

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

DEC 31 2015

SC Court of Appeals

WCC File No. 1315636

Kathey L. Staton, Employee, ... Appellant/Claimant,

vs.

Mohawk Industries, Inc., Employer,
and Liberty Mutual, Carrier, ... Respondents/Defendants.

RECORD ON APPEAL

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1315636

KATHEY L. STATON,

Employee,

Claimant,

vs.

MOHAWK INDUSTRIES, INC.,

Employer,

AND

LIBERTY MUTUAL

Carrier,

Defendants.

DECISION AND ORDER

Hearing:

Held in Hartsville, South Carolina, on October 2, 2014.

Appearances:

Claimant, Kathey Staton, represented by Stephen J. Wukela, Esquire, of the Wukela Law Firm, of Florence, South Carolina.

Defendants represented by J. Brandon Hylton, Esquire of McAngus, Goudelock & Courie, P.C. of Florence, South Carolina.

Purpose of Hearing:

The purpose of the hearing is determine issues set forth in the Hearing Notice, issues pled on the Forms 50 and 51, and any other issues which may timely come before the Commission.

Decision and Order

Gene McCaskill, Commissioner

Filed:

January 26, 2015

CLAIMANT'S APA EVIDENTIARY SUBMISSIONS

APA#	PRACTICE	DATES	PAGES
1	FirstHealth Family Care Centers	11/20/2012 – 6/12/2013	1-12
2	FirstHealth Surgical Specialties	4/2/2013 – 7/16/2013	13-21
3	Sandhills Neurologist, P.A.	7/3/2013	23-24
4	Dillon Internal Medicine Associates, P.A.	8/30/2013 – 5/19/2014	25-123
5	Hand Surgery Associates, LLC	11/25/2013 – 5/2/2014	124-126
6	McLeod Health	12/4/2013	137-143
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8	Matthew Welsch, Pee Dee Orthopaedic Associates	5/19/2014 – 8/8/2014	163-177
9	Carolinas Hospital System	6/2/2014 – 6/3/2014	178-182
10	Wal-Mart Pharmacy		183-185
11	Mohawk records	3/31/2006 – 11/25/2013	186-201
12	Workers' compensation filings	7/3/2013 – 8/1/2014	202-210
13	Commission Activity Report	6/17/2014 – 8/29/2014	211-212
14	Inspection video	5/30/2014	
15	Deposition of Kathy Lee Staton	5/9/2014	
16	Deposition of Dr. Matthew D. Welsch	6/23/2014	
17	Deposition of Dr. Robert Moore	7/2/2014	

DEFENDANTS' APA EVIDENTIARY SUBMISSIONS

APA#	PRACTICE	DATES	PAGES
18	FirstHealth Family Care Centers	09/19/2012 to 11/20/2012	213 - 217
19	FirstHealth Surgical Specialties	05/30/2014	218 - 219
20	McLeod Health	12/04/2013	220 - 221
21	Pee Dee Orthopaedic Associates	07/11/2014	222
22	Records of Employer	11/01/2012 – 09/18/2014	223 - 237

Prior to the call of the case, the parties had a prehearing conference and decided that several APA submissions were not going to be submitted due to the fact that Defendants were not contesting causation. At that time, the parties agreed to remove APA Nos. 5, 6, 8, 16 and 17. The remaining APA submissions were placed into evidence, pursuant to the Administrative Procedures Act.

STIPULATIONS

Counsel for both parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is determine issues set forth in the Hearing Notice, issues pled on the Forms 50 and 51, and any other issue which may timely come before the Commission.
2. Notice of Hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage and compensation rate are \$705.60 and \$470.2, respectively.
4. Venue set in Darlington County is proper.
5. Claimant seeks benefits under the *South Carolina Workers' Compensation Act*, based upon a repetitive injury with the date of injury of June 28, 2013.

STATEMENT OF THE CASE

Claimant was originally unrepresented. She filed a *pro se* Form 50 on November 14, 2013. In that Form 50, the Claimant alleged an injury to her hands on June 28, 2013. She stated she was not sure about how the accident occurred, but did state that she did "repeated work." Claimant stated that notice of the accident was given to the Employer on June 28, 2013. She alleged a partial disability and asserted an average weekly wage of \$0 a week. A hearing on the Claimant's Form 50 was scheduled for March 26, 2014 in front of Commissioner Aisha Taylor. After a prehearing conference, the Claimant decided to withdraw her Form 50 and seek legal counsel.

The Claimant then retained Stephen J. Wukela, Esquire to represent her. The Claimant, through Mr. Wukela, filed a Form 50, Request for Hearing, on July 3, 2014 alleging injury of November 17, 2013. The Claimant alleged a repetitive trauma injury to both wrists and neck due to her work as a CFN twist operator. Claimant asserted that she gave notice to her Employer on June 28, 2013. She was requesting additional medical examination and treatment for both wrists and her neck, and temporary benefits from various dates and times since November 17, 2013. Claimant alleged that a determination of permanent disability is premature at this time. The Defendants responded with a Form 51 in which they denied Claimant's injuries. The denial was based on the assertion that Claimant's injuries were not caused by repetitive trauma and the Claimant failed to provide timely notice. Defendants further denied that the Claimant was entitled to any temporary total disability benefits, any additional past or future causally-related medical treatment, and was not entitled to permanent disability. They further asserted that the Claimant sought medical treatment outside of the workers' compensation system.

At the hearing, the Defendants asserted that their sole defense was whether the Claimant provided timely notice. They agreed that the Claimant's injuries were caused by a repetitive trauma at Mohawk. The Defendants relied on the case of *King v. International Knife & Saw*, 718 S.E.2d 227, 395 S.C. 437 (SE Ct. App. 2011) in asserting the notice defense. Specifically, the portion of the Order where the court opined that for a work-related repetitive trauma injury, the

90-day reporting clock does not start until the injured employee discovered or should have discovered to be qualified to receive benefits for medical care, treatment, or disability due to his condition. In the case at hand, the Claimant began having problems with carpal tunnel syndrome as early as November 20, 2012. In her deposition, the Claimant testified that she knew in November of 2012 that the pain in her hands were coming from work and testified that she did not provide notice to her Employer until June 28, 2013, which would have been more than 90 days. Defendants assert that, because the Claimant knew her problems were related to work and had sought medical treatment, according to *King*, the Claimant had a duty to report her injuries to her Employer in a timely manner.

The Claimant asserts that notice was timely. First, Claimant asserts that her last injury exposure was not until November 11, 2013 and that the 90 day time period should run from that date. Second, she asserts that the Defendants are barred from asserting the notice of defense based on the fact that the Claimant originally filed a Form 50 that was filed with the Commission on November 14, 2013 and Defendants failed to file a Form 51 in response to that 50 and, therefore, their affirmative defense of failure to provide timely notice is barred. Finally, she asserts that she did not know the claim was compensable until she met with her attorney and thus the 90-day time period should run from that date.

In response, the Defendants assert that the last injury exposure rule no longer applies based on the revisions of the *South Carolina Workers' Compensation Act* in 2007, which establishes repetitive trauma and provided a notice provision in Section 42-15-20(C), which states that, "A claimant must report a repetitive trauma injury within 90 days of the date that the employee discovered or could have discovered by exercising reasonable diligence that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice and the Commission is satisfied that the employer has not been unduly prejudiced thereby." Further, that under the interpretation of *King*, the 90-day clock starts when the injured employee discovered or should have discovered that she was qualified to receive benefits for medical care, treatment, or disability due to her condition.

With regard to the argument that the Claimant did not know her claim was compensable until she met with her attorney, the Defendants would also argue that that was not the proper test pursuant to Section 42-15-20 and *King v. International Knife & Saw*. Finally, with regard to the argument that because Defendants failed to file a timely Form 51 they can no longer assert the affirmative defense of notice, the Defendants assert that the Claimant withdrew her prior Form 50 at the prior hearing in front of Commissioner Taylor. They assert that the Form 51 was timely as it relates to the Claimant's subsequent Form 50, as evidenced by a printout on eCase.

TESTIMONY

The Claimant was the sole witness who testified at the hearing. Claimant testified that she is 54 years old. She was hired at Mohawk as a twist operator in February of 2006. She described her job as essentially twisting yarns. She explained that she worked a series of rows and spinners that bear between 144 and 188 of spinners spinning yarn at a time. She explained her job is to load spools of thread, tie them in and take off finished spools of thread, cut them out and fix any breakouts that may have occurred during the process. Claimant testified that she began experiencing pain and numbness in her wrist, but did not have any idea of when the pain

began. However, she testified that she would first notice it when she would wake up and then when she would go to sleep the pain would be numb. She stated that when she first started having the problem, she would shake her hand at night and the feeling would come back. Upon questioning from her attorney, she indicated that the first time she saw a doctor was in November of 2012. Claimant testified that she continued to work with her condition which continued to worsen. Claimant testified that in 2012 she went to see Dr. Lingler, but that Dr. Lingler was out and she saw Dr. Steven Millen. She testified that she complained of pain in both of her hands. Claimant testified that she was then referred to Dr. Wohlrab, who is a neurologist. Claimant testified that she saw Dr. Wohlrab on April 2, 2013. She explained her symptoms to him and he provided an injection in both wrists. He recommended a nerve conduction study. She testified that after the nerve conduction study, she went back to the plant and was telling her supervisor she was having problems with her wrists. A First Report of Injury was then filed. Claimant was then sent by Mohawk to see Dr. Wallace. Claimant testified that Dr. Wallace told her that her condition was work-related; however, he stated in the beginning of his medical notes that it was not work-related. Claimant indicated that at some point Dr. Wallace gave her forms stating that her injury was, indeed, work-related. Claimant identified the long-term disability form of February 2014. Claimant testified she was eventually referred to Dr. Moore, who performed surgery. Claimant testified that when Dr. Wallace filled out the forms that her injury was work-related in 2014 was the first time that any doctor had told her that her condition was work-related. Claimant testified that November 17, 2013 was her last day of work. She testified that she has been out of work since that time, except for a couple of days that she tried to go back to work, but her hands bothered her too bad and she had to leave. She testified that her last full day of work was May 7, 2014. Claimant testified that she has now had surgery to both hands and was interested in going back to work. She is scheduled to go back to work on Sunday, October 5, 2014.

Upon cross-examination, the Claimant testified the pain in her hands began prior to November of 2012, but that November 2012 is the first time that she went to a doctor for the pain. Claimant testified that in November of 2012 she was having pain in her hands that consisted of burning and tingling, and that she had to shake her hands at night. Claimant testified that in November 2012 it was her belief that the pain in her hands was coming from work. When asked if she notified anybody at Mohawk of the pain in her hands until June 28, 2013, the Claimant stated that she did say something before, but they did not write it up. The Claimant was then confronted with her deposition testimony in which she stated that she did not report her injury until June 28, 2013; however, she stated that she had forgot when she talked to her supervisor before. It was then pointed out that the Claimant had stipulated in her Form 50 and APAs that notice was given on June 2, 2013. She was questioned by her attorney regarding the time in the past that she told her employer that her hands were bothering her. Claimant agreed that she did not tell them she had a work-related injury and that she did not tell them that she wanted to file a workers' compensation claim.

The Claimant then testified regarding her background. She testified she was a high school graduate and could read and write without any problems, and could perform basic math. Claimant then went under re-direct examination from her attorney.

SUMMARY EVIDENCE

First, records from **Kimberly Lingler** were reviewed. The dates of the records range from November 20, 2012 to June 12, 2013. In the medical record dated November 20, 2012, the Claimant was complaining of pain to her right hand up to her elbow that started two days prior. She notes that she gets up and walks, shaking her hands. She states that she is using braces at night. The history section notes that the Claimant states that she was told four years ago that her pain was from carpal tunnel syndrome, but never went to a specialist. Claimant was assessed as having carpal tunnel syndrome and was advised to continue using her wrist braces. She was referred to an orthopedic and prescribed Naproxen. Claimant followed up on December 12, 2012 for problems listed as carpal tunnel syndrome.

Next, the medical records of **First Health Surgical Specialties** were reviewed. The records were dated April 2, 2013 through July 16, 2013. Claimant treated on April 2, 2013 for bilateral hand numbness. Claimant alleged that she had repetitive motions that aggravated her pain and that she had numbness worse at night. Claimant also noted that she had bilateral hand numbness for three years. Claimant described her pain was worse in her right hand than her left. She denied an injury. Under the plan subjective section it notes that the Claimant was evaluated for bilateral carpal tunnel. She reported that she was diagnosed with carpal tunnel years ago. Under the physical examination, the Claimant had a positive phalen's and positive tinell's bilaterally, right greater than left. She was assessed with bilateral carpal tunnel syndrome. She was administered an injection into both hands and recommended an EMG. On July 1, 2013, the Claimant treated for left wrist pain. It notes the Claimant underwent a bilateral carpal tunnel injection on April 2, 2013. The injection helped the left wrist two months ago. Claimant was assessed with carpal tunnel syndrome. Again, she had positive phalen's and positive tinell's; however, on this visit the Claimant's right-sided symptoms had resolved and her pain was in her left hand and wrist. Claimant was administered another injection into her left carpal tunnel and the Claimant was recommended to undergo an EMG/NCV of the left upper extremity.

Next, the Claimant treated on May 30, 2014. It notes the Claimant had carpal tunnel release on December 3, 2013 and was scheduled for right carpal tunnel syndrome on June 3, 2014. The Claimant reported minimal pain in her left wrist and noted that her numbness had resolved. She did report bilateral wrist and left shoulder pain. She is assessed with pain in her shoulder and was diagnosed with a rotator cuff sprain. Claimant reported good relief from her left carpal tunnel surgery. It was also reported that Claimant had a new injury to her shoulder as a result of a motor vehicle accident.

Next, the medical records of **Sandhills Neurologists** were reviewed. The Claimant was seen on July 3, 2013 for a nerve conduction study. It came back abnormal and noted that the data was consistent with mild left and moderately severe right median neuropathy across the wrist (carpal tunnel syndrome). There was no electro diagnostic evidence for ulnar neuropathy or cervical radiculopathy.

Next, the records from **Dillon Internal Medicine** were reviewed. Claimant treated from August 8, 2013 through May 19, 2014. Claimant treated on August 8, 2013 complaining of pain in her left wrist and noted that it may be carpal tunnel syndrome, and that it was work from Mohawk. Then the record notes that the Claimant was sent over by Mohawk with complaints of

carpal tunnel syndrome. She reported numbness and paresthesias of the hand and also reported some neck issues. She reported some pain in her left elbow, but denied any trauma. She noted she had worked for Mohawk for approximately seven years. Claimant was assessed with carpal tunnel syndrome. X-rays were taken of the cervical spine, which showed no spondylosis and normal alignment. The impression was that Claimant had a normal cervical spine. X-rays of the left wrist were normal as well. An x-ray of the cervical spine did reveal degenerative joint disease. An addendum to the note indicated that Claimant had probable carpal tunnel syndrome of the left wrist and also noted the possibility of a double crush with cervical spine degenerative joint disease. It reported that Claimant had a ganglion cyst on the left wrist but did not impinge on the carpal tunnel syndrome or median nerve. Dr. Wallace noted the Claimant could return to work without restrictions on August 8, 2013. A workers' comp verification sheet was completed on August 7, 2013 and noted that the areas of the body covered by the workers' compensation claim was the left wrist and hand. Next, Claimant treated on August 21, 2013. Again, she reported carpal tunnel syndrome in the left wrist. Symptoms included hand pain, hand numbness and hand weakness. Dr. Wallace noted that the Claimant probably had a double crush syndrome with arthritic changes at the neck. Next, Dr. Wallace completed a questionnaire on August 22, 2013 and indicated that the symptoms of the left hand and wrist were not related to the work accident. Instead, Dr. Wallace indicated that the Claimant's current symptoms were related to normal aging/degeneration pre-existing condition. Dr. Wallace completed another questionnaire on September 6, 2013, again noting that the pain in her left wrist and hand were not related to her work, but were rather related to the normal aging process. Claimant followed up with Dr. Wallace on September 19, 2013. Again, she presented with carpal tunnel syndrome in the left wrist. The medical note indicates that the Claimant was upset that the doctor had deemed her carpal tunnel syndrome was not work-related. He reviewed the case and stated that the Claimant may have double crush syndrome in that she has cervical spine degenerative joint disease and noted that he was still trying to obtain the nerve conduction studies. Next, the Claimant followed up on October 3, 2013. Again, she reported pain related to carpal tunnel syndrome in her left wrist. Dr. Wallace noted he still did not have the nerve conduction studies. Again, he prescribed medication for carpal tunnel syndrome. Claimant then followed up on October 8, 2013, again for pain and numbness related to carpal tunnel syndrome. Dr. Wallace reviewed the carpal tunnel syndrome and noted the Claimant had right moderately severe carpal tunnel syndrome and mild carpal tunnel syndrome in the left wrist. He referred the Claimant to Dr. Moore for her carpal tunnel syndrome. Dr. Wallace then provided a work release note that noted the Claimant was seen in his office on October 8, 2013 and could return to modified duty for two weeks. Claimant followed up with Dr. Wallace on November 19, 2013. Again, she reported carpal tunnel syndrome in both wrists. Dr. Wallace noted he had spoken with Michael Williams and that Liberty Mutual has denied her carpal tunnel as workers' compensation and that the Claimant would like medical leave and Mr. Williams said that she would have to go through her regular medical. Dr. Wallace noted he was going to take her out of work for three weeks until she can see Dr. Moore. Dr. Moore wrote a letter to Dr. Wallace dated November 25, 2013 providing a copy of his medical record of November 25, 2013 regarding his diagnosis of bilateral carpal tunnel syndrome and bilateral palmer wrist ganglion cyst which were asymptomatic. Dr. Wallace then saw the Claimant on November 25, 2013, again for carpal tunnel syndrome. Claimant saw Dr. Wallace for FMLA paperwork. Dr. Wallace note the approximate date of the condition commenced on November 19, 2013 and the probable duration of the condition was December 12, 2013, with a return to work December 13, 2013. He noted that he referred the

Claimant to Dr. Robert Moore for carpal tunnel surgery of the left wrist. Next Dr. Wallace completed Section 4 of the attending physician statement for the short-term disability income benefits. He noted that Claimant's condition was a result of illness. He also noted that the carpal tunnel syndrome was related to her work. He opined the Claimant has severe limitation of functional capacity and was incapable of minimal sedentary activity. Claimant followed up with Dr. Wallace on January 31, 2014. Claimant was complaining of pain in her left hand. She notes that her job position required her to pull and push which has caused pain in her hands on the first day back to work. Again he diagnosed the Claimant with left mild carpal tunnel syndrome. Claimant followed up on February 19, 2014. Again, she reported trouble with her left hand as her position requires her to push and pull. Claimant followed up on March 14, 2014 with the same report. There is an addendum which states that the Claimant does have numbness in the clips of her right hand. She further states that she was out on leave and that this was not a workers' comp related injury. He diagnosed the Claimant with left mild carpal tunnel syndrome and referred the Claimant to Dr. Moore. He then provided a work release for March 14, 2014 through April 18, 2014, noting the Claimant could return to work without restrictions on April 21, 2014. A follow-up work release was completed and noted that the Claimant was out of work from May 19, 2014 through May 21, 2014 and to return to work without limitations on May 21, 2014. Finally, a third work release was completed excusing the Claimant from work from May 19, 2014 through September 3, 2014 and noted that the Claimant could return to work without limitations on September 3, 2014.

Next, the medical records of **McLeod Health** were reviewed. The Claimant treated on February 4, 2013 under an anesthesia evaluation. It noted the Claimant had carpal tunnel syndrome on the left wrist and that she had neuropathy in her left hand.

Next, the records of **Pee Dee Orthopaedic Associates** were reviewed. The Claimant had a post-operative examination on November 11, 2014 which she underwent right carpal tunnel release. It noted that her right wrist incision was fully healed, but she had mild scar tenderness and was negative for tinels's. The Claimant reported that she felt that she could not get back to work in her normal duties. He advised her to avoid lifting greater than five pounds and repetitive use for the next month.

Next, **non-medical records** were reviewed. Claimant submitted a First Report of Injury completed on July 3, 2013 which notes that the Claimant was alleging pain in both wrists. The date of injury was listed as August 1, 2008 and the date the Employer was notified was July 3, 2013. Next, a Form 19 was completed on September 9, 2013 showing a date of injury of August 1, 2008 and that the case was denied. Next is a Form 32 Request to Waive Appeal Filing Fee completed by the Claimant requesting fee waiver. Next, the Claimant completed a Form 50 dated November 22, 2013 indicating that she injured her hands. She stated that she was not sure how the injury occurred, but that she had to do repetitive work. She further stated that notice was given to the Employer on June 18, 2013. Next is a First Report of Injury dated December 10, 2013 noting a date of injury of June 28, 2013 and that the Employer was notified on December 21, 2013. It was noted that this was filing for litigation purposes only. A Form 18 was completed on December 26, 2013 showing no payment of TTD or medical benefits. A Form 50 was then completed by the Claimant's attorney on July 3, 2014 asserting that the Claimant sustained an injury to both wrists and neck as a result of an injury occurring on November 17, 2013 noting that that was the last day of injurious exposure. The Form 50 notes that notice was

given to the Employer on June 28, 2013. A Form 51 was completed and filed on August 1, 2014 in which the Defendants asserted that the Claimant's injury was not caused by the repetitive trauma and noted that the Claimant failed to provide timely notice. Defendants further assert that the Claimant sought treatment outside of the workers' compensation system. Finally, reports to the South Carolina Workers' Compensation Commission were reviewed that showed a timeline of documents being filed with the Commission and confirms that a Form 51 was not filed after the Claimant's *pro se* Form 50, but that a Form 51 was timely filed after the Claimant's attorney's subsequent Form 50. Next, records of the Employer were reviewed, which showed the Claimant's earnings from November 1, 2012 through September 18, 2014.

FINDINGS OF FACT

Based upon the evidence submitted at the hearing and the testimony of the witness, it is found as a fact that:

1. The Claimant alleges that she sustained a repetitive trauma injury to both wrists arising out of and within the course and scope of her employment.
2. She alleges on her Form 58 a date of injury of 11/17/13.
3. The Defendants deny her claim based on the lack of timely notice to her employer. They allege 06/28/13 as the date of injury in their pre-hearing brief.
4. The sole issue before the Commission at this hearing is a determination of compensability.
5. The Claimant initially filed this case *pro se* on 11/13/13. No Form 51 was filed. That Form 50 was withdrawn.
6. The Claimant then hired Mr. Wukela to represent her and he filed another Form 50 on her behalf. The Defendants responded by filing a Form 51 in response.
7. The Claimant's position is that since the Defendants did not file a Form 51 in response to her initial filing on 11/13/13, defensive notice was forfeited per the regulation.
8. The Claimant's position as to notice would be correct had she not withdrawn the Form 50 filed on 11/13/13. She, however, did withdraw that Form 50 and, as such, afforded the Defendants the opportunity to file a timely response – which they did – when she filed a new Form 50 on 07/03/14.
9. Both sides argue King v. International Knife and Saw as applicable case law. They are correct.
10. The Claimant's condition becomes compensable when she knew or should have known that she qualified for benefits for medical care and treatment, as well as disability due to her condition.

11. The Court of Appeals writes in King, "King's condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first.

12. The Claimant testified at the hearing that the pain started in 2012, and that is when she first went to see a doctor.

13. She also testified that she thought at that time that her pain was work-related.

14. The medical note from Dr. Kimberley Linger dated 09/19/12, states in the Assessment/Plan section – "CARPAL TUNNEL SYNDROME – New problem..."

15. The Claimant does not provide notice to her employer until 06/28/13.

16. Given the timeline, the Claimant has failed to provide notice to her employer within the statutorily designated time period.

17. That being said, the Claimant has disqualified herself from any benefits that would have been due her had notice been timely.

18. When the evidence is viewed as a whole, the Claimant has failed to meet her burden as to compensability and the claim is dismissed.

CONCLUSIONS OF LAW

1. Section 42-1-160 of the South Carolina Code of Law (1976, as amended) is applicable in defining injury and personal injury.
2. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in defining the period of time within which medical treatment and supplies shall be furnished.
3. Section 42-15-20 of the South Carolina Code of Law (1976, as amended) is applicable in determining when a claimant must provide notice to the employer regarding a repetitive trauma injury.
4. Section 42-17-40 of the South Carolina Code of Law (1976, as amended) is applicable in governing the conduct of hearings and renderings of awards.
5. *King vs. International Knife and Saw*, 395 S.C. 437; 718 S.E. 2d 227, (SC Ct. App. 2011) is applicable in determining when a claimant must report an injury to the employer after suffering a repetitive trauma injury and states that notice must be made within 90 days of when claimant knew or should have known that the repetitive trauma injury was compensable. Compensability is determined when the condition requires medical treatment or interferes with an employee's ability to perform his or her job, whichever occurs first.

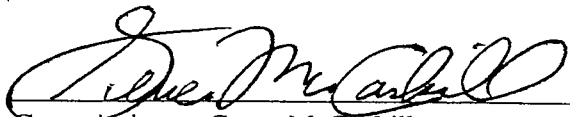
ORDER

Based on the Findings of Fact and Conclusions of Law, the undersigned Commissioner orders as follows:

1. **IT IS ORDERED** that the Claimant sustained an injury to her bilateral wrists in the form of carpal tunnel syndrome.
2. **IT IS FURTHER ORDERED** that the Claimant failed to provide timely notice of her injury, as she began having pain in her wrists in 2012 and sought and received medical treatment in November of 2012 and was diagnosed with carpal tunnel syndrome at that time. Further, the Claimant stated that in 2012 she knew that the pain in her wrists was coming from her work at Mohawk. The Claimant did not provide notice of a work-related injury to her employer until June 28, 2013.
3. **THEREFORE, IT IS ORDERED** that because the Claimant failed to provide timely notice, she has disqualified herself from any benefits that would have been due to her had notice been timely.
4. **THEREFORE, IT IS FURTHER ORDERED** that when the evidence is viewed as a whole, the Claimant failed to meet her burden as to compensability and the claim is dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Gene McCaskill

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).
January 26, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

Stephen J. Wukela

From: klindler@wcc.sc.gov
Sent: Monday, January 26, 2015 4:11 PM
To: KLINDLER@WCC.SC.GOV; BRANDON.HYLTON@MGCLAW.COM;
CHERYL.JACKSON@MGCLAW.COM; MARY.THOMAS@MGCLAW.COM;
STEPHEN@WUKELALAW.COM
Subject: Order - 1315636: Staton
Attachments: R08 ORD - SCWCC Order PDF - 01_26_2015 - WCC #_ 1315636.PDF

Please find the following order attached:

R08 ORD - Decision & Order - 1/26/2015 - ORDER#: 52038 - WCC #: 1315636

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1315636

KATHEY L. STATON,

Employee,

Claimant,

vs.

