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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

Appellate Case No.: 2015-001702

James Dent, ... Appellant,

v.

East Richland County Public Service
District, Employer, and State Accident Fund,
Carrier, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSON

James Dent,)
)
 Claimant,)
)
 vs.)
)
 East Richland County Public Service)
 District,)
)
 Employer/Defendant,)
)
 and,)
)
 State Accident Fund,)
)
 Carrier/Defendant.)
 _____)

ORDER

W.C.C. FILE NO.: 1205879

HEARING DATE: Held in Columbia, South Carolina on
February 7, 2014

APPEARANCES: Matthew Robertson, Esq., Attorney for the Claimant
Page Snyder, Esq., Attorney for the Defendants.

PURPOSE OF HEARING: To determine issues as set forth on Forms 50 and 51.

DECISION AND ORDER BY: Susan Barden, Commissioner

FILED: April 14, 2014

STIPULATIONS

This case was heard by the undersigned Commissioner in Columbia, South Carolina, on February 7, 2014. The parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the extent of the Claimant's permanent disability and to determine any credit for overpayment.
2. Notice of this hearing was timely and properly served upon all parties of interest.
3. Venue, set in Richland County, is proper as agreed by the parties.
2. Without objection, the Commission's file becomes part of the record, with the exception of any self-serving declarations or unstipulated medical reports.
3. The Claimant seeks a determination of benefits under the S.C. Workers' Compensation Act based upon Claimant's injury by accident occurring on May 1, 2012, while he was in the employment of the Defendant/Employer, East Richland County Public Service District. Therefore, the S.C. Workers' Compensation Commission has jurisdiction of this case.
4. The average weekly wage is \$916.10, making a compensation rate of \$610.75 applicable in this matter.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Claimant:

APA 1	Paula L. Belmar, MD Southeastern Spine	5/17/12-6/8/12	1-7
APA 2	Progressive Physical Therapy	1/16/13-7/1/13	8-27
APA 3	Columbia Neurosurgical	8/29/12-7/30/13	28-31
APA 4	Leonard Forrest, MD Southeastern Spine	7/8/13	32-37
APA 5	Harriet Fowler, CRC, M.Ed	9/13/13	38-60

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Defendants:

APA A	Dr. Brett Gunter	7/25/12-5/8/13	1-11
APA B	Dr. Paula Belmar	5/10/12-1/4/13	12-23
APA C	MRI's & Imaging	5/10/12-//28/12	24-26

STATEMENT OF CASE

On May 1, 2012, James Dent injured his lower back when lifting a manhole cover. This claim was accepted by the Employer/Carrier as a compensable injury to the Claimant's lower back. The Claimant filed a Form 50 on September 23, 2013, alleging that the Claimant was permanently and totally disabled as a result of his May 1, 2012 work injury. Claimant alleged compensable injuries to the back and legs. Defendants asserted that this matter is a single member claim under *Singleton* and that Claimant is not permanently and totally disabled per 42-9-30(21). Defendants filed a Form 21 on October 7, 2013 seeking termination of temporary total benefits and credit of overpayment of benefits. At the hearing, the Claimant was the only witness to testify.

EVIDENCE OF THE CASE

On May 1, 2012, the Claimant was working to repair a manhole cover when he lifted the manhole cover and sustained an injury to his lower back, feeling pain in his lower back immediately. The Claimant was first seen by Dr. Paula Belmar at Sentinel Health Partners on May 10, 2012. Claimant complained of low back pain which radiated down his right leg. Dr. Belmar ordered a spine x-ray and a follow-up in one week. At the follow-up visit, Dr. Belmar referred the Claimant to physical therapy. Claimant was unable to start physical therapy immediately due to an unrelated illness. On June 7, 2012, Dr. Belmar ordered a lumbar MRI. On June 25, 2012, the Claimant underwent a lumbar MRI at Camden Open MRI. This MRI

showed disc protrusions at multiple levels which were "probably post traumatic." Defendants' APA, page 25. The MRI also revealed a neoplasm in the lung. Following this MRI, the Claimant was referred to a neurosurgeon. Sometime after the MRI, the Claimant was diagnosed with lung cancer and began treatment including chemotherapy and radiation therapy.

Dr. Brett Gunter of Columbia Neurosurgical Associates took over care on July 25, 2012. Dr. Gunter noted that the Claimant "would not consider a surgical alternative should one be offered." Defendants' APA, page 2. Claimant's treatment with Dr. Gunter consisted of physical therapy, two lumbar epidural steroid injections and a work hardening program. The work hardening program was terminated due to the development of pain and shortness of breath. Dr. Gunter released the Claimant at MMI on May 8, 2013. Dr. Gunter gave an impairment rating of 10% and recommended medium duty work.

The Claimant submitted an IME from Dr. Leonard Forrest who assessed a 21% impairment rating and opined that the Claimant may not be able to do sedentary work on a full-time basis. Harriet Fowler of Vocational Rehabilitation Services opined that the Claimant would not be able to return to obtains substantial gainful employment.

The Claimant was the only witness to testify at the hearing. Claimant's testimony included a description of his educational background and work history, his work accident and the treatment he received for his injuries. The Claimant also testified to his ability to return to employment.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the

greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).

2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).

10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME admits that, *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not

always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).

17. Claimant ambulates with a cane that no authorized physician has prescribed.

Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).

18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).

19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "*the lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to

retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37, Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (*i.e. Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award in part on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.
26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

28. Claimant's average weekly wage is \$916.09, yielding a compensation rate of \$610.75.

29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

CONCLUSIONS OF LAW

Based upon the evidence submitted in the case, the testimony given, and the foregoing Findings of Fact, I make the following Conclusions of Law:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.

7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Brucoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

ORDER

Based upon the Findings of Fact and Conclusions of Law:

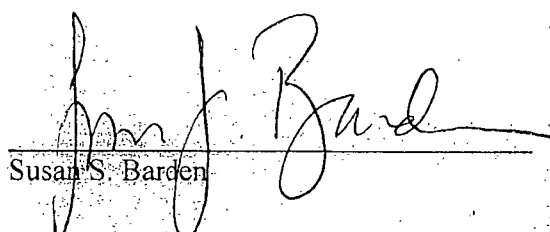
IT IS, THEREFORE ORDERED, that the Claimant is awarded permanent partial disability consisting of thirty give percent to the back. Claimant is entitled to a lump sum payment and Utica Mohawk language.

IT IS FUTHER ORDERED, that the Defendants are entitled to credit for overpayment of benefits from May 8, 2013 until March 12, 2014.

IT IS ALSO ORDERED, that the Defendants pay permanent partial disability in the amount of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars. The award of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars shall be allocated as follows: Twelve Thousand Three Hundred Eighty Nine and 49/100 (\$12,389.49) Dollars as attorneys' fees pursuant to a written agreement between the Claimant and his attorney; Two Thousand Six Hundred Fifty Nine and 15/100 (\$2,659.15) Dollars in disbursements and expenses; Twenty Two Thousand One Hundred Nineteen and 83/100 (\$22,119.83) Dollars in compromise settlement at the rate of Nineteen and 10/100 (\$19.10) Dollars per week for a period of 1,158.04 weeks pursuant to Sections 19-1-150, 42-9-10, 42-9-20

and 42-9-30 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of *James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010); see also *Utica Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 593 (1955); *Sciarotta v. Bowen*, 837 F.2d 135; *Lemire v. Secretary of Health and Human Services*, 682 F.Supp 102 (D.C.N.H. 1988) and *Hatch v. Heckler*, 626 F.Supp 1367 (N.D. California 1986).

AND IT IS SO ORDERED.


Susan S. Barden

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).
April 14, 2014

By: Kristi Love, Administrative Assistant to Commissioner Barden

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. FILE NUMBER: 1205879

James Dent,	)	
	)	
Employee, Claimant,	)	
	)	
vs.	)	<u>Remanded</u>
	)	
East Richland County Public	)	
Service District,	)	
	)	
Employer,	)	
and	)	
	)	
State Accident Fund,	)	
Carrier,	)	
Defendants.	)	

Appellate Panel Review held in Columbia,
South Carolina on September 15, 2014, per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed -

November 2nd, 2014

APPEARANCES:

Claimant represented by **Matthew C. Robertson, Esquire**, of Columbia, South Carolina; Defendants East Richland County Public Service District and State Accident Fund represented by **Page Snyder, Esquire**, of Columbia, South Carolina.

STATEMENT OF THE CASE

This claim went before the Single Commissioner pursuant to Form 50 filed by the claimant, Mr. James L. Dent on September 20, 2013. Therein, Mr. Dent alleged injuries by accident to the back, right leg and left leg, occurring on May 1, 2012 and arising out of and in the course of his employment with East Richland County Public Service. Specifically, the claimant alleged that he injured his back while attempting to singlehandedly move a heavy manhole cover. Claimant further alleged that he is permanently and totally disabled as a result of the accident both as a result of complete loss of earning capacity and as a result of a 50% or greater loss of use of his back to perform work. The Defendants admitted the accident of May 1, 2012. However, the Defendants denied that the claimant has sustained permanent and total disability and argued that the claim should be limited to the lumbar spine only.

The claim was heard by the Single Commissioner on February 7, 2014 in Columbia, South Carolina. On April 14, 2014, the Single Commissioner issued her Decision and Order, making the following findings of fact, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected). Claimant's IME report is

devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).

2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; See also Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).

10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME

admits that, "I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity" [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).

17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).

18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).

19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating

physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the lung cancer is not playing any role" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (i.e. Singleton) case for the reasons set forth supra (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician

("Medium") vis a vis the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.

26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through May 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$916.09, yielding a compensation rate of \$610.75.
29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

The Single Commissioner further made conclusions of law as follows:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers'-Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.

3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to *Dodge v. Brucoli Clark Laymen, Inc.*, 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the Claimant filed an Application for Review in the case setting forth his exceptions, copies of which were furnished to all interested parties, prior to oral arguments which were presented before the Appellate Panel on September 15, 2014. All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. CODE ANN. §42-15-50 (1976, as amended), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties.

DISCUSSION OF LAW AND FACTS

Having heard oral arguments on behalf of the parties, considered their briefs and viewed the record as a whole, the Appellate Panel considers the Hearing Commissioner's finding that this case is a "one body part case" requiring application of the rule in Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960) (where an injury is confined to a single scheduled member the employee is limited to the scheduled compensation for that body part) to be curious, particularly in light of the Hearing Commissioner's Finding of Fact #1, which found that the greater weight of the evidence shows that the claimant's right leg is affected by his lower back injury.

In addition, the Panel is unaware of any legal precedent for the concept that a body part can be found affected by the injury, but only "minimally affected," thereby requiring the Commission to disregard that affected body part in its analysis of whether or not a case is subject to the Singleton rule. Nor is the Panel aware of any rule, statute or case law which defines a threshold level of "affectedness" another body part must sustain as a result of the primary injury in order to determine whether or not the Singleton rule applies. However, the most recent guidance from the higher courts on the Singleton issue has come in the form of two separate cases: Colonna v. Marlboro Park Hospital, 745

S.E.2d 128, 404 S.C. 537 (S.C.App. 2013) and Beckman v. Sysco Columbia, LLC, Opinion No. 5205, (S.C.App. July 2014).

In Colonna, supra., the injured worker sustained an injury to her right leg in the course and scope of her employment as a geriatric nurse at Marlboro Park Hospital. In 2005, it was found by the Commission that Colonna had sustained a “right lower extremity (ankle) injury.” After receiving an award of scheduled compensation for the right leg in 2006, Ms. Colonna filed for a change in condition. She underwent surgery and was ultimately diagnosed with Reflex Sympathetic Dystrophy (RSD) which caused chronic pain to her right foot and ankle. As part of the treatment she received for her RSD, she was implanted with a permanent spinal cord stimulator.

In 2010, Colonna alleged multiple body parts which were not found compensable, specifically including an allegation that her back was a second injured or affected body part due to the implant of the spinal cord stimulator. However, the Commission and the Circuit Court found that the spinal cord stimulator implant did not constitute an injury to the back or affect the back as a second body part but instead was merely a treatment modality for her right leg. As a result, Colonna was limited to scheduled compensation to the right leg only. The Court of Appeals agreed, finding that Colonna had shown no proof that her back was injured or impaired by the spinal cord stimulator.

In Beckman, supra., the injured worker sustained a back injury. In addition, the worker presented evidence that his sacroiliac joint, for which at least one doctor had offered an impairment rating, was affected by the injury. Beckman also argued that his back injury resulted in radiculopathy affecting his left hip, left buttock and left leg. Defendant Sysco argued that the SI joint was part of the back and that, because the

injured worker sustained only a back injury, he was limited to scheduled compensation under Singleton, supra.

However, the South Carolina Court of Appeals held that it need not reach the issue of whether or not the additional, rated body part, the SI joint, was or was not subsumed within the back because the fact that Beckman suffered from radiculopathy affecting his left leg was sufficient to take the case out of Singleton and, therefore, Beckman was entitled to pursue compensation under the general disability statutes.

In the case sub judice, the claimant has an admitted back injury and contends that radiculopathy affecting one or both legs takes his case outside the Singleton rule, - allowing him to pursue a general disability remedy under S.C. CODE ANN. §42-9-10 (1976, as amended). As a result, the Panel finds it appropriate to remand the case to the Hearing Commissioner for consideration of Colonna, supra. and Beckman, supra. in light of her finding that this is a "one body part" case which would limit the claimant to scheduled compensation under Singleton, supra.

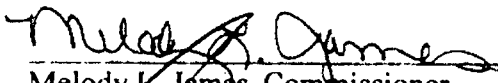
ORDER

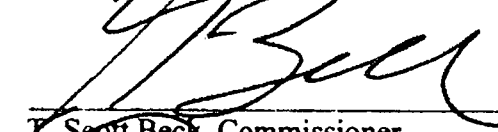
IT IS HEREBY ORDERED:

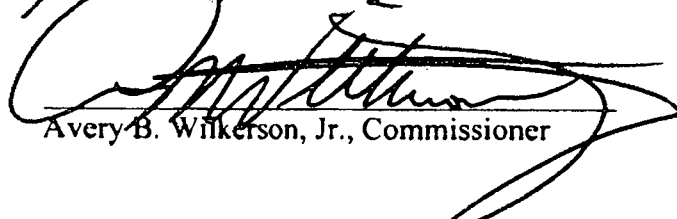
The case is hereby **REMANDED** to the Single Commissioner for consideration of Colonna, supra. and Beckman, supra. in reference to her finding that the case at bar is a "one body part" case wherein the claimant is limited to scheduled compensation for his back.

AND IT IS SO ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION


Melody L. James, Commissioner


T. Scott Beck, Commissioner


Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE

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

By Kim Falls on November 21, 2014

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSON

James Dent,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
East Richland County Public Service	)	
District,	)	ORDER (REMAND)
	)	
Employer/Defendant,	)	W.C.C. FILE NO.: 1205879
	)	
and,	)	
	)	
State Accident Fund,	)	
	)	
Carrier/Defendant.	)	
_____	)	

APPEARANCES: Matthew Robertson, Esq., Attorney for the Claimant
 Page Snyder, Esq., Attorney for the Defendants.

FULL COMMISSION PANEL: Melody C. James, T. Scott Beck and Avery B. Wilkerson,
 Jr.

FULL COMMISSION DATE: September 15, 2014

REMAND DECISION AND ORDER: Susan Barden, Commissioner

FILED: February 24, 2015

STIPULATIONS

This case was heard by the undersigned Commissioner in Columbia, South Carolina, on February 7, 2014. This case was appealed by the Claimant and the Full Commission heard this case on September 15, 2014. Following oral arguments and a full review of the Record on Appeal, the Appellate Panel issued an Order of Remand on November 21, 2014 to allow the Single Commissioner to consider Colonna v. Marlboro Park Hospital and Beckman v. Sysco Columbia, LLC. At the February 7, 2014 hearing, the parties stipulated to the following issues:

1. The purpose of the hearing is to determine the extent of the Claimant's permanent disability and to determine any credit for overpayment.
2. Notice of this hearing was timely and properly served upon all parties of interest.
3. Venue, set in Richland County, is proper as agreed by the parties.
2. Without objection, the Commission's file becomes part of the record, with the exception of any self-serving declarations or unstipulated medical reports.
3. The Claimant seeks a determination of benefits under the S.C. Workers' Compensation Act based upon Claimant's injury by accident occurring on May 1, 2012, while he was in the employment of the Defendant/Employer, East Richland County Public Service District. Therefore, the S.C. Workers' Compensation Commission has jurisdiction of this case.
4. The average weekly wage is \$916.10, making a compensation rate of \$610.75 applicable in this matter.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Claimant:

APA 1	Paula L. Belmar, MD Southeastern Spine	5/17/12-6/8/12	1-7
APA 2	Progressive Physical Therapy	1/16/13-7/1/13	8-27
APA 3	Columbia Neurosurgical	8/29/12-7/30/13	28-31
APA 4	Leonard Forrest, MD Southeastern Spine	7/8/13	32-37
APA 5	Harriet Fowler, CRC, M.Ed	9/13/13	38-60

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Defendants:

APA A	Dr. Brett Gunter	7/25/12-5/8/13	1-11
APA B	Dr. Paula Belmar	5/10/12-1/4/13	12-23
APA C	MRI's & Imaging	5/10/12-1/28/12	24-26

STATEMENT OF CASE

On May 1, 2012, James Dent injured his lower back when lifting a manhole cover. This claim was accepted by the Employer/Carrier as a compensable injury to the Claimant's lower back. The Claimant filed a Form 50 on September 23, 2013, alleging that the Claimant was permanently and totally disabled as a result of his May 1, 2012 work injury. Claimant alleged compensable injuries to the back and legs. Defendants asserted that this matter is a single member claim under *Singleton* and that Claimant is not permanently and totally disabled per 42-9-30(21). Defendants filed a Form 21 on October 7, 2013 seeking termination of temporary total benefits and credit of overpayment of benefits. At the hearing, the Claimant was the only witness to testify.

By Order dated April 14, 2014, the Single Commissioner determined that Claimant was not permanently and totally disabled. The Single Commissioner found that the claim was governed by *Singleton v. Young Lumber Co.* and Claimant was confined to compensation for his back pursuant to S.C. Code §42-9-30(21) because he did not suffer an injury or impairment to a

second body part. The Single Commissioner noted Claimant's subjective complaints of leg pain and found that his right leg was "minimally affected," but found that these complaints did not rise to a level to bring the claim outside of *Singleton v. Young Lumber Co.* The Order found that Claimant suffered 35% permanent partial disability to the back and he was entitled to further medical care for his low back in the form of physician visits and pain management/medications per *Dodge v. Brucoli Clark Laymen, Inc.*

Within the statutory period, Claimant filed an Application for Review setting forth his exceptions to the Single Commissioner's Order dated April 14, 2014. Briefs were timely filed by both parties and the matter was heard by the Full Commission on September 15, 2014. The Full Commission issued an Order remanding the case back to the Single Commissioner on November 21, 2014. Specifically, the Full Commission sought reconsideration of this claim in light of *Coloma v. Marlboro Park Hospital* and *Beckman v. Sysco Columbia, LLC*. This Order follows as a result of the Full Commission's remand.

EVIDENCE OF THE CASE

On May 1, 2012, the Claimant was working to repair a manhole cover when he lifted the manhole cover and sustained an injury to his lower back, feeling pain in his lower back immediately. The Claimant was first seen by Dr. Paula Belmar at Sentinel Health Partners on May 10, 2012. Claimant complained of low back pain which radiated down his right leg. Dr. Belmar ordered a spine x-ray and a follow-up in one week. At the follow-up visit, Dr. Belmar referred the Claimant to physical therapy. Claimant was unable to start physical therapy immediately due to an unrelated illness. On June 7, 2012, Dr. Belmar ordered a lumbar MRI. On June 25, 2012, the Claimant underwent a lumbar MRI at Camden Open MRI. This MRI showed disc protrusions at multiple levels which were "probably post traumatic." Defendants'

APA, page 25. The MRI also revealed a neoplasm in the lung. Following this MRI, the Claimant was referred to a neurosurgeon. Sometime after the MRI, the Claimant was diagnosed with lung cancer and began treatment including chemotherapy and radiation therapy.

Dr. Brett Gunter of Columbia Neurosurgical Associates took over care on July 25, 2012. Dr. Gunter noted that the Claimant “would not consider a surgical alternative should one be offered.” Defendants’ APA, page 2. Claimant’s treatment with Dr. Gunter consisted of physical therapy, two lumbar epidural steroid injections and a work hardening program. The work hardening program was terminated due to the development of pain and shortness of breath. Dr. Gunter released the Claimant at MMI on May 8, 2013. Dr. Gunter gave an impairment rating of 10% and recommended medium duty work.

The Claimant submitted an IME from Dr. Leonard Forrest who assessed a 21% impairment rating and opined that the Claimant may not be able to do sedentary work on a full-time basis. Harriet Fowler of Vocational Rehabilitation Services opined that the Claimant would not be able to return to obtains substantial gainful employment.

The Claimant was the only witness to testify at the hearing. Claimant’s testimony included a description of his educational background and work history, his work accident and the treatment he received for his injuries. The Claimant also testified to his ability to return to employment.

FINDINGS OF FACT

Following a review of the Appellate Panel Order and the Record on Appeal and in consideration of *Colonna v. Marlboro Park Hospital* and *Beckman v. Sysco Columbia, LLC*, I find the following Findings of Fact have been proven by a preponderance of the evidence:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant)
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.

8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent."
"Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery. (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant)
13. Claimant reached maximum medical improvement on May 8, 2013. (Defendants' APA, page 1)
14. The authorized treating physician assigned a 10% impairment rating and released Claimant to **medium** work. I give greater weight to the medium duty restrictions imposed by the authorized treating physician than I give to any other evidence regarding restrictions. (Defendants' APA, page 1)

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals. (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant’s IME who admits that, *“I’m not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity.”* (evidence in its entirety, including but not limited to Claimant’s APA #2, pages 10, 12, 15 and 24; Claimant’s APA #4, page 35; Defendants’ APA, pages 14 and 16).
17. Claimant’s complaints involving his legs are not always consistent, a finding I base on the pain diagrams in evidence (e.g., Claimant’s APA #2, pages 10, 15, and 24).
18. Claimant’s legs do not prevent him from driving. (testimony of Claimant).
19. Claimant’s straight leg test is negative. (Defendants’ APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed.

Notwithstanding Claimant’s testimony to the contrary, I find that Claimant’s use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant’s APA #2, pages 22 and 24).
22. I find that the restrictions of “sedentary” to “limited light” as recommended by a physical therapy are based primarily (if not essentially) upon Claimant’s aerobic capacity. I base this finding on Claimant’s APA #2, page 25, and on other evidence

as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician. (Defendants' APA, page 1)

23. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the *lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).
24. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
25. I considered Claimant's vocational report, but I give greater weight to the authorized treating physician's recommendation of **medium** duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. I note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." By contrast, Claimant's vocational expert "parrots" Dr. Forrest's

inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed. (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).

26. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.

27. Defendants may stop payment of temporary benefits.

28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity. (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).

29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.

30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

CONCLUSIONS OF LAW

Based upon the evidence submitted in the case, the testimony given, and the foregoing Findings of Fact, I make the following Conclusions of Law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.

6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to *Dodge v. Brucoli Clark Laymen, Inc.*, 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

ORDER

Based upon the Findings of Fact and Conclusions of Law:

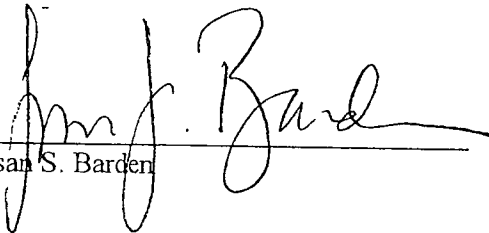
IT IS, THEREFORE ORDERED, that the Claimant is awarded permanent partial disability consisting of thirty-five percent to the back. Claimant is entitled to a lump sum payment and Utica Mohawk language.

IT IS FUTHER ORDERED, that the Defendants are entitled to credit for overpayment of benefits from May 8, 2013 until March 12, 2014.

IT IS ALSO ORDERED, that the Defendants pay permanent partial disability in the amount of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars. The award of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars shall be allocated as follows: Twelve Thousand Three Hundred Eighty Nine and 49/100 (\$12,389.49) Dollars as attorneys' fees pursuant to a written agreement between the Claimant and his attorney; Two Thousand Six Hundred Fifty Nine and 15/100 (\$2,659.15) Dollars in disbursements and expenses; Twenty Two Thousand One Hundred Nineteen and 83/100 (\$22,119.83) Dollars in compromise settlement at the rate of Nineteen and 10/100 (\$19.10)

Dollars per week for a period of 1,158.04 weeks pursuant to Sections 19-1-150, 42-9-10, 42-9-20 and 42-9-30 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010); see also Utica Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 593 (1955); Sciarotta v. Bowen, 837 F.2d 135; Lemire v. Secretary of Health and Human Services, 682 F.Supp 102 (D.C.N.H. 1988) and Hatch v. Heckler, 626 F.Supp 1367 (N.D. California 1986).

AND IT IS SO ORDERED.


Susan S. Barden

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).
February 24, 2015

By: Kristi Love, Administrative Assistant to Commissioner Barden

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

James Dent,

Claimant,

vs.

East Richland County Public Service
District,

Employer/Defendant,

and,

State Accident Fund,

Carrier/Defendant

ORDER

W.C.C. FILE NO.: 1205879

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

Appellate Panel Decision and Order filed:

July 10th, 2015

APPEARANCES:

Claimant was represented by Matthew C.
Robertson, Esquire, of Columbia, SC.

Defendants were represented by Page P. Snyder,
Esquire, of Columbia, South Carolina

STATEMENT OF THE CASE

This claim went before the Single Commissioner pursuant to a Form 50 filed by the claimant, James Dent, on September 20, 2013. Therein, Mr. Dent alleged injuries by accident to the back, right leg and left leg, occurring on May 1, 2012 arising out of and within the course of his employment with East Richland County Public Service. Claimant alleged he was permanently and totally disabled as a result of his May 1, 2012 accident when he injured his low back while moving a manhole cover. Claimant claims that he has sustained an injury causing radicular pain to both of his legs. The defendants admitted the compensability of the accident to the lumbar spine only and denied that the claimant sustained permanent and total disability.

The claim was heard by the Single Commissioner on February 7, 2014 in Columbia, South Carolina. The Single Commissioner issued her initial Decision and Order on April 14, 2014, making the following findings of facts, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).

4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also Defendants' APA, page 11*).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).

13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME admits that, *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.
20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that *"the lung cancer is not playing any role"* in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very

same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).

22. I considered Claimant's vocational report. However, I find that this is a "one body part" (i.e. *Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).

23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.

24. Defendants may stop payment of temporary benefits.

25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.

26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.

27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

28. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.

29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

In her initial Order and Decision dated April 14, 2014, the Single Commissioner made Conclusions of Law as follows:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Bruccoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his exceptions. The matter was briefed by both parties, copies of which were furnished to all interested parties prior to oral arguments which were presented before the Appellate Panel on September 15, 2014. All proffered testimony had been taken and all documentary evidence submitted to the individual members of the Appellate Panel and has since been under study and consideration.

On November 21, 2014, the Appellate Panel issued an Order of Remand of the Single Commissioner's initial Decision and Order. The Appellate Panel specifically wanted the Single Commissioner to consider Colonna v. Marlboro Park Hospital and Beckman v. Sysco Columbia, LLC in connection with the Single Commissioner's finding ~~that this is a one body part case pursuant to Singleton~~

As a result of the Order of Remand, the Single Commissioner reconsidered this matter and issued a subsequent Order and Decision on February 24, 2015 making the following findings of facts, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).

5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
 6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
 7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
 8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
 9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
 10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
-
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
 12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
 13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
 14. The authorized treating physician assigned a 10% impairment rating and released Claimant to medium work. I give greater weight to the medium duty restrictions imposed by the authorized treating physician than I give to any other evidence regarding restrictions (Defendants' APA, page 1).

