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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE PANEL
The Honorable R. Michael Campbell, II,
The Honorable T. Scott Beck and
The Honorable Avery Wilkerson

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SC Court of Appeals

WCC NO. 1119818

Appellate Case No: 2015-001380

Shameka S. Green, Employee,

Appellant

v.

Teleperformance Group, Inc.,
Employer,

AND

Zurich North America, Carrier,

Respondents

RECORD ON APPEAL

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APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1119818

Shameka S. Green

EMPLOYEE,
CLAIMANT/APPELLANT

VS.

Teleperformance Group, Inc.

EMPLOYER,

AND

Zurich North America

CARRIER,
DEFENDANTS/RESPONDENTS,

Appellate Panel Review held in Columbia, South
Carolina, on March 17, 2015 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

May 29th, 2015

APPEARANCES: Claimant/Appellant represented by Everett H. Garner, Esquire

Defendants/Respondents represented by Kelly F. Morrow, Esquire

STATEMENT OF THE CASE

This matter was initially held on July 9, 2013 before Commissioner Wilkerson. Commissioner Wilkerson issued a Decision and Order that was then appealed by the Claimant to the Full Commission. Just prior to the Full Commission review hearing, the Claimant withdrew the appeal and the Decision and Order of Commissioner Wilkerson became the unappealed Order of this case.

Commissioner Wilkerson held that the Claimant sustained an admitted injury by accident to the right lower extremity arising out of and in the course and scope of the employment with the Defendants on September 23, 2011. He determined that she was entitled to future medical care including NSAIDS, shots and braces. He awarded her 35% disability to the right lower extremity from her 21% impairment rating and provided the Defendants with a credit for the overpayment of benefits in the amount of \$1,210.90.

After withdrawing the Appeal to the Full Commission, the Claimant filed for a change of condition for the worse requesting further medical care for the right lower extremity. The Defendants timely responded denying the Claimant's change of condition for the worse and indicating that the prior Order of Commissioner Wilkerson remained in effect governing her future medical care.

A Hearing was held before Commissioner McCaskill on July 18, 2014. The Claimant was seeking a determination of a change of condition for the worse and the medical care to be provided as a result of the same. The Claimant took the position that the authorized treating physician, Dr. Noojin, indicated that the Claimant required further causally-related medical care in the form of a high tibial osteotomy. The Claimant took the position that this was supported by a questionnaire as provided by Dr. Noojin. The Defendants took the position that there had been

no change of condition for the worse. The Defendants indicated that was supported by the discovery deposition of Dr. Noojin that was conducted subsequent to the completion of the questionnaire and further clarified the medical care that was presently recommended was the same medical care that had been in issue prior to the Decision of Commissioner Wilkerson. As a result, the Defendants denied there had been a worsening of the Claimant's condition.

Prior to the Hearing before Commissioner McCaskill, the Claimant made a Motion to request a postponement or alternatively to allow the record to remain open to secure medical evidence by an orthopedist. The Claimant cited circumstances beyond their control (difficulty in getting the proper medical records from the treating doctor's office to the IME doctor) that had delayed their ability to secure that evaluation prior to the hearing date. The Defendants objected to any postponement of the hearing or for the record to remain open for any additional evidence. Alternatively, if the record were to remain open, the Defendants requested their right to respond to the new evidence as needed. The Single Commissioner allowed for the record to remain open for the Claimant to secure their assessment with an orthopedist and for the Defendants to respond to that evidence only. Claimant requested reconsideration to re-depose Dr. Noojin and the Single Commissioner indicated the record was closed.

At the conclusion of the hearing, the Single Commissioner issued a Decision and Order making the following findings of fact and conclusions of law:

SINGLE COMMISSIONER FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Findings of Fact

1. The Claimant suffered an injury by accident by accident to her right knee on 09/23/11 arising out of and within the course and scope of her employment with the Defendants which was adjudicated before Commissioner Wilkerson on July 9, 2013.
2. Commissioner Wilkerson issued an Order on September 18, 2013. His

Order was not appealed and is the law of the case.

3. The Claimant alleges that she has suffered a change of condition for the worse and seeking additional medical care and treatment under Section 42-17-90.
4. The Defendants assert that there is no evidence of a medical change of condition, and without supporting evidence the standard in the law as to change of condition cannot be met.
5. The Claimant asserts that her request is pain driven which is sufficient under the Act for a change of condition to exist.
6. The Claimant cites an Affidavit dated April 2, 2014 which was executed by Dr. Frank K. Noojin, who is the authorized treating physician, as evidence that the Claimant is entitled to a change of condition and, as such, additional medical care and treatment.
7. Dr. Noojin was also deposed on May 14, 2014. I give much greater weight to his deposition testimony.
8. In that deposition, Dr. Noojin was questioned as to the future medical care and treatment he listed on the Form 14B which was ordered by Commissioner Wilkerson – braces, shots, and NSAIDS.
9. Dr. Noojin was asked, “But in terms of the future medical treatment that was specifically stated, it was shots, braces, and NSAIDS?” Answer: Yes. “And no indication of a high tibial osteotomy; is that fair?” Answer: “That’s what I answered. Yes.” (Deposition page 15, lines 1-7).
10. Dr. Noojin goes on to say, “And the reason I had said that is because I had been offering the osteotomy for quite a time, and then she had not wanted to do it. So, therefore, I figured the decision had been made, that she didn’t want to do the surgery when we settled the case.” (Deposition page 15, lines 15-17).
11. It is the Claimant’s contention that her pain level is now higher and she now wishes to have additional medical care and treatment.
12. The Defendants counter that there has been no medical change to her condition and the pain she is having now is essentially the same pain she was having at the time of the hearing on July 9, 2013.

13. As to the medical evidence, Dr. Noojin testifies, "So objectively speaking from an x-ray standpoint, which is the only objective that I have, there has been no change in the condition other than the subjective pain." (Deposition page 31, lines 3-6).
14. The Claimant, at the direction of her attorney, underwent an IME with Dr. Joseph P. Jackson.
15. At the time of the hearing, Claimant's attorney did not disclose that the IME was to be with Dr. Jackson. In the interest of full disclosure, which I would have made at the hearing had I known the IME was to be with Dr. Jackson, Dr. Jackson performed hand surgery on me about 18 years ago. I had an excellent outcome and have not seen him since. This prior relationship does not have any impact on my ruling.
16. Dr. Jackson opines that the Claimant has had a medical change of condition for the worse. He writes, "So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse."
17. While I have the utmost respect for Dr. Jackson and I have thoughtfully considered his opinion, I give greater weight to the opinion of Dr. Noojin who has been the authorized treating physician throughout this case.
18. Dr. Noojin testifies, "...her pain has progressed to a level where she is –or has gotten to the point where she has decided she wants to do something else about it. But has there been a medical change in the overall condition of the knee? I don't think so based on my best assessment with the x-ray tools I have." (Deposition page 40, lines 7-13).
19. Having reviewing the original hearing transcript and having heard the live testimony of the Claimant at this hearing, I find that the pain the Claimant now professes to have is not substantively different than the pain she was having at the time of the original hearing on 07/09/13.
20. When I consider the evidence as a whole, the Claimant has failed to meet her burden as to a change of condition for the worse.
21. As such, the Claimant is not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013.

Conclusions of Law

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of and in the course of employment.
2. Claimant sustained a compensable injury by accident to the right lower extremity with the Defendants on September 23, 2011 per the prior Order of Commissioner Wilkerson.
3. Section 42-17-90 governs the Review of an Award for a Change of Condition for the worse.
4. Pursuant to Section 42-17-90, the Claimant has not carried the requisite burden of proof required under the South Carolina Workers' Compensation Act to establish that her right lower extremity injury has changed for the worse.
5. Section 42-1-40 governs average weekly wage.
6. Claimant has an average weekly wage of \$373.18 with a corresponding compensation rate of \$248.78.
7. Because the Claimant has failed to prove a change of condition for the worse, the prior Order of Commissioner Wilkerson remains the law of this case.

Following the Decision and Order, Claimant filed a Form 30 and asserted the following exceptions to the Decision and Order:

1. Did the Hearing Commissioner err in Finding of Fact No. 5 wherein he found that Claimant asserts that her request (for change of condition) is pain driven; the error being that the contemporary evaluating orthopedist, Dr. Joseph Jackson specifically opined that based on his review of more recent radiographic evidence Claimant had suffered a clear arthritic progression of her condition.
2. Did the Hearing Commissioner err in Finding of Fact No. 7 wherein he accorded greater weight to Dr. Frank Noojin's deposition testimony than to his affidavit; the error being that the affidavit addressed specific points of contention and explicitly established a change of condition.

3. Did the Hearing Commissioner err in Finding of Fact No. 13 wherein he accorded dispositive weight to Dr. Noojin's statement "so objectively speaking from an x-ray standpoint which is the only objective I have there has been no change in the condition other than subjective pain;" the error being that Dr. Noojin was reviewing outdated x-rays when expressing this opinion.
4. Did the Hearing Commissioner err in Finding of Fact No. 17 wherein he accorded greater weight to the opinion of Dr. Noojin; the error being that Dr. Jackson's radiographic evidence was contemporary and his opinion was based explicitly on such evidence.
5. Did the Hearing Commissioner err in Finding of Fact No. 19 wherein he found that the pain the Claimant now professes to have is not substantively different from the pain she was having at the time of the original hearing on July 9, 2013; the error being that the pain scale is a nebulous concept relative of the current context i.e., the advent of exposure to pain of heightened intensity.
6. Did the Hearing Commissioner err in Finding of Fact No. 20 wherein he found that the Claimant failed to meet her burden as to change of condition for the worse; the error being that the preliminary evidence afforded by Dr. Noojin and the contemporary evidence afforded by Dr. Jackson mandate otherwise.
7. Did the Hearing Commissioner err in Finding of Fact No. 21 wherein he found that Claimant was not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013; the error being that the substantial evidence heretofore cited mandates otherwise.

EVIDENCE OF THE CASE

Testimony

The Claimant testified that she is 40 years of age and has a high school education and some college education. (Hearing Trans. p. 12). Claimant continues to be employed with the Defendants, Teleperformance USA/Direct T.V. (Hearing Trans. p. 12). The Claimant testified she was involved in a work-related accident on September 23, 2011. She stated as a result she secured medical treatment with Dr. Noojin. (Hearing Trans. p. 13). She stated he released her

from his care on April 23, 2013. (Hearing Trans. p. 14). She testified prior to her release by Dr. Noojin she had discussed with him the possibility of having a high tibial osteotomy done on her right lower extremity. (Hearing Trans. p. 14). The Claimant testified she chose not to have the recommended surgery because of the extensive nature of the surgery and the recovery period she understood to be as long as one year's time. (Hearing Trans. p. 14-16).

The Claimant testified that her pain levels were worse since the last hearing in this matter. (Hearing Trans. p. 17-18). She testified she was experiencing more frequent Charlie horses in her leg and having to adjust more frequently because of the pain. (Hearing Trans. p. 18). As a result of her increased, unbearable pain, she felt as though she would now require/need the previously recommended surgery by Dr. Noojin. (Hearing Trans. p. 18). The Claimant testified that she continues to have increased pain despite the use of prescribed medications. (Hearing Trans. p. 19). The Claimant further testified that she has increased swelling in the knee that was physically displayed to the Single Commissioner. (Hearing Trans. p. 21).

On cross-examination Ms. Green testified that she testified at the prior hearing that her pain levels were between an 8 and a 9 consistently. (Hearing Trans. p. 24). She further testified that at her discovery deposition that was taken just weeks before the first hearing that she had also testified that her pain level average was a level 9 and she again reiterated that as her pain level at the prior hearing. (Hearing Trans. p. 25). The Claimant testified that despite a pain level of 9 she continued to work full time and the same hours she was working prior to the last hearing. (Hearing Trans. p. 26).

The Claimant testified that Dr. Noojin had performed her prior ACL knee surgery and she trusted his opinion of her condition and need for care. (Hearing Trans. p. 26-27). The Claimant testified that she had asked Commissioner Wilkerson at the prior hearing to award her

the high tibial osteotomy surgery for her injury in this case and that she was asking for the exact same treatment and care at the present hearing. (Hearing Trans. p. 27-29). The Claimant testified that she expressed her pain levels and complaints to Dr. Noojin throughout her medical care. (Hearing Trans. p. 29). She described her pain complaints and sensations as a Charlie horse to be the same sensations she testified to at the prior hearing. (Hearing Trans. p. 30).

The Claimant testified that she continues to have the same accommodations at work that she had at the last hearing to enable her to perform her job with the Employer on a routine basis. (Hearing Trans. p. 29). Further the Claimant testified she had received a pay raise since her last hearing in this matter. (Hearing Trans. p. 30).

Pamela Fleming testified on behalf of the Defendants. Ms. Flemming testified that she works with Teleperformance as the human resources generalist. (Hearing Trans. p. 33-34). In that capacity she oversees HR aspects and she handles workers compensation matters. (Hearing Trans. p. 34). Ms. Flemming testified if the Claimant was having any job performance issues either physically or on another platform she would have been informed of them and would have been asked to address them in her capacity. (Hearing Trans. p. 35). Ms. Flemming testified that the Claimant has never come to her and never indicated to her that she was having discomfort of any type nor did she ask for any specific accommodations to allow her to perform her job with them. (Hearing Trans. p. 37). Ms. Flemming described the Claimant as a good employee and she did not observe or have any personal knowledge of her having any difficulties performing her job as the result of her work-related injury to the right lower extremity. (Hearing Trans. p. 38).

On cross-examination Ms. Flemming testified she is not a medical professional and has not provided care to the Claimant. She further testified that the Claimant had never come to her to notify her of any pain or problems associated to performing her job with the Employer and she

had never requested medical care through them for anything associated to her workers compensation claim. (Hearing Trans. p. 40-42).

Medical

The Claimant received causally-related medical care with Dr. Noojin. Prior to the initial release by Dr. Noojin, he recommended on May 21, 2012 that the Claimant may be a candidate for a high tibial osteotomy. (APA p. 17). The Claimant elected not to have the surgery and Dr. Noojin placed her at maximum medical improvement on April 23, 2013 with a 21% impairment to the right lower extremity. He provided her with recommendations for future medical care to include: shots, braces, and NSAIDS. (APA p. 38-41).

The Claimant returned for an evaluation with Dr. Noojin after her release, on December 2, 2013 for her right knee. Dr. Noojin recommended that the Claimant could live with it or have a high tibial osteotomy. (APA p. 42). Dr. Noojin then completed an Affidavit on April 2, 2014 indicating that the Claimant sustained a change of condition for the worse due to worsened pain and that he would recommend the high tibial osteotomy. (APA p. 44-45).

Dr. Noojin's discovery deposition was taken on May 15, 2014, wherein Dr. Noojin stated that he had offered the Claimant a high tibial osteotomy and that the Claimant declined that surgery. (Depo p. 9-10). Dr. Noojin testified if the Claimant had the levels of pain described at the first hearing he would suspect that she would elect emergent care or immediate treatment. (Depo p. 17). Dr. Noojin also agreed that the Claimant's pain level complaints both prior to his release at MMI and then on her return visit in December 2013 were largely the same. (Depo p. 20). Dr. Noojin evaluated the x-rays of the Claimant's right knee both before and after the determination of MMI and indicated that her loss of cartilage was at the same level that it was at the time of her release, so he could not state that her condition had medically worsened. (Depo p.

30-35). Dr. Noojin agreed as a result the only change would be the Claimant's election to have the surgery, the same surgery that had been recommended to her prior to the release at maximum medical improvement. (Depo p. 29-32). Dr. Noojin indicated in his deposition that he was no longer of the opinions that he had previously provided in the Affidavit of April 2, 2014.

After the deposition of Dr. Noojin, and after the IME of Dr. Jackson, Dr. Noojin completed a questionnaire indicating that the IME secured with Dr. Jackson did not in any way impact his opinions that were set forth in his discovery deposition of May 15, 2014. He further indicated that the only thing that had changed in this case was the Claimant's election to have the high tibial osteotomy. Finally, Dr. Noojin concluded that the Claimant's need for a knee replacement was a consideration prior to the initial release on April 23, 2013 and that nothing had changed or accelerated that need.

The Claimant was evaluated by Dr. Jackson on September 5, 2014. Dr. Jackson concluded that there had been clear progression of the disease despite the Claimant's best efforts. He recommended that she not undergo an osteotomy because she no longer met the criteria for that surgery. He recommended that the Claimant see a regional expert in joint replacement and recommended weight loss.

FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

1. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant suffered an injury by accident to her right knee on September 23, 2011, arising out of and within the course and scope of her employment with the Defendants which was adjudicated before Commissioner

Wilkerson on July 9, 2013.

2. Commissioner Wilkerson issued an Order on September 18, 2013. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that his Order was not appealed and is the law of the case.
3. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant alleges that she has suffered a change of condition for the worse and seeking additional medical care and treatment under Section 42-17-90.
4. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Defendants assert that there is no evidence of a medical change of condition, and without supporting evidence the standard in the law as to change of condition cannot be met.
5. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant asserts that her request is pain driven which is sufficient under the Act for a change of condition to exist.
6. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant cites an affidavit dated April 2, 2014 which was executed by Dr. Frank K. Noojin, who is the authorized treating physician, as evidence that the Claimant is entitled to a change of condition and, as such, additional medical care

and treatment.

7. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Noojin was also deposed on May 14, 2014. We give much greater weight to his deposition testimony.
8. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that in that deposition, Dr. Noojin was questioned as to the future medical care and treatment he listed on the Form 14B which was ordered by Commissioner Wilkerson – braces, shots, and NSAIDS.
9. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Noojin was asked, "But in terms of the future medical treatment that was specifically stated, it was shots, braces, and NSAIDS?" Answer: Yes. "And no indication of a high tibial osteotomy; is that fair?" Answer: "That's what I answered. Yes." (Deposition page 15, lines 1-7).
10. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Noojin went on to say, "And the reason I had said that is because I had been offering the osteotomy for quite a time, and then she had not wanted to do it. So, therefore, I figured the decision had been made, that she didn't want to do the surgery when we settled the case." (Deposition page 15, lines 15-17).

11. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find it is the Claimant's contention that her pain level is now higher and she now wishes to have additional medical care and treatment.
12. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Defendants counter that there has been no medical change to her condition and the pain she is having now is essentially the same pain she was having at the time of the hearing on July 9, 2013.
13. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that as to the medical evidence, Dr. Noojin testifies, "So objectively speaking from an x-ray standpoint, which is the only objective that I have, there has been no change in the condition other than the subjective pain." (Deposition page 31, lines 3-6).
14. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant, at the direction of her attorney, underwent an IME with Dr. Joseph P. Jackson.
15. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that at the time of the Single Commissioner Hearing, Claimant's attorney did not disclose that the IME was to be with Dr. Jackson. In the interest of full

disclosure, which we find that Commissioner McCaskill would have made at the hearing had he known the IME was to be with Dr. Jackson, Dr. Jackson performed hand surgery on him about 18 years ago. Commissioner McCaskill had an excellent outcome and has not seen him since. However, this prior relationship did not have any impact on his ruling.

16. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Jackson opines that the Claimant has had a medical change of condition for the worse. He writes, "So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse."
17. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that while we have the utmost respect for Dr. Jackson and we have thoughtfully considered his opinion, we give greater weight to the opinion of Dr. Noojin who has been the authorized treating physician throughout this case.
18. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, Dr. Noojin testifies, "...her pain has progressed to a level where she is –or has gotten to the point where she has decided she wants to do something else about it. But has there been a medical change in the overall condition of the knee? I don't think so based on my best assessment with the x-ray tools I have." (Deposition

page 40, lines 7-13).

19. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the pain the Claimant now professes to have is not substantively different than the pain she was having at the time of the original hearing on July 9, 2013.
20. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant has failed to meet her burden as to a change of condition for the worse.
21. As such, based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant is not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013.
22. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

Conclusions of Law

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of

and in the course of employment.

2. Pursuant to S.C. Code Ann. § 42-15-10 and § 42-17-20, jurisdiction and venue are proper.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).
5. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.
6. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
7. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant sustained a compensable injury by accident to the right

lower extremity with the Defendants on September 23, 2011 per the prior Order of Commissioner Wilkerson.

8. Section 42-17-90 governs the Review of an Award for a Change of Condition for the worse.
9. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that pursuant to Section 42-17-90, the Claimant has not carried the requisite burden of proof required under the South Carolina Workers' Compensation Act to establish that her right lower extremity injury has changed for the worse.
10. Section 42-1-40 governs average weekly wage.
11. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant has an average weekly wage of \$373.18 with a corresponding compensation rate of \$248.78.
12. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant has failed to prove a change of condition for the worse, and the prior Order of Commissioner Wilkerson remains the law of this case.
13. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

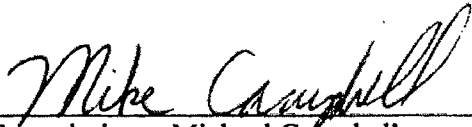
ORDER

IT IS HEREBY ORDERED that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED IN ITS ENTIRETY**.

IT IS HEREBY ORDERED that the substantial evidence supports a finding that the Claimant has failed to carry her burden of proof in demonstrating that she suffered a change of condition for the worse under Section 42-17-90.

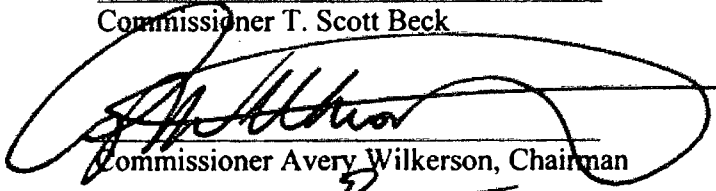
IT IS HEREBY ORDERED that the substantial evidence supports a finding that the prior Decision and Order of Commissioner Wilkerson remains the law of this case as the unappealed Order of this case. That Order governs the Claimant's entitlement to future medical care as there has been no change of condition for the worse.

AND IT IS SO ORDERED.


Commissioner Michael Campbell
For the Appellate Panel

WE CONCUR:


Commissioner T. Scott Beck


Commissioner Avery Wilkerson, Chairman

CERTIFICATE OF SERVICE

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

By Kim Falls on May 29, 2015

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1119818

SHAMEKA S. GREEN,

Employee,

Claimant,

vs.

TELEPERFORMANCE GROUP, INC.,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Richland, S.C. on July 18, 2014.

APPEARANCES:

Claimant appeared and represented by Everett H. Garner, Esquire, of Holler, Garner, Corbett, Ormond, Plante & Dunn of Columbia, South Carolina 2901.

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

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER:

Gene McCaskill, Commissioner

FILED:

December 17, 2014

STIPULATIONS

The parties stipulate at a hearing to the following:

1. The Claimant's average weekly wage is Three Hundred Seventy Three and 15/100 Dollars (\$373.15) with a corresponding compensation rate of Two Hundred Forty Eight and 78/100 Dollars (\$248.78).
2. Notice of a hearing was timely and properly served upon all parties of interest.
3. The South Carolina Worker's Compensation Commission has jurisdiction of this claim.
4. Venue is proper in Richland County.

APA SUBMISSIONS

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

The Claimant submitted the following exhibits:

1. Dr Frank K. Noojin, Moore Orthopaedics, dated 12/1/11 – 12/2/13, consisting of 43 pages.
2. Dr. Frank K. Noojin, discovery deposition, dated 5/15/14.
3. Dr. Frank K. Noojin, Affidavit, dated 4/2/14.
4. Dr. Joseph P. Jackson, Camden Orthopaedics, dated 9/5/14, consisting of 4 pages.

The Defendants submitted the following exhibits:

1. Dr. Frank K. Noojin, Moore Orthopaedics, dated 12/2/13 – 12/1/11, consisting of 16 pages.
2. Deposition of the Claimant, dated 6/27/13, consisting of 22 pages.

3. Deposition of Frank K. Noojin, dated 5/15/14, consisting of 25 pages.
4. Hearing Transcript, dated 7/9/13, consisting of 49 pages.
5. Decision and Order of the Single Commissioner, dated 9/18/13, consisting of 9 pages.
6. Questionnaire of Dr. Frank K. Noojin, dated 10/10/14, consisting of 2 pages.

STATEMENT OF THE CASE

This matter was initially held on July 9, 2013 before Commissioner Wilkerson. Commissioner Wilkerson issued a Decision and Order that was then appealed by the Claimant to the Full Commission. Just prior to the Full Commission review hearing, the Claimant withdrew the appeal and the Decision and Order of Commissioner Wilkerson became the unappealed Order of this case.

Commissioner Wilkerson held that the Claimant sustained an admitted injury by accident to the right lower extremity arising out of and in the course and scope of the employment with the Defendants on September 23, 2011. He determined that she was entitled to future medical care including NSAIDS, shots and braces. He awarded her 35% disability to the right lower extremity from her 21% impairment rating and provided the Defendants with a credit for the overpayment of benefits in the amount of \$1,210.90.

After withdrawing the Appeal to the Full Commission, the Claimant filed for a change of condition for the worse requesting further medical care for the right lower extremity. The Defendants timely responded denying the Claimant's change of condition for the worse and indicating that the prior Order of Commissioner Wilkerson remained in effect governing her future medical care.

Claimant took the position that the authorized treating physician, Dr. Noojin, indicated that the Claimant required further causally-related medical care in the form of a high tibial

osteotomy. The Claimant took the position that this was supported by a questionnaire as provided by Dr. Noojin. The Claimant was seeking a determination of a change of condition for the worse and the medical care to be provided as a result of the same.

The Defendants took the position that there had been no change of condition for the worse. The Defendants indicated that was supported by the discovery deposition of Dr. Noojin that was conducted subsequent to the completion of the questionnaire and further clarified the medical care that was presently recommended was the same medical care that had been in issue prior to the Decision of Commissioner Wilkerson. As a result the Defendants denied there had been a worsening of the Claimant's condition.

Prior to the hearing the Claimant made a Motion to request a postponement or alternatively to allow the record to remain open to secure medical evidence by an orthopaedist. The Claimant cited circumstances beyond their control (difficulty in getting the proper medical records from the treating doctor's office to the IME doctor) that had delayed their ability to secure that evaluation prior to the hearing date. The Defendants objected to any postponement of the hearing or for the record to remain open for any additional evidence. Alternatively if the record were to remain open the Defendants requested their right to respond to the new evidence in needed. The Single Commissioner allowed for the record to remain open for the Claimant to secure their assessment with an orthopaedist and for the Defendants to respond to that evidence only. Claimant requested reconsideration to re-depose Dr. Noojin and the Single Commissioner indicated the record was closed.

EVIDENCE OF THE CASE

Testimony

The Claimant testified that she is 40 years of age and has a high school education and some college education. (Hearing Trans. p. 12) Claimant continues to be employed with the Defendants, Teleperformance USA/Direct T.V. (Hearing Trans. p. 12) The Claimant testified she was involved in a work-related accident on September 23, 2011. She stated as a result she secured medical treatment with Dr. Noojin. (Hearing Trans. p. 13) She stated he released her from his care on April 23, 2013. (Hearing Trans. p. 14) She testified prior to her release by Dr. Noojin she had discussed with him the possibility of having a high tibial osteotomy done on her right lower extremity. (Hearing Trans. p. 14) The Claimant testified she chose not to have the recommended surgery because of the extensive nature of the surgery and the recovery period she understood to be as long as one year's time. (Hearing Trans. p. 14-16)

The Claimant testified that her pain levels were worse since the last hearing in this matter. (Hearing Trans. p. 17-18) She testified she was experiencing more frequent Charlie horses in her leg and having to adjust more frequently because of the pain. (Hearing Trans. p. 18) As a result of her increased, unbearable pain, she felt as though she would now require/need the previously recommended surgery by Dr. Noojin. (Hearing Trans. p. 18) The Claimant testified that she continues to have increased pain despite the use of prescribed medications. (Hearing Trans. p. 19) The Claimant further testified that she has increased swelling in the knee that was physically displayed to the Single Commissioner. (Hearing Trans. p.21)

On cross-examination Ms. Green testified that she testified at the prior hearing that her pain levels were between an 8 and a 9 consistently. (Hearing Trans. p. 24) She further testified

that at her discovery deposition that was taken just weeks before the first hearing that she had also testified that her pain level average was a level 9 and she again reiterated that as her pain level at the prior hearing. (Hearing Trans. p. 25) The Claimant testified that despite a pain level of 9 she continued to work full time and the same hours she was working prior to the last hearing. (Hearing Trans. p. 26)

The Claimant testified that Dr. Noojin had performed her prior ACL knee surgery and she trusted his opinion of her condition and need for care. (Hearing Trans. p. 26-27) The Claimant testified that she had asked Commissioner Wilkerson at the prior hearing to award her the high tibial osteotomy surgery for her injury in this case and that she was asking for the exact same treatment and care at the present hearing. (Hearing Trans. p. 27-29) The Claimant testified that she expressed her pain levels and complaints to Dr. Noojin throughout her medical care. (Hearing Trans. p. 29) She described her pain complaints and sensations as a Charlie horse to be the same sensations she testified to at the prior hearing. (Hearing Trans. p. 30)

The Claimant testified that she continues to have the same accommodations at work that she had at the last hearing to enable her to perform her job with the Employer on a routine basis. (Hearing Trans. p. 29) Further the Claimant testified she had received a pay raise since her last hearing in this matter. (Hearing Trans. p. 30)

Pamela Fleming testified on behalf of the Defendants. Ms. Flemming testified that she works with Teleperformance as the human resources generalist. (Hearing Trans. p. 33-34) In that capacity she oversees HR aspects and she handles workers compensation matters. (Hearing Trans. p. 34) Ms. Flemming testified if the Claimant was having any job performance issues either physically or on another platform she would have been informed of them and would have been asked to address them in her capacity. (Hearing Trans. p. 35) Ms. Flemming testified that

the Claimant has never come to her and never indicated to her that she was having discomfort of any type nor did she ask for any specific accommodations to allow her to perform her job with them. (Hearing Trans. p. 37) Ms. Flemming described the Claimant as a good employee and she did not observe or have any personal knowledge of her having any difficulties performing her job as the result of her work-related injury to the right lower extremity. (Hearing Trans. p. 38)

On cross-examination Ms. Flemming testified she is not a medical professional and has not provided care to the Claimant. She further testified that the Claimant had never come to her to notify her of any pain or problems associated to performing her job with the Employer and she had never requested medical care through them for anything associated to her workers compensation claim. (Hearing Trans. p. 40-42)

Medical

The Claimant received causally-related medical care with Dr. Noojin. Prior to the initial release by Dr. Noojin, he recommended on May 21, 2012 that the Claimant may be a candidate for a high tibial osteotomy. (APA p. 17) The Claimant elected not to have the surgery and Dr. Noojin placed her at maximum medical improvement on April 23, 2013 with a 21% impairment to the right lower extremity. He provided her with recommendations for future medical care to include: shots, braces, and NSAIDS. (APA p.38-41)

The Claimant returned for an evaluation with Dr. Noojin after her release, on December 2, 2013 for her right knee. Dr. Noojin recommended that the Claimant could live with it or have a high tibial osteotomy. (APA p 42) Dr. Noojin then completed an Affidavit on April 2, 2014 indicating that the Claimant sustained a change of condition for the worse due to worsened pain and that he would recommend the high tibial osteotomy. (APA p 44-45)

Dr. Noojin's discovery deposition was taken on May 15, 2014, wherein Dr. Noojin stated that he had offered the Claimant a high tibial osteotomy and that the Claimant declined that surgery. (Depo p. 9-10) Dr. Noojin testified if the Claimant had the levels of pain described at the first hearing he would suspect that she would elect emergent care or immediate treatment. (Depo p. 17) Dr. Noojin also agreed that the Claimant's pain level complaints both prior to his release at MMI and then on her return visit in December 2013 were largely the same. (Depo p. 20) Dr. Noojin evaluated the x-rays of the Claimant's right knee both before and after the determination of MMI and indicated that her loss of cartilage was at the same level that it was at the time of her release, so he could not state that her condition had medically worsened. (Depo p. 30-35) Dr. Noojin agreed as a result the only change would be the Claimant's election to have the surgery, the same surgery that had been recommended to her prior to the release at maximum medical improvement. (Depo p. 29-32) Dr. Noojin indicated in his deposition that he was no longer of the opinions that he had previously provided in the Affidavit of April 2, 2014.

After the deposition of Dr. Noojin, and after the IME of Dr. Jackson, Dr. Noojin completed a questionnaire indicating that the IME secured with Dr. Jackson did not in any way impact his opinions that were set forth in his discovery deposition of May 15, 2014. He further indicated that the only thing that had changed in this case was the Claimant's election to have the high tibial osteotomy. Finally, Dr. Noojin concluded that the Claimant's need for a knee replacement was a consideration prior to the initial release on April 23, 2013 and that nothing had changed or accelerated that need.

The Claimant was evaluated by Dr. Jackson on September 5, 2014. Dr. Jackson concluded that there had been clear progression of the disease despite the Claimant's best efforts. He recommended that she not undergo an osteotomy because she no longer met the criteria for

that surgery. He recommended that the Claimant see a regional expert in joint replacement and recommended weight loss.

FINDINGS OF FACTS

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of fact:

1. The Claimant suffered an injury by accident by accident to her right knee on 09/23/11, arising out of and within the course and scope of her employment with the Defendants which was adjudicated before Commissioner Wilkerson on 07/09/13.
2. Commissioner Wilkerson issued an Order on 09/18/13. His Order was not appealed and is the law of the case.
3. The Claimant alleges that she has suffered a change of condition for the worse and seeking additional medical care and treatment under Section 42-17-90.
4. The Defendants assert that there is no evidence of a medical change of condition, and without supporting evidence the standard in the law as to change of condition cannot be met.
5. The Claimant asserts that her request is pain driven which is sufficient under the Act for a change of condition to exist.
6. The Claimant cites an affidavit dated 04/02/14 which was executed by Dr. Frank K. Noojin, who is the authorized treating physician, as evidence that the Claimant is entitled to a change of condition and, as such, additional medical care and treatment.
7. Dr. Noojin was also deposed on 05/14/14. I give much greater weight to his deposition testimony.

8. In that deposition, Dr. Noojin was questioned as to the future medical care and treatment he listed on the Form 14B which was ordered by Commissioner Wilkerson – braces, shots, and NSAIDS.
9. Dr. Noojin was asked, “But in terms of the future medical treatment that was specifically stated, it was shots, braces, and NSAIDS?” Answer: Yes. “And no indication of a high tibial osteotomy; is that fair?” Answer: “That’s what I answered. Yes.” (deposition page 15, lines 1-7)
10. Dr. Noojin goes on to say, “And the reason I had said that is because I had been offering the osteotomy for quite a time, and then she had not wanted to do it. So, therefore, I figured the decision had been made, that she didn’t want to do the surgery when we settled the case.” (deposition page 15, lines 15-17)
11. It is the Claimant’s contention that her pain level is now higher and she now wishes to have additional medical care and treatment.
12. The Defendants counter that there has been no medical change to her condition and the pain she is having now is essentially the same pain she was having at the time of the hearing on 07/09/13.
13. As to the medical evidence, Dr. Noojin testifies, “So objectively speaking from an x-ray standpoint, which is the only objective that I have, there has been no change in the condition other than the subjective pain.” (deposition page 31, lines 3-6)
14. The Claimant, at the direction of her attorney, underwent an IME with Dr. Joseph P. Jackson.
15. At the time of the hearing, Claimant’s attorney did not disclose that the IME was to be with Dr. Jackson. In the interest of full disclosure, which I would have made at the

hearing had I known the IME was to be with Dr. Jackson, Dr. Jackson performed hand surgery on me about 18 years ago. I had an excellent outcome and have not seen him since. This prior relationship does not have any impact on my ruling.

16. Dr. Jackson opines that the Claimant has had a medical change of condition for the worse. He writes, "So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse."
17. While I have the utmost respect for Dr. Jackson and I have thoughtfully considered his opinion, I give greater weight to the opinion of Dr. Noojin who has been the authorized treating physician throughout this case.
18. Dr. Noojin testifies, "... her pain has progressed to a level where she is –or has gotten to the point where she has decided she wants to do something else about it. But has there been a medical change in the overall condition of the knee? I don't think so based on my best assessment with the x-ray tools I have." (deposition page 40, lines 7-13)
19. Having reviewing the original hearing transcript and having heard the live testimony of the Claimant at this hearing, I find that the pain the Claimant now professes to have is not substantively different than the pain she was having at the time of the original hearing on 07/09/13.
20. When I consider the evidence as a whole, the Claimant has failed to meet her burden as to a change of condition for the worse.
21. As such, the Claimant is not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of 09/18/13.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of and in the course of employment.
2. Claimant sustained a compensable injury by accident to the right lower extremity with the Defendants on September 23, 2011 per the prior Order of Commissioner Wilkerson.
3. Section 42-17-90 governs the Review of an Award for a Change of Condition for the worse.
4. Pursuant to Section 42-17-90, the Claimant has not carried the requisite burden of proof required under the South Carolina Workers' Compensation Act to establish that her right lower extremity injury has changed for the worse.
5. Section 42-1-40 governs average weekly wage.
6. Claimant has an average weekly wage of \$373.18 with a corresponding compensation rate of \$248.78.
7. Because the Claimant has failed to prove a change of condition for the worse, the prior Order of Commissioner Wilkerson remains the law of this case.

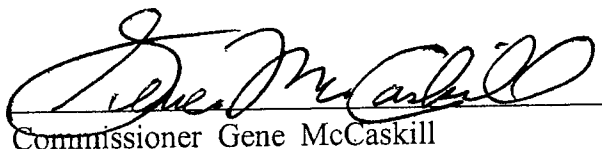
ORDER

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that the Claimant has failed to carry her burden of proof in demonstrating that she suffered a change of condition for the worse under Section 42-17-90.

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that the prior Decision and Order of Commissioner Wilkerson remains the law of this case as the unappealed Order of this case. That Order governs the Claimant's entitlement to future medical care as there has been no change of condition for the worse.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION

A handwritten signature in black ink, appearing to read "Gene McCaskill", is written over a horizontal line.

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).
December 17, 2014

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1119818

SHAMEKA S. GREEN,

Employee,

Claimant,

vs.

TELEPERFORMANCE GROUP, INC.,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Richland, S.C. on July 9, 2013.

APPEARANCES: Claimant appeared and represented by Everett H. Garner, Esquire, of Holler, Garner, Corbett, Ormond, Plante & Dunn of Columbia, South Carolina 2901.

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

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

COMMISSIONER: Avery B. Wilkerson, Jr.

FILED: September 18, 2013

STIPULATIONS

The parties stipulate at a hearing to the following:

1. The Claimant's average weekly wage is Three Hundred Seventy Three and 15/100 Dollars (\$373.15) with a corresponding compensation rate of Two Hundred Forty Eight and 78/100 Dollars (\$248.78).
2. Notice of a hearing was timely and properly served upon all parties of interest.
3. The South Carolina Worker's Compensation Commission has jurisdiction of this claim.
4. Venue is proper in Richland County.

APA SUBMISSIONS

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

The Claimant submitted the following exhibits:

1. Frank K. Noojin, M.D., Moore Orthopaedics dated 02/23/12 to 04/23/13 consisting of 22 pages. (APA# 1).
2. Handicap Placard consisting of 2 pages. (APA #2).

The Defendants submitted the following exhibits:

1. Frank K. Noojin, M.D., Moore Orthopaedics dated 12/01/11 to 05/23/13 consisting of 20 pages. (APA# 1).
2. Doctor's Care dated 11/01/11 consisting of 1 page. (APA# 2).
3. Lexington Medical Center dated 09/23/11 consisting of 9 pages. (APA# 3).
4. discovery deposition of the Claimant. (APA #4).

STATEMENT OF THE CASE

This matter came before the Single Commissioner on the filing of the Form 21, request for a hearing, by the Defendants in this case. The Defendants took the position that the Claimant suffered an admitted injury to the right knee as the result of a work-related injury arising out of and in the course and scope of her employment with the Defendants. They denied the allegations that the Claimant also suffered injuries to the right lower extremity and the back as the result of this accident. The Defendants asserted that the Claimant had reached Maximum Medical Improvement on April 23, 2013 when she was released by the authorized treating physician, Dr. Noojin with a 21% impairment to the right lower extremity. The Defendants sought a credit for the overpayment of temporary partial disability benefits and an award of permanent partial disability benefits, if appropriate. The Defendants requested a temporary partial credit either from the first date the doctor indicated the Claimant could return to fully duty work on February 11, 2013 and continuing or alternatively from April 23, 2013 (date of MMI) and continuing.

The Claimant took the position that she suffered an injury to the right knee and also suffered compensable injuries to the right leg and back as the result of her work related accident with the Defendants on September 23, 2013. The Claimant asserted that a determination of maximum medical improvement and determination of permanent partial disability benefits was premature as she requested more time for discovery to address future medical care with the authorized treating physician, Dr. Noojin. The Claimant requested a postponement of the hearing for additional discovery which was objected to by the Defendants and denied by the Single Commissioner.

