of the denial of benefits as well as the Form 15 filed in this case. There is no dispute that the burden rests with Defendants in proving that a good faith investigation occurred. Nowhere in the Hearing Commissioner's Decision and Order does the Hearing Commissioner state that Claimant has the burden of proving Defendants did not conduct a good faith investigation. Rather, the only finding by the Hearing Commissioner on this subject is a finding that Claimant presented no evidence to rebut Defendants' assertions that a good faith investigation occurred. This is not an error of law. The Hearing Commissioner did not shift or place the burden on Claimant. Rather, the Hearing Commissioner noted that once Defendants

¹ As will be discussed further in other exceptions raised by Claimant, the relevant evidence for this hearing was limited to only the evidence dated prior to the denial of benefits as that would have been the only evidence available to Defendants to make a decision on compensability.

showed by a preponderance of the evidence that a good faith investigation occurred, Claimant could present no rebuttal evidence that disputed that a good faith investigation occurred.

Therefore, because no contrary evidence was presented by Claimant, the Hearing Commissioner was required by law to make a finding that Defendants conducted a good faith investigation pursuant to S.C. Code Ann. § 42-9-260. For these reasons, the Full Panel should uphold the Hearing Commissioner's Decision and Order in its entirety.

II. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY NOT ORDERING REINSTATEMENT OF BENEFITS BECAUSE DEFENDANTS COMPLIED WITH S.C. CODE § 42-9-260.

Claimant next argues that the Hearing Commissioner erred in not reinstating medical and temporary disability benefits. Out the outset it should be noted that Claimant misstates the series of event surrounding the Form 15. Defendants ultimately were not fined and did not pay any fine associated with the Form 15 in this case.

Claimant likewise misstates that it is "undisputed" that Defendants did not serve Claimant with "any supporting documentation as required by Commission Regulation 67-504 setting forth the reason for termination." Defendants provided Claimant with the supporting documented reasons for the termination of benefits. This is undisputed as it appears on the face of the Form 15. Claimant cannot say that he was not put on notice as to the reason for the denial nor can Claimant say that Defendants did not comply with Regulation 67-504 related to the reason for termination. There is likewise no dispute that Claimant received a copy of the Form 15 when it was filed. The Hearing Commissioner specifically notes this is shown by Claimant filing a Form 15, Section III (which would not have been done unless Claimant received a Form 15, Section II). Claimant's exception or complaint is that he did not receive two copies of the Form 15. The Hearing Commissioner determined that because Claimant was represented by

counsel at the time the Form 15, Section II was served, the requirement to serve two copies was unnecessary. Case law on this issue indicates only that an employer *should* apply to the commission for permission to terminate benefits and that the employee *should* receive notice of the application².

Because the Form 15, Section II was determined to be properly filed and served and because Defendants complied with the "reason for denial" component of Reg. 67-504, the denial of benefits was properly enacted under the Act. Therefore, for the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

III. THE HEARING COMMISSIONER DID NOT ABUSE HIS DISCRETION BY CONSIDERING THE DEFENDANTS' PRE-HEARING BRIEF AND APA SUBMISSIONS.

Claimant next argues that the Hearing Commissioner erred by allowing Defendants pre-hearing brief and APA submissions into the record. This is based on two factors: (1) pursuant to Reg. 67-612(B)³, Defendants are the moving party and, therefore, were required to serve their APA submission fifteen days prior to the hearing; and (2) Reg. 67-611 requires all parties filed a Form 58 ten days before the hearing. Each of these will be addressed in turn.

First, Claimant is incorrect that Reg. 67-612(B) makes Defendants the moving party insofar as it subjects Defendants to filing APA submissions fifteen days before a hearing. Reg. 67-612(B) specifically is limited in scope to the admission of expert reports as evidence. Defendants did not submit any expert reports into the record that were considered by the Hearing Commissioner for the purpose of this hearing⁴ (e.g. determining if a good faith investigation occurred prior to denial of benefits). Therefore, Reg. 67-612(B) simply does not apply to the

² See e.g. Halks v. Rust Engineering Co., 208 S.C. 39, 36 S.E.2d 852 (1946).

³ Claimant repeatedly refers to Reg. 67-613 in his Brief. Defendants presume this to be an error and presume Claimant is referring to Reg. 67-612.

⁴ Defendants did submit the report of Dr. Barry Feldman but the Hearing Commissioner excluded it from evidence.

hearing before the Hearing Commissioner. In addition, it should be noted that Claimant submitted his pre-hearing brief and APA submissions fifteen days prior the hearing⁵. This is evidence that Claimant, in fact, believed himself to be the moving party under the Act and did not believe Defendants were the moving party under the Act.

Second, Claimant is correct that Reg. 67-611 requires a Form 58 be filed ten days before a hearing. In this case, this requirement was met by Defendants. Ten days prior to the November 13, 2013 hearing was November 3, 2013. November 3, 2013 was a Sunday. The Commission is not open on Sundays and cannot accept service of documents on that day. Likewise, Claimant's attorney's office is not open on Sundays and cannot accept service of documents on that day. Because all entities available for service were closed and unable to accept service on November 3, 2013, Defendants Form 58 was filed on Monday, November 4, 2013. South Carolina Rule of Civil Procedure 6 states "[i]n computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, **unless it is a Saturday, Sunday, or a State or Federal holiday, in which event the period runs until the end of the next day** which is neither a Saturday, Sunday nor such holiday." Monday, November 4, 2013 was the first day available to file and serve Defendants Form 58 and readily complies with the Act and the South Carolina Rules of Civil Procedure.

Therefore, for the foregoing reasons, the Hearing Commissioner did not abuse any discretion in allowing Defendants' Pre-Hearing Brief and APA Submissions to be submitted and the Hearing Commissioner's Decision and Order should be upheld in its entirety.

⁵ Claimant filed his brief on October 30, 2013 for the November 13, 2013 hearing.

IV. THE HEARING COMMISSIONER DID NOT ERR BY EXCLUDING ANY EVIDENCE DATED AFTER SEPTEMBER 13, 2013.

Claimant next argues that the Hearing Commissioner erred by limiting the evidence in the record to any evidence created prior to the verbal denial of benefits on September 13, 2013. The basis for this ruling is that Defendants could not have had access on or before September 13, 2013 to any documents or records created after September 13, 2013. When the Hearing Commissioner was asked to determine if Defendants conducted a good faith investigation, the only relevant documents to review were the documents available to Defendants at the time the decision to deny benefits was made. To permit or consider documents produced or created after September 13, 2013 would circumvent and undermine the stated purpose of the hearing on the Notice of Hearing.

Claimant argues that by excluding evidence after September 13, 2013, the Hearing Commissioner excluded written opinions from medical doctors related to causation. Again, that was the purpose of the decision by the Hearing Commissioner. The records and written opinions created after September 13, 2013 were not available to Defendants prior to September 13, 2013 and therefore cannot be weighed against the evidence used to deny benefits to Claimant. The only relevant evidence to the Hearing Commissioner's inquiry was the evidence available prior to September 13, 2013.

Therefore, for the foregoing reasons, the Hearing Commissioner's Decision and Order should be upheld in its entirety.

V. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #2 WHEN HE DETERMINED CLAIMANT SUFFERED A MYOCARDIAL INFARCTION ON MAY 28, 2013.

The Hearing Commissioner accepted all evidence and medical records created or produced prior to September 13, 2013. This medical evidence included numerous records from

Doctor's Care, Lexington Medical Center, and Drs. Travis and Lide. The evidence indicates that Claimant experienced an electrical shock at work on May 22, 2013. The Hearing Commissioner indicated that he reviewed the medical records from Lexington Medical Center wherein Claimant presented on May 28, 2013 (*six days* post-accident) with severe three vessel coronary disease, an *acute* myocardial infarction, and an *acute* post-infarct ventral septal defect. The evidence from Doctor's Care indicated that Claimant "woke up sweating" on May 28, 2013 (six days post-accident) and that he was experiencing "no chest pressure" prior to May 28, 2013 (six days post-accident). (See Def. APA p. 1). The evidence from Dr. Dasgupta at South Carolina Heart Center indicates that Claimant had pain in his left shoulder and neck region but did not have any chest pain prior to May 28, 2013. (See Def. APA p. 2). The medical records also revealed that Claimant smoked a pack of cigarettes per day for 35 years, drank a "12-pack" each week, and that he had a family history of coronary disease and myocardial infarction (namely his father passed away at the same age as Claimant of coronary disease with a myocardial infarction). (See Def. APA p. 3, 5). In addition, the Hearing Commissioner reviewed evidence of communication between Claimant and Employer. These communications revealed that Claimant only complained of neck pain, that Claimant worked the remainder of May 22, 2013 (the day of the shock) and worked his shift on May 23, 2013 (the day after the shock). (See Def. APA p. 9-11). Further, the Hearing Commissioner reviewed a note from Claimant's supervisor who stated that Claimant only complained of neck pain following the shock and that Claimant did not wish to go to a doctor. (See Def. APA p. 8).

When all of the medical and testimonial evidence in the record is viewed, it is clear that any reasonable person could reach the conclusion without surmise, conjecture, or speculation that Claimant suffered a myocardial infarction on May 28, 2013. The Hearing Commissioner

clearly reviewed the evidence and made this finding as it is supported by the medical records.

Claimant argues that this issue was not before the Hearing Commissioner and it was irrelevant to any issue before the Hearing Commissioner. This is incorrect. One of the central issues to denying compensability of this claim is the sequence of events that occurred and when Claimant's various medical issues manifested themselves. The medical records can be reasonably interpreted without surmise, speculation, or conjecture that Claimant did not experience any symptoms related to a myocardial infarction prior to May 28, 2013 (six days post-accident). It logically and reasonably follows then that a conclusion can be made that the myocardial infarction did not occur until May 28, 2013 (six days post-accident). A determination by Defendants that the myocardial infarction did not occur until May 28, 2013 (six days post-accident) would provide more than ample evidence to deny compensability of the claim. The Hearing Commissioner was tasked with determining whether a good faith investigation occurred. Part of that determination could, and should, include findings from the evidence and medical records that would support a good faith investigation and denial of benefits. That is exactly what the Hearing Commissioner did in this case. He looked at the same evidence Defendants had available and made a finding supported by that evidence that directly relates to Defendants decision to deny compensability of this claim. Therefore, the Hearing Commissioner's finding that Claimant suffered a myocardial infarction on May 28, 2013 (six days post-accident) is proper because it is (1) supported by the evidence in the record and (2) necessary for a finding that Defendants conducted a good faith investigation and had sufficient grounds to deny compensability on September 13, 2013. For the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

VI. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #4 THROUGH #9 BY MAKING FINDINGS RELATED TO AN INVESTIGATION BY DEFENDANTS.

Claimant next argues that the Hearing Commissioner erred as a matter of law by making findings of fact and conclusions of law related to Defendants investigation. Specifically, Claimant challenges any finding that indicates an investigation was conducted as Defendants did not present testimony from Employer or Carrier related to an investigation. While Claimant is correct that Defendants did not present testimonial evidence, Defendants did present documentary evidence in the form of medical records and form filings with the Commission. The evidence presented and the forms filed with the Commission make it clear that an investigation was performed and a conclusion that the claim was not compensable was reached based on a review of the medical records produced prior to September 13, 2013.

Because the record is clear that Claimant's denied compensation benefits because Claimant failed to meet his burden of proving a compensable claim, the Hearing Commissioner did not err in relying on those form filings and submitted medical records to support a conclusion that Defendants conducted an investigation in this claim. Therefore, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

VII. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #9.

Claimant next argues that the Hearing Commissioner erred in Finding of Fact #9 for two reasons: (1) the finding is in error because the Hearing Commissioner found Claimant was not prejudiced by receiving only one copy of the Form 15 when there is no evidence of lack of prejudice to Claimant; and (2) the finding is in error because Claimant was prejudiced when Defendants did not attach a separate attachment setting forth the grounds for denial. Each of these will be addressed in turn.

First, Finding of Fact #9 is not an error of law because there was no evidence of lack of prejudice. If Claimant was prejudiced by receiving only one copy of the Form 15, Claimant was required to present evidence of prejudice to rebut the Hearing Commissioner's finding. Claimant failed to present any evidence that he was prejudiced by receiving only one copy of the Form 15. Therefore, the Hearing Commissioner properly determined that Claimant was not prejudiced by receiving only one copy of the Form 15.

Second, Finding of Fact #9 is not an error of law because Defendants *did* attach the grounds for denial of benefits. Claimant reasserts issues raised previously in his brief that Defendants Form 15, Section II was deficient because it did not include the reasons for denial. In fact, the Form 15, Section clearly includes the information required by the Act. Defendants Form 15, Section II states that Claimant's claim is being denied because "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act." Therefore, Claimant cannot say he was prejudiced by receiving the very notice the Act requires.

Because Claimant presented no evidence of prejudice by only receiving one copy of the Form 15, Section II and because Defendants complied with the Act in stating the reasons for denial, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

VIII. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #10.

Claimant next argues that Finding of Fact #10 shifts the burden of proof to Claimant. This is incorrect. Finding of Fact #10 comes sequentially after previous findings of fact indicating that Defendants terminated benefits following an investigation. Once the Hearing Commissioner made that determination based on the evidence presented, Claimant had the opportunity to rebut and/or show evidence that Defendants did not, in fact, conduct a good faith investigation. Claimant failed to present any evidence to rebut Defendants proof that they

conducted a good faith investigation.

Therefore, the Hearing Commissioner properly found that Claimant failed to present any evidence to rebut the finding that Defendants conducted a good faith investigation. For the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

IX. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #11.

Claimant next argues that the Hearing Commissioner erred as a matter of law in Finding of Fact #11 in three instances: (1) the Hearing Commissioner erred by finding this claim is medically complex; (2) the Hearing Commissioner erred by using the phrase "alleged" to describe the electrical shock; (3) the Hearing Commissioner erred by making a finding that Defendants had Claimant's medical records prior to September 13, 2013. Each of these will be addressed in turn.

First, Claimant argues that the Hearing Commissioner erred by determining and stating this claim is medically complex. Claimant, on his Form 50 and Form 58 indicates that he is seeking medical benefits for his heart, left hand, left arm, left shoulder, neck, head, brain, chest, and all organs, members, and body parts. Simply alleging the entire body, including brain injury, necessarily makes this a medically complex claim. Therefore, the Hearing Commissioner did not err by stating this claim is "medically complex."

Second, Claimant argues that the Hearing Commissioner erred by using the phrase "alleged" to describe the electrical shock. Defendants do not dispute that Claimant suffered an electrical shock on May 22, 2013. Defendants have never admitted and do dispute that Claimant was electrocuted or suffered an electrocution as described by Claimant in his brief. However, even considering Defendants do not dispute that Claimant suffered an electrical shock, it was not

an error of law for the Hearing Commissioner to use the word "alleged."

Third, Claimant argues that there is no evidence Defendants had any of Claimant's medical records prior to September 13, 2013. Both medical and temporary disability benefits were paid for a period of time during the pendency of Defendants investigation. It is both common sense and practice in South Carolina that a Carrier has access to all medical reports of Claimant (especially when paying benefits). In addition, it is undisputed that Claimant's own attorney provided medical records related to Claimant's heart surgery and heart condition to Carrier via email on at least one occasion on June 26, 2013. It is therefore disingenuous to argue that Defendants may not have had access to Claimant's medical records when Claimant's attorney sent the medical records to Defendants on June 26, 2013. Because Claimant's attorney submitted Claimant's medical records to Defendant prior to September 13, 2013 and because Defendants had access to Claimant's medical records by operation of statute, the Hearing Commissioner did not err in finding Defendants had reviewed Claimant's medical records.

For all the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

X. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY ISSUING HIS DECISION AND ORDER ON DECEMBER 5, 2013.

Claimant next argues the Hearing Commissioner erred as a matter of law because the Hearing Commissioner took 14 business days to issue his Decision and Order. This is not an error of law. Therefore, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

XI. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY CONDUCTING A ONE HOUR PRE-HEARING CONFERENCE AND RULING ON OUTSTANDING PROCEDURAL OR SUBSTANTIVE MOTIONS.

Claimant next argues that the Hearing Commissioner erred as a matter of law by

conducting an un-recorded pre-hearing conference and ruling on outstanding motions. The motions Claimant refers to are motions that directly affected whether or not the Form 15 hearing could proceed. At least one of the motions was actually made and raised by Claimant⁶. In addition, Defendants motions were timely filed and served on Claimant. Because of the nature of the motions, the Hearing Commissioner was required to conduct a hearing on these motions before a Form 15 hearing could occur. Further, Claimant was given the opportunity during the pre-hearing conference with the Hearing Commissioner to adjourn and postpone the Form 15 hearing for additional time to prepare responses to various motions filed in the claim. Claimant refused that opportunity and chose to proceed with the hearing. Therefore, the Hearing Commissioner did not err in conducting an un-recorded pre-hearing conference nor did the Hearing Commissioner err in ruling on motions that directly affected whether or not the Form 15 hearing could be held.

Claimant also argues, again, that the Hearing Commissioner erred by shifting the burden of proof to Claimant. Again, there is nothing in the Hearing Commissioner's Decision and Order that shifts the burden to Claimant. Therefore, the Hearing Commissioner did not err in issuing his Decision and Order because he did not shift the burden to Claimant.

For the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

XII. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN ANY OF HIS ORDERS RELATED TO THE OUTSTANDING MOTIONS.

Claimant finally argues that the Hearing Commissioner erred as a matter of law related to specific findings and decisions in the Motions Hearing conducted prior to the Form 15 hearing. Prior to addressing each sub part of this exception, Defendants would assert that attempting to

⁶ Therefore, Claimant cannot argue he was prejudiced by having to argue all of the motions.

appeal decisions made on Motions is both interlocutory and improper through a Form 30. In the event the Full Panel determines that an appeal on a Form 30 of certain motions is not interlocutory, Defendants would respond to each sub part of the exception as follows:

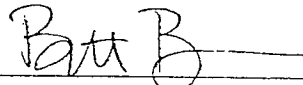
(a) Claimant first argues that the Hearing Commissioner denied his right to take the deposition of the adjuster "as a managing agent" of Carrier. Claimant also asserts error in that the Hearing Commissioner did not make a finding of fact that Defendants failed to obtain an Order prior to adjuster refusing to appear for the deposition. First, Claimant's request to depose the adjuster failed for several reasons. However, the chief reason is that the adjuster is not a managing agent of Carrier and, therefore, is not subject to subpoena for a deposition. Simply naming the adjuster as a managing agent does not make it so. Claimant sought to depose the wrong person with Carrier and the Hearing Commissioner properly denied his request. Second, the Hearing Commissioner properly refused to make a finding that Defendants failed to obtain an Order prior to the adjuster refusing the deposition. Interestingly, Claimant refused to appear for his own properly noticed deposition without filing a Motion to Quash and without obtaining an Order to postpone the deposition and took the position that no Order was needed to not appear at the deposition because "15 days" notice was not provided⁷. Therefore, the Hearing Commissioner did not err in regards to this sub-part of the exception.

(b) Next, Claimant argues the Hearing Commissioner erred by not holding a hearing on the Motion to Quash the deposition of the adjuster prior to the Form 15 hearing. Claimant never requested an alternate date for the motion to quash and never asked that it be expedited. Therefore, Claimant has waived any objection to its expediency. Further, Claimant's position previously was that the motions should not have been heard at all at

the Form 15 hearing (rather, they should have been done later). If Claimant was successful on that issue, it would be at odds with this request. Therefore, the Hearing Commissioner did not err in regards to this sub-part of the exception.

CONCLUSION

Based on all the foregoing reasons, the Hearing Commissioner's Decision and Order should be AFFIRMED in its entirety.



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Columbia, South Carolina
March 14, 2014

⁷ However, 10 days notice (as required by statute) was provided. This was undisputed.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY INSURANCE
COMPANY C/O LIBERTY MUTUAL GROUP,

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:

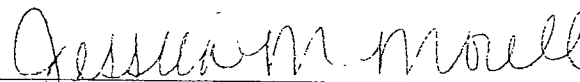
TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715

DOCUMENT: Other - Respondents' Reply Brief to the Full Commission

DATE OF
MAILING: March 14, 2014



Jessica M. Morell
Legal Assistant to Brett H. Bayne

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1306305

Clarence Winfrey, ... Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Defendants/Respondents.

NOTICE OF APPEAL

RECEIVED

AUG 25 2014

SC Court of Appeals

Appellant Clarence Winfrey appeals the Decision of the Appellate Panel of the South Carolina Workers' Compensation Commission filed July 25, 2014 which affirmed the Form 15(III) Hearing Commissioner's Decision with amendments. Appellant received notice of entry of the Appellate Panel Order (the final Agency Decision which is attached) according to an unsigned "Affidavit of Service" by email on July 25, 2014.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That the Commission erred as a matter of law by not reversing the Decision of the Hearing Commissioner pursuant to

S.C. Code of Laws §42-17-40, based on its review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and 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. That the Commission and the Hearing Commissioner erred as a matter of law by shifting the burden of proof at a Form 15 hearing to require the Claimant to prove that the Defendants did not conduct a Good Faith Investigation.

3. That the Commission and the Hearing Commissioner erred as a matter of law concerning the shifting of the burden of proof as set forth in #2 above wherein SC Code §42-9-260 and Commission Reg. 67-504(C) and 67-612(B)(4), all provide that the employer and the insurance carrier are the moving parties at the subsequent hearing held in a Form 15 situation wherein benefits are stopped without a hearing and as the moving parties have the burden of proof to prove that they have complied with the Act and by not applying the law established by the Court of Appeals in the case of Martin v. Rapid City Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App. 2006) which held that the employer and its insurance carrier have the burden of proof to prove that they have met one of the conditions under the Act wherein the Court specifically held:

"However, the statute is explicit that even under a Form 15, an employer can only terminate or suspend temporary compensation if one of the specified conditions is met." (Emphasis added).

4. That the Commission and the Hearing Commissioner erred as a matter of law where the Record is uncontroverted that the Defendants failed to comply with the requirements of SC Code §42-9-260 which provides that, "upon making the first payment, the employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." This is a mandatory provision and the Commission erred by failing to find that the Defendants could not take the benefit of the remainder of the Statute for having failed to comply with the Statute, which would allow them to stop payment of benefits without a hearing under the other provisions of that Statute.

5. That the Commission and the Hearing Commissioner not only erred by shifting the burden of proof to the Claimant but where the Record is uncontroverted that the Claimant's first notice that the Defendants were alleging they were entitled to stop benefits based on a good faith investigation was on September 13, 2013, by then holding and refusing to allow any evidence on behalf of the Claimant subsequent to that date into the Record therein placing the Claimant in a paradoxical situation of being required to prove that the Defendants did not conduct a Good Faith Investigation but at the same time being

denied the right to take the deposition of the adjuster after that date with no ruling until the hearing; being denied the file by the Defendants of the adjuster until after the Form 15 hearing; and being denied the right to submit any evidence after that date that would establish that he had sustained a compensable injury by accident which would rebut/contradict any evidence in the Record to the contrary.

6. That the Commission and the Hearing Commissioner erred as a matter of law by admitting into evidence and considering both the Defendants' Pre-Hearing Brief and their APA Submissions which were not only not submitted 15 days or more prior to the hearing in accordance with the Commission Regulations, but were not even timely served 10 days before the hearing as a non-moving party and were only served 9 and 8 days respectively prior to the date of the hearing, which is uncontroverted in the Record. The Commissioner abused his discretion in admitting these documents into the Record and then relying on those documents to rule against the Claimant.

7. That the Commission and the Hearing Commissioner erred as a matter of law by first finding that there was a stipulation and then setting forth the position of the Claimant that it was the position of the Claimant that the only issue before the Commission was whether the Defendants had properly terminated workers' compensation benefits, wherein to the contrary it was the position of the Claimant that the Defendants had the burden of proof to prove that they had stopped disability benefits

without a hearing under the alleged exception to the Act which allows them to do so; as claimed in this case that they had conducted a Good Faith Investigation.