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant's IME who admits that, "*I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity*" (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).
17. Claimant's complaints involving his legs are not always consistent, a finding I base on the pain diagrams in evidence (e.g., Claimant's APA #2, pages 10, 15, and 24).
18. Claimant's legs do not prevent him from driving (testimony of Claimant).
19. Claimant's straight leg test is negative. (Defendants' APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed. ~~Notwithstanding Claimant's testimony to the contrary, I find that Claimant's~~ use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
22. I find that the restrictions of "sedentary" to "limited light" as recommended by a physical therapy are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician (Defendants' APA, page 1).
23. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "*the lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

24. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
25. I considered Claimant's vocational report, but I give greater weight to the authorized treating physician's recommendation of medium duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. I note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." Claimant's vocational expert "parrot" Dr. Forrest's inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).
26. Although the undersigned greatly sympathizes with Claimant, I find that ~~Claimant's disability stems primarily from his cancer condition, including but~~ not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
27. Defendants may stop payment of temporary benefits.
28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity. (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).
29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

The Single Commissioner made the following Conclusions of Law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Bruccoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his exceptions. The matter was briefed by both parties, copies of which were furnished to all interested parties prior to oral arguments which were presented

before the Appellate Panel on May 18, 2015. All proffered testimony had been taken and all documentary evidence submitted to the individual members of the Appellate Panel and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1976, as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. The matter was heard by the Appellate Panel on May 18, 2015.

Matthew Robertson, for the Claimant and Page P. Snyder, for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties.

~~Having heard oral arguments on behalf of the parties, considered their briefs and viewed~~

the records as a whole, the Appellate Panel hereby finds a Full Affirmation of the Single Commissioner's Decision and Order dated February 24, 2015.

DECISION AND ORDER

The Appellate Panel hereby makes the following findings of fact:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all

considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).

5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
 6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
 7. Claimant was treated conservatively for his back injury. We base this finding on the medical evidence in its entirety.
 8. One month after the date of the accident, Claimant's pain radiation was better. We give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
 9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
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10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
 11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
 12. We do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
 13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
 14. The authorized treating physician assigned a 10% impairment rating and released Claimant to medium work. We give greater weight to the medium duty restrictions imposed by the authorized treating physician than we give to any other evidence regarding restrictions (Defendants' APA, page 1).

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals. (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant’s IME who admits that, “*I’m not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity.*” (evidence in its entirety, including but not limited to Claimant’s APA #2, pages 10, 12, 15 and 24; Claimant’s APA #4, page 35; Defendants’ APA, pages 14 and 16).
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18. Claimant’s legs do not prevent him from driving. (testimony of Claimant).
19. Claimant’s straight leg test is negative. (Defendants’ APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant’s testimony to the contrary, I find that Claimant’s use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant’s APA #2, pages 22 and 24).
22. I find that the restrictions of “sedentary” to “limited light” as recommended by a physical therapy are based primarily (if not essentially) upon Claimant’s aerobic capacity. I base this finding on Claimant’s APA #2, page 25, and on other evidence as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician. (Defendants’ APA, page 1)
23. I considered the opinion of Claimant’s one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest’s opinion that “*the lung cancer is not playing any role*” in Claimant’s inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant’s APA #4, including, but not limited to pages 36-37; Claimant’s APA #5, page 38).

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-
26. ~~Although the undersigned greatly sympathizes with Claimant, we find that~~ Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
27. Defendants may stop payment of temporary benefits.
28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. We base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).
29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

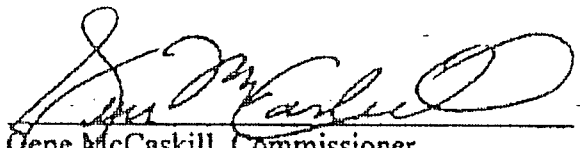
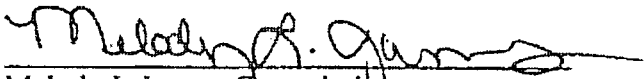
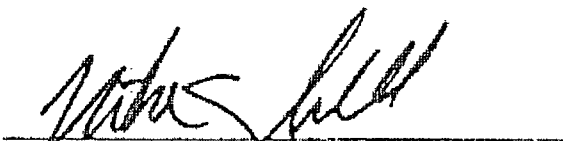
The Appellate Panel hereby makes the following conclusions of law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. ~~That the Claimant was an employee and East Richland County Public~~
Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Brucoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants' are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

IT IS, THEREFORE, ORDERED the Order of the hearing Single Commissioner dated February 24, 2015 is AFFIRMED IN FULL.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Gene McCaskill, Commissioner
Melody L. James, Commissioner
Mike Campbell, Commissioner

CERTIFICATE OF SERVICE

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

By Kim Falls on July 10, 2015

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

*Proudly representing injured workers
for over 25 years*

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 20, 2013

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: James Dent v. East Richland County Public Service District
WCC File No.: 1205879

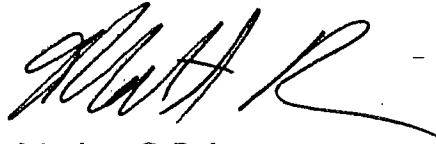
Dear Ms. Crocker:

Enclosed herewith is my Form 50 requesting a hearing with regards to the above-referenced matter along with my proof of service upon the carrier and/or opposing counsel in this matter.

I am requesting that this matter be set for hearing as soon as the Commission calendar will permit.

I hope this is sufficient for filing with the Commission. Should you require anything further, kindly advise.

Sincerely yours,



Matthew C. Robertson
Attorney for Employee/Claimant

MCR/bre
Enclosures
CC: Ellen Goodwin, Esquire
James Dent

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 #: 1205879
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: James Dent SSN: _____ Employer's Name: East Richland County Public Service District
Address: 1000 E. Main Street Address: PO Box 23069
City: Columbia State: SC Zip: 29224 City: Columbia State: SC Zip: 29224
Home Phone: _____ Work Phone: _____ Insurance Carrier: State Accident Fund
Preparer's Name: Matthew C. Robertson Law Firm: McDaniel Law Firm Preparer's Phone #: 803.771.7211

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

Date of Injury or Illness: 5/1/2012

- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
1. The claimant sustained an injury to Back and legs (Part(s) of Body Injured) on 5/1/2012 (Month/Day/Year) in Richland county, state of SC. Body part(s) affected are: Back and legs
2. Briefly describe how the accident occurred. See attached.
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 5/1/2012 (Month/Day/Year) in the following manner:
Claimant verbally reported the incident to his supervisor, Jack Molin (Accepted case).
- ☒ 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: Back and legs
- ☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
- ☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☒ Partial ☒ (2) Specific Disability: ☒ Total ☒ Partial ☐ (3) Wage Loss
- ☐ 9a. ☐ A determination of permanent disability is premature at this time.
- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ SEE ATTACHED, 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:
None
11. Further grounds or unusual aspects of claim: _____
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See attached.
- 11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: None. We reserve the right to amend the answer upon completion of our investigation.
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 Ellen Goodwind, Esquire
address PO Box 102100 Columbia, SC 29202 on the _____ day of September 2013, 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: _____ Attorney for Claimant: MRobertson@pfmcdlaw.com
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.

ATTACHMENT TO FORM 50
WCC File No.: 1205879

2.

Claimant was picking up a manhole cover and went to toss it back into place when he felt a sharp pain in his back and down his legs.

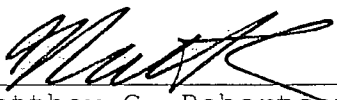
10a.

The Claimant is being paid at a compensation rate of \$610.76 per week at this time but the Claimant works one (1) week per month on call 24/7 at a schedule of 2:00 p.m. to 10:00 p.m., Monday through Friday but is on call 24/7 during those days and is on call Saturday and Sunday 24/7 for which he receives comp. time at the rate of eight (8) hours per day for every eight (8) hours worked and time and a half (1.5) in comp. time for any hours over eight (8) hours per day. Claimant cannot tell at this point whether or not this comp. time has been added to the Claimant's compensation rate.

11b.

Progressive Physical Therapy, 7653 Garners Ferry Road, Columbia, SC 29209; Paula Belmar, MD, Sentinel Health Partners, 2689 Highway 1 South, Elgin, SC 29045; Brett Gunter, MD, Columbia Neurosurgical Associates, 2728 Sunset Boulevard, Suite 106, West Columbia, SC 29169; Camden MRI, 1202 Mill Street, Camden, SC 29020; Image Care, LLC, 710 Rabon Road, Columbia, SC 29203; Leonard Forrest, MD, Southeastern Spine Institute, 1106 Chuck Dawley Blvd., Mt. Pleasant, SC 29464; Harriet Fowler, CRC, M.Ed., Vocational Rehabilitation Services, 2143 Marion Street, Columbia, SC 29201.

- Respectfully submitted,



Matthew C. Robertson
Attorney for Claimant

September __, 2013

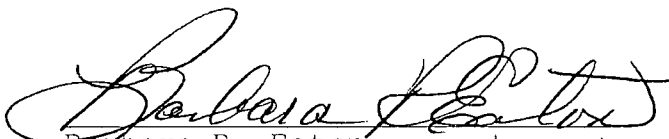
CERTIFICATE OF SERVICE BY MAIL

WCC File No.: 1205879

I hereby certify that I have on this day served the following in the matter of James Dent v. East Richland County Public Service District with a copy of the Form 50 Employee's Request for a Hearing by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Ellen Goodwin, Esquire
South Carolina State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202


Barbara R. Eaton
Paralegal

SWORN TO BEFORE ME this

20 day of September 2013.


(L.S.)
Notary Public for South Carolina

My Commission Expires: 1/21/14

**SOUTH CAROLINA
STATE ACCIDENT FUND**

HARRY B. GREGORY, JR., Director

October 3rd, 2013

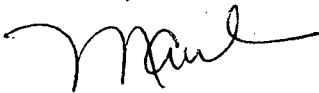
Virginia Crocker, Judicial Director
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: James Dent v East Richland County Public Service District
WCC File No.: 1205879
SAF File No.: 2012-1433

Dear Ms. Crocker:

Enclosed please find the Form 51 which has been completed by this office in the above-entitled claim. If I may be of further assistance, please feel free to call me.

Sincerely,



Marla I. Rehborn
Paralegal

Enclosure

cc: Matthew Robertson, Esquire

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5739

www.wcc.sc.gov

File #: **1205879**Carrier File #: **2012-1433**

Carrier Code #:

Employer FEIN #:

Claimant's Name: James Dent SSN: Address: City: State: SC Zip: 29145Home Phone: () - Work Phone: () -Date of Injury: 05/01/2012Employer's Name: East Richland County Public LibraryAddress: PO Box 23069City: Columbia State: SC Zip: 29224Insurance Carrier: State Accident FundPreparer's Name: Ellen Goodwin, Esq. Law Firm: State Accident Fund Preparer's Phone #: (803) 896-5891Date of Injury or Illness: 05/01/2012**Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:**

1. It is Admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. - The reasons for denial are:
The Defendants admit an injury to the lumbar spine only; however, extent of injury and all other body parts are denied. The Defendants deny an injury to the right and left leg.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is Admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is Admitted that notice of injury was given the employer. The reasons for denial are:
6. It is Denied the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
The Claimant reached MMI on 05/08/2013 and has been released and rated.
7. It is Admitted the employee is entitled to temporary total disability for the period(s) of :
Weekly benefits continue at this time.
8. It is Denied the employee is permanently disabled. The reasons for denial are:
Disability, if any, to be determined by W.C.C.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$ 916.09** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants will be filing a Stop Payment Application and ask that the both issues are set at the same time.
12. Estimated time needed for hearing: 30 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Matthew Robertson, Esquire

Judicial Director, SCWCC

Address: 1315 Elmwood Avenue, Columbia, SC 29201

P.O. Box 1715, Columbia, SC 29202-1715

on the 3rd day of October, 2013 by ☒ first class mail ☐ personal service ☐ certified mail.

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

Preparer's Signature

Asst. Chief Counsel
TitleEgoodwin@saf.sc.gov
Email

Date

10/3/13

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

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION COMMISSION
COUNTY OF RICHLAND) WCC File No: 1205879

James Dent,)
)
Employee Claimant,)
)
v.) **DATE OF HEARING: 02/07/14**
) **APA SUBMISSIONS**
)
East Richland County)
Public Services,)
as Employer, and)
State Accident Fund,)
as Carrier,)
)
Defendants.)
)

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 Matthew C. Robertson, the Attorney for the Claimant, submits the following report(s) in support of and on behalf of the Claimant in this matter:

Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
1	Paula L. Belmar, MD Southeastern Spine	05/17/12-06/28/12	1-7
2	Progressive Physical Therapy	01/16/13-07/01/13	8-27
3	Columbia Neurosurgical	08/29/12-07/30/13	28-31
4	Leonard Forrest, MD Southeastern Spine Institute (IME)	07/08/13	32-37
5	Harriet Fowler, CRC, M.Ed. (Vocational Evaluation)	09/13/13	38-60

Subjective

COMPLAINT OR ISSUE: Patient comes in today in follow up workers comp injury. Pain still present paraspinal area lower back SI joint area.

Objective

VS: BMI: 31.9. BP: 110/70. H: 66 in. P: 80 /min. W: 198lbs 0oz. Wendy Carter LPN
back

05/17/2012 11:41: difficulty getting out of chair and climbing on stretcher.

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: tenderness lumbar spine, tenderness left sacroiliac region, pain reproduced with bending, pain reproduced with twisting.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality., limp favoring left leg.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia., No dystonia.

Assessment

Degenerative disc disease ICD#722.6

Muscle spasms ICD#728.85

Renal calculus ICD#592.0

Discussion

Plan

physical therapy and needs to see primary for kidney stones and possible urology referral.

Handouts: Back pain, Back pain.

Orders

off one week

Referrals

PHYSICIAN REFERRALS: physical therapy.

Medications

Visit Level

Follow Up

Return to the office in 1 week Electronically signed by Paula L. Belmar, M.D.

Electronically signed by: Paula L. Belmar, M.D. on 05/17/2012 11:41 AM

Subjective

Objective

Assessment

Discussion

Plan

Orders

ORDER REHAB and THERAPY: Referral: Physical Therapy: lumbar radiculopathy and degenerative disc changes
Eval and treat ASAP

Referrals

Medications

Visit Level

Follow Up

plb
this will be set up by care IQ 1-888-922-7347 per Derrick they will call the pt to set this up and then advise us when and where 5/18/12-bt

Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of active medical problems.

Patient still hurting no therapy due to bronchitis.

Ridngg in car . Still on meds. Pain in knee right. Pain radiation is better

Objective

VS: BMI: 30.4. BP: 124/82. H: 66 in. P: 88 /min. W: 189lbs 0oz. Wendy Carter-LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality., limp favoring left leg.

STRENGTH: left lower extremity weakness 4/5.

MUSCLE TONE: No hypotonia. No dystonia.

Assessment

Low back pain ICD#724.2

Lumbar radiculopathy ICD#724.4

Discussion

Plan

Handouts: Back pain.

Orders

ORDER RADIOLOGY: MRI lumbar

Referrals

PHYSICIAN REFERRALS: ortho consult.

Medications

Vicodin ES (APAP/Hydrocodone): 750 mg-7.5 mg (tablet) SIG- 1 tab(s) every 6 hours orally #30

Substitutions Allowed Refills- 0 Notes-

Visit Level

Follow Up

if not better: Paula Belmar.

Dent, James L. - 17986 - Paula L. Belmar, M.D. - 06/07/2012 11:08 AM

Electronically signed by: Paula L. Belmar, M.D. on 06/07/2012 1:08 PM

Subjective

PHONE MESSAGE

Please enter Rx Info and Pharmacy in Prescription Details section and please enter Preferred pharmacy in Demographics__.

Message taken by:

Caller:

Call back phone number: 408-8664

Date of Birth:

Date of Last Visit:

Comments: patient said that vicodin is not working for his pain. please advise

Wendy Carter LPN

Objective

Response:

Assessment

REFILL REQUEST

Discussion

REFILL REQUESTED

Allergies:

Medication(s) requested:

Refill supply requested:

How to Handle Rx:

Notification:

Pharmacy: elgin

Plan

Orders

Referrals

Medications

Percocet (APAP/Oxycodone): 325 mg-10 mg (tablet) SIG- 1 tab(s) every 6 hours as needed orally
#60 Substitutions Allowed Refills- 0 Notes-

Visit Level

Follow Up

Electronically signed by Paula L. Belmar, M.D.

Subjective

do not do not have a contact # for his workers comp but we have a fax#, I faxed them asking them to call me back ASAP they need to get this pt set up with neurosurgery waiting on call 6/28/12-bt

Objective**Assessment**

Wendy called me asking me to send notes faxed all info on pt to her 7/2/12-bt
I spoke with pt today he still has not gotten an appt he will call his caseworker today and check on the status and advise me 7/12/12-bt

Discussion**Plan****Orders****Referrals****Medications****Visit Level****Follow Up**

Next MD appt:

1756

	DATE	DATE	DATE	DATE	DATE	DATE
CARDIO						
Tm						
Pelvic Tilts	-X10	@ home				
MULTIFIDUS/ Tra "drawing in"	-X10	X20	X20	X20	X20	
BRIDGING						
ABS						
LT Rot	-X10	X20	X20	X20	X20	
TAYLOR SIT- ROWS						
TAYLOR SIT- T's						
TAYLOR SIT-PULL DOWNS/LATS						
Side abd	x20	X20(B)	X20(B)	X20(B)	X20(B)	
PRONE ON ELBOWS						
PRONE PRESS UPS						
PRONE ALT UE/LE "superman"						
PRONE PLANKS Knees	X10/3..	X5/10sec	X5	X5	X5	
SIDE PLANKS Knees (B)		X5/10sec	X5	X5	X5	
Rowing	-x20	X20	X20	X20	X20	
QUADRUPED U/L/E "bird dog"		X10	X10	X10	X10	
STANDING I's, T's, Y's	-x20(e)	X20e	X20e	X20e	X20e	
KNEEL → ½ KNEEL						
HIP - 4 PLANES						
SWISS BALL WALLSLIDES						
SWISS BALL TRUNK EXT.						
SKC	x5/5"	X5/10sec	X5	X5	X5	
IRONING						
PIRIFORMIS						
GLUT						
HAMSTRING						
BOX LIFTS FLOOR → WAIST						
BOX LIFTS-WAIST→SHOULDER						
BOX LIFTS SHldr→OVERHEAD						
BOX CARRIES X 25 FT						
STOOPS/SQUATS						
WRITTEN REP ISSUED?						
THERAPIST'S INITIALS						

/2013 10:27 AM Whittaker, Amanda -> Kathryn CorVel Corporation
POTSmodem1 To:678-985-4872 POTS modem 2

Page 2 of 2

(1 of 1) 03-18-2013 07:21 AM -0500

BRETT C. GUNTER, MD

03/06/2013

Columbia Neurosurgical Associates, P.A.

720 Rabon Rd. • Columbia, SC 29203

Phone: (803) 462-0423

Fax: (803) 462-0432

132 Sunset Court • W. Columbia, SC 29169

Phone: (803) 794-3700

Fax: (803) 794-0322

PHYSICAL THERAPY ORDER

Patient Name: JAMES L DENT

Frequency: _____

Duration: _____

Diagnosis: Lumbar Spondylosis

Specific Orders Work hardening program

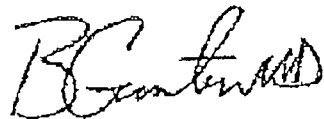
Precautions/ Restrictions: _____

Insurance Authorization: _____

Appt Date and Time: _____

*I certify that the above ordered physical therapy medically necessary

Physician: BRETT C. GUNTER, MD

Signature: 



Progressive Physical Therapy

Medical History

INJURY DETAILS

How did the injury occur? Lifting object

List any medications you are presently taking (if any): Zoloft, magnesium, Percocet

Have you had x-rays taken for this injury? ☒ Yes ☐ No

PAIN DESCRIPTION

Which of the following best describes your pain? (check one) - ☐ Sharp ☐ Dull ☒ Aching ☐ Shooting

Which of the following best describes the frequency of your pain? (check one) ☐ Constant ☒ Intermittent ☐ Occasional

What makes your pain feel worse? (check all that apply) ☒ Lifting ☐ Leaning ☐ Dressing ☒ Climbing

☒ Sitting ☐ Walking ☒ Standing ☐ Reaching

☐ Driving ☒ Bending ☒ Stooping ☒ Laying Down

What makes your pain feel better? Drain my ds

Please rate the level of pain you have experienced over the past 30 days:

What number on the pain scale best describes your pain **right now**?

What number on the pain scale describes your worst pain over the past 30 days?

What number on the pain scale describes your least pain over the past 30 days?

SYMPTOM DIAGRAM

Using the diagram at right, please indicate the location and type of symptoms you are experiencing. ☺

(Use the symbols from the diagram key to indicate the location and type of symptom on the image.)

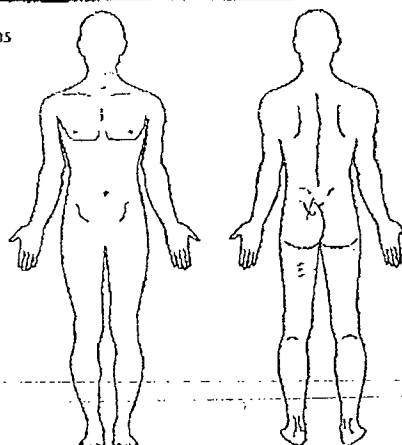


DIAGRAM KEY:	
SYMBOL	SYMPTOM
X	pain
	numbness
	tingling

GENERAL MEDICAL HISTORY

Do you have a history of cancer?..... ☒ Yes ☐ No

Do you have a pacemaker? ☐ Yes ☒ No

Do you have hypertension?..... ☐ Yes ☒ No

Do you have bowel/bladder problems?..... ☐ Yes ☒ No

Are you diabetic? ☐ Yes ☒ No

Are you pregnant? ☐ Yes ☒ No

Please list any other relevant past medical or orthopedic history:

Small cell lung cancer

01/16/2013 13:59 Clinic Main

(FAX)8034629549

P.001/002

BRETT C. GUNTER, MD

01/16/2013

Columbia Neurosurgical Associates, P.A.

720 Rabon Rd. • Columbia, SC 29203

Phone: (803) 462-0423

Fax: (803) 462-0432

132 Sunset Court • W. Columbia, SC 29169

Phone: (803) 794-3700

Fax: (803) 794-0322

PHYSICAL THERAPY ORDER

Patient Name: JAMES L DENT

Frequency: 2 time(s) a week

Duration: 4-8 week(s)

Diagnosis: Lumbar Radiculopathy, Lumbar Spondylosis

Specific Orders Lumbar physical therapy with the development of home exercise program, core strengthening exercises, and range of motion exercises., Lumbar physical therapy with emphasis on local measures including ultrasound, heat, and TENS, evaluate and management.

Precautions/ Restrictions:

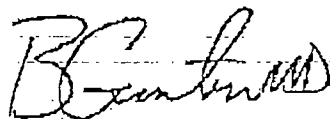
Insurance Authorization: Set up by Care IQ. etc

Appt Date and Time: 1/16/13 2:00pm

I certify that the above ordered physical therapy medically necessary

Physician: BRETT C. GUNTER, MD

Signature:





**Progressive
Physical Therapy**

Medical History

INJURY DETAILS

Type of Injury: back Date of Onset: 5-1-12
 How did the injury occur? lifting object
 List any medications you are presently taking (if any): Nexum, percocet
 Have you had x-rays taken for this injury? ☒ Yes ☐ No

PAIN DESCRIPTION

Which of the following best describes your pain? (check one) ☒ Sharp ☒ Dull ☒ Aching ☒ Shooting
 Which of the following best describes the frequency of your pain? (check one) ☐ Constant ☒ Intermittent ☐ Occasional
 What makes your pain feel worse? (check all that apply) ☒ Lifting ☒ Leaning ☒ Dressing ☒ Climbing
☒ Sitting ☒ Walking ☒ Standing ☒ Reaching
☒ Driving ☒ Bending ☒ Stopping ☒ Laying Down
 What makes your pain feel better? Nothing

Please rate the level of pain you have experienced over the past 30 days:

	NO PAIN					MODERATE PAIN					WORST PAIN				
	0	1	2	3	4	5	6	7	8	9	10				
What number on the pain scale best describes your pain right now?															
What number on the pain scale describes your worst pain over the past 30 days?															
What number on the pain scale describes your least pain over the past 30 days?															

SYMPTOM DIAGRAM

Using the diagram at right, please indicate the location and type of symptoms you are experiencing. ☺

(Use the symbols from the diagram key to indicate the location and type of symptom on the image.)

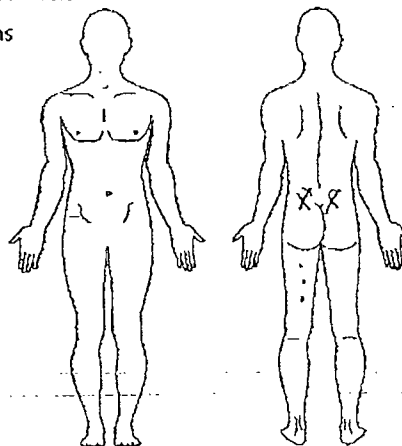


DIAGRAM KEY:	
SYMBOL	SYMPTOM
X	pain
.....	numbness
.....	tingling

GENERAL MEDICAL HISTORY

Do you have a history of cancer? ☒ Yes ☐ No
 Do you have a pacemaker? ☐ Yes ☒ No
 Do you have hypertension? ☐ Yes ☒ No
 Do you have bowel/bladder problems? ☐ Yes ☒ No
 Are you diabetic? ☐ Yes ☒ No
 Are you pregnant? ☐ Yes ☒ No
 Please list any other relevant past medical or orthopedic history: _____

Progressive **Physical Therapy**

10040 Two Notch Road * Columbia, SC 29223
803-788-9950 Ph * 803-462-9858 Fx

Date: January 16, 2013

Patient: Mr. James Dent

DOB:

Dear Dr. Gunter,

Mr. Dent was evaluated for physical therapy today per your orders. The Physical Therapy Order included ultrasound and TENS, modalities that are typically contraindicated in individuals with a diagnosis of cancer. During the evaluation Mr. Dent divulged that he was diagnosed in June 2012 with small cell lung cancer and has recently completed radiation therapy. We will not include these modalities in his plan of care at this time unless you feel they are necessary and safe and provide medical clearance. Thank you for your attention to this matter.

Sincerely,


Deborah Antley, DPT

Time In: / Time Out:

③ 1:45 / 2:15

TICKET NO.

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO.
41005	01/16/13	09:04am	PT NORTHEAST,	107081

NAME & ADDRESS

WEDNESDAY

DENT, JAMES

1902 20th St. - 4th Fl.

DOB: 11/11/55 (years)

GENDER: M

IBG:

FCL: 6

CELL:

20th St. - 4th Fl.

Chicago, IL 60612

WRK:

INSURED: DENT, JAMES

RELATION: OTHER

INS: WC/CORVEL THERAPY PROGRAM

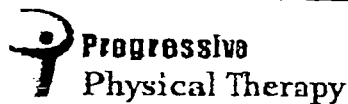
REASON: EVALUATION

NICKNAME:

COPAY:

INSURANCE			
BALANCE	\$0.00		
ACCOUNT			
BALANCE	\$0.00		
CURRENT			
CHARGES	262.00		
AMOUNT			
PAID			
NEW			
BALANCE			
CASH	CHECK	M.O.	C.C.