EVIDENCE OF THE CASE

The Claimant testified that she is separated and has one child and one grandchild. (Hr. Trans. p. 15) The Claimant is 39 years of age. (Hr. Trans. p. 15) The Claimant works as a Customer Service Representative for the Defendants answering incoming telephone calls to the Company and has been employed there since June 27, 2011. (Hr. Trans. p. 16-17) The Claimant has received a raise per hour since beginning her job in 2011 and since her date of injury. (Hr. Trans. p. 17) The Claimant testified that she worked 40 hour weeks. (Hr. Trans. p. 18)

The Claimant testified that she was injured at work on September 23, 2011 when she was sitting at her desk assisting a customer when her desk broke free of the cubicle striking her in the right knee. (Hr. Trans. p. 18-19) The Claimant initially sought medical care with Doctor's Care and received a support brace and referral to an orthopedist. (Hr. Trans. p. 21) The Claimant was referred to Dr. Noojin in December 2011 and underwent surgery to repair her torn ACL in February 2012. (Hr. Trans. p. 22; Defendants APA p. 6-7) The Claimant continued under the care of Dr. Noojin until her release on April 23, 2013. (Hr. Trans. p. 22; Defendants APA p. 20)

During the course of her medical care, Dr. Noojin provided the Claimant with light duty work restrictions. On January 7, 2013, Dr. Noojin provided her with light duty work restrictions and a 6 hour work day limitation. (Claimant APA p. 3) However, at the next visit of February 11, 2013 and thereafter Dr. Noojin only provided work restrictions and never any hour limitations on the Claimant's ability to return to work. (Claimant's APA p. 1-22) Dr. Noojin released the Claimant on April 23, 2013 and provided her with permanent work restrictions of no prolonged walking or standing, no kneeling, crawling or squatting, and no working at heights. (Defendants APA p. 20) The Claimant testified that the Defendants are accommodating her work restrictions as provided by Dr. Noojin. (Hr. Trans. p. 25)

The Claimant continues to complain of pain in her leg that is a constant pain. (Hr. Trans. p. 26) The Claimant wore her knee brace for approximately one year after her surgery and then discontinued its use. (Hr. Trans. p. 27-28) The Claimant testified that she had discussed a high tibial osteotomy with Dr. Noojin and had elected not to undergo that surgery. (Hr. Trans. p. 29; 31) The Claimant testified she makes adjustments at work to alleviate her pain and she continues to have problems driving due to pain in the knee. (Hr. Trans. p. 36-37)

On cross examination the Claimant admitted her medical evidence demonstrated that she remains the same weight now as she was when the accident occurred despite her prior testimony that she had gained nearly 20+ pounds as the result of inactivity from this injury. (Hr. Trans. p. 16; 42-44) The Claimant further testified that she provided her out of work slips to her employer as she received them throughout the course of her medical care. (Hr. Trans. p. 45-46) The Claimant disputed the absence of a continued 6 hour work limitation despite the medical documents submitted. (Hr. Trans. p. 46-50) The Claimant testified that her pain levels were different to those previously testified to during her deposition two weeks prior. (Hr. Trans. p. 53-55) The Claimant further admitted that she testified in her deposition that she did not want to have the surgery as recommended by Dr. Noojin due to the significant nature of the surgery. (Hr. Trans. p. 56-57)

Pamela Flemming, human resource manager, testified on behalf of the Defendants. Ms. Flemming testified that she has only been the local representative since May 20, 2013 but maintains responsibility over the workers compensation files for the Employer. (Hr. Trans. p. 62) Ms. Flemming testified that during her time with the employer they have been accommodating the Claimant's work restrictions as provided by Dr. Noojin. (Hr. Trans. p. 64) Additionally, she

testified that the Claimant had not presented any complaints about her abilities to perform her job. (Hr. Trans. p. 64)

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of fact:

1. Order instructions in this case were issued to both parties by the South Carolina Worker's Compensation Commission on July 19, 2013.
2. This is an admitted claim for the right knee/right lower extremity arising out of and in the course and scope of the Employment with the Defendants on September 23, 2011. The Defendants deny the Claimant suffered an injury to the low back in the initial accident or as the result of the right knee injury.
3. The Defendants filed a Form 21, request for a hearing, on May 28, 2013 to terminate temporary partial disability benefits, seeking a credit for the overpayment of benefits, and to pay permanent partial disability benefits to the right lower extremity on the basis that the Claimant had reached Maximum Medical Improvement.
4. The Claimant is back at work and making more money. I base this on the testimony of the Claimant.
5. No Form 50, Claimant's Request for a Hearing, was filed in this case. Claimant's attorney requested this case to be left open to return the Claimant back to Dr. Noojin to clarify work restrictions and surgery. The Defendants did not want to allow this to be done and stated it was time to determine permanent partial disability benefits. I have denied Claimant's request and will decide permanent partial disability, maximum medical improvement, and Dodge Medical care.

6. Claimant's testimony as to surgery is very important. The Claimant states in her deposition (taken less than 2 weeks prior to the hearing) that she does not want surgery and now testifies at the hearing that she wants surgery.
7. The Claimant testified as to the right knee, right leg and complaints of back pain.
8. I find this to be a single member case and the back is not part of this claim—Singleton Case. The allegations of a back injury are denied.
9. APA #17 is a driving force in this case; APA 18 & APA 20—note restrictions are accommodated by the Employer. And she may decide to do a high tibial osteotomy at some point in the future, which would as noted in Dr. Noojin's report related to her arthritic condition in her knee. Arthritic condition was aggravated by the accident.
10. Shots, braces and NSAIDS are awarded.
11. Dodge Medical care is awarded. I award 35% permanent partial disability to the right lower extremity.
12. Based on the greater weight of the evidence, I find that the Claimant has reached MMI as of April 23, 2013, per the authorized treating physician, Dr. Noojin, and there is an overpayment of temporary partial of \$1,210.90 in this case.
13. As to future medical care controlled by Section 42-15-60, APA p. 20 applies.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of and in the course of employment.

2. The Claimant suffered a compensable injury to the right lower extremity arising out of and in the course and scope of the Employment with the Defendants on September 23, 2011.
3. The Claimant did not sustain an injury to the back as alleged either as a direct result of the accident or as the result of overcompensation from the right lower extremity injury. The Claimant has not carried the requisite burden of proof required under the South Carolina Workers' Compensation Act to establish that her back injury arose out of and occurred in the course of her employment with the Employer on September 23, 2011. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998) (The workers' compensation Claimant has the burden of proving facts that show that injury arose out of employment, and award of benefits must not be based on surmise, conjecture, or speculation); Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E.2d 305 (1951) (The burden is upon the Claimant to prove the facts which render the injury compensable).
4. Section 42-15-60 governs the periods within which medical treatment shall be furnished.
5. Claimant is entitled to future medical care pursuant to Section 42-15-60 for braces, shots and NSAIDS. The Form 14B, APA p.20, is controlling on this issue. It sets forth the Claimant's permanent work restrictions and future medical needs as stated above only.
6. Section 42-1-40 governs average weekly wage.
7. Claimant has an average weekly wage of \$373.18 with a corresponding compensation rate of \$248.78.

8. Section 42-9-30 governs awards for single member injuries.
9. The Claimant is entitled to a disability award of 35% to the right lower extremity as the result of her work-related injury on September 23, 2011 to the right lower extremity.

ORDER

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that the Claimant has an admitted injury to the right lower extremity (knee). That the Claimant's allegations of a back injury related to the September 23, 2011 work-related injury are denied. This is a Singleton case.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant is entitled to future medical care/Dodge Medical care pursuant to the confines of 42-15-60 and is awarded braces, shots, and NSAIDS. APA p 20 is controlling on this issue as the Form 14B completed by the authorized treating physician, Dr. Noojin, indicating future care needed includes shots, braces, and NSAIDS.

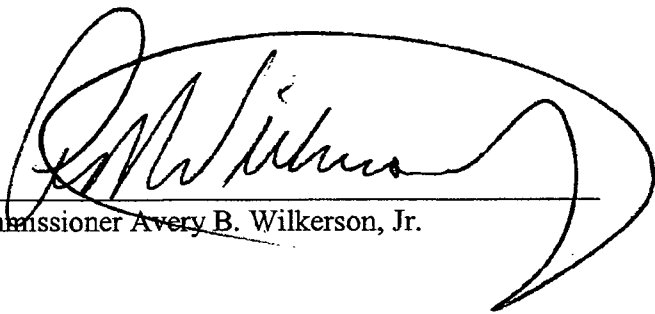
IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant is no longer entitled to temporary partial disability benefits pursuant to Section 42-9-260 and the Defendants are entitled to a credit for the overpayment of those benefits in the amount of \$1,210.90.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Claimant reached maximum medical improvement on April 23, 2013, per the authorized treating physician, Dr. Noojin who assigned her a 21% impairment to the right lower extremity and permanent work restrictions of no prolonged walking or standing, no kneeling, crawling or squatting and no working at heights.

IT IS FINALLY ORDERED, that the greater weight of the evidence supports a finding that the Claimant is awarded 35% to the right lower extremity under 42-9-30 as the result of her work related injury.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
September 18, 2013

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1119818

Shameka Green,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Teleperformance Group, Inc.,	)	Administrative Order
	)	
Employer,	)	
	)	
American Zurich Insurance Company,	)	
	)	
Carrier ,	)	
Defendants	)	
_____	)	

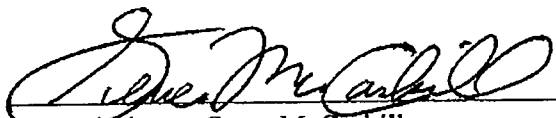
A motion regarding the following issue(s) have been received by the Claimant:

 X Hold the Record Open

The following disposition has been made: X GRANT*

***For the documented opinion from the Claimant's reviewing orthopedic surgeon only**

Columbia, SC



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).

July 10, 2014

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1119818

SHAMEKA S. GREEN,

Employee,

Claimant,

vs.

TELEPERFORMANCE GROUP, INC.,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

**DEFENDANTS RESPONSE TO THE
CLAIMANT'S MOTION TO
SUPPLEMENT THE RECORD**

Defendants were served with a Motion to Supplement the Record on January 20, 2015 in the above referenced case. They submit this in response to that Motion.

1. Claimant contends that further evidence should be considered by the Commission pending appeal pursuant to Regulation 67-707. Defendants respectfully disagree.
2. Regulation 67-707 allows for additional evidence that is necessary for the completion of the record in a case on review to be submitted and taken before a Commissioner.
3. The regulation requires that: C. The moving party must establish the new evidence is of the same nature and character required for granting a new trial and show:
 - (1) The evidence sought to be introduced is not evidence of a cumulative or impeaching character but would likely have produced a different result had the evidence been procurable at the first hearing; and

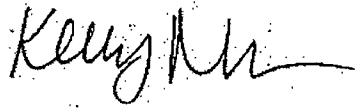
- (2) The evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.
4. Claimant argues that they should be allowed to submit the x-rays taken by Dr. Joseph to Dr. Noojin for consideration and further take the discovery deposition of Dr. Noojin.
 5. Claimant secured an affidavit of Dr. Noojin prior to the hearing date with the Single Commissioner.
 6. Defendants in response conducted the discovery Deposition of Dr. Noojin on 5/15/14 wherein he recanted the statements made in the previously submitted affidavit.
 7. The hearing in this matter was then scheduled before the Single Commissioner on 7/18/14.
 8. Claimant did not secure an IME prior to the hearing date and instead argued for the record to remain open after testimony was taken to allow for submission of their IME afterwards due to difficulties they had in securing and submitting the medical documentation to an IME doctor.
 9. In response, the Defendants requested their right to due process to respond to the IME evidence once received prior to the record closing. The Single Commissioner granted the Motion of the Claimant that simply requested the submission of the IME documents. At no time in the Claimant's Motion or during the hearing itself did they request further discovery take place. The Single Commissioner further granted the Defendants right to respond to the IME upon receipt and indicated the record would close thereafter.
 10. Claimant secured her IME with Dr. Jackson and submitted the record to the Defendants. The Defendants then submitted that report to Dr. Noojin wherein it specifically stated if Dr. Noojin needed any further information or documentation to make his responses to the questions presented that they could be provided.
 11. Dr. Noojin instead responded to the questionnaire presented by the Defendants. In turn, the Defendants submitted that information to the Single Commissioner and requested the record

close.

12. Only thereafter did the Claimant write to the Commissioner on 10/24/2014 requesting that the Single Commissioner leave the record open for him to depose Dr. Noojin and specifically present the x-rays conducted by Dr. Jackson during that deposition for consideration (Exhibit #1). The Single Commissioner declined that request and closed the record. Shortly thereafter the Single Commissioner rendered his Decision, that matter was executed, and an appeal by the Claimant to the Full Commission followed.
13. Claimant cannot show as required by Regulation 67-707 that the evidence was not procurable at the first hearing. This specific matter was considered by the Single Commissioner and ruled upon to be disallowed and not considered as the body of evidence for this hearing.
14. Further, the new evidence is not being brought to the Commission immediately upon its discovery as required by Regulation 67-707. Rather this information was known as a result of the IME that was conducted and prior to the Single Commissioner closing the record. That matter was already specifically ruled on by the Single Commissioner and does not constitute new grounds for consideration before the Full Commission. There is nothing to send back to the Single Commissioner at the direction of the Full Commission because this issue has already been decided by the Single Commissioner prior to the rendering of the Order.

Therefore, for the foregoing reasons the Defendants respectfully request that the Claimant's Motion to Supplement the Record in this matter be denied. The Claimant simply seeks to re-open this case and secure further discovery that she believes would be beneficial to her case. There are no grounds for allowing further discovery to take place once the record has closed under the guise of after acquired evidence on matters that were known, considered, and denied by the Single Commissioner.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kelly Morrow", with a horizontal line drawn underneath it.

Kelly F. Morrow, Esquire
Attorney for Defendants
McAngus, Goudelock & Courie
1320 Main Street, 10th Floor
Columbia SC 29211
(803)227-2300

LAW OFFICES
HOLLER, GARNER, CORBETT, ORMOND, PLANTE & DUNN

1777 Bull Street at Laurel
Columbia, South Carolina 29201
(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
Everett Hope Garner
*James J. Corbett
*J. Charles Ormond, Jr.
*Anthony R. Plante
Benjamin A. Dunn, III
* Certified Mediator S.C.

Of Counsel
Stanley G. Freeman
*Steven D. Dennis

Reply To
Post Office Box 11006
Columbia, S.C. 29211

October 24, 2014

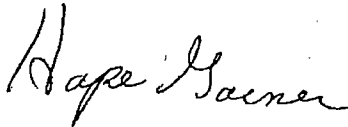
Commissioner Gene McCaskill
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: Shameka Green v. Teleperformance Group Inc.
WCC File No: 1119818

Dear Commissioner McCaskill:

I would request the opportunity to take Dr. Noojin's deposition since he stated conclusions without foundation or explanation and did not address the change in the arthritic condition expounded by Dr. Jackson. Also, Dr. Noojin was not provided the current x-rays taken by Dr. Jackson which he indicated showed unequivocally a change of condition. Please advise at your earliest convenience.

Sincerely,

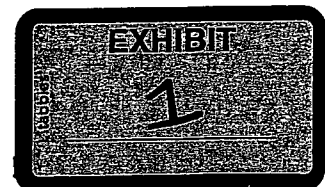


Everett Hope Garner

EHG

EHG\lmk

CC: Kelly F. Morrow, Esquire



BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1119818

Shameka Green	)	
	)	
Claimant,	)	
	)	
v.	)	
	)	
Teleperformance Group Inc.,	)	MOTION TO SUPPLEMENT
	)	THE RECORD
and	)	
	)	
Zurich North America,	)	
	)	
Defendants.	)	

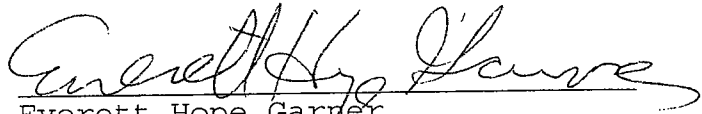
Claimant herein moves this Honorable Commission, to allow Claimant's counsel to supplement the record with an x-ray taken by the evaluating physician Dr. Joseph Jackson of Camden Orthopaedics and to allow Claimant's counsel to question the treating physician Dr. Frank Noojin in regard to this x-ray. Such motion is made pursuant to SC Reg. 67-7-7.

Such evidence is material to the case in that Claimant's treating physician, Dr. Frank Noojin did not have this x-ray available prior to his deposition testimony nor prior to his subsequent questionnaire response submitted by defense counsel.

Claimant would therefore respectfully request that such new evidence in the form of an x-ray submission and concomitant

response form the treating physician be allowed and granted.

Respectfully submitted,


Everett Hope Garner
Attorney for Claimant

Dated: January 15, 2015

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1119818

Shameka Green	)	
	)	
Claimant,	)	
	)	
v.	)	MOTION FOR CONTINUANCE
	)	OR ALTERNATIVELY TO HOLD THE
Teleperformance Group Inc.,	)	RECORD OPEN SUBSEQUENT
Employer and American Zurich	)	TO THE HEARING SCHEDULED
Insurance, Carrier,	)	FOR JULY 18, 2014
	)	
Defendants..	)	
	)	

Claimant's counsel herein respectfully moves this Honorable Commissioner for an Order of Continuance or holding the record open. This Motion is based on the following:

The parties appeared at a hearing before Commissioner Wilkerson on April 7, 2014 and discussed a continuance for the purpose of allowing counsel to depose the treating physician Dr. Frank K. Noojin who had submitted an Affidavit subsequent to Claimant's APA Submissions. Defense counsel did not agree to a continuance and Claimant withdrew the Form 50 - refiling it on April 11, 2014.

Dr. Noojin's deposition was taken on May 15, 2014. Shortly thereafter, Claimant's counsel began the process of securing another medical evaluation in reference to Claimant's alleged

change of condition and contacted an independent orthopaedic surgeon who agreed to review the case. Claimant's counsel immediately assembled the records and ordered the x-rays from Dr. Noojin as requested by the reviewing orthopaedic surgeon and was initially provided x-rays for another patient and subsequently provided x-rays which were incomplete. Therefore, Claimant's counsel has not yet been able to secure a documented opinion from the orthopaedic surgeon and requests additional time for this purpose.

Claimant through her counsel hereby moves the Commissioner for an Order continuing the case until these issues can be resolved and the reviewing doctor has an opportunity to complete his evaluation or alternatively leaving the record open for submission of such evaluation.

Respectfully submitted


Everett Hope Garner
Attorney for Claimant

July 3, 2014

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



WCC File #: 1119818
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Shameka S. Green SSN: 251 - 13 - 6119 Employer's Name: Teleperformance Group Inc.
Address: 3643 Falling Springs Rd. Address: 6510 Millrock Dr., Suite 150
City: Columbia State: SC Zip: 29203 City: Salt Lake City State: UT Zip: 84121
Home Phone: (803) 477 - 1944 Work Phone: () - Insurance Carrier: American Zurich Ins. Co.
Preparer's Name: Everett Hope Garner Law Firm: Holler Garner Preparer's Phone #: (803) 765 - 2968

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 9/23/2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

PLEASE SEE ATTACHED

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☒ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Kelly F. Morrow, Esquire, P.O. Box 12519, Columbia, SC 29211 on the 29th day of December 2014, by X first class postage certified mail personal service.

Everett H. Garner
Preparer's Signature

Attorney
Title

ehgarner05@yahoo.com
Email

12/29/14
Date

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

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

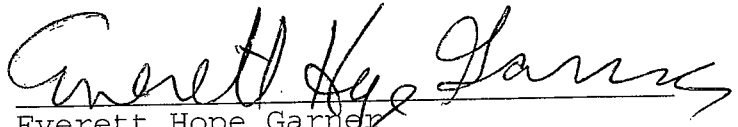
If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner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

ATTACHMENT TO FORM 30

1. Did the Hearing Commissioner err in Finding of Fact number 5 wherein he found that Claimant asserts that her request (for change of condition) is pain driven; the error being that the contemporary evaluating orthopaedist, Dr. Joseph Jackson specifically opined that based on his review of more recent radiographic evidence Claimant had suffered a clear arthritic progression of her condition.
2. Did the Hearing Commissioner err in Finding of Fact number 7 wherein he accorded greater weight to Dr. Frank Noojin's deposition testimony than to his affidavit; the error being that the affidavit addressed specific points of contention and explicitly established a change of condition.
3. Did the Hearing Commissioner err in Finding of Fact number 13 wherein he accorded dispositive weight to Dr. Noojin's statement "so objectively speaking from an x-ray standpoint which is the only objective I have there has been no change in the condition other than subjective pain;" the error being that Dr. Noojin was reviewing outdated x-rays when expressing this opinion.
4. Did the Hearing Commissioner err in Finding of Fact number 17 wherein he accorded greater weight to the opinion of Dr. Noojin; the error being that Dr. Jackson's radiographic evidence was contemporary and his opinion was based explicitly on such evidence.
5. Did the Hearing Commissioner err in Finding of Fact number 19 wherein he found that the pain the Claimant now professes to have is not substantively different from the pain she was having at the time of the original hearing on July 9, 2013; the error being that the pain scale is a nebulous concept relative of the current context ie., the advent of exposure to pain of heightened intensity.
6. Did the Hearing Commissioner err in Finding of Fact number 20 wherein he found that the Claimant failed to meet her burden as to change of condition for the worse; the error being that the preliminary evidence afforded by Dr. Noojin and the contemporary evidence afforded by Dr. Jackson mandate otherwise.

7. Did the Hearing Commissioner err in Finding of Fact number 21 wherein he found that Claimant was not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013; the error being that the substantial evidence heretofore cited mandates otherwise.

Respectfully submitted,



Everett Hope Garner
Attorney for Claimant

Dated: 12/29/14

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



WCC File #: 1119818
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Shameka S. Green SSN: 251 - 13 - 6119 Employer's Name: Teleperformance Group Inc.
Address: 3643 Falling Springs Rd. Address: 6510 Millrock Dr., Suite 150
City: Columbia State: SC Zip: 29203 City: Salt Lake City State: UT Zip: 84121
Home Phone: (803) 477 - 1944 Work Phone: () - - Insurance Carrier: American Zurich Ins. Co.
Preparer's Name: Everett Hope Garner Law Firm: Holler Garner Preparer's Phone #: (803) 765 - 2968

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 9/23/2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

PLEASE SEE ATTACHED

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Kelly F. Morrow, Esquire, P.O. Box 12519, Columbia, SC 29211 on the 2nd day of October 2013, by X first class postage certified mail personal service.

Everett H. Garner
Preparer's Signature

Attorney
Title

ehgarner05@yahoo.com
Email

10/2/13
Date

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

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

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

Shameka S. Green v. Teleperformance Group, Inc.
WCC File No: 1119818

ATTACHMENT TO FORM 30

1. Did the Hearing Commissioner err in finding that Claimant is no longer entitled to temporary partial disability benefits pursuant to Section 42-9-260 and the Defendants are entitled to a credit for overpayment of benefits in the amount of \$1,210.90; the error being that Claimant's disability continued unabated after her release and rating by the treating physician and she is entitled to continuing temporary benefits pursuant to Swinton v. SC Department of Mental Health, 314 S.C. 202, 442 S.E.2d 25 (1994) and its progeny.

2. Did the Hearing Commissioner err in denying Claimant's request that the case remain open in order for her to return to the treating physician for clarification of her restrictions to determine the efficacy of surgery; the error being that such ruling precludes Claimant's ability and right to fully develop the evidence in her case prior to a final adjudication.

3. Did the Hearing Commissioner err in determining this to be a single member scheduled injury case and that the back was not a part of the claim pursuant to Singleton; the error being that substantial evidence of record supports a finding that the back is inextricably involved in the injuries and the overall effect of the injury adversely affects Claimant's earning capacity as elucidated by the permanent work restrictions.

4. Did the Hearing Commissioner err in awarding 35% disability to the right lower extremity pursuant to Section 42-9-30; the error being that the permanent work restrictions in conjunction with the established medical impairment mandate a much higher degree of disability.

Respectfully submitted,


Everett Hope Garner
Attorney for Claimant

Dated: 10/2/13

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



WCC File #: **1119818**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Shameka Green SSN: 251-13-6119 Employer's Name: Teleperformance Group Inc.
Address: 3643 Falling Springs Rd., Apt. D Address: 1333 St. Andrews Rd.
City: Columbia State: SC Zip: 29203 City: Columbia State: SC Zip: 29210
Home Phone: (803) 477-1944 Work Phone: () - Insurance Carrier: American Zurich Insurance
Preparer's Name: Everett Hope Garner Law Firm: Holler Garner Preparer's Phone #: (803) 765-2968
Date of Injury or Illness: 9/23/11

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

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

On 9/23/11 (Month/Day/Year) in Richland county, state of South Carolina.

1. The claimant sustained an injury to knees/back (Part(s) of Body Injured) on 9/23/11 (Month/Day/Year) in Richland county, state of South Carolina.
2. Body part(s) affected are: knees/leg/back
3. Briefly describe how the accident occurred. A desk collapsed on Claimant's leg
4. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
5. The relationship of employer and employee existed at the time of injury.
6. At the time of the injury the claimant was performing services arising out of and in the course of employment.
7. Notice of the accidental injury was given to the Employer on 9/23/11 (Month/Day/Year) in the following manner:
Witnessed by Supervisor

☒ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: knees

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

☒ 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:
Surgical scarring

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

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Teleperformance Group Inc.

11. Further grounds or unusual aspects of claim:
Change of Condition - Dr. Noojin's report of December 2, 2013 and Affidavit dated April 2, 2014 is attached.

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:
Lexington Medical Center; Doctor's Care, Augusta Rd., West Columbia, SC 29129; Dr. Frank K. Noojin, Moore Ortho Clinic, 14 Medical Park, Suite 200, Columbia, SC 29203

11b. To the best of your knowledge, did you have any prior permanent disability? N/A
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.

14. Estimated time needed for hearing: 1 hour

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

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

☐ **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 Kelly F. Morrow, Esquire, P.O. Box 12519, Columbia, SC 29211
on the 7th day of January, 2014, 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: Everett Hope Garner Attorney: ehgarner05@yahoo.com Date: April 11, 2014
Title: _____ Email: _____

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 67-601 through 67-615 as well as Reg. 67-1801.

Employee's Notice of Claim and/or

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803)737-5723 www.wcc.sc.gov



WCC File #: 1119818

Carrier File #: 2800076482

Carrier Code #:

Employer FEIN #:

Claimant's Name: Shameka S. Green SSN 251-13-6119

Address: 1607 Kathleen Drive
Columbia, South Carolina, 29210

Home Phone: (803) 477-1944 Work Phone #

Date of Injury: 9/23/11

Preparer's Name: Kelly F. Morrow

Law Firm McAngus Goudelock & Courie

Preparer's Phone #: (803) 227-2238

Employer's Name: Teleperformance Group, Inc.

Address: 4335 Equity Drive
Columbus, Ohio, 43228

Insurance Carrier: Zurich North America

Date of Injury or Illness: 9/23/11

Estimated time for hearing: 45 minutes

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:

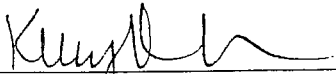
1. It is ☒ **Admitted**/☒ **Denied** the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: The Employer/Carrier admits that Claimant sustained a compensable injury to the right lower extremity on 09/23/11 as per the Decision and Order of the Single Commissioner. However, Defendants deny Claimant sustained an injury to the leg or back as alleged on the Form 50 and deny that Claimant has sustained a change of condition for the worse for any of the aforementioned injuries. Furthermore this case is on appeal before the Full Commission involving some of the allegations set forth on this Form 50, alleged change of condition, which should be stayed pending the completion of the appeal before the Full Commission.
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: See Number 1 above.
3. It is ☒ **Admitted**/☒ **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 1 above.
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: See Number 1 above.
5. It is ☒ **Admitted**/☒ **Denied** notice of injury was given the employer. The reasons for denial are: See Number 1 above.
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: Claimant is only entitled to continued medical treatment pursuant to the Form 14B and prior Order of the Single Commissioner. The medical treatment Claimant seeks to achieve on the change of condition for the worse has already been denied by the Single Commissioner pursuant to the prior Order, which is also part of the subject of their pending appeal before the Full Commission.
7. It is ☐ **Admitted** ☒ **Denied** the employee is entitled to temporary total disability for the period(s) of: The Employer/Carrier maintains there is no medical evidence to support Claimant's entitlement to temporary total disability benefits. Furthermore, Claimant continues to work full duty for the Employer, receiving regular wages.
8. It is ☐ **Admitted** ☒ **Denied** the employee is permanently disabled. The reasons for denial are: The Employer/Carrier maintains there is no additional medical evidence to support Claimant's entitlement to any further permanent partial disability benefits. Permanent partial disability benefits were paid pursuant to the Single Commissioner's Order in this case.
9. It is ☐ **Admitted** ☒ **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 373.15 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Defendants reserve the right to plead any additional defenses as they may become available, including, but not limited to, those set forth in Regulation 67-603.

☐ **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.

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


Preparer's Signature

Attorney for Employer/Carrier
Title

kmorrow@mgclaw.com
Email

January 24, 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.

VCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

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



WCC File #: 1119818
Prior File #:
Carrier Code #:
Employer FEIN #:

CHANGE OF CONDITION

Claimant's Name: Shameka Green SSN: 251-13-6119 Employer's Name: Teleperformance Group Inc.
Address: 3643 Falling Springs Rd., Apt. D Address: 1333 St. Andrews Rd.
City: Columbia State: SC Zip: 29203 City: Columbia State: SC Zip: 29210
Home Phone: (803) 477-1944 Work Phone: () Insurance Carrier: American Zurich Insurance
Preparer's Name: Everett Hope Garner Law Firm: Holler Garner Preparer's Phone #: (803) 765-2968

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

Date of Injury or Illness: 9/23/11

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

1. The claimant sustained an injury to knees/back (Part(s) of Body Injured) on 9/23/11 (Month/Day/Year) in Richland county, state of South Carolina.
2. Body part(s) affected are: knees/leg/back
Briefly describe how the accident occurred. A desk collapsed on Claimant's leg
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 9/23/11 (Month/Day/Year) in the following manner:
Witnessed by Supervisor

☒ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: knees

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

☒ 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:
Surgical scarring

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

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Teleperformance Group Inc.

11. Further grounds or unusual aspects of claim:
Change of Condition - Dr. Noojin's report of December 2, 2013 is attached.

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:
Lexington Medical Center; Doctor's Care, Augusta Rd., West Columbia, SC 29129; Dr. Frank K. Noojin, Moore Ortho Clinic, 14 Medical Park, Suite 200, Columbia, SC 29203

11b. To the best of your knowledge, did you have any prior permanent disability? N/A
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: 1 hour

☒ 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 Kelly F. Morrow, Esquire, P.O. Box 12519, Columbia, SC 29211
on the 7th day of January, 2014, 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.

Everett H. Garner Attorney ehgarner05@yahoo.com January 7, 2014
Preparer's Signature Title Email Date

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.

 MOORE CENTER
FOR ORTHOPEDICS

Moore Center for Orthopedics
104 Saluda Pointe Dr.
Lexington, SC 29072
(803)227-8174/ Fax (803)227-8221

12/02/2013 Shameka Green - 01/14/1974 - 52552

HISTORY OF PRESENT ILLNESS: Ms. Green is here for her right knee. She has had a one time reevaluation. She is still having pain. It is about 8/10 on the medial side of her knee. It is worse with walking and standing. She is doing light duty at work.

REVIEW OF SYSTEMS: The patient's past medical history form is reviewed with the patient, signed and placed in the chart.

PHYSICAL EXAMINATION: Physical exam shows stable Lachman. She has 0 to 120 degrees of range of motion bilaterally. Both knees are stable. Her incisions look healed. She has varus alignment on inspection.

RADIOGRAPHS: X-rays including hip to ankle view of the right knee and also four views of the right knee show more severe medial compartment arthritis on the left knee than the right, but she does have varus alignment to inspection with the weightbearing axis going through the medial compartment.

IMPRESSION: Varus osteoarthritis, right knee, status post high tibial osteotomy.

PLAN: At this point, we talked about options of she could live with it or have an osteotomy. I think she is too young for a knee replacement, so we are going to request authorization for Workman's Compensation to do a high tibial osteotomy of the right knee. This arthritis was preexisting, but it was aggravated by the injury. The left knee has arthritis as well, but it is not as symptomatic as the right knee. We went over the risk of infection, wound complication, stiffness, hematoma, blood clots, medical complications, nonunion, future surgery, and the six-month recovery process. We will set this up to be done as an inpatient admission.

Sincerely,

Electronically Approved by:

Dictated by: Frank Noojin, III, M.D.

South Carolina Workers' Compensation Commission

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



WCC File #: 1119818
Carrier File #: 2800076482
May 15, 2014

NOTICE OF HEARING

SHAMEKA S GREEN v. TELEPERFORMANCE GROUP, INC.

Subject: To determine issues as set forth on Forms 50 and 51.
Date: July 18, 2014 at 03:00 PM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500 Hearing Room B
Columbia, SC 29202

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

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

Commissioner Gene McCaskill
803-737-5663, klindler@wcc.sc.gov

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

By: Kellie C Lindler, SC Workers' Compensation, May 15, 2014

Party

Employee: SHAMEKA S GREEN

Employer: TELEPERFORMANCE GROUP, INC.
Carrier: American Zurich Insurance Co.

Attorney

Everett H. Garner
ehgarner05@yahoo.com
803-765-2968

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

South Carolina Workers' Compensation Commission

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



WCC File #: 1119818
Carrier File #: 2800076482
March 5, 2014

NOTICE OF HEARING

SHAMEKA S GREEN v. TELEPERFORMANCE GROUP, INC.

Subject: To determine issues as set forth on Forms 50 and 51.
Date: April 7, 2014 at 10:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

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

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

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

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

By: Elaine Boyd, SC Workers' Compensation, March 5, 2014

Party

Employee: SHAMEKA S GREEN

Attorney

Everett H. Garner
ehgarner05@yahoo.com
803-765-2968

Employer: TELEPERFORMANCE GROUP, INC.
Carrier: American Zurich Insurance Co.

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

SC Workers' Compensation Commission

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

WCC File #: 1119818Carrier File #: 2800076482

Carrier Code #: _____

Employer FEIN #: _____

Shameka S. Green 251-13-6119

Claimant's Name SSN
1607 Kathleen Drive
Columbia, South Carolina, 29210

Address City State Zip

(803) 477-1944

Home Phone # Work Phone #

Kelly F. Morrow McAngus Goudelock & Courie

Preparer's Name Law Firm

Teleperformance Group, Inc.

Employer's Name
4335 Equity Drive
Columbus, Ohio, 43228

Address City State Zip

Zurich North America

Insurance Carrier

(803) 227-2238

Phone Number

The date of injury reported on the Form 12A is: 9/23/2011**Check applicable section(s). The employer's representative requests a hearing to:**

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

Claimant reached maximum medical improvement on 4/23/2013 (m/d/yyyy) (copy of medical report must be attached).Compensation payments are current as of 5/28/2013 and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.A Form 17 was offered and refused on 3/11/2013.I. ☐ **Address suspension, termination, or reduction of temporary disability payment for any cause.**☐ a. At any time pursuant to § 42-9-260(E).☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

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

The authorized treating physician, Dr. Noojin, determined the Claimant reached maximum medical improvement on April 23, 2013 and assigned a 21% impairment to the right lower extremity.

Claimant reached maximum medical improvement on 4/23/2013 (m/d/yyyy) (copy of medical report must be attached).VI. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**☐ **Determine amount of compensation for claims involving a fatality.** (Dependency investigation must be attached).☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

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

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

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

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

verett H. Garner, Esquire
oller, Garner, Corbett, Ormond, Plante & Dunn
777 Bull Street
olumbia, South Carolina 2901

on the 30th day of May, 2013 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Preparer's Signature

Attorney for Employer/Carrier
Title

May 30, 2013
Date

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

WCC Form # 21

Revised 04/18/2011

21

Employer's Request for Hearing

P69

SOUTH CAROLINA WORKERS' COMPENSATION HEARING
FULL COMMISSION APPELLATE HEARING

SHAMEKA S. GREEN,
Employee

WCC FILE NO.
1119818

-VS-

TELEPERFORMANCE GROUP,
Employer

and

AMERICAN ZURICH,
Carrier

Pursuant to Notice of the Appellate Hearing taken on the 17th day of March 2015, heard before the South Carolina Workers' Compensation Commission Full Commission Appellate Panel including; Honorable T. Scott Beck, Michael Campbell, and Avery Wilkerson, Chair, and commencing at the hour of 10:00 a.m. in Columbia, South Carolina.

Tatum Court Reporting
P.O. Box 248
Edgefield, SC 29824
706.207.5483
ctatumcr@gmail.com

APPEARANCES

Everett H. Garner, Esq.
Holler, Garner, Corbett, Ormond, Plante & Dunn
PO Box 11006
Columbia, SC 29211
REPRESENTING THE EMPLOYEE/APPELLANT

Kelly F. Morrow, Esq.
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211
REPRESENTING THE EMPLOYER/CARRIER/RESPONDENTS

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LEGEND OF THE TRANSCRIPT

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

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P R O C E E D I N G S

THE COURT REPORTER: Today's date is March 17, 2015. This is South Carolina Worker's Compensation Case Number 1119818. This is the case of *Shameka S. Green, Claimant, versus Teleperformance Group, Employer, and American Zurich, Carrier.*

The Appellant is the Claimant, represented by Everett H. Garner. The Respondent is represented by Kelly F. Morrow.

Each side is allowed ten minutes for oral argument and the Appellant three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER WILKERSON: Mr. Garner.

MR. GARNER: Thank you, Commissioner.

*

A P P E L L A N T A R G U M E N T

BY MR. GARNER: I do represent Shameka Green, and have throughout this process. We originally had a hearing in this matter before you, Commissioner Wilkerson.

COMMISSIONER WILKERSON: I was going to ask you, I don't remember all the details of it and I don't have a problem if you want me to recuse myself. I need to step out, but...

1 MR. GARNER: I don't have a problem with you
2 hearing the case and I assume Kelly doesn't either.

3 MS. MORROW: No objection.

4 MR. GARNER: So I think we're fine.

5 But we did have that hearing and you issued an
6 order, and then we initially appealed that order.
7 And then during the course of that process I had
8 several conversations with Dr. Noojin, the treating
9 doctor, and concluded that the best way to proceed
10 from that point was to bring a change of condition
11 petition. He ultimately gave me an affidavit,
12 which is in the record and I think I attached it to
13 my brief too, which indicated that there was a
14 medical change of condition.

15 Well, and Ms. Morrow took Dr. -- well, we took
16 Dr. Noojin's deposition and he basically recanted
17 some of his opinion, if not all, and backpedaled
18 from what he had told me and what he had put in his
19 affidavit. So that gave me a conundrum of sorts,
20 put between a rock and a hard place. I knew that
21 to go forward with a medical condition I had to
22 have medical -- I mean, change of condition I'd
23 have medical support, and at that point I knew I
24 had to have something better than what Dr. Noojin
25 was giving me.

1 So what I did is I set out to get that from an
2 independent medical examination from Dr. Joseph
3 Jackson, who is a practicing orthopedic surgeon in
4 Camden. And Dr. Jackson agreed to view the records
5 and he says, I want to see the x-rays and so forth.

6 We initially had several logistical problems
7 in getting the records and the x-rays from
8 Dr. Noojin's office. They sent the wrong records,
9 they sent a CD that couldn't be opened. And
10 Commissioner McCaskill recognized that by the time
11 we got to the hearing and left the record open for
12 us to get Dr. Jackson's report in, which we did.

13 And I would point out that had I been able to
14 get Dr. Jackson's report and evaluation prior to
15 the hearing then I would have had an opportunity to
16 either depose Dr. Noojin again or subpoena him to
17 come to the hearing so I could cross-examine or ask
18 him about his opinion vis-a-vis Dr. Jackson's
19 opinion.

20 Of course, what Dr. Jackson said in his
21 evaluation, which we attached, was that there was
22 -- first of all he did x-rays contemporaneously
23 with his evaluation. Dr. Noojin's x-rays he had
24 viewed, the last ones, were in December of 2013.
25 His deposition was taken in May of 2014. So the

1 last x-rays that he viewed were taken in December
2 of 2013. Jackson took -- Dr. Jackson took x-rays
3 in September 2013, pointed out specifically what
4 the differences were, that there was a two
5 millimeter space -- Dr. Noojin had said there was
6 two millimeters spacing in the medial compartment,
7 Dr. Jackson now says there's no spacing in the
8 medial compartment. So there's a stark contrast in
9 their testimonies or in their opinions.

10 Dr. Noojin said in his deposition that he made
11 his decision based on the best tools he had. Well,
12 the problem with that is there were better tools
13 available by the time Dr. Jackson took his x-rays
14 in September, which we're still within the year for
15 the change of condition. There's no bright line
16 when the change of condition may have taken place,
17 it's a continuum of sorts.