8. That the Commission and the Hearing Commissioner erred as a matter of law by finding that the Defendants had properly stopped payment of benefits where the Defendants had failed to comply with the requirements of the Rule 67-504(A) by failing to comply with the provisions of that subsection which specifically require that, "shall" serve two copies of the Form 15 immediately on the Claimant according to Rule 67-211 with documentation attached as to the reason for termination or suspension. The Hearing Commissioner erred by failing to apply the law as dictated to the Commission by our Appellate Courts wherein the SC Court of Appeals has specifically held in the case of Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App. 2006) that an employer and its insurance carrier may not stop temporary total disability benefits and shall be required to resume such benefits where it:

"Failed to follow the proper procedure for doing so as outlined in §42-9-260 and Reg. 67-504. Rapid Plumbing terminated the compensation on August 10, 2002 . . . and failed to attach the supporting documentation as required by §42-9-260. These deficiencies are not mere technicalities but are substantial deviations from the statutory procedure." (Emphasis added).

9. That the Commission and the Hearing Commissioner erred as a matter of law by not assessing the mandatory 25% penalty and ordering reinstatement where the Defendants had failed to comply

with the statute at least admittedly in one regard, that being that they failed to file the mandatory form with the Commission at the time that benefits were started. In Rapid City the Court of Appeals held that the provisions of §42-9-260(G) which provides that the failure to comply with that section (doesn't specify in which regard but generally specifies in any regard) is mandatory as far as the imposition of the 25% penalty and the reinstitution of benefits. The Court of Appeals specifically stated, "the language of §42-9-260(G) is mandatory."

10. That the Commission and the Hearing Commissioner erred as a matter of law by considering evidence irrelevant and immaterial to the singular issue at a Form 15 hearing before the Commission by considering the Motion to Quash the deposition of the adjuster, the Motion to Compel Deposition for cause, the Motion for Continuance, the Summons and Complaint, and a Temporary Restraining Order, all of which were immaterial and irrelevant to the issue before the Hearing Commissioner on a Form 15(III) hearing under SC Code §42-9-260.

11. That the Commission erred as a matter of law by affirming Hearing Commissioner Order Finding of Fact No. 6 and specifically by finding as a fact in violation of the statute that, "a determination was based on the denial of the claim following an investigation." There is no documentation attached to the Form 15 in violation of the Statute to establish that an investigation was conducted and the statute specifically provides

that not only must an investigation be conducted, but a, "good faith" investigation must be conducted.

12. That while the Hearing Commissioner erred as a matter of law in making Findings of Fact Nos. 4-9 in that they refer to statements contained in various forms on file with the Commission as being in evidence and are not based on either testimony, stipulations or documentary evidence submitted pursuant to the Administrative Procedures Act, the Commission specifically erred by affirming his finding in Finding of Fact No. 8 finding that the Form 15, section 2, documented that the reason for termination was the employee failed to meet the burden of proof of compensable injury under the Workers' Compensation Act. This Finding of Fact by the Commissioner is not based on evidence in the Record.

13. That the Commission and the Hearing Commissioner erred as a matter of law in affirming and by making Finding of Fact No. 9 and specifically:

A. That the Claimant alleged that he was not properly served with a Form 15 because he was only served with 1 copy wherein the statute specifically provides that the Defendants are required to serve the Claimant with 2 copies. The Commissioner then goes on to make a factual conclusion that the Claimant was in no way, "prejudiced" which is not supported by the law or any evidence in the Record as the Defendants again failed in this regard in their compliance with both the statute and the

Commission Regulations and stopped benefits without hearing in violation of due process.

B. By making the conclusory statement that the Defendants' failure to comply with the statute by not only not providing the Claimant with 2 copies of the Form 15 but also by not setting forth a separate attachment as to the grounds was not improper, where such failures of compliance are an undisputed violation of the law. This statement violates one of the fundamental principles of the law as dictated by our Appellate Courts in reference to strict construction of the wording of the Act and the Defendants' requirement to "strictly" meet the requirements of the Act.

14. That the Commission and the Hearing Commissioner erred as a matter of law by affirming and making Finding of Fact No. 10 which is a violation of law and an error of law in that it shifts the burden of proof to the Claimant and provides that the Claimant not only has the burden to prove that the Defendants did not conduct a Good Faith Investigation but makes the blanket factual assumption which is based on surmise, speculation and innuendo that the Claimant did not put up evidence that would, "indicate that the Defendants acted in anything other than good faith during the investigation". There is simply no evidence and this is an error of law because whether or not the Defendants acted in good faith during the investigation is not a requirement under the Act. The requirement is whether or not they conducted a good faith investigation and this is speculation, innuendo and

surmise and an abuse of discretion by the Commissioner since it also reaches the factual conclusion that an investigation was performed. The Hearing Commissioner further erred as a matter of law, abused his discretion and subjected his decision to caprice by making the statement that, "this is based on the evidence or lack thereof submitted by the Claimant at the hearing."

15. That the Commission and the Hearing Commissioner erred as a matter of law by affirming and making the Hearing Commissioner's Finding of Fact No. 11, which in many ways is not a Finding of Fact, but by specifically making the following statements contained within that Finding that:

A. The Commissioner states that the Claimant is alleging, "a medically complex condition". This is surmise, speculation and innuendo and a blanket assumption made by the Commissioner that is not supported by any evidence in the Record;

B. Making the statement that it is an "alleged" shock. There is absolutely no evidence in the Record that the Defendants in any way challenged the fact that the Claimant suffered an electrical shock and electrocution on May 22, 2013; and

C. Making the statement that a causal relationship between the Claimant's electrical shock and his current medical condition is best determined by review of the medical expert medical reports to which the Defendants had access by operation of §42-15-95. There is absolutely no evidence, and this was a

hotly contested issue at the hearing, as to when or how the Defendants received any of the belated medical records that they were allowed to put into evidence (only based on the discretionary decision of the Commissioner). There was simply no testimonial or documentary evidence submitted into the Record that would establish whether or not those records were received before September 13, 2013.

16. That the Commission and the Hearing Commissioner erred by affirming and making a Finding of Fact that is not supported by any facts and evidence that the Defendants' refusal to continue benefits and the reason for stopping benefits was a determination as to whether or not his heart condition was causally related to the alleged electrical shock. The only, and the Claimant would reiterate the only, evidence in the Record as to a causal relationship is that set forth in the statement of the insurance carrier's own assigned rehab nurse wherein she specifically refers to the Claimant's treatment as being directly related to his electrical shock. That in fact is the uncontradicted evidence and the Commissioner's statement in that regard is speculation, surmise and innuendo and is the subject of being capricious and an abuse of discretion.

17. That the Commission and the Hearing Commissioner erred as a matter of law in affirming and by making the Hearing Commissioner's Conclusion of Law 2, subparagraph c, holding as a matter of law that the Defendants do not have to establish that they conducted a Good Faith Investigation but only that they have

to have, "represented to the Commission" that they had conducted such an investigation; and by shifting the burden of proof and requiring that, "the Claimant did not provide any evidence that the Defendants conducted their investigation in anything other than good faith", thus placing the burden of proof on the Claimant to prove that the Defendants did not conduct a Good Faith Investigation where they did not put in one iota of evidence that they had conducted a Good Faith Investigation or in any way met their burden of proof or even that of a prima facie case.

18. That the Commission and the Hearing Commissioner erred by holding as a matter of law that the Defendants' investigation, "revealed a good faith belief" that the Claimant had failed to meet his burden of proof. There is absolutely no evidentiary support of an investigation by the Defendants nor that this is what such investigation revealed. Under subsection (e) the Commissioner further erred by shifting the burden of proof to the Claimant where the benefits had been started on the basis that a prima facie case had been established that the Claimant had suffered a compensable injury. The Hearing Commissioner erred in a Form 15 hearing, which only comes about after the Defendants have started benefits on the basis that a compensable injury has occurred, by citing to law under SC Code §42-1-160 as to the Claimant's burden of proof where it is denied that a compensable injury has occurred.

19. That the Commission and the Hearing Commissioner erred as a matter of law by finding as a Conclusion of Law that, "therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants." The error being among many that the Defendants put up no substantial evidence to meet their burden of proof that they conducted a, "Good Faith Investigation" or that they in fact conducted any investigation as to what factually that investigation was, or the facts that substantiated that the Claimant had not met his burden of proof on compensability. That Finding or actually that Conclusion of Law is and makes the Commission Decision based on surmise, speculation and innuendo and the subject of caprice, prejudice and the subject of an abuse of discretion. The Commission failed in their oath of office by not complying with the dictates of the law as dictated by the Legislature, the Commission in its Regulations and under the decisions of the SC Appellate Courts. There is simply no evidence put into the Record to support this conclusion of law and this is an error of law under the law which the Commission is sworn by oath to uphold. It also violates the fundamental principles of the Act, which is that the Act shall be liberally construed in favor of benefits to the injured worker.

20. That the Court and the Hearing Commissioner erred as a matter of law by making Hearing Commissioner Order Conclusion of Law No. 3 which improperly states the position of the Claimant

stated on the Record repeatedly, in his Pre-Hearing Brief and at the Hearing, and in the unrecorded Pre-Hearing Motion Conference.

21. That the Court and the Hearing Commissioner erred as a matter of law in making Hearing Commissioner Order Conclusion of Law No. 4 for all the reasons as set forth hereinabove and in addition, by making the statement that it is, "possible" for the Defendants to have drawn a conclusion in good faith based on the Claimant's medical records that he suffered from pre-existing medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify in denying the claim." There is no medical evidence to this effect nor is there any evidence to that effect, nor is there any testimony nor documentary evidence to that effect and in addition, assuming that the Claimant is correct that the Defendants have the burden of proof, they have a burden of proof to establish by a preponderance of the evidence that they conducted a good faith investigation and the basis for denial based on that good faith investigation, none of which is met in this conclusion or case.

22. That the Commission erred in affirming and the Hearing Commissioner erred as a matter of law by delaying a decision from November 13, 2013 until December 5, 2013, a period of 22 days where the singular issue before the Commissioner was whether or not the Defendants had established that they conducted a Good Faith Investigation and had denied benefits based on that investigation. The statute contemplates a quick determination as

to whether or not the Defendants properly stopped benefits on one of the limited bases as provided for under the Act, wherein in this case the Commissioner not only delayed the Decision for over 22 days but also did not issue the Decision until after a decision on all Motions that had been filed before the Commission.

23. That the Commission by affirming and the Hearing Commissioner erred as a matter of law where the Hearing Commissioner stated that the purpose of the Hearing was to determine whether or not the Claimant was entitled to a reinstatement of benefits by holding, without notice prior to that hearing, an off the Record hearing on filed motions that took over an hour and ruling on all motions before even reaching the only issue of which the parties had notice on the date of the hearing.

24. That the Commission by affirming and the Hearing Commissioner erred as a matter of law in an ancillary and interlocutory Order concerning motions issued by:

A. Denying the right of the Claimant to take the deposition of the adjuster and in that regard, also by not making a Finding that the Defendants had failed to obtain an Order in reference to the Deposition that had been properly and timely set prior to the time that the Deposition was to take place; and

B. By not hearing a Motion to Quash a Subpoena issued for the adjuster's file prior to the date of the hearing on the Form 15(III) hearing where such Subpoena had been issued for the

production of the adjuster's file back in September to be produced before the end of September and the hearing was not held on the Motion to Quash prior to the production time nor was it held until the date of the hearing on the Form 15(III).

25. That the Commission erred in affirming and the Hearing Commissioner erred by making as a matter of law in his preliminary and interlocutory Order all of legal bases set out and all conclusions of law as to the Findings of Fact and Conclusions of Law made that would justify the Commissioner's refusal to grant the Claimant the right to take the adjuster's deposition and to quash the Subpoena for that Deposition. That Decision and the hearing on that not being held until the date of the hearing on the Form 15 (III) was prejudicial to the Claimant and in violation of his rights to due process of law in that it failed to give him "an adequate" opportunity to be heard especially in light of the Commissioner's decision in his Order that the Claimant had the duty and responsibility and burden of proof to prove that the Defendants did not, and the Claimant would emphasize did not, conduct a Good Faith Investigation.

26. That the Commission erred as a-matter of law under the provisions of the Administrative Procedures Act and the Worker's Compensation Act by allowing a party to draft the three Commissioner consensus Decision representing the final decision of the Commission and by not making its own detailed Findings of Fact and Conclusions of Law as is required by law.

27. That the Full Commission erred as a matter of law by issuing an Order drafted by Defense Counsel with a Statement of the Case which contains evidence outside of the Record, misstatements of the Record, assumptions from the Record and statements that constitute surmise, speculation, and innuendo and reference to an action filed in the Circuit Court which establishes that the Commission considered information outside of the Record.

28. That the Full Commission erred as a matter of law by adding Finding of Fact #7 specifically including but not limited to as a basis that said finding:

A. Was not requested or addressed to any issue raised;

B. Consists of no evidence in the Record establishing possession of Records, knowledge of Defendants or evidence supporting a good faith denial; and

C. Is the subject of surmise, speculation and innuendo.

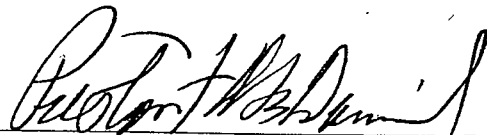
29. That the Full Commission erred as a matter of law by adding Finding of Fact #8 specifically including but not limited to that said Finding:

A. Is not a statement of fact but is an unsupported, inaccurate conclusion of law;

B. Is a statement of law non-supported by any case law and statutory law; and

C. Exceeds the authority of the Commission as fact-finder.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", is written over a horizontal line.

Preston F. McDaniel, Esquire
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August 22, 2014

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1306305

Clarence Winfrey, ... Appellant,

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Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL by depositing a copy of it in the United States Mail, postage prepaid, on August 22, 2014 addressed to: Ms. Amy Bracy, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 AND also serving a copy upon Brett H. Bayne, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: August 22, 2014



Preston F. McDaniel
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SC Court of Appeals

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY c/o LIBERTY
MUTUAL GROUP,

Carrier,

Defendants.

FULL COMMISSION DECISION
AND ORDER ON CLAIMANT'S
APPEAL FROM COMMISSIONER
BECK'S DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on May 19, 2014.

APPEARANCES:

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

Defendants represented by Brett H. Bayne, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Claimant's Form 30.

COMMISSIONER:

FILED:

July 25, 2014

STATEMENT OF THE CASE

This claim arises out of a work-related accident on May 22, 2013. On that date, Claimant was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was

rescinded, the Commission set Claimant's Form 15, Section III for a hearing before the Hearing Commissioner. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, the Hearing Commissioner conducted a standard pre-hearing conference as well as a Motions Hearing wherein the Hearing Commissioner ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. The Hearing Commissioner gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for the Hearing Commissioner to determine was whether or not Defendants had conducted a good faith investigation. In order to make that determination, the Hearing Commissioner limited the review of evidence to only those documents produced prior to the date of denial - September 13, 2013. Following the hearing, the Hearing Commissioner issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30 and this appeal followed. A hearing on this appeal was held on May 19, 2014 before the Full Commission. After hearing oral argument from both parties and considering the evidence submitted in the record, the Single Commissioner's Decision and Order is AFFIRMED AS MODIFIED.

SINGLE COMMISSIONER'S FINDINGS OF FACT

Based on my consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, I make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. Claimant suffered a myocardial infarction on May 28th, 2013. This is based on the medical records submitted by the Claimant from Lexington Medical Center.
3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The

termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.

7. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
8. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
9. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of This is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

10. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
11. I find the Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of §42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

Based on the foregoing, I make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if... a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. See Finding of Fact No. 4.

- b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. See Finding of Fact No. 6.
- c. Defendants represented to the Commission they conducted a good faith investigation of the claim. See Form 15, Section II dated September 12th, 2013.
- d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. See Finding of Fact Nos. 10-11
- e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". See Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. See § 42-1-160; Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation Act".); Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (Internal citations omitted)); S.C. Second Injury Fund v. Liberty Mut. Ins. Co., 353 S.C. 117, 576

S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence."),

f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.

3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.
4. Based on the foregoing, I find that Defendants properly stopped benefits under § 42-9-260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. See Finding of Fact # 8. This is a permissible ground for termination under the statute. See § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had knowledge of the course of Claimant's treatment through its Nurse Case Manager. See Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from preexisting medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. See e.g. Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) ... 3. Coronary artery disease[,] ... 5. Hypertension[,] 6.

Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.

5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

LEGAL ISSUES RAISED BY CLAIMANT-APPELLANT

1. Did the Hearing Commissioner err as a matter of law by holding that the Defendants do not have the burden of proof to prove that they conducted a good faith investigation allowing them to stop benefits without a hearing any by shifting the burden of proof requiring the Claimant to prove that the Defendants did, "not" conduct a good faith investigation?

- II. The Hearing Commissioner erred as a matter of law by not ordering reinstatement of benefits where the Defendants failed to comply with the mandatory requirements of SC Code §42-9-260.
- III. The Hearing Commissioner abused his discretion by considering the late filed pre-hearing brief and the late filed APA submissions of the defendants.
- IV. The Hearing Commissioner erred by excluding evidence from the Claimant after September 13, 2013.
- V. The Hearing Commissioner erred as a matter of law by making the Finding of Fact #2 that the Claimant suffered a myocardial infarction, "on May 28, 2013".
- VI. The Commissioner erred as a matter of law by making a finding of fact that is not supported by the evidence that an investigation was conducted as found in finding of fact #6 and by making other findings of fact #4 through #9, which are not supported by the testimony, stipulations or documentary evidence submitted in the record.
- VII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9.
- VIII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 10.
- IX. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 11.
- X. The Hearing Commissioner erred as a matter of law by delaying a decision from November 13, 2013 until December 5, 2013.
- XI. The Hearing Commissioner erred as a matter of law by holding a pre-hearing conference for over an hour and making substantive decisions on motions that were not properly noticed and which included the parties' positions on the issues before the Hearing Commissioner.

XII. The Hearing Commissioner erred as a matter of law in his ancillary and interlocutory order concerning motions that has been filed.

EVIDENCE OF THE CASE

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 complaining that he woke up sweating (6 days post-accident). (Def. APA p. 1). Doctor's Care noted that he had some tenderness in his shoulder and neck area. *Id.* Further, Doctor's Care noted that Claimant did not complain of any chest pressure. *Id.* Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. *Id.* Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

FULL COMMISSION FINDINGS OF FACT

Based on our consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, We AFFIRM AS MODIFIED and make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. The claimant was admitted to Lexington Medical Center on May 28, 2013 and underwent surgery for a myocardial infarction. This is based on the medical records submitted by the Claimant from Lexington Medical Center.
3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.

6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.
7. We find that the communications by and through the Claimant's attorney and the Defendants' representatives are sufficient to prove that the medical records were provided to the Defendants prior to September 13, 2013, and provide a basis for the Defendants knowledge and good faith denial.
8. We find that a heart attack and its relationship to a work related injury is a medically complex case.
9. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
10. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
11. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of this

is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

12. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
13. We find Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of §42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

FULL COMMISSION CONCLUSIONS OF LAW

Based on the foregoing, we make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if... a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. See Finding of Fact No. 4.
 - b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. See Finding of Fact No. 6.
 - c. Defendants represented to the Commission they conducted a good faith investigation of the claim. See Form 15, Section II dated September 12th, 2013.
 - d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. See Finding of Fact Nos. 10-11
 - e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". See Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. See § 42-1-160; Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation

Act".); *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased, and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (Internal citations omitted)); *S.C. Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 576 S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence."),

f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.

3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.
4. Based on the foregoing, we find that Defendants properly stopped benefits under § 42-9260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. See Finding of Fact # 8. This is a permissible ground for termination under the statute. See § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had

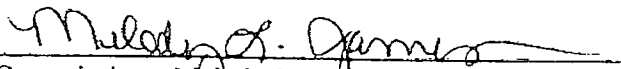
knowledge of the course of Claimant's treatment through its Nurse Case Manager. See Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from preexisting medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. See e.g. Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) ... 3. Coronary artery disease[,] ... 5. Hypertension[,] 6. Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.

5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

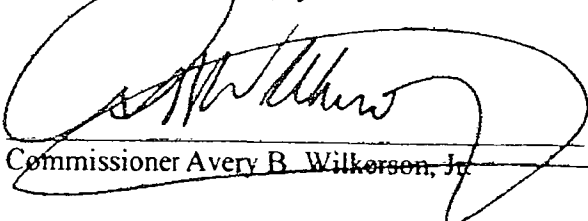
ORDER

IT IS HEREBY ORDERED that the Single Commissioner's Decision and Order is
AFFIRMED AS MODIFIED.

AND IT IS SO ORDERED.


Commissioner Melody James


Commissioner Aisha Taylor


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

By Kim Falls on July 25, 2014

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

CLARENCE WINFREY,

Employee

-VS-

ARCHWAY SERVICE, INC.,

Employer

and

AMERICAN FIRE AND CASUALTY CO.,

Carrier

WCC FILE NO.
1306305

Pursuant to Notice of the Workers' Compensation Hearing taken on the 13th day of November 2013, heard before the Honorable T. Scott Beck, and commencing at the hour of 3:50 p.m. in Columbia, South Carolina.

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	(None Offered)	

LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
[sic]	written as said

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P R O C E E D I N G S

1
2 **COMMISSIONER BECK:** Today's date is
3 November 13, 2013. This is Workers' Compensation
4 File Number 1306305. Claimant in this matter is
5 *Clarence Winfrey*, represented today by Attorney
6 Preston Daniel. The Employer is *Archway Service,*
7 *Inc.*, the Carrier is *American Fire and Casualty*
8 *Company*, they are represented today by Attorney
9 Rocky Hughey and Brett Bayne. Date of accident in
10 this matter is May 29, 2013. We are here today as
11 a result of a Form 15 hearing request filed on
12 behalf of the Claimant pursuant to 42-9-260(c).

13 Either of you gentlemen have APAs to submit?

14 **MR. HUGHEY:** Yes, your Honor.

15 **COMMISSIONER BECK:** I will note for the record
16 that there was an objection by the Claimant for me
17 to exclude the APA evidence and/or any witness
18 evidence on behalf of the Defendants as a result of
19 a late filing of their pre-hearing brief and
20 submissions to the Claimant. I'm going to overrule
21 that objection with the caveat that I'm only
22 considering information prior, up to, and including
23 September 13, 2013. That date being the date in
24 which Defendants made a decision to terminate
25 temporary total disability benefits that were

1 previously being paid to Mr. Winfrey.

2 Mr. Hughey, do you have your APAs?

3 **MR. HUGHEY:** Sure, your Honor. I just wanted
4 to let Preston know what I'm doing, is withdrawing
5 what was marked Exhibit 1, removing it from our APA
6 submissions.

7 Thank you, your Honor.

8 **COMMISSIONER BECK:** Other than that are there
9 any other objections to APAs, jurisdiction, venue,
10 or any other matter, Mr. Hughey?

11 **MR. HUGHEY:** None from the Defendants, your
12 Honor.

13 **COMMISSIONER BECK:** Mr. McDaniel?

14 **MR. McDANIEL:** Commissioner, I would
15 interpose, just for the record, a further objection
16 to several of the documents. As for those
17 documents under Exhibit 2 there's been -- and
18 Exhibit 3 there has been no foundation laid for the
19 submission of those records under any evidentiary
20 basis, and in addition to those, they're hearsay.
21 But I just want to note that for the record.
22 Really don't have any, you know, problem with them,
23 but, I mean, they are not properly submitted and
24 the proper foundation has not been laid.

25 I don't -- I think as to five, six, and seven,

1 and eight, and nine, those are all court documents,
2 but they're all postdated September 13th and I
3 think you've already stated that in reference to
4 any document that's submitted past that date you
5 would not consider that, so I just note that for
6 the record.

7 **COMMISSIONER BECK:** And I may also note that,
8 at least as it relates to five, six, seven, those
9 issues were the subjects of some Motions Hearings
10 that we had prior to going on the record today and
11 those matters have been ruled upon and an order is
12 being drafted dealing with each of those respective
13 issues.

14 Other than that, Mr. McDaniel, I'm going to
15 allow them in. Again, with the caveat that I'm
16 only considering information up to and including
17 September 13, 2013.

18 Any other objections?

19 **MR. McDANIEL:** And the -- Commissioner, just
20 for -- Tab -- what has been given to me as Tab --
21 I'm not sure, I believe that's four?

22 **MR. HUGHEY:** Yeah, we didn't submit that.