PROCEDURES	CPT	FEES	
Evaluation	97001	110.00	Eval + tx
Re-Evaluation	97002		
OT Evaluation	97003		
Functional Capacity Evaluation	97750		1) mtr & pt. @ sidelying
Work Hardening, 2 hours	97545		2) Ther. ex & HEP
Work Hardening, add'l. 1 hour	97546		
Therapeutic Exercise, 15 mins	97110	92.00	Pt. brought in stim unit
Functional Activities, 15 mins	97530		asking for instructions in use but
Electrical Stim., Unattended, 15 mins	97014		all of the parts were not
Electrical Stim., Unattended, 15 mins,			present.
Medicare	G0283		
Electrical Stim., Manual, 15 mins	97032		3) Education on positioning
Ultrasound, 15 mins	97035		& pain management.
Paraffin Bath	97018		
Massage, 15 mins	97124		
Manual Therapy	97140		
Mechanical Traction	97012		
Neuromuscular Re-Educ., 15 mins	97112		Visit Number: _____ of _____
Self Care Training, 15 mins	97535	60.00	Staff: _____
ROM Measure and Report	95851		Therapist's Signature: <i>[Signature]</i>
Other / Supplies	99070		
			RELEASE OF MEDICAL INFORMATION and
			ASSIGNMENT OF BENEFITS
			I hereby authorize the release of medical information necessary to
			process this claim and authorize payment of medical benefits to PPT or
			their designee for services described above.
			Patient or Authorized Person's Signature _____
			Date _____



The Leader in Innovative Therapies

SPINAL EVALUATION

10040 Two Notch Road
Columbia, SC 29223To M.D.:
☐ Fixed
☐ Mailed
☐ Given to Patient
☐ Filed in DC chart

Patient Name: James Dent Dr/ICD-9: Lumbar radiculopathy Date: 1-16-13
 DOB: _____ Date of Onset: 5-1-12 Physician: _____
 Claim #: _____ Date of Surgery: _____ Therapist: Deborah Antley, DPT
 History: PE - chronic LBP. He had an L5/S1 on Monday which gave
relief.

Diagnostic findings: _____ Meds: See medical history form
 Past Medical History: Small Cell Lung Cancer

Occupation: Maintenance Foreman

Physical Demands: _____

Work Status: ☐ full duty ☐ light duty ☒ off duty ☐ N/A

Vitals: HR = _____ BP = _____

When Worse: Sitting, standing, walking away

When Better: _____

Pain: 9/10 @ present, 5/10 @ best, 9/10 @ worstQuality: sharp, dull, aching, shooting, throbbing, sore

Summary of Objective Findings: * → denotes pain below with movements; T → denotes increased tone palpated

ACTION	CERVICAL		THORACIC		LUMBAR	
	ROM	RUM	ROM	RUM	ROM	RUM
FLEXION CERV 0-45; TL 0-20					40°	
EXTENSION CERV 0-45; TL 0-25					5°	
SIDEBEND RIGHT CERV 0-45; TL 0-35					10°	
SIDEBEND LEFT CERV 0-45; TL 0-35					5°	
ROTATE RIGHT CERV 0-60; TL 0-45						
ROTATE LEFT CERV 0-60; TL 0-45						
POSTURE	Cervical Lordosis ☐ T ☒ ☐ WNL Lumbar Lordosis ☐ T ☒ ☐ WNL Kyphosis ☐ T ☒ ☐ WNL Scapulothoracic <u>Scalene</u> Asymmetry <u>iliac crest</u> Leg length discrepancy <u>R > L</u> ☐ R > L ☐ L > R					
SPECIAL TESTS/ & NEURAL TENSION TESTING	ASLR ☒ R ☒ L ☐ SI gap ☐ Slump ☐ SI compression ☐ _____ ☐ _____					

MYOTOMES	R	L	MYOTOMES	R	L
L2-3 Hip Flex		5	C1 Cerv Rotation		
L3-4 Knee Ext		5	C4 Shldr. Shrug		
L4 Ankle DF		5	C5 Shldr. Abd		
L5 Or. Toe Ext		5	C6 Wrist Ext/ Fln. flex		
L5-S2 Toe Walk/ Fv.		4	C7 Wrist flex/ Elb. Ext		
OSWESTRY SCORE	31/80		C8 Finger Flex		
			T1 Digital Add/ Abd		
REFLEXES	☐ Intact ☐ Hypertonic ☐ Hypotonic ☒ NT				
DERMATOMES	☐ Intact bilaterally ☐ Impaired - see below				
RADICULAR SYMPTOMS	☐ tingling ☐ pain ☐ numbness ☐ _____ Site: <u>post thigh</u>				
SEGMENTAL MOVEMENT	Segmental mobility ☐ hypo ☐ hyper ☐ WNL <u>PSIS</u>				
SOFT TISSUE PALPATION	of tone _____				
WADDELLS SIGNS (Unreliable pain analysis)					
OTHER FINDINGS	<u>↓ strength @ hip</u> <u>abduct + 4/5</u>				

Assessment: This patient presents with the above functional limitations, affecting ADL and work capacity. Signs and symptoms are consistent with a differential diagnosis of chronic LBP

Rehab Potential: ☐ good ☒ fair ☐ poor 2° chronicity Vocational readjustment services required? ☒ yes ☐ no

Goals: to be met in _____ weeks

1. Patient will report decreased pain to 3/10 at present and 5/10 at worst to allow greater functional mobility.
2. Patient will increase Spinal ROM and strength to WNL to improve bending, stooping, driving, and dressing ability.
3. Patient will be independent with a home exercise program to allow return to his/her previous functional status.
4. Patient will demonstrate proper body mechanics with the following activities to allow return to work at full duty or to allow return to previous functional capacity: reaching, lifting, pushing, pulling, stooping, walking, driving, sitting.

5. PT able to lift 20-30 lbs for 1 hourPlan of Care: Physical Therapy 2 x per week for 4-6 weeks with treatment including the following:

- Therapeutic exercise: Spinal rehab- ROM/stabilization/ endurance/MCU/ HEP
- Functional activities- lift, push, pull, stoop, walk
- Manual therapy- myofascial release, dry needling, joint mobilization, STM
- Modalities- MENS/IFC/TENS, heat
- Patient education- postural awareness/ body mechanics/ injury prevention
- ultrasound, laser therapy, shockwave therapy, ionto

☐

Please sign and date the PT plan of care. Return to the therapist as soon as possible. Thank you for this referral!

X _____
 Physician / Nurse Practitioner / Physician's Asst. Date

 Physical Therapist Date

Time In: 1:30 / Time Out: 2:15
 (13) CHECKOUT TIME

ACCOUNT NUMBER	DATE	TIME	PT NORTHEAST,	TICKET NO.
107198	01/21/13	02:00pm		107198

NAME & ADDRESS: MONDAY
 DENT, JAMES
 DOB: 05/ years
 GENDER: M
 IBG:
 FCL: 6
 CELL:
 WRK:
 INSURED: DENT, JAMES
 INS: WC/CORVEL THERAPY PROGRAM
 REASON: FOLLOW UP
 NICKNAME:
 RELATION: OTHER
 COPAY:

INSURANCE BALANCE: \$262.00
 ACCOUNT BALANCE: \$262.00
 CURRENT CHARGES: 138.00
 AMOUNT PAID:
 NEW BALANCE:
 CASH CHECK M.O. C.C.

PROCEDURES	CPT	FEE	
Evaluation	97001		S: no c/o ↑ pain
Re-Evaluation	97002		
OT Evaluation	97003		
Functional Capacity Evaluation	97750		
Work Hardening, 2 hours	97545		O: MHP
Work Hardening, add'l. 1 hour	97546		thru ex
Therapeutic Exercise, 15 mins	97110	138.00	
Functional Activities, 15 mins	97530		A: tol well other than
Electrical Stim., Unattended, 15 mins	97014		being sup.
Electrical Stim., Unattended, 15 mins, Medicare	G0283		
Electrical Stim., Manual, 15 mins	97032		
Ultrasound, 15 mins	97035		
Paraffin Bath	97018		
Massage, 15 mins	97124		
Manual Therapy	97140		
Mechanical Traction	97012		
Neuromuscular Re-Educ., 15 mins	97112		
Self Care Training, 15 mins	97535		
ROM Measure and Report	95851		
Other / Supplies	99070		

Visit Number: of
 Staff: [Signature]
 Therapist's Signature: [Signature] PTA

RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS

I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above.

Patient or Authorized Person's Signature

Date

Time In: 1:38 / Time Out: 2:38
 (15) 1:38 / 2:38

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO.
	01/23/13	02:00pm	PT NORTHEAST	107235

NAME & ADDRESS
 DENT, JAMES
 1000 GARDEN BRANCH DRIVE
 FARMINGTON CT 06045
 WEDNESDAY
 DOB: 01/27/1971 years
 GENDER: M
 IBG:
 FCL: 6
 CELL:
 WRK:
 INSURED: DENT, JAMES
 INS: WC/CORVEL THERAPY PROGRAM
 REASON: FOLLOW UP
 NICKNAME:
 RELATION: OTHER
 COPAY:

INSURANCE	
BALANCE	\$400.00
ACCOUNT	
BALANCE	\$400.00
CURRENT	
CHARGES	184.00
AMOUNT	
PAID	
NEW	
BALANCE	
CASH	
CHECK	
M.O.	
C.C.	

PROCEDURES	CPT	FEE	
Evaluation	97001		S: No C/o ↑ p.
Re-Evaluation	97002		
OT Evaluation	97003		
Functional Capacity Evaluation	97750		
Work Hardening, 2 hours	97545		O: flu ex MHP
Work Hardening, add'l. 1 hour	97548		
Therapeutic Exercise, 15 mins	97110	184.00	A: add cardio next pt JM?
Functional Activities, 15 mins	97530		
Electrical Stim., Unattended, 15 mins	97014		
Electrical Stim., Unattended, 15 mins, Medicare	G0283		
Electrical Stim., Manual, 15 mins	97032		P: Cont
Ultrasound, 15 mins	97035		
Paraffin Bath	97018		
Massage, 15 mins	97124		
Manual Therapy	97140		Visit Number: _____ of _____ Staff: [Signature] OPI Therapist's Signature: [Signature] PTA
Mechanical Traction	97012		
Neuromuscular Re-Educ., 15 mins	97112		
Self Care Training, 15 mins	97535		
ROM Measure and Report	95851		RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above. Patient or Authorized Person's Signature Date
Other / Supplies	99070		

Time In: / Time Out:

1:30 / 2:30

CHECK OUT TIME

TICKET NO.

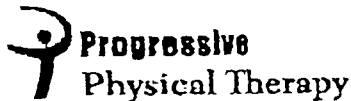
EXAM ROOM TIME

ACCOUNT NUMBER	DATE	TIME	PT NORTHEAST,	TICKET NO.
000000	01/28/13	02:00pm		107524

NAME & ADDRESS	DOB:	(years)	INSURANCE	\$584.00
DENT, JAMES	GENDER: M		BALANCE	
	IBG:		ACCOUNT	\$584.00
	FCL: 6		BALANCE	
	CELL:		CURRENT	1167.00
			CHARGES	
WRK:			AMOUNT	
INSURED: DENT, JAMES	RELATION: OTHER		PAID	
INS: WC/CORVEL THERAPY PROGRAM			NEW	
REASON: FOLLOW UP			BALANCE	
NICKNAME:	COPAY:		CASH	
			CHECK	
			M.O.	
			C.C.	

PROCEDURES	CPT	FEE	
Evaluation	97001		S: a little better
Re-Evaluation	97002		
OT Evaluation	97003		
Functional Capacity Evaluation	97750		
Work Hardening, 2 hours	97545		O: then up func act
Work Hardening, add'l. 1 hour	97546		MTP
Therapeutic Exercise, 15 mins	97110	92.00	
Functional Activities, 15 mins	97530	50.00	
Electrical Stim., Unattended, 15 mins	97014	25.10	A: ↓ cardio
Electrical Stim., Unattended, 15 mins, Medicare	G0283		
Electrical Stim., Manual, 15 mins	97032		
Ultrasound, 15 mins	97035		
Paraffin Bath	97018		
Massage, 15 mins	97124		P: cont PT standard PM
Manual Therapy	97140		
Mechanical Traction	97012		
Neuromuscular-Re-Educ., 15 mins	97112		Visit Number: _____ of _____
Self Care Training, 15 mins	97535		Staff: _____
ROM Measure and Report	95851		Therapist's Signature: <i>Alan Kutley, DPT</i>
Other / Supplies	99070		
			RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS
			I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above.
			Patient or Authorized Person's Signature _____
			Date _____

13492810



Progressive Physical Therapy Northeast • Phone: (803) 788-9950 • Fax: (803) 462-9858

Patient Care Discharge Summary

Patient Name: James Dent DOB: _____

Physician: Brett Gunter Therapist: Deborah Antley, DPT

Diagnosis: Lumbar Radiculopathy

Initial Evaluation Date: 1-16-13 Treatments Attended: 5

Treatments Missed: 1 Last Treatment Date: 1-30-13

It is our understanding that:

- ☐ Patient returned full time to position held prior to injury.
- ☐ Patient returned full time to different position.
- ☐ Patient is working part-time or light duty.

☒ Therapy Interrupted due to Family emergency. Patient's dealing

☐ Other: with much stress at this time.
Please discharge for now. 30 days or more
lapse in treatment.

Additional Comments: _____

We are working to provide the best service and follow up as possible. If you have any questions or concerns regarding this patient, please do not hesitate to call us at 803-788-9950.

Thank you for your interest and assistance.

Physician: _____

Date: 3-15-13

Therapist/Staff Signature: _____

Date: 3-12-13

Apr. 3. 2013 2:31PM --Cola Neurosurgical Scheduling

Page 4 of No. 1424 P. 3/4

03/28/2013 THU 8:51 FAX I 803 482 8858 Progressive PT
Received by Col. Corporation 3/28/2013, 8:35:12 AM Pacific Time, 2069, Page 4 of 4

003/004

Progressive
Physical Therapy
The Leader in Innovative Therapies
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F-402-0432
F-Belle-910-2009

Patient Attendance Status Report

Patient Name: James Derot DOB: _____
Referring Physician: Dr. Brett Carter

The above patient is scheduled for an evaluation on: _____

We have been unable to treat the above patient due to the following:

- ☐ Unable to obtain authorization from Insurance/WKC carrier.
- ☐ We do not participate with _____ Insurance Company
- ☐ Unable to contact patient after several attempts by phone and mail.
- ☐ Patient has refused physical therapy at this time.

☒ Other: PT on hold @ this time PT is having a personal crisis & family member (son) in ICU.

We are working to provide the best service and follow up possible. Please do not hesitate to call our office if you have any questions or concerns regarding this patient.

T. Brumby PMA
Staff Signature

2-7-13
Date

Apr. 3. 2013 2:31PM K2-Cola Neurosurgical Scheduling Page 5 of No. 1464 P. 4/4

Received by Co. Corporation 3/28/2013, 8:35:32 AM Pacific Time, 2009, Page 4 of 4
03/28/2013 THU 8:51 FAX 1 803 482 9858 Progressive PT

004/004



Progressive
Physical Therapy

F- 462-0432

Progressive Physical Therapy Northeast • Phone: (803) 788-9950 • Fax: (803) 462-9858

Patient Care Discharge Summary

Patient Name: James Dent DOB:
Physician: Brett Gunter Therapist: Deborah Antley, DPT
Diagnosis: Lumbar Radiculopathy

Initial Evaluation Date: 1-16-13 Treatments Attended: 5
Treatments Missed: 1 Last Treatment Date: 1-30-13

It is our understanding that:

- ☐ Patient returned full time to position held prior to injury.
☐ Patient returned full time to different position.
☐ Patient is working part-time or light duty.
☒ Therapy interrupted due to Family emergency. Patient dealing
☐ Other: with much stress at this time.
Please discharge for now. 30 days or more
Additional Comments: lapse in treatment.

We are working to provide the best service and follow up as possible. If you have any questions or concerns regarding this patient, please do not hesitate to call us at 803-788-9950.
Thank you for your interest and assistance.

Physician:

Date: 4-3-13

Therapist/Staff Signature:

Date: 3-12-13

Progressive Physical Therapy

10040 Two Notch Road * Columbia, SC 29223
803-788-9950 Ph * 803-462-9858 Fx

Date: April 10, 2013
Patient: Mr. James Dent
DOB: 1/1/57

Dear Dr. Gunter,

Mr. Dent was evaluated for a work hardening program today. After completing the evaluation it is felt that he is not a candidate for this program. Mr. Dent's job at time of injury was as Sewer Line Maintenance Foreman. This position would be rated as Heavy to Very Heavy Physical Demand Labor with Frequent Low Level Work. During the evaluation he exhibited dyspnea and increase in back pain.

Mr. Dent does not plan to return to work. As soon as his worker's compensation claim has been closed he plans to retire. He has already been approved for disability. Please let us know how to proceed with this patient.

Sincerely,

Deborah Antley, DPT
Deborah Antley, DPT

s

4-12-13 verbal orders received to D/K pt. Spoke to
Charlene @ Dr. Gunter's office. Deborah Antley, DPT
4-12-13 Message left for Wendy Harbin NCM regarding
above. DA

Time In: / Time Out:

EXAM ROOM TIME

CHECKOUT TIME

TICKET NO.

ACCOUNT NUMBER	DATE	TIME	PT NORTHEAST,	TICKET NO.
	04/10/13	01:00pm		C110989

NAME & ADDRESS	WEDNESDAY	DOB:	(57 years)	INSURANCE	\$0.00
DENT, JAMES		GENDER: M		BALANCE	\$0.00
		IBG:		ACCOUNT	
		FCL: 6		BALANCE	
		CELL:		CURRENT	
				CHARGES	
WRK:				AMOUNT	
INSURED: DENT, JAMES		RELATION: OTHER		PAID	
INS: WC/CORVEL THERAPY PROGRAM				NEW	
REASON: EVALUATION				BALANCE	
NICKNAME:		COPAY:		CASH	
				CHECK	
				M.O.	
				C.C.	

PROCEDURES	CPT	FEE
1 Evaluation \	97001	
1 Re-Evaluation	97002	
1 OT Evaluation	97003	
1 Functional Capacity Evaluation	97750	
1 Work Hardening, 2 hours	97545	
1 Work Hardening, add'l. 1 hour	97546	
1 Therapeutic Exercise, 15 mins	97110	
1 Functional Activities, 15 mins	97530	
1 Electrical Stim., Unattended, 15 mins	97014	
1 Electrical Stim., Unattended, 15 mins, Medicare	G0283	
1 Electrical Stim., Manual, 15 mins	97032	
1 Ultrasound, 15 mins	97035	
1 Paraffin Bath	97018	
1 Massage, 15 mins	97124	
1 Manual Therapy	97140	
1 Mechanical Traction	97012	
1 Neuromuscular Re-Educ., 15 mins	97112	
1 Self-Care Training, 15 mins	97535	
1 ROM Measure and Report	95851	
1 Other / Supplies	99070	

Pl. seen for work
 & hardening evaluation.
 Pl. not felt appropriate
 to continue, note
 sent to m.d.
 Await further orders.

Visit Number: _____ of _____

Staff: _____
 Therapist's Signature: *[Signature]*

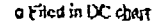
RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS

I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above.

Patient or Authorized Person's Signature

Date

NO. 2190 P. 5/5 003/003



Quality: SHARP DULL ACING/SPOTTING/PIGMENTING/SCORING

breath & 314th	Asstlt. Major & 1st Lt. & 1st Lt.
	former 2nd Cavalry Division

- 24 -

Progressive Physical Therapy

10040 Two Notch Rd. * Columbia, SC 29223
803-788-9950 Ph * 803-462-9858 Fx

July 1, 2013

Dear Mr. McDaniel,

I am writing in response to your request for further information concerning Mr. James Dent. I do not feel Mr. Dent would be an appropriate candidate for a functional capacity evaluation for several reasons. First of all he has been approved for disability and plans to retire so any information obtained would be of limited use. Given his medical conditions of known low back injury with surgery recommended and lung cancer, testing would be limited due to safety concerns.

I do not recall the specific conversation with Mr. Dent concerning Sedentary to limited Light work, however this would be supported by the findings during the Work Conditioning Evaluation. He was able to lift 10 to 20 lbs. on an Occasional basis. While we did not do a specific test for aerobic fitness his vital signs (resting heart rate of 88 bpm and shortness of breath with the limited testing performed) indicated that his aerobic capacity would support only Sedentary to limited Light Physical Demand Labor.

I did not receive the questionnaire you referred to in your letter so I am attaching a copy of the evaluation performed as well as my letter to Dr. Gunter. Please let me know if I can be of further assistance.

Sincerely,


Deborah Antley, DPT

'2013 10:58 AM

-> Progressive Physical Therapy

Page 2 of 6

CareIQ

A CORVEL NETWORK

CareIQ Therapy Program
301 Pennsylvania Parkway, Suite 210
Indianapolis, IN 46280

Certification Form

Patient Information:

Provider Name: Progressive Physical Therapy

Patient's Name: James Dent

Claim #:

Date of Birth:

Date of Injury: 05/01/2012

Home Telephone:

SSN:

Home Address:

Employer Name: East Ridgeland County Public Works Department

Work Telephone: (803) 788-6351

Employment Information: DO NOT BILL EMPLOYER

Treatment Information:

Physician's Last Name: Gunter

First Name: Brett

Physician's Phone: (803) 794-3700

Fax: (803) 794-0322

Diagnosis: Lumbar Spondylosis

Secondary Diagnosis:

Service: Work Hardening / Work Conditioning

Body Part: Lower Back Area -

Certified Visits: Initial Evaluation + 5 Visits

In order to avoid potential interruptions in care, please provide the following documentation to CareIQ Therapy Program office within 24 hours of services rendered. If any questions, please refer to the Provider and Documentation Requirements document provided or call CareIQ at (866) 866-1101.

- Initial Evaluation with Return to Work Questionnaire and script (if not already submitted)
- Progress Report completed at every 6th visit (include updated measurements, ROM and status of goals) with prescription to cover additional visits
- All cancellations and no show appointments must be reported to CareIQ Therapy Program within 24 hours of the missed appointment

Fax to: 866-910-2089

Email to: PTDdocuments@corvel.com

Disclaimer: This certification is invalid if a current prescription for this patient is not on file.

Billing Address:

CareIQ Therapy Program
301 Pennsylvania Parkway Suite 210
Indianapolis, IN 46280

Confidentiality Note:

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Amanda direct =
954-744-5099.

Amelia P. 866-1101

1/2013 7:28 AM

-> Progressive Physical Therapy

Page 4 of 8

CareIQ

A CORVEL NETWORK

CareIQ Therapy Program301 Pennsylvania Parkway, Suite 210
Indianapolis, IN 46280Faxed to
Vicki ✓**Certification Form****Patient Information:**

Provider Name: Progressive Physical Therapy
 Patient's Name: James Dent
 Date of Birth:
 Home Telephone:
 Home Address:
 Employer Name: East Ridgeland County Public Works Department
 Work Telephone: (803) 788-6351
 Employment Information: DO NOT BILL EMPLOYER

Claim #:

Date of Injury: 05/01/2012

SSN:

Treatment Information:

Physician's Last Name: Rawl
 Physician's Phone: (803) 794-3700
 Diagnosis: Lumbar Radiculopathy, Lumbar Spondylosis

First Name: Eva

Fax: (803) 794-0322

Secondary Diagnosis:

Service: Physical Therapy**Body Part: Lower Back Area****Certified Visits: Initial Evaluation + 5 Visit(s)**

In order to avoid potential interruptions in care, please provide the following documentation to CareIQ Therapy Program office within 24 hours of services rendered. If any questions, please refer to the Provider and Documentation Requirements document provided or call CareIQ at (866) 866-1101.

- Initial Evaluation with Return to Work Questionnaire and script (if not already submitted)
- Progress Report completed at every 6th visit (include updated measurements, ROM and status of goals) with prescription to cover additional visits
- All cancellations and no show appointments must be reported to CareIQ Therapy Program within 24 hours of the missed appointment

Fax to: 866-910-2089

Email to: PTDocuments@corvel.com

Disclaimer: This certification is invalid if a current prescription for this patient is not on file.**Billing Address:**

CareIQ Therapy Program
 301 Pennsylvania Parkway Suite 210
 Indianapolis, IN 46280

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Auth: P:87
P:87

134728

Brett Gunter, MD
Columbia Neurosurgical Associates, P.A.
132 Sunset Court
West Columbia, SC 29169

RE: James Dent

Date of Birth:

Social Security No.:

Dear Dr. Gunter,

I would sincerely appreciate it if you would answer the following questions and express opinions concerning the treatment and future medical care needs of your patient, Mr. James Dent:

1. Based on your knowledge of Mr. Dent at the time of his release will he need availability to a physician and pain medications on either a periodic or recurring or continual basis to control his back pain stemming from his work related accident and to keep his back condition in the condition that it was in at the time of release?

☒ Yes☐ No

BCG
BCG (initials)

2. In your opinion should he either be under the care of a family practitioner with access to and/or under the care of a chronic pain management specialist for ongoing conservative management of his back pain?

☒ Yes☐ No

BCG
BCG (initials)

3. Based on a review of your chart it appears that you advised Mr. Dent that surgical intervention was the only other treatment modality that was available that may address his ongoing and continual back problems and that Mr. Dent during that discussion advised you that due to his condition he did not want to contemplate surgical intervention at that time. Does that properly represent your recollection of that discussion with Mr. Dent concerning whether or not to perform surgical intervention on Mr. Dent for his back condition?

☒ Yes☐ No

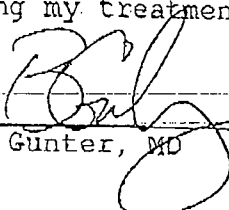
BCG
BCG (initials)

Jul. 31. 2013 1:29PM W IC

RECEIVED 07/31/2013 13:45

No. 2697 P. 3

The above-referenced answers and opinions constitute my answers and opinions to a reasonable degree of medical certainty concerning my treatment and care of my patient, Mr. James Dent.


Brett C. Gunter, MD

Date 7-30-2013

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.
Spine and Neurological Surgery

Carolina Spine Center
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.
PH (803) 462-3602 Fax (803) 462-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

JAMES L DENT

Patient Name

Patient social security #

Chart #

E. RICHLAND COUNTY PUBLIC SERV

State Accident Fund

Employer Name

Insurance Carrier

Case #

03/06/2013

05/01/2012

Date of Service

Date of Accident

Diagnosis code(s) and/or description of condition for which patient is being treated

Remain out of work for until further notice

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: BRETT C. GUNTER, MD

Signature:



COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.
Spine and Neurological Surgery

Caroline Spine Center
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.
PH (803) 462-3602 Fax (803) 462-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

JAMES L DENT

Patient Name

Patient social security #

Chart #

Employer Name

Insurance Carrier

Case #

08/29/2012

Date of Service

Date of Accident =

Diagnosis code(s) and/or description of condition for which patient is being treated

Remain out of work for 8 WEEKS

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: BRETT C. GUNTER, MD

Signature:



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

*Proudly representing injured workers
for over 25 years*

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 2, 2013

Dr. Leonard Forrest
Southeastern Spine Institute
1106 Chuck Dawley Boulevard
Mt. Pleasant, South Carolina 29464

RE: James Dent
Date of evaluation: July 8, 2013
SCWCC File No.:
DOB:
Patient No.:

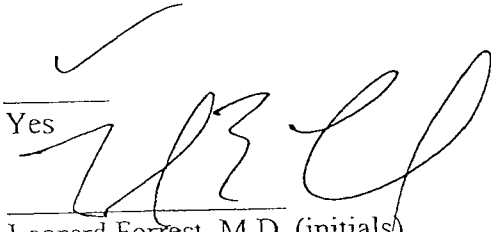
Dear Dr. Forrest:

I would appreciate it if you would consider the attached opinion and, if it is your opinion that Mr. Dent has lost more than 50% of the functional use of his back to do work requiring the use of his back, I would appreciate it if you would sign the statement and return it to us so we can submit it to a Commissioner.

1. According to the physical therapist the FCE could not be performed due to his condition and in your evaluation you found that James Dent is limited at best to sedentary duty work under the Department of Labor standards (See Page 2). After being advised that the FCE could not be performed because the physical therapist did not think that he could withstand an FCE and based on your evaluation and knowing the current condition of Mr. Dent's back and based on the U.S. Department of Labor's Dictionary of Occupational Titles physical demand work categories (very heavy duty, heavy duty, medium duty, light duty and sedentary physical demand levels) in your opinion knowing he is excluded from being able to do the work in any job classified in 4 out of 5 of the physical work demand categories in your opinion has he lost more than 50% of the functional use of his back to do work requiring the use of his back?