MOHAWK INDUSTRIES, INC.,

Employer,

AND

LIBERTY MUTUAL

Carrier,

Defendants.

**DECISION AND ORDER OF
APPELLATE PANEL**

Appellate Review held in Columbia, South Carolina on May 18, 2015, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed July 7, 2015

APPEARANCES:

Claimant/Appellant represented by
Stephen J. Wukela, Esquire of Florence, South Carolina.

Defendants /Respondents represented by
J. Brandon Hylton, Esquire of Florence, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill on October 2, 2014 in Hartsville, South Carolina. On January 26, 2015, he issued the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT OF THE SINGLE COMMISSIONER

Based upon the evidence submitted at the hearing, it was found as fact that:

1. The Claimant alleges that she sustained a repetitive trauma injury to both wrists arising out of and within the course and scope of her employment.
2. She alleges on her Form 58 a date of injury of 11/17/13.
3. The Defendants deny her claim based on the lack of timely notice to her employer. They allege 06/28/13 as the date of injury in their pre-hearing brief.
4. The sole issue before the Commission at this hearing is a determination of compensability.

5. The Claimant initially filed this case *pro se* on 11/13/13. No Form 51 was filed. That Form 50 was withdrawn.
6. The Claimant then hired Mr. Wukela to represent her and he filed another Form 50 on her behalf. The Defendants responded by filing a Form 51 in response.
7. The Claimant's position is that since the Defendants did not file a Form 51 in response to her initial filing on 11/13/13, defensive notice was forfeited per the regulation.
8. The Claimant's position as to notice would be correct had she not withdrawn the Form 50 filed on 11/13/13. She, however, did withdraw that Form 50 and, as such, afforded the Defendants the opportunity to file a timely response – which they did – when she filed a new Form 50 on 07/03/14.
9. Both sides argue King v. International Knife and Saw as applicable case law. They are correct.
10. The Claimant's condition becomes compensable when she knew or should have known that she qualified for benefits for medical care and treatment, as well as disability due to her condition.
11. The Court of Appeals writes in King, "King's condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first.

12. The Claimant testified at the hearing that the pain started in 2012, and that is when she first went to see a doctor.
13. She also testified that she thought at that time that her pain was work-related.
14. The medical note from Dr. Kimberley Linger dated 09/19/12, states in the Assessment/Plan section - "CARPAL TUNNEL SYNDROME - New problem..."
15. The Claimant does not provide notice to her employer until 06/28/13.
16. Given the timeline, the Claimant has failed to provide notice to her employer within the statutorily designated time period.
17. That being said, the Claimant has disqualified herself from any benefits that would have been due her had notice been timely.
18. When the evidence is viewed as a whole, the Claimant has failed to meet her burden as to compensability and the claim is dismissed.

CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER

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1. Section 42-1-160 of the South Carolina Code of Law (1976, as amended) is applicable in defining injury and personal injury.
 2. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in defining the period of time within which medical treatment and supplies shall be furnished.
 3. Section 42-15-20 of the South Carolina Code of Law (1976, as amended) is applicable in determining when a claimant must provide notice to the employer regarding a repetitive trauma injury.
 4. Section 42-17-40 of the South Carolina Code of Law (1976, as amended) is applicable in governing the conduct of hearings and renderings of awards.
 5. *King vs. International Knife and Saw*, 395 S.C. 437; 718 S.E. 2d 227, (SC Ct. App. 2011) is applicable in determining when a claimant must report an injury to the employer after suffering a repetitive trauma injury and states that notice must be made within 90 days of when claimant knew or should have known that the repetitive trauma injury was compensable. Compensability is determined when the condition requires medical treatment or interferes with an employee's ability to perform his or her job, whichever occurs first.

ORDER OF THE SINGLE COMMISSIONER

Based on the above Findings of Fact and Conclusions of Law, the Single Commissioner ordered as follows:

1. **IT IS ORDERED** that the Claimant sustained an injury to her bilateral wrists in the form of carpal tunnel syndrome.
 2. **IT IS FURTHER ORDERED** that the Claimant failed to provide timely notice of her injury, as she began having pain in her wrists in 2012 and sought and received medical treatment in November of 2012 and was diagnosed with carpal tunnel syndrome at that time. Further, the Claimant stated that in 2012 she knew that the pain in her wrists was coming from her work at Mohawk. The Claimant did not provide notice of a work-related injury to her employer until June 28, 2013.
 3. **THEREFORE, IT IS ORDERED** that because the Claimant failed to provide timely notice, she has disqualified herself from any benefits that would have been due to her had notice been timely.
 4. **THEREFORE, IT IS FURTHER ORDERED** that when the evidence is viewed as a whole, the Claimant failed to meet her burden as to compensability and the claim is dismissed.
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During the statutory period, counsel for the Claimant filed an Application for Review of the case, setting forth Claimant's grounds for review, a copy of which was furnished to all parties prior to oral argument, presented before the Appellate Panel on October 2, 2014. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration. By appeal, Claimant respectfully submits the following:

Whether the Single Commissioner erred in finding as a matter of fact and conclusion of law that the case was not compensable for lack of adequate notice of the accident?

Whether the Single Commissioner erred as a matter of fact and conclusion of law in finding that the Defendants had properly raised the defense of notice?

Whether, even assuming that Defendants properly raised the issue of notice, the Single Commissioner erred as a matter of fact and conclusion of law in finding that the Claimant failed to give adequate notice by virtue of her report to the Employer on or about June 28, 2013.

Whether the Single Commissioner erred as a matter of fact and conclusion of law in finding that the Claimant discovered, or could have discovered by exercise of reasonable diligence, that her accident was compensable upon her treatment with her family doctor on or about November 2, 2012, and that Claimant was obligated to give notice within ninety (90) days of that date to the Employer? In particular, Claimant contends that she did not receive a diagnosis of carpal tunnel syndrome from her doctor on that date and that, even if she had, no physician opined that her condition was work-related, and thus compensable, until after the Form 50 was filed.

Whether the Single Commissioner erred in failing to find as a matter of fact and conclusion of law that the Claimant adequately gave notice within ninety (90) days of the date of last injurious exposure, i.e. November 17, 2013?

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (2007), review the Award, weigh the evidence as presented at the initial hearing, and that good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law ~~consistent with or inconsistent with those of the Hearing Commissioner.~~

After carefully reviewing the instant case, the Panel, by majority vote, has determined all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, we make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Based on the evidence submitted at the hearing, we find as fact that:

1. The Claimant alleges that she sustained a repetitive trauma injury to both wrists arising out of and within the course and scope of her employment.
2. She alleges on her Form 58 a date of injury of 11/17/13.
3. The Defendants deny her claim based on the lack of timely notice to her employer. They allege 06/28/13 as the date of injury in their pre-hearing brief.
4. The sole issue before the Commission is a determination of compensability.
5. The Claimant initially filed this case *pro se* on 11/13/13. No Form 51 was filed. That Form 50 was withdrawn.

6. The Claimant then hired Mr. Wukela to represent her and he filed another Form 50 on her behalf. The Defendants responded by filing a Form 51 in response.
7. The Claimant's position is that since the Defendants did not file a Form 51 in response to her initial filing on 11/13/13, defensive notice was forfeited per the regulation.
8. The Claimant's position as to notice would be correct had she not withdrawn the Form 50 filed on 11/13/13. She, however, did withdraw that Form 50 and, as such, afforded the Defendants the opportunity to file a timely response – which they did – when she filed a new Form 50 on 07/03/14.
9. Both sides argue King v. International Knife and Saw as applicable case law. They are correct.
10. The Claimant's condition becomes compensable when she knew or should have known that she qualified for benefits for medical care and treatment, as well as disability due to her condition.
11. The Court of Appeals writes in King, "King's condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first."

12. The Claimant testified at the hearing that the pain started in 2012, and that is when she first went to see a doctor.
13. She also testified that she thought at that time that her pain was work-related.
14. The medical note from Dr. Kimberley Linger dated 09/19/12, states in the Assessment/Plan section – "CARPAL TUNNEL SYNDROME – New problem..."
15. The Claimant does not provide notice to her employer until 06/28/13.
16. Given the timeline, the Claimant has failed to provide notice to her employer within the statutorily designated time period.
17. That being said, the Claimant has disqualified herself from any benefits that would have been due her had notice been timely.
18. When the evidence is viewed as a whole, the Claimant has failed to meet her burden as to compensability and the claim is dismissed.

CONCLUSIONS OF LAW

1. Section 42-1-160 of the South Carolina Code of Law (1976, as amended) is applicable in defining injury and personal injury.
 2. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in defining the period of time within which medical treatment and supplies shall be furnished.
 3. Section 42-15-20 of the South Carolina Code of Law (1976, as amended) is applicable in determining when a claimant must provide notice to the employer regarding a repetitive trauma injury.
 4. Section 42-17-40 of the South Carolina Code of Law (1976, as amended) is applicable in governing the conduct of hearings and renderings of awards.
 5. *King vs. International Knife and Saw*, 395 S.C. 437; 718 S.E. 2d 227, (SC Ct. App. 2011) is applicable in determining when a claimant must report an injury to the employer after suffering a repetitive trauma injury and states that notice must be made within 90 days of when claimant knew or should have known that the repetitive trauma injury was compensable. Compensability is determined when the condition requires medical treatment or interferes with an employee's ability to perform his or her job, whichever occurs first.
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ORDER

Based on the above Findings of Fact and Conclusions of Law, the undersigned Commissioners order as follows:

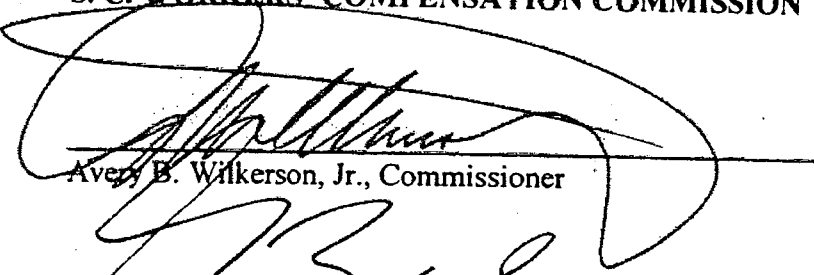
1. **IT IS ORDERED** that the Claimant sustained an injury to her bilateral wrists in the form of carpal tunnel syndrome.
2. **IT IS FURTHER ORDERED** that the Claimant failed to provide timely notice of her injury, as she began having pain in her wrists in 2012 and sought and received medical treatment in November of 2012 and was diagnosed with carpal tunnel syndrome at that time. Further, the Claimant stated that in 2012 she knew that the pain in her wrists was coming from her work at Mohawk. The Claimant did not provide notice of a work-related injury to her employer until June 28, 2013.
3. **THEREFORE, IT IS ORDERED** that because the Claimant failed to provide timely notice, she has disqualified herself from any benefits that would have been due to her had notice been timely.

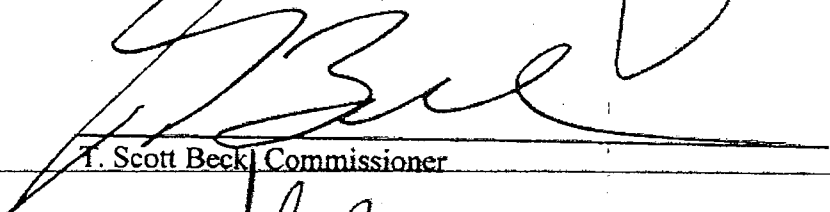
4. **THEREFORE, IT IS FURTHER ORDERED** that when the evidence is viewed as a whole, the Claimant failed to meet her burden as to compensability and the claim is dismissed.

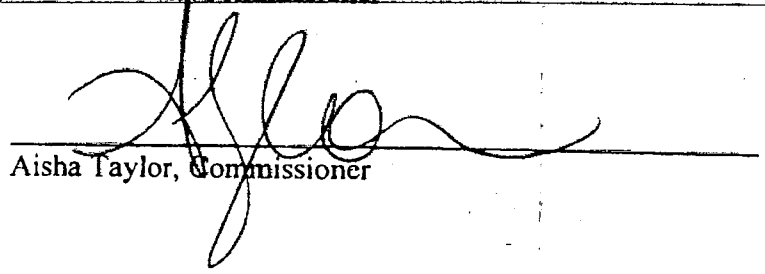
IT IS SO ORDERED.

Full affirmatio 

S. C. WORKERS' COMPENSATION COMMISSION


Avery B. Wilkerson, Jr., Commissioner


T. Scott Beck, Commissioner


Aisha Taylor, 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 if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on July 7, 2015

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1315636

Kathey Staton,)
)
 Claimant,)
)
 vs.) TRANSCRIPT OF PROCEEDINGS
)
 Mohawk Industries, Inc.,)
 Employer,) October 2, 2014
)
 and)
)
 Liberty Insurance)
 Corporation, Carrier,)
)
 Defendants.)
 _____)

This hearing was held before
Commissioner Gene McCaskill, reported by
Kimberly T. Power, Court Reporter and Notary
Public in and for the State of South Carolina;
said proceedings were held at the South
Carolina Workers' Compensation Commission,
Florence-Darlington Tech, 225 Swift Creek Road,
Hartsville, South Carolina, on Thursday,
October 2, 2014, commencing at the hour of
3:00 p.m.

1 APPEARANCES

2
3 ATTORNEYS FOR THE CLAIMANT4 WUKELA LAW FIRM
5 BY: STEPHEN J. WUKELA, ESQUIRE
6 403 Second Loop Road
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8 ATTORNEYS FOR THE DEFENDANTS

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10 BY: J. BRANDON HYLTON, ESQUIRE
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1 THE COURT: Today's date is
2 October 2, 2014. This is Workers' Compensation
3 Commission File Number 1315636. This is the
4 case of Kathey Staton vs. Mohawk Industries,
5 Inc. The carrier is Liberty Insurance
6 Corporation. The claimant is represented today
7 by Stephen J. Wukela, and the employer and
8 carrier are represented by J. Brandon Hylton.

9 The date of the accident is 6/28/13.
10 The claimant has an average weekly wage of
11 \$705.60, with a corresponding compensation rate
12 of \$470.42.

13 I know there was some discussion
14 before we went on the record and let's address
15 that right up front as to what the parties are
16 willing to stipulate to. If we can go ahead
17 and capture that for the record.

18 MR. WUKELA: Thank you,
19 Commissioner. We have a stipulation as to a
20 number of things. First, while the defendants
21 deny this case is compensable and firmly
22 challenge the compensability of the case, they
23 would admit that if the Commission finds that
24 adequate notice was given within the meaning of
25 the statute, that the case would be compensable

1 as to causation.

2 MR. HYLTON: Correct.

3 MR. WUKELA: We also have a
4 stipulation that if the Commission found that
5 the case was compensable, that the claimant
6 would be entitled to temporary total disability
7 benefits at the weekly rate of --

8 MR. HYLTON: Temporary total or
9 temporary partial because, I mean, based on
10 these things come in for a little bit of time.
11 TTD or TPD depending on the payments.

12 MR. WUKELA: Okay. Temporary total
13 or temporary partial disability benefits for
14 the periods between November 17, 2013 and
15 January 27, 2014.

16 THE COURT: Hold on. I don't type
17 numbers fast. 11/17/13 to January what?

18 MR. WUKELA: 27/14 and June 3, 2014
19 through September 5, 2014. As to Mr. Hylton's
20 point, he has offered as APA 22 payroll
21 records. I don't believe that there were any
22 earnings received by the claimant during those
23 dates. But obviously if there were, that would
24 convert that weekly period from temporary total
25 to temporary partial. Is that correct,

1 Mr. Hylton?

2 MR. HYLTON: Correct. We've got
3 them all labeled whether they were short-term.
4 We can go through that. That's not a problem
5 because short-term, of course, would not be for
6 us.

7 MR. WUKELA: Correct.

8 MR. HYLTON: We don't get that back.

9 MR. WUKELA: And, of course, the
10 payments to which Mr. Hylton refers are payroll
11 payments as opposed to any short-term
12 disability benefits.

13 THE COURT: If I get to that point
14 in my order, I think generally the way I write
15 it that they're entitled to TTD from when to
16 when except for any time during or any period
17 during that time in which they earned wages.

18 MR. WUKELA: That's correct,
19 Commissioner.

20 MR. HYLTON: That works.

21 MR. WUKELA: So those are the
22 stipulations, I believe, Commissioner as to
23 causation and periods of disability. Of
24 course, the compensability itself remains
25 denied on the issue of notice which is the soul

1 issue before the Commission now to determine
2 compensability.

3 In that regard, the parties have
4 also stipulated and agreed to the removal and
5 withdrawal of certain APAs that we intended to
6 offer. I think the simplest way, Commissioner,
7 is for me to tell you on my APA list what's in
8 now. So what is in is APA 1, APA 2, APA 3, APA
9 4, APA 12, and APA 13. The balance of the APAs
10 are withdrawn by the claimant. The defendants
11 also have APAs, and I think all those are in.

12 MR. HYLTON: Yes.

13 MR. WUKELA: Which includes APAs 18
14 through 22.

15 THE COURT: All right. Why don't we
16 go off the record.

17 (Off the record.)

18 THE COURT: All right. Gentlemen,
19 with that understanding, Mr. Wukela has taken
20 back some of the APAs that he intended to have
21 as a part of the record. Are there -- now with
22 the edited APAs, are there objections to APAs,
23 jurisdiction or venue or any other items?

24 MR. WUKELA: Nothing from the
25 claimant, Commissioner.

1 MR. HYLTON: Those stipulations are
2 stipulations to both parties, correct?

3 MR. WUKELA: Yes, sir.

4 THE COURT: All right. The
5 Commission file becomes a part of the record
6 with the exception of self-serving declarations
7 and unstipulated medical reports.

8 All right. Witnesses, Mr. Wukela?

9 MR. WUKELA: Only claimant,
10 Commissioner.

11 THE COURT: Witness, Mr. Hylton?

12 MR. HYLTON: None.

13 THE COURT: Do you have an employer
14 rep?

15 MR. HYLTON: No.

16 THE COURT: All right. Let's go off
17 the record and get the claimant.

18 (Off the record.)

19 THE COURT: Mr. Wukela, we're here
20 on a Form 50 that you filed on behalf of your
21 client. If you would, please, sir, place your
22 client's position on the record.

23 MR. WUKELA: Thank you,
24 Commissioner. Of course, this is a case in
25 which the parties have now stipulated that the

1 claimant suffered an injury to both of her
2 wrists from repetitive work at the job and
3 suffered some periods of disability as a
4 result. The issue in the case is notice.

5 This case was initially filed pro se
6 by the claimant on November 14th of 2013. By
7 the way, that pro se Form 50 is found at Page
8 205 of the APA. That pro se 50 was the
9 culmination of the claimant having suffered
10 pain and numbness in her bilateral wrists for a
11 period of time that increased over years and
12 ultimately causing her to go and see her family
13 doctor, Kimberley Lingler. She actually was
14 seen by a nurse case manager, Mr. Steven
15 Millen, and that visit was on November 20th of
16 2012. It's found at APA 1, Page 1.

17 This is the first time in the record
18 that any medical provider notes the claimant's
19 complaints of pain. In fact, he notes pain in
20 the right hand. He diagnoses carpal tunnel
21 syndrome and although the claimant will testify
22 that he didn't tell her that date that she
23 suffered carpal tunnel syndrome, nor did he
24 tell her that it was work-related. He sent her
25 to have an evaluation by a neurologist, a

1 Dr. Wohlrab, who she saw on the first occasion
2 on April 2, 2013. That report is found at APA
3 2, Page 14. Dr. Wohlrab diagnosed carpel
4 tunnel syndrome, told the claimant that he was
5 diagnosing carpel tunnel syndrome, and sent her
6 for a nerve conduction study. That nerve
7 conduction study was performed on July 3, 2013
8 and indeed revealed carpel tunnel syndrome.

9 Now, Dr. Wohlrab still hadn't told
10 her that it was work-related. The claimant
11 went to her employer in June of 2013 whereupon
12 a first report of injury was filed by the
13 employer with the Commission on July the 3rd of
14 2013, and that's found at APA Page 202.

15 The carrier authorized treatment at
16 the hands of the company doctor, Dr. Wallace,
17 and Dr. Wallace sent her to Dr. Moore who
18 performed a right carpel tunnel release -- a
19 left carpel tunnel release, my claimant is
20 telling me, which later was then followed by a
21 right carpel tunnel release performed by
22 Dr. Welch. In that intermediate time, the
23 carrier denied the claim in September of 2013,
24 and the claimant filed her pro se Form 50
25 November 14, 2013 and then left work on

1 November 17, 2013.

2 Now, that's the factual background.
3 The claimant contends that notice was adequate
4 for a number of reasons. The first being that
5 first Form 50, pro se 50, was filed on
6 November 14, 2013 and no Form 51 was filed by
7 the carrier within 30 days. Now, the
8 claimant and the claimant's counsel is well
9 aware that defense counsel was not involved at
10 that time. But nevertheless, no Form 51 was
11 filed and it's the claimant's contention that
12 pursuant to Regulation 67-603 that because they
13 didn't file a timely Form 51, that the
14 defensive notice was forfeited in the words of
15 the regulation. And we believe that ends the
16 inquiry as to notice.

17 A second Form 50 was filed by myself
18 to which a timely Form 51 was filed by
19 Mr. Hylton. That occurred because the claimant
20 appeared at a hearing on the pro se 50 and the
21 Commissioner determined that she should not
22 proceed and could not proceed and canceled the
23 hearing. I was retained and we proceeded. Of
24 course, it's Mr. Hylton's contention, which he
25 will argue very well I'm sure, that that filing

1 of that second Form 50 and the timely filing of
2 the second Form 51 negates the failure to file
3 the first 51. We contend that Rule 67-603 does
4 not entertain any such possibility.

5 The second issue -- reasons we
6 contend notice is timely has to do with the
7 definition of compensable in our statute. Of
8 course, when the legislature amended the
9 statute in 2007, I guess, they amended
10 42-15-20(C) to require that the case of
11 repetitive trauma notice must be given within
12 90 days of the date the employee discovered or
13 could have discovered by exercising reasonable
14 diligence that his condition is compensable.
15 Of course, 42-1-172 goes on to define
16 compensable and finds that an injury isn't
17 compensable unless a Commissioner makes a
18 specific finding of fact by preponderance of
19 evidence of a causal connection established by
20 medical evidence between the repetitive
21 activities that occurred while the employee was
22 engaged in regular duties of his employment and
23 the injury.

24 Now, the claimant contends that a
25 strict reading of the statutes would lead the

1 Commission to the conclusion that since the
2 statute defines compensable under repetitive
3 trauma and the statute says notice is triggered
4 by discovery of compensability, then no
5 claimant could discover that their claim was
6 compensable until after the Commissioner made a
7 specific finding. Defense argues that that is
8 a logical conclusion. Of course, the claimant
9 argues that the statutes must be strictly
10 construed and the legislature writes them the
11 way the legislature writes them. I remember
12 those same arguments during Ellison.

13 Nevertheless, the claimant would go
14 on to contend that even if there is a discovery
15 of compensability that can be made before a
16 finding is made by the Commissioner, such
17 discovery wouldn't necessarily turn on the
18 claimant discovering medical evidence that
19 establishes the causal connection between the
20 repetitive activities and the injury. The
21 defense cites King vs. International Knife and
22 Saw, a Florence case, 395 SC 437. And, of
23 course, that case as well said -- while it's a
24 Court of Appeals case said that the 90-day
25 reporting clock does not start until the

1 injured employee discovers or should discover
2 he qualifies to receive benefits for medical
3 care, treatment, or disability due to his
4 condition. That, the claimant contends, would
5 require some statement by some medical provider
6 evidencing causation and no such statement
7 existed anywhere in the record until --
8 certainly until after the first report of
9 injury was made by the employee.

10 The claimant's last contention as to
11 notice is that the employee continued to work
12 until November 17, 2013. Repetitive trauma is,
13 of course, the culmination of repetitive
14 accidents and injuries. She continued to
15 suffer those injuries until November 17, 2013,
16 and the claimant contends that the clock
17 shouldn't begin to run until the injury ends,
18 that is to say the last day of injury exposure.
19 And that is the claimant's arguments as to
20 notice, Commissioner.

21 THE COURT: Give me a minute. All
22 right. Mr. Hylton.

23 MR. HYLTON: As the claimant's
24 counsel pointed out, this case solely depends
25 on the notice in this case and whether notice

1 was timely provided. First with regard to the
2 Form 50. Again, 50 was filed pro se, went to
3 the hearing. The Commissioner before we went
4 on the record advised Ms. Staton that she may
5 want to seek legal counsel. Ms. Staton decided
6 to cancel that hearing so she could seek legal
7 counsel. Therefore, that 50 has gone away.

8 She then hired Mr. Wukela who filed
9 a Form 50 on her behalf. And, again, under
10 67-610 there is a continuing obligation to
11 update your answer which is what he did which
12 also provides us time to respond to that 50
13 which we did according to the Commission -- the
14 claimant's counsel, we timely responded to that
15 50. Therefore, we do have all those cases.
16 Again, whatever benefit she gained from
17 withdrawing the 50, she also has to take the
18 issues of the notice coming back up as well
19 because that 50 is withdrawn when you cancel
20 that hearing.

21 In this case next regarding when it
22 becomes compensable, again, that issue hasn't
23 been decided. King vs. International Knife and
24 Saw states succinctly that it begins to run
25 when the claimant discovered or could have

1 discovered that she was qualified for benefits
2 for medical care, treatment, or disability due
3 to her condition.