18 So when we got -- Commissioner McCaskill left
19 the record open, as he stated in his order, for
20 purposes of getting an evaluation by Dr. Jackson
21 and to allow Defendants to respond to that.

22 The Defendants chose to respond by sending a
23 questionnaire back to Dr. Noojin, who had
24 originally gave the opinion, basically asking him
25 three questions, asking him, Do you agree with

1 yourself, for lack of a better way to put it. Of
2 course he did. And he didn't -- she asked in her
3 letter to him does anything else he wanted to see.
4 He knew those x-rays were out there. Why he would
5 not want to see contemporaneous x-rays, I don't
6 know. I don't have any idea.

7 One thing I would point out, in the
8 questionnaire that Ms. Morrow sent to Dr. Noojin
9 after -- along with Dr. Jackson's report and after
10 his evaluation, question number three, which I
11 think that's attached to my brief too, the
12 questionnaire, asks, Is it still your opinion that
13 you recommended a total knee replacement to the
14 Claimant prior to her original release at maximum
15 medical improvement on April 23rd or 8th -- I can't
16 read what that says -- and that nothing has changed
17 nor accelerated that need. I point this out
18 because that's not -- that wasn't Dr. Noojin's
19 opinion. What Dr. Noojin said -- he never
20 recommended a total knee replacement prior to
21 releasing her. He discussed the possibility of her
22 needing a total knee replacement when she was 40 or
23 50 years old.

24 What this statement should have said, it
25 appears to me from the record, is recommended a

1 tibial -- high tibial osteotomy, which was the
2 surgery that Dr. Noojin had recommended all along,
3 not a total knee replace. I point that out for the
4 purposes -- Dr. Noojin checked yes and signed off
5 on something that wasn't even his opinion. So I
6 guess he didn't read it, I don't know.

7 But by virtue of Dr. Noojin not getting me the
8 records in time and Dr. Jackson's opinion, I made
9 the motion to be allowed to be re-depose Dr. Noojin
10 based on Dr. Jackson's evaluation. That was denied
11 by Commissioner McCaskill.

12 So what I'm asking the Commission to do is to
13 exercise your discretion and find exceptional
14 circumstances for remanding this case or referring
15 it directly to a orthopedic surgeon of the
16 Commissioners' choice for an independent evaluation
17 and provide all the x-rays, provide the latest ones
18 and the others, and then we'd have an independent
19 opinion as to what's going on here.

20 So we feel that -- Shameka Green is here this
21 morning. She had a serious work related accident.
22 She's basically been a pawn in a procedural
23 gamesmanship between doctors or -- I mean, it's
24 unfair to her not to get a chance to get all the
25 evidence in the record, because it wasn't her

Ms. Morrow.

*

RESPONDENT ARGUMENT

BY MS. MORROW: Good morning and may it please the Commission. Procedurally there's not a lot of disagreement as to the history of the claim. It's an admitted injury to the right knee. The authorized treating physician from the outset has been Dr. Noojin.

Dr. Noojin provided reconstruction -- ACL reconstruction to her knee February 21 of 2012. He monitored her progress following that surgery, including x-rays which were done in August of 2012, followed by additional follow ups and recommendation of what was a high tibial osteotomy prior to release at maximum medical improvement.

1 The Claimant declined that surgery and she was
2 further treated and then released at maximum
3 medical improvement.

4 Dr. Noojin provided his rating and release and
5 outlined future medical pursuant to a 14B that was
6 submitted in the APAs at page 41. The single
7 Commissioner at that time ruled initially she was
8 at maximum medical improvement, gave her a 21
9 percent impairment, and future medical care that
10 was limited to the Form 14B.

11 If you read the Form 14B from the first set of
12 pre-hearing briefs it outlines future medical
13 limited to NSAIDs, shots, and braces only. There
14 was no recommendation of future treatment,
15 including the high tibial osteotomy or total knee
16 replacement.

17 That was appealed, the appeal was withdrawn,
18 that order became the law of the case.

19 That was immediately followed by a change of
20 condition request questionnaire that was sent to
21 Dr. Noojin. That questionnaire submitted by the
22 Claimant and completed by Dr. Noojin.

23 We then deposed Dr. Noojin May 15 of 2014
24 where he recanted the entire questionnaire that he
25 had provided previously, based on his analysis of

1 the x-rays during the deposition, when he was
2 presented the question as to whether or not there
3 had been an objective change of condition. If you
4 read his deposition at page 31 he states that the
5 only difference at this point is the Claimant's
6 election for surgery.

7 Her pain complaints at the prior hearing were
8 nine out of ten. At the second hearing -- jumping
9 forward a little bit, at the second hearing her
10 pain complaints were, again, a nine out of ten. So
11 objectively her pain complaints -- subjectively her
12 pain complaints were the same so he had to look at
13 the objective evidence, which were the prior x-
14 rays; the ones that he had from August of 2013 and
15 then the ones that he updated in December of 2013
16 after the original hearing in this case. He
17 indicated there was still two millimeters of
18 cartilage in the knee, and this was at his
19 deposition in April of 2013. And that based on the
20 most recent evaluation and diagnostic tools there
21 had not been a progression of her arthritic change.

22 She had the ACL reconstruction, but she had
23 preexisting osteoarthritis in the knee that was
24 aggravated by the claim, which was also originally
25 taken into consideration on the first order in the

1 case.

2 His deposition clearly outlines that based on
3 the totality of the evidence, including his history
4 of treatment of her over the course of a year and a
5 half to almost two years, that the condition had
6 not progressed to the point where she needed a
7 total knee replacement or the high tibial
8 osteotomy. The high tibial osteotomy can only be
9 provided to someone while they have a certain
10 millimeter percentage of cartilage loss, because it
11 offsets the need for the total knee replacement by
12 a significant period of years. The total knee
13 replacement ultimately has to be utilized there
14 after, and he testifies that, too -- as well in his
15 deposition.

16 So neither one of those were on the table, and
17 both were considered prior to the original MMI
18 date. That's why that's contained in the follow up
19 questionnaire to Dr. Noojin after the IME with
20 Dr. Jackson.

21 We presented at the second hearing in this
22 case. There was a motion made for additional
23 evidence, including an IME, that was granted. The
24 single Commissioner allowed for us to then respond
25 to that evidence. And that was the limitation of

1 the extension of the record beyond the hearing.
2 There was no requirement that that subsequent
3 submission to Dr. Noojin be done by deposition or
4 anything else. If you read the questionnaire that
5 I submitted to Dr. Noojin, I clearly outlined that
6 if he needed any additional information,
7 documentation, or responses to contact and we would
8 provide that to them, and if reinstatement of his
9 deposition was necessary we would do that as well.

10 He chose to complete the questionnaire of his
11 own volition, indicated, again, that there was no
12 change of condition, and that the treatment that
13 had been recommended was all treatment that was
14 relative to the course of medical care prior to the
15 first hearing in this case, and that, again, there
16 was no change of condition.

17 Ultimately, the most important finding of fact
18 in the order in this case is number 20, wherein the
19 single Commissioner indicated that the body of the
20 evidence of a whole, which includes the medical
21 documentation, including the IME that was
22 submitted, as well as the testimony of the
23 Claimant, was considered in reaching the decision
24 that there had not been a change of condition for
25 the worst. And that the Claimant presented with

1 largely the exact same pain complaints, problems,
2 and future medical treatment that she had presented
3 with at the first hearing.

4 For that reason she does not carry her burden
5 of proof under 42-17-90. And the single
6 Commissioner's order in this case should be
7 affirmed in it's entirety. Thank you.

8 COMMISSIONER WILKERSON: Three minutes in
9 reply.

10 MR. GARNER: Very briefly. I don't think I'll
11 take that long, Commissioner.

12 *

13 **APPELLANT REPLY**

14 BY MR. GARNER: But we don't disagree with the
15 procedural history as Ms. Morrow's outlined it,
16 either. I would just point out, again, that
17 Dr. Noojin's recanting of his testimony that he had
18 given me in the affidavit obviously put me in a
19 bind. And the way I had to get out of that bind is
20 try to find some other medical support.

21 I don't understand why they're so afraid of
22 Dr. Jackson's opinion. Well, I do understand it.
23 Because it's different and they don't want it fully
24 assessed and evaluated by the Commission.

25 We just ask them to let another independent

1 doctor look at these x-rays and then come up with
2 an opinion which the Commission can judge at that
3 time.

4 The totality issue -- referred to the totality
5 evidence in finding number 20, or whatever it was.
6 The totality of the evidence that Dr. Noojin had
7 ended in December of 2013. We've got other
8 evidence after that that he -- he didn't ask for
9 it. She sent him a letter and said, If you need
10 anything, that's true. The letter says, If you
11 need anything else, do it. As I stated before, he
12 checked off on yes, yes, yes on every one of them,
13 including one that was totally inaccurate, and just
14 signed it and sent it back. He didn't reviewed it.
15 He ever said in his deposition he'd never even
16 talked to me, and I talked to him three or four
17 times. Obviously, I hope the Commission doesn't
18 think I sent him an affidavit out of the blue to
19 sign that he just signed and sent back. I
20 obviously talked to him and drafted that affidavit.

21 But, like I said, the evidence that he had
22 before him in deciding what he -- giving his
23 opinion ended in December. There's updated
24 evidence from September of 2014 that needs to be
25 fully assessed that has not been assessed by the

Commission. And that's all we're asking, is a fair
evaluation of that evidence. Thank you.

COMMISSIONER WILKERSON: Thank you all, both.
This concludes the hearing.

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(Whereupon, the hearing concluded at 10:16 a.m.)

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STATE OF SOUTH CAROLINA
COURT REPORTER CERTIFICATE

Be it known that I, Christine Tatum, a
Certified Court Reporter, did hear the appellate matter
of ***Shameka S. Green v. Teleperformance Group***, Workers'
Compensation File No. 1119818 on Tuesday, March 17,
2015, in Columbia, South Carolina, before the South
Carolina Workers' Compensation Commission Full
Commission Appellate Panel including; Honorable T. Scott
Beck, Michael Campbell, and Avery Wilkerson, Chair;

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

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

In Witness whereof, I have hereunto set my
hand this 29th Day of July 2015.



Christine Tatum, CCR
Certified Court Reporter

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1119818

Shameka Green,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	TRANSCRIPT OF PROCEEDINGS
Teleperformance Group,	)	
Inc., Employer,	)	July 18, 2014
	)	
and	)	
	)	
American Zurich Insurance	)	
Company, 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, 1333
Main Street, Columbia, South Carolina, on
Friday, July 18, 2014, commencing at the hour
of 3:00 p.m.

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WITNESS: PAMELA WILLIAMS-FLEMING

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1 THE COURT: Today's date is July 18,
2 2014.. This is Workers' Compensation Commission
3 File Number 1119818. This is the case of
4 Shameka S. Green vs. Teleperformance Group,
5 Incorporated. The carrier is American Zurich
6 Insurance Company. The claimant is represented
7 today by Everett H. Garner, and the
8 employer/carrier are represented by Kelly
9 Fitzharris Morrow.

10 The date of the accident is
11 September 23, 2011. The claimant has an
12 average weekly wage of \$373.15, with a
13 corresponding compensation rate of \$248.78.

14 Are there objections to
15 jurisdiction, venue, or APA submissions?

16 MR. GARNER: No, Commissioner.

17 MS. MORROW: No, Your Honor.

18 THE COURT: All right. Without
19 objection the Commission file become a part of
20 the record with the exception of self-serving
21 declarations and unstipulated medical records.

22 All right. We're here today,
23 Mr. Garner, on your client's Form 50. If you
24 would, please place your client's position on
25 the record.

1 MR. GARNER: Commissioner, Shameka
2 Green suffered the accident that you just
3 referred to that was treated for a long period
4 of time by Dr. Noojin who released her in April
5 of 2013 at maximum medical improvement.
6 Subsequent to that time we had a hearing before
7 Commissioner Wilkerson and an award was made.

8 After that we consulted further with
9 the authorized treating physician who signed an
10 affidavit that we prepared in regard to a
11 potential change in Ms. Green's condition which
12 would justify or actually make necessary an
13 additional surgery which had been discussed
14 before MMI and she had rejected it because of
15 the drastic nature of the surgery.

16 She has informed me that she has
17 experienced more pain -- more frequent pain and
18 an enduring pain which had become unbearable
19 and the treating doctor has said all along that
20 it was a pain-driven situation as to whether or
21 not she should have whatever surgery or
22 whatever correction -- corrective measures she
23 needed to have taken.

24 So she doesn't know anything about
25 the medical aspect of it, obviously. She just

1 knows that she's been in pain and she wants to
2 have something done to correct that pain. We
3 would submit that once the Commissioner reviews
4 the medical testimony which Dr. Noojin
5 explicitly says that she would benefit from
6 that surgery and tend to reduce her disability
7 which was obviously a very important factor in
8 this type of situation.

9 When you combine that with her
10 testimony about her pain level, we believe we
11 have justified a change of condition with
12 concomitant treatment, whatever that -- if it's
13 high tibial osteotomy or a knee replacement or
14 whatever it is turned out to be the most
15 feasible route for her.

16 THE COURT: Okay. Thank you. All
17 right. Ms. Morrow.

18 MS. MORROW: Your Honor, again, for
19 the record our position is that there was a
20 previous hearing held before the Single
21 Commissioner September 18 of 2013. The Single
22 Commissioner determined that there was a
23 compensable injury to the right knee only at
24 finding of fact No. 8 or Page 7 of the Order
25 alternatively, APA Page 184 for the defendants.

1 Future medical treatment was limited pursuant
2 to the Form 14B which was completed by the
3 authorized treating physician, Dr. Noojin, in
4 this case. Future medical treatment is
5 explicitly limited to shots, braces, and NSAIDs
6 only. That's also at finding of fact No. 10 of
7 the previous Order or Page 184 of our APAs.

8 The high tibial osteotomy was a
9 procedure that was recommended by the
10 authorized treating physician prior to the
11 hearing that was held on September 18, 2013.
12 Under prior deposition of the claimant, she
13 indicated she did not want to have the surgery.
14 At the hearing itself on September 18, 2013,
15 she requested specifically that surgery from
16 the Single Commissioner and was denied.

17 As a result, it's our position that
18 provision of that surgery is res judicata.
19 It's been litigated before the previous Single
20 Commissioner and is not appropriate at this
21 time.

22 Alternatively the change of
23 condition allegation should then be looked to
24 by the authorized treating physician. He's in
25 the most appropriate position to determine

1 whether or not there has been a functional
2 change of condition which is typically a
3 medical standard, not a subjective pain
4 standard. In Dr. Noojin's deposition he
5 confirmed that the pain reported was the same
6 level of pain when he determined she reached
7 maximum medical improvement. That's at his
8 deposition Page 23. It's the same reported
9 pain that she demonstrates now.

10 He states there is no objective
11 change in her condition based on a review of
12 her pre-MMI x-rays, as well as her post-MMI
13 x-rays. That discussion is at his deposition
14 Page 31 and 32. He indicates the x-rays both
15 pre- and post-MMI confirm the exact same amount
16 of cartilage lost which would be the same
17 pre-MMI to the present date under their
18 allegation of a change of condition. That's at
19 Page 30 of his deposition.

20 As a result he cannot state that
21 there has been a change of condition for the
22 worse based on the objective evidence and that
23 her only -- the only thing that has changed
24 effectively in this case is the claimant's
25 desire to have this surgery is once again being

1 raised. That's at his deposition Page 31.

2 The surgery, the high tibial
3 osteotomy, is the same recommendation he made
4 to her prior to his determination of maximum
5 medical improvement which is at Page 27 of the
6 deposition. And he also indicated someone who
7 reports her level of pain would require
8 emergent care rather than an election of
9 surgery several months to a year plus beyond
10 the initial request for surgery which would
11 have been our previous hearing date of
12 9/18/2013. That's also at his deposition Page
13 17.

14 We respect the position of the
15 Commission that the claimant is being allowed
16 to submit additional evidence. We just have a
17 continued objection to the untimely submission
18 of the evidence in this case. We request this
19 Commission grant us the right to respond to any
20 evidence that's brought in after this hearing
21 as well as the potential to reconvene the
22 hearing if necessary to present additional
23 testimony in response to that evidence if
24 warranted, but also not to be limited by the
25 need to depose their orthopedist and/or

1 potentially send that record back to the
2 authorized treating physician for comment for
3 submission to this Commission for
4 consideration.

5 THE COURT: As we discussed in the
6 pre-hearing, your objection is noted and I
7 certainly will, in the interest of fairness,
8 afford you any opportunity that would be
9 appropriate to respond.

10 MS. MORROW: I appreciate it.

11 THE COURT: All right. Anything
12 else, Ms. Morrow?

13 MS. MORROW: No, Your Honor.

14 THE COURT: Anything else,
15 Mr. Garner?

16 MR. GARNER: No.

17 THE COURT: All right. Mr. Garner,
18 you want to call a witness?

19 MR. GARNER: I call Shameka Green.

20 THE COURT: All right. I have two
21 requests for you. Very simple. The first is
22 speak up. Both of the lawyers have to hear
23 you. This young lady who is making the record,
24 it's imperative that she hear you. And, of
25 course, I need to hear you. Sometimes folks

1 get into an exchange with the other lawyer and
2 kind of forget the rest of us are here. So
3 please continue to speak up.

4 THE WITNESS: Yes.

5 THE COURT: And then the second is
6 if you're asked a yes or no question, please
7 give us a verbal yes or no answer. If you
8 shake or nod your head, which I do that all the
9 time, but in this setting Kim is going to have
10 to look to see what you've done and then she's
11 got to put it in the record which slows her
12 down. So to keep everything kind of on track
13 and kind of simple and clean, yes or no
14 questions, verbal yes or no answer. Okay?

15 THE WITNESS: Okay.

16 THE COURT: Please raise your right
17 hand.

18 (SHAMEKA S. GREEN, being duly sworn
19 to tell the whole truth, testified as follows:)

20 THE COURT: Please state your full
21 name for the record.

22 THE WITNESS: Shameka S. Green.

23 THE COURT: All right. Thank you,
24 Ms. Green. Mr. Garner.

25 MR. GARNER: Thank you,

1 Commissioner.

2 DIRECT EXAMINATION

3 BY MR. GARNER:

4 Q. Shameka, how old are you?

5 A. I am 40.

6 Q. And how much education do you have?

7 A. I have some. I finished high school
8 and I got some college which is Midlands Tech.

9 Q. Okay. Are you presently employed?

10 A. Yes.

11 Q. Where do you work?

12 A. I work at Teleperformance USA which
13 is Direct TV.

14 Q. Is that the same place you were
15 working when you experienced this work-related
16 injury?

17 A. Yes.

18 Q. Okay. What is your work situation
19 now as far as your hours? How many hours do
20 you work a week?

21 A. I work the same hours which is
22 around 23 to 25 hours a week which is
23 approximately about 43 to 45 hours every two
24 weeks.

25 Q. Now, prior to getting hurt on the

1 job, how many hours were you working?

2 A. I was working 43 to 45 hours a week.
3 I would average two weeks about 80 -- anywhere
4 from 80 to 85 depending on overtime.

5 Q. And why are you working a reduced
6 schedule now?

7 MS. MORROW: Your Honor, I just have
8 to object. All these questions were presented
9 at the prior hearing. They are not relevant to
10 a change of condition for the worse.

11 MR. GARNER: I'm leading into that.
12 I'm not going to dwell on it.

13 THE COURT: I will allow it for now.
14 Go ahead.

15 BY MR. GARNER:

16 Q. Were you injured on the job
17 September 23, 2011?

18 A. Yes.

19 Q. Now, were you treated by Dr. Noojin
20 during that course of -- was he the one that
21 rendered your treatment for that injury?

22 A. Yes.

23 Q. And he's an orthopedic surgeon?

24 A. Yes.

25 Q. And did he release you on or about

1 April 23, 2013?

2 A. Yes.

3 Q. Did you -- at that time had you made
4 some discussion -- had some discussion with him
5 about having surgery?

6 A. Yes, I had. Can I say his name or
7 not say his name, the doctor's name? Can I say
8 the doctor's name?

9 THE COURT: I don't know what you're
10 about to say.

11 THE WITNESS: I was about to say the
12 doctor's name, and I know at the last court
13 hearing I wasn't able to say the doctor's name.

14 BY MR. GARNER:

15 Q. You weren't able to say what he
16 said.

17 A. Yes. Okay. But, yes, I did have a
18 conversation with Dr. Noojin in reference of my
19 knee and getting the pain level down to where
20 it's tolerable as far as, you know, not having
21 so much pain and inflammation in the knee and
22 the leg.

23 Q. And at that discussion did you make
24 a decision as to whether or not to have the
25 surgery?

1 A. Yes, I did make a decision. I did
2 indicate to him I was having surgery, but he
3 was indicating to me that --

4 MS. MORROW: Your Honor, I would
5 object to anything the doctor had to say to
6 her.

7 THE COURT: That's what you can't
8 say.

9 THE WITNESS: Okay. That's what I
10 can't say.

11 THE COURT: The doctor is not here
12 for Ms. Morrow to cross-examine. So you cannot
13 tell me what the doctor said.

14 THE WITNESS: Okay.

15 BY MR. GARNER:

16 Q. Just tell us why you decided not to
17 have the surgery.

18 A. The reason why I decided not to have
19 the surgery is because of the significance of
20 the time frame and breaking the bone in my leg.
21 The time frame as far as healing process is
22 quite strenuous. I mean, it's a long time
23 healing process.

24 Q. What is your understanding what that
25 time frame was?

1 A. A year. Could be a year or more.

2 MS. MORROW: Your Honor, I just want
3 to note an objection that, again, this is res
4 judicata. It was previously discussed before
5 the previous Commissioner at the other hearing
6 as to the surgery that we litigated at the last
7 hearing in this matter.

8 THE COURT: Mr. Garner.

9 MR. GARNER: Thank you,
10 Commissioner.

11 THE COURT: I mean, do you want to
12 respond to her objection?

13 MR. GARNER: Well, obviously we're
14 progressing to the point of why she needs the
15 surgery or something now. I think I can lay a
16 basis for that based on what the situation was
17 before.

18 THE COURT: Anything else,
19 Ms. Morrow, on the objection?

20 MS. MORROW: No, Your Honor.

21 THE COURT: All right. I'm going to
22 allow that to a limited -- I mean, we're not --
23 we're not here to re-litigate the last hearing.

24 MR. GARNER: I understand.

25 THE COURT: I understand your desire

1 to lay a foundation for what you're going to
2 ask for.

3 BY MR. GARNER:

4 Q. At the time that you were released
5 by Dr. Noojin on April 23, 2013, were you in
6 pain? Did you have pain in your knee?

7 A. Yes.

8 Q. All right. And you testified in
9 earlier hearings as to what that pain level
10 was. Do you recall what you testified to?

11 A. Yes. I testified that that pain
12 level -- the highest pain level is a nine and
13 on an average good day it's anywhere between a
14 six or a seven. I'm now experiencing a ten
15 because the pain level has persisted. Like
16 every day it's getting worse and worse and
17 worse. So I'm having charley horses on a
18 regular basis where I can't hardly move my leg.
19 I got to move around or I got to get up because
20 the pain is just really sharp.

21 Q. Is that different than it was when
22 you had the hearing? And Ms. Morrow says it's
23 September 2013. The copy I have says July 9,
24 2013. When you had the last hearing, is your
25 pain level now or over the last couple of

1 months been different or your pain frequency
2 been different than it was then?

3 A. Yes. It's actually been worse.

4 Q. Explain how it's different.

5 A. As far as me being able to walk, I
6 have to pretty much -- the charley horses come
7 so bad, I got to like probably stand still. If
8 not, I'm going to fall. And I definitely don't
9 want to fall and end back in the hospital. The
10 charley horses come like really frequently to
11 the point that if I sit down for a long period
12 of time, I got to actually stand up, move
13 around, get -- get that blood back circulating
14 through my leg.

15 I can't walk for a long period of
16 time because, again, it just -- like it just
17 numbs up. If you ever had a charley horse,
18 that feeling is unbearable. I don't know if
19 anyone has had a charley horse, but that
20 feeling is very unbearable. And I definitely
21 need that surgery.

22 Q. How long does that feeling last?

23 A. I would say about anywhere like 10
24 seconds -- 10, 15 seconds at the most.

25 Q. And how often do you have those

1 charley horses?

2 A. I have them at least three or four
3 times a day.

4 Q. Back in July of 2013, were you
5 having any kind of similar pain?

6 A. Yes. I was having similar pain, but
7 they wasn't as frequently as I'm having them
8 now.

9 Q. How often were you having them then?

10 A. I was probably having them at least
11 probably once -- once a day out of a week,
12 probably two times out of a week versus now I'm
13 having about anywhere between four, five times
14 out of a week.

15 Q. How are you able to cope with that
16 pain?

17 A. Not -- very hard because it's hard
18 to get the medicine needed to cope with the
19 pain. So anywhere -- Tylenol, that's not
20 doing. So I'm trying to cope with it the best
21 way I can.

22 Q. Are you on some prescribed
23 medication?

24 A. Yes.

25 Q. Now, how are you -- if you have this

1 kind of pain, how are you able to work even on
2 a limited schedule?

3 A. I'm doing the best I can. I am
4 working and I'm doing the best I can with the
5 hours that I am restricted to. So I'm doing
6 the best I can. I got to work to provide for
7 myself.

8 Q. Have you been attending work
9 regularly?

10 A. Yes.

11 Q. Were you concerned if you didn't
12 attend work regularly that you might be
13 terminated?

14 A. Yes.

15 Q. Do you have good days and bad days?

16 A. I have more bad days than good
17 lately.

18 Q. How is that different than it was at
19 the prior -- at time of the prior hearing?

20 A. At the prior hearing, you know, it
21 wasn't as -- as I stated, it wasn't as bad as
22 before. I'm having to the point where, you
23 know, back then the good days was on the level
24 of the pain. And as far as the pain now, it's
25 just worse. I just can't describe how bad the

1 pain is.

2 Q. Are you having any other sensations
3 or feelings in your knee besides pain?

4 A. Yeah. My knee is actually swollen
5 as we speak. So it's visible as far as, you
6 know, just the circulation and the swelling. I
7 can't wear heels, just flip-flops or sneakers.

8 MR. GARNER: Commissioner, we would
9 offer to show you her knee for the swelling if
10 you would like to see. We don't have any
11 pictures of it, but if you would like to
12 observe the swelling.

13 THE COURT: It's what you want,
14 Mr. Garner.

15 BY MR. GARNER:

16 Q. All right. If you would, show the
17 Commissioner --

18 MS. MORROW: Your Honor, I just want
19 to note an objection that there is no
20 comparison to before today's date for which you
21 can know whether or not this appears to be
22 swollen or standard knee.

23 THE COURT: And your objection is
24 noted for the record and it is what it is.

25 MS. MORROW: Thank you.

1 MR. GARNER: Okay. Go ahead.

2 THE COURT: Ms. Morrow, do you want
3 to look?

4 THE WITNESS: If you notice this
5 knee is sunk in.

6 THE COURT: She's pointing to her
7 left knee.

8 THE WITNESS: This is my left knee
9 and this is my right knee and it's swollen.
10 The knee is coming all the way pretty much out
11 to there. I'm standing still and if you
12 notice, this knee is totally different than
13 that knee.

14 THE COURT: Okay. Thank you.

15 BY MR. GARNER:

16 Q. Do you know what a tibial osteotomy
17 is?

18 A. I have a general idea what it is,
19 but I'm really not for sure. I do know it's
20 breaking of the bone, relieving the pain and
21 the pressure to allow any, like, arthritis or
22 pain to be less as far as less painful.

23 Q. Are you aware that Dr. Noojin has
24 recommended or indicated you will have a --
25 need a future knee replacement?

1 MS. MORROW: Your Honor, I object to
2 the form of the question. Also, it calls for a
3 conclusion that's testimony made by Dr. Noojin
4 that she cannot testify to.

5 MR. GARNER: Okay. It's in the
6 medicals. We will rely on those.

7 THE COURT: The medicals will speak
8 for themselves.

9 BY MR. GARNER:

10 Q. Do you want whatever procedure to
11 relieve your pain?

12 A. Yes.

13 Q. Do you have any other sensations
14 besides the charley horses and swelling?

15 A. Just the charley horses and the
16 swelling and being in lots of pain.

17 Q. Do you consider cramping the same as
18 a charley horse?

19 A. Yes.

20 MR. GARNER: That's all I have at
21 this point, Commissioner.

22 THE COURT: All right. Ms. Morrow.

23 MS. MORROW: Your Honor, I would
24 just for purposes of the record concede that
25 Hope is correct. The hearing date per the

1 transcript was July 9, 2013. I think the
2 September 18, 2013 is the Order date. So I
3 apologize.

4 CROSS-EXAMINATION

5 BY MS. MORROW:

6 Q. Ms. Green, you remember when we took
7 your deposition back in June of 2013?

8 A. Yes.

9 Q. And similar to the last hearing, do
10 you remember the pain level that you described
11 during that deposition?

12 A. Yes.

13 Q. What was it?

14 A. It was between a six and six point
15 five and a seven and a nine, nine as being the
16 highest pain level.

17 Q. Ms. Green, I'm going to show you the
18 prior hearing transcript where I posed the
19 exact same question to you at Page 53 of the
20 prior transcript where I asked you -- do you
21 remember being asked the exact same question,
22 and what are the pain levels that you reported?

23 A. Okay. I see on there it says runs
24 between eight and nine. So nine would be the
25 highest pain level.

1 Q. Okay. But that's not a six?

2 A. Okay. But you said the lowest. I
3 gave you the lowest and then I gave you the
4 highest.

5 Q. I said what level of pain did you
6 report during your deposition. If you want to
7 quantify it, you can. I'm asking you what's
8 the level of pain?

9 A. My level of pain is a nine.

10 Q: That was true at your deposition in
11 2013?

12 A. Yes. That's the highest pain level
13 was the nine.

14 Q. Okay. And at the hearing in
15 July 2013, your pain level was also a level
16 nine; is that correct?

17 A. Yes.

18 Q. And we're talking about a one to ten
19 scale, correct?

20 A. Correct.

21 Q. Ten being posed to you as the worst
22 amount of pain imaginable?

23 A. Correct. And right now it's a ten,
24 the worse pain imaginable.

25 Q. Okay. And today you're still

1 working?

2 A. Yes.

3 Q. You're working the same hours you
4 were working when we had the hearing last time?

5 A. Yes.

6 Q. Still working with the same company?

7 A. Yes.

8 Q. Performing the same job?

9 A. Yes.

10 Q. Same responsibilities?

11 A. Yes.

12 Q. Still drive yourself to work?

13 A. Occasionally, yes. Not all the time
14 I drive myself to work.

15 Q. All right. And you treated with
16 Dr. Noojin as part of this case?

17 A. Yes.

18 Q. You trusted him to perform surgery
19 on you?

20 A. Yes.

21 Q. So you trust his opinion?

22 A. Yes.

23 Q. He did the ACL construction on your
24 knee?

25 A. Yes.

1 Q. And you believe in his
2 recommendations and opinions; is that fair?

3 A. It all depends on -- yes. I mean,
4 what his recommendation and opinion is, yes.

5 Q. Enough so that you would consider
6 letting him do the high tibial osteotomy that
7 you were describing as a radical surgery?

8 A. Explain radical. Like just out of
9 the blue? What do you mean by "radical?"

10 Q. You just described a surgery that
11 you had hesitations about because to your
12 understanding it involved cracking your bone
13 and a year worth of recovery?

14 A. That's correct. Yes.

15 Q. Okay. So you trust his
16 recommendation that that's what he had said in
17 the past that you need as far as treatment?

18 A. Yes. Uh-huh.

19 Q. Okay. And you asked the
20 Commissioner at the last hearing in this case
21 for the high tibial osteotomy, correct?

22 A. Yes. I asked him for the high
23 tibial osteotomy. And per the Commissioner he
24 asked me the question if I was to go to
25 Dr. Noojin today, tomorrow, next week on

1 whatever day and he was to ask me would I have
2 the tibial osteotomy, would I do it and I said
3 yes.

4 Q. Okay. And are you aware that the
5 Commissioner only awarded NSAIDs which are
6 anti-inflammatories, shots and braces as a
7 result of that hearing?

8 A. I understand, yes. I do understand
9 that until we get final clarification from the
10 doctor.

11 Q. Okay. And you're here today asking
12 for the exact same high tibial osteotomy that
13 we talked about at the last hearing, correct?

14 A. That is correct. Because back then
15 the pain level is not as worse as it is now.
16 My pain level is worse as it was back then.
17 I'm -- I'm pretty much in pain every day and
18 you can't put a price on a person's leg when
19 they're hurting every day. So if that surgery
20 would eliminate that pain, then, yes, I need
21 that surgery ASAP.

22 Q. The same pain that you had at the
23 last hearing?

24 A. This pain was a nine. It's not a
25 ten. So the pain level is different.

1 Q. Did you ever express that to
2 Dr. Noojin?

3 A. Yes, I have.

4 Q. Okay. All right. Even at the
5 previous hearing, you're testifying today that
6 you have to get up and walk around periodically
7 at work?

8 A. Yes, I do.

9 Q. That was the case when we had the
10 hearing last time, was it not?

11 A. That's the case, but our building
12 has moved. So, therefore, the distance to the
13 bathroom is a lot longer. The distance to find
14 a supervisor is a lot longer because half the
15 time the supervisors are not on the floor.
16 So -- and then half the time when you're
17 transferring your calls to the person that can
18 answer the questions, that line is either busy.
19 So you have to find somebody to help you
20 because you're not allowed to have a customer
21 on the phone but for so long a period of time
22 without being reprimanded.

23 Q. And that was the exact same thing we
24 discussed at the last hearing, is it not?

25 A. Correct. Yes.

1 Q. And your work hours are the same as
2 we discussed at the last hearing, correct?

3 A. Yes, my hours are the same.

4 Q. And at that time when we had the
5 hearing last time, you had actually received a
6 pay raise; is that right?

7 A. You receive a pay raise every year.

8 Q. Okay. And your description of the
9 actual pain that you experience in that leg is
10 the same you're describing today as it was at
11 the last hearing which is a charley horse?

12 A. Yes. It's like a form of a charley
13 horse which is bad cramping. I mean, I don't
14 know if you ever had a charley horse, but that
15 pain is very unbearable. If you had it in your
16 hand or your leg, but that pain is very
17 unbearable.

18 Q. And that's the same type of pain you
19 were experiencing back when we had the last
20 hearing, correct?

21 A. Correct. And the same pain which is
22 worser now that I'm experiencing at this
23 moment.

24 Q. And when you went back to see
25 Dr. Noojin, I believe, working from memory, was

1 roughly December of 2013, he did updated x-rays
2 on your knee; is that right?

3 A. I'm not for sure the date, but I
4 know I went back with him and did updated
5 information.

6 Q. And I don't have it noted. So when
7 you went back after the hearing -- after the
8 last hearing, he did updated x-rays; is that
9 fair?

10 A. Yes. And he did see where I would
11 need that tibial osteotomy.

12 MS. MORROW: Your Honor, I just
13 object to anything the doctor had to say. It's
14 hearsay testimony.

15 THE COURT: You can't tell me
16 anything the doctor said.

17 MR. GARNER: It's in the medical
18 records.

19 THE WITNESS: Thank you. I'm sorry.

20 MS. MORROW: Your Honor, those are
21 all the questions I have.

22 THE COURT: Okay. Mr. Garner.

23 MR. GARNER: Briefly.

24 REDIRECT EXAMINATION
25

1 BY MR. GARNER: .

2 Q. Shameka, do you want surgery or do
3 you want pain relief in whatever form?

4 A. Both. I want surgery and pain
5 relief because you can't -- like I stated, you
6 can't put a price on a leg. Like you can have
7 a job today, tomorrow, next week, but this pain
8 is with me for life. So I need something to
9 relieve that pain pressure. I'm not getting no
10 younger. I'm getting older. So I need to be
11 able to move around and move about. I mean,
12 like with anyone that haven't had a knee
13 replacement, it's not my fault, you know, that
14 I got hurt on the job. So I need that
15 replacement to move forward.

16 Q. Were you hoping that the pain would
17 get better without the surgery?

18 A. Yes.

19 Q. Has that happened?

20 A. No, it's gotten worse.

21 MR. GARNER: That's all,
22 Commissioner.

23 THE COURT: Ms. Morrow?

24 MS. MORROW: I haven nothing
25 further, Your Honor.

1 THE COURT: All right. Thank you,
2 ma'am. You can step down. Please watch your
3 step going down. Other witnesses, Mr. Garner?

4 MR. GARNER: No other witnesses,
5 Your Honor.

6 THE COURT: Is that your case?

7 MR. GARNER: Yes, sir.

8 THE COURT: Ms. Morrow?

9 MR. GARNER: I have Pam Fleming.

10 THE COURT: Ms. Fleming, you were
11 present for the speak up and yes or no. So
12 we're not going to replot that ground. If you
13 would, please, ma'am, raise your right hand.

14 (PAMELA WILLIAMS-FLEMING, being duly
15 sworn to tell the whole truth, testified as
16 follows:)

17 THE COURT: Please state and spell
18 your full name for the record. Okay?

19 THE WITNESS: Okay. Pamela,
20 P-A-M-E-L-A, J, Williams, W-I-L-L-I-A-M-S,
21 hyphen, Fleming, F-L-E-M-I-N-G.

22 THE COURT: All right. Ms. Morrow.

23 DIRECT EXAMINATION

24 BY MS. MORROW:

25 Q. Ms. Fleming, just briefly tell the

1 Commissioner where you work and what your
2 position is there.

3 A. I work with Teleperformance. I've
4 been with Teleperformance since May of 2013,
5 and I'm human resources generalist there.

6 Q. In your position you oversee
7 workers' comp?

8 A. Yes.

9 Q. Okay. And this is the same position
10 you've held since our last hearing in this
11 case?

12 A. Yes.

13 Q. Okay. And as a result are you
14 overseeing Ms. Green's workers' compensation
15 case for Teleperformance?

16 A. When you say overseeing, this case
17 has been transitioned to our corporate office.
18 So I don't know what overseeing is, but I am
19 the representative, if that makes sense.

20 Q. Well, as far as you're there
21 actually at the same facility that she works?

22 A. Yes.

23 Q. And if there are any issues in
24 regards to her needs, would you be the person
25 locally who would know that information?

1 A. Yes.

2 Q. Okay. You see her daily at work?

3 A. I do not.

4 Q. Do you see her frequently?

5 A. I do not.

6 Q. Okay. How often do you roughly see
7 her?

8 A. Well, if I go out to the call center
9 floor, I may see Shameka. Or if she's in the
10 hall or something like that, I may see her.
11 But in my office, I don't see her regularly.

12 Q. Okay. All right. What kind of
13 people do you see regularly in your office?

14 A. Just people who have like, you know,
15 issues that they would like me to assist them
16 with like leave of absences or if they're
17 having any type of employee relation issues,
18 issues that's on the job, or an employee that
19 is recommended by the management team that
20 needs to come down and need to have a
21 discussion for whatever reason.

22 Q. Okay. Would workers' comp fall
23 under that umbrella?

24 A. If someone has workers' comp, yes,
25 they would come see me.

1 Q. Okay. Has Ms. Green come to see you
2 since our last hearing in relation to her
3 workers' comp claim?

4 A. Not in relation to workers'
5 compensation, no.

6 Q. All right. Has she presented to you
7 requesting any additional medical treatment?

8 A. No.

9 Q. As far as the workers' comp claim?

10 A. As far as the workers' comp,
11 correct.

12 Q. Okay. When you see her, you said
13 you see her periodically throughout the
14 facility if you're up and out of your office.
15 You've heard her testify today that she's in a
16 level nine to ten pain. In your personal
17 opinion based on your observations of
18 Ms. Green, does she appear to be arriving in
19 pain when you see her?

20 MR. GARNER: I'm going to object.
21 She's not in a position -- she has no medical
22 training that I know of. She's not in a
23 position to assess anything like that.

24 THE COURT: I'm going to let her
25 answer the question as to what her opinion is.

1 Clearly and it's noted in the record per your
2 objection that she is not a medical profession.
3 You may answer the question.

4 THE WITNESS: You know, Shameka has
5 not come to me to notify me of any discomfort
6 the she's having or ask for any type of
7 accommodation, nor has her supervisor or her
8 management team, you know, come to me in
9 regards to this workers' compensation issue.
10 Now, I have assisted Shameka for other issues
11 that we've spoken -- spoken about that's
12 unrelated to this issue, other medical issues
13 that she's had.

14 BY MS. MORROW:

15 Q. Okay. Have her other medical issues
16 caused her to miss time from work?

17 A. Yes.

18 Q. But nothing related to the workers'
19 comp claim?

20 A. Correct. Yes.

21 Q. Okay. In your opinion is she having
22 any difficulty performing her job with
23 Teleperformance?

24 MR. GARNER: Same objection.

25 MS. MORROW: I'm asking for the

1 witness' opinion.