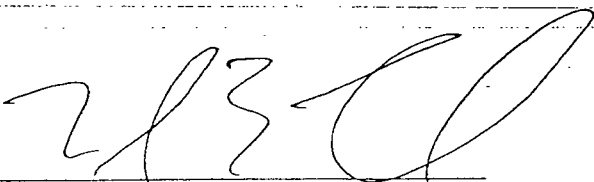
Yes

No


Leonard Forrest, M.D. (initials)

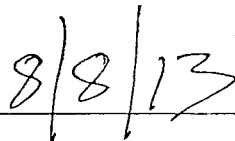
Dr. Leonard Forrest
RE: James Dent
August 2, 2013
Page 2 of 2

The above referenced opinion constitutes my opinion to a reasonable degree of medical certainty based on my evaluation and knowledge of the condition of James Dent.



Leonard Forrest, M.D.

Date



8/8/13

Sincerely yours,



Matthew C. Robertson
Attorney for Employee/Claimant

MCR/bre



MAIN CAMPUS

1106 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464

1122 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464

(843) 849-1551

Fax (843) 884-0629

1-800-432-0274

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R. Blake Dennis, MD
Richard F. Frisch, MD
Daniel R. Butler, PA-C
Justin C. Swain, PA-C
Courtney E. Bock, PA-C
G. Ryan Aprill, PA-C
Kelly Eddinger, PA-C

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John F. Johnson, MD
G. Robert Richardson III, MD
Kirsten W. Loeffler, PA-C
Helen Kulseth, PA-C

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W. Blane Richardson, MD
Ellen E. Rhame, MD
Virginia G. Blease, PA-C
Kathleen L. Bukowsky, PA-C
Christina Lockhart, PA-C
Megan Plumb, PA-C

AFFILIATED PHYSICIANS

NEURORADIOLOGY

Richard C. Holgate, MD

NEUROLOGY-INTRAOPERATIVE-

NEUROMONITORING
George "Trey" Lee, MD

VASCULAR-SPINE

ACCESS-SURGERY

Thomas C. Appleby, MD

July 8, 2013

Preston F. McDaniel, Esquire
1315 Elmwood Avenue
Columbia, SC 29210

RE: James Dent

DOB:

Patient#

Dear Attorney McDaniel:

Today, I had an opportunity to evaluate Mr. James Dent. As you know, Mr. Dent is a -year-old individual who has pain in his low back, into the right buttock, and down the right leg to below the calf.

Mr. Dent indicates that his symptoms began as a result of a work incident that occurred on May 1, 2012. Mr. Dent describes while he was carrying out his duties of sewer maintenance and repair he lifted a manhole cover, it slipped, and he tried to grab it. When he grabbed it, he indicates that he experienced pain to the extent that it knocked him to his knees. The pain was prominent and he felt it as a sharp/stabbing pain. The pain went down the right leg.

Mr. Dent indicates that he was treated initially by Dr. Paula Belmar. He relates that his initial treatment was with medication by mouth and physical therapy. Subsequently, he was referred to Dr. Gunter where he had two steroid injections. He indicates that the steroid injections helped at most for a couple of days. His only treatment since then has been with medication by mouth, currently Percocet.

Mr. Dent relates that his symptoms include stabbing, burning, and aching. The level of pain is 6 to 9 on a scale of 0 to 10. Nothings helpful. The symptoms are worse if he rides in a car for 30 minutes or more or if he does bending or lifting.

DENT, JAMES

Patient#

DOB:

July 8, 2013

Page 2

Mr. Dent relates that he was found to have small cell lung cancer last July. He was treated with chemotherapy and radiation therapy from approximately August to November. He indicates recently having been found to have metastasis to lymph nodes and an adrenal gland. He relates that the scan they did showed no indication of involvement of his back at this point in time.

Mr. Dent filled out the review of systems page on our intake form and I reviewed that.

Mr. Dent's job was doing sewer maintenance and repair. He was a foreman but indicates as a foreman he still had to do heavy-work activities. He indicates that he last worked on the day of his injury, which was May 12, 2012. Two months ago, Mr. Dent indicates that he was formally retired.

Mr. Dent indicates that he was introduced into a work hardening program. He indicates that he wasn't able to do anything without increased pain, so he wasn't able to persist with that program.

On physical examination, Mr. Dent is pleasant and cooperative. Height is 5 foot 6 inches and weight 160 pounds. He's alert and oriented. There's tenderness over the low back and into the right buttock. No tenderness over the mid back or upper back or neck. I'm not finding any definite weakness or definite neurologic deficit involving the right lower extremity nor the left lower extremity. There's also no evident weakness or evidence of neurologic deficit involving the upper extremities bilaterally.

There's an MRI that was done last summer available and I reviewed that. He had multilevel degenerative changes in the lumbar spine. There are superimposed disc bulges/protrusions at L3-4, L4-5, and L5-S1.

Mr. Dent has pain in his low back, right buttock, and down the right leg to below the knee. The symptoms began as a result of an incident where he was lifting a very heavy manhole cover, it slipped, he grabbed it, and in the process of doing this his pain began; that was 14 months ago. He was treated initially with physical therapy and medication by mouth, which didn't help significantly. Subsequently he had two injections, which also did not help significantly. Currently, he's taking Percocet. He had an MRI scan most recently about a year ago, which shows degenerative changes at multiple levels and superimposed disc bulges/protrusions.

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The likelihood is that the incident that occurred on May 1, 2012 caused one or more of the disc bulges/protrusions and aggravated the underlying degenerative condition and whatever bulge or bulges that was already present. That's the cause of his symptoms that he began with at that time, which persists to the present. That's my opinion to a reasonable degree of medical certainty.

As for the significance of the small cell lung cancer, I think that's very significant to Mr. Dent as a person certainly but I don't think it's playing any role with regard to the symptoms that began 14 months ago nor the back and related leg symptoms that persists now. Mr. Dent indicates that there was some type of scan done just a couple of weeks ago that didn't show any involvement of the back, which may have been a bone scan but I don't know. Also, certainly a new MRI of the lumbar spine could be done. Frankly I don't see a point in doing it from our perspective, as I'm not thinking further treatment is going to be of great benefit. His situation is clearly not a surgical one with regard to his work-related injury. At the other end of the spectrum, he's had injections that didn't help. Ultimately, in my opinion Mr. Dent is at maximal medical improvement at this time.

As for future needs certainly he's going to need to continue his pain medication, which currently is Percocet. Additional medications may or may not be needed. I don't envision any surgery playing a role for the work-related situation. Further injections could be tried for Mr. Dent but I wouldn't have a great level of optimism, given the lack of any significant benefit with the prior ones. A back brace for Mr. Dent for comfort is a consideration.

If Mr. Dent's symptoms worsen significantly in his back, I would then suggest new scanning be done; however, I would think it would be more likely related to his lung cancer than to any direct worsening because of his injury. If so, then further treatment in that regard would be under the direction of his oncology specialist and possibly include radiation.

I want to emphasize that in my opinion Mr. Dent's inability to work is on the basis of his work injury and in my opinion that would be true whether or not he had the small cell lung cancer. In fact the lung cancer is not playing any role in my opinion currently, which is that Mr. Dent is unable to return to work at any level.

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Clearly, he can't return to work at his prior job. However, I don't think he'd be able to work even at a lesser level on any regular basis; again, this is purely with regard to the work-related injury. Also to be considered is the fact that Mr. Dent has worked doing such manual-labor work for his whole career. Even though he has a high school education, I don't see him being able to learn new skills to work at a different job that would be a sedentary one for example. Even at that, I'm not convinced he would be able to even do sedentary-level work on a full-time basis.

As for impairment rating, in my opinion this is a class 3 motion segment lesion and I would ascribe a 21% permanent impairment rating for the result of the work incident that occurred on May 1, 2012. This is a whole person permanent impairment rating.

Thank you for referring Mr. James Dent for this independent medical evaluation. If I can be of further assistance or if you have any questions or concerns, please don't hesitate to call or write.

Sincerely,

Leonard Forrest, M.D.

LEF/sk

T- 7/12/13

Harriet Fowler, CRC, M.Ed.
Vocational Rehabilitation Services
2143 Marion Street
Columbia, South Carolina 29201
~~Tel: (803) 256-3213 - Fax: (803) 256-2129~~

Client: James Dent	Employer: East Richland
Address:	County Public Service
	Date of Birth:
Telephone:	SSN:
Date of Injury: 05/01/2012	Date of Referral: 09/04/2013

Initial Evaluation

The following is a result of a request by Attorney Matthew C. Robertson in Columbia, South Carolina for a vocational evaluation. Mr. Robertson's office provided medical records upon which the medical history was based and work history was a self-report by the client and his wife in an interview on 09/13/2013.

Educational/Vocational History:

The following is a self-report by the client, and his wife as the client had severe problems recalling the sequence of his jobs, the city they were in, even where and when he went to high school-even with his rather simple work history. Had he been alone without his wife's input he would have been unable to recall it. The client's wife told me privately that the radiation and chemotherapy had really affected the client's memory and noted the client constantly repeats himself and "asks the same questions over and over like a child." (They noted they would "do drills" before "having to recall it with those attorneys.")

The client graduated from Spring Valley High School in 1974 in Columbia, South Carolina. He noted he had "about a C to D average in high school" upon graduation. He noted he was on a vocational track in high school, rather than a college preparatory track and took heating and air conditioning technician classes in shop.

During his last two years in high school he noted he worked weekends during the school year and during summers at J.B. White's in Columbia, South Carolina as a "furniture deliverer driving a box truck and loading and unloading". This job is classified as very heavy in physical demand category and is semi-skilled (D.O.T. Furniture Driver/Deliverer, 905.663-018). Ending pay was \$2.50/hour.

Upon graduation from high school in 1974 the client began working with Black Glass Company in Columbia, South Carolina "running rubber around windows" as an assembly worker, which he noted involved "moving and stacking big windows" and other material handling involving lifting up to 100 pounds. This job is classified as heavy in physical demand category and is semi-skilled (D.O.T. Window Assembler, 809.681-010; Material Handler, 929.687-030). The client worked at this job for 3 months until

he was offered a better job. Ending pay was approximately \$3.00/hour.

In 1974 the client began working with Wometco Vending in Columbia, South Carolina as a vending machine deliverer and installer working throughout the state. He noted this involved lifting over 100 pounds, and "mainly just moving them to the right place on the floor and plugging in." This job is classified as very heavy in physical demand category and is semi-skilled (D.O.T. Vending Machine Deliverer/Installer, 905.663-018). The client worked at this job for 10 years until he obtained a better job in 1985, as it did not involve out of town work/travel. Ending pay was approximately \$10.00/hour.

In 1985 the client began working with East Richland County Public Service in Columbia, South Carolina as a general laborer "digging up lines, laying pipe, and unstopping sewer lines." He noted he had "to pull large hoses and lift weights up to 100 pounds at times." After 10 years in 1995 he was lead worker/foreman, but in this position continued performing his previous tasks as well as "training/directing others on the crew" with him. He noted he was "in the ditch, always doing the same work as them." He noted he did "no hiring or firing." This job is classified as heavy in physical demand category and is

low skilled (D.O.T. Sewer Line Repairer and Lead Worker, 869.664-018). The client worked at this job for 27 years until injury of 05/01/2012 (described below); and has not returned due to physician restrictions. He noted he was in the TERI Program and would have continued in that program for another 3 years were it not for the accident. (The S.C. TERI program allows the employee to retire, continue to work and receive both his retirement pay and regular pay for the job he is performing.) He noted he "needed to" continue in the TERI program for financial reasons. Ending pay was \$916.30 average weekly, or approximately \$23.90/hour based on a 40 hour work week.

Vocational Testing Results:

The client was administered the Wide Range Achievement Test-Revision 3 (WRAT-3) on 09/13/2013. He scored at 3rd grade level in arithmetic, 4th grade level in spelling, and at 5th grade level in reading.

Summary and Conclusions:

The client states that on 05/01/2012 he was working in his job as a sewer line maintenance worker/lead worker when he "picked up a manhole cover" and it slipped and when he "grabbed it" he "fell immediately" as an "immediate pain hit" him "so hard" he "crumpled to the ground." He noted he had hoped the pain would

improve, but progressively worsened to the point he had to go see a physician.

The client was then seen at Sentinel Health Partners in Columbia, South Carolina by family practice physician, Paula L. Belmar, M.D. on 05/10/2012, 05/17/2012, 05/25/2012, 06/07/2012/ 06/28/2012, 07/13/2012, 08/24/2012, and 01/04/2013. During these appointments Dr. Belmar noted the client began having back pain after a work accident on 05/01/2012 when he picked up a 90 pound man hole cover and "went to his knees" with pain having worsened by the next day; with pain in paraspinal lower back and SI joint areas, and down right leg; numbness in thigh area; and pain in right knee; and right foot burning pain.

During these appointments she noted on exam the client "obviously uncomfortable"; pain reproduced with bending, twisting; limited and painful range of motion; "difficulty getting out of chair and climbing on stretcher"; left lower extremity weakness at 4 over 5; tenderness in the lumbar spine on left and right and in bilateral sacroiliac region; and "limp favoring left leg".

X-rays (on 05/10/2012) revealed muscle spasming (evidenced by loss of lordotic curve), "advanced" L3-L4 degenerative disc

disease, "moderate" L4-L5 degenerative disc disease; "moderate to advanced" L5-S1 degenerative disc disease with "fairly marked disc narrowing at L5-S1; and "at least moderate" L2-L3, L3-L4, L4-L5, and L5-S1 facet joint changes. M.D. radiologist noted that if the client was "not better in 2 weeks" a lumbar MRI was needed.

On 06/25/2012 the client underwent a lumbar MRI at Camden Open MRI in Camden, South Carolina which revealed "herniated nucleus pulposus"/"moderately large protrusions" at L3-L4, L4-L5, and L5-S1 on the left; "disc protrusions at L2-L3, L3-L4, L4-L5 and L5-S1 on the right"; lateral recess stenosis at L3-L4 and L4-L5 and degenerative facet joint changes: "marked disc narrowing at L3-L4, L4-L5 and moderate narrowing at L5-S1"; and edema in the L3-L4 vertebral bodies. Schmorl's nodes were also noted at L1/T10, L2, L3, and L5. M.D. radiologist noted these were "large disc protrusions." He also noted in relation to causation, "The findings are probably post-traumatic given the two contiguous vertebral bodies."

During these appointments Dr. Belmar diagnosed disc protrusion, lumbar radiculopathy, muscle spasming, degenerative disc disease, and low back pain. She administered Toradol injection, Depo Medrol injection, and prescribed Medrol Dosepak, Vicodin,

Phenergan, Percocet, and Flexeril and ordered physical therapy "ASAP." An orthopedic consult was ordered on 06/07/2012 and a neurosurgical consult on 06/28/2012 "ASAP."

Following administration of all above medications and physical therapy Dr. Belmar noted (on 07/13/2012) the client continued with "still incapacitating pain"; and on 08/24/2012 "a lot of pain" was noted; and at last appointment Dr. Belmar added Dilaudid for additional pain relief. She ordered the client out of work during these appointments, and also ordered "no standing or heavy lifting" additionally on 07/13/2012.

The client was seen by Brett C. Gunter, M.D. at Columbia Neurosurgical Associates in Columbia, South Carolina on 07/25/2012 and 03/06/2013. At initial appointment Dr. Gunter noted nature of 05/01/2012 accident and subsequent medical history. He noted that the client had "constant" pain rated at a 9 over 10 level that was "worse with standing or walking too long, bending, stooping or twisting"; "worse with sitting back in a chair"; "worse in the morning"; and only "marginally improved by lying down and changing positions." He also noted continued intermittent pain/burning sensations in his knee region and in the dorsum of his foot bilaterally. Exam revealed spinal back range of motion reduced in "all cardinal planes" and

hyper-reflexive lower extremities on both right and left. Dr. Gunter noted MRI dated 06/25/2012 of the lumbar spine revealed "disc protrusions" at L2-3, L3-4, L4-5, and L5-S1; stenosis at L3-4 and L4-5; vertebral edema at L3 and L4; "multilevel degenerative disc disease"; lumbar spondylosis; and "congenitally short pedicles." He ordered both lumbar spine x-rays as well as an additional lumbar MRI, and the client was kept out of work.

On 08/28/2012 the client underwent a lumbar spine MRI at Dr. Gunter's offices which revealed a L2-L3 "moderate" right disc bulge possibly compressing "the exiting right L2 nerve root"; with right and central stenosis; L2-L3 degenerative facet and ligamentous changes; L5-S1 "moderate" disc bulge with degenerative facet changes; L3-L4 and L4-L5 "moderate" disc bulges with "moderate acquired" stenosis; L3-L4 and L4-L5 "degenerative facet and ligamentous changes superimposed upon a somewhat congenitally narrow canal with short lumbar pedicles"; L3-L4 and L4-L5 reactive marrow edema in discs; L3-L4 and L4-L5 annular tears with scar tissue; and L4-L5 small Schmorl's nodes. (M.D. radiologist noted continued "back pain with tingling and numbness in legs.")

On 01/15/2013 and 01/29/2013 the client was administered (by Eva J. Rawl, M.D.) lumbar epidural steroid injections at Dr. Gunter's offices. At first injection it was noted the client had continued left lower back pain radiating down to left lower extremity to his posterior thigh at an 8 over 10 level. By 01/29/2013 it was noted that the client had had "20 to 30% improvement in pain" since the 01/15/2013 injection; but in spite of that continued with "still low back pain with thigh pain"; with pain at a 7 over 10 level.

At second and final appointment with Dr. Gunter on 03/06/2013 Dr. Gunter noted that in spite of two lumbar epidural steroid injections and "many visits of lumbar physical therapy," the client continued with "significant pain in his lower back and left leg"; and continued with "reduced range of motion in all cardinal planes tested." He noted the client would "not consider" surgery. Dr. Gunter concluded; "Limited improvement, but no consideration for surgery. He wants to pursue a work hardening program." Therefore Dr. Gunter ordered a "work hardening program followed by functional capacity examination." At this last appointment he also ordered the client to "remain out of work."

The client began physical therapy at Progressive Physical Therapy in Columbia, South Carolina on 01/16/2013. At initial evaluation on this date, therapist noted pain on this date remained at a 9 over 10 level; and that "sitting, standing, walking around" all worsened the pain. She noted pain went from left back paraspinals/PSIS down into left thigh. She noted severely reduced range of motion with lumbar extension 5 degrees, sidebending to left 5 degrees, sidebending to right 10 degrees, and lumbar flexion 40 degrees. She also noted decreased strength with left hip abduction and extension strength at 4 over 5. She also noted the client had a positive or abnormal left straight leg raise test. The client was seen on 01/16/2013, 01/21/2013, 01/23/2013, 01/28/2013, and 01/30/2013.

The client was discharged from therapy on 04/10/2013 where pain was noted to be at a 8 over 10 level with pain continuing to radiate down lower extremities to thighs (left more than right). She also noted that lumbar range of motion remained severely reduced (lumbar extension 10 degrees, sidebending to the left and right 5 degrees, and flexion 45 degrees), straight leg raise test on the left remained positive, and tenderness remained at L3, L4, and L5 paraspinals/PSIS. She noted testing revealed the client limited to the occasional level only in kneeling, stooping and squatting and that he had pain with all of these

activities. (Occasional level limits the client to a maximum of 2.67 hours total in an 8 hour day.) She noted the client per testing able to lift maximum of only 10 pounds from floor to his waist, 10 pounds from his knees to his waist, and only 20 pounds from level (approximately waist); but noted the client even with these light weights was "short of breath" with only "three lifts". She also noted that with the above activities when the client had to move downward she had to "assist to lower to floor and rise." She opined on this date she felt the client unfit physically, i.e. too severely physically impaired to even participate in work hardening activities, i.e. physical therapy geared to returning the client to work. She noted, "Mr. Dent was evaluated for a work hardening program today. During the evaluation he exhibited dyspnea and increase in back pain...it is felt that he is not a candidate for this program. He has already been approved for disability." She also noted his job fell into the "heavy to very heavy" physical demand category "with frequent low level work."

On 07/01/2013 in a letter to Mr. Dent's attorney the physical therapist wrote; "I am writing in response to your request for further information concerning Mr. James Dent. I do not feel Mr. Dent would be an appropriate candidate for a functional capacity evaluation for several reasons. Given his medical conditions of

known low back injury with surgery recommended and lung cancer, testing would be limited due to safety concerns...he has been approved for disability so any information would be of limited use. I do not recall the specific conversation with Mr. Dent concerning sedentary to limited light work, however, this would be supported by the findings during the Work Conditioning Evaluation. He was able to lift 10 to 20 lbs. on an occasional basis...his aerobic capacity would support only sedentary to limited light physical demand labor."

On 05/08/2013 Dr. Gunter noted the client "currently on disability" and had been denied entrance to work hardening due to pain and dyspnea. He noted he felt the client to be at maximum medical improvement with a 10% whole person rating per AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, and noted, "It does not identify a clear indication for any mechanical restriction." He recommended "medium duty" noting the client felt he could perform no more than sedentary. He noted the client might need "periodic non-steroidal anti-inflammatory drugs over the years."

On 07/30/2013 Dr. Gunter replied to the following questions from the client's attorney affirmatively with "yes" answers: "Based on your knowledge of Mr. Dent at the time of his release will he

need availability to a physician and pain medications on either a periodic or recurring or continuing basis to control his back pain stemming from his work-related accident and to keep his back condition in the condition that it was at the time of release?" "In your opinion should he either be under the care of a family practitioner with access to and/or under the care of a chronic pain management specialist for ongoing conservative management of his back pain?" "Based on a review of your chart it appears that you advised Mr. Dent that surgical intervention was the only other treatment modality that was available that may address his ongoing and continual back problems and that Mr. Dent during that discussion advised you that due to his condition he did not want to contemplate surgical intervention at that time. Does that properly represent your recollection of that discussion with Mr. Dent concerning whether or not to perform surgical intervention on Mr. Dent for his back condition?" However, although he answered yes to the last/third question he added, "Generally, exception 'only other'."

On 07/08/2013 the client was seen by Leonard Forrest, M.D. at Southeastern Spine Institute in Mount Pleasant, South Carolina who noted medical history since accident. He noted that "nothing" was ultimately "helpful" with the pain including that the steroid injections "helped at most for a couple of days" and

physical therapy and medications "didn't help significantly." He noted that stabbing, burning, aching pain at a level ranging from 6 to 9 over 10, continued "in his low back, into the right buttock, and down the right leg to below the knee" through this date; and that riding "in a car for 30 minutes or more" and bending or lifting worsened the pain.

Dr. Forrest reviewed 08/22/2012 MRI and noted results including disc bulges/protrusions at L3-L4, L4-L5, and L5-S1 with degenerative changes.

In relation to causation Dr. Forrest noted, "The likelihood is that the incident that occurred on May 1, 2012 caused one or more of the disc bulges/protrusions and aggravated the underlying degenerative condition and whatever bulge or bulges that was already present. That's the cause of his symptoms that he began with at that time, which persists to the present." In relation to limitations he noted, "Clearly, he can't return to work at his prior job. However, I don't think he'd be able to work even at a lesser level on any regular basis; again, this is purely with regard to the work-related injury. Also to be considered is the fact that Mr. Dent has worked doing such manual-labor work for his whole career. Even though he has a high school education, I don't see him being able to learn new

skills to work at a different job that would be a sedentary one for example. Even at that, I am not convinced he would be able to even do sedentary-level work on a full-time basis. I want to emphasize that in my opinion Mr. Dent's inability to work is on the basis of his work injury and in my opinion that would be true whether or not he had the small cell lung cancer. In fact the lung cancer is not playing any role in my opinion currently, which is that Mr. Dent is unable to return to work at any level. As for the significance of the small cell lung cancer, I think that's very significant to Mr. Dent as a person certainly but I don't think it's playing any role with regard to the symptoms that began 14 months ago nor the back and related leg symptoms that persists now. Mr. Dent indicates that there was some type of scan done just a couple of weeks ago that didn't show any involvement of the back, which may have been a bone scan but I don't know. His situation is clearly not a surgical one with regard to his work-related injury. At the other end of the spectrum, he's had injections that didn't help. Ultimately, in my opinion Mr. Dent is at maximum medical improvement at this time."

In relation to impairment and future needs he noted, "As for impairment rating in my opinion this is a class 3 motion segment lesion and I would ascribe a 21 % permanent impairment rating

for the result of the work incident that occurred on May 1, 2012. This is a whole person impairment rating. As for future needs ~~certainly he's going to need to continue his pain~~ medication, which currently is Percocet. Additional medications may or may not be needed. I don't envision any surgery playing a role for the work-related situation. Further injections could be tried for Mr. Dent but I wouldn't have a great level of optimism, given the lack of any significant benefit with the prior ones. A back brace for Mr. Dent for comfort is a consideration."

On 08/08/2013 in response to the following question from the client's attorney Dr. Forrest answered affirmatively or "yes": "According to the physical therapist the FCE could not be performed due to his condition and in your evaluation you found that James Dent is limited at best to sedentary duty work under the Department of Labor standards (See Page 2). After being advised that the FCE could not be performed because the physical therapist did not think that he could withstand an FCE and based on your evaluation and knowing the current condition of Mr. Dent's back and based on the U.S. Department of Labor's Dictionary of Occupational Titles physical demand work categories (very heavy duty, heavy duty, medium duty, light duty, and sedentary physical demand levels) in your opinion

knowing he is excluded from being able to do the work in any job classified in 4 out of 5 of the physical work demand categories in your opinion has he lost more than 50% of the functional use of his back to do work requiring the use of his back?"

Also, in relation to the client's lung cancer and related limitations/restrictions, on 08/07/2012, Rudolph L. Wise, M.D. of Kershaw Medical Center in Camden, South Carolina noted diagnoses of "bronchogenic carcinoma of the lung-diagnosis established in 2012"; "secondary polycythemia"; "SIADH on the basis of carcinoma of the lung" and "first relapse of lung cancer based on CT of June 2013 showing retroperitoneal lymph node and left adrenal metastasis." Dr. Wise noted the client had undergone radiation therapy and chemotherapy and noted, "Mr. James Dent is presently undergoing chemotherapy for recurrent small cell bronchogenic carcinoma. This is to attest to his neurological status and his mental capacity, as he is manifesting the effects of prior radiation therapy and chemotherapy on his cognitive capacity. This letter is being written to address his mental capacity, as he has undergone radiation therapy and he's on multidrug chemotherapy, resulting in episodes of not being quite lucid and clear mentally at times."

In conclusion, Mr. Dent following all above outlined treatment, has been deemed by physical therapy too severely impaired physically to safely participate in work hardening or even to participate in a functional capacity evaluation. This physical therapist provided at the last treatment appointment/discharge that the client was unable to lift more than 10 pounds from the floor or from knee level to waist level and maximum from 20 pounds from waist level but only with shortness of breath and with having to be assisted to lower his body to the floor to be able to lift the 10 pounds and rise. To be able to perform sedentary work the client must be able to independently lift 10 pounds from the floor and do this up to at least one third of the day. Because of the client's being short of breath after only three lifts, and knowing he would have to perform such lifts 2.67 hours out of an 8 hour day to even be at sedentary level, and because at a sedentary level he would have to do this independently, and testing revealed he could not; per testing the client could not safely perform even sedentary work. Obviously, the physical therapist felt this was the case because she could have performed the FCE and tested the client only at the sedentary level (and thus determined he could have worked at the sedentary level) but felt it was unsafe to test at even the lowest/lightest level, i.e. the sedentary level. Also, last orthopedist and physiatrist (Dr. Forrest) concurred noting, "I'm

not convinced he would be able to even do sedentary work on a full-time basis. my opinion currently is that Mr. Dent is unable to return to work at any level." (A neurosurgeon who saw the client recommended medium duty, but this was certainly in tremendous contraindication to the physical therapist findings who had physically worked with the client and actually observed and tested his physical capacities. Because both the physical therapist and the physiatrist/orthopedist are in agreement; and because a physical medicine and rehabilitation physician, i.e. physiatrist, has more specific training in rehabilitation in determining limitations than a neurosurgeon, and because the physical therapist actually tested and observed the maximum physical abilities of the client, the weight of the evidence points to the physiatrist/orthopedist's and physical therapist's opinions being most accurate. Also, the opinion of the orthopedist/physiatrist is from an examination following the neurosurgeon's, i.e. reflecting the most current condition of the client.