4 And, again, reading further into the
5 case -- and, Commissioner, I'm reading here on
6 the second page here of the actual case, it
7 actually defines this even more. It says, "The
8 record reflects King acknowledged to the Single
9 Commissioner that his arm was tired, sore and
10 achy for a couple of years before he became
11 unable to work. He further noted that he
12 believed his arm ached because he worked
13 slinging a hammer all day. However, a mere
14 work-related ache does not constitute a
15 compensable condition regardless of whether the
16 employee later develops an injury. The Act
17 requires an injured employee to be diligent,
18 not -- King's condition was not compensable
19 until it either required medical care or
20 interfered with his ability to perform his job,
21 whichever occurred first."

22 So, again, there's nothing in the
23 statute which he wants to assert requires a
24 strict reading of the statute, nothing in there
25 says medical care. It says when he discovered

1 or could have discovered. The King case says
2 it's when it becomes compensable when they have
3 to seek medical care. Not when the doctor
4 tells you. When you seek the medical care.
5 And that's what happened in this case,
6 Commissioner.

7 The claimant had ongoing problems
8 going to APA Page 1 carpel tunnel for about
9 four years before her first treatment on
10 November 20, 2012. She goes for carpel tunnel
11 treatment on November 20, 2012, was assessed
12 with carpel tunnel syndrome, APA Page 3,
13 prescribed medication, APA Page 3, and referred
14 to an orthopedic surgeon, APA Page 3. Notice
15 runs from that date.

16 The claimant has admitted in her
17 deposition to her credit, was very credible in
18 her deposition.. Said that in November of 2012,
19 it was her belief that the pain in her hands
20 was coming from her work due to the burning
21 that was coming and she admitted she did not
22 provide notice to anyone at her employer until
23 June 28, 2013. Therefore, this case should be
24 denied based on the claimant's failure to
25 provide timely notice of the accident to her

1 employer.

2 And finally with regard to last
3 injury of exposure rule that he -- claimant's
4 counsel made, that's been overturned by the
5 Act. It is not the last injury exposure. It's
6 when you knew or should have known your
7 condition was compensable as defined by King.

8 THE COURT: All right. Mr. Wukela.

9 MR. WUKELA: Of course, we've well
10 rehearsed this by now, Commissioner. But what
11 Mr. Hylton doesn't have is any evidence that
12 any doctor told Ms. Staton that this condition
13 was work-related, in fact, until Dr. Wallace
14 filled out a disability form in February 2014.
15 The International Knife and Saw case says it
16 begins to run when she discovers she's
17 qualified to receive benefits for medical care
18 or disability. And, of course, the statute
19 tells us that that term "compensability"
20 requires a medical statement as to causation
21 which did not exist at that date and until well
22 after a pro se 50 had been filled.

23 As to this issue of withdrawing a
24 hearing request and the 50 being erased
25 somehow, Commissioner, respectfully if that

1 occurred, then it would be the same with regard
2 to the statute of limitations. And any time a
3 claimant withdrew a hearing request after the
4 two year statute, their case would be dismissed
5 with prejudiced. That's not what our rule is.
6 I mean, the claim is made. The WCC number is
7 established. A hearing request and withdrawing
8 a hearing request don't impact that and they
9 don't impact 67-603.

10 THE COURT: Mr. Hylton.

11 MR. HYLTON: I think claimant's
12 counsel is getting confused about filing a
13 notice of a claim than the notice of injury.
14 Notice of claim statute of limitations is
15 different than providing a 50 for actual
16 claimant benefits. There was no hearing on
17 that date. That has not gone away.

18 Again, with regard to the argument
19 that there was no medical evidence establishing
20 of that, that's not what the case law says.
21 King is very clear once you have pain and then
22 once you seek medical treatment, it doesn't say
23 in that case that the medical doctor has to say
24 that it's related. Once you believe that your
25 case is related to your work and then you seek

1 benefits for that condition, that's when you've
2 got to let your company know that you have a
3 compensable injury. And why do we do that is
4 because the employer has the right to control
5 medical treatment. That's why we have the
6 notice statute. It's one of the reasons to
7 investigate, to mitigate, and to control
8 treatment. By going on her own treatment
9 November 2012 and not telling her employer
10 until June 28, 2013, we have a period of time
11 there that the employer was denied the ability
12 to control medical treatment in the case. And,
13 thus, that's the reason we have the statute,
14 Commissioner.

15 THE COURT: Mr. Wukela.

16 MR. WUKELA: Commissioner, I don't
17 see any evidence of any prejudice. She saw her
18 family doctor. He sent her to a neurologist.
19 She had a nerve conduction study and then
20 immediately tells the employer and they very
21 promptly sent her to the company doctor and she
22 had surgery in short order thereafter and
23 didn't lose any time from work during that time
24 period. So I think it's difficult for them to
25 establish prejudice.

1 MR. HYLTON: Prejudice is not a
2 requirement. It is a strict standard.

3 MR. WUKELA: That's it,
4 Commissioner.

5 THE COURT: All right. We're ready
6 to hear from your witness.

7 MR. WUKELA: Thank you,
8 Commissioner.

9 THE COURT: Ma'am, a couple of
10 requests for you. One, speak up. This is a
11 small room, but you'll be answering their
12 questions primarily. I might ask you one and I
13 might not. You'll be looking that way. But
14 this young lady who is making the record has to
15 hear you and I have to hear you. So please
16 speak up.

17 THE WITNESS: Okay.

18 THE COURT: And the second is if
19 you're asked a yes or no question, how about
20 give us a verbal yes or no answer. If you
21 shake or nod your head, which I do all the
22 time, then she has to look to see what you did
23 and then she has to actually put that in the
24 record which slows her down. So yes or no
25 question, please give us a verbal yes or no

1 answer. Okay?

2 THE WITNESS: Okay.

3 (KATHEY STATON, being duly sworn to
4 tell the whole truth, testified as follows:)

5 THE COURT: Please state your full
6 name for the record.

7 THE WITNESS: Kathey Leah Staton.

8 THE COURT: Thank you, Ms. Staton.
9 Mr. Wukela, your witness.

10 MR. WUKELA: Thank you,
11 Commissioner. Commissioner, I'll lead her
12 pretty quickly through a little bit of
13 background stuff. I'm sure when Mr. Hylton
14 disagrees, he will let us know.

15 THE COURT: I'm certain he will.

16 DIRECT EXAMINATION

17 BY MR. WUKELA:

18 Q. Ms. Staton, how old are you?

19 A. Fifty-four.

20 Q. Looks like you were hired by Mohawk
21 as a twist operator back in February of 2006?

22 A. Yes.

23 Q. That job involves essentially
24 twisting yarns?

25 A. Yes.

1 Q. Looks like you worked on a series of
2 rows of spinners that are three to six sides on
3 the machine that vary between 144 and 188
4 spinners spinning yarn at a time?

5 A. Yes.

6 Q. And your job is to load on spools of
7 thread, tie them in, take off finished spools
8 of thread, cut them out, and fix any breakouts
9 during the process?

10 A. Yes.

11 Q. You've testified in your deposition
12 and I think we understand that at some point in
13 your career over there you started experiencing
14 pain and numbness in your wrist?

15 A. Yes.

16 Q. Do you have an idea of when that
17 began?

18 A. No.

19 Q. Tell me how it occurred.

20 A. Well, when I noticed it I would wake
21 up and when I go to sleep at night it would
22 wake me up and the pain would be numb. In the
23 beginning when I first start having that
24 problem, I could shake my hand at night and the
25 feeling would come back in. It got so bad then

1 I had to start getting up out the bed at night,
2 walk around and shake my hand for the feeling
3 to come back in my fingers. And then the three
4 fingers, my middle finger to my thumb, they
5 would be burning like somebody had poured
6 pepper on them.

7 Q. And that -- at any point did you
8 tell the employer that you were having those
9 problems?

10 A. Yes.

11 Q. Do you remember when that first
12 happened?

13 A. No.

14 Q. Was there a point in which you --
15 let me put it this way: Looks like from the
16 records the first time you saw a doctor and
17 complained about those symptoms was in November
18 of 2012?

19 A. Yes.

20 Q. Before that date at any time had you
21 told the employer, "Listen, I think I'm having
22 problems with my wrist?"

23 A. Well, I had told one on one
24 occasion, yes.

25 Q. Did anything ever come of that?

1 A. No.

2 Q. Did you continue to work?

3 A. Yes.

4 Q. And did your symptoms continue to
5 worsen?

6 A. Yes.

7 Q. And that led you to see the doctor
8 in November of 2012?

9 A. Yes.

10 Q. And tell me what happened. You saw
11 Dr. Lingler's office?

12 A. Yes.

13 Q. But you didn't see Dr. Lingler. It
14 looks like you saw Steven Millen?

15 A. Yes.

16 Q. Do you remember that visit?

17 A. Just vaguely.

18 Q. Tell me what you remember about it.

19 A. Well, I remember going to see Dr.
20 Lingler and she wasn't there. So they let me
21 see Dr. Millen and I was complaining with my
22 hands.

23 Q. Dr. Millen notes that your chief
24 complaint is being right pain hand, right pain
25 elbow?

1 A. I was having trouble with both of
2 them.

3 Q. And did -- what did Dr. Millen tell
4 you?

5 A. I don't remember exactly.

6 MR. HYLTON: And I would object to
7 the hearsay of what the doctor told her.

8 MR. WUKELA: Well, it's to notice.
9 I mean, that's what this is about, but okay.

10 MR. HYLTON: I'll let her -- she can
11 testify as to that, not as to the condition.

12 MR. WUKELA: I won't ask her if you
13 won't.

14 MR. HYLTON: It's up to you.

15 MR. WUKELA: All right. Fine.

16 BY MR. WUKELA:

17 Q. What happened next?

18 A. They referred me to see Dr. Wohlrab.

19 Q. And Dr. Wohlrab is a neurologist?

20 A. Yes.

21 Q. And did you see Dr. Wohlrab?

22 A. Yes.

23 Q. And it looks like from the records
24 the first time you saw him was April 2, 2013.

25 MR. WUKELA: Page 14 and 13 of APA

1 2, Commissioner.

2 BY MR. WUKELA:

3 Q. Does April 2013 sound like the first
4 time you saw Dr. Wohlrab?

5 A. I guess, yes.

6 Q. Tell me what you remember about that
7 visit.

8 A. Well, when I was explaining my
9 symptoms to him, he said it sound like it was
10 carpel tunnel syndrome. He gave me injection
11 in both wrist.

12 Q. And what did he recommend?

13 A. Well, he recommend to have a nerve
14 conduction study.

15 Q. And did that happen?

16 A. Yes.

17 Q. And you saw him after the nerve
18 conduction study?

19 A. No.

20 Q. Tell me what happened then. You saw
21 him, you had a nerve conduction study. Then
22 what happened?

23 A. Well, after then that's when I
24 start -- when I went to the plant and I was
25 telling them that I was having trouble with my

1 wrists and I told my supervisor.

2 Q. And who did you talk to over there?

3 A. Sonny Wood.

4 Q. And it looks like from the record
5 that Mr. Wood said, "Well, then we need to file
6 a first report of injury?"

7 A. Yes.

8 MR. WUKELA: And, Commissioner,
9 that's APA 12 Page 202.

10 BY MR. WUKELA:

11 Q. Then what happened after that?

12 A. Well, after I talked to Sonny, then
13 I had to go talk to the people in safety. The
14 people in safety, they contacted workers' comp.

15 Q. And then what happened?

16 A. Well, after that I told them I had
17 already had -- I told them I already had
18 another doctor appointment. They told me to
19 keep that doctor appointment. Somebody from
20 workers' comp contacted me and told me to go
21 see Dr. Wallace.

22 Q. And it looks like they told you to
23 keep the doctor's appointment that you had with
24 Dr. Wohlrab?

25 A. Yes.

1 Q. Which was --

2 MR. HYLTON: I'm going to object to
3 what they told her because this safety -- she
4 hasn't identified who this is that told her and
5 they're not a party to the case. It's a
6 manager of the company. They can speak on
7 behalf of the company.

8 BY MR. WUKELA:

9 Q. Who told you?

10 A. Who told me what?

11 Q. To keep that appointment.

12 A. Melanie.

13 Q. And who is she?

14 A. Melanie is over safety.

15 MR. HYLTON: Same objection.

16 THE COURT: I'm going to let her
17 answer that.

18 BY MR. WUKELA:

19 Q. And did you keep that appointment
20 with Dr. Wohlrab on July 16th?

21 A. No.

22 Q. Then what happened?

23 A. I continued working.

24 Q. And then they set you up -- wait a
25 second. I'm sorry. There is a note with

1 Dr. Wohlrab of July 16th.

2 A. It is?

3 Q. Yes, ma'am. Do you remember whether
4 you saw Dr. Wohlrab? It looks like that may be
5 the next visit after the nerve conduction
6 study.

7 A. I don't remember that visit.

8 Q. Fair enough. What do you remember
9 happened next?

10 A. What, after the nerve conduction
11 study?

12 Q. Yes, ma'am.

13 A. I remember just continued working.

14 Q. It looks like they set you up to see
15 Dr. Wallace?

16 A. Yes.

17 Q. And that was someone that the
18 employer told you to go see?

19 A. What?

20 Q. That was something that Mohawk --
21 someone Mohawk told you to go see?

22 A. Yes.

23 Q. And you saw Dr. Wallace beginning
24 August of 2013?

25 A. Yes.

1 Q. Did Dr. Wallace ever tell you that
2 your condition was work-related?

3 A. Yes.

4 Q. When did that occur?

5 A. When he put it in a note when I went
6 back -- well, in the beginning he didn't say it
7 was work-related.

8 Q. But at some point he gave you a form
9 that said it was?

10 A. Yes.

11 Q. And that was that long-term
12 disability form I think from February of 2014?

13 A. Yes.

14 Q. And then it looks like Dr. Wallace
15 ultimately sent you over to Dr. Moore?

16 A. Yes.

17 Q. And he performed surgery?

18 A. Yes.

19 Q. When Dr. Wallace filled out that
20 form that said it was work-related in February
21 of 2014, was that the first time any doctor had
22 told you I do think it's work-related?

23 A. Yes.

24 MR. HYLTON: Objection. Leading.

25 THE COURT: Rephrase.

1 BY MR. WUKELA:

2 Q. How about this way: Was there ever
3 a doctor who told you that before Dr. Wallace?

4 A. Work-related?

5 Q. Yes.

6 A. No.

7 Q. You ultimately left work I think in
8 November of 2013?

9 A. Yes. November 17th was my last day
10 I worked.

11 Q. And that was because Dr. Wallace
12 wrote you out?

13 A. Well, my hand was -- that was on a
14 Sunday that was my scheduled workday and I went
15 to Dr. Wallace after I got off work.

16 Q. And he wrote you out then?

17 A. Yes.

18 Q. I think you had been out since that
19 time except for maybe one time that you went
20 back just for a day or so?

21 A. Well, I would go back to work, but
22 my hand would bother me. I have to go back
23 out. But the last day I worked was -- full day
24 I worked was May the 7th.

25 Q. You've had surgery on both hands

1 now?

2 A. Yes.

3 Q. And are you interested in going back
4 to work?

5 A. Yes.

6 Q. Are you scheduled to go back to
7 work?

8 A. Yes.

9 Q. When?

10 A. Sunday, October 5th.

11 MR. WUKELA: Thank you for your
12 answers. Please answer any questions counsel
13 has for you.

14 CROSS-EXAMINATION

15 BY MR. HYLTON:

16 Q. Thank you, Ms. Staton. You recall
17 that your pain in your hands started happening
18 in November of 2012; is that correct?

19 A. Well, it happened before then, but
20 that's when I first went to the doctor for it
21 really.

22 Q. So in November 2012, you were having
23 pain in your hands, the burning and the
24 tingling and shaking at night, correct?

25 A. Yes.

1 Q. And, again, at that time it was your
2 belief that the pain in your hands was coming
3 from your work?

4 A. Yes.

5 Q. And, again, you didn't notify
6 anybody at Mohawk of that pain until June 28,
7 2013, correct?

8 A. Well, I had said something before,
9 but they didn't write it up.

10 Q. Well, I asked you in your
11 deposition, I said, "And what made you decide
12 to report the claim on June 28, 2013?" This is
13 Page 30 of your deposition that was taken on
14 May 19, 2014.

15 Starting on Line 17, the question,
16 "Okay. What made you decide to report the
17 claim on June 28, 2013?"

18 The answer was, "Because my finger
19 would get numb."

20 "Question: Okay."

21 "Answer: And see my -- my -- my
22 finger was getting numb."

23 "Question: Okay. And you hadn't
24 reported anything prior to June 28, 2013?"

25 "Answer: No."

1 Is that correct?

2 A. Yes.

3 Q. Is that the truth?

4 A. No. I had forgot about when I
5 talked to my supervisor before.

6 Q. But you've also already stipulated
7 in your 50 and your APAs that notice was given
8 on June 28, 2013, correct?

9 A. I don't know nothing about that.

10 MR. HYLTON: We would rely on the 50
11 and the stipulations of the June 28, 2013 being
12 the date of notice.

13 BY MR. HYLTON:

14 Q. Ms. Staton, you're a high school
15 graduate, correct?

16 A. Yes.

17 Q. I believe you testified you can read
18 and write and perform basic math without any
19 problems; is that correct?

20 A. Do what?

21 Q. Read and write, perform basic math?

22 A. Basic, yes.

23 MR. HYLTON: That's all the
24 questions I have.

25 THE COURT: Mr. Wukela.

REDIRECT EXAMINATION

BY MR. WUKELA:

Q. Ms. Staton, you said that sometime in the past that you had told the employer that your hands were bothering you?

A. Yes.

Q. And I think quite candidly you said you didn't tell them --

MR. HYLTON: Objection to leading.

THE COURT: Rephrase.

BY MR. WUKELA:

Q. Did you tell them back then, "Look, I think I've got a work-related injury?"

A. No.

Q. Did you tell them, "I think I need to a file workers' compensation claim?"

A. No.

Q. Did you -- did you leave work or did you continue working?

A. I continued working.

Q. And what caused you to ultimately leave work?

A. My hands just got bad.

MR. HYLTON: I'm going to object.

This is outside of cross.

1 MR. WUKELA: I don't have anything
2 further, Commissioner.

3 THE COURT: Anything else,
4 Mr. Hylton?

5 MR. HYLTON: No.

6 THE COURT: All right. Thank you,
7 ma'am. Any other witnesses, Mr. Wukela?

8 MR. WUKELA: No, that's it.

9 THE COURT: Okay. Any witnesses,
10 Mr. Hylton?

11 MR. HYLTON: No.

12 THE COURT: That concludes this
13 hearing.

14 (The hearing concluded at 2:42 p.m.)
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1 CERTIFICATE OF REPORTER

2
3 I, Kimberly T. Power, Court Reporter
4 and Notary Public for the State of South
Carolina at Large, do hereby certify:

5 That the foregoing transcript of
6 proceedings was taken before me on the date and
7 at the time and location stated on Page 1 of
8 this transcript; that the witness was duly
9 sworn to testify to the truth; that the
10 testimony of the witness and all objections
11 made at the time of the proceeding were
recorded stenographically by me and were
thereafter transcribed; that the foregoing
transcript of proceedings as typed is a true,
accurate, and complete record of the
proceedings made at the time to the best of my
ability.

12 I further certify that I am neither
13 related to nor counsel for any party to the
14 cause pending or interested in the events
thereof.

15 Witness my hand, I have hereunto
16 affixed my official seal this 11th day of
December, 2014, Lexington County, South
Carolina.

17
18
19
20
21 _____
22 Kimberly T. Power, Court Reporter
23 Notary Public State of South Carolina
24 My Commission Expires: 07/22/2015
25

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1315636

KATHY STATON	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	FULL BOARD HEARING OF
MOHAWK INDUSTRIES	)	
	)	KATHY STATON
EMPLOYER,	)	
AND	)	VS
	)	
LIBERTY INSURANCE	)	MOHAWK INDUSTRIES
	)	
<u>CARRIER.</u>	)	

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Kathy Staton versus Mohawk Industries, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:44 P.M., Monday, May 18, 2015, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

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COMMISSIONERS PRESENT:

T. Scott Beck, Chair
Aisha Taylor
Avery Wilkerson

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

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STIPULATIONS

Commissioner Beck: All right, please call the case.

Court Reporter: Today is May 18th, 2015. This is South Carolina workers' Compensation case number 1315636. This is the case of Kathy Staton, the Claimant versus Mohawk Industries, the Employer and Liberty Insurance is the Carrier. The Appellant is the Claimant represented by Stephen J. Wukela. The Respondent is represented by J. Brandon Hylton. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner McCaskill.

Commissioner Beck: Mr. Wukela?

Mr. Wukela: Thank you, Commissioners.

ARGUMENT FOR THE APPELLANT

By Mr. Wukela:

I won't burden this case overly with the facts, obviously you all have read the briefs, but this is a pretty straight forward case. Repetitive trauma tried

1 purely on the notice issue. Carpel tunnel syndrome,
2 the Claimant filed a pro se Form 50, had a hearing set
3 and that hearing did not go forward; the nature of that
4 hearing not going forward is part of the issue. And
5 subsequently the Claimant obtained counsel in my -- in
6 the name of myself and I filed a Form 50 and we had a
7 hearing and we tried the case on the notice. The issue
8 was the -- a Form 51 was not filed with -- at all,
9 actually, in response to the pro se 50. A Form 51 was
10 filed by Defense counsel in response to the Form 50 I
11 filed, and I argued that notice had been waived.
12 67-603 sub C says if you don't file a 51 within thirty
13 (30) days you shall forfeit the notice defense.
14 Defense argued that by virtue of filing the second 50 I
15 had revived the forfeited defense and Brandon then had
16 the opportunity to raise the defense. Obviously this
17 -- Brandon didn't get involved in this case until --
18 until -- until he got my 50 and so, that should be
19 said. At any rate, the Commissioner concluded that by
20 filing the second 50 I revived the opportunity to raise
21 the notice defense; I've appealed that as well as the
22 determination of notice. I'm going to speak as --
23 first, as to this issue of reviving a forfeited
24 defense. 67-603 sub C is unequivocal; it says if you
25 don't file a 51 in response to a 50 you forfeit --

1 shall forfeit the defense of notice, among other
2 affirmative defenses.

3 Commissioner Wilkerson: Were the 50's
4 on the same issue or were they on separate
5 issues?

6 Mr. Wukela: The same issue, repetitive
7 trauma, bilateral hands. Now, you know, what perhaps
8 is part of the confusion here is, one (1), what
9 happened? Because the Commission found that the
10 Claimant withdrew her Form 50, in the first one, at the
11 pro se hearing. What obviously happened, Commissioner,
12 is the lady got in there and it was obvious that she
13 was pro se and not capable of presenting a repetitive
14 trauma claim and the Commissioner determined that she
15 needed to get a lawyer. But what -- the question is
16 what legally happened? There is no evidence that she
17 withdrew anything. If you look at the activity report,
18 which is found at page 211 of my APA's, the
19 Commission's activity report says, 3/27/14 hearing
20 postponed. Now, there is nothing in the postponement
21 regulation that says by postponing a hearing you revive
22 forfeited defenses but as to the question of fact as to
23 what happened, there is no evidence of fact that the
24 Claimant withdrew anything at any point, and the only
25 evidence as to what happened at that hearing in the

1 record is the activity report that says the hearing was
2 postponed. Now, as to the question of law, is there
3 any law that says if you withdraw a Form 50 that you
4 revive forfeited defenses? And by the way, I don't
5 think that the -- the Defense has ever argued that they
6 failed to file a 51 in response to the first 50 or that
7 67-603 says that the -- the defense was forfeited; the
8 question is whether it was revived by some mechanism of
9 law and fact. The Form 50, of course, does two (2)
10 things: It files a -- it can file a claim and it can
11 request a hearing. Regulation 67-206 speaks to claim
12 filing and it says, of course, you file a claim by
13 filing a Form 50; nothing in the regulation 67-206 or
14 otherwise talks about withdrawing a claim. It's
15 similar to what you would do in Common Pleas in a
16 non-suit; there is no regulation that speaks to
17 voluntary non-suit, withdrawing a claim. And my
18 argument would be, I don't know that there is any way
19 that you can withdraw a claim and if you haven't -- the
20 51 -- the defenses raised in the 51 are in response to
21 the claim, and if you can't withdraw a claim, and
22 obviously there's no facts that she did withdraw a
23 claim or withdraw anything, then you can't have revived
24 the ability to respond to a claim. 67-207 speaks to
25 hearing requests. Now, of course, hearing requests are

1 -- are generated by filing a Form 50 and you can
2 request a claim without requesting a hearing, and you
3 can request a hearing having already requested a claim
4 and so forth, and so on. 67-609 does speak to
5 withdrawing a hearing request. Now, there's no
6 regulation that talks about withdrawing a claim, but
7 67-609 does speak to withdrawing a hearing request and
8 in particular that regulation says, when one withdraws
9 a hearing request it is without prejudice to the
10 Claimant's right to proceed with his or her claim;
11 that's 67-609 sub B. So, 67-609 sub B seems to say you
12 can withdraw a request for a hearing but that doesn't
13 affect or prejudice your claim in any way. Again, this
14 is assuming she withdrew anything, which the facts
15 don't support. 67-609 sub C, the regulation that
16 governs withdrawing a hearing request, does say that if
17 you withdraw a hearing request a second time without
18 good cause it may operate as a voluntary dismissal of
19 the claim; that is if it was done more than once and
20 withdrawn for the purpose of delay. Well, obviously,
21 nobody is alleging that anything was withdrawn more
22 than once; therefore, that doesn't come into play and
23 that's the only section of the regulations I can find
24 anywhere or in the law anywhere I can find where it
25 speaks to the issue of a claim being withdrawn

1 voluntarily or involuntarily. Therefore, Commissioner,
2 my contention is it was error of fact in law; there is
3 no factual support for the conclusion that the Claimant
4 withdrew anything and, secondly, even assuming she had
5 withdrawn her -- her request for a hearing, the hearing
6 request withdrawal regulation specifically says that
7 such withdrawals are without prejudice and they don't
8 speak to dismissing claims unless hearing requests are
9 withdrawn on more than one occasion.