2 MR. GARNER: She's got to be
3 qualified to give an opinion.

4 THE COURT: Well, as to her job
5 performance, I think she can speak to that.
6 Answer the question, please, ma'am.

7 THE WITNESS: Typically with
8 employees who have any type of job-related
9 issues performing, attendance or anything like
10 that, then those issues are brought to my
11 attention. And Shameka seems to be one of our
12 good employees. I don't see her often. Her
13 management team does not come to me asking for
14 assistance with Shameka in any way. So I would
15 say that she would be rated a pretty good
16 employee.

17 BY MS. MORROW:

18 Q. Okay. And if she was having any
19 difficulties -- let me just ask this: What
20 would the protocol be at your company if she
21 was having any problems with her workers' comp?
22 Does she report it to her supervisor and her
23 supervisor reports it to you? What is your
24 system?

25 A. Our system is any time an employee

1 says anything medical related, they
2 automatically send them to human resources.

3 Q. Which would be you?

4 A. Which would be to me.

5 Q. And has that occurred since the last
6 hearing in this case as it relates to
7 Ms. Green?

8 A. For workers' comp, no.

9 Q. And she testified just a little
10 while ago that she shows up at work because she
11 has concerns about possible termination. How
12 do you guys treat workers' comp absences at
13 Teleperformance?

14 A. We would excuse those days for her.

15 Q. If it was related to her claim?

16 A. Correct. If she -- because I think
17 she's come to me before and was telling me
18 about one day or the other that was workers'
19 comp related and asked if it would be excused.
20 So we've addressed those issues with her.

21 MS. MORROW: Okay. All right.
22 Perfect. Those are all the questions I have.
23 Thank you.

24 THE COURT: Mr. Garner.

25 MR. GARNER: Thank you,

1 Commissioner.

2 CROSS-EXAMINATION

3 BY MR. GARNER:

4 Q. Ms. Fleming, you indicated that you
5 started work at this location May 20, 2013; is
6 that correct?

7 A. May 19, May 20, that's correct,
8 2013.

9 Q. So that was about a year and a half
10 after her on-the-job injury took place?

11 A. That's correct. I was not there for
12 her injury.

13 Q. And you don't know any -- you don't
14 have any medical training, do you?

15 A. I do not have any medical training.

16 Q. And you don't know anything about
17 her pain levels either at the time of
18 hearing -- you testified at the last hearing,
19 didn't you?

20 A. Correct.

21 Q. You don't know anything about her
22 pain levels except what she said then and what
23 she said now? You don't know anything about
24 it, do you?

25 A. Right. She's never come to me with

1 any complaints about her pain level.

2 Q. And you don't know whether or not
3 she has sought medical -- you testified she
4 didn't come to you for anything workers' comp
5 or medically related; is that correct?

6 A. Ask that question again. I'm sorry.

7 Q. You testified she has not -- in
8 response to Ms. Morrow's question, you were
9 asked has she come to you with any complaints
10 about her needing medical treatment or anything
11 like that?

12 A. She has not come to me about any
13 issues regarding her pain or needing to miss
14 days or having those days excused in regards to
15 workers' comp.

16 Q. Okay. If she needed medical
17 treatment -- you don't know whether she sought
18 medical treatment through other avenues, do
19 you?

20 A. I do not. But with -- as I
21 mentioned, if Shameka had been away for a
22 workers' comp related type of issue and if she
23 had to miss work, then, yes, we would have had
24 a conversation where she would have asked me to
25 have those days excused -- that time excused.

1 Q. And you're aware that throughout
2 this process, at least from the time of the
3 last hearing, you're aware that she's had a
4 lawyer, correct?

5 A. Correct.

6 Q. And isn't it proper for her to go to
7 her lawyer to go to the workers' comp carrier
8 lawyer to seek this medical treatment?

9 MS. MORROW: Your Honor, I just
10 object. She's not an attorney.

11 THE COURT: She doesn't have legal
12 education.

13 THE WITNESS: Do I have to answer
14 that question? Because I don't quite --

15 THE COURT: No --

16 THE WITNESS: -- understand it.

17 THE COURT: The objection is
18 sustained.

19 BY MR. GARNER:

20 Q. But you don't have any idea whether
21 she sought medical treatment through other
22 sources, do you?

23 A. She has not addressed that with me,
24 no.

25 Q. You said Shameka is a good employee;

1 is that correct?

2 A. I would say that she's a pretty
3 good, fair employee. Yes.

4 MR. GARNER: Thank you. That's all.

5 THE COURT: Any other questions,
6 Ms. Morrow?

7 MS. MORROW: No, Your Honor.

8 THE COURT: All right, ma'am. You
9 may step down. Other witnesses, Ms. Morrow?

10 MS. MORROW: No, Your Honor.

11 THE COURT: All right. Then that
12 concludes this hearing.

13 (The hearing concluded at 3:28 p.m.)
14
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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 2nd 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 #1119818

SHAMEKA S. GREEN	)	
	)	
CLAIMANT,	)	SC WORKERS' COMPENSATION COMMISSION
	)	
VS.	)	HEARING OF
	)	
TELEPERFORMANCE, INC)	)	SHAMEKA S. GREEN
	)	
EMPLOYER,	)	VS
AND	)	
	)	TELEPERFORMANCE, INCORPORATED
AMERICAN ZURICH INS	)	
	)	
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Shameka S. Green versus Teleperformance, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 1:50 P.M., Tuesday, July 9, 2013, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

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ALSO PRESENT:

Ms. Pamela Fleming

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

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I N D E X

WITNESSES

All Witnesses:	Page
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EXHIBITS

C-1 (CLAIMANT'S EXHIBIT NUMBER ONE WAS MARKED FOR IDENTIFICATION) Received	39:21
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STIPULATIONS

Commissioner Wilkerson: Today's date is the 9th day of July, 2013. We're here in reference to Workers' Comp file number 1119818. The Claimant is Shameka S. Green and she is represented by Everett Garner. The Employer is -- is that Tele -- Teleperformance Group, Incorporated; the Carrier is American Zurich Insurance Company and Kelly Morrow is their attorney. The date of accident is 9/23 of 2011. The average weekly wage is three seventy-three, fifteen (\$373.15), which corresponds with a comp rate of two forty-eight, seventy-eight (\$248.78). We're here today to determine if the Carrier -- the -- excuse me -- the Employer/Carrier may stop payment and if so determine if the Claimant is entitled to any future benefits. The Carrier also requests credit for temporary total benefits paid and I think in the case it would be temporary --

Ms. Morrow: Partial.

Commissioner Wilkerson: -- partial benefits paid in excess of the award. Are there any objections to the APA's, jurisdiction, venue or any other items by the moving party, Ms. Morrow?

Ms. Morrow: Your Honor, I do just have an

1 objection to the handicap placard that's their
2 last APA; it is not substantiated by any type of
3 medical document and I don't know that it was
4 necessarily directly related to this claim in the
5 absence of something that would quantify that.

6 Mr. Garner: Dr. Noojin is the one that gave
7 her the -- signed for her to get it; so, he is the
8 treating Orthopedist and established all these
9 restrictions on her.

10 Commissioner Wilkerson: Is that in the
11 doctor's -- yes, I'm going to tell you what -- let
12 me tell you, I'm going to take it out, hand it to
13 you and maybe we'll get it in by exhibit; how
14 about that?

15 Ms. Morrow: That's fine.

16 Commissioner Wilkerson: I mean, if it can be
17 verified, I mean, yes. I mean, I'm fine with
18 that.

19 Mr. Garner: All right.

20 Commissioner Wilkerson: That way it just
21 doesn't become a pretentious point that -- well,
22 we'll put that in as a potential exhibit.

23 Mr. Garner: All right.

24 Commissioner Wilkerson: Okay. Is that -- is
25 that the only objection? Is that the issue from

1

--

2

Ms. Morrow: Yes, Your Honor.

3

Commissioner Wilkerson: -- okay. From Mr.

4

Garner?

5

Mr. Garner: No, nothing, Your Honor.

6

Commissioner Wilkerson: Thank you. I took

7

out -- what pages was that? I did not -- or was

8

it listed as an exhibit? I'm sorry; I didn't even

9

check the pages. Was that listed as a page?

10

Ms. Morrow: It's 23 and 24.

11

Commissioner Wilkerson: Oh, I took out pages

12

23 and 24, returned those back to Attorney Garner

13

as far -- as far as the APA's are concerned, we

14

may get those in by exhibit; we'll determine that

15

as we move forward. So, there being no other

16

objections the Commission's file becomes a part of

17

the record with the exception of self-serving

18

declarations and unstipulated medical reports.

19

Ms. Morrow, since you are the moving party I'll

20

get your client's position to begin with and then,

21

likewise, I'll have Mr. Garner put his client's

22

position on the record and also tell me, are you

23

going to Direct or rely on the medical and Cross,

24

tell me whether --

25

Ms. Morrow: I'll rely on the medical and do

1 Cross-Examination and reserve the right to submit
2 my witness in response.

3 Commissioner Wilkerson: -- that's fine. I
4 thought that would be the case but I always like
5 to get that as we move forward. So --

6 Ms. Morrow: Thank you.

7 Commissioner Wilkerson: -- go ahead. I'm
8 sorry.

9 Ms. Morrow: Your Honor, we're here today on
10 our 21 asserting that Ms. Green has reached
11 maximum medical improvement, seeking an award
12 under 42-9-30. This is an admitted injury to the
13 right knee. We deny that there was an injury to
14 the back; there has been no diagnosis, treatment
15 or causal connection in regards to their
16 allegations of a back injury, which makes it a
17 Singleton claim. She reached maximum medical
18 improvement by Dr. Noojin on April 23, 2013, which
19 you'll find at Defendant's APA, page 20. She
20 received a twenty-one percent (21%) impairment to
21 the right lower extremity with permanent work
22 restrictions of no prolonged walking, standing,
23 kneeling, crawling, squatting or working at
24 heights; this was as the result of her surgery on
25 February 21, 2012. She is back at work for the

1 Employer working in the same job she had prior to
2 this accident. We're seeking a credit for the
3 overpayment of temporary partial disability
4 benefits in this case from February 11, 2013 and
5 continuing, based on that calculation that is
6 twenty-one point two eight five seven (21.2857)
7 weeks; alternatively, from the date of maximum
8 medical improvement of April 23, 2013 through
9 today, which is eleven point one four two nine
10 (11.1429) weeks. If you look at the APA's --

11 Commissioner Wilkerson: What is the
12 temporary partial amount? You -- you're just
13 dealing in weeks, okay?

14 Ms. Morrow: I --

15 Commissioner Wilkerson: Or have we done --

16 Ms. Morrow: -- no, I'll be --

17 Commissioner Wilkerson: -- that doesn't
18 matter; I mean, I can list --

19 Ms. Morrow: -- no, I'll be happy to answer
20 that. We paid temporary partial from 5/1/12 to
21 6/15/13 so far and a total amount of six thousand,
22 three hundred eighty dollars and seventy cents
23 (\$6,380.70). She has been on a fairly consistent
24 schedule, which means that is a total of
25 fifty-eight point seven one four three (58.7143)

1 weeks or what averages to a hundred and eight
2 dollars and sixty-seven (\$108.67) per week. For
3 the credit date from 2/11 to today the credit
4 value would be two thousand, three hundred
5 thirteen dollars and twelve cents (\$2,313.12);
6 alternatively, from the date --

7 Commissioner Wilkerson: So, that's two
8 thousand, three hundred (\$2,300) and --

9 Ms. Morrow: -- thirteen dollars and twelve
10 cents (\$13.12).

11 Commissioner Wilkerson: -- okay.

12 Ms. Morrow: Alternatively, from the date of
13 maximum improvement of April 23rd would be one
14 thousand, two hundred ten dollars and ninety cents
15 (\$1,210.90). If you look at the Claimant's APA's
16 where they submitted all of the restrictions there
17 is an absence of an hour's restrictions that
18 begins as of February 11, 2012, which is at their
19 APA, page 2, and continues until her release. Our
20 position is that the only permanent restriction
21 she has are not limited by time but by physical
22 limitation; those physical limitations are being
23 accommodated by the Employer. She would be
24 entitled to future medical limited by 42-15-60 as
25 stated in the Form 14-B of Dr. Noojin, which

1 you'll find at the Defendant's APA, page 20, which
2 is future treatment of shots, braces and NSAIDS.
3 Dr. Noojin also reiterates the same work
4 restrictions we have already indicated. In terms
5 of future surgery the Claimant's doctor indicated
6 that any future surgery was a may/possibility,
7 which we say does not meet the requirements of
8 42-15-60 and therefore cannot be awarded in excess
9 of one (1) year; you find that at Defendant's page
10 -- APA, page 17. And that's it.

11 Commissioner Wilkerson: Okay. Mr. Garner --

12 Mr. Garner: Yes, sir.

13 Commissioner Wilkerson: -- your client's
14 position?

15 Mr. Garner: Yes, Commissioner. We are here
16 in opposition, of course, to the Form 21. Ms.
17 Green has been working under the same restrictions
18 from Dr. Noojin every since the -- she returned to
19 work on a part time basis; nothing has -- has
20 changed. We are asserting that she should be
21 allowed to continue on a temporary partial basis
22 and that the issue of permanency is not yet ripe
23 because, mainly as we discussed prior to the
24 hearing, Dr. Noojin's opinions are somewhat
25 equivocal it -- it appears and would be in need of

1 corroboration and -- and clarification. What we
2 are requesting the Commissioner to do is to
3 continue her on temporary partial while that
4 situation is fleshed out. I don't think that the
5 -- the February 11th date is any -- of any
6 significance and any -- the restrictions have not
7 changed before or since; so, the mere fact that
8 the doctor did not mention a specific hour
9 limitation, which he didn't mention in most of the
10 prior ones either, has any effect whatsoever on
11 her entitlement to temporary partial. So, we
12 would -- we are here to request that she be
13 allowed to continue on temporary partial, that all
14 the parties be allowed to flesh out the evidence
15 as to her permanency and to come -- come back to
16 the Commission, if necessary, to resolve that. We
17 have the issue of this tibial osteotomy, the
18 surgery that's been referred to, which has been
19 discussed by -- between Ms. Green and her doctor.
20 She had elected at this time not to have it
21 because of the seriousness of it and the -- the
22 questionable outcome; however, if presented with
23 -- she -- with the option of whether or not she
24 can have it now or not have it all she would
25 prefer to have it now. So, it's a situation she

1 is kind of caught in a quandary as to possibly,
2 very possibly, needing this surgery, which the
3 doctor has already offered her to have and she has
4 at this time declined. She is caught in that
5 quandary and to stop her temporary partial would
6 also put her in a further financial quandary. So,
7 we feel that the status quo should be maintained
8 for the time being till we have the -- all parties
9 have the opportunity to secure further evidence
10 about the permanency or future medical treatment.

11 Commissioner Wilkerson: Future medical
12 treatment. Okay.

13 Ms. Morrow: If I may, Your Honor, just in
14 response. We would object to any postponement of
15 the hearing. Adjudication on this matter is ripe
16 as she has reached maximum medical improvement and
17 a credit is appropriate. There is no basis for a
18 continuation past today. There was sufficient
19 time from not only the notification of maximum
20 medical improvement but also the filing of the
21 Form 21 and notification of the hearing to secure
22 those documents or the deposition of Dr. Noojin
23 prior to today's date. There have been no motions
24 made before the Commission before today asking for
25 an extension, no inclusion on the Form 58, and no

1 notice of a deposition prior to today's date and
2 time or submission of documents to Dr. Noojin that
3 have not secured a response with a request to
4 leave the record open to submit those documents
5 and we would object to any continuation on those
6 grounds.

7 Commissioner Wilkerson: And I think we
8 talked a little bit about that one (1) particular
9 issue before we started and -- and I had indicated
10 that we're here on a Form 21 and unless the moving
11 party agreed, based on those circumstances that we
12 just heard, that I was going to go ahead and hear
13 the case today. So, I would deny that and we are
14 going to hear the case today. So, anything else
15 before we take testimony from the Claimant?

16 Ms. Morrow: No, Your Honor.

17 Mr. Garner: No, Your Honor.

18 Commissioner Wilkerson: Okay. Ma'am, I'll
19 get you to raise your right hand; I'll have the
20 Court Reporter swear you in and we'll take some
21 testimony.

22 Whereupon;

23 Shameka Green, being duly sworn and cautioned to speak
24 the truth, the whole truth and nothing but the truth,
25 testified as follows:

1 Court Reporter: Please state your full name
2 for the record.

3 Witness: Shameka Green.

4 Court Reporter: Thank you, ma'am.

5 Commissioner Wilkerson: Thank you, Ms.
6 Green.

7 Mr. Garner: Commissioner, is it okay if I
8 remain seated?

9 Commissioner Wilkerson: Absolutely.

10 Mr. Garner: Thank you.

11 DIRECT EXAMINATION

12 By Mr. Garner:

13 Q. Shameka, where do you live?

14 A. I live at 3643 Falling Springs Road, Apartment D, as in
15 dog, Columbia, South Carolina, 29203.

16 Q. And who lives there with you?

17 A. I'm currently there for what -- by myself.

18 Q. Okay.

19 Mr. Garner: Did she state for the record
20 that she is standing on the medicals? I -- I
21 don't know.

22 Commissioner Wilkerson: Yes, she --

23 Ms. Morrow: I did.

24 Mr. Garner: Okay.

25 Commissioner Wilkerson: -- under her

1 position; yes, she did.

2 Mr. Garner: Okay. I'm sorry, Your Honor.

3 Commissioner Wilkerson: No, that's okay.

4 Q. Okay. I'm sorry; who lives there with you, Shameka?

5 A. I currently live by myself.

6 Q. Okay. Are you married?

7 A. I'm separated.

8 Q. How long have you been separated?

9 A. Since 1995.

10 Q. But you're not legally divorced?

11 A. No.

12 Q. Do you have children?

13 A. Yes.

14 Q. How many children do you have?

15 A. I have a daughter that is nineteen (19) and I also care
16 for my grandson who is one (1).

17 Q. When you say care for your grandson, do you have
18 physical custody of your grandson?

19 A. I don't have physical custody, I -- I take care of him
20 as far as clothes, shelter; if needed.

21 Q. You provide support for him?

22 A. Yes. Correct.

23 Q. How old are you, Shameka?

24 A. I am thirty-nine (39).

25 Q. What is your date of birth?

1 A. 1/14/74.

2 Q. How tall are you?

3 A. I'm approximately five (5') even.

4 Q. And about how much do you weigh?

5 A. I weigh about one eighty (180).

6 Q. What is your usual weight though; what did you weigh
7 prior to this work related injury?

8 A. I was about one sixty (160), close to that age --

9 Q. So, you've gained --

10 A. -- close that weight.

11 Q. -- you've gained about twenty (20) pounds since you got
12 hurt?

13 A. Yes.

14 Q. To what would you attribute that weight gain?

15 A. Not being able to move around like I used to, being
16 able to, you know, operate professionally as far as
17 with my knee.

18 Q. Is that a direct result of the injury?

19 A. Yes.

20 Q. Okay. Now, what's -- or what was your job or what is
21 your job at Teleperformance?

22 A. I am currently a Customer Service Representative where
23 I answer telephone calls coming inbound into the
24 company.

25 Q. How long have you worked there?

1 A. I have been there since June 27th of 2011.

2 Q. And are you paid by the hour?

3 A. Yes.

4 Q. What is your hourly rate?

5 A. When I first started it was nine, twenty-five (\$9.25);
6 it's now ten, twenty-five (\$10.25).

7 Q. All right. Prior to your work related injury did you
8 have any serious health problems?

9 A. No. The -- the only thing I -- I may have is
10 hypertension, which is high blood pressure.

11 Q. Okay. You were diagnosed with high blood pressure --

12 A. Yes.

13 Q. -- prior to it?

14 A. Uh-huh.

15 Q. And you take medication for that?

16 A. Yes.

17 Q. Okay. Do you ever have any problem with any kind of
18 arthritis or any kind of problem like that?

19 A. No. Before I worked at Teleperformance I was
20 maintaining two (2) jobs where I can -- I move about,
21 you know, very frequently.

22 Q. Prior to your work injury how many hours per week did
23 you normally work?

24 A. I worked eighty (80) hours, if not more, because I did
25 overtime; you're allowed to do overtime there.

1 Q. Eighty (80) hours, you're talking about every two (2)
2 weeks?

3 A. Eighty (80), yes, eighty (80) hours every two (2)
4 weeks, correct.

5 Q. Okay. How much education do you have, Shameka?

6 A. I finished high school and I have some college -- some
7 Midlands Tech.

8 Q. You don't have a degree from Midlands Tech?

9 A. No, I don't.

10 Q. Do you have any kind of certification or anything in
11 any kind of trade or anything like that?

12 A. No, sir.

13 Q. All right. Now, let's go to the date of the accident.
14 You were hurt on the job on September 23rd, 2011; is
15 that correct?

16 A. That's correct.

17 Q. All right. Now, the -- the Employer has admitted that
18 that happened but tell the Commissioner briefly how --
19 what happened on that day.

20 A. On September 23rd, 2011, I worked at night at the time.
21 So, it was a desk that I was sitting in that the -- I
22 was on a call with a customer and when the supervisor
23 came over he was trying to assist me with a customer.
24 I was right in front of mission control and I was also
25 sitting right behind the supervisor's desk. As the

1 supervisor was leaning on the desk trying to give me
2 input of what to tell the customer the desk then
3 collapsed; meaning coming out -- the hinges, coming out
4 the wall, everything falling onto my right leg. I was
5 turned at a vertical position where my right knee was
6 facing the desk as it collapsed on my leg and when the
7 desk collapsed it was so loud that pretty much
8 everybody stood up, everybody rushed over there to make
9 sure I was okay. The supervisors there was -- one I
10 can call her Tanajah -- Tanajah, I don't know her last
11 name and the main supervisor there was -- at night --
12 was her name was Diana Britt. They took a report. I
13 then went to the hospital.

14 Q. Let me ask -- let me interrupt you.

15 A. Okay.

16 Q. What -- what was that desk made of?

17 A. Wood along with metal underneath holding it together
18 and it was sot -- attached to a cubicle; so, everything
19 in that cubicle pretty much collapsed, the computer,
20 everything on it collapsed. As a matter -- matter of
21 fact it's nothing there right now to this day.

22 Q. So, if this was a desk that the back of it was attached
23 to a cubicle wall?

24 A. Correct.

25 Q. All right. So, it didn't have legs on the back; it

1 just collapsed onto you?

2 A. Correct.

3 Q. Okay. Now, how did you feel right after that happened?

4 A. I was in real pain, real bad pain. I immediately went
5 to the emergency room; from there I got a call. I
6 called the next day and spoke with the supervisor; they
7 told me who to call. I called the Workers' Comp
8 medical; they -- they had referred me to Doctor's Care.
9 From there I went to Doctor's Care, I had a MRI done
10 and they said I had a torn --

11 Ms. Morrow: Your Honor, I would object to
12 anything the doctors had to say.

13 A. -- okay.

14 Commissioner Wilkerson: You can tell me what
15 the doctor or the --

16 A. Okay. Sorry.

17 Commissioner Wilkerson: -- yes. And it is
18 an admitted accident; so --

19 Mr. Garner: Right. I understand.

20 Commissioner Wilkerson: -- we're okay along
21 those lines.

22 Mr. Garner: All right. Let me go ahead and
23 ask --

24 Q. -- now, this -- the accident itself occurred on
25 September 23rd, 2011; is that correct?

1 A. Yes.

2 Q. So, that would be two (2) years this September --

3 A. Yes.

4 Q. -- since it happened? Okay. Did you subsequently --
5 after Doctor's Care what kind of treatment did you
6 receive?

7 A. I retreat -- I -- I was treated with pain medicine and
8 then I was given a support brace, which is a little
9 flimsy support brace for my knee and that's all
10 Doctor's Care did.

11 Q. All right. After Doctor's Care what -- what happened?

12 A. Doctor's Care -- I went to Dr. Noojin, that's when he
13 performed another MRI and he came up with the same
14 solution as Doctor's Care came up with. And then from
15 there I was put on a knee brace; I was told that I had
16 to have surgery.

17 Q. All right. And did you -- what was the diagnosis that
18 you understood?

19 A. I had a torn -- I -- I broke -- it broke my ACL in my
20 -- in my leg --

21 Q. All right.

22 A. -- in my knee.

23 Q. And did you first see Dr. Noojin, it looks like, on
24 December 1st, 2011?

25 A. Yes.

1 Q. Okay. And he did the MRI and -- and the other
2 procedures?

3 A. Correct.

4 Q. Did you subsequently have surgery to repair that torn
5 ACL?

6 A. Yes. I had surgery on February 22nd -- the 21st or
7 22nd of 2012.

8 Q. All right. Have you been continuously under Dr.
9 Noojin's care since that time up until April 23rd,
10 2013?

11 A. Yes.

12 Q. How long were you out of work totally after that
13 surgery?

14 A. Well, my surgery was in February, I returned to work --
15 I want to say May/April -- I want to say about
16 somewhere in May I returned to work -- between, like
17 May and June I returned to work; I'm not for sure of
18 the dates.

19 Q. Was that on some type of light duty?

20 A. Yes.

21 Q. All right. Describe the light duty that --

22 A. No, sitting, no walking, no standing for a long period
23 of time. No stooping, bending and that nature.

24 Q. -- all right. Did you return to your same job?

25 A. Yes. I did return to my same job. He did indicate

1 that I only want to work anywhere till five (5) to six
2 (6) hours because of the significant long of sitting
3 and standing because I do have to walk to find
4 supervisors there on the floor and sometimes you have
5 to walk a little distance to get to one of the
6 supervisors.

7 Q. And did your employer accommodate these restrictions as
8 to the time they allowed you to work?

9 A. At first, I mean, it didn't but then I did get it
10 resolved with the HR who is not there now; she no
11 longer -- no longer works there. So, she did get it
12 resolved for me.

13 Q. And did you work the total number of hours that you
14 were physically able to do during that time?

15 A. Yes.

16 Q. Did -- so, you were paid partially by your employer; is
17 that correct?

18 A. In the beginning I had a very, very, hard time with
19 Workers' Comp and the Adjuster that they had there. I
20 was told that I would get my checks when I -- when they
21 felt like giving me my checks in the beginning --

22 Ms. Morrow: Your Honor, I object --

23 A. -- okay.

24 Ms. Morrow: -- that's hearsay testimony.

25 Mr. Garner: Well, that's -- that's party

1 opponent is the --

2 Commissioner Wilkerson: But she's got to
3 answer the question.

4 Mr. Garner: -- testimony. Right.

5 A. Okay.

6 Mr. Garner: All right.

7 Q. Okay. Just --

8 Commissioner Wilkerson: You've got --

9 A. Okay, sorry.

10 Commissioner Wilkerson: -- she has got to
11 answer the question first --

12 A. I'm sorry.

13 Commissioner Wilkerson: -- just not
14 elaborate, then answer the question, so.

15 Mr. Garner: -- right.

16 Q. All right. I -- I think my question was were you paid
17 partially -- paid some of your salary by your employer;
18 some of your hourly rate by your employer?

19 A. Yes, I was.

20 Q. And that was -- and made up by the Workers' Comp
21 insurance company for the balance of it?

22 A. Correct.

23 Q. How many hours per week were you averaging during the
24 time that you were -- after you came back to work in
25 June of 2012?

1 A. I was only averaging anywhere between twenty-three (23)
2 hours a week.

3 Q. And you were previously working how many hours a week?

4 A. Anywhere from forty-three (43) to forty-five (45) hours
5 a week.

6 Q. All right. And are you still working in that capacity?

7 A. Yes.

8 Q. All right. Are you still under the same restrictions
9 that Dr. Noojin put you on back then?

10 A. Yes. And --

11 Q. To your knowledge have any -- any of those restrictions
12 changed as to regards -- in regard to the time that you
13 are allowed to work under those restrictions?

14 A. -- no, it didn't. On the paper when I was given to him
15 it says everything was to remain the same.

16 Q. All right. Now, let's talk about your -- your present
17 condition. You were released by Dr. Noojin on April --
18 I -- April 23rd, 2013; is that correct?

19 A. Yes.

20 Q. Okay. Now, describe for the Commissioner the problems
21 you're having now with your leg.

22 A. The problems I'm having with my leg is very bad pain
23 almost like having a -- if you ever had a aneurysm,
24 that's the pain that's in my knee; if you've never had
25 a aneurysm then you -- you wouldn't know what it feels

1 like but it's that consistent pain going from my knee
2 all the way down to my -- my toes.

3 Q. Do your legs swell? Do you -- does your leg swell?

4 A. Yes.

5 Q. How often does that happen?

6 A. It swells very often. Dr. Noojin did give me -- I'm
7 sorry -- the doctor did give me a ice machine to use
8 that was prescribed by -- from the surgery.

9 Q. Did you say the pain radiates down -- down your leg to
10 your toes?

11 A. Yes.

12 Q. All right. Does -- is this pain that you have -- how
13 often do you have this pain?

14 A. I have it very often, especially when it's cold, if
15 it's raining, any type of strenuous -- anything
16 strenuous, any coldness, laying down for periods of
17 time, sitting for periods of time; it's very strenuous
18 on my knee.

19 Q. All right. Now, does it -- does it hurt you every day?

20 A. Pretty -- yes, pretty much every day.

21 Q. Do you ever -- ever have a day that is pain free as far
22 as your knee, Shameka?

23 A. No.

24 Q. All right. On your worst day, when you -- you talked
25 about it being raining and cool, what's -- on a scale

1 of one (1) to ten (10) how would you rate your pain?

2 A. I would rate it a nine (9).

3 Q. Okay. And on your best days when --

4 A. I -- I would rate it about a six point five (6.5),
5 seven (7).

6 Q. Does it ever get below that, do you think?

7 A. No.

8 Q. All right. Describe it as a -- describe the pain as
9 far as how it feels to you, is it sharp, ache, dull;
10 describe it for the Commissioner.

11 A. It's a very sharp pain that almost all -- like a
12 contracting pain, like continuous ongoing. I actually
13 now walk with a limp, which I never walked with a limp
14 before.

15 Q. Has this walking with a limp been a continuous thing
16 since you recovered from your surgery?

17 A. Yes.

18 Q. Are you able to wear heels?

19 A. I'm not able to wear any heels, only flats and
20 sneakers.

21 Q. Did you have to wear a brace for a period of time after
22 the surgery?

23 A. Yes. I wore the brace for a year after the surgery,
24 which caused --

25 Q. And how did --

- 1 A. -- go ahead.
- 2 Q. -- how did that affect you?
- 3 A. It caused a lot of strenuous -- anytime you have on a
4 brace, meaning you're only able to move your leg a
5 certain way and it causes strenuous on your back and
6 your -- and being able to walk for, you know, in a
7 manner that -- I mean, you can't -- you can't walk --
8 there -- there is no way to describe the pain.
- 9 Q. All right. Now, let's talk about your back. Does your
10 back bother you now?
- 11 A. Yes, it does bother me periodically. Yes, it does.
- 12 Q. Describe that. How often does it hurt?
- 13 A. It hurts, I'd say out of five (5) -- out seven (7) days
14 out of the week it hurts four (4) days out of the week.
- 15 Q. And does the -- the weather affect that?
- 16 A. Yes, along with my knee, correct.
- 17 Q. All right. On the -- on the worst day as far as your
18 back pain, what does it get to?
- 19 A. I would say about a seven (7).
- 20 Q. And on your best day?
- 21 A. Anywhere to a five (5).
- 22 Q. Are you taking medications for your pain?
- 23 A. Yes, I am taking medications. I am on Hydrocodine and
24 a muscle spasm.
- 25 Q. Is that -- was that prescribed by Dr. Noojin?

1 A. Yes.

2 Q. Did you have to use crutches for a period of time?

3 A. Yes, I did use a walking cane after the surgery. I
4 used a cane up to five (5) months, almost four (4)
5 months. It took about two (2) to three (3) months to
6 even walk again.

7 Q. So, there was a period of time where you couldn't walk
8 at all?

9 A. Yes.

10 Q. And you said that was two (2) or three (3) months?

11 A. Correct.

12 Q. And when you recovered from that you decided to go back
13 to work with the employer and work as much as you
14 could?

15 A. Yes.

16 Q. Now, have you been offered the option of having
17 surgery?

18 A. Yes, I have been offered to have the surgery to break
19 the bone in my knee --

20 Q. All right. What's your --

21 A. -- or my leg, my knee.

22 Q. -- is that surgery called a tibial osteotomy?

23 A. Yes.

24 Q. Did you have a discussion with Dr. Noojin about that?

25 A. Yes.

1 Q. And as a result of that discussion what have you
2 decided as far as wanting to have that surgery at this
3 point in time or when you had the discussion with him?

4 A. I -- in reference with the surgery that's -- that's a
5 very intense surgery. Breaking my bone, that would
6 have me out of work for at least -- almost a year out
7 of work. That's having to walk all over again and
8 having to, you know, do all the therapy, the -- the
9 crutches, the braces all over again and with the long
10 period of time that I would be out of work I was told
11 by Dr. Noojin it would be --

12 Ms. Morrow: Your Honor, I object to anything

13 --

14 Commissioner Wilkerson: You can't tell me
15 what he said.

16 A. -- oh, I mean --

17 Commissioner Wilkerson: You can tell me what
18 your understanding is.

19 A. -- my under -- my understanding -- my understanding was
20 that it won't fully heal it, it would just relieve some
21 -- some of the pressure, some of the pain that I'm
22 having. I -- I don't mind having the surgery as -- and
23 if I could do it later that's fine; I would do it with
24 the future medical as well.

25 Q. So, it's your -- does your age have anything to do with

1 your decision?

2 A. Yes, because I'm --

3 MS. Morrow: Your Honor, I'd just object to
4 the leading form of the questions.

5 Commissioner Wilkerson: Yes, don't lead her.
6 Yes.

7 Q. What -- now, if I understood your testimony that you
8 have decided -- you along with Dr. Noojin decided not
9 to have the surgery at this time; is that right?

10 A. -- yes.

11 Q. Or when you talked about it?

12 A. Uh-huh.

13 Q. If you were faced with the option of having it now and
14 not having it at all what would you do?

15 A. I would have it -- I would have it now, if given the
16 option, yes.

17 Q. If those were your only two (2) options?

18 A. Or to not have it --

19 Q. Okay.

20 A. -- at a later time.

21 Q. All right. I don't want to confuse you or get me
22 confused but if -- your preference is that you would --
23 you don't want to have it now; you want to have it in
24 the future if -- if necessary?

25 A. Correct.

1 Q. okay. But if you -- the only two (2) options were
2 having it now or not having it all what would you do?

3 Ms. Morrow: Your Honor, I object. The
4 medical stands on its own --

5 Commissioner Wilkerson: Yes.

6 Ms. Morrow: -- as far entitlement to future
7 medical treatment --

8 Mr. Garner: I think you can testify to what
9 she --

10 Ms. Morrow: -- it's not determinative of the
11 Claimant's well being.

12 Mr. Garner: -- what decision she'd make
13 based on what the medical is.

14 Commissioner Wilkerson: Yes. Well, here's
15 the problem, is you've either got to have it now
16 --

17 A. I'm sorry, sir.

18 Commissioner Wilkerson: -- you can't have it
19 when you turn sixty-four (64) underneath the law,
20 okay?

21 A. Uh-huh.

22 Commissioner Wilkerson: I -- the law is -- I
23 -- I didn't create the law.

24 A. I mean, I'd rather -- I mean, if I do have it I'd
25 rather wait for about a year or so; I'm still young.

1 I'd rather wait until about I'm like forty-two (42); I
2 mean -- I mean, I'm just thirty-nine (39).

3 Ms. Morrow: Your Honor, again, the Tiller
4 standard doesn't apply.

5 Commissioner Wilkerson: No. I understand.

6 Ms. Morrow: The Claimant's testimony in
7 terms of --

8 Commissioner Wilkerson: I understand.

9 Ms. Morrow: -- entitlement does not apply to
10 this claim.

11 Commissioner Wilkerson: I understand. I
12 don't disagree. I just need to hear from her --

13 A. Uh-huh.

14 Commissioner Wilkerson: -- she wants it two
15 (2) or three (3) years out as opposed to two (2)
16 or three (3) months out is what I understand.

17 A. I mean, if I -- if I need to have it now, I would have
18 it, right now; I mean, that's no problem.

19 Commissioner Wilkerson: Tell me what's your
20 definition of need to have it.

21 A. Meaning if I need to break my bone to make my leg feel
22 better, yes, I would go ahead and have it now.

23 Commissioner Wilkerson: So, if you went back
24 to Dr. Noojin tomorrow --

25 A. Uh-huh.

1 Commissioner Wilkerson: -- and Dr. Noojin
2 said, do you want to have the surgery next week on
3 Monday at three o'clock what are you going are you
4 going to tell him?

5 A. Yes.

6 Commissioner Wilkerson: Okay.

7 Q. All right. Shameka, let's talk about your -- some
8 things you can and can't do. As far as sitting, how
9 long can you sit without having pain or having to
10 adjust your position?

11 A. I can't sit for no longer than a -- probably an hour,
12 thirty (30) minutes to an hour at the most. When I'm
13 at work I constantly have to stand up, have to kind of
14 move because my knee, it does lock up and you can
15 pretty much hear it clicking as I get up and kind of --
16 kind of shift it around.

17 Q. Did you have any problems with restrictions on your
18 ability to sit prior to this injury?

19 A. No.

20 Q. All right. How about your effect on your standing?

21 A. I have no effect on my standing.

22 Q. It doesn't bother you standing?

23 A. (Shook head in a side-to-side motion). Huh-uh.

24 Q. All right. How about walking?

25 A. No, I didn't have -- it didn't have -- before the

1 surgery --

2 Q. I'm talking about now.

3 A. -- now? Oh, now -- I thought you was talking after --
4 before I had the surgery.

5 Q. I'm -- now first and then after before.

6 A. Now, with me walking, I can't walk for a long period of
7 time because my -- my knee swells up so bad and my leg
8 swells up so bad I can't walk for a long period of
9 time. As far as sitting, I can't sit for a long period
10 of time, no longer than thirty (30) minutes to an hour.

11 Q. How about standing?

12 A. Standing? I can't stand for a long period of time
13 without my leg swelling up -- my knee and my leg
14 swelling up really bad.

15 Q. Is that your understanding as to why those restrictions
16 -- work -- time restrictions were put on you?

17 Ms. Morrow: Your Honor, I object to the form
18 of the question; it's leading.

19 Commissioner Wilkerson: Yes.

20 Mr. Garner: Well, as she said, the medicals
21 speak for themselves, Commissioner.

22 Commissioner Wilkerson: Yes, they speak --
23 yes, because I'm going to ask something about that
24 in a minute.

25 Q. How about affects on your ability to lift?

1 A. I don't lift anything.

2 Commissioner Wilkerson: Now, it's my
3 understanding this was a complete ACL
4 reconstruction?

5 A. Yes.

6 Mr. Garner: Yes, sir.

7 Commissioner Wilkerson: Is that -- I'm --
8 I'm trying to look at the medical; I try not to do
9 that sometimes but.

10 A. Yes.

11 Commissioner Wilkerson: Okay.

12 Q. All right. And to accommodate the restriction or to
13 minimize the effect of your restrictions on your
14 ability to do your job what -- what have you done to
15 adjust at work?

16 A. What I -- I've done everything that, you know, I was
17 asked to do at the job. I do work the four (4) to five
18 (5) hours. I, you know, I kind of stand up and move
19 around a little -- even though I'm not supposed to,
20 you're not supposed to there; I do it anyway because I
21 don't have any other choice but to kind of move around
22 and do what all I need to do to perform the job duties.

23 Q. Prior to your injury what kind of physical activities
24 did you like to engage in?

25 A. I ran, I walked; I walked long periods of time. I

1 worked in -- went to gyms; worked out. I maintained
2 two (2) jobs; so, I was very active, very productive,
3 moved about a lot.

4 Q. Do you have any problems driving?

5 A. Yes.

6 Q. Well, what -- describe those.

7 A. I am -- due to me pushing and doing the pedals, you
8 know, it does cause strenuous on my knee as far as
9 moving and -- moving around, bending it up and down. I
10 don't drive very often. I do have somebody sometimes
11 to help drive me around.

12 Q. Do you drive yourself back and forth to work?

13 A. Yes, I do.

14 Q. How far is that?

15 A. It's about eight (8) minutes from where I live.

16 Q. All right. How about doing things around the house; do
17 you do any cleaning and that kind of -- laundry and
18 that kind of stuff?

19 A. Well, I mean, I do clean, I mean, as far as washing the
20 dishes and stuff but I have a friend that's there with
21 me that do help me around the house with washing
22 clothes and cleaning and, you know, and he doesn't live
23 there but he does come over often and help me out.