Also, the client has restrictions/limitations from his oncologist due to the effects of radiation and chemotherapy which include "episodes of not being quite lucid and clear mentally at times."

Mr. Dent has a high school education but currently functions at 3rd grade level in arithmetic, 4th grade level in spelling and 5th grade level in reading. These scores place the client at the illiterate level. The client has an excellent 38 year work history consisting of furniture deliverer, large parts assembler/material handler, vending machine deliver/installer, and sewer line worker/lead worker; with 10 years with one employer and 27 years with his last employer. These jobs fall into the heavy and very heavy physical demand categories and are semi-skilled and low skilled.

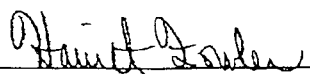
Therefore, given the client's restrictions, there is no job he previously held that he is now able to do. In order to determine jobs remaining within the client's current capacities, a transferable skills capacity analysis was performed. This occupational system analyzed the 12,741 job titles which exist in the United States economy as defined by the Dictionary of

Occupational Titles (D.O.T.). The D.O.T. is the official U.S. Department of Labor publication of jobs and respective requirements. All jobs were analyzed by computer against Mr. Dent's functional abilities, work history, and general educational development as inferred from his work history. Based on this objective extensive analysis there were no (0) job

titles identified that would be within his current transferrable abilities.

Given the client's advancing age (), education and functional academic levels including illiteracy, work history and attendant skills (all heavy and very heavy categories and lower skilled), and significant and severe physical limitations it is clearly more likely than not that the client is and will be (given MMI status) unable to obtain or maintain substantial gainful employment. Although the client's limitation (related to radiation/chemotherapy effects) of episodes of lack of mental clarity/lucidity could further create an employment barrier, the client would remain more likely than not unable to obtain or maintain substantial gainful employment even if this mental limitation were absent.

The contents of my report as well as the conclusions set forth therein, are to a reasonable degree of vocational certainty.


Harriet Fowler, CRC, M.Ed.
Vocational Rehabilitation Manager

November 4, 2013
Date

Harriet Fowler, CRC, M.Ed.
Vocational Rehabilitation Services
2143 Marion Street
Columbia, South Carolina 29201
Tel: (803)256-3213 Fax: (803)256-2129

Client:	James Dent	Employer:	East Richland
Address:	2143 Marion Street		County Public Service
		DOB:	
Telephone:	(803) 256-3213	SSN:	
Date of Injury:	05/01/2012	Date of Referral:	09/04/2013

The following addendum results from a question by the client's attorney, Matthew Robertson, as to whether the client's low achievement scores per WRAT-3 testing were a result of memory loss from his cancer treatment or were premorbid in relation to such treatment.

ADDENDUM

As noted in my January 14, 2014 addendum, the means to fully objectively answer the above query would be to obtain scores prior to the client's cancer treatment; and thus the client's high school records were obtained. These records reflect the client ranked 670 out of 723 in his class with a grade point ratio of 1.645, or at lowest first percentile; clearly consistent with an overall D average. All standardized achievement tests were not available, but standardized achievement tests in 1972 in 10th grade revealed reading at a second grade level and spelling at a second grade level. Also, percentile scores on the Differential Aptitude Tests were quite low with 15th percentile, 3rd percentile, 5th percentile, 20th

percentile, 3rd percentile, 10th percentile and 25th percentile. Other scores were not available/unreadable. Thus, the client's grades, class rank and the available standardized test scores would be evidentiary to support that the client's lower achievement scores on the WRAT in my original report were likely not lowered by his cancer treatment but existed prior to such treatment.

The contents of my report as well as the conclusions set forth therein, are to a reasonable degree of vocational certainty.



Harriet Fowler, CRC, M.Ed.
Vocational Rehabilitation Manager

01/24/2014
Date

CERTIFICATE OF SERVICE BY HAND DELIVERY

WCC File No.: 1205879

I hereby certify that I have on this day served the following in the matter of James Dent v. East Richland County Public Service District with a copy of Claimant's Pre-Hearing Brief, Notice of Witnesses and Written Reports(s)/Physician or Other Evidence, and APA Submissions, with enclosures by hand delivery and leaving with the receptionist as follows:

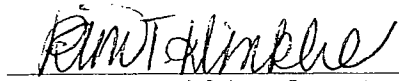
Ellen Goodwin, Esquire
South Carolina State Accident Fund
800 Dutch Square Blvd., Ste. 160
Columbia, SC 29210

Commissioner Susan S. Barden
SC Workers' Compensation Commission
1333 Main Street, Ste. 500
Columbia, South Carolina 29202


Barbara R. Eaton
Paralegal

SWORN TO BEFORE ME this

24 day of January, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 4/20/20

DEFENDANTS'
INDEX OF MEDICAL SUBMISSIONS

James Dent v East Richland County Public Library
WCC File No.: 1205879

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COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.
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(803) 794-3700 - (F) 794-0322

OFFICE VISIT-FOLLOW UP

Patient: JAMES I. DENT
Chart:
Date: 05/08/2013

DOB:

INTERIM HISTORY:

He went to a work hardening program and it was terminated due to the development of pain and some "dyspnea."

PHYSICAL-EXAM:

GENERAL EXAM:

LUNGS: clear to auscultation bilaterally
HEART: regular rate and rhythm

NEUROLOGICAL EXAM:

MENTAL STATUS: awake alert and oriented to person, place and time
SPEECH: fluent and conversant

POWER EXAM:

LOWER EXTREMITIES:

HIP FLEXOR: power 5/5 bilaterally
HIP EXTENSOR: power 5/5 bilaterally
KNEE FLEXOR: power 5/5 bilaterally
KNEE EXTENSOR: power 5/5 bilaterally
ANKLE DORSIFLEXOR: power 5/5 bilaterally
ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

ASSESSMENT:

He is currently on disability. He is at Maximum medical improvement. His Impairment rating is 10% of the whole person according to the American Medical Association Guides to the Evaluation of Permanent Impairment 5th edition. It does not identify a clear indication for any mechanical restriction. I would recommend medium duty under the circumstances. He indicates he does not believe he could perform any work more than sedentary. He may require periodic non-steroidal anti-inflammatory drugs over the years.

PLAN:

Release
Return to work Medium Duty

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED
BRETT C. GUNTER, MD

FAXED TO:
Paula Belmar MD

FAX: 4387563

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

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OFFICE VISIT-FOLLOW UP

Patient: JAMES L DENT

DOB:

Chart:

Date: 03/06/2013

INTERIM HISTORY:

He has completed many visits of lumbar physical therapy and two lumbar epidural steroid injections by Dr. Rawl. He is better overall, but he still has significant pain in his lower back and left leg. He would not consider a surgical alternative should one be offered.

PHYSICAL EXAM:

GENERAL EXAM:

LUNGS: clear to auscultation bilaterally
HEART: regular rate and rhythm
BACK: reduced range of motion in all cardinal planes tested.

NEUROLOGICAL EXAM:

MENTAL STATUS: awake alert and oriented to person, place and time
SPEECH: fluent and conversant

POWER EXAM:

LOWER EXTREMITIES:

HIP FLEXOR: power 5/5 bilaterally
HIP EXTENSOR: power 5/5 bilaterally
KNEE FLEXOR: power 5/5 bilaterally
KNEE EXTENSOR: power 5/5 bilaterally
ANKLE DORSIFLEXOR: power 5/5 bilaterally
ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

ASSESSMENT:

Limited improvement, but no consideration for surgery. He wants to pursue a work hardening program.

PLAN:

Work hardening program
Followed by Functional capacity examination
remain out of work
f/u after above

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

BRETT C. GUNTER, MD

FAXED TO:

RAWL, EVA J, MD
720 RABON RD
COLUMBIA, SC 29203-8900

Corvel Scan Date: 2/4/2013

Phone: (803)462-0423
Fax: (803)462-0432

DENT, JAMES L - DOB: [REDACTED]
LUMBAR ESI - 1/29/2013 (Authenticated by: Theresa Jones - 1/29/2013)

Date : 01/29/2013

Patient : JAMES L DENT

Chart :

LUMBAR ESI

Procedure Note

After obtaining informed consent, the patient was placed in a prone position of the C-arm table. The patient's back was prepped and draped in sterile fashion. The appropriate vertebral segments were identified using a C-arm. Local anesthesia of the skin and subcutaneous tissue was obtained using a # 27 gauge needle and 1% lidocaine. With C-arm guidance and using a # 20 gauge 3.5 inch epidural needle, the following level was injected: L3-4. Negative aspiration and no paresthesia noted.

Omnipaque 240 contrast was injected confirming needle localization with fluoroscopy in the Lateral and Oblique Views.

Each level was injected with 2 ml of PF 0.25% Bupivacaine/1% Lidocaine pre-mixed with 40 mg of preservative-free Triamcinolone. The patient tolerated the procedure well without any immediate complications. After an appropriate period of observation, the patient was allowed to go home with a driver. The patient was instructed to refrain from driving for 12 hours after the injection and told to contact our office immediately with any new pain, signs/symptoms of infection, new weakness/sensory changes or new bowel/bladder habit changes.

Comment: 20-30% improvement in pain Still LBP with some L thigh pain. 5/5 power.

RAWL, EVA J, MD
720 RABON RD
COLUMBIA, SC 29203-8900

Corvel Scan Date: 2/4/2013

Phone: (803)462-0423
Fax: (803)462-0432

DENT, JAMES L - DOB:
LUMBAR ESI - 1/29/2013 (Authenticated by: Theresa Jones - 1/29/2013)

BP Pre : 144/90 BP Post : 119/93 Weight: 180

Meds: Percocet 5/325 - 325 mg-5 mg
Flexeril - 10 mg
Norco - 325 mg-5 mg
Norvasc - 5 mg

Allergies: Zoloft
NKDA...

PHYSICIAN : EVA J. RAWL, MD

RAWL, EVA J, MD
720 RABON RD
COLUMBIA, SC 29203-8900

Phone: (803)462-6363 Corvel Scan Date: 2/4/2013
Fax: (803)462-0432

DENT, JAMES L - DOB:
LUMBAR ESI - 1/15/2013 (Authenticated by: Theresa Jones - 1/16/2013)

Date : 01/15/2013
Patient : JAMES L DENT
Chart :

LUMBAR ESI

Procedure Note

After obtaining informed consent, the patient was placed in a prone position of the C-arm table. The patient's back was prepped and draped in sterile fashion. The appropriate vertebral segments were identified using a C-arm. Local anesthesia of the skin and subcutaneous tissue was obtained using a # 27 gauge needle and 1% lidocaine. With C-arm guidance and using a # 20 gauge 3.5 inch epidural needle, the following level was injected: L3-4. Negative aspiration and no paresthesia noted.

Omnipaque 240 contrast was injected confirming needle localization with fluoroscopy in the Lateral and Oblique Views.

Each level was injected with 2 ml of PF 0.25% Bupivacaine/1% Lidocaine pre-mixed with 40 mg of preservative-free Triamcinolone. The patient tolerated the procedure well without any immediate complications. After an appropriate period of observation, the patient was allowed to go home with a driver. The patient was instructed to refrain from driving for 12 hours after the injection and told to contact our office immediately with any new pain, signs/symptoms of infection, new weakness/sensory changes or new bowel/bladder habit changes.

Comment: L LB rad to L LE post thigh. 5/5 power and sensation stocking dysthesia. Neg SLR bil.

RAWL, EVA J, MD
720 RABON RD
COLUMBIA, SC 29203-8900

Phone: (803)462-0423 Corvel Scan Date: 2/4/2013
Fax: (803)462-0432

DENT, JAMES L - DOB:
LUMBAR ESI - 1/15/2013 (Authenticated by: Theresa Jones - 1/16/2013)

BP Pre: 130/85 BP Post: 135/85 Weight: 179

Meds: Percocet 5/325 - 325 mg-5 mg
Flexeril - 10 mg
Norco - 325 mg-5 mg
Norvasc - 5 mg

Allergies: NKDA...

PHYSICIAN : EVA J. RAWL, MD

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

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OFFICE VISIT-FOLLOW UP

Patient: JAMES L DENT

Chart:

Date: 08/29/2012

INTERIM HISTORY:

He has primarily lower back pain and had about 3-4 total visits of lumbar physical therapy. He's had no visits to Pain Management Specialist. He has not worked since his injury on the job.

PHYSICAL EXAM:

GENERAL EXAM:

BACK: reduced range of motion in all cardinal planes tested.

NEUROLOGICAL EXAM:

MENTAL STATUS: awake alert and oriented to person, place and time

SPEECH: fluent and conversant

POWER EXAM:

LOWER EXTREMITIES:

HIP FLEXOR: power 5/5 bilaterally

HIP EXTENSOR: power 5/5 bilaterally

KNEE FLEXOR: power 5/5 bilaterally

KNEE EXTENSOR: power 5/5 bilaterally

ANKLE DORSIFLEXOR: power 5/5 bilaterally

ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

RADIOGRAPHIC STUDIES:

MRI lumbar spine shows moderate spinal stenosis at L3-4 and L4-5

ASSESSMENT:

Complex patient. He is in the middle of his treatment for lung cancer including chemotherapy and radiation therapy. He has lumbar spondylosis with moderate stenosis, but symptoms primarily of lower back pain.

PLAN:

Pain Management Specialist for lumbar epidural steroid injection once chemo and radiation are completed. Lumbar physical therapy with the development of home exercise program, core strengthening exercises, and range of motion exercises. Lumbar physical therapy with emphasis on local measures including ultrasound, heat, and TENS, evaluate and management.

f/u in 8 weeks

remain off work for now

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

BRETT C. GUNTER, MD

FAXED TO:

Michael J. Nienhuis MD FAX: 7886508

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.
Spine and Neurological Surgery

Carolina Spine Center
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.
PH (803) 462-3602 Fax (803) 462-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

JAMES L DENT

Patient Name

Patient social security #

Chart #

E. RICHLAND COUNTY PUBLIC SERV

STATE ACCIDENT FUND

Employer Name

Insurance Carrier

07/25/2012

05/01/2012

Case #

Date of Service

Date of Accident

Diagnosis code(s) and/or description of condition for which patient is being treated

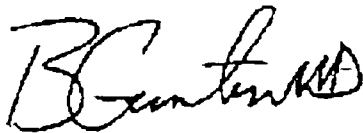
Remain out of work for 6 weeks

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: BRETT C. GUNTER, MD

Signature:



COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.www.columbianeurosurgical.com**Spine & Neurological Surgery**

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OFFICE CONSULTATION**Patient:** JAMES L DENT**Chart:****Date:** 7/25/2012**CHIEF COMPLAINT:**

Lower back pain

INTERIM HISTORY:

Mr. Dent is a year old right handed male presenting with lower back pain. This pain began on May 1, 2012 when working as a maintenance foreman for the East Richland County Public Service Department. He was lifting a manhole cover to replace it when he felt a pull in his back that caused immediate severe lower back pain. After resting at home for a week, he was evaluated by Sentinel Health in Elgin, SC and prescribed Flexeril, Vicodin, Prednisone, and lumbar physical therapy.

CURRENT SYNDROME:

Back: 100% This is a constant ache that is worse with sitting back in a chair, in the morning, standing or walking too long, bending, stooping, or twisting. It is marginally improved by lying down and changing positions.

Hip/Leg: He has intermittent burning sensations in his knee region and in the dorsum of his foot bilaterally. He denies real pain in his hips or legs.

Additionally, the results of his MRI prompted further evaluation for cancer. He was recently diagnosed with lung cancer and is to see an oncologist later today.

PATIENT HISTORY:

PAST MEDICAL HISTORY, CURRENT MEDICATIONS, ALLERGIES, SOCIAL HISTORY, FAMILY HISTORY, AND REVIEW OF SYSTEMS: All are contained in the 3-page past history document. I have reviewed this information which I signed today, and it is contained in the chart and considered a part of this note.

Allergies: NKDA

He takes low dose aspirin daily.

No history of significant bleeding including with previous surgical procedures. No history of problems with anesthesia. No history of AIDS or hepatitis. The patient does not have diabetes mellitus. The patient has never had a heart attack. The patient has hypertension. The patient has not had previous lumbar surgery. The patient is a cigarette smoker. The patient does not use alcohol. The patient denies illicit drug use.

PHYSICAL EXAM:

VITALS: Height: 66in. Weight: 190lbs. Pulse: 84

GENERAL EXAM:

GENERAL: moderately obese male otherwise appropriate.

HEAD: normocephalic

EYES: pupils equal and reactive, extrocular movements intact

EARS: external anatomy unremarkable
NECK: full range of motion without tenderness to palpation
THROAT: oropharynx clear to visual inspection
LUNGS: Fine crackles bilaterally.
HEART: regular rate and rhythm
ABDOMEN: soft non-distended, nontender
EXTREMITIES: warm, moist, pulses present
BACK: Mild reduction in ROM all cardinal planes.

NEUROLOGICAL EXAM:

MENTAL STATUS: awake alert and oriented to person, place and time
SPEECH: fluent and conversant

CRANIAL NERVE:

- III. Oculomotor: medial, superior, oblique muscle intact
- IV. Trochlear: superior oblique muscle intact
- V. Trigeminal: facial sensory muscle intact
- VI. Abducent: lateral rectus muscle intact
- VII. Facial: muscles of facial expression symmetric
- VIII. Vestibulocochlear: hearing in both ears present
- IX. Glossopharyngeal: sensation of oropharynx present
- X. Vagus: elevation of oropharynx present
- XI. Accessory: shoulder shrug intact
- XII. Hypoglossal: tongue protrudes normally in the midline

POWER EXAM:

UPPER EXTREMITES:

- SHOULDER ABDUCTION: power 5/5 bilaterally
- ELBOW FLEXOR: power 5/5 bilaterally
- ELBOW EXTENSOR: power 5/5 bilaterally
- WRIST FLEXOR: power 5/5 bilaterally
- WRIST EXTENSOR: power 5/5 bilaterally
- HAND GRIP: power 5/5 bilaterally

LOWER EXTREMITIES:

- HIP FLEXOR: power 5/5 bilaterally
- HIP EXTENSOR: power 5/5 bilaterally
- KNEE FLEXOR: power 5/5 bilaterally
- KNEE EXTENSOR: power 5/5 bilaterally
- ANKLE DORSIFLEXOR: power 5/5 bilaterally
- ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

SENSORY:

- TRUNK: sensation intact to light touch
- UPPER EXTREMITIES: sensation intact to light touch
- LOWER EXTREMITIES: sensation intact to light touch

CEREBELLAR: guarded.

REFLEXES: mildly hyper-reflexic BLE without clonus or up-going Babinski's..

RADIOGRAPHIC STUDIES:

MRI of the lumbar spine dated 6/25/12 shows congenitally short pedicles, multilevel DDD, vertebral edema at L3 and L4, disc protrusions at L2-3, L3-4, L4-5, and L5-S1 with lateral recess stenosis at L3-4 and L4-5.

ASSESSMENT:

Lumbar stenosis and spondylosis. The imaging is quality is too poor for surgical evaluation and planning.

PLAN:

- MRI L-spine with and without contrast to "evaluate lower back pain"
- Follow up after MRI
- AP/LAT lumbar spine, Flex/Extension lumbar spine

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

BRETT C. GUNTER, MD

Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of active medical problems. worker's comp. Patient still c/o back pain seen by PT is feeling better and only slightly still has pain with less radiation to the right lower leg. Has been undergoing PT.

Objective

VS: BMI: 31.2. BP: 114/68. H: 66 in. P: 80 /min. W: 194lbs 0oz. Wendy Carter LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical..

GAIT: No gait abnormality.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

Assessment

Low back pain ICD#724.2

Lumbar radiculopathy ICD#724.4

Discussion

Plan

off for another week continue PT

Handouts: Hypertension.

Orders

Referrals

Medications

Visit Level

Follow Up

Return to the office in 2 weeks Electronically signed by Paula L. Belmar, M.D.

Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of the following active health problems:

worker's comp Low back pain ICD#724.2

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

disc protrusion

L3 L4 EDEMA

Active problems reviewed. Medications reviewed. Health Maintenance reviewed.

SH/Lifestyle:

Reports medication compliance, active lifestyle.

Denies sedentary lifestyle, exercising.

ROS:

on radiation and had chemo small cell.

Still has pain lower back difficulty waling and doing ADLs and needs local shot of the lower back and PT..

Denies symptoms of chest pain, dyspnea, edema, weakness or tiredness.

Objective

VS: BMI: 29.5. BP: 104/64. H: 66 in. P: 80 /min. W: 183lbs 0oz. Wendy Carter LPN

EXAM: GEN: obviously uncomfortable.

LYMPH:

CARDIOVASCULAR:

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical..

SENSATION:

GAIT: No gait abnormality., limp favoring left leg.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

SKIN:

Assessment

Lung cancer ICD#162.9

Low back pain ICD#724.2

Discussion

Plan

no work for 3m.

Handouts: pain management rules and regulations, pain management rules and regulations.

Orders

Referrals

Medications

Dilaudid: 2 mg (tablet) SIG- 1 tab(s) every 4 hours as needed for pain orally Dispense- #120 Tablet(s)
Refills- 0 Notes-

Visit Level

Follow Up

Return to the office in 3 months Electronically signed by Paula L. Belmar, M.D.

Electronically signed by: Paula L. Belmar, M.D. on 01/04/2013 12:43 PM

Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of the following active health problems:

worker's comp Low back pain ICD#724.2

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

disc protrusion

L3 L4 EDEMA

Active problems reviewed Medications reviewed. Health Maintenance reviewed.

SH/Lifestyle:

Reports medication compliance, active lifestyle.

Denies sedentary lifestyle, exercising.

ROS:

Started chemo and radiation small cell lung cancer. NOT in the bone only lung. Has second MRI back for monday. Seen by Dr Gunner and has a follow up. Has a lot of pain.

Denies symptoms of chest pain, dyspnea, edema, weakness or tiredness.

Objective

VS: BMI: 29.2. BP: 110/70. H: 66 in. P: 88 /min. W: 181lbs 0oz. Wendy Carter LPN EXAM: FACE:

Sinuses- Nontender.

EARS: Right Ear: Ear Canal- Normal. TM- Normal.

Left Ear: Ear Canal- Normal. TM- Normal.

NOSE: No discharge or inflammation.

THROAT: Pharynx Normal.

NECK: No adenopathy.

RESP: Normal.

LUNGS: Percussion- Resonant bilaterally. Auscultation- Breath sounds symmetrically clear.

HEART: Rhythm- Regular. Murmur- Not detected. Rub- Not detected. Click- Not detected. Gallop- Not detected.

ABDOMEN: Soft. Tenderness- None. Mass(s)- None. Bowel Sounds- Present.

EXTREMITIES: Cyanosis. Absent. Clubbing. Absent. Edema- None.

BACK: Tenderness- None. Left sacroiliac tenderness. Spine- Normal. ROM- Limited. Painful. Straight Leg Raising- straight leg raising negative

Assessment

worker's comp Low back pain ICD#724.2

Lung cancer ICD#162.9

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

disc protrusion

L3 L4 EDEMA

Discussion**Plan**

off three month 12/15/12

CQM: Tobacco QM: Tobacco - current smoker. #1034F INTERVENTION: Tobacco use cessation intervention, counseling. #4000F

Handouts: Narcotic-Acetaminophen, UTI.

Orders

Referrals

Medications

Flexeril (Cyclobenzaprine): 10 mg (tablet) SIG- 1 tab(s) 3 times a day orally Dispense- #30
Substitutions Allowed Refills- 1 Notes-

Percocet (APAP/Oxycodone): 325 mg-10 mg (tablet) SIG- 1 tab(s) every 6 hours as needed orally
Dispense- #60 Substitutions Allowed Refills- 0 Notes-

Visit Level

Follow Up

Return to the office in 3 months

Electronically signed by: Paula L. Belmar, M.D. on 08/24/2012 10:26 AM

Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of the following active health problems:

worker's comp Low back pain ICD#724.2

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

Active problems reviewed. Medications reviewed. Health Maintenance reviewed.

SH/Lifestyle:

Reports medication compliance, active lifestyle.

Denies sedentary lifestyle, exercising.

ROS:

had MRI done. Still c/o pain and radiates inferiorly

Denies symptoms of chest pain, dyspnea, edema, weakness or tiredness.

Objective

VS: BMI: 30.4. BP: 110/70. H: 66 in. W: 189lbs 0oz. Wendy Carter LPN

EXAM: BACK: Tenderness- Right lumbar paraspinal area. Left lumbar paraspinal area. Spine- Normal.

ROM- Limited. Painful. Normal. Straight Leg Raising- straight leg raising negative

Assessment

Disc protrusion

L3L4 edema from trauma.

Discussion

Plan

off two weeks.

Handouts: Back pain.

Orders

Referrals

PHYSICIAN REFERRALS: neurosurgeon.

Medications

Visit Level

Follow Up

Electronically signed by Paula L. Belmar, M.D.

Subjective

Patient in today for follow up lower back pain. not feeling well. Still pain that is incapacitating

Objective

VS: BMI: 30.6. BP: 130/70. H: 66 in. P: 80 /min. W: 190lbs 0oz. Rikitia Boston, LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

Assessment

- Low back pain ICD#724.2

disc protrusion

L3 L4 EDEMA

Discussion

Plan

no heavy lifting or standing. Off one month.

Handouts: Back pain. Back pain, Back pain.

OFF ONE MONTH.

Orders

Referrals

NEUROSURGEON

Medications

CONTINUE PAIN MEDS.

Visit Level

Follow Up

Return to the office in 1month Electronically signed by Paula L. Belmar, M.D.

Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of active medical problems. worker's comp. Patient still c/o back pain seen by PT is feeling better and only slightly still has pain with less radiation to the right lower leg. Has been undergoing PT.

Objective

VS: BMI: 31.2. BP: 114/68. H: 66 in. P: 80 /min. W: 194lbs 0oz. Wendy Carter LPN

EXAM: GEN: obviously uncomfortable.

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SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical..

GAIT: No gait abnormality.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

Assessment

Low back pain ICD#724.2

Lumbar radiculopathy ICD#724.4

Discussion

Plan

off for another week continue PT

Handouts: Hypertension.

Orders

Referrals

Medications

Visit Level

Follow Up

Return to the office in 2 weeks Electronically signed by Paula L. Belmar, M.D.

B/F

2012-1433

PRIMARY CARE DIVISION
SENTINEL
HEALTH PARTNERS, PC

2889 HWY 1 SOUTH • ELGIN, SC 29045 • PHONE: 438-7698

Paula L. Belmar, M.D.

Eva Reynolds, FNP

Jennifer Carter, PA-C

Min W. Kang, M.D.

James Dent Date: 5/17/12
has been under
my care from 5/17/12 to 5/25/12
and is able to return to school/work on 5/28/12
Limitations / Remarks:

Form #002

Paula Belmar MD

Subjective

COMPLAINT OR ISSUE: WORKER'S COMP

The patient complains of Trauma or injury

5/1/12 worker's comp claim.

LBP that happened at work

The injuries involve the lower back

SYMPTOMS/RELATED:

Reports symptoms of pain.

Back pain started 5/1 at work. Picked up a man hole and went to his knees. Usually 90 lbs. Had pain and more pain worse the next morning. Pain goes down right leg. Right foot burns numb thigh area.

Works for Public Service Distric. East Richland County.

Denies symptoms of bruising, weakness, abrasions.

Objective

VS: BMI: 32.1. BP: 128/80. H: 66 in. P: 88 /min. W: 199lbs 0oz. Wendy Carter LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: tenderness lumbar spine, pain reproduced with bending, pain reproduced with twisting, tenderness right sacroiliac region.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

GENERAL APPEARANCE: Normal.