10 Commissioner Beck: How do we -- excuse
11 me, how do we not interpret it to mean that
12 the proceeding is before, it's being heard
13 before us; the 50 was being heard before
14 Commissioner McCaskill?

15 Mr. Wukela: Well, I'll -- I'll speak to
16 that, Commissioner. The claim that was heard
17 before Commissioner McCaskill is precisely
18 the same Workers' Compensation claim number
19 that the Claimant filed initially.

20 Commissioner Beck: But on a different
21 pleading?

22 Mr. Wukela: On a different pleading,
23 that's true. But remember, Commissioner, it
24 comes down to this issue of what does a 50
25 do? A 50 makes a claim, a 50 requests a

1 hearing. And I submit if we had the separate
2 form that requested a hearing --

3 Commissioner Beck: But -- but the 51 is
4 the Employer's answer to your request and we
5 have --

6 Mr. Wukela: -- to my claim.

7 Commissioner Beck: -- that's right, to
8 your -- to your request. It's called an
9 Employer's Answer to a Request for Hearing.

10 Mr. Wukela: Right, Commissioner, but in
11 that initial --

12 Commissioner Beck: In 67-603.

13 Mr. Wukela: -- yes, that's correct,
14 Commissioner. But in that initial 50 they
15 are required to plead defenses to the claim
16 and I would make it -- equate it a -- an
17 answer to a complaint; I mean, that's --
18 that's what it is as matter of pleadings.
19 You file your complaint, you -- you plead
20 your answer within a certain timeline and
21 that's your answer to the complaint. And
22 once you've answered the claim you may
23 procedurally have hearings on that --

24 Commissioner Beck: But in your scenario
25 we don't keep -- we don't get to file another

1 complaint, another complaint, another
2 complaint.

3 Mr. Wukela: -- that's correct.

4 Commissioner Beck: You didn't file for
5 a hearing, another hearing, and another
6 hearing.

7 Mr. Wukela: Correct. But that's
8 different than the claim. The claim has been
9 made when that pro se 50 was filed and 67 --

10 Commissioner Wilkerson: Is your
11 position that but for the notice it's
12 compensable?

13 Mr. Wukela: -- that was stipulated at
14 the hearing, Commissioner.

15 Commissioner Wilkerson: Well, I -- that
16 was what I read the order to say; I just
17 wanted to make -- I was going to ask you that
18 as well.

19 Mr. Wukela: No, sir. So, notice is the
20 issue. And -- and -- but let me -- and I
21 understand, kind of, your confusion,
22 Commissioner, but we're not filing repeated
23 claims; we're asking for hearings but once
24 the claim is filed, the claim is filed.
25 Otherwise, potentially you might have a

1 statute problem if you -- if you withdrew
2 your request for a hearing.

3 Commissioner Beck: Okay. What -- what
4 I'm -- and I know I'm about to chew into your
5 time.

6 Mr. Wukela: No, no, no.

7 Commissioner Beck: What I'm trying to
8 get to is, that failure to file a 51 is based
9 -- for argument sake, it could be based on
10 the 50 that's before me. It doesn't -- it
11 doesn't talk about claims; it talks about an
12 -- an answer to a hearing request. And the
13 answer to the hearing request that was before
14 the Commissioner at the time was your 50 that
15 had a timely 51 filed to it, not the pro se
16 50 that was filed earlier and we don't know
17 what happened; we know that it's been
18 postponed.

19 Mr. Wukela: And, Commissioner, no doubt
20 that's Defense's argument but what I would
21 say in response is, 67-603 sub C speaks
22 directly to the requirement, its mandatory
23 language, and it does not entertain any
24 exception or caveat or proviso. It doesn't
25 say at a subsequent hearing --

1 Commissioner Beck: And that -- that's
2 -- that's what I'm getting hung up on here is
3 failure to file a 51 within the period in
4 Section B (1), which is filed a 51 or 53
5 replying to each specification a Form 50 or
6 52. They did that.

7 Mr. Wukela: You're reading,
8 Commissioner, I'm sorry, from Rule --
9 Regulation 67-603?

10 Commissioner Beck: Yes.

11 Mr. Wukela: Yes, sir. Yes, sir.

12 Commissioner Beck: And then it goes on
13 to say failure to file the 51 within the
14 period in Section B (1) shall be deemed a
15 general denial of liability. It's not
16 talking about claims. It's not talking about
17 responding to a claim; it's -- it's talking
18 about responding to a request for a hearing.

19 Mr. Wukela: well, you -- you -- it --
20 well, Commissioner, it says, respond to a Form 50 --
21 and perhaps the confusion comes from the fact that a
22 Form 50 files both a claim and a request for hearing.
23 But consider the -- consider the -- the converse. Say
24 you have a situation where a Claimant files a -- a pro
25 se -- or files a Form 50 without requesting a hearing,

1 Defendants answer with a 51 defending on statute of
2 limitations and notice and so forth; then a subsequent
3 50 is filed to request a hearing and a timely 51 isn't
4 filed, I think the Defense would certainly argue, we
5 answered the claim; in -- in the sense of a complaint
6 being filed and an answer being filed responding to
7 these claims with affirmative defenses, we've done
8 that. To read it the other way, Commissioner, would
9 render that section pretty meaningless because all that
10 we would be required was -- for example, if a Claimant
11 had filed a 50 with a claim and no request for hearing,
12 that section would be meaningless because the next time
13 -- when they requested a hearing they would renew the
14 opportunity to raise those affirmative defenses ad
15 infinitum. The statute is pretty unequivocal and
16 pretty mandatory in its language requiring, if you're
17 going to raise these notices you do them within thirty
18 (30) days of the time the claim is made.

19 Commissioner Taylor: And all of this is
20 really assuming that that first 50 has been
21 -- was withdrawn, which it may not have been.
22 But my question is then, did you -- did you
23 -- when you filed the second 50 do you know
24 what happened to the first 50?

25 Mr. Wukela: I don't, Commissioner. In

1 fact, when I came into this situation the Claimant
2 says, you know, I had this hearing set, it didn't go
3 forward; the Commissioner asked -- told me -- told me
4 to get a lawyer. And so I filed -- I did the only
5 thing you can do, which is request a hearing. Of
6 course, the Commission's website says that the hearing
7 was postponed and, again, that goes to the factual
8 issue that the Commissioner raises that -- the
9 Commissioner below made this decision based on the
10 conclusion -- a factual and a legal conclusion.
11 Factual conclusion that the 50, whether it was a
12 request -- a -- a hearing request or a claim, had been
13 withdrawn and, two (2), that that revived forfeited
14 defenses. Factually, I think there is no evidence to
15 support that anything was withdrawn; the only evidence
16 is the Commission's activity report that says it was
17 postponed. And if I -- I submit, Commissioner, if you
18 -- if you find that that is the only fact and that the
19 hearing was simply postponed, you don't get into this
20 other issue. Obviously, your -- the answer to what
21 happened to that 50, is you were there on that 50 and
22 the hearing was postponed. The second --

23 Commissioner Beck: Whoa, wait, your
24 time is up.

25 Commissioner Wilkerson: Your time is

1 up.

2 Mr. Wukela: -- I -- I'm very sorry,
3 Commissioner, and I -- I --

4 Commissioner Taylor: You'll still have
5 three (3) minutes.

6 Commissioner Wilkerson: You've got
7 three (3) minutes.

8 Mr. Hylton: Thank you, Commissioner.

9 ARGUMENT FOR THE RESPONDENT

10 By Mr. Hylton:

11 Speaking to the notice issue in this claim, we did
12 go to the first hearing on that one and the Claimant
13 did elect to withdraw her Form 50 at that time in order
14 to go forth and get an attorney. So, you've got --

15 Commissioner Taylor: Wait, you said
16 withdrawn, was it --

17 Commissioner Beck: It was postponed.

18 Commissioner Taylor: -- well, which one
19 was it?

20 Commissioner Beck: Wait a second, we're
21 not accepting additional evidence into the
22 record, I mean --

23 Mr. Hylton: -- well --

24 Commissioner Taylor: Well, that is an
25 unusual question; I understand.

1 Mr. Hylton: -- I interpreted it as -- I
2 interpreted it as to be a withdrawn hearing. Now, it
3 does say postponed in there; I get that. But I don't
4 think it matters either way, you know, whether it was
5 either postponed or withdrawn and I'll tell you why.
6 Because there was a new Form 50 filed and the new Form
7 50 is different from the original Form 50. The
8 original Form 50 alleged an injury by accident, and it
9 alleged not repetitive trauma injury by accident,
10 alleged injury to her hands, it noted a date of
11 accident of June 28th, 2013, and said she gave notice
12 on the same day. Mr. Wukela files another Form 50
13 after that one -- again, we say it was withdrawn,
14 postponed, whichever one you want to say -- on July
15 3rd, 2014, they have now a claim of repetitive trauma;
16 which wasn't there in the first one. They now have a
17 date of accident of November 17th, 2013, and, again,
18 they're now alleging injuries to both wrists and the
19 neck and don't even mention the hands. So, we have a
20 whole different filing. This isn't I'm just refilling
21 that Form 50 that -- that was postponed or withdrawn in
22 the original hearing. He filed a new set of facts, a
23 new set of hearing and -- and it doesn't matter even if
24 it was postponed, it was the same one; it's a new Form
25 50 there, we have the right to respond to it. He is

1 talking about notice of claims; that's not what 67-603
2 says. It's not to response to the claim; it's a
3 response to a notice of hearing. We responded timely
4 to that notice of hearing. So, if they amended it, we
5 would have the timeline to amend. Under his scenario
6 they could file a Form 50 and then backdate and change
7 the date of -- of injury and if there is no response
8 then -- or the initial pleading didn't mention a -- a
9 notice of defense they would claim, no, no you've
10 waited; it just doesn't make sense that way. You get
11 to respond to the request for hearing before you. We
12 were on the request for hearing the Commissioner --
13 that Mr. Wukela filed in front of Commissioner
14 McCaskill. We were not in front of Commissioner
15 McCaskill on the Claimant's pro se Form 50; so, we've
16 timely answered that. Again, getting to the point, you
17 know, I believe that -- that we're here on his -- the
18 notice of defense. Again, we've alleged and -- and
19 stated that notice is to the defense. We believe King
20 controls in that case. In that case they said that
21 notice was when the injured employee discovers or
22 should have discovered that he qualifies to receive
23 benefits from medical care for treatment or disability
24 due to his condition. So, King kind of really is a two
25 (2) part test, one, the Claimant has to believe, and

1 then two (2), he has to act on his belief. And King
2 says, King's condition was not compensable until it
3 either required medical care or interfered with his
4 ability to perform his job, whichever occurred first.
5 Well, in this case the Claimant received medical
6 treatment on November 20th, 2012. She told the doctor
7 about shaking in her hands, said that she was using
8 hand braces, told four (4) years ago that she had
9 carpal tunnel in her hand, she was diagnosed with
10 bilateral -- or with carpal tunnel syndrome and she was
11 advised to continue using her wrist braces and was
12 referred to an ortho for surgery and given a -- a
13 prescription for Naproxen. She testified in November
14 of 2012, that she was having pain in both of her hands;
15 she said that it was burning and tingling and that she
16 would shake her hands at night. And she testified that
17 she believed the pain was coming from her work in
18 November, 2012; that's the transcript hearing, page 33,
19 line 16 through page 34, line 1. So, in this case you
20 have a lady who believes that she had carpal tunnel in
21 her hands, has pain in her hands, and King says that's
22 not enough; it says she must act on it. And again, he
23 says, medical treatment; that was the -- that's the key
24 there is medical treatment. She went for the medical
25 treatment, she was wearing a brace, she got an ortho

1 referral in 2012, and, again, there was no report to
2 her employer until June 28th of 2013. So, we believe
3 the notice defense, one, was properly raised as the
4 answers in 31 of -- of the request for hearing that we
5 were on at the hearing, and we believe that we've met
6 the requirements as the Supreme Court laid out in King.
7 So, you know, with that said, unless there are any
8 questions I'll relinquish the rest of my time.

9 Mr. Wukela: Thank you, Commissioner.

10 REPLY FOR THE APPELLANT

11 By Mr. Wukela:

12 I'd like to take my additional time to respond to
13 King. Certainly assuming that the defense is properly
14 before you, King is the law as handed down from the
15 Appellant Court thus far. It says that the -- the time
16 limit begins to run when the employee discovers he
17 qualifies to receive benefits; that is to say he
18 discovers he's entitled -- qualified to receive
19 compensation or medical treatment for the repetitive
20 trauma injury. Now, that begs the question of, when
21 then does the Claimant discover that they have a
22 repetitive trauma injury? The order and the Defense
23 rely on the fact that the Claimant testified that she
24 knew sometime in the past that she was having pain in
25 her wrists and she believed it was coming from work,

1 and that they contend that that gave her notice she was
2 suffering from a repetitive trauma injury. Now, King
3 says that's not good enough. In fact, King was -- the
4 court in King was confronted with exactly that issue --
5 I discuss this, Commissioners, at page 5 of my brief --
6 and they say there -- I'm sorry; I think I've pointed
7 you to the wrong page, page 11 of my brief. They said
8 there that the fact that the Claimant there, he -- he
9 believed his arm ached because he worked slinging a
10 hammer all day. However, the Court of Appeals said a
11 mere work related ache does not constitute a
12 compensable condition regardless of whether the
13 employee later develops an injury. The Act requires an
14 injured employee be diligent but not prescient. So,
15 the question becomes then, when did the Claimant have
16 medical evidence that they had a condition that was
17 work related? Not when they feel pain and believe it
18 was work related; the court in King said that's not
19 enough. The question is when did they have medical
20 evidence that they had a work related injury? By the
21 way, that's also what this court -- the -- the law
22 tells us -- 42-1-172 tells us is necessary to have a
23 repetitive trauma injury, causal connection by medical
24 evidence. well, the -- the doctor she saw in 2012,
25 which the order relies upon as notice, Dr. Millon, we

1 have no idea what Dr. Millon told her. Dr. Millon
2 diagnosed her in his record with carpel tunnel syndrome
3 but there is no record in the evidence of what Dr.
4 Millon told her. In fact, I asked her what Dr. Millon
5 told her and the Defense objected and we never found
6 out what Dr. Millon told her or didn't tell her. I
7 didn't go further, frankly, because the -- it's the
8 Defense's obligation to prove that she had knowledge at
9 that point and since we don't know what Dr. Millon told
10 her I submit the order was in error in relying on that
11 visit as evidence that she knew she had a condition
12 that was work related. If I might just finish my
13 thought, Commissioner?

14 Commissioner Beck: Finish your thought.

15 Mr. Wukela: I -- I also submit, Commissioners,
16 that there is no other medical evidence in the record
17 that Claimant was ever told that she had a -- a
18 repetitive trauma injury that was related to her work
19 prior to the time that she gave notice and everybody
20 admits she gave notice.

21 Commissioner Beck: Thank you,
22 gentlemen. That will conclude this proceeding.

23 (There being no further discussion, the hearing concluded at

24 3:06 P.M.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Full Board Hearing of Kathy Staton, vs. Mohawk Industries;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 22 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 21st Day of August, 2015.

Gloria G. Davis
 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1315636

KATHY STATON	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	FULL BOARD HEARING OF
MOHAWK INDUSTRIES	)	
	)	KATHY STATON
EMPLOYER,	)	
AND	)	VS
	)	
LIBERTY INSURANCE	)	MOHAWK INDUSTRIES
	)	
<u>CARRIER.</u>	)	

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Kathy Staton versus Mohawk Industries, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:44 P.M., Monday, May 18, 2015, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

APPEARANCES

FOR THE APPELLANT:
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FOR THE RESPONDENT:
J. Brandon Hylton, Esquire
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P.O. Box 7489
Florence, SC 29502

COMMISSIONERS PRESENT:

T. Scott Beck, Chair
Aisha Taylor
Avery Wilkerson

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

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Argument for the Respondent by Mr. Hylton	16:10
Reply for the Appellant by Mr. Wukela	20:11
Certificate	23

STIPULATIONS

Commissioner Beck: All right, please call the case.

Court Reporter: Today is May 18th, 2015. This is South Carolina Workers' Compensation case number 1315636. This is the case of Kathy Staton, the Claimant versus Mohawk Industries, the Employer and Liberty Insurance is the Carrier. The Appellant is the Claimant represented by Stephen J. Wukela. The Respondent is represented by J. Brandon Hylton. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner McCaskill.

Commissioner Beck: Mr. Wukela?

Mr. Wukela: Thank you, Commissioners.

ARGUMENT FOR THE APPELLANT

By Mr. Wukela:

I won't burden this case overly with the facts, obviously you all have read the briefs, but this is a pretty straight forward case. Repetitive trauma tried

1 purely on the notice issue. Carpel tunnel syndrome,
2 the Claimant filed a pro se Form 50, had a hearing set
3 and that hearing did not go forward; the nature of that
4 hearing not going forward is part of the issue. And
5 subsequently the Claimant obtained counsel in my -- in
6 the name of myself and I filed a Form 50 and we had a
7 hearing and we tried the case on the notice. The issue
8 was the -- a Form 51 was not filed with -- at all,
9 actually, in response to the pro se 50. A Form 51 was
10 filed by Defense counsel in response to the Form 50 I
11 filed, and I argued that notice had been waived.
12 67-603 sub C says if you don't file a 51 within thirty
13 (30) days you shall forfeit the notice defense.
14 Defense argued that by virtue of filing the second 50 I
15 had revived the forfeited defense and Brandon then had
16 the opportunity to raise the defense. Obviously this
17 -- Brandon didn't get involved in this case until --
18 until -- until he got my 50 and so, that should be
19 said. At any rate, the Commissioner concluded that by
20 filing the second 50 I revived the opportunity to raise
21 the notice defense; I've appealed that as well as the
22 determination of notice. I'm going to speak as --
23 first, as to this issue of reviving a forfeited
24 defense. 67-603 sub C is unequivocal; it says if you
25 don't file a 51 in response to a 50 you forfeit --

1 shall forfeit the defense of notice, among other
2 affirmative defenses.

3 Commissioner Wilkerson: Were the 50's
4 on the same issue or were they on separate
5 issues?

6 Mr. Wukela: The same issue, repetitive
7 trauma, bilateral hands. Now, you know, what perhaps
8 is part of the confusion here is, one (1), what
9 happened? Because the Commission found that the
10 Claimant withdrew her Form 50, in the first one, at the
11 pro se hearing. What obviously happened, Commissioner,
12 is the lady got in there and it was obvious that she
13 was pro se and not capable of presenting a repetitive
14 trauma claim and the Commissioner determined that she
15 needed to get a lawyer. But what -- the question is
16 what legally happened? There is no evidence that she
17 withdrew anything. If you look at the activity report,
18 which is found at page 211 of my APA's, the
19 Commission's activity report says, 3/27/14 hearing
20 postponed. Now, there is nothing in the postponement
21 regulation that says by postponing a hearing you revive
22 forfeited defenses but as to the question of fact as to
23 what happened, there is no evidence of fact that the
24 Claimant withdrew anything at any point, and the only
25 evidence as to what happened at that hearing in the

1 record is the activity report that says the hearing was
2 postponed. Now, as to the question of law, is there
3 any law that says if you withdraw a Form 50 that you
4 revive forfeited defenses? And by the way, I don't
5 think that the -- the Defense has ever argued that they
6 failed to file a 51 in response to the first 50 or that
7 67-603 says that the -- the defense was forfeited; the
8 question is whether it was revived by some mechanism of
9 law and fact. The Form 50, of course, does two (2)
10 things: It files a -- it can file a claim and it can
11 request a hearing. Regulation 67-206 speaks to claim
12 filing and it says, of course, you file a claim by
13 filing a Form 50; nothing in the regulation 67-206 or
14 otherwise talks about withdrawing a claim. It's
15 similar to what you would do in Common Pleas in a
16 non-suit; there is no regulation that speaks to
17 voluntary non-suit, withdrawing a claim. And my
18 argument would be, I don't know that there is any way
19 that you can withdraw a claim and if you haven't -- the
20 51 -- the defenses raised in the 51 are in response to
21 the claim, and if you can't withdraw a claim, and
22 obviously there's no facts that she did withdraw a
23 claim or withdraw anything, then you can't have revived
24 the ability to respond to a claim. 67-207 speaks to
25 hearing requests. Now, of course, hearing requests are

1 -- are generated by filing a Form 50 and you can
2 request a claim without requesting a hearing, and you
3 can request a hearing having already requested a claim
4 and so forth, and so on. 67-609 does speak to
5 withdrawing a hearing request. Now, there's no
6 regulation that talks about withdrawing a claim, but
7 67-609 does speak to withdrawing a hearing request and
8 in particular that regulation says, when one withdraws
9 a hearing request it is without prejudice to the
10 Claimant's right to proceed with his or her claim;
11 that's 67-609 sub B. So, 67-609 sub B seems to say you
12 can withdraw a request for a hearing but that doesn't
13 affect or prejudice your claim in any way. Again, this
14 is assuming she withdrew anything, which the facts
15 don't support. 67-609 sub C, the regulation that
16 governs withdrawing a hearing request, does say that if
17 you withdraw a hearing request a second time without
18 good cause it may operate as a voluntary dismissal of
19 the claim; that is if it was done more than once and
20 withdrawn for the purpose of delay. Well, obviously,
21 nobody is alleging that anything was withdrawn more
22 than once; therefore, that doesn't come into play and
23 that's the only section of the regulations I can find
24 anywhere or in the law anywhere I can find where it
25 speaks to the issue of a claim being withdrawn

1 voluntarily or involuntarily. Therefore, Commissioner,
2 my contention is it was error of fact in law; there is
3 no factual support for the conclusion that the Claimant
4 withdrew anything and, secondly, even assuming she had
5 withdrawn her -- her request for a hearing, the hearing
6 request withdrawal regulation specifically says that
7 such withdrawals are without prejudice and they don't
8 speak to dismissing claims unless hearing requests are
9 withdrawn on more than one occasion.

10 Commissioner Beck: How do we -- excuse
11 me, how do we not interpret it to mean that
12 the proceeding is before, it's being heard
13 before us; the 50 was being heard before
14 Commissioner McCaskill?

15 Mr. Wukela: Well, I'll -- I'll speak to
16 that, Commissioner. The claim that was heard
17 before Commissioner McCaskill is precisely
18 the same workers' Compensation claim number
19 that the Claimant filed initially.

20 Commissioner Beck: But on a different
21 pleading?

22 Mr. Wukela: On a different pleading,
23 that's true. But remember, Commissioner, it
24 comes down to this issue of what does a 50
25 do? A 50 makes a claim, a 50 requests a

1 hearing. And I submit if we had the separate
2 form that requested a hearing --

3 Commissioner Beck: But -- but the 51 is
4 the Employer's answer to your request and we
5 have --

6 Mr. Wukela: -- to my claim.

7 Commissioner Beck: -- that's right, to
8 your -- to your request. It's called an
9 Employer's Answer to a Request for Hearing.

10 Mr. Wukela: Right, Commissioner, but in
11 that initial --

12 Commissioner Beck: In 67-603.

13 Mr. Wukela: -- yes, that's correct,
14 Commissioner. But in that initial 50 they
15 are required to plead defenses to the claim
16 and I would make it -- equate it a -- an
17 answer to a complaint; I mean, that's --
18 that's what it is as matter of pleadings.
19 You file your complaint, you -- you plead
20 your answer within a certain timeline and
21 that's your answer to the complaint. And
22 once you've answered the claim you may
23 procedurally have hearings on that --

24 Commissioner Beck: But in your scenario
25 we don't keep -- we don't get to file another

1 complaint, another complaint, another
2 complaint.

3 Mr. Wukela: -- that's correct.

4 Commissioner Beck: You didn't file for
5 a hearing, another hearing, and another
6 hearing.

7 Mr. Wukela: Correct. But that's
8 different than the claim. The claim has been
9 made when that pro se 50 was filed and 67 --

10 Commissioner Wilkerson: Is your
11 position that but for the notice it's
12 compensable?

13 Mr. Wukela: -- that was stipulated at
14 the hearing, Commissioner.

15 Commissioner Wilkerson: Well, I -- that
16 was what I read the order to say; I just
17 wanted to make -- I was going to ask you that
18 as well.

19 Mr. Wukela: No, sir. So, notice is the
20 issue. And -- and -- but let me -- and I
21 understand, kind of, your confusion,
22 Commissioner, but we're not filing repeated
23 claims; we're asking for hearings but once
24 the claim is filed, the claim is filed.
25 Otherwise, potentially you might have a

1 statute problem if you -- if you withdrew
2 your request for a hearing.

3 Commissioner Beck: Okay. What -- what
4 I'm -- and I know I'm about to chew into your
5 time.

6 Mr. Wukela: No, no, no.

7 Commissioner Beck: What I'm trying to
8 get to is, that failure to file a 51 is based
9 -- for argument sake, it could be based on
10 the 50 that's before me. It doesn't -- it
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20 that's Defense's argument but what I would
21 say in response is, 67-603 sub C speaks
22 directly to the requirement, its mandatory
23 language, and it does not entertain any
24 exception or caveat or proviso. It doesn't
25 say at a subsequent hearing --

1 Commissioner Beck: And that -- that's
2 -- that's what I'm getting hung up on here is
3 failure to file a 51 within the period in
4 Section B (1), which is filed a 51 or 53
5 replying to each specification a Form 50 or
6 52. They did that.

7 Mr. Wukela: You're reading,
8 Commissioner, I'm sorry, from Rule --
9 Regulation 67-603?

10 Commissioner Beck: Yes.

11 Mr. Wukela: Yes, sir. Yes, sir.

12 Commissioner Beck: And then it goes on
13 to say failure to file the 51 within the
14 period in Section B (1) shall be deemed a
15 general denial of liability. It's not
16 talking about claims. It's not talking about
17 responding to a claim; it's -- it's talking
18 about responding to a request for a hearing.