23 **MR. McDANIEL:** You didn't submit it? Okay.
24 That's fine.

25 **COMMISSIONER BECK:** Mr. Hughey, any

1 objections?

2 MR. HUGHEY: Not from the Defendants, your
3 Honor.

4 MR. McDANIEL: It's not submitted, so.

5 COMMISSIONER BECK: All right. Without any
6 further objection the Commission File becomes a
7 part of the record with the exception of self-
8 serving declarations or un-stipulated medical
9 reports.

10 Also during the pre-hearing conference the
11 respective position of both the parties was
12 discussed. Parties stipulate that the sole purpose
13 for today's proceeding is to determine whether or
14 not the Defendants properly stopped the Claimant's
15 temporary total disability benefits under Section
16 42-9-260.

17 Mr. Hughey, do you concur with that?

18 MR. HUGHEY: We do, your Honor.

19 COMMISSIONER BECK: Mr. McDaniel?

20 MR. McDANIEL: Yes, your Honor.

21 COMMISSIONER BECK: All right. As a moving
22 party, Mr. Hughey, you may call your first witness
23 and I believe that is Mr. Winfrey.

24 MR. HUGHEY: Thank you, your Honor.

25 ****

1 Whereupon,

2 CLARENCE WINFREY,

3 having been first duly sworn,
4 was examined and testified as follows:

5 *****

6 MR. McDANIEL: Your Honor -- I'm sorry.

7 COMMISSIONER BECK: Please state your full
8 name for the record.

9 THE WITNESS: Clarence B. Winfrey, Junior.

10 COMMISSIONER BECK: Mr. Winfrey, you can put
11 your hand down. I'm going to ask, if you would,
12 during the course of your testimony, sir, try to
13 keep your voice up a little bit. These recording
14 devices have to be able to pick up everything that
15 you're saying and the court reporter actually has
16 to hear the words come out of your mouth, as well,
17 and I'm a little hard of hearing, okay?

18 WITNESS: I understand.

19 COMMISSIONER BECK: Mr. McDaniel, do you have
20 something?

21 MR. McDANIEL: Yeah, I just wanted to note one
22 thing additional for the record. I noted that they
23 did not give me notice of any witnesses as part of
24 their case. They did not list Mr. Winfrey as a
25 part of their case. However, we are allowing him

1 to testify on the limited issues concerning prior
2 to September 13th. However, we did list him as a
3 witness in our case.

4 COMMISSIONER BECK: I understand.

5 Mr. Hughey.

6 MR. HUGHEY: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. HUGHEY:

9 Q. Mr. Winfrey, can you hear me okay?

10 A. Yeah.

11 Q. Okay. You and I haven't met yet. I'm Rocky
12 Hughey, I represent your employer and their
13 insurance carrier on the workers' compensation
14 claim --

15 A. Nice to met you.

16 Q. I just have a few questions for you, all right?
17 Before we went on the record Mr. McDaniel and the
18 Commissioner let you know you can take a break if
19 you feel uneasy at any point. Just let me know and
20 we'll do that, all right?

21 A. (No Response.)

22 Q. Is that okay?

23 A. Yeah.

24 Q. Okay. Be sure you give verbal responses if you
25 can.

1 A. All right.

2 Q. Mr. Winfrey, I'm going to ask you about some of
3 your medical records. I understand you don't have
4 all of it in front of you. But what I'm going to
5 do is direct the Court to APA four. This is
6 Claimant's APA four.

7 COMMISSIONER BECK: Page four?

8 MR. HUGHEY: APA four, page ten, of the
9 Claimant's APAs.

10 Q. Mr. Winfrey, at some point after your incident at
11 work you went to Doctors Care, is that correct?

12 A. Yes.

13 Q. I'm looking at a report dated May 28, 2013, does
14 that sound like your first visit to Doctors Care?

15 A. I believe so.

16 Q. Okay. And I have a date of injury, or a date of an
17 incident, of May 22, 2013, does that sound about
18 right to you?

19 A. It was the Thursday before.

20 Q. Your accident was the Thursday before this medical
21 visit?

22 A. Yes.

23 Q. Okay. So you don't disagree with your accident
24 date being May 22, 2013?

25 A. I'm not sure about that, my friend.

1 Q. Did you go to Doctors Care days after your incident
2 at work or did you go to Doctors Care the same day
3 you were hurt?

4 A. It was over the weekend.

5 Q. Okay. So you didn't immediately go to Doctors
6 Care?

7 A. No.

8 Q. I'm looking at this report, says you were shocked,
9 you were complaining of neck pain on that day, is
10 that correct?

11 A. Yes.

12 Q. Did you complain of any chest pressure to the
13 doctor at Doctors Care?

14 A. That was Dr. Greenfield. And my neck was
15 excruciating from my shoulder up and it was so
16 severe I didn't feel nothing else but this.

17 Q. Were you having chest pain on that day?

18 A. If I was I couldn't feel it because of all the pain
19 here (indicating).

20 Q. So you don't have any recollection of feeling chest
21 pain on the day of this visit to Doctors Care?

22 A. No.

23 Q. All right. And just by way of background,
24 Mr. Winfrey, you are, or at least before this
25 accident, were a pack and a half a day smoker, is

1 that right?

2 A. Yes.

3 Q. And you also drank periodically?

4 A. Beer, yes.

5 Q. And in terms of your family history, not to upset
6 you, but unfortunately your father did have some
7 issues with his heart, is that correct?

8 A. He was an alcoholic, yes.

9 Q. And your father's cause of death, did he have a
10 heart attack?

11 A. Yes.

12 Q. Okay. Looks like on page 14 of the APAs for the
13 diagnosis from Doctors Care, and this is on May
14 28th, they diagnosed you with a cardiac arrhythmia,
15 do you know what that is, Mr. Winfrey?

16 A. No, sir.

17 **COMMISSIONER BECK:** What page?

- 18 **MR. HUGHEY:** This is on page 14, your Honor,
19 of the APAs.

20 **COMMISSIONER BECK:** Got it.

21 **MR. HUGHEY:** Page two, your Honor, of the
22 Defendant's APAs.

23 Q. Mr. Winfrey, I'm looking at a report from the South
24 Carolina Heart Center, this is dated May 28, 2013,
25 do you remember being seen there?

1 A. Doctor Lide.

2 Q. You did see Dr. -- Dr. Lide is the one you saw
3 there?

4 A. Yeah. I'm not sure about the dates.

5 Q. Okay. And it says in this report at the end of the
6 first paragraph, (As Read): At the time of this
7 interview the patient denied any chest pain, but
8 had minimal left shoulder pain.

9 When you went to the South Carolina Heart
10 Center do you remember whether or not you were
11 having chest pain?

12 A. When I went to the heart center I've already been
13 released from the hospital.

14 Q. Well, I'm looking a report, office consult, May 28,
15 2013 on South Carolina Heart Center letterhead, do
16 remember going there?

17 A. The only time I been there is after I got released
18 to visit Dr. Lide.

19 MR. McDANIEL: Your Honor, not to -- it might
20 be -- well, if there were no objection, but it
21 might be a benefit to Mr. Hughey to look at who
22 that report was from and it might help Mr. Winfrey
23 in properly responding to his questions.

24 COMMISSIONER BECK: All right.

25 Q. It looks like you saw a cardiologist there,

1 Dr. Dasgupta, do you remember seeing her?

2 A. Oh, yeah, that's the one -- I'm sorry. That's the
3 one Dr. Greenfield sent me to over there by
4 Lexington Hospital.

5 Q. And it looks like, down at the bottom of this first
6 page, they counseled you on stopping smoking, do
7 you remember that?

8 A. I was only in there for about an hour. He did an
9 ECHO of my heart and then they rushed me to the
10 hospital in an ambulance.

11 Q. And on page three of the APAs, the second page of
12 this report under Impression and Plan, here it
13 actually says, Chest pain unspecified. On the
14 first page it said you deny chest pain. Do you
15 know if you had chest pain at the time of that
16 visit?

17 A. I was profusely sweating at Dr. Dasgupta's and so
18 he did an ECHO of my heart.

19 Q. Right.

20 A. And then he called the ambulance to take me across
21 the street to the hospital.

22 Q. It looks like they -- part of the impression was
23 obesity. Would you consider yourself overweight at
24 the time of that visit on May 28th?

25 A. I'm overweight, yes.

1 Q. Okay. Looking at page four of the APAs -- of the
2 Claimant's APAs. This looks like a June 8, 2013
3 report when you were discharged from Lexington
4 Medical Center. Were you there for a period of
5 time, at Lexington Medical Center?

6 A. I think it was two and a half, three weeks, but I
7 might be wrong.

8 Q. I'm looking on page five at about the second
9 sentence down. It says you were found to have an
10 occlusion -- (As Read): He was found to have an
11 occlusion of his posterior descending coronary
12 artery, as well as three vessel coronary disease
13 and a VSD.

14 Did your doctors talk to you about any of
15 that?

16 A. I don't remember.

17 Q. On page six of the APAs, looks like this same visit
18 or this same discharge, under Final Diagnoses they
19 have coronary arteriosclerosis of native coronary
20 artery and they, again, mention tobacco use and
21 alcohol abuse, did they talk to you about those
22 items?

23 A. And this is at Lexington Hospital?

24 Q. Lexington Medical Center, it looks like.

25 A. I don't remember nobody talking about smoking and

1 drinking at the hospital.

2 Q. It does look like they performed a procedure that
3 involved a coronary artery bypass, is that your
4 understanding of the procedure that was performed?

5 A. All I know is that Dr. Travis told me that I had
6 entrance and exit wounds from electricity in my
7 heart. He has pictures. And far as everything
8 else, I'm not sure of, buddy. I'm sorry.

9 Q. That's fine.

10 MR. HUGHEY: Your Honor, can you bear with me
11 for just one second?

12 COMMISSIONER BECK: Yes, sir.

13 MR. HUGHEY: Thank you, your Honor.

14 Q. Mr. Winfrey, I'm now looking at page eight of the
15 APAs submitted by your attorney, Mr. McDaniel.
16 This appears to be a May 30, 2013 report and this
17 is the op note from Dr. Travis. Dr. Travis is the
18 one that did your surgery, is that correct? -

19 A. Yes.

20 Q. And I'm looking at the paragraph running on to that
21 page, on page eight. It says, (As Read): Patient
22 also had very significant pericarditis with large
23 calcific plaques located anteriorly and
24 posteriorly. It goes on to say, (As Read): They
25 were heavily calcified and there was a real

1 weirdness to the adhesions throughout.

2 Did he talk to you at all about the content or
3 what he found in your heart when he was in there?

4 A. No.

5 Q. And, Mr. Winfrey, you hadn't seen a doctor for your
6 heart in the years leading up to this, is that
7 correct?

8 A. Not to my memory, no.

9 Q. You don't have a regular family doctor that you
10 treat with?

11 A. No, sir, I sure don't.

12 Q. Mr. Winfrey, and finally in conclusion, the day
13 this happened, May 22, 2013, this incident happened
14 at the Publix on Rosewood, is that correct?

15 A. Rosewood Drive, yes.

16 Q. And you finished working that day, is that right?

17 A. Yes.

18 Q. In fact, you traveled somewhere after that, is that
19 correct?

20 A. I went to Aiken and I finished up two rotisseries
21 there and I called Bobby Ruppe and I said I
22 couldn't do no more.

23 Q. You didn't go anywhere else after that that day?

24 A. Well, I went home.

25 Q. Did you work the following day, Friday?

1 A. I got up and I got dressed and I went on to
2 Wal-Mart on 378, and from there I had to call Bobby
3 Ruppe again and say, I can't do it. Because I was
4 dumping sweat and my neck was killing me 'cause I
5 was trying to hold my head up. I couldn't do it.

6 Q. At the time of that conversation with Mr. Ruppe did
7 you tell him you were having chest pain?

8 A. I told him my neck was killing me.

9 MR. HUGHEY: Thank you, Mr. Winfrey. I don't
10 have anything else for you right now.

11 COMMISSIONER BECK: Mr. McDaniel, do you have
12 any questions, sir?

13 MR. McDANIEL: Very briefly. Your Honor,
14 first off, based on Mr. Winfrey's testimony, which
15 was un-objected to, I would ask the Court for it's
16 consideration of -- Mr. Winfrey testified as to
17 what Dr. Travis told him about the entrance and the
18 exit wounds, your Honor will recall that testimony?

19 COMMISSIONER BECK: Yes.

20 MR. McDANIEL: All right. In confirmation of
21 that I would ask for the Court's consideration of
22 Claimant's Exhibit under Tab two, page three from
23 Dr. Jeffery Travis, the authorized and treating
24 cardio vascular surgeon, as to his confirmation of
25 the entrance and the exit places that he found on

1 Mr. Winfrey's heart.

2 CROSS-EXAMINATION

3 BY MR. McDANIEL:

4 Q. Mr. Winfrey --

5 MR. HUGHEY: Your Honor, can I reply to that
6 just briefly?

7 COMMISSIONER BECK: Yes, sir.

8 MR. HUGHEY: We'd object to that coming into
9 evidence in that, number one, it's dated September
10 30, 2013, which is outside of your rule. I
11 understand Mr. McDaniel's trying to link the
12 foundation based on what Mr. Winfrey testified to
13 earlier. However, if this report comes in from
14 Dr. Travis we think it's fair game for any evidence
15 from Dr. Felton to come in.

16 COMMISSIONER BECK: Well, the report's in. If
17 I understand your request, Mr. McDaniel, it's only
18 for the purpose of corroborating the testimony I
19 just heard.

20 MR. McDANIEL: Correct.

21 COMMISSIONER BECK: Not for the opinion --

22 MR. McDANIEL: Not any of the rest of it, just
23 as to that limited part in reference to what
24 Dr. Travis stated in his report about what he found
25 as to being corroborative of what the Claimant

1 testified.

2 COMMISSIONER BECK: Mr. Hughey?

3 MR. HUGHEY: Your Honor, I think the point is
4 that we didn't know anything about that at the time
5 that this was supposedly told to Mr. Winfrey.

6 COMMISSIONER BECK: And that may go to the
7 weight of the evidence.

8 MR. HUGHEY: Sure.

9 COMMISSIONER BECK: But I'll allow it, limited
10 to that specific purpose.

11 MR. HUGHEY: Thank you, your Honor.

12 COMMISSIONER BECK: Any other questions?

13 MR. McDANIEL: Very briefly.

14 Q. Mr. Winfrey, you had an assigned rehab nurse at
15 some point in time, is that correct?

16 A. Yes.

17 Q. All right. And she attended all the appointments
18 with you when you went to your doctors?

19 A. Yes.

20 Q. A couple more questions. Has any adjuster or any
21 person from the insurance company called you and
22 has any way questioned whether or not your injuries
23 stem from your work related accident?

24 A. No.

25 Q. All right. Has at any time anybody from your

1 employer called you and questioned you or contacted
2 you or questioned you in any way as to whether or
3 not this was related to your electrical shock?

4 A. No.

5 Q. Now, when you saw Dr. Greenfield --

6 **MR. McDANIEL:** Commissioner, in reference to
7 Claimant's APA number ten, which was also submitted
8 by Mr. Hughey under their APA submissions, which
9 have been objected to, which have been admitted
10 over objection.

11 Q. According to that you advised Dr. Greenfield that
12 you had a 400 -- you were working on a 480 volt
13 rotisserie, shocked on Thursday, does that sound
14 like the history you gave her?

15 A. Yeah, I got shocked in my neck.

16 Q. And when she saw you what did she do, as far as
17 where did she send you?

18 A. Well, when she seen me I just wanted some Flexeril
19 and stuff and I was going to go back to work. She
20 put a thing on my finger and I had like 117 beats
21 per minute and I was only supposed to have 72.
22 That's when she did the ECHO and she said there's a
23 hole in my heart. That's when she sent me to
24 Gupta.

25 Q. Dasgupta?

1 A. Yeah.

2 MR. McDANIEL: Madam court reporter, it's
3 D-a-s-g-u-p-t-a.

4 Q. Now, when you saw Dr. Dasgupta, I want to ask you
5 if this sounds correct as to the history that you
6 gave him. (As Read): A review of his records
7 today shows that he received an electrical shock in
8 five days ago and since then has complained of pain
9 in his left shoulder radiating into his left
10 scapular region, left side of his neck, left
11 interclavicular region, and left arm.

12 A. Yeah, from the neck, all this right here
13 (indicating).

14 Q. Okay. Now, does that sound correct as to what you
15 told him?

16 A. It sounds it, but I'm not sure.

17 Q. But in other words, when he says that you received
18 an electrical shock five days-ago and since then
19 has complained of pain?

20 A. Dr. Greenfield's friends with Dasgupta. She's the
21 one that said, He's my friend, I can send you there
22 or you can go to the emergency room, but you've got
23 to go.

24 Q. And then after that, according to Dr. Dasgupta's
25 records and I believe your testimony, they had EMS

1 take you across the street from his office to the
2 emergency room?

3 A. Yes.

4 Q. And then you were treated there by Dr. Travis?

5 A. No, I met Dr. Lide.

6 Q. There?

7 A. At the hospital.

8 Q. And then after that Dr. Travis did the surgical
9 work?

10 A. Dr. Travis -- I think, I'm not positive about
11 dates, but he -- I think it was the next day, or
12 the following day, that's when they opened me up.

13 MR. McDANIEL: No further questions, your
14 Honor.

15 COMMISSIONER BECK: Mr. Hughey, anything
16 further?

17 MR. HUGHEY: Very briefly, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HUGHEY:

20 Q. Mr. Winfrey, do you know whether or not Liberty
21 Mutual contacted Mr. McDaniel about taking your
22 recorded statement at any point in the past?

23 A. I'm not sure.

24 Q. In terms of the specific amount of volts that were
25 involved in this wiring -- and I'm not trying to

1 give you a hard time -- are you able to say the
2 precise amount of voltage that was involved in this
3 rotisserie --

4 A. It was high voltage, I mean, 240, 480, one of the
5 two.

6 Q. Sure. But you don't know for sure whether it was
7 480 versus 240?

8 A. I've never been hit that hard.

9 MR. HUGHEY: Thank you, Mr. Winfrey. I don't
10 have anything further.

11 COMMISSIONER BECK: Anything further?

12 MR. McDANIEL: Nothing further. Thank you.

13 COMMISSIONER BECK: You may step down, sir.
14 Thank you very much.

15 WITNESS: Thank you.

16 COMMISSIONER BECK: Any other witnesses on
17 behalf the Defendants?

18 MR. HUGHEY: We'll rest, your Honor. We don't
19 have any other witnesses.

20 COMMISSIONER BECK: Any witnesses on behalf
21 the Claimant?

22 MR. McDANIEL: I understand they've rested?
23 None, your Honor.

24 COMMISSIONER BECK: All right. That will
25 conclude this proceeding. I'd like to see --

1 **MR. McDANIEL:** Your Honor -- I'm sorry. I
2 would like to put something on the record if I can.

3 We are here on a Form 15 Hearing. They have
4 an obligation to at least put up a *Prima facie*
5 case. They have not established that any of --
6 even any of the medical records were received by
7 them. They have put up no testimony, no evidence,
8 whatsoever, to establish when and if these -- even
9 these medical records were received by the
10 Defendants. They have miserably failed in
11 submitting any evidence to this Court upon which it
12 can -- there is a foundation been laid to submit
13 any evidence as to this man's condition was not
14 caused by -- that they conducted a Good Faith
15 Investigation. I just put that on the record, your
16 Honor.

17 **COMMISSIONER BECK:** All right.

18 Mr. Hughey, anything in reply to that?

19 **MR. HUGHEY:** Your Honor, just quickly in
20 response, since Mr. McDaniel felt the need to speak
21 on it. I won't summarize all of it. But, again,
22 we think we certainly had evidence in the record,
23 which was evidence in the Carrier file and the
24 medical records documenting a history of drinking,
25 smoking, coronary artery disease noted in the

1 medical records. No question arrhythmia was
2 diagnosed, but of course winds up with a coronary
3 bypass procedure. By the very language in the
4 medical records we believe it causes -- raises
5 question as to what's related to what. And we
6 certainly would stand by our positions that it was
7 absolutely a Good Faith Denial of benefits, your
8 Honor.

9 COMMISSIONER BECK: All right.

10 MR. McDANIEL: Commissioner, the only thing I
11 would note to you is that in part of Mr. Hughey's
12 discussion he went outside the record and said,
13 Which is obviously in the adjuster's file. And I
14 just ask that to note that that is not into
15 evidence and he has not submitted any evidence of
16 that point.

17 Thank you, your Honor.

18 MR. HUGHEY: We do have medical records that
19 Mr. McDaniel represented to the Court earlier that
20 he'd provided to the Defendants on multiple
21 occasions. So we did have the records from the
22 initial authorized physicians and that we paid for
23 those records -- paid those bills.

24 COMMISSIONER BECK: All right.

25 MR. McDANIEL: Again, I don't want to belabor

1 the point, but I just make one brief note, and that
2 is, there is nothing that establishes that they had
3 those records between -- before September 13th.

4 COMMISSIONER BECK: All right. That will
5 conclude this proceeding.

6 *****

7 (Whereupon, the hearing concluded at 4:18 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

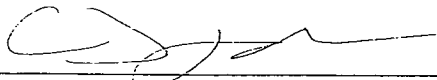
Be it known that I, Christine Tatum, a Professional Court Reporter and Notary Public, did hear the matter of **Clarence Winfrey -vs- Archway Service, Inc.**, Workers' Compensation File No. 1306305 on, Wednesday, November 13, 2013, in Columbia, South Carolina, before the Honorable T. Scott Beck;

That the witness(s) were duly sworn under pains and penalties of perjury to testify to the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand this 11th Day of December 2013.



Christine Tatum
Notary Public For South Carolina
My Commission Expires December 29, 2021

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

COUNTY OF RICHLAND

WCC CASE NO.

CLARENCE WINFREY,)

1306305

CLAIMANT/EMPLOYEE,)

-VS-)

ARCHWAY SERVICES, INC.,)

EMPLOYER,)

AMERICAN FIRE and CASUALTY)

INSURANCE,)

INSURER,)

Deposition of JEFFREY TRAVIS, a witness called by
Counsel on behalf of the DEFENDANT, pursuant to the
applicable provisions of the South Carolina Rules of
Civil Procedure, taken before Timothy Robinton, a
Professional Court Reporter and Notary Public in and for
the State of South Carolina, on Monday, December 16,
2013, at The Lexington Cardiovascular Surgery, 2728
Sunset Blvd. Suite 101, Columbia, South Carolina,
commencing at the hour of 7:00 a.m.

Job No. CS1783715

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EXHIBITS

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Exhibit No. 1	Letter from Jeffrey A. Travis . . 26

LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
[sic]	written as said

S T I P U L A T I O N S

It is hereby stipulated and agreed by counsel for the respective parties that the Witness will waive the reading and signing of the deposition transcript, and also that the witness is a expert in the field.

Whereupon,

JEFFERY A. TRAVIS,

having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAYNE:

Q. Doctor Travis, how are you doing today?

A. Good. How are you?

Q. Good. My name is Brad Bayne I am an attorney with McAngus Goudelock & Courie. I represent Archway Services and America Fire and Casualty Insurance Company in this case related to Mr. Clarence Winfrey. At this time it's a denied claim based on an investigation that we conducted. It's my understanding that you conducted or you performed the heart surgery on Mr. Winfrey when he presented to the hospital so we are here today to ask a few questions about that. Mostly related to

1 causation, his health history and kind of going forward
2 what needs to be done if the commission determines this
3 claim is dispensable. Do you have any questions before
4 I get started?

5 A. No.

6 Q. Can you give me just a brief run down what your
7 background is, your qualification and everything?

8 A. Sure. Medical Physician finish medical school in
9 1997, attended General Surgeon residency six years at
10 Wake Forest finished fellowship at Wake Forest as
11 Cardiothoracic surgery and been practicing about nine
12 years.

13 Q. And a day to day bases what do you in your
14 practice?

15 A. Open heart surgery, thorastic surgery, including
16 Lung surgery, Esophageal surgery, Vascular surgery,
17 Carotid in pumps and Triple A's.