RESP: Normal.

LUNGS: Percussion- Resonant bilaterally. Auscultation- Breath sounds symmetrically clear.

HEART: Rhythm- Regular. Murmur- Not detected. Rub- Not detected. Click- Not detected. Gallop- Not detected.

ABDOMEN: Soft. Tenderness- None. Mass(s)- None. Bowel Sounds- Present.

EXTREMITIES: Cyanosis- Absent. Clubbing- Absent. Edema- None.

Assessment

Lumbar radiculopathy ICD#724.4

Discussion

Plan

Handouts: back exercises.

OFFICE INJECTIONS/MEDICATIONS: Toradol (ketorolac) INJECTION - KETORLAC 15 MG. #J1885

Dose- 30 mg (= 2 units) Lot#: dl12445 Expiration Date: 9/13 Manufacturer: Anatomical Site: IM Right

Buttocks. NDC# 64679-758-06U Nurse: Rikitia Boston, LPN

DepoMedrol 80 mg INJECTION - METHYLPREDNISOLONE 80 MG. #J1040 Dose- 80 mg. Lot#: obxpk Expiration Date: 12/14 Manufacturer: Anatomical Site: NDC# 0781-3132-95 Nurse: Rikitia Boston, LPN

Orders

ORDER RADIOLOGY: Is spine xray

Referrals

Medications

Medrol Dosepak: 4 mg (tablet) SIG- take as directed Dispense- #1 Pack(s) Refills- 0 Notes-

Vicodin ES (APAP/Hydrocodone): 750 mg-7.5 mg (tablet) SIG- 1 tab(s) every 6 hours orally
Dispense- #30 Substitutions Allowed Refills- 0 Notes-

Phenergan (Promethazine): 25 mg (tablet) SIG- 1 tab(s) every 6 hours as needed orally Dispense-
#10 Substitutions Allowed Refills- 1 Notes-

Flexeril (Cyclobenzaprine): 10 mg (tablet) SIG- 1 tab(s) 3 times a day orally Dispense- #30
Substitutions Allowed Refills- 1 Notes-

Visit Level

Follow Up

Return to the office in 1 week off for one week. Electronically signed by Paula L. Belmar, M.D.

Electronically signed by: Paula L. Belmar, M.D. on 05/10/2012 12:31 PM

Sentinel Health Partners Radiology Report
2689 Hwy 1 South
Elgin, South Carolina 29045
Phone: 803-438-7698

Patient: Dent, James L
Acct No:
Birthdate:
Physician: Paula L. Belmar, M.D.

Service Date: 5/10/12

History: WORKER'S COMP. PULLED MUSCLE LIFTING.

Study: LUMBAR SPINE, THREE VIEWS

Findings: There are at least three or four calcifications overlying the left kidney. There is loss of the normal lordotic curve probably due to muscle spasm. There is advanced disc narrowing consistent with chronic degenerative disc disease changes at L3-4 and moderate degenerative disc disease changes at L4-5 and moderate to advanced degenerative disc disease changes with fairly marked disc narrowing at L5-S1. There are at least moderate degenerative facet joint changes at L2-3 and L3-4, L4-5 and L5-S1. There are atherosclerotic changes of the aorta.

IMPRESSION: LOSS OF NORMAL LORDOTIC CURVE PROBABLY DUE TO MUSCLE SPASM.
POSSIBLE RENAL STONES ON THE LEFT. CHRONIC DEGENERATIVE DISC AND FACET JOINT
CHANGES AS DESCRIBED ABOVE AS WELL AS ATHEROSCLEROTIC CHANGES.

Electronically Signed by: Don Copley, M.D.

Camden Radiology Associates

Trans: DJC/tr

Trans date/time: 5/11/2012 12:34

cc:

Notes:

kidney stone left and muscle spasm and deg disc if not better in 2w needs MRI lumbar. . Please f/u with
your physician for stone.

5/11/12 Patient notified. rwb

Electronically signed by: Paula L. Belmar, M.D. on 05/11/2012 1:58 PM

B/f
2012-1433

PRIMARY CARE DIVISION
SENTINEL
HEALTH PARTNERS, PA

2689 HWY 1 SOUTH • ELGIN, SC 29045 • PHONE: 438-7698

Paula L. Belmar, M.D.

Jennifer Carter, PA-C

Eva Reynolds, FNP

Min W. Kang, M.D.

James Dent Date: 5.10.12
my care from 5.5.12 to 5.17.12 has been under
and is able to return to school / work on 5.18.12
Limitations / Remarks:

Form #002

Paula Belmar MD
AK

IMAGECARE, LLC
710 RABON ROAD
COLUMBIA, SC 29203
803-462-3680

Name: Dent, James L**Patient ID:****DOB:****Acc#:****Patient Phone #:**

Exam Date: 08/28/2012**Exam:** MRI L-spine with - wo kontras**Reason:** STENOSIS, SPINAL (724.00)**Referrer:** Gunter, Brett MD

PROCEDURE: MRI lumbar spine without and with intravenous gadolinium contrast-enhancement, initial exam

CLINICAL-HISTORY: Back pain and tingling and numbness in legs since lifting injury on 05/01/2012. Past history of lung cancer.

TECHNIQUE: 4 mm sagittal and axial T1 and T2 images and T2 STIR images were obtained. Following the intravenous administration of 17 cc of MultiHance gadolinium contrast, sagittal and axial T1-weighted images were obtained. 3 cc of on used to MultiHance were discarded.

FINDINGS: There are 5 lumbar vertebral segments with normal anatomic alignment of the lumbosacral and distal 2 thoracic spine segments without fracture deformity, bone destruction, or evidence of underlying inflammatory or neoplastic disease. Moderate acquired central stenosis at the L3-4 and L4-5 disc levels are noted due to moderate diffuse degenerative disc bulges and mild productive degenerative facet and ligamentous changes superimposed upon a somewhat congenitally narrow canal with short lumbar pedicles. There is marked degenerative narrowing of both L3-4 and L4-5 discs with reactive marrow edema of the superior endplate of L4 adjacent to the degenerative L3-4 disc. Small Schmorl's nodes of the vertebral endplates adjacent to the degenerative L4-5 disc are noted. There is no evidence of disc herniation, spondylolisthesis, or significant foraminal stenosis at the L3-4 or L4-5 levels. Moderate degenerative disc narrowing of the L5-S1 disc is noted with a moderate diffuse symmetric circumferential bulge of the disc margin with mild productive degenerative L5-S1 facet changes without disc herniation, spondylolisthesis, or significant central or foraminal stenosis at the L5-S1 level. The L2-3 disc shows mild degenerative changes of disc desiccation with slight disc narrowing with a mild bulge of the disc with a moderate asymmetric far right lateral and foraminal disc bulge which may compress the exiting right L2 nerve root, best visualized on axial T1 images 24 and 25, on axial T2 images 15 and 16, and on sagittal images 12, 13, and 14. There is also a mild degree of central stenosis at the L2-3 level due to the mild diffuse disc bulge and mild degenerative facet and ligamentous changes superimposed upon the congenitally narrowed canal. The L1-2, T12-L1, and T11-12 discs and adjacent vertebral segments are normal. No intradural, retroperitoneal or surrounding paraspinal soft tissue abnormalities are noted. No abnormal intradural nerve root enhancement is noted on the gadolinium enhanced images. Focal enhancement of the posterior margins of the L3-4 and L4-5 discs are noted consistent with small amounts of enhancing scar tissue within annular tears.

IMPRESSION: (1) A congenitally narrow lumbar canal is noted with moderate central stenosis at the L3-4 and L4-5 disc levels due to degenerative bulging discs and mild productive degenerative facet and ligamentous changes.

(2) Mild L2-3 Central stenosis is noted with moderate right L2-3 foraminal stenosis due to an asymmetric broad-based far right lateral and foraminal disc bulge.

(3) A moderate symmetric circumferential degenerative disc bulge and mild productive facet changes at the L5-S1 level are noted without disc herniation or significant appearing spinal stenosis.

(4) The remainder of the exam is unremarkable.

CAMDEN OPEN MRI

1202-A Mill Street
Camden, SC 29020

Phone: 1-803-432-0470

Fax: 1-803-432-0570

Patient: James Dent
Account #:
Physician: Dr. Belmar

History: low back pain

LUMBAR SPINE MRI 6-25-12

MRI was performed on .3 Tesla Open Permanent Magnet Hiatachl System: Scanogram, T2 sagittal, T1 sagittal, proton density sagittal and T2 axial sequences were obtained.

Multiple sequences reveal considerable motion artifact. There is abnormal signal with edema in the L3 and L4 vertebral bodies. There is a Schmorl's node in the superior end plate of L5 and L3 as well as L2 and minimal Schmorl's node in the superior end plate of L1 and inferior end plate of T10. There are moderately large disc protrusions (HNP's) on the left at L3-4, L4-5 and L5-S1 and small to moderate disc protrusions on the right at L4-5 and L5-S1. There is a small disc protrusion on the right at L2-3 and L3-4. There is marked disc narrowing at L3-4 and L4-5 and moderate disc narrowing at L5-S1. There are degenerative facet joint changes particularly at L3-4 and L4-5 with lateral recess stenosis at both levels. No central stenosis is seen.

IMPRESSION: LARGE DISC PROTRUSIONS AS DESCRIBED ABOVE. EDEMA IN THE L3 AND L4 VERTEBRAL BODIES. NO COMPRESSION IS SEEN HOWEVER. THE FINDINGS ARE PROBABLY POST TRAUMATIC GIVEN THE TWO CONTIGUOUS VERTEBRAL BODIES HOWEVER THE POSSIBILITY OF NEOPLASM CANNOT BE TOTALLY EXCLUDED. LATERAL RECESS STENOSIS AT L3-4 AND L4-5.

Donald J. Copley, MD
Camden Radiology Associates

DJC/js

Date Signed: 6-27-12

Date Transcribed: 6-27-12

Sentinel Health Partners Radiology Report
2689 Hwy 1 South
Elgin, South Carolina 29045
Phone: 803-438-7698

Patient: Dent, James L
Acct No:
Birthdate:
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Electronically Signed by: Don Copley, M.D.

Camden Radiology Associates

Trans: DJC/tr

Trans date/time: 5/11/2012 12:34

cc:

Notes:

kidney stone left and muscle spasm and deg disc if not better in 2w needs MRI lumbar. . Please f/u with
your physician for stone.

5/11/12 Patient notified. rwb

Electronically signed by: Paula L. Belmar, M.D. on 05/11/2012 1:58 PM

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Pre-Hearing Brief, Notice of Witnesses and Written Medical Reports, and a copy of the medical reports in the case of James Dent v East Richland County Public Library, WCC File No.: 1205879 has been served upon Matthew Robertson, Esquire on this 15TH day of January, 2014, in the US Postal Service, by first-class postage, addressed to:

Matthew Robertson, Esquire
1315 Elmwood Avenue
Columbia, SC 29201



Marla I. Rehborn
Legal Assistant
State Accident Fund
P.O. Box 102100
Columbia, SC 29221-5000

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1205879

EMPLOYEE/CLAIMANT: JAMES L. DENT

EMPLOYER: EAST RICHLAND COUNTY PUBLIC SERVICE

CCPY

INSURER: STATE ACCIDENT FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 7TH DAY OF
FEBRUARY, 2014, COMMENCING AT THE HOUR OF 10:30 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN BARDEN,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

MATTHEW C. ROBERTSON, ESQUIRE, OF THE FIRM
McDANIEL LAW FIRM
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEYS FOR THE EMPLOYEE/CLAIMANT,

PAGE P. SNYDER, ESQUIRE, OF THE FIRM
STATE ACCIDENT FUND
POST OFFICE BOX 102100
COLUMBIA, SOUTH CAROLINA 29221-5000

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: JOSEPH DENT
JULIE DENT

I N D E X

PAGE

JAMES L. DENT:

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RE-DIRECT EXAMINATION BY MR. ROBERTSON....	50
CERTIFICATE OF NOTARY PUBLIC.....	52

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS FEBRUARY 7TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1205879. THIS IS THE CASE OF THE CLAIMANT
10 MR. JAMES DENT WHO IS PRESENT TODAY AND REPRESENTED
11 BY ATTORNEY MATT ROBERTSON VERSUS THE EMPLOYER EAST
12 RICHLAND PUBLIC SERVICE AND ITS CARRIER THE STATE
13 ACCIDENT FUND, BOTH OF WHICH ARE REPRESENTED BY
14 ATTORNEY PAGE SNYDER. THE PURPOSE OF TODAY'S
15 HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50,
16 51 AND 21. THE PARTIES AGREE AND STIPULATE THAT MR.
17 DENT'S AVERAGE WEEKLY WAGE IS \$910.09 YIELDING A
18 COMPENSATION RATE OF \$610.75. THE DATE OF THIS
19 ADMITTED ACCIDENT WAS MAY 1ST, 2012.

20 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
21 VENUE, OR ANY OTHER ITEMS?

22 BY MR. ROBERTSON:

23 NONE FROM THE CLAIMANT, YOUR HONOR.

24 BY MS. SNYDER:

25 NO.

1 BY COMMISSIONER BARDEN:

2 THANK YOU BOTH. WITHOUT OBJECTION, THE
3 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
4 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND
5 UNSTIPULATED MEDICAL REPORTS.

6 PRIOR TO GOING ON THE RECORD, WE HELD A
7 PREHEARING CONFERENCE. IT'S THE POSITION OF THE
8 CLAIMANT THAT HE IS PERMANENTLY AND TOTALLY DISABLED
9 WHETHER PURSUANT TO SECTION 42-9-10 BECAUSE OF THE
10 COMBINATION OF HIS BACK AND HIS LEG INJURIES. HIS
11 LEGS ARE AFFECTED BY HIS BACK AND OTHER FACTORS OR
12 ALTERNATIVELY 42-9-30 IN THAT HE HAS SUSTAINED A 50
13 PERCENT OR GREATER LOSS OF USE OF HIS SPINE, AND HE
14 BELIEVES THAT THE DEFENDANTS CANNOT SUCCESSFULLY
15 REBUT THE PRESUMPTION THAT HE IS PERMANENTLY AND
16 TOTALLY DISABLED. IN ANY EVENT, AT A MINIMUM, HE
17 BELIEVES THAT HIS AWARD SHOULD BE BASED UPON 500
18 WEEKS EVEN IF HE IS NOT FOUND TO BE PERMANENTLY AND
19 TOTALLY DISABLED. IT IS HIS OPINION THAT WHEN
20 CONSIDERING HIS VOCATIONAL REPORT CONTAINING HIS
21 VOCATIONAL EXPERT'S OPINION AS WELL AS THE
22 IMPAIRMENT RATING FROM HIS I.M.E., DR. FORREST, OF
23 21 PERCENT. HOWEVER, DR. FORREST DOES OPINE THAT
24 THE CLAIMANT HAS ACTUALLY SUSTAINED A GREATER THAN
25 50 PERCENT LOSS OF USE OF HIS BACK, AND THE CLAIMANT

1 BELIEVES THAT ANY IMPAIRMENT RATING IS A MERE
2 STARTING POINT IN DETERMINING PERMANENT DISABILITY
3 AND IS IN NO WAY A REFLECTIVE OR ACCURATE INDICATOR
4 OF THE CLAIMANT'S RESIDUAL CONDITION. BUT WHEN
5 TAKING THE VOCATIONAL REPORT, THE STATEMENT OF DR.
6 FORREST, THE IMPAIRMENT RATING, THE FACT THAT THE
7 CLAIMANT IS LIMITED TO BY A PHYSICAL THERAPIST WHO
8 LIMITED LIGHT AT A MAXIMUM, THE CLAIMANT BELIEVES
9 THAT HE IS INDEED ENTITLED TO A FINDING UNDER EITHER
10 STATUTORY THEORY, AND OF COURSE UNDER EITHER THEORY
11 ENTITLED TO RECEIVE LIFETIME CAUSALLY-RELATED
12 MEDICALS. HE WOULD POINT TO MY ATTENTION THE FACT
13 THAT HE IS A 27-YEAR EMPLOYEE, AND HE DOES SEEK HIS
14 AWARD IN A LUMP SUM WITH ALLOCATION LANGUAGE, *JAMES*
15 *V. ANNE* LANGUAGE IN THE ORDER. BUT IT IS HIS
16 CONTENTION THAT IMPAIRMENT RATINGS ARE JUST EXACTLY
17 THAT. THEY ARE NOT ACCURATE OR RELIABLE INDICATORS
18 OF A CLAIMANT'S RESIDUAL CONDITION, AND THE CLAIMANT
19 CONTENDS THAT THE EVIDENCE POINTS TO A FINDING AND
20 IS CONVINCING EVIDENCE THAT HE IS PERMANENTLY AND
21 TOTALLY DISABLED. BECAUSE OF HIS RESTRICTIONS, HE
22 IS UNABLE TO RETURN TO HIS PRE-ACCIDENT JOB, AND OF
23 COURSE, HIS RESTRICTIONS ARE VERY SIGNIFICANT.

24 CONVERSELY, IT IS THE POSITION OF THE
25 DEFENDANTS THAT THIS IS A BACK INJURY ONLY. THE

1 DEFENDANTS BELIEVE THAT THERE IS NO PERMANENT -- NO
2 DISABILITY BEYOND THE IMPAIRMENT RATING OF THE
3 AUTHORIZED PHYSICIAN DR. GUNTER, AND IF THERE IS ANY
4 DISABILITY BEYOND THE IMPAIRMENT RATING, IT WOULD BE
5 STRICTLY DE MINIMUS. EVEN IF I CONSIDER THE
6 IMPAIRMENT RATING OF THE CLAIMANT'S I.M.E., THE
7 DEFENDANTS BELIEVE THAT THERE IS NO PERMANENT
8 PARTIAL DISABILITY BEYOND THAT IMPAIRMENT RATING AT
9 A MAXIMUM. BUT THE DEFENDANTS WOULD POINT TO MY
10 ATTENTION THE RATING OF THE AUTHORIZED PROVIDER, AND
11 THE DEFENDANTS BELIEVE THAT THE AUTHORIZED
12 PROVIDER'S IMPAIRMENT RATING SHOULD BE ACCORDED
13 GREATER WEIGHT. THE DEFENDANTS BELIEVE THAT THERE
14 IS IN FACT WORK THAT THE CLAIMANT CAN PERFORM WITHIN
15 THE RESTRICTIONS AS ISSUED BY THE AUTHORIZED
16 PROVIDER, WHICH WOULD BE MEDIUM WORK. THE
17 DEFENDANTS DO ACKNOWLEDGE AND CONCEDE THAT THE
18 CLAIMANT HAS HAD LUNG CANCER AND HAS BEEN TREATED
19 FOR THAT, AND THE DEFENDANTS BELIEVE THAT THAT IS A
20 DISABLING FACTOR, WHICH ECLIPSES THIS BACK INJURY
21 FOR WHICH WE ARE PRESENT TODAY. THE DEFENDANTS
22 BELIEVE THAT THERE IS WORK THAT THE CLAIMANT CAN
23 PERFORM, WORK BASED STRICTLY ON HIS BACK INJURY
24 ALONE, AND THAT'S WHAT SHOULD BE THE FOCUS OF THE
25 INQUIRY. THE DEFENDANTS OBJECT TO THE AWARD BEING

1 MADE IN A LUMP SUM WITH THE ALLOCATION LANGUAGE.
2 THE DEFENDANTS WOULD CONCLUDE THAT THE CLAIMANT IS
3 NOT PERMANENTLY AND TOTALLY DISABLED AND IS ONLY
4 ENTITLED TO AN AWARD PURSUANT TO SECTION 42-9-30,
5 ITEM 21. BOTH PARTIES AGREE THAT THE CLAIMANT HAS
6 REACHED MAXIMUM MEDICAL IMPROVEMENT.

7 IS THERE ANYTHING THAT I MAY HAVE MISSTATED OR
8 MISCHARACTERIZED AS FAR AS YOUR RESPECTIVE
9 POSITIONS, AND IF THERE IS, I CERTAINLY WILL STAND
10 TO BE CORRECTED AND HEAR FROM YOU UNLESS YOU'RE
11 SATISFIED WITH THAT SUMMARY, SIR.

12 BY MR. ROBERTSON:

13 YOUR HONOR, JUST ONE MINOR ITEM.

14 BY COMMISSIONER BARDEN:

15 YES, SIR.

16 BY MR. ROBERTSON:

17 IN ADDITION, IF YOU DO NOT FIND THE CLAIMANT
18 PERMANENTLY AND TOTALLY DISABLED, WE WOULD STILL ASK
19 FOR FUTURE MEDICALS TO BE AWARDED UNDER DODGE TO THE
20 EXTENT THAT BOTH DR. GUNTER AND DR. FORREST HAVE
21 OPINED THAT THE CLAIMANT WILL NEED FUTURE
22 MEDICATIONS, AND I BELIEVE DR. FORREST I BELIEVE
23 INDICATES PERHAPS FUTURE SCANNING AS WELL AS CHRONIC
24 PAIN MANAGEMENT. THANK YOU.

25 BY COMMISSIONER BARDEN:

1 THANK YOU FOR THAT ADDITION. I APPRECIATE
2 THAT. MS. SNYDER.

3 BY MS. SNYDER:

4 I WOULD ONLY LIKE TO ADD ---

5 BY COMMISSIONER BARDEN:

6 YES, GO AHEAD.

7 BY MS. SNYDER:

8 --- THAT WE ARE SEEKING CREDIT FOR PAYMENTS
9 BACK TO THE DATE OF M.M.I.

10 BY COMMISSIONER BARDEN:

11 OKAY. THANK YOU SO MUCH. AND THAT WOULD BE
12 MAY 8TH, 2013?

13 BY MS. SNYDER:

14 YES.

15 BY COMMISSIONER BARDEN:

16 ALL RIGHT, I GOT IT. I APPRECIATE BOTH OF
17 Y'ALL.

18 BY MR. ROBERTSON:

19 MAY I BRIEFLY RESPOND?

20 BY COMMISSIONER BARDEN:

21 YES.

22 BY MR. ROBERTSON:

23 YOUR HONOR, ---

24 BY COMMISSIONER BARDEN:

25 OBVIOUSLY IF HE IS PERMANENTLY AND TOTALLY

1 DISABLED, THAT ISSUE IS MOOT.

2 BY MR. ROBERTSON:

3 IT IS MOOT, YES, YOUR HONOR.

4 BY COMMISSIONER BARDEN:

5 BUT YOU GO AHEAD AND TELL ME.

6 BY MR. ROBERTSON:

7 IF YOU DO NOT FIND THAT THE CLAIMANT IS
8 PERMANENTLY AND TOTALLY DISABLED, WE AGREE THAT SOME
9 CREDIT IS AVAILABLE TO THE DEFENDANTS, BUT I WOULD
10 ASK THAT YOU LIMIT IT TO THE DATE THE FORM 21 WAS
11 FILED.

12 BY MS. SNYDER:

13 AND THAT WAS OCTOBER 7TH, 2013.

14 BY MR. ROBERTSON:

15 YES, I AGREE.

16 BY COMMISSIONER BARDEN:

17 ALL RIGHT. AND OUR FIRST AND ONLY WITNESS IS
18 MR. DENT. SO, MR. DENT, IF YOU WILL RAISE YOUR
19 RIGHT HAND, PLEASE. AND IF YOU WILL REMOVE YOUR
20 CAP, PLEASE, SIR. CAN YOU REMOVE YOUR CAP?

21 BY THE WITNESS:

22 (THE WITNESS COMPLIES)

23 BY COMMISSIONER BARDEN:

24 THANK YOU.

25 * * * * *

1 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
2 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
3 MATTER HEREIN:

4 JAMES L. DENT

5 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

6 BY COMMISSIONER BARDEN:

7 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 JAMES L. DENT.

10 BY COMMISSIONER BARDEN:

11 THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS
12 MR. ROBERTSON HAS.

13 BY MR. ROBERTSON:

14 THANK YOU, YOUR HONOR. MAY IT PLEASE THE
15 COMMISSION.

16 DIRECT EXAMINATION BY MR. ROBERTSON:

17 Q. MR. DENT, BEFORE WE BEGIN, HAVE YOU BEEN DIAGNOSED
18 WITH SMALL CELL LUNG CANCER. IS YOUR CANCER
19 CURRENTLY IN REMISSION?

20 A. YES.

21 Q. OKAY. BUT DUE TO THE CHEMICAL THERAPY THAT YOU HAVE
22 GOTTEN, DO YOU HAVE SOME PROBLEMS WITH REMEMBERING
23 THINGS?

24 A. OH, YEAH.

25 Q. OKAY. ARE YOU GOING TO DO THE BEST YOU CAN TODAY TO

1 ANSWER MY QUESTIONS AND ANSWER COUNSEL'S QUESTIONS -

2 --

3 A. YEAH, I SURE WILL.

4 Q. --- TO THE BEST OF YOUR MEMORY?

5 A. MM-HMM.

6 BY COMMISSIONER BARDEN:

7 IS THAT A YES?

8 BY THE WITNESS:

9 YES.

10 BY COMMISSIONER BARDEN:

11 OKAY.

12 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

13 Q. AND WHEN WAS YOUR LAST SESSION OF CHEMOTHERAPY, WHAT
14 MONTH?

15 A. ABOUT A MONTH.

16 Q. WAS IT IN DECEMBER?

17 BY THE WITNESS:

18 WAS IT DECEMBER?

19 BY COMMISSIONER BARDEN:

20 SHE CAN'T HELP YOU.

21 BY MR. ROBERTSON:

22 SHE CAN'T HELP YOU.

23 BY COMMISSIONER BARDEN:

24 JUST DO THE BEST YOU CAN.

25 BY THE WITNESS:

1 OH, OKAY. I WOULD SAY AROUND DECEMBER, SIR.

2 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

3 Q. OKAY. MAYBE A MONTH OR TWO AGO?

4 A. YES.

5 Q. ALL RIGHT. HOW OLD ARE YOU TODAY, SIR?

6 A.

7 Q. OKAY. WHAT'S YOUR DATE OF BIRTH?

8 A.

9 Q. ALL RIGHT. ARE YOU MARRIED?

10 A. YES.

11 Q. WHAT'S YOUR WIFE'S NAME?

12 A. DENT.

13 Q. OKAY. DO YOU HAVE ANY CHILDREN?

14 A.

15 Q. ALL RIGHT. WHAT'S THE NAME OF YOUR OLDEST BOY?

16 A.

17 Q.

18 A. DENT, JUNIOR.

19 Q. OKAY. AND YOUR MIDDLE CHILD?

20 A. DENT.

21 Q. AND YOUR YOUNGEST?

22 A. HUH?

23 Q. YOUR YOUNGEST CHILD, WHAT'S HIS NAME?

24 A. OH,

25 Q. WHAT IS YOUR CURRENT ADDRESS, SIR?

1 A.

2 Q. AND WHAT CITY IS THAT IN?

3 A.

4 Q. AND THAT WAS

5 A. YEAH,

6 Q. OKAY.

7 BY COMMISSIONER BARDEN:

8 THANK YOU, SIR.

9 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

10 Q. HOW LONG HAVE YOU LIVED AT THAT ADDRESS, MR. DENT?

11 A. TWENTY-THREE YEARS.

12 Q. OKAY. HAVE YOU GRADUATED FROM HIGH SCHOOL?

13 A. YES, SIR.

14 Q. OKAY. DO YOU REMEMBER WHAT YOUR GRADES WERE LIKE IN
15 HIGH SCHOOL?

16 A. THEY WASN'T TOO SPIFFY.

17 Q. OKAY. DID YOU KNOW THAT YOUR HIGH SCHOOL RECORDS
18 SHOWED A "D" AVERAGE?

- 19 A. OH, YEAH, PROBABLY SO.

20 Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU A LITTLE BIT
21 ABOUT YOUR EMPLOYMENT HISTORY IF THAT'S OKAY.