24 Q. Do you do any shopping of any kind?

25 A. I mean, I do go to the grocery store but the most bags

1 I get is about two (2) or three (3) bags and I make
2 sure they're -- they're light. And if I do go shopping
3 for anything extra I make sure someone is there with
4 me.

5 Mr. Garner: I beg your indulgence just for a
6 minute, Commissioner.

7 Commissioner Wilkerson: Yes, sure.

8 Q. Have you -- are you allowed to use a handicap sticker?

9 A. Yes.

10 Q. All right. Who prescribed that for you or gave you the
11 information you needed or filled out the necessary
12 paperwork for you to get that?

13 A. Dr. Noojin.

14 Q. The Dr. Noojin who has been treating you for two (2)
15 years?

16 A. Yes.

17 Q. Is that a copy of the (indicating) --

18 A. Yes.

19 Ms. Morrow: Your Honor, I object. That's a
20 copy of the placard itself; there is no
21 prescription that accompanies the placard in order
22 to substantiate the testimony.

23 Commissioner Wilkerson: But she testified
24 who gave her the prescription for it.

25 Ms. Morrow: I don't think it --

1 Commissioner Wilkerson: And I don't know
2 what --

3 Ms. Morrow: -- I don't think it's been
4 properly authenticated.

5 Commissioner Wilkerson: -- well, it will be
6 when he takes Dr. Noojin's deposition in about
7 three (3) months because that's what is going to
8 happen; I'm just telling you.

9 Mr. Garner: We offer it.

10 Commissioner Wilkerson: I'm going to let it
11 in.

12 Ms. Morrow: Okay.

13 Commissioner Wilkerson: I don't -- it's --
14 it's --

15 Mr. Garner: That's all I have at this point,
16 Commissioner.

17 Commissioner Wilkerson: -- okay.

18 Court Reporter: I've marked it as C-1 for
19 Claimant's One.

20 (CLAIMANT'S EXHIBIT NUMBER ONE WAS MARKED FOR
21 IDENTIFICATION)

22 CROSS-EXAMINATION

23 By Ms. Morrow:

24 Q. Ms. Green, how are you doing?

25 A. I'm fine.

1 Q. Good. Your treatment in this claim, you were
2 testifying earlier, your initial reporting was to the
3 hospital?

4 A. Yes.

5 Q. And that would have been Lexington Medical Center?

6 A. Yes.

7 Q. Okay. You were also testifying earlier as to having
8 gained a significant amount of weight since this
9 accident occurred?

10 A. Yes.

11 Q. Okay. Do you recall that they took your weight, your
12 blood pressure, your height and all those measurements
13 when you went to the hospital?

14 A. Yes. They take -- they take it every time you go in to
15 the doctor.

16 Q. Okay. And you said you were weighing about a hundred
17 and sixty (160) pounds back when this accident actually
18 occurred?

19 A. About one sixty-five (165).

20 Q. Okay. And if I submit to you that at page 26 of our
21 APA's they have you listed at eighty-three (83)
22 kilograms, which is a two (2) pound differential
23 between kilograms to pounds, that will put you at a
24 hundred and eighty-two (182) pounds the day that you
25 went to the hospital as a result of this accident?

1 A. Okay.

2 Q. Do you disagree with that?

3 A. I mean, I don't -- I don't -- back then I don't know
4 what they weight was; I don't have any medical
5 documentation to show that.

6 Q. And that's the same weight that you roughly say you are
7 today?

8 A. I'm about one eighty-five (185), yes.

9 Q. Okay.

10 A. One eighty (180), one eighty-five (185).

11 Q. And you were subsequently seen at Doctor's Care --

12 A. Yes.

13 Q. -- as a result of this accident?

14 A. Yes.

15 Q. They also took your height, your weight, your blood
16 pressure; all those things when they saw you?

17 A. Yes.

18 Q. Okay. Now, if I'm looking at page 21 of my APA's and
19 they have your -- your weight listed at a hundred and
20 eighty-nine (189) would you disagree that that was the
21 information they secured from you on that date?

22 A. As I said earlier, I don't have any documentations
23 because that was two (2) years ago.

24 Q. Okay. But you wouldn't disagree that that's what is
25 noted in your medical records?

1 A. I -- I'd have to see it first.

2 Q. So, I'll show it to you.

3 A. Sure.

4 Q. Based on your testimony today you actually weigh less
5 than you did when you went to Doctor's Care after this
6 accident?

7 Mr. Garner: Was that a question?

8 A. Was that a question? Oh, you're asking me?

9 Mr. Garner: No, I'm asking --

10 A. Oh.

11 Mr. Garner: -- I'm asking her.

12 Q. I said based on this evidence --

13 A. No, I --

14 Q. -- you actually weighed less -- what your testimony is
15 today --

16 A. -- I was asking --

17 Q. -- is you weighed less than you did when you actually
18 went to Doctor's Care after this accident.

19 A. -- no, we was asking was that a question.

20 Q. I'm asking you.

21 Commissioner Wilkerson: No, she's asking you

22 --

23 A. Oh.

24 Commissioner Wilkerson: -- is that a
25 question. I'm sorry. Asking do you weigh -- I

1 think you testified earlier you weigh between a
2 hundred (100) -- you said a hundred and eighty
3 (180), I think.

4 A. Yeah. I'm glad you --

5 Commissioner Wilkerson: Now, I think you
6 said between one eighty (180) and one eighty-five
7 (185). The documentation from Doctor's Care,
8 which is the initial doctor's report says one
9 eighty-nine (189).

10 A. -- okay. I'm -- like I -- as I stated, I don't work
11 there; so, I don't know what, you know, if they put
12 something on there but I know what I weigh now and what
13 I was weighing back then because I can feel the weight
14 that I'm much heavier than I was back then.

15 Q. Okay.

16 Commissioner Wilkerson: But the doctor's
17 report doesn't say that.

18 A. Yeah, I mean --

19 Commissioner Wilkerson: Okay. I -- I don't
20 know --

21 A. -- yeah, I don't know.

22 Commissioner Wilkerson: -- but the initial
23 doctor's report says you weighed somewhere between
24 four (4) and nine (9) pounds more the date of the
25 accident than you do today.

1 A. And that's fine.

2 Commissioner Wilkerson: I don't know.

3 A. If that's what it says; I don't know, that's fine.

4 Q. Okay. Then you started your treatment with Dr. Noojin?

5 A. Yes.

6 Q. He gave you -- you had Flexin injections in your knee?

7 A. He gave me that after -- before -- he gave me that
8 first and those wasn't working. After he had the MRI
9 done then we found out that the same -- well, upon my
10 opinion it was the same diagnosis as Doctor's Care.

11 Q. All right. And he eventually did the surgery on you
12 and then he released you in April of this year?

13 A. Yes.

14 Q. Okay. And subsequent to your surgery you wore a brace
15 on your knee?

16 A. I wore a brace for a year --

17 Q. Okay.

18 A. -- right after surgery.

19 Q. And you haven't worn that brace since February of this
20 year?

21 A. Correct.

22 Q. And you're not wearing it today?

23 A. No. I do have a sleeve that I was told that I can wear
24 periodically to reduce the swelling.

25 Q. Okay. And each time you went to the doctor's you

1 reported knee pain as a result of this accident,
2 correct?

3 A. Correct.

4 Q. And the back pain that you've described has only been a
5 result of just pain that you had from wearing the
6 brace?

7 A. Yes, as I stated earlier.

8 Q. Okay. And the brace that you don't wear anymore?

9 A. I don't -- I don't wear the brace but that doesn't mean
10 that it still doesn't cause that significant pain.
11 because I had the brace on for a year.

12 Q. But the brace is no longer causing you to have back
13 pain?

14 A. The brace -- even though I don't have the brace that
15 don't mean that I still don't have the back pain.

16 Q. All right. Dr. Noojin would have provided you work
17 restrictions when you went to see him, correct?

18 A. Correct.

19 Q. You would have provided those to your employer?

20 A. Yes.

21 Q. Okay. Did you provide those to them along the way?

22 A. Yes.

23 Q. Okay. And have you reviewed any of your work
24 restrictions throughout the course of your -- your
25 claim?

1 A. I'm sorry; repeat that for me? what do you -- what --
2 what do you mean by that?

3 Q. Have you looked at them? I mean, did you read them,
4 did you review them --

5 A. Yes.

6 Q. -- at any time? Have you --

7 A. Uh-huh.

8 Q. -- you've been familiar with these --

9 A. Yes.

10 Q. -- these are what you handed in to your employer?

11 A. Yes.

12 Q. Okay.

13 A. And I also handed in to Dr. Noojin -- I mean, not Dr.
14 Noojin -- my attorney as well.

15 Q. Okay. And I'm going to let you look at some of these
16 records that were submitted by your attorney, which are
17 some of these work restrictions that you received from
18 Dr. Noojin.

19 A. Uh-huh.

20 Q. I'm looking at your APA, page 4. This would be back
21 from -- I'm reading upside down.

22 A. And can I say something?

23 Commissioner Wilkerson: Wait a minute --

24 A. That --

25 Commissioner Wilkerson: -- she didn't ask a

1 question yet.

2 A. -- okay.

3 Q. This would have been back before November of 2000 -- it
4 looks like 2012; you had sitting work restrictions at
5 that time?

6 A. Yes. That's -- you said 2012?

7 Q. Yes.

8 A. Are you sure that's 2012? That don't look like 2012.

9 Q. That would be 2012, follow -- followed by January of
10 2013.

11 A. It was the same, if you look at it, because that one
12 was revised. That one was revised by Dr. Noojin
13 because I had a problem with them wanting me to return
14 to work for full duty. So, I had to go back and get
15 him to redo it over to show that everything was to
16 remain the same.

17 Q. Okay.

18 A. And it's been consistent every since then.

19 Q. Which going to January 7 --

20 A. Uh-huh.

21 Q. -- of 2013, he provided you with work restrictions and
22 notes in this section a six (6) hour work restriction,
23 correct?

24 A. Correct.

25 Q. Moving forward to February of 2013, your APA, page 2,

1 there no longer a six (6) hour work restriction in
2 this, is there?

3 A. It's -- if you look at the notes it says everything was
4 to remain the same and it does --

5 Q. I'm asking you to look at this note.

6 A. -- yes, it does say six (6) hours.

7 Q. There is -- where on this page do you say six (6)
8 hours?

9 A. It doesn't say six (6) hours but it says remain the
10 same. It says light duty and everything is to remain
11 the same.

12 Q. There is no section in here anywhere. Show me -- point
13 to me where it says everything is to remain the same.

14 A. Ma'am, that's what I just explained to you that
15 everything had to be revised and we did go back to Dr.
16 Noojin --

17 Q. I -- ma'am --

18 A. -- okay.

19 Q. -- I'm asking you to point to me --

20 Commissioner Wilkerson: Page 2.

21 Q. -- on this page --

22 A. I don't --

23 Q. -- page 2 --

24 A. -- it's nothing -- it's not in there.

25 Q. -- where it says remains the same.

1 A. Okay.

2 Commissioner Wilkerson: It's not on there --

3 A. Okay.

4 Commissioner Wilkerson: -- so, that's all
5 you can tell me, it is or it isn't because I'm
6 looking at it.

7 Q. Page number 1, 4/23/2013, do you see anything on this
8 page that limits you to a six (6) hour workday?

9 A. No prolonged -- light duties.

10 Q. Anything that indicates to you you're under a six (6)
11 hour limitation?

12 A. It doesn't say that on there.

13 Q. Okay. And on the bottom it says, "This is permanent";
14 does it not?

15 A. Correct.

16 Q. And that is your last work restriction from Dr. Noojin,
17 correct?

18 A. Well, we can get something stating that if --

19 Ms. Morrow: Your Honor, I object.

20 A. -- everything remained the same.

21 Ms. Morrow: Evidence has been submitted in
22 this case.

23 Commissioner Wilkerson: It doesn't matter
24 what you can get now.

25 A. Okay.

1 Commissioner Wilkerson: Today is the day.

2 A. Well, it does -- he does -- he did limit me to six (6)
3 hours per --

4 Ms. Morrow: Your Honor, I object to the
5 testimony --

6 A. -- because on all --

7 Ms. Morrow: -- as being --

8 Commissioner Wilkerson: You can't --

9 A. -- okay.

10 Commissioner Wilkerson: -- you can't tell me
11 what he limited you to; I've got to find it in the
12 medical records.

13 A. It's in the medical records. Its six (6) hours and
14 every -- every time I went there he said --

15 Ms. Morrow: -- Your Honor --

16 A. -- okay.

17 Commissioner Wilkerson: You can't tell me
18 what he said.

19 A. I'm sorry. In my assumption -- in my assumption --

20 Ms. Morrow: -- Your Honor, I haven't asked a
21 question.

22 A. -- for the time --

23 Ms. Morrow: I asked her to address --

24 A. -- okay.

25 Ms. Morrow: -- page number 1 of the APA's --

1 Mr. Garner: That's all right.

2 Ms. Morrow: -- and that question has been
3 asked and answered.

4 Mr. Garner: Let -- just -- that's okay.

5 A. Okay.

6 Commissioner Wilkerson: Just answer the
7 question.

8 Mr. Garner: You're being badgered; that's
9 okay.

10 Commissioner Wilkerson: Sometimes there is
11 not an answer to every question.

12 A. Okay.

13 Q. Ms. Green, you also testified earlier that you averaged
14 eighty (80) hours every two (2) weeks prior to this
15 date of accident?

16 A. Yes.

17 Q. Okay. So, that would put you on an average forty (40)
18 hour work week, correct?

19 A. Yes.

20 Q. All right. Overtime at your job is never guaranteed
21 but it is offered, correct?

22 A. Yes.

23 Q. And you've actually received a raise since this
24 accident occurred, correct?

25 A. That's correct. When I went back to work that's when I

1 received my raise.

2 Q. Okay. And you were saying earlier that you have to
3 occasionally get up and walk around in the facility in
4 order to find a supervisor but isn't it actually true
5 that you are allowed to raise your hand to have a
6 supervisor come to you?

7 A. You're allowed to walk around if you cannot find one
8 because they're not -- they're rarely on the floor.
9 You are allowed to raise your hand but you cannot have
10 a call -- a person on a call for over AHT minutes,
11 which is three point forty-nine (3.49) seconds. So --

12 Q. My question to you is that you're not required to get
13 up and walk around for -- to look for a supervisor --

14 A. -- as I stated --

15 Q. -- you are allowed to raise your hand?

16 A. -- yes, you are allowed to raise your hand but if you
17 cannot find a supervisor you are allowed to walk
18 around.

19 Q. Okay. You talked about earlier your pain complaints as
20 well as far as your knee is concerned. You testified
21 today that your worst pain is a level nine (9) and your
22 best is a six and a half (6 ½) to seven (7)?

23 A. Are you referring to my back or my knee?

24 Q. Your knee.

25 A. My knee pain is a nine (9).

1 Q. Okay. All right. Do you remember when we took your
2 deposition back on the 27th of June?

3 A. Yes.

4 Q. Okay. Do you remember being posed that exact same
5 question and what you responded to?

6 A. Yeah, and I gave him eights (8's) but it runs between
7 an eight (8) and a nine (9).

8 Q. Okay. Then why didn't you identify during your
9 deposition that it went between an eight (8) and a nine
10 (9) instead of just indicating it was a solid eight
11 (8)?

12 A. I didn't -- I didn't know I have to keep the same --
13 when my knee pain comes, it comes; it -- it's a nine
14 (9) at one moment, it's a eight (8) at one moment.
15 Some days I have good days and it's about a six (6); no
16 -- no low -- no lower than a six (6). I mean, if you
17 ever had a aneurism -- not an aneurism, a charlie
18 horse, that pain is unbearable.

19 Q. So, your pain actually mirrors a charlie horse, not an
20 aneurism?

21 A. Aneurism is straight in your brain. I meant a charlie
22 horse.

23 Q. Okay. You also just said that your pain never goes
24 below a six (6)?

25 A. Correct.

1 Q. Okay. But do you also remember what you testified to
2 during your deposition in regards to your lowest knee
3 pain?

4 A. What, it's between a five (5) and a six (6)?

5 Q. Yes.

6 A. Okay. I mean, what's the difference?

7 Q. Well, on June 27th your pain went at least one (1)
8 level lower than it is today when you're testifying
9 here at the Commission --

10 A. Ma'am, as I stated earlier --

11 Q. -- that's the difference.

12 A. -- you have good days and you have bad days. There is
13 no point that can tell you how -- I mean, there's no
14 point system that can tell you how sharp your pain is
15 one day or how bad it is another day, one day -- some
16 days it might be a five (5), some days it might be a
17 six (6); most of my days they are nines (9). I mean,
18 you never -- if you ever had a desk completely fall on
19 your leg you wouldn't know how it felt.

20 Q. Okay. But your answer is different today than when it
21 was posed to you on June 27th, a couple of weeks ago?

22 A. Are you asking me?

23 Q. Yes, ma'am.

24 A. Yes. Because that's the pain I'm -- right now my pain
25 is about a six (6).

1 Q. Okay. You also testified today that you used to work
2 out before this accident --

3 A. Yes.

4 Q. -- and go to the gym?

5 A. Uh-huh.

6 Q. Okay. Do you also remember being asked those series of
7 questions during your deposition?

8 A. I -- I told him as well that I occasionally work out.
9 I go -- I walk up and down the steps. I work out at
10 home. I bend my leg back and forth to -- to maneuver
11 the pain. I do go to the gym at some point in time at
12 -- he did ask me that and I did say I did go to the gym
13 at some point in time.

14 Q. Okay. Do you also remember telling him that you
15 canceled your gym membership about six (6) years ago?

16 A. Okay. Even though I canceled the membership that don't
17 mean I can't still go to a gym and just walk in and
18 work out, ma'am.

19 Q. Okay.

20 A. You -- you don't have to have a membership to join a
21 gym.

22 Q. But you never bothered to clarify that either during
23 your deposition?

24 A. He never asked.

25 Q. Okay. But you never bothered to clarify --

1 A. He never asked.

2 Q. -- or indicate it?

3 Mr. Garner: Commissioner, it's -- it's not
4 her --

5 Commissioner Wilkerson: We're getting --
6 we're getting --

7 Mr. Garner: -- it's not her job to clarify
8 --

9 Commissioner Wilkerson: -- I'll tell you --

10 Mr. Garner: -- their questions.

11 Commissioner Wilkerson: -- here's what the
12 problem is. We're getting argumentative, to be
13 honest what you all have been doing for the last
14 five (5) minutes is a waste of the court's time.
15 Ask the question, answer it, okay?

16 Q. As far as your future --

17 Commissioner Wilkerson: If you don't answer
18 the questions I'm going to stop you, okay?

19 Q. -- as far as your future surgery is concerned you
20 testified today that you would have it today?

21 A. Yes.

22 Q. Okay. Also during your deposition what was your
23 response to the same question?

24 A. I said that I would have it at a later time because of
25 the significance in the surgery but I was just asked by

1 the -- the Judge if I was to have it today, yes, I
2 would have it today; if that would relieve my pain,
3 yes, I would. If I was to walk in that doctor's office
4 and he asked me if I would have it today, yes, I would.

5 Q. And you've already had that discussion with your doctor
6 and you already elected not to have the surgery,
7 correct?

8 A. Yes, I elected not to have it due to the significance
9 of the surgery.

10 Q. Okay. And then when you were asked about it on June
11 27th during your deposition --

12 A. I said --

13 Q. -- you also stated that you did not want to have the
14 surgery?

15 A. -- due to the significance of the surgery.

16 Q. And you've continued to receive temporary partial
17 benefits from the insurance carrier even since your
18 release by Dr. Noojin, correct?

19 A. Yes.

20 Q. And you still receive those today?

21 A. Yes.

22 Q. And isn't it also true that your employer allows you to
23 move around at work if you need to?

24 A. You -- as I stated earlier you are -- you can't --

25 Commissioner Wilkerson: Answer the question.

1 A. -- yes.

2 Commissioner Wilkerson: I don't need the
3 long story.

4 A. Yes.

5 Ms. Morrow: Thank you, Your Honor.

6 Commissioner Wilkerson: Now you can --

7 Ms. Morrow: I have no further questions.

8 Commissioner Wilkerson: -- now you can
9 elaborate.

10 A. Yes.

11 Mr. Garner: Go ahead and elaborate if you
12 want to.

13 A. As I --

14 Commissioner Wilkerson: You can elaborate if
15 you want to.

16 A. -- as I stated earlier, I do walk around to find a
17 supervisor because if you raise your hand they act like
18 they don't acknowledge you so you have to walk around
19 to find a supervisor.

20 Ms. Morrow: Your Honor, again, I object;
21 that was not my question.

22 Commissioner Wilkerson: I understand. I
23 understand.

24 REDIRECT EXAMINATION

25 By Mr. Garner:

1 Q. Shameka, you were asked about page 3 of the APA
2 submissions that we -- you don't know what that is but
3 what I'm about to show you. On page 3 you were asked
4 about that handwritten notation of six (6) hours per
5 day; is that correct?

6 A. Yes.

7 Q. Now, it's on that one (indicating)?

8 A. Correct.

9 Q. And you were also asked if it was on the -- the one
10 after it and it's not, is it?

11 A. No, it's not.

12 Q. All right. If we look back to the one before it, which
13 is dated -- I don't see a date on it -- is it on that
14 one?

15 Commissioner Wilkerson: Which one is that
16 one?

17 A. Yes. Yes, it is.

18 Mr. Garner: At page -- page 4, it doesn't
19 have a date.

20 Commissioner Wilkerson: It says November
21 26th.

22 Mr. Garner: Am I missing that one?

23 Commissioner Wilkerson: Well, that says next
24 appointment --

25 Mr. Garner: And that's -- or sometime --

1 Commissioner Wilkerson: -- is November.

2 Mr. Garner: -- November.

3 Commissioner Wilkerson: I'm sorry.

4 Mr. Garner: All right.

5 Q. If you look back at page 5 does it say anything about
6 six (6) hours?

7 A. No.

8 Q. It says no change from previous status; is that
9 correct?

10 A. Correct.

11 Q. Is there any change in the restrictions that you were
12 given as far as your work?

13 A. No, because --

14 Q. Is there any change in Dr. Noojin's recommendation
15 about the hours -- the number of hours?

16 A. -- no.

17 Ms. Morrow: Your Honor --

18 Mr. Garner: That's all, Commissioner.

19 Ms. Morrow: -- I object; the medical records
20 speak for themselves.

21 Mr. Garner: That's right.

22 Commissioner Wilkerson: They do. Yes, I
23 understand.

24 Mr. Garner: That's all I have, Commissioner.

25 Commissioner Wilkerson: Anything else?

1 Mr. Garner: No, sir.

2 Commissioner Wilkerson: Any other --
3 anything else from the Claimant?

4 Mr. Garner: No other witnesses; no, sir.

5 Commissioner Wilkerson: Anything from the
6 Defense?

7 Ms. Morrow: We're going to put Pamela
8 Fleming up just briefly.

9 Commissioner Wilkerson: Okay. Ma'am, I'll
10 get you to step down and get you to step up.

11 (Off The Record)

12 Commissioner Wilkerson: Ma'am, I'll get you
13 to raise your right hand; we're going to swear you
14 in and take some testimony.

15 Whereupon;

16 Pamela Williams Fleming, being duly sworn and cautioned
17 to speak the truth, the whole truth and nothing but the
18 truth, testified as follows:

19 Court Reporter: Please state your full name
20 for the record.

21 Witness: Pamela Williams Fleming.

22 Court Reporter: Thank you, ma'am.

23 DIRECT EXAMINATION

24 By Ms. Morrow:

25 Q. Pamela, where do you work?

1 A. Teleperformance.

2 Q. Okay. And how long have you been there?

3 A. I started May 20th of 2013.

4 Q. Okay. And what is your role there?

5 A. Human Resources.

6 Q. Okay. Do you ever see workers' comp in your role at
7 Human Resources?

8 A. I do.

9 Q. Okay. So, you would be over Ms. Green's claim?

10 A. Well, actually, since there had not been an HR
11 Representative there for some time those files were
12 transferred to the Ohio office.

13 Q. Okay. And those are now coming back to you as the
14 local Representative?

15 A. Yes. I'm here to represent, yes.

16 Q. Okay. As far as Ms. Green is concerned to your
17 knowledge has Teleperformance been accommodating her
18 restrictions provided by the authorized treating
19 physician?

20 Mr. Garner: I object to that, Commissioner.
21 She has only been there since May 20th of 2013;
22 she doesn't know what in the world is going on.

23 Ms. Morrow: She can speak to whether or not
24 there have been accommodations to this --

25 Mr. Garner: How would she know if she wasn't

1 there?

2 Ms. Morrow: -- case since May of 2013.

3 Mr. Garner: She wasn't there.

4 Commissioner Wilkerson: Well, she -- she --
5 since May, 2013, she can.

6 Mr. Garner: That's -- that's --

7 Ms. Morrow: Yes.

8 Mr. Garner: -- since May, 2013?

9 Commissioner Wilkerson: Yes.

10 Mr. Garner: That's -- that's -- but she's
11 asking a general question about the accommodations
12 since the injury; that's -- you can't testify to
13 that.

14 Ms. Morrow: I never said since the injury.

15 Mr. Garner: All right. Ask the question
16 again.

17 Commissioner Wilkerson: She said since she
18 had been there were the accommodations made.

19 Mr. Garner: I -- I'm sorry.

20 Commissioner Wilkerson: That's okay. Yes.
21 which would be -- I took it as May 30 -- excuse me
22 -- May 20th --

23 Ms. Morrow: Right.

24 Commissioner Wilkerson: -- 2013. I may have
25 said May 13th. Okay.

1 Q. Pamela, what I was asking you is since you've been
2 there at Teleperformance to your knowledge have they
3 been accommodating Ms. Green's restrictions that were
4 given by the authorized treating physician?

5 A. To my knowledge, yes.

6 Q. Okay. Is she allowed to stand up and freely move
7 around if she needs to?

8 A. Yes.

9 Q. Okay. Is she also allowed to raise her hand if she
10 needs a supervisor --

11 Mr. Garner: I'm going to object to the
12 leading, Commissioner.

13 Commissioner Wilkerson: Yes, just --

14 Ms. Morrow: -- okay.

15 Commissioner Wilkerson: -- just tell me what
16 accommodations were made.

17 Q. What is the protocol if she needs a supervisor?

18 A. If she needs a supervisor she can just raise her hand
19 at her desk; she can raise her hand while sitting or
20 she can stand and raise her hand.

21 Q. Okay. And to your knowledge since you've been there
22 has Ms. Green presented any complaints about an
23 inability to do her job?

24 A. I haven't received any complaints, no.

25 Q. Okay. Thank you.

CROSS-EXAMINATION

By Mr. Garner:

Q. Ms. Fleming, you've just been there since there since May 20 of 2013?

A. Yes, sir.

Q. So, of your personal knowledge you have no personal knowledge as to what happened with her or anything else at that location prior to that time, do you?

A. Prior to 5/20?

Q. Yes.

A. Do I have any knowledge?

Q. Personal knowledge, direct personal knowledge. Were you there?

A. I was not there.

Mr. Garner: That's all for me.

Commissioner Wilkerson: Okay.

Mr. Garner: That's all I have.

Ms. Morrow: I don't have anything further.

Commissioner Wilkerson: Ma'am, you may step down. Anybody else?

Ms. Morrow: No, Your Honor.

Commissioner Wilkerson: Okay. This concludes the hearing. Let me meet with the attorneys for a few minutes.

(There being no further questions, the hearing concluded at 2:43 P.M.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Shameka S. Green, vs. Teleperformance Group, Incorporated;

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 65 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 13th Day of August, 2013.


 Gloria 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 NO.: 1119818

SHAMEKA S. GREEN,

EMPLOYEE,
CLAIMANT,

vs.

DEPOSITION OF:
FRANK K. NOOJIN, III, M.D.

TELEPERFORMANCE GROUP, INC.,

EMPLOYER,

MAY 15, 2014

and

ZURICH NORTH AMERICA,

CARRIER,
DEFENDANTS.

Deposition on the oral examination of FRANK K.

NOOJIN, III, M.D., reported by Krista M. Gibson, Verbatim
Court Reporter and Notary Public in and for the State of South

Carolina; said deposition taken pursuant to notice and in
accordance with the South Carolina Rules of Civil Procedure

at the offices of Moore Orthopaedics, 104 Saluda Pointe Drive,
Lexington, South Carolina on Thursday, the 15th day of May,

2014, scheduled for 12:00 p.m. and commencing at the hour of
12:14 p.m.

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

REPRESENTING THE EMPLOYEE:

MR. EVERETT H. GARNER, ESQUIRE
Holler, Garner, Corbett, Ormond, Plante & Dunn
1777 Bull Street
Columbia, South Carolina 29201

REPRESENTING THE EMPLOYER & INSURANCE CARRIER:

MS. KELLY F. MORROW, ESQUIRE
McAngus Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29211

GIBSON REPORTING

803.807.3061

C O N T E N T S

(DEPOSITION OF FRANK K. NOOJIN, III, M.D.)

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(physician's statement) (1 Page)

COURT REPORTER'S NOTE:

-- INDICATES INTERRUPTION; INCOMPLETE

PHRASES; TRAILING OFF.

[sic] WRITTEN AS SAID.

GIBSON REPORTING 803.807.3061



1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent
4 and respective counsel that the reading and signing
5 of the deposition by the deponent is waived.

6 WHEREUPON:

7 FRANK K. NOOJIN, III, M.D., being duly
8 sworn and cautioned to speak the truth, whole truth
9 and nothing but the truth, testifies as follows:

10 DIRECT EXAMINATION

11 BY MS. MORROW:

12 Q. Good afternoon, Dr. Noojin. My name is
13 Kelly Morrow, and I'm an attorney with McAngus
14 Goudelock and Courie in Columbia. I'm representing
15 Teleperformance and their insurance carrier, Zurich,
16 in Shameka Green's workers' comp case. I'm the one
17 that set your deposition today.

18 And before we went on the record, I asked
19 you if you wanted to read and sign. Your preference
20 is to waive; is that correct?

21 A. Yes.

22 Q. Okay. I'm assuming you've been deposed
23 several times before?

24 A. Yes, ma'am.

25 Q. I won't belabor the ground rules, but if

1 there's anything I ask you that you don't understand,
2 doesn't make sense to you, you want me to rephrase or
3 repeat, just let me know. Okay?

4 A. Okay.

5 Q. All right. Can I get you to state your
6 full name for the record and just a brief educational
7 history?

8 A. I'm Frank Kenneth Noojin, III. I have been
9 in practice here in Columbia for 15 years as an
10 orthopaedic surgeon specializing in sports medicine,
11 arthroscopic knee and shoulder surgery predominately.

12 I graduated from Davidson College in 1990
13 with a BA in religion. I then went to medical school
14 at UAB in Birmingham and obtained a medical degree
15 there. Subsequent to medical school, I went to the
16 University of Louisville to do a one-year internship
17 in general surgery, followed by four years of
18 orthopaedic surgical residency.

19 I finished that in 1999 and then completed
20 a one-year sports medicine fellowship in Jackson,
21 Mississippi.

22 Q. Okay.

23 A. For four years, I was in private practice
24 in Greenville, South Carolina and then I transferred
25 to Moore Clinic in 2004 and have been practicing here

1 ever since. I'm certified by the American Board of
2 Orthopaedic Surgery and General Orthopaedic Surgery
3 and I'm also sub-specialty certified in orthopaedic
4 sports medicine.

5 Q. Okay. All right. And you started seeing
6 Shameka Green as it relates to this case, I think,
7 back in December of 2011. Does that sound right?

8 A. That sounds right.

9 Q. She initially came to see you after she had
10 a work-related injury where a desk fell on her and
11 hit her in the right knee. Does that sound familiar?

12 A. That's correct.

13 Q. Okay. You did a repair to her ACL in
14 February of 2012; is that right?

15 A. That's correct.

16 Q. And she also had some pre-existing
17 arthritis that you felt was aggravated by the
18 accident?

19 A. Yes.

20 Q. Okay. And, initially, she had a little bit
21 of difficulty in terms of her overall recovery; is
22 that fair?

23 A. Yes.

24 Q. And I'm saying post-surgery, in fairness.

25 A. Yes.

1 Q. And then she reached somewhat of a plateau,
2 it looks like from your notes, and then began saying
3 that she had increased pain in around May of 2012; is
4 that right?

5 A. Yes.

6 Q. And at that time in May of 2012, you noted
7 in your clinical notes that I'm reading that, at that
8 point, after the surgery you'd already performed, the
9 only other option for her, realistically, was a high
10 tibial osteotomy at some point in the future because
11 you felt like she was too young for a total knee
12 replacement.

13 A. That's correct.

14 Q. Okay. You noted in here that she already
15 had grade four changes in the tibial side and femoral
16 side of the knee.

17 A. Correct.

18 Q. Is that as advanced as it goes? Do you go
19 to --

20 A. Yes.

21 Q. -- a five?

22 A. That's as advanced as it goes.

23 Q. Okay.

24 A. However, if you consider the overall size
25 of the knee, which is maybe half of a dollar bill,

1 the cartilage --

2 Q. Okay.

3 A. Half the size of a dollar bill, and this is
4 the size of a quarter.

5 Q. Okay.

6 A. So there were two very significant
7 arthritic lesions on each side, the size of a
8 quarter.

9 Q. Okay.

10 A. But the rest of the cartilage looked fairly
11 good.

12 Q. Okay. Was any of that addressed in your
13 surgery or no?

14 A. I'm still waiting for this to boot up.

15 Q. Okay.

16 A. I might have done a microfracture, but I'm
17 not certain. Sometimes you can do a couple of
18 techniques. You can do -- can do a chondroplasty or
19 a microfracture to try to facilitate cartilage
20 repair. But other than that, not much.

21 Q. Are you looking for your procedure notes?

22 A. Yes. Thank you. No, we didn't really do
23 anything to articular cartilage that time.

24 Q. Okay. Back in May of 2012 when you
25 recommended the osteotomy for her, did she indicate

1 to you, at that time, what her pain levels were? I
2 don't know if you typically note those in your
3 medical notes, if those are in your handwritten notes
4 somewhere, or if that's even a topic of discussion on
5 your assessments.

6 A. Usually at follow-ups, I don't always
7 mention on a 10-point scale the severity of the pain,
8 I probably should, but she consistently complained
9 of knee pain throughout her recovery, which was
10 certainly understandable given the arthroscopic
11 findings of that significant of an arthritic lesion
12 in her knee. But it never seemed to be significant
13 enough to where she really wanted to take another
14 step.

15 Q. Okay.

16 A. At least as far as an operation during the
17 2012 year.

18 Q. Okay. And it's my understanding based on
19 her testimony, and we had a hearing on July 9th of
20 2013, that she told you that she just didn't want to
21 have the surgery at that time, when you offered it to
22 her back in May of 2012; is that correct?

23 A. Yes.

24 Q. Okay. Did she ever give you any indication
25 of why she was declining it in May of 2012?

1 A. To my recollection, the main reason was
2 that she had pain, but it was not enough to go
3 through a surgery that big with that extended of a
4 recovery.

5 Q. Okay.

6 A. So I guess -- I guess at the end of the
7 day, if I could say that, she probably wasn't in
8 enough pain to warrant pulling the trigger on another
9 procedure.

10 Q. Okay. And just for educational purposes,
11 in as layman terms as you can probably put it, will
12 you tell me what the high tibial osteotomy involves?
13 Because from what we're hearing it's a significant
14 surgery, but I'm not sure of the extent of the actual
15 surgery.

16 A. Yes. When someone develops arthritis of
17 one side of the knee -- there's three areas of the
18 knee and her arthritis is on the very inside of the
19 knee, closest to between the legs, if you will.

20 There's a few options that you could
21 provide treatment wise: one is the injections, two
22 is arthroscopic surgery, and three is more severe
23 surgeries, such as realigning the leg or doing a knee
24 replacement.

25 In a knee replacement, you basically put

1 metal and plastic in the knee to substitute for the
2 joint and to get pain relief from the articular
3 cartilage that's worn out in the joint.

4 That's the most extreme, aggressive surgery
5 we have for treating knee arthritis. And once you
6 take the arthritis out of the joint and put the
7 replacement in, there's no going back, of course.
8 You have a replacement for the rest of your life.

9 A high tibial osteotomy is where we --
10 osteotomy means, basically, break the bone. So we
11 realign the bone so that we can take her from a
12 bowlegged knee to more of a knock-kneed knee, quote.
13 And what that does is it takes the weight bearing
14 axis off of the arthritic side, on the inside, and
15 shifts it more over to the good side of the knee.

16 And so you basically realign the knee so
17 the weight goes to a different part of the knee and
18 it gives you pain relief. Now, it doesn't cure the
19 arthritis, but it can buy people ten years where the
20 knee doesn't bother them. And at that point, if they
21 were hurting enough, they could do knee replacement.

22 And since she is a fairly young person,
23 with arthritis on only one side of the knee, that is
24 a reasonable option for her to entertain short of
25 knee replacement.

1 Q. Okay.

2 A. However, to answer your question --

3 Q. Go ahead.

4 A. Excuse me.

5 Q. Sure.

6 A. Excuse me. It takes six months for the
7 bone to heal. It's two to three months of non-weight
8 bearing after surgery. Probably around three months,
9 actually, on average. And that generates significant
10 atrophy in the leg which has to be rebuilt. And it's
11 about a one year recovery process as far as reaching
12 maximum medical improvement from the procedure.

13 Q. Right.

14 A. Now, she could work before that. I mean,
15 but as far as standing on her leg for long periods of
16 time, it would be difficult at least for six months.

17 Q. And if she had a more sedentary job, would
18 that --

19 A. That would be okay.

20 Q. -- expedite her --

21 A. Yes.

22 Q. -- ability to go back to work?

23 A. Yes.

24 Q. Okay. All right. And I assume, but I'm
25 going to ask anyway, that that's a reasonable or

1 normal step or progression for somebody of her age to
2 consider the osteotomy before a total knee?

3 A. Yes.

4 Q. Based on the life and longevity of a total
5 knee, she would likely, if she had one in her 40s,
6 probably need another one?

7 A. Correct.

8 Q. Possibly two in her lifetime?

9 A. Correct.

10 Q. Okay.

11 A. Not to mention that with an osteotomy,
12 there's no restrictions on her activity. I don't
13 recall that she's particularly interested in any
14 kinds of athletics, but people that like to play a
15 lot of sports could do that with an osteotomy.

16 Whereas with a total knee, most doctors would
17 recommend that you do not do impact activities other
18 than maybe tennis or golf.

19 Q. And just out of curiosity, if you're
20 breaking the bone, does that also include hardware
21 and plating to realign the bone?

22 A. Yes.

23 Q. Okay.

24 A. You plate the bone, you put a little bone
25 graft in there and then you hope it heals.

1 Q. At least the way you want it to. Right?

2 A. The first time.

3 Q. Let's hope that is the case. All right.

4 And she, I guess, continued to complain of pain and
5 problems up until the point that you released her at
6 maximum medical improvement. Is that fair?

7 A. Yes.

8 Q. Okay. But you ultimately concluded that
9 she was at maximum medical improvement on April 23rd
10 of 2013; is that right?

11 A. Yes.

12 Q. Okay. And at that time, according to your
13 notes, she at least had not indicated to you that she
14 was electing to have the osteotomy; is that fair?

15 A. That's fair.

16 Q. Okay. And you even completed an addendum
17 that said that she may decide to do a high tibial
18 osteotomy at some point in the future as far as her
19 arthritis is concerned; is that right?

20 A. Yes.

21 Q. And then you also went on to complete a
22 Form 14B for us, which we submitted at the hearing,
23 which was in our APA, Page 20, providing her the 21-
24 percent impairment to the right, lower extremity, and
25 providing her the work restrictions.

1 But in terms of the future medical
2 treatment that was specifically stated, it was shots,
3 braces and NSAIDS?

4 A. Yes.

5 Q. Okay. And no indication of a high tibial
6 osteotomy; is that fair?

7 A. That's what I answered. Yes.

8 Q. Okay. So that's what you reasonably
9 believed would be the future medical as it related
10 to her work injury. Fair?

11 A. That's correct.

12 Q. Okay. Prior to taking --

13 A. And the reason I had said that is because I
14 had been offering the osteotomy for quite a time, and
15 then she had not wanted to do it. So, therefore, I
16 figured the decision had been made, that she didn't
17 want to do the surgery when we settled the case.

18 Q. Okay. Prior to the hearing that we
19 conducted in July of 2013, we deposed her in June
20 of 2013, on June 27th, and she testified in her
21 deposition at that time that she did not want to have
22 the surgery. Have you ever been made aware of that?

23 A. No, I have not heard of that.

24 Q. Okay. She actually did not come back and
25 see you, I think, until December of 2013. Is that

1 correct? From when you released her in April and
2 then she came back in December?