18 Q. How many heart surgeries have you performed in your
19 nine years plus your fellowship? - -

20 A. About -- Including fellowship probably about 1500,
21 since I have in private practice about a 1000.

22 Q. Okay. Have you any occasion treat Mr. Winfrey in
23 this case?

24 A. I did.

25 Q. And what did you treat Mr. Winfrey for?

1 A. Specifically had a ventricular septal defect was
2 the primary presenting problem?

3 Q. And what is a ventricular septal defect?

4 A. There is a septum between the two ventricles, the
5 right, left ventricle and because the tissue having died
6 between those two septum hole developed or defect, so
7 blood went from one side to the other which is
8 anatomically incorrect and not compatible with long term
9 survival.

10 Q. Okay. That hole is inside of the heart?

11 A. Correct.

12 Q. Okay. And when Mr. Winfrey presented to you what
13 were his complaints at the time?

14 A. He had chest pain, shortness of breath and he just
15 kind of had full body aches all over for four or five
16 days prior to the presentation.

17 Q. Okay. I believe that day he presented been May
18 28th is that correct?

19 A. If that's what record reflects

20 Q. On that morning -- I guess he didn't present to you
21 first thing that morning, he was referred?

22 A. Correct.

23 Q. And if the medical records from that referral
24 indicate that he did not have any chest pressure would
25 that be consistent with what he presented with that

1 morning or did he have some --

2 A. When I saw him that was not his specific complaint
3 he did not relate this specifically to -- what he would
4 considered or what we considered a heart attack pain and
5 he said he had kind of total body didn't feel well all
6 over.

7 Q. And is that typical of someone that has suffered
8 from a ventricular septal defect?

9 A. In general, someone who has post in-fart VSD,
10 ventricular septal defect will present with chest pain,
11 other words they do have acute heart attack, that's what
12 causes the ventricular septal defect.

13 Q. Okay. So, usually, they would, but it's not
14 certainty that they'll have chest pain?

15 A. No. Not everybody has chest pain, but a majority,
16 a great majority people will.

17 Q. You said post in-fart, is that a mild cardio
18 infarction your talking about?

19 A. Correct.

20 Q. Okay. And in this case I think the records had
21 indicated they he had a mild cardio infarction, and then
22 -- I think you said a post in-fart VSD is that correct?

23 A. Mostly likely. Yes, sir.

24 Q. Okay. Is that something like, I don't know, how
25 things in current time, is that infarction would occur

1 days before and then the VSD happened or is it
2 essentially the infarction, the VSD and then within
3 seconds kind of thing?

4 A. In general it takes a little bit of time before the
5 VSD fully develops other words you suffer the infarction
6 and sometime within 36 hours after that, depending on
7 the exact presentation. The muscle dies, as the muscle
8 dies it gets weak, the blood pushes through it, creates
9 the defect,--

10 Q. Okay.

11 A. -- usually there's a time lapse there.

12 Q. So based on that are you able to determine when the
13 infarction occurred in this case?

14 A. Not specifically, no.

15 Q. Is there's time - like a -- ballpark time frame
16 that you're able to back up to figure out?

17 A. It happened sometime with in the last week based on
18 his cardio enzymes.

19 Q. Okay. I believe that you've issued a questionnaire
20 in this case, you've indicated that his condition was
21 brought about by electrical shock of 480 volts is that
22 correct?

23 A. I believe it, absolutely, had cause the defect on
24 this presentation.

25 Q. And I wanted to ask specifically about the 480

1 volts, is that something you were able to determine from
2 looking at the equipment or --

3 A. No. I wouldn't have any knowledge of the amount of
4 voltage or the pertinence that.

5 Q. So that would be -- so if that was your opinion
6 that would be based on what you were told by Mr.
7 Winfrey?

8 A. Correct.

9 Q. Okay. Do you have any opinion or knowledge as to
10 what amount of electricity it would take to cause this
11 infarction or is it a case by case, how does that work?

12 A. It would be a case by case bases, it's not a --

13 Q. Okay. What I am asking, generally is, if for
14 example it was 400 volts or 300 volts or 200 volts is
15 there a point at which a shock is so small it's not
16 going to cause an infarction or a point which you hit is
17 becomes more likely and more likely that it's going to
18 cause a mild cardio infarction.

19 A. - I think that's known, as far as, a gradation.-

20 Q. Okay. And Mr. Winfrey in his deposition, I
21 believe, he indicated that he was at work and he
22 suffered from electrical shock working on a rotisserie
23 oven. Is it your understanding that or your believe
24 that's when the mild cardio infarction occurred, when
25 that shock occurred or something that would have

1 occurred later in the day?

2 A. I think it would of occurred within, you know,
3 minutes, hours after that.

4 Q. Okay. In a immediate aftermath of suffering that
5 infarction, so he gets shocked and it minutes to hours
6 after. What in a typical patient what would he be
7 experiencing as far as pain related symptoms or
8 complaints?

9 A. In general, in most people again as we discussed
10 have chest pain a lot of people will interpret that
11 differently. Certainly people will have shortness of
12 breath as a lot of people presenting symptoms of a heart
13 attack or simply or just I don't feel well, shortness of
14 breath they don't truly describe chest pain some people
15 are dull pain. It can be referred in a lot of different
16 ways. And then again, a lot of people don't have the
17 typical pressure or pain they have other symptomatology,
18 nausea or vomiting.

19 Q. Would some who was experiencing mild cardio
20 infarction be able to continue work that day?

21 A. Sometimes they are.

22 Q. Okay.

23 A. Sometimes they can.

24 Q. What about the next day would they, as it developed
25 and progress, would they be able to return to work that

1 day as well?

2 A. I have seen people you know struggle through mild
3 cardio infarction for one, two, three, four days and
4 just continue to push through their normal live even
5 though --

6 Q. And as in a scenario in which that occurred where
7 they suffered it and worked or kept and stayed at home,
8 work their kids or whatever. Would those symptoms be
9 worsting on a daily bases or is kind of a plateau?

10 A. Most people will plateau with in 36 to 48 hours but
11 not always.

12 Q. Okay.

13 A. And sometimes it continues to conscendo and that's
14 what brings them into the hospital, so that's why we see
15 them at variable times.

16 Q. And in the medical records, I think they were your
17 records related to the surgery you did, you found that
18 he had three vessel, I believe, artery disease, is that
19 something related to this electrical shock or is that a
20 congenital condition he had?

21 A. Well, not a congenital, but an acquire over his
22 life time.

23 Q. Okay. And what would cause someone to acquire that
24 over their life time?

25 A. After a Socratic cardio vascular disease caused by

1 high blood pressure, diabetes, elevated cholesterol
2 family history, cigarette smoking.

3 Q. Pretty much the whole gamete.

4 A. Yeah.

5 Q. Okay. And someone -- so someone for example who
6 smoke a pack a day or a half a pack a day would be an
7 increase risk for that?

8 A. Absolutely.

9 Q. Someone who drank a case a beer a week would be an
10 increase risk to that.

11 A. In general drinking it's not directly correlated to
12 coronary disease.

13 Q. Okay. If someone had a family history of close
14 relatives who suffering from coronary artery disease
15 that would be a risk factor?

16 A. Most likely.

17 Q. Okay. In the medical records it also talks about a
18 occlusion I believe of the coronary artery, is that a
19 condition that resulted from the electrical shock or is
20 that part of the artery disease he had acquire over his
21 life time?

22 A. I think it was related to the electrical shock.
23 Let me explain that just a little bit, you have
24 arterosclerosis or the hardening of the arteries, so you
25 have plaque in your arteries, because there at a base

1 line, based on those things that we talked about and
2 then some, every heart attack is caused by some process
3 causing that plaque to rupture. And so what you have an
4 injury or cut, basically, inside the artery and the body
5 tries to heal that much as it tries to heal a cut on
6 your skin it tries to form a scab, but instead it the
7 scab is forming inside an artery, and so the scab forms
8 and causes that artery to completely occlude . So it
9 doesn't matter if the plaque was ten percent blockage,
10 twenty, thirty, forty, whatever, it goes to 100 percent
11 because the blood begins to clot within the artery. So
12 that's why the artery becomes occluded, that's why
13 people have heart attacks.

14 Q. Okay. And so the -- I guess the question is the
15 plaque build up that was the occlusion. Was that plaque
16 build up directly caused by the electrical shock or did
17 the rupture of that plaque build up?

18 A. The rupture of the plaque is what causes the acute
19 heart attack. - - -

20 Q. Okay.

21 A. The build up happens over years and then it can be
22 any sort of activity that can cause that to rupture.

23 Q. Okay. So for in this scenario if the electrical
24 shock is what caused it, it would be the shock caused
25 the rupture, that then caused the heart attack, and then

1 caused the VSD?

2 A. Correct.

3 Q. Okay. But that plaque rupture could occur as you
4 said, it could occur for many things --

5 A. It can.

6 Q. -- from getting up the wrong way, strenuous
7 activities something like that.

8 A. It can. A stressful event in your life. People
9 that walk in and find a love one dead it can trigger
10 that any type of stress. Or whether it be physical,
11 emotional.

12 Q. And other than the timing of the heart attack, as far
13 as, some time of last week, there's way to know for
14 certain the plaque rupture was caused by the electrical
15 shock, is that correct?

16 A. Is there any definitive way to --

17 Q. Correct.

18 A. -- collate one to another absolutely not.

19 Q. It's more likely not, I guess. This is your
20 opinion on it?

21 A. Correct.

22 Q. Okay. As far as, his treatment goes, what is, I
23 guess once he goes through -- going cardio
24 rehabilitation right now, is that correct? As far as,
25 that treatment goes once he's completed with that care,

1 what is his prognoses or what is his outlook, both for
2 life and for getting back to normal life?

3 A. It certainly most of that depends on ventricular
4 function which is fairly reduced and also depends on his
5 other coronary disease and how stable that stays over
6 time.

7 Q. Okay.

8 A. I'm certainly think he has a short life span and
9 based on his ventricular function difficulty and
10 returning to full activities that he able to
11 accomplished before all this.

12 Q. And is the fact that the coronary disease existed
13 previously that he had acquired, the fact that exist is
14 that something that effects his recovery from the VSD
15 that he suffered?

16 A. It's more related what his ventricular function is
17 going to inhibit his -- I don't know what his
18 ventricular function was prior to all this. We see him
19 at time zero, I don't know what was at t minus one. His
20 ventricular function was normal at that point than
21 certainly this is correlated with his increase of
22 disability, but I don't know what that, that --

23 Q. As a general kind of hypothetical someone presents
24 with type of artery disease that he had absent the VSD
25 is there a reduce ventricular function in a patient that

1 would present with all the symptoms he had except for
2 what you believed caused by the shock?

3 A. In general, no. In general there ventricular
4 function can be anywhere, again there's a thousand
5 different factors that go into that.

6 Q. In the medical reports I believe in the post
7 surgical report you talked about seeing, I guess white
8 marks on either other side of the heart --

9 A. Correct.

10 Q. -- what, I think your opinion was, that probably
11 caused or most likely caused by an electrical shock,
12 entering and exiting the heart, is that correct?

13 A. Correct.

14 Q. Have you've seen anything like that in your career
15 prior to that point?

16 A. Not with the heart, I've certainly seen electrical
17 injuries, when I took care of burn patients, you would
18 see people that were burn electrically and you would see
- 19 the type of changes as it entered or exited the
20 extremity which is more common. I've never seen it on a
21 heart, I've never seen anything that looked liked that
22 on the heart.

23 Q. Okay.

24 A. That's what made me think this was related to his
25 electrical injury, certainly, looked like a entry, exit.

1 wound. It's shriveled, drawn up, kind of welded
2 together around the tissues around it, so I have seen it
3 in other locations, I've never seen it in the heart.

4 Q. Would the electricity if that -- if those marks are
5 indicative of that, would that electricity, I guess,
6 going through the heart had caused any issues other than
7 it may have led to the infarction itself?

8 A. It could of rupture the plaque led to the
9 infarction. I don't think it was directly related to
10 the -- I don't think it made a hole in the heart,

11 Q. Okay.

12 A. -- I think the hole in the heart came from the
13 infarction you know muscle dying over time and the hole
14 developing. I do think it could relate to any
15 electrical disturbance in the heart and ventricular
16 function.

17 Q. Okay.

18 A. Those are the things that it could effect.

19 Q. And in examining Mr. Winfrey, I guess prior to and
20 after surgery where you able to determine if there were
21 any exit wounds from the body of the electricity other
22 than what you observed in the heart, so did it come out
23 of his hand, foot?

24 A. I didn't observe any. No, sir.

25 Q. And in your practice have you've been involved -- I

1 guess you did the surgeries, are you involved in the
2 post cardiac care, as far as, the rehabilitation for
3 returning someone to work or returning someone to their
4 normal live, or do you --

5 A. I am.

6 Q. Okay. As far as, just a generic heart patient
7 someone that came in and had that ventricular defect,
8 that we talked about just kind of what, what based on
9 ventricular function, but, as far as, for example, going
10 back to our is there a level of work no heart patient
11 should go back to or is it a case by case bases?

12 A. It's always a case by case.

13 Q. Okay. And in someone like Mr. Winfrey's case do
14 you have an opinion yet, is to what, whether or not he
15 be able to return to work or is it still to early to
16 tell in his care?

17 A. I think based on his recovery he could return to
18 some form of work. Correct.

19 Q. Do you think he could be able to return being an
20 electrician or is that an area you would advise he
21 avoid?

22 A. I would advise him to avoid that.

23 Q. Is that because of the risk of electrical shock or
24 is that based on the nature of work?

25 A. A little bit of both.

1 Q. Okay. What is a rough time frame of being able to
2 return to work after a surgery like this?

3 A. In general most open heart surgery patients are
4 ready to go back to work in sometimes two to three
5 months. This is a little bit bigger type problem. I
6 could tell you that I've never had anybody who had this
7 particular injury make it back to work, most people
8 don't live through this. It is very uncommon for people
9 to live through this so.

10 Q. Okay. And your referring to the --

11 A. VSD.

12 Q. -- VSD

13 A. Yes, VSD.

14 Q. Is that based on where it was located or just the
15 fact it was as large as it was or --

16 A. Just --

17 Q. Just happened --

18 A. -- difficult problem to fix -- it's hard to fix.

19 Q. All right. Once it's fixed, absence some, for -
20 example, another electrical shock or something like
21 that, is it an issue that it's going to remain fix or is
22 he kind of going to always be at risk of that patch that
23 was placed rupturing again?

24 A. I think he is at very low risk.

25 Q. Okay.

1 A. Again most -- I don't know of any people that have
2 been followed for twenty years this problem. I think
3 it's a low risk, once it's fixed it should be fixed.

4 Q. Okay. And just to clarify one thing on the plaque
5 rupture itself, the causation of it. You testified that
6 it's -- I guess it's possible or in practice it's
7 possible that those incur from any number stimuli's via
8 physical activity, stress, you said walking in on a
9 loved one that kind of thing?

10 A. Correct. And some people it could happens in the
11 middle of the night while they are sleeping.

12 Q. It could happen.

13 A. Yes.

14 Q. Okay.

15 MR. BAYNE: I believe that is all I have.

16 Preston, do you have anything.

17 MR. MCDANIEL: I got a few questions.

18 CROSS EXAMINATION

19 MR. MCDANIEL: - - -

20 Q. It's been since May that you, actually, had an
21 opportunity to look back at the actual presented history
22 will that be fair?

23 A. Yes, sir.

24 Q. All right. I wanted to ask you a couple of
25 questions in reference to your operate note and found

1 that he had very significant per carditis --

2 A. Right.

3 Q. --I believe that basically inflammation --

4 A. Correct.

5 Q. -- and that presents as far as symptoms your going
6 to have, that presents jointlage pain.

7 A. Correct.

8 Q. Okay. In looking over that, correct me if I'm
9 wrong. A lot of times as you've already testified
10 people don't have chest pain, but I saw and lived here a
11 lot of times the pain is in the neck and over the
12 trapazees area of the shoulder or into the left arm.

13 A. That's correct.

14 Q. Is that a general presenting type process, or that
15 when sustain a mild cardio infarction?

16 A. It is, again presentation can be varied, I mean
17 some people just get shortness of breath or they fell
18 they have reflux, left arm pain, left jaw pain, neck
19 pain all those common in presenting signs and symptoms
20 for a heart attack.

21 Q. And the reason I am asking that is. And I believe,
22 of course your aware, -- had the history available from
23 the emergency doctor that who saw him at the Doctor's
24 Care, then the Cardiologist's who saw him, then sent him
25 directly by ambulance to the hospital. And does this

1 sound familiar on the based, this be the history that
2 you remember Mr. Winfrey presenting with -- when he said
3 that a fifty year old gentleman who on Wednesday prior
4 to admission was working on some electrical equipment
5 got a large shock, he went home from work and experience
6 significant chest pain as well as back and shoulder
7 pain, persisted through the weekend and he really did
8 not do much of the weekend. Then the doctor at the
9 Doctor's care recorded that, he's working got a
10 rotisserie shock on Thursday, sweated Thursday p.m. he
11 had pain immediately down the left shoulder, in the left
12 arm, and had jerk his neck and shoulder -- neck and
13 shoulder pain, tenderness over the left trapezes and
14 that's the area we referred to earlier, an entrance
15 wound on the third finger of the left hand. Is that
16 typical that left arm, left shoulder, neck pain, again I
17 believe you already said that is typical of
18 presentation.

19 A. It is.

20 Q. All right. So, let me then ask you this. I'm
21 going to show you a report that you were kind enough to
22 -- when you knew the causation was an issue, you issued
23 that report on September 30th. 2013. Does that
24 represent you're opinions and reference to this?

25 A. It does.

1 Q. I just want to ask you again. I know Mr. Bayne
2 went over this, but just in summary fashion would you
3 just tell me -- I just hand you copy of your optative
4 note, but just specifically -- just tell me -- and you
5 already testified, you haven't seen anything like this
6 before -- just tell me in your own words, basically,
7 what you observed, and just tell me what formulated this
8 opinion, that my opinion, my understanding, you believed
9 everything that caused him, required treatment by you
10 and the open heart surgery stemmed from this electrical
11 shock.

12 A. Right. And so if you mean, your asking me to put
13 together a time line of events. So he's working under
14 goes electrical shock that causes a plaque rupture
15 causing a heart attack. He feels bad all over has some
16 chest pain, pain other places related to that would be
17 typical, goes home and just tries to gut it out sort of
18 speak doesn't get better, finally shows up to the
19 emergency room or urgent care, the signs and symptoms in
20 the EKG changes components is consistence with him
21 having a heart attack. Brought over to the hospital,
22 optimally taken to the CAT lab found that has blockage
23 that we saw where there was 100 percent occluded artery,
24 including VSD, so sometime along that time course this
25 heart attack caused that muscle to die, the blood pushed

1 through that dead muscle caused the VSD. You know when
2 I saw him it would seemed to me that, that was the
3 typical course of what happened. That he had a plaque
4 rupture, artery occluded, the muscle died, VSD presented
5 in that time course, all of that seemed very normal to
6 me. When we operate on him the thing that was different
7 to me, made me think that this was directly related to
8 the electrical shock and not just two events that happen
9 to co-inside was the amount of change that I saw in his
10 heart. Again what was definitely entry and exit wound
11 where the Peri-cardiac was almost fused like you would
12 weld something together and that was Per carditis. It's
13 not a typical Per carditis that people have after a
14 heart attack, that it's global it's every where, it's
15 just kind of a general Per carditis, this was different
16 these were specific areas interior, posterior. We
17 really had to do a lot of work to clean those off to get
18 the Pericardium which is the sack around the heart off
19 the heart, off the heart proper, almost again, welded to
20 it on the front and back so we can pick the heart up to
21 actually work on it, it really took us thirty minutes to
22 get that done before we really start the operation, so
23 it was after operating on him that it seemed to me that
24 this electrical shock was directly related to the
25 primary problem that he presented with even though he

1 might of have a life long condition coronary disease,
2 I'm sure he did or after arteriosclerosis, I'm sure he
3 did, but I was fairly convinced this electrical shock
4 passed through his heart, it was likely the causative
5 event that started the domino effect. Again a lot of
6 things were in place already, but that electrical shock
7 was the thing that pushed the first domino over and
8 everything that we saw after that followed it. That's
9 just my opinion

10 Q. You also used the term soldier plaques.

11 A. Correct.

12 Q. And tell me about those.

13 A. We find sometimes on the heart what are called
14 soldiers plaque again that just kind of a nomenclature
15 that's been pasted down, they'll just be quarter size,
16 silver dollar size, white areas on the heart. That
17 don't have any type of reason or obvious you know
18 causation you find them variable, I don't know one or
19 two percent of hearts that you operate on, you just see
20 this little white -- whitish plaque areas. They are not
21 inflammatory they are not stuck to anything and they
22 have just passed down through -- along people just
23 called soldier plaques. We don't know what causes them,
24 we don't know why they are there, there just there. And
25 so, you know, I dictated that specifically because this

1 was very different. This was not just simple soldier
2 plaques that we see sometimes, this was you know a
3 fusing and what you know kind of drawn up area, it was
4 whitish, but it was not soldier plaques that sometimes
5 we see.

6 Q. I'm not going to try and keep you much longer I'm
7 going to just ask you. If you could mark that as
8 Plaintiff's exhibit 1

9 MR. MCDANIEL: Mark that as Exhibit No. 1
10 Whereupon, the below described, Report was
11 marked Plaintiff's Exhibit No. 1

12 Q. Doctor, this is a report that was issued on
13 September 30th I believe you dictated that, does that
14 represent your opinions and reference to the causation
15 issue and you opinions about what caused Mr. Winfrey
16 condition?

17 A. That's correct.

18 Q. Is that your opinion to a reasonable degree of
19 certainty?

20 A. It is.

21 Q. Now, I want to ask you one other thing. One
22 conversation you were very nice enough just to call me
23 in reference to another physicians issued reviewed some
24 records and you made a statement to me I'm not forget.
25 You said I held this man's hand in my heart, his heart

1 in my hand. Tell me about how important you think that
2 is based on your observation and opinions in this case
3 as compared to somebody just reviewing records.

4 A. Well it's specifically was reviewed by a
5 cardiologist who has never done a open heart surgery.
6 He does all his works by looking at x-ray's and images.
7 So you know in this gentleman's case you know somebody
8 that, actually, operated on a heart held it in their
9 hands is very important in determine the causation,
10 again causing an effect here and I think anybody that
11 had been in my shoes that had looked at the heart and,
12 actually, seen it and had seen a thousand other hearts
13 have never looked like this that had this exact problem
14 I don't think you can draw any other conclusion, so
15 I think it's hard for somebody that's never seen a heart
16 that certainly never seen -- and also did not see Mr.
17 Winfrey heart, could just make that assumption based on
18 just records. I don't disagree with that's how most
-19 heart attacks happen, that's how most VSD happens,
20 plaque rupture, MI, things rupture, but then to say para
21 partitas just post MI para partitas, when they never saw.
22 what I saw and have actually never seen a heart. It's
23 just a little hard to say that you could -- your reading
24 ten percent of the important, you know, facts. A lot
25 of the facts are covered up or not revealed by just

1 reviewing the records I guess that was my point is, you
2 know that cardiologist who, one never seen a heart, two
3 never saw Mr. Winfrey's heart to make those assumptions.
4 I think is just a little bit of leap of faith, I just
5 think they have all the information.

6 Q. How much can you, actually, see, if you actually --
7 I know you filmed the heart, the surgery, is that
8 correct?

9 A. Well I have a picture. We just took a picture we
10 just thought, again something we never seen before.

11 Q. Oh okay. So you actually took a picture. So
12 another cardiovascular surgeon could look at that and
13 they would -- I guess you took it because it was so
14 unusual?

15 A. Correct.

16 Q. All right.

17 A. Which is not uncommon in the operating room, we
18 find things that are different, abnormal, education we
19 tried to report those so that others can learn and
20 experience.

21 Q. All right.

22 MR. MCDANIEL: Thank you very much I think
23 that is all the questions I have.

24 MR. BAYNE: I just have a couple of follow
25 ups Doctor if I may.

RE DIRECT EXAMINATION

1
2 Q. In the 1000 to 1500 surgeries you've done. Have
3 you -- was this your first electrocution related open
4 heart surgery or have you had those before?