19 Mr. Wukela: Well, you -- you -- it --
20 well, Commissioner, it says, respond to a Form 50 --
21 and perhaps the confusion comes from the fact that a
22 Form 50 files both a claim and a request for hearing.
23 But consider the -- consider the -- the converse. Say
24 you have a situation where a Claimant files a -- a pro
25 se -- or files a Form 50 without requesting a hearing,

1 Defendants answer with a 51 defending on statute of
2 limitations and notice and so forth; then a subsequent
3 50 is filed to request a hearing and a timely 51 isn't
4 filed, I think the Defense would certainly argue, we
5 answered the claim; in -- in the sense of a complaint
6 being filed and an answer being filed responding to
7 these claims with affirmative defenses, we've done
8 that. To read it the other way, Commissioner, would
9 render that section pretty meaningless because all that
10 we would be required was -- for example, if a Claimant
11 had filed a 50 with a claim and no request for hearing,
12 that section would be meaningless because the next time
13 -- when they requested a hearing they would renew the
14 opportunity to raise those affirmative defenses ad
15 infinitum. The statute is pretty unequivocal and
16 pretty mandatory in its language requiring, if you're
17 going to raise these notices you do them within thirty
18 (30) days of the time the claim is made.

19 Commissioner Taylor: And all of this is
20 really assuming that that first 50 has been
21 -- was withdrawn, which it may not have been.
22 But my question is then, did you -- did you
23 -- when you filed the second 50 do you know
24 what happened to the first 50?

25 Mr. Wukela: I don't, Commissioner. In

1 fact, when I came into this situation the Claimant
2 says, you know, I had this hearing set, it didn't go
3 forward; the Commissioner asked -- told me -- told me
4 to get a lawyer. And so I filed -- I did the only
5 thing you can do, which is request a hearing. Of
6 course, the Commission's website says that the hearing
7 was postponed and, again, that goes to the factual
8 issue that the Commissioner raises that -- the
9 Commissioner below made this decision based on the
10 conclusion -- a factual and a legal conclusion.
11 Factual conclusion that the 50, whether it was a
12 request -- a -- a hearing request or a claim, had been
13 withdrawn and, two (2), that that revived forfeited
14 defenses. Factually, I think there is no evidence to
15 support that anything was withdrawn; the only evidence
16 is the Commission's activity report that says it was
17 postponed. And if I -- I submit, Commissioner, if you
18 -- if you find that that is the only fact and that the
19 hearing was simply postponed, you don't get into this
20 other issue. Obviously, your -- the answer to what
21 happened to that 50, is you were there on that 50 and
22 the hearing was postponed. The second --

23 Commissioner Beck: Whoa, wait, your
24 time is up.

25 Commissioner Wilkerson: Your time is

1 up.

2 Mr. Wukela: -- I -- I'm very sorry,
3 Commissioner, and I -- I --

4 Commissioner Taylor: You'll still have
5 three (3) minutes.

6 Commissioner Wilkerson: You've got
7 three (3) minutes.

8 Mr. Hylton: Thank you, Commissioner.

9 ARGUMENT FOR THE RESPONDENT

10 By Mr. Hylton:

11 Speaking to the notice issue in this claim, we did
12 go to the first hearing on that one and the Claimant
13 did elect to withdraw her Form 50 at that time in order
14 to go forth and get an attorney. So, you've got --

15 Commissioner Taylor: Wait, you said
16 withdrawn, was it --

17 Commissioner Beck: It was postponed.

18 Commissioner Taylor: -- well, which one
19 was it?

20 Commissioner Beck: Wait a second, we're
21 not accepting additional evidence into the
22 record, I mean --

23 Mr. Hylton: -- well --

24 Commissioner Taylor: Well, that is an
25 unusual question; I understand.

1 Mr. Hylton: -- I interpreted it as -- I
2 interpreted it as to be a withdrawn hearing. Now, it
3 does say postponed in there; I get that. But I don't
4 think it matters either way, you know, whether it was
5 either postponed or withdrawn and I'll tell you why.
6 Because there was a new Form 50 filed and the new Form
7 50 is different from the original Form 50. The
8 original Form 50 alleged an injury by accident, and it
9 alleged not repetitive trauma injury by accident,
10 alleged injury to her hands, it noted a date of
11 accident of June 28th, 2013, and said she gave notice
12 on the same day. Mr. Wukela files another Form 50
13 after that one -- again, we say it was withdrawn,
14 postponed, whichever one you want to say -- on July
15 3rd, 2014, they have now a claim of repetitive trauma;
16 which wasn't there in the first one. They now have a
17 date of accident of November 17th, 2013, and, again,
18 they're now alleging injuries to both wrists and the
19 neck and don't even mention the hands. So, we have a
20 whole different filing. This isn't I'm just refilling
21 that Form 50 that -- that was postponed or withdrawn in
22 the original hearing. He filed a new set of facts, a
23 new set of hearing and -- and it doesn't matter even if
24 it was postponed, it was the same one; it's a new Form
25 50 there, we have the right to respond to it. He is

1 talking about notice of claims; that's not what 67-603
2 says. It's not to response to the claim; it's a
3 response to a notice of hearing. We responded timely
4 to that notice of hearing. So, if they amended it, we
5 would have the timeline to amend. Under his scenario
6 they could file a Form 50 and then backdate and change
7 the date of -- of injury and if there is no response
8 then -- or the initial pleading didn't mention a -- a
9 notice of defense they would claim, no, no you've
10 waited; it just doesn't make sense that way. You get
11 to respond to the request for hearing before you. We
12 were on the request for hearing the Commissioner --
13 that Mr. Wukela filed in front of Commissioner
14 McCaskill. We were not in front of Commissioner
15 McCaskill on the Claimant's pro se Form 50; so, we've
16 timely answered that. Again, getting to the point, you
17 know, I believe that -- that we're here on his -- the
18 notice of defense. Again, we've alleged and -- and
19 stated that notice is to the defense. We believe King
20 controls in that case. In that case they said that
21 notice was when the injured employee discovers or
22 should have discovered that he qualifies to receive
23 benefits from medical care for treatment or disability
24 due to his condition. So, King kind of really is a two
25 (2) part test, one, the Claimant has to believe, and

1 then two (2), he has to act on his belief. And King
2 says, King's condition was not compensable until it
3 either required medical care or interfered with his
4 ability to perform his job, whichever occurred first.
5 Well, in this case the Claimant received medical
6 treatment on November 20th, 2012. She told the doctor
7 about shaking in her hands, said that she was using
8 hand braces, told four (4) years ago that she had
9 carpal tunnel in her hand, she was diagnosed with
10 bilateral -- or with carpal tunnel syndrome and she was
11 advised to continue using her wrist braces and was
12 referred to an ortho for surgery and given a -- a
13 prescription for Naproxen. She testified in November
14 of 2012, that she was having pain in both of her hands;
15 she said that it was burning and tingling and that she
16 would shake her hands at night. And she testified that
17 she believed the pain was coming from her work in
18 November, 2012; that's the transcript hearing, page 33,
19 line 16 through page 34, line 1. So, in this case you
20 have a lady who believes that she had carpal tunnel in
21 her hands, has pain in her hands, and King says that's
22 not enough; it says she must act on it. And again, he
23 says, medical treatment; that was the -- that's the key
24 there is medical treatment. She went for the medical
25 treatment, she was wearing a brace, she got an ortho

1 referral in 2012, and, again, there was no report to
2 her employer until June 28th of 2013. So, we believe
3 the notice defense, one, was properly raised as the
4 answers in 31 of -- of the request for hearing that we
5 were on at the hearing, and we believe that we've met
6 the requirements as the Supreme Court laid out in King.
7 So, you know, with that said, unless there are any
8 questions I'll relinquish the rest of my time.

9 Mr. Wukela: Thank you, Commissioner.

10 REPLY FOR THE APPELLANT

11 By Mr. Wukela:

12 I'd like to take my additional time to respond to
13 King. Certainly assuming that the defense is properly
14 before you, King is the law as handed down from the
15 Appellant Court thus far. It says that the -- the time
16 limit begins to run when the employee discovers he
17 qualifies to receive benefits; that is to say he
18 discovers he's entitled -- qualified to receive
19 compensation or medical treatment for the repetitive
20 trauma injury. Now, that begs the question of, when
21 then does the Claimant discover that they have a
22 repetitive trauma injury? The order and the Defense
23 rely on the fact that the Claimant testified that she
24 knew sometime in the past that she was having pain in
25 her wrists and she believed it was coming from work,

1 and that they contend that that gave her notice she was
2 suffering from a repetitive trauma injury. Now, King
3 says that's not good enough. In fact, King was -- the
4 court in King was confronted with exactly that issue --
5 I discuss this, Commissioners, at page 5 of my brief --
6 and they say there -- I'm sorry; I think I've pointed
7 you to the wrong page, page 11 of my brief. They said
8 there that the fact that the Claimant there, he -- he
9 believed his arm ached because he worked slinging a
10 hammer all day. However, the Court of Appeals said a
11 mere work related ache does not constitute a
12 compensable condition regardless of whether the
13 employee later develops an injury. The Act requires an
14 injured employee be diligent but not prescient. So,
15 the question becomes then, when did the Claimant have
16 medical evidence that they had a condition that was
17 work related? Not when they feel pain and believe it
18 was work related; the court in King said that's not
19 enough. The question is when did they have medical
20 evidence that they had a work related injury? By the
21 way, that's also what this court -- the -- the law
22 tells us -- 42-1-172 tells us is necessary to have a
23 repetitive trauma injury, causal connection by medical
24 evidence. Well, the -- the doctor she saw in 2012,
25 which the order relies upon as notice, Dr. Millon, we

1 have no idea what Dr. Millon told her. Dr. Millon
2 diagnosed her in his record with carpel tunnel syndrome
3 but there is no record in the evidence of what Dr.
4 Millon told her. In fact, I asked her what Dr. Millon
5 told her and the Defense objected and we never found
6 out what Dr. Millon told her or didn't tell her. I
7 didn't go further, frankly, because the -- it's the
8 Defense's obligation to prove that she had knowledge at
9 that point and since we don't know what Dr. Millon told
10 her I submit the order was in error in relying on that
11 visit as evidence that she knew she had a condition
12 that was work related. If I might just finish my
13 thought, Commissioner?

14 Commissioner Beck: Finish your thought.

15 Mr. Wukela: I -- I also submit, Commissioners,
16 that there is no other medical evidence in the record
17 that Claimant was ever told that she had a -- a
18 repetitive trauma injury that was related to her work
19 prior to the time that she gave notice and everybody
20 admits she gave notice.

21 Commissioner Beck: Thank you,
22 gentlemen. That will conclude this proceeding.

23 (There being no further discussion, the hearing concluded at
24 3:06 P.M.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Full Board Hearing of Kathy Staton, vs. Mohawk Industries;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 22 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 21st Day of August, 2015.

Gloria G. Davis
 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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South Carolina Workers' Compensation Commission
1335 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.WCC.SC.gov



NR

WCC File #: 1315636
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Kathleen L. Statton SSN: [REDACTED] Employer's Name: Muhawk
Address: [REDACTED] Address: 2115 Marlboro Rd
City: [REDACTED] State: SC Zip: [REDACTED] City: Bennettsville State: SC Zip: 29517
Home Phone: [REDACTED] Work Phone: [REDACTED] Insurance Carrier: Liberty Mutual
Preparer's Name: [REDACTED] Law Firm: [REDACTED] Preparer's Phone #: [REDACTED]

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
Date of Injury or Illness: 11/13/13

- The claimant sustained an injury to hands (Part(s) of Body Injured) on 11/13/13 (Month/Day/Year) in Marlboro county, state of SC. Body part(s) affected are: NO SURF TAPING INTERF
- Briefly describe how the accident occurred: NO SURF TAPING INTERF
- Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- The relationship of employer and employee existed at the time of injury. yes
- At the time of the injury the claimant was performing services arising out of and in the course of employment. yes
- Notice of the accidental injury was given to the Employer on 11/18/13 (Month/Day/Year) in the following manner:

- ☐ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: [REDACTED]
☐ (b) additional medical examination and treatment for: [REDACTED]

- ☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

- ☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☒ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

- ☐ 9a. ☐ A determination of permanent disability is premature at this time.

- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: None

- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ 20 and demands accounting of days worked and wages earned as provided by law.

- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: Muhawk 2115 Marlboro Rd
Bennettsville SC 29517

11. Further grounds or unusual aspects of claim:

- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Dr James Walker

- 11b. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe:

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

- ☒ 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: [REDACTED]

- ☒ 13b. I am requesting a hearing. A \$25 fee is required.

- ☐ 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. 67-1803.
☐ 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 certify I have served this document pursuant to Reg. 67-211 by delivering a copy to address [REDACTED] on the [REDACTED] day of [REDACTED] 20[REDACTED] by ☐ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature: Kathleen L. Statton Title: BCF Trust mediator Email: [REDACTED] Date: 11/22/13

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

239108

50

NOV 20 2013
JUDICIAL

Employee's Notice of Claim and Request for Hearing

SCWCC

DEC 02 2013

JUDICIAL

100205

105



VCC File #: 1315636
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kathey Staton SSN: [REDACTED] Employer's Name: Mohawk Industries, Inc.
Address: [REDACTED] Address: 160 S. Industrial Blvd.
City: [REDACTED] State: GA Zip: 30701
Home Phone: () - Work Phone: () - Insurance Carrier: Liberty Insurance Corporation

Preparer's Name: Stephen J. Wukela, Esquire Law Firm: Wukela Law Firm Preparer's Phone #: (843) 669 - 5634
A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 11/17/13

☐ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to both wrists and neck (Part(s) of Body Injured) on 11/17/13 (last day of injuries exposure) (Month/Day/Year) in Marlboro county, state of South Carolina.
2. Body part(s) affected are: both wrists and neck
Briefly describe how the accident occurred. Repetitive trauma as a CFN Twist Operator
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 06/28/13 (Month/Day/Year) in the following manner:
Sonny Wood - Supervisor

7. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: both wrist and neck
☒ (b) additional medical examination and treatment for: both wrist and neck

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Various dates and times since 11/17/13

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

- 9a. ☒ A determination of permanent disability is premature at this time.
10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

- 10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

11. Further grounds or unusual aspects of claim: Failure to enter into a compensation agreement; failure to provide medical; failure to pay medical, Claimant requests a 10% penalty pursuant to § 42-9-90, a 25% penalty pursuant to § 42-9-260, and interest pursuant to § 42-9-240 be assessed for said failures. James language requested; lump sum payment of total disability requested.

- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Kurt P. Wohlrab, MD-First Health Surgical Specialties Orthopaedics; James Wallace, MD-Dillon Internal Medicine; Robert W. Moore, MD- Hand Surgery Assoc.; Dr. Matthew D. Welsch, Pee Dee Orthopaedic Assoc.

- 11b. To the best of your knowledge, did you have any prior permanent disability? none
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

- 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 30 mins.

- 3b. I am requesting a hearing. A \$25 fee is required.

- 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. 67-1803.
☐ 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 certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____
on the _____ day of _____, 20____, by ☐ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature: [Signature] Attorney for the Claimant: Stephen@wukelalaw.com
Title: _____ Email: _____ Date: 3 July 2014

Instructions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 01 through 67-615 as well as Reg. 67-1801.



WCC File #: 1315636
Carrier File #: WCS55-C21415
Carrier Code #:
Employer FEIN #:

Claimant's Name: Kathey L. Staton SSN [REDACTED] Employer's Name: Mohawk Industries, Inc.
Address: [REDACTED] Address: Post Office Box 2705
[REDACTED] Dalton, Georgia 30722
Home Phone: _____ Work Phone # _____
Date of Injury: 6/28/13 Insurance Carrier: Liberty Mutual Group
Preparer's Name: J. Brandon Hylton Law Firm McAngus Goudelock & Courie Preparer's Phone #: (843) 519-1802

Date of Injury or Illness: 6/28/13 Estimated time for hearing: 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: Defendants assert Claimant's injury was not caused by repetitive trauma; Claimant failed to provide timely notice.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is ☒ Admitted ☐ Denied at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are: _____
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are: Claimant failed to notify employer within 90 days of when she knew her injury was related to her work.
6. It is ☐ Admitted ☒ Denied the employee ☐ needs ☐ is entitled to additional medical care as a result of injury or illness. The reasons for denial are: See #1 and #5.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of: _____
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are: See No. 1 and #5.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 705.60 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Claimant sought treatment outside of Workers' Compensation system.

☐ 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. 67-1803.
☐ 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.

Preparer's Signature: [Signature] Attorney for Employer/Carrier brandon.hylton@mcclaw.com
Title _____ Email _____

August 1, 2014
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



Claimant's Name: Kathey Staton Employer's Name: Mohawk Industries, LLC
Address: [REDACTED] Address: 160 S. Industrial Blvd.
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Calhoun State: GA Zip: 30701
Home Phone: () - Work Phone: () - Carrier: Liberty Insurance Corporation
Preparer's Name: Stephen J. Wukela, Esquire Preparer's Phone #: (843) 669-5634

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

☐ Injury ☐ Illness ☒ Repetitive Trauma

1. Compensation Rate: \$470.40 2. AWW: \$705.60 Date of Injury: 11/17/2013
3. Type of injury and body part(s): Both wrists.
4. Facts in controversy: See Attached.
5. Legal issues involved: See Attached.
6. Unusual aspects: None
7. Witnesses (designate if expert):* Kathey Staton
8. Exhibits: See Attached.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See Attached.
10. Name, address, and specialty, if any, of the treating physician: Kurt P. Wohlrab, MD-First Health Surgical Specialties Orth.;
James Wallace, MD-Dillon Internal Medicine; Robert W. Moore, MD-Hand Surgery Assoc.; Matthew D. Weisch, MD- Pee Dee Ortho.
Assoc.
11. Impairment rating(s); body part(s); physician and date of opinion: _____
12. I am amending my Form 50/51 in the following manner: Delete neck as body part alleged at this time

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

Signature: [Signature] 9 Sept 2014 Email: Stephen@wukelalaw.com
Date of hearing: October 2, 2014 Time needed for hearing: 30 min.
On behalf of ☒ Claimant ☐ Employer

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.

PROCEDURAL BACKGROUND

This is a denied repetitive trauma case before the Commission on the Claimant's Amended Form 50. The Claimant initially filed a pro se Form 50 on November 14, 2013 listing a date of accident of June 28, 2013. (APA# 12, p.000205). That claim was assigned WCC No. 1315636. No Form 51 Answer was filed. (APA# 13, p. 000211). The hearing was set in that matter for March 26, 2014. Defendants filed a Form 58 Pre-hearing brief prior to the hearing. At the hearing, the case was continued to allow Ms. Staton to retain counsel.

The Claimant subsequently retained Stephen J. Wukela who filed an Amended Form 50, WCC No. 1315636, on July 3, 2014 alleging a date of injury of November 17, 2013 (the last date of injurious exposure) as a result of repetitive trauma to both wrists and neck. (APA#12, p. 000209). The Defense filed a Form 51 on August 1, 2014 denying the accident and notice. (APA#12, p. 000210). The instant hearing was scheduled on those pleadings.

FACTUAL BACKGROUND

Job Description

Claimant was hired with Mohawk Industries as a Twist Operator on February 27, 2006. (APA #12, First Report of Injury, p. 000202). Mohawk operates a facility manufacturing yarns of sorts, a process that primarily involves twisting threads of yarn to create larger threads of yarn.

The Claimant's job as a CFN Twist Operator is described in the Mohawk Job Description as requiring that the employee "must be able to work in a repetitive and fast paced environment." (APA #11, p. 000188). After viewing a video of Claimant's work duties, (APA #14), Dr. Moore, a treating orthopaedic, opined that the work was, indeed, repetitive and fast paced. (APA# 17, Dep. Dr. Moore, p. 21, Lines 20-25).

Claimant's job involves essentially three elements: The first, creeling, involves placing spools of yarn onto the machine frame to be spun and tying the yarn into the process. The second job, doffing, involves removing from the machine spun spools of yarn. Third, the Claimant is responsible for fixing breakouts that occur during the spinning process.

The machines involved fill the plant floor row by row, and have 48 spinners per row side operating constantly. The Claimant is responsible for 3-6 sides of the machine. That is to say, the Claimant is responsible for 144-188 spinners at a time. The Claimant works a 12 hour shift and creels all day; that is to say she installs un-spun spools of yarn weighing 12-15 pounds, onto the machine and tie the yarn in. Doffing, which involves disconnecting and removing larger spun spools, is performed by the Claimant 8 times on average in a 12 hour shift. Once they have been removed, or doffed, larger spools are placed onto a yarn truck that weighs approximately 700-850 pounds. The truck is

pushed along during the doffing process by the claimant and ultimately pushed to a separate location for the material handlers to retrieve. (APA #11, pp. 000186-000187, 000188, 000189-000190; APA#14).

The claimant performed an on-site inspection where a number of comparable employees performed the job described above. That video is found at APA #14.

Medical History

On November 20, 2012, Claimant complained of right hand pain to her family nurse practitioner, Steven D. Millen, ANP, with Dr. Lingler's office at First Health Family Care. In the history of present illness the nurse practitioner indicated:

PT states that she is here today because of pain to her right hand up to her elbow that started 2 days ago, described as an intermittent burning, dull pains usually feels numb than after the numbness goes away the burning starts back worsened by nothing relieved by getting up walking and shaking (sic) her hands rating 0/10 at present and 8/10 at worse (sic). She has been taking/using hand braces at night and the shaking the hands thing which she feels like does help. Was told about 4 years ago that this was from carpal tunnel syndrome but never went to the specialist. (APA# 1, p. 000001).

Mr. Millen recommended that the claimant see an orthopaedic. (APA# 1, p. 000003). She continued to work and ultimately, on the referral from First Health, she saw a neurologist, Dr. Kurt Wolhrab at First Health Surgical for the first time on April 2, 2013. Dr. Wolhrab's HPI indicated:

Bilateral hand numbness X 3 years
pt says right hand is worse
denies injury
Pt says repetitive motions aggravate pain; numbness worse at night
pain scale: 3/10
c/o frequent tingling in hands.
(APA# 2, p. 000013)

Dr. Wohlrab diagnosed bilateral carpal tunnel syndrome, performed a Kenalog injection into both hands, and directed her to follow up with him if she did not improve to undergo an EMG. (APA# 2, p. 000014).

An EMG was, thereafter, scheduled for July 3, 2013.

Prior to the EMG, on June 18, 2013, the claimant met with her supervisor, Sonny Wood, and told him she was having trouble with both of her hands. He took her to the safety department where she saw Melanie McCallum and they filled out a Report of Injury.

On July 3, 2013, Ms. McCallum filed a First Report of Injury with the Workers' Compensation Commission indicating claimant's allegation of pain in both wrists and listing a date of injury on August 1, 2008. (APA# 12, p. 000202).

Claimant will testify that years ago while working for this employer, likely in August of 2008, she did complain to the employer of pain in her wrists but she was never treated and nothing further came of it at that time.

On July 3, 2013, the claimant underwent a Nerve Conduction Study ordered by Dr. Wolhrab which revealed bilateral carpal tunnel syndrome. (APA# 2, p. 000019). Shortly thereafter, the claimant was contacted by Roger Hathaway, Liberty Insurance Corporation, who directed her to see Dr. James Wallace at Dillon Internal Medicine. She saw Dr. Wallace on August 8, 2013. Dr. Wallace noted:

Patient words: Pt is complaining with pain in her left wrist (maybe carpal tunnel) w-comp Mohawk.

Addendum Note

Pt was sent over by Mohawk with complaints of carpal tunnel. She has seen her primary care physician in Rock Hill and she had a nerve conduction study test which she has not received the results of this as of yet. She has some numbness and paresthesias (sic) of the hand. She also has some neck issues, pain and limitation in ROM of the neck and left trapezius pain. Has also has some left elbow pain. She denies any trauma. She has worked at Mohawk for approximately 7 years. She is not sure where she has hurt her wrist.

(APA# 4, p. 000027).

Dr. Wallace diagnosed carpal tunnel syndrome, ordered x-ray of her cervical spine and she returned to work. (APA # 4, p.000032).

On August 16, 2013, Dr. Wallace's records contain a note indicating that Dr. Wallace's office had "Rec'd call from Jerry with Liberty Mutual". Apparently the adjuster told Dr. Wallace "This accident date 08/01/2008 per Jerry- - - -claim # WC555-C04637- - - - left hadn (sic) injury". (APA #4, p. 000039). It is not clear what other communications went on between the carrier and Dr. Wallace as the claimant was not notified of the communication. On August 21, 2013, Dr. Wallace saw the claimant again indicating "She had what probably is double crush syndrome with arthritic changes of the neck." (APA# 4, p. 000044).

Shortly thereafter, on August 22, 2013, Gerry Hathaway at Liberty Mutual sent Dr. Wallace a form to complete indicating "Are the left hand & wrist symptoms related to the patient's job description work accident?" Dr. Wallace responded "No". (APA# 4, p. 000053). The form goes on to ask "Are the injured worker's current symptoms related to normal aging/degeneration or pre-existing condition?" to which Dr. Wallace responded "Yes". (*Id.*) Again, the Claimant was not copied with this correspondence in violation of S.C. Code §42-15-95 and it should be excluded from evidence pursuant to S.C. Code §42-15-95(c).¹

On September 9, 2013, presumably after having received the form dated September 6, 2013, the carrier filed a Form 19 with WCC No. 0825684, and a date of accident of August 1, 2008 and marked the Form 19 "claim denied". (APA# 12, p. 000203).

Thereafter, the claimant received a letter from the carrier denying the case was compensable.

On November 14, 2013, the claimant filed a pro se Form 50 alleging injury to her hands, which was assigned WCC No. 1315636. (APA# 12, p. 000205). When asked to describe how the accident occurred, the claimant responded "no (sic) sure repeated work." (*Id.*) When asked when notice was given to the employer she responded "6/18/13". (*Id.*)

On November 17, 2013, the claimant left work due to pain in her wrists. She saw Dr. Wallace who took her out of work on November 19, 2013. (APA# 4, 000072).

Dr. Wallace referred the claimant to see Dr. Robert Moore, Hand Surgery Associates. (APA # 4, p. 000071). Also, on November 25, 2013 Dr. Wallace completed a Family Medical Leave Act Form for the employer which indicated as a diagnosis "carpal tunnel syndrome left wrist. Patient referred to Dr. Robert Moore for eval/tx of left wrist pain. Patient to be scheduled for surgery of CTS" (APA# 4, p. 000080). Dr. Wallace also completed a Short Term Disability Attending Physician's Statement on the same date in which he indicated that she had severe limitation of functional capacity and that she was "incapable of minimal (sedentary) activity". (APA# 4, p. 000083).