3 A. Yes.

4 Q. Okay. Out of curiosity, I didn't see it in
5 your notes, but again, any indication of what her
6 pain levels were when she left, when you released her
7 at maximum medical improvement?

8 A. No.

9 Q. Okay. At the hearing itself, Ms. Green
10 actually testified at the hearing, transcript Page
11 52, when she was asked about the level of pain
12 complaints, that she was at a level nine for pain for
13 that knee -- for that right knee.

14 And previously, two weeks before, when she
15 was asked about her knee pain as it relates to the
16 workers' comp claim, the admitted knee, on Page 53 of
17 the hearing transcript she indicated that it was at a
18 level eight. Is that fairly consistent with the pain
19 reports that she had been giving to you throughout
20 the course of your treatment of her?

21 A. My impression was the pain was not that
22 high. I mean, that's just my impression. I don't
23 remember us specifically talking about numbers like
24 that, so I'm not trying to take away from what she's
25 saying because it's her knee. But I don't remember

1 it being that bad. And most people, if they are
2 having nine out of ten pain, will opt to do something
3 about it.

4 Q. Okay.

5 A. If you failed pills and shots and time and
6 arthroscopic surgeries and things like that, a nine
7 out of ten, at least on my pain scale, is a lot of
8 pain and it's pretty much an intolerable amount for a
9 long period of time.

10 Q. And in fairness, we're talking about a one
11 to ten pain scale, typically, that we give to people.
12 Ten is the greatest amount of pain imaginable.

13 A. That is correct.

14 Q. That's what you are assessing also?

15 A. Yes.

16 Q. Okay. Would you imagine that somebody who
17 is reporting an eight to nine level pain, as far as
18 the knee is concerned, would need some sort of
19 emergent care, some sort of immediate need or
20 treatment?

21 A. I would suspect that yes, they would want
22 something else done --

23 Q. Okay.

24 A. -- at that time if the pain was at that
25 level.

1 Q. All right. Also at the hearing, we posed
2 specific questions to her in terms of the high tibial
3 osteotomy and her need for it, and we asked her as
4 far the surgery is concerned. She testified at the
5 hearing that she would have it that day.

6 And she stated that the only reason she
7 would have this surgery at a later time was based on
8 the significance of the surgery. But the judge asked
9 her if she was going to have it today and she said
10 she would have it today to relieve her pain.

11 A. She would?

12 Q. Correct. This was page 55. I'm sorry,
13 Page 56 and 57 of the hearing transcript. This was
14 also a line of questioning where we indicated this
15 was despite the fact that we had deposed her two
16 weeks prior and she indicated she did not want to
17 have the surgery. And again, our hearing date was
18 back on July 9th of 2013.

19 If that had been the case and those were
20 the pain levels, would you have expected to have
21 heard from her in July of 2013 or some time prior to
22 that, rather than December of 2013?

23 A. Under normal circumstances, yes. With
24 workers' compensation cases and the fact she already
25 had been released, she may not contact me. She may

1 contact her attorney instead. But, I mean, normally
2 I would expect that yes, I would have heard something
3 about the pain and the desire to do something else
4 about it.

5 Q. Okay. And you actually, after -- let me
6 just explain something to you, just from a legal
7 perspective, and you may have heard this before.
8 But an order was issued in her case by the sitting
9 commissioner in September of 2013 and it dictates
10 or designates exactly what future medical treatment
11 she is entitled to.

12 And that order specifically states, based
13 on testimony and medical evidence that was submitted,
14 findings of fact No. 6, that the claimant's testimony
15 as to surgery is very important. The claimant states
16 in her deposition, taken less than two weeks prior to
17 the hearing, that she does not want surgery, and now
18 testifies at the hearing that she wants the surgery.

19 He found that the future medical treatment
20 awarded in this case, findings of fact No. 10, was
21 dictated by your Form 14B; which was the shots, the
22 braces and the NSAIDS, as far as future medical care.

23 We're here today because there's a legal
24 concept called a change of condition for the worse,
25 you may have heard of this before, in which case a

1 person can approach, typically, the authorized
2 treating physician to determine whether or not there
3 is a medical change.

4 At this point, she came back to you in
5 December of 2013. She is noting a pain level of
6 eight out of ten according to your medical notes in
7 December of 2013. Would you agree with me that that
8 is the same level of pain that she dictated to me at
9 the hearing earlier in the year in July?

10 A. Yes.

11 Q. Okay. And that's a subjective presentation
12 that she gives to you in terms of her internal
13 interpretation of the situation of pain; is that
14 correct?

15 A. Yes.

16 Q. Okay. In your assessment anywhere in
17 December of 2013, from a medical perspective have you
18 been able to evaluate some type of difference in her
19 condition from when you released her in April and
20 when you saw her in December that constitutes an
21 actual physical medical change in her condition, that
22 would constitute a worsening? Not a continuation of
23 the same, but an actual worsening?

24 MR. GARNER: I'm going to object to
25 that question in so far as it calls

1 for a legal conclusion. I know you
2 asked it in terms of a medical
3 perspective, but, to protect the
4 record, I'm going to object to the
5 question.

6 Q. And Doctor, what I'm asking you is, in your
7 medical opinion, to a reasonable degree of medical
8 certainty, what in your medical notes of December 2,
9 2013 is different in a medical context than when you
10 released her in April of 2013?

11 A. Believe it or not, I'm still waiting on
12 this computer to finish booting up. Can I borrow
13 your April 2013 notes?

14 Q. Sure you can. This is split into two
15 pages. That's your clinical note, and the addendum
16 is behind it, and that's your December note.

17 A. I want to check some x-rays.

18 Q. Sure.

19 A. Is there another question you'd like to ask
20 while I'm waiting on --

21 Q. Sure.

22 A. -- this to come up, if it ever comes up?

23 Q. Sure.

24 A. Or would you want to wait? I can come back
25 to that question.

1 Q. We'll come back to that. You also filled
2 out an affidavit that is notarized April 2, 2014.
3 Did you type this affidavit?

4 A. I didn't type that affidavit.

5 Q. Okay. How did this affidavit come to you?

6 A. I don't know for sure, but I would assume
7 that an attorney faxed me the paperwork and I agreed
8 to the points and signed the argument.

9 Q. So that is your signature?

10 A. (Nonverbal response)

11 Q. You've at least seen it?

12 A. Yes.

13 Q. Okay. Did you have any discussions prior
14 to this affidavit to arrive at all of these
15 conclusions before you signed off on this affidavit?

16 A. Not that I recall.

17 Q. Okay. So this just blanket came to you and
18 you reviewed it, signed it and notarized it?

19 A. I believe so, based upon my records.

20 Q. And do you -- do you know if it came with
21 any correspondence outlining why it was coming to you
22 and what the request was?

23 A. I do not know.

24 Q. Okay.

25 A. I do not recall if it did.

1 Q. Okay. Part of what this affidavit states
2 at number six is that Ms. Green presented with
3 worsening pain which, in your medical opinion,
4 represented a progression of arthritic condition
5 aggravated by the original work accident which was
6 the basis of the recommendation for high tibial
7 osteotomy.

8 Based on what I've shown you today in terms
9 of the reported pain that she had when you released
10 her and in addition to the reported pain that she had
11 in July of 2013, when we had a hearing in this case,
12 and when you actually saw her in December of 2013, is
13 her pain complaint at the level eight or nine not
14 consistently the same?

15 A. Subjectively, it's consistently the same.
16 What I'm waiting to look at is objective information
17 which would be a change in x-rays.

18 Q. Do you want to take a break until it comes
19 in?

20 A. I mean, I hope by 1:00 it will be ready. I
21 guess it has a lot of checks to go through. It must
22 be an old laptop. That's why they usually bring it
23 up here and get it booted up before I come.

24 Q. I got you. But at least in terms of
25 subjective complaints, would you agree with me that

1 based on what I presented to you, there's no change
2 in her subjective pain complaints?

3 A. Yes ma'am, I would.

4 Q. I'm going to try to ask you this next
5 question. You tell me if you can or can't answer it
6 based on your computer. Number 10 of the affidavit
7 also says it's your medical opinion that the high
8 tibia osteotomy, if it's not performed in the near
9 future, there is a 100-percent medical likelihood she
10 will require a total knee replacement between the
11 ages of 45 and 50?

12 A. I think that's a little high on the
13 percentage. I mean, I think it's more likely than
14 not that she might need that. Well, let me back up
15 with that.

16 Okay. One reason Ms. Green didn't elect
17 to do the high tibia osteotomy is that it's not a
18 complete relief of pain. The arthritis is still
19 there. It's a reduction of pain. So if she's eight
20 out of ten, if we were to take her to three or four
21 out of 10, that would probably be a good result of
22 the surgery. So it doesn't fix you.

23 Q. Sure.

24 A. It just reduces the pain. I think I
25 probably answered that question without taking the

1 full context of the age. Of course, I don't know
2 when she is going to need the knee replacement. I
3 mean, it could be 55, it could be 45, it could be 60.
4 I don't know.

5 Q. And you can't discount the fact that any
6 other types of events can happen which alter the
7 course of her knee and the need for future care.
8 Correct?

9 A. That's right.

10 Q. So it would be very difficult for you to
11 say with absolute certainty or probably even greater
12 than 50 percent, at this point in her medical
13 progression, that it's a guarantee that she needs a
14 total knee on that knee?

15 MR. GARNER: Object to the absolute
16 certainty. That's not the standard.

17 MS. MORROW: The affidavit says 100-
18 percent medical likelihood. There's
19 no bigger standard than absolute.

20 THE WITNESS: Well, I mean, there's
21 not a 100-percent chance of anything.
22 I mean, who knows who will be around
23 in six months? I don't know.

24 You know, who knows what medical
25 conditions might surface to be a

1 contraindication to knee replacement?

2 But orthopedically speaking, should
3 she be healthy and should she live a
4 full, normal life span for an average
5 person? You know, I would say that
6 the odds are highly likely she will
7 need a knee replacement.

8 Now, whether somebody gets a knee
9 replacement depends upon their
10 activity level, how much pain they
11 have, what their pain threshold is,
12 their age and health status.

13 I mean, there are a lot of variables
14 there to determine whether or not
15 someone's going to select a knee
16 replacement. And there are a lot of
17 people that have much worse looking
18 x-rays than she does that don't ever

19 get a knee replacement. Okay?

20 MS. MORROW: Okay.

21 THE WITNESS: And there's also people
22 that have x-rays like hers that hurt
23 enough to get a knee replacement. So
24 I think 100 percent is too strong.
25 That was a mistake on my part.

1 I think it's much more likely than not
2 that she will need a knee replacement,
3 but I can't put a time on it.

4 MS. MORROW: Okay.

5 THE WITNESS: And it's my medical
6 opinion that the chondral damage, or
7 the arthritic lesions, were present
8 before the ACL injury.

9 BY MS. MORROW

10 Q. Okay. But none of that has changed in
11 terms of your original course of treatment and what
12 you thought in terms of her?

13 A. No. I mean, I don't --

14 Q. Which, in other words, wasn't included in
15 the Form 14B in terms of known future medical
16 treatment outlined for her. That knowledge or that
17 recommendation is no different than when you released
18 her at MMI in April 2013. Correct?

19 A. Correct.

20 Q. Okay.

21 A. That's correct.

22 Q. Okay.

23 A. And why somebody selects to get a knee
24 replacement or any other big surgery like that is
25 because they say their pain is enough. And when

1 their symptoms are backed up with x-ray findings and
2 the objective findings support what they're saying,
3 then that's when people have a knee replacement.
4 It's based upon their pain level.

5 Q. Okay.

6 A. So the whole process, other than x-rays, is
7 a fairly subjective thing, you know. So if somebody
8 can live with it -- which is what she was telling me
9 when I released her, that she could live with it like
10 it was. It hurt, but she could live with it.

11 Therefore we didn't do any surgery. The only
12 time we do anything else is when the pain exceeds
13 your ability to tolerate it.

14 Q. Would the same logic not apply to her high
15 tibial osteotomy or would you have to wait to review
16 the x-rays for that?

17 A. No. The high tibial osteotomy is
18 different.

19 Q. Okay.

20 A. A high tibial osteotomy --

21 Q. Do we need the x-rays for it? I just want
22 to give you all the time -- I'd rather you review
23 everything.

24 A. Here we go. A high tibial osteotomy has a
25 window. She's already getting to the point where the

1 high tibial osteotomy is going to be not as much a
2 benefit because the arthritis is progressing.

3 Q. What's the window, generally speaking?

4 A. Generally speaking, once you get close to
5 bone on bone the procedure is ineffective.

6 Q. Okay.

7 A. So on her x-ray, she's not bone on bone.
8 Will she be bone on bone next year? I don't know.
9 Is she bone on bone now, since my last x-ray, I don't
10 know. I don't think so, so there's a window there.

11 So if five years from now she says okay, I
12 want the high tibial osteotomy and I get x-rays on
13 her knee and it's bone on bone, it will no longer be
14 indicated.

15 Q. Okay.

16 A. Because it won't give her enough relief to
17 go through it.

18 Q. Okay.

19 A. And then, at that point, you would do a
20 knee replacement. So yes, there is a time limit on
21 the osteotomy. I don't know exactly what to tell
22 you.

23 Q. No, I understand.

24 A. But anyway, it's not like for the rest of
25 her life. It won't be an option for the rest of her

1 life.

2 Q. It's individualized.

3 A. Right.

4 Q. Based on what's going on in each person's
5 knee and what the progression is?

6 A. That's right. The original release date
7 was April of 2013?

8 Q. Twenty-three.

9 A. All right.

10 Q. And in looking at your notes, I think your
11 last requested or logged -- at least as far as your
12 notes are concerned, your last series of x-rays on
13 the knee were 8/9/2012 when she was complaining about
14 popping and clicking. You saw her on 8/16 and then
15 released her on 4/23. I may be missing a few notes
16 in there.

17 A. In September of 2012, she still had at
18 least two millimeters of joint space still remaining.
19 Let me look at the other x-rays. I'm reviewing
20 August 16th of 2012. I'm almost there.

21 Q. You're fine.

22 A. There's around two millimeters of joint
23 space remaining on the x-ray I have in the medial
24 compartment. And in December of 2013, I think
25 there's still roughly about two millimeters of joint

1 space remaining on the injured knee in the medial
2 compartment.

3 So objectively speaking from an x-ray
4 standpoint, which is the only objective that I have,
5 there has been no change in the condition other than
6 the subjective pain.

7 Q. Okay. And the subjective pain is the same
8 as what I presented to you that she presented to me
9 at the actual hearing in July of 2013. Would you
10 agree with me on that?

11 A. Well, I'm relying on your data.

12 Q. I understand.

13 A. So yeah, I mean, if that is what the
14 numbers are from her deposition, that is what the
15 numbers are.

16 Q. Okay. So would you then agree with me that
17 the only thing that has changed, if you will, is her
18 election for the surgery --

19 A. Yes.

20 Q. -- since you released her at maximum
21 medical improvement?

22 A. Yes.

23 Q. Okay. And I should have said this at the
24 beginning of the deposition, but in terms of all of
25 your testimony here today, all of your answers, have

1 they been stated to a reasonable degree of medical
2 certainty?

3 A. Yes.

4 Q. Okay. Based on what you're saying then,
5 based on your assessment of the x-rays, would you
6 also agree with me to a reasonable degree of medical
7 certainty that there has been no medical change of
8 condition for the worse as far as Ms. Green's knee is
9 concerned?

10 MR. GARNER: Object to the form of
11 the question.

12 A. Well, medical is all encompassing. I think
13 a better answer is no objective change.

14 Q. Okay.

15 A. And based upon what you said, there doesn't
16 appear to be a subjective change in the pain number
17 she reported.

18 MS. MORROW: Okay. Doctor, those are
19 all the questions I have for you. I
20 appreciate your time.

21 THE WITNESS: Okay.

22 CROSS-EXAMINATION

23 BY MR. GARNER

24 Q. Dr. Noojin, I'm Hope Garner and I, of
25 course, represent Shameka Green. It's the same

1 plaintiff that we're discussing here.

2 You'd agree that this high tibial osteotomy
3 procedure is a radical procedure; would you not?

4 A. I would say it's pretty radical if you're
5 the one having your leg broken.

6 Q. Right. It's surgery of such a magnitude
7 you would expect the patient would be hesitant to
8 have it once you've explained the procedure and the
9 recovery time; would you not?

10 A. Yes, sir.

11 Q. And you encountered that with Ms. Green;
12 did you not?

13 A. Yes, sir.

14 Q. Okay. Now as far as the subjectivity of
15 pain, you reported her subjective pain reports at the
16 time you were interviewing her at individual
17 treatment times; is that correct?

18 A. Some of the times, yes sir.

19 Q. Okay. Pain is a persisting thing or can be
20 a persisting thing; can it not?

21 A. It can, or it can fluctuate.

22 Q. And a person's perception of pain, their
23 ability to tolerate pain, can wax and wane according
24 to the passage of time; can it not?

25 A. Yes.

1 Q. Okay. So if she expressed a pain level of
2 a certain number and it persists, is it feasible that
3 she would have had a perception of the pain, but not
4 have a perception of the longevity and persisting
5 nature of the pain? Did that question make sense?

6 A. So in other words, you're talking about
7 sort of a wear and tear process, that the chronicity
8 of the pain would make somebody seek symptoms later
9 than earlier?

10 Q. Yes.

11 A. Is that what you mean?

12 Q. Yes. Something to that effect, yes.

13 A. That if added to the same number, could it
14 over time --

15 Q. Right.

16 A. -- become less tolerable?

17 Q. Right. Exactly.

18 A. I would agree with that.

19 Q. You would agree with that?

20 A. Yes, sir.

21 Q. Okay. So there's a possible cumulative
22 component to pain. Would that be a fair statement?

23 A. Sure.

24 Q. Okay. The Form 14B that was referred to
25 earlier, which if I can -- here it is. Okay. And

1 Kelly questioned you about, under the future medical
2 treatment, you recorded shots, braces and NSAIDS; is
3 that correct?

4 A. That's correct.

5 Q. You didn't make reference to the
6 possibility of the high tibial osteotomy; is that
7 correct?

8 A. That's correct.

9 Q. Okay. We'll go ahead and mark this.

10 A. However --

11 Q. We'll go ahead and mark this.

12 (MARKED DEPOSITION EXHIBIT NO. 1)

13 THE WITNESS: Excuse me, can I see my
14 April 13, 2013 notes for a minute?

15 MS. MORROW: April 13th?

16 THE WITNESS: I believe it was a free
17 piece of paper you have. I don't
18 believe it was stapled.

19 MS. MORROW: December?

20 THE WITNESS: No, you're right.
21 April, the date that I signed that.

22 MS. MORROW: Are you talking about
23 this? That's your --

24 THE WITNESS: No, the clinic note
25 that goes with it. Yes, this is the

1 one that had the addendum.

2 MS. MORROW: Correct.

3 THE WITNESS: So on the same day, I
4 dictated that it may need high tibia
5 osteotomy. So, I mean, I think that
6 even though I put that in the 14B,
7 that at the time I was thinking that
8 an osteotomy may be an option in the
9 future although she wasn't selecting
10 it at that time.

11 MR. GARNER: All right.

12 THE WITNESS: Because that same day
13 that I dictated it, I signed that
14 piece of paper apparently.

15 MR. GARNER: Right.

16 MS. MORROW: Which I'm going to
17 object to any questioning on that as
18 the hearing has already happened,
19 future medical treatment has already
20 been ordered by the single
21 commissioner, and it's been dictated.
22 The appeal in this case was dropped,
23 so that is an unappealed order of the
24 Commission as far as future medical is
25 concerned.

1 BY MR. GARNER

2 Q. All right. You didn't transpose that note
3 about the high tibia osteotomy from your note onto
4 the Form 14B; is that correct?

5 A. I want to say that the date it was dictated
6 -- it was dictated 4/23. No, sir.

7 Q. Okay. And when you saw Ms. Green on
8 December 2, 2013, you made reference to the options
9 and the osteotomy; is that correct?

10 A. Yes.

11 Q. Okay. And you think she's too young for
12 knee replacement, but you were going to request
13 authorization from workers' comp to do an osteotomy;
14 is that correct?

15 A. Correct.

16 Q. So you considered, at that point, the
17 osteotomy to be a vital option for her?

18 A. Yes, sir.

19 Q. Okay. And you were going to specifically
20 request that workers' comp authorize it; is that
21 correct?

22 A. Yes.

23 Q. So you had no doubt in your mind that it
24 was related back to the injury; is that correct?

25 A. Yes. I mean, I thought there was a

1 continuation of the same problem she had, she just
2 changed her opinion on whether or not she was going
3 to do the next step.

4 Q. Okay.

5 A. But I don't know anything about the legal
6 -- what's going on legally.

7 Q. All right.

8 A. You said medically, and that's what my
9 impression was.

10 Q. Okay. Would it be a fair statement that
11 her pain level, even though it hadn't changed, had
12 persisted over a long period of time?

13 A. Yes --

14 MS. MORROW: I would just object that
15 that's individualized to the claimant
16 and that the doctor can't speak to her
17 impression of pain.

18 Q. Would that be a fair statement?

19 A. Yes, sir.

20 Q. Okay. All right. Looking at your
21 affidavit, Doctor, first of all, let's just go
22 through it. You've been treating her since December
23 1, 2011 as you testified to earlier. You performed
24 the arthroscopy and ACL reconstruction.

25 You discharged her on April 23, 2013 with

1 an impairment rating. Prior to that discharge, you
2 discussed the option of additional surgery, radical
3 surgery, with extended recovery time of approximately
4 six months. Is all this still your opinion?

5 A. Yes.

6 Q. Okay. And stated to a reasonable degree of
7 medical certainty?

8 A. Yes, sir.

9 Q. All of your opinions are?

10 A. Yes, sir.

11 Q. Okay. She didn't wish -- she indicated at
12 that time that she didn't wish to proceed with the
13 surgery and you released her. And subsequent
14 thereto, which I think would probably date you
15 referring to her coming back to you on December 2,
16 2013, she presented with worsened pain, which in your
17 medical opinion represents a progression of her
18 arthritic condition; is that correct?

19 A. That's what it says.

20 Q. Okay. Do you agree with that?

21 A. Well, you see, one thing when I deal with
22 attorneys is they -- the particular semantics used
23 are very important legally. But to me, when I'm
24 reading it, I don't appreciate that. So in her mind,
25 her symptoms have progressed to the point where she's

1 selecting the surgery. Okay?

2 However, I just looked at the x-rays and I
3 don't see a progression of the arthritic condition,
4 at least that I can document objectively. So this is
5 a partially correct statement.

6 Q. Okay.

7 A. Meaning, yes, her pain has progressed to a
8 level where she is -- or has gotten to the point
9 where she has decided she wants to do something else
10 about it. But has there been a medical change in the
11 overall condition of the knee? I don't think so
12 based on my best assessment with the x-ray tools I
13 have.

14 Q. Right. You stated earlier, a medical
15 decision is an all encompassing thing.

16 A. That's right.

17 Q. Objective findings, subjective findings,
18 reports of pain and so forth; is that correct?

19 A. That's correct.

20 Q. And you said the need or necessity for high
21 tibial osteotomy or a knee replacement is whether or
22 not the patient can tolerate the pain anymore?

23 A. Correct.

24 Q. Do you still feel that she would benefit
25 from the high tibial osteotomy if it doesn't show a

1 bone on bone like you said?

2 A. If I re-evaluated her and her x-rays were
3 suitable, then I think she probably would benefit
4 from it.

5 Q. And can you testify that if she doesn't
6 undergo it in the near future, we're past the point
7 of benefit; is that correct?

8 A. That's correct.

9 Q. Okay. All right. If I understood your
10 testimony earlier correctly, about the eventual need
11 for total knee replacement, you think, all things
12 considered, it's more likely than not she will need a
13 total knee replacement in the future. Is that
14 correct?

15 A. Yes.

16 Q. The high tibial osteotomy, I believe, as
17 you put it, would buy ten years?

18 A. According to literature, it can buy ten
19 years. It can buy five for sure, with progressive
20 deterioration or increase in pain from year five to
21 year ten. How old is she? Excuse me.

22 MS. MORROW: Let me see, she is --

23 Q. Forty --

24 A. Forty-two?

25 Q. Forty-one, forty.

1 A. Forty?

2 Q. Roughly.

3 A. Yes, sir. Okay.

4 MS. MORROW: Her birthday is 1/14/74.

5 MR. GARNER: Yeah, forty. Okay.

6 BY MR. GARNER:

7 Q. And on No. 11, I feel that a high tibial
8 osteotomy is the best medical option at this time, it
9 will likely tend to lessen the degree of disability.
10 Is that still your statement?

11 A. Yes, sir.

12 Q. And you still agree with that?

13 A. Yes, sir.

14 Q. Is that stated to a reasonable degree of
15 medical certainty?

16 A. Yes, sir.

17 Q. Why do you feel that it is her best medical
18 option?

19 A. Because I still agree that, well, if she
20 can live with it, she can live with it as long as she
21 wants. Right? It's not going to -- which it's a
22 quality of life issue. That's why we would select
23 more treatment.

24 If she gets to the point where she has
25 decided that, medically speaking, not legally

1 speaking, her pain was such that she couldn't
2 tolerate it anymore, then that's the next option. I
3 think that it's the best option because doing a knee
4 replacement on a 40-year-old who still has joint
5 space remaining on her x-rays is not indicated. I
6 mean, I wouldn't recommend it.

7 Q. And this pain scale, that's kind of an
8 arbitrary -- you have to put your pain in numerical
9 terms and 10 is the maximum. And if the patient
10 feels they're already at eight of ten, they can't go
11 much higher than that, can they?

12 A. Well, they go two points higher. You're
13 right.

14 Q. Yeah.

15 A. Not much higher.

16 Q. Okay. All right. Eight to ten. There's
17 no 12 on the pain scale. Is there?

18 A. No, sir. The only other variable that
19 would make me a little less inclined to recommend an
20 osteotomy for her, she's a smoker. To my knowledge,
21 I think she is a smoker.

22 Q. Okay.

23 A. Smoking delays bone healing, which
24 increases the likelihood of a second procedure to get
25 the osteotomy to heal.

1 Q. All right. But in your December 2nd note,
2 would it be fair to say that you are recommending
3 that she go ahead with it based on where the
4 situation was at that time?

5 A. Yes, sir.

6 Q. Okay. And is that still your opinion?

7 A. If her pain level is there to that point,
8 yes.

9 MR. GARNER: Thank you, Doctor.

10 THE WITNESS: Yes, sir.

11 MS. MORROW: I don't have any further
12 questions.

13 (FURTHER DEPONENT SAYETH NOT.)

14 (THERE BEING NOTHING FURTHER, THE DEPOSITION OF
15 FRANK K. NOOJIN, III, M.D., CONCLUDED AT 1:09 PM)
16
17
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25

Certificate of Reporter

I, Krista M. Gibson, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported this deposition of FRANK K. NOOJIN, III, M.D., on Thursday, the 15th day of May, 2014, that the witness was first duly sworn by me and that the foregoing 45 pages constitute a true and correct transcription of my verbatim report of said deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript was thereafter sealed and delivered to Kelly F. Morrow, Esquire, 1320 Main Street, 10th Floor, Columbia, South Carolina, who will retain this sealed original transcript and shall be responsible for filing same with the court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof, I have set my hand and seal this 24th day of May, 2014.

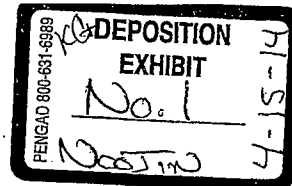
Krista M. Gibson

Krista M. Gibson, Court Reporter
My commission expires June 20, 2022

5/24/2013 08:44

(FAX)

P, 002/002



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



Physician's Statement

2800076482

Claimant's Name: Shameka S Green

Employer's Name: TELEPERFORMANCE GROUP, INC.

Physician's Name: Frank K Noonin III, M.D.

Insurance Carrier: American Zurich Ins. Co.

Practice/Clinic: Moore Orthopaedics

SCWC File No: 1119818

Referral's Name: Sharon Holt-Ervin

Phone: (704) 551-3484

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§ 42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 08-23-2011

Date of first office visit: 12-1-2011

Date of last visit: 4-23-2013

Diagnosis or nature of injury or illness: ACL tear w/ reconstruction with medial compartment

Body part(s) injured: Right knee

Body part(s) affected: arthritis KNEE

Date of Maximum Medical Improvement: 4-23-2013

Based on the AMA Guidelines, the claimant has sustained a 21* % medical impairment to Right lower extremity injured body part(s) and a % medical impairment to other affected body part(s).

 The claimant is able to return to work without restriction.

✓ The claimant is able to return to work with the following restrictions:

no prolonged walking or standing, no kneeling, crawling or squatting,
no work at heights

 The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

 will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not),

 will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

shots, braces, NSAIDs

Treating Physician

Date

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

FILE NO.: 1119818

SHAMEKA S. GREEN,)
Employee,) DEPOSITION OF
vs.) SHAMEKA S. GREEN
TELEPERFORMANCE, INC.,) JUNE 27, 2013
Employer,)
and)
ZURICH NORTH AMERICA)
Carrier/Defendant.)

Deposition on oral examination of SHAMEKA S. GREEN,
reported by Cecelia P. Englert, Court Reporter and Notary
Public in and for the State of South Carolina; pursuant to
Rule 30 of the South Carolina Rules of Civil Procedure;
said deposition was taken at the offices of Holler, Garner,
Corbett, Ormond, Plante & Dunn, 1777 Bull Street, Columbia,
South Carolina, on the 27th day of June, 2013, scheduled
for ten o'clock a.m. and commencing at the hour of 10:04
o'clock a.m.



800.211.DEPO (3376)
EsquireSolutions.com

APPEARANCES:

Representing the Employee:

EVERETT H. GARNER, ESQUIRE

Holler, Garner, Corbett, Ormond, Plante & Dunn

1777 Bull Street

Columbia, South Carolina 29201

Representing the Carrier/Defendant:

MATTHEW MOSER, ESQUIRE

McAngus, Goudelock & Courie, LLC

1320 Main Street, 10th Floor

Columbia, South Carolina 29201



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EXHIBIT INDEX:	PAGE:
(None proffered.)	

Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption
... Indicates trailing off

1
2 This deposition is taken in accordance with the
3 South Carolina Rules of Civil Procedure.

4 It is agreed and stipulated by the deponent and
5 respective counsel that the reading and signing of the
6 deposition by the deponent is expressly waived.

7 WHEREUPON:

8 SHAMEKA S. GREEN, being duly sworn and cautioned
9 to speak the truth, the whole truth and nothing but the
10 truth, testifies as follows:

11 EXAMINATION BY

12 MR. MOSER:

13 Q. Good morning, Ms. Green. Again my name is
14 Matt Moser. I'm an attorney with the McAngus,
15 Goudelock and Courie Law Firm here in Columbia. We
16 represent the Teleperformance Group and their workers'
17 comp insurance carrier in your claim that we're
18 obviously here for today.

19 A. Yes.

20 Q. And as Madam Court Reporter just let you
21 know, we're going to just be asking you some questions
22 here today. So try to speak up. Try to say "yes" or
23 "no," rather than just shaking your head. Try to let
24 me finish my question before you go and I'll do the
25 same. And then that way we'll have a very clear

1 record of what went on here today, okay?

2 A. Okay.

3 Q. Let's start by stating your full name for
4 the record, please, ma'am.

5 A. Shameka Shunta Green.

6 Q. And what do you go by to friends and family?

7 A. Shameka Green.

8 Q. Where do you live presently?

9 A. 3643 Falling Springs Road, Apartment D, as
10 in dog, Columbia, South Carolina 29203.

11 Q. How long have you lived at that apartment?

12 A. I just moved there May, beginning of May.

13 Q. And where did you live prior to that?

14 A. 1607 Kathleen Drive, Columbia, South
15 Carolina 29210.

16 Q. Are you from Columbia?

17 A. Yes.

18 Q. How old are you?

19 A. Thirty-nine.

20 Q. And what's your date of birth?

21 A. 1/14/74.

22 Q. Are you married?

23 A. No.

24 Q. Have you ever been married?

25 A. Yes.



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1 Q. How many times before have you been
2 married?

3 A. Just once.

4 Q. And when was that marriage?

5 A. Oh gosh. That's been a while. 1990, 1993.

6 Q. Did you have any children?

7 A. One.

8 Q. How old is that child?

9 A. My daughter is 20.

10 Q. Is your daughter financially dependent on
11 you?

12 A. Yes.

13 Q. How so?

14 A. She's a single mom. Might as well say, the
15 grandchild pretty much help with the baby. She is
16 trying to go to school, which is college. Single mom,
17 trying to raise a baby, really don't know too much
18 about parenting right now.

19 Q. Do you, for example, pay your daughter's
20 rent on a regular basis or anything like that?

21 A. No.

22 Q. Just money when she needs it?

23 A. Yes.

24 Q. Does anybody else live with you in the
25 apartment on Falling Springs Road?

1 A. No, just me.

2 Q. Is it a one bedroom apartment?

3 A. Yes.

4 Q. Is it on first floor or second floor?

5 A. It's flat level.

6 Q. Right on the street level?

7 A. Yes.

8 Q. Are there any stairs in the apartment?

9 A. There is.

10 Q. Is your apartment two stories?

11 A. Yes.

12 Q. Do you have difficulty navigating those
13 stairs?

14 A. Yes. Just take it one step at a time
15 because that's what I could afford at the time.

16 Q. How many stairs are in this apartment?

17 A. It's about nine.

18 Q. Is the bedroom upstairs or downstairs?

19 A. Upstairs.

20 Q. So you go upstairs every day?

21 A. Pretty much, yes.

22 Q. And just so I'm clear, started living in
23 this apartment in May of 2013?

24 A. Yes.

25 Q. 1607 Kathleen Drive --

1 A. Yes.

2 Q. -- what was located at that address? Was it
3 a home, apartment?

4 A. It was apartment.

5 Q. Were there stairs in that apartment?

6 A. Yes, it was as well.

7 Q. Same setup?

8 A. It was actually more and it was pretty
9 difficulty getting up and down the steps as well
10 there. Due to financial hardship, you know, had to
11 move out of there because pretty much from February to
12 May, I was pretty much homeless. So I've been in and
13 out of cars, with friends and relatives until I moved
14 to the apartment that I can afford, with what I'm --
15 what's going on now.

16 Q. Do you pay rent or mortgage at the apartment
17 that you're at now?

18 A. Yes.

19 Q. Rent?

20 A. Yes, rent.

21 Q. How much is that rent per month?

22 A. The rent is \$575.

23 Q. Are the only one responsible for that rent?

24 A. Yes.

25 Q. How far did you go in school?

1 A. I graduated and did some college at Midlands
2 Tech.

3 Q. How much college at Midlands Tech?

4 A. I would say about six months.

5 Q. Did you have any sort of specialty when you
6 attended school there?

7 A. No, uh-uh.

8 Q. How long ago was that?

9 A. I'm sorry?

10 Q. How long ago was that?

11 A. '90 -- '94.

12 Q. Have you done any other further
13 education --

14 A. No, sir.

15 Q. -- beyond that?

16 A. No.

17 Q. Do you have any other special licenses or
18 certificates or anything like that?

19 A. No.

20 Q. Have you ever served in the military?

21 A. No, sir.

22 Q. Have you ever had a workers' comp claim
23 before this one?

24 A. No.

25 Q. Do you have any sort of a criminal record?

1 A. Yes, I do.

2 Q. And just very briefly, what does that
3 involve?

4 A. Well, it was a cars -- disposing car under
5 lien. Pretty much, I was moving and had to get rid of
6 the car. It was just sitting there, wasn't working,
7 motor, transmission gone. Called the people to come
8 get it, never come get it. Then three months and
9 still hadn't came get it, so I called the tow people
10 to come pick it up.

11 Q. How long ago was that?

12 A. That would have been about three years ago,
13 two or three years ago.

14 Q. Was it here in Columbia?

15 A. Yes.

16 Q. Is that your only --

17 A. Yes.

18 Q. You mentioned that you haven't had any past
19 workers' comp claims. You ever been hurt on the job
20 before?

21 A. No.

22 Q. Have you ever been in a car accident that
23 required you to get medical treatment?

24 A. No.

25 Q. Have you ever sued anybody for any reason?

1 A. No.

2 Q. You ever been sued by anybody for any
3 reason?

4 A. Not that I'm aware of.

5 Q. That's a positive. It's my understanding
6 you haven't filed for any Social Security benefits of
7 any kind?

8 A. No, I haven't.

9 Q. What's your income presently?

10 A. Very low. Right now I'm -- I'm on permanent
11 part-time disability due to workers' comp. So I may
12 bring home my check, not even close to three/four
13 hundred every two weeks on the 7th and the 22nd.

14 Q. And that's your check from Teleperformance
15 Group?

16 A. Yes.

17 Q. And then that's supplemented with the
18 partial --

19 A. Partial. It depends on the hours worked.

20 Q. And how many hours per week are you working
21 for Teleperformance right now?

22 A. It's -- I do -- I'm counting it. I do
23 Monday I do five; Tuesday I do four; Wednesday,
24 Thursday is five hours, and then Friday is four hours,
25 about 20/25.



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1 A. Twenty-three hours.

2 Q. Is that a set schedule? Or is that --

3 A. Yes.

4 Q. -- based on need?

5 A. That's a set schedule I've had since the
6 injuries. It's been going on two years now.

7 Q. You've been working that schedule for close
8 to two years now?

9 A. Close to two years, yes. I was working full
10 time, doing like 45 hours a week. So that dropped
11 drastically.

12 Q. And what are you getting paid? Are you
13 getting paid hourly?

14 A. Yes, \$10.25.

15 Q. How does that compare to the hourly pay you
16 were receiving before your injury?

17 A. I was only getting \$9.25 then.

18 Q. So your hourly pay has increased, but your
19 hours have gone down.

20 A. Correct.

21 Q. How have your job duties changed since then?

22 A. They're pretty much the same. I sit and
23 like a lot, I do get up and walk around a lot. It is
24 -- then I can do it. I mean, I could sit for eight
25 hours and do overtime for four or five hours. Now

1 it's hard to sit down for a long period of time
2 without my, you know, knee locking up. Or if I stand
3 up -- walk for a long period of time, it's -- it
4 hurts. My swells up really bad.

5 Q. We'll get further into how you're doing at
6 work now, here in a little bit. But right now, just
7 give me a very, very rundown of the type of work
8 you've done in the past, since graduating high school.

9 A. Sure. I did work for law enforcement from
10 November of 1997 to 2007, did work law enforcement, so
11 --

12 Q. Who did you work for?

13 A. SLED on Broad River Road. So I did move a
14 lot. I'm sorry, go ahead.

15 Q. That's okay. Why did you leave SLED in
16 2007?

17 A. I had a bad house fire and just resigned.
18 Too much. And I was what you call a one man's job of
19 doing what five people was doing, but I was the only
20 one doing the -- the job. And my family comes first.
21 Had a child at the time and child comes first.

22 Q. So how long were you out of work, starting
23 in 2007?

24 A. 2007, that's when I left there and I started
25 working at hotel. Gosh, I forgot the name of the

1 hotel.

2 Q. That's quite all right.

3 A. Okay.

4 Q. Just put down a hotel.

5 A. I wasn't there very long. And then from
6 there, I went to McDonald's; wasn't there very long.
7 And then I went back to the hotel Cambridge Plaza
8 Hotel, and there I was there for a while. I was there
9 for like four years at Cambridge Plaza Hotel. I was
10 assistant front -- front desk clerk there. A lot of
11 walking, a lot of moving, checking on meets. From
12 there, I worked at Burger King, where I was assistant
13 manager. I was doing both jobs at the time, the hotel
14 and Burger King, so I was moving quite a bit. What
15 else. From Burger King, that's when I went to
16 Teleperformance, dropped Burger King and the hotel was
17 shut down by the police department. So that left me
18 just the one job, which I started in June, 27th of
19 2011.

20 Q. And then shortly thereafter is when you had
21 your work injury?

22 A. Yes. I had that on September 23rd of 2011.

23 Q. When you were working for SLED, was that in
24 an administrative type of job?

25 A. I was administrative coordinator two.

1 Q. And then, so after beginning work at
2 Teleperformance June of 2011, there about three months
3 later, September 2011 you had your injury. Just tell
4 me real quick -- obviously, we've admitted this
5 injury, provided treatment, but tell me in your own
6 words real quick what happened when you were injured.

7 A. At the time, I was working at night. And I
8 sat right in front of mission control, which is where
9 they monitor all the calls and then right behind me
10 was the supervisor's desk. It was a issue with one of
11 the customers on the phone, their accounts. So the
12 supervisor came over to assist me when the supervisors
13 -- I mean, not supervisor, but the customers complaint
14 about their account. As he was leaning on the desk,
15 the desk then collapsed. I was facing parallel to --
16 the supervisor was to the right, where when the desk
17 collapsed, it fell directly on my right knee.
18 Everything came out the wall, metal, computer,
19 everything pretty much fell. It was so loud, to
20 everybody stood up, everybody rushed over there, make
21 sure I was okay.