5 A. No. It's the first one.

6 Q. Okay. Are you -- Have you consulted with anyone to
7 find out if the plaques that you saw if that's kind of a
8 normal thing in a electrocution type surgery or is that
9 something or just to you a regular and --

10 A. Yeah. I never, I never, I didn't discuss this
11 specifically, but I never read about it or seen
12 anything. No.

13 Q. -- Okay. As far as, I think you said a second ago
14 that the main driver of why you believed to cause this
15 electrical shock was those plaques. Is that correct?

16 A. Correct.

17 Q. Okay. And I think you said it has to do with
18 timing but the main thing you got in there, you said
19 these plaques that's what this is, that's why you think
20 it was caused by the electrical shock.

21 A. Right. Again most of the time we can't identify a
22 specific causative trauma, so to speak, but here there
23 was a specific cause of trauma that could of started
24 again the whole domino effect.

25 Q. Is it possible that he was shocked and that and he

1 ends up with these plaques on his heart, but that is not
2 what actually caused the mild cardio infarction?

3 A. I think saying that the two things happened at the
4 same time but weren't related. I just don't think that
5 is plausible.

6 Q. Okay. And we were talking earlier, I was kind of
7 asking you about some symptoms he would be experiencing
8 and Mr. McDaniel went into the shoulder and the scapular
9 and the whole body pain, if -- if the record indicated
10 or the testimony indicated, that the only pain he was
11 experiencing until, say Friday, he was shocked on
12 Wednesday say until Friday, was neck pain, would that be
13 consistence with this mild cardio infarction or would
14 you except more than just neck pain to be experiencing
15 --

16 A. No. It could be just neck pain.

17 Q. -- okay. And one more time your believe or the
18 records indicate that sometime with in the week prior to
19 him presenting to you when that infarction occurred?

20 A. Correct.

21 Q. Okay. Is there a more likely than not, for example
22 the week prior could mean that day before, but is it
23 more likely it occurred Wednesday, Thursday, than it did
24 on Sunday?

25 A. I don't remember specific days but the time frame

1 for a heart attack to lead to VSD is usually thirty six
2 hours.

3 Q. Okay.

4 A. And then any time after that within the next
5 probably two weeks is possible.

6 Q. Okay. So it would at least be thirty six hours old
7 and up to two weeks old?

8 A. Correct.

9 Q. Okay.

10 A. That would be the typical time for a post infarct
11 VSD.

12 Q. Okay.

13 MR. BAYNE: That's all I got.

14 MR. MCDANIEL: Nothing further.

15 MR. BAYNE: All right.

16 RE CROSS

17 MR. MCDANIEL:

18 Q. Doctor Travis, Mr. Bayne asked you about this being
19 the first known electrical-open heart shock surgery that
20 you did, electrical shock -- but you testified earlier
21 that you seen many electrical shock patients where
22 you've seen the damage to the tissue and other parts of
23 the body.

24 A. Correct.

25 Q. And I believe you testified earlier of coarse you

1 did in these open heart surgeries you done cardio of all
2 types of thorastic surgery and all that, and worked on
3 burn patients?

4 A. Correct. Part of general surgery training is
5 taking care of trauma and burn patients.

6 Q. Okay. And so you have seen in the tissue damage --
7 type of tissue damage you saw in Mr. Winfrey's heart is
8 reminiscent of the tissue damage that you've seen in
9 other parts of the body?

10 A. Correct.

11 Q. Okay.

12 MR. MCDANIEL: Nothing further.

13 MR. BAYNE: No. I got nothing.

14 *

15 Deposition concluded at 7:40 a.m.

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1
2 STATE OF SOUTH CAROLINA
3 CERTIFICATE

4 Be it known that I, Timothy Robinton, a
5 Professional Court Reporter and Notary Public, did have
6 JEFFREY TRAVIS, appear before me on Monday, December 16,
7 2013, at 7:00 a.m., at The Lexington Cardiovascular
8 Surgery, 2728 Sunset Blvd. Suite 101, Columbia, South
9 Carolina;

10 That the witness was duly sworn under pains
11 and penalties of perjury to testify the truth, the whole
12 truth, and nothing but the truth;

13 That the foregoing pages constitute a true
14 and accurate transcription of the testimony given at
15 that time and place aforesaid to the best of my skill
16 and ability;

17 I further certify that I am not counsel or
18 kin to any of the parties to this cause of action, nor
19 am I interested in any matter of its outcome. - -

20 In Witness whereof, I have hereunto set my
21 hand and this 30th Day of December 2013.

22
23
24 Timothy M. Robinton,
25 Notary Public For South Carolina
My Commission Expires May 1, 2023



A Lexington Medical Center Physician Practice

Jeffrey A. Travis, MD

Victor A. Gomez, PA-C

2728 Sunset Boulevard, Suite 101
West Columbia, SC 29169
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Ph (803) 936-7095
Fx (803) 936-7908
Lexington Medical Center



September 30, 2013

Re: Clarence Winfrey

To Whom It May Concern:

Mr. Winfrey is a patient who presented with a very unusual cardiac lesion after suffering a large electrical shock. The lesion, a ventricular septal defect, is normally only seen very rarely in a setting of an acute myocardial infarction. I believe that Mr. Winfrey's electrical shock caused his heart attack and his ventricular septal defect.

Operative photos confirm a large white patch on both sides of his heart that were almost certainly entrance and exit wounds of the electricity. I have never seen anything like these patches in my 15 years of surgery. I have a photo of the anterior surface of the heart that demonstrates either the entrance or exit site.

I find it quite unbelievable that his surgery and postoperative course have been considered separate from his electrical injury at work. I see almost no other plausible explanation other than a direct cause and effect.

Sincerely,

Jeffrey A. Travis, MD

South Carolina Workers' Compensation Commission
WCC File No.: 1306305

**Certified
Transcript**

CLARENCE WINFREY, :
Employee, :
Claimant, :
vs. :
ARCHWAY SERVICES, INC., :
Employer, :
and :
AMERICAN FIRE & CASUALTY :
INSURANCE COMPANY C/O LIBERTY :
MUTUAL GROUP, :
Carrier, :
Defendants. :

THURSDAY, JANUARY 9, 2014

ORAL DEPOSITION OF KAREN GREENFIELD, MD,
taken at Doctors Care, 100 Jimmy Love Lane,
Columbia, South Carolina, commencing at 2:05 p.m.,
before Deidre Osborne, a Court Reporter and Notary
Public.

Job No. CS1787777

1 APPEARANCES:

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5 Representing the Claimant

6
7 MCANGUS GOUDELOCK & COURIE, LLC

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8 1320 Main Street, 10th Floor

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9 Columbia, South Carolina 29201

803-779-2300

10 brett.bayne@mgclaw.com

Representing the Defendants

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18 (INDEX AT REAR OF TRANSCRIPT.)
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1 (It is hereby stipulated and agreed by and
2 between counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Workers'
5 Compensation Commission and the Administrative
6 Procedures Act; and that the deponent waives
7 reading and signing of this deposition
8 transcript.)

9 - - -

10 KAREN GREENFIELD, MD, after having been
11 first duly sworn, was examined and testified
12 as follows:

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. BAYNE:

17 Q. Doctor, how are you doing today?

18 A. Good.

19 Q. My name is Brett Bayne. I'm an attorney
20 with McAngus, Goudelock & Courie. We represent
21 Archway Services and the insurance carrier in this
22 claim that Mr. Winfrey has filed. I'm just here
23 to ask you a few questions about the care you
24 provided him. I believe it was on May 28, 2013.
25 But before we begin, can you state your full name

1 for the record and also just go through your
2 background for me.

3 A. Karen G. Greenfield, MD. Undergraduate,
4 Wheaton College, Illinois. Doctor of Medicine,
5 University of Illinois, 1979. Residency and
6 internship at Richland Hospital in family practice
7 finishing in '82, and I've been working at Doctors
8 Care since '82.

9 Q. Okay. And what is it that you do at
10 Doctors Care on a daily basis?

11 A. Staff physician. See whatever illnesses,
12 accidents come in.

13 Q. Just general practitioner?

14 A. Right.

15 Q. Do you have any board certifications or
16 specialties?

17 A. Family practice.

18 Q. Okay. And you've -- have you had an
19 occasion to treat Mr. Clarence Winfrey in this
20 case?

21 A. Yes.

22 Q. And what was it that -- when did you
23 treat him and what did you treat him for?

24 A. It was Tuesday the 28th of May, and he
25 presented to the front desk just as a regular

1 patient, no urgency to it, and had complaints
2 about neck pain and left arm pain, and so when he
3 came in, in talking to him it was ascertained that
4 this was in the line of duty, that a rotisserie
5 had shocked him with 480 volts.

6 I have to admit that we don't see a lot
7 of electrocution things in here. Usually that's
8 emergency room kind of stuff, so I went real quick
9 and read what I could on it, and it said, really,
10 anything over probably 220 can cause some damage.
11 So he was saying that his left arm and shoulder
12 were hurting him and that the shock had kind of
13 jerked his neck down, and that's what he was
14 concerned about.

15 But in just observing him I saw that his
16 pulse was rapid and he was a little short of
17 breath which I actually had questioned him about,
18 but he said he didn't feel short of breath, and
19 then I advised him that it was work-related, that
20 this was going to be an EKG and some other things
21 and that he probably would need to have workmen's
22 comp cover that as opposed to -- because he put
23 himself down as self-pay, didn't have insurance.
24 He was going to just pay for that.

25 And I said, "Well, you better see about

1 workmen's comp on that." So we waited a little
2 while, in the meantime did the EKG and got
3 approval from workmen's comp to go ahead and treat
4 him.

5 Q. When you say he put self-pay, where did
6 he -- where did he put that down?

7 A. Well, where it is on the chart is where
8 it says copay, and S/P means self-pay.

9 Q. Would that have been something he filled
10 out on an intake form?

11 A. Right. Right.

12 Q. Okay. Do you have a copy of his intake
13 form?

14 A. I should because this was before our
15 computer revolution. All I have is his patient
16 information form, and it doesn't have any kind of
17 insurance listed, so if they don't have insurance,
18 by necessity, they're there for self-pay.

19 Q. Is there anywhere on that form to mark
20 whether it was work-related or not?

21 A. No. They don't ask them that at the
22 front desk.

23 Q. That's something you do during your
24 initial --

25 A. Well, I mean, it's obvious if they come

1 in with an authorization to be treated. Then
2 that's fine. And sometimes they'll say it was
3 work-related, but he did not offer that
4 information to start with.

5 Q. Okay. You had mentioned a minute ago
6 that he was shocked with 480 volts of electricity,
7 and I believe you've filled out a questionnaire as
8 well that indicates he was shocked with 480 volts
9 of electricity. Where did that information come
10 from?

11 A. He told me it was 480.

12 Q. So you haven't seen the device he was
13 using?

14 A. No.

15 Q. And you didn't do any testing on it?

16 A. No.

17 Q. Okay. So if it -- 480 volts is correct,
18 it would be because that's where Mr. Winfrey got
19 it from; is that right?

20 A. Right. Uh-huh.

21 Q. Okay. But you don't know for certain?
22 It could have been 240 or 110?

23 A. I would not have the foggiest.

24 Q. Okay. On your -- I believe it is your
25 medical report from that day where you have your

1 handwritten notes on it. You have written that he
2 had no chest pressure. What does that mean?

3 A. He was not complaining of any type of
4 thing that would go along with a heart attack.

5 Q. Okay. So he had no chest pain at that
6 time --

7 A. Right.

8 Q. -- that he was complaining of?

9 A. Right.

10 Q. Did you make any notes at all about
11 whether or not he was complaining of chest pain
12 before May 28th when he came in?

13 A. No.

14 Q. Okay.

15 A. The only thing that I wrote down there
16 was -- I guess it was on Thursday when he was
17 shocked, and he said he had some sweating issues
18 that evening --

19 Q. Okay.

20 A. -- apparently, and then came in on
21 Tuesday because he woke up sweating.

22 Q. Okay. Between the Thursday night
23 sweating and when he came in on Tuesday, did you
24 get any indication from him that he suffered from
25 that sweating or suffered from any chest pain --

1 A. No.

2 Q. -- during that time?

3 A. No.

4 Q. Okay. And you performed an EKG on him;
5 is that correct?

6 A. Yes.

7 Q. And what did that EKG reveal?

8 A. That he was tachycardic, pulse of 122
9 when normal is 60 to 100. He had some ST
10 elevation in the inferior part of his heart as
11 well as depression in the lateral leads which went
12 along with possible cardiac damage and also a
13 bundle branch block which is a widening of the
14 QRS.

15 Q. Okay. And tachycardia is just an
16 elevated heartbeat; is that correct?

17 A. Right. Heart rate. Yeah.

18 Q. And what is -- you said the right bundle
19 branch block. What does that mean?

20 A. The time interval between the time that
21 the impulse of the heart travels, I believe,
22 through the -- from the top of the heart to the
23 bottom of the heart. There's a regular time
24 period that it should be under, and it was wider
25 than that.

1 Q. Okay.

2 A. So it was taking longer to conduct the
3 electricity.

4 Q. And that would be indicative of a
5 blockage of the heart; is that correct?

6 A. No. That was an electrical problem.

7 Q. Okay.

8 A. Yeah.

9 Q. And then I believe it says inferior, you
10 said, ST elevation. And what does that mean?

11 A. ST elevation goes along with part of the
12 heart not getting blood supply to it.

13 Q. Okay. Are you able to tell from the EKG
14 that you performed and the findings that were
15 found what was wrong with his heart at that time?

16 A. Well, it would lead you to think that the
17 lower part of his heart had some lack of blood
18 control to -- or blood supply to it, and the rate,
19 obviously that his heart was struggling to try and
20 do what it needed to do.

21 Q. And when you say the lack of blood
22 supply, are you -- is that, again, an electrical
23 issue or is that --

24 A. No. That would be --

25 Q. -- a blockage?

1 A. -- a blockage probably.

2 Q. Okay. At that time does this EKG reveal
3 whether or not he was -- he was later -- let me
4 rephrase the question. He was later found to have
5 a -- what's called a ventricle septal defect, a
6 hole in his heart.

7 A. Yeah. You can't -- you can't see that
8 on --

9 Q. Okay.

10 A. -- an EKG.

11 Q. That's -- there's no way to know whether
12 or not he was suffering from it at the time of the
13 EKG or not; is that right?

14 A. Well, I guess. I'm not a cardiologist,
15 but the electrical impulse travels through the
16 septum, so if there was a hole in the septum, it
17 may -- that may explain why that was a little
18 longer delay getting there.

19 Q. But the EKG itself wouldn't actually
20 directly reveal that to you?

21 A. No.

22 Q. Okay. And what was your -- by the time
23 you got -- you read the EKG, what was your
24 determination of what was going on with
25 Mr. Winfrey?

1 A. That he needed someone a little bit
2 higher level of medical care than I, so I called a
3 cardiologist. I called Dr. Dasgupta. I spoke
4 with him, and he said, "Well, send him over right
5 now."

6 Q. Did your evaluation of Mr. Winfrey or the
7 EKG you performed give you any indication as to
8 when it was that Mr. Winfrey may have suffered
9 this heart attack?

10 A. No. I mean, it was -- I would say yes in
11 the fact that it's -- it wasn't three years ago.
12 It wasn't three months ago. Three -- it could
13 have been five days ago, but if it was longer than
14 ten days, he probably would not have had the ST
15 elevation.

16 Q. Okay. It was, obviously, sometime before
17 he did the EKG.

18 A. Right.

19 Q. Is there --

20 A. But not months before.

21 Q. Correct.

22 A. Yeah.

23 Q. Correct. And so we're kind of looking at
24 an upper limit of between five and ten days
25 maybe?

1 A. Probably.

2 Q. Okay. Could it have been sooner than
3 that as well?

4 A. What do you mean by "sooner"?

5 Q. In other words, could it have been that
6 morning? It could have been the night before? Or
7 is it --

8 A. I imagine.

9 Q. Okay.

10 A. Yeah.

11 Q. Other than the treatment on May 28th when
12 he presented, have you seen Mr. Winfrey back for
13 any reason?

14 A. Not as a patient.

15 Q. Okay. Have you had a chance to see him
16 in any setting at all?

17 A. He came back after he got out of the
18 hospital and thanked me for saving his life which,
19 of course, I didn't do.

20 Q. I understand. And then just one more
21 time, again, on the written opinion that you
22 issued on September 17, 2013, when you refer to
23 480 volts, that is based on what Mr. Winfrey told
24 you; is that right?

25 A. Yes. Uh-huh.

1 Q. And all your opinions here today are to a
2 reasonable degree of medical certainty?

3 A. Yes.

4 MR. BAYNE: Okay. That's all I have,
5 Preston.

6 - - -
7 EXAMINATION
8 - - -

9 BY MR. MCDANIEL:

10 Q. Let me ask you just a couple questions,
11 Doctor, and, really, it refers to -- would you
12 mind reading in some of the handwritten language.
13 First, up in the part -- and I'm going to refer.
14 This is found at page 66 of our APA Submissions.
15 Up where you've given the information from
16 Mr. Winfrey, all that's typed in, and then there's
17 handwritten notes. I believe there's a "G," but
18 it looks like your -- your initials to the left of
19 Columbia, South Carolina. You see that, Doctor,
20 in that section?

21 A. No. Those aren't mine.

22 Q. Oh, they're not?

23 A. I do everything below the Vital Sign
24 line.

25 Q. Okay.

1 A. And the other thing, I guess I did write
2 "WKC" in there for workmen's comp.

3 Q. Okay.

4 A. So that's mine, but everything else is --

5 Q. All right. Would you mind just
6 publishing just so -- so we can read all this.
7 Starting with "shocked," can you just tell me what
8 that says, all that written hand --

9 A. "Shocked on hand by 480 volts. Jerked
10 neck down to left shoulder."

11 Q. Okay.

12 A. That would have been written by the nurse
13 that put him back, and I'm trying to think of who
14 that is. Whoever signed the bottom left there.

15 Q. Okay.

16 A. Bax. We don't have a -- I don't know who
17 that is. Sorry.

18 Q. That's okay. That's all right. Now,
19 let's go down. You said you would have filled in
20 all the Physical.

21 A. Right.

22 Q. Would you just read what that says into
23 the record for me.

24 A. Okay. Well, the Complaint is on the
25 right side. 480 volts rotisserie shock on

1 Thursday. Sweated Thursday night. Woke up
2 sweating this morning, which would have been
3 Tuesday. Complained of pain in his left neck and
4 no chest pressure.

5 Now, that was after I asked him if he'd
6 had any discomfort in his chest.

7 Q. Okay.

8 A. So he did not offer that, really, and I
9 didn't write down there, but I do remember he was
10 really -- he was rubbing his arm, and he was like,
11 "My arm hurts." Of course, you have electricity
12 go through it --

13 Q. And that's the left arm and --

14 A. Right. Left arm.

15 Q. Okay. And is that also a common
16 presentation for having sustained a heart attack?

17 A. Yes. Well, you will have pain in your
18 arm but not pain to touch.

19 Q. Okay. And -- but he had actual pain --
20 to your recollection, he had pain to touch.

21 A. Well, yeah. I didn't write anything
22 about the arm, but I did put "tenderness in his
23 left trapezius," and that's the upper -- the
24 muscle up here in the neck, so he was -- he was
25 sore there.

1 Q. Okay. All right. And then in reference
2 to the other side, to the left --

3 A. Oh, okay. Well, the -- "well-developed,
4 well-nourished white male. No acute distress.
5 Appears short of breath but denies." Appears to
6 be. That's a --

7 Q. Okay.

8 A. "Entry wound." He had a entry on the --
9 the back of his third left finger. I didn't say
10 whether it was proximally or distally, but I do
11 remember that there.

12 Q. Okay.

13 A. "Trapezius -- tenderness, left
14 trapezius." And then when I listened to his heart
15 he had a grading of three over six murmur, and
16 his -- his rate was -- was high.

17 Q. All right. Grade three --

18 A. Over six.

19 Q. -- over six.

20 A. Yeah.

21 Q. What does that mean?

22 A. We grade heart murmurs from one to six.
23 Six is if I was sitting next to you without a
24 stethoscope I could hear your heart --

25 Q. Okay.

1 A. -- murmur. One is like you got to think
2 real hard, is that a heart murmur or not. So a
3 three is like a medical student could figure that
4 one out real easy.

5 Q. Okay. And then so that's the --

6 A. That would actually go along with the
7 ventral -- the septal -- excuse me. VSD, the
8 ventricular septal.

9 Q. It would --

10 A. Because you don't get murmurs from heart
11 attacks. You get murmurs either through blood
12 going over the valves or blood going from one side
13 of the heart to the other.

14 Q. Okay. So that would be further support
15 in reference to the EKG of that he was having --

16 A. Well, not --

17 Q. -- blood not going where it was supposed
18 to.

19 A. No. This would say the blood was -- was
20 turbulent going through some place, so it would
21 either be a valve or the hole between the right
22 side and the left side.

23 Q. Okay.

24 A. But it doesn't say anything about blood
25 getting to all the area of the heart.

1 Q. Right. Exactly. But, in other words,
2 it -- it's further support that the VSD was there
3 at that time.

4 A. Right.

5 Q. Okay. And then those -- I guess those
6 numbers are just diagnostic codes?

7 A. Right.

8 Q. Okay.

9 A. Yeah. For tachycardia, electric shock
10 and muscle shock.

11 Q. Then --

12 A. Okay.

13 Q. -- you discuss --

14 A. So discuss with Dr. Dasgupta at South
15 Carolina Heart Lexington, and he said, "Oh, send
16 him over." Of course, then when he got over
17 there, he said, "I'm calling an ambulance. You're
18 going to the hospital."

19 It's like, "Whoops."

20 Q. Okay. And then -- and so that's in
21 reference to your follow-up now?

22 A. Yeah. That he was to go now. Yeah.

23 Q. Okay. All right.

24 A. And then, depending on what happened, I
25 gave him some muscle relaxers and some pain

1 reliever for -- for what he perceived that he came
2 in here for.

3 Q. You know, your testimony goes along
4 exactly with -- in reference to five, no more than
5 ten days. Tell me what the -- why you said that
6 about the EKG in reference to, I believe -- was it
7 the STV or the ST?

8 A. ST elevation.

9 Q. The ST elevation.

10 A. Right. Yeah.

11 Q. Correct.

12 A. During the -- a heart attack, the ST
13 level grade will go up higher, and then as the
14 heart attack resolves, it comes down.

15 Q. Okay.

16 A. So the cardiologist will be able better
17 to tell you at what point it goes from being up to
18 being down or to being low. I'm not sure about
19 the evolution of time on that one.

20 Q. Okay. But it -- based on your background
21 and training, I believe you said that
22 normally that --

23 A. It's an acute injury.

24 Q. -- it's an acute injury, meaning within
25 the last ten days.

1 A. Oh, at least. Yeah.

2 Q. Okay. All right. And the opinion that
3 you were kind enough to write to us, you -- that
4 still remains your opinion to a reasonable degree
5 of medical certainty?

6 A. Right.

7 MR. MCDANIEL: All right. Nothing
8 further.

9 THE WITNESS: Well, not having any
10 previous information on any of his medical
11 status.

12 MR. MCDANIEL: Uh-huh. Uh-huh.

13 THE WITNESS: I mean, you know, if he was
14 seeing a cardiologist for three years and had
15 documented heart disease, that would be
16 another story, but ...

17 BY MR. MCDANIEL:

18 Q. Right. But in other words --

19 A. Just based on the one time.

20 Q. You said you did some brief research?

21 A. Yeah. The -- really, I was looking for
22 the VSD, and I couldn't find anything anywhere
23 about VSDs, but apparently there's some attorney
24 in Florida or in California that loves to do
25 electrical stuff, but on this -- you know,

1 V-fib -- of course, abnormal heart rhythm is the
2 greatest risk for an acute electrical injury
3 because the electricity goes through your heart,
4 just fritzes out your own heart's electrical
5 activity.

6 So V-fib and A-fib are the biggest things
7 that happen on that one, but this goes ahead and
8 says that the shock can actually cause myocardial
9 damage, can cause bundle branch blocks.