¹This form was originally filled out on August 22, 2013. On September 6, 2013, Dr. Wallace refilled out the form with the same responses. (APA#4, p. 000048).

On November 25, 2013, on the referral by Dr. Wallace, Claimant saw Dr. Robert Moore. Dr. Moore noted chief complaint "numbness and tingling in both hands" he diagnosed among other things "bilateral CTS worse on left". (APA# 5, pp. 000125-000126). He recommended a carpal tunnel release of the left wrist which he performed on December 4, 2013. (*Id.*)

On December 14, 2013, 30 days had passed since the claimant's filing of the Form 50 and no answer had been made by the carrier as required by R. 67-603(B)(1). (APA # 13, p. 000211).

On January 6, 2014, approximately a month after the surgery on the claimant's left wrist, Dr. Moore released her to full duty as of January 27, 2014. (APA# 5, p. 000129). At deposition, Dr. Moore indicated that release was as to her left hand. (APA# 17, Dep. Dr. Moore, p. 27, lines 5-10).

On January 15, 2014, the Commission noted that no Form 51 had been received. (APA# 13, p. 000211).

On January 17, 2014, claimant made an attempt to return to work as directed by Dr. Moore. She worked nine (9) hours and was forced to leave again due to the pain in both of her wrists, with particular pain in her right wrist.

Also, on January 17, 2014, the claimant's pro se Form 50 was scheduled for a hearing on March 26, 2014.

The Claimant returned to see Dr. Wallace on January 31, 2014. Dr. Wallace noted "Patients job position requires patient to pull and push which has caused pain in her hands on the first day back to work." (APA # 4, p. 000088). Dr. Wallace then gave the claimant instructions to return to work with the following limitations "avoid using left wrist 6 weeks" (APA# 4, p. 000091). Claimant attempted to return to work with that restriction and was told by the employer that they did not have work for her within those restrictions.

In the meantime, on February 19, 2014 Dr. Wallace completed a Long Term Disability Form for Hartford which indicated a diagnosis of carpal tunnel syndrome. Also in response to the question "Is condition due to illness or an injury that is work related?" Dr. Wallace responded "yes". (APA# 4, p. 000092). The Claimant provided that form to the employer as part of her Long Term Disability application.

On March 14, 2014 Dr. Wallace wrote the Claimant out of work from March 14, 2014 through April 18, 2014. (APA# 4, p. 000101). On May 9, 2014 he wrote her out from May 9, 2014 to May 21, 2014. (APA# 4, p. 000102). Then on May 19, 2014 he wrote her out from May 19, 2014 to September 3, 2014. (APA# 4, p. 000103).

In the meantime, on May 2, 2014, claimant returned to see Dr. Robert Moore with continued

complaints particularly in her right hand. Dr. Moore referred the claimant to see Dr. Matthew Welsch whom she saw on May 19, 2014. (APA#5, pp. 000130-000131).

Dr. Welsch noted in his HPI:

Kathey Staton is a 53 year (s) old, right hand dominant black female who works as a twist operator who presents with numbness and tingling in the right hand for the last year. This began insidiously, and is gotten worse over time. She also had numbness and tingling in the left hand, and was treated with carpal tunnel release about 5 months ago.

Her major complaint today is the numbness and tingling in the right hand. It occurs every night. It occasionally occurs throughout the day. All the fingers are involved. She has tried a nighttime splint with minimal relief of symptoms. She has had one cortisone injection with temporary relief of symptoms for about 2 months. This wore off.

She was previously treated by Dr. Moore, undergoing carpal tunnel release on the left hand. She was unable to return to her normal work duties due to the soreness after the surgery per the patient. This is about 5 months ago now.

Her pain right now is about a 7 or 8/10, and constant.

She denies other injury or surgery to the hands or wrists.

(APA# 8, p. 000167).

Dr. Welsch diagnosed right carpal tunnel syndrome and recommended a right carpal tunnel release which he performed on June 3, 2014. (APA# 8, p. 000169).

Also, in the meantime, the Commission postponed the March 26, 2014 hearing to allow the claimant to obtain counsel. Claimant retained the undersigned and on July 3, 2014 the undersigned filed an amended Form 50 listing a date of accident of November 17, 2013, the last date of injurious exposure. (APA# 12, p. 000209).

On July 11, 2014, after having performed surgery, Dr. Welsch released the claimant to return to light duty, no lifting or carrying over 5 pounds. (APA# 8, p. 000175). The employer has not accommodated those restrictions. On August 8, 2014, Dr. Welsch released the claimant to return without restrictions as of September 5, 2014. (APA# 8, p. 000176).

NOTICE

Defendant, by Form 51 dated August 1, 2014, denies notice. (APA# 12, p. 000210).

However, this is the first Form 51 filed in this claim. The first Form 50 was filed by the claimant, pro se, on November 14, 2013. (APA# 12, p. 000205). No Form 51 was filed within 30 days of this Form 50. (APA# 13, p. 000211). Pursuant to R. 67-603 (c), Defendants waived the defense of notice by failing to raise it timely in a Form 51 on or before December 14, 2013.

Even if Defendants had timely raised notice, the Claimant has given adequate notice. S.C. Code §42-15-20 (c) requires that:

- (C) In the case of repetitive trauma, notice must be given by the employee **within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable**, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.
(S.C. Code §42-15-20(c)). (Emphasis added.).

S.C. Code §42-1-172 defines repetitive trauma injury.

S.C. Code §42-1-172 (B) defines “compensable repetitive trauma”:

- (B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee

was engaged in the regular duties of his employment and the injury.

(S.C. Code §42-1-172 (B)). (Emphasis added).

Therefore, an injury is not considered “compensable”, triggering S.C. Code §42-15-20(c) until the Commission makes “a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence...”

Of course, no commissioner has made any finding of fact in this case.

As to “medical evidence” establishing a causal connection between the repetitive activities at work and the injury, the first time any physician indicated anywhere in the record that there was a causal connection between the job and claimant’s injury was when Dr. Wallace filled out the Long Term Disability Form on February 9, 2014. (APA# 4, pp. 000092-000093).

Of course, the employer had notice, and had filed a First Report of Injury months before, on July 3, 2013. (APA# 12, p. 000202). The next time any physician indicated that the claimant’s condition was work related was in the depositions of Dr. Welsch and Dr. Moore which were performed on June 23, 2014 and July 2, 2014, respectively. (APA#17, Dep. Dr. Moore, p. 15, line 24- p. 16, line 5; APA#16, Dep. Dr. Welsch, p. 44, line 24 - p. 45, line 3).

Moreover, the claimant’s last date of injurious exposure was November 17, 2013. By the employer’s own admission on their Form 12A, they received notice on July 3, 2013, four (4) months before the claimant’s last injurious exposure in November 2013.

Thus, the employer has received adequate notice pursuant to the law.

CAUSATION

Claimant’s treating surgeons, Dr. Moore and Dr. Welsch, were deposed. (APA#16, #17). Dr. Moore performed surgery on the claimant’s left wrist, and Dr. Welsch performed surgery on the claimant’s right wrist.

With regard to whether the claimant’s work was repetitive, Dr. Moore reviewed the video attached as (APA# 14), and testified “A. Yes, from the video that I witnessed it is. I would say repetitive and fast paced particularly with the hands. There wasn’t a whole lot of whole body movement but with the hands.” (APA# 17, Dep. Dr. Moore, p. 21, lines 22-25).

Dr. Moore also testified that without question the claimant suffered from carpal tunnel syndrome in both hands. (APA# 17, Dep. Dr. Moore, p. 28, lines 1-9). He went on to testify that the claimant

had pre-existing carpal tunnel syndrome that was aggravated by her work duties. On direct examination by defense counsel he testified:

- Q. Watching that video, do you have an opinion as to whether the work that was shown in that video would have any cause or aggravation to someone's carpal tunnel syndrome?
- A. I do. I do have an opinion on that. I do not think that that work would cause carpal tunnel syndrome. I do think that work would aggravate carpal tunnel syndrome.
(APA#17, Dep. Dr. Moore, p. 15, line 24-p. 16, line 5).

Similarly, Dr. Welsch who performed surgery on the claimant's right hand also viewed the video and testified:

- Q. Now, tell me your opinion to a reasonable degree of medical certainty as to whether her condition was most probably caused or aggravated by that work that you saw her do?
- A. Based on, again, the symptoms in terms of timing and when, when they began, the symptoms of carpal tunnel with numbness and tingling, you know, based on my conversation with her and, I guess, you know, provided some of the other information that carpal tunnel - - that the activities at work that she was doing, you know, could contribute or aggravate the symptoms of Carpal Tunnel Syndrome.
- Q. And is that most probably the case in this case?
- A. Yes. Most probably, yes, medically.
(APA# 16, Dep. Dr. Welsch, p. 44, line 24-p. 45, line 13).

CONCLUSION

Claimant suffered a repetitive trauma injury to both of her wrists as a result of repetitive work at Mohawk Industries, Inc. Claimant seeks medical treatment related to the care of those wrists including the treatment performed by Dr. Wallace, Dr. Wohlrab, Dr. Welsch, and Dr. Moore with further treatment to the extent that it will tend to lessen the period of disability. The Claimant also seeks temporary total disability from the last day of work November 17, 2013, and continuing until further order of the commission, excluding the dates she briefly returned to work on November 17, 2013 and May 7, 2014 through May 8, 2014.

FIRSTHEALTH FAMILY CARE CENTERS • 921 S Long Drive Suite 101, Rockingham NC 28379-4874

STATON, KATHEY (id: [REDACTED], dob: [REDACTED])

Return to Office

- to see Kimberley Lingler, MD at RFM on or around 06/12/2013

Encounter Sign-Off

Encounter signed-off by Kimberley Lingler, MD, 12/12/2012.

Encounter Date: 11/20/2012

Patient			
Name	STATON, KATHEY (52, F) ID# [REDACTED]	Appt. Date/Time	11/20/2012 03:30PM
DOB	[REDACTED]	Service Dept.	RFM
Provider	STEVEN D MILLEN ANP		
Insurance	Med Primary: CIGNA HEALTHCARE - MOHAWK - OPEN ACCESS PLUS Insurance #: U3779592301 Policy/Group #: 3331749 Prescription: MHS - Member is eligible.		

Chief Complaint

Right Pain, Hand, Right Pain, Elbow
pain x 2 days

Problems

- * Hypopotassemia (276.8)
- * Depressive disorder, not elsewhere classified (311)
- * Sleep related leg cramps (327.52)
- * Carpal tunnel syndrome (354.0)
- * Essential hypertension; benign (401.1)
- * Insomnia, unspecified (780.52)

PI

PT states that she is here today because of pain to her right hand up to her elbow that started 2 days ago, described as an intermittent burning, dull pains usually feels number than after the numbness goes away the burning starts back worsened by nothing relieved by getting up walking and shaking her hands rating 0/10 at present and 8/10 at worse. She has been taking/using hand braces at night and he shaking the hands thing which she feels like does help. Was told about 4 years ago that this was from carpal tunnel syndrome but never went to the specialist.

DS

Patient reports arthralgias/joint pain (See HPI) but reports no muscle aches, no muscle weakness, no joint swelling, no joint redness, no joint warmth, no ROM limitation, and no back pain. She reports no heartburn, no dysphagia, no hematemesis, no indigestion, no nausea, no vomiting, no abdominal pain, no abdominal bloating, no bowel movement changes, no rectal bleeding, no diarrhea, no constipation, and no fecal incontinence.

PN History

Last reviewed GYN History 09/19/2012
Date of LMP: 07/05/2012.
Duration of Flow (days): 5.
Age at Menarche: 12.
Age at First Child: 16.

Past Medical History

Last reviewed Past Medical History 09/19/2012
Hypertension: Y
Inflammatory Bowel Disease: Y
Diabetes: Y
Migraine Disorder: Y
Sleep Apnea: Y
Asthma: Y

Surgical History

Last reviewed Surgical History 09/19/2012

Social History

Last reviewed Social History 09/19/2012
Tobacco Social History

0000001 118

STATON, KATHEY (id: [REDACTED], dob: [REDACTED])

Smoking Status: Former smoker.
 Alcohol Use: Social Drinker (rare).
 Alcohol Use: quantity: one drink a week or less.
 Drug Use: Never.
 Caffeine Use: occasional.
 Exercise: less than once a week.
 Sexual Activity: Active.
 Sexual Partner: Male.
 Marital Status: Lives with significant other.
 Seat Belt Use: Y.
 Smoke Detectors Tested Regularly: Y.
 is blood transfusion acceptable in an emergency?: Y.

Family History

Last reviewed Family History 09/19/2012

Mother - Cancer, Breast
 - Cancer, Lung

Vitals

Wt: 190 lbs 6 oz T: 99.0 F° oral BP: 142/70 sitting R arm
 BP Cuff Size: adult Pulse: 72 bpm regular

Physical Exam

Patient is a 52-year-old female.

Constitutional: General Appearance: healthy-appearing and obese. Level of Distress: NAD. Ambulation: ambulating normally.

Neck: Neck: supple, FROM, trachea midline, and no masses.

Respiratory: Respiratory effort: good air movement and no dyspnea.

Musculoskeletal: Extremities: no cyanosis or edema.

Neurologic: Gait and Station: normal gait and station.

Psychiatric: Insight: good judgement. Mental Status: normal mood and affect and active and alert. Orientation: to time, place, and person and oriented except where noted.

Wrists: Inspection Right: no erythema, induration, swelling, warmth, or mass and normal wrist appearance. Palpation of the Radial Aspect Right: no tenderness of the distal forearm, the radial styloid process, the navicular, the trapezoid, the tubercle of radius, the capitate, the first metacarpal, the abductor tendon, the extensor tendon, the flexor carpi radialis, or the palmaris longus. Palpation of the Ulnar Aspect Right: no tenderness of the ulnar styloid process, the lunate, the triquetral, the lunotriquetral joint, the hook of hamate, the pisotriquetral joint, the pisiform, the extensor tendon, or the flexor carpi ulnaris. Passive Range of Motion Right: WNL, supination WNL, pronation WNL, extension WNL, flexion WNL, ulnar motion WNL, radial motion WNL, and thumb motion WNL. Passive Range of Motion Left: WNL, supination WNL, pronation WNL, extension WNL, flexion WNL, ulnar motion WNL, radial motion WNL, and thumb motion WNL. Strength Right: grip 5/5.

Special Tests: Special Tests on the Right: Phalen's test positive (and reverse phalen's negative) and Tinel's sign at the median nerve positive.

Medications

Reviewed patient's medication history & made changes

Name	Date
NAPROXEN 500 MG TABLET Take 1 tablet(s) twice a day by oral route for 30 days.	11/20/12 prescribed
MEDROXYPROGESTERONE 10 MG TABLET	10/31/12 filled
ZOLPIDEM 5 MG TABLET	09/27/12 filled
IRON	09/19/12 entered
ASPIRIN	09/19/12 entered
DIOVAN HCT 160 MG-25 MG TABLET	06/20/12 filled

Allergies

Reviewed allergy history (no data recorded) without changes
 NKDA

000002 119

STATON, KATHEY (REDACTED), dob: (REDACTED)

Assessment / Plan

1. CARPAL TUNNEL SYNDROME (354.0) - New Problem (no further w/u) - Continue using the wrist braces
Naproxen as below and heat 20min on 1hr off PRN
Referring to Orthopaedic as below
- NAPROXEN 500 MG TABLET - Take 1 tablet(s) twice a day by oral route for 30 days. Qty: 60 tablet(s) Refills: 3 Pharmacy: WAL-MART PHARMACY 1255
 - ORTHOPAEDIC SURGERY REFERRAL

Return to Office

- Kimberley Lingler, MD for PAP Female Exam 30 min at RFM on 11/27/2012
- as needed

Encounter Sign-Off

Encounter signed-off by Steven D Millen Anp, 11/20/2012.

000003

FIRSTHEALTH FAMILY CARE CENTERS • 921 S Long Drive Suite 101, Rockingham NC 28379-4874

STATON, KATHEY [REDACTED], dob: [REDACTED]

Encounter Date: 12/12/2012

Patient

Name	STATON, KATHEY [REDACTED]	Appt. Date/Time	12/12/2012 01:30PM
DOB	05/29/1960	Service Dept.	RFM
Provider	KIMBERLEY LINGLER MD		
Insurance	Med Primary: CIGNA HEALTHCARE - MOHAWK - OPEN ACCESS PLUS Insurance #: U3779592301 Policy/Group #: 3331749 Prescription: MHS - Member is eligible.		

Chief Complaint

Review Labs

Review labs— review labs that were drawn in August

Problems

- Hypopotassemia (276.8)
- Depressive disorder, not elsewhere classified (311)
- Sleep related leg cramps (327.52)
- Carpal tunnel syndrome (354.0)
- Essential hypertension; benign (401.1)
- Renal failure, unspecified (586)
- Insomnia, unspecified (780.52)
- Impaired fasting glucose (790.21)

HPI

Pt dropped off labs from August a few wks ago. I asked her to come in b/c sugar was elevated, or elevated, and K+ low. Pt reports that after these labs were draw she has continued diet and has lost some more weight, has restarted K+ supplement, and is drinking water regularly. Feels well. Denies increased thirst and urination. Only c/o is that she still can't sleep.

ROS

Constitutional: . no fever or chills.

Respiratory: . no cough or dyspnea / shortness of breath.

Cardiovascular: . no palpitations, edema, or chest pain.

Psych: . insomnia; denies mood problem.

GYN History

GYN History not reviewed (last reviewed 09/19/2012)

Date of LMP: 07/05/2012.

Duration of Flow (days): 5.

Age at Menarche: 12.

Age at First Child: 16.

Past Medical History

Reviewed Past Medical History

Hypertension: Y

Inflammatory Bowel Disease: Y

Polyps: Y

Headache Disorder: Y

Sleep Apnea: Y

STD: Y

Surgical History

Reviewed Surgical History

Social History

Reviewed Social History

Adult Social History

Smoking Status: Former smoker.

Alcohol Use: Social Drinker (rare).

Alcohol Use: quantity: one drink a week or less.

Drug Use: Never.

000004
121

FirstHealth Surgical Specialties

809 South Long Drive, Suite K

Rockingham, NC 28379

(910) 417-4090

Patient KATHEY L. STATON

EMRN:5070291

Age/DOB: [REDACTED]

Date of Service: 04/02/2013

Patient Name: KATHEY L. STATON

EMRN: 5070291

Date of Service: 04/02/2013

Reason For Visit

Bilateral hand numbness.

PCP

DR. Lingler.

Requested Here

Dr. Lingler.

HPI

Bilateral hand numbness X 3 years

pt says right hand is worse

denies injury

Pt says repetitive motions aggravate pain; numbness worse at night

pain scale: 3/10

c/o frequent tingling in hands.

Allergies

Rec: 02Apr2013. List Reconciled and Reviewed.

No Known Drug Allergies.

Current Meds

Rec: 02Apr2013. List Reconciled and Reviewed.

Diovan 160 MG Oral Tablet;TAKE 1 TABLET DAILY.; RPT

Iron 325 (65 Fe) MG Oral Tablet;TAKE 1 TABLET DAILY AS DIRECTED.; RPT

Potassium Chloride ER 10 MEQ Oral Tablet Extended Release;TAKE 1 TABLET DAILY WITH FOOD.; RPT

Vitamin E 1000 UNIT Oral Capsule;TAKE 1 CAPSULE DAILY.; RPT.

PMH

Hypertension (401.9)

Denied Sleep Apnea.

PSH

Denied Implantable Cardioverter-Defibrillator

Denied Pacemaker Placement

Tubal Ligation (V25.2).

Family Hx

Family history of Diabetes Mellitus

Family history of Hypertension.

Personal Hx

Denied Being A Social Drinker

Caffeine Use

Employment History: (V62.1);

* Mohawk Carpets, 02 Apr 2013

Former Smoker (V15.82)

Denied Living In A Nursing Home

Denied Living In An Assisted Living Facility

Marital History - Single

Denied Tobacco Use.

Active Problems

000013

122

Patient Name: KATHEY L. STATON EMRN: [REDACTED]

Date of Service: 04/02/2013

Numbness (Hypesthesia) (782.0).

ROS

She reported no fever and no chills.

She reported no headache.

She reported no blurry vision.

Assessment

- Numbness (782.0)

- Carpal tunnel syndrome (354.0)

Orders

XRay, Wrist 2V; Bilateral; Requested for: 02 Apr 2013.

Request Admin: SMALL CORTISONE INJECTION; lidocaine 20147 dk 8/2014kenolog 2k74857 10/2014; Qty0; R0; 0.

Arthrocentesis, Aspiration or Injections, small joint or bursa; Requested for: 02 Apr 2013.

Follow-up PRN; Requested for: 02 Apr 2013.

Plan

SUBJECTIVE: The patient is a very pleasant 52-year-old female who comes in for evaluation of bilateral carpal tunnel. She reports she was diagnosed with carpal tunnel years ago.

PHYSICAL EXAMINATION: She is a well-appearing female in no acute distress. She has positive flexion compression, positive Phalen's, and positive Tinel's bilaterally, right greater than left. She has no thenar atrophy and no hyperthenar atrophy. She is neurovascularly intact.

X-RAY FINDINGS: Review of her radiographs, two views of her hands, show no evidence of fracture, dislocation, or osteoarthritis.

ASSESSMENT: Bilateral carpal tunnel today.

PROCEDURE: After informed consent and sterile prep, 1 cc of lidocaine and 1 cc of Kenalog were injected into both hands. She does also have volar ganglion cysts bilaterally, left bigger than her right. She will follow up with us if she is not getting re-lift to consider EMG. If she does consider surgical treatment of her carpal tunnel, she would like her volar ganglions taken out at that time as well.

Coun/Edu

Patient Instruction/Education; Requested for: 02 Apr 2013.

Signature

Electronically signed by: Monike Reed C.M.A.; 04/02/2013 3:17 PM EST.

Electronically signed by: Kurt P Wohlrab M.D.; 04/03/2013 12:56 PM EST.

FirstHealth Surgical Specialties
809 S Long Drive Suite K
Rockingham, NC 28379

Patient: KATHEY L. STATON

EMRN: [REDACTED]

Age-DOB: [REDACTED]

Date of Service: 07/16/2013

Reason For Visit

Left wrist pain

PCP

Kimberly Lingler, MD.

HPI

Left wrist pain

pain scale 3/10

worse at night

bilateral carpal tunnel injection 4/2/13

injection helped left wrist x 2 months ago.

Allergies

No Known Drug Allergies.

Current Meds

Rec: 16Jul2013. List Reconciled and Reviewed.

Diovan 160 MG Oral Tablet; TAKE 1 TABLET DAILY.; RPT

Iron 325 (65 Fe) MG Oral Tablet; TAKE 1 TABLET DAILY AS DIRECTED.; RPT

Potassium Chloride ER 10 MEQ Oral Tablet Extended Release; TAKE 1 TABLET DAILY WITH FOOD.; RPT

Vitamin E 1000 UNIT Oral Capsule; TAKE 1 CAPSULE DAILY.; RPT.

PMH

Hypertension (401.9)

Denied Sleep Apnea.

PSH

Denied Implantable Cardioverter-Defibrillator

Denied Pacemaker Placement

Tubal Ligation (V25.2).

Family Hx

Family history of Diabetes Mellitus

Family history of Hypertension.

Personal Hx

Denied Being A Social Drinker

Caffeine Use

Employment History: (V62.1);

* Mohawk Carpets, 02 Apr 2013

Former Smoker (V15.82)

Denied Living In A Nursing Home

Denied Living In An Assisted Living Facility

Marital History - Single

Denied Tobacco Use.

Active Problems

Carpal Tunnel Syndrome (354.0)

Numbness (Hypesthesia) (782.0).

Patient Name: KATHEY L. STATON EMRN: [REDACTED]

ROS

She reported no fever and no chills.

She reported no headache.

Vital Signs

Vital Signs Recorded by Juarez, Lesvia on July 16, 2013 02:53 PM

Height: 64 in, Weight: 185.6 lb, BMI: 31.69, BSA: 1.90

Assessment

- Carpal tunnel syndrome (354.0)

Orders

Request Admin: SMALL CORTISONE INJECTION; lidocaine 20147DK 8/2014 kenalog 2k7840 9/2014; Qty0; R0; 0.

Arthrocentesis, Aspiration or Injections, major joint or bursa; Requested for: 16 Jul 2013.

NCV/EMG; Requested for: 16 Jul 2013

*left upper extremity; 16 Jul 2013.

Follow-up after Diagnostic Testing; Requested for: 16 Jul 2013.

Plan

SUBJECTIVE: The patient is a 53-year-old who follows up for her left wrist. The patient saw me back in early April with symptoms of bilateral carpal tunnel.

PHYSICAL EXAMINATION: She is a well-appearing female in no acute distress. She has positive flexion compression on the left. She has positive Phalen's, positive Tinel's. Her symptoms were generally right greater than left the last time. Today, she has no right-sided symptoms at all. She has no thenar atrophy and no hyperthenar atrophy. She complains of her pain not in her thumb or index but her middle ring and small with all provocative exams.

ASSESSMENT: Rule out carpal tunnel on the left side versus cubital tunnel.

PROCEDURE: Today after informed consent and sterile prep, 1 cc of lidocaine and 1 cc of Kenalog were injected into her left carpal tunnel.

PLAN: I am going to get an EMG/NCV of her left upper extremity to evaluate for any other peripheral neuropathy. She understands that although the injection gave her good relief, with her now ulnar-sided symptoms with median nerve exam findings, I would like to get the EMG and rule out any other symptoms. All this was discussed with her. Her injection was given today. We will see her in followup after her study.

Coun/Edu

Patient Instruction/Education; Requested for: 16 Jul 2013.

Signature

Electronically signed by : Lesvia Juarez C.M.A.; 07/16/2013 2:53 PM EST.

Electronically signed by : Kurt P Wohrab M.D.; 07/18/2013 8:56 AM EST.

CC: cc: LINGLER, KIMBERLY, MD
921 LONG DR SUITE 101
ROCKINGHAM, NC 28379

ROCKINGHAM MEDICAL RECORDS,

ROCKINGHAM, NC 28379

From: Carol Blamner

Fax: +1 (910) 888-6254

To:

Fax: +1 (910) 295-7955

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5070291



Sandhills Neurologists, P.A.