22 Q. And what was the name of that supervisor?

23 A. Oh gosh, that's even if he's still there.
24 He works at night. I'm not at night no more. Haven't
25 been at night for over a year. He wore glasses, he --

1 he dressed real preppy. And then he had Tanejua that
2 was there; she's a supervisor that worked at night,
3 and Diana Britt, she's the overall supervisors for the
4 supervisors, meaning she's the head honcho.

5 Q. And then, did you get any medical treatment
6 that night?

7 A. I did go to the hospital. I then later
8 called -- after I left the hospital, the next day I
9 called Diana -- not Diana, yeah, Diana. She told me I
10 had to call the medical claim or something, file a
11 medical claim. They then sent me to Doctor's Care.
12 From Doctor's Care, they got a report back. I got a
13 call from -- oh, gosh, the medical adjustor, Pat Body,
14 saying that they want a second opinion. So that's
15 when I was referred to Dr. Nguyen, and Dr. Nguyen sent
16 me to have a MRI, and it was confirmed, the same
17 information from Doctor's Care.

18 Q. And obviously, we have these records here
19 that we can look at. But it's good for us to be able
20 to just kind of get your perceptive --

21 A. Yes, sir.

22 Q. -- on how the treatment went. So did
23 Doctor's Care do anything for you, other than maybe
24 give you a little bit of medicine?

25 A. Yeah, correct. They just gave me pain

1 pills, Hydrocodene and some Tylenol, which is pretty
2 much it.

3 Q. Did that help?

4 A. No. Uh-uh.

5 Q. And then you began treating with Dr. Nguyen.

6 A. Yes.

7 Q. And again from your perspective, tell us
8 about the treatment that he provided for you and how
9 it affected you, either good or bad, what helped, what
10 didn't help, stuff like that.

11 A. He did -- I -- I think he did a very good
12 job. He was very listening and if like any pain
13 occurred, he made sure that MRIS was done. What was
14 really helpful was the surgery, because it did help a
15 little bit, not much, because I still have like
16 arthritis in the knee. The pain is still there
17 consistently. Then injections did help. It did stop
18 the pain for about a week. But then after a week, the
19 pain came back with the injections that was given. I
20 had several knee braces. They did give me a ice
21 mobilizer that I do use, I still use to this day, from
22 after the surgery which, you know, the swelling in the
23 leg.

24 Q. Tell me what that is again.

25 A. Ice mobilizer. It's like a machine where

1 you put ice and you just wrap your knee with the ice
2 pack and let it sit for about 20 minutes.

3 Q. Do you use that daily?

4 A. I use that probably three times a month, for
5 the swelling.

6 Q. Where did that come from? Was that
7 prescribed?

8 A. Yes. It was -- it was given to me after my
9 surgery I had.

10 Q. And that was all taken care of through the
11 insurance?

12 A. Yes.

13 Q. What other treatment do you do for yourself
14 at home, if any?

15 A. The steps one. That -- that helps a little
16 bit because it helps to move that knee without it
17 getting stiff, because when it get stiff, it hurts
18 really bad. That's why I can't sit, can't walk for
19 long period of time. Also, I was doing therapy. The
20 therapy was helpful. It did get me back into walking
21 without being scared that I'm going to fall. And I
22 do, you know, try to walk, kind of keep my leg, you
23 know, moving, because if not, it's -- it hurts.
24 Especially rain, cold, it hurts really bad.

25 Q. Do you have any physical therapy exercises

1 you're able to do at the house?

2 A. Yes. I do -- I was told I can sit on the
3 end of the bed, kind of bend my leg back and forth,
4 wiggle my feet a little bit.

5 Q. Are you able to do that?

6 A. Yes.

7 Q. Does that help?

8 A. It helps a little bit, especially when it --
9 when I'm asleep, when I get up in the morning and I've
10 been laying down for that long period of time, the
11 stiffness. And you can hear it -- you can actually
12 hear it pop in and out still.

13 Q. You mentioned being scared of having any
14 falls because your knee. Have you had any falls since
15 your surgery?

16 A. No, uh-uh.

17 Q. Does your feel more stable, like you're not
18 at risk of falling now? Or do you still feel that
19 way?

20 A. On certain -- certain things, yes, rain.
21 Rain and being -- coming down the steps and stuff like
22 that, I'm -- I do have a rail where I could hold onto.
23 But that does -- it is scary because sometimes my knee
24 still -- to this day, my knee pops out of place. It
25 still in and out.



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1 Q. When you say it pops out of place, do you
2 have to do anything to pop it back into place?

3 A. Just bend it back into place.

4 Q. Does it actually become dislocated?

5 A. It has that popping noise. I mean, it's
6 kind of hard to explain.

7 Q. Do you ever feel like you need to go to the
8 hospital?

9 A. No, no, no. It's -- it's almost like it's
10 moving out of -- out of joint or something like that.
11 But it's actually not, it's just -- I don't know; it's
12 kind of hard to explain.

13 Q. Is it more similar to like something being
14 dislocated? Or more like just kind of cracking your
15 knuckles?

16 A. Cracking in my knuckles, like -- like the --
17 that cracking noise.

18 Q. You think that's coming from --

19 A. The knee, yeah.

20 Q. -- arthritis?

21 A. It's coming from my knee.

22 Q. Had you ever experienced that before?

23 A. No, uh-uh.

24 Q. You mentioned knee braces. Do you currently
25 wear a knee brace?

1 A. No. I was told by doctor -- because I've
2 had so many, and I've been measured for so many knee
3 braces that the knee braces don't work. They end up
4 either falling down, and I'm scared that if it falls
5 down or if it come off or -- that it's going to
6 trigger some falling or something like that. So I was
7 told just don't wear the knee brace. I do have a
8 sleeve, which is about like a sport sleeve that I do
9 wear sometimes. It's a hole around the sleeve, but
10 that's about all.

11 Q. Are you wearing any brace or sleeve today?

12 A. No, I'm not.

13 Q. How often do you wear the sleeve?

14 A. Not often, not often.

15 Q. Why?

16 A. Because it swells my feet up.

17 Q. When was the last time you wore a brace?

18 A. Oh, it's been about February, about
19 February, February/March.

20 Q. Could you readjust the brace to fit tighter?

21 A. Yeah, it don't work, because I -- I'm a
22 -- I have thick legs, so I have like what you call a
23 ring, a sore, it gets sore on my leg.

24 Q. But you're able to walk around.

25 A. With the -- with the brace, yes.

1 Q. Are you able to walk around without the
2 brace?

3 A. Yeah, for just little bit, I mean, without
4 it hurting, as far as the brace being tightly on my
5 leg.

6 Q. When you returned to work, you kind of were
7 talking about this a little bit earlier, your hours
8 went down.

9 A. Yes.

10 Q. Your pay went a little bit up.

11 A. Uh-huh.

12 Q. Was there a reason for your pay increasing
13 like that?

14 A. Well, I -- I was shock. I was told that we
15 get a pay increase every year, so that's all I know.
16 I -- I wasn't mad and I wasn't sad.

17 Q. And you mentioned that your job duties
18 stayed about the same?

19 A. Yes.

20 Q. Tell us what those job duties are right when
21 you went back to work and if they've changed in any
22 way to the present day.

23 A. Well, I answer the calls that come in the
24 cue. If a supervisors is complaining -- I mean a
25 supervisor -- customers is complaining, we was told to

1 raise our hand, but it's -- supervisor are very scarce
2 to none. I don't know if you've ever been in
3 Teleperformance, but you have to pretty much find a
4 supervisor to take the call. So you pretty much have
5 to walk around the call center to see if supervisor
6 could take the call. Then you're sitting for long
7 period of time. You may have a 15 minute break. I
8 think I only have one 15 minute break for the hours
9 that I work. And with that 15 minute break, they do
10 allow you to walk around a little bit, but I just sit
11 down and kind of not move too much, just go in the
12 break room and sit down. Pretty much, that's all,
13 just sitting, walking and trying to find a supervisor.

14 Q. And that's pretty similar to how it was
15 before --

16 A. Yes.

17 Q. -- this injury?

18 A. Yeah.

19 Q. Do you feel like you're able to perform your
20 work duties satisfactorily?

21 A. Yes. I mean, I can perform it
22 satisfactorily, but not for a long period of time.

23 Q. You're able to do it for the hours that
24 you're scheduled --

25 A. Yes.



1 Q. -- presently? Because of the decrease in
2 hours, have you looked for employment elsewhere?

3 A. No.

4 Q. Right now, tell me all the problems that
5 you're having.

6 A. Where do you want me to begin. When you say
7 "all the problems," are you talking just body-wise,
8 physically, mentally, emotionally?

9 Q. All of it --

10 A. All.

11 Q. -- if you can.

12 A. Okay. Number one, my leg, which part of my
13 knee hurts really bad, especially when it rains, it
14 get cold, sitting, walking. Also, back pains from
15 when I did have to have the brace on. I did have the
16 brace on after surgery for close to a year, I had that
17 brace on. I could take it off at bedtime. Caused a
18 lot of strain, just walking as far as my leg because I
19 have to walk a certain way, my back. I had problems
20 with one of the adjustors in the beginning -- workers'
21 comp adjustors in the beginning, who held my checks,
22 that caused financial hardship as far as rent not
23 being paid on time because I depended on that check to
24 cover back bills, you know, stuff within the home, my
25 -- my child, financially stress.

1 As far as, you know, what's expected next, what's
2 going to go on next, not knowing, you know, if -- if
3 I'm going to lose a leg or, you know, if long-term in
4 jeopardy of my knee being out, which it is permanent
5 as far as me being on permanent, as far as the hours,
6 that Dr. Nguyen said is permanent disabled. I mean --
7 I mean, I could go on and on, but so far, that's the
8 main -- the main, you know, in reference of my knee,
9 my back, financially. I mean, I -- I even wrote down
10 several notes on this, on my paper from the first
11 adjustor from beginning to end.

12 Q. Well, let's take this one at a time.

13 A. Yes, sir.

14 Q. When you mentioned that your leg hurts, is
15 that your right leg, I'm assuming?

16 A. Yes.

17 Q. You mentioned pain. How often do you have
18 that pain?

19 A. On a daily, pretty much every day.

20 Q. Is it --

21 A. It's hard to walk. I walk with a -- a limp
22 now.

23 Q. How often do you walk with a limp?

24 A. Often. Like I used to could wear heels; I
25 can't wear any heels. I'm -- I'm pretty much stuck

1 with flats. If I do wear a heel, it has to be a tiny,
2 tiny heel. And then I'm scared to wear the little --
3 the two -- little one inch little heels because I walk
4 with that little limp with my knee.

5 Q. From the time that you wake up until the
6 time that you go to bed, is it hurting all the time?
7 Or does it come and go?

8 A. Come and go. I do have moments where it do
9 hurt a lot and I do have -- well, Dr. Nguyen has given
10 me like Hydrocodene and muscle spasm. I may take that
11 probably once a month, twice a month, if that, because
12 that's -- it can be very addicting. So I make sure I
13 just limit that to a minimum.

14 Q. Are you currently prescribed both of those
15 medications?

16 A. Yes.

17 Q. And you said you take them about once a
18 month?

19 A. Yes.

20 Q. When you have pain in your right leg, is it
21 strictly in and around your right knee?

22 A. You ever had a charley horse?

23 Q. I have.

24 A. That's how bad it is.

25 Q. Does it go up into your thigh? Or it sits

1 just right there in your knee?

2 A. Sits right in my knee, for like from my knee
3 to my toes and it hurts.

4 Q. Down to your toes.

5 A. Yes.

6 Q. I'm sure you've done this before, but the
7 pain that comes and goes, I would like you to rate it
8 for me on a scale of 1 to 10, 0 being no pain, 10
9 being emergency room pain.

10 A. It's about 8.

11 Q. And that's when it comes.

12 A. Yes.

13 Q. How about when it goes?

14 A. When it goes --

15 Q. Does it go to a zero?

16 A. -- it's about -- about a 5, a 5, 6.

17 Q. And you described, that would be like a
18 charley horse?

19 A. Yes.

20 Q. Does it ever change from that? Or is that
21 pretty --

22 A. Pretty much the same. That's why I was
23 prescribed the muscle spasms because if you ever had a
24 charley horse, that is one serious pain. Imagine
25 having them constantly.

1 Q. What makes it better when you get that pain?

2 A. I just start massaging my leg, like
3 constantly massaging my leg. Sitting on the edge of -
4 - wherever I can sit on the edge, maneuver it back and
5 forth, back and forth.

6 Q. Does sitting down and resting it make it
7 feel better?

8 A. Yeah. Wiggling my toes.

9 Q. Does standing up and loosening it up make it
10 feel better?

11 A. It's pretty much just -- no, because then I
12 -- I'll be hopping around if I'm standing up.

13 Q. What, if anything, makes it worse?

14 A. Not doing nothing at all.

15 Q. Not doing anything at all makes --

16 A. Yeah.

17 Q. -- it worse.

18 A. Makes it worse.

19 Q. You mentioned back pains. Am I
20 understanding you correctly saying that was coming
21 from the knee brace that you were wearing?

22 A. Yeah. If you had a knee -- if you ever had
23 knee surgery, you're -- you're tied down to that knee
24 brace and you pretty much can't take it off. At first
25 I was sleeping in it, walking in it, everything I did

1 in it. And I ain't but so tall, and trying to walk
2 and move around, it -- it caused strenuous on your
3 back.

4 Q. Well, how tall are you?

5 A. I am five -- I want to say 4'9"/5.

6 Q. And how much do you weigh?

7 A. You know you can't ask a lady that, 170/180.

8 Q. And I usually tell my folks at the very
9 beginning, none of my questions are intended to
10 embarrass you --

11 A. No.

12 Q. -- or to trick you. I just wanted to be
13 able to understand you just a little bit better.

14 A. Yes, sir.

15 Q. Have you had any problems with your other
16 leg since this work injury?

17 A. No, sir.

18 Q. Have you ever had a problem with your right
19 leg or your right knee before September 23rd, 2011?

20 A. No.

21 Q. Had you ever had any problem with your lower
22 back before that day?

23 A. No, sir.

24 Q. Had you ever had any problems with stress or
25 anxiety before that day?

1 A. Stress.

2 Q. You mentioned stress earlier as --

3 A. Oh, no, because I was bringing well over,
4 was a thousand dollars every two weeks versus now only
5 bringing home not even close to four.

6 Q. Is that the main cause of your stress now?

7 A. Yeah.

8 Q. When was the last time you felt any sort of
9 pain in your lower back?

10 A. About -- about three days ago. Three days
11 ago.

12 Q. Is that pretty rare? Or is that --

13 A. Yeah.

14 Q. Okay. Because you mentioned not having your
15 knee brace on, and --

16 A. Yeah.

17 Q. -- that was the main cause of that?

18 A. Yeah. But then it still comes and goes with
19 any -- like if I've had it on for a year, it comes and
20 goes as far as the back pain, because when my knee
21 locks up, that means I got to kind of shift and move
22 about. And that -- that wears and tears on your back
23 muscle, just as well as the knee muscle.

24 Q. When you're walking around, do you use any
25 sort of assistive device --

1 A. No.

2 Q. -- a cane or anything like that? Going up
3 and down the stairs in your apartment --

4 A. I hold on.

5 Q. -- is there a handrail?

6 A. Yeah. I made --

7 Q. Do you drive -- I'm sorry, go ahead.

8 A. Oh, no, I was just going to say, I made sure
9 there was a handrail.

10 Q. Do you drive a car?

11 A. Yes.

12 Q. What do you drive?

13 A. I drive a 2007 Saturn Ion.

14 Q. And do you own that car?

15 A. No.

16 Q. Do you make payments on that car?

17 A. Yes.

18 Q. Do you have a driver's license?

19 A. Yes.

20 Q. Did you drive here to this deposition today?

21 A. Yes.

22 Q. Is your car an automatic or manual
23 transmission?

24 A. Automatic.

25 Q. Are you able to drive without problem?

1 A. Sometimes. I mean, not all the time. It do
2 hurts to drive and bend my knee back and forth for a
3 long period of time. I do have a friend I can -- that
4 drives me around sometime, but -- oh, my daughter can
5 drive around because she do have her license as well.

6 Q. Have you taken any recent out-of-state
7 trips?

8 A. No. I wish. I need a vacation. No, sir.
9 No.

10 Q. What's the furthest car trip that you've
11 taken recently?

12 A. To work and back.

13 Q. How far of a drive is that for you every
14 day?

15 A. It's on Saint Andrew -- Saint Andrews Road.
16 It used to be five minutes from where I used to stay;
17 now it's about ten minutes.

18 Q. Describe for me, if you will, please, just a
19 typical day for you. And obviously that will change
20 for work days and non-work days. But what time do you
21 usually have to go into work?

22 A. I go into work at nine.

23 Q. What time do you usually wake up?

24 A. About 7:30.

25 Q. Do you require any help getting dressed? Or

1 you able to do that okay yourself?

2 A. I'm able to do that.

3 Q. Are you able to bathe yourself without any
4 problem?

5 A. Yes. It's -- I actually have a -- what you
6 call a safety rail in the shower, just so in case
7 anything happens, I can hold onto the safety rail in
8 my shower.

9 Q. Did that come with the apartment?

10 A. Uh-huh. Yes.

11 Q. Did your old apartment have one of those?

12 A. No. It actually -- I'm sorry, correction,
13 it actually had a place where in the shower you could
14 sit down.

15 Q. Is that your old one or your --

16 A. Old. Old apartment.

17 Q. And so then you're at work for either four
18 or five hours per day --

19 A. Yes.

20 Q. -- usually. How do you usually spend your
21 afternoons?

22 A. Home. Home. I -- I may ride to check on my
23 daughter or they may come and check on me. But other
24 than that, I -- I don't have too much money to go
25 anywhere else but home and to work.

1 Q. How far away does your daughter live?

2 A. She stays off Two Notch. She stays about
3 eight minutes from me.

4 Q. And how old is your grandchild?

5 A. He's one.

6 Q. Are you able to care for him?

7 A. Yes, without -- not a long period of time,
8 for about an hour, if not an hour because he -- he
9 moves a lot. So I probably can care for him for about
10 an hour or something like that. But someone's always
11 there with me with him.

12 Q. So do you ever keep him on your own?

13 A. No, uh-uh.

14 Q. Are you able to go grocery shopping by
15 yourself?

16 A. Yes.

17 Q. Are you able to carry groceries to and from
18 your car in your apartment?

19 A. If I get groceries, I don't get a lot of
20 groceries. I may get about two or three bags or four
21 bags the most because I'm -- I'm eating -- pretty much
22 eating by myself.

23 Q. So is that more of a result of your living
24 situation --

25 A. Yeah.

1 Q. -- or work injury.

2 A. I'm not carrying about no 20 or 10 bags.

3 The most bags is about three to four bags.

4 Q. That's because you live by yourself?

5 A. Yeah.

6 Q. Are you able to, for example, stand outside
7 the car while you pump a tank of gas?

8 A. Yeah.

9 Q. Are you able to do anything for exercise?

10 A. What do you mean for exercise? Go to the
11 gym, stuff like that?

12 Q. Anything like that?

13 A. No.

14 Q. Did you do that before your work injury?

15 A. Yeah, I did.

16 Q. Where did you have a gym membership?

17 A. Granby Fitness, right there off Charleston
18 Highway. Grand Fitness.

19 Q. Grand?

20 A. Yeah, I think that's what it's called.

21 Q. How long ago did you have a membership
22 there?

23 A. Gosh, it been a while. About six years ago.

24 Q. So you didn't cancel it because of this.

25 A. No. I need to lose weight now, so --

1 Q. Do you have any pets?

2 A. No.

3 Q. Are you able to go for a walk?

4 A. Not for a long period of time. I did try
5 and I couldn't -- I had to pretty much get somebody to
6 help me back to the car.

7 Q. Did you do anything for exercise, say, in
8 June, July, August of 2011 --

9 A. No.

10 Q. -- right before your injury?

11 A. Before my injury?

12 Q. Right.

13 A. Yeah. Running, walking, I worked at the
14 hotel, so I'd walk consistently, like up and down
15 -- up and down the steps, floors, because there was
16 four flights, four levels. So I -- I stayed busy. I
17 stayed -- even at Burger King, when you're at Burger
18 King, you -- you got to move. You can't just stay in
19 one spot.

20 Q. But was all of that that you're just
21 describing connected to your past employment?

22 A. Yeah. Yes.

23 Q. So when you were working for
24 Teleperformance, say immediately before this injury,
25 were you doing anything for exercise then?

1 A. No, I wasn't doing anything for exercise.

2 Q. Have you told Dr. Nguyen about all the
3 complaints that you've ever had related to this
4 injury?

5 A. No, uh-uh. We just kept it strictly me
6 related. He -- I did mention my back because he asked
7 was anything else hurting related because of the knee
8 brace, and I did mention my back.

9 Q. But for everything related to this work
10 injury, you've discussed that with Dr. Nguyen?

11 A. Yes.

12 Q. Do you have a family doctor?

13 A. Yes.

14 Q. And who is that?

15 A. His name is Fisher and he's with Lexington
16 Family Practice.

17 Q. When was the last time you've seen Dr.
18 Fisher?

19 A. Been about three weeks ago.

20 Q. And was that for something unrelated to this
21 work injury?

22 A. Yes.

23 Q. What medical conditions do you have that are
24 unrelated to this injury?

25 A. I have high blood pressure.

1 Q. Anything else?

2 A. No.

3 Q. When was your last visit to Dr. Nguyen? Was
4 it when he released you from --

5 A. Yes.

6 Q. -- this injury?

7 A. April 23rd.

8 Q. Have you been back to see him since?

9 A. No.

10 Q. Has your attorney sent you to be evaluated
11 anywhere --

12 A. No.

13 Q. -- for this claim?

14 A. No, sir. I need to make a correction.

15 Q. Please.

16 A. I do have hypertension and iron deficiency.

17 Q. You mentioned that you're doing fine at work
18 now. Would you be able to work more than a four or
19 five hour work day, do you think?

20 A. No.

21 Q. And why is that?

22 A. I mean, I -- I can perform my job fine with
23 the computer. But working longer hours, it's hard to
24 sit down for that long period of time and stand for a
25 long period of time, to be able to find supervisors on



1 that floor.

2 Q. If permitted to take standing or walking or
3 sitting breaks as needed, could you work a full eight-
4 hour work day?

5 A. It -- it just all depends on -- I mean, it
6 very well depends, because sometimes the full break in
7 times are not -- they're long, drawn out. So it -- it
8 just all depends.

9 Q. So you just need accommodation to move about
10 as you please, is that safe to say?

11 A. I guess, yeah.

12 Q. And obviously your communication with your
13 lawyer is none of my business, but have you been
14 presented with what's called a Form 17 to sign, that
15 states that you're able to return to work?

16 A. I'm already at work.

17 Q. Okay. Right. Do you know what a Form 17 is
18 then?

19 A. No.

20 MR. GARNER: For the record, I'm just going
21 to object to this line of questioning. I
22 can explain it later.

23 MR. MOSER: Okay.

24 Q. But you'd agree that, I mean, you've been
25 back to work.



1 A. Yes, I'm -- I'm back to work, but I'm only
2 there as far as permanent through Dr. Nguyen.

3 Q. Okay. We've covered that.

4 A. Oh, yeah.

5 Q. Okay, got you. Do you have any followup
6 medical appointments related to this work injury?

7 A. No. I was told that I can't. If -- if
8 anything was to happen, I can followup, and they will
9 have to get it authorized.

10 Q. And overall, are you satisfied with the
11 treatment you've received from Dr. Nguyen?

12 A. Yes.

13 Q. Is there anything that we haven't discussed
14 that you used to be able to do before this injury that
15 you can't do now?

16 A. Think we pretty much -- the heels, the
17 running, walking long period of time, we covered the -
18 -

19 Q. Do you have any hobbies?

20 A. I wish. I like to shop; can't do that no
21 more.

22 Q. You can't shop anymore?

23 A. No, sir.

24 Q. What's keeping you from that? Is it money?
25 Or is it your knee?

1 A. My knee, being able to walk around that
2 mall.

3 Q. When was the last time you've been shopping?

4 A. Gosh, it's been a while. It's been a while.

5 Q. Where would you usually do your shopping?

6 A. At the mall.

7 Q. Which mall?

8 A. Columbiana.

9 Q. You can't recall the last time you've been
10 back?

11 A. No.

12 Q. Do you have a personal computer in your
13 home?

14 A. No.

15 Q. Are you able to use a computer?

16 A. On my cell phone.

17 Q. Yeah. Do you know how to use a computer?

18 A. Yes.

19 Q. Were you using a computer a lot, I guess,
20 for your job at SLED?

21 A. Yes.

22 Q. All right, ma'am, I believe that's all the
23 questions I have right now.

24 A. Okay.

25 EXAMINATION BY



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1 MR. GARNER:

2 Q. I have a few follow-ups. Shameka, have you
3 had the discussion with Dr. Nguyen about whether or
4 not you wanted a future surgery, or present surgery
5 actually?

6 A. Yes.

7 Q. And is that surgery called a tibial
8 osteotomy?

9 A. Yes.

10 Q. What's your understanding of what that
11 surgery is?

12 A. That surgery is to break the bone in my knee
13 so to cause the pressure as far as the pain, to
14 relieve some of the pressure off my right knee.

15 Q. Did Dr. Nguyen present that to you as an
16 option to try to make you feel better in the long run?

17 A. Yes.

18 Q. And have you made a decision whether or not
19 you want that surgery?

20 A. No, I have not want the surgery because I
21 was told that it's just help to relieve some of the
22 pressure, not all the pressure. So I -- and it caused
23 like eight months out of work, eight months to a year
24 out of work, by him breaking the bone in my knee, in
25 my leg.

1 Q. So you've made that decision based number
2 one, it not being guaranteed to help very much; is
3 that right?

4 A. Correct.

5 Q. And number two, that you might be in the
6 same situation long term regardless?

7 A. Yes.

8 Q. Would you be working full time if you were
9 able, physically able?

10 A. Yes. If I was physically able, I would be
11 making -- working full time, plus overtime.

12 Q. That's all I have.

13 MR. MOSER: Okay. Thank you, ma'am.

14 THE WITNESS: You're welcome.

15 *****

16 Further deponent sayeth not.

17 (There being no further questions, the
18 deposition concluded at 10:49 a.m.)
19
20
21
22
23
24
25



CERTIFICATE OF REPORTER

I, CECELIA P. ENGLERT, COURT REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE,
HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF SHAMEKA
S. GREEN, ON THE 27TH DAY OF JUNE, 2013, THAT THE WITNESS
WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 43 PAGES
CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID
DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID
TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO
MATTHEW MOSER, ESQUIRE, MCANGUS, GOUDELOCK & COURIE, LLC,
1320 MAIN STREET, 10TH FLOOR, COLUMBIA, SOUTH CAROLINA,
WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL
BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO
TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER
ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
30TH DAY OF JUNE 2013.

CECELIA P. ENGLERT, COURT REPORTER
MY COMMISSION EXPIRES JUNE 3, 2018



800.211.DEPO (3376)
EsquireSolutions.com

**Camden Orthopaedic Associates
507 Walnut Street
Camden, SC 29020**

Joseph P. Jackson, Jr., M.D., F.A.C.S.

Telephone (803) 4329300

09/05/14 Shamcka Green DOB: 01/14/74 #15217 Orthopaedic Exam

Independent Medical Evaluation

Problem: Right kncc pain

Mr. Hope Garner, the patient's attorney for Workman's Compensation case, asked me to perform an independent medical evaluation on Shameka Green, who is now age 40 and a half. In 2011 she was working at Direct TV as a customer service representative when a table collapsed onto her right knee, resulting in immediate pain and swelling. She was seen by Doctor's Care, eventually found her way to Dr. Noojin who exhausted conservative measures and in 2012 did an arthroscopy of the right knee with the findings of arthritis of the medial femoral condyle and partial tears of both menisci. He did an anterior cruciate reconstruction. I have reviewed incomplete records of that encounter. I did see arthroscopy videos and reproductions of x-rays on a disk. I reviewed Dr. Noojin's deposition. I have the same problem that he had in that the disk could not readily be assessed for interpretation of these data. They did not show any overt arthritic changes.

ROS: Patient has hypertension, we will comment about that separately below.

Previous Surgery: She, in addition to the above surgery, in February of 2014 had a large cyst, baby watermelon sized, removed from her abdomen along with an appendectomy.

She is getting over that fairly well and is now working four hours a day at Direct TV. She lost her job at Burger King, where she was also working when she was at Direct TV. She had a third job to try to make ends meet doing accounting as a night-time desk clerk at various hotels around town. She can no longer do that work because of her knee pain.

Family History: Noncontributory.

Social History: Does not smoke or drink.

Medications: Lasix, Cardvillol, Lostran, Lisinopril, Aspirin, Tylenol.



Camden Orthopaedic Associates
507 Walnut Street

09/05/14 Shemeka Green DOB: 01/14/74 #15217 Orthopaedic Exam Continued
Page Two

Objective: BP 160/110. P-78. R-20. Ht 5'1". Wt 187 lbs. on our scales, which are kind to patients and weigh light. We calculated a BMI of 35.3. This is a very pleasant, neatly dressed lady, that is not faking bad. She is a forthright historian. She is mentally sharp and focused. The patient's gait is antalgic. Quick component left. She says that she plans to resort to a cane full time to get around. As she sits in a standard office chair in the exam room her right foot does not touch the floor but her left foot does. That indicates that she has loss of flexion. When I observe her stand she has hyperextension of the left knee and has a flexion contracture of the right knee. She is incapable of hopping on one leg on the right leg and cannot squat. As I palpate the knee through a range of motion I appreciate a large effusion. I appreciate patellofemoral crepitus and notice that even though she has a large tissue envelope that she has a palpable lateral tibial osteophyte and palpable medial osteophytes. Range of motion measured with a goniometer is 10 - 90°. Given her total active arch of flexion of 80°. She has a mild Lachman's and mild anterior drawer, trace pivot shift. Pulses are intact. Sensibility is intact. She has well healed arthroscopic surgical incisions. The knee feels slightly warm.

We took x-rays today in our office and assessed the previous disk by our computer where we can see them. Unfortunately, we cannot get a side by side comparison with this technology but I do notice on our today's x-rays there is complete loss of joint space on the medial side. There is a varus deformity. We measured that at 10° with goniometer. There is retained tibial hardware in the form of a washer and screw and an end of button. She has large holes from the hamstring soft tissue reconstruction, which may indicate a windshield wiper effect. Those holes appear to be appropriately positioned. We can see anterior osteophytes on the lateral side and the medial side and the tibia is subluxed medially about less than a half of cm compared to the opposite side. On the lateral x-ray she has distal femoral osteophytes, posterior femoral osteophytes, patellofemoral osteophytes and distal tibial osteophytes. So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse.

Furthermore, we measured for atrophy and the patient has thigh circumference 10 cm above the superior pole of the patella 45 cm on the right; 53 cm on the left. Her calf circumference is 38 cm on the right; 39 cm on the left. Accounting for 8 centimeters worth of atrophy on the left thigh and 1 cm discrepancy on the left.

Plan: Further recommendations of the AMA Guide to Evaluating Impairments, Sixth Edition, I evaluated the impairment several different ways. On the basis of loss of motion she is entitled to a whole person impairment of 8% or 20% lower extremity impairment. That information is found on page 537, Table 17-10. Table 17-6 on page 530, which incorporates muscle atrophy, entitles the patient to 7% whole person impairment or 8% for the calf, 13% for the lower extremity. Using the metric of gait derangement she falls into the moderate category of gait impairment with demonstrated osteoarthritis and resorting to use of a cane, which she feels like she will have to do, ~~and that is a moderate~~ *lower* impairment of the whole person 20% of the lower extremity. This ~~whole person~~ *lower* impairment would be a 49% lower extremity impairment. Finally, looking at Table 17-33, page 546 the values for meniscectomy and that would be a 2% whole person impairment, 4% lower extremity impairment for partial meniscectomies and for mild cruciate laxity she would be entitled to a 3% whole person impairment, 7% lower extremity impairment. I think for an accurate rating of the patient that the values in Table 17-33 should be added to the gait impairment derived from Table 17-5 on page 529 for a total of 25% whole person impairment or 62% lower extremity impairment. Furthermore, based upon my review of the literature and experience I believe that a valgus producing osteotomy is contraindicated with a significant flexion contracture and tricompartmental osteoarthritis. I think that it is inevitable that the patient will need a total knee. In the June 2014 Journal of Bone and Joint Surgery, Volume 96-A, #11, there is an article by Peter Durman, M.D., MBA entitled "The Role of Overweight and Obesity in Relation to the more rapid growth of Total Knee Arthroplasty Volume Compared with Total Hip Arthroplasty Volume". The essence of this article is that obese patients are driving up the demand for total knees at an even younger age. Current practice guidelines for non-operative treatment of osteoarthritis of the knee call for self management on behalf of the patient with quadriceps strengthening and weight loss. Her BMI, especially with severe hypertension she has today and on the appended list of medicines, i.e. four for hypertension, would certainly mandate getting down to a more healthy weight. Her profound quadriceps atrophy in my hands would preclude any operation and especially a valgus producing osteotomy because she inadequately rehabilitated. One does not need a bunch of fancy tests, such as ~~Sybex~~, when one can use a tape measure to see if the circumference of thighs are the same right and left. Clearly, an 8 cm discrepancy indicates significant quadriceps weakness. Adjunctive measures, such as Cortisone injections or Viscous supplementation, such as Synvisc, could be done to buy the patient some time. This patient certainly cannot work three jobs as she did in the past to support her family. She has two children at home, an 18 year old girl and a 3 year old boy, and she is doing the best that she can. If her pain gets to the point that she



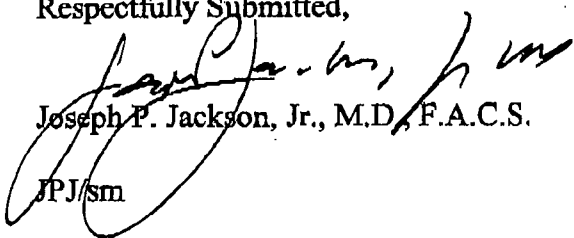
09/05/14 Shameka Green DOB: 01/14/74 #15217 Orthopaedic Exam Continued
Page Four

cannot stand it then I think that she needs to go to a regional expert in joint replacement, such as Dr. Tom Fehring at Charlotte Orthopaedic Hospital Ortho Carolina or Dr. Del Schutte at East Cooper Hospital. A total knee in a young person needs to be done perfectly the first time for the maximum longevity. We can anticipate that the patient would need at least two total knees in her lifetime. The point of the weight loss is to decrease the demand on the prosthesis so that it does not wear out quickly.

In summary, there has been clear progression of the patient's disease despite her best effort and my opinion is that she should not undergo a valgus producing osteotomy because she no longer meets the criteria for that and because it is much more difficult to do a good total knee after a valgus producing osteotomy. The risks of infection would go up because of the previous hardware and then adding more hardware for the valgus producing osteotomy would make her chances for the best total knee possible less likely.

Note, this encounter does not establish an intention to treat. It was at the request of her attorney for an independent medical evaluation and was dictated in the presence of the patient for completeness and accuracy.

Respectfully Submitted,


Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

SEP 10 2014

CAMDEN ORTHOPAEDIC ASSOCIATES
507 Walnut Street
Camden, SC 29020
Telephone: 432-9300

Joseph P. Jackson, Jr., M.D., F.A.C.S.
DEA No. BJ0821531
S.C. REG. 7447

NAME: Shameka Thum AGE: _____
ADDRESS: _____ DATE: 8/13/14

Rx

X-ray (B) Knees
standing AP & lateral
(APs on same film)
dx: Knee pain

Refill: _____ Times: _____
Dispense as Written: _____ M.D. _____
Substitution Permitted: _____

Fax: 803-252-8290

Shameka Pick-up 8/14/14 @ 3:05 PM

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF FRANK K. NOOJIN, M.D.
COUNTY OF LEXINGTON)

Personally appeared before me Frank K. Noojin, M.D., who after being duly sworn deposes and says:

1. I have been the treating orthopaedic surgeon for Shameka Green beginning on December 1, 2011.
2. I performed surgery on Ms. Green's right knee on February 21, 2012 denominated as a right knee arthroscopy with arthroscopic ACL reconstruction using hamstring autograft, partial medial meniscectomy and lateral meniscus repair.
3. I continued treatment of Ms. Green until discharging her with an impairment rating on April 23, 2013.
4. Prior to discharge, Ms. Green and I had discussed the option of additional surgery in the form of a high tibial osteotomy which is a radical surgery with an extended recovery time of approximately 6 months.
5. Ms. Green initially indicated that she did not wish to undergo this surgery at the time and I proceeded with the release of her from care on April 23, 2013.
6. Subsequent thereto, Ms. Green has presented to me with worsened pain which in my medical opinion represents a progression of her arthritic condition which was aggravated by the work related accident to the point that I would now recommend the high tibial osteotomy based on my view of her overall condition.

7. Based thereon, she is not presently at maximum medical

improvement and would likely benefit from this surgery in attempting to ameliorate her disability.

8. The underlying precipitating event for her present condition was the work related accident which had the direct effect of activating and aggravating her arthritic condition.

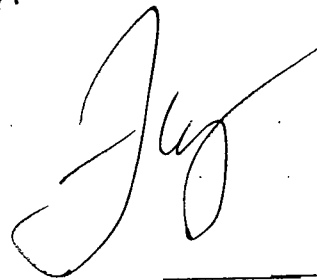
9. If Ms. Green does not undergo the high tibial osteotomy in the near future, her condition will progress past the point of benefit from this procedure.

10. Ultimately, it is my medical opinion that if this situation occurs ie., if the high tibial osteotomy is not performed in the near future, there is a 100% medical likelihood that she would require a total knee replacement most likely between the ages of 45 and 50.

11. I feel that the high tibial osteotomy is the best medical option at this time and will likely tend to lessen her degree of disability.

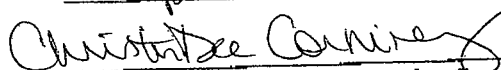
12. All of my opinions herein are stated most probably to a reasonable degree of medical certainty.

Further deponent sayth not.



Frank K. Noojin, M.D.

Sworn to and subscribed
before me this 2ND day
of April, 2014


Notary Public for South Carolina
My Commission Expires: 12/10/17

LAW OFFICES
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1777 Bull Street at Laurel
Columbia, South Carolina 29201
(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
Everett Hope Garner
James J. Corbett
*J. Charles Ormond, Jr.
*Anthony R. Plante
Benjamin A. Dunn, III
* Certified Mediator S.C.

Of Counsel
Stanley G. Freeman
*Steven D. Dennis

Reply To
Post Office Box 11006
Columbia, S.C. 29211

September 12, 2014

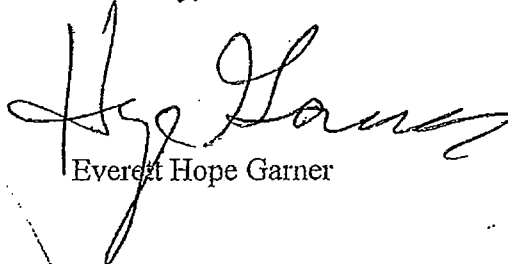
Commissioner Gene McCaskill
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: Shameka Green v. Teleperformance Group Inc.
WCC File No: 1119818

Dear Commissioner McCaskill:

Per your instructions at the hearing on July 9, 2014, enclosed please find the evaluation documentation of Shameka Green by Dr. Joseph P. Jackson for inclusion in the record in the above referenced case. If you should require anything further, please do not hesitate to contact me.

Sincerely,



Everett Hope Garner

EHG\lmk
Enclosure
CC: Kelly F. Morrow, Esquire w/enclosure

RECEIVED

SEP 17 2014

Per 20075.12224

**Camden Orthopaedic Associates
507 Walnut Street
Camden, SC 29020**

Joseph P. Jackson, Jr., M.D., F.A.C.S.

Telephone (803) 4329300

09/05/14 Shameka Green DOB: 01/14/74 #15217 Orthopaedic Exam

Independent Medical Evaluation

Problem: Right knee pain

Mr. Hope Garner, the patient's attorney for Workman's Compensation case, asked me to perform an independent medical evaluation on Shameka Green, who is now age 40 and a half. In 2011 she was working at Direct TV as a customer service representative when a table collapsed onto her right knee, resulting in immediate pain and swelling. She was seen by Doctor's Care, eventually found her way to Dr. Noojin who exhausted conservative measures and in 2012 did an arthroscopy of the right knee with the findings of arthritis of the medial femoral condyle and partial tears of both menisci. He did an anterior cruciate reconstruction. I have reviewed incomplete records of that encounter. I did see arthroscopy videos and reproductions of x-rays on a disk. I reviewed Dr. Noojin's deposition. I have the same problem that he had in that the disk could not readily be assessed for interpretation of these data. They did not show any overt arthritic changes.