22 A. MM-HMM.

23 Q. DO YOU REMEMBER WORKING FOR A COMPANY CALLED J.B.
24 WHITES?

25 A. YES, SIR.

1 Q. DO YOU REMEMBER WHAT YOU DID FOR THAT COMPANY?

2 A. I DELIVERED FURNITURE.

3 Q. OKAY. THAT JOB, WAS THAT BASICALLY WHAT YOU WOULD
4 CALL HEAVY LABOR?

5 A. YEAH.

6 Q. WERE YOU DOING A LOT OF LIFTING?

7 A. MM-HMM.

8 BY COMMISSIONER BARDEN:

9 IS THAT A YES?

10 BY THE WITNESS:

11 YES.

12 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

13 Q. REMEMBER WE TALKED ABOUT PLEASE SAY "YES" OR "NO,"
14 OKAY?

15 A. OKAY.

16 Q. ALL RIGHT, SIR.

17 BY COMMISSIONER BARDEN:

18 WE MIGHT DISAGREE DOWN THE ROAD WHAT "MM-HMM"
19 - MEANS WHEN SHE TRIES TO TYPE THAT DOWN. IT'S KIND
20 OF HARD TO TYPE.

21 BY MR. ROBERTSON:

22 YES, EXACTLY.

23 BY COMMISSIONER BARDEN:

24 THAT'S WHY. WE'RE NOT PICKING ON YOU.

25 BY THE WITNESS:

1 OKAY.

2 BY MR. ROBERTSON:

3 COMMISSIONER, I'LL TRY TO REMEMBER TO PROMPT
4 HIM.

5 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

6 Q. OKAY. AND YOU DID A LOT OF UNLOADING AND LOADING
7 TRUCKS AND SUCH?

8 A. YES.

9 Q. ALL RIGHT. YOUR NEXT JOB, WAS THAT BLYCO GLASS
10 COMPANY?

11 A. THAT WAS ONE OF MY FIRST JOBS.

12 Q. OKAY. AND WHAT DID YOU DO AT BLYCO GLASS COMPANY IF
13 YOU REMEMBER?

14 A. INSTALLED GLASS.

15 Q. DID YOU MOVE THINGS -- YOU MOVED IT?

16 A. NO, WE INSTALLED IT IN THE FRAMES AND SUCH.

17 Q. OKAY.

18 BY COMMISSIONER BARDEN:

19 OH, INSTALLED IT?

20 BY THE WITNESS:

21 MM-HMM.

22 BY COMMISSIONER BARDEN:

23 IS THAT A YES?

24 BY THE WITNESS:

25 YES.

1 BY COMMISSIONER BARDEN:

2 OKAY.

3 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

4 Q. DID YOU STACK BIG WINDOWS?

5 A. YES.

6 Q. ALL RIGHT. WERE THEY HEAVY?

7 A. OH, YEAH.

8 Q. WOULD YOU SAY THEY WEIGHED OVER 100 POUNDS?

9 A. OH, YEAH, PRETTY -- YEAH.

10 Q. AND YOU HAD TO LIFT THOSE?

11 A. YES. CERTAIN ONES WEIGH 100 POUNDS, AND -- YOU
12 KNOW...

13 Q. SURE, I UNDERSTAND. ALL RIGHT. DID YOU WORK FOR A
14 COMPANY CALLED WOMETCO VENDING?

15 A. YEAH.

16 Q. ALL RIGHT. WHAT WAS YOUR JOB AT WOMETCO VENDING;
17 WHAT DID YOU DO, SIR?

18 A. WE INSTALLED VENDING MACHINES.

19 Q. OKAY. DID YOU HAVE TO MOVE THE VENDING MACHINES TO
20 GET THEM IN THE RIGHT POSITION?

21 A. YES, SIR.

22 Q. AND THOSE VENDING MACHINES, WERE THEY VERY HEAVY?

23 A. YES, SIR.

24 Q. DID YOU HAVE TO DO SOME LIFTING IN THAT JOB?

25 A. WELL, MOSTLY OUR HAND TRUCKS AND STUFF LIKE

1 THAT DONE IT.

2 Q. A LOT OF PUSHING AND PULLING?

3 A. YEAH, PUSHING AND PULLING.

4 Q. OKAY. AND WHAT WAS ENTAILED WITH INSTALLING, JUST
5 PUSHING AND PULLING THEM INTO PLACE AND PLUGGING
6 THEM IN?

7 A. MM-HMM.

8 BY COMMISSIONER BARDEN:

9 IS THAT A YES?

10 BY THE WITNESS:

11 PUTTING THEM IN PLACE.

12 BY COMMISSIONER BARDEN:

13 IS THAT A YES?

14 BY THE WITNESS:

15 YES.

16 BY COMMISSIONER BARDEN:

17 OKAY.

18 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

19- Q. OKAY. NOW, YOUR NEXT JOB WOULD HAVE BEEN EAST
20 RICHLAND PUBLIC SERVICE DISTRICT; IS THAT RIGHT?

21 A. YES.

22 Q. AND DID YOU BEGIN WORKING THERE IN 1985; DOES THAT
23 SOUND RIGHT?

24 A. YEAH, '85.

25 Q. ALL RIGHT. AND SO YOU WORKED THERE FOR 27 YEARS?

1 A. RIGHT.

2 Q. ALL RIGHT. DID YOU WORK THERE UP UNTIL THE TIME YOU
3 WERE INJURED IN 2012?

4 A. YES.

5 Q. OKAY. WHEN YOU WERE HIRED AT EAST RICHLAND, WHAT
6 WERE YOUR JOB DUTIES; WHAT WERE YOU HIRED TO DO?

7 A. MAINLY WE -- YOU KNOW, MAINTAIN SEWER LINES.

8 Q. OKAY. DID ---

9 BY COMMISSIONER BARDEN:

10 AND, SIR, I'M GOING TO ASK YOU SOMETHING. IF
11 YOU WILL MOVE YOUR HAND FROM YOUR MOUTH, THAT WILL
12 HELP US HEAR YOU A LITTLE BETTER.

13 BY THE WITNESS:

14 OH, OKAY.

15 BY COMMISSIONER BARDEN:

16 THERE YOU GO. THANK YOU.

17 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

18 Q. THANK YOU, SIR. ALL RIGHT. NOW, WAS THAT A GENERAL
19 LABORER JOB?

20 A. YES, SIR, WHEN I FIRST STARTED, YES.

21 Q. OKAY, ALL RIGHT. NOW, WHEN YOU GOT ON THE SEWER
22 CREW, DID YOU DIG UP SEWER LINES?

23 A. YES.

24 Q. ALL RIGHT. DID YOU LAY PIPE?

25 A. YES.

1 Q. DID YOU UNSTOP SEWER LINES?

2 A. YES.

3 Q. OKAY. NOW, WHAT DID YOU HAVE TO DO TO DIG UP SEWER
4 LINES; DID YOU ACTUALLY HAVE TO DIG UP DITCHES AND
5 SUCH?

6 A. YES.

7 Q. OKAY. DID THAT ENTAIL A LOT OF STOOPING AND
8 BENDING?

9 A. MAINLY, YEAH, A LOT OF IT.

10 Q. OKAY. DID YOU HAVE TO STAND ON YOUR FEET THE WHOLE
11 TIME TO DIG THOSE DITCHES?

12 A. MM-HMM.

13 BY COMMISSIONER BARDEN:

14 IS THAT A YES?

15 BY THE WITNESS:

16 YES.

17 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

18 Q. AND IS THAT SOMETHING YOU THINK YOU COULD DO AT THIS
19 TIME, DIG THOSE DITCHES AND DIG UP THE SEWER LINES?

20 A. OH, NO.

21 Q. OKAY. DO YOU THINK YOUR BACK CONDITION AT THIS
22 POINT WOULD PREVENT YOU FROM DOING THAT?

23 A. YES, SIR.

24 Q. ALL RIGHT. NOW, DID YOU LAY PIPE? I BELIEVE I
25 ALREADY ASKED YOU THAT, BUT YOU DID LAY PIPE,

1 CORRECT?

2 A. RIGHT.

3 Q. AND WAS THAT DONE AFTER THE DITCH WAS ALREADY DUG?

4 A. YES. WELL, WE HAD TO DIG THE DITCH AND, YOU KNOW,
5 LAY THE PIPE.

6 Q. AND LAY THE PIPE. DID YOU HAVE TO CARRY THE PIPE
7 FROM A TRUCK TO THE DITCH?

8 A. YES.

9 Q. OKAY. HOW MUCH DID THE PIPE WEIGH?

10 A. PROBABLY 40, 50 POUNDS.

11 Q. DO YOU THINK YOU COULD LIFT AND CARRY THAT PIPE NOW?

12 A. NO, SIR.

13 Q. OKAY. IS THAT BECAUSE OF YOUR BACK CONDITION?

14 A. RIGHT.

15 Q. ALL RIGHT. NOW, WHAT DO YOU HAVE TO DO TO UNSTOP A
16 SEWER LINE?

17 A. WELL, WE GOT LITTLE JET MACHINES THAT GO UP IN THE
18 LINE AND DO IT. AND IF WE CAN'T GET IT LIKE THAT,
-19 WE, YOU KNOW, DIG IT UP. -

20 BY COMMISSIONER BARDEN:

21 WITH A SHOVEL, A HAND SHOVEL?

22 BY THE WITNESS:

23 WELL, SOMETIMES, YES. MOST TIMES A SHOVEL.

24 BY COMMISSIONER BARDEN:

25 OKAY.

1 BY THE WITNESS:

2 ACCORDING TO HOW, YOU KNOW, YOU CAN GET TO IT
3 OR NOT, YOU KNOW.

4 BY COMMISSIONER BARDEN:

5 OKAY. SO SOMETIMES YOU HAD TO USE A HAND
6 SHOVEL?

7 BY THE WITNESS:

8 MM-HMM.

9 BY COMMISSIONER BARDEN:

10 IS THAT A YES?

11 BY THE WITNESS:

12 YES.

13 BY COMMISSIONER BARDEN:

14 THANK YOU.

15 BY THE WITNESS:

16 I'VE GOT TO REMEMBER THAT.

17 BY COMMISSIONER BARDEN:

18 THAT'S FINE.

19 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

20 Q. I'VE GOT TO REMIND YOU, PLEASE SAY "YES" OR "NO,"
21 OKAY, MR. DENT?

22 A. YES, SIR.

23 Q. OKAY. NOW, WHEN YOU DIDN'T HAVE TO USE THE SHOVEL,
24 WAS THERE A TUBE YOU COULD PUT IN THE SEWER LINE
25 THAT MIGHT UNSTOP IT, SOMETHING YOU PUSHED IN THERE?

1 A. YES, SIR.

2 Q. OKAY. AND DID THAT ENTAIL A LOT OF PUSHING AND
3 PULLING?

4 A. YEAH, IF YOU COULDN'T GET IT LIKE THAT, YOU KNOW,
5 YOU HAD TO DIG IT UP.

6 Q. OKAY, YEAH. DO YOU THINK YOU COULD DO THAT DIGGING
7 AND THAT PUSHING AND PULLING NOW?

8 A. NO, SIR.

9 Q. IS THAT BECAUSE OF YOUR BACK CONDITION?

10 A. RIGHT.

11 Q. ALL RIGHT. AND IN YOUR JOB, DID YOU HAVE TO LIFT
12 MANHOLES IN THE STREET?

13 A. YES, SIR.

14 Q. MANHOLE COVERS I SHOULD SAY.

15 A. MM-HMM.

16 Q. YES?

17 A. YES.

18 Q. OKAY. NOW, AND ONCE YOU LIFTED A MANHOLE COVER AND
19 REMOVED IT, DID YOU HAVE TO CLIMB UP AND DOWN A
20 SERIES OF STEPS OR RUNGS TO GET IN AND OUT OF THE
21 SEWER?

22 A. YEAH, WE HAD TO GET OUT OF THE DITCH. WE PUT A
23 LADDER DOWN IN THE HOLE TO GET OUT OF IT.

24 Q. OKAY. DO YOU THINK YOU COULD DO THAT CLIMBING NOW?

25 A. NO.

- 1 Q. HOW ABOUT LIFTING OR MOVING THE MANHOLE COVERS?
- 2 A. I KNOW I CAN'T DO THAT.
- 3 Q. AND THE REASON YOU CAN'T DO THOSE THINGS, DO YOU
- 4 FEEL LIKE THAT'S BECAUSE OF YOUR BACK CONDITION?
- 5 A. YES, SIR.
- 6 Q. OKAY. ALL RIGHT. NOW, WERE YOU EVENTUALLY PROMOTED
- 7 TO FOREMAN ON THE JOB?
- 8 A. YES, SIR.
- 9 Q. OKAY. LET ME ASK YOU THIS: AFTER YOU WERE PROMOTED
- 10 TO FOREMAN, DID YOU STILL HAVE TO DO THESE HEAVY-
- 11 LABOR TASKS?
- 12 A. YES.
- 13 Q. OKAY. WAS THAT CONSIDERED A WORKING SUPERVISOR
- 14 POSITION?
- 15 A. RIGHT.
- 16 Q. AND DID YOU HAVE TO FILL IN FOR CREW MEMBERS THAT
- 17 CALLED IN SICK OR DIDN'T SHOW UP?
- 18 A. YES, SIR.
- 19 Q. OKAY, ALL RIGHT. NOW, I WANT TO TAKE YOU TO MAY 1ST
- 20 OF 2012, AND THIS IS AN ADMITTED ACCIDENT, SO WE
- 21 WON'T GO INTO IT A WHOLE GREAT DEAL AND WASTE THE
- 22 COMMISSIONER'S TIME, BUT I WOULD LIKE YOU IF YOU
- 23 COULD TELL THE COMMISSIONER WHAT HAPPENED ON MAY THE
- 24 1ST, 2012, THAT CAUSED YOUR BACK TO BE INJURED.
- 25 A. WELL, I WAS -- I WAS WORKING AROUND A DITCH, AND I

1 WAS TRYING -- WE HAD TO TAKE A MANHOLE OFF THE ROAD,
2 AND WE TOOK THE MANHOLE OFF AND GOT IT CEMENTED BACK
3 RIGHT, AND I HAD TO PUT IT BACK ON, AND THAT'S WHEN
4 MY BACK WENT OUT.

5 Q. OKAY. WERE YOU MOVING THE MANHOLE COVER BACK INTO
6 PLACE ---

7 A. YES.

8 Q. --- WHEN YOU SAID THIS HAPPENED?

9 A. MM-HMM.

10 **BY COMMISSIONER BARDEN:**

11 IS THAT A YES?

12 **BY THE WITNESS:**

13 YES.

14 **DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:**

15 Q. OKAY. AND WHAT DID YOU FEEL RIGHT AT THE START --
16 WHAT DID YOU INITIALLY FEEL WHEN THIS HAPPENED?

17 A. I FELT A SHARP PAIN AND WENT TO MY KNEES.

18 Q. OKAY. YOU WENT TO YOUR KNEES?

19 A. RIGHT.

20 Q. ALL RIGHT. WAS YOUR SUPERVISOR THERE ON THE JOB
21 WHEN THAT HAPPENED?

22 A. YES.

23 Q. IS HIS NAME JACK?

24 A. JACK.

25 Q. OKAY. DID JACK SEE YOU GO TO YOUR KNEES?

1 A. OH, YEAH.

2 Q. ALL RIGHT. DID PEOPLE COME OVER TO HELP YOU, YOU

3 KNOW, AND MAKE SURE YOU WERE ALL RIGHT?

4 A. YEAH, YEAH -- HH-HMM.

5 Q. OKAY. THAT'S A YES, CORRECT?

6 A. YES.

7 Q. OKAY, ALL RIGHT. NOW, WERE YOU IN IMMEDIATE PAIN AT

8 THAT TIME?

9 A. OH, YEAH.

10 Q. WHERE WERE YOU HURTING?

11 A. IN MY LOWER BACK.

12 Q. OKAY. WAS IT TO ONE SIDE OR THE OTHER OR ALL ACROSS

13 YOUR LOWER BACK?

14 A. ALL ACROSS THE BACK.

15 Q. OKAY. AND DID THE EAST RICHLAND DISTRICT, DID THEY

16 SEND YOU TO THE DOCTOR?

17 A. YES.

18 Q. BUT NOT RIGHT AWAY?

19 - - A. NO, NOT RIGHT AWAY. - -

20 Q. WAS IT ABOUT A WEEK LATER?

21 A. ABOUT A WEEK -- ABOUT A WEEK LATER.

22 Q. OKAY. WAS DR. BELMAR THE FIRST DOCTOR YOU SAW?

23 A. YES, SIR.

24 Q. ALL RIGHT. AND THE TREATMENT THAT YOU RECEIVED IS

25 OUTLINED IN YOUR MEDICAL RECORDS THAT WE HAVE PASSED

1 UP, AND I KNOW THE COMMISSIONER WILL READ ALL OF
2 THAT, BUT DO YOU FEEL LIKE DR. BELMAR DID A LOT FOR
3 YOU?

4 A. SHE DONE WHAT SHE COULD, I RECKON.

5 Q. OKAY. DID SHE GIVE YOU MEDICATIONS?

6 A. YES, SIR.

7 Q. WAS THAT ABOUT IT?

8 A. YEAH, THAT WAS ABOUT IT.

9 Q. OKAY. NOW, DID THE INSURANCE COMPANY AND THE EAST
10 RICHLAND, DID THEY EVENTUALLY REFER YOU TO SEE
11 ANOTHER DOCTOR?

12 A. YES, SIR.

13 Q. WAS THAT DR. BRETT GUNTER?

14 A. MM-HMM.

15 Q. YES?

16 A. YES.

17 Q. OKAY. ALL RIGHT. NOW, I'M GOING TO ASK YOU ABOUT
18 THE TREATMENT THAT DR. GUNTER GAVE YOU. DID HE SEND
19 YOU FOR PHYSICAL THERAPY?

20 A. YES.

21 Q. DO YOU REMEMBER GOING TO PHYSICAL THERAPY?

22 A. KIND OF.

23 Q. OKAY. DO YOU REMEMBER IF YOU DID EXERCISES IN THE
24 THERAPY?

25 A. YES, SIR.

1 Q. OKAY. DID YOU GET HEAT AND ICE TREATMENTS?

2 A. I GOT HEAT TREATMENT.

3 Q. OKAY. DID THE PHYSICAL THERAPY WHEN IT WAS OVER,
4 DID YOU FEEL LIKE IT HELPED YOU?

5 A. NO, SIR.

6 Q. OKAY. DID DR. GUNTER ALSO GIVE YOU STEROID
7 INJECTIONS?

8 A. YES, SIR.

9 Q. DID THOSE HELP YOU?

10 A. ABOUT TWO WEEKS.

11 Q. OKAY. THEY WORKED ABOUT TWO WEEKS, AND THEN ---

12 A. THEN YOU HAD TO GET ANOTHER ONE, AND YOU CAN'T GET
13 BUT TWO A YEAR.

14 Q. ALL RIGHT.

15 A. OR SOMETHING LIKE THAT.

16 Q. AND DID THEY -- THE EFFECT OF THE INJECTION
17 EVENTUALLY WEAR OFF?

18 A. YES.

19 Q. ALL RIGHT. DID DR. GUNTER DISCUSS SURGERY WITH YOU?

20 A. YES.

21 Q. DID YOU TELL DR. GUNTER THAT YOU WERE NOT REALLY
22 ABLE TO CONSIDER HAVING SURGERY?

23 A. YEAH, THAT'S WHAT I TOLD HIM.

24 Q. WAS THAT DUE TO YOUR CANCER CONDITION?

25 A. MM-HMM.

1 BY COMMISSIONER BARDEN:

2 IS THAT A YES?

3 BY THE WITNESS:

4 YES.

5 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

6 Q. ALL RIGHT. DO YOU RECALL DR. GUNTER SENDING YOU FOR
7 A WORK HARDENING EVALUATION, AND WHEN I SAY THAT, I
8 MEAN A BUNCH OF TESTS TO SEE WHAT YOU COULD LIFT AND
9 HOW LONG YOU COULD STAY ON A TREADMILL AND THINGS
10 LIKE THAT?

11 A. YES, SIR.

12 Q. ALL RIGHT.

13 A. I COULDN'T COMPLETE IT.

14 Q. ALL RIGHT. YOU WEREN'T ABLE TO FINISH THOSE TESTS?

15 A. MM-MM.

16 Q. NO?

17 BY COMMISSIONER BARDEN:

18 IS THAT A NO?

- 19 BY THE WITNESS:

20 NO.

21 BY COMMISSIONER BARDEN:

22 NO, YOU COULDN'T OR IS THAT RIGHT? YOU COULD
23 NOT? I DON'T WANT THE NO TO BE NO, THAT'S NOT
24 RIGHT.

25 BY THE WITNESS:

1 I COULDN'T FINISH THE TEST.

2 BY COMMISSIONER BARDEN:

3 I GOT IT. THAT'S GOOD.

4 BY MR. ROBERTSON:

5 THANK YOU.

6 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

7 Q. DID YOU HAVE TO STOP BECAUSE OF BACK PAIN AND
8 SHORTNESS OF BREATH?

9 A. YES.

10 Q. OKAY. DO YOU KNOW IF THE THERAPIST RECOMMENDED YOU
11 FOR THAT WORK HARDENING PROGRAM AFTER YOU COULDN'T
12 FINISH THE TEST?

13 A. NO.

14 Q. OKAY.

15 BY MR. ROBERTSON:

16 COMMISSIONER, I WOULD REFER YOU TO CLAIMANT'S
17 APA PAGE 22 ON THAT.

18 BY COMMISSIONER BARDEN:

19 -- THANK YOU. --

20 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

21 Q. ALL RIGHT. WAS IT YOUR UNDERSTANDING THAT THE
22 PROGRAM WOULDN'T DO YOU ANY GOOD?

23 A. NO, HE SAID IT WOULDN'T DO...

24 Q. OKAY. WHEN HE SAID ---

25 A. BECAUSE I COULDN'T COMPLETE IT.

1 Q. IS THAT DR. GUNTER YOU'RE REFERRING TO?

2 A. MM-HMM.

3 Q. YES?

4 BY COMMISSIONER BARDEN:

5 IS THAT A YES?

6 BY THE WITNESS:

7 YES.

8 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

9 Q. OKAY, ALL RIGHT. DID YOU KNOW THAT THE THERAPIST
10 REPORTED THAT YOU COULD ONLY DO SEDENTARY TO LIGHT
11 LIMITED WORK? DOES THAT SOUND FAMILIAR?

12 A. YES.

13 Q. ALL RIGHT.

14 BY MR. ROBERTSON:

15 COMMISSIONER, THAT'S APA PAGE 25.

16 BY COMMISSIONER BARDEN:

17 THANK YOU.

18 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

19 Q. ALL RIGHT. DID DR. GUNTER EVENTUALLY RELEASE YOU
20 FROM HIS CARE?

21 A. YES.

22 Q. OKAY. WAS THERE A POINT WHERE DR. GUNTER BASICALLY
23 SAID THERE'S NOTHING MORE HE CAN DO FOR YOU?

24 A. THAT IS RIGHT.

25 Q. ALL RIGHT. AND WAS IT YOUR UNDERSTANDING THAT HE

1 RELEASED YOU TO MEDIUM LEVEL WORK, OR DO YOU KNOW?

2 A. HE SAID I COULD -- YOU KNOW, MEDIUM -- YOU KNOW,
3 JUST NOTHING HARD WORK, YOU KNOW, JUST BARELY.

4 Q. OKAY, ALL RIGHT. BUT THE THERAPIST WHO EVALUATED
5 YOU SAID LIGHT WORK?

6 A. RIGHT.

7 Q. NOW, DID YOU KNOW THAT DR. GUNTER GAVE YOU A PERCENT
8 LEVEL OF IMPAIRMENT TO YOUR BACK IN HIS OPINION WHEN
9 HE RELEASED YOU, OR DID HE DISCUSS THAT WITH YOU AT
10 ALL?

11 A. NO, HE DIDN'T DISCUSS IT.

12 Q. OKAY. WITHOUT TELLING ME WHAT DR. GUNTER MAY HAVE
13 SAID, DID DR. GUNTER DISCUSS IMPAIRMENT RATINGS WITH
14 YOU AT ALL AND HIGH IMPAIRMENT RATINGS VERSUS LOW
15 IMPAIRMENT RATINGS?

16 A. WELL, I THINK HE SAID 80 PERCENT OR SOMETHING. I
17 FORGOT WHAT IT WAS.

18 Q. OKAY. DID HE SAY THERE WAS A REASON HE DOESN'T GIVE
19 HIGH IMPAIRMENT RATINGS ANYMORE?

20 A. YEAH, HE TOLD ME -- HE SAID ---

21 BY MS. SNYDER:

22 I OBJECT.

23 BY MR. ROBERTSON:

24 DON'T TELL ME WHAT HE TOLD YOU.

25 BY COMMISSIONER BARDEN:

1 SUSTAINED.

2 BY MR. ROBERTSON:

3 YEAH, DON'T TELL ME WHAT HE TOLD YOU.

4 BY COMMISSIONER BARDEN:

5 THAT WOULD BE HEARSAY.

6 BY THE WITNESS:

7 OKAY.

8 BY COMMISSIONER BARDEN:

9 YOU DID ASK HIM WHAT THEY DISCUSSED, AND THAT
10 INVITES A HEARSAY RESPONSE. SO, WE CAN'T HAVE THAT.

11 BY MR. ROBERTSON:

12 QUESTION WITHDRAWN, YOUR HONOR.

13 BY COMMISSIONER BARDEN:

14 ALL RIGHT. THANK YOU.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. DO YOU RECALL GOING TO SEE DR. FORREST IN MT.
17 PLEASANT?

18 A. YES, SIR.

19 Q. OKAY. DID YOU SPEND ABOUT AN HOUR WITH DR. FORREST
20 WOULD YOU SAY?

21 A. YEAH, ABOUT AN HOUR AND A HALF, SOMETHING LIKE THAT.

22 Q. DID HE EXAMINE YOU?

23 A. YES, SIR.

24 Q. DID HE GO OVER YOUR M.R.I. REPORTS WITH YOU?

25 A. YEAH, HE HAD AN M.R.I. THERE, AND HE WENT OVER IT

1 AND SHOWED ME WHAT THE DISC WAS AND ALL THAT.

2 Q. RIGHT, OKAY. NOW, LET ME ASK YOU THIS: DO YOU AGREE
3 WITH DR. FORREST WHEN HE OPINES THAT YOU'VE LOST 50
4 PERCENT OR MORE LOSS OF USE OF YOUR BACK DUE TO THE
5 INJURY WITH EAST RICHLAND?

6 A. OH, YEAH, I BELIEVE IT. YEAH, BECAUSE I CAN'T DO
7 NOTHING LIKE I USED TO COULD DO, YOU KNOW.

8 Q. SURE, OKAY. I WANT TO ASK YOU ABOUT SOME OF THE
9 CURRENT PROBLEMS THAT YOU'RE HAVING WITH YOUR BACK
10 AT THIS TIME. DO YOU STILL HAVE PAIN IN YOUR LOWER
11 BACK?

12 A. YEAH, IT GOES -- IT GOES DOWN MY LEG.

13 BY COMMISSIONER BARDEN:

14 WHICH LEG IS IT?

15 BY THE WITNESS:

16 MY RIGHT LEG.

17 BY COMMISSIONER BARDEN:

18 YOUR RIGHT LEG, OKAY.

19 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

20 Q. DO YOU SOMETIMES HAVE PAIN GOING TO YOUR LEFT LEG
21 ALSO?

22 A. YEAH, MY LEFT LEG.

23 Q. BUT IS IT MOSTLY YOUR RIGHT LEG?

24 A. IT'S MOSTLY THE RIGHT.

25 Q. OKAY, ALL RIGHT. NOW, THE PAIN IN YOUR LOWER BACK

1 ON A SCALE OF ONE TO TEN, HOW WOULD RATE THAT PAIN
2 ON AN AVERAGE DAY?

3 A. PROBABLY AROUND AN EIGHT.

4 Q. OKAY, ALL RIGHT. DO YOU EVER -- AND YOU HAVE PAIN
5 GOING DOWN YOUR RIGHT LEG; IS THAT WHAT YOU SAID?

6 A. YES.

7 Q. ALL RIGHT. DO YOU EVER HAVE PROBLEMS WITH NUMBNESS
8 IN YOUR RIGHT LEG?

9 A. MM-HMM.

10 Q. YES?

11 BY COMMISSIONER BARDEN:

12 IS THAT A YES?

13 BY THE WITNESS:

14 YES.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. DOES YOUR RIGHT LEG EVER SOMETIMES FEEL LIKE IT'S
17 GOING TO GIVE WAY?