10 Q. And where is that from?

11 A. Medscape. Actually, there's another one
12 here. Electrical Injuries and Lightning Strikes
13 under -- this is a UK site. "Cardiac system," it
14 says "Ventricular fibrillation is the usual cause
15 of immediate death. Other arrhythmias have been
16 reported: right bundle branch block, nonspecific
17 ST and T-wave changes" which is that ST thing we
18 were talking about.

19 "Supraventricular tachycardia, atrial
20 fib. Acute myocardial infarction has been
21 reported. It's worth noting cardiac markers will
22 be raised." That's the blood work. To diagnose a
23 heart attack you need either the symptoms, changes
24 in EKG and the blood work to go along with that
25 or, if you don't have the symptoms, those other

1 two things would be adequate. And "delayed
2 arrhythmias are extremely rare, tend to be found
3 in patients with a previous history of EKG
4 abnormality."

5 So, you know, acutely, that's when they
6 need to go to the emergency room, and five days
7 later, I was, frankly, surprised that he would
8 come in, but I was really concerned about his
9 heart findings.

10 Q. Let me -- you know, just one question.
11 Of course, he was obviously reporting these
12 problems that would be associated with --

13 A. Muscle injury.

14 Q. -- muscle from -- from the electrical
15 shock.

16 A. Right. Right.

17 Q. And that would be -- but also that's in
18 the same exact area that many people report pain
19 and --

20 A. When they're having a heart attack.

21 Q. -- discomfort and have -- well, would it
22 be your opinion that there's a substantial
23 likelihood that the electrical shock and where it
24 occurred and the path it took would have masked
25 him -- like -- in other words, saying like, "Well,

1 I've just got to get over this electrical shock,"
2 versus, "I've had a heart attack."

3 A. Well, I don't know about certainty issues
4 because without any pressure in his chest or a
5 heaviness in his chest, by itself, pain in the
6 left arm, I would be concerned about if he came in
7 and said, "I have left arm pain, but I'm fine
8 here."

9 Q. Uh-huh.

10 A. Especially with a EKG. But you're saying
11 with electrical shock pain, he may have confused
12 any pain that might have come from a heart attack
13 in his left arm with that.

14 Q. Correct.

15 A. Yeah. I mean, you can't separate those
16 two out.

17 Q. Okay. All right. Let me ask you -- and
18 you said this came -- and, of course, it says it
19 came off of Medscape. What is Medscape?

20 A. It's just a Web site with usually medical
21 information on it.

22 Q. Okay. Is that something y'all regularly
23 use when you've got --

24 A. No. I did that at home yesterday.

25 Q. Oh, okay.

1 A. No. I didn't do it at the time. I was
2 just doing it to be prepared for today.

3 Q. Okay. All right.

4 A. If you want this, too, you can have
5 that. We can make copies for both of you.

6 MR. MCDANIEL: Would you mind if we make
7 a copy of that?

8 MR. BAYNE: No.

9 MR. MCDANIEL: Okay.

10 THE WITNESS: This one -- I mean, I just
11 summarize it on the side there, but under
12 "Cardiac system" down there it has it.

13 I mean, this says, "This PatientPlus
14 article is written for healthcare
15 professionals so the language may be more
16 technical than the condition leaflets."

17 MR. MCDANIEL: Let me ask. Brett, do you
18 want to take a look at those?

19 MR. BAYNE: Yeah. Just --

20 THE WITNESS: And they were like eight
21 pages long, but I just --

22 MR. MCDANIEL: We can just make those an
23 exhibit to the deposition. Do you have any
24 objection to that?

25 THE WITNESS: And then this one was just

1 a summary of radiation on electrical injury in
2 terms of circulation, which is cardiac
3 disease. It says, "Cardiac complications of
4 electrocution (apropos of a case of myocardial
5 infarction after lightning electrocution.)"

6 Now, I don't know how lightening and 480
7 volts compare, so -- and it's just a
8 bibliography. It doesn't have any information
9 on there. Yeah. Physics wasn't my greatest
10 thing, so volts and amperes and all those
11 things.

12 MR. MCDANIEL: Okay. I don't have any
13 further questions, just subject to us
14 attaching those to -- as --

15 MR. BAYNE: Yeah. Just --

16 MR. MCDANIEL: We can attach them as one
17 of three or however many pages if you want to,
18 Brett.

19 THE WITNESS: Yeah. I was kind of
20 looking for the VSD because that's amazing,
21 but then when you read what Travis said, you
22 know, it looked like burn marks or something.
23 Now, I -- like I said, I wasn't sure whether
24 that was burn marks on the septum or burn
25 marks on the heart, but ...

1 MR. MCDANIEL: Okay. All right. Thank
2 you, Doctor. I don't have any further
3 questions. Let's just see if -- I don't know
4 if Mr. Bayne has any.

5 MR. BAYNE: Can we go off the record real
6 quick?

7 MR. MCDANIEL: Yeah.

8 (A discussion was held off the record.)

9 - - -

10 REEXAMINATION

11 - - -

12 BY MR. BAYNE:

13 Q. Doctor, I just wanted to ask a couple
14 follow-up questions. You said that Mr. Winfrey's
15 pain in his left arm was pain to touch; is that
16 right?

17 A. It was tender to touch.

18 Q. Tender to touch.

19 A. Yeah.

20 Q. You indicated that pain in the left arm
21 that is typically associated with a heart attack
22 is not tender to the touch.

23 A. Yeah.

24 Q. Is that right?

25 So at least based on your observation of

1 him on that day it would not have led you to
2 believe that that pain was related to a heart
3 attack; is that correct?

4 A. Yes.

5 Q. Okay. On the electrical articles that
6 you've referenced that are going to be put into
7 the record in just a second, you indicated that it
8 talked about an electrical shock, lightening; is
9 that right?

10 A. I would have to look at that.

11 MR. MCDANIEL: I think she was referring
12 to --

13 THE WITNESS: Well, the title says both.

14 MR. MCDANIEL: And I have no objection to
15 that page, Brett, if you wanted to put it in.

16 THE WITNESS: Yes. This one says
17 lightening.

18 BY MR. BAYNE:

19 Q. My quick question was, on the second page
20 which is labeled page 2 of 8 on the top right, it
21 does talk about lightening right there. About a
22 third of the way down it indicates lightening is
23 about 10 million volts; is that correct?

24 A. That's what it says.

25 Q. Okay.

1 A. I don't know.

2 Q. And you'd agree that 10 million is more
3 than 480; is that right?

4 A. Right. Uh-huh.

5 Q. And in the other -- the Medscape article
6 that you -- you printed off -- and I'll hand it
7 back to you real quick. It doesn't indicate on
8 there when it's talking about -- I believe you
9 circled a part about heart damage relating --

10 A. Right.

11 Q. -- from electrocution. It doesn't --

12 A. Right.

13 Q. It doesn't refer to the number of volts
14 that would be required or --

15 A. It doesn't say --

16 Q. -- would be typical?

17 A. -- what was causing it. Not of the
18 source. Yeah.

19 Q. Okay. In your notes on 10/28, one thing
20 I wanted to touch on I forgot about, you noted
21 that he had an entry wound --

22 A. Right.

23 Q. -- on his left hand. Is that a term of
24 art, so to speak, or was there an actual wound?

25 A. No. He actually had a wound there.

1 Yeah.

2 Q. Do you recall what it looked like?

3 A. I think it was a little brownish. It
4 was -- I mean, since it was five days old, I think
5 it was just like a resolving burn.

6 Q. Okay. So it looked -- at the time it
7 looked like a resolving burn?

8 A. Uh-huh.

9 Q. And then you said something about --
10 Mr. McDaniel asked you about the opinion that you
11 had filled out, the questionnaire you'd filled
12 out, and asked if that had changed at all, and I
13 think you said something about depending on his
14 history.

15 A. Oh. No. I mean, it -- my opinion from
16 then until now hasn't changed because I don't have
17 any other history.

18 Q. Okay.

19 A. Yeah.

20 Q. Would the fact that Mr. Winfrey had, for
21 example, a family history of this type of heart
22 condition, would that in any way change your
23 opinion as to what caused --

24 A. No.

25 Q. -- his symptoms?

1 A. Huh-uh.

2 Q. And, in fact, I believe when he did
3 arrive at the hospital finally and Dr. Travis saw
4 him, he did diagnose him with severe three vessel
5 disease. Does that at all change any of your
6 opinions in this case?

7 A. Not as far as what precipitated it, no.

8 MR. BAYNE: Okay. That's all I have.

9 MR. MCDANIEL: Nothing further.

10 - - -

11 (Medical Web Site Documents marked
12 Greenfield Exhibit Number 1, for
13 identification.)

14 - - -

15 (Witness excused.)

16 - - -

17 (Deposition concluded at 2:30 p.m.)

18 - - -

19 - - -

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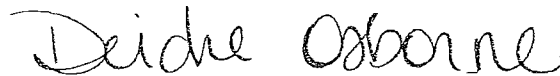
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I, Deidre Osborne, Court Reporter and
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That the proceedings and evidence are
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I further certify that I am neither
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Deidre Osborne,
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More Cognitive Deficits, Depression in Former NFL Players

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DRUG & REFERENCE INFORMATION

Primary CNS Lymphoma

Initial Evaluation and Management of CNS Injury

Central Nervous System Lymphoma in HIV

dumjion of exposure, the resistance of the tissues, contact surface, the extent of multisystem involvement, and the circumstances surrounding the incident.

Initial Evaluation

The high voltage direct current (DC) electrocution tends to cause a single muscle contraction, throwing its victim from the source. These patients tend to have more blunt trauma. Direct current electrocution can also cause cardiac dysrhythmias, depending on the phase of the cardiac cycle affected. This action is similar to the affect of a cardiac defibrillator.

Low voltage alternating current (AC) electrocution is three times more dangerous than DC current at the same voltage. The lowest frequency for electrical current in the United States is 60 Hertz (Hz) because this is the lowest frequency at which an incandescent light functions. With AC electrocution, continuous muscle contractions (tetany) may occur, since the muscle fibers are stimulated at between 40 to 110 times per second. With tetany, the victim tends to hold on to the source of current output, thereby increasing the duration of contact and worsening the injury.^[1]

Generally, the longer the duration of contact with high voltage current, the greater the degree of tissue destruction. This is true until the tissue becomes carbonized and resistance develops to the current flow. Current is often concentrated at the contact and ground points of the body, where the greatest amount of tissue damage occurs. However, extensive damage may occur between the contact and ground point.

Electrical injuries occur from direct contact or as an indirect contact with a power source. Indirect contacts can be separated into arc, flash, thermal, and blunt trauma injuries. An arc injury is the most destructive of all of the indirect mechanisms. It can generate approximately 2,500°C. An electrical arc is a current spark that develops between two objects that are not in contact with each other. An arc injury occurs when the victim becomes part of the arc itself. Electrical arcs can ignite clothing and cause thermal burns. Flash burns from the electrical source usually result in superficial partial thickness burns. High voltage shocks may cause blunt trauma, usually when the electrical energy causes the victim's muscles to contract violently. This intense and diffuse muscle contraction can cause the victim to fall or fracture bones, especially in AC electrocution.^[1]

Central nervous system injury is common with electrocution, as is blunt head trauma, which results from falls or from being thrown from a high voltage contact. Change in mental status is also common. Cataracts, which may occur immediately after electrocution or months later, develop in 5% of patients who have sustained electrical injury near the head or high voltage electrocution.^[1] Corneal burns, intraocular hemorrhage or thrombosis, uveitis, retinal detachment, and orbital fractures may also result.

Electrical injury in pediatric patients often involves the oral cavity because children typically bite or suck on the electrical cord. Injury to the labial artery with delayed bleeding occurs in 10% of these patients.

Cardiac arrest, either from asystole or ventricular fibrillation, is common in electrocution. However, patients may present with sinus tachycardia, transient ST segment elevation, QT segment prolongation, PVCs, atrial fibrillation, or bundle branch block.^[1] Acute myocardial infarction is rare but has been reported.^[1] Vascular damage is greatest in the medial layer of the vessel. Intimal damage may result from immediate or delayed thrombosis as edema and thrombi form on the damaged endothelial surface. This commonly occurs in small muscle branches, where blood flow is slower. The damage to the small arterioles, along with marginal muscle viability as a direct result of the electrical energy, can lead to progressive tissue necrosis.^[1] Coagulation necrosis, intravascular hemolysis, and delayed vessel rupture may also occur.

Damage to the lungs is rare because the air in the lungs is a poor conductor of electricity. More commonly, blunt pulmonary trauma occurs from falls or other associated events. Respiratory arrest may result from tetanic contraction of the diaphragm. Aspiration pneumonia and pulmonary edema are not the direct result of electrocution.

Injuries to solid abdominal organs directly from electrical current have not been reported. Solid organ damage is usually the consequence of blunt trauma. Hepatic and pancreatic necrosis, paralytic ileus, bowel perforation, esophageal hemorrhage, Curling's ulcers, and gastrointestinal bleeding have been reported. Acute renal failure usually results from rhabdomyolysis or hypovolemia.

Long bone fractures, vertebral compression fractures, and scapular fractures may result from electrical shock, either from the violent and intense muscle contraction or from secondary blunt trauma. Shoulder dislocations may result from tetanic spasm of rotator cuff muscles. Pericostal burns, bony matrix destruction, aseptic necrosis, and osteomyelitis have been reported as delayed complications. Severe muscle necrosis may require fasciectomy.

Altered mental status is usually transient unless associated with significant head injury. The victim may have confusion, agitation, emotional lability, amnesia (with loss of both short-term and long-term memory), cognitive impairment, aphasia, headache, seizures, and prolonged coma. Cerebral edema, hypoxic encephalopathy, and peripheral neuropathy have been reported. Central and peripheral nervous systems symptoms may improve, but long-term disability is common.

In high voltage electrocution, the spinal cord may be injured as a result of fractures or ligamentous injury to the spinal column caused by muscle contraction or blunt trauma. In addition, the electrical current may cause direct injury to the spinal cord. This spinal cord injury may be acute or delayed. Acute insult to the spinal cord may cause weakness and paresthesia within hours of the initial injury. Neurologic deficits are more common in lower extremities than in upper extremities. These patients have a good prognosis for partial or complete recovery. On the other hand, delayed injury may be manifested days to years after

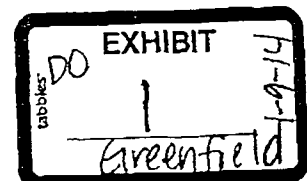
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Electrical Injuries and Lightning Strikes

This PatientPlus article is written for healthcare professionals so the language may be more technical than the condition leaflets. You may find the abbreviations list helpful.

Patients presenting with electrical injuries have problems that can range from the very trivial to the fatal (in which case, they are said to have been electrocuted). If patients survive the initial exposure, the outlook is generally very good with few permanent injuries as a result.

Epidemiology^[1]

- Electrical burn injuries account for about 3-4% of burns unit admissions.^[2]
- Electricians and linesmen are at highest risk but those working with electrical tools also form a significant proportion of this patient group.
- Approximately 20% of all electrical injuries occur in children (with a bimodal peak incidence in toddlers and adolescents), usually involving cable extensions or wall outlets.^[3]
- For every death, there are two serious injuries and 36 reported electric shocks.
- Death most often occurs in young males (male:female = 9:1).
- Most deaths occur in the spring and summer months.
- Water greatly increases the risk of fatality.

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Pathophysiology of electrical injury^[1]

Electrical current causes damage through:^[3]

- Direct process of physiological changes (altering cell resting membrane potential).
- Conversion of electrical energy into thermal energy, resulting in massive tissue destruction and coagulative necrosis.
- Secondary damage associated with falls and violent muscle contractions.

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summary to use in
appraisal



There are several factors that affect the degree of damage:

Current

Type of current: this may be direct or alternating. The latter is significantly more dangerous in a number of respects:

- It may result in tetanic muscular contraction, so preventing the casualty from letting go of the source.
- An alternating current of any more than 10 mA induces sweating. Skin moisture decreases its resistance (see below).
- Human tissue is most sensitive to frequencies between 40 and 150 Hz. The frequency best suited for household use is about 50 Hz, so making household current particularly dangerous. This is all the more salient, as this is the frequency that is capable of producing ventricular fibrillation (VF).

Amount of current:

- 1 mA = threshold of perception resulting in tingling sensation.
- >7-9 mA = muscular tetany preventing release of grip from current source (this is lower for children and women).
- 20-50 mA = pain and severe breathing difficulties leading to respiratory arrest.
- 50-100 mA = VF.
- >2 A = asystole.

Current path: the key issue affecting mortality is whether the current passes through the heart. For example, contact of the electrical source with both hands effectively results in a transthoracic pathway which is thought to account for about 60% of mortalities, whereas there is very low mortality related to a pathway passing through one leg and out of the other.

Voltage^[2]

Generally, the greater the voltage, the greater the damage (the exception being with high-tension voltage: above this level, greater voltage doesn't necessarily influence the degree of injury).^[4] This is accentuated or limited by the resistance of the tissue that the electricity passes through (see below):

- **Low voltage:**
 - <50 V: no danger.
 - 240 V: UK household supply ($\pm 10\%$). This creates small, deep entrance and exit wounds.
- **High voltage:**
 - $\geq 1,000$ V: there is often extensive tissue damage and limb loss. Contact with $>70,000$ V is invariably fatal
 - 100 million V: lightning - this is quite different from a high-voltage electric shock and is treated separately below.

Resistance

As the current travels through the body, it follows the path of least resistance.^[5] Resistance varies in different tissues and will have a great influence on the extent of any injuries.

- At a cellular level, the injury resembles a crush injury more than it does a burn.
- The electrical current will pass through low-resistance tissues in preference, causing necrosis along the way.
- Since the skin resistance can be affected by moisture, electric current can be transmitted to deeper structures before it causes significant skin damage (there may be serious deep injury with spared skin).^[6]
- A current passing along the surface of the body to earth can cause very deep burns over a large area.^[6]
- There will be a range of clinical manifestations with different effects on different organs.
- Be aware of potential secondary injuries from falling or being thrown to the ground.^[6]

Burns^[2]

- These range from first-degree to third-degree: there is typically a depressed charred central area with surrounding oedema. There may be several entry and exit wounds (the latter characteristically have an explosive appearance - round or oval grey craters with no inflammatory changes).^[7]
- Arc burns are produced by the passage of a current of electricity from the source to the ground and may be associated with extensive skin damage.
- So-called 'kissing burns' are produced in flexor creases when muscle tetany causes the joint to flex and the current flows through opposing skin.^[8]
- Flame burns occur when the current ignites clothing.

Cardiac system

- Ventricular fibrillation (VF) is the usual cause of immediate death from electrocution,^[9] this occurs immediately.
- Other arrhythmias have been reported: right bundle branch block and nonspecific ST and T-wave changes occur most commonly;^[9] there may be supraventricular tachycardia and, occasionally, atrial fibrillation.
- Acute myocardial infarction has been reported.
- It is worth noting that cardiac markers will be raised, regardless of cardiac damage, so don't use these as an indication of cardiac damage.^[6]
- Delayed arrhythmias are extremely rare and tend to be found in patients who have a previous history of ECG abnormalities (known or subclinical).^[6]

Nervous system

- **Acute complications:** these include respiratory arrest, seizures, altered mental state, amnesia, coma and expressive dysphasia. Motor deficits have also been reported.
- **Delayed complications:** these include spinal cord injury (common) and complex regional pain syndrome (CRPS).^[9]
- Acute ischaemic stroke has also been reported.^[7]

11. Bodily K, Perry JF Jr, Strate RG, Fischer RP: Salvageability of patients with post-traumatic ruptures of the descending thoracic aorta in a primary trauma center. *J Trauma* 17: 754, 1977
12. Achram M, Rizk G, Haddad FS: Angiographic aspects of traumatic intracranial aneurysms following war injuries. *Br J Radiol* 53: 1144, 1980
13. Reichle FA, Golsorkhi M: Diagnosis and management of penetrating arterial and venous injuries in the extremities. *Am J Surg* 140: 365, 1980

Radiation and Electrical Injury

1. Cohn KE, Stewart JR, Fajardo LF, Hancock EW: Heart disease following radiation. *Medicine* 46: 281, 1967
2. Conteras MD: Myocardial depolarization caused by lightning. Report of a clinical case. *Arch Inst Cardiol Mex* 41: 220, 1971
3. Starmer CF, McIntosh HD, Whalen RE: Electrical hazard and cardiovascular function. *N Engl J Med* 284: 181, 1971
4. Grand A: Cardiac complications of electrocution (apropos of a case of myocardial infarct after lightning electrocution). *Arch Med Prof* 33: 177, 1972
5. Lister GD, Gibson T: Destruction of the chest wall and damage to the heart by x-irradiation from an industrial source. *Br J Plast Surg* 26: 328, 1973
6. Watson AB, Wright JS, Loughman J: Electrical thresholds for ventricular fibrillation in man. *Med J Aust* 1: 1179, 1973
7. Myers RW: Radiation heart disease. *J Tenn Med Assoc* 68: 292, 1975
8. Virenque C, Laguère J: Les accidents de la fulguration. *Anesth Anal Rean* 33: 775, 1976
9. Wilkinson C, Wood M: High voltage electric injury. *Am J Surg* 136: 693, 1978
10. Doherty PW, McLaughlin PR, Billingham M, Kernoff R, Goris ML, Harrison DC: Cardiac damage produced by direct current countershock applied to the heart. *Am J Cardiol* 43: 225, 1979