ROS: Patient has hypertension, we will comment about that separately below.

Previous Surgery: She, in addition to the above surgery, in February of 2014 had a large cyst, baby watermelon sized, removed from her abdomen along with an appendectomy.

She is getting over that fairly well and is now working four hours a day at Direct TV. She lost her job at Burger King, where she was also working when she was at Direct TV. She had a third job to try to make ends meet doing accounting as a night-time desk clerk at various hotels around town. She can no longer do that work because of her knee pain.

Family History: Noncontributory.

Social History: Does not smoke or drink.

Medications: Lasix, Cardvillol, Lostran, Lisinopril, Aspirin, Tylenol.



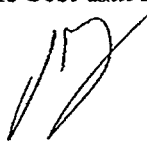
Objective: BP 160/110. P-78. R-20. Ht 5'1". Wt 187 lbs. on our scales, which are kind to patients and weigh light. We calculated a BMI of 35.3. This is a very pleasant, neatly dressed lady, that is not faking bad. She is a forthright historian. She is mentally sharp and focused. The patient's gait is antalgic. Quick component left. She says that she plans to resort to a cane full time to get around. As she sits in a standard office chair in the exam room her right foot does not touch the floor but her left foot does. That indicates that she has loss of flexion. When I observe her stand she has hyperextension of the left knee and has a flexion contracture of the right knee. She is incapable of hopping on one leg on the right leg and cannot squat. As I palpate the knee through a range of motion I appreciate a large effusion. I appreciate patellofemoral crepitus and notice that even though she has a large tissue envelope that she has a palpable lateral tibial osteophyte and palpable medial osteophytes. Range of motion measured with a goniometer is 10 - 90°. Given her total active arch of flexion of 80°. She has a mild Lachman's and mild anterior drawer, trace pivot shift. Pulses are intact. Sensibility is intact. She has well healed arthroscopic surgical incisions. The knee feels slightly warm.

We took x-rays today in our office and assessed the previous disk by our computer where we can see them. Unfortunately, we cannot get a side by side comparison with this technology but I do notice on our today's x-rays there is complete loss of joint space on the medial side. There is a varus deformity. We measured that at 10° with goniometer. There is retained tibial hardware in the form of a washer and screw and an end of button. She has large holes from the hamstring soft tissue reconstruction, which may indicate a windshield wiper effect. Those holes appear to be appropriately positioned. We can see anterior osteophytes on the lateral side and the medial side and the tibia is subluxed medially about less than a half of cm compared to the opposite side. On the lateral x-ray she has distal femoral osteophytes, posterior femoral osteophytes, patellofemoral osteophytes and distal tibial osteophytes. So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse.

Furthermore, we measured for atrophy and the patient has thigh circumference 10 cm above the superior pole of the patella 45 cm on the right; 53 cm on the left. Her calf circumference is 38 cm on the right; 39 cm on the left. Accounting for 8 centimeters worth of atrophy on the left thigh and 1 cm discrepancy on the left.



Plan: Further recommendations of the AMA Guide to Evaluating Impairments, Sixth Edition, I evaluated the impairment several different ways. On the basis of loss of motion she is entitled to a whole person impairment of 8% or 20% lower extremity impairment. That information is found on page 537, Table 17-10. Table 17-6 on page 530, which incorporates muscle atrophy, entitles the patient to 7% whole person impairment or 8% for the calf, 13% for the lower extremity. Using the metric of gait derangement she falls into the moderate category of gait impairment with demonstrated osteoarthritis and resorting to use of a cane, which she feels like she will have to do, and that is a moderate impairment of the whole person 20% of the lower extremity. This ~~whole person~~ ^{would be a} impairment would be a 49% lower extremity impairment. Finally, looking at Table 17-33, page 546 the values for meniscectomy and that would be a 2% whole person impairment, 4% lower extremity impairment for partial meniscectomies and for mild cruciate laxity she would be entitled to a 3% whole person impairment, 7% lower extremity impairment. I think for an accurate rating of the patient that the values in Table 17-33 should be added to the gait impairment derived from Table 17-5 on page 529 for a total of 25% whole person impairment or 62% lower extremity impairment. Furthermore, based upon my review of the literature and experience I believe that a valgus producing osteotomy is contraindicated with a significant flexion contracture and tricompartmental osteoarthritis. I think that it is inevitable that the patient will need a total knee. In the June 2014 Journal of Bone and Joint Surgery, Volume 96-A, #11, there is an article by Peter Durman, M.D., MBA entitled "The Role of Overweight and Obesity in Relation to the more rapid growth of Total Knee Arthroplasty Volume Compared with Total Hip Arthroplasty Volume". The essence of this article is that obese patients are driving up the demand for total knees at an even younger age. Current practice guidelines for non-operative treatment of osteoarthritis of the knee call for self management on behalf of the patient with quadriceps strengthening and weight loss. Her BMI, especially with severe hypertension she has today and on the appended list of medicines, i.e. four for hypertension, would certainly mandate getting down to a more healthy weight. Her profound quadriceps atrophy in my hands would preclude any operation and especially a valgus producing osteotomy because she inadequately rehabilitated. One does not need a bunch of fancy tests, such as Sybex, when one can use a tape measure to see if the circumference of thighs are the same right and left. Clearly, an 8 cm discrepancy indicates significant quadriceps weakness. Adjunctive measures, such as Cortisone injections or Viscous supplementation, such as Synvisc, could be done to buy the patient some time. This patient certainly cannot work three jobs as she did in the past to support her family. She has two children at home, an 18 year old girl and a 3 year old boy, and she is doing the best that she can. If her pain gets to the point that she

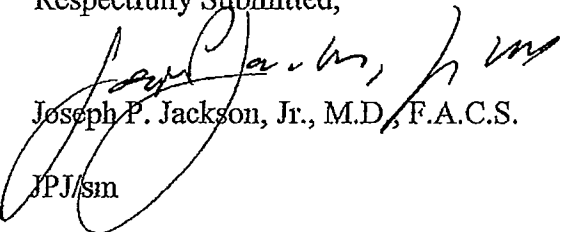


cannot stand it then I think that she needs to go to a regional expert in joint replacement, such as Dr. Tom Fehring at Charlotte Orthopaedic Hospital Ortho Carolina or Dr. Del Schutte at East Cooper Hospital. A total knee in a young person needs to be done perfectly the first time for the maximum longevity. We can anticipate that the patient would need at least two total knees in her lifetime. The point of the weight loss is to decrease the demand on the prosthesis so that it does not wear out quickly.

In summary, there has been clear progression of the patient's disease despite her best effort and my opinion is that she should not undergo a valgus producing osteotomy because she no longer meets the criteria for that and because it is much more difficult to do a good total knee after a valgus producing osteotomy. The risks of infection would go up because of the previous hardware and then adding more hardware for the valgus producing osteotomy would make her chances for the best total knee possible less likely.

Note, this encounter does not establish an intention to treat. It was at the request of her attorney for an independent medical evaluation and was dictated in the presence of the patient for completeness and accuracy.

Respectfully Submitted,


Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

SEP 10 2014

LAW OFFICES
HOLLER, GARNER, CORBETT, ORMOND, PLANTE & DUNN

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(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
Everett Hope Garner
*James J. Corbett
*J. Charles Ormond, Jr.
*Anthony R. Plante
Benjamin A. Dunn, III
* Certified Mediator S.C.

Of Counsel
Stanley G. Freeman
*Steven D. Dennis

Reply To
Post Office Box 11006
Columbia, S.C. 29211

October 24, 2014

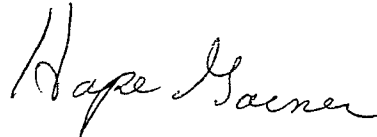
Commissioner Gene McCaskill
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: Shameka Green v. Teleperformance Group Inc.
WCC File No: 1119818

Dear Commissioner McCaskill:

I would request the opportunity to take Dr. Noojin's deposition since he stated conclusions without foundation or explanation and did not address the change in the arthritic condition expounded by Dr. Jackson. Also, Dr. Noojin was not provided the current x-rays taken by Dr. Jackson which he indicated showed unequivocally a change of condition. Please advise at your earliest convenience.

Sincerely,



Everett Hope Garner

EHG

EHG\lmk

CC: Kelly F. Morrow, Esquire

Reply To

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

October 22, 2014

VIA HAND DELIVERY

Commissioner Gene McCaskill
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

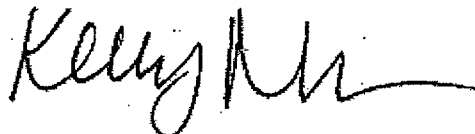
RE: Shameka S. Green v. Teleperformance Group, Inc. and Zurich North
America
Date of Accident: September 23, 2011
WCC File No.: 1119818
Our File No.: 20675.12224
Claim No.: 2800076482

Dear Commissioner McCaskill:

Enclosed herewith please find a completed questionnaire of Dr. Noojin in response to the independent medical examination that was secured by Claimant in the above-referenced case. As you recall, we had a Hearing on this matter on July 18, 2014 wherein you allowed the record to remain open for Claimant's attorney to secure an independent medical examination to address her allegations of a change of condition for the worse. You also allowed me to secure responsive evidence, which is what I am enclosing. As a result, I am asking that the record close and that you render a decision in regard to this matter. I previously sent the same document to Claimant's attorney under separate cover and notified him of my intent to request closure of the record and issuance of a decision as well.

Certainly, should you have any questions whatsoever in regard to the enclosure or my request, please do not hesitate to contact me at any time. I look forward to receiving your final decision on this matter.

Very truly yours,



Kelly F. Morrow

KFM/sso

Enclosure

cc: Everett Hope Garner, Esquire, Holler Dennis Corbett Ormond Plante & Garner
Sharon Holt-Ervin, Zurich North America (via facsimile)

09/30/2014 09:29 Nooj In-CT

(FAX) 803.779.2300

P.002



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

September 17, 2014

Frank K. Noojin, III, M.D.
Moore Orthopaedic Clinic
104 Saluda Pointe Drive
Lexington, South Carolina 29072

RE: Shamaka S. Green v. Teleperformance Group, Inc. and Zurich North America
Date of Accident: September 23, 2011
WCC File No.: 1119818
Our File No.: 20675.12224
Claim No.: 2800076482

Dear Dr. Noojin:

Enclosed herewith please find the independent medical examination we recently received in the above-referenced case from Dr. Jackson of Camden Orthopaedic Associates which was conducted on September 5, 2014. I would kindly ask that you review the enclosed IME and complete the following questions attached hereto. Of course if you have any questions or need any additional documentation in order to provide the responses, please do not hesitate to contact me at any time. If further discussion is necessary, we will be glad to reinstate your deposition, only if necessary.

1. To a reasonable degree of medical certainty are you still of the opinion set forth in your May 15, 2014 discovery deposition wherein you indicated that the Claimant has not sustained a change of condition for the worse as it relates to her original injury of September 23, 2011?

☒ Yes ☐ No

2. Do you still believe as stated in your discovery deposition, that the only thing that has changed relative to this claim is the Claimant's election for the high tibial osteotomy surgery?

☐ Yes ☒ No

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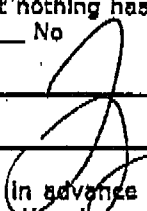
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(FAX)8032278034

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Frank K. Noojin, III, M.D.
September 17, 2014
Page 2

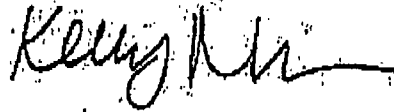
3. Is it still your opinion that you recommended a total knee replacement to the Claimant prior to her original release at maximum medical improvement on April 28, 2013 and that nothing has changed nor accelerated that need?
- ☒ Yes ☐ No

 10/10/14

I would like to thank you in advance for addressing these questions. Again, if you need any additional information in order to provide the responses requested, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,



Kelly F. Morrow

KFM/smg
Enclosures

cc: Sharon Holt-Ervin, Zurich North America (w/o encs)
Everett Hope Garner, Esquire, Hollar Dennis Corbett Ormond Plante & Garner
(w/o encs)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1119818

SHAMEKA S. GREEN,

Employee,

Claimant,

vs.

TELEPERFORMANCE GROUP, INC.,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

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

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND EVERETT
H. GARNER, ESQUIRE:

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

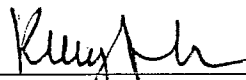
APA#	DOCTOR	PRACTICE	DATES	PAGES
1.	Frank K. Noojin, III, M.D.	Moore Orthopaedic Clinic	12/02/13 to 12/01/11	1-16

EX#	EXHIBIT	DATES	PAGES
1.	Deposition of the Claimant	06/27/13	17-39
2.	Deposition of Frank K. Noojin, III, M.D.	05/15/14	40-65
3.	Hearing transcript	07/09/13	66-177
4.	Decision and Order of the Single Commissioner	09/18/13	178-187

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Matt Kilmer, Claimant's direct supervisor, and/or other representatives of the Employer may be called to testify in response to the Claimant's testimony.



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

Columbia, South Carolina
July 8, 2014

 MOORE CENTER
FOR ORTHOPEDICS

Moore Center for Orthopedics
104 Saluda Pointe Dr.
Lexington, SC 29072
(803)227-8174/ Fax (803)227-8221

12/02/2013 Shameka Green - 01/14/1974 - 52552

HISTORY OF PRESENT ILLNESS: Ms. Green is here for her right knee. She has had a one time reevaluation. She is still having pain. It is about 8/10 on the medial side of her knee. It is worse with walking and standing. She is doing light duty at work.

REVIEW OF SYSTEMS: The patient's past medical history form is reviewed with the patient, signed and placed in the chart.

PHYSICAL EXAMINATION: Physical exam shows stable Lachman. She has 0 to 120 degrees of range of motion bilaterally. Both knees are stable. Her incisions look healed. She has varus alignment on inspection.

RADIOGRAPHS: X-rays including hip to ankle view of the right knee and also four views of the right knee show more severe medial compartment arthritis on the left knee than the right, but she does have varus alignment to inspection with the weightbearing axis going through the medial compartment.

IMPRESSION: Varus osteoarthritis, right knee, status post high tibial osteotomy.

PLAN: At this point, we talked about options of she could live with it or have an osteotomy. I think she is too young for a knee replacement, so we are going to request authorization for Workman's Compensation to do a high tibial osteotomy of the right knee. This arthritis was preexisting, but it was aggravated by the injury. The left knee has arthritis as well, but it is not as symptomatic as the right knee. We went over the risk of infection, wound complication, stiffness, hematoma, blood clots, medical complications, nonunion, future surgery, and the six-month recovery process. We will set this up to be done as an inpatient admission.

Sincerely,

Electronically Approved by:

Dictated by: Frank Noojin, III, M.D.

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

08/16/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

HISTORY:

Ms. Green is here for the right knee. She is having pain once again. She has had increasing pain at work. There has been no new injury.

PHYSICAL EXAMINATION:

On examination today, she has no effusion. She has excellent stability. She has full range of motion of her knee. Her gait is guarded. Generally she is alert and appropriate.

RADIOGRAPHS:

I did get four views of the right knee today, which show mild to moderate medial compartment arthritis of the right knee, which has been present.

IMPRESSION:

1. OSTEOARTHRITIS RIGHT KNEE WITH
PATELLOFEMORAL PAIN

PROCEDURE:

I sterilely injected her right knee with 80 mg. of Depo-Medrol.

PLAN:

She is doing her regular job but she has some reduced hours. I am going to give her some more Lortab for pain. We are going to take two days off of work and have her return back on August 18th where she is doing her regular job with restricted hours. There will be no change in the status. Follow-up will be in one month. I have given her some Norco for pain.

Frank K. Noojin, III, M.D.

CC List:

FKN:ats28

DD: 08/16/2012 DT: 08/17/2012 08:59:33

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This document was electronically authenticated by Frank K. Noojin, III, M.D. on 08/21/2012 09:07:08.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1119818

Shameka Green	)	
	)	
Claimant,	)	
	)	
v.	)	NOTICE OF WITNESSES AND WRITTEN
	)	MEDICAL REPORTS TO BE INTRODUCED
Teleperformance Group Inc.,	)	AS DIRECT EVIDENCE ON BEHALF OF
Employer and American Zurich	)	CLAIMANT
Insurance, Carrier,	)	
	)	
Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
KELLY F. MORROW, ESQUIRE

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

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>NO. OF PAGES</u>
Dr. Frank K. Noojin Moore Orthopaedics	12/1/11 - 12/2/13	1 - 43
<u>Exhibits:</u>		
Dr. Frank K. Noojin Deposition	5/15/14	
Dr. Frank K. Noojin Affidavit	4/2/14	

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of

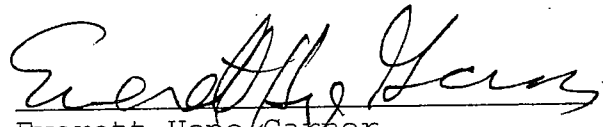
cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant.

Shameka Green

Respectfully Submitted,


Everett Hope Garner
Attorney for Claimant

Columbia, South Carolina
7/13, 2014

Moore Orthopaedic Clinic Outpatient Surgery Center
104 Saluda Pointe Drive, Suite 200
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

W/C

02/21/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington ASC

SURGEON:

Frank K. Noojin, M.D.

PREOPERATIVE DIAGNOSIS:

1. CHRONIC ANTERIOR CRUCIATE LIGAMENT INSUFFICIENCY RIGHT KNEE
2. BUCKET HANDLE TEAR, LATERAL MENISCUS RIGHT KNEE
3. POSTERIOR HORN MEDIAL MENISCUS TEAR, RIGHT KNEE

POSTOPERATIVE DIAGNOSIS:

1. CHRONIC ANTERIOR CRUCIATE LIGAMENT INSUFFICIENCY, RIGHT KNEE
2. BUCKET HANDLE TEAR, LATERAL MENISCUS, RIGHT KNEE
3. POSTERIOR HORN MEDIAL MENISCUS TEAR, RIGHT KNEE
4. GRADE IV MEDIAL FEMORAL CONDYLAR DEFECT AND MEDIAL TIBIAL PLATEAU DEFECT, RIGHT KNEE

PROCEDURE:

1. RIGHT KNEE ARTHROSCOPY WITH ARTHROSCOPIC ACL RECONSTRUCTION USING HAMSTRING AUTOGRAFT
2. PARTIAL MEDIAL MENISCECTOMY, RIGHT KNEE
3. LATERAL MENISCUS REPAIR, RIGHT KNEE

ANESTHESIA:

GENERAL WITH FEMORAL SCIATIC NERVE BLOCK

ESTIMATED BLOOD LOSS:

MINIMAL

COMPLICATIONS:

NONE

TOURNIQUET TIME:

18 MINUTES

IMPLANTS USED:

SMITH AND NEPHEW SIZE 8 MM ENDOBUTTON DIRECT WITH ARTHREX 8 X 23 MM BIOABSORBABLE INTERFERENCE SCREW; SYNTHES SCREW WITH METAL WASHER; THREE FAS-T-FIX MENISCUS REPAIR IMPLANTS

Continued

Moore Orthopaedic Clinic Outpatient Surgery Center
104 Saluda Pointe Drive, Suite 200
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

02/21/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington ASC

Continued

DVT PROPHYLAXIS:

INTRAOPERATIVE FOOT PUMPS AND TED HOSE

COMBINED WITH POSTOPERATIVE ASPIRIN
THERAPY

INDICATION FOR PROCEDURE: Ms. Green is a 38-year-old female with a right ACL tear that is chronic. After description of alternatives, she opted to proceed with surgery. We went over the risks of infection, wound complications, stiffness, numbness, recurrent instability, medical complications, future arthritis, failure to heal, blood clots and a six month recovery process.

DESCRIPTION OF PROCEDURE: The patient was given a femoral sciatic nerve block and was put under general endotracheal anesthesia. The right leg was then sterilely prepped and draped and preoperative IV antibiotics were given. Examination revealed a 2+ Lachman, 2+ pivot shift test. All ligaments were stable, including the posterior drawer. We then sterilely prepped and draped the right leg and preoperative IV antibiotics were given. I then exsanguinated the limb and inflated the tourniquet to 300 mmHg. Through a 3 cm incision I then harvested the semi-tendinosis and gracilis tendons in the usual fashion. The graft was prepared on the back table and the quadruple graft was measured out to 8 mm in diameter, 200 mm in length. Whip notch from Smith and Nephew then placed on the graft. It was maintained under tension on the Graftmaster board, covered and moistened until its use later in the procedure.

I next then established anteromedial and anterolateral portals and a diagnostic arthroscopy was performed. The patellofemoral joint was normal. The medial and lateral gutters were normal. The medial compartment was inspected and was found to have a 1 x 2 cm grade IV medial femoral condylar defect with a corresponding grade IV tibial articular cartilage defect that was a kissing lesion. There was some degeneration of the posterior horn of the medial meniscus extending into the mid body. The intercondylar notch revealed complete absence of the anterior cruciate ligament. The lateral compartment revealed a bucket handle tear of the lateral meniscus that was unstable. The articular cartilage was in good condition. I next then débrided the posterior horn of the medial meniscus. I did a minimal resection here just to contour this to a smooth, stable rim. I did not do any chondroplasty of the medial compartment. I then inspected the lateral compartment and rasp the meniscus edges. I then placed three Fas-T-Fix meniscus repair implants into position. I received excellent reapproximation of the meniscus. The bone was quite stable. No further intervention was thought to be necessary in the lateral compartment. I next then turned my attention to the ACL reconstructions.

Continued

Moore Orthopaedic Clinic Outpatient Surgery Center
104 Saluda Pointe Drive, Suite 200
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

02/21/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington ASC

DESCRIPTION OF PROCEDURE (continued):

I next then resected some of the fat pad and resected what was left of the old anterior cruciate ligament. A notchplasty was accomplished. I then hyperflexed the knee with a 5 mm femoral offset guide. I placed a guide pin into position. The tunnel length was quite short, it was only 18 mm. I initially started with an Arthrex system and was going to use a Tightrope, but I had to convert to an EndoButton direct due to the short femoral tunnel. The tunnel length was only 18 mm. I therefore reamed out the tunnel and prepared the graft with the 8 mm EndoButton direct from Smith and Nephew. I then whipstitched the graphs appropriately on the back table and prepared the EndoButton direct. I also reamed a guide pin in the tibia through the anteromedial incision with a 8 mm reamer as well. I then rasped the tunnel edges and passed the graft without difficulty. Fluoroscopy was used to verify that the button was in the appropriate place. It had excellent fixation intraoperatively. I then cycled the knee through flexion and extension and then placed an 8 x 23 mm bioabsorbable interference screw from Arthrex into position in the tibial tunnel, which got very good fixation. Lachman was assessed and was found to be stable. I then tied the sutures over a post, Synthes with a washer for back-up fixation.

At this time, I was pleased with the graft appearance arthroscopically and clinical stability. I had already deflated the tourniquet awhile ago. I then irrigated the wound thoroughly with normal saline solution. Skin was closed with 2-0 Vicryl and 4-0 Prolene sutures. The portals were closed with 4-0 Prolene. Sterile dressing applied. The patient was given a hinged knee brace. The patient was then extubated in the operating room and taken to recovery in stable condition. Tolerated the procedure well without complications.

Frank K. Noojin, III, M.D.

CC List:

FKN:ats32

DD: 02/23/2012 DT: 02/23/2012 14:39:35

178561

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 02/24/2012 11:10:39.

Dr. C. K. Noojin, III, M.D.
3/5/12
Dr. C. K. Noojin, III, M.D.
Lexington

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

03/08/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

HISTORY:

Ms. Green returns for her right knee. She is doing well.

PHYSICAL EXAMINATION: On examination today, she has full extension and 90 degrees of flexion. Lachman is stable. She has 1+ effusion of the knee. I see no sign of complications.

IMPRESSION:

1. RECOVERING RIGHT ACL RECONSTRUCTION

PLAN:

Plans are to discontinue the aspirin and allow her return to work at her regular duties on March 21, 2012 in the brace. Continue therapy until the next visit and I want to see her back in four weeks.

Frank K. Noojin, III, M.D.

CC List:

FKN:ats28

DD: 03/08/2012 DT: 03/09/2012 08:58:45

182346

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 03/09/2012 15:57:51.

28007482

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

04/09/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

HISTORY:

Ms. Green is here for her right knee and she is doing well.
She is (Dictation Anomaly): 05 ____ ACL reconstruction.

PHYSICAL EXAMINATION:

On examination today, she has full extension, 120 degrees of flexion. Her Lachman is stable. Incision healing well. She has a 1+ effusion in the knee.

IMPRESSION:

1. RECOVERING RIGHT ACL RECONSTRUCTION

PLAN:

I am very pleased with her progress. We are going to keep her in an ACL brace and allow her to return to work light duty, no more than six hours per day to limit her standing and continue her therapy. I want to see her back in six weeks.

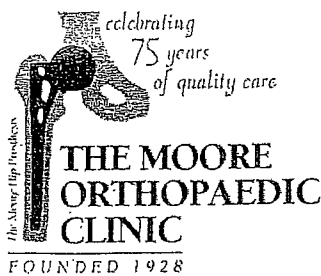
Frank K. Noojin, III, M.D.

CC List:

FKN:ats32

DD: 04/09/2012 DT: 04/09/2012 18:14:58

189837



John P. Batson, M.D., FAAP
Youth Sports Medicine Specialist &
Board Certified General Pediatrics
& Sports Medicine
Kim J. Chillag, M.D.
Total Hip &
Total Knee Replacement
William T. Felmy, M.D.
Spine Surgery

David B. Fulton, M.D.
Hand, Upper Extremity Surgery
& General Orthopaedics

S. Wendell Holmes, Jr., M.D.
Sports Medicine, Arthroscopy
& General Orthopaedics

William H. Kirkley, M.D.
General Orthopaedics

Mark D. Locke, M.D., FAAP
Pediatric Orthopaedics

Earl B. McFadden, Jr., M.D.
Hand & Upper Extremity Surgery

Frank K. Noojin, III, M.D.
Sports Medicine, Arthroscopy
& General Orthopaedics

Bradley P. Presnal, M.D.
Total Joint Replacement, Arthroscopy &
General Orthopaedics

W. Alaric Van Dam, M.D.
Musculoskeletal Medicine
& Electrodagnostic

REPORT OF MEDICAL EXAMINATION

SHAMEKA GREEN
Employee's Name
ZURICH NORTH AMERICAN
Employer/Carrier
FRANK K. NOOJIN, III, MD
Physician/Provider

XXX-XX-6119
Social Security Number
04/09/2012
Date of Office Visit
Frank K. Noojin
Signature of Physician

RETURN TO WORK STATUS:

Regular Duties ☒
Light Duties ☒
Remain Out of Work ☐

Date to Return:
Date to Return: 4-16-12
Duration:

PHYSICAL LIMITATIONS:

☐ None
☐ No Walking or climbing
☐ No standing
☐ No prolonged standing
☐ No sitting
☐ No bending or stooping
☐ No twisting or stretching
☐ No change from previous status

6 hrs / day
☐ Pushing and pulling limit lbs.
☐ Lifting and carrying limit lbs.
☐ Sedentary duties only
☐ No kneeling, squatting, crawling
☐ No work involving arm/hand
☐ No overhead work
☐ No work at heights
☐ Other:

FOLLOW UP:

6 Days ☐ Months
6 Weeks ☐ PRN
☐ Discharged with permanent limitations above
☐ Next Appointment:

Copy of office note to follow. Need Auth for ACL Brace

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

05/21/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

HISTORY:

Ms. Green returns for her right knee. She is still having pain. Her brace is not fitting well. It is an ACL brace.

REVIEW OF SYSTEMS:

The patient's past medical history form is reviewed with the patient, signed and included in the chart.

PHYSICAL EXAMINATION:

Physical exam shows she has no effusion. She has 0 to 120 degrees of range of motion bilaterally. Both knees are stable. Lachman testing shows excellent stability. Gait is guarded.

IMPRESSION:

1. RECOVERING RIGHT ACL RECONSTRUCTION
WITH GRADE IV MEDIAL COMPARTMENT
ARTHROTIC LESION

PLAN:

Plans are, at this time, to keep her at light duty with no change in work status. I am going to simply change her from an ACL brace to a medial compartment Unloader brace because I think this will probably serve her better. She had a Grade IV changes on the tibial side and the femoral side. I do not think she is candidate for any kind of cartilaginous procedure. The only other option really realistically would be a tibial osteotomy at some point in the future if the medial compartment Unloader compartment brace works but we will see her back in six weeks.

Frank K. Noojin, III, M.D.

CC List:

FKN:ats28

DD: 05/21/2012 DT: 05/22/2012 10:08:27

200948

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 05/23/2012 16:46:54.

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

08/09/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

HISTORY:

Ms. Green returns for her right knee. She is still having some popping and clicking in the knee. She is now five months out from her ACL reconstruction.

REVIEW OF SYSTEMS:

The patient's past medical history form is reviewed with the patient, signed and included in the chart.

PHYSICAL EXAMINATION:

Physical exam shows crepitation in the patellofemoral joint. She has excellent stability. She has 0 to 120 degrees of range of motion bilaterally. There is no effusion.

IMPRESSION:

1. RECOVERING RIGHT ACL RECONSTRUCTION WITH GRADE IV ARTHRITIC LESION

PLAN:

We are going to keep her at light duty for another six weeks. Continue the home exercises. I have given her some Norco for pain. I want to see her back in six weeks, at which time we anticipate return to work. I want four views of the right knee at that time.

Frank K. Noojin, III, M.D.

CC List: mail-to: Dr. Floyd.

FKN:ats28

DD: 08/09/2012 DT: 08/10/2012 09:33:20

220520

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 08/13/2012 14:30:17.

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

08/16/2012

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

HISTORY:

Ms. Green is here for the right knee. She is having pain once again. She has had increasing pain at work. There has been no new injury.

PHYSICAL EXAMINATION:

On examination today, she has no effusion. She has excellent stability. She has full range of motion of her knee. Her gait is guarded. Generally she is alert and appropriate.

RADIOGRAPHS:

I did get four views of the right knee today, which show mild to moderate medial compartment arthritis of the right knee, which has been present.

IMPRESSION:

1. OSTEOARTHRITIS RIGHT KNEE WITH
PATELLOFEMORAL PAIN

PROCEDURE:

I sterilely injected her right knee with 80 mg. of Depo-Medrol.

PLAN:

She is doing her regular job but she has some reduced hours. I am going to give her some more Lortab for pain. We are going to take two days off of work and have her return back on August 18th where she is doing her regular job with restricted hours. There will be no change in the status. Follow-up will be in one month. I have given her some Norco for pain.

Frank K. Noojin, III, M.D.

CC List:

FKN:ats28

DD: 08/16/2012 DT: 08/17/2012 08:59:33

222240

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 08/21/2012 09:07:08.

 MOORE CENTER
FOR ORTHOPEDICS

Moore Center for Orthopedics
104 Saluda Pointe Dr.
Lexington, SC 29072
(803)227-8174/ Fax (803)227-8221

12/02/2013 Shameka Green - 01/14/1974 - 52552

HISTORY OF PRESENT ILLNESS: Ms. Green is here for her right knee. She has had a one time reevaluation. She is still having pain. It is about 8/10 on the medial side of her knee. It is worse with walking and standing. She is doing light duty at work.

REVIEW OF SYSTEMS: The patient's past medical history form is reviewed with the patient, signed and placed in the chart.

PHYSICAL EXAMINATION: Physical exam shows stable Lachman. She has 0 to 120 degrees of range of motion bilaterally. Both knees are stable. Her incisions look healed. She has varus alignment on inspection.

RADIOGRAPHS: X-rays including hip to ankle view of the right knee and also four views of the right knee show more severe medial compartment arthritis on the left knee than the right, but she does have varus alignment to inspection with the weightbearing axis going through the medial compartment.

IMPRESSION: Varus osteoarthritis, right knee, status post high tibial osteotomy.

PLAN: At this point, we talked about options of she could live with it or have an osteotomy. I think she is too young for a knee replacement, so we are going to request authorization for Workman's Compensation to do a high tibial osteotomy of the right knee. This arthritis was preexisting, but it was aggravated by the injury. The left knee has arthritis as well, but it is not as symptomatic as the right knee. We went over the risk of infection, wound complication, stiffness, hematoma, blood clots, medical complications, nonunion, future surgery, and the six-month recovery process. We will set this up to be done as an inpatient admission.

Sincerely,

Electronically Approved by:

Dictated by: Frank Noojin, III, M.D.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1119818

SHAMEKA S. GREEN,

Employee,

Claimant,

vs.

TELEPERFORMANCE GROUP, INC.,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

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

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND EVERETT
H. GARNER, ESQUIRE:

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

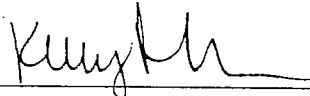
APA#	DOCTOR	PRACTICE	DATES	PAGES
1.	Frank K. Noojin, III, M.D.		12/01/11 to 05/23/13	1-20
2.		Doctor's Care	11/01/11	21
3.		Lexington Medical Center	09/23/11	22-30

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

examination, or otherwise promptly submit opposing medical records into evidence.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Matt Kilmer, Claimant's direct supervisor, and/or other representatives of the Employer.



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

Columbia, South Carolina
June 24, 2013

04/25/2013 14:28

(FAX)

P.003/004

Moore Orthopaedics
104 Saluda Pointe Drive
Lexington, South Carolina 29072
(803) 227-8174 Phone / (803) 227-8221 Fax

04/23/2013

SHAMEKA GREEN - 01/14/1974 - 52552

Lexington Office

ADDENDUM:

I think she will probably need future medical care regarding this knee. It may be in the form of Euflexxa injection or cortisone injection intermittently. She also may need bracing and she may decide to do a high tibial osteotomy at some point in the future, which would be related to her arthritic condition in her right knee. Her knee is stable from the ACL standpoint.

Frank K. Noojin, III, M.D.

CC List:

FKN:ats28

DD: 04/23/2013 DT: 04/24/2013 12:16:32

289786

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 04/25/2013 10:05:41.

05/24/2013 08:50

(FAX)

P.002/003

mooredinfo.com



Primary Care Sports Medicine
Craig M. Burnworth, M.D.

Hip and Knee Replacement
Kim J. Chilling, M.D.

Spine Surgery
William T. Felmy, M.D.

Hand, Upper Extremity Surgery
David B. Fulton, M.D.

Sports Medicine and Arthroscopy
Cartilage Repair
S. Wendell Holmes, Jr., M.D.

Children's Orthopaedics
Mark D. Locke, M.D.

Shoulder Surgery, Hand & Microsurgery
Earl B. McFadden, Jr., M.D.

Sports Medicine, Arthroscopy
Shoulder and Knee Surgery
Frank K. Noojin, M.D.

Sports Medicine, Arthroscopy
Shoulder and Knee Surgery
Aran M. O'Malley, M.D.

Hip and Knee Replacement
Bradley R. Presnal, M.D.

Orthopaedic Foot and Ankle
W. Bret Smith, DO, MS

Musculoskeletal Medicine and
Electrodiagnostics
W. Alaric Van Dam, M.D.

04/23/2013

Zurich North American
PO Box 968080
Schaumburg, IL 60196-8080

Re: SHAMEKA S GREEN
EMPLOYER: TELE PERFORMANCE
DATE OF INJURY: 09/23/2011

Dear Sir,

Regarding Shameka Green's injury to the right lower extremity, I believe Maximum Medical Improvement has been attained. The final diagnosis for Shameka Green remains recovering right ACL reconstruction right knee with medial compartment arthritis. According to the 6th Edition of the American Medical Association's Guidelines to the Evaluation of Permanent Impairment, I believe the patient is entitled to a Class I impairment rating to the right lower extremity for ACL laxity. This is a maximum, which I think would probably be more appropriate to be a 5% impairment rating to the right lower extremity for the anterior cruciate ligament injury. If the arthritic condition is considered as a part of this impairment rating as well, this would be an additional 16% impairment rating to her right lower extremity for loss of articular cartilage in the medial compartment. The reason I say if the arthritic condition is included is because both knees have symmetrical osteoarthritis in the medial compartment and I do not think the arthritis was a direct result of this injury but was preexisting, albeit aggravated by the injury and surgery. So, if the arthritic condition is included it would be a total of a 21% impairment rating to the right lower extremity.

Shameka Green is discharged from my care at this time. I would be happy to be of assistance in the future should this be necessary.

14 Medical Park, Suite 200
Columbia, SC 29203
T: 803 227 8000

4721 Sunset Boulevard, Suite A
Lexington, SC 29072
T: 803 227 8007

104 Saluda Pointe Drive
Lexington, SC 29072
T: 803 227 8000

05/24/2013 08:50

(FAX)

P.003/003

mooredinfo.com



Please do not hesitate to contact me should you have any further questions or require any additional information.

Sincerely,

Primary Care Sports Medicine
Craig M. Burnworth, M.D.

Hip and Knee Replacement
Kim J. Chilling, M.D.

Spine Surgery
William T. Felmy, M.D.

Hand, Upper Extremity Surgery
David B. Fulton, M.D.

Sports Medicine and Arthroscopy
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S. Wendell Holmes, Jr., M.D.

Children's Orthopaedics
Mark D. Locke, M.D.

Shoulder Surgery, Hand & Microsurgery
Earl B. McFadden, Jr., M.D.

Sports Medicine, Arthroscopy
Shoulder and Knee Surgery
Frank K. Noojin, M.D.

Sports Medicine, Arthroscopy
Shoulder and Knee Surgery
Aran M. O'Malley, M.D.

Hip and Knee Replacement
Bradley R. Presnal, M.D.

Orthopaedic Foot and Ankle
W. Bret Smith, DO, MS

Musculoskeletal Medicine and
Electrodiagnostics
W. Alaric Van Dam, M.D.

Frank K. Noojin, III, M.D.

FKN:ats28

289787

This document was electronically authenticated by Frank K. Noojin, III, M.D. on 05/07/2013 10:44:36.

14 Medical Park, Suite 200
Columbia, SC 29203
T: 803 227 8000

4721 Sunset Boulevard, Suite A
Lexington, SC 29072
T: 803 227 8007

104 Solvda Pointe Drive
Lexington, SC 29072
T: 803 227 8000

05/24/2013 08:44

(FAX)

P.002/002

(Page 1 of 1)

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



Physician's Statement

2800076482

Claimant's Name: Shameka S Green
Physician's Name: Frank K Noojin III, M.D.
Practice/Clinic: Moore Orthopaedics
Preparer's Name: Sharon Holt-Ervin
Phone: (704) 651-3484

Employer's Name: TELEPERFORMANCE GROUP, INC.
Insurance Carrier: American Zurich Ins. Co.
SCWCC File No: 1119818

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 08-23-2011

Date of first office visit: 12-1-2011 Date of last visit: 4-23-2013

Diagnosis or nature of Injury or Illness: ACL tear sp reconstruction with medial compartment

Body part(s) Injured: Right knee Body part(s) affected: arthrosis

Date of Maximum Medical Improvement: 4-23-2013

Based on the AMA Guidelines, the claimant has sustained a 21* % medical Impairment to Right lower extremity injured body part(s) and a 0 % medical Impairment to other affected body part(s).

 The claimant is able to return to work without restriction.

 The claimant is able to return to work with the following restrictions:

no prolonged walking or standing, no kneeling, crawling or squatting,
no work at heights

 The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

 will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

 will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

shots, braces, NSAIDs

Treating Physician

Date

9/07

14B

Physician's Statement

* please see attached impairment rating letter

Subject: Shameka Green v. Teleperformance Group, Inc. WCC # 1119818
From: Everett Garner (ehgarner05@yahoo.com)
To: eboyd@wcc.sc.gov;
Cc: kmorrow@mgclaw.com;
Date: Wednesday, April 9, 2014 2:11 PM

Elaine:

Per our discussion with Commissioner Wilkerson at the hearing on April 7, 2014 we hereby withdraw our Form 50 and will be re-filing it immediately.

Hope

Subject: Shameka S. Green v. Teleperformance Group - WCC # 1119818
From: Everett Garner (ehgarner05@yahoo.com)
To: ehollmon@wcc.sc.gov;
Cc: kmorrow@mgclaw.com;
Date: Tuesday, February 18, 2014 4:29 PM

This is to advise that we are withdrawing our appeal in regard to this matter which is currently scheduled for Wednesday, February 19, 2014 at 10:00 A.M.

Everett Hope Garner

RECEIVED

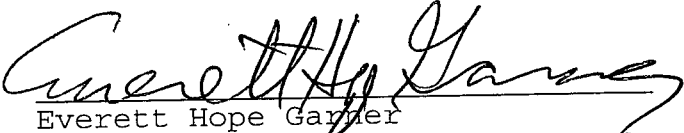
NOV 16 2015

CERTIFICATE OF COUNSEL

SC Court of Appeals

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

November 16, 2015


Everett Hope Garner
Holler, Garner, Corbett, Ormond,
Plante & Dunn
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Appellant