18 A. IT DID THE OTHER NIGHT.

19 Q. IT DID THE OTHER NIGHT?

20 A. I FELL IN THE SHOWER AND HIT MY NOSE.

21 Q. DID IT CAUSE YOU TO FALL?

22 A. YES.

23 Q. HAS THAT ---

24 A. A MATTER OF FACT, I'VE GOT MY ARM NOW WRAPPED UP.

25 Q. OKAY. HAS THAT PROBLEM IN YOUR RIGHT LEG EVER

1 CAUSED YOU TO FALL BEFORE?

2 A. MAYBE A WHILE BACK.

3 Q. OKAY. NOW, THE PROBLEM WITH WEAKNESS AND GIVING WAY
4 IN YOUR RIGHT LEG, IS IT YOUR UNDERSTANDING THAT'S
5 RELATED TO YOUR BACK?

6 A. REPEAT THAT AGAIN.

7 Q. BASED ON WHAT YOU KNOW, IS YOUR BACK AFFECTING YOUR
8 RIGHT LEG IN THAT WAY?

9 A. A PSYCHOTIC[sic] NERVE OR SOMETHING. I DON'T KNOW
10 WHAT IT IS.

11 Q. RIGHT, OKAY, THAT'S FINE. DO YOU HAVE TROUBLE
12 SLEEPING?

13 A. YES, SIR.

14 Q. ALL RIGHT. ARE YOU STILL TAKING MEDICATIONS FOR
15 YOUR BACK AT THIS TIME?

16 A. YEAH, I THINK I'M TAKING PERCOCET.

17 Q. OKAY. DO YOU HAVE TROUBLE STANDING FOR LONG PERIODS
18 OF TIME?

-19 A. OH, YEAH.

20 Q. HOW ABOUT SITTING FOR LONG PERIODS OF TIME?

21 A. OH, I CAN'T EVEN SIT HARDLY. I CAN'T -- WHEN I WENT
22 TO CHARLESTON ---

23 Q. IS THAT THE TIME YOU WENT TO SEE DR. FORREST?

24 A. YES, SIR.

25 Q. OKAY. HOW FAR CAN YOU WALK BEFORE YOUR BACK MAKES

1 YOU NEED TO STOP AND REST?

2 A. ABOUT FROM HERE TO THAT DOOR (WITNESS INDICATES).

3 Q. OKAY. ARE YOU ABLE TO TAKE LONG TRIPS IN YOUR CAR?

4 BY COMMISSIONER BARDEN:

5 AND THE RECORD WILL REFLECT THAT THE CLAIMANT
6 IS SITTING IN THE WITNESS' CHAIR, AND HE IS
7 INDICATING TO THE DOOR IN COURTROOM "A."

8 BY MR. ROBERTSON:

9 THANK YOU, YOUR HONOR.

10 BY COMMISSIONER BARDEN:

11 WHICH I DON'T HAVE A TAPE MEASURER, BUT I WOULD
12 ASSUME IT'S SOME ---

13 BY MR. ROBERTSON:

14 A VERY SHORT DISTANCE, I WOULD SAY.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. ARE YOU ABLE TO TAKE LONG TRIPS IN YOUR CAR?

17 A. NO, SIR.

18 Q. OKAY. YOU ---

19 A. I MEAN, I DO, BUT I HAVE TO GET OUT, YOU KNOW, AND
20 WALK AROUND.

21 Q. OKAY. AND THAT TRIP TO CHARLESTON GAVE YOU A LOT OF
22 TROUBLE?

23 A. MM-HMM.

24 Q. YES?

25 BY COMMISSIONER BARDEN:

1 IS THAT YES?

2 BY THE WITNESS:

3 YES. AND I HAD TO STOP ABOUT THREE TIMES.

4 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

5 Q. DO YOU STILL DRIVE YOURSELF?

6 A. NO.

7 Q. ALL RIGHT.

8 A. I TOLD MY WIFE I DIDN'T WANT TO DRIVE NO MORE.

9 Q. OKAY.

10 BY COMMISSIONER BARDEN:

11 AND WHY IS THAT?

12 BY THE WITNESS:

13 I DON'T KNOW. I'M JUST SCARED I'LL, YOU KNOW,
14 FALL OUT OR SOMETHING LIKE THAT.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. DO YOU HAVE -- DO YOU FEEL LIKE YOU HAVE TROUBLE
17 WITH YOUR LEG WORKING THE PEDALS OR...?

18 A. NO. I CAN MASH THE PEDALS PRETTY GOOD.

19 BY COMMISSIONER BARDEN:

20 YOU'RE WORRIED ABOUT FAINTING OR SOMETHING?

21 BY THE WITNESS:

22 YES, SIR -- MA'AM.

23 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

24 Q. IS THAT RELATED MORE TO YOUR BACK, OR IS RELATED TO
25 YOUR CANCER?

1 A. I DON'T KNOW. I MEAN, YOU KNOW.

2 Q. OKAY, THAT'S FAIR. ARE YOU ABLE TO DO YOUR OWN YARD
3 WORK?

4 A. NO, SIR..

5 Q. OKAY. DID YOU USED TO DO YOUR YARD WORK BEFORE THIS
6 ACCIDENT?

7 A. OH, YEAH.

8 Q. ALL RIGHT. WHAT KIND OF HOBBIES DO YOU HAVE; WHAT
9 DID YOU DO FOR LEISURE TIME?

10 A. WELL, WHEN I WAS FEELING GOOD, I WOULD GO FISHING
11 AND STUFF LIKE THAT?

12 Q. DO YOU STILL GO FISHING?

13 A. MM-HMM.

14 BY COMMISSIONER BARDEN:

15 IS THAT A YES?

16 BY THE WITNESS:

17 YES.

18 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

19 Q. OKAY. DO YOU GO FISHING AS MUCH AS YOU USED TO DO?

20 A. NO, SIR.

21 Q. WHY NOT?

22 A. BECAUSE I JUST -- I JUST CAN'T GET OUT ON THE BOAT
23 NO MORE.

24 Q. OKAY. IS IT YOUR BACK THAT GIVES YOU PROBLEM
25 GETTING DOWN IN THE BOAT?

1 A. MM-HMM.

2 BY COMMISSIONER BARDEN:

3 IS THAT A YES?

4 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

5 Q. IS THAT A YES?

6 A. YES.

7 Q. PLEASE REMEMBER TO SAY YES. I KNOW IT'S ---

8 A. I KNOW, IT'S ROUGH.

9 Q. LET ME ASK YOU THIS: DID YOU USED TO DO A LOT OF
10 CARPENTRY PROJECTS AROUND THE HOUSE?

11 A. YES.

12 Q. OKAY. DID YOU BUILD A DECK AT ONE TIME OR A PORCH?

13 A. YES.

14 Q. CAN YOU STILL DO THOSE TYPE OF THINGS?

15 A. NO, SIR.

16 Q. AND WHY IS THAT?

17 A. I JUST CAN'T BEND OVER AND NAIL AND DO THIS AND
18 THAT.

19 Q. OKAY. IS THAT DUE TO YOUR BACK?

20 A. YES.

21 Q. OKAY. HAVE YOU DONE HEAVY LABOR BASICALLY ALL OF
22 YOUR LIFE?

23 A. DO WHAT?

24 Q. IN ALL YOUR JOBS, HAVE YOU EVER DONE ANYTHING THAT
25 WASN'T HEAVY LABOR?

1 A. NO, SIR.

2 Q. OKAY. SO HEAVY LABOR IS WHAT YOU'VE DONE?

3 A. MM-HMM.

4 BY COMMISSIONER BARDEN:

5 IS THAT A YES?

6 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

7 Q. YES?

8 A. YES. I CAN'T REMEMBER THAT.

9 Q. DO YOU THINK YOU WOULD BE ABLE TO GO BACK TO DOING
10 ANY OF THE TYPE OF WORK THAT YOU'VE DONE IN THE
11 PAST?

12 A. NO, SIR.

13 Q. IS THAT DUE TO YOUR BACK?

14 A. MM-HMM.

15 Q. YES?

16 A. YES.

17 Q. OKAY. WOULD YOU BE ABLE TO LIFT OR MOVE LARGE
18 VENDING MACHINES?

19 A. NO, SIR.

20 Q. WOULD YOU BE ABLE TO LIFT OR MOVE 100 POUND
21 MATERIALS AND WINDOWS?

22 A. NO, SIR.

23 Q. WOULD YOU BE ABLE TO LIFT AND DELIVER FURNITURE?

24 A. NO, SIR.

25 Q. WOULD YOU BE ABLE TO DO MOST OF THE THINGS THAT YOU

1 DID ON THE JOB AT EAST RICHLAND?

2 A. NO, SIR.

3 Q. OKAY. CAN YOU DIG?

4 A. NO, SIR.

5 Q. CAN YOU CLIMB IN AND OUT OF DITCHES?

6 A. NO, SIR.

7 Q. OKAY. DO YOU KNOW HOW TO USE A COMPUTER?

8 A. NO, SIR.

9 Q. OKAY. NOW, I'M NOT ASKING THIS TO EMBARRASS YOU,

10 SIR, BUT ARE YOU GOOD WITH READING AND WRITING?

11 A. NO, SIR.

12 Q. HOW ABOUT MATH?

13 A. NAW, NOT REAL GOOD.

14 Q. DO YOU THINK YOU COULD DO A JOB THAT REQUIRES A LOT

15 OF PAPERWORK?

16 A. NO, SIR.

17 Q. WOULD YOU BE ABLE TO DO A JOB THAT REQUIRES YOU TO

18 DO A LOT OF MATH?

19 A. NO, SIR.

20 Q. OKAY. DO YOU THINK YOU COULD DO A DESK JOB?

21 A. NO, SIR.

22 Q. HAVE YOU EVER DONE A DESK JOB?

23 A. NO, SIR.

24 Q. DO YOU FEEL LIKE THERE'S ANY KIND OF JOB THAT YOU

25 COULD DO AT THIS TIME?

1 A. NO, SIR.

2 Q. IS THAT DUE TO YOUR BACK?

3 A. MM-HMM.

4 BY COMMISSIONER BARDEN:

5 IS THAT A YES?

6 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

7 Q. YES?

8 A. YES.

9 Q. HAVE YOU BEEN ACCEPTED FOR SOCIAL SECURITY
10 DISABILITY TO YOUR KNOWLEDGE?

11 A. TO MY KNOWLEDGE, MAYBE.

12 Q. OKAY, MAYBE?

13 A. MAYBE.

14 Q. YOU DON'T KNOW?

15 A. I DON'T KNOW.

16 Q. DO YOU RECEIVE A CHECK FROM SOCIAL SECURITY EVERY
17 MONTH ---

18 A. I THINK SO.

19 Q. --- OR DIRECT DEPOSIT?

20 A. YEAH.

21 Q. OKAY. ALL RIGHT. DO YOU KNOW IF ANY DOCTOR HAS
22 RECOMMENDED THAT YOU RECEIVE CONTINUING MEDICATIONS?

23 A. NOT THAT I KNOW OF.

24 BY MR. ROBERTSON:

25 COMMISSIONER, I'LL DEFER TO THE MEDICAL RECORDS

1 ON THAT.

2 BY COMMISSIONER BARDEN:

3 OKAY. AND I WILL CERTAINLY READ THEM.

4 BY MR. ROBERTSON:

5 I KNOW YOU WILL, COMMISSIONER. THAT'S ALL I
6 HAVE AT THIS TIME. THANK YOU.

7 BY COMMISSIONER BARDEN:

8 THANK YOU SO MUCH.

9 PLEASE ANSWER ANY QUESTIONS MS. SNYDER HAS FOR
10 YOU.

11 CROSS EXAMINATION BY MS. SNYDER:

12 Q. MR. ROBERTSON ASKED YOU A LOT OF GOOD QUESTIONS, SO
13 MAYBE WE CAN KEEP THIS BRIEF, OKAY?

14 A. OKAY.

15 Q. I SEE YOU'RE IN A WHEELCHAIR TODAY. I HAVEN'T HAD A
16 CHANCE TO MEET WITH YOU BEFOREHAND, BUT I SEE YOUR
17 WIFE ALSO HAS A CANE. CAN YOU TELL ME ABOUT ---

18 A. NO, SHE'S JUST CARRYING THAT FOR ME.

19 BY MS. JULIE DENT:

20 THEY OFFERED THE ---

21 BY COMMISSIONER BARDEN:

22 WAIT, YOU DON'T GET TO TALK, MA'AM. YOU'RE NOT
23 A WITNESS. SO, GO AHEAD, MS. SNYDER, ASK YOUR
24 QUESTION AGAIN.

25 CROSS EXAMINATION RESUMED BY MS. SNYDER:

1 Q. DO YOU ALWAYS UTILIZE A WHEELCHAIR?

2 A. NO.

3 Q. NO. CAN YOU TELL ME ABOUT AND DESCRIBE TO ME ABOUT
4 HOW OFTEN YOU USE A WHEELCHAIR OR WHEN YOU USE A
5 WHEELCHAIR?

6 A. WHEN I WALK A LOT.

7 Q. WHEN YOU WALK A LOT, OKAY. WAS IT PRESCRIBED TO YOU
8 BY A DOCTOR?

9 A. YEAH, WELL, I CAN'T REMEMBER.

10 Q. THAT'S OKAY.

11 A. YEAH, I DON'T REMEMBER.

12 Q. WHEN DID YOU START USING A WHEELCHAIR?

13 A. PROBABLY ABOUT A YEAR AGO.

14 Q. A YEAR AGO, AND IS THAT FOR YOUR BACK PAIN, OR DOES
15 THAT HAVE ANYTHING TO DO WITH YOUR CANCER?

16 A. IT'S MY PAIN.

17 Q. YOUR PAIN, OKAY.

18 BY COMMISSIONER BARDEN:

19 - DOES IT HAVE ANYTHING TO DO WITH THE CANCER AND
20 THE CHEMO?

21 BY THE WITNESS:

22 NO -- NO, MA'AM.

23 BY COMMISSIONER BARDEN:

24 OKAY.

25 CROSS EXAMINATION RESUMED BY MS. SNYDER:

1 Q. BUT YOU DON'T RECALL A DOCTOR GIVING YOU -- WHERE
2 DID YOU GET -- I'M SORRY. LET ME START OVER. WHERE
3 DID YOU GET THE WHEELCHAIR FROM?

4 A. DOWNSTAIRS.

5 Q. OH, IN THE BUILDING?

6 A. YEAH.

7 Q. OKAY, GOT IT. SORRY. BUT YOU DON'T TYPICALLY
8 UTILIZE A WHEELCHAIR?

9 A. UH-UH.

10 BY COMMISSIONER BARDEN:

11 IS THAT A NO?

12 BY THE WITNESS:

13 NO.

14 BY COMMISSIONER BARDEN:

15 SO, YOU USE A CANE; WOULD THAT BE RIGHT?

16 BY THE WITNESS:

17 YES.

18 BY COMMISSIONER BARDEN:

19 OKAY.

20 CROSS EXAMINATION RESUMED BY MS. SNYDER:

21 Q. AND WAS THAT GIVEN TO YOU BY A DOCTOR?

22 A. MM-HMM.

23 BY COMMISSIONER BARDEN:

24 IS THAT A YES?

25 BY THE WITNESS:

1 YES. I'VE GOT TO KEEP REMEMBERING THAT.

2 CROSS EXAMINATION RESUMED BY MS. SNYDER:

3 Q. THAT'S OKAY. IT'S TOUGH. DO YOU RECALL WHICH
4 DOCTOR GAVE YOU THE CANE?

5 A. I SURE DON'T.

6 Q. OKAY. I WOULD LIKE TO ASK YOU A COUPLE OF QUESTIONS
7 ABOUT THE DAY OF YOUR ACCIDENT. YOU MENTIONED THAT
8 YOU WENT TO YOUR KNEES AFTER YOU PICKED UP THE
9 MANHOLE COVER. THAT WAS BECAUSE OF THE PAIN IN YOUR
10 BACK?

11 A. YEAH.

12 Q. IS THAT CORRECT?

13 A. THE PAIN SHOT DOWN MY BACK AND LEG.

14 Q. OKAY. HAVE YOU SEEN A DOCTOR ---

15 BY COMMISSIONER BARDEN:

16 WHICH LEG; IS THIS THE RIGHT LEG IT WENT DOWN?

17 BY THE WITNESS:

18 YES, MA'AM.

19 BY COMMISSIONER BARDEN:

20 ALL RIGHT.

21 CROSS EXAMINATION RESUMED BY MS. SNYDER:

22 Q. DO YOU RECALL GOING TO A DOCTOR FOR YOUR LEGS OR
23 YOUR LEG PAIN?

24 A. NO.

25 Q. NO. HAVE YOU BEEN ASSIGNED AN IMPAIRMENT RATING FOR

1 YOUR LEG PAIN?

2 A. NO.

3 Q. OKAY. WHEN DID YOU START HAVING PAIN IN YOUR LEGS
4 REGULAR? EITHER LEG, I SUPPOSE. I WOULD ASK YOU TO
5 SPECIFY.

6 A. PROBABLY A YEAR OR SO AGO.

7 Q. YEARS AGO BEFORE YOUR ACCIDENT?

8 A. NO. A YEAR -- ABOUT A YEAR AGO.

9 Q. OKAY. A YEAR AGO FROM TODAY?

10 A. YEAH, A YEAR AGO FROM TODAY.

11 Q. OKAY. AT THE TIME OF YOUR ACCIDENT, WERE YOU
12 PARTICIPATING IN THE STATE'S TERI PROGRAM?

13 A. YES, MA'AM.

14 Q. DID YOU HAVE AN IDEA OF WHAT DATE YOU WOULD RETIRE?

15 A. I HAD TWO AND A HALF, THREE YEARS -- ALMOST THREE
16 YEARS TO GO.

17 Q. OKAY.

18 A. SO, I JUST STARTED ABOUT TWO WEEKS -- TWO YEARS, AND
19 THAT'S WHEN THE ACCIDENT HAPPENED.

20 Q. SO, YOU HAD BEEN ON TERI FOR TWO YEARS BEFORE THE
21 ACCIDENT?

22 A. YES, MA'AM.

23 Q. OKAY. DID YOU HAVE A PLANNED DATE OF WHEN YOU WOULD
24 RETIRE?

25 A. LET ME SEE. WELL, I FIGURED ABOUT THREE MORE YEARS,

1 YOU KNOW.

2 Q. RIGHT. IT'S A FIVE-YEAR PROGRAM, CORRECT?

3 A. YEAH, FIVE YEARS WOULD BE UP.

4 Q. OKAY. AND I UNDERSTAND THAT SOMETIMES YOU CAN GET
5 HIRED BACK AFTER TERI. WERE YOU PLANNING TO BE DONE
6 AFTER TERI?

7 A. YES, MA'AM.

8 Q. OKAY. DO YOU RECALL ANY DOCTORS TELLING YOU THAT
9 YOU HAD LUMBAR RADICULOPATHY; DOES THAT SOUND
10 FAMILIAR TO YOU?

11 A. UH-UH.

12 BY COMMISSIONER BARDEN:

13 IS THAT A NO?

14 CROSS EXAMINATION RESUMED BY MS. SNYDER:

15 Q. IS THAT A NO?

16 A. NO.

17 Q. OKAY, THAT'S FINE.

18 BY MS. SNYDER:

19 I THINK THAT'S ALL I HAVE AT THIS TIME.

20 BY COMMISSIONER BARDEN:

21 THANK YOU, MS. SNYDER. MR. ROBERTSON, ANY
22 QUESTIONS ON RE-DIRECT?

23 BY MR. ROBERTSON:

24 JUST VERY BRIEFLY, COMMISSIONER.

25 BY COMMISSIONER BARDEN:

1 SURE.

2 RE-DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

3 Q. MR. DENT, I JUST HAVE REALLY ONE QUESTION FOR YOU.
4 AGAIN, DR. BELMAR WAS THE FIRST DOCTOR THAT YOU SAW
5 AFTER YOUR ACCIDENT; IS THAT CORRECT?

6 A. YES, SIR.

7 Q. ALL RIGHT. NOW, IF HER FIRST RECORD ON MAY THE 8TH,
8 2012, INDICATES THAT YOU HAD PAIN GOING DOWN YOUR
9 RIGHT LEG, WOULD YOU AGREE THAT YOU PROBABLY TOLD
10 HER THAT?

11 A. YEAH, I MIGHT HAVE.

12 Q. OKAY.

13 A. BECAUSE I DID AT THE TIME.

14 Q. SO, IF DR. BELMAR IS CORRECT ABOUT WHAT YOU SAID,
15 THEN YOU HAD RIGHT LEG PAIN -- PAIN GOING DOWN YOUR
16 RIGHT LEG RIGHT FROM THE START; IS THAT CORRECT?

17 A. MM-HMM.

18 BY COMMISSIONER BARDEN:

19 IS THAT A YES?

20 RE-DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

21 Q. IS THAT A YES?

22 A. YES.

23 BY COMMISSIONER BARDEN:

24 THANK YOU.

25 BY MR. ROBERTSON:

1 NOTHING FURTHER, YOUR HONOR.

2 BY COMMISSIONER BARDEN:

3 OKAY. ANYTHING ELSE, MS. SNYDER?

4 BY MS. SNYDER:

5 NO, MA'AM.

6 BY COMMISSIONER BARDEN:

7 ALL RIGHT. THAT CONCLUDES THIS PROCEEDING.

8 THANK Y'ALL VERY MUCH.

9 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
10 CONCLUDED AT THE HOUR OF 11:09 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1205879

EMPLOYEE/CLAIMANT: JAMES L. DENT

EMPLOYER: EAST RICHLAND COUNTY PUBLIC SERVICE

INSURER: STATE ACCIDENT FUND

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 51 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **JAMES L. DENT** TAKEN ON THE 7TH DAY OF FEBRUARY, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 12TH DAY OF APRIL, 2014.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-04-2024

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

Matthew C. Robertson

From: Love, Kristi [klove@wcc.sc.gov]
Sent: Wednesday, February 19, 2014 8:33 AM
To: Matt Robertson (mrobertson@pfmcdlaw.com); psnyder@saf.sc.gov
Subject: DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS.doc
Attachments: DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS.doc

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC #: 1205879

DATE OF HEARING: February 7, 2014

PLACE OF HEARING: Columbia, SC

CLAIMANT: James Dent

EMPLOYER: East Richland County Public Services

CARRIER: State Accident Fund

CLAIMANT'S ATTY: Matt Robertson

DEFENDANTS' ATTY: Page Snyder

FINDINGS OF FACT

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affects his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected). Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #2, page 22; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).

Commissioner's Notes for Decision and Order

9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" a surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting—he admitted at the hearing that he has no problem using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned—even from Claimant's IME; (b) Claimant's IME admits that *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15, and 24; Claimant's APA #4, page 35; Defendants' APA, page 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation, and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the *lung cancer is not playing any role*" in Claimant's inability to work, [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including but not limited to pages 36-37; Claimant's APA #5, page 38).
21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (*i.e.*, *Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 40%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of the accident.
26. Defendants to receive credit for overpayment from the date of maximum medical improvement.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.

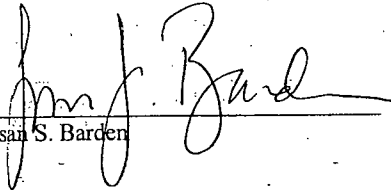
INSTRUCTIONS: Attorney Page Snyder to prepare proposed Order unless otherwise agreed upon by the parties. Proposed Order shall include **VERBATIM** Findings of Fact attached hereto, **unless there is a mistake, in which case, it may be corrected. ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION.** Any other Findings of Fact not inconsistent with those attached hereto may also be included. Proposed Order shall be submitted within 35 days of the date of these order instructions. If you need a transcript order it *immediately* from court reporter Jan Whitworth in writing at Post Office Box 551, Roebuck, South Carolina 29376. Provide a copy of the proposed order to opposing counsel or *pro se* claimant **at least five (5) days prior to the time** one is submitted to the Commission. **IN YOUR COVER LETTER TO ME, PLEASE INCLUDE A STATEMENT THAT THE OPPOSING PARTY HAS NO OBJECTION TO THE ORDER AS WRITTEN.**



The Commission now requires the proposed order be e-mailed to klove@wcc.sc.gov and all parties in Word format.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered. (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award


Susan S. Barden

South Carolina Workers' Compensation Commission

Matthew C. Robertson

From: Love, Kristi [klove@wcc.sc.gov]
Sent: Thursday, March 27, 2014 2:31 PM
To: Matt Robertson (mrobertson@pfmcdlaw.com)
Cc: psnyder@saf.sc.gov
Subject: FW: DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS
Attachments: DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS.doc

From: Love, Kristi
Sent: Thursday, March 27, 2014 2:30 PM
To: psnyder@saf.sc.gov; Cook, Matthew R.
Subject: DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS

E-mail to follow.

REQUEST FOR PROPOSED ORDER

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PLACE OF HEARING: Columbia, SC

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EMPLOYER: East Richland County Public Services

CARRIER: State Accident Fund

CLAIMANT'S ATTY: Matt Robertson

DEFENDANTS' ATTY: Page Snyder

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Commissioner's Notes for Decision and Order

Page 1 of 4

P.208

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10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" a surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting—he admitted at the hearing that he has no problem using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned—even from Claimant's IME; (b) Claimant's IME admits that *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15, and 24; Claimant's APA #4, page 35; Defendants' APA, page 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation, and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the *lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including but not limited to pages 36-37; Claimant's APA #5, page 38).
21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (*i.e.*, *Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of the accident.
26. Defendants to receive credit for overpayment from the date of maximum medical improvement.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$916.09, yielding a compensation rate of \$610.75.

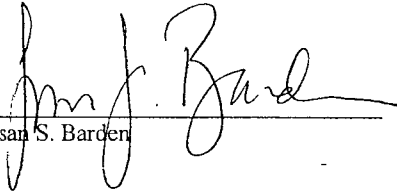
INSTRUCTIONS: Attorney Page Snyder to prepare proposed Order unless otherwise agreed upon by the parties. Proposed Order shall include **VERBATIM** Findings of Fact attached hereto, **unless there is a mistake, in which case, it may be corrected. ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION.** Any other Findings of Fact not inconsistent with those attached hereto may also be included. Proposed Order shall be submitted within 35 days of the date of these order instructions. If you need a transcript order it *immediately* from court reporter Jan Whitworth in writing at Post Office Box 551, Roebuck, South Carolina 29376. Provide a copy of the proposed order to opposing counsel or *pro se* claimant **at least five (5) days prior to the time** one is submitted to the Commission. **IN YOUR COVER LETTER TO ME, PLEASE INCLUDE A STATEMENT THAT THE OPPOSING PARTY HAS NO OBJECTION TO THE ORDER AS WRITTEN.**



The Commission now requires the proposed order be e-mailed to klove@wcc.sc.gov and all parties in Word format.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award



Susan S. Barden

South Carolina Workers' Compensation Commission

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

RECEIVED

DEC 10 2015

SC Court of Appeals

Appellate Case No.: 2015-001702

James Dent, ... Appellant,

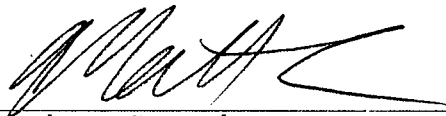
v.

East Richland County Public Service
District, Employer, and State Accident Fund,
Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

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

Dated: 12-7-15


Matthew C. Robertson
MCDANIEL LAW FIRM
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Columbia, SC 29201
(803) 771-7211

Attorney for Appellant