Iatrogenic Cardiovascular Trauma

1. Libanoff AJ, Silver AW: Complications of transseptal left heart catheterization. *Am J Cardiol* 16: 390, 1965
2. Popper RW, Schumacher D, Quinn CH: Cardiac tamponade due to hyperionic contrast medium in the pericardial sac following cine-angiography. *Circulation* 35: 933, 1967
3. Evans DW: Traumatic right coronary artery occlusions incident to retrograde left ventricular catheterization with a stiff catheter. *Am J Cardiol* 22: 119, 1968
4. Hagan AD, Trone JN: Ventricular septal perforation following left ventricular angiography. *Am J Cardiol* 22: 885, 1968
5. Meyer JA, Millar K: Perforation of the right ventricle by electrode catheters: A review and report of nine cases. *Ann Surg* 168: 1048, 1968
6. Rudolph AM: Cooperative study in cardiac catheterization. Complications occurring in infants and children. *Circulation* 37 (suppl III): 111-59, 1968
7. Swan HJ: Cooperative study on cardiac catheterization. Complications associated with angiocardiography. *Circulation* 37 (suppl III): 111-81, 1968
8. Swan HJ: Cooperative study on cardiac catheterization. Perforation and other cardiac complications. *Circulation* 37 (suppl III): 111-36, 1968
9. Conti CR, Ross RS: The risks of cardiac catheterization. *Am Heart J* 78: 289, 1969
10. Pietras RJ, May PC, Gunnar RM, Tobin JR Jr: Reappraisal of the posterior percutaneous technique of left heart catheterization. *Dis Chest* 55: 471, 1969
11. Stillman MT, Richards AM: Perforation of the interventricular septum by transvenous pacemaker catheter. Diagnosis by change in pattern of depolarization. *Am J Cardiol* 24: 269, 1969
12. Burnside J, Daggett WM, Austen WG: Coronary artery rupture by a mitral valve prosthesis after closed chest massage. *Ann Thorac Surg* 9: 267, 1970
13. Kerber RE, Ridges TD, Harrison DC: Electrocardiographic indications of atrial puncture during pericardiocentesis. *N Engl J Med* 282: 1142, 1970
14. Kitamura K, Gobel FL, Wang Y: Dissection of the left coronary artery complicating retrograde left heart catheterization. *Chest* 58: 587, 1970
15. Baldwin BJ, Dorney ER: Acute cardiac tamponade following removal of temporary epicardial pacemaker wires after open surgery. *Am J Med Sci* 261: 241, 1971
16. Bernstein V, Rotem CE, Peretz DI: Permanent pacemakers: A follow-up study. Incidence and management of congestive heart failure and perforation. *Ann Intern Med* 74: 361, 1971
17. Enghoff E, Cullhead I: Experiences with transseptal left heart catheterization: a review of 454 studies. *Am Heart J* 81: 398, 1971
18. Goswami M, Gould L, Gomprecht RF, Imperiale A: Perforation of the heart by flexible transvenous pacemaker. *JAMA* 216: 1771, 1971
19. Henzel JH, Dewese MS: Morbid and mortal complications associated with prolonged central venous cannulation. Awareness, recognition and prevention. *Am J Surg* 121: 600, 1971
20. Bensard J, Barrillon A, Scebat L, Lenegre J: Course of aortic myography after selective angiography. *Arch Mal Coeur* 66: 1972
21. Berner HW, Seisler EP, Barlow J: Fetal cardiac tamponade: complication of amniocentesis. *Obstet Gynecol* 40: 599, 1972
22. Björk VO, Book K: The hazards to the left circumflex coronary artery during mitral valve surgery in cases with atrial septal defect and corrected transposition. *Scand J Thorac Cardiovasc Surg* 215, 1972
23. Borja AR, Masri Z, Shruck L, Pejo S: Unusual and lethal complications of infraclavicular subclavian vein catheterization. *Am J Surg* 57: 42, 1972
24. Iben AB, Firpo R, Hurley EI: Coronary artery bypass for iatrogenic ostial injuries. *Chest* 61: 304, 1972
25. Imparato AM, Kim GE: Electrical complications in patients with permanent cardiac pacemakers. Ten years' experience. *Arch Intern Med* 105: 705, 1972
26. Agdal N, Jorgensen TG: Penetrating laceration of the pericardium and myocardium and myocardial rupture following closed cardiac massage. *Acta Med Scand* 194: 477, 1973
27. Golden MS, Pinder T Jr, Anderson WT, Cheitlin MD: Fatal coronary hemorrhage complicating use of a flow-directed tipped catheter in a patient receiving anticoagulant therapy. *Am J Cardiol* 32: 865, 1973
28. Niede S, Abe T, Kurbayashi R, Sato M, Abe S: Case of aortic injury resulting from acupuncture. *Jpn J Thorac Surg* 26: 881, 1973
29. Petterson SR, Singh JB, Reeves G, Kocot SL: Tricuspid perforation by endocardial pacing electrode. *Chest* 63: 125, 1973
30. Rubenfire M, Aube DT, Drake EH, Ormond RS: Clinical relation of myocardial perforation as in complication of permanent transvenous pacemakers. *Chest* 63: 185, 1973
31. Takaro T, Hultgren HN, Littmann D, Wright EC: An analysis of deaths occurring in association with coronary arteriography. *Am Heart J* 86: 587, 1973
32. Van Durme JP, Heyndrickx G, Snaeck J, Vermerie P, Panu: Diagnosis of myocardial perforation by intracardiac electrograms recorded from the indwelling catheter. *J Electrocardiol* 6: 97, 1973
33. Barnes RW, Peterson JL, Krugmire RB Jr, Strandness DE: Complications of percutaneous femoral arterial catheterization. *Am J Cardiol* 33: 259, 1974
34. Hurwitz BJ, Zion MM, Obel IWP: Myocardial perforation by flexible Elema endocardial pacing catheters. *Thorax* 29: 678, 1974
35. Stanger P, Heymann MA, Tarnoff H, Hoffman JIE, Rudolph AM: Complications of cardiac catheterization of neonates, infants, and children. A three year study. *Circulation* 50: 595, 1974
36. Atcheson SG, Peterson GV, Fred HL: Ill-effects of cardiac catheterization: report of two unusual cases. *Chest* 67: 615, 1975
37. Biggart JD, McClure J: Right atrial laceration. Complication of external cardiac massage. *Br Heart J* 37: 652, 1975
38. Dane TEB, King EG: Fatal cardiac tamponade and other medical complications of central venous catheters. *Br J Surg* 62: 635, 1975
39. Harrison LH, Gregg DL, Itscoitz SB, Redwood Dr, Michael: Delayed coronary artery dissection after angiography. *J Thorac Cardiovasc Surg* 69: 880, 1975
40. Shah A, Gnoj J, Fisher VJ: Complications of selective coronary arteriography by the Judkins technique and their prevention. *Am Heart J* 90: 353, 1975

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1306305

EMPLOYEE/CLAIMANT: CLARENCE WINFREY

EMPLOYER: ARCHWAY SERVICE, INC.

INSURER: AMERICAN FIRE & CASUALTY COMPANY



SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 13TH DAY OF
JANUARY, 2014, COMMENCING AT THE HOUR OF 9:27 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE, SUSAN S. BARDEN
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

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1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

BRETT HARRIS BAYNE, ESQUIRE, OF THE FIRM
MCANGUS GOUDELOCK & COURIE, L.L.C.
1320 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYER/INSURER

ALSO ATTENDING:

SUSAN KISER
STEVE SHULMEISTER
MARK WARREN
CLARENCE WINFREY

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

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6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS JANUARY 13TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1306305. THIS IS THE CASE OF THE CLAIMANT
10 MR. CLARENCE WINFREY WHO IS PRESENT TODAY. LET'S GO
11 OFF THE RECORD ONE SECOND.

12 (OFF THE RECORD)

13 BY COMMISSIONER BARDEN:

14 MR. WINFREY IS REPRESENTED BY ATTORNEY PRESTON
15 MCDANIEL. THE EMPLOYER IS ARCHWAY SERVICES AND ITS
16 CARRIER AMERICAN FIRE, BOTH OF WHICH ARE REPRESENTED
17 BY ATTORNEY BRETT BAYNE. THE PURPOSE OF TODAY'S
18 HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50
19 AND 51. CURRENTLY THE CLAIMANT IS BEING PAID A
20 COMPENSATION RATE OF \$442.40. MR. MCDANIEL, YOU
21 MENTIONED THAT AND WE DID NOT, WITH ALL OF THE OTHER
22 THINGS WE TALKED ABOUT IN SPITE OF AN HOUR THAT WE
23 EXPENDED USING OR TALKING ABOUT EVERYTHING, WE
24 REALLY DIDN'T GET INTO THE COMP RATE, ARE YOU --
25 WOULD YOU LIKE THAT HELD IN ABEYANCE? YOU SAID IN

1 YOUR ---

2 BY MR. MCDANIEL:

3 YES.

4 BY COMMISSIONER BARDEN:

5 --- FIFTY-EIGHT, YOU WANTED IT HELD IN
6 ABEYANCE.

7 BY MR. MCDANIEL:

8 YES, COMMISSIONER. WE ARE -- FOR PURPOSES OF
9 HOPEFULLY TRYING TO GET BENEFITS RESTARTED, WE ARE
10 AGREEABLE TO THAT COMP RATE WITH THE ---

11 BY COMMISSIONER BARDEN:

12 STIPULATION THAT YOU WOULD LIKE TO ---

13 BY MR. MCDANIEL:

14 --- THAT WE -- WE HAVEN'T EVER ASKED FOR THE
15 INFORMATION, YOU KNOW, TO CONFIRM THE COMP RATE SO
16 WE -- TO -- THAT WE CAN TRY THAT ISSUE AT A LATER
17 DATE.

18 BY COMMISSIONER BARDEN:

19 OKAY. AND DO Y'ALL HAVE AN OBJECTION TO ---

20 BY MR. BAYNE:

21 HOLDING THAT IN ABEYANCE? NO.

22 BY COMMISSIONER BARDEN:

23 OKAY. THE DATE OF THE INCIDENT, WHICH OCCURRED
24 WHICH WAS ELECTRICAL SHOCK OCCURRED ON MAY 22ND,
25 2013. ALL RIGHT. BUT I'M GOING TO PREEMPT MR.

1 BAYNE BEFORE I ASK IF THERE ARE ANY OBJECTIONS,
2 BECAUSE HE DOES HAVE AN OBJECTION TO GOING FORWED
3 TODAY. HE SITES FOR HIS OBJECTION THE FACT THAT
4 COMMISSIONER BECK HAD -- HELD A FORM 15 HEARING
5 WHEREIN THE DEFENDANTS WERE FOUND TO HAVE NOT
6 UNLAWFULLY STOPPED MR. WINFREY'S BENEFITS AFTER
7 THEIR INVESTIGATION OF THE CLAIM. IN THAT ORDER,
8 COMMISSIONER BECK MADE A FINDING THAT THE CLAIMANT
9 SUFFERED A MYOCARDIAL INFARCTION ON MAY 28TH, 2013.
10 THE DEFENDANTS BELIEVE AND CONTEND THAT IF I FIND A
11 DIFFERENT ACCIDENT DAY OR IF I FIND A DIFFERENT DATE
12 OTHER THAN THE MAY 28TH, 2013, THAT THAT IS
13 PROCEDURALLY PROBLEMATIC, THAT I SHOULD NOT HOLD
14 THIS HEARING TODAY IN THAT IF THAT -- IF THE APPEAL
15 WERE DROPPED, THE LAW OF THE CASE IS THE MAY 28TH,
16 2013, AND THE DEFENDANTS BELIEVE THAT THAT SHOWS
17 THAT THERE IS NO CAUSAL RELATIONSHIP BETWEEN THE
18 HEART ATTACK AND THE ACCIDENT OF OR THE INJURY OF
19 MAY 22ND, 2013, BECAUSE OF THE TIME GAP. THAT THAT
20 WOULD BE THE LAW OF THE CASE AND, THEREFORE, I WOULD
21 BE SITTING IN A PSEUDO APPELLATE CAPACITY AND THAT
22 IF I FOUND A DIFFERENT DATE OF A HEART ATTACK OR
23 SOME OTHER OCCURRENCE OF AN EVENT THAT I WOULD BE
24 SETTING ASIDE OR REPUDIATING THE ORDER OF ANOTHER
25 COMMISSIONER, WHICH CERTAINLY I DO NOT WANT TO DO.

1 COMMISSIONER BECK DOES MENTION THE DATE, MAY 22ND,
2 2013. I HAVE LISTENED TO THE ARGUMENTS OF COUNSEL,
3 AND MR. BAYNE'S VERY ELOQUENT IN HIS STATEMENT OF
4 WHY I SHOULD NOT GO FORWARD TODAY. BUT CONSIDERING
5 THE FACT THAT THOSE TWO DATES ARE MENTIONED IN THE
6 ORDER, I DO BELIEVE THAT I MAY AND I'M CERTAINLY
7 HOPEFUL THAT I HAVE ENOUGH PROCEDURAL WIGGLE ROOM
8 TODAY TO GO FORWARD. IT MAY BE THAT -- AND I GUESS
9 IT'S THAT ALL THIS WILL HAVE TO COME OUT THROUGH THE
10 APPELLATE PROCESS, AND OF COURSE THINGS ARE WHAT
11 THEY ARE AND THAT -- AND ONCE I SIGN AN ORDER, IT
12 CERTAINLY WON'T BE WITHIN MY PROVENCE TO DETERMINE
13 WHETHER OR NOT I HAVE HELD A HEARING APPROPRIATELY
14 AND LAWFULLY, BUT THAT WILL ALL HAVE TO BE
15 DETERMINED. SO I CERTAINLY HAVE CONSIDERED YOUR
16 ARGUMENTS. THEY WERE CERTAINLY WELL SPOKEN, BUT I
17 AM GOING TO GO FORWARD TODAY AND TO ADJUDICATE THIS
18 CLAIM THAT HAS BEEN ASSIGNED TO ME. MR. BAYNE, ALSO
19 ON BEHALF OF HIS CLIENTS, REQUESTED THAT I LEAVE THE
20 RECORD OPEN, WHICH I ORDINARILY DO NOT DO, BUT
21 THROUGH NO FAULT OF HIS OWN, MR. BAYNE HAD SCHEDULED
22 THE DEPOSITION OF DR. LIDE, WHO -- WELL, NOT THROUGH
23 NO FAULT OF HIS OWN. HE SCHEDULED THE DEPOSITION OF
24 DR. LIDE, AND THEN DR. LIDE THROUGH NO FAULT OF MR.
25 BAYNE'S NOR HIS CLIENTS, DR. LIDE CANCELLED THAT

1 DEPOSITION. SO AT THE REQUEST OF MR. BAYNE, I HAVE
2 AGREED TO LEAVE THE RECORD OPEN. THAT DEPOSITION IS
3 GOING TO BE HELD LATER IN THE MONTH, SO I CANNOT
4 MAKE A DECISION UNTIL I GET THAT DEPOSITION, BUT I
5 CERTAINLY TRUST THAT DEPOSITION TRANSCRIPT WILL BE
6 EXPEDITED, AND I WILL MAKE A DECISION AS SOON AS I
7 FINISH REVIEWING THAT DEPOSITION.

8 ARE THERE ANY FURTHER OBJECTIONS TO APAs,
9 JURISDICTION, VENUE, OR ANY OTHER ITEMS?

10 BY MR. MCDANIEL:

11 NONE FROM THE CLAIMANT, COMMISSIONER.

12 BY MR. BAYNE:

13 NONE FROM THE DEFENDANT.

14 BY COMMISSIONER BARDEN:

15 THANK YOU. WITHOUT FURTHER OBJECTION AND, MR.
16 BAYNE, YOU OBVIOUSLY HAVE A RUNNING OBJECT TO THIS
17 HEARING STRICTLY, YOU KNOW, SIMPLY EVEN BEING HELD,
18 BUT YOU HAVE A -- OBVIOUSLY YOUR OBJECTION IS
19 PRESERVED FOR THE RECORD. WITHOUT FURTHER OBJECTION
20 THE COMMISSION FILE BECOMES A PART OF THE RECORD
21 WITH THE EXCEPTION OF SELF SERVING DECLARATIONS AND
22 UNSTIPULATED MEDICAL REPORTS.

23 PRIOR TO GOING ON THE RECORD, WE HELD A PRE-
24 HEARING CONFERENCE. IT IS THE POSITION OF THE
25 CLAIMANT THAT NOT ONLY DID HE INJURE HIS NECK AND

1 HIS LEFT SHOULDER AND ARM, WHICH ARE ADMITTED BODY
2 PARTS, THAT HE ALSO SUSTAINED A MYOCARDIAL
3 INFARCTION FROM THE SHOCK, WHICH ULTIMATELY RESULTED
4 IN V.S.D. OR A HOLE IN HIS HEART. HE ALSO CONTENDS
5 THAT HE SUFFERED A HEAD AND POSSIBLY A BRAIN INJURY,
6 BUT BECAUSE THE FOCUS OF HIS TREATMENT HAS BEEN JUST
7 ABOUT EXCLUSIVELY ON THE HEART, HIS HEAD AND HIS --
8 AND POSSIBLE BRAIN INJURY HAVE NOT BEEN EXPLORED OR
9 PROPERLY AND THOROUGHLY EVALUATED. SO HE SEEKS A
10 FINDING OF COMPENSABILITY OF NOT ONLY THE NECK AND
11 THE LEFT SHOULDER, WHICH THE DEFENDANTS ADMIT, AND
12 THOSE ARE THE ONLY ADMITTED BODY PARTS, I WANT TO
13 EMPHASIZE THAT, THE NECK AND THE SHOULDER. BUT HE
14 ALSO BELIEVES AND CONTENDS AND WOULD CONTEND THAT
15 THE MEDICAL EVIDENCE SUPPORTS HIS FINDING BY MORE
16 THAN A GREATER WEIGHT OF THE EVIDENCE STANDARD, BUT
17 HE BUT AT LEAST MEETS THAT STANDARD, AND HE ALSO
18 INJURED HIS HEART AND HIS HEAD. HE SEEKS TEMPORARY
19 TOTAL DISABILITY BENEFITS FROM SEPTEMBER 15TH, 2013,
20 TO THE PRESENT AND CONTINUING. HE SEEKS
21 REIMBURSEMENT FOR THOSE EXPENSES HE'S INCURRED THUS
22 FAR WITH REGARD TO THE EVALUATION AND TREATMENT OF
23 HIS INJURED BODY PARTS. HE SEEKS AN ORDER REQUIRING
24 THE DEFENDANTS TO PROVIDE TREATMENT WITH DR. TRAVIS,
25 WHO IS HIS TREATING CARDIOVASCULAR SURGEON, AS WELL

1 AS DR. LIDE, HIS CARDIOLOGIST. DOCTORS TRAVIS AND
2 LIDE WERE INITIALLY AUTHORIZED BEFORE BENEFITS WERE
3 DENIED. AND IF THIS CLAIM IS COMPENSABLE, THE
4 DEFENDANTS DO NOT -- AND OBVIOUSLY THE DEFENDANTS
5 BELIEVE THIS CLAIM IS NOT COMPENSABLE WITH REGARD TO
6 THE HEART AND BRAIN, BUT IF IT IS FOUND TO BE
7 COMPENSABLE, THE DEFENDANTS WOULD AGREE THAT DR.
8 TRAVIS AND DR. LIDE WOULD BE APPROPRIATE PROVIDERS
9 AND THAT THAT THEY ARE FAMILIAR WITH THE CLAIMANT'S
10 CONDITION AND THEY HAVE TREATED HIM AND THEY
11 INITIALLY WERE SELECTED BY THE DEFENDANTS. AS THE
12 CLAIMANT HAS NOT REACHED MAXIMUM MEDICAL
13 IMPROVEMENT, ANY DETERMINATION OF PERMANENCY WOULD
14 BE PREMATURE. THE CLAIMANT WOULD CONTEND THAT EVEN
15 IF HE HAD PRE-EXISTING HEART PROBLEMS THAT THEY WERE
16 AGGRAVATED SIGNIFICANTLY BY THE ELECTRICAL SHOCK,
17 WHICH CAUSED THE MYOCARDIAL INFARCTION, AND THEN THE
18 BURN CAUSED THE V.S.D. TOWARD HIS CONTENTION THAT
19 THIS IS A COMPENSABLE CLAIM, THE CLAIMANT WOULD
20 POINT TO MY ATTENTION THE FACT THAT THREE TREATING
21 PHYSICIANS HAVE ALL OPINED TO A REASONABLE DEGREE OF
22 MEDICAL CERTAINTY THAT THE CLAIMANT'S CONDITION IS
23 RELATED TO THE SHOCK OF MAY 22ND, 2013. AS FAR AS
24 THE DEFENDANTS' EXPERT, DR. FELDMAN, THE CLAIMANT
25 CONTENDS THAT THAT OPINION SHOULD NOT BE ACCORDED AS

1 MUCH WEIGHT IN THAT DR. FELDMAN NEVER SAW OR
2 EXAMINED THE CLAIMANT. THAT THE -- THAT DR. FELDMAN
3 IS A CARDIOLOGIST, AND THE ONLY CARDIOVASCULAR
4 SURGEON IN THIS CASE, DR. TRAVIS, DOES FIND THAT THE
5 CONDITION IS RELATED TO THE EMPLOYMENT. DR. FELDMAN
6 BY CONTRAST IS A CARDIOLOGIST. AND FINALLY THE
7 CLAIMANT WOULD POINT TO MY ATTENTION THE FACT THAT
8 DR. FELDMAN WAS ONLY ASKED IF THE V.S.D. WAS CAUSED
9 BY THE SHOCK AND NOT THE MYOCARDIAL INFARCTION. SO
10 THE CLAIMANT BELIEVES THAT DR. FELDMAN'S OPINION
11 SHOULD BE VIEWED WITH THOSE DEFICIENCIES. AND EVEN
12 IF DR. FELDMAN'S OPINION IS NOT VIEWED WITH ANY --
13 AS FLAWED OR FAULTY OR WITH ANY DEFICIENCIES, THE
14 CLAIMANT WOULD CONTEND THE FACT THAT DR. FELDMAN,
15 ACCORDING TO THE CLAIMANT'S INTERPRETATION, SAYS HE
16 DOES ADMIT THAT THE SHOCK COULD HAVE CAUSED THE
17 CLAIMANT'S CONDITION.

18 CONVERSELY, IT IS THE POSITION OF THE
19 DEFENDANTS THAT EXCEPT FOR THE NECK AND THE
20 SHOULDER, BENEFITS UNDER THE ACT SHOULD BE DENIED.
21 THE DEFENDANTS DISPUTE THAT THERE IS ANY CREDIBLE
22 MEDICAL EVIDENCE WHICH ESTABLISHES A RELATIONSHIP
23 BETWEEN THE SHOCK OF MAY 22ND, 2013, AND ANY HEART
24 OR BRAIN INJURY. THE DEFENDANTS POINT TO MY
25 ATTENTION THE OPINION OF DR. FELDMAN WHO THE

1 DEFENDANTS BELIEVE OUGHT TO BE GIVEN THE GREATEST
2 WEIGHT OF ALL THE OPINIONS IN THAT -- THAT THERE WAS
3 A SIGNIFICANT TIME GAP BETWEEN THE MAY 22ND, 2013,
4 INJURY AND THE HEART ATTACK. AND AGAIN THE
5 DEFENDANTS WOULD POINT TO MY ATTENTION THAT
6 COMMISSIONER BECK MADE A SPECIFIC FINDING THAT THERE
7 WAS A MYOCARDIAL INFARCTION ON THE 28TH, BUT EVEN
8 NOT WITHSTANDING THAT FINDING THAT COMMISSIONER BECK
9 MADE, JUST THE MEDICAL EVIDENCE ALONE DOES NOT
10 ESTABLISH A SUFFICIENT LINK OR CAUSAL NEXUS BETWEEN
11 THE SHOCK AND THE MYOCARDIAL INFARCTION. THE
12 DEFENDANTS BELIEVE THAT THERE WAS NO CHEST PAIN
13 UNTIL THE CLAIMANT WENT TO THE HOSPITAL ON THE 28TH.
14 AND OF COURSE THE DEFENDANTS CONTEND THAT THE MAIN
15 ISSUE IS WHAT CAUSED THE PLAQUE RUPTURE, WHICH
16 ULTIMATELY CAUSED THE HEART ATTACK. THE DEFENDANTS
17 BELIEVE THAT IT WAS NOT A SHOCK THAT JUST CAUSED A
18 HEART ATTACK. IT WAS THE CLAIMANT'S PLAQUE, HIS
19 DISEASED ARTERIES, WHICH THE DEFENDANTS BELIEVE
20 BECAUSE OF THE TIME GAP THERE CANNOT -- IT CANNOT BE
21 SHOWN THAT THERE WAS AN AGGRAVATION OF THE
22 CLAIMANT'S PRE-EXISTING CONDITION. THAT THE
23 CLAIMANT HAS SEVERE VESSEL DISEASE IN I BELIEVE
24 THREE OF HIS CORONARY VESSELS. SO THE DEFENDANTS
25 BELIEVE THAT THERE WAS A PLAQUE BUILD UP WHICH

1 ULTIMATELY RUPTURED, WHICH IS JUST COINCIDENTAL WITH
2 THE TIME -- WITH THE FACT THAT THERE WAS A SHOCK
3 INCIDENT OR INJURY SIX DAYS PRIOR, AND SO THAT THERE
4 -- THE TIME GAP ALONE AND PER THE OPINION OF DR.
5 FELDMAN IS REASON ENOUGH AND CLEAR AND CONVINCING TO
6 THEM THAT BENEFITS UNDER THE ACT SHOULD BE DENIED,
7 BECAUSE IT CANNOT BE STATED WITH A REASONABLE DEGREE
8 OF MEDICAL CERTAINTY WHEN THE PLAQUE DISRUPTION
9 OCCURRED, AND IT IS THE PLAQUE DISRUPTION WHICH
10 CAUSED THE MYOCARDIAL INFARCTION, WHICH IN TURN
11 CAUSED THE V.S.D.

12 ALL RIGHT. Y'ALL SAID IT FOR AN HOUR, AND YOU
13 SAID IT A LOT BETTER THAN I JUST DID, BUT IF YOU'RE
14 SATISFIED WITH THAT SUMMARY, UNLESS I'VE
15 MISCHARACTERIZED OR MISSTATED ANYTHING, AGAIN, I
16 HAVE NOT -- Y'ALL, I DON'T GET THESE DOCUMENTS UNTIL
17 THE VERY TIME OF THE HEARING. SO I AM -- I HAVEN'T
18 READ THEM. SO IF I'VE MISSTATED SOMETHING, I WANT
19 TO KNOW AND WILL CORRECT IT ON THE RECORD RIGHT NOW.
20 I STARTED WITH YOU AS YOU'RE THE MOVING PARTY,
21 UNLESS YOU'RE SATISFIED WITH THAT SUMMARY, SIR.