Henry Tellez, M.D. Giridhar Chintalapudi, M.D.

Board Certified Neurologists

Pinhurst

295 Olmsted Boulevard
Mellon Building, Suite 12
Pinhurst, NC 28374
Phone: 910-235-0395
Fax: 910-235-0546

Sanford

1816 Doctors Drive
Sanford, NC 27330
Phone: 919-708-5008

Fuquay-Varina

609 Artain Street Unit 100
Fuquay-Varina, NC 27526
Phone: 919-552-8917
Fax: 919-557-3695

Name: Staton, Kathey

DOB: [REDACTED]

NERVE CONDUCTION / EMG STUDY

PATIENT NAME: Kathey Staton
DATE: 07-3-13
REQUESTING PHYSICIAN: Kurt Wohlrab, MD

Ms Staton is a 53 year old female with a history of paresthesias involving both hands. NCV and EMG are requested to rule out entrapment syndromes and cervical radiculopathy. S/P median nerve block on the right side

Nerve conduction studies: NCVs are performed above 34°C room temperature on bilateral upper extremities.

Motor Nerves: Left median motor responses show normal distal motor latency, normal amplitudes, normal F-wave responses and normal conduction velocity. Right median motor pulses show prolonged distal motor latency, normal amplitudes, normal F-wave responses and normal conduction velocity. Bilateral ulnar motor responses show normal distal motor latencies, normal amplitudes, normal F-wave responses and normal conduction velocities. There is no significant differences across the elbow either on conduction velocities or in amplitudes on ulnar motor studies.

Sensory nerves: Bilateral median digital sensory responses show prolonged latencies and normal amplitudes. Bilateral ulnar distal sensory responses show normal latencies and normal amplitudes. Left radial sensory response shows normal latency and normal amplitude.

NEEDLE EXAMINATION: EMG is performed using standard disposable concentric needles. Muscles are sampled from bilateral cervical paraspinals, deltoid, biceps, triceps, pronator teres, APB and FDI. Needle examination is unremarkable without acute or chronic denervation changes.

IMPRESSION: Abnormal study. Electrodiagnostic data is consistent with mild left and moderately severe right median neuropathy across the wrist (carpal tunnel syndrome). No electrodiagnostic evidence for ulnar neuropathy or cervical radiculopathy is seen. Clinical correlation recommended.

COMMENTS: The above impression is based on electrodiagnostic evidence only. This study does not exclude spinal stenosis/spondylosis or mechanical/structural issues.

(Electronically signed)

Giridhar Chintalapudi, M.D.

Board Certified, American Board of Neuromuscular Medicine.

CC: Kurt Wohlrab, MD



From: Carol Brammer Fax: +1 (910) 895-5264

To:

Fax: +1 (910) 295-7958

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Laboratory's Normal Values:

<u>Motor</u>	DML(ms)	Amp(mV)	Vel(m/s)	F-W(ms)	Dist(cm)
Median	<4.2	>4.2	>49	<31	8
Ulnar	<4.2	>5.6	>49	<31	8
Peroneal	<5.7	>2.2	>41	<56	7.5
Tibial	<5.7	>2.8	>41	<56	7.5

Femoral
 <40y/o <6.3 >3.6
 >40y/o <5.6 >0.7

H-Reflex
 Tibial <2ms(Difference)

<u>Sensory</u>	Lat(ms)	Amp(μV)	Dist(cm)
Median			
Palmar	<2.2	>40	8
Digital	<3.8	>10	14
Ulnar			
Palmar	<2.2	>20	8
Digital	<3.8	>10	14
Dorsal Ulnar	<2.2	N/A	8
Radial	<3.8	>25	10
Sural	<4.2	>5	14
Sup.Peroneal	<3.4	>5	14
Saphenous	<4.4	>5.5	14
Med.Plantar	<3.5	N/A	14
Lat.Plantar	<3.4	N/A	14
Lat.Fem.Cut.	<3.1	>9	12

Howard, James Jr. MD, EMG Training Manual "Neurological Fellows and Residency Program." Chapel Hill, North Carolina: Howard, 1995.197-199pp.

Kathey Staton

DOB: [REDACTED]

Date of Encounter: 08/08/2013 10:16 AM

Kathey Staton

08/08/2013 10:16 AM

Location: Dillon Internal Medicine Associates, PA

Patient #: [REDACTED]

DOB: [REDACTED]
Marital status: Single / Language: English / Race: Black or African American / Ethnicity: Not Hispanic or Latino

Gender: Female

History of Present Illness (James P Wallace, MD 08/08/2013 10:32 AM)

Patient words: Pt is complaining with pain in her left wrist (maybe carpal tunnel) w-comp Mohawk.

The patient is a 53 year old female

Addendum Note (Melissa Cox 8/13/2013 10:59:16 AM)

Pt was sent over by Mohawk with complaints of carpal tunnel. She has seen her primary care physician in Rock Hill and she had a nerve conduction study test which she has not received the results of this as of yet. She has some numbness and paresthesias of the hand. She also has some neck issues, pain and limitation in ROM of the neck and left trapezius pain. Has also had some left elbow pain. She denies any trauma. She has worked at Mohawk for approximately 7 years. She is not sure where she has hurt her wrist.

Social History (Peggy Bryant 08/08/2013 10:18 AM)

Denies illicit drug use

Drinks alcohol occasionally, on a less than daily basis

SMOKING STATUS (MEANINGFUL USE): Never smoker

Vitals (Peggy Bryant 08/08/2013 10:16 AM)

08/08/2013 10:16 AM

Weight: 187 lb Height: 66 in

Body Surface Area: 1.99 m² Body Mass Index: 30.18 kg/m²

Temp.: 99.0°F Pulse: 60 (Regular) Resp.: 18 (Unlabored)

BP: 128/78 Manual (Sitting, Left Arm, Standard)

Physical Exam (James P Wallace, MD; 08/08/2013 10:45 AM)

The physical exam findings are as follows:

General

Mental Status - Alert. **General Appearance** - Cooperative, Well groomed and Consistent with stated age. Not in acute distress. **Orientation** - Oriented X3 and Oriented to purpose. **Build & Nutrition** - Well nourished and Well developed.

Hydration - Well hydrated.

Integumentary

General Characteristics: Overall examination of the patient's skin reveals - no suspicious lesions, no bruises and no evidence of scars. **Color** - normal coloration of skin. **Skin Moisture** - normal skin moisture.

Head and Neck

Head - normocephalic. atraumatic with no lesions or palpable masses.

Kathey Staton

Patient #: [REDACTED]

DOB: [REDACTED]

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Neck
Global Assessment - full range of motion and supple, no bruits auscultated on the right, no palpable mass on the left and no nuchal rigidity.
Trachea - midline.
Thyroid
Gland Characteristics - normal size and consistency and no palpable nodules, non-tender.

Eye
Vision - Visual fields without obvious defect. **Eyeball** - Left - No Nystagmus. Right - No Nystagmus. **Pupil** - Left - Direct reaction to light normal, Equal, Regular and Round. Right - Direct reaction to light normal, Equal, Regular and Round.

ENMT

Ears
External Auditory Canal - Left - no tenderness noted. Right - no tenderness noted.
Otoscope Exam: Tympanic Membrane is gray in appearance. Left - tympanic membrane is gray in appearance. Right - tympanic.

Mouth and Throat
Oral Cavity/Oropharynx: Oral Mucosa - pink and moist.

Chest and Lung Exam
Chest and lung exam reveals - normal excursion with symmetric chest walls, quiet, even and easy respiratory effort with no use of accessory muscles and on auscultation, normal breath sounds, no adventitious sounds and normal vocal resonance.

Breast - Did not examine.

Cardiovascular
Inspection: Jugular vein - Left - Inspection Normal. Right - Inspection Normal.
Palpation/Percussion: Carotid Artery - Left - Normal pulsations. Right - Normal pulsations.
Auscultation: Rhythm - Regular. **Heart Sounds** - Normal heart sounds.
Murmurs & Other Heart Sounds: Auscultation of the heart reveals - No Murmurs.
Carotid arteries - No Carotid bruit.

Abdomen
Inspection: Inspection of the abdomen reveals - No Visible peristalsis, No Abnormal pulsations, No Paradoxical movements and No Hernias.
Skin: Inspection of the skin of the abdomen reveals - No Stria and No Scars.
Palpation/Percussion: Palpation and Percussion of the abdomen reveal - Non-Tender, No Rebound tenderness, No Rigidity (guarding), No Abnormal dullness to percussion and No Palpable abdominal masses.
Auscultation: Auscultation of the abdomen reveals - Bowel sounds normal and No Abdominal bruits.

Rectal - Did not examine.

Peripheral Vascular
Upper Extremity: Inspection - Left - Pink nail beds, No Digital clubbing. Right - Pink nail beds, No Digital clubbing.
Palpation: Temperature - Left - Warm. Right - Warm. **Tenderness** - Left - Non-Tender. Right - Non-Tender. **Edema** - Left - No edema. Right - No edema.
Lower Extremity: Inspection - Left - Pink skin. No Cyanotic nailbeds or Ulcerations. Right - Pink skin. No Cyanotic nailbeds or Ulcerations.
Palpation: Temperature - Left - Normal. Right - Normal. **Tenderness** - Left - Non-Tender. Right - Non-Tender. **Edema** - Left - No edema. Right - No edema.

Neurologic
Mental Status: Affect - appropriate. **Speech** - Normal.
Cranial Nerves - Normal Bilaterally.
Sensorium - Normal.
Motor

Kathleen Station

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DILLON INTERNAL MEDICINE

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DOB: [REDACTED]

Patient #: [REDACTED]

Bulk and Contour: - Normal.
Tone: - Normal.
Strength: 5/5 normal muscle strength - All Muscles. Coordination - Normal.

Musculoskeletal
Spine/Ribs/Pelvis

Lumbosacral Spine: Examination of the lumbosacral spine reveals - no tenderness to palpation, no pain, no swelling, edema or erythema of surrounding tissue and normal lumbosacral spine movements.

Upper Extremity

Hand/Wrist:

Wrist: Functional Testing - Note: pos tinel L wrist

Lymphatic

General Lymphatics

Description - No Generalized lymphadenopathy.

Assessment & Plan (James P Wallace, MD; 08/08/2013 11:21 AM)

Carpal tunnel syndrome, left (354.0)

Current Plans:

- ANA (86038) Routine
ANA Direct Positive*Note: Negative
- FOLIC ACID SERUM (82746) Routine
Folate (Folic 15.4 (ng/mL)*Note: A serum folate concentration of less than >3.0 (ng/mL)
Acid), Serum 3.1 ng/mL is considered to represent clinical deficiency. *Annotation:letter
ssent to pt about abnormal labs. 9PB)PW

- Heavy Metals Profile: ARSENIC (82175) Routine
Lead, 3 (ug/dL)*Note: The Centers for Disease Control and 0-
Blood Prevention states 19 (ug/dL)
blood lead levels less than 10 ug/dL in children have
been associated with numerous adverse health effects.
New York State Guidelines: Blood lead levels in the
range 5-9 ug/dL have been associated with adverse
health effects in children aged 6 years and younger.

Environmental Exposure:
WHO Recommendation <20
Occupational Exposure:
OSHA Lead Std 40
BEI 30

Detection Limit = 1

Arsenic, .5 (ug/L)*Note:

Blood

Detection Limit = 1 2-
23 (ug/L)

Mercury, None Detected (ug/L)*Note:

Blood

Environmental Exposure: <15.0
Occupational Exposure: 0.0-
14.9 (ug/L)

BEI - Inorganic Mercury: 15.0

Detection Limit =

1.0

- Heavy Metals Profile: CADMIUM (82300) Routine
Cadmium, None Detected (ug/L)*Note:
Blood

Environmental Exposure: 0.0-
Nonsmokers 0.3 - 1.2 1.2 (ug/L)
Smokers 0.6 - 3.9
Occupational Exposure:
OSHA Cadmium Std 5.0
BEI 5.0

Detection Limit = 0.5

- Heavy Metals Profile: LEAD (83655) Routine

Lead,
Blood
(Adult)

3 (ug/dL)*Note:
Prevention states

The Centers for Disease Control and

0-
19 (ug/dL)

blood lead levels less than 10 ug/dL in children have been associated with numerous adverse health effects. New York State Guidelines: Blood lead levels in the range 5-9 ug/dL have been associated with adverse health effects in children aged 6 years and younger.

Environmental Exposure:
WHO Recommendation <20
Occupational Exposure:
OSHA Lead Std 40

Detection Limit = 1

• Heavy Metals Profile: MERCURY, BLOOD (83825) Routine

• Methylmalonic Acid, Serum (83921) Routine

Methylmalonic Acid,
Serum

174 (nmol/L)*Note: The reference range for methylmalonic acid has been set at +3sd above the mean for healthy blood bank donors. In the clinical assessment of patients with megaloblastic anemias a cutoff of +3sd provides greater specificity in the diagnosis of the vitamin deficiency states, despite the sacrifice of some sensitivity.

73-
376 (nmol/L)

• RPR (86592) Routine

RPR Non Reactive*Note: Non Reactive

• SED RATE (85651) Routine

• SPEP (84165) Routine

Protein, Total, 6.3 (g/dL)*Note:

6.0-8.5 (g/dL)

Albumin 3.6 (g/dL)*Note:

3.2-5.6 (g/dL)

Alpha-1-Globulin 0.2 (g/dL)*Note:

0.1-0.4 (g/dL)

Alpha-2-Globulin 0.6 (g/dL)*Note:

0.4-1.2 (g/dL)

Beta Globulin 0.8 (g/dL)*Note:

0.6-1.3 (g/dL)

Gamma Globulin 1.1 (g/dL)*Note:

0.5-1.6 (g/dL)

M-Spike Not Observed (g/dL)*Note:

Not
Observed (g/dL)
2.0-4.5 (g/dL)
0.7-2.0

Globulin, Total 2.7 (g/dL)*Note:

A/G Ratio 1.3*Note:

P E Interpretation, SPEI*Note: The SPE pattern appears essentially unremarkable. Evidence of monoclonal protein is not apparent.

Please note: SPRCS*Note: Protein electrophoresis scan will follow via computer, mail, or courier delivery. The SPE pattern appears essentially unremarkable. Evidence of monoclonal protein is not apparent.

• TSH (84443) Routine

• VITAMIN B-12 (82607) Routine

Vitamin B12 484 (pg/mL)*Note: 211-946 (pg/mL)

• CERVICAL SPINE 2 VIEWS (72040) Routine

• WRIST 2 VIEWS (73100) Routine

• X-RAY: CERVICAL SPINE

NUMBER OF VIEWS: 2

INTERPRETATION

VERTEBRAL ALIGNMENT: NORMAL

DISC SPACES: NO SPONDYLOSIS

Kathey Staton

Patient #: [REDACTED]

DOB: [REDACTED]

Saturday, March 29, 2014

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DILLON INTERNAL MEDICINE

4:26PM 03/29/2014

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VERTEBRAL POSITION: NO SPONDYLOLISTHESIS

VERTEBRAL STRUCTURE: NO COMPRESSION FRACTURES

SCLEROSIS: NONE

OSTEOPHYTES: NONE

SURGICAL HARDWARE: NONE

IMPRESSION:

1) NORMAL CERVICAL SPINE

• **X-RAY: WRIST**

SIDE: LEFT

NUMBER OF VIEWS: 2

INTERPRETATION

RADIUS: NORMAL

ULNA: NORMAL

TRIQUETRUM: NORMAL

PISIFORM: NORMAL

LUNATE: NORMAL

SCAPHOID: NORMAL

TRAPEZIUM: NORMAL

TRAPEZOID: NORMAL

CAPITATE: NORMAL

HAMATE: NORMAL

RADIOCARPAL JOINT: NORMAL

SURGICAL HARDWARE: NONE

IMPRESSION:

1) NORMAL LEFT WRIST

• **X-RAY: CERVICAL SPINE**

NUMBER OF VIEWS: 2

INTERPRETATION

VERTEBRAL ALIGNMENT:

DISC SPACES: NO SPONDYLOSIS

VERTEBRAL POSITION: SPONDYLOLISTHESIS

VERTEBRAL STRUCTURE: NO COMPRESSION FRACTURES

SCLEROSIS: NONE

OSTEOPHYTES: bridging C3-C6

SURGICAL HARDWARE: NONE

IMPRESSION:

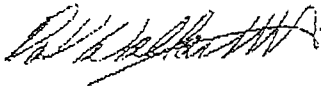
1) DEGENERATIVE JOINT DISEASE OF THE CERVICAL SPINE

- Follow up in 2 weeks

Addendum Note (Melissa Cox; 08/13/2013 11:00:58 AM)

Pt with probable carpal tunnel syndrome of the left wrist. Going to rule out metabolic etiology. Possibility of double crush with cervical spine DJD. Going to get a C-spine film, x-ray of the left wrist. There is a ganglion cyst in the left wrist. It does not appear to impinge on the carpal tunnel or medial nerve.

Pt had severe DJD of the cervical spine which I feel has significantly caused issues with possible neuropathy. Going to see her back in 2 weeks.



James P Wallace MD

LMO

8/22/2013 2:40:23 PM PAGE 3/004 Fax Server

10/2
3901 Premier North Drive
P.O. Box 31204
Tampa, FL 33631-3204
Telephone: 813-264-6588
1-800-282-6218
Fax: 603-334-8050

Attn: Jerry H.

603-430-1527

LIBERTY
MUTUAL

70930

W0555-104637

Associate Kathy Staton
Employer Mohawk Industries
Date of Birth: [REDACTED]
Date of Injury: 08/01/2008

AUG 22 2013

Dear Dr. Wallace,

The above referenced associate was referred to your facility for left hand & wrist injury complaints.

The purpose of this letter is to determine the major contributing cause of the patient's current condition versus a pre-existing condition or unrelated condition, due to the mechanism of injury being in question. We previously provided the patient's job description for review. Please address the following questions regarding the patient's injury & treatment and return to my attention as soon as possible:

What is your diagnosis for the above referenced patient? 354.0 (ICD9 code).

Are the left hand & wrist symptoms related to the patient's work accident?

Yes _____ No ☒

Comments: Pain in (L) wrist

Are the injured worker's current symptoms related to normal aging/degeneration or pre-existing condition?

Yes ☒ No _____

What do you recommend for a future treatment plan? If surgery is recommended, is this due to the work related accident?

Comments: _____

MD Signature and date: [Signature] 8-22-13

Thank you in advance for your cooperation. If you have any questions, please call my extension 22640.

Thank you.

Sincerely,

Gerry Hathaway

Patient Message

pt called

Staton, Kathey

To: Berry, LPN, Robyn
From: Berry, LPN, Robyn
Sent: 9/19/2013 5:02 PM
Phone: (843) 265-4866

> From: lindah, lindah
> To: Berry, Robyn
> Sent: 9/18/2013 4:48 PM
>

patient called today 09/18/13-----rec'd letter from w/c stating dr wallace had noted her injury was not related to w/c---she said she has appt with dr wallace tomorrow 09/19/13 wanted to speak w/him concerning the note and if she needed to come in tomorrow---call her at 843-265-4866..lgh

03/29/2014 12:51 pm

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MAR. 31. 2014 4:27PM - DILLON INTERNAL MEDICINE

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DILLON
INTERNAL MEDICINE
ASSOCIATES, PA

705 N 8th Ave, Suite 1A
Dillon, SC 29536
Phone: (843) 774-2478
Fax: (843) 774-1826

Kathey Staton

DOB: 05/29/1960 (53 years)

Date of Encounter: 10/08/2013 05:28 PM

Kathey Staton

10/08/2013 05:28 PM

Location: Dillon Internal Medicine Associates, PA

Patient #: 70930

DOB: 05/29/1960

Marital status: Single / Language: English / Race: Black or African American / Ethnicity: Not Hispanic or Latino

Gender: Female

History of Present Illness (James P Wallace, MD 10/08/2013 05:04 PM)

The patient is a 53 year old female presenting to discuss diagnostic procedure results. The patient had an EMG/PNCV's.

Additional reason for visit:

Carpal tunnel syndrome is described as the following:

This occurs in both wrists. Symptoms include hand pain, hand numbness and hand weakness. Symptoms are located in the left index finger. There is no radiation. Onset was gradual month(s) ago. The patient describes this as moderate in severity and improving. Associated symptoms do not include increased pain sensitivity, decreased pain sensitivity, decreased pincer strength, weakened grasp, incisional pain, incisional swelling, incisional redness or drainage from the surgical incision. Current treatment includes nonsteroidal anti-inflammatory drugs. Pertinent medical history includes degenerative joint disease (cervical spine). Past evaluation has included nerve conduction studies (07/03/13 R. wrist moderately severe CTS L. mild CTS). Past treatment has included nonsteroidal anti-inflammatory drugs and injected corticosteroids.

Allergies (James P Wallace, MD; 10/08/2013 05:59 PM)

No Known Drug Allergies 09/19/2013

Past Medical History *(James P Wallace, MD; 10/08/2013 05:59 PM)*

Carpal tunnel syndrome, left (354.0)

Social History (James P Wallace, MD; 10/08/2013 05:59 PM)

Drinks alcohol occasionally, on a less than daily basis

SMOKING STATUS (MEANINGFUL USE): Never smoker

Denies illicit drug use

Medication History (James P Wallace, MD; 10/08/2013 05:59 PM)

Valsartan-Hydrochlorothiazide (160-25MG Tablet 1 Oral daily) Active - Hx Entrv.

TraMADol HCl (50MG Tablet 1 (one) Tablet Oral three times daily, as needed, Taken starting 10/03/2013) Active - Hx Entry.

Medications Reconciled Specific dose unknown - Active - Hx Entry.

Vitals (Brooke Lovett PET; 10/08/2013 05:30 PM)

10/08/2013 05:29 PM

Weight: 181 lb Height: 66 in

Body Surface Area: 1.96 m² **Body Mass Index:** 29.21 kg/m²

Temp.: 98 °F Pulse: 72 (Regular) Resp.: 16 (Unlabored)

BP: 130/90 Manual (Sitting, Left Arm, Standard)

Physical Exam (Brooke Lovett, PET; 10/08/2013 05:39 PM)

The physical exam findings are as follows:

Kathery Staton

Patient #: 70930

DOB: 05/29/1960 (53 years)

Saturday, March 29, 2014

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DILLON INTERNAL MEDICINE

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General

Mental Status - Alert. **General Appearance** - Cooperative, Well groomed and Consistent with stated age. Not in acute distress. **Orientation** - Oriented X3 and Oriented to purpose. **Build & Nutrition** - Well nourished and Well developed. **Hydration** - Well hydrated.

Integumentary

General Characteristics: Overall examination of the patient's skin reveals - no suspicious lesions, no bruises and no evidence of scars. **Color** - normal coloration of skin. **Skin Moisture** - normal skin moisture.

Head and Neck

Head - normocephalic, atraumatic with no lesions or palpable masses.

Neck

Global Assessment - full range of motion and supple. no bruit auscultated on the right, no bruit auscultated on the left, non-tender, no lymphadenopathy, no palpable mass on the right, no palpable mass on the left and no nuchal rigidity.

Trachea - midline.

Thyroid

Gland Characteristics - normal size and consistency and no palpable nodules. non-tender.

Eye

Vision - Visual fields without obvious defect. **Eyeball** - **Left** - No Nystagmus. **Right** - No Nystagmus. **Pupil** - **Left** - Direct reaction to light normal, Equal, Regular and Round. **Right** - Direct reaction to light normal, Equal, Regular and Round.

ENMT

Ears

External Auditory Canal - **Left** - no tenderness noted. **Right** - no tenderness noted.

Otoscopic Exam: Tympanic Membrane - **Left** - tympanic membrane is gray in appearance. **Right** - tympanic membrane is gray in appearance.

Mouth and Throat

Oral Cavity/Oropharynx: **Oral Mucosa** - pink and moist.

Chest and Lung Exam

Chest and lung exam reveals - normal excursion with symmetric chest walls, quiet, even and easy respiratory effort with no use of accessory muscles and on auscultation, normal breath sounds, no adventitious sounds and normal vocal resonance.

Breast - Did not examine.

Cardiovascular

Inspection: Jugular vein - **Left** - Inspection Normal. **Right** - Inspection Normal.

Palpation/Perussion: Carotid Artery - **Left** - Normal pulsations. **Right** - Normal pulsations.

Auscultation: Rhythm - Regular. **Heart Sounds** - Normal heart sounds.

Murmurs & Other Heart Sounds: Auscultation of the heart reveals - No Murmurs.

Carotid arteries - No Carotid bruit.

Abdomen

Inspection: Inspection of the abdomen reveals - No Visible peristalsis, No Abnormal pulsations, No Paradoxical movements and No Hernias.

Skin: Inspection of the skin of the abdomen reveals - No Stria and No Scars.

Palpation/Perussion: Palpation and Percussion of the abdomen reveal - Non Tender, No Rebound tenderness, No Rigidity (guarding), No Abnormal dullness to percussion and No Palpable abdominal masses.

Auscultation: Auscultation of the abdomen reveals - Bowel sounds normal and No Abdominal bruits.

Rectal - Did not examine.

Peripheral Vascular

Kathey Staton

Patient #: 70930

DOB: 05/29/1960 (53 years)

Saturday, March 29, 2014

Page 2 / 3

NO. 813 P. 20

DILLON INTERNAL MEDICINE

MAR 21 2014 4:28PM

137

Upper Extremity: Inspection - Left - Pink nail beds. No Digital clubbing. **Right** - Pink nail beds. No Digital clubbing.
Palpation: Temperature - Left - Warm. **Right** - Warm. **Tenderness - Left** - Non Tender. **Right** - Non Tender.
Edema - Left - No edema. **Right** - No edema.
Lower Extremity: Inspection - Left - Pink skin. No Cyanotic nailbeds or Ulcerations. **Right** - Pink skin. No Cyanotic nailbeds or Ulcerations.
Palpation: Temperature - Left - Normal. **Right** - Normal. **Tenderness - Left** - Non Tender. **Right** - Non Tender.
Edema - Left - No edema. **Right** - No edema.

Neurologic

Mental Status: Affect - appropriate. **Speech** - Normal.

Cranial Nerves: - Normal Bilaterally.

Sensory: - Normal.

Motor:

Bulk and Contour: - Normal.

Tone: - Normal.

Strength: 5/5 normal muscle strength - All Muscles. **Coordination** - Normal.

Musculoskeletal

Spine/Ribs/Pelvis

Lumbosacral Spine: Examination of the lumbosacral spine reveals - no tenderness to palpation, no pain, no swelling, edema or erythema of surrounding tissue and normal lumbosacral spine movements.

Upper Extremity

Hand/Wrist:

Wrist: Functional Testing - Note: pos tinel L wrist

Lymphatic

General Lymphatics

Description - No Generalized lymphadenopathy.

Assessment & Plan (James P Wallace, MD; 10/08/2013 05:01 PM)

Hypertension, benign (401.1)

Current Plans:

- Started Valsartan-Hydrochlorothiazide 160-25MG, 1 Tablet daily, #30, 30 days starting 10/08/2013, Ref. x3.
- Continued TraMADol HCl 50MG, 1 (one) Tablet three times daily, as needed, #60, 10/08/2013, No Refill.

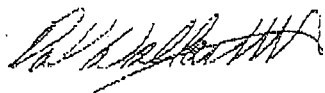
Carpal tunnel syndrome, left (354.0)

Today's Impression: 07/03/13 R CTS moderately severe

L mild CTS

Current Plans:

- Referred to Moore, Dr. Robert, (Orthopedic Surgeon)



James P Wallace MD

Fax or mail the completed application to:

The Hartford
P.O. Box 14301
Lexington, KY 40512-4301
Fax Number: (577) 431-6901



Section III - Attending Physician's Statement of Disability (Page one)

To be completed by the Employer

Name of patient	Social Security Number	Date of birth
Kathryn L. Staton	[REDACTED]	[REDACTED]
Address of patient (Street, City, State & Zip Code)		
[REDACTED]		
Employer's name (and division, if applicable)		
Mak & Co.		
I hereby authorize release of information on this form by the below named physician for the purpose of claim processing.		
Signed (Patient)		Date
Kathryn L. Staton	2/12/14	

To be completed by the Attending Physician
(The patient is responsible for the completion of this form without expense to the Company)

Patient's condition is the result of:	☒ Illness	☐ Injury	☐ Pregnancy	Height	Weight
If pregnancy, what is the expected date of delivery? Month / Day / Year					
If pregnancy, indicate LMP date: Month / Day / Year					
Is condition due to illness, or an injury that is work related? ☒ Yes ☐ No					
DIAGNOSIS					
Primary diagnosis					ICD-9 Code
Carpal Tunnel Syndrome					354.0
Secondary diagnosis(es)					ICD-9 Code(s)
Test Results (List all results, or enclose tests)					
Test	Date	Result			
EMG/NCS	1/14/14	Normal			
Test	Date	Result			
Subjective symptoms					
Physical examination findings					

TREATMENTS

Date you first treated this patient	11/19/13	Date you first treated this patient for this condition	11/19/13
Date of onset of this condition	11/19/13	Date of disability	
Date of most recent treatment	1-31-14	Date of next office visit	3/19/14
How often has patient been seen/treated?	UX		
Has patient been referred to any other physician? ☒ Yes ☐ No If "Yes," Date(s)			
Name of physician		Specialty	
Dr. Robert Moore			
Address of physician			
Nature of treatment for this condition			
Has surgery been performed? ☒ Yes ☐ No If "Yes," Date: 12-4-13			
Procedure		CPT Code	
Carpal Tunnel			
Was patient hospitalized for this condition? ☒ Yes ☐ No If "Yes," Date(s) admitted			
Date(s) discharged			
Name of hospital(s)			
Address of hospital(s)			
Progress (Please check one): ☐ Recovered ☒ Improved ☐ Unchanged ☐ Relapsed			

FUNCTIONAL CAPABILITIES

Please complete this section based on your clinical assessment at the time patient stopped working or reduced work schedule.

In a general workplace environment, the patient is able to:

	Sit	Stand	Walk
Number of hours at a time	9	8	8
Total hours/day			

Please check the frequency with which the patient can perform the following activities:

	Never	Occasionally (1-33%)	Frequently (34-67%)	No Restrictions	Not Applicable
Lift / carry 1 to 10 lbs.	R ☒ L ☐	R L B	R L B	R L B	
Lift / carry 11 to 20 lbs.	R ☒ L ☐	R L B	R L B	R L B	
Lift / carry 21 to 50 lbs.	R ☒ L ☐	R L B	R L B	R L B	
Lift / carry 51 to 100 lbs.	R ☒ L ☐	R L B	R L B	R L B	
Lift / carry over 100 lbs.	R ☒ L ☐	R L B	R L B	R L B	
Bending at waist					
Kneeling / crouching					
Driving					
Reaching only (not load-bearing)					
Above shoulder	R L B	R L B	R L B	R L B	
At waist / desk level	R L B	R L B	R L B	R L B	
Below waist / desk level	R L B	R L B	R L B	R L B	
Hanging / handling	R L B	R L B	R L B	R L B	

Hand dominance: ☒ R ☐ L

Is the patient's vision impaired? ☐ Yes ☒ No

Best corrected visual acuity: R _____ L _____

Does the patient have a psychiatric / cognitive impairment? ☐ Yes ☒ No If "Yes," please describe the extent of the impairment and its etiology: _____

Progress (Please check one): ☐ Recovered ☒ Improved ☐ Unchanged ☐ Retrogressed

Do you believe the patient is competent to endorse, check and direct the use of the proceeds? ☒ Yes ☐ No

Current restrictions or limitations, if different from above: _____

Expected duration of any current restriction(s) or limitation(s) listed above: _____

Attending Physician's Name (please print or type): J.P. Walker

Telephone Number:

(813) 774-2470

Fax Number:

(813)

License Number:

10072

SIN Number:

Degree:

Specialty:

Internal Medicine

Street Address (Street, City, State & Zip Code)

705 N. 8th Ave. Suite 14 Dallas TX 75316

Signature:

Date signed:

3/19/14

1-457131

Page 5 of 5

McHawk ESV - 017-K/1528

007012

PHYSICAL DEMANDS ANALYSIS



FROM: _____ DATE: _____
 FAX #: _____ PHONE #: _____
 To Supervisor of CLAIMANT NAME: _____ CLAIM NUMBER: _____

The immediate supervisor of the claimant listed above should complete this form and fax it back to The Hartford as soon as possible. If a job analysis has been done for this position, please send with this document.

Company Name: Mohawk Location: Oak River
 Job Title: CFH Operator

Please note essential duties of this position (those that are performed with some frequency and not reasonably omitted.) Attach a current job description if available. Operate CFH Twisting frame. Retrieve yarn on buggie, place yarn on machine, doll yarn off machine, set up new yarn, creel yarn in, fix breakouts.

Supervisory duties? ☐ Yes ☒ No

Education/training requirements: None at present

License/trade requirements: None

How can this job be modified and for how long? Cannot be modified

Are other jobs available in your company that require similar ability but require less physical effort? ☐ Yes ☒ No If yes, please explain.

***** Complete this form considering only the Essential Job Duties *****

Work schedule for the job

Hrs. per day 12 Days per week 3 to 4
 Shifts B-Night Overtime hours Volunteer
 Break/lunch periods 4 (15-25-15-15 min)
 Work pace: ☐ Self ☐ Incentive/piece rate
☒ Machine ☐ Set quota

Work field data

Machines / tools used:

☐ Computer ☐ Telephone ☐ Calculator
☐ Fork Lift (sit) ☐ Head Set
☐ Fork Lift (stand) ☐ Motor vehicle
☐ Power hand tools ☐ Manual hand tools

Materials used: Gloves, Cutex Service Cutter, finger knife
 Describe work station: Plastic knife

Operates twisting frames - multiple sides
Concrete floor

Sitting/Standing/Walking Requirements

Total hours at one time (check one for each)

Sitting	0	.5	1	2	3	4	5	6	7	8+
Standing	0	.5	1	2	3	4	5	6	7	8+
Walking	0	.5	1	2	3	4	5	6	7	8+

Total hours during typical workday (check one for each)

Sitting	0	.5	1	2	3	4	5	6	7	8+
Standing	0	.5	1	2	3	4	5	6	7	8+
Walking	0	.5	1	2	3	4	5	6	7	8+

Alternate sitting and standing as needed? ☐ Yes ☒ No

Talking/Hearing/Vision Requirements

Talking ☒ Person to person
☐ On the phone
☐ In group settings

Hearing ☒ In person
☐ On the phone
☐ In group settings

Vision ☒ Near ☒ Peripheral vision
☒ Midrange ☒ Depth perception
☒ Far

Pushing/Pulling/Lifting/Carrying Requirements

Task description (Describe task, articles that are pushed/pulled/lifted or carried and any mechanical assistance.)	Article - Weight		Typical Distance	Frequency	Duration
	Typical Weight	Maximum Weight	Push/Pull/Lift/Carry (in feet)	(How many times in one day?)	(For how long at one time?)
Tubes of Yarn (LAT)	12 ^{1/2}	15 ^{1/2}	3 ft	300	35 min.
(Push) Yarn Truck - with Yarn	700 ^{1/2}	850 ^{1/2}	40'	- 8	2-3 min

Other Essential Job Duties

		Never	Occasionally (1-33%)	Frequently (34-67%)	Constantly (68-100%)
Driving		✓			
Airplane Travel		✓			
Balancing		✓			
Stooping			✓		
Kneeling			✓		
Crouching			✓		
Crawling		✓			
Climbing		✓			
Reaching, Indicate if not bilateral by using R for right, L for left.	Above Shoulder			✓	
	At waist/desk level			✓	
	Below waist level			✓	
Handling (gross motor: gripping, holding, grasping)	Right Hand			✓	
	Left Hand			✓	
	Both Hands			✓	
Fingering (fine motor)	Right Hand				
	Left Hand				
	Both Hands			✓	
Feeling (sensing temperatures and textures)	Right Hand				
	Left Hand				
	Both Hands		✓		

Work Conditions	Yes	No
Setting: Inside <u>100</u> % Outside _____ %		
Extreme Heat	☒	☒
Extreme Cold	☐	☒
Wet/Humid	☐	☒
Fumes/Dust/Dirt/ Smoke	☐	☒
Confined Areas	☐	☒
High Places	☐	☒
Equipment in Motion	☒	☐
Safety Equipment/Clothing	☐	☒
Noise	☒	☐
Environmental Hazards (check if exists in workplace):		
Mechanical	☒	☐
Chemical	☐	☒
Electrical	☐	☒
Industrial Magnets	☐	☒

If you have additional information related to the Essential Duties of this position which has not been addressed elsewhere on this form, please attach and return it with this document.

Essential Duties are defined as those that are performed with some frequency and not reasonably omitted.

Signature of Person filling out form:

Frank Thigpen

Print Name:

Frank Thigpen

Phone # (with area code):

1-843-528-3622

Date:

3/31/06

Position:

Asst. Mgr.

Fax #:

843-528-3312



JOB DESCRIPTION

Position Title:	CFN Cabling Operator	Location:	ORS	FLSA:	
Reports to Title:	Shift Mgr	Prepared by:	Frank Thigpen	Grade:	
SBU/Department:	CFN Cabling	Approved by:	Frank Thigpen	DATE:	8/1/12

Primary Objective:

- To manufacture (by operating a cabler), good quality twisted carpet yarn onto a tube, from 2 ends of single ply yarn in a safe, efficient and effective manner

Duties & Responsibilities:

- Retrieve correct yarn and take to appropriate frame
- Set up yarn onto the frame
- Creel the yarn
- Fix Breakouts
- Doff the packages
- Must be able to work in a safe manner at all times
- Keep their area neat and clean at all times- good housekeeping
- Any and all other duties deemed necessary by their Leadership, including Management

Experience & Knowledge Required: Describe the education and knowledge required as well as the minimum years of experience needed.

- High school diploma or GED
- Must be able to read and write, and comprehend all paperwork necessary for job duties
- Must have some math skills
- Must be able to run and maintain a full job within the 90 probationary period

Skills: Describe the specific skills required for this position in terms of technical, managerial, interpersonal skills and unique abilities.

- Must be able to work in a team environment
- Must be able to work with their hands on and around moving machinery, in a safe manner
- Must be able to take instructions from supervision or leadership and act appropriately on them

Supervision: Indicate the positions that report to this position.

- No one reports to this position
- This position reports to the shift Leader, Shift Mgr, and other appropriate area Mgrs

Other Pertinent Job Information: (Such as: American with Disabilities Act- ADA requirements for certain hourly positions).

- Must be able to work in a repetitive and fast paced environment
- Must be able to bend, stoop and to lift 17 lbs throughout a shift
- Must be willing and able to use and wear PPE

Disclaimer: The above information on this description has been designed to indicate the general nature and level of the work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities, and qualifications required of employees assigned to this job.

☐	Climbing	☒	☐	☐	☐
☐	Reaching/Working Overhead	☐	☐	☒	☐
☐	Keyboard Use/Repetitive Hand Motion	☒	☐	☐	☐

Activity	Description	Frequency	Weight
☐	Pushing <u>Yarn trucks</u>	<u>50% / day</u>	<u>200</u> lbs.
☐	Pulling _____	_____	_____ lbs.
☐	Lifting <u>Pkgs off truck to machine</u>	<u>50% / day</u>	_____ lbs.
☐	Carrying _____	_____	_____ lbs.

Can the job be performed by alternating sitting and standing? ☐ YES ☒ NO

What are the major tasks requiring the use of one or both hands? Indicate the Percentage of the employee's workday that is spent on each of these tasks.

Reaching: Creel arm; Supply package; Yarn from truck to machine 50%

Pushing yarn truck 50 %

_____ %

F. Information About the Job as it Relates to the Disability

Can the job be modified to accommodate the disability either temporarily or permanently? ☐ YES ☒ NO If "Yes," Explain.

Is it possible to offer the employee assistance in doing the job (e.g., through the use of technology or personal assistance)? ☐ Yes ☒ No If "Yes," Explain.

G. Signature

Name (Print)	<u>Marilyn Brown</u>	Title	<u>SR HR Rep</u>
Signature	<u>Marilyn Brown</u>	Date	_____
Telephone Number	<u>(843) 528-3615</u>	Fax Number	<u>(843) 528-3312</u>

WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP) MOHAWK INDUSTRIES INC. P.O. BOX 887, BENNETTSVILLE, SC 29512 (843) 528-3620		CARRIER/ADMINISTRATOR CLAIM NUMBER WC555-C04637 615728030		OSHA LOG NUMBER 		REPORT PURPOSE CODE 	
INDUSTRY CODE 		EMPLOYER FEIN 52-1604305		JURISDICTION SC		JURISDICTION CLAIM NUMBER 	
INSURED REPORT NUMBER 				**1-03-RMPG0-10400-32200-OR000			
EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT) 2118 MARLBORO ROAD, BENNETTSVILLE, SC 29512 NOT SPECIFIED				LOCATION # **		PHONE # (843) 528-3620	
CARRIER/CLAIMS ADMINISTRATOR CARRIER (NAME, ADDRESS & PHONE #) LIBERTY INSURANCE CORP PO BOX 31204, TAMPA, FL 33631 (813) 264-6588				POLICY PERIOD 		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) 	
CARRIER FEIN 03-0316876				POLICY/SELF-INSURED NUMBER WA7-65D-004272-012		ADMINISTRATOR FEIN 	
EMPLOYEE/WAGE NAME (LAST, FIRST, MIDDLE) STATON, KATHEY L							
ADDRESS (INCL ZIP) NOT SPECIFIED		DATE OF BIRTH 		SOCIAL SECURITY NUMBER 		DATE HIRED 02/27/2006	
SEX ☐ M MALE ☒ F FEMALE ☐ U UNKNOWN		MARITAL STATUS ☒ UNMARRIED SINGLE/DIVORCED ☐ M MARRIED ☐ S SEPARATED ☐ K UNKNOWN		STATE OF HIRE 		OCCUPATION/JOB TITLE TWISTER OPERATO	
HOME 		# OF DEPENDENTS 4		EMPLOYMENT STATUS Full Time		NCCI CLASS CODE 	
DATE 		DAY 		MONTH 		DAYS/WEEK 5	
HOURS/DAY 8		FULL PAY FOR DAY OF INJURY? ☒ YES ☐ NO		DID SALARY CONTINUE? ☒ YES ☐ NO		YES ☒ NO ☐	
OCCURRENCE/TREATMENT NAME EMPLOYEE MCCALLUM, MELANIE							
DATE OF INJURY/ILLNESS 08/01/2008		TIME OF OCCURRENCE () CANNOT BE DETERMINED ☒ 01:15 ☐ PM		LAST WORK DATE 		DATE EMPLOYER NOTIFIED 07/03/2013	
DATE DISABILITY BEGAN 		TYPE OF INJURY/ILLNESS INFLAMMATION		PART OF BODY AFFECTED WRIST		TYPE OF INJURY/ILLNESS CODE 37	
PART OF BODY AFFECTED CODE 34		INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES? ☒ YES ☐ NO		DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED DEPARTMENT: TWISTING BCF 18 MARLBORO ROAD, BENNETTSVILLE, SC 29512		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED UNKNOWN	
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED 		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED 		INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL ALLEGES PAIN IN BOTH WRISTS			
RETURN(ED) TO WORK Lost Time				IF FATAL, GIVE DATE OF DEATH 		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? WERE THEY USED? YES ☐ NO ☐	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) 				HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS) 		CAUSE OF INJURY CODE 90	
INITIAL TREATMENT ☒ NO MEDICAL TREATMENT 1 MINOR: BY EMPLOYER 2 MINOR CLINIC/HOSP 3 EMERGENCY CARE 4 HOSPITALIZED > 24 HRS 5 FUTURE MAJOR MEDICAL/LOST TIME ANTICIPATED				ADMINISTRATOR NOTIFIED 13/2013			
DATE PREPARED 07/03/2013		PREPARER'S NAME & TITLE MCCALLUM, MELANIE SENIOR SAFETY SPE		PHONE NUMBER (843) 528-3620		11A-1 (r 1-1-02)	

SEE BACK FOR IMPORTANT INFORMATION

© IAABC 2002

146

00202

Select Option:

WCC #: SSN:

Date Range: -

Status Group:

Attorney/Carrier:

This information is subject to change and is not to be considered Official Notice from the SC Workers' Compensation Commission.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Report run: 06/17/14 09:18

Report Criteria: WCC#: 1315636

Click WCC# for More Information

WCC #	Caption	D/O/I	Carrier	Attorney for Defendant	Attorney for Claimant	Status
1315636	Kathey Staton -VS- MOHAWK INDUSTRIES INC.	06/28/13	Liberty Insurance Corporation PO Box 31204 TAMPA FL 33631 CMC555Ta mpa@libert ymutual.co m (800) 282- 6218	J. Brandon Hylton McAngus Goudelock & Courie PO Box 7489 Florence SC 29502 Brandon.hyl ton@mgcla w.com (843) 519- 1802	Stephen J Wukela Wukela Law Firm PO Box 13057 Florence SC 29504 stephen@wu kelalaw.com (843) 669- 5634	03/27/14 Hearing Postponed 03/20/14 Form 20 Received 01/17/14 Notice Printed 01/17/14 Scheduled for Hearing 01/15/14 Hearing Schedule Pending 01/15/14 Form 51 Not Received to Date 12/31/13 Form 18 Received 12/31/13 Claims Fine Satisfied 12/27/13 EDI First Report received 12/20/13 12A Fine Assessed

300211

FIRSTHEALTH FAMILY CARE CENTERS • 921 S Long St., Suite 101, Rockingham NC 28379-4874

STATON, KATHEY (id: [REDACTED], dob: [REDACTED])

Reviewed allergy history (no data recorded) without changes
NKDA

Assessment / Plan

1. CARPAL TUNNEL SYNDROME (354.0) - New Problem (no further w/u) - Continue using the wrist braces

Naproxen as below and heat 20min on 1hr off PRN

Referring to Orthopaedic as below

- NAPROXEN 500 MG TABLET - Take 1 tablet(s) twice a day by oral route for 30 days. Qty: 60 tablet(s) Refills: 3 Pharmacy: WAL-MART PHARMACY 1255
- ORTHOPAEDIC SURGERY REFERRAL

Return to Office

- Kimberley Lingler, MD for PAP Female Exam 30 min at RFM on 11/27/2012
- as needed

Encounter Sign-Off

Encounter signed-off by Steven D Millen Anp, 11/20/2012.

Encounter performed and documented by Steven D Millen Anp

Encounter reviewed & signed by Steven D Millen Anp on 11/20/2012 at 3:51pm

Encounter Date: 09/19/2012

Patient

Name	STATON, KATHEY [REDACTED]	Appt. Date/Time	09/19/2012 02:45PM
DOB	[REDACTED]	Service Dept.	RFM
Provider	KIMBERLEY LINGLER MD		
Insurance	Med Primary: CIGNA HEALTHCARE - MOHAWK - OPEN ACCESS PLUS Insurance #: U3779592301 Prescription: MHS - Member is eligible.		

Chief Complaint

Establish PCP

Establish—

Problems

- Hypopotassemia (276.8)
- Depressive disorder, not elsewhere classified (311)
- Sleep related leg cramps (327.52)
- Essential hypertension; benign (401.1)
- Insomnia, unspecified (780.52)

HPI

Pt is transferring care from a PCP in Society Hill, SC. Pt has h/o HTN, insomnia, hypokalemia (stopped meds due to increase in cramping).

Pt reports that over the last 1.5-2 mo ago that she is having decreased interests, decreased appetite, occasionally feeling down. Denies SI but had to think about it a bit. She has trouble falling asleep and staying asleep.

Last colonoscopy was 12/2010. Told to repeat in 5 yrs due to polyp.

Last mammo and pap in 10/2011.

Last labs done last month.

OS

None recorded.

YN History

Reviewed GYN History & made changes

Date of LMP: 07/05/2012.

Duration of Flow (days): 5.

Age at Menarche: 12.

Age at First Child: 16.

Past Medical History

Reviewed past medical history.

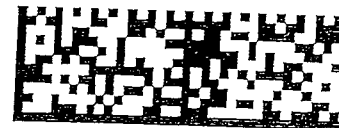
FIRSTHEALTH FAMILY CARE CENTERS • 921 S Long Drive Suite 101, Rockingham NC 28379-4874

STATON, KATHEY (id #990832, dob: 05/29/1960)

Consult Orders

STATON, KATHEY 05/29/60 #990832

FIRSTHEALTH FAMILY CARE CENTERS
FirstHealth FCC RFM
921 S Long Drive Suite 101
Rockingham, NC 28379-4874
(910) 417-3850



*8476453w376 A-Referral

REFERRAL/CONSULT

Patient Instructions:

- It is very important that you keep this referral appointment
- Call the Specialist's office at (910) 417-4090 if you are unable to keep this appointment; as many specialist now charge patients for no shows
- Plus, call our office at (910) 417-3850 if you decide you no longer want to keep this referral/consult appointment as scheduled

Referral/Consult Appointment:

Appointment Information:

Appointment Date: 11/30/2012

Appointment Time: 3:30

Specialist Physician:

KEVIN SLATER, PA-C
809 S. LONG DRIVE
SUITE S
ROCKINGHAM, NC 28379

Specialist Phone: (910) 417-4090
Specialist Fax: (910) 417-4099

Specialist's Coordinator:

Patient Information:

Patient Name: KATHEY STATON

Patient DOB: [REDACTED] Patient SSN: [REDACTED]

Patient Address: [REDACTED]

Patient Phone: H: [REDACTED]

Insurance Package 1: CIGNA HEALTHCARE - MOHAWK - OPEN ACCESS PLUS
ID: U3779592301

Group: 3331749

Policy Holder: STATON, KATHEY L

Insurance Package 2: None recorded.

Authorization #:

Clinical Order Name:

Orders included: 1

354.0: Carpal tunnel syndrome

Continue using the wrist braces Naproxen as below and heat 20min on 1hr off PRN Referring to Orthopaedic as below

• ORTHOPAEDIC SURGERY REFERRAL

Schedule Within: provider's discretion

Send To: KEVIN SLATER, PA-C

Appointment Date: 11/30/2012

Appointment Time: 3:30

Documents Sent:

☐ Progress Note(s)☐ Lab(s)☐ Radiology/Imaging☐ Other/Specify☐ Other/Specify☐ Other/Specify

Provider Signature:

Electronically Signed by: STEVEN D MILLEN ANP, NP, S

NP#: 1710182209

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1315636

RECEIVED
DEC 31 2015
SC Court of Appeals

Kathey L. Staton, Employee, ... Appellant/Claimant,

vs.

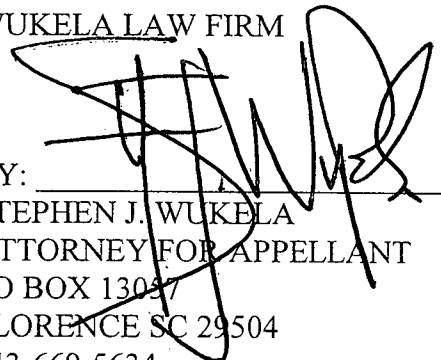
Mohawk Industries, Inc., Employer,
and Liberty Mutual, Carrier, ... Respondents/Defendants.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Record on Appeal complies with the Supreme Court Order of August 13, 2007, in that there are no personal data identifiers included in the Appellant's Record on Appeal, or they have been redacted where necessary.

December 29th, 2015

WUKELA LAW FIRM

BY: 
STEPHEN J. WUKELA
ATTORNEY FOR APPELLANT
PO BOX 1305
FLORENCE SC 29504
843-669-5634

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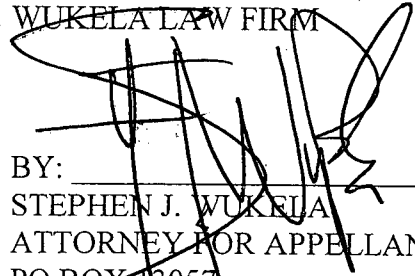
Mohawk Industries, Inc., Employer,
and Liberty Mutual, Carrier, ... Respondents/Defendants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 29th, 2015

WUKELA LAW FIRM

BY: 
STEPHEN J. WUKELA
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