22 BY MR. MCDANIEL:

23 COMMISSIONER, I NEVER WAS -- CAN I JUST BRIEFLY
24 PUT ---

25 BY COMMISSIONER BARDEN:

1 YES.

2 BY MR. MCDANIEL:

3 --- MY POSITION ON THE RECORD IN REFERENCE TO
4 THE -- THAT YOU CANNOT GO FORWARD POSITION THAT
5 THEY'RE TAKING?

6 BY COMMISSIONER BARDEN:

7 I GUESS I DID NOT DO THAT ON YOUR BEHALF SO I --
8 - YOU CERTAINLY MAY.

9 BY MR. MCDANIEL:

10 RIGHT. AND I JUST WANT TO JUST FOR -- FOR THE
11 RECORD, NUMBER ONE, THAT WAS NOT AN ISSUE THAT WAS
12 BEFORE COMMISSIONER BECK. NUMBER TWO, THAT ---

13 BY COMMISSIONER BARDEN:

14 WHEN YOU SAY "THAT," YOU MEAN THE DATE?

15 BY MR. MCDANIEL:

16 THE -- THE DATE ---

17 BY COMMISSIONER BARDEN:

18 OKAY.

19 BY MR. MCDANIEL:

20 --- THAT HE REFERRED TO ON THE 28TH, NUMBER
21 ONE. NUMBER TWO, THAT IS NOT THE LAW OF THE CASE.
22 THEIR POSITION IS THAT IT'S THE LAW OF THE CASE.
23 THAT IS ON APPEAL. THAT ISSUE HAS NOT BEEN FOUND TO
24 BE A FINAL FINDING BY THE -- THE ALL THE -- ALL THE
25 APPELLATE PANEL THAT MAY LOOK AT THAT, THE APPELLATE

1 PANEL OF THE COMMISSION, COURT OF APPEALS, SUPREME
2 COURT. THIRD, AND -- AND MORE IMPORTANTLY IS THAT
3 COMMISSIONER BECK MADE A SPECIFIC FINDING, A FACT
4 AND CONCLUSION OF LAW. ANY CONCLUSION OF LAW --
5 NUMBER FIVE, HE SPECIFICALLY STATED, "SPECIFICALLY,"
6 COMMA, "THE CLAIMANT HAS REQUESTED A HEARING ON THE
7 MERITS OF WHETHER CLAIMANT SUSTAINED A COMPENSABLE
8 INJURY BY ACCIDENT AS IN -- AND IS ENTITLED TO
9 BENEFITS BY OPERATION OF FORM 50 EMPLOYEES REQUEST
10 FOR HEARING FILED ON OCTOBER 21ST, 2013. THEREFORE,
11 THE QUESTION OF WHETHER THE CLAIMANT SUSTAINED A
12 COMPENSABLE INJURY BY ACCIDENT IS ENTITLED TO -- AND
13 IS ENTITLED TO BENEFITS UNDER THE ACT WILL BE
14 DECIDED BY THE COMMISSION AT THE HEARING SET
15 PURSUANT TO THE CLAIMANT'S FORM 50 REQUEST FOR
16 HEARING." THEN IN HIS ORDER HE FURTHER FOUND, "IT
17 IS FURTHER ORDERED THAT ALL OTHER ISSUES AND
18 CONTENTIONS SPECIFICALLY INCLUDING THE QUESTION OF
19 WHETHER CLAIMANT SUSTAINED AN INJURY BY ACCIDENT
20 ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT
21 WITH DEFENDANTS RESULTING ON COMPENSABLE DISABILITY
22 IS PRESERVED FOR ADJUDICATION AT THE HEARING SET
23 PURSUANT TO THE CLAIMANT'S OCTOBER 21ST, 2013, FORM
24 50 EMPLOYEE'S REQUEST FOR HEARING." I THINK IT'S
25 VERY CLEAR FROM COMMISSIONER BECK'S ORDER THAT HE

1 WAS IN NO WAY TRYING TO MAKE A DETERMINATION AT THAT
2 HEARING AS TO WHETHER OR NOT BASED ON THE FACTS AS
3 TO WHETHER OR NOT THOSE FACTS WOULD SUBSTANTIATE
4 AFTER THEY WERE DEVELOPED AS TO WHETHER OR NOT
5 CLARENCE SUSTAINED A COMPENSABLE INJURY BY ACCIDENT.
6 I THINK HE MAKES IT VERY CLEAR. I WOULD JUST ADD
7 THAT. THE OTHER THING IS IN REFERENCE TO DR. HARRY
8 FELDMAN, THERE ARE TWO WAYS THAT AN EXPERT'S OPINION
9 MAY BE SUBMITTED INTO EVIDENCE. ONE IS BASED ON
10 THEIR PERSONAL KNOWLEDGE. AS -- AS YOU
11 APPROPRIATELY STATED, COMMISSIONER, DR. FELDMAN HAS
12 NOT REVIEWED, HAS NOT EVALUATED, HAS NOT ANY WAY
13 SEEN NOR ACTUALLY SEEN THE NOT ONLY THE PICTURES BUT
14 HE HAS NOT EVALUATED OR HAD ANY PHYSICAL CONTACT OR
15 EVALUATION OF -- OF MR. WINFREY. HIS -- HE HAS
16 ABSOLUTELY NO PERSONAL KNOWLEDGE. HE DID A RECORDS
17 REVIEW. THE SECOND WAY AN EXPERT OPINIONS MAY BE
18 SUBMITTED INTO EVIDENCE IS BASED ON A PROPERLY
19 PHRASED HYPOTHETICAL QUESTION. THERE IS NO EVIDENCE
20 WHEN YOU REVIEW THIS TRANSCRIPT THAT OF ANY PROPERLY
21 PHASED HYPOTHETICAL QUESTION BEING PRESENTED TO HIM
22 AND, THEREFORE, I BELIEVE THAT HIS EVIDENCE --
23 HOWEVER, FIRST TIME FOR SIMPLICITY SAKE I'M GOING TO
24 PLACE THAT ON THE RECORD, BUT AS I STATED BEFORE, WE
25 WANT TO MOVE FORWARD, AND SO I WOULD ASK YOU TO GIVE

1 IT SUCH WEIGHT AS YOU -- YOU'VE ALREADY PREVIOUSLY
2 STATED TO GIVE IT. HOWEVER, I BELIEVE IT'S ENTITLED
3 TO NO WEIGHT BECAUSE THERE'S NO EVIDENCE THAT ~~HE~~ HAS
4 ANY PERSONAL KNOWLEDGE OF MR. WINFREY AND HIS
5 CONDITION, NOR IS THERE ANY EVIDENCE OF A PROPERLY
6 PHRASED HYPOTHETICAL QUESTION, HOWEVER, I JUST --
7 THAT'S IT. AND WE'RE READY TO MOVE FORWARD.

8 BY COMMISSIONER BARDEN:

9 ALL RIGHT. MR. BAYNE, I'M GOING TO ALLOW YOU
10 TO RESPOND, SIR, IF WANT TO.

11 BY MR. BAYNE:

12 THANK YOU, COMMISSIONER. AS FAR AS THE -- THE
13 PROCEDURAL ASPECT OF THE CASE HERE, WE DON'T
14 DISAGREE THAT COMMISSIONER BECK IN HIS DECISION AND
15 ORDER INDICATED THAT COMPENSABILITY WILL BE
16 DETERMINED AT A LATER DATE AND INDICATED THAT THERE
17 WOULD BE A HEARING PURSUANT TO THE FORM 50 FILED BY
18 MR. WINFREY AND MR. MCDANIEL. ALL WE'RE POINTING
19 -- OUT IN RELATION TO COMMISSIONER BECK'S ORDER AND THE
20 PROCEDURAL ASPECT HERE TODAY IS THAT HE HAS MADE A
21 FINDING OF FACT THAT THE HEART ATTACK, THE
22 MYOCARDIAL INFARCTION, DID NOT OCCUR UNTIL MAY 28TH,
23 2013. THAT SPECIFIC FACT DOES NOT NECESSARILY
24 INDICATE CAUSATION OR DISPROVE CAUSATION, BUT IT IS
25 SOMETHING THAT IS THE LAW OF THE CASE AND THAT IS ON

1 APPEAL AT THIS MOMENT. OUR POSITION IN THE PRE-
2 HEARING AND CONTINUING IS THAT THAT DATE CANNOT ~~BE~~
3 MODIFIED BY A SUBSEQUENT HEARING ONLY BY THE
4 APPELLATE PANEL ON APPEAL THAT MR. MCDANIEL HAS
5 FILED. SO THAT IS OUR PROCEDURAL APPEAL TO IT. WE
6 DON'T DISAGREE THAT HE INDICATED THAT THAT A
7 COMMISSIONER AT A LATER DATE WOULD DETERMINE
8 COMPENSABILITY AND THAT WE WOULD HAVE THIS HEARING.
9 THAT'S NOT AT -- AT ISSUE. RELATED TO DR.
10 FELDMAN, HE IS A CARDIOLOGIST. HE'S QUALIFIED TO
11 GIVE AN EXPERT OPINION. IN HIS DEPOSITION, HE ~~WAS~~
12 ASKED HYPOTHETICAL QUESTIONS RELATED TO MR.
13 WINFREY'S CONDITION. FURTHER, COMMISSIONER, WHILE
14 HE WAS ASKED SPECIFICALLY TO SPEAK ON THE V.S.D.,
15 HIS OPINION AS WELL AS DR. TRAVIS'S AND I BELIEVE
16 DR. LIDE'S WILL INDICATE THAT THE V.S.D. WAS CAUSED
17 BY A MYOCARDIAL INFARCTION THAT WAS CAUSED BY A
18 PLAQUE RUPTURE. SO INDIRECTLY DR. FELDMAN WAS ASKED
19 TO SPEAK AS TO WHETHER OR NOT THE PLAQUE RUPTURE WAS
20 CAUSED BY AN ELECTRICAL SHOCK, WHICH THEN TRIGGERED
21 THE CHAIN OF EVENTS THAT LED US HERE TODAY AND LED
22 MR. WINFREY UNFORTUNATELY TO HAVE TO HAVE AN OPEN
23 HEART SURGERY. SO WHILE MR. -- AND WHAT DR.
24 FELDMAN'S OPINION OR IN HIS DEPOSITION, HE STATED,
25 "I WAS ASKED TO SPEAK ON THE V.S.D.," IMPLICITLY HE

1 IS REFERRING TO THE FACT THAT HE WAS ASKED TO SPEAK
2 ABOUT WHAT CAUSED THE V.S.D., AND WHAT CAUSED THE
3 V.S.D. WAS A MYOCARDIAL INFARCTION, AND WHAT CAUSED
4 THE MYOCARDIAL INFARCTION WAS THE PLAQUE RUPTURE,
5 AND WHAT CAUSED THE PLAQUE RUPTURE IS WHY WE'RE HERE
6 TODAY. WETHER OR NOT IT WAS CAUSED BY ELECTRICAL
7 SHOCK OR NOT IS SOMETHING THAT YOU'RE GOING TO HAVE
8 TO DETERMINE, AND IF IT WAS IT'S COMPENSABLE, IF IT
9 WAS NOT THEN IT IS NOT COMPENSABLE, AND THAT IS OUR
10 POSITION AT THIS HEARING.

11 BY COMMISSIONER BARDEN:

12 OKAY. THANK YOU, GENTLEMEN. ANYTHING ELSE
13 BEFORE WE HEAR FROM MR. WINFREY?

14 BY MR. BAYNE:

15 NOTHING FROM ME, YOUR HONOR.

16 BY COMMISSIONER BARDEN:

17 ALL RIGHT, SIR. DO YOU NEED ANY WATER OR
18 ANYTHING?

19 BY MR. WINFREY:

20 I'M FINE. THANK YOU.

21 BY COMMISSIONER BARDEN:

22 YOU SURE? ALL RIGHT. WILL YOU RAISE YOUR
23 RIGHT HAND, PLEASE. DO YOU SWEAR OR AFFIRM THE
24 TESTIMONY YOU'RE ABOUT GIVE IN THIS PROCEEDING IS
25 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE

1 TRUTH?

2 BY MR. WINFREY:

3 I DO.

4 CLARENCE WINFREY

5 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

6 BY COMMISSIONER BARDEN:

7 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 CLARENCE P. WINFREY, JUNIOR.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT. THANK YOU. AND I KNOW IT'S
12 DIFFICULT TO SPEAK UP, BUT YOUR VOICE HAS TO REACH
13 OVER TO THOSE GENTLEMEN OVER THERE AND THE PEOPLE IN
14 THE BACK AS WELL, AS WELL AS OUR COURT REPORTER AND
15 ME, SO JUST DO THE BEST YOU CAN.

16 BY THE WITNESS:

17 OKAY.

18 BY COMMISSIONER BARDEN:

19 AND IF WE NEED TO BREAK; YOU JUST LET ME KNOW.

20 OKAY?

21 BY THE WITNESS:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 MR. MCDANIEL.

25 DIRECT EXAMINATION BY MR. MCDANIEL:

1 Q. CLARENCE, IS -- IF YOU CAN -- IF -- IF IT'S ALL
2 RIGHT, CAN YOU DIRECT YOUR COMMENTS TO COMMISSIONER
3 BARDEN IF I SIT OVER HERE AND JUST LIKE WHISPER IN
4 YOUR LEFT EAR?

5 A. YEAH.

6 Q. ALL RIGHT. SO I'M GOING TO GO OVER HERE AND JUST
7 LET YOU -- YOU AND COMMISSIONER BARDEN ---

8 BY COMMISSIONER BARDEN:

9 OR IF YOU WANT TO SIT HERE, MR. MCDANIEL,
10 (INDICATING) AND PUT YOUR STUFF THERE AND YOU CAN
11 SIT DOWN. I ---

12 BY MR. MCDANIEL:

13 THAT'S ---

14 BY COMMISSIONER BARDEN:

15 --- THAT'S WHAT ATTORNEYS DO, EITHER STAND OR
16 SIT THERE.

17 BY MR. MCDANIEL:

18 THANK YOU.

19 BY COMMISSIONER BARDEN:

20 AND I'M FINE WITH THAT.

21 BY MR. MCDANIEL:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 JUST SO THAT HE ISN'T GOING TO BE HEARING YOU
25 OVER THERE AND THEN LOOKING AT ME, THAT MIGHT BE A

1 LITTLE HARD. ALL RIGHT.

2 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

3 Q. CLARENCE, I'M GOING TO DO JUST A LITTLE BIT OF
4 BACKGROUND AND -- AND HOW OLD ARE YOU?

5 A. FIFTY-ONE.

6 Q. FIFTY-ONE. AND I BELIEVE YOU'RE DIVORCED AND ~~HAVE~~
7 ONE CHILD WHO'S OVER THE AGE OF 18; IS THAT CORRECT?

8 A. YEAH.

9 Q. ALL RIGHT. AND YOU'VE BASICALLY -- YOUR BACKGROUND
10 EXPERIENCE IS IN MECHANICAL AND IN MAINTENANCE WORK
11 AND IN ELECTRICAL?

12 A. YEAH. YEAH.

13 Q. FOR THE LAST 15 YEARS LEADING UP TO THE TIME THAT
14 YOU WENT TO WORK FOR ARCHWAY SERVICES, WHAT -- WHAT
15 TYPES OF JOBS DID YOU DO; WHAT -- WHAT AREA DID YOU
16 WORK IN?

17 A. I WAS THE MAINTENANCE MAN AT F.P. JOHNSON, A PLANT
18 IN CHAPIN; ROOF ELECTRIC; CAROLINA WINGS, I WAS
19 THEIR MAINTENANCE MAN BASICALLY DOING THE SAME THING
20 AS ARCHWAY. AND ---

21 BY COMMISSIONER BARDEN:

22 CAN YOU GENTLEMEN HEAR OKAY?

23 BY MR. BAYNE:

24 OKAY.

25 BY COMMISSIONER BARDEN:

1 YOU CAN? ALL RIGHT.

2 THE WITNESS RESUMES ANSWER:

3 A. AND I WORKED WITH STEVE SCHULMEISTER; HE WAS A
4 MASTER ELECTRICIAN.

5 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

6 Q. OKAY. ALL RIGHT. AND SO BASICALLY YOU DID
7 MAINTENANCE WORK BUT DID A LOT OF WORK IN THE
8 ELECTRICAL FIELD?

9 A. ELECTRICAL AND MAINTENANCE. YES, SIR.

10 Q. ALL RIGHT. AND ARCHWAY SERVICES, HOW LONG HAD YOU
11 BEEN WITH THEM BEFORE THIS ACCIDENT?

12 A. I'VE BEEN WITH THEM EIGHT, NINE MONTHS; I MIGHT BE
13 WRONG.

14 Q. ALL RIGHT. AND THEN -- AND SO WHAT -- WHAT WERE YOU
15 DOING, WHAT WAS YOUR JOB AT ARCHWAY SERVICES?

16 A. WE TOOK CARE OF ALL THE WAL-MART DELIS. WE JUST
17 TOOK OVER PUBLIX'S ABOUT TWO MONTHS PRIOR AND WORKED
18 ON ALL OF THEIR EQUIPMENT FOR LIKE THE ROTISSERIES
19 AND FRYERS AND THINGS LIKE THAT.

20 Q. LET ME ASK YOU THIS ON A GENERAL BASIS, WHAT LEVEL
21 OF CURRENT IS IT -- YOU WORKED ON COMMERCIAL
22 EQUIPMENT, ELECTRICAL EQUIPMENT AND -- AND ALL THAT
23 TYPE OF -- AND THAT ARE FOUND IN THE KITCHEN. TELL
24 ME WHAT THE GENERAL VOLTAGE IS OF THAT KIND OF
25 EQUIPMENT?

- 1 A. LIKE THE ROTISSERIE I WAS WORKING ON WAS HIGH
2 VOLTAGE. I DIDN'T LOOK TO SEE HOW MUCH EXACTLY IT
3 WAS, BUT IT HAD TO BE 240 OR HIGHER.
- 4 Q. AND BASICALLY, I KNOW IT'S -- IT'S ALWAYS HELPFUL TO
5 ME TO GET THIS EXPLAINED TO ME. HOW DOES -- YOU --
6 YOU HAVE TRUNK LINE FOR A BETTER TERM THAT COMES IN
7 TO -- TO A BUSINESS, AND THEN HOW DOES THAT FILTER
8 DOWN TO LIKE YOUR 220 OR YOUR 240 CURRENT OR YOUR
9 480?
- 10 A. YOU HAVE BARS ON THE BACK WHERE YOUR MAIN POWER
11 COMES IN, AND THAT'S WHERE YOU PUT YOUR BREAKERS,
12 AND IT DEPENDS ON THE AMP DRAW OF THE EQUIPMENT.
13 'CAUSE LIKE THAT ROTISSERIE THAT HURT ME, IT HAD
14 THREE BREAKERS FOR THAT ONE ROTISSERIE. I MEAN
15 THERE WAS ONE ON TOP, ONE ON BOTTOM. SO THERE ARE
16 THREE MORE FOR THE BOTTOM.
- 17 Q. AND SO BASICALLY, FOR EXAMPLE, THERE'S VOLTAGE EVEN
18 880 OR HIGHER THAT COMES INTO THE MAIN LINE?
- 19 A. OH, YES.
- 20 Q. AND THEN IT'S DISTRIBUTED OUT?
- 21 A. THAT'S CORRECT. THERE'S GREATER COMING IN.
- 22 Q. AND THEN -- THEN THAT -- THAT'S DISTRIBUTED ON OUT,
23 SO THIS -- THIS ROTISSERIE HAD AT LEAST THREE
24 BREAKERS. SO IT WAS AT LEAST 220 OR 240?
- 25 A. IT WAS AT 240. I MEAN, IT'S 240 OR ABOVE, YES.

1 Q. OH. OKAY. NOW, JUST TELL COMMISSIONER BARDEN WHAT
2 HAPPENED, YOU KNOW, WHAT TIME OF DAY AND YOU WERE
3 AND -- AND WHAT -- WHERE YOU WERE AND WHERE THE
4 ACCIDENT OCCURRED?

5 A. I WAS AT A PUBLIX, STORE 67 ON ROSEWOOD DRIVE. THEY
6 HAVE A ROTISSERIE STACKED ON TOP OF ROTISSERIE AND
7 SO I MADE -- I WENT THERE AND MADE ARRANGEMENTS
8 WHERE I COULD GET THERE AT 6:30 IN THE MORNING,
9 BECAUSE YOU ONLY GOT A LITTLE WALKWAY SO I COULD
10 PULL THE ROTISSERIES OUT. SO THE NEXT DAY I WENT,
11 AND I WAS THERE ABOUT 6:15. THE LADY MANAGER LET ME
12 IN, AND THERE WAS ONE GIRL BACK AT THE DELI. AND I
13 PULLED THE ROTISSERIES OUT. THE FRYERS ARE BEHIND
14 ME. I TOOK THE PANEL OFF AND SET IT ON THE BOTTOM
15 ROTISSERIE ON THE -- THE BOTTOM OF THE TOP
16 ROTISSERIE ON THE LITTLE LEDGE, AND I HAD MY HAND
17 LIKE THIS (INDICATING). I WAS TRACING WIRES OUT.

18 BY COMMISSIONER BARDEN:

19 SO YOU WERE HOLDING AND USING WIRES WITH YOUR
20 RIGHT, LEFT HAND?

21 BY THE WITNESS:

22 YEAH, TRACING WIRES WITH MY RIGHT.

23 BY COMMISSIONER BARDEN:

24 RIGHT HAND. OKAY.

25 BY THE WITNESS:

1 AND THEN ONE OF THE WIRE PRONGS WERE BROKEN OFF
2 THE SWITCH, WHICH IS DOWN BY MY HAND.

3 BY COMMISSIONER BARDEN:

4 BY YOUR RIGHT HAND?

5 BY THE WITNESS:

6 WHICH I DID NOT SEE, AND I JUST LOOKED TO MAKE
7 SURE ALL THE WIRES WERE ATTACHED, BUT IT WAS JUST
8 FLOATING. AND WHEN I WAS MOVING THE WIRES, THAT
9 WIRE MOVED, AND I MEAN IT BLEW UP. I MEAN NOT NO
10 POW, IT WENT KABAM. AND THAT'S WHEN I SNATCHED BACK
11 REAL HARD, BUT I COULD FEEL IT FROM HERE
12 (INDICATING), MY NECK.

13 BY COMMISSIONER BARDEN:

14 SO YOU'RE USE -- YOU'RE INDICATING YOUR LEFT
15 ARM ALL THE WAY UP?

16 BY THE WITNESS:

17 YEAH, I GOT A SCAR RIGHT THERE.

18 BY MR. MCDANIEL:

19 COMMISSIONER, YOU -- YOU CAN STILL SEE THE SCAR
20 WHERE THE ---

21 BY COMMISSIONER BARDEN:

22 YOU CAN SIT DOWN. I'LL COME OVER TO YOU.
23 GENTLEMEN, IF Y'ALL WANT TO COME OVER AND LOOK AT
24 THE SCAR YOU'RE WELCOME TO. (COMMISSIONER VIEWS
25 SCAR) OKAY. ALL RIGHT. THANK YOU.

1 BY THE WITNESS:

2 AND THAT'S WHERE THE POWER WENT IT.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT.

5 BY THE WITNESS:

6 AND IT WENT UP MY ARM AND FROM MY EARS DOWN
7 THROUGH MY SHOULDER.

8 BY COMMISSIONER BARDEN:

9 IS THAT YOUR MIDDLE FINGER THE SCAR WAS ON?

10 BY THE WITNESS:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 OKAY. SO IT WENT UP YOUR ARM INTO YOUR NECK?

14 BY THE WITNESS:

15 RIGHT THROUGH HERE AND RUN DOWN THROUGH HERE
16 (INDICATING).

17 BY COMMISSIONER BARDEN:

18 OKAY. AND YOU'RE INDICATING YOUR CHEST AND UP
19 INTO YOUR HEAD A LITTLE BIT?

20 BY THE WITNESS:

21 YEAH.

22 BY COMMISSIONER BARDEN:

23 ALL RIGHT.

24 BY THE WITNESS:

25 AND THAT'S HOW -- WHEN I CALLED BOBBY RUPPE AND